UNITED STATES DEPARTMENT OF DEFENSE

RESPONSE SYSTEMS TO ADULT SEXUAL
ASSAULT CRIMES PANEL

VICTIM SERVICES SUBCOMMITTEE

CONFERENCE CALL

THURSDAY
MARCH 20, 2014

The Subcommittee convened
telephonically at 2:30 p.m. Eastern Daylight
Time, Mai Fernandez, Chair, presiding.

PRESENT:
Mai Fernandez, Chair
Dean Michelle J. Anderson
William Cassara
Meg Garvin
Honorable Elizabeth Holtzman
Honorable Christel Marquardt
Brigadier General Colleen McGuire, Retired

STAFF:
Maria Fried, Designated Federal Official
Colonel Patricia Ham, Staff Director
Commander Sherry King
Terri Saunders

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2:48 p.m.

MS. FRIED: Good afternoon, everyone. This Victim Services Subcommittee is now open.

MS. FERNANDEZ: Hi, this is Mai Fernandez. First of all, I want to thank everybody on the call, and for indulging my lateness for 15 minutes. I was on a plane getting off in Miami and everything got a little delayed.

REP. HOLTZMAN: Liz Holtzman.

MS. FERNANDEZ: Hey, Liz, how are you?

REP. HOLTZMAN: How are you? Who is this?

MS. FERNANDEZ: It's Mai.

REP. HOLTZMAN: Hi, Mai, how are you?

MS. FERNANDEZ: I am good. We are just starting the meeting.

REP. HOLTZMAN: Excellent.
MS. FERNANDEZ: I just wanted to thank everybody who's on the call today, and I wanted to thank the staff. I thought that this was an excellent draft, and given it was our first round at looking at something, I think it was the right place to start. It's well laid out; it's concise. I think it really gives us something that we can respond to.

As far as the content is concerned, I don't have any opening remarks. And I hate to do this to Meg, to put her on the spot, but given that she probably has the most background on this part of the report, I wanted to see if she could start by just giving us her first impressions of the draft.

MS. GARVIN: Um, okay. And I know - I realize that um just landed in the transcript. So, excellent. Yes, I, too, applaud the staff. This is really dense material and I thought it was covered really well in here.

I'm not sure whether we want to
talk substance or structure, and structure might be - my recommendation probably is that structure wait until we think about other chapters also, perhaps. So, substantively, I just had a handful of things that I had seen in the recommendations and in the language of the recommendations that I thought the Subcommittee might want to focus on just to make sure that the language choices are the ones that we actually want in there, so I'm happy to go through those.

But, overall, I thought it was excellent and captured our prior discussion. And I think from my perspective we're at some language-choice moments because I think language choice is going to matter in the recommendations.

JUDGE MARQUARDT: Could I make a suggestion? You know, I find it difficult structurally to have the recommendation first and then the finding. I thought the finding should precede the recommendation.
COURT REPORTER: Sorry, this is the court reporter. I was wondering if the current speaker could please identify themself for the record.

JUDGE MARQUARDT: Christel Marquardt.

REP. HOLTZMAN: This is Liz Holtzman. I completely agree. I was going to make that suggestion, as well. It's very easy to get lost if you don't have the finding first, then the recommendation afterwards.

MS. FERNANDEZ: This is Mai. I also think that that is a good recommendation.

MS. GARVIN: Yes, and this is Meg Garvin. I concur. That was one of the structural things I thought, also.

CDR KING: And we switched them back and forth a couple of times, just to let you know. We weren't sure which way that we should start it out, so we can always switch those back. That's not a hard thing.

MS. GARVIN: But one thing I
thought structurally when - this is Meg Garvin. When it all is said and done and we read through all of it, the chapters, or whatever they end being called. And I think that structurally it might make sense to have all recommendations in one place, like a listing of recommendations that flow out of every chapter or whatever, subsection we end up considering. And then within those chapters it goes finding, recommendation, finding, recommendation. But that all recommendations it might be desirable to have in one place, and then supported within the chapters in that structure. But, again, I don't know whether that recommendation of mine makes sense until we see everything.

JUDGE MARQUARDT: I think we should wait. Christel.

REP. HOLTZMAN: I agree. And I also - this is Liz Holtzman. I agree with that. Why don't we wait and see what it looks like. But the other thing I wanted to say in terms
of structure is that I'm not sure the findings and recommendations should come before we have the DoD current victims policy, and differences between CVRA. I mean, I was wondering about the order of that. I'm not sure.

JUDGE MARQUARDT: I like that suggestion. This is Christel.

REP. HOLTZMAN: Because I think it's kind of strange to read the findings and the recommendations first, then have everything laid out, so this is how I see it.

MS. FERNANDEZ: This is Mai. I think you've get more of a sense of a narrative if we do it the way that Liz and Christel are talking about.

JUDGE MARQUARDT: But then again, we may want to see the other parts before we make all the structural recommendations.

MS. FERNANDEZ: Meg, why don't you go ahead and start talking the substance, and then maybe towards the end of this
conversation we can revisit some of the structural issues.

MS. GARVIN: Okay, I can flag mine. I imagine other folks have some, also, but maybe I'll just focus mine on recommendations. So, my first - I have some stuff prior to this, but the first real substantive one is on page 2, Recommendation 2. And it's actually quasi-global because I think it would apply to Recommendation 1, also, I believe. So, it's a quasi-global comment, and that is I'm wondering if in our recommendations if the Subcommittee might want to consider saying the victim, him or herself, or through counsel can do these things. And the reason, I think making explicit that whether our recommendation is personal just to the victim or includes through counsel is to avoid future litigation about what counsel can do. And that, obviously, was the entire litigation, or one huge chunk of the litigation in Kastenberg was what can the victim do, but also what can
the victim's counsel do. And I know we are not making specific narrow recommendations on the SVC's duties, but I think in our recommendations, when we're saying the victim should have a right to do something, I would strongly encourage us saying that victim or the victim's counsel can do it.

REP. HOLTZMAN: Meg, this is Liz Holtzman. Would it make sense to refer - to have this completely as a separate finding and recommendation, find the problem in the -- whatever the name of that case, Kastenberg, and say given that and to avoid these problems we recommend that it be clear that the reference to victim shall include reference to victim's counsel.

MS. GARVIN: That's a much cleaner way to do that. I really like that, yes. I would agree with that.

MS. FERNANDEZ: How do others feel about that?

JUDGE MARQUARDT: I think that's a
good way to handle it. This is Christel.

MR. CASSARA: This is Bill. That makes sense to me.

DEAN ANDERSON: Yes, this is Michelle. I agree.

MS. FERNANDEZ: This is Mai. I agree, so let's do that.

JUDGE MARQUARDT: This is Christel. I would like to go through Finding 1, and then Recommendation 1 in that sequence because I think they feed off of one another. And I have difficulty because in my profession as an appellate judge we do a lot of editing, and so I have edited a number of these.

MS. GARVIN: Me, too. This is Meg. I have, also. I didn't know what to do with edits.

CDR KING: This is Sherry. The idea is, I think, if you send me the edits I will incorporate all the substantive edits into like bubbles, and I can put them together, and then you can all - and send it out to
everybody with the report with those edits, comments in it. And then you can all see each other's.

MS. FERNANDEZ: I probably didn't make that very clear.

CDR KING: Just send them to me, not to each other.

JUDGE MARQUARDT: Yes. I have a question about in that first recommendation, implement mechanisms. And I know that you use that word mechanisms in a lot of places, but I think it's procedure or something like that. Mechanisms just seems strange to me in a legal sense.

CDR KING: Ma'am, I think - just to let you know where that came from, it came from the statute, the Victims Rights Act that lists all the rights.

JUDGE MARQUARDT: I saw that.

CDR KING: So, that's where we got that word from, just to let you know.

JUDGE MARQUARDT: Yes, I know, and
it just seems strange.

REP. HOLTZMAN: Implement isn't --

this is Liz Holtzman. Implement isn't really

a great word either, establish or create is

better. But, you know, that's a very minor

change.

DEAN ANDERSON: I guess I'm

wondering just - I apologize if this is

obvious to everyone else - this is Michelle.

I'm wondering why it doesn't just say the DoD

should grant the victim's right to confer with

trial counsel, or should establish the

victim's right to confer with trial counsel.

JUDGE MARQUARDT: I think it should

say the government's trial counsel because it

could be confusing if it's his trial counsel,

or -

COL. HAM: Ma'am, this is Colonel

Ham. Trial counsel is the prosecutor. That's

the term of art in the military for the

prosecutor.

JUDGE MARQUARDT: Well, for a non-
military person, it was confusing.

COL HAM: Understood, ma'am.

REP. HOLTZMAN: Maybe the first
time you use it just put a footnote in,
explain what it is, or at some point.

MR. CASSARA: Hi, this is Bill.

Will there be a glossary of terms?

COL HAM: Yes, there'll be a
glossary of terms in the report and we'll cite
to, I think, the Manual for Courts-Martial
defines trial counsel. We'll put a footnote in
that describes that.

MS. FERNANDEZ: Just for the sake
of organization, would people like to go
through the findings and recommendations one
by one rather than just talking about all of
them?

MS. GARVIN: I think that makes
sense. This is Meg.

MS. FERNANDEZ: Okay. Well, then
let's start with Finding 1 and see other than
- I want to focus on substantive edits right
now. And I think non-substantive edits, I think, we could just send to Sherry and she can, like I said, put them in the bubbles.

JUDGE MARQUARDT: Could somebody define for me service policy? I know service is capitalized; policy is not. Is that a word of art also in Finding 1?

CDR KING: Yes, ma'am. Service means all the four or five military services, the Coast Guard, Army, Navy, Marines and Air Force.

JUDGE MARQUARDT: Would it be better to say the Armed Forces Policy?

