

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

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P R O C E E D I N G S

(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

1 Christel. I think it was the appropriate  
2 length. I had a couple of questions about a  
3 couple of words in this. At the end of the  
4 second paragraph where you say it's a  
5 significant national problem, I mean, we are  
6 dealing with the military. I just don't think  
7 that we should make that global statement,  
8 that it's a national problem.

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

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

21 CDR KING: Okay. That would work  
22 probably. That's the trouble with cutting out

1 too much, you know --

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

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

15 COL HAM: I wrote that, ma'am.  
16 This is Colonel Ham.

17 REP. HOLTZMAN: Okay. Well, I --  
18 Colonel, I don't mean "professional" in the  
19 sense that it's not well written. I don't  
20 mean it that way. I just think that we  
21 shouldn't be viewed as kind of being  
22 subservient in some way to the Defense

1 Department here. We're an independent panel,  
2 and we don't need to be complimenting them or  
3 not complimenting them. We need to be  
4 analyzing and stating -- setting forth our  
5 analysis. That's just my view about it. So  
6 --

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

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

18 If you want to say that the  
19 Defense Department has recently undertaken a  
20 major effort, including a constellation of  
21 initiatives, to deal with the threat, you  
22 know, that's fine. And that's -- you know,

1 that would be fine. I have no real problem if  
2 you just rephrase the first sentence. But I  
3 don't know about the rest of the paragraph.  
4 To me, that's what -- it just smacks of just  
5 the wrong tone for us.

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

12 COL HAM: Not taken that way.  
13 Ma'am, I guess -- and I don't -- I don't love  
14 the paragraph either, but I was trying to  
15 figure out a way to transition to, you know,  
16 there's all these programs, but they are only  
17 effective when they are accessed. Would you  
18 still like that point made somehow? I thought  
19 that would

20 (Simultaneous Speaking.)

21 CHAIR FERNANDEZ: I'm sorry.

22 Colonel Ham. I actually agree with that part,

1 but there has been -- and I think Liz is  
2 phrasing that there has been a constellation  
3 of programs, but together over the last  
4 whenever, but they can only be effective as  
5 long as people access them, and then you put  
6 -- and the programs themselves need to be  
7 effective also.

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

14 COL HAM: Okay.

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

20 COL HAM: And the second question,  
21 ma'am -- this is Colonel Ham again -- or --  
22 for all of the subcommittee -- or Mai and

1 Representative Holtzman, I guess, is, do you  
2 have an overall -- since this is the  
3 introduction, do you have an overall  
4 assessment -- good, bad, middling -- of the  
5 programs that are in existence? Is that  
6 appropriate for an introduction? Or is that  
7 something that you just don't want to comment  
8 on?

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

20 JUDGE MARQUARDT: This is  
21 Christel. I agree with that, but a lot of  
22 these initiatives weren't even brought into

1 effect until this last year. And, I mean, I  
2 don't think -- I agree with Representative  
3 Holtzman that we shouldn't be giving accolades  
4 to the Department of Defense when many years  
5 went by without doing anything.

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

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

1 counsel, lots of programs.

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

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

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

21 CHAIR FERNANDEZ: Yes, I agree.

22 REP. HOLTZMAN: Something like

1 that. That would be -- that's all I wanted to  
2 say about that.

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

15 So I think there are kind of  
16 moderate statements of encouragement that we  
17 can put in there, but I wouldn't, but I agree  
18 that kind of more sweeping, positive  
19 statements probably should be -- might be best  
20 tempered by the notion that the jury is out  
21 and we need more time to assess these others  
22 in detail.

1                   DEAN SCHENCK: This is Lisa. I  
2 agree with what Michelle just said. I think  
3 that's -- we know that the programs are in  
4 place. We just can't assess how valuable they  
5 are going to be, and one of our  
6 recommendations is that DoD assess overlap in  
7 benefits of their programs.

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

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

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

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

20                  CHAIR FERNANDEZ: Sure.

21                  CDR KING: So that -- that's  
22 something new, and that kind of follows

1 framing the issue -- your discussion right now  
2 in framing the issue to talk about what  
3 recommendations you want in here.

4 CHAIR FERNANDEZ: I think that's  
5 fine.

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

9 CDR KING: Yes.

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

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

15 DEAN ANDERSON: Got it. Got it.

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

1 the two versions you sent this morning?

2 CDR KING: Ma'am, I don't think  
3 there is -- there is not any difference in the  
4 first several of them. So I can go print out  
5 the old version, and then we can tell you the  
6 --

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

9 CDR KING: No. Last night.

10 REP. HOLTZMAN: Oh. Was it last  
11 night?

12 CDR KING: Last night at 9:30.

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

17 COL HAM: If you look at page 9 or  
18 10, you know, one of them goes -- you know,  
19 has Finding 19. I don't think the first  
20 document went that far.

21 REP. HOLTZMAN: Oh, I see. Okay.  
22 Let me just look at it. Yes. Right. Okay.

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

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

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

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

1 And then the last ones are just based on your  
2 discussions.

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

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

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

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

20 CDR KING: So maybe the way we  
21 could do it is if everybody agrees the finding  
22 on Recommendation 1 is okay, absent perhaps

1 some editorial changes, grammatical changes.  
2 Then, we could just -- you could just indicate  
3 that and then we can move on, so that we know  
4 what we can include in the report.

5 REP. HOLTZMAN: Can I just -- I  
6 just wanted to add one thing on Recommendation  
7 1, which is that what we ask the Secretary of  
8 Defense is to decide which ones should be  
9 funded. I would ask the Secretary of Defense  
10 to evaluate the programs and decide which ones  
11 work first, because they may decide not to  
12 fund programs that have nothing to do with  
13 whether they work or not.

14 They may just decide it's not high  
15 priority or they may decide, you know, they  
16 don't like the name of it. I don't know what  
17 reason they could use. So I would just like  
18 to put -- to determine which programs should  
19 continue to be funded at a sustainment level.  
20 I don't know. Maybe it's clear from that.  
21 Maybe I'm just nitpicking. But I just wanted  
22 to make sure that --

1                   CHAIR FERNANDEZ: This is Mai.  
2                   What's the phrasing? So it's Recommendation  
3                   1 you're looking at that says --

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

13                  JUDGE MARQUARDT: Well, it  
14                  requires measuring the effectiveness.

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

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

1 directing SAPRO to evaluate and assess.

2 REP. HOLTZMAN: Right.

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

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

8 CHAIR FERNANDEZ: Yes, I think so.

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

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

21 CHAIR FERNANDEZ: Okay. Any other  
22 changes to Recommendations 1 or 1A? Can we go

1 on to Recommendation Number 2?

2 (No response.)

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

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

13 The word testimony is used when  
14 things are respectful toward the military, and  
15 the word anecdotal information or anecdotes is  
16 used when it's critical of the military. So  
17 I think the word anecdotal needs to come out  
18 of the document globally. And when something  
19 is testimonial, it needs to be referred to as  
20 direct testimony. And where it's  
21 non-testimonial because it is charts or graphs  
22 or other information, it needs to be referred

1 to that way, because the word anecdote is not  
2 used as implicit disparagement throughout the  
3 document. So I would request that the staff  
4 do a global search for the word anecdote or  
5 anecdotal.

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

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

1 disclosures by SARCs and SAPR/VAs.

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

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

1 anecdotal information.

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

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

21 JUDGE MARQUARDT: This is  
22 Christel. I have a --

1                   CHAIR FERNANDEZ: Can't we just  
2 say we interviewed them? I mean, basically,  
3 these were all interviews.

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

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

20                   So that, I believe, is why it's  
21 written that way. But if a commander finds  
22 out evidence from a witness, for example, you

1 know, the commander doesn't know there is a  
2 restricted report, but a witness to the  
3 offense comes and tells him, it's not a  
4 restricted report anymore, if he ever knew  
5 that it was.

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

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

19 (No response.)

20 In other words, I certainly see,  
21 Colonel Ham, that this recommendation tracks  
22 very tightly the current -- the status quo

1 position of the SARCs and the SAPR/VAs  
2 inadvertent disclosures to two different types  
3 of people. But I thought that our dialogue  
4 was more about inadvertent and accidental  
5 disclosure generally, including to command and  
6 military officers, that the victim would still  
7 be to make a restricted report after that  
8 inadvertent or mistaken disclosure.

