

UNITED STATES DEPARTMENT OF DEFENSE

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RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT
CRIMES PANEL

VICTIM SERVICES SUBCOMMITTEE

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CONFERENCE CALL

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FRIDAY
APRIL 25, 2014

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The Subcommittee convened telephonically at 9:00 a.m. Eastern Daylight Time, Mai Fernandez, Chair, presiding.

PRESENT:

MAI FERNANDEZ, Chair
DEAN MICHELLE ANDERSON
BILL CASSARA
MEG GARVIN
HONORABLE ELIZABETH HOLTZMAN
DEAN LISA SCHENCK

STAFF:

BILL SPRANCE, Designated Federal Official
COLONEL PATRICIA HAM, Staff Director
COMMANDER SHERRY KING, Supervising Attorney

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

(9:08 a.m.)

MR. SPRANCE: Okay, I'll start it.

Good morning. This is Bill Sprance, the Designated Federal Official, and this meeting of the Victim Service Subcommittee is now open.

CHAIR FERNANDEZ: Terrific, thank you. Thank you all for being on this additional call. I also want to thank Michelle. I thought what you wrote was really good.

I think the way we ended it last -- yesterday, was that we were all going to do an up or down vote on that particular recommendation, and that we were going to email in our votes. Am I correct in my summary?

DEAN ANDERSON: This is Michelle. I thought that we were going to review the revisions and -- on this call, and make a determination on this call, rather than an up

1 or down vote by email. I'm willing to go that
2 way too, but I just think we need to limit the
3 amount that we discuss, because we have to go
4 through so many more recommendations.

5 CHAIR FERNANDEZ: Yeah, okay.
6 Let's open it up and was everybody able to
7 review what Michelle wrote?

8 MR. CASSARA: Michelle, was that
9 the thing that came in -- I'm sorry. I wasn't
10 here yesterday.

11 CHAIR FERNANDEZ: Yes, yes Bill.

12 MR. CASSARA: Thank you.

13 COL HAM: And this is Colonel Ham.
14 The first bullet is one of your
15 recommendations in the SVC portion. It is
16 Recommendation No. 8 in the SVC portion.

17 DEAN ANDERSON: Right. So this is
18 Michelle. So it simply states the more
19 generic proposition, that there is a right to,
20 and then the second -- and we may or may not
21 want to duplicate that effort here. The
22 second is a structural or sort of procedural

1 directive to implement that right.

2 (Simultaneous speaking.)

3 REP. HOLTZMAN: -- of the SVC.

4 What page is this?

5 CDR KING: It's on page 110,
6 ma'am. This is Sherry, Recommendation 8.

7 Just for the court reporter, we need to try to
8 remember to say our names if you can, please.

9 DEAN SCHENCK: This is Lisa. Why
10 wouldn't we put them both in the SVC section?
11 I understand one is a directive regarding the
12 military police. But I don't know. I think
13 if you're talking SVC, maybe we should
14 centrally locate it.

15 My second question is are we
16 allowed to discuss whether we like this or
17 not, or are we deciding we're not discussing
18 it?

19 CHAIR FERNANDEZ: No. We're
20 discussing it, but we're just trying to limit
21 the discussion and try to get to a conclusion
22 as quickly as we can.

1 DEAN SCHENCK: This is Lisa. I
2 think logistically requiring an SVC, telling
3 them they can have an SVC before they can do
4 anything, is going to cause a lot of problems
5 with the investigation, the process of the
6 investigation, including attempting to get,
7 you know, to catch the perpetrator.

8 So we do have some cases where
9 they don't know the perpetrator. We do have
10 some cases -- again, we do have some cases,
11 many cases where it's an unknown perpetrator,
12 where the perpetrator's running, the
13 perpetrator's gone, and it's on the victim
14 maybe I want to see that special victim
15 counsel.

16 So that's going to interfere with
17 the process of the investigation, while we
18 wait for the SVC to come talk to the victim
19 about alcohol. Do you see what I mean? I
20 just think it's going to be logistically
21 problematic.

22 CHAIR FERNANDEZ: This isn't the

1 alcohol. This is strictly whether they want
2 to go restricted or unrestricted.

3 DEAN SCHENCK: Yeah, but --

4 CHAIR FERNANDEZ: This is
5 inadvertent.

6 DEAN SCHENCK: They're going to
7 ask -- this is Lisa. They're going to tell me
8 I get a special victim counsel. Oh, what does
9 a special victim counsel do? Well, they're
10 going to advise you as to this, this, this and
11 this, including -- it's a lawyer.

12 If I'm a victim and I'm concerned
13 about myself, about anything, about anything,
14 I wasn't in the barracks room. I wasn't
15 supposed to have anybody in the barracks room
16 after two in the morning or some, some
17 violation, some minor rule.

18 If I hear the word "get a lawyer,"
19 they are going to ask for a lawyer, whether or
20 not they're going to advise me about
21 restricted and unrestricted. SARC can talk to
22 them about restricted and unrestricted, and

1 that's who they usually go to. I mean the
2 SARC's going to be able to talk to them about
3 restricted and unrestricted.

4 I think as of right now, the SARCs
5 are thinking, because I think we're
6 questioning people as to this. The SARCs are
7 saying this is what restricted means, this is
8 what unrestricted means, and you can get a
9 special victim counsel at that point.

10 So we're adding yet another gate
11 or a speed bump, I want to say, to the
12 investigative process.

13 CHAIR FERNANDEZ: Okay. Can we
14 hear something that's either the same as
15 Lisa's or different?

16 REP. HOLTZMAN: This is Liz
17 Holtzman. I just want to add something that
18 I thought. If the police think that this will
19 impede them, they'll probably conduct as much
20 of the investigation as they can before they
21 talk to the victim. So they're going to get
22 around this. Could.

1 I just don't know how effective --
2 I mean I think it's the drafting, Michelle.
3 But I just, one, don't know how effective it's
4 going to be in achieving the objective. I
5 think it can be easily circumvented. I have
6 the same concerns that Lisa does.

7 MS. GARVIN: This is Meg. I just
8 want us to be clear. They already do have the
9 right to have counsel before talking to the
10 investigators.

11 We're just -- this reference is
12 just saying the police should be one more
13 person that tells me you have the right, and
14 I'm a little befuddled that we think that the
15 police shouldn't be part of the process of
16 telling people their rights.

17 But the honest assessment is could
18 it interfere with investigations. The honest
19 answer is yes. All rights can interfere with
20 investigations, whether those are defendant's
21 rights or victim's rights. That is the lay of
22 the land with regard to rights in the criminal

1 process.

2 I guess I'm not particularly
3 concerned about that. I'm much more concerned
4 about the victim knowing what he or she is
5 entering into and doing it willingly and
6 knowingly.

7 COL HAM: This is Colonel Ham. Is
8 there any concern with potentially replacing
9 a current Article 31(b) right with -- rights
10 warning with another rights warning?

11 CHAIR FERNANDEZ: What's a 31(b)
12 right?

13 COL HAM: You have the right to --
14 if you're a suspect of an offense, you have
15 the right to remain silent. Anything you say
16 can and will be used against you. You have
17 the right to an attorney.

18 CHAIR FERNANDEZ: Miranda.

19 COL HAM: But beyond Miranda,
20 because it advises of exactly what offense
21 someone is suspected of. So it's beyond
22 Miranda, and it's triggered by suspicion of

1 commission of offense, not custodial
2 interrogation. So if there's any collateral
3 misconduct the person is reasonably suspected
4 of, they'll have that rights warning, and
5 they're going to have another rights warning
6 that if they talk to the police they can talk
7 to another attorney.

8 I'm just raising it, because now
9 you're talking about potential multiple rights
10 warnings before a victim talks to a police
11 officer or an investigator.

12 CHAIR FERNANDEZ: Yeah. This is
13 Mai. I'm not overly-concerned with somebody
14 being supplied with too much information from
15 the get-go. I think it's somewhat innocuous.
16 I think it tells everybody look, this is --
17 these lawyers are for real. You get them from
18 the very start.

19 I think the way that this is
20 written up right now, it provides information
21 without providing too much obstruction. I
22 mean that's my take on it. Bill, what do you

1 think? Bill, are you there?

2 MR. CASSARA: I took a phone call,
3 and I had to mute you all for a second. So I
4 apologize for that. This is Bill obviously.
5 So the question posed to me was?

6 CHAIR FERNANDEZ: What do you
7 think about Michelle's rewriting?

8 MR. CASSARA: I will tell you that
9 from -- I don't really have an issue with it.
10 I mean my only concern when I read it was how
11 are we going to educate the first responders,
12 so to speak, to make sure that they do this
13 right. I mean obviously this is before I or
14 any of my people, any of my peeps would get
15 involved in this.

