

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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FRIDAY
MAY 2, 2014

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The Subcommittee convened via teleconference at 1:00 p.m. Eastern Daylight Time, Elizabeth Hillman, Chair, presiding.

PRESENT:

PROFESSOR ELIZABETH HILLMAN, Chair
HARVEY BRYANT
BG (Ret.) JOHN S. COOKE
BG (Ret.) MALINDA DUNN
COL (Ret.) STEPHEN R. HENLEY
COL (Ret.) LARRY J. MORRIS
RUSSELL W. STRAND

ALSO PRESENT:

BILL SPRANCE, Designated Federal Official
JANICE CHAYT, Investigator
DILLON FISHMAN, Attorney
JOANNE GORDON, Attorney
COL PATRICIA HAM, Staff Director
LTC KELLY McGOVERN, Supervising Attorney
TERRI SAUNDERS, Deputy Staff Director

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

(1:11 p.m.)

MR. SPRANCE: This is Bill Sprance,
the DFO, and the meeting of the Subcommittee
is now open.

LTC McGOVERN: Dean Hillman, would
you like to make opening remarks?

CHAIR HILLMAN: First, just to
thank everybody for working so hard to get as
far as we have on this. And I doubt that
everybody has gone through everything that the
staff has sent out because there haven't been
enough hours for everyone to do that.

But I want to be clear, this is an
interim report of the Subcommittee to the
panel. So what we are publishing are
essentially interim findings and
recommendations, which should be as close to
final as we can make them. But the time
pressure is preventing us from quite nailing
down exactly everything at this point, which
is why we're not submitting a final report at

1 this point. So that's the context in which we
2 will present this on Monday.

3 And then, I just want to tell you,
4 Kelly, that we should just -- I'll follow your
5 lead on how to walk through the things that
6 you need in order to finalize this to get
7 something out to the panel and then to sort of
8 set up, queue up our presentation, which we
9 will continue to work on this weekend.

10 LTC McGOVERN: Okay. Thank you,
11 Dean Hillman. For the purposes of the
12 findings and recommendations, first, a few
13 clarifications if I could for those of you who
14 are here. In the investigations portion, I
15 sent a note at the end of one of my many
16 emails today.

17 Number 13 actually appears twice,
18 Number 13 and Number 17. So Number 17 will be
19 replaced. And it appears in the slides that
20 we've sent you, so we'll go over that real
21 quickly to make sure that everybody is aware
22 of that change and that detail.

1 Second, then I would like to go
2 through some of these issues. Colonel Henley
3 sent us some proposed language to add, and I
4 wanted to run that by the group if that's okay
5 with you, Dean Hillman, to try to narrow that
6 down for today, that will be acceptable to the
7 majority or at least those on this phone call.

8 And then, once we get through those
9 issues, Dean Hillman, if you'd like to take
10 the lead on discussing and preparing for
11 Monday's presentation, that would be extremely
12 helpful as well. Does that sound good?

13 CHAIR HILLMAN: Sounds good.

14 LTC MCGOVERN: Okay. So does
15 everybody have an opportunity right now or
16 access to a computer to be able to see what
17 Recommendation Number 17 is on your slides?
18 Anyone not -- I guess I should ask, does
19 anyone not have access to a computer while
20 we're talking on the phone?

21 (No response.)

22 Okay. Great. If you'd turn to --

1 it says at the top "Investigations, Number
2 17." Each of the numbers at the top of these
3 slides correlates to the numbers that we will
4 be reporting with the handout. Jan, would you
5 like to explain this finding and
6 recommendation?

7 MS. CHAYT: Well, it's really not
8 new to any of you. Two iterations ago when
9 you got the list of investigation issues it
10 was listed on there. It was an editing error
11 on my part, because before we put statistics
12 in front it was Number 13. So when I was
13 cutting and pasting into the newer list, I
14 used it incorrectly when it was in that
15 position. So that was my error for bringing
16 it over, so I'm sorry about that.

17 But it was previously discussed and
18 has the edits that Mr. Strand has requested
19 regarding that a victim can talk to the police
20 and it would not trigger an investigation. So
21 that's what this one is about.

22 LTC MCGOVERN: So this would be a

1 change to the restricted report or likely
2 implicate changes to the regulations governing
3 -- and the policies governing restricted
4 reporting in the military. Is everyone on the
5 line -- can I go through you by name and will
6 you let me know if you're comfortable with
7 this recommendation? Dean Hillman?

8 CHAIR HILLMAN: Yes.

9 LTC McGOVERN: General Dunn?

10 BG DUNN: Yes.

11 LTC McGOVERN: Okay. Mr. Bryant?

12 MR. BRYANT: Yes.

13 LTC McGOVERN: Colonel Henley?

14 COL HENLEY: Yes.

15 LTC McGOVERN: Colonel Morris?

16 Colonel Morris, are you still there?

17 COL MORRIS: Oops. I had my mute
18 on. Yes, I'm sorry.

19 LTC McGOVERN: That's fine. Are
20 you comfortable with --

21 COL MORRIS: Yes, I am.

22 LTC McGOVERN: -- the

1 recommendation? Okay. And General Cooke?

2 BG COOKE: Yes.

3 LTC McGOVERN: Okay. Great. And,
4 Russ, you're comfortable with it, right?

5 MR. STRAND: Yes, I'm very
6 comfortable with it. Thank you.

7 LTC McGOVERN: Okay. Okay. Thank
8 you. All right. So we have a consensus on
9 Number 17.

10 Again, we'll combine everyone's
11 edits, run it through Colonel Ham and Dean
12 Hillman, and then by Sunday send out a revised
13 version for everyone to look at, so you can be
14 familiar on Monday with the final product.

15 I think we are probably at about
16 the 80 percent solution, 70 to 80 percent
17 solution right now. But that takes care of
18 that one.

19 The next topic that evolved during
20 the teleconferences was Number 14 regarding
21 the advisement of Article 31 rights,
22 collateral misconduct. Basically, in earlier

1 discussions we had talked about studying it,
2 and then it evolved to let's go ahead and
3 recommend they take some sort of action by the
4 Secretary of Defense developing this list.

5 And if you can bear with me.
6 Colonel Henley actually recommended a minor
7 editing that I wanted to run by you. He
8 concurs with the proposed recommendation but
9 suggests editing as follows, reading "or as
10 associated with the sexual assault incident
11 and determine a list of qualifying minor
12 offenses." So, again, it's saying the same
13 thing, just more eloquently.

14 BG COOKE: Which part are you in?
15 Are on the --

16 LTC McGOVERN: Number 14B, sir.

17 BG COOKE: 14B. Okay. Thank you.
18 I'm looking at that now.

19 LTC McGOVERN: Okay. Yes, sir.
20 Also, when you speak, for the Court Reporter,
21 could you please identify yourself as well?

22 Number 14B reads that "The

1 Secretary of Defense establish a procedure
2 that either grants automatic immunity or an
3 expedited process to grant transactional
4 immunity for a victims' minor collateral
5 misconduct." Or associated with -- I'm trying
6 to find my place here.

7 Okay. So the second sentence was
8 that "The Secretary of Defense should
9 establish a list of minor offenses that
10 constitute collateral misconduct." Colonel
11 Henley, where exactly would we insert the word
12 "or associated with a sexual assault"?

13 COL HENLEY: So the 14B
14 recommendation would read as follows, "The
15 Secretary of Defense establish a procedure
16 that either grants automatic immunity or
17 expedites procedures to grant transactional
18 immunity for victims' minor collateral
19 misconduct leading up to or associated with a
20 sexual assault incident and determine a list
21 of qualifying minor offenses."

22 LTC McGOVERN: Okay.

1 CHAIR HILLMAN: This is Beth. I
2 like Colonel Henley's language. I actually --
3 I made quite a lot of edits going through
4 this, so we're going to have to reckon with
5 those. They aren't substantive changes, but
6 they're -- I'll flag the ones that are
7 substantive after you go through what you have
8 there, Kelly.

9 But on this, I thought we should
10 put in there why we think the list should be
11 established and our recommendations, because
12 specifically it's -- I separated 14B into two
13 sentences, what Colonel Henley just said but
14 ending at "or be associated with a sexual
15 assault incident" is the first sentence.

16 The second sentence, "The Secretary
17 should establish a list of which minor
18 offenses should qualify in Colonel Henley's
19 language," "so that victims would know in
20 advance," because I think we have to flag that
21 the reason we're doing this is to encourage
22 reporting. And that's a part of the

1 recommendation in my mind. So I would want to
2 add that extra piece to what Colonel Henley
3 said.

4 LTC MCGOVERN: Okay. And the only
5 other difference I received from any of the
6 other members, Colonel Scholz has hearings
7 today, so she couldn't participate. She was
8 comfortable with the language in 14B for a
9 procedure that grants expedited procedures for
10 transactional immunity, but she was not okay
11 with automatic immunity.

12 BG COOKE: And this is John Cooke.
13 I submitted some comments on this, too, and I
14 have a similar problem. It goes to the terms
15 "automatic immunity," "transactional
16 immunity," and then in 14C we use the term
17 "limited immunity." And I'm not sure what
18 we're talking about in all three, if we're
19 talking about similar things.

20 I'm not sure what "automatic
21 immunity" is. I mean, I think I know what
22 we're getting at, but "automatic" implies that

1 it's going to be triggered on the occasion of
2 some circumstance. We don't specify what that
3 is, nor do we specify how far that immunity
4 extends, which gets into the transactional and
5 what offenses may be covered and what may not
6 be covered.

7 Part of my concern with
8 Recommendation 14B to begin with is we're
9 recommending a rather broad step here, and the
10 details really need to be thrashed out.
11 That's why I preferred C. I can live with
12 having the two of them together, but the
13 problem with B is it's pretty open without
14 specifying what we're really talking about.

