

UNITED STATES DEPARTMENT OF DEFENSE

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RESPONSE SYSTEMS TO ADULT SEXUAL  
ASSAULT CRIMES PANEL

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MONDAY  
JUNE 16, 2014

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The Panel met in the Thurgood  
Marshall United States Courthouse, Courtroom  
506, 40 Centre Street, New York, New York, at  
9:00 a.m., Barbara Jones, Chair, presiding.

PRESENT:

The Honorable Barbara Jones, Chair  
Harvey Bryant  
Colonel (Ret.) Holly Cook  
Brigadier General (Ret.) Malinda Dunn  
Mai Fernandez  
Professor Elizabeth Hillman\*  
The Honorable Elizabeth Holtzman  
Vice Admiral (Ret.) James Houck  
Brigadier General (Ret.) Colleen McGuire

STAFF:

Maria Fried, Designated Federal Official  
Colonel Patricia Ham, Staff Director  
Lieutenant Colonel Kyle Green

\*via teleconference

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

(9:25 a.m.)

CHAIR JONES: All right, I just wanted to start by saying that I really want to thank the staff for the work that they have done on this draft final report.

(Applause.)

CHAIR JONES: And I have to say I have never seen so much written so well so quickly. It has just been amazing. So, thank you again.

What I thought the best thing to do this morning, since a couple of the members of the panel have to leave on the early side, is talk about our overview, I believe is what it is called in here, and by that I mean the important things that we would consider takeaways from the year that we have spent figuring all this out or not figuring it out but at least studying it. Because it seems to me that there are things that we might want to say that haven't yet been put in this text,

1 which is a terrific text and has lots of facts  
2 and our recommendations and findings. But  
3 there may be some other conclusions or other  
4 statements that we might want to make, I  
5 thought.

6 And also in doing this, we will  
7 pick out the most important messages that we  
8 want this report to send. And I thought the  
9 best way to handle discussion of it would be  
10 to just take a look again on pages 7 and 8 of  
11 what it is that Congress has tasked us with  
12 because, certainly, we need to make sure that  
13 we concentrate on these, both in the Executive  
14 Summary and also now in our discussions about  
15 whether there are additional statements,  
16 takeaways, if you want to call them that, that  
17 we may want to make.

18 Beth, I wanted to start, actually,  
19 by talking about comparisons a little bit  
20 because they were a major part of what  
21 Congress wanted us to do. And your  
22 subcommittee did a phenomenal job comparing

1 the military system with the civilian world,  
2 including investigators, prosecutors, how  
3 things were adjudicated. But I wondered if  
4 one of the things we didn't want to say or we  
5 do want to say, rather, is make it pretty  
6 clear that when they asked us to do all these  
7 statistical comparisons, that in fact they are  
8 almost impossible to do.

9 So, if they are disappointed that  
10 we haven't compared conviction statistics and  
11 other data like that, just a simple statement  
12 that one, and I think we do some of this in  
13 the report, it is impossible to make those  
14 kinds of apples to apples comparisons but then  
15 also to go on and say, and this is where I  
16 think we should have some discussion, that we  
17 believe, however, based on the testimony,  
18 based on all the site visits, based on all the  
19 work we did, that the military systems compare  
20 very favorably with civilian systems. That we  
21 are, in many instances, we meaning the  
22 military systems, are in many instances

1 already using best practices. And in fact,  
2 the military system has its own practice now,  
3 the Special Victim's Counsel, which doesn't  
4 exist in the civilian world.

5 And I just wondered if a statement  
6 like that as one of our takeaways would be  
7 something that you think, one, is correct, and  
8 two, would make sense in the context of the  
9 report.

10 Beth, are you still there? We  
11 lost her.

12 PROFESSOR HILLMAN: No, no, I'm  
13 here. Pardon me. I was on mute. Can you  
14 hear me now?

15 CHAIR JONES: Yes, we can.

16 PROFESSOR HILLMAN: Thank you for  
17 the comments. I think that is right. I think  
18 we can say and should say something along  
19 those lines, that the last current draft of  
20 the Executive Summary of the Comparative  
21 Systems Subcommittee gestured in that  
22 direction. We also included in the discussion

1 quite a few statements of that. Just noting  
2 that I focus on the fact that the data we have  
3 is still relatively scarce and this is a  
4 difficult problem to characterize accurately  
5 in the civilian or the military and that we do  
6 make many concrete recommendations to improve  
7 the quality of comparisons that Congress asked  
8 us to do now but, you are right, we actually  
9 can't do effectively, given the current  
10 situation.

11 CHAIR JONES: All right. And I  
12 think we can certainly start in terms of  
13 drafting those sentiments by looking at the  
14 subcommittee's report. Mai.

15 MS. FERNANDEZ: Beth, tell me if  
16 you agree with this. In certain situations,  
17 we asked, we had a lot of deliberation of  
18 whether to say these changes should be made to  
19 the military system and we said, we decided it  
20 was better to study it in certain  
21 circumstances. And one of that was when you  
22 have had a military judge come into the

1 situation.

2 I don't know if right up front we  
3 should also say that we have asked these  
4 things to be studied but we want a conclusion  
5 pretty quickly that it shouldn't just kind of  
6 linger in there in a sort of -- I think one of  
7 our biggest fears is that if we ask something  
8 to get studied, nothing ever happens. It just  
9 studies, the study goes on the shelf and then  
10 there is no change made if the study  
11 recommends there is change.

12 But something up-front that says  
13 these were some of the weaknesses that we saw,  
14 we asked that these things get studied but we  
15 also want, if changes are needed, to be  
16 implemented quickly.

17 COL COOK: As a follow-on to that  
18 piece, that is a good point, we know there is  
19 going to be a follow-on group looking at some  
20 of the judicial responses and their ability.  
21 Having those points that we said be studied in  
22 that process doesn't mean that all the other



1 recommendations have to wait until the end of  
2 that next review panel is completed. So, some  
3 of these, we recognize right up front, that  
4 some of these can be implemented now by the  
5 Department of Defense. Others may have to  
6 appropriately wait but that is only because of  
7 that other review panel. But that is not the  
8 bulk of everything that is in here. It is the  
9 minority of recommendations.

10 REP. HOLTZMAN: I thought she was  
11 just referring to studies, just studies. And  
12 some of those studies can be done right now.

13 COL COOK: Right now. That's what  
14 I am saying.

15 REP. HOLTZMAN: I didn't  
16 understand okay.

17 COL COOK: That is exactly what I  
18 am saying. There may be a study or two that  
19 had to do with the traditional panels. Fine,  
20 let that one wait. But the rest of it is  
21 irrelevant to that.

22 REP. HOLTZMAN: So, I agree with

1 that. I think it is a very good point. And  
2 maybe we can bullet the different studies that  
3 we want done.

4 VADM HOUCK: And just a footnote.  
5 I think it is part of the push and pull of  
6 working through the final aspects of this.  
7 But I don't want to characterize these as  
8 weaknesses. I mean the point of a study is to  
9 study them. So, I completely agree with  
10 everything that has been done except I think  
11 we need to be careful how we characterize the  
12 issues.

13 CHAIR JONES: And I think we can  
14 also point out that with all the tasks that we  
15 had and the limited amount of time, that it  
16 only makes sense that some of this needed  
17 further study. So, I think we can add that  
18 concept in there.

19 And sort of connected to this in  
20 my mind, at least, would be to also, and this  
21 would be a separate bullet, I expect, comment  
22 on the vast amount of change, new programs,

1 new policies, et cetera, that has taken place,  
2 implemented either by the Department of  
3 Defense or by Congress and that it needs to be  
4 assessed. It takes time to assess it. I  
5 don't know that we want to say that it is time  
6 to sit back and try to figure out where we are  
7 at. But I think we have to comment on the  
8 amount of time, the very short amount of time  
9 and the great amount of change that has  
10 occurred and think of a way to talk about why  
11 don't we assess now for a little while?

12 I don't know how people feel about  
13 that. And I don't want to say to Congress  
14 don't do anymore. But I think we ought to  
15 impress upon everybody who is looking at this  
16 problem that we need to take a breath at some  
17 point and figure out how these programs are  
18 actually going to be developed and work.

19 Mai?

20 MS. FERNANDEZ: The Victim  
21 Services Subcommittee also acknowledged that  
22 in our work. And we might want to mirror some

1 of the language we put in there. And I know  
2 we have had some debate about cost on this  
3 before but I wanted to really emphasize the  
4 need for independent evaluation. I think if  
5 it is not independent and I think if the  
6 military does evaluation by itself, people  
7 aren't going to believe it. And if it is only  
8 done by somebody who is seen as having no  
9 bias, that there is going to be real  
10 credibility given to any evaluation that is  
11 done. And that should be put up front.

12 CHAIR JONES: So, I think when you  
13 talk about cost you want to emphasize that  
14 nothing is going to continue to work unless it  
15 is sustained and has the resources to sustain  
16 it.

17 MS. FERNANDEZ: Well, we also  
18 talked that independent evaluations are  
19 costly.

20 CHAIR JONES: Oh, I see. Well, I  
21 actually, then have two bullet points.

22 MS. FERNANDEZ: Yes.

1                   CHAIR JONES: I have a resources  
2 point and then I agree we have a lot of  
3 recommendations along this line about how  
4 important independent evaluations are for  
5 credibility. So, that would also be a  
6 takeaway that I think is very important.

7                   Jim?

8                   VADM HOUCK: One more comment, if  
9 I may.

10                  CHAIR JONES: Yes.

11                  VADM HOUCK: We are, a number of  
12 us are close enough to the system that when we  
13 say things like the Joint Service Committee  
14 ought to have an opportunity to look at  
15 something, it has meaning to us and we know  
16 what they do. As we do this with an eye on  
17 how others will perceive this, I am not sure  
18 that external audiences will have any idea  
19 what the Joint Services Committee is. And it  
20 may be at the risk of killing more trees, it  
21 may be worth some explanation about what their  
22 role is, which, as I understand it is, it is

1 a very detailed and careful internal group  
2 that looks at this thing with an eye toward  
3 how it is actually -- looks at these issues  
4 with an eye toward how can it actually be  
5 implemented and the second and third order of  
6 effects of changes.

7 And because it is made up of  
8 experts that work very closely with these  
9 issues, they are, in some respects, the only  
10 ones that will be able to anticipate what the  
11 third order effects of these changes are.

12 So, it is not that we are wanting  
13 to study for the sake of study, to slow grow  
14 the change, it is that we want to propose  
15 practical solutions that are going to get it  
16 right. And I think that Joint Services  
17 Committee and other similar groups, if there  
18 are such, are the part of the getting it  
19 right.

20 CHAIR JONES: I think that is  
21 great to add. And I think the notion of we  
22 have made a lot of recommendations, I think we

1 have worked very hard and we hope that they  
2 are all practical and they are going to work.  
3 But I think to talk about it in terms of we  
4 need to make -- you know we recognize that  
5 these solutions, we hope these solutions are  
6 practical, makes a lot of sense. Because,  
7 obviously, some of these other committees have  
8 a lot more, at least military, expertise in  
9 terms of the nuts and bolts and how things are  
10 actually going to work or not going to work.

11 MR. BRYANT: If I may.

12 CHAIR JONES: Yes, Harvey?

13 MR. BRYANT: With all due respect  
14 to the Joint Services Committee, it is made up  
15 primarily of the folks who run the military  
16 justice system or the Department of Defense  
17 and the various services. It has been in  
18 existence for a long, long time and it just  
19 seems to me that if the Secretary of Defense  
20 or Congress felt like this was the group that  
21 could and should or was in a position to do  
22 the things they asked us to do, they would

1 have asked them to do it.

2 It is just a repetition of things  
3 I have said before in other meetings. And I  
4 think that we should take a stand on some of  
5 these issues ourselves, rather than asking  
6 somebody else to look at it. Because I think  
7 we have certainly had an ample opportunity to  
8 assess a lot of these things.

9 PROFESSOR HILLMAN: Judge Jones?

10 CHAIR JONES: Yes, Beth.

11 PROFESSOR HILLMAN: It is a little  
12 tough for me to hear you all, so I apologize.  
13 I am not catching everything.

14 I just wanted to say I agree with  
15 Mr. Bryant. I think there is real tension  
16 between what Mai just said about having  
17 external review and assessment and sending  
18 things to the Joint Service Committee. I mean  
19 just so everybody -- I think you all know this  
20 better than me, the membership of the Joint  
21 Service Committee is a representative of the  
22 TJAG, the Army, the Navy, the Air Force, the



1 SJA to the Commandant of the Marine Corps, and  
2 then somebody from Homeland Security to  
3 represent the Coast Guard. So, it is  
4 definitely an insider group that is not  
5 intended to make recommendations for the kind  
6 of changes that we have been talking about.

7 VADM HOUCK: So, I think we are  
8 missing a nuance here. And I think that the  
9 nuance is -- there are a couple.

10 First, I am not proposing anything  
11 new this morning. A number of our  
12 recommendations that we have voted on and  
13 settled on already recommend that these things  
14 be addressed or looked at further by the Joint  
15 Services Committee.

16 So, I am not proposing that we add  
17 anything new or that we go back and revisit  
18 any of those. I am simply proposing that we  
19 include a brief bit of explanation about what  
20 the Joint Services Committee is and what it  
21 does. Because I think outsiders may not  
22 understand that.

1 I think the other point is that  
2 more broadly this is about, this is a part of  
3 the process of civilian control. And so, I  
4 think to simply suggest that the Joint  
5 Services Committee has been in existence and  
6 hasn't done anything about these issues  
7 through the years misses a fundamental point,  
8 which is to say that the joint services  
9 committee works for the Secretary of Defense,  
10 ultimately.

11 And so Congress passed the law  
12 that enacted this panel. This panel has  
13 looked at issues and is going to make  
14 recommendations to the Secretary of Defense.  
15 The Secretary of Defense then tasks the group  
16 that works for the Secretary of Defense to  
17 ensure that these recommendations, if they are  
18 going to be implemented, are going to be  
19 implemented in a way that make sense.

20 It is part of the evolution. It  
21 is part of the ongoing dialogue and process  
22 between civilians and the military. So, I

1 think to say that the group is insiders that  
2 have had a chance to fix this for years, I  
3 mean fundamentally misses a number of issues.

4 But at the end of the day, I don't  
5 think any of it is necessary. I am just  
6 simply proposing an explanatory paragraph  
7 about what the Joint Services Committee does.

8 REP. HOLTZMAN: It is my view, and  
9 I think these views are really not  
10 irreconcilable, one might not necessarily look  
11 at the Joint Services Committee to initiate  
12 brand new ideas. That is our job.

13 What they do that is perhaps a  
14 little more useful is to bring their  
15 experience to bear on the implementation, as  
16 opposed to the idea itself.

17 I mean if we are looking for  
18 solutions in terms of creative new ideas, Mr.  
19 Bryant, I agree with you. If we are looking  
20 at them to sort of vet what we are saying, say  
21 well, have you really thought that if you do  
22 this down the line somewhere you are going to

1 need XYZ or this is the problem that has been  
2 created, I think that is very useful. That's  
3 all. I don't want to put words in your mouth  
4 but I think that that is what we are saying  
5 here. And so, I think it is really important  
6 that our ideas be vetted. We have tried to  
7 but we are not perfect. I know we are very  
8 close to perfect. Not 100 percent.

9           So, I think it is a good idea to  
10 have some other people take a look at what we  
11 have done. But I agree with you, we could  
12 never rely on them and that is why Congress  
13 asked us, an independent body, to come up with  
14 the ideas.

15           CHAIR JONES: Mai?

16           MS. FERNANDEZ: Clarity for  
17 clarity's sake, so I understand. The Joint  
18 Services Committee would look at  
19 implementation. An independent evaluation  
20 would be justice work.

21           CHAIR JONES: Absolutely.

22           MS. FERNANDEZ: So, if you sort of

1 said it like that; we want independent  
2 evaluation to make sure it works and the Joint  
3 Services Committee to make sure they review  
4 this to make sure it is implemented correctly,  
5 that is all we want. Right? We want  
6 something that says this works and we are  
7 going to implement it knowing all the  
8 different variables that we need to share.

9 REP. HOLTZMAN: Well, I'm not 100  
10 percent sure that that is 100 percent correct.  
11 Because if the Joint Services Committee -- the  
12 evaluation, I think is totally separate. Are  
13 these programs that are ready to be put in  
14 place, are they working?

15 MS. FERNANDEZ: Right.

16 REP. HOLTZMAN: And if not, what  
17 needs to be done about them?

18 But with regard to the General  
19 Services Committee, these are ideas that are  
20 still not in practice. They are going to  
21 review them and say well, you know, come back  
22 and say oh, it is a great idea. It is going

1 to work perfectly. But suppose they come up  
2 with the thought that oh, well, there are  
3 going to be these problems and someone has to  
4 make a decision. Is it still worth going  
5 ahead? How much is it going to cost? Are  
6 these problems worthwhile.

7 I mean so I don't think you can  
8 just say that they are going to implement it  
9 no matter what. It may come back and someone  
10 may go back to the Secretary of Defense and  
11 say well, look, this is a great idea but it is  
12 not going to work or it is going to cost too  
13 much money or whatever. And then he or she --

14 MS. FERNANDEZ: I guess up front I  
15 agree with You, Representative Holtzman. I  
16 think just up-front understanding what these  
17 -- I mean we are sitting here as a panel  
18 having done this for a year and we are having  
19 a debate of exactly what does what. But a  
20 clarification up-front for making all these  
21 recommendations, there are certain vehicles  
22 that need to check these recommendations and

1 putting that information up-front so we  
2 understand how to use the Joint Services  
3 Committee and how to use an evaluation.

4 COL COOK: That is a good way of  
5 putting it. It is a check. And using the  
6 Joint Services Committee, their check is going  
7 to be limited to changes that are proposed to  
8 the Uniform Code of Military Justice. And if  
9 you change one piece of the -- it is the legal  
10 statutory change. And Colonel Ham or somebody  
11 from the Joint Services can correct that but  
12 it is not necessarily to the implementation of  
13 all of the programs. It is to what changes  
14 are we making that would change the criminal  
15 justice system in the military services.

16 And if you change one piece of it,  
17 what other piece might be affected, good or  
18 bad, and looking holistically at the UCMJ.  
19 Their focus will be limited to that. It won't  
20 be as limited to the Victim Services pieces.  
21 It won't be some of the other administrative  
22 policy issues that are out there as well,

1 their viewpoint.

2 And that is why it is good, let's  
3 find a point to say hey, let's define who does  
4 these independent evaluations outside. What  
5 goal, limited that it might be, will the JSC  
6 have?

7 What role will the joint with  
8 this new -- what was the other team we put it  
9 to? The Policy Panel. There is another UCMJ  
10 Review Panel we also put. We can define what  
11 the mission statements of each one of those  
12 up-front simply but they are limited.

13 MR. BRYANT: Well, --

14 CHAIR JONES: And I think -- yes,  
15 go ahead, Mr. Bryant.

16 MR. BRYANT: I'm looking and I  
17 looked into this before the meeting and went  
18 on their website to see what the Joint  
19 Services Committee is composed of and does.  
20 And of course, I do agree with them. He is  
21 not proposing anything new that we have as a  
22 majority of the panel already agreed that we



1 are going to do. There is no question about  
2 that.

3 But I think while we are  
4 addressing what Ms. Fernandez initiated in  
5 terms of when we send this thing to other  
6 places as we have done, what is going to  
7 happen?

8 But I just want to say, while we  
9 are talking about this on the record, that  
10 according to the website, there is a working  
11 group that meets twice a month that does  
12 research and drafts proposals. And the JSC  
13 voting group meets once a month and unanimous  
14 agreement on all proposals to amend the  
15 Manuals for Courts-Martial is the committee's  
16 objective. And they are supposed to report to  
17 the President. And Secretary of Defense  
18 fulfills his obligations by having an annual  
19 review of the Uniform Code of Military  
20 Justice, et cetera, et cetera.

21 And so I think it goes back to my  
22 point, and I know we have already voted on

1 this so I am not trying to start an argument,  
2 I am just pointing out that it seems to me  
3 that with this group in place, had it been  
4 either the Secretary of Defense's prerogative  
5 or plan and Congress' prerogative and plan  
6 when they assess or dictated what this  
7 committee was supposed to do, had they thought  
8 that JSC was the place to do that, they would  
9 have sent it there to start with.

10 But anyway --

11 CHAIR JONES: Okay. I would like  
12 to move on to another topic that I think has  
13 to be highlighted. It is one that we are  
14 highlighting because we know and have been  
15 unable to find out much about it at all, and  
16 that is the problem with male sexual assault.  
17 So, I think male sexual assault has to be  
18 highlighted and what little we know, we can  
19 certainly put in there. And I think the big  
20 takeaway is we need to know a lot more and be  
21 much more focused on it than we have been in  
22 the past.

1                   Colonel Cook?

2                   COL COOK: I think that would be  
3 fair and I agree with that completely because  
4 I had that on my notes as well. It surprised  
5 me with some of the things I read in the  
6 Victim Services Panel and at least especially  
7 one witness in particular.

8                   But I haven't seen the current  
9 training but I would put in a point that talks  
10 about the training that is currently in place  
11 within the Department of Defense really does  
12 need to be relooked to make sure that that  
13 particular issue is adequately presented. I  
14 don't recall that being something that was  
15 emphasized while I was still in, nor am I  
16 confident that it is right now.

17                   So, I would make a special point  
18 that does seem to be an area we need more  
19 information on, in particular with the  
20 training. So, it is going out to all levels  
21 of the troops.

22                   MS. FERNANDEZ: And I think part

1 of the training, at least what we recommended,  
2 was that people know what male sexual assault  
3 is. Because that is one thing that kept  
4 coming up. People don't know it when they see  
5 it.

6 CHAIR JONES: All right. There  
7 are a number of items that Congress has tasked  
8 us with that because we have been asked to say  
9 something about them, as I said earlier, I  
10 think have to go into our overview here. And  
11 those are easy to pick out. They are what I  
12 would call more discrete than some of our  
13 other tasks, like the topic of advisory  
14 sentencing guidelines.

15 I know we talked about --  
16 sentencing guidelines was clearly something  
17 they asked us to do. Oh, conviction rates.  
18 But I think we have covered that. That was  
19 something very specific in there and we have  
20 covered that already.

21 We have already done civilian best  
22 practices in the sense that we have decided to

1 discuss it. And I thought there was something  
2 else. Conviction rates, I have already  
3 mentioned.

4 COL HAM: Mandatory minimums,  
5 ma'am?

6 CHAIR JONES: Yes, I don't think  
7 that is actually in here. But since we did  
8 it, we could add it.

9 COL HAM: As I recall, ma'am, that  
10 was a request from the Secretary of Defense  
11 through the General Counsel to include them as  
12 well.

13 CHAIR JONES: Okay, right. And we  
14 certainly should respond to that as well. It  
15 wasn't from Congress per se. That refreshes  
16 my recollection.

17 Clearly, in the Defense  
18 Authorization Act of 2014, they asked  
19 specifically about Special Victim's Counsel  
20 but I think we have already agreed that that  
21 should be something we highlight in a  
22 takeaway.

1                   And I think we need to certainly  
2                   -- well maybe we ought to talk about Special  
3                   Victim's Counsel for a moment. I mean I think  
4                   all I said is that with that program, which is  
5                   only in the military and not in the civilian  
6                   world, it is really a unique program. It  
7                   needs to be assessed.

8                   But are there other things that we  
9                   want to talk about? Do we know more now that  
10                  we might want to put in there? We have  
11                  described what it is. I guess we could say  
12                  that my recollection is that the early  
13                  returns, if you want to call them that from  
14                  victims, have been extremely positive. And so  
15                  we may want to flesh that out a little bit  
16                  more.

17                  Are there other takeaways from  
18                  this?

19                  MS. FERNANDEZ: Mostly, it was  
20                  evaluation and resources.

21                  CHAIR JONES: Right. Okay.

22                  MS. FERNANDEZ: It is a highly --

1 it needs quite a bit of resources.

2 CHAIR JONES: Good, thanks.

3 REP. HOLTZMAN: The only other  
4 thing and this may be not exactly within the  
5 purview of our panel, but there has not been  
6 that much publicity about that. And I think  
7 that just my conversation is totally anecdotal  
8 with people. Well, you know, there are some  
9 terrible problems with rape in the military  
10 and nothing is happening. And they are  
11 focused entirely on this issue of the  
12 commander.

13 When I say well, the military has  
14 done all these things, and particularly this  
15 Special Victim's Counsel, people were really  
16 impressed. And so as part of the way of  
17 establishing both public confidence and the  
18 fact that the military is doing something, and  
19 also maybe even more than public confidence,  
20 victim confidence, it is really important that  
21 people understand that this tool, it is true  
22 it has not been fully evaluated and we don't

1 know 100 percent how well it is going to work,  
2 but it is empowering for victims and it does  
3 send a very strong signal that the military is  
4 not ignoring the problem with victims and  
5 ignoring the problem of sexual assault in the  
6 military. So, I think people ought to know a  
7 lot more about this than they do.

