UNITED STATES DEPARTMENT OF DEFENSE

RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL

ROLE OF THE COMMANDER SUBCOMMITTEE

CONFERENCE CALL

MONDAY
APRIL 21, 2014

The Subcommittee met telephonically at 2:00 p.m. Eastern Daylight Time, the Honorable Barbara Jones, Chair, presiding.

PRESENT
THE HONORABLE BARBARA JONES, Chair
THE HONORABLE ELIZABETH HOLTZMAN
GENERAL (RET.) CARTER HAM
MAJOR GENERAL (RET.) JOHN ALTENBURG
BRIGADIER GENERAL (SELECT) LISA TURNER
JOYE FROST

ALSO PRESENT
LIEUTENANT COLONEL CANDACE HUNSTIGER,
Designated Federal Official
COLONEL PATRICIA HAM, RSP Staff Director
LIEUTENANT COLONEL KYLE GREEN, RSP Supervising Attorney
2:04 p.m.

LTCol HUNSTIGER: Well, welcome, everyone, to the Role of the Commander Subcommittee meeting. The meeting is now open.

Judge Jones?

CHAIR JONES: Thank you. We're going to make an effort this afternoon to go through the findings and recommendations for Chapters 6, 7 -- or Sections 6, 7, and 8. And I believe we can begin just with Section 6 in the findings and recommendations section.

I think I have noted that there are a couple of comments on the text itself, but I would like to make an effort to see if we generally agree on the findings and recommendations first.

So we begin with our first finding, which is that "the evidence does not support a conclusion that removing authority to convene courts-martial from senior
commanders will reduce the incidence of sexual
assault or increase reporting of sexual
assault in the armed forces."

I have no difficulty with that
finding. It is consistent with, I believe,
what our interim report was. Is there any
comment on that finding? All right.

MS. FROST: I'm just having a
problem finding the findings and
recommendations.

CHAIR JONES: Oh, I'm sorry. It's
on page 28.

MS. FROST: And it's the first
recommendation?

CHAIR JONES: It's Finding 1.

Well, actually, on page 28, in Section 6 -- I
don't know if I'm off here -- I think it
starts with findings.

MS. FROST: Okay. Fine. Thank
you. I've got it.

CHAIR JONES: The second finding is
that "the evidence does not indicate removing
authority to convene courts-martial from senior commanders will improve the quality of investigations and prosecutions or increase the conviction rate in these cases." Any comment with respect to that finding? I might want to conform it to "does not support a conclusion," just stylistically, say "the evidence does not support a conclusion that removing authority..."

Kyle, maybe you can help me, or maybe you don't know, but is there any kind of finding or recommendation with respect to the Comparative Committee, from them with respect to this issue? Comparative Systems?

LTCOL GREEN: I'm not --

CHAIR JONES: Okay.

COL HAM: Ma'am, this is Colonel Ham.

CHAIR JONES: Yes.

COL HAM: So there is not currently -- excuse me, I'm chewing. There is
not currently a finding on the role of the commander in the conviction rate. There is a section on comparing civilian and prosecution rates that basically goes through Dr. Stone's testimony in December. She points out all of the reasons that it is difficult to compare civilian and military prosecution rates, and suggests some ways to make the information standardized throughout the services, and then it would be comparable. But at this point in time, it really isn't.

CHAIR JONES: So they're going to have some sort of a finding there, and they have to be alert to make sure that they are -- they are not duplicating it. We're not, I guess, because we're making a statement about the commander removing authority. But I guess we need to check through on what they have to say about quality of investigations, prosecutions, and conviction rates.

Any other comments about Finding 2?
All right. Finding 3. "The evidence does not support a conclusion that removing such authority will increase confidence among victims of sexual assault about the fairness of the military justice system or reduce their concerns about possible reprisal for making reports of sexual assault." Yes, Liz?

REP. HOLTZMAN: I mean, I'm not necessarily opposed to the conclusions, but I think we need to pay some attention in this finding to the fact that there are some people who think it will make a difference. So you can say, "While there was testimony, or there were statements to the effect that removing authority will increase confidence among victims," you know, the evidence didn't support a conclusion that it would.

If it's just some kind of nod so that we acknowledge the existence of some body of information that is contrary to this, otherwise people will say, "Well, did you just
ignore it? Did you just" -- I mean, that's just my --

MS. FROST: Yes, that's right. I strongly agree with that, because I don't think that we've heard evidence -- I mean, just because -- I mean, removing the authority might well indeed increase confidence among victims of sexual assault. And it might reduce their concerns in the short term. I'm very uncomfortable making that statement, not the conclusion, but we're essentially saying that we've surveyed enough victims that we can say what they do or do not believe. I really think we need to rewrite that.

CHAIR JONES: I agree. That one stuck out for me as well. And, again, you know, we did hear testimony, which is evidence, that removing that authority would increase confidence. I'm not saying how much weight we gave it, and I don't -- but I think we do have to be very careful with that finding.
So we need to rewrite it. We had some language when we did our report out with respect to foreign military systems in which I think we used a little bit different phrasing about there was -- it was more along the lines of, you know, the evidence neither supported nor -- you know, did support or not support. So there is a way to rewrite this, because otherwise we are sort of ignoring what we did here.

So, Kyle, will you play with that for us?

LTCOL GREEN: Yes, ma'am. We'll look at that.

CHAIR JONES: Okay.

LTCOL GREEN: Yes, we'll look --

CHAIR JONES: I'm sorry. I'm having no trouble hearing the other callers, but I am having trouble hearing you, Kyle.

LTCOL GREEN: I would say yes, ma'am, we'll look to the Allies assessments and see what language we can pull from that.
CHAIR JONES: I think there is a little more neutral language that -- where we acknowledge that there is some evidence, just not compelling or conclusive or whatever. And we definitely have to take note of that, give it more than a nod here.

Finding 4. "Arguments about the advantage of prosecutors over commanders with respect to convening authority are not consistent with information from the civilian sector."

MS. FROST: This is Joye. I have a problem with the way this is written as well. I mean, to begin with, it is so vague. I mean, because we're so immersed in this, I think I understand what is being said. But I don't think the average, well-informed person would understand what is -- I think we need to say exactly what we mean here. Are commanders more effective than prosecutors? I guess that's what is being said.

And then I think we really have to
be careful here. When we say "consistent with
information from the civilian sector," well,
that's the problem. There's a lot of
information from the civilian sector, and
there are communities where prosecutors do a
pretty phenomenal job of prosecuting sexual
assaults but, overall, I don't know that you
could say that about civilian prosecutors.

This is -- I think we have to be a
little more nuanced about that, and, again, go
back to that language. If there is no
compelling evidence that the change that
military prosecutors need to be more effective
over commanders.

GEN HAM: Judge, this is Carter
Ham. I agree with Joye, and I think perhaps
being a little more specific in Finding 4, and
perhaps the language in Finding 3 might be
applicable. It just says that the evidence
does not support a conclusion that prosecutors
will achieve either more cases being referred
to trial or a higher conviction rate than
commanders have achieved.

REP. HOLTZMAN: Right. This is Liz Holtzman. I agree.

MS. FROST: I like that a lot.

REP. HOLTZMAN: You might also add something like, you know, "more willing to take cases" or "more willing to prosecute."

I mean, I don't know how to capture that, but there is also that concept, too, because, as we know, the civilian side is a little bit less -- more reluctant to take cases than the military side. So I don't know. If there is some gentle way of throwing that in, it would be good.

(Simultaneous speaking.)

CHAIR JONES: I'm sorry. Joye?

MS. FROST: Again, I think we have to be careful about saying -- making blanket statements about the civilian sector and comparing it to the military. At least that's what I heard from the researcher. I mean, basically, she started her presentation saying
there really is no way to compare.

And the data that she used, if I recall, at the Austin hearing was old. It was from the '90s. So I just think we have to be careful there and be a little more nuanced that there is no conclusive evidence that has been presented that overall prosecutors in the civilian sector are more or less effective than prosecutors.

I mean, I will say, I have struggled with this from day one -- the lack of research. But particularly comparative research is -- it's difficult to draw conclusions sometimes.

CHAIR JONES: Well, I agree with all of you, and I particularly like putting in the more detailed language. What we're talking about here is comparison of prosecutors over commanders, I think as convening authorities, in terms of achieving more charges brought, more cases being tried. And I think those are generally -- well, those
were General Ham's two examples.

But I agree we need to rewrite
that, and there isn't a lot of, well, evidence
that --

MS. FROST: Well, the one example
that I remember from the Austin hearing, I
believe there were actually some statistics
from the military where cases had been turned
over to civilian authorities for prosecution,
and the figures were pretty abysmal. Does
anybody recall those?

CHAIR JONES: Do you mean the
results in the civilian courts?

MS. FROST: Right.

CHAIR JONES: Or whether they even
dropped the charges?

MS. FROST: Right.

MG ALTENBURG: Altenburg here. I
recall that there were many cases where the
civilian authorities declined, and the
military picked it up and prosecuted. I don't
recall any where the military turned it over
to civilian and they went ahead and prosecuted
where the military did not.

MS. FROST: I would suggest that
we go back and look at those particular
statistics, because, I mean, that -- it might
be useful to integrate here. But it's -- you
know, "a troubling finding is," and then talk
about that.

REP. HOLTZMAN: And my --

CHAIR JONES: Go ahead, Liz.