COL HAM: This is Colonel Ham. Services generally denotes all five of the different Services. I guess I don't know how else to say it.

JUDGE MARQUARDT: Well, it would have to be plural then, possessive, Services' policy.

REP. HOLTZMAN: Not necessarily. But I think the reason to do that is DoD is
separate as an entity from each one of the
Services so, you know, I think I don't have
any problem, frankly, with making clear that
- I think what it's trying to do is just
indicate that at every single level, the
policy of the military is to grant victims
whatever these rights are.

COL HAM: That's right,
Representative Holtzman. This is Colonel Ham.
The DoD sets the overarching policy and the
Services then each have their own implementing
policy.

REP. HOLTZMAN: That's why I think
if you just said military - this is Liz
Holtzman again. That's why I just think if you
said military, it might be confusing because
it might not be clear that that includes DoD,
or all the Services, you know. I mean, these
are technical words, I think.

JUDGE MARQUARDT: Well, I just
needed an explanation.

REP. HOLTZMAN: I could be wrong
about that, but this is my sense.

MS. FERNANDEZ: What else do we have on Recommendation or Finding 1?

REP. HOLTZMAN: I wanted to add something on Finding 1. This is Liz Holtzman, if nobody else has anything to say. It's not really clear - I mean, I know what you're trying to do here, but it should be clear in the findings that the reason that the role of the commander is not comparable to the right to consult on the CVRA is because the trial counsel does not have the authority to refer matters for prosecution. I mean, I think it should be explicit as to why it's not comparable in the findings.

(Simultaneous speaking.)

REP. HOLTZMAN: However, due to the role of the commander, the CVA is not directly comparable. Well, you don't spell that out.

MS. GARVIN: This is Meg. I would agree adding to that would make sense in particular in light of the shifting
legislative plans. And if something does
change explaining our rationale for this
finding will help explain whether it stays
relevant if legislation passes, or if the
legislation has changed the recommendations.
So, I think a little more detail there about
why we don't think it's comparable will help
ensure interpretation of our recommendation
later.

REP. HOLTZMAN: This is Liz
Holtzman again. I think I found that problem
in a few places, so if I could just suggest to
the staff that you just make sure that it's
very - that the rationale is clear in all of
the findings, that would be great. I mean, I
don't know that I have another example where
I made notes on it, but I think I was feeling
that same problem elsewhere, so just make
sure.

MS. FERNANDEZ: Okay. We'll move on
to Recommendation 2.

REP. HOLTZMAN: I think the same
thing - I'm sorry. I think the same problem exists in Recommendation 6, so okay, anyway. I don't mean to get ahead of ourselves at this point, another example of that. So, there may be others.

JUDGE MARQUARDT: Are we going to look at the recommendation also for Number 1?

MS. FERNANDEZ: Go ahead, Christel.

JUDGE MARQUARDT: Well, in the Recommendation it says the victim's specific concerns discussions, I don't know what that means, or desires. I think it should be requests, not desires. I think desires is a bad word. And then in the second to last line, Authority may consider those issues prior.

DEAN ANDERSON: Yes, I agree with Christel. This is Michelle. I was sort of stopped by the question of - the lack of parallelism between concerns, discussions, and desires. And I agree that it could be the victim's specific concerns and preferences regarding case disposition would take into
account whatever discussions means, and have
a better word, I think, than desires. And then
that then makes more sense, I think, vis a vis
the latter part of the sentence where the
convening authority may consider those views.
Those views being, you know, referring to
conscerns and preferences.

JUDGE MARQUARDT: But I still think
issues is a better word.

DEAN ANDERSON: Where is issues?
Where would you put issues?

JUDGE MARQUARDT: Well, instead of
views.

DEAN ANDERSON: Oh, I see. Yes.

JUDGE MARQUARDT: And I know we're
going to send these to Sherry, but I just
thought it was unusual.

DEAN ANDERSON: It's a substantive
question, you know, the concerns, discussions,
and desires, I think would be substantive
edits.

MS. GARVIN: I think another -
this is Meg. Another potential substantive 
edit there is whether we're comfortable with 
it being a may consider, or whether we want 
our recommendation to be shall consider.

DEAN ANDERSON: Yes, I would like 
it to be shall, not a permissive may.

MS. FERNANDEZ: This is Mai. This 
is shall, too.

REP. HOLTZMAN: Where are you?
Sorry.

MS. GARVIN: Recommendation 1, 
second to last line where it says, convening 
authority may consider, I'm recommending that 
our recommendation be shall consider.

DEAN ANDERSON: I agree. This is 
Michelle.

MS. FERNANDEZ: Members, Terri 
Saunders is here. She was on the committee 
that, what's the right word, redrafted all the 
Rules of Evidence based on all the changes to 
the Federal Rules of Evidence, and they 
changed shall to will. That appears to be the
COL HAM: Is everyone okay with will rather than shall?

MS. FERNANDEZ: Everyone okay with will instead of shall?

(Chorus of yeses.)

MR. CASSARA: That's fine with me.

CDR KING: Before you're done with this can we just go over it to make sure I'm clear?

REP. HOLTZMAN: You mean the recommendation?

CDR KING: There was - yes. I'm just not clear, one person discussed changing the word desires to I think preferences. And then change it to issues, so - or maybe issues is - oh, views to issues. Okay.

JUDGE MARQUARDT: Yes, we want the word discussions gone. Concerns is fine, it should say concerns and preferences. We get rid of discussions, we get rid of desires. Later instead of saying those views, it says
those issues.

CDR KING: Okay.

JUDGE MARQUARDT: And instead of saying may on the second to last line, it says will.

CDR KING: Okay. I just wanted to make sure I understood that as we were writing it.

REP. HOLTZMAN: Well, also, at the very beginning where it says DoD should create and implement -

MS. FERNANDEZ: Yes, I guess I'm still not clear on why we have a lot of -- there's a lot of verbiage in that first part of the sentence.

JUDGE MARQUARDT: I don't know what should denotes.

REP. HOLTZMAN: This is a recommendation. Recommendation, what other word would you use?

COL HAM: The Panel doesn't have the authority to direct DoD or Congress to do
anything, only to recommend.

JUDGE MARQUARDT: Okay. But I think Liz said that create was a good word there.

REP. HOLTZMAN: Better than implement. Implement is -

JUDGE MARQUARDT: Well, that you can create and implement.

MS. GARVIN: Yes, I would not leave it at just create. This is Meg. I would recommend that if we're going to say create, it's create and implement, something that directs them to actually put it into practice. I mean, that our recommendation has got to be practiced and driven, that we create it and then put it into practice.

CDR KING: I think in some of our charts that we have, some of the Services already do it in practice in their instructions, or in their policy says Services do that in practice already, but it's not in any statutory language. And in practice I
I think probably all the Services do it at least to a point.

MR. CASSARA: Bill Cassara. Sorry, folks, I hit the wrong button. I disconnected myself. I know you missed me. I'm back.

MS. FERNANDEZ: Yes, Bill, we did.

Do we have anything else on Finding or Recommendation 1?

JUDGE MARQUARDT: Where it says in the fourth line of the finding, disposition of the matter, is there a better word? I'm not sure what word would be better used.

MS. FERNANDEZ: Christel, do you have a recommendation for a better word?

JUDGE MARQUARDT: Well, I wondered if charges or the allegations --

CDR KING: I think that word was meant to relate to the administrative -- if there was some other administrative procedure, or administrative action that was taken.

JUDGE MARQUARDT: Well, I think the beginning of that line should say pursue a
non-judicial or administrative, some other
disposition I think is not good wording.

    CDR KING: So, take out some other
and just leave it pursue non-judicial or
administrative disposition of the matter?

    JUDGE MARQUARDT: Well, you could
put an A in there, Pursue a non-judicial or
administrative disposition of the whatever.

    MS. FERNANDEZ: Can we move on to
Recommendation 2 and Finding 2?

    REP. HOLTZMAN: This is Liz
Holtzman. On Recommendation 2 in line 4 it
should be gender neutral so it's -

    JUDGE MARQUARDT: Exactly.

    REP. HOLTZMAN: And then in the
parenthesis at the very end when it says,
submission in writing or personal meeting, I
could think of a circumstance where it might
be via email, via video, so maybe submission
in writing, personal meeting, or otherwise. I
don't know, but something that's not - well,
I guess you say e.g., so that's okay. I'm okay
with that, just make it gender neutral.

MS. GARVIN: I'm going to actually
- this is Meg. I'm going to comment on that
same thing in the parenthetical. The e.g.
certainly clarifies, it's for example, but
having it be or in the parenthetical means
it's one or the other even though those are
for examples, and I have a problem with a
recommendation that makes it sound like it's
a disjunctive. I'd rather just have a comma
there so we're not saying it has to be one or
the other, that the decision maker might say
it's multiple ways.

REP. HOLTZMAN: Do you want an and?

MS. GARVIN: No, just a comma, so
it's a for - I mean, we're recommending that
they should implement the policy, and the
convening authority retains the discretion. I
just don't want to - so I want it to be a
comma so the discretion includes that they
could do it in multiple ways within the same
case if they wanted to.
JUDGE MARQUARDT: So, in other words, put a comma in and take the or out.

MS. GARVIN: Correct.

REP. HOLTZMAN: But that's not grammatical.

CDR KING: Well, then we could add in or otherwise, or something like that if you wanted.

MS. GARVIN: Well, yes, we could do or otherwise, but then again we have the or. I actually think it - Liz, I think it does work grammatically if we use kind of the legal version of the e.g. parentheticals where -- but it will depend on the style guide we're following for writing this. If it was a legal parenthetical, the comma actually achieves it and you don't need to do anything else. If it's not, then we need to think about it. And then I'd recommend at the end and/or.

COL HAM: This is Colonel Ham.

Right now the right to be heard during a plea is not included in the statutory language
Congress just enacted. Is there any recommendation on whether that word should be added, or the - I mean, it might be more than a word.

