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

Rachel Landsee
Kristin McGrory
Terri Saunders
P-R-O-C-E-E-D-I-N-G-S

2:34 p.m.

MS. FRIED: We're good to go then.

We can open the meeting, and I'll let you guys do your thing.

CHAIR FERNANDEZ: Great. Could we just go around and say who's here? This is Mai Fernandez.

DEAN ANDERSON: This is Michelle Anderson.

BRIG GEN MCGUIRE: Colleen McGuire.

JUDGE MARQUARDT: Christel Marquardt.

MR. CASSARA: Bill Cassara.

REP. HOLTZMAN: Liz Holtzman.

CHAIR FERNANDEZ: Hi, Liz.

REP. HOLTZMAN: Hi. Hi, everybody.

CHAIR FERNANDEZ: Let's go around one more time, folks, just so we know everybody who's on the phone. It's Mai
DEAN ANDERSON: Michelle Anderson.

BRIG GEN MCGUIRE: Colleen McGuire.

JUDGE MARQUARDT: Christel Marquardt.

MR. CASSARA: Bill Cassara.

CHAIR FERNANDEZ: And Liz Holtzman, okay.

REP. HOLTZMAN: Liz Holtzman, yes.

COL HAM: And then for the staff: Commander King; Colonel Ham; Terri Saunders, S-A-U-N-D-E-R-S; and Kristin McGrory, that's K-R-I-S-T-I-N, McGrory; and Rachel Landsee. That's spelled L-A-N-D-S-E-E. And to help our court reporter, if everybody can please remember to say their name before they start, at least until he can recognize the voices.

CHAIR FERNANDEZ: Sure thing.

Okay. This is Mai Fernandez, and I, once again, wanted to start off by saying I think the staff did a nice job at encapsulating all
the testimony that we heard on the Special Victims' Counsel.

I also wanted to ask the Subcommittee that, as we're deliberating, if there's any purely editing issues that you have, to just submit those to the staff and let's just deliberate on the substance and not on any of the grammatical or style issues. If we could just submit those directly to the staff, that would be great.

You know, I didn't have a lot of issues with what was in here. There's a long explanation, which I think is needed because this is such a new concept for most people. And I thought that most of our findings were on the short side and our recommendations, but I didn't remember any additional ones that we came up with when we deliberated when we were all together. So I kind of wanted to open up the discussion to others who may have had other issues.

DEAN ANDERSON: Are we
deliberating, just to clarify -- this is Michelle. Are we deliberating on the findings and recommendations first in the way that we did last time, or are we sort of going through the draft as a whole?

CHAIR FERNANDEZ: Well, we might want to get through the findings and recommendations first and just have those done and then go through the rest of the report.

DEAN ANDERSON: Okay.

CHAIR FERNANDEZ: Okay. So starting with the findings and recommendations, does anybody want to start us off with anything, any additional findings or recommendations that weren't listed here?

MR. CASSARA: Mai, this is Bill. Mine is really more in the form of a question as to what, if anything, we had decided on a particular issue. You know, I'm old, my memory isn't very good, but am I remembering correctly that we decided against recommending any form of a uniform rank or years of
experience to the services in terms of the SVC? In other words, we said we're not going to say they have to be of X rank and they have to be of X years of experience; am I correct on that?

BRIG GEN MCGUIRE: Yes, that's my understanding. This is Colleen.

MR. CASSARA: Does everybody else recall the same way?

CHAIR FERNANDEZ: Yes.

MR. CASSARA: Okay. I just wanted to clarify that. Thank you.

DEAN ANDERSON: This is Michelle. I just wanted to understand, though. My sense is that the services are fairly uniform on this question, and I wonder if we do want to make a recommendation of a minimum number of years, I don't know, maybe three, of trial experience, maybe one, I'm not sure, but just putting in a floor so that our recommendation that there be appropriate trial experience at least include something. You know what I
mean?

CHAIR FERNANDEZ: Christel, go ahead.

JUDGE MARQUARDT: I agree that, especially that second-last sentence that the officer must have actual courtroom experience, I think there should be a minimum time and it should include participation in courts-martial. I think with the inclusion of that last sentence, the Services will determine what constitutes appropriate, I think is way too broad.

CHAIR FERNANDEZ: What do others think about that issue?

MR. CASSARA: My main concern is for the Coast Guard folks, I'm thinking of them in particular right now, who don't do a whole lot of cases. If we put X number of trials as a requirement, there may not be anybody in the Coast Guard. They just don't do many cases.

REP. HOLTZMAN: Well, there should
be some way to determine experience.

CHAIR FERNANDEZ: Aren't we saying
courtroom experience, though?

DEAN ANDERSON: Right. Any kind
of courtroom experience. This is Michelle.

MR. CASSARA: And, Sherry, you've
probably dealt with more Coast Guard folks
than any of us have. Am I correct in my
recollection and understanding that they just
don't do a lot of these cases?

CDR KING: They don't do a lot
cases. What I've seen is the Coast Guard
working with Marines and with Navy people and
getting experience that way. They sometimes
send them over to do trial work on either
side, and I've seen them in the Marine Corps,
also. Like at Camp Pendleton, they had the
Coast Guard people. So they fit them in so
that they get experience sometimes, but they
really don't do that many cases, so there's a
lot of them with probably no experience in
trial work.
MR. CASSARA: We need a good admiralty lawyer, that's who we call.

COL HAM: This is Colonel Ham. In some of the other Subcommittee discussions is the consideration that, although someone might not have a lot of military justice experience, they may, for example, be an assistant U.S. attorney in their civilian life, and be a reservist. So there's some discussion about whether or not you -- how you word it. You might not want to eliminate that type of person, who has a lot of experience but not necessarily active duty trial experience.

REP. HOLTZMAN: I sort of, I'm not unhappy about leaving this vague, because I don't think, you know, we've heard exactly how much trial experience, on the military justice side, people actually need. So I think, you know, we take qualify people to -- so I don't know that I feel strongly that we should be prescribing a floor here. I mean, I know what you're trying to accomplish, but there may be
people who fall outside that and, given the
problems there are going to be in terms of
funding and all the rest, I don't know that we
want to make it harder. That's all.

DEAN ANDERSON: Okay. So this is
Michelle. I think that's right, Liz. I would
suggest that we get rid of the last sentence
on the recommendation then, because the last
sentence seems to grant discretion in ways
that we're not actually -- but it's
technically correct but that there's no reason
for us to underscore.

The second sentence of the
recommendation says, the service will require
counsel to have appropriate trial experience.
We could even take out the quotation marks and
just say it's not enough that the individual
serve in a military justice billet, rather
you've got to have actual courtroom experience
and participation in courts-martial, period.
I'd feel more comfortable. It would seem less
ambiguous, actually, if we took out the last
sentence.

BRIG GEN MCGUIRE: I agree. This is Colleen.

REP. HOLTZMAN: I think that's a good suggestion.

CHAIR FERNANDEZ: Okay. Does everybody agree we take out the last sentence? This is Mai.

MR. CASSARA: Yes, that's fine.

Thank you.

CHAIR FERNANDEZ: Okay, okay. Let's go to finding number two.

JUDGE MARQUARDT: Well, I thought part of direction was to look for the best practice.

CHAIR FERNANDEZ: I couldn't hear you, Christel. What did you say?

JUDGE MARQUARDT: I thought part of our direction was to look for the best practices.

CHAIR FERNANDEZ: I think the problem is that, for the most part, they've
been up and running for such a short period of time, there's no way of determining right now what a best practice would be.

CDR KING: Was that Dean Anderson speaking?

CHAIR FERNANDEZ: No, I'm sorry. This is Mai.

CDR KING: I'm sorry, Mai.

CHAIR FERNANDEZ: No, no, no problem. So I think it is, I mean, these programs have to be up and running for probably at least a year before we can really say, hey, you know, the Army has got a best practice in doing this and we should all emulate it.

DEAN ANDERSON: Well, this is Michelle. I would agree with that, Mai. And I think that the recommendation should be that the services develop a mechanism of determining best practices over the course of the next calendar year, to be revised and assessed on an annual basis. The reason is
that we only just now have just over 12 months
with the most mature of these programs, and we
need another set of time to be able to convene
and assess what are best practices, and make
those and highlight those for the other
services.

