The Subcommittee convened telephonically at 9:00 a.m. Eastern Daylight Time, The Honorable Barbara Jones, Chair, presiding.

PRESENT:

THE HONORABLE BARBARA JONES, Chair
MAJOR GENERAL (RETIRED) JOHN ALTENBURG
PROFESSOR GEOFFREY CORN
JOYE FROST
GENERAL (RETIRED) CARTER HAM
PROFESSOR ELIZABETH HILLMAN
THE HONORABLE ELIZABETH HOLTZMAN
VICE ADMIRAL (RETIRED) JAMES HOUCK
BRIGADIER GENERAL (SELECT) LISA TURNER

ALSO PRESENT:

WILLIAM SPRANCE, Designated Federal Official
COLONEL PATRICIA HAM, RSP Staff Director
LTCOL KYLE GREEN, RSP Senior Attorney
MR. SPRANCE: Good morning. This is Bill Sprance, the Designated Federal Official, and this meeting of the Subcommittee is now open.

CHAIR JONES: Thank you, Bill.

This is --

MR. SPRANCE: Good morning, Judge. Welcome.

CHAIR JONES: Good morning. All right. I believe this morning we have three sections of potential reports that we have all had the opportunity to take a look at and to discuss. And we also were sent a table of contents.

I think, by and large, these are excellent, and I think it probably makes sense to start with Section III, the Commander's Responsibilities in Sexual Assault Response.

Were there any comments or suggestions that were sent in, Kyle, that the
rest of us, you know, may not have received?

LTCOL GREEN: No, Judge Jones. We didn't receive any comments in advance.

CHAIR JONES: Okay. Great. I hadn't gotten any, so I suspected there weren't any, but I wanted to just double check.

All right. Then, I guess the smartest thing to do, and the most organized, would be just to begin with Section III, which is the draft for April 14, and start with -- well, let me ask this, are there any general comments before we just go page by page on this?

Okay. The first page is titled -- or Section A is Commander Authority and Responsibility. Are there any comments, suggested changes, with respect to that page?

GEN HAM: Judge, this is Carter Ham. I would just say that I agree with your assessment. I think the entirety of the report is really well done and quite clear.
For Section III, paragraph A, I think there is -- would benefit by a brief description of perhaps how commanders differ from convening authorities. I think it's important, as it says up front, to say, the two roles, while overlapping, are not interchangeable, military officers of all ranks and experiences may serve in command positions.

And I'd suggest something along the lines of, while convening authorities are normally more senior and experienced officers, and there might be something -- just a brief, very brief one- or two-liner about how commanders are selected, which is generally -- and command positions are identified, which is generally the purview of local commanders, and how convening authorities are designated, which is a much more centralized process and authorities that flow from the Service Secretaries.

CHAIR JONES: I actually think
that's a great idea, and I guess when I read this, I've been so close to this it didn't occur to me that that wasn't highlighted or even in there. I think it's a very good idea to put it in.

I think we've heard about, to some extent, how commanders are selected, and I think we know convening authorities are generally more senior. Do we have any other more specific information, such as -- actually in the record about them being selected by the Secretaries -- the convening authorities, that is?

LTCOL GREEN: Judge Jones and General Ham, this may help. Section IV of the report on Commander's Responsibility in Military Justice cases, Part B is a distinction between commanders and convening authorities, and so that is, sir, a lot of what you are referencing we have included in that section.

So we'll take a look and see what
-- if some of that can be rolled into this section, but that may help, sir, to -- because the convening authority role obviously is specific to the military justice process.

GEN HAM: This is Carter Ham. I agree with that, Kyle, and I think the part in Section IV that addresses the convening authority is well done. I just think there is some value, again, recognizing that most readers of this report will not be intimately familiar with the military justice system. A one- or a two-liner in Section III, paragraph A, simply to further clarify why, for example, the roles, while overlapping, are not interchangeable. Just a couple of sentences up front, and then the fuller description to come in Section IV I think is appropriate.

LTCOL GREEN: Yes, sir.

PROF. HILLMAN: This is Beth. I wondered, Kyle, do we have Section IV yet?

LTCOL GREEN: No, Professor Hillman. I'm going to send it out to you
today. It is -- we just finished the review on it for Staff last night, and that will go out to you today. It's about a 15-page section with a lot of detail.

PROF. HILLMAN: Okay. I just wondered if I missed it, so -- which is entirely possible.

I do sort of have a comment overall on this section. I'm sorry, Judge Jones, to be slow on the uptake here.

CHAIR JONES: No, no, no. Please go ahead.

PROF. HILLMAN: You know, part of the way that -- I'm concerned that this doesn't sort of set out what makes the -- this sets out the authority of the commander but doesn't gesture even at the ways in which the commander's role is sort of a fraught one here, in that part of the problem with reporting is the deference to authority.

And maybe this is also in Part IV. Actually, Kyle, that's why I asked about this,
because I wondered if I missed it. But, you know, military justice has unique features that recognize, see Article 31, that recognize the challenge of the deference to authority and the protection of rights that we want in the criminal justice system.

And I just think we should note that somewhere in here where we mention that the commander has great authority, but that's a double-edged sword in some ways here, because it does make some victims reluctant to report.

Likewise, and then I'll be quiet in just a moment, in this first section, too, where we talk about the -- we set up the importance of the commander's role in maintaining good order and discipline, and then note that commanders have proved essential in culture change. They have proved essential in culture resistance -- resistance to cultural change, too, and I think not saying that up front undermines our
Chair Jones: Beth, with respect to your last comment, can you give me a page cite on that? Or is this -- we're still in III, right, A?

Prof. Hillman: In III(A).

Paragraph 3 is about historically commanders being leaders, and just I believe what we say to be correct but incomplete here, that commanders have been important in cultural transition, but commanders have also been sources of tremendous resistance. And commanders are, in fact, in my opinion, now part of the problem and part of the answer in sexual assault issues.

And I feel like the authority that we give the commanders is in fact -- is -- it doesn't all trend in one direction. And I'm concerned the way we set this first part up just looks as if we don't realize that.

Chair Jones: Would you want to send some text in on that?
1 PROF. HILLMAN: Okay.

2 BG TURNER: This is Colonel

3 Turner. I --

4 REP. HOLTZMAN: This is Liz

5 Holtzman. Professor Hillman, are you saying

6 -- I don't disagree with you on your last

7 point, although I don't recall any testimony

8 about it. Undoubtedly, there has been

9 resistance, and we have seen resistance from

10 commands with regard to sexual assault. I'm

11 not familiar with what happened on --

12 CHAIR JONES: Representative

13 Holtzman, you faded out.

14 REP. HOLTZMAN: Okay. I'm sorry.

15 My question to you is, I don't doubt the truth

16 of what you're saying with regard to the fact

17 that commanders have impeded, in some

18 instances, cultural change. I don't know how

19 much testimony there is in the record on that,

20 but undoubtedly it has happened.

21 But I'm really focused on your

22 first point, which is, is your point because
someone is in a position of high authority
that it's intimidating, or are you making some
other point about that? I'm trying to
understand the point you're making about
commanders.

PROF. HILLMAN: This is Beth.

Absolutely, Congresswoman Holtzman, that's
exactly what I mean. And Article 31, for
instance, requires that service members get a
rights advisement before, if they are
suspected of criminal wrongdoing from anybody
in the military, not only who is in a position
of authority, not only a convening
authority/commanding officer, which we've
pointed --

REP. HOLTZMAN: Correct.

PROF. HILLMAN: -- out are
indistinguishable terms. So, yes, I do think
that that's relevant.

