

UNITED STATES DEPARTMENT OF DEFENSE

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RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT
CRIMES PANEL

VICTIM SERVICES SUBCOMMITTEE

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CONFERENCE CALL

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THURSDAY
APRIL 3, 2014

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The Subcommittee met by
teleconference at 2:30 p.m. Eastern Daylight
Time, Mai Fernandez, Chair, presiding.

PRESENT

MAI FERNANDEZ, Chair
THE HONORABLE ELIZABETH HOLTZMAN
THE HONORABLE CRISTEL MARQUARDT
BG COLLEEN MCGUIRE
DEAN MICHELLE J. ANDERSON
DEAN LISA SCHENCK

ALSO PRESENT

WILLIAM SPRANCE, Designated Federal Official
COL PATRICIA HAM, Staff Director
TERRI SAUNDERS, Deputy Staff Director
CDR SHERRY KING, Supervising Attorney
JULIE CARSON, Attorney
KRISTIN MCGRORY, Attorney
RACHAEL LANDSEE, Attorney

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

2:35 p.m.

CHAIR FERNANDEZ: So I'm going to skip any huge preparatory stuff and hand this right over to Commander King to tell us what we should be looking at.

CDR KING: First thing is Bill Sprance could start the meeting.

CHAIR FERNANDEZ: Oh, that would be good.

MR. SPRANCE: Good afternoon. This is Bill Sprance, the Designated Federal Officer, and this meeting of the Subcommittee is now open.

CDR KING: Thank you. Okay. And just for the record, I believe we have Mai Fernandez, Dean Schenck, Dean Anderson, General McGuire, Representative Holtzman, and Judge Marquardt. Is there anybody else that I missed? Okay. And here in the office, we have Colonel Ham, Terri Saunders, and the rest of the victim services team, Commander King,

1 Julie Carson, Kristin McGrory, and Rachael
2 Landsee, for the court reporter's information.

3 And so I'm not exactly sure where
4 you want to start, but you might want to start
5 with the crime victim's rights since they're
6 still one of the findings and recommendations.
7 If you're ready to discuss that, that hasn't
8 been voted on or discussed in detail yet.
9 That was the last one. I think it's number
10 eight. I don't know if you want to start
11 there or start just looking at our edits or
12 how you prefer to do it.

13 CHAIR FERNANDEZ: Why don't we
14 start with that one because that's the most
15 substantive thing that we need to do. And
16 it's on the allocution stuff.

17 My recollection was that, Bill,
18 you're against several on number four. I know
19 Liz Holtzman wanted to look at more
20 information. Have we heard anything about Liz
21 on this?

22 BG MCGUIRE: Can somebody repeat

1 that? I couldn't understand what the issue
2 was. I got the voting, but I didn't get the
3 issue.

4 CDR KING: Okay. The issue, but I
5 don't think, we don't have Mr. Cassara on the
6 call yet, so it may be that --

7 REP. HOLTZMAN: Oh, okay. There
8 was only one Bill on the phone. Okay, okay.

9 CDR KING: And Meg Garvin, she
10 emailed me earlier and she said she's giving
11 a training all day, so she'll try to join when
12 she can.

13 JUDGE MARQUARDT: Now, was this
14 recommendation eight?

15 CDR KING: Yes, this is. It's on
16 page four, and I don't know if you want to set
17 that aside for now since we only have a couple
18 of the more vocal members on that, or if you
19 want to go over that first anyway and start
20 discussing it.

21 CHAIR FERNANDEZ: I think we
22 should wait for Bill.

1 REP. HOLTZMAN: This is Liz
2 Holtzman. That's my view because he, you
3 know, he has a point of view, and we should
4 make sure that we hear it before we make a
5 final decision.

6 JUDGE MARQUARDT: I have a couple
7 of other minor things that I would like to
8 discuss with regard to the others if you
9 wanted to go through them now.

10 CHAIR FERNANDEZ: Sure. Why don't
11 we go through them? With regard to the
12 recommendations, Christel?

13 JUDGE MARQUARDT: Yes.

14 CHAIR FERNANDEZ: Okay.

15 JUDGE MARQUARDT: On
16 recommendation one where it says to account
17 for -- you know, I noticed through all of
18 this, sometimes you capitalize "convening
19 authority" and sometimes you don't. So you
20 ought to be consistent with that.

21 But, anyway, nevertheless, the
22 authority's role in the military justice,

1 there should be a mechanism to allow a victim
2 to express his or her views.

3 CHAIR FERNANDEZ: Instead of a
4 victim's views?

5 JUDGE MARQUARDT: Yes.

6 CHAIR FERNANDEZ: Okay.

7 JUDGE MARQUARDT: And instead of
8 "these," it should be "the."

9 REP. HOLTZMAN: Well, then it's
10 not going to make sense, you know, to allow a
11 victim to express his or her views, and then
12 it's to be relayed. Are we taking out "to be
13 relayed?"

14 JUDGE MARQUARDT: No, because the
15 first part of the sentence says that we're
16 doing this because of the authority.

17 REP. HOLTZMAN: Well, as I read
18 it, it won't make sense. There should be a
19 mechanism to allow a victim's views -- but
20 then you have the "to be relayed." You can't
21 just have express and then to be relayed.

22 CHAIR FERNANDEZ: Right. It's

1 like saying express/expressed. I mean, if you
2 changed that word "relayed" to "expressed,"
3 you're saying the same thing, Christel.

4 REP. HOLTZMAN: Right. So just
5 take out the "to be relayed" and then it could
6 be, because he's saying later on, I think,
7 sometimes whether the convening authority can
8 decide whether to receive this in writing or
9 directly or however they want it.

10 JUDGE MARQUARDT: I agree with
11 that.

12 CHAIR FERNANDEZ: Let's go down
13 the edits that were made from last time.
14 Anything else that folks think that needs to
15 be changed?

16 JUDGE MARQUARDT: On
17 recommendation two -- this is Christel -- at
18 the very end you say "submission in writing,"
19 and then you say "personal meeting." I would
20 say "or personally."

21 CHAIR FERNANDEZ: Right.

22 CDR KING: The only thing about

1 "or personally" was we had a discussion last
2 time -- this is Sherry, for the record -- that
3 Meg Garvin didn't or was uncomfortable with
4 the word "or" because she felt that that
5 expressed, like, an indication that the victim
6 or someone could make a choice on that instead
7 of giving the victim different options.

8 CHAIR FERNANDEZ: Well, then we
9 could say in person.

10 REP. HOLTZMAN: I don't
11 understand, I don't understand the point
12 you're making, Sherry. Sorry.

13 CHAIR FERNANDEZ: I think what Meg
14 was saying that, if you put an "or" there, it
15 changes the meaning.

16 REP. HOLTZMAN: How does it change
17 the meaning?

18 CHAIR FERNANDEZ: Writing "or
19 personal meeting." The comma indicates that
20 it's one or the -- I mean, the "or" indicates
21 it's writing or personal meeting. My sense is
22 that the comma is that you could have both.

1 JUDGE MARQUARDT: Well, and the
2 "e.g." could mean for example, and then you
3 could say "in writing," comma, "in person."

4 CHAIR FERNANDEZ: I think if
5 that's the big issue here, we could say comma
6 and say or both.

7 REP. HOLTZMAN: Or both.

8 CHAIR FERNANDEZ: Well, "e.g." is
9 for example so it's not --

10 REP. HOLTZMAN: Oh, yes, okay.
11 Where exactly are you in this?

12 CHAIR FERNANDEZ: Recommendation
13 two --

14 REP. HOLTZMAN: Oh, two. Sorry.

15 CHAIR FERNANDEZ: That's okay. I
16 think that the comma was, you can't have an
17 "e.g." and put an "or," because it's for
18 example, so it's a list of things. It's not
19 a one or the other.

20 DEAN ANDERSON: Who's saying that?

21 CHAIR FERNANDEZ: This is Mai.

22 DEAN SCHENCK: No, I agree with

1 Mai. This is Lisa. Okay. So "e.g." means
2 for example. That means it's not exclusive.
3 That doesn't mean it's only two of those
4 things. It just means these are examples. So
5 I don't see a need for changing that.

6 JUDGE MARQUARDT: Well, I like in
7 person because I think personal meeting is not
8 --

9 DEAN SCHENCK: Oh, yes, that I
10 agree with. I agree with what terminology,
11 but as far as putting the other stuff in there
12 or an "or," I don't think we -- I guess we
13 could put in there that the point of "e.g." is
14 these are just examples.

15 CHAIR FERNANDEZ: Okay. Let's
16 move on to finding three.

17 DEAN SCHENCK: Mai, can I go back?
18 I'm sorry to --

19 CHAIR FERNANDEZ: No, no, go
20 ahead.

21 DEAN SCHENCK: I had some comments
22 on just a couple of things. On finding one

1 where we have, we have DoD policy, the CVRA,
2 and FY14 NDAA, "all grant". We don't need all
3 and just say grant. And then in the last line
4 on that page, "However, due to the role of the
5 commander," people really just don't know what
6 we're talking about. What do you mean the
7 role of the commander? I think we should put
8 in parentheses maybe as convening authority or
9 -- see what I mean? They don't understand
10 what role, you know.

11 CHAIR FERNANDEZ: Yes, I think
12 that's a good distinction.

13 DEAN SCHENCK: So we need to put
14 it in parentheses or put it in there. And,
15 again, these are just my suggested changes.
16 I don't feel adamant about any of these.

17 Recommendation one on the next
18 page, or at least it's --

19 REP. HOLTZMAN: Before you go
20 further than that, can I just say something on
21 finding one, too, or do you want to just
22 finish? I mean, because I was going to -- all

1 right. Why don't you just finish? That's
2 okay.

3 DEAN SCHENCK: No, no, that's
4 fine. I think we should stick to one finding,
5 you know what I mean? We do one and then go
6 to the next one and then go to the next one.