So, you know, in terms of the
recommendation, I think we might want to put
a time frame to say that we believe that in
another six months to a year we would have
enough experience to develop, to identify and
disseminate best practices among the services
and that this should be done -- actually, I
think the last sentence should probably be
more explicit, but that's a different issue.
I'll bring it up in a minute.

JUDGE MARQUARDT: Well, it seems
to me that the Secretary of Defense should
direct the services to identify the best
practices of their individual program, because
the services will be able to see what is
working and what isn't.
REP. HOLTZMAN: This is Liz Holtzman. But then they should be required to share them --

JUDGE MARQUARDT: Absolutely.

REP. HOLTZMAN: -- and develop a list and, that, you know, that would require coordination. I don't know who does that, whether that's a --

JUDGE MARQUARDT: It's SAPRO.

REP. HOLTZMAN: -- counsel, whether it's SAPRO, the Acting General Counsel, the Defense Department, or SAPRO or somebody ought to be tasked with developing a best practices list, and then annually thereafter or more frequently, something like that.

DEAN ANDERSON: Yes, I think that's it.

JUDGE MARQUARDT: But we don't want them just to develop a method of determining. I think they should just be able to identify those.
REP. HOLTZMAN: Yes, that's what I'm saying. I thought I had made that clear. I'm sorry. Yes, I agree with you completely. You're right. That's what I thought I said, but maybe I didn't.

CHAIR FERNANDEZ: So the services identify and SAPRO collects and then allows the sharing of those best practices. I think that's what our directive should be.

COL HAM: SAPRO doesn't control Special Victims' Counsel at all. Those are all, the JAG programs are separate.

DEAN ANDERSON: This is Michelle. Just to jump in on this, I don't think, this is just conceptual about what it means to develop a best practice. In my own experience, it is not that an individual unit, or service in this case or clinical program if you're a law school, has a best practice. It is that they come together, multiple units come together and say: Look, this is what we do, what do you do? Oh, this is what we do.
Oh, well, that's interesting. What are the advantages and disadvantages of that?

And then they determine collectively that, among them, the best practice is this. In other words, if I only see my own area of operation, I can't say this is a best practice, because I don't know how it compares to what the other teams are doing, or the other units are doing.

So do we want to have -- I mean, it does seem to me that what we don't want is to say, you know, Marine Corps, tell us your best practices, because it's navel gazing. They say, well, we do this well. How do you know that? You don't even know what the other services do.

Don't we want a convening so that people can make an assessment? You know, after a year and a half of practice in this area, would it be useful for leaders of the different services, SVC teams, to come together and to say we do it this way, we do
it this way, and, among us, we believe that
these are the best practices that we should
each emulate, and develop those.

CHAIR FERNANDEZ: I think that's a
good suggestion, and I think you're right,
Michelle. I mean, it's hard to say this is a
best practice when you have no comparison.

DEAN ANDERSON: Right. It only
becomes best relative to other things.

CHAIR FERNANDEZ: Right.

DEAN ANDERSON: So there has to be
a relative assessment, a collective, not
individual advocacies for what my program
does, when I don't even know what the other
programs do to take care of this issue,
whatever that issue is.

COL HAM: Did you want to direct -
- this is Colonel Ham. I guess there are a
couple of ways to do that. Have the Secretary
of Defense direct the chiefs, or heads, or
whatever they're calling them of the different
Special Victims' Counsel programs for the
services to collaborate? Do you want to
direct, or the Secretary of Defense direct a
working group --

DEAN ANDERSON: Yes, I think a
work --

COL HAM: -- of the -- yes, from
the different services, Special Victims'
Counsel from the different services, or --

DEAN ANDERSON: Yes, and I think
we should direct them to assess how they deal
with a range of issues that each of them deals
with; and, two, by discussion and
deliberation, develop a set of best practices
that are delivering services at the highest
level, you know, or through some other metric
of bestness. Obviously, we wouldn't say it
like that, but do you know what I mean? Like,
have them get together and make an assessment
of what constitutes a best practice in dealing
with a range of issues that SVCs have to
grapple with.

I don't think it's just sufficient
to have them have a working group. I think they've got to deliberate on differences among the services in how they address a range of issues and to, among them, develop a list of best practices for addressing them.

REP. HOLTZMAN: Well, I think that that's a good idea, but I don't think you have to spell that out. I think if you create a working group and require them to come up with a list of best practices, that's how they're going to do it. I don't think we have to tell them that they have to compare and contrast and whatever. I think that would be the normal part of coming up with best practices.

So I think it can be, I think you can require them to do it, but I don't think we have to go into that kind of detail.

That's all I'm saying.

COL HAM: For the court reporter, that's Representative Holtzman.

REP. HOLTZMAN: And by the way, why do we need the Secretary of Defense? Why
can't it be the General Counsel or somebody in
the, you know, legal chain of command? I just
--

CDR KING: The Secretary of
Defense would direct the General Counsel,
ma'am, I believe. But the General Counsel
doesn't control TJAGs like that.

REP. HOLTZMAN: I see. Well,
whoever the appropriate person is.

CDR KING: Okay, okay. And we can
figure that out or make sure it's the right/entity.

REP. HOLTZMAN: I mean, that's
just my concern that, you know, Secretary of
Defense may take it way too high. That's all.

CHAIR FERNANDEZ: Okay. Are we
good on recommendation number two?

BRIG GEN MCGUIRE: I think we are.

MR. CASSARA: I agree.

CHAIR FERNANDEZ: Okay. Is there
any amendments, while we're here, to the
findings or anything you want to add or take
out of there?

BRIG GEN MCGUIRE: I think it looks fine.

DEAN ANDERSON: This is Michelle, and I'm just wondering about the last sentence of the recommendation where there's an online website. I'm not sure what kind of other websites there are, maybe it's just a website, where a counsel are able to exchange experience and information.

Right, so what that sentence actually gets to is the information exchange and comparative assessment that we want the chiefs to engage in, and I think that there are two separate things going on here. One is that it may be useful, and this may already exist, for SVCs to have a listserv that they are subscribed to, on which they can ask questions: hey, I've got this new issue, has anyone ever faced this, which I think would be terribly useful, particularly when they're isolated, because there aren't too many of
them.

But I think that's different than written materials, either online or in hard copy, that, on an annual basis, the chiefs have determined are the best practices that they want to disseminate throughout the services. Do you see what I'm saying? So I might change that last sentence because I think it conflates two different things.

CHAIR FERNANDEZ: So what do you want it to say? How would you change it, Michelle?

DEAN ANDERSON: Well, I think that the assessment of best practices is different than ongoing support for SVCs, who have to grapple with issues that they've never grappled with before. I think a listserv, or an online website, or a blog, or some electronic communication where people who are relatively isolated can reach out to their colleagues, and ask questions about the issues they're facing is a good idea. But that's
different than developing a more static set of materials, static only in the sense that it's revised once a year, a static set of written materials about the best practices that the chiefs have come up with.

And I think, to the extent that this recommendation is about the latter, it should be about the latter. I also think that the finding also suggests a second recommendation, which is an electronic form of communication between the SVCs about issues that they're grappling with on a regular basis, which is different than best practices. That's basically like, look, I've got an immigration issue that has come up here on this sexual assault, or whatever. You know what I mean? And I've never dealt with something like that before, has anyone else? And then someone else says, yes, I have, I'm in Alaska, but this is what you do with it.

So I just think those are two slightly different recommendations on the
finding that we've got limited experience, the programs are relatively new. The limited experience means that SVC should speak to one another. The fact that the program is relatively new means we want the chiefs of the different services to get together and exchange ideas, compare ideas, and come up with best practices on an annual basis.

CHAIR FERNANDEZ: Hey, Meg.

Welcome aboard.

MS. GARVIN: Sorry I'm late, everyone.

CHAIR FERNANDEZ: No worries. Okay. So I think just the two things with the findings and the recommendations have to look at is, one, we've got to create some best practices, and the way we're going to do that is by creating a working group across the different services to come together and pull that together.

The second part is dissemination and communication among Special Victims'
Counsels across services, and creating a way to do that, creating either through a listserv or through a website, or whatever they choose to use. But those are the two things that we need to kind of specify.

COL HAM: Right. And that may exist already, so we'll make sure --

CHAIR FERNANDEZ: Exactly.

