

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

ROLE OF THE COMMANDER SUBCOMMITTEE

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DELIBERATION SESSION

+ + + + +

FRIDAY
JANUARY 24, 2014

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The Subcommittee convened telephonically, the Honorable Barbara Jones, Chair, presiding.

PRESENT

THE HONORABLE BARBARA JONES, Chair
MAJOR GENERAL (Ret.) JOHN ALTENBERG
PROFESSOR GEOFFREY CORN
GENERAL (Ret.) CARTER HAM
PROFESSOR ELIZABETH HILLMAN
THE HONORABLE ELIZABETH HOLTZMAN
VICE ADMIRAL (Ret.) JAMES HOUCK
BRIGADIER GENERAL (Select) LISA TURNER

ALSO PRESENT

MARIA FRIED, Designated Federal Official
LT COL KYLE GREEN, RSP Senior Attorney
COL PATRICIA HAM, RSP Staff Director
TERRI SAUNDERS, RSP Deputy Staff Director

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

2 2:37 p.m.

3 MS. FRIED: Okay. Good afternoon.

4 This is Maria Fried, the DFO. And thank you
5 all for your time once again. And with that,
6 I'd like to go ahead and open the meeting.

7 CHAIR JONES: I'm sorry. Is Beth
8 Hillman on?

9 LT COL GREEN: No, ma'am, she's
10 not. We can call her, but I'm not sure she's
11 at the office today. So she may -- I think
12 she may be dialing in from elsewhere. But
13 we'll send her an email and ask her if she's
14 dialing in. I don't know if the change in
15 numbers is affecting her or what, but we'll
16 send her an email real quick to see if she's
17 dialing in.

18 CHAIR JONES: All right.

19 MS. SAUNDERS: This is Terri on
20 the line. We have a court reporter who has
21 just joined the conference, but he's actually
22 not physically here, but he's on conference

1 call with us. So if I could ask you all to
2 please identify yourselves before you speak,
3 if you can try to remember. Otherwise, we'll
4 try to go back and clean it up at the end.

5 CHAIR JONES: Okay, good
6 suggestion, Terri. Yes, this is Barbara Jones.
7 I'm a little reluctant to go ahead without
8 Beth, but I guess we can start and hope that
9 she joins us and then we can recap.

10 So I, like the rest of you, have
11 tried to read everything that's come in. And
12 many of you have been able to get comments,
13 which the staff has been able to add to our
14 draft.

15 I guess there's one question that
16 I had which we could discuss, and that is for
17 the scope of what we want to report to the
18 full Panel. And I was thinking that we
19 certainly want to give the full Panel our
20 findings, as we did with our initial finding
21 on this issue earlier. But I see there's a
22 recommendation section here, and I don't know

1 whether we want to do that or not -- well, at
2 least today, because I noticed that Ms. Frost
3 has a recommendation and others of us might
4 have some ideas that are additional
5 recommendations. But I would open that up.
6 And recommendations is something we might want
7 to discuss with the full Panel. I'd just open
8 that up for comment. So did we intend to --

9 MEMBER HILLMAN: Beth Hillman.

10 CHAIR JONES: Hi, Beth.

11 MEMBER HILLMAN: Sorry I'm so
12 late. I got hung up.

13 CHAIR JONES: No, no, you're not.
14 I was here two seconds before you. This is
15 Barbara Jones, for the court reporter. The
16 first question I just asked, and I'd like to
17 hear your thoughts on it, was whether,
18 obviously we're going to issue a report with
19 findings in it. I don't know whether we
20 should actually have a recommendation section
21 in this or not or leave that up to the full
22 Panel.

1 MEMBER HAM: This is Carter Ham.
2 At this point, I think we should save
3 recommendations until the Subcommittee's final
4 report to the Panel. I think this initial
5 report -- personally, I'm happy with the
6 report as it is written and then wait until
7 our final report to make the Subcommittee's
8 recommendations.

9 CHAIR JONES: Anybody else on that
10 topic?

11 MEMBER HOUCK: Jim Houck. I agree
12 with that.

13 CHAIR JONES: Okay. Then that
14 would -- that's basically what I think that we
15 should do. This is Barbara Jones again. Make
16 our findings and then have deliberations on
17 those with the full Panel. And we certainly
18 will have an opportunity to discuss various
19 recommendations, but I don't think we can put
20 them in this report out that we're doing now
21 to the full Panel.

22 All right. I have started to read

1 through the various comments. I thought maybe
2 what we could do first of all, before we went
3 comment by comment that we have received, is
4 just to ask if there are any general comments
5 from anyone who may not yet have had an
6 opportunity to respond to the Subcommittee
7 report. And if there aren't any, then I think
8 we should just begin comment by comment.

9 Does everybody have a copy of the
10 draft with the various comments that did come
11 in on time to be put into it?

12 MEMBER HOLTZMAN: I just have a
13 general comment. I think it is a general
14 comment. I mean, there are a couple of times,
15 and maybe more than a couple, where we have
16 talked about how we have looked at the
17 question of whether, and it's really the
18 second sentence in the document, whether the
19 convening authority should have the right to
20 refer serious criminal offenses, including
21 sexual assault, to court-martial.

22 I don't think we've looked at the

1 question of serious criminal offenses. I
2 think we've looked simply at the question of
3 sexual assaults and the referral of that.

4 So I would recommend that we make
5 it very clear all the way through -- I don't
6 know how many times it appears; I know it
7 appears at least more than once -- that the
8 focus is on whether there should be a
9 reference in sexual assault cases, even though
10 the statute, and we could refer to that in a
11 footnote or a parenthesis, the statutes or the
12 other proposals may be much broader. But
13 that's not our jurisdiction. I'm sorry. Liz
14 Holtzman.

15 MEMBER CORN: This is Professor
16 Corn. I agree that our -- that the mission
17 was to focus on the issue of sexual violence
18 offenses. I do think we have heard generally,
19 though, particularly from commanders, about
20 their views on the significance or importance
21 of convening authority over offenses under the
22 Code more generally. So I don't necessarily

1 agree that we have not heard anything on the
2 relationship between the role of the commander
3 and a broader scope of convening authority,
4 but maybe that can be addressed in the
5 footnote or the parenthetical that
6 Representative Holtzman suggests.

7 MEMBER TURNER: Ma'am, Colonel
8 Turner here. Maybe the staff can help us, but
9 I think that the NDAA 14 may have specifically
10 required RSP to, you know, evaluate the
11 effects of removing chain of command from the
12 UCMJ in terms of legislation. But I'd ask us
13 to go back and look at that statute. I don't
14 remember the details.

15 MEMBER HOLTZMAN: Yes, but I'm not
16 sure that includes -- this is Liz Holtzman --
17 I'm not sure that it includes the impact on
18 all the other crimes.

19 CHAIR JONES: This is Barbara
20 Jones. Yeah, I think the specific NDAA 14
21 mandate relates to what impact, if any,
22 removing the commander would have on the

1 reporting of sexual assaults. I agree with
2 Liz Holtzman that we have -- and Professor
3 Corn -- we have heard a little bit of -- well,
4 we all know that the proposed legislation from
5 Senator Gillibrand affects almost all serious
6 felonies, not just sexual assaults. And we
7 began to hear, and I think we heard a fair
8 amount, about potential issues in terms of
9 jurisdiction and other problems that might
10 arise from having particular fact patterns
11 that occur in every case having to be parsed
12 out jurisdictionally between the new convening
13 authorities and the commanders who would
14 remain to, you know, carry out good order and
15 discipline with less serious offenses and some
16 serious offenses.

17 But we don't have anything
18 specifically in this report about that, as I
19 recall. So I think a footnote might be
20 helpful, if only to say that it does affect
21 all serious offenses and we have heard, you
22 know, there may be some issues there. I mean,

1 part of our problem is we still have not
2 heard, I don't think, a final discussion of
3 exactly what the current version of Senator
4 Gillibrand's bill actually calls for.

5 MEMBER HOLTZMAN: This is Liz
6 Holtzman again. Maybe I'll make myself clear.
7 I'm happy to have footnotes saying that we
8 heard testimony about whatever. That's true.
9 But I'm just concerned with this sentence that
10 says the Subcommittee has focused particular
11 attention on the question of whether senior
12 commanders should retain the right to refer
13 serious criminal offenses, including sexual
14 assaults, to court-martial. That's in the
15 very first -- I don't think we did focus
16 particular attention on whether there should
17 be a referral of other serious offenses.
18 I understand this is a nitpick, so I apologize
19 for taking it --

20 CHAIR JONES: No. You know what,
21 I've got it now, and I think the simple fact
22 is we should say to refer sexual assault cases

1 and put in a footnote. This is Barbara Jones
2 again, for the court reporter.

3 Are there any other --

4 MEMBER HOLTZMAN: The reason for
5 saying that is I just don't want us to be
6 attacked for chewing off more than we had a
7 right to. I mean, we will be attacked for
8 whatever we say or don't say, but, you know,
9 if we're very narrowly focused on what
10 actually our jurisdiction is and make it very
11 clear that we're not going beyond that, I
12 think we can be a little bit safer.

13 MEMBER ALTENBERG: I agree. This
14 is John Altenberg. And I think the footnote
15 is a way to cover the issue. I agree with
16 Congresswoman Holtzman.

17 CHAIR JONES: Okay. Any other
18 comments?

19 All right. Any other general
20 comments that we haven't yet received or
21 aren't on the draft?

22 All right. Then on page one, I

1 agree with Professor Hillman. I don't think
2 we need to indicate the numbers here, but I'm
3 happy to hear from any and everyone else on
4 that subject.

5 MEMBER HAM: This is Carter Ham.
6 I think, as with the recommendations, perhaps
7 that degree of specificity is best left for a
8 final report. Perhaps in this initial report
9 we could simply say most, or a majority, or
10 near majority or something like that.

11 CHAIR JONES: Any other comments
12 on that? All right. Then we'll make a
13 modification to that, and it will be noted in
14 the next draft that goes out. But we'll
15 certainly -- I agree. As I said earlier, I
16 don't think we need eight of nine at this
17 stage.

