

UNITED STATES DEPARTMENT OF DEFENSE

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RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL

ROLE OF THE COMMANDER SUBCOMMITTEE

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FRIDAY
APRIL 25, 2014

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The Subcommittee met via teleconference at 2:30 p.m. Eastern Daylight Time, The Honorable Elizabeth Holtzman, Acting Chair, presiding.

PRESENT:

HONORABLE ELIZABETH HOLTZMAN
MAJOR GENERAL JOHN ALTENBURG (RET.)
JOYE FROST
GENERAL CARTER HAM (RET.)
PROFESSOR ELIZABETH HILLMAN

STAFF:

LIEUTENANT COLONEL CANDACE HUNSTIGER,
Designated Federal Official
COLONEL PATRICIA HAM, RSP Staff Director
LIEUTENANT COLONEL KYLE GREEN, RSP
Supervising Attorney

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

2:43 p.m.

LT COL HUNSTIGER: This is Lieutenant Colonel Candace Hunstiger. Welcome, everyone, to the Role of the Commander Subcommittee meeting. The meeting is now open.

MS. HOLTZMAN: Thank you very much. So let's turn to draft 24 April Executive Summary.

Should we just ask for comments or how do you want to go through this?

LT COL GREEN: Ma'am, this is Kyle. I'll just point out that we received written comments on these from General Ham, from Professor Corn, who sent it to us from Italy, so I guess bonus points for effort on that one, and also Colonel Turner.

And Colonel Turner can't join us and Professor Corn cannot but their comments are incorporated so we were able to get their feedback on this.

So I guess we've noted the comments they had. Most of them really are just wording issues and so far I don't see any issues overall with the structure or the broad scope of the Executive Summary. So unless anyone has comments here.

COL HAM: Ma'am, this is Colonel Ham. Representative Holtzman, I just sent you the --

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MS. HOLTZMAN: Thank you.

COL HAM: -- okay, the version of the Executive Summary with all the comments and I re-sent you the Summary of Findings and Recommendations.

MS. HOLTZMAN: I have the Executive Summary, thank you.

Does anybody have any comments beyond -- I mean does anyone have any additional comments to make on the Executive Summary you have?

MG ALTENBURG: This is Altenburg. I have one and it's whether we should somehow in the assessment methodology on Page 1 not only say that we received articles and information and so forth, but that we reviewed and analyzed the same. Should we add that in there? Is it important to say more than we just received it?

MS. HOLTZMAN: That's fine with me, but how does anybody else feel? Wait a minute, do we have the Court Reporter on? Hello?

COURT REPORTER: Yes, I'm here.

MS. HOLTZMAN: Oh, you're here, okay, fine, good.

LT. COL GREEN: Ma'am, that's an easy word switch if we just want to change received to say the members reviewed articles and information from those who participated as well as comments and information from the public. So that's an easy switch, sir.

MG ALTENBURG: Okay.

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MS. HOLTZMAN: Anybody else have any comments they want to make on the Executive Summary?

I just have one brief wordsmithing comment on the conclusion of the Subcommittee, the very first line, we say "firmly convinced," isn't -- I would suggest we just say "believe." That's just one comment.

And then secondly, on Page 3, I don't know if this is necessary there, so I'm perfectly happy not to -- I don't feel strongly about it, but when we talk about how the commander doesn't -- when there's a disagreement with the convening authority and the staff judge advocate that requires Secretarial review, but there's also, we don't allude to, and maybe we would should is my question, the power of the SJA on his or her own to raise the issue to a higher level which existed before these changes.

But does anyone feel that that's necessary to mention here? I guess we probably mentioned it in the text a dozen times, so.

Okay, I'll withdraw given that it's mentioned elsewhere. Does anyone have any objection to changing "firmly convinced" to "believe" on Page 1?

MG ALTENBURG: This is Altenburg. I'm looking at the conclusion on my document on Page 7, if that's what you're talking about and it says "believes its recommendations will strengthen" --

MS. HOLTZMAN: No, I'm looking at Page 1, not 7.

MG. ALTENBURG: So what page are you talking about?

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MS. HOLTZMAN: One, the very first line "in conclusion of the Subcommittee based on extensive review, the Subcommittee's firmly convinced." I mean it's up to you.

MG. ALTENBURG: No, I'm fine with believe. I think that's more neutral and, although anybody feel strongly about leaving firmly convinced or whatever it was?

MS. FROST: I think "believes" is probably a more appropriate term to use.

MS. HOLTZMAN: All right. Are there any other comments on the Executive Summary?

PROF. HILLMAN: This is Beth, Representative Holtzman. I just wanted to respond to a couple things Geoff Corn wrote that are in the draft that Kyle sent this morning. Are you looking at that where Kyle put in the comments that were submitted to -- ?

MS. HOLTZMAN: Absolutely, and that's why we're on the phone.

PROF. HILLMAN: Just on Page 3, Geoff suggested that we change that. I think you should just say -- he wrote we should state the numbers.

I think the Subcommittee's report is the Subcommittee's report. I think it should just say the Subcommittee does not recommend amending the UCMJ. I think that that language as -- it's on Page 3 in the middle there -- that language is left

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over from the interim report of the Subcommittee.

But I think, you know, you're in a place now to go forward. So I think it should say they don't recommend. I mean, I'm going to write something separate on this, so I don't think that that was in deference to where I was on that. But this is now the Subcommittee's final report. So it seems to me it should get rid of that majority language all together.

MS. HOLTZMAN: Oh, you mean where it says "strong majority of the" -- I don't know where you're reading that. Could you just locate me, please, Beth?

PROF. HILLMAN: Yes, on Page 3, the second paragraph.

MS. HOLTZMAN: Right.

PROF. HILLMAN: The fourth sentence, it says "a strong majority."

MS. HOLTZMAN: Right, okay.

PROF. HILLMAN: And Geoff suggested state numbers. I think if you just state "the Subcommittee does not recommend."