8 CHAIR JONES: No, I agree and I  
9 think that supports the notion or issue. Make  
10 sure that it is highlighted and make a big  
11 deal out of it.

12 I think it was you, Colonel,  
13 first.

14 COL COOK: And that goes to the  
15 transparency piece. I mean I had written down  
16 a couple of overarching comments whether they  
17 go into the SVC program or whether they go  
18 more generally in other areas, it relates to  
19 this part in particular, that transparency  
20 portion of letting people know what is out  
21 there was important.

22 So, I would agree with everything



1 that Representative Holtzman just said. Ms.  
2 Fernandez just said the evaluation and the  
3 resourcing but we have all made the comments  
4 up front that we have got to have the right  
5 people in these things. The military works on  
6 an assignment process and recognize that is  
7 about mission needs.

8 But in this particular area,  
9 because of the sensitivities, there has got to  
10 be some assessment in that assignment process.  
11 Do you have the right person? Does this  
12 person want to be there? So, they need to  
13 balance that assignment with some volunteerism  
14 or some conscious assessment of who is going  
15 to be in those positions.

16 And the third point in this area,  
17 but it applies to a lot more, is as we are  
18 increasing the rights for victims and we are  
19 providing more services, as we should be  
20 doing, you have got to watch how far that  
21 pendulum swings, that you are not going so far  
22 out that you are impeding the constitutional

1 rights of an accused or of somehow tilting the  
2 scales of justice in a justice systems where  
3 fairness for all sides involved has got to be  
4 kept paramount.

5 I mean it is a balancing process.  
6 We clearly need more work, at least on the  
7 victim side, but that doesn't mean that you  
8 ignore the others. There has got to be  
9 balance. So, those are just holistic comments  
10 I had. They fit in the SVC piece, as well as  
11 they do for some of the others. But I would  
12 hope that that balance process, the  
13 transparency, and making sure the assignment  
14 process has an assessment of volunteerism,  
15 somebody who wants to do the investigation,  
16 the prosecution, the Victim Services, and is  
17 the right person to be doing it. They may  
18 want to do it for their own reasons and that  
19 is not necessarily the right answer either.

20 CHAIR JONES: General?

21 BRIG GEN DUNN: I was just going  
22 to add to Representative Holtzman's comment

1 that we should make clear that the SVC program  
2 is up and running and is really a unique  
3 program.

4 But I think since we are doing an  
5 overview and we are trying to put up-front  
6 that in addition to that, it might be good  
7 just to do a summary of major programs the  
8 military has implemented over the last  
9 whatever period of years we want to choose,  
10 just a bullet list.

11 It says here are the things that  
12 are going on. And then that also ties into  
13 the analysis here. The pause, take a breath,  
14 let's see how this works.

15 Yes, but I think that would be  
16 good. Easy to see, easy to find up-front  
17 list.

18 CHAIR JONES: I agree with all of  
19 that and I want to go back and echo something  
20 you said, Colonel, about making sure that we  
21 talk about the rights of the accused and due  
22 process. And that is a stand-alone, to me,

1       takeaway from our analysis. So, it certainly  
2       can fit in in different places. But I think  
3       it is important enough to emphasize as a  
4       stand-alone commentary. Because we have to be  
5       careful when we are talking about the accused  
6       and the constitution of the United States.

7                 REP. HOLTZMAN: Just to follow-up  
8       on that point and the Colonel's point, I think  
9       we should add to that the pressure that is  
10      being brought to bear on the commander, the  
11      convening authority with all these super  
12      reviews and have that rethought. Because, in  
13      the end, I mean everyone has to think that the  
14      system is fair and not that there is a thumb  
15      on that scale. And they may have gone  
16      overboard.

17                CHAIR JONES: I think that is  
18      right and it fits right into a couple of our  
19      recommendations that we make in the report.  
20      And to the whole problem of, at least related  
21      problem, of unlawful command influence.

22                COL COOK: I would agree but I

1 would also say that that pressure isn't just  
2 internal within the military. When you look  
3 at the -- you know you can look at the one  
4 convening authority, whether you agree or you  
5 don't.

6 But if you are looking at a  
7 commander and the pressure to act, you will  
8 have the pressure from the troops. You will  
9 have the pressure from the press. You will  
10 have the pressure from the politicians but you  
11 also have the pressure from the Congress that  
12 if they don't act, even if everything is all  
13 completely right within that particular case,  
14 when they come up for nomination for their  
15 next position or their next promotion,  
16 Congress and the Senate has got people that  
17 will say we are not just going to confirm. We  
18 think they made the wrong decision, just  
19 because politically that is expedient.

20 So, that pressure is -- I don't  
21 mean to go into the specific examples in our  
22 overview, but just to recognize that pressure

1 is permeating the entire system right now.  
2 And if you are an accused that is out there,  
3 once you are accused, how are you going to  
4 feel about whether or not you get a fair shake  
5 in that process? Or if you are a commander,  
6 I am pretty confident but I know it is not  
7 going to be everybody but that they got the  
8 backbone to make the right decision because it  
9 is the right decision, regardless of the  
10 consequences.

11 CHAIR JONES: Mai?

12 MS. FERNANDEZ: I think on the  
13 flip of that, there is still not enough  
14 pressure at the very lowest levels to stop the  
15 kind of sexual harassment in changing the  
16 culture, as was emphasized by the public  
17 comment that we had when we were here last  
18 time. That if that culture of sexual  
19 harassment is not eradicated, it is going to  
20 influence all of the following: the  
21 investigations, the prosecutions, the  
22 adjudications of sexual assault crimes. That

1 more pressure has to come to bear on stopping  
2 that kind of action.

3 CHAIR JONES: I mean I think I  
4 would go so far as to go right to a statement  
5 that the most important thing is to change  
6 culture --

7 MS. FERNANDEZ: At the very lowest  
8 levels.

9 CHAIR JONES: -- and that we can't  
10 -- and that we have to focus on all levels of  
11 leadership and peer groups. It is all levels,  
12 really.

13 MS. FERNANDEZ: Yes, I don't even  
14 know if it is leadership. It is peer groups  
15 and it is not what we necessarily consider  
16 assault. It is harassment.

17 COL COOK: You could leave it all  
18 levels of military services. This is all  
19 personnel.

20 BRIG GEN DUNN: And there was an  
21 acknowledgment that so many of the programs  
22 that we have heard about in the last year are

1 focused on that. And the programs need to  
2 continue and the focus of the Secretary of  
3 Defense now needs to stay on this issue.

4 CHAIR JONES: Yes. So, something  
5 along the lines of you know, in my mind, you  
6 can make lots of changes, do what you want  
7 with the Uniform Code of Military Justice but  
8 until you change the culture of the military,  
9 you are not going to have the kind of results  
10 that you want.

11 BRIG GEN DUNN: I would maybe  
12 acknowledge that this is not a military issue.  
13 This is a societal issue that comes into the  
14 military with the young people who come into  
15 the military. But the military has a unique  
16 ability to focus on it and the teamwork trust  
17 and relationships aspect of the military makes  
18 it mandatory that we continue to focus on it.

19 MS. FERNANDEZ: And it is a  
20 message that starts with recruitment.

21 CHAIR JONES: With what?

22 MS. FERNANDEZ: It is a message



1 that starts at recruitment and continues every  
2 step of the way and is exemplified by  
3 everybody that a recruit comes in contact  
4 with.

5 COL COOK: The comment you just  
6 made, Judge Jones, I would love to see the  
7 title, not the title, but like one of the  
8 topic sentences for that paragraph was just to  
9 say we were a panel to look at the response of  
10 systems. But we all recognized that the  
11 effort should be most focused on the  
12 prevention aspect of it to start with, from  
13 the beginning. And that is where the cultural  
14 change that comes in for the prevention piece,  
15 to go back to the terms that they used.

16 BRIG GEN MCGUIRE: I wonder if we  
17 couldn't also acknowledge while it wasn't  
18 within our scope, acknowledge the parallel  
19 efforts that were going on at college  
20 campuses. Because a big recruiting base into  
21 the military comes from that age demographic  
22 and the fact that during a parallel survey or

1 study, that they determined that there was a  
2 horrific problem on college campuses. Because  
3 the military is a closed system, it is easy to  
4 measure. Campus is probably the next closest,  
5 although it is not a closed system.

6 That when you made the comment  
7 that these are folks coming into the military  
8 as well, did we want to make any mention that  
9 oh, by the way, a parallel study recognized  
10 that this is not just a military problem?

11 BRIG GEN DUNN: I think there is a  
12 paragraph in this front part that does mention  
13 that.

14 BRIG GEN MCGUIRE: Okay.

15 CHAIR JONES: And I think we can  
16 certainly do that.

17 REP. HOLTZMAN: You know but the  
18 problem is that the military is forced to deal  
19 with this problem. And also, the military is,  
20 in fact, sending very mixed messages. On the  
21 one hand, it accepts women into the system.  
22 And we understand I am just talking about

1 sexual assault on women. But it accepts women  
2 into the system and doesn't entirely treat  
3 them as equals. And what is the message that  
4 goes out about that to everyone?

5 So, I think the military has to  
6 face up to not just what is happening outside  
7 its borders but it needs to be really looking  
8 in the mirror and it can't just see a male  
9 face in the mirror. Once you have to see the  
10 male face mirror, we are in trouble.

11 CHAIR JONES: And along those  
12 lines, the military has to recognize it has a  
13 special responsibility. And in addition to  
14 that, it has an opportunity because it is a  
15 closed system and it runs on orders. So, I  
16 think those two statements have to be made as  
17 well.

18 You know I didn't ask -- I know  
19 you just said, Colonel Cook, that you had made  
20 your own list. I can continue to keep going  
21 but do you want to backtrack on it? Does  
22 anyone want to backtrack on any of the ones

1 that we have already discussed?

2 COL COOK: Not to backtrack on  
3 them. I had two others that I had to add to  
4 it. But if you go through your list, if they  
5 are not there at the end, I will add them  
6 then.

7 CHAIR JONES: Okay, great. Let me  
8 see what else I have here. Well, I think this  
9 is obvious. We need to also highlight not  
10 just the programs for victims with Special  
11 Victim's Counsel right up there but also the  
12 tremendous work that we have done, what the  
13 Victim Services Committee has done with  
14 respect to victims' rights. So, there has to  
15 be something in the overview about that.

16 And you know I think, for me, the  
17 takeaway is victims' rights have existed in  
18 the federal system. They are still developing  
19 and growing with the case law. Victims'  
20 rights have been part of the Department of  
21 Defense directives, I believe. But how to  
22 implement them, the question of standing, all

1 of those things are very new in the military  
2 system. And so, it has got to be something  
3 that we watch and I think we have said it, we  
4 are strongly, strongly supportive of trying to  
5 figure out ways to implement victims' rights  
6 at the earliest moments, which is part of what  
7 we talk about with our military judges and  
8 also as effectively as possible, which I think  
9 the answer to is having Special Victim's  
10 Counsel, who will ultimately make case law so  
11 that this will develop in the military justice  
12 system as well.

13 Any other comments on that or are  
14 there other takeaways? Colonel Cook.

15 COL COOK: I think one of the  
16 things you mentioned that it has been in the  
17 federal system. It has been in the DoD, I  
18 think one of the problems with the DoD is  
19 noting the perception is there have been the  
20 victim's rights to put in their input to the  
21 convening authority but it has never been  
22 required. It has been a matter of practice.

1                   So the perception is, whatever  
2                   rights have been there have been inadequate.  
3                   There has been a lot of initiatives that are  
4                   out there to bolster that. And that is what  
5                   you have to watch. It has always been their  
6                   perception.

7                   CHAIR JONES: You mean in the  
8                   federal DoD?

9                   COL COOK: In the military justice  
10                  system right now.

11                 CHAIR JONES: Oh, right.

12                 COL COOK: A lot of this is coming  
13                  up because the victims don't trust that they  
14                  will -- they didn't know what the convening  
15                  authority meant. Was that their immediate  
16                  commander? Was that a general? Could they  
17                  talk to the judge or not? The perception was.

18                 So advertising these things are  
19                  out there, letting people know this is a  
20                  requirement. They will see it every single  
21                  time. And they are highlighting it and then  
22                  monitoring what the reaction to that would be.

1 Special Victim Counsel is putting resources  
2 where your mouth is, just to say hey, here is  
3 yet another person who is going to speak just  
4 to you and you have that attorney client  
5 privilege. That has never existed.

6 CHAIR JONES: You know just  
7 thinking back in my experience in the federal  
8 system, there are many fewer, well, many, many  
9 fewer sexual assault victims who tend to be  
10 the victims, obviously are the victims we are  
11 focused on, and are also the victims who are  
12 most likely to need extra care and need to  
13 have their rights enforced.

14 I haven't found the federal  
15 justice system incredibly robust when it comes  
16 to protecting victims' rights. It is handled  
17 by -- I know the Department of Justice has a  
18 program and I know that prosecutors' offices  
19 have victim witness assistance programs and  
20 everything else. It may just be a lack in the  
21 kinds of cases that are done where you  
22 actually have a little victim who wants to

1       come in there and tell his or her story  
2       because the cases tend to be larger and not  
3       oriented towards personal damage, if you want  
4       to call it that.

5                       So, in that system, it is in the  
6       care of the prosecutors to make sure that  
7       victims' rights are enforced. The good news  
8       about the military justice system is now the  
9       victims have these rights and they will also  
10      have an extra person looking over it with  
11      Special Victim's Counsel. It could turn out  
12      to be, if it works, more robust than what is  
13      going on in the civilian world.

14                      What other topics? Mai?

15                      MS. FERNANDEZ: I mean just to  
16      emphasize that without the right, you can't  
17      implement some of these strategies. Because  
18      it is fine to have the Victim's Counsel but  
19      had we not provided them standing so that the  
20      victims could speak through them, but that  
21      also means keeping an eye on how victims'  
22      rights evolve. And that there needs to be an



1 ongoing oversight on that to make sure that it  
2 keeps up with the civilian world.

3 Personally, I would love for there  
4 to be a link on studying what happens with  
5 Special Victim's Counsel and see what its  
6 application would be in a much more robust way  
7 in the civilian world. Right now --

8 CHAIR JONES: I don't think we  
9 have time.

10 (Laughter.)

11 MS. FERNANDEZ: I don't know if  
12 that is going to be a comment that could be  
13 made.

14 CHAIR JONES: I know. I am only  
15 kidding you.

16 MS. FERNANDEZ: Yes, I know.

17 CHAIR JONES: No, I mean I opened  
18 the door on that. And maybe I just never had  
19 a lot of cases with victims who wanted to come  
20 in, but honestly, I don't think the federal  
21 system is the right system to actually  
22 compare. It is probably more the state

1 systems. And I know you have done that. So,  
2 my comments are pretty limited.

3 MS. FERNANDEZ: I guess my, yes,  
4 it is to look at this and see its application  
5 across all judicial systems. It is a really  
6 neat innovation that where they have clients  
7 around the country, it really does work but  
8 nobody knows about them. We are putting it in  
9 a very large scale in the military. It would  
10 be nice to see if we should be putting more of  
11 our federal resources into doing this in other  
12 places.

13 COL COOK: I think one of the  
14 reasons why it had to grow up within the  
15 military is because it is such a closed  
16 system.

17 CHAIR JONES: Yes.

18 COL COOK: It is not a system  
19 where the victims come in, whether they may  
20 have known or may not have known their  
21 attacker, the reality within the military is  
22 that the service members all continue to live

1 with each other and you have to protect the  
2 rights of the person who is now accused with  
3 the victim who is now under stress that they  
4 never envisioned they would have.

5           It is more difficult to ignore  
6 within the military. You have to address it.  
7 So, I think that is why it arose here. It  
8 would be interesting to see if somebody would  
9 ever pick up the cost. I mean personnel,  
10 money, and everything else, the time that is  
11 involved with this and putting it more broadly  
12 in the civilian system. I am not saying that  
13 wouldn't be the gold standard. I am just  
14 saying, it is an uphill battle for anyone to  
15 take that on.

16           CHAIR JONES: And I suppose if we  
17 want it to be completely thorough, we ought to  
18 also add that obviously in saying this we  
19 recognize that, again, there are constraints  
20 with respect to keeping the criminal justice  
21 system moving, time problems, delays that  
22 could be caused. So, it is not an easy road

1 but at least we are on it.

2 Okay, why don't I open it up? And  
3 I can always go back.

4 REP. HOLTZMAN: No.

5 CHAIR JONES: Oh, Liz.

6 REP. HOLTZMAN: I had some  
7 thoughts on this, just a few.

8 First of all, as a takeaway,  
9 possibly to emphasize that there is no silver  
10 bullet that is going to solve this problem,  
11 which is, in a way, what got us into this  
12 exercise to begin with. And that it is a  
13 whole panoply of programs and issues and also,  
14 probably most importantly, having victims feel  
15 that if they report they are going to be  
16 treated with dignity and respect and will  
17 receive justice. And that some of the efforts  
18 of silver bulletism are seriously misguided.

19 Secondly, the question of whether  
20 this exercise that we are engaged in should be  
21 redone and revisited in several years because  
22 the problem is serious enough. I mean, it

1 goes along with what you are saying about the  
2 evaluation and so forth. But maybe after four  
3 or five years or whatever period of time to  
4 review and see what kind of progress has been  
5 made.

6 Because going back to the point  
7 that Mai made, unless there is an outside or  
8 civilian review of this, it is possible the  
9 military may not move forward otherwise.

10 And then just finally on the point  
11 that was made about listing all the programs  
12 that we have for special victims -- I mean for  
13 victims, I think that is very important. I  
14 think giving a sense of how much progress has  
15 been made is really important. But I also do  
16 think that a few things have changed just in  
17 the last year that are really significant.  
18 And I don't think we should kind of allow that  
19 to be confused. Because people will say oh,  
20 well, you know the military did all of these  
21 things but those have been there for years and  
22 nothing changed. But things have changed. We

1 have a major increase in the number of reports  
2 and that may be because of this. We don't  
3 know 100 percent why that is the case but I  
4 suspect it has to do with the publicity, the  
5 fact that the military has been announcing  
6 that it is serious about this problem, and the  
7 creation of the Special Victim's Counsel.

8 So, those are my thoughts.

9 CHAIR JONES: Yes and I think  
10 there is no reason why we can't give a, I  
11 hesitate to use the word shout out but  
12 publicity has made a huge difference.

13 REP. HOLTZMAN: I think it is  
14 vital, not just internally. I think it is  
15 vital for the public to have confidence and  
16 also the people within the military. I mean,  
17 they read newspapers or watch TV. They see  
18 the news. I mean that is how some of this  
19 stuff gets transmitted, I am sure.

20 And then their families and  
21 friends will get a better feeling about it.

22 CHAIR JONES: In my conversations

1 with people, there hasn't been enough  
2 publicity about any number of topics because  
3 people really don't know. It would be nice to  
4 think you are going to read the executive  
5 summary of our report but I think publicity is  
6 where it is at.

7 So, I agree.

8 COL COOK: And recognizing that  
9 the cause of some of that publicity is the  
10 congressional dialogue.

11 CHAIR JONES: Oh, absolutely.

12 COL COOK: Whether you agree with  
13 any of the legislative proposals that were out  
14 there, the fact that Congress directed this  
15 panel is in the blog, the fact that you have  
16 very visible congresswomen who are out there  
17 on opposite sides but they have taken on the  
18 challenge. Regardless of win, lose, or  
19 anything, people are talking, pressure is out  
20 there, money is being put forth.

21 CHAIR JONES: And I think that  
22 should be in there.

1                   REP. HOLTZMAN: Right but that  
2                   debate, and I would actually provide some  
3                   accolades for that debate because that debate  
4                   itself --

5                   COL COOK: Without taking sides.

6                   REP. HOLTZMAN: -- has prompted  
7                   these changes and has prompted the kind of  
8                   public scrutiny and the outcry that has led to  
9                   these reforms.

10                  COL COOK: I think that debate is  
11                  exactly why they put the NDAA provision that  
12                  said this panel will do this.

13                  CHAIR JONES: Any other comments  
14                  on this? Okay, additional ones?

15                  COL COOK: The two other ones I  
16                  had to put up front in this overview is, and  
17                  I have mentioned it several times in here, we  
18                  have talked about it, is the resourcing  
19                  distribution, both in terms of money -- there  
20                  is a lot of recommendations that are in here,  
21                  a lot of very important things that need to be  
22                  done. And we are recognizing that the



1 Department of Defense and the federal  
2 government are working within a constrained  
3 environment and that there are going to be  
4 some tough decisions made. But there has got  
5 to be some conscious decisions made in terms  
6 of putting personnel authorizations and  
7 dollars behind it now and into the future to  
8 sustain this.

9 We talked about fencing  
10 congressional money but just recognizing they  
11 are going to have to do something across the  
12 board. And I still think the Secretary of  
13 Defense, you are not going to get everything  
14 you want so, you are going to have to make  
15 conscious decisions on a regular basis to see  
16 where do you need it most that year. Is it  
17 victims' services? Is it within training? Is  
18 it within the funding of the courts, whatever  
19 it is.

20 So, the resourcing portion I would  
21 like to see up front as well. And I don't  
22 know if it is in the bottom of the executive

1 summary or the overview but I, personally,  
2 would like to see in the front of our report,  
3 in that up-front, just a thank you to all the  
4 witnesses, the allies, and everybody else.  
5 You know, thank you to the witnesses, the  
6 services, the congressional witnesses that  
7 came to us, the academics, the practitioners,  
8 their time and experience that were provided  
9 to us was invaluable throughout the whole  
10 process.

11 And then a special recognition for  
12 the courage of the victims who came and shared  
13 their stories at their own expense and through  
14 their own personal investment in it. I would  
15 just like to see that up-front as part of  
16 ours.

17 REP. HOLTZMAN: What about the  
18 courage of the people who appointed us? Just  
19 a joke.

20 (Laughter.)

21 COL COOK: I'm not sure they will  
22 appoint some of us again but that's okay.

1                   CHAIR JONES: That is a definite,  
2 Colonel. I think that is a great idea.

3                   Any others?

4                   We haven't hit everything that the  
5 legislature has tasked us with. So, let me  
6 just go through them and get your sense of  
7 whether we want to highlight or call it a  
8 takeaway or what have you.

9                   Throughout, and then both '13 and  
10 '14 National Defense Authorization Acts, there  
11 is this concern of the Role of the Commander  
12 and a focus on the legislation that did  
13 involve the commander as convening authority  
14 and really what turned into the most  
15 publicized legislative debate and in fact,  
16 took up a lot of time in the Role of the  
17 Commander Committee.

18                   So, it seems like it should be in  
19 there as a takeaway. We have talked about it  
20 a lot. We are all on record with what we  
21 think about it. But I would be happy to hear  
22 any particular thoughts that anyone might want

1 to put in in terms of an overview or a  
2 takeaway.

3 Admiral?

4 VADM HOUCK: Yes, very simply, I  
5 think that commanders have been fundamental to  
6 any positive changes that have taken place in  
7 the military, particularly, over the past 50  
8 years, 50, 60 years. And I think that we have  
9 talked ad nauseam about the importance of  
10 commanders and the importance of commanders  
11 being accountable in some workable way for  
12 implementing the changes that need to take  
13 place. But to remove them in some fundamental  
14 way from the process is not the judgment of  
15 this panel, at least the majority judgment of  
16 this panel that ought to be done.

17 I haven't had a chance to read  
18 every word of this draft thing. So, maybe the  
19 sentiment is already conveyed. But commanders  
20 are fundamental to the success of everything  
21 that happens in the military.

22 BRIG GEN DUNN: I thought that the

1 language that led off the interim report on  
2 the role of the commander, the first few  
3 paragraphs, were great.

4 CHAIR JONES: The January 30  
5 report?

6 BRIG GEN DUNN: We did a good job  
7 of summarizing.

8 MS. FERNANDEZ: Judge?

9 CHAIR JONES: Yes, Mai.

10 MS. FERNANDEZ: The only addition  
11 I would make is that my recollection for the  
12 January 30th report is that to date we haven't  
13 found any evidence that removing the commander  
14 in the way that Congress was talking about was  
15 going to be usable.

16 CHAIR JONES: But i.e., increasing  
17 reporting.

18 MS. FERNANDEZ: Right, increasing  
19 reporting.

20 CHAIR JONES: Right.

21 MS. FERNANDEZ: However, that it  
22 should be something that we continue to

1 monitor and that the role of the commander and  
2 its influence on the whole sexual assault from  
3 investigation to adjudication -- I guess my  
4 issue is we didn't have any evidence to date  
5 but we might see something in the future and  
6 that we should continue to monitor this. And  
7 it could be a change that we could consider in  
8 the future again.