7 REP. HOLTZMAN: I try not to do
8 the wordsmithing stuff, but here I think the
9 "however, due to the role of the commander in
10 the criminal justice process, the right to
11 confer with attorney for the government,"
12 isn't that trial counsel? We should be
13 consistent in the use of that term because,
14 actually, attorney for the government? I mean
15 -

16 DEAN SCHENCK: Right, right, I
17 agree. And I think --

18 REP. HOLTZMAN: I don't know. So
19 that's one problem. And should we say the
20 victim's right to confer with trial counsel,
21 parens, the prosecutor if you want, is not
22 directly comparable to the right to confer

1 with the attorney for the government under the
2 CVRA? Because I think what we're trying to do
3 is draw, it's saying that there's a difference
4 because the convening authority makes a
5 prosecution decision, unlike in the civilian
6 side where the prosecutor makes the
7 prosecution's decision. It's not sufficient
8 just to talk to the prosecutor, you also have
9 to talk to the convening authority.

10 I mean, maybe there's a way it
11 would work. It might have to be longer, but
12 you might just want to make it a little bit
13 more explicit so that people know what you're
14 talking about because --

15 JUDGE MARQUARDT: Well, I would
16 like for somebody to define for me convening
17 authority and trial counsel because I think
18 they're used somewhat -

19 DEAN SCHENCK: Okay. Well, if you
20 notice, the first time the document has the
21 word "trial counsel," we have a footnote
22 there. And at the bottom of the footnote, we

1 have RCM-502. The trial counsel is a military
2 term for prosecutor. Yet, I guess the judge
3 thinks we should have the footnote.

4 My personal opinion is the
5 footnotes add to the denseness of the reading.
6 My recommendation is what Congresswoman
7 Holtzman said, parentheses, i.e., the
8 prosecutor and just be consistent with the
9 word "trial counsel," just like Liz said.

10 JUDGE MARQUARDT: Well, who is the
11 convening authority then?

12 DEAN SCHENCK: Well, the convening
13 authority is a person in the military that, by
14 virtue of his position and rank, that is
15 designated to take actions over criminal
16 cases, administrative criminal cases, and
17 would forward cases to court-martial, to
18 convene courts-martial. And it's by virtue of
19 your position and your rank, generally,
20 they're designated as convening authorities.

21 That's why when we say "the role
22 of the commander," I think that's overly

1 broad. I think you have to say the role of
2 the commander, you know, as convening
3 authority.

4 REP. HOLTZMAN: Yes, right. Or
5 the other way to say it is just to say because
6 -- the other way to say it is, in the civilian
7 -- "Under the CVRA, the victim is given the
8 right to confer with the attorney for the
9 government or the prosecutor because the
10 attorney for the government or the prosecutor
11 makes a prosecutorial decision. In the
12 military justice system, the prosecutor, i.e.
13 the trial counsel, does not make the
14 prosecution decision. That is made by the
15 convening authority. It's not a decision just
16 to give the right to confer with trial
17 counsel. To give an equivalent right, you
18 have to be, as to whether or not to bring
19 prosecution, you have to have" -- you may just
20 have to lay it out just a little bit more than
21 you are here to make it clear. Now, maybe I'm
22 just being too wordy but -

1 DEAN SCHENCK: I agree with that.
2 I think we just need to flesh it out and put
3 it in layman's terms and remember who the
4 folks that are going to read the report and --

5 REP. HOLTZMAN: Congress people
6 might not understand this.

7 DEAN SCHENCK: That's exactly
8 right. That's exactly right. And I think
9 that's the best way to go.

10 REP. HOLTZMAN: I mean, it took
11 me, like, what? Six months to figure out the
12 difference of convening authority and trial
13 counsel and all that stuff. It might take
14 other people less time, but, still, they might
15 need a little bit of time.

16 COL HAM: We're ready to swear you
17 in now, ma'am.

18 REP. HOLTZMAN: To what?

19 (Laughter)

20 COL HAM: To defend and support the
21 Constitution of the United States.

22 CHAIR FERNANDEZ: Okay. Are we

1 done with that, or can we move into finding
2 number two?

3 DEAN SCHENCK: Are we skipping
4 recommendation one, or are we done with that?

5 CHAIR FERNANDEZ: No. Okay. We
6 go into finding number one and recommendation
7 number one, or do we have other things? Can
8 I please sort of, because, I mean, we only
9 have an hour and a half on this and we've
10 already gone through it, if things are purely
11 grammatical or editorial and don't change the
12 meaning or don't need clarification, let's
13 just submit those and go to the substance
14 because, otherwise, we're just not going to
15 get through the amount of the material we have
16 in front of us.

17 JUDGE MARQUARDT: When are the
18 grammatical things going to get changed? I
19 mean, they keep coming up.

20 COL HAM: Ma'am, this is Colonel
21 Ham. If everyone could please remember to say
22 who's speaking for the court reporter. Ma'am,

1 if you want to send us edits or non-
2 substantive changes, please send them to
3 Sherry and we can make them. And we're
4 continuing to go through it. Obviously, these
5 are still in draft form. They're not
6 finalized, so we just need to go through and
7 catch those kinds of things. But it's always
8 great to have another set of eyes sending us
9 comments like that.

10 CHAIR FERNANDEZ: Okay. Lisa, you
11 were talking on number one?

12 DEAN SCHENCK: Yes. I'm good with
13 the substance and the last, at the end where
14 it says "with respect to the court-martial
15 process." I believe we're talking about the
16 entire disposition of the case, so I would say
17 the convening authority may consider those
18 issues prior to making his or her decision
19 regarding case disposition. That means they
20 can do whatever they want, the victim may
21 convince the convening authority not to go
22 forward, like the Sinclair case.

1 CHAIR FERNANDEZ: Is everybody
2 okay with that?

3 REP. HOLTZMAN: Yes, as long as
4 that's comprehensive, sure.

5 CHAIR FERNANDEZ: Would you say
6 that again, please?

7 DEAN SCHENCK: So I was saying, at
8 the very last line, the convening authority
9 may consider those issues prior to making his
10 or her decision regarding case disposition.

11 REP. HOLTZMAN: Okay. My only
12 concern about that, are we talking about any
13 part of the case? It sounds like it's the
14 total case. Suppose it's a question about a
15 plea, about --

16 DEAN SCHENCK: I think that goes
17 into case disposition.

18 REP. HOLTZMAN: Okay. If you're
19 satisfied that that would include disposition
20 of part of the case or something about part of
21 the case, then I'm fine with

22 DEAN SCHENCK: I definitely think

1 the plea agreement portion is within there.
2 I also mean that, I had a victim who didn't
3 want to go to court-martial. She wanted the
4 accused to be administratively separated, and
5 the convening authority took that into
6 consideration and didn't send the case to a
7 court-martial.

8 REP. HOLTZMAN: Administratively
9 separated? You mean cut and --

10 DEAN SCHENCK: No, no,
11 administratively discharged. Separated from
12 service.

13 REP. HOLTZMAN: It's just a joke.
14 Okay. If you feel comfortable with that, I'm
15 fine.

16 CDR KING: This is Sherry. Can I
17 just ask one clarification? In the last
18 meeting, we had a discussion about the use of
19 "will" or "may" in the next to the last
20 sentence or last line there where it says the
21 convening authority, right now it says "will
22 consider." And then Dean Schenck suggested it

1 should say the convening authority may
2 consider the issues prior to making his or her
3 decision.

4 DEAN SCHENCK: Don't forget we had
5 that case, and it was command influence, a
6 decision by Judge Pohler when the convening
7 authority said the only thing he considered.
8 I think that us forcing the term "will
9 consider," I mean, I just don't think it's
10 appropriate. I mean, we give him the
11 opportunity to consider, but how can you say
12 he will? Everybody is going to determine
13 whether or not they're going to do it on their
14 own.

15 JUDGE MARQUARDT: Well, I thought
16 that we were pretty clear that we thought they
17 should or that they will consider, not forcing
18 them, but I thought that was the issue.

19 COL HAM: That was Judge
20 Marquardt.

21 JUDGE MARQUARDT: That's right.

22 CHAIR FERNANDEZ: I mean, I think,

1 by saying will consider, I don't think you're
2 saying it's the only factor that you're going
3 to consider. I mean, you can consider
4 anything. You will consider doesn't mean that
5 it's going to be determinative of your
6 decision, but there is a factor that you bring
7 in. So by saying "will," I don't think we're
8 tying anybody's hands.

9 REP. HOLTZMAN: Well, you're tying
10 them that they will consider, you're not tying
11 them to --

12 CHAIR FERNANDEZ: Yes, but I could
13 consider that it's snowing outside today. I
14 mean, considering something, again, is not
15 determinative of how I'm going to make a
16 decision.

17 REP. HOLTZMAN: Well, if nobody
18 thinks there's a legal issue with requiring
19 them to consider a fact, then I don't have any
20 problem with it. But if there is a legal
21 problem that's created, you better be careful.
22 That's all. I mean, maybe -- so I don't know.

1 I'm not an expert on this, but we have very
2 good experts right on this phone call.

3 COURT REPORTER: This is the court
4 reporter. Could I ask that people please
5 identify themselves when they speak?

6 CHAIR FERNANDEZ: Yes, sorry.
7 This is Mai. Can the staff weigh in on
8 whether this is going to, this has any legal
9 ramifications?

10 COL HAM: This is Colonel Ham.
11 Understanding Dean Schenck's point, if there
12 are unlawful material or unlawful -- coercion
13 is not the right word. If there was unlawful
14 command influence in a submission, the
15 convening authority should not consider it.

16 JUDGE MARQUARDT: Well, they could
17 consider it and find that it's not valid.

18 REP. HOLTZMAN: Oh, but you're not
19 even allowed to consider it. That's the
20 problem. The other way to deal with that is
21 the convening authority either may consider or
22 is in a position to consider these issues.

