

UNITED STATES DEPARTMENT OF DEFENSE
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RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT
CRIMES PANEL

COMPARATIVE SYSTEMS SUBCOMMITTEE

+ + + + +

PLANNING AND DELIBERATION SESSION

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WEDNESDAY
JANUARY 15, 2014

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The Panel convened in the
Teleconference Room of Suite 150 in 875
North Randolph Street, Arlington, Virginia
at 7:00 a.m, Elizabeth Hillman, Chair,
presiding.

PRESENT

Elizabeth Hillman, Chair
Harvey Bryant
BG (Ret.) John Cooke
BG (Ret.) Malinda Dunn
Rhonnie Jaus *
Colonel (Ret.) Dawn Scholz *
Russell Strand

ALSO PRESENT

Maria Fried, Designated Federal
Official

Dillon Fishman

Colonel Patricia Ham

Commander Sherry King

Lieutenant Colonel Kelly McGovern

Terri Saunders

* Present via telephone

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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Professor Hillman. 4

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input to determine which topics can be
completed by April 2, 201416

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1 P-R-O-C-E-E-D-I-N-G-S

2 7:14 a.m.

3 DFO FRIED: Good morning,
4 everyone. Thank you for joining us this
5 bright, early Wednesday morning for
6 accommodating the schedule. I'm opening the
7 meeting and turning it over to Professor
8 Hillman. Thank you.

9 PROF. HILLMAN: Thanks, Maria.

10 Thanks to everybody for coming in
11 so early. I appreciate it. We have a tough
12 time finding a time to actually talk in person
13 and we thought it was important to get
14 together to identify our priorities and to
15 start the deliberations process after we've
16 heard so much information. I'll just mention
17 quickly an update on the other subcommittees.
18 Some of you are also engaged in different
19 subcommittees.

20 If there is anything that we want
21 to say on the Role of the Commander, we should
22 get that out now because the Role of the

1 Commander Subcommittee is in the process of
2 drafting a report that will be presented at
3 the next public hearing of the RSP and that
4 will be January 30th. So if there is anything
5 we want to push to that committee, we should
6 do that sooner rather than later.

7 Really what our goal is today is
8 to look at the huge list of things we are
9 tasked with answering within the charter of
10 the RSP. We have a long list. The Role of
11 the Commander Subcommittee has a high-profile
12 question but we have a long set of questions.

13 We need to start to draft the
14 report so that we can actually stay on time.
15 We need to be done by May/June and the RSP
16 meets in April and we need to get a draft of
17 what we're saying to the RSP before that and
18 we still need to do some data collection.

19 Today if we can prioritize,
20 identify the places where we still need some
21 more information, and then start to shape what
22 our findings and recommendations would be,

1 we'll give our staff a chance to actually
2 start working through the production of the
3 report that we are going to need.

4 I think we'll move on here. Let
5 me ask Kelly McGovern if she wants to add
6 anything else.

7 Do you want to add anything else,
8 Kelly?

9 LTC McGOVERN: No.

10 PROF. HILLMAN: Okay. I'm really
11 grateful for her help, for Dillon and for Jan,
12 for Colonel Ham, for everybody who has been
13 working on this here. I'm excited to have a
14 chance to start.

15 There is a document that we
16 circulated yesterday, the CSS issues for
17 discussion which was just updated which
18 everybody who is here in person has in front
19 of them. The folks on the phone have a copy
20 of it that came in yesterday.

21 I thought we would start by
22 looking at the -- just review what our sort of

1 objectives are and then look at these issues
2 because this is actually a big outline of all
3 the things that could end up in the report and
4 we need to identify anything that is missing
5 that you think should be in the report, take
6 out anything you think should not be in the
7 report, and sort of adjust this as we sort of
8 think about priorities.

9 Let me just start by reminding us
10 of what we're doing here because we really
11 haven't had a chance to talk. We are the
12 source of information on how the military
13 system compares to the civilian system and the
14 civilian system is not one but many.

15 The military system is not one but
16 five. This is not a clean sort of comparison
17 that we can do but the way this is set up is
18 if you run down the objectives, the first one
19 is our overall mandate.

20 The next one has to do with
21 training; training of law enforcement
22 personnel specifically with the initial

1 interaction. This has overlap with the Victim
2 Services Subcommittee. Yet, we are the ones
3 who are focused here on the training. The
4 next one is, again, about training of counsel.
5 The next is about the statistics.

6 Among the things that we are going
7 to hold forth on here, that may be the most
8 contentious because it's the one that triggers
9 the most concern is this problem of different
10 dimensions on the military than it is in
11 civilian jurisdictions.

12 The next one, the examine
13 sentencing guidelines, we have not heard from
14 anybody on this yet and we will and we are
15 working on that. That is a piece that we have
16 yet to get to. I don't anticipate that we'll
17 deliberate much on that.

18 I think that the second to last
19 there, Identify Best Practices, is actually
20 the most important thing on the list. My
21 suggestion would be that we actually focus on
22 all that background piece with an eye towards

1 getting out there what we want to say are best
2 practices because I think we have a uniquely
3 valid place from which to assess this because
4 of the work that we've been doing over the
5 last few months.

6 Then finally the Assess Pending
7 Legislation which keeps changing but we'll do
8 that maybe in a snapshot sort of way at the
9 end here. Doing a careful analysis of the
10 proposals that are out there right now doesn't
11 make a lot of sense for us to reach
12 conclusions on those because they continue to
13 change and there's hearings coming up, we
14 guess, and there's going to be more proposals
15 on the table.

16 With that, let me just take -- you
17 all haven't had a chance to talk about your
18 perspective on this at all and how we ought to
19 approach this. Are there comments on this
20 sort of idea about looking through the outline
21 of our report and then trying to prioritize
22 and reach some tentative efforts on framing

1 best practices. Are there comments on that
2 that anybody wants to add?

3 LTC McGOVERN: Can I just
4 interject a couple of things just to provide
5 some perspective on not necessarily what our
6 report will look like but the final RSP
7 report. Judge Jones has said she envisioned
8 starting out stating what the problem is and
9 by doing that using the statistical portion.

10 We have received a bunch of
11 information and then we are going to see the
12 statistics to understand those statistics. We
13 felt you all needed to hear all the
14 information about the systems first.

15 And the conclusion may be that
16 this is an apples-to-oranges comparison in a
17 lot of ways. I think Judge Jones believes
18 that's an important piece that we'll be saying
19 up front this is the problem or whether or not
20 there is a problem.

21 That is something to keep in the
22 back of our minds how we are going to either

1 incorporate that and whether our specific task
2 of just looking at conviction rates also then
3 leads to the responsibility just because we
4 are Comparative Systems to also look at the
5 surveys that have been done and the general
6 statistics and the DoD SAPRO reports and
7 everything.

8 That is all falling into our area.
9 As we are adding and cutting, you may think
10 that doesn't look like it's in our lane, but
11 it has sort of fallen in our lane and it's an
12 important part of our lane.

13 Then Jan has done an amazing job
14 of pulling together all the resources that
15 have been sent or that will be sent to be
16 considered for this report. The way we would
17 like to help draft the report is for a lot of
18 this background information for each sentence
19 we'll be able to provide a citation to
20 testimony or to an article to back it up.

21 I know it's hard to deliberate
22 when you don't have a set of facts and

1 information before you to say, "Okay, from
2 that we can draw this finding and
3 recommendation." If we can sketch some of
4 that out today, we can start drafting those
5 information type papers which will then build
6 into our report.

7 Lastly, my understanding is the
8 subcommittee reports will serve as the basis
9 for the RSP report. The panel members will
10 likely then just draw their own
11 recommendations, either adopt or tweak the
12 recommendation.

13 In a FACA forum subcommittees
14 cannot -- the subcommittee recommendations
15 cannot just be rubber-stamped by the panel
16 members. They will have to deliberate this as
17 well but we are going to be doing the bulk of
18 the work so that in the month to month-and-a-
19 half that the full panel has, they don't have
20 to do as much work or writing. Those are just
21 some issues to be considering.

22 PROF. HILLMAN: Thanks, Kelly.

1 Anybody else want to comment on
2 sort of our agenda for the morning or sort of
3 where we are?

4 MR. BRYANT: I'm looking over your
5 shoulder. Is this just something you have or
6 are we all suppose to have this?

7 PROF. HILLMAN: You should all
8 have this.

9 MR. BRYANT: Somehow I didn't get
10 the objectives part. I've got the issues for
11 discussion.

12 PROF. HILLMAN: Do people not have
13 that objectives piece?

14 BG DUNN: No, no. We have it. It
15 was with the email yesterday.

16 MR. BRYANT: Ah. Well, I didn't
17 have a chance to print that off.

18 DFO FRIED: And just a reminder --

19 MR. BRYANT: I've got the list of
20 issues but I didn't have the --

21 DFO FRIED: Just a reminder from
22 the FACA standpoint, if you have any questions

1 that result after this meeting or any comments
2 you want to make, please direct them first to
3 Kelly and she'll make sure that -- I should be
4 CC'd as well but she'll make sure it gets
5 disseminated to the rest of the panel members,
6 the subcommittee members, just to make sure
7 there's no inadvertent deliberations.

8 MR. STRAND: I want to amplify
9 what Kelly was saying. As we are going
10 through all the meetings and stuff like that
11 when we're talking to some civilian groups and
12 organizations and some military groups and
13 organizations, it's really not easy to
14 crosswalk levels of certain things.

15 For example, levels of training.
16 We can look at what the military got for
17 training and we know what they're getting, but
18 it's so diverse in the civilian world what
19 percentage of them actually get training so we
20 can speak to what percentage of military
21 people get this training and have a sense of
22 that.

1 Just like even in the last meeting
2 we had for NDAA, they didn't know -- they
3 don't have a sense of how many prosecutors are
4 actually prosecuting these cases have that
5 good quality training.

6 That's just one example of how
7 this can be difficult to compare because it's
8 so diverse in different jurisdictions or
9 organizations. It's much less diverse with
10 the military.

11 PROF. HILLMAN: That's probably
12 actually a tentative finding for us, that sort
13 of thing that Russ just said, which is that
14 training is more standardized in the Armed
15 Forces than what it is in civil jurisdictions.

16 That is the kind of up-front
17 framing that will help us feel comfortable, I
18 think, with what we can say about what we have
19 because we do not have a comprehensive study
20 of civilian training practices but we have
21 some touchstones and we are filling that in.
22 That is exactly the kind of thing we want, I

1 think, to frame where we're headed.

2 LTC McGOVERN: And I think, Russ,
3 we'll have a lot of disclaimers throughout our
4 explanation that this is -- for the
5 jurisdictions we have been able to study that
6 this is a difficult comparison but here are
7 the numbers that we do have.

8 PROF. HILLMAN: Okay. So then
9 let's dig in. The list of issues then. This
10 has continued to evolve and we've sent out
11 some versions of this before but I'm not sure
12 how much everybody has had a chance to look at
13 this.

14 Let's just do some work while
15 we're here and let's look at this. Let's
16 start with the -- you can see it's organized,
17 the overall document, by the objectives.

18 The first nine pages go to number
19 one there, the first objective which is
20 compare military and civilian systems. This
21 is all -- this whole first big chunk of the
22 outline is all background data rather than to

1 specific pieces.

2 Let me just ask Kelly and Dillon
3 and Jan, everybody who has been working on
4 this, do you envision the structure of the
5 report as a huge like dissertation at the
6 beginning that is sort of an exposition of all
7 this? This is all information that will
8 support the findings and this is going to be
9 really long if you draft this.

10 LTC McGOVERN: Right. I believe
11 that a lot of this is important to understand
12 whether or not there is a problem in the
13 military. How concise we can be is going to
14 be important so that people actually read the
15 report so that we can get it done.

16 For instance, the organizational
17 structure of the investigating teams in the
18 military versus the civilians, it seems to be
19 everybody is taking this multi-disciplinary
20 approach. Some of it may be just up front
21 these are how the common investigating
22 prosecution and defense structures look like.

1 But then as actual findings these
2 are the problems or these are the issues and
3 recommendations. I think it's difficult not
4 to go through a lot of this background and
5 just say, "We looked at investigations and we
6 found this, this, and this" in order for the
7 panel then to be able to deliberate.

8 PROF. HILLMAN: See how this
9 sounds to you. I would be inclined to
10 structure this background information into the
11 findings and the recommendations that we make
12 in each of these sub-areas. For instance, the
13 question of whether it's a problem so there's
14 a lot of pieces of that. Is there a problem
15 with how we investigate? I mean, we have to
16 break that down.

17 That is where everything here
18 under letter A, Investigation Issues, which
19 runs two-and-a-half pages on here. Everything
20 there could come under in support of the
21 finding that says investigation in the
22 military is more standardized than in civilian

1 systems.

2 Then we actually explain what we
3 mean by that. Or investigative training, that
4 is, is more standardized. Do you see what I
5 mean? I'm happy to take other perspectives on
6 this.

7 If we write a magnum opus that has
8 all this data at the front and our conclusions
9 at the end, I fear that, first, we can't be
10 comprehensive because it would just be too
11 long. Second, I think that nobody will look
12 at the whole first chapters of the report.

13 COL HAM: Well, the structure.
14 Again, we looked at an overall structure
15 having reviewed all the prior task force
16 reports. Of course, there is an executive
17 summary. There is a methodology.

18 The findings and recommendations
19 are up front as well as in the back. Does
20 that make sense? For those who are looking
21 for not to read what information you base your
22 findings on there, there is a mechanism in the

1 structure of the report for them to do that.

2 PROF. HILLMAN: Okay.

3 COL HAM: But it's up to you.

4 That was how we looked at the JTF SAMS, the
5 Military Academy's report, which is not
6 necessarily any kind of structure that you
7 need to follow if you want to depart
8 from --

9 PROF. HILLMAN: I want to follow a
10 structure that we can finish this in actually.

11 BG DUNN: It also seems to me that
12 we have certain areas that we'll need to do in
13 more detail than others. For example -- take
14 the example of the training of investigators.

15 I'm just going to throw this out
16 here but I think based on what I've heard, the
17 way the military trains and follows up
18 instructors its investigative -- you know, its
19 development of investigators is far and away
20 more superior, organized, and consistent over
21 the course of a career than anything we've
22 heard from any civilians.

1 They are trying to find money,
2 they are trying to catch as catch can. I
3 think, you know, when we address that, that
4 could be relatively quick and simple.

5 When we move to prosecutors, you
6 know, I think we've got a real separation
7 between military prosecutors who are young and
8 who get a lot of training and a lot of backup
9 and a lot of support versus civilian
10 prosecutors who do this for years and years
11 and years and develop all that expertise from
12 an OJT perspective.

13 That is something when we get to
14 our recommendation I think is going to be a
15 little more probably contentious in this room
16 as we try to sort through that.

17 What are some of the other things
18 we heard? The way the civilians consolidate.
19 We heard from all these different civilian law
20 enforcement and prosecution organizations.
21 Some of them have these incredible
22 consolidations with prosecutors,

1 investigators, victim advocates.

2 The military is moving in that
3 direction. There are probably some
4 recommendations we can make there to move that
5 process along maybe, assuming we think that's
6 valuable.

7 PROF. HILLMAN: Okay. For those
8 of you on the phone, that was General Dunn
9 speaking. Let me get General Cooke and then
10 Mr. Strand.

11 BG COOKE: I was just going to --
12 maybe the panel members know this but what are
13 the other subcommittees doing? We don't want
14 to be three completely different approaches to
15 all this.

16 COL HAM: It's overall the same
17 structural approach which is Judge Jones asked
18 us to identify all the issues we thought had
19 come up in all the information presented just
20 as a list of those issues to give to the
21 subcommittees to determine which ones you want
22 to make findings and recommendations on, which

1 ones you don't, if there are additional ones
2 you want. That is all it's meant to be.

3 Then the second step would be
4 filling in the information that you've
5 received on those issues just as a factual
6 background for you and then for you to do with
7 that what you want in your findings and
8 recommendations. It's the same methodology in
9 other words, sir, for every subcommittee.

10 As Professor Hillman noted, the
11 three subcommittees have very different -- I
12 don't know what the --

13 BG COOKE: Substantive.

14 COL HAM: Yeah, substantive
15 things. This subcommittee definitely has the
16 most information but a lot of it is very
17 factual it may be fair to say. So maybe less
18 -- I'm not sure what word to use.

19 I mean, the facts you've heard are
20 the facts you've heard. What findings and
21 recommendations you make from them are up to
22 you. The list of issues isn't meant to say

1 this is a staff thing and you need to make
2 recommendations. These issues are absolutely
3 not our role. It's just these are all the
4 issues that have come out in all the materials
5 that have been presented to you.

6 The methodology section would
7 include all the information that is available
8 to you realizing some of it has been heard in
9 subcommittee meetings.

10 Some of it is available to you
11 through the transcripts of public meetings and
12 some of it is available to you through public
13 comment, etc. That has been received. So
14 there are different sources for the
15 information you can consider.

16 LTC McGOVERN: And I think the
17 role of the Commander is a few steps ahead in
18 that they have already started deliberations.
19 My understanding is their structure right now,
20 as well, is some background information and
21 discussion about that information, the
22 findings and recommendations.

1 My proposal is that the staff help
2 you draft the background information. We say
3 this is what the military is doing. This is
4 generally what civilians are doing. A
5 discussion analysis of those two along with
6 your deliberations and then your finding of a
7 recommendation from that.

8 Bottom line is we don't want to
9 rewrite the DoD IG report on training
10 investigators but we'll have to probably do a
11 little bit of the background information for
12 the report.

13 That is just something the staff
14 will have to work with you on finding a
15 balance, how to make sure we are educating the
16 public to let them know you have heard a lot
17 of information and completely understand the
18 issues and the facts. Again, not getting so
19 bogged down on it that we write an
20 encyclopedia.

21 MR. STRAND: We'll have to do the
22 middle first. We probably should to get a

1 good overview of the middle. These are the
2 facts and then we can define these
3 recommendations out of that.

4 The only other thing I want to say
5 is I'm hesitant about focusing on problems
6 because I think there's a lot more successes
7 than there are problems. The military has
8 basically been focused on all the problems.

9 I think what I've seen -- I guess
10 we can start giving opinions. What I've seen
11 here is a lot of the problems that are in the
12 public and a lot of the problems that have
13 been brought up across the board in the press
14 and even in Congress is they are aberrations,
15 some of them. The real problem is that good
16 information isn't getting out.