PROF. CORN: This is Professor --
COL HAM: Dean Hillman, something
like, "The Uniform Code of Military Justice
recognizes the inherently coercive nature of command." I'm not sure if that's the right word, but I know -- I know the -- of course the line of -- the cases that you're talking about and the law that you're talking about.

So that would be an example of -- so a statement of your point, and then an example of how the military justice system adapts or addresses that point in numerous sections, of course, the prohibition against unlawful command influence as well.

PROF. HILLMAN: Right. But that would be -- that's exactly what I mean, Colonel Ham.

PROF. CORN: This is Professor Corn. I think that in some of the -- I recall in some of the discussions with the commanders at Lackland that I think we -- there were questions asked to reflect that a commander has -- because of the commander's authority, if they exercise their authority diligently and properly, it has a potentially significant
positive effect, but there are also commanders who conceded that if they -- they were derelict in the exercise of their authority that it could have a negative effect.

I think that's a fairer statement. I am hesitant to link it to Article 31, because Article 31 is based on an inherent coercion that is produced by the confluence of the nature of the superior-subordinate relationship in the military and being suspected of criminal wrongdoing and being questioned for that wrongdoing.

I don't think Article 31 is premised on the notion that the military -- the military culture itself is constantly inherently coercive. It is the combination of the military society, plus the suspicion of wrongdoing, which is precisely why Article 31 requires that the individual questioning the service member inform them of the offense they are suspected of having committed, unlike a normal Miranda warning.
But I do think -- I do agree with Professor Hillman that it would be legitimate and appropriate to note that commanders, because of their authority over a unit, when they are not discharging their responsibilities properly and they are derelict in the discharge of their responsibilities, it can have a very significant corrosive effect on the culture of the unit, and that would extend to this area as well if they are not properly discharging their responsibility.

CHAIR JONES: You know, correct me if I'm wrong, Beth, but I think you are actually commenting on the inherent authority of the commander as I guess having the potential for being inherently "intimidating," I think was one word that was used, or "coercive."

I think it would be best if you sent us some text, and then we could take a look at it.
PROF. HILLMAN: Okay, Judge Jones.

I will.

CHAIR JONES: Am I on the right track, Beth?

PROF. HILLMAN: You are.

CHAIR JONES: Okay. Thanks.

Any other comments about that issue or anything else with respect to page 1? And, if not, we can go to B, which is reporting channels on page 2 for victims of sexual --

PROF. HILLMAN: Judge Jones, this is Beth Hillman again. This section, I -- one of the things I think important in the reporting channels that we saw on the ground during our site visits was that it's not entirely clear to everyone how the reporting channels work. This is, in part, their novelty. It is, in part, the difficulty just of educating, which the military faces all the time and overcomes.

But I feel like this section
doesn't acknowledge that, you know, there is
all of this extensive training. We saw
evidence on the ground that not everybody gets
this very well. We actually witnessed a
problem with the restricted report, something
being made through restricted reports that
actually couldn't do that, couldn't be made
that under the rules that we then articulate
here.

So I am concerned that we don't
address the challenge here as well as the
efforts to overcome it.

CHAIR JONES: I don't disagree
with the fact that I think I heard at least
one example of -- and maybe more, although not
at Fort Hood, of where reporting was somewhat
difficult, reporting options might be somewhat
difficult to understand.

So I don't have a problem with
acknowledging that and making -- you know,
adding some lines with respect to that. Does
anybody else have an opinion with respect to
that or a suggestion?

REP. HOLTZMAN: My only concern --
this is Liz Holtzman -- is that I guess
Professor Hillman's concern -- and I want to
make it clear what her concern is. Is it that
the reporting option with regard to restricted
versus unrestricted or how to make a report?
Because I think that's two different things.
I'm not sure I have seen any
evidence that anybody was confused about how
to make a report or that they didn't have to
go to the commander or that they didn't have
to go to their, you know, immediate
supervisor, but that there were lots of other
options.

But if you're talking about
confusion about that, then I don't know. I
haven't seen any evidence. Maybe we've had
it, and I've just missed it. It's possible.

PROF. HILLMAN: This is Beth
Hillman again. I actually think it's very
tough to have evidence of people being
uncertain about how to report, but I think that the victim advocates recognize that the persons who do come forward sometimes manifest uncertainty about what it means to talk to many of the different persons who are listed in the charts on page 4.

And this is, in some ways, a consequence of the proliferation of reporting channels, which is -- the many avenues to report are great, but there is very little simplicity in this process. And, for instance, the privileges that attach to victim advocates, to chaplains, to legal personnel, to law enforcement, to legal assistants, attorneys.

This is -- I don't believe that it's probably possible to communicate in a very, you know, complete and comprehensive fashion all of the details of the different privileges and then the restricted versus unrestricted. I'd say both. It's the restricted and unrestricted are still somewhat
novel concepts. Even though we have been
doing it for some time, I'm not sure everybody
gets that. And then I think it's just the
different meaning of talking to all these
different persons is not --

REP. HOLTZMAN: But you're not
saying that there is confusion or at least --
I just want to make clear what the point is
you're making. But you're not saying there is
confusion about the various places that you
can go to make a report as opposed to the
consequences of making a report to these
various different people in terms of legality,
the privilege, confidentiality, and restricted
versus unrestricted. Or are you saying there
is confusion about everything?

PROF. HILLMAN: No, ma'am. This
is Beth again. No, ma'am, I wouldn't go that
far. Just the last paragraph -- let me be
specific. On page 4, the last paragraph of
Section B, which is underneath the chart says,
"The reporting options are well and broadly
publicized throughout the military." Maybe
this is in the -- maybe this doesn't even have
to go here.

And I apologize, we just -- we
haven't talked very much about our conclusions
here. So I was -- I had a lot of reaction to
the drafts here. So it's a lot, and I'll --
I regret slowing us down so much, but I just
think the fact that they're publicized doesn't
mean that they're understood.

And I feel like it's worth in our
text here to support the idea that there is
more that we need to do, and that the training
that we have in place and these options that
we have are just not -- they are not, you
know, like the sky is blue to everybody out
there just yet. It's still -- it remains a
confusing and complicated system.

LTCOL GREEN: Professor Hillman,
this is Kyle. Something that might help with
this -- and I will tell you, ma'am, we are
smiling here because designing that little
two-column chart on that page has taken many, many, many hours and more footnotes than we care to provide. But -- so I think you're 100 percent right on that, especially when the trained lawyers are having trouble figuring out exactly where things sit.

The one thing I will say is we have asked DoD SAPRO and the DEOMI folks for the data from the first -- since January, they have been using DEOCS 4.0, and that includes six specific quiz-like questions on reporting options. And so everyone that is taking a climate survey since January, I think it's a fairly good assessment as to whether or not they really understand who can and cannot take a restricted report. We have asked them for that, and so that might be some objective data, I mean, at least for a few months' worth of information as to what we're seeing initially with that that might help to clarify that.

PROF. HILLMAN: That would be
great.

REP. HOLTZMAN: This is Liz Holtzman again. I'm not quarreling with the view that there could be confusion in a victim about the difference between restricted and unrestricted. I'm not doubting that there could be confusion about, if I go to a chaplain, will it be restricted? Or if I go to a victim advocate, will it be restricted? I completely agree with you, and it's a point very well taken.

But what I am doubtful about is -- and I don't remember you making this point, which is that the various options for making a report are understood. Maybe not all the consequences, but are you saying that people don't know that they can report to a chaplain, to a SARC, to the sergeant, to the captain, to the general, to the -- to a medical officer, are you saying that that's the -- that there is confusion about that, that people don't know they have all of those places that they
can go to?

Or are you saying that -- because about that, I don't know that I've seen any evidence because I'm just questioning if that's the point you're making. I'm not disagreeing with the other part of that. I am just questioning about whether there is confusion about the fact that you can go and make a report to all of these places.

