

UNITED STATES DEPARTMENT OF DEFENSE

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RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT
CRIMES PANEL

COMPARATIVE SYSTEMS SUBCOMMITTEE

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CONFERENCE CALL

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TUESDAY
APRIL 29, 2014

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The Subcommittee met by teleconference at 11:00 a.m. Eastern Daylight Time, Elizabeth Hillman, Chair, presiding.

PRESENT

PROFESSOR ELIZABETH HILLMAN, Chair
BG (Ret.) JOHN S. COOKE
RHONNIE JAUS

ALSO PRESENT

MARIA FRIED, Designated Federal Officer
JANICE CHAYT
JOANNE GORDON
SHANNON GREEN
COL PATRICIA HAM
LTC KELLY McGOVERN
TERRI SAUNDERS

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

11:02 a.m.

MS. FRIED: Good morning everyone, the subcommittee meeting is open.

LTC MCGOVERN: Dean Hillman, do you have any opening remarks?

CHAIR HILLMAN: No, I'm grateful for everybody's work and I think if we could poll, if you just could let me know who -- let everybody know who's on the call and then I think we should begin.

You keyed everything up really clearly. I think it's -- and you pushed out the suggestions that we got from Colonel Scholz and from Colonel Morris which is helpful. So I think we're ready.

LTC MCGOVERN: Jan, can you reach out to who's on the line for us?

MS. CHAYT: Okay, I believe we have Dean Hillman, we have Rhonnie Jaus, we have General Cooke, of course our DSO is here and

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yourself on the line.

In the room -

LTC MCGOVERN: Who is in the room with you?

MS. CHAYT: Okay, first we have Colonel Ham, we have Terri, we have Shannon and I think Joanne will be joining us also.

LTC MCGOVERN: Great, thank you.

All right, the first finding of concern today was number 51, that it is concerning increasingly difficult to seat an alternate panel in sexual assault cases.

Unfortunately, I don't know exactly what Colonel Scholz's concern was and that I can go back to it this afternoon in the four to six session if we need to.

Does anyone else have a concern with that finding?

MS. JAUS: I am not really concerned with the finding, I don't know if that's true or not. This is Rhonnie.

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But I think maybe the Recommendation on 51.b could be beefed up a little bit, ensure the military Judge appropriately controls the line of questioning during voir dire, you know, to ensure fairness and to ensure that there are no preconceived prejudices, something like that because I think that's the most important thing to control the panel.

That's how the panel can be controlled is if the questioning is geared not to, you know, to elicit whether people have preconceived notions, prejudices, vices, you know, from maybe false information or something like that.

LTC MCGOVERN: Okay, and I believe that in the discussion a lot but we can include more in the Recommendation.

CHAIR HILLMAN: This is Beth. I think that's a great idea just, you know, add another clause on that. And also it just

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looks, in terms of the length of that, that it's short and it would be appropriate to add just a clause which is what I'm doing now.

LTC MCGOVERN: Okay.

And I'll go back and find out what Colonel Scholz was with the Finding and some of that was based on an email that Dean Hillman received and just other questions that we got or answers during the site visits where people had said, well one drink, keeping made it difficult to seek panels.

So I think we have the support for that Finding but we definitely can elaborate if necessary.

Okay, on to 52.

BG COOKE: This is John Cooke. I have one small comment/question in the second sentence of 52.a. It says the difference has been the military courts, t apostrophe s. that sounds like one court. I don't know if we're

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talking about CAAF or military courts in general. But one way or another, it shouldn't be a singular court.

LTC MCGOVERN: Okay.

CHAIR HILLMAN: This is Beth.
Good point, General Cooke.

This has more in the Finding than some of the others and I'm not sure, we write there's a public misperception about how this evidence is used and then we -- which comes to the conclusion that's based on a study, partly this is because I've been thinking about the surveys and statistics part and then that the service defense counsel don't find that it's effective and that it's rarely used.

We didn't do any kind of survey to actually verify that. That's based on, you know, just some of what we heard.

So, and ultimately, this Recommendation is a pretty limited one. We're simply saying we don't find this change

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especially objectionable or especially consequential but I'm not sure how much we really should say here. This seems not -- it seems not, with all the other things that we're saying, this seems that we're just stating that this part of the VPA is not especially consequential. So I'm not sure we should really say that much here. I'd be happy to hear from others on that.

BG COOKE: Yes, I think that's a good point. This is John Cooke again.

I think you can delete the sentence about the defense counsel don't find it particularly effective.

The main thrust of this is that people don't understand what the defense really is and we're trying to clarify that it's narrower than the perception and that it ought it to be retained.

CHAIR HILLMAN: You know, this is Beth.

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General Cooke, I'm not sure that we actually are so clear that it's being retained. I mean I guess what we would like people to understand is that we cannot eliminate character from -

BG COOKE: Right, yes, I overstated. I agree.

CHAIR HILLMAN: But no, I think you're right. I think that the question is how much do we want to educate on this particular point.

So I guess there's, I guess we could leave that that there's a -- maybe let's say there's some confusion about how this type of character evidence is actually used at trial. Cut that next sentence and then just rather than saying therefore, simply say Section 3.g of the VPA is unlikely to result in any significant change to occur in practice for that first Finding.

LTC MCGOVERN: Okay.

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BG COOKE: Yes.

MS. JAUS: Taking out the services, defense counsel -- this is Rhonnie -- do not find this type of evidence effective, take that sentence out.

CHAIR HILLMAN: Right, correct.

LTC MCGOVERN: And that is in the discussion as well that that's where you all heard about it that basically this is a big headline but it's actually not an impact in sexual assault cases while at the time even though they think it is to the news media.

CHAIR HILLMAN: This is Beth again.

Then if we're okay with 52.a, then does anybody want to say anything else about 52.a?

MS. JAUS: No.

CHAIR HILLMAN: Okay, then 52.b, I'm not sure we should try to eliminate this term. I mean did we decide that we wanted to try to get people not to use this? If that's

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our goal, to be honest, we shouldn't write this the way it is. This is the myth busting that perpetuates the myth.

I mean for us to headline this section, good soldier defense, and then talk about it several times, we actually are instantiating that phrase in peoples minds.

The term itself, a court created term, there's a lot of those in our common parlance about courts-martial that we use that are actually somewhat useful.

So I'm not sure that we should -- is it in fact our goal to try to excise this term or do we just want to say that the VPA in 52 there, the Recommendation that we think the VPA may increase confidence but won't have much impact.

LTC MCGOVERN: That was based off of the deliberation session you all had and Judge Jones was on the line and was saying that what this is a district court created term, it's

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a tag line that should be just eliminated, they should stop using that. So that's where that came from. But if it's not helpful, certainly we can adjust it.

CHAIR HILLMAN: This is Beth again.

Then maybe we should just leave it in the Recommendation, that first line that says refrain from calling accused's character evidence, the good soldier defense and then -

LTC MCGOVERN: Okay.

CHAIR HILLMAN: -- read the rest of that; but cut 52.b.

LTC MCGOVERN: Okay.

MS. JAUS: And what do you want to call the section? You don't want to call the section good soldier defense or you want to just call it character evidence?

CHAIR HILLMAN: This is Beth.

That's a good point, I'd call it character evidence, you know.

BG COOKE: Yes.

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MS. JAUS: All right, so instead of good soldier defense, character evidence.

LTC MCGOVERN: Okay. 53?

CHAIR HILLMAN: Okay. Sorry, one more thing, Kelly. This is Beth again.

Let's just put scare quotes around good soldier defense when it does appear because then we are indicating that we're not, you know, that's a phrase we're trying to get rid of but we do have to state it there, but let's put quotes around it in 52.

LTC MCGOVERN: Okay.

All right, 53?

I think Colonel Scholz's only concerns with that are reflected in her edits. I mean the word cases after sexual assault and then instead of apt to be misleading, she said will be misleading. But Chair Hillman, I think you had concerns about 53 as well.

CHAIR HILLMAN: I was confused -- this is Beth.

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I was confused by 53.a, the phrasing of our Recommendation. It says that the SecDef directs the Secretaries to develop a single standardized methodology to calculate these two rates, prosecution and conviction and the subcommittee recommends a methodology which accomplishes this.

Does that mean we're recommending a particular methodology? Does the discussion do that or -

LTC MCGOVERN: Yes, it's in there.

CHAIR HILLMAN: Is it a single standard, just one single standard? Isn't that what we recommended?

LTC MCGOVERN: Right, because based on the December presentations, the waterfall slide was clearly difficult because there is no -- they count things differently. They don't use the same definitions and to not really see comparable data between the two.

For instance, the Army is only

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showing those cases that have been found to have shown probable cause or the other Services are presenting all cases to the commanders. So -

CHAIR HILLMAN: I totally agree with that and that we need to have it standardized.

What my confusion is about is about what we're actually saying here. Do we actually set out what that methodology should be?

LTC MCGOVERN: Yes.

CHAIR HILLMAN: Or are we simply saying that this needs a single? That's all because I couldn't tell from the way that second clause is.

LTC MCGOVERN: Right, no, there's a little graph that shows basically how a waterfall slide would go from, you know, cases received, cases within military jurisdiction to unfounded, no action taken, Article 15, court-martial and through that process it

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should be easy. It shouldn't be rocket science basically and so spell it out for them.

And it's really based on what the Army was already doing.

BG COOKE: This is John.

I think if we're going to incorporate by reference that that particular part of the discussion we ought to reference it here so it's clear what we're recommending.

LTC MCGOVERN: Okay.

CHAIR HILLMAN: This is Beth.

We may need to drop the chart in here actually, if that would be the clearest way to do that.

BG COOKE: Right, either way, but somehow, yes.

CHAIR HILLMAN: This is great. This is a really important part of what -- this is a service we can provide that will set out this is how we want -- this will help everybody should it be adopted. So I think that being as

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clear as we can in the parts that is most likely to be read, these Findings and Recommendations would be great.

