UNITED STATES DEPARTMENT OF DEFENSE

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RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL

VICTIM SERVICES SUBCOMMITTEE

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CONFERENCE CALL

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FRIDAY
APRIL 18, 2014
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The Subcommittee met by teleconference at 10:00 a.m. Eastern Daylight Time, Mai Fernandez, Chair, presiding.

PRESENT:

MAI FERNANDEZ, Chair
DEAN MICHELLE J. ANDERSON
BILL CASSARA
MEG GARVIN
THE HONORABLE ELIZABETH HOLTZMAN
THE HONORABLE CHRISTEL MARQUARDT
BG (Ret.) COLLEEN McGUIRE
DEAN LISA SCHENCK

ALSO PRESENT:

CANDACE HUNSTIGER, Designated Federal Official
COL PATRICIA HAM, Staff Director
CDR SHERRY KING, Supervising Attorney
JULIE CARSON, Staff Attorney
KRISTIN McGRORY, Staff Attorney
PROCEEDINGS

(10:07 a.m.)

LT COL HUNSTIGER: Please go ahead, and welcome to the meeting. The meeting is now open for debate and deliberations.

CHAIR FERNANDEZ: I'd like to say that I -- hi, Liz.

REP. HOLTZMAN: Hi.

CHAIR FERNANDEZ: We are starting with the framing the issue, the two-page document.

REP. HOLTZMAN: Right. Okay.

CHAIR FERNANDEZ: I'd like to say I like it. I mean, it's short, it's concise, it's to the point. This is more of what I thought it should look like. But I don't know if this is too short for others, but, in my opinion, it's what the section should start with. But why don't we hear from others on it.

JUDGE MARQUARDT: This is
Christel. I think it was the appropriate
length. I had a couple of questions about a
couple of words in this. At the end of the
second paragraph where you say it's a
significant national problem, I mean, we are
dealing with the military. I just don't think
that we should make that global statement,
that it's a national problem.

CDR KING: Ma'am, I think that's
in here because it -- we cut out part of it
where we talked about the White House Council
on Sexual Assault and the White House report
on it, and the statements the President has
made that it's a national problem, not just a
military problem. So I think that's why we
had it in. I don't know if we want to keep it
in or not.

DEAN ANDERSON: Maybe drop in a
footnote to that end. Commander King, this is
Michelle Anderson.

CDR KING: Okay. That would work
probably. That's the trouble with cutting out
too much, you know --

REP. HOLTZMAN: Yes. This is Liz Holtzman. I have a problem altogether with that paragraph. I mean, first of all, I mean, I know that a lot of effort has been made, but I don't know that we should be in a mode of complimenting the Defense Department. That's really not what we have been asked to do. We have been asked to evaluate what it's doing.

And I think it sets -- to me it sets entirely the wrong tone. It's just not -- it sounds like we are kowtowing to them, and it's just not professional in my view.

That's just my --

COL HAM: I wrote that, ma'am.

This is Colonel Ham.

REP. HOLTZMAN: Okay. Well, I --

Colonel, I don't mean "professional" in the sense that it's not well written. I don't mean it that way. I just think that we shouldn't be viewed as kind of being subservient in some way to the Defense
Department here. We're an independent panel, and we don't need to be complimenting them or not complimenting them. We need to be analyzing and stating -- setting forth our analysis. That's just my view about it. So --

CHAIR FERNANDEZ: Liz, this is Mai. I would agree with that. I think that if we take out the wording that is, the same features and military structure and hierarchy fosters --

REP. HOLTZMAN: Yes. And it also suggests in the first paragraph, and this has been, you know, that a diligent effort has been going on for a very long time. That's not really the case. I mean, so it just leaves to me the wrong impression.

If you want to say that the Defense Department has recently undertaken a major effort, including a constellation of initiatives, to deal with the threat, you know, that's fine. And that's -- you know,
that would be fine. I have no real problem if
you just rephrase the first sentence. But I
don't know about the rest of the paragraph.
To me, that's what -- it just smacks of just
the wrong tone for us.

Colonel Ham, I don't mean in any
way to minimize brilliance -- your brilliance
and knowledge, ability, and professionalism.
And if I have in any way disparaged that, or
that of any other member on this Committee, I
don't mean that. I apologize.

COL HAM: Not taken that way.

Ma'am, I guess -- and I don't -- I don't love
the paragraph either, but I was trying to
figure out a way to transition to, you know,
there's all these programs, but they are only
effective when they are accessed. Would you
still like that point made somehow? I thought
that would

(Simultaneous Speaking.)

CHAIR FERNANDEZ: I'm sorry.

Colonel Ham. I actually agree with that part,
but there has been -- and I think Liz is phrasing that there has been a constellation of programs, but together over the last whenever, but they can only be effective as long as people access them, and then you put -- and the programs themselves need to be effective also.

So just because you put together -- I guess the point I'm making is just because you put together a program doesn't mean that program is particularly effective. So it's accessing them, and also making sure that they are top quality programs.

COL HAM: Okay.

CHAIR FERNANDEZ: The point that you make there. You've created all of these programs, but we may need to make sure that the programs are effective, and we need to make sure that victims access them.

COL HAM: And the second question, ma'am -- this is Colonel Ham again -- or -- for all of the subcommittee -- or Mai and
Representative Holtzman, I guess, is, do you have an overall -- since this is the introduction, do you have an overall assessment -- good, bad, middling -- of the programs that are in existence? Is that appropriate for an introduction? Or is that something that you just don't want to comment on?

BG McGuire: This is Colleen. I think the jury is out. I think the first sentence where it says, you know, while it's a comprehensive constellation of initiatives, I think that we haven't had the time to really collect or really watch the programs mature to a level of effectiveness. Not to say it's too early; I think we have to continue to work our analysis. But mine would be -- I couldn't say they are bad or good, I'd say it's still, the jury is out. It's too early.

Judge Marquardt: This is Christel. I agree with that, but a lot of these initiatives weren't even brought into
effect until this last year. And, I mean, I don't think -- I agree with Representative Holtzman that we shouldn't be giving accolades to the Department of Defense when many years went by without doing anything.

REP. HOLTZMAN: I mean, I don't mind saying -- yes, I don't mind acknowledging that, you know, a series of initiatives have been taken in the last several years, both by the Pentagon and by Congress, to address, in particular, the -- I mean, to address the larger problem of sexual assault, and to focus on the victims.

Some of these programs are so new that they -- that there has not been enough time to evaluate them fully. If you want to say that, that's okay. But that's, in essence, where I am about it, too. I mean, I think it's a good thing that they focused on victims, and we have a whole host of new programs. Everything from small things like certifying the SARCs, to the special victims'
counsel, lots of programs.

But, you know, how well are they working? Are they fully implemented? I mean, these are things we are not yet in a position to say anything about, I think. I don't know. Maybe we can say some things about some of them.

CHAIR FERNANDEZ: I think that that's the statement. This is Mai. I agree with Colleen. The jury is out, and I think that we need to say exactly that. There has been a lot of programs initiated, but we still need time for them to mature, and we need time for them to be evaluated, and that needs to be an ongoing process. That can be, up front, part of our frame.

REP. HOLTZMAN: And I think we could say we also agree with the focus -- you know, the focus on victims' services is critical. I mean, if you wanted to say that.

CHAIR FERNANDEZ: Yes, I agree.

REP. HOLTZMAN: Something like
that. That would be -- that's all I wanted to
say about that.

DEAN ANDERSON: I do think -- this
is Michelle. I do think that we might be able
to say that there has been a substantial
effort in the past year and a half, two years,
to develop a constellation of programs that
best attend to the needs of the victims. And
the programs are new. There are some that
look quite promising. I mean, I think we all
agree that the special victims' counsel is a
very promising development and is widely
received well, by those who have been surveyed
who are victims.

So I think there are kind of
moderate statements of encouragement that we
can put in there, but I wouldn't, but I agree
that kind of more sweeping, positive
statements probably should be -- might be best
tempered by the notion that the jury is out
and we need more time to assess these others
in detail.
DEAN SCHENCK: This is Lisa. I agree with what Michelle just said. I think that's -- we know that the programs are in place. We just can't assess how valuable they are going to be, and one of our recommendations is that DoD assess overlap in benefits of their programs.

CHAIR FERNANDEZ: Does the staff have enough to go on now -- this is Mai -- in order to make the edits?

COL HAM: Yes. This is Colonel Ham. Yes.

CHAIR FERNANDEZ: Okay. Then, let's move on. Sherry, what's our next document?

CDR KING: Since Meg isn't on the phone, and we've kind of -- could transition into it, can we start talking about victims services for a while?

CHAIR FERNANDEZ: Sure.

CDR KING: So that -- that's something new, and that kind of follows
framing the issue -- your discussion right now
in framing the issue to talk about what
recommendations you want in here.

    CHAIR FERNANDEZ: I think that's fine.

    DEAN ANDERSON: So this was the one -- this is Michelle. This was the one
where there were two versions sent out and --

    CDR KING: Yes.

    DEAN ANDERSON: Okay. So the one
that you want to review was sent out at 6:30
last night.

    CDR KING: Yes. 9:30. 9:30 my time.

    DEAN ANDERSON: Got it. Got it.

    REP. HOLTZMAN: My copies don't
have the time on them, so is there some other
way that we could identify -- I just printed
them out, those versions, so -- which is why,
I'm sorry, I was a little late getting onto
the phone. But can you -- is there some way
of easily telling what the difference between
the two versions you sent this morning?

CDR KING: Ma'am, I don't think there is -- there is not any difference in the first several of them. So I can go print out the old version, and then we can tell you the --

REP. HOLTZMAN: Didn't you send out two versions this morning?

CDR KING: No. Last night.

REP. HOLTZMAN: Oh. Was it last night?

CDR KING: Last night at 9:30.

REP. HOLTZMAN: Oh, okay. So last night at 9:30. I'm sorry. Right. So you -- there's no easy way of telling which of these two, you know --

COL HAM: If you look at page 9 or 10, you know, one of them goes -- you know, has Finding 19. I don't think the first document went that far.

They're not numbered properly, but that's fine. Yeah. I've got it. I think I have the one that -- yes. Okay. Thanks. Thank you very much. Sorry for the interruption.

CDR KING: So the first recommendations are the ones that we had done earlier, and that you had already went over once, and a few people sent comments, which we tried to include on the side, if you want to try to finalize these at all.

CHAIR FERNANDEZ: Can you say that again, Sherry? This is Mai.

CDR KING: The first, let's see, eight or -- eight recommendations, I think, at least are ones that we had sent out before and we discussed in the meeting last week. And then people sent some more comments, so I included the comments on the side, or edits on the side. And you already discussed these at least once, so maybe we can try to finalize these as much as possible now, so that we can, you know, try to include them in the report.
And then the last ones are just based on your discussions.

JUDGE MARQUARDT: Okay. I am willing to go out on a limb here and think that the verb tense that Lisa pointed out has been changed correctly.

COL HAM: Nothing has been changed, but pointed out. It has just been -- this version doesn't show the --

CDR KING: Right. It doesn't show -- we took out some of the track changes, because there are so many edits that it's confusing. So, yes, it shows that we changed it based on her edits.

CHAIR FERNANDEZ: So can we talk about recommendations -- finding on Recommendation 2? Because Recommendation 1 seems, and 1A, seem fairly non-controversial, unless I am mistaken.

CDR KING: So maybe the way we could do it is if everybody agrees the finding on Recommendation 1 is okay, absent perhaps
some editorial changes, grammatical changes. Then, we could just -- you could just indicate that and then we can move on, so that we know what we can include in the report.

REP. HOLTZMAN: Can I just -- I just wanted to add one thing on Recommendation 1, which is that what we ask the Secretary of Defense is to decide which ones should be funded. I would ask the Secretary of Defense to evaluate the programs and decide which ones work first, because they may decide not to fund programs that have nothing to do with whether they work or not.

They may just decide it's not high priority or they may decide, you know, they don't like the name of it. I don't know what reason they could use. So I would just like to put -- to determine which programs should continue to be funded at a sustainment level. I don't know. Maybe it's clear from that. Maybe I'm just nitpicking. But I just wanted to make sure that --
CHAIR FERNANDEZ: This is Mai. What's the phrasing? So it's Recommendation 1 you're looking at that says --

REP. HOLTZMAN: You know, which programs work and should -- you know, work and should be continued. Just put in which programs are effective. Oh, well, maybe you don't need that. I was just -- I was just wondering whether they could just -- because it just suggests to him, or her someday, that they should be -- which should be funded at a sustainment level and which shouldn't.

JUDGE MARQUARDT: Well, it requires measuring the effectiveness.

REP. HOLTZMAN: Right. But it doesn't mean that you translate that into the funding. That's the problem. There's kind of like a logical synapse there.

CHAIR FERNANDEZ: Does the Secretary direct SAPRO to evaluate and assess all programs and initiatives and measure their effectiveness? This is Mai. So you're
directing SAPRO to evaluate and assess.

REP. HOLTZMAN: Right.

CHAIR FERNANDEZ: And then to figure out which ones they should continue funding.

REP. HOLTZMAN: Well, we don't -- do we need to go to that point?

CHAIR FERNANDEZ: Yes, I think so.

REP. HOLTZMAN: What about which are continued as opposed to which are -- you know, which should be continued, expanded, altered? I mean, it shouldn't be just that we want them -- first of all, yes. Just, maybe, I'll think of some wording and try to send it to you.

JUDGE MARQUARDT: I have a suggestion on Recommendation 1A where it says, the Secretary of Defense directs the military services to fully implement. I would insert the word to. It's Christel Marquardt.

CHAIR FERNANDEZ: Okay. Any other changes to Recommendations 1 or 1A? Can we go
on to Recommendation Number 2?

(No response.)

Okay. So noted. No more changes to 1 or 1A. We're on Recommendation 2. And this is Mai.

DEAN ANDERSON: This is Michelle. On Recommendation 2, it is not clear -- I've got a, first, global concern with the word anecdote and anecdotal. It appears to be used every time there is a criticism of the military, and I think that that's not the way to do it.

The word testimony is used when things are respectful toward the military, and the word anecdotal information or anecdotes is used when it's critical of the military. So I think the word anecdotal needs to come out of the document globally. And when something is testimonial, it needs to be referred to as direct testimony. And where it's non-testimonial because it is charts or graphs or other information, it needs to be referred
to that way, because the word anecdote is not used as implicit disparagement throughout the document. So I would request that the staff do a global search for the word anecdote or anecdotal.

The second thing I want to say is that it's not clear to me why this finding and recommendation is confused on the inadvertent disclosure by SARCs and SAPR/VAs, as opposed to just any number of other people. We did get a lot -- share a lot of testimony about a number of instances of inadvertent disclosures to commanders of confidential information.