15 MR. STRAND: This is Russ Strand.
16 I share similar concerns, but my concerns
17 might be a little bit different. If we give
18 transactional immunity or we give, you know,
19 expedited immunity, in real terms, what does
20 that mean? The problem that we're having is
21 we're having to read people their rights, and
22 that's the chilling effect. And some were in

1 the middle of the night, you know, what are we
2 going to get?

3 So basically we're -- if we don't
4 give some sort of immunity, or at least
5 acknowledge that we don't have to advise
6 rights for minor misconduct, we're not
7 changing anything because what the purpose of
8 this is is so if I'm sitting down or one of
9 our agents is sitting down with a victim that
10 we don't have to advise rights, because once
11 we do then that's -- then that, you know,
12 inhibits the information they give, that
13 inhibits the quality of the investigation, it
14 inhibits, you know, all of these things which
15 can come back to bite everybody later on.

16 So I'm not sure how to quite solve
17 this, other than I agree with Professor
18 Hillman where we should have a list, so that
19 everybody knows, everybody, you know, is on
20 the same sheet of music and it's not a
21 surprise. And whether it's immunity or not,
22 I -- you know, I don't know how to deal with

1 that part. But the purpose is where I
2 shouldn't or my agent -- or our agent
3 shouldn't have to read rights for those
4 offenses. That's the whole goal.

5 COL HENLEY: This is Steve Henley.
6 Do the terms "automatic" and "transactional"
7 -- is that necessary to the recommendation in
8 14B? I think that's sort of -- it appears to
9 be unnecessary if the goal is just to provide
10 guidance to an alleged victim as to what
11 offense or offenses would constitute minor
12 collateral misconduct. But I don't know if
13 that would address --

14 BG COOKE: When I made my comments
15 back earlier, I suggested just taking the
16 terms out and just saying that -- "grants
17 immunity" without getting into how that
18 immunity gets granted. I agree with Russ.
19 The main thrust here is we don't want to force
20 investigators to have to stop a victim and
21 warn him or her of their rights in which case
22 we are going to chill them as far as talking

1 about this crime that may have been committed
2 against them.

3 And, obviously, if we are going to
4 not warn them of their rights, then we're not
5 going to be able to use that, and that is an
6 effective form of immunity. But what exact
7 form that immunity should take, unless we want
8 to write a much longer recommendation, I think
9 we ought to shorten this and just say it
10 affords them immunity for minor collateral
11 misconduct, and that that -- we should
12 recommend that that -- what that list is is
13 clearly spelled out, so that there's not a
14 question on the part of either the victim or
15 the agent as to whether something is or isn't
16 covered.

17 MR. BRYANT: This is Harvey Bryant.
18 It is a little tricky, though, to take out --
19 when we start talking about when the immunity
20 actually is granted or takes effect, because
21 if we're trying to -- I agree with trying to
22 keep investigators from having to advise of

1 rights. When they get to that point and the
2 victim says, "While we were smoking marijuana,
3 I -- oh, by the way, am I going to be charged
4 with this?" "I don't know. I have to find
5 out. We have a procedure that goes into
6 that."

7 I like the idea that we are going
8 to have a list, as articulated by Professor
9 Hillman, that says already in advance, "These
10 offenses are not going to be charged as
11 collateral misconduct," which it seems to me
12 we are getting more into an automatic -- I
13 agree, as an attorney, the word "automatic"
14 just bothers me anyway, but it's a problem
15 here.

16 So, and what -- the way the Navy
17 does it, the way NCIS does it, all of these
18 people are getting use immunity anyway.
19 That's not as good as transactional immunity,
20 but they're getting use immunity because the
21 Navy doesn't stop to advise them of their
22 rights.

1 Yeah. Go ahead.

2 LTC McGOVERN: For your
3 consideration, I sent out a copy of the DoD
4 policy which acknowledges the -- and there is
5 evidence in the WGRA that knowing that you've
6 committed some sort of collateral misconduct
7 is a barrier to reporting. So the barrier to
8 reporting, although you can assume that when
9 someone stops to read you your rights it is
10 going to interrupt the flow of the
11 investigation, but that's probably not the
12 initial barrier to reporting, so -- the
13 barrier to reporting is whether they are going
14 to come forward at the start and the victim
15 advocate in the first -- so although you're
16 trying to grant transactional immunity at the
17 time of the investigation, I wonder if what
18 you all are actually getting at is the greater
19 immunity that would start before they even get
20 to the investigator.

21 So is this a policy decision not to
22 prosecute and then an exception to 31B that

1 you would be talking about? Just food for
2 thought.

3 BG COOKE: Clearly, we don't want
4 to discourage people from coming forward, so
5 they have to know that if they make a
6 complaint about a sexual assault, then any one
7 of the offenses listed -- and I agree it
8 should be a clear list -- nothing that they
9 say can be used against them. Whether they
10 should have transactional immunity, I mean,
11 this is an extreme case, but somebody could
12 come in and make a complaint about something
13 in order to get themselves transactional
14 immunity for something on this list.

15 So we want to make clear that
16 nothing you say can be used against you with
17 regard to these offenses. I think that's the
18 thrust of this.

19 LTC McGOVERN: Okay.

20 BG COOKE: Or that's what --

21 MR. BRYANT: This is Harvey Bryant.
22 That's what NCIS has been doing for some time

1 now. They just don't advise them when they
2 start talking about collateral misconduct,
3 which means they can't use it.

4 LTC McGOVERN: That's not exactly
5 what's happening, though, because then they
6 refer the action of minor misconduct to the
7 Commander. So NCIS isn't pursuing it, but
8 it's not preventing the Navy commanders from
9 pursuing it.

10 MR. BRYANT: Well, I was
11 responding, Colonel McGovern, to General
12 Cooke's idea that -- and thought about people
13 who will come in and report just to get whole
14 transactional immunity. If you can't use the
15 statement -- I guess they can refer it and say
16 -- say what? I don't know. They sent it back
17 to the commander, who is going to have to try
18 to figure this out, if he is going to pursue
19 it without the statement and admission of the
20 offender, which is pretty tricky. If it's
21 just two people involved, you know, the person
22 being investigated for sexual assault is going

1 to say, "She was smoking dope." And that's
2 all you've got? Because you can't use her
3 statement, "I was smoking dope."

4 BG COOKE: Well, and with the fruit
5 of the poisonous tree, you'd have problems
6 with most of the other stuff, too.

7 Again, I -- sorry, Harvey.

8 MR. BRYANT: You are exactly right.
9 I'm sorry. Go ahead.

10 BG COOKE: Well, I go back to the
11 point, we can either write a very long
12 recommendation here, or I think we can make
13 the main point that if we say the Secretary of
14 Defense establish a procedure that grants
15 immunity for victims' minor collateral
16 misconduct, and then let the Secretary of
17 Defense figure out how to do that. We ought
18 to also specify that there be a specific list
19 of offenses.

20 BG DUNN: This is Malinda. I
21 concur in that exactly, because that makes our
22 recommendation shorter. It I think captures

1 our intent, and then lets the Secretary of
2 Defense sort through how that process will be
3 implemented.

4 COL HENLEY: This is Steve Henley.
5 So, General Cooke, would this be in substance
6 the recommendation, the Secretary of Defense
7 establish a procedure that grants immunity for
8 victims' minor collateral misconduct leading
9 up to or associated with a sexual assault
10 incident and determine a list of qualifying
11 minor offenses?

12 BG COOKE: Right.

13 COL HENLEY: I mean, that seems to
14 address most parties' concerns. Are there any
15 objections?

16 MR. STRAND: This is Russ. I like
17 that idea, because that is really the core of
18 what we're trying to get at here, instead of
19 -- whether it's transaction or whatever, I
20 don't want to -- you know, if there's other
21 evidence outside of the fruit of the poisonous
22 tree doctrine that they might be able to use

1 later on, so be it, and then I think that
2 would be a good compromise.

3 I think the current request for DoD
4 to have -- you know, where they are going to
5 withhold taking action on minor misconduct, it
6 is not a requirement, it's a suggestion to
7 convening authorities and to commanders and
8 things like that. How it's been implemented,
9 however, has been part of the bump, because
10 some commanders will withhold that and some
11 commanders will take action even before the
12 sexual assault investigation is over with.

13 So that really in itself doesn't
14 have any teeth. I think this one would be
15 much more helpful for victims to know that
16 even if they do discuss some of these things
17 as collateral misconduct they can do that
18 freely. And then taking away the rights
19 advisement requirement would help
20 substantially.

21 LTC McGOVERN: Russ, can I go back
22 to something you just said? Did you -- did I

1 -- I didn't hear you exactly, but did you say
2 that commanders are not waiting until the end
3 to take action?

4 MR. STRAND: That's correct.
5 Because there is no requirement for commanders
6 to withhold action. There is just a --

7 LTC MCGOVERN: No, there's no
8 requirement, but we got RFIs responses back
9 from the services saying, "In the very few
10 cases that they are taking adverse action,"
11 which in the Army was I think as low as five
12 percent of the cases, that it is at the end of
13 the process. Yeah. We have some at the
14 beginning, that the prosecutor wants the
15 discretion to do that for their case. And
16 that's why the services oppose this.

17 But, in general, there is no
18 requirement, but we have received some
19 responses from the services saying generally
20 it is at the end of the entire proceeding.

21 CHAIR HILLMAN: I think we are
22 close on this. I think that's in the

1 findings, Kelly, that point. And I think that
2 Russ' point is that it's not definitive that
3 the optimal procedure is always happening, and
4 so we're working towards -- we're working in
5 that direction. But I think we're close.

6 Colonel Henley's language on 14B is
7 what we're looking for. I'm comfortable with
8 that. So are there any objections to how
9 we've sort of made somewhat more vague 14B
10 while communicating clearly our intent to
11 encourage reporting?

12 (No response.)