17 As we move forward, we certainly
18 want to identify problems and focus on those,
19 but also focus on the good things that are
20 being done, especially when it gets to some of
21 the promising best practices that we've seen
22 that really needs to get out there.

1 COL HAM: And the finding is not
2 limited to an issue that you think needs a
3 fix.

4 LTC MCGOVERN: Right. Certainly.
5 To me a finding is going to be a best
6 practice. A finding may be, for instance, a
7 consolidated facility seems to be the best
8 practice in your opinion. That is a finding
9 and your recommendation is there be funding
10 applied just for an example.

11 Again, after looking through and
12 analyzing or researching a lot of these, it's
13 hard to say exactly what a best practice is
14 but I think that instead of being so concerned
15 about making a list of best practices that
16 those may be incorporated into your findings
17 as well and that way you are not just looking
18 at problems, you're looking at, "Wow, this is
19 a solution we have found."

20 PROF. HILLMAN: That sounds right
21 to me. I worry about framing this as is there
22 a problem because we have all been spending a

1 lot of time on something that is not a problem
2 if that's the case. I don't think that's the
3 perspective that we are actually facing out
4 there but we want to elaborate.

5 In other words, the problem is not
6 necessarily the response systems and we are
7 focused on response systems but we have to all
8 accept that there's just a problem, that this
9 is happening. That is, the incidents are
10 happening. We are focused on the response
11 systems.

12 MR. BRYANT: We can always frame
13 it as needed improvements and not use the word
14 problems. Something like that.

15 PROF. HILLMAN: Right. I think
16 that is going to be important in how we set
17 this up.

18 MR. BRYANT: Recommended.

19 BG DUNN: I think we're also
20 looking at, for example, there's a problem but
21 is the way the military investigates sexual
22 assaults part of the problem or not? Here is

1 how we do it in the civilian community and
2 here is how we do it in the military
3 community.

4 If we look at it in that framework
5 we could narrow -- help narrow the entire
6 report to here are a few things that really
7 need to be focused on and changed.

8 PROF. HILLMAN: I think that's
9 exactly right. If we are going to outline
10 what differentiates the civil systems from the
11 military systems that we have and then those
12 in which there is the greatest gap, I think we
13 need to explain why there are those gaps and
14 talk about whether those are the right things
15 or not.

16 Colonel Ham, do you want to --

17 BG DUNN: And some of the gaps are
18 on the civilian side. I mean, you look at
19 training and resourcing, etc., etc., etc.

20 PROF. HILLMAN: I think that will
21 be the subtext of our report but not our
22 primary --

1 BG DUNN: Exactly.

2 PROF. HILLMAN: Not the overhead.

3 MR. BRYANT: Because that varies
4 so much with civilians. We heard about the
5 small jurisdictions where they might have two
6 rapes a year and they've only got these two
7 people.

8 BG DUNN: Exactly.

9 MR. BRYANT: That's all over the
10 place. Talking about the military, I agree
11 that it's pretty standardized. Everybody is
12 doing the same thing. It's like the FBI.
13 Every FBI agent is going to go and have this
14 training on a regular basis and the civilians,
15 don't have a national prosecution thing for
16 civilians.

17 BG DUNN: Right. And resourcing
18 varies drastically.

19 PROF. HILLMAN: I'm not so sure
20 it's quite that lockstep because of the
21 branches of service, those distinctions, and
22 because of the different sizes of

1 installations and the remoteness of different
2 locations.

3 MR. STRAND: And the difference
4 between a submarine and Fort Hood.

5 PROF. HILLMAN: Right. But,
6 still, that is something to put out there,
7 too. I mean, I think part of the value of
8 what we'll set out is to recognize that the
9 military jurisdiction itself has a lot of
10 subparts and we need to elaborate solutions
11 that will fit all those different places and
12 not just one.

13 MR. STRAND: And one of those key
14 areas, and we're going to struggle with this,
15 is SANE nurses. There are some installations
16 that it's a really good fit to have highly
17 qualified and trained internal SANE nurses.

18 There are some places, like we'll
19 talk about this morning, Fort Hood, they have
20 no SANE nurses in the military system. The
21 locals take care of that.

22 But is that a good fix then if

1 Fort Hood deploys? You know, the soldiers
2 from Fort Hood deploy somewhere else where
3 they need that organic support. I think those
4 are some of the differentiations that we need
5 to look at.

6 COL HAM: And you have the NDAA
7 provision that requires SANE capability at
8 every installation that has a 24-hour
9 operating room, although I guess that is open
10 to interpretation as all statutes are but just
11 to make you aware that there is that provision
12 and how will that play into your assessment.

13 PROF. HILLMAN: Okay. Let me ask
14 the folks on the phone if you want to weigh in
15 on anything that we've said so far and then
16 we'll start walking through this, I think,
17 from the top.

18 COL SCHOLZ: This is Dawn. I just
19 agree that I think the format is fine as long
20 as we've got that nice executive summary and
21 findings up front. I think having a
22 background is going to be important. I just

1 wanted to agree with that.

2 MS. JAUS: This is Rhonnie. I
3 agree. I'm okay with everything.

4 PROF. HILLMAN: Okay. So let's
5 look at this. The first part is the big
6 investigation piece that's here. That's
7 letter A under the compare military and
8 civilian systems. This runs through the
9 structure, who does the investigation, role
10 and authority, how we're tracking, how
11 evidence is handled and collected.

12 LTC McGOVERN: And this is where I
13 think a lot of this will be background but
14 then you will get -- I anticipate you may have
15 a finding about the investigative role and
16 authority because they have discretion in the
17 civilian community where they don't in the
18 military, again identifying a gap in our
19 factual background section.

20 PROF. HILLMAN: So as I look
21 through here when I get to Roman VIII there
22 which is Collateral Misconduct. Then I start

1 to -- then Culture Change.

2 Then we start to hit some things
3 that feel like they are going to crosscut
4 throughout. In other words, collateral -- I
5 guess it will be relatively comprehensive and
6 then you'll approach this here but this will
7 also appear in other parts of what we're
8 looking at.

9 COL HAM: There is a definite
10 piece of the role of the Commander and
11 collateral misconduct as well. And victim
12 services.

13 LTC McGOVERN: So are you asking
14 do we group it in a separate spot where we say
15 how do investigative prosecutors and defense
16 all approach collateral misconduct?

17 PROF. HILLMAN: That and culture
18 change are examples of a step in the sequence
19 of how the investigation proceeds but are,
20 instead, concepts that matter here and how
21 investigators play into that. Anyway, we can
22 address that in the findings.

1 MR. STRAND: So it may or may not
2 fit in the investigator piece. It might fit
3 in another section where we look at collateral
4 misconduct and then how everybody interplays
5 in that section as opposed to just under the
6 investigative piece. Is that what I'm
7 hearing?

8 PROF. HILLMAN: Yes.

9 MR. STRAND: Okay.

10 BG COOKE: Can I -- I'm not
11 entirely clear on that. It seems to me
12 there's a piece of each of those, collateral
13 misconduct and culture change, that applies
14 rather specifically to the investigative
15 process and it ought to be addressed there.
16 I mean, they could be cross-referenced or
17 something I suppose.

18 It applies there but there's a
19 bigger piece as well, a much bigger piece that
20 extends beyond even this Subcommittee's
21 purview so I'm not sure how you slice and dice
22 that. The investigators clearly receive

1 pieces of that that affect them, involve them.

2 LTC McGOVERN: Well, and as we go
3 through this, one way to deal with it may be
4 those who are drafting the investigation
5 portion address it within investigations and
6 say, "Investigators go ahead and investigate
7 all possible chargeable misconduct."

8 Then defer to the commander and
9 refer it to the commander for action. And
10 culture change certainly the Baltimore folks
11 and the Philadelphia Police Departments have
12 explained what culture change was for them
13 within a police department. It changed how
14 they write and things like that.

15 Yes, sir, you're right it is very
16 specific to that so we may address it here and
17 then have an over-arching issue as well.
18 Maybe we start more specific and then once we
19 combine the section of the report, if we see
20 a lot of overlap, we can take those portions
21 out.

22 BG DUNN: I think the culture

1 change issue runs across the entire panel but
2 if we take it and apply it to our piece, it's
3 more recognition of here is the cultural
4 issue. It's not a military issue, it is a
5 societal issue.

6 Here is the information that we've
7 gotten about what was wrong with some of those
8 cultural perspectives and here is how it's now
9 applied. Here is what our investigators are
10 being taught.

11 Here is, presuming the Role of the
12 Commander, and how they are being educated.
13 Here is how they've done the education to the
14 civilian community. Here is what Baltimore
15 and Philadelphia did.

16 LTC McGOVERN: Right. Everybody
17 is getting training on victim blaming and, you
18 know, and changing their language and things
19 that they do. Those are specific best
20 practices.

21 BG DUNN: And how to conduct the
22 interviews and how to -- right.

1 LTC McGOVERN: I think we may need
2 to keep it in this portion but if we are
3 seeing that it sounds redundant, we can pull
4 it out and have it as an over-arching area.

5 MR. STRAND: Well, there are some
6 significant changes and differences also in
7 collateral misconduct. The civilian police
8 departments they could care less and they
9 don't have to do anything.

10 That's a huge -- that's a huge
11 impact on investigation and reporting. If I'm
12 an underage drinker in my hometown, that's not
13 going to stop me from reporting to the police.
14 If I'm smoking marijuana in some
15 jurisdictions, obviously Colorado, but other
16 jurisdictions, that may not be a problem.

17 They don't have to stop anything.
18 It doesn't stumble. Then the role, too, the
19 new role of the SVCs in collateral misconduct
20 and that investigation may play an integral
21 part later on which is just another ancillary
22 part.

1 PROF. HILLMAN: So I'm running a
2 list of what I think could be topics. We can
3 talk about a deliberation for this
4 investigations part. That list right now runs
5 to the assignment of SANE, the selection and
6 assignment of SANE, the training specifically
7 and what we can say about the distinction.

8 Collateral misconduct and how
9 that's managed and then the culture change
10 issues, in this investigation part in
11 particular, that there be something we want to
12 say with respect to findings on this. Are
13 there other pieces of what we've heard about
14 investigations that appear here that you think
15 we want to make findings on?

16 MR. STRAND: Yes. On the
17 training, I think, we have a finding on the
18 training as far as the massive amount of
19 training that our military gets and
20 standardized across the board where much
21 higher percentages get it as opposed to almost
22 ad hoc in the civilian realm as opposed to,

1 you know, like the agents get four months of
2 detective training where some detectives don't
3 get any.

4 They get OJT, on-the-job training.
5 Then just specifically in sexual assault,
6 everybody is required to get minimum training
7 standards where in the civilian world they're
8 not.

9 I think the differences between
10 training figures also -- one of the things we
11 need to highlight is the differences in what
12 authority patrolmen in the civilian world have
13 vice the authority that patrolmen in the
14 military have which is -- and their response
15 is significantly different.

16 The reason I say this is because
17 if we compare what patrolmen get in the
18 civilian world, they get trained probably a
19 little more on responding to sexual assault
20 and everything else because they are actually
21 in a lot of jurisdictions doing the
22 investigations, whereas in the military that

1 is not going to happen so differentiating
2 those things.

3 Then another finding I really
4 think is an issue is sustainment. I think
5 that's probably going to cut across the entire
6 spectrum.

7 Right now there's a lot of energy
8 and a lot of resources and a lot of things
9 being thrown in there but are they
10 sustainable? Are they permanent? My belief
11 is that they're not as soon as the ball fits
12 somewhere else so we have to make
13 recommendations on funding, on personnel, and
14 probably in each of these areas, resourcing.

15 BG DUNN: Resourcing in terms of
16 our recommendations is absolutely critical
17 because unless things are resourced, they do
18 not -- they are not sustained.

19 MR. STRAND: Most of these
20 programs are done out of hide right now and
21 out of hide doesn't work as the hide gets cut
22 and we are facing some significant cuts.

1 A lot of these temporary
2 positions, term positions and they are going
3 to be the first to go away. Everything that
4 was briefed could very well be different in
5 five years if we don't make some strong
6 recommendations.

7 COL HAM: You also heard about the
8 Special Victim Capability and the Special
9 Victim investigators. Did you want to throw
10 that into the mix of these issues as well?

11 MR. STRAND: Yes.

12 COL HAM: For example, I know,
13 Russell, you talked about Fort Hood. You
14 heard there's a certain number of special
15 victim investigators there but was it a
16 sufficient number to cover what was necessary?
17 There was also non-special victim
18 investigators as part of that. All those
19 issues I'm just throwing out.

20 MR. STRAND: Absolutely. Do we
21 have the right mix? Do we have enough
22 personnel with the increase in reports? Same

1 thing with the crime lab and the prosecutors.

2 The prosecutors are getting
3 strained along the way. Well, the JAGs are
4 because, again, everything is coming out of
5 hide but are there additional authorizations?
6 Are there additional resources?

7 COL HAM: Are the prosecutors
8 co-located with Special Victim investigators
9 at Fort Hood. Is that something that you
10 would recommend or not recommend as a best
11 practice?

12 MR. STRAND: Right. And JBLM up
13 at Joint Base Lewis-McChord.

14 LTC McGOVERN: And some of these
15 if you don't think you've received enough
16 information within deliberations, please let
17 us know and we can arrange for more
18 information. For initial findings, those all
19 sound good. Again, any other findings coming
20 out from USACIL lab visit that you may have.

21 PROF. HILLMAN: That's a good
22 point. I mean, I hope everybody will flag

1 what else you think we need. The big cross-
2 cutting point that Russ just made about
3 resources, Malinda backed that up with the
4 sustainability of this.

5 I actually think this goes not
6 only to the frame in which we write this but
7 also to our substantive recommendation because
8 I think we need to recommend that efficiencies
9 be part of the answers that we're seeking
10 here. We can direct funding. That's fine.

11 I think we should do that,
12 absolutely, and suggest that it's important
13 that a multi-year sort of commitment and
14 specific earmark go to this rather than having
15 commands have to continue to take it out of
16 their operating budgets.

17 I think alongside that we just
18 have to find cheaper solutions to some of what
19 we're doing now because this just can't --
20 just that level of resource allocation
21 required for what's happening in some
22 instances now I just don't think we can expect

1 to continue. That piece of it, I think,
2 matters throughout here, too.

3 MR. BRYANT: I agree with that
4 entirely because to come to the point where
5 this or any other group is suggesting that the
6 solution is to throw more money at it, right
7 away you are going to start losing people in
8 terms of the strength of the recommendation.

9 We need to make sure our
10 recommendations do address sustainability but
11 that can't be the be all and end all. If we
12 throw more money at this we solve something
13 which is in line, I think, with what Beth
14 was --

15 BG DUNN: Well, it's not money.
16 It's actually people.

17 MR. BRYANT: Well, which is money.

18 BG DUNN: Well, right. I mean, if
19 you don't -- I believe it's relatively clear
20 from last go-round of looking at sexual
21 assault in the military where there were some
22 recommendations made about creating

1 organizations on installations that would be
2 a resource to victims, etc.

3 It was never done. It was never
4 done. It was ad hoc in units and it was never
5 done because to hire a GS-13 or GS-14, I mean,
6 it all comes back to the resources.

7 MR. BRYANT: Well, during
8 reductions and hiring freezes. It's not only
9 just the money. It's the kind of money that's
10 important.

11 MR. STRAND: If it's earmarked and
12 it's fenced, it's sustainable. If it's part
13 of the operating budget that goes into the big
14 pot, it is not sustainable. That is the kind
15 of thing that I'm -- but we do need to
16 consolidate some things. We heard from the
17 JAGs last week that there are probably reasons
18 why each one of them have their own legal
19 academies and things like that.

20 But when it comes to the
21 specialized training, I think there are so
22 much more similarities, especially when we

1 talk specifically about sexual assault is
2 there a reason why we have three or four
3 different services doing their own thing using
4 the same resources in their training or should
5 we recommend that they combine those and find
6 some efficiencies there because there are some
7 cultural differences in the services, but then
8 you track some of those out in the training.
9 You determine what applies to everybody which
10 is going to be about 80 to 90 percent and
11 what's different. Then you have a little
12 track in that training. I hear what you're
13 saying there, Harvey.

14 MR. BRYANT: If we're saying they
15 need this and they need so many X somethings,
16 it's obvious that takes money to do without us
17 beating the money drum.

18 I mean, whether it's a city
19 council or Congress, they get sick and tired
20 of hearing groups all the time saying, "Well,
21 if we just had more." Nobody ever comes in
22 and says, "If we had less." It's always if we

1 just had more. I just don't want us to get
2 off on that. I agree we've got to address it
3 in terms --

4 BG DUNN: It's not necessarily
5 saying more money. It's saying what that is
6 has to be focused on the best.

7 MR. STRAND: It has to be fenced.

8 BG DUNN: Well, I don't know that
9 but it has to be --

10 MR. BRYANT: We need a SANE nurse
11 at every whatever and the special victim unit
12 investigators and so on. That says more
13 resources in and of itself.

14 BG DUNN: NDAA has already taken
15 care of the SANE nurses.

16 MR. STRAND: Here's an example.

17 BG DUNN: And the Special Victim
18 Council and all.

19 MR. STRAND: Here is an example,
20 back in the '80s child abuse was a big issue
21 and there was a lot of boards and a lot of
22 discussion. There was a lot of things going

1 on so family advocacy started at that point in
2 time but it wasn't successful until somebody
3 said, "We need this. This is earmarked money.
4 It's fenced all the way from Congress all the
5 way through to the end user."

6 That is what has sustained family
7 advocacy all these years, even in all the
8 budget fights and the reductions and
9 everything else. When that family advocacy
10 money comes down, it comes down clean. I've
11 used it now since the early '90s and I don't
12 have a problem with our budget people.

13 Every year when we get a certain
14 amount of money they can't tax it, they can't
15 pull it, they can't move it. I think that's
16 really important for sustainability. Not the
17 amount of money but just the kind of money
18 that it is.

19 MS. JAUS: It's the same thing in
20 the civilian world where there's a Violence
21 Against Women Act where we get a lot of money
22 through that and it's sustained because

1 there's all that money through the federal
2 government that comes to the different
3 programs. This is Rhonnie.