And I guess I'm wondering -- and I apologize to the staff if I am not seeing something globally that you have addressed elsewhere, but this finding appears to focus on only the disclosures by SARCs and SAPR/VAs when it -- my recollection of this testimony is that there is -- there was disclosures by many others, and there is no reason for us to limit the policy to the inadvertent
disclosures by SARC's and SAPR/VAs.

COL HAM: Ma'am, this is Colonel Ham. Two things. We should -- on the wording, actually we should remove the word testimony. You didn't receive any testimony. I don't know what to call it. We had these discussions way early on, because nobody is under oath, so we try to say, heard from, or, were told, or something like that. Unless you disagree.

DEAN ANDERSON: If the word testimony has a technical meaning, I completely agree. I'm not looking for it to up the value of the comments. I'm simply not looking to disparage the value of the comments by what I -- I just -- the word anecdotal sounds like it's isolated and cannot be trusted, when it is the information we have and it is the information we receive. And so I wouldn't want to use -- and it doesn't feel like it's used consistently throughout. When commanders testify, we don't talk about it a
anecdotal information.

We tend to do that in the document when we're talking about victims, and I think that's -- that's my concern is just that we treat whatever the information we receive by oral non-testimony, you know, oral -- I don't know what it is. But we should treat it consistently throughout the document.

REP. HOLTZMAN: This is Liz Holtzman. I agree with Michelle Anderson. I also -- Colonel Ham, what about this as a suggestion? If we use the word testify, the first time we use it, we just put a footnote in and say the word testify, you know, does not mean that the -- refers to statements made before -- in a formal manner to the committee, subcommittee, none of the statements were taken under oath. So that just makes it clear that that's what we're talking about, and then we can just use it in a non-technical sense.

JUDGE MARQUARDT: This is Christel. I have a --
CHAIR FERNANDEZ: Can't we just say we interviewed them? I mean, basically, these were all interviews.

JUDGE MARQUARDT: This is Christel. I just think you could put in there that the subcommittee members were told of instances.

COL HAM: Okay. Then, the second thing, ma'am, the current policy is that disclosures by -- it focuses on when SAPRs and VAs and health care personnel take restricted reports. That they can take restricted reports, and right now the policy is that if there is an inadvertent disclosure to anyone other than a commander or law enforcement, it remains restricted. It is only if there is a disclosure, improper, inadvertent, to a commander or law enforcement that it does not remain restricted.

So that, I believe, is why it's written that way. But if a commander finds out evidence from a witness, for example, you
know, the commander doesn't know there is a
restricted report, but a witness to the
offense comes and tells him, it's not a
restricted report anymore, if he ever knew
that it was.

DEAN ANDERSON: Right. I guess I
-- this is Michelle. I thought that we were
trying to turn that issue over in our heads in
a number of ways, the last time we dialogued
about this. And I thought that we had come to
a position that regardless of who
inadvertently discloses to the command, or to
military police, that the victim would still
be able to file a restricted report.

That was my understanding of where
we landed, but perhaps I was mistaken. Do
other people have a sense that that's where we
landed?

(No response.)

In other words, I certainly see,
Colonel Ham, that this recommendation tracks
very tightly the current -- the status quo
position of the SARC's and the SAPR/VAs inadvertent disclosures to two different types of people. But I thought that our dialogue was more about inadvertent and accidental disclosure generally, including to command and military officers, that the victim would still be to make a restricted report after that inadvertent or mistaken disclosure.

COL HAM: Does anybody have a recollection? I don't know if we have the transcript yet. This is Colonel Ham. There was discussion that legislation -- you would have to direct Congress to change the legislation.

DEAN ANDERSON: Right.

CHAIR FERNANDEZ: This is Mai. I think it was -- we didn't care who the inadvertent disclosure came from. We just wanted to make sure that, if it was inadvertent, that there would be a way to not have to go unrestricted. Isn't that correct, folks?
DEAN ANDERSON: Yes, that was my understanding.

DEAN SCHENCK: Yes. This is Lisa. I agree with what Mai just said.

CHAIR FERNANDEZ: Okay. So is the language changed so that it just doesn't -- it is not limiting the SARCs and VAs, but it's anybody who makes an inadvertent disclosure?

COL HAM: This is Colonel Ham. Who would those people be, who are inadvertent -- I don't -- I'm trying to figure it out. Who would be inadvertently disclosing things?

DEAN SCHENCK: This is Lisa. Perhaps a roommate discloses to the first sergeant, perhaps the victim tells the first sergeant, or a squad leader immediately upon the occurrence, but then decides to go restricted.

DEAN ANDERSON: Yes, I agree with that. I agree with -- this is Michelle. I agree with that analysis.

COL HAM: So do you want to
include this? What if it's a witness? What is the subcommittee's recommendation if a witness informs the commander?

REP. HOLTZMAN: Then that's fine, in my view.

COL HAM: It's still up to the victim?

REP. HOLTZMAN: It's up to the victim whether or not to cooperate, but the investigation can commence.

DEAN ANDERSON: Yes.

CDR KING: So that's -- we discussed, or I think we separated them out and discussed the confidant, you know, the reporting to a roommate or friend in Finding and Recommendation 5. So maybe you want to look at that also, at the same time as we are discussing this. This is Sherry.

DEAN ANDERSON: I guess the problem -- this is Michelle. The problem I have with Recommendation 5 is that it has the same exception as I -- does Recommendation 5
-- let's see.

Yes, I guess one of my problems --
this is Michelle. One of my concerns is that
we heard not -- unsworn testimony that the
victims and the people they confide in tell
any number of people, their command, the next
person they see in line, their best friend,
whatever.

And once the information is out,
the victims repeatedly indicated that they
feel they had lost control of the narrative,
and lost control, ultimately, of whether or
not to make a restricted or unrestricted
report.

And our impulse as a committee,
after reflecting on this, was to vest more
authority in the victim's ability to make a
restricted or an unrestricted report,
regardless of who received the information,
regardless of whether or not the information
was someone in the chain of command or law
enforcement.
I think the victim still has a
decision, and I think the victim should have
the authority to make a restricted report,
even if, for instance, what if someone who is
in the military police is assaulted?
Everybody who then is told, who is a friend or
whatever, is also a military policy officer,
so it can't be that law enforcement provides
a global exception. That seems too broad.

But I also think that, in general,
the victim should still maintain the authority
about whether or not to file a restricted or
an unrestricted report, regardless of who is
told, if the telling is inadvertent, or a
mistake, or improper in some way.

So that is my concern with the
findings and recommendations on 2 and 5, is
that they leave in an absolute exemption for
telling someone in military law enforcement,
or for someone in the chain of command, when
we heard that recruits are often told, when
something comes up, you tell the commanding
person, you tell the commanding officer, you
tell the person in your chain of command.

And at times that happens
inadvertently and mistakenly. And that can't
wrest from the victim the authority to make a
restricted complaint, and to try to gain some
control over that information again.

So I would rather see
recommendations that were broader and that
allowed the victim to continue to maintain the
ability to make a restricted report,
regardless of who is told, and regardless of
who does the telling, if the telling is
improper or inadvertent.

COL HAM: Okay. So should the
recommendation be that Congress repeal its
recently enacted legislation requiring
commanders to report to MCIOs, regardless of
where they get the information, and a
secondary recommendation for the Secretary of
Defense to enact policy or to amend current
policy? I'm thinking.
That the recommendations are structured around changing current policy. So you want to amend current policy to permit the victim to choose a restricted report, choose to file a restricted report. I'm trying to think of the wording. Regardless of -- of prior disclosure of the information to the command or law enforcement. I'm trying to figure out how to put it.

DEAN ANDERSON: I mean, yes, I think that seems along the route of where we landed last time. I thought we talked about these issues as requiring that kind of amendment of policy. And I think that it really is a question of whether or not the victim decides, or has an opportunity to try to make a decision, about his or her own report and the scope of that report.

And I think it just goes to the sense of lack of control that victims have when something happens to them, and the fear that surrounds that, losing that information.
REP. HOLTZMAN: This is Liz Holtzman. I guess I have -- I don't -- you know, I have missed some of the parts of the session, so I don't recall fully the conversation about that. I completely agree with the idea that if a SARC somehow or a medical officer sees the commander, and says, oh, did you know about blah, blah, blah, and even if it's not inadvertent, even if it's intentional, if the person is not authorized to make that statement, or if it's an inadvertent statement, and the commander finds out about it or the police find out about it, okay.

But I'm not really sure that -- but, you know, the problem is that this really cuts against something that is -- I mean, I think the military has been very concerned about, and that the victims groups have been very concerned about, which is that nothing gets put under the rug. And if the commander can withhold from reporting an incident for
any reason, then -- to the investigative agencies, then we've created -- have we created a real problem?

DEAN ANDERSON: Well, right. I mean, I think the question -- you've hit something on really -- you've hit on something really important, Liz, and that is that it seems to me that the historical problem, as I understand it, was that command could decide yea or nay, whether to send something forward for investigation, and that vested the authority about the -- in the decision-making with the command.

And what Congress said is the command now has -- is forced to move forward with an investigation every time they receive this information, which is one response to the historical problem. One response to the historical problem is to say, we force commands to act. And that is a reasonable response.

The problem is that it divests the
authority with the victim to make a decision
about the scope of the report that he or she
wishes to make. And what we're trying to say
is, yes, every time the victim comes forward
with an unrestricted report, command must act.
But command should not act when the disclosure
has been inadvertent or improper. And the
command has to know whether or not the victim
-- what the victim's decision is.

We're trying to re-vest the victim
with the decision about whether or not to go
forward. Historically, the victim didn't have
that decision. Congress -- go ahead.

JUDGE MARQUARDT: This is
Christel. I wondered if you could just have
the commander consult with the victim before
proceeding?

COL HAM: You know, Christel, I
was thinking that, too. But the problem there
is probably the last person -- the victim, if
they want to go restricted, the last person
that they want to talk to is the commander.
JUDGE MARQUARDT: Well, it doesn't seem like there is any way around that, then.

COL HAM: I think you--

DEAN ANDERSON: That's not true. Let me just brainstorm. This is Michelle. I think we could have, the victim is consulting with a SARC or a victim advocate, and the commander could consult with that victim advocate. In other words, when information came to the command, the command could make sure that the victim had special victims' counsel or an advocate of some kind, and then the command could consult with the advocate about whether or not this is a restricted or an unrestricted report.

I completely agree that the last person the victim wants to speak with on some occasions is the commander. But I think we have put into place advocates who can represent the victim in a range of circumstances, and this would be a good one.

REP. HOLTZMAN: This is Liz
Holtzman. I'm still a little bit troubled about this, because I really -- I don't know that we've broken down the old method here, I mean, where stuff was pushed under the rug, swept under the rug. And I don't know that -- I don't know how many instances there are of inadvertent disclosure, and so then to create this bureaucratic problem for every report of sexual assault, I mean, I don't know if it's -- I just have to think about what the consequences of that would be. I'm not a hundred percent persuaded that that's, you know --

CHAIR FERNANDEZ: This is Mai. Can we go through a possible scenario of how this would breakdown? Okay. Woman X gets assaulted on a Saturday night. She tells her roommate that she has been assaulted on Sunday morning. Monday morning, that roommate somehow says something to her direct report, and that commander feels like it needs to be -- well, what happens there? And I need Lisa,
or somebody in the military, to tell me who
that -- who that roommate is possibly
reporting to, and what the consequences are
there.

DEAN SCHENCK: This is Lisa. I'm
not familiar with all of the service
regulations. But I believe that if -- because
of the training that is given to these
individuals, if they know of a sexual assault,
although there is no duty to report, they're
going to feel like they have to report, just
by virtue of the training they are given.
There is no duty to report, but then they are
scared because the training -- they are going
to report.

I know this is a huge conundrum
because the roommates or friends may be
reporting that to squad leaders. Squad
leaders in turn report that to the platoon
leaders, and the platoon leaders, then go
report to the company commander, and so the
commander is going to have to take action.
CHAIR FERNANDEZ: But that -- at that point when the information gets to the commander?

DEAN SCHENCK: But when the information gets to the commander, according to the statutory provisions, the commander has got to inform the MCIOs, as I understand it, because the commander is forbidden from investigating the matter himself or herself.

CHAIR FERNANDEZ: Okay. Let's say you go to the MCIO, but then all of a sudden somebody says, wait a second. She wanted this to go" --

REP. HOLTZMAN: How would anybody know that?

DEAN SCHENCK: Well, then they go back -- this is Lisa. What I see happening from the scenario Mai set forth, is that the MCIOs, poof, they are going to investigate. What is the first thing they do? They're going to go to the victim. They're going to go to the victim. They're going to ask her to
make a statement. She is going to be freaked out and say, I didn't want to report it. I was just confiding in my roommate. I don't know what I want to do.

Either the MCIOs are going to know the victim -- I believe they will probably go to the SARC first, and then the SARC -- to see the victims. But, nevertheless, the process begins. And in order to investigate, who is the first person you have to get a statement from? Well, the victim. And so therein lies the conundrum. The victim -- you come to me, I'm the victim, and you're telling me I've got to make a statement? All I did was tell my roommate. I was crying and she asked me why I was crying, which is a scenario.

The commander, however, has a duty to investigate. The MCIOs, when a crime is reported to them, has a duty to investigate, and now, specifically, sexual assault. The commanders cannot investigate. Only the MCIOs can investigate.
CHAIR FERNANDEZ: Why can't we get the law, then, to say at that moment when the MCIO shows up, the victim can say, no, I don't want to move forward. And then the investigation stops.

COL HAM: Ma'am, they can -- they do have the choice to --

CHAIR FERNANDEZ: I know.

COL HAM: -- not cooperate, but right now the MCIO is supposed to tell them that the investigation could go forward regardless of their cooperation. There is no stop of the investigation, no mandatory stop of an investigation right now.

CHAIR FERNANDEZ: That's what I'm saying -- at the moment where this should be able to go back to being restricted. That's --

CDR KING: But it wasn't restricted yet. She hadn't made a report at all.

COL HAM: Commander King, her
point is she hasn't made a report at all.
There was no restricted or unrestricted report.

    CDR KING:  Right.

    COL HAM:  She hadn't made a report at all, so, I mean, it all just -- I mean, it sort of -- that's the moment that we need to be able to empower the victim to say, stop.

    BG McGUIRE:  But we also have an obligation, though, to the safety and security -- this is Colleen. There is an obligation to the safety and security of that installation, and the commanders have got to take what action is necessary to ensure the security and safety of that population.

    And if they are aware that a rape took place -- they don't have a victim necessarily, they just have a -- they are going to be looking for the perpetrator, not so much the victim. I mean, common sense prevails that if we think a crime took place, we are going to take action on it, in order to
protect others.

