UNITED STATES DEPARTMENT OF DEFENSE

RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL

MONDAY
JUNE 16, 2014

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

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

Beth, I wanted to start, actually, by talking about comparisons a little bit because they were a major part of what Congress wanted us to do. And your subcommittee did a phenomenal job comparing
the military system with the civilian world, including investigators, prosecutors, how things were adjudicated. But I wondered if one of the things we didn't want to say or we do want to say, rather, is make it pretty clear that when they asked us to do all these statistical comparisons, that in fact they are almost impossible to do.

So, if they are disappointed that we haven't compared conviction statistics and other data like that, just a simple statement that one, and I think we do some of this in the report, it is impossible to make those kinds of apples to apples comparisons but then also to go on and say, and this is where I think we should have some discussion, that we believe, however, based on the testimony, based on all the site visits, based on all the work we did, that the military systems compare very favorably with civilian systems. That we are, in many instances, we meaning the military systems, are in many instances
already using best practices. And in fact, 
the military system has its own practice now, 
the Special Victim's Counsel, which doesn't 
exist in the civilian world.

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

Beth, are you still there? We 
lost her.

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

CHAIR JONES: Yes, we can.

PROFESSOR HILLMAN: Thank you for 
the comments. I think that is right. I think 
we can say and should say something along 
those lines, that the last current draft of 
the Executive Summary of the Comparative 
Systems Subcommittee gestured in that 
direction. We also included in the discussion
quite a few statements of that. Just noting
that I focus on the fact that the data we have
is still relatively scarce and this is a
difficult problem to characterize accurately
in the civilian or the military and that we do
make many concrete recommendations to improve
the quality of comparisons that Congress asked
us to do now but, you are right, we actually
can't do effectively, given the current
situation.

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

MS. FERNANDEZ: Beth, tell me if
you agree with this. In certain situations,
we asked, we had a lot of deliberation of
whether to say these changes should be made to
the military system and we said, we decided it
was better to study it in certain
circumstances. And one of that was when you
have had a military judge come into the
I don't know if right up front we should also say that we have asked these things to be studied but we want a conclusion pretty quickly that it shouldn't just kind of linger in there in a sort of -- I think one of our biggest fears is that if we ask something to get studied, nothing ever happens. It just studies, the study goes on the shelf and then there is no change made if the study recommends there is change.

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

COL COOK: As a follow-on to that piece, that is a good point, we know there is going to be a follow-on group looking at some of the judicial responses and their ability. Having those points that we said be studied in that process doesn't mean that all the other
recommendations have to wait until the end of that next review panel is completed. So, some of these, we recognize right up front, that some of these can be implemented now by the Department of Defense. Others may have to appropriately wait but that is only because of that other review panel. But that is not the bulk of everything that is in here. It is the minority of recommendations.

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

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

REP. HOLTZMAN: I didn't understand okay.

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

REP. HOLTZMAN: So, I agree with
that. I think it is a very good point. And maybe we can bullet the different studies that we want done.

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

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

And sort of connected to this in my mind, at least, would be to also, and this would be a separate bullet, I expect, comment on the vast amount of change, new programs,
new policies, et cetera, that has taken place, implemented either by the Department of Defense or by Congress and that it needs to be assessed. It takes time to assess it. I don't know that we want to say that it is time to sit back and try to figure out where we are at. But I think we have to comment on the amount of time, the very short amount of time and the great amount of change that has occurred and think of a way to talk about why don't we assess now for a little while?

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

Mai?

MS. FERNANDEZ: The Victim Services Subcommittee also acknowledged that in our work. And we might want to mirror some
of the language we put in there. And I know we have had some debate about cost on this before but I wanted to really emphasize the need for independent evaluation. I think if it is not independent and I think if the military does evaluation by itself, people aren't going to believe it. And if it is only done by somebody who is seen as having no bias, that there is going to be real credibility given to any evaluation that is done. And that should be put up front.

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

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

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

MS. FERNANDEZ: Yes.
CHAIR JONES: I have a resources point and then I agree we have a lot of recommendations along this line about how important independent evaluations are for credibility. So, that would also be a takeaway that I think is very important. Jim?

VADM HOUCK: One more comment, if I may.

CHAIR JONES: Yes.

VADM HOUCK: We are, a number of us are close enough to the system that when we say things like the Joint Service Committee ought to have an opportunity to look at something, it has meaning to us and we know what they do. As we do this with an eye on how others will perceive this, I am not sure that external audiences will have any idea what the Joint Services Committee is. And it may be at the risk of killing more trees, it may be worth some explanation about what their role is, which, as I understand it is, it is
a very detailed and careful internal group
that looks at this thing with an eye toward
how it is actually -- looks at these issues
with an eye toward how can it actually be
implemented and the second and third order of
effects of changes.

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

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

CHAIR JONES: I think that is
great to add. And I think the notion of we
have made a lot of recommendations, I think we
have worked very hard and we hope that they are all practical and they are going to work. But I think to talk about it in terms of we need to make -- you know we recognize that these solutions, we hope these solutions are practical, makes a lot of sense. Because, obviously, some of these other committees have a lot more, at least military, expertise in terms of the nuts and bolts and how things are actually going to work or not going to work.

MR. BRYANT: If I may.

CHAIR JONES: Yes, Harvey?

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

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

PROFESSOR HILLMAN: Judge Jones?

CHAIR JONES: Yes, Beth.

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

I just wanted to say I agree with Mr. Bryant. I think there is real tension between what Mai just said about having external review and assessment and sending things to the Joint Service Committee. I mean just so everybody -- I think you all know this better than me, the membership of the Joint Service Committee is a representative of the TJAG, the Army, the Navy, the Air Force, the
SJA to the Commandant of the Marine Corps, and then somebody from Homeland Security to represent the Coast Guard. So, it is definitely an insider group that is not intended to make recommendations for the kind of changes that we have been talking about.

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

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

So, I am not proposing that we add anything new or that we go back and revisit any of those. I am simply proposing that we include a brief bit of explanation about what the Joint Services Committee is and what it does. Because I think outsiders may not understand that.
I think the other point is that more broadly this is about, this is a part of the process of civilian control. And so, I think to simply suggest that the Joint Services Committee has been in existence and hasn't done anything about these issues through the years misses a fundamental point, which is to say that the joint services committee works for the Secretary of Defense, ultimately.

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

It is part of the evolution. It is part of the ongoing dialogue and process between civilians and the military. So, I
think to say that the group is insiders that
have had a chance to fix this for years, I
mean fundamentally misses a number of issues.

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

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

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

I mean if we are looking for
solutions in terms of creative new ideas, Mr.
Bryant, I agree with you. If we are looking
at them to sort of vet what we are saying, say
well, have you really thought that if you do
this down the line somewhere you are going to
need XYZ or this is the problem that has been created, I think that is very useful. That's all. I don't want to put words in your mouth but I think that that is what we are saying here. And so, I think it is really important that our ideas be vetted. We have tried to but we are not perfect. I know we are very close to perfect. Not 100 percent.  

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

CHAIR JONES: Mai?

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

CHAIR JONES: Absolutely.

MS. FERNANDEZ: So, if you sort of
said it like that; we want independent
evaluation to make sure it works and the Joint
Services Committee to make sure they review
this to make sure it is implemented correctly,
that is all we want. Right? We want
something that says this works and we are
going to implement it knowing all the
different variables that we need to share.

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

MS. FERNANDEZ: Right.

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

But with regard to the General
Services Committee, these are ideas that are
still not in practice. They are going to
review them and say well, you know, come back
and say oh, it is a great idea. It is going
to work perfectly. But suppose they come up with the thought that oh, well, there are going to be these problems and someone has to make a decision. Is it still worth going ahead? How much is it going to cost? Are these problems worthwhile.

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

MS. FERNANDEZ: I guess up front I agree with You, Representative Holtzman. I think just up-front understanding what these -- I mean we are sitting here as a panel having done this for a year and we are having a debate of exactly what does what. But a clarification up-front for making all these recommendations, there are certain vehicles that need to check these recommendations and
putting that information up-front so we understand how to use the Joint Services Committee and how to use an evaluation.

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

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

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

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

MR. BRYANT: Well, --

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

MR. BRYANT: I'm looking and I looked into this before the meeting and went on their website to see what the Joint Services Committee is composed of and does. And of course, I do agree with them. He is not proposing anything new that we have as a majority of the panel already agreed that we
are going to do. There is no question about that.

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

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

And so I think it goes back to my point, and I know we have already voted on
this so I am not trying to start an argument,
I am just pointing out that it seems to me
that with this group in place, had it been
either the Secretary of Defense's prerogative
or plan and Congress' prerogative and plan
when they assess or dictated what this
committee was supposed to do, had they thought
that JSC was the place to do that, they would
have sent it there to start with.

But anyway --

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

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

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

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

MS. FERNANDEZ: And I think part
of the training, at least what we recommended, was that people know what male sexual assault is. Because that is one thing that kept coming up. People don't know it when they see it.

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

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

We have already done civilian best practices in the sense that we have decided to
discuss it. And I thought there was something else. Conviction rates, I have already mentioned.

COL HAM: Mandatory minimums, ma'am?

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

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

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

Clearly, in the Defense Authorization Act of 2014, they asked specifically about Special Victim's Counsel but I think we have already agreed that that should be something we highlight in a takeaway.
And I think we need to certainly -- well maybe we ought to talk about Special Victim's Counsel for a moment. I mean I think all I said is that with that program, which is only in the military and not in the civilian world, it is really a unique program. It needs to be assessed.

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

Are there other takeaways from this?

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

CHAIR JONES: Right. Okay.

MS. FERNANDEZ: It is a highly --
it needs quite a bit of resources.

        CHAIR JONES: Good, thanks.

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

        When I say well, the military has
done all these things, and particularly this
Special Victim's Counsel, people were really
impressed. And so as part of the way of
establishing both public confidence and the
fact that the military is doing something, and
also maybe even more than public confidence,
victim confidence, it is really important that
people understand that this tool, it is true
it has not been fully evaluated and we don't
know 100 percent how well it is going to work, but it is empowering for victims and it does send a very strong signal that the military is not ignoring the problem with victims and ignoring the problem of sexual assault in the military. So, I think people ought to know a lot more about this than they do.

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

I think it was you, Colonel, first.

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

So, I would agree with everything
that Representative Holtzman just said. Ms. Fernandez just said the evaluation and the resourcing but we have all made the comments up front that we have got to have the right people in these things. The military works on an assignment process and recognize that is about mission needs.

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

And the third point in this area, but it applies to a lot more, is as we are increasing the rights for victims and we are providing more services, as we should be doing, you have got to watch how far that pendulum swings, that you are not going so far out that you are impeding the constitutional
rights of an accused or of somehow tilting the scales of justice in a justice system where fairness for all sides involved has got to be kept paramount.

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

CHAIR JONES: General?

BRIG GEN DUNN: I was just going to add to Representative Holtzman's comment
that we should make clear that the SVC program
is up and running and is really a unique
program.

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

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

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

CHAIR JONES: I agree with all of
that and I want to go back and echo something
you said, Colonel, about making sure that we
talk about the rights of the accused and due
process. And that is a stand-alone, to me,
takeaway from our analysis. So, it certainly
can fit in in different places. But I think
it is important enough to emphasize as a
stand-alone commentary. Because we have to be
careful when we are talking about the accused
and the constitution of the United States.

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

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

COL COOK: I would agree but I
would also say that that pressure isn't just internal within the military. When you look at the -- you know you can look at the one convening authority, whether you agree or you don't.

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

So, that pressure is -- I don't mean to go into the specific examples in our overview, but just to recognize that pressure
is permeating the entire system right now.
And if you are an accused that is out there,
once you are accused, how are you going to
feel about whether or not you get a fair shake
in that process? Or if you are a commander,
I am pretty confident but I know it is not
going to be everybody but that they got the
backbone to make the right decision because it
is the right decision, regardless of the
consequences.