COL HAM: Yes, or it may just be within each service at this point in time.

We'll confirm exactly what there is or isn't.

CHAIR FERNANDEZ: Okay. Thank you, Colonel Ham.

DEAN ANDERSON: If there isn't one that's across the services at this point, do you want it to be in two separate findings, and recommendations instead of have both the best practices for the working group and then the dissemination across the services in the same one?

CHAIR FERNANDEZ: I think, for priority sake, break them apart.
DEAN ANDERSON: I agree. That's Michelle.

CHAIR FERNANDEZ: Okay. Let's move on to finding number three, evaluation. It's pretty straightforward.

JUDGE MARQUARDT: Could you -- this is Christel. Could you clarify for me the difference between the metrics and the evaluation?

CHAIR FERNANDEZ: The metrics and the evaluation?

JUDGE MARQUARDT: In the recommendation.

BRIG GEN MCGUIRE: I think what she -- this is Colleen. I think the difference between the standard evaluation and metrics is just what is it that we're going to evaluate, and what's the quantity, I mean, we need to quantify the evaluation. So metrics would be the quantifying, and the evaluation would be what it was we were looking at. That's how I interpreted it.
REP. HOLTZMAN: Doesn't evaluation include metrics?

BRIG GEN MCGUIRE: Oh, no, not always. I could do an evaluation and my evaluation is good, bad, and better. I just evaluated it as good. Well, how do you measure good? The metrics are fill in the blank.

REP. HOLTZMAN: Well, but that's the point of the evaluation. I mean --

BRIG GEN MCGUIRE: I would argue that there are evaluations out there that have absolutely no metrics.

REP. HOLTZMAN: -so if you have separate metrics, what are they used for? If they're used for evaluation, then they become part of an evaluation. That's the only point I'm making. I mean, it's just a quibble about words but --

BRIG GEN MCGUIRE: Okay, yes, or we could say standard evaluation with metrics.

CHAIR FERNANDEZ: Yes, I like
that, actually. With specific metrics, yes.

JUDGE MARQUARDT: And I know we
don't need to get into wordsmithing, but I
think the words in the second line "which is
used" are redundant. I don't think you need
them in there.

BRIG GEN MCGUIRE: I agree with
you, I agree with you. But let's --

REP. HOLTZMAN: I'm just
suggesting something. Suppose there are no
metrics to measure any of these things. I
mean, you know, maybe you don't have a
quantitative way of evaluating some of the
best practices. So I just don't want us to
make a recommendation or where metrics, where
they're available, or usable or something like
that. But, I mean --

DEAN ANDERSON: Well, why not say,
why not say, Liz -- this is Michelle. Why not
just say with metrics where appropriate or
where applicable?

REP. HOLTZMAN: Yes, okay, that's
good.

COL HAM: This is Colonel Ham.

Some of the metrics, I think, have come up in some of your presentations. One is victim satisfaction, and I guess satisfaction with what? With the attorney, with the process, with the explanation of the process? Another metric would be of those who -- or could be, excuse me -- of those who asked or determined they would like a Special Victims' Counsel starting with the restrictive report, did they convert to an unrestricted report? You know, I guess another metric would be what functions was the Special Victims' Counsel most helpful with or least helpful with? You know, issues with the command, issues with the prosecutor, issues with the defense counsel. Those are potential ones, I guess.

REP. HOLTZMAN: Colonel Ham, this is Liz Holtzman. Those don't have to do with best practices, necessarily.

COL HAM: I guess that's a
question, ma'am. Does that finding relate to, finding number three, does that relate to, do you want that just to relate --


CHAIR FERNANDEZ: You've got to love it when Liz Holtzman tells you you're always right. Colonel Ham, you can go home happy now.

COL HAM: Yes, thank you. I'm going to frame this part of the transcript and give it to my husband. Thank you.

CHAIR FERNANDEZ: Yes, I don't think her authority holds anything there, but okay. Okay. So are we good with number three now?

JUDGE MARQUARDT: Yes.

MR. CASSARA: Yes, ma'am.

CHAIR FERNANDEZ: Okay. Let's
move on to number four, where I think we'll probably have more debate.

REP. HOLTZMAN: This is Liz Holtzman. I just didn't understand number four, the recommendation. The services should extend SVC representation to a victim, so long as a right of the victim exists and is at issue.

CHAIR FERNANDEZ: Well, I guess would it be that, if something goes to appeal, but there's not an issue about a victim's right, then you don't get to keep your Special Victims' Counsel?

MR. CASSARA: Yes, I recall that this is the one that we really struggled with.

REP. HOLTZMAN: That's what it means. So it's only to vindicate a right of the victim.

BRIG GEN MCGUIRE: Correct.

MR. CASSARA: Yes. I think it's actually fairly well-worded, in terms of what we were trying to accomplish.
REP. HOLTZMAN: What happens if, you know, there are no victim rights on appeal, but after the appeal it goes back in retrial or something like that? I don't know if that happens ever. What happens to the right to counsel?

JUDGE MARQUARDT: Well, they may be back at a court-martial where they have the rights already set out by the statute, I assume.

MR. CASSARA: That's correct. I have two cases where that's the case right now, and the SVC is, they just appointed a new SVC.


JUDGE MARQUARDT: I think the staff did a great job on this, because I thought it was a very hard issue.

MR. CASSARA: We grappled with it for a long time. It's a very succinct two-
paragraph summary.

MS. GARVIN: Yes, this is Meg. I agree.

DEAN ANDERSON: This is Michelle. I agree.

CHAIR FERNANDEZ: Well, damn. I thought this was going to be the hardest one, and we're all in accordance.

JUDGE MARQUARDT: Let's go to five.

DEAN ANDERSON: Before anyone changes their mind.

JUDGE MARQUARDT: Right, go.

REP. HOLTZMAN: On five, do you think you need to add something to this, something to the effect of at the very end of the recommendation and maybe release to the SVC or the SVC and the victim? Because it doesn't say the release of documents, it just says to perform a review of the documents.

MR. CASSARA: Well, I think it would be covered by the --
REP. HOLTZMAN: All right. Do you think it's not necessary?

MR. CASSARA: Yes, it's going to be covered by the rules of evidence, anyway.

COL HAM: This is Colonel Ham.

The staff had a couple of, I guess, issues that you might want to resolve. The first one is, as you recall, this was, the bubble describes, deleted from last week's discussion of victim rights. It's a discovery issue, but we didn't want to delete it from this subject unless you told us to, because it was in the transcript.

And, secondly, there are some issues with release, even if documents are released to the counsel, if they are protected by the Privacy Act, or some other laws that constrain the Executive Branch that they may only be released to the counsel and not be able to be shown to the victim. That's a little bit in the weeds, but that's in some of the service standard operating procedures for

Neal R. Gross and Co., Inc.
202-234-4433
Special Victims' Counsel, so we wanted to be sure that you knew about that.

MR. CASSARA: Colonel Ham, it's Bill. I mean, I think what we're trying to accomplish here, correct me if I'm wrong, is basically the same thing that we do right now, in terms of discovery and disclosure of documents to a defense counsel.

COL HAM: Right.

MR. CASSARA: If I think that there's something out there that's relevant, I ask the judge to conduct an in-camera review. And if that judge finds that it is relevant to the defense, then he or she make a determination as to how those documents will be disseminated. For example, what a judge will frequently do is say I'm going to hold them in camera or, you know, in chambers, and you can go to the clerk of court and the clerk of court will allow you to review them, but they're not going to leave this building, or a judge may say, you know, each side gets one
copy and that's all.

I think we're basically saying the same thing. We're trying to implement the same procedure for victims; am I correct?
That's the overall goal here?

MS. GARVIN: Yes, I think so.
This is Meg.

MR. CASSARA: Yes. So, you know,
I mean, I think a military judge would perform an in-camera review and determine what, if any, documents are relevant to the asserted right is absolutely on point. The judge will determine the dissemination of that information if he or she finds it relevant.

JUDGE MARQUARDT: I'm a little confused -- this is Christel -- on the recommendation, where you're recommending legislation or policy. I think we should be clear. It should either be legislation, or policy because it leaves it so that either one can say, well, I thought the other was going to do it.
MS. GARVIN: And this is Meg. I don't want to harp on what I said last time, too. With regard to the recommendation, you know, I believe it already exists. But my recommendation would be that we recommend that there be clarity in legislation or policy, or whichever one we choose, because I'd hate for our recommendation to be perceived that SVC doesn't already have the right to ask for this and get an in-camera review.