LTC MCGOVERN: Okay. 53.b as well to see if we need to -

CHAIR HILLMAN: This is Beth.

I don't have any particular problem with this. I just wonder about if how comprehensive this is or whether we -- if it's sufficiently comprehensive that it really says everything that we want or should we incorporate a chart that actually specifies the things that we want to be assessed as the chronology progresses from the start to finish of a case.

That's my only concern there is representing this as clearly as possible what we're stating. So, and this rather than -- this says the Secretary directs an assessment rather than the Secretary directs the methodology.

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So it feels like this assessment ought to somehow track that previous recommendation, but 53.a recommends that there be a standard method to calculate rapes that are reported and then it seems that 53.b ought to say the Secretary ought to assess based on what's actually reported.

Does that make sense, Kelly?

LTC MCGOVERN: Yes, and I think what this basically, the 53.b was going at is some of the data that you all were not able to analyze because they don't have the number of Article 32s where an IO recommended against -- a commander went forward and it resulted in acquittal. Pretty easy, even though -- is that really an issue or a problem.

So, it's related but not still directly related to the waterfall slide which showed us some more detail of what's in other information so that further study can be done to identify some problems you guys were asking.

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Are there problems? We don't have the data to identify whether or not there's an issue there.

COL HAM: This is Colonel Ham.

Kelly, I think what I'm asking, what we're thinking here, I thought there was another edited version of this of I think the proposal of the subcommittee here was to have a study somewhat like what Cassia Spohn has done with other jurisdictions, to look at prosecutorial decision making. Is that what this is referring to, Kelly? I just can't recall.

LTC MCGOVERN: And I think this one -- this may be one that was added, so I'm not sure how this got there exactly. I know it's addressed in the discussion. But I mean we can specifically state to do a study similarly to Cassia Spohn to look at these issues.

CHAIR HILLMAN: This is Beth.

Some of this is addressed in the recommendations about statistics but perhaps

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not all. So I don't have an objection to recommending a study if that's what that's intended to do.

So that recommendation is really directed at -- we should just clarify if that's what it is. The Secretary direct an expert study of the -- because this sounds like it's sort of in-house project, which I think is probably challenging for the DoD to do but to recommend a study, that would make more sense.

LTC MCGOVERN: Okay.

And what you'll find in the actual report is actually a specific section here where we do display the statistics that we were able to capture from that information from the DoD SAPRO report and then pointing out that this is not really comparable so your Findings and Recommendations are derived from that.

And this is just really hard to do standing alone in the Findings and Recommendations to cast a different light on

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it. So if you want charts and things like that, we can certainly add those in.

Okay, anything else on 53 then?
Are you ready for 54?

MS. JAUS: Yes.

LTC MCGOVERN: Again, this comes from the military is required to report to Congress different numbers than they report to other agencies or even to DoD. So then different terms are used and one of those terms is substantiated which doesn't appear anywhere else.

So you have those cases which are unfounded, being baseless or false. Then you have this definition of substantiated cases which they went forward on but then that provides this gap between unfounded cases and substantiated cases.

Whereas, if you follow the disposition chart we got find above, you're going to have unfounded cases, no action taken

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where there's insufficient evidence and then all the other possible dispositions.

So the Finding is that they have to report to all these different people and the Recommendation is Congress stop requiring and report substantiated because that's not a good number to even to be using if you actually want to know what's happening with all these cases.

Is that an accurate assessment, Colonel Ham?

MS. SAUNDERS: She stepped out of the room for a moment, she'll be right back.

BG COOKE: This is John Cooke.

I think I understand what you just said, Kelly, and I'm trying to wrestle with 54.a, the Recommendation. Are we recommending that Congress amend the provision and provide a definition of substantiated?

LTC MCGOVERN: No, sir. They actually -- the DODI provides the definition of substantiated for the Services.

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Each year, Congress comes back and says you guys will report to us the synopsis of each substantiated case. But then the Services, again, what it's interpreted as substantiated is differing among the Services. The MCIOs don't use the term unsubstantiated. The commanders don't use the term substantiated when they're deciding whether to refer or do an Article 15.

So Congress is the only one that's thrown this term in there. So the recommendation would be get rid of that term and just look at the actual disposition of all these cases and if there's a number of cases where no action was taken because there's insufficient evidence, then maybe you don't need a full synopsis on those.

But right now, they're only seeing a group of cases based on the substantiated definition. It's just very confusing for the Services who don't seem to understand well,

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does that mean when someone's found probable cause? Like if each were a court-martial or was it an Article 15? The testimony was just kind of all over the map for that.

And in responses to the RFIs were nobody uses the term substantiated except for Congress.

BG COOKE: Okay, I'm not sure what 54.a Actually recommends when I read that long sentence.

CHAIR HILLMAN: Hang on, Kelly. This is Beth.

I do think that this -- I think I'm understanding what we want to say and I don't think we quite say it yet.

So first in 54.b, the second sentence, let's add what the consequence of using that term is which is confusion. So the term substantiated is not otherwise used throughout the process resulting in confusion and inaccuracy in the reports to Congress.

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Let's say that that's what the problem is.

And then let's make a recommendation that says Congress enact legislation to amend this and cut all the part that requires -- that explains what the requirement is which is in 54.a because that's describing what we don't want them to do anymore and really we should put that in the Finding there. So let's just enact legislation to amend this section and then to enable the Services to provide accurate information and then list what you have in 54.b which would, in fact, provide that accurate information.

LTC MCGOVERN: Okay, do you want to combine 54.a and 54.b into one then?

CHAIR HILLMAN: Yes, because I think 54.a has a lot in there that actually says how it used to be and why it's a bad idea but it's not really what we want to recommend.

LTC MCGOVERN: Right, okay, so we delete to report until the end and then add 54.b

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to that first part. I'll give that a shot and see if that meets your intent for the evidence.

CHAIR HILLMAN: General Cooke, does that make sense to you?

BG COOKE: Yes, that makes sense to me. The only thing I would add is in 54.b, I find the string of items here with commas and some of the phrases are modifying the preceding phrase and other phrases are supposed to be in effect additional items, if you know what I mean. I find that confusing. I don't know if there's a way to structure that so that either using bullets or maybe semicolons somewhere so that we list -

MS. JAUS: You can separate the sentences, you know, you can make more than one sentence.

BG COOKE: Yes, somehow, it's just a long sentence with a bunch of commas in it and so I'm not sure what the major points are and what the modifying points are. If that makes

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sense.

LTC MCGOVERN: That makes sense.
That's good. Okay, very helpful. Okay.

The next one was the 55
Recommendation, telling them not to compare.

CHAIR HILLMAN: Sorry, Kelly, this
is Beth.

In 55.b, I wondered if we should
include what Rhonnie mentioned previously
about the use of the word contact in addition
to non-penetrative when we're talking about
differences in definitions across
jurisdictions.

LTC MCGOVERN: Okay.

CHAIR HILLMAN: And this one -

LTC MCGOVERN: So how -

CHAIR HILLMAN: Let's see, so how
would I do that? Let's see, in 55.b, the second
sentence, let's see, the first sentence,
national data collection the definition is
standing.

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By contrast, DoD includes data on all reported non-penetrative sexual offenses ranging from unwanted touching to rape and civilian jurisdictions track penetrative, non-penetrative and contact offenses.

Rhonnie, does that make sense?

MS. JAUS: Yes, well, it's more not necessarily non-penetrative, more contact. I mean people don't even use the term non-penetrative. I've only seen it here when dealing with the military. It's either penetrative or contact, you know.

CHAIR HILLMAN: So let's use those two terms. This is Beth. That's great, let's use those two terms and DoD included data on penetrative and non-penetrative while civilian jurisdictions track penetrative and contact offenses. Just that I think that having that language in there helps us more capture what's happening in civilian jurisdictions.

MR. JAUS: Yes, I agree.

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LTC MCGOVERN: Great.

CHAIR HILLMAN: And then finally, this is Beth, on 55, the Recommendation, I feel like that I'm not sure we should -- I'm not sure what to say here. I think we will -- it's very difficult to not compare because what we've actually done in the previous section is set up ways to have more useful comparisons because -

LTC MCGOVERN: Right.

CHAIR HILLMAN: -- we classify -- we're trying to get information that allows comparison across the Services and potentially to non-military jurisdictions as well.

So I wonder, we'd like to say not to make excessive or invalid comparisons but I don't really think we can very easily say don't look at these rapes.

LTC MCGOVERN: Well, and I think maybe the last clause is lost in that maybe would be to better focus that you all have talked about that prosecution or conviction

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rates shouldn't be the measure of success.

CHAIR HILLMAN: Exactly, right on point.

MS. JAUS: I agree with that. There are many other things to look at.

LTC MCGOVERN: And again, it does seem a number that the public gets consumed with are our conviction rates but a lot of civilian jurisdictions aren't even required to report that.

So they're looking at the military's conviction rates and saying, you know, whether or not they're good and whether or not we're handling sexual assault properly or holding these people accountable when there are probably measures or other measures of success looking at prevention and other things.

But, again, this goes back to the Services criticizing Congress, that Congress thinks you can prosecute your way out of this problem, that they shouldn't use conviction

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rates as a measure of success was a common theme in their responses to the RFIs.

BG COOKE: What if we started that Recommendation with the word comparison and then insert it after rapes should not be used?

LTC MCGOVERN: Okay, sounds simple.

CHAIR HILLMAN: I like that.

LTC MCGOVERN: Okay, does that work for everybody?

MS. JAUS: So it should not be used or should not be used as the sole measure of success? Just should not be used as a measure of success or as the sole measure of success?

BG COOKE: You could change a to the. As the measure of success. I don't -

CHAIR HILLMAN: This is Beth.