18 Okay. The next comment is from
19 Professor Corn, and we're in the assessment
20 summary.

21 MEMBER HOLTZMAN: Oh, before we
22 get to assessments.

1 CHAIR JONES: Yes, Liz?

2 MEMBER HOLTZMAN: Sorry. This is
3 Liz Holtzman. I don't understand the
4 statement where it says, "Further, eight of
5 nine Subcommittee members," and I understand
6 we're going to correct that, "agree that the
7 evidence does not support a conclusion that
8 removing such authority will significantly
9 enhance the confidence of sexual assault
10 victims." That seems to me a very general
11 statement. What kind of confidence of sexual
12 assault victims? What are we talking about
13 here? Confidence to do what? To report? The
14 confidence to pursue the case? The confidence
15 to, you know, in the justice system? I mean,
16 what does it mean? I'm sorry. That just
17 seems to me to be a very nebulous, actually,
18 in my view, meaningless statement.

19 MEMBER CORN: This is Professor
20 Corn. If I could maybe jump on that a little
21 bit, as well. The reference is directly to
22 the role of the convening authority. That

1 role has to do with the prosecutorial response
2 to allegations of criminal misconduct
3 involving sexual violence.

4 I mean, in terms of -- we do talk
5 later in the report about the different
6 mechanisms for reporting and responding to
7 sexual violence and how that may or may not
8 contribute to confidence in sexual assault
9 victims in the credibility of the response.
10 But I think, in that paragraph, what we're
11 talking about is the prosecutorial response,
12 whether or not an allegation of sexual
13 violence that violates the UCMJ will or will
14 not be referred to trial. That's the function
15 of the convening authority.

16 LT COL GREEN: And, Ms. Holtzman,
17 this is Lieutenant Colonel Green on the staff.
18 There was a recommendation, and I mentioned in
19 my email we've received a number of text
20 correction recommendations. Rather than
21 looking at each one of those and taking up all
22 your time doing that, we were going to look at

1 the text recommendations. But Professor
2 Corn's recommended language that says,
3 "enhance the confidence in the integrity of
4 the military justice system among victims of
5 sexual violence."

6 MEMBER HOLTZMAN: Okay. That's a
7 better, you know, that's a better formulation.
8 I mean, what it says now just leaves me up in
9 the air. That's all. Liz Holtzman, that's
10 who's speaking. Yes, maybe fairness is better
11 than integrity, but that's a perfectly
12 acceptable comment, conclusion.

13 CHAIR JONES: I mean, we should
14 certainly -- I would certainly support -- this
15 is Barbara Jones -- saying fairness. I mean,
16 we can also get more specific and actually
17 allude to what we're going to be finding, I
18 believe, which is that at least the majority
19 or most of us believe that the evidence does
20 not support the conclusion that removing the
21 commander as convening authority will or will
22 not increase reporting or will increase

1 prosecution or conviction rates. We can play
2 with this, but I think maybe the more specific
3 we are the better.

4 MEMBER HOLTZMAN: This is Liz
5 Holtzman. Are you saying that there's a
6 problem -- you have a problem with the prior
7 sentence, which is, you know, the one about
8 all Subcommittee members? How would you --

9 CHAIR JONES: No, no.

10 MEMBER HOLTZMAN: You're not
11 proposing to change that?

12 CHAIR JONES: No.

13 MEMBER HOLTZMAN: Okay. I didn't
14 understand then what you were proposing, so
15 forgive me. This is Liz Holtzman.

16 CHAIR JONES: I'm sorry. I
17 thought we were talking about the line with
18 "will significantly enhance the confidence of
19 sexual assault victims."

20 MEMBER HOLTZMAN: Right.

21 MEMBER CORN: Yes, this is
22 Professor Corn. I think that my understanding

1 is that Kyle has some suggested modification
2 of the language to make it more precisely
3 aligned with why we're considering this and
4 why we're making the recommendations. I mean,
5 the word choice I think we can banter around
6 later, but I think most of us agree with
7 Representative Holtzman that this is not --
8 the objective here is not just confidence of
9 sexual assault victims. You have to make that
10 more precise. Confidence in what? And it's
11 the function of the system, I think, that
12 we're talking about.

13 CHAIR JONES: All right. That's
14 fine. I'm not going to -- I'd like to see the
15 -- we'll see the new word change there and
16 take it from there.

17 LT COL GREEN: Yes, ma'am. And as
18 we go through this, if I have alternate words
19 that have been proposed, I'll let everybody
20 know. But the comments that we provided out
21 really were more substantive in terms of the
22 additions or the fundamental nature of what

1 was being said. And perhaps if we get to that
2 point and the next round we can really look at
3 words and specifics on sentences, in terms of
4 making sure that what they say, it may be more
5 helpful because we have received a number of
6 comments from people that we'll try to
7 incorporate.

8 CHAIR JONES: Okay. Thanks, Kyle.
9 All right. The next comment is in the section
10 one, assessment summary, and it's from
11 Professor Corn. And it reads, "And all agree
12 on the importance of maximizing the
13 contribution of the military justice system
14 and the overall effort to mitigate the risk of
15 sexual violence in the armed forces. How to
16 achieve this objective has, however, generated
17 a divergence of opinion."

18 MEMBER CORN: Judge, this is
19 Professor Corn. My only point there was I
20 think that -- I mean, my sense is that is a
21 point of consensus among us, that the system
22 should contribute to mitigating this risk.

1 So, you know, it just kind of qualified --
2 when I read that first sentence, it struck me
3 that we all recognize there's been a lot of
4 scrutiny, but we also recognize that the
5 system needs to respond to that scrutiny
6 somehow. How to do it is obviously going to
7 be the point of some departure. If other
8 people want to add that, it doesn't -- it was
9 just a thought at the moment when I read it.

10 CHAIR JONES: Okay. Any other
11 thoughts on that? And Professor Corn had
12 another comment in the second paragraph in
13 section one and recommended moving two
14 sentences to paragraph one. I'll tell you
15 what. Perhaps when the staff has time to take
16 a look at it, we can make a decision and send
17 out another draft. How does that sound with
18 respect to that comment, since we're --

19 MEMBER CORN: Concur. Professor
20 Corn.

21 CHAIR JONES: Okay. I'm on the
22 second page. Okay. And this is Colonel

1 Turner. You're recommending you add a new
2 section about commanders and convening
3 authority.

4 MEMBER TURNER: Ma'am, this,
5 again, may be a staff issue. Colonel Turner
6 here. Just an organizational introduction to
7 the topic for civilian readership is all.

8 CHAIR JONES: Right. I see what
9 you're saying here. And I'm sorry, I didn't
10 get this draft with these comments in it. I
11 didn't have enough time today myself to read
12 it, so I'm doing it as we go along. I think
13 that you're right. We can try some placement
14 or move it around some. It may make more
15 sense closer to the front, and we'll send out
16 another draft.

17 All right. I'm on page four. All
18 right. Professor Corn wants us to consider
19 not using just the word "survivor." Professor
20 Corn?

21 MEMBER CORN: Yes. I mean,
22 overall, the two terms that we use repeatedly

1 that I have a little difficulty with are
2 "survivors" and "sexual assault," and I'll
3 explain both briefly. I think we've got
4 victims or alleged victims of crime that came
5 before us, and the term "survivor," for me,
6 diminishes a little bit. If you're the victim
7 of sexual violence, you're the victim, you're
8 a crime victim. I understand you've survived
9 the consequence of a crime. I just think, in
10 the context of a report addressing the
11 response to criminal misconduct, the term
12 victim or alleged victim or an individual who
13 alleges they've been a victim, whatever the
14 case may be, would be a better word choice.

15 And I have a little bit of
16 consternation with our use of sexual assault.
17 I think the common connection between all of
18 the sex offenses in the Code is they're acts
19 of sexual violence. I get sexual assault as
20 a generic term, but, in my view, I don't
21 consider rape or forcible sodomy as sexual
22 assault. I think they begin with a sexual

1 assault and they are consummated with an act
2 of sexual battery that's much more, much more
3 egregious.

4 So, I'm okay leaving those terms.
5 I just wanted to raise that concern as I read
6 through it.

7 CHAIR JONES: I guess we've been
8 using it in the context of, you know, the name
9 of our Response Panel, but I understand that
10 it's a specific -- sexual assault is a
11 specific crime. We'll have to give that some
12 thought, and maybe we should put it in a
13 footnote.

14 With respect to survivors, we can
15 think about that, too. I don't know whether
16 the -- did Protect Our Defenders specifically
17 refer to survivor statements? I can't recall.
18 In any event, we can certainly give that some
19 more thought, too. But before we leave it,
20 are there any comments from anyone else?
21 Okay.

22 MEMBER HOLTZMAN: Wait, wait,

1 wait. I have -- in the next to last paragraph
2 on that page, to me it wasn't clear, just
3 thinking about it -- this is Liz Holtzman --
4 from the point of view of a civilian, and I
5 think Colonel Turner makes a good point that
6 not everybody reading this is going to
7 understand the military stuff. I think that
8 we ought to maybe just describe that a little
9 bit more clearly the role of the staff judge
10 advocate, that if a staff judge advocate
11 disagrees with the decision of the commander,
12 that he or she may take it up the chain of
13 command. I mean, it's not clear that that's
14 exactly what they're doing here, so I think
15 that that should be clarified to make it
16 clearer.

17 CHAIR JONES: And I think there's
18 also new legislation on that in NDAA 14. So
19 we should probably at least footnote it.

20 MEMBER HOLTZMAN: And I wanted to
21 add another point to the paragraph about
22 foreign military systems, which is it's not

1 only that removing commanders had no effect on
2 victims' willingness to report crime. I
3 believe also that it had no effect on the
4 ability to prosecute these crimes more
5 effectively. If everybody agrees with that,
6 we should put that there, as well.

7 CHAIR JONES: I think I'd agree
8 that we don't have any evidence it contributed
9 to being more effective in prosecuting them.
10 I don't recall what we put in our initial --
11 specifically what we put in our initial report
12 out. But whether we put that in or not, I
13 think that's a fair statement.

14 Okay. Anything else? And
15 generally speaking, I think we do have to move
16 our description of the system up before we get
17 into section three, which I think was Colonel
18 Turner's and Ms. Holtzman's suggestion.

19 MEMBER HOLTZMAN: No, Colonel
20 Turner gets full credit.

21 CHAIR JONES: All right. I'll
22 give her full credit then. All right. We're

1 on page five.