REP. HOLTZMAN: My memory is the
same as General Altenburg's, and I do think
that either incorporating that information
directly, the evidence or the information that
we received, I think that that would be
important. I don't know whether it should be
a separate finding or in this, but I think it
does go to the question of whether one can
automatically assume that the grass is always
greener on the other side.

MS. FROST: And I'm wondering, why
do we -- why are Finding number 2 and number
4 separated? I think we could probably combine those two.

REP. HOLTZMAN: This is Liz Holtzman. I think it's a separate point, because I think it's a larger point about --

MS. FROST: Civilians versus --

REP. HOLTZMAN: Yes.

MS. FROST: Okay. That's fine.

That's just -- that's fine.

COL HAM: Ma'am, this is Colonel Ham. The --

MS. FROST: Yes, Colonel.

COL HAM: Whether you want point 4 to stay the way it is, I think it was drafted to reflect the argument -- if you recall, it's on page 26 of the assessment, that reflected the White House Report findings on civilian prosecutions.

And as to the other point of the cases that the military tried that civilian prosecutors declined, we do have that information. It is in the Comparative Systems
Subcommittee assessment, and it is in this report, too. It was something like 79 cases from the Army with a 78-percent conviction rate, and then the other Services had fewer cases, but the conviction rates were there as well.

MS. FROST: That's a good point, if it's the White House. But I'm wondering, what is the -- the particular studies I get when we're now doing essentially third-hand citations, the White House is citing two studies? And I don't know how widely or how broadly you could extrapolate those on a national level.

Again, there are areas where prosecutors do an amazing job of prosecuting sexual assaults. Overall, probably not. Maybe we could -- does the White House report actually cite the studies?

LTCOL GREEN: Ms. Frost, this is Kyle. The person -- the White House study that we quoted in the assessments are not
quotes from other studies. Those are sort of their conclusions based on those. But I think what I'm hearing from you is I think what we took was sort of the bottom-line conclusion, and the White House study and what's in the body of the assessment is actually a little bit more fact-based. And so we can bring in some of the facts from the White House study, and I think make this a stronger finding that really reflects the facts and not just the bottom-line conclusion.

MS. FROST: Yes, okay. Well, certainly, a number of -- it really needs to be much more specific.

CHAIR JONES: Right. And when I looked at it, I actually was thinking that it was a little narrower. That it really was comparing prosecutors making decisions about what cases to bring and commanders making those kinds of decisions in terms of, you know, referral to trial. But it can -- it could be the latter, and not necessarily
implicating, you know, conviction rates. But
I think all of these comments should help us
to rewrite 4.

Finding 5 -- well. None of the
military justice systems employed by our
Allies was changed or set up to deal with the
problem of sexual assault." This is
essentially a finding that we made in our
interim report to the Panel already. Is there
any -- are there any comments or changes that
anyone wants to make to Finding 5?

Okay. Finding 6. "It is not
clear whether removing" -- I'm sorry. Go
ahead, Liz.

REP. HOLTZMAN: I just want to
raise a question in the middle of that
finding, number 5, where it says that "the
evidence does not indicate the removal of the
commander" -- skipping -- "has affected the
reporting of sexual assaults." Do we want to
say more than that? Is it just -- is it
limited to the reporting of sexual assaults,
or is it the prosecution of sexual assaults, 
or the incidence of sexual assaults? Is it 
all -- I mean, do we want to make -- 

CHAIR JONES: Yes. You know what? 
I need to go -- yes, I need to go back because 
I have to refresh my recollection as to what 
-- I think most of these countries had no 
statistics in this area. So good point. And 
unless you know off the top of your head, Kyle 
--

LTCOL GREEN: Judge Jones, you're 
right. There is not a whole lot of 
information on incidence. We have some 
anecdotal information that we added from a 
British Parliamentarian talking about 
incidence, but none of it is -- it is somewhat 
anecdotal and not necessarily based on facts 
or hard data. And the issue is, is that no 
or other countries track as closely as the U.S. 
military.

CHAIR JONES: All right. Well, we 
can take another run through that. That to me
looks potentially like what we said in our interim. Doesn't mean it can't be fiddled with and it isn't right.

I remember the point we always make about the statistics that Israel did give us, but I don't know that we need to put them in here. We'll take a look, Liz.

All right. If everyone is okay, then, with 5, with the understanding we'll go back and take a look at the statistics.

Finding 6. "It is not clear what impact removing convening authorities from senior commanders would have on the military justice process or what consequences would result to organization, discipline, or operational capability and effectiveness."

Well, it isn't clear to me. Is that a finding everybody is willing to sign off on? Any comments?

Okay. Finding 7. "Expanding the role of military judges who are independent from the chain of command may improve case
processing and enhance perceptions of the fairness and independence of courts-martial proceedings." Any comments on that one?

COL TURNER: This is Lisa Turner. In Section 4, we had a recommendation that overlaps with this to some extent. I know they were working on the final language, but it dealt with recommending the Secretary of Defense direct the Military Justice Review Group or Joint Service Committee evaluate the feasibility and consequences of modifying the quasi-judicial responsibilities of the convening authority, including discovery, court-martial panel selection, et cetera, and that all addressed or primarily addressed military judges.

So this finding is much more significant I think instead of just recommending that we suggest the Secretary of Defense, as a recommendation, review this, but saying in fact it may improve them. Well, it may also harm them, and I think we heard some
testimony to that effect as well. You can
look at the OCMs and see that.

CHAIR JONES: Well, is that
something that we should not have in this
particular section and leave it to the other
section?

LTCOL GREEN: Judge Jones, this is
Kyle.

CHAIR JONES: Yes.

LTCOL GREEN: Colonel Turner is
spot on. We did do some work on the revised
recommendations on this line from Section 4.
So --

CHAIR JONES: Right.

LTCOL GREEN: This is a bit of a
-- I mean, obviously, there is a bit of a
discussion overlap just because some of this
point was also made in the section, but it may
have fit better within Section 4.

CHAIR JONES: My reaction to it is
that it does, and then I would definitely hold
it for Section 4. Any comments from anyone?
Okay. Then we will move on to
Finding 8. "Congress has recently enacted
significant reforms addressing sexual assault
in the military, and the DoD has implemented
numerous changes to policies and programs to
approve oversight and response. These reforms
and changes have not yet been fully evaluated
to assess their impact on sexual assault
reporting or prosecution."

Okay. I mean, I don't think
anybody disagrees with that. Is there -- are
we not talking about prevention here? We're
sticking to reporting or prosecution? I mean,
obviously, the reforms are broader than that.

LTCOL GREEN: And, Judge Jones,
again, this one overlaps. We walk through
this finding in Section 5, the legislation --

CHAIR JONES: Right.

LTCOL GREEN: -- again, so we have
some revised language in Section 5 that I
believe we broadened. I don't have the
revised language in front of me.
REP. HOLTZMAN: So are you suggesting we --

CHAIR JONES: I'm sorry. I didn't hear you.

REP. HOLTZMAN: This is Liz Holtzman. Does it also address victims? That doesn't belong here.

LTCOL GREEN: I will have to look at it, ma'am. I'm not sure what it says in terms of impact on victims, in terms of that revised language.

CHAIR JONES: I think, well, we definitely need to figure out whether this should stay here, and what we've said in the other sections.

LTCOL GREEN: And my recommendation is --

CHAIR JONES: Pardon me?

LTCOL GREEN: My recommendation, ma'am, is that we expand -- we can look at the other recommendation. The other recommendation being specific to legislation,
that's probably the most logical place for a finding on that topic. And so this may not belong here as much as it belongs there.

CHAIR JONES: Well, I was actually waiting for the line that basically said, "and so until we have seen the results of this -- of these new initiatives, essentially, you know, we would not recommend -- that we would recommend, you know, waiting on any legislation to remove the authority from -- you know, convening authority from senior commanders." That's what I thought we were leading to in that one, but we have done that in the legislation section? Is that what you're saying, Kyle?

LTCOL GREEN: Yes, ma'am. At least -- not so much an assessment or any opinion of the Subcommittee, but there is a finding in that section that we walked through and everybody approved.

CHAIR JONES: And just remind me, what does that say?
LTCOL GREEN: Ma'am, it's essentially the same language. I just -- I don't have a copy of the revised version, but we reworked this based on inputs --

CHAIR JONES: Gotcha.

LTCOL GREEN: -- at the meeting last week.

CHAIR JONES: All right. Well, then we just need to -- we obviously don't need it twice, so we'll figure out where it should go.

LTCOL GREEN: Okay, ma'am.

CHAIR JONES: Is that right, Kyle?

LTCOL GREEN: I think so.

CHAIR JONES: Okay. Now, we have two recommendations. The first is, "The authority vested in senior commanders to convene courts-martial under the Uniform Code of Military Justice for sexual assault offenses should not be changed." Any comments on that?

All right. And the second
recommendation is, "Although the Subcommittee recommends against modification of convening authority responsibilities for sexual assault offenses, further study is appropriate to fully assess what positive and negative impacts would result from changing pre-trial or trial responsibilities of commanders. In particular, the Subcommittee believes discovery, oversight, court-martial panel member selection, search authorization, and other magistrate duties, appointment and funding of expert witnesses, and procurement of witnesses, are responsibilities that are currently assigned in whole or in part to commanders that should be considered and fully assessed."

LTCOL GREEN: And, Judge Jones --

CHAIR JONES: Colonel, can you --

LTCOL GREEN: This, again is --

CHAIR JONES: Colonel?

