

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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THURSDAY  
APRIL 24, 2014

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The Subcommittee met telephonically at 9:30 a.m. Eastern Daylight Time, Professor Elizabeth Hillman, Chair, presiding.

PRESENT

PROFESSOR ELIZABETH HILLMAN, Chair  
HARVEY BRYANT  
COL (Ret.) LAWRENCE J. MORRIS

ALSO PRESENT

JANICE CHAYT, Investigator  
DILLON FISHMAN, Attorney  
MARIA FRIED, Designated Federal Official  
JOANNE GORDON, Attorney  
SHANNON GREEN, Legislative Analyst  
COL PATRICIA HAM, Staff Director  
LTCOL KELLY MCGOVERN, Supervising Attorney  
AMY GRACE PEELE, Technical Writer  
TERRI SAUNDERS, Deputy Staff Director

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

(9:41 a.m.)

MS. FRIED: Good morning,  
everybody. Glad to see that everybody's able  
to speak this morning, those of you who can.  
The meeting's open and with that, I'll turn it  
over to Kelly and Dean Hillman.

LTCOL MCGOVERN: I have received  
information from four of our members regarding  
the findings and recommendations they would  
like us to review and consider possible  
changes.

So if we could just start at the  
top with Finding 2(c). I believe that's the  
first one up to bat.

CHAIR HILLMAN: That's great,  
Kelly. This is Beth. I have one question.  
Who's on the line with us?

LTCOL MCGOVERN: Oh, I apologize.

CHAIR HILLMAN: That's okay.

LTCOL MCGOVERN: There's Dean  
Hillman, Maria Fried and right now Colonel

1 Morris. In this room we have Dillon, Jan, Amy  
2 who is our technical writer, Colonel Ham and  
3 Terri Saunders and myself, so Lieutenant  
4 Colonel Kelly McGovern.

5 FEMALE PARTICIPANT: Shannon.

6 LTCOL MCGOVERN: Oh, and Shannon  
7 Green, our legislative expert, so.

8 CHAIR HILLMAN: Great, thank you  
9 and hello, Colonel Morris.

10 COL MORRIS: Hey, Beth.

11 CHAIR HILLMAN: Okay, go ahead,  
12 Kelly, you were on. I just wanted to make  
13 sure about who was here. So you're on 2(c).  
14 Is that what you said?

15 LTCOL MCGOVERN: Yes. Harvey, is  
16 that you, or Mr. Bryant?

17 MR. BRYANT: Yes, it is. Good  
18 morning.

19 LTCOL MCGOVERN: Mr. Harvey.

20 (Laughter)

21 MR. BRYANT: Good morning.

22 LTCOL MCGOVERN: Good morning. We

1 were just about to begin with Finding 2(c)  
2 which Colonel Scholz asked us to take a look  
3 at and to add the word the possibility.

4 MR. BRYANT: Don't have a problem  
5 with that. That's fine. I'm sorry I was late  
6 but the first three times I called in it was  
7 busy so I thought maybe the system was  
8 clearing itself or something.

9 LTCOL MCGOVERN: No problem.

10 CHAIR HILLMAN: I'm glad -- sorry.  
11 Harvey, I'm glad that you're here. This is  
12 Beth. I'm glad that you're here. I had the  
13 same problem so, but Kelly has us all set up.

14 MR. BRYANT: Okay.

15 CHAIR HILLMAN: Ready to go here.

16 LTCOL MCGOVERN: Okay, so  
17 everyone's in agreement. We will change  
18 Finding 2(c) to read, "Both military and  
19 civilian agencies recognize the possibility  
20 for the presence of bias in their officers and  
21 investigators." Everybody agree?

22 CHAIR HILLMAN: Can we just say

1 the possibility of bias? I mean --

2 LTCOL MCGOVERN: Sure.

3 CHAIR HILLMAN: -- I don't think  
4 we need the extra words.

5 LTCOL MCGOVERN: Okay. And Number  
6 2, recommendation. Colonel Scholz asked for  
7 utilize civilians when possible/feasible.

8 CHAIR HILLMAN: So I'm trying to  
9 remember our discussion on this issue.

10 One thing that I -- we don't have  
11 the transcripts of our discussions, do we, so.

12 LTCOL MCGOVERN: Not readily  
13 available.

14 CHAIR HILLMAN: Right, which is  
15 fine. I was just trying to recall what we  
16 actually had talked about here.

17 LTCOL MCGOVERN: I believe Colonel  
18 Scholz had recognized that you really are at  
19 the need of the service so the needs of the  
20 Army will dictate who are going to fill these  
21 positions, although you want the right people  
22 for the job.

1 I suspect she wanted when  
2 possible/feasible because there may be  
3 circumstances that you just have to fill the  
4 slot with the personnel available.

5 MR. BRYANT: I don't have any  
6 objection to using when possible. Feasible is  
7 more, in my mind at least, a little more  
8 wishy-washy. But if it's possible that we  
9 should have these civilians, et cetera, et  
10 cetera. Now obviously if it's possible. If  
11 it's impossible --

12 CHAIR HILLMAN: Agreed with that.  
13 I think the key is to have carefully selected  
14 and trained personnel regardless of whether  
15 they're civilians or military.

16 MR. BRYANT: Correct.

17 CHAIR HILLMAN: What I was trying  
18 to remember is did we have a preference for  
19 civilians for some reason here? Because it  
20 sort of says, the first clause says let's  
21 choose civilians and the second one says  
22 ensure the military personnel who do this have

1 the right capabilities and commitment which,  
2 of course, for instance, were you to assign me  
3 to that job, I would be insufficient as a  
4 civilian because I wouldn't have the right  
5 training or have been carefully selected.

6 So can we rewrite that to, Kelly,  
7 can you just take another stab at that and  
8 write it to say that MCIO directors and  
9 commanders carefully select and train civilian  
10 or, you know, I don't know, something that  
11 puts those two ideas together?

12 MS. CHAYT: Dean Hillman, there  
13 actually was preferences for civilian agents  
14 at certain installations when there's an SVU  
15 team because they stay there for continued  
16 period of time and don't PCS as the military  
17 do, giving that continuous, known effort in  
18 those larger locations, so for --

19 CHAIR HILLMAN: Thank you, Jan.

20 MS. CHAYT: Yes.

21 CHAIR HILLMAN: That's perfect.

22 That's what I couldn't remember. So let's say



1 directors, first we should put in the finding  
2 that, in that top finding then, 2(a), a best  
3 practice is careful interview and selection of  
4 applicants.

5 And then something in there about  
6 continuity, how important continuity is in  
7 that first 2(a) finding. Can we add that  
8 there?

9 Then the second finding talks  
10 about military necessity and flexibility. I  
11 understand.

12 The next talks about the  
13 possibility of bias and then the  
14 recommendation will be when possible, Mr.  
15 Bryant's words, when possible, they carefully  
16 select, train and utilize civilians as  
17 supervisory agents and investigators for  
18 purposes of continuity. I just want to be  
19 clear on why we're doing that.

20 LTCOL MCGOVERN: Right.

21 CHAIR HILLMAN: That make sense?

22 LTCOL MCGOVERN: That's right.

1 MR. BRYANT: The when possible  
2 should come after commanders in that  
3 recommendation, not --

4 CHAIR HILLMAN: Okay.

5 MR. BRYANT: Yes, don't you think?

6 LTCOL MCGOVERN: Got it.

7 MR. BRYANT: When possible  
8 carefully select, train and utilize civilians.

9 LTCOL MCGOVERN: Got it.

10 CHAIR HILLMAN: Yes.

11 LTCOL MCGOVERN: That will link  
12 those much better, so I think we got that.  
13 The next one is Number 4, the recommendation.

14 MR. BRYANT: Excuse me, before we  
15 go there, on 3(a) I didn't put this down and  
16 I apologize. It is true that military  
17 investigators have more robust, but do we  
18 agree that it's far more robust? Would it be  
19 all right just to say military investigators  
20 have more robust and specialized training? Or  
21 is the evidence before us that it is, in fact,  
22 far more robust? I agree it's more robust and

1 specialized.

2 LTCOL MCGOVERN: We will --

3 CHAIR HILLMAN: I paused on that  
4 too but didn't write it. I agree with that.

5 LTCOL MCGOVERN: Okay, that's  
6 changed. We're good to go. Thank you.

7 Number 4 and --

8 Sorry, Number 4 recommendation.  
9 We're looking at the Number 4 recommendation.

10 MR. BRYANT: The reason I put that  
11 one down is do we, is this even necessary for  
12 us to put this in? Do we have a finding that  
13 that exist, that addresses cultural biases and  
14 inaccurate perceptions of victim behavior?  
15 I'm just asking. I mean, we didn't put that  
16 as a finding, that there's cultural biases and  
17 inaccurate perceptions of victim behavior.

18 I think that when we -- I don't  
19 doubt that there is to some extent and we  
20 covered that, I think, when we talked about  
21 the possibility the folks were biased up in  
22 the 2 area, when we said Finding 2(c), which

1 is both military and civilian recognize the  
2 possibility of presence of bias, et cetera.