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

15 DEAN ANDERSON: Right.

16 CHAIR FERNANDEZ: This is Mai. I  
17 think it was -- we didn't care who the  
18 inadvertent disclosure came from. We just  
19 wanted to make sure that, if it was  
20 inadvertent, that there would be a way to not  
21 have to go unrestricted. Isn't that correct,  
22 folks?

1 DEAN ANDERSON: Yes, that was my  
2 understanding.

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

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

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

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

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

22 COL HAM: So do you want to

1 include this? What if it's a witness? What  
2 is the subcommittee's recommendation if a  
3 witness informs the commander?

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

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

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

11 DEAN ANDERSON: Yes.

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

19 DEAN ANDERSON: I guess the  
20 problem -- this is Michelle. The problem I  
21 have with Recommendation 5 is that it has the  
22 same exception as I -- does Recommendation 5

1 -- let's see.

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

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

15 And our impulse as a committee,  
16 after reflecting on this, was to vest more  
17 authority in the victim's ability to make a  
18 restricted or an unrestricted report,  
19 regardless of who received the information,  
20 regardless of whether or not the information  
21 was someone in the chain of command or law  
22 enforcement.

1           I think the victim still has a  
2           decision, and I think the victim should have  
3           the authority to make a restricted report,  
4           even if, for instance, what if someone who is  
5           in the military police is assaulted?  
6           Everybody who then is told, who is a friend or  
7           whatever, is also a military policy officer,  
8           so it can't be that law enforcement provides  
9           a global exception. That seems too broad.

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

16           So that is my concern with the  
17           findings and recommendations on 2 and 5, is  
18           that they leave in an absolute exemption for  
19           telling someone in military law enforcement,  
20           or for someone in the chain of command, when  
21           we heard that recruits are often told, when  
22           something comes up, you tell the commanding

1 person, you tell the commanding officer, you  
2 tell the person in your chain of command.

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

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

15 COL HAM: Okay. So should the  
16 recommendation be that Congress repeal its  
17 recently enacted legislation requiring  
18 commanders to report to MCIOs, regardless of  
19 where they get the information, and a  
20 secondary recommendation for the Secretary of  
21 Defense to enact policy or to amend current  
22 policy? I'm thinking.

1                   That the recommendations are  
2                   structured around changing current policy. So  
3                   you want to amend current policy to permit the  
4                   victim to choose a restricted report, choose  
5                   to file a restricted report. I'm trying to  
6                   think of the wording. Regardless of -- of  
7                   prior disclosure of the information to the  
8                   command or law enforcement. I'm trying to  
9                   figure out how to put it.

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

19                   And I think it just goes to the  
20                   sense of lack of control that victims have  
21                   when something happens to them, and the fear  
22                   that surrounds that, losing that information.

1                   REP. HOLTZMAN: This is Liz  
2 Holtzman. I guess I have -- I don't -- you  
3 know, I have missed some of the parts of the  
4 session, so I don't recall fully the  
5 conversation about that. I completely agree  
6 with the idea that if a SARC somehow or a  
7 medical officer sees the commander, and says,  
8 oh, did you know about blah, blah, blah, and  
9 even if it's not inadvertent, even if it's  
10 intentional, if the person is not authorized  
11 to make that statement, or if it's an  
12 inadvertent statement, and the commander finds  
13 out about it or the police find out about it,  
14 okay.

15                   But I'm not really sure that --  
16 but, you know, the problem is that this really  
17 cuts against something that is -- I mean, I  
18 think the military has been very concerned  
19 about, and that the victims groups have been  
20 very concerned about, which is that nothing  
21 gets put under the rug. And if the commander  
22 can withhold from reporting an incident for

1 any reason, then -- to the investigative  
2 agencies, then we've created -- have we  
3 created a real problem?

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

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

22 The problem is that it divests the

1 authority with the victim to make a decision  
2 about the scope of the report that he or she  
3 wishes to make. And what we're trying to say  
4 is, yes, every time the victim comes forward  
5 with an unrestricted report, command must act.  
6 But command should not act when the disclosure  
7 has been inadvertent or improper. And the  
8 command has to know whether or not the victim  
9 -- what the victim's decision is.

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

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

18 COL HAM: You know, Christel, I  
19 was thinking that, too. But the problem there  
20 is probably the last person -- the victim, if  
21 they want to go restricted, the last person  
22 that they want to talk to is the commander.

1                   JUDGE MARQUARDT: Well, it doesn't  
2 seem like there is any way around that, then.

3                   COL HAM: I think you --

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

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

22                   REP. HOLTZMAN: This is Liz

1 Holtzman. I'm still a little bit troubled  
2 about this, because I really -- I don't know  
3 that we've broken down the old method here, I  
4 mean, where stuff was pushed under the rug,  
5 swept under the rug. And I don't know that --  
6 I don't know how many instances there are of  
7 inadvertent disclosure, and so then to create  
8 this bureaucratic problem for every report of  
9 sexual assault, I mean, I don't know if it's  
10 -- I just have to think about what the  
11 consequences of that would be. I'm not a  
12 hundred percent persuaded that that's, you  
13 know --

14 CHAIR FERNANDEZ: This is Mai.  
15 Can we go through a possible scenario of how  
16 this would breakdown? Okay. Woman X gets  
17 assaulted on a Saturday night. She tells her  
18 roommate that she has been assaulted on Sunday  
19 morning. Monday morning, that roommate  
20 somehow says something to her direct report,  
21 and that commander feels like it needs to be  
22 -- well, what happens there? And I need Lisa,

1 or somebody in the military, to tell me who  
2 that -- who that roommate is possibly  
3 reporting to, and what the consequences are  
4 there.

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

16 I know this is a huge conundrum  
17 because the roommates or friends may be  
18 reporting that to squad leaders. Squad  
19 leaders in turn report that to the platoon  
20 leaders, and the platoon leaders, then go  
21 report to the company commander, and so the  
22 commander is going to have to take action.

1                   CHAIR FERNANDEZ:  But that -- at  
2                   that point when the information gets to the  
3                   commander?

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

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

14                  REP. HOLTZMAN:  How would anybody  
15                  know that?

16                  DEAN SCHENCK:  Well, then they go  
17                  back -- this is Lisa.  What I see happening  
18                  from the scenario Mai set forth, is that the  
19                  MCIOs, poof, they are going to investigate.  
20                  What is the first thing they do?  They're  
21                  going to go to the victim.  They're going to  
22                  go to the victim.  They're going to ask her to

1 make a statement. She is going to be freaked  
2 out and say, I didn't want to report it. I  
3 was just confiding in my roommate. I don't  
4 know what I want to do.

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

17           The commander, however, has a duty  
18 to investigate. The MCIOs, when a crime is  
19 reported to them, has a duty to investigate,  
20 and now, specifically, sexual assault. The  
21 commanders cannot investigate. Only the MCIOs  
22 can investigate.

1                   CHAIR FERNANDEZ: Why can't we get  
2 the law, then, to say at that moment when the  
3 MCIO shows up, the victim can say, no, I don't  
4 want to move forward. And then the  
5 investigation stops.

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

8                   CHAIR FERNANDEZ: I know.

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

15                  CHAIR FERNANDEZ: That's what I'm  
16 saying -- at the moment where this should be  
17 able to go back to being restricted. That's  
18 --

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

22                  COL HAM: Commander King, her

1 point is she hasn't made a report at all.  
2 There was no restricted or unrestricted  
3 report.

4 CDR KING: Right.

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

9 BG MCGUIRE: But we also have an  
10 obligation, though, to the safety and security  
11 -- this is Colleen. There is an obligation to  
12 the safety and security of that installation,  
13 and the commanders have got to take what  
14 action is necessary to ensure the security and  
15 safety of that population.

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

1 protect others.

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

12 COL HAM: Right.

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

20 COL HAM: Right.

21 REP. HOLTZMAN: So it may just not  
22 be solvable.

1                   DEAN ANDERSON: Why don't -- it  
2                   does seem to me that there -- this is  
3                   Michelle. There will be instances in which  
4                   investigations go forward despite the fact  
5                   that the victim does not cooperate. There is  
6                   no question about that.

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

19                  Exactly the way that Lisa Schenck  
20                  talked about. "I was just crying. I just  
21                  told my roommate. She asked me why I was  
22                  crying. I told her what happened. And now

1       it's totally out of my control." It's like  
2       that could be a moment when the victim gets an  
3       opportunity to consult with counsel or a  
4       victim advocate and to make a decision about  
5       whether or not he or she wishes to make a  
6       restricted or an unrestricted report.