PROF. HILLMAN: This is Beth again. I guess what I'd just say is I think that what it means to make a report and what the role of each of these persons is in the system we've set up is not well understood by most people. It is just -- and so I guess -- I'll leave it at that.

REP. HOLTZMAN: Okay.

CHAIR JONES: All right. Thanks, Kyle, if you can give us that data.

LTCOL GREEN: Yes, ma'am. We're hoping to get that as soon as possible.

CHAIR JONES: But I also think
there has been, to my memory, some anecdotal information about the confusion with respect to reporting. In some instances, it is just -- it has been a problem with commanders themselves in terms of, if you report to a certain person, can that remain restricted or not? I think that has been clarified in policy now.

But I think we've also heard from at least one or two victims that, you know, they might have wanted a restricted report, but because, for instance, in one instance the victim ended up in a civilian hospital, it was no longer a restricted report.

So, I mean, if we can find other anecdotal pieces of information, we should try to do that, too.

Okay. Anything else on Section B, or can we go to Section C, Investigation of Sexual Assault Allegations?

REP. HOLTZMAN: Wait a minute. We didn't finish page 4 -- 3. And I have some
questions.

CHAIR JONES: Oh, okay. Sorry.

Okay.

REP. HOLTZMAN: Actually, page 2 also.

CHAIR JONES: All right.

REP. HOLTZMAN: I saw in paragraph 1 where we talk about studies indicate that the risk for contact, sexual violence, is comparable in the civilian sector. Could we throw some numbers in there, so that -- not a whole section, but just at least some numbers? Maybe one sentence with some numbers so that people can get a sense of that?

CHAIR JONES: I think we have them, yes.

REP. HOLTZMAN: Yes, they're later on. So when we make this point, it just -- it's a lot.

And on page 3, it is just not clear to me, at the end of the first full paragraph, "or in the victim's chain of
command or non-commissioned officer support channel." What is a "non-commissioned officer support channel"? I don't know what that means. I mean, maybe I should, but I don't. I'm sure I should.

CHAIR JONES: Go ahead, Kyle.

LTCOL GREEN: We tend to use, inappropriately, "non-commissioned officer chain of command," and obviously "chain of command" is a function of command, which is an officer function. So we misuse that term, and "non-commissioned officer support channel" is really the correct term for what most people refer to as "non-commissioned officer."

REP. HOLTZMAN: All right. Well, if I don't understand it, probably there are at least one or two other people in the rest of the world who might not understand it. So maybe you can use non-jargon language for that.

LTCOL GREEN: Okay. I think we clarify it someplace else. We'll make sure
that it's --

REP. HOLTZMAN: Oh, great.

LT COL GREEN: I'm not sure that we've done it yet, ma'am. It may be this is a carryover from the initial assessment, so let me make sure that we've referenced it properly. Thanks.

MG ALTENBURG: This is Altenburg. That could be covered with a footnote, I think.

REP. HOLTZMAN: Or whatever.

LT COL GREEN: Yes, sir.

GEN HAM: This is Carter Ham. I have two quick comments on page 2 in Section B in the second paragraph at the end. It says, "Commander does not investigate the report." I think we certainly have some -- I think we have heard where commanders have, inappropriately, investigated the report. The issue is they no longer have the authority to investigate the report. Maybe that's a nuanced difference, I don't know.
And in the next paragraph, with regard to restricted or unrestricted, and beginning -- unrestricted beginning in 2005, I think that's true but not -- I don't think it is universally true. For example, my recollection is that DoD civilians were not entitled to restricted reporting when the policy was initially begun. That's probably worth checking, but my -- I recall actually a fight with the Vice Chief of Staff of the Army when I was in a command position to make civilians -- have civilians covered by restricted reporting. And family members as well, by the way.

REP. HOLTZMAN: I have another question on page 3.

CHAIR JONES: Okay.

REP. HOLTZMAN: In the middle of the second full paragraph where it talks about military criminal investigative organizations. "Should honor a victim's choice to decline to participate in the investigation?" -- what
1 does it mean?  What does that mean?
2 You're saying that the person has
3 made an unrestricted -- the victim has made an
4 unrestricted report, and then declines to
5 participate in the investigation.
6 COL HAM:  Yes, ma'am.
7 REP. HOLTZMAN:  Is that what it
8 refers to?
9 COL HAM:  Yes, ma'am.  This is
10 Colonel Ham.
11 REP. HOLTZMAN:  Okay.
12 COL HAM:  Or if they've made no
13 report at all and someone else has reported an
14 incident --
15 REP. HOLTZMAN:  Well, how about
16 the unrestricted?  Oh, that's the
17 unrestricted?
18 COL HAM:  It would -- I think the
19 point is -- we'll check the language of the
20 policy, but the point is that a victim never
21 -- that the MCIO, the Military Criminal
22 Investigative Organization, should honor a
victim's decision to decline to participate in an investigation, whether it's the result of an unrestricted report on her part or his part, or no report at all, if someone else has reported it, for example, a third party.

REP. HOLTZMAN: Okay. I had one further comment on the bottom of page 3. It says, "Several military" -- the last paragraph says, "Several military personnel are trained as initial responders to sexual assault reports. Only SARCs are responsible for documenting reports on a form."

GEN HAM: Yes. Liz, this is Carter Ham. I would suggest inserting categories. "There are several categories of military personnel who are trained as initial responders," and then go from there.

CHAIR JONES: Does that help your concern, Liz?

REP. HOLTZMAN: Well, it's -- yes, right, it does. But it just -- it goes to Beth's point. It's confusing.
PROF. HILLMAN: Judge Jones, this is Beth again.

CHAIR JONES: Yes, go ahead.

PROF. HILLMAN: I was wondering how we might -- Kyle, are you going to reference like intras and supras to other parts of the report? Like I'm looking at page 2, note 10, which is about the reporting rate. It starts with, "Studies indicate 55 percent of crimes are not reported." We're going to have a whole section on statistics and surveys. And, really, I'm not comfortable with citing to a single statement about what the reporting rate is because it varies. I mean, we heard numbers in testimony from five to 25 percent are reported. One of the witnesses testified about the different numbers recently at the service academies.

That is just so complicated, I wonder if you could just drop, you know, "most crimes" -- "Most sexual assault crimes are not reported. We address this in greater detail,
you know, at this section." Is that feasible for us to do here, to cross-reference, or --

CHAIR JONES: Yes. No, I think we have to make those kinds of cross-references because there is overlap, particularly in the statistical comparisons. And that's where I noticed it as well in this.

So I agree with you, and I -- there is going to be a lot of that done once we have the report sort of in more final form, although I guess this is pretty close to final form. But, no, I think we have to do a lot of that.

What is your specific -- I don't know what page you're on, Beth.

PROF. HILLMAN: Footnote 10.

CHAIR JONES: I see it.

PROF. HILLMAN: Because it references the reporting rate, which is very contested.

LTCOL GREEN: And, Professor Hillman, I think what you're talking about is
the statistical analysis that CSS is doing?

PROF. HILLMAN: That's right.

LT.COL GREEN: I guess the only
issue with that -- I mean, I don't know that
the Subcommittee reports are going to cross-
reference each other. I wonder if that's
something when we sort of combine it into one
overall Panel report, if that's clarification
that needs to happen there, because, I mean,
quite frankly, the Subcommittees by design and
just by the nature of it, are not necessarily
looking at each other's reports in their own
report-writing.

PROF. HILLMAN: This is Beth
again.

CHAIR JONES: Kyle, could I
suggest, then, that we -- can we just not
reference that issue? I mean, not be so -- I
don't know.

