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RESPONSE SYSTEMS TO ADULT SEXUAL
ASSAULT CRIMES PANEL
VICTIM SERVICES SUBCOMMITTEE MEETING
SUBCOMMITTEE MEETING

Thursday,
November 21, 2013

One Liberty Center
875 North Randolph Street
Suite 150
Arlington, Virginia 22203

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1 PANEL MEMBERS PRESENT:

2

3 MAI FERNANDEZ, Chair

4 HONORABLE ELIZABETH HOLTZMAN

5 HONORABLE CHRISTEL MARQUARDT

6 DEAN MICHELLE ANDERSON

7 DEAN COLONEL (RET.) LISA SCHENCK, USA

8 MEG GARVIN

9 BILL CASSARA

10 COLONEL PATRICIA HAM, USA, Staff Director

11 CAPTAIN (RET.) DAVID GRUBER, USN, Staff Director,

12 Defense Legal Policy Board

13 CAPTAIN BILL SPRANCE, Alternate Designated

14 Federal Officer

15 COMMANDER SHERRY KING, USN, Branch Chief, Response

16 Systems Panel

17 JULIE CARSON, Staff Attorney, Response Systems

18 Panel

19 KRISTIN MCGRORY, Staff Attorney, Response Systems

20 Panel

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1 Advisory Committee Act as does the full Panel.
2 That is, the government in the Sunshine Law that
3 puts certain restrictions on our activities to
4 ensure that the public is able to see what you do.
5 For those of us who are attorneys, we're used to
6 the attorney-client privilege, the work product
7 privilege. Those of us in government are used to
8 the Freedom of Information Act and exemptions.
9 Presume those -- none of those apply to us.

10 So as a Subcommittee, the way this
11 trickles down to you is you may not have a meeting
12 without a Designated Federal Official present. Our
13 Alternate Designated Federal Official is Mr.
14 William Sprance from the Department of Defense
15 Office of General Counsel. Some of you have
16 already met Maria Fried. She is our Designated
17 Federal Official, also with the Department of
18 Defense Office of General Counsel. We may not have
19 a meeting without a DFO present.

20 A meeting is any two of you discussing the
21 substance of your work. So things to watch out for
22 are you can't email each other about your thoughts.

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1 Any emails have to go through one of the staff. So
2 if you want -- for example, if you find an article
3 or something that you would like distributed to the
4 Subcommittee, send it to Commander King, who's your
5 Branch Chief, Commander Sherry King, or one of the
6 other Subcommittee staff or RSP staff, and we'll
7 distribute it for you.

8 You are not permitted to identify yourself
9 as a member of the Panel to the media or things
10 like that. You are permitted to talk to anyone,
11 but not on behalf of the Panel or to express an
12 opinion of the Panel or your Subcommittee, because
13 the Subcommittee acts as a whole and reports to the
14 full Panel. Those are not meant to discourage you
15 from talking to whoever you want, but it's in your
16 own personal capacity expressing your own personal
17 opinions, not the Panel's or the Subcommittee's
18 opinions.

19 Those are the most important points, and
20 very different from how you may be used to
21 operating. Anything that's provided to you is
22 accessible to the public. These hearings or

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1 meetings are all transcribed -- verbatim
2 transcribed, and the transcripts will be posted on
3 the website as will all materials that you're
4 provided so that the public can see what you're
5 doing. All your deliberations will take place in
6 these types of meetings so that they can be
7 verbatim transcribed and anyone can see what you
8 thought and how you arrived at your decisions.

9 Your ultimate goal is to present your
10 findings and recommendations to the full Panel in
11 an open meeting so they can deliberate on whether
12 to accept, reject, modify, your findings and
13 recommendations on the specific areas the Secretary
14 of Defense has asked you to examine, which are in
15 the Terms of Reference, one of the documents in
16 your binder.

17 So with that short introduction, the Chair
18 of your Panel is Ms. Mai Fernandez, who is on the
19 full Panel as well, and we'll turn it over to her.

20 MS. FERNANDEZ: Welcome, and thank you all
21 for being here before I got here. And so, this is
22 the first meeting of the Subcommittee of Victim

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1 Services, and I just wanted to thank you all for
2 committing your service and your time. It is quite
3 a bit of time, but it's, I think, where the rubber
4 meets the road. Victim services -- I mean, we can
5 change things around for the commanders. We can
6 look at other jurisdictions and see how they've
7 dealt with this issue. But at the end of the day,
8 somebody who's been sexually assaulted needs the
9 best services that the military can provide.

10 So I really do see this as if nothing --
11 if we accomplish nothing else, we have to make sure
12 that the services that we provide the victims of
13 crime in the military receive the best that we can
14 give them.

15 We're one of three Subcommittees just as a
16 matter of information. Today we are going to be
17 hearing from the SAPRO Office. They're going to
18 give us more information on their SARCs and their
19 victim advocates so we can get more information on
20 that. We'll have an opportunity also to hear this
21 afternoon from a report from the Joint Service
22 Committee on the UCMJ, which has been tasked by the

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1 DoD General Counsel to conduct a comprehensive
2 survey of civilian practices in the area to see how
3 they approach and support protecting victims, as
4 well as affording victims their rights to
5 participate in judicial proceedings.

6 And at the end, which I think will be the
7 most valuable, we have set aside time to
8 deliberate, which actually the full Committee has
9 not had a lot of time to do. So we're going to
10 have an opportunity to really go back and forth and
11 to say what our opinions are and where we think
12 things should be going.

13 But before we start, I think it's a good
14 idea to maybe kind of go around and say who we are
15 and how we got into these chairs. And I can say
16 I'm Mai Fernandez. I'm currently the Executive
17 Director of the National Center for Victims of
18 Crime. I came into that position many years ago.
19 I was a prosecutor in Manhattan. I then went to
20 work for DoJ, but not in one of their litigation
21 branches, but in the area that provides programs,
22 many of which go to victims of crime. And then I

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1 went back to the front lines and worked in a
2 community-based organization where we served young
3 people, many who had been victims of sexual
4 assault. So that's sort of the background that I
5 bring to this. And we can go -- why don't we go
6 this way?

7 MR. CASSARA: Sure. Excuse me. My name
8 is Bill Cassara. I live in Augusta, Georgia. I
9 spent 22 years in the JAG Corps, six years active
10 duty Army and 16 in the Reserves. That's where I
11 got to know then Captain Ham, so that shows you how
12 long that she and I have been doing this.

13 I am currently -- for the last 20 plus
14 years have been in private practice. My practice
15 is limited to representing service members in
16 courts martial, Federal litigation, former service
17 members in administrative matters, et cetera. So a
18 large part of what I do is representing service
19 members accused of sexual assaults. So that's how
20 I got here.

21 MS. FERNANDEZ: Thank you.

22 JUDGE MARQUARDT: And I'm Christel

1 Marquardt from Kansas, and I served 17 and a half
2 years on the Kansas Court of Appeals. Before that,
3 I was in private practice, but I've also served on
4 the Kansas Sentencing Commission for about seven
5 years, and also served on the Commission that
6 rewrote the entire Criminal Code for Kansas, which
7 took us about eight years. And so, that's my
8 background.

9 MS. FERNANDEZ: Thank you for being here.

10 DEAN ANDERSON: My name is Michelle
11 Anderson, and I'm the Dean at CUNY School of Law.
12 My scholarly area of expertise is rape and rape
13 law. I am an Advisor on the American Law
14 Institute's Project to revise the Model Penal Code
15 for its sexual assault provisions and related
16 sexual offenses. And I teach criminal law and have
17 been focused on these issues forever it seems like.
18 So I'm very committed to this and very pleased to
19 be here.

20 DEAN SCHENCK: Can you guys speak up? I
21 can't really hear you.

22 DEAN ANDERSON: Sure.

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1 MS. GARVIN: I am Meg Garvin. I am the
2 Director of the National Crime Victim Law Institute
3 and also a Clinical Professor of Law at Lewis and
4 Clark Law School out in Portland, Oregon. My focus
5 in both my academic work and in my litigation work
6 is on representing victims of crime during criminal
7 cases on the civilian side to protect their rights.
8 So I don't really touch the civil side of stuff,
9 mostly criminal law and just protecting rights. I
10 have worked with the military, particularly the Air
11 Force, in the past on their SVC Program, just
12 telling them what we know from the civilian side.

13 CONGRESSWOMAN HOLTZMAN: My name is Liz
14 Holtzman. I'm a former member of Congress where I
15 drafted the Federal Rape Privacy Shield Law as part
16 of the Federal Rules of Evidence. And I was
17 District Attorney of Kings County where we
18 developed comprehensive victims' services for the
19 first time for victims -- all crime victims, but
20 specifically for victims of sexual assault,
21 including specifically children. I was also
22 involved in changing the rape laws in New York

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1 State and the laws of sexual abuse against
2 children.

3 And most recently, although it's not that
4 recent, worked with Congresswoman Carolyn Maloney
5 in drafting Federal legislation requiring states to
6 speed up the handling of rape evidence kits and
7 providing financing for what we're doing.

8 MS. FERNANDEZ: Thank you. Thank you.
9 Oh, Judge Jones, would you like to --

10 CAPTAIN (RET.) GRUBER: I don't think -- I
11 don't know if Judge Jones -- I think Lisa Schenck
12 is on.

13 COLONEL HAM: Dean Schenck.

14 CAPTAIN (RET.) GRUBER: Dean Schenck is
15 on.

16 COLONEL (RET.) SCHENCK: Yeah. Is it my
17 turn?

18 MS. FERNANDEZ: Yes.

19 DEAN SCHENCK: Okay. So I'm an Associate
20 Dean for Academic Affairs at GW Law School. I
21 teach Military Justice. I co-authored *Cases and*
22 *Materials Law Book on Military Justice* that I use

1 in my course. Prior to being appointed here at GW
2 Law School, I was the Senior Advisor to the Defense
3 Task Force on Sexual Assault in the Military
4 Services for a year or so. And prior to that, I
5 was in the Army. I was a Signal Officer for a few
6 years, about six, and then I went to law school.

7 I was a prosecutor. I was a victim
8 witness assistant. And I was also on the Appellate
9 bench for -- the Criminal Appellate bench for six
10 years prior to my retirement. I think that's about
11 it.

12 MS. FERNANDEZ: All right, thank you. I
13 think we could go right into testimony.

14 CAPTAIN (RET.) GRUBER: I did want to go
15 through and introduce the staff and go over the
16 materials that we have.

17 MS. FERNANDEZ: Oh, pardon me. Pardon me.
18 Yes. Pardon me.

19 CAPTAIN (RET.) GRUBER: I'm Dave Gruber.
20 I'm an attorney with the Office of General Counsel
21 here at DoD. I'm the Staff Director for the
22 Defense Legal Policy Board, which is currently, I

1 guess, on hiatus, for lack of a better word. We
2 don't have a current task. And I've been
3 supporting this Panel since its inception, and I'm
4 the Branch Chief for Victim Services.

5 I was a Captain in the Navy JAG Corps for
6 23 years. My last assignment was as Counsel to the
7 Chief of Naval Personnel where I was involved in
8 pretty much all aspects of personnel, including
9 sexual assault prevention policy. And the repeal
10 of Don't Ask, Don't Tell. Don't Ask was a big
11 agenda item during that tour.

12 I regretfully am being reassigned by the
13 Office of General Counsel, as I discussed with Mai
14 the other day, so there's another task force that
15 they want me to start, but I'll still be just right
16 upstairs and involved with this. The very good
17 news is that I'll be relieved by Commander Sherry
18 King, who was a member of the Joint Service
19 Committee Study that Ms. Fernandez was just talking
20 about.

21 So I'll let the rest of the staff
22 introduce themselves for the Subcommittee. Sherry?

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1 COMMANDER KING: I'm a Navy JAG attorney.
2 I worked with Dave earlier in our careers in
3 Bremerton. I've been a Navy attorney for 25 years.
4 The first six were on active duty, and then I've
5 been in the Reserves ever since. I've worked as a
6 prosecutor in Snohomish County, Washington since
7 that time. And in Snohomish County, we rotate
8 instead of being in one unit, so I've prosecuted
9 all kinds of felony and misdemeanor crimes,
10 including sex crimes.

11 I've been on -- as a Reserve JAG, my last
12 assignment before I came back on active duty was as
13 a trial military judge, so I got to see some
14 criminal cases from that side. And then I've been
15 on active duty on a recall for the last two years.
16 This will be my third year.

17 So and after we finish the study that I
18 met some of you at, I came over here. So we'll be
19 presenting this afternoon a little bit of the
20 information from our study where we went around and
21 studied prosecution and victim services around
22 parts of the United States at least.

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1 MS. MCGRORY: I'm Kristin McGrory. I'm
2 new to the staff. I recently left active duty in
3 the Army. My most recent job in the Army, I was a
4 law clerk at the Army Court of Criminal Appeals.
5 Prior to that, I was a defense appellate attorney,
6 a trial defense attorney, and a prosecutor. I just
7 transitioned off active duty.

8 MS. CARSON: I'm Julie Carson. My
9 previous incarnation was as a family law
10 practitioner in my home state of Oklahoma. Most
11 recently, I've been in the front office as a
12 Confidential Assistant for the Deputy Secretary of
13 Defense. And I joined this group because I'm very
14 interested in the issue and passionate about
15 helping the military solve the issues around sexual
16 assault. And I joined this group in August.

17 CAPTAIN (RET.) GRUBER: And our DFO for
18 today is Bill Sprance.

19 CAPTAIN SPRANCE: Bill Sprance. I'm the
20 Alternative DFO. I have 25 -- I work for the DoD
21 General Counsel, but 25 years' Navy experience.
22 I'm a Captain in the Navy as well. Four years of

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1 active duty and the remainder in Reserve. So while
2 I was on active duty, spent two years doing
3 criminal appeals and then two years doing actual
4 prosecution, which included multiple sexual assault
5 cases during that time. And that's it. I'm happy
6 to be here.

7 CAPTAIN (RET.) GRUBER: In your binders,
8 there's some information I wanted to highlight for
9 you. This information, a lot of it is background
10 that you weren't expected to read before this
11 meeting, but it's information for you to take with
12 you and to review as we continue our review. In
13 the folder obviously you've already found your
14 lunch menu hopefully and placed your order for
15 that. We have our agenda.

16 We only received bios from a few of the
17 presenters, but those bios that we do have, we have
18 provided for you. And behind that also, we listed
19 just some different topics about the care providers
20 that we'll be learning about. If you have items of
21 inquiry or thoughts on what you might want to ask
22 them, would you just provide a little outline to

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1 help me out?

2 In your binder, we've provided you with
3 our organizational chart so you can see how we're
4 laid out and have the contact information for
5 everyone. We also have short biographies we've
6 drafted at Tab B for all of the members. Obviously
7 if you want to -- some of you have seen these
8 already and they're standard, but if you don't like
9 your bio and you want to change it, just let us
10 know. Any changes, additions, deletions, whatever
11 you want, we want it to reflect your desires, of
12 course. At Tab C --

13 CONGRESSWOMAN HOLTZMAN: And any
14 resemblance to any person living or dead --

15 (Laughter.)

16 CAPTAIN (RET.) GRUBER: I don't fact check
17 the bios, ma'am. You can put whatever you want.

18 At Tab C is something we'll be talking
19 about in the afternoon. We've started to flush out
20 agendas for future meetings. The meetings closer
21 to us have more detailed agendas. The later
22 meetings will really be something that we'll be

1 looking for your input on as to what you want to
2 do, what objectives you have, and who you want to
3 meet with.

4 At Tab D are the terms of references we've
5 prepared as to what this Subcommittee should be
6 looking at based, of course, on the mandate from
7 the NDAA Section. Tab E is something I have sent
8 to you by email, but I provided you another copy.
9 It's just a short summary of victim services that
10 are provided, policies in places by the Department
11 of Defense. It's, I think, a good outline, and
12 I've discussed that with the DoD SAPRO Office, and
13 they're happy with that outline.

14 At Tab F is Section 576 from last year's
15 NDAA which created this Panel under the Federal
16 Advisory Committee Act and also contains the terms
17 of reference, including the one pertaining to
18 victim services. Tab G, H, I, J, and K are a
19 series of responses we received from the services
20 to request for information. These are just now
21 flowing in and we're reviewing them as a staff.
22 We've highlighted in this binder a few of the ones

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1 that pertain to victim services, but we'll be
2 prepping all of those. And I believe ultimately
3 we'll be posting them on the website as well. The
4 RFIs are coming in sort of on a rolling basis.
5 They have different deadlines depending on how --
6 what the immediacy -- immediate need was for the
7 information.

8 COLONEL HAM: Just a little -- yeah, a
9 little more -- RFI is the term, request for
10 information. We have 131 questions we've sent out
11 or requests for information all in a big
12 consolidated document. Those of you who are
13 litigators, it looks like a great, big discovery
14 request. And they've gone to the Secretaries of
15 the services and to the Secretary of Defense. And
16 they have divvied out who will be responding to
17 those, so you will get responses from the
18 Department of Defense and all the services.

19 As Dave mentioned, we staggered the
20 response deadlines, three different deadlines,
21 based on what we think the Panel is taking up and
22 the order they're taking it up. So we asked for

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1 victim services responses actually before the
2 meeting that some of you attended November 7th and
3 8th. Unfortunately, we weren't able to go through
4 it because we got some of it the day of the
5 meeting. So we have one of our attorneys spending
6 an awful lot of time, almost all her time, on going
7 through these responses and consolidating them in a
8 format so that we can ask her, okay, Victim
9 Services Subcommittee is coming today, pull out the
10 latest responses we've received so we can provide
11 it to you.

12 So as I said, one attorney spends almost
13 all her time on this. The last of the responses
14 are due in December, and it's not the end. If you
15 see more things you want us to ask for, we will
16 certainly go back and ask for it, or if we don't
17 feel that a response adequately addresses the
18 question that we've asked or the information that
19 we've asked for, we'll go back. The Secretary has
20 instructed the Service Secretaries to comply and
21 comply in a timely manner with all of our requests,
22 so they are doing that. But if there's more to ask

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1 for, if there's a different way to ask, we can go
2 back.

3 CAPTAIN (RET.) GRUBER: Thank you. The
4 very last tab at Tab L, as you know, at the public
5 meeting we provided testimony by victims and
6 survivors of sexual assault, which was difficult to
7 obtain some of those witnesses, as you can imagine,
8 particularly ones whose experience was recent. We
9 did receive from the Army -- we didn't receive it
10 in time to present it to you at the public meeting,
11 but General Darpino sent to us some information
12 they had responses from sex assault victims. Most
13 of the names have been redacted, but this was --
14 were in either response to queries or just letters,
15 emails, and things that victims had sent to their
16 counsel, to their SARCs, or victim advocates.

17 So this is further information, feedback
18 from survivors that she provided for us. And so we
19 wanted to give that to you as well so you'd get a
20 chance to look at that in addition to what was
21 presented at the public meeting.

22 And we will occasionally get information

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1 like this that comes in, just information that's
2 generated, the letters we've sent out to other
3 agencies, or just information that comes in, and
4 we'll always try to provide you that in a timely
5 fashion. And Colonel Ham will be in charge of
6 coordinating most of that.

7 CONGRESSWOMAN HOLTZMAN: Mr. Gruber?

8 CAPTAIN (RET.) GRUBER: Yes, ma'am.

9 CONGRESSWOMAN HOLTZMAN: I just looked
10 quickly through the -- some items on Tab L.

11 CAPTAIN (RET.) GRUBER: Yes, ma'am.

12 CONGRESSWOMAN HOLTZMAN: And, of course,
13 these are laudatory. Did we ask the military to
14 provide us with all -- well, let's put it this way.
15 Did the military receive negative comments? Do we
16 have those? Did they send us those?

17 CAPTAIN (RET.) GRUBER: I'm not aware of
18 them -- I don't know how they handle that, ma'am,
19 but I can make the inquiry.

20 CONGRESSWOMAN HOLTZMAN: Right.

21 CAPTAIN (RET.) GRUBER: We asked them to
22 provide survivors for the Panel. We didn't

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1 necessarily ask for written feedback from
2 survivors. They generated this on their own. If
3 they screened it in any way, I don't know. But if
4 you want, I will -- we will make that inquiry.

5 CONGRESSWOMAN HOLTZMAN: Yeah. I mean, I
6 think there should be a fair representation of what
7 they've received.

8 CAPTAIN (RET.) GRUBER: And then, in fact,
9 we might be able to -- we'll have Army
10 representatives. I don't know they'll be in a
11 position to answer that, but --

12 COLONEL HAM: So, yeah. The short answer
13 is we did not request this. This was sent to us.

14 CONGRESSWOMAN HOLTZMAN: I saw that,
15 but --

16 CAPTAIN (RET.) GRUBER: Yes.

17 DEAN ANDERSON: And these materials at Tab
18 F are only from the Army?

19 COLONEL HAM: They were sent in response
20 to the request to the services to, if possible,
21 provide some survivors for the last Panel.

22 DEAN ANDERSON: So some of these are folks

1 from other services.

2 COLONEL HAM: These are all from the Army.

3 CAPTAIN (RET.) GRUBER: The Army is the
4 only -- yes.

5 DEAN ANDERSON: The Army is the one that
6 decided to assemble this material and send it.

7 COLONEL HAM: Exactly.

8 DEAN ANDERSON: Okay.

9 CAPTAIN (RET.) GRUBER: Now, if it's
10 something the Panel is interested in, we can make a
11 similar request to the other services. It's really
12 up to you. But when we receive information like
13 this that we believe is relevant to the task, you
14 know, we'll provide it to you. Obviously we don't
15 want to overwhelm you with information, so we try
16 to meter it out.

17 COLONEL HAM: Judge Jones also had us
18 prepare and send to a number of victim advocacy
19 organizations around the country requests for any
20 input they would like to provide to the Panel. And
21 we have started to receive some of that. And that
22 list of organizations that we contacted is

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1 available for you. We can provide it to you. So
2 if you have other organizations you would -- that
3 we didn't think of or we didn't find, we will do
4 that. But those were signed by me as the Staff
5 Director, and Judge Jones reviewed that list as the
6 Chair of the Panel. So we have done that, and, of
7 course, we can go to any other organizations that
8 you think of that you would like to ask for input
9 from.

10 CAPTAIN (RET.) GRUBER: And even some
11 individuals. Dr. Rebecca Ham, for example, is one
12 person we contacted. And so it's starting to flow
13 in.

14 MS. GARVIN: Colonel Ham, I had a question
15 about Tab G, if I understand responses to questions
16 that were sent out and that are coming in. How do
17 we know, and I may just be missing it. How do we
18 know which branch the answer is from?

19 CAPTAIN (RET.) GRUBER: There's a table of
20 contents in the beginning. So it'll tell you Tab G
21 is from the DoD SAPRO Office. Tab H is Air Force.
22 Tab I is Army, J is Marine, and K is Navy.

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1 MS. GARVIN: Okay. Okay.

2 CAPTAIN (RET.) GRUBER: Sometimes you can
3 tell just by their answers, you know, reference to
4 OPNAV instruction or something, that would be Navy.

5 MS. GARVIN: Okay, all right. So it's --
6 okay,. Thank you.

7 CAPTAIN (RET.) GRUBER: And if you want,
8 if it's easier, you know, in the future, we'll PDF
9 these and put a header on them or something like
10 that. We'll make it a little bit easier.

11 MS. GARVIN: As long as I knew how to
12 navigate. As long as I know how to navigate the
13 binder, I'm fine. I just wanted to confirm.

14 CONGRESSWOMAN HOLTZMAN: Just in terms of
15 -- Madam Chair, just in terms of the requests we've
16 made for information, I think it's really good that
17 we've asked for outside organizations to provide
18 input. But have the people in the military, who
19 deal on a day-to-day basis with victims been asked
20 to respond if they have any suggestions, any
21 critiques, any comments about how the system isn't
22 working or could be improved, I think it would be a

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1 good idea. And it won't be too burdensome for the
2 military to query the people who are dealing with
3 this on a day-to-day basis and their supervisors.

4 We may get some good suggestions from them
5 and otherwise. But, you know, the whole process is
6 top down, and I'm trying to see if we can get some
7 information from the bottom up. Maybe Madam Chair,
8 you know how to do that.

9 COLONEL HAM: And part of our thought, as
10 you know -- thank you, Representative Holtzman. I
11 know Dave has informed you about the December
12 meeting in Texas. And, again, with the limited
13 time the whole Panel and the subcommittee has to
14 complete its task, we wanted to give you the
15 opportunity to get to some of the installations
16 where you can talk to whomever there.

17 So in other words, these are not -- when
18 we ask for witnesses, we put in a request for
19 witnesses to the services, and they determine who
20 will be coming to talk to you, which doesn't mean
21 they're -- you know, it doesn't mean they're
22 shaping what is said or things like that, or

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1 they're telling people what to say. I'm not
2 suggesting that. But it is who the services
3 produce.

4 So you are invited to go to Lackland,
5 which is a training base for the Air Force and talk
6 to the people who are there, and Fort Hood, which
7 is an operational Army base, highly deployed,
8 combat base. And you can talk to the SARCs and VAs
9 who happen to be there and hopefully obtain some of
10 that information. And we can do it in a more
11 formal way as well. Thank you.

12 CAPTAIN (RET.) GRUBER: We'll explore
13 options, ma'am. I'll talk to Colonel Ham about
14 that whether we can explore that. But then also
15 whether they do that internally in the
16 organizations, the individuals who will be in this
17 first panel I think might be able to answer that
18 question whether they have that type of feedback
19 mechanism institutionally within the different
20 services.

21 DEAN ANDERSON: I'm also interested,
22 Colonel Ham and Mr. Gruber. Many of the materials

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1 that we have here that are pieces of feedback are
2 from folks who reported. And we know that that's a
3 small minority of the number of people who have
4 experienced sexual assault. And I'm wondering if
5 there are mechanisms that you put into place to
6 obtain anonymous feedback from people who have
7 chosen not to report about their sense of why they
8 didn't report or the adequacy of services available
9 to them.

10 COLONEL HAM: There are, again, I don't
11 want to answer questions that you should hear from
12 witnesses.

13 DEAN ANDERSON: Yeah.

14 COLONEL HAM: But I know the DoD SAPRO,
15 and again, you'll hear that over and over, and
16 that's the Department of Defense Sexual Assault
17 Prevention and Response Office, does track in their
18 survey -- you've heard the 26,000 number. They do
19 track in their survey why do people not report, and
20 they break that up by percentages of responses.

21 As far as the Response Systems Panel is
22 concerned, we accept public comment from anyone and

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1 invite public comment from anyone, and it can be
2 anonymous. We have not to this point received
3 anonymous comments. We received, for example,
4 before the last meeting which had the survivor
5 panel, we received public comment from other sexual
6 assault survivors, and that has all been posted on
7 the website. So everything we receive will
8 eventually get posted. Everything we have received
9 for that meeting is already up.

10 One thing that we cannot do, however, is
11 go back to a criminal investigative agency and say
12 we have a person, Jane Smith, for example, who says
13 -- and that's not a real name; that's a made up
14 name -- that says this happened, can you tell us
15 what happened in that case, because we do not have
16 releases from people to do that, so we can't get
17 you that information. If somebody says X and Y
18 happened, we can neither confirm nor deny that. We
19 have somebody saying X and Y happened, and that's
20 what it is.

21 So we do post those comments for you. And
22 anyone is permitted to submit comments to us,

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1 understand -- if they find out about the Panel,
2 that is. So we've tried to publicize the Panel.

3 We are not bound by public affairs
4 protocols that some of you may be familiar with
5 that apply to the Department of Defense. We sent
6 out a press release -- in fact, Julie wrote it.
7 Julie wrote the press release for the last public
8 meeting. Ms. Fernandez had provided us contact --
9 press contacts for all the major media outlets, and
10 we obtained some others. So we notified almost
11 every media outlet you can think of that that
12 meeting was going on so the word could get out. So
13 we're trying to do that in any way that we can.

14 CAPTAIN (RET.) GRUBER: And we
15 specifically asked two of the organizations that
16 testified -- Protect our Defenders and the Service
17 Women's Action Network -- to provide them. We've
18 been almost in daily contact sometimes with
19 representatives from those groups, and we asked
20 them to publicize internally the meeting. And we
21 did generate -- POD sent us some feedback they got
22 -- some of it was anonymous, some of it was

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1 otherwise -- which was included in the materials
2 for the last meeting. And so, we've asked them to
3 continually, if they receive stuff they think would
4 be relevant for us, to, you know, to let us know.

5 But as Colonel Ham said, I do think when
6 Ms. Stebbins Inch appears from the DoD SAPRO
7 Office, she might be able to tell you a little bit
8 more about their survey. We also examined it very
9 closely in our first public meeting in September
10 and also at one of the previous meetings of the
11 Role of the Commander Subcommittee.

12 COLONEL HAM: I think, yeah. I think they
13 survey their SARCs and VAs on things like that. So
14 Ms. Stebbins Inch will know that.

15 CONGRESSWOMAN HOLTZMAN: I tried to go
16 onto the website to see what materials were
17 available, and there was virtually nothing there.
18 Maybe I've got the wrong website. Like I say, I
19 did it last night to see if there --

20 DEAN ANDERSON: The links are broken. A
21 lot of the links are broken in terms of the
22 compilation of materials from, like, November 7th

1 and 8th. I was just looking at that to see if we
2 could review what had happened in the last meeting.
3 For what it's worth, just feedback, those links
4 sometimes are there, but then the links themselves
5 are broken, and the material itself doesn't launch.

6 CONGRESSWOMAN HOLTZMAN: So I found no
7 materials at all.

8 COLONEL HAM: Well, we know everything is
9 up from September. Everything is up from June.
10 Everything is up from -- we're still working on
11 putting November 7th and 8th up. We have the
12 transcripts back there with the court reporting
13 agency now for corrections, so those final
14 transcripts will be up as soon as possible.

15 We've got some of the stuff up from some
16 of the Subcommittee meetings, but we're doing it,
17 you know, as quickly as we can. But if you see an
18 issue with the website, please notify us. We're
19 responsible for the website. That's another thing.
20 This is an independent organization, so we are
21 responsible for that.

22 CONGRESSWOMAN HOLTZMAN: If you need some

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1 expert advice on that, you might want to check with
2 CMS.

3 COLONEL HAM: With who, ma'am?

4 CONGRESSWOMAN HOLTZMAN: CMS.

5 COLONEL HAM: Okay, thank you.

6 CONGRESSWOMAN HOLTZMAN: Do you know who
7 they are?

8 COLONEL HAM: I don't.

9 CONGRESSWOMAN HOLTZMAN: Medicare.

10 COLONEL HAM: Oh.

11 (Laughter.)

12 CAPTAIN (RET.) GRUBER: What we need --
13 what we really need is an 18-year-old to teach us
14 how to build a website.

15 COLONEL HAM: Those of you who have met
16 Mr. Trexler, he is our webmaster as well. So along
17 with all of his other duties, he's responsible for
18 posting everything up there.

19 CAPTAIN (RET.) GRUBER: Well, I know that
20 we're helping him try to get the information from
21 the 7th and 8th posted. So we'll talk to him today
22 about that and see if we can provide assistance.

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1 Are there any other questions? We can
2 take -- does anybody need a quick break before we
3 bring in the first panel or else -- no? All right.
4 Sherry, would you -- we'll get everybody situated,
5 and we'll get started.

6 (Whereupon, a recess was taken.)

7 MS. FERNANDEZ: I think we're going to get
8 started. Good morning. I'm Mai Fernandez, and I
9 am the Subcommittee Chair for Victim Services
10 Committee, and I know several of you have come
11 before the Panel before. Some of you are best
12 friends with the Panel at this point because you've
13 come before us four times.

14 And I just want to thank you very, very,
15 very much for not only coming before us, but the
16 work that you are all doing. Providing services to
17 victims is really, at the end of the day, the most
18 important thing that we can do, and ensuring that
19 those services are the best that they can be. And
20 getting people to a better place when they've gone
21 through the most horrific event of their life is
22 really and truly a very, very important task. So I

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1 just want to thank you for being here and thank you
2 for what you've chosen to do with your lives.

3 I think -- as I said off the record, I'll
4 say it on the record also. We want your testimony
5 be short because I'd rather engage you all in some
6 deeper conversations that we could have sort of on
7 a Subcommittee level that on the Panel level is a
8 little more difficult to have. So I think that
9 maybe we could begin with the Coast Guard and go
10 this way. And, Ms. Wren, why don't you start us
11 off?

12 MS. WREN: Absolutely. Thank you. And
13 this will be very short because I didn't know we
14 were supposed to have an opening. So I'll just say
15 thank you for having me here again. I actually
16 have -- I've been with you, a few people at
17 different times and appreciate the opportunity to
18 speak again because what you're accomplishing is
19 going to be so helpful to us at large.

20 All I was really told is to come and talk
21 today about our process with SARCs and VAs and how
22 we do assist victims in the field. The Coast

1 Guard, as I think everybody knows, is not part of
2 DoD. We are part -- oh, is somebody on the phone?

3 MS. FERNANDEZ: Yes.

4 MS. WREN: We are part of DHS and not DoD.
5 But, you know, as one of the five armed services
6 anyway, we do align with DoD whenever we can, and
7 we're getting -- we're very, very close to total
8 alignments in some ways. We have some other
9 initiatives, and we all borrow very heavily from
10 each other. I think our strongest strength -- our
11 strongest strength is, you know, caring for our
12 victims because that is the top priority. As the
13 Program Manager for the Coast Guard, my top
14 priority is always taking care of the sexual
15 assault response coordinators so that they can do
16 their job of taking care of victims the best.

17 And I'm sure everything that everybody
18 else will say is very similar to what we're doing.
19 And they're, I think, a little better prepared. I
20 was just told to show up at 10:00.

21 MS. FERNANDEZ: And you know what? That's
22 98 percent of life, so we're good. Ms. Rogers?

1 MS. ROGERS: Good morning. I'm Tanya
2 Rogers, and this is my first time before the Panel.
3 For the last five years I've had the honor and
4 privilege of serving in different capacities within
5 the Navy's Sexual Assault Prevention and Response
6 Program. And my experiences have allowed me to see
7 the Navy SAPR Program not only from the micro level
8 where direct services have been provided to
9 individuals, but also from the macro level where
10 systemic changes are addressed through program
11 evaluation and policy development. Additionally, I
12 have served in the Army National Guard, which
13 provides me with the unique perspective of
14 understanding the environments in which our victims
15 encounter within the military.

16 I began my career in victim services and
17 in the non-profit sector. I supported victims at a
18 rape crisis and domestic violence center as a
19 crisis counselor, and I've provided 24/7 victim
20 support. And, you know, subsequent to that, I also
21 worked for local government in supporting them as a
22 Sexual Assault/Child Abuse Specialist. And in that

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1 position, I was working within a task force where
2 we were working jointly in supporting victims,
3 investigating child sexual abuse, and conducting
4 investigations, and supporting them. And so, in
5 that position -- you know, I worked for four years
6 in that position, which afforded me an opportunity
7 not only to work with these victims and to get to
8 know them, but to really see what the multi-
9 disciplinary effort brought to that environment.

10 Additionally, I've also served as the
11 Correctional Counseling Program Leader for the
12 Arkansas Department of Corrections as a sex
13 offender -- in the Sex Offender Screening Risk
14 Assessment Program. And so, that's also brought a
15 level of information to me that I was also able to
16 see the other side of it, work with sex offenders,
17 and see what the criminal justice program brings to
18 this environment in working with not only the
19 offenders, but knowing a little bit more about how
20 that translates with working with victims.

21 And in 2008, then I accepted a position at
22 the Hampton Roads SAPR Program in Norfolk,

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1 Virginia, and that was my introduction into the
2 Navy SAPR Program. And in that position, I had
3 oversight over the Hampton Roads Virginia Naval
4 Installation SAPR Program, and I -- we were
5 supporting over 75,000 active duty personnel. My
6 main responsibility was to ensure at that time the
7 five installation SARCs were providing direct
8 support services to victims, and that they were
9 providing oversight over the SAPR victim advocates
10 in the execution of their duties, and providing
11 training and consultation to commands as well as
12 anything that was within their area of
13 responsibilities.

14 I was also in that position responsible
15 for providing victim care wherever necessary --
16 recruiting, screening, and training victim
17 advocates, providing awareness and prevention
18 training at commands, and consultation, and
19 providing oversight over the victim advocates while
20 they were executing their duties in supporting the
21 victims.

22 Additionally, I also co-chaired the

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1 Monthly Sexual Assault Case Management Group on a
2 monthly basis, where we reviewed all open,
3 unrestricted cases, ensuring that victims were
4 receiving the necessary support and referrals to
5 help facilitate continuity of care. All of that
6 experience allowed me to then transition to the
7 position that I'm in now, working for the Navy as a
8 Navy SAPR Program Analyst. This has afforded me
9 the opportunity to continue to work and bring my
10 experience as a SARC into this position and help
11 facilitate systemic change. As a SAPR Program
12 Analyst, I perform data analysis and evaluate
13 information, and the information we receive from
14 the SARCs helps to facilitate change within the
15 SAPR Program.

16 As a part of improving the effectiveness
17 and efficiency of the SAPR Program, the Navy has
18 updated the initial SARC training for the SARCs and
19 the SAPR victim advocates. We have also
20 coordinated the 40-hour SARC annual training this
21 past year, provided monthly webinars to increase
22 subject matter expertise. And this has all

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1 resulted in increased SARC and SAPR victim
2 advocates' ability to provide culturally competent
3 and effective services.

4 Additionally, our team has provided venues
5 for the SARCs and victim advocates to receive
6 ongoing guidance and support in executing their
7 duties and responsibilities through web-based
8 meetings that are held every other month. We've
9 also provided an avenue for SARCs to meet on a
10 quarterly basis in a SARC discussion group to show
11 best practices and to really collaborate with one
12 another in identifying ways to improve their
13 systems.

14 All of these efforts by the Navy help to
15 support them in carrying out their duties at the
16 installations and continuing to support their
17 victim advocates as well as the victims in their
18 installations. Fiscal Year '13 was a major shift
19 for us. In accordance with NDAA requirements, we
20 hired 66 civilian sexual assault response
21 coordinators and 66 professional SAPR victim
22 advocates. Additionally, we trained, utilizing the

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1 newly-updated curriculum and certified via the
2 Defense Sexual Assault Advocate Certification
3 Program our newly-hired victim advocates. To date,
4 the Navy has over 4,415 unit SAPR victim advocates
5 who have been successfully credentialed via DSAC-P.

6 To further support an efficient program,
7 the Navy implemented a regional model, and so what
8 we've done is we've hired and trained regional
9 SARCs within 11 individual regions. This
10 implementation has resulted in increased
11 coordination between the Navy and the field and has
12 demonstrated a close communication gap between the
13 SARCs. We're also closing the gap between the SAPR
14 metrics management. We have increased visibility
15 and analysis of regional data trends as well.

16 SARCs serve as designated installation
17 program managers of sexual assault victim support.
18 They oversee local implementation and execution of
19 the SAPR Program and ensure comprehensive victim
20 services are provided through coordinated community
21 response. As a previous SARC and now in my role as
22 a SAPR Program Analyst, I admire all of the

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1 initiatives that are taking place and that are
2 being implemented throughout the Navy. For
3 example, the addition of our Deployed Resiliency
4 counselors and the implementation of the Victims'
5 Legal Counsel serves to provide additional access
6 to services that did not previously exist.

7 As we move forward and with time, I look
8 forward to the evidence base that we will be able
9 to obtain to determine the efficacy of these
10 efforts as we strive to achieve the climate where
11 sexual assaults do not occur. I thank you for the
12 time, and I look forward to any questions that you
13 may have.

14 MS. FERNANDEZ: Thank you. Lieutenant
15 Colonel?

16 LIEUTENANT COLONEL LEWIS: Thank you,
17 ma'am. Good morning, distinguished Subcommittee
18 Panel members. This is my first time to testify
19 before the Panel, though you might recognize me
20 from the audience from some of the prior sessions
21 that I've attended by the entire Panel. I'm
22 privileged to be joined today by Lisa Surette, who

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1 will be discussing any SARC victim advocate issues
2 for the Air Force, and Captain Allison DeVito, who
3 works for me as the Chief of Victims' Policy in the
4 Air Force Legal Operations Agency, Military Justice
5 Division. I'm the Chief of that Division, which
6 means I have a number of hats, including the Joint
7 Service Committee on Military Justice Air Force
8 position, as well as the Chief of the Division.

9 Prior to taking my position in July, I was
10 the Deputy Chief Trial Judge from the Air Force, so
11 I can bring some of that perspective of the
12 courtroom. And before that, I was a staff judge
13 advocate for three years where I was delegated
14 responsibility for the Victim Witness Assistance
15 Program at Cannon Air Force Base, New Mexico.

16 Captain DeVito has been in her position
17 for almost 18 months, and she has the unique
18 perspective of helping stand up the Air Force
19 Special Victims' Counsel Program, and will be able
20 to answer any questions related to how that program
21 interacts with the Victim Witness Assistance
22 Program. So my comments will be mostly focused on

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1 the Victim Witness Assistance Program.

2 The two points that I'd like to make in an
3 opening statement is, first, that the Air Force has
4 a robust training program for its victim liaisons,
5 and that includes our judge advocates as well as
6 our paralegals, and the training that they receive
7 down at the Air Force Judge Advocate General School
8 at Maxwell Air Force Base, Alabama. I won't go
9 through the length of the courses, but needless to
10 say from the time that our JAGs and paralegals come
11 into the Air Force, they're exposed to what their
12 duties will be in the Victim Witness Assistance
13 Program. And that continues throughout their
14 career at various formal courses, as well as
15 informal on-the-job training that they receive at
16 the installation level.

17 The second point that I'd like to make is
18 that there is sometimes confusion between the scope
19 of the Victim Witness Assistance Program and the
20 various other sources of support that we provide
21 through SARCs, victim advocates, and now through
22 special victims' counsel. The most important point

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1 is to understand that the Victim Witness Assistance
2 Program assists all victims of crime, and that
3 could be a larceny victim. It could be someone who
4 is a victim of a physical assault. And we assist
5 all witnesses who interact with the military
6 justice system.

7 So our overall statistics in terms of the
8 percentage of people that we help in the VWAP
9 Program for the Air Force is only about six percent
10 of the victims that we are assisting from initial
11 contact. Only about six percent of those are
12 sexual assault related in any way. So it's just
13 important for us to understand that the VWAP
14 Program is a little bit broader.

15 And then finally, I'd just like to close
16 with sharing some feedback that we received from a
17 recent case out at Joint Base Lewis McChord. And
18 from the Air Force's perspective, this is exactly
19 how all of our programs should work together. And
20 this was a sexual assault case involving an Air
21 Force accused, and the victim in that case praised
22 the Air Force senior trial counsel, the assistant

1 trial counsel, the case paralegal, the SARC, and
2 the victim advocate. And this is what she
3 specifically said about her victim liaison.

4 "During the trial, she waited with me in
5 the victim waiting area. She had a gentle nature
6 and was very soothing while I was so upset. When
7 the verdict was read, I couldn't go into the
8 courtroom because my legs felt like lead. During
9 the trial week, I had barely slept, barely ate, and
10 by the time the verdict was being read, I was
11 outside myself. She told me they were reading the
12 verdict and asked if I wanted to go in, but my legs
13 were like Jell-O, so I said no. She asked me if I
14 minded if she went in. She went and listened and
15 came back crying relief tears. She told me he was
16 found guilty on all charges. For a second I
17 couldn't move. I'm so glad she was there. She was
18 gentle, soft, and easygoing, which soothed my
19 strung-out nerves."

20 This case is a prime example of how a
21 victim liaison working effectively with the trial
22 team, the SARC, and the victim advocate, can help

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1 victims get through what is undoubtedly one of the
2 most difficult experiences of their lives. Thank
3 you for your time this morning, and the Air Force
4 team looks forward to any questions we might
5 answer.

6 MS. FERNANDEZ: Thank you very much. Ms.
7 Cuevas?

8 MS. CUEVAS: Good morning. I have with me
9 today Chief Warrant Officer Simmons and Gunnery
10 Sergeant Rodriguez-Hower as my Marine backup. I am
11 the SAPR Program Manager for Marine Forces Reserves
12 Headquarters in New Orleans. I, too, like Shawn --
13 I've worked with Shawn before and I've worked with
14 Tanya. I was not prepared for an opening
15 statement, but I'll give you a brief overview of
16 what we've been up to.

17 I, like Tanya, come from a civilian
18 background. I worked as a director of a rape
19 crisis center in Biloxi, Mississippi before working
20 with the Navy for four years prior to signing on
21 with the Marine Corps in 2010. I've been with
22 Marine Forces Reserves since then and have had the

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1 absolute pleasure of implementing all of these
2 changes, and directives, and executive orders to
3 our 184 sites across the United States with Marine
4 Forces Reserves. It has been challenging,
5 difficult, and eye opening for me and for everyone
6 else.