1 CHAIR FERNANDEZ: I think may, at
2 the end of the day, is our safest if we're
3 really worried about this.

4 REP. HOLTZMAN: Well, I guess we
5 did see the Sinclair case results.

6 CHAIR FERNANDEZ: Why don't we go
7 with -- this is Mai, by the way. Why don't we
8 go with safer, rather than not, and go with
9 "may?" Anybody completely disagree with that?
10 Going once, going twice, gone. It's "may."

11 Lisa, did you have anything else
12 under finding or recommendation one? Okay.
13 Going to finding two and recommendation two.

14 DEAN SCHENCK: Okay. This is
15 Lisa, and I have just a couple of
16 observations, by reading all these findings
17 and recommendations. I was looking at it like
18 someone just picking this up, and I don't
19 think we're specific enough when we're talking
20 about -- in the third sentence, it says --

21 CHAIR FERNANDEZ: The third
22 sentence in the finding or the recommendation?

1 DEAN SCHENCK: In the finding,
2 finding two. In finding two and some of the
3 other places, we use terminology and we
4 haven't really defined what we're talking
5 about. So, for example, in this finding, it
6 says "reasonably heard regarding a plea."
7 What does that mean? Does that mean they
8 cannot submit documents, recommend, recommend
9 no plea, they can talk to the judge? What
10 does that mean, reasonably heard?

11 And then -- so this is Lisa. One
12 of the things, the other things, throughout we
13 talk about Article 6(b) rights, Article 6(b)
14 UCMJ rights. We talk about 18 USC rights.
15 And so I think that when we're using the
16 terminology "rights," we need to, the first
17 time we are using the term, like Article 6(b)
18 or reasonably heard that right, we need to
19 define what we're talking about because that
20 could mean so many things.

21 REP. HOLTZMAN: I completely agree
22 or find a shorthand. Also, people aren't

1 going to know what you're talking about when
2 you keep referring to these rights.

3 DEAN SCHENCK: Right, exactly. I
4 mean, if I don't know what Article 6(b) UCMJ
5 rights are specifically, I guarantee the Hill
6 people don't know what that means.

7 And in this one, "reasonably be
8 heard," I think, in our discussions -- and
9 this is Lisa -- I think in our discussions we
10 said that it wasn't clarified and that it was
11 not described, which could be part of the
12 problem.

13 JUDGE MARQUARDT: This is
14 Christel. I like the use of the

15 COL HAM: We lost you, Judge
16 Marquardt. Could you repeat that?

17 JUDGE MARQUARDT: Oh, I just like
18 the use of the word

19 REP. HOLTZMAN: You like the use of
20 the word what?

21 COL HAM: Dean Schenck, we
22 understand your point. This is Colonel Ham.

1 I believe the Subcommittee's decision was the
2 findings and recommendations are actually
3 going to go after the full discussion. We
4 just put them up front for the ease of your
5 teleconference discussions.

6 DEAN SCHENCK: This is Lisa again.
7 My problem then is, if they're going to pull
8 these findings and recommendations out and
9 separate them with the general report, say the
10 full panel wants to take specific findings and
11 recommendations, still at some point these
12 findings and recommendations maybe stand
13 alone, at least that was the way the DTF-SAMS
14 report was. They did appear right above the
15 actual discussion, but, in the beginning, when
16 we had the executive summary, we had
17 bulletized recommendations. And if you can't
18 read it and understand what the heck it means,
19 I'm afraid that drawing from what we're
20 providing may end up with a specific
21 recommendation that is not defined.

22 COL HAM: Got it. I have the DTF-

1 SAMS report right in front of me.

2 CHAIR FERNANDEZ: So can we go
3 ahead and clarify those rights in the
4 narrative?

5 CDR KING: We can try. We can
6 try. I think staff -- yes, we can try to
7 revise it and send it out again, I guess, to
8 try to include more specific language. But if
9 anybody has any ideas to help us out, you
10 could send them to us. I'm not exactly sure
11 right now what they should be.

12 CHAIR FERNANDEZ: Lisa, can I ask
13 you to help out with that? This is Mai.

14 DEAN SCHENCK: Yes, I can help out
15 with that.

16 REP. HOLTZMAN: This is Liz. Can
17 I make another point about finding two? The
18 problem is is that it's a little unclear the
19 way it's written. What you're trying to say
20 here is that the provisions of DoD and service
21 policy and the NDAA do not grant a victim the
22 right to be heard as would exist under the

1 CVRA. And, you know, if you made that
2 clearer, the whole thing would be clearer.

3 DEAN ANDERSON: Can you all --
4 this is Michelle. I need to jump off for
5 about 15 minutes and I'll get right back on.

6 CHAIR FERNANDEZ: Thanks.

7 REP. HOLTZMAN: So he just said
8 that you might not need anything, and the same
9 thing then happens in recommendation two
10 because you just get lost talking about it
11 here. So recommendation two would be to
12 assure that the victim in the military justice
13 system has an equivalent right to be heard
14 with respect to the plea, as in the civilian
15 under the CVRA do X, Y, Z. So you set out
16 exactly what you're trying to accomplish, and
17 then people, then you're not losing your
18 reader. It becomes clearer that way. That's
19 all. And it's really worth mentioning here
20 that it's creating some problems. So I don't
21 know whether it's worthwhile to go into it or
22 not. I could send my edits to the staff, if

1 they can read my handwriting.

2 CDR KING: We read most of the
3 last one, and your assistant helped us where
4 we couldn't. So that was actually fine.

5 REP. HOLTZMAN: Okay.

6 CHAIR FERNANDEZ: Okay. Finding
7 number two in recommendations. Anything else
8 in there? Okay. Let's then move on to
9 finding three in recommendation three.

10 REP. HOLTZMAN: This is Liz
11 Holtzman, just quickly. You can't have a
12 finding where a victim should, a victim can,
13 and the recommendation is the victim should.
14 So that just needs to be changed. You can
15 say, under the present system, victims can do
16 X, and then the recommendation is they should
17 be able to do X.

18 Here again, the right granted by
19 Article 6(b), I mean, who knows what that is?
20 That's the same probably as I said before. I
21 don't mean to -- sorry.

22 CHAIR FERNANDEZ: Okay. Anything

1 else on recommendation three or finding three?

2 JUDGE MARQUARDT: I have one
3 sentence to

4 CHAIR FERNANDEZ: Let's go onto
5 finding four and recommendation four.

6 JUDGE MARQUARDT: On
7 recommendation four -- this is Christel -- the
8 SECDEF should implement mechanisms.

9 CHAIR FERNANDEZ: Okay. Anything
10 on four?

11 DEAN SCHENCK: Lisa Schenck.
12 Sorry, I got cut off. But I heard everything
13 up until Mai talking about finding three.
14 This is Lisa.

15 CHAIR FERNANDEZ: Okay. Do you
16 have anything on finding four, recommendation
17 four?

18 DEAN SCHENCK: That was Mai
19 Fernandez?

20 CHAIR FERNANDEZ: Yes.

21 REP. HOLTZMAN: I have the same
22 problem with recommendation four. I don't

1 really understand what this recommendation is
2 about. What is it that you're trying to get?
3 What do we urge be done? Is it what is in the
4 including? Is it that specific part that says
5 "including a provision," blah, blah, blah, or
6 is it just all the rights in Article 6(b)? I
7 don't understand what the specific objective
8 is of the fourth recommendation.

9 CHAIR FERNANDEZ: Sherry, why
10 don't you explain it?

11 COL HAM: This is Colonel Ham. I
12 think I can help, and Rachael is here, the
13 primary drafter of this part. So, as I
14 understand it, the CVRA kind of splits the
15 responsibility for enforcing the trial rights
16 between the prosecutor and the trial court,
17 the district court judge. So the district
18 court judge has an affirmative duty to ensure
19 that a victim is afforded his or her rights.
20 That does not, that is not reflected in the
21 Military Victim Rights Act or Article 6(b) of
22 the UCMJ. Rachael, is that a fair summation

1 of the

2 MS. LANDSEE: This is Rachael. I
3 think the recommendation, if I remember
4 correctly, also came from Subcommittee
5 discussion regarding how a lot of the
6 violation of victims' rights comes pretrial.
7 And so I think this is an effort of the
8 Subcommittee to have the judge, through a
9 pretrial, get on the record that the victims
10 were afforded all of their rights sort of
11 before a trial starts to avoid any problems
12 down the road, I believe, was what this
13 recommendation was about.

14 REP. HOLTZMAN: I mean, I just, I
15 still -- but recommendation four really goes
16 way beyond that because it doesn't really, it
17 talks about implementing mechanisms which
18 ensure that victims are afforded the rights
19 specified in Article 6. Who could be opposed
20 to that?

21 But then what we're talking about,
22 however, has to do with the trial judge and

1 not with other mechanisms. So we've got to
2 get very clear, in my opinion, humble opinion,
3 what we are finding, what is the problem, and
4 what are we trying to address, rather than
5 addressing the whole universe here. I mean,
6 the first sentence is, you know, it's
7 everything. Is that really what the
8 recommendation -- I mean, I'm for it if we're
9 for it, but I think we've said that before and
10 that's not really a specific problem, or is
11 it?

12 And the finding has to do with the
13 trial judge has to make findings, but then the
14 U.S. Code says something different and then
15 the NDAA doesn't say. I mean, I'm already
16 confused totally by this. What is it that we
17 want to come out of this? We should just say
18 it real simple and really clearly. That's my
19 only point. So I found this recommendation
20 four quite confusing, the finding and the
21 recommendation, because it wasn't clear to me
22 what we were trying to get, what was the

1 problem and what we're trying to correct.

2 That's all.

3 CDR KING: What about if we skip
4 the first sentence or included that in the
5 findings, which it kind of is -- this is
6 Sherry -- and just included the specific
7 recommendation in the second sentence that
8 said the Military Judges' Benchbook should be
9 amended to include language that inquires
10 whether the victim's rights have been or the
11 victim has been accorded rights pursuant to
12 whatever throughout the pretrial and trial
13 process?