LTCOL GREEN: This is a repeat.

CHAIR JONES: Yes, that's what it
sounds like. Yes, right.

All right. So then we have to
decide where we want to put this?

LTCOL GREEN: Yes, ma'am.

CHAIR JONES: Okay. We can end up
with one recommendation here, if that's the
way we go.

Any other comments about this
section? There were only -- there were a
couple of comments on the text. I think one
or both. Well, we have staff comments, which
are fine, and then we have one from -- two
from Colonel Turner. And I think we -- I
mean, I generally agreed with those. One is
on page 11 where the suggestion is made that
we identify that only one former senior
military officer had served as a GCM CA. We
can do that.

And then the other was a
recommendation on page -- I've lost you,
Colonel.

LTCOL GREEN: Twenty-three, ma'am.
CHAIR JONES: Oh. On page --
well, there's one on page 9 where Colonel
Turner suggests we clarify we have heard no
testimony from any victim that complained of
an issue with the convening authority in the
case of their accused. Most complaints
weren't even about commanders but about NCOs.
We'll have to go back and take a closer look.

So, I mean, I would be happy to
take a closer look at that, or ask the staff
to. But I'm a little reluctant to put that in
there without doing that.

MS. FROST: This is Joye. And I
agree.

CHAIR JONES: "No testimony" is
very broad.

MS. FROST: And, actually, even
though -- again, based on my recall, victims
did complain about NCOs, but they also
complained about the response after they
reported. I don't think that's a good idea to
put that in there.
CHAIR JONES: Yes. I think I also recall that at least there were general comments about being disappointed with commanders' response. So I wouldn't put that one in there either.

I think those are the only two.

Can we move to Section 7? Yes, Liz, is that you?

REP. HOLTZMAN: Yes. This is Liz. It's me. Sorry. I don't know if -- I have a couple of small wordsmithing -- I was just going to send them to Kyle, but --

CHAIR JONES: Okay.

REP. HOLTZMAN: -- I don't know if it belongs here or in the legislation, but I generally feel -- my overall feeling is that we do not, in my humble opinion, fully address the, what I consider to be infirmities in the Gillibrand proposal. And I don't know if it belongs here or where it belongs, but I do think we need -- and we have not really addressed -- the vagueness with which it
addresses the whole question of the alternative to the commander's convening authority. That's a whole subject that I think, you know, needs to be addressed, at least in a sentence if not more.

And, secondly --

CHAIR JONES: We have evidence about that. We have -- so there is certainly something we could say.

REP. HOLTZMAN: Right. My only question is, should it be said here? But, I mean, I made a note with the draft as I was reading it, because we talk a lot about the proposal, but we don't talk, I think, sufficiently about some of the problems with the proposal and that's one of them.

The second thing is that you are left with the impression, in terms of the proposal, that she has never claimed -- let me find my notes on that. Excuse me. She has never claimed that the Allied militaries had increases in reporting as a result of the
changes they made.

I think that was an early argument that was made in favor of the legislation. I could be wrong. I would definitely stand to be corrected. But if that was an argument that was made and withdrawn, I think that history ought to be there, too.

CHAIR JONES: Well, that is my recollection as well, and I think we have that -- we have that information, and we can doublecheck it, because I know that --

REP. HOLTZMAN: My only -- yes. My only concern is that the report should reflect not a broken, you know, some things about the legislation here, and some things about the legislation there. Maybe that's the way, stylistically, you want to approach it. But I just want to make sure, if we're doing that, that we have the whole panoply of argumentation, including how -- the genesis of this proposal.

I mean, the original -- the
original, as I recall, argumentation in favor of this bill was that it was going to increase reporting, and of course that argument was dropped. I think that, you know, some of that should be in a discussion of the bill.

Just because she dropped it, or someone dropped it, doesn't mean that that shouldn't be part of an understanding of what happened, because it might suggest, you know, as it may seem to some people, outside observers, that, you know, once you latch on to an idea, all the rationales fall away. You know, well, so you come up with other ones, and then, is the argument still as strong?

So that's just my --

MG ALTENBURG: This is John Altenburg. In fairness to Senator Gillibrand, my recollection is a little bit different, and my recollection is that she said we threw out the Allied argument. Our Allies do it; why shouldn't we? I don't specifically recall her saying that theirs was better. It was just
the argument that they're our Allies and we
should do what they do. It was sort of the
rural community idea. Why should we be
separate from everybody else?

I don't recall her citing any
statistics that they were doing a better job.
It was just the -- it was that international
argument that our Allies do it; we should do
it, too, type of thing.

REP. HOLTZMAN: Well, my
recollection on that -- this is Liz Holtzman
again -- is that initially that was not the
case because I think they cited to Israel
where there was an increase. But actually
what turned out to be the case was that Israel
had -- the commander didn't have the convening
authority, since, I don't know, time
immemorial, like the 1950s --

CHAIR JONES: 1955.

REP. HOLTZMAN: I'm sorry. 1955.

CHAIR JONES: 1955.

REP. HOLTZMAN: So that the change
in reporting, which is relatively recent, has
nothing to do with the chain of -- with the
convening authority. So I do -- I mean, I
could stand corrected. I could be completely
wrong about it. But I do think that there is
a historical aspect as well as some other
deficiencies in the bill that should be
addressed.

Now, I don't know where they
should go. I'm not making that editorial
change now. But my own thought is that it
should be in one place probably or at least
all the arguments ought to be there.

LTCOL GREEN: And, Ms. Holtzman --
this is Kyle -- we have completely revised the
discussion of pending legislation in the
legislation section, and we have added
substantial detail. So as soon as we get
these initial drafts, we will have revised
text for you to review there. And I think,
based on our discussions last week, this is
exactly what we answered to.
REP. HOLTZMAN: Okay.

MG ALTENBURG: And I certainly agree with Liz Holtzman that we ought to say more about the legislative proposal, because it does have so many flaws and vagueness. And we ought to identify that. I definitely agree with that.

CHAIR JONES: Right. And it's a live piece of legislation that is going to be argued about and voted on again presumably. So it's something that we should talk about.

Anything else on 6?

(No response.)

Okay.

COL TURNER: This is Lisa Turner.

CHAIR JONES: I'm sorry.

COL TURNER: The staff comments on page 27.

CHAIR JONES: Oh, I missed those.

Thank you, Colonel.

LT COL GREEN: Ma'am, these are some things that in the course of our
discussion, or in the course of your deliberations, you covered. And I think -- I think it would be fair, and I think this falls right in line with what you all are talking about in terms of the discussion about supporting reasons for change that perhaps the Subcommittee needs to just expand on in its assessment.

And so these were two points that we think are important. Obviously, the impacts or the predictions about changing of the convening authorities would have on reporting and victim expectation, and then also the issue of reprisal. And so I -- my recommendation is that we add a short paragraph on each talking about the Subcommittee's determination on those.

CHAIR JONES: Okay. And then we can -- you can point them out to us, and we'll take a look at them again. We'll have that opportunity.

Okay. Section 7. Okay. The
first finding is that, "although surveys may provide helpful insight into positive and negative climate factors within an organization, surveys alone do not provide a comprehensive assessment of the climate in an organization."

Any comment on that, or any disagreement?

(No response.)

All right. The second one is that "commanders must seek additional information beyond survey results to gain a clear picture of the climate in their organization."

Okay. Finding 3. "Evaluations conducted by independent organizations of institutional and installation command climate are essential to achieving credible, unbiased measurement of SAPRO initiatives, programs, and effectiveness."

Okay. Four. "Commanders are ultimately accountable for their unit's performance and climate, but unit climate
assessments must consider the effectiveness of all leaders in the organization, including" -- and this was -- "including all subordinate personnel exercising leadership or supervisory authority."

Okay. I don't think there is any disagreement about that.

MS. FROST: Judge, this is --

CHAIR JONES: Yes.

MS. FROST: I'm sorry to go back. Just, you know, looking at Finding 3, "evaluations conducted by independent organizations." I'm not sure what we are talking about. Independent from what? I don't recall that in the text. Maybe I just missed that.

CHAIR JONES: I guess I was thinking organization, obviously, independent of the Department of Defense, is what I was thinking. But maybe that isn't the intent there.

MS. FROST: This is Joye. That is
something that I had pushed, because quite frankly that is the gold standard in evaluation. And my concern is that to really have credibility, both in -- I think with victims and victims advocacy groups -- that there does need to be some kind of arm's length there.

And it is my understanding -- this wasn't in the meeting, but didn't -- hasn't SAPRO itself actually contracted with the RAND Corporation to do some of its evaluation?

COL HAM: Yes, ma'am.

MS. FROST: Or that may --

CHAIR JONES: Yes, we did hear about that.

COL HAM: This is Colonel Ham. I'm sorry. We asked for more information, and they gave us kind of a white paper on what they are having RAND do. They are having RAND develop and do the next Workplace and Gender Relations Survey.

CHAIR JONES: Right.
MS. FROST: So I think that's a step in the right direction. And, you know, I think maybe we could temper that, because, I mean, there are going to be things that commanders do locally to evaluate. I mean, it's -- the terminology here is pretty generic, but maybe what we should do is say that ultimately to achieve credible evidence or credible findings that meet rigorous evaluation and research standards that DoD should consider more use of evaluations. You know, kind of temper it somewhat, but that is the gold standard. And if we want people to believe this, then we've got to -- that's what has to be done.