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

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

19                It does seem to me to be different  
20      if the victim decides to make a restricted  
21      report and then some third party comes forward  
22      and says, "I'd like to report having seen a

1 rape, having been a witness to rape." Well,  
2 that's a different circumstance. You don't  
3 have a statement from -- what you have is an  
4 investigation goes forward without the  
5 cooperation of the victim.

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

17 So while I agree that there are  
18 concerns about instances in which the victim  
19 does not have control, I think there are a  
20 sufficient number of times in which we want to  
21 grant the victim control, and that that  
22 control would be a meaningful opportunity, if

1 the victim has an opportunity to consult with  
2 counsel or with the victim advocate.

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

6 DEAN ANDERSON: Sure.

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

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

18 CDR KING: And, ma'am, this is  
19 Sherry. I was looking through some of our  
20 notes, and one of the places in Texas, one of  
21 the counsel told us that a large part of their  
22 work comes -- talking to victims and advising

1       them about whether they want to file a  
2       restricted or unrestricted report.  So I know  
3       they've discussed about -- whether it's in the  
4       policy or not.

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

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

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

14                   CDR KING:  Thank you.

15                   (Pause.)

16                   Can we maybe move on to Finding  
17       and Recommendation 3?  This one involves the  
18       new recruits, and the policy right now that  
19       they are supposed to receive some initial  
20       training or at least -- I guess it's really  
21       posters or whatever, and your recommendation  
22       to expand that information at the MEP station

1 before they actually get recruited on to  
2 active duty.

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

7 CDR KING: Anybody else?

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

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

13 (No response.)

14 She had told me she had to leave  
15 for a few minutes to take care of some things.

16 Okay. So is everybody okay with  
17 Number 3 as it is?

18 (No response.)

19 Okay. It sounds like it. If  
20 anybody has any objections, please let us know  
21 right away by email, if you're not on the  
22 phone I guess, or if you don't want to --

1                   DEAN SCHENCK: This is Lisa. I'm  
2 fine with that.

3                   CDR KING: Okay. Thank you.

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

15                   DEAN SCHENCK: And who writes the  
16 incident reports?

17                   CDR KING: This is from the  
18 commander.

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

21                   CDR KING: The commander knows  
22 about a restricted report, that there was an

1 incident, but not who it was or the details of  
2 it exactly.

3 DEAN SCHENCK: I see.

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

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

16 CDR KING: Good morning, Meg.

17 MS. GARVIN: Good morning.

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

21 REP. HOLTZMAN: I mean, I think  
22 the purpose of this is very important, which

1 is to ensure that -- and I agree with the  
2 intention of this -- to ensure -- this is Liz  
3 Holtzman -- that the victim that has filed an  
4 unrestricted report gets the full panoply of  
5 services and someone is checking on that. I  
6 think that that's important.

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

20           (Pause.)

21           Why are we hedging on this? Why  
22 aren't we just requiring that these reports be

1 provided for unrestricted -- for restricted  
2 reports, as opposed to asking them to review  
3 whether it should be done?

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

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

9 DEAN ANDERSON: Yes, I'm --

10 REP. HOLTZMAN: -- recommendation.  
11 You know, why should anybody have to give it  
12 any more thought? The only question is the  
13 implementation.

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

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

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

22 CDR KING: Okay. And you kind of

1 discussed Number 5. I think that might be  
2 included in the issue relating to Number 1, so  
3 I don't know if you want to discuss that any  
4 more or you want to move on to Number 6. Oh,  
5 I'm sorry, relates to Number 2, not Number 1.

6 I think the numbering got off  
7 here, but the next one I have is number -- oh,  
8 well, maybe I'm missing a page. It's --  
9 Number 6 is RAINN, the Safe Helpline. And I  
10 think the recommendation was made to try to  
11 clarify -- to clarify the number for the Safe  
12 Helpline and to make that -- that you wanted  
13 to make that the central point of entry for a  
14 hotline number.

15 DEAN SCHENCK: Yes. This is Lisa.  
16 I don't know if everyone remembers, but when  
17 we had -- we heard information from people who  
18 talked to us indicating that they went through  
19 a recording. You know, when they called, it  
20 kicked into a "leave a message at the beep."  
21 So we decided as a group when we talked about  
22 it at that meeting. I can't remember which

1 one. But we talked about making it like a 911  
2 for military sexual assault, something easily  
3 remembered.

4 COL HAM: This is Colonel Ham.  
5 Anything else on 6, or is everybody okay with  
6 that?

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

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

22 REP. HOLTZMAN: Okay. Right. But

1 that's not clear from how this is written. So  
2 how -- sexual assault counseling and for  
3 connection to local SARCs and other service  
4 providers. Just use the same construction.  
5 Just say this is a hotline for sexual assault  
6 counseling and for connection to local SARCs  
7 and other service providers, and for immediate  
8 connection to local SARCs and other service  
9 providers.

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

18 COL HAM: Yes, ma'am.

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

22 MS. GARVIN: This is Meg. Nothing

1 from me on that.

2 BG MCGUIRE: This is Colleen. I'm  
3 fine.

4 (Pause.)

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

7 Mai, this is Colonel Ham. I think  
8 the subcommittee was about to start on Number  
9 7.

10 CHAIR FERNANDEZ: Okay.

11 COL HAM: Findings on  
12 Recommendation 7.

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

18 DEAN ANDERSON: I guess I'm  
19 wondering -- this is Michelle. I'm wondering  
20 why we're not -- don't we want them to be  
21 uniform? Isn't that the goal of this? So why  
22 don't we just direct that they be uniform and

1 reflect all existing initiatives, programs,  
2 and policies, rather than whether the training  
3 -- rather than assess whether the training and  
4 curriculum is uniform and reflects? Why don't  
5 we just direct that it is -- that the training  
6 and curriculum are uniform and reflect.

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

15 So how about the Recommendation  
16 7B, the periodic evaluation of training  
17 provided for services, SARC and VA training --  
18 yes, I think we would need to change the  
19 language, but it would be that -- the periodic  
20 evaluations of the training to ensure that  
21 they -- that the training and curriculum  
22 across the services is uniform and reflects

1 all existing initiatives, programs, and  
2 policies, so that the assessment itself  
3 ensures the uniformity and consistency and the  
4 up-to-dateness of the initiatives, programs,  
5 and policies.

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

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

16 REP. HOLTZMAN: Right. Okay. So  
17 that it includes -- right. So uniform and  
18 includes all policies. Are we getting at the  
19 question of the effectiveness of the training?  
20 Is that in a separate recommendation, or  
21 should it be in here? Because it could be  
22 uniform and it could include everything and

1 people could go to sleep, or not really learn.

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

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

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

19 And, secondly, remember -- I don't  
20 know if it makes any difference because it is  
21 going to come in after your report is issued  
22 -- there is an evaluation of training going --

1 required to go to Congress 120 days from when  
2 the NDAA was passed, which comes out to about  
3 April 25th.

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

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

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

1 are annual or what. There are already  
2 directed annual evaluations.

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

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

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

19 REP. HOLTZMAN: Okay. So this is  
20 -- this is not going to duplicate -- answer my  
21 question. Is this going to duplicate anything  
22 that is in the law or in policy right now?

1 And you're telling me no. So that's good.  
2 Then I think it's a very important suggestion.

3 (Simultaneous speaking.)

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

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

17 REP. HOLTZMAN: Okay. Well, then,  
18 can you make that clear, that while the law  
19 requires A, B, C, you know, that we are  
20 concerned that it's not specific enough, and  
21 so, therefore, we are suggesting that the  
22 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.

1                   CHAIR FERNANDEZ:  Is everyone okay  
2 with Meg's recommendation and the staff's  
3 edits, so that we could move on to Number 9?

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

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

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

21                  CHAIR FERNANDEZ:  Yes, let's do  
22 that.

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

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

13                   CHAIR FERNANDEZ: Meg, are you on  
14 the line?

15                   MS. GARVIN: Yes, I'm here.

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

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

22                   CHAIR FERNANDEZ: Okay. Okay.

1       Should we start with Finding 1 in  
2       Recommendation 1?

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

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

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

19                      And Representative Holtzman and I  
20      -- this was -- you and I had this conversation  
21      the very first time we read the directions to  
22      ourselves, right?  This is -- we are saying

1 that they have standing at the trial court  
2 level, and the issue is whether they have  
3 appellate standing, or whether we are actually  
4 saying -- questioning that they have trial  
5 level standing.

