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

FEMALE PARTICIPANT: Shannon.

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

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

COL MORRIS: Hey, Beth.

CHAIR HILLMAN: Okay, go ahead, Kelly, you were on. I just wanted to make sure about who was here. So you're on 2(c).

Is that what you said?

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

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

LTCOL MCGOVERN: Mr. Harvey.

(Laughter)

MR. BRYANT: Good morning.

LTCOL MCGOVERN: Good morning. We
were just about to begin with Finding 2(c) which Colonel Scholz asked us to take a look at and to add the word the possibility.

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

LTCOL MCGOVERN: No problem.

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

MR. BRYANT: Okay.

CHAIR HILLMAN: Ready to go here.

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

CHAIR HILLMAN: Can we just say
the possibility of bias? I mean --

LTCOL MCGOVERN: Sure.

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

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

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

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

LTCOL MCGOVERN: Not readily available.

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

LTCOL MCGOVERN: I believe Colonel Scholz had recognized that you really are at the need of the service so the needs of the Army will dictate who are going to fill these positions, although you want the right people for the job.
I suspect she wanted when possible/feasible because there may be circumstances that you just have to fill the slot with the personnel available.

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

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

MR. BRYANT: Correct.

CHAIR HILLMAN: What I was trying to remember is did we have a preference for civilians for some reason here? Because it sort of says, the first clause says let's choose civilians and the second one says ensure the military personnel who do this have
the right capabilities and commitment which, of course, for instance, were you to assign me to that job, I would be insufficient as a civilian because I wouldn't have the right training or have been carefully selected.

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

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

CHAIR HILLMAN: Thank you, Jan.

MS. CHAYT: Yes.

CHAIR HILLMAN: That's perfect.

That's what I couldn't remember. So let's say
directors, first we should put in the finding
that, in that top finding then, 2(a), a best
practice is careful interview and selection of
applicants.

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

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

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

LTCOL MCGOVERN: Right.

CHAIR HILLMAN: That make sense?

LTCOL MCGOVERN: That's right.
MR. BRYANT: The when possible should come after commanders in that recommendation, not --

CHAIR HILLMAN: Okay.

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

LTCOL MCGOVERN: Got it.

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

LTCOL MCGOVERN: Got it.

CHAIR HILLMAN: Yes.

LTCOL MCGOVERN: That will link those much better, so I think we got that.

The next one is Number 4, the recommendation.

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

LTCOL MCGOVERN: We will --

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

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

Number 4 and --

Sorry, Number 4 recommendation.

We're looking at the Number 4 recommendation.

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

I think that when we -- I don't doubt that there is to some extent and we covered that, I think, when we talked about the possibility the folks were biased up in the 2 area, when we said Finding 2(c), which
is both military and civilian recognize the
possibility of presence of bias, et cetera.

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

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

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

LTCOL MCGOVERN: We are happy to
delete it, unless you would like to state that
the SECDEF continue to ensure the training.

For instance, in Philadelphia --

    MR. BRYANT: That solves it, Kelly.

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

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

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

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

    But this is sort of, I think
Larry's right, this is a specific. It's cultural biases and factually inaccurate perceptions. We have not introduced, I mean, I know we're not looking at the entire report here, but we've not introduced that in the findings here.

MS. CHAYT: Is there a difference in --

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

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

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

COL MORRIS: They could be or could not be, you know, bad and dated data. It's just all the questions you're raising cry out for more text and more background which
just I think raises the question of what are we gaining with the recommendation as it sits there right now.

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

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

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

   COL MORRIS: Well --
FEMALE PARTICIPANT: Go on.

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

REPORTER: Sorry to interrupt.

This is the Court Reporter. Could I ask the speakers please identify themselves when they speak?

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

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

Everybody agrees that you need to have the right mindset toward these people and that we have some lagging population that
hasn't gotten it or needs it to be corrected.

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

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

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

So my notes anyway were at the
Secretary recommendation, the Secretary of Defense continue to direct MCIO to ensure training of agents in all levels of law enforcement that addresses inaccurate perceptions of victim behavior.

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

MR. BRYANT: Yes, that would suit me too, Harvey.

COL MORRIS: Yes. Morris, yes.

LTCOL MCGOVERN: Dean Hillman?

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

And I agree, I like that redrafting of addresses but I would say
including, that addresses key factors
including inaccurate perceptions of victim
behavior.

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

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

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

COL MORRIS: My apologies. Larry
Morris. Number 7, if I can get back to it, I
think may be a technical question. On
recommendation for Number 7, says to
coordinate with the prosecutor. Are we doing
anything -- does not the reg already require
that? And in that case, are we just telling
them to follow the reg or is that not as clear
as I would guess about what the regulations
currently say?
COL HAM: Sir, it's Colonel Ham.