MS. HOLTZMAN: I agree with that. This is Liz Holtzman. I think that that's --

MG ALTENBURG: All right. This is Altenburg.

MS. HOLTZMAN: Any objection to Professor Hillman's suggestion? Adopted. Okay.

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Anything else, Professor Hillman? Anything else anybody else has to say whether on the original or on the amended version of the Executive Summary? Can we say we've approved it? Okay.

So what do we do next, the Findings and Recommendations?

LT COL GREEN: Yes, ma'am. I would recommend we just walk through the Findings and Recommendations and just make sure any of the go-over comments and make sure that everybody's comfortable with them as they are written.

MS. HOLTZMAN: Okay, I didn't get what you said, Colonel Ham. I don't know where this is in what you already said, Kyle. I don't mean to hold anybody up but I thought it was something -- I don't have it.

Is this in the Executive Summary, the Findings? Just tell me where you sent that please and I'll have it.

COL HAM: I sent it to eholtzman at --

MS. HOLTZMAN: No, no, no, I'm talking about the prior because you didn't -- I didn't get what you just sent.

COL HAM: It went out at 7:30 last night, ma'am.

MS. HOLTZMAN: Okay.

LT COL GREEN: Right. I sent a copy this morning, ma'am, that had comments from Colonel Turner and Professor Corn added. So let me get the time on that and --

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MS. HOLTZMAN: I'm sorry to hold you up but I just don't have the document. Thursday at 7:33, is that the document we're looking at? Oh, here we are, Member Comments on Draft Executive Summary. I've got that. Okay. Fine, let me just print this out. Okay. Let's start.

Does anybody have any issues on the Findings?

GEN HAM: Liz, this is Carter Ham. On the recommendation one, it is addressed more stylistic but, again, I think this report ought stand on its own so I'm not sure if "continues to recommend" makes a lot of sense. I think we ought to just say the Subcommittee maybe "recommends against modification."

MS. HOLTZMAN: Correct. I guess my problem here, yes, I completely agree with that. This is Liz Holtzman. Any objection to General Ham's suggestion? Okay. We're going with that.

It would be very helpful to me, Kyle, if you just tell me where these Recommendations are in the document because I don't -- I made my comments as I was going along, not on this document on your summary sheet, so would you know where these are located in the text so I can find them?

LT COL GREEN: Ma'am, the corrected version that we sent has the comment bubbles with your comments off to the side. Are those showing for you?

MS. HOLTZMAN: I don't know what pages to look at. Okay, I don't want to take anyone's time. It's just, I spent some time going through

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the individual Recommendations --

LT COL GREEN: Yes, ma'am, and --

MS. HOLTZMAN: -- and I don't -- so if you'd show me the summary pages, I don't have my notes or comments on this.

LT COL GREEN: Okay, let me -- the legislation comments that we're talking about are on page 30-31 of the draft.

MS. HOLTZMAN: Great, thank you very much. Okay. Does anybody have any other recommendations on this?

LT COL GREEN: And just following up on General Ham's comments and what Professor Hillman said, I mean this recommendation also says "a strong majority." Are you all comfortable with just removing that and just saying "the Subcommittee recommends"?

MS. HOLTZMAN: I thought we agreed to that already, Kyle. You're behind us. We did it.

GEN HAM: He's got it in another location, Ms. Holtzman.

MS. HOLTZMAN: Oh, another one. Oh, I see. You slipped another one in.

MS. FROST: Yes, this is Joye. I think clearly the language should be consistent between the various sections of the report.

I do have a comment, this is Joye, I have a comment on the recommendation number three. I think it's really weak and especially if we're going

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to advise Congress not to adopt Section 3(d) to do the, you know, the climate survey after each and every sexual assault.

And then it says the more useful practice may be to examine each incident to determine if measures could be enacted that may have prevented the incident or made the incidents less likely to occur.

That just strikes me as very tepid. I think we really are talking about that DoD should develop a formal review process as opposed to saying the commander should examine. I just think it's too weak as written.

And we talked about, you know, formalized procedures such as sentinel events in the criminal justice system. I'm not saying use that terminology or child fatality review change, that sort of thing, but I think there was some discussion from the military folks that talked about models already in use in the military and I would strongly suggest beefing that up.

MS. HOLTZMAN: I agree. This is Liz Holtzman. I added a finding that, I mean I was joking a little, about letting no crisis go to waste might entail a review procedure undertaken after such an incident and a command to determine why additional actions might be taken in the future if that occurred with such incident.

MS. FROST: You know, and it may not -- it may be a training issue. It could be a lot of things. I would, in that sense, you know, assess the, you know, all the contributing factors, things that did occur or did not occur.

MS. HOLTZMAN: Right, that's my view, too, that it could be

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strengthened. Anybody disagree with that or anybody --

There's no disagreement, can we add the -- sorry.

LT COL GREEN: Ms. Frost, do you have proposed language that you want us to use or?

MS. FROST: Well, I could certainly come up with some but in the last discussion, I think Colonel Turner talked about specific models that already exist in the military. So I would suggest, you know, something to the effect that DoD maybe, I don't know, or that Congress should consider requiring a formal review process of, you know, when sexual assaults occur similar to what the military utilizes and then give some examples or something like that.

MG ALTENBURG: Would everybody be comfortable with recommending it to DoD rather than to Congress?

MS. HOLTZMAN: Yes, I was just about to say that, General Altenburg -- this is Liz Holtzman -- I completely agree. Let's not get -- I mean I don't know that we need to get Congress involved and I don't know that you need to have a formal procedure.

MS. FROST: No, if you don't make it a required process, it may or may not happen and the problem is we see that one Service does it one way, another Service does it another way. I totally agree, DoD, I just said Congress because they're the ones who were talking about this, you know, is their legislation about the climate survey.

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But yes, DoD should develop a formalized review process. And, it, you know, it could vary depending on the severity of the sexual assault. We're not like -- yes.