13 Okay. And then 14C is a direction
14 to the Joint Services Committee, which I made
15 some small tinkering with to make parallel
16 clauses and my editing. But otherwise that is
17 just asking to look at these underlying issues
18 that remain even once that list of qualifying
19 offenses is promulgated, because we should
20 look at 31B, we should look at a procedure for
21 or a definition of some limited -- some
22 immunity. We could even just say "immunity"

1 there rather than "limited immunity" to avoid
2 the lack of precision with that term. And
3 then whether other legislation or policy
4 should address that issue of collateral
5 misconduct. So 14C seems consistent with what
6 we have all said, too.

7 Are there any other concerns with
8 that? Or, Kelly, do you have concerns?

9 LTC McGOVERN: No. I appreciate
10 everybody working through this compromise
11 solution. And I guess my point about the RFIs
12 and the responses is in the presentation on
13 Monday, if we can just be careful, because the
14 services have provided a ton of information
15 that we may not have appropriately gotten
16 everybody up to speed on.

17 If you all can just take with
18 caution some of the generalization, because we
19 don't want the services then to turn around
20 and say, "Well, we gave them information about
21 that contrary to what they reported." So that
22 would just be a suggestion. We have just

1 received so much information, it's hard to
2 pass it all along to you all.

3 CHAIR HILLMAN: Understood, Kelly.
4 This is Beth. Understood, and we'll do our
5 best to toe the line while remaining -- while
6 remaining realistic about the possibility that
7 we will be able to preempt all criticisms.

8 LTC McGOVERN: Right. Yes. Okay.

9 MR. STRAND: Whether from the
10 military or the general public, because
11 they're not the only ones watching what we say
12 we have looked at and heard about.

13 LTC McGOVERN: Right. How --

14 BG DUNN: This is Malinda, and I
15 think it's -- it's important for all of us to
16 keep in mind that over the last couple of
17 years things that may have been occurring
18 regularly a few years ago have been changing
19 according to, you know, a good deal of
20 information that we have gotten, and that we
21 specifically have to be careful about making
22 generalizations based on, well, you know, a

1 couple of years ago it used to be this way,
2 and, you know, we've got to force ourselves to
3 limit our comments to how it is now as we're
4 moving forward, we hope.

5 CHAIR HILLMAN: Hear hear. This is
6 Beth. Hear hear to moving forward. So,
7 Kelly, what's up next? I think we're done
8 with 14.

9 LTC McGOVERN: Okay. For
10 Number 23 --

11 COL MORRIS: Kelly, on 14C, I --
12 would you recommend to change "implementing"
13 to "granting," if the Secretary does not
14 support "granting" immunity? Can you
15 implement -- I mean, you can implement a
16 policy, but I think you grant or not grant
17 immunity. It's just a thought.

18 LTC McGOVERN: That sounds like a
19 good change, sir. And, Dean Hillman, I'll
20 look at the changes you sent and then
21 incorporate those as well for 14C.

22 CHAIR HILLMAN: Great.

1 LTC McGOVERN: Very helpful. Thank
2 you, sir.

3 For 23-3, going through the report
4 and past transcripts, where some of the
5 members talked about the training in the
6 military services as being robust, well done,
7 and other sorts of words, I was looking in the
8 Thesaurus for another word for "sufficient,"
9 because it seems kind of flat from a word
10 choice perspective, and that's why I sent it
11 out to the group to see if you wanted it.

12 Some people are comfortable with
13 that. Colonel Henley had a suggestion to
14 change it to the word "effective." Are there
15 any other opinions on that?

16 BG COOKE: This is John Cooke. I
17 think that part of the problem is with the
18 qualifier "largely," which suggests that some
19 of it isn't. Is that what we mean to say?
20 Whether it's sufficient or superior or
21 satisfactory or whatever, do we want to say
22 "largely"?

1 LTC MCGOVERN: Sir, I think before
2 when we were discussing this, "sufficient"
3 didn't seem big enough, so they decided to add
4 the word "largely." But --

5 BG COOKE: That seems to detract
6 from "sufficient," rather than add to it,
7 since it suggests that some of it isn't
8 sufficient.

9 LTC MCGOVERN: Technically, you
10 could omit the entire sentence and then just
11 show what the military services had rather
12 than stating a conclusion in the first
13 sentence. But if you want to make an overall
14 assessment, it may -- I thought Colonel
15 Henley's suggestion saying that the training
16 was effective was a good alternative.

17 CHAIR HILLMAN: This is Beth. I
18 move your suggestion that we delete the first
19 sentence and simply make that finding, "All
20 the services have specially trained and
21 selected lawyers to serve as lead trial
22 counsel." Second sentence, "Defense counsel

1 handling sexual assault cases are also
2 trained, and many have previously served as
3 trial counsel."

4 LTC McGOVERN: Great. Super.
5 Thank you.

6 Number 47. At this time, Colonel
7 Morris is the only one who was against the
8 judge being involved earlier in the process as
9 a general principle. We have talked about
10 what "involved" means.

11 General Dunn, we haven't been able
12 to talk to you through these teleconferences.
13 I just wanted to doublecheck with you. Are
14 you comfortable with the previous meetings we
15 had that discuss the judge being involved
16 around the time of preferral?

17 BG DUNN: Yes, I am.

18 LTC McGOVERN: Okay. And then,
19 Colonel Henley, you wrote today that you have
20 some different opinions. Did you want to
21 discuss those with the group?

22 COL HENLEY: Steve Henley. This is

1 not a change in position. I still recommend
2 judge involvement early on. It's just I
3 thought initially we had talked about
4 preferral and pretrial confinement, which is
5 the reference on your members' position
6 handout.

7 But in the recommendation itself it
8 would be involvement from preferral of charges
9 or imposition of pretrial restraint, whichever
10 is earlier, and it got me to thinking if it's
11 pretrial restraint, which could precede
12 preferral of charges by some significant
13 point, we may be opening up the military judge
14 to allowing counsel on both sides to flood the
15 judge with these minor motions dealing with
16 terms of restraint, conditions on liberty,
17 Article 13 issues.

18 I'm not sure that's the most
19 efficient use of the judge's time. So if you
20 change it to "preferral of charges or
21 imposition of pretrial confinement," that
22 might provide some boundaries for counsel and

1 not flooding a judge with these types of
2 issues.

3 I know we didn't discuss that
4 earlier, but it's just something that popped
5 into my mind. I don't know if anybody else
6 has the same concern. If you allow --

7 BG DUNN: This is --

8 COL HENLEY: So I'm saying, I mean,
9 if you allow counsel -- at the imposition of
10 restraint -- and we don't really define what
11 that is -- then the judge is then trying to
12 resolve these preliminary issues, and I think
13 it would not be an efficient use of his or her
14 time. So --

15 BG DUNN: Steve, this is Malinda
16 Dunn. I think you raise an excellent point on
17 that, and that the use of the word "pretrial
18 confinement" would be more appropriate. There
19 are well established remedies for -- and a
20 well-established time in the military justice
21 system for defense to raise issues with other
22 pretrial restraint outside pretrial

1 confinement.

2 LTC MCGOVERN: Sir, thank you for
3 that suggestion. Originally, we had just said
4 "preferral." The additional pretrial
5 restraint came from the 2004 Army study where
6 they were analyzing whether the judge should
7 come in earlier, and it actually was to deal
8 with Article 13 type of issues.

9 But if you're more comfortable at
10 this stage recommending pretrial confinement,
11 that's an easy fix if everyone on this call
12 wants to weigh in on that change.

13 COL HENLEY: Well, that doesn't
14 mean -- this is Steve Henley again. After
15 preferral of charges, if there are Article 13
16 issues, then the judge can certainly address
17 them as appropriate. The concern I had is as
18 soon as the commander imposes a condition on
19 liberty, is that going to allow the defense
20 counsel to approach a judge to litigate the
21 accused's conditions of restraint?

22 I'm not sure that that's what we

1 mean when we say this, getting a judge
2 involved earlier on in the process. But
3 certainly after preferral of charges I don't
4 see any reason why the judge, if there is an
5 Article 13 issue, couldn't raise it during the
6 normal course of pretrial litigation.

7 COL HAM: Sir, this is Colonel Ham.
8 What about the issue of confinement and no
9 charges brought for substantial periods of
10 time?

11 COL HENLEY: Well, I still think --
12 this is Steve Henley again. You would still
13 need a magistrate to address that. I don't
14 know if things have changed, but it used to be
15 in the military -- the Army magistrate rules,
16 that was one of the issues that the magistrate
17 addressed. And I don't know if that's still
18 the case.

19 BG DUNN: I thought we had agreed,
20 Steve -- this is Malinda, I'm sorry. I
21 thought we had just recommended the change
22 "imposition of pretrial restraint" to

1 "imposition of pretrial confinement." So the
2 military judge would be involved as soon as
3 there is confinement or preferral of charges,
4 but not the other lesser forms of restraint.

5 COL HENLEY: Yes, ma'am. Steve
6 Henley again. I would I guess envision the
7 military judge actually doing the confinement
8 reviews. But that -- we also I think later on
9 in our recommendations talk about these other
10 types of judges that might handle the
11 preliminary hearings as well. So this would
12 be maybe an area that those limit -- I forget
13 the term, which I think, Dean Hillman, you
14 used, what these individuals would end up
15 doing, but confinement reviews would be one of
16 them.

17 Again, I'm not trying to stop the
18 recommendation. I think the recommendation is
19 fine. It's just when I looked at it today, it
20 just hit me that maybe counsel would flood the
21 judge with what I would characterize as minor
22 motions that would, as Judge -- as General

1 Dunn pointed out, could be addressed later on
2 in the process.

3 LTC McGOVERN: Sir, that's an easy
4 change. If everyone else agrees, I have no
5 problem making that edit.

6 CHAIR HILLMAN: This is Beth.
7 That's great, Kelly. I will say that I'm
8 recommending that we restructure this section,
9 not changing what we're saying but just to put
10 all of these different points together and
11 eliminate some of the repetitiveness that is
12 in all of these recommendations related to it.