7 This year we were lucky enough to be able
8 to hire three full-time SARCs and two full-time
9 civilian victim advocates to supplement our 320
10 trained UVAs we have across the force. So we've
11 been very, very busy. We have a lot of information
12 to share, a lot of knowledge we've gained over the
13 last few years, and a lot of questions of our own
14 on how to continue to implement this and keep it
15 working appropriately. So I will keep it short,
16 and I welcome any questions you have. And thank
17 you so much for having us here today.

18 MS. FERNANDEZ: Thank you. Ms. Collins?

19 MS. COLLINS: Good morning. I'm Carolyn
20 Collins. I'm the Deputy Director for the Army
21 Sexual Harassment/Assault Response and Prevention,
22 or SHARP, Program. I've been with the program for

1 several years now. I previously came out of
2 Training and Doctrine Command out of the Army
3 working with training development in this area.
4 When the Task Force was stood up by DoD in 2004, we
5 worked on the training and education requirements
6 and those moving forward. And as the office was
7 established within the Army at the headquarters
8 level, I moved up and took that position for the
9 lead of the program in 2006.

10 And I've worked with the Sexual Assault
11 Prevention and Response Program from that time
12 until 2009 when the Army did some internal
13 reorganization. We launched a prevention campaign.
14 We had already accomplished everything the original
15 Army Task Force had put in place as an action plan.
16 And we didn't think we were where we wanted to be
17 as a program at the time, and so we implemented a
18 new campaign. With that campaign was the
19 integration and really looking at cultural change
20 back to the harassment level before anything even
21 escalates up to harassment. So that really drove
22 our development of our victim advocates and SARCs

1 in their roles and responsibilities. It is
2 probably broader of what require for those
3 positions since we've combined efforts out of
4 different programs in that area.

5 We have an 80-hour training course we run
6 right now for that course for both victim advocates
7 and sexual assault response coordinators, and we're
8 currently expanding that to grow their
9 capabilities. We'll be launching a pilot in
10 January for an eight-week course for those
11 personnel at brigade and higher, the full-time
12 positions that we're putting in place. We
13 currently have 829 full-time positions at the
14 brigade level for SARCs and victim advocates. And
15 for those personnel and higher, they'll go to an
16 eight-week course for our initial pilot that by
17 third quarter in '14 may expand out into a 12-week
18 course as we're evaluating functionality and
19 requirements.

20 Battalion and below, those personnel will
21 continue to go to an 80-hour course, but we'll have
22 additional professional development throughout the

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1 year to grow their skill sets. I've provided a
2 brief, and I'm certainly willing to go into that.
3 What I can tell you is although we've POM'd those
4 positions 14 through 18, we're reevaluating
5 commanders' requirements right now. We have a SEC
6 Army directive that came out at the -- late May,
7 and with that we're re-looking functionality above
8 the brigade level for those program managers and
9 below the brigade level for those personnel. We've
10 implemented extensive new screening criteria. We
11 had already been screening our personnel pretty
12 extensively for the program with qualifications in
13 that, but we've now implemented a tier one and tier
14 two screening criteria.

15 Sexual assault response coordinators must
16 be appointed by a general officer, and they must
17 meet those screening requirements, victim advocates
18 by an O-6 or brigade level commander for those
19 selections. And so with that screening criteria in
20 the level one, none of the level one requirements
21 or tier one are waiverable. Some of the tier two
22 are waiverable. As an example, if you're a young

1 PFC and, let's say, an E-2, and you had a drunk
2 driving offense or other small -- other offense,
3 and you are held accountable for those actions at
4 that time. You're now 15 years removed from that,
5 and you are a senior NCO, and you're electing to --
6 volunteering to serve in one of these full-time
7 positions. That would be something that would
8 trigger a screening criteria requirement that a
9 general officer would have to potentially waive for
10 you to serve in that position. And so, we've done
11 extensive screening criterias.

12 I would like -- if you wouldn't mind on
13 those slides, if you could look at slide number
14 five. It provides a listing of all of the
15 different requirements we screen personnel through
16 now, their qualifications. Currently the
17 qualification is the ADR's training criteria to be
18 able to send their applications on up to DoD for
19 certification processes once they've met all the
20 screening criterias, they've met the rank
21 requirements, and they've met the education and
22 experience background to be selected for those

1 positions. We do consider these positions
2 positions of trust, and we so designated them for
3 the hiring actions across the board.

4 So we had a temporary hiring pause. We
5 were hiring in '13. They were exempted from the
6 hiring freeze and the Army's furlough at the time.
7 But because we were implementing these new
8 screening criterias the Secretary had asked for,
9 and we wanted to make sure with the functionality
10 that was going into the job descriptions, certainly
11 the screening criterias and conditions of
12 employment, we had those set before we opened those
13 positions back up. So those have been opened back
14 up, and we have vetted all of the screening
15 criteria with the bargaining and non-bargaining
16 requirements as well.

17 And so, we're currently hiring across the
18 board to replace the military we put in place
19 initially for the Fiscal Year '12 NDAA
20 requirements. So the in-mix at the brigade level
21 will be about 250 full-time military and about 450
22 full-time civilians doing that work at the brigade

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1 level. And then above that we briefed the
2 Secretary of the Army and Chief of Staff of the
3 Army within the last two weeks. We're going to be
4 growing those assets above for case management,
5 program management at the echelons above brigade,
6 and that'll add on. I believe we're upwards --
7 it's been an \$18 million bill we're looking at
8 right now with the add on positions, bringing over
9 -- our overall commitment for full-time personnel
10 for victim advocacy, Sexual Assault Response
11 Coordinator Program managers at a little over \$62
12 million. So we remain committed, but certainly
13 open to answer any other questions you have.

14 MS. STEBBINS INCH: Good morning, Panel
15 members. Bette Stebbins Inch here, and I am the
16 Senior Victim Assistance Advisor at SAPRO. I've
17 been there since 2007. And prior to that, I worked
18 on the two congressionally mandated task forces
19 that looked at sexual assault across the military.

20 DEAN SCHENCK: Excuse me. Could you guys
21 speak up? I can't really hear the conversation.

22 MS. STEBBINS INCH: Okay. Bette Stebbins

1 Inch here.

2 DEAN SCHENCK: Oh, hi, Bette. It's Lisa
3 Schenck. How you doing?

4 (Laughter.)

5 MS. STEBBINS INCH: Oh, hi. I'll try to
6 speak louder.

7 DEAN SCHENCK: I probably know what you're
8 going to say.

9 (Laughter.)

10 MS. STEBBINS INCH: I'll bet you do.
11 Prior to coming to SAPRO, I worked on the two
12 Defense Task Forces that looked at sexual violence
13 across the military academies and sexual assault
14 across the military services. And prior to that,
15 for about 10 years I worked for the Army running
16 the Victim Witness Assistance Program out of
17 Hawaii.

18 So today I've been asked to just touch on
19 two areas primarily. So I'll start with those, and
20 then if you have questions, I'll be happy to answer
21 whatever questions you have.

22 The first point that I've been asked to

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1 talk about is the victim assistance services in the
2 military. These are new standards that we actually
3 started working on in 2011, and they have finally
4 been signed. So the DODI was signed yesterday or
5 two days ago.

6 CONGRESSWOMAN HOLTZMAN: What's a DODI?

7 MS. STEBBINS INCH: It's the directive --
8 it's Department of Defense Instruction, so it
9 provides guidance to the military services on what
10 they have to do in this particular subject matter.
11 So that was signed by the Under Secretary of
12 Defense for Personnel and Readiness a couple of
13 days ago, and it's soon to be published. The next
14 step is publishing. And so, I do have a copy that
15 I can supply to you today I'm happy to say.

16 And what that is, it's called the
17 Department of Defense Standards for Victim
18 Assistance Services in the Military, and this is to
19 be integrated in DoD policy. And essentially what
20 these standards do is they establish a foundational
21 level of victim assistance services while
22 recognizing the distinct mission, skill sets, and

1 responsibilities of the Department's various victim
2 assistance related programs.

3 So we have four victim assistance related
4 programs throughout the Department of Defense.
5 They are the Family Advocacy Program, which handles
6 the domestic abuse and child abuse cases. Then we
7 have the Sexual Assault Prevention and Response
8 Office, SAPRO, and we handle just the sexual
9 assault victims. And then we have the Victim
10 Witness Assistance Program that Lieutenant Colonel
11 Lewis spoke about, and they handle victims of all
12 crime. And then we have the Military Equal
13 Opportunity Office, and that's where your EO folks
14 are, and they handle victims of assault, people who
15 we'll refer to as complainants.

16 So these high level standards apply to
17 each of those four programs. Each of those four
18 programs have distinct missions, different goals.
19 So this provides a fundamental level of standards
20 that have to be provided to each of these victims,
21 including the harassment victims. And we broke
22 them down into three areas: competency, ethical,

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1 and foundational standards. And we aligned it with
2 the National Standard Consortium from 2003 out of
3 Dr. Deana "Dee" Hart. It was funded out of OVC to
4 provide that -- those standards for the Nation.
5 And so that's what we used to apply to the military
6 in these unique areas.

7 CONGRESSWOMAN HOLTZMAN: What was the
8 initial, OVC?

9 MS. STEBBINS INCH: Office of Victims of
10 Crime, Department of Justice. Yeah.

11 COLONEL HAM: Just background. Joye
12 Frost, who's the Director of that office, is a
13 member of one of the other Subcommittees.

14 MS. STEBBINS INCH: They provided a grant
15 to the University of South Carolina to establish
16 these, and what that group did was come -- bring
17 together all the academia professionals and the
18 actual workers from the Federal and local, State,
19 national levels, and DoD, to come up with those
20 standards. So we didn't recreate the wheel. We
21 took those standards, applied them to the unique
22 needs of the military.

1 And the second piece of this Department of
2 Defense Instruction is we established a Senior
3 Counsel that reports to the Under Secretary of
4 Defense for Personnel Readiness. And it's a senior
5 level counsel from each of those programs. So if
6 you think about SAPRO as an OSD office. So there
7 are four OSD offices for each of those programs I
8 talked about. And then each of the military
9 services have four people in charge of those
10 different programs. So right there we've got 20
11 people already.

12 And so, this counsel is a senior level
13 counsel that would bring those people together so
14 that they can promote efficiencies and victim
15 services, coordinate the victim assistance related
16 policies, and assess the implementation of the
17 standards across the whole Department. So we're
18 very excited about this.

19 I'm particularly excited, like I said,
20 because we started in 2011 when we looked at
21 standardizing and professionalizing the role of the
22 SARCs, and we realized we had these four different

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1 programs that were established in siloes with each
2 other based on different laws and policies that
3 were put in place. So this brings everything
4 together to have that initial high level standard.

5 And the second thing I've been asked to
6 talk about are the policy requirements for SARCs
7 and victim advocates as far as hiring and selection
8 criteria and those things go. So the Department of
9 Defense 6495.02 Instruction on Sexual Assault in
10 the Military. We do not tell the services what
11 level of person they have to hire. We tell them
12 what they have to be able to do. They have to be
13 able to provide a 24/7 response capability. They
14 have to be able to have direct, unimpeded access to
15 the installation commander.

16 So we have a whole enclosure, number six,
17 with procedures and requirements for the SARCs to
18 complete and provide along with the victim
19 advocates. But we leave it to the services to
20 determine if that is a GS-12 level, a GS-11. They
21 have to be military or a government person, so
22 either active duty military or a GS or not

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1 appropriated funds civilian. They can't be a
2 contractor.

3 And in addition to that, our policy also
4 says that they have to have a certification --
5 Department of Defense Sexual Assault Advocate
6 Certification Program. And included in that
7 program are requirements. They have to submit two
8 letters of recommendation, one from their immediate
9 supervisor, one from their commander. So if you're
10 a SARC, you have to have a letter of recommendation
11 from both of those people.

12 And for example, the letter of
13 recommendation from the commander, he signs a
14 letter that says I attest to the professional
15 capabilities of this person. I've spoken to them,
16 and I believe they can do this job. And we have --
17 and I have assured a background check has been
18 performed on this person, and they will follow the
19 Code of Professional Ethics.

20 In the application packet, the applicant
21 has to sign a Code of Professional Ethics that
22 they'll follow. They have to submit these two

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1 letters of recommendation, and there are four
2 different levels of certification that the
3 applicant can apply for. The first one does not
4 require experience. Levels two, three, and four
5 require experience that build upon each other over
6 the years. And there is also a renewal. They have
7 continuing education units that they have to
8 complete over two years, and they have to reapply
9 within the two-year mark.

10 In addition to that, they have to submit
11 proof of attending an NACP-approved training. And
12 NACP is the National Advocate Credentialing Program
13 administered by the National Organization for
14 Victim Assistance. They screen all of the training
15 curriculum, and they screen it for our policy
16 compliance at the DoD level. They screen it for
17 the categories of training that's being offered in
18 that curriculum to make sure that they're covering
19 advocacy. Cultural competence, sensitivities,
20 history of victim services, trauma of victims,
21 crisis intervention are some of the categories.
22 And they screen it for hours. There has to be a

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1 minimum of 40 hours covering those specific topics,
2 and they have to submit proof of that along with
3 the application. So I think I'll leave it there
4 and open to any questions.

5 MS. FERNANDEZ: Thank you to all of you.
6 The question I'm going to ask is a very basic
7 question because I think that oftentimes we receive
8 the testimony, but we're not getting a clear
9 picture of how all of this kind of works.

10 I've been sexually assaulted last night.
11 I wake up in the morning, and I'm in a fog, and I
12 tell my best friend that I've been sexually
13 assaulted. My best friend knows that there's
14 services out there because I'm a wreck. How do I
15 begin engaging with the whole system? Where do I
16 start? Where does somebody guide me that has some
17 idea, like, oh, yeah, you can get help? How is it
18 that I actually start going from the assault to
19 getting services? And any one of you who wants to
20 -- I know it's going to be different, but anybody
21 who wants to take the first crack at it.

22 MS. COLLINS: I can certainly tell from

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1 the Army perspective. Within the Army, we
2 advertise our 24/7 hotline numbers across the board
3 at the local level as well as we advertise the DoD
4 hotline number, and that's in all of our training,
5 and that's in all of our awareness materials around
6 the community. And then, so first would be the
7 call. And what would happen is that individual,
8 the person that has that phone number, would then
9 assign a victim advocate, and they would be
10 engaging with that individual immediately.

11 Normally, depending on the level of
12 assault, of course, let's say it's a penetration
13 crime or, you know, an incident that requires
14 medical support. They would be meeting them at the
15 hospital. And at that point, they would go through
16 with them -- our sexual assault response
17 coordinator and victim advocate would go through
18 with them the different options they have for
19 reporting, both restricted reporting and
20 unrestricted reporting.

21 Restricted reporting means that limited
22 personnel know about the assault. They can get

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1 medical support and certainly initial patient care
2 for testing for, you know, STDs and pregnancy
3 testing and other requirements, injuries, take care
4 of it, as well as counseling support. They can
5 continue advocacy services. We can do a forensic
6 exam and keep all that information restricted. And
7 they can elect up to a year later to go to
8 unrestricted if they would like, and we still have
9 that evidence.

10 MS. FERNANDEZ: Only a year?

11 MS. COLLINS: Right. The evidence is kept
12 longer, much longer than that. But certainly we
13 advise them that they can switch over to an
14 unrestricted report. Now we keep the restricted
15 report information and the forensic exam up to five
16 years now.

17 MS. FERNANDEZ: No, my question is, you
18 only have a year to go from unrestricted to
19 restricted?

20 MS. COLLINS: From restricted to --

21 MS. FERNANDEZ: I'm sorry, restricted to
22 unrestricted?

1 MS. COLLINS: Right. Right.

2 MS. FERNANDEZ: You only have one year?
3 What happens if I decide, well, a year and a day --

4 MS. STEBBINS INCH: You can switch from
5 restricted to unrestricted at any time, but the
6 evidence --

7 MS. COLLINS: You just lose evidence after
8 -- we hold the evidence for five years. So if you
9 had the forensic exam kit done and you wanted to
10 bring it into court, you lose the option of having
11 evidence after a time period.

12 DEAN ANDERSON: What is that time period?

13 MS. COLLINS: Right now by policy it's one
14 year.

15 CONGRESSWOMAN HOLTZMAN: Wait. I'm not
16 following that. What happens after one year?

17 DEAN ANDERSON: The evidence is destroyed.

18 MS. COLLINS: No.

19 CONGRESSWOMAN HOLTZMAN: The rape evidence
20 kit is kept for five years.

21 MS. COLLINS: For five years.

22 CONGRESSWOMAN HOLTZMAN: No matter what.

1 MS. COLLINS: Right.

2 CONGRESSWOMAN HOLTZMAN: What happens --
3 what does the one-year period refer to? Sorry.

4 MS. COLLINS: I'm sorry.

5 MS. STEBBINS INCH: That's the old
6 requirement.

7 MS. COLLINS: The five-year period with
8 the new standard, five-year period with keeping the
9 evidence. They have five years, and at least 60
10 days out we inform them -- no later than a month
11 out, but we are trying to keep track of that victim
12 throughout the five years as they're moving around
13 with their career. We're trying to inform them
14 that they're coming up to that five-year mark where
15 that evidence is going to be destroyed if they
16 wanted to switch over.

17 And it's more challenging than when it was
18 at a one-year mark only because you're tracking
19 victims throughout a career and different
20 locations, and they potentially do not want victim
21 services to continue.

22 MS. GARVIN: Including notification that

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1 they've left the military?

2 MS. COLLINS: Yes. That's more of a
3 challenge. We're still working through some of
4 those policy pieces right now because that is
5 definitely challenging if they've moved and moved
6 on from different locations over a five-year
7 period.

8 COLONEL HAM: And as a point of
9 comparison, the Comparative Systems Subcommittee
10 had a full-day meeting on Tuesday where they heard
11 from a lot of the local jurisdictions -- Fairfax
12 County, Arlington, Baltimore, Maryland, City of
13 Falls Church, and I'm forgetting somebody -- oh,
14 Virginia Beach. And across the board, the
15 confidential rape kits were only kept for one year,
16 and the victims were not notified that the year was
17 going to expire. Again, that's a small sample to
18 compare this information to.

19 DEAN ANDERSON: Ms. Collins, could I ask a
20 question about -- you said that the hotline is the
21 point of entry. And then a victim advocate is
22 called. If a victim decides not to report, is that

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1 a third option? You indicated that there was a
2 restricted report, an unrestricted report. Is
3 there a third option of not reporting?

4 MS. COLLINS: Well, certainly the victim
5 can always choose not to report.

6 DEAN ANDERSON: And what are the services
7 available to that victim who chooses not to report?

8 MS. COLLINS: Certainly they could go get
9 medical care and not divulge that they've had --
10 been sexually assaulted. So if I go in as a
11 service member and think I'm pregnant or think --
12 you know, I can have testing as a patient without
13 divulging I've been sexually assaulted. I can
14 certainly ask for behavioral health and not divulge
15 I've been sexually assaulted. But it's going to be
16 very limited to really the care for that victim to
17 the particular needs. I would think it would be
18 challenging for a physician to give the full level
19 of care or referrals that may be needed for the
20 victim if they never divulge they've been sexually
21 assaulted.

22 As far as them reporting sexual assault,

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1 there's restricted and unrestricted. And
2 unrestricted opens up many other avenues for the
3 victim to report they've been sexually assaulted.
4 So they can go through their chain of command, you
5 know. They can go to any friend, individual, come
6 forward to law enforcement, CID. There's multiple
7 offices they can engage with initially.

8 All of them are still required by our
9 policy to call the sexual assault response
10 coordinator and bring them in to, again, provide
11 those advocacy services. Certainly if their
12 commander is aware of the unrestricted report, they
13 have more options to support the victim. First of
14 all, they've known they've been offended, but they
15 can do military protection orders. They can move a
16 victim. They can move an offender. The victim has
17 expedited transfer options if they report to their
18 chain of command that you don't have with
19 restricted reporting. So it just provides -- and
20 then, of course, we pursue prosecution against
21 alleged offenders if they can be identified in
22 that.

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1 So there are many more capabilities, I
2 would say, under the unrestricted report coming
3 forward, and that would be our option for most
4 folks to come forward on. But first and foremost,
5 we want to get the victim care, and if they want to
6 have restricted reporting, that's why it's there to
7 get that person back to getting holistic services.

8 DEAN ANDERSON: And when that percentage
9 of victims choose not to report, how does the Army
10 assess from its own perspective what percentage of
11 victims are coming forward at all to report having
12 been sexually assaulted?

13 MS. COLLINS: We do that in a couple of
14 different manners. First of all, we use the --

15 DEAN ANDERSON: Right. I understand that
16 there are different surveys. I'm sorry. My
17 question was inaccurate. What percentage of
18 victims do not report at all according to the Army?

19 MS. COLLINS: According to the Army, for
20 overall sexual assault crimes, our report rate is
21 42 percent. Now, one survey 42 percent, the other
22 41. For penetration crimes, the report rate is 54

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1 percent.

2 DEAN ANDERSON: And that's based on -- now
3 I'm asking the other question that you thought it
4 was before. That's based on random sample surveys
5 of --

6 MS. COLLINS: Right. That's our
7 operational troop survey that we do across the
8 board to about 75,000 surveys we sent out in 2012--
9 was our most recent survey.

10 DEAN ANDERSON: And if it's a restricted
11 report or a non-report, I guess I'm interested in
12 what are the surveys, because at least, you know,
13 or approximately 50 percent, according to the Army,
14 choose not to report. What are the services
15 available for those victims?

16 MS. COLLINS: Well, chaplain services are
17 always available. Medical support is always
18 available. However, if a victim advocate does not
19 know someone has been sexually assaulted, you know,
20 it's very difficult to get any kind of advocacy
21 services. If I -- certainly I can go to my local
22 rape crisis center if I choose to go off the

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1 installation. I can go to local hospitals.

2 I, as a service member, can -- still am
3 empowered to make certain choices. And if I do not
4 inform, you know, the government that I've been
5 sexually assaulted, it's more restrictive of what
6 services we can provide to that individual. But
7 let's say I don't want anyone in my command
8 structure to know. I could certainly make a doctor
9 appointment off the installation, or I can choose
10 to use medical support on the installation.

11 DEAN ANDERSON: What about psychological
12 services for victims?

13 MS. COLLINS: You would be able to have --
14 certainly we have behavioral health across the
15 board for our service members, and they can request
16 behavioral health appointments.

17 COLONEL HAM: What's Military One Source,
18 ma'am? That might --

19 MS. COLLINS: Military One Source is
20 available as well. That is a --

21 COLONEL HAM: What is that?

22 MS. COLLINS: Military One Source is a

1 support system that you can utilize by phone. It's
2 to do online counseling or you can get up to six
3 appointments to off post services as well
4 through --

5 COLONEL HAM: Behavioral health.

6 MS. COLLINS: Behavioral health through
7 Military One Source.

8 COLONEL HAM: And that's for family
9 members and active duty.

10 MS. COLLINS: And for service members.

11 MS. STEBBINS INCH: But it is not
12 anonymous or confidential. They are mandatory
13 reporters.

14 MS. COLLINS: Right. So that's a
15 challenge.

16 MS. STEBBINS INCH: The Safe Helpline
17 would be if someone wanted to get information and
18 access to resources away from the base and not have
19 anybody knowing about it, we have established a
20 Safe Helpline where they can get that crisis
21 intervention. They can get those referrals to --
22 we have about 1,100 affiliates that have been

1 imbedded in the civilian community that provide
2 referrals to, as well as the referrals on base.

3 So people could contact the Safe Helpline,
4 disclose they've been sexually assaulted. That is
5 not a number that gets counted in any of the
6 buckets. You contact a SARC or a victim advocate
7 and say you've been sexually assaulted, it's going
8 to be counted either restricted or unrestricted.

9 MS. GARVIN: Is the Safe Helpline
10 advertised as much as the hotline?

11 MS. COLLINS: It's on all of our -- the
12 DoD Safe Helpline is on all of our advertisements,
13 whether it's touch guards, posters, brochures, and
14 all of our training. It's provided to all
15 individuals.

16 MS. STEBBINS INCH: And it's operated by
17 RAINN.

18 CAPTAIN (RET.) GRUBER: We can give you
19 some --

20 JUDGE MARQUARDT: Is there negative input
21 -- negative problems with going for psychological
22 help?

1 MS. COLLINS: No. We have really
2 worked --

3 DEAN ANDERSON: There's a nod in the back.

4 MS. COLLINS: Well, I think there's always
5 a stigma. I think all of the services are working
6 on anti-stigma campaigns efforts across the board
7 because not only in this area but, you know,
8 certainly coming out of a war environment, we're
9 encouraging folks to seek counseling for PTSD and
10 other issues. So there is a strong push pursuing
11 behavioral health.

12 For the Army, we've aligned behavioral
13 health with our brigades as well, so you can get
14 support services very close into your organization
15 without the stigma. But I know --

16 JUDGE MARQUARDT: But it goes on their
17 record.

18 MS. COLLINS: Well, under restricted
19 reporting, no. The command would not know they're
20 getting -- what kind of services they're getting.
21 They would just say they have a medical
22 appointment, but they would not have to disclose

1 what type of medical support they're getting.

2 DEAN ANDERSON: Is that true across the
3 services?

4 MS. SURETTE: If -- sorry. Lisa Surette
5 from the Air Force. If an individual goes to
6 mental health, that is documented on their record.
7 So that is a concern for people, especially with
8 security clearances. So we would look at what kind
9 of resources we have available in the local
10 community, if they wanted to seek assistance with
11 chaplain services. Some do, some don't. So that's
12 what we would do to help that individual.

13 MS. GARVIN: I have three questions, and
14 one ties to this last point, but two tie to an
15 earlier point. So as soon as -- if they call the
16 general hotline and an advocate is assigned, is
17 there -- I believe I know the answer. But is there
18 privilege immediately with that advocate across the
19 services? And is that absolute legal privilege,
20 meaning it cannot be pierced?

21 MS. STEBBINS INCH: No, it's similar to
22 the psychotherapist-patient privilege. So there

1 are some exceptions.

2 MS. GARVIN: Some exceptions, but
3 relatively minor if it's as strong as
4 psychotherapist.

5 LIEUTENANT COLONEL LEWIS: It is mirrored
6 on MRE 513, which is the psychotherapist-patient
7 privilege. It's Military Rule of Evidence 514.
8 It's the SARC-victim advocate privilege. And the
9 same largest exception is when it's
10 constitutionally required at trial. And the
11 military judge plays a strong role in determining
12 what is going to be released and what is not going
13 to be released, and has a number of options in the
14 rule to ensure that victim privacy is protected.

15 MS. GARVIN: Okay. My second question
16 relates to that immediate call also. And I know
17 the answer for one branch, but I don't know the
18 answer for all the branches. The new programs that
19 all the branches are setting up with regard to SVCs
20 or their equivalents, so the special victim counsel
21 or legal counsel --

22

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1 CONGRESSWOMAN HOLTZMAN: What's a SPECIAL
2 VICTIMS' COUNSEL?

3 MS. GARVIN: Special victim counsel.

4 CONGRESSWOMAN HOLTZMAN: Okay.

5 MS. GARVIN: Or the equivalent because I
6 know they have different names. When does that
7 person get involved?

8 LIEUTENANT COLONEL LEWIS: So this is
9 Lieutenant Colonel Lewis. Given that the Air Force
10 had the pilot program and has been doing the SVC
11 Program for the longest, I'm going to start with
12 the -- with answering this.

13 So first, we have our special victim's
14 counsel as an entry point for that victim if, in
15 your example, Ms. Fernandez, the victim or the
16 friend says, let's call the special victims'
17 counsel, because they've seen either posters out in
18 the unit that they're available --

19 MS. FERNANDEZ: Chances are that's not the
20 way it would go.

21 LIEUTENANT COLONEL LEWIS: And they're
22 also going to be referenced from the DoD Safe Line

1 as an option as well. So they could choose to
2 immediately go seek privileged communications with
3 a lawyer if they wanted to. Now, it's going to
4 depend completely on the circumstances of what's
5 going on and what's most important at that time.

6 MS. FERNANDEZ: Do you ever get that? I
7 mean, if I get raped, the person I think of is not
8 that I want a lawyer.

9 LIEUTENANT COLONEL LEWIS: Agreed, and the
10 fresh reports that are immediately after the
11 incident like you described, the lawyer is not the
12 first thing that you think of. But in cases where
13 there has been a delayed report, and we're talking
14 much later on, and the person is deciding do I
15 really want law enforcement involved. Do I not
16 want law enforcement involved? We've found that
17 the special victims' counsel is uniquely suited to
18 help them make those decisions just based on their
19 experience and training with law enforcement
20 investigations.

21 MS. FERNANDEZ: Let me stop you there for
22 a second.

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1 DEAN SCHENCK: I have a question as well.

2 MS. FERNANDEZ: Okay. So when you call
3 the helpline, is there a determination made as to
4 when the incident happened so that the person on
5 the helpline could say, hey, you know what? This
6 is about the time that you may want to talk to a
7 lawyer. I mean, is that -- are the people on the
8 helpline trained to sort of make those
9 determinations?

10 MS. STEBBINS INCH: Yes. The Safe
11 Helpline staff receives about 80 hours of training,
12 yes. So as they're walking somebody through
13 whatever discussion they're having, they're highly
14 trained at determining what resource they need to
15 guide them to.

16 MS. SURETTE: And the same if the person
17 is calling into the local hotline or the base
18 hotline. We're doing a couple of assessments, too.
19 One, we're assessing for their safety --

20 DEAN SCHENCK: Can you speak up? I can't
21 hear you.

22 MS. SURETTE: Sorry. One, we're assessing

1 for their safety because obviously we can't see
2 them. When did the incident occur? Do they need
3 medical attention? What is it that they're looking
4 for? Do they want medical attention? Do they want
5 law enforcement, or do they just want some other
6 services? And that's what we're doing on the line.

7 Some of our victims walk into our office
8 as well, so they know where we're located. We
9 definitely let them know our office hours, but that
10 they can contact us 24/7.

11 COLONEL HAM: Would you state your name
12 for the court reporter, please, ma'am?

13 MS. SURETTE: Lisa Surette from the Air
14 Force.

15 MS. FERNANDEZ: On the phone?

16 DEAN SCHENCK: Yes. I wasn't able to hear
17 when do they get the attorney? Do they have to ask
18 for the attorney? Can you clarify that for me one
19 more time?

20 MS. STEBBINS INCH: Yeah. Our policy
21 actually requires -- DoD level policy requires the
22 victims are informed immediately about the

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1 availability of legal assistance attorney --

2 DEAN SCHENCK: Okay. So they're told they
3 can get a lawyer. They're told they can get a
4 lawyer. And then at whatever point they then ask,
5 then they're assigned an attorney, right?

6 MS. STEBBINS INCH: Correct.

7 MS. MANSFIELD: And that's a statutory
8 requirement, too. That was in the National Defense
9 Authorization Act from Fiscal Year '12. Janet
10 Mansfield.

11 DEAN SCHENCK: Is that a yes?

12 DEAN ANDERSON: And that's whether or not
13 they decide to report.

14 MS. STEBBINS INCH: Well, restricted
15 reporting counts.

16 DEAN SCHENCK: Yeah, so that's a good
17 question. So they call up, they want a restricted
18 report, they're informed of the availability of the
19 victim counsel. They can send in victim counsel at
20 any point after the initial report. Is that when
21 -- is that correct?

22 MS. STEBBINS INCH: Yes.

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1 MS. WREN: Could I say something about the
2 Coast Guard?

3 MS. FERNANDEZ: Go ahead.

4 MS. WREN: This is Shawn Wren for the
5 phone. The Coast Guard, we stood up our special
6 victims' counsel in July of this last year, modeled
7 immediately after the Air Force's. And the way
8 that we do it is very clearly, a touch point is
9 through our SARCs, you know. So that is really
10 their responsibility because everybody -- the SARC
11 always has to be notified immediately whatever the
12 report may come into. But everybody does know
13 about it, the victim advocates, the commands. But
14 we always make sure that when the SVC is assigned,
15 the SARC and me as the Program Manager are copied.
16 So we always make sure that all of us are in the
17 loop to ensure that every victim knows and has the
18 opportunity to talk to an SVC very quickly.

19 DEAN SCHENCK: Okay.

20 MS. WREN: So finally, that's working very
21 well.

22 DEAN SCHENCK: Have you seen for the

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1 services that have got the counsel in place, have
2 you seen a change in the reporting? In other
3 words, to me, I think the victims would be more
4 inclined to report even it's restricted because
5 they now know they have a victim counsel. I think
6 it would --

7 CAPTAIN (RET.) GRUBER: If I could
8 interject. Dean Schenck, this is Dave Gruber. We
9 do plan at a future Subcommittee meeting to devote
10 an extensive block solely to the Special Victim
11 Counsel Program. These witnesses here weren't
12 necessarily told to speak in detail on that
13 program. So to the extent they can talk perhaps
14 about how they think -- see it affecting reporting
15 or interaction with the SARCs. But we are going to
16 have a future block on that and have special victim
17 counsel available at the site visits as well.

18 DEAN SCHENCK: Great.

19 MS. FERNANDEZ: Meg had one follow-up
20 question, and then Liz, and then Shawn.

21 MS. GARVIN: And so my follow-up question
22 is not a follow-up to the SVC questions. It's

1 total -- it's related to the prior point, which is
2 the medical access off base. Is that covered by
3 DoD insurance? If I go completely off base to go
4 get something, is there any out-of-pocket expense
5 for a service person?

6 MS. STEBBINS INCH: TRICARE applies in
7 some places, but we would have to check. I don't
8 know that it applies in all situations.

9 CONGRESSWOMAN HOLTZMAN: What's TRICARE?

10 MS. STEBBINS INCH: TRICARE is the
11 insurance for -- it's the supplemental insurance
12 for military.

13 MS. GARVIN: So there is a chance that if
14 I'm trying to make sure nobody knows about this at
15 all and I go access medical or mental health
16 services elsewhere, then I have an out-of-pocket
17 expense. Is that accurate?

18 MS. CUEVAS: Possibly, yes. We do have a
19 unique situation with the Reserve side of the
20 house. A lot of our service members report
21 assaults to us that occurred while not in a
22 drilling status and while not on any active duty,

1 and, therefore, it's not covered anywhere under --
2 so we spend a good deal of time getting those
3 members to local resources that can provide
4 services free of cost, or will be covered by their
5 TRICARE insurance that they have through the
6 Reserves.

7 MS. GARVIN: So is that -- and this ties
8 to the training component of what you all are
9 actually here to talk about. Is that part trained
10 on so your advocates understand what is covered and
11 non-covered medical and mental health expenses,
12 things like that.

13 MS. CUEVAS: Absolutely, yes.

14 MS. COLLINS: So as an example, when the
15 program stood up in '04 --

16 CONGRESSWOMAN HOLTZMAN: You need to speak
17 more loudly?

18 MS. COLLINS: Sorry.

19 CONGRESSWOMAN HOLTZMAN: We need to get
20 microphones.

21 MS. COLLINS: When the program was stood
22 up in '04, forensic exams were not covered under

1 TRICARE. So the Department of Defense worked hard
2 with that, with legislation changes on that as well
3 so that -- because they're considered an off-post
4 hospital, normally a state police evidence
5 gathering procedure, not a patient care procedure.
6 And so, initially victims were getting charged for
7 sexual assault forensic exams.

8 That's now covered under TRICARE across
9 the board, and we have -- our policy requires us to
10 have memorandums of agreement with local rape
11 crisis centers, with understanding the local
12 hospitals with our practices, procedures so they
13 understand how they can handle military personnel
14 as well. With all of our orientation training,
15 when you come new to an installation, we cover that
16 as well separately than the overall understanding
17 you get of the program when you first enter the
18 military. Every place you go you have orientation
19 training to understand how it functions at that
20 location.

21 So we are subject to state law changes and
22 requirements that we have to abide by. As an

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1 example, with California, we have trouble with
2 restricted reporting in California. We have
3 trouble with restricted reporting in Belgium. So
4 we're in different countries. We have to -- so
5 everything is subject to the local operational
6 environment as well.

7 MS. FERNANDEZ: When you go off base.

8 MS. COLLINS: Right.

9 MR. CASSARA: And, ma'am, if the alleged
10 victim is completely -- has no correlation to the
11 military at all, she is a civilian and just happens
12 to be on the base dating a service member or
13 something, then what happens?

14 MS. COLLINS: Well, and I'll ask my
15 attorney to help me with this one as well. But I
16 would say it depends on the jurisdiction of the
17 installation, first of all. Some installations
18 have Federal jurisdiction, some are not. Certainly
19 a crime was, you know, committed there. If it's a
20 military offender, we're going to be engaged with
21 that case based on that jurisdiction.

22 From a victim care perspective, we

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1 potentially would be giving them immediate medical
2 care if they needed it and then transferring them
3 off the installation to medical support off post as
4 well as rape crisis centers in that off post.

5 MS. MANSFIELD: The Victim Witness Liaison
6 Program, that's available to every victim or
7 witness regardless of their status. So a civilian
8 victim with no connection to the military, not a
9 dependent of anyone, would receive the services of
10 the victim witness liaison at the Staff Judge
11 Advocate Office, who would then work with off post
12 agencies, helping agencies, and get the victim --
13 that civilian victim, the unaffiliated one, the
14 services that they needed.

15 MS. FERNANDEZ: Representative Holtzman?

16 CONGRESSWOMAN HOLTZMAN: Thank you. I
17 just have a few questions. Do you have any
18 statistics -- do you try to gather statistics about
19 the number of instances in which outside medical
20 facilities are taken advantage of, and there's been
21 no reporting, so do you get some sense of
22 utilization of these facilities?

1 MS. STEBBINS INCH: I think I can answer
2 that from the DoD perspective. With the Safe
3 Helpline, we do track how many referrals we're
4 making to the medical facilities -- to the
5 facilities off base.

6 CONGRESSWOMAN HOLTZMAN: Right, but
7 suppose it's not through the helpline. Suppose,
8 you know, the rape victim, sexual assault victim
9 shows up at a local hospital, just like that, and
10 it's not reported to the military. Do you keep
11 track of that?

12 MS. STEBBINS INCH: Well, it really --

13 CONGRESSWOMAN HOLTZMAN: Or do you have
14 some way of keeping track of that?

15 MS. STEBBINS INCH: When we revised the
16 policy this year, we put in a section that speaks
17 to establishing the MOUs with your local facilities
18 that they -- and included in that that you would
19 notify that SARC so that we could track that, but
20 it's not consistently done. We don't have any data
21 on that.

22 CONGRESSWOMAN HOLTZMAN: But you're going

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1 to -- are you going to -- but you're trying to get
2 that.

3 MS. STEBBINS INCH: We're trying to get to
4 it. It's just --

5 MS. FERNANDEZ: How would that even work?
6 I mean, I go to the hospital, and I get an exam
7 done, and then the person who examines me reports
8 back to the military?

9 MS. STEBBINS INCH: Well, that's the
10 challenge because we'd like to be able to loop them
11 back into the services on base if possible. But
12 the reason they've probably gone off base is
13 because they don't want the military to know. So
14 you have reluctance on the part of the medical
15 provider off base to cooperate with -- we can't
16 force them, no.

17 MS. FERNANDEZ: I mean, as a medical
18 provider, I don't think even under HIPAA you could
19 even give that information out, could you?

20 CONGRESSWOMAN HOLTZMAN: Without the name
21 you might be able to. I'm just trying -- I'm just
22 looking at the statistics. I'm just trying to get

1 an idea of how -- that's what I'm interested in.
2 I'm not looking at the victim for a moment. I'm
3 just trying to get an idea of how large that
4 population is that is just rejecting going through
5 official military channels to outside channels. If
6 we just had some idea. This is, you know, on a big
7 installation, you know, you have this one person
8 shows up a year, well, that's one thing. But if
9 you have hundreds and hundreds of people showing
10 up, that's something else. I mean, you need to
11 know. That's all I'm saying. I'm not asking
12 names. I'm not asking -- privacy violations. I
13 just want to know kind of the magnitude of the
14 problem.

15 MS. GARVIN: Is that one of the questions
16 asked when you do the across the services
17 questionnaire about where you've -- you're giving
18 us the 50 percent -- 54 percent is the total
19 reporting number? Are you asking in that survey
20 this type of question?

21 MS. COLLINS: Not for the Army. That
22 question is not in that survey right now.

1 CONGRESSWOMAN HOLTZMAN: Well, if you
2 don't have the information, you can't. But if
3 you're trying to get this information -- I think it
4 would be useful to try to get it to get a sense of
5 to what extent people are just kind of not even
6 looking at the whole panoply of services that you
7 all are working so hard to set up. I hope the
8 number is small, but we need -- I would say that we
9 need to have a better handle on it.

10 Secondly, my second question goes back to
11 the person who was nodding her head before about
12 mental health. I'm not somebody who has any
13 experience with the military, so please bear with
14 me and be patient with me. Can you explain to me
15 about the issue with regard to the stigma? If
16 somebody -- obviously if somebody reports -- an
17 unrestricted report, there will be a record that
18 the person has sought mental health services,
19 behavioral health services -- I guess that's the
20 term of art. And that will be -- and that record
21 will follow them throughout their career in the
22 military. Is that correct, who reported?

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1 MS. SURETTE: My understanding -- maybe
2 you should talk to somebody who's in the military.
3 But any time you go to mental health and they make
4 an annotation in your mental health record that
5 you've sought services, that's going to be --
6 that's going to follow them. That's going to be a
7 record in their medical record.

8 MS. MANSFIELD: Right. I wanted to
9 clarify there that's in your medical record, so
10 that doesn't mean your commander gets a record that
11 says Private Smith sought mental health at her last
12 installation. It's part of your medical records,
13 which would be protected under HIPAA and that.

14 CONGRESSWOMAN HOLTZMAN: Well, in what way
15 would those records intersect with a person's
16 career?

17 COLONEL HAM: I think -- let me ask the
18 question this way. One, VA benefits is one.

19 CONGRESSWOMAN HOLTZMAN: Right.

20 COLONEL HAM: So when you leave the
21 military, there's a record of something that may
22 entitle you to some Veteran Administration's

1 benefits. I guess the second question I would ask
2 is, most of us have security clearances, and we
3 have to fill out a complicated form called the SF-
4 86. We have to have a name for everything.
5 Standard Form-86. And there's a question -- I have
6 a secret clearance. It's reviewed every 10 years.
7 I don't have a very high level clearance. There's
8 a question on there on have I sought --

9 SPEAKER: Counseling.

10 COLONEL HAM: -- counseling. A few years
11 ago there was a policy change that said if I have
12 sought counseling only for post-traumatic stress
13 disorder or marital difficulties, I could
14 truthfully answer that question nom, and that
15 instruction is in the form. What is the
16 instruction, if any, for if I have sought mental
17 health counseling as a result of a sexual assault?
18 Is that -- can I also answer truthfully no to that
19 question?

20 And it only goes back a certain number of
21 years. I think it goes back to the prior seven
22 years or whatever.

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1 MS. STEBBINS INCH: You're talking about
2 Question 21 on that form, and we've worked hard to
3 -- but we don't own the form. Security owns the
4 form. Actually I'd have to get back to see what
5 the final decision was made on that because we were
6 asking for an exception for sexual assault
7 counseling on that form because that did trigger
8 command notification. So even if you had a
9 restrictive report, it could then be part of that
10 packet, which was concerning.

11 CONGRESSWOMAN HOLTZMAN: I'm going to try
12 to follow up. This is really getting very
13 confusing for me. So and unrestricted report, it's
14 on your record, medical record. And we're not sure
15 100 percent whether that's -- you can exempt
16 yourself if you're from -- a question of security
17 clearance if you sought mental health services.

18 Now, let's go to restricted reports. A
19 restricted report, how is the commander getting
20 information about mental health utilization?

21 MS. STEBBINS INCH: Well, if you are
22 required to provide it on that question, on that

1 other form --

2 CONGRESSWOMAN HOLTZMAN: Aside from that
3 questionnaire -- aside from the questionnaire.

4 MS. STEBBINS INCH: Well then, they're
5 just not finding out any personally identifying
6 information.

7 CONGRESSWOMAN HOLTZMAN: Okay. So the
8 only way that they would find -- that a commander
9 would find out about -- if you filed a restricted
10 or a non-restricted report, the only way a
11 commander would find out about your accessing
12 mental health services or counseling services in
13 connection with the assault would be if you seek a
14 promotion or if you seek a security clearance --
15 security clearance. Yes, no?

16 MS. STEBBINS INCH: Not automatically, no.

17 GUNNERY SERGEANT RODRIGUEZ-HOWER: I'm
18 Gunnery Rodriguez-Hower.

19 SPEAKER: Thank you.

20 GUNNERY SERGEANT RODRIGUEZ-HOWER: If you
21 work with a specials unit -- a special unit, such
22 as like the presidential detail, their pilots, and

1 such, an HMX-1, for example, is at Quantico Marine
2 Corps Base, and even the KAF. If you're working in
3 those units or if you're armed at the gates, that
4 is when those mental health appointments are
5 pinged. If you're holding, I guess, a higher
6 clearance than just secret or specifically working
7 for the President, those are the marines, in our
8 case, that are concerned with going to mental
9 health.

