UNITED STATES DEPARTMENT OF DEFENSE
RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL
VICTIM SERVICES SUBCOMMITTEE

CONFERENCE CALL

THURSDAY
APRIL 24, 2014

The Subcommittee met telephonically at 3:00 p.m. Eastern Daylight Time, Mai Fernandez, Chair, presiding.

PRESENT
MAI FERNANDEZ, Chair
THE HONORABLE ELIZABETH HOLTZMAN
THE HONORABLE CHRISTEL MARQUARDT
BG (Ret.) COLLEEN MCGUIRE
DEAN MICHELLE ANDERSON
DEAN LISA SCHENCK
MEG GARVIN

ALSO PRESENT
WILLIAM SPRANCE, Designated Federal Official
COL PATRICIA HAM, Staff Director
CDR SHERRY KING, Supervising Attorney
CDR KING: Mr. Sprance, since you're the DFO, could you start the meeting?

MR. SPRANCE: I will, Sherry.

Good afternoon. This is Bill Sprance, the Designated Federal Officer, and this meeting of the Subcommittee is now open.

CDR KING: This is Sherry. Just to start the meeting, Mai, if you want -- if it's okay, I sent out an email yesterday, and I thought we might want to start with the Victim Services findings and recommendations. The staff did some editing since last week on many of them, and Dean Anderson did a lot of work over the weekend on some of them. So, Mai, if you want to start with those, we could do that.

Just to point out to everybody, I also sent out a new draft of the Victim Services Report. It's different than the one you had the very first time you deliberated on
findings and recommendations. And Dean Anderson also contributed to that over the weekend. So, if you want to go ahead and start deliberating on findings and recommendations, starting on page 67 of the report I sent out last night.

CHAIR FERNANDEZ: Why don't we start there.

CDR KING: Perfect. Thank you. So, this is Sherry. Just to -- Finding and Recommendation 1 is just basically -- it's one you've already seen before. It's just basically the one talking about the number of changes and initiatives DOD, SAPRO and Congress have done. And then your recommendation to study or to capture the data and assess the effectiveness of the program. And then with a view to streamline or eliminate those that are not successful.

I think -- I tried to incorporate your discussion from the meeting on 4/18, so I don't know if you've had a chance to look at
REP. HOLTZMAN: This is Liz Holtzman. On Recommendation 1, is there any reason that you don't add the words at the end of it, "and expanding the programs that are successful, preserving and expanding those that are successful?" I mean, why are only focused on eliminating?

CDR KING: We can do that. I don't think anybody had mentioned that before, which is probably why we didn't write it.

REP. HOLTZMAN: Okay. Well, anyway, it just occurred to me that what we're asking for is to cut out --

CDR KING: All right.

REP. HOLTZMAN: Based on the --

(Simultaneous speaking.)

REP. HOLTZMAN: -- make sure that we have continuation of the programs. And I think it says that.

JUDGE MARQUARDT: Well, I think --

COURT REPORTER: Sorry to
interrupt. This is the court reporter. Could I ask the speakers to please identify themselves when they speak?

CDR KING: Yes, that was Christel that just spoke.

REP. HOLTZMAN: Yes, this is Liz Holtzman. I thought I said add words and continue and expand that are successful.

CDR KING: Actually, ma'am, when I look at it, I think if you look at bullet 2, the third line -- or the second line, the end of the second line says, "To determine which are effective, which should be continued, expanded, or are duplicative of other programs, and how best to allocate funds and personnel for Victim Services programs in a research-constrained environment."

CDR KING: Okay, but that's a finding and we're saying that Recommendation 1 only deals with eliminating.

REP. HOLTZMAN: Okay.

CDR KING: That's Liz Holtzman.
Okay. Whatever you want to do. I don't --

REP. HOLTZMAN: Well, we'll try to

-- if it's okay with the other members or if
everybody agrees we can put it in there also.

CDR KING: Fine.

MS. GARVIN: Yes, I think it's fine
to move it to recommendations, or just copy it
into it. This is Meg Garvin.

CDR KING: Does anybody disagree

with that?

CHAIR FERNANDEZ: No, I think we

move forward.

CDR KING: Okay. So, number 2 and

number 5 kind of go together now based on Dean
Anderson's recommendation, so I don't know if
you want to discuss those now or go through
the rest -- discuss number 2 now and go to 5,
or wait until you get to 5.

CHAIR FERNANDEZ: We'll --

CDR KING: Okay. So, should we just
go to 3 now, and then when we get to 5 you can
look back at the findings on 2? How about if
we go to Finding and Recommendation 3?

REP. HOLTZMAN: This is Liz Holtzman. I just have one on 1A, which is -- the Recommendation 1A, the fourth bullet talks about the MCIO must be notified. It seems to me since we're talking about -- I just thought it might be clearer just to say the MCIO must be notified, and add the words "as required by existing law and policy." We're not suggesting that we're making up some new notification requirement, or different from what's already in the law.

CDR KING: Also number 2 --

REP. HOLTZMAN: Well, there's a third bullet on page 58, 68, sorry.

CDR KING: Okay. And also, I'm sending to --

REP. HOLTZMAN: And the other issue raised in that is the restricted report need not be released, and to whom is that restricted report to be released to? It was not clear from that. I mean, they're
relatively minor but the point is --

CDR KING: You may want to discuss these bullets, and Finding and Recommendation 2 more, I think, when you get to number 5 since that's where the recommendation is that goes with all of them.

REP. HOLTZMAN: Is this the finding for 2? I thought this was the finding for 1A. I don't really -- or the recommendation for 1A. I'm just saying what it was actually.

I'm sorry, it's findings and recommendations. I'm very sorry. I'm skipping the gun. I'm jumping the gun. I apologize.

CDR KING: Okay. So, Recommendation 3 is your recommendation to provide additional information at the MEPS center to the new recruits that includes this definition of sexual assault, possible consequences of a conviction for sexual offenses, and information about the DOD Safe Help Line and other avenues for assistance. And I think you looked at, or you've discussed this
recommendation and finding a couple of times, but I think we modified the language slightly based on your 4/18 meeting. I think you approved it there but we may have -- you may have modified it slightly. Is there any recommendations or things you want to change on this one?

CHAIR FERNANDEZ: This seems pretty straightforward to me.

CDR KING: Okay.

CHAIR FERNANDEZ: This is Mai.

CDR KING: Okay. This is Sherry again. If you want to move to Findings on Recommendation 4 and Recommendation 4. This one is the recommendation that you want, the eight-day reports to also include restricted reports and the services that are being provided to victims for restricted reports without identifying or releasing personally identifying information. And I tried to modify the language based on your discussion at the last meeting on 4/18. Does anybody have any
Additional changes to this, or are you okay
with this language, or do you still want this
recommendation?

MS. GARVIN: This is Meg. I think
the edits are good, and I think the new
version of it should stand.

REP. HOLTZMAN: This is Liz
Holtzman. I just wanted to -- on the fourth
bullet, tracking -- add the words, "or
reporting on," because this is a question
about that reporting as opposed to just
tracking. I'm sure, you know, and this is sort
of technical. I also don't think that bullets
2 and 3 are necessary, but that's not a major
--

CDR KING: We can take them out if
other members want to. I mean, it's --

REP. HOLTZMAN: So, my
justification is that all it talks about is
the reports that are required to be given,
which is --

CDR KING: Right.
REP. HOLTZMAN: Why do we care about that? I mean, we're talking about reports that are being given, and we're talking -- so, I don't think it's really relevant, but if you want to keep it in there. It doesn't hurt, just takes up room.

CDR KING: We can take them out and let someone have -- so, if any other members have any feelings about whether we should leave them in or take them out?

CHAIR FERNANDEZ: I think we should move on, because we're limited in our time.

CDR KING: So, take them out?

CHAIR FERNANDEZ: Sure.

JUDGE MARQUARDT: This is Christel. I think we ought to take them out.

CDR KING: Done. Okay, then on number 5 --

REP. HOLTZMAN: Wait a minute, 4 on the recommendation, is there something missing at the bottom of Recommendation 4?

CDR KING: It goes to page 5.
There's two bullets, ma'am. The second bullet is on page 70.

REP. HOLTZMAN: Okay. Well, I don't think the first bullet is clear to me, "restricted reports is" -- and "which a member of the" --

CDR KING: Oh, I see.

REP. HOLTZMAN: "After the offense direct the service to require a written incident report no later than eight days following a restricted report, as well as unrestricted which our service" -- aren't we -- don't we care about the report that should include what care was given to the victim? Shouldn't that be what is being transmitted to the Secretary of -- is that what the restricted report should contain? I mean, isn't that what the information should contain?

CDR KING: Yes.

REP. HOLTZMAN: An incident report. Aren't we asking for the incident report to be
about services to the victim?

    CDR KING: You're right. We did

leave that out. We'll put that back in.

    REP. HOLTZMAN: Somewhere it should

be there. That's all I'm saying.

    CDR KING: Right.

    DEAN ANDERSON: Is there -- this is

Michelle. I'm wondering if there's a reason

why the construction of the first bullet in

Recommendation 4 doesn't just say, "The

Secretary of Defense direct the services to

require written incident reports no later than

eight days following a restricted or

unrestricted report."

    JUDGE MARQUARDT: I think that

wording is better, that system.

    DEAN ANDERSON: In other words, the

only people making restricted or unrestricted

reports are members of the armed forces, so --

it's Michelle again.

    CDR KING: Well, I guess it could

be civilian dependents also, especially if
it's the offender -- I guess it could be --

DEAN ANDERSON: Well, don't we want
to track those, too? This is Michelle. I'm
wondering --

COL HAM: Ma'am, this is Colonel
Ham. They're not tracked by the Section 1743
of the NDAA, which it only directs them to
submit written incident reports in sexual
assaults in which a member of the armed forces
is the victim. So, if the intent is to make
equivalent the requirement for restricted
reports to the statutory requirement for
unrestricted reports, they are limited to when
a member of the armed forces is a victim.