I think either is fine, sole measure is fine, I think as the measure of success might be too subtle for people to get although I like it as directly.

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LTC MCGOVERN: Okay.

BG COOKE: I don't care.

LTC MCGOVERN: Okay. Pick your battles which is good.

Okay, moving on 56 is the Recommendation getting on to sentencing, that the majority of people who had attended the session are unanimous, I think, the people who attended the session of a supporter.

Generalizing for some of the other who weren't in attendance are now at least Colonel Morris, does not concur with that.

So, I sent that around and I don't know if rather than addressing that here or do you just want to wait for the responses we receive from the other members? Or do you support the Finding and Recommendation have issues with the wording of the Recommendation?

BG COOKE: I think we probably, ultimately are going to have to wait until everybody weighs in. I have a couple of

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specific comments in the Finding.

I'd be inclined to delete the sentence during a site visit. That's one piece of evidence. I don't know that it necessarily constitutes a Finding of the subcommittee. I think it's discussed in the discussion.

LTC MCGOVERN: Okay.

BG COOKE: And I might divide 56 into A and B and make the last sentence B. It's almost a platitude but -

LTC MCGOVERN: I'm sorry, sir, could you articulate that a little more?

BG COOKE: Well, the last sentence, victim and public confidence in the military justice system is almost a platitude. I'm not sure we even need it. But I'm not sure that it follows from the first two sentences.

LTC MCGOVERN: Okay.

BG COOKE: So if we're going to keep it, I would make it a separate Finding.

LTC MCGOVERN: Okay.

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COL HAM: Sir, would you rather just to limit that and have the -- this is Colonel Ham -- would you rather or what's the subcommittee's sense? Take out that sentence and just have the first two sentences in the federal criminal justice system and then ending at panel member sentencing by members and then just take out those next two sentences?

BG COOKE: That's what I would do.

CHAIR HILLMAN: This is Beth.

What if we moved 62 up? Because that actually, that's where we're talking about transparency and credibility. So 62 says we don't publish the data. And if we put that at the top of this section, then it would enable us to say that what is a platitude, but it's actually an important one because that's a part of what we're aiming at in this entire section to say victim and public confidence depend on credibility and transparency.

We could put that sentence in 62 in

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the Finding and then that Recommendation, General Cooke, would that help if we put that there?

BG COOKE: No, that -- I agree. That's the fourth step. But it doesn't really follow here. It really follows -- I mean whether it's member sentencing of Judge sentencing doesn't really affect credibility and transparency as much as that applies in 62. I'd agree with that.

LTC MCGOVERN: Okay.

CHAIR HILLMAN: So in that case, then 56, the Finding simply says the first two sentences there in the federal criminal justice system in 44 states and then the military retention option for panel members sentencing by -- that's redundant, actually, for sentencing of panel members, right.

BG COOKE: Right.

CHAIR HILLMAN: We should cut the first panel member there. And then that's it

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for 56.

LTC MCGOVERN: Okay.

BG COOKE: For the Finding.

MS. JAUS: For the Finding.

BG COOKE: Yes. On the Recommendation, I think you have to include changes before the word Manual for Courts-Martial, you have to put to the UCMJ and the Manual for Courts-Martial. It would require a code change too.

LTC MCGOVERN: Okay.

CHAIR HILLMAN: So, let's just get a sense here, Kelly, since we have everybody, so I don't know that Rhonnie and John will be on the call this afternoon, so you support the change in the Judge alone sentencing?

MS. JAUS: I support that.

BG COOKE: I do, too.

MS. JAUS: This is Rhonnie, I support that.

CHAIR HILLMAN: Okay.

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LTC MCGOVERN: Okay. That's it?

CHAIR HILLMAN: So, actually, Kelly, if I could just get the numbers here on the call right now to weigh in on this, too, if we have multiple members who disagree on that, I'm leaning towards including that alternative, you know, including that perspective in our report rather than having them write separately because that is if there's more than one person, because I'm not sure we have a consensus if we have multiple people who have doubts about Judge alone sentencing and I don't want to overstate the consensus that the subcommittee sort of submits to the panel for consideration.

Plus, the subcommittee's not really writing the final report here. We're making recommendations to the panel and the panel will consider those. So, if you have thoughts about the process and how you think we ought to manage that.

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MS. JAUS: Well this is Rhonnie.

What if it's just one person who disagrees. Everybody agrees except just Colonel Morris does not concur. I mean -

LTC MCGOVERN: At this point, that's what it is.

CHAIR HILLMAN: Then I think he writes separately. So -

MS. JAUS: Okay.

BG COOKE: Yes, Beth, this is John.

I agree. If we're really split, if there are several who oppose the change, then I think the report has to kind of be an either or report with the breakdown of how many went each way.

If it just turns out to be Colonel Morris alone, then I think he should probably write something.

But it's not an easy issue and there are reasonable arguments to be made on both sides.

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LTC MCGOVERN: Okay.

CHAIR HILLMAN: Okay, thank you, that helps me on that.

LTC MCGOVERN: Okay, all right. The next series of Findings are based on edits to the sentencing portion so these are all highlighted in yellow as Findings that didn't necessarily come out in the previous version we sent out.

So if y'all could review those, see if maybe any of them should be condensed. It looks like 63.a and 63.b are so similar people might even get confused as thinking they're the same thing. One's talking about commissions, the other one's guidelines.

MS. JAUS: Can't we just combine them, sentencing commissions and sentencing guidelines?

LTC MCGOVERN: Right. Yes, I like that.

CHAIR HILLMAN: This is Beth.

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You know, Kelly, why don't you combine those but start the second sentence with, you know, sentencing guidelines. Twenty-four states, the District of Columbia and the federal system has sentencing commissions. Sentencing guidelines have been adopted by 20 states and the District of Columbia and the federal system. And then actually people won't think that we're mixing this up.

LTC MCGOVERN: Okay, that is very helpful. Thank you.

BG COOKE: Well, why do we care if 24 states have commissions?

LTC MCGOVERN: Again, I think it's in a lot of the discussions that are part of the infrastructure, everything you would probably need if you're going to do the sentencing guidelines. You're going to need the whole commission, I'm not sure.

MS. JAUS: Or that they put a lot of

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thought into it and it's a complicated procedure, you know, the whole commission is difficult to do. I put that at the first part of it.

BG COOKE: Yes, there's got to be a better way to do this. I see your point.

LTC MCGOVERN: Well, and it might be better, sir, to make the point and say the Finding is, you have very complex requiring commissions -

BG COOKE: Right.

LTC MCGOVERN: -- to manage for those 20 states that do have sentencing guidelines.

BG COOKE: Right. I think 63.b starts to get at that point.

MS. JAUS: Yes, I agree with that.

BG COOKE: And it could be we could expand 63.b to elaborate with another sentence or so that just said, you know, some -- I don't want to use the word bureaucracy, but some

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infrastructure is needed in order to develop and maintain a system of guidelines. Something like that.

LTC MCGOVERN: Okay.

CHAIR HILLMAN: This is Beth.

Agreed, then let's drop 23 or sorry 63.a into that Finding because it's data that's supports that. So states differ in their approaches and infrastructure is necessary 24, etc. have commissions to provide that infrastructure.

BG COOKE: Yes.

LTC MCGOVERN: Okay.

CHAIR HILLMAN: And then, actually, Kelly, you can drop 63.b into 3.c. So sentencing guidelines vary. These are the objectives. Twenty states, D.C. and the federal system have guidelines.

LTC MCGOVERN: okay.

COL HAM: This is Colonel Ham.

Was the evidence that you heard

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about the states that have commissions but don't have guidelines, I don't know if it's important, they used to have them but they dropped them. Would that be evidence? I can't recall. They kept the commission but dropped the guidelines.

LTC MCGOVERN: I'd have to go back and look at those transcripts.

CHAIR HILLMAN: That doesn't strike me -- I missed some of that testimony but that doesn't strike me as shocking given that, you know, the commission's role is to study sentencing and where there's sentencing happening, whether or not there are guidelines and, you know, different.

But I presume we note that in the discussion that summarizes some of that. So I think it's okay to leave that some bandwidth here on that spectrum of options.

I sort of want to push us to, before we craft all these Findings, what is our

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recommendation on this?

LTC MCGOVERN: Right. It's -

CHAIR HILLMAN: The parts down here on 63?

LTC MCGOVERN: I put that there because it was just mainly the Findings and I was wondering if this all just background discussion actually, or is there -

BG COOKE: I thought we were going to basically recommend that this is bigger than the scope of what's on our plate and that we were going to recommend that it be studied further basically.

COL HAM: That's in 57, sir. So I don't know, they could be out of order, the 60s would go after so maybe -

BG COOKE: I'm not sure what's different here than what's in 57.

CHAIR HILLMAN: Agreed. So I don't think we need a question mark there, Kelly. I think that rolls right into the 63

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series that's there rolls right into 57. These should all be numbered as the same thing.

LTC MCGOVERN: Okay. And can you also add separate Findings or should there be to show how complex it is or do you just want it in discussion?

MS. JAUS: I thought we decided that it had to be studied in more detail and there was a mix of opinions as to whether it should -- I know most people would disagree with mandatory minimums. I was in favor of it but I thought we were going to -- we thought that it needed further study.

LTC MCGOVERN: Right and that is through 57.b but as far as the Findings to support that Recommendation, I guess my question is do you want the all the series of Findings leading up to that Recommendation all straight and in the Findings and Recommendations.

Is it bigger than the scope of

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what's on your plate and is this complex or do you just want to take this is really complex and leave it at that as your Finding and the Recommendation is further study?

MS. JAUS: I think it's good to point out that they need commissions and that some states have judicial agencies and others have legislative agencies. I think all those are good. I think a lot of people don't know that.

LTC MCGOVERN: Okay.