16 But you know, having met a number
17 of young MPs over the years, I'm not sure that
18 this is going to be conveyed correctly, or CID
19 agents, you know, because when a CID agent
20 gets on the scene, you know, it's almost like,
21 you know -- it's almost like reading a suspect
22 their Article 31 rights, you know.

1 Occasionally, they do stop
2 talking, and if you start telling the victim
3 that, you know, she has a right to meet with
4 an attorney or he then, you know as Lisa said,
5 you do run the risk that they are going to
6 stop talking.

7 CHAIR FERNANDEZ: Who just joined
8 the meeting? This is Mai, sorry.

9 MR. CASSARA: I don't think
10 there's a better solution, but that was my
11 only concern when I read it.

12 CHAIR FERNANDEZ: I'm sorry. Who
13 just joined?

14 DEAN ANDERSON: This is Michelle.
15 I got cut off.

16 CHAIR FERNANDEZ: Oh, okay.

17 DEAN ANDERSON: Sorry about that.

18 CHAIR FERNANDEZ: Has everybody
19 who's on the line had an opportunity to speak
20 on this matter?

21 DEAN ANDERSON: I think -- I just
22 want to underscore. This is Michelle. I want

1 to underscore how modest this proposal is.
2 This is only about directing military police
3 to advise a victim of their rights. Military
4 police advise people of their rights all the
5 time.

6 They're trained to do so. Do they
7 do it perfectly every time? No. Are they
8 sometimes too young to do it well? Sure. But
9 that's true with defendant's rights.

10 This is a modest proposal that
11 simply allows the victim again, if she is
12 approached by the police, to understand that
13 she has an opportunity to consult with an
14 attorney before making a decision about
15 whether or not to go on the record with the
16 police with an unrestricted report, or whether
17 to decline to do so.

18 CHAIR FERNANDEZ: Okay. Let's --
19 I think we've had the discussion that we can
20 have on this. I'm prepared to take a vote on
21 this, and I'm going to vote that we go for the
22 proposal that Michelle wrote. Anybody else

1 like to go next?

2 DEAN ANDERSON: This is Michelle.
3 I'll vote for it.

4 MS. GARVIN: This is Meg. I'll
5 vote for it.

6 DEAN SCHENCK: This is Lisa. I'm
7 against it.

8 MR. CASSARA: This is Bill. I am
9 for it.

10 REP. HOLTZMAN: Liz Holtzman, I'm
11 against it.

12 CHAIR FERNANDEZ: Okay. Sounds
13 like the for have outweighed the no's, so the
14 proposal stays in. To be exact, Michelle's
15 language that she just redrafted stays in.

16 DEAN SCHENCK: Okay, this is Lisa.
17 I do have one comment. I believe the
18 language, the way it's phrased, needs to be
19 modified, in that we should direct the
20 Secretary of Defense. We shouldn't tell the
21 Secretary of Defense to direct the DoD. We
22 should direct the Secretary of Defense to do

1 it.

2 So the Secretary of Defense direct
3 -- the Secretary of Defense develop and
4 implement policy, do you see what I mean? We
5 don't need that "direct the DoD" in the
6 middle.

7 MR. CASSARA: I think what you're
8 saying is that comes from the Department of --
9 as we say, the Department of Redundancy
10 department. The Secretary of Defense is the
11 Department of Defense, so --

12 DEAN ANDERSON: Yeah, sorry. This
13 is Michelle. I was simply mimicking language
14 that I saw elsewhere. I certainly defer to
15 the staff and to others about what the
16 directive -- where the directive goes.

17 CDR KING: And do you want this
18 moved to the special victim counsel portion,
19 or do you -- what do we do with the first
20 bullet, because that's already in your report?
21 Or do you want us to replace what you have
22 with this in the special victim's counsel

1 section?

2 DEAN ANDERSON: I don't think it's
3 a bad idea, because it seems to be -- do we
4 put it in both?

5 REP. HOLTZMAN: This is Liz
6 Holtzman. Could you please advise me what
7 page the bullet is on?

8 COL HAM: Yes ma'am. It's on page
9 110. It's Recommendation 8.

10 REP. HOLTZMAN: That's the first
11 bullet?

12 COL HAM: Yes ma'am.

13 REP. HOLTZMAN: I must have a
14 different document then. This is April 23 '14
15 draft?

16 COL HAM: Yes ma'am, and that's
17 what I'm saying. The first bullet is already
18 in the document. What I'm asking is do you
19 want the second bullet in the same place, or
20 do you want it in Victim Services? I'm just
21 trying to figure out where you want it.

22 REP. HOLTZMAN: I don't know. I

1 guess I must have a different document, 108.

2 Is that the one, 108 or 110?

3 COL HAM: 110 ma'am,

4 Recommendation 8.

5 REP. HOLTZMAN: Where is your
6 first bullet? I only see one item there, one
7 paragraph. I don't see any bullet.

8 DEAN ANDERSON: We're talking
9 about the email.

10 COL HAM: The bullet, ma'am, is on
11 the email that Dean Anderson sent. I'm sorry
12 I'm not being clearer. The top bullet on Dean
13 Anderson's email is already Recommendation 8
14 on page 110.

15 DEAN SCHENCK: This is Lisa. It's
16 on page 106, Liz. I think it's probably
17 printed on your page 106.

18 DEAN ANDERSON: So this is
19 Michelle.

20 REP. HOLTZMAN: It's on 106 or
21 whatever. Okay. I don't have it, because
22 we're not dealing with pages, but that's okay

1 with me.

2 CHAIR FERNANDEZ: Okay. Let's
3 move on folks, because it's 9:20.

4 MS. GARVIN: Actually Mai, this
5 is Meg. I know we need to move on, but I
6 think they're not identical recommendations.
7 One actually explicitly talks about the victim
8 having a right to consult with --

9 The way Michelle drafted it, it's
10 slightly different language intended to get to
11 the same thing. I would say we substitute out
12 Recommendation 8 and put this, which is a
13 stronger, clearer directive recommendation in.

14 COL HAM: Okay. So you want the
15 language after "make a restricted or
16 unrestricted report," the language "or no
17 report at all"?

18 REP. HOLTZMAN: Excuse me. I
19 think as a member of the subcommittee, I am
20 entitled to understand exactly where you are,
21 so I can follow the discussion. I cannot
22 follow the discussion because you're talking

1 about two bullets, moving something from one
2 place to another. I'm sorry, I just don't
3 know where you are.

4 CHAIR FERNANDEZ: Liz, did you get
5 Michelle Anderson's email?

6 REP. HOLTZMAN: Yes.

7 CHAIR FERNANDEZ: It talks about
8 Recommendation No. 2/5.

9 REP. HOLTZMAN: I have that.

10 MS. GARVIN: So ignore the
11 recommendation -- this is Meg for the record.
12 Ignore that opening language, that that is the
13 correct email. It's those two bullets, taking
14 those two bullets, putting them in the text of
15 the Word document that we were looking at
16 yesterday --

17 (Simultaneous speaking.)

18 MS. GARVIN: -- yes, on page 110.

19 REP. HOLTZMAN: It was on page 57
20 or something like that yesterday. Okay. But
21 you're on page 110, and you're substituting
22 these two bullets points in the email for the

1 Recommendation No. 8 that's on page 110, draft
2 23 April '14?

3 MS. GARVIN: Correct.

4 CHAIR FERNANDEZ: Correct.

5 REP. HOLTZMAN: And the language
6 you're substituting -- the language you're
7 omitting, it starts "The Secretary of Defense
8 implement a policy which clarifies that a
9 victim may consult with and receive an SVC"?

10 MS. GARVIN: Correct.

11 REP. HOLTZMAN: You're going to
12 take that out?

13 DEAN ANDERSON: Yeah, that first
14 sentence, that first sentence where it says
15 "The Secretary of Defense implement a policy"
16 -- this is Michelle. That first sentence is
17 substituted with the language of the new
18 recommendation. I do want to keep the
19 sentence that says "Communication made during
20 this," and I would just take out the word
21 "initial."

22 "Communication made during this

1 consultation would be confidential and
2 protected under attorney-client privilege."

3 I also agree with Colonel Ham, that the "or no
4 report at all" is appropriate language to
5 mimic in the first sentence.

6 MS. GARVIN: This is Meg. I
7 agree with that.

8 DEAN ANDERSON: So then we're only
9 -- I think if Liz knows where we are, I think
10 we're only on the question of whether or not
11 this -- these two bullets of recommendations
12 show up twice in the report or once in the
13 report, and for me it really comes down to a
14 question of structure.