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

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

21 So it's a fact-specific thing at  
22 the trial court level, that's the gap in the

1 law's appellate standing. That to me is the  
2 gap right now.

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

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

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

20 MS. GARVIN: Right. And what I'm  
21 saying is this -- I think it's faulty law to  
22 apply into that narrow interpretation. And

1 I'm happy to write a separate letter. But, I  
2 mean, you know, it's Law 101. It doesn't say  
3 that the -- in our Constitution nowhere does  
4 it say the defendant has standing to assert  
5 his constitutional fair trial rights in a  
6 trial court.

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

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

21 COL HAM: Ma'am, this is Colonel  
22 Ham. I don't want you to think that that's in

1 any way what we're suggesting. I think we're  
2 just asking if -- if there is any way to make  
3 plain what you're saying, or if there is any  
4 way to clarify in the current statute what the  
5 subcommittee concludes exists already now,  
6 just so there is no argument anymore or to  
7 state that you don't believe there is any  
8 plausible argument, based on the services'  
9 interpretation currently and the specific  
10 holding of the case law, and the difference --  
11 the CVRA does say that the -- I don't know the  
12 exact language.

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

21 Is there anything you want to say  
22 about that? If not, we will drop it. We're

1 not trying to suggest that it's limited or --  
2 or if you want to clarify that it isn't  
3 limited.

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

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

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

19 It is not clear that a victim can  
20 -- has rights to enforce denials or violations  
21 of the -- you know, of victims' rights on  
22 appeal, and then it is not clear, you know,

1 that their rights in trial court to do  
2 whatever are clear. So then the  
3 recommendation is that the victims' rights --  
4 this should be -- you know, it should be clear  
5 -- the Secretary should make it clear that the  
6 victim has a right to protect these rights  
7 both in the trial court and on appeal. We  
8 don't have to get into how, right?

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

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

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

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

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

22 COL HAM: Of the crime victim

1 rights portion, and on Finding and  
2 Recommendation 3, the standing issue.

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

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

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

15 COL HAM: Three.

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

20 COL HAM: So, Ms. Garvin -- and  
21 this is Colonel Ham -- I think we got what you  
22 mean, so we should clarify that they can

1 enforce them in the trial court and the  
2 appellate court. Is that --

3 MS. GARVIN: Yes.

4 COL HAM: -- about the -- okay.

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

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

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

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

19 REP. HOLTZMAN: That's my view.

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

1 incorporated and addressed.

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

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

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

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

19 REP. HOLTZMAN: This is Liz  
20 Holtzman. I have a number of comments, Mai.  
21 I don't know how you want to proceed on the  
22 victims' services subcommittee, crime victims'

1 rights draft, still. So I'm happy to defer,  
2 to wait, to mail them in, whatever you want,  
3 or go to -- you know, I just wanted to let you  
4 know that I still have comments about it. So  
5 if you want to go to the -- to the special  
6 victims counsel, that's fine with me. I don't  
7 care what order you go in. I just wanted to  
8 reserve my rights, my standing.

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

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

17 MS. GARVIN: Yes, let's --

18 REP. HOLTZMAN: Okay. I thought  
19 -- okay. On Recommendation Number 1, I  
20 thought I had made this point before, which is  
21 I am not satisfied with the language that the  
22 trial counsel convey the victims' concerns and

1 preferences. I thought that what we were  
2 talking about was that the victim be able to  
3 convey his or her preferences directly to the  
4 convening authority and not through the medium  
5 of the trial counsel.

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

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

19 And so to me allowing one person,  
20 being the victim, a sexual assault victim, not  
21 every victim, a sexual assault victim to have  
22 a session with the convening authority,

1 interjects potential issues in the process, in  
2 the accused's due process rights.

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

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

20           So, to me, I don't care how the --  
21 how the information is conveyed to the  
22 convening authority. I just don't think -- it

1 could be in writing, it could be briefs, it  
2 could be documents, could be email, whatever  
3 the conveying authority specifies, but I don't  
4 think it should go through the trial counsel.

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

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

21           And the matters could be provided  
22 with the case. And I don't oppose writing

1 materials at all, but I really need you to  
2 think out loud for a minute -- and, Patty,  
3 help me here -- in the past, materials  
4 provided to the convening authority of course  
5 should be provided to the accused, in order  
6 that the accused can provide a response.

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

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

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

5           So there is no staff judge  
6 advocate advising that person. It is a trial  
7 counsel. So -- and, again, it differs by  
8 services. I think that is generally correct.  
9 So I think maybe there are two issues, and one  
10 is the right to be heard on the plea, which is  
11 addressed in Recommendation -- I'm sorry, I  
12 just saw it. It's Recommendation 2, which is  
13 how to be heard on the plea in the military  
14 justice system, which is the -- what  
15 Representative Holtzman was referring to, that  
16 it be in writing or in person or otherwise.

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

22           REP. HOLTZMAN: This is Liz

1 Holtzman. My understanding -- maybe I'm just  
2 wrong -- but the victim is given a right. And  
3 were you talking about the difference between  
4 the Crime Victims Act and the military justice  
5 system? In the Crime Victims Rights Act, as  
6 I understand it, the crime victim has the  
7 right to confer with the counsel to the  
8 government.

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

18           Before a decision is made to  
19 prosecute, the trial counsel is not the one in  
20 the military system who is making that  
21 decision. The equivalent to the prosecutor is  
22 the convening authority. But under this

1 system, the only one who is -- who is  
2 addressing the convening authority is the  
3 trial counsel, becomes the medium through  
4 which papers are transmitted. Do you know how  
5 the papers are transmitted? Do you know that  
6 they are transmitted with views of the trial  
7 counsel? I mean, it's not a clean situation.

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

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

21 MR. CASSARA: Well, Liz, let me  
22 respond, and then Dean Schenck may agree or

1 disagree. Just as in the civilian system, a  
2 defense counsel has the opportunity to go to  
3 a -- you know, using your analogy, as a  
4 defense counsel, I can go to the prosecutor --

5 REP. HOLTZMAN: Correct.

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

8 REP. HOLTZMAN: Correct.

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

22 So when I want to approach the,

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

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

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

18                    DEAN SCHENCK: Sorry. Go ahead,  
19    Liz.

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

1 authority.

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

5 REP. HOLTZMAN: Okay.

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

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

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

21 REP. HOLTZMAN: And so I don't  
22 really want to create a system which is

1       biased.  But I guess I misread this in the  
2       sense -- and I thought this was the exclusive  
3       way of getting to the convening authority --  
4       but I think what you've said is persuasive to  
5       me as long as the request can be made through  
6       the trial counsel for a meeting or to submit  
7       additional papers directly to the convening  
8       authority, that's fine.

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

15                   MR. CASSARA:  So if your question  
16       is, do I think the trial counsel will deliver  
17       that material to the convening authority, the  
18       answer is 100 percent yes.  I agree with Dean  
19       Schenck that perhaps the better way to do it  
20       is to do what the defense would be required to  
21       do, which is to submit it through the staff  
22       judge advocate, you know, and have the alleged

1 victim do the same thing, and then in both  
2 instances, if the convening authority wishes  
3 to meet with me or with a special victims  
4 counsel, prior to making the disposition,  
5 that's a call the convening authority can  
6 make.

7 REP. HOLTZMAN: What if we --

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

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

18 The example is a plea bargain. If  
19 a defense counsel submits an offer to plead  
20 guilty, and the trial counsel thinks it's  
21 ridiculous, they don't get to decide that. It  
22 has to go up to the convening authority.

1                   Same with any matter that is  
2 addressed to the convening authority for his  
3 or her decision.

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

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

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

17                  MR. CASSARA: That's better.  
18 Thank you.

19                  MS. GARVIN: What if instead of,  
20 you know -- why don't we just say that the  
21 victim's access to the convening authority --  
22 and I don't know the right word to say it --

1 is -- why don't we say it's the same as the  
2 defendant's. And if that's through the trial  
3 counsel, it's through trial counsel. If it's  
4 through -- if it's through the judge advocate,  
5 it's through the judge advocate, whatever it  
6 is, but why don't we be explicit to say what  
7 we are trying to set up here, what we are  
8 recommending is that the victim has the same  
9 access as the defendant.