REP. HOLTZMAN: Yes. I mean, that is -- I think you have pinpointed exactly what the conundrum is here and in -- you know, clearly, if the victim is not cooperating, that could have a major impact on an investigation. Might or might not. There might be enough other evidence, if they proceed, it took place in some, you know, off of a bar or some other -- hotel room, there might be other witnesses, then they go ahead.

COL HAM: Right.

REP. HOLTZMAN: So, I mean, the victim is going to lose some control anyway. It's not a situation where you can -- if you have a witness who comes forward, the victim can still say no, but they can't stop the investigation, no matter what kind of report they file.

COL HAM: Right.

REP. HOLTZMAN: So it may just not be solvable.
DEAN ANDERSON: Why don't -- it does seem to me that there -- this is Michelle. There will be instances in which investigations go forward despite the fact that the victim does not cooperate. There is no question about that.

But I guess the question is forcing the disclosure of the victim's statement and the victim's report when the victim does not wish to have an unrestricted report is the problem we're working on. It does seem to me that there is an opportunity for the victim to consult with the many -- one of the many advocates that we have developed in place, whether it's the special victims counsel -- I think that would be a terrific time for the victim to be able to say, "Wait a second. I don't know. I was just crying."

Exactly the way that Lisa Schenck talked about. "I was just crying. I just told my roommate. She asked me why I was crying. I told her what happened. And now
it's totally out of my control." It's like that could be a moment when the victim gets an opportunity to consult with counsel or a victim advocate and to make a decision about whether or not he or she wishes to make a restricted or an unrestricted report.

Now, again, there will be instances in which the victim loses the ability to control the information, and a report -- I'm sorry, and an investigation goes forward without -- despite the fact that there is a restricted report.

But we don't have to control the entire universe of every investigation in order to vest some additional authority in the victims to make a decision about whether or not to make a restricted or an unrestricted report at that time.

It does seem to me to be different if the victim decides to make a restricted report and then some third party comes forward and says, "I'd like to report having seen a
rape, having been a witness to rape." Well, that's a different circumstance. You don't have a statement from -- what you have is an investigation goes forward without the cooperation of the victim.

But we don't have to solve every potential situation in order to vest additional control in the victim. In many instances in which there are improper or inadvertent disclosures, that -- and there is no third party, and there is no reason to move forward, but for the victim's statement and the victim's decision to move forward with an unrestricted report, we can vest authority in the victim at that moment in time in order to make a decision.

So while I agree that there are concerns about instances in which the victim does not have control, I think there are a sufficient number of times in which we want to grant the victim control, and that that control would be a meaningful opportunity, if
the victim has an opportunity to consult with
counsel or with the victim advocate.

CHAIR FERNANDEZ: Michelle, why
don't you give -- why don't you give us a try
at some language.

DEAN ANDERSON: Sure.

REP. HOLTZMAN: This is Liz
Holtzman. Can I ask a question? Would you --
is there a right to the special victims'
counsel before a report is filed?

COL HAM: You are recommending
that -- it is not clear whether there is or
isn't. I think most of the services put it in
their policy, so you are recommending in the
special victim counsel portion that that be
made clear, that they do have the right to
consult before making any report.

CDR KING: And, ma'am, this is
Sherry. I was looking through some of our
notes, and one of the places in Texas, one of
the counsel told us that a large part of their
work comes -- talking to victims and advising
them about whether they want to file a
restricted or unrestricted report. So I know
they've discussed about -- whether it's in the
policy or not.

DEAN ANDERSON: I'll work on some
language and try to send it, if that would be
helpful to the staff, or if the staff feels
like it has enough, I'm fine with awaiting the
next version. But I also want to be helpful.

CDR KING: It would be very
helpful if you sent something I think for us.

DEAN ANDERSON: I will. I will.
Thank you.

CDR KING: Thank you.
(Pause.)
Can we maybe move on to Finding
and Recommendation 3? This one involves the
new recruits, and the policy right now that
they are supposed to receive some initial
training or at least -- I guess it's really
posters or whatever, and your recommendation
to expand that information at the MEP station
before they actually get recruited on to active duty.

DEAN ANDERSON: This is Michelle. I think this is unobjectionable and pretty straightforward in terms of responsive to the -- our position last time.

CDR KING: Anybody else?

JUDGE MARQUARDT: This is Christel. I think it's fine.

CDR KING: Okay. And I think Mai had to get off the phone for a few minutes. Is that right? Mai, are you here?

(No response.)

She had told me she had to leave for a few minutes to take care of some things. Okay. So is everybody okay with Number 3 as it is?

(No response.)

Okay. It sounds like it. If anybody has any objections, please let us know right away by email, if you're not on the phone I guess, or if you don't want to --
DEAN SCHENCK: This is Lisa. I'm fine with that.

CDR KING: Okay. Thank you.

How about Number 4? This is the eight-day report discussion that is -- I think it is really just starting right now where the services send out a report saying what's going on with the victim of unrestricted -- of an unrestricted report as far as services being provided and requested? And your recommendation I believe is that we try to expand that to restricted reports without releasing identity or other information of the victim.

DEAN SCHENCK: And who writes the incident reports?

CDR KING: This is from the commander.

DEAN SCHENCK: But the commander doesn't know about an unrestricted report.

CDR KING: The commander knows about a restricted report, that there was an
incident, but not who it was or the details of it exactly.

DEAN SCHENCK: I see.

CDR KING: I think your recommendation was that the SARC would -- or victim advocate would have to somehow provide the information without providing who it was. So --

DEAN SCHENCK: And why would we want to include the -- it seems like some of these details might reveal more information about the incident than someone who makes a restricted report would like to have revealed. In other words, the time, date, and location may immediately reveal who was on duty where.

CDR KING: Good morning, Meg.

MS. GARVIN: Good morning.

CDR KING: Okay. Right now we were discussing Victims Services, Number 4, I think. Yes.

REP. HOLTZMAN: I mean, I think the purpose of this is very important, which
is to ensure that -- and I agree with the
intention of this -- to ensure -- this is Liz
Holtzman -- that the victim that has filed an
unrestricted report gets the full panoply of
services and someone is checking on that. I
think that that's important.

You know, it may be that some of
this -- not as much information is required,
and that could be easily dealt with in the
recommendations. And it is in the bottom part
of Recommendation 4, "SAPRO should work with
the services to ensure to include" -- I don't
think the wording is great -- "adequate
measures to protect the victim's identity or
other information that could reasonably lead
to the victim's or alleged assailant's
identification." So I think it kind of takes
care of the concern that you properly raised,
Michelle.

(Pause.)

Why are we hedging on this? Why
aren't we just requiring that these reports be
provided for unrestricted -- for restricted reports, as opposed to asking them to review whether it should be done?

COL HAM: So we'll remove the words "determine whether to"?

REP. HOLTZMAN: Yes. That would be my recommendation. I mean, it seems a perfectly reasonable --

DEAN ANDERSON: Yes, I'm --

REP. HOLTZMAN: -- recommendation.

You know, why should anybody have to give it any more thought? The only question is the implementation.

DEAN ANDERSON: I agree with Liz. This is Michelle.

CDR KING: Does anybody have any more objections or any objections to Recommendation 4, or should we move on?

JUDGE MARQUARDT: This is Christel. I agree with the comments that Liz made.

CDR KING: Okay. And you kind of
discussed Number 5. I think that might be included in the issue relating to Number 1, so I don't know if you want to discuss that any more or you want to move on to Number 6. Oh, I'm sorry, relates to Number 2, not Number 1. I think the numbering got off here, but the next one I have is number -- oh, well, maybe I'm missing a page. It's -- Number 6 is RAINN, the Safe Helpline. And I think the recommendation was made to try to clarify -- to clarify the number for the Safe Helpline and to make that -- that you wanted to make that the central point of entry for a hotline number.

DEAN SCHENCK: Yes. This is Lisa. I don't know if everyone remembers, but when we had -- we heard information from people who talked to us indicating that they went through a recording. You know, when they called, it kicked into a "leave a message at the beep." So we decided as a group when we talked about it at that meeting. I can't remember which
one. But we talked about making it like a 911 for military sexual assault, something easily remembered.

COL HAM: This is Colonel Ham.

Anything else on 6, or is everybody okay with that?

REP. HOLTZMAN: I'm okay with -- this is Liz Holtzman. I'm okay with the substance of it. I just -- I'm just questioning the wording of the first bullet point in Recommendation 6, which says that "Set forth clear guidance that DoD Safe Helpline is a single 24/7 crisis hotline for sexual assault counseling, and to connect victims directly." Who is connecting victims to local SARC? Is that the hotline or what? I didn't understand. The wording is a little unclear.

COL HAM: Yes. RAINN connects them to the local SARC while they are still on the line.

REP. HOLTZMAN: Okay. Right. But
that's not clear from how this is written. So
how -- sexual assault counseling and for
connection to local SARCs and other service
providers. Just use the same construction.
Just say this is a hotline for sexual assault
counseling and for connection to local SARCs
and other service providers, and for immediate
connection to local SARCs and other service
providers.

I don't know. It just was not
clear to me who the -- who was connecting to
whom and what, the way it was structured.
Maybe you have a better way of writing than
what I'm suggesting. I don't know. It just
was unclear. I would suggest you review the
language of that. It has nothing to do with
substance.

COL HAM: Yes, ma'am.

With those comments, anything else
on 6, or can the subcommittee -- does the
subcommittee want to move to 7?

MS. GARVIN: This is Meg. Nothing
from me on that.

BG McGuire: This is Colleen. I'm fine.

(Pause.)

COL Ham: Okay. This is Colonel Ham. Anything on 7?

Mai, this is Colonel Ham. I think the subcommittee was about to start on Number 7.

Chair Fernandez: Okay.

COL Ham: Findings on Recommendation 7.

JUDGE MARQUARDT: This is Christel. On the recommendation, the Secretary of Defense direct -- I don't think you need the word "that" -- direct periodic evaluations of training.

DEAN ANDERSON: I guess I'm wondering -- this is Michelle. I'm wondering why we're not -- don't we want them to be uniform? Isn't that the goal of this? So why don't we just direct that they be uniform and
reflect all existing initiatives, programs, and policies, rather than whether the training -- rather than assess whether the training and curriculum is uniform and reflects? Why don't we just direct that it is -- that the training and curriculum are uniform and reflect.

In other words, there are two recommendations under Recommendation 7. One is a periodic evaluation of the training, and second is an assessment as to whether the training and curriculum is uniform. And it seems to me that the second doesn't add much to the first, because the first is the periodic evaluation.

So how about the Recommendation 7B, the periodic evaluation of training provided for services, SARC and VA training -- yes, I think we would need to change the language, but it would be that -- the periodic evaluations of the training to ensure that they -- that the training and curriculum across the services is uniform and reflects.
all existing initiatives, programs, and policies, so that the assessment itself ensures the uniformity and consistency and the up-to-dateness of the initiatives, programs, and policies.

REP. HOLTZMAN: This is Liz Holtzman. Can I ask a question about this? Are we only concerned about uniformity here in the evaluation? Is this a recommendation just designed to get at uniformity?

DEAN ANDERSON: No, it's not. It looks like it's also designed to make sure that the training and curriculum reflects the existing programs and policies, the most up-to-date --

REP. HOLTZMAN: Right. Okay. So that it includes -- right. So uniform and includes all policies. Are we getting at the question of the effectiveness of the training? Is that in a separate recommendation, or should it be in here? Because it could be uniform and it could include everything and
people could go to sleep, or not really learn.

COL HAM: So would you add at the end, Ms. Holtzman, Representative Holtzman, after "policies" -- "and is effective"?

REP. HOLTZMAN: Yes, right. That should be -- the evaluation should be for effectiveness and for uniformity and for -- what would you call it -- breadth or, you know, whether it includes the -- and is up to date and includes all of these programs, initiatives, and so forth. Yes. I'm sure you could add a word to --

COL HAM: And just to remind the subcommittee -- this is Colonel Ham -- I guess two things. DoD SAPRO establishes the training protocols for SARCs and VAs, in fact, for all training in sexual assault across the services to commanders, SARCs, VAs, everybody.

And, secondly, remember -- I don't know if it makes any difference because it is going to come in after your report is issued -- there is an evaluation of training going --
required to go to Congress 120 days from when
the NDAA was passed, which comes out to about
April 25th.

So there -- again, there may be
more information on this coming that the full
panel can use if they have recommendations in
this area.

REP. HOLTZMAN: This is Liz
Holtzman again. May I ask a question about
that? Congress asked for a one-time
evaluation. Aren't we asking for a periodic?

COL HAM: Yes, ma'am. And I'm
sorry I can't recall the -- it was in the
NDAA, and I have a chart of -- there is like
four or five reports required, and this is one
of them. And I don't know if it's single or
-- well, it was three within 120 days. So I
don't know if they are going to -- there was
no other one required by statute. What I
can't recall is if the Secretary of Defense
has already ordered periodic evaluations, and
I believe he has. I can't remember if they
are annual or what. There are already
directed annual evaluations.

REP. HOLTZMAN: So what are we
adding to what is already in either policy or
law?

CDR KING: This is Sherry. I
think this came after a discussion of the one
evaluation that SAPRO had done where they
didn't appear to use any particular standards.
They just kind of wrote a report about what
they saw and the different services were each
evaluated different.

They didn't have any standard
criteria across the services for developing --
for measuring either whether they were
training on the right stuff or how effective
the training was or whether it reflected
current laws.

REP. HOLTZMAN: Okay. So this is
-- this is not going to duplicate -- answer my
question. Is this going to duplicate anything
that is in the law or in policy right now?
And you're telling me no. So that's good. Then I think it's a very important suggestion.

(Simultaneous speaking.)

CHAIR FERNANDEZ: Does the staff have some sort of commentary? This is Mai.

CDR KING: Well, I think the problem is there is like requirements for SAPRO to do the evaluation. But I think you were trying to make the language more specific and to try to make it consistent, not just to require the evaluations, which is already required by law. So I think that is why we were trying to -- I don't know that we did it very well, but we were trying to include something different than just what it says in the law they are required to do.

REP. HOLTZMAN: Okay. Well, then, can you make that clear, that while the law requires A, B, C, you know, that we are concerned that it's not specific enough, and so, therefore, we are suggesting that the evaluations also do X, Y, Z? Because I don't
1 want someone to say, "Well, you know, why are
2 you making this recommendation? It's already
3 in the law. It's already" -- you know, I
4 think we'll make it look as though we know
5 what we're doing.