13 And just to be clear, this is what
14 I recommend in the top -- the very first
15 recommendation in this section, that we say
16 why we're doing it there, so we say, "The
17 Secretary recommends Congress enact
18 legislation to amend the UCMJ, the President
19 enact changes to the MCM, and that service
20 secretaries implement appropriate regs to
21 increase the authority of military judges over
22 the military justice process."

1 And I think we should say "over the
2 pretrial process, to enhance fairness,
3 efficiency, and public confidence." And that
4 is an addition that I just made, and then that
5 is "to enhance fairness, efficiency, and
6 public confidence," and then the specific are
7 in each of the parts that are right now in
8 Recommendations 47, 48, 49, and 50.

9 LTC McGOVERN: Okay.

10 CHAIR HILLMAN: Okay. Any other
11 comments on the military judge section?

12 MR. BRYANT: This is Harvey. This
13 is just a picky thing on the words used.
14 Everywhere else that I've seen when we do
15 recommendations and findings, we use the word
16 "cases." And this last sentence says "would
17 change" -- and maybe, Beth, you've decided to
18 change the sentence, too, but this change
19 would impact all practices and not just
20 practice in sexual assault cases.

21 It seems to me we should be
22 consistent and say "impacts all cases," not

1 just sexual assault cases. That's the only
2 time I have seen that "practice" pop out.
3 Whenever -- to repeat myself, it's always
4 "cases" everywhere else.

5 CHAIR HILLMAN: This is Beth.
6 Harvey, that's a great point. I changed that
7 to actually move that into a finding rather
8 than in our recommendation, because that's a
9 consequence of the recommendation, but it's
10 not really a recommendation per se. But I put
11 that separately here. The sentence that I
12 drafted anyway reads, "Giving military judges
13 an enhanced role in pretrial proceedings would
14 affect the prosecution of all cases." Not
15 only sexual assault.

16 MR. BRYANT: Okay. You are way
17 ahead of me, as usual.

18 CHAIR HILLMAN: Not hardly. But
19 I'm trying to keep up with Kelly and company
20 there, so -- okay. So, Kelly, where are we
21 next here?

22 LTC McGOVERN: Okay.

1 Unfortunately, not too far, but this one
2 should be pretty easy. 48A, during one of the
3 later teleconferences Colonel Henley was on,
4 we raised the fact that defense motions then
5 would be able to be ex parte, and so I just
6 wanted to check with everybody that they were
7 comfortable with that, that that is the way
8 it's done in some civilian jurisdictions, not
9 all the civilian jurisdictions. And I think
10 everybody on this call has felt comfortable
11 with that.

12 Does anyone object to defense being
13 able to make ex parte motions if appropriate
14 or necessary?

15 MR. BRYANT: This is Harvey. I am
16 in favor of this, but as long as we have
17 appropriate circumstances it is going to be
18 determined by somebody else at some other
19 point, since we are recommending that they
20 make these changes.

21 I don't think all motions of any
22 kind ought to be ex parte. I don't think that

1 was our intent. That's why I like the words
2 "consider an ex parte procedure in appropriate
3 circumstances."

4 LTC MCGOVERN: Right.

5 MR. BRYANT: And then, just in
6 general, and, again, Beth has probably
7 straightened this up, but that's an oddly
8 worded structured sentence right in there.
9 I'd almost disagree with its intent, but it
10 doesn't -- doesn't read very well.

11 LTC MCGOVERN: Which sentence, sir?

12 MR. BRYANT: Starting with, "With
13 this change, the defense is no longer required
14 to go through the government for pretrial
15 witness requests and consider ex parte
16 procedure in appropriate circumstances." That
17 sentence all by itself is hanging loose
18 somewhere, because what we're saying is "The
19 Secretary of Defense recommends," and what
20 we're tacking on is "recommend considering an
21 ex parte procedure in appropriate
22 circumstances."

1 So it's just -- that sentence needs
2 to be straightened up or --

3 LTC McGOVERN: Right. That's a
4 good catch. Thank you, Mr. Bryant. We'll
5 edit that. Very good.

6 Number 50A. Let's see. Everybody
7 comfortable, other than I think Colonel
8 Morris, with this being a binding decision
9 without prejudice, 32? And I think the only
10 ones that I need to hear back from -- General
11 Dunn, are you comfortable with that?

12 BG DUNN: I'm listening. Hang on
13 one second.

14 LTC McGOVERN: Sure.

15 MR. BRYANT: While she's doing that
16 -- this is Harvey -- what do we -- binding on
17 whom and binding in what sense? Because it
18 says, "Results in dismissal of charges without
19 prejudice, thereby implying that the charges
20 can at some point be brought back."

21 LTC McGOVERN: Yes, sir. The idea
22 is currently an investigating officer can say

1 that or recommend to the convening authority
2 that the case not go forward, but the
3 convening authority still decides to refer the
4 case. If it's a judge acting as a judge over
5 the Article 32 hearing, and says there's no
6 probable cause, the case would be dismissed
7 without prejudice. So if the government can
8 come back with additional evidence, can prefer
9 charges again, present their case, they can
10 try again.

11 But the large change is that this
12 finding that there is no probable cause would
13 actually be binding. So convening authorities
14 wouldn't ever then even have the decision to
15 refer or not refer, because there is no
16 probable cause, so --

17 MR. BRYANT: All right. I was just
18 trying to match up finding with dismissal of
19 charges without prejudice. But you have
20 elucidated that. Thank you.

21 BG DUNN: And I concur with this
22 concept.

1 LTC McGOVERN: Okay.

2 BG DUNN: This is Malinda Dunn.

3 Sorry.

4 LTC McGOVERN: Thank you, ma'am.

5 Next, I think we have everybody -- actually,
6 no. General Dunn, we needed to get your
7 opinion. Do you support judge-alone
8 sentencing or panel sentencing? I just wanted
9 to give you some easy questions when you came
10 back, ma'am.

11 (Laughter.)

12 BG DUNN: I don't have any
13 objection to judge-alone in felony cases. I
14 think we should leave some opportunity for
15 officers, non-commissioned officers to learn
16 about the military justice system by sitting
17 as panel members. So, generally, I support
18 it. I would limit it to felony cases.

19 LTC McGOVERN: Okay. Do you want
20 to articulate that in a separate statement, or
21 do you --

22 BG DUNN: Yes. How about if I just

1 send you an email on that? I mean, I think it
2 could even be done at court level, but -- you
3 know, the general court-martial cases, general
4 court-martial. You know, obviously -- well,
5 yes, I'll send you something separately, but
6 generally I concur. I'm not going to speak
7 out on it.

8 LTC McGOVERN: All right. And,
9 well, that's sort of the question today, since
10 we are at the -- we are approaching the
11 deadline here is, where are people going to
12 fall on the spectrum? Do you concur with the
13 way it is written? Are you non-concurring?
14 Dissenting? Would you like to write a
15 separate statement? How would you like to
16 proceed?

17 BG DUNN: I will say I will -- I
18 will concur with a comment.

19 LTC McGOVERN: Okay.

20 CHAIR HILLMAN: This is Beth.
21 Kelly, let's put that comment in the
22 discussion under the --

1 LTC McGOVERN: Okay.

2 CHAIR HILLMAN: -- recommendation,
3 then. So, and General Dunn, if it's okay,
4 then, we just attribute it to you as one of
5 the subcommittee members and say, "This seems
6 that" -- you know, whatever you'd like to say,
7 "This seems especially appropriate in felony
8 cases."

9 You'd also like to reserve the
10 sentencing role in minor cases, for instance,
11 or whatever you want to say. And I'd like to
12 put it actually in the report, then, rather
13 than having it at the end. That way people
14 see it when they're -- when they're looking at
15 our recommendations and findings.

16 BG DUNN: This is Malinda Dunn.
17 That's fine.

18 LTC McGOVERN: And then, General
19 Dunn, what is your position for Number 64?
20 The other Subcommittee members are proposing
21 that mandatory minimums not be adopted at this
22 time, and we wanted to get your position on

1 that.

2 BG DUNN: I absolutely concur with
3 that.

4 COL HAM: This is Colonel Ham. On
5 Number 64 --

6 LTC McGOVERN: The first sentence
7 or --

8 COL HAM: Yes. The second sentence
9 says, "The judicial proceedings panel should
10 study the impact of mandatory minimums." They
11 are already directed to do that. So I had a
12 question as to what you wanted to do. You're
13 recommending they should study when Congress
14 has already directed them to study. Are these
15 --

16 BG COOKE: This is John Cooke. Why
17 don't you put it in the finding?

18 COL HAM: Right. Finding.

19 LTC McGOVERN: Ma'am, do you know
20 if they are directed to study mandatory
21 minimums or this discharge provision that has
22 already been enacted? Because it --

1 COL HAM: That's a very good point.
2 They are directed to assess the impact of the
3 mandatory minimum provisions that have been
4 implemented.

5 BG COOKE: Well, this is John Cooke
6 again. Then maybe we want to tell -- maybe we
7 want to recommend that their scope be
8 broadened to include this whole thing. Well,
9 I guess -- well, I'm confused. Is what we're
10 putting here in the second sentence, is that
11 exactly what they've been told to do in the
12 NDAA?

13 LTC McGOVERN: Yes, sir.

14 BG COOKE: Okay. Well, then, it
15 ought to be a finding.

16 LTC McGOVERN: And we have
17 highlighted --

18 CHAIR HILLMAN: Sorry, Kelly. This
19 is Beth. We should say, "The JPP will study
20 the impact." And that's a finding. I agree.

21 LTC McGOVERN: Okay. And the first
22 sentence, 64-1, we had highlighted, I think

1 Ms. Jaus is not comfortable. Again, generally
2 she supports mandatory minimums. I think she
3 was willing to go with the consensus of the
4 Subcommittee because of the breadth of Article
5 -- the breadth of offenses that Article 120
6 covers.