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

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

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

1 to bring that up to the convening authority,"  
2 but --

3 MS. GARVIN: Okay.

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

8 MS. GARVIN: Got it. Okay.  
9 You're right, Colonel Ham, I don't want to say  
10 that.

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

18 In the civilian world, defendants  
19 don't have a right to necessarily give input  
20 before deciding if a prosecutor charges  
21 either. They do sometimes, like Bill said,  
22 but it's no different. But the victims

1 typically do have a right to give input before  
2 charging, so I think the victim's right is  
3 different than the defendant's under this as  
4 far as written policy.

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

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

18 MS. GARVIN: Got it.

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

21 MS. GARVIN: Got it.

22 REP. HOLTZMAN: Okay. Can I just

1 -- this is Liz Holtzman again. Maybe -- would  
2 it be -- how would you feel, Bill or Dean  
3 Schenck or Meg, if after regarding case  
4 disposition -- the preferences regarding case  
5 disposition, including a request to meet with  
6 the convening authority? Or do you think that  
7 we don't need to add that --

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

10 REP. HOLTZMAN: Okay.

11 MR. CASSARA: I think it's  
12 implied.

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

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

17 MR. CASSARA: I'm happy to help.  
18 Like I said, if I ever have a question about  
19 civil rights law, I'll ask you. But, you  
20 know, there are a few things in life I'm smart  
21 on; this might be the one. So --

22 CHAIR FERNANDEZ: So, at the end

1 of the day, where are we, folks? Are we  
2 making a change to what is there or not?

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

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

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

20 DEAN SCHENCK: This is Lisa. I'm  
21 fine with the language as it -- as it exists,  
22 because the chief of military justice and

1 trial counsel stack up the record of trial and  
2 all the matters, and staff judge advocate will  
3 review it if it goes to -- anything with a --  
4 I would think anything but a summary  
5 court-martial. And I think at this point  
6 there were very few special assault cases for  
7 going to summary courts-martial.

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

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

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

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

19 DEAN SCHENCK: This is Lisa. I'm  
20 fine with the way it is. And don't forget,  
21 the victims -- special victims' counsel help  
22 them with those matters, and they are probably

1 going to be working with trial counsel on all  
2 the cases. Special victims' counsel is not  
3 going to go to the staff judge advocate;  
4 special victims counsel is going to go to the  
5 trial counsel.

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

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

16 And the second point in that  
17 bullet says that the existence of separate  
18 investigation entities within each military  
19 service could potentially lead to confusion  
20 for military investigators, prosecutors, and  
21 other military and civilian employees engaged  
22 in the detection, investigation, and

1 prosecution of crime.

2 I'm not sure why that's a problem,  
3 because we are not talking about criminal  
4 prosecutions here. We are talking about  
5 violations of the rights under the CVRA. So  
6 I don't know that that sentence even belongs  
7 there. Maybe you could just take a look at  
8 that. I don't want to waste everybody's time.  
9 It's not -- I'm just looking to see if there  
10 are any other --

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

14 REP. HOLTZMAN: Okay.

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

22 COL HAM: Does everyone agree with

1 the recommendation that instead of having an  
2 entity in each service it should be one  
3 overarching entity in DoD?

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

6 MS. GARVIN: This is Meg. I  
7 agree.

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

11 (Laughter.)

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

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

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

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

21 REP. HOLTZMAN: Yes, I still have  
22 -- I still have a few more, but are we taking

1 out that second part of that second bullet?

2 Did we agree to do that?

3 BG MCGUIRE: I think we did.

4 REP. HOLTZMAN: Okay. Fine.

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

10 CHAIR FERNANDEZ: Okay. Thank  
11 you.

12 Let's move on to Special Victims'  
13 Counsel.

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

16 MS. GARVIN: I am, yes.

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

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

22 CDR KING: I just said that the

1 recommendations and findings are at the back,  
2 starting on page 29 of this one.

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

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

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

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

17 CHAIR FERNANDEZ: Great. Thank  
18 you.

19 Meg, because I know you need to  
20 leave, is there -- are there any things that  
21 you need to bring up that you feel like we  
22 need to discuss while you're on the phone?

1 MS. GARVIN: I'm reviewing real  
2 quickly. I will be late to class. That's the  
3 beauty of being the professor, right? Shoot,  
4 that's in the transcript now, isn't it? Darn  
5 it.

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

15 Now, maybe that means --

16 MS. GARVIN: Can we just --

17 DEAN ANDERSON: -- that dialogue  
18 -- pardon?

19 MS. GARVIN: Is it possible --  
20 this is Meg. Is it possible to go back to  
21 victims services, I will get off the line, and  
22 get my class -- it's evaluation day, so they

1 have to have a full half-hour to do an  
2 evaluation of me. I can get them started on  
3 that, which I have to be out of the room and  
4 out of the building for anyhow, and then I'll  
5 get back on the line for a half an hour.

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

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

10 CHAIR FERNANDEZ: Okay.

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

14 CHAIR FERNANDEZ: Okay.

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

17 CHAIR FERNANDEZ: Okay. Sounds  
18 good.

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

21 MS. GARVIN: Thanks.

22 COL HAM: Did anyone else have any

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

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

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

19 DEAN SCHENCK: Thank you.

20 COL HAM: Basically, in a  
21 nutshell, requires the special victims'  
22 counsel to advise the client of the advantages

1 and disadvantages of military jurisdiction  
2 versus civilian jurisdiction, and their -- the  
3 victim's preference must be given "great  
4 weight."

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

18                   DEAN SCHENCK: Patty, I just want  
19 to get clarification. This is Lisa. I want  
20 to get clarification on the legislation. So  
21 the legislation, as I understand it, is going  
22 to require us to take into account the

1 victim's preference through the special  
2 victims' counsel regarding who takes  
3 jurisdiction over the case.

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

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

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

20 And we -- the Criminal  
21 Investigations Division from the Army  
22 continued its investigation, even though the

1 Korean National Police did their  
2 investigation. So ours is always ongoing and  
3 our investigators work very closely with  
4 civilian police forces and -- but sometimes  
5 civilian police forces call our guys and say,  
6 "Hey, your service member is accused of sexual  
7 assault." And they come in. They work very  
8 closely together.

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

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

22 CHAIR FERNANDEZ: I guess my

1 question -- this is Mai. My question is, I  
2 mean, if we haven't heard any testimony on  
3 this, how are we supposed to -- I mean, we are  
4 kind of seeing this for the first time. So  
5 how are we even supposed to make a finding or  
6 a recommendation on this? I mean, what's our  
7 role here?

8 REP. HOLTZMAN: Sorry?

9 CHAIR FERNANDEZ: What's our role  
10 here?

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

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

22 So there was a letter sent to the

1 Senate Armed Services Committee, which we  
2 requested a copy of, we received, and I  
3 believe we have sent you. If we haven't,  
4 that's our fault. And you are directed in  
5 your terms of reference to comment on pending  
6 legislation.

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

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

15 COL HAM: Ms. Garvin, is that you?

16 (No response.)

17 Representative Holtzman, you know  
18 more about that than I do for sure. All I did  
19 is they did request comments. Comments were  
20 provided, and we reflected what they are. We  
21 don't have another side of this. I don't know  
22 --

1                   REP. HOLTZMAN: Who was the  
2                   proponent? Is this McCaskill's bill?

3                   COL HAM: Yes, ma'am.

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

16                  I mean, I'm glad to hear, Dean  
17                  Schenck, that there is such good cooperation.  
18                  I just -- you know, my experience has been  
19                  that I have never had any experience with  
20                  military prosecution, but with other  
21                  prosecutors. And sometimes that can be very  
22                  -- let's put it -- problematic. And even a

1 UN-experienced diplomat couldn't handle the  
2 issues of sorting out jurisdiction problems.

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

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

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

21 CHAIR FERNANDEZ: I like that. I  
22 mean, right now we don't have much -- it's

1 almost impossible for us to comment on this.

2 REP. HOLTZMAN: Yes. But we can  
3 see some problems.

4 CHAIR FERNANDEZ: Sure.

5 REP. HOLTZMAN: And if they  
6 haven't done their homework, then they should.  
7 That's smart. That would be, in essence, the  
8 theme of the recommendation.

9 MR. CASSARA: I will say, I agree  
10 with Liz completely. There are few things  
11 that I've seen recently which on first blush  
12 gave me a less positive reaction than this.  
13 I think -- you know, my personal position, I  
14 think it is a terrible idea, and I don't think  
15 we should be making an opinion on it until we  
16 find out more information.