I just -- I worry about putting --
like you're going to put it -- if there's a
conclusion, then this -- we're going to have
conflicting subcommittee reports, then, because the one on statistics will sort of be a nuanced look into -- with a lot of fine-grain detail.

So maybe it doesn't -- maybe we just -- can we just alter that line and say, "Studies indicate most sexual assault crimes are not reported, with similar reporting rates in civilian and military," instead of saying "among females," which I wouldn't even be that specific. I would just say "similar reporting rates in the civilian and military -- civilian sector and the military." Period. Like just be a little less specific.

PROF. HILLMAN: This is Liz Holtzman. I think it's very important to -- at this point to cite to the work of the Subcommittee and the report of the Subcommittee. We might have to give pages, but, I mean, how can we leave that out? I don't know. Maybe it's a mistake, but -- maybe I'm mistaken, but I think that it should
-- there should be a cross-reference.

CHAIR JONES: Well, I think that would -- I mean, I think what we should do is highlight the suggestion. I don't think -- I completely agree, we should not have dueling conclusions in the Subcommittee reports if we can avoid it. And it may be that we have to highlight each of these, and then -- I mean, personally, I don't have a problem with the suggestion that you are making, Beth, because it makes the point and I -- with a cross-reference to your statistics, there will be more data.

I hope we are going to be able to figure out where we're going in terms of potential conflicts with the other two Subcommittees everywhere. But at the moment, Kyle is right. We have our own -- you know, we have our own information here that has led to this report.

I would -- Beth, is your Subcommittee report in form for deliberations,
or where are you at with that?

PROF. HILLMAN: This is Beth again. That's a good question, Judge Jones. Lieutenant Colonel McGovern and her staff are working really hard, and they have had a lot of support from Kyle, too, on this. We are actually deliberating again, and we are hearing witnesses on Friday related to the specific reporting and the surveys, the validity of the results from the surveys, because we view this as a really critical piece of it.

And then, what we have deliberated -- we have had many discussions on findings and recommendations, and that's what we've focused on to date. But we don't -- we don't yet have the draft reports, but we will soon. So that's where we are. But we don't have something to give you yet.

CHAIR JONES: Do you --

PROF. HILLMAN: We can't actually -- we can't report out to your Subcommittee.
That's what -- the sort of procedural point that I think Kyle is flagging --

CHAIR JONES: Right.

PROF. HILLMAN: -- the Subcommittees report to the Panel. The Subcommittees don't report to each other. So I don't know that we actually can give that to you, so I don't know how we'd cross-reference in these internal reports.

REP. HOLTZMAN: Well, why don't we? And, you know, and if someone thinks it violates FACA, which how could it? No one is deliberating. You know there is a report that has been studying this issue. You can say, you know, "Another Subcommittee of the Response Panel has been studying this issue. See the report entitled" dot, dot, dot, whatever it is. That's what -- you don't have to reference a page, but it does at least give somebody an indication that there is something else out there, too. I don't think that that violates anything.
CHAIR JONES: Well, we know there is more that has been done, and I know it because I'm also on that Subcommittee. And I guess it's the Bureau of Justice Statistics people who will be coming on Friday.

All right. So, Kyle, can we generalize that sentence as Professor Hillman suggested and make a cite to -- or at least a placeholder on --

LTCOL GREEN: Yes, ma'am.

CHAIR JONES: -- and mention that there is an in-depth statistical analysis being done by Comparative Services?

LTCOL GREEN: Yes, ma'am. We can do that.

CHAIR JONES: Okay. And I guess we will all be alert to any other areas where we may need to look at additional data as a panel, or the Panel will need to look at the additional data worked up by the other Subcommittees. This is a big area, but I think there would also be some overlap with
respect to some of the Victim Services issues.

All right. Is there anything else in those first three pages, four pages, on Section B?

(No audible response.)

CHAIR JONES: Okay. So then I'm on page 4, which starts -- which is where Investigation of Sexual Assault Allegations, Section C, begins. Any comments with respect to this section or with respect to page 4 or 5?

REP. HOLTZMAN: On 5, in the last paragraph, first sentence, where it talks about the implementation of special victims capabilities, the second sentence says what special victims capability includes -- capabilities includes, but it doesn't say what it is supposed to do. I don't even know what a special victims capabilities is. Is it a unit? Is it a policy?

CHAIR JONES: Yes. Well, that's a good question. I thought they were units at
different installations, but maybe I'm wrong
and it certainly doesn't say that.

REP. HOLTZMAN: And what their
purpose is. So if you could just put a comma
and explain what those special victims
capabilities are, is, whatever.

CHAIR JONES: Is it that easy,
Kyle? Are they units at installations that
these personnel assigned?

COL HAM: It's a statutory
requirement, so the statute gave it that name.

REP. HOLTZMAN: What is it? Is it
an animal, vegetable, or mineral?

(Laughter.)

COL HAM: It's a multi --

CHAIR JONES: Why do you have to
ask these hard questions, Liz?

COL HAM: Multidisciplinary team
to address a criminal allegation of sexual
assault. I think that's a fair statement,
Kyle.

REP. HOLTZMAN: So they
investigate? I mean, what -- are they supposed to help the victim? What are they supposed to do?

LTCOL GREEN: All of the above, ma'am. It's basically a tip-to-tail support resource for sexual assault, from allegation to conclusion. It's the team that is specially trained and specially outfitted to assist the victim and prosecute the case through the process.

REP. HOLTZMAN: Great. So maybe you can put a comma and say that, assist the victim and prosecute the case -- probably not prosecute, investigate the case.

LTCOL GREEN: Absolutely. Yes, ma'am.

REP. HOLTZMAN: Okay.

LTCOL GREEN: Thank you for --

REP. HOLTZMAN: So if you'd put a comma and put those points, that would be great.

LTCOL GREEN: We will --
GEN HAM: This is Carter. This one on page 5, the second paragraph that begins with, "Allegations of sexual assault." I think just probably a footnote, but I believe there is some difference between stateside and overseas reporting because of status of forces agreements with regard to interaction with host nation law enforcement in reports of sexual assault. So that's probably worthy of a footnote.

CHAIR JONES: Kyle, have you got that?

LTCOL GREEN: Yes, ma'am. Thank you, sir.

CHAIR JONES: Great. All right. Was there anything else in this section that's on pages 4, 5, and the top of 6? Okay.

REP. HOLTZMAN: Just a question on the top of 6, where it says that it is supposed to be given to appropriate military command for consideration.

Well, since there are no more
special -- is it clear -- I really got
confused because of the special courts-
martial. Is it clear to this -- which kind of
military commander the charge has to go to?
Because I guess I was -- what concerned me
was, what happens if it goes to the wrong
place? Talk about confusion. Does everybody
know who the appropriate commander is once the
investigation is complete?

CHAIR JONES: No.

REP. HOLTZMAN: Well, if it's not
an issue or whatever, then just -- I withdraw
the comment. But it was just something that
--

LT.COL GREEN: Well, and I think,
Ms. Holtzman, that's what the whole next
section goes to. I think the discussion on
the investigation is more of a generalized --
when an investigation is completed, it goes to
an appropriate military commander, and that is
not defined. But then specific to sexual
assault, the initial disposition authority, by
DoD policy, is defined as the special court-martial convening authority, as you mentioned.

So I think --

REP. HOLTZMAN: So it goes to the special court-martial convening authority first.

LTCOL GREEN: For sexual assault.

REP. HOLTZMAN: So he or she looks at it, and then what happens? But they can't -- then it has to go to general court-martial convening authority, isn't that right?

LTCOL GREEN: No, ma'am. The initial disposition authority has the authority to initiate action or take no action. It would go to the general court-martial convening authority either by chain of command policy or if referred after an Article 32 investigation, once charges are proffered and it's at that stage.