10 CAPTAIN (RET.) GRUBER: What about people
11 who don't work for the President -- sailors on
12 nuclear submarines part of the Personnel
13 Reliability Program, parachute riggers, missile
14 siloes. Just about everything someone does in the
15 military is dangerous who potentially has access to
16 weapons. How is mental health counseling for
17 sexual assault important to commanding officers,
18 and what do they do with that information? And if
19 you want to take that for the record, that's okay.

20 MS. STEBBINS INCH: Yeah, I think we
21 should with Mental Health Affairs and find out what
22 their policy is on that.

1 CONGRESSWOMAN HOLTZMAN: Right, that would
2 be great just to --

3 DEAN ANDERSON: Could I just on this
4 particular thing clarify because it seems to me
5 that there are two different kinds of reports that
6 may go to the command. One report is the report of
7 having been sexually assaulted. And the other kind
8 of report is the seeking of mental health services
9 because the victims on November 7th -- a couple of
10 the victims on November 7th talked about the
11 report. It talked about actually both of those
12 things, following them through different
13 assignments in different locations. Do you
14 remember that?

15 SPEAKERS: Yeah.

16 DEAN ANDERSON: Yeah, and the problems
17 with both of those kinds of reports following the
18 victim. And I guess what you have when it's
19 unrestricted report is you have both of those
20 following, I take it. And I want to make sure that
21 I'm understanding this correctly. Or you have a
22 restricted report, in which case if you seek no

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1 mental health, then nothing follows you?

2 MS. STEBBINS INCH: Correct.

3 DEAN ANDERSON: But if you seek mental
4 health counseling on a military base, that is going
5 to follow you. Am I understanding it correctly
6 based on the testimony from the last time that the
7 report of the sexual assault itself follows you?

8 MS. FERNANDEZ: Let's break it down.
9 Restricted, unrestricted, what information goes to
10 the commander? Does a restricted and an
11 unrestricted -- does a commander know about both or
12 just one, or just unrestricted?

13 MS. ROGERS: If I may, Tanya Rogers from
14 the Navy. Whenever there was a restricted case
15 that was reported, the commander would only be
16 notified that a sailor has reported a restricted
17 report. They would not know any --

18 MS. FERNANDEZ: In their command.

19 MS. ROGERS: In their command. They would
20 not know any personally identifying information, if
21 it was male, female, nothing. So that would be it.

22 MS. FERNANDEZ: Okay. Stop right there.

1 DEAN ANDERSON: How many people are in
2 their command? Are these folks identifiable?

3 MS. CUEVAS: No, not under the new
4 directive. It's only the installation commander
5 that's notified of a restricted report, correct.

6 MS. ROGERS: Right, yeah.

7 (Cross talking.)

8 DEAN ANDERSON: So that's pretty high up.

9 MS. STEBBINS INCH: They're very sensitive
10 to that, right.

11 DEAN ANDERSON: But then does a commander
12 get a ping when there's -- if mental health
13 services are sought?

14 MS. ROGERS: They may, but my experience
15 as a SARC--

16 MS. FERNANDEZ: So I'm a commander. All I
17 know is that somewhere in my command there's been a
18 restricted report.

19 MS. ROGERS: They may not tie those two
20 situations together, ma'am. It may not necessarily
21 relate.

22 MS. FERNANDEZ: Okay.

1 MS. ROGERS: I've had victims that I
2 worked with who had restricted cases and who did
3 seek mental health support. And their commanders
4 never knew that they had a restricted report.

5 MR. CASSARA: I think it would be helpful,
6 as a former soldier, when we talk about a
7 commander, I know that in all the services, you
8 know, that means a different thing. But, you know,
9 in the Army, a commander can be a company commander
10 with 125 soldiers under them, or it can be a base
11 commander with 10,000 soldiers under them. So I
12 think it would be helpful for the Committee members
13 that don't have a military background, when you're
14 saying "a commander," if you could please be more
15 specific in terms of your specific services, how
16 big of a command are we talking about.

17 Because I think her concern is, if there's
18 20 females in an infantry company command, I don't
19 think you're talking about the company commander
20 getting a ping that a restricted filing has been
21 done, unless I'm wrong. Or are we talking about a
22 base commander getting a ping where there's 10,000

1 soldiers and the base commander is not going to
2 have a clue as to who we're talking about. So if
3 you all could just please help out --

4 MS. CUEVAS: That's correct, sir. The
5 requirement is to notify the base commander.

6 MR. CASSARA: Okay.

7 MS. CUEVAS: And so it could be 10,000.
8 And in the case of Marine Forces Reserves, that's
9 Lieutenant General Mills.

10 MR. CASSARA: That's a big base. I've
11 been there.

12 MS. CUEVAS: Correct. It covers the whole
13 United States. And so when we receive a restricted
14 report, it could be from anywhere. Our little site
15 in Wahpeton, North Dakota may report a restricted
16 report. He's the only commander that's going to be
17 notified of that restricted report. And he sits in
18 New Orleans, so he's never going to be able to
19 identify this marine.

20 MS. STEBBINS INCH: And I just want to
21 caveat that with, in the policy when the SARCs are
22 providing information to the commander on the

1 restricted report, it should not be personally
2 identifiable. So if you only have two females in
3 that whole unit and you're going to that commander,
4 you are not going to disclose the sex because that
5 could potentially identify the person. So we're
6 very careful to make sure they couldn't piece it
7 together.

8 CONGRESSWOMAN HOLTZMAN: Now, the
9 commander in this case is what --

10 MS. STEBBINS INCH: Whichever level it is,
11 it doesn't matter. Yeah. I mean, it's the
12 commander at the base level or the installation
13 level. But I think the point I was trying to make
14 is that they limit the information that's provided
15 to them, so it is not going to be able to be
16 personally identifiable.

17 CONGRESSWOMAN HOLTZMAN: Is that a new
18 change? I mean, it sounded like these victims we
19 listened to had this information follow them all
20 the way through.

21 MS. CUEVAS: Well, those were unrestricted
22 reports, I believe, that sat before you. They were

1 unrestricted reports.

2 MS. FERNANDEZ: Okay, go there. Okay. So
3 we heard -- we had folks testify that their mental
4 health and their sexual assault history went with
5 them from command to command. How does that
6 happen? Who gets that information? I think your
7 question was really good. Are we talking about
8 people in a small -- how identifiable am I when
9 that information goes up? Am I one of 10,000, or
10 am I one of 125? So in an unrestricted report.

11 MS. MANSFIELD: So, ma'am, I heard the
12 victims testify at that hearing.

13 MS. FERNANDEZ: Right.

14 MS. MANSFIELD: The first thing I would
15 point out is most of those assaults occurred a long
16 time ago, well before these programs were in place,
17 well before restricted reporting even existed, and
18 well before current policy was put in place. So
19 I'm not sure --

20 DEAN ANDERSON: Well, so tell us what
21 happens now. Someone makes an unrestricted report
22 and seeks mental health counseling on the base. Do

1 those two bits of information, are they reported to
2 her next commanding officer at the next assignment?

3 MS. CUEVAS: If the report is still open,
4 if the case is still open and a victim transfers --
5 PCSs, PCAs, whatever -- transfers to a new new
6 command, and it's still open, we will transfer the
7 SAPR report with them. Now, if she chooses to seek
8 mental health counseling when she checks into her
9 new command, they will know she's going to
10 counseling. All commanders have a responsibility
11 to keep up with all of their marines, so they're
12 going to know. They may not necessarily what she's
13 receiving counseling for, but they will know that
14 she's attending appointments.

15 MS. FERNANDEZ: How many people are we
16 talking about? How many people is that
17 commander --

18 MS. CUEVAS: It should be a need to know.
19 That's up to that commander to share that
20 information. We try to counsel them on keeping it
21 as close guarded --

22 MS. FERNANDEZ: But how many people are

1 under that commander?

2 MS. CUEVAS: It's going to be their direct
3 commander.

4 MS. FERNANDEZ: It's going to be their
5 direct commander then.

6 MS. CUEVAS: Yes, ma'am.

7 MS. FERNANDEZ: So it could be about 125,
8 okay?

9 MS. CUEVAS: Could be, yes, ma'am.

10 MS. FERNANDEZ: Okay.

11 JUDGE MARQUARDT: And they have the names.

12 MS. FERNANDEZ: Sure.

13 MS. CUEVAS: Of course. This is an
14 unrestricted report. There's legal issues going
15 on. There's things going on that they need to
16 control.

17 DEAN ANDERSON: So it sounds like the
18 story that we heard, although it happened a while
19 ago, could happen today. And that's important to
20 understand. It's not a question of it being
21 historical.

22 MS. CUEVAS: Yes, ma'am. If the case is

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1 resolved legally prior to the victim transferring,
2 there's no reason for that to transfer with that
3 victim.

4 MS. COLLINS: Unless the victim wants to
5 keep advocacy care.

6 MS. CUEVAS: No. We close it, and it's
7 finished.

8 MS. ROGERS: The victims do require -- the
9 victims do have to approve transfer of their cases.
10 They have to provide written consent. The new
11 policy requires that. They do not -- if they opt
12 not to transfer their case, it stays with the
13 original SARC and that SARC will continue to
14 support that case. So it will not continue to --

15 MS. FERNANDEZ: If you're in North Dakota
16 and you get transferred to Louisiana, you could
17 still have the same SARC.

18 MS. ROGERS: They can continue -- and that
19 SARC will -- in the Navy, our policy is, in the DD-
20 2910, it is the victim reporting preference
21 statement. The victim has to approve transfer of
22 that case, and they have to sign that form stating

1 I do or I do not. And if they state I do not want
2 it transferred, that original SARC will keep it,
3 and it will remain with them, and they will
4 continue to review it at the case management group,
5 and they will continue to keep that victim updated,
6 and it will not follow them to the next command.

7 (Cross talking.)

8 MS. FERNANDEZ: Wait, wait, wait, one at a
9 time.

10 DEAN ANDERSON: What if she needs mental
11 counseling at the next installation? What if she
12 needs mental health counseling?

13 MS. ROGERS: If that is required, then the
14 SARC will coordinate that at the next installation.

15 MS. CUEVAS: However --

16 MS. COLLINS: I think it's an individual
17 case. Everything happens based on each individual
18 case. So let's say I'm a victim and I was
19 assaulted three days ago, and I go to my command
20 and ask for now an expedited transfer, which I now
21 have the authority to do. I may want to be moved
22 to another whole installation across the country.

1 That case is going to transfer with me because
2 there's still an open case, as mentioned before.

3 And so, my commander has to update me
4 monthly on what's going on with my case. They have
5 to know about the case. So by policy, by DoD
6 policy, commanders have to keep victims informed of
7 what's going on with their cases. So the commander
8 has to know about the case because it's the
9 commander's program. The commander is ultimately
10 responsible for making sure the victim is getting
11 care and support and working with the case. So it
12 is -- so again, it's a case by case transfer.

13 If the case is closed out and I still want
14 to get victim care, I may elect to transfer my
15 victim care to my new installation. That doesn't
16 necessarily mean my gaining commander is informed
17 of anything. I'm just -- I may continue victim
18 advocacy care 10 years after the case because I
19 still want that support. So until I turn it off,
20 it's not turned off.

21 DEAN ANDERSON: But wouldn't your
22 commanding officer need to know the kind of mental

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1 health care that you're getting?

2 MS. COLLINS: Not unless it's a challenge
3 with your position and they seek to say that this
4 person is exhibiting different challenges with
5 their position. They may have to seek and refer
6 you to medical care themselves for behavioral
7 healthcare if you're having -- let's say you're
8 starting to be depressed or you're having drinking
9 issues on the job or other things.

10 A commander may refer somebody to
11 behavioral health as well. So some of it's
12 elective, some of it's not elective for behavioral
13 health.

14 MS. STEBBINS INCH: And if I could just
15 add one piece to that. I think in addition to the
16 care, I think it's important to look at the
17 exceptions in that Military Rule of Evidence
18 privileged communication for psychotherapist and
19 patient, because I do believe that a commander's
20 need to know is one of the exceptions. I don't
21 know if you know off the top of your head.

22 And I think that's where I've heard

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1 sometimes victims running into trouble because the
2 commander made a strong case that they had a need
3 to know what was going on because it was job
4 related. So maybe if you took a look at that
5 privileged language --

6 MS. FERNANDEZ: Give me an example. I'm
7 trying to --

8 CONGRESSWOMAN HOLTZMAN: So you're saying
9 there's no -- sometimes -- I'm just trying to
10 understand the question or the point. Sometimes
11 the commander insists on knowing the details, and
12 the commander gets to hear those details, and then
13 the privilege -- there's no privilege to that
14 information in a trial. Is that the point you're
15 making?

16 MS. STEBBINS INCH: It's possible.

17 CONGRESSWOMAN HOLTZMAN: It's possible
18 that there might not be a privilege to that
19 information at a trial.

20 MS. STEBBINS INCH: So I think if you took
21 a look at the exceptions in the MRE, it might help
22 answer some of the questions that you're asking.

1 COLONEL HAM: Exceptions. I'll read them.
2 There is no privilege under this rule, one, when
3 the patient is dead; two, when the communication is
4 evidence of child abuse or of neglect or in a
5 proceeding in which one spouse is charged with a
6 crime against a child of either spouse; three, when
7 Federal, state law, or service regulation imposes a
8 duty to report information contained in a
9 communication; four, when a psychotherapist or
10 assistant believes the patient's mental or
11 emotional condition makes the patient a danger to
12 any person, including the patient; five, if the
13 communication clearly contemplates the future
14 commission of a fraud or a crime, or if the
15 services of the psychotherapist are sought or
16 obtained to enable or aid anyone to commit or plan
17 to commit what the patient knows or reasonably
18 should know to be a crime or a fraud; six, when
19 necessary to ensure the safety and security of
20 military personnel, dependents, property,
21 classified information, or the accomplishment of
22 the military mission; or seven, when the accused

1 offers statements concerning his mental condition
2 in defense extenuation or mitigation, and that goes
3 on a little bit; or eight, when admission or
4 disclosure of the communication is constitutionally
5 required. So the big exception is the military
6 mission.

7 CONGRESSWOMAN HOLTZMAN: And that's one
8 you could drive the truck through.

9 COLONEL HAM: I'm sorry?

10 CONGRESSWOMAN HOLTZMAN: That's the one
11 you could drive the truck through.

12 COLONEL HAM: For an accused as well.
13 This applies to an accused going to a
14 psychotherapist as well.

15 MS. GARVIN: In practicality, is there a
16 showing required for the commander to get it?
17 So --

18 LIEUTENANT COLONEL LEWIS: In my
19 experience -- this is Lieutenant Colonel Lewis --
20 yes, there is, because my experience has been that
21 the medical providers who have these records are
22 extremely reluctant to give them to anyone unless

1 there is a very, very clear showing that that
2 provider believes that it's okay. And the
3 providers that I've interacted with are thinking
4 not only about a military rule of evidence that
5 might apply at trial, but -- or the policy that
6 applies to them on a day in, day out basis separate
7 from a rule of evidence at trial. But they are
8 thinking about their state licensure rules.

9 And so all of those three things come in,
10 and there's a discussion generally between the
11 staff judge advocate at the installation and the
12 medical provider to determine what, if anything,
13 should be released. The most common example that I
14 can think of in the Air Force is a security forces
15 squadron commander, who is responsible for base
16 defense at any Air Force installation.

17 A great number of those folks have to arm
18 up every day in order to defend our base gates and
19 to do patrol response. If there is something that
20 that commander needs to know to decide whether this
21 person should be carrying a weapon on duty, then
22 they get as little information as they need to make

1 that arm/do not arm decision. So they don't get
2 the entire medical record, all of the progress
3 notes. They would probably be told that the mental
4 health provider has some concerns about this
5 person, and then there would be that sort of
6 limited discussion about what needs to happen.

7 DEAN ANDERSON: So, but why would the
8 existence of a sexual assault or the experience of
9 having been sexually assaulted have anything to do
10 with whether or not that person would be armed?

11 LIEUTENANT COLONEL LEWIS: To me it has
12 nothing to do with the sexual assault and has
13 everything to do with where they are that
14 particular day in terms of if it's safe for them to
15 be armed or not. And so it just has to do with
16 where they are.

17 DEAN ANDERSON: So it's for the mental
18 health.

19 LIEUTENANT COLONEL LEWIS: Exactly. It's
20 concerns that the mental health provider has either
21 for them or for others or the ability to accomplish
22 the mission. They just might not be in a place

1 right that moment in time where they can accomplish
2 the mission.

3 DEAN ANDERSON: I guess one of the
4 concerns I have is not just the official channels
5 of communication, but once communication has
6 happened, the informal channels of communication
7 among members of the military at different levels.
8 And little nods here and there that that's a part
9 of the problem that it's not just -- you know, what
10 narrow exceptions exist, but that this information
11 is so interesting that someone has experienced a
12 sexual assault or has received mental health
13 counseling for having been a victim, that that may
14 be communicated informally.

15 MS. COLLINS: Yes, ma'am.

16 DEAN ANDERSON: Let the record reflect
17 that there are a lot of nods.

18 LIEUTENANT COLONEL LEWIS: And the only
19 thing I will add is while that does happen, there
20 are Federal laws out there regarding Privacy Act
21 information and HIPAA that should protect that
22 unlawful disclosure. And if it is, in fact, an

1 unlawful disclosure that's not to someone who has a
2 need to know, then there are remedies provided for
3 that, whether that's investigation, or, in the case
4 of the Privacy Act, you have the ability to bring a
5 personal suit, a lawsuit against that individual.

6 CONGRESSWOMAN HOLTZMAN: Somebody wanted
7 to answer --

8 GUNNERY SERGEANT RODRIGUEZ-HOWER: I
9 believe the problem with all of this knowledge,
10 junior marines don't know that. They don't know
11 any of this. And when someone senior comes to them
12 and says where are you going, where is your
13 appointment, when are you getting back, get on the
14 phone, I want to know that you were there, I mean,
15 that does happen, and that is how this information
16 is getting out. It's not necessarily the
17 commanders. It's the staff NCOs and those that are
18 in charge of these junior marines. They're young.
19 They're 18 to 24. They don't know -- everything
20 that's being discussed, they know nothing of it.

21 DEAN ANDERSON: So it sounds like now that
22 we're talking about three different channels of

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1 communications. There are formal channels of
2 communication that are authorized by statute.

3 GUNNERY SERGEANT RODRIGUEZ-HOWER: Yes,
4 ma'am.

5 DEAN ANDERSON: There is informal dialogue
6 among people who did have a need to know, but are
7 inappropriately, as you point out, sharing
8 information that is tantalizing. And then there is
9 the sort of discovery of information by lower level
10 people when they don't have a need to know, but
11 they do have authority over the troops -- where are
12 you going off base, what is this about, this kind
13 of -- that informal discovery of the underlying
14 information may deter people from seeking
15 counseling that they need, or may inappropriately
16 violate their rights to privacy around this issue.

17 That's really helpful to parce these out
18 because we're charged with trying to strategize
19 about how to address victims' concerns.

20 MR. CASSARA: And, Dean Anderson, if I
21 could pop in.

22 DEAN ANDERSON: Yeah.

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1 MR. CASSARA: -- you know, again, as the
2 defense counsel on the Panel. I think one of the
3 other questions that we have to address is, you
4 know -- is it Gunnery or Master?

5 GUNNERY SERGEANT RODRIGUEZ-HOWER: It's
6 Gunnery, sir, yes.

7 MR. CASSARA: The Gunnery Sergeant just
8 said, you know, when a young private is approached
9 by their staff sergeant and says where are you
10 going, that there are privates in the Army and in
11 the Marine Corps who will walk off base and be gone
12 for three or four hours, having nothing at all to
13 do with having been sexually assaulted or anything
14 else. They just want to go, you know.

15 And so, I think that one of the balances
16 that that sergeant has to draw is when a marine or
17 the soldier simply says, well, I have an
18 appointment off base, that sergeant has no idea at
19 all of knowing whether or not that's true. And I
20 think that's sort of what you're grappling with is,
21 you know, how does that person make the
22 determination. How much information are we going

1 to get out so that that person who is in charge of
2 that young soldier or marine is able to ensure
3 that, you know, their safety and that what they're
4 telling them is true? I don't know the answer to
5 that question, but that's sort of what we're
6 looking at.

7 MS. CUEVAS: And other issues related to
8 that are, a lot of times we see in our schoolhouses
9 and in our schools, the hours are the same as the
10 family service hours. So they can't miss hours in
11 school to access services. We've had these issues
12 and the same with medical. They don't have --
13 their hours are the same. They're supposed to be
14 in school from 0700 to 1600, and that's the hours
15 that medical or family services are operating also.
16 So they have no access to services without getting
17 an excuse from their direct chain of command to go.

18 COLONEL HAM: Some soldiers, and I'll
19 speak for the Army, will want their commander to
20 know what happened at the last installation and
21 they will tell him or her. I mean, I've supervised
22 people who come in and tell me very personal things

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1 that I didn't need to know that happened to them in
2 the past or, you know, a substance issue that
3 happened years ago. And they come in and sit down
4 and close the door and say, ma'am, I need you to
5 know something about me. And you don't know why
6 they're telling you that. But, I mean, nobody else
7 in my unit knew that. That was told to me.

8 I've also had subordinates who are
9 attending mental health counseling and taking drugs
10 for psychiatric problems. And they came and told
11 me, and nobody else they worked with even in a
12 small office knew. They had a medical appointment.
13 I was aware of it, they went, and that's that. But
14 a lot of times the soldier feels some kind of duty
15 incumbent on them to let their supervisor or
16 commander know -- this is what I'm going through,
17 this is what I went through, I need you to know
18 this about me -- just because they want you to
19 know. And the commander hasn't sought that
20 information. The commander is not looking for, you
21 know, tantalizing information. The soldier has
22 come and revealed that.

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1 MS. WREN: Well, commanders are often
2 supportive, and so that's why they --

3 COLONEL HAM: Exactly.

4 CONGRESSWOMAN HOLTZMAN: To what extent is
5 this problem do you think, from your experience,
6 very vast experience, inhibit reporting by victims?

7 MS. STEBBINS INCH: Reporting or getting
8 healthcare?

9 CONGRESSWOMAN HOLTZMAN: Sorry?

10 MS. STEBBINS INCH: Reporting or getting
11 healthcare?

12 CONGRESSWOMAN HOLTZMAN: Okay, now that
13 you opened that up, yeah, you can answer both.
14 Reporting was my question, but also seeking
15 healthcare. I mean, to what extent this worry
16 about privacy, and specifically the possibility
17 that if they seek these services, someone -- the
18 commander would know or people who supervise them
19 would know that they're going off base for services
20 and so forth? What is the incentive inhibitor, or
21 do you know?

22 MS. STEBBINS INCH: Well, we asked the

1 question on the Gender Relations Survey data if you
2 experienced one of these behaviors, and there was
3 the range of UCMJ violations. If they say yes,
4 then the questions go to did you report it, to whom
5 did you report, did you get care, and why did -- if
6 you did not report it, why did you choose not to
7 report it.

8 And so, we have actually that data, and
9 privacy is on the top three concerns of people.
10 It's a -- they're concerned about losing control of
11 the information.

12 CONGRESSWOMAN HOLTZMAN: And so, what --
13 is that -- okay. So you know that.

14 MS. STEBBINS INCH: Yes.

15 CONGRESSWOMAN HOLTZMAN: So then, what are
16 you doing to address this very big problem that
17 we've identified here? Is there some kind of
18 effort at the DoD level or in the services to
19 address this issue, for example, need to know,
20 protection of soldiers, privacy? Are you grappling
21 with this?

22 MS. STEBBINS INCH: Yes, and we've put it

1 in policy. I mean, these are where are a lot of
2 our changes are coming from. Our policy is you do
3 not share the information with someone that does
4 not have a legitimate need to know. If you do
5 share it, you could be subject to punishment for
6 sharing it. That's stated in our policy, and
7 that's why they're getting the attorneys now to
8 help protect their privacy so they can have a safe
9 place to go to air their concerns and get
10 information in order to determine which step they
11 want to take, restricted or unrestricted.

12 And then, the privileged communication,
13 that just came out two years ago or last -- about
14 two years ago. So that was -- and it's
15 specifically to address the concern about lack of
16 privacy. But I think it's also important to
17 understand that it's difficult because for the
18 active duty member, I mean, they're living and
19 working with people. And if you don't provide
20 information -- if something -- if there is some
21 sort of a scuttlebutt or information out there and
22 there's nobody filling in the gaps of that

1 information, then people -- the rumor mill just
2 takes over, and it's very difficult to control
3 that.

4 And I think we've even started addressing
5 that with the release of case -- court martial
6 statuses. We're starting to publish those in an
7 effort to control the rumor mill. And we're
8 encouraging the commanders to address it and stop
9 it when they hear things and shut it down from the
10 NCO level all the way up.

11 So, yeah, we've taken a lot of active,
12 aggressive steps trying to get a handle on that.

13 CONGRESSWOMAN HOLTZMAN: And just one more
14 question. Do you have any suggestion, or does
15 anyone here have any suggestions about other steps
16 that can be taken with regard to protecting privacy
17 of the victims so that we can encourage reporting?
18 I mean, I'd welcome that. If you don't want to
19 answer now, that's fine. But if you have one at
20 any time, I think that would be great.

21 MS. CUEVAS: I've seen a big change in the
22 Marine Corps in just the last year with the

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1 Commandant's campaign plan where he trained his
2 three stars, and they trained down. And we
3 provided an immense amount of training to the
4 commanders directly from the generals. And a good
5 deal of that was on maintaining confidentiality and
6 treating these cases appropriately and how to
7 handle them. I can already see a difference.

8 My concerns are, though, if that's not
9 continuously done as our commanders turn over,
10 we'll lose that feeling we have right now.

11 CONGRESSWOMAN HOLTZMAN: You see a
12 difference in what?

13 MS. CUEVAS: I see a difference in the
14 information out -- the leaks. I see things being
15 held tighter.

16 CONGRESSWOMAN HOLTZMAN: Okay. Does that
17 mean --

18 MS. CUEVAS: I see confidence rising with
19 the victims.

20 CONGRESSWOMAN HOLTZMAN: Oh. And so that
21 was my second question. So victims are aware that
22 this -- these training programs have some impact in

1 terms of --

2 MS. CUEVAS: Yes, ma'am. I think they
3 have a lot more faith in their commanders right
4 now.

5 CONGRESSWOMAN HOLTZMAN: Okay.

6 MS. CUEVAS: I don't -- I'm not a fool to
7 think that that will stay forever. That's not
8 something that's concrete. It's fluid. So as our
9 commanders change, I think we have to stay on top
10 of that and continuously train to the need for
11 confidentiality and how to handle these cases
12 appropriately. But right now as we're sitting
13 today, there's a feeling that they trust more.
14 We've seen an increase in reports, and I think that
15 tells us that they're trusting more. I don't think
16 the marines are out raping more. I think our
17 victims are feeling much more confident in their
18 commanders.

19 One of the other changes is the commanders
20 directly having to notify the victim of any changes
21 in their cases. I've had them come back to me
22 saying, wow. Colonel So and So came to me and was

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1 talking to me. He wasn't sending information
2 through the victim advocates. He wasn't sending
3 information through other people. He directly
4 spoke to the victim. And that also built a chain
5 of trust with the victim and their commanders that
6 this is just between us.

7 But again, I don't know that that's going
8 to stay without being on top of it all the time.

9 CONGRESSWOMAN HOLTZMAN: And are there
10 programs to make sure they're on top of it?

11 MS. CUEVAS: We're trying.

12 MS. STEBBINS INCH: Institutionalizing it
13 across the Department.

14 MS. CUEVAS: Yes, ma'am.

15 CONGRESSWOMAN HOLTZMAN: Has it been
16 institutionalized?

17 MS. STEBBINS INCH: Well, I believe it has
18 with the requirements in the DODI for specialized
19 training requirements for commanders.

20 JUDGE MARQUARDT: I have a question. Have
21 you prosecuted any or do you know of any
22 prosecutions of individuals that have been

1 spreading rumors or spreading unauthorized
2 information?

3 LIEUTENANT COLONEL LEWIS: I'm not aware
4 of any particular prosecutions for those particular
5 things. Commanders of course have a wide variety
6 of options available for them for discipline, and
7 so they do have options short of a criminal
8 prosecution that could also involve this sort of
9 behavior.

10 DEAN ANDERSON: Are you aware of any
11 discipline or punishment that's been meted out on
12 this issue independent of a prosecution?

13 LIEUTENANT COLONEL LEWIS: Certainly I'm
14 aware in my personal experience of cases where
15 medical records or mental health records have been
16 improperly accessed. But I cannot tie that
17 specifically to a sexual assault case. They
18 generally are individuals who are improperly
19 accessing those records and already have the
20 ability to access them.

21 MS. MANSFIELD: So at my level at the
22 Department of the Army, I've seen investigations

1 into improper release of medical information, in
2 particular from victims, that's been investigated
3 and disciplinary actions have been taken.

4 But honestly, from a victim's point of
5 view, it's the barracks gossip.

6 DEAN ANDERSON: Yeah.

7 MS. MANSFIELD: And that is not
8 necessarily punishable, and that's what's really
9 insidious, I think, for the victims. And it's also
10 the most difficult thing to punish, to punish a 19-
11 year-old for spreading what they heard from
12 somebody else to another person. And that's how
13 the victims -- and that's very difficult for the
14 services -- how do you prosecute that.

15 You know, the commander is the only person
16 who has the ability to put down those orders, you
17 know, to stop to barracks gossip at least where he
18 could hear it, or see it, or put a stop to it.
19 Social media is, of course, a big problem in this
20 area. So figuring out ways to look at social media
21 and how soldiers use social media and what control
22 commanders may or may not have over that is

1 probably important.

2 MS. GARVIN: On the flip side of
3 punishment, has there been any formal commendation,
4 praise, something done formally for the reporting
5 of barracks gossip? So someone who comes forward
6 and says, this is happening and reports that to
7 their command structure, is there formal ways to
8 commend that, to put that as an affirmative thing
9 in someone's record to say they intervened. So is
10 there some formal process to commend intervention?

11 GUNNERY SERGEANT RODRIGUEZ-HOWER: I know
12 in some assignments in the Marine Corps, there are
13 marines at certain levels that have counseling
14 abilities. You have the lower level, what we call
15 first responders. These are the individuals that
16 are dealing with these junior marines at the lowest
17 levels -- sergeants, corporals. And then you have
18 the STACK and SEAL level. A lot of the rumor mill,
19 the gossip stuff gets to the level of the NCOs and
20 the NCO ranks, and the staff NCOs. They also then
21 turn around with administrative measures and can do
22 counselings in their training jackets.

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1 There's a lot of tools that those
2 individuals have that don't necessarily get to the
3 commanders, so it's not a prosecutorial level.
4 It's a counseling level where they're either
5 brought in and they're spoken to or something has
6 been put into their training jacket that they've
7 been counseled about, discussing, you know, Lance
8 Corporal Smith's situation, that that's not a need
9 to know for them.

10 And then a lot of times if it's something
11 within a section, like it's in an admin section,
12 those warnings are brought in and told, okay,
13 everybody knows that this situation happened, but
14 you're not to talk about it. And that's how a lot
15 of those rumor mill things are handled at that
16 level through interaction with those junior marines
17 and letting them know you're not to talk about the
18 things that you hear. If you don't know anything
19 about it, you don't have a need to know, then it's
20 not discussed.

21 JUDGE MARQUARDT: You know, it reminds me
22 of bullying in the general population. And you

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1 need to do something about it.

2 CAPTAIN DEVITO: I just have -- this is
3 Allison DeVito with the Air Force -- two points
4 kind of along those lines. One is a policy issue
5 that's been put in place by DoD requiring the
6 commanders to provide monthly updates in a case.
7 We think that provides a great opportunity for not
8 only the commander to provide the victim with
9 updates, but for the victim and the victim advocate
10 and the victim's counsel to give feedback and raise
11 issues with the commander of, you know, these are
12 things that are happening in the unit that the
13 commander might not otherwise be aware of.

14 I know that has been successful so far in
15 the SVC Program with being able to raise these
16 issues with kind of the social ostracization with
17 commanders.

18 DEAN ANDERSON: That's interesting. Is
19 that part of the requirement of that interaction,
20 that the feedback go both ways, or is that
21 something informally that you've noticed has
22 happened?

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1 CAPTAIN DEVITO: It's something informally
2 that we've noticed that it's a good opportunity
3 that lower ranking airmen, victims would not
4 normally have interactions with their commanders
5 necessarily. And it provides a forum for them to
6 be able to, you know, be comfortable as they're
7 getting the case update to also provide that
8 feedback. And the commander is probably asking
9 them, hey, how are things going? Are you getting
10 the support you're needing?

11 DEAN ANDERSON: But that's not required.
12 The, hey, how are things going is not part of the
13 required communication.

14 MS. COLLINS: But there is a separate
15 requirement. So as an example, we have to do
16 monthly Sexual Assault Review Boards on ongoing
17 cases on the installation with the senior
18 commander, which is normally a general officer.
19 And on a need to know basis, personnel are invited
20 into the -- for the Army it's called the Sexual
21 Assault Review Board or the SARB. And they review
22 the case to look at process, procedure, challenges

1 they're having. Are they getting the care they
2 need? Is anything inhibiting the care they need?
3 The commander is accountable to that senior
4 commander at the forum of what actions are going
5 on. And all of the first responders --

6 DEAN ANDERSON: Is the rumor mill
7 discussed at that level?

8 MS. COLLINS: They can discuss if there's
9 a challenge -- if the victim is experiencing
10 challenges because of the rumor mill, and
11 recommendations can be made that the commander take
12 actions in that area because the commander can be
13 both the commander of the alleged offender and the
14 victim. Many times that's the case. So they're
15 handling both sides of the case, or it can be
16 commanders from different organizations. One has
17 the alleged offender where you can have a rumor
18 mill there, as well as a rumor mill where the
19 victim underneath the commander that the victim
20 works for.

21 So the monthly Sexual Assault Review
22 Boards gives that opportunity to say, you know, do

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1 we need off-post services? Do we need on-post
2 services? Does there need to be continuing care?
3 How are we best giving care to this victim? How is
4 the case proceeding? Is everybody meeting their
5 regulatory requirements to give services? And then
6 that's why we have those. Are there best practices
7 we've observed somewhere else we want to
8 incorporate into the program?

9 So there is an accountability piece there
10 for commanders as well. How are they taking care
11 of that victim, and how well is -- you know, is
12 legal providing services? Is CID doing timely
13 investigations? All of those things are then
14 discussed.

15 DEAN ANDERSON: And in those moments, are
16 those also analyzed?

17 MS. COLLINS: Those are for the
18 unrestricted reports. We won't deep dive onto
19 the --

20 DEAN ANDERSON: I'm sorry, in the
21 restricted reports. Is there any dialogue in
22 the --

1 MS. COLLINS: No personal identifying
2 information, no. No, because we don't want
3 those --

4 DEAN ANDERSON: No, no, no. I guess I'm
5 wondering about -- to circle back, the victim
6 services that are available for those who choose
7 not to formally report. And I guess I'm confused
8 because I thought that you all had indicated that
9 there was -- that there were three possibilities.
10 One, you call the hotline and you choose not to
11 report; two, you call the hotline and you choose to
12 make an unrestricted report; three, you call the
13 hotline and you make a restricted report. But it
14 sounds like you've indicated there are only two
15 options, that by calling the hotline you have made
16 at least a restricted report, and could make a
17 choice to make that unrestricted. Is that correct?

18 MS. STEBBINS INCH: I think the confusion
19 is with the term "hotline" because we have the Safe
20 Helpline, which is the anonymous, confidential
21 crisis intervention support line that people can
22 access without making any type of official report.

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1 No numbers are sent to DoD that a report was made
2 to the Safe Helpline.

3 But then you've got at some of the bases
4 and installations what they call the "hotline" to
5 their SARC, to their victim advocate, and those
6 ones go into either restricted or unrestricted
7 reports. Does that make sense?

8 DEAN ANDERSON: Yeah.

9 MS. COLLINS: Now, certainly on those
10 calls, I can ask what services do you provide, and
11 I may not tell you who I am, or I'd like to come
12 meet you, then I found out information. But I
13 haven't disclosed -- I've elected not to report
14 under official channels, either restricted or
15 unrestricted. So that third option of not
16 reporting at all, and I choose another path.

17 DEAN ANDERSON: Right. But let's say
18 someone says I don't know that I want to report. I
19 mean, that seems like it's going to be the most
20 obvious. The moment the person calls, let's say
21 it's not the national RAINN hotline, but it's a
22 hotline set up by the military that is a hotline

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1 to, I guess, a SARC person, right? So then the
2 person says -- the victim says, I don't think I
3 want to report, but I'm desperate for counseling.
4 I need to talk to somebody. I don't want my
5 commanding officer to know. I don't want anyone I
6 work with to know. What happens then?

7 MS. SURETTE: We give them options,
8 probably more likely in the local community.
9 Sorry. We would give them options. What are they
10 looking for? So if they're seeking services for
11 counseling is what you said, we're probably going
12 to refer them to the local rape crisis center or
13 counseling services off the installation.

14 DEAN ANDERSON: So it's on a ship. Those
15 folks --

16 MS. CUEVAS: That's part of the choices
17 and consequences that victims have to make at that
18 point for not making an official report with SAPR.
19 To open up an official report with one of us as the
20 SAPR personnel, they are going to have to choose
21 restricted or unrestricted. And I usually give
22 them the benefits of signing a restricted report

1 form, and the benefit is now they have a record.
2 It's just their record. It's no one else's. It's
3 very confidential, we talk about that, and the
4 benefits of them making some kind of paper trail
5 for themselves.

6 DEAN ANDERSON: I guess what I'm wondering
7 is it sounds like there is some disparity across
8 facilities, installations, and types of services --
9 I'm sorry, types of military service in terms of
10 one's ability to access mental health,
11 psychological support off a base or off a military
12 installation. That's going to vary by assignment.
13 It's fairly dramatic, right?

14 MS. COLLINS: And within the United States
15 and outside the United States.

16 DEAN ANDERSON: So in the location,
17 nationally, you know, place within and outside a
18 U.S. jurisdiction.

19 So I guess I'm wondering the things that
20 we can control within the military, what are the --
21 within the military options of confidential,
22 psychological support for those who don't wish to

1 make a public report.

2 MS. CUEVAS: They can choose to go to
3 counseling services without ever disclosing the
4 sexual assault. They can refuse to talk to any
5 SAPR personnel. They can see a mental health
6 counselor, and the mental health counselor can keep
7 something confidential and restricted, but they
8 can't actually take that restricted report. They
9 have to call in the SAPR personnel to do that.

10 So they can choose to receive counseling
11 and never speak to one of us, and it never gets
12 counted in our SAPR numbers at that point.

13 MS. STEBBINS INCH: And they also have --
14 just to clarify one additional point because you
15 have the RAINN National Hotline, and that's
16 separate. But then the military created the DoD
17 Safe Helpline to fill that void. So anybody could
18 access it by logging into safehelpline.org or
19 calling or on their mobile app. So they can be in
20 Bahrain on a ship and get counseling -- you know,
21 crisis management short term and access to long-
22 term care. They can get all that through the app

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1 on the Safe Helpline or by calling them or by
2 logging on and doing a live chat session.

3 Those are people that are paid for out of
4 DoD money to fill that exact void. So they're
5 aware of all of their options on base and off base,
6 and it's all anonymous and confidential. We don't
7 qualify them, you know, by asking their name or
8 anything.

9 MS. FERNANDEZ: Let me do a follow-up on
10 that --

11 MS. CUEVAS: Sure.

12 MS. FERNANDEZ: -- because I was just
13 thinking, I mean, I know there's women on subs now.
14 And there's been women on ships. What goes on
15 there? How does somebody either for a restricted
16 or unrestricted for example get services through
17 SAPRO if they're -- you know, if they're not on
18 land, if they're in a very restricted situation, if
19 they're underwater, if they're above water?

20 MS. STEBBINS INCH: Well, for the deployed
21 locations, one of the tools that we created to
22 augment the military services' programs was the

1 Safe Helpline mobile app, because once it's
2 downloaded on the service member's phone, they can
3 access everything without use of even the Internet,
4 including a telephone call. But I'll let the Navy
5 and the service answer the specifics to if they're
6 on a ship or --

7 MS. FERNANDEZ: In a sub.

8 MS. STEBBINS INCH: Yeah.

9 MS. ROGERS: There are definite
10 limitations on a sub, and I know when I was in the
11 field there were challenges, you know, but they do
12 have the availability of, you know, chaplain
13 support. So they do their best in those areas.
14 And we do talk to victims about the limitations of
15 what is available in that environment.

16 But I can speak to when I was in the
17 field, I was deployed onto a carrier for a week,
18 and I was able to see what was available to
19 victims. And, you know, they do have a
20 psychologist on board that provides support.
21 There's a chaplain. And so, I was able to work
22 within that environment and see that they do have

1 availability. It's just being able to not only
2 educate the medical department, the psychologist in
3 how to make sure that everyone is aware of that,
4 but also educate the command personnel that these
5 are available resources on a ship as well during
6 that time period.

7 MS. FERNANDEZ: Why wouldn't they know?
8 It's their ship.

9 MS. ROGERS: Ma'am, I will tell you that
10 from the times that I was working in the field,
11 these 18- to 24-year-olds do not. It's kind of
12 like a stopgap of information at times. They're so
13 focused on the mission, and getting their jobs
14 done, and going from point A to point B, that a lot
15 of the times a lot of the trainings that we
16 provided when I was there, it's kind of like they
17 miss that piece. They don't listen to here's
18 what's available --

19 MS. FERNANDEZ: The commander or --

20 MS. ROGERS: No, no, the individuals on
21 the ship, not the commanders.

22 MS. FERNANDEZ: Oh, okay. Yes. Yes.

1 MS. ROGERS: They know what's available.

2 MS. FERNANDEZ: Okay.

3 MS. ROGERS: We're talking about the
4 actual population that needs the services. So
5 there are resources available, and I think for the
6 Navy for us, you know, one of the things that we
7 have with the deployed resiliency counselors that
8 are going to be on the ships, that is one added
9 benefit that will enhance the services that will be
10 provided for individuals.

11 CAPTAIN (RET.) GRUBER: Ms. Rogers, what
12 are the capabilities of overseas ports, ships
13 transiting from San Diego that might pull into
14 Japan, Bahrain, or some in Korea, for example. Is
15 there reach back capability on the --

16 MS. ROGERS: We have SARCs in those
17 locations as well. We do have SARCs. We do have a
18 regional SARC in Korea. We do have in Bahrain as
19 well as in Japan. And in all of those areas we
20 will have deployed officers as well in those areas
21 as well, correct?

22 SPEAKER: That's correct, on the ships.

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1 MS. ROGERS: On those ships, so --

2 CONGRESSWOMAN HOLTZMAN: Could you please
3 repeat that because you were talking --

4 MS. ROGERS: I'm sorry. I was just double
5 checking. We will have deployed resiliency
6 counselors as well in those regions. We have
7 family service centers as well. So we do have
8 support systems in those areas so that when they
9 are pulling in, that there is a support system in
10 place should something happen or someone needs to
11 talk to to a counselor in those.

12 CONGRESSWOMAN HOLTZMAN: What's a
13 resiliency counselor?

14 MS. ROGERS: Deployed resiliency
15 counselors, they are the -- they're credentialed
16 providers. They're going to be either social
17 workers, psychologists, that will be dedicated to
18 specific ships. And they will be available during,
19 you know, deployments and even while they're in
20 port.

21 COLONEL HAM: They're not just sexual
22 assault, are they?

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1 MS. ROGERS: No, they will be --

2 COLONEL HAM: They do suicide
3 prevention --

4 MS. ROGERS: Yeah. They will be trained
5 in all areas, but they will also be trained as
6 SARCs. They will -- and they will be able to
7 support victims of sexual assault as well as
8 suicide prevention.

9 MS. STEBBINS INCH: You know, one thing
10 that we have learned over the years working with
11 victims of sexual assault is, and related to Ms.
12 Rogers' stopgap of information, is that people --
13 you can train and tell people where to go to report
14 over and over again, and it's never too often,
15 because they don't think it's going to apply to
16 them until they need it, until either something
17 happens to their friend or until they're looking
18 for it.

19 So the key thing that we have to sustain
20 is the awareness of the resources because we really
21 have a tremendous amount of resources throughout
22 DoD. So it's just sustaining our awareness of it

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1 and making sure it's publicized, so when the person
2 needs them, they see it. They know where to go.

3 CONGRESSWOMAN HOLTZMAN: I want to ask a
4 question on a completely different subject. Okay.
5 Somebody has been a victim of sexual assault, has
6 taken advantage of some services -- mental health
7 services, victim services. And now they're out of
8 the military. They're discharged. What connection
9 is there between any continuing mental health
10 services? What connection is there between
11 military mental health services and VA? Is there
12 what I would call -- I learned this term -- a warm
13 handoff?