MS. HOLTZMAN: Well, how do people react to that? Is there anyone who disagrees with the suggestion? So do you want to give us a -- do we need language, Kyle, or are we sufficiently clear on the language?

LT COL GREEN: We had a recommendation in your proposed additional finding, ma'am, that we'll rework.

But Colonel Turner agreed, she indicated this morning she agreed with your concept and that perhaps we can mirror the language in Finding 4.2 and noting that there isn't the DoD requirement but that some commanders have developed reviews that DoD should evaluate and consider for a standardized process.

So, if you're comfortable with us using that second finding under Recommendation 4 as a model, we can tweak this and see if it meets your expectations.

MS. HOLTZMAN: That sounds -- this is Liz Holtzman -- that sounds very good to me, I don't know how the rest -- Joye, how do you feel?

MS. FROST: Yes, no, I'm fine with it. I just think it needs to be stronger and it needs to be consistent across the Services.

MS. HOLTZMAN: Okay. So is, I guess, we're in agreement on that point. Can we move on to part three, Subcommittee Recommendations and

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Findings? Is that correct? Is that where we are?

Did we finish part two or is it that -- or am I in the wrong place here? Where should I be?

LT COL GREEN: Ms. Holtzman, we've just -- I think there were three Recommendations under the Legislation and Policy section and I think we just covered all of them. Just to make sure that everyone's comfortable with those three Recommendations and the Findings.

We have the -- we will make minor language corrects in Recommendation 1, Recommendation 3, we will rework that for the Subcommittee to recommend to DoD a formalized review process that's more strongly worded and consistent across the Services and the Finding 3.2, we will work Ms. Holtzman's language according to that to support that finding that she's recommended.

MS. HOLTZMAN: Okay, but you're not going to use "letting no crisis go to waste," that was a joke.

LT COL GREEN: Oh, come on, ma'am. No, ma'am, we will not.

MG ALTENBURG: Just put quotes around it, that'll take care of it.

COL. HAM: Representative Holtzman and members, I have a language question. Is the proper language "not adopt" or is the proper language "Congress not enact" or does it make no difference? I don't know.

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MS. HOLTZMAN: It makes no difference.

COL. HAM: Okay. And then the second thing is, there's been a lot of discussion of this in the other Subcommittee, the list of recommendations and we're adding the word "should," like "Congress should not." So if your recommendation is listed, do you need that word?

Like this is a list of recommendations so "the Secretary of Defense direct," "the Secretary of Defense should direct" or do you want those words in there? It's a minor point, but it's sticking out to me.

So for example, in Recommendation 4, your recommendation is "the Secretary of Defense direct," not "should direct."

MG ALTENBURG: Altenburg again, I like taking "should" out. We don't need the subjunctive mood here since we're going final. It's not like we're directing the Congress or the Secretary of Defense to do anything by recommending to do this.

MS. HOLTZMAN: This is Liz Holtzman. I like it the other way because -- but I'm happy to go with what the majority wants. I'm fine, it's not a big issue.

GENERAL HAM: This is Carter. I think given the target audience for this report, I would suggest keeping "should" in, perhaps a little deference shown to those who ultimately have to make the decision.

MS. HOLTZMAN: That's kind of my view.

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MG ALTENBURG: I'm fine with that then. So let's just leave "should" in.

MS. HOLTZMAN: All right, so now what are we up to? Finding Number -- are we at Finding Number --

LT COL GREEN: Finding Number 4, ma'am, which is from the Commander's Responsibilities in Sexual Assault Prevention.

MS. HOLTZMAN: And what page is that on?

LT COL GREEN: It is --

MS. HOLTZMAN: Sorry to make you do this.

LT COL GREEN: Oh, that's okay, ma'am. It's Page 53 of the review that you did in draft, ma'am.

MS. HOLTZMAN: Great. So any suggestions or thoughts about Recommendation Number 4 or the Findings in connection with it?

GENERAL HAM: Liz, this is Carter. On Finding 4 to 6, I'm not sure I understand this, "add reference to effective youth programs in body." I'm not sure what that means.

LT COL GREEN: General Ham, that's a staff note that we've added some language there that we need to just make sure that the text reflects the discussion about the youth programs that the CDC briefed you on. So that one's actually for us.

GENERAL HAM: Okay.

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MS. HOLTZMAN: Any other suggestions on Finding 4? I mean Finding -- yes, Recommendation 4 and Finding 4 and Findings connected with it?

If not, can we move on to Recommendation Number 5 and the Findings under it? Any comments, additions, thoughts or anything? Okay.

Should we go to Recommendation Number 6?

By the way, do these need to be read? I'm hoping that we don't need to read them, but I'm happy to have them read or read them myself if anybody wants to go that route. Okay. Hearing no objections.

So we have Recommendation Number 6. Any objection to Recommendation Number 6?

Okay, moving on to Recommendation 7.

LT COL GREEN: And Ms. Holtzman, this is the one where you had recommended some additional language at the end of that just to note the protection against re-victimization.

MS. HOLTZMAN: Okay, right. I see that. Thank you for including it. Does anyone -- well first before we -- okay, since Kyle brought up my suggestion, is there anybody who objects to that? Okay, so that's included. Any other thoughts, comments, objections to Recommendation Number 7?

Okay, hearing none, we're going to Recommendation Number 8. Any comments, objections, thoughts to Recommendation Number 8 and the Finding underneath it, 8.1?

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LT COL GREEN: We'll clarify that.

MS. HOLTZMAN: Sorry? Anybody opposed to that? Has any thoughts on that? Okay.

Recommendation Number 9. So that's approved.

Recommendation Number 9, any objections, thoughts, comments on Recommendation 9? Okay, that's approved.

Recommendation Number 10, any comments, objections, thoughts on Recommendation 10? Okay, hearing none, that's approved.

Recommendation Number 11, we have some comments here and additions.