REP. HOLTZMAN: I see. So it goes to two separate convening commanders.

LTCOL GREEN: Well, it would go
REP. HOLTZMAN: It goes first to the special military -- special convening authority and then if the prosecution -- if the charges are sustained, and then it goes to the general convening authority?

LTCOL GREEN: For referral, yes, ma'am.

BG TURNER: This is Colonel Turner. But it is up to the special court-martial convening authority to decide whether or not to forward those charges, although at least for the Air Force our Secretary issued a memo in June of '13 directing the special court-martial convening authority to let the GCMCAs know about that, so they could independently withhold if the case isn't formally forwarded.

CHAIR JONES: I'm sorry. Colonel Turner, they could withhold, but they have to forward? Did I miss something?

BG TURNER: No, ma'am. It's up to
the special court-martial convening authority
if, after looking at his evidence and talking
to his JAG, if he wants to forward the case to
the GCM with the recommendation that it be
referred to trial or choose to look at the
evidence and say no, I'm not going to do that,
and in that kind of case it would be up to the
GCM to decide whether or not he wants to pull
it up on his own, since it hasn't been
formally forwarded to him.

CHAIR JONES: I see. And what are
the other branches doing about that?

(No audible response.)

CHAIR JONES: You don't know?

Okay.

COL HAM: Well, there's -- I'm
trying to think if it's in the NDAA. I think
it is. Any report of a sexual assault has to
go to the first general officer in command, so
they know about every one from the initiation
of the report. And you've learned about --
you learned about other entities of the sexual
assault review boards that are in place at
every installation, where they're meeting
monthly on the incidents more from a victim
services point of view.

But the installation commander or,
you know, general officer are on those sexual
assault review boards, so I think that answers
your question. But they are required to know.
The first general officer in command is
required to know.

CHAIR JONES: I hate to do this,
but could I just take you back to page 5, the
last sentence again? We're talking about
investigations being completed, and then we --
and I'm assuming in sexual assaults. We're
not talking about just any investigation.
Correct?

COL HAM: Right. Well, except at
the beginning of the paragraph, Judge Jones.

CHAIR JONES: Right.

COL HAM: So I think --

CHAIR JONES: Right. Then it says
the case is provided to the appropriate
military commander. Don't we know that the
appropriate military commander is the special
court-martial convening authority on sexual
assaults? Or am I missing something, which is
quite possible.

LTCOL GREEN: Judge Jones, you are
correct. I think -- and this is good. I
think our intent was to talk about the
appropriate commander being the commander of
the accused, but let us -- I think there's --
we need to clarify that. So we will fix that
so that it talks about the initial disposition
authority for the accused.

CHAIR JONES: Okay. Well, that
would help me. That would be great.

All right. Now, in thinking about
that, I missed I think some of the other
discussion. Were there any other problems
that -- with that particular section? Or are
we now into disposition authority, D, on page
6?
(No audible response.)

Okay. That runs through page 6 and 7.

PROF. HILLMAN: Judge Jones, this is Beth.

CHAIR JONES: Yes, Professor.

PROF. HILLMAN: I have a question about the unfounding description. This is on page 6, this -- in draft under paragraph D. I just wondered why we described the founding decision in the Army and then not in the other services.

CHAIR JONES: Yes, I don't know. I have that underlined myself because we do have the Army definition, which is a probable cause determination. I don't know. Do we know, is it very different? Is it just nuanced in the other services? Kyle?

LTCOL GREEN: No. Judge Jones, the Army is the only Service to use the term "founding." And the Army is the only Service that -- in which the MCIO can unfound an
investigation. In the other Services, it is required to be unfounded by the commander. So there is a discrepancy, and I believe CSS is -- we have talked at length with them about this. There is definitely a disconnect among policies and practices among the four Services.

PROF. HILLMAN: Kyle, this is Beth. We are actually going to make a recommendation about that from CSS. But here, I actually can tell now -- I can see you actually -- you buried that in the -- and this is really well-written. This is not a critique of how you've written it, but you just buried it where you wrote that the other investigative services, on the top of page 7, provide investigations without any legal conclusions or qualitative opinion on the evidence elicited.

Maybe just add at the end of there, "unlike the Army's process" or flag at the beginning of the section, "only the Army
does this," because it just mixes up -- we can't quite --

LTCOL GREEN: It's confusing.

Thank you.

CHAIR JONES: Anything else on Section D?

REP. HOLTZMAN: Yes. Just a few.

What does it mean on the top of page 7 that the commanders are required to provide MCIO written disposition data prior to closure of a criminal investigation? What does that mean?

COL HAM: Ma'am, it's -- I'm trying to think of the best way to put it. The commander actually has to --

GEN HAM: This is Carter Ham.

Let me jump in here. There is -- whenever there is a founded allegation by the criminal investigation, it is as in the Army. Then, the commander is required, by Army policy, to respond to the criminal investigation organization how he or she has disposed of
that case, whether it's a court-martial, whether they took no action, administrative action, whatever it is, but there is a requirement to report back and say, "I got your report that this allegation was founded, and here is what I did about it."

REP. HOLTZMAN: But that's not what this says -- provide the MCIO written disposition data. Data is not -- I don't know what disposition data means -- prior to the closure of a criminal investigation. Is a criminal investigation closed when it is sent to the commander, either for -- closed because it's not founded or closed because they founded it, so to speak? I don't know. I'm just troubled by -- I don't understand what this means.

LTCOL GREEN: Right. And, Ms. Holtzman, the data is actually the word used in the instructions, so --

REP. HOLTZMAN: Oh, well that's great.
(Laughter.)

LTCOL GREEN: -- highlight a point, and so we will -- we'll find a better way to describe that. But no, the investigation remains open until receipt of the commander's disposition.

REP. HOLTZMAN: Okay. Well, so -- all right. So the MCIO can't close the case until they have heard -- and that is across all the Services -- until they've heard from the commander that the case has been -- what his or her decision is?

LTCOL GREEN: That's correct.

REP. HOLTZMAN: All Services.

LTCOL GREEN: That's correct.

Yes, ma'am.

REP. HOLTZMAN: Okay. And I guess -- I don't want to hold you up. I have some other -- I just had some other questions where I was confused. I can give you the language and maybe, you know, you could take a look at it.
CHAIR JONES: Are you sure? It's fine if you want to do it now.

REP. HOLTZMAN: Not really.

CHAIR JONES: Do you want to wait?

Okay. Okay. Then we'll go to E, unless there are some other -- there's another discussion, any other discussion in D?

(No audible response.)

Okay. Then we're in Other Commander Responsibilities, and it runs through pages 7 and 8.

PROF. HILLMAN: Judge Jones, this is Beth.

CHAIR JONES: Go ahead.

PROF. HILLMAN: I would just -- as I mentioned before, I feel like that unlawful command influence piece deserves greater play in this draft about the role of the commander, as a risk to the commander's effectiveness throughout this process. And the way that we've set it up, it gets -- you know, we mention Article 37 in the last paragraph here.
So I'd just recommend that we -- we make a larger point in saying the commander's ability to -- to act in this realm is affected by the possibility of unlawfully influencing the process.

CHAIR JONES: Yes. I actually made that note in -- we can go over here that we should say more about unlawful command influence. And so I agree with you that we need to say more. Do you -- do you want to send in some suggested language? And then we'll --

LTCOL GREEN: Judge Jones, this is Kyle again. And again, this is our fault or just the nature of the drafting process. We have a section on UCI and the commander's responsibility in military justice cases. I mean, it's more of an evolution. Section IV, which you all will get today, it more goes into the case history and the treatment of this judicially. So it may or not, Professor Hillman, answer your question. But we may
want to look at that just once the sections are integrated.