I was going to go get the Department of

Defense Instruction. I know it says that the
cases now have to be kept --

FEMALE PARTICIPANT: It does.

COL HAM: -- kept open until the

command has reported the action. And what I'm
trying to recollect is if there's a line in

there that also says coordinate with the

prosecutor. If you want to continue the
discussion, I'll go grab the Instruction and

check it.

COL MORRIS: And that's enough and

we can check another time. If it does, then

it seems to me we're just, then we're not

saying anything new. If not, it makes sense.

LTCOL MCGOVERN: This is Colonel

McGovern. The difference is in the Army

there's a direct requirement for the CID to

get an opine on probable cause from the JAG,

whereas the other services, the MCIO presents

it directly to the commander for the commander
to make an assessment. Then the commander's
supposed to consult with the JAG.

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

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

LTCOL MCGOVERN: Yes, sir.

COL MORRIS: Thanks.

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

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

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

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

CHAIR HILLMAN: Yes, great point.

This is Beth. That's a great point.

COL HAM: This is Colonel Ham. I think it depends state by state whether they're a one-party consent or a two-party consent.
It's federal wire fraud, wire laws that some of you know a lot more about than me.

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

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

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

LTCOL MCGOVERN: Yes, sir.

MR. BRYANT: Less onerous, more efficient, some words to that effect. It's not a big deal but I think we ought to say something about what goes on the other side. I'm done.
CHAIR HILLMAN: This is Beth.
That sounds great. That sounds great to me.

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

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

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

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

And I'm also just wondering, this is sort of a different issue. And, again, I'm sorry. It's Harvey Bryant. If they send you
a videotape of the victim in every case, is
the defense then going to be able to obtain
that as far as that Article 32 when they can't
call the victim?

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

COL HAM: This is Colonel Ham.

They certainly would be able to, sir, I
believe. The defense is still allowed to
present evidence, even under the new Article
32.

MR. BRYANT: Right.

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

LTCOL MCGOVERN: This is Colonel
McGovern. In the JSC-SAS, when they went
around, there was great controversy among the
different jurisdictions in the validity of the
videotaping of the victim and the goal being
she would only be videotaped once, whereas the
fact that they have these bits and pieces that
they recall at a time, it's setting you up for
an inconsistent statement which is a major
drawback. Since we haven't had, I think, a
sufficient amount of time to deliberate that
issue, that may be one we should delete.

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

LTCOL MCGOVERN: I think it's
important to videotape the suspect in many
jurisdictions in order to protect the
government, the police agency that there was
not coercion.

MR. BRYANT: Yes.

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

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

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

MR. BRYANT: Go ahead, please.

No, go ahead.

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

(Simultaneous speaking.)

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

MR. BRYANT: If we stick with 9,
the finding needs to have the words added
regarding the efficiency and usefulness of
videotaping of adult victim interviews. But actually I'm more with Lieutenant McGovern at this point, where I would just delete 9.

That's my personal --

CHAIR HILLMAN: This is Beth.

Let's tentatively delete that. I just would like to get Russ Strand's input on that because I have a feeling it came from him.

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

MS. CHAYT: That's right, ma'am.

When he was presenting our recommendations and findings in the larger group this one did not get discussed in detail.

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

COL MORRIS: This is Larry Morris.

Are we sure someone didn't just mis-transcribe
and they meant to say the accused?

Did we discuss videotaping the accused.

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

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

MS. CHAYT: Correct.

LTCOL MCGOVERN: Right, so --

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

I mean, imagine, you know, appropriately a victim's group scrutinizing our steps saying you're going to, you know, put a person who's already had, you know, sensitive experience, and then skittishness
about it and then say, you know, sit in that chair. We're going to roll the tape.

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

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

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

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

COL MORRIS: And I agree. I know we don't have a total consensus either but it's certainly the trend. And I think as we
talked about briefly before, just do it in the
interest of justice, take that - increase
police professionalism, shorten hearing over
how somebody was really questioned, all that
stuff.

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

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

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

But I thought that one of the --
so the context that's important here is that
the services are not all doing the same thing
here and that what the law requires and what's
happening in practice are not congruent.

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

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

LTCOL MCGOVERN: That's exactly
right.

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

And then there are different
practices across the services and we need to make recommendations about how to deal with that.

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

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

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

COL HAM: Ma'am --

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

COL HAM: I'm sorry, ma'am. We
also received information from the services. We asked them how many times they take adverse action in collateral misconduct and what type of action.