3 So that was my question on Number  
4 4. Is it necessary for us to say ensure the  
5 training of agents addresses cultural bias?  
6 I don't know.

7 COL MORRIS: Anyway, same question  
8 from here and what's cultural bias mean? As  
9 soon as you throw in a term like that, you've  
10 got to define, you know, could be race, sex,  
11 any number of things. So if we're going to  
12 have a recommendation you need a finding and  
13 the terms are sensitive and imprecise.

14 MR. BRYANT: I don't want to beat  
15 this to death but our Finding Number 4 says  
16 exactly that, that both military and civilian  
17 do provide training to address biases and  
18 prepare agents to effectively investigate a  
19 sexual assault. So I might just, I'm just,  
20 that's it. I won't say any more about it.

21 LTCOL MCGOVERN: We are happy to  
22 delete it, unless you would like to state that

1 the SECDEF continue to ensure the training.

2 For instance, in Philadelphia --

3 MR. BRYANT: That solves it,  
4 Kelly.

5 COL MORRIS: That solves it for me  
6 if you just put continue.

7 LTCOL MCGOVERN: Okay. And  
8 Colonel Morris, we can draw up a footnote to  
9 discuss what we mean by cultural bias in the  
10 circumstance if necessary.

11 CHAIR HILLMAN: This is Beth. I  
12 think that we should probably -- there's a  
13 disconnect between the finding and the  
14 recommendation there if we do include cultural  
15 biases and factually inaccurate perceptions at  
16 all in that recommendation.

17 So I think we could say the  
18 Secretary directs continued, the Secretary  
19 continue to ensure training of agents and all  
20 levels of law enforcement regarding best  
21 practices in investigating sexual assault.

22 But this is sort of, I think

1 Larry's right, this is a specific. It's  
2 cultural biases and factually inaccurate  
3 perceptions. We have not introduced, I mean,  
4 I know we're not looking at the entire report  
5 here, but we've not introduced that in the  
6 findings here.

7 MS. CHAYT: Is there a difference  
8 in --

9 CHAIR HILLMAN: Jan, what do you  
10 think about that?

11 COL HAM: Is there a difference  
12 between biases and the inaccurate perceptions  
13 of victim behavior or aren't the biases the  
14 same thing as the inaccurate perceptions of  
15 victim behavior? I'm throwing out. I don't  
16 know the answer to that.

17 CHAIR HILLMAN: This is where Mr.  
18 Strand could weigh in.

19 COL MORRIS: They could be or  
20 could not be, you know, bad and dated data.  
21 It's just all the questions you're raising cry  
22 out for more text and more background which

1 just I think raises the question of what are  
2 we gaining with the recommendation as it sits  
3 there right now.

4 LTCOL MCGOVERN: Sir, I think one  
5 of the things you're gaining is that we do  
6 have a lot of turnover in the military. And  
7 based on the civilian investigator interviews  
8 is that, and especially Liz Donegan, that it's  
9 a constant struggle for them as new people  
10 come in to ensure that they do not have these  
11 biases against victims, that they understand  
12 counterintuitive behavior and so I think  
13 that's where the continue word helps.

14 But maybe the best way to say it  
15 would be the SECDEF continue to ensure  
16 training of all agents that address biases and  
17 then just leave it at that and delete the  
18 factually inaccurate perceptions of victim  
19 behavior.

20 FEMALE PARTICIPANT: And do you  
21 want to add best practice --

22 COL MORRIS: Well --

1 FEMALE PARTICIPANT: Go on.

2 COL MORRIS: I mean, it doesn't  
3 happen much. It's just, you know, the  
4 turnover is addressed by getting people as  
5 they come in the door now, you know. I mean,  
6 that would be like the infantry saying  
7 sustaining marksmanship. You know, we tend to  
8 do that because you had to shoot before you --

9 REPORTER: Sorry to interrupt.  
10 This is the Court Reporter. Could I ask the  
11 speakers please identify themselves when they  
12 speak?

13 LTCOL MCGOVERN: Oh, sure. Sure,  
14 not a problem. Okay, Colonel Morris, great  
15 analogy. Would you like to continue?

16 COL MORRIS: No, I mean, I'm done.  
17 I don't have anything more. Just I think we  
18 all have the same sense that this somewhat  
19 comes out of nowhere.

20 Everybody agrees that you need to  
21 have the right mindset toward these people and  
22 that we have some lagging population that



1 hasn't gotten it or needs it to be corrected.

2 But I think the overall  
3 comprehensiveness of the report -- if we had  
4 not had that recommendation there, I don't  
5 know that any of us would have said, geez,  
6 we're missing something. I think our sense  
7 would be that aspect is appropriately  
8 addressed in --

9 MR. BRYANT: All right, this is,  
10 yes, Harvey Bryant. What if we just said  
11 addresses -- I think we should take out the  
12 word factually first of all because I don't  
13 even know what that means, but.

14 Leaving in biases what if we said  
15 addresses culturally inaccurate perceptions or  
16 just addresses inaccurate perceptions of  
17 victim behavior and leave out biases and  
18 factual. Biases is a multifaceted term.  
19 That's just my suggestion and I agree with,  
20 you know, the whole issue of this particular  
21 recommendation.

22 So my notes anyway were at the

1 Secretary recommendation, the Secretary of  
2 Defense continue to direct MCIO to ensure  
3 training of agents in all levels of law  
4 enforcement that addresses inaccurate  
5 perceptions of victim behavior.

6 LTCOL MCGOVERN: Would you all  
7 like to just delete Number 4 and incorporate  
8 it into Number 2?

9 MR. BRYANT: Yes, That would suit  
10 me too, Harvey.

11 COL MORRIS: Yes. Morris, yes.

12 LTCOL MCGOVERN: Dean Hillman?

13 CHAIR HILLMAN: Yes, yes. Then  
14 let's get rid of the finding there about  
15 training on Number 4 too and let's add that to  
16 2 as well and let's just put a 2(d), you know,  
17 both military and civilian law enforcement  
18 agencies provide training. Let's make that  
19 2(d) and then the recommendation is about  
20 selection and also about training.

21 And I agree, I like that  
22 redrafting of addresses but I would say

1 including, that addresses key factors  
2 including inaccurate perceptions of victim  
3 behavior.

4 I agree that that's a central  
5 issue here and that it also connects us to the  
6 turnover issue and the lag that Colonel Morris  
7 just described so I agree.

8 LTCOL MCGOVERN: Great. This is  
9 Colonel McGovern. We're ready to move on to  
10 Finding 8.

11 MR. BRYANT: That wasn't the one I  
12 put in?

13 COL MORRIS: My apologies. Larry  
14 Morris. Number 7, if I can get back to it, I  
15 think may be a technical question. On  
16 recommendation for Number 7, says to  
17 coordinate with the prosecutor. Are we doing  
18 anything -- does not the reg already require  
19 that? And in that case, are we just telling  
20 them to follow the reg or is that not as clear  
21 as I would guess about what the regulations  
22 currently say?

1 COL HAM: Sir, it's Colonel Ham.

2 I was going to go get the Department of  
3 Defense Instruction. I know it says that the  
4 cases now have to be kept --

5 FEMALE PARTICIPANT: It does.

6 COL HAM: -- kept open until the  
7 command has reported the action. And what I'm  
8 trying to recollect is if there's a line in  
9 there that also says coordinate with the  
10 prosecutor. If you want to continue the  
11 discussion, I'll go grab the Instruction and  
12 check it.

13 COL MORRIS: And that's enough and  
14 we can check another time. If it does, then  
15 it seems to me we're just, then we're not  
16 saying anything new. If not, it makes sense.

17 LTCOL MCGOVERN: This is Colonel  
18 McGovern. The difference is in the Army  
19 there's a direct requirement for the CID to  
20 get an opine on probable cause from the JAG,  
21 whereas the other services, the MCIO presents  
22 it directly to the commander for the commander

1 to make an assessment. Then the commander's  
2 supposed to consult with the JAG.

3 So we're trying to standardize the  
4 process throughout all the services and I  
5 think this was one step in that direction.

6 COL MORRIS: Then that makes  
7 sense. Just maybe recommend an additional  
8 sentence in the findings that just makes clear  
9 the disparity among the services so then it's  
10 clear that we're correcting and recommending.

11 LTCOL MCGOVERN: Yes, sir.

12 COL MORRIS: Thanks.

13 LTCOL MCGOVERN: And we will check  
14 the DODI for you too, sir, and include that in  
15 the discussion. Okay, if everyone's ready,  
16 we'll move on to Finding 8.

17 MR. BRYANT: The reason I flagged  
18 that one -- this is Harvey Bryant. The reason  
19 I flagged that one was the finding goes  
20 straight to the recommendation and since we  
21 are comparative systems, shouldn't we put some  
22 sentence in there about what goes on in the

1 civilian world?

2 We can just say procedures vary in  
3 the civilian world also, although I think the  
4 evidence before us was that in most cases the  
5 civilian investigators can initiate pretext  
6 phone calls without getting permission. They  
7 just do it. They wire up the victim or  
8 whoever and get started, but I can't say that  
9 exists across the board in civilian law  
10 enforcement.