JUDGE MARQUARDT: Well, I had a problem with the ending of that first sentence because it's the right to be heard regarding a plea. Is that the plea negotiation, the plea agreement after it's been made, whatever? I mean, if you're going to have any effective influence on the plea, it's got to be during the negotiation process and not after the agreement has been made.

COL HAM: I think that was the intent, certainly, ma'am, if it's not carried because it says, should include the right to be heard before the convening authority makes his or her decision to accept, reject or propose a counter-offer to a pretrial agreement. So, that's during the negotiations.

JUDGE MARQUARDT: Well, I think it should be made clear. It looks like a pretrial
agreement has already been made, so a pretrial proposal or something?

COL HAM: Again, that's a term of art, ma'am. It's a - the document is called a pretrial agreement, what you would think of as a plea bargain. The document is called a pretrial agreement.

JUDGE MARQUARDT: Okay, because agreement means it's already set.

COL HAM: Proposed, maybe?

JUDGE MARQUARDT: Proposed pretrial -

MR. CASSARA: Colonel Ham, this is Bill. How about just any pretrial offer? I mean, in the Navy I think it's called a PTO, isn't it, Sherry? Or maybe that's the Air Force.

COL HAM: It's not the Air Force.

CDR KING: Yes, I think it's called a PTO.

JUDGE MARQUARDT: I think offer is good.
MR. CASSARA: I mean, we could say for offers of military pretrial agreements.  

JUDGE MARQUARDT: Yes.  

COL HAM: Offer pretrial agreements?  

JUDGE MARQUARDT: Or just - I like the idea just to a pretrial offer and don't even - submitted by the accused. How do we know who's submitting it?  

COL HAM: It has to be submitted by him.  

JUDGE MARQUARDT: Well, what about a counter-offer. I guess you have a counter-offer. Okay. Well, but you see, it could be the pretrial offer, then you have a counter-offer, so what's the victim responding to? That's all I'm saying. So, that's why we leave it more general, but it's up - it's not a big deal.  

REP. HOLTZMAN: I think the negotiation word should be in there, because that's what it is.
COL HAM: Under the federal statute there's no - well, I'm wondering, Ms. Garvin, my recollection is there's no right to participate in the negotiations -

(Simultaneous speech.)

MS. GARVIN: You're correct, Colonel Ham. The broad term that's used in the federal system is plea, the word plea is used, and the way it is navigated in practice is the right to confer with a prosecuting attorney is leveraged to be involvement in plea negotiations as they're happening and to be kept in the loop as they're happening. The right to be heard regarding plea is the right to be heard prior to a final decision being made about a plea agreement that has been reached as it's presented to the court, so it's the right to be heard by the court prior to acceptance. I'm not sure that's the best way to go, but that is the way it's currently laid out in the federal system, and it's used, the right to confer to ensure participation in
negotiation, and you have the right to be
heard on plea, to be heard by the court prior
to acceptance.

JUDGE MARQUARDT: Well, it seems to
me the word "plea," even though that's what
everybody thinks it says is subject to
interpretation by the court at that point.

REP. HOLTZMAN: You know, this is
only a recommend – this is not the statute.

JUDGE MARQUARDT: I know.

REP. HOLTZMAN: This is just a
recommendation, so I don't know that the words
must be – each word is going to have that
kind of significance. And particularly since
it's the mechanism includes the right to be
heard before the Convening Authority makes its
decision to accept, reject, or propose a
counter offer. So, it sounds to me clearly –
I mean, the word "negotiation" might be
better, but it sounds like you're right in the
process there, to me.

MS. GARVIN: This is Meg. I would
tend to agree with that. And I think if we're trying to make an explicit recommendation about involvement in negotiations rather than having interest and rights specifically heard by the decision maker before decision, that might be a separate recommendation which is - because it sounds like we might be making a recommendation of a tripartite negotiation, which is a little bit different than being heard about the plea.

JUDGE MARQUARDT: I agree with you on that.

DEAN ANDERSON: Meg, isn't that going further than what you get with civil court?

MS. GARVIN: In civilian - yes, that is. I'm not, necessarily, endorsing that. I'm saying if we are - I think we need clarity on whether that's what we are recommending or not. The civilian system right now, you just get to be heard by the decision maker before it becomes final, and you hope
that the right to confer allows you some level
of participation, but because you're not a
decision maker that's it.

MS. FERNANDEZ: I see very - I
don't know if the word is reluctance, but
we've got to be careful to go - if we're
going to be doing things that go farther than
the civilian system.

(Off microphone comment.)

REP. HOLTZMAN: Especially since
I'm not sure we had testimony on the subject.

MS. GARVIN: That we have not?

REP. HOLTZMAN: And I'm not sure
whether we have.

MS. FERNANDEZ: No, I don't think
we have. I mean, that kind of recommendation
I think wouldn't be prudent.

REP. HOLTZMAN: I agree without
support.

JUDGE MARQUARDT: I'll concede.

COL HAM: So, is it clear what the
intent of this one is, Subcommittee members?
This is Colonel Ham. Our understanding of your intent was to make a military equivalent of what Ms. Garvin just described as the right to be heard during the plea, which you discussed and heard issues about why that is difficult to do in an equivalent manner to how Ms. Garvin described it in the civilian system. So, as the staff drafting this we were trying to implement your intent as we gleaned it from your deliberations, that this is to replace that, or to put something in place as equivalent as it can be in the Military Justice process as it exists now.

REP. HOLTZMAN: Colonel Ham, this is Liz Holtzman. I don't think we are suggesting, in fact now, any change aside from the content of the – changing the gender neutral issue, and changing the content of the parenthetical statement.

JUDGE MARQUARDT: Well, I thought we were going to change pretrial offer or proposal instead of agreement.
REP. HOLTZMAN: Yes, right. Offer, right. You're right.

MS. GARVIN: And with those - this is Meg Garvin. With those changes I think, Colonel Ham, it does capture the conversation and our discussion, and our recommendation and intent.

MS. FERNANDEZ: Okay, then let's move on to Recommendation 3 and Finding 3.

REP. HOLTZMAN: This is Liz Holtzman. On Finding 3 I think I have the same problem that I had mentioned earlier. It's kind of a generic issue. It doesn't - it's too general, and it should refer to the appellate rights point which is what we're talking about here. Isn't that correct?

MS. GARVIN: This is Meg Garvin. I'm going to agree with that. I have two comments, one on Recommendation 3, and one on Finding 3. To echo Liz' on Finding 3, the finding seems to be mixing and matching trial level standing and appellate standing. And I
think our recommendation was about appellate standing, so I think Finding 3 should be about appellate. And that there's no clarity of appellate device right now rather than something broader that seems to be going on to trial and it's appellate. And in my notes, my edits I can send some suggested language on that. I have it, but that was the Finding 3.

And then on the Recommendation 3, I have concerns about the last clause or phrase. My grammar is bad today. The "is pending in appropriate circumstances." Mainly, it's just a phrase, "in appropriate circumstances," I would recommend removing that because I think that is getting into details that we shouldn't include.

JUDGE MARQUARDT: I agree that I would cross that out.

DEAN ANDERSON: Yes, I agree with that. I also am wondering about the first part of - this is Michelle. The first part of Recommendation 3. The first part says, "The
1. DoD should complete its study on the issue."

And because we don't know what the findings are, that just sort of comes out of nowhere and it's not clear in reading what it's about, and why we should be making a recommendation on it, moreover. It could just say, "The DoD should develop mechanisms for an appropriate appellate device to insure" - or, actually, "The DoD should develop mechanisms to insure mandatory expedited interlocutory review of an alleged violation the rights listed in," blah, blah, blah.

I just think that there's more language here - the language is cumbersome and I'm not sure that we need the "for an appropriate appellate device," if there is a mechanism.

JUDGE MARQUARDT: Well, I like "process" instead of "device," for an "appropriate appellate process."

DEAN ANDERSON: That sounds good to me, too. But then I would take out the "for
the appropriate appellate device."

JUDGE MARQUARDT: Yes.

MS. GARVIN: I agree. I think if it just said "develop mechanisms to insure mandatory expedited interlocutory review," that's good.

JUDGE MARQUARDT: Could you say "appellate review?"

REP. HOLTZMAN: That's a good point.

MS. GARVIN: Well, as long as we're sure that it can include pretrial appellate review, and it's not locked into a post moment, which is why I think we have interlocutory in there.

JUDGE MARQUARDT: Well, maybe you should say both.

MS. GARVIN: Good point, good point.

JUDGE MARQUARDT: Maybe "develop mechanism for appropriate review of pretrial and post-trial."
MS. GARVIN: I think that would be an excellent edit. This is Meg.

REP. HOLTZMAN: Well, what about during the trial? I mean, you've got pre and post, but what about during the trial?

JUDGE MARQUARDT: Well, you could pre, during -

REP. HOLTZMAN: Because it raises that question. That's all I'm - that's why I'm raising it.

PARTICIPANT: Maybe all -

MS. GARVIN: Or it could be - and this might be wordsmithing that we can do through edits, but we can do "to insure mandatory expedited interlocutory review," which does include pretrial and trial, as well as post-trial review. I mean, we could do it that way, or in our wordsmithing and editing we could come up with a - to insure we capture all three moments.

JUDGE MARQUARDT: I think it should be explicitly stated because it's going to
leave it up to judicial review and it's going
to take a long time to get down to exactly
what we had intended. And it is hard to draft
by committee, I agree.

MS. GARVIN: This is Meg. Is this
something staff could attempt, if our intent
is clear that it's all three moments, that you
all could draft language?

COL HAM: Actually, the way it's
drafted, it's even broader than that, Ms.
Garvin, because we say "interlocutory review
of alleged violation of the rights in Article
6-B," which are - some are, what's the right
word, in the absence of a trial.