9 CHAIR JONES: I don't disagree.

10 PROFESSOR HILLMAN: Judge Jones,  
11 may I ask a question?

12 CHAIR JONES: Yes.

13 PROFESSOR HILLMAN: The projects  
14 by which the staff drafted this final report,  
15 which I also haven't read every word of, just  
16 a couple people just mentioned that the way  
17 things had been stated in the subcommittee  
18 reports, I think General Dunn just said, for  
19 instance, in the Role of the Commander January  
20 30 statement or whatever that it struck the  
21 right tone. How did we draft the final report  
22 here? I mean, did our staff cut and paste

1 from the subcommittee reports? Did they  
2 draft anew? I mean much of the language is  
3 different. So, some of it is new.

4 So, I just wondered, could you  
5 describe that? I didn't even actually  
6 understand the different highlights and things  
7 that are in the report and I just wondered if  
8 you could speak to that.

9 CHAIR JONES: I think what the  
10 staff did was they took parts from the  
11 subcommittee reports and then they took  
12 additional pieces to support different  
13 sections from testimony and other available  
14 information and documents that came in.

15 I am unaware of anything else  
16 being done.

17 Colonel Ham?

18 COL HAM: Yes, ma'am. Basically,  
19 your guidance, we built the text around the  
20 findings, which came out of the subcommittee  
21 reports and the recommendations. So, that was  
22 the starting point where all the factual

1 findings and your recommendations, which were  
2 all new, incorporated into the text. And as  
3 you received the drafts of the draft document,  
4 you saw all the highlighted portions, which  
5 meant those were the actual findings or the  
6 actual recommendations.

7           So, if it is not highlighted, the  
8 text surrounding the findings and  
9 recommendations, in some parts, there isn't a  
10 whole lot of text surrounding those findings  
11 or recommendations as we try to incorporate  
12 your intent to get to the essence of what you  
13 want to say in your final report, apart from  
14 all the additional detail that is in the  
15 subcommittee reports, which we are printing as  
16 an annex to your final report, a separate  
17 volume that is clearly marked as an annex.  
18 So, there will be parts, if you agree in your  
19 final report, that refer for a more detailed  
20 discussion to the annex, the subcommittee  
21 reports.

22           COL COOK: And the blue



1 highlights, just to clarify because I know I  
2 asked Colonel Ham this, the blue highlights  
3 that were in or teal or whatever color that  
4 came out on your computer that were in the  
5 draft were the actual findings and the yellow  
6 highlight -- I'm sorry -- were the actual  
7 recommendations and the yellow highlights were  
8 the findings or was it backwards?

9           Okay, the yellow highlights were  
10 the recommendations and the blue teal,  
11 whatever color highlights were the findings  
12 verbatim of the other words were around it.

13           And Colonel Green is going to  
14 talk.

15           LT COL GREEN: Not necessarily  
16 verbatim.

17           COL COOK: Okay.

18           LT COL GREEN: Particularly on the  
19 findings, we tried to make it a narrative and  
20 sort of flow. So, the language of the  
21 findings we tried to weave that in with the  
22 recommendations.

1                   One of the things the staff is  
2                   tasked with now is to look at the findings as  
3                   to the purity of the text and compare it to  
4                   the findings that is listed in the abstract to  
5                   make sure that they are either consistent or  
6                   if they are adjusted. Because there are some  
7                   things based on our review of the panel's  
8                   deliberations or a subcommittee conclusion  
9                   that was not drawn by the panel that we have  
10                  not included into the dual aspects of the  
11                  findings. And so we are continuing to try to  
12                  verify that to make sure that we have got that  
13                  exactly right.

14                  CHAIR JONES: Beth?

15                  PROFESSOR HILLMAN: Thank you.

16                  CHAIR JONES: Okay.

17                  COL COOK: If I can add to what  
18                  Admiral Houck was just saying on the  
19                  commanders are fundamental to the success of  
20                  any positive change and then even that out  
21                  with what Ms. Fernandez was saying.

22                  One of the things that is in that

1 part of the discussion, I agree it should all  
2 be up-front in the Role of the Commander to  
3 summarize it, when we do that, noting that the  
4 commanders were fundamental to this whole  
5 change is not necessarily the convening  
6 authorities. I mean the commanders are your  
7 lower levels. And just like we were going to  
8 list before, not list everything they do but  
9 maybe highlight a couple of things. If they  
10 are fundamental to any positive change in the  
11 last 50 years in the sexual assault arena,  
12 they are the key to helping to change the  
13 culture that we have said is to be out there,  
14 maintaining the good order and discipline,  
15 accountability at other levels of command or  
16 across the force, welfare of both the accused  
17 and the victims, availability of services.

18 And I would agree with Ms.  
19 Fernandez's comments about the need to  
20 continue to monitor that role and the  
21 influence in sexual assault from the  
22 investigation to adjudication because of the

1     sheer power that that conveys with it but I am  
2     not necessarily -- you need to monitor and  
3     ensure that it continues to be the appropriate  
4     process in the future or we need to look at  
5     it. But I don't necessarily think that I  
6     would want us to put a comment in there that  
7     says and we need to relook whether we want to  
8     change it again in the future.

9             I think we do need to monitor and  
10     assess and make changes as appropriate,  
11     depending upon what is found. But I don't  
12     want to make a statement that says and just  
13     look at it again to change in the future. So,  
14     that would be -

15             VADM HOUCK: I agree with that.

16             COL COOK: But I would make a  
17     distinction, even if it is a footnote of  
18     saying hey, these are commanders, in the  
19     footnote as we explain on whatever page of the  
20     report, a commander is not necessarily the  
21     convening authority in these cases. That is  
22     higher level.

1 CHAIR JONES: Oh, absolutely.

2 COL COOK: But for somebody who is  
3 new to the process, that, I think, is an  
4 important distinction to understand from the  
5 beginning.

6 PROFESSOR HILLMAN: Judge Jones?

7 CHAIR JONES: Yes, Beth.

8 PROFESSOR HILLMAN: Just a quick  
9 comment that I hope -- I recognize that I did  
10 form the balance of the panel on these issues  
11 but I would -- I guess you would like to  
12 include some statement that commanders are  
13 sometimes a source of the problem. That, I  
14 think, could make this read in a more  
15 persuasive fashion, in terms of the panel's  
16 thorough look at what is happening with  
17 respect to sexual assault. Because even  
18 during the time in which we were sitting and  
19 examining these issues, questions about  
20 commanders who were court-martialed.  
21 Commanders made decisions that generated a lot  
22 of heat, not necessarily a lot of light around

1 these issues. And failing to acknowledge that  
2 and openly stating that commanders are the  
3 source of -- are the core of the solution, I  
4 think will make our report look as if we are  
5 not recognizing that that part of the  
6 commander's actions are a source of public  
7 scrutiny and lack of confidence and doubt  
8 about accountability. And then the balance of  
9 the panel believes, though I don't, that there  
10 are some things in the system to protect  
11 against that and correct it when it does  
12 happen.

13 CHAIR JONES: I think that is  
14 fair.

15 MS. FERNANDEZ: Absolutely, I  
16 agree with what Dean Hillman just said. I  
17 think I would ask for stronger language than  
18 what Colonel Cook is asking for about not just  
19 simply oversight but oversight with the  
20 possibility of making changes to the command  
21 structure, if needed.

22 I mean I just think that the

1 commanders, on some level, have to be kept on  
2 the hook throughout, as we move forward. By  
3 keeping them on the hook, it motivated a lot  
4 of change within the military. And I don't  
5 want to see that motivation go away. And I  
6 think that we talked, as the admiral said, ad  
7 nauseam about the need to keep commanders  
8 involved in the process. But I also think  
9 that they need to know that this is also a  
10 privilege. It is a responsibility and a  
11 privilege to have. And that if it is not  
12 executed properly, that we could take it away.

13 CHAIR JONES: It could be taken  
14 away. I don't know that we can take it away.

15 MS. FERNANDEZ: No, we wouldn't  
16 take it away. No, I don't think we could do  
17 much.

18 CHAIR JONES: Right.

19 BRIG GEN DUNN: Well, I think what  
20 Ms. Fernandez just described was the very  
21 heart of the testimony of every single senior  
22 commander who came in and testified before

1 this panel. We are responsible. Our jobs are  
2 on the line. We are the ones who will make  
3 this change in the military.

4 And so I think that the top-down  
5 focus from Secretary of Defense down through  
6 the services has made that very clear from the  
7 top level to the bottom level that the  
8 commanders are responsible for implementing  
9 this change. It is certainly my sense that  
10 they take that very seriously.

11 You know, as we talk about culture  
12 change, I think that it is occurring with the  
13 commanders.

14 CHAIR JONES: I agree, General. I  
15 think the way you began this, Mai, was to say  
16 we need to -- that a lot of our assessment  
17 with respect to this narrow issue, not about  
18 all commanders but of convening authority  
19 within the UCMJ, our, at least the majority's  
20 decision at this point not to do anything was  
21 because we did not believe we had enough  
22 evidence to convince us that it was going to



1       increase reporting or increase convictions or  
2       what have you. And I think we should say that  
3       and figure out a way also to say so that  
4       doesn't mean that change can't occur and that  
5       the structure should be monitored to ensure  
6       that it continues or can operate in the best  
7       possible fashion or if evidence could be  
8       brought forward.

9                   I think we have been careful not  
10       to overstate why we reached the result we did  
11       with respect to the role of the commander as  
12       convening authority. And I will be able to  
13       take a look at these deliberations now and  
14       craft something. And we can take more  
15       comment, which should not be sent among  
16       ourselves because of the Federal Advisory  
17       Committee Act but can be sent to Colonel Cook.

18                   COL COOK: To Colonel Ham.

19                   CHAIR JONES: I'm sorry, Colonel.  
20       Are you sure, Colonel, you don't want to take  
21       that role?

22                   COL COOK: I am happy. But I do

1 want to state for the record because I made  
2 the comment what it should say, I completely  
3 agree with both Ms. Fernandez and Dean Hillman  
4 that I think it is fair in our overview to say  
5 the statement up-front that says this panel  
6 recognizes, however, the commanders are a  
7 source of the negative public scrutiny and of  
8 a potential bar or perceived bar by the  
9 victims to even report it. Because that is  
10 what we heard.

11 CHAIR JONES: I think that is a  
12 great way to put it.

13 COL COOK: So, recognizing that  
14 up-front, I think that is the only way to make  
15 what we are saying, this is what we found. We  
16 didn't have evidence to find it another way  
17 but the perception is there and the scrutiny  
18 is there. Those are the facts.

19 CHAIR JONES: Admiral?

20 VADM HOUCK: So my sense is what  
21 you are looking for are sort of omnibus,  
22 overarching comments and themes to emphasize.

1 And on some level, I regret having made a  
2 comment this morning at all about it. Because  
3 I don't know.

4 I mean we have heard hours and  
5 hours and hours upon this. But I am not even  
6 sure that I can agree with my colleague,  
7 Colonel Cook on the notion that we heard  
8 evidence that there was the perception that  
9 commanders were stopping victims from  
10 reporting.

11 And then my own recollection is  
12 that from witness to witness to witness, we  
13 heard that there was concern about  
14 retaliation. But when we got down to the bare  
15 metal, so to speak, there was no pinpointing  
16 of the fact that there was concern the  
17 commanders were the source of disincentive to  
18 reporting.

19 So, I mean you know we have talked  
20 about this at great length. And it is an  
21 issue on which we do not all agree but I think  
22 that it would be a mistake to try to start

1 rewriting what we found in the overview of the  
2 report.

3 So, those are my views.

4 COL COOK: And let me clarify  
5 because I don't ever want to go on the record  
6 as saying the commander has ever stopped  
7 anyone from reporting. But I do believe that  
8 victims were afraid that if they did report,  
9 what their commanders -- their perception.  
10 You know public scrutiny is saying the  
11 commanders or the convening authorities are  
12 not maintaining the culture. So, that  
13 perception of commander action. I'm not  
14 saying the commanders ever did it but the  
15 perception by victims that if they did report,  
16 whether it was the retaliations, that the  
17 commander response to it was somehow -- it is  
18 the commander response that prevented them  
19 from reporting or their perception of what  
20 that response might be, not any evidence of  
21 the commander action.

22 So, that there is some perception

1 by the victims that if they reported, they  
2 didn't have enough faith in the chain of  
3 command that their report would have either  
4 been taken seriously or handled appropriately.  
5 That was their perception. And if we phrase  
6 it that way, I don't have a concern about it.  
7 But I don't think that we ever heard from any  
8 commander that said the opposite.

9 BRIG GEN DUNN: I think we heard  
10 from one or two or four victims who had  
11 organizations behind them that said that. I  
12 think we have a lot of other data that showed  
13 that the number one reason people don't report  
14 is because of their peers inside and outside  
15 the military.

16 So, I think we are extrapolating  
17 the statements of a few into a -- you know,  
18 victims are afraid of their commanders and I  
19 just don't believe that we heard that. And I  
20 think that the interim report addressed that,  
21 that victims didn't understand actually who  
22 the convening authority was and understand the

1 system. I mean, I just think it is dangerous  
2 to even say that because I don't think we  
3 heard that on a large scale.

4 BRIG GEN McGUIRE: And judge, just  
5 a comment as well along that line is that the  
6 commander is responsible, big hand wave, for  
7 climate, environment, culture within that  
8 organization. And so while the concern may be  
9 because of retaliation, because of the  
10 culture, the environment, whatever, it is  
11 always pinned on the commander, regardless if  
12 it is that individual or not.

13 So there is, I think, some  
14 confusion in that regard.

15 CHAIR JONES: All right. Well, I  
16 would like everyone to take a close look there  
17 at the language that we have come out with  
18 here. Does that sound like -- I understand  
19 the concern.

20 MS. FERNANDEZ: Just as a  
21 corollary, Judge, I love General Dunn's  
22 statement that so many victims didn't

1 understand the process. I think that that  
2 might be an overarching statement that we make  
3 is that the whole process was so unclear to  
4 victims and that some of the things, like  
5 Special Victim's Counsel, that have been put  
6 forth now are clarifying that.

7 But there has got to be continual  
8 education for everybody as to how the military  
9 legal structure works. Because for those of  
10 us who aren't in the military, it has taken a  
11 year to figure it out. And we are lawyers.  
12 I can't imagine somebody coming in as a  
13 private, trying to understand how this whole  
14 process works.

15 BRIG GEN DUNN: I think that  
16 really goes to the sustainment piece of the  
17 training and the review of the programs that  
18 we have discussed. Because now that this  
19 process has begun, it must continue and must  
20 be resourced.

21 CHAIR JONES: Well, it can never  
22 be over --

1 BRIG GEN DUNN: Exactly.

2 CHAIR JONES: -- because of the  
3 turnover --

4 BRIG GEN DUNN: Because of the  
5 turnover, exactly.

6 CHAIR JONES: -- with the  
7 personnel, in any event.

8 All right, other comments?

9 I mean I think we have certainly  
10 responded to all of the tasks that Congress  
11 has given us. So maybe some of, as I say, the  
12 more discrete ones, don't really need to  
13 highlighted. They are in the report and they  
14 are also in the subcommittee reports.

15 So, let me just --

16 COL COOK: Just one other  
17 question.

18 CHAIR JONES: Yes, Colonel?

19 COL COOK: You brought up the  
20 point of putting the Role of Commander up-  
21 front because it was so key. Because we had  
22 three subcommittees, do you want to make a



1       brief statement?  If you are going to put a  
2       brief statement and an overview of the Role of  
3       the Commander, do you want to just, in that  
4       overview, a brief statement on both what the  
5       bottom line, a couple of sentences,  
6       Comparative Systems and Victims' Services,  
7       what the most important takeaway on those  
8       would be?  Or is that not --

9                   CHAIR JONES:  I was doing it by  
10       topic, as opposed to subcommittee.

11                   COL COOK:  Okay, that's fine.

12                   CHAIR JONES:  But I am happy to  
13       hear any additional takeaways that would come  
14       from either of those committees.  I mean Role  
15       of the Commander didn't just deal, obviously,  
16       as you all know, with the convening authority  
17       issue.  We also looked at the commanders' role  
18       in prevention and we looked at the whole  
19       accountability piece.

20                   COL COOK:  And the Special Victim  
21       Counselor, the counselor was in the Victims'  
22       Services.  So, that would be the comment for

1 that. And then the Comparative Services.

2 CHAIR JONES: Comparative Services  
3 is throughout these comparisons.

4 COL COOK: Yes, okay.

5 CHAIR JONES: Beth, did you have  
6 any other particular things that you would  
7 want to put in the overview? Like, do we want  
8 a sentence or two about how we believe that  
9 even though the training and experience of  
10 prosecutors and defense counsel between the  
11 two systems is different? We have confidence  
12 or some confidence or no confidence that the  
13 military lawyers are doing -- I don't know  
14 what your takeaway assessment is there. It  
15 may have been in your subcommittee report but  
16 I don't really recall.

17 I think you thought generally  
18 favorably about after comparing that the  
19 training and the military was as good, if not  
20 better and that the experience might be  
21 somewhat lacking but that could be cured by  
22 highly qualified experts. Is there something

1 like that that you think we might want to  
2 highlight?

3 PROFESSOR HILLMAN: Yes, Judge  
4 Jones. I think that you are right. I think  
5 that the significant distinction in terms of  
6 staffing the military response systems of  
7 sexual assault as compared to civilian  
8 response systems to sexual assault, those run  
9 to the experience and the training. And the  
10 military services have to adapt to the limited  
11 experience that their personnel generally have  
12 with more sophisticated training and more  
13 thorough training for the responders  
14 themselves across the board, as well as  
15 working to leverage civilian resources.

16 I think it is worth mentioning in  
17 the overview, and this runs counter to the  
18 sense that this is such a huge problem in  
19 terms of numbers in the military, that  
20 everyone must have all sorts of experience  
21 with it. But the reality is at our smaller  
22 posts, which are an awfully large percentage

1 of the bases that we have, there are many  
2 people, as was pointed out in the reports, who  
3 don't get experience as victim advocates, for  
4 instance, because there just aren't any cases.

5           So, I think it is worth mentioning  
6 the sort of scattered really a diaspora of  
7 military forces who are spread out around the  
8 world and the difficulty of maintaining  
9 expertise and experience in all those places  
10 means the military is doing it already and  
11 needs to continue to work harder than civilian  
12 systems do at training, and leveraging the  
13 civilian resources.

14           CHAIR JONES: All right, thank  
15 you.

16           Would you also think that we might  
17 want to highlight the comparison of  
18 investigation systems with a sentence or two?

19           PROFESSOR HILLMAN: Sure, since we  
20 do make significant recommendations which  
21 would conserve resources for investigators and  
22 also recognize we have worked hard to trade

1 effectively and we both have added  
2 investigators. We have recommended the  
3 addition of investigators to defense counsel's  
4 portfolio there. So, I think that would be  
5 appropriate to highlight.

6 CHAIR JONES: All right, thank  
7 you. We will do that.

8 Shall we take a ten minute break?  
9 (Whereupon, the above-entitled  
10 matter went off the record at  
11 10:44 a.m. and resumed at 11:09  
12 a.m.)

13 CHAIR JONES: Okay, Maria, do you  
14 want to reopen the meeting?

15 MS. FRIED: Sure. The meeting is  
16 open.

17 CHAIR JONES: All right. I think  
18 there may be one or two more comments on the  
19 takeaway points, and then, I would like to  
20 move on because I know there will be comments  
21 with respect to actually having gone through  
22 the text, and I will talk about that before we

1 start into it. But, for now, why don't we  
2 finish up comments with respect to that  
3 overview section?

4 Liz?

5 REP. HOLTZMAN: Thank you, Madam  
6 Chair.

7 I just have one point in terms of  
8 a takeaway, an overview. I don't know how my  
9 colleagues will feel about this.

10 But I think one of the things that  
11 I found was that there is a lot that we still  
12 don't know. We don't understand the causes of  
13 male-on-male sexual assault. We don't  
14 understand, actually -- I don't know that we  
15 know enough about the treatment of sexual  
16 assault. I don't know that we understand, for  
17 example, the issue of revictimization that  
18 takes place with regard to victims of sexual  
19 assault.

20 And just as the military took the  
21 initiative with regard to Special Victims'  
22 Counsel, I think that it should be supporting

1 research in these areas to make sure that the  
2 approaches that are taken work and that  
3 research is done to address these problems.  
4 I mean, to acknowledge a little bit of our  
5 ignorance in this area and to try to address  
6 or support research into solutions.

7 CHAIR JONES: Yes, I don't think  
8 it is ever a mistake to admit what you don't  
9 know and have humility about it. In addition,  
10 I think many of our recommendations to the  
11 Department of Defense to bring in external  
12 independent people, both to research as well  
13 as to assess, is what you are talking about.  
14 And so, I think we ought to highlight that.

15 Any other comment on that?

16 (No response.)

17 Okay. Colonel?

18 COL COOK: Yes. We talked before  
19 about the Joint Services Committee in terms of  
20 identifying upfront what their role and  
21 mission was. During the break what I was  
22 reminded of is, for everybody's awareness and

1 Admiral Houck, in particular, because he can  
2 tell how the Navy does it, but in the Army, if  
3 you are on the Joint Services Committee, there  
4 is one officer from each of the Services. All  
5 of them have a full-time job.

6 Mr. Bryant's memo, what he pulled  
7 to show what they do and how often they meet,  
8 whether they are on the Working Group or  
9 actual Committee, and they meet once a month  
10 or twice a month, it is usually a pretty short  
11 meeting.

12 I would recommend from the Panel's  
13 view that identifying what their mission is  
14 and that they will have to take on this  
15 review, but they are going to have to take on  
16 the recommendations that we are talking about.  
17 You have the ongoing UCMJ review that is going  
18 on. You are going to have the Judicial Panel  
19 that is coming up.

20 These things are important. We  
21 don't want it waiting. We don't want it  
22 taking years.



1                   So, I was going to say, after you  
2 write the roles and missions, could we add a  
3 statement that says something to the effect:  
4 the Panel understands that each Service  
5 provides one Judge Advocate to serve as a  
6 member of the JSC to meet on a monthly or  
7 bimonthly basis. In light of the increased  
8 number of recommendations and issues the JSC  
9 will need to consider after the submission of  
10 this Panel's report, the UCMJ review, and the  
11 anticipated Judicial Panel Review, SECDEF  
12 should consider increasing the amount of time  
13 that JSC members are available to focus on the  
14 UCMJ review process during the next 24 to 36  
15 months.

16                   I would just say they are going to  
17 need more time doing this. It is a one-hour  
18 duty or a couple-hour duty during it, and they  
19 get to go back to their offices and do the  
20 research and stuff, but it is for their  
21 ongoing annual review and other things.

22                   So, if we are going to ask them to

1 look at our stuff, they may need somebody  
2 telling them there should be more time  
3 allocated. And I don't know how the Navy does  
4 it, but Admiral Houck might be able to educate  
5 us on that point.

6 CHAIR JONES: General Dunn?

7 BRIG GEN DUNN: But are we telling  
8 SECDEF how to suck eggs here? I mean, he has  
9 got our recommendations, and he may not even  
10 send them to the JSC. He may convene an  
11 organization to look at them.

12 I mean, I just think we are  
13 descending into the weeds when we get down to  
14 that level because he has got the work. He  
15 will figure out how to allocate it.

16 CHAIR JONES: Yes, I agree with  
17 you that we need to express how important we  
18 think it is to be dealt with quickly, but I  
19 would be concerned about making a  
20 recommendation to send something, and then,  
21 saying, "And by the way, this is how you do  
22 it."

1 COL COOK: Then, when we put the  
2 roles and missions, I mean, there is a part of  
3 me that wants to make sure it doesn't get so  
4 delayed. If they meet on their regular  
5 schedule with no change, this will take  
6 forever, and that shouldn't be what the answer  
7 will be.

8 CHAIR JONES: All right.

9 COL HAM: Colonel Cook, I would  
10 say that the past doesn't have to be prologue,  
11 but we did become aware in reviewing past  
12 reports -- for example, the Defense Task Force  
13 on Sexual Assault in Military Service -- that  
14 Congress required updates from the Department  
15 of Defense on the status of implementation of  
16 recommendations. So, there is literally a  
17 spreadsheet kept with what the status is. And  
18 I don't know that that will be the case with  
19 these recommendations, but I would expect that  
20 it would.

21 COL COOK: Is that done through  
22 the DoD's General Counsel's Office or through

1 this other committee? Just curious.

2 COL HAM: Yes, I'm not sure. I  
3 know DoD SAPRO kept, I think DoD SAPRO was  
4 the central repository of the list of  
5 recommendations. And they still track all the  
6 GAO recommendations as well. So, they track  
7 Task Force recommendations, GAO  
8 recommendations, and I would expect, although  
9 I don't know -- I have not been told -- that  
10 your recommendations will be handled in a  
11 similar manner.

12 COL COOK: Okay. Then, if we just  
13 emphasize not -- make it expedient, I would be  
14 fine with that. Thank you.

15 CHAIR JONES: I think that is  
16 fair.

17 Okay. Now what I would like to  
18 move to is we have all received this Draft  
19 Final Report. I know that people have  
20 comments that they would like to make about  
21 it, which I want to hear, so that we can talk  
22 about them, agree with them or not.