LTCOL GREEN: And, Ms. Frost, this is Kyle. I guess my understanding is maybe the question is independent organizations -- are we talking evaluations conducted by organizations outside of DoD?

MS. FROST: That's my personal opinion, yes.
LTCOL GREEN: And I guess, Colonel Turner, would that satisfy --

MS. FROST: It's just like with Department of Justice. We fund grantee projects, and we want them to be evaluated. We send money to the National Institute of Justice, who is our research arm, but they don't do the evaluation. They go out and get an independent research organization to do the evaluation, and I really think the military should emulate that model more.

MG ALTENBURG: This is Altenburg. I agree with you, Joye, on that.

COL TURNER: Colonel Turner here again. I don't disagree with the idea of having other organizations evaluate the effectiveness of SAPRO programs. I think that's healthy from a number of perspectives. I guess I'm just trying to read this finding and say, "How are the various ways it could be interpreted?"

"Independent" to some people may
or may not include RAND or contracted organizations. Based on the sentence structure, it could be somebody completely outside of DoD coming in to evaluate a particular installation. It could be that we're saying that instead of organizations evaluate installation command climate. Is that what we're saying? Independent organization, non-DoD, should be evaluating the installations' command climates? I don't think that's what I heard the discussion as saying.

MS. FROST: That's a good point, because this is specifically about command climate. But, again, I -- I wish -- I'm not intimately familiar with the survey, but I think the fact that DoD is contracting with RAND, it's not -- I guess -- I don't see how you could have the command climate survey administered outside of -- by people in DoD. But it -- certainly the construction and how it is -- the sampling,
and so forth, the construct of it at least.

COL TURNER: So I think you are moving it one level a little bit, Joye. What we're saying is we need an independent, unbiased organization to look at the way SAPRO is doing its job as opposed to going in and doing its own. I mean, part of their study might be to do a survey. I don't know. But is that sort of where this conversation is going?

(Simultaneous speaking.)

MG ALTENBURG: This is Altenburg. Personally, I just think it means that SAPRO needs an outside audit, however that happens. They need somebody looking at their process and how they do it and look at how they're doing it. That's my own view. There may be more than that, but that's --

MS. FROST: Well, that's a little different than I think what we're trying to say, but, actually, I think both. And I don't know, would the OIG, the DoD OIG, ever be
involved in assessing the performance of SAPRO? Or doing an audit?

COL HAM: Ma'am, this is Colonel Ham. If you remember the Defense Task Force on Sexual Assault in the Military Services, one of their recommendations was the Department of Defense set up an independent Sexual Assault Advisory Board, and that was not specifically implemented, not an independent, you know, Federal Advisory commission like you are that would advise the Secretary of Defense on sexual assault matters. Is that more what you're talking about, or --

MS. FROST: Well, I think -- I don't think that's -- I'm sorry. Was it General Altenburg that said that? An audit of SAPRO? I don't think an advisory committee would do that. An audit means just literally looking -- you know, from soup to nuts, looking at what they do, how they do it.

I do have some concerns about the
command climate survey and the way it is
constructed and the way that that information
is used.

REP. HOLTZMAN: This is Liz

Holtzman. I agree with Joye about this. I am
not sure that we need to call for a whole
investigation of everything that SAPRO does.
That may be a very good suggestion, General
Altenburg, but I think right now what you are
talking about, Joye, and what I agree with, is
that there needs to be an outside organization
or company that assesses the -- you know, the
quality of SAPRO's work on climate -- you
know, on -- whatever it is. Maybe the survey
is --

MS. FROST: That's a simpler way
to put it.

COL HAM: Ma'am, this is Colonel
Ham. The Government Accountability Office --
Congress has directed them a number of times
to look at different parts of SAPRO's program.
Would that be a specific --
REP. HOLTZMAN: I don't think so.

COL HAM: No?

REP. HOLTZMAN: This is Liz Holtzman. I don't think so. I mean, I think they are just looking at it sort of in a broader way, but I don't know that they have the background, the experts, in psychological assessment and that kind of thing, which I could be wrong, that -- you know, it's the survey methodology, and whether the questions are right, are they asking the right questions, how are they arriving at the questions, and so forth.

So I think -- I'm not sure that's a study for GAO. GAO could tell you whether, you know, people are -- you know, how many surveys they are doing and whether they are spending too much money on the surveys, and that kind -- you know, are they using a good --

MS. FROST: I agree.

REP. HOLTZMAN: -- pick the
company that they are doing the survey with. But I don't think they could -- I'd be hesitant -- I mean, it's possible that they have that expertise, but I'd be hesitant about picking them. I think it should be -- I have no problem with letting DoD make the decision, but it should be some agency outside of DoD and outside of the government that is assessing this.

MS. FROST: And they should be research experts, and they should be particularly expert at survey methodology. The idea of doing this strictly -- isn't it completely by email or online? Anyway, I just have some concerns with how it is being used, from the information that is being gathered, and, you know, I think a top-to-bottom assessment by an expert, independent, external research organization would be in order. Maybe the National Academy of Sciences. They did something with the Bureau of Justice Statistics with their National Crime
Victimization Survey. So maybe something similar.

COL HAM: Ms. Frost, are you talking -- this is Colonel Ham. Are you talking about the whole Workplace and General Relations Survey now? Or are you focusing on Command Climate Survey?

MS. FROST: Well, actually, both. Anytime you're doing surveys like this, and putting so much weight on them, it makes me really uncomfortable, if they themselves are not being evaluated for -- are they really getting the information that they think they are -- that they want to get?

COL HAM: I can tell you Comparative Systems has a whole section on the -- on survey methodology, and did meet with Dr. Sable from the Bureau of Justice Statistics and Dr. Lynch again and Mr. Beck, as well as gathered the National Academy of Sciences study that you are talking about. So they have quite a bit in their report on that.
MS. FROST: So maybe this is not
the right place. Well, I don't know, though.
This is command survey, so -- climate survey,
so --

COL HAM: You know, if we're
talking about command climate surveys, I don't
know that that would necessarily, you know,
intersect with what Comparative Systems is
doing. If we narrow Finding 3 to, you know,
getting an independent or non-government
research -- research group to evaluate and
make it narrow, which seems to be what this --
these findings are about, the surveys, and the
initiatives, programs and effectiveness, that
is pretty broad.

MS. FROST: I agree. This would
also tie into our concern about the
legislation that would suggest doing a climate
survey every time there is an incidence of
sexual assault. So we could even talk about
the timing and -- you know, and even
alternative -- perhaps this assessment could
include alternative or complementary ways of assessing command climates that isn't totally dependent on this survey.

COL HAM: That's an excellent suggestion.

CHAIR JONES: Well, I agree. So are we going to narrow Finding 3 along the lines of our discussion?

MS. FROST: I think so based on what Colonel Ham just told us about the larger discussion.

CHAIR JONES: Right. Larger picture. Okay.

Now, if we go to Finding 4, we have the statement that "commanders are ultimately accountable for their unit's performance and climate, but unit climate assessments must consider the effectiveness of all leaders in the organization, including all subordinate personnel exercising leadership or supervisory authority." And I don't think there is any disagreement with that.
The next finding says, "Most issues and concerns expressed by victims are with lower level leaders, not senior commanders or convening authorities" --

MS. FROST: This is Joye. Same concerns as before.

CHAIR JONES: Yes.

MS. FROST: If we're basing this on anecdotal reports by some victims, I have great concerns. If this is -- and I apologize because I have not read Section 7. If this is in fact based on survey results or something systematic, that's different. But if we cannot say that systematically we know that victims' concerns are primarily with lower-level leaders, it just -- it just concerns me, because the reports that make it to the media are not about lower-level leaders. And it makes us sound tone deaf, I'm afraid, if we put it written like this.

CHAIR JONES: Right. I mean, I think "most" is a big problem, and we can --
we should --

LTCOL GREEN: Can I suggest --

CHAIR JONES: Yes, go ahead, Kyle.

LTCOL GREEN: This is Kyle.

Professor Corn provided some good alternate language that I think really gets at the heart of this issue. I mean, because -- and I don't think it would be unreasonable to -- I think most of the concerns have focused on subordinate, and they do tend to focus on improper response by lower-level leaders and then discussions. I mean, that was a point that the Subcommittee heard many times.

But I think the point of that is really his second paragraph, to make sure that the analysis and the -- and that focuses as well on lower-level leaders and not just commanders.

CHAIR JONES: Yes. And the second part talks about how low-level leaders will have the most contact with sexual assault victims.
MS. FROST: But are we basing --

REP. HOLTZMAN: May I --

MS. FROST: -- this comment --

CHAIR JONES: Yes, Liz, what's your question?

REP. HOLTZMAN: I must be dealing with a different document. I have a document that I'm working off, which is draft 2 April '14. Is that not the correct draft?

CHAIR JONES: Yes. Same document. That's what I'm looking at.

REP. HOLTZMAN: Okay. And the finding -- all right. So you're on Finding Number 5.

CHAIR JONES: Right.

REP. HOLTZMAN: "Most issues and concerns..." Okay. Well, I just wanted to say that I share Joye's concern. I mean, I do -- I mean, unless you are willing to say it more explicitly that many of the concerns heard by the Subcommittee, if you want to put it that way, were with the lower-level
leaders, and there has been no systematic
analysis of victims to determine where their
exact source of dissatisfaction is. I'm not
saying you should put that in, but that would
be more accurate, I think, than what we have
here, because this kind of --

CHAIR JONES: Yes. No, I strongly
agree with that.