14 DEAN SCHENCK: Okay. This is
15 Lisa. First of all, the Secretary of Defense,
16 the reason he's listed in this recommendation,
17 as I understand it, is because we want the
18 Department of Defense to make recommendations
19 regarding changes to the manual for courts-
20 martial, UCMJ, DoD directives, those kind of
21 actions.

22 I agree with everyone else. I do

1 think it's too wordy. I don't think it's
2 direct. I think it's hard to figure out what
3 we're talking about. And let me just tell
4 you, that last sentence, the Military Judges'
5 Benchbook is an Army publication. It is not
6 provided by the Department of Defense. So
7 when we say the Military Judges' Benchbook
8 should be amended, that's like saying, hey,
9 Army, modify your Department of the Army
10 pamphlet because that's what it is. It's a
11 Department of the Army pamphlet.

12 So maybe what, I mean, I can help
13 write this. I just need to understand, like
14 in bold type format almost, what is it that we
15 want to happen? Because I can help write it,
16 I just need to know what is it we want to
17 happen.

18 JUDGE MARQUARDT: Trying to see to
19 it that the victims are given the rights that
20 they are to be accorded, but I think that's
21 very broad.

22 DEAN SCHENCK: So do we know what

1 rights are missing?

2 COL HAM: Again, this is Colonel
3 Ham. Our understanding of the issue from the
4 Subcommittee's discussion was, having the
5 judge, trial judge, be involved in assuring
6 the victim was accorded the rights under the
7 Military Victim Rights Act. I don't know how
8 else to say it, kind of an affirmative duty to
9 ensure the victim is accorded those rights by
10 asking questions on the record to the trial
11 counsel and if there's a special victim
12 counsel and the victim.

13 In other words, to ameliorate any
14 need for appellate litigation of the issues.
15 It's right on the record, it either happened
16 or it didn't happen.

17 DEAN SCHENCK: Well, you could
18 also do that with a form, like they do with
19 the defendant, the accused. They submit that
20 form to assure that the defense counsel
21 discussed the rights with the accused. You
22 have the right to appeal, and then the defense

1 counsel submits that form as an appellate
2 exhibit. There's no requirement to go through
3 those things on the record.

4 So you could do it by a form, but
5 I understand you want to modify the Military
6 Judges' Benchbook. But I think that that
7 might lead to certain issues. The trial judge
8 is going to ask the defense, the accused, and
9 trial counsel whether or not the victim has
10 been provided these rights? If it's a victim
11 counsel, okay. But, again, I think that we're
12 being really, we are telling the Department of
13 Defense to tell the Army to modify their
14 pamphlet, their script that they use at every
15 court-martial. That's what we're doing.
16 That's what we're doing here, and that's
17 pretty direct. That's a pretty direct
18 recommendation. And since the Department of
19 Defense is probably going to implement these
20 recommendations, as they have done in the past
21 with these reports, I think we need to figure
22 that out or either go broader with a little

1 bit of leeway or be really careful about what
2 we're telling them to do.

3 The Military Judges' Benchbook
4 should be amended? That is very direct.
5 That's one publication.

6 REP. HOLTZMAN: Well, don't all
7 the services have something comparable?

8 DEAN SCHENCK: Actually, all the
9 services use the Army judges bench book. I
10 think all the services, if they use a script,
11 they used the one designed by the Army. I
12 think they may even attend the military judges
13 course at the Army school for three weeks to
14 go over the script.

15 So it's not that it's a bad idea.
16 I don't think it's a bad idea. It's just that
17 I wonder do we need to do it in the script.
18 And I'm concerned that what if you have a
19 victim who doesn't, what if there's no special
20 victims' counsel present or -- I mean, there's
21 just a bunch of issues involved. I think we
22 maybe should take it back a notch and give

1 more, be more direct, you know, be more direct
2 to ensure that the rights are, the rights
3 specified in the NDAA, the affirmative rights
4 are accounted for at every record, in every
5 courts-martial record. That's what we're
6 saying, I think.

7 We're saying that, at every court-
8 martial, we want to make sure that the victims
9 rights have been fulfilled. I think that's
10 what we're recommending. We're saying
11 Department of Defense, you need to put in some
12 mechanisms to make sure this happens.

13 CHAIR FERNANDEZ: Lisa, why can't
14 we just put that onus on the trial judge and
15 call it a day?

16 DEAN SCHENCK: Right. Because I
17 don't believe that we -- well, I don't think
18 -- well, first of all, the Secretary of
19 Defense cannot put any onus on any trial
20 judge. It comes through the Manual for
21 Courts-Martial, and the Manual for Courts-
22 Martial changes come by recommendations from

1 the services to the Joint Service Committee,
2 and then DoD goes forward to Congress with
3 them.

4 We can recommend that DoD, I think
5 we should look at the recommendations in
6 detail, seeing as where we recommended that
7 they look at manual changes, you know what I
8 mean? So we recommend that --

9 CHAIR FERNANDEZ: I don't think we
10 should be talking about manual changes.
11 That's not really what our panel is set out to
12 do.

13 DEAN SCHENCK: Well, if we say
14 mechanisms, then we just should anticipate it,
15 direct mechanisms. If our panel is not set
16 out to recommend manual changes, then we
17 should not be making recommendations on a DA
18 pamphlet called the Judges' Benchbook. That's
19 like the needle, that's like the eye of the
20 needle, you know. That's just really
21 specific. That's like five levels down from
22 the manuals of courts-martial.

1 REP. HOLTZMAN: Well, one problem,
2 another problem with that is that only deals
3 with the Army, it doesn't deal with the other
4 services.

5 DEAN SCHENCK: Right. Because the
6 other services can choose not to --

7 REP. HOLTZMAN: But I guess what
8 I'm trying to understand here, finding four,
9 is this really the thrust of it, that under
10 the Crime Victims Act, that's a U.S. Code
11 3771, is that what that is? I'm trying to
12 figure that out.

13 DEAN SCHENCK: Yes.

14 REP. HOLTZMAN: Okay. So maybe we
15 call it just the Crime Victims Act and stop
16 calling it with the section because that
17 already is totally confusing. But if the
18 Crime Victims Act, what you're saying, that on
19 the Crime Victims Act, the judge is
20 specifically given the responsibility of
21 ensuring that the victim's rights are
22 enforced. The judge has that responsibility;

1 am I right? Is that correct?

2 CDR KING: Yes, but both the judge
3 and the trial counsel, but the trial court is
4 responsible for --

5 REP. HOLTZMAN: Right. But each
6 has his or her own responsibilities. So the
7 trial court has an equal responsibility, has
8 a complete responsibility, regardless of what
9 the trial counsel does, to ensure that the
10 rights of the victim are enforced. Under the
11 NDAA, there is no, there's no statutory
12 requirement that a judge do the same thing.

13 The Secretary of Defense now has
14 to make changes. The statute requires that
15 the Secretary of Defense make the changes to
16 the manuals for court-martial and prescribe
17 appropriate regulations. Okay. So that's a
18 finding that that's happened.

19 Well, what is our recommendation
20 beyond that? I mean, we now have Congress has
21 told, has told Secretary of Defense to
22 recommend changes to ensure that the trial

1 judge protects the victim's rights. Okay.
2 Now that's a finding. Now, what is our
3 recommendation with regard to that? That
4 should be changed in this manual? That it
5 should be in statute? That it should be in
6 the manual? That it should be in other --
7 what is our recommendation?

8 This is a finding. Okay. The
9 finding is the Secretary of Defense have been
10 told, basically, to do, to bring up to the
11 Crime Victims Act standard, in essence, the
12 behavior of trial judges in the military. So
13 now what are we recommending vis a vis that?
14 What is our recommendation? That the UCMJ --
15 we're recommending -- or are we recommending
16 that the Secretary of Defense do what he's
17 required to do under the NDAA? What are we
18 saying to the Secretary of Defense that he
19 should do this different from what he's
20 already required to do under the NDAA.

21 DEAN SCHENCK: Yes, I agree with
22 Liz. If you look at the last, if you look at

1 that line in our finding that says the NDAA
2 tells him to recommend changes to the Manual
3 for Courts-Martial and regulation so that
4 mechanisms are in place to ensure those rights
5 have been accorded. And so I think that, I
6 think that, I think our recommendation is,
7 yes, do what they told you to do and, oh, by
8 the way, we might want to implement this
9 through changes in the Military Judges'
10 Benchbook.

11 REP. HOLTZMAN: I don't
12 necessarily object to the Benchbook. I'm just
13 trying to understand what we're trying to do
14 here. So are we trying to say that the NDAA
15 mandates --

16 CHAIR FERNANDEZ: Civilian law is
17 more expansive than the military law, and I
18 think we should direct Congress to expand the
19 military law because it didn't in the NDAA.

20 REP. HOLTZMAN: Okay. Well,
21 that's separate from what we're recommending
22 in four. I guess the point I'm trying to

1 make, if I can get it clear, is that maybe
2 what -- the last sentence requires changes to
3 the manual court-martial all in a passive
4 voice. It does not, the NDAA apparently
5 doesn't require the Secretary of Defense to
6 give the trial judge the same responsibilities
7 as the trial judge has under the Crime Victims
8 Act. Am I right? I'm trying to understand
9 this. I just don't really, it's just not --

10 CHAIR FERNANDEZ: This is Mai. I
11 think you're right, and that's why I'm saying
12 why don't we hand this back to Congress?

13 REP. HOLTZMAN: Well, because
14 maybe the thing is that we don't need a
15 statute. Maybe if the Secretary just said if
16 the NDAA is not clear that the trial judge is
17 to be given this responsibility. This is a
18 passive voice, so I can't tell who's
19 responsible for doing what. But if the trial
20 judge is not given the responsibility as the
21 trial judge is under the Crime Victims Act,
22 then the Secretary of Defense should, in

1 carrying out the 14 NDAA, try to implement
2 regulations that will make the trial judge
3 responsible in the same way that the trial
4 judges are responsible under the Crime Victims
5 Act for protecting victims' rights. If that's
6 what our recommendation is. I don't know.
7 Since I don't know what the finding is, I'm
8 sorry, I can't make a recommendation. That's
9 my problem here with recommendation and
10 finding number four. So maybe, you know, if
11 the staff would go back and take a closer look
12 at what exactly they think the problem is
13 here, then we can discuss what the solution
14 is, in my opinion. But that's just my
15 opinion.