Professor Hillman, you've been given the responsibility, I see, in the comments section for the Recommendation Number 11. I don't know if you're aware of that. Professor Hillman? Are you on? Okay.

Anybody have any objections to Recommendation Number 11? Any thoughts with the comments?

Kyle, could you please tell us what you had in mind when you say "ask Professor Hillman to clarify the third item"?

LT COL GREEN: Ma'am, this is from our previous deliberation discussion. You already raised points about the second and third parts of this -- of the focus areas that were recommended here.

First there was concern among the Subcommittee members that

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what this --

MS. HOLTZMAN: Have we addressed this already?

LT COL GREEN: Ma'am, we've not. We've not made any changes to either the second or third parts.

MS. HOLTZMAN: Okay, so we need to have comments on -- we need to review this, correct?

LT COL GREEN: Right and I was -- and we're waiting -- I've asked for Professor Hillman to clarify that and, obviously, she has got CSS report going so we just haven't gotten the update to this yet.

I guess, I mean my question is -- my thought is whether this is some, I mean whether this is a different recommendation than what's incorporated in the other Recommendations.

You know, it's obviously more specific in terms of the tasking and laying out three different principles but there were two of those principles that you, as Subcommittee members, took issue with during the last deliberation session.

MG ALTENBURG: What we were talking about is commanders don't have a lot to say about any of this. They get who we access and pass through the training base. And so their ability to control accessions is minimal and even assignments is minimal. And so the question was should we even bother to put that in our recommendation, if I recall correctly.

MS. FROST: This Joye and I have to say that third one in

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particular, I raised this in addition to the last concern. I really don't know what that means, particularly assignments.

So what does that mean? If you know somebody's at high risk of offending, you're going to try and get them reassigned? That's not reducing sexual assault, that's just transferring the problem.

I just don't understand the third sentence very well.

MS. HOLTZMAN: This is Liz Holtzman. I don't understand what the word accessions means, so I have a problem with that as well.

MG ALTENBURG: Accession is bringing people into the Service. You access them. You recruit them and access them into the Army or Navy. It's a term of art in the recruiting business, I guess really.

MS. HOLTZMAN: Yes, but command, do the commanders have any role in the recruitment?

MG ALTENBURG: Oh, they don't, that's what I meant by when I said this is really beyond the scope of the people who are commanding forces, you know, in the military. I mean this is all done by the recruiting command and others.

MS. HOLTZMAN: So, it seems to me from what you're saying, General Altenburg, that item number three, for sure, seems to be the control of the commander and, therefore, shouldn't be included. But does anyone object? Feel differently? What about the second point, do the commanders get to say who the trainers are?

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MG ALTENBURG: I want to say they do because they can pick trainers, although it may be that some of the SAPRO programs, and I've been out of the military for 12 years, some of the SAPRO programs may be preordained and they get who SAPRO says they're going to get, I don't know. Others with more recent uniform service may know better than I.

PROF. HILLMAN: Representative Holtzman, this is Beth Hillman, I'm sorry, I had to step away to a crisis that came up, but I'm back.

If this is all caused by just something that I suggested that wasn't clear, you should just axe this whole recommendation. So I don't think that -- I mean you're trying to salvage language that perhaps isn't actually the Subcommittee's own.

MS. HOLTZMAN: Well, that was someone's suggestion. General Altenburg suggested that we just axe this recommendation. I'm okay with that because it seems either redundant or outside the area of the commander. But that's just my view.

MG ALTENBURG: Well, certainly clause three is outside the scope of a commander's responsibility, if that's the one where the recommendation is to control accessions and assignments as part of their prevention strategy. Command's got nothing to say about accessions and assignments.

MS. HOLTZMAN: So should we keep the rest of this? Anybody in favor of keeping the rest of Recommendation 11? Anybody in favor of dropping Recommendation 11?

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General Altenburg, you're in favor.

MG ALTENBURG: Well, I was in favor of leaving three for sure and it seems like two was covered elsewhere. We might leave -- unless Kyle or some of the Staff can tell me that we've kind of covered what's in the first part of that, the first three lines that are in black. If that's covered somewhere else then we don't need 11 at all. If it's not, then we should probably leave the first sentence in as Recommendation 11. That's my view.

MS. HOLTZMAN: Kyle, do you have an answer to that?

LT COL GREEN: Yes, ma'am. There isn't one of -- the other Recommendations really talk to specific aspects of the prevention training and prevention strategy. This one does focus directly on just commander ownership and commander leadership. So it isn't necessarily repeated or stated this directly. And if that's really the focus of the recommendation, we can certainly reword it.

I guess the issue is whether the Subcommittee wants to include any aspect of the, overseeing the selection of training or the assurance that those who are training in this --

MS. FROST: This is Joye. The one thing that, I mean, I think that's an important point and I agree that there are probably some limitations of commanders on getting qualified and motivated trainers.

But I will, again, hark back to the meeting with CDC where they were crystal clear that it wasn't just about having an effective training, that there was

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almost no effect from a sort of a one-time or intermittent training session, almost no --

MG ALTENBURG: I have a specific recommendation.

MS. FROST: Okay.

MG ALTENBURG: I recommend that we delete the words "three areas of" so that the first sentence reads "the Secretaries of the Military Departments should ensure commanders focus on effective prevention strategy."

And I would delete "first" so the second sentence would read "Commanders must demonstrate leadership of DoD prevention approach and its principles."

I would delete "second" and the third sentence should read "Commanders must ensure members of their command are effectively trained by qualified and motivated trainers who are skilled in teaching methods that will keep participants tuned into prevention messages," and I would delete all of three.

MS. HOLTZMAN: Okay. On that proposal, any objections?

MS. FROST: I'm sorry, what are you saying for the second part of that?

MG ALTENBURG: The sentence that starts "second" would remain except we take the word "second" out of it. Instead of going "first" and "second."

MS. FROST: Okay. Oh, okay. I see what you're saying.
Yes.