MS. FROST: I think maybe part of
the point of the finding -- correct me if I'm
wrong, Kyle -- is to get to the point that
saying we need to remove convening authority
from -- general court-martial convening
authority isn't really getting necessarily to
the root of the issue that the victims have,
because they complain about a variety of
things -- you know, peer reprisal, NCO
reprisal, lower-level reprisal. And we didn't
hear evidence that a general court-martial
convening authority was the problem.

REP. HOLTZMAN: Yes. I think if
we -- we really need to flesh that one out,
because I'm afraid it will be misread as
they're dismissing victims' concerns with
senior commanders. I mean, I don't disagree
with it, but unless there has been a
scientific survey of sexual assault victims in
the military that -- I just -- based on the
selective nature of victims that appeared, I
just think we have to be, again, much more
nuanced with this, but -- and still make our
point.

COL HAM: Ma'am, it's Colonel Ham.

Does everybody agree with -- it sounds like
some people might not have the version that
has Professor Corn's suggested comments, but
his comment, again, is as regards command
climate surveys, that because low-level
leaders will inevitably have the most contact
with sexual assault victims in their units,
unit climate assessments and response measures
must be sufficiently comprehensive to include
leaders and supervisors at all levels. Do
people agree or disagree with that point?
Focus on what the command climate assessment should assess.

CHAIR JONES: I agree with that.

MS. FROST: I agree with that, but, again, I get really uncomfortable with some of the vague terminology. What does a "lower-level leader" mean?

LT COL GREEN: I think those who are not convening authorities.

MS. FROST: Well, then I'm not sure that I really agree with that, because sitting there listening to victims, there were a lot of complaints about commanders not supporting them or not doing the right thing, even though it may have been NCOs.

And I don't -- you know, unless you can point us to some systematic assessment of what victims have or have not said, I just get real uncomfortable when we start putting words in what victims think based on the few victims that have appeared before the Subcommittee and the larger Panel.
Again, I don't disagree. I just think we need to -- we just need to be careful with that.

CHAIR JONES: I hadn't even focused on it, but lower-level leaders, I think we do need to make that more detailed.

MG ALTENBURG: A suggested starting point would be to say below the O-5 level of leaders. That would be the battalion commander, the squadron commander, and most of the Services. And it seems that almost all of the evidence, if not all of the evidence, involved criticism of people at the E-5, E-6, E-7, E-8, O-3, O-4 level, all below the battalion or squadron level. It was where their next level and even two or three levels above them leaders were, is my recollection.

CHAIR JONES: Well, maybe we could say --

MG ALTENBURG: I would just say -- the other thing I was going to say is that the O-5 level is the first level of convening
authority. That's the summary court-martial convening authority level of responsibility. Everybody below that level is not any kind of a convening authority, let alone someone who could send them to even a lower-level trial. But they are leaders, and they are people that are responsible, quite frankly, for a lot of the problem that we have. But that's where the leaders are that are affecting the victims the most.

LTCOL GREEN: And, sir, specific to the climate survey requirements among the Services, those begin at the company commander level. There are requirements that company commanders do climate assessments, climate surveys, and so I think the point of this question is even -- is exactly what you said, is to delve even below the junior-level commanders down into the non-commissioned officer leadership and the subordinate officers within the organization.

MS. FROST: This is Joye. I still
think whenever we lump all victims together
and we say "Victim concerns tend to focus on
perceived response to sexual assault reporting
by lower-level leaders," we have now made a
huge conclusion about victims in general in
the military. And I am still uncomfortable
with that.

I think we need some -- to say,
"Some victim concerns are many victims' concerns," so that we don't give the
perception that we are saying this is what all
victims are focused on. And, again, because
this is so discordant with what we're getting
in the media.

MG ALTENBURG: Well, first of all,
we can use some nuanced language so that it's
not exclusively lower-level. And, secondly,
does anyone recall any victim saying anything
about somebody at the O-5 level or above?
Because I don't.

REP. HOLTZMAN: This is Liz
Holtzman. I mean, I don't know, but it
doesn't matter, I think, whether we heard --
after all, how many witnesses -- how many
victims did we hear? 15? 10? 20? I mean,
out of thousands. So I don't know that that
is representative, and I would be -- I share
Joye's concern about suggesting on the basis
of what we heard what most victims feel. I
think that that's, you know, opening us up to
criticism. It is -- you know, it's an
extrapolation without it being based on
evidence. We can talk about what we heard;
that is certainly true. But I don't know that
we can then go from there to saying that this
is in fact -- you know, that we have
identified the --

MS. FROST: That it reflects the
experience of all victims in the military,
because I don't think that it -- that it does.
And so I'm just saying, I think it's --

CHAIR JONES: The finding in 5 is
way too sweeping. It should obviously be
something which is true, and basically say,
"Look, we have also heard from many" -- I think may work -- "victims." And I don't know how exactly to talk about lower-level leader, but then it -- we can say, "Because these leaders will have the most contact, it is important to, you know, make sure that they are surveyed in these climate surveys."

I like what, you know, Geoff is saying in the second part of his comment, but I completely agree we can't say, you know, "Most issues and concerns from victims are with lower-level leaders." So I think we need to rewrite that.

And I -- you know, I think you are all right, but we -- no one said, "Yes, the convening authority, you know, harmed me or wasn't attentive to me." But there has to -- I don't think that's really the point of what we're trying to say in this section. Or, if it is, we have to -- we have to try to say it differently if we can.

I mean, most people, I think there
was testimony, don't even know who or what a convening authority is. But that's not -- I don't see that as a finding that we would -- or a point that we need to press right here.

MS. FROST: I just think it -- I think it's really important that we remember that the media has a tendency to cut statements out of reports like this and out of --

CHAIR JONES: Yes.

MS. FROST: So we have to look at everything and be aware that, you know, as written, they would say, "Ah, they're whitewashing the role." You know, they're saying senior commanders are not part of the problem; they are blaming it on lower-level leaders.

CHAIR JONES: Right. So when we get to 6, it says, "Commanders at all levels must be attuned to the critical role played by NCOs and subordinate leaders and supervisors; must set expectations, establish appropriate
organizational climate, and ensure unit
leaders are appropriately trained to
effectively perform their roles in sexual
assault prevention and response."

And I guess in the text we have a
sufficient description of who non-commissioned
officers are, and people will know, having
read the text, what we mean by "subordinate
leaders and supervisors." I guess that's a
bit of a question. I haven't reread this
recently.

Kyle?

LT.COL GREEN: Judge Jones, I think
N.C.O.s obviously -- and we have defined that,
but I think we are talking just about
subordinate leaders and supervisors within the
organization. So --

CHAIR JONES: Meaning what? The
entire Service?

LT.COL GREEN: No, ma'am. Within
-- so a commander's organization.

CHAIR JONES: The unit, the
company?

LTCOL GREEN: Yes. Whatever the organization is.

COL HAM: So if it's the company, he should be concerned, or she, with all his or her subordinate leaders. If it's the battalion, he or she should be concerned with all of his subordinate leaders, which would include the company, and so on, up the line.

CHAIR JONES: I see. So commanders at all levels, meaning battalion, company, what have you. Is that it?

COL HAM: Yes, ma'am.

CHAIR JONES: Okay. Finding 7, unless there is any more commentary on 6. "The dramatic increase in large volume of surveys last year creates risk of survey fatigue. Personnel who are tasked repeatedly to complete surveys for their immediate unit and its parent commands may become less inclined to participate or provide thoughtful input."

And I think that's -- we've heard plenty of
evidence about that.

And that's the last finding there.

Before we go to the recommendations, any further comment?

COL HAM: I've deleted two surveys.

CHAIR JONES: Okay.

COL HAM: This is Colonel Ham.

CHAIR JONES: You've what? You've completed two?

COL HAM: I deleted. I deleted two surveys this week.

CHAIR JONES: Oh, deleted.

COL HAM: I deleted them. We get surveyed every time we have --

CHAIR JONES: Well, then, you're -- that's further evidence for Finding Number 7.

All right. Recommendation 1, "DoD and the Services must identify and utilize additional means to assess and measure organizational culture and culture change for
sexual assault prevention and response."

REP. HOLTZMAN: This is Liz Holtzman. Do we want to say "organizational culture" or "organizational climate"? I mean, should we be using the same terms?

CHAIR JONES: I think "climate" makes more sense there.

REP. HOLTZMAN: I don't care what you use, but whatever we -- whatever we're saying in the findings, we should repeat in the recommendation and in the text, so --

CHAIR JONES: Right.

REP. HOLTZMAN: And the other point I want to make -- and this is a larger point -- but do we know that there are other effective measures aside from surveys to test climate? I mean, are we talking about focus groups? Are we talking about interviews? Joye, you're an expert on that. So there are alternatives to this -- the surveys? I just want to make sure.

MS. FROST: Yes. Sure. And there
could be other kinds of indicators. And I am
no expert, believe me. I love my friends in
BJS and NIJ. But, yes, there could be
in-person interviews. There could be all
c kinds of things that you might do.

CHAIR JONES: Yes. I mean, we
heard evidence about alternatives to surveys,
or at least enhancements, some complementary
things to do. But we ought to talk about --
put that in there.