This would be in the trenches, from what I understand. Not every SVC is getting this, and we had testimony of it being ad hoc. So I think the recommendation might be that we recommend clarifying legislation, or clarifying policy to provide this or something along those lines.

REP. HOLTZMAN: Right. I think that's good. But this is Liz Holtzman again. But that's why I wanted to add something at the end which goes to the release of those documents, because, yes, we can leave it up to

Neal R. Gross and Co., Inc.
202-234-4433
something else. But if what Meg says is
accurate, then we would need testimony that
they're not always getting documents in which
they're entitled, and there ought be something
in here that suggests that this is what's
supposed to happen.

JUDGE MARQUARDT: I think that's a
good suggestion. This is Christel.

DEAN ANDERSON: As a global
comment -- this is Michelle -- I think that
it's rare that the document uses the first-
person plural "we." I would strongly
recommend against it. It actually decreases
the credibility of the recommendation when we
say "we recommend." Most of the time, the
recommendation says "Congress should," or "the
services shall" or something like that.

So I think we need to get rid of,
both in five and six, the recommendation says
"we recommend," which sounds like, well, who
the heck are you, rather than we have the
authority, because we've done the research and
this is our considered opinion that
legislation, that Congress, or whoever we're
directing, to engage in this practice to
clarify policy, or to implement policy that
clarifies that the victims have the right to
have access to records, through their SVCs
relevant to the assertion of particular
rights, etcetera, etcetera.

MS. GARVIN: And this is Meg. If
I heard you correctly, the current practice
with regard to defendants, thinking about
Liz's comment for the last sentence, would it
make sense and align with defense practice
right now if it said, once a request is made
by the SVC, the military judge will perform an
in-camera review to determine what, if any,
documents are relevant to the asserted right
and the method of disclosure of those
documents?

MR. CASSARA: Absolutely.

JUDGE MARQUARDT: So in this case,
would you be saying that every time a trial
counsel provides documents to the Special
Victims' Counsel it would go through the
military judge for an in-camera review?

MS. GARVIN: No.

DEAN ANDERSON: If that's how this
is reading, I would say no, because I think
what we're saying is when there's a question
about whether they can be released or not.

REP. HOLTZMAN: Yes, right. And
that's what, I think that's an ambiguity in
the second sentence of the recommendation.

DEAN ANDERSON: Got it, got it.

REP. HOLTZMAN: You know, that's
right. Who was the request made of? If the
request that's made of trial counsel is
denied, is really what you want to say here.
Is that really it?

DEAN ANDERSON: I think that's
correct.

REP. HOLTZMAN: Because once the
request by the SVC is denied by trial counsel,
the SVC may, you know, whatever it is, apply
to the judge. I don't know what the language is, but something like that.

CHAIR FERNANDEZ: So have we decided on that first sentence what we're saying is "Congress shall?" And are we saying legislation or policy? Which one are we saying?

MS. GARVIN: I think it's policy. I think the law already exists to allow for this, which is rare for me to say.

CHAIR FERNANDEZ: Okay. Congress shall clarify policy?

COL HAM: Secretary of Defense, or the, depending on if it's an executive order, the president.

BRIG GEN MCGUIRE: If we want to modify the rules --

COL HAM: Right.

BRIG GEN MCGUIRE: -- the rules of court-martial.

COL HAM: Right, but the Secretary of Defense would forward it to -- the
Secretary of Defense, it seems, would be the appropriate party, ma'am, because if he, if it's something he can do through DoD policy, he can do that. If it's something that has to go to the president, he directs the Joint Service Committee to prepare that for him.

CHAIR FERNANDEZ: Okay. So Secretary of Defense shall clarify policy to provide victims through SVC access to records, blah, blah, blah, blah. And then the second sentence, once a request is made by the SVC and denied by trial defense counsel --

JUDGE MARQUARDT: Well, I thought it was trial counsel.

CHAIR FERNANDEZ: Yes, sorry, denied by trial counsel.

MR. CASSARA: I think we should say if a request is made by the SVC and denied by the trial counsel, the SVC may petition the court and the military judge will perform an in-camera review, dot, dot, dot.

MS. GARVIN: I agree. That's
good.

CHAIR FERNANDEZ: Okay. Six and final.

REP. HOLTZMAN: This is Liz Holtzman. The recommendation, are we saying for how long and for what level? What is the staffing level that's required here? What does it mean based on the success of the program?

JUDGE MARQUARDT: Maybe it's not to sustain the program, but to maintain a successful program.

DEAN ANDERSON: This is Michelle. I'd like to second Christel's comment there and change it from appropriate sufficient funds to DoD to say something like appropriate full funding to DoD to sustain the program in each service and implement the improvements the Response Systems Panel recommends.

BRIG GEN MCGUIRE: Instead of based on successful program, it should be based on, if an evaluation concludes the
success of the program or something like that, because you need something to evaluate the success on.

REP. HOLTZMAN: Yes, but you're going to need funding for the program before an evaluation is made because, if they're going to evaluate it after it's been in effect for a year, then, you know, since they may not start this year when everything was put into effect for all the services, and so then they have to take time to pick an evaluator and blah, blah, blah. So we're talking two years maybe until an evaluation is out, and what happens in that period of time?

JUDGE MARQUARDT: Well, that's why I like the words to maintain a program that meets the needs of the servicemen.

MS. GARVIN: So I would -- this is Meg. Based on this conversation, I don't think we say, based on the success of the program we recommend. I say we just say Congress shall appropriate sufficient funds to
DoD to sustain a robust program at a sufficient level for the branches, or something like that. I think we take out the based on the success. I mean, our finding says it's already looking like it's a success, and elsewhere we say, keep evaluating it.

REP. HOLTZMAN: Well, I mean, I guess I like your -- this is Liz Holtzman. I like what you're suggesting, Meg. But my only concern here is we have to be more specific, because we're going to be facing cutbacks. And so do we have to spell out somehow what they need to do?

I mean, for example, let's assume that they find that really you need, per thousand members of the military, that you need two SVCs or one, or maybe it's 10,000. I mean, should it somehow be related to if they find a certain level is necessary to provide adequate services that the funding should be sufficient to do that, or do you think just general language to provide robust
funding, I mean to provide funding to provide
robust services that meets the needs of --
well, I don't know.

MS. GARVIN: I think your point is
well taken, Liz, that it needs to be, maybe
robust is the wrong word --

REP. HOLTZMAN: -- I like robust.

MS. GARVIN: Yes, so maybe it's
robust and adequate to provide services to all
servicemen as determined by future
evaluations, or something like that. I mean,
I'd hate to have it contingent. I'm just
worried about the opening language. I agree
more specificity of don't cut this down to one
SVC per, you know, 15,000. That would be
problematic. So I'm not sure of the right
language. I agree with you that the more
specific we can be the better, but I'm not
sure how to do it.

REP. HOLTZMAN: But for Congress
to allocate the money, we're going to have to
have some way to quantify it.
CHAIR FERNANDEZ: Well, can't we say, you know, we need, we need adequate funding for X amount of years until this can be evaluated and we know how many SVCs we need per number of troops? I mean, that's also part of the evaluation: do we have enough, do we have enough SVCs to deal with all the problems that are coming up?

I mean, I think it's kind of like, we need to keep this going for a few years until we have time to evaluate it, and know exactly how much a really good program will cost because right now we're just guessing.

REP. HOLTZMAN: Well, maybe the staff should try to write something like that.

CHAIR FERNANDEZ: Fully fund and adequately man, something like that?

REP. HOLTZMAN: Let' not use the word "man." I mean, that's an objection I have all the way through this document.

CHAIR FERNANDEZ: Adequately staff?
BRIG GEN MCGUIRE: One of the ways the SVC talked about the program was right now they're staffing it with reservists for a temporary basis, but they've added and made a request to Congress for X number of additional lawyers in order to adequately staff. So --

MS. GARVIN: I'm sorry. Didn't we also hear testimony, however, that right now there's only one paralegal for multiple SVCs? So staffing of the program is more than just the sheer number of SVCs, I think.