DEAN ANDERSON: I see, that's why
this sentence is constructed the way it is.

COL HAM: Yes, ma'am.

DEAN ANDERSON: Got it.

REP. HOLTZMAN: This is Liz
Holtzman. I'm on page 70, the first bullet.
Why are we protecting -- I mean, I'm sure
there's a good answer, but why are we
protecting the identity of the alleged
defender? Suppose it's public?

COL HAM: Ma'am, on a restricted
report it is not revealed. If the victim
knows, it is not --

REP. HOLTZMAN: This doesn't --
this bullet is not restricted to restricted
reports.

COL HAM: Okay.

REP. HOLTZMAN: If it's intended to
be, I understand that. But if it's not, I
don't know what it's --

COL HAM: Yes, ma'am. You're
correct. This is Colonel Ham.

REP. HOLTZMAN: So, I don't know
how you want to fix it.

COL HAM: We can make it more
specific.

REP. HOLTZMAN: You can just say
when restricted reports are made. Just
introduce the second -- the first bullet with
that, in a restricted report, when restricted
reports are made. Add those words.

CDR KING: Okay. Anything else with respect to number 4? Okay, if you want to move to number 5? In this one, the recommendation is the one -- the new recommendation that Dean Anderson wrote that combines number 2 and 5 is on page 71. I left the old ones in here so that you could see what they were, and if you want to take any of those for findings.

DEAN ANDERSON: This is Michelle Anderson. I -- the intent of this recommendation is to vest more authority in the victim over control, imperfect, though it's always going to be, but some control over the information. And, also, allowing the intervention of an SVC to -- for consultation purposes before the trial in order to make a restricted or unrestricted report so that the decision is a little bit more knowing and informed, and that Command should respond to the queue of whether or not it's a restricted or unrestricted report.
Now, of course, as we've discussed there may be other ways in which information comes to investigators about a situation, but this is just about identifying information about an instance of sexual assault that comes to a Commander, and what should happen at that moment.

CHAIR FERNANDEZ: So, Michelle, this is Mai. The way I'm reading this is I'm raped, I tell you, you tell my Commander, my Commander then needs to go and speak with my SVC to figure out if this is restricted or unrestricted.

DEAN ANDERSON: Right. And if you don't have an SVC that's obviously the opportune moment to grant you one, and to give you an opportunity to deliberate with that counsel on the question of whether or not it's going to be restricted or unrestricted.

REP. HOLTZMAN: This is Liz Holtzman. Okay. I have some questions, and then I have some concerns. My first question
is, right now the way it's written, and I think you did a very good job of writing a very concise and clear recommendation, Dean Anderson. My hat is off to you.

Right now, it's -- taking Mai's example, let's say I'm the victim and I go to my sergeant and say hi, sarge, I just was raped. I'm just trying to figure out what to do about it. Okay? Directly to the chain of command. Under your -- as I read this recommendation, that sergeant would have no right -- that would not destroy the confidentiality. Is that correct?

DEAN ANDERSON: Yes, there's the phrase "other than a direct report from a victim." When a victim comes directly to Command then it's an unrestricted report. Now, we could -- obviously, this was drafted this weekend, you know, so it's imperfect drafting. And I think that we could change that if people felt like they wanted Commanders to be required to advise the victim that they need
to speak with an SVC. That would make it more uniform as between those who come directly forward to the chain of command, and those who do not.

REP. HOLTZMAN: Okay. In sentence number -- in line number 3, because you want to revise --

DEAN ANDERSON: Oh, I see. Yes, yes, yes, yes.

REP. HOLTZMAN: They confide in others in the chain of command or not. And I guess if you're going to allow that, I think that's a huge change in policy, and I have real concerns about that because I do not -- I mean, we have one -- we talked about it last time, I mean, it's really two conflicting, very conflicting issues here.

On one hand what the military has done over the past three years and Congress is to say no more hiding stuff under the rug, so the military Commanders now have a mandatory reporting requirement immediately. They cannot
for any reason not report. I mean, so to
change that, I don't think we've taken enough
evidence to know what the impact of that would
be, so I have -- even though it may give the
victim more leeway, I have a lot of concerns
about doing that, because I don't think we're
yet out of the woods. I mean, this is my
hunch. I could be wrong, but I don't think the
military is yet out of those old woods where,
you know, there was a reluctance to, you know,
to open up on what had happened, and to refer
all these cases for prosecution. So, that's a
big, big concern that I have here. And I don't
think I could -- I mean, that's just -- I'm
not sure I could support it, even though I
understand where you're coming from, and I
very much value giving victims, empowering
victims as much as possible.

DEAN ANDERSON: So, how about this,
Liz? I take your point. I completely agree
that I don't think the military is out of the
woods on a question of Commanders burying
allegations. There was a report in the Washington Post yesterday about the head of the Blue Angels being disciplined for doing exactly that, so I completely agree with your concern.

What if we took out the parenthetical in line 3 that said, "in the chain of command or not," and it just said that "sexual assault victims have the ability to confide in others before deciding whether to make a restricted or unrestricted report."

And then down in the third to the last line we remove that when information comes to a Commander about an instance of sexual assault by whatever means we take out "other than a direct report from victim." The Commander communicate with the appropriate SVC. So, what that does is it forces the interface, not between the Command and the victim, but even if the victim comes to Command, the thing that Command needs to do is to advise that the individual needs to consult with the SVC, so
that it takes out the potential for Command burrying - I mean, not entirely, obviously. They can violate the rules and regulations, but at least on paper says that the Command has to refer this question to the SVC and allow the victim the opportunity to consult with an SVC before deciding whether to make a restricted or an unrestricted report.

REP. HOLTZMAN: And how much time would you give the victim?

DEAN ANDERSON: I don't know. I assume that the SVCs are - I mean, all of our other findings and recommendations around SVCs encourage fairly prompt interactions that are -- you know, allow the victim to consult with an SVC. And a lot of the testimony from the SVCs in my recollection, at least, was that they spent some time doing exactly this, that is consulting with victims about whether or not to make a report that is restricted or unrestricted. They're in the best position to consult with the victims about what the
implications are for doing this.

REP. HOLTZMAN: Well, I understand that, but I also -- but my question is how long are we -- how much time are we giving the victim to make up his or her mind about what to do?

DEAN ANDERSON: You feel like that needs to be explicit in the recommendation?

REP. HOLTZMAN: See, what worries me having been a former prosecutor is delay with regard to investigation. You have DNA, other materials out there. It's imperative if you can move quickly, so the delay is not only an empowering factor, it could be a factor that undermines or inhibits the investigation, that's all. So, I appreciate what you're trying to do but I just have concerns about the delay. I just do. I'm sorry. And I don't know how to resolve it, because I think you've done a really good of trying to do that here.

And suppose the Special Victim - I mean, I don't know. You could just - what
I see here is bureaucratic - a possibility of bureaucratic delays, and that's not a good thing. I mean, on the one hand you got the - your objective which is I - you know, I strongly support which is empowering the victims. On the other hand you have the possibility of all the bureaucratic delays, and I don't know.

So, what you would be saying here is that in every single case, the Commander must check with the Victims Services, I mean, the Special Victim's Counsel before referring a matter.

DEAN ANDERSON: I guess that assumes, of course - this is Michelle, that the SVC is promptly available, and can engage in that consultation. And, obviously, we're making recommendations that they are promptly available -

REP. HOLTZMAN: I would feel more comfortable about this if we made the suggestion that this should be examined as a
way of preserving or enhancing victim's sense of empowerment, as opposed to actually making a direct recommendation. I just - that's where I am. So, you feel free to do what you think is best, because I know that we don't necessarily share the same view about this, but that's fine, because I respect very much where you're coming from here.

DEAN ANDERSON: Meg, you work with - are you still on the line?

MS. GARVIN: Yes, I am.

DEAN ANDERSON: What's your take on this because you are the expert among us about counsel for the victims.

MS. GARVIN: Well, I mean, the SVCs from my understanding are being - you're different by branch, right, but generally pretty quickly available. I wouldn't imagine it would be a significant delay with regard to access to the SVC, and the SVC having spoke with her client. The delay could be inherent in the decision making process by the victim.
Right? Like when you lay out the pros and cons of both directions, that's a hard moment, right, for someone to decide which way they want to go. But the delay factor could be real. I don't know that it would be significant, but it could be real.

I like this recommendation with regards to - in terms of empowerment and choice, and like would clearly aid with the trauma aspect, meaning decreased trauma for victims when they have this much agency. But I just don't understand how it does relate to the current directive to Commanders. Like isn't it - this now would be in conflict with what - or what Commanders are supposed to do right now. Is that accurate?

CDR KING: Yes, 1742A and B require Command, if any information about a sexual assault comes to them to refer it for investigation, that they have to. So, this is basically saying change the statutory obligation of Commanders, the section of the
obligation of Commanders under 1742 to say the
first step is check with the SVC to confirm
it's unrestricted before you go forward.

MS. GARVIN: Right. And I -

CDR KING: And the victim has to
find an SVC, then it's a direct communication
with the victim. So, right, they don't have
to have an SVC. They can - they're offered
the SVC. You can always choose otherwise.
Okay.

REP. HOLTZMAN: I don't know
whether this would make me feel better, but if
it weren't the Commander - I mean, if you
didn't change the Commander's responsibility
to refer to MCIO, but you put the
responsibility on the MCIO to speak with
Special Victims Counsel before proceeding, I
would feel better about it.

DEAN ANDERSON: I take that as a
friendly amendment. I don't - you know, the
point is - the point here, this is Michelle,
is not to obfuscate the obligation of Command
to begin to more consistently respond to these allegations that come forward. And I agree with Liz that that continues to be a problem. The intention is simply to - well, it's not simple, is it? The intention is to vest more authority about the distribution of the information that gets beyond the control of the victim in ways that are deeply disempowering and traumatic that we heard from many victims in terms of what they told us, and told the panel.