14 (Laughter.)

15 CONGRESSWOMAN HOLTZMAN: Or is there just
16 you're out on your own?

17 MS. STEBBINS INCH: No. We try to perform
18 warm handoffs two ways primarily. One through the
19 SARC by either performing a warm handoff with the
20 military sexual trauma coordinator, MST
21 coordinator, that works for the Veterans Affairs
22 Office, or an OIF/OEF program manager who acts in

1 the -- they work for Veterans Affairs. And what
2 they do is they provide information to people that
3 are exiting the military. And then thirdly, we
4 created a special tab on the Safe Helpline specific
5 to transitioning service members. So those people
6 that are about to leave the military that have been
7 sexually assaulted, it's so easy to get overwhelmed
8 by the paperwork because you have other concerns
9 about confidentiality and privacy

10 So we've created this really within five
11 clicks, you can through a decision tree and
12 determine what it is you're looking for --
13 benefits, counseling. We even work with the
14 Department of Labor to get the homelessness piece
15 locked in there.

16 MS. FERNANDEZ: Do you have an Obamacare
17 call?

18 (Laughter.)

19 MS. STEBBINS INCH: So we've tried to
20 coordinate our efforts with Veterans Affairs so
21 that we can link people up as best as possible.

22 CONGRESSWOMAN HOLTZMAN: And how is it

1 working?

2 MS. STEBBINS INCH: I don't know.

3 CONGRESSWOMAN HOLTZMAN: Does anybody
4 know? Has anybody evaluated it? Who's responsible
5 for evaluating that?

6 MS. COLLINS: The Veterans Affairs Office
7 would have to evaluate their services and how
8 they're delivering that support.

9 CONGRESSWOMAN HOLTZMAN: Right. So you
10 have this part, but you don't know actually whether
11 it's adequate in terms of how the people wind up in
12 VA, whether this warm handoff is really sufficient.
13 Do you think -- I mean, in your own experience, do
14 you think that that's something worth looking at?

15 MS. COLLINS: But the VA does it on a
16 recurring occurring panel with DoD.

17 MS. STEBBINS INCH: Right. That's true.
18 There are several points that I think DoD
19 intersects with the VA. And I know -- I think
20 there might be some surveys out there, so I'd have
21 to check into that, and I can let you know. And
22 there's also Transition Assistance Program, which

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1 is separate from what we're doing. It's a
2 completely other program in the military. Each of
3 the services have it, so every single person that
4 is leaving the military gets screened. And they
5 have adjusted some of those screening questions to
6 identify if you've suffered from military sexual
7 trauma, which encompasses both assault and
8 harassment so that they could get you into care.
9 But I can check and see if there's any more formal
10 mechanism in place that tracks that.

11 CONGRESSWOMAN HOLTZMAN: Right, because I
12 think it's -- from some of the testimony we've
13 heard, the VA services were questioned seriously,
14 and so I'm just concerned if you're relying on all
15 of these sophisticated veteran services that this
16 warm handoff is really working.

17 MS. COLLINS: Ma'am, we also just in
18 September, as an example, we trained all of the
19 victim advocate coordinators there to coordinate
20 with the VA on the Army policy and programs. And
21 then I did a training session and then webinars
22 across the U.S. so they would understand the Army

1 program and how we -- and how you transfer victims
2 and how you transfer work with our behavioral folks
3 in that.

4 So certainly the victim can ask for their
5 behavioral health records or a copy of them to
6 provide the counselor in the VA and to continue
7 that service. But there's a difference between
8 getting services and getting benefits. And you
9 have to have much less information to get services.

10 I can walk into the VA and say I've been
11 sexually assaulted. I don't have to produce a lot
12 for them to give me services, medical support, and
13 behavioral health support separate than I want to
14 pursue, like, a disability benefit for something
15 that happened in service, and can I document
16 anything happened with that. So it's different
17 forms.

18 MS. FERNANDEZ: Kind of three questions,
19 but sort of they all kind of relate to each other.
20 If there was something out there to prevent sexual
21 assault from happening, what is it? What's the one
22 thing that you would do? I want to hear from each

1 of you.

2 We've gotten a ton of information that
3 sounds like, wow, you guys are doing all this
4 really good stuff. Where's the gap? What's the
5 one thing you would do that you're saying, you
6 know, they're just missing the boat on this? We've
7 got a ton of attention being beamed down on this
8 issue right now. Like Ms. Cuevas said, you know,
9 your commanders are getting all of this training,
10 but if tomorrow this training stopped because the
11 attention stopped being focused on it, the next set
12 of commanders aren't going to be responding the
13 same way. What is your fear of what could happen
14 in the future?

15 So the three questions. So how do you
16 stop all of this stuff from happening? What's the
17 gap we're missing? You told all the things that
18 are going on, but what's the gap? And thirdly,
19 when the media stops focusing on this, what is your
20 fear?

21 MS. WREN: Well, that's a very loaded
22 question. I've been working on military sexual

1 assault since 2001, and I've spent a lot of time
2 thinking about a lot of those things, and I really
3 wish there were easy answers. Yeah, we all know,
4 this is such a complicated societal problem that's
5 very ingrained very deeply. Obviously things can
6 change. I often think I'm probably older than most
7 people here, but I remember how drunk driving was
8 considered years ago, and, you know, everybody did
9 it, you know, and it was kind of okay. You know,
10 kids without car seats. And, you know, over time
11 everybody learned, and that's kind of how I see
12 this. We've made more progress than I ever thought
13 I'd see at this point. Still not enough.

14 So where are the gaps? There's no silver
15 bullet; otherwise, I think we all would've loved to
16 have had it by now, and I think everybody would
17 have. It's an ingrained societal thing with a ton
18 of bias, and it's slowly starting to change. It's
19 just going to take time.

20 What's the gap? I think just how do we
21 continue to sustain this level at this problem? I
22 don't know that it can sustain at this level, but

1 we are all taking advantage of this opportunity to
2 do as much as we can to change a culture. And I
3 know you've heard it said before that the military
4 can lead culture change in this. Perhaps we can
5 make that societal change over time. It just takes
6 time, like all the other things I've seen in my
7 lifetime.

8 I wish there were a silver bullet, and
9 none of us know what it is or we wouldn't all be
10 sitting here probably. Did I answer the question?

11 MS. FERNANDEZ: No, that's good. I'm not
12 looking necessarily for a silver bullet. But if
13 there's one thing you could do to help prevent one
14 gap and --

15 MS. WREN: One thing that I could do if I
16 could do it, it would be start very, very young
17 with our young people, males and females, to really
18 somehow in a multi-faceted approach because we know
19 just training, like you've heard us all say, just
20 talking at them. Until it affects them, it doesn't
21 make a difference. Really personalize it and make
22 it real for them to get it young before these

1 biases and these entitlement issues come into play
2 as our young people grow up and turn into adults,
3 and we end up with these problems. So I think
4 that's what I would try.

5 MS. FERNANDEZ: Ms. Rogers?

6 MS. ROGERS: Oh --

7 DEAN ANDERSON: Could we just confine the
8 one suggestion to the military context so that
9 we're -- these are possible things that we might be
10 able to suggest implementation of?

11 MS. ROGERS: Yes, ma'am. As far as
12 prevention, you know, for us -- for what I've seen
13 since I've been in the program, you know, I've seen
14 that we've thrown a lot of different things out
15 there at the field, and, you know, we've
16 implemented a lot of different programs, and we've
17 flooded our sailors with a lot of information. And
18 I think that it can be a little overwhelming.

19 And I think the one thing that I feel that
20 we should continue to focus on right now is the
21 bystander prevention. And, you know, it's
22 something that they can connect with. It's

1 tangible. It's something that they can relate to.
2 And I think that that's a formula that seems to be
3 working, and I think it's something that we need to
4 give it time to work. And I think that's where,
5 you know, that turns into the gap.

6 We've spent so much time trying to find
7 that one perfect formula for how do we address the
8 gaps that exist right now with military sexual
9 assault. We've got to find that one thing that
10 will stop it, but let's give it time to work. And,
11 you know, in talking with the SARCs, they've been
12 overwhelmed with all of the different initiatives,
13 and all the different trainings, and all the
14 different things we keep pushing and pushing and
15 pushing. And we've got to give it time.

16 And so, let's see what bystander
17 prevention does for them. Right now, we've really
18 -- we've provided them with training this past
19 September, very tailored for the SARCs. They're
20 starting to weave it into the current work that
21 they have. And we're very much looking forward to
22 measuring what that's going to do for them.

1 And what the fear is, you know, I think,
2 you know, I try not to think about the fear, but I
3 think from a military standpoint, I think my fear
4 would be that we would lose momentum in what we've
5 gained thus far. I've seen us come leaps and
6 bounds since I joined the program in 2008. The
7 time that I've spent in the Air National Guard,
8 when I was in there wasn't a program. And so, to
9 see where we're at now is very, very comforting,
10 but I think we have a long way to go. And my fear
11 is that somehow, as Peggy was talking about that,
12 we will somehow lose this momentum. And I think as
13 we continue to work and continue to press ahead
14 that, you know, hopefully we'll continue to
15 overcome and achieve the environment that we're
16 seeking where no sexual assaults will occur.

17 MS. FERNANDEZ: Colonel?

18 LIEUTENANT COLONEL LEWIS: Starting with
19 prevention, my view is it's all about culture and
20 what the culture is of your organization. And as
21 that changes over time, as leaders get completely
22 and fully engaged and then push that down to the

1 next level, to the next level, to the next level,
2 and then pay attention to it. So anything that
3 seems to be impacting the culture that's leading
4 and correlated to sexual assault.

5 Alcohol we know plays a role in a number
6 of our cases, and the military's culture involving
7 alcohol --

8 MS. FERNANDEZ: Can I stop you there
9 because that's come up several times. Are all
10 these young people provided with some other kind of
11 recreation other than drinking? I mean, is that
12 something that's really out there for -- I mean,
13 like not having a picnic. Like stuff that young
14 people are going to want to do other than going out
15 and drinking because if that's your only choice,
16 that's what you're going to take.

17 LIEUTENANT COLONEL LEWIS: I've had many,
18 many discussions with senior leaders at the
19 installation level about how we can provide all of
20 those options and have them be options that they
21 actually are interested in and will take up. The
22 reality is that alcohol still plays a tremendous

1 role in a lot of the cases that the Air Force sees.

2 I see special interest reports on
3 essentially every unrestricted sexual assault in
4 the Air Force, and alcohol is a common, common to
5 them. So the prevention efforts need to not only
6 just focus on sexual assault, but the roles of
7 things that maybe are before the sexual assault in
8 time.

9 In terms of gaps on the other end of the
10 spectrum, we, of course, have victim rights that
11 are embedded in our policy, and I believe with our
12 recent publication of our instruction, we'll now be
13 in line with the CVRA. But there's still a gap
14 about how those rights should be properly enforced.
15 And if you think about something that's really
16 going to make some impact when the victim has the
17 right to enforce that in some meaningful way,
18 again, there will be more attention to it.

19 MS. FERNANDEZ: Do you mean embedding
20 victims' rights in the UCMJ? Is that what you're
21 recommending?

22 LIEUTENANT COLONEL LEWIS: That-- not

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1 necessarily. We already have it in policy. Adding
2 it to the UCMJ is certainly an option. But DoD has
3 got it in our policy, and we're going to implement
4 it. Mostly is there an enforcement mechanism that
5 can be added to the system that's going to be fair
6 for both parties in any litigation?

7 DEAN ANDERSON: Enforcement for what, sir?

8 LIEUTENANT COLONEL LEWIS: Enforcement for
9 victims' rights -- the right to be heard, the right
10 to be consulted.

11 DEAN ANDERSON: And, sir, what would an
12 enforcement mechanism look like?

13 LIEUTENANT COLONEL LEWIS: There are a
14 number of enforcement mechanisms, and I'd like to
15 defer to some of the things that JSC SAS studied
16 with civilian systems to this afternoon's session.
17 I've got two folks who are going to be talking
18 about what options are out there. Again, there's
19 not one that is a clear winner in my mind, but that
20 is a gap that I see.

21 And then lastly, my fear is resources. We
22 have a tremendous amount of resources right now

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1 that are being able to be put at combatting this,
2 including unprecedented special victims' counsel
3 and resourcing that. We all know that if this is
4 not going to be a long-term discussion in 10 or 15
5 years, that there will be budget constraints, and
6 there will be opportunities to say, well, do we
7 really need this or not. And so, sustaining that
8 momentum in the area of budget cuts and resources.

9 COLONEL HAM: Sequestration. We've got
10 sequestration taking effect in January, which is
11 going to force a \$52 billion cut in DoD on top of
12 all the cuts last year. We've got air squadrons
13 who can't fly. We've got Army units who can't
14 train. This question has already been asked by
15 some of the members. I mean, are some of these
16 resources necessary?

17 LIEUTENANT COLONEL LEWIS: Necessary in my
18 opinion, absolutely, because we have not solved
19 this.

20 COLONEL HAM: When balanced against all
21 the other fiscal constraints the Department of
22 Defense is under.

1 LIEUTENANT COLONEL LEWIS: That is a very
2 difficult question, but I have a tremendous amount
3 of trust in the senior leaders of the Air Force who
4 are -- and within the Department of Defense who are
5 putting these resources in and in making those
6 decisions. I worry when the attention is off of
7 the issue if the resources will be able to be
8 sustained, because as we know, a lot of these
9 things are for continuity of care of victims and
10 for very robust support systems. And there might
11 be arguments that those should be scaled back.

12 COLONEL HAM: If there's another war.

13 MR. CASSARA: Can I ask a question? In a
14 normal PCS there's very little handover. I have
15 PCS'd in my replacement -- it's a permanent change
16 of station, I'm sorry, ma'am. But when you leave
17 your duty position and the next person comes on, I
18 understand that there's a 24-hour handover from
19 your position to your predecessor or your
20 successor. Was there something being built in to -
21 - my concern -- all of our concern would be you
22 leave, the next person comes on, and he's got --

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1 you know, he or she has a two-day handoff, and it
2 takes, you know, a couple of months to get ginned
3 up on a job before you have any real idea as to
4 what you're doing. And I assume that these are
5 normal two- or three-year duty assignments for all
6 uniformed personnel?

7 LIEUTENANT COLONEL LEWIS: It varies in
8 the Air Force depending on whether you're an
9 officer, enlisted. So I don't know of anything
10 particular in the Air Force that's being looked at
11 to force a turnover. But the reality is in certain
12 key jobs we're well aware that there can't be any
13 gaps in resources. And I know that's one of the
14 reasons why perhaps I'm the only uniformed person
15 sitting at this table because we have a number of
16 very, very critical civilian positions with
17 continuity.

18 MR. CASSARA: Does the same apply to the
19 captain, and gunnery, and chief behind you, if you
20 could address that. When you leave and a person
21 replaces you, how much time do they have, or has
22 that been factored in yet?

1 CHIEF WARRANT OFFICER SIMONS: Well, I can
2 say for myself I'm in a Victim Witness Liaison
3 Office or billet that used to be in the staff judge
4 advocate. Now with our new orders, that's no
5 longer a judge advocate that does that job. It's
6 got to be an officer or civilian equivalent, and
7 that's the requirement.

8 So when I transfer in three years or if I
9 retire or whatever, if I leave that job, there will
10 be somebody that comes in behind me to do it. But
11 with that said, this is a collateral duty. This is
12 not -- it's not my job. I work in the trial
13 section at the Legal Office. This is a collateral
14 duty for me. So it could be handed off to another
15 legal admin officer as a collateral duty for them
16 as well.

17 GUNNERY SERGEANT RODRIGUEZ-HOWER: I think
18 it's the same for us. Obviously the uniformed
19 advocate is a collateral duty for most. I'm very
20 unique where I do it full time, so I work with the
21 SARC every day. For other UVAs, they -- if they're
22 chosen to be a UVA -- not many volunteer, and that

1 is -- we've talked about how that's become quite a
2 bit of a problem, but they can be a UVA for a year
3 or, you know, maybe just for six months to fill the
4 billet until they PCS. And then the following UVA
5 just gets trained and they fill the billet whenever
6 they arrive.

7 So there has been discussion on how they
8 can keep UVAs longer, how we can track them so when
9 they PCS, the incoming unit knows they're already
10 trained and they're already certified, and how they
11 can continue to stay -- to be a UVA.

12 MS. FERNANDEZ: So is a victim advocate,
13 it's a volunteer position?

14 MS. CUEVAS: Ideally you would have a
15 service member volunteer to become that uniformed
16 victim advocate. Unfortunately in the Marine Corps
17 they don't always have that option.

18 MS. STEBBINS INCH: It's not an unpaid
19 position.

20 MS. CUEVAS: No, it's a collateral duty to
21 their normal job. All marines have collateral
22 duties, and some are appointed as victim advocates

1 for the unit.

2 MS. COLLINS: Every service is different.
3 So at our brigades, we have full-time military
4 personnel doing these -- the requirements as we're
5 hiring on civilians to offset them. And so, there
6 will remain 250 full-time military positions that
7 are required to be in the position for three years
8 and serve in those jobs before there's turnover for
9 collateral duty. They must have at least a year --
10 a two-year retainability to serve in the position.

11 CONGRESSWOMAN HOLTZMAN: I just heard
12 someone say this -- the officer in the back -- that
13 it's hard to recruit people to these positions who
14 wear a uniform. Is that true, and if so, why? Is
15 it just --

16 MS. CUEVAS: Yes, ma'am, it is difficult
17 to.

18 CONGRESSWOMAN HOLTZMAN: Can you explain?
19 Is there some stigma attached to this position?

20 MS. CUEVAS: Especially -- yes, ma'am. In
21 the last couple of years with all the required
22 training and the duties that are coming down, a

1 marine will very quickly tell you, and I don't want
2 to speak for my marines back here. They join the
3 Marine Corps -- you'll hear this from a lot of our
4 guys -- to fight wars. And then they come in and
5 we appoint them, okay, well, you're the last one
6 checking in, now you're going to be the uniformed
7 victim advocate. That's the furthest thing from
8 their mind when they went into that recruiting
9 station to join the Marine Corps is that I'm going
10 to be a sexual assault victim advocate now.

11 And so, we bring them in and we train
12 them. And when we do training we ask them, how
13 many truly volunteered? And out of a class of 40,
14 you may have two, three, that answer I volunteered.
15 The rest were volun-told to come to this class.
16 And they -- we sway them. I give them the option
17 by the end of this week if you have -- if you still
18 have uncertainties, if you still think that this is
19 not something you can do. We always give them an
20 out, and I have done it for many of them. I'll
21 call your commander, and the commanders know if
22 they get a call from me, it's nothing adverse for

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1 them. This is just not the right person for this
2 billet.

3 Now, they've been screened properly
4 according to the commander's checklist for
5 selecting them. They fit the criteria. But it
6 just may not fit that personality. We know not
7 everyone can do this work. We know that. But in
8 the Marine Corps, we don't always have the option
9 to have a big pool -- a whole battalion of people
10 that's going to volunteer to act in this collateral
11 duty. It's just against their nature sometimes.

12 MS. WREN: But that's where the Coast
13 Guard really makes out because of the humanitarian
14 base.

15 MS. CUEVAS: Humanitarian.

16 (Laughter.)

17 MS. WREN: You know, so we're kind of
18 lucky there --

19 CONGRESSWOMAN HOLTZMAN: And what about
20 the other services? That's not an issue in the
21 Army?

22 MS. COLLINS: Well, I think we experienced

1 some of that initially, yes, ma'am. But I would
2 say that we've put in place an additional skill
3 identifier at 1 Bravo that those personnel that
4 have met this requirement now and serve in those
5 positions, that is seen by promotion boards and
6 others as to be beneficial for them.

7 CONGRESSWOMAN HOLTZMAN: Right.

8 MS. COLLINS: So it's career--so we're
9 trying to make it career enhancing. We are
10 evaluating a military occupational specialty right
11 now so there would be upward mobility because for
12 them, it is about what is their career. And if I
13 serve in this position, I can't do my full-time
14 job. Is it going to be career hindering for me?
15 So we're trying to build those incentives in place
16 so it will be career enhancing.

17 CONGRESSWOMAN HOLTZMAN: And you in the
18 Navy?

19 MS. ROGERS: In the Navy we have over
20 4,400, you know, certified victim advocates that
21 are uniformed victim advocates. And we also have
22 our 66 civilian victim advocates as well.

1 CONGRESSWOMAN HOLTZMAN: I know, but are
2 you experiencing the same problem?

3 MS. ROGERS: We have not heard that from
4 our SARCs. They actively recruit and train victim
5 advocates. And we have not seen any, you know,
6 decline in the numbers as it relates to that.

7 MS. CUEVAS: Well, we haven't seen a
8 decline. They just don't all volunteer.

9 MS. SURETTE: The military or the Air
10 Force has full-time SARCs. They're either
11 civilians or officers. We have full-time victim
12 advocates. Most of them are civilians. And then
13 we have military victim advocates, and those --

14 MS. FERNANDEZ: But do they volunteer for
15 it?

16 MS. SURETTE: Those are volunteers. The
17 other ones they apply --

18 MS. FERNANDEZ: And do you have problems
19 with people volunteering for it?

20 MS. SURETTE: Sometimes some locations,
21 yes, and we're looking into that. Again, I think
22 it's do they meet the qualifications, do they want

1 to do this, and do they have the disposition to do
2 this, so it's kind of all three of those.

3 CONGRESSWOMAN HOLTZMAN: Right. But then
4 also you have the question that was raised before.
5 How does this fit in with my military career? How
6 does this fit in with my military ambition? And
7 so, it's probably really important, and I commend
8 the Army for thinking through how to make this
9 something that is a bonus, or at least someone can
10 see the pot of gold at the end of the rainbow.

11 MS. SURETTE: Right, how is this desirable
12 in your career path.

13 CONGRESSWOMAN HOLTZMAN: Right. And maybe
14 that's something that needs to be looked it.

15 MS. SURETTE: Yes.

16 CONGRESSWOMAN HOLTZMAN: I see the Coast
17 Guard doesn't have this problem at all.

18 MS. WREN: No. That's the only thing
19 we're really good --

20 MS. CUEVAS: They're humanitarians.

21 (Cross talking.)

22 CONGRESSWOMAN HOLTZMAN: They want to look

1 at it.

2 MS. CUEVAS: We have started looking, and
3 it caveats into what we discussed earlier, is we've
4 been giving awards to very active UVAs. We try to
5 recognize them when they're really good. And I can
6 tell you, a marine is a marine. Even if they're
7 volun-told to do something, at the end of the day,
8 they're going to really try their best to do it
9 well.

10 We've had a few oops and we've released
11 from the duty immediately when we find that they're
12 not just the go-to kind of person for this type of
13 job, and that's given. But especially at Marine
14 Forces Reserve we're very limited to the people
15 that we can even choose. Sometimes at our Reserve
16 sites, there may only be 12 active duty on a site
17 with, you know, several hundred drilling
18 Reservists. The drilling Reservists can't be UVAs.
19 We have to pull from that active duty staff. So
20 we're even more limited at those limited sites.

21 CONGRESSWOMAN HOLTZMAN: So let's just say
22 you and the Army have figured out what the --

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1 COLONEL HAM: Incentive structure.

2 CONGRESSWOMAN HOLTZMAN: -- incentive
3 structure is. How do you share it with all your
4 colleagues in the different services? How does
5 that work?

6 MS. STEBBINS INCH: Well, actually General
7 Patton has been in discussions with the services
8 about how to make this a career progressor for the
9 individual duties within the services and how to
10 consider making it a specialty. So they're
11 reviewing that.

12 CONGRESSWOMAN HOLTZMAN: Right. Right.
13 So there is a mechanism, but it's a broader
14 question than just this. I mean, if you've figured
15 something out important and you've identified a
16 problem in the area of how you respond to sexual
17 assault, whether it's the Marines, or the Navy, or
18 the Coast Guard, or the Army, and you've figured
19 out a really good solution for that, how do you
20 share it with your colleagues?

21 That's kind of the larger question. I
22 mean, I'm glad to see that General Patton is

1 addressing this specific one. But is there a
2 mechanism for sharing good news, effective
3 measures, best practices among services?

4 MS. COLLINS: We certainly brief each
5 other on our different programs. So even a couple
6 of weeks ago I was over with the Deputy Director of
7 the Air Force Program, and we were talking about
8 some of the Army, different things we were doing.

9 Monthly, DoD has a meeting or every two
10 months a meeting where we bring up all our new
11 initiatives that are briefed at that as well, and
12 we share those across the board. That's a general
13 officer level forum as well, so it's -- and then
14 normally they're back seated by a colonel or a
15 civilian equivalent to a colonel in those forums.
16 So there's recurring updates where we're trying to
17 share best practices across the board.

18 Our annual reports we submit up to DoD
19 includes all of the services' best practices that
20 they've identified across their program at
21 different echelons of command. Was it something
22 done by a local commander versus across the Army as

1 an example, where we see promising or best
2 practices.

3 CAPTAIN (RET.) GRUBER: We're working our
4 way across the table.

5 MS. FERNANDEZ: Yeah, we're working our
6 way across the table. What's the overall budget
7 for all of the sexual assault services?

8 MS. STEBBINS INCH: For DoD SAPRO Office,
9 I don't have that figure off the top of my head.
10 The services are responsible for funding their own
11 programs, but for DoD SAPRO, I would have to get
12 you that information.

13 CAPTAIN (RET.) GRUBER: We can research
14 that for you.

15 MS. FERNANDEZ: We can research what
16 exactly it is. And what I want is a comparison to
17 what we've spent on other kinds of services in the
18 military, because, I mean, the argument of, you
19 know, if we go to war, can we afford to be doing
20 the kinds of things that we're doing here. You
21 know, in my mind it's a readiness question. And
22 so, I want to be able to say from here to this

1 we're spending this on sexual assault.

2 CAPTAIN (RET.) GRUBER: Are you talking
3 about the idea of personnel services, because if
4 you compare it to the cost of an aircraft carrier,
5 it's not going to compute.

6 MS. FERNANDEZ: Exactly. Well, I would
7 say yes. Personnel services, I think that would be
8 a question that maybe we want --

9 CAPTAIN (RET.) GRUBER: Manpower training
10 and education, things like that.

11 MS. FERNANDEZ: Right. Right. I think
12 it's all of those things that we need to talk to.
13 And we need to have a fair comparison because at
14 the end of the day, I don't want it to be sort of
15 like the food stamps bill that somehow we think
16 we're going to get rid of that one and we're going
17 to get rid of our budget deficit.

18 CAPTAIN (RET.) GRUBER: Understood.

19 MS. CUEVAS: It's also bodies. I know the
20 Marine Corps had to draw down from 220,000 troops
21 to 184,000, is that correct?

22 DEAN SCHENCK: Excuse me. I wanted to let

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1 you know I've got to go teach class from 12:00 to
2 1:30, and then I'll drive over and I'll see you
3 about 2:00 or so.

4 MS. FERNANDEZ: Okay, terrific.

5 DEAN SCHENCK: All right, thank you so
6 much.

7 MS. CUEVAS: So there has been discussion
8 in making this a permanent MOS similar to -- you
9 know, to be a full-time victim advocate as a
10 marine. But to do so would take those bodies out
11 of their normal jobs as a marine and put them into
12 another job as we're drawing down that many troops
13 now.

14 MS. FERNANDEZ: Ms. Cuevas, I think we
15 left off with you.

16 MS. CUEVAS: Yes, ma'am. Prevention. One
17 of the things I've observed in working with both
18 the Navy and the Marine Corps now is we come
19 straight into our young people and we're telling
20 them about sexual assault when we've missed a whole
21 element, this whole culture of what's going on a
22 lot of times. We've missed this whole culture that

1 surrounds sexual assault, all the "isms," all the
2 harassment, all this type of stuff that contributes
3 to this type of rape culture, as we've called it
4 for years.

5 And we don't always address that. We've
6 had -- we jump right in with trying to identify
7 what sexual assault is when they can't even address
8 what normal sex is or what normal relationships
9 are, or interpersonal communication. And we skip
10 all of that.

11 So I think a lot of times -- I had a
12 colonel actually tell me that he didn't need me to
13 get up and describe all this because he had no
14 doubt that when his marines saw a sexual assault
15 take place, that they would step up. And I said,
16 but, sir, do they know what that looks like because
17 they don't know what that looks like. They assume
18 they do.

19 And I think one of the things that is
20 missing is that total package of education to our
21 young folks. I think they need more in-depth
22 training on humanitarian needs. Is that what you

1 were getting at? I agree with you a hundred
2 percent on how to treat other people well, how to
3 treat themselves well. We skip right over that and
4 go straight to sexual assault many times. And I
5 think that's something that they're not connecting.

6 Also what was our second question? I'm
7 sorry, we got off track. So what's missing is
8 time. I agree with Tanya. We need time to
9 implement some of this. The rollout has been so
10 fast and furious in the last two years that we're
11 exhausted. I honestly feel like I have not
12 completed one quality project since I've worked for
13 the Marine Corps. You can't get the ink dry before
14 you're working on the next project.

15 I can't answer emails because we're so
16 busy rolling out, collecting data, rolling out,
17 collecting data. That's what we do all day long.
18 Last week we spent a good deal of time -- myself
19 and our three SARCs -- on two very acute victims
20 who needed some -- a lot of attention. And since
21 ours are spread out all over, we're on the phone
22 and we're traveling constantly to them. And at the

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1 same time I had to weigh, do I get my DoD end of
2 the year report in, or do I get this person
3 hospitalized this week?

4 The rollout is fast and furious, and we
5 need time to implement what has already been put in
6 place before we roll out anything else because I
7 really don't think we have a good grasp of what
8 we've already created. I think it's just all over
9 the place and it's scattered. And it really feels
10 like I've done this kind of work for a long time,
11 and to come to work every day thinking, we've not
12 completed anything yet. And I don't know.

13 I hear Tanya -- do you feel that way also?
14 It's frustrating to see things not completely --
15 and stand back and go, wow, that's good, or, that
16 didn't work, let's try something else. We don't
17 give it time to marinate and see if it's complete.

18 MS. FERNANDEZ: No, it makes total sense.
19 I would hope that somehow in all the craziness that
20 getting that person to the hospital --

21 MS. CUEVAS: Well, that is always
22 priority.

1 MS. FERNANDEZ: Right.

2 MS. CUEVAS: So you're not getting your
3 DoD report any time soon.

4 (Laughter.)

5 MS. CUEVAS: Yeah, It's a no-brainer which
6 one takes priority, but it is very frustrating to
7 know that you feel like you've not completed a
8 project up to the quality and the standards you
9 would've at any time given the time, yeah.

10 MS. COLLINS: I think, again, a lot of
11 it's already been said. For us, you know, we put
12 an action plan in place in '04. We came back,
13 revisited it in '08 after we had gotten everything
14 done, and we saw it wasn't enough. And we put
15 another one in place, and it was about cultural
16 change. And so, the final phase of that campaign
17 is sustain, refine, and share best practices. So
18 it's very much what we said about are we sharing
19 what we have. Are we sustaining and are we
20 constantly evaluating ourselves to look at better
21 options, because it can't be a stagnant plan.

22 We're never going to complete this work,

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1 if you will. So our first phase was committed Army
2 leadership. That phase never ends because that
3 includes training and accountability. And we just
4 changed how we do our OERs, our officer evaluation
5 reports, and our NCO, non-commissioned officer,
6 evaluation reports. They have to address this
7 program when they take command and how they're
8 going to manage it.

9 We just changed command climate surveys
10 where they have to take surveys 30 days into
11 command. Do a plan on how they're going to address
12 this issue based on the responses they get, go back
13 six months later, evaluate their plan to see if it
14 was on target or not and adjust it if they need to,
15 and then go back a year later and measure it again.
16 That's why they're in command for two years just on
17 the subject matter.

18 Second phase was Army-wide conviction and
19 getting everybody on board. We recruit in, and
20 we're training folks coming in from the culture, as
21 we talked about earlier, where we're right now
22 trying to take this down to the junior high school

1 level where we have Junior ROTC for training,
2 because, you know, your values and your ethics and
3 all of that is built very young. So when you're
4 walking in the door and your experience has been,
5 this was not accountable in my community or in my
6 family, and we're charging folks a couple of days
7 into the military with sexual assault because
8 they're doing something. And they're getting
9 trained their sixth day in the Army on this issue.

10 But they're already getting charged
11 because they've done something. They walked in a
12 gated community, if you will, that we have
13 different laws we're going to prosecute on or some
14 of the same laws, but they were not necessarily
15 held accountable. And so I think that's critical.

16 So for me, training and the accountability
17 all goes into the prevention campaign. And I don't
18 think it's a silver bullet, and we've got multiple
19 actions. We're in the third phase right now,
20 achieve cultural change, that builds on the other
21 two. But we're going back to phase two because
22 we've had a turnover, and there's been time, and

1 other campaigns have stood up, which are always
2 challenging. Suicide prevention campaign. So
3 there's always different campaigns that are moving
4 commanders around on what they focus on that
5 becomes challenging to sustain the efforts and
6 embed them.

7 I think for the resources we've had great
8 support from our leaderships across the board, but
9 making sure it's programmed out throughout the
10 years. And we've got so much being added on every
11 year. It creates an unfunded requirement every
12 year. I don't think I've briefed yet where I
13 haven't gone to the resource managers every year
14 and said, I know I briefed you two years ago on
15 what we need this year, but all of that has changed
16 and we need more money.

17 So right now I'm briefing new requirements
18 for Fiscal Year '14. I'm briefing new requirements
19 to try get in the President's budget before January
20 so we can change the Fiscal Year '15 budget. And
21 then I'm briefing Fiscal Year '16 through '20 right
22 now on what we need as everything is constantly

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1 changing and new bills are being added on.

2 MS. FERNANDEZ: How can you possibly brief
3 on Fiscal Year '20?

4 MS. COLLINS: We have to. We project that
5 far in advance. We brief this year for Fiscal Year
6 '15 through '20 on what we'll need to run the
7 program. And then you adjust fire as you get to
8 that year. So we're not -- next October will be
9 Fiscal Year '15, but if the Secretary of the Army
10 wants to change his budget that he put in a year
11 ago for that period, he has to get it in before
12 January right now with any of those changes.

13 So and we know there's going to be
14 changes. There's been a lot of new requirements
15 rolled out this summer. The Secretary of the Army
16 has been aggressive on adding new changes as well.
17 Our screening criteria alone is adding on
18 additional requirements. And we're looking at
19 standing up \$18 million additional in manning over
20 on top of the \$45 million bill that just pays for
21 victim advocates and SARCs, different from the \$3.2
22 million for new legal counsel and new victim

1 witness liaisons and other things. So, you know,
2 expanding our school house. There's a bill to all
3 of that during the year of execution, so money --
4 there is no more money. It's just a reshuffling of
5 money, so it's got to come from somewhere. So some
6 other mission is not going to get done to pay this
7 bill, and it's just a re-prioritization.

8 For us, this is the number one priority in
9 the Army. Sexual assault is the number one for the
10 Secretary and Chief, and they've so stated in their
11 campaign plans and their Army campaign plan. We're
12 in there. So it will get funding as G357 does the
13 rack and stack of every Army priority from what
14 they call the one to end list and decides what's a
15 must fund, the zero category, and you work your way
16 on down away from that. We are a zero category and
17 we must fund our program.

18 CAPTAIN (RET.) GRUBER: The number one
19 priority --

20 MS. COLLINS: Above board, we are the
21 number one --

22 CAPTAIN (RET.) GRUBER: As I say, we're in

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1 war, and there are soldiers in combat as we speak.

2 MS. COLLINS: We are the number one
3 priority for the Army.

4 COLONEL HAM: That's extraordinary. I
5 know that's the Army's number one priority. That's
6 just mind-boggling to me. We have soldiers dying
7 in Afghanistan.

8 MS. COLLINS: But this is so --

9 COLONEL HAM: Oh, I know. I'm not arguing
10 with that. I'm just commenting on how
11 extraordinary.

12 MS. COLLINS: This is so far in war to the
13 culture --

14 COLONEL HAM: You almost forget about it
15 because we're not there.

16 MS. COLLINS: And to the profession of who
17 we want our soldiers of who we want to be as an
18 Army, as a corporation, and that if we can't -- if
19 you're not going to get this right and dedication
20 to this, then you're saying you're willing to have
21 something else. What is more important than what's
22 happening with that? And I'm not saying -- but our

1 senior leaders, they've sent a strong message to
2 our leaders across the Army, this is our number one
3 priority. Now, I'm not going to say two years from
4 now it'll be the number one priority. It may not
5 be. But as far as POMing and resources, we're
6 putting those in place to institutionalize the
7 program. We have 32 training support packages for
8 commanders, for new recruits, for operational
9 training, for our first responders. All of that's
10 being POM'd. But the accountability on whether or
11 not it's being executed as a standard always has to
12 come back. The commander accountability, are they
13 doing the command climate surveys? Are they
14 getting that accountability on their NCOERs and
15 OERs? Are they being evaluated for what they do?

16 I think, you know, across the board, those
17 two things will move us forward. If we're going to
18 have culture change, we want where this doesn't
19 have to be the number one priority because we've
20 already ingrained it, and it's not acceptable. So,
21 you know, but to get to that culture change, I
22 think you have to have a period of immense focus.

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1 And then you have to have a sustainment level,
2 which there is a resource bill to that sustainment
3 level. And we're going to get best practices that
4 come up five years from now we're going to have to
5 adjust fire on and constantly looking for those
6 things.

7 CAPTAIN (RET.) GRUBER: Can I ask a
8 specific question? In the beginning Colonel Lewis
9 read a letter from a victim talking about the level
10 of contact and care that I assume she received.
11 General Darpino also provided a number of letters
12 to us recently from victims, some of them
13 requested, some of them just spontaneously
14 generated. And I was wondering specifically with
15 victim advocates who are often volunteers as
16 collateral duty, what's their case load like? How
17 do they balance this with their normal duties,
18 which may require them to stand watches or maybe
19 even go TDY? And how do you assess their --

20 CONGRESSWOMAN HOLTZMAN: TDY?

21 CAPTAIN (RET.) GRUBER: Temporary duty --
22 I apologize -- do a temporary assignment. And how

1 do you assess their emotional resiliency for this
2 job, because I would imagine it could be extremely
3 difficult. And these aren't people who necessarily
4 have a master's in social work or something like
5 that who are prepared for it. So if you could
6 address that a little bit more because I think with
7 victim advocates, that really is where the rubber
8 meets the road with these programs.

9 MS. CUEVAS: Gunnery Sergeant is a victim
10 advocate. Well, she was as a collateral duty --
11 it's your primary duty at the moment.

12 GUNNERY SERGEANT RODRIGUEZ-HOWER: It's
13 primary duty, yes.

14 MS. CUEVAS: Maybe you could --

15 GUNNERY SERGEANT RODRIGUEZ-HOWER: I think
16 that -- well, I can only speak for Quantico, which
17 is where I'm looking at currently. I take a lot of
18 the workload off the uniformed victim advocates if
19 they're going TAD or if -- well, temporary duty, as
20 you mentioned, sir.

21 Emotionally speaking, I don't think they
22 are ready for it. I think that my SARC, as she

1 trains uniformed victim advocates, she tells them,
2 no kidding, like this is what you have to be
3 prepared for, and you do scenarios. But a lot of
4 them aren't prepared for what they see or hear or
5 emotional responses. A lot of them feel like, you
6 know, a victim might be angry, and they cuss a lot.
7 And I tell them that's not the case at all. They
8 don't ever picture victims being male marines, and
9 that's quite a shock to them when that happens.

10 So how they handle their workload, they
11 assign -- well, their commanders know that they're
12 going to be gone basically as long as it takes to
13 help the victims, whether it's taking them to
14 medical or NCIS. And everything just has to cease.
15 Everything stops and every -- all the attention
16 goes to those victims. And it doesn't matter how
17 long it takes. And if they can't make an
18 appointment, we will ask the victim is it okay if I
19 step in. You know, I don't know any of your
20 information, but, you know, I want to be there for
21 you emotionally. And they're usually okay with
22 that if -- you know, we usually tag team if we have

1 to.

2 But as far as workload goes, I think it
3 depends on the marine's MOS. We have instructors
4 that are UVAs, and they have a hard time with it
5 because as instructors they have to be there to
6 teach. And they don't have the time to step back
7 because then no one will be there to teach their
8 academy -- the Staff NCO Academy.

9 So I think in that instance, we've only
10 had one victim that requested a different UVA
11 because she was not getting the attention she
12 needed. And we certainly helped her out.

13 CAPTAIN (RET.) GRUBER: What's the
14 caseload for a typical victim advocate? How many
15 cases should they handle, and how many cases do
16 they normally have to handle?

17 MS. CUEVAS: Once they're assigned a case,
18 we try to avoid giving them two at once. And so,
19 they should only have one open report at a time,
20 although we do have a few that are out at our stand
21 alone sites that are handling two cases at the
22 most. Any more than that would not be possible for

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1 them to --

2 MR. CASSARA: Is there a requirement, and
3 you may have already covered this and I may have
4 missed it. But is a requirement that a female
5 victim has a female SARC and a male victim has a
6 male SARC?

7 SPEAKERS: No.

8 MS. CUEVAS: But there's -- we do offer --
9 we ask them if they're comfortable with us. If
10 it's --

11 MR. CASSARA: Oh, okay.

12 MS. CUEVAS: We ask either. If it's a
13 female, are you okay with me.

14 MR. CASSARA: Okay. Okay.

15 MS. SURETTE: And actually for the Air
16 Force, if we have males who come forward, in my
17 experience they wanted a female victim advocate.
18 They don't --

19 MS. CUEVAS: We get that a lot, too.

20 MS. SURETTE: But for the Air Force, we
21 have statements of understanding. We get their
22 supervisor to sign off, get their commander to sign

1 off to know that this is an additional duty that
2 they want to participate in. And it may require
3 time away from work. And we usually give them one
4 victim. We have ongoing monthly training for them.
5 We also want to know what their deployment schedule
6 is, what their leave schedule is. If they think
7 they are not in an emotional way that they can
8 provide support, let us know and we will step in or
9 we'll assign them another --

10 CAPTAIN (RET.) GRUBER: So the supervisors
11 and the COs -- I know from being a senior watch
12 officer, if I lose one person off the watch roll, I
13 may have to change the rotation from two sections
14 to three or from three to two, things like that.
15 So, up the chain of command they understand how to
16 prioritize this collateral duty?

17 MS. ROGERS: Right. Tanya from the Navy.
18 There's the supervisors, there's a statement of
19 understanding that they have to sign -- DD Form
20 2909. And it states on there that they have to
21 understand that the victim advocate will become
22 unavailable. And especially when a victim first

1 reports, they will -- a victim advocate will become
2 sometimes unavailable for two to three days
3 depending on going to medical, going to -- you
4 know, going to law enforcement. And someone else
5 will have to -- they'll have to reshift the
6 schedule. So that does become a challenge. But
7 the commander typically will adjust to that.

8 And as far as -- one of the things as a
9 SARC, you know that as well is that, you know,
10 we're constantly monitoring victim advocates. You
11 know, as a SARC, I was always touching back and
12 saying how are things going, is there anything that
13 you need, you know, and to come to do a debriefing
14 with them, you know. Is there is anything that
15 you're concerned about?

16 So measuring, you know, where are you at
17 with this case so that, you know, you're making
18 sure that their needs are being met and they're not
19 becoming overwhelmed, because it is -- it can be
20 traumatic, and there is vicarious trauma that can
21 take place. And so, you know, we always ensure
22 even through the training -- we had a clinical

1 counselor that came through for the victim advocate
2 training, the 40-hour course, who comes in and
3 talks to them specifically about here's what we can
4 offer you to support you in your role as a victim
5 advocate.

6 CAPTAIN (RET.) GRUBER: Thank you.

7 MS. ROGERS: You're welcome.

8 MS. FERNANDEZ: Why don't you -- you're
9 last up.

10 MS. STEBBINS INCH: Well, I concur with
11 everything that's been stated already. What would
12 I do to prevent sexual assault? I think that we
13 really have to create an environment that says the
14 military is the absolute last place I want to be if
15 I am going to sexually offend somebody. And we can
16 do that through a couple of ways, and these are the
17 gaps that I see missing.

18 I think that in order to support that kind
19 of an environment, we have to have -- someone said
20 about the bystander intervention, which leads me to
21 re-looking at how we're addressing this with the
22 men. With the women only being about 15 percent of

1 the force, this has got to stop being just a
2 women's issue. This has got to be a men's issue,
3 too. Men can help stop it along with the women by
4 doing bystander intervention. And we've got to, I
5 think, create the messaging that encompasses the
6 men so that we start speaking directly to the men
7 about how they can support our efforts in
8 preventing this from happening.