1                   I would ask that we talk about  
2                   areas where you believe that actually  
3                   something is wrong or where there is  
4                   substantive error or disagreement, I guess is  
5                   what I am talking about here.

6                   With respect to the other types of  
7                   comments, if you would put them in writing, we  
8                   can make those and get them back. The staff  
9                   could make those and get them back to you. I  
10                  would take a look at those as well.

11                  So, Colonel Cook, you look ready  
12                  to go over there.

13                  (Laughter.)

14                  COL COOK: Sorry.

15                  All right. My biggest one is  
16                  going to be Recommendation No. 45, and I think  
17                  Admiral Houck put the note that he put out in  
18                  writing that Mr. Trexler put on our desks, had  
19                  the same concern. I don't think that  
20                  Recommendation 45 --

21                  CHAIR JONES: Do you have a page  
22                  number?

1 COL COOK: Yes. I'm sorry, it is  
2 on page 20 of the Findings and Recommendations  
3 portion.

4 My notes had said that we had  
5 rejected that.

6 Page 20 on the Findings and  
7 Recommendations for Part -- all I can tell you  
8 is it says, "RSP Recommendation No." -- I have  
9 Recommendation 45, RSP Recommendation 45.

10 Okay, the topic, for Colonel Ham  
11 or Colonel Green, if somebody could tell us  
12 where it is at, the topic was on the Service  
13 TJAGs and SJA to the Commandant, permitting  
14 only counsel with litigation experience to  
15 serve as defense counsel, as well as setting  
16 the minimum tour length of defense counsel to  
17 two years or more except in exigent  
18 circumstances.

19 CHAIR JONES: Does everybody have  
20 it? The large report is not helpful. The  
21 smaller one, if you have it, that says in red  
22 "Outline and Numbering of Recommendations and

1 Findings" is where we will most easily find  
2 these. Page 20.

3 I'm sorry, Colonel Cook, I think  
4 we are ready for you now.

5 COL COOK: Okay.

6 COL HAM: It should be in your  
7 folders, Members. If someone is missing it,  
8 we have a couple of extra copies.

9 COL COOK: Okay. I had written my  
10 notes for this -- and I didn't go back to the  
11 transcript, so somebody else can tell me -- I  
12 had written that we actually rejected, but we  
13 might not have voted on it, which is what I  
14 think Colonel Green was telling me.

15 We had a discussion about this and  
16 keeping it as only with litigation experience  
17 and the two years. We talked about the  
18 exigent circumstances. But I thought that the  
19 final answer was we actually rejected the  
20 recommendation and we were supposed to move  
21 the findings to the CSS Recommendation No.  
22 36(a) and (b) to consolidate them. That is

1 the note that I had from the last meeting.

2 And 36(a) and (b) was the one that  
3 talked about Service Secretaries ensuring  
4 military defense counsels are adequately  
5 resourced in funding resources and personnel,  
6 including defense supervisory personnel with  
7 training and experience comparable to their  
8 counterparts.

9 But I just know that we didn't, I  
10 thought we did not agree to the thing that  
11 said they have to have litigation experience,  
12 only litigation experience, or the tour  
13 length. So, I just wanted to revisit that  
14 language.

15 I think what Mr. Trexler put out  
16 from Admiral Houck, he also has a draft on the  
17 one piece of paper that was put on our chairs.  
18 At the very bottom he had recommended  
19 revisions in that one as well.

20 Professor, Dean Hillman, do you  
21 have a copy of Admiral Houck's recommended  
22 changes?



1                   PROFESSOR HILLMAN: I'm looking at  
2 the comment, I mean right here in the document  
3 that Colonel Ham circulated on page 20. Is  
4 that what you mean?

5                   COL COOK: Page 20 is the one I am  
6 looking at, but there is also -- Mr. Trexler  
7 put onto each of our desks here a one-page  
8 printout of an email that he received from  
9 Admiral Houck or --

10                  BRIG GEN DUNN: It is also in the  
11 comment down there in the pink box.

12                  COL COOK: Right, as a comment out  
13 of the -- I'm sorry?

14                  BRIG GEN DUNN: See the pink box  
15 at the bottom of page 20?

16                  PROFESSOR HILLMAN: I am looking  
17 at Comment 25, that top comment.  
18 Unfortunately, I don't think we are there  
19 quite yet, but that is what I am looking at.

20                  BRIG GEN DUNN: Yes, I think that  
21 is what we are talking about. And then, there  
22 was Representative Holtzman's comment above,

1       which I think the "to the maximum extent  
2       feasible" language might solve the problem  
3       here.

4                   CHAIR JONES:  I didn't realize  
5       that we hadn't finalized this one.  And I  
6       guess whether we did or we didn't, we have  
7       comments now.

8                   I don't have my notes, but I  
9       thought there were people that did not sign  
10      onto to "exigent" I think, "for exigent  
11      circumstances".

12                   Are there other disagreements of  
13      this?  This is a substantial one, whether we  
14      actually have a finalized recommendation or  
15      not, though.  Do you have others of this  
16      nature?  Colonel Cook?

17                   I would like to go back and take a  
18      look at the deliberations on this because I  
19      thought we had arrived at language, but maybe  
20      it just never made it.

21                   COL COOK:  Okay.

22                   CHAIR JONES:  General, what is

1 your --

2 BRIG GEN DUNN: That is my sense  
3 as well. I thought we had moved off into  
4 language like Representative Holtzman's --

5 CHAIR JONES: Right.

6 BRIG GEN DUNN: -- the "to the  
7 maximum extent feasible," or something like  
8 that. People didn't like the words "exigent  
9 circumstances because that sounded like --

10 CHAIR JONES: And, Beth, you think  
11 -- I'm sorry, who said that you thought we  
12 were going to combine it with 36?

13 COL COOK: I did.

14 CHAIR JONES: Okay. Well, we need  
15 to look at this and figure out what we did.  
16 I think we all thought we had finalized it.  
17 We obviously haven't. But let me go back and  
18 look at everything. And then, this will be  
19 something we will circulate right away.

20 REP. HOLTZMAN: Well, what do we  
21 think of Admiral Houck's proposed language?

22 Professor Hillman, do you have

1 that in front of you? Should I read it?

2 PROFESSOR HILLMAN: I do.

3 REP. HOLTZMAN: Oh, you do?

4 COL COOK: You know what? I think  
5 we are talking about two different things.

6 Beth, I think we are talking about  
7 the same where Admiral Houck, at the very last  
8 paragraph, he is trying to soften it, not to  
9 make it mandatory minimum for the defense  
10 counsel, but to say, if you have lead defense  
11 counsel, you have to have litigation  
12 experience and you have to have that two  
13 years' experience, two years or more  
14 experience as a defense counsel unless --

15 CHAIR JONES: Right. I guess what  
16 I am saying is, Beth, you don't have this  
17 piece of paper that the rest of us have, which  
18 has in it some recommended language from Jim  
19 Houck. You have got the actual  
20 recommendations and you have Comment 24, I  
21 think.

22 I can also read it. Am I right,

1 Beth, you don't have that yet?

2 PROFESSOR HILLMAN: Right. Right,  
3 Your Honor. But I think the comment is, the  
4 email has got it as a comment here, but I see  
5 that it is -- I mean, if you would like to go  
6 ahead and change this, you know, just go ahead  
7 and read off the language that you want, if  
8 you want us to agree on that.

9 CHAIR JONES: All right. Well,  
10 why don't we see if this is acceptable to  
11 everybody then?

12 So, where it starts "Permit only  
13 counsel," it reads, "Permit only counsel with  
14 litigation experience to serve as lead  
15 counsel/defense counsel in a sexual assault  
16 case, as well as set the minimum tour length  
17 of defense counsel at two years or more,  
18 except when a lesser tour length is approved  
19 by the Service Judge Advocate General or Staff  
20 Judge Advocate to the Commandant of the Marine  
21 Corps or a designee, because of exigent  
22 circumstances or to specifically enable

1 training of defense counsel under supervision  
2 of experienced defense counsel."

3 So, that is the language that  
4 Admiral Houck is proposing. Is that  
5 acceptable to everybody?

6 All right. Beth? I know this is  
7 hard.

8 PROFESSOR HILLMAN: Judge Jones, I  
9 don't have any particular comments on that.  
10 You know, the recommendation was that there's  
11 too many defense counsel without any  
12 experience. That is what we heard out there.

13 CHAIR JONES: Right.

14 PROFESSOR HILLMAN: So, we were  
15 pointing in that direction. That is a very  
16 long recommendation, but if that is what the  
17 Panel wants to go with --

18 CHAIR JONES: Okay, I hear you.  
19 Thanks.

20 REP. HOLTZMAN: Judge Jones, my  
21 only question here is the issue of "because of  
22 exigent circumstances". I just want to make

1       sure that -- I mean, I am not sure whether  
2       Admiral Houck intends that to apply only to  
3       the tour of duty or to the -- well, both  
4       points.

5                   I think, initially, the way it was  
6       originally drafted, it was to apply to both  
7       points. So, I don't know whether that is what  
8       he wants to do. To me, it suggests -- I liked  
9       having a safety valve here, but I would abide  
10      by the thoughts of the Panel.

11                   So, I am not sure that it is  
12      drafted --

13                   CHAIR JONES: Right.

14                   REP. HOLTZMAN: -- to ensure that.  
15      That is my only question.

16                   CHAIR JONES: Got you.

17                   Yes, I thought we were only  
18      talking about the tour length, but maybe I  
19      am --

20                   COL COOK: Both were in the  
21      original recommendation.

22                   CHAIR JONES: All right. Well,

1 are you saying that you think you need -- I  
2 don't think they are the same thing. To say  
3 you need experienced defense counsel is a  
4 different concept from a minimum tour length.

5 BRIG GEN DUNN: Well, I think the  
6 minimum tour length leads to experienced  
7 counsel.

8 CHAIR JONES: Experienced counsel?  
9 All right. Well, if no one else --

10 BRIG GEN DUNN: Yes.

11 COL COOK: I see what you are  
12 saying, that it is two different things. You  
13 are going to be experienced counsel to be the  
14 supervisor and normal defense counsel will be  
15 there for two years unless there is an exigent  
16 circumstance.

17 CHAIR JONES: Right.

18 COL COOK: I see what you are  
19 saying.

20 CHAIR JONES: If everyone  
21 understands it that way --

22 REP. HOLTZMAN: Well, that is



1 what, that the --

2 CHAIR JONES: That the exigent  
3 circumstances only applies to the tour length.

4 COL COOK: Why not separate them?  
5 Why don't you put "Permit only counsel with  
6 litigation experience to serve as lead defense  
7 counsel in a sexual assault case."? Period.  
8 "For other defense counsel, set the minimum  
9 tour length at two years or more, except  
10 when...."

11 CHAIR JONES: I think that works.  
12 Liz, does that help?

13 REP. HOLTZMAN: Yes. I would just  
14 check with Admiral Houck as to how he wanted  
15 this.

16 CHAIR JONES: Uh-hum, okay.

17 REP. HOLTZMAN: I mean, I thought  
18 that the exigent circumstances was to apply to  
19 both, but --

20 CHAIR JONES: I will double-check  
21 with him. If he says no, then we will go with  
22 Colonel Cook's phrasing.

1                   REP. HOLTZMAN: Correct. I am  
2 fine.

3                   CHAIR JONES: Okay. Great. Thank  
4 you.

5                   What else, Colonel?

6                   COL COOK: It is Recommendation  
7 No. 65 on page 27 of the draft which you have.  
8 And this is one of the ones upfront in Colonel  
9 Ham's email on June 4th that she said, "The  
10 Panel did not orally accept the CSS  
11 Recommendation 10A, but Judge Jones and  
12 Professor Hillman agreed that this  
13 recommendation will be reviewed" and that we  
14 might have wording revisions.

15                   I would suggest some wording  
16 revisions. This is the one that talks about  
17 the standardization of, quote, "policy" for  
18 when you advise a victim of their rights for  
19 collateral misconduct.

20                   The way it is currently worded, it  
21 still talks about you direct the  
22 standardization of policy and you ensure that

1 there is clear policy. I would submit that  
2 the policy is set. It is in the law.

3 I think on the notes that I have  
4 from the last time, I think that one way we  
5 can resolve it is just to change the wording,  
6 not to put "policy," but ensure the  
7 procedures. So, what I would recommend it say  
8 is that, "The Secretary of Defense resolve any  
9 discrepancy in the procedures MCIO  
10 investigators follow to advise victim and  
11 witness Service members of their rights under  
12 Article 31(b) for minor misconduct uncovered  
13 during the investigation of a felony to ensure  
14 that there is a clear process that complies  
15 with the law throughout the Services."

16 Because, again, you can't make a  
17 policy that is different from the law right  
18 now. It is the procedures and the process we  
19 should be focused on.

20 CHAIR JONES: Well, I agree with  
21 that. I think we got as far as discussing  
22 that, but we didn't have language last time --

1 COL COOK: Okay.

2 CHAIR JONES: -- I think is right.

3 COL COOK: So, if that language is  
4 acceptable, then --

5 CHAIR JONES: Okay. Liz?

6 COL COOK: -- I can re-read it.

7 REP. HOLTZMAN: No, no, no. You  
8 know, there could be a discrepancy in some  
9 words that don't really affect the substance.  
10 So, I just want to make sure that we give a  
11 little leeway in that language.

12 So, when you say -- maybe take out  
13 the word "any"?

14 COL COOK: Okay, that's fine.  
15 "Resolve discrepancies in the process"?

16 REP. HOLTZMAN: Or procedural,  
17 yes.

18 CHAIR JONES: I mean, we could  
19 just say -- I mean, really, what are we  
20 telling them, to follow the law?

21 (Laughter.)

22 BRIG GEN DUNN: Yes, because we

1 have the clear evidence that NCIS just on  
2 their own decides they are not going to read  
3 rights for minor misconduct. And Article 31,  
4 as a statute, doesn't contemplate that  
5 decision on the part of NCIS, independent  
6 decision on the part of NCIS. I mean, it is  
7 sort of that.

8 REP. HOLTZMAN: I mean, this  
9 language itself would be okay if you added, in  
10 my view, if you just added in the second line,  
11 before the word "requirement" -- what is it,  
12 what kind of a requirement? Is it a statutory  
13 requirement, a constitutional requirement?

14 Okay, this may be regarding the  
15 statutory requirement. Policy regarding  
16 "following the statutory requirement" or  
17 "obeying the statutory requirement".

18 COL COOK: No, it is not  
19 constitutional.

20 MR. BRYANT: Which is why best  
21 practices in a civilian investigation is to  
22 not do that. That is the best practice.

1                   REP. HOLTZMAN: I think what we  
2                   are all really saying is the word "policy"  
3                   vice "procedure" or "process".

4                   COL COOK: Policy in the military  
5                   is a regulatory, documented requirement that,  
6                   while Congress didn't say it, the Department  
7                   of Defense somehow said it. So, it is not  
8                   just a practice. It is a rule, essentially,  
9                   but --

10                  CHAIR JONES: Well, are we really  
11                  saying we want the Secretary of Defense to  
12                  reemphasize for investigators that they must  
13                  advise victims and witnesses?

14                  BRIG GEN DUNN: Well, we want them  
15                  to resolve that discrepancy when MCIO doesn't  
16                  do it.

17                  CHAIR JONES: Right, right.

18                  BRIG GEN DUNN: And the rest of  
19                  them do. And we have got to sort through  
20                  that, either by changing our --

21                  COL COOK: Or figuring out why  
22                  they do it. Because there are some that would

1 say that NCIS doesn't think that they're --  
2 anyone subject to the Code has to read  
3 somebody who is suspected of their rights, of  
4 a violation of their rights, of a crime, that  
5 they are read their rights. But NCIS might  
6 not think that they are subject to the Code.  
7 So, to the extent there is a discrepancy in  
8 how they do business, just make sure they are  
9 following the laws I think is the only message  
10 we are trying to put out there.

11 CHAIR JONES: Okay.

12 COL COOK: While we're on that --  
13 oh, okay, I won't say anything.

14 CHAIR JONES: No, no, no, that's  
15 okay. What?

16 COL COOK: While we are on that  
17 same page, if you look at CSS Finding 10-1,  
18 here's going to be a comment I have just  
19 generally. I know we, as a Panel, have voted  
20 on the language very carefully of every  
21 recommendation that is in here. In this  
22 portion that we are now adopting as the

1 Panel's side we are now including the findings  
2 by the underlying subcommittees, but we have  
3 never really gone through -- you know, we can  
4 look at that finding that is sitting there  
5 that says the majority of those civilian  
6 police agencies that were contacted by the  
7 subcommittee, and that may be true, but when  
8 I think of the amount of police -- I don't  
9 want to extrapolate some findings that were  
10 out there too far to say there's a whole lot  
11 of law enforcement agencies that are out  
12 there. This may be the finding by that  
13 Subcommittee, and that is something that is  
14 out there. I don't want to put it out there  
15 as saying, hey, the majority of police  
16 agencies don't do this, because that is not  
17 necessarily a correct statement.

18 BRIG GEN DUNN: There are 44,000  
19 different police agencies.

20 COL COOK: Right, and I don't want  
21 to change the underlying finding, but I am not  
22 so sure that, for all of the recommendations



1 that this Panel is making, that we need to  
2 upfront put what the Subcommittee's findings  
3 are as part of ours and start reopening the  
4 debate on some of these things.

5 MR. BRYANT: First of all, that is  
6 a two-pronged finding.

7 COL COOK: Yes.

8 MR. BRYANT: If you read it  
9 carefully, it says, "The majority of civilian  
10 police agencies contacted...."

11 COL COOK: Right. Correct.

12 MR. BRYANT: We are not saying  
13 that throughout the United States, but I think  
14 I would feel comfortable making the  
15 generalization that they don't routinely  
16 pursue action for minor criminal behavior.

17 The second part, there is a second  
18 part. They do not interrupt the victim  
19 interview to advise the victim of his or her  
20 rights for minor offenses.

21 My recollection, General Dunn --  
22 and you were on the Committee with me -- is

1 that we didn't hear from any police agency or  
2 investigative agency who said, "Oh, well, yes,  
3 we do."

4 BRIG GEN DUNN: Exactly.

5 MR. BRYANT: "Yes, we do stop and  
6 advise people."

7 BRIG GEN DUNN: Yes, that finding  
8 as modified by the "contacted during the  
9 Comparative Systems Subcommittee research" is  
10 factual. I mean, they all shook their heads  
11 at us, as did a number of prosecutors with  
12 respect to it, saying, "What? Why would we do  
13 that?"

14 (Laughter.)

15 COL COOK: Well, we are going to  
16 get to some of the findings. I point this one  
17 out because I know I circled it on that point.  
18 That is not my biggest concern. When I get to  
19 some of the others where I think some of the  
20 findings, I'm not sure they -- that they are  
21 overbroad in terms of their generalization.

22 BRIG GEN McGUIRE: Yes, if we were

1 to say "the majority of the 27 civilian police  
2 agencies we contacted on the East Coast" --

3 COL COOK: It's a small number.

4 BRIG GEN McGUIRE: Right. Yes, I  
5 think our report indicates who our witnesses  
6 were, correct?

7 BRIG GEN DUNN: Right, and that's  
8 what I am saying. I have no problem with the  
9 findings in the subcommittee reports. It just  
10 becomes, once they are part of here, are we  
11 scrutinizing all of them to make sure that  
12 what the Panel says --

13 MR. BRYANT: I could say tongue-  
14 in-cheek, "We found no evidence that other  
15 police agencies advise them about a misconduct  
16 or pursued matter of misconduct."

17 BRIG GEN DUNN: That is broader  
18 than what we do say.

19 MR. BRYANT: No, I am not saying  
20 to say that there is no -- we did not find any  
21 evidence --

22 COL COOK: We can keep that in the

1 back of our mind and leave it the way it is  
2 now. There are some others that I will point  
3 out afterward. But, for No. 65, that is the  
4 wording on that was the biggest one. So, let  
5 me know, Judge Jones, when you want me to go  
6 to the next one where I have a question.

7 REP. HOLTZMAN: Let me just ask a  
8 question. Colonel, can I just interrupt for  
9 one second just on this point?

10 COL COOK: Uh-hum.

11 REP. HOLTZMAN: Do we want to or  
12 should we say that we have adopted the  
13 recommendations in whole, or the findings of  
14 the subcommittees without individually  
15 reexamining them? Is that something that we  
16 want to say?

17 CHAIR JONES: I think we have to  
18 make some statement because we purposely at  
19 times did not go back through and have a  
20 debate on findings. We debated on whether we  
21 agreed with the result, whether we agreed in  
22 each part with all of the findings. And maybe

1 that is the statement we make.

2 REP. HOLTZMAN: Personally, I  
3 think there should be some kind of disclaimer,  
4 so that we are not implying somehow that we  
5 are bound by everything that is said here.

6 COL COOK: But that is why my  
7 point is we are doing this as the overview of  
8 the Panel's piece. We have all of the  
9 recommendations that we have signed on. Do we  
10 just leave it at those recommendations and get  
11 rid of the note that you may -- you know, you  
12 can find the discussion; you have got the  
13 findings here. Maybe, "Note: further  
14 discussion is at these recommendations  
15 specifically and throughout the whole report."  
16 Because you have got the findings. You could  
17 put Recommendation 65, leave it there, and you  
18 can put a note, "See CSS Finding 10-1," if  
19 this cross-references, if you want to do that.

20 But I know the findings are what  
21 we voted on, the wording of some of the  
22 recommendations --

1                   CHAIR JONES: The recommendations  
2 is what we voted on.

3                   COL COOK: Right. I'm sorry.  
4 Recommendations. Thank you. Recommendations  
5 we voted on, not necessarily all the findings.

6                   BRIG GEN DUNN: Well, let me make  
7 two points here. One, repeatedly, during our  
8 discussions, I know I asked, I know Professor  
9 Hillman said, "Okay, but these findings" --  
10 okay, no, excuse me -- "The Committee findings  
11 are staying underneath this recommendation to  
12 explain it, correct?" And the answer  
13 repeatedly was, yes, that is going to be the  
14 format of the report. So, I think separating  
15 them now makes it much harder to see the  
16 underlying summary of facts.

17                   Two, you know, we had multiple  
18 subcommittees. Not everybody could sit on  
19 every subcommittee. We sort of have to trust  
20 that -- I mean, I suppose we could look at  
21 these findings to make sure they are written  
22 from a factual perspective.

1                   And this one, the one at hand says  
2                   that we talked to, you know, the majority of  
3                   the ones that we talked to said this, and that  
4                   is a fact. And I don't think it implies any  
5                   more than that.

6                   If we start getting into these  
7                   hundreds and hundreds and hundreds of findings  
8                   from multiple committees that we didn't all  
9                   sit on, we could be here for another year.

10                  REP. HOLTZMAN: That is why my  
11                  recommendation is that we put an asterisk  
12                  somewhere in the report and indicate that we  
13                  adopted the findings of the subcommittees.  
14                  While the recommendations were fully debated  
15                  and discussed and amended, the Subcommittee  
16                  findings for the recommendations that we  
17                  adopted were adopted as they were written.

18                  COL COOK: And the other comment I  
19                  would make, then, for the recommendation --  
20                  for the findings, I've got clarifications for  
21                  them, not crossing them out. The one reason  
22                  why I had said, do you want to put the

1 findings there as well, is because it just  
2 reads so long. When you are reading this  
3 whole thing together and you are reading this  
4 overview, and then, you are reading all the  
5 findings with these recommendations, and then,  
6 you get into the report that has the  
7 highlighted portions with the findings and the  
8 recommendations, by the time it becomes --

9 CHAIR JONES: While I like having  
10 the findings and recommendations in the report  
11 as you read along, I don't think we should  
12 repeat them at the end of each section. I  
13 think those should go.

14 COL COOK: It just seems like  
15 someplace something has got to go.

16 CHAIR JONES: Those should  
17 definitely go.

18 COL COOK: Okay. If you are  
19 taking out there -- it just for me became long  
20 and I found I wasn't --

21 CHAIR JONES: That was something I  
22 was going to recommend when we got there



1 because that just becomes --

2 COL COOK: Obnoxious?

3 CHAIR JONES: -- terrible. Well,  
4 no one is going to read it after a while.

5 COL COOK: And that was why I went  
6 back when I was looking at some of the --

7 CHAIR JONES: I need to go back,  
8 though, to this issue about findings and  
9 recommendations. We clearly adopted the  
10 recommendations, or at least almost all of the  
11 recommendations, and we spent a lot of time.

12 And we did it based upon the  
13 reports out of the subcommittees. There were  
14 times, at least a couple of times I  
15 specifically remember where people were  
16 starting to get into, "What about this  
17 finding, that finding?" And I said that the  
18 Committee was not adopting specific findings  
19 or specific language in findings. We were  
20 adopting the recommendation based on all the  
21 information.

22 Give me your recommendation for

1       how we fix this.

2                       PROFESSOR HILLMAN:   Judge Jones?

3                       CHAIR JONES:    Yes, Beth.

4                       PROFESSOR HILLMAN:  I think, like  
5       General Dunn said, here in the report, I agree  
6       that the findings need to be there.  I am  
7       understanding how you want to draw distinction  
8       between the Panel and, right, the findings  
9       versus the recommendations.