7 But she didn't like the word
8 "unwise." Does anyone else have any issues
9 with that first sentence? Finding 64-1.

10 CHAIR HILLMAN: Kelly, this is
11 Beth. Let's -- why don't we say, "The
12 majority of the Subcommittee does not
13 recommend requiring further -- requiring
14 them." I mean, that's actually -- we don't
15 even need that statement, do we? Because
16 actually we have the statement above saying
17 there is no further mandatory minimums. So
18 let's just get rid of that. You can say,
19 "Mandatory minimums remain controversial."
20 Period.

21 LTC McGOVERN: Okay. Great.

22 COL HAM: And, General Cooke, I

1 went -- I'm sorry, I didn't have the direction
2 to the judicial proceedings panel in front of
3 me, but I have it now. And what they are
4 directed to do, in the last NDAA, which was
5 after the Secretary of Defense asked the RSP
6 to look at mandatory minimums, is to assess
7 the implementation and effect of the mandatory
8 minimum sentence established by Section blah,
9 blah, blah, and the appropriateness of
10 statutorily mandated minimum sentencing
11 provisions for additional offenses under the
12 Uniform Code of Military Justice.

13 BG COOKE: Okay. This is John
14 again. Again, it sounds to me like we are
15 just recommending that they do what they have
16 already been told to do, and so if that's the
17 case, we should just put that in a finding,
18 word it as Professor Hillman mentioned, "will
19 study."

20 LTC MCGOVERN: Okay. Okay. Those
21 were the most controversial topics that are
22 contained in our findings and recommendations

1 that I wanted to make sure Dean Hillman will
2 know where everybody stands and can accurately
3 represent that.

4 So thank you, and, Dean Hillman, if
5 you want to move on to the presentation.

6 CHAIR HILLMAN: Before we do that,
7 just I want to see if anybody else wants to
8 raise anything further in here. So I'll put
9 a call out for that.

10 There is one more recommendation
11 I'd like to look at. I also will say I didn't
12 get through this draft but to Recommendation
13 51. So I'm going to -- I'd need to look at
14 the rest of those pages to go final, and I'll
15 do that after our call. But does anyone have
16 anything that they want to flag that they have
17 seen in the documents that we have
18 distributed?

19 COL HENLEY: This is Steve Henley,
20 Dean. 54B.

21 CHAIR HILLMAN: Okay. I'm there.
22 54B, what do you have?

1 COL HENLEY: Kelly, do you have the
2 language I sent in on this?

3 LTC McGOVERN: I have your email
4 right here, sir. You recommended -- okay. So
5 it says, "Ensure the military judge
6 appropriately controls the line of
7 questioning." You have requested it say, "The
8 military judge continues to exercise his or
9 her authority to control the scope of
10 questioning during voir dire to ensure it is
11 necessary to gaining information to
12 intelligently exercise challenges and seat a
13 fair and impartial panel. By taking a more
14 active role, the military judge can ensure
15 there are no preconceived notions, prejudice,
16 or impressions, or misleading questions from
17 counsel."

18 That's what I was trying to say,
19 sir.

20 (Laughter.)

21 COL HENLEY: That's why I thought
22 it was you who suggested it to me. That's why

1 I was clarifying what you told me.

2 BG COOKE: This is John Cooke. Can
3 I make a small suggestion with regard to that?
4 I'm fine with all that, but -- and I wasn't
5 going to raise this before, but can we --
6 would it be okay to just say "by taking an
7 active role," as opposed to "by taking a more
8 active role," which implies that they are not
9 taking an active role now?

10 COL HENLEY: Yes. This is Steve
11 Henley. That's exactly the concern I had with
12 the word "ensure," too. I think the judges
13 are doing this. But I agree with that
14 language, too, is to strike "more." Because
15 it's just describing the first sentence as to
16 -- well --

17 BG COOKE: Yes. So just tell them
18 a little more clearly what we want them to do,
19 but we don't have any reason to think that
20 they're not doing it.

21 LTC MCGOVERN: Thank you. That's
22 extremely helpful. Dean Hillman, it's back to

1 you.

2 CHAIR HILLMAN: Okay. Anybody
3 else? Colonel Henley had a good catch there.
4 Anybody else see anything?

5 BG DUNN: The only other thing I
6 would add in that particular recommendation is
7 that the finding underneath it says "impartial
8 military panel members," which to me implies
9 beyond the issue that is being discussed in
10 the recommendation. What we're trying to get
11 at here is, you know, things that come out of
12 training or -- or issues that panel members
13 have surrounding sexual assault.

14 COL MORRIS: This is Larry Morris.
15 Add a clause to the end of that saying
16 "because of," and then move it back to 54A.

17 BG DUNN: Or something. That's my
18 only --

19 COL MORRIS: I sure agree with
20 that.

21 LTC McGOVERN: Would it be
22 appropriate, then, to say "is increasingly

1 difficult to sit military panel members in
2 sexual assault cases because of current
3 training practices" or something -- I mean,
4 the training language I can work on, but just
5 finding where to put the verb now.

6 COL HENLEY: This is Steve Henley.
7 Would that be a finding?

8 LTC McGOVERN: Sir, I think it --
9 the email Dean Hillman received and testimony
10 from other -- the information received on site
11 visits, counsel said it was hard to sit panels
12 because of the training they have received
13 regarding consent and alcohol.

14 BG DUNN: Right. And if you say
15 that, I think that captures it. Not that
16 military members are inherently impartial, but
17 that the training they have received impacts
18 their -- it impacts the ability to seat them
19 as jurors or the misconceptions, you know,
20 however you want to capture that.

21 COL MORRIS: Right. The military
22 jurors are not inherently partial.

1 BG COOKE: Right. This is John.
2 Yeah. Difficult -- "It is increasingly
3 difficult to seat military panel members in
4 sexual assault cases because of their exposure
5 to training materials that," and then you can
6 put what you got from the services.

7 BG DUNN: Exactly.

8 LTC McGOVERN: Thank you, sir.

9 CHAIR HILLMAN: That's great.
10 Okay. Thank you. Thank you for that. Any
11 other -- Russ, you were going to say something
12 I think.

13 MR. STRAND: Yeah. I've got just
14 two thoughts on two recommendations. One is
15 39 -- Recommendation 39. We're asking the
16 Secretary of Defense to direct military
17 services to provide independent, employable
18 defense investigators in order to increase
19 efficiency.

20 I fully agree with that, but I
21 thought we had some conversation early on,
22 too, about providing the same ability for

1 prosecutors, because the MCIOs don't
2 specifically work for the prosecutors, and I
3 know we heard from some complaining that, you
4 know, once the case is closed, they don't have
5 any support, and they are having to basically
6 do the investigations on their own. So --

7 LTC MCGOVERN: Russ, I don't know
8 -- I'm not sure if it was a meeting maybe you
9 weren't able to attend, but I believe we
10 discussed this, because now the special victim
11 capability, there is a special victim
12 investigator and working closely with a
13 special victim prosecutor. So I didn't think
14 that there was any -- I think that they found
15 we don't need specialized defense counsel for
16 the defense, and you don't need specialized
17 investigators for the prosecution.

18 MR. STRAND: Well, that special
19 victim agent still doesn't work for the --
20 they still work for the MCIO, not for the
21 prosecutor. And that's very intentional
22 because if -- if it appears by the public or

1 anybody else that we are actually working for
2 the prosecutor, then that biases our
3 investigation, presents additional problems.
4 So each independent investigative agency is
5 independent for a reason.

6 And so I'm not sure, even if the
7 special victim investigators are working
8 closely with them, they are still not helping
9 that prosecutor prepare for court like an
10 investigator would help the defense attorney
11 prepare for court. That's my only concern.
12 But if anybody else doesn't have that concern,
13 I'm okay with that.

14 BG DUNN: This is Malinda Dunn. I
15 don't -- I guess I don't see that as a
16 concern, Russ, because when we address it with
17 the defense counsel, we are really talking
18 about the basic resourcing issue. And on the
19 government's side, I don't think we face that
20 same issue of access to resourcing and, you
21 know, ability to run down, having the
22 resources to run down what you need to run

1 down.

2 MR. STRAND: Okay.

3 COL MORRIS: This is Larry Morris.

4 Just agreeing -- same thing. This
5 recommendation seems to be an important
6 standalone to correct a stark and longstanding
7 imbalance between the way these operations are
8 resourced.

9 MR. STRAND: Okay.

10 COL MORRIS: Just start filling in
11 some other qualifiers I thought could make
12 it --

13 MR. STRAND: Okay. Good. Then,
14 the other concern that I had within
15 Recommendation 67, which appears to be the
16 last one, where the Secretary of Defense
17 should direct the secretaries of the military
18 services to study the offender risk assessment
19 for possible incorporation at appropriate
20 times and in an appropriate manner in sexual
21 assault cases.

22 During some of the discussions on

1 mandatory sentencing, mandatory minimums, you
2 know, that conversation came up, and I think
3 we had a discussion where, you know, they
4 mention these things in the civilian world
5 because oftentimes the offenders have a long
6 history of criminal and sexual assault
7 offenses, and things like that.

8 Our population is relatively
9 younger, much younger. Most of them have no
10 criminal, you know, background as far as, you
11 know, any convictions or arrests. And so I
12 see that as potentially problematic because to
13 do sex offender risk assessments, most of the
14 civilian communities are using very highly
15 trained, specialized people to do that. And
16 if you don't use those resources, it could be
17 fraught with a lot of problems.

18 Basically, then, the services could
19 then send out a checklist and say, "Well, this
20 is" -- and I think the jury is still out on
21 the -- how good these sex offender risk
22 assessments are and how valuable they are. So

1 I just have some concern with that
2 recommendation.

3 CHAIR HILLMAN: This is Beth. I
4 don't remember a particularly strong advocate
5 of having this in here. I wonder, Russ, if we
6 just made that a finding, the finding about
7 civilian jurisdictions, just raising that we
8 recognize because we are comparative here --
9 we recognize that sex offender risk
10 assessments are being used, and we actually
11 say it in that finding 67-1. "At various
12 stages of proceedings, evidence demonstrates
13 that they may be valuable for preventing
14 recidivism and promoting rehabilitation."
15 What if we just put that as a finding and we
16 cut that recommendation?