MS. GARVIN: This is Meg. I think that it's - the recommendation that Liz just made about having the MCIOs that have to before investigation proceeds, MCIO has to talk to the SVC. Then we're not contradicting - we're not putting it in that Commanders could sweep anything under the rug. They still have to refer, but the investigation, you don't start turning over rocks unless the victim says turn over rocks. I think that might be a better approach to this. It still
empowers but it stops the investigation, potentially.

REP. HOLTZMAN: Okay. But I still have a reservation about, you know, whether this somehow could interfere with the preservation of evidence, so I, you know - to me it's better because we're not - I agree with you, Meg, we're not interfering with the Commander's explicit mandated responsibility that Congress has emphasized time and again. I think that would be dangerous to do that, and I don't know that it would have any effect. I mean, so you can go forward and I'll just have a reservation about this in terms of protecting evidence. But I think that might be a - it's certainly better from my point of view that we go down this road with the - having the investigations check with the - investigator check with the -

CHAIR FERNANDEZ: Can you just run a practical scenario of what this would look like? This is Mai. To have the investigator
stop. So, how does - how would that actually work?

REP. HOLTZMAN: Well, presumably, as I see it - I mean, I could be completely wrong, and I hope that there's some professional there like Colonel Ham or Commander King who will tell me I'm wrong here, but right now somebody - someone is a rape victim and they told, I don't know - let's just assume that there's a witness who has gone and told Commander, or told somebody, his Commander then told the Base Commander. The Commander then under the law is required to call the MCIO and say I understand that there's a rape that took place on January 3rd, and these people were present, and whatever he knows, or she knows. So, that's called into the MCIO.

The person taking that call would then have a responsibility before they go ahead and investigate it. I understand - now, Dean Anderson, maybe I'm not - or, Meg, maybe
I'm not getting correctly how you see it, but before the investigator could commence the investigation after having heard this info would have to call the SVC to see if the report is restricted or unrestricted.

DEAN ANDERSON: Yes, I mean - this is Michelle. In some ways what it means is that the first step in an investigation is to consult with the SVC.

REP. HOLTZMAN: Correct.

MS. GARVIN: Yes. I like that.

That's pretty - that seems right.

COL HAM: What if - this is Colonel Ham. What if there is no SVC and you have to go to the victim?

DEAN ANDERSON: I think that's an important point, Colonel Ham - this is Michelle, that I didn't anticipate, but is possible. What I want to make sure, though, is that there's not a proceeding simply on the basis of there not yet being the consultation that the victim is entitled to. Right? So, the
- we could change the language. I mean, I
could certainly take this dialogue and change
this language for the staff. I'm not trying to
shirk responsibility, but I think try to frame
it so that the first line of analysis is -
the first line of investigation is to consult
with the appropriate SVC, and if there is not
one, to inquire whether or not there's been
the opportunity for that consultation. Because
I think what we're trying to do is not just
grant the right to the SVC at some point, but
grant the right to the SVC at a time when,
from the victim's perspective, the
distribution of information is most at stake.

BG McGuire: This is Colleen

McGuire. I just - as I heard the scenario
being played out, I just had an integrity
issue and concern as an investigator that if
you knew - and investigators won't
investigate something if there was not a crime
or if anybody, you know, doesn't want to
pursue this. So, if there wasn't a crime, then
they won't investigate. But if there was
clearly a crime, but they don't want that
individual to investigate, investigators, as
are Commanders, are still charged and
obligated to insure the safety and security of
the population. So, this would be an integrity
- this would really be, I guess, a shift in
philosophy for law enforcement, if you're
aware of a crime to not investigate.

DEAN SCHENCK: This is Lisa. I
think I'd add to that, as well. The problem
especially with the military is that the crime
may be witnessed but I would say up until last
year, victims on active duty could be ordered
to testify. Victims of every kind, not just
sexual assault, victims could be ordered to
testify, so there's a two-fold issue. One is,
I think the issue with the investigator
ceasing an investigation, ceasing work on an
investigation that may involve other crimes
besides sexual assault. Right?

And the second thing is the people that
are part of those other crimes are active duty members, and so now we want the victim not to testify. And we see the conundrum in the military, that's just one of the things that happens in a close unit.

DEAN ANDERSON: This is Michelle. I'm not quite sure I'm following you, Lisa.

DEAN SCHENCK: Okay. Let be more clear. One, enlisted service members are forbidden from going off post until they get a pass, and when they get a pass they all go drinking and get several rooms in a hotel. And when they get rooms in a hotel they engage in misconduct, whether it's a sexual assault, other various crimes, under-age drinking, disrespect to someone senior. I had a case where one of the service members peed on top of the Company Commander who happened to be walking by. And all this stuff that occurred, the civilian police are generally going to relinquish that investigation to the military police because they believe it's just young
kids engaging in misconduct.

The military police, however, see this as many different crimes. Some people didn't have passes. Some people didn't go to duty. It all what could be construed as military crimes, and the civilians will relinquish the investigation to the military investigators.

If the victim doesn't want to go forward, stop investigating. Right? Is that how I understand it? And so the people who are interviewed as part — in addition to the sexual assault may come up with some other offenses. That's the conundrum for the military, and I guess we could ask Jan, an investigator on the staff, a retired criminal investigator on the staff, but they — that's right, they have a duty to investigate crimes. So, where should they go with that?

REP. HOLTZMAN: Well, my answer, this is Liz Holtzman, is that the victim always has the right under the new
procedures not to cooperate.

DEAN SCHENCK: Yes.

REP. HOLTZMAN: So, that's not going to change. That's the - I mean, but I think the problem that was just raised by Dean Schenck is that, you know, all the problems that will arise when you cut it off and say -- well, the problems that will arise when you stop the Commander from reporting, and the problems that arise if you stop an investigation from going forward. And you also don't know, by the way, whether the victim herself or himself has been coerced in some fashion not to go forward. We're all assuming that victims don't want to go forward because they really don't want to go forward, but there could be coercion in some cases, as well.

DEAN ANDERSON: That's why I think the - this is Michelle. That's why I think the intervention of an SVC is important. It limits the opportunities for coercion. It
doesn't completely eliminate them, but it does limit it substantially.

REP. HOLTZMAN: This is Liz Holtzman again. My view is just that we've heard a couple of cases where people - there was inadvertent reporting, and then people felt that their rights had been taken away and felt disempowered. But that's one consequence, but the other consequence of not investigating these crimes is also serious, so I come down on the other side.

CHAIR FERNANDEZ: Let me - this is Mai. So, let me address Colleen and Lisa. Okay? So, the first step of the investigator is going to go to the SVC. There could be a panoply of crimes that got committed when the sexual assault got committed, but the only thing that the investigator is going to ask the SVC about whether to go forward or not on is the sexual assault. Is that a problem?

REP. HOLTZMAN: Yes.

COL HAM: Ma'am, this is Colonel
Ham. We can use a real life example. Those of you who went to Lackland; actually, I think it was the Comparative System folks who I was with who spoke to the OSI investigators who investigated the misconduct there. They affirmatively sought out people who not only had not reported "offenses," who did not think there were offenses, but instead sought out consensual sexual activity with the military training instructors. So, they would not ever have an SVC. They wouldn't - and they refused to cooperate in the investigation because they didn't - in their view there was no crime. So, the MCIOs continued to investigate. That's what they were directed to do under current policy, so one of the issues I'm raising is people get an - they're entitled to an SVC at certain points in time, one of which is they accept that they are a victim of a crime. And that was an open question in those cases. So, I'm just raising that as an example, that you may not have an SVC to go to, not only because
the victim hasn't gone to one for advice, but
because there's a question of whether what
happened, which everyone agrees to, is an
offense.

I guess the second issue would be
if you go to a counsel and ask have you spoken
to X, if that's your client, I know the
typical defense counsel answer is I'm not
going to answer that question. And then the
second thing is well, she told us you're her
attorney. Yes, I'm her attorney. And what did
she tell you about what she wanted to do with
this report? I'm sorry, I'm not answering that
question. That's privileged information, and
I'm not going to answer your question. So,
those are all other issues that arise, but I'm
wondering if there are ways to deal with
those.

DEAN ANDERSON: Well, surely, I
mean, let's take them separately. This is
Michelle. The fact that in some instances
someone refuses to participate because they've
engaged in consensual behavior, and they
received an SVC. That's a real possibility. I
think that the military investigator should
proceed with an investigation. I don't think
this recommendation should change that, and I
do think that the recommendation can deal with
circumstances in which there is no SVC, and
the victim refuses to cooperate, and refuses
an SVC. I don't know in those instances - in
fact, I'm pretty confident in those instances
that you're referring to, there was no SVC
because the program wasn't at that time up and
running. In fact, I think the program was in
response to that, the scandals that emerged
from Lackland, in part, at least. So, I agree
with you that we want that the
recommendation take it into account.

The second issue was - actually,
what was the second issue, Patty?

COL HAM: Ma'am, if an investigator
called me as a defense counsel and said all
right -
DEAN ANDERSON: Right, and the SVC refuses to disclose.

COL HAM: Right. Have you seen her or him? My answer is, I'm not going to answer that question.

DEAN ANDERSON: Well, why don't we make it so that the first line of investigation is to consult with the victim, and to advise the victim that the victim has a right to speak with an SVC before making a determination about whether or not something is restricted or unrestricted. I mean, it's simply the warning that's given, and then proceeding in - you know, give the victim the opportunity to consult with an SVC on this question. If the victim refuses, then we continue with the investigation. That I think would take care of circumstances in which the SVC, even to be the conduit of information, or we might think that the SVC would feel that those questions are privileged and would not want to answer those questions. I think
talking directly with the victim provided the
victims have an opportunity to consult with
counsel.