10                      I would say that I don't think we  
11       are actually meeting the terms of what we have  
12       been tasked to do unless we include those  
13       findings in what the Panel is setting forth.  
14       I think it is fine if you want to put this in  
15       the technical way that you and Representative  
16       Holtzman were just describing, perhaps that we  
17       just adopt the findings of the subcommittees  
18       that support the recommendations that we  
19       adopted without redrafting all of those.

20                      But what it actually is, it is an  
21       assessment, for instance, of the strengths and  
22       weaknesses of the proposed initiative and

1 assessment of the adequacy of the procedures.  
2 Actually, that is in the findings because the  
3 recommendations that we make don't make  
4 assessments. So, everything that they have  
5 been asked, that we have asked to do, to  
6 compare and contrast, to assess and to review,  
7 that is actually in the findings. So, I think  
8 the findings do need to be around the  
9 recommendation.

10 CHAIR JONES: Oh, I agree the  
11 findings have to be there because it is the  
12 only way that you understand the underpinnings  
13 of the recommendations.

14 Maybe what we have to do, then, is  
15 find out if there are other -- deal with the  
16 one we have before us and, also, look for  
17 others where there is a problem with the  
18 findings, so that we can adopt them all.

19 REP. HOLTZMAN: I don't know why  
20 we can't adopt all the findings, but I think  
21 we have to say that the findings have been  
22 adopted, that we are relying on the

1 subcommittees' work product in adopting the  
2 findings when we adopted the recommendations,  
3 something like that. We can come up with  
4 decent language, I'm sure. But I think  
5 something, some small disclaimer that  
6 indicates that we haven't gone over each  
7 finding word-for-word, that's all, because I  
8 think that that is a very important point that  
9 Colonel Cook brought to our attention.

10 CHAIR JONES: All right. I think  
11 I understand your proposal. I like it. We  
12 will do that.

13 COL COOK: Okay. Recommendation  
14 7-Bravo, RSP Recommendation 7-Bravo.

15 CHAIR JONES: Page?

16 COL COOK: On page, the portion  
17 I'm interested in is on page 5. It is the  
18 subparagraph that says, "the rate at which  
19 referral of cases to courts martial against  
20 the advice of Article 32".

21 I mean, what we are talking about  
22 is the study should assess the following: the

1 rate at which referral of cases to courts  
2 martial against the advice of an Article 32  
3 investigating officer --

4 CHAIR JONES: I'm sorry, I'm not  
5 there yet. Where are you?

6 COL COOK: It is on the very top.  
7 You have got a box there.

8 CHAIR JONES: I see it. Got it.  
9 Thank you.

10 COL COOK: I would just delete the  
11 part --

12 PROFESSOR HILLMAN: I'm sorry, I'm  
13 lost. Could you just tell me where you are?

14 CHAIR JONES: Apparently, page 5,  
15 the very first line, "the rate at which the  
16 Services" --

17 COL COOK: I'm sorry, the next  
18 sub-bullet. The next sub-bullet. You've got  
19 a box up there, Dean Hillman, and it has got  
20 three points, three bullets in there. I am  
21 talking about the middle bullet.

22 And the concern or the

1 recommendation I would like is to cut out the  
2 parenthetical information because we didn't  
3 adopt that recommendation. So, I want to take  
4 out the parentheses "unless and until our  
5 recommendation to make the Article 32  
6 officer/decisionmaker a military judge whose  
7 probable cause decision is binding". I don't  
8 think we made that as a final recommendation.

9           You want a study to look at the  
10 assessment and things like that, but that  
11 recommendation wasn't -- Colonel Ham, we  
12 didn't adopt that one.

13           COL HAM: Correct, ma'am.

14           COL COOK: So, the parenthetical  
15 that is in there doesn't belong as part of the  
16 study.

17           CHAIR JONES: Right. It refers to  
18 something that we didn't do. Okay. That will  
19 be deleted.

20           Any objections to that?

21           (No response.)

22           All right.

1 COL COOK: Okay. RSP  
2 Recommendation No. 18 is on page 9. Thank  
3 you.

4 Okay. This is one where the  
5 wording that is here is as we agreed, and we  
6 all had a big discussion. But when I went  
7 back to my notes on this one as well, we had  
8 a discussion. And one thing that Dean  
9 Hillman, the reason that I had conceded on all  
10 this was because the understanding is this is  
11 a victim can come forward and make a  
12 restricted report to the agent with a Victim  
13 Advocate or Special Victim Counsel present.  
14 So, the emphasis is on, look, there will be a  
15 third party present.

16 Part of me wants to just change  
17 that word "when" to "as long as". I want it  
18 clear that this only applies when there is a  
19 third -- a person can come forward to the  
20 military investigators and they can make a  
21 report, and it is not going to turn a  
22 restricted report into unrestricted. But our

1 discussion went a far way of saying, hey,  
2 that's because there is a third party there,  
3 which is important to me. So, I don't want to  
4 just say "when a party is present". I want it  
5 clear, "as long as a third party is present,"  
6 so that somebody doesn't misunderstand it the  
7 opposite way. So, I just want to change  
8 "when" to "as long as a Victim Advocate and/or  
9 Special Victim Counsel is present".

10 CHAIR JONES: This is 18?

11 COL COOK: Recommendation 18. It  
12 is on --

13 CHAIR JONES: Going over to page  
14 10?

15 COL COOK: Yes. It should be on  
16 the top of page 10. Oh, in the second line it  
17 says, in parenthetical it says, "with a Victim  
18 Advocate or Special Counsel present". I want  
19 to take out the "with" and put "as long as a  
20 Victim Advocate or Special Victim Counsel"  
21 and, then, add the word "is" "present".

22 REP. HOLTZMAN: Colonel Cook,



1       could you explain to me the reason for your  
2       view on that?

3                   COL COOK: I am concerned the same  
4       way that I had, that if you look at this with  
5       a victim -- I mean, it is a requirement, for  
6       me it is a requirement that that person be  
7       present. And I am not sure that that is  
8       stated strongly enough as being a condition to  
9       them being --

10                   REP. HOLTZMAN: Right, I just read  
11       that, but why do you feel it is so important  
12       to have those people present?

13                   COL COOK: Because I think that  
14       when a victim goes -- depending upon how far  
15       a victim goes in starting to make comments to  
16       the investigators, that at some point, if I am  
17       a defense attorney, I am going to raise  
18       questions about that communication. And if I  
19       am the accused, I have a right to defend  
20       myself, confront the witnesses, and to get  
21       evidence that is out there.

22                   You know, you're the

1 investigator's --

2 REP. HOLTZMAN: Right. You are  
3 thinking about the material --

4 COL COOK: I am concerned later on  
5 something may come up; I want a third-party  
6 witness.

7 REP. HOLTZMAN: Okay.

8 CHAIR JONES: And I agreed with  
9 that when we discussed it. We need somebody  
10 there other than the two.

11 So, can we just say -- so, what is  
12 your proposal?

13 COL COOK: In the second line,  
14 where it says "with" --

15 CHAIR JONES: Yes.

16 COL COOK: -- I just want to say  
17 "as long as". And then, you will have to add  
18 the word "is" in front of the word "present"  
19 at the end of that line.

20 REP. HOLTZMAN: Suppose it is  
21 recorded, though? Just a question, Colonel.

22 COL COOK: If it is recorded and

1 that recording is preserved, then you've got  
2 -- okay, but if it is recorded, I would be  
3 fine with that. But now you are looking at a  
4 victim who wants to be able to go talk to them  
5 and not make it an unrestricted report. If  
6 you keep it as restricted, if you are a  
7 defense, can you get a copy of that? I don't  
8 know if you can get a copy of that recording.

9           And now, do you preserve it  
10 forever? It becomes evidence? I don't know  
11 if you have created another issue, if you are  
12 making an actual recording of something that  
13 later on becomes a restricted report that  
14 nobody is supposed to know what is in there,  
15 unless the victim changes their mind.

16           If this is a discussion, if there  
17 is a limit that keeps this discussion about  
18 the process, what can I expect, that is one  
19 thing, but we didn't put that qualifier in  
20 here. My concern is, if we got into the  
21 substance -- and again, I have never been a  
22 defense attorney; I have been a prosecutor --

1 but if you get into the substance, it is now  
2 in the possession of the government, and I am  
3 concerned you are putting -- and yet, if you  
4 are putting the Special Victim Counsel there,  
5 and you have that as being your witness with  
6 an investigator, do you later make that  
7 Special Victim Counsel the potential for being  
8 a witness against their own victim, the  
9 client? I'm not sure that is the best  
10 interest, either.

11 A recording would preserve it, but  
12 are you creating other issues? I don't know  
13 enough about it. I am just concerned. I  
14 don't want it to be a two-party conversation.

15 MR. BRYANT: Excuse me, Judge  
16 Jones.

17 CHAIR JONES: Yes.

18 MR. BRYANT: Aren't we only  
19 talking in this recommendation about whether  
20 or not you can go to an investigator and make  
21 a restricted report? Isn't that what -- or is  
22 there something else here that I am missing

1 here?

2 BRIG GEN MCGUIRE: No, we agree  
3 you go and --

4 MR. BRYANT: Yes.

5 BRIG GEN MCGUIRE: We have had  
6 that conversation. That is not an issue. The  
7 issue and the concern is, and I have got  
8 another issue from the investigator  
9 perspective. When you operationalize a  
10 recommendation like that, they have to  
11 immediately start thinking, okay, is this  
12 going to be restricted or unrestricted? But  
13 if I know that there is a Victim Advocate  
14 there, it is always going to be restricted.

15 COL COOK: I thought the  
16 conversation, Dean Hillman, when Russ -- and  
17 I forgot Russ' last name -- had from before,  
18 okay, Russ Strand, that a victim is going to  
19 come in. They will start talking to the  
20 investigator. They will get comfortable with  
21 the process. And the goal is to have that  
22 restricted report turn into an unrestricted.

1 And that is great in terms of a goal.

2 The concern I have is, what  
3 happens if it is now unrestricted. Defense  
4 gets to investigate it. What if there were  
5 some comments made during that unrestricted  
6 portion that the other side is entitled to?  
7 I don't know how you protect -- I mean, I  
8 understand both sides. I understand both  
9 sides, and that's where my concern is.

10 You are at the investigator  
11 portion. And that, for me, is a slippery  
12 slope. I would rather keep it from there, but  
13 I can agree to let it go there with this  
14 third-party witness. And hopefully, none of  
15 these unforeseen potential situations come up,  
16 but if it does, that there is some safeguard  
17 that is there for all parties concerned.

18 CHAIR JONES: All right. So, can  
19 we say, the recommendation is to change  
20 restricted reporting policy to "allow a victim  
21 who has made a restricted report to provide  
22 information to a military criminal

1       investigative organization, but only when a  
2       Victim Advocate and/or Special Victim Counsel  
3       is present."?  Something along those lines?  
4       Okay.

5                       Beth, is that all right with you?

6                       PROFESSOR HILLMAN:  That's fine,  
7       Judge Jones.  The point is to make it possible  
8       to make the switch.  I don't think the  
9       Subcommittee intended to prescribe exactly how  
10      it happens; just to make it happen.  So,  
11      that's fine.

12                      CHAIR JONES:  Great.  Okay.  Thank  
13      you.

14                      REP. HOLTZMAN:  Just one small  
15      point.

16                      CHAIR JONES:  Right.

17                      REP. HOLTZMAN:  Judge Jones, I'm  
18      sorry.

19                      CHAIR JONES:  That's all right.

20                      REP. HOLTZMAN:  When it says "has  
21      made a restricted report," does that require  
22      the person already to have made the report or

1 can the restricted report be made at that  
2 time? No, you have to already have made the  
3 report?

4 BRIG GEN DUNN: You don't make a  
5 restricted report to law enforcement. So,  
6 this would be somebody who has made a  
7 restricted report on that --

8 REP. HOLTZMAN: Already?

9 BRIG GEN DUNN: -- already, and  
10 then, wants to --

11 REP. HOLTZMAN: Okay. Thank you.

12 COL COOK: On the recommendations,  
13 those are the four that I had the most  
14 comments. And then, like I said, I had  
15 findings; there were five points. If we are  
16 going to keep them there, then I would just  
17 like to clarify because some of them -- I have  
18 to go back and look at what I have, but I  
19 don't know that they were quite -- there were  
20 nuances with some of them.

21 Okay. Recommendation No., okay,  
22 in Recommendation 55, RSP Recommendation 55,



1 which is on page 24, if you look underneath it  
2 -- I mean, this is going to go back to the CSS  
3 Recommendation 32-2, 33-2.

4 And it says, "The Services fully  
5 fund special prosecutor's case preparation  
6 requirements." If we are leaving these in  
7 here, what I would just suggest is saying,  
8 instead of "fully fund," "adequately  
9 resource".

10 Unless you are ready to fully fund  
11 everything the defense does, and "fully fund"  
12 means 100 percent of their resourcing;  
13 "adequately resource" has got some wiggle  
14 room.

15 We are making a recommendation  
16 they fully fund the prosecution case  
17 preparation requirements. Are we going to  
18 fully fund defense counsel --

19 BRIG GEN DUNN: Where --

20 COL COOK: I am underneath RSP  
21 Recommendation 55. There are two CSS  
22 findings. The second one is 33-2.

1                   BRIG GEN DUNN: Yes. No, I see  
2 that. Have you ever heard of convening  
3 authority that didn't fully fund the  
4 prosecutor's requirements? I mean, the  
5 evidence we had is that the prosecutors get  
6 the funding.

7                   COL COOK: Oh, okay.

8                   BRIG GEN DUNN: That's not a  
9 recommendation.

10                  COL COOK: It is not a  
11 recommendation. I did misread it that way  
12 because I was looking -- I thought we were  
13 making -- okay, your point taken. Okay.  
14 Thank you.

15                  BRIG GEN DUNN: Yes, the findings  
16 are findings of fact.

17                  COL COOK: They find that they do.  
18 Fine.

19                  Then, we will see that maybe with  
20 some of these, if I misread it.

21                  No. 60, RSP 60, and again, we are  
22 looking at CSS Finding 29-1 that is underneath

1 that.

2 This is a CSS finding. The Panel  
3 did not adopt the recommendation for the  
4 enhanced role of military judges at this  
5 point. I would request that we delete the  
6 second sentence that says, "The recommendation  
7 for an enhanced role of military judges noted  
8 elsewhere in this report may necessitate  
9 increased funding." We didn't make that final  
10 determination.

11 CHAIR JONES: Because we sent it  
12 for study.

13 COL COOK: Yes.

14 CHAIR JONES: All right. So, that  
15 should not be in there. The second sentence  
16 of that finding is out.

17 PROFESSOR HILLMAN: Judge Jones?

18 CHAIR JONES: Yes, Beth?

19 PROFESSOR HILLMAN: Could we just  
20 change that back to "The study for an enhanced  
21 role of military judges noted elsewhere in  
22 this report may necessitate increased

1 funding."? Just because we recommend a study  
2 rather than recommending a pretrial role for  
3 military judges, could we just change it to  
4 that?

5 COL COOK: Dean Hillman, I had  
6 thought about that, too, because I started  
7 writing. I had written something.

8 "If the review recommended to  
9 consider the role of military judges results  
10 in an increase in their use, then increased  
11 funding may be required for the training of  
12 judges."

13 REP. HOLTZMAN: Or just to cut  
14 that shorter, just "If there is an enhanced,"  
15 "If the role of the military judges is  
16 enhanced, that may necessitate increased  
17 funding for the training...."

18 COL COOK: Okay. Then, I would  
19 add, "is enhanced after further study that may  
20 necessitate" --

21 REP. HOLTZMAN: Yes. "After the  
22 study recommended by this report" --

1 COL COOK: Right. Right. I would  
2 agree with that. That would be fine. Just  
3 the way it was --

4 REP. HOLTZMAN: Right.

5 COL COOK: -- it wasn't accurate.

6 CHAIR JONES: Okay.

7 REP. HOLTZMAN: Beth, are you okay  
8 with that?

9 PROFESSOR HILLMAN: Indeed, that  
10 sounds great.

11 CHAIR JONES: All right. Good.

12 COL COOK: Okay. On RSP  
13 Recommendation No. 62 on page 26, CSS Finding  
14 15-1, I'm not saying it's -- it needs a period  
15 at the very end of the finding. That's one,  
16 but that's not the reason I point it out.

17 The first sentence, no change.  
18 The second sentence, for me, it doesn't  
19 follow. If we are saying that the -- I don't  
20 understand what the Marine Corps does by those  
21 two sentences together.

22 "DoD policy requires specially-

1 trained and selected MCIO investigators be  
2 assigned as the lead investigators for all  
3 sexual assault cases, which has increased  
4 their caseloads. As a result, CID  
5 investigators cannot handle" -- can they not  
6 handle it because they don't have enough  
7 resources for it or --

8 BRIG GEN DUNN: No, they are not  
9 an MCIO.

10 COL COOK: All right.

11 BRIG GEN DUNN: They are not an  
12 MCIO.

13 COL COOK: See, for me, the way  
14 that is, as a result, because they have  
15 increased the campaign, I thought that they  
16 didn't have enough resources. So, I think  
17 that needs to just be clarified.

18 "And Marine Corps CID  
19 investigators are not MCIOs, and" --

20 BRIG GEN DUNN: They are more like  
21 an MPI level.

22 COL COOK: Right. So, what do

1 we --

2 BRIG GEN DUNN: So, maybe take out  
3 "as a result" --

4 COL COOK: Because that causes --

5 BRIG GEN DUNN: -- and start with  
6 "Marine Corps Criminal Investigative Division  
7 investigators are not MCIOs and cannot handle  
8 any sexual assaults."

9 COL COOK: "And therefore,  
10 currently, can't handle" --

11 BRIG GEN DUNN: Right.

12 COL COOK: I mean, the point is we  
13 are trying to correct that.

14 BRIG GEN DUNN: Right.

15 CHAIR JONES: Okay. So, what is  
16 the language we want?

17 BRIG GEN DUNN: So, take out "as a  
18 result," and just say, "Marine Corps Criminal  
19 Investigation Division investigators are not  
20 MCIO investigators."

21 COL COOK: "And therefore,  
22 cannot" --

1 BRIG GEN DUNN: "And therefore" --

2 COL COOK: -- "currently handle  
3 any sexual assaults and violation" -- that  
4 would address my concern for that one.

5 CHAIR JONES: Well, actually, we  
6 are making a finding. So, can we say simply,  
7 "Because Marine Corps Criminal Investigation  
8 Division investigators are not MCIO  
9 investigators" --

10 COL COOK: Yes.

11 CHAIR JONES: -- "they cannot  
12 handle any sexual assaults."?

13 COL COOK: Yes. Yes.

14 CHAIR JONES: Then, we are just  
15 stating a fact.

16 REP. HOLTZMAN: Yes. Can we take  
17 out the "in violation"? Because it sounds  
18 like just sexual assaults that violate Article  
19 120. Wouldn't that be like the Criminal Code?  
20 It sounds like their actions are in violation.

21 CHAIR JONES: Okay.

22 MR. BRYANT: Judge Jones?



1 CHAIR JONES: Yes, Mr. Bryant?

2 MR. BRYANT: May we also change  
3 that "can't handle" to "can't investigate"?  
4 Because the "can't handle" has a connotation  
5 that they are incapable.

6 (Laughter.)

7 COL COOK: And that is where my  
8 confusion came in.

9 REP. HOLTZMAN: Right.

10 COL COOK: Because they can't  
11 handle the increased caseloads in the first  
12 sentence, but I did not think that is what we  
13 are looking at.

14 BRIG GEN MCGUIRE: "Not  
15 permitted"?

16 MR. BRYANT: Yes, "not permitted,"  
17 that's another one.

18 BRIG GEN DUNN: The point is,  
19 right, that the NCIS is overwhelmed with minor  
20 cases.

21 CHAIR JONES: Okay. All right.

22 BRIG GEN DUNN: Or so they say.

1 COL COOK: All right. RSP  
2 Recommendation No. 53 on page 24. Okay, is  
3 that redundant? I mean, I looked at that  
4 investigation. That recommendation, when I  
5 read this in order, even if I didn't give it  
6 in order, to me, it seemed redundant with RSP  
7 Recommendation No. 51, just two points above  
8 it.

9 So, for me, I thought if we got  
10 rid of that recommendation, because it is  
11 already there, and move the CSS Finding 24-1  
12 right behind 22-1 on page 23, that we would  
13 have our same point, but it would be a little  
14 more consolidated.

15 They both deal with looking at the  
16 Navy's military justice litigation career  
17 track, and it is specifically mentioned in the  
18 other one.

19 CHAIR JONES: We talked about this  
20 at some length.

21 REP. HOLTZMAN: We did talk about  
22 it, yes.

1                   CHAIR JONES: I couldn't remember  
2 what the results were. We can go back and  
3 look, but I thought that, because 51 really  
4 related to a Joint Training Working Group,  
5 talked about best practices, and this, 53 was  
6 more specific -- I don't know. I think we  
7 went back and forth on this one.

8                   PROFESSOR HILLMAN: Judge Jones?

9                   CHAIR JONES: Yes, Beth?

10                  PROFESSOR HILLMAN: I think that  
11 if we take the phrase that is the rationale  
12 for 53 and embed that in 51, so that is the  
13 reasons that we are doing this, I think it  
14 would be fine.

15                  So, the second paragraph in 51  
16 says what the Working Group should do:  
17 identify best practices, strive to eliminate  
18 redundancy, et cetera. If we just add to  
19 there "enhance expertise in litigating sexual  
20 assault cases," which is the reason that 53 is  
21 there, then I think 53 can deal with that.

22                  CHAIR JONES: So, you are saying

1 take out the Recommendation 53, correct?

2 PROFESSOR HILLMAN: Yes.

3 CHAIR JONES: And move the  
4 finding --

5 BRIG GEN DUNN: No, no, move the  
6 language.

7 CHAIR JONES: Oh, move the --

8 PROFESSOR HILLMAN: Or just move  
9 the reason for 53 --

10 CHAIR JONES: Oh, I see.

11 PROFESSOR HILLMAN: -- which is to  
12 "enhance expertise in litigating sexual  
13 assault cases," and add that to the list of  
14 things that the Working Group is doing. So,  
15 the Working Group should identify best  
16 practices, strive to eliminate redundancy," et  
17 cetera. And then, add in "Consider ways to  
18 enhance expertise in litigating sexual assault  
19 cases." And then, it reviews all those  
20 different things, including the litigation  
21 career track, as ways to do that.

22 CHAIR JONES: I got you.

1                   PROFESSOR HILLMAN: Does that make  
2 sense?

3                   CHAIR JONES: Yes, I think so.  
4 Anybody?

5                   COL COOK: No, that's fine with  
6 me.

7                   CHAIR JONES: Okay, great.

8                   COL COOK: Just move the whole  
9 finding the way it is, 24-1, and put it right  
10 underneath the 22-1, underneath that.

11                  BRIG GEN DUNN: Yes, that would  
12 work. Yes, move, so that there would be three  
13 findings under 51.

14                  COL COOK: I just know that when I  
15 was re-reading it again, I thought we had  
16 discussed it. I went back and I looked, and  
17 we had accepted it, but it just still struck  
18 me as repetitive. So, that would solve my  
19 concern on that one.

20                  CHAIR JONES: All right. Good. I  
21 think we're agreed.

22                  COL COOK: Now those were

1 substantive changes that I had where I thought  
2 the finding or the recommendation needed to be  
3 changed for some reason. The other changes  
4 that I had are minor tweaks or clarifications  
5 that I don't think affect substance at all.  
6 So, for those, I can just give directly to  
7 Colonel Green separately.

8 CHAIR JONES: That would be fine.

9 COL COOK: Fine. Thank you.

10 CHAIR JONES: There is one that we  
11 should just make a decision on that I noticed  
12 in some comments. And that is, when we are  
13 making our recommendations, we sometimes say  
14 "Recommend that `X' happen," and other times  
15 we say, "Recommend that `X' should happen."  
16 So, sometimes we are taking the "should" out  
17 and sometimes we are leaving it in. So, we  
18 should just have, for the sake of uniformity,  
19 probably no "should". Okay. So, we will make  
20 that change throughout. It is small, but --

21 REP. HOLTZMAN: But, then, the  
22 problem occurs in the second sentence of those

1 recommendations because it is fine to say,  
2 "Recommend that the Secretary direct..." but  
3 then what happens in the second sentence?  
4 "Secretary direct" again. I don't know.  
5 Sometimes it didn't seem to work. That is all  
6 I am saying.

7 CHAIR JONES: All right. Well,  
8 then, as we are deleting these, we will have  
9 to it with care --

10 REP. HOLTZMAN: Okay.

11 CHAIR JONES: -- and see if we  
12 have any more problems.

13 REP. HOLTZMAN: Okay.

14 COL COOK: I'm sorry, and on RSP  
15 Recommendation 48 --

16 CHAIR JONES: Yes?

17 COL COOK: -- which is another one  
18 on the findings, it is the finding underneath  
19 it. It is CSS Finding --

20 CHAIR JONES: Page?

21 COL COOK: The page is -- what is  
22 it? Page 21. Okay. It is CSS Finding 8-2

1        underneath it.