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

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

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

CHAIR HILLMAN: This is Beth again. I definitely want to address that. I mean, this recommendation doesn't go far enough for me.
I want to hear from Colonel Morris
and Mr. Bryant on this too, but I feel like,
given what you just said, that actually
there's very few cases where low-level
misconduct triggers any consequences or
significant consequences for the victim.

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

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

LTCOL MCGOVERN: And that the
services do not support that position. They
want to leave it up to the prosecutor and the commander to reserve the possibility because in some cases it may be helpful for the credibility of the victim to take the stand and say, yes, I received an Article 15. I've received my punishment. Now, I'm here to talk about the accused.

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

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

LTCOL MCGOVERN: Does that change?

Anyone?

CHAIR HILLMAN: This is Beth.

Yes, I hear you on this. So, Larry and
Harvey, do you have anything to add on this?
I'm hearing the objection.

COL MORRIS: I do --

MR. BRYANT: This is Harvey.

Colonel, go ahead, please.

COL MORRIS: No, please, go on.

MR. BRYANT: This is Harvey Bryant. I understand what these women are saying and I agree. I think this is an important issue that we need to say something about. We heard about this from all sides. Prosecution, defense and especially victims have concerns over this particular issue.

And, yes, we did hear the military is against changing it but -- I don't have a suggestion as to how to clean this up to get to where we can define this within the space that it's taking right now so, but we need, you know, something needs to be done and I'm just standing here hoping that Dean Hillman will jump in with some great words.

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

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

If that's right, then, you know, the service objections about sometimes they might not want to, sometimes it looks like purchasing testimony. I mean, those are all true enough but that's true any time you give immunity to anybody so you have to just trust decision makers to weigh all that stuff out
and decide under the right circumstances whether you want to bear that risk.

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

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

But my sense is that everybody's aware that you could potentially have some of that and there might be some of that and to that degree then measures like this have some cracks in that maybe somebody will get away
with drinking or something from time to time.

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

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

CHAIR HILLMAN: This is Beth. That's hugely helpful to me, as was what Harvey said. I also think we need to make this comparative because this is a distinction between the civilian.
We should have a finding that says in civilian jurisdictions this sort of misconduct is not pursued. I mean, did we hear from anyone who said this sort of thing would ever come up? I don't think so. They just said they would never pursue it.

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

Different question than is it prosecuted but she said it presents a barrier, as I recall, if others recall the same thing.

This is Colonel Ham, I'm sorry.

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

CHAIR HILLMAN: Right. This is
Beth again. Then perhaps what we ought to say is that because of the breadth of potential criminal liability in the military as compared to civilian jurisdictions, this collateral misconduct issue is different if not, I think it's much greater but it's certainly at least different than in civilian jurisdiction.

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

So I think that the way Colonel Morris put it is correct. We want an expedited process. I think we do want an...
amendment to Article 31(b) that permits an
expedited process by which an authority can
appropriately waive liability for minor
collateral misconduct.

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

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

MR. BRYANT: This is Harvey
Bryant. I like that but I think we should
remove -- take our findings about the civilian
world, that it is infrequently a barrier to
investigators proceeding or something like
that because I really think that is the
evidence of force.

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

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

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

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

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

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

LTCOL MCGOVERN: Okay, that's helpful.

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

LTCOL MCGOVERN: Okay, we can address it in the discussion as a possible
reason why change would be -- to 31(b) would not be difficult because it's not commonly used, although the perception is it's causing a barrier to reporting. So I think we got it. We can work with that one and move on.

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

CHAIR HILLMAN: This is Beth. I don't have any objection to, you know, those additions to this. I do think this is an important recommendation, that we actually use the database that exists. So -- but I don't
have a problem with including additional
contacts as Colonel Scholz suggested.

LTCOL MCGOVERN: Okay.

(Simultaneous speaking.)

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

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

COL MORRIS: Or titled?

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

Currently in a restricted report,
that information wouldn't be -- the alleged
offender's name wouldn't be recorded. So
Congress is afraid that these alleged
offenders are not captured or we're not
capturing that information.
COL HAM: So maybe the better way, it's not known offenders. It's they don't input personally identifying information on offenders currently. Maybe that's a better way to put it, Colonel Morris?

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

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

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

CHAIR HILLMAN: I agree with that.

LTCOL MCGOVERN: Okay.

COL MORRIS: Would the findings still be accurate to say does not currently input data on offenders who are identified by accusers who file restricted reports? I
thought you said the same thing then maybe
along those lines because I agree with the
concept. I just -- I didn't know if that was
a term of art that I had missed.

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

COL MORRIS: Okay, thanks.

LTCOL MCGOVERN: All right. Any
other concerns?