15 To the extent that we're making
16 findings about the victim's inability to
17 control the information and to -- and to have
18 that information leaked in different ways, and
19 then it automatically become a restricted or
20 an unrestricted report, I do think a finding
21 -- a recommendation that the victim retain
22 control about whether or not they can make a

1 restricted or unrestricted report after
2 consulting with an SVC is important to have,
3 in the section where we talk about the lack of
4 control victims have over the information.

5 I also think it belongs with the
6 SVC section because it more clearly identifies
7 when the right attaches, if it has not
8 attached heretofore, and that is when the
9 investigation commences, or when there's a
10 potential for an investigation commencing
11 actually.

12 So I would opt, although I don't
13 feel strongly about this, I would opt to have
14 it in both places, depending on how we
15 structure the findings.

16 CHAIR FERNANDEZ: This is Mai.
17 That's what I thought from the get-go, we
18 should put it in both places.

19 MS. GARVIN: This is Meg. That
20 makes sense to me.

21 CHAIR FERNANDEZ: Okay. Anybody
22 have opposition to that?

1 (No response.)

2 CHAIR FERNANDEZ: Okay. Let's
3 move on. Meg, yesterday we ended our
4 conversation on the -- what do you call those
5 --

6 MS. GARVIN: The collateral?

7 CHAIR FERNANDEZ: Yeah, thank you,
8 the collateral misconduct, and I asked to see
9 if there was some way that you could come up
10 with some compromise language. Did you by any
11 chance --

12 MS. GARVIN: No, I have not done
13 that. If we can go through the rest of the
14 recommendations, I can be looking at it then.
15 But I don't have language to propose right
16 now.

17 CHAIR FERNANDEZ: Okay.

18 MS. GARVIN: So if you want to go
19 through something else and come back to it.

20 CHAIR FERNANDEZ: That sounds fair
21 enough, okay. So now I'm lost. Which
22 recommendation do we go to next? Sherry, 20?

1 CDR KING: Yes.

2 CHAIR FERNANDEZ: Sherry, could
3 you read 20?

4 REP. HOLTZMAN: Where is that
5 page?

6 CHAIR FERNANDEZ: It's on page 77.

7 REP. HOLTZMAN: Didn't we skip
8 pages? Oh sorry. Okay, go ahead Sherry.
9 Sorry.

10 CDR KING: Okay. The
11 recommendation, the finding on Recommendation
12 20 is that the fear of damage to one's
13 military career deters victims from reporting
14 having been sexually assaulted, and then
15 Recommendation 20 reads "The Secretary of
16 Defense directs the DoD to implement policy
17 that protects victims of military sexual
18 assault from suffering damage to their
19 military careers, including weakened
20 performance evaluations or lost promotions,
21 security clearances or personnel reliability
22 certifications, based on having been a victim

1 of sexual assault, having reported sexual
2 assault, or having sought treatment for sexual
3 assault.

4 "Additionally, the DoD promulgates
5 regulations that ensure the SVC advise their
6 clients of the means by which they can
7 challenge any inappropriate personnel action,
8 based on having been a victim or seeking
9 treatment."

10 DEAN SCHENCK: Okay, this is Lisa.
11 Just a wording, and this goes to the other
12 recommendations on this page. Again, we
13 should direct -- we recommend the Secretary of
14 Defense implement policy, you see what I mean?
15 We don't need the Secretary of Defense
16 directing DoD.

17 Also in the finding, I think it
18 should say "deters victims from reporting a
19 sexual assault," or I mean I don't know if I
20 like "having been sexually assaulted." But
21 anyway, I'm fine with this. I also think we
22 should put, instead of "including," I think we

1 put "including, but not limited to," if you
2 think we need it.

3 CHAIR FERNANDEZ: I like the
4 including but not limited to language.

5 DEAN ANDERSON: Yeah, this is
6 Michelle. I do too.

7 REP. HOLTZMAN: This is Liz
8 Holtzman. That sounds like a contract. I
9 don't think this is a contract.

10 MR. CASSARA: I don't have any
11 issue with that. This is Bill.

12 CHAIR FERNANDEZ: Anybody else
13 have any commentary on this finding and
14 recommendation? Okay. I think most people
15 were okay with the including but not limited
16 to language. So we'll include that in, and
17 we'll go on to Recommendation 21.

18 COL HAM: Ma'am, if I could --
19 this is Colonel Ham. So 19 is in abeyance
20 right now or --

21 CHAIR FERNANDEZ: Yes.

22 COL HAM: Okay.

1 CHAIR FERNANDEZ: Meg is
2 scribbling as we are talking.

3 COL HAM: Okay. Then ma'am, the
4 ones that are highlighted were ones that we
5 think Dean Anderson has taken care of with her
6 redrafted recommendations. So it may be that
7 these all just get deleted.

8 REP. HOLTZMAN: Colonel Ham, what
9 are you referring to in these all?

10 COL HAM: Starting on page 77, the
11 ones that are highlighted, that say "previous
12 draft." Previous potential recommendations --

13 (Simultaneous speaking.)

14 REP. HOLTZMAN: Finding 22, 23,
15 24, 25?

16 COL HAM: Yes ma'am, yes ma'am.
17 We think those are all rewritten by Dean
18 Anderson. But we didn't want to delete them
19 until you gave us the okay to do so.

20 REP. HOLTZMAN: I don't
21 understand. Rewritten? Did we approve them
22 before? I guess I'm confused.

1 DEAN ANDERSON: So we actually
2 didn't -- this is Michelle. We actually
3 didn't review them before.

4 They were ones that we didn't get
5 to, and they were ones -- a lot of this
6 language, if you read through it, is language
7 that I pulled for both the text of the
8 description, which we didn't review in detail
9 on our phone calls.

10 But it's in the text of the
11 description of background information, and
12 it's also part of the findings and
13 recommendations that I developed from this.
14 So you know, like Finding 24 talks about
15 barriers to reporting. I think to the extent
16 possible we should go through these, because
17 we've never really looked at these.

18 REP. HOLTZMAN: Excuse me. This
19 is Liz Holtzman. We did look at Finding 22,
20 because I remember having objected to it, and
21 because I didn't think we were in a position
22 to -- I was commenting on the Secretary of

1 Defense and the military services' commitment
2 and --

3 DEAN ANDERSON: Yeah, and with
4 that thought -- this is Michelle -- I thought
5 we agreed with all that, and I didn't include
6 any of that information in Finding 22, because
7 I do recall that dialogue we had.

8 REP. HOLTZMAN: I think we should
9 just junk all of this on page 78 and 79, the
10 ones that are underlined. I don't think that
11 they're -- I don't know what the findings,
12 what recommendation could possibly come out of
13 them. I mean, I guess it's something that
14 could.

15 But I didn't know what they were
16 pointing to. So I don't know that we need
17 them. I don't know what recommendation they
18 relate to, and so I would just agree with
19 Colonel Ham's view, which is they're not
20 necessary and take them out. But you can't
21 just have findings without recommendations, I
22 think. I don't know.

1 CHAIR FERNANDEZ: Michelle, what's
2 your take? You wrote them up.

3 DEAN ANDERSON: Well, I think we
4 could actually fairly quickly go through
5 these, if we all -- and I -- you know, I
6 actually think that we could do it in five
7 minutes.

8 (Simultaneous speaking.)

9 REP. HOLTZMAN: Are we going to
10 read them --

11 DEAN ANDERSON: Pardon?

12 REP. HOLTZMAN: Are we going to
13 read them all?

14 DEAN ANDERSON: No. I mean I
15 don't think we should read them aloud. I
16 think we should look at each one of them,
17 though, and go through them fairly quickly,
18 and I can tell you whether I took the language
19 and where I put it or whether I junked it, if
20 that's helpful.

21 CHAIR FERNANDEZ: Yeah. I think
22 just a little bit of background on this, and

1 then I think we've got to figure -- I think
2 Liz makes a good, brings up a good issue. If
3 we're not going to have a recommendation that
4 goes along with these findings, structurally
5 what do we do with these?

6 DEAN ANDERSON: Okay. So possible
7 Finding 21. I'm on page 77. Are you guys
8 with me?

9 Okay. This is language that
10 evolved slightly, but it's background
11 information that came up, that went into
12 introductory materials.

13 It's not necessary to have it as a
14 finding. We actually have -- I reformulated
15 some of it and put it into the -- you'll
16 recall we voted yesterday in favor of a
17 provision that said they should be trained,
18 folks should be trained that this is about --
19 it doesn't destroy morale; it's consistent
20 with good order and discipline, etcetera.

21 So I think Finding 21 should be
22 junked.

1 CHAIR FERNANDEZ: Okay. Let's
2 junk it.

3 DEAN ANDERSON: Finding 22 was
4 objected to by Liz and many others of us. It
5 should be junked. I'm just saying what -- I
6 didn't include it anywhere.

