

UNITED STATES DEPARTMENT OF DEFENSE

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RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT
CRIMES PANEL

COMPARATIVE SYSTEMS SUBCOMMITTEE

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CONFERENCE CALL

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THURSDAY
APRIL 24, 2014

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The Subcommittee met telephonically at 9:30 a.m. Eastern Daylight Time, Professor Elizabeth Hillman, Chair, presiding.

PRESENT

PROFESSOR ELIZABETH HILLMAN, Chair
HARVEY BRYANT
COL (Ret.) LAWRENCE J. MORRIS

ALSO PRESENT

JANICE CHAYT, Investigator
DILLON FISHMAN, Attorney
MARIA FRIED, Designated Federal Official
JOANNE GORDON, Attorney
SHANNON GREEN, Legislative Analyst
COL PATRICIA HAM, Staff Director
LTCOL KELLY MCGOVERN, Supervising Attorney
AMY GRACE PEELE, Technical Writer
TERRI SAUNDERS, Deputy Staff Director

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P-R-O-C-E-E-D-I-N-G-S

(9:41 a.m.)

MS. FRIED: Good morning,
everybody. Glad to see that everybody's able
to speak this morning, those of you who can.
The meeting's open and with that, I'll turn it
over to Kelly and Dean Hillman.

LTCOL MCGOVERN: I have received
information from four of our members regarding
the findings and recommendations they would
like us to review and consider possible
changes.

So if we could just start at the
top with Finding 2(c). I believe that's the
first one up to bat.

CHAIR HILLMAN: That's great,
Kelly. This is Beth. I have one question.
Who's on the line with us?

LTCOL MCGOVERN: Oh, I apologize.

CHAIR HILLMAN: That's okay.

LTCOL MCGOVERN: There's Dean
Hillman, Maria Fried and right now Colonel

1 Morris. In this room we have Dillon, Jan, Amy
2 who is our technical writer, Colonel Ham and
3 Terri Saunders and myself, so Lieutenant
4 Colonel Kelly McGovern.

5 FEMALE PARTICIPANT: Shannon.

6 LTCOL MCGOVERN: Oh, and Shannon
7 Green, our legislative expert, so.

8 CHAIR HILLMAN: Great, thank you
9 and hello, Colonel Morris.

10 COL MORRIS: Hey, Beth.

11 CHAIR HILLMAN: Okay, go ahead,
12 Kelly, you were on. I just wanted to make
13 sure about who was here. So you're on 2(c).
14 Is that what you said?

15 LTCOL MCGOVERN: Yes. Harvey, is
16 that you, or Mr. Bryant?

17 MR. BRYANT: Yes, it is. Good
18 morning.

19 LTCOL MCGOVERN: Mr. Harvey.

20 (Laughter)

21 MR. BRYANT: Good morning.

22 LTCOL MCGOVERN: Good morning. We

1 were just about to begin with Finding 2(c)
2 which Colonel Scholz asked us to take a look
3 at and to add the word the possibility.

4 MR. BRYANT: Don't have a problem
5 with that. That's fine. I'm sorry I was late
6 but the first three times I called in it was
7 busy so I thought maybe the system was
8 clearing itself or something.

9 LTCOL MCGOVERN: No problem.

10 CHAIR HILLMAN: I'm glad -- sorry.
11 Harvey, I'm glad that you're here. This is
12 Beth. I'm glad that you're here. I had the
13 same problem so, but Kelly has us all set up.

14 MR. BRYANT: Okay.

15 CHAIR HILLMAN: Ready to go here.

16 LTCOL MCGOVERN: Okay, so
17 everyone's in agreement. We will change
18 Finding 2(c) to read, "Both military and
19 civilian agencies recognize the possibility
20 for the presence of bias in their officers and
21 investigators." Everybody agree?

22 CHAIR HILLMAN: Can we just say

1 the possibility of bias? I mean --

2 LTCOL MCGOVERN: Sure.

3 CHAIR HILLMAN: -- I don't think
4 we need the extra words.

5 LTCOL MCGOVERN: Okay. And Number
6 2, recommendation. Colonel Scholz asked for
7 utilize civilians when possible/feasible.

8 CHAIR HILLMAN: So I'm trying to
9 remember our discussion on this issue.

10 One thing that I -- we don't have
11 the transcripts of our discussions, do we, so.

12 LTCOL MCGOVERN: Not readily
13 available.

14 CHAIR HILLMAN: Right, which is
15 fine. I was just trying to recall what we
16 actually had talked about here.

17 LTCOL MCGOVERN: I believe Colonel
18 Scholz had recognized that you really are at
19 the need of the service so the needs of the
20 Army will dictate who are going to fill these
21 positions, although you want the right people
22 for the job.

1 I suspect she wanted when
2 possible/feasible because there may be
3 circumstances that you just have to fill the
4 slot with the personnel available.

5 MR. BRYANT: I don't have any
6 objection to using when possible. Feasible is
7 more, in my mind at least, a little more
8 wishy-washy. But if it's possible that we
9 should have these civilians, et cetera, et
10 cetera. Now obviously if it's possible. If
11 it's impossible --

12 CHAIR HILLMAN: Agreed with that.
13 I think the key is to have carefully selected
14 and trained personnel regardless of whether
15 they're civilians or military.

16 MR. BRYANT: Correct.

17 CHAIR HILLMAN: What I was trying
18 to remember is did we have a preference for
19 civilians for some reason here? Because it
20 sort of says, the first clause says let's
21 choose civilians and the second one says
22 ensure the military personnel who do this have

1 the right capabilities and commitment which,
2 of course, for instance, were you to assign me
3 to that job, I would be insufficient as a
4 civilian because I wouldn't have the right
5 training or have been carefully selected.

6 So can we rewrite that to, Kelly,
7 can you just take another stab at that and
8 write it to say that MCIO directors and
9 commanders carefully select and train civilian
10 or, you know, I don't know, something that
11 puts those two ideas together?

12 MS. CHAYT: Dean Hillman, there
13 actually was preferences for civilian agents
14 at certain installations when there's an SVU
15 team because they stay there for continued
16 period of time and don't PCS as the military
17 do, giving that continuous, known effort in
18 those larger locations, so for --

19 CHAIR HILLMAN: Thank you, Jan.

20 MS. CHAYT: Yes.

21 CHAIR HILLMAN: That's perfect.

22 That's what I couldn't remember. So let's say

1 directors, first we should put in the finding
2 that, in that top finding then, 2(a), a best
3 practice is careful interview and selection of
4 applicants.

5 And then something in there about
6 continuity, how important continuity is in
7 that first 2(a) finding. Can we add that
8 there?

9 Then the second finding talks
10 about military necessity and flexibility. I
11 understand.

12 The next talks about the
13 possibility of bias and then the
14 recommendation will be when possible, Mr.
15 Bryant's words, when possible, they carefully
16 select, train and utilize civilians as
17 supervisory agents and investigators for
18 purposes of continuity. I just want to be
19 clear on why we're doing that.

20 LTCOL MCGOVERN: Right.

21 CHAIR HILLMAN: That make sense?

22 LTCOL MCGOVERN: That's right.

1 MR. BRYANT: The when possible
2 should come after commanders in that
3 recommendation, not --

4 CHAIR HILLMAN: Okay.

5 MR. BRYANT: Yes, don't you think?

6 LTCOL MCGOVERN: Got it.

7 MR. BRYANT: When possible
8 carefully select, train and utilize civilians.

9 LTCOL MCGOVERN: Got it.

10 CHAIR HILLMAN: Yes.

11 LTCOL MCGOVERN: That will link
12 those much better, so I think we got that.
13 The next one is Number 4, the recommendation.

14 MR. BRYANT: Excuse me, before we
15 go there, on 3(a) I didn't put this down and
16 I apologize. It is true that military
17 investigators have more robust, but do we
18 agree that it's far more robust? Would it be
19 all right just to say military investigators
20 have more robust and specialized training? Or
21 is the evidence before us that it is, in fact,
22 far more robust? I agree it's more robust and

1 specialized.

2 LTCOL MCGOVERN: We will --

3 CHAIR HILLMAN: I paused on that
4 too but didn't write it. I agree with that.

5 LTCOL MCGOVERN: Okay, that's
6 changed. We're good to go. Thank you.

7 Number 4 and --

8 Sorry, Number 4 recommendation.
9 We're looking at the Number 4 recommendation.

10 MR. BRYANT: The reason I put that
11 one down is do we, is this even necessary for
12 us to put this in? Do we have a finding that
13 that exist, that addresses cultural biases and
14 inaccurate perceptions of victim behavior?
15 I'm just asking. I mean, we didn't put that
16 as a finding, that there's cultural biases and
17 inaccurate perceptions of victim behavior.

18 I think that when we -- I don't
19 doubt that there is to some extent and we
20 covered that, I think, when we talked about
21 the possibility the folks were biased up in
22 the 2 area, when we said Finding 2(c), which

1 is both military and civilian recognize the
2 possibility of presence of bias, et cetera.

3 So that was my question on Number
4 4. Is it necessary for us to say ensure the
5 training of agents addresses cultural bias?
6 I don't know.

7 COL MORRIS: Anyway, same question
8 from here and what's cultural bias mean? As
9 soon as you throw in a term like that, you've
10 got to define, you know, could be race, sex,
11 any number of things. So if we're going to
12 have a recommendation you need a finding and
13 the terms are sensitive and imprecise.

14 MR. BRYANT: I don't want to beat
15 this to death but our Finding Number 4 says
16 exactly that, that both military and civilian
17 do provide training to address biases and
18 prepare agents to effectively investigate a
19 sexual assault. So I might just, I'm just,
20 that's it. I won't say any more about it.

21 LTCOL MCGOVERN: We are happy to
22 delete it, unless you would like to state that

1 the SECDEF continue to ensure the training.

2 For instance, in Philadelphia --

3 MR. BRYANT: That solves it,
4 Kelly.

5 COL MORRIS: That solves it for me
6 if you just put continue.

7 LTCOL MCGOVERN: Okay. And
8 Colonel Morris, we can draw up a footnote to
9 discuss what we mean by cultural bias in the
10 circumstance if necessary.

11 CHAIR HILLMAN: This is Beth. I
12 think that we should probably -- there's a
13 disconnect between the finding and the
14 recommendation there if we do include cultural
15 biases and factually inaccurate perceptions at
16 all in that recommendation.

17 So I think we could say the
18 Secretary directs continued, the Secretary
19 continue to ensure training of agents and all
20 levels of law enforcement regarding best
21 practices in investigating sexual assault.

22 But this is sort of, I think

1 Larry's right, this is a specific. It's
2 cultural biases and factually inaccurate
3 perceptions. We have not introduced, I mean,
4 I know we're not looking at the entire report
5 here, but we've not introduced that in the
6 findings here.

7 MS. CHAYT: Is there a difference
8 in --

9 CHAIR HILLMAN: Jan, what do you
10 think about that?

11 COL HAM: Is there a difference
12 between biases and the inaccurate perceptions
13 of victim behavior or aren't the biases the
14 same thing as the inaccurate perceptions of
15 victim behavior? I'm throwing out. I don't
16 know the answer to that.

17 CHAIR HILLMAN: This is where Mr.
18 Strand could weigh in.

19 COL MORRIS: They could be or
20 could not be, you know, bad and dated data.
21 It's just all the questions you're raising cry
22 out for more text and more background which

1 just I think raises the question of what are
2 we gaining with the recommendation as it sits
3 there right now.

4 LTCOL MCGOVERN: Sir, I think one
5 of the things you're gaining is that we do
6 have a lot of turnover in the military. And
7 based on the civilian investigator interviews
8 is that, and especially Liz Donegan, that it's
9 a constant struggle for them as new people
10 come in to ensure that they do not have these
11 biases against victims, that they understand
12 counterintuitive behavior and so I think
13 that's where the continue word helps.

14 But maybe the best way to say it
15 would be the SECDEF continue to ensure
16 training of all agents that address biases and
17 then just leave it at that and delete the
18 factually inaccurate perceptions of victim
19 behavior.

20 FEMALE PARTICIPANT: And do you
21 want to add best practice --

22 COL MORRIS: Well --

1 FEMALE PARTICIPANT: Go on.

2 COL MORRIS: I mean, it doesn't
3 happen much. It's just, you know, the
4 turnover is addressed by getting people as
5 they come in the door now, you know. I mean,
6 that would be like the infantry saying
7 sustaining marksmanship. You know, we tend to
8 do that because you had to shoot before you --

9 REPORTER: Sorry to interrupt.
10 This is the Court Reporter. Could I ask the
11 speakers please identify themselves when they
12 speak?

13 LTCOL MCGOVERN: Oh, sure. Sure,
14 not a problem. Okay, Colonel Morris, great
15 analogy. Would you like to continue?

16 COL MORRIS: No, I mean, I'm done.
17 I don't have anything more. Just I think we
18 all have the same sense that this somewhat
19 comes out of nowhere.

20 Everybody agrees that you need to
21 have the right mindset toward these people and
22 that we have some lagging population that

1 hasn't gotten it or needs it to be corrected.