CHAIR JONES: Mai?

MS. FERNANDEZ: I think on the
flip of that, there is still not enough
pressure at the very lowest levels to stop the
kind of sexual harassment in changing the
culture, as was emphasized by the public
comment that we had when we were here last
time. That if that culture of sexual
harassment is not eradicated, it is going to
influence all of the following: the
investigations, the prosecutions, the
adjudications of sexual assault crimes. That
more pressure has to come to bear on stopping that kind of action.

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

MS. FERNANDEZ: At the very lowest levels.

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

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

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

BRIG GEN DUNN: And there was an acknowledgment that so many of the programs that we have heard about in the last year are
focused on that. And the programs need to continue and the focus of the Secretary of Defense now needs to stay on this issue.

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

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

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

CHAIR JONES: With what?

MS. FERNANDEZ: It is a message
that starts at recruitment and continues every step of the way and is exemplified by everybody that a recruit comes in contact with.

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

BRIG GEN McGUIRE: I wonder if we couldn't also acknowledge while it wasn't within our scope, acknowledge the parallel efforts that were going on at college campuses. Because a big recruiting base into the military comes from that age demographic 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
sexual assault on women. But it accepts women
into the system and doesn't entirely treat
them as equals. And what is the message that
goes out about that to everyone?

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

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

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

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

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

And you know I think, for me, the takeaway is victims' rights have existed in the federal system. They are still developing and growing with the case law. Victims' rights have been part of the Department of Defense directives, I believe. But how to implement them, the question of standing, all
of those things are very new in the military system. And so, it has got to be something that we watch and I think we have said it, we are strongly, strongly supportive of trying to figure out ways to implement victims' rights at the earliest moments, which is part of what we talk about with our military judges and also as effectively as possible, which I think the answer to is having Special Victim's Counsel, who will ultimately make case law so that this will develop in the military justice system as well.

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

COL COOK: I think one of the things you mentioned that it has been in the federal system. It has been in the DoD, I think one of the problems with the DoD is noting the perception is there have been the victim's rights to put in their input to the convening authority but it has never been required. It has been a matter of practice.
So the perception is, whatever rights have been there have been inadequate. There has been a lot of initiatives that are out there to bolster that. And that is what you have to watch. It has always been their perception.

CHAIR JONES: You mean in the federal DoD?

COL COOK: In the military justice system right now.

CHAIR JONES: Oh, right.

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

So advertising these things are out there, letting people know this is a requirement. They will see it every single time. And they are highlighting it and then monitoring what the reaction to that would be.
Special Victim Counsel is putting resources where your mouth is, just to say hey, here is yet another person who is going to speak just to you and you have that attorney client privilege. That has never existed.

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

I haven't found the federal justice system incredibly robust when it comes to protecting victims' rights. It is handled by -- I know the Department of Justice has a program and I know that prosecutors' offices have victim witness assistance programs and everything else. It may just be a lack in the kinds of cases that are done where you actually have a little victim who wants to
come in there and tell his or her story
because the cases tend to be larger and not
oriented towards personal damage, if you want
to call it that.

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

What other topics? Mai?

MS. FERNANDEZ: I mean just to
emphasize that without the right, you can't
implement some of these strategies. Because
it is fine to have the Victim's Counsel but
had we not provided them standing so that the
victims could speak through them, but that
also means keeping an eye on how victims'
rights evolve. And that there needs to be an
ongoing oversight on that to make sure that it keeps up with the civilian world.

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

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

(Laughter.)

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

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

MS. FERNANDEZ: Yes, I know.

CHAIR JONES: No, I mean I opened the door on that. And maybe I just never had a lot of cases with victims who wanted to come in, but honestly, I don't think the federal system is the right system to actually compare. It is probably more the state
systems. And I know you have done that. So, my comments are pretty limited.

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

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

CHAIR JONES: Yes.

COL COOK: It is not a system where the victims come in, whether they may have known or may not have known their attacker, the reality within the military is that the service members all continue to live
with each other and you have to protect the rights of the person who is now accused with the victim who is now under stress that they never envisioned they would have.

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

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

Okay, why don't I open it up? And

I can always go back.

REP. HOLTZMAN: No.

CHAIR JONES: Oh, Liz.

REP. HOLTZMAN: I had some

thoughts on this, just a few.

First of all, as a takeaway,

possibly to emphasize that there is no silver bullet that is going to solve this problem,

which is, in a way, what got us into this exercise to begin with. And that it is a whole panoply of programs and issues and also, probably most importantly, having victims feel that if they report they are going to be treated with dignity and respect and will receive justice. And that some of the efforts of silver bulletism are seriously misguided.

Secondly, the question of whether this exercise that we are engaged in should be redone and revisited in several years because the problem is serious enough. I mean, it
goes along with what you are saying about the evaluation and so forth. But maybe after four or five years or whatever period of time to review and see what kind of progress has been made.

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

And then just finally on the point that was made about listing all the programs that we have for special victims -- I mean for victims, I think that is very important. I think giving a sense of how much progress has been made is really important. But I also do think that a few things have changed just in the last year that are really significant. And I don't think we should kind of allow that to be confused. Because people will say oh, well, you know the military did all of these things but those have been there for years and nothing changed. But things have changed. We
I have a major increase in the number of reports and that may be because of this. We don't know 100 percent why that is the case but I suspect it has to do with the publicity, the fact that the military has been announcing that it is serious about this problem, and the creation of the Special Victim's Counsel.

So, those are my thoughts.

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

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

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

CHAIR JONES: In my conversations
with people, there hasn't been enough publicity about any number of topics because people really don't know. It would be nice to think you are going to read the executive summary of our report but I think publicity is where it is at.

So, I agree.

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

CHAIR JONES: Oh, absolutely.

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

CHAIR JONES: And I think that should be in there.
REP. HOLTZMAN: Right but that
debate, and I would actually provide some
accolades for that debate because that debate
itself --

COL COOK: Without taking sides.

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

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

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

COL COOK: The two other ones I
had to put up front in this overview is, and
I have mentioned it several times in here, we
have talked about it, is the resourcing
distribution, both in terms of money -- there
is a lot of recommendations that are in here,
a lot of very important things that need to be
done. And we are recognizing that the
Department of Defense and the federal government are working within a constrained environment and that there are going to be some tough decisions made. But there has got to be some conscious decisions made in terms of putting personnel authorizations and dollars behind it now and into the future to sustain this.

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

So, the resourcing portion I would like to see up front as well. And I don't know if it is in the bottom of the executive
summary or the overview but I, personally, would like to see in the front of our report, in that up-front, just a thank you to all the witnesses, the allies, and everybody else. You know, thank you to the witnesses, the services, the congressional witnesses that came to us, the academics, the practitioners, their time and experience that were provided to us was invaluable throughout the whole process.

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

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

(Laughter.)

COL COOK: I'm not sure they will appoint some of us again but that's okay.
CHAIR JONES: That is a definite, Colonel. I think that is a great idea.

Any others?

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

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

So, it seems like it should be in there as a takeaway. We have talked about it a lot. We are all on record with what we think about it. But I would be happy to hear any particular thoughts that anyone might want
to put in in terms of an overview or a takeaway.

Admiral?

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

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

BRIG GEN DUNN: I thought that the
language that led off the interim report on
the role of the commander, the first few
paragraphs, were great.

CHAIR JONES: The January 30
report?

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

MS. FERNANDEZ: Judge?

CHAIR JONES: Yes, Mai.

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

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

MS. FERNANDEZ: Right, increasing
reporting.

CHAIR JONES: Right.

MS. FERNANDEZ: However, that it
should be something that we continue to
monitor and that the role of the commander and its influence on the whole sexual assault from investigation to adjudication -- I guess my issue is we didn't have any evidence to date but we might see something in the future and that we should continue to monitor this. And it could be a change that we could consider in the future again.

CHAIR JONES: I don't disagree.

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

CHAIR JONES: Yes.

PROFESSOR HILLMAN: The projects by which the staff drafted this final report, which I also haven't read every word of, just a couple people just mentioned that the way things had been stated in the subcommittee reports, I think General Dunn just said, for instance, in the Role of the Commander January 30 statement or whatever that it struck the right tone. How did we draft the final report here? I mean, did our staff cut and paste
from the subcommittee reports? Did they
draft anew? I mean much of the language is
different. So, some of it is new.

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

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

I am unaware of anything else
being done.

Colonel Ham?

COL HAM: Yes, ma'am. Basically,
your guidance, we built the text around the
findings, which came out of the subcommittee
reports and the recommendations. So, that was
the starting point where all the factual
findings and your recommendations, which were all new, incorporated into the text. And as you received the drafts of the draft document, you saw all the highlighted portions, which meant those were the actual findings or the actual recommendations.

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

COL COOK: And the blue
highlights, just to clarify because I know I asked Colonel Ham this, the blue highlights that were in or teal or whatever color that came out on your computer that were in the draft were the actual findings and the yellow highlight -- I'm sorry -- were the actual recommendations and the yellow highlights were the findings or was it backwards?

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

And Colonel Green is going to talk.

LT COL GREEN: Not necessarily verbatim.

COL COOK: Okay.

LT COL GREEN: Particularly on the findings, we tried to make it a narrative and sort of flow. So, the language of the findings we tried to weave that in with the recommendations.
One of the things the staff is tasked with now is to look at the findings as to the purity of the text and compare it to the findings that is listed in the abstract to make sure that they are either consistent or if they are adjusted. Because there are some things based on our review of the panel’s deliberations or a subcommittee conclusion that was not drawn by the panel that we have not included into the dual aspects of the findings. And so we are continuing to try to verify that to make sure that we have got that exactly right.

CHAIR JONES: Beth?

PROFESSOR HILLMAN: Thank you.

CHAIR JONES: Okay.

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

One of the things that is in that
part of the discussion, I agree it should all be up-front in the Role of the Commander to summarize it, when we do that, noting that the commanders were fundamental to this whole change is not necessarily the convening authorities. I mean the commanders are your lower levels. And just like we were going to list before, not list everything they do but maybe highlight a couple of things. If they are fundamental to any positive change in the last 50 years in the sexual assault arena, they are the key to helping to change the culture that we have said is to be out there, maintaining the good order and discipline, accountability at other levels of command or across the force, welfare of both the accused and the victims, availability of services. And I would agree with Ms. Fernandez's comments about the need to continue to monitor that role and the influence in sexual assault from the investigation to adjudication because of the
sheer power that that conveys with it but I am not necessarily -- you need to monitor and ensure that it continues to be the appropriate process in the future or we need to look at it. But I don't necessarily think that I would want us to put a comment in there that says and we need to relook whether we want to change it again in the future.

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

VADM HOUCK: I agree with that.

COL COOK: But I would make a distinction, even if it is a footnote of saying hey, these are commanders, in the footnote as we explain on whatever page of the report, a commander is not necessarily the convening authority in these cases. That is higher level.
CHAIR JONES: Oh, absolutely.

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

PROFESSOR HILLMAN: Judge Jones?

CHAIR JONES: Yes, Beth.

PROFESSOR HILLMAN: Just a quick comment that I hope -- I recognize that I did form the balance of the panel on these issues but I would -- I guess you would like to include some statement that commanders are sometimes a source of the problem. That, I think, could make this read in a more persuasive fashion, in terms of the panel's thorough look at what is happening with respect to sexual assault. Because even during the time in which we were sitting and examining these issues, questions about commanders who were court-martialed. Commanders made decisions that generated a lot of heat, not necessarily a lot of light around
these issues. And failing to acknowledge that
and openly stating that commanders are the
source of -- are the core of the solution, I
think will make our report look as if we are
not recognizing that that part of the
commander's actions are a source of public
scrutiny and lack of confidence and doubt
about accountability. And then the balance of
the panel believes, though I don't, that there
are some things in the system to protect
against that and correct it when it does
happen.