7 CHAIR FERNANDEZ: Okay.

8 DEAN ANDERSON: Is this okay? You
9 guys all with me?

10 CHAIR FERNANDEZ: Yeah. We're
11 great, we're good. Keep going.

12 DEAN ANDERSON: Yeah. Finding 23
13 is about, has some of the language that is now
14 introductory language, about that this is one
15 of the most under-reported crimes in the
16 United States generally, and that there are
17 specific structural impediments to reporting
18 that are -- that derive from military -- their
19 structured military life.

20 So it's now in the introduction.
21 I don't think we need a finding. I think 23
22 goes.

1 CHAIR FERNANDEZ: Okay.

2 MR. CASSARA: We're on a roll.

3 DEAN ANDERSON: 24 is also -- it's
4 almost verbatim language. The first bullet in
5 24 is language that comes out, and is now part
6 of the introductory materials earlier in the
7 document. So Finding 24, first bullet, should
8 be -- there's no need to repeat it. It's
9 elsewhere in the document.

10 Finding 24, second bullet is about
11 the proximity of individuals on military
12 installations, alcohol. It seems like it was
13 pulling in a lot of information that was -- I
14 tried to separate these out and put these into
15 the proximity problem, and that goes with the
16 retaliation issue, among other things.

17 So it's elsewhere in the document,
18 more clearly associated with findings and
19 recommendations that we made in the document.
20 So I think the second bullet goes.

21 CHAIR FERNANDEZ: Okay.

22 DEAN ANDERSON: Finding 25, the

1 first bullet is elsewhere in the document.
2 It's now in introductory materials. Finding
3 25, second bullet is actually now in some of
4 the ideal, though it's not quite as strongly
5 stated. The idea is actually now in the
6 introduction to our entire Victims Services
7 Subcommittee report.

8 The third bullet is also verbatim
9 in the introductory materials to the whole
10 report. So Finding 25 is elsewhere, and
11 should go.

12 CHAIR FERNANDEZ: Okay.

13 DEAN ANDERSON: Finding 26. This
14 is about the kinds of services that are
15 important. That certainly shows up elsewhere
16 in the document, where talk about the victims
17 services. So this not all personnel assigned
18 demonstrates the quality or skills and this
19 recommendation.

20 Correct me if I'm wrong, Commander
21 King and Colonel Ham. These recommendations
22 and findings, I believe, are elsewhere in the

1 document, but I want to confirm that with the
2 two of you, at least something like them.

3 CDR KING: I think they are. I've
4 read it so many times. They've been in at
5 least one version. I'm pretty sure --

6 DEAN ANDERSON: I think they
7 showed on -- yeah. I think they showed up
8 under the SARC section, not the -- but I'm not
9 sure.

10 CDR KING: They show up under the
11 SARC and VA, and we have a specific
12 recommendation about both.

13 DEAN ANDERSON: Yeah, that's what
14 I thought. They're elsewhere in the document.

15 CDR KING: Yes.

16 DEAN ANDERSON: Possible Finding
17 28 is -- this is actually now broken out, the
18 concerns about retaliation, the concerns about
19 collateral misconduct and being believed and
20 being able to control the information. That's
21 now broken out into findings and
22 recommendations elsewhere. So I rewrote that

1 and put that into findings and recommendations
2 elsewhere.

3 MR. CASSARA: Okay.

4 CHAIR FERNANDEZ: Okay. Nice job,
5 Michelle.

6 DEAN ANDERSON: Oh thanks. I
7 think that this is really hard stuff, and I
8 think the hardest we're about to get to, and
9 that's collateral misconduct, right?

10 MR. CASSARA: Michelle, for your
11 hard work, we're doubling your pay.

12 (Laughter.)

13 DEAN ANDERSON: Doubling the
14 enormous amount I'm getting from the military.
15 That's right.

16 MR. CASSARA: There you go.

17 DEAN ANDERSON: For the record,
18 we're doing this for free. I'm doing this for
19 free, we all are.

20 MR. CASSARA: We all are.

21 DEAN ANDERSON: Okay. So I think
22 the only thing we still have outstanding is

1 the question of collateral misconduct, is that
2 true?

3 CHAIR FERNANDEZ: That's is
4 correct.

5 DEAN ANDERSON: Okay.

6 REP. HOLTZMAN: Wait a minute.
7 This is Liz Holtzman. We haven't gone through
8 the other recommendations, crime victims
9 rights and the other recommendations in the
10 rest of the draft.

11 CDR KING: This is Sherry. We
12 have Mr. Cassara's additional view, and then
13 some of the crime victim rights, at least one
14 or two of the recommendations in there are
15 new. So if we want to do that, and then
16 there's a couple of new ones in the SVC that
17 you haven't previously seen before.

18 So I'm not sure. It might be
19 easier to go to Mr. Cassara's additional view
20 and then before you go to the crime victims
21 section. We could either do that first or do
22 the SVC new recommendations first.

1 DEAN SCHENCK: Well, this is Lisa.
2 I'd like to do Bill's while we've got Bill on
3 the line.

4 MR. CASSARA: I'm here.

5 CDR KING: That's at page 129.

6 MR. CASSARA: And I personally
7 thought it was brilliant, but that's me. As
8 we've done previously, I would like to express
9 my gratitude to the staff for helping me write
10 this, because I'm nowhere near this coherent.
11 Makes me sound much smarter than I am.

12 DEAN ANDERSON: Could you guys
13 tell us what page it is again? I apologize.

14 MR. CASSARA: 129.

15 DEAN ANDERSON: Okay, thanks.

16 REP. HOLTZMAN: Bill, this is Liz
17 Holtzman. I just have one question about the
18 -- and on page 131. In the third bullet, when
19 you say "The members should be instructed,"
20 are you referring to jurors? Is that the part
21 for jurors?

22 MR. CASSARA: Yes, yep.

1 REP. HOLTZMAN: Okay. Well, okay.
2 I basically appreciate very much the dissent
3 and your comments, and I personally agree with
4 the last four bullets. I do have a problem
5 with the third bullet, and I'd like you to
6 explain why you think that's important,
7 because my concern about that is that I don't
8 know what an interview is. Is that under
9 oath?

10 MR. CASSARA: Well, no. An
11 interview itself is generally not under oath,
12 unless the judge has ordered a deposition.

13 REP. HOLTZMAN: Right. So this
14 would not be under oath?

15 MR. CASSARA: Right, and my
16 concern is this. When combined with the
17 recent changes to Article 32 hearings, where
18 the ability of the defense to question,
19 rather, the alleged victim of a sexual assault
20 is going to be severely curtailed, to put it
21 mildly.

22 We heard some testimony from the

1 one federal public defender who, when I asked
2 him, you know, about how this works out in the
3 federal system, he said "Frankly, many times
4 it's trial by ambush."

5 I'm concerned that we are going --
6 we're going to be in a position where the
7 defense counsel have not interviewed the
8 alleged victim prior to trial, because he or
9 she has refused to.

10 The only opportunity that they're
11 going to get to question the alleged victim in
12 any form is at trial, and any -- which is
13 going to be obviously limited to a cross-
14 examination of those matters raised by the
15 direct examination.

16 So if we've gotten to a point
17 where the defense has never spoken to this
18 person outside of the realm of the trial
19 itself, there is no way that the defense is
20 going to know what is going to come out, and
21 they could be severely ambushed.

22 Again, we run into -- you know,

1 this is the other problem. When you combine
2 the change in Article 32 with the fact that we
3 go to sentencing right after findings.
4 There's no pre-sentence report. So the guy's
5 convicted at noon. On Monday at two o'clock,
6 on Monday at three o'clock, they start
7 sentencing.

8 REP. HOLTZMAN: Okay, Bill. This
9 is Liz Holtzman again.

10 MR. CASSARA: All right.

11 (Simultaneous speaking.)

12 REP. HOLTZMAN: If we were to
13 adopt the last four bullets.

14 MR. CASSARA: I'm sorry, say that
15 again?

16 REP. HOLTZMAN: If we were to -- I
17 personally think the last four bullets make a
18 lot of sense and are fair. But I don't know
19 why -- I think that if you had those last four
20 bullets, that would affect the statement you
21 just made.

22 I also don't know why the

1 interview needs to be pretrial that you've
2 asked for in Bullet No. 1. If this has to do
3 with sentencing, I could open to an interview
4 prior to the sentencing.

5 But I'm not sure I would agree to
6 a pretrial interview because, you know, that
7 opens up the possibility for harassment and
8 all the rest, that we've often seen in these
9 cases.

10 MR. CASSARA: Well, but I mean
11 with the new changes to Article 32, any
12 pretrial interview would include a special
13 victims counsel and/or the prosecutor. So I
14 think that the potential for harassing or
15 embarrassing the victim are severely
16 diminished.