COL HAM: So the word staff, although that is more than for defense counsel. To give you a comparison, I guess there are about 500,000, a little bit more than 500,000 soldiers in the Army, and there are 130 active-duty defense counsel.

MS. GARVIN: And I'm not, I'm not suggesting that we know the specific numbers. I just, I like the general word "staff," at whatever level. I just want to make sure that we don't somehow say staff a certain number of
SVCs, because it could be determined that it's SVC plus paralegal equals something. I don't know. So I'm just concurring in the language of staff, but making sure that we don't go on and say how many SVCs.

REP. HOLTZMAN: Or you can say that the staffing, that the funding of the SVC program, including SVCs, paralegals, and other support staff, is sufficient to serve the needs of the victims of assault, sexual assault.

CHAIR FERNANDEZ: Also, should we take number six and actually put it after number three? I still think that we need to link funding and evaluation together.

REP. HOLTZMAN: Yes, good flow.

DEAN ANDERSON: But shouldn't number six be number one? This is Michelle. I mean, that's the overwhelming issue here that we've heard from the victims, that they believe that it makes an enormous difference and it is our position that this should be
fully funded to sustain a robust program and implement the improvements that we recommend.

REP. HOLTZMAN: Well, I sort of liked tying it in with the evaluation just because I think it flows easily that way.

CHAIR FERNANDEZ: We could make six number one, and number three number two. Anything that has to do with resources we should sort of clump together. So what you would have is the overarching number six, give us enough money to make sure this thing works. Number two is let's evaluate it. Number three, let's figure out what the best practices are so we can disseminate them. Four, let's figure out a way to disseminate them. And then you get to the actual, how do these things work in court. Does that make sense as far as flow? Hello? What's that?

JUDGE MARQUARDT: I said that's fine. This is Christel.

REP. HOLTZMAN: I know this is a little off the point, but when you were saying
it, speaking it, it occurred to me that, on
the best practices, maybe we need more than
just dissemination but maybe there needs to be
training on them, too.

CHAIR FERNANDEZ: Yes. No, I
think that that's -- yes, I think we should
put that in there. So, again, if we're just
going to take them in blocks, one is give us
enough money to make sure that we can make
this thing work. The next one is let us
evaluate it. The third is let's create best
practices. Fourth would be figure out how to
exchange best practices with one another.
Fifth would be training. And then we'd go
into six, which would be currently, six would
be number one. Seven would be number four.
Eight would be number five.

I think about things in terms of
narratives sometimes, and I'm just thinking,
you know, we think that this is a really good
program, but we need enough money to run it.
We need to make sure that it's doing what it's
supposed to be doing, but in addition to that, there's other things that it needs. It needs training, it needs best practices, and it needs a way for people to communicate with each other. And then these are some of the specifics of what we need from the people in it. These are the qualifications. And then, lastly, these are a couple of specific issues on how to deal with them in court.

REP. HOLTZMAN: It's a little bit hard to really conceptualize all of that, but once we get it on paper that way I think it will really flow.

CHAIR FERNANDEZ: Anybody else?

MR. CASSARA: Yes. I'm fine with that. I mean, I'm not particularly worried about what order the recommendations are in, but it certainly does make sense that we group them together in, you know, in the order that Michelle recommended. So I'm fine with that.

CHAIR FERNANDEZ: Okay. I think we're done with the findings and
recommendations. Do we want to go to the other sections now?

COL HAM: Ma'am, this is Colonel Ham. Ms. McGrory -- Kristin is the most familiar with all your transcripts on this, but there was one other -- and I'll ask her to pipe in if I'm misstating anything -- but there was one other issue that you didn't reach consensus on and that is whether you wanted to comment at all on the organization of Special Victims' Counsel programs. If you recall, all the services, except the Army, has set up an independent entity, and the Army has not. And we didn't know if you wanted to recommend the independent entity or something else or just see how things develop and not address it at all.

CHAIR FERNANDEZ: Is there some way we can incorporate that into looking at best practices and mention that that specifically is something we want folks to look at? The Army is doing it one way and the
rest of the services are doing it the other. We want a moment for the services then to be able to come together and see what's the best practice. I don't know. I mean, that would be my thought on it.

COL HAM: And in the body of the discussions, I think the issue of potential conflicts of interest is raised. Would you like them to specifically address that in their evaluation? Evaluation is the wrong word. That's a different recommendation. In their assessment of best practices.

CHAIR FERNANDEZ: To assess -- you've lost me on this.

COL HAM: In the discussion, the body of the document, there's a discussion of the different ways the Special Victims' Counsel programs are organized right now. And, again, the Army is the outlier in not having an independent entity, which could raise potential or actual conflicts of interest because right now --
CHAIR FERNANDEZ: Oh, I see what you're saying.

COL HAM: -- the SVC works for the same person the trial counsel works for.

CHAIR FERNANDEZ: Right.

COL HAM: The Army has responded that they think that it's an issue, and we're wondering if you want that specifically addressed in the collaborative best practices assessment.

JUDGE MARQUARDT: This is Christel. It seems to me that they should have a separate, and I think that's what our recommendation ought to be, that the Army ought to follow the other branches.

MS. GARVIN: This is Meg. I actually agree with Christel on this. I know in some ways, waiting to see how it all fleshes out, you know, so people can develop best practices themselves, but I think the risk of conflict is very real and I'd hate for that to be discovered mid-case for somebody
and instead to set up a separate branch, and
I know that's the wrong word, but it just
seems that that problem is gone.

JUDGE MARQUARDT: Or we could have
one finding that there is potential for
conflict, and therefore, we recommend that the
Army follow the others.

MR. CASSARA: I would concur with
that. I think that the best policy is for the
SVCs to be a stovepipe organization.

DEAN ANDERSON: This is Michelle.
I agree.

CHAIR FERNANDEZ: Liz?

REP. HOLTZMAN: Yes, I agree, as
well.

JUDGE MARQUARDT: Colonel Ham, I
appreciate you bringing that up.

COL HAM: You're welcome, ma'am.
It was an issue a long time ago in the defense
organizations as well, which are all now
separate.

MS. GARVIN: This is Meg. May I
raise -- I thought we had talked about this previously, and, if not, that's okay, we can just chalk it up to my faulty memory. And I don't know if this is the right place, but one of the things we talked about or heard evidence, took evidence on and I think may have asked some questions when we did one of the site visits was the career development aspect of this for SVCs, like if it's good or bad for your career, and, you know, as a military lawyer and what their perceptions currently were and are.

And I'm just raising it again because one of the things I think we talked about when we were down in Texas with some of the SVCs was, you know, how are you perceiving this, you know, is this going to hurt your long-term JAG career, is it good for your JAG career, and had some casual conversations about, you know, is there a way to make sure somehow that this is a -- if it's not a positive at least it's not a negative in the
career track? I'm just re-raising it. I don't know if this is the right time to talk about it, whether that was just side conversation that actually isn't relevant for recommendation purposes or is it something that we should put in here at all, in our recommendations, since this is the SVC chapter.

COL HAM: Ma'am, this is Colonel Ham. If there's an independent entity that adds to the protection for the attorney, you could also perhaps add in your selection criteria that something like -- I don't know. I don't know what the right words are.

MS. GARVIN: There's different words, I think, in different services.

COL HAM: Yes, yes. Encourage -- if they're selecting their best people for them, then they become great jobs.

MS. GARVIN: If there's a way to do that, I would like the Subcommittee to consider adding some of that language just
because I just really don't want this to then be perceived as a side mandatory duty that comes up and it's an oh, dear god moment. So that would be my two cents on it.

CHAIR FERNANDEZ: How do you say that? I mean, how do you say, this is a job that's going to get you promoted?

MS. GARVIN: Well, I do think what Colonel Ham was just saying is that it's, you know, the selection criteria is top people get selected for this -- and I'm not saying defense shouldn't have top people or actually happen to think that -- but, you know, that if it's parallel language in some way to, it's a prestigious job, we encourage the best of the best to apply or something or to be selected, we only select the best of the best. I think that may achieve it.

CHAIR FERNANDEZ: We're going to need to look at recommendation number one again.