MS. GARVIN: This is Meg. I think
that's right. It's essentially kind of a
quasi-Miranda moment. Right? The investigator
is saying to the victim you know you have a
right to counsel. Right? Do you want to
exercise that right. Do you want to access
your SVC now? And if they say yes, then like
a Miranda moment, all questioning - I mean,
I know not all investigation stops at that
moment, but we're saying everything stops
while the victim consults with the SVC, and
then it's which direction is this report
going.

REP. HOLTZMAN: This is Liz
Holtzman. I guess my concern about this is
that this allows the - I want to - people
have said, I don't remember who said it, but
there's a larger issue here than just the will
of the victim. You have the safety of the
other people on the base, and we have the safety of civilians if they - someone who has committed a sexual offense is allowed to go unpunished, or if the case is not investigated someone is allowed to go unpunished.

So, what you're saying here is that if a third party, even let's say it's not even inadvertent. Let's just say there's a third party, a witness who comes forward and tells the Commander I've seen a rape, and this is what had happened, and then we're going to allow the victim to stop the entire investigation? I don't know why - what is the value of doing that? How do we know this person hasn't done this before, and won't do it again? Why do we give this power to the victim? I understand the victim doesn't have to cooperate, but why should the investigation stop if there's other evidence?

DEAN SCHENCK: This is Lisa. I also wonder, you know, sometimes there's multiple tiers involved.
REP. HOLTZMAN: Right.

DEAN SCHENCK: And multiple victims involved, so what happens in the scenario where the victim doesn't want to go forward? And I totally agree and understand, but when the other victims want to go forward, or the other accused admits guilt? And then we have real cases, and even though the confessions have to be corroborated, we have ways of corroborating those confessions. So, maybe later in the process that victim may want to say okay, I will testify. And we can't just say oh, we didn't investigate. We did nothing, even though we had confessions from two of the accused, and another victim. See what I mean?

REP. HOLTZMAN: Yes. I had to -

DEAN SCHENCK: This is Lisa. I had a case where it was multiple accused, multiple victims.

REP. HOLTZMAN: I mean, this wouldn't happen in the civilian world, a victim couldn't stop an investigation.
DEAN ANDERSON: In the civilian world, though, there are different - this is Michelle. In the civilian world, though, there are different incentive structures and a different history of the problem. And there isn't the Command structure that's forced to disclose something. Things come forward to the police by any number of mechanisms, sometimes the victim, sometime others. I'm not sure that this is as big a issue, though, unless I'm missing something, as we might be thinking it is. I mean, this is simply whether or not the reporting is restricted or unrestricted. You know, if someone else comes forward around this, the first thing the military police do is reach out to the victim and advise them that they have an opportunity to consult with an SVC on whether to make a restricted or unrestricted report.

Let's say that the victim says I want to make a restricted report, but there's evidence outside the restricted report that
this is an actual case, and that evidence is
already in front of - has already been
reported to the Commander, to the police. The
police can go forward and their victim chooses
not to participate. We're not vesting
authority around - we're not vesting the
decision making about whether or not to
investigate with the victim. We're vesting the
authority about whether or not to make a
restricted or an unrestricted report with the
victim. That is going to influence whether or
not military police pursue a case as it does
in the civilian world. In the civilian world,
someone reports that domestic violence has
happened, or a rape has happened, the victim
says I don't want to go forward, I don't want
to testify, even if there's good evidence,
sometimes the prosecutor says well, look,
we're not going to pursue this, and sometimes
they say we are going to pursue this. And
that's still within the jurisdiction of the -
- and authority of the police.
This simply curtails - what it does is it changes the automatic shift from a restricted to an unrestricted report, which divests the victim with the only authority she has, or he has, which is whether or not to fully disclose and be open for the investigation, or whether or not to try to keep the information private for any number of reasons.

CHAIR FERNANDEZ: You know, I hate to make this kind of suggestion because I always think it's a bunch, but is this something that needs to get studied? I mean, I think that people have raised really good issues on both sides, and I don't think any of us feel particularly comfortable with the language, with anything that we've come up with. Am I wrong in sort of - and is this something that we need to maybe declare the findings and ask for a study in some other - for another body to make a solution, whether it's the Pentagon, or the SVCs would make a
suggestion. But to identify that the problem is there, but that we don't have the solution.

DEAN ANDERSON: Yes, this is Michelle. I mean, I really think that we have enough information that this is a substantial problem, and that it deters people, the feeling that they will not be able to control the information is something that deters victims from coming forward. I think that's established by the record that we've reviewed. I think it's up to us to come up with creative possible solutions, and this is one way to vest that authority in the victim without limiting either the Command's decision making and requirement, the requirement on Commanders to report to the military police, nor does it divest the military police from the decision making authority about whether or not to continue to proceed to investigate despite whether or not this is a restricted or unrestricted report. It's actually a form of modest intervention. It gives the victim a
Miranda warning that she has the opportunity to consult with a Special Victim's Counsel who is already in play, just often at a later stage of the game. This recommendation moves that opportunity to consult with counsel more formally to an earlier stage in the process, and it allows the decision about whether or not to make a restricted or an unrestricted report more knowing and intentional. And it takes away the thing that - or it attempts to take away the thing, it won't be perfect, but it attempts to take away the thing that I think is deterring people from reporting, which is I won't get to decide what happens with the information. That's going to be true in many circumstances, and it's certainly true in life, but this is an attempt to try to vest some control with the victim in terms of whether or not the report, at least, is restricted or unrestricted. So, I would not support simply making a recommendation to review this question. I'm open to revising and
continuing deliberations on what the
appropriate mechanisms are. I think it's only
to become a lot better, move from Command to
the military police made it instead of
consulting with the SVC, consulting with the
victim and giving the warning, the Miranda
warning that you have an opportunity to
consult with an SVC. I think those are two
good revisions to what's here, and I think we
can deliberate to something that is -
  hopefully answers concerns that have been
expressed.

REP. HOLTZMAN: Well, this is Liz
Holtzman. I kind of agree with Mai that I
don't mind having a study. I just don't - I
mean, I don't know the extent of the problem.
You say that it's big, Dean Anderson. Maybe
you're right, but I don't remember the
testimony indicating that this is the reason
that people didn't come forward because they
were - because they weren't able to file a
restricted report, or because the information
came out otherwise. I'm not sure that that's
- you know, how much - how widespread the
problem is.

So, that's part also of my concern
here because the not knowing how widespread
the problem is, I'm not sure that we want to
create some bureaucratic mechanisms here that
can have other unintended consequences. I
don't know what they are. I mean, maybe
they're not, and maybe you're right, that this
will work in a perfectly fine, fair way
without undermining law enforcement concerns,
as opposed to victim-oriented concerns.
I just don't know the extent of
the problem, and I don't know what the
consequences would be of the suggestions that
you've made.

BG McGuire: Because to be - this
is Colleen McGuire, again. And I recall some
of Russ Strand's presentations in I think it
was Austin where we talked about many times
when we approach a victim that may or may not
want to do a restricted report or
unrestricted, that our investigators are
trained really to influence them to make the
decision to make it unrestricted. And they're
pretty good - they've got good techniques and
good track records in doing so.

MS. GARVIN: This is Meg. You know,
it sounds like we are really split. I mean,
I'm right with Michelle on this in the revised
version of it at least, because if all we're
saying is inform the victim they have right to
counsel, which is the right we afford
defendants. Also the victim does consult with
their SVC, and the outcome of that
consultation is their report of the incident
is a non-report. They're saying no, that's not
reporting. Let them not control what the
problem for the investigator is, other than
you have an uncooperative victim which could
be uncooperative otherwise.

What we're doing is we're saying
the actual disclosure of your story you have
control over in the moment. I guess, I'm not seeing - in that more mild version of this recommendation, I'm not seeing the hurdle to investigation. In the initial one where we are saying stop investigating, that seems like a big shift of policy. In this one we're saying you just confirmed you have an uncooperative witness, basically, and her version of the story is there's not a criminal report.

BG McGuire: Meg, is that true? I mean, because, I mean, I'm asking, too. I mean, is that what the outcome of the more mild version would be?

Chair Fernandez: If you went restricted there would be no investigation. It's not just an uncooperative victim. You have to -

BG McGuire: Right, but no. But, Mai, if someone else has brought information forward, there's still an invest - isn't that what we're talking about? Victim states restrict - I mean, maybe I'm confused about
how - what that means. When someone else reports on them, I mean, I know then there's an investigation. Yes, I guess it's a question of does it automatically stop, and does the - - the problem we're having, the policy discussion we're having is does the victim get to stop investigation. Right? That's the crux of this?

CHAIR FERNANDEZ: Yes.

DEAN ANDERSON: Right. And I think that the - this is Michelle. The intent of the recommendation from the get-go was not to vest that authority with the victim. I mean, in terms of whether or not this is an issue, you know, the victim's control over their own reporting. There's the survey of victims of military sexual assaults said that 70 percent believe that they did not want anyone to know of the sexual assault. They felt uncomfortable making a report to Command, that's 66 percent, and they did not think the report would be kept confidential, that's 51 percent. So, in
terms of the crux of the problem at least in terms of the survey of victims of military sexual assault themselves, they're agreeing with statements that strongly suggest they don't have control over the information, and that's one of the reason why they don't make a report of a sexual assault.

REP. HOLTZMAN: Do we need to take a vote on this?

CHAIR FERNANDEZ: I think so. I think -

MS. GARVIN: This is Meg. Before we take a vote could we - and I know we're under time constraints. Could we consider breaking it down into incremental recommendations and then taking a vote on those? Meaning, would there be consensus that the Miranda warning at least should be given? Would there be then consensus on what happens at that next moment, and then would there be consensus on that next - because what we have in front of us are incremental steps of a recommendation, and I'm
just wondering if there is consensus around
pieces of those or not. And maybe that
requires redrafting, because I don't think the
one in front of us right now is drafted
necessarily incrementally, but that would be
one process instead of voting in a total up or
down. I do think we've heard evidence that
this is a problem for victims, and the
solution we may not have the whole answer to,
but I'm wondering if that incremental approach
might be appropriate.