6 CHAIR FERNANDEZ: Are we clear on
7 Recommendation 7? Can we move on?

8 CDR KING: I think so.

9 CHAIR FERNANDEZ: Let's move on to
10 Recommendation Number 8.

11 (Pause.)

12 The only issue at hand is to
13 remove that sentence regarding the SVCs,
14 correct?

15 CDR KING: I think we tried to --
16 we amended it based on Meg's comment, so that
17 we just added it at the end to mention that
18 it's another program, but not that it should
19 -- we tried to address her comment to say that
20 it's not -- shouldn't be compared against the
21 others, but that they should factor in the new
22 program.
CHAIR FERNANDEZ: Is everyone okay with Meg's recommendation and the staff's edits, so that we could move on to Number 9?

JUDGE MARQUARDT: Well, I wondered if we need to insert in there that they are adequately trained? This is Christel Marquardt. I mean, it's one thing to effectively utilize them, but they have to be trained properly. Or do we cover that in some other place?

CDR KING: I think that's what we were trying to get at in the prior one, in Number 7.

COL HAM: Mai, this is Colonel Ham. I think Ms. Garvin is only available until noon. So it may be advisable to discuss the victim rights -- for us to break from this and take -- go to victims' rights issues while Meg is on the phone. If that is something you want to do?

CHAIR FERNANDEZ: Yes, let's do that.
REP. HOLTZMAN: Mai, just a couple of quick things on Recommendation 8. Just quick. I don't know what "they are properly delineated" refers to, so that could be clarified. And "all" is still necessary? Are you saying that the Secretary should find out whether all the programs are still necessary? I mean, it's not clearly written, so I just would suggest that staff review that language. Otherwise, I'm happy to go on to Meg's area.

COL HAM: Why don't we go on to victims' rights, then?

CHAIR FERNANDEZ: Meg, are you on the line?

MS. GARVIN: Yes, I'm here.

CHAIR FERNANDEZ: Do you want to walk us through this?

MS. GARVIN: I think -- I think the staff incorporated everything I had suggested. I just think that we should just walk through them as we have been.

CHAIR FERNANDEZ: Okay. Okay.
Should we start with Finding 1 in Recommendation 1?

MS. GARVIN: I don't know. I mean, we can explain it to make it clear, the differences, but it looks like it was probably taken care of.

COL HAM: Ma'am, this is Colonel Ham. I think the open question that Ms. Garvin has addressed is in Finding Number 3 and Recommendation Number 3, and that was this issue of standing. Ms. Garvin, can you discuss that, or did you want to discuss that?

MS. GARVIN: Yes. So, yes. Sorry, I was looking -- I was thinking there was more, but, yes, this -- the meat of what I had sent was -- you can see it in -- Colonel Ham is correct -- Recommendation 3, both the finding and actual recommendation.

And Representative Holtzman and I -- this was -- you and I had this conversation the very first time we read the directions to ourselves, right? This is -- we are saying
that they have standing at the trial court level, and the issue is whether they have appellate standing, or whether we are actually saying -- questioning that they have trial level standing.

So the older recommendation said -- is over in the right I think. You know, just -- as a lawyer, I just don't understand why we think someone, if they meet the three-prong standing test, doesn't have standing. So I was making suggestions that we don't imply that they don't have standing.

I know that's a double negative. That we don't imply they lack standing, whatever it is. So that's what I was trying to get at with my edits, and that we focus on -- I'm just dumbfounded at the idea that someone wouldn't have trial level standing if they meet the three-prong test. We will -- okay.

So it's a fact-specific thing at the trial court level, that's the gap in the
law's appellate standing. That to me is the
gap right now.

MS. McGRORY: Ma'am, this is
Kristin on the staff. I think the only issue
as far as looking at how the service courts
are handling it, as well as CAAF -- and it's
in the SVC portion -- is that the services are
very narrowly interpreting the Kastenberg
opinion as far as in their actual policy.

What we're addressing right now --
that the SVCs and the victims have standing as
far as 412 -- or 412, 513, 514. That's what
they are putting out in policy. And in this
report that we just received from them, there
is no indication that they are going to amend
the policy to provide for more standing.

And the difference in the CVRA
that we don't have right now is that specific
trial court language. So that's why --

MS. GARVIN: Right. And what I'm
saying is this -- I think it's faulty law to
apply into that narrow interpretation. And
I'm happy to write a separate letter. But, I mean, you know, it's Law 101. It doesn't say that the -- in our Constitution nowhere does it say the defendant has standing to assert his constitutional fair trial rights in a trial court.

There is no statute, there is no language in the Constitution that says defendant has standing. It comes right out of Marbury v. Madison, that if there is a right afforded you have standing so long as it is ripe, it is redressable, and you complain against the right person. Right?

And CAAF has adopted that three-prong standing. In Kastenberg, they narrowed it to one of the issues presented. And that's an appropriate appellant moment, but I just really have a problem with a committee endorsing an interpretation that just flies in the face of basic law.

COL HAM: Ma'am, this is Colonel Ham. I don't want you to think that that's in
any way what we're suggesting. I think we're just asking if -- if there is any way to make plain what you're saying, or if there is any way to clarify in the current statute what the subcommittee concludes exists already now, just so there is no argument anymore or to state that you don't believe there is any plausible argument, based on the services' interpretation currently and the specific holding of the case law, and the difference -- the CVRA does say that the -- I don't know the exact language.

The CVRA does say that the rights shall be asserted in the district court, and we -- the subcommittee I think -- and then if the district court denies relief, you go to the appellate court. And that is not currently -- because there is no enforcement mechanism currently in the Article 6(b), the military victim rights.

Is there anything you want to say about that? If not, we will drop it. We're
not trying to suggest that it's limited or --
or if you want to clarify that it isn't
limited.

MS. GARVIN: I would like to
clarify that it isn't limited, if the rest of
the committee is okay with that.

JUDGE MARQUARDT: This is
Christel, and I believe that it shouldn't be
limited.

REP. HOLTZMAN: This is Liz
Holtzman. I agree with Meg about this. But
I think that if we are writing it, the finding
right now doesn't say what the problem is that
we are trying to address here. And so maybe
that's -- you know, it would be really helpful
if the finding said, you know, there is --
it's not clear that a victim can raise
enforcement rights at present.

   It is not clear that a victim can
-- has rights to enforce denials or violations
of the -- you know, of victims' rights on
appeal, and then it is not clear, you know,
that their rights in trial court to do whatever are clear. So then the recommendation is that the victims' rights -- this should be -- you know, it should be clear -- the Secretary should make it clear that the victim has a right to protect these rights both in the trial court and on appeal. We don't have to get into how, right?

MS. GARVIN: I agree we don't have to get into how.

REP. HOLTZMAN: Or if you do -- I mean, I don't know that we don't have to, but -- I'll leave that up to you, but I just --

MS. GARVIN: No. I don't think we do have to get into the how. I think the way you just phrased it is good.

COL HAM: Hi, Bill. It's Colonel Ham. We're on Finding 3, and the subcommittee is discussing the standing issue.

MR. CASSARA: Which one of the findings and recommendations?

COL HAM: Of the crime victim
rights portion, and on Finding and
Recommendation 3, the standing issue.

COL HAM: Okay. I've got an
amended victims services, possible findings
and recommendations, and I've got a -- hold on
-- and a victims services, possible findings
and recommendations. Is that the one we're
on?

CDR KING: No. We're on the crime
victim rights. It's the one I sent with the
SVC. I sent it first with the SVC and the
crime --

MR. CASSARA: I've got it. Okay.
And we are on which part now?

COL HAM: Three.

MR. CASSARA: Recommendation 3.
Okay. Sorry for being tardy, folks. I was on
the phone with a prison, and they like to
talk, so -- okay. I'm here.

COL HAM: So, Ms. Garvin -- and
this is Colonel Ham -- I think we got what you
mean, so we should clarify that they can
enforce them in the trial court and the
appellate court. Is that --

MS. GARVIN: Yes.

COL HAM: -- about the -- okay.

REP. HOLTZMAN: You don't even
need to use the word "standing." We can just
say that they have the right to. I mean,
that's -- you don't want to use it. I mean,
you could use it. It's up to you, Meg. I
mean, you're the guru on this.

MS. GARVIN: The reason we use it
-- I hate using it because it does sound too
legalese-y, but I would say not using it
leaves it less than clear for --

REP. HOLTZMAN: Okay. Then, let's
use it.

MS. GARVIN: So I think we should
use it.

REP. HOLTZMAN: That's my view.

COL HAM: Ms. Garvin, did you have
anything else on the crime victims' rights
part? I think all of your edits have been
incorporated and addressed.

MS. GARVIN: Yes, I don't have anything further. You guys addressed everything.

CHAIR FERNANDEZ: So can we go back to victims' services? Well, since we've got Meg on the line, we should probably do the special victims counsel.

Well, I would like to go back to this crime victims' rights, if I could. There were a couple of things that I noticed that probably need some -- they are very minor, but on page 2, Recommendation 1, the second line, "Trial counsel conveyed." It should be plural.

And then on the next page, under Recommendation 2A -- or 2B, the recommended changes.

REP. HOLTZMAN: This is Liz Holtzman. I have a number of comments, Mai. I don't know how you want to proceed on the victims' services subcommittee, crime victims'
rights draft, still. So I'm happy to defer, to wait, to mail them in, whatever you want, or go to -- you know, I just wanted to let you know that I still have comments about it. So if you want to go to the -- to the special victims counsel, that's fine with me. I don't care what order you go in. I just wanted to reserve my rights, my standing.

MS. GARVIN: I didn't have anything in particular in the SVC thing, unless staff corrects my faulty memory, I had sent some --

CHAIR FERNANDEZ: Why don't you go -- I mean, Liz, if there are substantive issues on the -- on victims' rights, then why don't we go ahead and address them?

MS. GARVIN: Yes, let's --

REP. HOLTZMAN: Okay. I thought -- okay. On Recommendation Number 1, I thought I had made this point before, which is I am not satisfied with the language that the trial counsel convey the victims' concerns and
preferences. I thought that what we were
talking about was that the victim be able to
convey his or her preferences directly to the
convening authority and not through the medium
of the trial counsel.

And I thought that I had raised
that point before, but I see that it is not
addressed here. And I don't like this
language, and I object to requiring the victim
to go through the trial counsel to convey
preferences to the convening authority.

DEAN SCHENCK: This is Lisa.
Having worked out in the field, one of the
things that happens with commanders is
everybody wants to give their two cents in
person, and specifically the accused. The
accused wants a moment with the convening
authority.

And so to me allowing one person,
being the victim, a sexual assault victim, not
every victim, a sexual assault victim to have
a session with the convening authority,
interjects potential issues in the process, in
the accused's due process rights.

So just to throw this out again,
in General Sinclair's case, the trial judge
found, even though I wouldn't agree with him,
Judge Pohl determined that it was to meet --
the main influence, the convening authority,
only relied on the victim's preferences in
determining the court-martial disposition.
And that's why I believe we need to do it
through the trial counsel.

REP. HOLTZMAN: Okay. Let me just
-- if I could just respond to that. At a
later point, somewhere in these materials, the
convening authority has the right -- or maybe
it's in another subcommittee -- the convening
authority is given the right to decide whether
to receive the comments from the victim,
either in person or in writing.

So, to me, I don't care how the --
how the information is conveyed to the
convening authority. I just don't think -- it
could be in writing, it could be briefs, it
could be documents, could be email, whatever
the conveying authority specifies, but I don't
think it should go through the trial counsel.

Now, if that is -- you know, if
that changes the whole system, that's another
issue. I hadn't really considered that. But
I don't -- that's just my view about it now.
But if you're telling me that nobody else gets
the right to submit directly -- to submit
materials directly to the commander, then
that's a different story.

DEAN SCHENCK: This is Lisa. I
think you're right. I think you're right,
Liz. I think we could not make it the trial
counsel. We could make it the staff judge
advocate, who is the fair and impartial
advisor of the convening authority. The trial
counsel is not the fair and impartial adviser
of the convening authority.

And the matters could be provided
with the case. And I don't oppose writing
materials at all, but I really need you to
talk out loud for a minute -- and, Patty,
help me here -- in the past, materials
provided to the convening authority of course
should be provided to the accused, in order
that the accused can provide a response.

And on appeal, just looking at it
from an appellate perspective, if the victim
provides information to the convening
authority, of course I would recommend it be
in writing. If it goes through the staff
judge advocate, the staff judge advocate is
going to be able to look at that and determine
whether or not the accused should have an
opportunity to respond. And, therefore, there
would be no due process implications on the
appellate there.

COL HAM: I would say it's --
while it's an open question, it's certainly
not addressed in the manual, as you know, Dean
Schenck. One issue is that a trial counsel or
an SJA is not advising those other than the
general court-martial convening authority.

So, again, the lowest level authority that can address a sexual assault is not the general court-martial convening authority.

So there is no staff judge advocate advising that person. It is a trial counsel. So -- and, again, it differs by services. I think that is generally correct.

So I think maybe there are two issues, and one is the right to be heard on the plea, which is addressed in Recommendation -- I'm sorry, I just saw it. It's Recommendation 2, which is how to be heard on the plea in the military justice system, which is the -- what Representative Holtzman was referring to, that it be in writing or in person or otherwise.

And then this is how to convey the victims' concerns and preferences in kind of all other issues. So I don't know if the subcommittee wants to make the distinctions that are currently made or change it.

REP. HOLTZMAN: This is Liz
Holtzman. My understanding -- maybe I'm just wrong -- but the victim is given a right. And were you talking about the difference between the Crime Victims Act and the military justice system? In the Crime Victims Rights Act, as I understand it, the crime victim has the right to confer with the counsel to the government.

The government for the government -- a prosecutor -- is making the prosecutorial decision whether to bring the case. So the crime victim has the right under the CVRA to talk to the prosecutor before the decision is made whether or not to go forward with the prosecution. I mean, you could do it at subsequent times, but you certainly have the right to do it before.

Before a decision is made to prosecute, the trial counsel is not the one in the military system who is making that decision. The equivalent to the prosecutor is the convening authority. But under this
system, the only one who is -- who is
addressing the convening authority is the
trial counsel, becomes the medium through
which papers are transmitted. Do you know how
the papers are transmitted? Do you know that
they are transmitted with views of the trial
counsel? I mean, it's not a clean situation.

So that's why I'm suggesting that
if you really want an equivalent to the CVRA's
right to consult with the government's lawyer
that we give a direct right, whether it's in
writing or otherwise. I mean, the commander,
you know, can do it anyway, or could direct
that the submission be made to his or her SJA
or court SJA, whatever it is.

But I think that that should --
that that equivalent needs to be created. I'm
not happy, but maybe, Dean Schenk, you could
persuade me otherwise, that being transmitted
by the trial counsel is effective enough.