9 And in addition, with fear and the stopped
10 funding that we've heard of, all the funding gaps
11 that we're identifying, I'm wondering, you know,
12 how do we institutionalize the program so that it
13 doesn't ebb and flow with the attention that it's
14 getting at the moment, because I see it definitely
15 as a mission readiness issue. You can't have an
16 estimated 26,000 people experience sexual assault
17 not concentrating on their job, not being able to
18 focus on their job because they're having to deal
19 with the trauma of being sexually assaulted.

20 So we have to be more creative in coming
21 up with some funding streams. And I think about
22 what the civilian community did with the Violence

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1 Against Women Act. They created a funding stream
2 through VOCA to fund the Civilian Service Programs,
3 to fund victim witness positions for the FBI, for
4 the U.S. Attorney's Office. And they created a
5 compensation fund for victims. And I'm wondering
6 why our judges aren't allowed to fine anybody. Why
7 are they not allowed to order restitution? Because
8 these could potentially create some funding streams
9 that would support victims along with supporting
10 the programs.

11 COLONEL HAM: They can fine. Fines are
12 authorized in any case. But it's payable to the
13 Treasury. It's payable to the Treasury.

14 CAPTAIN (RET.) GRUBER: It doesn't go to a
15 fund.

16 MS. STEBBINS INCH: Oh, okay. I didn't
17 know that. And then the last thing I wanted to
18 touch on in support of creating an environment that
19 doesn't -- that really doesn't tolerate sexual
20 assault, that that's the last place any offender
21 wants to be. With the victims' rights piece, you
22 know, I personally do think it needs to be a

1 military law if it's going to have any teeth. And
2 I agree that it has to have some enforcement
3 mechanism. And we have to -- I think we need one
4 office designated as someone to receive complaints
5 about victims' rights, and to investigate those
6 complaints. I see that as a gap.

7 MS. FERNANDEZ: Do you see that also --
8 would that office be someplace -- if there's
9 retaliation by a commander, would that office be
10 the place that you would see victims go to?

11 MS. STEBBINS INCH: Well, retaliation by a
12 commander, I think there's already that mechanism
13 in place in an Article 138 complaint if you
14 experience that. You can already go to Legal
15 Assistance and talk to them about that complaint,
16 for example.

17 CAPTAIN (RET.) GRUBER: Or the Inspector
18 General.

19 MS. STEBBINS INCH: Right.

20 MS. FERNANDEZ: What we heard is the
21 Inspector is -- that's just not the place to go.

22 MS. STEBBINS INCH: Well, that's at the

1 base level for all the reasons that you've probably
2 heard. I think what I'm more referring to is a
3 higher level, like a DoD. That right now there's
4 not one -- like DoD IG is not investigating
5 complaints of victims' rights from the field. So
6 right now, if you would like to file a complaint
7 that your investigator did -- treated you poorly,
8 you could go to DoD IG on the hotline and file that
9 complaint. But if you want to say that the trial
10 counsel didn't allow me to sit in on the court
11 martial and I have the right to attend trial unless
12 the judge determines otherwise, there's no one
13 that's going to look at that complaint.

14 MS. GARVIN: So there's nothing like the
15 CVRAs Ombudsman's Office that was created after
16 CVRA 3771 was passed. Okay.

17 MS. STEBBINS INCH: And I think there's
18 already -- I'm not saying create a whole other
19 organization in DoD. I think we already exist.
20 It's just designating that somebody has this role
21 to receive reports and investigate them.

22 MS. FERNANDEZ: Let me just follow up

1 because this is -- we've been talking a lot about
2 the chain of command. Let's say that the chain of
3 command stayed the way it was, but I feel like I'm
4 being retaliated against by my commander. What do
5 I do? Do I have any recourse? And what is it, and
6 do people know about it?

7 MS. STEBBINS INCH: I mean, the first
8 recourse if I was assisting that victim is I would
9 get them in to see the legal assistance attorney to
10 learn about your Article 138 complaint.

11 MS. FERNANDEZ: What is that 138
12 complaint?

13 MS. STEBBINS INCH: I think maybe one of
14 the lawyers can answer that better.

15 COLONEL HAM: I can address it because --

16 CAPTAIN (RET.) GRUBER: I used to do that.

17 COLONEL HAM: Any soldier has under
18 Article 138 of the UCMJ -- any soldier has a right
19 to institute a complaint against their commander
20 for any discretionary act. Example, I asked for
21 leave over Christmas. My commander denied it. I'm
22 filing an Article 138 complaint. What gives an

1 Article 138 complaint teeth is it has to go through
2 the General Court Martial Convening authority up to
3 the service level.

4 CAPTAIN (RET.) GRUBER: The Secretary's
5 Office.

6 COLONEL HAM: It has to go forward. It
7 can't be stopped. So typically there's a process
8 they have to request redress. They have to say I
9 want this within a certain amount of time. But if
10 they don't get it --

11 CAPTAIN (RET.) GRUBER: I used to review
12 and brief those. I had the job for the Department
13 of the Navy, every 138 in the Navy and Marine Corps
14 I used to have to read and forward up to the
15 Secretary and brief them. It was a fun job.

16 What happens is, as Colonel Ham was
17 saying, is a service member will ask for whatever
18 they want, their relief. I wanted to take leave
19 during Christmas. They request that. It's denied.
20 They can then -- and it may be denied by somebody
21 lower in the chain of command perhaps. And then
22 they request from their CO, you know, I want to

1 take this leave. They say no. They then file a
2 138 grievance, which goes via their commanding
3 officer to the first flag officer, general officer,
4 in the chain of command.

5 The commanding officer than can provide
6 relief and say, okay, here's your leave. If not,
7 the general officer in the chain of command can
8 review it and provide relief. If relief is denied,
9 either way a report of that disposition is sent to
10 the Secretary of the service concerned. Normally
11 in the respective judge advocate general's offices,
12 they have someone who receives those, reviews them,
13 and briefs them up for final action. The Secretary
14 of concern could reach down and provide relief,
15 depending on what it is.

16 MS. FERNANDEZ: On first blush, that
17 sounds like an awful way to have to complain about
18 your commander if he's not responding correctly.

19 CAPTAIN (RET.) GRUBER: If you need
20 grievance, that's cognizable and clearly defined.
21 And so, it's not something that if there's a
22 general sense of lack of support or indifference,

1 it's not going to be a tool for that. It's more of
2 a tool for official acts, particularly ones that
3 affect the permanent record of the individual or
4 their prospects for future employment within the
5 service. So I would agree with you.

6 JUDGE MARQUARDT: Are there time frames
7 for getting each of one of those things done?

8 CAPTAIN (RET.) GRUBER: Yes, ma'am. I no
9 longer recall them. By service regulation, though,
10 there are hoops you have to go through. I believe,
11 normally the general course would be 45 or 90 days.

12 MS. FERNANDEZ: Do you all see that as a
13 problem that, okay, the chain of command is left
14 alone, but I don't really have a way then to say,
15 look, my commander is not supporting me through
16 this. And it just seems like everybody I'm working
17 with is against me. They're for the perpetrator.
18 I mean --

19 MS. COLLINS: I know we're looking at
20 something in the Army right now. We briefed it to
21 the Secretary about a week ago, which is we used to
22 have our victim advocates and our sexual assault

1 response coordinators would be working for -- under
2 the brigade chain of command.

3 MS. FERNANDEZ: Right.

4 MS. COLLINS: To allow that victim
5 advocacy to not have any support role as being shut
6 down to them. If a victim is complaining, like,
7 say, about the chain of command, we are moving that
8 victim advocate. They'll work in the brigade, but
9 they will be in alignment outside above that level
10 either to the division level or to the installation
11 commander so that if there is a challenge and
12 they're voicing it that there is an opportunity to
13 step in and make changes in that environment.

14 MS. FERNANDEZ: So again, concrete. I
15 don't feel like I'm being supported. I go to my
16 SARC and say, my commander is really being
17 completely unsupportive about this whole situation
18 and is making my life miserable. The SARC then
19 goes to somebody outside above the command?

20 MS. COLLINS: The victim advocate.

21 MS. STEBBINS INCH: Or the legal --

22 MS. COLLINS: From the legal perspective,

1 it would be -- there's other options, as mentioned
2 before, the IG, the victim witness counsels that
3 they would be engaging with to look at their
4 options, expedited transfers. There's multiple --

5 MS. STEBBINS INCH: And also the legal
6 assistance attorney and the special legal counsel
7 now are other really good options. So if I'm a
8 SARC and I'm hearing that feedback from the victim,
9 I'm going to go talk to the attorney and say you
10 need to talk to them because they're having
11 problems with the commander and see if you can help
12 them. Or even the trial counsel might be a better
13 person depending on what the problem is because
14 they can speak to the commander. They're in a
15 position of authority that the commander will
16 listen to. But the formalized retaliation
17 complaint process, I don't know that one exists.

18 MS. FERNANDEZ: Let me just -- the whole
19 time I was listening to, you know, why we should
20 keep everything under the chain of command, it made
21 sense except for when I talked about retaliation.
22 So if you don't have some formal place to be able

1 to say I'm being retaliated against, then your only
2 recourse is to say let's take this out of the chain
3 of command. If you create someplace where you can
4 say, I need recourse, I think that would solve a
5 lot of problems. I mean, maybe I'm being too naïve
6 or I'm too simplistic about this. But it seems as
7 though you need someplace to go if your commander
8 is retaliating against you.

9 LIEUTENANT COLONEL LEWIS: Ma'am, I'm very
10 satisfied that there is a Federal statute that
11 deals with retaliation and that the DoD IG, and the
12 service IGs investigate retaliation, and there's an
13 avenue for complaints. More often it's not quite
14 termed "retaliation." It's more I'm having some
15 difficulties in the unit, and it's not necessarily
16 the commander. It's more individuals who are maybe
17 at a lower level of supervision, front line
18 supervisors, or colleagues, peer level
19 difficulties.

20 And that's where in the Air Force we see a
21 lot of special victims' counsel not necessarily
22 doing things in court necessarily, but so much of

1 their efforts are during the investigation phase
2 and working with commanders, bringing things to
3 their attention, bringing attention to the staff
4 judge advocate who supervises the trial counsel,
5 and getting everybody to realize that these are
6 problems. And we see that a lot of times.

7 And so if it needs to get to the level of
8 a formal retaliation complaint, then there is a
9 mechanism to get there, and I'm satisfied also that
10 there are others that are looking at whether this
11 Federal statute should change right now. There are
12 legislative proposals on that.

13 But we want to kind of nip this in the bud
14 as much as possible so that the first hint that
15 there is any sort of dissatisfaction with the way
16 treatment is going on in the unit, that the special
17 victim's counsel, the victim witness liaison, the
18 victim advocate, the SARC, someone in that support
19 group of individuals knows about it and then can
20 assist in making sure that it stops as soon as
21 possible.

22 COLONEL HAM: I mean, you got to look at

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1 the statistics, too, if you're going to accept any
2 of those SAPRO statistics. I mean, the retaliation
3 is generally not happening from the command. My
4 understanding of the statistics, it's generally
5 peer-to-peer. I would also address your and maybe
6 ask Mr. Cassara for more current information. I
7 have yet to find the accused who was so well
8 supported in the command against the victim.

9 MR. CASSARA: I think that's another
10 issue.

11 COLONEL HAM: In 24 years of service, I
12 have yet to come across this accused who's side the
13 commander takes over a victim.

14 MR. CASSARA: I will say it's not
15 something I see. You know, I mean, it's usually
16 me, my military counsel, and my client. And from
17 the client's perspective, at least in the Army --
18 no offense to the other services, but in the Army,
19 you have people on the other side. That's
20 something that we'll pick up individually.

21 COLONEL HAM: But defense counsel have
22 dealt with this problem for years and years and

1 years, the opposite that -- the client who comes in
2 and says my commander is doing X, Y, and Z to me,
3 will you help me.

4 MR. CASSARA: Right. I would say that in
5 the overwhelming majority of my cases, the -- you
6 know, again, I'm not speaking to the alleged
7 victim. Pre-trial, I'm speaking to my client who
8 is, you know, still presumed innocent. And they
9 are saying my command is hanging me out to dry.
10 I'm getting absolutely no support at all from my
11 chain of command.

12 MS. FERNANDEZ: It's 12:30, so last words.
13 Liz?

14 CONGRESSWOMAN HOLTZMAN: Well, I don't
15 have a lot word. I've got a lot of words, but --
16 (Laughter.)

17 CONGRESSWOMAN HOLTZMAN: But, okay, I'm
18 sorry. I'll ask you quickly, and if you don't have
19 time to answer, if you could respond at some other
20 point that's convenient for you, I'd appreciate it.

21 First of all, I was surprised to hear that
22 the bystander training is not for men. I just

1 assumed that it was --

2 MS. STEBBINS INCH: It is. It's for men.

3 CONGRESSWOMAN HOLTZMAN: But it's not --
4 your complaint about it was what, that it's not
5 targeted enough for men or it's not suitable enough
6 for men?

7 MS. STEBBINS INCH: I think it has to be
8 part of a more comprehensive approach in the
9 prevention strategy to speak to men, not just in
10 the --

11 CONGRESSWOMAN HOLTZMAN: Well, could you
12 elaborate on that because I think that this is
13 really a critical, critical part, which is culture
14 change and what we're doing in terms of talking to
15 the men who are soldiers.

16 MS. STEBBINS INCH: All right. So I
17 think, you know, in an overarching prevention
18 strategy, you have different layers of --

19 CONGRESSWOMAN HOLTZMAN: And can you be
20 very concrete and specific? That would be really
21 helpful. I want to understand.

22 MS. STEBBINS INCH: Okay. Okay. Yeah.

1 So in the prevention strategy that we have, there
2 are different layers of prevention efforts, and one
3 of them is the bystander intervention. And part of
4 that you have a social marketing campaign that
5 speaks directly to men. So one thing that we did
6 in 2008 that I thought was really good was we
7 created a message that spoke to men. Men can stop
8 separate and help us come up with these, but they
9 put it in a military context. For example, it
10 would say my strength is for defending, so that it
11 would loop in the cultural values that the men
12 associate with while being in the military to the
13 sexual assault behavior of stopping it, and
14 intervening, and what it looks like to do that.

15 So what I'm saying is that it seems to me
16 we have groups like DAKOWITZ out there, and it
17 continues to underscore -- perpetuate the myth that
18 this is a women's issue when you do that because
19 the reality is maybe more women are reporting than
20 men, but the majority of perpetrators are men. And
21 according to the DMDC survey, the majority of
22 people being assaulted are men. And we have way

1 more men in the military.

2 So unless we can take each of those pieces
3 and pull them together in a concrete way to speak
4 to men about stopping this, I don't know that we're
5 going to make a lot of headway very quickly. I'm
6 not sure how that's going to look. Right now we've
7 got it incorporated in the social marketing
8 campaign, but there's those other elements in the
9 prevention strategy that need to also underscore
10 that messaging.

11 DEAN ANDERSON: Does the bystander
12 training, just on the question on what the
13 bystander training does and how it focuses on men
14 in terms of this, does it include messaging around
15 sort of the hazing routines that sometimes bring to
16 the fore sexual assault between men or the kind of
17 we're going to prove that you're not one of us,
18 you're not man enough to be in the military, those
19 kinds of messages. Does it talk about that, or
20 does it only talk about rape and sexual assault as
21 a gender issue, a heterosexual issue?

22 MS. STEBBINS INCH: I don't know.

1 MS. CUEVAS: In the Marine Corps, we do
2 have parts of hazing and parts of male-on-male
3 sexual assaults that are approached equally.

4 DEAN ANDERSON: But you agree that it
5 should be bumped up.

6 MS. CUEVAS: Oh, absolutely.

7 DEAN ANDERSON: You were the one who
8 brought this up.

9 MS. CUEVAS: Absolutely I did.

10 DEAN ANDERSON: There needs to be more
11 comprehensive sexual --

12 MS. CUEVAS: Right. In the Marine Corps,
13 less than six percent of the Marine Corps is
14 female.

15 DEAN ANDERSON: Yeah.

16 MS. CUEVAS: And we constantly -- I have
17 constantly been bombarded by, especially our
18 sergeants major, not throwing them under the bus.
19 But they have said multiple times this year, Peggy,
20 what can we do to harden our female marines against
21 this? I always say, why don't get them marines to
22 quit raping? How about that? Let's work on that

1 first.

2 But they -- as supportive as they are and
3 as much as they've bought into it, they still
4 aren't grasping the full picture that this is a
5 whole culture that we've created, and we're going
6 to have to do something about that. We don't need
7 to harden our female marines.

8 CONGRESSWOMAN HOLTZMAN: Okay. So what do
9 we need to do about that?

10 MS. CUEVAS: I would be rich if I knew
11 that, I think.

12 CONGRESSWOMAN HOLTZMAN: You don't have
13 the answer?

14 MS. CUEVAS: I don't have the answer,
15 ma'am.

16 CONGRESSWOMAN HOLTZMAN: Okay. But if we
17 don't have the answer, what are we doing to try to
18 find the answer, okay? Maybe that's another
19 question to you. What are doing to find -- do we
20 have psychologists working on this? Do we have
21 social scientists working on this? What is the
22 effort to say how do we address this cultural

1 issue?

2 MS. STEBBINS INCH: Well, I can say from
3 the DoD perspective, we're revamping the prevention
4 strategy that was done in 2008. And we're doing
5 that through a number of ways. They are -- they've
6 gone out and reviewed things that were considered
7 best practices or promising practices across the
8 different academies and universities and throughout
9 society. And they're bringing all that back.

10 And so, we are refreshing our prevention
11 strategy to incorporate more of this through
12 evidence-based practices basically and seeing where
13 that lies. And I just -- you know, I guess --

14 CONGRESSWOMAN HOLTZMAN: You mean trial
15 and error.

16 MS. STEBBINS INCH: Well, some people do
17 have some concrete measurements in place, so we're
18 looking at those to see if they can be applied to
19 the military environment. So we are taking a very
20 comprehensive approach, and we're in the process of
21 doing that right now.

22 But at the service level, I'm not sure

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1 about their individual strategy.

2 MS. CUEVAS: I know that --

3 MS. WREN: Well, we have an awesome one,
4 too, that we're doing -- sorry about that, Peggy.
5 We started a four-hour prevention workshop that is
6 -- we're just starting to do the metrics now on it,
7 but we have -- we always have it led by a SARC, an
8 attorney, and a CGIS, which is like an NCIS agent
9 for the Coast Guard. And we have both genders. So
10 we do a whole big group of up to 80 people, and we
11 talk about all these different things that are out
12 there in society. No Power Point. It's all
13 discussion based. It's very difficult for the
14 trainers actually because they have to have a lot
15 of training to do it.

16 And then we break into gender-specific
17 groups with the same gender trainers. And what
18 we're finding is that the men being able to talk to
19 an attorney and a CGIS agent that are the same
20 gender as them, and to be able to say, hey, why is
21 it that we're getting in trouble because she's
22 drinking, too, and how come we're getting --

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1 they're able to be very clear on what they think,
2 and getting these straight answers back. And
3 that's really -- we're getting some very good
4 results from that. I mean, I don't have the
5 metrics for that yet, but so far it's been very
6 well -- everybody has taken that on very well. We
7 have some very surprised people coming out of that.
8 So we're finding some success with that. I'm sure
9 the other services are doing similar things.

10 MS. CUEVAS: We are. We're doing the
11 bystander training. It's a three-hour block of
12 training also, and it's good, and they're
13 increasing that training this year to other levels
14 of ranks. Also at MFRS, specifically, at Marine
15 Forces Reserves, we had a program for the last
16 several years under General Hummer when he was with
17 us called the Cultural of Responsible Choices. And
18 it covered a large group, of drinking, all kinds of
19 things. And bystander intervention was
20 incorporated into that. That's a responsible
21 choice is to intervene when you see these things
22 happening.

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1 And I thought that was a good start, and
2 it was taught by the commanders. On top of all the
3 other SAPR training we do, their commanders had to
4 present this material to them. It was a very good
5 start, and we're continuing that. But I think we
6 just need to do more, and it has to continue. We
7 need to sustain this. You know, we just can't
8 stand up and say don't rape.

9 CONGRESSWOMAN HOLTZMAN: Right, and maybe
10 that program needs to be enhanced.

11 MS. CUEVAS: Yes, ma'am.

12 CONGRESSWOMAN HOLTZMAN: Maybe do the
13 number of hours or what are they talking about
14 needs to be changed.

15 MS. CUEVAS: Yes, ma'am, it needs to
16 evolve as we evolve.

17 CONGRESSWOMAN HOLTZMAN: Anybody else want
18 to comment about that?

19 LIEUTENANT COLONEL LEWIS: Very briefly
20 just for the Air Force. Our CVS Program -- Air
21 Force CVS, the 32-person organization headed by
22 Major General Woodward, who has spoken to the Panel

1 before. They went out and did focus groups at 14
2 different Air Force installations and got some
3 excellent feedback. There was some question about
4 whether airmen would be willing to talk and be very
5 open. And their response was that they were very
6 willing to talk about things and share a lot of
7 information, give them a lot of perspective. And
8 we have something similar to the Coast Guard's
9 program. It's called Got Consent. It was run by
10 Spangdahlem Air Base in Germany fairly recently and
11 received coverage under *Stars and Stripes*. And
12 that is an excellent, excellent program, again
13 taking traditional Power Point out of the mix and
14 instead placing our airmen as they leave the first
15 term airmen center, which they would show up to at
16 their first duty station after getting out of basic
17 training and technical school usually.

18 And they're there, and they get to
19 actually watch the entire sexual assault process
20 kind of from start to finish led by JAGs and OSI
21 agents and SARC.

22 CONGRESSWOMAN HOLTZMAN: I'm also on

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1 another Subcommittee called the Role of the
2 Commander. And I'm just wondering from your
3 experience, really important hands-on experience,
4 do you think -- this is a proposal that commanders
5 be taken out of the decision to transfer a case to
6 a court martial. Do you think in your experience
7 that doing that and removing commanders from the
8 decision on court martialing people or referring
9 cases for court martial will enhance victims'
10 reporting? Anybody.

11 MS. STEBBINS INCH: I do not.

12 MS. CUEVAS: No, ma'am. I don't think the
13 decision to report is that far out. I think it'll
14 have no effect on who reports and who doesn't.

15 CONGRESSWOMAN HOLTZMAN: Anybody disagree
16 with that who's present?

17 LIEUTENANT COLONEL LEWIS: No.

18 CONGRESSWOMAN HOLTZMAN: Thank you. And
19 one another thing. Can you give us some -- some
20 programs we have with regard to the use of alcohol,
21 I don't know what they are. I don't think that
22 we've ever had a presentation on that.

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1 CAPTAIN (RET.) GRUBER: We'll take that
2 for action, ma'am.

3 COLONEL HAM: Though I will tell you, like
4 before, almost all of you who are in the Army, the
5 army in the late '80s, I think all of DoD, but the
6 Army I know took a huge de-glamorization of alcohol
7 program.

8 CAPTAIN (RET.) GRUBER: The Navy did as
9 well. There's been a lot of that.

10 COLONEL HAM: Yeah. And it was a DoD-
11 wide, late '80s, and has been sustained since then.

12 CAPTAIN (RET.) GRUBER: It was combined
13 with drug abuse prevention.

14 MR. CASSARA: You used to take your
15 subordinates to the club and drink excessively.
16 They now deglamorized all of that. It is proactive
17 work.

18 JUDGE MARQUARDT: Maybe sexual assault
19 should be a career ender.

20 MR. CASSARA: If they're convicted, trust
21 me, it is.

22 CAPTAIN (RET.) GRUBER: Anything else,

1 members?

2 MS. FERNANDEZ: I just want to thank you
3 for your candor and for your information. You were
4 terrific, and we got a lot out of this from those
5 in the front and those in the back.

6 DEAN ANDERSON: On the question of
7 commanders, if you have a position that you are
8 going to articulate on the record because you all
9 report to the commanding officers, I think it's
10 important for them to have a mechanism by which
11 they might respond to that question not on the
12 record and anonymously.

13 MS. FERNANDEZ: I agree.

14 DEAN ANDERSON: They have experience, but
15 they are currently on the record as who they are.

16 CAPTAIN (RET.) GRUBER: The only challenge
17 we have under FACA is information received is
18 available to the public. I don't have the ability
19 to take a privileged communication under the
20 Federal Advisory Communications Act.

21 DEAN ANDERSON: So by what mechanism could
22 they submit an anonymous statement to indicate that

1 in their experience not -- that removing the chain
2 of command -- because this has been happening
3 repeatedly. You guys -- the Panel has asked a
4 number of people on the record, in public,
5 photographed, you know, whether or not they want to
6 remove commanding officers from the process. And I
7 just want to make sure that there is something on
8 the record that is clear that they could make an
9 anonymous report.

10 CAPTAIN (RET.) GRUBER: I don't have a
11 ready mechanism at hand other than they can mail
12 something to Colonel Ham and not put their address
13 on it. That's really the only way I can think of
14 doing it. If anybody wants to do that.

15 DEAN ANDERSON: Okay. Well, let's think
16 about that. That's good for now. I think it's
17 worth thinking about because this question of
18 commanding authority is such an important one.

19 MS. FERNANDEZ: Thank you.

20 SPEAKERS: Thank you.

21 (Whereupon, a luncheon recess was taken.)

22 MS. FERNANDEZ: Good afternoon, and thank

1 you for coming back. We didn't scare you away.

2 LIEUTENANT COLONEL LEWIS: Not at all.

3 MS. FERNANDEZ: You know, I think sort of
4 the rules of the road are pretty much the same.
5 Your opening remarks should be short with a lot of
6 time for back and forth discussion. I think the
7 conversation and the information that we receive is
8 much more rich. So Colonel Lewis, if you'd like to
9 begin.

10 LIEUTENANT COLONEL LEWIS: And we have a
11 Power Point presentation, and I just have just the
12 very, very beginning of an overview of my role as
13 the Chairman of the Joint Service Committee on
14 Military Justice. And so that's why I'm here to
15 kind of provide the overall view, and then I'm
16 going to turn it over and almost of all of the
17 detail is going to come from our two Subcommittee
18 members.

19 So we have a slide that talks about the
20 agenda, and I'm only going to be talking about the
21 first bullet, which is the overview of the JSC and
22 the report status. And then I'll turn it over to

1 Commander King and Captain Carter, and they'll
2 cover the rest.

3 If you look at the overview slide for the
4 JSC, so we're created by a Department of Defense
5 directive, and we have two roles. One is to assist
6 the President in fulfilling his responsibilities on
7 the UCMJ. And so, we are the organization that
8 staffs and drafts and votes on executive orders,
9 the proposed changes to the Military Rules of
10 Evidence, Rules for Court Martial, and things like
11 that. And then further, the DoD General Counsel
12 has the ability to reach into the Joint Service
13 Committee and ask us to study any particular issue
14 that they think are of interest. And that is
15 exactly what has happened with this particular
16 tasking.

17 So in the tasking on the 13th of September
18 2012, Representative Buck McKeon sent a letter to
19 SECDEF with some concerns, and Secretary Panetta
20 responded on the 8th of November, and in that had
21 set up essentially this structure for the Joint
22 Service Committee, what we call the Sexual Assault

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1 Subcommittee, JSC SAS. And then we got further
2 clarification on the 28th of June, 2013, this time
3 from Mr. Taylor, the former Acting SECDEF General
4 Counsel. And that letter really started to talk
5 about how the JSC SAS was going to interact with
6 the Response Systems Panel and interact with the
7 HASC and SASC staffs as they go through.

8 So my next slides just kind of show you
9 these letters, what they look like. It's just the
10 first pages there so you can see the 13 September
11 letter and the 8 November 2012 letter. And then on
12 the slide after that, you can see the 28 January
13 '13 letter, just to see what they covered. And
14 then I'm now on slide number six, which is my
15 introduction to the JSC SAS staff, and we've
16 included each of the members that either worked on
17 the expeditionary study going out and taking a look
18 at the civilian jurisdictions, meeting with the
19 various law enforcement, prosecutors, victim --

20 COLONEL HAM: What was the task? What was
21 the task of the JSC SAS?

22 LIEUTENANT COLONEL LEWIS: And it's to

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1 study civilian systems from the prosecution level,
2 the investigation level, the victim support level,
3 and determine what's out there and what kind of
4 best practices are available that the military
5 should be considering and should be looking at, and
6 to report that back to the JSC, report that back to
7 the DoD General Counsel. And then for the
8 underlying data that's collected to be released to
9 the Response Systems Panel.

10 But this is a list of everybody that
11 worked on it, either the draft of the report or the
12 expeditionary study. And we, of course, got the
13 two leads here who are going to talk through their
14 roles, Captain Nick Carter and Commander Sherry
15 King.

16 The most important thing that I have is on
17 slide number seven, which is what our status of
18 this report is. We had hoped that the report was
19 going to be finalized prior to our presentations
20 here. Unfortunately it's not, so each member of
21 the services, including the Coast Guard, has a
22 representative on the Joint Service Committee. And

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1 the way that things are moved forward from the JSC
2 is through a majority vote. Right now, with all of
3 the legislative proposals that are going on, the
4 JSC as a whole has not received enough votes for
5 that report to be approved and forwarded to the DoD
6 General Counsel. And so we expect that very, very
7 soon.

8 Once the JSC either chooses to approve the
9 report or decides not to approve the report, then
10 it will either go back to the Subcommittee for
11 further work, or it will be forwarded up to the DoD
12 General Counsel for their review. So the report at
13 this time is pre-decisional, and so we're not going
14 to be talking about specific things that are in the
15 report in terms of recommendations of the Joint
16 Service Committee. Instead what will be provided
17 is the factual assertions of what was seen by those
18 that were out doing the interviews, and to the
19 extent that they have personal opinions that are
20 just their own or that I have personal opinions
21 from reviewing the report and the underlying data,
22 we'll be able to provide those, but those would not

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1 be the opinions of judge advocates general or
2 particular services.

3 We are working very closely with DoD GC
4 last night and today to see what in the attachments
5 to the report, that underlying data we can release
6 sooner rather than later, and we expect that we'll
7 have something very soon on that. You're probably
8 aware that Question Number 32 of the Request for
9 Information from the RSP dealt with this particular
10 issue, and the response was that the report is not
11 done yet. We're hoping that we might actually be
12 able to give you the underlying data that was
13 observed and reports that were collected.

14 COLONEL HAM: If I can interject, the --
15 we received an interim briefing from some of the
16 members over the summer, the Comparative Systems
17 folks. Professor Hillman was there, General Dunn
18 was there for the prep sessions over the summer in
19 August. Kelly McGovern, who we now know, part of
20 our staff, gave a presentation interim report. She
21 was the head of this study, and we have actually
22 already used some of that information from the

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1 jurisdictions that were visited and personnel who
2 were identified and were willing to come and talk
3 to the Panel. The full Panel already saw some of
4 them then -- some of the civilian prosecutors who
5 appeared at the full Panel meeting from all the
6 different jurisdictions or jurisdictions that were
7 visited by this study.

8 LIEUTENANT COLONEL LEWIS: So with that,
9 I'll turn it over to the Subcommittee.

10 COMMANDER KING: Thank you. And I already
11 introduced myself to all of you, but basically I'll
12 just tell you a little bit about the study, and
13 I'll let Nick introduce himself.

14 We were tasked to go around and talk to
15 civilians about prosecution, investigations, and
16 victim services. And we were -- we felt quite
17 lucky to do that. We had people on the committee
18 who have been prosecutors in the past, some defense
19 counsel, various people from different
20 organizations, different -- one from each service,
21 different backgrounds. And we introduced ourselves
22 to different prosecutors or different agencies.

1 Ms. Garvin was very helpful in Oregon and several
2 other places in getting us contacts so that we
3 could talk to people.

4 During the study, we didn't necessarily
5 meet with exactly the same groups at every place
6 partly because they aren't the same in every place
7 and partly because some things were more relevant
8 than others at different places. But we managed to
9 talk to 18 jurisdictions in 14 different states.
10 And so, between all of us with our different
11 backgrounds, military justice, most of us had some
12 military justice background who started the study.
13 So we learned a lot about civilian prosecutions,
14 civilian investigation, and especially what we want
15 to address here is the victim services.

16 And before we start with that, I'll let
17 Captain Carter introduce himself and tell you a
18 little bit about his background.

19 CAPTAIN CARTER: Okay. I'm Captain
20 Nicholas Carter. I work for the United States Air
21 Force. I'm currently stationed at Andrews Air
22 Force Base doing appellate defense work on top of

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1 being part of this Committee, which has been very
2 enlightening and professionally, I guess, enriching
3 being able to go around and meet all the different
4 people who work within this field.

5 I guess just also so you know, that we do
6 kind of have some nomenclature in regards to this
7 wherein we use victim legal counsel to refer to a
8 victim attorney who represents a victim. A
9 prosecutor, you know, could be an attorney general.
10 It could be, you know, a prosecuting lawyer. We
11 usually refer to them as prosecutor. A victim
12 advocate is usually referred to as a social worker,
13 somebody who's a non-lawyer who there's to support
14 a victim. Different jurisdictions call them
15 different things. We kind of use those as our
16 normal reference. So as we're going through here,
17 that may kind of help you understand who we're
18 talking about.

19 COMMANDER KING: We have no need to stick
20 to this Power Point. We just made it so that we
21 would have some guidance as to what we wanted to
22 talk about. So if any of you have questions any

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1 time or want to go in a different direction, we're
2 more than happy to just answer questions. But if
3 you turn to page 12, you can see the different
4 jurisdictions we went to.

5 COLONEL HAM: How did you select the
6 jurisdictions?

7 COMMANDER KING: We selected the
8 jurisdictions partly based on information we had
9 been given from various -- the HASC and SASC
10 Committees as to what they would like to see us --
11 where they would like to see us go.

12 CAPTAIN CARTER: And we also looked --

13 COMMANDER KING: It was partially based on
14 contacts we had, people who we knew or we could
15 find. We started out maybe looking for maybe
16 military people who had contacts in the civilian
17 prosecution agencies.

18 CAPTAIN CARTER: And we also tried to vary
19 in size, you know, Dover, Delaware, a lot smaller
20 of a jurisdiction versus, you know, Manhattan, New
21 York. And so, we tried to have a vary in size. We
22 tried to have various locations, you know, within

1 the country to see, you know, West Coast, East
2 Coast, you know, South, Alaska, you know, different
3 things like that.

4 And then as we got to doing it, you know,
5 and we got more contacts, and, you know, some
6 jurisdiction says, oh, you want to go talk to the
7 people in Arizona because of their victim rights,
8 you know, progression and what they've gone into.
9 That's kind of led us that way as well.

10 MS. GARVIN: So there was no comparative
11 -- upfront comparative moment, the strength of the
12 law of sexual assault, or analysis of the law,
13 strength or weaknesses, of the sexual assault laws
14 in these jurisdictions or victims' laws in these
15 jurisdictions before you went. You were going and
16 looking at process regardless of strength or
17 weaknesses of laws?

18 COMMANDER KING: Correct. So when we
19 started, we kind of included our questions that we
20 used. When we went to a jurisdiction we had a
21 standard set of questions that we used. We didn't
22 use them question and answer each time. We found

1 we got a lot more information if we had a
2 discussion, probably like you have. But we were
3 all familiar with the questions, and we usually
4 provided them ahead of time so that the
5 jurisdiction would know the kind of information we
6 were looking for. And we found by the end of our
7 interview, we'd pretty much covered everything on
8 those questions. But you can see what kind of
9 things we were looking for.

10 SPEAKER: What page are you on?

11 COMMANDER KING: It's not -- it's an
12 additional attachment. It's the additional
13 attachment we passed out. It has -- we had
14 questions that we asked prosecutors in interviews
15 -- I'm sorry -- investigators. And we had
16 questions we asked victim advocates and victim
17 lawyers in another set of questions, and then
18 another one for defense attorneys where we were
19 able to interview public defenders.

20 And we made those up based on how we
21 thought prosecutors -- what process they might go
22 through to try to learn how they charge cases, what

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1 considerations they use, how they deal with the
2 investigators, how they deal with victim advocates,
3 what part victim advocates play in the process from
4 meeting the victim, charging the -- deciding to
5 charge or not charge the case, preparing for trial,
6 preparing for sentencing, post-trial, things like
7 that. And we wanted to see how they all relate to
8 -- work together or don't work together, what
9 considerations they have.

10 And every state is a little different, and
11 everybody has a little different process on how
12 they charge a case, and we tried to get into that
13 as much as possible. We looked how offices are
14 organized as far as prosecution of sexual assault
15 cases and how police are organized, how they're
16 trained, what they know, what their experience is
17 like. And we found typically as far as
18 prosecutors --

19 And I should say before we start getting
20 into this that what Nick and I are relaying to you
21 is our own personal opinion. It's not the
22 military's opinion. It's not DoD's. It's not --

1 who else --

2 CAPTAIN CARTER: The General Counsel of
3 the Joint Service Committee.

4 COMMANDER KING: It's not anybody's
5 opinion other than ours and perhaps other people on
6 the Committee at the time who aren't here to speak
7 for themselves.

8 But we really found that prosecutors are
9 by far more experienced as far as the number of
10 cases they've tried before they ever get to try a
11 sexual assault case than you might see in the
12 military simply because of the number of cases they
13 do and their progression. I think in every
14 jurisdiction, even the small ones, prosecutors
15 start out trying misdemeanor cases, and they
16 typically will do that for two or three years. And
17 then they'll typically move up and start trying
18 felony cases, and they usually start trying either
19 juvenile cases where they get a variety of cases
20 but non-jury trials, or they go to, like, drug or
21 property crime cases. And then they might move up
22 to various -- every office after that kind of

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1 differs a little bit, but it takes a while to move
2 up to sexual assault cases. And those are usually
3 in a specialized unit, and they work --

4 In many offices, I think it was
5 interesting because a lot of offices, you have to
6 pretty much interview for it, and you have to be
7 selected for it based on not only your trial skills
8 and abilities, but also your ability to deal with
9 these kind of cases and to relate to victims. So
10 there was --

11 CAPTAIN CARTER: And the desire.

12 COMMANDER KING: And the desire to do it.

13 CAPTAIN CARTER: They mention that a lot.
14 It's very continual that people who are doing these
15 cases for the most part, they want to be doing
16 these cases. They don't want to put somebody in
17 one of these if they didn't want to, so.

18 COMMANDER KING: So we thought that was
19 important. And that's important to the victims
20 because I think everybody told us that victims can
21 sense when they have a prosecutor who cares about
22 the cases and cares about them and cares about what

1 happens to these sort of cases. So they were very
2 concerned about that.

3 DEAN ANDERSON: Can I just ask -- I'm not
4 sure if this is -- I would be very interested. I
5 know a lot about what you're reviewing, but I don't
6 know where the military is on these same questions.
7 So if when you talk about the specialization that
8 one has to go through in order to become a sexual
9 offenses prosecutor, if you could also mention sort
10 of what the standard practice is in the military,
11 that would be helpful for those of us who have more
12 expertise in the civilian world and less in the
13 military world.

14 COMMANDER KING: It's a little bit
15 difficult because every service is different, and
16 different offices do it a little bit different, and
17 we're only Air Force and the Navy among other
18 things. So we can tell you a little bit in
19 general, but I'm not sure we're going to be able to
20 say specifically.

21 CAPTAIN (RET.) GRUBER: And we are
22 developing some of that --

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1 COMMANDER KING: Right.

2 CAPTAIN (RET.) GRUBER: -- through the
3 RFI's.

4 COMMANDER KING: Right.

5 CAPTAIN (RET.) GRUBER: And I know that
6 prosecutor and investigator qualifications are a
7 big focus in the Comparative Systems Subcommittee.
8 It's a bit of a seamless web how we divide -- you
9 know, we divided these tasks up. We can gather
10 that information for you because there are people
11 on the teams that are working on it.

12 COLONEL HAM: And you're going to hear, in
13 fact, a big focus of the meeting on December 11th
14 and 12th is training of prosecutors and defense
15 counsel and the experience level --

16 DEAN ANDERSON: In the military?

17 COLONEL HAM: Yes, ma'am, and as compared
18 to civilians, so there are two prosecutors and a
19 defense counsel. And there are specialized
20 prosecution programs if the service has them and
21 how they select people for those jobs.

22 COMMANDER KING: I think one thing that's

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1 a little bit difficult for me is it's been a while
2 since I was at the trial level doing those cases,
3 same as Mr. Gruber. And it was a little bit -- it
4 was different back then. The services have made a
5 lot of improvements and are trying different things
6 to improve. And one of the reasons we looked at
7 all those things was to help perhaps in doing that
8 and to help them refine the way they do that and
9 try to figure out from service to service how it
10 will work, because in our group we have one person
11 from each service, and everybody did it
12 differently. So I'm not sure we can really speak
13 very knowledgeably or very accurately about how
14 they do it right now in each service.

15 DEAN ANDERSON: I guess I'm just asking
16 because we're tasked with making recommendations to
17 make it easier for the victim in the military. So
18 it would be helpful to know sort of very generally,
19 you know, in general, wow, that's very different.
20 In general the military doesn't have the kind of
21 specialized move up the system. Even that level of
22 information --

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1 CAPTAIN CARTER: What I can tell you,
2 generally there's -- the military seems to send
3 their prosecutors to more formal training than
4 civilians do. Civilians tend to have most of their
5 training on the job working with each other and
6 things of that sort, and they go for longer. In
7 the military, at least, again, in my opinion, not
8 speaking for JSC or OGC. In my opinion, you know,
9 you tend to try cases, these caliber cases quicker,
10 you know. You tend to, if you're a brand new
11 prosecutor, there's usually what they call senior
12 trial counsel, sometimes also called special
13 victims' counsel as well.

14 LIEUTENANT COLONEL LEWIS: Not special
15 victims' counsel, but we've got our special
16 victims' capabilities. So we've got 10 in the Air
17 Force for a special victims' unit senior trial
18 counsel, and so they are a select group who have
19 already been a senior trial counsel for a period of
20 time, have attended some special training courses.
21 And they are the ones that are working hand-in-hand
22 with, again, a select group of Air Force -- Office

1 of Special Investigations agents. We have 24 of
2 them. And that is our core group who is providing
3 sort of any reach back oversight to all of these
4 sexual assault cases in the Air Force.

5 COLONEL HAM: And the Army has special
6 victim prosecutors. It started with 23 in 2007 or
7 so. They've gone up to 30. If you go on the Fort
8 Hood trip, you'll get to talk to the one who's
9 located there. You'll find out how much experience
10 she has, how many cases she's tried, how she was
11 selected for the job.

12 One of the things they do is they -- as
13 part of the training, once they get selected for
14 that job. And they've had -- they have to have a
15 lot of experience to get selected for the job, but
16 they actually go to large jurisdictions and work
17 with the prosecutors in those large jurisdictions
18 for a period of time to learn any additional
19 practices from them. But again, all that will be
20 -- if you can go, Dean Anderson, it will be --

21 DEAN ANDERSON: Oh, I'm trying to.
22

1 COLONEL HAM: We'll discuss it at the 11th
2 and 12th -- actually I think that part of it is on
3 the 12th of December. And you'll get to talk to a
4 special victim prosecutor and special victim
5 counsel and at Fort Hood and at Lackland.

6 COMMANDER KING: And one of the things the
7 Navy does is we have military justice litigation
8 qualified attorneys who are senior -- more senior
9 people. And it's a specialty you apply for, and
10 you have to show you've tried so many cases. And
11 then you get up to an expert after that, and you
12 have to show you've tried more cases. And so, then
13 we have those people supervise the less experienced
14 prosecutors or defense attorneys. So every service
15 is doing it a little bit different, but we're all
16 trying to improve.

17 But the one problem I can say personally
18 is I think we just simply don't have as many cases
19 as the civilians do, so we're never going to get as
20 many trials in military cases as in civilian cases
21 because there simply aren't as many trials. There
22 aren't as many cases. So in a civilian

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1 jurisdiction like New York, and in any of the
2 boroughs in New York that we visited, they all have
3 way more cases than we'll probably ever have.

4 JUDGE MARQUARDT: But isn't it true that
5 the military does settle out a lot of those cases
6 so that you don't try them?

7 COMMANDER KING: Well, so do the
8 civilians, ma'am.

9 JUDGE MARQUARDT: Yes.

10 COMMANDER KING: So I don't think that we
11 settle out any more cases than the civilians do.
12 Everybody pleads cases a lot, as you know. So I'm
13 not sure that -- we didn't necessarily compare
14 numbers for numbers exactly, but I wouldn't say
15 there's so much difference in that as just the
16 sheer number of cases overall, because some of
17 these jurisdictions are so much bigger than any
18 particular legal office is going to be.