MS. GARVIN: One suggestion might
be to recommend or encourage the Judge
Advocates General to select -- what's the
right word? You know, carefully monitor the
selection, ensure the -- I don't know. I'm
trying to think of some words. Put special
emphasis on, especially because they're new
and they're all breaking new ground with the
law, maybe there's a way that we could
wordsmith that if that captures what you're
saying. Special emphasis, select your most
qualified, you know, judge advocate, something
like that.

REP. HOLTZMAN: Can you get
special credit in the military?

CHAIR FERNANDEZ: Special pay?

CDR KING: They've been working on
that for years for military justice, at least
for in the Navy, where they told selection
boards that they have to give special
consideration to people in military justice
because a lot of times people in operational
billets got promoted over people in military
justice overall. So, you know, I think people have been grappling with this overall some, but I think at least if it was something in the JAG Corps that counted as a prestigious, you know, the trial position that was important, that would even it out with the other trial people or with the other military personnel.

REP. HOLTZMAN: This is Liz Holtzman. Would it be enough to do something general, like saying that the services should make sure that the position is not viewed as something of a hamper to career opportunities in the military, instead to take appropriate measures to enhance its attractiveness? Just a thought.

CHAIR FERNANDEZ: I think to get into negative is not a good idea. I think if somehow we can describe it as the most qualified, you know, the --

REP. HOLTZMAN: Well, I'm not sure I agree with you about necessarily the most
qualified. You know, we just want qualified people, not the most necessarily. I don't know. To me, you could argue about whether the defense counsel or the trial counsel should be the most.

So I don't know. That's just my thought. But, you know, maybe -- I'm just, I just don't want this to be seen as a bottom of the totem pole assignment for a lawyer.

MS. GARVIN: Yes, and that's my concern, too. I share Mai's concern, though, about phrasing it in the negative. I'm just wondering if, you know, staff, I hate always saying maybe staff can come up with language, but you might know the language that is used in the other units to demarcate what is a prestigious moment and what isn't a prestigious moment in a career, I think, better than we do. And if we just have a recommendation that says selection criteria shall include that somehow or shall be encouraged to make sure selection includes
this, whatever that language is, I think that would be a good recommendation.

And it shouldn't be, you know, I agree with Liz, maybe it's not the best and the brightest because all of the trial counsel, defense counsel, and victim counsel should all be excellent. But I think whatever makes it prestigious would be good, particularly for a few years.

CHAIR FERNANDEZ: Am I wrong in saying that legal services is usually looked upon in military as not a great place to go?

CDR KING: You mean prosecutor and defense, or --

PARTICIPANT: Legal assistance?

CHAIR FERNANDEZ: Legal assistance is what I was looking for.

CDR KING: No, it's generally the --

CHAIR FERNANDEZ: What's looked upon as a bad place to go as a lawyer in the military?
CDR KING: No, it's generally a junior position. It's not a bad position. It's a place to expose junior attorneys to how a lot of the things in the military work.

CHAIR FERNANDEZ: What's a job, though, in the military that nobody wants?

CDR KING: Claims. I mean, you wouldn't want to be a colonel and be put in legal assistance. I would say that. But it's very -- it's very common. That's where I started, legal assistance. And --

MR. CASSARA: As did I.

COL HAM: Again, for the legal point, legal assistance is the statutory hook to establish this program. NDAA amended legal assistance statutory provision in order to provide Special Victims' Counsel. So that's the legal -- what's the right word? Corroboration? No, the legal connection between Special Victims' Counsel and legal assistance attorneys, as it's part of.

CHAIR FERNANDEZ: No, I chose the
wrong, I chose the wrong -- I guess I wanted
to say that if somebody was, if there's a bad
place to go and their criteria is a certain
set of criteria, we want to make sure that it
at least doesn't reflect, that our criteria is
very different.

I'm with Meg. Why don't you guys
give this a stab?

CDR KING: We'll try.

COL HAM: Yes, ma'am.

CHAIR FERNANDEZ: Okay. When in
doubt, punt. Was there anything else out
there that we talked about that we should be
making findings and recommendations on?

(No verbal response.)

Okay. We have another 17 minutes.

How do we want to spend this? Do we want to
go section by section or --

MS. GARVIN: I don't think we want
to go section by section. I think we might
get bogged down in the weeds. I will say that
there was one thing that was unclear to me in
reading the process to obtain an SVC, and that is, there's a sentence on page seven toward the end of the first paragraph under Subsection C, the process to obtain an SVC. It says, but, in accordance with DoD policy, an SVC may not receive a restricted report. And I guess I understood or was confused that that conflicted with that someone who made a restricted report could have access to it if it was appropriate. Is that correct?

COL HAM: Yes, that's correct.

MS. GARVIN: But what does it mean that an SVC may not receive a restricted report? What does that mean?

MS. MCGRORY: Ma'am, this is Kristin on the line. What that means, and it's actually set forth, I believe, in both the Air Force Rules of Practice and Procedure and the Army's handbook, is they're saying that an SVC is not one of the enumerated individuals within the DoD instruction that
can actually accept the report -- a restricted report. So when they're laying out the process for obtaining an SVC, it actually starts with the report to one of the enumerated individuals if it's a restricted report, who then directs the victim to the SVC for legal guidance.

So they're actually putting out in their handbooks, which obviously are not regulation or policy, that the SVC can't take a restricted report. And they tie that back into DoD instruction.

DEAN ANDERSON: This is Michelle. Just to understand this, should an SVC come upon someone who wishes to make a report but wishes to make it restricted, the SVC has an obligation to make it an unrestricted report and report it up the chain of command?

MS. MCGRORY: No. Then, I think they're actually bound by attorney-client privilege, so it's sort of, I don't know why they have it out there that an SVC can't take
a restricted report because they're still
bound by attorney-client privilege. We're
just saying, based on DoD policy, they're not
one of the enumerated individuals.

CDR KING: But those individuals
are listed in Footnote 40, the SARC, victim
advocate, or medical personnel. Remember,
even though it's restricted, though, if it's
not covered by attorney-client privilege,
there's going to, it's a report, so there is
some information obtained, you know, by the
SARC, et cetera, which would not -- that
wouldn't go anywhere if it was covered by the
attorney-client privilege. So the --

REP. HOLTZMAN: Wait a minute. Is
the client necessarily covered by attorney-
client privilege? I mean, I was puzzled by
that because I didn't understand where that
was going. This is Liz Holtzman. I didn't
understand what that meant. So now I
understand that it means that you can't, the
SVC can't, is not one of the people to receive
a report, whatever that means. That has
nothing to do with the trial or after. That
wasn't clear, so the way you have it it's just
not clear what that means.

But that raises a very important
point. Suppose somebody has made a restricted
report or hasn't decided to make a restricted
report or not. If they go to an SVC right
away, is it clear that anything that -- well,
to be protected for attorney-client privilege,
but is there something about the report that
could somehow be made public? I mean, for
example, the name? Is the name protected by
attorney-client privilege? Name of the
client? I'm not sure about that.

JUDGE MARQUARDT: This is
Christel. I had that highlighted as well, on
my sheet. And, you know, I think that maybe
there ought to be a recommendation that an SVC
can take a restricted report.

DEAN ANDERSON: I agree. It seems
obvious that a victim, if they knew that an
SVC existed, may be confused about the chains
of authority that different people have --
this is Michelle, by the way -- and may
approach an SVC to make a restricted report.
And I don't see why we would want to have
confusion about whether or not the SVC has to
disclose, you know, the scope of what the SVC
had to disclose, given that they are not a
restricted report receiver, as it were. Maybe
the name, maybe nothing, maybe it's all
covered by attorney-client privilege. But why
not just clarify that? If anyone related to,
you know, a SARC, a victim advocate, a medical
professional. I'm also wondering about a
religious leader of some kind. Can, can --

BRIG GEN MCGUIRE: They're also
bound by the --

CDR KING: This is Sherry. I
think what Kristin was just trying to say is
that there's a -- if a victim comes to a
victim counsel the first thing, that
discussion would be confidential, but that
doesn't start the official process even for a restricted report where you're eligible, you know, when you go to a SARC or a victim advocate, they tell you what your rights are. They send you to medical or wherever you need to go.

DEAN ANDERSON: I agree. Why shouldn't it? Why shouldn't it be that the SVC can do that?