17 REP. HOLTZMAN: Yes. And we can  
18 also say that Congress shouldn't be making the  
19 decision about it without more information.  
20 We could say that, too, if we wanted to. That  
21 would be my recommendation, assuming they  
22 haven't done their homework on it.

1 COL HAM: They may be asking you  
2 to do it for them.

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

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

8 (Laughter.)

9 COL HAM: Ma'am, just --  
10 Representative Holtzman, this is the same bill  
11 you discussed in a different subcommittee that  
12 required the climate assessments directly  
13 after the offense?

14 REP. HOLTZMAN: Oh, yes. Right.  
15 Well, I mean, I think that -- I have no  
16 problem. I mean, if Dean Schenck can spell  
17 out some of the concerns, we could put a  
18 finding saying that these are issues that  
19 suggest themselves. And since Congress has  
20 done -- has held no hearings on this, we just  
21 had the Department of Defense's concerns, that  
22 Congress should defer action on adopting this

1 until they have examined the underlying issues  
2 or held hearings or gathered more information  
3 about it.

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

11 COL HAM: Okay, ma'am.

12 REP. HOLTZMAN: -- diplomatically.  
13 I think that would be my suggestion.

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

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

21 DEAN SCHENCK: Right. This is  
22 Lisa. It's -- I'm talking about adverse

1 implications that impact victims specifically.

2 REP. HOLTZMAN: Correct.

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

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

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

22 CDR KING: Ma'am, I think when I

1 sent out the email and asked for times, I was  
2 hopeful that we would be -- have gotten  
3 through everything. Maybe I was a little  
4 optimistic that we would have gotten through  
5 everything by today.

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

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

16 CDR KING: Victims' services  
17 section.

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

22 But I definitely think they need

1 to be developed, and some of them don't have  
2 recommendations, some of them have possible  
3 findings. It is -- and there is a lot there  
4 that is important. So I want to make sure  
5 that we have time, in particular, where all of  
6 us or many of us are available to talk through  
7 some of those issues.

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

10 PARTICIPANT: She's on.

11 COL HAM: Oh, I'm sorry. And,  
12 Dean Anderson, we can -- and everyone, we can  
13 tell there are some that you will strike  
14 because you struck portions of the  
15 introduction, so those are easy to just take  
16 out. But we didn't get into your possible  
17 recommendations on some of the issues, which  
18 would be very, very helpful.

19 Did you want to turn to those,  
20 Mai, or --

21 CHAIR FERNANDEZ: Sure.

22 MS. GARVIN: Okay. This is Meg.

1 I have been back on the line, and I will have  
2 to get back off, unfortunately. I reviewed  
3 everything on the SVC, the edits that were  
4 made when you guys had your discussions. I  
5 don't have any specific comments. They all  
6 looked fine to me. I think the language and  
7 everything looks great.

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

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

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

20 REP. HOLTZMAN: This is Liz  
21 Holtzman. I have a couple. I haven't  
22 actually finished the whole section, I have to

1 confess, but on page 5, we talk a lot about  
2 the provision in the Uniform Code of Military  
3 Justice, so that you are entitled to an SVC,  
4 if you are otherwise entitled to legal  
5 assistance under 10 USC 1044. Do we ever  
6 explain who is entitled under 10 USC 1044 to  
7 legal assistance?

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

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

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

22 REP. HOLTZMAN: So maybe just put

1 a sentence in the first time you raise that  
2 point, so that everybody knows what we are  
3 talking about. And maybe you can also  
4 footnote it.

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

13 MS. McGRORY: Ma'am, this is  
14 Kristin again. Right now, when this was  
15 written, the only two services that had  
16 policies were the Army and the Air Force. The  
17 Marine Corps has since come out with theirs --  
18 their policy. It doesn't specifically address  
19 this particular provision. And currently the  
20 Coast Guard and the Navy do not have written  
21 policies on the SVC program yet. So that's  
22 where it stands as of now.

1                   REP. HOLTZMAN: Well, I understand  
2 that's where it stands, but are we making some  
3 recommendation that these policies are good  
4 ones? I mean, or are we just going to say,  
5 "Well, you know, we have no comment on what  
6 anybody else is doing"?

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

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

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

21                  CHAIR FERNANDEZ: Liz, why don't  
22 you go ahead?

1                   REP. HOLTZMAN: That's as far as I  
2 got. I'm sorry. I'm silent now on this  
3 point. I mean, I'd be happy to send the rest  
4 of my suggestions to the staff, I hope maybe  
5 by the end of the day, if not, on Monday.

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

9                   (No response.)

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

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

19                  CHAIR FERNANDEZ: Is that question  
20 for Liz?

21                  CDR KING: No, it's for --

22                  REP. HOLTZMAN: I think I answered

1 it. I think I answered it, but I don't know  
2 about anybody else.

3 CHAIR FERNANDEZ: I think that's  
4 fine.

5 CDR KING: Okay.

6 CHAIR FERNANDEZ: And let's write  
7 it up.

8 CDR KING: Okay. Thank you.

9 CHAIR FERNANDEZ: Okay. Sorry.  
10 Okay. So let's finish up with  
11 victims' services. Were we on 8? Is that  
12 what we were on?

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

15 CHAIR FERNANDEZ: Right.

16 REP. HOLTZMAN: Okay. Now I've  
17 got it. Thank you. Sorry.

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

21 CHAIR FERNANDEZ: All right.  
22 Let's move to 9. Let me see if I'm -- I'm

1 looking at the wrong section. Sorry.

2 COL HAM: This is on page 6?

3 CHAIR FERNANDEZ: No. I'm  
4 completely looking at the wrong document.  
5 Okay.

6 DEAN SCHENCK: Approximately what  
7 page is that?

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

13 DEAN SCHENCK: Okay.

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

19 COL HAM: There are more victim  
20 advocates than there are victims, I think is  
21 the point, ma'am. So that because there is a  
22 requirement by Congress to have every certain

1 size unit have a victim advocate in it, not  
2 every victim advocate ever deals with a  
3 victim.

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

8 COL HAM: Yes, ma'am.

9 (Pause.)

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

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

18 REP. HOLTZMAN: But in terms of  
19 the recommendation, I completely agree, Mai.  
20 This is Liz Holtzman. But we don't -- the  
21 recommendation doesn't really go to the point  
22 of too many victim advocates. I mean, all

1 we're saying is that SAPRO determines the  
2 appropriate case load, but isn't the case load  
3 determined by Congress? Am I wrong?

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

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

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

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

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

20 REP. HOLTZMAN: I understand that,  
21 but why do you need a victim advocate if you  
22 have the victim advocates general -- I mean,

1 if there are too many victim advocates, should  
2 the caseload be -- should the number be  
3 reduced is all I'm saying. I mean, we don't  
4 address the number issue. Should we be? This  
5 is my question about that.

6 CDR KING: This is Sherry. We  
7 might not have been very clear on how we write  
8 this, but Congress mandated a certain amount  
9 -- a certain number based on full-time  
10 employees. And then the services, instead of  
11 necessarily using the 472 -- making available  
12 472 employees, have divided that up and said  
13 okay, we're going to have 10,000 part-time  
14 people who get trained and will be available.  
15 In case there is ever sexual assault in their  
16 units, they're available to be assigned.

17 And so then we heard in Texas,  
18 some of those people said they never saw a  
19 victim, and that that made them nervous about  
20 ever representing one because they wouldn't  
21 have had enough experience doing it. And so  
22 it seems like we've got a lot of people. They

1 do a lot of training, but a lot of the victim  
2 advocates don't feel very confident about what  
3 they're doing or probably aren't very  
4 confident about what they're doing because  
5 they don't actually provide services like a  
6 full-time victim advocate would typically do.

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

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

18 DEAN SCHENCK: This is Lisa. Do  
19 you remember over at Fort Hood in -- the  
20 people we visited, and there were many of  
21 them, VAs and SARCs -- they talked to us a  
22 little bit about the fact that they had no

1 identifier in their file, and they couldn't be  
2 treated like the EEO representatives.

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

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

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

21 COL HAM: Dean Schenck, Ms. Carson  
22 is here, and she is an expert on the staff on

1 these things. She said they do have skill  
2 identifiers. They don't have career fields or  
3 what you know of as military occupational  
4 specialties.