4 BG COOKE: We just have to be
5 realistic. When you look at one problem in a
6 vacuum, you can come up with a million things
7 to fix that problem but you have to recognize
8 there's a lot of other problems that also
9 demand attention, money, and people. We need
10 to keep that perspective when we write this.

11 BG DUNN: And I think if we can
12 prioritize. I mean, here are the biggest
13 issues and then here's the nice to do. Here's
14 the nice-to-do stuff.

15 PROF. HILLMAN: I love the
16 recommendation that we actually structure
17 this, the resourcing, like family advocacy or
18 like VAWA specifically based on problems that
19 have been legislatively identified and funded.
20 That pulls this issue up to a different level
21 than what it's been at that won't be in the
22 cycle of here is another scandal and this is

1 what's happening.

2 But, instead, creates an
3 infrastructure of funding that would continue
4 and maybe an oversight body that actually gets
5 to redirect that funding with an eye towards
6 what is most effective across the board on a
7 regular basis.

8 LTC McGOVERN: Well, a bigger
9 issue that the subcommittee may want to
10 consider with that is who pays for the court-
11 martial and where does that money come from as
12 well once we get into the prosecution realm of
13 it because I don't think it's necessarily
14 impacting court-martials now but it is an
15 issue.

16 PROF. HILLMAN: I think it is. I
17 think it definitely is and what's being
18 investigated. I mean, this is a diversion of
19 resources. This is like a magnet that's
20 pulling resources from the JAG Corps.

21 I think it is affecting what is
22 happening out there to the detriment of some

1 other types of law enforcement and legal work
2 that needs to happen.

3 That is beyond our scope. I mean,
4 we're not here to protect all the other goals.
5 There's so many goals that are getting served
6 by these resources that we're relying on to
7 implement all this.

8 Okay. We are actually
9 deliberating now which is just fine. Maybe
10 we'll sort of combine this. Kelly and I
11 scheduled deliberations sort of at a later
12 time but we are deliberating on the
13 investigative piece which is just fine and I
14 think that makes sense for how to walk through
15 this.

16 Go ahead, Russ.

17 MR. STRAND: Another thing is, I
18 think, the anonymous reporting piece that
19 Ashland, Oregon brought to us at the public
20 meeting. I think that's something we need to
21 discuss as far as --

22 PROF. HILLMAN: Russ, what kind of

1 reporting?

2 MR. STRAND: Anonymous reporting.

3 PROF. HILLMAN: Anonymous
4 reporting.

5 MR. STRAND: To where if I'm a
6 civilian victim in Ashland, Oregon and I'm not
7 sure I want to make a report, I can still go
8 to law enforcement. I still talk to them.

9 They collect the criminal
10 information and use it maybe not for that
11 particular case but they can start
12 investigating just like we do in drug cases
13 and everything else. Currently in the
14 military if a victim wants to talk to an
15 investigator it's automatically an
16 investigation.

17 I have a concern with that because
18 if I'm a victim and I'm being told by the
19 victim advocate, my special victim counselor
20 and everything else I don't have to talk to an
21 agent and, if I do, everything is -- you know,
22 the can is going to be opened.

1 The message that I'm getting in
2 some -- the message people are getting in some
3 cases is, I guess, "I don't want to talk to
4 them. Maybe they are not trustworthy."

5 If we look at the restrictive
6 reporting piece and allow maybe a victim to
7 talk to an agent first and then if the victim
8 decides to go forward with an investigation,
9 then we do that. But if they don't, no harm
10 no foul.

11 We at least have that information
12 and we've given that person an opportunity.
13 My sense is that if we allow victims to do
14 that, we're going to have more unrestricted
15 reports in the end.

16 A lot of us have personal
17 interaction and the way that we are training
18 our agents across the board to be more
19 sensitive and to be that. I really liked what
20 Ashland had as a best practice that we might
21 consider adopting.

22 BG DUNN: And that also ties into

1 the issue of trying to keep a finger on serial
2 offenders because if we can somehow structure
3 that so that the victim can speak to an
4 investigator and then the process can be held
5 until the victim makes a decision, at least
6 you've got a name in there perhaps.

7 MR. STRAND: And we might actually
8 be able to find other victims.

9 BG DUNN: Well, right. Exactly.

10 MR. STRAND: The DNA and CODIS.

11 BG DUNN: Right. Right.

12 PROF. HILLMAN: Ms. Jaus, did you
13 want to get in on that?

14 MS. JAUS: I was going to say -- I
15 was going to say the same thing that Malinda
16 said that as long as law enforcement knows
17 about the name, that's the most important
18 thing.

19 With the anonymous reporting if
20 they don't want to give their name, at least
21 the military would know of a possible serial
22 offender out in the midst. I think that's

1 very important.

2 COL SCHOLZ: This is Dawn. I
3 thoroughly agree with what Russ said, too, how
4 that would parcel things up. Just the
5 tracking under one four. I just think that
6 may be just a little too much detail now.
7 It's semantics but tracking serial offenders.
8 It says how do we track alleged offenders.

9 I think that we need to either
10 state the statistical issue of exactly what
11 we're talking about there and accounting for
12 and stuff like that. The word tracking is a
13 little bit confusing.

14 That's what I wanted to point out.
15 Sounds as if we are tracking them down, you
16 know, instead of what we are really meaning
17 about creating a database and capturing the
18 data.

19 BG DUNN: We are trying to
20 identify them perhaps.

21 MS. JAUS: Yes. Correct.

22 PROF. HILLMAN: Okay. Any other

1 on the investigative pieces?

2 MR. STRAND: When we went to the
3 crime lab -- when we went to the Army crime
4 lab or the DoD crime lab and then we went to
5 the Georgia crime lab, we saw some differences
6 there.

7 Not any big ones. I mean, they
8 basically have the same technologies other
9 than the fact that our crime lab, the DoD
10 crime lab, has a lot more programs out there
11 for the future and they are doing a lot more
12 research.

13 One of the things that struck me -
14 - it's not necessarily resourcing but it
15 struck me that they were also impacted by the
16 furlough, by sequestration. The lab actually
17 shut down. When victim advocates and everyone
18 else was, you know, exempted, some parts of
19 this community that's actually supporting
20 sexual assaults weren't.

21 BG DUNN: So the stream -- there
22 were exemptions and they didn't go far enough

1 downstream with the exemptions.

2 MR. STRAND: It wasn't
3 encompassing enough. That would also include
4 then the training stopped during sequestration
5 as well so if you're not training the people
6 to do what they're doing, then that impacts
7 the investigations as well. I guess it's kind
8 of not protecting them from the bad things
9 that happen but making sure that when they are
10 exemptions in sexual assault that they go a
11 long ways.

12 Plus the lab said that they are
13 currently able to sustain what they're doing
14 but if there's a continued increase, and I
15 guess that goes across the board, the lab said
16 that they would need more resources because
17 they are maxed out right now.

18 If we see a 47 percent increase
19 across the board in DoD last year, that's
20 going to impact them. It's going to impact
21 everyone. But is that going to be the way
22 that we're looking at the future? We don't

1 know but we have to consider that.

2 LTC McGOVERN: Russ, would you
3 propose any sort of finding as far as the
4 length of time it takes to process a case in
5 the military versus civilian based on the lab
6 work? Because that's, again, the problem
7 being the over-arching problem of sexual
8 assault victims dissatisfaction with the
9 military. That's one of the issues.

10 MR. STRAND: Right. I was
11 impressed with the crime lab processing time.
12 It was kind of funny not in a ha-ha way but in
13 a strange way when we went to the Georgia lab
14 they actually seemed to have a better
15 processing time, but they segmented each one
16 of their processing times.

17 Like the crime lab when they
18 report their process time, that would be, I
19 think, a finding. The way that the crime lab
20 reports their processing is from the time it
21 comes in the door the whole case to when it
22 leaves.

1 Whereas, in other labs, as was
2 pointed out in Georgia, they only take the DNA
3 first, or they only take it in firearms first
4 and each segment is this. Even in the DNA lab
5 if they're processing the sexual assault kit
6 for the victim and they don't get DNA, once
7 they process that, then they stop the clock.

8 If they have to process the
9 underwear, then the clock starts again. If
10 they have to process another piece of
11 evidence, the clock -- it's not really -- I
12 think the processing times can't be compared
13 very well.

14 I'm satisfied with the processing
15 time the crime lab has currently but if they
16 have more cases, that's going to impact
17 because they only have so much capacity.

18 COL HAM: Did you receive any
19 information on national processing times
20 rather than one lab, which is a snapshot. I
21 don't know if you received information from
22 the crime lab on an overall average nationally

1 for processing time of DNA and overall
2 nationally whether it's done like Georgia or
3 whether it's done like the military crime lab.

4 MS. JAUS: Could I say something?
5 I think there is a tremendous backlog
6 throughout the country and I think there's
7 legislation pending where they are trying to
8 get funding across the country to deal with
9 the backlog.

10 I think there is enormous backlog
11 in certain jurisdictions throughout the
12 country and there's really no consistency.
13 The more reporting there is, the more the
14 backlog grows and that could be a common
15 problem for the military but I think it's a
16 big problem across the United States.

17 MR. BRYANT: Was there a
18 prioritizing of the rape kits or perp. kits by
19 the military crime lab?

20 MR. STRAND: There is a priority
21 system. If it's pending court-martial, that
22 goes to the top of the stack.

1 MR. BRYANT: In all cases and not
2 just --

3 MR. STRAND: Correct.

4 MR. BRYANT: -- the sexual assault
5 cases.

6 MR. STRAND: Correct.

7 MR. BRYANT: I'm just asking
8 because there's a process in a lot of civilian
9 jurisdictions for the prosecutor. The lab is
10 prioritizing certain types of cases where the
11 prosecutor can by written letter request that
12 this be given priority and the lab --

13 BG DUNN: There --

14 MR. BRYANT: They have MOU's with
15 the prosecutors' offices saying, "Okay, who
16 sent us the letter saying make this a
17 priority, make it a priority?" It's got to be
18 signed by somebody.

19 BG DUNN: There is --

20 MR. BRYANT: And how many of these
21 are going through the military lab as opposed
22 -- you know, in military cases, you know, are

1 there cases where the military is handling the
2 case but the evidence is sent to civilian
3 labs?

4 MR. STRAND: Generally not.
5 Generally once the military assumes
6 jurisdiction they go and collect the evidence
7 and it comes to our lab. If it's already in
8 another lab, say it's weeks into the process
9 and it's already gone to the other lab, it
10 will stay at that other lab generally because
11 I didn't make that lab trip.

12 BG DUNN: And there is a process
13 to reach into the military lab to move it
14 along.

15 MR. STRAND: Right. Prosecutors
16 can call. Defense attorneys can call. Agents
17 can call.

18 MR. BRYANT: So there is that
19 prioritizing process.

20 BG COOKE: And there is also a
21 prioritization of what sequence they do things
22 in.

1 BG DUNN: Right.

2 BG COOKE: Sometimes that can be a
3 resource issue as well. They can get the key
4 piece of evidence out of the first thing.
5 They don't want to look further. The
6 prosecutor may want them to go four more
7 levels to have the belt and suspenders
8 approach when it gets to trial. That is also
9 a resource.

10 MR. STRAND: The big difference
11 that I saw was between the Georgia lab -- we
12 only did see the Georgia lab -- they don't
13 like to do mixed samples because they're
14 complicated and the Georgia lab says we might
15 do two or three. When we were there they were
16 doing -- at the DoD lab they were doing a
17 mixed sample of seven.

18 It takes a lot of work but they
19 felt confident so there's a difference there,
20 too. Some labs may not do very well with
21 mixed samples but the DoD lab, I think, is in
22 the forefront in the world on doing that.

1 MS. JAUS: I think in New York
2 they do mixed samples all the time and I think
3 they don't shy away from it because they have
4 a state-of-the-art lab. It just depends upon
5 the culture of the lab and the capability.

6 BG COOKE: Can I go back to Russ'
7 point about the lab? If more cases are
8 brought, it's going to be a resource issue for
9 them. That's true across the board.

10 One of the conundrums in all this
11 is if success is measured by more
12 prosecutions, then resources are going to get
13 sucked into this process.

14 If success is measured by driving
15 down the incidents of sexual assaults, then
16 it's not, or it may not be. It doesn't
17 necessarily have to be. Part of this is what
18 are the measures of success and how do you
19 achieve that.

20 MR. STRAND: Well, if we're
21 successful in the next five years we'll
22 increase reports by 300 percent. As that goes

1 on, we are going to reduce the incidents or
2 the prevalence down and hopefully the two
3 shall get close.

4 I don't think they will ever meet
5 but the more successful we are at holding
6 defenders accountable and investigating these
7 things and prosecuting them, we are eventually
8 going to see a decrease in actual incidents.
9 We should.

10 BG COOKE: We hope so.

11 MR. STRAND: We hope so. In the
12 meantime I think it's going to be -- on the
13 front end it's going to be painful.

14 BG COOKE: Well, maybe this goes
15 beyond our scope prosecution isn't the only
16 way to drive down the incidents of these
17 things. There's a lot of other things that
18 need to happen.

19 BG DUNN: Many, many.
20 Investigation and prosecution is one aspect.
21 I think the training and --

22 BG COOKE: Well, the culture

1 change --

2 BG DUNN: Culture change at large
3 in society as well as in the military is far
4 more important in that regard. Investigation
5 and prosecution is critical.

6 PROF. HILLMAN: That points to
7 something that I'm not sure is in here yet
8 that I think perhaps should be that the first
9 responder is often not somebody
10 who -- the first person who is aware there's
11 a potential sexual assault is not a person
12 who's embedded in these systems that we're
13 looking at.

14 It's just a person somewhere.
15 It's that change that the military actually
16 has an easier time with than -- I mean, there
17 is no -- I mean, we can't even teach people
18 what the constitution is as sort of our
19 citizenship training is pretty weak. Much
20 less do we teach people how to respond.

21 That is from top to bottom across
22 the board something really everybody ought to

1 be aware of. I wonder if we should -- I don't
2 know where that fits in here but it is
3 comparative systems and that is the training
4 that's happening of everybody in the military
5 and not only -- it runs to culture change but
6 I'm not sure that it's set out separately. Is
7 that in here?

8 LTC McGOVERN: I think the Victims
9 Services Subcommittee is addressing the
10 training of soldiers in sexual assault and
11 will likely note that there is not comparable
12 training of society.

13 PROF. HILLMAN: Okay. I'm happy
14 to leave that to them then.

15 BG COOKE: What about like
16 universities? What are they doing, if
17 anything, to educate people about this?

18 BG DUNN: Sweep it under the rug.

19 LTC McGOVERN: I do think the
20 University of Texas could follow up with you
21 to explain they create awareness programs and
22 things of that nature.

1 COL HAM: But what you've heard in
2 this subcommittee, I believe, I think there
3 was some local, again, a snapshot. What I
4 think you did hear in the public meeting is
5 probably their own police force on the
6 university and very low, if any.

7 I think Ms. Jaus weighed in on
8 this in one subcommittee meeting. Very low,
9 if any, referrals for outside prosecution from
10 the universities.

11 BG DUNN: We did hear that from
12 the police as well. The police had a
13 discussion with us about universities adjacent
14 to their jurisdictions and the fact that --

15 MR. STRAND: Almost outside --

16 BG DUNN: In some cases --

17 MR. STRAND: -- sexual assault
18 being reported but in the gates not so much.

19 BG DUNN: Right. And in some
20 jurisdictions the police handle the campus and
21 in others they don't and very little seem to
22 come out.

1 MS. JAUS: Under Title 9 every
2 university and college receiving federal
3 funding have to conduct a sexual assault
4 investigation. Irrespective of what happens
5 with law enforcement they have to have their
6 own investigation and their own grievance
7 procedures. I don't know if it's being done
8 but that's what is required under Title 9.

9 MR. STRAND: But those are
10 administrative investigations. Aren't they?
11 Unless they are criminal?

12 MS. JAUS: Well, they are like, I
13 guess, quasi-hearings where they determine
14 whether the student is going to be suspended.
15 That's been the whole crisis across the
16 country that the universities aren't doing
17 these investigations but they are required
18 under Title 9 for many years now.

19 MR. STRAND: That's very true but
20 that's also part of the problem. You've got
21 faculty members making determinations on
22 whether or not and they are bringing the

1 victim and the suspect in the same room and
2 they are having this discussion. That is
3 actually more egregious than letting the law
4 enforcement do it.

5 MR. FISHMAN: We received some
6 testimony on this, just to be clear, at the
7 public meeting. Chief Cory Booker from
8 Ashland, Oregon testified specifically about
9 this issue a little bit so it's in the
10 transcript.

11 MR. BRYANT: And we talked
12 anecdotally about it, too. I think where we
13 started this was not what these colleges are
14 actually doing whether it's Title 9 and all
15 this.

16 In comparing the systems it's the
17 military addressing the cultural change and
18 the education of their particular population
19 better than colleges in the civilian world.
20 I think based on what we've seen and heard in
21 public meetings, as well as the subcommittee
22 meetings, the answer is yes. I mean --

1 MS. JAUS: Absolutely.

2 MR. BRYANT: -- they have really
3 taken this very, very seriously. They are
4 under the microscope right now. I think they
5 are bending over backwards to get the word out
6 to the members of the military that this is
7 unacceptable.

8 Now, time will tell, perhaps five
9 years, whether this is taking or not, whether
10 it's going to reduce the incidents of sexual
11 assault.

12 BG COOKE: I don't want to beat a
13 dead horse here but I just think somewhere in
14 a full-panel approach, whether it comes from
15 this subcommittee or not, we need to address
16 something beyond what the response is in a
17 complaint or in a case where sexual assault
18 has been made.

19 We are responding to a problem and
20 a lot can be done before you ever get to
21 specific complaints. The military is doing
22 that but I think we need to address that and

1 talk about what is being done, what more might
2 be done. If all you're doing is prosecuting
3 people who have already committed these acts,
4 then you're losing the battle.

5 COL HAM: One thing you have not
6 been directed to compare by Congress, and you
7 may want to comment on this similar to the way
8 you're doing it, sir, you have been directed
9 to start at investigation, prosecution, and
10 adjudication.