17 REP. HOLTZMAN: I understand that.
18 But I think that if we adopted bullets, 1, 2,
19 3, 4 and we went to a post-trial presentencing
20 interview, I would have less objection. I'm
21 not sure I would still support it, but I think
22 that that would -- you know, I would have much

1 less concern about that.

2 MR. CASSARA: I understand.

3 CHAIR FERNANDEZ: Let me ask,
4 though. This is a dissent. I mean I don't
5 know if we need to support a dissent.

6 MR. CASSARA: Right. I was just
7 getting ready to say, Sherry, correct me if
8 I'm wrong, but can somebody do, you know, sort
9 of a concurrence in part like they would do in
10 a federal court, rather than a typical --

11 REP. HOLTZMAN: I'm sorry. This
12 is Liz Holtzman again. My proposal would be
13 that we adopt -- so that it's not part of the
14 dissent, that we adopt the last
15 recommendations, the recommendations that are
16 contained in the last four bullets that Bill
17 has proposed.

18 DEAN SCHENCK: This is Lisa. I
19 completely agree with Liz. The problem --
20 Bill, the last bullet, when the accused gets
21 to make an unsworn statement, I don't believe
22 that the government can make objections. Can

1 they?

2 MR. CASSARA: Well, in some cases
3 they can. For example, CAAF came out with a
4 case just this week about the government being
5 allowed to object to certain references to sex
6 offender registry.

7 DEAN SCHENCK: Okay. So why would
8 we expand the type of objections, the number
9 of objections that the defense can use against
10 a victim, when the accused himself only has
11 limited, you know, he can say whatever he
12 wants, and the government can only object to
13 minor things, that one CAAF opinion.

14 But generally, the government's
15 just restricted to providing additional
16 information, you know, rebutting what was said
17 in the unsworn. By that time, you really
18 don't want to do it. So I understand the
19 position of the defense. It's been more to
20 the position of the government, when the
21 accused makes an unsworn statement.

22 So I'm with Liz. I completely

1 agree. We should absorb all these bullets
2 except for the last one. I believe the
3 objections, whatever objections that are
4 authorized for the government when the accused
5 makes an unsworn statement, those would be the
6 objections that would be authorized for the
7 defense.

8 MR. CASSARA: That's not my
9 intent Lisa, just so you know.

10 DEAN SCHENCK: Then maybe you
11 should just rephrase, because like I said, the
12 accused gets to rant on and on, and the
13 government is stuck to rebuttal information.
14 I've got to run to a faculty meeting. I'll be
15 listening until about three more minutes,
16 okay.

17 REP. HOLTZMAN: Lisa, this is Liz
18 Holtzman. Maybe I didn't make myself clear.
19 I'm not in favor of Bullet No. 1. I don't
20 know whether you are. As written, I'm not in
21 favor of it. The pretrial interview of the
22 witness, of the victim.

1 DEAN SCHENCK: You know, we do
2 have those cases. This is Lisa. We do have
3 those cases where the victim, at this point
4 now, isn't going to be required to testify at
5 a 32.

6 The victim may not testify on the
7 merits, because the victim -- the victim, the
8 accused may plead guilty, and then the defense
9 has never had a pretrial interview with that
10 victim. So you know, I'm torn on that one.

11 REP. HOLTZMAN: Well my suggestion
12 is to make it post-trial, post presentation of
13 evidence, just as the sentencing, before the
14 sentencing takes place.

15 DEAN SCHENCK: So that would be --
16 this is Lisa -- so that would be -- I agree
17 with that. So it would be to provide a
18 presentencing interview.

19 REP. HOLTZMAN: Correct.

20 DEAN SCHENCK: And that could mean
21 any time before, any time before sentencing.
22 Refuses to provide an interview. Then again,

1 we have to say an interview with the defense
2 because, you know, they're going to be
3 interviewed by everybody.

4 But I would say provide the
5 defense, you know, be interviewed by the
6 defense, an opportunity for the defense to
7 interview them, and then they -- prior to
8 sentencing, and that means it would cover any
9 time before sentencing, and that means it
10 would cover any time before sentencing. So if
11 they got interview before the 32, that's it.

12 DEAN ANDERSON: Hey, this is
13 Michelle. I have to step off for about five
14 minutes and I'll be right back, and I'm okay
15 with whatever we decide on this issue.

16 DEAN SCHENCK: This is Lisa, one
17 more thing. Can I ask the staff, I know this
18 might be a pain. But could you create a
19 document with just the recommendations from
20 both of the sections, so that I could look at
21 it over the weekend for like language and
22 typos and just general stuff, not to fight

1 about them?

2 I just want us to look good when
3 we provide this to the rest of the panel. I
4 mean I hate to be OCD about it, but I really
5 want to take a look, and I find it difficult
6 to do that when we're changing them so much.

7 COL HAM: Yes.

8 DEAN SCHENCK: Thank you.

9 CHAIR FERNANDEZ: Okay. Where do
10 we stand on this, on full dissent? Is it now
11 a dissent or it's not a dissent?

12 MR. CASSARA: Well, let me pose a
13 question to Sherry that I hope will facilitate
14 the resolution. Sherry is it possible for,
15 you know, for Liz, for example to say I
16 concur, and recommend that bullets 2, 3, 4 --
17 2, 3, 4, 5 become, you know, be implemented.
18 I disagree on sort of a concurring and
19 dissenting opinion.

20 COL HAM: Well, the proposal, I
21 think -- this is Colonel Ham, Mr. Cassara. It
22 sounds like the proposal is to move those

1 bullets into the subcommittee's recommendation
2 for an unsworn, and the question is do the
3 members agree with that, and then if not, you
4 go to the next step.

5 Any member can provide any
6 statement about anything, concurring,
7 dissenting, agreeing, I mean, although it
8 wouldn't make much sense to do agreeing. But
9 it sounds like the proposal is to move the
10 information in those bullets into the
11 recommendation that the victim get the
12 unsworn.

13 REP. HOLTZMAN: With two caveats.

14 COL HAM: Yes ma'am, yeah.

15 REP. HOLTZMAN: One is that, as
16 Lisa suggested on the last bullet, to make it
17 clear that they're the same objections that
18 the government has for a defendant, or I can't
19 remember exactly what. There's an amendment
20 she suggested to the last bullet, and the
21 amendment that she and I both agreed on, which
22 is to provide a presentencing and take the

1 word "pretrial" out of Bullet No. 1 and put
2 "presentencing."

3 MS. GARVIN: This is Meg, this is
4 Meg. I understand the proposal. The only two
5 bullets I would support are three and four,
6 the instruction and the new matter delaying,
7 the few matters brought up delayed. Oh, so 3,
8 4 and 5. You know, Bullet 1, even if it's
9 presentencing with the amendment, I wouldn't
10 support, and number two, the five days in
11 advance I would not support.

12 COL HAM: In some of the services,
13 I think the Air Force requires the accused,
14 the substance of the unsworn in advance as
15 well. That goes by service.

16 REP. HOLTZMAN: I'm sorry. I
17 guess I didn't read -- this is Liz Holtzman
18 again. I guess I didn't read Bullet No. 2
19 really carefully. I mean it should be five
20 days in advance of sentencing. I don't mind
21 providing a statement before the sentencing
22 takes place.

1 I think if we changed that,
2 instead of before trial to do it before
3 sentencing, then I have no objection. Would
4 you have an objection still, Meg, to that, if
5 it were before sentencing?

6 MS. GARVIN: I would. I don't
7 know -- it means to take away the oral
8 component of sentencing statements, meaning
9 like you can't -- you have to have written it
10 down and done it.

11 If there is a rule that governs
12 defense, statements of allocation, that
13 mandates both, then the recommendation of
14 victims right of allocution or victims
15 allocutions should be treated akin to the
16 defendant's right of allocution. That
17 language I would agree with.

18 But so you're saying some of the
19 services do treat --

20 COL HAM: You know, I don't -- I
21 recall that from some appellate opinions, but
22 I don't --

1 MR. CASSARA: Yeah, ma'am this is
2 Bill. I don't think that's the case. I've
3 done several Air Force courts-martial, and
4 I've never had a client have to turn in --
5 even with guilty pleas, that they've had to
6 turn in a version of their unsworn.

7 MS. GARVIN: Yeah. So I would
8 not support it. I mean I just -- my
9 fundamental position is the victim rights
10 allocutions with regard to just their victim
11 impact statements should be treated akin to
12 the unsworn statement of defense, which is
13 their right of allocution. But that's my
14 fundamental position.

15 REP. HOLTZMAN: But Meg, just stay
16 with me for one second. This is Liz Holtzman
17 again. I'm not saying that they should give
18 the oral statement, although I do think -- I
19 mean I'm not necessarily opposed to the
20 presentencing interview, and maybe that's just
21 sufficient if you took out the number two.