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MS. HOLTZMAN: Okay, is there any objection? Okay, so we're accepting General Altenburg's proposed changes. We're up to Recommendation Number 12. Any thought on 12?

MS. FROST: I need to understand what we mean when we say that sexual assault reporting options are simplified. Are we talking about information about options, or are we actually saying that reporting options should be simplified? If we're saying that, don't we need to say how they should be simplified?

MG ALTENBURG: This is Altenburg again. I'm reading the Findings under 12, and it seems to me that we could delete the words "simplified and," so that it reads "reporting options are clarified to ensure all members," blah, blah, blah "understand." "Simplified" -- I think, Joye's right. "Simplified" raised the specter of something very specific.

MS. HOLTZMAN: Right.

MG ALTENBURG: And that maybe we're going to eliminate something and as I read the Findings, I don't see anything in the Findings where we're finding that there's too many options, or there's too much, it just means we just want a clarification for people, not actually a simplification.

MS. HOLTZMAN: I agree with that. This is Liz Holtzman. Any objection to General Altenburg's suggestion? I don't hear any, so it's adopted. I had a question, too, whether the first finding belongs here at all, since we're talking about the reporting option, I don't know what the role of the command and convening

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court-martial has to do with those reporting options.

LT COL GREEN: Ms. Holtzman, I think that Finding 12-1 and 12-5 are both outside the scope of this. We may have just inadvertently added them.

MS. HOLTZMAN: Oh, okay. Does anyone object to removing two items that are outside the scope of this recommendation? I don't hear any objections, so that's approved. Okay, now we're up to -- anybody have anything else to say about Recommendation 12? All right, we're up to Recommendation 13. Do you know what page that's on, Kyle? Would you mind to please help?

LT COL GREEN: Of the report, ma'am?

MS. HOLTZMAN: Yes.

LT COL GREEN: Yes, just a moment, 73.

MS. HOLTZMAN: Seventy-three?

LT COL GREEN: Yes.

MS. HOLTZMAN: Does anybody have any issue with Recommendation Number 1, and the Findings under it? That's a big chunk of stuff. Okay. Okay. Any objection to Recommendation 13 and the Findings thereunder? I'm not hearing any. Going, going, gone.

Recommendation Number 14. Any objections or concerns with regard to Recommendation Number 14?

Okay, we're up to Recommendation Number 15. I guess that's the equivalent of Recommendation Number 3 on my pages, and I just wanted to say

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that I was confused by the recommendation because there was so many negatives in that. So have you rewritten it?

LT COL GREEN: I'm sorry, ma'am. Which recommendation are we talking about?

MS. HOLTZMAN: Fifteen. There's just a whole lot of negatives in that recommendation and so I just kind of got lost.

LT COL GREEN: It's been modified pretty extensively. It's only four lines long, when before it was five.

MS. HOLTZMAN: Okay. Anybody have any objection to Recommendation Number 15 or the Finding thereunder? Okay, hearing none, we're going --

MG ALTENBURG: I would make one. I would take the word "should" out of the last line, because in this case we're not talking about a recommendation of ours. We're saying that investigating officer, that the charge not be referred. And I don't know if we should bother to say "should not be referred." I think it's clear if we just take the word "should" out.

GENERAL HAM: This is Carter. You're talking about the second "should"?

MG ALTENBURG: That's correct. The "should" in the last line.

GENERAL HAM: I think it reads more clearly if you delete that

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"should" -- the second "should."

LT COL GREEN: And, sirs, but the first one after "when a GCMCA," you think that first one?

MG ALTENBURG: I think that one has to stay in there, because that's the meaning.

LT COL GREEN: Okay.

MG ALTENBURG: Yes, I guess it's actually the third "should," now that I read it, right. It goes, "the Secretary of Defense should".

GEN HAM: That one should stay in for sure. We all agree with that.

MG ALTENBURG: "GCMCA should," that stays. It's the "should" in the last line.

LT COL GREEN: Right.

MG ALTENBURG: So just to be clear, I agree with the proposal to remove "should" from the last line.

MS. HOLTZMAN: Any objection for removing the word should in the last line? Hearing none, it's agreed to. Any other comments on the Finding 15-2? No comments, we're going on to Recommendation Number 16.

Any comments, any objections any disagreements with Recommendation 16?

I guess my -- I just wanted to add one thing. This is Liz Holtzman again. You know, when you say "Congress should not adopt additional

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amendments to the UCMJ," it sounds like period, right there, and Congress shouldn't be adopting additional amendments to the UCMJ.

So, somehow that's a misleading -- I don't think we want to go there. That's not exactly the point that probably most of us agree with. So can it be somehow worded that it's clear that that relates to the post-trial authority of convening authorities?

Or maybe you can just start the sentence by saying "with regards to imposing additional limits," or something "with regards to the convening authority under Article 16, Congress should not adopt additional amendments to the UCMJ and the President should not impose limits."

Because the way you read it, the way I read it, was that we were saying Congress shouldn't adopt any additional amendments to the UCMJ, and maybe my reading is wrong. And if you disagree with me, that's fine, too. I don't feel very strongly, but it just was jarring to read that.

COL HAM: Okay, we could do also, just, "Congress should not adopt additional amendments to Article 60 of the UCMJ and the President should not impose additional limits to the post-trial authority of convening authorities," period.

MG ALTENBURG: That's more clear. And it resolves the issue that Ms. Holtzman raises.

MS. HOLTZMAN: Okay, everyone in favor of that change that Colonel Ham articulated? Anyone opposed to it? Hearing no opposition, that's

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accepted. I'm now on Recommendation 16 as amended with the Findings. Any objections? So that Recommendation is now adopted. Okay.

Now we're up to Recommendation 17.

LT COL GREEN: Yes, ma'am, this is on page 98.

MS. HOLTZMAN: Thank you very much. Okay, great. It is? Ninety-nine. Any comments, thoughts, objections to Recommendation Number 17? And I guess we're being asked to consider the additional language in Finding 17.3, as well. Is that correct, Kyle?