2 But I think the overall
3 comprehensiveness of the report -- if we had
4 not had that recommendation there, I don't
5 know that any of us would have said, geez,
6 we're missing something. I think our sense
7 would be that aspect is appropriately
8 addressed in --

9 MR. BRYANT: All right, this is,
10 yes, Harvey Bryant. What if we just said
11 addresses -- I think we should take out the
12 word factually first of all because I don't
13 even know what that means, but.

14 Leaving in biases what if we said
15 addresses culturally inaccurate perceptions or
16 just addresses inaccurate perceptions of
17 victim behavior and leave out biases and
18 factual. Biases is a multifaceted term.
19 That's just my suggestion and I agree with,
20 you know, the whole issue of this particular
21 recommendation.

22 So my notes anyway were at the

1 Secretary recommendation, the Secretary of
2 Defense continue to direct MCIO to ensure
3 training of agents in all levels of law
4 enforcement that addresses inaccurate
5 perceptions of victim behavior.

6 LTCOL MCGOVERN: Would you all
7 like to just delete Number 4 and incorporate
8 it into Number 2?

9 MR. BRYANT: Yes, That would suit
10 me too, Harvey.

11 COL MORRIS: Yes. Morris, yes.

12 LTCOL MCGOVERN: Dean Hillman?

13 CHAIR HILLMAN: Yes, yes. Then
14 let's get rid of the finding there about
15 training on Number 4 too and let's add that to
16 2 as well and let's just put a 2(d), you know,
17 both military and civilian law enforcement
18 agencies provide training. Let's make that
19 2(d) and then the recommendation is about
20 selection and also about training.

21 And I agree, I like that
22 redrafting of addresses but I would say

1 including, that addresses key factors
2 including inaccurate perceptions of victim
3 behavior.

4 I agree that that's a central
5 issue here and that it also connects us to the
6 turnover issue and the lag that Colonel Morris
7 just described so I agree.

8 LTCOL MCGOVERN: Great. This is
9 Colonel McGovern. We're ready to move on to
10 Finding 8.

11 MR. BRYANT: That wasn't the one I
12 put in?

13 COL MORRIS: My apologies. Larry
14 Morris. Number 7, if I can get back to it, I
15 think may be a technical question. On
16 recommendation for Number 7, says to
17 coordinate with the prosecutor. Are we doing
18 anything -- does not the reg already require
19 that? And in that case, are we just telling
20 them to follow the reg or is that not as clear
21 as I would guess about what the regulations
22 currently say?

1 COL HAM: Sir, it's Colonel Ham.

2 I was going to go get the Department of
3 Defense Instruction. I know it says that the
4 cases now have to be kept --

5 FEMALE PARTICIPANT: It does.

6 COL HAM: -- kept open until the
7 command has reported the action. And what I'm
8 trying to recollect is if there's a line in
9 there that also says coordinate with the
10 prosecutor. If you want to continue the
11 discussion, I'll go grab the Instruction and
12 check it.

13 COL MORRIS: And that's enough and
14 we can check another time. If it does, then
15 it seems to me we're just, then we're not
16 saying anything new. If not, it makes sense.

17 LTCOL MCGOVERN: This is Colonel
18 McGovern. The difference is in the Army
19 there's a direct requirement for the CID to
20 get an opine on probable cause from the JAG,
21 whereas the other services, the MCIO presents
22 it directly to the commander for the commander

1 to make an assessment. Then the commander's
2 supposed to consult with the JAG.

3 So we're trying to standardize the
4 process throughout all the services and I
5 think this was one step in that direction.

6 COL MORRIS: Then that makes
7 sense. Just maybe recommend an additional
8 sentence in the findings that just makes clear
9 the disparity among the services so then it's
10 clear that we're correcting and recommending.

11 LTCOL MCGOVERN: Yes, sir.

12 COL MORRIS: Thanks.

13 LTCOL MCGOVERN: And we will check
14 the DODI for you too, sir, and include that in
15 the discussion. Okay, if everyone's ready,
16 we'll move on to Finding 8.

17 MR. BRYANT: The reason I flagged
18 that one -- this is Harvey Bryant. The reason
19 I flagged that one was the finding goes
20 straight to the recommendation and since we
21 are comparative systems, shouldn't we put some
22 sentence in there about what goes on in the

1 civilian world?

2 We can just say procedures vary in
3 the civilian world also, although I think the
4 evidence before us was that in most cases the
5 civilian investigators can initiate pretext
6 phone calls without getting permission. They
7 just do it. They wire up the victim or
8 whoever and get started, but I can't say that
9 exists across the board in civilian law
10 enforcement.

11 But that was my only question with
12 that, that question being do we want to say
13 something about what, you know, since they're
14 doing comparing systems, do we want to make
15 some reference to what we heard goes on in the
16 civilian world?

17 CHAIR HILLMAN: Yes, great point.
18 This is Beth. That's a great point.

19 COL HAM: This is Colonel Ham. I
20 think it depends state by state whether
21 they're a one-party consent or a two-party
22 consent.

1 It's federal wire fraud, wire laws
2 that some of you know a lot more about than
3 me.

4 LTCOL MCGOVERN: So we will
5 certainly look into that and they certainly
6 did give the impression that it's easier than
7 what the Army is having to go through for
8 their approval at this time.

9 COL HAM: If they're a one-party
10 consent.

11 MR. BRYANT: And maybe we can --
12 well, this is Harvey Bryant again. Maybe we
13 can just make that reference, that the
14 evidence laws in many civilian jurisdictions
15 the ability to initiate pretext phone calls is
16 easier or something.

17 LTCOL MCGOVERN: Yes, sir.

18 MR. BRYANT: Less onerous, more
19 efficient, some words to that effect. It's
20 not a big deal but I think we ought to say
21 something about what goes on the other side.
22 I'm done.

1 CHAIR HILLMAN: This is Beth.

2 That sounds great. That sounds great to me.

3 LTCOL MCGOVERN: Okay, and yes,
4 sir. We'll be sure to put the disclaimer in
5 that it is state by state because some states
6 do not allow it at all.

7 But for those that do, we'll cite
8 L.A., for instance, is an example where it's
9 one-party consent. So great point to keep us
10 on the comparative side of things.

11 If you all are ready, we'll move
12 to Recommendation 9.

13 MR. BRYANT: I'm trying to read my
14 handwriting here. Well, maybe I'm just
15 forgetting some of the things we talked
16 before. Do we really have to require
17 videotaping of sexual assault victims? It
18 said require it when possible. That seems to
19 be two different things.

20 And I'm also just wondering, this
21 is sort of a different issue. And, again, I'm
22 sorry. It's Harvey Bryant. If they send you

1 a videotape of the victim in every case, is
2 the defense then going to be able to obtain
3 that as far as that Article 32 when they can't
4 call the victim?

5 All right. Okay, you're not
6 calling the victim, Mr. Prosecutor. I'd like
7 to have the hearing officer hopefully with the
8 recommendation of the judge see this video.

9 COL HAM: This is Colonel Ham.
10 They certainly would be able to, sir, I
11 believe. The defense is still allowed to
12 present evidence, even under the new Article
13 32.

14 MR. BRYANT: Right.

15 COL HAM: On the other hand, the
16 prosecutor could use it too. The prosecutor
17 could use it too because that would seem to be
18 permitted, although, again, we don't have any
19 experience with it yet.

20 LTCOL MCGOVERN: This is Colonel
21 McGovern. In the JSC-SAS, when they went
22 around, there was great controversy among the

1 different jurisdictions in the validity of the
2 videotaping of the victim and the goal being
3 she would only be videotaped once, whereas the
4 fact that they have these bits and pieces that
5 they recall at a time, it's setting you up for
6 an inconsistent statement which is a major
7 drawback. Since we haven't had, I think, a
8 sufficient amount of time to deliberate that
9 issue, that may be one we should delete.

10 MR. BRYANT: Yes, because the next
11 question that arises in my mind is, is the
12 victim going to have the ability to refuse to
13 be videotaped or is he or she going to be told
14 that they're being videotaped or not? Because
15 all of those things, I just think for us to
16 ask the Secretary of Defense to require
17 videotaping of sexual assault victims. Well,
18 I agree with Lieutenant Colonel McGovern.
19 Maybe we should delete the whole 9.

20 LTCOL MCGOVERN: I think it's
21 important to videotape the suspect in many
22 jurisdictions in order to protect the

1 government, the police agency that there was
2 not coercion.

3 MR. BRYANT: Yes.

4 LTCOL MCGOVERN: But I'm not so
5 sure that there is a best practice as far as
6 videotaping the victim.

7 MR. BRYANT: Well, if you want to
8 stick with this, we should also --

9 CHAIR HILLMAN: This is Beth. Go
10 ahead, Harvey.

11 MR. BRYANT: Go ahead, please.
12 No, go ahead.

13 CHAIR HILLMAN: No, no. All I was
14 going to suggest is that --

15 (Simultaneous speaking.)

16 CHAIR HILLMAN: It's the delay
17 that's getting us here. This is Beth on the
18 phone. Kelly said there was a slight delay.
19 Harvey, you go ahead and finish your point.

20 MR. BRYANT: If we stick with 9,
21 the finding needs to have the words added
22 regarding the efficiency and usefulness of

1 videotaping of adult victim interviews. But
2 actually I'm more with Lieutenant McGovern at
3 this point, where I would just delete 9.
4 That's my personal --

5 CHAIR HILLMAN: This is Beth.
6 Let's tentatively delete that. I just would
7 like to get Russ Strand's input on that
8 because I have a feeling it came from him.

9 Jan, do you have anything else
10 that you remember about that? Is this
11 highlighted in yellow because we did not
12 discuss this at all?

13 MS. CHAYT: That's right, ma'am.
14 When he was presenting our recommendations and
15 findings in the larger group this one did not
16 get discussed in detail.

17 It was mentioned and it was
18 something that we needed to discuss.
19 Unfortunately it was not discussed and there
20 was no consensus among our members.

21 COL MORRIS: This is Larry Morris.
22 Are we sure someone didn't just mis-transcribe

1 and they meant to say the accused?

2 Did we discuss videotaping the
3 accused.

4 LTCOL MCGOVERN: Sir, that would
5 be a best practice I think. But Jan has noted
6 that in our RFI responses, the MCIOs are
7 saying they do videotape suspects now.

8 COL MORRIS: Though
9 inconsistently, right, and not --

10 MS. CHAYT: Correct.

11 LTCOL MCGOVERN: Right, so --

12 COL MORRIS: Certainly not
13 uniformly because I guess there are many good
14 reasons to not make it a uniform practice, so
15 I'd at least recommend dropping it and also
16 just be conscious that this would really jump
17 out.

18 I mean, imagine, you know,
19 appropriately a victim's group scrutinizing
20 our steps saying you're going to, you know,
21 put a person who's already had, you know,
22 sensitive experience, and then skittishness

1 about it and then say, you know, sit in that
2 chair. We're going to roll the tape.

3 So I would guess there's not
4 enough of a consensus among us to include it
5 as a recommendation.

6 LTCOL MCGOVERN: If we go back and
7 dig a little deeper as to whether in practice
8 they are videotaping suspects or if it's only
9 where the resources are available, would you
10 all recommend that that suspect be videotaped?

11 MR. BRYANT: This is Harvey
12 Bryant. Yes, I mean, just from a law
13 enforcement point of view you already
14 articulated very well a few minutes ago why
15 it's a best practice to videotape the accused.

16 So I don't have any, you know,
17 that's definitely a best practice for all law
18 enforcement, although you don't get 100
19 percent consensus even on that.

20 COL MORRIS: And I agree. I know
21 we don't have a total consensus either but
22 it's certainly the trend. And I think as we

1 talked about briefly before, just do it in the
2 interest of justice, take that - increase
3 police professionalism, shorten hearing over
4 how somebody was really questioned, all that
5 stuff.

6 CHAIR HILLMAN: This is Beth. I
7 agreed entirely on the videotaping of the
8 accused and also I agree with striking this
9 without further querying of our members, that
10 is striking the piece on videotaping victims.

11 LTCOL MCGOVERN: Okay. We'll get
12 back to you regarding videotaping suspects but
13 for the time being we will delete Finding and
14 Recommendation Number 9. Okay, The next topic
15 is Number 10, Dean Hillman.

16 CHAIR HILLMAN: Okay, right. This
17 is Beth. I flagged this one. This is in
18 part, this is something that we've already
19 mentioned. It's difficult to assess the
20 findings and recommendations outside of the
21 context of the whole report.

22 But I thought that one of the --

1 so the context that's important here is that
2 the services are not all doing the same thing
3 here and that what the law requires and what's
4 happening in practice are not congruent.

5 So I feel like our finding needs
6 to say that. The finding now says MCIO agents
7 report the requirement to stop a victim
8 interview causes problems.

9 But really I think our finding is
10 investigators across the services don't follow
11 the same practice that Article 31(b) requires
12 when minor collateral misconduct appears in
13 the interview.