CHAIR JONES: Yes. And, actually, I didn't think of the fact that we needed to say more about it until I sort of finished reading Section VI. But, okay, we should take a look at the other section we haven't gotten yet, although Beth, if you want to send in some language, I'd still appreciate that for Section III. Okay?

PROF. HILLMAN: Okay.

BG TURNER: Judge Jones, this is Colonel Turner.

CHAIR JONES: Yes.

BG TURNER: I completely agree that if we are going to introduce it here, although we will expand it more later, we want this at least to be a fully accurate summary. And so like Professor Hillman is talking one part of that equation. The other part is that lots of people can commit unlawful command influence, not just the commander, and so
there ought to be some recognition of that.

      CHAIR JONES:  I agree.

      COL HAM:  And that is in the other section, but we can maybe both refer to it and mention it here as well.

      CHAIR JONES:  Okay, great. So I guess we're -- unless there's anything further on this --

      REP. HOLTZMAN:  I have a couple of points on page 8.

      CHAIR JONES:  Certainly.

      REP. HOLTZMAN:  Here again, I mean, this is my ignorance of this -- of the military system in general. But line 4 refers to the first flag officer in the chain of command. I mean, what is that? I mean, I'm sure it's in something written, but I don't know what it means. So maybe you could explain that in English.

      And the other thing, too, is that commanders also -- the second sentence is a very important sentence, but we just sort of
leave it there, which is to deal with potential peer retaliation. We never discuss how they do that. Or maybe it is going to be in some other part of this report. If so, perhaps we should reference that.

CHAIR JONES: Where are you? On page 8?

REP. HOLTZMAN: First paragraph, the last sentence.

CHAIR JONES: Okay.

REP. HOLTZMAN: "Have personnel responsibilities which require them to assess and eliminate potential peer retaliation." I mean, that's a big subject. Are we just going to leave it out? I mean, do we deal with it, Kyle, or --

LTCOL GREEN: Well, I think, ma'am, we'll have a section -- I mean, some of this will be discussed in the prevention section, but I think you're -- we can certainly expand -- at least expand on what we're talking about here, and maybe make
references to those and --

REP. HOLTZMAN: Yes. At least
just refer to where else it's, you know, being discussed. All right.

And then, again, a language point,
further down in the next paragraph, "alleged -- this should not -- and should not discuss alleged misconduct with the subject." What are we talking about with regard to a subject? Is that the accused? Is that -- who is that? This is new terminology that we're using, and so I just want to be sure that someone understands what we're talking about here.

LTCOL GREEN: Okay. No, we are talking about an accused or -- I mean, again, using the terminology used within Article 31 and case rights for that. But we will -- I think what you're saying is to try to make that consistent with terminology we are --

REP. HOLTZMAN: Well, what I'm trying to say is that we don't need to use the military jargon if there is other language
that people generally understand. I mean, this is not a report just for military people. This is a report going to the Congress -- I don't know how many of them have served in the military -- and the President. And we know he didn't. Or the Secretary of Defense; he did, so he'll understand it, but others won't.

Wait a minute. How does -- okay. Wait. Oh yes, "Commander must ensure that the accused is not punished in any way prior to trial in violation of Article 13." How does this jibe with the -- his power or her power to incarcerate the accused prior to trial or to reassign the accused prior to trial? I mean, those are powers that the commander has. How does that fit in?

COL HAM: Yes, ma'am. I don't know --

REP. HOLTZMAN: I'm not looking for an answer. I'm just saying, how do we address this?

COL HAM: Got it.
REP. HOLTZMAN: Okay. And I guess we haven't talked about plea bargaining anywhere here or administrative disposition. So I assume that is going to be somewhere else?

LTCOL GREEN: In the next section, yes, ma'am.

REP. HOLTZMAN: Okay. And I thought also that in the last -- "Cases of sexual assault posed a particular concern for undue or unlawful command influence," and do we need some examples there? I don't know.

CHAIR JONES: I thought we were going to expand on this in another --

REP. HOLTZMAN: Okay. Well, we -- okay, fine.

CHAIR JONES: I think we can do that.

REP. HOLTZMAN: Okay. I'm finished with page 8.

CHAIR JONES: Okay. Anything else before we go to page 9, Findings and
Recommendations?

(No audible response.)

All right. There are five findings here. The first is, "Criticism of the military justice system often confuses the term 'commander' with the person authorized to convene courts-martial for serious violations of the UCMJ. These are not the same thing."

Are there any -- is there any discussion about that, suggested language changes, that or actually we could just take them one at a time. But for the first one, any issues?

LTCOL GREEN: And Judge Jones, all five of these are pulled over from your initial assessment.

CHAIR JONES: Right. I know. I recognize them, but --

PROF. HILLMAN: Judge Jones, this is Beth. That doesn't seem like a finding to me so much, but maybe I'm misunderstanding. So I just -- it's just -- the point that -- and there are no recommendations in this
particular part, so these are -- in terms of
the most important things for us to say, I
guess that's not at the top of my list, so --
but I guess we want to try to -- the text
above clarifies that, and we've spent some
time on it.

    Maybe this is just an attempt to
highlight that, but it -- I see the findings
as supporting recommendations that we are
going to make, so the recommendations are
based on it, so the findings sort of
disconnected from that are a little -- I don't
know. I guess I just don't know. There is a
huge number of things we could conclude as a
result of the -- all of the work that is
reported in the document above, but I -- this
one doesn't strike me as the most important
one.

    CHAIR JONES: Okay. Well, let's
go through these and see if there are any
issues with any of them. And I think what
you're pointing out is that if there is going
to be a final report here, and a lot of integration, it is going to have to get done. Any other general comments with respect to these findings?

(No audible response.)

All right. Then the second one, any issues with respect to that? It begins "Under current law and practice," talks about the authority to refer sexual assault allegations.

(No audible response.)

All right. The third one is, "Sexual assault victims currently have numerous channels outside the chain of command." And we talked a little bit about this in the context of the report. And I think we talked about particularly the notion about the alternative reporting channels are well and broadly publicized throughout the military.

Liz, did you have a comment?

REP. HOLTZMAN: Yes, I don't --
just going to the point about, in the second sentence there. "They are not required to report to anyone in their organization." What does that mean, "in their organization"? Is that an understood -- is that a generally used term? Is that -- I don't know what that --

CHAIR JONES: Yes. It seems to me there has to be a better one than that.

COL HAM: "In their military organization" or --

REP. HOLTZMAN: "In their military organization," does that mean their military unit, is that -- I'm sure you can figure out the words.

And, you know, going to Beth's point earlier, you know, the finding doesn't in any way allude to the possibility of confusion or the existence of some confusion. I don't know whether we want to do that.

CHAIR JONES: Well, we may want to -- we may want to add that more can be done, which I think is an important --
REP. HOLTZMAN: Right.

CHAIR JONES: And so let's rework a little bit the third finding, based on our conversation earlier. And I don't know, is it enough to say they are not required to report to anyone in their chain of command? Because I don't know what "organization" specifically means either.

REP. HOLTZMAN: I think they are going to change it to "military unit" or something like that.

CHAIR JONES: Okay. Let's -- we have two things at least, then, to rework in the third finding.

The fourth one is -- I'm sorry. Did I cut somebody off?

(No audible response.)

Fourth finding is about the assaults. "Assault allegations have to be referred to the MCIOs," that they are independent of the chain of command. No commander can refuse to forward an allegation.
I agree with that finding. I'm not sure we specifically say -- do we specifically say that in the sections that we have just gone -- in the section we have just gone through? I mean, I can go back and double-check my own memory. I didn't think it was quite that sharp.

(No audible response.)