BG COOKE: It seems to me though that a lot of this could be addressed in the discussion and then collapsed into a more concise one or two findings along with what's already in 57. Otherwise, we've got more Findings here than we do on just about anything else and we're kicking the can down the road.

LTC MCGOVERN: Right, okay, sure. Okay we will work on that.

CHAIR HILLMAN: This is Beth.

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I agree with that, and including on the two Recommendations here in 57. I think we can move the findings that are 57.a and b, integrate those into what's up above actually.

Those are the -- and actually, 57.b is really, it's a recommendation. It's us stating that we're not recommending, you know, recommendation by guidelines would require additional study. We don't recommend guidelines at this time, enhancing the Judges role in the system including in sentencing will accomplish some of our goals here and the additional study.

I don't even know if we want to recommend additional study. But we could say additional study would be required.

That would be before implementing guidelines. That would be my sense of where we're going on this.

LTC MCGOVERN: Okay.

BG COOKE: Okay.

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CHAIR HILLMAN: Rhonnie, does that sound okay to you?

MS. JAUS: Yes, that's fine.

LTC MCGOVERN: Okay. Okay. We're ready to move on to 58.a in my frame of mind.

MS. JAUS: I'm ready. I don't know, does anybody have anything else to say about 57? Okay.

I don't like this, rather information suggests that mandatory minimum sentences may chill victim reporting because the victim does not want to be the cause of such consequences.

I actually don't agree with that. I know we discussed that and I remember discussing it but I think that in my experience, victims were happy with the minimum that the rapist or series sex offender can get a decent amount of time.

And when they found out that in

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other cases that there wasn't any minimum and they could actually get probation, victims were very, very disappointed.

I understand it's different in the military. I get that, but I don't really think that, I don't know. I'm uncomfortable with because that was not my -- that is not perception of what happened.

LTC MCGOVERN: Okay and that was testimony from FAMM, Families Against Mandatory Minimums. So they clearly had a different perspective and agenda and their testimony was this really discourages people because they don't want to be personally responsible for this sentence. Leave it up to the Judge or whoever to decide an appropriate sentence. They just wanted to have reported it.

But there's flip side to both arguments. So -

COL HAM: That was the victims

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advocate groups, the National Alliance to End Sexual Violence, which -- Ms. Jaus, this is Colonel Ham.

Of course, yes, there's another side for me. We should take that out. That was their perspective, NAESV, National Alliance to End Sexual Violence.

MS. JAUS: Right. I know there's two perspectives and I get it but I just think that many other people feel differently. The victims I've dealt with in a long career feel the absolute opposite. So I'm sure there's two sides -- I know there's two sides, but I don't know.

I felt more people felt that the mandatory minimum wasn't enough for people who commit serious sexual assault.

COL HAM: So should we just take out that sentence? Should we delete that sentence?

CHAIR HILLMAN: I think we might

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need to change what we're saying here. In part, but you know, first, I think we can take out that sentence, Colonel Ham. I'm fine with that, that last sentence there because the discussion will capture these different views.

But our Finding at the top there that we find requiring them is unwise, that's also contrary to what Rhonnie just said.

MS. JAUS: I've always said that I thought mandatory minimums -- I know I'm the only person who feels that way. I'm like Colonel Morris in a sense. I think mandatory minimums are good and I know I'm the only person that feels that way.

CHAIR HILLMAN: You know, Rhonnie, I think the reason that I'm concerned about imposing mandatory minimums is because of the breadth of charges that are brought, the breadth of behavior that gets prosecuted as sexual assault.

And that's what worries me in the

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military context specifically. I actually wouldn't object to mandatory minimums for the, you know, the contact offenses or whatever, you know, the rape, the more serious, whatever. Right, you know, the rape.

But my concern here is that the statute with which we're dealing is so broad that mandatory minimums are hindering the disposition of these.

MS. JAUS: I think that's a good point but why don't we just say that that with the law existing the way it does, the breadth of sexual activity that's defined, mandatory minimums are unwise. Should they change it in the event that, I think I saw that someplace else that we were trying to make conduct more definite or more distinct then maybe mandatory minimums might be wise at that point.

But the way it is now, unwise, I guess. Maybe we can explain why. Because I think that many people in the public and the

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community would think that towards sexual assault, there should be mandatory minimums. But when they think of sexual assault, they think of rape, they think of sodomy, they think of the more serious offenses.

Because like here in New York, they're constantly asking to increase the amount of time to victims and you know, they're crazed and the mandatory minimum is five years and, you know, nobody thinks that's enough. People think it should be ten years.

CHAIR HILLMAN: General Cooke, what do you think?

BG COOKE: My concern about mandatory minimums is that they become knee-jerk reactions in too many cases and just don't end up allowing for the unusual case that some discretion is appropriate for.

So I'm very cautious about mandatory minimums. You know, I guess I'd put more confidence in the Judge than the I do in

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Congress or whoever's making these things to make the right call.

So I, I mean I certainly don't disagree with taking that sentence out. I'm not sure how nuanced we can be here in the Findings and Recommendations.

CHAIR HILLMAN: General Cooke, if we wrote, the subcommittee finds that requiring them in adults, in the first sentence there in the Finding, mandatory minimums remain controversial. The subcommittee finds that requiring them in adult sexual assault cases, given the statute, given the breadth of Article 120 is unwise.

Would that be -- does that --

MS. JAUS: Yes, I think that's a good idea.

CHAIR HILLMAN: Does that meet -- does that sort of hedge too much for you?

BG COOKE: No, I can live with that.

MS. JAUS: I think that's a good

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compromise because that explains why we're not in favor because of the many different crimes that are included in that definition. I think that's good.

COL HAM: This Colonel Ham.

Your recommendation is to reconsider the statutory mandatory minimums which do only apply to certain offenses in Article 120, not across the threats. It does apply to rape, what's called sexual assault under the Manual which is not a generic term. It's a specific statutory term.

And rape and sexual assault of a child, forcible sodomy and attempts. So it's only really four categories of offenses that required new mandatory minimums will affect.

MS. JAUS: I didn't know that.

LTC MCGOVERN: The beauty of this one is that it was also a task to the JPP. What had happened here is that it wasn't originally part of the response systems panel charter or

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tasking.

But then in the SecDef came out and said in addition to sentencing guidelines, please consider the impact of mandatory minimums as well as the collateral consequences such as what affect it'll have on guilty pleas, conviction rates and whatnot. And that's where the other Findings come from to make sure that you are addressing the SecDef tasking.

So, one recommendation here may be, again, have this reviewed further by the JPP. Because previously when my impression was that greater subcommittee had met that people were supporting the folks that said it actually would possibly reduce reporting and victims who are against it.

What we're hearing now during this discussion, really it's contrary to some of the previous discussions. So I'm afraid there is maybe there's maybe another one I can float to the members tonight and say, is there a concern

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fits here or are there differing opinions. Because if it is different than previous discussions y'all have had.

MS. JAUS: Right. I remember discussing this and I remember people saying that about the victims groups were against it and I voiced my feeling that most of the victims I've dealt with were in favor of it and think it's -

LTC MCGOVERN: Right.

MS. JAUS: -- plain for the serious sex offenses. And actually don't think the minimum is enough time.

LTC MCGOVERN: Okay.

CHAIR HILLMAN: And Kelly, this is Beth.

Let's try to say less and also since the JPP, the follow-on panel will look at this, what if we simply say, and I understand we'll have to make sure that the other subcommittee members are okay if we alter this

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Recommendation.

But we could say, we, you know, recommend no additional mandatory minimums. We must recommend further mandatory minimums not be adopted at this time and that the JPP study the impact of those already included in the MDAA, which is the Mandatory Discharge for the certain offense that Colonel Ham mentioned that are the limited list of offenses.

Because that seems to me how we could say something here that we actually do agree on rather than pushing so far that we get to a point of disagreement.

LTC MCGOVERN: Okay, I think that's fine. Okay, great.

COL HAM: Dean Hillman, this is Colonel Ham and just to let you know the SecDef did request RSP to look at mandatory minimums. Judge Jones actually responded back saying yes, she would. So I think not completely throwing it to the JPP, which is it sounds like you're

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not doing would -- what am I trying to say?

CHAIR HILLMAN: We are ducking too low. We don't want to duck too low but I don't think we are. Do you think that we are?

COL HAM: No, no, no, I'm not saying that. All I'm saying is because Judge Jones wrote back to the Secretary of Defense saying yes, we will look at this or it might have been the General Counsel who actually wrote the letter.

That reflects you did look at it but you think it needs more study. Does that make sense?

CHAIR HILLMAN: It does. I think that, you know, we're saying we looked at it where we don't recommend more at this time given the breadth of the statute. We are going to recommend -- we're softening the recommendations that it's listed in what's been drafted but we are recommending further study.

And we've made some Findings. I'd

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say we did look at it. The fact that we aren't, you know, ready to give them chapter and verse doesn't seem that that's inconsistent with Judge Jones's representation.

COL HAM: Yes, ma'am. I hope, okay.

LTC MCGOVERN: Okay, all right. Fifty-nine, there were concerns, as you said, 59 and then 59.a Recommendations for assaults sound data using to say that it really takes the provision that wanted to convene an authority to grant clemency.

So we may want to walk through this whole thing in order to find the appropriate recommendation.

CHAIR HILLMAN: Okay, this first sentence is not quite radical. Right? So maybe you should Actually read through this, Kelly?

LTC MCGOVERN: Yes, please.

CHAIR HILLMAN: Fifty-nine a,

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although the full effects of the changes to Article 60 are not known at this time, the changes require that the convening authority put into writing clemency actions. I mean what are we saying there exactly? So that's just not clear, like what does it mean to place clemency actions in writing?

LTC MCGOVERN: That basically it's, Colonel Ham, correct me if I'm wrong, but for the limited number of things they can provide, comments, the action on, they have to put in writing.

Was that correct ma'am? Is that what that's saying?