14 LTCOL MCGOVERN: That's exactly
15 right.

16 CHAIR HILLMAN: I think we need to
17 make a finding that it's not the same in each
18 of the services. Again, this is a little bit
19 like the framing of this whole section.
20 There's a lot of turnover in the military so
21 we need additional training.

22 And then there are different

1 practices across the services and we need to
2 make recommendations about how to deal with
3 that.

4 This is a place where we really
5 should seek to standardize and clarify because
6 the law is not being consistently applied and
7 that became clear to us in our study.

8 LTCOL MCGOVERN: Right. In the
9 most recent set of responses to RFIs, Navy did
10 put in writing that the NCIS agents do not
11 read victims their rights for what they
12 determine to be minor misconduct.

13 They just refer that to the
14 commander for action but I'm not sure, then,
15 what the commander can do because they weren't
16 read their rights for that minor misconduct.
17 So we can certainly refine the finding and
18 recommendation to be more focused on that.

19 COL HAM: Ma'am --

20 CHAIR HILLMAN: My other comment
21 on -- go ahead, Colonel Ham.

22 COL HAM: I'm sorry, ma'am. We

1 also received information from the services.
2 We asked them how many times they take adverse
3 action in collateral misconduct and what type
4 of action.

5 And right now none of the services
6 formally track that information, which may be
7 an area of recommendation for you if you
8 decide.

9 They did provide us, they did a
10 data call in 2013 and were able to provide us
11 the numbers for that year and, overall, in
12 general, less than five percent of cases with
13 collateral misconduct have adverse action
14 taken. I'm speaking generally.

15 And the great majority of time it
16 was very low level but, again, that's not
17 formally collected data so the subcommittee
18 may want to address that, or not.

19 CHAIR HILLMAN: This is Beth
20 again. I definitely want to address that. I
21 mean, this recommendation doesn't go far
22 enough for me.

1 I want to hear from Colonel Morris
2 and Mr. Bryant on this too, but I feel like,
3 given what you just said, that actually
4 there's very few cases where low-level
5 misconduct triggers any consequences or
6 significant consequences for the victim.

7 I feel like we should surface that
8 reality and, moreover, should make clear that
9 a regulation that provided this limited
10 transactional immunity or accepted minor
11 collateral offenses, the language of this
12 recommendation, we should go ahead and put
13 that out there because it would then convey to
14 victims that they will not suffer these
15 consequences, that already they don't suffer
16 but in a very minor, very limited set of
17 circumstances.

18 COL HAM: We would have to caveat
19 that it's not, the data's not been empirically
20 collected and tracked.

21 LTCOL MCGOVERN: And that the
22 services do not support that position. They

1 want to leave it up to the prosecutor and the
2 commander to reserve the possibility because
3 in some cases it may be helpful for the
4 credibility of the victim to take the stand
5 and say, yes, I received an Article 15. I've
6 received my punishment. Now, I'm here to talk
7 about the accused.

8 So the services were not fond of
9 adjusting the current regulations which
10 reserves the right to the commander to decide
11 at the end of the proceeding what to do.

12 MS. CHAYT: And, ma'am, the
13 services were also concerned by creating this
14 known immunity possibility that defense
15 attorneys could say that victims only came
16 forward because they knew they'd get immunity
17 on the collateral misconduct. That is what
18 some of the responses were.

19 LTCOL MCGOVERN: Does that change?
20 Anyone?

21 CHAIR HILLMAN: This is Beth.
22 Yes, I hear you on this. So, Larry and

1 Harvey, do you have anything to add on this?

2 I'm hearing the objection.

3 COL MORRIS: I do --

4 MR. BRYANT: This is Harvey.

5 Colonel, go ahead, please.

6 COL MORRIS: No, please, go on.

7 MR. BRYANT: This is Harvey

8 Bryant. I understand what these women are

9 saying and I agree. I think this is an

10 important issue that we need to say something

11 about. We heard about this from all sides.

12 Prosecution, defense and especially victims

13 have concerns over this particular issue.

14 And, yes, we did hear the military

15 is against changing it but -- I don't have a

16 suggestion as to how to clean this up to get

17 to where we can define this within the space

18 that it's taking right now so, but we need,

19 you know, something needs to be done and I'm

20 just standing here hoping that Dean Hillman

21 will jump in with some great words.

22 CHAIR HILLMAN: Colonel Morris.

1 COL MORRIS: I guess my intent is
2 that yes, to the recommendations -- you know,
3 there are a few that people are going to seize
4 on and this is sure one that people have
5 thought about forever, so we really need to
6 clear that air.

7 And in the others, a lot of
8 questions popped out to me out of the
9 recommendation from a clarity of language
10 standpoint, but maybe the way to set this is
11 to figure out what do we certainly have a
12 consensus on, if anything, that we need some
13 clearly defined, expedited process by which
14 some named level of authority can override
15 31(b).

16 If that's right, then, you know,
17 the service objections about sometimes they
18 might not want to, sometimes it looks like
19 purchasing testimony. I mean, those are all
20 true enough but that's true any time you give
21 immunity to anybody so you have to just trust
22 decision makers to weigh all that stuff out

1 and decide under the right circumstances
2 whether you want to bear that risk.

3 So if our point is that at least
4 under certain circumstances, we will need to
5 employ this override because the interest of
6 solving a felony is much more important than
7 the drinking or drugs or whatever the normal,
8 low-ish level of violation is that we might be
9 dealing with.

10 If that's so, then how do we do
11 that with the right amount of speed that
12 preserves the system's interest in not making
13 this, you know, too wide a path through that
14 then you end up with, maybe not undermining
15 your justice system, but you could have some
16 collateral impact of people losing faith in
17 the system and the sort of get over aspect.

18 But my sense is that everybody's
19 aware that you could potentially have some of
20 that and there might be some of that and to
21 that degree then measures like this have some
22 cracks in that maybe somebody will get away

1 with drinking or something from time to time.

2 So if that's so, then where would
3 we want to locate that? You know,
4 investigator autonomy doesn't seem to make
5 sense because investigators are paid to
6 investigate and not make judgments by omission
7 or commission that then affect the prosecutory
8 attack. So, you know, the Navy policy of just
9 don't read them their rights or any decision
10 left with an investigator is bad practice
11 whichever way it goes.

12 So it seems that you want to then
13 integrate the right level of involvement of
14 prosecutors to affirm that decision, which
15 then I'm going to leave you with the last
16 question, which is a command coordination or
17 an alternative of having command approval.

18 CHAIR HILLMAN: This is Beth.
19 That's hugely helpful to me, as was what
20 Harvey said. I also think we need to make
21 this comparative because this is a distinction
22 between the civilian.

1 We should have a finding that says
2 in civilian jurisdictions this sort of
3 misconduct is not pursued. I mean, did we
4 hear from anyone who said this sort of thing
5 would ever come up? I don't think so. They
6 just said they would never pursue it.

7 COL HAM: Although Ms. Jaus said
8 that underage drinking is a barrier to
9 reporting in campus sexual assault. I believe
10 she said that the last meeting.

11 Different question than is it
12 prosecuted but she said it presents a barrier,
13 as I recall, if others recall the same thing.
14 This is Colonel Ham, I'm sorry.

15 MR. FISHMAN: My recollection
16 actually -- it's Dillon -- was that Ms. Jaus
17 specifically talked about immigration cases,
18 that she's had a lot of those as well and that
19 she specifically said that they would
20 routinely ignore the status of the victim, or
21 alleged victim.

22 CHAIR HILLMAN: Right. This is

1 Beth again. Then perhaps what we ought to say
2 is that because of the breadth of potential
3 criminal liability in the military as compared
4 to civilian jurisdictions, this collateral
5 misconduct issue is different if not, I think
6 it's much greater but it's certainly at least
7 different than in civilian jurisdiction.

8 And because alcohol is such a --
9 because alcohol-facilitated sexual assaults,
10 I mean, we don't say that anywhere in this
11 right now that I've seen, but recognizing that
12 alcohol-facilitated sexual assaults are a
13 large part of the sexual assaults that take
14 place in the military, we need to recognize
15 that the regulations around alcohol which, to
16 be honest, are only getting more restrictive
17 because of this issue in significant part,
18 those rules or violating those rules, they do
19 create a barrier to reporting.

20 So I think that the way Colonel
21 Morris put it is correct. We want an
22 expedited process. I think we do want an

1 amendment to Article 31(b) that permits an
2 expedited process by which an authority can
3 appropriately waive liability for minor
4 collateral misconduct.

5 LTCOL MCGOVERN: So my
6 understanding where we're at now is in our
7 finding for Number 10, we note that in
8 civilian jurisdictions, the policies vary as
9 far as whether or not they will prosecute
10 collateral misconduct, although for underage
11 drinking, there are many who do not prosecute
12 that type of misconduct.

13 And then a 10(a) recommendation
14 would be we need to standardize what the
15 services are doing as well as the law -- as
16 the law is currently written so that everybody
17 is reading their rights, and 10(b), the
18 recommendation that Article 31(b) be amended.

19 MR. BRYANT: This is Harvey
20 Bryant. I like that but I think we should
21 remove -- take our findings about the civilian
22 world, that it is infrequently a barrier to

1 investigators proceeding or something like
2 that because I really think that is the
3 evidence of force.

4 There were times and situations
5 but, for the most part, it's infrequent or
6 some equivalent word that's going to deter a
7 victim or slow down or harm an investigation.

8 LTCOL MCGOVERN: Okay, we will
9 work on that and over the weekend when you see
10 the report, please feel free to continue to
11 edit that one because it will be different
12 than what we're seeing right now.

13 COL HAM: And do you want -- I'm
14 sorry, it's Colonel Ham. Do you want an
15 additional recommendation that the services
16 formally collect and track that data or no?

17 CHAIR HILLMAN: This is Beth. I'm
18 reluctant to impose additional reporting
19 requirements and I'm doubtful that our real
20 point here is to know whether this happens a
21 lot because I think the fear that it would
22 happen is more significant than the reality of

1 it happening.

2 So I feel like we have enough
3 evidence to know that, first, this doesn't
4 happen often enough to feel like commanders
5 need this authority in very many
6 circumstances, that we should protect it
7 against any encroachment.

8 And second, I think that even
9 having the data that it doesn't happen very
10 often would not be more persuasive to changing
11 the mindsets of everybody that coming forward
12 doesn't subject the person to recriminations
13 for a very minor act compared to the grave
14 acts that will get prosecuted.

15 LTCOL MCGOVERN: Okay, that's
16 helpful.

17 MR. BRYANT: This is Harvey
18 Bryant. I agree with Professor Hillman that
19 we ought not add another reporting burden to
20 this recommendation.

21 LTCOL MCGOVERN: Okay, we can
22 address it in the discussion as a possible

1 reason why change would be -- to 31(b) would
2 not be difficult because it's not commonly
3 used, although the perception is it's causing
4 a barrier to reporting. So I think we got it.
5 We can work with that one and move on.

6 Colonel Scholz asked that we look
7 at Number 12 and 13. And she recommended we
8 explain why. One reason is being that we're
9 identifying serial offenders. And I think in
10 the discussion, we can address, or we do
11 address this, that this was a tasking by
12 Congress that we look at the database and
13 whether we have the capability to track
14 offenders when people make restricted reports
15 because right now, all those offenders are
16 continuing throughout the military -- alleged
17 offenders.

18 CHAIR HILLMAN: This is Beth. I
19 don't have any objection to, you know, those
20 additions to this. I do think this is an
21 important recommendation, that we actually use
22 the database that exists. So -- but I don't

1 have a problem with including additional
2 contacts as Colonel Scholz suggested.

3 LTCOL MCGOVERN: Okay.

4 (Simultaneous speaking.)

5 COL MORRIS: A question. When we
6 use the term known, does everybody know what
7 that means and just not me, known alleged
8 sexual assault offenders? Does that mean
9 adjudicated and therefore in the system?

10 LTCOL MCGOVERN: No, sir. It
11 would be --

12 COL MORRIS: Or titled?

13 LTCOL MCGOVERN: Neither. It
14 would be a person who's making an alleged
15 report and says Sergeant Smith sexually
16 assaulted me.

17 Currently in a restricted report,
18 that information wouldn't be -- the alleged
19 offender's name wouldn't be recorded. So
20 Congress is afraid that these alleged
21 offenders are not captured or we're not
22 capturing that information.

1 COL HAM: So maybe the better way,
2 it's not known offenders. It's they don't
3 input personally identifying information on
4 offenders currently. Maybe that's a better
5 way to put it, Colonel Morris?

6 COL MORRIS: Are either of those
7 terms in the regulation known? If not, we
8 might want to say accused or something like
9 that. Just --

10 LTCOL MCGOVERN: Or possibly named
11 offenders because if someone comes in and says
12 I was sexually assaulted but I don't know who
13 it was, then clearly that field can't be
14 filled out.