22 I didn't realize it was -- I'm

1 sorry. I misread it, and I didn't realize
2 that it was before trial. My only sense, my
3 only -- where I'm coming from is I don't think
4 it's unfair to have the substance of what the
5 victim is going to say be communicated to the
6 defendant.

7 Now I'm not saying it has to be in
8 writing. Maybe the substance of it can be
9 communicated by the government or the special
10 counsel, or if there's an interview. But I
11 don't think it's unfair to require that the
12 substance be communicated. That's what I
13 thought this was, this was asking for more
14 than that, and I would not support it before
15 trial.

16 DEAN SCHENCK: This is Lisa again.
17 I missed the last conversation. Are we still
18 at an impasse?

19 REP. HOLTZMAN: Yeah. I made a
20 mistake Lisa, because I didn't realize that
21 the statement of the victim has to be provided
22 five days in advance of trial to the

1 defendant. That I don't agree with. I don't
2 think it should be before trial, and I don't
3 think that we should be compelled to give a
4 statement.

5 I mean the substance of the
6 statement I don't mind being communicated
7 before the victim gets to say that, give that
8 statement. But I don't think that it should
9 be before the trial.

10 DEAN SCHENCK: Oh, you mean the
11 second -- the second bullet.

12 REP. HOLTZMAN: Yes. There's a
13 problem.

14 DEAN SCHENCK: They mean the
15 witness statement?

16 REP. HOLTZMAN: I'm not sure what
17 they're asking.

18 DEAN SCHENCK: You mean the
19 witness statement, Bill? This is Lisa.

20 MR. CASSARA: Yes. My proposal
21 would be that whatever statement the victim is
22 going to provide at sentencing be provided to

1 the defense on advance of trial, and you know.

2 CHAIR FERNANDEZ: Okay. Can I
3 make a suggestion, that the subcommittee adopt
4 3, 4 and 5, and then Bill's dissent stays as
5 is.

6 DEAN SCHENCK: Okay. This is
7 Lisa. I think on number 2, the government's
8 going to provide it anyway under the discovery
9 rules. I just have that gut feeling that
10 they're required to provide that.

11 MR. CASSARA: Well, I believe
12 that obviously if she had written something
13 down, they would. But obviously if she didn't
14 --

15 DEAN SCHENCK: So you're making
16 her -- this is Lisa -- you're making her write
17 a statement?

18 MR. CASSARA: That would be my
19 proposal.

20 DEAN SCHENCK: Yeah. I can't live
21 with that.

22 MR. CASSARA: I understand.

1 DEAN SCHENCK: I mean there's no
2 way -- this is Lisa -- there's just no
3 freakin' way, having worked with victims for
4 20 years easily, I guess, there's just no
5 freakin' way that we should ever require
6 victims of any criminal offense to write
7 something, to reduce their feelings to writing
8 and provide it five days before trial.

9 Do you know the trauma those
10 people go through before the trial? It is
11 unbelievable, and then sometimes they don't
12 even find out about physical concerns. I had
13 to tell a sexual assault victim she was
14 exposed to genital warts during the sexual
15 assault, because we didn't get the medical
16 record of the accused. You know, there's just
17 no way I'm voting for that. No. Sorry about
18 that. Okay, got to run, bye.

19 MR. CASSARA: I still love you.

20 DEAN SCHENCK: Okay, love you.

21 Bye.

22 CHAIR FERNANDEZ: Okay. This is a

1 dissent. Bill's dissent will go forward the
2 way Bill's dissent wants to go forward. I
3 think the only thing on the table is do we
4 want to incorporate 3, 4 and 5 in our
5 recommendation.

6 MR. CASSARA: And it would be a
7 revised 5.

8 DEAN ANDERSON: Have we -- I
9 apologize. This is Michelle. I am back on
10 the phone. I apologize. Have we heard from
11 Meg on this, only in the sense -- Meg, are you
12 still with us?

13 MS. GARVIN: Oh yeah. I'm okay
14 with 3, 4 and 5. That was my position. I
15 mean I'm fine not putting any of them either,
16 but 4 and 5 are not objectionable to me.

17 REP. HOLTZMAN: Well I guess I'm
18 concerned because I have now -- this is Liz
19 Holtzman again. When this -- I mean I haven't
20 really read them again carefully enough, in
21 light of some of this conversation, which is
22 very helpful to me.

1 But Bullet 4, for example, says if
2 there's new matter brought up in the victim's
3 unsworn statement, what does that mean "new
4 matter"? Does that mean new matter I mean --

5 CHAIR FERNANDEZ: Not in evidence.

6 REP. HOLTZMAN: No, I don't know
7 what it means.

8 COL HAM: Ma'am. That's a term of
9 art in the rules for courts-martial. Is that
10 how you're using it Bill? And it would
11 matters that -- substantive matters that the
12 defense hasn't heard about yet, in general.
13 Is that correct, Mr. Cassara?

14 MR. CASSARA: Correct. I mean
15 the typical example is, and it's going to
16 happen, especially as Lisa says, with the
17 possibility in guilty plea cases where the
18 defense has never spoken to the victim prior
19 to the trial, and then he or she says on
20 sentencing that they've received mental health
21 treatment, and the defense has no knowledge of
22 this.

1 You know, or I had a case recently
2 in which the victim stated that she had to
3 take out a restraining order against my
4 client, an ex parte restraining order. Again,
5 we had no knowledge at all of this. So my
6 concern -- you know, and I don't know if it's
7 true, unless I have a chance to actually
8 investigate it.

9 So if the victim is going to say,
10 you know, I took out a restraining order, I
11 came down with a disease, whatever it is that
12 they're going to say, if we haven't heard of
13 that before, then we have to have an
14 opportunity to investigate it and determine if
15 it's true.

16 REP. HOLTZMAN: Okay, well I don't
17 have -- and basically what you're saying is
18 that this is material brought up at trial.

19 MR. CASSARA: At sentencing.

20 REP. HOLTZMAN: Right, but the new
21 evidence would be evidence that had not come
22 out at trial?

1 MR. CASSARA: That is correct.

2 REP. HOLTZMAN: So that you didn't
3 know prior to the trial?

4 MR. CASSARA: That is correct.

5 REP. HOLTZMAN: Or by the
6 conclusion of the trial?

7 MR. CASSARA: Correct.

8 REP. HOLTZMAN: You know, I don't
9 have an objection to that. I guess I don't
10 have an objection to the last three. But 1
11 and 2 I would have to review really carefully
12 to support them, and they might need to be
13 modified. Certainly 1 needs to be modified.
14 1 and 2 would need to be modified.

15 So I couldn't support them as they
16 stand. I have no objection to 3, 4 and 5, and
17 5 as modified by Lisa Schenck.

18 CHAIR FERNANDEZ: What I'd like to
19 do is keep 3, 4 and 5 in our recommendations,
20 and then let Bill's dissent stand as is.

21 MR. CASSARA: I'm fine with that.

22 CHAIR FERNANDEZ: If no

1 objections, we're moving on.

2 MR. CASSARA: And everybody just
3 so you know, I'm going to be muting you. I
4 have a phone call that I have to take at this
5 time. It will only take a couple of minutes.
6 I'll be back on in a minute.

7 CHAIR FERNANDEZ: Okay. Thanks,
8 Bill.

9 MR. CASSARA: Yep.

10 CHAIR FERNANDEZ: Okay. It's
11 10:01. What do folks want to do? Do you want
12 to stay on for a little longer and see what we
13 can finish, or do people need to get off?

14 DEAN ANDERSON: This is Michelle.
15 I can stay on. I think we just have to deal
16 with collateral misconduct. It's not a small
17 matter, but I think we could tackle it.

18 CHAIR FERNANDEZ: We have findings
19 with regards to -- we have two sets of
20 findings, crime victims and special victims
21 counsel.

22 CDR KING: This is Sherry.

1 There's only a couple in each one that you
2 haven't seen and voted on before, I think. So
3 there's maybe three or four new ones in the
4 total of both sections.

5 CHAIR FERNANDEZ: Okay. Let's try
6 and stay on another half hour. I'm going to
7 really, really ask people to try to be --
8 unless it's something that you can't live
9 without, let's try to get -- let's deal with
10 the collateral misconduct and then let's get
11 to the other, because otherwise, we cannot
12 bring this to Congress at the right date.

13 So Meg, do you have anything that
14 we can discuss or should we just bring it up
15 to the committee?

16 MS. GARVIN: I think we just need
17 to bring it up. I apologize. I think, yeah.
18 I think we just need to bring it up. My
19 recommendation would be that we consider it
20 without the parenthetical, that we're leaving
21 it to DoD to identify which low level -- what
22 constitutes a low level misconduct that won't

1 be prosecuted.