CHAIR JONES: I think that is
fair.

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

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

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

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

CHAIR JONES: Right.

BRIG GEN DUNN: Well, I think what Ms. Fernandez just described was the very heart of the testimony of every single senior commander who came in and testified before
this panel. We are responsible. Our jobs are on the line. We are the ones who will make this change in the military.

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

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

CHAIR JONES: I agree, General. I think the way you began this, Mai, was to say we need to -- that a lot of our assessment with respect to this narrow issue, not about all commanders but of convening authority within the UCMJ, our, at least the majority's decision at this point not to do anything was because we did not believe we had enough evidence to convince us that it was going to
increase reporting or increase convictions or what have you. And I think we should say that and figure out a way also to say so that doesn't mean that change can't occur and that the structure should be monitored to ensure that it continues or can operate in the best possible fashion or if evidence could be brought forward.

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

COL COOK: To Colonel Ham.

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

COL COOK: I am happy. But I do
want to state for the record because I made
the comment what it should say, I completely
agree with both Ms. Fernandez and Dean Hillman
that I think it is fair in our overview to say
the statement up-front that says this panel
recognizes, however, the commanders are a
source of the negative public scrutiny and of
a potential bar or perceived bar by the
victims to even report it. Because that is
what we heard.

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

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

CHAIR JONES: Admiral?

VADM HOUCK: So my sense is what
you are looking for are sort of omnibus,
overarching comments and themes to emphasize.
And on some level, I regret having made a comment this morning at all about it. Because I don't know.

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

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

So, I mean you know we have talked about this at great length. And it is an issue on which we do not all agree but I think that it would be a mistake to try to start
rewriting what we found in the overview of the report.

So, those are my views.

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

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

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

So, I think we are extrapolating
the statements of a few into a -- you know,
victims are afraid of their commanders and I
just don't believe that we heard that. And I
think that the interim report addressed that,
that victims didn't understand actually who
the convening authority was and understand the
system. I mean, I just think it is dangerous
to even say that because I don't think we
heard that on a large scale.

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

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

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

MS. FERNANDEZ: Just as a
corollary, Judge, I love General Dunn's
statement that so many victims didn't
I understand the process. I think that that might be an overarching statement that we make is that the whole process was so unclear to victims and that some of the things, like Special Victim's Counsel, that have been put forth now are clarifying that.

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

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

CHAIR JONES: Well, it can never be over --
BRIG GEN DUNN: Exactly.

CHAIR JONES: -- because of the turnover --

BRIG GEN DUNN: Because of the turnover, exactly.

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

All right, other comments?

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

So, let me just --

COL COOK: Just one other question.

CHAIR JONES: Yes, Colonel?

COL COOK: You brought up the point of putting the Role of Commander up-front because it was so key. Because we had three subcommittees, do you want to make a
brief statement? If you are going to put a
brief statement and an overview of the Role of
the Commander, do you want to just, in that
overview, a brief statement on both what the
bottom line, a couple of sentences,
Comparative Systems and Victims' Services,
what the most important takeaway on those
would be? Or is that not --

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

COL COOK: Okay, that's fine.

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

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

CHAIR JONES: Comparative Services is throughout these comparisons.

COL COOK: Yes, okay.

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

I think you thought generally favorably about after comparing that the training and the military was as good, if not better and that the experience might be somewhat lacking but that could be cured by highly qualified experts. Is there something
like that that you think we might want to
highlight?

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

I think it is worth mentioning in
the overview, and this runs counter to the
sense that this is such a huge problem in
terms of numbers in the military, that
everyone must have all sorts of experience
with it. But the reality is at our smaller
posts, which are an awfully large percentage
of the bases that we have, there are many people, as was pointed out in the reports, who don't get experience as victim advocates, for instance, because there just aren't any cases.

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

CHAIR JONES: All right, thank you.

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

PROFESSOR HILLMAN: Sure, since we do make significant recommendations which would conserve resources for investigators and also recognize we have worked hard to trade
effectively and we both have added
investigators. We have recommended the
addition of investigators to defense counsel's
portfolio there. So, I think that would be
appropriate to highlight.

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

Shall we take a ten minute break?

(Whereupon, the above-entitled
matter went off the record at
10:44 a.m. and resumed at 11:09
a.m.)

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

MS. FRIED: Sure. The meeting is
open.

CHAIR JONES: All right. I think
there may be one or two more comments on the
takeaway points, and then, I would like to
move on because I know there will be comments
with respect to actually having gone through
the text, and I will talk about that before we
start into it. But, for now, why don't we
finish up comments with respect to that
overview section?
Liz?

REP. HOLTZMAN: Thank you, Madam Chair.
I just have one point in terms of a takeaway, an overview. I don't know how my colleagues will feel about this.

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

And just as the military took the initiative with regard to Special Victims' Counsel, I think that it should be supporting
research in these areas to make sure that the
approaches that are taken work and that
research is done to address these problems.
I mean, to acknowledge a little bit of our
ignorance in this area and to try to address
or support research into solutions.

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

Any other comment on that?

(No response.)

Okay. Colonel?

COL COOK: Yes. We talked before
about the Joint Services Committee in terms of
identifying upfront what their role and
mission was. During the break what I was
reminded of is, for everybody's awareness and
Admiral Houck, in particular, because he can tell how the Navy does it, but in the Army, if you are on the Joint Services Committee, there is one officer from each of the Services. All of them have a full-time job.

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

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

These things are important. We don't want it waiting. We don't want it taking years.
So, I was going to say, after you write the roles and missions, could we add a statement that says something to the effect: the Panel understands that each Service provides one Judge Advocate to serve as a member of the JSC to meet on a monthly or bimonthly basis. In light of the increased number of recommendations and issues the JSC will need to consider after the submission of this Panel's report, the UCMJ review, and the anticipated Judicial Panel Review, SECDEF should consider increasing the amount of time that JSC members are available to focus on the UCMJ review process during the next 24 to 36 months.

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

So, if we are going to ask them to
look at our stuff, they may need somebody
telling them there should be more time
allocated. And I don't know how the Navy does
it, but Admiral Houck might be able to educate
us on that point.

CHAIR JONES: General Dunn?

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

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

CHAIR JONES: Yes, I agree with
you that we need to express how important we
think it is to be dealt with quickly, but I
would be concerned about making a
recommendation to send something, and then,
saying, "And by the way, this is how you do
it."
COL COOK: Then, when we put the roles and missions, I mean, there is a part of me that wants to make sure it doesn't get so delayed. If they meet on their regular schedule with no change, this will take forever, and that shouldn't be what the answer will be.

CHAIR JONES: All right.

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

COL COOK: Is that done through the DoD's General Counsel's Office or through
this other committee? Just curious.

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

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

CHAIR JONES: I think that is fair.

Okay. Now what I would like to move to is we have all received this Draft Final Report. I know that people have comments that they would like to make about it, which I want to hear, so that we can talk about them, agree with them or not.
I would ask that we talk about areas where you believe that actually something is wrong or where there is substantive error or disagreement, I guess is what I am talking about here.

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

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

(Laughter.)

COL COOK: Sorry.

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

CHAIR JONES: Do you have a page number?
COL COOK: Yes. I'm sorry, it is on page 20 of the Findings and Recommendations portion.

My notes had said that we had rejected that.

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

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

CHAIR JONES: Does everybody have it? The large report is not helpful. The smaller one, if you have it, that says in red "Outline and Numbering of Recommendations and
"Findings" is where we will most easily find these. Page 20.

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

COL COOK: Okay.

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

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

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

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

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

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

Professor, Dean Hillman, do you
have a copy of Admiral Houck's recommended
changes?
PROFESSOR HILLMAN: I'm looking at the comment, I mean right here in the document that Colonel Ham circulated on page 20. Is that what you mean?

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

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

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

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

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

BRIG GEN DUNN: Yes, I think that is what we are talking about. And then, there was Representative Holtzman's comment above,
which I think the "to the maximum extent feasible" language might solve the problem here.

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

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

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

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

COL COOK: Okay.

CHAIR JONES: General, what is
your --

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

CHAIR JONES: Right.

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

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

COL COOK: I did.

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

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

Professor Hillman, do you have
that in front of you? Should I read it?

PROFESSOR HILLMAN: I do.

REP. HOLTZMAN: Oh, you do?

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

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

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

I can also read it. Am I right,
Beth, you don't have that yet?

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

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

So, where it starts "Permit only counsel," it reads, "Permit only counsel with litigation experience to serve as lead counsel/defense counsel in a sexual assault case, as well as set the minimum tour length of defense counsel at two years or more, except when a lesser tour length is approved by the Service Judge Advocate General or Staff Judge Advocate to the Commandant of the Marine Corps or a designee, because of exigent circumstances or to specifically enable
training of defense counsel under supervision
of experienced defense counsel."

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

All right. Beth? I know this is hard.

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

CHAIR JONES: Right.

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

CHAIR JONES: Okay, I hear you.

Thanks.

REP. HOLTZMAN: Judge Jones, my
only question here is the issue of "because of
exigent circumstances". I just want to make
sure that -- I mean, I am not sure whether Admiral Houck intends that to apply only to the tour of duty or to the -- well, both points.

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

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

CHAIR JONES: Right.

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

CHAIR JONES: Got you.

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

COL COOK: Both were in the original recommendation.

CHAIR JONES: All right. Well,
are you saying that you think you need -- I
don't think they are the same thing. To say
you need experienced defense counsel is a
different concept from a minimum tour length.

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

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

BRIG GEN DUNN: Yes.

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

CHAIR JONES: Right.

COL COOK: I see what you are
saying.

CHAIR JONES: If everyone
understands it that way --

REP. HOLTZMAN: Well, that is
what, that the --

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

COL COOK: Why not separate them?

Why don't you put "Permit only counsel with litigation experience to serve as lead defense counsel in a sexual assault case."? Period.

"For other defense counsel, set the minimum tour length at two years or more, except when...."

CHAIR JONES: I think that works.

Liz, does that help?

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

CHAIR JONES: Uh-hum, okay.

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

CHAIR JONES: I will double-check with him. If he says no, then we will go with Colonel Cook's phrasing.
REP. HOLTZMAN: Correct. I am fine.

CHAIR JONES: Okay. Great. Thank you.

What else, Colonel?

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

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

The way it is currently worded, it still talks about you direct the standardization of policy and you ensure that
there is clear policy. I would submit that
the policy is set. It is in the law.

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

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

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

CHAIR JONES: -- I think is right.

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

CHAIR JONES: Okay. Liz?

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

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

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

COL COOK: Okay, that's fine.

"Resolve discrepancies in the process"?

REP. HOLTZMAN: Or procedural, yes.

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

(Laughter.)

BRIG GEN DUNN: Yes, because we
have the clear evidence that NCIS just on	heir own decides they are not going to read
rights for minor misconduct. And Article 31,
as a statute, doesn't contemplate that
decision on the part of NCIS, independent
decision on the part of NCIS. I mean, it is
sort of that.

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

Okay, this may be regarding the
statutory requirement. Policy regarding
"following the statutory requirement" or
"obeying the statutory requirement".

COL COOK: No, it is not
constitutional.

MR. BRYANT: Which is why best
practices in a civilian investigation is to
not do that. That is the best practice.
REP. HOLTZMAN: I think what we are all really saying is the word "policy" vice "procedure" or "process".

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

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

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

CHAIR JONES: Right, right.

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

COL COOK: Or figuring out why they do it. Because there are some that would
say that NCIS doesn't think that they're -- anyone subject to the Code has to read somebody who is suspected of their rights, of a violation of their rights, of a crime, that they are read their rights. But NCIS might not think that they are subject to the Code. So, to the extent there is a discrepancy in how they do business, just make sure they are following the laws I think is the only message we are trying to put out there.

CHAIR JONES: Okay.