2 (Telephonic interruption.)

3 MEMBER HOLTZMAN: Hello?

4 MEMBER ALTENBERG: Some of us are
5 still here, I think. This is John Altenberg.
6 I hear Ms. Holtzman; is that right?

7 MEMBER HOLTZMAN: You hear me,
8 yes.

9 MEMBER ALTENBERG: Are there
10 others with us?

11 MEMBER HOUCK: Houck's still here.

12 MEMBER TURNER: Colonel Turner.

13 MEMBER ALTENBERG: I think
14 somebody popped off and we heard that beep.

15 MEMBER TURNER: I think we lost
16 Judge Jones.

17 COL HAM: I'll go call her. This
18 is Colonel Ham.

19 COURT REPORTER: This is the court
20 reporter. We're off the record at 3:05.

21 (Whereupon, the foregoing matter
22 went off the record at 3:05 p.m. and went back

1 on the record at 3:06 p.m.)

2 CHAIR JONES: I'm back. Sorry. I
3 just disconnected myself. Great, thank you.

4 All right. On page five,
5 Professor Hillman's comments are that section
6 four, which relates to -- let's start with
7 that one, the historical overview of the right
8 of the commander. It seemed a little out of
9 place and might be more useful in the eventual
10 report.

11 I think it's certainly something
12 that should go in the final report. And I
13 think I'm inclined to agree that we may not
14 need it in this report out from our
15 Subcommittee. So I'm happy to hear comments
16 about that. I don't think there's anything in
17 this section that's not correct. I'm just
18 saying I don't -- I think it's a bit of -- it
19 sort of takes away from the rest. It's sort
20 of, I don't know, extra and maybe it would be
21 better put in the final. Yes, is that
22 Professor Hillman?

1 MEMBER HILLMAN: Yes, this is
2 Beth. I thought I just might explain what I
3 meant. I have a hard time, honestly,
4 understanding exactly what this is as an
5 initial assessment, compared to what the sort
6 of general report out would be. So part of
7 this may simply be my confusion about what
8 we're doing exactly. I mean, if I'm
9 understanding correctly, we want to flag what
10 the Panel ought to deliberate over with
11 respect to the convening authority question in
12 the military justice system. Maybe this all
13 belongs in here, but we did hear from Fred
14 Borch. But, you know, all of the case
15 background and whatnot, I don't know what the
16 -- the eventual report needs to have plenty of
17 background in it and our staff is compiling
18 all that and putting it there.

19 But I just don't know how focused
20 you want to be in this or how expansive it
21 should be, and we did not talk about service
22 connection, for instance, in the Subcommittee.

1 And, actually, Borch addressed the Panel,
2 rather than the Subcommittee, which doesn't
3 mean it can't go here.

4 I just -- it feels off base to me.
5 And if the Subcommittee can focus this
6 somewhat, I think it would be maybe a good
7 idea for the Panel's deliberation. That's it.

8 CHAIR JONES: Well, I just happen
9 to agree with you because I think it detracts
10 from getting a report out that's sort of more
11 economical and flags issues. But I'm happy to
12 hear from anybody else on this. And I guess
13 -- yeah, go ahead. I'm sorry, who is this?

14 MEMBER HOLTZMAN: Liz Holtzman.
15 Is there some reason that we couldn't put it
16 in an appendix or something like that?

17 CHAIR JONES: I guess not. Any
18 other comments about it?

19 MEMBER CORN: This is Professor
20 Corn. The only piece of that section that I
21 thought -- my sense was that it was more of a
22 proposed finding that was related to the

1 ultimate question of whether or not the
2 convening authority should play a role in the
3 prosecutorial function was the paragraph on
4 the importance of the role of the commander in
5 meeting goals of discipline during periods of
6 cultural change. And I do recall there was
7 some discussion of that periodically. But
8 that felt more like a finding to me, as
9 opposed to just background. The rest of it
10 just seemed like background. My view is we go
11 in a footnote or an appendix.

12 But if that's a finding that's
13 being proposed or that we should consider,
14 then I think that paragraph should be recast
15 in that section, as opposed to this.

16 CHAIR JONES: Anybody else?

17 MEMBER TURNER: Colonel Turner
18 here.

19 CHAIR JONES: Yes, Colonel?

20 MEMBER TURNER: Just that context
21 matters to some degree. Whatever is the right
22 way, a footnote or otherwise, is fine. But to

1 understand the unique military justice system,
2 the role of the commander in that context,
3 some historical background and understanding
4 is necessary. Not necessarily all that's laid
5 out here, but some background is necessary.

6 CHAIR JONES: Any other comments?

7 LT COL GREEN: This is Lieutenant
8 Colonel Green. Obviously, the issue in terms
9 of social change is one that was discussed
10 during your last deliberation session, so
11 that's what we've added and incorporated in
12 that section.

13 CHAIR JONES: Right.

14 LT COL GREEN: If we're going to
15 call it an intro section that talks about
16 commanders more generally, what commanders
17 are, I mean, we might be able to incorporate
18 some details from this section into that
19 without necessarily going into the depth of an
20 historical analysis.

21 The one thing I would say is
22 there's current debate related to the

1 legislation on this that is focused on the
2 service connection test and some of that. So
3 I think that's why we focused that portion
4 within the brief based on arguments that have
5 been heard, again, as Professor Hillman points
6 out, was heard by the RSP and not necessarily
7 by the Subcommittee.

8 CHAIR JONES: All right. Well,
9 why don't we -- I think it needs to be
10 shorter. Can you be more specific about what
11 the debate is on the statute?

12 COL HAM: Ma'am, this is Colonel
13 Ham. There's a new justification for the
14 statute that goes as follows: that commanders
15 lost the ability to -- lost jurisdiction over
16 these cases for 20 years and everything was
17 okay. And so there's a little bit of the
18 discussion of the Solorio/Relford which shows
19 that, even during the 20 years of the service
20 connection test, all sexual assaults against
21 military members by military members were
22 certainly service connected and the commander

1 indeed did have a jurisdiction over them.

2 MEMBER ALTENBERG: I think the
3 whole business of service connection is going
4 to be confusing to a lot of people, and we
5 ought to make sure that everybody on the
6 Committee understands it. It's become a
7 problem in the last few weeks because the
8 Senator and people that work for her have made
9 the comment publically that between 1969 and
10 1987 convening authorities did not have this
11 authority over service felony crimes and they
12 were able to maintain a well-disciplined army.

13 Number one, it's not a true
14 statement. It's extremely inaccurate. The
15 O'Callahan decision restricted military
16 convening authorities and military commanders
17 who exercised convening authority to service-
18 connected crimes, but they were still the
19 convening authorities and they still sent rape
20 and ag assault and robbery and murder cases to
21 trial after their lawyer made the
22 recommendation. So it was still convening

1 authority commanders making all those same
2 decisions. They weren't able to make as quite
3 as many as they could after 1987 because the
4 Solorio decision by the Supreme Court said
5 your system is sophisticated and adequate and
6 you can try all crimes wherever they occur,
7 whether they're downtown or on a ship or on
8 the base.

9 So the only difference had to do
10 with the extent of the jurisdiction. The
11 convening authority rule itself did not change
12 at all.

13 Now, she went on to say, you know,
14 they did a fine job, and then I saw something
15 from some other sector where they quoted the
16 Center for Military History saying that the
17 Army in the '70s was at its low point in terms
18 of discipline and morale. And that just kind
19 of reinforces the fact.

20 Unfortunately, I'll just say it
21 since it's the elephant in the room, that the
22 Senator is ill-advised by people who know not

1 enough about military justice or military
2 history to be taking the stance that they're
3 taking. It's just unfortunate for her, I
4 think, that she made that public comment.
5 That's my perspective on it.

6 CHAIR JONES: Okay. Anybody else?
7 I think that we should shorten this. That was
8 General Altenberg, for the court reporter. I
9 think that we should certainly shorten the
10 historical overview, and I think that there is
11 a way to say that the convening authority, you
12 know, has been the system throughout, in
13 response to your comments, General Altenberg.
14 And why don't we take a crack at playing
15 around with this a little bit?

16 I do want to go back, though, to
17 the paragraph on page six about us just
18 talking about the role of the commanders in
19 meeting the goals of discipline and fairness.
20 Are there any other -- and discussing Don't
21 Ask, Don't Tell, et cetera. Are there any
22 other comments about that?

1 MEMBER HILLMAN: Judge Jones, this
2 is Beth Hillman. Actually, just a comment on
3 the service connection piece. You all are
4 referencing changes and comments that have
5 been made by legislative staff that I actually
6 haven't even heard and haven't been before us,
7 that aren't in the materials that we have. So
8 I just -- it's fine if we want to consider the
9 service connection issues, and, for us, we
10 have to, given our, as Colonel Turner pointed
11 out, our mandate is to assess the current
12 legislation.

13 But I'm not -- putting it in this,
14 we just haven't really heard from anybody on
15 that issue, except really in passing. So I
16 would caution us not to step out on that. In
17 a way, I understand General Altenberg's wishes
18 to correct Senator Gillibrand. I don't think
19 we're ready to correct that impression without
20 getting some information on it, so I'm
21 hesitant to do that.

22 CHAIR JONES: Yes. And I guess

1 what I was thinking was that if we simply
2 accurately described the convening authority
3 and the fact that it continued throughout the
4 period and just explained that the
5 jurisdiction was narrowed during that one
6 period because of the service connection
7 issue, we wouldn't necessarily even refer to
8 Senator Gillibrand -- we couldn't because I
9 haven't seen those comments either.

10 MEMBER ALTENBERG: I agree with
11 that. I have no desire to mention the Senator
12 in our report.

13 MEMBER HILLMAN: This is Beth
14 Hillman again. I'm sorry. But then we're
15 shaping our report in response to -- I mean,
16 if there's something on the -- I guess that we
17 need to put that then in the -- if we're
18 responding to something that's not in the
19 record that we've looked at, I think we should
20 add it to the record and then sort of discuss
21 it and consider it and then put that in. But
22 if there's some bare bones way that you'd like

1 to just state out the sort of -- the convening
2 authority's existence through a period of
3 time, I can't see any reason not to do that.
4 But it is going to distract from the sort of
5 coherence and the focus of this.