COL HAM: Well, they've always had to put their clemency action in writing. I think it means they have to explain it, parental rationale.

CHAIR HILLMAN: So let's look at that list. Let's accurately describe that and I'm not so sure that the first clause is

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necessary, so in other words, a Finding sounds especially hesitate when we start by saying although the full effects are not known.

So we could say the new Article 60 requires that the convening authority provide a rationale for the limited clemency actions that were available.

And then the next sentence is fine, I think, right? The changes may prevent the convening authority.

But this next sentence really refers to the limits on clemency action, not the writing requirement, not the requirement for a rationale.

So the new Article 60 may prevent the convening authority from providing forfeiture protection for dependence of convicted Service members.

LTC MCGOVERN: And I think what this was trying to do was, because it started out saying since this hasn't taken effect, full

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effects aren't known, it is listing a few of the different effects.

So, that's where one of was that they'd have to provide this rationale in writing, the other that what you're missing in a group of people who now are not going to be able to get forfeiture protection and it's unclear whether they're going to be able to grant clemency in other cases.

So, maybe it would be better to do a one to three parenthetical type of thing of either the -

Because that's really what Lieutenant Colonel Craig Burton from the Air Force was helping explain what the Services predicted may be problems or unknowns about the new Article 60 when the Services talk to you about it that would be their polls that Congress didn't predict. And so those would be Findings that you guys are pointed out to Congress.

BG COOKE: Then maybe the point is

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that instead of starting with although, maybe it's the changes to the to Article 60 are not fully known at this time.

LTC MCGOVERN: Right.

BG COOKE: And then the second, the placing or explaining clemency actions, that is known, I think, so I'm not sure we need to list that there but the others are question marks that we still have.

And you could say, for example, they may prevent the convening authority from providing forfeiture protection, they may also make them clear that convening authority's ability grant clemency in multiple charge cases.

LTC MCGOVERN: That's held in HR.

Do you have any --

CHAIR HILLMAN: That's great, that sounds great. And then Rhonnie, is that okay, that sentence?

MS. JAUS: Yes.

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CHAIR HILLMAN: Just rewriting that section.

The b seem like a separate Finding that should stand by itself because this sounds critical. Post-trial release may be foreclosed for convicted persons who do not get punitive discharges or greater than a year.

I wouldn't put that in the parenthetical, that last part about no access to appellate review. I think that's a critical piece.

LTC MCGOVERN: Okay.

BG COOKE: Yes, although, I mean, the problem is you do have Article 69 so it maybe you have to say it maybe effectively foreclosed.

CHAIR HILLMAN: Yes, or limited. Right, I get that. So okay.

LTC MCGOVERN: You want us to add the word effectively, sir?

BG COOKE: I think so or just they

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may have limited access to a appellate review, something like that. I mean they do have -- there is an avenue there, it's we all know that it's not very robust but -

LTC MCGOVERN: I can even say limited access with the only avenue being Article 69 to be specific if you want.

BG COOKE: Yes, I think -- and I assume, I haven't looked at the discussion but the discussion section should probably expand on that a little bit and explain what is and isn't involved in an Article 69 review.

LTC MCGOVERN: Right, and let's take quite some time.

Okay. Recommendations? Colonel Scholz found 59.a confusing to reinstate the provision that limits.

CHAIR HILLMAN: So I think it's just stated in the negative there. So Congress should amend to protect dependents to allow convening authorities to protect dependents of

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a convicted Service member.

MS. JAUS: Right, I do think it's confusing. I think Colonel Scholz is right. I think it's better to put it in differently.

LTC MCGOVERN: Okay.

CHAIR HILLMAN: Does that make sense, Kelly?

LTC MCGOVERN: Yes.

CHAIR HILLMAN: Okay.

And then the second Recommendation is further modification and here we mention something we -- actually that second clause there, the clause delaying clemency until after the appellate process is completed.

We didn't actually mention that in our discussion above. So we probably should mention that if we want to put that in the Recommendation here.

LTC MCGOVERN: Okay, yes, that was one of the things you were asked to consider and again, I think it was drawn toward Article 50

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and trying to compare it to a Governor having the pardoning power at the very end of the process. And if you want the this action, let's forego the should the clemency be delayed until after the appellate process.

So the convening authority would be standing by until then and then be able to make some sort of decision.

CHAIR HILLMAN: Okay, then if it was a specific packing, should we have a Finding that says delaying clemency until after the appellate process is completed would significantly impact the -- negatively impact, I mean really what we want to say is that's not a good idea because the appellate process could take a long time and if there if could -- I mean it's related to our conclusion on forfeitures.

LTC MCGOVERN: Well, and this would be for everyone. This wouldn't, I mean, my understanding would be if they are going to have any clemency power, should it be saved until the

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end of the appellate process?

Colonel Ham, do you have any other insight on that?

COL HAM: I'm sorry, Kelly. We were talking about something else and I missed it.

LTC MCGOVERN: Okay. In the tasking to delay clemency until the end of the appellate process, can you provide the members with any insights on the feasibility of that? And the tasking, my understanding wasn't just for the small groups who wouldn't be allowed forfeitures. It would be all clemency.

COL HAM: That's my understanding. That's my understanding.

LTC MCGOVERN: Sort of like a Governor granting a pardon.

COL HAM: Correct. That's my understanding although the legislation doesn't say that.

CHAIR HILLMAN: So is it on the

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table right now that this is just a question that came to us. Is it in proposed legislation to delay clemency until after the appellate process?

LTC MCGOVERN: No, this was just a tasking.

CHAIR HILLMAN: Okay. Let's just leave it as is then. It says including delaying. Let's just leave it in the Recommendation because we don't really have -- they've asked us to make a Recommendation on it. We're saying don't do that right now but we don't actually have that much information nor do we hear much from the impact of that.

So it will be effective for us to say much more. Let's just leave it.

LTC MCGOVERN: Okay. All right. On to -- I didn't have anyone saying that they had issues with 60 or 61, but do you all have any input for those two?

BG COOKE: This is John.

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The only question I have is I'm assuming it's correct that the President could through the Manual for Courts-Martial do away with IMMUNITY sentences. It wouldn't require a UCMJ amendment. Has anybody looked at that?

LTC MCGOVERN: I have to go double check.

BG COOKE: And the President's authority over sentencing is pretty broad so I think that's right but I haven't looked at it.

CHAIR HILLMAN: That's a good point. I haven't looked at it, either.

LTC MCGOVERN: Okay. We will follow-up on that for you, sir.

Anything about sex offender risk assessments?

CHAIR HILLMAN: That's fine for me.

LTC MCGOVERN: Okay. Number 62. Colonel Scholz said she disagrees if information is already available for the public requiring this big effort that would be

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duplicative and unnecessary.

Again, I'm not sure where she thinks all this information currently is available other than the DoD SAPRO report contains the synopsis of each of these but the reason you all couldn't do assessment was because we don't have sentencing data readily available.

So, one of the things -

CHAIR HILLMAN: Kelly -

LTC MCGOVERN: -- that Navy has done in the last year is post everything on a website so people can see every sentence in these cases. Is that right, Maria?

Ms. Fried: Yes. That's my understanding.

LTC MCGOVERN: Right. So the other services have not followed step yet, so I think that's kind of where this is going.

BG COOKE: Are they -

CHAIR HILLMAN: Kelly, this is Beth.

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Is Dawn on the call this afternoon?

LTC MCGOVERN: Yes. So we can come back to that.

General Cooke?

BG COOKE: I was just going to ask are we doing this in all courts-martial or just in sexual assault case courts-martial, the Navy?

LTC MCGOVERN: Maria, do you know?

MS. FRIED: I don't know.

LTC MCGOVERN: It was about the same time as the Wilkerson case came out and they started publishing but, and I'm not sure if it's just all courts-martial. We can find out for you what they're doing if you want.

BG COOKE: The question is, I mean if it's going to be done, it shouldn't be limited to a certain category of cases. It should be in all cases.

MS. JAUS: I agree with that, it should be all cases.

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BG COOKE: The question then becomes what administrative burden are we suggesting for the Services? I wouldn't think it would be huge, but I also wouldn't think it would be negligible.

LTC MCGOVERN: Right. Well and I guess the fact that the Navy's already instituted it seems like the burden -- they've assessed that the burden is not so great that the transparency was worth the burden.

BG COOKE: But if they're only doing it in sexual assault cases, then that's not as big as if they're doing it in all cases. That's really the question.

LTC MCGOVERN: Right. I'll follow-up on that before the 4:00 call with Colonel Scholz to find out the details and we will check this for concerns as well.

So, okay. You guys ready to tackle survey statistics?

MS. JAUS: Oh, I thought this was --

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I have to sign off. I have another meeting.

LTC MCGOVERN: Okay.

(Simultaneous speaking.)

CHAIR HILLMAN: I'm fine. General Cooke, are you okay with doing this part?

BG COOKE: Yes, I'm okay, yes.

LTC MCGOVERN: Okay, so we're there. So Survey Statistics, again, this section should be sent out to the members within the next day or two, I'm sure, so that everybody can put this in contacts either the initial Findings and Recommendations.

CHAIR HILLMAN: So speaking globally, Kelly, I sent you some big comments about sort of the way that we structured the report. Are we restructuring it in that way or -

LTC MCGOVERN: She did. Right. Yes, into those four parts, she sure did.

CHAIR HILLMAN: Right. Okay, that's great.

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And then the just, General Cooke, so you know what this is a difficult section of the report to write, but I think it's essential for setting things up.

What I tried to set out is sort of four sections here that first we talk about the difficulty of collecting data. But the importance of it.

Second, talk about interpreting that data and the challenges there.

Third, talk about comparing the data which is fraught with peril, in the phrase I sued before.

And then finally, we say that we can't extract incidence and prevalence rates for sexual assault from public health surveys but we need crime victimization surveys instead.