CDR KING: Maybe that could be, that could maybe be one of your recommendations, but that's not what the policy is right now is what she was trying to say. It's not an official, it's still confidential, like it is if you go to a -- it's privileged, like if you go to a minister, you know, or a chaplain or whatever.

DEAN ANDERSON: Well, that would be a -- you'd make an exception to the attorney-client privilege. I'm wondering, I'm asking, would you be carving an exception into the attorney-client privilege if a Special
Victims' Counsel was authorized to receive a restricted report because a restricted report --

COL HAM: You still have to give that information.

DEAN ANDERSON: So that's an important point. That's an important point, Colonel Ham. I do think that -- this is Michelle. I do think that the SVC should be charged with getting this person to a SARC or victim advocate. I mean, if a medical professional can receive a restricted report, you know, if a medical professional has a privilege, you know, the religious person has a privilege and the Special Victims' Counsel has a privilege, I would think that if a medical professional can receive a restricted report or can get somebody to a SARC, the SVC should be charged with getting somebody to a SARC so that they can make an appropriate restricted report.

CDR KING: Can I make a suggestion
about this? Julie has written a huge amount on this when it comes to victim services in the SAPRO program and the duties and responsibilities of the SARC and various things. Perhaps you want to continue your discussion after you've reviewed all the stuff she's written about it and maybe make a finding, we can go back and make a finding here but --

DEAN ANDERSON: Or is there a different section, just to understand, is there a different section on the SARCs that we're going to take a look at?

CDR KING: Yes, you sure are. Right now, it's kind of long, but we're working on it and hopefully we'll get that part next week.

DEAN ANDERSON: Okay. That's fine with me. You know, maybe the staff can just note that as a question that certain members of the -- it sounds like I wasn't alone in highlighting that and that we are wondering
about that question and want to deliberate on it once we get the full information about the SARC.

REP. HOLTZMAN: See, the other thing, too, about that, I'm just concerned about this whole issue of confidentiality because I'm just -- whatever worth that has, you know, I can't say. But, you know, one of the grounds for invoking attorney-client privilege is you that you have to be an actual client of the lawyer. Well, what point does the reporting victim become a client of the Special Victims' Counsel? Not clear when that happens. So if you find someone who's acted as a Special Victims' Counsel for your best friend and you know this person's name and you go up to that person and say, gee, I'd like you to be my Special Victims' Counsel, I was just assaulted by my commander, that person may not be your counsel at that point. So where's the privilege?

I'm just arguing that there's an
ambiguity here about what privilege attaches. So it may be necessary, even if they don't have an obligation to report under whatever rules you have in the military for reporting these confidences, still it should be confidential if material is given to them.

DEAN ANDERSON: Well, and I have a question on page 16.

REP. HOLTZMAN: Yes, the Navy people know more about attorney-client privilege than I do, so I just throw that out as a concern. That's all. Sorry.

COL HAM: Ma'am, actually, the staff discussed that quite a bit, too. The analogy is, or perhaps, that if you are suspected of an offense, even if you're not charged or you haven't been read your rights or anything, you can go and talk to a defense counsel and you form an attorney-client privilege as a suspect or someone seeking legal advice from a criminal defense counsel in the military. And would the Subcommittee
members -- right now, that victim can go to a legal assistance attorney, can go to a trial defense attorney if they think they're suspected of collateral misconduct, and form an attorney-client relationship, and is there something similar that the Subcommittee members would want to think about for advice prior to making a report, that an alleged victim can seek legal assistance -- although not using that word as a term of art -- can seek legal advice from a Special Victims' Counsel just as their status as an alleged victim before they've reported?

Right now, that may be happening. It's not covered in the NDAA. That may, in fact, be happening; I don't know. But it's not covered right now.

CHAIR FERNANDEZ: Okay. Colonel Ham, walk me through this. I've been assaulted. I just know that there's an attorney and somebody has told me that they're a Special Victims' Counsel, and I go to them
and I go I've been assaulted. What am I
asking at this point? Am I asking what do I
do next?

COL HAM: I don't know. I guess
you could be asking I've heard of the Special
Victims' Counsel, can you explain to me, you
know, whether I should report this? A lot of
that stuff would be replicated by the SARC,
but the question I guess for the Subcommittee
to decide if you'd want to deliberate on and
make a recommendation on is are Special
Victims' Counsel authorized to provide legal
advice to alleged victims who have not made a
restricted or unrestricted report?

REP. HOLTZMAN: I'm even asking a
preliminary question. Suppose they're not
even giving legal advice. Once they get that
information, is that privileged information?
Is that confidential, even because they
haven't been assigned as their counsel? When
does it become a counsel? You know, that kind
of question which is what I'm asking.
CHAIR FERNANDEZ: I think what Colonel Ham is saying, though, Liz, is that the moment you start talking, the privilege attaches.

REP. HOLTZMAN: Well, I don't know that that's the case. I mean, maybe that is true.

CHAIR FERNANDEZ: Well, we could say that.

REP. HOLTZMAN: Oh, okay, okay. That's the point I'm making, should we be dealing with the question not only with regard to the legal advice that's given but with regard to the confidentiality of any information that's given before the, to an SVC or someone who acts as an SVC before they're actually assigned or before they're actually the counsel?

MR. CASSARA: Well -- this is Bill. Let me give you a quick analogy in our final five minutes before I have to hang up. If somebody walks into the trial defense
office or an ADC in the Air Force or a NLSO in
the Navy and they say I've been suspected of
an offense, what should I do? They're going
to speak to a lawyer, and that lawyer is going
to tell them, you know, these are your rights.
That lawyer is not detailed or assigned to
represent that person until and unless charges
are brought against that individual.
Nonetheless, everything that that person says
to that lawyer is privileged, and I think the
same thing would apply here. Am I correct,
Colonel Ham?

COL HAM: You're correct in that,
of course, in the defense world there is an
attorney-client privilege and the counsel is
bound to represent that person. The question
I'm throwing out is, that has not been spelled
out, as far as I know, for Special Victims'
Counsel, and do the members want to spell that
out as the scope of what the Special Victims'
Counsel's representation may entail? Someone
may seek them out without making a report.
MS. GARVIN: Yes. This is Meg. I would say yes. We want it to be parallel so if victims go there first, it's protected. And if that's not clear at this point, I think we need to make it clear or recommend that it be made clear.

JUDGE MARQUARDT: And as I said before, I am a little disturbed by what is on page 16 because, if there's a communication by the victim or the SVC with the victim's liaison, it's not protected by confidentiality. I mean --

MS. GARVIN: Yes, I agree.

CHAIR FERNANDEZ: But, again, doesn't that person work for the prosecutor?

COL HAM: Yes, ma'am.

JUDGE MARQUARDT: The liaison?

COL HAM: Yes, the victim witness liaison is -- that's a fancy name for a paralegal for the prosecutor.

JUDGE MARQUARDT: That's not what it meant to me. The victim's liaison, I
thought, handled the victim's problems.

MS. GARVIN: No. No, that came up in our last discussion. The name is a bad name because that person really just works for the prosecutor.

COL HAM: Judge Marquardt, you might be thinking of the victim advocate, ma'am, and there is a victim advocate-victim privilege.

JUDGE MARQUARDT: There is.

REP. HOLTZMAN: Maybe when we talk about the special victim liaison person or whatever you want to call it, the victim's liaison person, that maybe we just put in parens, paralegal who works for the prosecutor so that it becomes clear to readers. I don't know how many times we use that term, but you might just want to think about whether we could clarify things by doing that.

DEAN ANDERSON: We may want to clarify that they need a new name because it really is a terrible name, and it sounds like
somebody who would have privilege and
everything else that we get confused with. So
I don't -- it sounds silly, but I don't think
it's a bad idea to say that that should be a
different name, like paralegal.

JUDGE MARQUARDT: Okay.

MR. CASSARA: Hey, folks, I hate
to interrupt, but I have to hang up.

CHAIR FERNANDEZ: Okay, Bill.

Thank you.

MR. CASSARA: So I bid you all
adieu, and I'll talk to you all next week.

CHAIR FERNANDEZ: All right. Bye,
Bill.

MR. CASSARA: Bye-bye.

REP. HOLTZMAN: Are we finished?

DEAN ANDERSON: This is Michelle.