6 CHAIR JONES: Well, I think -- go
7 ahead.

8 MEMBER CORN: Yeah, this is
9 Professor Corn. My problem with the section
10 is, and I think it's reflected in the
11 comments, is it's not linked or nested within
12 the broader -- the way it's characterized,
13 it's not linked or nested within the broader
14 kind of end state of this initial report,
15 which is leading to findings, and eventually
16 recommendations, but certainly, in this draft,
17 leading to findings.

18 I don't totally agree with
19 Professor Hillman that there's been -- that
20 this has not been addressed at all. I think
21 implicit, implicit in proposals to divest the
22 convening authority, the commander of

1 convening authority, is an underlying, maybe
2 sometimes more overt than others, suggestion
3 that there are certain crimes that really
4 don't implicate the command function. And
5 that, I think, was at the core of the service
6 connection, or a part of the service
7 connection rationale.

8 So, in that regard, what General
9 Altenberg expressed resonates with me to an
10 extent, not because it's a critique of what a
11 legislative staffer said, because it's a
12 response to the suggestion that if you have a
13 felony it has nothing to do with the
14 commander's function, so why is he involved in
15 the decision to take it to trial?

16 So I think if it could be re-
17 characterized in a way that links it back to
18 the ultimate issue, it has merit in the text
19 of your report. If it's general background,
20 then I absolutely agree with Professor Hillman
21 that it's really beyond the scope, not so much
22 because we didn't hear it, because I just

1 think, as you say, Judge Jones, it tends to
2 distract from the momentum of the report.

3 CHAIR JONES: Why don't we do
4 this? I think, since the staff, I assume, can
5 send everyone a link to the remarks that were
6 made and the arguments that are currently
7 being made about this to each of us, we can
8 look at it and then we can decide, that will
9 help us to decide how to handle it.

10 I am very much in favor, though,
11 of either absorbing portions of this section
12 elsewhere, certainly cutting it down, and I
13 think we could probably make a pretty quick
14 decision if we had the comments that we might
15 want to clear up the record on, if you will,
16 the public record, if we had them. So unless
17 someone has another idea, I think we ought to
18 get them and they could be on the record, and
19 then we can decide how to handle them in this
20 report.

21 MEMBER HOLTZMAN: I just want to
22 go -- this is Liz Holtzman. I just want to go

1 back and echo Colonel Turner's point, although
2 she didn't make it necessarily about this. We
3 are still talking about a number of people who
4 are not really familiar with how the criminal
5 military justice system works. So I don't
6 object to having something that deals with
7 this.

8 Now, I agree with you that it
9 interrupts the flow. And I can't say that
10 I've read the section -- I skipped over it,
11 frankly -- and that I've read everything in
12 the report carefully, but so stick it in the
13 back in an appendix and cut it down if you
14 want. But I would just be concerned about
15 assuming that everybody is going to understand
16 what we're talking about, because they aren't.
17 And so maybe something that just helps them
18 get an understanding of it would be important.

19 So that's just my view about it.
20 I agree with Beth Hillman. We shouldn't be
21 taking anything on without having our facts.
22 She's absolutely right about that.

1 CHAIR JONES: All right. Let us
2 take another shot at this. I think an
3 appendix may be a good way to handle this. It
4 would be good to have the back-up there, I
5 agree with you. And we can also discuss it.

6 MEMBER HOLTZMAN: Yes. This is
7 Liz Holtzman. May I make one other point
8 before you go way past me? I'm on page five,
9 and I noticed the word "revolutionary" in the
10 first sentence, and that seemed to me a little
11 exaggerated.

12 (Simultaneous speaking.)

13 LT COL GREEN: This is Lieutenant
14 Colonel Green. We have a recommendation to
15 change that to systemic, rather than
16 revolutionary.

17 MEMBER HOLTZMAN: Or fundamental,
18 whatever, you know. Just a different word.

19 CHAIR JONES: That sounds like an
20 easy one. Okay. Are we comfortable, whether
21 it's in an appendix or somewhere in the
22 report, with the paragraph, which is the first

1 full paragraph on page six, that relates to
2 Don't Ask, Don't Tell and other areas where
3 the commanders have had success, successful
4 outcomes in changing culture?

5 Is there anyone uncomfortable with
6 it? Let me just ask you that. We had some
7 discussion about this the last time, and I
8 confess I have not gone back and re-read it
9 again in detail. But I just want to make sure
10 there aren't any other comments about this.

11 MEMBER HOLTZMAN: Well, this is
12 Liz Holtzman. I do have a factual comment.
13 I don't think we have full inclusion of women
14 in the military yet, so I can't agree with
15 this statement.

16 CHAIR JONES: Okay.

17 MEMBER HOLTZMAN: So, you know, I
18 don't know if we have to modify it, but I
19 don't agree with that.

20 MEMBER CORN: This is Professor
21 Corn. Again, I think it's a finding, and it's
22 a finding -- you don't have to make a finding

1 that commanders have achieved perfect success
2 in every cultural change. The ultimate
3 finding is at the end of the paragraph, which
4 is that commanders are the decisive element in
5 implementing cultural change, not JAG
6 officers. And that is linked to the issue.
7 Whether or not they fully accomplished it,
8 personally I don't think that we could say, we
9 could reach a conclusion, nor have we heard
10 evidence whether or not the lingering effects
11 of Don't Ask, Don't Tell have been totally
12 eradicated from the Armed Forces. But what we
13 do know is that the effort to do so is going
14 to make the commander the focal point.

15 MEMBER ALTENBERG: You could say
16 the same thing about racial integration, also.
17 It's no nirvana. It's just the commander's
18 role is important. Some would argue that we
19 haven't done that as well as we need to, so on
20 this we both agree with Congresswoman
21 Holtzman. But then we've got to watch what
22 we're saying. That's all.

1 CHAIR JONES: All right. I do
2 think we have to watch what we're saying in
3 this particular paragraph. We'll all have our
4 draft, and when the next one comes out I think
5 we have to -- we may have to narrow it a
6 little bit. I'm not sure either how much
7 we've actually heard about this as a
8 Subcommittee, but, you know, I may just be
9 misremembering. Perhaps the staff can find
10 some of that for me. If no one else has a
11 problem, that's fine. It may just be me.

12 MEMBER HILLMAN: Judge Jones, this
13 is Beth Hillman. I'm not responding on all
14 these issues because I'm not -- you're not
15 writing, you know, for me so much. But I do
16 want to say I agree that it's strong there.
17 You could say the same thing somewhat less.
18 It's a little -- it says -- I absolutely agree
19 what Geoff Corn was saying, commanders are at
20 the center of this process. But when you say
21 commanders affected the necessary adjustments,
22 it sounds too much like we are in the nirvana

1 that Liz Holtzman mentioned. And that's just
2 going to trigger a reaction that you don't
3 need with this, so I would tone it down.

4 CHAIR JONES: All right. Well, I
5 mean, I think you've just said better what I'm
6 thinking than I have. So I'm going to try to
7 narrow that, and then we can have -- when the
8 next draft goes out we'll see if it's
9 satisfactory to everybody.

10 Okay. Unless there's anything
11 else on that issue, then I'm going to move to
12 the comment on page six from General
13 Altenberg. And I confess I'm just reading
14 this now. General, do you want to speak to
15 this?

16 MEMBER ALTENBERG: It's just
17 another source, and I'm trying to contact
18 Judge Cox or Professor Saltzburg at GW, who
19 also worked on this, to see if I can find the
20 original document.

21 CHAIR JONES: Okay.

22 MEMBER HILLMAN: General

1 Altenberg, this is Beth Hillman. I mean, I
2 was a co-reporter with Vic Hansen on that. I
3 could send you a copy.

4 MEMBER ALTENBERG: Okay, good. I
5 had talked to somebody earlier today who
6 informed me that you and Vic were together as
7 the workers on that. So, yes, that would be
8 helpful, Beth. Thank you.

9 CHAIR JONES: All right. This is
10 a section that we're going to be doing a lot
11 with. So, General Altenberg, why don't we --
12 you'll have this, and if you have additional
13 comments you'll send them in, okay?

14 MEMBER ALTENBERG: Yes, yes,
15 that's fine. Thank you.

16 CHAIR JONES: Great. I'm moving
17 through the report just to get through the
18 comments that did get in here and get to the
19 staff in time. And the next -- I'm not
20 assuming there are no comments on the pages in
21 between, but the next ones, at least as far as
22 I can tell, are on page 15 under findings and

1 recommendations.

2 MEMBER HOLTZMAN: Oh, can I make a
3 comment on page nine?

4 CHAIR JONES: Sure.

5 MEMBER HOLTZMAN: I mean, I'm not
6 sure that we have said, and I think it
7 definitely should be clear, that the options
8 for reporting are widely posted and widely --
9 I mean, these aren't secret orders or secret
10 methodologies. These are widely known and
11 widely publicized and widely, I believe,
12 understood. That's at least how --

13 CHAIR JONES: Yes. When I read
14 this section, too, I wondered if, I thought we
15 heard testimony, too, that everyone who comes
16 in as a recruit and maybe many times
17 thereafter, as far as the training as to how
18 you report. I could be wrong about that, but
19 that was my recollection. But in any event,
20 I do think we need to make that point. I
21 agree. Any other comments?

22 MEMBER HOLTZMAN: This is Liz

1 Holtzman again. On page nine, it's also, I
2 want to be made clear, too, that the
3 commander, I don't know whether it belongs on
4 this page or where it belongs, but the
5 commander cannot interfere with the reporting
6 or with the investigation of the case under
7 the system as it presently exists; is that
8 correct?

9 MEMBER ALTENBERG: That is
10 correct, and it's something that, something
11 that changed just, I think, four to five years
12 ago, and so it is important that that be
13 there.

14 One of the problems, I think, with
15 this issue, and Beth and I have talked about
16 this I think, is that some of the people
17 criticizing the system most are dealing with
18 ten-year-old information. They're dealing
19 with old cases, and some people aren't
20 accounting for some of the changes that have
21 been made. I'm not saying that there's been
22 enough change, but a lot of the criticisms are

1 dated because there have been responses by the
2 DoD and the military departments to this
3 problem, this really serious problem. And our
4 report should account for as it is now.