2 That would be, I think, some of
3 what middle ground, without punting on the
4 issue.

5 CHAIR FERNANDEZ: I like that,
6 because it leaves a lot of discretion to the
7 government, then.

8 DEAN ANDERSON: This is Michelle.
9 I'd vote for that.

10 REP. HOLTZMAN: Well, this is Liz
11 Holtzman. I just want to express my
12 objection. We have not -- this is a major
13 recommendation that would put a blanket rule,
14 in essence requiring immunity to be granted in
15 whatever category of cases the Secretary of
16 Defense agrees to or classifies as low level.

17 We have not had anybody talking to
18 us about the consequences of doing this, and
19 while you know in theory there may be a lot of
20 good ideas, and maybe this is an excellent
21 idea, I think without having examined the
22 consequences of it, it's not really -- I

1 couldn't support it.

2 I think if you want to say the
3 Secretary of Defense should study whether
4 doing this would be, you know, effective.

5 But I could not support this is in
6 this way, because we have not laid the
7 groundwork for that recommendation. This is
8 my view. I mean if you tell me we have
9 materials in the hearing that support, that
10 show that we've examined the consequences of
11 doing this, that would be fine.

12 But I don't know that I would
13 still support it, but I would feel much less
14 strongly then. But I think we have an
15 obligation, if we're going to make a
16 recommendation, to show that we've done the
17 homework, not just that we think it's a good
18 idea.

19 MR. CASSARA: Everybody, what
20 page are we on?

21 COL HAM: 77, Bill.

22 MR. CASSARA: Thank you. That's

1 what I thought. I just want to make sure.

2 CHAIR FERNANDEZ: I am much more
3 comfortable -- this is Mai -- with the study
4 language than I am with making the
5 recommendation now. I think that we just --
6 we can take a vote on this, whether we put a
7 recommendation that we study this or we leave
8 the language as is without the parenthetical.

9 DEAN ANDERSON: So this is
10 Michelle. I vote to leave the language as is
11 without the parenthetical.

12 CHAIR FERNANDEZ: Meg.

13 MS. GARVIN: This is Meg. I
14 concur with Michelle.

15 CHAIR FERNANDEZ: Liz.

16 REP. HOLTZMAN: I object to it,
17 with or without the parenthetical.

18 CHAIR FERNANDEZ: You want the
19 study language?

20 REP. HOLTZMAN: I would prefer
21 that, yes.

22 MR. CASSARA: I agree with Liz.

1 This is Bill.

2 CHAIR FERNANDEZ: I agree with
3 Liz. Okay. We're going with the study
4 language this time.

5 DEAN ANDERSON: Okay. Then I'll
6 write a dissent and whoever wants to join that
7 is welcome to. I think this is a crucial
8 issue.

9 The Department of Defense has
10 identified this as the most -- one of the most
11 crucial reasons why people refuse to, you
12 know, report. So we'll move forward from
13 that. When do you need the language on the
14 dissent for this?

15 COL HAM: Today would be good, but
16 as soon as possible.

17 MS. GARVIN: With regard to that,
18 I imagine that the process has to be we send
19 it to you, you send it back out. Is that
20 accurate, that we cannot send it to each
21 other? I'm going to dissent. This is Meg.

22 CDR KING: If you send to me, Dean

1 Anderson, I will send it out right away to all
2 the members. Anybody can respond back to me.

3 COL HAM: But they don't get to --
4 but nobody gets to comment on your dissent,
5 ma'am, unless it's discussed, like we did Mr.
6 Cassara's.

7 CDR KING: You can send it back --
8 respond back to me if you want to join it, if
9 you want a -- that it's both of yours or --

10 MS. GARVIN: That's what I'm
11 saying, that it is the best way for -- I
12 imagine Michelle, based on conversations to
13 date, Michelle and I, what we articulated
14 during the meetings, we seemed to be in
15 alignment. I'm going to guess our dissents
16 will be the same.

17 So what I'm trying to figure out
18 is it joint dissent rather than -- trying to
19 figure out process to ensure it's a joint
20 dissent, and if we actually align.

21 COL HAM: It's really not a
22 dissent. It's just a separate statement.

1 MS. GARVIN: I'm sorry. I'm
2 sorry, yes.

3 COL HAM: I mean it's semantics,
4 but there's just separate statements of
5 different members on different issues.

6 DEAN ANDERSON: Are we authorized
7 -- are Meg and I authorized to dialogue and
8 put forward a separate statement together?

9 CHAIR FERNANDEZ: You guys can't
10 have a conversation without everybody present.
11 So that's the issue. What you can do --

12 (Simultaneous speaking.)

13 MS. GARVIN: -- send it out, and
14 then I can look at it, along with the rest of
15 the committee.

16 CHAIR FERNANDEZ: Okay. So you're
17 putting out the dissent. We all look at it,
18 make any kind of commentary. Those of us who
19 are in favor of the dissent, I mean it's only
20 going to be Meg's input.

21 So what I think you need to do is
22 send it out to the whole committee. Meg, you

1 make any commentary, send that back and
2 Michelle, if you don't have a problem with it,
3 you send back an acquiescence to the whole
4 committee again.

5 DEAN ANDERSON: What do you mean
6 acquiescence?

7 CHAIR FERNANDEZ: That you're
8 acquiescing to whatever Meg wants to edit.

9 DEAN ANDERSON: Yeah. There may
10 be others who are not on the call who wish to
11 join, but agree with the theory in principle,
12 that I would circulate something. People
13 would make a decision whether to join that
14 statement or not, with whatever corrections
15 seem appropriate, and then that statement
16 could be a joint statement.

17 COL HAM: Please send it to
18 Sherry. Please send it to Sherry, this is
19 Colonel Ham, for her distribution. Please
20 don't email each other.

21 (Off mic comment.)

22 COL HAM: Then the other issue --

1 so we're off the line. But the other issue
2 where there's not consensus is the warning by
3 the military criminal investigative officer,
4 if anybody wants a separate statement on that
5 same procedure.

6 DEAN ANDERSON: We adopted that,
7 right?

8 COL HAM: Yes, and it was not by
9 -- it was not --

10 DEAN ANDERSON: Oh, I see what
11 you're saying. Right, right. So a separate
12 statement, yeah, right.

13 DEAN ANDERSON: Okay.

14 CDR KING: Okay. So where -- do
15 you want to start with the new recommendations
16 in the SVC or the victim rights?

17 CHAIR FERNANDEZ: Victim rights.

18 CDR KING: The victim rights
19 starts on page 129. Oh, I'm sorry, I'm sorry.
20 The victims rights recommendations start on
21 page 123, but the first new recommendation is
22 on page 125.

1 (Off mic comment.)

2 CDR KING: It's Recommendation 3,
3 and this -- this recommendation, this is
4 Sherry for the record. This recommendation is
5 one you discussed and clarified at the last
6 meeting on April 18th to amend the
7 recommendation, to have express standing at
8 the trial level as well as the appellate level
9 court.

10 MS. GARVIN: This is Meg. I'm
11 fine with the revision or the new version
12 that's here.

13 REP. HOLTZMAN: Meg, this is Liz
14 Holtzman. I thought that when we talked about
15 it, that we were going to fudge the issue of
16 the term legal standing. Am I correct in that
17 understanding, or did you want to have it
18 explicit?

19 MS. GARVIN: I had recommended
20 that it be explicit, based on experience in
21 the civilian world for when it's not explicit
22 -- even though it's a odd term to have in this

1 type of document, I do recommend it be in
2 there.

3 CHAIR FERNANDEZ: Okay. Do we
4 have any more commentary on number three?

5 (No response.)

6 CHAIR FERNANDEZ: Okay. We go
7 with the revisions. Sherry.

8 CDR KING: Okay, and then if you
9 want to go back to the SVC --

10 REP. HOLTZMAN: This is Liz
11 Holtzman. I have some wording suggestions on
12 Finding No. 1, and --

13 CHAIR FERNANDEZ: Are they
14 substantive, Liz? If not --

15 REP. HOLTZMAN: Well, they're not
16 substantive. I can send them in. It's just
17 inverting the order and changing the -- it's
18 just the wording.

19 CHAIR FERNANDEZ: Okay. Send
20 those in.

21 DEAN ANDERSON: Can I just -- this
22 is Michelle. I'm trying to write the separate

1 statement right now, and as we're talking
2 about other stuff and reviewing other stuff.
3 I just want to clarify.

4 The finding on collateral
5 misconduct, as I understood it in our dialogue
6 yesterday, was going to be modified to be the
7 statement from the Department of Defense,
8 indicating that collateral misconduct by a
9 victim of sexual assault is one of the most
10 significant barriers. Is that correct? Is
11 that where we ended?