11 That's the statutory language that
12 has been peeled out and given to the
13 subcommittee if you feel that it's a
14 recommendation or a finding that you want to
15 make. There should be a comparison in --

16 MS. JAUS: Education and training.

17 COL HAM: -- prevention.

18 PROF. HILLMAN: Go ahead on the
19 phone there. Was that Rhonnie?

20 MS. JAUS: Yes, it's Rhonnie. I
21 think this is one of the problems that you
22 have on the college campuses. A lot of

1 people, even the victims, they don't even
2 realize there's a crime you know. You have
3 all these, I'm just going to say, young women
4 in colleges and sororities who think it's just
5 fine to get drunk and pass out and have
6 somebody having sex with them.

7 They're not sure that's actually a
8 crime. I think it's a whole education piece
9 in the beginning. Before we even get to the
10 prosecution when people come into the military
11 if they could be trained about what sexual
12 assault is, how alcohol interplays with
13 consent. I think that's an important issue.

14 COL HAM: You can also issue
15 recommendations that the follow-on panel
16 examine some things if you believe there are
17 gaps in what you've been directed to examine.

18 PROF. HILLMAN: That's exactly
19 right. These are all really critical points
20 but it's not what we've heard information on
21 and we are not going to become expert in the
22 next four weeks on what's happening in

1 colleges and universities and the complex
2 regulatory structure that actually governs
3 their responses.

4 There's a lot of privacy issues.
5 This is a really vexing problem in a lot of
6 directions on campuses. But we do need to say
7 this deserves more attention. That is
8 absolutely right. And continue to stress that
9 parallel with what the military faces given
10 its age demographics and the likely comparable
11 incident rate. But we can't really speculate
12 on that but that is certainly something we
13 should point to.

14 I think we should wrap up this
15 investigations part. Two things. Mr. Strand,
16 will you take the lead with our staff on
17 crafting the findings and drafting this piece?

18 MR. STRAND: Yes.

19 PROF. HILLMAN: Who else, if
20 anyone else, on the subcommittee would like to
21 work on the investigative part of the report
22 in particular?

1 BG DUNN: I will help Russ with
2 it.

3 PROF. HILLMAN: Okay.

4 BG DUNN: I would be happy to do
5 that.

6 PROF. HILLMAN: Okay. That's
7 great.

8 COL HAM: Ma'am, there was one
9 other issue that came up. It's on the list.
10 I didn't know if you wanted to discuss it any
11 further was the issue of whether -- it may be
12 in the prosecution section -- whether
13 prosecutors should have investigators apart
14 from the military criminal investigative
15 organizations. You heard some of that at
16 Lackland.

17 LTC McGOVERN: I think it
18 certainly comes up in the list with the
19 defense as well.

20 PROF. HILLMAN: With the defense?
21 The co-location and the integration and the
22 question of civilian resources to supplement.

1 I think that's an issue that we do need to --

2 MR. STRAND: Well, a lot of bigger
3 district attorney's office do have
4 investigators. Smaller ones don't in the
5 civilian world. We heard testimony -- we
6 heard some presentations last week and I'm
7 still confused about how many defense
8 attorneys actually have their own
9 investigators and how many don't.

10 It's a great issue, ma'am. If we
11 are going to look at investigators for defense
12 attorneys, we definitely want to look at
13 investigators for prosecutors. But a bigger
14 question is what is the level and quality of
15 those investigators? Are they going to be CID
16 agents?

17 If they're CID agents then, of
18 course, that's a resourcing issue. But in
19 fairness if the defense attorneys need their
20 own, prosecutors do, too, because the thing
21 that's unique -- maybe not unique in the
22 military but very very -- it's a badge of

1 honor, is our agents don't work for the
2 prosecutors.

3 Our agents don't follow -- I mean,
4 you know, we work together. We work
5 collaboratively but we don't investigate for
6 the prosecution. The prosecution is involved
7 early on and throughout the process to make
8 sure that we get advice from them.

9 They tell us some of the things to
10 consider the elements of proof, things like.
11 When we close our case out, right now our
12 standard for closing the case is probable
13 cause. Unfortunately that leaves most
14 prosecutors in all the services lacking or
15 wanting because as they are preparing their
16 case, they might stumble across more
17 witnesses.

18 They might want more evidence.
19 That support is generally not there. Then the
20 same complaint that the defense attorneys have
21 as they are planning their case. I think we
22 need to make it clear that the prosecutor,

1 even though they work with the agents early on
2 and throughout the process, we are not working
3 for them as their agents or their
4 investigators.

5 Same thing in the civilian world.
6 That's why DAs have their own prosecutor or
7 their own detective sometimes and own
8 investigators. We have to make that clear on
9 that as well.

10 LTC McGOVERN: I think one way to
11 analyze the issue, the bigger question is is
12 the current command structure of CID and CIS
13 the best command structure for sexual assault
14 crimes, or for these types of crimes is it
15 best to have a separate request for the
16 prosecution and for the defense to be
17 supplemented with investigators? Like you
18 said, they do have the command structure that,
19 "I don't work for the prosecution."

20 BG DUNN: I think it's critical
21 the way Colonel McGovern just characterized
22 that because if we go down the path should

1 prosecutors have their own investigators and
2 should defense have, I mean, that is a huge
3 issue that is really not related to sexual
4 assault.

5 I mean, we're talking about
6 changing the entire investigatory structure of
7 all the military services which is not where
8 I think we're going with this panel. I think
9 to couch it in terms of should there in the
10 context of sexual assault investigation be a
11 special supplementation or a fencing of
12 investigators for that purpose is the right
13 way to address that.

14 MS. JAUS: Can defense attorneys
15 make a request in the military for an
16 investigator for a case?

17 BG DUNN: Yes.

18 LTC MCGOVERN: I believe so,
19 right?

20 MR. STRAND: They can.

21 LTC MCGOVERN: For a murder trial.
22 We've done that.

1 COL HAM: We heard -- the panel
2 heard in Lackland that was done and routinely
3 denied.

4 BG DUNN: Right.

5 COL HAM: In the Lackland
6 investigation it was denied.

7 LTC McGOVERN: That is definitely
8 an issue which I think we threw in the defense
9 portion but maybe we can just put it all
10 within the investigator's portion.

11 COL HAM: My only question related
12 to because I thought there was a bullet here
13 that the prosecutors had raised the issue --

14 MR. STRAND: They did.

15 COL HAM: -- with regard to an
16 investigation. I realize that is also an
17 issue in your defense portion. I didn't know
18 if you wanted any further discussion.

19 MR. STRAND: The big reason I
20 brought up level two is back in my day we
21 would often -- well, not often times. On big
22 cases like murder cases we would right-seat

1 with the prosecutor and that is still
2 available to prosecutors where we could
3 continue on and everything else on a case-by-
4 case basis but it's decided by the local SAC,
5 Special Agent in Charge.

6 When the defense requested
7 investigators, they generally got an MP
8 investigator. The prosecutor would have a CID
9 agent and the defense would have an MP
10 investigator which is different levels of
11 training, different levels of responsibility
12 for these major cases so that is why I brought
13 up the levels of training. If we do that,
14 it's got to be equal.

15 PROF. HILLMAN: It's got to be an
16 equal issue. It's just a huge one that we
17 need to address with the defense counsel part.
18 Let's try to wrap up this at least first look
19 at the investigative part. We have a sense of
20 where we're headed on this. I'm going to make
21 a suggestion now. We are over the time till
22 we were going to take a break.

1 I would like to keep going because
2 we are actually going to run out of time.
3 Anybody who needs to take a break, those of
4 you on the phone if you would leave us for a
5 few minutes and come back, we will come back
6 to you and you can weigh in then. I think we
7 should press through.

8 Actually, I think at this point we
9 should do the briefings on Hood and Lackland
10 because I want to get those on the record.
11 Those were visits that we made that we haven't
12 summarized for the record and I think we
13 should do that now. Let's do that.

14 Russ is going to talk about Fort
15 Hood.

16 MR. STRAND: Okay. On December
17 10th we started our preparatory meeting at Fort
18 Hood, Texas. Just for everybody to know, all
19 three subcommittees had different meetings
20 going on at the same time so we started out
21 with a joint meeting with everybody from all
22 the subcommittees.

1 There was a command brief done by
2 Colonel Rousseau where they discussed the
3 court-martial process. I guess once this is
4 reviewed and released, everyone on the
5 subcommittee will have the full text. I'm
6 just going to highlight a couple of things.

7 One of the first things that came
8 out in the joint meeting with all the
9 subcommittees was the discussion about the
10 ability of a soldier to make a restrictive
11 report after confiding in a friend. Currently
12 there is a lot of confusion if somebody
13 reports something, can that person have
14 confidential restrictive reporting.

15 There was some discussion there.
16 If not already done, this is still in the main
17 meeting, the trial counsel will coordinate
18 with CID to work the case in parallel
19 throughout the investigative process.
20 Currently at Fort Hood there were two special
21 victims prosecutors, two full-time civilian
22 SVU agents, and several other SVU agents

1 assigned to the team.

2 In Fiscal Year 12 CID opened 977
3 investigative actions. In Fiscal Year '13
4 they were 1,089 total cases for CID. Sexual
5 assault cases numbered 171 in Fiscal Year '12
6 and 239 in Fiscal Year '13. That was a huge
7 increase with no increase in in manpower.

8 COL HAM: Can I interrupt you for
9 a second? I want to preface -- I know this is
10 probably not in your notes because it's a
11 preparatory session, as you recall, in the
12 beginning of the session I reminded the
13 subcommittee members of what a preparatory
14 session is, that no deliberations were
15 permitted, etc.

16 This first session was an overview
17 of what Fort Hood is basically and very
18 generically what the mission of Fort Hood is,
19 etc.

20 Then very generically how the SJA
21 office is set up and basically numbers of
22 sexual assaults, incidents on Fort Hood, and

1 then the subcommittees broke into their
2 different sessions. No deliberations were
3 permitted. That's a very important point to
4 clarify because these are preparatory
5 sessions.

6 MR. STRAND: And just receiving
7 information. Okay.

8 MR. BRYANT: Can I interrupt just
9 a minute, Russ? 171 sexual assaults in '12.
10 That encompasses all sorts. I mean, any type
11 of unwanted sexual contact?

12 MR. STRAND: All the way up to
13 penetration crimes.

14 MR. BRYANT: Okay.

15 MR. STRAND: Yes. Ninety-two of
16 the 102 cases refereed to court-martial
17 resulting in conviction which included guilty
18 pleas. To date there have been no reported
19 issues regarding retaliation. Any such
20 allegation would be taken seriously.

21 Fort Hood is has not seen any case
22 of retaliation by the chain of command

1 specifically. However, some victims have
2 stated that they were harassed by the accused
3 or by friends of the accused. Some victims
4 have requested transfer.

5 Then we went into the specific
6 subcommittee meetings. The first people we
7 met with were medical personnel from Darnall
8 Army Hospital and Scott & White Hospital in
9 Temple, Texas.

10 The key things out of that meeting
11 was there are no certified sexual assault
12 nurse examiners or forensic examiners on post
13 so Fort Hood currently did not have any
14 certified SANE nurses. They have a Memorandum
15 of Understanding between them and Scott &
16 White Hospital so they do all of their sexual
17 assault examinations.

18 The issue regarding having a
19 qualified SANE or forensic examiner at Darnall
20 instead of transporting victims to Scott &
21 White has been debated many times. One of the
22 issues was we don't have anybody here but

1 let's get in the car and go 15, 20 minutes or
2 whatever for the exam. That was an issue that
3 they continually debate.

4 Interesting thing --

5 BG DUNN: Do they have a number of
6 penetrative offenses? Only because I see that
7 as related to the issue of SANE nurses.

8 MR. STRAND: Not in the general
9 meeting. I think when we got down to the CID
10 part they had some information on that, but I
11 don't know if they differentiate.

12 I know with Scott & White it was
13 surprising to me how few military cases they
14 saw.

15 MR. BRYANT: I didn't understand
16 what you said. They're debating the 15 to 20
17 minute car ride?

18 MR. STRAND: If somebody reports
19 to Darnall Hospital and say they were sexually
20 assaulted, or somebody is at Fort Hood and
21 they get a victim advocate and say, "I was
22 sexually assaulted," they are not seen at the

1 hospital there. They go to the civilian
2 hospital.

3 MR. BRYANT: Okay.

4 MR. STRAND: So they debate
5 whether -- because from the investigator's
6 standpoint again, the victim's got to go from
7 point A to point B again, perhaps additional
8 loss of evidence, instead of the one-stop
9 shopping at Darnall.

10 They said on rare occasion will
11 they go to Darnall. Generally the victim is
12 transported off-post.

13 Which again, in that particular
14 jurisdiction isn't a big issue. It does
15 become a big issue overseas and it becomes a
16 big issue in some other places where you have
17 to transport the victim a couple of hours.

18 COL HAM: You heard in a
19 subcommittee meeting here also, from this area
20 INOVA is the center of excellence, for lack of
21 a better term, that all civilian and military
22 folks are brought to. You heard from that

1 sexual assault nurse examiner, if you recall.

2 MR. BRYANT: Right.

3 BG DUNN: For Fort Belvoir or Fort
4 Myer and all the jurisdictions, they go to
5 INOVA.

6 MR. BRYANT: That's going to
7 happen a lot of places.

8 BG DUNN: They pool the expertise
9 together in one place.

10 MR. STRAND: They see about 50
11 cases from Fort Hood a year is what they were
12 saying.

13 MR. BRYANT: Fifty --

14 MR. STRAND: Fifty examinations,
15 50 sexual assault examinations. Interestingly
16 enough, when we heard from the Headquarters
17 people, they informed us that it's a
18 requirement that if it's a Memorandum of
19 Understanding and somebody is doing our work
20 for us, they have to use the DoD-approved kit.

21 Scott & White said they do not use
22 our kits. They use their own Texas kits. I'm

1 not sure what the differences are but I
2 thought that was important.

3 One advantage the SANE nurses
4 said, one advantage of the military medical
5 system over the civilian system is a follow-up
6 medical exam. Many civilian victims do not
7 have insurance and in the military the patient
8 will receive additional care.

9 What they were telling us is there
10 was a big difference when they get a military
11 victim. They didn't have to worry about
12 follow-ons. They didn't have to agonize over
13 whether or not they're going to drop off the
14 medical system. They know that they were
15 going to be handled, which they saw as a big
16 difference.

17 In comparing military and civilian
18 police response, both of the SANE nurses said
19 it's been their experience that military
20 detectives are much more courteous. Often the
21 civilian police will drill the victim and it
22 almost appears they're trying to convince them

1 not to report, that it's not a crime. That's
2 one of the differences that they brought up
3 which was important.

4 As far as the military's victim
5 advocate program, some come with the patient
6 to the hospital and they are very well trained
7 and supportive. They were very supportive of
8 what training and experience in the way that
9 the military victim advocates arrived.

10 BG DUNN: But is that to say it's
11 not 100 percent that the victim advocates were
12 with the military victim?

13 MR. STRAND: Correct. Because the
14 victim makes that choice. They may not want
15 a victim advocate.

16 COL HAM: They may not want the
17 military to know at all.

18 MR. STRAND: Right. That's a
19 great point, ma'am. They also mentioned that
20 they do get some military victims that don't
21 want the military to know and they keep it
22 confidential.

1 MS. JAUS: Hey, Russ?

2 MR. STRAND: Yes, Rhonnie?

3 MS. JAUS: You said they see 50
4 sexual assault exams from Fort Hood. How does
5 that compare to the civilian population?

6 MR. STRAND: I'm trying to find it
7 here. My recollection is they see about 500
8 a year in the area.

9 MS. JAUS: Okay.

10 MR. STRAND: And about 50 of those
11 are military.

12 MS. JAUS: Okay. Good. Thanks.

13 MR. STRAND: You're welcome.

14 Then we met with trial counsel and
15 Bell County District Attorney's Office. That
16 was a very good meeting because it was
17 wonderful to have both the civilian
18 prosecutors and the military prosecutors in
19 the same room at the same time.

20 In Bell County all felony cases
21 are brought to the District Attorney from the
22 police. Cases are screened at the DA's office

1 and a decision is made to drop the complaint.

2 If that's done an officer gets a
3 warrant. Most often it is known if the
4 defendant is active duty. The case is
5 evaluated to determine if it should be offered
6 to the military from filing forward.

7 The first point of coordination on
8 a case is through the police. The Killeen
9 Police Department coordinates directly with
10 CID soon after the incident is reported. CID
11 will open a collaborative investigation and
12 will help in many cases.

13 The Bell County District
14 Attorney's Office said there's a number of
15 factors that go into deciding release of a
16 case to military jurisdiction. Those factors
17 include status of the victim, impact to the
18 community, the involvement of civilian co-
19 defendants, and location and status of
20 witnesses. The main determining factor is the
21 status of the victim.

22 Historically the DA did not offer

1 as many cases to the military. But in the
2 last two to three years the DA has kept an
3 open mind about sending more cases and will as
4 long as it works. So they've got a lot more
5 confidence over the last two to three years to
6 refer more cases to the military. They've got
7 a lot more confidence in the way the military
8 is going to handle it.

9 Civilian police have discretion.
10 If they feel a case is unworthy, it's never
11 brought to the DA. Killeen Police bring most
12 cases to the DA but can choose not to. So
13 even in Killeen, Texas a patrolman can decide
14 whether they feel it meets any kind of merit
15 to either an investigation or they can drop
16 the case right there at the car.

17 Part of Fort Hood cantonment area
18 is concurrent jurisdiction. The state seldom
19 tries to take jurisdiction on those parts.
20 The US Attorney's Office in Waco handles
21 crimes committed by civilians at Fort Hood.

22 The Bell County District

1 Attorney's Office does not have a special
2 victims prosecutor. The prosecutors are all
3 generalists but some handle higher portions of
4 sexual assault cases.

5 They do have investigators, and
6 some of the investigators have prior
7 investigative experience but do not receive
8 special training to conduct these
9 investigations for Bell County.

10 The number of sexual assault cases
11 filed has gone down which was significant. As
12 the cases are increasing significantly at Fort
13 Hood, the cases being filed in the local
14 jurisdiction has been going down.

15 Meeting with special victims
16 prosecutors --

17 COL HAM: Can I add one more
18 thing? They did explain -- it's a little
19 perhaps different than some jurisdictions and
20 perhaps different than your jurisdiction, Mr.
21 Bryant. I'm not sure.