5 CHAIR JONES: Right. And I think
6 that -- I'm sorry.

7 MEMBER HOLTZMAN: Well, I think
8 these two points go to -- this is Liz Holtzman
9 again. I think these two points go to a lot
10 of misapprehension that somehow this process
11 is manipulatable and that people don't know
12 what their options are. I think those things
13 really need to be clear that that's not the
14 case.

15 MEMBER CORN: This is Professor
16 Corn. I think the inclusion of the
17 prohibition of a junior commander or any
18 commander attempting to stifle or a report or
19 interfere with a report is very important.
20 And I think we should, I know that we heard
21 from some commanders who asked them directly,
22 if they learned that a subordinate commander

1 did that, what would the response be, and a
2 couple of, as I recall, they said they would
3 relieve that officer from command. So it's
4 evolving into an interference that would be
5 perceived as a significant dereliction of duty
6 and breach of command responsibility that
7 could justify disciplinary action in and of
8 itself. We heard that, and I think we should
9 emphasize that.

10 CHAIR JONES: Yes. We've heard it
11 at Fort Hood. But in addition, there is a
12 provision in the NDAA 14, also, which probably
13 only codifies what policy already previously
14 existed. Our commanders must report within 24
15 hours, and, as I said, I think that merely
16 codified what was said before. And we should
17 reference, we should reference the practice,
18 the policy, the directive, and also the NDAA
19 14 on that because it definitely a commander
20 not being able to sweep anything under the rug
21 and, if they fail to report and it's found
22 out, they're subject to discipline.

1 So I think we should add both the
2 posting of the ways to report, any training
3 that's been done, as well as the commander
4 interference subjects we've been talking
5 about. Any other suggestions before we go to
6 page 15?

7 MEMBER TURNER: Ma'am, Colonel
8 Turner here. The issue we're talking about
9 right now, accountability, is something I
10 brought up later in the draft and that we
11 really don't talk about commander
12 accountability or at least only briefly.
13 Going back here, as we've been talking, I've
14 been pulling out the 13 and the 14 NDAAs to go
15 back in terms of RSP charter. And part of
16 that is to talk about accountability and
17 responsibilities of members of the armed
18 forces with regard to sexual assault
19 prevention and response. And so, at some
20 point, I'd recommend we add a more robust
21 discussion about accountability to include the
22 pieces that we just mentioned.

1 CHAIR JONES: You know, how does
2 the Subcommittee feel? Have we heard
3 everything we need to hear on accountability?
4 I think we had not focused on that for this
5 report. Maybe we have.

6 MEMBER HOLTZMAN: This is Liz
7 Holtzman. I don't know if we've heard
8 everything on accountability. Do we have
9 instances in which commanders have been
10 punished or removed for improper interference
11 or misuse of their authority with respect to
12 the handling of the prosecution of these
13 cases? Have we heard anything about that?

14 CHAIR JONES: My recollection is
15 what we've heard about are command climate
16 surveys, the fact that they're going to the
17 next level of commander, the fact that there's
18 more or at least in the future there may be in
19 some services specific questions about sexual
20 assault. But I'm not, I don't know, the staff
21 can help me here: did we ever receive some of
22 these climate surveys? I think they were

1 going to send them to us. I think we
2 requested it. But I think that's what we know
3 at this point, that there is an effort --

4 COL HAM: You have the actual --
5 the DEOMI people, the Defense Equal
6 Opportunity Management Institute people came
7 and spoke at a Subcommittee meeting, and you
8 have the actual surveys, the command climate
9 surveys, a couple of iterations of them that
10 show how over the last couple of years they've
11 changed some of the questions on sexual
12 assault and exactly what those questions are.
13 And you've also heard I think that same day on
14 the required commenting on support for sexual
15 assault prevention or response in annual
16 evaluations and the like, and there's some in
17 the NDAA about that, as well, I believe now.

18 MEMBER TURNER: Colonel Turner
19 here. I think also the RSP heard from Vic
20 Hansen, Professor Hansen about accountability.
21 And Colonel Ham mentioned the sit reps piece.
22 And so also part of the Lackland materials

1 that we provided talk about commander
2 accountability, and it's just we did not
3 develop it as much as perhaps we could, if
4 that would be helpful to the full panel. But
5 to say a commander has to do certain things
6 but without addressing the ways that he can be
7 held accountable or should be held
8 accountable, I wonder if we're only addressing
9 half the issue.

10 CHAIR JONES: I don't disagree.
11 And throughout our hearings, Panel and
12 Subcommittee, accountability has been on our
13 mind and we've been asking questions about it.
14 We could certainly try to add that to this
15 report. I mean, I think the proposition is
16 pretty straightforward. They should be
17 accountable, and there have to be ways that we
18 can be sure that they'll be held accountable
19 and we can have a description of what's been
20 done so far and include citations in the NDAA
21 14. We just don't have that section in here,
22 and I don't -- go ahead, Colonel.

1 COL HAM: Yes, ma'am, this is
2 Colonel Ham. On behalf of the staff, I guess
3 we envision that as a more comprehensive thing
4 for the final report. And we can put --

5 CHAIR JONES: Well, Colonel Ham, I
6 had not thought that we were going to be
7 putting it in this report either, which is
8 why, you know, I probably want to take another
9 look back at what we've already heard and
10 seen.

11 MEMBER TURNER: Colonel Turner
12 here, ma'am. If it's final report, that's
13 fine. This Subcommittee is supposed to help
14 the RSP writ large, so if it's not the right
15 place here that's perfectly fine with me.

16 MEMBER HOLTZMAN: My view -- this
17 is Liz Holtzman -- is that I think that needs
18 to be in any kind of report that we prepare
19 about commander accountability. I think
20 you're right, Colonel Turner. It's only half
21 the story. So we don't have enough info.
22 Maybe we need more.

1 CHAIR JONES: I'm all for having a
2 section on commander accountability, but do
3 you think we need to do it in this report now?

4 MEMBER HOLTZMAN: Well, that's my
5 question. Yes, I don't know.

6 CHAIR JONES: Yes.

7 MEMBER HOLTZMAN: That I don't
8 know.

9 CHAIR JONES: What do other people
10 think?

11 MEMBER ALTENBERG: I think -- this
12 is Altenberg. I think not at this time, but
13 I feel strongly that we should address
14 accountability and I feel strongly that there
15 hasn't been sufficient accountability in the
16 --

17 CHAIR JONES: Well, let me, let me
18 --

19 MEMBER ALTENBERG: -- past. Just
20 in the last, in my opinion, it's only been the
21 last few years that there's been a real focus
22 and attention paid to this issue. And I think

1 there's more and more accountability
2 occurring, but there wasn't what there should
3 have been before and there certainly wasn't a
4 transparency. And while I may be cautiously
5 optimistic that that's going to improve a lot,
6 I think it's something we should definitely
7 address.

8 CHAIR JONES: Unless anyone else
9 has any suggestions, I think mine would be
10 that we ask the staff to just send us the
11 citations to where we can go back to our own
12 materials and to the website and review what
13 we have and suggest that they draft a short
14 section because I don't disagree that it's
15 important. And it can be a section that's
16 not, you know, that can be based on what we
17 know now and leave it a little bit open in
18 terms of a much larger or lengthier section in
19 the final report. Why don't we take a shot at
20 that?

21 MEMBER HOLTZMAN: Barbara, on
22 another subject -- this is Liz Holtzman again.

1 On page 11 -- you wanted us to get page 15.
2 I'm sorry.

3 CHAIR JONES: That's quite all
4 right.

5 MEMBER HOLTZMAN: But I just
6 thought that in the last paragraph about
7 convening authorities and staff judge
8 advocates that we put in this point, which I
9 think is true, but I could be corrected, which
10 is we don't know of any case in which the
11 staff judge advocate suggested prosecution
12 which a convening authority rejected. We know
13 vice versa. We know that there are cases
14 where the convening authority has gone
15 forward, but I don't think we've had any other
16 cases where the staff judge advocate said this
17 does not warrant, you know, this should be
18 prosecuted, in other words. This should be
19 prosecuted, this case of sexual assault or
20 violence or whatever word you want to use, and
21 --

22 CHAIR JONES: I think you're

1 right. There is something about that on the
2 record. I remember it myself, but we have to
3 go back and find it if it's there. I'm trying
4 to -- I don't remember, as I sit here, what
5 testimony that came in through. But we can
6 find that, and I think, if we do find it, we
7 should cite it. I agree.

8 MEMBER CORN: This is Professor
9 Corn. Just one comment on that. If we do
10 cite that, I think it has to be very precise.
11 What I have in mind is I suspect that there is
12 going to be, we'll be able to cite evidence
13 that no officer who acted as a general court-
14 martial convening authority or a staff judge
15 advocate to a GCMCA was able to identify one
16 incident where the GCMCA overrode a referral
17 recommendation from the staff judge advocate.

18 Speaking of convening authorities
19 generally I think runs the risk -- we just
20 don't, I don't think we have or could even
21 begin to have enough information to be able to
22 make that comment with regard to special or

1 summary court convening authorities who may
2 have received a recommendation in the
3 transmittal packet, let a case go to trial,
4 and said to their servicing JAG, you know, I
5 don't agree, I'm going to recommend don't go
6 to trial, and then it goes above their head
7 and when it gets to the GCMCA it gets sent to
8 trial.

9 So it's a little, I just think
10 that we should be very, very precise about how
11 we characterize that. I think it's a really
12 critically important point that dispels some
13 of the misconceptions about the JAG-GCMCA
14 relationship, but I don't think it should be
15 phrased in a way that's so over-broad that it
16 encompasses all convening authorities.

17 MEMBER HOLTZMAN: I think you're
18 right. That's Liz Holtzman.

19 CHAIR JONES: Agreed, agreed.
20 Anything else as we go along after page 11
21 now? All right. Then we're at page 15. Let
22 me give everybody a minute. Okay. Page 15.

1 It's findings and recommendations of the
2 Subcommittee, section seven in the current
3 draft. I think we've already agreed that we
4 will have findings, not recommendations. And
5 so why don't we begin with the first one? And
6 I see that there's a comment from Colonel
7 Turner. Would you mind speaking to that,
8 Colonel?