2                    It says, "A best practice in the  
3        military is the assignment of civilian  
4        investigators." We had a discussion. This is  
5        a finding portion. So, you all who did this  
6        report just -- I know when we did our  
7        recommendations for the Panel, we said that we  
8        wanted to have them overseeing or supporting  
9        it in terms of working with it, but not  
10       necessarily supervising it.

11                   Is the finding still accurate when  
12       you say that the best practice in the military  
13       is the assignment of civilian investigators  
14       who supervise the SVU or is it who oversee or  
15       provide input to the SVU and have continuity  
16       of investigators?

17                   I think we had a long discussion  
18       last time about not everybody is meant to  
19       supervise, but you do want that continuity of  
20       expertise involved in it. So, I don't know if  
21       that affects the finding or not.

22                   BRIG GEN DUNN: Yes, I mean, as I



1 recall, I mean, I know the discussion we had  
2 last time, right, was that you had to leave  
3 commanders flexibility to put in charge those  
4 who should be in charge, whether they are  
5 military or civilian.

6 I do know that the Panel heard a  
7 good deal of information. And then, of  
8 course, we had Mr. Strand, who is both a Panel  
9 member and an expert in his own right on this.

10 And MCIOs are, in fact, hiring  
11 civilians, usually retired military agents,  
12 specifically to run their SVU programs, where  
13 practicable, because of their expertise, their  
14 continuity, their understanding of the  
15 military because they have been in it. But  
16 that is a fact, that they are working toward  
17 that.

18 COL COOK: That's all I am asking.  
19 So, if the finding is accurate the way it is,  
20 that that was the best practice you found. It  
21 doesn't affect our recommendation?

22 BRIG GEN DUNN: Right.

1 COL COOK: I just wanted to make  
2 sure that was true.

3 And then, in Recommendation 56,  
4 which is on page 25 -- and I know I said that  
5 was all I had, but -- 56 on page 25.

6 (Laughter.)

7 I'm sorry.

8 CSS Finding 38-1. I don't think  
9 that is quite accurate.

10 CHAIR JONES: I mean, 28-1 did you  
11 say?

12 COL COOK: Thirty-eight. It is  
13 RSP 56 on page 25.

14 CHAIR JONES: Oh, okay, got it.

15 COL COOK: And it says, "CSS  
16 Finding 38-1".

17 There are currently no  
18 requirements for the Services to measure  
19 military defense counsel performance trying  
20 sexual assault cases. The Panel is unaware of  
21 any effort on the Services' part to do so.

22 I will agree there is a part of me

1 that says no requirements. I mean, we  
2 evaluate. The evaluation process is out  
3 there. I mean, what you are getting at there  
4 is there is nothing specific on the sexual  
5 assault panel. Because every defense  
6 attorney, every prosecutor, everybody that is  
7 out there working on this, they are evaluated  
8 on everything. They just don't single out  
9 sexual assault.

10 So, when you say there is "no  
11 requirement to measure defense performance to  
12 try sexual assault" -- I mean, I don't know;  
13 I am not sure if I think it is an  
14 overstatement. They do measure it in  
15 evaluations. They may not single it out, if  
16 that is what you are trying to get at. You  
17 think it should be singled out in evaluation  
18 systems? That is my question on that one.

19 BRIG GEN DUNN: Yes, Dean Hillman,  
20 can you remember where the recommendation came  
21 from? I am trying to think what specific  
22 assessments of prosecutors that we heard

1 about.

2 PROFESSOR HILLMAN: Right. What  
3 is the specific number of the CSS? Is it a  
4 finding?

5 BRIG GEN DUNN: Yes.

6 COL COOK: Yes, it was CSS Finding  
7 38-1.

8 PROFESSOR HILLMAN: Thirty-eight?

9 COL COOK: Thirty-eight, 3-8.

10 BRIG GEN DUNN: And the associated  
11 recommendation.

12 PROFESSOR HILLMAN: Right. This  
13 was just based on the absence of performance  
14 metrics, and it is reflected throughout. I  
15 mean, it is similar to the other  
16 recommendation where we are trying to make  
17 assessments of the different pieces of the  
18 response system.

19 I mean, the discussion in the CSS  
20 report says, "It is difficult to evaluate all  
21 military defense counsel to measure success if  
22 the conviction rates aren't an accurate or

1 desirable measure." Rates are not, but we do  
2 need to come up with some ways to assess  
3 whether or not defense counsel are actually  
4 performing well in sexual assault cases  
5 specifically. And that is what this  
6 recommendation is about.

7           So, there isn't anything -- I  
8 mean, I think the finding is correct,  
9 actually. There are no requirements for  
10 performance assessment in sexual assault cases  
11 specifically, which is what that Panel says  
12 that is what we are talking about  
13 specifically, sexual assault cases.

14           BRIG GEN DUNN: Yes. Well, I  
15 understand Colonel Cook's concern because you  
16 use the "performance," and it does lead us  
17 into thinking about performance evaluations,  
18 I think.

19           But now, based on what Dean  
20 Hillman has said, we were talking about sort  
21 of a data analysis and training assessments,  
22 that sort of evaluation. So, maybe there is

1 a better word other than "performance" that  
2 leads us into thinking about efficiency  
3 reports.

4 COL COOK: Because they are  
5 looking for efficiency reports --

6 BRIG GEN DUNN: Right.

7 COL COOK: -- professional  
8 responsibility, oversight, and things like  
9 that. You are talking about the technique and  
10 the qualifications --

11 BRIG GEN DUNN: Yes, we are  
12 talking about -- exactly. Is the training  
13 working? Are sexual assaults, are those  
14 accused of sexual assault being appropriately  
15 represented across the board? It is not an  
16 individual performance assessment.

17 CHAIR JONES: So, this is a  
18 situation where the recommendation informs the  
19 finding instead of the reverse. So, I mean,  
20 I think all we are saying is defense counsel  
21 doesn't have a similar performance assessment  
22 to what they are doing for prosecutors in the

1 sexual assault area.

2 COL COOK: But I am not sure there  
3 is --

4 BRIG GEN DUNN: Well, I am not  
5 saying that this --

6 COL COOK: In the Navy there is  
7 the performance evaluation because the  
8 Judicial Panels were the ones that were doing  
9 it, which is what we are looking at as a best  
10 practice. But I think in the Army there is no  
11 special performance assessment that is done  
12 specifically for sexual assault cases.

13 BRIG GEN DUNN: But there is an  
14 assessment -- see, I think that the judicial  
15 assessment is on the individual performance  
16 side. I think what we are talking about here  
17 is an assessment of, okay, we have done all  
18 this training of military prosecutors. What  
19 are the outcomes now in our sexual assault  
20 cases? Can we see the results of that  
21 training? And implementing something similar  
22 to that for the defense counsel.

1 COL COOK: And would you, then,  
2 now in all the Services for the prosecutors?

3 BRIG GEN DUNN: Yes, all the  
4 Services would move to some sort of -- you  
5 know, the SAPRO system forces it.

6 But I agree with you that the  
7 language here is very confusing. It looks  
8 like we are talking about individual  
9 performance, and, in fact, we are talking  
10 about doing some sort of assessment across the  
11 board of how we are doing. Is our training  
12 effective?

13 COL COOK: Okay. Is it possible,  
14 is this one area where you leave the  
15 recommendation, because, like you said, Judge  
16 Jones, you said it is the recommendation that  
17 informs the finding. Can we leave the  
18 recommendation without a finding underneath  
19 it?

20 REP. HOLTZMAN: I don't think we  
21 need to do that. I think that would be a  
22 mistake because I think --



1 COL COOK: Okay.

2 REP. HOLTZMAN: But I think if you  
3 put the apostrophe after the "S" in "defense  
4 counsel," then you make it -- you indicate  
5 that you are talking about all plural there,  
6 or something like that.

7 COL COOK: Oh, because this is an  
8 individual performance evaluation which they  
9 do do. It is just a question of you are  
10 looking at the program. Are these people  
11 competently doing what they have been charged  
12 to do? And I agree with that.

13 REP. HOLTZMAN: No, it is more  
14 than just are they competent.

15 COL COOK: Yes.

16 REP. HOLTZMAN: That is what the  
17 evaluation --

18 COL COOK: Are they doing --

19 REP. HOLTZMAN: Are they  
20 adequately doing their job? But there is a  
21 larger question here, which is, did they have  
22 enough resources to do their job? Are they

1 getting enough training to do their job? I  
2 mean, you know, the evaluation is under the  
3 existing circumstances, but this --

4 COL COOK: Can we say "measure  
5 effectiveness" then? Because that gets into  
6 the performance, the training, the resourcing.  
7 "To measure defense counsel's effectiveness in  
8 trying sexual assault cases"? Was that not  
9 without --

10 COL HAM: There was discussion, if  
11 you recall, General Dunn, on using the word  
12 "effective" since that has a Sixth Amendment  
13 connotation.

14 COL COOK: Okay.

15 COL HAM: So, that is when  
16 "performance" was substituted.

17 The body of the report talks about  
18 the statutory requirements to assess the  
19 special victim capability, including the  
20 specially-trained prosecutors within it.

21 CHAIR JONES: We don't have  
22 something similar for defense --

1 COL HAM: Exactly. Right. Yes.

2 REP. HOLTZMAN: Yes. And maybe,  
3 also, if you added that, unlike with regard to  
4 prosecutors, military prosecutors, there are  
5 no requirements within the Service to measure.  
6 That would also clarify the point that we are  
7 getting at. I don't have the exact wording.  
8 But, you know, if you contrasted it right  
9 there to the military prosecutors, there is a  
10 system for measurement. Then, I think it  
11 would help deal with Colonel Cook's very valid  
12 point.

13 CHAIR JONES: So, what are we  
14 going to do to Finding 38-1? Let's just  
15 settle it now with the language.

16 REP. HOLTZMAN: Maybe we could --

17 CHAIR JONES: We should say, I  
18 think you started off with "In contrast"?

19 REP. HOLTZMAN: Yes.

20 CHAIR JONES: "In contrast to the  
21 performance assessment of prosecutors in  
22 sexual assault cases, there currently are no

1 requirements for the Services to measure  
2 military defense counsel's performance trying  
3 sexual assault cases."

4 Will that work?

5 REP. HOLTZMAN: Yes. Take out the  
6 apostrophe "S". "Military defense counsel".

7 CHAIR JONES: It will be counsels,  
8 plural, with an apostrophe?

9 REP. HOLTZMAN: Either plural or  
10 just "counsel".

11 CHAIR JONES: Okay. I like  
12 "counsel," I think.

13 REP. HOLTZMAN: Just take off the  
14 apostrophe.

15 CHAIR JONES: Okay. "Military  
16 defense counsel performance". And then, I  
17 think we are all set. Yes? That's good,  
18 Colonel?

19 Okay. Great. Thank you.

20 Mai?

21 MS. FERNANDEZ: Yes, just to keep  
22 it consistent with what we were talking about

1 our overarching themes, when we talk about  
2 evaluations or independent or studies, we  
3 don't mention the word "independent" often in  
4 our recommendations. And so, it looks like an  
5 internal evaluation.

6 And if we turn to Recommendation  
7 16, I think the word "independent" should  
8 be --

9 CHAIR JONES: Do you have a page,  
10 please?

11 MS. FERNANDEZ: Oh, I'm sorry.

12 CHAIR JONES: That's okay.

13 MS. FERNANDEZ: Nine.

14 CHAIR JONES: Great.

15 MS. FERNANDEZ: Recommendation 16  
16 at the top.

17 CHAIR JONES: I don't think we  
18 ever discussed that being independent, did we?

19 BRIG GEN DUNN: No, I don't think  
20 so.

21 CHAIR JONES: I think this was one  
22 where that wasn't really part of the

1 conversation. We wanted, I guess, a list of  
2 what commanders think or the military, DoD  
3 thinks is low-level collateral misconduct.

4 BRIG GEN DUNN: Right, because  
5 that is completely within the UCMJ system  
6 then.

7 MS. FERNANDEZ: Definitely, then,  
8 Recommendation 30, which has to do with  
9 Special Victims' Counsel, I do think that that  
10 needs to be independent because that is --

11 COL COOK: Page 15.

12 MS. FERNANDEZ: I'm sorry, page  
13 15, No. 30.

14 REP. HOLTZMAN: Let me ask a  
15 question about that. If they had an outside  
16 evaluator evaluate the evaluation mechanism,  
17 you don't think the Services could handle  
18 applying that standard? I mean, in other  
19 words, if you had XYZ Corporation that does  
20 research on these kinds of surveys or studies,  
21 develops a method for evaluating the  
22 effectiveness of defense counsel, develops the

1 metrics --

2 MS. FERNANDEZ: To create a  
3 mechanism to evaluate --

4 REP. HOLTZMAN: Yes, make it on  
5 the metrics. And then, that was applied by  
6 the Services; don't you think that would be  
7 sufficient or not?

8 MS. FERNANDEZ: I think, in my  
9 mind, it is always best to say XYZ Corporation  
10 has independently evaluated this program and  
11 it is declared that it is successful for A, B,  
12 and C.

13 BRIG GEN DUNN: But maybe it is a  
14 stepped process where, you know, DoD develops  
15 the metrics and necessarily has to look at  
16 prosecution metrics across the board, both in  
17 and out with the Service, and then, gathers  
18 statistics, so gathers results based on those  
19 metrics they have developed. And then, that  
20 provides the opportunity for an outside look,  
21 don't you think? XYZ Corporation doesn't  
22 understand --

1 MS. FERNANDEZ: Oh, I think you  
2 always have to do it in collaboration with,  
3 but the actual findings are from an  
4 independent evaluator.

5 CHAIR JONES: You know, we have  
6 another recommendation where we talk generally  
7 about bringing someone in independently to  
8 evaluate not the entire SAPRO system, but  
9 individual programs. So, I don't know that we  
10 intended to specify this as one of those  
11 programs, although it would be a candidate.

12 But, also, there is, I guess --

13 MS. FERNANDEZ: I think if this is  
14 sort of our spotlight program, it needs an  
15 independent evaluation. Because we are saying  
16 that this is one of the biggest things that we  
17 are doing in order to bring victim  
18 satisfaction. We are hoping that it increases  
19 reporting. We need to make sure that  
20 everything that we are seeing, it is our  
21 enforcement of victims' rights. So, I think  
22 the fact that we are saying it is doing, so I



1 think it needs somebody from the outside --

2 CHAIR JONES: So, you want to  
3 enhance this recommendation with a --

4 MS. FERNANDEZ: I would just put  
5 "independent evaluator".

6 CHAIR JONES: Well, actually, are  
7 we saying we are going to develop a standard  
8 evaluation mechanism in consultation with an  
9 independent entity --

10 MS. FERNANDEZ: That's fine.

11 CHAIR JONES: -- or body, or  
12 whatever? Okay.

13 MS. FERNANDEZ: Yes.

14 CHAIR JONES: I mean, is that all  
15 right with everybody else?

16 COL COOK: Yes.

17 CHAIR JONES: Okay. Great.

18 Thanks, Mai.

19 MS. FERNANDEZ: Uh-hum.

20 CHAIR JONES: Anything else?

21 REP. HOLTZMAN: Judge Jones, I  
22 sent in a whole bunch of --

1 CHAIR JONES: You did.

2 REP. HOLTZMAN: -- suggestions. I  
3 think very few of them had to do with the  
4 recommendations, but they might have. I don't  
5 know. I assume that --

6 PROFESSOR HILLMAN: Judge Jones,  
7 this is Beth.

8 Likewise, my comments are  
9 reflected in that document that Patty sent  
10 around for us.

11 So, Colonel Ham, your staff put  
12 all of those together.

13 COL HAM: Right.

14 PROFESSOR HILLMAN: So, I think it  
15 is just Representative Holtzman and me and,  
16 then, Admiral Houck's comments are in the  
17 draft.

18 CHAIR JONES: If I could move for  
19 a minute to something that relates to one of  
20 your comments, Professor? You talked about  
21 the ordering of the recommendations and trying  
22 to order them, so that the most

1 important/strongest investigation -- I don't  
2 mean investigation -- recommendation would  
3 come first. I think that is a very important  
4 idea.

5 I think what happens in the text  
6 is, you know, the recommendations come up in  
7 the order that the text is laid out in. But  
8 do you have a proposal for how we could -- I  
9 think we would be talking about re-ordering  
10 the recommendations in that initial abstract  
11 that people would be reading upfront. Was  
12 that what was on your mind?

13 PROFESSOR HILLMAN: Yes, Your  
14 Honor. The way we ordered them in the CSS  
15 Subcommittee report was from the sort of most  
16 important piece and, then, the others  
17 followed. But they are re-ordered here. And  
18 we start with, you know, the very first  
19 recommendation of the Panel is "Improve  
20 response rate to surveys." I just wouldn't  
21 start there. So, I would go in the order that  
22 CSS findings/recommendations --

1 CHAIR JONES: Okay. Well, why  
2 don't we do this: first of all, we will go  
3 back to your Subcommittee report. Did Victim  
4 Services do the same thing, Mai? Do you  
5 remember? Do you know?

6 MS. FERNANDEZ: I don't think so.

7 CHAIR JONES: Okay. All right.  
8 Well, neither did Role of the Commander, to my  
9 recollection.

10 So, why don't I take a shot at re-  
11 ordering the recommendations and send them out  
12 for comment?

13 I would like to go through any  
14 other comments anyone has that are  
15 substantive. If it is a question of a typo or  
16 a comma, or what have you, I will assume  
17 responsibility to go through and fix those, if  
18 that is okay with everybody. But why don't we  
19 take a minute now and figure out if there are  
20 more substantive comments?

21 PROFESSOR HILLMAN: Judge Jones?

22 CHAIR JONES: Yes?

1                   PROFESSOR HILLMAN: I have about  
2                   35 more minutes to stay with you. So, maybe  
3                   I should go ahead with the comments that I  
4                   made, and maybe we can discuss those. I did  
5                   not flag little things.

6                   CHAIR JONES: That would be great.  
7                   That would be great. Go ahead.

8                   PROFESSOR HILLMAN: Great. We  
9                   could combine --

10                  CHAIR JONES: I'm sorry, did you  
11                  say you were going to --

12                  PROFESSOR HILLMAN: Shall I go  
13                  ahead?

14                  CHAIR JONES: Yes.

15                  PROFESSOR HILLMAN: I could run  
16                  through now for you the comments that I made.

17                  CHAIR JONES: Yes.

18                  PROFESSOR HILLMAN: I can only be  
19                  on the call until 10:00 my time. So, I will  
20                  have to go then, anyway. So, maybe I should  
21                  review those comments with you before I have  
22                  to go.

1                   CHAIR JONES: You should go now,  
2 absolutely.

3                   PROFESSOR HILLMAN: Okay. On page  
4 12 of the number of comments that Colonel Ham  
5 sent, it is Recommendations 23(a) and (b).

6                   I thought they could be combined.  
7 And also, a comment you see I wrote there is  
8 that the Victims Services Subcommittee Finding  
9 23-3 also belongs in this, as a finding to  
10 support this recommendation.

11                  CHAIR JONES: It is on page 12,  
12 everybody.

13                  BRIG GEN DUNN: Twenty-three (a)  
14 and (b).

15                  CHAIR JONES: Beth, could you  
16 repeat that, now that we are all on the same  
17 page, so to speak?

18                  PROFESSOR HILLMAN: Right. See,  
19 it says 23(b) and 24 should be combined.  
20 Twenty-three (b) says, "Adopts policies to  
21 ensure mental health treatment will not have  
22 negative implications on career or promotion."

1 And 24 says, "Implement policy to protect  
2 victims from suffering damage to their  
3 careers," which ought to include ensuring that  
4 mental health treatment does not have negative  
5 implications.

6 CHAIR JONES: All right. You want  
7 to combine those?

8 BRIG GEN DUNN: Twenty-three (b)  
9 and 24, that does make sense.

10 REP. HOLTZMAN: Is this it? Okay.

11 BRIG GEN DUNN: Yes, that's it.

12 REP. HOLTZMAN: All right. I'm  
13 sorry, what page?

14 BRIG GEN DUNN: Page 12 and 13,  
15 23(b) and 24.

16 REP. HOLTZMAN: Oh, okay, yes.  
17 Yes, sure. Okay, I've got it.

18 CHAIR JONES: So, do you just want  
19 to take the text from 24 and keep going in  
20 23(b), add it in there?

21 COL COOK: Can I make a suggestion  
22 on that one?

1 CHAIR JONES: Yes.

2 COL COOK: I would suggest, I  
3 mean, I like what Dean Hillman just said, but  
4 I would suggest leaving it as 24 and leaving  
5 23 as a standalone. But I think the point of  
6 protecting somebody's career is worth leaving  
7 separate by itself. Move it out of 23(b) and  
8 just put it into 24, that they don't have  
9 damage to their careers.

10 PROFESSOR HILLMAN: I agree. It  
11 is a separate recommendation that we actually  
12 make in 24. I just think 23(b) is a part of  
13 24.

14 BRIG GEN DUNN: So, 23(a) will  
15 become 23, right? Twenty-three (a) will  
16 become 23?

17 PROFESSOR HILLMAN: Right.

18 BRIG GEN DUNN: With the Finding  
19 11 underneath it?

20 COL COOK: Yes.

21 BRIG GEN DUNN: And then, 23(b)  
22 will go, and we will have 24 with Finding 19?



1 Is that right?

2 CHAIR JONES: And, General Dunn,  
3 you are in charge of this one.

4 (Laughter.)

5 BRIG GEN DUNN: If you read 23(b)  
6 and, then, you go over and read 24 on the next  
7 page, they essentially say the same thing.  
8 So, we are just going to get rid of 23(b).

9 Is that right, Beth, just get rid  
10 of 23(b) or do you want to incorporate the  
11 language somehow?

12 PROFESSOR HILLMAN: I think you  
13 can get rid of, but I don't know if -- Ms.  
14 Fernandez, if you want to say that explicitly,  
15 you could add that to 24 if you want to, to  
16 say that explicitly about mental health  
17 treatment. But I think 24 captures all of  
18 23(b).

19 COL COOK: You can also just --  
20 this is Holly -- in RSP Recommendation 24, in  
21 the very last line where it says, "or having  
22 sought treatment for sexual assault," you

1 could probably add the words "or having sought  
2 mental health treatment," and specifically  
3 address it that way in the last line.

4 BRIG GEN DUNN: "Or having sought  
5 mental health"? So, about how, "or having  
6 sought mental health treatment for sexual  
7 assault"?

8 COL COOK: Treatment, right, for  
9 sexual assault.

10 BRIG GEN DUNN: Yes.

11 CHAIR JONES: I think that does  
12 it.

13 Okay. Thank you, Beth.

14 PROFESSOR HILLMAN: Judge Jones,  
15 one other thing. The Victim Services  
16 Subcommittee finding that supports 24 appears  
17 for some reason on page 16 under RSP  
18 Recommendation 32. So, we should just move  
19 it. If you look on page 16, it says, "Finding  
20 23-3".

21 CHAIR JONES: Oh.

22 PROFESSOR HILLMAN: We should just

1 move that one up to support Recommendation 24.

2 CHAIR JONES: Oh, yes. And delete  
3 from there.

4 BRIG GEN DUNN: Yes, 23-3, yes.

5 CHAIR JONES: All right. So, we  
6 are deleting 23-3?

7 BRIG GEN DUNN: We are moving it  
8 over underneath Recommendation 24.

9 CHAIR JONES: Okay.

10 REP. HOLTZMAN: But, then, it is  
11 completely redundant, it seems, with VSS  
12 Finding 19 there. So, maybe you don't need  
13 both of them.

14 What do you think, Mai? VSS  
15 Finding 19 and VSS Finding 23?

16 MS. FERNANDEZ: Yes, I think they  
17 say the same thing. One is a little longer  
18 than the other.

19 REP. HOLTZMAN: Right. I like the  
20 longer one better, right. I think we could  
21 eliminate --

22 BRIG GEN DUNN: Well, wait a

1 minute. Wait a minute, though, because, see,  
2 VSS 23-3 specifically talks about seeking  
3 guidance from Special Victim Counsel, which  
4 relates to RSP 32. So, it makes sense there.

5 COL COOK: Okay, but what you  
6 could leave is -- because the first part of  
7 it, though, is redundant -- so, you could  
8 leave VSS Finding No. 19, as Ms. Fernandez  
9 likes, the simple one.

10 BRIG GEN DUNN: Yes.

11 COL COOK: And then, cut off  
12 everything before up to the end in 23-3 and  
13 just have it as a standalone statement.  
14 "Victims may seek guidance from Special  
15 Victims' Counsel regarding career  
16 implications" --

17 BRIG GEN DUNN: Yes, I see how it  
18 works. Okay.

19 COL COOK: And you use both, but  
20 you break it up.

21 BRIG GEN DUNN: Yes. Right. So,  
22 leave 19 like it is and leave 23-3 where it

1 is, but take out the first part.