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

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

COL COOK: While we are on that same page, if you look at CSS Finding 10-1, here's going to be a comment I have just generally. I know we, as a Panel, have voted on the language very carefully of every recommendation that is in here. In this portion that we are now adopting as the
Panel's side we are now including the findings by the underlying subcommittees, but we have never really gone through -- you know, we can look at that finding that is sitting there that says the majority of those civilian police agencies that were contacted by the subcommittee, and that may be true, but when I think of the amount of police -- I don't want to extrapolate some findings that were out there too far to say there's a whole lot of law enforcement agencies that are out there. This may be the finding by that Subcommittee, and that is something that is out there. I don't want to put it out there as saying, hey, the majority of police agencies don't do this, because that is not necessarily a correct statement.

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

COL COOK: Right, and I don't want to change the underlying finding, but I am not so sure that, for all of the recommendations
that this Panel is making, that we need to
upfront put what the Subcommittee's findings
are as part of ours and start reopening the
debate on some of these things.

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

COL COOK: Yes.

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

COL COOK: Right. Correct.

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

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

My recollection, General Dunn --
and you were on the Committee with me -- is
that we didn't hear from any police agency or investigative agency who said, "Oh, well, yes, we do."

BRIG GEN DUNN: Exactly.

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

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

(Laughter.)

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

BRIG GEN McGUIRE: Yes, if we were
to say "the majority of the 27 civilian police agencies we contacted on the East Coast" --

COL COOK: It's a small number.

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

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

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

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

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

COL COOK: We can keep that in the
back of our mind and leave it the way it is now. There are some others that I will point out afterward. But, for No. 65, that is the wording on that was the biggest one. So, let me know, Judge Jones, when you want me to go to the next one where I have a question.

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

COL COOK: Uh-hum.

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

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

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

COL COOK: But that is why my point is we are doing this as the overview of the Panel's piece. We have all of the recommendations that we have signed on. Do we just leave it at those recommendations and get rid of the note that you may -- you know, you can find the discussion; you have got the findings here. Maybe, "Note: further discussion is at these recommendations specifically and throughout the whole report."

Because you have got the findings. You could put Recommendation 65, leave it there, and you can put a note, "See CSS Finding 10-1," if this cross-references, if you want to do that.

But I know the findings are what we voted on, the wording of some of the recommendations --
CHAIR JONES: The recommendations is what we voted on.

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

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

Two, you know, we had multiple subcommittees. Not everybody could sit on every subcommittee. We sort of have to trust that -- I mean, I suppose we could look at these findings to make sure they are written from a factual perspective.
And this one, the one at hand says that we talked to, you know, the majority of the ones that we talked to said this, and that is a fact. And I don't think it implies any more than that.

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

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

COL COOK: And the other comment I would make, then, for the recommendation -- for the findings, I've got clarifications for them, not crossing them out. The one reason why I had said, do you want to put the
findings there as well, is because it just reads so long. When you are reading this whole thing together and you are reading this overview, and then, you are reading all the findings with these recommendations, and then, you get into the report that has the highlighted portions with the findings and the recommendations, by the time it becomes --

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

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

CHAIR JONES: Those should definitely go.

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

CHAIR JONES: That was something I was going to recommend when we got there
because that just becomes --

COL COOK: Obnoxious?

CHAIR JONES: -- terrible. Well,

no one is going to read it after a while.

COL COOK: And that was why I went

back when I was looking at some of the --

CHAIR JONES: I need to go back,

though, to this issue about findings and

recommendations. We clearly adopted the

recommendations, or at least almost all of the

recommendations, and we spent a lot of time.

And we did it based upon the

reports out of the subcommittees. There were

times, at least a couple of times I

specifically remember where people were

starting to get into, "What about this

finding, that finding?" And I said that the

Committee was not adopting specific findings

or specific language in findings. We were

adopting the recommendation based on all the

information.

Give me your recommendation for
how we fix this.

PROFESSOR HILLMAN: Judge Jones?

CHAIR JONES: Yes, Beth.

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

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

But what it actually is, it is an assessment, for instance, of the strengths and weaknesses of the proposed initiative and
assessment of the adequacy of the procedures. Actually, that is in the findings because the recommendations that we make don't make assessments. So, everything that they have been asked, that we have asked to do, to compare and contrast, to assess and to review, that is actually in the findings. So, I think the findings do need to be around the recommendation.

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

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

REP. HOLTZMAN: I don't know why we can't adopt all the findings, but I think we have to say that the findings have been adopted, that we are relying on the
subcommittees' work product in adopting the
findings when we adopted the recommendations,
something like that. We can come up with
decent language, I'm sure. But I think
something, some small disclaimer that
indicates that we haven't gone over each
finding word-for-word, that's all, because I
think that that is a very important point that
Colonel Cook brought to our attention.

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

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

CHAIR JONES: Page?

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

I mean, what we are talking about
is the study should assess the following: the
rate at which referral of cases to courts martial against the advice of an Article 32 investigating officer --

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

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

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

COL COOK: I would just delete the part --

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

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

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

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

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

COL HAM: Correct, ma'am.

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

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

Any objections to that?

(No response.)

All right.
COL COOK: Okay. RSP

Recommendation No. 18 is on page 9. Thank you.

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

Part of me wants to just change that word "when" to "as long as". I want it clear that this only applies when there is a third -- a person can come forward to the military investigators and they can make a report, and it is not going to turn a restricted report into unrestricted. But our
discussion went a far way of saying, hey, that's because there is a third party there, which is important to me. So, I don't want to just say "when a party is present". I want it clear, "as long as a third party is present," so that somebody doesn't misunderstand it the opposite way. So, I just want to change "when" to "as long as a Victim Advocate and/or Special Victim Counsel is present".

    CHAIR JONES: This is 18?

    COL COOK: Recommendation 18. It is on --

    CHAIR JONES: Going over to page 10?

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

    REP. HOLTZMAN: Colonel Cook,
could you explain to me the reason for your view on that?

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

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

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

You know, you're the
investigator's --

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

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

REP. HOLTZMAN: Okay.

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

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

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

CHAIR JONES: Yes.

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

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

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

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

If this is a discussion, if there is a limit that keeps this discussion about the process, what can I expect, that is one thing, but we didn't put that qualifier in here. My concern is, if we got into the substance -- and again, I have never been a defense attorney; I have been a prosecutor --
but if you get into the substance, it is now
in the possession of the government, and I am
concerned you are putting -- and yet, if you
are putting the Special Victim Counsel there,
and you have that as being your witness with
an investigator, do you later make that
Special Victim Counsel the potential for being
a witness against their own victim, the
client? I'm not sure that is the best
interest, either.

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

MR. BRYANT: Excuse me, Judge
Jones.

CHAIR JONES: Yes.

MR. BRYANT: Aren't we only
talking in this recommendation about whether
or not you can go to an investigator and make
a restricted report? Isn't that what -- or is
there something else here that I am missing
BRIG GEN McGUIRE: No, we agree you go and --

MR. BRYANT: Yes.

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

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

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

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

CHAIR JONES: All right. So, can we say, the recommendation is to change restricted reporting policy to "allow a victim who has made a restricted report to provide information to a military criminal
investigative organization, but only when a Victim Advocate and/or Special Victim Counsel is present."? Something along those lines?

Okay.

Beth, is that all right with you?

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

CHAIR JONES: Great. Okay. Thank you.

REP. HOLTZMAN: Just one small point.

CHAIR JONES: Right.

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

CHAIR JONES: That's all right.

REP. HOLTZMAN: When it says "has made a restricted report," does that require the person already to have made the report or
can the restricted report be made at that
time? No, you have to already have made the
report?

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

    REP. HOLTZMAN: Already?

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

    REP. HOLTZMAN: Okay. Thank you.

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

    Okay. Recommendation No., okay,
in Recommendation 55, RSP Recommendation 55,
which is on page 24, if you look underneath it -- I mean, this is going to go back to the CSS Recommendation 32-2, 33-2.

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

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

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

BRIG GEN DUNN: Where --

COL COOK: I am underneath RSP Recommendation 55. There are two CSS findings. The second one is 33-2.
BRIG GEN DUNN: Yes. No, I see that. Have you ever heard of convening authority that didn't fully fund the prosecutor's requirements? I mean, the evidence we had is that the prosecutors get the funding.

COL COOK: Oh, okay.

BRIG GEN DUNN: That's not a recommendation.

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

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

COL COOK: They find that they do.

Fine.

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

No. 60, RSP 60, and again, we are looking at CSS Finding 29-1 that is underneath
This is a CSS finding. The Panel did not adopt the recommendation for the enhanced role of military judges at this point. I would request that we delete the second sentence that says, "The recommendation for an enhanced role of military judges noted elsewhere in this report may necessitate increased funding." We didn't make that final determination.

CHAIR JONES: Because we sent it for study.

COL COOK: Yes.

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

PROFESSOR HILLMAN: Judge Jones?

CHAIR JONES: Yes, Beth?

PROFESSOR HILLMAN: Could we just change that back to "The study for an enhanced role of military judges noted elsewhere in this report may necessitate increased
funding."? Just because we recommend a study rather than recommending a pretrial role for military judges, could we just change it to that?

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

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

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

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

REP. HOLTZMAN: Yes. "After the study recommended by this report" --
COL COOK: Right. Right. I would agree with that. That would be fine. Just the way it was --

REP. HOLTZMAN: Right.

COL COOK: -- it wasn't accurate.

CHAIR JONES: Okay.

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

PROFESSOR HILLMAN: Indeed, that sounds great.

CHAIR JONES: All right. Good.

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

The first sentence, no change.

The second sentence, for me, it doesn't follow. If we are saying that the -- I don't understand what the Marine Corps does by those two sentences together.

"DoD policy requires specially-
trained and selected MCIO investigators be assigned as the lead investigators for all sexual assault cases, which has increased their caseloads. As a result, CID investigators cannot handle" -- can they not handle it because they don't have enough resources for it or --

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

COL COOK: All right.

BRIG GEN DUNN: They are not an MCIO.

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

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

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

COL COOK: Right. So, what do
we --

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

COL COOK: Because that causes --

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

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

BRIG GEN DUNN: Right.

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

BRIG GEN DUNN: Right.

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

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

COL COOK: "And therefore, cannot" --
BRIG GEN DUNN: "And therefore" --

COL COOK: -- "currently handle

any sexual assaults and violation" -- that

would address my concern for that one.

CHAIR JONES: Well, actually, we

are making a finding. So, can we say simply,

"Because Marine Corps Criminal Investigation

Division investigators are not MCIO

investigators" --

COL COOK: Yes.

CHAIR JONES: -- "they cannot

handle any sexual assaults."?

COL COOK: Yes. Yes.

CHAIR JONES: Then, we are just

stating a fact.

REP. HOLTZMAN: Yes. Can we take

out the "in violation"? Because it sounds

like just sexual assaults that violate Article

120. Wouldn't that be like the Criminal Code?

It sounds like their actions are in violation.

CHAIR JONES: Okay.

MR. BRYANT: Judge Jones?
CHAIR JONES: Yes, Mr. Bryant?

MR. BRYANT: May we also change that "can't handle" to "can't investigate"?

Because the "can't handle" has a connotation that they are incapable.

(Laughter.)

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

REP. HOLTZMAN: Right.

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

BRIG GEN McGUIRE: "Not permitted"?

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

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

CHAIR JONES: Okay. All right.

BRIG GEN DUNN: Or so they say.
COL COOK: All right. RSP Recommendation No. 53 on page 24. Okay, is that redundant? I mean, I looked at that investigation. That recommendation, when I read this in order, even if I didn't give it in order, to me, it seemed redundant with RSP Recommendation No. 51, just two points above it.

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

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

CHAIR JONES: We talked about this at some length.

REP. HOLTZMAN: We did talk about it, yes.
CHAIR JONES: I couldn't remember what the results were. We can go back and look, but I thought that, because 51 really related to a Joint Training Working Group, talked about best practices, and this, 53 was more specific -- I don't know. I think we went back and forth on this one.