19 And we have maybe the same number -- maybe
20 we have the same number of Navy attorneys as one
21 office in New York might have or something like
22 that. So and ours are scattered all over the

1 United States, so that's the difference.

2 LIEUTENANT COLONEL LEWIS: Just to follow
3 up on plea bargaining, with sex offender
4 registration as essentially a consequence of a
5 guilty plea to an Article 120 rape, sexual assault
6 offense, in the Air Force we have not necessarily
7 seen a tremendous amount of plea bargaining to
8 those particular offenses. Now, if the defense
9 counsel is able to show that this is not an Article
10 120 offense, that it's not a sexual assault, that
11 maybe it was more a physical assault --

12 JUDGE MARQUARDT: You can plead it down.

13 LIEUTENANT COLONEL LEWIS: And the
14 convening authority agrees to that pre-trial
15 agreement, the prosecution understands that that's
16 the right offense to be tried, then that's the sort
17 of offense where we would see a pre-trial
18 agreement, but not necessarily in the Article 120
19 arena. In the Air Force we see this. Generally
20 they're fully-contested cases.

21 COMMANDER KING: So one of the things we
22 wanted to talk to you about is how victim advocates

1 work in the different systems and how they work
2 with prosecutors. And I think there's a slide.
3 Slide 11 kind of has a little diagram.

4 CAPTAIN CARTER: Sixteen.

5 COMMANDER KING: Oh, I'm sorry, 16.

6 Sorry. If you can go to that one, and it has
7 organizational structure. And this goes back to
8 Slide 14. We studied a lot of additional -- like
9 victim advocate type organizations, and we met with
10 the people from -- there were at least 20
11 organizations listed on slide 14. And we found
12 that there are victim advocate services at every
13 jurisdiction we studied from the time the victim
14 first comes in contact with someone to report a
15 sexual assault through prosecution and beyond.

16 Generally at the beginning at the hospital
17 or police station, wherever a victim reports,
18 typically it's community victim advocates from rape
19 crisis centers or other victim advocate
20 organizations. But there are some jurisdictions
21 where the police have advocates, and they respond
22 to those cases, and maybe in a few, prosecution

1 advocates who work with the prosecutors might even
2 respond.

3 And then typically either the victim
4 advocates from the rape crisis centers or the
5 police advocates will work with the victim until
6 they go to -- until the case is referred to a
7 prosecutor's office. And then a victim advocate
8 from the prosecutor's office typically takes over,
9 although they told us all the time in almost every
10 jurisdiction that sometimes one advocate who
11 started with a victim keeps the victim all the way
12 because they're closer to that person. But they
13 usually try to understand that there's different
14 roles and work with each other.

15 And one of the things we were impressed
16 with was how well they all know each other and how
17 well they all work together these days as far as,
18 you know, getting together, talking about cases,
19 understanding each other's services.

20 CAPTAIN CARTER: And that's something
21 interesting to see, especially in a jurisdiction
22 like Philadelphia where all these different

1 advocates were, I mean, almost fighting against
2 each other. You have the victim advocates fighting
3 against the police department for unfinding cases.
4 You have them fighting against prosecutors for
5 these kinds of things.

6 But when we met with them, they all over
7 the time and working together and understanding
8 what everybody does, they've formed this trust
9 where they'll easily call each other out if they're
10 not doing what they think they need to be doing.
11 But they've formed this trust to where they'll be
12 able to work with each other. They see each other
13 all as partners, as we're all the same team to do
14 this. We just have different roles within that.

15 And it was very interesting to see how,
16 you know, groups that were enemies against each
17 other at one point are -- seem to be now that they
18 all work together, you know, to achieve this common
19 goal.

20 COMMANDER KING: So our study was really
21 not at the policy level so much. It was more at
22 the practical service provider level. What do they

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1 get for victims? How do people work together? How
2 do they relate to each other, and how do they
3 ensure that victim services are provided at all
4 levels, and that victims are actually taken care of
5 through the process? And that's what we were
6 trying to see if any of those processes could be
7 perhaps adopted or incorporated some more into the
8 military.

9 And we talked to victim advocates at all
10 levels, including the community advocates, support-
11 based victim advocates, and we also met with
12 several victim attorneys, and we were able to talk
13 to them about their service, and found that quite
14 interesting.

15 MS. FERNANDEZ: Would you mind describing
16 that in a little more detail --

17 COMMANDER KING: Sure.

18 MS. FERNANDEZ: -- what jurisdictions had
19 victim counsel, how does it work, do they think
20 it's effective.

21 COMMANDER KING: You know, it was
22 interesting because it seemed like we started out

1 talking -- visiting prosecutor's offices where for
2 the most part they had not heard of victim
3 attorneys or victim legal counsel who represent
4 victims in the criminal case. Everybody had heard
5 of victim lawyers who are civil attorneys and are
6 planning on suing somebody at some point.

7 So they were all familiar with them, and
8 the prosecutors basically said, well, we don't have
9 those victim attorneys sit in on our case. They're
10 not part of our case. For the most part, the
11 attitude is they can wait until afterwards because
12 what they need is a conviction, first of all. So
13 they really didn't seem to work together very much
14 during the criminal prosecution, those attorneys.

15 So that was the first part of our study.
16 And then we got to -- well, we went to Texas, and
17 we went to Oregon. We went to Arizona and Alaska,
18 and that's -- those were the states, I think, where
19 we found the most victim attorneys and the most
20 victim attorney services.

21 CAPTAIN CARTER: Yeah. You know, at first
22 there was a lot of skepticism to victim counsel.

1 The prosecutors that for 20, 30 years have been
2 prosecuting sexual assault cases feel like they're
3 defending the rights of victims their whole career,
4 you know, at some point kind of took it offensively
5 that they don't defend victim rights good enough.
6 I mean, I've been doing this for 30 years. And so,
7 that was very hard for them, and they faced that
8 with a lot of skepticism.

9 Now, and what they were concerned about
10 was kind of, you know, taking the trust away from
11 the prosecutor. You know, to prosecute these
12 cases, if you're giving a victim somebody else to
13 depend on other than the prosecutor, that was
14 really difficult for them to say. And then also
15 interfering with the investigation as well is what
16 they were really concerned about.

17 Their experience with attorneys, as
18 Commander King said, was usually with civil
19 attorneys who were looking for, you know, a
20 personal injury, you know, judgment afterwards.
21 And so their experiences weren't always necessarily
22 good with those kinds of attorneys. So they really

1 didn't want to have a lot of interaction with them.
2 And those jurisdictions are Dover, Arlington, New
3 York, you know, not experienced with victim legal
4 counsel. They had concerns like that.

5 And when we talked to the jurisdictions
6 that did have the victim legal counsel, not that
7 they didn't have those same concerns, but victim
8 legal counsel tended to not do those things that
9 kind of created the skepticism. The victims' legal
10 counsel scopes were usually defined enough that
11 they were there representing and taking care of the
12 victim rights that are typically statutorily or
13 constitutionally required. And they were ensuring
14 that those were taken care of, representing them,
15 you know, in regards to privacy, information being
16 released. In Alaska, they would represent them at
17 bail hearings, you know, and different things like
18 that.

19 COLONEL HAM: Are they pro bono? Are they
20 government funded? Like how many would be there in
21 a state, and how would they choose what cases and
22 victims to work with?

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1 COMMANDER KING: Ma'am, we found in most
2 states there's some victim service organizations
3 that's funded by grants or something, right? Ms.
4 Garvin can -- she knows about this really. In
5 Texas, I think Texas legal services. And they're
6 funded by grants. In Alaska it's interesting
7 because the Office of Victim Rights is at least
8 funded in part by the Alaskan -- the citizen --

9 CAPTAIN CARTER: The money you get from
10 living there, if you get convicted of a crime, you
11 kind of forfeit that. And so then that money goes
12 to fund the victim legal counsel

13 COMMANDER KING: So most of the ones we
14 talked to were all people who work for an agency
15 that's funded by some sort of government grants or
16 something, I believe, although I think in Oregon,
17 apparently there's some -- we didn't talk to the
18 private attorneys who do it pro bono. I assume
19 there are some that get paid also somewhere, but we
20 didn't talk to any of those. Ms. Garvin is saying
21 yes.

22 MS. GARVIN: Yes. There are some that are

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1 -- there's pro bono in every jurisdiction, and then
2 there are some paid in every jurisdiction, too.

3 COMMANDER KING: I think when we did some
4 actual research, we weren't able to talk to them in
5 each jurisdiction, and most of them don't really
6 have a big impact on the whole system yet. But
7 there's somebody in every state and maybe they
8 represent kids more or, you know, there's some that
9 represent immigrants or, you know, have some
10 particular focus and work for an agency, and help
11 those victims out. And some of them may be crime
12 victims, some not.

13 The one thing we noticed in the military,
14 we've been concentrating on sexual assault, and for
15 the most part, you know, making these programs --
16 the victim lawyer programs center around victims of
17 sexual assault. In the civilian world, they
18 represent victims of other kinds of crime, and I
19 think some of the case law has been related, some
20 at least, to property crimes and other, you know,
21 identity theft crimes where there's some financial
22 incentive to do it.

1 CAPTAIN CARTER: Restitution based.

2 COMMANDER KING: Restitution based. So
3 it's not all sexual assault related.

4 CAPTAIN CARTER: And, in fact, in even
5 some of the jurisdictions that had them, like San
6 Diego, they said there was a very, very limited
7 amount of sexual assault cases that they actually
8 had a special victim's counsel work on. Here in
9 the District of Columbia, you know, the district
10 attorney we talked to, she tends to -- you know,
11 they tend to -- they work together with them, and
12 she tends to get a hold of them -- a pro bono
13 attorney, victims' attorney if there's a problem,
14 if something got missed, you know. She tends to
15 get a hold of them, oh, you need to get an attorney
16 because of this, be it a notification or something
17 along those lines, you know, other rights that
18 are --

19 D.C. is interesting because it is Federal,
20 so it's subject to the CVRA, you know. And so,
21 something along those and she realizes something
22 that needed to be done didn't get done, she kind of

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1 almost facilitates and refers, hey, you need to go
2 have this person help you sort through this.

3 COLONEL HAM: What percentage of victims
4 would use victim counsel within a certain
5 jurisdiction, if you know?

6 CAPTAIN CARTER: San Diego is less -- I
7 think they said less than two percent.

8 COMMANDER KING: Well, I think it's a very
9 small percentage in every state partially because
10 there's not enough -- again, Ms. Garvin could
11 probably tell you more, but I think it's a very
12 small percentage. There's not enough victim
13 attorneys to go around. And also probably most of
14 the cases go fine without victim attorneys. There
15 are victim advocates who help support victim
16 rights. And in those cases, most of those victims
17 aren't necessarily looking for a lawyer to help
18 them out because, at least in some cases, they run
19 fairly smoothly where the victim doesn't
20 necessarily say my rights are being violated, I
21 need -- you know, or figure out that they want a
22 lawyer.

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1 So it's really -- it seemed to be a very
2 small percentage. I can't say how many, but I can
3 tell you that in some jurisdictions where we did
4 interview the victim lawyers, the sexual assault
5 prosecutors had no real concept that they played a
6 part in their case -- that these lawyers played a
7 part in their cases. So it wasn't a big
8 percentage.

9 So it's a pretty small percentage based on
10 the -- there's not that many victim lawyers out
11 there in the civilian world yet. And so it's more
12 -- it seemed to us that it's more the problem cases
13 or where people have not let victims speak at a
14 hearing or played a part in the plea bargain
15 process, or at least been notified of these rights,
16 and, you know, included them in the process, that
17 that's where the victim attorneys are stepping in.

18 And we wanted to talk about some of the
19 differences and some of the specific things that
20 lawyers do in the civilian world and how they do
21 it. And slide 36 kind of -- I made kind of a list
22 of the main things we saw victim attorneys

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1 representing their clients and victims on. And the
2 first place I think we talked to victim lawyers was
3 in Texas. Yeah, it was in Texas. It was in Texas,
4 and that was probably the most limited program that
5 we talked to victim lawyers. They seem to do more
6 legal assistance, like maybe lawyers do a lot --
7 military lawyers -- sorry -- do a lot of legal
8 assistance. You know, people come in and need a
9 will or they need help with their landlord, or they
10 need -- they want to get a divorce and they need
11 advice about their divorce, something like that.
12 All active duty military people are entitled to
13 just come in and talk to a -- get a legal
14 assistance attorney to talk to them about those
15 things and represent them.

16 And so, the victim lawyers in Texas we
17 talked to do some of those similar things. Sexual
18 assault victim or any victim, you know, something
19 happens where they live, they might need to move
20 out of if the accused lives there, or, you know,
21 they might need help breaking a lease or with their
22 employment because they're going to court a lot or

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1 something like that. So they help out in those
2 kind of cases. They don't -- in Texas, they told
3 us they weren't really participating in the
4 criminal case. They would give them advice about
5 what the criminal justice process was like, but
6 they didn't really participate in the criminal case
7 in Texas so much --

8 CAPTAIN CARTER: They weren't involved in
9 interviews. They weren't involved in those things.
10 They just --

11 COMMANDER KING: The one interesting thing
12 they were doing in Texas that is probably because
13 of their laws, but the attorney we interviewed was
14 representing a victim who was being sued by the
15 defendant for defamation of character, something
16 like that, because she had made the rape
17 allegation. And so there was a civil lawsuit going
18 on at the same time, so there was certainly a need
19 for a victim attorney, and I'm sure the victim
20 couldn't afford to go hire an attorney to defend
21 her. So that was something that was going on, and
22 the attorney, they were providing legal services to

1 the victim for that to defend the civil suit.

2 CAPTAIN CARTER: There are other things --
3 privacy records, you know, and filing briefs and
4 things of that sort, keeping medical records out,
5 privacy records. They do a lot of that. And a lot
6 of -- some victims counsel have been very
7 successful. In Alaska they even prevented in-
8 camera review by judges, you know. They've done --

9 CONGRESSWOMAN HOLTZMAN: In-camera review
10 of what?

11 CAPTAIN CARTER: Of medical records and
12 things of -- and other privacy records, you know,
13 mental health records. They've been able to
14 prevent that step, you know, so they've been pretty
15 successful at preventing some of those rights.

16 COMMANDER KING: It was interesting. In
17 most of the states, the victim attorneys would
18 either file an appearance in court or at least
19 somehow the peer -- you know, make themselves be
20 part of the process as far as if there was a
21 request for mental health records or medical
22 records, or there was some rape shield or, you

1 know, prior sexual conduct, argument that someone
2 wanted to present this evidence. And then victims'
3 attorneys would appear or make an argument or file
4 a brief or something on the victim's behalf,
5 representing the victim's privacy interests, not
6 necessarily whether that evidence is relevant in
7 trial or not. That would be the prosecutor still
8 who does that.

9 But the victim attorney would represent
10 the victim's interest in that and make an argument
11 on that level as far as the victim's privacy
12 interest. And then that would be the only part the
13 attorney would play, at least in the motion, not
14 necessarily arguing as far as relevance or anything
15 like that. That's still the prosecutor who has the
16 case. But the victim attorney would appear just to
17 make those arguments for the victim. Where the
18 victim has a right to privacy or some other right
19 to be heard on something, then the victim lawyer
20 can be heard for the victim.

21 CAPTAIN CARTER: They also help in
22 sentencing. They go to sentencing. If they have

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1 an allocution right or something like that, they
2 help them prepare that. You know, they do kind of
3 some of those legal counsel things.

4 But another thing that they do that seemed
5 to be pretty common is once they filed an
6 appearance, you know, however it is, they tended to
7 say that once the prosecutors and defense counsel
8 all knew that the victim has their own attorney,
9 there's kind of a self-correction that everybody
10 does. Okay, they've got an attorney watching this
11 stuff, we need to make sure that we're doing
12 everything that we need to as well, you know.

13 COMMANDER KING: It seemed to be that's
14 one of the things they said is that people at least
15 -- you know, were better at remembering the victim
16 has certain rights in this state -- the right to be
17 notified of all these things, and the right to have
18 a discussion about the plea offer or something like
19 that, and the right to be present at sentencing,
20 the right to give evidence, to ask for restitution,
21 things like that. And so, they said just basically
22 filing the notice of appearance, they're letting

1 them know, it seems to make a difference in that.

2 And the other thing that everybody is
3 really concerned about and that we were really
4 curious about because since -- as we were talking
5 about all the trust with the prosecutor and
6 breaking that trust, and how does the prosecutor
7 form that relationship with the victim, that
8 typically you have if you're going to go to trial
9 on a sexual assault case. The victim lawyers we
10 talked to, and perhaps it was a result of them
11 working with the same prosecutors all the time, I
12 think. But they would -- typically once they filed
13 the notice of appearance, they would typically
14 either talk to the prosecutor or send an email if
15 they had a close enough relationship saying I'm
16 representing this victim, it's okay, I want to be
17 present for X, Y, and Z, you know, interviews. But
18 other than that, go ahead and, you know, keep in
19 contact with the victim, and you can meet with the
20 victim on your own. It's not necessary for me to
21 be present at every meeting.

22 So I think -- and even if there was -- a

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1 lot of times the victim lawyers seem to facilitate
2 the first meeting and then figure it out from
3 there. But it wasn't -- they seemed to still
4 understand or at least many of them did, that it's
5 important for the prosecutor and the victim in
6 these cases to have a relationship if they're going
7 to have a success trial and a successful case. And
8 the attorneys we talked to seemed to be very
9 cognizant of that and very careful about that.

10 CAPTAIN CARTER: And most of those
11 attorneys we talked to --

12 COMMANDER KING: Most of them.

13 CAPTAIN CARTER: -- were former
14 prosecutors as well, and prosecutors with a number
15 of years of experience, you know.

16 MR. CASSARA: When we had the full
17 Committee meeting a couple of weeks ago, we heard
18 from a number of special victim counsel --

19 COMMANDER KING: Right.

20 MR. CASSARA: -- about the success of the
21 program. And then we heard from a number of
22 special victim prosecutors who said they're quite

1 an impediment.

2 COMMANDER KING: Those were the same
3 people we talked to, sir.

4 MR. CASSARA: Yeah, so I'm curious whether
5 or not you ran into the same --

6 COMMANDER KING: We did.

7 MR. CASSARA: Okay.

8 COMMANDER KING: Well, I don't think those
9 people said -- they thought they would be an
10 impediment. The people there were the people we
11 talked to who had not really had contact with the
12 victim lawyers for the most part, because we talked
13 to the prosecutors from New York, including the
14 prosecutor at that hearing. We talked to the
15 prosecutor from Arlington. She was one of our
16 first -- one of the first offices we interviewed.

17 So their views were because -- are based
18 on their opinions, but it's not based on, from what
19 we could tell, their experience with the victim
20 lawyers appearing in the cases.

21 MR. CASSARA: Did you speak to public
22 defenders as well?

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1 COMMANDER KING: Yes, we did.

2 MR. CASSARA: And what was -- do you have
3 a general consensus as to how they felt?

4 CAPTAIN CARTER: Yes, sir. There's a
5 slide with regards to it as well.

6 MR. CASSARA: I was getting there.

7 CAPTAIN CARTER: Yeah. The defendant's
8 perspective -- mainly the basic problem any
9 defenders had in regards to it was *Brady*
10 information. That seemed to be the big thing is
11 that, you know, they don't give us *Brady*
12 information. There are concerns that there's all
13 these rights that are being progressed for victims
14 where for the accused, everything seems to be a
15 for-profit, you know, agency. You know, for them
16 to make a phone call, they're charged a lot of
17 money. For them to have to, you know, pay for a
18 taxi to get to the court, and things of that sort
19 that they were concerned with.

20 But the main thing when it comes to due
21 process rights is they're worried in regards to,
22 and we have the quote in here "If the prosecution

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1 screws something up, the defendant pays the price."
2 If the prosecution doesn't notify or talk to the
3 victim about a plea agreement, they're worried that
4 the defendant is going to pay the price and it's
5 going to push off the trial, or it's going to
6 change something. Or in some cases, the sentencing
7 hearing has opened up again, you know, to allow,
8 you know, a victim the right to be heard or
9 something along those lines.

10 Now, what we can say is the defenders who
11 had a lot of experience with this, some of them
12 thought it could be better in some cases, the ones
13 in Snohomish County thought, yeah, that would stop
14 the conflict of interest the prosecutor has in
15 regards to medical records and things of that sort.
16 Other ones thought that they enjoyed -- they said
17 the more information that the victim has the
18 better. And if the victim has somebody who's
19 talking to them -- the defendant's perspective was--
20 - is maybe -- they're not going to be taking some
21 of these reluctant victims to court because they
22 have their own attorney, you know.

1 So all in all, the defendant's perspective
2 was not that they didn't want victims' counsel in
3 general, you know. Most of them who were
4 experienced with them didn't really see a big
5 problem with --

6 MR. CASSARA: You talked about the
7 different interpretations of *Brady*. What is the
8 general consensus among victims' counsel? Maybe it
9 varies from state to state, and if they come into
10 possession of *Brady* material --

11 MS. FERNANDEZ: Meg, why don't you talk
12 about that?

13 COMMANDER KING: Yeah, that would be
14 better.

15 DEAN ANDERSON: Yeah, I don't know the
16 rules of --

17 COMMANDER KING: Well, I think she can --

18 DEAN ANDERSON: Now, we're allowed to talk
19 to each other.

20 COMMANDER KING: I think she can answer
21 that question a lot better than we could.

22 MS. GARVIN: And it's been litigated in

1 Federal and state courts previously that when they
2 are truly victim counsel and, therefore, not an arm
3 in the prosecution, *Brady* is irrelevant. It
4 doesn't attach to them because they are not an arm
5 of law enforcement.

6 And I just want to flag something, too,
7 based on the -- you know, my question at the outset
8 of this about the assessment of the laws, of the
9 jurisdictions before you go in, I think has an
10 impact for how we all interpret the data points
11 that you guys put forth, which are really -- I'm
12 super excited to read that, because, for instance,
13 in New York, the victims' rights laws that would
14 afford standing to victim counsel in trial level
15 cases is very weak. So there are only a handful of
16 rights. There are no constitutional rights in New
17 York. And, therefore, standing for victims'
18 counsels, and the ability for victims' counsel to
19 actually enter an appearance in New York is
20 incredibly limited, whereas in jurisdictions such
21 as Texas has a hurdle to appellate stuff, but
22 Alaska and Oregon, Arizona, D.C., the victims'

1 rights afforded are clearer, and they include
2 explicit standing provisions. Therefore, you will
3 have more potential experience with victim counsel.

4 So, you know, I think that should be one
5 of the lenses through which we look at some of the
6 data points of understanding the law and whether
7 they could have even had a lawyer. And I know
8 you'll get to standards at some point because it's
9 not whether the lawyer had standing in general.
10 It's always whether the lawyer has standing on an
11 issue.

12 COMMANDER KING: Right.

13 COLONEL HAM: Ms. Garvin, and maybe,
14 David, if you're going more into special victim
15 counsel. Are there any ethical obligations on a
16 victim counsel? I think I know the answer, but I'm
17 asking. If their client does tell them what we
18 would otherwise call *Brady* information, is there
19 any ethical obligation on that attorney to attempt
20 to get the client to agree to turn that over? That
21 would be my first question.

22 Secondly, if the client perjures him or

1 herself, what is the victim counsel's
2 responsibility, if any?

3 MS. GARVIN: Well, you have an -- it's the
4 same ethical codes that govern any lawyer. You
5 can't be the one who puts it on, so you can't
6 suborn perjury. There is a debate out there about
7 whether if you're not the one that puts them on,
8 whether you are suborning perjury or not. But, you
9 know, the same ethics that govern anything, your
10 honesty to the court you have there.

11 So if I believe my client is perjuring
12 themselves, for instance, and I go in to then
13 subsequently argue restitution, I certainly
14 couldn't use any of that information that I knew
15 was perjury.

16 COLONEL HAM: Do you have any obligation
17 to move to withdraw from the case or -- it would go
18 by state. I guess it would go by state.

19 CAPTAIN (RET.) GRUBER: If it's a defense
20 counsel, I know what to do as a defense counsel if a
21 client was going to perjure themselves. And I know
22 -- well, a prosecutor have that confidence.

1 Victims' counsel is somewhere in between.

2 MS. GARVIN: If you're the one -- if I
3 know they're going to perjure themselves, the same
4 ethical obligation of that defense counsel would
5 have, I would have basically. I mean, because
6 those are governed by general ethics. It's not
7 because you are -- if you call them, that's
8 suborning perjury. If the prosecution calls them
9 and you let them go on the stand, you're not
10 suborning perjury, but you have other ethical
11 obligations that would require you to either loudly
12 recuse or not recuse.

13 CAPTAIN (RET.) GRUBER: I guess, but, you
14 know, normally defense counsel is excused by the
15 judge. You withdraw from the case, but the judge
16 reviews that. I don't know who victims' counsel
17 works for other than --

18 MS. GARVIN: They work for their client.

19 CAPTAIN (RET.) GRUBER: -- they walk away,
20 you know.

21 MS. GARVIN: Well, it's the same in the
22 civil context, right?

1 CAPTAIN (RET.) GRUBER: Sure.

2 MS. GARVIN: There are ethical obligations
3 to the court that you have. But I wouldn't be
4 suborning perjury. I'm not putting him on the
5 stand. I have attorney-client privilege.

6 CONGRESSWOMAN HOLTZMAN: But suppose you
7 get a situation of restitution. Suppose the victim
8 has told you the event never happened?

9 MS. GARVIN: I cannot move forward with
10 the restitution hearing, 100 percent.

11 CAPTAIN CARTER: And something that we did
12 notice is the -- in these places, the victim legal
13 counsel's role was pretty -- it was pretty defined.
14 And I'm remembering the one that we had talked, you
15 know, in your office. She doesn't usually ask the
16 victim what happened. That's not -- her role is to
17 protect her privacy. Her role is to protect her
18 mental health records. Her role is to protect, you
19 know, for bail hearings, her safety, you know,
20 things of that sort. They don't get into that kind
21 of stuff. That's not their role, and so,
22 therefore, they're avoiding some of those ethical

1 issues because the scope that they have defined for
2 them does not necessarily include that.

3 MS. FERNANDEZ: -- limited representation.

4 COMMANDER KING: Well, in fact, most of
5 them -- many of them showed us representation
6 agreements, and they will say I am representing you
7 for the purpose of, you know, the bail hearing or
8 for the purpose of the medical records hearing, or
9 something. You know, it was very limited. They're
10 not -- it's not like what -- at least we've heard
11 the military will be like where you get assigned a
12 victim's counsel and they represent you throughout
13 every single thing that's going on. Most of --

14 MS. GARVIN: May I ask a question about
15 that?

16 COMMANDER KING: Sure.

17 MS. GARVIN: And I know we'll have special
18 victim counsel here from the military at another
19 point. But my understanding is there's still --
20 the military special victim counsel is still
21 limited to representation of rights.

22 COMMANDER KING: I don't think they've --

1 that's not been --

2 LIEUTENANT COLONEL LEWIS: I wouldn't say
3 it's that narrow. I mean, we see them for legal
4 assistance functions, and they are certainly going
5 in to Military Rule of Evidence 412 hearings, rape
6 shield.

7 MS. GARVIN: Right. But you have a right
8 to be heard, and you have a right to privacy.

9 LIEUTENANT COLONEL LEWIS: Absolutely.

10 CAPTAIN CARTER: But there's also where
11 they're involved in pre-trial investigation. There
12 are situations, you know, of things like --
13 anecdotally.

14 MS. GARVIN: Okay.

15 CAPTAIN (RET.) GRUBER: And workplace
16 relationships.

17 CAPTAIN CARTER: Workplace relationships.

18 MS. GARVIN: Those are all -- so we do all
19 -- victim counsel in the civilian world does all of
20 that, too, under the scope that it's related to
21 their rights to privacy, to employment, to
22 fairness, dignity, respect, to whatever, which I--

1 what gives us standing if we then eventually have
2 to go into criminal court.

3 COLONEL HAM: Well, it's up to you. I
4 mean, you all know the Secretary of Defense has
5 directed the services to implement these programs,
6 and you heard at the meeting. They had to have
7 something done by 1 November. They have to be
8 fully operational by 1 January. There's provisions
9 in the National Defense Authorization Act if they
10 pass, but it's up to you as a Subcommittee and the
11 full Panel to recommend the scope of
12 representation, to recommend all those things
13 should you desire to do so.

14 CONGRESSWOMAN HOLTZMAN: One of my
15 questions has to do with the victim impact
16 statement or the statement in connection with
17 sentencing. I mean, what happens with regard to
18 that, these victims' counsel, your experience with
19 regard to that.

20 COMMANDER KING: As far as if they help --

21 CONGRESSWOMAN HOLTZMAN: Well, a couple of
22 things. Number one, making sure the victim is

1 heard at sentencing. Are they doing that? Is that
2 part of the scope of their obligation? I mean, for
3 example, if you have victim impact statements, I
4 don't know if every statement is something like
5 that, or the equivalent of that. I mean, normally
6 the prosecutor is responsible for ensuring that.
7 But what's the role of victim counsel in connection
8 with that? And also in the military. I gather
9 that the victim is entitled to be heard in
10 connection with the sentence.

11 COMMANDER KING: Well, in the military, at
12 this point at least, if the victim is called on
13 sentencing, they're sworn, so they're subject to
14 cross examination.

15 CONGRESSWOMAN HOLTZMAN: Oh, I see. Oh,
16 okay.

17 COMMANDER KING: Which is different than
18 we saw in most of the civilian jurisdictions where
19 a victim can give a victim impact statement
20 obviously without being sworn. There were some
21 jurisdictions that had kind of weird opportunities
22 for victims to be heard. And most times, victims

1 come in, and tell the judge, you know, what
2 happened to them, what the impact is before the
3 sentencing. But in the military, sentencing is
4 typically -- it depends -- whoever found you guilty
5 typically will sentence you. So if you have a
6 judge who found you guilty, then the judge
7 sentences you. But if you have members or jurors
8 who found you guilty, then those jurors sentence
9 you. So that's a little bit different. What we
10 thought --

11 CONGRESSWOMAN HOLTZMAN: But what about
12 the role -- but what about the role of the special
13 victims' counsel with regard to the -- the victim's
14 role vis-à-vis sentencing?

15 COMMANDER KING: We found a lot -- there's
16 a lot of case law about getting cases or trying to
17 get cases overturned or to -- where they've skipped
18 that or not allowed the victims to give an impact
19 statement before sentencing. There's a lot of
20 litigation, I got from Ms. Garvin's website mostly
21 on, you know, what the ramifications are and what
22 the remedies are for that.

1 CONGRESSWOMAN HOLTZMAN: Well, what role
2 does the victim -- special victims' counsel play
3 with regard to victim's role in sentencing?

4 CAPTAIN CARTER: And from what we heard --

5 CONGRESSWOMAN HOLTZMAN: Are they
6 advocates for it? Are they not allowed to
7 participate?

8 CAPTAIN CARTER: No. From what we've
9 heard, they help them prepare their statement. It
10 does not, from what we've heard or seen, I don't
11 recall if they're the ones like doing the direct
12 examination or they're not the ones making a
13 sentencing argument or something along those lines.
14 They're helping them prepare, and then they go from
15 there. And then the judge typically, you know, is
16 the one who makes that decision as per the
17 sentence, you know, along that -- I mean, they help
18 prepare their victim -- their clients, and then
19 they go from there.

20 MS. FERNANDEZ: Can I suggest something
21 for purposes of both time and clarity, because I
22 think this is -- we all want to dig into this issue

1 because it's so new and it's interesting. Is there
2 any way when we have a real discussion on special
3 victims' counsel that we could have, like, a side
4 by side Power Point, what's being done in the
5 civilian system, what's being done in the military
6 system, so we can see if the military system really
7 is going much farther than the civilian. And we
8 could have that and be able to do a really stark
9 comparison.

10 CAPTAIN (RET.) GRUBER: We can do that. I
11 know that -- I asked for a chart comparing the
12 different services -- military services because
13 they're not all approaching it the same way. You
14 know, contrasting like humanetrics. But we can
15 also try to compile a similar comparison for
16 civilian jurisdictions, and I think this group and
17 Ms. Garvin might be able to help put that together.

18 MS. FERNANDEZ: Because I also think if
19 there's a potential for a bad *Brady* situation --
20 pardon my shorthand here -- it's been litigated.

21 MS. GARVIN: There is not a chance for
22 that -- for *Brady* to attach to victim counsel.

1 MS. FERNANDEZ: Even if the military's is
2 going much farther than what you guys are doing?

3 MS. GARVIN: No, and they're not going
4 further. They're just grounding it in very
5 different language.

6 LIEUTENANT COLONEL LEWIS: Right. And I
7 think the confusion was we were describing limited
8 scopes of representation, limited to just a couple
9 of things and not talking about what the wide menu
10 could be. So I think that's where we got that
11 little confusion.

12 MS. GARVIN: If maybe because *Brady* does.
13 I mean, I think the comparison would be really
14 useful for this group, but not necessarily for the
15 *Brady* component. I think it's more for the how is
16 this system working as a whole component, like how
17 are they working with prosecutors. How are they
18 working with defense counsel? How did they work
19 with the victim advocates because there's a whole
20 -- this is a really interesting component that you
21 guys seem to have delved into.

22 COMMANDER KING: Right. That was

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1 something we felt was helpful. So one thing I
2 wanted to say about *Brady* is we didn't -- you know,
3 we didn't stress that a lot. But one thing several
4 counsel told us is that if their victim said
5 something that wasn't necessarily accurate, they
6 would help them, you know, perhaps clarify that
7 with the prosecutor or something because it wasn't
8 -- they didn't necessarily feel it was in their
9 client's best interest if there was some either --
10 you know, something that they had done
11 deliberately, but more likely it was -- you know,
12 some unintentional statement or somehow it got to
13 be something else.

14 MS. FERNANDEZ: Again, I think provide us
15 some better background because I think all of you
16 were here for the earlier November hearing.

17 COMMANDER KING: He wasn't. Captain
18 Carter wasn't, but I was.

19 MS. FERNANDEZ: But the defense attorneys
20 who were present gave very compelling testimony as
21 to why these counsels might be really bad for
22 defendants. And I think that we need to more

1 thoroughly understand these three areas, you know,
2 victims' rights impacting defendants' due process
3 -- where, when, how, you know. The prosecution
4 screws up, the defendant pays. I'm not sure.
5 Victim advocates and the attorney.

6 I think it's the *Brady* and the due process
7 questions that we need to be able to really focus
8 in on and feel like if we're adding this extra
9 component for victims, are we going to put
10 defendants in a much -- in a difficult and possibly
11 unconstitutional situation? I hear that that's
12 probably not happening. I just think we need to be
13 able to understand this very clearly and simply.

14 MS. GARVIN: I would recommend then that
15 we bring in some Federal folks who have dealt --
16 because it's been litigated under the Federal CVRA
17 in Federal jurisdictions, the constitutional
18 rights, the victims' rights. The states haven't
19 done it, so having state prosecutors and state
20 defense attorneys is not as relevant to the
21 comparative moment.

22 COMMANDER KING: You know, it's difficult

1 because they have their own laws, so --

2 MS. GARVIN: They all have different laws,
3 whereas the military is more akin to the, you know,
4 CVRA. There's debate whether the CVRA attaches,
5 but it's more akin to.

6 COMMANDER KING: One thing we got from
7 victim rights that we thought was important is that
8 everybody said -- in the whole system, everybody
9 said the best place to enforce victim rights is the
10 first time at trial or doing the initial
11 proceedings. And they've all -- every jurisdiction
12 had figured out ways to try to do that that we
13 talked to, and we probably only talked to the best
14 one or some of the best ones, not the worst. But
15 every jurisdiction had done that.

16 And mostly it was, you know, the
17 prosecutors were kind of doing that as they go.
18 Victim advocates are very -- work very hard to
19 ensure that victim rights are complied with during
20 the process. And finally, judges do it. If
21 there's a sentencing hearing and the victim has a
22 right to be present and is not obviously there, in

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1 many jurisdictions the judge will say, counsel,
2 have you checked with the victim, does the victim
3 want to be present.

4 And we personally, and I think the other
5 on our team, came to the conclusion that the
6 military probably in our opinion should adopt
7 something like that. The judges have a trial
8 script. All the parties have a trial script they
9 go through. And everything they say when you're
10 doing a guilty plea or a trial is written down
11 already, essentially the whole process, what you -
12 - you know, all the rights that you go through, the
13 plea agreement and everything. It's all there for
14 you, and just pretty much follow it.

15 And if we include that in there -- has the
16 victim been notified of the right to be here for
17 the sentencing? Has the victim -- has the plea
18 agreement been discussed with the victim? And
19 there's victim counsel that can stand up and say
20 yes or no, you know, depending on what the
21 prosecutor says, but you could incorporate it at
22 that level. And to me, that would -- we would have

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1 a lot less litigation later on if that's done
2 because we would've already -- it would be pretty
3 clear on the record.

4 And every case -- when we talk to people
5 about cases that had been overturned, you know,
6 most of the time things didn't change very much for
7 the victim overall, maybe a couple of cases where
8 there was restitution. But most of the time the
9 best place for the victim to say what they have to
10 say is during the trial. It's not later, you know,
11 after they --

12 COLONEL HAM: They only have a certain
13 amount of time to reopen as well, right?

14 COMMANDER KING: Correct.

15 COLONEL HAM: Thirty days or something
16 like that?

17 COMMANDER KING: Especially in the
18 military.

19 COLONEL HAM: I have a question. Many of
20 the states that you visited, and Ms. Garvin would
21 know, have constitutional -- state constitutional
22 rights. Of course there are no Federal

1 constitutional rights. Is there a distinction
2 between -- I don't know if -- are there
3 distinctions to be made, because at best, military
4 victims will have statutory rights versus
5 constitutional rights. And if so, what are those
6 distinctions?

7 CAPTAIN CARTER: From what we observed, if
8 the rights came constitutionally or statutorily, it
9 would seem like in practice there didn't seem to be
10 a big difference. It seemed more as was the
11 jurisdiction focused on victim rights in general?

12 COMMANDER KING: And was there an
13 enforcement mechanism?

14 CAPTAIN CARTER: And was there an
15 enforcement mechanism.

16 COLONEL HAM: I mean, there's going to be
17 no doubt if there's no constitutional right that
18 defendant's rights would always trump because they
19 are based in the Constitution. Is that an issue?

20 COMMANDER KING: In many of the states we
21 visited, there were both. There were statutory
22 rights and there were also constitutional rights

1 that were essentially the same or perhaps a few
2 less than the statutory rights. But in a lot of
3 states there were both constitutional -- there was
4 statutory rights and there was a constitutional
5 amendment or a constitutional provision giving the
6 victim at least some rights.

7 COLONEL HAM: That's what I'm saying.
8 There would never be -- well, at least it's not
9 foreseeable at this point that there would be a
10 Federal constitutional right. So the victim's
11 rights in the military will never be equivalent to
12 an accused's rights. What implication does that
13 have, if any?

14 CAPTAIN CARTER: Well, I think that would
15 be the same --

16 MS. GARVIN: That's the same as the
17 Federal system.

18 CAPTAIN CARTER: Yeah.

19 MS. GARVIN: Yeah. So in Federal district
20 courts, you would have the exact -- you'd have a
21 parallel moment because it's a statutory right up
22 against defendant's constitutional rights.

1 CAPTAIN CARTER: And that's the same even
2 currently if we're talking about, you know,
3 Military Rule of Evidence 412 or something like
4 that. Those are, you know, more legislature
5 statutory rights that she's got privacy. They have
6 to be weighed against the constitutional right, and
7 the judge makes the decision, you know.

8 COLONEL HAM: The executive order for rule
9 of evidence is lower than statutory.

10 CAPTAIN CARTER: Yeah. Yes. So but they
11 still have to weigh those, and I think that would
12 be the same, you know. The judges have to weigh
13 the right that's being protected and where it comes
14 from versus a constitutional right.

15 COMMANDER KING: I think -- go ahead.

16 MS. GARVIN: I was going to ask a question
17 about some other stuff.

18 COMMANDER KING: Okay.

19 MS. GARVIN: I just don't know if we're
20 there yet.

21 COMMANDER KING: Go ahead.

22 MS. GARVIN: Well, I just had a question

1 about -- so you spoke with prosecution-based victim
2 advocates in all these jurisdictions as well, it
3 sounds like, non-lawyer victim advocates who were
4 not system based. And I'm just curious what they
5 told you, not about the role of the counsel, but
6 about their jobs and whether they perceived any
7 limitations on their job, whether they did have an
8 opinion about victim counsel. I'm just curious
9 what the existing advocates thought about the
10 process and its strengths, weaknesses, and then
11 maybe victim counsel.

12 COMMANDER KING: Go ahead.

13 CAPTAIN CARTER: The victim advocates -- I
14 mean, their job was pretty clearly defined. The
15 victim advocates we talked to I thought were
16 wonderful. They were very knowledgeable about the
17 system. They knew the system at times better than
18 it seemed like the prosecutors did. They
19 controlled -- everybody was their client. So if
20 they go to court, they're the client. If the court
21 is done, they're their client. They still
22 represent the victim. They're knowledgeable about

1 the community resources, so if they need to set
2 somebody up with, you know, sometimes rent,
3 sometimes victim compensation, different things
4 like that, they have all of these things.

5 Now, what the role was is they worked for
6 the prosecution office advocating for the victim.
7 So if the prosecutor is maybe not wanting to go
8 forward based on this, they're there advocating for
9 that victim and ensuring that we've done everything
10 we can before we decline a prosecution.

11 Now, when it comes to special victims'
12 counsel, they didn't seem to necessarily mind the
13 special victims' counsel was there. But in a lot
14 of the jurisdictions where special victims' counsel
15 isn't as prevalent, these victim advocates really
16 seem to be the ones who are taking the charge and
17 making sure that the victims got all of their
18 rights complied with. Prosecutors relied on them
19 to do that, and it seemed to work out very, very
20 well. And that also added to the continued issue
21 of that the prosecutor needs to keep the trust of
22 the victim. And if the victim advocate is able to

1 do these things for the prosecutor, advocate for
2 her while working for the prosecutor, it kind of
3 adds that added trust that there's somebody in that
4 prosecution office. You know, I know that she is
5 working for -- you know, that that advocate is
6 working on our behalf.

7 So the in-house victims' counsel,
8 everybody really seemed to trumpet that that was
9 good and that that was effective to protect the
10 rights of the victims.

11 COLONEL HAM: Did you see anything in any
12 jurisdiction, any program, because we've heard
13 "victim advocates," they might be called different
14 things, and they might be affiliated with different
15 organization. We've heard "victim counsel." Did
16 you see any program in any jurisdiction that you
17 visited that does not exist in the military?

18 COMMANDER KING: I'm not sure if it does
19 exist. But one of the things I've had the
20 perception of, just anecdotally talking to SARCs or
21 victim advocates in the military, is that they
22 don't get a lot of training on the actual ins and

1 outs of trials, and how -- they get some training
2 from a lawyer on how the -- you know, on how the
3 trial works. But they don't know the system as
4 well as I think would be good for them to know the
5 system.

6 Every victim advocate we talk to in the
7 civilian world understood how their specific
8 criminal justice system worked, who was who, who
9 you turn to for this, who you turn to for that,
10 where you can get a question answered, whether they
11 work for the prosecutor or not. But the
12 prosecution-based victim advocates were really
13 critical to the cases it seemed because not only
14 did they understand the system, but they could
15 explain it to the victim --

16 CAPTAIN CARTER: Non-legalese.

17 COMMANDER KING: -- nonlegalese, I guess.
18 And, you know, explain it not only once at the
19 beginning of the case, but over and over when the
20 victim had a question or when there was a hearing
21 that was kind of odd or something, they could
22 explain it.

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1 COLONEL HAM: Is the military relying on
2 the victim counsel and the victim witness liaison?
3 Is that an additional party that you see in the
4 jurisdictions? So we have the victim witness
5 liaison. We have victim advocates. We have the
6 SARCs. We have the special victim counsel. Are we
7 stovepiping this stuff more in the military than
8 you saw in the civilian?

9 COMMANDER KING: I think so. But I think
10 the victim witness liaison in the military plays
11 the role that's similar to a victim advocate in the
12 civilian world. But we -- you know --

13 CAPTAIN CARTER: In our personal opinion,
14 not speaking for JSC or OGC, you know, the victim
15 witness liaison tends to be somebody who has --
16 it's an additional duty, you know. And where the
17 victim advocate, their job is to take care of that
18 victim, you know, and that is what they do.

19 COLONEL HAM: I think that's different in
20 the Army.

21 CAPTAIN CARTER: And it could be
22 different, you know. It may just depend on

1 different jurisdictions and even different bases
2 within those jurisdictions, you know.

3 DEAN SCHENCK: The Army is changing,
4 right? I mean, back when I was in the Army, the
5 victim witness liaison in that office, the head of
6 that was in the Criminal Law Division for the Army.
7 The Joint Service Rep for the Army was the head of
8 that office. And that victim witness liaison in
9 many cases was the prosecutor way back when I was
10 there.

11 COMMANDER KING: Right.

12 DEAN SCHENCK: And the first thing we
13 would tell the victim witness liaison is to tell
14 the victims I'm not your lawyer, but this is how
15 it's going to work. They used to have -- they used
16 to try to have the victim witness liaison to tell
17 the victims I'm not your lawyer, but this is how
18 it's going to work.