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

LTCOL MCGOVERN: And we'll change
that then in the finding and recommendations
for Number 12 so this is extremely helpful.
I appreciate your patience with this.

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

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

LTCOL MCGOVERN: Right.

MR. BRYANT: Yes, I wrote down --

CHAIR HILLMAN: Just can you give us an --

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

LTCOL MCGOVERN: Okay. We'll move a little bit of the discussion then into the finding because these findings and recommendations will be standing on their own in appendices and we fully expect that some people will only read the findings and
recommendations, so this is helpful that we
need to put them in the full context, so --

CHAIR HILLMAN: And the example?

(Simultaneous speaking.)

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

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

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

I guess the other side of the coin
is it leaves a law enforcement investigator
open to some cross examination that may be
harmful. But it's already being done, at
least in some of the MCIOs. I'm not sure if it's in all of them.

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

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

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

So doesn't this -- can we put this in, like, for instance, that Finding Number 2 or do you think it deserves a separate place here?
LTCOL MCGOVERN: We can play with it and if Finding and Recommendation Number 2 is getting too long, we can make it Number 3. So it certainly does seem to be grouped within that same category of concern.

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

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

LTCOL MCGOVERN: Okay. For the next one, Mr. Bryant, you asked us to look at
Number 17 recommendation.

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

CHAIR HILLMAN: Jan?

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

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

MS. CHAYT: Well, ma'am, the requirement is that if the medical facility is
24/7, then they need to have a SANE. Not that
they have it if they're not already a 24/7
establishment. So it's just a little
different.

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

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

MS. CHAYT: Which isn't very
local.

LTCOL MCGOVERN: Right.

FEMALE PARTICIPANT: They're more
experienced.

COL HAM: This is Colonel Ham.

Would you like the recommendation more direct,
Dean Hillman, to say Congress should reexamine
or that you believe the legislation was
unnecessary? Do you want something stronger
or different directed at the legislation
rather than the effects of the legislation?

CHAIR HILLMAN: This is Beth. I'm
pondering what I mean there. I do remember
actually even at the civilian locations that
we visited what a challenge it is to meet this
sort of demand.

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

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

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

MR. BRYANT: Well, this is Harvey
Bryant. My whole thought was we need to tell what it is, if we're going to stick with this, what we want the Surgeon Generals to assess the effect of -- assess the logistical and funding effects of it, the logistical, funding and necessity, efficacy, efficiency, something other than just a flat assess the effect of. That was my main issue in the beginning, but I certainly agree with everything that Professor Hillman just said.

CHAIR HILLMAN: Colonel Morris.

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

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

LTCOL MCGOVERN: Yes, we have a lot that we can provide in the discussion section as well to help flesh out the concerns that, you know, are we talking logistical, funding, expertise, the difficulty of maintaining credentials?
Shannon has weighed in and she said one suggestion may be also to say that the legislation seems overly proscriptive.

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

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

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

CHAIR HILLMAN: This is Beth.

Right on. Right on. And I think that the big
framing piece here is about leveraging civilian resources.

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

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

MR. BRYANT: Harvey Bryant. No.

COL MORRIS: Agreed.

LT.COL MCGOVERN: Okay.

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

Do you want to do one more of these maybe and then we could all take a five-minute break and then come back. Would that be okay?
LTCOL MCGOVERN: That would be great. Next, Colonel Scholz and Dean Hillman both recommended we look at Number 19.

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

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

The issue was that the different services all had different ways of doing this. They all do it, but they do it differently. They are not coordinating their efforts.
And there is a combined service, Medical Education and Training Center, that teaches many of the different medical fields and medical specialties and it would just seem to make sense to utilize that same expertise in this area.

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

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

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

But Jan, what you said sounds
persuasive to me. Colonel Morris, any
thoughts on that?

COL MORRIS: Nothing further.

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

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

CHAIR HILLMAN: Okay.

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

CHAIR HILLMAN: Okay.

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

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

LTCOL MCGOVERN: Okay.

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

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

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

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

LTCOL McGOVERN: Yes.

CHAIR HILLMAN: And we agreed that
allowing investigators to take a report that could remain restricted would be helpful in building the databases and, you know, getting information to go forward?

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

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

MS. CHAYT: Another jurisdiction did discuss the fact that an officer would approach a victim as part of the decision-making process. Part of that was an attempt to build some rapport so that they would be more comfortable coming forward.
Some of it was to gain information so that they could, you know, identify serial perpetrators and things like that, so it was for a purpose.

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

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

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

MR. BRYANT: This is Harvey. I'm
not -- are you saying, Beth, that you think we should strike this? Because I do think it's an important issue about the investigator being able to get this information; if nothing else, so they can run a -- and I realize most of the people in the military don't have a criminal history, but so you can run criminal history information or see what we're talking about.