So I sort of view it as us presenting the information from the start, the collection point to interpreting it, comparing it and then

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deciding what we want to recommend going forward.

LTC MCGOVERN: You said the evidence the subcommittee heard on this was folks came in from the Bureau of Justice Statistics, the former Director, Jim Lynch, as well as the current Director, acting Director and statistical analyst to explain the differences of the surveys and Joanne has captured that in her writeup as well.

But it's helpful to have your set of fresh eyes as someone who hasn't heard that evidence. Do these make sense?

BG COOKE: Well, and again, I didn't -- I missed all of that stuff, so I'm on thin ice here.

I think Professor Hillman's organization makes sense. And just reading through this this morning, I didn't find anything that I thought was terribly confusing or that I disagreed with based on my shallow

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knowledge of it all.

I think I need to read it in the context of a broader discussion to make sure I understand what we're finding and recommending here. But, as a whole, I thought it was okay. I didn't have any specific problems with it.

LTC MCGOVERN: Okay. And Colonel Scholz provided edits throughout this section which are helpful adding a few words here or there to each one to help clarify things.

The only ones she Actually had a comment on was number 66 where the last sentence of 66 Recommendation was the Secretary of Defense should also follow best practices in receiving higher response rates of the Military Service Academy.

She asked why we're targeting this specific group and Joanne, if you're there, maybe you can weigh in better to explain the process that Military Service Academy and how they get such a higher response rate compared

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to the DoD surveys.

COL HAM: Yes, this is Colonel Ham.

Joanne's here, too, but basically, the Military Academies bring higher responses so they have a much higher rate.

LTC MCGOVERN: Correct.

MS. GORDON: Over seventy.

COL HAM: And the National Crime Victimization Survey has about an 87 or 88 percent response rate.

LTC MCGOVERN: So I don't think that we're necessarily targeting that specific group but maybe to avoid confusion, we could add what that best practice is in that allotting time to take the survey, requiring the survey or I mean something to that effect to get a higher response rate.

BG COOKE: Is what we're saying here is the Secretary of Defense should follow its own best practices that have achieved a higher response rate? Are we saying we should

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apply that method elsewhere or are we saying there's something wrong at the academies?

Now that I read this, it's not clear to me which is the is the -

LTC MCGOVERN: Right, no, sir. I think what we're trying to say is that you should do what they do at the academies which is allow them time and send the surveys required and to respond to the surveys.

Similar to when you go to some of the other schools, they say everybody has to sit there for ten minutes to do the course survey which means they sit there and not do the survey or you can sit there and fill it out and when given those two choices, most people end up filling out the survey and handing it in.

So, it seems kind of strange to be forcing people to fill out a victim-type survey where you want voluntary data but they do do it at the academy, so if they want a higher response rate, they should do something to

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encourage.

CHAIR HILLMAN: Kelly, it's a great point that this is not quite clear what we're saying and I'm not sure I'm ready to recommend a particular method of surveying because I don't think that the active duty population is the same as the midshipmen and cadets at the service academies. And I -

LTC MCGOVERN: Right.

CHAIR HILLMAN: I'm not sure that the same strategies will work.

I remember those surveys and I remember the attention that the cadets in my classes gave to those when they were forced to fill them out, too.

The higher response rate may not be -- the way in which we would get those responses would be to have everybody in a room, right. I mean literally, physically control them. And the sorts of data that we're collecting, I think just having heard the social sciences weigh in

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on the, you know, the many things that affect that, you know, the order of the questions, the phrasing, the -- all the different things that affect responses to the surveys.

I'm not ready to say we should have commanders put everybody in, you know, the auditorium and have them fill this stuff out together. That will give us better data.

But I do think we need to continue to find ways to get better data and to deal with the non-response biased issues. I mean I think that's a critical piece in the middle of 66 where we say, we need the non-response bias analysis plan transparent and the data should be made available so that independent researchers can actually get inside and study it.

One of the big challenges to the data has been not enough disclosure of what we've collected and how we analyzed it.

LTC MCGOVERN: Okay, so would you

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like to just delete the last sentence?

CHAIR HILLMAN: Yes.

LTC MCGOVERN: Okay.

BG COOKE: Yes, I agree.

CHAIR HILLMAN: Because the discussion will take into account what Joanne mentioned but, you know, the response rates are higher at Service academies. So I mean we'll say that.

I do wonder though, if we need to say the response rate is in the Finding 66 there, we say this response rate is very low but that should we also say the response rate is sometimes very high? And its' like Service academy Service.

LTC MCGOVERN: Okay.

CHAIR HILLMAN: In other words, that Finding should be response rates to military surveys about, you know, the experience with each assault varies.

LTC MCGOVERN: But do you then need

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to have an explanation and say you're not recommending that the commanders hold everyone in an auditorium similar to, you know, if you put it as part of a Finding, do you need to address it in the Recommendation?

CHAIR HILLMAN: You know, I think we just want to say what you wrote here, there Secretary seeks to improve response rates. I think that's great and then make non-response bias analysis data available.

LTC MCGOVERN: Okay.

CHAIR HILLMAN: I think that's fine.

LTC MCGOVERN: Okay. I did -

BG COOKE: Let me -- while you're --
Hi, Kelly.

Did we get evidence that 24 percent response rate is not a very good one?

LTC MCGOVERN: Yes, sir.

BG COOKE: Okay.

LTC MCGOVERN: Others are 70, 80

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percent so you don't know in the biases, you don't know if it's only those people who were really upset by their issues and were actually affected or is this an accurate, you know, survey of the population?

So 24 percent is pretty low to be making policy and legislative decisions off of.

BG COOKE: Okay.

LTC MCGOVERN: There's not -- Jan, did you want me to go back to investigation and ask them to wait and -

CHAIR HILLMAN: Actually, sorry, Kelly, this is Beth.

Before we leave this, I think 67.a, I'm not sure these are quite structured in the right way yet.

LTC MCGOVERN: Okay.

CHAIR HILLMAN: But 67.a, I don't think we can actually say that, especially since we don't cite to any surveys in making that statement there.

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There's the overall risk and then we use the phrase that Rhonnie had recommended we use, contact sexual violence is the same for military and civilian women after controlling for age and marital status differences.

We need, if we're -- that's a big statement. I'm not sure we know. I don't know that we know that the rates very well for either but is that based on -- is it a national intimate, you know, partner violence survey? Is that what that's based on or -

LTC MCGOVERN: Yes, ma'am.

CHAIR HILLMAN: -- we need to say what that is.

LTC MCGOVERN: Okay, yes, that's if you need each survey. Correct?

CHAIR HILLMAN: Yes, state that then, say the CDC, you know, study of contact sexual violence, which is not the same, is what these other terms that we use to identify, you know, found the overall risk to be the same for

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after controlling for differences.

I think that's fine. We just need to put more detail in that Finding because it's too global as stated.

LTC MCGOVERN: Okay.

COL HAM: And it, yes, ma'am, this is Colonel Ham.

And they surveyed military people so they're not comparing contact sexual violence to unwanted sexual contact. So that's not a comparison of two surveys. That's one survey that surveyed both.

CHAIR HILLMAN: Right, I remember that. It's just one. We just have to specify. And the fact that it's an external survey, you know, perhaps it lent it more credibility in making this relative assessment. So I find it useful to have it in here, but we just need to pump up the voracity of that.

LTC MCGOVERN: Okay, great.

CHAIR HILLMAN: One this to pull

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out up in here, Kelly. Sorry, one more thing more on this survey information.

I thought that one of the things we heard and realized and this -- Jan was the one who brought this to our attention in part, that the family advocacy program reports that cover domestic violence, that they include some sexual assaults that don't get counted. Didn't we want to include that here? That ought to be looked at as well. Isn't that a part of this survey and statistics piece?

LTC MCGOVERN: I think Joanne was trying to work that in but we're having a hard time finding a spot for it, Joanne. Do you want to weigh in on that?

MS. GORDON: Yes, ma'am.

The problems is that the family advocacy data I know one is being covered extensively by victim services as though to avoid a little subcommittee fratricide. We have a draft unit.

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The other piece is that this survey, the WGRA, covers active duty service members. And so if I'm not active duty and I'm assaulted by my spouse, that survey number captures that. If I'm a spouse of an active duty member, I'm never surveyed.

And so if we're talking about SAPRO numbers that are reported, I'm restricted to sexual assault that occurred that captures spouse members in there.

It does lend itself to the fact that the numbers, the WGRA numbers and the SAPRO numbers can't be compared, but we talk so I guess extensively about this survey piece in here and how it shouldn't be compared to those numbers, I'm concerned that if we start saying, oh, and look at this other thing that we can't compare, it will just remind people to compare them, if that makes sense.

CHAIR HILLMAN: Yes, the myth busting challenge that I set out before that if

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we set this data out.

Okay, maybe it just goes in the discussion then instead of a Finding here. So we'll just -- I'll keep an eye and that way as we write this up and if I feel like there's a part that we need to add, maybe we'll add that to the discussion.

But note that I don't want to create the impression that we're certain that there's over counting of sexual assaults because I think there are factors that push in both directions here. So that's all. And that's one of the, you know, small pieces that suggests we're undercounting rather than over counting with the survey.

Okay, Kelly, you were going to send us back to investigations. Is that right?

LTC MCGOVERN: Right, Jan had a couple of things that are still out there that she would like addressed, if you would just give me one minute, I can pull that up.

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Unfortunately, I've been bombarding Jan with emails.

CHAIR HILLMAN: While you're looking for it, I'll just say, General Cooke, I'm grateful that you're able to weigh in on these parts now and it's a huge help to us, so thank you.

BG COOKE: Well, I hope so. I feel a little -- well, I feel kind of guilty that I'm coming in at the end here and, you know, throwing a monkey wrench into things. So I hope it's constructive.

CHAIR HILLMAN: It's not a wrench though. It's the gears.