PROFESSOR HILLMAN: Judge Jones?

CHAIR JONES: Yes, Beth?

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

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

CHAIR JONES: So, you are saying
take out the Recommendation 53, correct?

PROFESSOR HILLMAN: Yes.

CHAIR JONES: And move the finding --

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

CHAIR JONES: Oh, move the --

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

CHAIR JONES: Oh, I see.

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

CHAIR JONES: I got you.
PROFESSOR HILLMAN: Does that make sense?

CHAIR JONES: Yes, I think so.

Anybody?

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

CHAIR JONES: Okay, great.

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

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

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

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

COL COOK: Now those were
substantive changes that I had where I thought the finding or the recommendation needed to be changed for some reason. The other changes that I had are minor tweaks or clarifications that I don't think affect substance at all. So, for those, I can just give directly to Colonel Green separately.

CHAIR JONES: That would be fine.

COL COOK: Fine. Thank you.

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

REP. HOLTZMAN: But, then, the problem occurs in the second sentence of those
recommendations because it is fine to say, 
"Recommend that the Secretary direct...," but 
then what happens in the second sentence? 
"Secretary direct" again. I don't know. 
Sometimes it didn't seem to work. That is all 
I am saying.

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

REP. HOLTZMAN: Okay.

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

REP. HOLTZMAN: Okay.

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

CHAIR JONES: Yes?

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

CHAIR JONES: Page?

COL COOK: The page is -- what is 
It says, "A best practice in the military is the assignment of civilian investigators." We had a discussion. This is a finding portion. So, you all who did this report just -- I know when we did our recommendations for the Panel, we said that we wanted to have them overseeing or supporting it in terms of working with it, but not necessarily supervising it.

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

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

BRIG GEN DUNN: Yes, I mean, as I
recall, I mean, I know the discussion we had last time, right, was that you had to leave commanders flexibility to put in charge those who should be in charge, whether they are military or civilian.

I do know that the Panel heard a good deal of information. And then, of course, we had Mr. Strand, who is both a Panel member and an expert in his own right on this. And MCIOs are, in fact, hiring civilians, usually retired military agents, specifically to run their SVU programs, where practicable, because of their expertise, their continuity, their understanding of the military because they have been in it. But that is a fact, that they are working toward that.

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

BRIG GEN DUNN: Right.
COL COOK: I just wanted to make sure that was true.

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

(Laughter.)

I'm sorry.

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

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

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

CHAIR JONES: Oh, okay, got it.

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

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

I will agree there is a part of me
that says no requirements. I mean, we evaluate. The evaluation process is out there. I mean, what you are getting at there is there is nothing specific on the sexual assault panel. Because every defense attorney, every prosecutor, everybody that is out there working on this, they are evaluated on everything. They just don't single out sexual assault.

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

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

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

BRIG GEN DUNN: Yes.

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

PROFESSOR HILLMAN: Thirty-eight?

COL COOK: Thirty-eight, 3-8.

BRIG GEN DUNN: And the associated recommendation.

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

I mean, the discussion in the CSS report says, "It is difficult to evaluate all military defense counsel to measure success if the conviction rates aren't an accurate or
desirable measure." Rates are not, but we do need to come up with some ways to assess whether or not defense counsel are actually performing well in sexual assault cases specifically. And that is what this recommendation is about.

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

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

But now, based on what Dean Hillman has said, we were talking about sort of a data analysis and training assessments, that sort of evaluation. So, maybe there is
a better word other than "performance" that leads us into thinking about efficiency reports.

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

BRIG GEN DUNN: Right.

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

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

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

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

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

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

BRIG GEN DUNN: But there is an assessment -- see, I think that the judicial assessment is on the individual performance side. I think what we are talking about here is an assessment of, okay, we have done all this training of military prosecutors. What are the outcomes now in our sexual assault cases? Can we see the results of that training? And implementing something similar to that for the defense counsel.
COL COOK: And would you, then, now in all the Services for the prosecutors?

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

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

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

REP. HOLTZMAN: I don't think we need to do that. I think that would be a mistake because I think --
COL COOK: Okay.

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

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

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

COL COOK: Yes.

REP. HOLTZMAN: That is what the evaluation --

COL COOK: Are they doing --

REP. HOLTZMAN: Are they adequately doing their job? But there is a larger question here, which is, did they have enough resources to do their job? Are they
getting enough training to do their job? I mean, you know, the evaluation is under the existing circumstances, but this --

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

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

COL COOK: Okay.

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

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

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

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

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

REP. HOLTZMAN: Maybe we could --

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

REP. HOLTZMAN: Yes.

CHAIR JONES: "In contrast to the performance assessment of prosecutors in sexual assault cases, there currently are no
requirements for the Services to measure military defense counsel's performance trying sexual assault cases."

Will that work?

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

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

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

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

REP. HOLTZMAN: Just take off the apostrophe.

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

Okay. Great. Thank you.

Mai?

MS. FERNANDEZ: Yes, just to keep it consistent with what we were talking about
our overarching themes, when we talk about evaluations or independent or studies, we don't mention the word "independent" often in our recommendations. And so, it looks like an internal evaluation.

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

CHAIR JONES: Do you have a page, please?

MS. FERNANDEZ: Oh, I'm sorry.

CHAIR JONES: That's okay.

MS. FERNANDEZ: Nine.

CHAIR JONES: Great.

MS. FERNANDEZ: Recommendation 16 at the top.

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

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

CHAIR JONES: I think this was one 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
5 BRIG GEN DUNN: Right, because
6 that is completely within the UCMJ system
7 then.
8
9 MS. FERNANDEZ: Definitely, then,
10 Recommendation 30, which has to do with
11 Special Victims' Counsel, I do think that that
12 needs to be independent because that is --
13
14 COL COOK: Page 15.
15
16 MS. FERNANDEZ: I'm sorry, page
17 15, No. 30.
18
19 REP. HOLTZMAN: Let me ask a
20 question about that. If they had an outside
21 evaluator evaluate the evaluation mechanism,
22 you don't think the Services could handle
23 applying that standard? I mean, in other
24 words, if you had XYZ Corporation that does
25 research on these kinds of surveys or studies,
26 develops a method for evaluating the
27 effectiveness of defense counsel, develops the
metrics --

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

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

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

BRIG GEN DUNN: But maybe it is a stepped process where, you know, DoD develops the metrics and necessarily has to look at prosecution metrics across the board, both in and out with the Service, and then, gathers statistics, so gathers results based on those metrics they have developed. And then, that provides the opportunity for an outside look, don't you think? XYZ Corporation doesn't understand --
MS. FERNANDEZ: Oh, I think you always have to do it in collaboration with, but the actual findings are from an independent evaluator.

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

But, also, there is, I guess --

MS. FERNANDEZ: I think if this is sort of our spotlight program, it needs an independent evaluation. Because we are saying that this is one of the biggest things that we are doing in order to bring victim satisfaction. We are hoping that it increases reporting. We need to make sure that everything that we are seeing, it is our enforcement of victims' rights. So, I think the fact that we are saying it is doing, so I
think it needs somebody from the outside --

CHAIR JONES: So, you want to

enhance this recommendation with a --

MS. FERNANDEZ: I would just put

"independent evaluator".

CHAIR JONES: Well, actually, are

we saying we are going to develop a standard

evaluation mechanism in consultation with an

independent entity --

MS. FERNANDEZ: That's fine.

CHAIR JONES: -- or body, or

whatever? Okay.

MS. FERNANDEZ: Yes.

CHAIR JONES: I mean, is that all

right with everybody else?

COL COOK: Yes.

CHAIR JONES: Okay. Great.

Thanks, Mai.

MS. FERNANDEZ: Uh-hum.

CHAIR JONES: Anything else?

REP. HOLTZMAN: Judge Jones, I

sent in a whole bunch of --
CHAIR JONES: You did.

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

PROFESSOR HILLMAN: Judge Jones,

this is Beth.

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

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

COL HAM: Right.

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

CHAIR JONES: If I could move for a minute to something that relates to one of your comments, Professor? You talked about the ordering of the recommendations and trying to order them, so that the most
important/strongest investigation -- I don't
mean investigation -- recommendation would
come first. I think that is a very important
idea.

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

PROFESSOR HILLMAN: Yes, Your
Honor. The way we ordered them in the CSS
Subcommittee report was from the sort of most
important piece and, then, the others
followed. But they are re-ordered here. And
we start with, you know, the very first
recommendation of the Panel is "Improve
response rate to surveys." I just wouldn't
start there. So, I would go in the order that
CSS findings/recommendations --
CHAIR JONES: Okay. Well, why don't we do this: first of all, we will go back to your Subcommittee report. Did Victim Services do the same thing, Mai? Do you remember? Do you know?

MS. FERNANDEZ: I don't think so.

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

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

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

PROFESSOR HILLMAN: Judge Jones?

CHAIR JONES: Yes?
PROFESSOR HILLMAN: I have about 35 more minutes to stay with you. So, maybe I should go ahead with the comments that I made, and maybe we can discuss those. I did not flag little things.

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

PROFESSOR HILLMAN: Great. We could combine --

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

PROFESSOR HILLMAN: Shall I go ahead?

CHAIR JONES: Yes.

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

CHAIR JONES: Yes.

PROFESSOR HILLMAN: I can only be on the call until 10:00 my time. So, I will have to go then, anyway. So, maybe I should review those comments with you before I have to go.
CHAIR JONES: You should go now, absolutely.

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

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

CHAIR JONES: It is on page 12, everybody.

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

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

PROFESSOR HILLMAN: Right. See, it says 23(b) and 24 should be combined. Twenty-three (b) says, "Adopts policies to ensure mental health treatment will not have negative implications on career or promotion."
And 24 says, "Implement policy to protect victims from suffering damage to their careers," which ought to include ensuring that mental health treatment does not have negative implications.

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

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

REP. HOLTZMAN: Is this it? Okay.

BRIG GEN DUNN: Yes, that's it.

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

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

REP. HOLTZMAN: Oh, okay, yes.

Yes, sure. Okay, I've got it.

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

COL COOK: Can I make a suggestion on that one?
CHAIR JONES: Yes.

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

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

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

PROFESSOR HILLMAN: Right.

BRIG GEN DUNN: With the Finding 11 underneath it?

COL COOK: Yes.

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

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

(Laughter.)

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

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

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

COL COOK: You can also just -- this is Holly -- in RSP Recommendation 24, in the very last line where it says, "or having sought treatment for sexual assault," you
could probably add the words "or having sought mental health treatment," and specifically address it that way in the last line.

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

COL COOK: Treatment, right, for sexual assault.

BRIG GEN DUNN: Yes.

CHAIR JONES: I think that does it.

Okay. Thank you, Beth.

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

CHAIR JONES: Oh.

PROFESSOR HILLMAN: We should just
move that one up to support Recommendation 24.

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

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

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

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

CHAIR JONES: Okay.

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

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

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

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

BRIG GEN DUNN: Well, wait a
minute. Wait a minute, though, because, see, VSS 23-3 specifically talks about seeking guidance from Special Victim Counsel, which relates to RSP 32. So, it makes sense there.

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

BRIG GEN DUNN: Yes.

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

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

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

BRIG GEN DUNN: Yes. Right. So, leave 19 like it is and leave 23-3 where it
is, but take out the first part.

CHAIR JONES: Okay, great.

Next, Beth?

PROFESSOR HILLMAN: On page 20, RSP Recommendation 43.

CHAIR JONES: Uh-hum.

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

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

REP. HOLTZMAN: We are looking at what number?

COL COOK: She is looking at --

MR. BRYANT: She is looking at 43.

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

COL COOK: The bottom of page 5.

CHAIR JONES: Yes, 9 says,

"Congress and the Secretary of Defense not measure success solely by comparing military and civilian prosecution and conviction rates."

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

CHAIR JONES: Right.