REP. HOLTZMAN: Is somebody going
to criticize that? Because do we know whether
the surveys are inadequate? I mean, does this
reflect our feeling that the surveys are
inadequate, or do they just reflect a feeling
that we need to know more, even if the surveys
tell us -- I mean, why are we saying this?

LTCOL GREEN: Because, Ms.
Holtzman, I think if you look at Finding 1:
"Although surveys may provide helpful insight
into positive and negative factors, surveys do
not provide a comprehensive assessment." So
this is tied to Recommendation 1.

REP. HOLTZMAN: Oh, okay. All right.

LTCOL GREEN: And we can -- in the final report, we can group these. I mean, I think you bring up a point just in terms of findings and recommendations that build on each other. So we'll look at that and try and group them.

CHAIR JONES: Okay. Two. "In addition to personnel surveys, DoD, the Services, and commanders should identify other resources for feedback on SAPRO programs and local command climate." I guess that's -- I'm trying to figure out what 1 and 2 -- what the relationship is here between 1 and 2.

LTCOL GREEN: Well, Judge Jones, 1 is really targeted more at the institutional level, and 2 is more targeted at the local unit level.

CHAIR JONES: Oh, okay. Feedback on the SAPRO programs from the local unit
level? I see. All right.

Three. "Action plans developed by commanders following a climate survey should outline what steps the command will take," et cetera, "and commanders should be accountable for developing a plan for monitoring the organization's SAPRO climate outside of periodic surveys."

And then we have Professor Corn. Well, we could -- he suggests that that -- "The commanders should be accountable for developing a plan for monitoring the organization's SAPRO climate outside of periodic surveys" should be a standalone recommendation. We can take that into consideration.

REP. HOLTZMAN: This is Liz Holtzman. I have a question about this, because this refers to text, page 5, and it suggests to me that these action plans have already been undertaken or these plans have been done in the various Services. Am I
right? And so what do we know about them? Do
we know anything? Do they do what they are
supposed to do? Am I wrong that these plans
--

CHAIR JONES: I think we've heard
that they --

LTCOL GREEN: The different
Services have different responsibilities. All
of the Services require the command climate
surveys to be forwarded to the superior
commander for review. The Army requires that
to be briefed to the higher commander, along
with an action plan, and those -- what exactly
that constitutes in terms of the action plan
is not, at least by Service-level guidance,
well established.

So, and it is not universal. Each
of the Services has different expectations for
the climate survey and what will accompany
that.

CHAIR JONES: So the action plan
-- so it sounds like the Army does require
action plans. The other Services may not. Is that what you're saying? Or do not? But they exist in the Army. Right, Kyle?

    LTCOL GREEN: Yes, that's right, ma'am.

    CHAIR JONES: So, but we're not recommending that we -- are we recommending that they think about doing it Service -- I mean, in all the Services, for instance? What we are doing is saying what we think an action plan should have in it I guess. It should outline what steps the command will take to validate or expand upon survey information.

    I don't -- I honestly don't know what the Army's action plans look like now. And if we have seen them, I -- you know, I'm sorry, I don't recall.

    REP. HOLTZMAN: This is Liz Holtzman. I'm just quoting on page 4. It says, "In September 2013, the Marine Corps implemented a policy requiring commanders to develop an action plan that addresses concerns
identified in the DEOCS report." So that is
different from an action plan dealing with the
SAPRO survey.

MS. FROST: But I thought this was
a survey. They're talking about climate
survey here in this recommendation.

REP. HOLTZMAN: Well, I'm trying
to understand what kind of action plans exist
out there and whether -- and what we know
about them and whether we should be -- you
know, if we know anything about them, should
we be saying more than that, that they should
be developed? That's all. It seems to me, in
some cases they may already be -- they may
already have been developed. That's all.
Maybe it's out of my ignorance about this, but
--

LTCOL GREEN: They don't have a
lot of details.

CHAIR JONES: So with the -- maybe
General Ham and General Altenburg and Colonel
Turner could assist here. Is the correct --
a more specific recommendation that the
Secretaries of the Military Departments direct
action plans, since apparently the Army is the
only one -- I'm sorry.

LTCOL GREEN: Each of the Services
has a plan, just not necessarily an action
plan.

CHAIR JONES: Okay.

LTCOL GREEN: By that wording.
And I don't even know -- that wording is used
in some of the specific Service requirements,
but it's not further defined.

CHAIR JONES: But do they exist?
Everybody is required -- I think we need to go
back and just see what we know about action
plans, and then we'll have a better idea what,
if anything, we want to say here.

That will be easy to check
through, and then we can have a better
discussion of it.

Recommendation 4. "Secretary of
Defense should direct periodic and regular
evaluations of DoD SAPRO programs and performance, to be conducted by independent organizations which would serve to validate or disprove DoD's own internal assessments and would provide useful feedback to the Department and enhance public confidence in SAPRO programs and initiatives."

All right. Well, those are recommendation -- that's far broader than 3, or maybe that's meant to be a reaction to -- or the result of our Finding 3.

LTCOL GREEN: Yes, Judge Jones.

That was our thought.

MS. FROST: Okay. But I thought with -- I am either very confused -- the findings --

CHAIR JONES: No, I'm with you.

MS. FROST: But Finding 3 was going to -- we were going to keep that narrow, and that is -- that is assessing installation. Well, yes, that's at the installation level. So --
LTCOL GREEN: Actually, Ms. Frost, it's both. Finding 3 reflects both institutional and installation level. So

MS. FROST: Okay. I thought we had -- okay.

LTCOL GREEN: Well, as it reads now, ma'am. I'm not -- I --

MS. FROST: I thought we had talked about -- okay. I'm sorry. I think I am confused. I need to go back and read that again.

CHAIR JONES: Well, I mean, 3 -- we just have to decide if we're talking about something as broad as the recommendation in 4. I just got confused because I wasn't sure whether we were simply evaluating how survey -- command climate surveys may have been done, or whether they have been, you know, reliable and good tools.

And then, all of a sudden we're talking about something far broader, unbiased measurements or SAPRO initiatives, programs
and effectiveness. Maybe we just need to
decide, do we want -- and I think General
Altenburg said it -- an audit of SAPRO. Are
we talking about focusing on something as
broad as in Recommendation 4? Or did we have
a more modest goal in mind?

MS. FROST: Well, I think auditing
SAPRO is a different issue than having an
assessment of programs, practices, and so
forth, at the installation level. I mean,
essentially, if you're putting all your eggs
in one basket and saying that the command
climate is going to tell you where -- that all
of these programs and all of these new reforms
and all of these practices that local
commanders do that are innovative that nobody
has assessed before, the Command Climate
Survey is the be all/end all. And that is
just not -- that's not possible.

So I do think that there should be
some kind of way to -- I mean, even when
you're doing command climate surveys is --
obviously, you're not going to be able to
formally evaluate most installations. But you
could certainly do a few of them and say, "As
the command climate positive results are going
up, you can actually tie it to these
particular programs and initiatives." And are
you seeing similar results across Services?

I just think there is such an
opportunity here, and I'm afraid at the end of
three years or so the military could be in a
situation where, yes, we're having more
reports of sexual assault, and we're having
more convictions, but we really don't know
why.

CHAIR JONES: Well, I mean, I like
Recommendation 4 as it reads. Are we all --
is that essentially what you're talking about,
Joye?

MS. FROST: Yes. I --

CHAIR JONES: Periodic -- yes. I
mean, it sounds -- I like 4, Recommendation 4.
I'm just -- and maybe I'm just confusing
things by wandering back to the third finding.

We don't have to deal with that right now.

Does anyone disagree with

Recommendation 4?

(No response.)

Okay. Five says, "Assessment of command climate must accurately assess and evaluate effectiveness of subordinate organizational leaders and supervisors, in addition to commanders." I don't know. Haven't we said that? Or maybe we haven't.

But I thought we were talking about --

LTCOL GREEN: Ma'am, this is another one where the finding up above says it, but this is the actual recommendation. And what we -- what the staff needs to do on all of these recommendations is actually put in who is responsible for the recommendation and who does the Subcommittee believe should be directed to implement that recommendation.

CHAIR JONES: I see. Okay.

LTCOL GREEN: So, I mean,
essentially, I think most of these will line
up fairly intuitively. But if the
Subcommittee members believe that that
ultimately should be something that happens,
that's what we really need to assess in terms
of this.

CHAIR JONES: Okay. Six reads,
"DoD and the services must be alert to the
risk of survey fatigue and should monitor and
assess what impact increased survey
requirements have on survey response and
survey results."

Okay. And last, Recommendation 7,
we basically recommend that Congress not adopt
Section 3(d) of the Victims Protection Act of
2014. That requires climate assessments for
the commands of the accused and the victim
following an incident involving a covered
sexual offense.

And we go on to say,
"Organizational climate may not be a
contributing factor in every alleged crime of
sexual assault, and climate survey results may be biased immediately following a sexual assault allegation, which may create confusing or misleading information that does not reflect long-term perspectives or climate."

Is that --

MS. FROST: Also, this may -- I'm sorry. Go ahead.

CHAIR JONES: Go ahead, Joye. No, no, go ahead.

MS. FROST: It could possibly be irrelevant, but I'm -- if the staff could answer this question, it says, "What specifically does the legislation say when they say 'a covered sexual offense'?"

So, for example, if someone is off the military installation and they are sexually assaulted by a civilian, but they report the sexual assault through the military chain of command, would that -- under the pending legislation, would that invoke the Command Climate Survey?
LTCOL GREEN: I don't have my Section 5 in front of me, and I don't have a copy of the Act. I can't recall the specific trigger, but it's broad.