I've got a couple of other things that I was
wondering about, and that is the relationship
between the SVC and collateral misconduct and
whether or not we want to make a
recommendation on that question.
We didn't hear a lot about it. It does sound like the services vary on the question on whether the SVC represents the victim during proceedings involving collateral misconduct. I do strongly think that we should make a recommendation about collateral misconduct -- and I'm not sure if this is the place for that, but I want to make sure that there is a place for that.

Also, I'm particularly interested in seeing kind of the introductory materials that are about the incentives created by the structures in the military and the existence of collateral misconduct charges in terms of the propensity of victims to come forward. So I hope that that is not the last thing we look at. I hope that's one of the earlier sections that we all are able to pull together and we can review because I do think it shapes a little bit the way we think about what we're doing with the rest of these pieces of the puzzle throughout the document.
So I was wondering about collateral misconduct because it did come up here and whether or not there was a best practice to use SVCs to defend victims in charges of collateral misconduct because they know the victim's experience the best. I don't know.

JUDGE MARQUARDT: Well, the handbooks spell out the whole procedure pretty well, I think.

DEAN ANDERSON: Right. But all that we've got in this document is that that it varies across the services, and I guess the SVC tells the victim about what's happening but then, if the victim is just handed off to whatever assigned defense counsel, it might not be as effective as the SVC who has developed a stake in representing this victim, being the one to take forward when there are criminal or administrative or other punitive action against the, you know, that the service proceeds against the victim on.
CDR KING: This is Sherry. Can I just comment, if no one else has something, real quick? I think, you know, that's a good point. Some of the services let there be joint representation. The problem, I think, is that now we've developed such specialized services for the defense and they have such a big support team where, you know, they provide each other information and they have a supervisor who's a very experienced defense attorney and that defense attorneys have gone to defense attorney training so they know how to handle certain issues, they're used to it, they have collaboration between other defense attorneys, that -- the problem is the Special Victims' Counsel has their own chain of command and their own support that I think that's the concern of some of the services and why they haven't done that perhaps is that then the victim would be getting less services for his or her defense work than another accused or defendant would be getting because
that person would be under the standard
defense command.

DEAN ANDERSON: Right. That makes
a lot of sense to me, and maybe that's the
best way to proceed. I do think that we
should talk about maybe the next section or
the section right after that because I know
you guys are probably working on these --

CDR KING: We are.

DEAN ANDERSON: -- at the same
time, but it would be great to kind of look at
the big picture. One, the overview one and
the collateral misconduct question. I think
if we could make a recommendation on that, it
may solve some of these issues here. And I
agree with you that specialized defense
counsel who have been trained to be defense
counsel are better than people who just have
some trial experience and then have been
specially trained to be SVCs but don't have
experience as defense counsel. So that makes
sense.
CDR KING: Yes. And the other problem with that is, in order to be a defense counsel, you have to be certified to represent them in court, to appear in court. And some of the SVCs may not have that certification. Some may if they were really experienced and had done all the jobs, but a lot of them won't have done all those jobs so they wouldn't be able to appear in court.

COL HAM: Dean Anderson, this is Colonel Ham. The issue of collateral misconduct has been discussed extensively by the Comparative Systems Subcommittee and, actually, this is probably the one issue that has run across all three subcommittees. So I'm sure the full panel is going to be interested in this Subcommittee's thoughts on it, as well.

DEAN ANDERSON: Yes, I think you're right. It does really cross all of the jurisdictions of the three subcommittees, and, you know, I think it's an important one.
CHAIR FERNANDEZ: So what do we want to do here?

DEAN ANDERSON: Maybe, maybe nothing. I think I'd like to dive into, you know, I understand that the staff are working on a lot of different sections at the same time. I would make a recommendation, to the extent that it's feasible and appropriate, that we be able to take a look at some of the, you know, the first section that we talked about where we sort of talked about victims who report and who choose not to report, why, what that's about, what their experiences are, what the structures in the military are that may deter them from reporting. I think that's all, and that's going to lead us into an analysis of collateral misconduct.

CHAIR FERNANDEZ: Okay.

REP. HOLTZMAN: Well, it could come in under victims' rights, as well.

DEAN ANDERSON: Yes.

CDR KING: And along the line of
victims' rights, if any of you have any
written edits for the actual, you know, report
part, please feel free to still send them. We
were getting --

REP. HOLTZMAN: Yes, I'm going to
do that.

CDR KING: Yes. Before we put it
together, we wanted to make sure everybody had
a chance to do that and then also to have the
transcript of what you actually said to make
sure that we actually got it exactly right and
didn't just rely on our notes or our memories.
So you can still send those in if you have
them.

The other thing we'll have ready
for you pretty soon, I think, or is about
ready is the initiatives that the services
have undertaken in the last -- how many years?


CDR KING: Since 2007. There's a
lot of them. Rachel has been putting them
together for a long time because there was no
particular format they gave them to us in, and there's at least over 150 pages worth. So it's taken us a lot longer than we thought it would. We didn't realize it would be such an undertaking, and she's trying to, like, assemble something to give you a little bit of an overview of them. But they're enormous, and we really don't know what to do with them or have any particular ideas exactly what to do with them. So maybe would it be okay if we put a link to them for you and then maybe you guys can all develop some ideas at least of what you want to say about them?

REP. HOLTZMAN: Maybe you should publish a book with them and send them out.

(Laughter.)

CDR KING: Yes, but we couldn't do it by next week.

REP. HOLTZMAN: My copy machine is going crazy.

CDR KING: Well, that's why -- I know. There's so much information, and I'm
always concerned that you'll want something I
didn't send you. But that's why we were
thinking of putting this on the website --

CHAIR FERNANDEZ: If somebody asks
for it, then send it. But I don't think quite
that much information needs to be brought our
way.

CDR KING: Okay, okay.

MS. GARVIN: This is Meg. I like
the idea of the links, rather than sending it.
You know, I think links are fine because then,
as questions pop up as we're reading, we can
go to it rather than having you have sent it
to us.

CDR KING: We'll put it on the
website. I'll let you know as soon as it gets
done so you can look at it and, hopefully,
come to -- have at least some way to formulate
some recommendations or conclusions or if you
want to say anything about it at all. Because
there's a lot. Some of them told us dollar
amounts for the cost of the initiatives. Some
of them said, yes, there were costs or, no, there weren't costs, just yes or no. Some of them left it blank. So I don't know if that's going to help you a huge amount to assess the cost of them, but it might somewhat.

CHAIR FERNANDEZ: Folks, we've gone on about ten minutes beyond what we said we were going to do. How do you want to proceed?

DEAN ANDERSON: I'm good, and I need to get off. This is Michelle. I really want to thank the staff for their extraordinary work, and I look forward to speaking to you all next week.

COL HAM: Dean Anderson, if you had any other substantive or editing comments, can you send those to Commander King?

DEAN ANDERSON: I just emailed them.

COL HAM: Oh, great. Thank you, ma'am.

DEAN ANDERSON: Thank you. Take
care. Bye.

CHAIR FERNANDEZ: Thank you.

REP HOLTZMAN: Okay, thanks everyone. Thanks to the staff. This is Liz Holtzman, bye-bye.

(Whereupon, the foregoing matter was concluded at 4:11 p.m.)
<table>
<thead>
<tr>
<th>44:12</th>
<th>47:3,10</th>
</tr>
</thead>
<tbody>
<tr>
<td>60:17</td>
<td>63:9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Z</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1</th>
<th>10,000</th>
<th>45:17</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>13:1</td>
<td></td>
</tr>
<tr>
<td>130</td>
<td>48:17</td>
<td></td>
</tr>
<tr>
<td>15,000</td>
<td>46:15</td>
<td></td>
</tr>
<tr>
<td>150</td>
<td>90:2</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>75:8</td>
<td>80:9</td>
</tr>
<tr>
<td>17</td>
<td>65:16</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2</th>
<th>2:30</th>
<th>1:11</th>
</tr>
</thead>
<tbody>
<tr>
<td>2:34</td>
<td>2:2</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>89:19,20</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td>1:9</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>1:9</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>4</th>
<th>4:11</th>
<th>93:7</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>68:6</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5</th>
<th>500,000</th>
<th>48:15,16</th>
</tr>
</thead>
</table>


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: 03-27-14

Place: teleconference

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

______________________________
Court Reporter