2 CHAIR JONES: Okay, great.

3 Next, Beth?

4 PROFESSOR HILLMAN: On page 20,  
5 RSP Recommendation 43.

6 CHAIR JONES: Uh-hum.

7 PROFESSOR HILLMAN: I just had  
8 left that almost precisely but for the last  
9 line, Recommendation No. 9 up above. Perhaps  
10 we want to say that again because it is so  
11 important to us, but is redundant, that  
12 Congress should consider more than conviction  
13 rates to measure the effectiveness.

14 If you look at 9, 9 says don't  
15 rely solely conviction rates.

16 REP. HOLTZMAN: We are looking at  
17 what number?

18 COL COOK: She is looking at --

19 MR. BRYANT: She is looking at 43.

20 COL COOK: -- No. 43, and the last  
21 sentence of 43 is exactly the same as the RSP  
22 Recommendation No. 9 on the bottom of page 5.

1 REP. HOLTZMAN: Yes, on the bottom  
2 of page 5.

3 COL COOK: The bottom of page 5.

4 CHAIR JONES: Yes, 9 says,  
5 "Congress and the Secretary of Defense not  
6 measure success solely by comparing military  
7 and civilian prosecution and conviction  
8 rates."

9 PROFESSOR HILLMAN: Your Honor, I  
10 just recommend that we cut that last sentence  
11 in Recommendation 43 --

12 CHAIR JONES: Right.

13 PROFESSOR HILLMAN: -- because we  
14 have stated up above, not to look only at  
15 these. And I think here we are saying, we are  
16 making a recommendation related to the  
17 effectiveness of the multidisciplinary  
18 approach and these additional metrics. That  
19 is a positive recommendation to implement No.  
20 9, essentially, and I think we should just cut  
21 that last sentence. It is redundant.

22 CHAIR JONES: Yes, now that I read

1       them together, I agree with you.

2                   REP. HOLTZMAN:   And it also refers  
3       to the prior sentence, the conviction rates.  
4       So, I think that that is a good suggestion.

5                   CHAIR JONES:   Is that agreeable to  
6       everyone?

7                   MS. FERNANDEZ:   Yes.

8                   CHAIR JONES:   Okay, great.   Thank  
9       you.

10                  PROFESSOR HILLMAN:   Okay.   Judge  
11       Jones, the next recommendation I had was on  
12       page 28, RSP 66.

13                  My recollection was that this is  
14       about the pretext of our goals.   I thought we  
15       agreed to add a comment that our goal here was  
16       a streamlined approval process for pretextual  
17       phone calls and not just make it -- maybe I am  
18       wrong on that.   That was the language I  
19       thought we wanted to say to sort of streamline  
20       approval to make sure they use it.

21                  CHAIR JONES:   I remember that  
22       conversation.

1 BRIG GEN DUNN: Yes, absolutely.

2 COL COOK: On the notes from last  
3 time, mine says, in the middle of it, "to  
4 conduct timely pretext calls".

5 CHAIR JONES: Right, and it didn't  
6 get in there. That's all. So, "approving  
7 military investigative organizations' agent  
8 requests". Maybe the approval should be  
9 timely, but "timely" is supposed to be in  
10 there. I think I recall that, Professor.

11 REP. HOLTZMAN: Well, I would also  
12 add after the word "facilitate" in the fifth  
13 line, "to facilitate and speed up".

14 MR. BRYANT: "Expedite".

15 REP. HOLTZMAN: "Expedite,"  
16 whatever. It's another way to deal with  
17 Professor Hillman's concern. I mean an  
18 additional way. I am not disagreeing with the  
19 word "timely" earlier.

20 CHAIR JONES: Right.

21 COL COOK: So, we are using  
22 "expedite" instead of "facilitate"?



1 REP. HOLTZMAN: No, "and".

2 COL COOK: Oh, "and," okay.

3 BRIG GEN DUNN: "Facilitate".

4 REP. HOLTZMAN: "Facilitate and  
5 expedite".

6 COL COOK: Okay.

7 REP. HOLTZMAN: Right. Right,  
8 because this came from very clear testimony  
9 that we had that the Army lags far behind. It  
10 is virtually impossible to get approval from  
11 this Army; whereas, the Air Force, it speeds  
12 right through the system and they use it all  
13 the time as an effective investigative tool.

14 CHAIR JONES: All right. Well, we  
15 know what our goal is here. We just have to  
16 write it in. "Facilitate and expedite".  
17 Okay.

18 REP. HOLTZMAN: And "timely,"  
19 "conduct timely pretext phone calls".

20 CHAIR JONES: Right. Okay. Okay.

21 PROFESSOR HILLMAN: Judge Jones?

22 CHAIR JONES: Yes.

1                   PROFESSOR HILLMAN: My next  
2 comment was on page 39.

3                   CHAIR JONES: Uh-hum.

4                   PROFESSOR HILLMAN: So, RSP 84,  
5 and this may be a question about the  
6 appropriate tilt of the Joint Services  
7 Committee's responsibility. But I felt wary  
8 about assigning to the Joint Services  
9 Committee now and clarifying rights, and then,  
10 enforcement. So, I would take out the Joint  
11 Services Committee here and leave it to the  
12 JPP because we are actually asking for review  
13 and clarification of the extent of the  
14 Victims' Rights Act of information that is  
15 relevant to the assertion of a particular  
16 right.

17                   We spent some time on that, on  
18 getting everybody onboard with that language.  
19 So, I wouldn't change the language, but the  
20 Joint Services Committee would be to implement  
21 it, would recommend ways to implement this,  
22 but I think the rights clarification question

1 is not in their portfolio.

2 CHAIR JONES: And I confess, I  
3 don't know the answer to that, but that sounds  
4 right.

5 COL COOK: And I would want to  
6 leave it in there because the Joint  
7 Proceedings Panel is going to look at it from  
8 a third-party panel that is studying it, and  
9 the JSC would be looking at it from a policy  
10 perspective of all the Services on how best to  
11 do that.

12 So, to me, both perspectives --  
13 the ultimate decision is going to go to the  
14 Secretary of Defense, but it should be  
15 informed, both as a policy matter with input  
16 from all the Services as well as this third-  
17 party panel that is going to be examining the  
18 process that is out there.

19 REP. HOLTZMAN: But I think  
20 Professor Hillman's concern is justified here.  
21 The Joint Services Committee doesn't clarify.  
22 So, I would take it out. If you want to put

1 it as a later point, and the Joint Services  
2 Committee should review any proposal made by  
3 the Judicial Proceedings Panel.

4 COL COOK: That would be fine with  
5 me.

6 REP. HOLTZMAN: Something like  
7 that.

8 Professor Hillman, is that okay  
9 with you?

10 PROFESSOR HILLMAN: Absolutely.

11 CHAIR JONES: All right. So,  
12 exactly what are we doing then?

13 REP. HOLTZMAN: Take out "Joint  
14 Services Committee" in line 1.

15 CHAIR JONES: Okay.

16 REP. HOLTZMAN: And then, you put  
17 a new sentence. "The Joint Services Committee  
18 should review and" -- what? -- "comment on,"  
19 "should review" maybe "the recommendations of  
20 the Judicial Proceedings Panel."

21 COL COOK: "And provide comments  
22 as appropriate" or "if needed".

1 REP. HOLTZMAN: Right.

2 COL COOK: Whichever one, because  
3 it is not automatic.

4 REP. HOLTZMAN: Right.

5 COL COOK: They may completely  
6 agree and have nothing to say.

7 CHAIR JONES: So, can we just end  
8 it with "review the recommendations of the  
9 JPP."?

10 COL COOK: I think that's fine,  
11 yes.

12 CHAIR JONES: Okay. Everyone  
13 agreed?

14 All right. Thank you, Beth.

15 Next?

16 PROFESSOR HILLMAN: Sure. I'm  
17 sorry, I'm almost done here.

18 Page 41, Recommendation 88.

19 CHAIR JONES: Uh-hum.

20 PROFESSOR HILLMAN: This is  
21 another victims' rights recommendation. We  
22 ended up with this language in here that

1 sounds diluted to me. And so, I wondered if  
2 we wanted to restore the original language.  
3 I would be more comfortable with that.

4 This is about the Secretary  
5 recommend that the President make changes to  
6 the Manual and prescribe appropriate rights to  
7 ensure that everybody engaged in investigation  
8 and prosecution use their best efforts to  
9 notify and accord victims the rights.

10 Just "use their best efforts". I  
11 don't think we are creating some -- I don't  
12 think it is too much to just say we want to  
13 have rights that will allow us to ensure that  
14 victims are notified and accorded the rights  
15 specified in Article 60 of the UCMJ. So, I  
16 would cut that "best efforts" language.

17 COL COOK: This is Colonel Cook.  
18 In VSS Finding 34-2, right underneath it it  
19 talks about the Victim Rights Act requiring  
20 prosecutors and investigators to use their  
21 best efforts. That's what the statute says.  
22 My comment and why I had asked that that get

1 put into it is, if they think it's difficult  
2 to advise victims of their best efforts in a  
3 civilian community, that becomes that much  
4 more difficult in an environment that is  
5 closed.

6 But when somebody leaves the  
7 Services, we will do our darnedest to try to  
8 find them. If they're retired, they've got a  
9 check; it can be followed. If they're not,  
10 and they move to the far ends of the world,  
11 they do have rights. I agree with you, Dean  
12 Hillman, that they should be advised, and the  
13 military will move heaven and earth to do  
14 that. But I think if the statute talks about  
15 best efforts, then I don't think our  
16 recommendation should be any more onerous on  
17 them than using the same language that's in  
18 the statute.

19 CHAIR JONES: Yes, we had kind of  
20 a lengthy discussion about this, and I think  
21 that there was concern, too, with holding  
22 investigators to a standard, and that that

1 might imply, you know, liability where they  
2 were using their best efforts but not saying  
3 anything about best efforts.

4 I think I would leave it the way  
5 it is, because I know it was the end of a very  
6 long conversation that we all agreed on. So  
7 that one I think we're going to leave alone,  
8 Professor.

9 PROFESSOR HILLMAN: Okay. I'm  
10 sorry. I couldn't quite hear you, Judge  
11 Jones.

12 CHAIR JONES: Oh, I'm sorry. I  
13 guess -- what I said was we had a very long  
14 talk about this, and there were -- at the  
15 time, and there were -- I mean, the reason why  
16 I preferred best efforts, I actually hadn't  
17 noticed the statutory argument that Colonel  
18 Cook just made. But I would be concerned  
19 talking about it in absolute terms when you're  
20 dealing with investigators and others. I  
21 think best efforts is sensible.

22 So we're -- unless anyone else



1 disagrees, we're going to leave that one the  
2 way it's written.

3 PROFESSOR HILLMAN: Okay. My next  
4 suggestion is on page 43. Mr. Bryant had a  
5 comment on this one, too. This is  
6 Recommendation 93. It actually -- it  
7 conflicts with 74.

8 CHAIR JONES: That's always a bad  
9 thing.

10 REP. HOLTZMAN: Where is 74?

11 CHAIR JONES: Oh, this is -- I  
12 remember reading this now.

13 PROFESSOR HILLMAN: It's on page  
14 32.

15 CHAIR JONES: Let me just take a  
16 look.

17 PROFESSOR HILLMAN: We do actually  
18 -- we say there, "Repeal this change that was  
19 already made." Ninety three says, "Don't make  
20 any more changes." Ninety three is too vague  
21 I think, so I would just delete 93 and --

22 COL COOK: It says we should

1 repeal part of the UCMJ on the convening  
2 authority decision, so it's already saying we  
3 don't want to make changes, but we're already  
4 recommending a change.

5 MS. FERNANDEZ: Got it.

6 CHAIR JONES: We'll have to move  
7 the findings, then, if they're relevant. I  
8 need to look at this.

9 BRIG GEN DUNN: This is talking  
10 about only to refer charges. Ninety three is  
11 only talking about referring charges.

12 REP. HOLTZMAN: Right. I don't  
13 see that it's redundant. I mean, I don't --  
14 are you saying, Professor Hillman, that RSP  
15 Recommendations 74 and 93 are identical?

16 PROFESSOR HILLMAN: No, ma'am.  
17 But 74 recommends a change, and the -- I guess  
18 if you look at -- it already says -- I'm  
19 sorry, 92 -- 92 states, "The panel recommends  
20 against any further modifications to the  
21 authority vested in commanders also designated  
22 as convening authorities." So it actually

1 very clearly says that. Then, 93 says, again,  
2 "Congress not further modify the referral  
3 process, essentially, beyond the recent  
4 amendments."

5 So I think that 92 essentially  
6 includes 93, but I also think that saying  
7 Congress make no more changes. Maybe what is  
8 in 74 is distinct enough from this -- what  
9 this states. But I just don't know what we're  
10 getting from including 93.

11 BRIG GEN DUNN: Well, I think 93,  
12 to me, specifically addresses the referral  
13 issue. I think those findings are important  
14 underneath it.

15 PROFESSOR HILLMAN: I think the  
16 findings -- I don't know. Harvey, did you  
17 have anything? You had a comment on this  
18 where you said, "What modifications are  
19 currently out there?"

20 MR. BRYANT: Well, in fairness to  
21 the panel, my comments tend -- in this area,  
22 and several others, tend to be argumentative

1 advocacy for things the panel has already  
2 voted on. So I'm --

3 PROFESSOR HILLMAN: Well, Harvey,  
4 I'm never argumentative. I'm --

5 MR. BRYANT: No. I'm talking  
6 about my own comments. My own comments. So,  
7 no, I don't have anything to add. I was just  
8 registering my concern with things the panel  
9 had already decided to recommend.

10 PROFESSOR HILLMAN: Got it. Thank  
11 you.

12 REP. HOLTZMAN: Can I make a point  
13 here? I think what the -- what RSP 92 and 93  
14 deal with is not that they not further modify.  
15 I think what they mean by "modify" is limit or  
16 reduce. Isn't that really what it's saying as  
17 opposed to making any changes? I mean, for  
18 example, to enhance? So maybe if Congress had  
19 a further limit -- well, I don't know. I'm  
20 sorry. I take that -- because I don't even --

21 CHAIR JONES: I mean, I think I  
22 see the issue between 74 and 93, because we

1 are asking for a repeal that relates to the  
2 convening authority's referral power. So we  
3 have to -- I have to now try to figure out  
4 where 92 fits into this.

5 I mean, in 93 we could say, "Save  
6 for our -- except for our recommendation in  
7 74," but I'm just pointing out that I get the  
8 problem there.

9 Now, let me look at 92.

10 MS. FERNANDEZ: I guess we could  
11 say, "Unless otherwise designated -- except  
12 for those designated in this report."

13 CHAIR JONES: I think we can fix  
14 this. I'm just not coming up with it right  
15 now.

16 REP. HOLTZMAN: Going back, I  
17 think in 92 what we're talking about --  
18 "modification" means any further limitations  
19 on the authority vested in commanders. Isn't  
20 that really what we're saying, as opposed to  
21 any changes? Am I wrong?

22 BRIG GEN McGUIRE: Other than what

1 has already been recommended in 73, but so we  
2 take --

3 REP. HOLTZMAN: 74 doesn't talk  
4 about limitations, so it wouldn't actually be  
5 in contradiction with 74. If you just said,  
6 "Recommends against any further limitations on  
7 the authority vested in commanders" that would  
8 -- that would clarify 92 and not make it  
9 contradictory to 74.

10 COL COOK: 74 talks about lifting  
11 a limitation that's on commanders right now.

12 REP. HOLTZMAN: Correct.

13 COL COOK: So it doesn't impose a  
14 limitation; it lifts one that is already there  
15 that we think went too far.

16 REP. HOLTZMAN: Right.

17 MR. BRYANT: I would just point  
18 out that part of the reasoning of some of the  
19 panel members for not recommending other  
20 changes is that the changes that have already  
21 taken place we haven't had a chance yet to see  
22 what the effect is. So I'm not sure that's

1 the same thing as saying, "No, don't do any  
2 changes," as opposed to "don't do any more  
3 limiting changes." Because the prior  
4 reasoning has been, if you -- we've had enough  
5 changes one way or the other that we need to  
6 let those mature before we make -- before we  
7 do anything else. I'm just pointing that line  
8 of reasoning out.

9 REP. HOLTZMAN: Okay. I don't  
10 feel very strongly about that. I just --  
11 that's fine. I mean, leaving the language of  
12 92 there is okay with me, but then you have to  
13 sort of -- then you have to kind of exempt 74.

14 BRIG GEN DUNN: Okay. Well, 93 I  
15 think should say, "Congress not further limit  
16 the authority," because then that removes the  
17 conflict with 74, right? Ninety two --

18 CHAIR JONES: Well, I think that  
19 93 definitely goes to limitation. So I think  
20 that's a good suggestion.

21 MR. BRYANT: Very specific.

22 BRIG GEN DUNN: That was

1 Representative Holtzman's suggestion.

2 CHAIR JONES: All right. Thank  
3 you, Liz.

4 BRIG GEN DUNN: Excellent  
5 suggestion.

6 REP. HOLTZMAN: I thought it was  
7 92, but I'm happy to take the compliment.

8 (Laughter)

9 CHAIR JONES: Maybe we can combine  
10 --

11 COL COOK: Ninety two, why can't  
12 we just add the first sentence to the second  
13 sentence and forget about the first comment  
14 which is, "We recommend any further" -- this  
15 is in 92. Take out the first sentence that  
16 say, "We recommend they get further  
17 modification," because that does contradict.

18 Why don't we just say, "The panel  
19 does not" -- Recommendation 82, "The panel  
20 does not recommend Congress adopt the reforms  
21 in the Sexual Assault Training Oversight  
22 Prevention Act or the Military Justice



1 Improvement Act." That was something we were  
2 specifically supposed to rule on, so just take  
3 out the first sentence.

4 CHAIR JONES: And we may reverse  
5 the order of the recommendations to make the  
6 specific legislative recommendation come after  
7 the more general one.

8 REP. HOLTZMAN: Can I just make a  
9 slight suggestion?

10 CHAIR JONES: Sure.

11 REP. HOLTZMAN: The word "reform"  
12 is already making a judgment as to the  
13 appropriateness. "Reform" is a good word. I  
14 mean, I'd rather just say, "The proposals made  
15 with regard to the authority, the convening  
16 authority" as opposed to "reforms," because it  
17 sounds like we're anti-reform, which we --

18 CHAIR JONES: Go ahead.

19 COL COOK: I'd be okay with just  
20 saying we not adopt either the Sexual Assault  
21 Training Oversight Prevention Act or the  
22 Military Justice Improvement Act, to take out

1 proposals, reforms, or anything. Those are  
2 two specific bills that are out there. We are  
3 recommending you don't pass those --

4 REP. HOLTZMAN: Well, but only  
5 with regard to the --

6 COL COOK: Commander.

7 REP. HOLTZMAN: Yes, the court-  
8 martial convening, whatever it is. I think it  
9 is something else in those bills that we --

10 CHAIR JONES: All right. We may  
11 have to doublecheck and see if we need to  
12 limit that, but I would go to -- I would  
13 change 92 and add the word "limit" to 93, and  
14 then we have to look at 74 and --

15 COL COOK: Judge Jones, before we  
16 go further, based on what you just said,  
17 because I didn't notice after the first  
18 sentence, Rep. Holtzman, then in that sentence  
19 if you do delete the first sentence, then  
20 that's true, it would be clarified, "The Panel  
21 does not recommend Congress adopt the  
22 proposals to modify the authority vested in

1 commanders" in either of those proposals. And,  
2 besides, it's simple.

3 CHAIR JONES: Good. Proposal  
4 modifying the authority --

5 COL COOK: Vested in commanders in  
6 either the sexual assaults, and blah, blah,  
7 blah, those two acts.

8 CHAIR JONES: Okay. And then, I  
9 think -- are we okay with 74 there? Yes, 92  
10 is easy. Okay. I think we're consistent now.

11 Beth, thank you very much.

12 PROFESSOR HILLMAN: Sure. I've  
13 got one more thing, and then I'll probably  
14 need to sign off here. Should I go ahead?

15 CHAIR JONES: Yes, please.

16 PROFESSOR HILLMAN: Page 46,  
17 RSP 96. This is the one about the culture  
18 defense. Representative Holtzman commented  
19 that we should explain it more. I think  
20 that's -- I think we should -- don't just say  
21 that Congress should enact Section 3(g) of the  
22 Victims Protection Act because it may increase

1 victim confidence. I think that would make it  
2 a little clearer, because that's really what  
3 we're saying. This is just worded funny  
4 because it says "enacted," instead of making  
5 an assertion, the way our other  
6 recommendations do, which I think is a source  
7 of self-confusion. Just that previous  
8 recommendations said, "Congress should not  
9 enact;" we should say, "Congress enact Section  
10 3(g) of the Victims Protection Act, because it  
11 may increase victim confidence."

12 CHAIR JONES: I think that's  
13 right.

14 PROFESSOR HILLMAN: Okay. And  
15 that is -- there's more discussion of that.  
16 There's just one more thing that I'll mention,  
17 just about our sort of negative  
18 recommendations, that is for the Panel to  
19 consider. I don't know that we want to make  
20 this change, but I wrote this comment on page  
21 50, in relation to RSP 106, but my comment  
22 actually runs to several of our

1 recommendations.

2           So 106 says that DoD not  
3 promulgate an additional formal statement of  
4 rights, essentially. All of our negative  
5 statements on this sound strange to me. It's  
6 the same with 81 and 96, each of which says,  
7 "Congress should not do this." I think we've  
8 made findings that explain why action isn't  
9 appropriate, because we don't recommend action  
10 on all of those particular things. But I  
11 think that it -- these are -- we can only  
12 respond to the way things are right now by  
13 saying DoD not promulgate an additional formal  
14 statement, for instance, or one of these other  
15 ones.

16           Let's see, like 80 says, "The  
17 panel does not recommend sentencing  
18 guidelines." At least that one says "at this  
19 time," where 81 says, "No further mandatory  
20 minimums at this time." They are time-  
21 stamped. I mean, there is a particular time  
22 in there. But it's a strange thing to state

1 Congress shouldn't do something, because it --  
2 and in 106 there is no time limitation on the  
3 promulgating additional rights, and I just  
4 don't know that things might not change.

5 So my suggestion was we consider  
6 whether findings are responsive enough to our  
7 tasking from Congress to consider these  
8 things, or if we really do want to make all  
9 these negative recommendations.

10 CHAIR JONES: Yes. Well, the way  
11 they phrased it in the legislation it says,  
12 "An assessment of whether DoD should  
13 promulgate this statement."

14 MS. FERNANDEZ: On the sentencing,  
15 106 is really difficult to understand.  
16 Period.

17 REP. HOLTZMAN: Well, maybe a  
18 better way to do it, we just say, "At this  
19 time, there is no need" or "The panel finds  
20 that there is no need to promulgate -- you  
21 know, for additional formal statement of these  
22 rights."

1                   PROFESSOR HILLMAN: I think that's  
2 helpful language, if we do want to actually  
3 make recommendations here. I think that's  
4 definitely helpful.

5                   REP. HOLTZMAN: Yes, the panel  
6 finds that there is no need.

7                   (Simultaneous speaking)

8                   CHAIR JONES: Well, I don't quite  
9 get it. Why wouldn't we say -- presumably  
10 we've done our assessment, and at this time we  
11 do not recommend that they promulgate an  
12 additional formal statement.

13                   MS. FERNANDEZ: Well, because I  
14 think you have to put "at this time." I think  
15 that that --

16                   CHAIR JONES: Okay.

17                   MS. FERNANDEZ: -- it's got to be  
18 time bracketed.

19                   CHAIR JONES: All right.

20                   MS. FERNANDEZ: Is that the main  
21 issue here, the time bracketing?

22                   PROFESSOR HILLMAN: Yes. That's

1 one issue. I can -- I understand that Judge  
2 Jones wants this to be responsive to the  
3 assessment request from Congress. I have --

4 CHAIR JONES: They're asking us to  
5 assess whether --

6 PROFESSOR HILLMAN: -- avoided  
7 these statements of what we shouldn't do,  
8 because I just -- those seem slippery to me  
9 conceptually and in terms of implementation.  
10 But it seems that we're leaning that way  
11 again, the limitation "at this time," that's  
12 fine. That's how the negative recommendation  
13 --

14 REP. HOLTZMAN: Also, if you say  
15 there's no need, that gives a reason for it.  
16 It sounds as though they've actually done  
17 their job as opposed to just saying they  
18 shouldn't, you know.

19 PROFESSOR HILLMAN: Right.

20 REP. HOLTZMAN: That being --

21 CHAIR JONES: I mean, they do  
22 switch to -- I mean, there are several of



1 these where they want an assessment. I mean,  
2 if you want to switch from "recommendations"  
3 to "it's our assessment," that's -- I think we  
4 should probably just say we don't recommend it  
5 at this time myself, and keep it all  
6 recommendations, one way or the other, because  
7 then we have a second type of message.