CHAIR FERNANDEZ: That's what I'm
wondering. Are we really in the kind of
situation we're in right now, the best to make
that judgment? Could we not just specify the
findings and let the recommendation come after
a study is done?

DEAN ANDERSON: Well, this is
Michelle. This is that study. I mean, I'm -
we've been tasked to make recommendations for
changes that will help to enhance, among other
things, enhance reporting and victim's
services. So, I agree with Meg that breaking this down, because I actually think that the recommendation as it was originally drafted was far too broad, and too sweeping. And that we've come to a place where we actually might agree on some small steps.

CHAIR FERNANDEZ: What would the recommendation on the Miranda look like?

DEAN ANDERSON: It would look like the first step in the investigation for the military police is to contact the victim to get a statement and to advise the victim that they have a right to consult with a Special Victim's Counsel before making the determination about whether or not they file an unrestricted or a restricted report.

REP. HOLTZMAN: Let me ask you in that light, this is Liz Holtzman. Along the lines of the point that was made, I forget who raised it, that investigators are pretty persuasive about trying to persuade people to make unrestricted reports. Is the police
officer, the investigative agency barred from trying to persuade the victim at that point to make an unrestricted report?

DEAN ANDERSON: You know, I don't --- this is Michelle. I don't think we have to get into that. I'm certainly not suggesting Miranda warning is a constitutional prohibition on any kind of persuasion once someone has elected, or before someone has elected to see an SVC. I think, though, that once someone has elected to see an SVC, that that should be the next step. That seems to make sense.

You know, I'm very sympathetic to the concerns about community safety, and the concern that allowing victims to control the report more, and the restricted nature of the report may decrease the sum total of investigations and weeding out of offenders who may be multiple offenders. I'm sorry, that may be repeat offenders. But I think we've got enough evidence that, in fact, law enforcement
is thwarted by victim's refusal to come forward because they don't feel safe, they don't feel like they have control over the information once they do come forward. That I think, ultimately, the law enforcement - the desire for effective law enforcement and protection of the community weighs in favor of this kind of a change in policy, because if victims feel more empowered to control the information, we saw this time and again, that many victims who initially made restricted reports became comfortable with the system, became comfortable with the rights that they had, understood the process more and changed to unrestricted reporting. And I think the reason they did that is that they've been able to interact with the services that the - that are provided for victims by the different services in the military. And I think we're trying to enhance that, we're not trying to undermine the law investigation, you know, the law enforcement process here. In fact, we're
trying to support it.

CHAIR FERNANDEZ: Okay. What we have on the table is do we try to pass some of this incrementally, and by that we start off with what we're calling right now the Miranda warning. Do we decide that we put it up as a finding but not issue a recommendation, but ask that it be studied? Is there anything else on the table right now?

BG McGUIRE: This is Colleen McGuire. Just one more thought and consideration, is that oftentimes when - and this is a case where a victim confides in somebody and somebody gives the information to whomever, there's always that potential of the alleged perpetrator.

That person now is tainted, could be potentially without the benefit of a trial one way or the other. So, that individual may even elect to want to pursue a wrongful, or even, you know - I'm just looking at the accused rights, as well, in the event that the
victim has confided in certain individuals, roommates or whatever, that information gets to the Commander and others, names are going to be known. You've got another party in the mix. That's just another thing to be in consideration of.

CHAIR FERNANDEZ: But an investigation can exculpate somebody.

BG McGUIRE: Yes.

CHAIR FERNANDEZ: Did you see that happen a lot, Colleen?

BG McGUIRE: To be honest with you, I had never - personally I never ran into a case where there was inadvertent exposure or admittance to some sort of victimization to rape or sexual assault. We knew or were aware of restricted reports, and that was it, but I never ran across anything where it was inadvertent, because I think if it were, we would have investigated.

CHAIR FERNANDEZ: Okay. Do we vote or - do we have a vote to vote?
MS. GARVIN: Well, before we vote I'd like to at least break down the recommendation and rewrite it on the basis of the discussion we've had here.

BG McGuire: I vote for that.

CDR King: Who was that just speaking?

BG McGuire: This is Colleen, I'm sorry. I vote for the breakdown.

CDR King: Thanks, Colleen.

Judge Marquardt: This is Christel. I don't think it would hurt to spell out on paper exactly what the two positions are so that everybody knows if we're going to vote on it.

MS. GARVIN: This is Meg. I think that makes the most sense.

Chair Fernandez: Okay. Why don't we - so when are we going to make this - because we don't have any more calls after this. Correct?

COL Ham: That's correct, ma'am.
This is Colonel Ham.

CHAIR FERNANDEZ: We have to do it over the computer, or how do we do this?

DEAN ANDERSON: Well, this is Michelle. It's 4:30 and I respectfully submit that we're not going to get to all of the recommendations in the next half an hour in all likelihood. I think we're going to have to schedule another meeting. I could be wrong about that.

JUDGE MARQUARDT: Well, I would prefer to get it right rather than to rush it. And we are put in a very difficult time frame, so I'm with you for having another scheduled phone visit if we can manage it.

DEAN SCHENCK: This is Lisa. I agree with that. I think we should definitely have another phone meeting.

CHAIR FERNANDEZ: Can staff manage that?

CDR KING: We can have a meeting any time you want to, ma'am, but we need to
get the report in so I don't know who's going
to write these - you know, who has, in fact,
written the language. I'll be happy to
distribute it. I'm not sure I'm really clear
on what you want us to write, so someone else
is going to have to help us with that. But we
need to get this report in - I was hoping -
we really need to get it to the RSP panel,
the main panel which some of you are on by I
thought tomorrow or Monday we had planned, so
I don't know.

COL HAM: This is Colonel Ham. You
need to take what time you need. And if that
means you can't report on the 5th of May, then
that's what it means. I will tell Judge Jones
that. You need to take the time you need. We
have a statutory deadline for the RSP, and we
have limited availability of our RSP members
in May, very, very limited, so - but you need
to decide what you want to do. Right now
there's a - we were trying to get these out
to the full panel members last week.
Obviously, we've blown that deadline.

They need some time to review this before your briefing, which is currently scheduled on the 5th and 6th. If, Mai, if you decide that you are not going to be able to be ready for that date, then that's your decision, and I need to tell the Judge as soon as possible so we can decide, or she can decide the way forward. But it's not on us to rush you to any decision other than we have a statutory deadline from Congress, and that is looming in front of us and coming up very quickly.

REP. HOLTZMAN: This is Liz Holtzman. Can I make a suggestion? Can we agree that we will resolve this issue at some other point, and move ahead as quickly as we can on the balance of the findings and recommendations as much as we can finish today. If we can schedule another meeting, that's fine, and we can give the full panel, you know, at least two-thirds of what we've
done, or three-quarters of what we've done. But I think we should just move forward and try to resolve this in some other fashion. Maybe somebody drafts up the, you know, the two opposing proposals and we take a vote by long distance, whatever, computer.

DEAN ANDERSON: Well, this is Michelle. I'm certainly willing to work on this based on this dialogue and try to break out the moments of time that I thought that we had identified as possible places where we might have an intervention and possibly agree as a Committee. And I can circulate that to anybody who wants to help work on this. I'm willing to do it tonight, and try to work with a couple of you to get the flavor of this dialogue as best we can. And then I think it's - then it's up or down votes on specific moments of time rather than the whole thing. Although, the whole thing may go down, and that's fine.

CHAIR FERNANDEZ: Okay. What I
would say is, Michelle, why don't you give a
crack at writing the two positions out. Send
it to staff, staff can then send it to us, we
do an up or down vote on this particular
piece. I think there - would people be
available tomorrow at 9 a.m.?

JUDGE MARQUARDT: This is Christel.
I am not. I'm on a Board that I committed to
meeting with.

DEAN SCHENCK: This is Lisa. I'm
only available from 9:00 until a quarter to
10. I've got a faculty meeting at 10.

CHAIR FERNANDEZ: That's 45
minutes. And if we know we've got 45 minutes
to go, and we've got a half an hour now, we
could turn some of this out. Who else is
available?

DEAN ANDERSON: This is Michelle.
I'm available.

REP. HOLTZMAN: This is Liz. I'll
look to be available.

BG McGuire: I can be available,
and I will have coffee. It's 6:00 in the morning over there.

CHAIR FERNANDEZ: Okay. Let's try to give it an hour tomorrow morning, and that way that gives most of the day for the staff to be able to do what it needs to do. And we've got to get this out so the staff can get it out next week. I mean, it would be - we're not going to meet the statutory deadline otherwise. So, my thing is, Michelle, let's - you go with 5. Let's move on to number 6. Sherry, you're on.

CDR KING: Okay, so number 6 is - I think you already agreed on number - let's see, wait now, sorry. I modified this based on the discussion. This is the mechanism -

CHAIR FERNANDEZ: Sherry, what page are we on at this point?

CDR KING: Okay. Go to 71.

CHAIR FERNANDEZ: Okay.

CDR KING: Recommendation 6, which is there's no current mechanism for a sexual
assault victim to keep a report of sexual assault restricted and request to be moved away from the physical duty or living location of the alleged assailant. So, this is for the expedited transfer.

I tried to take your discussion about it into the findings, and into the recommendation. I don't know if I did it very well, but the recommendation I ended up with is on page 72. "Service Secretary should insure that Commander location and training address the Commander's authority to make duty and other assignment transfers based on the recommendations of medical personnel even if the specific underlying reason for the request for the transfer is protected and cannot be disclosed."