MR. CASSARA: Well, Liz, let me
respond, and then Dean Schenck may agree or
disagree. Just as in the civilian system, a
defense counsel has the opportunity to go to
a -- you know, using your analogy, as a
defense counsel, I can go to the prosecutor --

REP. HOLTZMAN: Correct.

MR. CASSARA: -- and say, "Hey,
you guys shouldn't be bringing this case."

REP. HOLTZMAN: Correct.

MR. CASSARA: "Here's why. Here
are the reasons for that." Well, under the
military justice system, I don't get to do
that with the convening authority. So I -- if
I wish to approach the command about not
taking a case to trial, or about a plea
bargain or anything else, I have to do it
through the staff judge advocate. It is a
rare and cold day in you-know-where when I get
to go in and personally meet with a convening
authority. I mean, has it happened in my
years of doing this? Yes. Is it the norm?
Overwhelmingly, no.

So when I want to approach the,
you know, "prosecution," and the decisionmaker being the convening authority, I am required to go through the trial counsel, through the staff judge advocate. And I agree with Dean Schenck that we are creating an unbiased system where we give the still alleged victim of a crime more rights over the accused -- you know, the committer. That's not a good word, but the accused of that -- you know, the accuser of that offense.

So that's why I -- you know, whatever -- I don't personally have a horse in the race as to which way we do it, but I think it needs to be evenhanded for both the government and the defense.

REP. HOLTZMAN: Well, but you're telling --

DEAN SCHENCK: Sorry. Go ahead, Liz.

REP. HOLTZMAN: But you're telling me, Bill, that there are occasions when you do approach the commander, the convening
authority.

MR. CASSARA: Well, the convening authority, though, can agree to see anybody that they want to.

REP. HOLTZMAN: Okay.

MR. CASSARA: It's in that written submission to the convening authority, the alleged victim says, "I would like the opportunity to meet with you." Then, the convening authority can do that. I mean, you know, but I'm telling you, in 25 years and under the courts-martial, I can count on maybe three fingers how many times a convening authority has actually agreed to meet with me.

REP. HOLTZMAN: Okay. I'm just -- I appreciate the clarification. You know, I'm not familiar with all the details of how the military justice system --

MR. CASSARA: I don't know anything about --

REP. HOLTZMAN: And so I don't really want to create a system which is
biased. But I guess I misread this in the sense -- and I thought this was the exclusive way of getting to the convening authority -- but I think what you've said is persuasive to me as long as the request can be made through the trial counsel for a meeting or to submit additional papers directly to the convening authority, that's fine.

Have you had -- but my further question is, is there any reason for you or anyone who has experience in this on the committee to believe that the trial counsel is not completely fair in transmitting these materials to the convening authority?

MR. CASSARA: So if your question is, do I think the trial counsel will deliver that material to the convening authority, the answer is 100 percent yes. I agree with Dean Schenck that perhaps the better way to do it is to do what the defense would be required to do, which is to submit it through the staff judge advocate, you know, and have the alleged
victim do the same thing, and then in both instances, if the convening authority wishes to meet with me or with a special victims counsel, prior to making the disposition, that's a call the convening authority can make.

REP. HOLTZMAN: What if we --

MR. CASSARA: General McGuire could tell you that they are very busy people.

COL HAM: This is Colonel Ham. The -- I mean, the trial counsel is not free to decide not to forward something to the convening authority. Since the convening authority is the decisionmaker, if something is supposed to -- if something is submitted to go to him or her, the trial counsel must submit it, you know, through the SJA.

The example is a plea bargain. If a defense counsel submits an offer to plead guilty, and the trial counsel thinks it's ridiculous, they don't get to decide that. It has to go up to the convening authority.
Same with any matter that is addressed to the convening authority for his or her decision.

MS. GARVIN: This is Meg. Because I do think we had discussed this a little bit before to -- my instinct is the same as Liz's. But understanding the system, why aren't we phrasing it as yes to the convening authority, and the sort of same devices and mechanisms as -- why don't we just say that we're on parallel tracks and they have to --

MR. CASSARA: I'm sorry, Meg, could you repeat that? I'm getting a back echo on my end. I don't know if it's on your end or not, but I didn't hear what you said.

MS. GARVIN: Sorry. I'll come --

MR. CASSARA: That's better.

Thank you.

MS. GARVIN: What if instead of, you know -- why don't we just say that the victim's access to the convening authority -- and I don't know the right word to say it --
is -- why don't we say it's the same as the defendant's. And if that's through the trial counsel, it's through trial counsel. If it's through -- if it's through the judge advocate, it's through the judge advocate, whatever it is, but why don't we be explicit to say what we are trying to set up here, what we are recommending is that the victim has the same access as the defendant.

COL HAM: This is Colonel Ham. I'm not sure you want to do that, because there is no right of the accused to confer with the government on any of this stuff.

MS. GARVIN: So, Bill, when you do it, it's just at the mercy of someone?

MR. CASSARA: Absolutely. I mean, if I say that I want to speak to a convening authority before he or she makes a decision on referring a case to trial, that request will be conveyed. I mean, you know, like Colonel Ham said, I mean, the trial counsel is not going to say, "Well, no, we're not even going
to bring that up to the convening authority,"

but --

MS. GARVIN: Okay.

MR. CASSARA: -- the staff judge advocate will walk in and say, "Mr. Cassara wants to meet with you." I recommend you do or don't do it and --

MS. GARVIN: Got it. Okay.

You're right, Colonel Ham, I don't want to say that.

CDR KING: This is Sherry. I just want to point out, there is already in DoD policy, under the VWAP, that the trial counsel is required to take the victim's views and relay them. And so it is already in policy, and so I think we are trying to incorporate that, and that really is consistent.

In the civilian world, defendants don't have a right to necessarily give input before deciding if a prosecutor charges either. They do sometimes, like Bill said, but it's no different. But the victims
typically do have a right to give input before charging, so I think the victim's right is different than the defendant's under this as far as written policy.

MS. GARVIN: Thank you for clarifying. For some reason, I thought when Bill was talking it had been spelled out in the military thinking that it was different than civilian, so I was thinking -- I'm thinking, why not make it identical? But since it's not spelled out that the defense is like the civilians, then that makes sense.

MR. CASSARA: And, Meg, I don't' want to beat the horse, but I think the best analogy is, you know, anybody can write a letter to the convening authority and say, "I want to" --

MS. GARVIN: Got it.

MR. CASSARA: They could be selling magazines or they could be --

MS. GARVIN: Got it.

REP. HOLTZMAN: Okay. Can I just
-- this is Liz Holtzman again. Maybe -- would it be -- how would you feel, Bill or Dean Schenck or Meg, if after regarding case disposition -- the preferences regarding case disposition, including a request to meet with the convening authority? Or do you think that we don't need to add that --

MR. CASSARA: I think that's somewhat redundant. I'm not --

REP. HOLTZMAN: Okay.

MR. CASSARA: I think it's implied.

MS. GARVIN: Yes, I don't think it's necessary.

REP. HOLTZMAN: All right. I'm okay, then. Thanks for the clarification.

MR. CASSARA: I'm happy to help.

Like I said, if I ever have a question about civil rights law, I'll ask you. But, you know, there are a few things in life I'm smart on; this might be the one. So --

CHAIR FERNANDEZ: So, at the end
of the day, where are we, folks? Are we
making a change to what is there or not?

MR. CASSARA: I mean, the only
thing I would throw out -- and, Dean Schenck,
please, you know, pipe in -- is whether we
want to change "trial counsel" to "staff judge
advocate." And I will tell you that the trial
counsel doesn't have much access to a
convening authority either.

COL HAM: This is Colonel Ham,
but, Bill, it depends on the level, right?
You're thinking general court-martial
convening authority.

MR. CASSARA: Well, that's true.
And I would say that I'd hate to be the trial
counsel. It's going to get to the general
court-martial convening authority, if that's
the level we're at. So in that regard, the
language can stay the way it is.

DEAN SCHENCK: This is Lisa. I'm
fine with the language as it -- as it exists,
because the chief of military justice and
trial counsel stack up the record of trial and 
all the matters, and staff judge advocate will 
review it if it goes to -- anything with a --
I would think anything but a summary 
court-martial. And I think at this point 
there were very few special assault cases for 
going to summary courts-martial.

MR. CASSARA: I would say that's
absolutely true.

CHAIR FERNANDEZ: So do we change
it to "staff judge advocate" and that's our 
change here?

MR. CASSARA: No. I think we
decided we're going to leave it the way it is.
Am I correct, or did I mishear?

REP. HOLTZMAN: This is Liz 
Holtzman. I'm for leaving it the way it is.
I'm okay with that.

DEAN SCHENCK: This is Lisa. I'm 
fine with the way it is. And don't forget,
the victims -- special victims' counsel help 
them with those matters, and they are probably
going to be working with trial counsel on all
the cases. Special victims' counsel is not
going to go to the staff judge advocate;
special victims counsel is going to go to the
trial counsel.

CHAIR FERNANDEZ: Okay. Liz, why
don't --

REP. HOLTZMAN: I'm going to leave
the wording stuff out. I just have a point on
page 5, Recommendation Number 6, the second
bullet and the second sentence. We are
talking about -- the recommendation basically,
to refresh everybody's memory, is to have a
system-wide ombudsman, if you will, for
complaints about violations of the CVRA.

And the second point in that
bullet says that the existence of separate
investigation entities within each military
service could potentially lead to confusion
for military investigators, prosecutors, and
other military and civilian employees engaged
in the detection, investigation, and
prosecution of crime.

I'm not sure why that's a problem, because we are not talking about criminal prosecutions here. We are talking about violations of the rights under the CVRA. So I don't know that that sentence even belongs there. Maybe you could just take a look at that. I don't want to waste everybody's time.

It's not -- I'm just looking to see if there are any other --

DEAN SCHENCK: This is Lisa. I agree with Liz. It looks like that is -- it looks -- perhaps it's an additional finding.

REP. HOLTZMAN: Okay.

DEAN SCHENCK: Actually, there are two bullets, right? I mean, I think those two bullets under that one finding relate to the military and the NDAA, and they don't relate to the actual civilian position on the CVRA. So maybe perhaps they are two separate findings as opposed to falling under that.

COL HAM: Does everyone agree with
the recommendation that instead of having an entity in each service it should be one overarching entity in DoD?

DEAN SCHENCK: This is Lisa. I agree with that.

MS. GARVIN: This is Meg. I agree.

MR. CASSARA: Yes. I don't have an issue with that. That's Bill, in case you didn't recognize the one male voice.

(Laughter.)

REP. HOLTZMAN: Yes. This is Liz Holtzman. I don't have any objection.

BG McGUIRE: And this is Colleen. I have none.

DEAN ANDERSON: This is Michelle. I'm fine with it as well.

COL HAM: Are there any other comments, then, on the crime victim rights section? Ms. Garvin, or anyone else?

REP. HOLTZMAN: Yes, I still have -- I still have a few more, but are we taking
out that second part of that second bullet?
Did we agree to do that?

BG McGUIRE: I think we did.

REP. HOLTZMAN: Okay. Fine.

Oh. Let me just quickly go
through the rest. I think the rest are pretty
much wordsmithing issues. I'm not going to
take anyone's time with that. I'll just send
them to the staff.

CHAIR FERNANDEZ: Okay. Thank
you.

Let's move on to Special Victims'
Counsel.

COL HAM: Meg Garvin, are you
still on the line?

MS. GARVIN: I am, yes.

CDR KING: The recommendations are
at the back of that one, just for everybody's
-- to remind everybody.

DEAN SCHENCK: This is Lisa. I
couldn't hear that.

CDR KING: I just said that the
recommendations and findings are at the back, starting on page 29 of this one.

REP. HOLTZMAN: Is that how -- this is Liz Holtzman. Is that how they are going to appear in all of the other sections?

COL HAM: Yes, ma'am. And then there will be an abstract of all the recommendations up front right before -- after the executive summary.

CHAIR FERNANDEZ: I apologize for asking. Can you say what date -- which date this email came on? I just want to make sure I pull up the right version of this.

CDR KING: Yesterday, and it's yesterday's with the victim rights one, and it's dated 18 April.

CHAIR FERNANDEZ: Great. Thank you.

Meg, because I know you need to leave, is there -- are there any things that you need to bring up that you feel like we need to discuss while you're on the phone?
MS. GARVIN:  I'm reviewing real quickly.  I will be late to class.  That's the beauty of being the professor, right?  Shoot, that's in the transcript now, isn't it?  Darn it.

DEAN ANDERSON:  I think we've been over the SVC section before -- this is Michelle -- and I would like to have Meg's input on the new potential findings and recommendations related to the impediments to reporting and some of the things that we talked about -- about two days ago that Meg was not allowed -- was not on the phone call for.

Now, maybe that means --

MS. GARVIN:  Can we just --

DEAN ANDERSON:  -- that dialogue -- pardon?

MS. GARVIN:  Is it possible -- this is Meg.  Is it possible to go back to victims services, I will get off the line, and get my class -- it's evaluation day, so they
have to have a full half-hour to do an
evaluation of me. I can get them started on
that, which I have to be out of the room and
out of the building for anyhow, and then I'll
get back on the line for a half an hour.

CHAIR FERNANDEZ: Damn, Meg, what
do you think you're going to do, try to get --

MS. GARVIN: We're not even
allowed to touch the envelope, so --

CHAIR FERNANDEZ: Okay.

MS. GARVIN: So I'm going to get
off now. I will go get them started on that,
and then I'll come back on the line.

CHAIR FERNANDEZ: Okay.

MS. GARVIN: And I'll be able to
be on the line for half an hour.

CHAIR FERNANDEZ: Okay. Sounds
good.

MR. CASSARA: I'm sure your
evaluation will be wonderful.

MS. GARVIN: Thanks.

COL HAM: Did anyone else have any
comments on the victims counsel portion?

There was a section our legislative analyst
added on page 16, which is a provision in the
Victim Protections Act of 2014, which is
legislation by Senator McCaskill that has
passed the Senate and is pending in the house,
which has a requirement -- an additional
requirement added to what special victims'
counsel must advise their clients about.

DEAN SCHENCK: I'm not sure what
document you're in at the moment.

COL HAM: Ma'am, we're in the
special victims' counsel draft dated 18 April
'14, and we're on page -- I'm asking if there
are any comments all the way throughout, but
I wanted to point out the -- there are a
couple of paragraphs added on page 16 about
legislation currently pending in the House.

DEAN SCHENCK: Thank you.

COL HAM: Basically, in a
nutshell, requires the special victims'
counsel to advise the client of the advantages
and disadvantages of military jurisdiction versus civilian jurisdiction, and their -- the victim's preference must be given "great weight."