MS. FROST: Well, yes, that would be my concern. So you could have -- it would be helpful maybe to know that, if you all could go back and --

LTCOL GREEN: This was all discussed in Section 5 of your report. Again, this is a repeat finding. Obviously, it's got specific implications for the climate survey. This is the first draft of this that we did. My personal thought is that it's covered in the legislation and we rework the language specific to this based on discussions last week.

COL TURNER: This is Colonel Turner. Covered offenses under that act include rape and sexual assault under Article 120, forcible sodomy under 125, or an attempt to commit any of the above offenses.
MS. FROST: So it's very broad.

Okay.

REP. HOLTZMAN: This is Liz Holtzman. I have a different reaction to this. I mean, I agree that a climate survey isn't appropriate, but it may be appropriate to have some other kind of inquiry into after the sexual assault takes place. For example, let's assume it takes place on the base. Was there sufficient lighting in the area? Was there some other problem that needs to be addressed? Was there something else that went wrong that could have been addressed?

I think just to let, I mean, I think the impulse behind this is probably -- and it may not be a bad idea. I'm not sure I agree -- I don't agree with requiring a survey. But I don't know how else to phrase it, but I'm not sure I would disagree with having some response to a sexual assault by the commander in the sense of review, analysis, or something. But I defer to the
people who have been commanders and who know about that and what your reaction is. But just to sort of say, no, we're not going to do anything if there's an incident, I think we can learn from some of these incidents and possibly improve response to the problem.

MS. FROST: Well, we talked about this last week, and we talked about doing something to send information and did not do so, so if people are interested. But this whole idea of sentinel events, you know, we've done it with child fatality reviews. We're now beginning to do it with elder abuse, fatality reviews. Obviously, these are not necessarily fatalities, but you go back and look at what, you know, you gather the various practitioners to assess what may have contributed or what wasn't there that might have prevented a key event, a sentinel event, like a sexual assault.

CHAIR JONES: Well, maybe we ought to take a look at that.
COL HAM: Is General Ham still on the line?

GEN HAM: I am, Patty.

COL HAM: Sir, is there anything you can say about the normal -- I don't know what you'd call it -- hot-wash-after-action review or formal administrative investigation that would occur after events? I'm not --

GEN HAM: Yes, I was thinking about that. But I think it's so localized that it's very difficult to make a broad generalization about what happens. You know, I know some local commanders within Justice have said, as most have suggested, in that very thorough kind of after-action review, if you will, they look at not just the criminal aspects of an allegation but the broader aspects: you know, the lighting, the fencing, the security, the locks on all the doors, and all those kinds of things. But I don't think that's universal.

The closest I can come to, Patty,
and I don't think we heard any testimony with regard to this, is something akin to what at least the Army was doing for a number of years in the follow-up to a suicide, which was a very specific and regulated reporting process. But I don't think that there's any such standardization for allegations of sexual assault.

REP. HOLTZMAN: Thank you, General. This is Liz Holtzman again. Maybe one of the things we should be thinking about is whether, as part of a recommendation, we could suggest that there be, I don't know whether you want to call it standardized but some sort of -- let the military come up itself with some either protocols or recommendations for review after there's been one of these incidents because maybe there is, you know, whether it's the locks on the door or the lighting or whether it's more information or confusion or something else that should be given out, I mean, that wasn't
done. Maybe there's some way that the military could be looking at this.

It reminds me, and I mentioned this to Colonel Turner a while ago and the Chair and I have discussed this in the past, but the idea in New York City of CompStat where commanders, police precinct captains, you know, when there's an increase in crime, they have to begin to account for it because they're held responsible for it. So they take a kind of closer look and they figure out new strategies.

I guess what I'm trying to achieve is something that doesn't just say, okay, we're not going to take a survey, forget about it, but something that would be proactive. In the future, you want to learn from what's happened if you can. I don't know exactly why. I certainly would not prescribe what should be done, but some people who are smarter or more knowledgeable than I could do that.
COL TURNER: Colonel Turner.

GEN HAM: Yes, this is General Ham. I agree with what Liz is saying. I'm not sure it fits in this section with regard to survey. It may be more appropriate in the section that deals with the role, the commander's actions. But I'd be supportive of a recommendation that recommended that the Secretary or the Service Secretaries establish some kind of more comprehensive after-action review or investigation upon allegation of a sexual assault.

CHAIR JONES: Yes, I agree because I think what we're really missing here is a sort of a more tailored tool. We just heard about how surveys, everybody is tired of taking them, and we're not sure what value it would have in this circumstance. So I think we can roll along with this.

And, again, I'm not sure where it belongs. Maybe it does belong in the legislation.
And, actually, just as an aside, in this recommendation, I think the last sentence is actually more of a finding than a recommendation. But that's minor.

Is everybody content then with those, with our discussions with respect to these recommendations? Can we go on to Section 8?

All right. Hearing no objection, Section 8--

REP. HOLTZMAN: Is Kyle going to draft something in connection with --

CHAIR JONES: Yes.

REP. HOLTZMAN: Okay, great.

Thanks.

CHAIR JONES: I think so.

Speaking for you, Kyle.

LTCOL GREEN: I'm taking notes furiously, ma'am. We'll get it done.

CHAIR JONES: I know. I know you will.

MS. FROST: I sent you a link on
the NIJ sentinel event initiative, which is exactly what people were talking about. It's an after-action review when something bad happens in the system. That might be helpful.

BG(SELECT) COL TURNER: Just for the record, Colonel Turner here. We do have something similar, although there's some legal issues associated with it, for site safety investigations associated with fatalities in particular or Class A mishaps. And as General Ham said, the Air Force also does the suicide review. They also have command-based reviews for other fatalities.

REP. HOLTZMAN: This wouldn't be something brand new in the military. It would be just in a different context.

COL HAM: We have to do a tailored recommendation because the commander would have to stay in the non-criminal investigative lane, which I'm sure, you know, Kyle will be able to draft that. They're not permitted to investigate the criminal part of it anymore,
so we'll draft it so it's clear. When I say
"we," I mean Kyle.

LTCOL GREEN: Or Doug.

CHAIR JONES: Okay. All right.

We have 16 minutes. Section 8. And this
relates to commander accountability. There
were several suggestions as to text by Colonel
Turner. As we did before, let's turn to the
findings first.

The first finding. "Although
statutory provisions require assessment of a
commander's success or failure in responding
to incidents of sexual assault, there are no
provisions that mandate assessment or
evaluation of a commander's success or failure
in sexual assault prevention." Any problems
with that? Okay.

Finding 2, "All Services have
policies and methods for evaluating commanders
on their ability to foster a positive command
climate, but definitions of evaluations
mechanisms vary across the Services." I think
Finding 3, "Mandated reporting of command climate surveys to the next higher level of command has the potential to improve command visibility of climate issues of subordinate commanders. Meaningful review by senior commanders increases opportunities for early intervention and can improve command response to survey feedback. However, commanders and leaders must recognize that surveys may or may not reflect long-term trends and they provide only one measure of a unit's actual command climate and the commander's contribution to that climate."

All right. Recommendation number 1, "DoD and the Services should consider opportunities and methods for effectively factoring accountability metrics into a commander's performance assessment, including climate survey results in discipline trends, sexual assault statistics, and equal opportunity data. Results-based assessment
provides both positive and negative
reinforcement and highlights the importance of
a healthy command climate." I honestly do not
recall -- well, is there any disagreement with
respect to that? I'm going to have to go back
and just look at the basic, the text on this,
our testimony, or the evidence. It seems like
a fine recommendation.

Now, do we have more findings?

Oh, I see. Recommendation 1 is in the middle
between finding 3 and finding 4.

All right. Finding 4,
"Subordinate leaders in a unit play a
significant role in the success or failure of
SAPRO efforts and accountability should extend
beyond commanders to junior officers, NCOs,
and civilian supervisors. SAPRO program
effectiveness will be limited without the full
investment of subordinate leaders. Service
policies on expectations for subordinate
accountability vary."

We sort of discussed this before
and have seen it in line with what we're
talking about in terms of lower-level
commanders, leaders. Any objections to
finding 4?

All right. Finding 5, "If
performance evaluation assessment increases
attention to and support of SAPRO programs,
differences in assessment requirements may
result in uneven support and attention among
subordinate leaders and personnel. Section 3
of the Victims Protection Act of 2014 would
extend evaluation requirements to all service
members." All right.

MS. FROST: This is Joye. I have
a question. It says, "Differences in
assessment requirements." Do we mean
differences in assessment requirements among
the Services? Because I seem to remember we
had one Subcommittee hearing and, if I
remember correctly, the Army has a rather
detailed OER, whereas the Air Force has
something that's like two pages and that's it,
or am I --

LTCOL GREEN: That's correct. And the Navy's requirement is that all Service personnel will be assessed based on their contribution to command climate, whereas the other Services have implemented requirements only for commanders or leaders. It does vary across the Services. That's what we're trying to reflect here.

MS. FROST: Okay. You might put in "among the Services."

CHAIR JONES: Okay. Finding 6, "Regional training provided to senior commanders through resident and on-site courses vary significantly among the Services. For example, the Army and Navy provide mandatory resident courses on legal issues and training to senior commanders, while the Air Force has no equivalent training requirements or course and provides only limited legal training as part of its command training and orientation."
Any objections on that? All right.