11 But that was my only question with  
12 that, that question being do we want to say  
13 something about what, you know, since they're  
14 doing comparing systems, do we want to make  
15 some reference to what we heard goes on in the  
16 civilian world?

17 CHAIR HILLMAN: Yes, great point.  
18 This is Beth. That's a great point.

19 COL HAM: This is Colonel Ham. I  
20 think it depends state by state whether  
21 they're a one-party consent or a two-party  
22 consent.

1                   It's federal wire fraud, wire laws  
2                   that some of you know a lot more about than  
3                   me.

4                   LTCOL MCGOVERN:   So we will  
5                   certainly look into that and they certainly  
6                   did give the impression that it's easier than  
7                   what the Army is having to go through for  
8                   their approval at this time.

9                   COL HAM:   If they're a one-party  
10                  consent.

11                  MR. BRYANT:   And maybe we can --  
12                  well, this is Harvey Bryant again.   Maybe we  
13                  can just make that reference, that the  
14                  evidence laws in many civilian jurisdictions  
15                  the ability to initiate pretext phone calls is  
16                  easier or something.

17                  LTCOL MCGOVERN:   Yes, sir.

18                  MR. BRYANT:   Less onerous, more  
19                  efficient, some words to that effect.   It's  
20                  not a big deal but I think we ought to say  
21                  something about what goes on the other side.  
22                  I'm done.

1 CHAIR HILLMAN: This is Beth.

2 That sounds great. That sounds great to me.

3 LTCOL MCGOVERN: Okay, and yes,  
4 sir. We'll be sure to put the disclaimer in  
5 that it is state by state because some states  
6 do not allow it at all.

7 But for those that do, we'll cite  
8 L.A., for instance, is an example where it's  
9 one-party consent. So great point to keep us  
10 on the comparative side of things.

11 If you all are ready, we'll move  
12 to Recommendation 9.

13 MR. BRYANT: I'm trying to read my  
14 handwriting here. Well, maybe I'm just  
15 forgetting some of the things we talked  
16 before. Do we really have to require  
17 videotaping of sexual assault victims? It  
18 said require it when possible. That seems to  
19 be two different things.

20 And I'm also just wondering, this  
21 is sort of a different issue. And, again, I'm  
22 sorry. It's Harvey Bryant. If they send you



1 a videotape of the victim in every case, is  
2 the defense then going to be able to obtain  
3 that as far as that Article 32 when they can't  
4 call the victim?

5 All right. Okay, you're not  
6 calling the victim, Mr. Prosecutor. I'd like  
7 to have the hearing officer hopefully with the  
8 recommendation of the judge see this video.

9 COL HAM: This is Colonel Ham.  
10 They certainly would be able to, sir, I  
11 believe. The defense is still allowed to  
12 present evidence, even under the new Article  
13 32.

14 MR. BRYANT: Right.

15 COL HAM: On the other hand, the  
16 prosecutor could use it too. The prosecutor  
17 could use it too because that would seem to be  
18 permitted, although, again, we don't have any  
19 experience with it yet.

20 LTCOL MCGOVERN: This is Colonel  
21 McGovern. In the JSC-SAS, when they went  
22 around, there was great controversy among the

1 different jurisdictions in the validity of the  
2 videotaping of the victim and the goal being  
3 she would only be videotaped once, whereas the  
4 fact that they have these bits and pieces that  
5 they recall at a time, it's setting you up for  
6 an inconsistent statement which is a major  
7 drawback. Since we haven't had, I think, a  
8 sufficient amount of time to deliberate that  
9 issue, that may be one we should delete.

10 MR. BRYANT: Yes, because the next  
11 question that arises in my mind is, is the  
12 victim going to have the ability to refuse to  
13 be videotaped or is he or she going to be told  
14 that they're being videotaped or not? Because  
15 all of those things, I just think for us to  
16 ask the Secretary of Defense to require  
17 videotaping of sexual assault victims. Well,  
18 I agree with Lieutenant Colonel McGovern.  
19 Maybe we should delete the whole 9.

20 LTCOL MCGOVERN: I think it's  
21 important to videotape the suspect in many  
22 jurisdictions in order to protect the

1 government, the police agency that there was  
2 not coercion.

3 MR. BRYANT: Yes.

4 LTCOL MCGOVERN: But I'm not so  
5 sure that there is a best practice as far as  
6 videotaping the victim.

7 MR. BRYANT: Well, if you want to  
8 stick with this, we should also --

9 CHAIR HILLMAN: This is Beth. Go  
10 ahead, Harvey.

11 MR. BRYANT: Go ahead, please.  
12 No, go ahead.

13 CHAIR HILLMAN: No, no. All I was  
14 going to suggest is that --

15 (Simultaneous speaking.)

16 CHAIR HILLMAN: It's the delay  
17 that's getting us here. This is Beth on the  
18 phone. Kelly said there was a slight delay.  
19 Harvey, you go ahead and finish your point.

20 MR. BRYANT: If we stick with 9,  
21 the finding needs to have the words added  
22 regarding the efficiency and usefulness of

1 videotaping of adult victim interviews. But  
2 actually I'm more with Lieutenant McGovern at  
3 this point, where I would just delete 9.  
4 That's my personal --

5 CHAIR HILLMAN: This is Beth.  
6 Let's tentatively delete that. I just would  
7 like to get Russ Strand's input on that  
8 because I have a feeling it came from him.

9 Jan, do you have anything else  
10 that you remember about that? Is this  
11 highlighted in yellow because we did not  
12 discuss this at all?

13 MS. CHAYT: That's right, ma'am.  
14 When he was presenting our recommendations and  
15 findings in the larger group this one did not  
16 get discussed in detail.

17 It was mentioned and it was  
18 something that we needed to discuss.  
19 Unfortunately it was not discussed and there  
20 was no consensus among our members.

21 COL MORRIS: This is Larry Morris.  
22 Are we sure someone didn't just mis-transcribe

1 and they meant to say the accused?

2 Did we discuss videotaping the  
3 accused.

4 LTCOL MCGOVERN: Sir, that would  
5 be a best practice I think. But Jan has noted  
6 that in our RFI responses, the MCIOs are  
7 saying they do videotape suspects now.

8 COL MORRIS: Though  
9 inconsistently, right, and not --

10 MS. CHAYT: Correct.

11 LTCOL MCGOVERN: Right, so --

12 COL MORRIS: Certainly not  
13 uniformly because I guess there are many good  
14 reasons to not make it a uniform practice, so  
15 I'd at least recommend dropping it and also  
16 just be conscious that this would really jump  
17 out.

18 I mean, imagine, you know,  
19 appropriately a victim's group scrutinizing  
20 our steps saying you're going to, you know,  
21 put a person who's already had, you know,  
22 sensitive experience, and then skittishness

1 about it and then say, you know, sit in that  
2 chair. We're going to roll the tape.

3 So I would guess there's not  
4 enough of a consensus among us to include it  
5 as a recommendation.

6 LTCOL MCGOVERN: If we go back and  
7 dig a little deeper as to whether in practice  
8 they are videotaping suspects or if it's only  
9 where the resources are available, would you  
10 all recommend that that suspect be videotaped?

11 MR. BRYANT: This is Harvey  
12 Bryant. Yes, I mean, just from a law  
13 enforcement point of view you already  
14 articulated very well a few minutes ago why  
15 it's a best practice to videotape the accused.

16 So I don't have any, you know,  
17 that's definitely a best practice for all law  
18 enforcement, although you don't get 100  
19 percent consensus even on that.

20 COL MORRIS: And I agree. I know  
21 we don't have a total consensus either but  
22 it's certainly the trend. And I think as we

1 talked about briefly before, just do it in the  
2 interest of justice, take that - increase  
3 police professionalism, shorten hearing over  
4 how somebody was really questioned, all that  
5 stuff.

6 CHAIR HILLMAN: This is Beth. I  
7 agreed entirely on the videotaping of the  
8 accused and also I agree with striking this  
9 without further querying of our members, that  
10 is striking the piece on videotaping victims.

11 LTCOL MCGOVERN: Okay. We'll get  
12 back to you regarding videotaping suspects but  
13 for the time being we will delete Finding and  
14 Recommendation Number 9. Okay, The next topic  
15 is Number 10, Dean Hillman.

16 CHAIR HILLMAN: Okay, right. This  
17 is Beth. I flagged this one. This is in  
18 part, this is something that we've already  
19 mentioned. It's difficult to assess the  
20 findings and recommendations outside of the  
21 context of the whole report.

22 But I thought that one of the --

1 so the context that's important here is that  
2 the services are not all doing the same thing  
3 here and that what the law requires and what's  
4 happening in practice are not congruent.

5 So I feel like our finding needs  
6 to say that. The finding now says MCIO agents  
7 report the requirement to stop a victim  
8 interview causes problems.

9 But really I think our finding is  
10 investigators across the services don't follow  
11 the same practice that Article 31(b) requires  
12 when minor collateral misconduct appears in  
13 the interview.