LT COL GREEN: Yes, ma'am, that's the one that you noted as having concerns.

GENERAL HAM: This is Carter. So, the last time we talked, I offered this language, too, because I think we were wrestling with the idea of, against seeking to support that overriding conclusion.

But I'm not sure if we heard enough evidence from victims or others that supports this particular Finding. I think it's -- my gut tells me it's probably right, but I don't know that we have the evidence that, we heard evidence that would support that Finding 17.3.

MS. FROST: Yes, again, that's my concern, because we're not talking about the impact on the system. We're talking about the impact on current service members, and reducing victims' fears, and I don't think we can say that. I think what we're saying is, is that we do not, you know, support a conclusion that such

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a change would increase reporting and prosecution. I mean -- except similar wording that we used earlier in the document.

I just -- I think I brought that up, because I was just really uncomfortable when we started extrapolating what we thought victims would or would not do in the future, or how they would feel or believe.

MS. HOLTZMAN: Okay, so how do we feel about Finding 17.3? Are we satisfied with it? Do we want to drop it?

GENERAL HAM: This is Carter again. And again, I wrote it after our discussion back last time. I think removing 17.3, that has no effect whatsoever on the overall report. I don't think it does any -- I don't think it leaves any holes in the argument. I think it's not necessary.

MS. FROST: I agree.

MG ALTENBURG: I do, too.

MS. HOLTZMAN: I'm in agreement with that, too, particularly because I don't know that we could part that which the preponderance of the evidence was and so forth and so on. So I agree with that. I would -- so we will eliminate Finding 17.3. Any objections in eliminating Finding 17.3? Okay.

With that done, any objection to Recommendation 17 and the Findings underneath it? Hearing none, that's approved.

Okay, moving to Recommendation Number 18. Kyle, do you have a page for that, if you don't mind?

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LT COL GREEN: It should be somewhere around Page 105, ma'am.

MS. HOLTZMAN: Thank you, everybody for your patience with me about this. Recommendation 18, any objection to the Recommendation with the extra language and the Finding underneath it? Hearing none, it's approved.

Go to the Recommendation Number 19. Any objection to Number 19 and the Finding underneath it? I don't hear any, so Recommendation 19 is approved. Recommendation 20, any objection? Any thoughts about --

MG ALTENBURG: Spell check nailed the double climate.

LT COL GREEN: Yes, sir, we caught that one as well, thank you.

MS. HOLTZMAN: Okay, so that's where you're taking out the second reference to -- how is it changed? What will it change?

MG ALTENBURG: It's just a typo, it's, climate up here is back to back, just "climate climate."

MS. HOLTZMAN: Oh, I see, right, two of them. Okay. All right. So with that deletion, any other objection to Recommendation 20? Okay, hearing none, that's approved.

Recommendation 21, any objection to Recommendation 21? Any comment or disagreement? Hearing none, Recommendation 21 is approved.

Recommendation 22. Any objection, comment, on Recommendation 22 and the Finding thereunder? Joye, is this something that came

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up -- this is Liz again -- is this something that came up that you raised about what an independent organization -- do we mean non-DoD? Outside DoD?

MS. FROST: You know, that would be my preference, but I think independent is strong enough.

MS. HOLTZMAN: Okay. Okay, so any objection to Recommendation 22? Hearing none, it's approved.

Recommendation 23, okay. Any objection here? Any other comments?

COL HAM: Ma'am, this Colonel Ham. I think this is the first time DEOMI is appearing in the recommendation, should we spell it out? It's in the text, of course, but this will be the first time it appears in a recommendation, so if someone's just looking at the list of Recommendations, they know what it is?

MS. HOLTZMAN: Okay, all right. So recommendation over that. Any objection or hearing no objections, Recommendation 23 is approved.

Recommendation 24, any objection to Recommendation Number 24? I don't hear any. That's approved.

Okay, Recommendation Number 25. What page is that on? Give me a second to get there.

LT COL GREEN: 116, ma'am.

MS. HOLTZMAN: Okay. Okay, I must have it on a different page.

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LT COL GREEN: That's fine, try 117.

MS. HOLTZMAN: 117, yes, thank you.

Okay, 117, I'm sorry, Recommendation 25, any comments, objections to Recommendation 25? My only comment about it is that the recommendation is not necessarily related to the Findings. Is that correct? We're talking about command and fostering a positive command climate, but the recommendation doesn't really relate to that.

MG ALTENBURG: The sub-category there is commander accountable, above the Recommendation on the Findings and Recommendation Worksheet, or the 11-page document. And in that context of commander accountability, I think the Recommendations and the Findings do fit together.

MS. HOLTZMAN: But the Findings are about developing positive -- am I correct, Kyle, particularly Point 3, foster a positive climate? I don't feel strongly, but I just didn't see the connection. All right, if nobody else agrees to that then we'll just -- any other objection to Recommendation 25? We'll just go forward with that. I don't hear any objections, so that's approved.

Recommendation 26, any objection to 26? Comments?
Hearing none, that's approved.

Recommendation 27, any comments, objections? Hearing none, that's approved.

Recommendation Number 28.

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GENERAL HAM: Liz, this is Carter. I would just add, at the end, "including officers, non-commissioned officers and civilian leaders."

MS. HOLTZMAN: Okay, so the words "and civilian leaders" should be added after NCOs?

GENERAL HAM: I believe so.

MS. HOLTZMAN: Any objection to General Ham's recommendation? I don't hear any, so that's accepted. Any other changes to Recommendation 28? Hearing none, that's accepted.

And Recommendation 29, okay. Any objection to Recommendation 29?

I see that there's an asterisk there or a bullet, oh, it's just a bullet, okay. I don't hear any objection to Recommendation 29, so that's approved.

Okay, wow. So now we have to look at the potential additional Recommendations and Findings. Do you mind if I read this because I haven't looked at this, since it's an additional one.