MS. GARVIN: Does interlocutory in
the military not - it means any time that
something is pending, so it would capture --
interlocutory isn't limiting. Is that
correct, Colonel Ham?

COL HAM: I wish Dean Schenck was
on today to check my - I mean, the
extraordinary work process is not limited to
when there is a set of charges proceeding. For example, a Writ of Habeas Corpus, as you all know, can be filed when there are no charges pending. So, I guess we're asking what exactly is your intent. We thought your intent was to enforce all the rights in Article 6-B, but if you say pretrial, trial, and post-trial you may be limiting it more than it is right now. And if that's your intent, then -

MS. GARVIN: No, I think you all have the intent correctly. And I was hung up on the word "interlocutory," making sure that wasn't inappropriately limiting anything. That was my concern. I want it as broad as possible. And I think the Committee's discussions today echo that.

COL HAM: So, I guess the word "interlocutory" then would mean to a court system, as opposed to through the chain of command, which is what we understood your intent to be. You want it through the appellate court system.
MS. GARVIN: Correct.

COL HAM: I think - well, Mr. Cassara, and I'd love to hear from Dean Schenck on this one, too, if we have the right word there.

MR. CASSARA: Okay. Direct me as to - this is Mr. Cassara, I'm sorry. You probably realized that since I'm the only Mr. on the phone.

(Laughter.)

MR. CASSARA: Give me a paragraph that you are looking at. Is it Recommendation 4?

COL HAM: It's Recommendation 3.

MR. CASSARA: I'm sorry, I'm way ahead of you. Okay. "The DoD" -

COL HAM: The question is "interlocutory," does that capture - our intent was that it captures the appellate process.

MR. CASSARA: Well, as I understand the Committee's intent it is that the victim
through his or her counsel be allowed to file an appeal at any relevant stage whether it be pretrial or during trial, or I guess theoretically post-trial. For example, if a defense counsel were to file a post-trial motion, so it would seem that if the Committee's intent is to allow the victim's counsel to file an appeal at any relevant state of the proceeding, then interlocutory is probably limiting that.

PARTICIPANT: How?

MR. CASSARA: Because when I think interlocutory appeal, I think of an appeal taking place during a trial.

JUDGE MARQUARDT: Correct.

MR. CASSARA: Not pretrial or post-trial.

JUDGE MARQUARDT: Correct.

COL HAM: So, should it be expedited appellate review, just appellate review?

MR. CASSARA: Why not just
expedited review?

PARTICIPANT: Well, who else -

COL HAM: Then it doesn't necessarily have to be by a court.

MR. CASSARA: Okay, I see what you're saying. Well, that's a valid point.

REP. HOLTZMAN: I would say an appropriate device to insure mandatory expedited appellate review.

MR. CASSARA: Yes, I think that makes the most sense.

REP. HOLTZMAN: Take "appellate" from where it is on line 2 in front of "device" and put is in front of "review," and strike out interlocutory.

MR. CASSARA: Where it would say, "develop mechanisms for an appropriate device to insure mandatory expedited appellate review of an alleged violation."

PARTICIPANT: Can I just -

JUDGE MARQUARDT: I like the word "process" rather than "device."
PARTICIPANT: I thought we took that out, anyway.

DEAN ANDERSON: Yes, the only thing that I would add - this is Michelle, on the question of appellate versus interlocutory, is that it - although it may be technically correct that appellate signifies at any particular stage of the game, the word "interlocutory" has a specific meaning that allows for someone to stop the process midway and get expedited review of something. So, I might actually add both words even though it's a little bit more cumbersome.

MR. CASSARA: Let me ask this. What about if it just said mandatory - well, I want to talk about the word "mandatory," but what if it said to insure judicial review -- expedited judicial review?

DEAN ANDERSON: Yes, but I guess my concern is the implication that the word "appellate" or "judicial", that the possible implication that it awaits until the end of
the process. Even though I understand technically it doesn't have to imply that, it can imply that, as opposed to interlocutory which means intermediate, in the mid stage of the process. And I wouldn't want to lose that.

MS. GARVIN: And I would echo that, which is where that word in our deliberations/debate - that's where that word came from, was our deliberations previously to make sure it didn't wait until the end.

DEAN ANDERSON: Right.

MS. GARVIN: I'm just not sure how we wrap both those things in and capture the intent, and make sure people understand that.

MS. FERNANDEZ: Is there a problem with just saying before, during, and after trial? I mean, just sort of say what it is.

MS. GARVIN: Well, except as Colonel Ham was pointing out, some of these things might not go to trial. Am I understanding that right, Colonel Ham?

COL HAM: That was our
understanding of your intent, that you wanted
it to reach all the rights, which don't
necessarily involve any trial.

MS. GARVIN: Right. And that is the
same in civilian, right, there doesn't have to
be a pending case in order to initiate review
of a denial.

MS. FERNANDEZ: Well, doesn't
pretrial then cover everything that would
happen if it didn't go to trial? You're saying
pre, during, and after, we're kind of covering
everything.

REP. HOLTZMAN: Didn't I hear
suggestions that we let the staff try to
figure this one out and come back to us with
some language.

PARTICIPANT: Good idea.

JUDGE MARQUARDT: Well, they can
consult with Colonel Schenck, too.

REP. HOLTZMAN: Yes, and go through
an appellate review while they're at it.

(Laughter.)
COL HAM: Can I just ask one more wordsmith question. This is Colonel Ham. Somebody raised an issue with mandatory, does that engender -

MR. CASSARA: That was me.

COL HAM: What's your thought there, Mr. Cassara? Did you want to -

MR. CASSARA: Well, I may be wrong. I'm wrong a lot, just ask my wife. But my concern would be do we want to - I mean, are we telling a court that they have to do something? Is that our desire? You know, that's really my concern.

COL HAM: In other words, that they have to address the substance of something rather than deny or grant outright?

MR. CASSARA: Right.

COL HAM: Okay.

CDR KING: I think we meant the mandatory to go with the expedited.

MR. CASSARA: Aha, not with the review.
CDR KING: Right.

MS. GARVIN: This is Meg. I guess I'm not sure I had read it that way, or thought we - I thought we were directing the court to take review kind of akin to the civilian one of shall take up and decide forthwith language.

JUDGE MARQUARDT: It modifies the alleged violation of rights.

MR. CASSARA: I mean, if that's what our goal is, I'm - you know, the - I understand.

MS. GARVIN: And I will say, I mean, the shall take up and decide forthwith that is in the civilian has not mandated substantive review. Right? Because they have had to decide what the standard of review is, and the standard of review at times in the civilian world has dictated, in my opinion inappropriately so, but it has happened, non-review of substance, and instead said they didn't meet the threshold standing, so the
shall take up and decide language in the CVRA has resulted in courts, they have to look at the petition and decide what track it's on, basically.

MR. CASSARA: Okay. Then I'm good. See, I told you, I'm wrong a lot.


JUDGE MARQUARDT: Should we have the word "should" in there? "The DoD implementation mechanism should include the provisions for the trial court."

REP. HOLTZMAN: I have another point to make on Recommendation 4, which is that, you know, it's not clear to me the right was waived by the victim, whether that's sufficient. Should it be a knowing waiver, or is that not necessary? Just throw it out to have a question. That's all. I don't have a recommendation.

PARTICIPANT: And this is very wordy. We can –
MR. CASSARA: Yes. I think a lot under the recommendation is missing words.

MS. FERNANDEZ: What was that, Bill?

MR. CASSARA: I think that the last sentence under Recommendation 4 is missing a word or two.

COL HAM: Yes, these are combined drafts, so we'll work on this one and cut it down.

MR. CASSARA: Okay. I just — yes.

COL HAM: There are some obvious grammatical things in there. We'll tighten it up.

MR. CASSARA: I don't mean to grammar police, but I wasn't sure what the intent was of the sentence. Okay.

CDR KING: It was too many versions being put together to get it out to you, I think.

MR. CASSARA: You know how many times I've done this with appellate argument.
I read my brief right before I went in and found numerous typos, so I -

(Laughter.)

MR. CASSARA: Embarrassing moment, believe me. I was shy about pointing those out, so -

CDR KING: Of course. So, with the waiver we were just trying to get something affirmative on the record, you know, make them do something affirmative on the record rather than just say the victim is not here so - you know, the judge say that, maybe make the trial counsel - somebody make an affirmative finding that there was a waiver, because that's what you had talked about, you know, making a finding about the rights, so we kind of included waiver in there based on, I think, your more general discussions.

REP. HOLTZMAN: I think we can wait to see what you can work out.

MS. FERNANDEZ: Let's work that one - let's take a hand at rewriting that one,
because I just had just sort of trouble understanding it all together. So, I think if it - if we tighten up, we may just need another quick look at that one. Are we okay with that? We can move to Recommendation 5? Anybody?

MR. CASSARA: I'm reading. I'm reading 5. I'm with you.

JUDGE MARQUARDT: I'm wondering if it's the finality of court-martial findings, maybe it's to insure the finality of charges or something, because what we're trying to do is to make sure that they can't bring charges 10 years later.

PARTICIPANT: Right. So, maybe you mean proceedings instead of findings?

JUDGE MARQUARDT: I don't know, but it should be worded differently. That's all I think.

PARTICIPANT: I agree with that.

MS. GARVIN: This is Meg. I apologize, I'm a little - I was not following
exactly what our intent was with this. This was to ensure that there is a limitation time period on which a victim could bring charges.

MS. GARVIN: Charges, or was it the victim could bring complaint for violation of their rights? That was my confusion, so this is about charges?

CDR KING: No, our intent was to bring a complaint about a violation of their rights based on -

MS. GARVIN: So, setting up something parallel to the CVRA's time frame for bringing the complaint.

CDR KING: Correct.