14 LTCOL MCGOVERN: That's exactly  
15 right.

16 CHAIR HILLMAN: I think we need to  
17 make a finding that it's not the same in each  
18 of the services. Again, this is a little bit  
19 like the framing of this whole section.  
20 There's a lot of turnover in the military so  
21 we need additional training.

22 And then there are different



1 practices across the services and we need to  
2 make recommendations about how to deal with  
3 that.

4 This is a place where we really  
5 should seek to standardize and clarify because  
6 the law is not being consistently applied and  
7 that became clear to us in our study.

8 LTCOL MCGOVERN: Right. In the  
9 most recent set of responses to RFIs, Navy did  
10 put in writing that the NCIS agents do not  
11 read victims their rights for what they  
12 determine to be minor misconduct.

13 They just refer that to the  
14 commander for action but I'm not sure, then,  
15 what the commander can do because they weren't  
16 read their rights for that minor misconduct.  
17 So we can certainly refine the finding and  
18 recommendation to be more focused on that.

19 COL HAM: Ma'am --

20 CHAIR HILLMAN: My other comment  
21 on -- go ahead, Colonel Ham.

22 COL HAM: I'm sorry, ma'am. We

1 also received information from the services.  
2 We asked them how many times they take adverse  
3 action in collateral misconduct and what type  
4 of action.

5 And right now none of the services  
6 formally track that information, which may be  
7 an area of recommendation for you if you  
8 decide.

9 They did provide us, they did a  
10 data call in 2013 and were able to provide us  
11 the numbers for that year and, overall, in  
12 general, less than five percent of cases with  
13 collateral misconduct have adverse action  
14 taken. I'm speaking generally.

15 And the great majority of time it  
16 was very low level but, again, that's not  
17 formally collected data so the subcommittee  
18 may want to address that, or not.

19 CHAIR HILLMAN: This is Beth  
20 again. I definitely want to address that. I  
21 mean, this recommendation doesn't go far  
22 enough for me.

1                   I want to hear from Colonel Morris  
2                   and Mr. Bryant on this too, but I feel like,  
3                   given what you just said, that actually  
4                   there's very few cases where low-level  
5                   misconduct triggers any consequences or  
6                   significant consequences for the victim.

7                   I feel like we should surface that  
8                   reality and, moreover, should make clear that  
9                   a regulation that provided this limited  
10                  transactional immunity or accepted minor  
11                  collateral offenses, the language of this  
12                  recommendation, we should go ahead and put  
13                  that out there because it would then convey to  
14                  victims that they will not suffer these  
15                  consequences, that already they don't suffer  
16                  but in a very minor, very limited set of  
17                  circumstances.

18                  COL HAM: We would have to caveat  
19                  that it's not, the data's not been empirically  
20                  collected and tracked.

21                  LTCOL MCGOVERN: And that the  
22                  services do not support that position. They

1 want to leave it up to the prosecutor and the  
2 commander to reserve the possibility because  
3 in some cases it may be helpful for the  
4 credibility of the victim to take the stand  
5 and say, yes, I received an Article 15. I've  
6 received my punishment. Now, I'm here to talk  
7 about the accused.

8 So the services were not fond of  
9 adjusting the current regulations which  
10 reserves the right to the commander to decide  
11 at the end of the proceeding what to do.

12 MS. CHAYT: And, ma'am, the  
13 services were also concerned by creating this  
14 known immunity possibility that defense  
15 attorneys could say that victims only came  
16 forward because they knew they'd get immunity  
17 on the collateral misconduct. That is what  
18 some of the responses were.

19 LTCOL MCGOVERN: Does that change?  
20 Anyone?

21 CHAIR HILLMAN: This is Beth.  
22 Yes, I hear you on this. So, Larry and

1 Harvey, do you have anything to add on this?

2 I'm hearing the objection.

3 COL MORRIS: I do --

4 MR. BRYANT: This is Harvey.

5 Colonel, go ahead, please.

6 COL MORRIS: No, please, go on.

7 MR. BRYANT: This is Harvey

8 Bryant. I understand what these women are

9 saying and I agree. I think this is an

10 important issue that we need to say something

11 about. We heard about this from all sides.

12 Prosecution, defense and especially victims

13 have concerns over this particular issue.

14 And, yes, we did hear the military

15 is against changing it but -- I don't have a

16 suggestion as to how to clean this up to get

17 to where we can define this within the space

18 that it's taking right now so, but we need,

19 you know, something needs to be done and I'm

20 just standing here hoping that Dean Hillman

21 will jump in with some great words.

22 CHAIR HILLMAN: Colonel Morris.

1 COL MORRIS: I guess my intent is  
2 that yes, to the recommendations -- you know,  
3 there are a few that people are going to seize  
4 on and this is sure one that people have  
5 thought about forever, so we really need to  
6 clear that air.

7 And in the others, a lot of  
8 questions popped out to me out of the  
9 recommendation from a clarity of language  
10 standpoint, but maybe the way to set this is  
11 to figure out what do we certainly have a  
12 consensus on, if anything, that we need some  
13 clearly defined, expedited process by which  
14 some named level of authority can override  
15 31(b).

16 If that's right, then, you know,  
17 the service objections about sometimes they  
18 might not want to, sometimes it looks like  
19 purchasing testimony. I mean, those are all  
20 true enough but that's true any time you give  
21 immunity to anybody so you have to just trust  
22 decision makers to weigh all that stuff out

1 and decide under the right circumstances  
2 whether you want to bear that risk.

3 So if our point is that at least  
4 under certain circumstances, we will need to  
5 employ this override because the interest of  
6 solving a felony is much more important than  
7 the drinking or drugs or whatever the normal,  
8 low-ish level of violation is that we might be  
9 dealing with.

10 If that's so, then how do we do  
11 that with the right amount of speed that  
12 preserves the system's interest in not making  
13 this, you know, too wide a path through that  
14 then you end up with, maybe not undermining  
15 your justice system, but you could have some  
16 collateral impact of people losing faith in  
17 the system and the sort of get over aspect.

18 But my sense is that everybody's  
19 aware that you could potentially have some of  
20 that and there might be some of that and to  
21 that degree then measures like this have some  
22 cracks in that maybe somebody will get away

1 with drinking or something from time to time.

2 So if that's so, then where would  
3 we want to locate that? You know,  
4 investigator autonomy doesn't seem to make  
5 sense because investigators are paid to  
6 investigate and not make judgments by omission  
7 or commission that then affect the prosecutory  
8 attack. So, you know, the Navy policy of just  
9 don't read them their rights or any decision  
10 left with an investigator is bad practice  
11 whichever way it goes.

12 So it seems that you want to then  
13 integrate the right level of involvement of  
14 prosecutors to affirm that decision, which  
15 then I'm going to leave you with the last  
16 question, which is a command coordination or  
17 an alternative of having command approval.

18 CHAIR HILLMAN: This is Beth.  
19 That's hugely helpful to me, as was what  
20 Harvey said. I also think we need to make  
21 this comparative because this is a distinction  
22 between the civilian.



1                   We should have a finding that says  
2                   in civilian jurisdictions this sort of  
3                   misconduct is not pursued. I mean, did we  
4                   hear from anyone who said this sort of thing  
5                   would ever come up? I don't think so. They  
6                   just said they would never pursue it.

7                   COL HAM: Although Ms. Jaus said  
8                   that underage drinking is a barrier to  
9                   reporting in campus sexual assault. I believe  
10                  she said that the last meeting.

11                  Different question than is it  
12                  prosecuted but she said it presents a barrier,  
13                  as I recall, if others recall the same thing.  
14                  This is Colonel Ham, I'm sorry.

15                  MR. FISHMAN: My recollection  
16                  actually -- it's Dillon -- was that Ms. Jaus  
17                  specifically talked about immigration cases,  
18                  that she's had a lot of those as well and that  
19                  she specifically said that they would  
20                  routinely ignore the status of the victim, or  
21                  alleged victim.

22                  CHAIR HILLMAN: Right. This is

1 Beth again. Then perhaps what we ought to say  
2 is that because of the breadth of potential  
3 criminal liability in the military as compared  
4 to civilian jurisdictions, this collateral  
5 misconduct issue is different if not, I think  
6 it's much greater but it's certainly at least  
7 different than in civilian jurisdiction.

8           And because alcohol is such a --  
9 because alcohol-facilitated sexual assaults,  
10 I mean, we don't say that anywhere in this  
11 right now that I've seen, but recognizing that  
12 alcohol-facilitated sexual assaults are a  
13 large part of the sexual assaults that take  
14 place in the military, we need to recognize  
15 that the regulations around alcohol which, to  
16 be honest, are only getting more restrictive  
17 because of this issue in significant part,  
18 those rules or violating those rules, they do  
19 create a barrier to reporting.

20           So I think that the way Colonel  
21 Morris put it is correct. We want an  
22 expedited process. I think we do want an

1 amendment to Article 31(b) that permits an  
2 expedited process by which an authority can  
3 appropriately waive liability for minor  
4 collateral misconduct.