Recommendation 30. "Given existing training curriculum mandates, the Department of Defense should not promulgate an additional formal statement what accountability, rights and responsibilities a member of the Armed Forces has with regards to matters of sexual assault prevention and response."

Finding 30-1. "As described in Enclosure Ten of DoD instruction 6495.02, DoD has established comprehensive mandatory training

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requirements that ensure all personnel receive tailored training on SAPRO principles, reporting options and resources for help, SAPRO programs and command personnel roles and responsibilities, prevention strategy behavior, and documentation retention requirements."

Finding 30-2, "DoD SAPRO establishes core competencies and tailored SAPRO training, requirements and establishes mandatory instructions, subject to the following training situations: accession, annual refresher training, pre-imposed deployment, prevention military education, pre-command and senior enlisted leader, SARCs, and VAs, and Chaplains."

Any objection to this proposed recommendation? I guess I have one comment. I think that DoD has established comprehensive training requirements, but I'm not sure that they ensure that all personnel will receive all this information. I mean I think they are designed to ensure but can we say that they do? Just a thought I had about this.

GENERAL HAM: This is Carter. I agree with that, that just to say that "are designed to," I think that makes a lot of sense. We just don't, well, we know that they are not, we know there are gaps in the information and we don't really know the full effectiveness of some of the policies yet.

MS. HOLTZMAN: Right. Also, in Finding, the second one, okay, sorry. I thought it was a grammatical problem, but there isn't any. Does anybody have any comments to this or any objections or any thoughts? I know, but I

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think we understand it. If nobody's got any objections, then it's approved.

LT COL GREEN: We have two additional points that we noted from previous discussion. The first is General Ham and Ms. Frost, you both raised the outside review. We've included that, and you all approved the Finding related to climate surveys and review of SAPRO programs there, but does the Subcommittee want to make a broader overarching recommendation for outside oversight from an external agency or from an external group?

MS. FROST: I don't think I would use the term oversight.

GENERAL HAM: This is Carter. I thought the phrase that we used was advisory panel --

MS. FROST: Right.

GENERAL HAM: -- for the Secretary of Defense. I still think that's a worthwhile consideration and, you know, when the Secretary of Defense has lots of advisory panels, I think given the importance of sexual assault it is not a bad thing if he has a body kind of outside of his official advisor, Service Secretaries and Chiefs and others that to -- you know, they're in a position, frankly, to say the emperor has no clothes. I think there's some goodness in that.

MS. HOLTZMAN: I don't disagree. It's such a good suggestion. So where do we put that, Kyle?

LT COL GREEN: That's a good question, ma'am.

MS. FROST: Maybe right up front in Legislation and Policy, no,

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it really isn't.

MS. HOLTZMAN: Well, put it at the end, then.

LT COL GREEN: For accountability?

MS. HOLTZMAN: Yes, it's to give the Secretary of Defense an outside, you know, perspective on all of these changes and the unvarnished truth about what's happening. I don't -- pardon?

COL HAM: Do the members have any suggestion on the general type of entities that would be on the advisory panel, or just leave it generic?

GENERAL HAM: This is Carter. I don't think we would need to get into the business of who ought to be in it. Typically, such advisory panels are a mix of some people who will have military experience, some who do not, there. In this case, I would hope that there would be people with some longstanding interest in this particular issue. Obviously, you need some legal advice as well.

But I would say steer away from a specific recommendation, just this recommendation that there be an advisory panel. So this is Carter. For a place to consider it is in Recommendation 22, where we're talking about overall of that periodic evaluation.

LT COL GREEN: And that was my question, sir, was whether or not that encompassed what you all were discussing.

GENERAL HAM: Well, I mean the Subcommittee may have to make a choice. I'd be supportive of specifically mentioning in that recommendation

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the Secretary of Defense appointing an advisory panel.

LT COL GREEN: Yes, sir. And that really is different than just the periodic and regular evaluation of programs.

MS. HOLTZMAN: Yes, but it kind of fits into it because it gives him a broader perspective on what's happening or what outside people feel is happening.

GENERAL HAM: Yes, this is Carter. So for example, So DACOWITS is a standing body that -- and I think they do have regularly periodic evaluations that are recommendations. Well it'd be kind of on that same plane, that same level, I think, at least what's in my mind.

LT COL GREEN: Sir, we're just talking about it. The Recommendation 22 is under the sub-section of Command Climate. Does that narrow it too much, in terms of where to make the recommendation? Should it be in a different section? Should we repeat, essentially create a short, standalone recommendation specific to the advisory board in somewhere else?

GENERAL HAM: Yes, I don't think it would -- I think it'd be okay in 22. The other option, I guess, would be to put it, starting off under Legislation and Policy. And I guess the other piece to consider, you know, maybe this falls outside of the purview of this Subcommittee.

MS. HOLTZMAN: Well, you know, I mean, it doesn't really fall that far out, because in Recommendation 22, we talk about "useful feedback to the

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Department and enhance public confidence in SAPRO programs and initiatives." And I don't think that this -- I think it'll be okay to say something along the lines of yes, this is the response path is just ignore it.

But I don't think it's a bad idea to say, "and further to enhance feedback and to enhance public confidence, we recommended the Secretary appoint an advisory panel on these issues."

GENERAL HAM: So this is Carter. So Liz, how about, if it's okay, I'll send some possible language to Kyle and the body to consider it to be included in Recommendation 22, and then you guys can take a look at it and see if you think it fits.

MS. HOLTZMAN: Okay, is there anybody who objects to that? Any other comment about that? Okay so that's --

LT COL GREEN: Ma'am, from the Staff and General Ham, just thinking about it, we're concerned that because it is sort of an overarching recommendation, our thought is that it may bury it, if we put it there and you mentioned the policy section and we could certainly add just a short recommendation on an advisory board in the Recommendations on Legislation and Policy.