15 COL MORRIS: Yes, I mean, but then
16 the findings then --

17 CHAIR HILLMAN: I agree with that.

18 LTCOL MCGOVERN: Okay.

19 COL MORRIS: Would the findings
20 still be accurate to say does not currently
21 input data on offenders who are identified by
22 accusers who file restricted reports? I

1 thought you said the same thing then maybe
2 along those lines because I agree with the
3 concept. I just -- I didn't know if that was
4 a term of art that I had missed.

5 LTCOL MCGOVERN: We can adjust it
6 to be the identified by accusers language,
7 sir.

8 COL MORRIS: Okay, thanks.

9 LTCOL MCGOVERN: All right. Any
10 other concerns?

11 CHAIR HILLMAN: This is Beth.
12 Sorry, Kelly. This is Beth. Just that is an
13 important point. I mean, known offenders.
14 The language is important there, that we not
15 suggest that we're entering information into
16 the database that suggests there's actually
17 been an adjudication. And anyway, so I agree
18 with tracking the precise language that we
19 actually intend there.

20 LTCOL MCGOVERN: And we'll change
21 that then in the finding and recommendations
22 for Number 12 so this is extremely helpful.

1 I appreciate your patience with this.

2 Number 16, Colonel Scholz felt
3 that that finding needs further explanation
4 and that an example might assist the
5 understanding.

6 CHAIR HILLMAN: This is Beth. I
7 agree. It's sort of just there. This is one
8 of those that's a problem without seeing
9 actually the entire report I think.

10 LTCOL MCGOVERN: Right.

11 MR. BRYANT: Yes, I wrote down --

12 CHAIR HILLMAN: Just can you give
13 us an --

14 MR. BRYANT: I wrote down on my
15 notes last night the exact same thing.
16 Example, question mark.

17 LTCOL MCGOVERN: Okay. We'll move
18 a little bit of the discussion then into the
19 finding because these findings and
20 recommendations will be standing on their own
21 in appendices and we fully expect that some
22 people will only read the findings and

1 recommendations, so this is helpful that we
2 need to put them in the full context, so --

3 CHAIR HILLMAN: And the example?

4 (Simultaneous speaking.)

5 MR. BRYANT: This is Harvey
6 Bryant. Do we have examples? What are the
7 examples that -- of the word, terms used that
8 would imply concern of the victim?

9 COL HAM: The testimony that you
10 heard, I think from Claudia Bayliff is one
11 person, is instead of saying performed oral
12 sex on someone, which tends to indicate
13 consent, use some other language. That would
14 be an example.

15 We know that at least some of the
16 MCIOs are teaching this already. It's in CID
17 Regulation, the Army CID Regulation and that
18 was provided to us.

19 I guess the other side of the coin
20 is it leaves a law enforcement investigator
21 open to some cross examination that may be
22 harmful. But it's already being done, at

1 least in some of the MCIOs. I'm not sure if
2 it's in all of them.

3 LTCOL MCGOVERN: So the goal is
4 that they provide language to actually
5 describe the act of what happened rather than
6 classifying it as a general term or an
7 offense.

8 CHAIR HILLMAN: This is Beth.
9 Doesn't this run to the sort of training,
10 selection and, you know, quality of the
11 investigators?

12 This seems a little funny to me to
13 be separate on its own here. This is really
14 about how reports of assault are characterized
15 in the language that goes forward and avoiding
16 language that suggests there was consent of
17 the victim when we actually can put it in a
18 more accurate way.

19 So doesn't this -- can we put this
20 in, like, for instance, that Finding Number 2
21 or do you think it deserves a separate place
22 here?

1 LTCOL MCGOVERN: We can play with
2 it and if Finding and Recommendation Number 2
3 is getting too long, we can make it Number 3.
4 So it certainly does seem to be grouped within
5 that same category of concern.

6 CHAIR HILLMAN: Maybe since 3 is
7 investigator training, maybe it goes in 3. I
8 just would consider moving it there because
9 really what you're saying is that the
10 training, this is an example of the kind of
11 training they need. In fact, it's an example
12 of bias and that inaccurate perception. You
13 know, performed oral sex is an inaccurate
14 perception of an act where a victim was forced
15 into that behavior.

16 So I think that's what this is
17 going to and I think it would be -- it's about
18 the preparation of the report, but it feels to
19 me like it would strengthen actually Finding
20 Number 3.

21 LTCOL MCGOVERN: Okay. For the
22 next one, Mr. Bryant, you asked us to look at

1 Number 17 recommendation.

2 MR. BRYANT: Yes. This is Harvey
3 Bryant. My question really there is what do
4 you mean by assess the effects? Going to have
5 doctors assessing the effect that they have
6 SANE nurses in the emergency room? Are we
7 talking about financial or personnel or,
8 because I really don't know what we're
9 recommending that they assess the effect of.

10 CHAIR HILLMAN: Jan?

11 MR. BRYANT: Again, are we talking
12 about funding, lack of personnel, makes us a
13 better emergency room?

14 CHAIR HILLMAN: This is Beth.
15 What I remember about this is that the
16 requirement that all military facilities have
17 a 24/7 SANE capability is unnecessary because
18 so many civilian medical facilities nearby
19 have experienced SANES who can manage these
20 needs. Jan, is that correct?

21 MS. CHAYT: Well, ma'am, the
22 requirement is that if the medical facility is

1 24/7, then they need to have a SANE. Not that
2 they have it if they're not already a 24/7
3 establishment. So it's just a little
4 different.

5 And yes, ma'am, the whole issue
6 was why not use the civilian expertise that's
7 already available?

8 LTCOL MCGOVERN: At Fort Hood they
9 have a 24/7 but don't they use local SANE?

10 MS. CHAYT: Which isn't very
11 local.

12 LTCOL MCGOVERN: Right.

13 FEMALE PARTICIPANT: They're more
14 experienced.

15 COL HAM: This is Colonel Ham.
16 Would you like the recommendation more direct,
17 Dean Hillman, to say Congress should reexamine
18 or that you believe the legislation was
19 unnecessary? Do you want something stronger
20 or different directed at the legislation
21 rather than the effects of the legislation?

22 CHAIR HILLMAN: This is Beth. I'm

1 pondering what I mean there. I do remember
2 actually even at the civilian locations that
3 we visited what a challenge it is to meet this
4 sort of demand.

5 And I'm not, I am wary of, I'm
6 doubtful that this is a good decision, to
7 require this, given the redundant capability
8 at civilian medical facilities. But I'm
9 pondering how directive we ought to be here on
10 rescinding it.

11 We could take aim at the
12 legislation and say FY '14 NDAA's requirement
13 that all military treatment facilities with a
14 24/7 ER capability maintain a SANE ought to
15 include an exception for those near a civilian
16 medical facility with sufficient capacity.

17 But perhaps that's too big a
18 loophole to -- maybe that's what you're going
19 to drive a truck through and that would mean
20 that no one would do it. So other thoughts on
21 that, Mr. Bryant?

22 MR. BRYANT: Well, this is Harvey

1 Bryant. My whole thought was we need to tell
2 what it is, if we're going to stick with this,
3 what we want the Surgeon Generals to assess
4 the effect of -- assess the logistical and
5 funding effects of it, the logistical, funding
6 and necessity, efficacy, efficiency, something
7 other than just a flat assess the effect of.
8 That was my main issue in the beginning, but
9 I certainly agree with everything that
10 Professor Hillman just said.

11 CHAIR HILLMAN: Colonel Morris.

12 COL MORRIS: Nothing to add this
13 time. I do agree with the consensus.

14 CHAIR HILLMAN: Okay. Kelly, this
15 is Beth again. Kelly, do you have enough to
16 redraft that at this point do you think?

17 LTCOL MCGOVERN: Yes, we have a
18 lot that we can provide in the discussion
19 section as well to help flesh out the concerns
20 that, you know, are we talking logistical,
21 funding, expertise, the difficulty of
22 maintaining credentials?

1 Shannon has weighed in and she
2 said one suggestion may be also to say that
3 the legislation seems overly proscriptive.

4 If you want to do a comparative
5 analysis, often you give a sexual assault
6 coordinator and that may be a better way for
7 these 24/7 emergency rooms because it seems
8 like they are outsourcing a lot of these to
9 those local hospitals or SANEs which have more
10 experience.

11 So rather than having a SANE and
12 trying to maintain those qualifications, a
13 coordinator could work to bring those off-post
14 SANEs on post and provide the best exam
15 possible.

16 So in the discussion, we can
17 provide different ways they can do it, but
18 overall, the legislation appears overly
19 proscriptive and should possibly include an
20 exception. Would that work?

21 CHAIR HILLMAN: This is Beth.
22 Right on. Right on. And I think that the big

1 framing piece here is about leveraging
2 civilian resources.

3 This kind of legislation prevents
4 the services from effectively leveraging
5 civilian resources, which can actually do
6 better than what we can do in some instances.

7 And given the different types of
8 military installations, I think that's really
9 critical, so I like that. Any objections to
10 what Kelly just said?

11 MR. BRYANT: Harvey Bryant. No.

12 COL MORRIS: Agreed.

13 LTCOL MCGOVERN: Okay.

14 CHAIR HILLMAN: Okay. Kelly, this
15 is Beth again. You know, let's do one more of
16 these and then I need to take a break. I need
17 a little more coffee and I need to stand up
18 and stretch.

19 Do you want to do one more of
20 these maybe and then we could all take a five-
21 minute break and then come back. Would that
22 be okay?

1 LTCOL MCGOVERN: That would be
2 great. Next, Colonel Scholz and Dean Hillman
3 both recommended we look at Number 19.

4 CHAIR HILLMAN: Okay, this is
5 Beth. I'm trying to remember what I meant
6 here but I think I was, this is some, direct
7 the services to create a working group, to
8 create a course open to all practitioners at
9 the Medical Education and Training Center.
10 This was an exportable or mobile training
11 capability and discuss and monitor, refresh
12 your sexual assault forensic training. Can
13 you remind us of what we're trying to fix with
14 this recommendation?

15 MS. CHAYT: Ma'am, unfortunately
16 we did not get to discuss this in any detail
17 during our subcommittee meeting. It was only
18 in the subgroup.

19 The issue was that the different
20 services all had different ways of doing this.
21 They all do it, but they do it differently.
22 They are not coordinating their efforts.

1 And there is a combined service,
2 Medical Education and Training Center, that
3 teaches many of the different medical fields
4 and medical specialties and it would just seem
5 to make sense to utilize that same expertise
6 in this area.

7 CHAIR HILLMAN: That sounds very
8 persuasive to me. This is Beth. That sounds
9 very persuasive, but I couldn't tell that's
10 what we were coming from here.

11 Can we add a little more to that
12 with the finding? Right now, Finding 19 says
13 the services have different programs developed
14 independently.

15 We need to mention that that
16 creates waste, duplication, you know,
17 unnecessary. It's redundant. So we think
18 because already there exists the Medical
19 Education and Training Center, we ought to use
20 that so, and then can we just revise that to
21 sort of clarify what we're saying there?

22 But Jan, what you said sounds

1 persuasive to me. Colonel Morris, any
2 thoughts on that?

3 COL MORRIS: Nothing further.

4 CHAIR HILLMAN: Mr. Bryant, any
5 thoughts on that? Okay. Mr. Bryant,
6 anything?

7 MR. BRYANT: No, Beth, that's
8 fine. Thank you.

9 CHAIR HILLMAN: Okay.

10 LTCOL MCGOVERN: And we can adjust
11 the recommendation again to place the
12 commenting that will appear throughout the
13 report. This is another area to standardize
14 and consolidate.

15 CHAIR HILLMAN: Okay.

16 LTCOL MCGOVERN: All right. We're
17 ready to break whenever you are, ma'am.

18 CHAIR HILLMAN: Okay. Okay, let's
19 take a break. Let's take five minutes. I
20 have 7:43. I'll tell you what, let's come
21 back at -- well, that's my time. Just so you
22 know, it's early here. Let's come back at 10

1 minutes til, okay?

2 LTCOL MCGOVERN: Okay.

3 (Whereupon, the foregoing matter
4 went off the record at 10:43 a.m. and went
5 back on the record at 10:55 a.m.)

6 LTCOL McGOVERN: We need to go
7 back to Number 13. I had grouped 12 and 13
8 together, but they are actually quite
9 different recommendations. Thirteen is one
10 that Russ had talked about -- and correct me
11 if I'm wrong, Jan -- about the origin model
12 where you can have some sort of restricted
13 report to the police. And this would require
14 a different kind of restricted report in the
15 military.

16 If you want to read through those
17 findings and recommendations, I would be open
18 to your thoughts.

19 CHAIR HILLMAN: Kelly, this is
20 Beth. Did we discuss this in a session?

21 LTCOL McGOVERN: Yes.

22 CHAIR HILLMAN: And we agreed that

1 allowing investigators to take a report that
2 could remain restricted would be helpful in
3 building the databases and, you know, getting
4 information to go forward?

5 COL HAM: I'm not sure that there
6 was a complete consensus on how this would
7 work or, because we do have this restricted
8 and unrestricted report system, this would be
9 like a semi-restricted report. And this is
10 being done -- I think Russ refused to Ashland,
11 Oregon. It's a test program that started in
12 January 2013. So I don't -- we just don't
13 have any more information than that.