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

CHAIR HILLMAN: I don't disagree with --

MR. BRYANT: I think we --

CHAIR HILLMAN: Go ahead, Harvey.

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

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

So we just -- you may want to consider, are you setting up these MCIOs for
this gray area and criticism that they are not investigating allegations. So it is kind of a double-edged sword.

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

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

LTCOL McGOVERN: Well, and I guess the idea would be they provide the information -- they are making a restricted report, so that they can receive health benefits and counseling. So if they name their alleged offender, in DSAIDs -- the DSAIDs information
would then be provided to the MCIO so they can track these alleged offenders to see if there is a problem. So the MCIOs would be getting the information based on your recommendation in Number 12.

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

And then, if something goes unrestricted by accident, it can't go back to being restricted. And the whole idea of restricted is to give victims more confidence and control. And I believe that based on 12, we are putting information into a system that we get from a victim that could help investigators. But I also want investigators to be able to talk to the victim.
So I think we should recommend that restricted reporting -- I think this is pretty close to right, but we aren't doing a good enough job explaining the rationale for it. So the finding needs to be that -- that MCIOs -- the investigator ought to be able to talk to the victim without triggering a full-scale investigation, because, to be honest, in some instances the investigator will convince the victim to move forward to -- it would do that -- make that conversion that we want from restricted to unrestricted.

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

The second part, I actually -- I don't -- that's where I feel like I don't know enough. How do we prohibit them from using the information to initiate an investigation or title an alleged offender as the subject?
I'm just not so sure how to do that, but
that's because of my lack of confidence in the
investigative arena. Maybe this is enough --
require the information have the same
safeguards as other criminal intelligence
data.

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

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

LTCOL McGOVERN: I think you
really would have to consider a whole separate
from being this semi-restricted, so it's clear you don't want this further investigated, unless you convert.

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

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

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

MR. BRYANT: Yes. Hold on.

(Pause.)
20(c). Hmm.

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

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

LTCOL McGOVERN: And I think that can be cured with an intro to the section. It
says, "the debate is whether training can be substituted for experience." Is that part of --

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

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

LTCOL McGOVERN: Right.

MR. BRYANT: And I don't have --
I'm sorry, but I just think it's part of our problem, and that shows up other places in some of this that, you know, the main thing is load -- caseload and the number of times that they actually have to go to bat in a sexual assault courts-martial.

LTCOL McGOVERN: But I

(Simultaneous speaking.)

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

LTCOL McGOVERN: I mean, the term of reference was -- or the tasking was to
assess training, so I think what we've tried
to do here is, looking at training alone, is
the training program -- are these attorneys
successfully advocating their positions in
court with the training that they are
provided? Despite your -- the experience
discussion.

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

So that is provided in the
discussion, that the experience level varies
depending on who you are comparing this to.
But looking at the training, are these
attorneys trained enough to be prosecuting and
defending these cases?
MR. BRYANT: I think that's the --
and we say that all services permit a
specially trained, certified counsel to
prosecute sexual assault crimes cases. That
was just my only issue -- or not -- not a
major issue, but just worthy of pointing out
that after receiving the training and not
necessarily receiving the experience, maybe I
should be satisfied with that sentence in the
recommendation that says given the military's
turnover and personnel rotations, about
training the judge advocate.

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

CHAIR HILLMAN: Yes, I think this
is -- I think, you know, Harvey is responding
to the -- just the framing issue I think. I
do think that needs to be sort of fronted
here, the training/experience distinction.
And I actually think the sustain or increase
funding piece that gives Mr. Bryant some pause
there, we -- if possible, we should recognize
it's -- training is expensive but we have to
continue to fund it, so long as we have this
system of criminal justice in the military,
because it's -- we otherwise can't maintain
the degree of expertise that we need.

But I do think that 21(a) does

speak to that. Harvey, do you see that?

That's a good

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

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

MR. BRYANT: Yes. And --

LTCOL McGOVERN: That we are

looking at for --

MR. BRYANT: -- someone else's

response to 20c is similar to what I was going
to bring up later on, and that is we heard a lot from the military attorneys about receiving training and special assistance in both state and federal court. Everyone speaks very highly of their experience and recommended to us that that try to be increased, wherever possible; they were getting enormous benefits from it.

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

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

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

MR. BRYANT: Yes. Sure.

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

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

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

MR. FISHMAN: This is Dillon. The RFI information is that all of the services
have specific requirements. They are not all
the same requirements, but they all have
certification requirements for people to be
lead prosecutors or trial counsel in sexual
assault cases. So we can clarify that word
certified, specially certified if you want --
we can put that in the discussion section. We
can kind of bring that into the finding, if
you'd like.