12 COL HAM: Yes ma'am.

13 DEAN ANDERSON: Okay, that's what
14 I thought, and the finding remains in the
15 materials, in the document itself, right?

16 COL HAM: It's on page 42 of the
17 Department of Defense Instruction that you
18 have, 6495.02, and one of the changes, it's
19 not fair prosecution; it's fair punishment,
20 which is --

21 DEAN ANDERSON: Right, right,
22 right, and that is now going to be a finding.

1 I just want to make sure what I'm responding
2 to in this statement. That's all I'm saying,
3 and the recommendation is going to be changed
4 to mean, to direct the DoD to have a study on
5 this, right?

6 COL HAM: To assess or however we
7 word it, however the subcommittee wants it
8 worded, to assess whether -- to assess the
9 implications of or to assess whether to
10 implement a policy of transactional immunity
11 for certain collateral misconduct, something
12 like that.

13 DEAN ANDERSON: Yeah. Can we not
14 use the word "transactional immunity" and
15 "certain." This is designed to be about low
16 level misconduct and I wouldn't use the word
17 "immunity." We on the committee have not used
18 the word immunity, although that's a way to
19 construct it, that makes it seem, you know,
20 that is -- that's a way to construct it that
21 I don't think that we on the committee have
22 used. I'll just say that.

1 REP. HOLTZMAN: This is Liz
2 Holtzman. That's how I understood it, and
3 that's part of the reason that I voted against
4 it, because that I believe -- I thought that
5 was what the recommendation called for. Now
6 maybe I'm misreading it.

7 (Pause.)

8 DEAN ANDERSON: Yeah. The words
9 "transactional immunity" were not in the
10 document, and my recollection is that Colonel
11 Ham was the one who introduced that idea, the
12 conceptualization for certain misconduct. The
13 way that the language was written, it was
14 about choosing not to prosecute low level
15 offenses.

16 I think that's a different way of
17 conceptualizing it. I understand that for
18 some members of the committee, that may be the
19 same as transactional immunity for certain
20 offenses. But I would rather not have that go
21 into the language of the recommendation of the
22 lead document, if that's not what the

1 committee has agreed to.

2 I guess I would like to see the
3 committee's -- the revisions by the staff of
4 the recommendation on the studying of this
5 issue, and have a vote, at least by email, on
6 that question, and also have that language, so
7 that I know what I'm responding to in the
8 statement.

9 REP. HOLTZMAN: So you want to
10 have a second -- this is Liz Holtzman. You
11 want to have a second vote on the study?

12 DEAN ANDERSON: Well, we have
13 agreed, as I understand it, the committee has
14 by majority vote voted for something about a
15 study or assessment. But then it's not clear
16 to me that that language looks like in terms
17 of the recommendation.

18 And all I'm asking is that when
19 the staff revises the recommendation, that it
20 circulate to the committee what that language
21 is, so that first the people who voted for it
22 can know what they're voting for, and second,

1 I can know what those who are going to submit
2 a separate statement are responding to.

3 I mean if people agree that it
4 should be transactional immunity and it should
5 be about that, then that's perfectly fine.
6 The committee as a majority can vote in
7 whatever way it chooses. I just want to know
8 what the language is and I want people
9 apprised of what the language is as we move
10 forward, that's all.

11 REP. HOLTZMAN: Where is the
12 finding or the recommendation that you're
13 referring to? Can the staff point that out,
14 what page?

15 DEAN ANDERSON: Page 77. Page 77,
16 Recommendation 19 and -- Finding on
17 Recommendation 19 and Recommendation 19. As
18 I understood it, in the final document, the
19 finding on Recommendation 19 was going to be
20 the quotation from the Department of Defense
21 about the fear of punishment.

22 As I understood it, the

1 Recommendation 19 was going to be changed to
2 be something about a study or assessment.

3 REP. HOLTZMAN: Right, okay.

4 DEAN ANDERSON: And -- go ahead.

5 REP. HOLTZMAN: The way I
6 understood it, and maybe I was misspeaking,
7 because I had the language in front of me.
8 But it would be that the language, as I
9 understand it now, based on your -- is that
10 you just put -- implement a study of whether
11 this should be a policy. So you just insert
12 those words.

13 DEAN ANDERSON: Yeah, that's what
14 I thought too, Liz. That's what I thought to.

15 REP. HOLTZMAN: So I mean --

16 DEAN ANDERSON: Right. I just
17 want to make sure that that's what we all
18 understand is the language that's going
19 forward in the lead report, so that when I'm
20 drafting a separate statement, I can know what
21 that language is.

22 CHAIR FERNANDEZ: I think you can

1 go with that assumption.

2 DEAN ANDERSON: Pardon?

3 CHAIR FERNANDEZ: I think we can
4 go with that assumption.

5 DEAN ANDERSON: Okay.

6 CHAIR FERNANDEZ: Okay. Sherry,
7 where were we with the recommendations? Do we
8 have recommendations on special victims
9 counsel? Is that where we are now?

10 CDR KING: Yes, we do ma'am. This
11 is Sherry. Page 110, there's two
12 recommendations that are different, number 10
13 and number 11. Number 10 is based on the new
14 Victim Protection Act and your discussion from
15 the last meeting.

16 I think your recommendation for
17 the last meeting was that Congress study or
18 take additional testimony to determine the
19 potential impact of having victims, having SVC
20 advise victims about civilian prosecution and
21 letting victims voice a choice in that matter.

22 REP. HOLTZMAN: I just have -- on

1 10 and 11, I have -- first of all, I don't
2 think further testimony should be taken by
3 Congress. Congress is further, you know, the
4 Congress obtains further information or
5 whatever.

6 But Congress doesn't have to
7 operate by testimony. Congress can get lots
8 of information, letters, documents, you and so
9 forth. So I think testimony is too
10 restrictive in term in No. 10.

11 CDR KING: So use information
12 instead?

13 REP. HOLTZMAN: Further evidence
14 and information, further information that
15 would be obtained by Congress.

16 (Pause.)

17 REP. HOLTZMAN: This is just a
18 quick -- Liz Holtzman again. On
19 Recommendation 10, I know we went over it. I
20 just -- on reading it, I just thought that we
21 needed to lay out -- it's not a substantive
22 and it's not -- I thought we needed to lay out

1 the cost benefits and downsides of this. But
2 maybe we don't need that.

3 (Pause.)

4 REP. HOLTZMAN: So I guess there
5 is no evidence. I mean I withdraw that
6 comment. Forget it. I just withdraw it.
7 Sorry.

8 CHAIR FERNANDEZ: Did you want the
9 DoD -- you didn't want the DoD response in
10 here? I think we talked about that, is that
11 right?

12 COL HAM: Anything else on number
13 10? This is Colonel Ham.

14 REP. HOLTZMAN: Sorry?

15 COL HAM: Is there anything else
16 on number 10 from anyone? This is Colonel
17 Ham.

18 REP. HOLTZMAN: No.

19 COL HAM: On number 11?

20 REP. HOLTZMAN: No.

21 COL HAM: Okay.

22 CDR KING: Those are all the new

1 findings that we had. I don't know if
2 anybody's had a chance to go through it and
3 have any other additional comments. But those
4 were all the new findings that we put in at
5 this point, based on your 4/18 meeting.

6 FEMALE PARTICIPANT: Are we
7 finished?

8 CHAIR FERNANDEZ: I think so.

9 MR. CASSARA: And I think this is
10 our last group meeting, is it not?

11 REP. HOLTZMAN: Thank you very
12 much.

13 CHAIR FERNANDEZ: I'd like to
14 thank the staff on this. This has been an
15 unbelievably difficult task, and I just wanted
16 to say thank you very, very much for doing an
17 incredible job.

18 COL HAM: Thank you.

19 MR. CASSARA: Kudos, kudos,
20 absolutely. You know, we came to this all
21 from very different backgrounds. I'm
22 surprised how many times I have disagreed with

1 somebody, and then agreed with them on a
2 completely different point. I appreciate
3 everybody's professionalism, and I appreciate
4 the staff's hard work.

5 MS. GARVIN: Absolutely ditto,
6 yes, absolutely.

7 MR. CASSARA: So I will see some
8 of you either in New York or in D.C.,
9 depending on who is where.

10 DEAN ANDERSON: I look forward to
11 it. Thank you all.

12 MR. CASSARA: Y'all take care,
13 bye.

14 CHAIR FERNANDEZ: Take care, bye-
15 bye.

16 MR. SPRANCE: This is Bill
17 Sprance, the DFO, and this meeting of the
18 subcommittee is closed.

19 (Whereupon, at 10:23 a.m., the
20 meeting was adjourned.)
21
22

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C E R T I F I C A T E

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: 04-25-14

Place: teleconference

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