GENERAL HAM: This is Carter, I'm happy either way, frankly.

MS. HOLTZMAN: I like some -- right. This is Liz Holtzman and I feel -- I'm okay either way, too. But I think if we're going to have it as a standalone, maybe we just -- I like the idea of using the words feedback and public

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confidence somehow in the language, because I think that's what would be very useful, I think. I think it's a good suggestion. Okay, so I guess, General Ham, you're going to prepare some language for us to look at?

GENERAL HAM: Yes, ma'am, I will.

MS. HOLTZMAN: Great. And so I guess, how do we deal with that? Do we just approve it by, informally or, Kyle, what's the procedure?

LT COL GREEN: Yes, ma'am. What I will do is I will take all of these and we had some minor word tweaks, and I will forward out to the Subcommittee members a final copy, and if we can just get an email approval, if everyone's comfortable with the language at that point. I don't know that we need another discussion on it. We should be able to just make sure that we've captured it.

MS. HOLTZMAN: Well, as I understand it, basically, we've agreed in concept with the idea that there should be an advisory committee and what has to be approved is the exact language. So, if that's the case, then the record will reflect that. So I don't think we have anything further to discuss. Is that correct? Kyle?

LT COL GREEN: Ma'am, the only thing, just one point on the Recommendations regarding Congress modifying, not modifying the authority vested in senior commanders. This is a repeat of the recommendation of the initial assessment.

We noticed that there's nothing in there or a finding as to the

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conflict of interest issue with commanders. That was an initial finding in the initial assessment and we're racking our brains here to figure out, or try to recall if that was specifically excluded or if that's an oversight and we -- the Subcommittee members want to include basically recapturing the conflict of interest finding in the initial assessment.

MS. HOLTZMAN: Kyle, what would it say, in general? What would the language be?

LT COL GREEN: Ma'am, I think what we had was that, something to effect that there's no inherent conflict of interest in the senior commanders making convening authority decisions for courts-martial; commanders face decisions with competing interests in the regular course of their duties.

I'm paraphrasing, but I think that was the context of what was in the initial assessment. And it may just be an oversight that we missed that, but obviously, conflict of interest has been a recurring discussion that this Subcommittee has considered and so I want to make sure that we're not missing that.

MS. HOLTZMAN: Is there any comment about that?

Does everyone feel that we should get some language on that subject again? Anyone object to it? Well, it sounds to me like everybody feels that you should prepare something, Kyle. We just love giving you homework.

LT COL GREEN: That's easy, ma'am. We will look through what we have in the initial assessment and add it back in as part of Recommendation

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17, so I'll highlight that in the final version and let you see what we've added.

MS. HOLTZMAN: Well, Kyle, may I suggest given that it's -- highlighting it in the final version, I would recommend, instead, that you send around an email with two matters for approval. Number one, the approval of the wording that General Ham will have for us on the advisory committee. And secondly, noting that this was admitted and we need to have it either approved or rejected again by the Subcommittee. And so people will focus on it and we won't have any question about, oh, I didn't see it, something like that.

LT COL GREEN: Okay.

MS. HOLTZMAN: So I would suggest doing that separately and then we can get it a proper vote and then you can send out whatever else -- then we're basically finished at that point. Right?

LT COL GREEN: Yes, ma'am. Yes, ma'am, I believe so.

COL HAM: I guess, ma'am -- Colonel Ham -- the remaining item for Judge Jones and the rest of the Subcommittee is how to brief the full Panel on this, and whether it will be all Judge Jones, or all the full Panel members, or the entire Subcommittee, and I don't know if she has made that determination yet. She is coming here tomorrow to talk to us about the presentation. Maybe there'll be more information after that.

MS. HOLTZMAN: Well, does anybody have any comments about that? Any feelings we could report to her what people think?

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I mean, personally, I think people have worked so hard on this that they should be able to, if they want, brief the entire Panel and respond to questions from the entire Panel. If they don't want to, I guess they don't have to. But they should have that opportunity would be my view on it. But, and my recommendation to her. I don't know how anybody else feels.

MG ALTENBURG: I agree with that. There's just a few of us that aren't on the Response Panel anyway, but I agree that we ought to have that opportunity should we choose to.

MS. HOLTZMAN: Right.

MG ALTENBURG: It's another opportunity for dialogue, you know, for the people that are on the Response Panel.

MS. HOLTZMAN: Okay, does anybody make a suggestion to the Chair? Okay, hearing none, objections. So we will -- Colonel Ham, would you mind?

COLONEL HAM: Yes, ma'am, I'll tell her.

MS. HOLTZMAN: Yes, Judge Jones.

COLONEL HAM: And I think her overall approach is all the Subcommittees will do a similar brief-out and it will, you know, kind of follow a standard format and it would be, you know, it would involve, I hate to say the word, PowerPoint, because that just fits the scope of breadth of all the Recommendations.

So it would cover all the Findings and Recommendations, and if

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there were any rationale or anything like that as well as up-front, the methodology and what you were directed to examine. So I will probably be in touch with a draft of that, you know, early next week, as soon as we get the Judge's thoughts on it tomorrow. And I'll be sure to pass on your recommendation.

MS. HOLTZMAN: Okay. Well, anything else that we have to do? Kyle? Colonel Ham? Well, let me thank you very much for your patience with me, to all the members of the Subcommittee, and for all of your hard work. I'm very grateful for that, and for the professionalism that you've all shown.

LT COL GREEN: Thank you, ma'am.

MG ALTENBURG: Thanks very much, Ms. Holtzman.

MS. HOLTZMAN: Thanks to the Staff, too for their amazing hard work. Okay, everybody, thank you very much. I think this meeting is finished. Do we need to, the closer to close this?

LT COL HUNSTIGER: I certainly can do that if you like, ma'am.

All right, so the Role of the Commander Subcommittee meeting is now closed.

(Whereupon, the foregoing matter went off the record at 3:57 p.m.)

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