8 REP. HOLTZMAN: I think you're  
9 right.

10 CHAIR JONES: Okay. But let's --  
11 we'll go back and make sure that we say "at  
12 this time."

13 PROFESSOR HILLMAN: Judge Jones, I  
14 apologize. I have to sign off, and I  
15 apologize I can't be there and present. I  
16 appreciate all the work that you guys do in my  
17 absence.

18 CHAIR JONES: I think you have  
19 traveled farther than anyone else throughout  
20 this year, Beth, so thank you so much.

21 PROFESSOR HILLMAN: Okay. Thank  
22 you. Bye-bye.

1                   CHAIR JONES: All right. Were  
2 there substantive comments from anyone else  
3 that aren't in the -- I mean, if they're  
4 already in the report, I'd still like to hear  
5 them now.

6                   COL COOK: I have one minor --  
7 this is really minor, but it's not just a typo  
8 thing, that the panel can -- that the  
9 wonderful staff we have can just add -- I want  
10 to put the word "better protect victims." I  
11 want to say this is 71, but I don't -- I have  
12 to find it.

13                   CHAIR JONES: You know, I suspect  
14 we'll have a little bit more to talk about, so  
15 maybe we should break for lunch at this point.  
16 Is that agreeable to everybody? Okay. It's  
17 1:00. So we'll regroup and be back in about  
18 -- I didn't say a time. What do you figure,  
19 30 minutes, half hour? 1:30.

20                   (Whereupon, the above-entitled  
21 matter went off the record at 1:00 p.m.)  
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(1:53 p.m.)

CHAIR JONES: All right, then  
we'll resume where we left off.

So the question is, are there any  
other substantive or additional substantive  
comments with respect to the draft final  
report? Colonel?

COL COOK: On RSP Recommendation  
71, I just want to add one word. And RSP  
Recommendation 71 is on page 31. And the only  
thing I would put is the word "better." It  
says, "It is the sense of the Panel that the  
military judge should be involved in the  
military justice process in an earlier stage  
in order to," I want to put "better protect  
the rights of victims and accused." I don't  
want it to sound like they are not protected  
now, but we can do a better job than what  
we're already doing.

CHAIR JONES: I don't have a

1 problem with that. Any other -- any  
2 objections or further comment? All right.  
3 Then, we will add "better." Thank you.

4 COL COOK: I have none other.

5 CHAIR JONES: All right. Is there  
6 anyone else who has substantive comments with  
7 respect to recommendations, findings, the  
8 substance of the draft final report? Do I  
9 have them all?

10 REP. HOLTZMAN: Well, you don't  
11 have mine. I'm sorry.

12 CHAIR JONES: Go ahead, Liz.

13 REP. HOLTZMAN: I submitted  
14 responses to the draft final report for all of  
15 the sections except Section 6, which I have  
16 here. Most of the comments are stylistic.  
17 I'm trying --

18 BRIG GEN MCGUIRE: This?

19 REP. HOLTZMAN: That's one of  
20 them. That's to number 5. I don't know that  
21 we all have to deliberate because, I think  
22 that on the stylistic issues, I'm perfectly

1 prepared to let our very competent chair and  
2 staff make whatever stylistic changes they  
3 deem appropriate. I'm not going to --

4 CHAIR JONES: All right.

5 REP. HOLTZMAN: So that would be  
6 my recommendation --

7 CHAIR JONES: Thank you.

8 REP. HOLTZMAN: -- with regard to  
9 that. I don't know that the substantive ones  
10 -- I didn't separate out substance and style  
11 when I was going through, so --

12 COL COOK: And, Representative  
13 Holtzman, I did the same thing. I have  
14 already spoken to Colonel Green. But on my  
15 notes there was -- I haven't made it through.  
16 Some of the sections we got in advance. I  
17 want to finish going through those. But so  
18 far on the narrative type sections that I've  
19 gone through, I think they are incredibly well  
20 written. They match what we were discussing.  
21 They added in witness testimony. I didn't  
22 have any concerns.

1           The notes that I have are minor  
2           structure or sentence-type things or the  
3           question of whether a footnote belongs in a  
4           footnote or is going in the body, but those  
5           are things that I didn't think needed to be  
6           deliberated on the way the findings and  
7           recommendations did. So I don't -- for the  
8           purposes of this meeting, I wasn't planning on  
9           bringing it up.

10           CHAIR JONES: All right. I'll  
11           resolve those with the staff. Were you going  
12           to look for your substantive --

13           REP. HOLTZMAN: I don't want to  
14           take the time of the committee, the panel at  
15           this point. I mean, if there are substantive  
16           comments -- well, I guess, are you going to --  
17           what is the procedure that is going to be  
18           followed, Madam Chair, with regard to --

19           CHAIR JONES: Well, I thought if  
20           there were substantive comments we could  
21           resolve now, while the panel is all together,  
22           we could do that. Going forward, after we get

1 back the final full draft, which will have  
2 changes -- for instance, the easiest of which  
3 will be that there will no longer be a recap  
4 on the findings and recommendations at the end  
5 of each section, but there will also be the  
6 changes that we have agreed upon this morning  
7 in it, as well as a review for the other  
8 comments that you've handed in, which are not  
9 substantive.

10 Then, I think after that comes out  
11 we will have to have a telephone conference,  
12 and we will have to -- since it has to be  
13 public, I gather there is a possibility --  
14 where are you, Maria? That we could have a --  
15 we would have a public --

16 MS. FRIED: Yes, Judge Jones. I  
17 think we can always have a teleconference.

18 CHAIR JONES: Could you speak up  
19 just a little? I'm sorry.

20 MS. FRIED: Yes. I think we can  
21 have a teleconference. We have members, we  
22 have some lines available so the public could

1       come down and participate that way.

2                   CHAIR JONES: All right. I don't  
3 know how much notice you have to give for  
4 that, but we're not going to have enough time,  
5 so it will have to be -- have to be a waiver.  
6 Okay. All right. Well, that's what we'll try  
7 to do, and I'll try to figure out when that  
8 last phone conference has to occur after I  
9 have consulted with the staff and we'll send  
10 out an email to everyone, hopefully as --  
11 possibly as early as tomorrow, so that we can  
12 plan for a phone conference to do the final  
13 approval on this.

14                   REP. HOLTZMAN: And perhaps in  
15 connection with that, if there are some  
16 substantive issues that need to be raised,  
17 then we can address them at that time.

18                   CHAIR JONES: Absolutely. So it  
19 may be, you know, a conference we're going to  
20 have to consider spending some time on, just  
21 a quick one. But, yes, we would have to  
22 undertake to resolve all the substantive



1 issues as well.

2 REP. HOLTZMAN: Could I just point  
3 one thing out?

4 CHAIR JONES: Yes.

5 REP. HOLTZMAN: Page 30, Section  
6 6. We talked -- I think we eliminated this  
7 today, because we had eliminated it in our  
8 prior meeting. But there's a recommendation  
9 here -- there's a statement here that the  
10 Secretary of Defense should direct the  
11 Military Justice Review Group or Joint  
12 Services Committee to evaluate if there are  
13 circumstances when the general court-martial  
14 convening authority should not have the  
15 authority to override a recommendation from an  
16 investigating officer -- this is on page 30 --  
17 against referral of an investigated charge for  
18 trial by court-martial. Didn't we just agree  
19 that this wasn't going to be a recommendation?

20 CHAIR JONES: I'm sorry. Where  
21 are you? This is Section 6 of the actual  
22 report?

1 REP. HOLTZMAN: Yes.

2 CHAIR JONES: Okay.

3 REP. HOLTZMAN: Well, anyway,  
4 maybe we don't have to address it now, but I  
5 thought that we had somehow -- this is  
6 something that we had agreed was not going to  
7 be in the recommendations.

8 CHAIR JONES: Which -- we  
9 certainly had discussion about finding  
10 probable cause determinations, but this is  
11 different, correct?

12 LT COL GREEN: Ms. Holtzman, there  
13 were two recommendations in the subcommittee.  
14 The CSS recommendation was to make it a  
15 probable cause hearing, and that that would be  
16 a binding recommendation, and that was  
17 rejected by the panel. And then, the second  
18 was from the Role of the Commander  
19 Subcommittee report, and this was a  
20 recommendation to further study if there were  
21 certain circumstances when that would be  
22 binding and the convening authority could not

1       override that.

2                   REP. HOLTZMAN:   Okay.   So that has  
3       not been changed.

4                   LT COL GREEN:   That's correct,  
5       ma'am.

6                   REP. HOLTZMAN:   Okay.   Thanks.  
7       The only other thing I want to point out that  
8       is a little bit more than stylistic, and that  
9       is we refer a couple of times to the actions  
10      of the convening authority as prosecutorial.  
11      And I don't really -- I suggest that we not  
12      use that term, because I -- while it is  
13      similar to a prosecutorial decision to refer,  
14      I think likening the commander to -- the  
15      convening authority to a prosecutor takes us  
16      down a road that we might not want to go.

17                   CHAIR JONES:   Well, we also refer  
18      to the trial counsel as prosecutors, which is  
19      what they are.

20                   REP. HOLTZMAN:   Correct.   But the  
21      convening authority is not the prosecutor.   It  
22      says here, "For example, convening authority

1 is in a better position to make informed  
2 prosecutorial decisions in a higher level  
3 court-martial." And I --

4 (Simultaneous speaking)

5 CHAIR JONES: I mean, prosecutors  
6 do make charging decisions. Sometimes they  
7 decide what will be tried as well, frequently.  
8 So it is a type of prosecutorial decision.  
9 Obviously, they are not trying a case.

10 REP. HOLTZMAN: Right. But the  
11 decision is based -- you know, they are taking  
12 a few other factors into account that  
13 prosecutors don't, and I think by reducing  
14 this to a prosecutor you may be raising  
15 questions that shouldn't be raised about it.  
16 I think it's better to say, "Convening  
17 authority is in a better position to make  
18 informed decisions about referral," whether a  
19 case -- you know, something that would  
20 describe it without talking about the  
21 convening authority as the prosecutor, because  
22 I think it diminishes the role.

1                   CHAIR JONES: Well, it is a role  
2 that's larger than that, because it's also --  
3 of course, that -- well, I think your point is  
4 that there's factor of good order and  
5 discipline in the unit that's added, and that  
6 isn't what one would normally consider  
7 prosecutorial criteria.

8                   REP. HOLTZMAN: So this is my  
9 suggestion. It's a very small one. It's a  
10 little bit more than stylistic.

11                   CHAIR JONES: Well, it is more  
12 than stylistic, and it's -- and is it in -- we  
13 can just run the text -- not the text, the  
14 recommendations, to see where we use it. And  
15 then I think we'll bring it up again on the  
16 telephone conference, just to see what the  
17 absent members of the panel think about that.  
18 Okay?

19                   COL COOK: And I would ask, Judge  
20 Jones, while we're -- you're going to set  
21 another meeting, put in the telephone, that's  
22 all fine. For those of us who didn't quite

1 make it through all of the final sections, if  
2 we get the opportunity, we'll get it -- all of  
3 our comments back to Colonel Ham. And, for  
4 me, I can do it by Friday of this week. I  
5 just haven't had a chance to do it before now.  
6 I just want to make sure that there is some  
7 time that we can go through it.

8           Again, I don't expect it to be  
9 substantive at this point. The findings and  
10 recommendations we made the changes to this  
11 morning, I expect will be pulled into the  
12 other portions without our saying it. And  
13 then the other parts you guys have been doing  
14 a great job on.

15           CHAIR JONES: Well, today is  
16 Monday.

17           COL COOK: Right.

18           CHAIR JONES: I know that a number  
19 of panel members may still have additional  
20 comments. They just haven't been able to get  
21 back. So when do you propose getting them in,  
22 Colonel?

1 COL COOK: I can probably do it by  
2 Wednesday. I can definitely do it by Friday.  
3 But I'll get -- I mean, I'll get it in as soon  
4 as can be my goal. I'll read it on the train  
5 going back and spend part of tomorrow doing  
6 it. So my guess is by --

7 CHAIR JONES: Well, why don't we  
8 say as soon as possible, and preferably by the  
9 -- by Wednesday, close of business.

10 MS. FERNANDEZ: When is it due?

11 CHAIR JONES: Pardon me?

12 MS. FERNANDEZ: When is it due?

13 CHAIR JONES: The 27th to  
14 Congress.

15 MS. FERNANDEZ: To Congress?

16 CHAIR JONES: Yes. So we're --

17 MS. FERNANDEZ: I kind of sort of  
18 think that we need to end deliberations at  
19 some -

20 COL COOK: Oh, it's not  
21 deliberations.

22 MS. FERNANDEZ: No. But if we

1 have a conference call where we're going to  
2 continue deliberating --

3 CHAIR JONES: Well, hopefully  
4 these will be like the final things, and very  
5 few of them have substance hopefully. I don't  
6 know how else to do it, or I would call off  
7 the conference call. I think we have to -- we  
8 have to have at least one final conference  
9 call. We are running out of time. No two  
10 ways about it.

11 REP. HOLTZMAN: Plus, we haven't  
12 seen the executive summary.

13 CHAIR JONES: Nope.

14 REP. HOLTZMAN: That has to be  
15 approved, so -- there might have to be a vote  
16 of approval on the report itself.

17 CHAIR JONES: Oh, absolutely.  
18 Okay. Then, Colonel?

19 COL HAM: Yes? Yes, ma'am?

20 CHAIR JONES: Are we ready for --  
21 is there public comment?

22 COL HAM: Yes, ma'am. We have --



1                   CHAIR JONES: I'm sorry. Go  
2 ahead.

3                   LT COL GREEN: I have not received  
4 -- or we have not received any information on  
5 additional statements from panel members.  
6 That factors in both our ability to finalize  
7 the report as well as the panel's responses to  
8 various issues that need to be discussed about  
9 that. So --

10                  CHAIR JONES: Well, I think  
11 Professor Hillman indicated she was going to  
12 write an additional statement. But although  
13 I'm not sure if she wasn't -- I don't know  
14 whether she was planning to use a statement  
15 she had already written. Would you call her  
16 and find out? Is there anyone else who is  
17 here right now who plans to write an  
18 additional statement? Liz?

19                  REP. HOLTZMAN: Just a paragraph  
20 or two.

21                  CHAIR JONES: A paragraph or two.  
22 Okay. And you might as well call the missing

1 panel members, then, and just --

2 LT COL GREEN: Okay.

3 CHAIR JONES: -- if you would,  
4 Colonel.

5 COL HAM: And, ma'am, for the  
6 timeline, I know you mentioned it. If it's  
7 not going to get to the Secretary of Defense  
8 and Congress by the 27th, we need to notify  
9 them, because we have to back plan it in time  
10 to get to the printer, et cetera. So we are  
11 backing up against a pretty tight timeline to  
12 finish.

13 CHAIR JONES: Well, it sounds like  
14 there is no way we can have our phone  
15 conference by next Monday.

16 COL HAM: I'm sorry, ma'am?

17 CHAIR JONES: It seems to me there  
18 would be no way we would be able to have our  
19 phone conference before next Monday. I'm not  
20 even sure if that would work. Why don't we  
21 discuss this, and we'll do what we have to do.  
22 If we're not going to have it printed by the

1 27th, we'll notify Congress.

2 COL HAM: Yes, ma'am.

3 CHAIR JONES: Okay. And public  
4 comment?

5 COL HAM: Yes, ma'am. We have one  
6 public comment, Ms. Caprice Manos. Ms. Manos,  
7 you can step forward to the lectern.

8 And, members, you have Ms. Manos's  
9 written statement in your folders, and it is  
10 also posted to the website.

11 MS. MANOS: Good afternoon.  
12 Hello. I come before you now to state and  
13 verify under Title 28, Section 1746 of the  
14 U.S. Code, that I, Caprice N. Manos, who is  
15 sui juris and a natural person at common law,  
16 and who is yet unrecognized as remaining in  
17 the National Guard, the military, and whose  
18 proper military status has not been recognized  
19 since 2003, and that which is still  
20 unrecognized to this present day for purposes  
21 of actual status and current litigation.

22 That litigation is supposed to be

1 taking place with the investigation, but it is  
2 not being done correctly. I had to ask the  
3 investigator to remove himself from the case  
4 by and through the attorney liaison, who is  
5 supposed to be a special victims unit, but I  
6 don't know if she is communicating that well.

7 One thing is clear is that the  
8 issue -- or one of the key issues of the case  
9 litigation is that the status of a military  
10 member, the key issue itself, such military  
11 member is to be protected from harm and  
12 retaliation that can come as a result of the  
13 military status as unlawfully concealed.

14 The key issues of my case and  
15 material facts are unlawfully being concealed  
16 continually by those who are charged with a  
17 duty to uncover and investigate and prosecute  
18 the crime which took place upon me from 2003  
19 and until recent.

20 I am here as a victim/witness who  
21 has not yet been -- who has not received the  
22 proper forms from the Department of Defense

1 regulations known as DD Form 2701, which all  
2 victims of crime in the military are first to  
3 be given, which states that the rights of  
4 victims, possible medical compensation,  
5 information related to prosecution, and other  
6 important pertinent information released to  
7 prosecution, arrest, and other necessary forms  
8 that need to be filled out.

9 I have not received them from the  
10 first complaints I made in 2003. I have  
11 suffered quite a bit of retaliation. Those  
12 complaints were based upon sexual assault,  
13 sexual harassment. A lot of the unlawful  
14 confinements that I did suffer were over  
15 reprisal for trying to make reports and trying  
16 to go to IG. When the reprisal was taking  
17 place, they kept me quarantined in my cot  
18 quite a bit.

19 I was trained as an investigator  
20 prior to the military, so it did help me get  
21 through everything, and in basic training I  
22 paid attention and it helped me quite a bit as

1 well. I was an older soldier.

2 I want to say -- give a background  
3 on the case briefly. I'm speaking fast  
4 because of the time limit. That some of the  
5 crimes that -- of the unlawful  
6 confinement/kidnapping, in the UCMJ, only  
7 civilian life -- some of those crimes were  
8 borne because I stayed a case at the state  
9 level where I was forced to become attorney of  
10 record by a judge, who deprived me of my civil  
11 rights of a jury and a defender in order to  
12 conceal what was my ex-boyfriend cop who took  
13 me. He kidnapped me so I couldn't go in the  
14 military -- false charges.

15 So I got through that and stayed  
16 the case. I contacted the Adjutant General in  
17 Florida. He had an investigation done. I was  
18 sworn in right before my 36th birthday, so I  
19 was happy. But the statements that were made  
20 to me by a Captain Alexander while being held  
21 in Kuwait in a fire shelter, without a battle  
22 buddy, repeatedly told that I should drop the

1 case back home, so they witness tampered and  
2 they would not stop -- they told me I was not  
3 allowed to speak with anybody. They tried  
4 isolation techniques. They tried false  
5 counseling statements. And when they could  
6 not succeed or break my spirit as it is, they  
7 proceeded to try to form a mental depiction --  
8 a mental evaluation depiction in reprisal.

9 My commander I believe did that.  
10 They admitted to me after -- I was told by a  
11 chaplain to form a JAG report was never  
12 investigated. Later, when I got back to Fort  
13 Stewart, an emergency because of the  
14 situation, the person who was supposed to  
15 investigate the JAG report told me she lost  
16 the hard copies in the desert. I still have  
17 my copy.

18 I started to press the issue. I  
19 was quarantined more in Fort Stewart, that's  
20 after getting back. Prior to coming back, I  
21 was moved to a camp with no orders on my  
22 person -- when my commander just left me -- he

1 left me. They went and they mobilized to  
2 Iraq. IG came out -- I believe it was IG, a  
3 woman and two men came out and they said I  
4 didn't have to go forward. They wanted to  
5 know who all knew about this back home. I  
6 told them I communicated quite a bit with my  
7 family through the satellite phones when I  
8 could get away. So I snuck out of the tent at  
9 one point in the night to do that, to let  
10 everybody know I was going home.

11 Well, I went and was taken to  
12 another camp with no orders on me. This was  
13 Camp Wolf. And I put into a vehicle with two  
14 men and a woman. The woman played sort of  
15 devil's advocate. I don't remember her name.  
16 But she told me whatever they did to me, just  
17 don't cry, don't show emotion, because it  
18 would not be good for me.

19 I was told I would never go home,  
20 that I should not make waves in the military  
21 -- walk to the main latrine and remained  
22 there. Of course, it caused apprehension and



1 fear of assault.

2 CHAIR JONES: Ms. Manos, I just  
3 wanted to let you know you have about a minute  
4 left.

5 MS. MANOS: Okay. Okay. From the  
6 inception of the first crimes that took place  
7 upon me, they have not properly investigated.  
8 Following my arrival back to Fort Stewart, the  
9 military police refused to do an  
10 investigation. This CID agent -- I finally  
11 was given Special Victims Unit. I was shot  
12 with poison pellets in 2012. I survived. I  
13 have pictures for reference in the back. And  
14 I survived that and have heart problems from  
15 that.

16 He has not done any investigation  
17 on that. I have been summarily told by the  
18 Special Victims Unit attorney, allegedly  
19 because I never met the prosecutor, that the  
20 prosecutor summarily decided that there is no  
21 probable cause for sexual assault and no  
22 probable cause for the kidnapping charges.

1                   I have been on this case myself  
2                   for 11 years winding through the Pentagon, who  
3                   had the case a couple of times, not  
4                   investigating it. But the matter of attempts  
5                   of kidnapping, severe organized stalking,  
6                   burning me, branding me on my leg. I had to  
7                   have a bodyguard for three years.

8                   I mean, that was a life and death  
9                   situation to me. I did what I was trained to  
10                  do in my own investigations training. And I  
11                  conducted the case as best I could.

12                  When it got turned over, I  
13                  expected to see better results. A refusal  
14                  flatly to interview all of my witnesses, which  
15                  was half the unit, for what was going on when  
16                  the assault was happening in the desert and  
17                  prior by the CID agent. Many -- he has not  
18                  returned any calls to tell me how he has kept  
19                  up with the case. I have asked him to step  
20                  off the case through the attorney, and she has  
21                  since taken herself off the case as well.

22                  That right now is all to conclude

1 -- also, there was supposed to be an  
2 investigation into my -- my rank was  
3 unlawfully reduced. I don't know what rank I  
4 am right now because of time and rate. I have  
5 not been paid for years, and what is very  
6 important is I found a falsified -- false life  
7 insurance policy on myself. And I got some of  
8 it on tape.

9           Also, they charged me in my  
10 disposable income in civilian life. They took  
11 my disposable income in payment for that --  
12 for that life insurance policy that did not  
13 exist.

14           So I know what insurance policy I  
15 signed, another one was created. I did an  
16 investigation on my own, found out --  
17 Prudential told me that commanders can sign  
18 for the life insurance policy. I never got  
19 past that.

20           So I thought that the investigator  
21 would do -- would investigate the crimes where  
22 I was shot. I thought that he would interview

1 more witnesses. I had a former investigator  
2 witness to the break-in and setup of the  
3 shooting where they -- of setting the sensors,  
4 motion sensors, to tag me, and that's how they  
5 shot me, weeks prior to them shooting me.

6 The investigator was standing by  
7 for an impromptu phone call from the CID  
8 agent. The CID agent refused to interview the  
9 man. And he cut my hours short for making my  
10 own statement. He told me he had a lot of  
11 cases to do, which I believe.

12 He made false statements as well.  
13 I won't go into what they were right here.  
14 And he cut my time short. He refused to  
15 supplement the reports with the statements of  
16 the frame of mind that I was in while I was in  
17 captivity and what went on.

18 So I don't know how a prosecutor  
19 summarily decided there is no probable cause  
20 without any victim-witness statements under  
21 penalty of perjury. I don't know how -- I  
22 have never met -- there is no client-attorney

1 relationship there. So that's what I'm  
2 dealing with right now.

3 Nobody has taken -- I had shrapnel  
4 in my back from a poison pellet. I took that  
5 out myself, and I survived. So no one has  
6 taken that out for me. And when I asked him  
7 how to take that out, or what was the chain of  
8 custody, which I kept it in my back for those  
9 reasons, he told me, "Oh, go to the VA,  
10 they'll take it out." I responded, "The VA is  
11 not a law enforcement agency to keep chain of  
12 custody of this."

13 CHAIR JONES: Ms. Manos, I'm  
14 sorry, but --

15 MS. MANOS: That's okay.

16 CHAIR JONES: -- your time has  
17 expired.

18 MS. MANOS: I appreciate it.

19 CHAIR JONES: But we have your  
20 written statement.

21 MS. MANOS: Thank you.

22 CHAIR JONES: Thank you.

1                   All right. Unless there is any  
2 further business, then, I think we are  
3 adjourned. Anything else? All right.  
4 Thanks, everybody.

5                   (Whereupon, the above-entitled  
6 matter went off the record at 2:18 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  
Crimes Assault Panel Meeting

Before: US DOD

Date: 06-16-14

Place: New York, NY

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



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Court Reporter

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