14 I don't know, Jan, were there any
15 other jurisdictions that were doing this kind
16 of thing?

17 MS. CHAYT: Another jurisdiction
18 did discuss the fact that an officer would
19 approach a victim as part of the
20 decision-making process. Part of that was an
21 attempt to build some rapport so that they
22 would be more comfortable coming forward.

1 Some of it was to gain information so that
2 they could, you know, identify serial
3 perpetrators and things like that, so it was
4 for a purpose.

5 And it would be basically a matter
6 of the policeman said, would you like to make
7 a report? Try to show that they were, you
8 know, somewhat amenable to discussing it, and
9 not -- but would not automatically pressure
10 the victim into doing an investigation.

11 So if there was more than one
12 department, it was only Ashland and a few
13 others that we got some documentation on that
14 actually had several layers of different ways
15 to do it. But the results of that were not
16 conclusive that we had.

17 CHAIR HILLMAN: Okay. This is
18 Beth. This seems too far to go then, given
19 how we are not sure really how this would work
20 out. And I don't feel expert enough to sort
21 of weigh in to this extent.

22 MR. BRYANT: This is Harvey. I'm

1 not -- are you saying, Beth, that you think we
2 should strike this? Because I do think it's
3 an important issue about the investigator
4 being able to get this information; if nothing
5 else, so they can run a -- and I realize most
6 of the people in the military don't have a
7 criminal history, but so you can run criminal
8 history information or see what we're talking
9 about.

10 If you have the section where
11 we're talking about putting in the data for,
12 quote, known offenders, I just think it's
13 important that victims feel that they -- as
14 Kelly or Lieutenant Colonel McGovern
15 characterized it as a semi-restricted report.
16 And I sort of laughed at that, but it's a very
17 good -- a very good way to consider this.

18 CHAIR HILLMAN: I don't disagree
19 with --

20 MR. BRYANT: I think we --

21 CHAIR HILLMAN: Go ahead, Harvey.

22 MR. BRYANT: It's

1 counterproductive, it seems to me, that -- to
2 say that if a victim goes to a law enforcement
3 officer in the military that an investigation
4 has to be initiated. And so I would like to
5 see us -- I'm not sure we've got this worded
6 properly in light of your concerns, Beth, but
7 I'd like to see us stick with some
8 recommendation here that -- that doesn't make
9 it counterproductive, doesn't deter victims
10 from going to law enforcement, military law
11 enforcement investigators, or maybe with their
12 attorney to make these reports.

13 LTCOL MCGOVERN: Mr. Bryant, we
14 would like to check, too, to see if it is a
15 statutory requirement. One of the strengths
16 that we talk about in the discussion of the
17 investigations is that every allegation in the
18 military is investigated. There is not this
19 police discretion to dispose of cases that you
20 have in the civilian world.

21 So we just -- you may want to
22 consider, are you setting up these MCIOs for

1 this gray area and criticism that they are not
2 investigating allegations. So it is kind of
3 a double-edged sword.

4 MR. BRYANT: This is Harvey
5 Bryant. I understand that, but if our finding
6 is that victims who make a restricted report
7 of sexual assault cannot provide information
8 to an investigator, then that's not -- in my
9 view, that's not a good thing. That's not --
10 it's counterproductive. So we need some
11 recommendation regarding that.

12 The whole thing about Oregon, I'm
13 failing to see how whether it's working in
14 Oregon has anything to do with the fact that
15 a victim who makes a restricted report cannot
16 provide information to an investigator.

17 LTCOL McGOVERN: Well, and I guess
18 the idea would be they provide the information
19 -- they are making a restricted report, so
20 that they can receive health benefits and
21 counseling. So if they name their alleged
22 offender, in DSAIDs -- the DSAIDs information

1 would then be provided to the MCIO so they can
2 track these alleged offenders to see if there
3 is a problem. So the MCIOs would be getting
4 the information based on your recommendation
5 in Number 12.

6 CHAIR HILLMAN: Kelly, this is
7 Beth. I agree with what Mr. Bryant just said.
8 This is -- what gave me pause about this
9 recommendation is that the restricted
10 reporting process is very -- it's very
11 detailed, and it's sort of byzantine actually.
12 You know, only certain persons can take a
13 restricted report.

14 And then, if something goes
15 unrestricted by accident, it can't go back to
16 being restricted. And the whole idea of
17 restricted is to give victims more confidence
18 and control. And I believe that based on 12,
19 we are putting information into a system that
20 we get from a victim that could help
21 investigators. But I also want investigators
22 to be able to talk to the victim.

1 So I think we should recommend
2 that restricted reporting -- I think this is
3 pretty close to right, but we aren't doing a
4 good enough job explaining the rationale for
5 it. So the finding needs to be that -- that
6 MCIOs -- the investigator ought to be able to
7 talk to the victim without triggering a
8 full-scale investigation, because, to be
9 honest, in some instances the investigator
10 will convince the victim to move forward to --
11 it would do that -- make that conversion that
12 we want from restricted to unrestricted.

13 So I think that the SECDEF
14 Directive, DoD SAPRO -- yes, to change that
15 first part is fine, that first sentence I
16 think is fine, you know, as a voluntary
17 decision on the part of the victim.

18 The second part, I actually -- I
19 don't -- that's where I feel like I don't know
20 enough. How do we prohibit them from using
21 the information to initiate an investigation
22 or title an alleged offender as the subject?

1 I'm just not so sure how to do that, but
2 that's because of my lack of confidence in the
3 investigative arena. Maybe this is enough --
4 require the information have the same
5 safeguards as other criminal intelligence
6 data.

7 So it may just be that we need
8 more context than this to -- to support the
9 finding and recommendation.

10 COL HAM: Okay. This is Colonel
11 Ham. Is there any concern or any additional
12 recommendation about how to shield the
13 investigators or the MCIOs from being accused
14 of talking someone out of going forward with
15 an investigation or the investigators -- you
16 know, the issue that you saw with some
17 civilian agencies, the investigators not
18 believing something, and then this is a reason
19 to not investigate it any further. It ends up
20 getting turned against the investigator.

21 LTCOL McGOVERN: I think you
22 really would have to consider a whole separate

1 from being this semi-restricted, so it's clear
2 you don't want this further investigated,
3 unless you convert.

4 MS. SAUNDERS: This is Terri. And
5 I believe in the discussion section of this,
6 it also talked about having -- giving the
7 victim the opportunity to have their special
8 victim counsel or victim advocate present
9 during the interview just so there is no
10 perception of coercion on the part of the
11 MCIO.

12 CHAIR HILLMAN: This is Beth.
13 Absent any opinion to the contrary, let's just
14 strengthen that then, and let's -- let's
15 strengthen the finding, and then keep the
16 recommendation. That's where I am on that.

17 LTCOL McGOVERN: Okay. This is
18 Colonel McGovern. We are on to 20(c). Mr.
19 Bryant, you had asked that we look at that
20 one?

21 MR. BRYANT: Yes. Hold on.

22 (Pause.)

1 20(c). Hmm.

2 CHAIR HILLMAN: You know, Harvey
3 -- this is Beth -- I'm looking at this. The
4 first sentence is really pretty strong. "In
5 all services, the training of military lawyers
6 prosecuting and defending sexual assault
7 crimes is sufficient." Maybe is -- we
8 actually have sort of -- we continue to sort
9 of hide the ball on the fact that we have so
10 much more transition in the military and fewer
11 sort of -- less corporate expertise compared
12 to what we have in civilian prosecutors and
13 defenders in general.

14 I think we should -- I do think
15 the training is largely sufficient, but it's
16 -- we don't actually say what the issue is
17 here that we are -- we are never clear about
18 this -- that distinction. And that made this
19 section not read as persuasively to me as I
20 think it should.

21 LTCOL McGOVERN: And I think that
22 can be cured with an intro to the section. It

1 says, "the debate is whether training can be
2 substituted for experience." Is that part of
3 --

4 MR. BRYANT: Yes, that's the note
5 that I have -- that I wrote on this is what is
6 lacking is the repeated experience or the
7 continuing experience in sexual assault cases.
8 So when we say "they permit any specially
9 trained and certified counsel to prosecute,"
10 and Beth's concern I think is somewhat covered
11 by the recommendation that says "given the
12 military's turnover and personnel rotations,"
13 et cetera. That part is in there, although we
14 have proposed a solution that may cause some
15 concern in some places.

16 But that was my main issue with
17 20(c), and that is while they're trained, they
18 are not necessarily experienced. Like
19 learning to fly but never -- you know, very
20 rarely going out and taking the plane up.

21 LTCOL McGOVERN: Right.

22 MR. BRYANT: And I don't have --

1 I'm sorry, but I just think it's part of our
2 problem, and that shows up other places in
3 some of this that, you know, the main thing is
4 load -- caseload and the number of times that
5 they actually have to go to bat in a sexual
6 assault courts-martial.

7 LTCOL McGOVERN: But I
8 (Simultaneous speaking.)

9 MR. BRYANT: I think the finding
10 is that what's lacking is -- or something to
11 the effect that there is not the opportunity
12 or something to that effect. I don't know
13 beyond what I wrote, which is what is lacking
14 is repeated experience. But I do agree with
15 Beth that to say in all services the training
16 is sufficient is pretty -- pretty broad.
17 Although sufficient is not a really strong
18 word, that does accurately describe it. It's
19 sufficient. I guess it could certainly be
20 better.

21 LTCOL McGOVERN: I mean, the term
22 of reference was -- or the tasking was to

1 assess training, so I think what we've tried
2 to do here is, looking at training alone, is
3 the training program -- are these attorneys
4 successfully advocating their positions in
5 court with the training that they are
6 provided? Despite your -- the experience
7 discussion.

8 And so looking at the training, it
9 does appear so -- experience, it really --
10 there is further discussion in the report. It
11 depends which jurisdiction you're looking at.
12 Some of the smaller jurisdictions, or even in
13 Philadelphia, our prosecutors have the same
14 amount of experience. Whereas those 30-year
15 veterans like Rhonnie Jaus, you know, we
16 certainly don't have that continuity.

17 So that is provided in the
18 discussion, that the experience level varies
19 depending on who you are comparing this to.
20 But looking at the training, are these
21 attorneys trained enough to be prosecuting and
22 defending these cases?

1 MR. BRYANT: I think that's the --
2 and we say that all services permit a
3 specially trained, certified counsel to
4 prosecute sexual assault crimes cases. That
5 was just my only issue -- or not -- not a
6 major issue, but just worthy of pointing out
7 that after receiving the training and not
8 necessarily receiving the experience, maybe I
9 should be satisfied with that sentence in the
10 recommendation that says given the military's
11 turnover and personnel rotations, about
12 training the judge advocate.

13 COL HAM: 21(a) addresses
14 experience and fewer years of prosecution and
15 trial experience. Dean Hillman, does that
16 capture it in a difference place or --

17 CHAIR HILLMAN: Yes, I think this
18 is -- I think, you know, Harvey is responding
19 to the -- just the framing issue I think. I
20 do think that needs to be sort of fronted
21 here, the training/experience distinction.
22 And I actually think the sustain or increase

1 funding piece that gives Mr. Bryant some pause
2 there, we -- if possible, we should recognize
3 it's -- training is expensive but we have to
4 continue to fund it, so long as we have this
5 system of criminal justice in the military,
6 because it's -- we otherwise can't maintain
7 the degree of expertise that we need.

8 But I do think that 21(a) does
9 speak to that. Harvey, do you see that?

10 That's a good

11 MR. BRYANT: Yes, I agree. I knew
12 there was another part, so let me just
13 withdraw my concerns with 20c and 20, and I'm
14 satisfied.

15 LTCOL McGOVERN: Okay. And we
16 will try to include an intro section that sets
17 up the discussion for you, sir.

18 MR. BRYANT: Yes. And --

19 LTCOL McGOVERN: That we are
20 looking at for --

21 MR. BRYANT: -- someone else's
22 response to 20c is similar to what I was going

1 to bring up later on, and that is we heard a
2 lot from the military attorneys about
3 receiving training and special assistance in
4 both state and federal court. Everyone speaks
5 very highly of their experience and
6 recommended to us that that try to be
7 increased, wherever possible; they were
8 getting enormous benefits from it.

9 LTCOL McGOVERN: Right. We do
10 need to add it in --

11 MR. BRYANT: I don't think -- and
12 I don't know that we have -- well, I do know.
13 We don't have a specific -- we don't address
14 that anywhere, that I recall, in these
15 findings and recommendations.

16 LTCOL McGOVERN: Right. We should
17 have a finding to explain that there are
18 programs for our prosecutors to intern at
19 these offices, but it is for a short period of
20 time, so the recommendation is it be for at
21 least six months, I believe is what Ronnie Yao
22 had recommended. Does that -- would that

1 solve it?