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

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

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

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

20 REP. HOLTZMAN: Oh, I see. So  
21 what's the difference between the victim's  
22 advocate and the SARC?

1 COL HAM: SARC is the boss. The  
2 victim's advocate reports to the SARC.

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

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

12 MS. CARSON: The statute requires  
13 -- this is Julie Carson. The statute requires  
14 one full-time equivalent SARC and one  
15 full-time equivalent victim advocate at the  
16 brigade level. So all of the services are  
17 putting in one full-time victim advocate, and  
18 at least one full-time SARC, at the brigade  
19 level. But everything on down, you'll find  
20 it's collateral duty and it's largely going to  
21 be uniformed victim advocates who are  
22 part-time.

1                   DEAN SCHENCK: This is Lisa. I  
2 can see why some of them are underemployed, if  
3 they have a full-time victim's advocate at the  
4 brigade level. Some of these units don't --  
5 they go the whole year without ever having a  
6 victim -- ever having a victim identified or  
7 having any kind of sexual assault in their  
8 unit.

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

17                   REP. HOLTZMAN: Can I add  
18 something? I recall -- maybe my memory is  
19 faulty here, this is Liz Holtzman, that some  
20 of these people who were victims' advocates  
21 were drafted into this task and it wasn't  
22 their choice. They weren't volunteering.

1 They didn't necessarily want it. Is that  
2 correct?

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

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

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

15 It is normally the size unit that  
16 is told to deploy, and there might be 40  
17 brigades told to deploy, but it's that entity  
18 which may explain why Congress felt it  
19 necessary to put the personnel in that size  
20 entity, because they are going to pick up and  
21 go somewhere, and then they are going to pick  
22 up and come back, which may mean you end up

1 with too many, but what do you do if Brigade  
2 A deploys and Brigades B and C are left back,  
3 and Brigade A is the one that had the SARCs  
4 and -- has a SARC and VA in it? Because then  
5 they are going to go.

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

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

22 PARTICIPANT: Thank you.

1 PARTICIPANT: Thank you, ma'am.

2

3 REP. HOLTZMAN: Bye.

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

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

20 REP. HOLTZMAN: Right.

21 MS. CARSON: So I think it's --  
22 what we heard was some of these people don't

1 have any hands-on experience. Therefore, they  
2 feel completely ill-equipped when their first  
3 case comes around.

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

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

18 REP. HOLTZMAN: It says --

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

1 testimony that the SARCs --

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

6 MR. CASSARA: I'm reading.

7 REP. HOLTZMAN: SARCs reported,'  
8 skip down, that the foremost challenge for  
9 SARCs is having too many responsibilities to  
10 effectively perform all of the duties required  
11 of the job.'

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

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

22 CDR KING: Can I explain, since we

1 don't -- you don't have the report in front of  
2 you now? The SARCs have three basic kinds of  
3 duties: managerial duties that includes doing  
4 -- entering all of the statistics and --  
5 there's about 12 or 16 duties, isn't there,  
6 Julie, in that category? And then there's  
7 direct victims' services duties because they  
8 do the same thing as victim advocates. And  
9 then there's also training, and they train --  
10 they're responsible for preparing training and  
11 also training all the victim advocates.

12 So there's really separate  
13 categories, so I think in Texas where you --  
14 I don't think you were there, Bill. Some of  
15 the people were talking about it. And maybe  
16 we heard it -- we found some other testimony  
17 on it where somebody, I think in one of our  
18 hearings, even suggested that we divide up  
19 SARCs into maybe doing one or two of the  
20 skills and not all three of the duties, like  
21 maybe have someone who does the managerial  
22 things separate from the other SARC duties

1 because they said it takes them all day to  
2 enter reports into the data system. And they  
3 don't -- they just don't have time to do all  
4 those things, I think was some of the  
5 testimony -- and, unfortunately, you don't  
6 have that in front of you right now, probably.  
7 But that's in the report that we -- we tried  
8 to write that out in the report.

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

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

16 REP. HOLTZMAN: Hands on?

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

19 CHAIR FERNANDEZ: If any of us  
20 could say it.

21 DEAN SCHENCK: Yes. Well, this is  
22 Lisa again. Yes, it's kind of a term of art

1 in academia, when we send people to work in  
2 the field and do clinical work, that kind of  
3 stuff.

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

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

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

12 MS. CARSON: Yes.

13 REP. HOLTZMAN: Good.

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

17 COL HAM: We know to take out the  
18 words anecdotal.' I would say -- Ms.  
19 Fernandez, I am struggling with who to direct  
20 to do what in some of these recommendations,  
21 and not just in your subcommittee, in all of  
22 them. So it's drafted to direct the Surgeons

1 General. I have to find out somehow if that's  
2 the right entity or if there is an Assistant  
3 Secretary of Health Affairs or at what level.  
4 The Surgeons General are in the service level.

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

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

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

22 REP. HOLTZMAN: Military services,

1 just the way you have it, but just take out  
2 direct the Surgeons General,' just the  
3 Secretary of Military Services evaluate the  
4 availability.'

5 COL HAM: Yes, ma'am.

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

9 COL HAM: I like that, ma'am.  
10 Thank you.

11 (Laughter.)

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

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

22 (No audible response.)

1                   CHAIR FERNANDEZ: No. Let's move  
2 on to 11.

3                   (Pause.)

4                   Yes. I think that getting those  
5 included is absolutely essential. We need to  
6 have domestic violence sexual assault included  
7 in the overall numbers of sexual assault.  
8 Does anybody have anything on Number 12 that  
9 they have a problem with? Or, I'm sorry,  
10 Number 11.

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

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

16                  CHAIR FERNANDEZ: Go ahead.  
17 Patty, go ahead.

18                  COL HAM: Family Advocacy Program.  
19 You heard from them, and they have been  
20 around, I don't know -- well, it says over 20  
21 years ago. And they were set up to support  
22 domestic abuse victims and their families, so

1 it's still a separate program. Even though  
2 they may be handling sexual assaults, they  
3 would be intimate partner sexual assaults and  
4 family sexual assaults.

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

10 CDR KING: Yes.

11 DEAN ANDERSON: Yes? Okay.

12 CDR KING: It was late last night.

13 DEAN ANDERSON: Oh, I know. No  
14 problem.

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

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

22 CHAIR FERNANDEZ: So Number 13 is

1 attempting to address the issue of  
2 revictimization, and I understand that's a  
3 very sensitive topic, as Ms. Garvin notes in  
4 her comments, that it shouldn't be  
5 inadvertently or inappropriately used.

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

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

14 I do, however, believe that there  
15 is a large percentage of revictimization where  
16 they have -- you have those predators in drill  
17 sergeant positions and commander positions and  
18 senior NCO positions, and they have a way of  
19 finding these previously victimized  
20 individuals. And so I believe it's to assist  
21 them, in part to empower themselves to get  
22 services because I think we have talked about

1 this kindling effect -- the kindling effect --  
2 where if you had a past sexual victimization  
3 of -- and then something else triggers your  
4 response, and it just keeps going and going  
5 and going. So it's just another -- it could  
6 be another sexual assault. It could be  
7 another -- it could be PTSD from being in the  
8 area of operation. It doesn't matter.

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

19 REP. HOLTZMAN: Right. This is  
20 Liz Holtzman. This is something that I have  
21 been concerned about for a long time. I'm not  
22 sure that I want to say that we should

1 identify, because maybe that's going to be too  
2 controversial, to screen people out. But to  
3 -- I mean, there might be some way of saying  
4 that people who enter the military who've been  
5 victims of crimes and who've been victims of  
6 sexual assault before should be made aware of  
7 services for them so that they can avoid  
8 possible revictimization, given the, you know,  
9 the high incidence of that, rather than saying  
10 exactly how it is going to work.

11 DEAN ANDERSON: You know -- this  
12 is Michelle -- just to add to that, I do think  
13 that if we're screening everybody who is  
14 coming into the military for prior unwanted  
15 sexual contact, it does seem to me that that's  
16 an opportunity -- by the way, we're screening  
17 both men and women -- to screen for having  
18 perpetrated unwanted sexual contact. Not at  
19 all for the purposes of pursuing, but the  
20 screening could be about their experiences of  
21 having engaged in unwanted sexual contact,  
22 either as the initiator or the recipient, and

1 then that could provide us with important  
2 mental health information.