16 CDR KING: So the problem is --
17 I'm sorry. This is Sherry King. What we were
18 trying to do was trying to find a way to
19 incorporate your concerns from the earlier
20 meetings. And all the enforcement mechanisms,
21 basically, in the NDAA were left to the
22 Secretary of Defense. So we're trying to find

1 a way for you to make recommendations, you
2 know, or tell the Secretary of Defense how
3 those enforcement mechanisms or what
4 specifically you want in there, if there's
5 specific things you want to enforce it. And
6 we're not doing very good at that, but that
7 was our intention that, since the statute
8 basically requires the Secretary of Defense to
9 implement all the rights, you know, and set up
10 mechanisms, that we were trying to incorporate
11 that into what you said in your meetings that
12 you wanted to have happen. And we've been
13 having a little bit of trouble doing it very
14 clearly, obviously. We can take another stab
15 at it now, once we have this discussion from
16 you.

17 But that's our problem is that all
18 of the mechanisms are set forth, you know --
19 in the NDAA, it says the Secretary of Defense
20 shall develop. So then --

21 REP. HOLTZMAN: What is the
22 Secretary of Defense supposed to develop?

1 That's what I'm not understanding here. Is
2 the Secretary of Defense supposed to develop
3 -- excuse me. This is Liz Holtzman. I'm just
4 trying to understand is the Secretary of
5 Defense supposed to, under the NDAA, develop
6 regulations that will require the trial judges
7 to enforce victim rights? Is that what the
8 NDAA requires?

9 CDR KING: No, it's not that
10 clear.

11 REP. HOLTZMAN: What?

12 CDR KING: No, it's not that
13 clear. The --

14 REP. HOLTZMAN: Well, then if it's
15 not clear, that's the problem. So then the
16 problem then is that you have, in the Crime
17 Victims Act, you have the trial judge is
18 responsible for enforcing it, and it's not
19 clear under the whatever Congress did that the
20 Secretary of Defense is supposed to achieve
21 the same result. So even though Congress
22 hasn't specified it, he should. And if he

1 doesn't want to, then Congress should change
2 the law.

3 That's my recommendation because I
4 guess what our view here is that this should
5 be as comparable as possible, what happens in
6 the military system in terms of crime victims
7 should be as comparable as possible to what
8 the rights are for crime victims at least in
9 the federal system. But if we don't want it
10 comparable, then that's another story.

11 CHAIR FERNANDEZ: I think
12 everybody has been looking for compatibility
13 and comparability between -- this is Mai --
14 between the NDAA and the Crime Victims Act.
15 So

16 COL HAM: So this is Colonel Ham.
17 We have the language of the military, I call
18 it the Military Victim Rights Act, whatever
19 you want to call it, Article 6(b), the
20 amendment. Basically, what it did is it set
21 forth the list of rights, and then it left to
22 the Secretary of Defense a whole lot of other

1 things. So I may be repeating what Sherry
2 said. So what the staff is trying to capture
3 are your thoughts on what those things should
4 be that the Secretary of Defense should do.

5 REP. HOLTZMAN: This is Liz
6 Holtzman. I think, for starters, there could
7 be a long list, but I would say, for starters,
8 it's a real simple list, it's a real simple
9 thing, is to make it at least equivalent to
10 what we have under the Crime Victims Act. And
11 if it's not, it should be, and that's very
12 simple. Then if you want other things, too,
13 and bells and whistles, that's another whole
14 discussion.

15 But if that point isn't clear, if
16 the Secretary of Defense hasn't been directed
17 under the NDAA to make the trial judge's
18 responsibility equivalent to those in a
19 federal court under the federal law, then that
20 should change. This is my view. It seems to
21 be a very simple thing.

22 CHAIR FERNANDEZ: I agree with

1 Liz. This is Mai. If you read number three,
2 it gives you, we're saying, okay, you need to
3 be able to swiftly appeal any time that one of
4 your rights is violated. So what we want to
5 state in this one is we want to make sure that
6 all your rights that you have, all the rights
7 that you have under the Crime Victims Act in
8 the NDAA. So they kind of work together.

9 REP. HOLTZMAN: No, it's not all
10 the rights, that the trial judge has a
11 responsibility for enforcing them under the,
12 in the military justice system, just as the
13 trial judge has the responsibility in the
14 civilian system. That seems to me the point.
15 That's the only point I'm making. Because in
16 the civilian system, under the Crime Victims
17 Act, the trial judge --

18 DEAN SCHENCK: Hello?

19 CHAIR FERNANDEZ: Yes.

20 DEAN SCHENCK: This is Lisa. I'm
21 here.

22 CHAIR FERNANDEZ: Okay. I think

1 we need a suggestion from the staff on how to
2 move forward on this.

3 COL HAM: We can -- this is
4 Colonel Ham. You made -- recommendation three
5 is also something that -- I'm looking. I've
6 got to make sure because I don't have it all
7 memorized. It's something, SECDEF was
8 directed to develop, you know, enforcement
9 mechanisms, and the appellate enforcement
10 mechanism is another example of what we took
11 to be you directing the Secretary of Defense
12 to include in those things.

13 So we could, taking Representative
14 Holtzman and Dean Schenck and everybody else's
15 comments, but those two in particular for
16 finding four, again, our understanding is your
17 recommendation is the SECDEF should put some
18 responsibility on the trial judge, just like
19 the CVRA does to district court judge. So we
20 can reword it so that it's like that.

21 But a number of the
22 recommendations we thought, and maybe we

1 thought wrong, were directing the SECDEF to
2 include stuff into what Congress has directed
3 him to develop, if that makes sense. Include
4 specific things in there.

5 REP. HOLTZMAN: Yes, you could do
6 that, too. You can say and one thing he could
7 do, for example, is direct them to change the
8 manual to, you know, or to require, he could
9 require, I think the Secretary of Defense
10 could require new manuals, could require new
11 training, could require, you know, videos. I
12 mean, all of that stuff is also possible. But
13 you have to have it focused on what the
14 purpose is of the manual change. Because if
15 you get a new manual, what's the manual going
16 to say?

17 JUDGE MARQUARDT: Well, it seems
18 to me we're talking about the responsibility
19 of the trial judge to make sure that the
20 victim is accorded his or her rights. Well,
21 I don't know that the manual, I mean the
22 manual may be one mechanism to do that.

1 CHAIR FERNANDEZ: Is that Judge
2 Marquardt?

3 JUDGE MARQUARDT: Yes, it is.
4 Thank you.

5 DEAN ANDERSON: Yes, this is
6 Michelle. I'm back on board. I'm sorry. I
7 had to get off for another meeting briefly,
8 but what documents are we working on?

9 CHAIR FERNANDEZ: The same one we
10 were on when you left.

11 DEAN ANDERSON: Oh, my. Okay,
12 great. Thanks.

13 CDR KING: You know, there's
14 several, finding and recommendation -- this is
15 Sherry -- number six is kind of the same
16 thing. It's trying to make a right equivalent
17 to what's under the CVRA. So maybe you put it
18 like, I don't know if you want to do it in one
19 finding and recommendation where you list
20 specific things you want to make, you know,
21 equivalent or similar to the CVRA. And then
22 just list them in one instead of having

1 individual findings, or do you want them in
2 individual findings still you think?

3 REP. HOLTZMAN: Why don't we try
4 individual and -- this is Liz Holtzman -- and
5 then you can combine them. So I think clearer
6 right now is really what the objective should
7 be.

8 CDR KING: And if anybody has any
9 ideas and wants to share them, you know, send
10 them to us ahead of time, that would be great,
11 too. I mean, I think we're getting where
12 you're going with that, and we'll make another
13 stab at it.

14 REP. HOLTZMAN: But maybe there
15 are some other things specifically that you
16 had in mind here. I'm just trying to

17 CDR KING: Not under that one.
18 Under number four, basically, I think you were
19 recommending that someone should be, and I
20 guess we were interpreting it as someone
21 should be responsible, and under the CVRA it's
22 the trial judge and also the trial counsel.

1 The trial counsel, the prosecutor is
2 responsible for enforcing the rights, and the
3 trial judge is responsible for ensuring them.
4 They're kind of different things, but I think
5 that's the way it's supposed to work.

6 And so we were trying to make an
7 equivalent based on your discussion from
8 earlier meetings. So that's all we were
9 trying to do, and we obviously didn't do it
10 very clearly. But we'll work on that again.

11 CHAIR FERNANDEZ: Can then we go
12 down to, are we at recommendation six then?

13 REP. HOLTZMAN: No, we're at five,
14 I guess.

15 CHAIR FERNANDEZ: No, I thought
16 five was just like three and four. I thought
17 Sherry just said.

18 CDR KING: I think it is because
19 in the CVRA they give a time limit of 14 days
20 that the victim can go back and claim that she
21 or he didn't get his rights under the CVRA at
22 the trial court level. Well, in the military,

1 the problem with giving a date like that is
2 really the case isn't final until at least the
3 convening authority acts, and there's not a
4 number of days that that can happen. So the
5 language, I don't think you could pick a
6 particular number of days because the accused
7 has a right to provide information to the
8 convening authority after trial and, in most
9 cases, the victim does also now in a sexual
10 assault case. And even though there's a time
11 limit set in the rules, that can be extended
12 for good cause.

13 So I don't think you can make a
14 recommendation that's exact where you say, you
15 know, the victim has to appeal a violation
16 within 20 days or whatever because there's not
17 really an exact time under the Manual for
18 Courts-Martial. So we were trying to do
19 something like that for number five also, to
20 make it an equivalent right but based on what
21 happens after trial in the military.