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

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

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

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

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

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

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

CHAIR HILLMAN: At the end of what sentence?

LTCOL McGOVERN: I'm not sure,
actually. I'm trying to figure it out.

CHAIR HILLMAN: Are we on 21a?

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

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

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

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

MS. CHAYT: No, the recommendation.

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

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

COL MORRIS: No objection.

MR. BRYANT: Well, is that the whole -- this is Harvey Bryant. Is that the
whole purpose of the Navy having litigation
practice, to improve the prosecution of sexual
assault cases?

COL HAM: This is Colonel Ham --

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

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

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

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

CHAIR HILLMAN: This is Beth. I
don't object to that additional language.  
That's fine.  

LT COL McGOVERN: Colonel Morris,  
do you have any opinions about the career  
litigation track?  

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

CHAIR HILLMAN: Kelly, this is  
Beth.  

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

CHAIR HILLMAN: I guess -- this is  
Beth -- for me, it just runs to what our  
objectives are in this particular report. But  
I don't -- we can leave it out. I actually --  
I think the question should be, is it  
effective overall in the services? That  
should be the question for the JAGs to answer.
I think that, for us, that the question is, would it increase expertise in litigating sexual assault cases? So I actually think for us to task the JAG, I don't think they should make that change necessarily only for this reason, but --

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

Mr. Bryant: Well, suppose we say that -- how about this compromise: "would be effective in enhancing expertise in litigating sexual assault cases"? Instead of "increasing," just "enhancing." If you've got a career track, that would -- would that lead to enhancing -- we may we splitting hairs to say "enhancing" rather than "increasing."

But if you got further litigation practice, it seems to me these are your -- these are your top gun kind of people, and that's going to enhance the expertise in
litigating sexual assault cases, and then, parenthetically, all cases. But we don't have to say that. I understand the stay in your lane concept.

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

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

MR. BRYANT: Harvey Bryant. I wholeheartedly agree. I agree.
COL HAM: Colonel Morris, I'm asking for your input here. There is some formal interaction, because different services assign their judge advocates to teach at the different schools. Those are formal arrangements, aren't they?

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

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

CHAIR HILLMAN: Okay. So we will
throw in informally, recognizing it's not that there's not some interaction, but even, you know, sharing instructors isn't the same as sort of making decisions about personnel and training.

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

(No response.)

Dean Hillman, this one is yours.

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

LTCOL McGOVERN: Okay. Sorry.

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

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

LTCOL McGOVERN: Okay.

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

CHAIR HILLMAN: I added just a couple of words. First, it -- I added after, "The Commandant of the Marine Corps should sustain and broaden the emphasis on developing and maintaining shared expertise and experience in prosecuting adult sexual assault
crimes." Colonel Morris, does that sound --

COL MORRIS: Oh, it sounds fine to me.

CHAIR HILLMAN: -- okay to you?

Okay. So, Kelly, now if -- unless there's objections, we're on to 23.

LTCOL McGOVERN: Okay.

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

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

(Laughter.)

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

LTCOL McGOVERN: Yes. Okay. 23b, you had expressed concern -- Colonel Scholz expressed concern that she doesn't believe this is true in the Air Force, at least during
her time. The defense counsel most often came from the installation legal office, but she wasn't aware of one ever being selected without trial experience.

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

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

COL MORRIS: This is Larry Morris. I'm okay up to -- 23 itself, this is such a consequential recommendation. The language "or be equalized with that of trial counsel," do we want to be more -- is there any harm in being more specific, like setting a minimum time or a normal -- a norm? Because trial
counsel are -- probably, in general, have shorter tours than defense counsel, and both sides have been too short. But it's even more common to pluck some trial counsel out.

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

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

COL MORRIS: I think we all agreed that longer tours in general make sense. But you have to have -- you know, be open to operational contingencies and all. But that language, it doesn't seem to me, does much,
because we are tying it to people who have an equally volatile and uncertain tour length. So my sense is we either tighten the language, or stick a number in there, a preference for a two-year assignment.

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

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

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

LTCOL McGOVERN: Okay, sir.

Are there any other concerns with 23?

(No response.)
Okay. Then, Dean Hillman, you asked that we look at Number 25?

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

LTCOL McGOVERN: Sure.

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

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

LTCOL McGOVERN: Would it be --

CHAIR HILLMAN: This is Beth.

Sorry, Kelly. I would love to give them
budgets, but I think that's likely not to work so well. So I -- that's -- I think that's right, "training opportunities" maybe.