17 MR. STRAND: I would be very happy
18 with that. I agree with the finding as to the
19 recommendation, because I fear what might
20 happen from that.

21 BG COOKE: This is John. I support
22 that, too. There is a lot more of these

1 things than just what that little segment addresses. So
2 I think we'd be better off just pointing out
3 that they're out there and letting others
4 decide what to do about them.

5 BG DUNN: This is Malinda, and I
6 concur with that, because one of the other
7 things that Russ didn't even mention -- he
8 mentioned on the front end how young they all
9 are, but on the back end they don't stay in
10 the military either. So the military is not
11 going to be treating them for recidivism, et
12 cetera, because they are not going to be
13 there. So I agree wholeheartedly with keeping
14 the finding and bouncing the recommending.

15 CHAIR HILLMAN: Okay. Okay. So
16 we're okay with that one. Any other concerns?
17 Russ, those were your two, is that right?

18 MR. STRAND: Yes. I'm fine with
19 everything else.

20 CHAIR HILLMAN: Okay.

21 MR. BRYANT: Beth, I just have --
22 this is Harvey Bryant. In 56A, I'm going to

1 -- we name a particular person that we are
2 recommending be used -- let me pull it up
3 here. Cassia Spohn. I just wonder about the
4 propriety of naming individual persons any
5 more than we would say, "Russ Strand should
6 teach such and such." It's just a question I
7 have, whether that's --

8 CHAIR HILLMAN: I agree. Harvey,
9 this is Beth. I agree. I'd change that. I
10 didn't get to that yet, but I'd change that to
11 "Direct an expert study of prosecutorial
12 decisionmaking in sexual assault cases by a
13 highly qualified expert in the field."

14 MR. BRYANT: Okay. Yeah. I'm not
15 questioning her qualifications. I'm just
16 questioning the propriety of naming an
17 individual.

18 And then -- again, this is Harvey.
19 I don't know what the number is anymore, but
20 there is a point where we are recommending a
21 study by this other panel about breaking down
22 and splitting up the offenses under Article

1 120.

2 And since we address that in so
3 many areas, that that's a problem and why it's
4 a problem, and the issues that it's causing,
5 and assessing what is going on, why don't we
6 just ourselves say that that needs to be done?
7 Instead of saying we recommend they look into
8 it? I mean, I think we could say as a fact
9 that everything encompassed there is causing
10 multiple issues with the entire system, from
11 the victim's point of view, from the --

12 CHAIR HILLMAN: This is Beth.
13 That's at 44B, and that's a recommendation
14 says the JPP consider whether to recommend --
15 and I did a little editing on this, too. I
16 think we -- what we are saying here is really
17 two things, recommend the legislation that
18 would either split sexual offenses under
19 Article 120 into different articles that
20 separate penetrative and contact offenses from
21 other offenses or narrow the breadth of
22 conduct currently criminalized under Article

1 120.

2 So we have said it as we recommend
3 the JPP consider changes. You'd want to
4 strengthen that and say they -- they recommend
5 legislation to either split that up or to
6 narrow the breadth of conduct currently under
7 120.

8 MR. BRYANT: Well, one of the two,
9 because our finding pretty much says
10 specifically what the problems are, and to say
11 we recommend they consider whether to
12 recommend, I think we want to say that we need
13 legislation that does this.

14 LTC MCGOVERN: Mr. Bryant, I think
15 when we talked about this before the reason
16 additional study was recommended is because
17 Article 120 has been changed three times
18 recently. So maybe let things settle and
19 study it to make sure that they get it right,
20 because in one of the changes it was found to
21 be unconstitutional and that had a lot of
22 consequences.

1 MR. BRYANT: I don't know whether
2 -- you know, how that fits in with the fact
3 that we say in other places no holds barred,
4 this is an issue, this is a problem, and 120
5 -- somebody needs to change it. It just seems
6 -- it's a little wishy-washy to say, "The
7 judicial proceedings panel consider whether to
8 recommend."

9 LTC McGOVERN: Well, maybe in other
10 parts we didn't articulate. This is -- it's
11 sort of at the point where it is the best of
12 the worst right now, but I think the reason
13 it's raised throughout the report is because
14 there is a public misperception that sexual
15 assault in the military means these
16 penetrative offenses all the time, and in
17 comparative analysis we are trying to make
18 sure that everybody understands this is a wide
19 range of things, not necessarily recommending
20 that it -- my understanding wasn't that the
21 Subcommittee was recommending a change. It
22 was just recognizing there is a difference in

1 statutes when you are trying to compare these
2 systems.

3 MR. BRYANT: Well, our finding is
4 pretty specific, and there is other places
5 throughout this Subcommittee's findings and
6 recommendations that the breadth -- the
7 current breadth of Article 120, again, is
8 causing issues and problems from -- in a lot
9 of places. And I just am thinking and
10 suggesting that maybe we take a position that
11 these -- you know, that's one of our findings.

12 I'm not going to, you know, go
13 crazy over it. I'm not going to write a
14 dissenting opinion. I'm just suggesting that
15 we have said this in so many ways, and then we
16 say you're asking them to consider whether.

17 CHAIR HILLMAN: This is Beth,
18 Harvey. Why don't we at least strengthen the
19 language in that? And that doesn't actually
20 -- the problem here -- I also -- I think we
21 should fix 120. I think it's a train wreck.
22 But I can't figure out what to do with that,

1 and I'm uncertain of the consequences of it on
2 our ability to continue to prosecute
3 effectively because of what Kelly talked
4 about. We realize the many changes have
5 caused a lot of problems out there.

6 So what if we say, "The judicial
7 proceedings panel examine legislation that
8 would either split sexual offenses or narrow
9 the breadth of conduct currently
10 criminalized"? Is that stronger for you?
11 We're telling them to examine legislation or
12 examine --

13 MR. BRYANT: Yes.

14 CHAIR HILLMAN: Is that okay?

15 MR. BRYANT: Yes. Thank you.

16 BG COOKE: This is John. I wonder
17 if we want to add a finding there that
18 explains that Article 120 has been amended
19 several times in the last -- just in the last
20 few years. That, in itself, has generated
21 turbulence and uncertainty, and so that care
22 needs to be exercised in further changing it.

1 Sort of explains our namby-pambyness, but --

2 CHAIR HILLMAN: Okay. We can do
3 that. Any objections to that?

4 (No response.)

5 Okay. Harvey got us to the point
6 that I wanted to actually raise a question,
7 which is in this 44 set of recommendations.
8 So 44A, I think we should delete that. It's
9 actually not much of a recommendation anyway,
10 and I don't know how the Secretary would quite
11 do this.

12 So I'd just delete that. I think
13 that the essence of that is captured
14 elsewhere. In the survey section, there is a
15 discussion of surveys above. And actually in
16 the -- in the finding here, 44-1, that's
17 underneath there anyway. So I'd strike 44A.

18 BG COOKE: This is John. I agree.

19 COL MORRIS: Yes. This is
20 Lawrence. I absolutely agree.

21 COL HENLEY: I concur. I think we
22 could just do it by silence, but I concur.

1 CHAIR HILLMAN: Okay. Any
2 objections?

3 (No response.)

4 Okay. So, Kelly, what is next? Do
5 you want to talk about the presentation now,
6 if there is nothing else on the
7 recommendation?

8 LTC McGOVERN: That would be great.
9 If you want to take the lead on that, I can
10 explain what we took a shot at to do the
11 slides, but I want to make sure you have the
12 time to talk about your vision for Monday.

13 CHAIR HILLMAN: Okay. So on to
14 Beth's vision for Monday, I'd like -- for
15 everybody who can be there, I'd like you to
16 have a chance to address the panel to share
17 your own perspective on this, and also to
18 share what you see as the key parts of what
19 our recommendations are.

20 So we are still working -- staff is
21 still working with us to craft some scenes at
22 the beginning that will sort of highlight the

1 direction that we are taking here. Their
2 first attempt at that is on Slide 12, which
3 sets out some themes and major proposals that
4 will -- my hope in this presentation is to
5 provide a framework that will make our many
6 specific recommendations explicable.

7 So we need to provide some
8 guideposts, and the themes and major proposals
9 sort of start off -- will help us with that.
10 And then we will introduce each section.

11 And I would like for your help with
12 the presentation, recognizing that we don't
13 have time to orchestrate some carefully
14 developed presentation where everybody plays
15 a clearly specified role. But I'd like for
16 each of you to sort of introduce a major
17 section by talking about your experience,
18 because that will enhance your -- it will
19 enhance the gravitas of our recommendations if
20 our Subcommittee members, especially those who
21 are not on the panel, have a chance to say
22 where their thoughts come from in this

1 particular arena, and then say what you see as
2 especially important.

3 And then I will walk through what
4 the specific recommendations are after each of
5 those pieces. So that's -- and then the only
6 other thing I'd say is I would also like for,
7 where there are some subtle distinctions
8 between what you think is the appropriate
9 approach and what is reflected there, like
10 what General Dunn was just saying, or more
11 significant disagreement, like what Colonel
12 Morris has said about judges not being what he
13 sees as uniquely qualified to do sentencing;
14 and, therefore, he would retain member
15 sentencing. I'd like you to speak to that
16 when we get to that part of the findings and
17 recommendations, so that the panel members can
18 hear from you, too, on this -- from you
19 specifically on this.

20 So since that is the first you've
21 actually heard from us on how we'd set this
22 up, we have -- Kelly, we have four hours, is

1 that right, on this? Or three hours?

2 LTC McGOVERN: Four hours. And
3 then they have reserved time -- there is a lot
4 of public comment, but I think you'll have
5 whatever time you need, ma'am.