And then the second one is, "The medical personnel, SARC and VAs to be trained on the option, if the Commander has the possibility or the authority to effect a transfer based on medical recommendations."
So, this kind of skirts around the expedited transfer for a restricted, so nobody has to tell about the restricted. This is what General McGuire was talking about at the last meeting, that you wanted to try to incorporate. So, it's kind of a backdoor way of allowing some leniency for victims who make a restricted report to talk to medical personnel who can then go to a Commander and say based on medical reasons I recommend you move X, or move him to a different building, or move him to a different side of the building to a different work location in order to separate the two without having to tell the Commander why specifically this victim has to move. And that's based on current regulations, and that's exactly what General McGuire was talking about at the last meeting, so I tried to include that in the findings and that recommendation.

COL HAM: This is Colonel Ham. This goes a little further than current policy than
the DOD instruction on sexual assault prevention and response, which recognizes that health care personnel can convey to the victim's Commander adverse duty impacts related to sexual assault without revealing the source of the adverse duty impact. That's already in current policy. I think that's what General McGuire was referring to, if I'm correct, General McGuire?

BG McGuire: Yes, that's right.

COL Ham: That already exists. And the health care personnel, as you heard in testimony and has been written in policy may not disclose the reason for their recommendation on duty limitations or whatever.

Rep. Holtzman: Do we move forward on this, Mai? Does anybody have any objection?

Chair Fernandez: I don't have any objections on number 6.

Rep. Holtzman: Does anybody else?

Chair Fernandez: Going once, going
twice, gone. We're on 7.

CDR KING: Okay, finding number 7
relates to the Safe Help Line. We tried to
revise the findings based on your discussion,
and I left little notes on the side here to
say that Safe Help Line contracted with RAINN,
and we tried to clarify that.

Second bullet says that the
military advertises Safe Help Line as a
hotline number but they always - they also
advertise their own which are not always
answered 24/7.

And then the third one is that
Safe Help Line database, it's not always up-
to-date, or accurate. And then we made the
finding - we modified the finding just to
clarify what you said. Two bullets - I guess
there needs to be a bullet under the first
one. "The Secretary has set forth clear
guidance that the DoD Safe Help Line is a
single 24/7 sexual assault crisis hotline for
military members, and that they come up with
an easily remembered number similar to the
website SafeHelp.org."

And then the second bullet is that
"DoD require the services to provide the Safe
Help Line with sufficient contact information
to make sure they can always contact a live
person on a 24/7 basis," which is what they're
supposed to do.

CHAIR FERNANDEZ: Anybody have a
problem with number 7? It seems pretty
straightforward.

COL HAM: Mai, can I make a
suggestion? This is Colonel Ham. Again, I'm
not trying to rush anybody, but the changes up
until the new recommendations from Member
Anderson which start on page 76 are
incorporating all your comments from your
prior discussion. If you want, you can move to
the new ones which you haven't discussed yet,
and if anybody has any further comments on
these that you've already discussed that we've
incorporated your comments on, you can let us
know. Does that make sense?

CHAIR FERNANDEZ: Yes.

CDR KING: Maybe let us know by tomorrow's meeting so that way if you do have anything you want to discuss, I can be prepared to tell everybody which ones need more discussion.

CHAIR FERNANDEZ: Go straight to page 76. Is that where we would start right now?

CDR KING: Yes, with Finding on Recommendation 15.

CHAIR FERNANDEZ: Okay. Is everybody okay with that?

DEAN SCHENCK: Okay. This is Lisa. Let me get it straight. So we're supposed to go back, see the comments and the changes we made based on comments, and then, if we have any problems with that tomorrow morning, we discuss it.

CDR KING: Yes, and if you find them ahead of time let me know so that I can
make sure that we bring that up at the meeting
so that we're not just going through them
again like this. So, if you read them tonight,
email me and say I have a problem with number
13, or whatever, or I want to discuss number
13, or whatever.

DEAN SCHENCK: Yes, so this is
Lisa. Should we use it in the findings and
recommendations that follow Subsection M and
then not the ones that are in the back?

CHAIR FERNANDEZ: What?

CDR KING: Ma'am, we were just
going over the Victim Services ones right now.
I think that's all she meant is so Finding 8,
9, 10, 11, 12 -

(Simultaneous speaking.)

DEAN SCHENCK: Okay, great I'm with
you.

CDR KING: Perfect.

CHAIR FERNANDEZ: Let's go to
Recommendation 15.

CDR KING: Do you want me to go
over these, or one of you?

CHAIR FERNANDEZ: Go ahead, Sherry.

CDR KING: Okay. Finding on 15 is about harassment and retaliation against a victim in response to an allegation of sexual assault erodes unit cohesion, and the fear of harassment and retaliation deters a victim from coming forward to report instances of sexual assault.

And then the recommendation is that "The Secretary of Defense direct DoD to develop and implement training for all members of the military including new recruits that retaliation or harassment by service members in response to an allegation of sexual assault violates good order and discipline," or "violates order and discipline," but it probably should be good order and discipline, I think is the term that's used.

CHAIR FERNANDEZ: Yes, it should.

CDR KING: Yes. What do folks think about 15? Do you have a problem with it? Okay,
let's move on to 16.

CDR KING: Okay. The finding on 16 is that when an offender outranks or directly commands a victim, sexual assault is an especially egregious abuse of power. Military officials and service members may be more likely to ignore or retaliate against instances of sexual assault when the offender is a high-performing service member or a superior offending against a subordinate. So, the recommendation is that "The Secretary of Defense direct DoD to develop and implement training for all members of the military, including new recruits, explaining that implicit or explicit sexual" - I'm sorry, "implicit or explicit invitations or demands for sex, or sexualized interactions from Commanders or superiors are not lawful orders, should not be obeyed, violate the Code of Military Conduct and will be punished."

CHAIR FERNANDEZ: That seems pretty straightforward. Are we okay with that?
Anybody have a problem?

COL HAM: Ma'am, this is Colonel Ham. In the finding it says "Military officials or service members may be more likely to ignore," and I think it's more nuance. I'm just asking. Of course, you just had a long discussion that Commanders are not free to - anyone in the chain of command has to refer the thing up, so that's already the law.

JUDGE MARQUARDT: Take out "be more likely," the descriptor. Just say "may ignore."

CHAIR FERNANDEZ: Yes, that's good.

DEAN SCHENCK: This is Lisa. I'm not sure what retaliate against instances of sexual assault, retaliate against victims who report sexual assault when the offender is -- sexual assault.

CHAIR FERNANDEZ: Yes, that's a good point. That was in which number?

DEAN SCHENCK: This is Lisa.
Finding on Recommendation 16.

CHAIR FERNANDEZ: Instead of saying "retaliate against instances of sexual assault," it should be "retaliate against those who report instances of sexual assault."

Okay. All right. But you want to leave in the finding that military officials may ignore when they are not permitted to ignore. That's my only point.

REP. HOLTZMAN: Well, military Commanders are not permitted to ignore, but other military officials are permitted to ignore. You can say - may be likely to -

DEAN ANDERSON: I think that they may even though they're not supposed to. Yes, I also think that Christel - this is Michelle. Christel's revision that just says military officials and service members may ignore or retaliate against those who report instances of sexual assault when the offender is a high-performance service member or superior officer, I'm sorry, superior
offending against a subordinate. And this is
simply in response to the instances in which
the drill sergeant, we heard about this from,
I think E, when a set of victims testified or
spoke to us about their experiences. And E
testified that the drill sergeant had offended
against a number of people, and when she came
forward she - you know, her wallet was
stolen, it ended up in the trash, her food was
stolen, so she was really retaliated against
for coming forward.

So, instead of saying "may,"
because that sounds permissive, I take it that
the problem is that "may" sounds permissive
when the statute does not -

REP. HOLTZMAN: Well, I don't think
it's the problem. The problem is that military
officials are not allowed to ignore.

DEAN ANDERSON: So, why don't we
say there have been instances in which
military officials and service members have
ignored or retaliated against those who
reported instances of sexual assault when the offender is a high-performance service member or a superior officer offending against a subordinate. I think that's - there have been instances. We've heard testimony about these instances. The Washington Post reported about another instance yesterday, so I think that's a way of stating it more as a finding rather than a likelihood or something like that.

COL HAM: Okay. And then, ma'am, your question was should there be an offense for that, and that is already directed to be studied by the Judicial Proceedings Panel actually in response to one of the people you heard from, the ex-Coast Guard member who appeared before you. So, you have that question. There's a bullet that answers your question that the Judicial Proceedings Panel is already directed to study that.

DEAN ANDERSON: So, this is a question of whether or not there should be an abuse of power. I wondered whether or not we
should recommend that there be an abuse of power crime rather than fraternization, which fraternization is often about consensual behavior, and is conceptualized as consensual behavior, but that abuse of power could additionally be charged when there's a sexual offense against a subordinate.

COL HAM: And that's - I'm sorry to repeat myself. That's what the - Congress has directed the Judicial Proceedings Panel, the follow-on panel to the Response Panel. They directed them to look at that exact issue.

DEAN ANDERSON: Okay.

REP. HOLTZMAN: I'm sorry to do this. This is Liz, but I had a small addition on Recommendation 14 to match it to the - I mean, on the finding on 14 to match it to the recommendation, which is to add language at the end of the sentence.

The sentence reads now, "It has been recognized that a percentage of the men
and women in the military experience unwanted sexual contact before entering military service." I want to add, "And that a substantial percentage of these victims may be targets for future victimization." I just wanted to add that so it matches the recommendation. I don't know whether that had been omitted inadvertently or what. Are people following me?

DEAN ANDERSON: Yes, I am. This is Michelle. I think that's the right direction, Liz.

BG McGUIRE: I agree with Liz on that. I don't know if I'd use the word "target."

REP. HOLTZMAN: Okay, I just scribbled it, so I'm perfectly happy if the staff revises it to make it more -

CDR KING: Yes. One way to say it is may be subject to revictimization.

REP. HOLTZMAN: Yes, that's fine.

CDR KING: Or may become victims
again, something like that.