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

COL MORRIS: Preferably.

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

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

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

LTCOL McGOVERN: Okay, sir.

COL MORRIS: Thanks.

We are ready for Number 25?

CHAIR HILLMAN: Yes. Number 25, the second part of the finding here on 25, is -- says, "While consolidation was considered and discussed, it would be too costly and onerous." I don't really want to say that. Consolidation was discussed. I don't want to recommend that we consolidate, but I'm not prepared to say it would just be too impossible if someone came up with some great
approach that would do this. So I'd like to just cut that piece about consolidation.

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

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

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

LTCOL McGOVERN: Because the recommendation --

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

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

Let's see, so the first sentence
here is pretty straightforward. "All services send members to training courses and JAGs can go to the other services, which enables sharing. Consolidation of facilities and training has been proposed." Actually, but I don't even want to say that, because we are not dealing with some pressure about that. There is no legislation that is pending that suggests consolidation.

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

MR. BRYANT: Sure. Yes. Yes.

CHAIR HILLMAN: And then we could mention it in the recommendation. If we are going to establish this working group, then we could say they should consider consolidation, which is essentially what we say it is doing anyway -- strive to eliminate redundancy,
services. So we could say, "the working
group should identify best practices, strive
to eliminate redundancy, consider consolidated
training, and monitor training and
experience."

MR. BRYANT: So, but the --

CHAIR HILLMAN: Go ahead, Harvey.

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

CHAIR HILLMAN: Yes.

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

COL MORRIS: No, that's all right.

I mean, my concern maybe is a shared concern
that -- that consolidation can just be some
distraction that is just not enough to be
worth anybody's energy. So I'm okay with that wording. Or if you wanted that sentence to change, to drop the second part of the sentence to say something else. "While consolidation of facilities and training was considered and discussed, the paramount concern is -- the highest quality training can be best achieved through joint training and use of the best aspects of each service's programs initiatives," or something like that. So that somebody doesn't seize on this thing as some study group to consolidate the JAG schools, when the main point is get to work, share each other's stuff. And, you know, in the electronic world, being on the same piece of dirt is less important than collaborating and getting to work with each other.

CHAIR HILLMAN: This is Beth. That's exactly what I'd like it to say, what Colonel Morris just said: "while consolidation was considered and discussed, it is of paramount" -- whatever he just said is right
"Paramount importance is the actual quality of the training."

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

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

COL MORRIS: You mean as to the report?

CHAIR HILLMAN: Yes.

COL MORRIS: I can do it real quick if you want. How far did we go?

Anybody? What is our last number for this
LTCOL McGOVERN: We just made it through 25, sir.

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

LTCOL McGOVERN: 62.

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

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

COL MORRIS: Yes, I will.

LTCOL McGOVERN: Okay.

COL MORRIS: Are we doing another part this afternoon?
LTCOL McGOVERN: Yes.

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

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

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

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

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

LTCOL McGOVERN: Okay.

CHAIR HILLMAN: Okay. That's great.

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

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

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

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

LTCOL McGOVERN: So in 27 recommendations, delete the word "consider"
and say, "implement the Navy's evaluation system, and also" -- so we would delete the word "quarterly."

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

LTCOL McGOVERN: Okay.

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

LTCOL McGOVERN: Okay.

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

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

LTCOL McGOVERN: Sure.

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

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

LTCOL McGOVERN: Okay. So is the recommendation to continue to fund and expand,
or continue to fund?

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

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

CHAIR HILLMAN: I think so.

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

CHAIR HILLMAN: I think we are.

LTCOL McGOVERN: Okay. Dean Hillman?

CHAIR HILLMAN: This is -- yes.

So this is, you know, one of the things that we have not talked about. And if we still have Colonel Morris, do we have you for a couple more minutes here? This says we are going to need more funding. We didn't -- it says the increased funding for training and additional training. We don't really assess the economic consequences of much of this. I mean, we don't say elsewhere that we need increased funding for lots of things. We say
we need enduring funding, or we need funding.

But this is just sort of different.

And, actually, Colonel Morris,

since you're concerned about what we're saying
about judges, if you -- do you have a response
to this particular part? Or if you can flag
some of your other concerns, too -- I'd be
interested in hearing them -- about what we
say about judges later.

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

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

COL MORRIS: You know, I reacted
to it and then let it go. It didn't -- You
have to accept the rest of the premise on the,
you know, the increased judicial involvement
than I think the majority agrees with. So I
suppose that means -- I guess that does mean more training. I guess my sense is judges aren't as often training-starved as counsel are.

CHAIR HILLMAN: Right. Okay. So I --

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

LTCOL McGOVERN: Go ahead.