6 CHAIR HILLMAN: Okay. So I think
7 we'll go section by section and take questions
8 from the panel members, should they have any,
9 after each section. So any concerns or
10 responses or suggested modifications to that
11 approach?

12 COL MORRIS: I agree.

13 CHAIR HILLMAN: Okay. And, Kelly,
14 do you want to walk through what you provided
15 for us here?

16 LTC McGOVERN: Sure. Just to
17 provide you an overview, these are the -- the
18 format of the five that are standardized for
19 each of the subcommittees. Of course,
20 Comparative Systems is going first. So, and
21 it probably will not get to Victims Services
22 and Role of the Commander until the next day.

1 But just so you all understand, we are trying
2 to provide semi-standardized things to the
3 panel from the different subcommittees but
4 allowing variation.

5 And the difference of our -- of
6 your presentation is that instead of detailing
7 on every slide the exact wording of these
8 recommendations, Dean Hillman has asked we
9 highlight the main points. And so as we're
10 going through, the staff, our goal is to have
11 a slide associated with each number throughout
12 the report, as I said, and then really say
13 what is the purpose of this slide? And make
14 sure that there isn't a slide just as a
15 filler. And what is the big, so what? That
16 those points are highlighted.

17 Then, we'll have in notes sections
18 for you all the actual findings and
19 recommendations. If we have some statistics
20 or something that we think are also
21 additionally helpful, we'll try to plug those
22 in this weekend. We are just running out of

1 time.

2 But some of that has already been
3 included in the report, so we can easily lift
4 it and put it in the notes section. Is there
5 -- and if there is anything else, as I just
6 walk through this real quickly, that you all
7 think would be helpful for you for a slide
8 presentation, let me know. But the
9 introduction, terms of reference, and
10 methodology is common to all the
11 subcommittees. The theme and proposal is
12 something for Dean Hillman.

13 Then, the first section is really
14 unique and stands alone as being -- for
15 setting up what is the problem and surveying
16 sexual violence and comparative analysis and
17 things like that. This will be particularly
18 interesting I think because it is following
19 General Snow, who is the new head of DoD
20 SAPRO. He will be speaking first Monday
21 morning. So that will be particularly
22 interesting to follow up with.

1 Also, yesterday, the DoD SAPRO
2 report was just published. I'll forward that
3 all to you for your weekend reading. It's
4 only 700 pages long. But we will be able to
5 I think turn around and incorporate some of
6 that information into the written report for
7 you all.

8 So once you get through the survey
9 section, we reach sort of a break where then
10 you talk about the investigative prosecution
11 defense and adjudication of these cases that
12 you were asked to analyze. And that is where
13 I inserted a slide "Common Terminology," so
14 you can inform the response panel members that
15 these are the terms we're going to use
16 throughout these reports. There's different
17 names for these, but these are what you're
18 going to use.

19 What the special victim capability
20 is, just a quick, broad overview that -- what
21 the civilians use, what the military is using,
22 then launch into the investigation, training,

1 prosecution, defense, the court-martial
2 process, issues that you've followed and
3 legislation that applies throughout to
4 sentencing, which all follows the rough draft
5 report which we sent out last Friday.

6 And that gets us to the final
7 slide. Then, whatever you all would like
8 added as some final slides, if you want one to
9 -- regarding legislation, certainly there can
10 be conclusions with some of those themes
11 reiterated. Just let us know what you'd like,
12 Dean Hillman, or any suggestions the other
13 members have. And we will make it happen in
14 the next 24 hours and try to get it out to
15 everybody on Sunday when we will be here
16 printing. So that's the goal right now.

17 Do you have any questions or --

18 CHAIR HILLMAN: That sounds great.
19 Kelly, thank you and everybody who has worked
20 on this. I already see all the work that you
21 did on the slide deck since yesterday, which
22 is -- and now it has to be adjusted again

1 because we have just made another series of
2 changes. So I recognize that the uneven
3 terrain that you're working on makes this
4 tougher to get it done, and I regret that
5 extra challenge for you.

6 The only -- one thing that I want
7 to confirm with everybody here, I do -- I
8 would like -- I don't want to stand up there
9 and talk this entire time. So I would like
10 each of you to, you know, sort of introduce
11 one of these sections and talk about your --
12 you know, your experience and your -- what
13 you've learned in the course of this -- the
14 investigation that we've done in the
15 Comparative Systems Subcommittee.

16 So we just need to put people in
17 the right places on that. So, Kelly, could
18 you say where we tentatively thought everybody
19 might get involved? Aware that if any of you
20 wish to add to what I'm saying when I'm
21 briefing this out, you should certainly do
22 that, and I'll remain, you know -- I'll try to

1 be attentive to anybody who wants to add or
2 correct or contradict anything that I'm
3 saying.

4 LTC MCGOVERN: And just for my
5 general understanding, my impression is Judge
6 Jones will be sitting with the other panel
7 members who are on the other subcommittees,
8 but the panel members on the subcommittee will
9 be sitting with you, Mr. Bryant and General
10 Dunn. Is that -- or will they be up at the
11 table as well? I guess that's the logistics
12 that we need to figure out first.

13 COL HAM: This is Colonel Ham. We
14 -- I think the plan is that all -- the full
15 panel members are going to sit up exactly like
16 you were sitting on January 30th. It's in the
17 exact same room. And then, any other
18 subcommittee members will be sitting where the
19 presenters sat, in other words in front of the
20 panel. If that's okay with you, Dean Hillman;
21 we can certainly change it if you want it some
22 other way.

1 We did also find out today C-SPAN
2 is going to be there.

3 CHAIR HILLMAN: This is Beth.
4 That's fine with me, Colonel Ham. And maybe,
5 Mr. Bryant and General Dunn, you can -- you
6 know, you can ask the questions and direct
7 things from the bench as it were, as we are
8 walking through this if you want to, you know,
9 direct us. But the rest of us will be down
10 there in the gallery.

11 LTC MCGOVERN: Sir, just -- you
12 know, the easy assignment would be Mr. Strand
13 assisting you with investigations. And then,
14 Colonel Morris, based on your experience being
15 in charge of training of defense counsel,
16 didn't know if you wanted to assist talking
17 about the training counsel.

18 COL MORRIS: Sure. That would be
19 fine.

20 LTC MCGOVERN: And then, you'll get
21 your guest appearance again when it comes to
22 your theories on judge involvement as well,

1 sir.

2 General Cooke, upon your arrival,
3 again, we have talked to you about helping
4 with the sentencing portion.

5 BG COOKE: Yes.

6 LTC McGOVERN: And, Colonel Henley,
7 you are the mastermind of the judge becoming
8 involved at preferral or pretrial confinement.
9 Figured you could help with the prosecution
10 section and defense, to help talk through
11 that.

12 And Colonel Scholz has expressed a
13 lot of interest as well or done a lot of the
14 edits regarding the prosecution and defense,
15 so I'm sure she could help chime in with that
16 as well.

17 That really takes care of all the
18 Subcommittee members who are going to be there
19 in any section. So, Russ Strand,
20 investigations; Colonel Morris, training of
21 attorneys; Colonel Henley and Colonel Scholz,
22 prosecution and defense section; and General

1 Cooke to assist with sentencing, with Colonel
2 Morris providing his views on judge-alone
3 sentencing and judge involvement.

4 Does that sound okay, Dean Hillman?

5 CHAIR HILLMAN: Sounds good to me.

6 Thank you, Kelly.

7 COL HENLEY: Kelly, this is Steve
8 Henley. So would that match up, like
9 prosecution and defense, Slides 46 through 54?

10 LTC MCGOVERN: I'm sorry. I don't
11 have the actual slide number with me right
12 now, but, really, maybe Colonel Scholz could
13 talk about in general what she knows about --
14 and, again, I can talk to her later this
15 evening, some of the special victim
16 capabilities.

17 The prosecution/defense section
18 really begins with Number 32 of the findings
19 and recommendations. I'm not sure which slide
20 number that is for you, but it's at the top
21 of --

22 COL HENLEY: Right. That's

1 Slide 46. So the --

2 LTC McGOVERN: She could help talk
3 about possibly the special victim capability
4 or her understanding of that. But then when
5 you get into these other issues, talking about
6 the defense counsel and what the defense
7 counsel has to do, I think that's where you
8 would provide assistance with --

9 CHAIR HILLMAN: Colonel Henley,
10 this is Beth. You should probably talk to
11 like the judge's role, 47. I mean, that seems
12 -- I guess that doesn't fall easily into a
13 section, but that seems -- to me, that --
14 that's Slide 61 in here, which we haven't
15 really -- there is not detail in there yet.
16 But there is no reason we have to actually
17 insert numbers into the briefing in the
18 section headings. I mean, you could certainly
19 talk about that. So would that make more
20 sense, Colonel Henley?

21 COL HENLEY: Yes. I'm just trying
22 to get a sense -- I was going to -- I just

1 went to Judge's Role, 47, and I know that's --
2 you're working on it. I was probably going to
3 print them and look at them over the weekend,
4 but I was just curious if that's how you
5 envision the presentation. Are we going to
6 talk in detail on each slide?

7 CHAIR HILLMAN: No. I mean, I
8 think I'll walk through the slides that say
9 what each is. So I'd just like you to help us
10 frame it by saying -- and also, honestly, just
11 break the monotony of the presentation so we
12 aren't going from one to 66 in terms of
13 recommendations.

14 But, you know, for you to stand up
15 and say this is your experience. This was
16 your -- this is what you know from your own
17 experience about this set of issues. This is
18 what you've learned from our investigation.
19 And these are the key things we have to keep
20 in mind as we make these recommendations.