DEAN SCHENCK: This is Lisa. I agree with that. Target used in the military scenario is very effective.

CDR KING: okay. Are we ready for 17? The finding on 17 is that inculcating the notes and the needs of the individual must be subordinate to the needs is a stable of military training. Nevertheless, subordination of the individual to the mission may be misinterpreted to deter reports of sexual assault and encourage retaliation against victims who come forward.

And the recommendation is that, "The Secretary of Defense direct the DoD to develop and implement training for all members of the military, including new recruits, emphasizing that reporting instances of sexual assault is essential for good order and discipline, and protects rather than undermines morale."

JUDGE MARQUARDT: I think that's
REP. HOLTZMAN: This is Liz Holtzman. Can we skip the reading of the balance of the findings and recommendations on page 77?

CHAIR FERNANDEZ: Yes.

JUDGE MARQUARDT: Well, I've got a question on issue 18. This is Christel.

CHAIR FERNANDEZ: Well, let's - is 17 okay for the recommendation? Are we okay on that one before we go on to 18?

COL HAM: Mai, this is Colonel Ham. For 15, 16, and 17, all the training, and I guess 18 has training, too, do we just want to add a phrase to the extent is not already occurring? We're presuming none of this is incorporated in current training, so it doesn't - I guess my point is it doesn't detract from your recommendation. It just says if you're not doing this in your training, do it.

CHAIR FERNANDEZ: Right. Yes, I
think that's fine.

CDR KING: Okay, so other than that, everybody is good with 17, and we can move on to 18?

CHAIR FERNANDEZ: Yes.

JUDGE MARQUARDT: This is Christel. I was concerned about 18 because it only looks at victimization of males by a male, and I think that they could equally be victimized by a female officer.

DEAN ANDERSON: So, this is Michelle. That relates to the recommendation, not the finding. The finding is gender neutral of an offender. The recommendation identifies the offender as male, and I think you're right about that. And the phrase with examples of one-on-one sexual assault including hazing or sexual abuse by groups of men, that needs to be reframed to include female on male sexual assault.

What I wanted to get at with this one is just the interesting ways that we heard
that sexual abuse happens against men, that
it's often about kind of hazing rituals in
which there is sort of a physical
subordination, sexual subordination of a new
member or someone who's on the outs by a group
of people as a way for these people and these
four men in this instance to bond with one
another, and to assert dominance over this
person who was on the outs. But I agree that
absolutely we should acknowledge also the
possibility and instances of female on male
sexual assault.

REP. HOLTZMAN: Can I just make -
this is Liz Holtzman. Can I just make a
suggestion with regard to that? I would not do
that in such a way that in any way detracts
from the specificity of the language that you
already have in here. Male on male sexual
assault is a serious problem. It's not as well
understood, and it's not as well faced up to
by the military, so I would not tamper with
the language about that. If you wanted to add
a sentence or two about female on male sexual assault, that's fine with me, but I wouldn't undermine - I would not tamper with this language.

DEAN ANDERSON: Yes, this in terms of number of instances - this is Michelle. Male on male sexual assault was the vast majority. That's not to say that female on male doesn't exist, and doesn't need to be further investigated and understood. So, I agree with that.

DEAN SCHENCK: Okay, so this is Lisa. So, where are we at? Are we keeping it, are we --

REP. HOLTZMAN: Yes, we're going to add some language, a sentence or two at the end of 18.

DEAN SCHENCK: Okay.

REP. HOLTZMAN: Or a finding.

DEAN SCHENCK: I was just wondering where we got that information regarding female on male sexual assaults. We definitely heard
about the hazing and the -

REP. HOLTZMAN: Yes.

DEAN SCHENCK: You know, that sort of college type, that atmosphere. And I'm not saying we don't have female on male sexual assault. I'm just wondering where we're drawing data for the finding.

DEAN ANDERSON: Yes, that's a good question, Lisa.

JUDGE MARQUARDT: Well, could the staff sort of comb the record and figure out if there's anything out there that we heard? I mean, I think we heard overwhelmingly about male on male sexual hazing, really.

REP. HOLTZMAN: Well, I think there's sexual assault, too, not just hazing.

JUDGE MARQUARDT: Oh, yes, I agree.

REP. HOLTZMAN: Plain out normal kind.

JUDGE MARQUARDT: Yes, yes.

DEAN SCHENCK: Yes, this is Lisa. I agree just from sitting on a bench for six
1 years, there were many male on male sexual
2 assault cases, superior/subordinate included.
3 Maybe we can look at the WGRA survey data
4 because they do ask whether or not your
5 assailant was male or female, and they do have
6 that information in the report.

    CHAIR FERNANDEZ: That's a great
7 idea, Lisa.

    DEAN SCHENCK: I don't anybody
8 talking --

    CHAIR FERNANDEZ: I don't either.

    REP. HOLTZMAN: Well, maybe put it
9 in a separate item then, leaving the male on
10 male by itself, and if we have enough
11 information to do something on female on male
12 then we can add then. If we don't, then we
13 shouldn't.

    CHAIR FERNANDEZ: Do you want to
14 move on to number 19, which is transactional
15 immunity for collateral misconduct?

    CDR KING: From one level
16 collateral misconduct. Discussion on number
DEAN ANDERSON: So, this is an account, obviously – this is Michelle. This is an account, obviously, to have the collateral misconduct question removed as a potential deterrent which, you know, the Department of Defense itself states that it's one of the largest reasons that people don't report. It's not designed to remove all collateral misconduct prosecutions, but only low-level collateral misconduct prosecutions which we may want to further identify or leave in the way that it is, under-age drinking, alcohol offenses, adultery, fraternization, et cetera.

COL HAM: This is Colonel Ham. Do you want to – there's currently a requirement to advise of Article 31 rights for any violation of Uniform Code of Military Justice, if one is suspected. It's not based on custodial interrogation like Miranda, it's based on being a suspect. Is there anything on
CHAIR FERNANDEZ: So, what currently happens under the status quo, Colonel Ham? As soon as someone brings forward a report of sexual assault, they're told oh, you may be - I mean, we got testimony on that.

COL HAM: No, ma'am. During the investigation, and the Comparative System Subcommittee is looking at this. If there's a military criminal investigative organization conducting an investigation and they're interviewing anybody, any witness who they reasonably believe is a suspect of violating the Uniform Code of Military Justice, they are required to advise them of their rights under Article 31(b) of the Uniform Code of Military Justice, which predated Miranda, and is triggered by being a suspect, not triggered by custodial interrogation.

REP. HOLTZMAN: Do we -

COL HAM: If that is the issue for
them investigating, which is different than an issue of whether someone will come forward with a report.

REP. HOLTZMAN: Do we have to do anything beyond 19? Is there any problem with 19?

CHAIR FERNANDEZ: Let me ask you. Did you say the Comparative System Subcommittee was handling collateral misconduct?

COL HAM: They are - they have looked at it in some detail. That is not to say that if you believe there's a different prism with which to view it, that this Subcommittee and Role of the Commander could comment on it. Right now the policy is to basically wait. It's the Commander's discretion to wait and to kind of deal gingerly with it. We requested information from the services. They don't formally track this data. There was a data call for 2013 that showed very low levels of adverse action as a
result of collateral misconduct, and very - and when action was taken it is at a very low level. But, again, it's not empirical, that's based on the data call.

I would just say that this granting transactional immunity for any offense would be a significant action.

CHAIR FERNANDEZ: Well, that's kind of how I feel, and I'm wondering if there's been a subcommittee that's looked at this with more detail than we have. I'd like to be able to - I mean, I think that Liz, and Colleen, and I sit on the full panel, and we could come when these are discussed by that subcommittee, come and speak of what we saw on this subcommittee. But I have reservations about number 19.

DEAN SCHENCK: This is Lisa. I agree, I have reservations about this. That's why I don't like directing commanders not to take action on some offense. I mean, Commanders are in a position to use their
judgment. But, also, when I traveled with the DTF-SAMS cases where there were assertions of - there are substantiated false allegations based on fear of being charged with collateral misconduct. There's always going to be that problem that exists.

    My problem is really more than we're recommending a really hard stand on this, and I don't know if I'm ready to get there.

    REP. HOLTZMAN: We haven't heard very much evidence on this on what the solution would do.

    DEAN ANDERSON: In terms of the scope of the problem, however, we - you know, the way this is constructed, the underlying evidence is elsewhere in the report, so the underlying evidence of the victim's testifying about this, the victim's concern about this, victims being - testifying themselves or reporting themselves in a survey instrument that they didn't want to come forward because
of fear of collateral misconduct. That’s elsewhere in the report, so the findings look pretty thin and bold, but I think when coupled with the underlying evidence they go directly – they follow directly from the underlying evidence that we heard, the testimony and evidence that we’ve heard. So, I think that, in fact, the statement – the Recommendation 19 itself is actually more modest than what the Department of Defense says, which is that it's "one of the greatest" I believe is the language, one of the largest reasons why people are deterred from reporting sexual assault. So, I think the finding is very well grounded.

People can disagree with whether or not substantively we should make a recommendation about the prosecution of low-level collateral misconduct, but I don’t think that one can say that given the findings that Colonel Ham mentioned, which is that this is rarely done, in less than 5 percent of the
cases is it done, and they're always done at
the fairly low level that we're not talking
about a circumstance in which one can make the
argument that command authority would unravel
without this opportunity to prosecute for low-
level collateral misconduct.

Plus, the point here is not that
collateral misconduct prosecutions themselves
are threatened and deterred, which I think
that happens occasionally, and is terrible
when it happens, but rather the point here is
that, in fact, the threat of collateral
misconduct prosecutions, even if it happens
rarely, and even when it does happen the
Commanders exercise wide discretion to impose
few if any punishments. The point is that the
threat of collateral misconduct prosecutions
keeps a lot of folks silent. And I'm not
making that up. That's what the Department of
Defense has said.