All right. Well, apparently, everyone else read it, so I'm okay. Or I'm not okay.

And the last finding is, "Under current law and practice, the authority to resolve sexual assault allegations is limited to senior commanders who must receive advice from judge advocates before determining appropriate resolution."

REP. HOLTZMAN: My only -- this is Liz Holtzman again. My only concern about this is that there is very little in the text about the judge advocate and the advice. I mean, I know it's an important finding, but,
I mean, have we sufficiently spelled out that point in the text? Or do we do it somewhere else?

CHAIR JONES: I think this is sort of the same problem we have had earlier, which is that there is a lot more about the relationship of the judge advocate and the commander in another section. So --

REP. HOLTZMAN: Maybe the finding doesn't belong here.

CHAIR JONES: It might not. I'm right about that, Kyle, right? I think I read a lot more in the other section that we are going to be talking about today.

LTCOL GREEN: That's correct. And I mean, obviously the SJA's advice is in the next section on military justice process. So yes, ma'am.

REP. HOLTZMAN: I just raise the issue.

LTCOL GREEN: Sure. Yes, ma'am.

And as we sort of see this -- and, again, this
is up to your all's conclusion and what you
want to do, but if we separate out the
findings and recommendations, they are not
necessarily going to be chapter by chapter,
but more one overall section, and it may make
a little bit more flow sense at that point,
ma'am.

CHAIR JONES: Yes. No, I think
it's definitely going to because we don't know
-- we really don't know where they fit, I
think at this point. This last one is a very
good example of that.

All right. Should we head on,
then, to Section VI?

BG TURNER: Judge Jones, this is
Colonel Turner here.

CHAIR JONES: Yes, Colonel.

BG TURNER: Just as to that
finding, after the words "to senior
commanders," perhaps we should put in the
clause "who have been designated as convening
authorities," and then continue with the rest
of the sentence.

CHAIR JONES: Excellent point.

Got it.

COL HAM: Did any of the Subcommittee members have any additional findings from this section?

LTCOL GREEN: Or recommendations.

COL HAM: Or recommendations?

PROF. HILLMAN: This is Beth, Colonel Ham. I think we should say something about unlawful command influence here. I know it's in Part IV, which focuses on the military justice piece, but this is actually the part, similar to the climate part, that is sort of the larger frame of the commander's responsibility.

And unlawful command influence is cognizable within the military justice system that you are going to talk about in Part IV, but it affects the commander's ability to be effective outside of the confines of that -- the military justice process.
So I think we should make a finding about unlawful command influence is relevant and it's distinctive. I mean, this is -- we're identifying what's distinctive about this whole process and problem in the armed forces, and I think the command influence issue with the convening authority and all other persons who can engage in unlawful command influence potentially is a part of that playing field that we should just highlight in the findings.

CHAIR JONES: Beth, why don't you send us a proposed finding? Because I think you were going to send us some text for that section, where we can put more in about unlawful command influence.

PROF. HILLMAN: Okay.

CHAIR JONES: And again, I'm not sure where these findings are all going to end up in terms of the overall set of findings and recommendations in the final report.

All right. We are on Section VI,
Perspectives on the Military Justice Authority of Commanders. This is 28 pages. I think the best thing to do is, first, to ask are there any general comments or can we just proceed page by page?

(No audible response.)

Okay. On page 1, then, Judicial Deference to Commander Authority, and it's pretty much a recap of Supreme Court cases.

PROF. HILLMAN: Judge Jones, this is Beth. This is not -- this is an interpretation of the case law that I don't entirely agree with. So I -- but I'm not -- if this is what everyone else agrees with, then it's fine. So, but I don't view the case law in quite this way. So it's -- but to -- anyway, so this -- sort of the -- anyway, so I -- likewise, I'm not sure that I share the perspective of the majority of the Subcommittee on these issues, so I don't need to belabor that. But I'll just point that out.
CHAIR JONES: Well, I'll be honest with you, I haven't gone back and actually read all of the text of these cases and then compared it with the commentary here, which I'd be willing to do.

Liz, was that you?

REP. HOLTZMAN: Yes. Well, I wasn't really sure about the relevance of this whole part. I would very much like to understand what your different take is. I don't know that this reflects -- it certainly doesn't reflect my understanding because I haven't read these cases.

PROF. HILLMAN: This is Beth. I just -- I don't see the degree of deference to the military in quite the way -- so the central doctrine that is the theme here is the degree of judicial deference to the military, and then that plays out here in the -- whether or not commanders are interfered with in their military justice role by -- or whether the military justice system is left untouched by
the Supreme Court.

And I see it as more a sine wave in some ways, and then a lot more deference under first Justice Rehnquist, then-Chief Justice Rehnquist, that has shaped this, but that it was quite different in the early years of the UCMJ, and that O'Callahan, the case that is set out here, is not really the total outlier, nor do I think, as this section concludes, that it is just a coincidence that all of these cases, or most of these cases, are about sexual assault.

I think the fact that all of these cases, or most of these cases, are about domestic violence and sexual assault just confirms that this has long been a problem in the armed forces and that these issues are -- these issues are difficult for the military justice system to grapple with in terms of jurisdiction as well as in terms of services, victims services, et cetera.

So I -- this section doesn't --
there is difference of opinions, of course, among, you know, those who view the lines and discuss how to interpret them. But just for me, this isn't cognizant.

MG ALTENBURG: I think there is -- this is Altenburg. I think there are several Supreme Court cases, other than the ones that you mentioned, about sexual assault that are even stronger in reinforcing -- I wouldn't call it the deference, which is an acknowledgement that the system is sophisticated and has matured.

One of the first ones is Parker v. Levy, '74, which is huge in terms of deference to the UCMJ and the way the military justice system is run because it involves what are called the general articles. And the other are several murder cases in the late '80s and '90s, capital murder cases, that went all the way to the Supreme Court, and there were nine-zero opinions affirming the military justice system for handling capital cases.
And I think that's, in a way, far more -- those cases are far more significant than the cases that are mentioned about sexual assault as far as any -- again, I don't know if the right term is deference to military justice, but certainly the courts have recognized that the system works.

PROF. HILLMAN: This is Beth. General Altenburg, you're right about all of those other cases. These are the cases about service connection, where it's like, you know, capital cases and, you know, the general articles cases are about the constitutional principles, whether it's -- you know, the general articles are void for vagueness or whether, as you say, the system is protective of due process in a way that it gets deference from the civilian courts to operate on its own in some respects.

So, but these cases are about service connection, and those are sexual assault cases.
CHAIR JONES: Well maybe, you know, Beth, I -- I'm not comfortable signing off on this without actually, you know, reading the cases. And I think maybe we should think more about, you know, how important this section is in terms of relevance, maybe background, and maybe it needs to be shortened or removed.

So I would like to shelve it for the moment, unless people feel strongly about discussing it further now. I'm not prepared to do that because honestly, I have to really take a closer look at it.

(No audible response.)

Okay. So we move to B, Recent studies of commander authority under the UCMJ. And that actually, the text begins on page 4.

PROF. HILLMAN: Judge Jones, this is Beth again.

CHAIR JONES: Yes.

PROF. HILLMAN: The first sentence, which is -- the second sentence,
which describes the review of the Cox
Commission, I know that it's a quotation from
one of my friends and colleagues, Vic Hansen,
who wrote about the Cox Commission, calling it
a bottom-up review. But as the reporter for
the Cox Commission, I disagree with that
description of what we did. So I think we
could polish that.

CHAIR JONES: I'm going to make
that --

REP HOLTZMAN: So why don't you
just take the word out and just say, just
"undertook a review"?

PROF. HILLMAN: That's fine. So
it's just -- it was very -- we had no funding,
and we did the best we could. But at that --
that celebrates the extent of its review, and
it makes it much bigger than what it was.