9 MEMBER TURNER: Yes, ma'am. I
10 just wondered if perhaps to say the evidence
11 does not support a conclusion that removing
12 senior commanders as convening authority will
13 affect victim confidence in the military
14 justice system might be a little too
15 conclusive. There are some victims, but none
16 of them testified to us that they personally
17 didn't report because of their convening
18 authority. Some of them did testify that that
19 could affect confidence in the system.
20 Although, on the other hand, if they don't get
21 the changes to the entire system, when a
22 commander is removed, you know, that will

1 reduce their confidence in the overall system.
2 So I thought perhaps this might be a little
3 bit strongly worded for victims.

4 MEMBER HOLTZMAN: I agree with
5 that. This is Liz Holtzman.

6 CHAIR JONES: Yes, Liz. This is
7 Barbara Jones. I agree, too. And I think we
8 do have to be careful and be narrow in these
9 findings. Starting to talk about victim
10 confidence, you know, there is some evidence.
11 We've heard it from the victims that it might
12 affect their confidence. So I just, I don't
13 want to overstate anything. I think our
14 credibility will be much higher if we keep it
15 narrow.

16 MEMBER HOLTZMAN: This is Liz
17 Holtzman. Could I make a recommendation that
18 we split the two points about affecting the
19 incidence of sexual assault or reporting and
20 put the victim confidence in a separate point.
21 Then we can keep it --

22 CHAIR JONES: And we can pick it

1 up later, yes.

2 MEMBER HOLTZMAN: Well, I just put
3 it -- no, just put in point number two,
4 whatever you want to say about it. But it
5 maybe just doesn't belong with point number
6 one. And I would also suggest that we add
7 something to the effect, on the prosecution
8 side, that the removal of the commander will
9 not affect, there's no evidence that the
10 removal of the commander will affect the
11 prosecution of sexual assaults, the conviction
12 rate, or the conviction rate in sexual assault
13 cases.

14 CHAIR JONES: I agree with you.

15 MEMBER HOLTZMAN: Whatever it is,
16 the investigation --

17 CHAIR JONES: Right.

18 MEMBER HOLTZMAN: -- things should
19 be there.

20 CHAIR JONES: Right, I agree. Any
21 disagreement about that? Okay. Can we move
22 to page 16? All right. Four says removing

1 convening authority from senior commanders is
2 unlikely to have an effect on reprisal
3 concerns of sexual assault victims. Any
4 comments on -- Professor Corn wants to add "as
5 there is no evidentiary basis to support a
6 causal link between these concerns and
7 existing convening authority."

8 Well, I think we did hear victim
9 testimony that they were concerned about
10 reprisal. Maybe I'm missing your point.

11 MEMBER CORN: Yes, Judge Jones.
12 The point is that I believe it is a legitimate
13 concern, but what I don't believe we've seen
14 is an evidentiary basis to link the concern to
15 the role of the GCMCA. That's my point. I
16 don't want to diminish the concern. I want to
17 emphasize that, while we acknowledge it's a
18 concern, we're not persuaded that it's a
19 concern derived from the existing function of
20 the convening authority.

21 CHAIR JONES: Okay. Your
22 phrasing, I understand, is narrower. Why

1 don't we consider what to do with that? I
2 like the idea that there's no evidentiary
3 basis to support a causal link. Any other
4 comments on that one? I would like to play
5 with that one a little bit. Is there anyone
6 who disagrees with the finding?

7 MEMBER HOLTZMAN: I agree with the
8 suggestion it should be revised. This is Liz
9 Holtzman.

10 CHAIR JONES: Okay.

11 MEMBER HOLTZMAN: I think that --

12 CHAIR JONES: All right. We can
13 look at it again.

14 MEMBER HOLTZMAN: Yes. First of
15 all, I agree that there have been concerns.
16 And the issue is that, the way that I would --
17 I mean, there are two issues, actually
18 embedded in point four. One is the issue that
19 the removing the convening authority will not
20 have, there's no evidence -- the way I would
21 phrase it, instead of unlikely, because I
22 don't think we should be speculating. I think

1 we have, we can say what the evidence is, that
2 we have no evidence that removing the
3 convening authority from senior commanders
4 will have an effect on the reprisals against
5 sexual assault victims. That's one point
6 that's embedded in here.

7 And the second point is that, you
8 know, there may be concerns and maybe you want
9 to phrase what the removal of the commander
10 will do with respect to the concern and pick
11 up Professor Corn's point, but there are
12 really two separate points embedded here, I
13 think. And I also don't, as I said, I don't
14 like the wording that it's unlikely. I would
15 rather phrase the findings in terms of what we
16 have evidence about and what we don't have
17 evidence about.

18 CHAIR JONES: And I think they
19 should all conform to that way of being
20 stated, evidence or no evidence. Any other
21 comments on four?

22 MEMBER CORN: This is Professor

1 Corn. I think that the key is I don't want to
2 diminish the significance of anybody who
3 believes that this change would have symbolic
4 value, but our judgment is the symbolic value
5 is not empirically justified. That's the
6 point I'm trying to emphasize.

7 CHAIR JONES: All right. Let me
8 take a hand at revising this and see if I can
9 come up with something that works for
10 everybody.

11 MEMBER CORN: And this is
12 Professor Corn again, Judge. Since the next
13 one is my comment, as well, it's a similar
14 concern. The way it's phrased now, there is
15 no inherent conflict of interest. I think the
16 real point is whatever potential conflict of
17 interest may exist as a result of this,
18 there's insufficient evidence to support the
19 conclusion that it's having a negative or
20 improper impact. As strong a proponent I am
21 for the system, I can appreciate why some
22 people would say I think there is some

1 conflict of interest. I just believe that
2 whatever risk there is is adequately mitigated
3 by the totality of the process. And that's
4 why I suggested -- what was it? The influence
5 of any perceived conflict of interest on the
6 exercise of convening authority by senior-
7 level commanders is speculative, at best, and
8 does not undermine the integrity of the
9 prosecutorial decision-making process. I
10 think we've heard evidence to support that.
11 I don't think we've heard evidence that can
12 support the conclusion that there is
13 absolutely no risk or inherent or perception
14 of conflict of interest.

15 CHAIR JONES: I think, with
16 respect to conflict of interest, I want to
17 give it some more thought. I don't view -- I
18 know I remember, Admiral Houck, you talking
19 about a potential conflict of interest. In a
20 general way, I don't see conflict of interest
21 in the structure of the military justice
22 system any more than in other systems.

1 Conflict of interest, to me, means you know
2 somebody, you have a relationship with them,
3 and, therefore, you should recuse yourself.
4 But I don't know whether -- does anyone else
5 want to chime in on this? I'm happy to work
6 on this finding as well, to see what we can
7 come up with. There's a difference between
8 saying no conflict of interest, which I might
9 be leaning to, and what we have now, I guess.

10 MEMBER HOUCK: This is Jim Houck.
11 I think the point I was making during the last
12 call was only that, and I don't agree with the
13 point, but the point was made by one of our
14 panelists, and I can't remember exactly who,
15 who suggested that the mere fact that,
16 identified the conflict of interest as
17 follows: that a commander who is charged with
18 creating an environment in which sexual
19 harassment and sexual assault does not exist
20 is then conflicted when the commander has to
21 prosecute or refer a case which suggests that
22 such activity does exist.

1 Again, I don't agree with it. But
2 I was just, in our last call, just trying to
3 parse that there are two different types of
4 potential conflicts of interest that critics
5 have raised, and I was just trying to parse it
6 and identify one of them.

7 CHAIR JONES: All right. I
8 remember that now. Any other comments on
9 this?

10 MEMBER ALTENBERG: This is
11 Altenberg. I hesitate to say this, so please
12 keep that in mind as I --

13 CHAIR JONES: All right, General.
14 Go ahead.

15 MEMBER ALTENBERG: You know, the
16 people, and I know the one fellow that
17 mentioned this has some military background,
18 but the people that talk about this don't seem
19 to have in mind anyway the unique nature of
20 the military's mission and the fact that
21 leaders, commanders, especially at senior
22 levels, are called upon on a daily basis to

1 make decisions that put people's life at risk,
2 you know, and to choose who's going to go
3 forward and to choose who's going to get on
4 the helicopter that's going to go on the
5 assault or to choose who's going to drive the
6 truck, you know, for supply through a
7 dangerous area. There's an inherent risk in
8 all of that, and I think that the conflict
9 that they identify for a convening authority
10 to make these types of decisions pale in
11 comparison to the other decisions that they
12 make on a routine daily basis. You know, the
13 disciplinary decisions don't come up that
14 frequently, but the other operational
15 decisions come up hourly, if not something
16 even more intense.

17 And so I think there's a failure
18 on some people's part to understand that's the
19 context. That's why there is a different
20 system.

21 So, again, I don't want to belabor
22 too much the defense of the military culture

1 and all the rest of it because lots of aspects
2 of military culture are pretty negative and
3 pretty foul. But that's where I am on the
4 conflict of interest issue.

5 CHAIR JONES: Anybody else?

6 MEMBER HOUCK: Jim Houck. Not on
7 that particular issue, per se, but I have a
8 meeting at 4:00 that I cannot miss and I'm
9 signing off. I have concerns about some of
10 the recommendations in comment 21 I just want
11 to flag right now, but I must sign off now.
12 Thank you.

13 CHAIR JONES: All right. Thanks,
14 Jim. And I guess, if Jim signed off, we won't
15 be discussing recommendations today. I see,
16 Colonel Turner, you also have a suggestion
17 about conflict of interest that -- hello? Is
18 everybody there?

19 MEMBER TURNER: Yes, Colonel
20 Turner here. Ma'am, as I look at this, I
21 think that the findings should be succinct and
22 to the point, where my comment is probably

1 better put in introductory remarks that talk
2 about the commander and chain of command, who
3 they are, what they do.

4 CHAIR JONES: That may make it all
5 a lot easier if we figure out what we actually
6 want to say about this, and then our finding
7 can reflect it. All right.