19 They used to have -- they used to try to
20 have the victim witness liaison be a person that
21 wasn't involved in the court martial, but because
22 of resources -- and I hate to say this -- because

1 of gender in many cases it was because, you know, I
2 worked for mostly men. And then subsequent to
3 that, we saw a transition a little bit better where
4 it was still in the prosecutor's shop, but not a
5 part of the prosecution team.

6 LIEUTENANT COLONEL LEWIS: So the Air
7 Force's policy is pretty broad. It allows the
8 victim liaison to be a medical mental health
9 provider, a judge advocate general, a paralegal, or
10 other person appropriate under the circumstances of
11 a particular case. Now, in practice it is almost
12 always a paralegal working in the prosecution for
13 that staff judge advocate. They may or may not
14 work in military justice. They may be working in,
15 for instance, a civil law division. But the staff
16 judge advocate is usually the one who is detailing
17 that victim liaison.

18 When I first started training victim
19 advocates when we created that program many years
20 ago, I used to train victim advocates and tell them
21 that I didn't care exactly who the victim formed a
22 bond with, whether it was the victim witness

1 liaison in my office, whether it was them, whether
2 it was the SARC, as long as someone formed that
3 bond. And now in 2013, I will just add the special
4 victims' counsel to that list. I don't care where
5 the bond forms as long as that victim feels that
6 one person is their go-to person.

7 And I think it varies from case to case.
8 I think sometimes it's going to be that special
9 victims' counsel, and other times it's going to be
10 that SARC because they bonded with them during that
11 first meeting. We've had victim advocates change
12 in the Air Force because the bond wasn't quite
13 there, and we thought that we should have someone
14 else. So it's circumstances.

15 MS. FERNANDEZ: Do you ever talk to
16 anybody about typical fact patterns?

17 COMMANDER KING: Yes.

18 MS. FERNANDEZ: Okay. What were they, and
19 did they mirror the ones that you see in your
20 experience in the military?

21 COMMANDER KING: Yes.

22 CAPTAIN CARTER: Yes. And the fact

1 pattern -- our typical fact pattern of the two,
2 alcohol, you know, involved, people who knew each
3 other at a separate occasion. There was a pretty
4 consistent reliance that those cases didn't go to
5 trial civilly as often.

6 COMMANDER KING: A lot of cases --

7 MS. FERNANDEZ: So do they track it?

8 COMMANDER KING: Yes.

9 CAPTAIN CARTER: Yes, college students.

10 CONGRESSWOMAN HOLTZMAN: And what
11 percentage of cases does that constitute?

12 COMMANDER KING: I'm not sure we got an
13 exact percentage, but everybody talked about the
14 alcohol facilitated sexual assaults where people
15 know each other, or at a party together, are
16 drinking together, and something happens, and then
17 there's a report of a sexual assault. And all
18 offices -- in adult sexual assault crimes, there's
19 a fairly high percentage of those.

20 The problem with discussing the specifics
21 of how they take it to trial or don't take it trial
22 is in a lot of states they have different laws and

1 different standards. And they have to prove either
2 force or that the victim -- that the accused
3 provided the alcohol, or did it on purpose, or
4 drugged the person, or the victim was totally
5 passed out. So there were different laws then the
6 military, so we couldn't --

7 And we really didn't have weeks at each
8 place to study all the laws and, you know, go into
9 specific comparisons. But in general we found the
10 laws weren't exactly the same, but everybody who
11 has a population of 20-some-year-olds in their
12 jurisdiction has a fairly high number of those
13 cases. And a lot of them don't go to trial for one
14 reason or another, either the victim doesn't want
15 to go to trial or they can't prove the specific
16 elements needed for their state.

17 DEAN ANDERSON: And are you saying that
18 they go to trial -- these kinds of cases go to
19 trial more often in military justice contexts?

20 COMMANDER KING: They seem -- or at least
21 they seem to be part of the military system. You
22 know, I'm not sure if they actually go to trial or

1 if they get addressed in the military context more
2 because we know about them all. In the civilian
3 world they don't necessarily know about them at the
4 prosecutor's office many of them either because the
5 police might investigate them or --

6 CAPTAIN CARTER: Or the college may
7 investigate them and keep it kind of in-house.

8 DEAN ANDERSON: A huge percentage never
9 report.

10 DEAN SCHENCK: In the military, some of
11 the witnesses report.

12 COMMANDER KING: Exactly. If you tell
13 your friend -- if you tell your, you know, your
14 roommate or whoever, then they have to report. So
15 that's why -- I think we know about more of them
16 even in the military than they do in the civilian
17 world just because -- I mean, we talk to
18 prosecutors. They only know about them if a crime
19 was reported and if that crime was referred by the
20 police to the prosecution agency. So that's a
21 whole different situation than you have in the
22 military where you might tell your friend something

1 happened last night, and then all of a sudden
2 there's a police report where you didn't mean to
3 have one.

4 JUDGE MARQUARDT: Do you have an opinion,
5 Mr. Cassara? Do they go to trial?

6 MR. CASSARA: I do have an opinion.

7 (Laughter.)

8 CAPTAIN CARTER: I think me and Mr.
9 Cassara's opinion will probably be the same.

10 COLONEL HAM: I mean, I've read those
11 records on appeal, and Dean Schenck has, too. So
12 there are convictions with more than a year in
13 prison. It's I woke up and I don't know what
14 happened. I must've been assaulted, and there's a
15 conviction.

16 MR. CASSARA: I will say in my experience,
17 and I was telling somebody earlier I have probably
18 half a dozen rape cases that I am currently
19 representing an accused on. On three of them the
20 state refused to prosecute. Now, I've heard people
21 saying -- you know, I've seen the reports in the
22 press where people say, well, that doesn't happen.

1 And maybe I have the only three in the entire U.S.
2 military and I just happen to have them on my
3 docket, but I find that somewhat hard to believe.

4 By my anecdotal evidence, the military
5 prosecutes those types of sexual assaults
6 significantly more frequently than the civilian
7 courts do. Do I have statistics to prove that?
8 No, my anecdotal evidence. I will say this. If
9 you talk to any military defense counsel, they're
10 going to tell you the same thing. I don't know if
11 prosecutors would, but I think any military defense
12 counsel is going to tell you the same thing.

13 COLONEL HAM: We had the jurisdictions in
14 the day before yesterday. Virginia Beach was one
15 of them, of course, a huge military installation.
16 And we asked them do any of you -- do you any of
17 your prosecutors turn down cases that the military
18 picks up. And the Virginia Beach detective said
19 yes, multiple.

20 DEAN SCHENCK: And I think the services
21 reported to Senator Gillibrand in a written
22 document that I saw, for the last two years the

1 Army had 47 cases that civilians turned down as
2 sexual assaults, and they had an 81 percent
3 conviction rate of those cases.

4 CAPTAIN (RET.) GRUBER: We've received
5 documentation of those actual cases if anybody
6 wants to see it. We saw it more of -- probably
7 more for the Comparative Systems Subcommittee. But
8 we have received that from the Army JAG.

9 COMMANDER KING: And I reviewed some of
10 those, and some of them I thought it was
11 interesting because some of them, there were
12 convictions in six cases. Some of them there were
13 convictions on the non-sex charges, but not the sex
14 charges. And some of them there were also
15 acquittals.

16 And as a civilian prosecutor, when I had
17 those cases -- when I had cases where the victim
18 really couldn't say what happened, and you have to
19 show some sort of consent or inability to consent,
20 I would talk to the victim about it and explain
21 that, you know, if we charge it, we go to a jury
22 trial, and the jury is told they have to believe --

1 they have to find -- first of all, they have to
2 believe -- they're told the defendant is innocent.
3 And so, they have to start out on that basis, not
4 that it's an equal footing between the two. They
5 have to start out with the defendant as innocent.

6 And then not only do you have to present
7 enough evidence so that they think it probably
8 happened, they have to believe beyond a reasonable
9 doubt. And these are two strangers. And can they
10 say -- and then you ask the victim if they think
11 they said no, and if they don't know, then I'm like
12 -- then I ask them sometimes, you know, how do you
13 think the jury would decide all those things? And
14 a lot of times when they talk about it and
15 understand it, they really want the services, and
16 they don't really go to a trial sometimes when they
17 understand that's the system that we have and the
18 laws.

19 And so, sometimes I think it's important
20 -- it helps them to understand the context of
21 what's going to happen at trial, and they make the
22 decision that it's better not to go forward, or

1 that maybe they think -- you know, and that's
2 assuming you don't have other corroborating
3 evidence or something that changes that.

4 CAPTAIN CARTER: And that's similar --

5 DEAN SCHENCK: -- parties' response, too.

6 The victims just freeze, and so there are
7 acquittals resulting from that unfortunately.

8 COMMANDER KING: Well, there are -- that's
9 the problem with it. I mean, there are some -- you
10 know. And I think an important part -- I mean,
11 we're always going to have those cases. The
12 important part to me is at least, first of all, the
13 victims are supported, second of all, that they are
14 -- you know, that they have enough support
15 explanations and learn enough about it so that they
16 feel they're part of the process, not that
17 something is happening to them, you know. I mean,
18 these are bad things, and sometimes maybe they feel
19 better if they go to trial even if there's an
20 acquittal, but they should be able to decide that,
21 at least have some input into that because it's
22 them doing it, and especially if they're going to

1 be in the same social situation or family with that
2 person. Sometimes it's better for them, I thought
3 and they thought, if they could say, you know, I
4 know he did it, and my prosecutor believes he did
5 it, and my advocate or whatever. But we think we
6 wouldn't prove it, so I'm choosing to not go
7 forward.

8 DEAN SCHENCK: Also there's administrative
9 measures that can be taken.

10 COMMANDER KING: Right, in the military,
11 yeah.

12 DEAN SCHENCK: I've had many clients who
13 preferred that the accused be administratively
14 separated. So immediately -- immediately -- within
15 two weeks of the closed report, the accused would
16 get discharged from the service and just go away,
17 especially at the training installations where
18 they're really young and they're just kids, and
19 they may have had some sexual contact with the
20 accused already. And so, when they get there,
21 they're kids, and everybody is in that closed base,
22 location. And the accused says he didn't do it,

1 and the victim is sure, you know, this occurred.
2 And the accused doesn't want to get a Federal
3 conviction. He can do administrative separation.

4 CAPTAIN (RET.) GRUBER: Excuse me. I'm
5 going to dial Dean Anderson in. She asked if I
6 asked her if she's available.

7 MS. GARVIN: I just wanted -- it's a
8 different topic.

9 COMMANDER KING: Can I finish -- I wanted
10 to finish a couple of things about this one.

11 What we were looking in these situations
12 isn't necessarily so much -- how better to
13 prosecute or what we wanted to talk about. It's
14 how --

15 CAPTAIN (RET.) GRUBER: Michelle?

16 DEAN ANDERSON: Yes.

17 CAPTAIN (RET.) GRUBER: Hi, you're back on
18 with the Panel.

19 DEAN ANDERSON: Okay, thanks so much. I'm
20 going to put myself on mute, but will be listening
21 in.

22 MS. FERNANDEZ: Great, thank you.

1 COMMANDER KING: Okay. So we were trained
2 to looked at not necessarily, you know, how better
3 the -- well, we were looking at the -- we tried to
4 look at the training and experience of the
5 prosecutor because I think we thought that was
6 important for the victim services to get a good
7 prosecutor also and good prosecution services. But
8 we were also looking at what type of victim
9 advocate services there were for the victim and how
10 well people in the system who were advocates not
11 only understand the counseling and support part,
12 but understand the criminal part because ultimately
13 if a victim makes an unrestricted report, they do
14 so expecting something that's going to be done for
15 them. And if the people who are supporting the
16 victim don't understand how that process works,
17 then it creates a little bit of a gap for the
18 victim. And I believe it makes them a little bit
19 more suspicious of the process than they should be.

20 So my goal would be to have all military
21 victim advocates, SARCs, whoever they are as
22 familiar with the criminal justice system and how

1 it really works as they can possibly be. So that's
2 one way I think that we could better support the
3 victim is not only give them all the training we
4 can and send them to all the trainings on how to
5 support the victim outside of the process since
6 that's really important, but also to support the
7 victim going through the process.

8 MS. FERNANDEZ: Meg?

9 MS. GARVIN: So my question is about slide
10 22, which is "Collateral Misconduct."

11 COMMANDER KING: Oh, yes.

12 MS. GARVIN: And I'm just curious -- you
13 did a comparison it sounds like, and I'm just
14 curious what all of this means on this slide.

15 CAPTAIN CARTER: Well, in collateral
16 misconduct, it's an issue in the military. You
17 know, if you use marijuana, you're going to get
18 kicked out of the military one way or the other,
19 for the most part. And that almost, you know,
20 creates an issue where it's easy for, you know, oh,
21 somebody if they allege, you know, sexual assault
22 maybe to get out of, you know, the underage

1 drinking or things of that sort. How do they do
2 that?

3 Well, what we've found out is asking the
4 prosecutors how do you deal with this collateral
5 misconduct? Okay. Most of the time they just say
6 you just need to deal with it. It's usually
7 present. Usually if you're going to have somebody
8 who's underage drinking, somebody is going to be
9 using drugs, they're -- you know, there's going to
10 be collateral misconduct. They're going to have a
11 shoplifting record.

12 COMMANDER KING: Prostitution.

13 CAPTAIN CARTER: Prostitution, you know,
14 all these kinds of things. And they do typically
15 -- you know, don't charge the minor stuff. They
16 will grant immunity, but they don't like to grant
17 immunity, and the reason is because they think the
18 immunity makes it look more like there's an
19 incentive, and it gives, you know, someone like Mr.
20 Cassara ammunition to --

21 COLONEL HAM: Factual or testimonial?

22 COMMANDER KING: Either.

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1 CAPTAIN CARTER: Either, you know. And
2 so, given those things, you know, they're concerned
3 about that. I mean, interestingly enough, you
4 know, there's one jurisdiction, you know, when we
5 brought up about drug abuse. That jurisdiction has
6 basically said, well, most people in our
7 jurisdiction think that that all drugs should be
8 legal anyway. So that's not an issue.

9 COMMANDER KING: You know, small amounts
10 of drug possession in some civilian communities is
11 not -- it's very difficult to even get a conviction
12 for that, let alone -- in a regular case let alone
13 if your defendant is also a victim of a rape or
14 something.

15 But the difference partly is because
16 prosecutors' offices regularly decide -- they don't
17 charge every offense that comes to them. They
18 regularly decide what offenses they can charge,
19 partly based on, I mean, their duty to society, to
20 protect society and to manage the resources they
21 have. They don't have an unlimited amount of
22 resources to prosecute every single thing that

1 comes through. They review the cases. They decide
2 based on the weight of the evidence and various
3 other prosecutorial standards on what they're going
4 to charge. And every prosecutor we talked to did
5 not want to charge a victim.

6 Now, if there is a case where a victim is
7 a drug dealer and, you know, and happens to be, you
8 know, dealing a large amount of drugs or maybe is
9 also, you know -- I mean, you can be raped if
10 you're also an identity thief, you know, and
11 stealing people's identity. Or you might be
12 prosecuted for those, but they simply pretty much
13 -- they still work with the victim. They just
14 don't talk about that case. They wall off the
15 case.

16 So victims don't get a freebie on all
17 felony offenses in the civilian world, but
18 typically the police and the prosecutors will say,
19 you know, we don't care if you were using drugs at
20 the time. We don't care that you were drinking
21 unnecessarily. That's not our concern because most
22 of their cases, quite frankly, involve somebody who

1 was doing that. But they said, but the important
2 part to us is that you tell the truth, and that we
3 -- that's the important part because the defense
4 counsel, of course, if a victim has lied about
5 something like that first over and over and that's
6 in their statements, certainly will address that to
7 the jury, and then that gives the jury a basis not
8 to believe them. But if the victim comes in and
9 says, yeah, I was using drugs that night, or, I was
10 drinking and I was only 20, and, you know, somebody
11 snuck me into the bar, a jury is going to say,
12 yeah, I can understand that, but there's still a
13 victim of a crime. And prosecutors, like you
14 heard, they're, like, that's fine, we'll deal with
15 that issue. So it's not --

16 CONGRESSWOMAN HOLTZMAN: My concern is on
17 the military side. Probably on the civilian side
18 nobody is going to think that it's a rape victim
19 and is drinking. They aren't going to say, here,
20 she can be prosecuted for that. I can't think of
21 the last time somebody got prosecuted for
22 drunkenness or public drunkenness. That probably

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1 doesn't enter their mind. But in the military,
2 they might, like, from the get-go, so they may not
3 want to record the case. And so if you're telling
4 me this decision then is made by the prosecutor
5 down the road, what kind of a disincentive is this
6 to the victim? I mean, that's not something you
7 looked at.

8 COMMANDER KING: Well, we did not study
9 the --

10 CONGRESSWOMAN HOLTZMAN: You were looking
11 at the civilian. Okay, so it's an unfair question.

12 COMMANDER KING: We limited our scope to
13 the civilian world partly because we had only a
14 limited amount of time, and then personnel and
15 people were transferred. And we, quite frankly,
16 needed to give them the information that we had.
17 So that was all -- that was where we limited it.
18 We didn't study that. So it's really only our own
19 opinions, which are probably no better than anyone
20 else's.

21 CONGRESSWOMAN HOLTZMAN: Well, if you
22 wouldn't mind giving me yours --

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1 (Laughter.)

2 CAPTAIN CARTER: We don't mind.

3 COMMANDER KING: Well, you know, it's kind
4 of --

5 CONGRESSWOMAN HOLTZMAN: It's got to be
6 more important than mine, that's for sure.

7 COMMANDER KING: It's hard. I mean, as a
8 prosecutor, I wouldn't want -- I don't want to
9 prosecute victims. On the other hand, not
10 prosecuting them or not -- underage drinking
11 typically isn't brought to a court martial if
12 that's the only offense you have. A lot of times
13 you're not going to trial. You're going to be --
14 you know, you might get in JP. You might get some
15 administrative remarks or something.

16 The problem is if a commander does that,
17 then, you know, defense attorneys try to say, well,
18 that's all she got because she claimed it was a
19 rape, and, you know. It's a difficult situation.
20 I'm not exactly sure how to deal with it. I
21 personally don't want to prosecute victims just
22 because as a prosecutor I think that's bad. But

1 the military is different, and you really can't
2 have people using drugs in the military either.

3 DEAN SCHENCK: I think it's a catch 22.

4 COMMANDER KING: It is.

5 DEAN SCHENCK: Because if you tell the
6 victims they're not going to have anything happen
7 to them, then they're going to report so nothing
8 happens to them. We saw that in some cases when we
9 were on the Task Force, the Defense Task Force. We
10 would go and hear, you know -- actually we went to
11 Lackland, so we would see that.

12 And then we also heard the other side
13 where the victims reported and got counseled, and
14 the counseling statement followed them. And then
15 they had to tell the story of the sexual assault as
16 the next assignment because they had gotten a
17 counseling statement for underage drinking. You
18 see what I mean? So it's just a catch 22, sort of
19 like the mental health issue where --

20 COLONEL HAM: But a counseling statement
21 is not a disciplinary action, so there would be no
22 disciplinary action. Yeah, and you and Admiral

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1 Houck in the open hearing --

2 DEAN SCHENCK: Right, exactly. And then
3 you have the Navy.

4 COLONEL HAM: Someone with cocaine --
5 someone doing cocaine in the military is not a
6 minor --

7 COMMANDER KING: You can't have people who
8 use drugs like that be on active duty. And that's
9 a problem -- that we have standards like that. And
10 so it's not really fair to compare it to the
11 civilian world because while you're not supposed to
12 use drugs and technically it might be illegal in
13 most states, it's not really -- you know, you don't
14 have this -- your boss might still fire you. So in
15 a way it's kind of the same if your boss finds out
16 even though you're a rape victim that you were
17 using drugs, and you weren't -- like you're an air
18 traffic controller, you're probably still going to
19 lose your job whether you were a rape victim or
20 not.

21 COLONEL HAM: But it's not the same motive
22 to misrepresent perhaps as it could represent in

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1 the military, because if you're doing cocaine,
2 you're gone, and you're probably going to get
3 disciplinary action depending on the service and
4 depending on your rank.

5 (Cross talking.)

6 DEAN SCHENCK: If you're a crew chief on
7 an aircraft, you are done in the Army. You are
8 done. You have to be done.

9 COLONEL HAM: And you're going to get
10 prosecuted for a Federal felony. So it presents a
11 motive to misrepresent that doesn't exist in the
12 civilian world as well.

13 CONGRESSWOMAN HOLTZMAN: But I'm also --

14 COMMANDER KING: But you can still be a
15 rape victim --

16 DEAN SCHENCK: Exactly.

17 COMMANDER KING: -- and have used cocaine.
18 And you shouldn't -- that shouldn't be overlooked
19 either, so.

20 CONGRESSWOMAN HOLTZMAN: Right. My
21 concern is the other side of this, which is how
22 does this deter -- let's say there's a legitimate

1 rape victim and you have a predator out there. How
2 is this person going to be deterred from reporting
3 because of the collateral misconduct? I mean, I'm
4 not minimizing it. I asked for your opinion. It's
5 a very tough issue. I don't know, Captain, if you
6 wanted to opine.

7 CAPTAIN CARTER: The only thing I could
8 probably add to it is, you know, on top of just
9 that you've got this issue and problem. I mean, to
10 me from what I've experienced and what I've seen,
11 juries make a difference. I mean, lying to your
12 supervisor about one thing at one time, that makes
13 a big difference in a -- you know. So this
14 collateral misconduct, that follows it, is an issue
15 and it is a problem.

16 And, you know, again, the civilian
17 jurisdictions. It's not an issue and it's not a
18 problem there, so I don't know how much gleaning we
19 get from looking at them towards that issue. I
20 think it's something that we're going to have to
21 look at and maybe make a hard choice of, you know,
22 have some, you know, transition for, you know,

1 victims to put them into a location where, you
2 know, some -- they can be taken care of and maybe
3 not necessarily be, you know, hindering the
4 mission.

5 DEAN SCHENCK: Do you think the victim
6 counsel could be helpful in that scenario? In
7 other words, because we have heard where the victim
8 counsel can be put into the process. You report
9 your restricted, I want my attorney, and then you
10 talk to your counsel regarding -- now that's not a
11 defense counsel.

12 CAPTAIN CARTER: And that was going to be
13 my first issue is that the victim counsels, they're
14 not defense counsels, you know. And if they're
15 going to be getting into advising them as to what
16 they should do in regards to a --

17 LIEUTENANT COLONEL LEWIS: Let me
18 elaborate on that a little bit particularly. We do
19 expect that special victims' counsel hear about
20 collateral misconduct in a privileged
21 communication, sometimes before an allegation of
22 sexual assault has even been reported because we

1 can have a special victims' counsel before we have
2 an unrestricted or a restricted report.

3 The way I see this personally is it's
4 important for the command to make an individual
5 decision on discipline in an individual case. And
6 so, if we do have someone who is an identity thief
7 who is going out and stealing identities from
8 various service members, and they also happen to be
9 a sexual assault victim, those are two separate
10 things. And those need to be resolved knowing the
11 whole concept, both of them.

12 And, frankly, that probably results in two
13 different courts martial, one for identity theft if
14 the value is significant enough, and there are
15 military victims that have been taken advantage of.
16 And then there's probably a sexual assault
17 prosecution. And that's probably the right answer
18 for the command to take in that.

19 Contrast that with underage drinking. And
20 so what we say in our policy within the Air Force
21 is that the commander can, in fact, delay the
22 discipline decision, and that is just fine. And

1 I've had this conversation with commanders before.
2 What exactly do you want to do? Well, I want to
3 hold someone accountable. Do you think you need to
4 do that right this moment? Either yes or no. If
5 they don't need to hold them accountable right this
6 moment in order to protect good order and
7 discipline in their unit, then perhaps we can delay
8 that decision until a later point in time, and
9 perhaps we can see how the sexual assault case and
10 investigation move forward, and then decide when
11 it's appropriate.

12 Now, some special victims' counsel, and I
13 think some victims, are going to say, I just want
14 to be done with that. I would like you -- if
15 you're going to give me a letter of reprimand in
16 the military or an Article 15 non-judicial
17 punishment for underage drinking, I'd like to have
18 that now, and I'd like to be done with it. And
19 then when I get asked questions at trial about my
20 role and responsibility, I can say, no, that's
21 over, I've been disciplined. And I think the
22 special victims' counsel can play a real role in

1 saying, you know, command, I know you want to --
2 you've got this going on here with discipline
3 issues. Our preference is let's resolve it right
4 now before trial during the investigation.

5 Other victims we think will take the
6 opposite view and will say I can't deal with that
7 right now, not until I know what's going on,
8 because if what happens is that the sexual assault
9 never goes to trial, and then we have a victim
10 being punished for underage drinking, you have a
11 serious equity. And that goes back to things that
12 certainly we've studied within the Air Force and
13 others where it looks like we're blaming and
14 punishing the victim and not holding the offender
15 accountable at all.

16 CONGRESSWOMAN HOLTZMAN: Can I ask a
17 question about that?

18 LIEUTENANT COLONEL LEWIS: Yes, ma'am.

19 CONGRESSWOMAN HOLTZMAN: Or maybe Colonel
20 Ham, you have the answer. What happens when you
21 take a commander's responsibility -- the
22 commander's right to refer for court martial in

1 this kind of circumstance? Do you know the answer
2 to that? What happens under that bill?

3 LIEUTENANT COLONEL LEWIS: I do. So let's
4 start before we even get to the possible bill. So
5 right now, the Secretary of Defense has withheld
6 authority on discipline for sexual assault, and it
7 includes victim misconduct in there. So the SECDEF
8 withholding requires that to go up to the O-6
9 level, and so victim collateral misconduct, as well
10 as offender misconduct, as well as offender
11 providing alcohol to the victim minor. That all
12 gets wrapped up and goes to the first O-6 in the
13 chain of command. They are the first ones that can
14 handle it. Yes, they've got to handle the whole
15 thing, and that's been done, and that's in place.
16 That's our current practice now.

17 Now, what happens if you take the
18 commander out of the system? It complicates things
19 significantly. And the latest version of Senator
20 Gillibrand's proposal seems to try to address that
21 a little bit more than perhaps prior versions of
22 the Military Justice Improvement Act or the

1 proposed floor amendment that we were commenting on
2 and that the RSP has heard testimony from the
3 service TJAGs.

4 What it appears now is an attempt to roll
5 up lesser included offenses, but it's not
6 necessarily going to roll up everything, in my
7 personal opinion just from reviewing the
8 legislation. So what I can say at this point is it
9 looks like it complicates matters significantly.

10 MS. FERNANDEZ: When you say "roll up,"
11 what do you mean?

12 LIEUTENANT COLONEL LEWIS: I mean right
13 now it's rolled up together to one O-6 who is
14 deciding the whole thing of what's going to be --

15 MS. FERNANDEZ: -- Senator Gillibrand's
16 bill.

17 LIEUTENANT COLONEL LEWIS: In my view, it
18 seems to still have some parallel prosecution and
19 some parallel disposition authorities because it
20 attempts to put certain offenses within the chain
21 of command, those offenses where punishment is less
22 than one year, for instance. Certain offenses

1 under the UCMJ would still be command authority.

2 But then --

3 MS. FERNANDEZ: And underage drinking can
4 be administrative, so that would always stay
5 underneath the command?

6 LIEUTENANT COLONEL LEWIS: Underage
7 drinking can be prosecuted. It's rarely prosecuted
8 in the military. But it could --

9 MS. FERNANDEZ: But it's usually dealt
10 with administratively.

11 LIEUTENANT COLONEL LEWIS: Usually.

12 COMMANDER KING: But it doesn't have to
13 be.

14 MS. FERNANDEZ: So you could get a
15 situation where the sexual assault gets dealt with
16 by a JAG, but the drinking gets dealt with by the
17 commander.

18 LIEUTENANT COLONEL LEWIS: That is my view
19 because it's not a lesser included offense that's
20 being attempted to be given to the JAG disposition
21 authority, the O-6 with specialized criminal --

22 CONGRESSWOMAN HOLTZMAN: Now, what effect

1 does that have on the victim, that kind of
2 bifurcation? How do you see that playing out?

3 LIEUTENANT COLONEL LEWIS: It's very hard
4 for me to look into a crystal ball and decide --

5 CONGRESSWOMAN HOLTZMAN: No, I understand.
6 How would it work? Would it be adverse to the
7 victim? Would it be helpful to the victim? How do
8 you see that playing out?

9 LIEUTENANT COLONEL LEWIS: I see it
10 depending on the victim. There are some believe
11 that they're not going to get justice without
12 command involvement.

13 CONGRESSWOMAN HOLTZMAN: No, no, no, I
14 mean the bifurcation.

15 LIEUTENANT COLONEL LEWIS: Correct.

16 CONGRESSWOMAN HOLTZMAN: Okay.

17 LIEUTENANT COLONEL LEWIS: And so, those
18 victims will have their cases going to someone
19 somewhere else that they don't know that is, you
20 know, not in their direct chain of command that
21 they can look up to. And so, there will be some
22 that are unhappy with the disposition decision

1 there. And then there will probably certainly be
2 those victims -- we've had a number of people make,
3 you know, very public statements that they feel
4 that this is the best answer. And those folks --
5 that may give them more confidence to report.

6 CONGRESSWOMAN HOLTZMAN: And let me just
7 follow up. Maybe I wasn't clear. Obviously --
8 that's not my question really. My question is, if
9 the commander can deal with underage drinking,
10 whether the bureaucracy deals with the prosecution
11 in one of these cases where you have collateral
12 misconduct, could that harm the victim, this
13 bifurcation, not just what they would prefer or how
14 they see the commander, but what are the
15 complications you see in the disposition in how the
16 victim looks at it. That's really my question. Is
17 that clear? Am I making myself clear to you?

18 LIEUTENANT COLONEL LEWIS: A system that
19 has two military justice systems is very
20 complicated, and that's part of the concern of
21 trying to say exactly what's going to happen. If
22 the commander can handle a victim's underage

1 drinking, that commander has the authority to
2 impose discipline. And if a JAG O-6 disposition
3 authority is the one who makes the decision on the
4 sexual assault, we now have two different people
5 making the decision, and that could lead to
6 inequities, whereas now with the Secretary of
7 Defense withholding, those things are wrapped
8 together.

9 MS. GARVIN: The proposed bifurcation or
10 possible bifurcation, are they talking to each
11 other at all in terms of staying one decision
12 before the decision is made, or are they siloed
13 bifurcation right now? Is that your interpretation
14 of it?

15 LIEUTENANT COLONEL LEWIS: My
16 interpretation is that the legislative rules are
17 not at that level of detail.

18 MS. GARVIN: That's what I -- okay.

19 DEAN SCHENCK: It sort of general -- it
20 talks about -- well, actually I think Senator
21 Gillibrand modified her legislation last week just
22 to separate sexual assault specifically.

1 LIEUTENANT COLONEL LEWIS: No, I don't
2 think that's current. I believe that that was a
3 proposal, but I don't believe that is the current
4 legislative proposal.

5 DEAN SCHENCK: So then it's the version
6 before. I mean, it's back to the old version.

7 LIEUTENANT COLONEL LEWIS: No, I would
8 disagree with that as well. There is new version
9 that came out.

10 DEAN SCHENCK: Does the third version
11 refer all felony level offenses to Director of the
12 Military Prosecution?

13 CAPTAIN (RET.) GRUBER: You know, we can
14 discuss that. We have a legislative analyst who's
15 on staff who, if you want, can maybe provide an
16 overview.

17 COLONEL HAM: I mean, I can give you a
18 brief overview.

19 (Cross talking.)

20 DEAN SCHENCK: It can create two systems
21 whereas the first version created maybe one and
22 half systems, and we weren't sure what was

1 happening at the lower level offenses left to the
2 career commander. The new version creates two
3 systems and separates the included offenses, those
4 with the new O-6 convening authority and leaves
5 intact all general court martial convening
6 authorities so that all the other offenses, the
7 excluded offenses go through that system. They
8 take the very serious offenses to the commander.

9 If you have one incident that involves
10 underage drinking and you have a sexual assault,
11 the underage drinking could be handled by the
12 commander because it's a disciplinary type action
13 for all parties, not just the victim because these
14 witnesses and then the sexual assault would move to
15 the Director of Military Prosecutions or whatever
16 it is for felony type offenses.

17 COLONEL HAM: That is correct. There's a
18 line in the new version that appears to attempt to
19 say, you know, all the misconduct of the accused,
20 regardless of which category it's in, will go to
21 the Director of Prosecutions.

22 DEAN SCHENCK: That's the way Canada does

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1 it. Canada just says you're the accused, you have
2 underage drinking, you have dereliction of duty,
3 all your offenses have to go to the Director of
4 Military Prosecutions.

5 CONGRESSWOMAN HOLTZMAN: It doesn't look
6 like that -- but, Commander, do you have a
7 response?

8 COMMANDER KING: Well, The only thing I
9 was thinking is that if the victim is prosecuted by
10 a totally separate entity that's -- you know, and
11 especially for simpler offenses, it's probably --
12 it could happen first and a lot easier. And
13 depending on what it is, probably not underage
14 drinking, but maybe drug use. The victim could be
15 administratively separated long before you get done
16 investigating, let alone prosecuting, the sexual
17 assault. And so, now you have the victim who's
18 been kicked out of the service for their
19 misconduct, and the accused is still here. And now
20 the victim, you know -- I mean, I don't know. But
21 it's certainly --

22 COLONEL HAM: Well, one issue we don't

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1 know the answer to --

2 COMMANDER KING: Right.

3 COLONEL HAM: Right now the general court
4 martial convening authority can grant immunity.
5 Only the general court martial convening authority
6 can grant immunity.

7 COMMANDER KING: Right, that's true, too.

8 COLONEL HAM: We don't know how this will
9 work with this new prosecutor because we did hear
10 that the intent is that the prosecutor will
11 negotiate plea agreements. Right now that's only
12 left to the convening authority.

13 So will this new prosecutor be able to
14 grant immunity or will this new prosecutor be able
15 to ask this new convening authority for immunity,
16 and then the commander is not going to be able to
17 do anything with collateral misconduct?

18 COMMANDER KING: Right. And so --

19 COLONEL HAM: It's off the table.

20 COMMANDER KING: So it could go either
21 way, or who knows at this point. But there's a lot
22 of ramifications that could happen, and we have two

1 totally separate entities.

2 CONGRESSWOMAN HOLTZMAN: I appreciate
3 that.

4 COMMANDER KING: Yeah.

5 CAPTAIN CARTER: If we could bring it back
6 to some of the stuff that we've seen here that I
7 think addresses this. One thing that we saw that
8 helps build the trust, help builds the credibility
9 of the prosecution function is the fact that
10 everybody was on the same page. And when I say
11 everybody was on the same page, they weren't all
12 just rubber stamping each other. You've got
13 prosecutors telling investigators, no, don't unfind
14 it, go back and find me this, this, this, and this
15 through their meetings and through their dealings
16 with each other. You've got victim advocates in
17 there saying, no, you can't give up on this right
18 now; these are things that we need to do.

19 And they all work together, and they all
20 fight. And then when it comes to a decision, be it
21 that they're going to go forward, they're going to
22 make a plea agreement, they're going to decline and

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1 dismiss it all together because there's no
2 evidence, that when everybody is on that same page,
3 it's going to add some credibility to that victim,
4 that they know they all fought for me as much as
5 they could.

6 If we're splitting this and having a JAG
7 make a decision here and having a commander make a
8 decision here, you're not going to have that exact
9 same prosecution. What if the JAG doesn't go
10 forward, and then the commander goes forward on
11 underage drinking, you know? You're not going to
12 have that same trust that the victim is going to
13 need to get, which was routinely -- I know I
14 probably said it a couple of times here, that trust
15 the prosecutor has with the victim seems to be a
16 very, very important part that all these
17 prosecutors are focused on.

18 And so, if you split that up, they're not
19 on the same page, you know. And it's not going to
20 come across to the victim that my rights are being
21 taken care of by people the way that they should be
22 taking care of them.

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1 COMMANDER KING: One of the things people
2 tended to tell us is that it was important that
3 they all either are on the same page or at least
4 appear to be on the same page and not point fingers
5 at each other. And oftentimes when there was a
6 declination and the prosecutor was meeting with the
7 victim, they'd have the detective there so you
8 couldn't say, well, the prosecutor thinks this, but
9 I would personally do something else, so it's their
10 fault.

11 And I think the more systems you have for
12 who's prosecuting and who's involved in it, the
13 more you can have that finger pointing. And what
14 we get from those things are victims who are
15 totally confused, like some of the ones we've seen
16 from years ago who don't feel supported and are
17 confused about who did what, and why it wasn't
18 successful.

19 I would bet most of those cases did not --
20 were not victim advocates and victim support
21 personnel who explained those cases and whatever
22 was happening to those victims in a way that they

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1 could understand and that they could really figure
2 out what was going on. And that most of them at
3 the time, whatever was happening happened, did not
4 feel supported and did not feel like their position
5 was being represented. It's hard for us to tell at
6 this time whether their cases should've went
7 forward or not went forward. But I suspect that
8 most of them, had we better victim advocate
9 support, people who could truly understand and
10 explain to them what was going on, that we would
11 not be hearing from as many disgruntled victims as
12 we are. But that's my opinion, of course.

13 CAPTAIN CARTER: And one thing we heard
14 from the jurisdictions is we can't prosecute our
15 way out of an issue or a problem. It's not a
16 function of let's have more prosecutions. They're
17 all clear on that, including ones that have gone
18 through the same allegations of that, you know,
19 we're not taking -- that they're not taking, you
20 know, cases to court and things like that. They
21 were all very clear that we can't prosecute our way
22 out of this, you know. Just taking more people to

1 trial isn't going to help.

2 MS. FERNANDEZ: I think we're all needing
3 a break.

4 COMMANDER KING: I think so.

5 CAPTAIN (RET.) GRUBER: Do you want to
6 take 10 minutes and then reconvene with this group?

7 MS. FERNANDEZ: We can take 10 minutes and
8 begin deliberations.

9 COMMANDER KING: That would be good.

10 CAPTAIN (RET.) GRUBER: That's good then.

11 COMMANDER KING: Thank you.

12 SPEAKERS: Thank you.

13 (Whereupon, a recess was taken.)

14 CAPTAIN (RET.) GRUBER: Okay. Let's go
15 back on the record. Madam Chair, this afternoon's
16 session is our time for deliberation to discuss
17 really anything the Subcommittee members want to
18 discuss, to include, you know, planning future
19 meetings and setting the direction for the
20 Subcommittee.

21 I will call your attention again to what's
22 marked as Tab C in your binders, and this is where

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1 we've laid out the agenda for some future meetings.
2 But of course, you know, none of that is written in
3 stone, particularly as we work our way further out.

4 You'll see the first -- the first
5 schedules are for the site visits to Fort Hood and
6 Joint Base San Antonio. And those have been
7 transmitted to the receiving commands, and they're
8 starting to arrange for those visits. The order of
9 presentation may shift around a little bit as they
10 accommodate the schedules of the individuals there.
11 But as you can see, we're really taking a look at
12 giving you a chance to meet with actual
13 practitioners in the field who are working in some
14 of the areas we've been hearing about at the public
15 meetings and we've heard about today to see what
16 the SARC commander relationship is.

17 What about special victim capability?
18 Talk to defense counsel -- excuse me. Talk to
19 special victims' counsel and then tour some of the
20 facilities and really see how these areas are laid
21 out.

22 CONGRESSWOMAN HOLTZMAN: Are we going to

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1 meet with any victims?

2 CAPTAIN (RET.) GRUBER: We've asked for
3 the special victim counsel to perhaps bring victims
4 with them if they're willing to do that. We
5 thought that was probably our best avenue to speak
6 with actual victims if they could be there with
7 their counsel. So we have communicated that
8 request. I don't know if anyone would be willing
9 to, but we have asked for that, yes, ma'am.

10 CONGRESSWOMAN HOLTZMAN: But, okay, there
11 may be some who don't have -- okay. All right.

12 CAPTAIN (RET.) GRUBER: We can follow up
13 on that some more. They should all have counsel at
14 this point with the programs operating. But we
15 could do an additional follow-up with the SARCs if
16 you'd like to see if there's any victims that may
17 be -- those case are done and want to talk to us.

18 CONGRESSWOMAN HOLTZMAN: Yep. Yep. Yep.

19 CAPTAIN (RET.) GRUBER: And the trip to
20 San Antonio, a major training base. Obviously
21 slightly different focus going to Lackland. We're
22 not going to use the word "focus group" because

1 that, I've learned, triggers actually some legal
2 requirements for human research. So we're going to
3 change that to "roundtable."

4 MS. FERNANDEZ: That's in January?

5 COLONEL HAM: December 13th, ma'am.

6 CAPTAIN (RET.) GRUBER: That's the next
7 agenda. But you can see there we're looking for
8 the ability to meet and talk to recruits, talk to
9 some of their drill instructors, and that challenge
10 they talked about when you cycle a third or more of
11 your force through every year and you have to train
12 people, and you have to maybe try to educate them
13 about a new culture. Well, this is where the
14 rubber meets the road for that type of mission. So
15 that's one of the objectives that we want to
16 achieve.

17 In addition to talking to their special
18 victim counsel, with the Air Force it's been in
19 place longer, so maybe it's a more developed, more
20 refined program. We can learn about that as well.

21 CONGRESSWOMAN HOLTZMAN: So this is
22 Lackland.

1 CAPTAIN (RET.) GRUBER: Yes, ma'am.

2 CONGRESSWOMAN HOLTZMAN: That's another
3 word for Lackland Air Force Base.

4 CAPTAIN (RET.) GRUBER: Joint Base San
5 Antonio, yes, ma'am.

6 CONGRESSWOMAN HOLTZMAN: Okay, thank you.

7 COLONEL HAM: A couple of things. So we
8 have points of contact at the installations that
9 are finalizing these agendas, and all three
10 Subcommittees will have their own agenda. So,
11 ma'am, for you, you would kind of pick and choose
12 between the two agendas what you want to do.

13 So this is kind of what we've asked them
14 for and they're going to put it together. I do
15 want to make that distinction with focus groups,
16 and Dean Schenck worked on JTF Sam, so those focus
17 groups. And we're not doing focus groups because
18 they do trigger human behavior research
19 limitations. We have asked to interview people in
20 specific positions down there. We still have to
21 check if we have to keep anonymous some of the
22 people who we talked to. And Bill Sprance is here,

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1 our Alternative DFO, who may know more about this
2 at this point than I do. But I do have to check
3 with some other folks to make sure that we don't
4 run afoul of any of the human behavior research
5 guidelines. Bill, did you have anything to add?

6 MR. SPRANCE: No, you got it, the fact
7 that we have to be very careful.

8 MR. CASSARA: Colonel Ham, if I could just
9 ask quickly just a couple of questions since you
10 were stationed there? As I understand it, there's
11 -- the Subcommittee meeting is on Monday or
12 Tuesday, whatever December 10th is.

13 COLONEL HAM: These are site visits. The
14 correct FACAs term there, Representative Holtzman.

15 MR. CASSARA: Okay.

16 COLONEL HAM: "FACA" is a four-letter
17 words to us. It's a preparatory work group, so
18 it's not a meeting.

19 MR. CASSARA: Okay.

20 COLONEL HAM: We do not need a DFO. You
21 may not deliberate. That's your only thing. So
22 you're gathering facts.

1 MR. CASSARA: And then the 11th and
2 12th --

3 CONGRESSWOMAN HOLTZMAN: We can't talk to
4 each other, you got that?

5 MR. CASSARA: That's right.

6 COLONEL HAM: It's the full Panel meeting.

7 MR. CASSARA: Okay.

8 COLONEL HAM: And then the 13th is San
9 Antonio.

10 MR. CASSARA: Okay. Now, you were
11 stationed down at Hood. How far is Hood from
12 Austin?

13 COLONEL HAM: It's about an hour to hour
14 and a half.

15 MR. CASSARA: Oh, okay. Okay. So one
16 could fly into Austin, drive to Hood.

17 COLONEL HAM: Our plan is logistically,
18 without taking up too much of the record, is to
19 stay in Austin.

20 MR. CASSARA: Okay, got it.

21 COLONEL HAM: And then we will drive down
22 to Hood on that Tuesday morning so that we get

1 there about 8:30, get through the gate, and we can
2 start at 9:00. And then after we finish the full
3 Panel meeting Thursday evening, we'll stay
4 overnight, drive to San Antonio. Austin is almost
5 equidistant between Killeen -- beautiful Killeen --
6 and San Antonio. So it's a perfect place to stay.
7 Also logistically, we have a block of rooms at a
8 hotel, and we'll be sending you logistical
9 information out about --

10 MS. FERNANDEZ: Flying in and out of
11 Austin both times? So we're not taking a plane
12 other than to Austin.

13 MR. CASSARA: That's correct.

14 COLONEL HAM: You will probably -- if you
15 go to San Antonio, our advice is probably going to
16 be fly out of San Antonio, and probably stay
17 overnight until Saturday morning to fly out of San
18 Antonio. But we're still working on all those
19 logistics, but we'll have a block of rooms at the
20 hotel set up like conference room website.