CHAIR JONES: I defer to you,
Professor. I think we should take "about a
month" out then.

Anything further on page 4? Let
me just look. Okay. Is everybody with me?

What about page 5? At the bottom of page 5, we leave the commentary about the U.S. Commission on Civil Rights and move to Defense Advisory Committee on Women, which is basically, again, reporting on their conclusions, their deliberations, recommendations, into page 6. Any issues with any of that?

REP. HOLTZMAN: No, but I just have a question on page 5, the first full paragraph, the last sentence. "As hard as they might try not to, the officer will almost inevitably consider conflicts that arise above and below their rank in the chain of command."

What are the conflicts that we're talking about here? It seems like a very -- I don't understand the point.

CHAIR JONES: Well, it is a quote from a commissioner, so I don't know --

REP. HOLTZMAN: Well, I understand that, but --
CHAIR JONES: Yes, right. I guess
I --

REP. HOLTZMAN: I don't understand
the --

(Simultaneous speaking.)

CHAIR JONES: -- we'll have to let
our imaginations run wild on what they are.
I don't know what he was referring to. I can
imagine that, you know, below is the notion of
possibly knowing either the accused or the
victim, and above, you know --

REP. HOLTZMAN: Well, if that's
what they're talking about, then --

CHAIR JONES: Right.

REP. HOLTZMAN: -- they can
clarify that. We don't need a quote. I don't
know what this is designed to -- what point
this is designed to make.

CHAIR JONES: Well, then, maybe
what I would ask the Staff to do is go back
and read it and see if we can put it in
context. Go back to the source here. Fair
enough, Kyle?

LTCOL GREEN: We can do that.

Yes, ma'am.

CHAIR JONES: Okay. Okay. What other points in this section, page 5, page 6?

BG TURNER: Judge Jones, Colonel Turner.

CHAIR JONES: Yes, Colonel.

BG TURNER: So if we move to page 6, I just wondered about a structural matter.

CHAIR JONES: Okay.

BG TURNER: We are, in Section C and Section D, asking the reader to evaluate and hear essentially the summary of our evidence over a number of points, as opposed to integrating the two sections, C and D, so that you'd have, for example, as an alternative structure, victim reporting and then the response -- reprisal, retribution, and then the response; expectations of victims and survivors, and so forth, as opposed to the current structure which asks the reader to
retain quite a range of discussion points, and
then hear the countervailing point separately.

CHAIR JONES: What does everybody
else think about that? Hello?

PROF. HILLMAN: Judge Jones, this
is Beth.

CHAIR JONES: Yes.

PROF. HILLMAN: I don't have a
strong feeling about that. I think that this
does read like -- as Colonel Turner just said,
like a summary of a lot of material there --
you know, a lot of the arguments, and it sets
them out. But I don't have strong feelings.

Colonel Turner, you think it would
make it clear, or you just find this sort of
clunky? I mean, it's lengthy, but I didn't
find it all that hard to follow. You found it
tough to follow?

BG TURNER: Only in that, you
know, we are so immersed in this, I think we
can go through, because we've heard so many of
the arguments so many times, but for the
c Civilianship it seems to me that if we
2 take it in smaller chunks it will be more
3 accessible to them.

   CHAIR JONES: Go ahead, Beth and
4 Liz.

   PROF. HILLMAN: This is Beth. I
7 would just say, I don't -- my sense of the
8 greater civilian readership is probably maybe
9 more limited than what some of you think who
10 will read this, but the framing of it I think
11 will really matter. So I'd especially -- the
12 executive summary or the -- you know, the top
13 piece of this certainly should do that. I
14 think you're absolutely right. But here --
15 I'm a little less concerned here.
16
   I do wonder, too, if you want
17 those findings -- you know, the way that the
18 report is structured, the findings and
19 recommendations are in Part IX, you know, of
20 the overall report. So they are just -- they
21 are coming at the end.
22
   I don't know if we could highlight
those or if maybe you're already planning the summary -- the executive summary will incorporate all of those findings I guess, with the abstract at the top. So I think that will do a lot of what the -- you know, trying to break it down -- that we need to do.

CHAIR JONES: Yes. I think I agree. I mean, it's true, I have no idea what the civilian readership -- what difficulties they might have, but I think it made sense to me.

And I think the executive summary fashions in that way, with issue and then the arguments for changes, and then arguments against changes, makes a lot of sense and should alert every reader.

So I don't think I would recommend redoing the section. What does everybody else think? I guess we're okay with this, then, the way it is.

MS. FROST: Judge Jones, this is Joye Frost. I apologize, but it's a really
busy day for me and I'm going to have to
depart the phone call at this point, but thank
you.

CHAIR JONES: Okay. Thank you, Joye.

REP. HOLTZMAN: Judge Jones, I
have to say the same thing. This is Liz
Holtzman. I apologize very much. I just
would like to make some overall general
points.

CHAIR JONES: Yes.

VADM HOUCK: Congresswoman
Holtzman, just a second. This is Jim. I also
have a 10:30 meeting I've got to bail out for
now. Sorry for the interruption.

CHAIR JONES: I think we're going
to have to end this at 10:30. So that's what
I had scheduled too, so --

REP. HOLTZMAN: Sorry.

CHAIR JONES: No. No one else
should have to apologize.

And then I think what we need to
do is get everyone's availability for another
conference. I'm sorry. Kyle, are you still
there?

LTCOL GREEN: Yes, Judge Jones.

We're still here.

CHAIR JONES: You're not leaving

for a meeting?

(Laughter.)

LTCOL GREEN: No. I think we

blocked the time. But we can do that, ma'am.

We'll send out -- and then anybody that's

left, if we have some written comments that we
can take, we can certainly circulate that if

that's more efficient for everybody, to
circulate comments among each other.

CHAIR JONES: Okay. Well, we're -

- we haven't closed the meeting yet, have we?

LTCOL GREEN: No ma'am, we

haven't.

CHAIR JONES: Okay. I think it

would be a good idea to try to rewrite the

section that discusses the Supreme Court
cases. I don't -- and maybe there is a way to
narrow it down. And again, since I haven't
read them, I don't know that I agree or
disagree with what is there now. But maybe we
can make an effort at that.

And the other thing is, I am
concerned about this cross-referencing, and
also the -- I guess we have to keep in mind
that these are readouts of Subcommittee
reports that we are talking about for the
whole Panel.

But since they do contain
statements in them where -- and data where
there may be more information in other
Subcommittee reports, we have to figure out a
way to cross-reference and maybe, as we did in
that one case, generalize and say, you know,
the statistics are comparable or -- as opposed
to getting into more detail, if we have a much
more comprehensive review and comparative
system. So that's the best example I can
think of at the moment, but I'm afraid there
are going to be other examples. And we -- I
think we need to give some thought to how to
fix this or handle it.

Okay. I don't have much else to
say, then, if anything. You're going to try
to either -- well, both solicit written
comments, Kyle, but also set up another
telephone availability.

LT COL GREEN: Yes, ma'am.

CHAIR JONES: So that we can
continue deliberations. Okay.

LT COL GREEN: Yes, ma'am.

CHAIR JONES: Thanks, everybody,
very much. Are you going to close the
meeting, Bill?

MR. SPRANCE: Yes, ma'am, I will.

CHAIR JONES: Okay.

MR. SPRANCE: This is Bill
Sprance, and the Subcommittee meeting is now
closed.

(Whereupon, at 10:31 a.m., the
Subcommittee meeting was concluded.)
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In the matter of: Response Systems to Adult Sexual Assault Crimes Panel Meeting

Before: US DOD

Date: 04-08-14

Place: Washington, DC

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