2 MR. BRYANT: Yes. Sure.

3 COL HAM: Now, Mr. Morris, did you
4 have anything on this? I thought I heard that
5 you --

6 COL MORRIS: Only in that second
7 sentence there of 20c. Certified, I'm not
8 sure what we mean to say there, since every
9 counsel has to be certified under 27b. If we
10 mean something beyond UCMJ certification, then
11 we should say that. And, secondly, is that
12 true? Is it really true that -- that everyone
13 has to have some special stamp to try sexual
14 assault cases right now? If that's not
15 universally true, I would want to adjust it to
16 make sure we're not overstating the case.

17 LTCOL McGOVERN: It is true that
18 in the Air Force they go through a
19 certification program. Dillon, do you want to
20 talk more on that?

21 MR. FISHMAN: This is Dillon. The
22 RFI information is that all of the services

1 have specific requirements. They are not all
2 the same requirements, but they all have
3 certification requirements for people to be
4 lead prosecutors or trial counsel in sexual
5 assault cases. So we can clarify that word
6 certified, specially certified if you want --
7 we can put that in the discussion section. We
8 can kind of bring that into the finding, if
9 you'd like.

10 COL HAM: Would you say, specially
11 trained and selected to serve as lead counsel?
12 That's a qualifier.

13 COL MORRIS: Let's say we know
14 what we're saying is true, that's -- well,
15 it's surprising to me that I can be dating
16 myself, so that's okay.

17 CHAIR HILLMAN: I agree with
18 Colonel Morris. This is Beth. This -- I also
19 -- you know, it's -- because we visited sites
20 and we -- we realized that some of the plans
21 for training aren't the same as everyone being
22 trained, or the plan for implementation isn't

1 the same thing as fully effective
2 implementation.

3 I'm wary of saying too much is
4 happening everywhere when, you know, just one
5 instance of it not happening on the ground is
6 enough to cast doubt about the credibility of
7 the statements that we're making.

8 COL HAM: Why don't we change
9 "permit" to "have specially trained."

10 CHAIR HILLMAN: Yes, that's right.
11 I think that's great, Colonel Ham. "All
12 services have specially trained counsel to
13 prosecute sexual assault crimes cases." Then
14 we talk about certification and discussion.

15 LTCOL McGOVERN: So that addresses
16 20. On 21a, Colonel Scholz recommended adding
17 in "and increase expertise in litigating
18 sexual assault cases" at the end of the
19 sentence.

20 CHAIR HILLMAN: At the end of what
21 sentence?

22 LTCOL McGOVERN: I'm not sure,

1 actually. I'm trying to figure it out.

2 CHAIR HILLMAN: Are we on 21a?

3 LTCOL McGOVERN: Correct. I'm
4 guessing she's talking about the first
5 sentence, but I can go back and ask her.

6 COL MORRIS: It's the only
7 sentence, right?

8 MS. CHAYT: For 21, I believe it's
9 b.

10 LTCOL McGOVERN: 21a, there's
11 three sentences.

12 MS. CHAYT: No, the
13 recommendation.

14 LTCOL McGOVERN: Oh, the
15 recommendation. I apologize. I'm looking at
16 the finding. Yes.

17 COL HAM: So it fits right at the
18 end of that sentence. This is Colonel Ham.
19 Does anyone object to adding that?

20 COL MORRIS: No objection.

21 MR. BRYANT: Well, is that the
22 whole -- this is Harvey Bryant. Is that the

1 whole purpose of the Navy having litigation
2 practice, to improve the prosecution of sexual
3 assault cases?

4 COL HAM: This is Colonel Ham --

5 MR. BRYANT: I mean -- yes, ma'am?

6 COL HAM: I think it was to
7 improve the military justice practice overall.
8 That was the original reason for establishing
9 it, because it has been around for -- it has
10 been around for a while. Dillon can tell us
11 exactly.

12 LTCOL McGOVERN: And then, from
13 that program, they have selected out their
14 senior trial counsel specifically for sexual
15 assault. So that is a valid point, that it is
16 not just for sexual assault cases.

17 MR. BRYANT: Yes. And I think --
18 I am satisfied to leave it as it is, and that
19 is whether or not core litigation facts would
20 be affected in the other services, in their --
21 which is what this in effect says.

22 CHAIR HILLMAN: This is Beth. I

1 don't object to that additional language.

2 That's fine.

3 LTCOL McGOVERN: Colonel Morris,
4 do you have any opinions about the career
5 litigation track?

6 COL MORRIS: Not as worded. So
7 it's okay as worded, ma'am.

8 CHAIR HILLMAN: Kelly, this is
9 Beth.

10 MR. BRYANT: Just on -- she's fine
11 with adding the language of "increasing
12 expertise in litigating sexual assault cases."
13 And Colonel Morris and I are happy with
14 leaving it as it is: "effective in their
15 service."

16 CHAIR HILLMAN: I guess -- this is
17 Beth -- for me, it just runs to what our
18 objectives are in this particular report. But
19 I don't -- we can leave it out. I actually --
20 I think the question should be, is it
21 effective overall in the services? That
22 should be the question for the JAGs to answer.

1 I think that, for us, that the
2 question is, would it increase expertise in
3 litigating sexual assault cases? So I
4 actually think for us to task the JAG, I don't
5 think they should make that change necessarily
6 only for this reason, but --

7 LTCOL McGOVERN: The additional
8 language does show that you are keeping your
9 eye on the task and staying within the sexual
10 assault lane, which is your charter, so --

11 MR. BRYANT: Well, suppose we say
12 that -- how about this compromise: "would be
13 effective in enhancing expertise in litigating
14 sexual assault cases"? Instead of
15 "increasing," just "enhancing." If you've got
16 a career track, that would -- would that lead
17 to enhancing -- we may we splitting hairs to
18 say "enhancing" rather than "increasing."

19 But if you got further litigation
20 practice, it seems to me these are your --
21 these are your top gun kind of people, and
22 that's going to enhance the expertise in

1 litigating sexual assault cases, and then,
2 parenthetically, all cases. But we don't have
3 to say that. I understand the stay in your
4 lane concept.

5 LTCOL McGOVERN: Okay. That
6 sounds like a good compromise. Making
7 progress, we're now on -- oh, I'm sorry.

8 CHAIR HILLMAN: Sorry, Kelly. I'm
9 going to -- this is Beth. Just, slowly, for
10 one second, in 21b, the finding, I want to add
11 just one word in that. I'd like to add
12 "informally" before "share." So: "All the
13 services informally share resources,
14 personnel, and lessons for training," because
15 that suggests much more collaboration than
16 what I think -- the final process and do some
17 collaboration for training. I just wanted to
18 add "informally," because there is not an
19 actually systematic way that happens right
20 now.

21 MR. BRYANT: Harvey Bryant. I
22 wholeheartedly agree. I agree.

1 COL HAM: Colonel Morris, I'm
2 asking for your input here. There is some
3 formal interaction, because different services
4 assign their judge advocates to teach at the
5 different schools. Those are formal
6 arrangements, aren't they?

7 COL MORRIS: I wondered that. I
8 know that they are longstanding, but I don't
9 know that they are more formal than kind of a
10 firm handshake, you know, that -- you know,
11 whether there is some MOU behind, you know,
12 like the one Marine on your faculty and that
13 sort of thing, I don't know.

14 LTCOL McGOVERN: And based on our
15 RFIs, for instance, the special victim
16 counsel, they are having monthly meetings for
17 all the services to talk, and they are doing
18 formal collaboration efforts. So I do think
19 it -- you're right to make that distinction
20 between formal and informal for our
21 prosecutors and defense counsel.

22 CHAIR HILLMAN: Okay. So we will

1 throw in informally, recognizing it's not that
2 there's not some interaction, but even, you
3 know, sharing instructors isn't the same as
4 sort of making decisions about personnel and
5 training.

6 LTCOL McGOVERN: Okay. Are we
7 ready to move on to Number 23?

8 (No response.)

9 Dean Hillman, this one is yours.

10 CHAIR HILLMAN: Yes, sorry. I'm
11 just still -- I'm looking at 21b.

12 LTCOL McGOVERN: Okay. Sorry.

13 CHAIR HILLMAN: No, no. It's
14 okay. I don't want to slow down too much
15 here. But, again, I feel like we want to --
16 this says that the JAGs and the SJA to the
17 Commandant -- first, we need just some words
18 in there. It's not quite grammatically
19 correct right now. "Should sustain the
20 emphasis on developing and maintaining
21 experience and expertise."

22 I would like to encourage them to

1 sort of, maybe "should sustain and broaden the
2 emphasis on developing and maintaining shared
3 resources and expertise." Because I feel like
4 the "send a recommendation here" says direct
5 the Joint Training Working Group, which is
6 recommended in the best practices to
7 continuously review and assess and eliminate
8 redundancy, ensure streamlined training and
9 collaboration, which is a great
10 recommendation. I just wanted the -- in fact,
11 I'm not sure those should be together, but I
12 just wanted to add more on the sharing of
13 resources on 21.

14 LTCOL McGOVERN: Okay.

15 COL MORRIS: Do you mind reading
16 back what you said on 21b?

17 CHAIR HILLMAN: I added just a
18 couple of words. First, it -- I added after,
19 "The Commandant of the Marine Corps should
20 sustain and broaden the emphasis on developing
21 and maintaining shared expertise and
22 experience in prosecuting adult sexual assault

1 crimes." Colonel Morris, does that sound --

2 COL MORRIS: Oh, it sounds fine to
3 me.

4 CHAIR HILLMAN: -- okay to you?
5 Okay. So, Kelly, now if -- unless there's
6 objections, we're on to 23.

7 LTCOL McGOVERN: Okay.

8 CHAIR HILLMAN: Again, this is a
9 grammatical piece. "The Secretary directs the
10 service JAGs and SJA to the Commandant to
11 ensure that only counsel with prior litigation
12 expertise-experience be allowed to serve as
13 defense counsel." That was my concern there.

14 LTCOL McGOVERN: Great. If they
15 could all be that easy.

16 (Laughter.)

17 CHAIR HILLMAN: All right. So are
18 we on to 25?

19 LTCOL McGOVERN: Yes. Okay. 23b,
20 you had expressed concern -- Colonel Scholz
21 expressed concern that she doesn't believe
22 this is true in the Air Force, at least during

1 her time. The defense counsel most often came
2 from the installation legal office, but she
3 wasn't aware of one ever being selected
4 without trial experience.

5 CHAIR HILLMAN: We heard that it
6 was -- this is Beth. We heard it was true in
7 some situations. So we're not saying it's
8 true in the Air Force or anywhere in
9 particular, just that it has been the case in
10 the past.

11 MR. BRYANT: I agree. We did --
12 this is Harvey Bryant. We did hear that that
13 was true, and I think even in Norfolk at the
14 naval base there that came up while we had
15 defense counsel in the room.

16 COL MORRIS: This is Larry Morris.
17 I'm okay up to -- 23 itself, this is such a
18 consequential recommendation. The language
19 "or be equalized with that of trial counsel,"
20 do we want to be more -- is there any harm in
21 being more specific, like setting a minimum
22 time or a normal -- a norm? Because trial

1 counsel are -- probably, in general, have
2 shorter tours than defense counsel, and both
3 sides have been too short. But it's even more
4 common to pluck some trial counsel out.

5 So I don't know if this is -- if
6 this is distinct coverage for defense counsel
7 when -- when so often people are jerked at the
8 12- or 15-month point. Do we want to set --
9 does 2710 now express at least a preference
10 for a two-year tour as counsel? Does anybody
11 know that offhand?

12 LTCOL McGOVERN: I do not know it
13 offhand, sir. I think the 12- to 18-month
14 finding in 23a was expressed by the Marines.
15 And so just, when they're figuring out their
16 job, it's time to rotate, was the gist of
17 their conversation.

18 COL MORRIS: I think we all agreed
19 that longer tours in general make sense. But
20 you have to have -- you know, be open to
21 operational contingencies and all. But that
22 language, it doesn't seem to me, does much,

1 because we are tying it to people who have an
2 equally volatile and uncertain tour length.
3 So my sense is we either tighten the language,
4 or stick a number in there, a preference for
5 a two-year assignment.

6 CHAIR HILLMAN: This is Beth. I'm
7 happy to put in a stronger preference there,
8 and try to be a little more prescriptive on
9 it. So that sounds good to me.

10 COL HAM: You want to say, "at
11 least a two-year assignment"? Colonel Morris?
12 Or we stick with two years?

13 COL MORRIS: Either is okay. But
14 I think some number that forces people to see
15 the system has decided that's the norm. And
16 I would bet if you scanned the field today,
17 way less than half would have served a full
18 two years in any tour as counsel.

19 LTCOL McGOVERN: Okay, sir.
20 Are there any other concerns with
21 23?

22 (No response.)

1 Okay. Then, Dean Hillman, you
2 asked that we look at Number 25?

3 COL MORRIS: May I ask us to look
4 at 24? I didn't think of it far enough --

5 LTCOL McGOVERN: Sure.

6 COL MORRIS: The recommendation
7 says, "ensure their training budgets are on
8 par with military prosecutors." I understand
9 the intent. It's just, most of them don't
10 have budgets. So your budget is, you know, a
11 notional glob that's folded in with government
12 training.