5 LTCOL MCGOVERN: So my  
6 understanding where we're at now is in our  
7 finding for Number 10, we note that in  
8 civilian jurisdictions, the policies vary as  
9 far as whether or not they will prosecute  
10 collateral misconduct, although for underage  
11 drinking, there are many who do not prosecute  
12 that type of misconduct.

13 And then a 10(a) recommendation  
14 would be we need to standardize what the  
15 services are doing as well as the law -- as  
16 the law is currently written so that everybody  
17 is reading their rights, and 10(b), the  
18 recommendation that Article 31(b) be amended.

19 MR. BRYANT: This is Harvey  
20 Bryant. I like that but I think we should  
21 remove -- take our findings about the civilian  
22 world, that it is infrequently a barrier to

1 investigators proceeding or something like  
2 that because I really think that is the  
3 evidence of force.

4 There were times and situations  
5 but, for the most part, it's infrequent or  
6 some equivalent word that's going to deter a  
7 victim or slow down or harm an investigation.

8 LTCOL MCGOVERN: Okay, we will  
9 work on that and over the weekend when you see  
10 the report, please feel free to continue to  
11 edit that one because it will be different  
12 than what we're seeing right now.

13 COL HAM: And do you want -- I'm  
14 sorry, it's Colonel Ham. Do you want an  
15 additional recommendation that the services  
16 formally collect and track that data or no?

17 CHAIR HILLMAN: This is Beth. I'm  
18 reluctant to impose additional reporting  
19 requirements and I'm doubtful that our real  
20 point here is to know whether this happens a  
21 lot because I think the fear that it would  
22 happen is more significant than the reality of

1 it happening.

2 So I feel like we have enough  
3 evidence to know that, first, this doesn't  
4 happen often enough to feel like commanders  
5 need this authority in very many  
6 circumstances, that we should protect it  
7 against any encroachment.

8 And second, I think that even  
9 having the data that it doesn't happen very  
10 often would not be more persuasive to changing  
11 the mindsets of everybody that coming forward  
12 doesn't subject the person to recriminations  
13 for a very minor act compared to the grave  
14 acts that will get prosecuted.

15 LTCOL MCGOVERN: Okay, that's  
16 helpful.

17 MR. BRYANT: This is Harvey  
18 Bryant. I agree with Professor Hillman that  
19 we ought not add another reporting burden to  
20 this recommendation.

21 LTCOL MCGOVERN: Okay, we can  
22 address it in the discussion as a possible

1 reason why change would be -- to 31(b) would  
2 not be difficult because it's not commonly  
3 used, although the perception is it's causing  
4 a barrier to reporting. So I think we got it.  
5 We can work with that one and move on.

6 Colonel Scholz asked that we look  
7 at Number 12 and 13. And she recommended we  
8 explain why. One reason is being that we're  
9 identifying serial offenders. And I think in  
10 the discussion, we can address, or we do  
11 address this, that this was a tasking by  
12 Congress that we look at the database and  
13 whether we have the capability to track  
14 offenders when people make restricted reports  
15 because right now, all those offenders are  
16 continuing throughout the military -- alleged  
17 offenders.

18 CHAIR HILLMAN: This is Beth. I  
19 don't have any objection to, you know, those  
20 additions to this. I do think this is an  
21 important recommendation, that we actually use  
22 the database that exists. So -- but I don't

1 have a problem with including additional  
2 contacts as Colonel Scholz suggested.

3 LTCOL MCGOVERN: Okay.

4 (Simultaneous speaking.)

5 COL MORRIS: A question. When we  
6 use the term known, does everybody know what  
7 that means and just not me, known alleged  
8 sexual assault offenders? Does that mean  
9 adjudicated and therefore in the system?

10 LTCOL MCGOVERN: No, sir. It  
11 would be --

12 COL MORRIS: Or titled?

13 LTCOL MCGOVERN: Neither. It  
14 would be a person who's making an alleged  
15 report and says Sergeant Smith sexually  
16 assaulted me.

17 Currently in a restricted report,  
18 that information wouldn't be -- the alleged  
19 offender's name wouldn't be recorded. So  
20 Congress is afraid that these alleged  
21 offenders are not captured or we're not  
22 capturing that information.

1 COL HAM: So maybe the better way,  
2 it's not known offenders. It's they don't  
3 input personally identifying information on  
4 offenders currently. Maybe that's a better  
5 way to put it, Colonel Morris?

6 COL MORRIS: Are either of those  
7 terms in the regulation known? If not, we  
8 might want to say accused or something like  
9 that. Just --

10 LTCOL MCGOVERN: Or possibly named  
11 offenders because if someone comes in and says  
12 I was sexually assaulted but I don't know who  
13 it was, then clearly that field can't be  
14 filled out.

15 COL MORRIS: Yes, I mean, but then  
16 the findings then --

17 CHAIR HILLMAN: I agree with that.

18 LTCOL MCGOVERN: Okay.

19 COL MORRIS: Would the findings  
20 still be accurate to say does not currently  
21 input data on offenders who are identified by  
22 accusers who file restricted reports? I



1 thought you said the same thing then maybe  
2 along those lines because I agree with the  
3 concept. I just -- I didn't know if that was  
4 a term of art that I had missed.

5 LTCOL MCGOVERN: We can adjust it  
6 to be the identified by accusers language,  
7 sir.

8 COL MORRIS: Okay, thanks.

9 LTCOL MCGOVERN: All right. Any  
10 other concerns?

11 CHAIR HILLMAN: This is Beth.  
12 Sorry, Kelly. This is Beth. Just that is an  
13 important point. I mean, known offenders.  
14 The language is important there, that we not  
15 suggest that we're entering information into  
16 the database that suggests there's actually  
17 been an adjudication. And anyway, so I agree  
18 with tracking the precise language that we  
19 actually intend there.

20 LTCOL MCGOVERN: And we'll change  
21 that then in the finding and recommendations  
22 for Number 12 so this is extremely helpful.

1 I appreciate your patience with this.

2 Number 16, Colonel Scholz felt  
3 that that finding needs further explanation  
4 and that an example might assist the  
5 understanding.

6 CHAIR HILLMAN: This is Beth. I  
7 agree. It's sort of just there. This is one  
8 of those that's a problem without seeing  
9 actually the entire report I think.

10 LTCOL MCGOVERN: Right.

11 MR. BRYANT: Yes, I wrote down --

12 CHAIR HILLMAN: Just can you give  
13 us an --

14 MR. BRYANT: I wrote down on my  
15 notes last night the exact same thing.  
16 Example, question mark.

17 LTCOL MCGOVERN: Okay. We'll move  
18 a little bit of the discussion then into the  
19 finding because these findings and  
20 recommendations will be standing on their own  
21 in appendices and we fully expect that some  
22 people will only read the findings and

1 recommendations, so this is helpful that we  
2 need to put them in the full context, so --

3 CHAIR HILLMAN: And the example?

4 (Simultaneous speaking.)

5 MR. BRYANT: This is Harvey  
6 Bryant. Do we have examples? What are the  
7 examples that -- of the word, terms used that  
8 would imply concern of the victim?

9 COL HAM: The testimony that you  
10 heard, I think from Claudia Bayliff is one  
11 person, is instead of saying performed oral  
12 sex on someone, which tends to indicate  
13 consent, use some other language. That would  
14 be an example.

15 We know that at least some of the  
16 MCIOs are teaching this already. It's in CID  
17 Regulation, the Army CID Regulation and that  
18 was provided to us.

19 I guess the other side of the coin  
20 is it leaves a law enforcement investigator  
21 open to some cross examination that may be  
22 harmful. But it's already being done, at

1 least in some of the MCIOs. I'm not sure if  
2 it's in all of them.

3 LTCOL MCGOVERN: So the goal is  
4 that they provide language to actually  
5 describe the act of what happened rather than  
6 classifying it as a general term or an  
7 offense.

8 CHAIR HILLMAN: This is Beth.  
9 Doesn't this run to the sort of training,  
10 selection and, you know, quality of the  
11 investigators?

12 This seems a little funny to me to  
13 be separate on its own here. This is really  
14 about how reports of assault are characterized  
15 in the language that goes forward and avoiding  
16 language that suggests there was consent of  
17 the victim when we actually can put it in a  
18 more accurate way.

19 So doesn't this -- can we put this  
20 in, like, for instance, that Finding Number 2  
21 or do you think it deserves a separate place  
22 here?

1 LTCOL MCGOVERN: We can play with  
2 it and if Finding and Recommendation Number 2  
3 is getting too long, we can make it Number 3.  
4 So it certainly does seem to be grouped within  
5 that same category of concern.

6 CHAIR HILLMAN: Maybe since 3 is  
7 investigator training, maybe it goes in 3. I  
8 just would consider moving it there because  
9 really what you're saying is that the  
10 training, this is an example of the kind of  
11 training they need. In fact, it's an example  
12 of bias and that inaccurate perception. You  
13 know, performed oral sex is an inaccurate  
14 perception of an act where a victim was forced  
15 into that behavior.

16 So I think that's what this is  
17 going to and I think it would be -- it's about  
18 the preparation of the report, but it feels to  
19 me like it would strengthen actually Finding  
20 Number 3.