The Senate Armed Services Committee asked for the Department of Defense's views on this legislation after it was passed. And we reflected what their position is. You don't have to have that in there. They are not in favor of this provision, basically because the military has no jurisdiction over civilian jurisdictions or no authority over them, and are concerned that this would delay investigations if a victim decided to have the civilian jurisdictions before it and then the civilian jurisdictions declined to go forward at some point in time.

DEAN SCHENCK: Patty, I just want to get clarification. This is Lisa. I want to get clarification on the legislation. So the legislation, as I understand it, is going to require us to take into account the
victim's preference through the special
victims' counsel regarding who takes
jurisdiction over the case.

And that means regarding
jurisdiction over the investigation of the
case, as well as jurisdiction over any
potential trial of the case. So it's a two
fold --

COL HAM: You know, Dean Schenck,
I don't know that it's clear. It's --

DEAN SCHENCK: Okay. This is
Lisa. Let me just clarify for those of the
folks who don't understand how things happen
as far as investigation goes. So in the
military, if there is an offense committed by
an accused, we think it's a military accused,
it occurs off-post -- for example, I had a
rape case in Korea, and it occurred in a
hotel. But it was an American victim.

And we -- the Criminal
Investigations Division from the Army
continued its investigation, even though the
Korean National Police did their investigation. So ours is always ongoing and our investigators work very closely with civilian police forces and -- but sometimes civilian police forces call our guys and say, "Hey, your service member is accused of sexual assault." And they come in. They work very closely together.

And then it comes to the prosecutors. The prosecutors then have conversations regarding who is going to take jurisdiction over the offense. And I hate to say this, but military is very quick with adjudicating cases. And they can just -- over minor sexual assault offenses, because the prosecutors don't want that in the civilian sector.

So I really -- oh, my gosh, I'm worried about this piece of legislation and its impact on how we do this in the military.

So --

CHAIR FERNANDEZ: I guess my
question -- this is Mai. My question is, I mean, if we haven't heard any testimony on this, how are we supposed to -- I mean, we are kind of seeing this for the first time. So how are we even supposed to make a finding or a recommendation on this? I mean, what's our role here?

REP. HOLTZMAN: Sorry?

CHAIR FERNANDEZ: What's our role here?

REP. HOLTZMAN: Well, how do we know that, for example, the military doesn't like this? Have they sent us material, letters, backup?

COL HAM: Yes, ma'am. You should have -- and, I'm sorry, I get confused on which subcommittee gets what. But, again, the Senate Armed Services Committee asked the Department of Defense to comment on this. Otherwise, the Department of Defense does not comment on legislation.

So there was a letter sent to the
Senate Armed Services Committee, which we requested a copy of, we received, and I believe we have sent you. If we haven't, that's our fault. And you are directed in your terms of reference to comment on pending legislation.

There really is nothing -- I don't know that there is anything else on this. The legislation passed without much comment or any on this -- on these provisions.

REP. HOLTZMAN: Well, somebody in the Senate must have had some misgivings about it to have asked the DoD for comment. I mean, if we heard from --

COL HAM: Ms. Garvin, is that you?

(No response.)

Representative Holtzman, you know more about that than I do for sure. All I did is they did request comments. Comments were provided, and we reflected what they are. We don't have another side of this. I don't know --
REP. HOLTZMAN: Who was the proponent? Is this McCaskill's bill?

COL HAM: Yes, ma'am.

REP. HOLTZMAN: Do we have time, for example, to ask for her to send the reason -- you know, for her to provide the backup for this, why she wanted it? And to maybe -- I mean, I know one letter from the Defense Department -- I don't know whether that represents all of the various aspects, but are there ways to get some information from the -- you know, from the criminal investigative -- because we could do some more research on this. I think it could be -- I think this could be a problem.

I mean, I'm glad to hear, Dean Schenck, that there is such good cooperation. I just -- you know, my experience has been that I have never had any experience with military prosecution, but with other prosecutors. And sometimes that can be very -- let's put it -- problematic. And even a
UN-experienced diplomat couldn't handle the issues of sorting out jurisdiction problems.

Also, the delay -- I mean, if you're a prosecutor -- some prosecutors may want to be -- have their police departments completely in control of the investigation in terms of, you know, the forensics and all of that stuff. And I think you rightly point out there could be serious delay issues here.

By the way, this doesn't apply abroad. It only applies in the U.S.

So, I mean, if there has -- my suggestion might be if there was no review of this in the Senate, there were no hearings and they took no evidence, then maybe we could suggest that since there could be some problems here that the Congress defer on adopting this until further examination of the pros and cons being undertaken. Something like that.

CHAIR FERNANDEZ: I like that. I mean, right now we don't have much -- it's
almost impossible for us to comment on this.

REP. HOLTZMAN: Yes. But we can

see some problems.

CHAIR FERNANDEZ: Sure.

REP. HOLTZMAN: And if they

haven't done their homework, then they should.

That's smart. That would be, in essence, the

theme of the recommendation.

MR. CASSARA: I will say, I agree

with Liz completely. There are few things

that I've seen recently which on first blush

gave me a less positive reaction than this.

I think -- you know, my personal position, I

think it is a terrible idea, and I don't think

we should be making an opinion on it until we

find out more information.

REP. HOLTZMAN: Yes. And we can

also say that Congress shouldn't be making the

decision about it without more information.

We could say that, too, if we wanted to. That

would be my recommendation, assuming they

haven't done their homework on it.
COL HAM: They may be asking you to do it for them.

REP. HOLTZMAN: Well, we don't have the time. I mean, how can we do it?

MR. CASSARA: They'd have to pass it before they know what's in it. No, I'm kidding.

(Laughter.)

COL HAM: Ma'am, just --

Representative Holtzman, this is the same bill you discussed in a different subcommittee that required the climate assessments directly after the offense?

REP. HOLTZMAN: Oh, yes. Right.

Well, I mean, I think that -- I have no problem. I mean, if Dean Schenck can spell out some of the concerns, we could put a finding saying that these are issues that suggest themselves. And since Congress has done -- has held no hearings on this, we just had the Department of Defense's concerns, that Congress should defer action on adopting this
until they have examined the underlying issues or held hearings or gathered more information about it.

I mean, we would be taking a negative position, but we're not saying we are opposed to it. We're just saying, you know, because it raises these issues, you can't go forward without knowing a little bit more than we do now. Some very delicate way of saying that --

COL HAM: Okay, ma'am.

REP. HOLTZMAN: -- diplomatically.

I think that would be my suggestion.

DEAN SCHENCK: This is Lisa. I agree with Liz. I think we can craft something very ambiguous indicating that this really needs to be investigated further because of the potential adverse implications.

REP. HOLTZMAN: Right. For the effective prosecution of sexual assault cases.

DEAN SCHENCK: Right. This is Lisa. It's -- I'm talking about adverse
implications that impact victims specifically.

REP. HOLTZMAN: Correct.

DEAN SCHENCK: And I can cite cases in my head that I reviewed on the appellate bench, and just unbelievable adverse implications on victims.

REP. HOLTZMAN: Well, that's why maybe we should be able to cite some of those examples in terms of calling for further investigations by the Congress before it passes legislation.

DEAN ANDERSON: This is Michelle. I just want to touch base on our timeframe, because there is a lot to cover still in the victims' rights section, I believe, things that got shifted there. And I wanted to clarify, we're meeting Tuesday, it looks like, for a couple of hours, and then is -- is that it? Or are there other opportunities to -- what is our timeframe for finishing up these documents?

CDR KING: Ma'am, I think when I
sent out the email and asked for times, I was hopeful that we would be -- have gotten through everything. Maybe I was a little optimistic that we would have gotten through everything by today.

I didn't get a huge amount of availability indications for next week, but I can -- we probably are going to need one more conference I think. So I don't know if you want to set it right now or have me try to coordinate schedules again.

DEAN ANDERSON: Yes. I guess I'm just mindful of the fact that there is a lot of new stuff now in the victims' rights section, or maybe there's -- no, no, it's --

CDR KING: Victims' services section.

DEAN ANDERSON: Victims' services, right, right. Victims' services section. Sorry, there is a lot of different things here, and I apologize for my confusion.

But I definitely think they need
to be developed, and some of them don't have
recommendations, some of them have possible
findings. It is -- and there is a lot there
that is important. So I want to make sure
that we have time, in particular, where all of
us or many of us are available to talk through
some of those issues.

COL HAM: I think we are just
waiting for Ms. Garvin to come back on to --

PARTICIPANT: She's on.

COL HAM: Oh, I'm sorry. And,

Dean Anderson, we can -- and everyone, we can
tell there are some that you will strike
because you struck portions of the
introduction, so those are easy to just take
out. But we didn't get into your possible
recommendations on some of the issues, which
would be very, very helpful.

Did you want to turn to those,

Mai, or --

CHAIR FERNANDEZ: Sure.

MS. GARVIN: Okay. This is Meg.
I have been back on the line, and I will have
to get back off, unfortunately. I reviewed
everything on the SVC, the edits that were
made when you guys had your discussions. I
don't have any specific comments. They all
looked fine to me. I think the language and
everything looks great.

So I will try and get back on
before this call ends again, but I am going to
have to go step into class.

JUDGE MARQUARDT: And this is
Christel Marquardt. I'm going to have to
leave in about 15 minutes myself.

CHAIR FERNANDEZ: Okay. So why
don't we finish out -- should we just go to
victims' services and -- can I ask -- I'm
sorry, not victims' services, special victims
counsel -- and find out if anybody has any
substantive comments on that one section.

REP. HOLTZMAN: This is Liz
Holtzman. I have a couple. I haven't
actually finished the whole section, I have to
confess, but on page 5, we talk a lot about
the provision in the Uniform Code of Military
Justice, so that you are entitled to an SVC,
if you are otherwise entitled to legal
assistance under 10 USC 1044. Do we ever
explain who is entitled under 10 USC 1044 to
legal assistance?

CDR KING: I think there might
have been a footnote at one time that got
taken out.

REP. HOLTZMAN: Could we try to
get it back in? Because I think somebody
might ask, "What are we talking about here?"
So, and it might actually belong in the text
of this as a very brief way of explaining.
Who are we talking about? Are these people
who are in the military? I mean, I don't
know.

COL HAM: In general, it's
military and their dependents, which means
their families, and retirees.

REP. HOLTZMAN: So maybe just put
a sentence in the first time you raise that point, so that everybody knows what we are talking about. And maybe you can also footnote it.

And the other point I wanted to make on page 6, we talk about the Air Force and the Army expressly provide for SVC representation for entry-level personnel. But that this is not the case in the Navy and the Marines and maybe the Coast Guard. Have we addressed this disparity? Should it be uniform?

MS. McGRORY: Ma'am, this is Kristin again. Right now, when this was written, the only two services that had policies were the Army and the Air Force. The Marine Corps has since come out with theirs -- their policy. It doesn't specifically address this particular provision. And currently the Coast Guard and the Navy do not have written policies on the SVC program yet. So that's where it stands as of now.
REP. HOLTZMAN: Well, I understand that's where it stands, but are we making some recommendation that these policies are good ones? I mean, or are we just going to say, "Well, you know, we have no comment on what anybody else is doing"?

MS. McGRORY: You don't have a recommendation yet. But if that's something you want to recommend, we can definitely put that in there.

REP. HOLTZMAN: I don't know. I mean, my -- I shouldn't -- just me, I don't know that I -- how anybody else feels, but it seems to me that that policy is a good one for the Air Force and the Army, but I'd just bring that to your attention.

COL HAM: Are there other comments by other subcommittee members? Kristin can draft something up and -- if you agree that it should be in there.

CHAIR FERNANDEZ: Liz, why don't you go ahead?
REP. HOLTZMAN: That's as far as I got. I'm sorry. I'm silent now on this point. I mean, I'd be happy to send the rest of my suggestions to the staff, I hope maybe by the end of the day, if not, on Monday.

CHAIR FERNANDEZ: Does anybody have any other substantive changes on the special victims counsel section?

(No response.)

Okay. Then, let's try to finish up victims' services.

CDR KING: So, ma'am, can I just clarify? This is Sherry. Do you want us to write up a draft recommendation and finding regarding the other services -- the Navy and Coast Guard and Marines or whoever -- including entry-level personnel in their -- as being required to represent them also?

CHAIR FERNANDEZ: Is that question for Liz?

CDR KING: No, it's for --

REP. HOLTZMAN: I think I answered
it. I think I answered it, but I don't know about anybody else.

CHAIR FERNANDEZ: I think that's fine.

CDR KING: Okay.

CHAIR FERNANDEZ: And let's write it up.

CDR KING: Okay. Thank you.

CHAIR FERNANDEZ: Okay. Sorry.

Okay. So let's finish up with victims' services. Were we on 8? Is that what we were on?

REP. HOLTZMAN: That's the one where we had two of them.

CHAIR FERNANDEZ: Right.


COL HAM: I think you had finished on 8, or if there are any other comments on 8, you were going to go to 9.

CHAIR FERNANDEZ: All right.

Let's move to 9. Let me see if I'm -- I'm
looking at the wrong section. Sorry.

COL HAM: This is on page 6?

CHAIR FERNANDEZ: No. I'm completely looking at the wrong document.

Okay.

DEAN SCHENCK: Approximately what page is that?

CHAIR FERNANDEZ: The recommendation is on page 7, possible Recommendation 9, and the findings are above it. And it's on the -- the number of victim advocates and their duties.

DEAN SCHENCK: Okay.

CHAIR FERNANDEZ: Can I ask a question? Under the first finding under Recommendation 9, "Personnel trained as VAs may not ever serve a victim"? I don't understand that.

COL HAM: There are more victim advocates than there are victims, I think is the point, ma'am. So that because there is a requirement by Congress to have every certain
size unit have a victim advocate in it, not
every victim advocate ever deals with a
victim.

CHAIR FERNANDEZ: Okay. It almost
sounds like, as a victim advocate, you can't
share the victim. If you could just clarify
the language on that.

COL HAM: Yes, ma'am.

(Pause.)

CDR KING: This is one that we
weren't even sure you wanted. We just had put
it in here as something -- as a potential
issue for discussion to decide if you even
want to make a recommendation on it.

CHAIR FERNANDEZ: Well, I think
the recommendation on case load is an
important thing to do.

REP. HOLTZMAN: But in terms of
the recommendation, I completely agree, Mai.
This is Liz Holtzman. But we don't -- the
recommendation doesn't really go to the point
of too many victim advocates. I mean, all
we're saying is that SAPRO determines the
appropriate case load, but isn't the case load
determined by Congress? Am I wrong?

CHAIR FERNANDEZ: No, I don't
think Congress determines the case load. I
don't think that there is a case load.