JUDGE MARQUARDT: Maybe we should just re-look at the wording and parrot some of the language from the CVRA more closely.

MS. FERNANDEZ: I think that's a good idea.

MS. GARVIN: I think that's a good idea, especially because the CVRA - well,

Colonel Ham, I would recommend that, although
some of it is clunky in the CVRA, too, the drafting there. We didn't do such a good job with some of it. There's several different time frames in there, so maybe you guys can actually make it cleaner than the CVRA's one. The CVRA has an explicit time period for when you're challenging certain -- bringing complaint for certain pieces, other pieces it's actually open, and there's no clarity of when you have to file a complaint. So, parroting the CVRA but maybe organizing it a little bit better would be good.

MS. FERNANDEZ: Okay.

COL HAM: We might come to you for help if that's okay, Ms. Garvin.

MS. GARVIN: Of course, yes. And in my notes, I had a - some ideas on that in my edits, so I will be sending those to Sherry.

CDR KING: Very good, thank you. We just weren't exactly sure if you wanted them to be exactly the same as the CVRA or something a little bit different based on your
discussions, so maybe your notes will help.

PARTICIPANT: It almost seems like

Recommendations 6 and 5 should be flipped. Am I wrong about that?

PARTICIPANT: Should be what?

PARTICIPANT: Flipped, 6 should be 5, and 5 should be 6.

CDR KING: I think Number 6 was meant to at least relate to like the ombudsman proceeding in the federal system where the U.S. Attorney's Office has an ombudsman to respond to complaints of victims that maybe the prosecutor or someone else in the system didn't give them their rights, and do an investigation. And a lot of times I think those are - we didn't get to hear from them, specifically, but those occur after the whole case is over.

JUDGE MARQUARDT: Well, I wondered if it was similar to the mandamus that you do when some official does not act the way that they are required to do.
COL HAM: We thought the intent here was the ombudsman similar to the - it's in the DOJ, I don't know if it's part of the Office of Victims of Crime, or separate. That was what was trying to be captured there, but if we are completely off -

REP. HOLTZMAN: Yes. See, I think that number 6 - this is Liz Holtzman. I think that 6 using both the recommendation and the finding, because it's not clear to me particularly in the recommendation what it is you're trying to address comparable to that set forth in CVRA. We don't know what you're really talking about here. And it's not clear, also, in the finding what is it that you're trying to do? These are not mechanisms to undo the harm. That's to be done in the judicial process, as I gather. What is - to kind of change it to the future? I mean, what is the point of this mechanism that receives complaints? Is it supposed to - what is it supposed to do, this mechanism, that's
referred to in Finding 6? What's the purpose of it?

COL HAM: This is Colonel Ham. I think the thought was, again similar to the ombudsman and the Department of Justice, if Department of Justice employees, the prosecutor, for example, is alleged to have violated the CVRA, this is where the victim would file a complaint. Is that correct, Ms. Garvin?

MS. GARVIN: Yes.

COL HAM: There is nothing similar in the military system -

MS. GARVIN: Well, there are -

REP. HOLTZMAN: Okay. Well, you should describe it because it is completely -- to somebody who is not familiar with what you're trying to talk about, this is just not clear, what it is that you are envisioning. You might give an example, but it's just not clear. So, this allows - in other words, this doesn't give the victim a remedy for the
denial in the courthouse assuming that there
was no remedy, aside from what she gets, or he
gets through the trial process. What this does
is allow other people who violated those
rights to be penalized, or by bringing this to
the attention of the authorities to possibly
improve training or develop other programs. Is
that correct?

COL HAM: Correct.

REP. HOLTZMAN: All right. Well,
maybe spell out that that's the purpose in the
findings, that the - you know, in the federal
system this is what happens. There's no
comparable system in the military, so the
recommendation is that there should be a
comparable system which does A, B, C, D, E.

CDR KING: Part of that was in
recognition, and we probably, we didn't spell
it out very good, of the NDAA that requires
the Armed Forces to designate an authority to
receive and investigate complaints relating to
provision or violation of the rights and
disciplinary sanctions for members of the Armed Forces who violate - who willfully and wantonly fail to comply with the requirements.

REP. HOLTZMAN: All right. But you know something, that's also - I mean, you could spell out that that's what the NDAA requires. You could also spell out what the present system is in the federal system, but wantonly and what was the other word, willfully and wantonly is a pretty high standard. Well, what about just negligently, or what about just whatever? It should be covered by that, too, that there's some way of developing ways to redress violations of criminal - of victim's rights that are not done deliberately, I mean, wantonly and willfully, too, it seems to me. I don't know.

JUDGE MARQUARDT: Well, who are the DoD officials? I mean, who is this supposed to cover?

REP. HOLTZMAN: I guess it's supposed to cover - as I understand what
they're saying it covers prosecutors, it could cover the trial judge, it could cover the convening authority. It might cover the convening authority's SJA.

JUDGE MARQUARDT: Well, it wouldn't officials then, it would be DoD employees.

REP. HOLTZMAN: Well, they are officials, but they could be employees. I mean, sure. I don't know if they're employees.

JUDGE MARQUARDT: I don't think that's the correct word, but I'm saying that officials I think limits it.

REP. HOLTZMAN: I'm not looking to wordsmith this. I just found it confusing. I didn't know what you were trying to accomplish here, so now that you've explained that, I think you should - you need to explain it better and more clearly. And I think you also ought to deal with the situations in which it's not a wanton and willful violation because that seems quite narrow.

PARTICIPANT: Yes, you almost have
to prove intent, you know. It's like -

REP. HOLTZMAN: Have to? Yes, of course. Willful always requires intent, and wanton is like yes, that's - I don't even know what that would be -

(Laughter.)

REP. HOLTZMAN: - normally used.

I don't know. It's pretty heavy duty.

PARTICIPANT: Can we get further explanation into this recommendation?

CDR KING: We can try to spell it out better. We were just trying to relate to the CVRA's - the investigation that DOJ does when there's a complaint that its employees didn't follow the CVRA, or some states also, like Alaska, have a similar office that can investigate complaints that officials, prosecutors, or whoever didn't follow the actual victim rights statutes. So, we were trying to do that, kind of comply with that, and we assumed the stuff with the NDAA was also requiring the DOJ to come up with. And
it's obvious we didn't explain it very well, and we'll try to maybe clarify it more so that not only you can understand it, but other people that we're making the recommendations to can understand it.

COL HAM: I think this was discussed on the meeting you had at GW. If it's something that you no longer wish to make a recommendation on, that's entirely your call.

MS. GARVIN: This is Meg. I think we should make a recommendation. I think, though, just explaining it more, because even we who've been in it and know - and I think concurred on it before, when we read the language, it didn't trigger enough of our recollection. So, I think it's just explaining in the finding, even more than the recommendation, in the finding kind of what's in the CVRA, what was it intended to, because that ombudsman thing, we could flesh it out just a little bit more.
COL HAM: Yes. And, typically, that
- you'll notice the wording, and I'm
wondering if you want to leave it in. Either
within or outside DoD, typically, the office
that would be set up to receive complaints
about things is an IG-type office. I don't
know if you want to get into any more detail
or not.

REP. HOLTZMAN: Why would it be
outside of DoD? Isn't an IG office inside of
DoD?

COL HAM: Yes, ma'am. There's the
DoD IG office.

REP. HOLTZMAN: Right. So, it's
within DoD. I don't know why we would want
something outside of DoD.

COL HAM: Okay. Right.

MS. FERNANDEZ: Let's move on to
number 7. Do we need to explain what certain
documents are? I mean, that just seems so
vague to me that I'm not sure that it conveys
anything.
COL HAM: This is also based on your discussion from the 29th of January. And if I can recollect it and give you a short memory, or a short reminder. There was discussion as to whether the SVC should be entitled to discovery. I think the case law on that as reflected in that Congressional Research Service study is that victims are not entitled to trial counsel's file, or law enforcement file. There was discussion on whether that should be different in the military, and the discussion went on for a while, and then Judge Jones and Judge Marquardt I think came to their conclusion that it would be best left to the discretion of the judge. There was a lot of discussion on it, and we really weren't sure what the consensus of the Subcommittee was on that.

DEAN ANDERSON: Colonel Ham, could you just - I apologize. This is Michelle. I just wanted to clarify which documents are we talking about now, which kinds of certain
documents are we talking about?

COL HAM: Well, that was the question - asking Ms. Garvin for some help here, too. I think that was the open question, that it wouldn't be certain, it would be within the discretion of the judge most of the time, that it was hard to determine what documents the counsel should be entitled to. That's why it's vague, there wasn't a lot of details.

MS. GARVIN: Yes. And I think, Colonel Ham, you actually captured the vagaries of our conversation very well there.

(Laughter.)

MS. GARVIN: Because we were vague when we were discussing it because, you know, my position as a victim's lawyer is I should get everything unless it's privileged or confidential. And I think others on the Subcommittee were like well, wait, do we know enough in light of case law? So, we ended up with this vague conversation about, well, what
documents? Is it the law enforcement
documents, is it trial counsel's? And that
resulted in this kind of vague language, which
I think is an accurate representation if where
we landed. And now having read it, I'm just
wondering if our vagueness here should
actually dictate that we don't make a
recommendation on it, and instead when we're
talking about the SVC section of our report we
talk about that SVC should have sufficient
authority and standing to do what's necessary
to represent their client. And we leave it at
that in that section, and we don't make a
specific recommendation here.

JUDGE MARQUARDT: Well, I like the
idea of a recommendation, but if you leave it
up to the military judge, the military judge
will have the discretion to know what kinds of
things to give access to.