21 LTCOL MCGOVERN: Okay. For the  
22 next one, Mr. Bryant, you asked us to look at

1 Number 17 recommendation.

2 MR. BRYANT: Yes. This is Harvey  
3 Bryant. My question really there is what do  
4 you mean by assess the effects? Going to have  
5 doctors assessing the effect that they have  
6 SANE nurses in the emergency room? Are we  
7 talking about financial or personnel or,  
8 because I really don't know what we're  
9 recommending that they assess the effect of.

10 CHAIR HILLMAN: Jan?

11 MR. BRYANT: Again, are we talking  
12 about funding, lack of personnel, makes us a  
13 better emergency room?

14 CHAIR HILLMAN: This is Beth.  
15 What I remember about this is that the  
16 requirement that all military facilities have  
17 a 24/7 SANE capability is unnecessary because  
18 so many civilian medical facilities nearby  
19 have experienced SANES who can manage these  
20 needs. Jan, is that correct?

21 MS. CHAYT: Well, ma'am, the  
22 requirement is that if the medical facility is

1 24/7, then they need to have a SANE. Not that  
2 they have it if they're not already a 24/7  
3 establishment. So it's just a little  
4 different.

5 And yes, ma'am, the whole issue  
6 was why not use the civilian expertise that's  
7 already available?

8 LTCOL MCGOVERN: At Fort Hood they  
9 have a 24/7 but don't they use local SANE?

10 MS. CHAYT: Which isn't very  
11 local.

12 LTCOL MCGOVERN: Right.

13 FEMALE PARTICIPANT: They're more  
14 experienced.

15 COL HAM: This is Colonel Ham.  
16 Would you like the recommendation more direct,  
17 Dean Hillman, to say Congress should reexamine  
18 or that you believe the legislation was  
19 unnecessary? Do you want something stronger  
20 or different directed at the legislation  
21 rather than the effects of the legislation?

22 CHAIR HILLMAN: This is Beth. I'm

1     pondering what I mean there. I do remember  
2     actually even at the civilian locations that  
3     we visited what a challenge it is to meet this  
4     sort of demand.

5                     And I'm not, I am wary of, I'm  
6     doubtful that this is a good decision, to  
7     require this, given the redundant capability  
8     at civilian medical facilities. But I'm  
9     pondering how directive we ought to be here on  
10    rescinding it.

11                    We could take aim at the  
12    legislation and say FY '14 NDAA's requirement  
13    that all military treatment facilities with a  
14    24/7 ER capability maintain a SANE ought to  
15    include an exception for those near a civilian  
16    medical facility with sufficient capacity.

17                    But perhaps that's too big a  
18    loophole to -- maybe that's what you're going  
19    to drive a truck through and that would mean  
20    that no one would do it. So other thoughts on  
21    that, Mr. Bryant?

22                    MR. BRYANT: Well, this is Harvey



1 Bryant. My whole thought was we need to tell  
2 what it is, if we're going to stick with this,  
3 what we want the Surgeon Generals to assess  
4 the effect of -- assess the logistical and  
5 funding effects of it, the logistical, funding  
6 and necessity, efficacy, efficiency, something  
7 other than just a flat assess the effect of.  
8 That was my main issue in the beginning, but  
9 I certainly agree with everything that  
10 Professor Hillman just said.

11 CHAIR HILLMAN: Colonel Morris.

12 COL MORRIS: Nothing to add this  
13 time. I do agree with the consensus.

14 CHAIR HILLMAN: Okay. Kelly, this  
15 is Beth again. Kelly, do you have enough to  
16 redraft that at this point do you think?

17 LTCOL MCGOVERN: Yes, we have a  
18 lot that we can provide in the discussion  
19 section as well to help flesh out the concerns  
20 that, you know, are we talking logistical,  
21 funding, expertise, the difficulty of  
22 maintaining credentials?

1 Shannon has weighed in and she  
2 said one suggestion may be also to say that  
3 the legislation seems overly proscriptive.

4 If you want to do a comparative  
5 analysis, often you give a sexual assault  
6 coordinator and that may be a better way for  
7 these 24/7 emergency rooms because it seems  
8 like they are outsourcing a lot of these to  
9 those local hospitals or SANEs which have more  
10 experience.

11 So rather than having a SANE and  
12 trying to maintain those qualifications, a  
13 coordinator could work to bring those off-post  
14 SANEs on post and provide the best exam  
15 possible.

16 So in the discussion, we can  
17 provide different ways they can do it, but  
18 overall, the legislation appears overly  
19 proscriptive and should possibly include an  
20 exception. Would that work?

21 CHAIR HILLMAN: This is Beth.  
22 Right on. Right on. And I think that the big

1 framing piece here is about leveraging  
2 civilian resources.

3 This kind of legislation prevents  
4 the services from effectively leveraging  
5 civilian resources, which can actually do  
6 better than what we can do in some instances.

7 And given the different types of  
8 military installations, I think that's really  
9 critical, so I like that. Any objections to  
10 what Kelly just said?

11 MR. BRYANT: Harvey Bryant. No.

12 COL MORRIS: Agreed.

13 LTCOL MCGOVERN: Okay.

14 CHAIR HILLMAN: Okay. Kelly, this  
15 is Beth again. You know, let's do one more of  
16 these and then I need to take a break. I need  
17 a little more coffee and I need to stand up  
18 and stretch.

19 Do you want to do one more of  
20 these maybe and then we could all take a five-  
21 minute break and then come back. Would that  
22 be okay?

1 LTCOL MCGOVERN: That would be  
2 great. Next, Colonel Scholz and Dean Hillman  
3 both recommended we look at Number 19.

4 CHAIR HILLMAN: Okay, this is  
5 Beth. I'm trying to remember what I meant  
6 here but I think I was, this is some, direct  
7 the services to create a working group, to  
8 create a course open to all practitioners at  
9 the Medical Education and Training Center.  
10 This was an exportable or mobile training  
11 capability and discuss and monitor, refresh  
12 your sexual assault forensic training. Can  
13 you remind us of what we're trying to fix with  
14 this recommendation?

15 MS. CHAYT: Ma'am, unfortunately  
16 we did not get to discuss this in any detail  
17 during our subcommittee meeting. It was only  
18 in the subgroup.

19 The issue was that the different  
20 services all had different ways of doing this.  
21 They all do it, but they do it differently.  
22 They are not coordinating their efforts.

1                   And there is a combined service,  
2                   Medical Education and Training Center, that  
3                   teaches many of the different medical fields  
4                   and medical specialties and it would just seem  
5                   to make sense to utilize that same expertise  
6                   in this area.

7                   CHAIR HILLMAN: That sounds very  
8                   persuasive to me. This is Beth. That sounds  
9                   very persuasive, but I couldn't tell that's  
10                  what we were coming from here.

11                  Can we add a little more to that  
12                  with the finding? Right now, Finding 19 says  
13                  the services have different programs developed  
14                  independently.

15                  We need to mention that that  
16                  creates waste, duplication, you know,  
17                  unnecessary. It's redundant. So we think  
18                  because already there exists the Medical  
19                  Education and Training Center, we ought to use  
20                  that so, and then can we just revise that to  
21                  sort of clarify what we're saying there?

22                  But Jan, what you said sounds

1 persuasive to me. Colonel Morris, any  
2 thoughts on that?

3 COL MORRIS: Nothing further.

4 CHAIR HILLMAN: Mr. Bryant, any  
5 thoughts on that? Okay. Mr. Bryant,  
6 anything?

7 MR. BRYANT: No, Beth, that's  
8 fine. Thank you.

9 CHAIR HILLMAN: Okay.

10 LTCOL MCGOVERN: And we can adjust  
11 the recommendation again to place the  
12 commenting that will appear throughout the  
13 report. This is another area to standardize  
14 and consolidate.

15 CHAIR HILLMAN: Okay.

16 LTCOL MCGOVERN: All right. We're  
17 ready to break whenever you are, ma'am.

18 CHAIR HILLMAN: Okay. Okay, let's  
19 take a break. Let's take five minutes. I  
20 have 7:43. I'll tell you what, let's come  
21 back at -- well, that's my time. Just so you  
22 know, it's early here. Let's come back at 10

1 minutes til, okay?

2 LTCOL MCGOVERN: Okay.

3 (Whereupon, the foregoing matter  
4 went off the record at 10:43 a.m. and went  
5 back on the record at 10:55 a.m.)

6 LTCOL McGOVERN: We need to go  
7 back to Number 13. I had grouped 12 and 13  
8 together, but they are actually quite  
9 different recommendations. Thirteen is one  
10 that Russ had talked about -- and correct me  
11 if I'm wrong, Jan -- about the origin model  
12 where you can have some sort of restricted  
13 report to the police. And this would require  
14 a different kind of restricted report in the  
15 military.

16 If you want to read through those  
17 findings and recommendations, I would be open  
18 to your thoughts.

19 CHAIR HILLMAN: Kelly, this is  
20 Beth. Did we discuss this in a session?

21 LTCOL McGOVERN: Yes.

22 CHAIR HILLMAN: And we agreed that

1 allowing investigators to take a report that  
2 could remain restricted would be helpful in  
3 building the databases and, you know, getting  
4 information to go forward?