REP. HOLTZMAN: Well, it says, by
statute, each brigade or equivalent sized unit
must have a full-time SAPRO VA assigned.'

CHAIR FERNANDEZ: Yes, but those
are positions. It's not caseload of victims.

REP. HOLTZMAN: What does it mean,
positions'? I mean, do you have to have that
-- those victim advocates, right, for every
brigade?

CHAIR FERNANDEZ: Have those
bodies present, but you could have one victim
or you could have a hundred victims in your
caseload.

REP. HOLTZMAN: I understand that,
but why do you need a victim advocate if you
have the victim advocates general -- I mean,
if there are too many victim advocates, should
the caseload be -- should the number be
reduced is all I'm saying. I mean, we don't
address the number issue. Should we be? This
is my question about that.

CDR KING: This is Sherry. We
might not have been very clear on how we write
this, but Congress mandated a certain amount
-- a certain number based on full-time
employees. And then the services, instead of
necessarily using the 472 -- making available
472 employees, have divided that up and said
okay, we're going to have 10,000 part-time
people who get trained and will be available.
In case there is ever sexual assault in their
units, they're available to be assigned.

And so then we heard in Texas,
some of those people said they never saw a
victim, and that that made them nervous about
ever representing one because they wouldn't
have had enough experience doing it. And so
it seems like we've got a lot of people. They
do a lot of training, but a lot of the victim
advocates don't feel very confident about what
they're doing or probably aren't very
confident about what they're doing because
they don't actually provide services like a
full-time victim advocate would typically do.

REP. HOLTZMAN: So what is the
recommendation? That the same number be -- I
mean, what is the recommendation?

CDR KING: Well, we don't know
exactly what the recommendation is, that's
what -- we're writing it up, hoping -- you
know, we didn't have a lot of discussion on
this, just some that we should try to make it
more appropriate. So we weren't -- I think
we're not very clear because we're not exactly
sure what you want it to be.

DEAN SCHENCK: This is Lisa. Do
you remember over at Fort Hood in -- the
people we visited, and there were many of
them, VAs and SARC\'s -- they talked to us a
little bit about the fact that they had no
identifier in their file, and they couldn't be
treated like the EEO representatives.

   So to me, it's harder -- this ties
into this because part of the reason they are
not efficient in being victim advocates is
because they don't see enough victims. Part
of it is also because they permanently change
stations before they see victims. Part of it
is because there is too many of them.

   I don't know where I'm going with
this. I think part of me wants to recommend
that they put a skill identifier on the
service members, and they keep -- they create
a track for these individuals. That's what
they wanted -- the people that were in these
positions -- they wanted to be promoted. They
wanted to stay in this line of work.

   If we do it for the EEO program,
why can't we do it for the sexual assault
program?

   COL HAM: Dean Schenck, Ms. Carson
is here, and she is an expert on the staff on
these things. She said they do have skill identifiers. They don't have career fields or what you know of as military occupational specialties.

Remind the subcommittee, I think the Defense Task Force on Sexual Assault in the Military Services recommended eliminating the Unit Victim Advocate Program entirely and instituting a much smaller, better trained cadre of victim advocates. That was not accepted, and Congress mandated a certain number in each specifically sized unit.

REP. HOLTZMAN: But don't the victim advocates -- aren't they really the kind of paralegals for the trial counsel?

MS. CARSON: No. Those are -- that's another word.

CDR KING: It's a victim witness liaison in the --

REP. HOLTZMAN: Oh, I see. So what's the difference between the victim's advocate and the SARC?
COL HAM: SARC is the boss. The victim's advocate reports to the SARC.

REP. HOLTZMAN: Okay. So the victim advocate basically is the hand-holder, takes the victim to the hospital, takes the victim to health care services.

CHAIR FERNANDEZ: My understanding is the victim advocate position is ancillary duty. A SARC is your full-time position. Is that correct? I'm asking the staff. It's Mai.

MS. CARSON: The statute requires -- this is Julie Carson. The statute requires one full-time equivalent SARC and one full-time equivalent victim advocate at the brigade level. So all of the services are putting in one full-time victim advocate, and at least one full-time SARC, at the brigade level. But everything on down, you'll find it's collateral duty and it's largely going to be uniformed victim advocates who are part-time.
DEAN SCHENCK: This is Lisa. I can see why some of them are underemployed, if they have a full-time victim's advocate at the brigade level. Some of these units don't -- they go the whole year without ever having a victim -- ever having a victim identified or having any kind of sexual assault in their unit.

I mean, there are some units that don't have sexual assault. And if this is a mandated requirement, to have a full-time person, a full-time job being a victim advocate at the brigade level, that's a lot of people. That's a lot of victim advocates. And that's a lot of time. You spend your whole day.

REP. HOLTZMAN: Can I add something? I recall -- maybe my memory is faulty here, this is Liz Holtzman, that some of these people who were victims' advocates were drafted into this task and it wasn't their choice. They weren't volunteering.
They didn't necessarily want it. Is that correct?

COL HAM: Yes. We heard that when we went to Texas.

REP. HOLTZMAN: So that also raises a question about the quality of the service, so -- that they are providing.

COL HAM: This is Colonel Ham. I guess two points. From an operational deployment standpoint, the brigade is the -- I don't know what to call them -- the plug-and-play, for lack of a better word, to deploy. The brigade is normally -- brigade is an Army term.

It is normally the size unit that is told to deploy, and there might be 40 brigades told to deploy, but it's that entity which may explain why Congress felt it necessary to put the personnel in that size entity, because they are going to pick up and go somewhere, and then they are going to pick up and come back, which may mean you end up
with too many, but what do you do if Brigade
A deploys and Brigades B and C are left back,
and Brigade A is the one that had the SARC
and -- has a SARC and VA in it? Because then
they are going to go.

REP. HOLTZMAN: Isn't our main
issue here that if you're going to have all of
these people, that they have sufficient
on-hand experience to be able to do the job?
It's one thing to -- I don't know if I want to
fiddle with the numbers because I just don't
know, but what you want to know is that if
somebody all of a sudden is called to help a
victim, that they have the wherewithal to be
able to help that victim. And it goes -- and
I think what they were saying, it goes beyond
whatever training they are going -- it goes to
some supervised experience.

JUDGE MARQUARDT: I'm sorry, but
this is Christel, I have to sign off. I'll
talk to you next week.

PARTICIPANT: Thank you.
PARTICIPANT: Thank you, ma'am.

REP. HOLTZMAN: Bye.

Well, so is the recommendation saying basically that the -- the way we have it now, I mean, it's not 100 percent clear to me that the victim advocates should be -- that their training should be -- even though they may not have sufficient work that they should have -- that their training should be improved?

MS. CARSON: Their training should be improved, and that -- probably that they should get some sort of supervised experience, so they'd go with another experienced VA with a victim to the hospital or -- what you don't want is somebody to go in there cold, with absolutely no experience helping a victim, and saying and doing all the wrong things.

REP. HOLTZMAN: Right.

MS. CARSON: So I think it's -- what we heard was some of these people don't
have any hands-on experience. Therefore, they feel completely ill-equipped when their first case comes around.

REP. HOLTZMAN: Okay. Well, if that's the case, I would suggest that we, you know, clarify the bullet, clarify that recommendation. And I think that the recommendation should be in two bullets because one finding has to do with the VAs, and the other finding has to do with the SARCs. And the SARCs, it seems that there are not enough SARCs, that that's the problem, but we don't really address that in the recommendation. Am I wrong?

MS. CARSON: I'm not sure. I'm not sure. Are we saying that there is not enough SARCs?

REP. HOLTZMAN: It says --

MR. CASSARA: I don't recall any testimony to that regard, but I could be wrong. I'm old and I haven't had a lot of caffeine today, so -- but I don't recall any
testimony that the SARC --

REP. HOLTZMAN: Yes. It says SARCs are -- this is the finding. SARCs reported,' second sentence in the second bullet on page 7.

MR. CASSARA: I'm reading.

REP. HOLTZMAN: SARCs reported,'

skip down, that the foremost challenge for SARCs is having too many responsibilities to effectively perform all of the duties required of the job.'

MR. CASSARA: And I guess I didn't read that as having not enough SARCs, but having them having to many other ancillary duties, which may be two sides of the same coin.

REP. HOLTZMAN: Right. Well, I don't -- right. So I don't know what the -- I didn't read it that way. I don't know what -- that these responsibilities were not necessarily related to their job.

CDR KING: Can I explain, since we
don't -- you don't have the report in front of you now? The SARCs have three basic kinds of duties: managerial duties that includes doing -- entering all of the statistics and -- there's about 12 or 16 duties, isn't there, Julie, in that category? And then there's direct victims' services duties because they do the same thing as victim advocates. And then there's also training, and they train -- they're responsible for preparing training and also training all the victim advocates.

So there's really separate categories, so I think in Texas where you -- I don't think you were there, Bill. Some of the people were talking about it. And maybe we heard it -- we found some other testimony on it where somebody, I think in one of our hearings, even suggested that we divide up SARCs into maybe doing one or two of the skills and not all three of the duties, like maybe have someone who does the managerial things separate from the other SARC duties...
because they said it takes them all day to enter reports into the data system. And they don't -- they just don't have time to do all those things, I think was some of the testimony -- and, unfortunately, you don't have that in front of you right now, probably. But that's in the report that we -- we tried to write that out in the report.

CHAIR FERNANDEZ: What do we want to say here? Do we want to say that we think that the SARC's duties have to be streamlined and that the VAs need to have probably a good experience -- experiential training?

CDR KING: Yes, that's a good word for it.

REP. HOLTZMAN: Hands on?

DEAN SCHENCK: This is Lisa. I like experiential.'

CHAIR FERNANDEZ: If any of us could say it.

DEAN SCHENCK: Yes. Well, this is Lisa again. Yes, it's kind of a term of art
in academia, when we send people to work in
the field and do clinical work, that kind of
stuff.

COL HAM: We use it a lot in the
military, too -- experiential work
developments.

CHAIR FERNANDEZ: Okay. We go
with experiential.' So are we done with 9?

REP. HOLTZMAN: So are they going
to rewrite that and send it to us -- the
staff?

MS. CARSON: Yes.

REP. HOLTZMAN: Good.

CHAIR FERNANDEZ: Okay. Let's
look at 10. I like this one, and I think it's
really important.

COL HAM: We know to take out the
words anecdotal.' I would say -- Ms.
Fernandez, I am struggling with who to direct
to do what in some of these recommendations,
and not just in your subcommittee, in all of
them. So it's drafted to direct the Surgeons
General. I have to find out somehow if that's
the right entity or if there is an Assistant
Secretary of Health Affairs or at what level.
The Surgeons General are in the service level.

    I think there is an Assistant
Secretary of Health Affairs or Deputy
Secretary of Health Affairs who is in the DoD
level, and I just -- I'm trying to tell you I
need to figure out who the right entity is to
accomplish what you are recommending. I don't
know that you need to worry about that, but
you may see a different one in a later
version, if I find out. But Surgeons General
are the wrong entity.

    REP. HOLTZMAN: Well, why don't
you just take it out and just fudge it? Just
say, you know, that they'll be responsible for
evaluating, and then they can figure out how
to get it evaluated.

    COL HAM: The Secretary of Defense
or the Secretary of -- you want to know if --

    REP. HOLTZMAN: Military services,
just the way you have it, but just take out
direct the Surgeons General,' just the
Secretary of Military Services evaluate the
availability.'

COL HAM: Yes, ma'am.

REP. HOLTZMAN: Or obtain an
evaluation or something. Let them figure it
out. Don't waste your time.

COL HAM: I like that, ma'am.

Thank you.

(Laughter.)

COL HAM: I would say that's a --
if you see those changes in any of the
recommendations, that's because we are
figuring out, you know, the right entity or
some places we say Secretary of Defense, that
might not be the right entity. If you see any
changes like that, that's why.

CDR KING: So is Number 10 -- are
there any other changes to it? This is
Sherry.

(No audible response.)
CHAIR FERNANDEZ: No. Let's move on to 11.

(Pause.)

Yes. I think that getting those included is absolutely essential. We need to have domestic violence sexual assault included in the overall numbers of sexual assault.

Does anybody have anything on Number 12 that they have a problem with? Or, I'm sorry, Number 11.

REP. HOLTZMAN: Can we still ask what FAP is? Just so that people who don't know what the initials stand for can understand it?

COL HAM: Yes, ma'am. Family --

CHAIR FERNANDEZ: Go ahead.

Patty, go ahead.

COL HAM: Family Advocacy Program. You heard from them, and they have been around, I don't know -- well, it says over 20 years ago. And they were set up to support domestic abuse victims and their families, so
it's still a separate program. Even though they may be handling sexual assaults, they would be intimate partner sexual assaults and family sexual assaults.

DEAN ANDERSON: This is Michelle. Just to clarify, the finding is for Recommendation 11, but then the possible recommendation is labeled 12. Am I correct in clarifying that the possible recommendation --

CDR KING: Yes.

DEAN ANDERSON: Yes? Okay.

CDR KING: It was late last night.

DEAN ANDERSON: Oh, I know. No problem.

CDR KING: There are some numbering problems later on, too, I noticed but we'll fix all of that.

DEAN ANDERSON: Yes, yes. No problem. I just wanted to make sure that those were tied together. So I think that's an uncontroversial recommendation.

CHAIR FERNANDEZ: So Number 13 is
attempting to address the issue of revictimization, and I understand that's a very sensitive topic, as Ms. Garvin notes in her comments, that it shouldn't be inadvertently or inappropriately used.

The idea that we thought you might want to get across is to try to identify people to get them services.

DEAN SCHENCK: This is Lisa. I agree with Meg. We've got be really careful on this and not make it an indicator on some kind of crazy form the military is requiring victims to sign.

I do, however, believe that there is a large percentage of revictimization where they have -- you have those predators in drill sergeant positions and commander positions and senior NCO positions, and they have a way of finding these previously victimized individuals. And so I believe it's to assist them, in part to empower themselves to get services because I think we have talked about
this kindling effect -- the kindling effect --
where if you had a past sexual victimization
of -- and then something else triggers your
response, and it just keeps going and going
and going. So it's just another -- it could
be another sexual assault. It could be
another -- it could be PTSD from being in the
area of operation. It doesn't matter.

I think the Department of Defense
has got to come to grips with assisting those
individuals, empowering those individuals, and
tracking their revictimization and finding
those predators. So I think General Patton
testified that it was some sort of metric, but
he didn't indicate in his testimony what he
was going to do with the metric. He needs to
-- I mean, I know he's not there anymore, but
DoD needs to get their grip on that issue.