13 So maybe instead of "training
14 budgets," "training opportunities," unless you
15 want to make an extra recommendation, which I
16 would endorse, that they be given independent
17 budgets. But otherwise, let's at least --
18 maybe "opportunities" is more realistic than
19 "budgets."

20 LTCOL McGOVERN: Would it be --

21 CHAIR HILLMAN: This is Beth.
22 Sorry, Kelly. I would love to give them

1 budgets, but I think that's likely not to work
2 so well. So I -- that's -- I think that's
3 right, "training opportunities" maybe.

4 LTCOL McGOVERN: Would it be safe
5 to say "to ensure their training opportunities
6 are funded on par with that of military
7 prosecutors"?

8 COL MORRIS: Preferably.

9 LTCOL McGOVERN: Because later on
10 we are making a recommendation they not be
11 given their own budget. So that's a great
12 catch, sir, to be consistent through the
13 report. But the Marines, in particular,
14 talked about how they had to scramble to even
15 get money for traveling to different
16 conferences and things like that.

17 COL MORRIS: Right. I mean, I --
18 there is no value in living on anecdotes. But
19 I have a strong recollection of fighting this
20 stuff with the government, and not getting it
21 equivalently. And when every little shutdown
22 happens, you're just -- you're fighting a

1 losing battle.

2 But with that in mind, you should
3 probably fix the finding there, too, because
4 that also implies budget. So maybe we were
5 just along -- somewhere along the lines of
6 some defense counsel indicated that, because
7 they do not have independent training budgets,
8 their training opportunities were insufficient
9 and unequal to those of military trial
10 counsel.

11 LTCOL McGOVERN: Okay, sir.

12 COL MORRIS: Thanks.

13 We are ready for Number 25?

14 CHAIR HILLMAN: Yes. Number 25,
15 the second part of the finding here on 25, is
16 -- says, "While consolidation was considered
17 and discussed, it would be too costly and
18 onerous." I don't really want to say that.
19 Consolidation was discussed. I don't want to
20 recommend that we consolidate, but I'm not
21 prepared to say it would just be too
22 impossible if someone came up with some great

1 approach that would do this. So I'd like to
2 just cut that piece about consolidation.

3 MR. BRYANT: This is Harvey. I
4 agree entirely, and I wrote down a question
5 mark and the word "disagree" with that last
6 part also. It is possible. I don't know that
7 it's too costly or too onerous. I think part
8 of the discussion at the time was that the --
9 you know, the size of the facility and having
10 these lawyers and pulling them away from their
11 units and all that -- but, really, it -- let
12 me just say I agree with it if we take out
13 "too costly or too onerous." It's --

14 LTCOL McGOVERN: Did you want to
15 eliminate the whole second sentence or just
16 the "too costly and onerous"?

17 MR. BRYANT: Well, then that
18 leaves us with, "The service predictions are
19 likely to do what?"

20 LTCOL McGOVERN: Because the
21 recommendation --

22 MR. BRYANT: I think at that point

1 we are saying -- we are -- "considered and
2 discussed, but the subcommittee does not
3 recommend consolidated training at this time,"
4 or something like that. I think it can be
5 pulled off. I mean, you know, if somebody
6 decided to do it, the money would be there and
7 orders would be issued, and Russ Strand would
8 be talking to 450 to 500 people. And that's
9 an exaggerated number, obviously.

10 CHAIR HILLMAN: All right. This
11 is Beth. Let's say "consolidation of
12 facilities and training." See, even saying
13 "considered and discussed," I'm actually not
14 comfortable with that, because I actually
15 think that -- to say we considered and
16 discussed consolidation would entail a sort of
17 economic analysis that we actually didn't
18 engage in. We just heard some opinions on it,
19 but I don't feel like we did some kind of
20 thoroughgoing review of that the way we did in
21 some of these other arenas.

22 Let's see, so the first sentence

1 here is pretty straightforward. "All services
2 send members to training courses and JAGs can
3 go to the other services, which enables
4 sharing. Consolidation of facilities and
5 training has been proposed." Actually, but I
6 don't even want to say that, because we are
7 not dealing with some pressure about that.
8 There is no legislation that is pending that
9 suggests consolidation.

10 So maybe -- let's just leave that
11 out of what the finding is there. And then in
12 the recommendation, I mean, Harvey, is that
13 okay with you, if we just leave
14 "consolidation" out?

15 MR. BRYANT: Sure. Yes. Yes.

16 CHAIR HILLMAN: And then we could
17 mention it in the recommendation. If we are
18 going to establish this working group, then we
19 could say they should consider consolidation,
20 which is essentially what we say it is doing
21 anyway -- strive to eliminate redundancy,
22 monitor training and experience throughout the

1 services. So we could say, "the working
2 group should identify best practices, strive
3 to eliminate redundancy, consider consolidated
4 training, and monitor training and
5 experience."

6 MR. BRYANT: So, but the --

7 CHAIR HILLMAN: Go ahead, Harvey.

8 MR. BRYANT: I was just going to
9 say -- excuse me, Colonel Morris -- that for
10 the finding sentences, it would stop at the
11 word approaches. "Today, we are sharing a
12 successful practice, strategy, and
13 approaches." Then, we'd go to the
14 recommendation. Is that -- am I reading your
15 intent correctly, Beth?

16 CHAIR HILLMAN: Yes.

17 MR. BRYANT: Or did you want to
18 just -- yes, okay. I'm sorry, Colonel Morris.

19 COL MORRIS: No, that's all right.
20 I mean, my concern maybe is a shared concern
21 that -- that consolidation can just be some
22 distraction that is just not enough to be

1 worth anybody's energy. So I'm okay with that
2 wording. Or if you wanted that sentence to
3 change, to drop the second part of the
4 sentence to say something else. "While
5 consolidation of facilities and training was
6 considered and discussed, the paramount
7 concern is -- the highest quality training can
8 be best achieved through joint training and
9 use of the best aspects of each service's
10 programs initiatives," or something like that.

11 So that somebody doesn't seize on this thing
12 as some study group to consolidate the JAG
13 schools, when the main point is get to work,
14 share each other's stuff. And, you know, in
15 the electronic world, being on the same piece
16 of dirt is less important than collaborating
17 and getting to work with each other.

18 CHAIR HILLMAN: This is Beth.
19 That's exactly what I'd like it to say, what
20 Colonel Morris just said: "while consolidation
21 was considered and discussed, it is of
22 paramount" -- whatever he just said is right

1 -- "Paramount importance is the actual
2 quality of the training."

3 COL MORRIS: And, Kelly, if you
4 want, I can just send suggested language off
5 to you. Can I give an administrative
6 interjection here real quick? I have a school
7 obligation I have to get to by 12:00, so I'm
8 going to have to detach, like at eight of or
9 so. I know you all will probably keep going.
10 If that makes sense, maybe I'll just check
11 back in with you guys later to find out where
12 I should supplement in writing or something.

13 CHAIR HILLMAN: Before you go --
14 this is Beth. Can you tell us what your
15 primary concerns are? Can you flag those? Or
16 are there too many?

17 COL MORRIS: You mean as to the
18 report?

19 CHAIR HILLMAN: Yes.

20 COL MORRIS: I can do it real
21 quick if you want. How far did we go?
22 Anybody? What is our last number for this

1 group?

2 LTCOL McGOVERN: We just made it
3 through 25, sir.

4 COL MORRIS: Right. And are we
5 going through -- what number?

6 LTCOL McGOVERN: 62.

7 COL MORRIS: Oh, that's right. I
8 have a bunch of little things. My biggest
9 concerns are starting at, let's see, in the
10 40s -- 44. I have some concerns on 44, the
11 last sentence of 44a, the findings: their
12 subjectivity didn't quite strike me right, and
13 the 44 recommendation. And then I think I'm
14 just going to have to dissent, rather than
15 argue on the judge thing, so, you know, 45b.

16 LTCOL McGOVERN: Colonel Morris,
17 will you be able to join us this afternoon
18 still?

19 COL MORRIS: Yes, I will.

20 LTCOL McGOVERN: Okay.

21 COL MORRIS: Are we doing another
22 part this afternoon?

1 LTCOL McGOVERN: Yes.

2 COL MORRIS: So we aren't doing
3 that this morning?

4 LTCOL McGOVERN: No. The 40s and
5 sentencing will be this afternoon.

6 COL MORRIS: So this morning we're
7 not doing the 60s, then. Where are we ending
8 this morning?

9 MR. BRYANT: It looks like we're
10 ending somewhere around 41, 42, just based on
11 what we're -- what I've printed off here.

12 COL MORRIS: Then, I really have a
13 bunch of little stuff. I don't have anything
14 that's driving me nuts between here and that
15 point. So I'll be able to either catch up or
16 just send some small suggestions.

17 LTCOL McGOVERN: Okay.

18 CHAIR HILLMAN: Okay. That's
19 great.

20 LTCOL McGOVERN: And could we try
21 Number 27, the finding. Colonel Scholz
22 recommended we add "of counsel" after the word

1 "evaluation."

2 MR. BRYANT: This is Harvey
3 Bryant. Actually, I had put there that it
4 should read down at the bottom, "similar, to
5 ensure effective evaluation of counsel," as
6 opposed to "effective training." I don't know
7 that that's -- a quarterly evaluation ensures
8 effective evaluations. But I don't -- Colonel
9 Scholz's suggestion is fine. That's fine.

10 LTCOL McGOVERN: And, Dean
11 Hillman, you had also flagged 27.

12 CHAIR HILLMAN: I wondered why we
13 were telling them to consider implementing an
14 evaluation system, instead of just
15 implementing one. Unless we think that the --
16 I mean, we don't have to say they -- all the
17 services need to do quarterly evaluations by
18 judges. Do we not want to require judges to
19 require -- to assess counsel? That's really
20 what the question is. So --

21 LTCOL McGOVERN: So in 27
22 recommendations, delete the word "consider"

1 and say, "implement the Navy's evaluation
2 system, and also" -- so we would delete the
3 word "quarterly."

4 CHAIR HILLMAN: I just want
5 something similar. You know, implement an
6 evaluation system similar to the Navy's.

7 LTCOL McGOVERN: Okay.

8 CHAIR HILLMAN: I don't think I
9 was in on the detailed discussion of this, but
10 that seems -- I mean, we find it useful that
11 judges are evaluating counsel, so why wouldn't
12 we ask the rest of them to do something along
13 those lines?

14 LTCOL McGOVERN: Okay.

15 MR. BRYANT: And I agree with
16 Lieutenant Colonel McGovern's suggestion of
17 taking out "consider" and just put the word
18 "implement" in there. If that's our
19 recommendation, you don't just "consider" it,
20 but you do it. "Implement the Navy's
21 evaluation system" or something similar
22 thereto.

1 LTCOL McGOVERN: Okay. Number 28.

2 COL MORRIS: Actually, excuse me,
3 may I ask you to look at 26 real quick?

4 LTCOL McGOVERN: Sure.

5 COL MORRIS: I'm tracking the
6 intent there. My concern is only that we not
7 tie it too much to the HQE program, which is,
8 you know, weird and intended to be transitory.
9 So the recommendation would be under finding,
10 the HQE to start that. Just say, "experienced
11 civilian trial advocates play an important
12 role," blah, blah.

13 And then -- and then under
14 recommendation, something like, "the Marine
15 Corps should continue to fund and expand" --
16 again, instead of "HQE programs," just say
17 "fund and expand programs that ensure -- that
18 provide permanent civilian presence in the
19 training structure for trial and defense
20 counsel." Something like that.

21 LTCOL McGOVERN: Okay. So is the
22 recommendation to continue to fund and expand,

1 or continue to fund?

2 COL MORRIS: I don't have a strong
3 feeling on that.

4 LTCOL McGOVERN: Are we ready to
5 move on to 28?

6 CHAIR HILLMAN: I think so.

7 MR. BRYANT: I'm ready. This is
8 Harvey. I'm ready.

9 CHAIR HILLMAN: I think we are.

10 LTCOL McGOVERN: Okay. Dean
11 Hillman?

12 CHAIR HILLMAN: This is -- yes.
13 So this is, you know, one of the things that
14 we have not talked about. And if we still
15 have Colonel Morris, do we have you for a
16 couple more minutes here? This says we are
17 going to need more funding. We didn't -- it
18 says the increased funding for training and
19 additional training. We don't really assess
20 the economic consequences of much of this. I
21 mean, we don't say elsewhere that we need
22 increased funding for lots of things. We say

1 we need enduring funding, or we need funding.

2 But this is just sort of different.

3 And, actually, Colonel Morris,
4 since you're concerned about what we're saying
5 about judges, if you -- do you have a response
6 to this particular part? Or if you can flag
7 some of your other concerns, too -- I'd be
8 interested in hearing them -- about what we
9 say about judges later.