5 COL HAM: I'm not sure that there  
6 was a complete consensus on how this would  
7 work or, because we do have this restricted  
8 and unrestricted report system, this would be  
9 like a semi-restricted report. And this is  
10 being done -- I think Russ refused to Ashland,  
11 Oregon. It's a test program that started in  
12 January 2013. So I don't -- we just don't  
13 have any more information than that.

14 I don't know, Jan, were there any  
15 other jurisdictions that were doing this kind  
16 of thing?

17 MS. CHAYT: Another jurisdiction  
18 did discuss the fact that an officer would  
19 approach a victim as part of the  
20 decision-making process. Part of that was an  
21 attempt to build some rapport so that they  
22 would be more comfortable coming forward.



1 Some of it was to gain information so that  
2 they could, you know, identify serial  
3 perpetrators and things like that, so it was  
4 for a purpose.

5 And it would be basically a matter  
6 of the policeman said, would you like to make  
7 a report? Try to show that they were, you  
8 know, somewhat amenable to discussing it, and  
9 not -- but would not automatically pressure  
10 the victim into doing an investigation.

11 So if there was more than one  
12 department, it was only Ashland and a few  
13 others that we got some documentation on that  
14 actually had several layers of different ways  
15 to do it. But the results of that were not  
16 conclusive that we had.

17 CHAIR HILLMAN: Okay. This is  
18 Beth. This seems too far to go then, given  
19 how we are not sure really how this would work  
20 out. And I don't feel expert enough to sort  
21 of weigh in to this extent.

22 MR. BRYANT: This is Harvey. I'm

1 not -- are you saying, Beth, that you think we  
2 should strike this? Because I do think it's  
3 an important issue about the investigator  
4 being able to get this information; if nothing  
5 else, so they can run a -- and I realize most  
6 of the people in the military don't have a  
7 criminal history, but so you can run criminal  
8 history information or see what we're talking  
9 about.

10 If you have the section where  
11 we're talking about putting in the data for,  
12 quote, known offenders, I just think it's  
13 important that victims feel that they -- as  
14 Kelly or Lieutenant Colonel McGovern  
15 characterized it as a semi-restricted report.  
16 And I sort of laughed at that, but it's a very  
17 good -- a very good way to consider this.

18 CHAIR HILLMAN: I don't disagree  
19 with --

20 MR. BRYANT: I think we --

21 CHAIR HILLMAN: Go ahead, Harvey.

22 MR. BRYANT: It's

1 counterproductive, it seems to me, that -- to  
2 say that if a victim goes to a law enforcement  
3 officer in the military that an investigation  
4 has to be initiated. And so I would like to  
5 see us -- I'm not sure we've got this worded  
6 properly in light of your concerns, Beth, but  
7 I'd like to see us stick with some  
8 recommendation here that -- that doesn't make  
9 it counterproductive, doesn't deter victims  
10 from going to law enforcement, military law  
11 enforcement investigators, or maybe with their  
12 attorney to make these reports.

13 LTCOL MCGOVERN: Mr. Bryant, we  
14 would like to check, too, to see if it is a  
15 statutory requirement. One of the strengths  
16 that we talk about in the discussion of the  
17 investigations is that every allegation in the  
18 military is investigated. There is not this  
19 police discretion to dispose of cases that you  
20 have in the civilian world.

21 So we just -- you may want to  
22 consider, are you setting up these MCIOs for

1 this gray area and criticism that they are not  
2 investigating allegations. So it is kind of  
3 a double-edged sword.

4 MR. BRYANT: This is Harvey  
5 Bryant. I understand that, but if our finding  
6 is that victims who make a restricted report  
7 of sexual assault cannot provide information  
8 to an investigator, then that's not -- in my  
9 view, that's not a good thing. That's not --  
10 it's counterproductive. So we need some  
11 recommendation regarding that.

12 The whole thing about Oregon, I'm  
13 failing to see how whether it's working in  
14 Oregon has anything to do with the fact that  
15 a victim who makes a restricted report cannot  
16 provide information to an investigator.

17 LTCOL McGOVERN: Well, and I guess  
18 the idea would be they provide the information  
19 -- they are making a restricted report, so  
20 that they can receive health benefits and  
21 counseling. So if they name their alleged  
22 offender, in DSAIDs -- the DSAIDs information

1 would then be provided to the MCIO so they can  
2 track these alleged offenders to see if there  
3 is a problem. So the MCIOs would be getting  
4 the information based on your recommendation  
5 in Number 12.

6 CHAIR HILLMAN: Kelly, this is  
7 Beth. I agree with what Mr. Bryant just said.  
8 This is -- what gave me pause about this  
9 recommendation is that the restricted  
10 reporting process is very -- it's very  
11 detailed, and it's sort of byzantine actually.  
12 You know, only certain persons can take a  
13 restricted report.

14 And then, if something goes  
15 unrestricted by accident, it can't go back to  
16 being restricted. And the whole idea of  
17 restricted is to give victims more confidence  
18 and control. And I believe that based on 12,  
19 we are putting information into a system that  
20 we get from a victim that could help  
21 investigators. But I also want investigators  
22 to be able to talk to the victim.

1           So I think we should recommend  
2           that restricted reporting -- I think this is  
3           pretty close to right, but we aren't doing a  
4           good enough job explaining the rationale for  
5           it. So the finding needs to be that -- that  
6           MCIOs -- the investigator ought to be able to  
7           talk to the victim without triggering a  
8           full-scale investigation, because, to be  
9           honest, in some instances the investigator  
10          will convince the victim to move forward to --  
11          it would do that -- make that conversion that  
12          we want from restricted to unrestricted.

13                 So I think that the SECDEF  
14          Directive, DoD SAPRO -- yes, to change that  
15          first part is fine, that first sentence I  
16          think is fine, you know, as a voluntary  
17          decision on the part of the victim.

18                 The second part, I actually -- I  
19          don't -- that's where I feel like I don't know  
20          enough. How do we prohibit them from using  
21          the information to initiate an investigation  
22          or title an alleged offender as the subject?

1 I'm just not so sure how to do that, but  
2 that's because of my lack of confidence in the  
3 investigative arena. Maybe this is enough --  
4 require the information have the same  
5 safeguards as other criminal intelligence  
6 data.

7 So it may just be that we need  
8 more context than this to -- to support the  
9 finding and recommendation.

10 COL HAM: Okay. This is Colonel  
11 Ham. Is there any concern or any additional  
12 recommendation about how to shield the  
13 investigators or the MCIOs from being accused  
14 of talking someone out of going forward with  
15 an investigation or the investigators -- you  
16 know, the issue that you saw with some  
17 civilian agencies, the investigators not  
18 believing something, and then this is a reason  
19 to not investigate it any further. It ends up  
20 getting turned against the investigator.

21 LTCOL McGOVERN: I think you  
22 really would have to consider a whole separate

1 from being this semi-restricted, so it's clear  
2 you don't want this further investigated,  
3 unless you convert.

4 MS. SAUNDERS: This is Terri. And  
5 I believe in the discussion section of this,  
6 it also talked about having -- giving the  
7 victim the opportunity to have their special  
8 victim counsel or victim advocate present  
9 during the interview just so there is no  
10 perception of coercion on the part of the  
11 MCIO.

12 CHAIR HILLMAN: This is Beth.  
13 Absent any opinion to the contrary, let's just  
14 strengthen that then, and let's -- let's  
15 strengthen the finding, and then keep the  
16 recommendation. That's where I am on that.

17 LTCOL McGOVERN: Okay. This is  
18 Colonel McGovern. We are on to 20(c). Mr.  
19 Bryant, you had asked that we look at that  
20 one?

21 MR. BRYANT: Yes. Hold on.

22 (Pause.)



1                   20(c).   Hmm.

2                   CHAIR HILLMAN:   You know, Harvey  
3                   -- this is Beth -- I'm looking at this.   The  
4                   first sentence is really pretty strong.   "In  
5                   all services, the training of military lawyers  
6                   prosecuting and defending sexual assault  
7                   crimes is sufficient."   Maybe is -- we  
8                   actually have sort of -- we continue to sort  
9                   of hide the ball on the fact that we have so  
10                  much more transition in the military and fewer  
11                  sort of -- less corporate expertise compared  
12                  to what we have in civilian prosecutors and  
13                  defenders in general.

14                  I think we should -- I do think  
15                  the training is largely sufficient, but it's  
16                  -- we don't actually say what the issue is  
17                  here that we are -- we are never clear about  
18                  this -- that distinction.   And that made this  
19                  section not read as persuasively to me as I  
20                  think it should.