DEAN SCHENCK: This is Lisa. I
agree with Michelle. That's why I think that
the findings, refresh your memory with the public hearing with the other victim. It was where the woman had a weapon, she was on guard duty and she went to the latrine and left her weapon, and when she went to court they said, well what about that weapon. So, I agree, I think this finding is - we have definite data on the findings -- the direction of that we will not prosecute.

I believe we're asking the Secretary of Defense to determine -- Secretary to the services whether or not this - what they should do about it regarding the prosecution of those offenses, those low-level offenses.

REP. HOLTZMAN: This is Liz Holtzman. Maybe I misstated my point earlier. I completely agree that the evidence for the finding and recommendation 19 is ample. I don't think we have enough information to understand the consequences of suggesting the recommendation. That we don't have evidence
on, so I'm a little concerned about the consequences of our making this recommendation, what they would be.

CHAIR FERNANDEZ: Well, one thing we - go ahead.

JUDGE MARQUARDT: I agree with Liz.

BG McGUIRE: This is Colleen, and I agree with Liz and Mai, as well. I'm just kind of troubled having an absolute, you know, a recommendation with an absolute will not prosecute.

JUDGE MARQUARDT: This is Christel. I think that we need to do something, though, because the evidence was so overwhelming that that was one of the reasons that people did not report. And we're trying to encourage them to report, so we need to come up with some language that maybe isn't so absolute but that encourages somebody, the Commander to look at these collateral issues and to - I'm not sure what the language is, but I just think it is an important issue.
DEAN ANDERSON: So, one thing it could be - this is Michelle. Just trying to identify a common way forward is possibly allow - I mean, I completely agree with the reference to, I think it was Lisa's reference to the individual who left her weapon in, I think it was in a theater of war, and that would not be covered by low-level collateral misconduct in my mind, at least. And I think we could recommend that the Secretary of Defense direct the DoD to develop and implement a policy that Commanders will not prosecute low-level collateral misconduct, and then relate it to - with a new recommendation that the Secretary of Defense and the DoD figure out what low-level collateral misconduct is most common in these instances. I mean, obviously, it's not the abandonment of a weapon in a military installation, it's going to be under-age drinking, alcohol offenses, and fraternization, those are the ones that we're talking about. And we could
even reduce it to those, if - so, I think we could do one or two things to modify this recommendation.

One would be to say will not prosecute for under-age drinking, alcohol offenses, or fraternization. Those are the lowest level among these, I would think. Or we could say will not prosecute - will determine what low-level collateral misconduct offenses are not appropriate for prosecution when someone comes forward with a credible allegation of sexual assault. That's another way to go, either that we modify and restrict what collateral misconduct - what constitutes collateral misconduct, or that we direct the Department of Defense to identify what circumstances are so low-level that they're not worth pursuing. I mean, when people come forward with sexual assault, and all know this, under-age drinking or alcohol offenses are often involved.

REP. HOLTZMAN: Well, there is a
third option which is not to adopt this recommendation in any form.

DEAN ANDERSON: Oh, absolutely.

Absolutely.

REP. HOLTZMAN: And that's my concern. I understand where you're coming from, and I think that's - I just think that when we are going to recommend a blanket policy, and I understand the impetus for this, you know, that we have to do something, but I don't want to do something that we don't really understand the consequences of. I mean, I don't understand the consequences of doing this, so - because I don't know all the cases, and I don't have a strong enough feel for what it would mean to bar Commanders from making a decision. I'm assuming that the number of - I'm assuming that they do this in very rare circumstances, they allow the prosecutions in very rare circumstances anyway, so I'm not sure that - I'm just very troubled about the recommendation.
DEAN ANDERSON: Recommendation.

REP. HOLTZMAN: Yes, that's all. I don't know that we have enough information if that's a good course of action or not. I mean, it sounds -

DEAN ANDERSON: Let me just push back a little bit on this. This is Michelle. The last thing I'll say is that it's not clear to me when something is not current policy what information we might have about something that's hypothetical, and that does not exist in the real world currently. So, it's unclear what kind of information we would have in front of us. What we do have is that Command so rarely uses it, and it's so - you know, that it's not something that's salient in more than 95 percent of the cases. So, that suggests to me that it's not a crucial moment in terms of Command authority. And that when it is pursued, it's very low-level, when collateral misconduct charges are pursued they are pursued with fairly low-level
consequences, not - you know, we look at the data and it says counseling, or non-judicial punishment, you know, not something that's worthy of even a judicial proceeding. So, that makes me think that on the side of Command authority, good order and discipline, weighing on that side is very little. Weighing on the other side is tremendous evidence that the threat of collateral misconduct charges deter reporting. And, in fact, the Department of Defense I believe says that it's the greatest deterrent to reporting, or one of the greatest deterrents to reporting. So, I think when we weigh them out, it's difficult to know what further information we would have when the military itself has not come forward and said this is a crucial moment in terms of our ability to maintain good order and discipline. And, in fact, by practice it rarely comes up.

REP. HOLTZMAN: Well, I think the answer to that is we could have asked, we could have had some testimony on what people
felt the consequences would be. Would this
make any difference, would it be a big deal?
How - what would it harm? Maybe it has no
consequence, or you could be completely right.
I'm not saying you're not. I just don't know
the answer to that.

BG McGuire: This is Colleen, and I
just wanted to also note that sometimes - you
know, if we make a recommendation like this,
it almost gives a license for folks to engage
in misconduct. I know this is a 180. I know
that sounds extreme, but I know I'm not going
to be held accountable, so if I go out
drinking with my friends and should something
happen, not that I plan to have anything
happen, I know nothing is going to happen to
me.

But my concern is even the finding
on Recommendation 19, the fear of being
prosecuted, or is it the fear of not
necessarily being prosecuted, but being held
accountable to some degree for what happened
because I know what I did was wrong. Is that the fear for coming forward, or is it the fear, actual fear of prosecution? I think that if I was a victim I would say I'd be in fear of being prosecuted, but deep down I feel that I might be prosecuted in the eyes of my peers and others for having contributed to this behavior. It acts as a deterrent.

DEAN ANDERSON: Contributed to what behavior? Contributed to what behavior, Colleen?

BG McGuire: The alcohol, over-consumption of alcohol.

DEAN ANDERSON: Contributes to the sexual assault?

BG McGuire: No, no, no. I - and that's why I said this is going to come across without actually having clearly articulated in writing. No, I'm not saying that at all. I'm just saying that they know it's wrong to drink. Nobody wants to go - I'm not planning to get sexually assaulted, but then it's - I
should just shut up at this point. It's just
that the conditions of the instance was they
know they did - or they were wrong and they,
you know - so they don't want to report it
for fear that they're going to be blamed for
it.

JUDGE MARQUARDT: This is Christel.
Look at the other side of it. The purpose for
this is okay, I'm going to go out and we're
going to have an alcohol party. And I'm not
going to be held accountable for raping
somebody because they're not going to report.

(Simultaneous speaking.)

REP. HOLTZMAN: This is a great
conversation, but it's 5:15 so I'm leaving.
Sorry, everybody. I'm not in favor of this -

DEAN ANDERSON: Unfortunately, I
have to leave, as well. Thank you.

CHAIR FERNANDEZ: Hi, who's still
on the line?

DEAN SCHENCK: This is Lisa. I'm
still here. I don't -- ask the Secretary of
Defense to take a look at - you know, recommend he take a look at the possibility of blah, blah, blah.

CHAIR FERNANDEZ: Yes, I don't either. What I'm going to do is everybody sleep on it for the night, and then I think we've got more nos than we've got yeses on this one. I don't feel comfortable with it, but I think -

MS. GARVIN: I just want to put - this is Meg. I want to put on the record that I am not comfortable removing the findings. I know it's in there in other places but we need a finding on this at the very minimum. And I do support a recommendation on this. I know we're going to talk about it tomorrow, but removing the finding I think would be very problematic from the evidence we've heard.

CHAIR FERNANDEZ: Okay. Let's -

JUDGE MARQUARDT: This is Christel. Because I can't be on the phone call tomorrow, you know what my position is. I think that we
need to address the issue.

COL HAM: This is Colonel Ham. The actual – if this helps with the finding, the actual DoD recognition is collateral misconduct by the victim of a sexual assault is one of the most significant barriers to reporting assault because of the victim's fear of punishment. If that helps to use the right wording, I guess punishment is different than prosecution. It definitely is. Do you want the wording as DoD reflects it, or do you want different wording?

CHAIR FERNANDEZ: I think let's put the correct wording in for sure. Let's sleep on it and see if we can split the baby on this. I think we all recognize that the finding is hugely important. The problem is, is this the right solution. And therein lies the problem.

MS. GARVIN: This is Meg. May I ask a procedural question. If we leave the findings in we have no recommendation and is
it appropriate, permissible, possible to put
in a statement as an individual member with
regard to that?

COL HAM: Anybody can make separate
statements, and there's no requirement to make
recommendations with all the findings.

MS. GARVIN: Okay, thank you.

DEAN SCHENCK: This is Lisa -

CHAIR FERNANDEZ: In your creative
head see if you can split the baby for us, and
then bring it to us tomorrow morning.

CDR KING: Okay. Do you want to
talk about 20, Mai, or do you want to hold
that for tomorrow, too?

CHAIR FERNANDEZ: No, but if I can
send around the number and everything tomorrow
for the 9:00 meeting, that would be great. And
then we're just going to power through the
last ones. Okay?

CDR KING: It's fine with the
staff. Does the DFO want to close the meeting
for today?
MR. SPRANCE: Happily, this is Bill Sprance, the DFO, and the Subcommittee meeting is now closed.

CHAIR FERNANDEZ: Okay. Thanks.

(Whereupon, the proceedings went off the record at 5:18 p.m.)
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CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Response Systems to Adult Sexual Assault Crimes Panel Meeting

Before: US DOD

Date: 04-24-14

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

[Signature]
Court Reporter