8 MEMBER HOLTZMAN: This is Liz
9 Holtzman. Maybe there's another way to
10 address this point instead of in a finding.
11 Maybe there's a way of discussing the
12 arguments against, the arguments for removing
13 the authority in a way that could address
14 these points about -- because there are two
15 main arguments that they make, that this sends
16 a signal to victims that the military cares
17 about them and the second one is that there's
18 an inherent conflict of interest in the
19 commander. And they never really spell that
20 out, but maybe it's what Jim said or maybe
21 it's something else. So maybe instead of a
22 finding, maybe it could be in a finding, but

1 maybe one needs to parse out and respond, you
2 know, a little bit more at length to the
3 concerns and just say we've found no evidence
4 to support these concerns. I don't know.
5 Maybe there's a better way to deal with it
6 than just coming out -- I don't know. I'm
7 just thinking out loud. I apologize.

8 MEMBER HILLMAN: This is Beth
9 Hillman. I'll just, I have to go, too. I
10 have a 1:00, actually, and I'm sorry to leave.
11 But I'll just say, although this is against my
12 interest here, I do mention in the separate
13 statement that I wrote two specific conflicts.
14 So you could take those off. I mean, that's
15 one reason I wanted to distribute this now so
16 --

17 CHAIR JONES: Thank you, Beth.

18 MEMBER HILLMAN: You bet. One is
19 about what Jim said, which is that a commander
20 who is trying to make change in culture who's
21 very forceful on the issue of sexual assault
22 and then later orders a court-martial to go

1 forward. That seemed, to me, a potential
2 conflict. You don't have to respond on that
3 now, but that's one. The other one is a
4 defense counsel being concerned. In other
5 words, that first one, the problem seems that
6 it creates problems with a successful
7 prosecution because it could be unlawful
8 command influence that would undermine a
9 successful prosecution. Second is that same
10 thing creates defense counsel concerns that
11 legitimate cases, cases that are not
12 legitimate would go forward.

13 That's all I'll say there. I
14 appreciate the chance to weigh in, and good
15 luck with the rest of your call. Thanks,
16 Judge Jones and everybody.

17 CHAIR JONES: Thanks, Beth. All
18 right. Well, I agree that we need to talk
19 about this, the conflicts of interest in the
20 section about arguments for removing the
21 commander, and then when we redistribute it
22 we'll take a look and see and also make a

1 suggested finding at that point but only at
2 that point, after we've had a discussion.

3 MEMBER TURNER: Judge Jones,
4 Colonel Turner here.

5 CHAIR JONES: Yes, sure. Go
6 ahead, Colonel.

7 MEMBER TURNER: Professor Hillman
8 was very, very generous letting us see her
9 draft report early, and she just mentioned
10 UCI, as well. And so maybe as we expand that
11 section, we address the UCI issue there, as
12 well.

13 CHAIR JONES: Right.

14 MEMBER HOLTZMAN: You see, also,
15 it may be -- this is Liz Holtzman. I'm just
16 thinking about the undue command influence, I
17 mean the conflict of interest in terms of
18 commander doesn't want to prosecute a case
19 because that will show that there's a problem
20 in his unit or her unit. But there's no way
21 of squelching the incident. I mean, that
22 number is going to be there. That will have

1 been reported, okay? I mean, it will have
2 been investigated, so how do you, how do you
3 eliminate that? It seems to me, maybe I'm
4 wrong, but I'd like to think about that a
5 little bit more. I mean, if the commander
6 can't change the numbers, how many rapes took
7 place in your command, then what is the
8 conflict? Actually, there may be more of an
9 incentive to prosecute them than to do nothing
10 about that. But if you can't change the
11 numbers, I don't know what the conflict about
12 that is, but maybe I'm missing something.

13 CHAIR JONES: Let us try to write
14 another, add a section on this, on conflict of
15 interest and get it back to everybody. All
16 right. Six is the Department of Defense has
17 established sufficient channels outside the
18 chain of command for victims to report
19 incidents of sexual assault. I guess,
20 Professor Corn, you had a recommendation here.
21 We're on page 16.

22 MEMBER CORN: Yes. Judge, I mean,

1 I think my guess is not everybody has had a
2 chance to read and respond to these. Again,
3 my point in these comments is I think we have
4 to emphasize the connection to where we're
5 going. The point is that the efforts of DoD
6 to establish multiple reporting channels and
7 to impose measures to mitigate the risk of
8 improper influence, in our view, have created
9 an effective reporting mechanism to mitigate
10 the risk that victims will be deterred by a
11 fear of arbitrary interference. And,
12 candidly, I'm not sure how much evidence we
13 heard of this. I think this is a hugely
14 significant evolution in the process because
15 I don't think it was always that way. I think
16 this is a relatively recent development. But,
17 ultimately, what the issue is is are we
18 confident that what's occurred to date has
19 mitigated effectively the risk of hesitancy to
20 report because of a fear of arbitrary
21 interference?

22 CHAIR JONES: Yes. I think the

1 way you're phrasing it is a more appropriate
2 type of finding. And in reading all of six,
3 and I think it needs to be the type of finding
4 you're talking about. And the bullet points
5 are facts that we don't need there and should
6 be, if they're not already, but I think they
7 are, in the body or the text of the report
8 itself.

9 MEMBER HOLTZMAN: Yes, I would
10 also say with regard to point seven -- this is
11 Liz Holtzman. I don't know that I'm prepared
12 to say that there is sufficient laws in place
13 to ensure that everything is going to be
14 independently investigated. Do we feel that
15 confident? I mean, that certainly appears to
16 be the case, but do we have to make that
17 finding?

18 CHAIR JONES: That struck me as a
19 little sweeping, also. And, actually, I
20 confess I haven't read this as closely as I
21 should have, so maybe it's in the report. But
22 I think it is important to make sure, for

1 informational purposes, that people understand
2 that the military criminal investigative
3 organizations do operate independently. And
4 I think we've said it, but I think we haven't
5 emphasized it. If we have, I apologize.

6 MEMBER CORN: This is Professor
7 Corn. I think seven could be easily modified
8 to just a finding that DoD has made
9 substantial progress in mitigating the risk of
10 improper influence on independent
11 investigations, as opposed to the conclusion
12 that it could never happen.

13 CHAIR JONES: That's a good -- I
14 agree. All right. And Ms. Frost is not here,
15 but she joins in saying, "I do not agree with
16 this finding." All right. And, again, I
17 would not have bullet points here, unless
18 someone disagrees.

19 Okay. Page 17. Let me look.
20 Number eight. Well, this goes back to our
21 previous report out on the Allied military
22 justice systems. So, I mean, I haven't

1 actually compared what we say here to what we
2 said before, but let me look at the comments.
3 Well, maybe I better take a closer look at it.
4 Has anyone else, does anyone else have any
5 thoughts? Ms. Frost says, "I possibly do not
6 agree with this finding."

7 MEMBER HOLTZMAN: Number eight?
8 Is that what you're talking about?

9 CHAIR JONES: Yes, on eight.

10 MEMBER TURNER: Colonel Turner
11 here. It might make the most sense to just go
12 back and restate what we previously said.

13 CHAIR JONES: I think that might
14 be the best thing to do. And it may not be so
15 different from this, but I think I would be
16 inclined to stick with what we reported out
17 before. And then we'll see if Ms. Frost has
18 some additional comments once it's been
19 modified. All right. Any other comments on
20 that one?

21 Okay. Number nine. Commanding
22 officers, indeed leaders at every level of the

1 military hierarchy, must play a central role
2 in responding to the challenges posed by
3 military sexual assault. Professor Hillman
4 recommends that we cut that and also that we
5 cut ten, which reads, "Commanders are
6 essential to creating and sustaining a command
7 climate." And her rationale is that it's kind
8 of out of tune with the rest of our findings,
9 and she thinks they're a distraction.

10 Liz, were you agreeing with that
11 or --

12 MEMBER HOLTZMAN: Yes, I was --
13 right. I mean, they seem just to be obvious
14 statements, but maybe they belong somewhere
15 else in the report. But I don't know what the
16 finding -- what does it mean? What are the
17 implications of these findings for the
18 ultimate conclusion here? I don't know.

19 MEMBER CORN: Judge, this is
20 Professor Corn. I think we could get rid of
21 nine; or, actually, I think I flipped them.
22 I put nine -- I flipped them around, so ten

1 became nine. And in the edit I recommended to
2 Kyle, what I had was, "Commanding officers,
3 indeed leaders at every level in the military
4 hierarchy, must play a central role in
5 responding to the challenges posed by military
6 sexual assault at senior command levels. This
7 includes retaining existing convening
8 authority." I mean, I think that's what we're
9 saying, we're just not saying it.

10 MEMBER TURNER: Judge Jones? I'm
11 sorry.

12 CHAIR JONES: Yes, Colonel Turner?

13 MEMBER TURNER: It is Colonel
14 Turner here, ma'am. I'm just going back to
15 NDAA 13, which specifically requires the RSP
16 to give, quote, "an assessment of the roles
17 and effectiveness of commanders at all levels
18 in preventing sexual assaults and responding."
19 So however is the right way to answer that
20 task . . .

21 MEMBER CORN: This is Professor
22 Corn. I think the point of both of these is

1 to support the ultimate conclusion that part
2 of that command function at senior command
3 levels is convening authority. That seemed to
4 be the influence to me.

5 MEMBER HOLTZMAN: I think we need,
6 I think we need more information about this.
7 It goes back to kinds of command climate and
8 the accountability point that was raised
9 earlier. Do we have enough information about
10 command climate, what's happening? I just
11 think these are generalizations that really
12 have no substance. I mean, to me, they just
13 hang out there, and I don't know that they're
14 supported. Of course they need to play a
15 role, but what does that mean? I don't know.
16 To me, I would take them out, but I would, I
17 do think that the issues that they raise need
18 to be addressed in terms of command climate.
19 Do we talk about that any place in this
20 report? Maybe this report isn't the place
21 where we should address that.

22 CHAIR JONES: You know, we have,

1 our work is not over with this particular
2 report out to the Panel. I am not, at this
3 point, certain, and maybe it's just because I
4 haven't reviewed all of the information and
5 evidence we have, but I'm not certain we have
6 everything we need on accountability. I know
7 I haven't focused on it, and I wouldn't be
8 comfortable talking about it right now in this
9 report. It's clearly on the table. We have
10 to talk about that, and we have to talk about
11 and assess how commanders are doing. And we
12 haven't really, I think we've heard a lot
13 about that. But to talk about how they're
14 doing I think requires a more in-depth look at
15 whatever results we have so far. And I know
16 we have some information and testimony with
17 metrics and the results of different programs
18 that may have increased reporting and enhanced
19 victim confidence, but I don't know that we're
20 prepared to go there in this particular
21 report. But by no means are we done, and
22 accountability is one of the main things that

1 we have to move to next and actually assessing
2 how are we doing on command climate. Does
3 that make any sense?