BG COOKE: Well, you know, it's kind of the kid that comes in you know after all the shootings done and then, you know, starts throwing out, you know, throwing out a few more arrows and everybody says, hey, I thought we were finished so I want to avoid that.

Or as they said, the appellate

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courts, they come on the battlefield after all the fighting is done and shoot the wounded.

LTC MCGOVERN: Okay, going back to investigations, the Recommendation ten, I'm trying to put this in context or I can just save this for this afternoon's discussion and send it out to people for consideration before the meeting.

But, this is one that didn't have consensus in the editing process last week, so talking then about this possible transactional immunity for reporting for self-report and minor collateral misconduct.

Jan, do you want to discuss this at all or do you want me to read what is here?

MS. CHAYT: I need you to read it first. You said we wouldn't get there so I didn't bring it.

LTC MCGOVERN: I never thought we would. We're doing so great but, so the Secretary of Defense directs JSC to examine if

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they could recommend that 31 be allowed to the Secretaries in the military Services to promulgate regulations requiring to a Service member whoever reports a sexual assault or is suspected of minor collateral misconduct.

Basically, General, I'll have to give you some background on what we found is NCIS -

BG COOKE: Kelly, just cut to the chase. I have it in front of me, the Finding and Recommendation and I think I understand. I did hear some of that before. And if the question is what did I want to do with this, my view on this Recommendation, I'm very skeptical of amending Article 31 or the ability to grant immunity at the levels where it would have to be granted to have any effect here.

However, as I read the Recommendation, it's only asking the Secretary of Defense to ask the Joint Services Committee to examine all this. And I'm okay with asking

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them to examine it.

LTC MCGOVERN: Okay. Okay. So in this revised Recommendation, Part B, and I'm not sure if you have this part in front of you, sir.

BG COOKE: Okay.

LTC MCGOVERN: It says direct a limited automatic grant and trust study whether to direct a limited automatic grant of transactional immunity it can be available for drug and alcohol abuse or self-report minor misconduct. When an investigation has not been an issue as the result of other information received from another source or state that a procedure to obtain an expedited grant of immunity be implemented.

Basically, in the Recommendation, do you all want to refer to this type of immunity you can possibly get in a drug and alcohol abuse or do you want to keep it more general and save that analogy for the discussion?

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BG COOKE: You know, I would take it out, but again, as I read this, it's all going to get referred back to the Joint Service Committee, so I'm not sure how specific we have to be.

I'd be very, well, I'd be a lot more cautious if we were actually recommending these things be done.

LTC MCGOVERN: Right. Dean Hillman, do you want in the Recommendation of what to study to use the analogy of the drug and alcohol abuse or do you just want to say or that a procedure to obtain an expedited grant of immunity be implemented or see other appropriate legislation and policy to address the issue of collateral misconduct?

CHAIR HILLMAN: I think I agree with General Cooke that if we're simply recommending that the JSC look at this, then I don't think that being too specific about it. Our discussion should mention that analogy.

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You know, I thought that there's two pieces here. We're concerned about the impact of this on the effectiveness of investigation and that's actually -- that's something that was reported to us from the field. I mean they're not all doing the same thing. That's Recommendation 10.b there that says standardization of policy regarding the requirements.

I think they're disregarding the Article 31.b all the time right now and that the authority to -- I think it does a disservice to the victim to not advise them of their rights when they could be prosecuted and to not have clarity on this is a problem, I think, and an uneven mess across the Services. So that's really what I -- that's the need that the primary thing that I think we should do from a system perspective is make sure that the mandate that remains in 31 for a rights advisement that that stays in place.

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But from the victim services perspective, I think there's a concern. And from an investigative effectiveness perspective, and I know this is Russ Strand's concern, that this derail interviews with the rights advisement.

So but this is complicated, it involves -- now we have special victims counsel who are involved so there's a lot of different pieces to this and I think rather than specifying exactly how this ought to be analogized, you know, drug and alcohol abuse, that's in a different context, there's no special victims counsel in those situations.

So I'm not sure how far that analogy needs to go and I would leave that part.

COL HAM: Dean Hillman, this is Colonel Ham. Does the Subcommittee want to recommend in conjunction with this recommendation or apart from it to -- for the Joint Service Committee to assess really what

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the extent of the issue is now with rights warnings? I think you already anecdotally -- I mean, there's no empirical evidence as to how much this happens, and how much if it happened in the past it has changed, you know, and what direction with Special Victim Counsel. Would that be something to assess before recommending the policy changes, or before making policy changes, or changes in the law. I don't know. Just throwing it out.

BG COOKE: I think that's kind of inherent in the recommendation where it says direct the Joint Service Committee to examine whether.

LTC McGOVERN: Okay.

CHAIR HILLMAN: Colonel Ham, I think you're right, that that needs to be taken into account. My concern was, you know, the Navy investigators told us they never do this. Right? They're just not doing rights advisements when collateral misconduct comes

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up, and I think that --

LTC McGOVERN: They confirmed that.

Right?

CHAIR HILLMAN: Right.

LTC McGOVERN: They confirmed that in their response to the supplement RFIs, that they refer it to the Commander for action because NCIS only handles serious misconduct.

CHAIR HILLMAN: So, that's a problem. I mean, that's a violation of 31. And I think it doesn't protect victims from potential criminal liability in the way that Article 31 is supposed to, even as it enhances the investigation of sexual assault. So, I do think that that's the -- to me, there's not much further study that we need to sort of try to fix that. I just don't know what the fix is yet, and I think so long as our discussion, which it will, I'm sure, point out that there's this inconsistency there, you know, we're saying there needs to be a solution. We're not sure

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whether it's amending Article 31 or altering the practices of the investigators.

LTC McGOVERN: Okay. And just clarify one more time then, Dean Hillman, you said there's two possible letter Ds at this point, one contains the analogy, the drug and alcohol abuse; the other one just says there's a procedure to obtain expedite grant of immunity, for the recommendation you just want the shorter version, but talk about the drug and alcohol abuse transactional immunity in the discussion. Is that right? At first I heard you say it was okay to be specific, but then I thought I heard you say that should just be in the discussion, so I just wanted to clarify.

CHAIR HILLMAN: I'm trying to clarify to myself. So, I guess the first, A says "consider amending Article 31B, and then second says -- it actually says "examine whether," that's not grammatical, right, "direct a limited automatic grant of transactional

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immunity." Even that language is too specific, I think, for me. If I said we wanted to be more specific that's not my intent here. I followed General Cooke's recommendation that we not be so specific here. But the second part then is whether the -- the first part, whether the Secretary should recommend. The second would be whether -

BG COOKE: A limited automatic grant of immunity should be available.

CHAIR HILLMAN: Right.

BG COOKE: I think that's about all you need to say.

CHAIR HILLMAN: Right. The fact that it's a limited automatic grant implies a sort of expedited process, or it could be through an expedited process, anyway.

BG COOKE: Yes.

CHAIR HILLMAN: The way that they would get that limited automatic grant, we're not specifying.

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BG COOKE: Right.

CHAIR HILLMAN: But it actually has to come right now from the Convening Authority, and yet we have investigators who are implying that they're giving that grant right now.

BG COOKE: Yes.

LTC McGOVERN: Okay. That's helpful.

BG COOKE: And you could say limited automatic or expedited grant. I don't know what an automatic grant is.

LTC McGOVERN: The automatic grant would be I'm not going to read you rights and you won't be prosecuted for alcohol-related offenses --

(Simultaneous speech.)

BG COOKE: But then -- yes, well -- okay.

CHAIR HILLMAN: But -- actually, you know, I'm not sure we should say automatic. Can we just say limited grant of immunity should be verbal.

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LTC McGOVERN: But that -- I mean, that already is, I guess, if you go through the Convening Authority you can always request immunity. If the concern is whether a limited grant of immunity should be available so that investigators know they don't have to read the rights because it would be automatic.

CHAIR HILLMAN: Actually -- I'm sorry to vacillate on this. You can leave it in there. We're just -- automatic means that we're at least considering that victims who report should never be prosecuted for some things. A limited automatic means that we're saying victims who report a serious sexual assault should never be prosecuted for a minor alcohol offense. I am comfortable saying that based on our goals here, which are to improve reporting and make investigations run better, so I'm fine with that, so you can leave that in. Expedited, I'm not -- you could put in--

BG COOKE: I don't care. That's fine.

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LTC McGOVERN: Okay.

BG COOKE: I care, but it's fine.

CHAIR HILLMAN: You recommend expedited? Do you want that in there, General Cooke?

BG COOKE: No, no, no. No, it's fine. I care about all this. I don't want to imply that I don't care. I just -- I'm fine with the way you now have it.

LTC McGOVERN: Okay, sir. Then on 19 in investigations, we can address that with Colonel Scholz this afternoon. She didn't think that the Joint Medical Education and Training Center would be where the location for a Joint Course, so Jan needs to just talk to her a little bit about Lackland and what they heard there. But that is where joint training occurs, so that's why that's in the current Recommendation 19.

Other than that, sir, did you want to address anything based on your two comments

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about your concerns that you sent me which I did forward to Dean Hillman, but I can pull those up, too.

BG COOKE: Let me go back and find them again.

LTC McGOVERN: Okay. I can send it to you really quickly if that's easiest.

BG COOKE: I have such a short memory here, Kelly, that -

LTC McGOVERN: No, sir. I'm -

(Simultaneous speech.)

CHAIR HILLMAN: If you could send it to me, I don't know where it is either.

LTC McGOVERN: Okay.

CHAIR HILLMAN: I can see things that you sent to me but the list is so long now that --

LTC McGOVERN: I know, I'm sorry.

BG COOKE: Well, one of them --

LTC McGOVERN: Okay. I just sent it to both of you.

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CHAIR HILLMAN: Thank you.

LTC McGOVERN: As long as we have General Cooke, I think it would be great to go through his.