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

14           REP. HOLTZMAN: This is Liz  
15 Holtzman. I'm not in favor -- maybe I  
16 misspoke or I wasn't -- didn't make myself  
17 clear. I'm not sure that I would propose  
18 screening. I don't know that we have enough  
19 information to make such a recommendation.  
20 That could be -- but I think what the  
21 recommendation could be, which is much --  
22 which would be to advise people when they

1 enter the military, and others who are already  
2 in the military, of the services, even if  
3 you're not a victim of sexual assault, if you  
4 have ever been a victim of sexual assault, we  
5 can help you.

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

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

20 MR. CASSARA: This is Bill  
21 Cassara. And I realize we are running short  
22 on time, and I really don't want to open up a

1 whole can of worms. And I don't want to sound  
2 horribly insensitive either, but I don't want  
3 us to be in a position of -- and maybe this  
4 isn't even an issue, but I don't want us to be  
5 in a position of saying that somebody is or is  
6 not eligible for the military due to prior  
7 victimization.

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

16 PARTICIPANT: Hey.

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

19 (Laughter.)

20 MR. CASSARA: No, you know, people  
21 who would -- with amputations. I mean, the  
22 military screens people out based on mental

1 and physical disabilities. And I just want to  
2 make sure that we're not in a position of  
3 saying that they can't use that in the case of  
4 the victim of a sexual assault. You know,  
5 that may sound cold, but, you know, with  
6 readiness still being the ultimate goal and  
7 responsibility of the military, I don't think  
8 we are in a position to alter that.

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

14 MR. CASSARA: No. I don't think  
15 that we want to -- I don't think we want to  
16 take a position one way or another. I just  
17 don't -- I want to make sure that whatever we  
18 do is not telling the military that they have  
19 to accept somebody who is a prior victim of  
20 sexual assault and that they cannot consider  
21 their mental disability in determining whether  
22 or not that person comes into the military.

1 I mean, maybe this provision  
2 doesn't do that, and maybe I'm being  
3 hypersensitive, or hyperinsensitive as the  
4 case may be, but I just want to make sure that  
5 nothing that we say or put down here limits  
6 the ability of the military to make  
7 determinations of who is eligible for military  
8 service. Am I only confusing the matter?

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

18 And I don't think that we are  
19 making recommendations about screening people  
20 in or out of the military. Perhaps we should  
21 be asking the military to more explicitly  
22 screen out perpetrators. It is strange that

1 we would focus on victims in terms of  
2 screening out.

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

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

22 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.

14                   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

1 about -- that I thought was getting into the  
2 area of screening applicants, and I just want  
3 to make sure that we're careful not to do  
4 that.

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

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

21 CHAIR FERNANDEZ: Michelle, this  
22 is Mai. I was going to say the same thing.

1 So many people don't identify themselves, so  
2 they're not going to seek out these services  
3 that are, quote unquote, available. I think  
4 we could make that recommendation. I don't  
5 think it's really -- it would help a handful  
6 of people.

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

16 REP. HOLTZMAN: Well, they could  
17 -- I mean, I'm not disagreeing with you, Mai.  
18 This is Liz Holtzman. But I think those  
19 services could be rejected, too. It depends  
20 how you word it. Personally, I mean, I think  
21 that maybe a more general way of addressing  
22 the problem, which is the military needs to

1 develop programs to provide services that will  
2 protect and enhance the ability of this group  
3 to avoid revictimization. These could  
4 include, you could put, such things as  
5 counseling -- making clear that counseling  
6 programs are available to prior victims of  
7 sexual assault, unwanted sexual contact, and  
8 so forth. It could include screening programs  
9 to identify those people.

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

20 CHAIR FERNANDEZ: I think, then,  
21 we need more of a political answer to this, or  
22 recommendation. I think that we need to

1 identify this clearly as a problem, but we  
2 don't know what the solution is. And that  
3 there needs to be hearings on it, or --  
4 somebody needs to open up this can of worms,  
5 and we don't have the luxury of doing that  
6 right now, but somebody needs to open it up  
7 and say, we know it's an issue. We need to  
8 find the correct solutions for it. But we  
9 don't want to trample on somebody's civil  
10 rights either.

11 DEAN ANDERSON: What about this?  
12 This is just a brainstorming idea. This is  
13 Michelle. What about directing the Department  
14 of Defense to work with -- I mean, the folks  
15 who have, it seems to me, the best information  
16 on victims and consequences to sexual assault  
17 is, you know, the folks at the CDC. They have  
18 the best information about how to prevent  
19 sexual assault, how to -- just in terms of  
20 gathering the information and analyzing it.  
21 What about --

22 COL HAM: Ma'am, this is Colonel

1 Ham. The Department of Defense already works  
2 with the CDC to develop their prevention  
3 efforts.

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

13 CHAIR FERNANDEZ: So we should say  
14 that the -- they may already be doing that.  
15 We know they're working with the CDC on  
16 strategic prevention efforts. Do we want to  
17 ensure that their collaboration include  
18 efforts along these lines? I'm already  
19 forgetting the words you just used. And we  
20 also know that a large number of the new  
21 reports of sexual assault are men and women  
22 who were victimized before they came in the

1 military.

2 DEAN ANDERSON: That could be the  
3 finding, and then the directive is to ensure  
4 that there is -- you know, I agree with you  
5 that it could already been happening, but we  
6 didn't hear about it. What we heard about was  
7 working with the CDC on prevention efforts,  
8 without the assumption that many people in the  
9 room may have already been victimized.

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

18 REP. HOLTZMAN: Can I just make an  
19 amendment to that? First of all, I'm not sure  
20 I would limit it to CDC because, you know,  
21 there may be other organizations that military  
22 could work with that could develop this -- I

1 mean, I don't know that CDC is a place that --  
2 if they decide to do screening, that you'd go  
3 to CDC to do screening, or the nature of the  
4 counseling. I don't -- you know, I'm not  
5 sufficiently familiar with that.

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

13           I would also like to throw out --  
14 I don't know -- we haven't heard anything  
15 about this. I don't know what kind of  
16 screening there is in terms of arrest records  
17 and the like with regard to sexual predators,  
18 or people who've been found guilty of sexual  
19 assault or sexual misconduct. Is there any  
20 screening of that? Should there --

21           CDR KING: Yes, there is.

22           COL HAM: And they're prohibited

1 by statute now from accepting into the  
2 military.

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

5 COL HAM: Am I correct on that?

6 CDR KING: Yes.

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

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

19 REP. HOLTZMAN: There may be no  
20 best practices. So I'm not sure I would even  
21 use those terms, because there may be no best  
22 practices on the issue of revictimization. I

1 don't know how much work has been done on  
2 this.

3 DEAN ANDERSON: Right. And I'm  
4 not saying that we should use the word best  
5 practices. I think working with the CDC is a  
6 best practice. That's what I mean.

7 REP. HOLTZMAN: Yes.

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

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

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

16 DEAN ANDERSON: Yes. And those  
17 materials were forwarded to us, and I read the  
18 transcripts and the materials and they were  
19 absolutely fascinating. And clearly, they  
20 know what they are talking about there, so I  
21 think -- I don't think it's a problem. I  
22 think it's a good idea to direct a focus on

1 this question to the CDC and the Department of  
2 Defense.

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

8 COL HAM: Yes, ma'am.

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

12 CHAIR FERNANDEZ: Thank you, Liz.

13 REP. HOLTZMAN: Have a nice  
14 weekend.

15 PARTICIPANT: Bye, Liz. Happy  
16 Easter.

17 REP. HOLTZMAN: Thank you.  
18 Bye-bye.

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

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

1 be 21.

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

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

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

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

21 COL HAM: That would be very  
22 helpful, Dean Anderson. Thank you.

1                   DEAN ANDERSON: Yes. I think that  
2 even if, you know, whatever I draft or someone  
3 else drafts gets completely changed, having  
4 something in front of us will help us get  
5 through the material and find a direction to  
6 go forward.

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

21                   CHAIR FERNANDEZ: Folks, this is  
22 Mai. I need to get off the line also. When

1 is our next meeting? Tuesday? At what time?

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

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

7 CDR KING: Oh, that could be.  
8 11:30 to 1:30? Yes, that sounds right.

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

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

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

20 PARTICIPANT: Thank you.

21 CHAIR FERNANDEZ: Okay. Likewise  
22 from me. Take care, folks. Thank you for all

1 the hard work, and Happy Easter.

2 (Whereupon, at 1:06 p.m., the  
3 proceedings in the foregoing matter were  
4 concluded.)

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Before: DOHA RSP

Date: 04-18-14

Place: teleconference

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Court Reporter

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