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

CHAIR HILLMAN: Okay. And just to preview, then, your objection for that part, your sense is that the benefits aren't worth the changes in the -- giving military judges an increased role.
COL MORRIS: And, actually, it is probably a little more annoyingly specific. I don't agree with the whole -- give them all of the expansions that we called for. I do in some aspects of case management of witness production, that kind of stuff.

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

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

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

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

LTCOL McGOVERN: Thank you, sir.

CHAIR HILLMAN: Okay. Thanks, Larry.

COL MORRIS: Thanks, you all.

Bye.

MR. BRYANT: While we're having that good-bye -- this is Harvey Bryant -- I agree -- I have a neighbor next door who had a stroke. He needs to go to physical therapy,
and he doesn't have a ride. So I'm going to
have to take a pause here, and see if we can
work something out. So I -- if you all will
excuse me for just a minute or two, I need to
make a phone call on another line to see if I
can work something out with another neighbor
to take him.

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

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

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

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

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

LTCOL McGOVERN: Okay.

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

LTCOL McGOVERN: Okay. Great.

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

LTCOL McGOVERN: No.

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

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

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

So, of all those different models, it seems like it is helpful to have that investigator and prosecutor working closely together and possibly offices at -- for these
other players in the system. But because of those complicated issues that could arise at Dawson Place or JBLM, that's not -- we don't recommend that as the new -- or you all won't recommend that as the new gold standard.

CHAIR HILLMAN: That helps, Kelly.

Thank you.

LTCOL McGOVERN: Okay.

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

And then the second recommendation actually says, we should assess the strengths and weaknesses and continue to improve and pay attention. And you flag the problem with that -- victim advocates being too close. But I feel like this could necessitate a change in, for instance, what they're doing at JBLM right
now, wouldn't it? I mean, wouldn't this say that they can't continue to have their special victim counsel in the same building that they have their prosecutors and investigators?

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

CHAIR HILLMAN: That would be fine.

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

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

LTCOL McGOVERN: And they had to report to Congress on that in January -- in January 14, they had to tell Congress that
they basically fully manned the special victim
capability as required by Congress. So --

CHAIR HILLMAN: Then that's --

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

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

Because I just -- I can't tell
yet, and it's just too -- it's big and too new
a program to -- to me, it puts in a -- it
makes it appear more mature than what I think
it is, in terms of my own sense of how it's
working out on the ground.

LT COL McGOVERN: Okay.

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

CHAIR HILLMAN: That's fine.

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

CHAIR HILLMAN: Okay. Thank you.

LT COL McGOVERN: And you also were concerned with 31c?

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

I agree with the standardization.
That would help. I wondered if we should suggest it. Should we say -- but I don't -- just because when we say they need to standardize, then everyone wants to have their own label put on it.

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

LTCOL McGOVERN: And in the discussion we --

CHAIR HILLMAN: Do you have a language proposal?

LTCOL McGOVERN: Well, in the discussion, we illustrate how every service calls their special victim prosecutors something different, which serves no purpose at all. It's just nobody wants to say that
they are doing what someone else did. So we can certainly add in if --

CHAIR HILLMAN: Well, let's choose one.

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

(Simultaneous speaking.)

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

LTCOL McGOVERN: Okay.

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

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

MS. FRIED: That is the Marine Corps.

LTCOL McGOVERN: And that's the difference -- that's the difference in the special victim counsel titles. We are talking
about the special victim prosecutors. Some
call them senior trial counsel. Some call
them special victim prosecutors.

CHAIR HILLMAN: I'm all for that.

Okay. So are we out of time? How far behind
are we? We're like 10 recommendations,
findings and recommendations behind? That's
not too bad.

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

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

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

LTCOL McGOVERN: Tomorrow, I
believe, is from 12:00 to 2:00. Yep. Eastern
Standard time. Today, this afternoon, from
2:00 to 3:00, we'll also be discussing with
General Cooke, Colonel Morris, Colonel Henley,
and if Dean Hillman is available after her
other call, the sentencing portion and the judge involvement. So working backwards this afternoon.

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

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

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

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

(Laughter.)

CHAIR HILLMAN: Okay. Thanks, everybody. So I'll be back on this afternoon
after I get out of this other call. So I'll
be calling in late, but I'm grateful for
whatever you all do before I get there.

LTCOL McGOVERN: Okay. Thank you.

Maria?

MS. FRIED: So we'll reconvene
this afternoon. Thank you. Meeting closed.

(Whereupon, at 12:01 p.m., the proceedings in
the foregoing matter were concluded.)
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CERTIFICATE

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.

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Neal R. Gross