22 In Bell County they don't decline

1 jurisdiction and let the military take it.
2 They defer jurisdiction. In other words the
3 defendant is still on bond from the county and
4 the county watches to see if they're satisfied
5 with what the military does with the case.

6 Of course there is concurrent
7 jurisdiction. They could also bring a
8 prosecution. As I recall they said they had
9 only done that once in the last 10 or 12
10 years.

11 MR. STRAND: So they still
12 monitor. That's a good point.

13 We met with the special victims
14 prosecutors. We had a variety of opinions
15 from them.

16 Providing more rights to victims
17 is taking away rights from the accused. This
18 is from the prosecutors.

19 With the current system defense
20 cannot do anything without the government
21 knowing about it and controlling the purse
22 strings. Without the Article 32 the defense

1 will need investigators. That was their
2 opinion.

3 The Article 32 is one instance in
4 which defense has to force someone to give an
5 interview. Although we've seen that's going
6 to change with the new NDAA.

7 An ancillary purpose of the
8 Article 32 is discovery. It used to be, is no
9 longer, that the hearing can become a fishing
10 expedition. With an aggressive defense
11 counsel it can become a second trial. That
12 was one of the issues that they brought up,
13 which may or may not be fixed.

14 MR. BRYANT: Actually it becomes
15 the first trial.

16 MR. STRAND: It becomes the first
17 trial. Right. The actual first trial is
18 actually the -- right.

19 Article 32 testimony is not
20 routinely recorded on video. An audio
21 transcript is made, while cases with child
22 victims are video recorded.

1 Trial Defense Services does not
2 have enough support -- again, this is coming
3 from the special victims prosecutors. I
4 believe I haven't changed yet. Yes. They say
5 that they don't have enough support.
6 Paralegal handles administrative issues and is
7 a shared resource.

8 There are some discovery games
9 which is a misunderstanding of the rules.
10 Article 46 provides equal access.

11 There are significant cultural
12 issues when an E4 or below is called by an
13 officer in Trial Defense Services for an
14 interview. The soldier does not know the
15 right to refuse. Soldiers are more likely to
16 answer questions when asked by someone of
17 senior rank. TDS sometimes goes too far in
18 the Article 32.

19 Taking a commander out and putting
20 the SJA in charge will not improve reporting.
21 When you have a few outrageous examples it
22 changes everything.

1 Most often TDS does not exceed the
2 proper limits. The IO will say stop. To
3 improve the current system the IO's ability to
4 limit a line of questioning needs to be
5 clarified.

6 They were of the very strong
7 opinion that an investigating officer is not
8 equipped to deal with military rules of
9 evidence or 412(c) exceptions. Commanders
10 highly value the Article 32 in its current
11 form.

12 The Army absolutely should have
13 career prosecutors. People would naturally
14 self-select. In JAGs' first seven years they
15 need to do everything and then they can
16 specialize. Officers who elect to specialize
17 need to know that they are doing so may limit
18 a promotion in a successful career.

19 To be selected to O5 the track
20 should be military justice or litigation. So
21 they were of the opinion there should be a
22 track.

1 We met with law enforcement
2 agencies both civilian and military.
3 According to them, one issue that needs
4 attention is prevention.

5 The Army has done a good job of
6 narrowing down policy and procedure for
7 response to sexual assault investigations.
8 When investigators look at an incident, they
9 look at all aspects to prevent the need to
10 look at some of the cultural aspects.

11 One of the things that was
12 highlighted there was that currently they
13 believe that the military was doing a really
14 good job on prevention because they look at
15 the cases, they work with the commanders, they
16 identify some of the cultural issues, and they
17 give feedback to the commanders which is kind
18 of a close-the-loop thing.

19 They also do crime prevention
20 surveys. If they see certain things going on
21 in certain units or certain areas, they'll do
22 a crime prevention survey. Which basically is

1 looking at some of the problems, doing
2 findings and recommendations for prevention.

3 Which is a piece we find is
4 different in the civilian world. They
5 actually give that feedback. They go beyond
6 the investigations to look at the problems as
7 well.

8 The MPs also do sexual assault
9 briefings. CID gives briefings to the
10 commanders of first sergeant corps. CID
11 briefs every battalion and brigade commander
12 as far as processes and procedures and things
13 like that.

14 At Fort Hood the SVU team only
15 handles penetration cases. At Fort Hood they
16 have a special victims unit team and they only
17 handle penetration cases. The other cases,
18 the wrongful sexual contacts and non-
19 penetration, goes to the general crimes teams.
20 The general crimes team handles touching
21 cases.

22 About 25 to 30 percent of the

1 victims report within 96 hours. Reports have
2 come in from 1986 including one from a former
3 WAC, Women's Army Corps.

4 It is not always about
5 prosecution. It's about solving the case.
6 That was one huge difference that they pointed
7 out. They're not about prosecuting the case.
8 They're about, if they get a report they're
9 going to investigate it regardless of when it
10 happened. Even if the person is deceased
11 they're going to investigate it.

12 They pointed out that CID finds
13 the truth. The criteria for working a case is
14 not prosecution. Agents and MPs have no
15 discretion about whether to investigate. CID
16 has cases that civilian police declined.

17 The office currently has 10
18 collateral investigations. Maybe five will go
19 to the DA and maybe one will be filed. The
20 rest will come back to CID for follow-up.

21 So their opinion was the major
22 parts of the cases where there is collateral

1 cases, they're going to end up working it
2 because the DA will not file.

3 Our last meeting there, I believe
4 it was the last meeting, was with the defense
5 counsel. We had some really good sharing of
6 opinions there.

7 If the Army takes a policy
8 decision to push more cases to trial, they
9 need to have more qualified attorneys in TDS
10 to protect EQs. That was a big thing they
11 saw. If there's more and more of these cases
12 going, they need more qualified attorneys.

13 The Army does not have a career
14 defense bar. It would be terminal to an
15 officer's career to stay in defense. A
16 defense tour could be no more than two to
17 three years at a time. That was one of the
18 things they brought up.

19 One of them made a recommendation
20 of a regimental affiliation, having a separate
21 trial defense regiment where that's all you
22 do. You come in for your career defense

1 attorney. An officer will not be punished for
2 wanting to come back.

3 Another problem is the Army does
4 not have defense investigators. Paralegals
5 come from III Corps which sends who it wants
6 and they are frequently not the best soldiers.
7 They are of the opinion they get dumped on.

8 It does not appear the commanders
9 are taking the side of the accused, which I
10 thought was interesting from the defense side.

11 The Command Corps says to train
12 senior commanders on handling sexual assault
13 cases there is an exercise in which commanders
14 have a fact pattern with a closed case.

15 In the past commanders used to
16 debate what to do with the case. Now
17 commanders are uniformly of the opinion that
18 sexual assault allegations must go to trial.
19 They no longer debate the case. They say it
20 should go to trial.

21 Most commanders do not know the
22 accused. Even at the company level, where the

1 commander may like the accused and the victim
2 may feel or be aware of this, most commanders
3 believe being accused of sexual assault is
4 like failing a drug test. Guilt is assumed.
5 Commanders will not keep cases from the light
6 of day.

7 MR. BRYANT: This is all still
8 coming from the defense attorneys?

9 MR. STRAND: From the defense
10 attorneys, yes.

11 Their opinion is losing the good-
12 soldier defense could matter when it is
13 relevant to jury panel that will apply it, but
14 they will not do so in every case. Panels and
15 judges are not stupid and not fooled. Panel
16 members are educated and experienced.
17 Sometimes it does come down to credibility.

18 The good-soldier defense is a tool
19 Trial Defense Services does not have all the
20 time. It's only available for some soldiers.

21 One thing that could improve
22 systemically is changing discovery rules so at

1 preferral, defense would have a lot more
2 accessibility to evidence. The command has
3 control over the case and the defense needs
4 information to show relevance of witnesses.
5 Their recommendation is to have discovery
6 start at preferral instead of waiting for
7 referral.

8 One comment was, I teach defense
9 counsel to treat victims with respect. I want
10 them to be as nice as possible or victims and
11 witnesses will not cooperate. Defense
12 attorneys who are abusive or demanding will be
13 disciplined. Some civilian attorneys take
14 advantage of the Article 32. The Article 32
15 is not to protect the victim's feelings, but
16 the pendulum is swinging too far in the
17 direction of the victim.

18 The last comment that I'll make on
19 this particular thing, and you can read the
20 whole thing for yourself once it's final-
21 approved, the military is trying to measure
22 the depth of an ocean during the waves. I

1 thought this was a good point we've heard from
2 many of the people who present. A real study
3 would take years. There are so many measures
4 that no one can say what is effective.

5 The recent tinkering with statutes
6 did not have the intended impact as much as
7 some of the educational programs did.
8 Counsels struggle more now. Counsels struggle
9 with teaching three versions of Article 120,
10 which hinders effective prosecution.

11 Are there measures that will yield
12 results? Using qualified Article 32 officers
13 may help. If the military rushes to add other
14 things, it will just hamper the rights of
15 soldiers accused of a crime and the Army now
16 has soldiers with convictions who do not
17 deserve them.

18 Subject to your questions.

19 MR. BRYANT: Does not deserve the
20 convictions? Did they elaborate on that?
21 They didn't deserve it because they weren't
22 guilty, or --

1 MR. STRAND: They did not
2 elaborate.

3 MR. FISHMAN: Mr. Strand, you can
4 correct me if I'm wrong. I think part of the
5 context they might have been talking about,
6 the touching versus non-touching.

7 MR. STRAND: Yes. They didn't
8 feel a lot of these cases should go forward to
9 trial, the touching cases.

10 MR. BRYANT: It should have been
11 handled by Article 15 or something like that.

12 MR. FISHMAN: Right. I believe
13 that was the context in which the defense
14 counsel is making that --

15 BG DUNN: Sort of making a
16 distinction between penetration cases and
17 touching cases.

18 COL HAM: One point also, I'm
19 sorry if you mentioned it and I didn't hear
20 it. Both the preparatory sessions at Fort
21 Hood and the preparatory sessions at Lackland
22 were held in a non-attribution environment.

1 MR. STRAND: That's why we didn't
2 mention any names.

3 COL HAM: We informed the
4 participants that their names would not be
5 used to encourage candor.

6 MR. STRAND: Right. The last
7 comment they made, if the Army set the goal to
8 eliminate sexual assaults, they are setting a
9 bar that's impossible.

10 PROF. HILLMAN: Okay. Thanks,
11 Russ.

12 MR. STRAND: You're welcome.

13 PROF. HILLMAN: I'm going to take
14 advantage of my Air Force background and go up
15 to 30,000 feet for the Lackland report here
16 because I want to move back to us talking, but
17 this is a critical point.

18 As with the Fort Hood visit, the
19 Lackland visit gave us the opportunity -- and
20 that is all across the subcommittee structure,
21 not only the comparative systems but the role
22 of the commander and the victim's services

1 committees -- to actually see what's happening
2 on the ground and to appreciate how
3 distinctive each situation is with respect to
4 the way authority is allocated with any
5 jurisdiction, the way the investigation
6 ensues, and then the particulars of the
7 mission of that military installation and how
8 things work out.

9 On December 13, we went to
10 Lackland. We started much the same way as at
11 Fort Hood, with a collective briefing from the
12 command. Then we split into groups to talk to
13 all of these different interested parties.
14 That is, each of the subcommittees split to
15 talk to prosecutors, to defense counsel, to
16 the investigators, to the medical personnel.

17 The distinctive thing about
18 Lackland that really drove through the center
19 of our entire visit was the aftermath of the
20 scandal of military training instructors who
21 committed sex offenses and were prosecuted.
22 It has had an overwhelming impact on the base.

1 It was evident that everybody was aware that
2 really, their first job was not only to
3 accomplish the training mission, that - and
4 because it's such a big training base. The
5 37th Training Wing is the first entry point
6 for all enlisted personnel in the Air Force.
7 They get some 500 folks a week. They have an
8 eight-and-a-half-week basic training course.

9 This is an entry point, where this
10 scandal happened in the Air Force. They know
11 that their job is to stop this and everything
12 has changed as a result of it. The Air
13 Force's particular solution here has run in a
14 lot of directions. It runs to not only the
15 response systems that we're focused on here
16 but to things that General Cooke in particular
17 was gesturing at, to the architecture of the
18 place, to the personnel assignment of the
19 place, to the infrastructure.

20 To give you a couple of examples,
21 there are new barracks being built to replace
22 what had been dated and already scheduled to

1 be updated -- facilities where the basic
2 military trainees are housed. There have been
3 windows cut in everything. There have been
4 cameras placed to try to increase surveillance
5 and limit the opportunities for the kinds of
6 interactions that took place, the intimate
7 sexual interactions that took place, so that
8 they wouldn't be out of the view of others.

9 The number of personnel who are
10 assigned. One of the problems that was
11 identified with the military training
12 instructors was identified as a lack of
13 oversight. There were too many instances
14 where one individual had too much sway. So
15 additional personnel have been assigned. They
16 haven't yet met those targets for the number
17 of military training instructors specifically
18 and then supervisory personnel. But there's
19 a very different sense of how autonomous
20 anybody can be.

21 This emphasis really does
22 permeate. It's really how everybody spoke to

1 us. They're going to talk to us that way
2 because we're the RSP when we're walking
3 through, and this is what our mission is. But
4 it really did. They did communicate the depth
5 and extent to which response to this set of
6 incidents has changed the culture of the
7 place.

8 The first thing I just want to
9 comment on, it became clear to me and I think
10 to all of us what the scandal actually was as
11 compared to what was reported. That's one of
12 the disconnects that we face. The problems
13 that seize attention aren't from the media,
14 from members of Congress, and all of us who
15 pay attention to these issues but are not in
16 them at the time, the way that they look in
17 published reports are not actually always what
18 happened.

19 Sometimes it's so complex that
20 some of the defense counsel or prosecutors, I
21 can't remember, who talked to us, they so
22 wanted us to understand the complexity of the

1 investigation, prosecution, and adjudication
2 that had ensued as a result of these reports
3 of sexual assault by military training
4 instructors. They brought in one transcript
5 and it was like three phone books. They said,
6 if you want to see what happened here, here's
7 the investigation and the transcript of what
8 happened. It was tremendous. For us to
9 really understand what happened there, they
10 worked very hard to understand what happened
11 and they invested tremendous resources.

12 The scandal was a few sexual
13 assaults. Really the signature case was this
14 one multi-victim case that had one bad actor
15 in particular. There are others. That was
16 the Walker case. There are a number of other
17 also penetrative offenses that were prosecuted
18 in this. The overwhelming majority of what I
19 think were 34 military training instructors
20 who were investigated and were found to be
21 involved, the overwhelming were violations of
22 Article 92 for not obeying regulation.

1 That made sexual contact between
2 military training instructors and current or
3 former trainees a violation of regulations.
4 They were not non-consensual sexual acts that
5 were prosecuted in these cases. In fact, most
6 of the victims in the aggressive investigative
7 process that went forward had to be dragged
8 into cooperating. Which is, in part, a
9 collateral misconduct issue because they also
10 were violating regulations. But it was in
11 large part that they didn't see these as
12 crimes, because in part I'd say they wouldn't
13 be crimes outside of a military context.

14 So the majority of what the Air
15 Force prosecuted at Lackland in this big
16 military training instructor scandal was
17 sexual contact between trainees, and former
18 trainees in many instances, and military
19 training instructors. The resources that were
20 poured into this were extraordinary, and it
21 created great stress and challenge. It also
22 had the result of developing expertise that

1 didn't exist before among the investigators,
2 the prosecutors, and the defense counsel.

3 A couple of things to note about
4 this. Each place that we're going to look at
5 in the military is distinctive. This is basic
6 military training for the Air Force. There is
7 no other base that's quite like Lackland.
8 This is Joint Base San Antonio. They talked
9 to us about the challenge that was created by
10 the creation of Joint Base San Antonio. There
11 wasn't a special court-martial convening
12 authority at Lackland for a period. They've
13 had to wrestle with who the convening
14 authority has been at different points in time
15 in the consolidation of bases and operations
16 that happened with the creation of a joint
17 base that included Air Force as well as Army
18 installations in San Antonio.

19 So this is very complicated. The
20 command structure is very complicated there.
21 Who does the investigation and how it works
22 out is complicated.

1 The particulars of what we heard
2 from each group. I want to stress what
3 Colonel Ham just said. We did say this was a
4 not-for-attribution environment. We sat in
5 small groups with panels of people who had a
6 lot to tell us. Clearly, many of them felt
7 like this was their opportunity to tell us
8 what was wrong and how things weren't working
9 out on the ground the way in which they were
10 supposed to be working out.

11 One of the take aways here, for
12 me, was very much that to understand the
13 impact of all the policies and practices that
14 we've heard articulated by the leaders of the
15 response systems in the services requires an
16 ongoing evaluation effort of what's actually
17 happening out there -- and this is me talking
18 -- that requires an independent evaluation.

19 We can't only rely on commands to
20 report on how this is happening. We need to
21 go in and check on what's happening because of
22 the difficulty of getting people to report

1 accurately on the resource limitations that
2 they fight. The folks we talked to, for
3 instance defense counsel who were very unhappy
4 with the resources that they were granted
5 compared to the prosecution, just as some of
6 those at Fort Hood said, they said, well we do
7 a great job anyway. We overcome. We're going
8 to take the hill because that's what our job
9 is and that's what we're trained to do.

10 But the hill is a lot steeper than
11 it ought to be. Not everybody is going to get
12 over it when we leave it that way. And we
13 aren't going to know that based on what they
14 surface for us because it's their job to make
15 do, given the situation that they're in.
16 We're not going to be able to really
17 understand what's happening unless we continue
18 to get inside. They raised so many issues,
19 all of which appear in different places.

20 One cultural issue at basic
21 military training was the power imbalance,
22 that dramatic lack of autonomy and empowerment

1 of trainees. If that is necessary, we need to
2 continue to find ways to try to create an
3 atmosphere where people can report because
4 just the very insignificant status of those
5 who haven't gotten to the lowest rank of the
6 military yet because they're not through being
7 basic military trainees, to get them to report
8 crimes that occur when they're in that place
9 of transformation into being a part of the
10 military is a really tough challenge.

11 COL HAM: One thing they did --
12 and it's in the minutes. There are more
13 complete minutes and once they're signed we
14 can send them to you. They have that phone
15 line, ma'am.