22 So assuming you want to do that,

1 but I think we talked about it at the last
2 hearing you wanted to do it, just make it
3 clearer. And I was trying to do that, but I
4 don't think we probably did it real well.

5 CHAIR FERNANDEZ: I think that's
6 the way to go. Does anybody dispute that?

7 REP. HOLTZMAN: Yes, I think
8 that's fine.

9 CHAIR FERNANDEZ: Okay. So we're
10 at six, recommendation six. Okay. What do
11 folks have as comments on recommendation six
12 and finding six?

13 REP. HOLTZMAN: Well, I guess my
14 question about this is why isn't it sufficient
15 to have the various services receive the
16 complaint? What's the inadequacy there? I
17 mean, am I wrong that the various services --
18 I'm trying to, you know, remember what this is
19 about.

20 CHAIR FERNANDEZ: This is like the
21 ombudsman in the Department of Justice.

22 REP. HOLTZMAN: Oh, so this would

1 be outside and above the services?

2 CHAIR FERNANDEZ: That was your
3 thought last time, I think, Representative
4 Holtzman.

5 REP. HOLTZMAN: Okay.

6 DEAN SCHENCK: Okay. So this is a
7 DoD -- this is Lisa. So we're saying, hey,
8 SECDEF, create an entity within your
9 organization to receive complaints about your
10 officials.

11 COL HAM: This is Colonel Ham.
12 That was discussed last time. I think the
13 original wording was within or outside of DoD,
14 and the Subcommittee decided inside DoD. But
15 the DoD IG. The analogy would be the
16 whistleblower complaint process in DoD IG,
17 although my recollection is the Subcommittee
18 didn't specify an entity, if that correctly
19 reflects the conversation from that
20 teleconference. But we certainly can change
21 it if that's not --

22 DEAN SCHENCK: No, no, I was

1 thinking the DoD IG, as well. No, I think
2 it's fine. Again, that was Lisa.

3 CHAIR FERNANDEZ: Okay. So are we
4 clear there?

5 REP. HOLTZMAN: Can I just ask a
6 question? When you say the failure of DoD
7 officials, would that include various services
8 or is this just for the DoD itself? Is that
9 a separate entity? I mean, I'm just trying to
10 understand.

11 COL HAM: We should probably
12 include military services or DoD.

13 REP. HOLTZMAN: Well, but isn't
14 it, but isn't it now that the military
15 services has to set up a system to receive
16 complaints, each of the services, or am I
17 wrong about that? Because the NDAA, according
18 to finding six, requires a designation of an
19 authority within each armed force to receive
20 an investigative complaint. So you're saying
21 that we should do this in the DoD -- I don't
22 exactly understand what the DoD is in

1 relationship to each armed force. Is that
2 something that's a separate bureaucracy that
3 we're talking about, just like the Pentagon,
4 or is it --

5 COL HAM: Yes, I think it's a
6 chance to kick it up one more time.

7 REP. HOLTZMAN: Oh, okay. I just
8 wanted to make sure that I understood that.
9 Okay. I'm not opposed to that. That's fine.

10 CHAIR FERNANDEZ: Okay. Let's
11 move to seven.

12 REP. HOLTZMAN: I just had
13 clarifying language for recommendation seven.
14 That's all, but I'm not going to bother giving
15 it to you now. I'll just send it to the
16 staff.

17 CHAIR FERNANDEZ: Okay. I think
18 we need to make a determination around eight.
19 I know Bill still isn't in here, but I think
20 it was pretty clear that Bill just didn't want
21 this in there. But I also want to iterate
22 that he wasn't going to, he also said he

1 wasn't going to be scandalous if we did keep
2 it in. So I just want to keep that balance in
3 mind.

4 COL HAM: That's Mai speaking?

5 CHAIR FERNANDEZ: Yes, that's Mai
6 speaking. I'm so sorry.

7 DEAN ANDERSON: Yes, this is
8 Michelle on finding eight and recommendation
9 eight. I think they do capture the dialogue
10 of what at least the majority opinion was on
11 the Subcommittee for victim services about the
12 right of allocution during pre-sentencing. So
13 I think they accurately, defining the
14 recommendation accurately reflect our
15 dialogue. I also think they're according for
16 the process of victim healing, which obviously
17 is within the scope of what we're trying to
18 analyze here.

19 DEAN SCHENCK: Okay. This is
20 Lisa. On pre-sentencing, the government has
21 the opportunity to present matters in
22 aggravation. We're talking about pre-

1 sentencing in this recommendation, so merely
2 what this recommendation is doing is allowing
3 for the government the ability to do exactly
4 what they can do under the Manual for Courts-
5 Martial anyway and the rules of courts-
6 martial. Matters in aggravation specifically
7 includes victim impact, so I don't see -- I
8 know Bill's not on the line, but I don't --

9 DEAN ANDERSON: Lisa, this is
10 Michelle. I think it was a question of
11 clarification of this matter.

12 COL HAM: Dean Schenck, this is
13 Colonel Ham. I think the issue that the
14 Subcommittee would change under current
15 government aggravation rules is they would
16 permit an unsworn statement by the victim or
17 a written statement, not sworn, not subject to
18 cross-examination, by the victim, which, as
19 you know, is not the norm, unless it's part of
20 a plea agreement or the defense doesn't
21 object.

22 So for military justice wonks,

1 that would be the difference. That would be
2 the change. Does that make sense?

3 DEAN SCHENCK: This is Lisa. I
4 got cut off again. I'm sorry. And you were
5 just saying for clarification of the language
6 --

7 DEAN ANDERSON: Actually, Colonel
8 Ham has actually clarified something, and I
9 think she's right. I was incorrect in stating
10 that this is a clarification.

11 DEAN SCHENCK: Oh, okay.

12 DEAN ANDERSON: We're talking
13 about unsworn. I'm sorry. Go ahead, Colonel
14 Ham.

15 COL HAM: I'm sorry. I'll try and
16 do it shorthand the second time. Dean
17 Schenck, for the military justice wonks, like
18 you and me, the change to the government's
19 ability to present aggravation by this
20 Subcommittee recommendation, as the staff
21 understands it, is it would now permit the
22 government to, it actually would be the

1 victim's right, whether or not the government
2 wanted to do it, to testify in an unsworn
3 manner, present an unsworn statement or a
4 written statement not subject to cross-
5 examination. That would be the change that
6 this recommendation, supported by its finding,
7 would make. Does that make sense?

8 DEAN SCHENCK: Yes.

9 REP. HOLTZMAN: And that would be
10 with respect to sentence; isn't that correct?

11 DEAN ANDERSON: Right. The second
12 half of the court-martial. Again, I thank you
13 for the clarification, but I still, you know,
14 I think that our recommendation is fine. I go
15 with the recommendation of the staff.

16 COL HAM: And Mr. Cassara
17 disagrees with the recommendation and would
18 provide a separate statement on it. Just to
19 encapsulate his view, he believes the right to
20 cross examine the victim in sentencing,
21 although rarely exercised, is an important way
22 for the accused to present matters in

1 extenuation and mitigation that would be lost.

2 DEAN SCHENCK: Yes, noted and
3 disregarded. This is Lisa Schenck.

4 REP. HOLTZMAN: This is Liz
5 Holtzman. I just have kind of a wording issue
6 here, which is, number one, we should make it
7 clear that we're talking about sentencing;
8 and, number two, the language both in the
9 finding and the recommendation should track
10 each other. I mean, we use allocution in the
11 recommendation, and we don't use it in the
12 finding. So try to use comparable language
13 because we're talking about the same thing.

14 CDR KING: I really didn't spend
15 much time working on this because it wasn't,
16 you guys hadn't really discussed it yet or
17 voted on it. So that was kind of a
18 placeholder for it until you discussed it.
19 And just for my clarification, Dean Schenck,
20 are you saying that you agree it should be a
21 right to present an unsworn statement or not
22 an unsworn statement?

1 DEAN SCHENCK: No, I agree. If
2 the accused gets the unsworn statement, I
3 believe the victim should get the unsworn
4 statement.

5 CDR KING: And we'll certainly
6 change the testimony to that. I just left it
7 more general because you hadn't decided on
8 anything as a group at all yet.

9 JUDGE MARQUARDT: This is
10 Christel. Do we need to explicitly say that
11 that right does not include the right of
12 cross-examination?

13 CDR KING: If it's an unsworn
14 statement, I think it's pretty well understood
15 in the manual that that does not include the
16 right to cross-examination. And we'll put
17 that in the recommendation.

18 CHAIR FERNANDEZ: Okay. I think
19 we're done with these, folks. Sherry, what do
20 we move on to now?

21 DEAN SCHENCK: Sorry. This is
22 Lisa. Did we cover the standing issue you

1 noted in your email?

2 CDR KING: You know, we were just
3 a little bit concerned about one of the NDAA
4 requirements is that the Committee address
5 standing in some way, and so I don't know if
6 you, I just wanted to make sure that the panel
7 thought they had done that either in the Crime
8 Victim Rights or in the victim legal counsel
9 or special victims' counsel sections or if you
10 want to think about making it another more
11 specific finding on it or if you want to think
12 about it and address it at the next meeting.
13 Not everyone is here this time.

14 DEAN ANDERSON: Commander King,
15 this is Michelle. Could you clarify for us?
16 I'm kind of looking through the materials and
17 there have been a number of emails, just to
18 focus on what the standing issue is?

19 CDR KING: Yes.

20 DEAN ANDERSON: Because I can't
21 seem to find the relevant materials on it, so
22 I apologize for that.

1 CDR KING: I think

2 COL HAM: Ma'am, this is Colonel
3 Ham. I'm looking through your terms of
4 reference. They're just specific direction to
5 the full panel, which falls under this
6 Subcommittee purview, to assess whether the
7 roles and responsibilities and authorities of
8 the special victims' counsel should be
9 expanded to include legal standing to
10 represent the victim during investigative and
11 military justice proceedings.