21 MR. CASSARA: Okay, wonderful.

22 COLONEL HAM: You go in and you reserve

1 your own. There's a block held for you.

2 MR. CASSARA: Thank you, ma'am.

3 COLONEL HAM: Anyway, without going into
4 much further into logistics, that's where we are
5 right now.

6 CAPTAIN (RET.) GRUBER: The next agenda is
7 you see is for the Subcommittee meeting that we've
8 scheduled for January 9th, 2014. And at this
9 point, this is very notional, and it's going to be
10 subject to the direction of the Chair and the
11 members of the Subcommittee.

12 Our thought process with this is that we
13 would bring back in -- we've had a chance now to
14 learn about the care providers, conduct site
15 visits. We've had public meetings learning about
16 these programs. And the members will have a chance
17 to digest some of the many materials you've
18 received. And then we're going to bring in some of
19 the more senior policy leads and probably really
20 drill down on some of your issues and questions.
21 We thought it would be better to bring them back
22 later rather than earlier when you're more informed

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1 on these programs. And then the afternoon is
2 dedicated to special victims' counsel programs.

3 Based on the conversations today, we
4 probably should consider maybe adding even more
5 time for special victims' counsel or breaking it up
6 somehow in some fashion. But obviously this
7 January 9th schedule, it's a placeholder, but we
8 will want the direction of the Subcommittee as to
9 how to finish it up. And that's something that we
10 can talk about today, and also when we have one of
11 our phone conference calls we can talk about that
12 as well as you start to think about what do you
13 want to hear at this meeting.

14 And then as you look further, we have a
15 tentative site visit preparatory session in
16 Norfolk, Virginia January 28th. A major Navy fleet
17 concentration area, of course, looking at how the
18 sea services handle some of these similar issues.
19 And then even further on in February, you know, I
20 thought maybe we'd talk to maybe some civilian care
21 providers. That might not be necessary. There may
22 be other things you want to do.

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1 COLONEL HAM: I would say the direction
2 from the Chair, Judge Jones, to all the
3 Subcommittees is we do not have another full Panel
4 meeting planned after December until the
5 Subcommittees report out in April, unless the Chair
6 changes her mind. But her direction is the
7 Subcommittees should be meeting by phone or in
8 person two times or more per month. It doesn't
9 mean physically attending every person every time,
10 but because the full Panel members will not have to
11 attend or are not being asked to attend full Panel
12 meetings, that there should be more time for the
13 Subcommittees to work.

14 CAPTAIN (RET.) GRUBER: And the scheduling
15 chart that I gave you has the dates that we're
16 proposing for that. And as you'll see -- like we
17 met on Thursday today. The sequencing of the
18 Subcommittee meetings is, since many of our Panel
19 members are on more than one Subcommittee meeting
20 -- Representative Holtzman, for example, is on two
21 Subcommittees -- we're trying to group them close
22 together during one week to minimize the travel

1 into the area for Judge Jones or Rep Holtzman or
2 any of the other members that are on multiple
3 Subcommittees. So we'd have a Subcommittee week
4 Tuesday, Wednesday, Thursday with Victim Services
5 on Thursdays. The conference calls would be two
6 weeks after that, and it would be an opportunity to
7 follow up on questions for the record you may have
8 had, talk about upcoming meetings, logistics, and
9 anything else you might want to talk about.

10 My suggestion for the conference calls is
11 we're most likely to have them in the early
12 afternoon since we have members who are on the West
13 Coast. And if we do it 9:00 here, it would be too
14 early for them.

15 CONGRESSWOMAN HOLTZMAN: So what time?

16 CAPTAIN (RET.) GRUBER: Whatever you
17 prefer. I would propose 1:00 to 3:00, something
18 like that, but we can adjust that depending on --

19 CONGRESSWOMAN HOLTZMAN: Yeah, on the
20 18th, the conference call, I can't do it between
21 12:00 and 3:00 East Coast Time.

22 CAPTAIN (RET.) GRUBER: And that's why I'm

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1 asking. You know, I said to you, and we can get
2 you another copy of that sort of chart that I had.
3 You fill out your availability. Some of you have
4 replied, and we'll update the matrix we have with
5 that availability.

6 COLONEL HAM: Well, I think we only have a
7 couple of responses on the site visits for the 10th
8 and 13th. So of course you don't need to let us
9 know now if you can go to one or the other. We
10 highly encourage you if you can, and we understand
11 that you're busy and this is an extra job for
12 everybody, that if you can, do attend --

13 CAPTAIN (RET.) GRUBER: So for the rest of
14 this session, it's an opportunity not only to talk
15 about what we want the Subcommittee to do, but
16 anything else that we've talked about, information
17 received, initial impressions, if you want to start
18 thinking about possible recommendations that you
19 want to explore. So, for example, one
20 recommendation that you would debate is should
21 crime victim rights be codified for the military
22 either in the UCMJ or in some other fashion. I

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1 sense that's an issue you're going to want to look
2 at and examine. So that's just the possible type
3 of recommendation you might want to talk about, but
4 it's really up to you and the members as to how you
5 want to take this at this point. And we also have
6 -- obviously we have our Terms of Reference in
7 Section 576 in your binders if you want to go over
8 those and refresh your memory on the tasking.

9 MS. FERNANDEZ: Given I think, all of us
10 are lawyers, why don't we give kind of general
11 impressions and issue spotting, because to say what
12 we're going to recommend or things that we need to
13 recommend, I'm not even sure I could go there right
14 now. But I could spot issues, and I could tell you
15 sort of how -- general perception. So I don't want
16 to start, but does anybody else have kind of that
17 sort of frame of mind?

18 MR. CASSARA: You're looking at me?

19 MS. FERNANDEZ: Yes --

20 MR. CASSARA: Okay.

21 MS. FERNANDEZ: -- because you told me
22 outside in the hall that you wanted to start, so.

1 MR. CASSARA: Okay. I will start. I
2 think the first thing that I would like to see us
3 to do as a Subcommittee is to figure out what is
4 our end state and what do we view success as in
5 terms of addressing this issue. As we just heard,
6 success is not -- I don't believe is equated with
7 more prosecutions. I'm not even sure success is
8 equated with more reports. I mean, obviously if
9 they're valid reports, you know, then that is a way
10 to measure success.

11 But it would seem to me that as we've
12 talked about the environment in which a good number
13 of these cases arise, that one of the -- all of us
14 would be happy if none of us had to be here, if we
15 could come up with a system whereby we
16 significantly decreased the number of sexual
17 assaults. You know, looking at it from the
18 victim's perspective, how do we do that? How do we
19 address just that part of the equation?

20 And then I think the second part of the
21 matrix is trying to figure out how do we measure
22 success. What is our end state? So as I've

1 listened to the speakers today, those are the two
2 thoughts that have -- and again, I preface all of
3 this with -- I'm filtering this through a defense
4 counsel's brain, not a victims' advocate brain, not
5 a prosecutor's brain, but a defense counsel's
6 brain. But to me, you know, I would like to look
7 at, you know, how do we stop these things, you
8 know, or significantly decrease the number of
9 sexual assaults. And two, how do we implement
10 changes that are fair to the accused, but also
11 provide appropriate services to the victim of a
12 sexual assault? That's all I think we need to
13 gauge success.

14 MS. FERNANDEZ: Thank you. Anybody want
15 to respond to that or bring up a totally different
16 topic?

17 JUDGE MARQUARDT: I think it's important
18 to look at the fact that at least it appears that
19 the victims don't have many rights right now in the
20 military system, and I think we need to look at
21 that. And I also was concerned about the dual
22 handling of these various issues that the military

1 looks at when some crime has been committed. And
2 those would be the things that I think are
3 important to review.

4 MS. FERNANDEZ: Thank you. Liz?

5 CONGRESSWOMAN HOLTZMAN: Well, success. I
6 don't know if I even could imagine that. That's
7 pretty far down the road. I mean, I think the
8 issues you pointed to, prevention, is really
9 important. I thought we began to focus on that and
10 discovered, at least from my point of view, that
11 everybody that we heard from today seemed to
12 suggest that changing the culture was really
13 important, but that they didn't have really a
14 handle on how to do that. And I'm not sure how to
15 get at that, whether we -- so I don't know, maybe
16 staff has some ideas of how to get it back, but I
17 think looking more closely at the prevention side
18 is important.

19 I also discussed with -- I mean, the thing
20 that has struck me of this testimony that we had a
21 while ago was the fact that a large percentage of
22 the victims had been previously victimized,

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1 something like 45 percent.

2 COLONEL HAM: You mean before they came in
3 the service?

4 CONGRESSWOMAN HOLTZMAN: Either before the
5 service or they had been previously victimized in
6 the service. I don't know, you know, exactly the
7 timeframe, but I thought that was a kind of
8 astonishing figure. It's almost half. And also
9 that a proportion -- I don't know that they have
10 the statistics -- of the offenders have been
11 previously victims of sexual abuse.

12 Well, if there's some way -- I don't know
13 why people who have been previously victimized are
14 victimized again, but if there is some way -- I
15 don't mean to use that phrase -- "hardening the
16 victim." If there's some way of helping the
17 victims when they get into the military at that
18 time, that could be one way of reducing the
19 incidence. If they are given the tools, the
20 training, and so forth, you have a target
21 population. The question is how do you identify it
22 and what kind of training is helpful, because I'm

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1 not sure I even understand why this is the case.

2 So I would look at that.

3 Similarly, if so many predators have been
4 sexually abused previously, maybe if we could
5 identify those people before they come. Either
6 they don't come into the military or they're given
7 some kind of training, counseling, something at the
8 get-go. So maybe looking at how to identify these
9 populations, what you could do about it. I don't
10 know that there is anything you can do, but that's
11 one thing that occurs to me.

12 COLONEL HAM: Ma'am, if I could address
13 that for a second. One thing we might want to look
14 at, you heard the term "resiliency," which is a --
15 certainly I'm not an expert in it, but the
16 Department of Defense is -- has already begun
17 programs in what they call resiliency. A lot of it
18 is to address issues of post-traumatic stress and
19 perhaps suicidal behavior to -- I don't want to go
20 too much further into it because I don't know a
21 whole lot about it. But perhaps we can get some of
22 those resiliency --

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1 It's to, for lack of a better word, to
2 teach a service member who has suffered some
3 trauma, I believe, to learn to, for lack of a
4 better word, bounce back, deal with, be resilient
5 to those --

6 CONGRESSWOMAN HOLTZMAN: But I'm not sure
7 that bounce back is not maybe quite the same thing
8 because it may be that the behavior that's learned
9 from the abuse has to be unlearned. So it may be
10 -- I really don't know. I don't understand this
11 figure, and maybe we need some people to help. But
12 I think looking at that population in some way
13 might be a way of kind of reducing the incidents to
14 some extent on prevention.

15 CAPTAIN (RET.) GRUBER: I think I
16 understand what you're saying. You know that
17 there's an identified population that's likely --
18 more likely to be a victim than other individuals.

19 CONGRESSWOMAN HOLTZMAN: Right.

20 CAPTAIN (RET.) GRUBER: And how do we
21 perhaps reach out out them without somehow
22 stigmatizing them and affecting their career?

1 CONGRESSWOMAN HOLTZMAN: Well, not only
2 reach out to them and affecting their career. I
3 don't even know what we would tell them. I mean, I
4 don't know that we know enough. All I'm saying is
5 maybe some people do know enough, but this seems to
6 be one possible area which should be looked at
7 because it's an identifiable population. And if we
8 could help them protect themselves, that may be a
9 way of reducing the incidence.

10 DEAN SCHENCK: I completely agree with
11 that.

12 CONGRESSWOMAN HOLTZMAN: Okay. So that's
13 just one. And also to look at the programs that
14 they have in basic training where they said, well,
15 okay, they're going to sexual assault too soon.
16 They're not going to cultural issues before that.
17 Maybe we need to flush out what those programs need
18 to be.

19 So I'm very much in tune with the
20 prevention part of it, and I would just suggest
21 those two things, the early stuff and what to do
22 about this special population.

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1 JUDGE MARQUARDT: But if you look at
2 domestic abuse cases, these women are abused time
3 after time after time, and they keep going back.
4 And I think that's a lesson that we need to maybe
5 apply to some of this because if these people are
6 being sequentially abused, because people go back
7 into those situations, and they don't -- they don't
8 know how to get out out on their own, and they need
9 some assistance.

10 CONGRESSWOMAN HOLTZMAN: I think that's a
11 good example, although there are some differences
12 obviously, but I agree with you. There's something
13 that we need to look at in those numbers.

14 And the other thing is they also did
15 suggest -- some people did suggest some other
16 specific issues. The rights issue is important.
17 I'm trying to think of -- there was something else
18 I wanted to say, but for the moment I was just
19 looking at the prevention issue. But there's --
20 I'll come back later when I get my thoughts
21 together on this point.

22 COLONEL HAM: Ma'am, one of the the issues

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1 you mentioned, the cultural change. One of the
2 things you may be hearing in the Role of the
3 Commander Subcommittee is, you know, how leaders
4 lead change, strategic leaders and leaders below
5 the strategic level. How do you teach leaders to
6 lead change?

7 The military is not the only organization
8 that specializes in that. You know, Harvard
9 Business School, other entities specialize in
10 teaching leaders to lead change, including cultural
11 change. It's an art and a science that it is
12 believed can be taught rather than one that you're
13 born with. So you may want to -- I think you are
14 going to examine that in your other Subcommittee.
15 You may decide to look at some of that here. But
16 the silver bullet may indeed be leadership, but a
17 specific type of leadership through change.

18 MS. FERNANDEZ: Dean?

19 DEAN SCHENCK: I'd like to add onto those
20 comments regarding the re-victimization. We saw
21 the same thing on the task force earlier. I
22 recently talked to General Reynolds. She's the

1 female Commander of Parris Island, and the Marines
2 do separate female training. They do female
3 training with female drill sergeants on the front
4 end. And she and I talked about how in the Army
5 they used to do a female platoon in the company of
6 men. So when my sister was in the service, her
7 platoon was all women with women drill sergeants.
8 And they had integrated training, but they were
9 allowed to train those young women. They were very
10 young, 16, 17, 18, when they come in, to have a
11 strong female role model. And maybe we should have
12 General Reynolds come and just talk about how they
13 train the women to do just that, to stand up, to
14 say no.

15 When I was on the appellate bench, we saw
16 many cases of re-victimization where the drill
17 sergeants, they kind of had this -- these predators
18 could kind of figure out who the previous victims
19 were. They knew who they were going to put in
20 those positions, and it was very troubling. And
21 when those victims were interviewed regarding their
22 inappropriate conduct with the drill sergeant, many

1 of them said, well, I was sexually abused by my
2 stepfather. I came in the military to get away
3 from them -- from him. And then I got here, and
4 the drill sergeant was the guy in charge. And, you
5 know, and the accused would, in his defense, would
6 say it was consensual. We had pizza and cigarettes
7 at the hotel right after. It's not consensual.

8 And so, the front end, maybe DoD can
9 figure out a way to identify those groups. You
10 know, the numbers General Patton was throwing out,
11 the metric, the metric. The metric is not relevant
12 if we can't figure out where it fell in, you know.
13 Did they report after they were in the military, or
14 did they come in and fill out a survey? I think
15 that's a huge thing.

16 CONGRESSWOMAN HOLTZMAN: And I think that
17 they could -- I mean, I don't know enough, so this
18 is really just wild speculation. But if when
19 people go into the military, at that point then
20 they ask, I guess, you know, your mother's name,
21 and your father's name, where you went to high
22 school, and all that stuff. If they ask -- given

1 all the services that we have for victims of sexual
2 abuse, have you ever been victimized by sexual
3 abuse.

4 And people wouldn't have to answer it, but
5 if they did answer it, you would have an
6 identifiable population at that point. I mean,
7 that question -- the answer could be completely
8 private and you could do with it what you want.
9 But it seems to me that that might be a way of
10 beginning to identify some of the people who could
11 fall into that category.

12 COLONEL HAM: And they might do that, and
13 I don't know.

14 CONGRESSWOMAN HOLTZMAN: I don't think
15 they do that now because I had a conversation with
16 the woman from the Marine Corps who we were talking
17 about that, because she felt strongly that in basic
18 training, these -- the programs needed to start at
19 basic training, the cultural programs. Now, I
20 don't know if she's right or wrong, but I think
21 that's worth exploring.

22 COLONEL HAM: Do you want to hear then

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1 from -- I'm not sure if it would be on the academic
2 side or the psychiatric/sociological side on
3 victimology, perpetrator dynamics, victim offender
4 dynamics, things like that.

5 MS. FERNANDEZ: I don't even know if you
6 need to go that far. I think what we need to know
7 is can we screen both on the victim side and the
8 offender side coming in, and is there something
9 that we can do once we've screened. I mean, I
10 don't think our job is to sit there and understand
11 the psychology behind this. I think it's too deep
12 and too complicated. But it is to say, okay, so
13 you know you have an offender. Is this person
14 somebody that we should just not have in the
15 military --

16 CAPTAIN (RET.) GRUBER: Could you define
17 that? How do you know we have an offender? What
18 does mean?

19 MS. FERNANDEZ: I don't know. I don't
20 know how you screen for that.

21 CAPTAIN (RET.) GRUBER: Are you talking
22 about a previous offender?

1 MS. FERNANDEZ: Yes, somebody who --

2 CAPTAIN (RET.) GRUBER: He committed an
3 offense when he was a kid --

4 MS. FERNANDEZ: When he was a kid.

5 CAPTAIN (RET.) GRUBER: -- or 16.

6 MS. FERNANDEZ: Yeah, but it's not on a
7 criminal record, which most are. But are there a
8 series of questions you could give that kid?

9 CAPTAIN (RET.) GRUBER: We do screen
10 pretty extensively when we recruit people. But
11 you're right. It is for things that were
12 adjudicated in some fashion.

13 MS. FERNANDEZ: Right.

14 CAPTAIN (RET.) GRUBER: Some child
15 offenses, as you know, are expunged from records,
16 and so we may or may not be able to get that --

17 MS. FERNANDEZ: Yeah, it wouldn't be based
18 on a criminal record because most of these things
19 aren't reported, so you're not going to catch it.
20 But I think there would be a way for screening for
21 somebody who has offender behaviors.

22 CAPTAIN (RET.) GRUBER: Somehow this

1 reminds me a little bit of, like, profiling or
2 genetic screening or something. We're getting into
3 some ethical issues here which I think are getting
4 pretty complex.

5 MS. FERNANDEZ: I think it's worth looking
6 at, though.

7 CAPTAIN (RET.) GRUBER: Because we think
8 -- we give you an MMPI Personality Inventory, and
9 you're likely to be an offender, so you're not
10 going to become, you know, an airman. I don't
11 think we can legally do that, and I don't know if
12 we want to.

13 MS. FERNANDEZ: I think we want to know
14 who's coming -- who we're recruiting.

15 CAPTAIN (RET.) GRUBER: Sure.

16 MS. FERNANDEZ: And I think we need to
17 figure out how we're going to do it ethically and
18 how we're going to do it responsibly. But if we
19 can get to that in some sort of way, I think it's
20 worth our while to at least look into it.

21 I don't -- I get where you're coming from,
22 but I can't say that I want to say let's not look

1 at it because it's possibly -- you know, we're
2 probably going to start violating people's civil
3 rights. What I want to say is let's look into it,
4 and if we start violating people's civil rights,
5 we'll stop short.

6 CAPTAIN (RET.) GRUBER: I know it's done
7 for military occupations, assessing someone's
8 personality, temperament, capability.

9 MS. FERNANDEZ: Right.

10 CAPTAIN (RET.) GRUBER: You know, if
11 you're going to work in a missile silo in the Air
12 Force, for example --

13 MS. FERNANDEZ: You don't want to be
14 trigger happy?

15 CAPTAIN (RET.) GRUBER: Yeah, well,
16 there's certain types of -- there are certain
17 personalities they attract to that, and they screen
18 for that, psychological background for someone
19 who's commanding a nuclear sub, for example. I
20 know that that's done. But, no, it's definitely
21 something we can explore. And I wouldn't be
22 surprised if at the SAPR Office or the G-1, N-1

1 Offices they haven't started to think about this at
2 some level, what they can do. So we will
3 definitely explore this if that's what you want.

4 CONGRESSWOMAN HOLTZMAN: The part I feel
5 comfortable -- and I'm a little concerned, but, I
6 mean, I have no hesitation taking a look. But I'd
7 be concerned that we don't know enough to make this
8 decision.

9 CAPTAIN (RET.) GRUBER: Sure.

10 CONGRESSWOMAN HOLTZMAN: But if there's
11 the same kind of prevalence of -- because I don't
12 know what the numbers are. The predators who have
13 been sexually abused who then go on to sexually
14 abuse others, if there's a connection in those
15 numbers, then it might be worthwhile -- those are
16 the people to identify and maybe to provide
17 counseling for, whatever you can do. I don't know
18 what you can do. And maybe it's not --

19 But if its number is not really large,
20 like 45 percent, I don't know that there's -- that
21 I would support doing that. But I'd like to know a
22 little bit more. I mean, I think she's -- you

1 know, she identified something that's important to
2 look at.

3 CAPTAIN (RET.) GRUBER: Understood, and
4 it's something you want to learn more about.

5 MS. FERNANDEZ: Yeah. I mean, I'm not
6 saying, oh, we're going to make a declaration here
7 that we're going to --

8 CAPTAIN (RET.) GRUBER: Oh, no, I
9 understand completely. We'll start to inquire, and
10 I'll talk to Sherry. We'll refine the questions,
11 and we'll get back with you on that, and then we'll
12 start to, Colonel Ham, engage services.

13 CONGRESSWOMAN HOLTZMAN: Can I also
14 suggest one other area that we should look at,
15 which is the Article 32? Is that -- am I -- I
16 don't know.

17 MS. FERNANDEZ: Yeah, it's Article 32,
18 you're right.

19 CONGRESSWOMAN HOLTZMAN: I'm not sure I'm
20 referring to the right thing. But the mistreatment
21 -- excuse me. I'm not allowed to say that -- the
22 question -- where the victim may undergo serious

1 questioning about the alleged offense. Should we
2 take a good look at how to reform that or whether
3 it needs -- I mean --

4 CAPTAIN (RET.) GRUBER: I don't know if
5 that's the Comparative Systems Panel or the --

6 COLONEL HAM: I know they're looking at
7 it, but --

8 CONGRESSWOMAN HOLTZMAN: Are they looking
9 at it?

10 CAPTAIN (RET.) GRUBER: They are.

11 COLONEL HAM: Although it's a victim --

12 CAPTAIN (RET.) GRUBER: I think how the --
13 I think the role of the special victims' counsel
14 and the standing that they have in the 32 is
15 something --

16 CONGRESSWOMAN HOLTZMAN: I'm not talking
17 about that.

18 CAPTAIN (RET.) GRUBER: -- we should look
19 at.

20 CONGRESSWOMAN HOLTZMAN: I'm talking about
21 what are the rights to inquire of the victim at
22 this hearing and whether that whole system needs to

1 be reviewed.

2 CAPTAIN (RET.) GRUBER: And that may
3 actually change when the NDAA is passed, too,
4 because there's proposed legislation --

5 CONGRESSWOMAN HOLTZMAN: Well, I know, and
6 someone needs to probably look at that proposal. I
7 mean, I think when I saw the the proposal, it
8 seemed to suggest that nobody who was a victim
9 could ever be called. I'm not sure that you ever
10 want to -- I mean, that seems like a pretty heavy
11 duty result because sometimes someone who's a
12 victim of a robbery, you really do want to call
13 them in because you have a predator or a serial
14 robber or something like that. So it seems to me
15 -- but I didn't study the proposal.

16 COMMANDER KING: Could that possibly be
17 looked at in the context of victim rights? And if
18 you're looking into victim rights and what rights
19 they should have and how we should enforce them,
20 perhaps rights at hearings. One of the things we
21 didn't get to talk about is how they enforce those
22 rights even in Arizona where victim counsel can

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1 stand up and -- not necessarily object out loud,
2 but they work out a way so that if a defense cross
3 examination is overly invasive, that a judge will
4 stop. So maybe we could look --

5 CAPTAIN (RET.) GRUBER: That's what I was
6 thinking about when I mentioned special victims'
7 counsel, and obviously a victim at an Article 32
8 isn't going to necessarily know how to make an
9 evidentiary objection on his or own behalf most
10 likely. But if there was counsel there who could
11 participate in that process, who was there to
12 protect the rights of the victim, that would
13 completely change the dynamic.

14 CONGRESSWOMAN HOLTZMAN: Well, I'm even
15 going beyond that. I mean, I'm accustomed to a
16 grand jury system, so I'm not accustomed to this at
17 all --

18 CAPTAIN (RET.) GRUBER: Sure.

19 CONGRESSWOMAN HOLTZMAN: -- any prior
20 questioning of the victim. And I'm not sure
21 whether they're, you know, I mean -- go for it.
22 Sorry. But, you know, that's a pretty radical

1 change, but I'm thinking about more than just
2 tinkering with the system about that.

3 CAPTAIN (RET.) GRUBER: Okay.

4 CONGRESSWOMAN HOLTZMAN: I don't know
5 whether anybody agrees with that.

6 JUDGE MARQUARDT: I know you said you
7 didn't want to get into psychology and all of that
8 because it was so deep. But there may be some
9 people who deal with psychology of these
10 perpetrators and might have some broad range of
11 indicators for us to look at that we might be able
12 to incorporate maybe into your questions, and not
13 to look at individuals, but to look at the overall
14 grouping of the perpetrators.

15 MS. FERNANDEZ: That would be -- I think
16 that would be beneficial.

17 COLONEL HAM: Dr. Lysak I know has spoken
18 forth at one of the prep sessions. He's done a lot
19 of work in that area. And there's also another
20 individual who I think was originally going to be a
21 Subcommittee member, but was unable to do it. Her
22 name is Dr. Valiere. And she's done some work, I

1 know, in this field, and has worked for the
2 services as a matter of fact. So she may be
3 someone who you may want to consider.

4 MS. FERNANDEZ: I think that would be
5 good. A few things that I think. Several times
6 during the day we've had sort of fact patterns of
7 where these cases take place, you know. It's
8 either in the barracks or in a hotel room. It's
9 almost like we've pinpointed where this chemical
10 reaction takes place, and so, you've got to undo
11 the chemical reaction.

12 I think unlike in civilian society where
13 these things happen, they may have similar fact
14 patterns, but happen in all different kinds of
15 places, you know, a business office or a -- it's
16 pretty narrowed down. Tell me here --

17 MR. CASSARA: I would agree.

18 CAPTAIN (RET.) GRUBER: So you're thinking
19 of aiming -- how you aim prevention --

20 MS. FERNANDEZ: How do you aim prevention?
21 How do you just completely pry that situation
22 apart?

1 CAPTAIN (RET.) GRUBER: Well, actually
2 that is interesting because there's a --

3 COLONEL HAM: But you'd have to do it in a
4 way that respects the all-volunteer nature of the
5 force. That's --

6 MS. FERNANDEZ: Sure. You don't want
7 to --

8 COLONEL HAM: And I'm not disagreeing with
9 anything you're saying, Mai. But that's the wall
10 that comes up is we have an all-volunteer force, so
11 we can't go back to open bay barracks with the
12 first sergeant walking through.

13 MS. SAUNDERS: You can't?

14 COLONEL HAM: Although that would be the
15 solution. So that's the consideration --

16 CAPTAIN (RET.) GRUBER: There's a program
17 -- I'm sorry. There's a program that the Navy
18 instituted in San Diego that they're rolling out
19 where they've actually for the first time created a
20 domestic or in the U.S. shore patrol. Shore patrol
21 is when you're in foreign ports, so we'd pull into
22 Thailand, and we'd have shore patrol because we

1 didn't want our folks arrested by local
2 authorities. You know, so you worry about that.

3 But they're roving the barracks and
4 they're going to hot spots and places where they
5 expect people are. And just -- they view it as an
6 education prevention thing. They're not there
7 necessarily to arrest people, but they're looking
8 for things that they think would cause trouble and
9 they intervene.

10 And this is normally senior NCOs, or Navy
11 chief petty officers, or either first class petty
12 officers. They're going out there and they're
13 walking around where they know the sailors are
14 going to congregate. And they're going to those
15 bars. They're talking to tavern owners and things,
16 trying to sort of get out. They're walking through
17 the barracks.

18 MS. FERNANDEZ: Is there such a thing like
19 in college residential advisors? Like we would
20 have RAs on a floor.

21 CAPTAIN (RET.) GRUBER: I was just reading
22 an article about that in one of the *Navy Times* that

1 we have in the lobby where they're starting to put
2 senior petty officers in the junior enlisted
3 barracks to be sort of -- they're calling them
4 mentors.

5 MS. FERNANDEZ: Right.

6 CAPTAIN (RET.) GRUBER: But to be in there
7 and to sort of look after all aspects of the
8 sailors' lives, because, you know, we have young
9 service men and women who have never had money
10 before, don't know how to balance a checkbook or
11 buy a car. And so, there's all sorts of things
12 that, you know, for those of us who served, you
13 wouldn't believe the situations they can
14 unfortunately sometimes get themselves into. So
15 these mentors are helping them with that, helping
16 them stay squared away, but also try to look at
17 that, too.

18 DEAN SCHENCK: Let me explain a little bit
19 about the Army, how we transitioned. So back
20 around '94, we had these barracks before '94, and
21 the barracks -- in the barracks were these charge
22 of quarters at the desk. And anyone coming in the

1 building had to give their ID and sign in. There
2 was a lot of control on those barracks, a lot. And
3 then around 1994, they started this better
4 opportunity for single soldiers, which we used to
5 joke around --

6 MR. CASSARA: Yeah, it was like *Animal*
7 *House*.

8 DEAN SCHENCK: -- because Bill and I were
9 down in -- I was at Rucker and he was down there in
10 the South. And I will absolutely never forget the
11 day they implemented it, Valentine's Day, February
12 14th, 1994. And it was -- I kept telling the post
13 commander better opportunity for sex offenders.
14 Kept saying, and it was -- I kid you not --
15 underage drinking in the barracks, girl passed out,
16 three individuals having sex with her while she's
17 passed out within a day of them getting rid of the
18 charge of quarters, and we're going to -- well,
19 they're adults, they should know how to do this.

20 And the Air Force -- do we have any Air
21 Force folks? Yeah. So the Air Force has
22 dormitories, so the Army kept pointing, well, the

1 Air Force seems to be doing okay with this. But it
2 was just something about the Army, and now, we've
3 come to this. Now, they're underage. They drink in
4 the barracks. They drink with kegs outside. They
5 go to hotel rooms. You know, so --

6 I think what Dave is saying is a really
7 good idea. They used to do that in the Army as
8 well in Korea.

9 SPEAKER: Well, the Air Force also used to
10 have charge of quarters, too. And since then,
11 we've also had a lot of issues.

12 MR. CASSARA: They used to have door
13 managers.

14 SPEAKERS: It's like door managers, or
15 they would have a senior NCO --

16 MR. CASSARA: They have to give it a
17 civilian title in the Air Force.

18 CAPTAIN (RET.) GRUBER: The barracks petty
19 officer, whatever you want to call it.

20 MS. FERNANDEZ: I just think that's
21 something that we need to look to. If it's going
22 back to being old school, let's go back to being

1 old school. But as a civilian, when you think of
2 the military, you think of these people who are
3 going out there and fighting wars for us. When you
4 take off the uniform, what you have is a kid, a
5 real kid. And, you know, some of them, you know, I
6 would imagine -- and I've said this to other folks
7 -- is that the Army is in the same situation as
8 public schools are around this country. They're
9 dealing with all the societal problems that are
10 coming in.

11 And so, you're having these kids come in
12 with an array of problems, and you're having to
13 deal with all of them. And then you're giving them
14 money. You're giving them liberty. And you're
15 often giving them access to drugs. And what you
16 have is a real bad chemical reaction there, and so
17 how do you get to that?

18 CAPTAIN (RET.) GRUBER: Well, I believe
19 that's something that the SAPR Offices, the
20 personnel -- I say N-1, that's maybe G-1 is Army
21 normally. That means personnel readiness manpower
22 training. I know they spend a lot of time thinking

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1 about this, and so I think what you're looking for
2 is some detailed information or presentations on
3 the prevention efforts that they have particularly
4 for young people and new recruits, boots on the
5 ground efforts to sort of disruptive -- destructive
6 behavior patterns.

7 MS. FERNANDEZ: Yes.

8 CAPTAIN (RET.) GRUBER: And that is
9 definitely something we can learn more about and
10 present.

11 COLONEL HAM: Even beyond policy, though,
12 at the DoD -- at the service level, I mean,
13 commanders are undoubtedly doing stuff like this.
14 We just have to find examples of them down at the
15 installation level that could be a best practice,
16 and how to do that in our limited amount of time
17 without going to all of them.

18 CAPTAIN (RET.) GRUBER: At the site
19 visits, so these are things to inquire about.
20 That's why we wanted you to meet with the
21 commanders, but also meet with the drill
22 instructors at Lackland. This is, you know, what

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1 you want to ask them, this stuff. But we will --
2 yes, ma'am, we'll definitely pull the string on
3 this and learn more.

4 MS. FERNANDEZ: And I think the other
5 thing that I kept hearing today is that we need
6 time on all of us, is that everybody is coming up
7 with a new great idea about every three minutes.
8 And you can't -- and so and whatever we recommend,
9 this can't be something that is two years, three
10 years. It takes -- it's going to take time, and
11 it's going to take resources to see if it really
12 makes a change.

13 And our recommendations have to say "time"
14 and "resources" in them; otherwise, we're just
15 going to be throwing some stuff up on the window
16 and seeing what sticks.

17 CONGRESSWOMAN HOLTZMAN: Well, the other
18 issue on culture change, I thought it was
19 interesting that the Army has a program for Junior
20 ROTC in high school.

21 MR. CASSARA: I had never heard that
22 before. I thought it was a great idea.

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1 CONGRESSWOMAN HOLTZMAN: So none of the
2 other services have that.

3 JUDGE MARQUARDT: But that is a program
4 for Junior ROTC in high schools.

5 MR. CASSARA: That addresses sexual
6 assaults?

7 JUDGE MARQUARDT: I'm not sure. I assume
8 they do, but --

9 CAPTAIN (RET.) GRUBER: I am familiar with
10 the Navy's program because at my last active duty
11 job, we owned that program along with anything else
12 that was manpower, personnel, and training.
13 Normally what happens is all of the services have a
14 Junior ROTC Program in high school, but they don't
15 have multiple ones at one high school. So the Navy
16 may have a unit at one, Air Force, Army. They're
17 all staffed normally by retired senior officers,
18 commanders, captains, colonels in the Army or the
19 Air Force.

20 And they do all sorts of different
21 military training and drill. You'll see them a lot
22 of times as the color guard at high school football

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1 games, you know, where you might visibly see them.
2 But it's a full curriculum.

3 MS. FERNANDEZ: We're talking about sexual
4 assault.

5 CAPTAIN (RET.) GRUBER: I'm interested in
6 whether they train on that and, you know, those
7 type of gender relations. We can -- that's --

8 COLONEL HAM: That's what the Army was
9 saying they're doing.

10 MS. FERNANDEZ: Yeah. Well, that's what
11 I'm saying.

12 CAPTAIN (RET.) GRUBER: We can find out
13 about that.

14 CONGRESSWOMAN HOLTZMAN: I think we should
15 find out about it.

16 CAPTAIN (RET.) GRUBER: Yeah.

17 CONGRESSWOMAN HOLTZMAN: And I wouldn't
18 necessarily say you have to train on sexual
19 assault, but just train on interpersonal
20 relationships, recognizing the dignity of another
21 human being and respect for that --

22 COLONEL HAM: Yes, ma'am.

1 CONGRESSWOMAN HOLTZMAN: -- so that it's
2 possible that, you know, some of the work could be
3 done beforehand.

4 CONGRESSWOMAN HOLTZMAN: I know that's one
5 of the goals of it is to expose young people to
6 military culture and help build up their character
7 and, you know, develop them to be better citizens.
8 And then obviously develop a full potential of
9 recruits, too. But not everybody who goes through
10 those programs has any intention of serving, but
11 it's something for them to do to build their self-
12 esteem, and pride, and --

13 COLONEL HAM: Well, the thing with the
14 ROTC Program -- I don't know what we're doing. I
15 imagine --

16 CONGRESSWOMAN HOLTZMAN: Yeah, well --

17 COLONEL HAM: A lot of these programs are
18 reaching into that, too, but we don't know.

19 CAPTAIN (RET.) GRUBER: They are. My son
20 is in one of these. They're hearing a lot about
21 it.

22 DEAN SCHENCK: Well, I know at West Point,

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1 they have consideration of others. They have
2 pillars, you know, military academic and
3 consideration of others. And they do these company
4 trainings with the videos. Now, those videos and
5 this back in the day. Those videos are very
6 pointed and they stop the video. It's cadet run,
7 and cadets have to talk about it. So I don't know.
8 But I think ROTC is really one of those things --

9 CAPTAIN (RET.) GRUBER: So you want to
10 learn about what the gender relations, treating
11 people with dignity, training that occurs not only
12 in the ROTC Programs, but within the service
13 schools as well.

14 CONGRESSWOMAN HOLTZMAN: Yeah, that would
15 be good.

16 MS. FERNANDEZ: It's 4:17. I know some
17 people have to take trains and stuff out.

18 CAPTAIN (RET.) GRUBER: It's up to the
19 Subcommittee. We're here for as long as you want.
20 If you want to wrap up, we can obviously do that as
21 well.

22 CONGRESSWOMAN HOLTZMAN: What about roll

1 up?

2 MR. CASSARA: Can I roll up?

3 (Cross talking.)

4 MS. FERNANDEZ: Give us something to chew,
5 and then let's split.

6 MR. CASSARA: Yeah, something to think
7 about for the next time. Colonel Ham and I were
8 talking about this earlier, how the Class 6 stores
9 on some bases --

10 COLONEL HAM: Liquor stores.

11 MR. CASSARA: I'm sorry, Class 6 is a
12 liquor store, tax free liquor to service members.

13 CONGRESSWOMAN HOLTZMAN: Nice.

14 MR. CASSARA: A great idea.

15 CONGRESSWOMAN HOLTZMAN: So we get cheaper
16 booze for our kids.

17 MR. CASSARA: What could possibly go
18 wrong?

19 DEAN SCHENCK: But it's really not that
20 much cheaper actually. I was there yesterday.

21 (Laughter.)

22 CAPTAIN (RET.) GRUBER: They used to have

1 a wide magazine selection, too.

2 MR. CASSARA: Yeah, they closed that part
3 of it. But my point is the Navy has recently
4 started that at 2200 hours, 10:00 p.m., the Class 6
5 stores no longer sell alcohol. I don't know if
6 that's service wide, but I know that it is on some
7 bases.

8 CAPTAIN (RET.) GRUBER: I don't know.

9 MR. CASSARA: I would be curious --

10 MS. FERNANDEZ: You mean they were selling
11 after 10:00 p.m.?

12 MR. CASSARA: Oh, they're 24/7.

13 MS. FERNANDEZ: Oh, my god.

14 CONGRESSWOMAN HOLTZMAN: Oh, god. That's
15 ridiculous.

16 MR. CASSARA: It depends on where you are,
17 but if you're stationed in Jacksonville at the
18 Naval Air Station, the liquor store is open 24/7.
19 Well, again, what could go wrong?

20 You know, my point is if we could somehow
21 or another identify those bases that have cut the
22 sales off at 10:00 p.m.

1 MS. FERNANDEZ: And seeing if --

2 MR. CASSARA: -- and seeing whether or not
3 the incidence of reported sexual assaults has been
4 affected. It's only been a few weeks, so it may
5 not be a good metric at this point.

6 COLONEL HAM: Well, if the line is out the
7 door at --

8 MR. CASSARA: Or if the line is out the
9 door at 9:30, that's the other possibility.

10 (Laughter.)

11 MS. FERNANDEZ: I wouldn't even say you
12 have to look at sexual assault. You have to see --
13 yeah, it's just everything that's going on, the
14 partying --

15 MR. CASSARA: The problem is sort of
16 equivalent to when we quit -- when we started
17 taxing cigarettes a lot. The goal is, like, to
18 bring in more money. But then if less people
19 smoke, then where is the money coming from? So, I
20 mean, this is a huge revenue generator for the
21 military.

22 CONGRESSWOMAN HOLTZMAN: Oh, my god.

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1 Well, that should be --

2 MR. CASSARA: And so, you know, that's
3 what I'm thinking, Judge -- I mean, ma'am. It
4 might be hard to change minds in terms of, you
5 know, doing that. But, you know, I means, let's be
6 honest, you know. Twenty-one-year kids buying
7 alcohol at 2:00 in the morning, very few good
8 things are going to happen after that.

9 CONGRESSWOMAN HOLTZMAN: You can't even do
10 that in the private sector, in civilian life. What
11 liquor stores are open past -- I don't know if
12 they're open until 10:00 at night, not even in New
13 York City.

14 (Cross talking.)

15 CAPTAIN (RET.) GRUBER: Or you could go to
16 a 7-Eleven.

17 MR. CASSARA: I have a 22-year-old son,
18 and I've told him alcohol and girls after midnight
19 are a very bad combination, you know. And so, I'm
20 just wondering if there's a way to track what bases
21 are doing that, what effect they have seen, if any,
22 on, you know, the culture, and how transferable is

1 that to other services. I suspect if the SECDEF
2 said your Class 6 stores are now going to close at
3 2200 hours, lots of people may complain, but -- and
4 realize, they can go off base and do the same
5 thing. They can go off base and buy alcohol.

6 CONGRESSWOMAN HOLTZMAN: More
7 inconvenient.

8 MR. CASSARA: But at least on most
9 military bases, especially for what are called
10 training commands where it's a basic training
11 installation, those kids are not allowed off base.
12 So I think something good has got to come out of
13 not selling alcohol at 2:00 in the morning to 21-
14 year-old kids who are buying them for their 18-
15 year-old girlfriend.

16 CONGRESSWOMAN HOLTZMAN: Aside from the
17 fact that in New York City they put a substantial
18 tax on cigarettes and actually it did have an
19 effect. It has had an effect because young people
20 can't afford it.

21 MR. CASSARA: My son quit. Thank you.

22 CONGRESSWOMAN HOLTZMAN: So, I mean,

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1 absolutely. So it seems to me that that's might be
2 something worth looking at how this is --

3 MR. CASSARA: That would be my parting
4 point to chew upon is addressing --

5 MS. FERNANDEZ: I'm ready to do it now.
6 Can't we just call --

7 MR. CASSARA: Call somebody and say, look
8 -- yeah. I mean --

9 MS. FERNANDEZ: Let's call Secretary Hagel
10 and see what he can do, like, now.

11 MR. CASSARA: I think anybody with common
12 sense would look at that and say and say that is
13 not a good idea.

14 MS. FERNANDEZ: That's a terrible idea.

15 CAPTAIN (RET.) GRUBER: We will take that
16 for action as a question for all the services and
17 develop that information for you.

18 COLONEL HAM: A lot of scenarios.

19 CONGRESSWOMAN HOLTZMAN: Can you find out
20 sort of on the civilian side what the normal
21 closing hours are? I mean, that's --

22 (Cross talking.)

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1 MR. CASSARA: That's true. I've never
2 thought about it. That's true.

3 CONGRESSWOMAN HOLTZMAN: That's really
4 late.

5 MR. CASSARA: Well, if they stop at 10:00
6 p.m. --

7 (Cross talking.)

8 CONGRESSWOMAN HOLTZMAN: In Sin City, most
9 stuff closes down at, I would say, you know, 9:00
10 for liquor stores.

11 COLONEL HAM: I mean, I could go --

12 CONGRESSWOMAN HOLTZMAN: Yeah, I know, but
13 we don't sell it in supermarkets. That's it.

14 JUDGE MARQUARDT: Even in California,
15 they're open all night.

16 MR. CASSARA: Yeah. And like I said, it's
17 not a silver bullet, but I think it's got to be --

18 (Cross talking.)

19 CONGRESSWOMAN HOLTZMAN: -- liquor stores
20 are closed. Can you imagine?

21 DEAN SCHENCK: Super Walmart, it's 24
22 hours. You can get it there in West Virginia.

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1 MR. CASSARA: It seems you know a lot
2 about this.

3 (Laughter.)

4 SPEAKER: Yeah, I think you can probably
5 get anything in Super Walmart.

6 CAPTAIN (RET.) GRUBER: Is there anything
7 else anyone wants to discuss on the record before
8 we shut down?

9 MS. FERNANDEZ: I don't think so. Just
10 thank you to all of you for being here, and we'll
11 see you in Texas.

12 (Whereupon, at 4:25 p.m., the public
13 hearing was concluded.)

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