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

CHAIR JONES: Yes, now that I read
them together, I agree with you.

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

CHAIR JONES: Is that agreeable to everyone?

MS. FERNANDEZ: Yes.

CHAIR JONES: Okay, great. Thank you.

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

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

CHAIR JONES: I remember that conversation.
BRIG GEN DUNN: Yes, absolutely.

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

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

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

MR. BRYANT: "Expedite".

REP. HOLTZMAN: "Expedite,"

whatever. It's another way to deal with Professor Hillman's concern. I mean an additional way. I am not disagreeing with the word "timely" earlier.

CHAIR JONES: Right.

COL COOK: So, we are using "expedite" instead of "facilitate"?
REP. HOLTZMAN: No, "and".

COL COOK: Oh, "and," okay.

BRIG GEN DUNN: "Facilitate".

REP. HOLTZMAN: "Facilitate and expedite".

COL COOK: Okay.

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

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

Okay.

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

CHAIR JONES: Right. Okay. Okay.

PROFESSOR HILLMAN: Judge Jones?

CHAIR JONES: Yes.
PROFESSOR HILLMAN: My next comment was on page 39.

CHAIR JONES: Uh-hum.

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

We spent some time on that, on getting everybody onboard with that language. So, I wouldn't change the language, but the Joint Services Committee would be to implement it, would recommend ways to implement this, but I think the rights clarification question
is not in their portfolio.

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

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

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

REP. HOLTZMAN: But I think Professor Hillman's concern is justified here. The Joint Services Committee doesn't clarify. So, I would take it out. If you want to put
it as a later point, and the Joint Services Committee should review any proposal made by the Judicial Proceedings Panel.

COL COOK: That would be fine with me.

REP. HOLTZMAN: Something like that.

Professor Hillman, is that okay with you?

PROFESSOR HILLMAN: Absolutely.

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

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

CHAIR JONES: Okay.

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

COL COOK: "And provide comments as appropriate" or "if needed".
REP. HOLTZMAN: Right.

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

REP. HOLTZMAN: Right.

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

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

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

CHAIR JONES: Okay. Everyone agreed?

All right. Thank you, Beth.

Next?

PROFESSOR HILLMAN: Sure. I'm sorry, I'm almost done here.

Page 41, Recommendation 88.

CHAIR JONES: Uh-hum.

PROFESSOR HILLMAN: This is another victims' rights recommendation. We 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.

This is about the Secretary
4 recommend that the President make changes to
5 the Manual and prescribe appropriate rights to
6 ensure that everybody engaged in investigation
7 and prosecution use their best efforts to
8 notify and accord victims the rights.
9
10 Just "use their best efforts". I
don't think we are creating some -- I don't
11 think it is too much to just say we want to
12 have rights that will allow us to ensure that
13 victims are notified and accorded the rights
14 specified in Article 60 of the UCMJ. So, I
15 would cut that "best efforts" language.

COL COOK: This is Colonel Cook.
17 In VSS Finding 34-2, right underneath it it
talks about the Victim Rights Act requiring
19 prosecutors and investigators to use their
20 best efforts. That's what the statute says.
22 My comment and why I had asked that that get
put into it is, if they think it's difficult
to advise victims of their best efforts in a
civilian community, that becomes that much
more difficult in an environment that is
closed.

But when somebody leaves the
Services, we will do our darnedest to try to
find them. If they're retired, they've got a
check; it can be followed. If they're not,
and they move to the far ends of the world,
they do have rights. I agree with you, Dean
Hillman, that they should be advised, and the
military will move heaven and earth to do
that. But I think if the statute talks about
best efforts, then I don't think our
recommendation should be any more onerous on
them than using the same language that's in
the statute.

CHAIR JONES: Yes, we had kind of
a lengthy discussion about this, and I think
that there was concern, too, with holding
investigators to a standard, and that that
might imply, you know, liability where they were using their best efforts but not saying anything about best efforts.

I think I would leave it the way it is, because I know it was the end of a very long conversation that we all agreed on. So that one I think we're going to leave alone, Professor.

PROFESSOR HILLMAN: Okay. I'm sorry. I couldn't quite hear you, Judge Jones.

CHAIR JONES: Oh, I'm sorry. I guess -- what I said was we had a very long talk about this, and there were -- at the time, and there were -- I mean, the reason why I preferred best efforts, I actually hadn't noticed the statutory argument that Colonel Cook just made. But I would be concerned talking about it in absolute terms when you're dealing with investigators and others. I think best efforts is sensible.

So we're -- unless anyone else
disagrees, we're going to leave that one the way it's written.

PROFESSOR HILLMAN: Okay. My next suggestion is on page 43. Mr. Bryant had a comment on this one, too. This is Recommendation 93. It actually -- it conflicts with 74.

CHAIR JONES: That's always a bad thing.

REP. HOLTZMAN: Where is 74?

CHAIR JONES: Oh, this is -- I remember reading this now.

PROFESSOR HILLMAN: It's on page 32.

CHAIR JONES: Let me just take a look.

PROFESSOR HILLMAN: We do actually -- we say there, "Repeal this change that was already made." Ninety three says, "Don't make any more changes." Ninety three is too vague I think, so I would just delete 93 and --

COL COOK: It says we should
repeal part of the UCMJ on the convening authority decision, so it's already saying we don't want to make changes, but we're already recommending a change.

MS. FERNANDEZ: Got it.

CHAIR JONES: We'll have to move the findings, then, if they're relevant. I need to look at this.

BRIG GEN DUNN: This is talking about only to refer charges. Ninety three is only talking about referring charges.

REP. HOLTZMAN: Right. I don't see that it's redundant. I mean, I don't -- are you saying, Professor Hillman, that RSP Recommendations 74 and 93 are identical?

PROFESSOR HILLMAN: No, ma'am.

But 74 recommends a change, and the -- I guess if you look at -- it already says -- I'm sorry, 92 -- 92 states, "The panel recommends against any further modifications to the authority vested in commanders also designated as convening authorities." So it actually
very clearly says that. Then, 93 says, again, "Congress not further modify the referral process, essentially, beyond the recent amendments."

So I think that 92 essentially includes 93, but I also think that saying Congress make no more changes. Maybe what is in 74 is distinct enough from this -- what this states. But I just don't know what we're getting from including 93.

BRIG GEN DUNN: Well, I think 93, to me, specifically addresses the referral issue. I think those findings are important underneath it.

PROFESSOR HILLMAN: I think the findings -- I don't know. Harvey, did you have anything? You had a comment on this where you said, "What modifications are currently out there?"

MR. BRYANT: Well, in fairness to the panel, my comments tend -- in this area, and several others, tend to be argumentative
advocacy for things the panel has already voted on. So I'm --

PROFESSOR HILLMAN: Well, Harvey, I'm never argumentative. I'm --

MR. BRYANT: No. I'm talking about my own comments. My own comments. So, no, I don't have anything to add. I was just registering my concern with things the panel had already decided to recommend.

PROFESSOR HILLMAN: Got it. Thank you.

REP. HOLTZMAN: Can I make a point here? I think what the -- what RSP 92 and 93 deal with is not that they not further modify. I think what they mean by "modify" is limit or reduce. Isn't that really what it's saying as opposed to making any changes? I mean, for example, to enhance? So maybe if Congress had a further limit -- well, I don't know. I'm sorry. I take that -- because I don't even --

CHAIR JONES: I mean, I think I see the issue between 74 and 93, because we
are asking for a repeal that relates to the convening authority's referral power. So we have to -- I have to now try to figure out where 92 fits into this.

I mean, in 93 we could say, "Save for our -- except for our recommendation in 74," but I'm just pointing out that I get the problem there.

Now, let me look at 92.

MS. FERNANDEZ: I guess we could say, "Unless otherwise designated -- except for those designated in this report."

CHAIR JONES: I think we can fix this. I'm just not coming up with it right now.

REP. HOLTZMAN: Going back, I think in 92 what we're talking about -- "modification" means any further limitations on the authority vested in commanders. Isn't that really what we're saying, as opposed to any changes? Am I wrong?

BRIG GEN McGUIRE: Other than what
has already been recommended in 73, but so we take --

REP. HOLTZMAN: 74 doesn't talk about limitations, so it wouldn't actually be in contradiction with 74. If you just said, "Recommends against any further limitations on the authority vested in commanders" that would -- that would clarify 92 and not make it contradictory to 74.

COL COOK: 74 talks about lifting a limitation that's on commanders right now.

REP. HOLTZMAN: Correct.

COL COOK: So it doesn't impose a limitation; it lifts one that is already there that we think went too far.

REP. HOLTZMAN: Right.

MR. BRYANT: I would just point out that part of the reasoning of some of the panel members for not recommending other changes is that the changes that have already taken place we haven't had a chance yet to see what the effect is. So I'm not sure that's
the same thing as saying, "No, don't do any changes," as opposed to "don't do any more limiting changes." Because the prior reasoning has been, if you -- we've had enough changes one way or the other that we need to let those mature before we make -- before we do anything else. I'm just pointing that line of reasoning out.

REP. HOLTZMAN: Okay. I don't feel very strongly about that. I just -- that's fine. I mean, leaving the language of 92 there is okay with me, but then you have to sort of -- then you have to kind of exempt 74.

BRIG GEN DUNN: Okay. Well, 93 I think should say, "Congress not further limit the authority," because then that removes the conflict with 74, right? Ninety two --

CHAIR JONES: Well, I think that 93 definitely goes to limitation. So I think that's a good suggestion.

MR. BRYANT: Very specific.

BRIG GEN DUNN: That was
Representative Holtzman's suggestion.

CHAIR JONES: All right. Thank you, Liz.

BRIG GEN DUNN: Excellent suggestion.

REP. HOLTZMAN: I thought it was 92, but I'm happy to take the compliment.

(Laughter)

CHAIR JONES: Maybe we can combine --

COL COOK: Ninety two, why can't we just add the first sentence to the second sentence and forget about the first comment which is, "We recommend any further" -- this is in 92. Take out the first sentence that say, "We recommend they get further modification," because that does contradict.

Why don't we just say, "The panel does not" -- Recommendation 82, "The panel does not recommend Congress adopt the reforms in the Sexual Assault Training Oversight Prevention Act or the Military Justice
Improvement Act." That was something we were specifically supposed to rule on, so just take out the first sentence.

CHAIR JONES: And we may reverse the order of the recommendations to make the specific legislative recommendation come after the more general one.

REP. HOLTZMAN: Can I just make a slight suggestion?

CHAIR JONES: Sure.

REP. HOLTZMAN: The word "reform" is already making a judgment as to the appropriateness. "Reform" is a good word. I mean, I'd rather just say, "The proposals made with regard to the authority, the convening authority" as opposed to "reforms," because it sounds like we're anti-reform, which we --

CHAIR JONES: Go ahead.

COL COOK: I'd be okay with just saying we not adopt either the Sexual Assault Training Oversight Prevention Act or the Military Justice Improvement Act, to take out
proposals, reforms, or anything. Those are
two specific bills that are out there. We are
recommending you don't pass those --

REP. HOLTZMAN: Well, but only

with regard to the --

COL COOK: Commander.

REP. HOLTZMAN: Yes, the court-
martial convening, whatever it is. I think it
is something else in those bills that we --

CHAIR JONES: All right. We may

have to doublecheck and see if we need to
limit that, but I would go to -- I would
change 92 and add the word "limit" to 93, and
then we have to look at 74 and --

COL COOK: Judge Jones, before we
go further, based on what you just said,
because I didn't notice after the first
sentence, Rep. Holtzman, then in that sentence
if you do delete the first sentence, then
that's true, it would be clarified, "The Panel
does not recommend Congress adopt the
proposals to modify the authority vested in
commanders" in either of those proposals. And, besides, it's simple.

CHAIR JONES: Good. Proposal modifying the authority --

COL COOK: Vested in commanders in either the sexual assaults, and blah, blah, blah, those two acts.