16 PROF. HILLMAN: That's right. One
17 of the things they changed, in the common
18 areas that are shared by the different units
19 that are moving through the training process,
20 there are phones. They didn't used to have
21 those phones there and now they have the
22 phones in. They put the phones there

1 specifically so they could call and report a
2 sexual assault.

3 They added some other things so it
4 wouldn't only be that. You can call to get
5 information about the weather, which they said
6 is a popular option.

7 But the phones that they put there
8 are a hotline to be able to report, because
9 they didn't think otherwise they'd have access
10 to do it, and then they added additional
11 automatic programs. So you can't call
12 anybody. You can only make the calls that are
13 programmed into the phone. They added those
14 so that if I pick up the phone, everybody's
15 not going to know who happens to be in the
16 room at the same time that I'm calling to
17 report a sexual assault.

18 Now, I have questions about how
19 that works. If I'm in a public space and I
20 pick up a phone where there are other people
21 in the room and I'm calling to report a sexual
22 assault --

1 MR. BRYANT: Press 1 for sexual
2 assault.

3 (Laughter.)

4 PROF. HILLMAN: I don't know how
5 I'd do that without -- but the intervention
6 was notable and the extent to which they are
7 trying.

8 Sustainability struck me as a huge
9 problem here. I just felt like, how can there
10 not be fatigue on making this the mission of
11 the Training Wing at Lackland for too long a
12 period of time.

13 The frustration of the defense
14 counsel was clear. The prosecutors had
15 developed considerable expertise. They feel
16 like the lions of the bar in the military
17 right now, the special victim's prosecutors
18 who have developed real capacity and have
19 gotten the resources and training they need to
20 be effective in this.

21 Maybe I'll just pause there.
22 There's more that we could talk about. I

1 think the Lackland notes that everybody took,
2 the transcript is a good set of highlights.
3 I really appreciate everybody who took those
4 notes on the staff force and put together the
5 transcript.

6 COL HAM: Minutes, ma'am, not
7 transcript.

8 PROF. HILLMAN: Okay. Minutes.

9 It's also not everything that we
10 heard. There was so much information that I
11 think those of us who were there will continue
12 to add that to the report. But it was really
13 essential for us to hear from folks on the
14 ground and I thought it was immensely valuable
15 to us. I'm glad we had the chance to do it.

16 Does anybody else who was there
17 want to add anything else?

18 MR. STRAND: I was struck that
19 after Lackland, they had this mandatory
20 increase in personnel to make sure you had the
21 doubling and tripling up, and that hadn't
22 happened.

1 PROF. HILLMAN: There were mixed
2 reports on why that hadn't happened. Some
3 were that they didn't have the full complement
4 of trainees, so they didn't need the full
5 complement of MTIs yet. But you're right.

6 That's an example of the
7 disconnect between the aspiration that's set
8 out by we will now have this level of
9 staffing, and then the reality on the ground
10 which is there aren't bodies to put in those
11 positions and they aren't trained.

12 MR. STRAND: My concern was they
13 had a high reliance on technology, which is
14 not surprising.

15 PROF. HILLMAN: It's the Air
16 Force.

17 MR. STRAND: It's the Air Force.
18 But even cutting in the windows. I'm going
19 through there as a criminal investigator.
20 When we do crime prevention surveys, if I
21 wanted to do something, can I work my way
22 around the system? Absolutely I can work my

1 way around the system.

2 I think it almost made them
3 overconfident in some aspects. The technology
4 can have that double-edged sword. I heard
5 more than one person at least in the big group
6 say, we haven't had a sexual assault since,
7 which bothered me a lot.

8 PROF. HILLMAN: Absolutely. This
9 was a definite feeling. There was a sense of,
10 we've got this one. We're good.

11 MR. STRAND: We stopped it.

12 PROF. HILLMAN: Yes. This one is
13 under control. When this happens, we have a
14 system that's going to just leap into action
15 and Superman fix everything.

16 MR. STRAND: And yet the last
17 thing we heard was from the trainer that
18 trains security forces who said, just
19 yesterday we had one of our students report
20 sexual assault. In the room, she stood up and
21 said, I was raped, and ran out of the room.

22 Then they got a victim advocate

1 who gave her restricted reporting. She
2 shouldn't have been allowed a restricted
3 report because she said that in front of a
4 person of the chain of command. I asked if
5 the instructor was part of the chain of
6 command and she said yes. So they got a
7 restricted report from this victim who should
8 not have gotten a restricted report.

9 So we just heard that they were
10 handling it. But then the one example they
11 gave us, this victim that should not have
12 gotten a restricted report got a restricted
13 report. And OSI never got the report of the
14 sexual assault.

15 COL HAM: Which was before her
16 time in the military.

17 MR. STRAND: Which was before her
18 time in the military. But routinely, they
19 would still get that. I'm not sure that would
20 have made a difference. They gave her
21 restricted reporting as an option when she
22 wasn't allowed. So there is some confusion.

1 There's this underlying belief
2 that, you know, we've got this. But in any
3 system, I don't care what service, what
4 jurisdiction, you're going to have people that
5 -- even with redundant systems, things aren't
6 going to go that way.

7 That's not casting a disparage on
8 Lackland. It's just that the one example was
9 pretty profound.

10 PROF. HILLMAN: Okay. That was
11 Fort Hood and Lackland. Those are the site
12 visits. We're going to need more time to
13 deliberate, eventually, on this.

14 Can we run through the schedule
15 now? I'm going to go off the agenda here
16 because we just talked about site visits, and
17 I want to be clear on what suggestions and
18 recommendations the members of the
19 subcommittee have for what else we need and
20 where else we need to go, what the schedule
21 is.

22 Could you run down what the

1 schedule is for us, Kelly?

2 LTC MCGOVERN: Currently, the only
3 thing on the calendar are another subcommittee
4 meeting on February 11 where we will be
5 covering the sentencing issues, statistics.
6 Sentencing being clemency is now a required
7 area of review. A lot of the statistics will
8 consume that day. Hopefully we'll have time
9 to deliberate that topic that day, to some
10 extent, is the goal.

11 Other than that, we don't have
12 anything on the calendar except for a deadline
13 of April 1, I think to have our subcommittee
14 report done. That allows the rest of January,
15 February, and March. Ideally, I think you
16 would like to have most of your deliberations
17 done by the end of February and most of the
18 writing done. In a group setting, in order to
19 get agreement on so much information, it's
20 going to be a lot of back and forth in March
21 for drafting.

22 COL HAM: You can also -- there

1 was the site visit to Joint Base Lewis-McChord
2 and the surrounding civilian area scheduled.
3 Unfortunately, for the same time period, Judge
4 Jones, the Chair, has called a meeting of the
5 full panel. You can decide if you want to
6 reschedule that or any other site visit you
7 would like us to arrange.

8 As you're deliberating, if you
9 find you need more information on things, we
10 can find presenters for you on those issues
11 and bring them in. Not every meeting has to
12 be as we've been driving you, from 8:00 to
13 5:30. They can be more like this. If you
14 say, we need to hear a little bit on X, Y, or
15 Z, we can find that for you and bring it in.
16 Or, we need to hear more on X, Y, or Z.

17 I would also ask Kelly to make
18 sure you have all the resources that are
19 available for your deliberations. I know some
20 of you attended the public meetings where some
21 of this material was discussed. We would, of
22 course, ask that you review those transcripts

1 for information relevant to your terms of
2 reference as well.

3 So we'll try to pull that stuff
4 for you and point it out to you so you have
5 that to review. Again, realizing you're very
6 busy and some of you have been able to attend
7 some things and not others, that information
8 is there. If you want to review it to inform
9 your deliberations, it's certainly encouraged
10 to do so.

11 LTC MCGOVERN: To follow up on
12 Colonel Ham's point, Jan is compiling this
13 Excel spreadsheet which will provide you those
14 resources along with which topic they relate
15 to and where they came from as far as a public
16 meeting or testimony.

17 For the site visits, the purpose
18 of going to Fort Lewis was to see the Army's
19 new gold standard of a consolidated facility
20 with the examiners, the prosecutor, and the
21 investigator co-located. About 30 to 45
22 minutes away in Everett, Washington is a place

1 called Dawson's Place which also takes the
2 multi-disciplinary approach with the victim
3 advocates and everyone else in the
4 prosecutor's office, and the investigator
5 located in one so that you could make a real
6 comparison.

7 An option, rather than traveling
8 out there, could be to have Lieutenant Colonel
9 Stelle from the Army fly here to explain -- he
10 has PowerPoint presentations, which he did to
11 his TJAG -- how that works out there and how
12 it operates, along with a few of his staff.

13 Philadelphia now, according to
14 Commander King, has a place similar to
15 Dawson's Place where they have a consolidated
16 facility. If you wanted just to take a train
17 for a day, you could take what could have been
18 a three-day trip. For those who are located
19 on the East Coast, if they wanted to make the
20 trip, you could get the briefing from Rob
21 Stelle and do the trip possibly in one day to
22 Philadelphia.

1 So that's an option if you feel
2 like you still need to see more, as far as
3 different approaches to the multi-disciplinary
4 approach. If you'd just like to read articles
5 about it, we can give you those as well.

6 The other site visit that had been
7 proposed, an invitation had been extended to
8 go to Charlottesville. The purpose of that
9 trip would be to look at training for
10 prosecutors again.

11 BG DUNN: And defense.

12 LTC MCGOVERN: And defense. Yes,
13 ma'am.

14 If you feel like you've already
15 had sufficient information on training, and we
16 have a lot of other stuff to do, that is a
17 decision.

18 Again, for the site visits: what's
19 the purpose, do we need more information, do
20 we have the time, are sort of the
21 considerations.

22 I do think that we need to

1 possibly schedule a deliberation meeting again
2 in the last week of January if people are
3 available to do it in conjunction with the
4 full public meeting on the 30th, either on the
5 29th or the 31st. And then possibly, at least
6 one other all-day session in February in
7 addition to our February 11th meeting. So
8 meet twice a month January and February.

9 MR. STRAND: I've also got
10 February 25th and March 11th. Would those
11 then be deliberations?

12 LTC MCGOVERN: Right. Those were
13 dream dates early on. We haven't locked those
14 in with you all to see your availability yet.
15 Originally on the calendar, we had planned
16 these deliberation days, thrown those out
17 there, if we'd like to continue to work off of
18 those.

19 Again, by March 11th, hopefully we
20 would have the 70 percent solution to our
21 report, and could sit down and talk about what
22 we would still need and deliberate at that

1 point.

2 BG DUNN: In your absence, Dillon
3 was beating on us to go over those proposed
4 dates and put them on our calendar and
5 everything.

6 LTC MCGOVERN: Good.

7 BG DUNN: So I think we have all
8 considered and responded to those dates. I
9 don't know what the outcome was, but I know
10 that he sent that around a couple of times.

11 LTC MCGOVERN: Okay, great. Yes.
12 If we can stick with those dates. The only
13 other one that would have been thrown in there
14 would be we originally had a site visit for
15 the last week of January.

16 BG DUNN: Right. On the 30th.

17 LTC MCGOVERN: But a day of
18 deliberations may be a substitute if you want.

19 BG DUNN: Could I ask one
20 question? We have seen the Army and seen the
21 Air Force. We have not seen a large Navy
22 operation.

1 COL HAM: We were also planning,
2 in conjunction with Virginia Beach, to try to
3 set up a site visit there. Again, it was
4 around the 30th, which has fallen through.
5 That's still a possibility if you wanted to
6 reschedule it. We understood the same thing.
7 We haven't seen a large Navy installation.

8 MR. BRYANT: I think the Victim's
9 Services Subcommittee was going --

10 COL HAM: Yes. They're looking.
11 That would be open to you as well if two
12 members were available along with a staff
13 member.

14 PROF. HILLMAN: If another
15 subcommittee is planning a site visit, we
16 should certainly jump on board and send one or
17 two people.

18 LTC MCGOVERN: I spoke with them
19 yesterday. They are no longer doing that site
20 visit.

21 PROF. HILLMAN: I think the
22 legitimacy of our perspective and our

1 recommendations does depend actually, despite
2 the crunch of the time that we see ahead of
3 us, on doing a couple more visits.

4 Are there other perspectives on
5 that?

6 MR. BRYANT: I agree with you.
7 Because while I wasn't at Hood or Lackland,
8 both of your reports --

9 COL HAM: Because of weather, sir.
10 You wanted to be.

11 (Laughter.)

12 MR. BRYANT: Yes. It was weather.
13 Right. I wanted to be. The flight got
14 canceled.

15 But that says something to me,
16 your report about what you're hearing when you
17 actually go on site is different from what
18 we're hearing when we're sitting in the
19 courtroom. Not different, necessarily, but
20 more insightful.

21 LTC MCGOVERN: I could grab
22 Commander King and ask her to come in and

1 propose a Navy visit. San Diego certainly has
2 a civilian sexual assault program that was
3 part of the MAD project when the MAD --

4 COL HAM: MAD standing for Make a
5 Difference.

6 LTC MCGOVERN: Yes, ma'am.

7 BG DUNN: We had a San Diego --

8 LTC MCGOVERN: Right. They've
9 come to speak.

10 BG DUNN: In Texas we had the San
11 Diego --

12 LTC MCGOVERN: They've come to
13 speak. But to actually go visit.

14 BG DUNN: Right. But I'm thinking
15 more about the Navy, which could either be
16 Joint Base Lewis-McChord and --

17 LTC MCGOVERN: Bremerton.

18 BG DUNN: Bremerton, which is I
19 think a fairly substantial Navy base.
20 Although I don't know how many junior people
21 they have.

22 COL HAM: They're where aircrafts

1 go. I know the Nimitz used to be there.

2 BG DUNN: Okay. They have
3 aircraft carriers so it's big. So that might
4 be one possibility because that puts all three
5 together. Or, of course the Norfolk area,
6 holy cow. And then San Diego.

7 COL HAM: And of course there are
8 large military populations like Virginia Beach
9 or the Seattle area. So you can talk to the
10 local prosecutors.

11 BG DUNN: Right.

12 COL HAM: As you had a chance to
13 do at Fort Hood as well.

14 MR. BRYANT: The Navy has got an
15 obviously very, very large defense -- well, a
16 large JAG presence in the Norfolk area.

17 BG DUNN: In the Norfolk area.
18 Yes. It's huge.

19 COL HAM: You did hear from the
20 investigators from Virginia Beach, if you
21 recall. A woman towards the end was from
22 Virginia Beach and she talked about her

1 interaction with military investigative
2 organizations, et cetera.

3 MR. BRYANT: Yes. That was two
4 weeks ago.

5 MR. STRAND: I'm comfortable with
6 what level of training JAGs are getting.

7 What I'm not comfortable with is,
8 I've been to Joint Base Lewis-McChord to see
9 Rob Stark's center. I had the opportunity to
10 be there when it was dedicated.

11 My question is, they say it's
12 modeled after other things but I don't think
13 it is. My sense is, and this is where I need
14 clarification, I think they're doing things
15 there that other people aren't because of the
16 resourcing. In other organizations, they rely
17 on external organizations to put people in.

18 PROF. HILLMAN: Where is this,
19 Russ?

20 MR. STRAND: At Joint Base Lewis-
21 McChord.

22 Whereas in the military they're

1 directed to be there. And they've got
2 resources in there that I don't know if
3 civilian-like organizations have.

4 LTC MCGOVERN: That's why I think
5 Philadelphia and Everett, Washington with
6 Dawson's Place are unique as well in that they
7 really are located in one building.

8 You go on the bottom floor of
9 Dawson's Place and you have the SANE nurse,
10 the victim advocate, the victim service
11 agencies. On the second floor is the
12 investigators and the prosecutors. They have
13 weekly meetings, which defense counsel
14 actually have issues with.

15 So there are those same sort of
16 models out there which you have not had the
17 opportunity to see, which could be valuable.

18 MR. STRAND: I'd be more
19 interested in that than the other things.

20 BG DUNN: I don't think we need to
21 go to Charlottesville to see. I think we got
22 a good layout the last time on prosecutor

1 training.

2 LTC MCGOVERN: It only needs to be
3 two to three people if we wanted to do a trip.

4 MR. STRAND: I really think going
5 to a Navy base would be helpful to get on the
6 grounds like we did with the Army and the Air
7 Force.

8 LTC MCGOVERN: Commander King is
9 here if you'd like to ask her for a
10 recommendation. She's in charge of the Victim
11 Services Subcommittee.

12 CMDR KING: Norfolk is one of the
13 biggest Navy bases, at least on this coast,
14 that has a big prosecution, defense services,
15 a trial judiciary, investigators.

16 They have some of it here at the
17 Navy Yard. They have a region legal service
18 office that has prosecutors, and they have
19 defense attorneys here. So there is something
20 local but they're not as big as Norfolk. The
21 base is not the same as the Norfolk base.
22 That's one of the best bases I think on this

1 coast.

2 BG DUNN: How about Bremerton? If
3 we did a trip that included Joint Base Lewis-
4 McChord and Bremerton, how big is Bremerton in
5 terms of resourcing? Would we get a good feel
6 or are we going to get a better feel at
7 Norfolk or San Diego?

8 CMDR KING: I think it's about
9 equivalent.

10 MR. STRAND: How about Annapolis
11 though, too? The Service Academy is a part of
12 the system and I'd like to, since we went to
13 Lackland, go to Annapolis and see how they're
14 dealing with the aftermath.

15 CMDR KING: Annapolis doesn't do
16 their own courts-martial there. They do them
17 at the Navy Yard.

18 MR. STRAND: Right. But the
19 system is in place for response.

20 BG DUNN: I think that's entirely
21 different. I think if we're going to do that,
22 we should go to Navy basic training.

1 Do you train --

2 CMDR KING: Great Lakes.

3 BG DUNN: Okay. Everybody comes
4 through Great Lakes?

5 CMDR KING: Yes.

6 LTC MCGOVERN: Do you guys have
7 anywhere where you do a consolidated facility
8 or anyplace that you guys consider your gold
9 standard in the Navy?

10 CMDR KING: You might be asking
11 the wrong person. But Bremerton -- I should
12 say the Puget Sound because the main office is
13 located in Bremerton, and then we have other
14 bases that are part of the same command at
15 Everett, Whidbey Island, and Bangor. They
16 don't do trials at Bangor anymore, but they do
17 at the other bases.

18 PROF. HILLMAN: To be honest, I
19 don't want the gold standard. I want to know
20 what's going on on the ground. So I'd be
21 happy to go to a place that has fewer
22 resources and actually isn't so big.