12 So you've had long discussions,
13 and I believe Meg Garvin's position was that
14 there already is standing, so there is no need
15 to make a recommendation. I guess our point
16 as a staff is Congress has directed an
17 assessment of that, so the question for the
18 Subcommittee is, even if you believe it's
19 already settled, should there be something in
20 writing in your report about it?

21 DEAN ANDERSON: Yes, I think --
22 this is Michelle again, and I appreciate that,

1 Colonel Ham. I do think that Meg has
2 indicated that there are a number of areas
3 that are, from her perspective as an advocate
4 for victims, hopefully settled but, from the
5 perspective, from a wider perspective, could
6 stand clarification in manuals, in the law,
7 etcetera. This seems like one of those areas,
8 and I think a recommendation on that would be
9 appropriate.

10 REP. HOLTZMAN: Excuse me. Would
11 that be more appropriate in the other section
12 on legal counsel?

13 DEAN ANDERSON: This is Michelle.
14 In response to Representative Holtzman, I
15 think the recommendation would be that crime
16 victim, I'm sorry, that victim's counsel would
17 have standing to represent the victim during
18 the investigation phase. I think that's what
19 a number of these issues around what's
20 discoverable and what the process is for that
21 might emerge. Is that correct, Colonel Ham,
22 from your understanding?

1 COL HAM: I'm looking towards
2 Kristin McGrory, who's looked at this issue.
3 Kristin, do you want --

4 CDR KING: I think -- this is
5 Sherry. We did make one recommendation last
6 time. In your victim rights recommendations,
7 it says that -- let's see. I can't remember
8 exactly what it said. It says every time you
9 refer to the victim, you're also referring to
10 the victim's counsel.

11 REP. HOLTZMAN: Yes, if you want
12 to throw something into there, you could say
13 that the victim has, wherever the victim has
14 a right to appear or a right to be heard, you
15 know, the victim may be heard by counsel,
16 through counsel. I mean --

17 COL HAM: Represented by counsel,
18 yes.

19 REP. HOLTZMAN: I think that point
20 is already there, but, you know, if it needs
21 to be strengthened, I think that's where it
22 should go.

1 COL HAM: I'm sorry, ma'am.
2 That's in finding seven and recommendation
3 seven, and the issue there, and we don't get
4 too far into the weeds, is the case that Ms.
5 Garvin discussed has only dealt with rape
6 shield issues. So whatever withholding is,
7 our concern, as far as your discussions and
8 recommendations go, is that's what it is right
9 now, it's a holding on a rape shield issue.
10 And if you wanted to clarify that you believe
11 it should be broader, that might be
12 appropriate for an additional finding and
13 recommendation. So I think that's what
14 finding seven and recommendation are, if the
15 Subcommittee agrees.

16 DEAN ANDERSON: Yes, the
17 recommendation seven -- this is Michelle --
18 appears itself to be fairly broad language.
19 The finding is in some ways incommensurate
20 with the recommendation because of its
21 reference to a case that's limited to rape
22 shield issues.

1 However, the second sentence in
2 the finding I think does the work that it
3 needs to do. You know, future litigation on
4 this issue may ensure, and, therefore, the
5 recommendation is that, across the board, the
6 victim's right to be heard includes the right
7 to be represented by counsel.

8 REP. HOLTZMAN: Yes, right. This
9 is Liz Holtzman. I created new language or
10 suggested new language which has now been
11 forwarded to the Committee but saying in
12 recommendation seven that SECDEF should
13 recommend an appropriate amendment to the
14 Manual for Courts-Martial to clarify that all
15 references to a victim's rights be heard
16 includes the right to be heard through counsel
17 because I thought the language wasn't very --

18 CHAIR FERNANDEZ: I think that's
19 clear. This is Mai. I like Liz's wording.

20 REP. HOLTZMAN: So I'm sending it
21 over.

22 COL HAM: Ma'am, Representative

1 Holtzman, and Subcommittee members, there's an
2 issue of whether the right to be heard and
3 standing are the same thing.

4 REP. HOLTZMAN: Well, so maybe
5 what you say is amend that to clarify that all
6 references to a victim's right to be heard or
7 to a victim's standing also includes a right
8 to be heard through counsel or that the
9 counsel -- I haven't written it, but that's
10 easy to change. That could be changed.
11 Colonel Ham, thank you for raising that point.

12 COL HAM: And Kristin McGrory has
13 thought and looked a lot at this, so I'm
14 asking her if she had any other advice.

15 MS. MCGRORY: No, ma'am. This is
16 Kristin. That was my only concern. The way
17 Kastenberg is written, the right to be, it's
18 a standing issue but the right at issue in
19 that case was the right to be heard. So the
20 right to be heard was violated in that case.
21 So I think it just needs to be clear, when
22 you're talking about standing, you are

1 standing whenever a violation of any right
2 occurs, versus a right to be heard. That was
3 my only concern.

4 REP. HOLTZMAN: Okay. So maybe
5 just to redraft both of these so it makes it
6 clear that you're referring to both of them --
7 this is Liz Holtzman -- would be appropriate.
8 That's all.

9 I'm sorry. I have to get off
10 because I have a 4:00 conference call, and I
11 have to leave my office now. So sorry,
12 everybody. Mai, thank you very much, and I'm
13 sorry I have to leave a little early. But I
14 appreciate all the work the staff has done,
15 hard work, good work. Bye-bye.

16 CDR KING: Do you want to move,
17 since people are going to have to get off, and
18 discuss if we can have an extra meeting
19 because we're going to run out of time and
20 it's taking a lot more time for us to go
21 through all these things than we expected it
22 would. So can we, can I just send out an

1 email asking for availability and pick a date
2 for another meeting?

3 DEAN SCHENCK: This is Lisa.
4 You're talking about an in-person meeting,
5 Sherry?

6 CDR KING: No, I'm talking about
7 phone meetings.

8 DEAN SCHENCK: Okay. Yes, that
9 sounds good to me.

10 CDR KING: I'll do a poll and do
11 it. If we could, in the last few minutes,
12 instead of going through the special victims'
13 counsel, if we could just get some discussion
14 on the framing the issue topic so that
15 Rachael, Rachael has been working on that and
16 trying to put findings to put together in
17 that, but we're kind of a little bit not sure
18 where you want to go with it --

19 DEAN ANDERSON: This is Michelle.
20 And I'm glad we're bringing up the framing
21 issue in the last few minutes. I think that,
22 for what it's worth, I have a little bit of a

1 concern about the use of the DoD surveys where
2 the answers are offered. The survey
3 instrument gives the choices for people to
4 check off about why they did or did not make
5 a report. I think, at best, those are
6 constructed responses. I think they're
7 interesting, but I don't think they should
8 provide the bulk of the analysis here because
9 the answers were constructed before boxes were
10 checked.

11 And to that extent, I think I
12 might frame this a little differently. I
13 would start with the question of how many
14 people who are sexually assaulted in the
15 military report or what percentage of people
16 who are sexually assaulted in the military
17 choose to report and what percentage choose
18 not to report or to make a confidential
19 report. And then I might also say, in the
20 civilian world, there would be a comparison
21 and contrasting there.

22 Regardless of what the comparison

1 is between the military and civilian world,
2 the next section, I think, needs to be an
3 acknowledgment of a huge problem of under-
4 reporting of sexual assault, adult sexual
5 assault in the military. And then the
6 question comes to why.

7 So, currently, the structure that
8 is here is victims' accounts around sexual
9 assault. And then immediately it moves into
10 these DoD surveys where the answers are
11 fabricated ahead of time. And what I would
12 do, after I talk about the huge problem of
13 under-reporting, I would say, well, it
14 behooves us to ask the question why, why are
15 sexual assaults under-reported?

16 And then I would talk primarily
17 about the treatment that victims have
18 experienced after sexual assault, and we've
19 got a lot of testimony from live victims and
20 also a lot in the secondary source material
21 that we distributed and analyzed. And then I
22 think we have to grapple with the structural

1 disincentives to reporting. So structural
2 disincentives to reporting, like collateral
3 misconduct, potential harm to one's career,
4 the harm to unit cohesion and one's place
5 within the unit, and then, finally, the fear
6 of retaliation by authorities or peers, both
7 of which we heard testimony on.

8 What that does is it frames the
9 issue as we have a problem of under-reporting,
10 what might be some of the structural issues
11 with under-reporting, and that sets us up to
12 make findings and recommendations on these
13 structural disincentives to reporting. That's
14 what I would suggest, and I have notes on this
15 if that would be helpful. And other people
16 may disagree about that structure, but that's
17 what I think are the key issues around framing
18 the issue.

19 CHAIR FERNANDEZ: Michelle, I like
20 that structure. The only other comment I
21 would make is that our charge is further than
22 reporting and under-reporting, and I think we

1 could do a frame of reporting is indicative of
2 other problems. But I think that the frame
3 has to be also have we been providing the best
4 services that we -- is reporting the only
5 problem here? But at the end of the day, we
6 don't disagree with you.

7 DEAN ANDERSON: Yes, I completely
8 agree with you. In the treatment victims have
9 testified about include, in part, their
10 experiences with services. And I think you're
11 right. That's a crucial part of the picture
12 and should be part of what we're talking about
13 right now.

14 CHAIR FERNANDEZ: But I think, at
15 the end of the day, what we need to make is a
16 pitch here that what we want is our troops to
17 be healthy and to be in a good position. And
18 that doesn't matter if you report or not
19 report, it will be that you get the correct
20 services.

21 So I think we first need to say is
22 that it's great if people report, but, at the

1 end of the day, if we have ready and healthy
2 troops, that is really our goal.

3 DEAN ANDERSON: Even if there are
4 sexual assault victims who do not report and,
5 therefore, sexual assault perpetrators who are
6 not brought to task?

7 CHAIR FERNANDEZ: Well, I think
8 that there's a lot -- this is Mai -- I think
9 there's a lot of people who, I think you were
10 the first one to say it, Michelle. There's a
11 lot of people who don't report, and they
12 strictly want services.