REP. HOLTZMAN: Well, isn't the
word certain, this is all subsumed under a
study, so all the recommendation here is
requiring a study of what documents should be
provided. That seems to me to be
unobjectionable in my -

JUDGE MARQUARDT: What study - may
I ask what study this is referencing, because
I guess I was - I'm not sure I under -

REP. HOLTZMAN: I don't know. It
says that DoD should conduct further study in
order to determine whether Special Victims
Counsel should be granted access. I think the
word certain should be taken out. Granted
access to documents possessed by the trial
counsel, and circumstances under which
decisions regarding access may be in the
discretion of the military - maybe that
sentence needs to be taken - maybe that part
of the sentence - so, I have no problem with
saying that we think the issue should be
studied further.

MS. GARVIN: I guess I do have a
problem with that because I believe through
litigation right now and certain victim's
rights right now, I already have access to
these documents. So, for this - meaning SVC.
If I'm an SVC, I think I would go into court
tomorrow and argue that my right to, I don't
know, to be heard about something gives me the
right to see at least portions of those
records. And I think defense counsel would
probably object, or trial counsel might
object, and then we'd litigate it. This
recommendation to me that further studies
should be conducted in order to determine
whether the SVC counsel gets access, to me
says this Subcommittee has made a
determination that at this juncture they don't
get it. And I have concerns about the
Subcommittee saying right now in an undecided
area of law that they don't get something.

REP. HOLTZMAN: Well, the other way
to do it is to say in some - I mean, the
other way is to just have the finding a little
bit broader, which is to say that in some
jurisdictions, Special Victims Counsel is
entitled to some documents, some parts of
documents in the possession of defendant's
counsel. I mean, of defense counsel. Is that
correct, is that what we talked about, defense
counsel or trial counsel? I'm trying to
remember here.

MS. GARVIN: Trial counsel and
investigative agencies.

REP. HOLTZMAN: Yes, by trial
counsel. And say that those - and the
question should be as to whether those rights
should be expanded, should be examined. So,
then you're not limiting, you're just saying
expansion should be examined. But I don't feel
strongly about it. If you think it's better
just to have the whole thing litigated out in
the future, I have no objection to that.

MS. GARVIN: I'm fine with that
change. I mean, the actual edit I made to this
one was there should be further study
conducted in order to determine the scope of
access to records.
REP. HOLTZMAN: Oh, okay.

MS. GARVIN: Which I think would be a better edit.

REP. HOLTZMAN: Okay, that's fine.

MS. GARVIN: It's really wherever the Subcommittee comes down. I'm just concerned about a recommendation that —

REP. HOLTZMAN: Okay, so that they don't have any rights now, when they do. Okay.

PARTICIPANT: Well, is it a sure thing that Special Victims Counsel can always go into court and ask for things?

REP. HOLTZMAN: Why not?

MS. GARVIN: They can go in now and ask for them, and I think the finding is an accurate statement of what's happening, which is current access to files appears to be ad hoc. That seems to be what's happening.

MS. FERNANDEZ: Hi, this is Mai. I guess my only thought is if we even limited the study to the scope, it just seems like we might end up limiting what Special Victims
Counsel can get by even studying it, rather than just litigating it on an ad hoc basis. I just think that a study might do more harm to the victim that really reveal anything.

MS. GARVIN: I tend to agree with you, Mai. If we're going to recommend the study, I want it broad like the scope that doesn't imply they don't get it, but I have concerns that -

MS. FERNANDEZ: - it will limit.

MS. GARVIN: I think it's better to litigate it on a case-by-case situation. I don't know. I think that maybe we should strike this one.

MS. FERNANDEZ: Liz, do you disagree?

REP. HOLTZMAN: I don't know. I feel - I don't have strong feelings about it. I'd be really guided by the rest of your views. I mean, to me if it's ad hoc, how do we know how it's going to come out? And maybe if we described it in a better way and say in
some cases courts have granted full discovery, in some cases they've limited discovery, maybe a study should be made of the limitations that have been put on it and whether they're appropriate. Maybe if you phrased it that way you're not limiting anything, but you may think we don't need a study, and this issue will all be resolved in the next, you know, before our report is made public.

MS. GARVIN: No, it will not be litigated that quickly. This is Meg.

DEAN ANDERSON: Let me jump in. This is Michelle.

MR. CASSARA: Okay.

DEAN ANDERSON: I'm sorry, Bill. You've got the floor?

MR. CASSARA: No, you go ahead, Michelle.

DEAN ANDERSON: So, I just want to put in a plug for not recommending further study. And the reason is that I think we heard repeatedly at different times that the demand
on different services and on the Department of Defense to study and continue to study, and continue to study are pretty -- that they're feeling overwhelmed by that. And unless we have a very - I'm not opposed to studying things. Good heavens, it's a good thing to do in general, but unless we have a really clear reason why we want them to study this and not something else, I'm not sure that just making a recommendation to study is a good idea. And I think because of the way this discussion has gone it persuades me that Finding 7 and Recommendation 7 we could probably not have.

MR. CASSARA: And to follow-up on that, I think in the post-Kastenberg world, this is all going to be resolved in litigation. I mean, I think, you know, right now cases that I'm involved with, SVC are given access to whatever documents the trial counsel has, and if they don't have them they file a discovery request, you know. And I think in Kastenberg there is almost equal
footing, and unless it's privileged they seem to be getting it. I just — 

REP. HOLTZMAN: So, you don't even really think there's an issue.

MR. CASSARA: I really don't. I think it's something that will be worked out in litigation, if at all. I think it's pretty much not an issue, but if there is an issue, I just think that it's something that the courts will resolve on an individual basis.

MS. FERNANDEZ: So, it sounds like a consensus potentially to just delete it. Let's delete it.

MR. CASSARA: That would be my recommendation.

MS. FERNANDEZ: Let's delete it.

Okay, folks, 8th and final.

MR. CASSARA: Okay. I'll pipe in here first. I think I dissent. And, obviously, if the Committee comes up with that as a joint proposal recommendation, I understand, but I just have real concerns with that. I mean, I
know that the civil courts - I mean the
civilian courts are doing it. I don't know how
universally, and under what percentage of
civilian courts the defense is allowed to
cross-examine the victim during sentencing.
But I just - I have a real concern from a
defense counsel standpoint with the victim
being able to testify without being subject to
cross-examination, and the defense not having
an opportunity to really question the
underlying facts as to what the victim is
saying, you know. And I've seen too many cases
recently where - in fact, I've got one right
now where the victim said something completely
inconsistent with what she said during the
findings portion of the trial that led the
military panel to want to revote on their
finding of guilty. I just - I think that we
are that point chopping too far into the
accused rights.

DEAN ANDERSON: Can I just clarify
- can I just ask you a question, Bill? This
is Michelle, just to understand Recommendation 8.

MR. CASSARA: Absolutely.

DEAN ANDERSON: This is about only after a finding - am I correct in understanding -

MR. CASSARA: Right, this is during the sentencing -

DEAN ANDERSON: - after a finding of guilt.

MR. CASSARA: Absolutely.

DEAN ANDERSON: Just a question of whether or not the victim can submit a Victim Impact Statement that's not subject to cross-examination. Is that what we're -

MR. CASSARA: That is what we're talking about.

DEAN ANDERSON: Okay.

MR. CASSARA: Right now the victim once, you know, there's been a conviction and he or she testifies on sentencing, they are subject to cross-examination. I will tell you
that 90 - I'm sure Colonel Ham would agree with me that probably 90 to 95 percent of the
time there is no cross-examination, but I'm very uncomfortable with taking that right away
from the defense.

DEAN ANDERSON: Tell me what JSC is.

COL HAM: The Joint Service Committee, ma'am. The entity that proposes amendments to the Manual for Courts-Martial, the Executive Order portion, so they would go to the President as an Executive Order. The Rules of Criminal Procedure, for lack of a better word, the Military Rules of Criminal Procedure are Executive Order.

DEAN ANDERSON: Thank you.

REP. HOLTZMAN: And what's the practice now? Can a victim submit a statement? I'm not talking about testifying, but can they submit a written statement, and are they then subject to cross-examination on that statement?
COL HAM: They can submit a written statement if defense did not object, but the Rules of Evidence apply at sentencing unless they are waived by the defense.

(Simultaneous speech.)

DEAN ANDERSON: Do defendants in the military proceeding have a right of allocution at sentencing?

PARTICIPANT: Yes.

DEAN ANDERSON: And does the right of allocution - this is Michelle. Does the phrase "the right of allocution" mean that one can speak without being cross-examined?

MS. GARVIN: Generally, yes.

DEAN ANDERSON: And the defendant has that at sentencing?

CDR KING: At sentencing the defendant or accused as we call them in the military has a right to either to make a sworn or unsworn statement. The unsworn statement can be made in a variety of ways, it can be written, verbal, counsel if they want, however
they want. But that - no one can ask them questions about it if they choose to make an unsworn statement.

REP. HOLTZMAN: And let me just make clear about the victim. If the victim chooses to make an unsworn statement written, then what happens?

CDR KING: It can only be done that way if it's an agreement with the defense. And sometimes that happens with pretrial agreements that the defense will agree to it.

REP. HOLTZMAN: Okay. So, if it's not agreed to, then the only way the victim gets to give the version about what happened to her and the harm that's caused is through a sworn statement.

COL HAM: I don't want to get too far in the weeds, ma'am, but it's not a simple yes or no. A lot of the victim impact could be included in the agreed upon facts that the judge has for the guilty plea, which is a written document, so I don't - I think what
you're asking I can say generally that's correct, but there are - the prosecution and defense write a long document on the facts of the case, and a lot of it can be included in that.

REP. HOLTZMAN: And what happens to family members and other people who want to testify about that? Are they also subject to cross-examination?

COL HAM: Yes, the prosecutor calls -

MR. CASSARA: I mean, if defendant's family - if the accused family testifies they are subject to cross-examination. If the victim's family comes to testify, they're subject to cross-examination. And Colonel Ham is right, I mean, I've done certainly a number of cases in which as part of a pretrial agreement the government has insisted on a narrative statement from the victim as to the impact that it had on him or her. And if I want the pretrial agreement then
I've got to include that.