1 LTC MCGOVERN: So we could go to
2 Everett, see Dawson's Place in the morning and
3 the Navy in the afternoon.

4 CMDR KING: Yes, but the criminal
5 justice part at Everett has been reduced so
6 much.

7 BG DUNN: So it's gone to
8 Bremerton?

9 CMDR KING: Yes, ma'am. Pretty
10 much. I'm not sure if there's even one
11 prosecutor. There's an SJA that works for the
12 Region Legal Services Office commander at
13 Everett. There still may be a prosecutor but
14 they've been moving most of their services.
15 They have had some, but I'm not sure how many
16 are there.

17 BG DUNN: How far is Bremerton?
18 It's not that far, right?

19 CMDR KING: It's not that far.
20 But it takes about an hour and a half to two
21 hours to get between Everett and Bremerton.
22 You either have to take a ferry or drive

1 around.

2 BG DUNN: How about from Seattle
3 to Bremerton?

4 CMDR KING: About 45 minutes to an
5 hour.

6 BG DUNN: Yes. So if you're at
7 Joint Base Lewis-McChord, to get to Bremerton
8 it's just going over the bridge.

9 CMDR KING: Those two are actually
10 fairly close. That's the least of the
11 problem, driving. That's about 45 minutes, I
12 would say on a normal day.

13 MR. BRYANT: Do you mean by gold
14 standard, who's got the best program or which
15 is run the best?

16 It seems to me, just to discuss
17 it, in fairness we need to see the bigger
18 operation, what's happening with the majority
19 of the people. I think the numbers that
20 you're going get from going to Norfolk -- and
21 I'm not pushing Norfolk. I'd just as soon go
22 to the West Coast.

1 But it just seems to me that if we
2 go to a large base, you're going to see a
3 larger number of sexual assaults, a larger
4 number of prosecution. It will give us a
5 better sense of how it's working with a large
6 number of people.

7 I see your perspective where if we
8 can do both, we probably should. The question
9 is, do we have enough time now.

10 MR. STRAND: If we went out to the
11 West Coast we could kill two birds with one
12 stone. We could look at the jointness between
13 the military and civilians as far as the
14 resource centers and a Navy place as opposed
15 to here. We could bring in Rob Stark --

16 BG DUNN: Stelle, Rob Stelle.

17 MR. STRAND: Stelle. And look at
18 Philadelphia and hit Norfolk.

19 COL HAM: Ma'am, from your
20 perspective or from everyone's perspective
21 except Dale and Roger, these are fairly easy
22 to set up because we coordinate with the

1 installation. We tell them what we want and
2 they do it, and we show up.

3 So if you wanted several and your
4 direction to your subcommittee is try to
5 attend one --

6 PROF. HILLMAN: There we go.

7 COL HAM: We will do what you want
8 us to do.

9 BG DUNN: We could do Norfolk, we
10 could do Philadelphia, we could do --

11 PROF. HILLMAN: Okay. You just
12 set up our plan.

13 Here's what I propose, that we
14 actually pursue each one of these. That we
15 look at visiting Philadelphia with those who
16 can go, that we set up a Lewis-
17 McChord/Bremerton visit for those who can go,
18 and that we get to Norfolk for those who can
19 go.

20 COL HAM: We need two subcommittee
21 members. That's the minimum, of course.

22 PROF. HILLMAN: Okay. Let's set

1 those up in the next month, really. I don't
2 anticipate we're going to have a big group
3 going to each of these because our schedules
4 won't permit that.

5 But if we can do that, I think
6 that will enhance our confidence as we're in
7 the drafting process. Those of us who aren't
8 out there on the road can be writing up our
9 recommendations and we'll adapt them as it
10 goes. I think that will make a huge
11 difference.

12 I'd also like to visit the
13 Washington Navy Yard since we're here and
14 since they did handle the Annapolis piece. It
15 seems like we should throw them in the mix
16 too. And forget the -- not that I wouldn't
17 like to visit Charlottesville and see what's
18 actually happening with the training, but
19 we're getting a lot of top-down perspective
20 from all the senior folks. We actually got a
21 lot of training materials from Charlottesville
22 the last time that we met.

1 Was that the Role of the
2 Commander?

3 BG DUNN: We got all the training.
4 Yes.

5 PROF. HILLMAN: So I think that's
6 fine for that. I don't find that as good a
7 use of our time.

8 I think we should go to a big Navy
9 base too. I just don't want to only go to the
10 bigger posts.

11 Is that clear, then, on what the
12 plan is?

13 COL HAM: Yes, ma'am. And just
14 for comparison --

15 MR. BRYANT: Also too, you're
16 going to get a lot of response about when the
17 civilians are doing these cases, when they're
18 not, and why.

19 In Norfolk they've got the
20 prosecutors in Portsmouth and Virginia Beach
21 doing military cases. We'll get that
22 perspective, whether or not the military is

1 satisfied with how that's working.

2 COL HAM: As you were able to from
3 Hood with having the Bell County DA there.

4 MR. BRYANT: Yes.

5 COL HAM: We actually got a copy
6 of their MOU, which will be attached to the
7 minutes.

8 I guess just for comparison, DTF
9 SAMS was a totally different focus and chose
10 to visit a large number of installations, I
11 think 60 around the world. It was a totally
12 different focus. They were obtaining their
13 own data on a lot of the items that are in the
14 DoD SAPRO report, actually. Their focus was
15 going around the world and visiting, which has
16 not been the focus of the full RSP or the
17 subcommittee.

18 We can certainly look to set these
19 up.

20 PROF. HILLMAN: This sounds good.

21 Dawn and Rhonnie on the phone, do
22 you want to add anything to our discussion of

1 the next steps and what our plan is here?

2 MS. JAUS: I think it's a good
3 idea to split up and go to these things. I
4 think that if you have two people going to
5 each of these things it would be more
6 effective than large groups going. I think
7 that was a good suggestion.

8 COL SCHOLZ: Yes. Me too. We can
9 get as much information as possible for the
10 group.

11 I just want to let you know I have
12 to sign off at 9:30. I'm assuming that we'll
13 send this out via email and we can all take a
14 look at the proposed schedule.

15 PROF. HILLMAN: Yes.

16 BG DUNN: We also have the
17 question of overseas, the deployed
18 environment.

19 BG COOKE: Yes. Not that we
20 should be traveling overseas, but is there any
21 way through a conference call, or even letters
22 or something like that, that we can get some

1 input from folks overseas? Because that
2 raises a whole other layer of issues.

3 LTC MCGOVERN: We can submit
4 requests for information. We actually will
5 have a large amount of information for you all
6 based on the 100-plus requests for information
7 we've previously requested and we're sifting
8 through now, which will really provide a lot
9 of the basis for these facts in our report.

10 But specific questions that we can
11 ask, how do you do this overseas, we can
12 certainly submit to members either in a
13 deployed environment or even in Germany now,
14 which is so decentralized, or Korea.

15 MS. JAUS: I'd like to recommend
16 that we just add a section to our report that
17 says, areas that need further consideration,
18 review, and study, or something. Because I
19 think it's going to be tough to get an answer
20 on everything we've got on this list already.

21 BG COOKE: Could I ask another
22 question?

1 PROF. HILLMAN: Great point.

2 BG COOKE: We have on here
3 examining sentencing guidelines in civilian
4 courts. I haven't been to all the meetings so
5 we may not have done anything.

6 PROF. HILLMAN: That's for
7 February 11.

8 BG COOKE: That is a complicated
9 issue. That's not just going to be --

10 PROF. HILLMAN: It's huge.

11 BG COOKE: So what are we going to
12 do with that?

13 LTC MCGOVERN: Yes, sir. My
14 proposal is to tackle that -- again, this is
15 something that was originally part of the
16 specific requirements.

17 Then the Secretary of Defense came
18 out with a subsequent letter that said, "In
19 addition to sentencing guidelines I want you
20 to consider mandatory minimums, the collateral
21 effects, the impact," and all those things you
22 see under there.

1 BG COOKE: Right.

2 LTC MCGOVERN: My suggestion is
3 February 11 we hear information about those,
4 as well as input from the services on what
5 they see as the impact, to answer the question
6 of: does this look like it's feasible, a good
7 idea or not? Certainly not how to do it. And
8 then if so, recommend further study. But we
9 take the first chop at, is this even a good
10 idea?

11 COL HAM: I would note the
12 Judicial Proceedings Panel is in the same
13 statute that creates you and has specific
14 follow-on tasks examining the actual sentences
15 that are imposed in the military, as I recall.

16 As it's a follow-on panel, you are
17 free to recommend that that panel do more on
18 something that you don't think you'll get
19 enough done on.

20 PROF. HILLMAN: That's a great
21 point.

22 Before we lose Rhonnie, are you

1 still on the phone?

2 MS. JAUS: I have to sign off at
3 9:30 as well.

4 PROF. HILLMAN: If either of you
5 could tell us which sections you'd like to
6 work with the staff to take a lead on, that
7 would be great for us before we lose you.

8 LTC MCGOVERN: Ms. Jaus, I was
9 wondering if you could help with the
10 prosecution portion especially, providing the
11 civilian perspective?

12 MS. JAUS: Okay. Where is that,
13 is that in the outline?

14 PROF. HILLMAN: That's B. It's
15 Roman I. It's on page 5 of the prosecution
16 issues.

17 MS. JAUS: Okay. I can help with
18 the investigation issues I think and
19 prosecution. In terms of my experience, those
20 would be probably the closest -- that's
21 probably where I can add value.

22 PROF. HILLMAN: Okay.

1 MS. JAUS: Okay. From the
2 civilian point of view. Right.

3 PROF. HILLMAN: Right. That
4 single civilian point of view that you're
5 going to bring to us.

6 COL HAM: Again, the NDAA imposes
7 some mandatory minimums now. That's within
8 your purview as well now.

9 MR. BRYANT: This is obvious. The
10 military may be the only large scale
11 prosecution entity that doesn't already have
12 sentencing guidelines. Most states now have
13 some sort of sentencing guidelines. The
14 federal government went from mandatory to
15 discretionary guidelines but they're there.

16 I agree with you. The question
17 is, is it a good thing or a bad thing? But it
18 exists in large scale form almost everywhere
19 now.

20 LTC MCGOVERN: I think it'll be
21 open once you all get a common base of
22 knowledge about those.

1 MR. BRYANT: But it is
2 complicated. For instance in Virginia and in
3 the federal system too, the jury is never told
4 that there is such a thing as sentencing
5 guidelines. That's only when the judge does
6 the sentencing.

7 LTC MCGOVERN: So again, just
8 differences in our systems as well.

9 MR. BRYANT: But that's not
10 necessarily true in all the states. In some
11 states the jury isn't bad but the guidelines
12 are.

13 PROF. HILLMAN: So Harvey, we're
14 signing you up for sentencing guidelines. Is
15 that okay?

16 MR. BRYANT: All right. Okay.
17 That's fine. I've done both. I've done the
18 federal and the state.

19 BG DUNN: But the first thing is
20 the statistics of the sentences.

21 COL HAM: Which is not until the
22 final, the follow-on.

1 BG DUNN: Yes.

2 MR. STRAND: A quick question
3 before we lose our colleagues on the phone,
4 procedurally as we're working on our sections
5 my understanding is we don't email each other.
6 We email you.

7 MS. JAUS: Now it's Kelly, not
8 Dillon? Is that who we're emailing?

9 BG DUNN: Kelly has returned.

10 MR. BRYANT: Dillon paid good
11 money to get off that list.

12 MR. STRAND: So we email back and
13 forth to you, Kelly. And then you filter --
14 not filter, but you --

15 COL HAM: Consolidate.

16 MR. STRAND: -- consolidate and
17 communicate with each of us individually?

18 LTC MCGOVERN: Correct.

19 BG DUNN: But you all are helping
20 with the drafting.

21 COL HAM: Yes.

22 BG DUNN: That's significant. The

1 purpose of the staff is to assist with the
2 writing. So take your ideas and convert them.

3 MS. JAUS: I could speak with
4 Kelly about what I'm supposed to write?

5 LTC MCGOVERN: Yes, ma'am.

6 BG DUNN: Exactly.

7 PROF. HILLMAN: Before we lose you
8 -- I'm sorry. I want to get -- Harvey asked
9 about nailing down the dates for around
10 January 30.

11 LTC MCGOVERN: Rather than doing a
12 deliberation day, we could do the Navy Yard.
13 That's something close enough that we could go
14 to it.

15 PROF. HILLMAN: No. I want to do
16 a deliberation day. The visits are going to
17 be small and only a couple of us, but
18 everybody will likely be coming in for the
19 response systems and we need the time to
20 deliberate it. It helps us even if some of us
21 are on the phone.

22 COL HAM: The 29th there is

1 already a Victims Services Subcommittee
2 meeting. The 30th is the full panel meeting
3 which will focus on the Role of the Commander.
4 So if the 31st is available for this
5 subcommittee, that would work out.

6 MR. BRYANT: It'd make it easier
7 on you.

8 LTC MCGOVERN: Maria can't be
9 everywhere.

10 MR. BRYANT: She can't be in two
11 places at once.

12 The 31st is fine.

13 PROF. HILLMAN: The 31st? Great.

14 MS. JAUS: Okay. The 31st. So we
15 have to be there the 30th and the 31st?

16 PROF. HILLMAN: Right.

17 COL HAM: Ms. Jaus, you do not
18 have to attend the full panel meeting on the
19 30th. You are certainly invited if you're
20 available.

21 MS. JAUS: Okay. The 31st is in
22 Arlington?

1 PROF. HILLMAN: Arlington. Yes.

2 COL SCHOLZ: I am still planning
3 for that date. This is Dawn. I am able to
4 make the February 11 but I may have to see
5 what I can readjust for the 31st.

6 MR. STRAND: I am officiating a
7 wedding that day.

8 BG DUNN: I am flying to Chicago
9 that day.

10 LTC MCGOVERN: Would more people
11 be available the 29th if we found a different
12 location?

13 MS. SAUNDERS: The one on the 29th
14 is actually taking place at GW.

15 LTC MCGOVERN: General Dunn and
16 Russ, would you be available on the 29th?

17 BG DUNN: Yes. I can do the 29th
18 but not the 30th.

19 PROF. HILLMAN: Rhonnie, you're
20 not available on the 29th, right?

21 MS. JAUS: I think I could do the
22 29th.

1 PROF. HILLMAN: You could?

2 MS. JAUS: Yes.

3 MR. STRAND: I'll be in San Diego
4 on the 29th.

5 MR. BRYANT: So you can't do the
6 29th or the 31st, you're out for both?

7 MR. STRAND: I'm out for both.

8 PROF. HILLMAN: It sounds like the
9 31st is our better bet then.

10 Because we've actually deliberated
11 some on the investigative piece, losing Russ
12 won't be as devastating as it would otherwise
13 be.

14 Dawn and Rhonnie, anything else
15 you want to add before we lose you?

16 MS. JAUS: No. I'll just wait for
17 the next email.

18 COL SCHOLZ: I'll send an email to
19 Kelly too about some of the areas I think I
20 can help out in the report.

21 PROF. HILLMAN: Great. Thank you
22 so much.

1 MS. JAUS: All right. Thank you.

2 COL SCHOLZ: Thank you. Bye.

3 LTC MCGOVERN: One of the areas of
4 concern to make sure we have good
5 representation will be the defense issues.
6 Colonel Henley could certainly help out.

7 COL HAM: Colonel Morris.

8 BG DUNN: Yes. I think Larry
9 Morris would be.

10 LTC MCGOVERN: Morris? All right.

11 PROF. HILLMAN: Okay.

12 MR. BRYANT: And March 11, when we
13 were here last week we were discussing that --
14 I'm sorry.

15 PROF. HILLMAN: No. Press on.

16 MR. BRYANT: -- as a potential
17 teleconference. That's what we were talking
18 in round terms about, March 11.

19 BG DUNN: I mean, I live here.

20 MR. BRYANT: Is that where we are
21 now? I'm just asking. Because if it's not
22 teleconference --

1 LTC MCGOVERN: The other meetings
2 I think we tentatively have scheduled is
3 February 11 to go over statistics and
4 sentencing, February 25 would be a
5 deliberation meeting, and then March 11, a
6 report review deliberation meeting.

7 MR. BRYANT: Okay. Well, we were
8 talking about a potential -- I'm just asking
9 if we're still there, that potentially it's a
10 teleconference on March 11?

11 COL HAM: You can always call in,
12 sir.

13 MR. BRYANT: Call in? Okay.

14 BG COOKE: Those are all -- each
15 one of them is all day. That's the plan.

16 COL HAM: Those are going to be
17 long, I think.

18 LTC MCGOVERN: I think so, because
19 these deliberations are just --

20 MR. BRYANT: That's fine.

21 PROF. HILLMAN: We got through
22 four pages. So I think it probably will be on

1 the long end.

2 MR. BRYANT: That's fine. I just
3 want to be clear.

4 PROF. HILLMAN: It's a good
5 question.

6 I don't think that we'll do --
7 after the sentencing and clemency statistics
8 on the 11th, and you hope to get some
9 deliberation in on that day too. After that
10 on February 11, we don't do any full days of
11 receive mode of getting information except for
12 the site visits when we're talking to people
13 on the ground. We'll focus on deliberating.

14 LTC MCGOVERN: Right. On the 25th
15 and the 11th we'll probably have some
16 briefings as well, or probably just the 25th,
17 on the other site visits.

18 MR. STRAND: I'll keep them on my
19 calendar as a full day just in case. My
20 suspicion is once we start looking at the
21 information in greater depth, we may revisit
22 some of the deliberations and we might need

1 the time.

2 PROF. HILLMAN: Right. To the
3 extent we could sort of have the library of
4 information as this indexing project that is
5 this massive effort you're undertaking, that
6 will help us to support and find more solid
7 ground under what we're doing too, I think.

8 BG DUNN: Not to mention the
9 encyclopedic brain of Colonel Ham over there.

10 COL HAM: I'm the person who sat
11 through every subcommittee meeting.

12 BG DUNN: That is very valuable
13 for you to be available to point us to various
14 resources.

15 MR. FISHMAN: Do you want to take
16 a look as well at whether to set any of these
17 visits tentatively, schedule any of those?