10 COL MORRIS: Now, tell me which
11 one we're at again?

12 CHAIR HILLMAN: 28, where it says,
13 "military judges do joint training at the
14 Army's Judge Advocate Legal Center and
15 School." It says the recommendation -- there
16 is this -- the part that is in yellow on that
17 says that we need more funding for training.

18 COL MORRIS: You know, I reacted
19 to it and then let it go. It didn't - You
20 have to accept the rest of the premise on the,
21 you know, the increased judicial involvement
22 than I think the majority agrees with. So I

1 suppose that means -- I guess that does mean
2 more training. I guess my sense is judges
3 aren't as often training-starved as counsel
4 are.

5 CHAIR HILLMAN: Right. Okay. So
6 I --

7 COL MORRIS: You are going to have
8 to do some --

9 LTCOL McGOVERN: Go ahead.

10 COL MORRIS: I'm sorry. You're
11 going to have to do some corrective training,
12 whatever you would say, of the current judges
13 if you switched -- you make all of these
14 changes. So it's less the new ones than the
15 ones that are under the old system. That's a
16 lot of changes of competencies and
17 expectations of the judges.

18 CHAIR HILLMAN: Okay. And just to
19 preview, then, your objection for that part,
20 your sense is that the benefits aren't worth
21 the changes in the -- giving military judges
22 an increased role.

1 COL MORRIS: And, actually, it is
2 probably a little more annoyingly specific.
3 I don't agree with the whole -- give them all
4 of the expansions that we called for. I do in
5 some aspects of case management of witness
6 production, that kind of stuff.

7 But, you know, one of my concerns
8 is we make a lot of sweeping statements in
9 there that suggest disputes earlier in the
10 process than currently exist now. So you talk
11 about getting witnesses and that sort of thing
12 where, you know, pre-preferred. That's rarely
13 a dispute, except for witness production at
14 Article 32.

15 And then, also, my sense is that
16 for those advocating the increased role,
17 probably we need to talk about what's left of
18 Article 32, because you really want to switch
19 to a preliminary hearing model. And maybe
20 taking all of those recommendations together
21 we sort of say so, but it might be useful
22 especially as a -- as a threshold matter as

1 you get to that set of recommendations to make
2 that even clearer.

3 CHAIR HILLMAN: Okay. Understood
4 on that. I'm curious to see, you know, your
5 sense of what you are comfortable with moving,
6 although I understand the -- you know, maybe
7 it's the effect on the 32 that is your core
8 concern. So, anyway, thank you for staying
9 on. I guess you have to go shortly. I
10 understand. So --

11 COL MORRIS: Yes. So thanks,
12 everybody, but I need to go get to my other
13 work here.

14 LTCOL McGOVERN: Thank you, sir.

15 CHAIR HILLMAN: Okay. Thanks,
16 Larry.

17 COL MORRIS: Thanks, you all.
18 Bye.

19 MR. BRYANT: While we're having
20 that good-bye -- this is Harvey Bryant -- I
21 agree -- I have a neighbor next door who had
22 a stroke. He needs to go to physical therapy,

1 and he doesn't have a ride. So I'm going to
2 have to take a pause here, and see if we can
3 work something out. So I -- if you all will
4 excuse me for just a minute or two, I need to
5 make a phone call on another line to see if I
6 can work something out with another neighbor
7 to take him.

8 COL HAM: Sir, we have to end at
9 noon. We have to end in 10 -- nine minutes,
10 anyway.

11 MR. BRYANT: Oh, I'm sorry. Well,
12 let's -- yes, I'm fine. I'm fine then. I'm
13 fine. Go ahead.

14 LTCOL McGOVERN: Okay. Maybe we
15 can get through one or two more. Number 29,
16 Dean Hillman, you had wanted to address that?

17 CHAIR HILLMAN: Yes. I think this
18 is one that needs more context, again, for the
19 finding and recommendation to stand on its
20 own. So I'd add an initial clause in that
21 recommendation which is about our decision to
22 not recommend a single organizational

1 structure.

2 And I altered that first sentence
3 to something like, "given the range of
4 military installations in terms of size,
5 location, and mission, no single
6 organizational structure for prosecution and
7 defense is optimal."

8 LTCOL McGOVERN: Okay.

9 CHAIR HILLMAN: Just to be clear,
10 I just want us to front that issue.

11 LTCOL McGOVERN: Okay. Great.

12 CHAIR HILLMAN: Okay. Related to
13 that was in 30a. Is that -- was there
14 anything before 30a that anybody had?

15 LTCOL McGOVERN: No.

16 CHAIR HILLMAN: So that last
17 sentence in 30a, which 30a, the
18 recommendation, which says, "the subcommittee
19 does not recommend that the SARC, victim
20 advocate, SVC, or other victim support
21 personnel be collocated with prosecutors and
22 investigators." They are currently

1 collocated, right?

2 I mean, there is a -- they do
3 that. I just was not clear what that meant,
4 because the consolidation facilities that we
5 saw, they are -- they're not -- there is a
6 barrier between them, but they are essentially
7 collocated, right? I mean, what were we
8 trying to get at there?

9 LTCOL McGOVERN: Well, we
10 illustrate that there's four different models
11 that you will see, with JBLM and Dawson Place
12 being one of them. We discussed the concerns
13 of Brady piercing the military victim advocate
14 privilege. Then we compare it to Austin and
15 the Philadelphia Center, the PSARC, and then
16 compare it to Fort Hood where it is just
17 investigators and prosecutors, and then all
18 others where it is not consolidated at all.

19 So, of all those different models,
20 it seems like it is helpful to have that
21 investigator and prosecutor working closely
22 together and possibly offices at -- for these

1 other players in the system. But because of
2 those complicated issues that could arise at
3 Dawson Place or JBLM, that's not -- we don't
4 recommend that as the new -- or you all won't
5 recommend that as the new gold standard.

6 CHAIR HILLMAN: That helps, Kelly.
7 Thank you.

8 LTCOL McGOVERN: Okay.

9 CHAIR HILLMAN: I just feel like
10 that we're saying a little more than that here
11 by saying, don't put them together. I think
12 the first part of that says just what you
13 said, that it's most important to do
14 prosecutors and investigators, and then the
15 forensic exam room.

16 And then the second recommendation
17 actually says, we should assess the strengths
18 and weaknesses and continue to improve and pay
19 attention. And you flag the problem with that
20 -- victim advocates being too close. But I
21 feel like this could necessitate a change in,
22 for instance, what they're doing at JBLM right

1 now, wouldn't it? I mean, wouldn't this say
2 that they can't continue to have their special
3 victim counsel in the same building that they
4 have their prosecutors and investigators?

5 LTCOL McGOVERN: Sure. And then
6 if it would be helpful, we can delete that
7 last sentence and save it for the discussion,
8 the sentence of 30a, that the subcommittee
9 does not recommend. Would that --

10 CHAIR HILLMAN: That would be
11 fine.

12 LTCOL McGOVERN: Okay. Do we have
13 time for 31?

14 CHAIR HILLMAN: We do. We've got
15 a couple minutes. My objection was to "fully
16 implemented." So, I don't know. It's -- do
17 we know that based on what -- I agree they've
18 implemented it, but "fully" sounds too
19 complete to me, so --

20 LTCOL McGOVERN: And they had to
21 report to Congress on that in January -- in
22 January 14, they had to tell Congress that

1 they basically fully manned the special victim
2 capability as required by Congress. So --

3 CHAIR HILLMAN: Then that's --

4 LTCOL McGOVERN: -- we can
5 certainly delete "fully," because personnel do
6 change and, you know, they may end up with 22
7 special victim prosecutors instead of 23, or
8 whatever. So --

9 CHAIR HILLMAN: You know what?
10 Can we just say, then, what you just said?
11 Actually, the military services reported to
12 Congress in January that they fully
13 implemented the special victim capability. To
14 me, that's totally fine, but that's not the
15 same thing as us deciding, based on our
16 investigation and study, that this has
17 actually been, you know, fully implemented.

18 Because I just -- I can't tell
19 yet, and it's just too -- it's big and too new
20 a program to -- to me, it puts in a -- it
21 makes it appear more mature than what I think
22 it is, in terms of my own sense of how it's

1 working out on the ground.

2 LTCOL McGOVERN: Okay.

3 COL HAM: And we'll check the
4 language of the report and make sure we're
5 reflecting exactly what they said.

6 CHAIR HILLMAN: That's fine.

7 COL HAM: I think they were
8 required to have it fully implemented, so
9 that's probably what they said in -- we'll
10 make sure we're accurately reflecting the
11 language.

12 CHAIR HILLMAN: Okay. Thank you.

13 LTCOL McGOVERN: And you also were
14 concerned with 31c?

15 CHAIR HILLMAN: Yes. Let's see,
16 why was I concerned about this? So
17 standardization of the titles, I do agree with
18 that, and efforts to reduce public confusion,
19 enable comparability. Ah, I don't know why I
20 wrote this. So that's why I'm looking at it
21 now.

22 I agree with the standardization.

1 That would help. I wondered if we should
2 suggest it. Should we say -- but I don't --
3 just because when we say they need to
4 standardize, then everyone wants to have their
5 own label put on it.

6 So, and I thought the public
7 confusion is not so much, sort of, to reduce
8 -- if we are -- we are recommending continued
9 shared resources and continued collaborative
10 training, which is happening now. So, I feel
11 like it would help enhance that, as well as
12 enhancing the comparability of the programs
13 and confusion.

14 LTCOL McGOVERN: And in the
15 discussion we --

16 CHAIR HILLMAN: Do you have a
17 language proposal?

18 LTCOL McGOVERN: Well, in the
19 discussion, we illustrate how every service
20 calls their special victim prosecutors
21 something different, which serves no purpose
22 at all. It's just nobody wants to say that

1 they are doing what someone else did. So we
2 can certainly add in if --

3 CHAIR HILLMAN: Well, let's choose
4 one.

5 LTCOL McGOVERN: I think "special
6 victim prosecutor" works well.

7 (Simultaneous speaking.)

8 CHAIR HILLMAN: I'd like for you
9 to all to -- you to come up with an acronym
10 recommendation for us, and then we follow
11 that. That's what I think. So, and I agree
12 it should be standardized.

13 LTCOL McGOVERN: Okay.

14 MS. FRIED: This is Maria Fried.
15 I think the Navy's is Victim Legal Counsel.

16 LTCOL McGOVERN: No. We're --
17 that is --

18 MS. FRIED: That is the Marine
19 Corps.

20 LTCOL McGOVERN: And that's the
21 difference -- that's the difference in the
22 special victim counsel titles. We are talking

1 about the special victim prosecutors. Some
2 call them senior trial counsel. Some call
3 them special victim prosecutors.

4 CHAIR HILLMAN: I'm all for that.
5 Okay. So are we out of time? How far behind
6 are we? We're like 10 recommendations,
7 findings and recommendations behind? That's
8 not too bad.

9 LTCOL McGOVERN: No. And, again,
10 tomorrow is designed to catch the ones we
11 aren't able to cover today. So I think we're
12 doing great.

13 CHAIR HILLMAN: Okay. Mr. Bryant,
14 is this --

15 MR. BRYANT: I've lost track of
16 the times for tomorrow.

17 LTCOL McGOVERN: Tomorrow, I
18 believe, is from 12:00 to 2:00. Yep. Eastern
19 Standard time. Today, this afternoon, from
20 2:00 to 3:00, we'll also be discussing with
21 General Cooke, Colonel Morris, Colonel Henley,
22 and if Dean Hillman is available after her

1 other call, the sentencing portion and the
2 judge involvement. So working backwards this
3 afternoon.

4 MR. BRYANT: All right. Tomorrow
5 I'm going to be able to participate on the
6 cell phone, but I will be in my car driving to
7 Richmond. So I won't be reading stuff; I'll
8 just be -- try to absorb what everybody is
9 saying.

10 LTCOL McGOVERN: All right. We
11 appreciate that. That's great.

12 CHAIR HILLMAN: That's right. I
13 second what Kelly said. Harvey, whatever you
14 can do for us, and we'll try to pose some
15 pointed questions for you to keep you on the
16 road, and to have us benefit from your insight
17 on that tomorrow.

18 MR. BRYANT: Okay. It will be
19 hands-free.

20 (Laughter.)

21 CHAIR HILLMAN: Okay. Thanks,
22 everybody. So I'll be back on this afternoon

1 after I get out of this other call. So I'll
2 be calling in late, but I'm grateful for
3 whatever you all do before I get there.

4 LTCOL McGOVERN: Okay. Thank you.
5 Maria?

6 MS. FRIED: So we'll reconvene
7 this afternoon. Thank you. Meeting closed.
8 (Whereupon, at 12:01 p.m., the proceedings in
9 the foregoing matter were concluded.)

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MATTER: DOHA Adult Sexual Assault Crimes Panel

DATE: Thursday, April 24, 2014

I hereby certify that the attached transcription of pages 1 to 143 inclusive are to the best of my belief and ability a true, accurate, and complete record of the above referenced proceedings as contained on the provided audio recording.

Neal R Gross

NEAL R. GROSS

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