Now, obviously, if it's a contested case then there's going to be no pretrial agreement and, you know - and that's where I get into if the victim is going to testify on sentencing, I'm not comfortable with removing the ability to cross-examine.

REP. HOLTZMAN: Well, do we even - is there a Constitutional issue here, is really kind of what I'm getting at.

PARTICIPANT: No, I don't believe-

MR. CASSARA: I think that, you know, I think Meg will tell you that in civil courts this happens, I don't know what percentage of civilian courts, but I know that it is not uncommon in civilian courts for the victim to testify without cross-examination. And look, you know, I understand. I may be the only one who disagrees with the recommendation and, you know, that's something that I can respond to.

REP. HOLTZMAN: Well, but maybe
because of the different system with regard to sentencing. Remember in the military the jury sentences.

MR. CASSARA: Not always.

REP. HOLTZMAN: Not always.

MR. CASSARA: Whoever does the findings, whether it be judge or jury, also does the sentencing.

REP. HOLTZMAN: Well, but if you have a "jury" jury trial, it's the jury that makes the sentence. Right?

MR. CASSARA: Absolutely.

REP. HOLTZMAN: But the sentence is not imposed by the jury in civilian trial, or even in a criminal trial.

MR. CASSARA: Very, very few. I think -

REP. HOLTZMAN: Unless you have a trial before a judge.

MR. CASSARA: Right. Right.

REP. HOLTZMAN: Jury would never be involved in the sentence. Well, maybe death
sentence or not -

MS. GARVIN: In civilian - this is
Meg. In civilian when the victim is being used
for aggravation or mitigation at the
sentencing, meaning called, they are subject
to cross-examination. Their right of
allocation is their Victim Impact moment which
is how did this crime impact me? That is not
subject to cross-examination in the majority
of civilian courts, state and federal.

I mean, I feel pretty strongly
about this one that I think something at
sentencing that allows actual victim voice
without the trauma impact of cross-examination
is important for us to consider as a Victim
Services Subcommittee but, you know, I
understand the challenges with having it.

MR. CASSARA: Well, and as I said,
I'm not, you know, I'm not here to speak for
the Committee. I may be the lone wolf on this
one. I mean, I don't plan on - I don't want
to hold up the rest of you all's thought
process because I'm being the naysayer.

MS. FERNANDEZ: No. I mean, there's a couple of ways I think we can deal with this. We could take a vote now on what we have in front of us, but my sense is good minds could come to a good agreement on this. Bill and Meg, would you be willing to have - can you guys talk off -

MS. FRIED: No

MR. CASSARA: I just heard our Federal Official jump out of her seat.

MS. GARVIN: I mean, I think it comes down to the Subcommittee thinking through, you know, is this part of the response that we want to recommend based on what we've heard, you know, that victims get this moment of unfettered speaking about their trauma in the court process. That's what it comes down to, or do we have concerns about it?

I don't have legal - I don't have the same concerns as Bill about defendant's
rights because I think it's a narrow moment, but if I was defense counsel, I would certainly want to argue that there are concerns. I don't think that they rise to a Constitutional level so I don't have very strong concerns about it.

JUDGE MARQUARDT: I think it is important, and it's really quite therapeutic, I think, for a victim to be able to present those issues at sentencing.

COL HAM: Ms. Garvin, would you want us to further explain what you've said, which is the right of allocution is not subject to cross-examination only applies to victim impact, not to aggravation. Although, in the military we don't - I mean, we really don't separate these, the victim impact -

MS. GARVIN: Yes, you guys have it slightly different.

MR. CASSARA: I think that's a distinction without a difference.

COL HAM: Yes, okay.
MS. GARVIN: I mean, I agree with Christel. I mean, part of where this comes from is like the neurobiology of trauma tells us this moment of being heard means half the victim recovery. So, I think there's literature out there to support the utility of it from a survivor's perspective. And I think judges, most of them, would agree with that statement, too, that Christel just made that it's useful. That may be where the concern comes about it from a defense perspective.

MS. FERNANDEZ: Meg, is there some way right now that you can figure out how to draft this more narrowly, the actual wording?

MS. GARVIN: I'm happy to send in my edits and suggested language that cabins it, but I'm - and then we can further discuss it.

COL HAM: And, Mr. Cassara, you can - we can assist you in drafting a separate statement if you never do -

MR. CASSARA: Yes. You know, I -
I'm not trying to hold up the entire Committee over this. I mean, I may be the lone wolf, and if I am, then I'll sit down with you all and maybe write a very small separate opinion on it. That's all.

COL HAM: Okay.

REP. HOLTZMAN: Well, I mean, yes, one of the possibilities is that it could be limited in cases where there's no jury, to cases where there's no jury, also.

MR. CASSARA: Well, I don't know that that accomplishes what Meg is trying to accomplish.

REP. HOLTZMAN: I understand that, but it makes it - it raises fewer issues if you are - because is this before the finding of - this is after the finding of guilt. Right?

MR. CASSARA: Yes, ma'am.

COL HAM: For the sentencing.

JUDGE MARQUARDT: Well, this Committee is supposed to deal with victim's
rights. And I think this is an important right for victims.

PARTICIPANT: I agree.

JUDGE MARQUARDT: We're not here to represent the accused.

REP. HOLTZMAN: Excuse me. I disagree with that. No one is here to represent anybody, but if there's a real issue of fairness, then it needs to be considered as part of the process, in my view. I mean, you don't have to agree, but that's my view.

MS. FERNANDEZ: No, I think we all recognize the need for Victim Impact Statements. I think it's one of -

REP. HOLTZMAN: Right, I agree.

MS. FERNANDEZ: That said, I'm just wondering given Bill's assertion that where he found a jury to then say oh, well, we want to really look at our findings again, I don't think anybody wants that either. There's got to be finality when there's finality. So, I guess my question is, is there any way of
crafting this in a way that says you can give
a Victim Impact Statement but that can't turn
around the findings that were just made?

JUDGE MARQUARDT: I think you can
put that in there, that it's post-conviction,
and that it doesn't change the conviction and
the findings.

REP. HOLTZMAN: Well, I'm not sure
that that's what Bill's concern was. I think
his concern was that what it did was it
suggested a level of dishonesty, am I not
saying this correctly, Bill?

MR. CASSARA: You're correct. I
mean, the -

REP. HOLTZMAN: Yes, level of
dishonesty on the part of the victim to
suggest that the testimony at trial was
tainted. That, I think, is the issue. I don't
know how you're going to prevent that if
you're going to have a Victim Impact Statement
that is made that is subject to cross-
examination or not.
MR. CASSARA: Well, only one - in that particular case that information only came out as a result of cross-examination.

REP. HOLTZMAN: Oh, okay.

MR. CASSARA: But, you know, I just - and, again, I'm just - you know, I'll say my peace one last time and then we'll go from there. I just feel that when we limit the ability of an accused to cross-examine, or at that point a convict - you know, even a person who's been convicted to cross-examine the victim we limit his or her rights to provide evidence to the members or to the judge in mitigation. But, you know, again that's my piece, and I'll leave it at that. You all vote otherwise, that's - you know, like I said, I'm not going to hold this up just for me.

MS. FERNANDEZ: But how about some how we also put in there -

MR. CASSARA: I'm sorry?

MS. FERNANDEZ: Hold on for a
second. If we somehow in our language say that this Victim Impact Statement can't in any way change around the findings.

MR. CASSARA: Well, no, that's not the concern. I mean, if information comes out that causes the members to question the findings, then maybe it should. But I think the bottom line is, you know, Meg and I, you know, we disagree. If the Committee agrees with — in other words, I don't think that there's a way to split this baby.

MS. GARVIN: I don't either, yes.

MR. CASSARA: We're either going to allow an unfettered right of allocution to the victim, or we're not. And if the Committee votes to allow it, then I'll write something separately and we'll go from there.

MS. FERNANDEZ: Then I think we need to take a vote amongst the members because we've heard a well-rationalized dissent. If you weren't rational, Bill, I might take a vote anyway.
(Laughter.)

MS. FERNANDEZ: But I think we do need to - because this is the first time that we've actually needed - that we haven't been able to figure out how to split a baby, so -

MS. GARVIN: Can I put one thing, because I do think - I think this is a dispute that I agree, you can't split the baby. I do want to comment that the note that is in there about - that I believe protects defendant's rights, and Bill disagrees, and I respect that, but I believe defendant's rights are sufficiently protected by the right of rebuttal rather than the right of cross-examination in this moment because I don't believe cross-examination catches that in the minute or in the report, but I think that's an important thing. Defendants can rebut statements that are done in allocution.

REP. HOLTZMAN: Before we take a vote because I feel a little uncomfortable
here. I mean, I haven't really given the amount of thought that this - this is a very serious issue in my judgment, because I do agree that this is an important right for victims. And we certainly stood up for Victim Impact Statements, and feel they're very, very strong, feel strongly about that. But I haven't really - I don't know, perhaps we had testimony and I just haven't focused on it about the consequences of this in the military system, particularly, and what - how it exactly works in the state system. So, I mean, could we postpone a vote on this so I could get some materials to look at? I just don't feel comfortable voting on this now. I don't feel I have enough information about how it works in all the states, about the existence of cross-examination, where it exists, does it exist anywhere aside from the military?

MS. FERNANDEZ: Well, can I ask the staff, can we get information on this? Would that be a possibility for you guys to get?
COL HAM: Yes, we can look for it.

One item that might be - well, Mr. Cassara
has already mentioned, I mean 90 to 95 percent
of the time there is no cross-examination. I
mean, there's - that's his sense as a
practicing counsel. Would you - I don't know
if there's any way to verify that, and I don't
know if that would be important to know or
not.