18 LTC MCGOVERN: I might just do
19 that by email and take a look at calling these
20 places to see when they would be willing to
21 host us first.

22 PROF. HILLMAN: I'm not offended

1 should you contact individuals who you think
2 would be most available and appropriate for
3 us, rather than opening up to everybody to
4 attend.

5 If someone very much wants to
6 attend a particular site visit, you should let
7 Kelly know. But otherwise if you don't get
8 invited, don't be crestfallen.

9 I think for you to look for
10 everybody's schedule is going to be hard on
11 this.

12 For me --

13 BG DUNN: You're going to Seattle.

14 PROF. HILLMAN: Yes.

15 BG DUNN: Won't that be nice.
16 You'll be in the same time zone.

17 PROF. HILLMAN: That's a little
18 easier for me.

19 These others, express interest.

20 But you also should feel empowered
21 to identify who you think ought to go and then
22 take a couple of people with you.

1 LTC MCGOVERN: The other topic
2 that we still need a lead for as well will be
3 training.

4 Again, training for investigators
5 will probably fall with Russ. But the
6 training of prosecution and defense counsel
7 could be handled primarily by one person and
8 then worked into those portions, because
9 there's so many other issues within
10 prosecution.

11 COL HAM: I would ask Colonel
12 Morris as well, since he used to be in charge
13 of that.

14 BG DUNN: He's done it on both
15 sides.

16 LTC MCGOVERN: General Cooke, do
17 you have an area you would like to --

18 BG COOKE: I feel equally
19 unqualified in just about all of these areas.
20 But I'm happy to take whatever is left or
21 whatever you think I can help with.

22 PROF. HILLMAN: May I make a

1 suggestion for one part? It's not a whole
2 section but one particular part.

3 The statute and what we ought to
4 do with the statute is a very tough issue for
5 me. I would really appreciate your thoughts
6 and look at that.

7 Because we're faced with -- it's
8 actually in the -- what's the word -- summary.
9 What's the word for what we get, not
10 transcript, from the -- minutes. It's in the
11 minutes from the Lackland report. And it may
12 be in the minutes from Fort Hood, I'm not
13 sure.

14 MR. STRAND: It is in there.

15 PROF. HILLMAN: The changes in the
16 statute have had consequences on the ground
17 that have not been good. The old statute
18 isn't what we wanted either. I'm not at all
19 sure that the statute we have right now is
20 what we want.

21 This is focusing narrowly on
22 Article 120, the penetrative offenses and how

1 we're managing them.

2 Just to put this out there, my
3 problem with the statute is it does not
4 articulate what is the common non-stranger
5 sexual assault that exists with a lack of
6 consent. It has to be contorted for
7 prosecutors to fit this in.

8 I want to know more about whether
9 we should recommend a change in that and how
10 that might go forward, because what has
11 happened, and I'm sure you know plenty about
12 this, the changes in 2007 and now we have
13 another 2012 version -- I don't know what we
14 should do.

15 Does that sound okay?

16 BG COOKE: Yes. I can say I come
17 to that with no preconceived notions.

18 PROF. HILLMAN: I would love to
19 have your perspective on it as you sort of
20 look through what we've dug up. We can get
21 the stuff that's been indexed when we get
22 that. That would be a huge help to me.

1 LTC MCGOVERN: What I have, to
2 recap as far as everyone's role, Colonel
3 Scholz will assist with investigation and
4 prosecution.

5 Russ is going to be the lead for
6 investigation.

7 General Dunn is going to help with
8 investigation.

9 BG DUNN: I'm happy to do the
10 prosecution thing too as needed. We don't
11 want too many cooks in there.

12 PROF. HILLMAN: No. Let's put you
13 in there.

14 BG DUNN: I do have quite a bit of
15 experience in military prosecution.

16 LTC MCGOVERN: And I think some of
17 the most recent exposure to the training
18 programs as well. That will help.

19 So for prosecution it will be Ms.
20 Jaus and General Dunn.

21 For sentencing guidelines, Mr.
22 Bryant.

1 BG COOKE: I'm happy to -- I have
2 some familiarity with that too with my day
3 job.

4 LTC MCGOVERN: Great. Then
5 Colonel Morris, we'll have him working the
6 defense side and training.

7 Anybody else feel comfortable
8 assisting Colonel Morris with defense topics?

9 I think I'd feel comfortable
10 throwing Colonel Henley in the mix if he's up
11 for it.

12 So Colonel Morris, training of
13 counsel.

14 Mr. Bryant, would you like to
15 tackle training from the civilian perspective
16 of counsel?

17 MR. BRYANT: Sure.

18 LTC MCGOVERN: And then General
19 Cooke's special project, Article 120.

20 I'll also be asking Colonel Henley
21 to assist us with the statistical review, as
22 well as ask Judge Jones to weigh in on that

1 since she has particular interest for the big
2 picture on statistics.

3 Dean Hillman, is there a specific
4 line you want or would you like an overall one
5 voice type of job?

6 PROF. HILLMAN: How about the best
7 practices and assessing the legislation, the
8 things at the end that we haven't actually --

9 LTC MCGOVERN: Okay. Great.

10 PROF. HILLMAN: And probably I
11 should do the statistics piece too.

12 LTC MCGOVERN: Okay. Good.

13 COL HAM: With Judge Jones. That
14 applies across.

15 PROF. HILLMAN: It does.

16 LTC MCGOVERN: As far as process,
17 I could offer up that the staff draft the
18 background information with citations to this
19 huge amount of information that you all will
20 receive, as well as potential findings but
21 without recommendation.

22 Then the subcommittee member that

1 we're working with will tweak that as well as
2 draw out additional findings and draft initial
3 recommendations. Then we can take that and
4 present it to the group.

5 Is that a process that would work
6 for you?

7 Because I know you all have full-
8 time jobs. It'd be too much to do the initial
9 chop, so the staff kind of envisioned we will
10 be doing the initial drafting. But if someone
11 really likes writing, we don't want to steal
12 your thunder.

13 We can then work with the
14 individuals on our time lines as far as where
15 we can get it, what we can get done.

16 I think having some of that
17 background in those initial drafts may help
18 future deliberations. Because you could say,
19 "Here is an issue. This is the background.
20 Are you comfortable with this finding?"

21 BG DUNN: Absolutely. We could
22 cut things down and put them in different

1 places as we go through the process.

2 BG COOKE: I would say that would
3 be great. Don't try to be too elegant.
4 That's a ton of work for you all.

5 LTC MCGOVERN: So maybe outline
6 format for deliberations as far as the
7 background. Yes, sir.

8 BG COOKE: Whatever works for you.
9 Having it framed and sort of organized would
10 be immensely beneficial. But I don't want
11 somebody worrying about, should I say happy or
12 glad here, that kind of stuff, at this point.

13 PROF. HILLMAN: We need to be
14 elegant in the recommendations and we need to
15 decide how extensive our findings can be.

16 If we report out hundreds of
17 findings, which we certainly could do based on
18 the list that we came up with just for the
19 investigative piece, we can't report out
20 hundreds of recommendations. We're going to
21 have to distill those. That's where I think
22 we do need the care.

1 BG COOKE: Ultimately we need to
2 be elegant.

3 BG DUNN: We've got to figure out
4 into the weeds we're going to go with our
5 findings.

6 PROF. HILLMAN: I mean, this is
7 going to be incredibly long.

8 LTC MCGOVERN: And it is
9 important.

10 I mean, do you want to get into,
11 they always use video in investigations in
12 many of the civilian jurisdictions where we
13 don't? Is that even an issue that we can
14 tackle? Or is it, do they have processes set
15 up and are they providing the oversight with
16 DoD IG and other agencies?

17 We'll definitely have to work that
18 with the individual subcommittee members as to
19 what depth we can go to for each separate
20 topic.

21 COL HAM: We can also create
22 appendices that, for example, list all your

1 sources. There's a number of appendices I
2 guess we're all envisioning that then don't
3 have to be in the --

4 BG DUNN: We can also draw lines.
5 We can say, "We learned the following
6 practices that the military does not use at
7 the moment."

8 Or things that the military does,
9 like Russ' favorite, plucking, that we think
10 perhaps should be taken out.

11 And then draw a line as to, these
12 are the recommendations we make, these are
13 maybe considerations as the military moves
14 forward.

15 MR. STRAND: Some of them might
16 recommend more study.

17 BG DUNN: If we make a thousand
18 recommendations then everything is going to
19 get lost.

20 PROF. HILLMAN: On the
21 recommending future study piece of it, I think
22 that that's the answer to we don't know how

1 this is working in remote locations and in
2 deployed environments. Because we just cannot
3 get smart on that in the next 10 minutes.

4 I think that that's where we
5 bracket that piece and say we understand what
6 the top-level view is on what's necessary to
7 maintain that functionality within the systems
8 that we have, but we haven't studied how this
9 is working in foreign jurisdictions and in
10 deployed environments.

11 LTC MCGOVERN: I think the other
12 piece that we want to be sure to address that
13 we were not able to get to is the Reserve
14 component. If someone wants to look into
15 that, we didn't touch that either.

16 BG DUNN: Right.

17 COL HAM: It's even a different
18 survey. The Workplace and Gender Relations
19 Survey that you're used to looking at is for
20 active duty. There is a separate one for
21 Reserve components.

22 BG DUNN: Right. And their

1 workplace is not their military unit.

2 I was going to ask this question a
3 couple of minutes ago and I lost it. Is DoD
4 doing another survey? Is it going to be done
5 anytime soon?

6 COL HAM: The DoD SAPRO survey is
7 every two years.

8 BG DUNN: Right. But I thought
9 they were restructuring to try to avoid some
10 of the huge issues that we all know exist with
11 the statistics.

12 Do we know where they are on that
13 or we don't know?

14 COL HAM: I'm trying to remember.

15 PROF. HILLMAN: They're adapting.

16 COL HAM: The Role of the
17 Commander when Colonel Metzler spoke. He
18 spoke about changing their survey. But I'm
19 not sure if he spoke about changing the timing
20 of it being every two years. I don't recall.

21 MR. STRAND: We might be talking
22 about two different things. The DMDC, the

1 Defense Data Management Center, does the
2 surveys.

3 BG DUNN: They do them
4 technically. I'm talking about the questions.

5 COL HAM: The Defense Manpower Data
6 Center creates the survey that DoD SAPRO uses.

7 MR. STRAND: Correct.

8 COL HAM: It is administered
9 biannually? No. Every other year.

10 MR. STRAND: Every other year.
11 Right.

12 COL HAM: I don't know if they're
13 changing the time.

14 PROF. HILLMAN: From what I
15 remember they said that they're changing, for
16 instance -- this is our big question -- why
17 don't you report. They're changing that
18 question to try to get more precisely at what
19 exactly.

20 They're aware of the problem with
21 comparison across years and identifying
22 trends. Every time we change the survey it

1 alters our ability to actually assess the data
2 across. So the trending issue is a piece of
3 it. But they were making some changes with
4 respect to trying to break out those
5 questions.

6 Do you remember that long list?
7 That's what I remember.

8 COL HAM: I remember something on
9 it, ma'am, but I can't recall any specifics
10 right now.

11 LTC MCGOVERN: I don't think
12 anything will happen during our report period
13 --

14 BG DUNN: That's going to address
15 the issues with that survey in terms of --

16 LTC MCGOVERN: No.

17 BG DUNN: -- when did this occur,
18 what type of assault was it.

19 PROF. HILLMAN: I was just looking
20 around to see if Shannon were here. We don't
21 need her right now.

22 The legislative piece we're just

1 going to have to, like I said, look at that a
2 little bit later. We will have a sense of
3 what practices are out there and then what's
4 changing.

5 But our mandate is to really look
6 at how things have been working and what's
7 happening right now. And not so much, at
8 least not in this first piece, at the impact
9 of these particular things.

10 LTC MCGOVERN: Some of it will be
11 incorporated. For instance, the new tasking
12 to look at clemency also will require us to
13 look a little bit at Article 60, which is new,
14 current, and pending legislation.

15 So somehow it may tie in. We can
16 work with Shannon to ensure if there's
17 something regarding investigations we can
18 insert it.

19 I think that's towards the end
20 once we get through our initial stuff. We see
21 what current fixes are out there before we
22 make a recommendation that they already have

1 pending legislation on.

2 PROF. HILLMAN: As we get closer
3 to having an outline of what we're going to
4 report out, if you could circulate what the
5 other subcommittees have so that we can see
6 what we might be able to take the accelerator
7 off of in terms of depth and complexity.

8 Is that a problem? Can we look at
9 what their outlines are from the other
10 subcommittees?

11 LTC MCGOVERN: From the get-go
12 we've had --

13 DFO FRIED: I think that's going
14 to be a problem because it would be
15 deliberating. The subcommittees have to
16 report out to the full panel and the full
17 panel deliberates. Once that's done I think
18 the other subcommittees could look at the
19 reports.

20 PROF. HILLMAN: Okay. Then those
21 of us on multiple subcommittees will have to do
22 that.

1 BG DUNN: But the staff can also
2 say, like Colonel Ham told us today, that
3 someone else is addressing something else more
4 in depth. The staff can say to us somebody
5 else has got 23 pages on this.

6 LTC MCGOVERN: We've worked very
7 hard to make sure we're not doing the same
8 issues. If we do overlap we're only doing it
9 from the prosecution/defense perspective.

10 PROF. HILLMAN: The other thing is
11 I think this outline is going to change as you
12 draft. I want you to feel empowered to make
13 those changes and to actually make big
14 structural changes like a different section
15 here and move things around. We'll adapt how
16 we're responding to it.

17 The writing process never goes
18 smoothly after you've collected the research,
19 so you should feel confident doing that. And
20 you don't have to fire it to everybody all the
21 time when you're making changes.

22 COL HAM: The sole purpose for

1 this was so you could at least try to get down
2 all the issues that have come up. A number of
3 them, as you've heard, are recurring themes.
4 But to just try to throw on a page all the
5 issues that have come up within your
6 subcommittee's purview.

7 Whether or not you determine that
8 they need a finding or a recommendation is
9 completely up to you, and whether or not it's
10 an issue.

11 PROF. HILLMAN: All right. I
12 think that we'll close.

13 DFO FRIED: The one thing I would
14 add, Professor Hillman, is if you think that
15 another subcommittee has looked at it or
16 should look at it, you can make that
17 recommendation also as it's ongoing to include
18 in their report.

19 PROF. HILLMAN: For instance, we
20 also heard testimony about the role of the
21 commander. Some of the witnesses before us
22 had opinions on this. But the Role of the

1 Commander Subcommittee has to report out before
2 we can report out that. That's essentially
3 where we are. They're an autonomous body
4 essentially. Whatever our witnesses told us
5 have to be elevated to the panel level before
6 it can influence.

7 DFO FRIED: Correct.

8 MR. STRAND: So if we feel it's
9 important, even though it's in their role we
10 should -- if we think it's important, put it
11 in the report and just let them consider it?

12 PROF. HILLMAN: We should put it
13 out. That's right.

14 DFO FRIED: I think the transcript
15 though once it's finalized, if it's posted
16 even before the full panel deliberation you
17 can read what was said in those transcripts.
18 There won't be any deliberations on the part
19 of the subcommittee or their report of
20 recommendations, if that makes any sense.

21 LTC MCGOVERN: So the other
22 subcommittees can consider our minutes and

1 transcripts, is that correct?

2 DFO FRIED: Once they're posted.

3 BG DUNN: Yes. Because that's all
4 public.

5 PROF. HILLMAN: And they're posted
6 really fast. I mean, you're getting them out.

7 DFO FRIED: Yes.

8 COL HAM: It is draft form. The
9 transcripts are draft form.

10 PROF. HILLMAN: But the
11 transcripts have been released from just last
12 week, right?

13 COL HAM: They are drafts.

14 PROF. HILLMAN: But they were
15 released as drafts to the public because I've
16 heard from people calling me about what was in
17 them.

18 COL HAM: They are very clearly
19 marked that they are drafts. Just like any
20 trial transcript, there are errors in them
21 that need to be corrected.

22 MR. STRAND: Are they on the

1 website as drafts?

2 DFO FRIED: They are documented as
3 drafts.

4 COL HAM: They are also documented
5 as, if it's a subcommittee meeting that the
6 full panel has not been briefed on this.
7 They're very clearly marked in bright red.

8 LTC MCGOVERN: And it's not
9 unheard of that the Office of Military
10 Commissions, they post the draft transcripts
11 until they're authenticated, because that is
12 a long process. Then it's removed and
13 replaced with the final one.

14 PROF. HILLMAN: Okay. Colonel
15 McGovern, Colonel Ham, is there anything else
16 you want to put out there before we wrap up?

17 MR. BRYANT: Do you anticipate the
18 meeting on the 31st being most of the day?
19 It's fine with me if it is. It's just
20 planning for Saturday and the next day.
21 Should we go ahead and set aside the whole
22 day, that whole work day?

1 PROF. HILLMAN: You know, I'm not
2 sure. There's diminishing returns after a
3 certain amount of time that we're focusing on.
4 So I'd say four hours or so would make sense.

5 I also will want to go home
6 honestly on Friday afternoon. I'll catch a
7 flight back.

8 But I think we should spend a
9 morning session, and then a couple of hours in
10 the afternoon and then cut out. I'd say until
11 3:00 maybe. Is that reasonable?

12 What do you think? You're already
13 gone. He's not here.

14 MR. BRYANT: He's not going to be
15 here.

16 PROF. HILLMAN: Does that sound
17 reasonable to you?

18 MR. BRYANT: Yes.

19 PROF. HILLMAN: Because we will
20 have been the previous day --

21 MR. BRYANT: We're not going to
22 run the clock down to 6:00 like we did last

1 week?

2 PROF. HILLMAN: I don't think
3 that's helpful in this deliberation piece. We
4 need everybody on board and focused.

5 I'd say we'll start at a
6 reasonable time and close at 3:00 or so. Does
7 that make sense?

8 Thanks, General Cooke.

9 BG COOKE: Thank you.

10 PROF. HILLMAN: All right. Thanks
11 to everybody for your insight and your
12 stamina. We'll need more of that as we go
13 forward.

14 DFO FRIED: The meeting is closed.

15 (Whereupon, at 9:57 a.m. the
16 meeting was closed.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Response System to Adult Sexual
Assault Crimes Panel Meeting

Before: US DOD

Date: 01-15-14

Place: Arlington, VA

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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