CHAIR JONES: Okay. And then, I think -- are we okay with 74 there? Yes, 92 is easy. Okay. I think we're consistent now.

Beth, thank you very much.

PROFESSOR HILLMAN: Sure. I've got one more thing, and then I'll probably need to sign off here. Should I go ahead?

CHAIR JONES: Yes, please.

PROFESSOR HILLMAN: Page 46, RSP 96. This is the one about the culture defense. Representative Holtzman commented that we should explain it more. I think that's -- I think we should -- don't just say that Congress should enact Section 3(g) of the Victims Protection Act because it may increase
victim confidence. I think that would make it a little clearer, because that's really what we're saying. This is just worded funny because it says "enacted," instead of making an assertion, the way our other recommendations do, which I think is a source of self-confusion. Just that previous recommendations said, "Congress should not enact;" we should say, "Congress enact Section 3(g) of the Victims Protection Act, because it may increase victim confidence."

CHAIR JONES: I think that's right.

PROFESSOR HILLMAN: Okay. And that is -- there's more discussion of that. There's just one more thing that I'll mention, just about our sort of negative recommendations, that is for the Panel to consider. I don't know that we want to make this change, but I wrote this comment on page 50, in relation to RSP 106, but my comment actually runs to several of our
recommendations.

So 106 says that DoD not promulgate an additional formal statement of rights, essentially. All of our negative statements on this sound strange to me. It's the same with 81 and 96, each of which says, "Congress should not do this." I think we've made findings that explain why action isn't appropriate, because we don't recommend action on all of those particular things. But I think that it -- these are -- we can only respond to the way things are right now by saying DoD not promulgate an additional formal statement, for instance, or one of these other ones.

Let's see, like 80 says, "The panel does not recommend sentencing guidelines." At least that one says "at this time," where 81 says, "No further mandatory minimums at this time." They are time-stamped. I mean, there is a particular time in there. But it's a strange thing to state
Congress shouldn't do something, because it -- and in 106 there is no time limitation on the promulgating additional rights, and I just don't know that things might not change.

So my suggestion was we consider whether findings are responsive enough to our tasking from Congress to consider these things, or if we really do want to make all these negative recommendations.

CHAIR JONES: Yes. Well, the way they phrased it in the legislation it says, "An assessment of whether DoD should promulgate this statement."

MS. FERNANDEZ: On the sentencing, 106 is really difficult to understand. Period.

REP. HOLTZMAN: Well, maybe a better way to do it, we just say, "At this time, there is no need" or "The panel finds that there is no need to promulgate -- you know, for additional formal statement of these rights."
PROFESSOR HILLMAN: I think that's helpful language, if we do want to actually make recommendations here. I think that's definitely helpful.

REP. HOLTZMAN: Yes, the panel finds that there is no need.

(Simultaneous speaking)

CHAIR JONES: Well, I don't quite get it. Why wouldn't we say -- presumably we've done our assessment, and at this time we do not recommend that they promulgate an additional formal statement.

MS. FERNANDEZ: Well, because I think you have to put "at this time." I think that that --

CHAIR JONES: Okay.

MS. FERNANDEZ: -- it's got to be time bracketed.

CHAIR JONES: All right.

MS. FERNANDEZ: Is that the main issue here, the time bracketing?

PROFESSOR HILLMAN: Yes. That's
one issue. I can -- I understand that Judge Jones wants this to be responsive to the assessment request from Congress. I have --

CHAIR JONES: They're asking us to assess whether --

PROFESSOR HILLMAN: -- avoided these statements of what we shouldn't do, because I just -- those seem slippery to me conceptually and in terms of implementation. But it seems that we're leaning that way again, the limitation "at this time," that's fine. That's how the negative recommendation --

REP. HOLTZMAN: Also, if you say there's no need, that gives a reason for it. It sounds as though they've actually done their job as opposed to just saying they shouldn't, you know.

PROFESSOR HILLMAN: Right.

REP. HOLTZMAN: That being --

CHAIR JONES: I mean, they do switch to -- I mean, there are several of
these where they want an assessment. I mean, if you want to switch from "recommendations" to "it's our assessment," that's -- I think we should probably just say we don't recommend it at this time myself, and keep it all recommendations, one way or the other, because then we have a second type of message.

REP. HOLTZMAN: I think you're right.

CHAIR JONES: Okay. But let's -- we'll go back and make sure that we say "at this time."

PROFESSOR HILLMAN: Judge Jones, I apologize. I have to sign off, and I apologize I can't be there and present. I appreciate all the work that you guys do in my absence.

CHAIR JONES: I think you have traveled farther than anyone else throughout this year, Beth, so thank you so much.

CHAIR JONES: All right. Were there substantive comments from anyone else that aren't in the -- I mean, if they're already in the report, I'd still like to hear them now.

COL COOK: I have one minor -- this is really minor, but it's not just a typo thing, that the panel can -- that the wonderful staff we have can just add -- I want to put the word "better protect victims." I want to say this is 71, but I don't -- I have to find it.

CHAIR JONES: You know, I suspect we'll have a little bit more to talk about, so maybe we should break for lunch at this point. Is that agreeable to everybody? Okay. It's 1:00. So we'll regroup and be back in about -- I didn't say a time. What do you figure, 30 minutes, half hour? 1:30.

(Whereupon, the above-entitled matter went off the record at 1:00 p.m.)
A-F-T-E-R-N-O-O-N  S-E-S-S-I-O-N

(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
problem with that. Any other -- any
objections or further comment? All right.
Then, we will add "better." Thank you.

COL COOK: I have none other.

CHAIR JONES: All right. Is there
anyone else who has substantive comments with
respect to recommendations, findings, the
substance of the draft final report? Do I
have them all?

REP. HOLTZMAN: Well, you don't
have mine. I'm sorry.

CHAIR JONES: Go ahead, Liz.

REP. HOLTZMAN: I submitted
responses to the draft final report for all of
the sections except Section 6, which I have
here. Most of the comments are stylistic.
I'm trying --

BRIG GEN McGUIRE: This?

REP. HOLTZMAN: That's one of
them. That's to number 5. I don't know that
we all have to deliberate because, I think
that on the stylistic issues, I'm perfectly
prepared to let our very competent chair and
staff make whatever stylistic changes they
deem appropriate. I'm not going to --

CHAIR JONES: All right.

REP. HOLTZMAN: So that would be
my recommendation --

CHAIR JONES: Thank you.

REP. HOLTZMAN: -- with regard to
that. I don't know that the substantive ones
-- I didn't separate out substance and style
when I was going through, so --

COL COOK: And, Representative
Holtzman, I did the same thing. I have
already spoken to Colonel Green. But on my
notes there was -- I haven't made it through.
Some of the sections we got in advance. I
want to finish going through those. But so
far on the narrative type sections that I've
gone through, I think they are incredibly well
written. They match what we were discussing.
They added in witness testimony. I didn't
have any concerns.
The notes that I have are minor structure or sentence-type things or the question of whether a footnote belongs in a footnote or is going in the body, but those are things that I didn't think needed to be deliberated on the way the findings and recommendations did. So I don't -- for the purposes of this meeting, I wasn't planning on bringing it up.

CHAIR JONES: All right. I'll resolve those with the staff. Were you going to look for your substantive --

REP. HOLTZMAN: I don't want to take the time of the committee, the panel at this point. I mean, if there are substantive comments -- well, I guess, are you going to -- what is the procedure that is going to be followed, Madam Chair, with regard to --

CHAIR JONES: Well, I thought if there were substantive comments we could resolve now, while the panel is all together, we could do that. Going forward, after we get
back the final full draft, which will have
changes -- for instance, the easiest of which
will be that there will no longer be a recap
on the findings and recommendations at the end
of each section, but there will also be the
changes that we have agreed upon this morning
in it, as well as a review for the other
comments that you've handed in, which are not
substantive.

Then, I think after that comes out
we will have to have a telephone conference,
and we will have to -- since it has to be
public, I gather there is a possibility --
where are you, Maria? That we could have a --
we would have a public --

MS. FRIED: Yes, Judge Jones. I
think we can always have a teleconference.

CHAIR JONES: Could you speak up
just a little? I'm sorry.

MS. FRIED: Yes. I think we can
have a teleconference. We have members, we
have some lines available so the public could
come down and participate that way.

CHAIR JONES: All right. I don't know how much notice you have to give for that, but we're not going to have enough time, so it will have to be -- have to be a waiver. Okay. All right. Well, that's what we'll try to do, and I'll try to figure out when that last phone conference has to occur after I have consulted with the staff and we'll send out an email to everyone, hopefully as -- possibly as early as tomorrow, so that we can plan for a phone conference to do the final approval on this.

REP. HOLTZMAN: And perhaps in connection with that, if there are some substantive issues that need to be raised, then we can address them at that time.

CHAIR JONES: Absolutely. So it may be, you know, a conference we're going to have to consider spending some time on, just a quick one. But, yes, we would have to undertake to resolve all the substantive
issues as well.

REP. HOLTZMAN: Could I just point one thing out?

CHAIR JONES: Yes.

REP. HOLTZMAN: Page 30, Section 6. We talked -- I think we eliminated this today, because we had eliminated it in our prior meeting. But there's a recommendation here -- there's a statement here that the Secretary of Defense should direct the Military Justice Review Group or Joint Services Committee to evaluate if there are circumstances when the general court-martial convening authority should not have the authority to override a recommendation from an investigating officer -- this is on page 30 -- against referral of an investigated charge for trial by court-martial. Didn't we just agree that this wasn't going to be a recommendation?

CHAIR JONES: I'm sorry. Where are you? This is Section 6 of the actual report?
REP. HOLTZMAN: Yes.

CHAIR JONES: Okay.

REP. HOLTZMAN: Well, anyway, maybe we don't have to address it now, but I thought that we had somehow -- this is something that we had agreed was not going to be in the recommendations.

CHAIR JONES: Which -- we certainly had discussion about finding probable cause determinations, but this is different, correct?

LT COL GREEN: Ms. Holtzman, there were two recommendations in the subcommittee. The CSS recommendation was to make it a probable cause hearing, and that that would be a binding recommendation, and that was rejected by the panel. And then, the second was from the Role of the Commander Subcommittee report, and this was a recommendation to further study if there were certain circumstances when that would be binding and the convening authority could not
override that.

REP. HOLTZMAN: Okay. So that has not been changed.

LT COL GREEN: That's correct, ma'am.

REP. HOLTZMAN: Okay. Thanks.

The only other thing I want to point out that is a little bit more than stylistic, and that is we refer a couple of times to the actions of the convening authority as prosecutorial.

And I don't really -- I suggest that we not use that term, because I -- while it is similar to a prosecutorial decision to refer, I think likening the commander to -- the convening authority to a prosecutor takes us down a road that we might not want to go.

CHAIR JONES: Well, we also refer to the trial counsel as prosecutors, which is what they are.

REP. HOLTZMAN: Correct. But the convening authority is not the prosecutor. It says here, "For example, convening authority
is in a better position to make informed
prosecutorial decisions in a higher level
court-martial." And I --

(Simultaneous speaking)

CHAIR JONES: I mean, prosecutors
do make charging decisions. Sometimes they
decide what will be tried as well, frequently.
So it is a type of prosecutorial decision.
Obviously, they are not trying a case.

REP. HOLTZMAN: Right. But the
decision is based -- you know, they are taking
a few other factors into account that
prosecutors don't, and I think by reducing
this to a prosecutor you may be raising
questions that shouldn't be raised about it.
I think it's better to say, "Convening
authority is in a better position to make
informed decisions about referral," whether a
case -- you know, something that would
describe it without talking about the
convening authority as the prosecutor, because
I think it diminishes the role.
CHAIR JONES: Well, it is a role that's larger than that, because it's also -- of course, that -- well, I think your point is that there's factor of good order and discipline in the unit that's added, and that isn't what one would normally consider prosecutorial criteria.