21 And then, I would actually go
22 through the details of it, unless you want to

1 -- I mean, anybody who wants to do that, I'm
2 fine with that, too. But I wouldn't -- I
3 didn't expect everybody else to prepare the --
4 to brief on those particular slides, but,
5 rather, to talk about your experience, what
6 you learned on the panel, and what you see as
7 the big picture item, with an eye toward
8 building a framework that we reinforce
9 throughout the whole thing rather than just
10 going from one discrete recommendation to
11 another.

12 COL HENLEY: Yes. I'm much more
13 comfortable providing limited commentary than
14 leading the discussion. So thank you for --

15 CHAIR HILLMAN: Okay. So, Kelly,
16 do you need anything else from us right now?

17 COL HENLEY: Can I -- Kelly, can
18 you talk about the -- just the logistics,
19 where we are supposed to be on Monday, what
20 time, how long it is supposed to last?

21 COL HAM: This is Colonel Ham.
22 You're at George Washington University Law

1 School, the fifth floor, Faculty Conference
2 Center, at 20th and H Streets. And we'll send
3 this out in an email, too, sir. I apologize.

4 LTC McGOVERN: And the closest
5 Metro station, of course, is Foggy Bottom.
6 The presentation by General Snow will begin at
7 about 8:30, and he has an hour. And Judge
8 Jones has requested him to appear to provide
9 an update, so the panel has all the latest
10 information for its final report.

11 Then, starting at 9:30, Comparative
12 Systems has the floor for, honestly, as long
13 as you need it. There is a break, 12:30 to
14 1:00 or so for lunch. And there is time set
15 aside for public comment from 4:30 to 5:00,
16 although we are trying to move -- trying to
17 have all of the public comment on Tuesday, the
18 second day, 4:30 to 5:00.

19 If Comparative Systems finishes on
20 Monday, then Victims Services Subcommittee
21 will start. We pick up again at 8:30 Tuesday
22 morning, Victims Services Subcommittee will

1 continue or Comparative Systems, wherever we
2 are. And Role of the Commander will go last.

3 So each subcommittee is handling
4 their presentations a little bit differently.
5 It is completely up to the chair. Every
6 subcommittee is using PowerPoint to help the
7 discussion along. And it is the same basic
8 format as you have. Some subcommittees are --
9 the chair is focusing most of the discussion,
10 and others, yours and Role of the Commander,
11 are splitting it up more.

12 Does that answer your question,
13 Colonel Henley?

14 COL HENLEY: Yes. We should be
15 there --

16 COL HAM: You should be there about
17 8:00.

18 COL HENLEY: 8:00. Okay.

19 COL HAM: What the members have
20 been provided thus far are -- or will get,
21 they will get copies of the slides. The
22 Victims Services and Role of the Commander

1 reports are completed. They will have those,
2 which of course have the findings and
3 recommendations separated out. So the members
4 from your -- the members will have, from your
5 subcommittee, copies of slides and a copy of
6 the findings and recommendations separated out
7 as -- pretty much as Kelly has in the format
8 that she has provided to you.

9 And all of that of course is
10 available to the public. Everything that the
11 members have is available to the public, and
12 we will have copies of it there as well as we
13 will post it on the website as soon as the
14 meeting is over.

15 COL HENLEY: Right. And then
16 you'll have copies of the materials for us
17 there?

18 COL HAM: Yes.

19 LTC McGOVERN: Yes, sir.

20 COL HAM: Yes, sir. And, again, we
21 just heard from C-SPAN today. They do want to
22 be there. They were -- they have been at a

1 couple of our meetings, so they go in the
2 morning and set up.

3 COL HENLEY: This is Steve Henley.
4 If I had known that -- I actually ran into
5 Brian Lamm in front of C-SPAN as I was running
6 this morning. I could have asked him to be
7 gentle. He seemed pretty sullen. Maybe --

8 COL HAM: They just asked us today,
9 so we're trying to set it up.

10 And, as you all know, it's -- those
11 of you -- I think most of you have attended
12 some meetings, the meetings are open to the
13 public completely. So members of the public
14 come in and out as they choose.

15 CHAIR HILLMAN: This is Beth. I
16 hate to do this, but can I backtrack to a
17 couple of recommendations? Kelly, I just
18 realized as I'm looking at this that I want --
19 I thought we should delete a couple of
20 recommendations, and I -- since we still have
21 everybody on the line, and we have a few more
22 minutes left in our time here, I wonder if we

1 could go back to that and we could list those.

2 LTC MCGOVERN: Absolutely.

3 CHAIR HILLMAN: I'm sorry,
4 everybody. This is 45 and 46. I think we
5 should cut these. Sorry to make you back up
6 here.

7 I looked at these early this
8 morning. I mean, 45 says, "Maintain the
9 prosecutor's role." I don't think anybody is
10 proposing changing that, so I don't think we
11 actually need to make a recommendation there.
12 And I'm not sure who we are directing to do
13 what there, other than a sort of negative.

14 And then, 46 says, "Military
15 commanders should retain current disposition
16 options." This actually -- this runs towards
17 the Role of the Commander's recommendations,
18 and I don't think we need to say anything
19 there either because we're not recommending a
20 change, and there isn't a proposal, a
21 legislative proposal out there, that we are
22 speaking to specifically on it.

1 Now, if we want to speak to the
2 proposals that the Role of the Commander
3 Subcommittee is speaking to, we could. But we
4 are not -- we have carved that out primarily
5 in the subcommittee designation.

6 So I would be more comfortable,
7 really, to delete 45 and 46, leaving those
8 findings in there as to inform the report but
9 not making those recommendations.

10 COL HENLEY: You would -- if I
11 understand that, you would delete the findings
12 as well?

13 CHAIR HILLMAN: Oh, no. No.
14 Sorry. Just the recommendations. The
15 findings are fine with me.

16 COL HENLEY: Okay.

17 CHAIR HILLMAN: Sorry.

18 COL HENLEY: This is Steve Henley.
19 I don't have any problem with that. I would
20 agree.

21 COL MORRIS: This is Larry Morris.
22 I agree, too.

1 BG DUNN: Malinda. I concur.

2 MR. BRYANT: I agree with those,
3 Beth. This is Harvey. I am also wondering if
4 the same thing doesn't apply to Number 45. It
5 says, "Maintain prosecutor's role in drafting
6 appropriate charges and recommending
7 disposition." I mean, has there been any
8 suggestion that somebody else do it?

9 CHAIR HILLMAN: I'm with you,
10 Harvey. I think 45 and 46 both should go.

11 Okay. We're making my life easier.
12 Fewer recommendations to report on Monday. I
13 appreciate that. Anything else that we need
14 to do, Kelly? I'm sorry to go back on that,
15 go backwards.

16 LTC McGOVERN: That is no problem
17 at all. I guess my question, then, when you
18 are presenting for comparative analysis -- and
19 this is so minor, but, I mean, literally for
20 numbering purposes, do you want us just to
21 have a section of findings without
22 recommendations that actually just become part

1 of the discussion in the report? Or do you
2 want a slide that says that you all found
3 that, you know, there are actually --
4 prosecutors in the military and civilians both
5 have broad discretion, that prosecutors in the
6 military and in civilians both have
7 disposition decisions.

8 CHAIR HILLMAN: I think those
9 findings should be in there, because they
10 inform our decision not to make a
11 recommendation there. So the panel and the
12 public might as well know we looked at that.
13 So I'd be fine with hanging findings
14 essentially.

15 LTC McGOVERN: Okay. But I guess
16 my question is, do you still want a slide for
17 those?

18 CHAIR HILLMAN: I think so. That
19 says discretion, you know, comparable
20 discretion. So with just a couple of bullets.
21 I think so, yes.

22 LTC McGOVERN: Okay. Super.

1 That's all. I just want to make sure I have
2 your intent. That's great. Too easy.

3 CHAIR HILLMAN: Okay. Kelly, you
4 and I are going to talk again, I'm sure, over
5 the weekend here. But does anybody else have
6 concerns that you want to raise before we lose
7 this last chance to talk before our Monday
8 meeting?

9 COL HAM: Ma'am, this is Colonel
10 Ham. I just -- I guess I want to make clear,
11 and you can address it as well, that this is
12 your interim assessment. Yeah. Okay. So --

13 CHAIR HILLMAN: Absolutely. That's
14 correct. We -- this is our interim
15 assessment. This is not a final report. I
16 think this is going to be pretty close,
17 because we are trying to turn this around for
18 a May 12th report getting out. So, but it's
19 not -- it will be presented as our interim
20 report rather than as the final
21 recommendation.

22 COL HAM: I guess my point being

1 that if there are other tweaks to the wording
2 of the findings and recommendations, you would
3 still have an opportunity to do that as well
4 as eliminate or add to them. But as you said,
5 Dean Hillman, you are probably mostly there.
6 But I guess everyone shouldn't feel like these
7 are in cement. They can still be changed. Is
8 that correct, Dean Hillman?

9 CHAIR HILLMAN: Absolutely.

10 COL HAM: Okay.

11 LTC MCGOVERN: But if you have
12 written recommendations that you would like to
13 send me, I would greatly appreciate it,
14 because we only have three days after the
15 public meeting to write the entire report. I
16 state that for the record. But I really
17 appreciate everybody's help getting this
18 right.

19 CHAIR HILLMAN: Okay. Well, thank
20 you to you and your staff, everybody there,
21 Colonel Ham, Lieutenant Colonel McGovern,
22 everybody there, and everybody on the line.

1 I really appreciate your work on it, and we'll
2 get this done and see how Monday goes.

3 LTC McGOVERN: Super. Bill, can
4 you close the meeting for us?

5 MR. SPRANCE: I will. This is Bill
6 Sprance, the DFO, and this meeting of the
7 Subcommittee is now closed.

8 (Whereupon, at 2:48 p.m., the
9 proceedings in the foregoing matter
10 were concluded.)

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ability 54:18 55:22 57:21 67:2	advisement 7:21 22:19
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C E R T I F I C A T E

This is to certify that the foregoing transcript

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

Before: US DOD

Date: 05-02-14

Place: teleconference

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