4 MEMBER TURNER: Yes, ma'am.
5 Colonel Turner here.

6 CHAIR JONES: Well, you could say
7 no, too, Colonel, but I'm just worried that
8 it's not going to fit in this report at this
9 time. It's got to be done, and it's got to be
10 in the final report for sure. I think it may
11 be beyond us at the moment, and we may have
12 most, if not all, the information on it right
13 before us, but we haven't focused on it yet.
14 At least I haven't.

15 MEMBER TURNER: Copy that, ma'am.
16 It may be some of the scar tissue I'm wearing
17 from some previous jobs I've done dealing with
18 trying to hold commanders accountable so . .
19 .

20 CHAIR JONES: Fair enough,
21 Colonel. Fair enough. All right. We're on
22 the last page, or, no, we're not. Yes, we

1 have a recommendation from Ms. Frost, and I
2 actually think it's worth our while for each
3 and every one of us to begin to think about
4 recommendations. She's stepped ahead and has
5 outlined one for us. We should certainly
6 consider that. There may be others that we
7 want to come up with, but we're not doing it
8 in this report. And perhaps when we read it
9 out to the full Panel, there will be some
10 discussion at that point by the Panel about
11 potential recommendations. Does that sound
12 right to everybody, or are there other
13 suggestions right now that anyone wants to
14 talk about in terms of a recommendation along
15 the lines of Ms. Frost?

16 MEMBER HOLTZMAN: Did you read
17 what she recommended?

18 CHAIR JONES: Oh, I'm sorry. She
19 recommended a permanent advisory council on
20 sexual assault in the military with direct
21 access to the Secretary of Defense, and it
22 goes on to talk about the council's

1 composition, which would include sexual
2 assault survivors with both positive and
3 negative experiences, former military
4 commanders with differing views on commanders
5 and convening authority, and, most
6 importantly, researchers. And she says, and
7 that's not all-inclusive, but those are the
8 members she highlights. And they would advise
9 the Secretary of Defense, the services, and
10 staff SAPRO on proposed courses of action.
11 And it goes on, but that's the essence of it.

12 MEMBER CORN: I think, to address
13 her recommendation, we need more information
14 on what's available already to the Secretary
15 of Defense.

16 CHAIR JONES: Yes, I agree with
17 that. I mean, and we probably need to hear
18 more about exactly what she's recommending,
19 too. So that's why I think, at this point,
20 it's premature to talk about it, but I think
21 we should all be thinking about
22 recommendations, if we are going to have any,

1 start thinking about them now. What else?

2 The last one -- yes?

3 MEMBER TURNER: Judge Jones,
4 Colonel Turner. In terms of recommendations,
5 we had a number of panelists provide
6 recommendations. I wonder if they've been,
7 you know, co-located or brought together in
8 some location and if that might be helpful to
9 look at.

10 CHAIR JONES: I think it would.
11 Kyle, do you have recommendations, other than
12 Ms. Frost's?

13 LT COL GREEN: No, ma'am. We
14 would have to go back and cull through
15 transcripts, written documents. We have not
16 consolidated any of the recommendations.
17 Obviously, in the course of this report, we
18 consolidated all the arguments for change, but
19 any tangential or included recommendations on
20 that, we have not culled through that.

21 CHAIR JONES: All right. I think
22 I may have some, and these would be from

1 presenters, which are not necessarily Panel
2 members. But I'll send you what I have. And
3 everyone else, if you have any recommendations
4 along these lines or want to help cite to ones
5 that you may have heard during testimony or
6 otherwise, please send them in to Kyle.

7 MEMBER CORN: Yes, ma'am.

8 CHAIR JONES: Yes?

9 MEMBER CORN: I said, yes, ma'am.

10 CHAIR JONES: Oh, okay. I just
11 heard the ma'am. All right. Let's see. Were
12 there comments as to 11? Congress has enacted
13 significant reforms, implemented new changes.
14 Let me see. So what are we saying? There
15 must be sufficient opportunity to assess the
16 results of these changes and, if possible, the
17 relative merit of all the changes and
18 initiatives prior to deciding whether more
19 substantial or drastic changes are necessary.
20 I don't see a comment on that. Are there any
21 that we should take into account right now?
22 Okay.

1 MEMBER CORN: Judge, this is
2 Professor Corn. The only other, the only
3 other finding that I suggested in an email, I
4 think, to Kyle yesterday, maybe I sent it,
5 maybe I didn't, and Beth's original document
6 that she sent around about ten days ago made
7 me think of it, is I wonder if it's fair to
8 say there's a lack of uniformity in the
9 implementation of DoD policy among the
10 services or if that's not relevant.

11 CHAIR JONES: You know, I think
12 that you're right because that's what we've
13 heard. Every one of the services appears to
14 do things, you know, in somewhat different
15 ways as they implement these policies.

16 MEMBER CORN: And I'm agnostic on
17 whether that's a good or bad thing, but it
18 might be an important finding if it leads to
19 a recommendation. In other words, if we feel
20 that there should be greater uniformity or
21 synchronization in implementing these
22 programs, then it would be based on a finding

1 from what we've heard that there is disparity.

2 CHAIR JONES: Yes. You know what?

3 My personal reaction is I don't know enough
4 about whether every service should be exactly
5 the same. It sounds like it would be -- and
6 I don't know what exactly the same means,
7 honestly. It sounds to me that it would be
8 very difficult because of how differently-
9 configured each of the services are and the
10 different kinds of missions they have. So I
11 wouldn't be ready to go there. Anybody else
12 have any comments on that?

13 MEMBER HOLTZMAN: Liz Holtzman. I
14 agree with you, Judge Jones. I also would
15 say, with regard to number 11, maybe we wait
16 to the end to address this issue in the final
17 report because it's not only Congress that has
18 adopted significant reforms, it's also the
19 Defense Department.

20 And so, you know, well, so I
21 think, I mean, it has to be changed, in my
22 view, at least from that point of view. But

1 I don't know that we need to be making a
2 comment about this now because what we're
3 doing is telling Congress don't do anything
4 more. I mean, do we really feel comfortable,
5 do we have enough evidence that we suggest
6 that Congress shouldn't do anything anymore?
7 And, anyway, they're not going to listen to us
8 about that, so I don't know how . . .

9 CHAIR JONES: Well, I think that
10 might be, that might also borderline, not a
11 borderline, it's a recommendation, and I think
12 we may be going too far there, at least in the
13 context of the Subcommittee report-out.

14 All right. We're going to get
15 another draft back to everyone. I realize
16 that time is short. That seems to be the way
17 this is going for us. And I think we need to
18 have, try to get comments back in. I don't
19 know how fast this will come back out.
20 Hopefully, very quickly. And then we can have
21 one, hopefully have another telephone
22 conference.

1 Kyle, what's your projection on
2 all of this? I'm putting you on the spot.

3 LT COL GREEN: We'll start working
4 it right away, ma'am. Our goal is to get
5 something this weekend, so I guess we should
6 probably check availability for either Monday
7 afternoon or, at the latest, Tuesday, just to
8 give you an opportunity to review in time for
9 Thursday.

10 CHAIR JONES: Yes. I think we're
11 better off having the call later, like on
12 Tuesday, where we would actually have a fair
13 amount of time to take a look at the changes.
14 So as far as Tuesday is concerned, I don't
15 know how you want to determine availability.
16 Do you want to send out emails? Do we want to
17 try to do it right now over the phone? It's
18 up to you.

19 LT COL GREEN: Why don't I send
20 out an email to everybody asking about
21 availability for Tuesday afternoon, ma'am, if
22 that works? Or just any time of the day on

1 Tuesday, unless there are times when you all
2 know that are not going to work for Tuesday.

3 CHAIR JONES: Okay. So why don't
4 we, each of us, just agree and we'll send in
5 times we're not available on Tuesday or maybe,
6 better yet, times we are. Whatever. You'll
7 send the email, we'll respond, and that way
8 we'll also get Beth Hillman and Admiral Houck.
9 Okay?

10 LT COL GREEN: Yes, ma'am. Again,
11 what we'll provide, we've got a lot of text
12 changes, as well, as well as the changes
13 discussed today, and any observations that you
14 want to send in advance of that, just like we
15 did here, it helps us maybe to focus and
16 narrow things for you.

17 CHAIR JONES: Yes. Anybody,
18 really, who has some further thoughts or wants
19 to really comment on anything, I think that
20 would be very helpful to send them in to the
21 staff.

22 MEMBER TURNER: Judge Jones,

1 Colonel Turner here. Again, I really
2 appreciate Professor Hillman letting us see
3 her remarks in advance. I understand they're
4 still draft, and she's working to refine
5 those. We already talked about some of the
6 things, like ensuring that the revision
7 addresses conflict of interest a little bit
8 more and unlawful command influence.

9 One thing we didn't talk about
10 that she does raise that I may have missed
11 some of the evidence on is the assertion that
12 there is a norm, quote, "that celebrates only
13 aggressive male sexuality," unquote. So if we
14 get more, if the staff has anything that would
15 support that that maybe I missed, I would love
16 to hear that. Otherwise, we may want to think
17 about do we need to address that or not.

18 CHAIR JONES: I confess I missed
19 that. I read her submission pretty quickly.
20 But I --

21 MEMBER TURNER: It's certainly not
22 been my personal experience as a woman in 23

1 years in the service so . . .

2 CHAIR JONES: All right.

3 MEMBER HOLTZMAN: This is Liz
4 Holtzman. I have to get off. I'm sorry.

5 CHAIR JONES: Okay, okay. We'll
6 take a look at this, particularly that. I
7 don't recall any testimony about that
8 specifically. Anything else? All right.
9 Thanks, everybody. And I'll talk to everyone
10 Tuesday, presumably.

11 (Whereupon, the foregoing matter
12 was concluded at 4:26 p.m.)

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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 Systems to Adult Sexual
Assault Crimes Panel Meeting

Before: US DOD

Date: 01-28-14

Place: telephone conference

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.

Neal R Gross

Court Reporter

NEAL R. GROSS

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