REP. HOLTZMAN: Right. This is
Liz Holtzman. This is something that I have
been concerned about for a long time. I'm not
sure that I want to say that we should
identify, because maybe that's going to be too
controversial, to screen people out. But to
-- I mean, there might be some way of saying
that people who enter the military who've been
victims of crimes and who've been victims of
sexual assault before should be made aware of
services for them so that they can avoid
possible revictimization, given the, you know,
the high incidence of that, rather than saying
exactly how it is going to work.

DEAN ANDERSON: You know -- this
is Michelle -- just to add to that, I do think
that if we're screening everybody who is
coming into the military for prior unwanted
sexual contact, it does seem to me that that's
an opportunity -- by the way, we're screening
both men and women -- to screen for having
perpetrated unwanted sexual contact. Not at
all for the purposes of pursuing, but the
screening could be about their experiences of
having engaged in unwanted sexual contact,
either as the initiator or the recipient, and
then that could provide us with important mental health information.

It does seem to me that if we are screening for people who are prior victims, as an opportunity when they first come in to provide them with services, it's also an opportunity to screen for those who have -- and there are survey instruments to do this kind of work, to screen for folks who have experiences or attitudes that are -- indicate a propensity to -- or an openness to unwanted sexual contact, to perpetrating that. I think that might be helpful.

REP. HOLTZMAN: This is Liz Holtzman. I'm not in favor -- maybe I misspoke or I wasn't -- didn't make myself clear. I'm not sure that I would propose screening. I don't know that we have enough information to make such a recommendation. That could be -- but I think what the recommendation could be, which is much -- which would be to advise people when they
enter the military, and others who are already in the military, of the services, even if you're not a victim of sexual assault, if you have ever been a victim of sexual assault, we can help you.

That, in and of itself, could bring forward people without having to go through the screening, because I'm not sure that the screening -- you know, how that would be received. And, you know, Dean Schenck pointed out some issues.

So I'm going to suggest that we don't say screening, but that we say that the military advise -- make it clear to prior victims, or to people who have been prior victims, that there are victims' services and counseling services available to them, and the importance to them of taking advantage of these services.

MR. CASSARA: This is Bill Cassara. And I realize we are running short on time, and I really don't want to open up a
whole can of worms. And I don't want to sound
horribly insensitive either, but I don't want
us to be in a position of -- and maybe this
isn't even an issue, but I don't want us to be
in a position of saying that somebody is or is
not eligible for the military due to prior
victimization.

I mean, the reality of it is that
the military has to be able to screen people
for entry, and some victims of sexual assault,
as a result of PTSD or some other after-
effect, are not going to qualify for military
service through no fault of their own, just as
blind people, really short people, and others
don't qualify for --

PARTICIPANT: Hey.

MR. CASSARA: I'm sorry. I'm
sorry. Okay. Present company excluded.

(Laughter.)

MR. CASSARA: No, you know, people
who would -- with amputations. I mean, the
military screens people out based on mental
and physical disabilities. And I just want to make sure that we're not in a position of saying that they can't use that in the case of the victim of a sexual assault. You know, that may sound cold, but, you know, with readiness still being the ultimate goal and responsibility of the military, I don't think we are in a position to alter that.

REP. HOLTZMAN: Wait a minute. Are you -- I'm not sure what you're saying, Bill. This is Liz Holtzman. Are you saying you want to have screening, or you don't want to have screening?

MR. CASSARA: No. I don't think that we want to -- I don't think we want to take a position one way or another. I just don't -- I want to make sure that whatever we do is not telling the military that they have to accept somebody who is a prior victim of sexual assault and that they cannot consider their mental disability in determining whether or not that person comes into the military.
I mean, maybe this provision doesn't do that, and maybe I'm being hypersensitive, or hyperinsensitive as the case may be, but I just want to make sure that nothing that we say or put down here limits the ability of the military to make determinations of who is eligible for military service. Am I only confusing the matter?

DEAN ANDERSON: Well, I thought that -- this is Michelle. I thought that this recommendation and finding was more about after they were screened, after they had been admitted into the military. If we're talking about screening people out, I'm not sure why we're not screening out those who have experiences engaging in unwanted sexual -- perpetrating unwanted sexual contact.

And I don't think that we are making recommendations about screening people in or out of the military. Perhaps we should be asking the military to more explicitly screen out perpetrators. It is strange that
we would focus on victims in terms of screening out.

But I understood that this finding and recommendation was more after they were screened in as it were and were a member of the military community that we would help identify, or maybe not identify but just try to make clear that there are services for people who have previously been victimized, even if they don't conceptualize it as having been, quote unquote, raped or sexually abused, but that they are -- you know, that's the part that I think is the part that we have to leap.

Many victims don't self-identify for purposes of their own mental health and sanity and way of working in the world. No one wants to identify as a victim. And so they don't conceptualize themselves as a rape victim or a sexual assault victim. Yes, this bad thing happened to them, but they play it -- they downplay it.

And when later they are sexually
1 victimized in the military, come to find out, 
2 upon screening, that they have actually been 
3 victimized before service as well. So, and 
4 that's the part that troubles so many of us. 
5 How did we not provide them services from the 
6 beginning and help shore up their mental 
7 health and stability and ability to handle 
8 stress and engage in self-protection? How did 
9 we not do that initially? So I understood 
10 that this recommendation was not about 
11 screening in or out into the military, but was 
12 more about what happens once people are part 
13 of a community. 

MR. CASSARA: And Michelle, I will 
15 tell you, when I originally read it, that's 
16 the way I read it, too. I just -- it sounded 
17 like some of the discussion was getting 
18 towards the issue of screening, which is why 
19 I said, you know, I don't -- frankly, I'm 
20 happy and fine with the way that this is 
21 worded. I have no issues with it. I just 
22 wanted -- you know, there was some discussion
about -- that I thought was getting into the area of screening applicants, and I just want to make sure that we're careful not to do that.

DEAN ANDERSON: Now, on the question of identifying versus simply providing more information about services, are we in agreement -- that is, the group generally -- and, Liz, you brought this up initially, I think -- are we in agreement that we shouldn't be identifying individual people, but should be talking about enhancing the availability of resources? I mean, the problem is, if we don't screen, they don't identify.

So that's, I think, the leap that I was talking about of how to talk -- when someone is now in the military community, how do we provide them with services when they don't identify as a victim?

CHAIR FERNANDEZ: Michelle, this is Mai. I was going to say the same thing.
So many people don't identify themselves, so they're not going to seek out these services that are, quote unquote, available. I think we could make that recommendation. I don't think it's really -- it would help a handful of people.

It is a bold step to say that we would identify people and then give them services. We could get our -- I mean, this could be the kind of thing that people would say is a civil rights violation. It could be -- it could bring up a lot of problems. On the other hand, I also think it's getting services to people who need it, and I think that's the core of the issue here.

REP. HOLTZMAN: Well, they could -- I mean, I'm not disagreeing with you, Mai. This is Liz Holtzman. But I think those services could be rejected, too. It depends how you word it. Personally, I mean, I think that maybe a more general way of addressing the problem, which is the military needs to
develop programs to provide services that will
protect and enhance the ability of this group
to avoid revictimization. These could
include, you could put, such things as
counseling -- making clear that counseling
programs are available to prior victims of
sexual assault, unwanted sexual contact, and
so forth. It could include screening programs
to identify those people.

But I am a little reluctant
because I don't really -- I'm not sure we've
had testimony on -- I mean, we've had
testimony about the problem, but I'm not sure
that we've had testimony about the impact of
the solution, the negative aspects, the
positive aspects. I just don't know enough
about it, and it could be extremely
controversial. Not that that would be a bad
thing, but I don't know that --

CHAIR FERNANDEZ: I think, then,
we need more of a political answer to this, or
recommendation. I think that we need to
identify this clearly as a problem, but we
don't know what the solution is. And that
there needs to be hearings on it, or --
somebody needs to open up this can of worms,
and we don't have the luxury of doing that
right now, but somebody needs to open it up
and say, we know it's an issue. We need to
find the correct solutions for it. But we
don't want to trample on somebody's civil
rights either.

DEAN ANDERSON: What about this?

This is just a brainstorming idea. This is
Michelle. What about directing the Department
of Defense to work with -- I mean, the folks
who have, it seems to me, the best information
on victims and consequences to sexual assault
is, you know, the folks at the CDC. They have
the best information about how to prevent
sexual assault, how to -- just in terms of
gathering the information and analyzing it.

What about --

COL HAM: Ma'am, this is Colonel
Ham. The Department of Defense already works with the CDC to develop their prevention efforts.

DEAN ANDERSON: Right. Right.

And what about -- that's what I'm sort of working off of, Colonel Ham, is the idea of working with the CDC to develop a protocol that would best serve those who enter the military having been previously victimized in order to provide them with services and get them to a place where they are better prepared to engage fully in military life.

CHAIR FERNANDEZ: So we should say that the -- they may already be doing that. We know they're working with the CDC on strategic prevention efforts. Do we want to ensure that their collaboration include efforts along these lines? I'm already forgetting the words you just used. And we also know that a large number of the new reports of sexual assault are men and women who were victimized before they came in the
DEAN ANDERSON: That could be the finding, and then the directive is to ensure that there is -- you know, I agree with you that it could already been happening, but we didn't hear about it. What we heard about was working with the CDC on prevention efforts, without the assumption that many people in the room may have already been victimized.

And just to sort of collaborate on that particular question and identify best practices for providing services for people who were victimized prior to their military -- prior to entering the military, so that they could engage fully in their -- you know, both the military life and the career prospects that are in front of them.

REP. HOLTZMAN: Can I just make an amendment to that? First of all, I'm not sure I would limit it to CDC because, you know, there may be other organizations that military could work with that could develop this -- I
mean, I don't know that CDC is a place that --

if they decide to do screening, that you'd go
to CDC to do screening, or the nature of the
counseling. I don't -- you know, I'm not
sufficiently familiar with that.

And I think the objective should
be not just that they can fully engage in
military activities; they may feel that they
are doing that now, but so that they can have
the tools to prevent revictimization of
themselves. That needs to be part, in my
view, of what the objective is of the program.

I would also like to throw out --

I don't know -- we haven't heard anything
about this. I don't know what kind of
screening there is in terms of arrest records
and the like with regard to sexual predators,
or people who've been found guilty of sexual
assault or sexual misconduct. Is there any
screening of that? Should there --

CDR KING: Yes, there is.

COL HAM: And they're prohibited
by statute now from accepting into the military.

REP. HOLTZMAN: Okay. All right. Thank you. I didn't know about that.

COL HAM: Am I correct on that?

CDR KING: Yes.

REP. HOLTZMAN: Okay. So that would be -- Dean Anderson, those would be my comments with regard to your proposal, which is to expand it beyond CDC and other appropriate organizations or entities.

DEAN ANDERSON: Yes. I think that's right, and I think part of it should be not just engaging in military life, but preventing revictimization. I think that's, you know, no question, provided it's sort of best practices from the CDC. I think that's a great idea.

REP. HOLTZMAN: There may be no best practices. So I'm not sure I would even use those terms, because there may be no best practices on the issue of revictimization. I
don't know how much work has been done on
this.

DEAN ANDERSON: Right. And I'm
not saying that we should use the word best
practices. I think working with the CDC is a

REP. HOLTZMAN: Yes.

DEAN ANDERSON: Do you know what I
mean? I mean, they are the --

REP. HOLTZMAN: Yes, I've got it.

COL HAM: And Dean Anderson, just
for your information, prevention falls under
the roles of Commander Subcommittee, so they
did hear briefings from the CDC on prevention
efforts and --

DEAN ANDERSON: Yes. And those
materials were forwarded to us, and I read the
transcripts and the materials and they were
absolutely fascinating. And clearly, they
know what they are talking about there, so I
think -- I don't think it's a problem. I
think it's a good idea to direct a focus on
this question to the CDC and the Department of Defense.

So, you know, I'm glad we're grappling with this. Even if we don't have a clear directive, I think the directive is to, you know, focus on -- you know, to ask them to focus on this question of revictimization.

COL HAM: Yes, ma'am.

REP. HOLTZMAN: It's one o'clock. I think I'm going to have to go. So thank you, everybody.

CHAIR FERNANDEZ: Thank you, Liz.

REP. HOLTZMAN: Have a nice weekend.


DEAN ANDERSON: So this is Michelle, and I realize that the rest of the findings, 14 through -- I don't know the --

COL HAM: I'm sorry. 21. Should
be 21.

DEAN ANDERSON: Well, whatever it is, that's fine. That's fine.

Many of these things came up as part of a dialogue that we initially had with the framing, and then were moved here. And I'd be willing to draft some language on possible findings and recommendations for many of them or to work with someone there to do that.

I don't want these things to get lost in the weeds. I think they are crucial. I actually think they are more important than some of the other things we're talking about, but that's -- I'm sure everybody has a different opinion about what is important relative to other things.

And so I just want to be helpful and make sure that these don't -- these things don't fall through the cracks.

COL HAM: That would be very helpful, Dean Anderson. Thank you.
DEAN ANDERSON: Yes. I think that even if, you know, whatever I draft or someone else drafts gets completely changed, having something in front of us will help us get through the material and find a direction to go forward.

COL HAM: That would be really helpful, Dean Anderson, and I think the -- one of the big questions is, you know, are there new programs to propose? That was a big question the subcommittee wrestled with very early on, and I thought the answer was nobody thought there was a program that DoD didn't have they should have, so the -- that's part of our difficulty is -- which is a different question than are they effective or should they be changed or whatever. But there hasn't been a whole lot of discussion on those couple of issues, so your suggestions are very helpful.

CHAIR FERNANDEZ: Folks, this is Mai. I need to get off the line also. When
is our next meeting? Tuesday? At what time?

CDR KING: I think it's -- I think it's 1:00 or 1:30, but I'll have to -- I'll send out an email and --

MR. CASSARA: I'm sorry. I'm sorry, Sherry. I had it Tuesday at 11:30.

CDR KING: Oh, that could be.

11:30 to 1:30? Yes, that sounds right.

MR. CASSARA: I have a moot court at 1400, so I have to --

CDR KING: Okay. Yes, that's -- exactly, 11:30 to 1:30 because I was trying to balance schedules between morning and afternoon availability.

MR. CASSARA: Well, and then that's fine. I do have to go. I have a client coming in, but I wish you all the best, a Happy Easter or a Happy Passover, as the case may be, and we'll talk next week.

PARTICIPANT: Thank you.

CHAIR FERNANDEZ: Okay. Likewise from me. Take care, folks. Thank you for all
the hard work, and Happy Easter.

(Whereupon, at 1:06 p.m., the proceedings in the foregoing matter were concluded.)
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In the matter of: Victim Services Subcommittee

Before: DOHA RSP

Date: 04-18-14

Place: teleconference

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