COL TURNER: This is Colonel Turner. That might be a little bit strongly worded for the Air Force. They actually send a group of wing commanders down to a university and resident courses and then there's, say, a two-hour block on legal issues. So there is, depending on how you define mandatory residence training, there is some of that, so maybe we can just wordsmith this a little bit.

CHAIR JONES: Maybe you would send us some suggested language? We are pretty stark about the Air Force there. All right.

Recommendation 2, "The Secretaries of the Military Departments should ensure that assessment of commander performance in sexual assault prevention and response incorporates more than results from command climate surveys. Commanders should be measured according to clearly assigned and established
standards for SAPRO leadership and performance." Okay.

And then Recommendation 3 is, "To hold commanders accountable, DoD, SAPRO, and Secretaries of the Military Departments must ensure that SAPRO programs and initiatives are clearly defined and established objective standards, when possible. The Navy's accountability effort, which provides specific direction and command-tailored direction on SAPRO and other command climate initiatives, offers an encouraging model for ensuring compliance and fostering program success. Detailed standards and expectations provide commanders clear guidance on supporting SAPRO programs."

All right. Well, Colonel, you have a recommendation here. "We should consider recommending a DoD review of policies associated with the Privacy Act and SA matters to include releasing information on commanders who fail in this area. Independent and DoD
studies have concluded that commanders need to be more actively and deliberately transparent about military justice cases in order to deter service members from crime." Okay. And you volunteered to hunt those down.

Maybe before we go to that recommendation, any problems with the previous ones that were in the text already, recommendations 2 and 3? All right.

Colonel Turner, do you want to speak to your recommendation?

COL TURNER: Sure, ma'am. SA stands for sexual assault matters in that context. Sorry about the abbreviation there. We talked about it briefly at one of the meetings, I think, there in D.C. about transparency and how the different Services implement the Privacy Act considerations at different levels, so we mostly want to ask DoD to review that and perhaps consider standardizing it more.

CHAIR JONES: Okay.
GEN HAM: This is Carter Ham.

Lisa, I'm sorry. Could you give an example?

COL TURNER: Yes, sir. So, for example, there was a news article just this morning on a Navy captain who was in charge of the Blue Angels who was relieved of command. So that's an O-6, and having been relieved of command for a particular variety of issues. The Air Force very, very rarely identifies, certainly by name, an O-5 who's been relieved. We will GOs. And so there's that gray area of differences.

GEN HAM: Okay, thanks. Yes, that helps a lot because I think the general practice across DoD is that general and flag officers kind of lose their right to privacy if disciplinary matters are taken, but I see the point with regard to below the flag rank.

CHAIR JONES: And I recall the discussion that we had about this. I guess we ought to -- I'm just not sure whether or not it fits in with Methods for Ensuring Commander
Accountability. I don't disagree with the sentiment, but maybe we should think about that and consider whether we want to put that in here. Any views on that?

COL TURNER: I totally understand if this is not the appropriate place for that so.

CHAIR JONES: It may be. I just have to give it some thought. It certainly, the notion that your behavior will become public is not only transparency but it would also have an impact, I guess, a deterrent impact and it's a way to do accountability, clearly.

MS FROST: I have a question. At what point is this information being released?

BG(SELECT) TURNER: It depends on the individual case and the Service. So, for example, sometimes it is immediately upon someone being relieved of command, even though an investigation is still ongoing. Sometimes it is at the point of charges. It's a case-
by-case analysis and weighing of the interests involved in the Privacy Act.

MS. FROST: Okay. Thank you.

CHAIR JONES: Well, I'm just not sure whether it belongs here. So having said that, I guess we can take a closer look and figure out if it fits in somewhere else. If people think it does belong here, I'm happy to hear that comment. I'm just not sure. Or if everyone has had it after two hours, it's 3:57, we could also adjourn at this point.

Colonel Ham, were you about to say something?

COL HAM: No, ma'am, I'm right here. I was turning to Kyle to ask if he wanted to put out what's next for the Subcommittee.

LTCOL GREEN: Ms. Frost, did you have something?

MS. FROST: Yes, I just wanted to say isn't this something that maybe the Comparative Systems could look at?
LTCOL GREEN: I don't think they will because, I mean, anything -- once they reach a commander-based issue, they'll tend to defer to this Subcommittee.

MS. FROST: Oh, okay, okay.

LTCOL GREEN: I mean, in terms of the --

MS. FROST: I'll be honest. I don't think I understand enough about what's happening. And, again, I come with a bias from the civilian system where the name of the victim is protected but not the offender or the alleged offender necessarily.

CHAIR JONES: Okay. Kyle, do you want to tell us the dates for our next get-together?

LTCOL GREEN: Yes, ma'am. We will feverishly put together the revisions based on your comments and edits. We're going to try to do that and do everything we can to have you a revised version of the entire report by tomorrow. We really would appreciate any
feedback --

CHAIR JONES: Tomorrow?

LTCOL GREEN: -- in advance.

That's right, ma'am. We've got -- Sections 1 through 5 are done, so we need to do 6, 7 and 8, and then we will get you the revisions of these last three sections. We're pretty much up to speed, so, as soon as we get that, we will turn that to you and get it to you and ask for any thoughts or comments that you might have.

And then the next, our deliberations session is on Friday. It's from 2:30 to 4:30. And the hope is that we can wrap up and get as much of it done. Obviously, this is your report, so we'll take what time you need. But we're very cognizant of trying to complete the report and get it to the Panel members so that they have time to digest it before the meetings on the 5th and 6th.

CHAIR JONES: All right. And we
have, you've already, I saw, assessed everybody's availability for Friday.

LTCOL GREEN: Right. And I understand it's not -- I think we may end up with seven out of the nine members, ma'am. And Admiral Houck may or may not, so we'll see. And, Ms. Frost, I'm really sorry about that. It's definitely a top priority this week.

MS. FROST: Maybe I gave you the wrong time because I can actually make it on Friday.

LTCOL GREEN: Oh, good. Okay. Well, good. We may be in better shape then.

MS. FROST: Yes, I can make it on Friday.

BG (SELECT) Turner: I can't make it because I've got a training.

LTCOL GREEN: Oh, that's right.

Yes, ma'am. Nancy told me about that. I'd forgotten about that.

CHAIR JONES: Okay. So I guess
meeting then, we're done, and we'll be
together again on Friday.

LTCOL GREEN: And if any of you
had some ideas on some of the rewording on
things that you can provide me, I'd much
appreciate it and then just feedback on the
drafts.

Candy, I guess it's yours then.

LTCOL HUNSTIGER: Sure, okay,
great. Well, thanks for joining us today, and
the Role of the Commander Subcommittee meeting
is now closed.

(Whereupon, the foregoing matter
was concluded at 4:02 p.m.)
<table>
<thead>
<tr>
<th>Term</th>
<th>Page Numbers</th>
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<tbody>
<tr>
<td>combine</td>
<td>15:2</td>
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<td>come</td>
<td>33:13</td>
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<td>43:4</td>
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<td>20:22</td>
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<td>65:20</td>
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<td>31:2</td>
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<td>1:4</td>
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<td>10:5</td>
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<td>34:3</td>
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<td>46:12</td>
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<td>5:10</td>
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<td>4:14</td>
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<td>3:1</td>
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<td>5:6</td>
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<td>5:3</td>
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<td>12:18</td>
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<td>9:12</td>
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<td>comply</td>
<td>29:19</td>
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<td>29:4</td>
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<td>complaints</td>
<td>29:6</td>
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<td>complementary</td>
<td>51:18</td>
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<td>65:19</td>
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<td>35:15</td>
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<td>37:13</td>
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<td>30:16</td>
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<td>30:18</td>
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<td>70:16</td>
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<td>45:3</td>
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<td>48:1</td>
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<td>62:10</td>
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<td>consideration</td>
<td>70:16</td>
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<td>98:18</td>
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<td>27:15</td>
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<td>3:5</td>
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<td>9:10</td>
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<td>44:1</td>
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<td>46:2</td>
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<td>contributed</td>
<td>40:10</td>
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<td>92:14</td>
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<td>conclusion</td>
<td>2:11</td>
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<td>conclusion</td>
<td>4:12</td>
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<td>concluded</td>
<td>98:1</td>
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<td>conclusion</td>
<td>95:5</td>
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<td>2:22</td>
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<td>courses</td>
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<td>2:22</td>
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<td>covered</td>
<td>37:2</td>
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<td>81:3</td>
</tr>
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<td>65:17</td>
</tr>
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<td>credibility</td>
<td>40:4</td>
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<td>credible</td>
<td>38:17</td>
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<td>crime</td>
<td>48:22</td>
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<td>CRIMES</td>
<td>1:3</td>
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<td>criminal</td>
<td>85:16</td>
</tr>
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<td>cross</td>
<td>92:22</td>
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<td>critical</td>
<td>63:20</td>
</tr>
<tr>
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<td>58:13</td>
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<td>68:12</td>
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<td>66:22</td>
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<td>95:15</td>
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<td>96:7</td>
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<td>21:14</td>
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<td>12:11</td>
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<td>13:13</td>
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<td>32:5</td>
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<td>94:20</td>
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<td>countries</td>
<td>19:7</td>
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<tr>
<td>couple</td>
<td>2:15</td>
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<td>commission</td>
<td>11:9</td>
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<td>concern</td>
<td>32:13</td>
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