CHAIR HILLMAN: Yes.

BG COOKE: The way it read it was -- I'm trying to begin. I pulled this out of the big master document.

LTC McGOVERN: Okay. Do you want me to send you the master document, too, sir, more quickly?

BG COOKE: I'm almost there.

LTC McGOVERN: Okay.

BG COOKE: It said, "Currently, all the military services and members to training courses and JAG schools of the other services which enables sharing of successful tactics, strategies, and approaches. While the Subcommittee considered and discussed consolidation of facilities, quality of training is considered to be of importance."

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First of all, that sentence didn't really make sense to me. The second clause doesn't really explain the first. And it doesn't discount consolidated -- I mean, it says we discussed it, but it doesn't say we thought that we shouldn't recommend it. So, I just -- I think that second sentence either needs to be dropped or modified.

CHAIR HILLMAN: These comments track with how we talked about changing this before, don't they? I mean, clarifying what we're doing here. General Cooke has the same concerns that we raised.

LTC McGOVERN: Right. Yes.

CHAIR HILLMAN: No is suggesting we consolidate all training at one facility for JAGs. Was not the intent of that proposal, so we'll go back and adjust that.

CHAIR HILLMAN: But do you remember when Harvey Bryant and I were talking about this on one of these calls. It's not -- if someone

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were to come up with a fabulous plan to consolidate, I mean, that's -- we don't want to sort of foreclose that. We just don't want to put that at the top of the list. It's more important that we have effective training, and that there is a means by which approaches can be shared, effective strategies can be shared. But we don't want to foreclose the possibility of consolidation as a bad idea, necessarily, just not at the top of the list. Am I remember that correctly? I mean, that's where I think we ended up at.

LTC McGOVERN: Okay. And I think we were getting vague enough that it was more global, that you weren't suggesting consolidation at this time. Right?

CHAIR HILLMAN: That's correct.

LTC McGOVERN: Okay.

CHAIR HILLMAN: General Cooke, is that consistent with your sense there?

BG COOKE: Well, I mean, I don't

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recall that discussion, so I'm not sure what was discussed. I think we either need to drop that sentence or it needs to be -- if we want to say that we discussed it, we need to say something to the effect that we didn't see a basis or a reason to pursue it at this time, something like that.

CHAIR HILLMAN: I agree with that.

LTC McGOVERN: And then you had concerns with number 44, sir.

BG COOKE: Yes.

LTC McGOVERN: I just want to make sure that we've addressed those, as well.

BG COOKE: Well, 44 I think is one talked about before, that's with the charging -- the preferral of charges, and comparing that and the standard for that with the standard for the "Charging" decision in the civilian community. And I just think we're comparing apples and oranges there. And I'm not sure where we're going with that whole

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discussion.

LTC McGOVERN: Right. The charging section seems to have caused confusion and heartburn by a few members it seems like, so I'm not sure -- I think we talked about combining part of it, and deleting part of it to revise it. I'm not sure how much value is added. Basically, my understanding is you just want to say -- let the public know that military Commanders and JAG officers who are drafting these charges do have discretion. They consider a number of factors, and civilians consider a number of factors. But past considering a number of factors, it's apples and oranges. Would that be more accurate, sir?

BG COOKE: Yes, I think so. As I say, the standard to prefer a charge is very low, and to the extent it matters at all in the context of sexual assault cases, it's not bad that it's low. A victim can prefer a charge without having to worry about its provability, and she or he

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can at least compel somebody to look at the complaint. So, I don't know that you want to raise the standard for preferring charges. It's once you get beyond that, that people have to take various factors into consideration in deciding whether to proceed with a case or not.

LTC McGOVERN: And I'm just trying to find in here exactly where we should fix it, but I can do that this afternoon as I go back through and see -- based on the transcript from last week, too, because I think we ran into the same sort of roadblocks when the other folks were discussing it on Thursday and Friday during teleconferences.

CHAIR HILLMAN: I missed most of the discussion of 44, but you did -- I did get on the line in time to hear that you had a plan for how to revamp that. I do wonder if we should just strike the recommendation and just have findings that describe what, you know, number four says there, comparing civilian and

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military guidance on disposition. And then have findings that are descriptive rather than a recommendation. I'm not sure we actually have something we really all agree to say about articulating a higher threshold, or a common threshold.

LTC McGOVERN: Okay. And that's why I said if it's necessary to just delete that whole part if it's not something that is important to -- I mean, you're recommending plenty of other things, and doing Section 1708 of the FY NDAA that's non-binding, provision about the accused character and military service, that's what we had talked about moving into the good soldier defense section as part of the different ways they're going after that as a consideration, and getting that confused with actual character evidence. So, I honestly think based on the feedback we've had from members we need to delete 44 and see if people are more comfortable with that. Because even

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DOJ and everybody has these thresholds for things, they consider all these other factors, and General Cooke is right, there's a lot of difference between charging, indicting, and preferral, and referral. So, maybe it's something we just don't compare.

CHAIR HILLMAN: Since we haven't been specifically ordered to address that, I'm happy to not address something.

BG COOKE: Yes, that would be fine with me.

LTC MCGOVERN: Okay. That's easy. I can delete. The other one I think that really gets us through the issues that we need to discuss for this afternoon, the availability of the members. We can address their individual concerns, but we have gone through our list of findings and recommendations at this point. So, that's good.

BG COOKE: So, let me ask two questions, Kelly. What do you now need from me,

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and is there a conference call on Friday?

LTC McGOVERN: Yes, sir, there is -- I'll start backwards. There is a conference call on Friday to go over the slide presentation and confirm one last time everybody is comfortable with these findings and recommendations that are going to be presented on Monday.

BG COOKE: Okay. At 1:00 on Friday?

LTC McGOVERN: Yes, sir.

BG COOKE: Okay.

LTC McGOVERN: Leading up to that we will send out this new list of findings and recommendations. I won't send out any report, but we will send out the written portion of survey and statistics, so if people are reviewing the revisions to those findings and recommendations they can put them in context. But we'll just ask if you can comment on any of the wording of findings and recommendations that you still needs to be tweaked, we'll ask

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for that by Thursday. That would be incredibly helpful.

BG COOKE: Okay.

LTC McGOVERN: So, I will send something out tomorrow and ask for it back by Thursday, and then we'll talk about it on Friday.

BG COOKE: Great.

LTC McGOVERN: Does that sound good, Dean Hillman?

CHAIR HILLMAN: That sounds great, Kelly, thank you. I think we're on track to have -- so just to clarify what our plan is here. We won't have a final report to circulate to the panel members in advance of our presentation to them on May 5th, but we will have findings and recommendations that will constitute essentially an interim report. Those could still change before our final report, but I don't anticipate them changing much. And the May 5th presentation will be our opportunity to

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give the panel our findings and recommendations in a way that I think will help frame the other two Subcommittees' reports which are somewhat less broad than what ours are because they're focused on Victim Services, and then Role of the Commander, although there's certainly plenty of overlap. But then our report will get finalized. Kelly set a deadline of May 12th for when we want to turn that around, and that will be the -- any changes that we want to make in findings and recommendations, but primarily just finalizing the report -- the discussion to support those in that week after the Subcommittee presentations to the panel.

LTC McGOVERN: And for this afternoon, Dean Hillman, you'll have Colonel Scholz, Colonel Morris, and Mr. Bryant, although we're not sure about Colonel Scholz and Mr. Bryant, whether they'll be available. They're going to try, but it will at least give you time to address any issues you want with

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Colonel Morris' suggestions, and then the few items we have specifically that Colonel Scholz was concerned with. And then last week you had asked Mr. Bryant and Ms. Jaus to weigh in on one of these civilian findings, so we can ask him about that, but may not even need the full two hours this afternoon then.

CHAIR HILLMAN: Music to my ears. So, that's great. General Cooke, will you be at the presentation on the 5th?

BG COOKE: I have an Agency meeting here on that morning, so I can -- I think -- I'm not sure how long it's going to take over there. I don't think I'm free until close to noon. I could join you in progress, but I don't think I can be there at the start.

CHAIR HILLMAN: I think that's perfect, actually, because the morning will be a SAPRO presentation. Kelly, aren't we on, and Colonel Ham, aren't we on until -- we're not really going to report in until the afternoon?

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COL HAM: Ma'am, you start at 9:30. The SAPRO briefing is 8:35 to 9:30. Then the first Subcommittee briefing starts.

CHAIR HILLMAN: And that's us, so we have the morning until lunch. Is there anything afternoon that we're doing?

COL HAM: All the rest of the day and the next day are Subcommittee reports, although we have public comment both days, and we do have -- I think we do have people coming for public comment.

CHAIR HILLMAN: So, I guess then I'd just suggest if we could put anything else before we start, that would be great to give General Cooke a chance to get over there if he can. You know, to have more Subcommittee members to sort of hear the presentation and then take questions from panel members, if they have them, and help present some of this material, that would be -- that's what our goal is. But really the work that you're doing right

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now in terms of drafting the findings and recommendations, that's the critical part of this. This is the presentation piece, so I'd be grateful for whatever time you can be there for.

BG COOKE: Well, I'd like to be there. This was set up a long time ago, and it's a command performance, but I'll get over there as soon as I can. I should be able to get there by noon, but not much earlier.

CHAIR HILLMAN: Okay, that sounds great. So, we'll keep you posted if that schedule becomes a little clearer. You know, Colonel Ham and Lieutenant Colonel McGovern are working that out.

LTC McGOVERN: Okay. If there's nothing further, Maria, do you want to close the meeting for us?

MS. FRIED: Sure. I guess no other comments from the Subcommittee members? We're good to go? Okay.

BG COOKE: Hope Kelly feels better.

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LTC McGOVERN: Oh, thank you, sir.

(Whereupon, the proceedings went
off the record at 12:57 p.m.)

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