REP. HOLTZMAN: So this is my suggestion. It's a very small one. It's a little bit more than stylistic.

CHAIR JONES: Well, it is more than stylistic, and it's -- and is it in -- we can just run the text -- not the text, the recommendations, to see where we use it. And then I think we'll bring it up again on the telephone conference, just to see what the absent members of the panel think about that. Okay?

COL COOK: And I would ask, Judge Jones, while we're -- you're going to set another meeting, put in the telephone, that's all fine. For those of us who didn't quite
make it through all of the final sections, if
we get the opportunity, we'll get it -- all of
our comments back to Colonel Ham. And, for
me, I can do it by Friday of this week. I
just haven't had a chance to do it before now.
I just want to make sure that there is some
time that we can go through it.

Again, I don't expect it to be
substantive at this point. The findings and
recommendations we made the changes to this
morning, I expect will be pulled into the
other portions without our saying it. And
then the other parts you guys have been doing
a great job on.

CHAIR JONES: Well, today is
Monday.

COL COOK: Right.

CHAIR JONES: I know that a number
of panel members may still have additional
comments. They just haven't been able to get
back. So when do you propose getting them in,
Colonel?
COL COOK: I can probably do it by Wednesday. I can definitely do it by Friday. But I'll get -- I mean, I'll get it in as soon as can be my goal. I'll read it on the train going back and spend part of tomorrow doing it. So my guess is by --

CHAIR JONES: Well, why don't we say as soon as possible, and preferably by the -- by Wednesday, close of business.

MS. FERNANDEZ: When is it due?

CHAIR JONES: Pardon me?

MS. FERNANDEZ: When is it due?

CHAIR JONES: The 27th to Congress.

MS. FERNANDEZ: To Congress?

CHAIR JONES: Yes. So we're --

MS. FERNANDEZ: I kind of sort of think that we need to end deliberations at some -

COL COOK: Oh, it's not deliberations.

MS. FERNANDEZ: No. But if we
have a conference call where we're going to
continue deliberating --

CHAIR JONES: Well, hopefully
these will be like the final things, and very
few of them have substance hopefully. I don't
know how else to do it, or I would call off
the conference call. I think we have to -- we
have to have at least one final conference
call. We are running out of time. No two
ways about it.

REP. HOLTZMAN: Plus, we haven't
seen the executive summary.

CHAIR JONES: Nope.

REP. HOLTZMAN: That has to be
approved, so -- there might have to be a vote
of approval on the report itself.

CHAIR JONES: Oh, absolutely.

Okay. Then, Colonel?

COL HAM: Yes? Yes, ma'am?

CHAIR JONES: Are we ready for --
is there public comment?

COL HAM: Yes, ma'am. We have --
CHAIR JONES: I'm sorry. Go ahead.

LT COL GREEN: I have not received -- or we have not received any information on additional statements from panel members. That factors in both our ability to finalize the report as well as the panel's responses to various issues that need to be discussed about that. So --

CHAIR JONES: Well, I think Professor Hillman indicated she was going to write an additional statement. But although I'm not sure if she wasn't -- I don't know whether she was planning to use a statement she had already written. Would you call her and find out? Is there anyone else who is here right now who plans to write an additional statement? Liz?

REP. HOLTZMAN: Just a paragraph or two.

CHAIR JONES: A paragraph or two. Okay. And you might as well call the missing
panel members, then, and just --

LT COL GREEN: Okay.

CHAIR JONES: -- if you would, Colonel.

COL HAM: And, ma'am, for the timeline, I know you mentioned it. If it's not going to get to the Secretary of Defense and Congress by the 27th, we need to notify them, because we have to back plan it in time to get to the printer, et cetera. So we are backing up against a pretty tight timeline to finish.

CHAIR JONES: Well, it sounds like there is no way we can have our phone conference by next Monday.

COL HAM: I'm sorry, ma'am?

CHAIR JONES: It seems to me there would be no way we would be able to have our phone conference before next Monday. I'm not even sure if that would work. Why don't we discuss this, and we'll do what we have to do. If we're not going to have it printed by the
27th, we'll notify Congress.

COL HAM: Yes, ma'am.

CHAIR JONES: Okay. And public comment?

COL HAM: Yes, ma'am. We have one public comment, Ms. Caprice Manos. Ms. Manos, you can step forward to the lectern.

And, members, you have Ms. Manos's written statement in your folders, and it is also posted to the website.

MS. MANOS: Good afternoon.

Hello. I come before you now to state and verify under Title 28, Section 1746 of the U.S. Code, that I, Caprice N. Manos, who is sui juris and a natural person at common law, and who is yet unrecognized as remaining in the National Guard, the military, and whose proper military status has not been recognized since 2003, and that which is still unrecognized to this present day for purposes of actual status and current litigation.

That litigation is supposed to be
taking place with the investigation, but it is not being done correctly. I had to ask the investigator to remove himself from the case by and through the attorney liaison, who is supposed to be a special victims unit, but I don't know if she is communicating that well.

One thing is clear is that the issue -- or one of the key issues of the case litigation is that the status of a military member, the key issue itself, such military member is to be protected from harm and retaliation that can come as a result of the military status as unlawfully concealed.

The key issues of my case and material facts are unlawfully being concealed continually by those who are charged with a duty to uncover and investigate and prosecute the crime which took place upon me from 2003 and until recent.

I am here as a victim/witness who has not yet been -- who has not received the proper forms from the Department of Defense
regulations known as DD Form 2701, which all
victims of crime in the military are first to
be given, which states that the rights of
victims, possible medical compensation,
information related to prosecution, and other
important pertinent information released to
prosecution, arrest, and other necessary forms
that need to be filled out.

I have not received them from the
first complaints I made in 2003. I have
suffered quite a bit of retaliation. Those
complaints were based upon sexual assault,
sexual harassment. A lot of the unlawful
confinements that I did suffer were over
reprisal for trying to make reports and trying
to go to IG. When the reprisal was taking
place, they kept me quarantined in my cot
quite a bit.

I was trained as an investigator
prior to the military, so it did help me get
through everything, and in basic training I
paid attention and it helped me quite a bit as
well. I was an older soldier.

I want to say -- give a background

on the case briefly. I'm speaking fast

because of the time limit. That some of the

crimes that -- of the unlawful

confinement/kidnapping, in the UCMJ, only

civilian life -- some of those crimes were

borne because I stayed a case at the state

level where I was forced to become attorney of

record by a judge, who deprived me of my civil

rights of a jury and a defender in order to

conceal what was my ex-boyfriend cop who took

me. He kidnapped me so I couldn't go in the

military -- false charges.

So I got through that and stayed

the case. I contacted the Adjutant General in

Florida. He had an investigation done. I was

sworn in right before my 36th birthday, so I

was happy. But the statements that were made

to me by a Captain Alexander while being held

in Kuwait in a fire shelter, without a battle

buddy, repeatedly told that I should drop the
case back home, so they witness tampered and
they would not stop -- they told me I was not
allowed to speak with anybody. They tried
isolation techniques. They tried false
counseling statements. And when they could
not succeed or break my spirit as it is, they
proceeded to try to form a mental depiction --
a mental evaluation depiction in reprisal.

My commander I believe did that.
They admitted to me after -- I was told by a
chaplain to form a JAG report was never
investigated. Later, when I got back to Fort
Stewart, an emergency because of the
situation, the person who was supposed to
investigate the JAG report told me she lost
the hard copies in the desert. I still have
my copy.

I started to press the issue. I
was quarantined more in Fort Stewart, that's
after getting back. Prior to coming back, I
was moved to a camp with no orders on my
person -- when my commander just left me -- he
left me. They went and they mobilized to Iraq. IG came out -- I believe it was IG, a woman and two men came out and they said I didn't have to go forward. They wanted to know who all knew about this back home. I told them I communicated quite a bit with my family through the satellite phones when I could get away. So I snuck out of the tent at one point in the night to do that, to let everybody know I was going home.

Well, I went and was taken to another camp with no orders on me. This was Camp Wolf. And I put into a vehicle with two men and a woman. The woman played sort of devil's advocate. I don't remember her name. But she told me whatever they did to me, just don't cry, don't show emotion, because it would not be good for me.

I was told I would never go home, that I should not make waves in the military -- walk to the main latrine and remained there. Of course, it caused apprehension and
fear of assault.

CHAIR JONES: Ms. Manos, I just wanted to let you know you have about a minute left.

MS. MANOS: Okay. Okay. From the inception of the first crimes that took place upon me, they have not properly investigated. Following my arrival back to Fort Stewart, the military police refused to do an investigation. This CID agent -- I finally was given Special Victims Unit. I was shot with poison pellets in 2012. I survived. I have pictures for reference in the back. And I survived that and have heart problems from that.

He has not done any investigation on that. I have been summarily told by the Special Victims Unit attorney, allegedly because I never met the prosecutor, that the prosecutor summarily decided that there is no probable cause for sexual assault and no probable cause for the kidnapping charges.
I have been on this case myself for 11 years winding through the Pentagon, who had the case a couple of times, not investigating it. But the matter of attempts of kidnapping, severe organized stalking, burning me, branding me on my leg. I had to have a bodyguard for three years.

I mean, that was a life and death situation to me. I did what I was trained to do in my own investigations training. And I conducted the case as best I could.

When it got turned over, I expected to see better results. A refusal flatly to interview all of my witnesses, which was half the unit, for what was going on when the assault was happening in the desert and prior by the CID agent. Many -- he has not returned any calls to tell me how he has kept up with the case. I have asked him to step off the case through the attorney, and she has since taken herself off the case as well.

That right now is all to conclude
-- also, there was supposed to be an investigation into my -- my rank was unlawfully reduced. I don't know what rank I am right now because of time and rate. I have not been paid for years, and what is very important is I found a falsified -- false life insurance policy on myself. And I got some of it on tape.

Also, they charged me in my disposable income in civilian life. They took my disposable income in payment for that -- for that life insurance policy that did not exist.

So I know what insurance policy I signed, another one was created. I did an investigation on my own, found out -- Prudential told me that commanders can sign for the life insurance policy. I never got past that.

So I thought that the investigator would do -- would investigate the crimes where I was shot. I thought that he would interview
more witnesses. I had a former investigator witness to the break-in and setup of the shooting where they -- of setting the sensors, motion sensors, to tag me, and that's how they shot me, weeks prior to them shooting me.

The investigator was standing by for an impromptu phone call from the CID agent. The CID agent refused to interview the man. And he cut my hours short for making my own statement. He told me he had a lot of cases to do, which I believe.

He made false statements as well. I won't go into what they were right here. And he cut my time short. He refused to supplement the reports with the statements of the frame of mind that I was in while I was in captivity and what went on.

So I don't know how a prosecutor summarily decided there is no probable cause without any victim-witness statements under penalty of perjury. I don't know how -- I have never met -- there is no client-attorney
relationship there. So that's what I'm
dealing with right now.

   Nobody has taken -- I had shrapnel
in my back from a poison pellet. I took that
out myself, and I survived. So no one has
taken that out for me. And when I asked him
how to take that out, or what was the chain of
custody, which I kept it in my back for those
reasons, he told me, "Oh, go to the VA,
they'll take it out." I responded, "The VA is
not a law enforcement agency to keep chain of
custody of this."

   CHAIR JONES: Ms. Manos, I'm
sorry, but --

   MS. MANOS: That's okay.

   CHAIR JONES: -- your time has
expired.

   MS. MANOS: I appreciate it.

   CHAIR JONES: But we have your
written statement.

   MS. MANOS: Thank you.

   CHAIR JONES: Thank you.
All right. Unless there is any further business, then, I think we are adjourned. Anything else? All right. Thanks, everybody.

(Whereupon, the above-entitled matter went off the record at 2:18 p.m.)
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CERTIFICATE

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.

[Signature]
Court Reporter

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