MR. CASSARA: Yes, I don't know
that there is, Colonel Ham. I think you would
literally have to go through the records of
trial of every court-martial in order to come
up with a number. Mine is a very unscientific
study, but most counsel do not cross-examine
the victim upon a conviction, just as most
trial counsel don't, you know - when I put my
client's mom on the stand, the prosecutors
never cross-examine her, you know. But in the
rare occasions that it does happen it can
sometimes be useful. So, I have no problem
you know, I don't know what the timing is,
but I have no problem with postponing a vote. And I have no problem if the vote is 9-1 against me, you know.

CDR KING: 8-1.

MR. CASSARA: Whatever the numbers are.

COL HAM: May I ask, Ms. Garvin, in the - with the jurisdictions you're familiar with, ma'am, if the victim has a right of allocution, is there a requirement to provide the statement ahead of time to the defense, so if they can rebut any of the facts they know what they are ahead of time to line up their evidence?

MS. GARVIN: No, there is not. I shouldn't say that globally. There are a handful of jurisdictions that they require it to be in advance, but not very many. I am happy to submit to the Committee, to staff if this would be useful, a citation list with annotations of the 50 states on where they stand on cross-examination of VIS. It has all
the citations to the statutes and to case law
if that would be useful for the staff to have.
And then that might at least give the
landscape. It doesn't answer the question of
propriety of it from a rights perspective, but
at least then you'd have the law.

REP. HOLTZMAN: Do we have some
experience in the federal system of how this
- I mean, about this issue, not just in the
states?

CDR KING: We did have some
testimony on it from Mr. Jeffress, I think, on
some discussion of it in his testimony, or his
discussion before the Subcommittee in January,
I think it was.

MR. CASSARA: It was snowing, I
remember that. Meg, are there any
jurisdictions besides the military that you're
aware of where sentencing commences
immediately upon findings, or in all
jurisdictions is there a -

MS. GARVIN: Several commence
immediately.

MR. CASSARA: Okay.

MS. GARVIN: Not always by directive, meaning the statutes don't mandate it, but courts do it.

MR. CASSARA: Okay. Okay.

REP. HOLTZMAN: Generally, there's some time for, you know, probation - I mean, reports about - I mean, there's a probation report, there are other reports that are made so it's not - I mean, in New York it's not.

MS. GARVIN: Yes. Generally, there are pre-sentence reports or probation reports done depending on the level of the crime, but some jurisdictions will move, in particular, in plea situations, they'll move immediately to sentencing.

REP. HOLTZMAN: Okay, but that's a different story.

COL HAM: And you all know the sentencing proceeding is a - it looks like a trial in the Military Justice to determine the
sentence, instead of determining guilt or
innocence. I don't know how - what the
parallel to that is, if there is any in the
civilian system.

MS. GARVIN: The closest parallel
is when it's actually a capital case because
then it's a full-blown trial-type proceeding,
generally speaking, though it is different. I
believe - I know that he did not - or I
don't believe he testified unless he testified
when I was not in attendance, but Professor
Cassell, Paul Cassell out of Utah has written
on this subject. And, again, from a victim's
perspective so it's not a defense perspective,
but I believe there is a Law Review article
that the staff might be able to pull and
circulate, if that would be of use. I believe,
I'm not positive. Again, that's a victim-
centered one, not a defense-oriented rights
one, so -

REP. HOLTZMAN: Well, any side
would be helpful to me. I'm sorry, I just feel
very - I just feel I need more information.

I'm sorry.

MS. FERNANDEZ: No, you shouldn't be sorry, Liz. I think it's - I think Bill brought up some good arguments, and all of us understand why Victim Impact Statements are important. But I think it's a good idea that before we make a decision that we have some more background information. So, let's wait on number 8.

REP. HOLTZMAN: And, Meg, when you give us this annotated list and so forth, is there any effort in the states that don't have this cross-examination right to create it, or is the movement the other way, or is this not an issue any more, I mean, people just accepting the way the system works, however it works in their own jurisdiction?

MS. GARVIN: I'm not sure that I could identify a clear trend. I know in Texas over the last several years there's been - Texas does a lot of cross-examination and
also does allow - doesn't allow the victim to speak, actually, until after sentence has been imposed.

REP. HOLTZMAN: Wow.

MS. GARVIN: There's been an attempt to change that. That has gone nowhere. Victims have tried to tilt at it, and it hasn't changed. Maryland allows cross-examination of - or requires sworn statements of victims. I don't believe there's an effort to change that. In other jurisdictions there is, and some case law has gone that way, but it - what I can send to staff is the 50 state chart with actual language, as well as case citations that explain how it's been interpreted. And then there's a memo that goes with it. It's one of our public policy pieces that's been published.

REP. HOLTZMAN: Oh, that's great.

MS. GARVIN: So people can take a look at it, and it does talk a little bit about trend in theory, but I don't believe
there's - I would not use the word "trend" in assessing what's happening.

    REP. HOLTZMAN: Well, I think that would be really helpful to me. I don't know if anybody else needs it, but I feel that would be really helpful to me.

    DEAN ANDERSON: Yes, I'd love to see it. This is Michelle.

    COL HAM: Ms. Garvin, is there - I think you discussed this in the meeting, but is there then a - again, realizing a lot of jurisdictions don't have jury sentencing, if there's a jury there's an instruction that says it's not evidence, but instead it's an authorized manner in which to present matters for the juror's consideration?

    MS. GARVIN: That is my understanding. We've never done a 50-state analysis on that issue, Colonel Ham. The ones we've worked in, that is what happens, but it's not in the chart, and I don't have a 50-state analysis of that.
COL HAM: Thank you. That's the instruction given if the accused chooses an unsworn statement, just as reflected, that it's not evidence, but it's an authorized manner in which to bring matters for their consideration. And they can consider the fact that it's unsworn.

MS. FERNANDEZ: Okay. We've been going for an hour and 45 minutes, folks. I hate to be the timekeeper, but we said we would try to keep these to an hour and a half. I think other than Recommendation 8 we've given the staff what we need, and I think we can move forward on this one?

COL HAM: If there are other substantive comments, which I suspect there are, on the body can everybody send them to Sherry so she can consolidate them all?

DEAN ANDERSON: Sure. This is Michelle, and I want to just make a request for more than 24 hours to read a document that stands in the coming weeks. I understand that
there are limitations and stresses on all sides because this is a difficult thing to write, but it's extremely difficult to process in a limited amount of time. And I worry that we won't have enough time to really digest it without more than 24 hours.

    CDR KING: Our plan is definitely to give - it was this time to give you more time. It didn't work out, partly because of the short time since the last meeting, and then the federal storm that we had, but our plan - we're working on the next one and trying to get it to you earlier.

    PARTICIPANT: There's a rumor there's snow again for next week.

    CDR KING: Yes, it's in the forecast. I don't know that we're going to get snow again, so anything that can go wrong for -

    MR. CASSARA: That's going to reflect on your OER. You have done nothing to stop the snow -
(Laughter.)

COL HAM: We had a white St. Patrick's Day, and yes, they're talking about more next Tuesday and Wednesday, although with a lot of caveats.

CDR KING: Our biggest snowstorm of the year was last Monday.

REP. HOLTZMAN: Have you had more snow than we've had in New York? I'm just curious.

CDR KING: Well, I don't know, but we close down the federal government any time we have any, or threaten any.

COL HAM: We got about a foot out at my house on Monday.

MR. CASSARA: It's 80 degrees here. I don't know what the problem is.

PARTICIPANT: We're coming down.

CDR KING: We're holding these meetings in the wrong place.

MR. CASSARA: There you go.

JUDGE MARQUARDT: Well, I have a
question about the May meeting. Have you made a decision on where that's going to be?

COL HAM: Yes, ma'am, we confirmed yesterday, I'm getting my days - yesterday, the 5th and 6th are going to be George Washington University School of Law in the Faculty Conference Center, which is where we were on the 29th of January. For the 29th and 30th of May, we don't have a location yet, but it's tentatively in New York at Manhattan.

DEAN ANDERSON: So, let me just clarify, on the 5th and 6th of May it's going to be in D.C.

COL HAM: Yes, ma'am.

DEAN ANDERSON: And on the - I'm sorry, what are the dates?

COL HAM: The 29th and 30th.

DEAN ANDERSON: The 29th and 30th are going to be in New York. Okay.

JUDGE MARQUARDT: What are we doing in New York?

PARTICIPANT: Having fun.
PARTICIPANT: No, that's a joke.

COL HAM: Ma'am, the 5th and 6th of May is when all three of the Subcommittees will issue their report and their findings and recommendations to the full panel. However, Ms. Fernandez determines you should do that, and then the panel will deliberate on all the findings and recommendations of the Subcommittees. The 29th and 30th is their final review of the report, and again because on the Federal Advisory Committee, they go line by line or page by page, however the Judge determines to review the final report. And then it gets polished up and sent to Congress and Secretary Hagel.

REP. HOLTZMAN: And you think it's appropriate for us to be at the 29th and 30th, as well. That's a question.

COL HAM: That's up to you, ma'am. It's not - it's certainly not required. Our process has been that you're invited to attend all the panel's public meetings.
JUDGE MARQUARDT: All right, thank you.

MR. CASSARA: All right, folks. Everybody have a good weekend. Stay warm, hahaha.

MS. FRIED: Thank you all. The meeting is closed. Bye all, thank you.

(Whereupon, the proceedings went off the record at 4:37 p.m.)
| Page 120 | Neal R. Gross and Co., Inc.  
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<table>
<thead>
<tr>
<th>Page 121</th>
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<td>Neal R. Gross and Co., Inc.</td>
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<td>202-234-4433</td>
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CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Response Systems to Adult Sexual Assault Crimes Panel Meeting

Before: US DOD

Date: 03-20-14

Place: conference call

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

_________________________
Court Reporter