13 DEAN ANDERSON: Right, right,
14 right, right, right. That's what I think the
15 link is. That's what I think the link is.
16 And it is not our goal, I completely agree
17 with you, Mai, it is not our goal to have
18 everyone report. However, to the extent that
19 there are disincentives to reporting that are
20 not about I would like my privacy but are more
21 about I fear retaliation, that's a problem in
22 the military that we've heard about again and

1 again that we can make a recommendation on.

2 And I agree with you that the
3 services one receives, whether one reports or
4 not, are crucial. Many of the services one
5 receives only happens if one makes a report.
6 For instance, everything we've been talking
7 about in terms of victims' rights, they don't
8 particularly attach until there's a
9 proceeding, and that doesn't happen until
10 there's a report. So there are a lot of
11 victims that choose not to report for reasons
12 that are not valid reasons and they're more
13 about structural disincentives within the
14 military, rather than a desire to maintain
15 one's privacy.

16 CHAIR FERNANDEZ: Right now, what
17 I saw was a total emphasis on reporting and
18 not reporting. And I think the frame has to
19 be bigger. It's about how do you get these
20 men and women into a better place, and I think
21 that that needs to be an overarching frame.

22 And then we can kind of start

1 narrowing the frame to, well, what do we do
2 about reporting and why don't people report.
3 But I think the very first thing we've got to
4 say is it's a real personal choice to report
5 or not report, and people do it for, I mean
6 there's a lot of reasons that don't go with
7 the structural disincentives. It's strictly
8 I don't want to come forward, I just don't.

9 DEAN ANDERSON: I don't have any
10 problem with a broader lense that begins the
11 framing that it's about the health of the
12 troops overall. I have no problem with that,
13 Mai.

14 CHAIR FERNANDEZ: So I think that
15 that needs to be the initial frame, and then
16 we start going into -- so the initial frame is
17 healthy troops and having services available
18 in all the different ways we talk about for
19 the troops if they report or if they don't
20 report.

21 We know that if they report,
22 there's going to be additional services that

1 they can get. So there should be incentives,
2 and you're also holding perpetrators
3 accountable. Then you can get into what are
4 the disincentives not to report in those
5 circumstances.

6 And then you can talk about, okay,
7 these are the things we're recommending, we're
8 making recommendations for, so we're
9 recommending for services to be made
10 available, more widely available for people
11 who don't want to report at all. And then
12 we're trying to provide, trying to take away
13 those structural disincentives for people who
14 do want to report.

15 DEAN ANDERSON: Yes, I agree with
16 that. I think that's great.

17 CHAIR FERNANDEZ: That would be
18 the frame that I would put on it, you know,
19 not just tie it to the survey because there
20 are so many problems with that survey that I
21 actually think that we're doing ourselves a
22 disservice by using it as our principal source

1 of reference.

2 DEAN ANDERSON: I completely
3 agree. This is Michelle. Yes. The summary
4 reads right now, the summary is like sexual
5 assault is not just a military problem. Well,
6 given that there is no one claiming that,
7 that's not something to prove and it should
8 not show up in our report. Nobody is saying
9 this is a problem exclusive to the military.
10 No one is claiming that it's a problem only in
11 the military. It's just a question asked
12 repeatedly throughout the process. We've made
13 comparisons between the military and civilian
14 world.

15 But I really don't think that our
16 summary should be like, newsflash, this is not
17 just a military problem. Rather than just a
18 summary, I think we should have findings and
19 recommendations on the things that we've
20 talked about that are structural disincentives
21 to reporting, as well as the services for
22 victims who do report and don't report.

1 CHAIR FERNANDEZ: The services for
2 victims are going to be, we have a whole
3 victim services section coming that includes
4 all the SAPR programs, all the advocates who
5 work in it, the SARCs, DAs, all the different
6 advocates, all the victim advocates, all the
7 family advocates, all the, you know, all the
8 kind of requirements about collateral
9 misconduct and various things.

10 So you're going to be seeing that
11 and maybe that's kind of its own section right
12 now, and maybe that, once you see that, that
13 will help you figure out if you want parts of
14 that to go up in the framing the issue also or
15 how far to go in that section when we have a
16 whole detailed section on it, also, as far as
17 the military.

18 So it's just coming, but it's such
19 a big, complicated section. If you read it,
20 some of the SAPR directions you've read are
21 really long and very complicated. And Julie
22 has been working really, really hard to try to

1 simplify the whole process and all the changes
2 that have come over the years, and it's
3 getting reviewed and reviewed some more. So
4 it's coming, but that will help maybe you
5 figure out what you want in this section. But
6 we at least wanted to start getting some ideas
7 from you.

8
9 COL HAM: This is Colonel Ham. I
10 understand all the discussion, and we can
11 incorporate all this into the framing the
12 issue. Throughout the terms of reference and
13 direction of Congress, the adequacy of systems
14 to support and protect victims in all phases
15 of an investigation, prosecution, and
16 adjudication, which seem to presuppose a
17 report. Do you want to, it sounds like you
18 want us to address that that's not where
19 you're looking exclusively.

20 CHAIR FERNANDEZ: I don't know. I
21 honestly think that if you just look at that,
22 you're going to miss the majority of victims

1 every single time.

2 COL HAM: Was that Mai?

3 CHAIR FERNANDEZ: Yes, that was
4 Mai.

5 COL HAM: Okay. I'm not
6 commenting one way or another. I'm just
7 reading the words that Congress directed the
8 --

9 JUDGE MARQUARDT: Well, you know -
10 - this is Christel. I have looked at that
11 framing the issues, and I agree. I mean, all
12 the percentages are so misleading that I don't
13 think that the way that it was handled should
14 even be included. But I agree with Michelle
15 that part of the issue that brought all this
16 to light was that people were not reporting,
17 and now that they are because they have some
18 protections I think is a major part of what
19 we're doing.

20 COL HAM: Again, all we have is
21 that SAPRO study. I understand there are a
22 lot of issues with it. It shows increases in

1 reporting from the mid 2000s until now. So
2 one thing we have to be careful of is the
3 accuracy of the statements we make. Unless
4 you want us to comment on the survey, which
5 this subcommittee hasn't examined --

6 JUDGE MARQUARDT: No, I'm not
7 suggesting that we do that. But like I say,
8 I think that our particular direction is that
9 we have to look at why people were not
10 reporting.

11 DEAN SCHENCK: This is Lisa. It
12 seems that the failure to report is a general
13 issue throughout everywhere: campuses, society
14 in general. I mean, there are numerous
15 scientific studies indicating that it's under-
16 reported. Even the National Academies of
17 Sciences report we just received I think
18 indicates that it's the number one most under-
19 reported crime. Do we really have to go there
20 with specifics? I mean, that's just, seems to
21 me, a general fact.

22 JUDGE MARQUARDT: But the military

1 is very different from the civilian side of
2 it.

3 DEAN SCHENCK: This is Lisa. But
4 did we study that in our Subcommittee, you
5 know --

6 CHAIR FERNANDEZ: Study what,
7 Lisa? Study what, Lisa?

8 DEAN SCHENCK: Should we study the
9 reasons why in the military we are under-
10 reported and why our reasons are victims are
11 under-reporting, those reasons, and how
12 they're different from the civilian sector?

13 DEAN ANDERSON: No, I mean, I
14 think -- this is Michelle -- when you were off
15 the phone, we talked about pretty much exactly
16 what you're saying, which is a comparison with
17 the civilian world, at least what I think
18 you're saying, which is that no one is
19 claiming that this is an issue that's
20 exclusive to the military and there are a lot
21 of limitations with the studies that center
22 right now what the document says, the draft,

1 including giving the answers to victims to
2 check off.

3 And so we thought it would be
4 better for us to talk about the actual victim
5 testimony we received about the treatment
6 victims experienced when they were assaulted
7 and reported or didn't or involuntarily
8 reported, as it were, because someone told
9 somebody. So the responses by both the
10 command structure and the peers, which I think
11 is a crucial piece that we haven't really
12 addressed anywhere else in the document.

13 I mean, I think that this is a
14 hard piece to write, and I give the staff
15 credit for trying to take a stab at it. I
16 think the hardest part is collecting the
17 victim testimony, but it looks like from the
18 draft that there's already an intention to do
19 that. So I don't think we're suggesting
20 anything that the staff isn't already in the
21 process of plowing through, and it will be
22 interesting to see the next iteration.

1 CHAIR FERNANDEZ: I think we've
2 given you some food for thought. Why don't
3 you take this and go and see where you can go.
4 I think there's some consensus that we stay
5 away from the survey as much as possible, but
6 the claim that this is under-reported all over
7 is a given and we don't want to focus on that.
8 And I think it's the -- overall, we want to
9 give services to folks who don't report, and
10 then we want to create incentives for people
11 to report. We want to identify why they're
12 not reporting and then give them incentives to
13 report.

14 CDR KING: That helps us, I think,
15 in at least getting kind of a focus on it.

16 CHAIR FERNANDEZ: Okay.

17 CDR KING: This is a hard one
18 because we really hadn't spent a lot of time
19 on it and it really didn't have any focus. We
20 were just trying to kind of combine some of
21 the topics you had addressed before that
22 didn't really go in or that didn't really fit

1 in in any other section that we had so far,
2 and we weren't quite sure how to even get
3 going on it.

4 CHAIR FERNANDEZ: No, I think it's
5 a hard thing to do. Okay, folks. We've been
6 on the phone for an hour and 45 minutes.

7 DEAN ANDERSON: Thanks, everyone.
8 That was Michelle.

9 CHAIR FERNANDEZ: I think, Bill,
10 do you need to close?

11 MR. SPRANCE: I do, Ms. Fernandez,
12 I do. This meeting is now closed.

13 (Whereupon, the foregoing matter
14 was concluded at 4:16 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: 04-03-14

Place: teleconference

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