21                  LTCOL McGOVERN:   And I think that  
22                  can be cured with an intro to the section.   It

1 says, "the debate is whether training can be  
2 substituted for experience." Is that part of  
3 --

4 MR. BRYANT: Yes, that's the note  
5 that I have -- that I wrote on this is what is  
6 lacking is the repeated experience or the  
7 continuing experience in sexual assault cases.  
8 So when we say "they permit any specially  
9 trained and certified counsel to prosecute,"  
10 and Beth's concern I think is somewhat covered  
11 by the recommendation that says "given the  
12 military's turnover and personnel rotations,"  
13 et cetera. That part is in there, although we  
14 have proposed a solution that may cause some  
15 concern in some places.

16 But that was my main issue with  
17 20(c), and that is while they're trained, they  
18 are not necessarily experienced. Like  
19 learning to fly but never -- you know, very  
20 rarely going out and taking the plane up.

21 LTCOL McGOVERN: Right.

22 MR. BRYANT: And I don't have --

1 I'm sorry, but I just think it's part of our  
2 problem, and that shows up other places in  
3 some of this that, you know, the main thing is  
4 load -- caseload and the number of times that  
5 they actually have to go to bat in a sexual  
6 assault courts-martial.

7 LTCOL McGOVERN: But I  
8 (Simultaneous speaking.)

9 MR. BRYANT: I think the finding  
10 is that what's lacking is -- or something to  
11 the effect that there is not the opportunity  
12 or something to that effect. I don't know  
13 beyond what I wrote, which is what is lacking  
14 is repeated experience. But I do agree with  
15 Beth that to say in all services the training  
16 is sufficient is pretty -- pretty broad.  
17 Although sufficient is not a really strong  
18 word, that does accurately describe it. It's  
19 sufficient. I guess it could certainly be  
20 better.

21 LTCOL McGOVERN: I mean, the term  
22 of reference was -- or the tasking was to

1 assess training, so I think what we've tried  
2 to do here is, looking at training alone, is  
3 the training program -- are these attorneys  
4 successfully advocating their positions in  
5 court with the training that they are  
6 provided? Despite your -- the experience  
7 discussion.

8           And so looking at the training, it  
9 does appear so -- experience, it really --  
10 there is further discussion in the report. It  
11 depends which jurisdiction you're looking at.  
12 Some of the smaller jurisdictions, or even in  
13 Philadelphia, our prosecutors have the same  
14 amount of experience. Whereas those 30-year  
15 veterans like Rhonnie Jaus, you know, we  
16 certainly don't have that continuity.

17           So that is provided in the  
18 discussion, that the experience level varies  
19 depending on who you are comparing this to.  
20 But looking at the training, are these  
21 attorneys trained enough to be prosecuting and  
22 defending these cases?

1                   MR. BRYANT: I think that's the --  
2                   and we say that all services permit a  
3                   specially trained, certified counsel to  
4                   prosecute sexual assault crimes cases. That  
5                   was just my only issue -- or not -- not a  
6                   major issue, but just worthy of pointing out  
7                   that after receiving the training and not  
8                   necessarily receiving the experience, maybe I  
9                   should be satisfied with that sentence in the  
10                  recommendation that says given the military's  
11                  turnover and personnel rotations, about  
12                  training the judge advocate.

13                  COL HAM: 21(a) addresses  
14                  experience and fewer years of prosecution and  
15                  trial experience. Dean Hillman, does that  
16                  capture it in a difference place or --

17                  CHAIR HILLMAN: Yes, I think this  
18                  is -- I think, you know, Harvey is responding  
19                  to the -- just the framing issue I think. I  
20                  do think that needs to be sort of fronted  
21                  here, the training/experience distinction.  
22                  And I actually think the sustain or increase

1 funding piece that gives Mr. Bryant some pause  
2 there, we -- if possible, we should recognize  
3 it's -- training is expensive but we have to  
4 continue to fund it, so long as we have this  
5 system of criminal justice in the military,  
6 because it's -- we otherwise can't maintain  
7 the degree of expertise that we need.

8 But I do think that 21(a) does  
9 speak to that. Harvey, do you see that?

10 That's a good

11 MR. BRYANT: Yes, I agree. I knew  
12 there was another part, so let me just  
13 withdraw my concerns with 20c and 20, and I'm  
14 satisfied.

15 LTCOL McGOVERN: Okay. And we  
16 will try to include an intro section that sets  
17 up the discussion for you, sir.

18 MR. BRYANT: Yes. And --

19 LTCOL McGOVERN: That we are  
20 looking at for --

21 MR. BRYANT: -- someone else's  
22 response to 20c is similar to what I was going

1 to bring up later on, and that is we heard a  
2 lot from the military attorneys about  
3 receiving training and special assistance in  
4 both state and federal court. Everyone speaks  
5 very highly of their experience and  
6 recommended to us that that try to be  
7 increased, wherever possible; they were  
8 getting enormous benefits from it.

9 LTCOL McGOVERN: Right. We do  
10 need to add it in --

11 MR. BRYANT: I don't think -- and  
12 I don't know that we have -- well, I do know.  
13 We don't have a specific -- we don't address  
14 that anywhere, that I recall, in these  
15 findings and recommendations.

16 LTCOL McGOVERN: Right. We should  
17 have a finding to explain that there are  
18 programs for our prosecutors to intern at  
19 these offices, but it is for a short period of  
20 time, so the recommendation is it be for at  
21 least six months, I believe is what Ronnie Yao  
22 had recommended. Does that -- would that

1 solve it?

2 MR. BRYANT: Yes. Sure.

3 COL HAM: Now, Mr. Morris, did you  
4 have anything on this? I thought I heard that  
5 you --

6 COL MORRIS: Only in that second  
7 sentence there of 20c. Certified, I'm not  
8 sure what we mean to say there, since every  
9 counsel has to be certified under 27b. If we  
10 mean something beyond UCMJ certification, then  
11 we should say that. And, secondly, is that  
12 true? Is it really true that -- that everyone  
13 has to have some special stamp to try sexual  
14 assault cases right now? If that's not  
15 universally true, I would want to adjust it to  
16 make sure we're not overstating the case.

17 LTCOL McGOVERN: It is true that  
18 in the Air Force they go through a  
19 certification program. Dillon, do you want to  
20 talk more on that?

21 MR. FISHMAN: This is Dillon. The  
22 RFI information is that all of the services



1 have specific requirements. They are not all  
2 the same requirements, but they all have  
3 certification requirements for people to be  
4 lead prosecutors or trial counsel in sexual  
5 assault cases. So we can clarify that word  
6 certified, specially certified if you want --  
7 we can put that in the discussion section. We  
8 can kind of bring that into the finding, if  
9 you'd like.

10 COL HAM: Would you say, specially  
11 trained and selected to serve as lead counsel?  
12 That's a qualifier.

13 COL MORRIS: Let's say we know  
14 what we're saying is true, that's -- well,  
15 it's surprising to me that I can be dating  
16 myself, so that's okay.

17 CHAIR HILLMAN: I agree with  
18 Colonel Morris. This is Beth. This -- I also  
19 -- you know, it's -- because we visited sites  
20 and we -- we realized that some of the plans  
21 for training aren't the same as everyone being  
22 trained, or the plan for implementation isn't

1 the same thing as fully effective  
2 implementation.

3 I'm wary of saying too much is  
4 happening everywhere when, you know, just one  
5 instance of it not happening on the ground is  
6 enough to cast doubt about the credibility of  
7 the statements that we're making.

8 COL HAM: Why don't we change  
9 "permit" to "have specially trained."

10 CHAIR HILLMAN: Yes, that's right.  
11 I think that's great, Colonel Ham. "All  
12 services have specially trained counsel to  
13 prosecute sexual assault crimes cases." Then  
14 we talk about certification and discussion.

15 LTCOL McGOVERN: So that addresses  
16 20. On 21a, Colonel Scholz recommended adding  
17 in "and increase expertise in litigating  
18 sexual assault cases" at the end of the  
19 sentence.

20 CHAIR HILLMAN: At the end of what  
21 sentence?

22 LTCOL McGOVERN: I'm not sure,

1 actually. I'm trying to figure it out.

2 CHAIR HILLMAN: Are we on 21a?

3 LTCOL McGOVERN: Correct. I'm  
4 guessing she's talking about the first  
5 sentence, but I can go back and ask her.

6 COL MORRIS: It's the only  
7 sentence, right?

8 MS. CHAYT: For 21, I believe it's  
9 b.

10 LTCOL McGOVERN: 21a, there's  
11 three sentences.

12 MS. CHAYT: No, the  
13 recommendation.

14 LTCOL McGOVERN: Oh, the  
15 recommendation. I apologize. I'm looking at  
16 the finding. Yes.

17 COL HAM: So it fits right at the  
18 end of that sentence. This is Colonel Ham.  
19 Does anyone object to adding that?

20 COL MORRIS: No objection.

21 MR. BRYANT: Well, is that the  
22 whole -- this is Harvey Bryant. Is that the

1 whole purpose of the Navy having litigation  
2 practice, to improve the prosecution of sexual  
3 assault cases?

4 COL HAM: This is Colonel Ham --

5 MR. BRYANT: I mean -- yes, ma'am?

6 COL HAM: I think it was to  
7 improve the military justice practice overall.  
8 That was the original reason for establishing  
9 it, because it has been around for -- it has  
10 been around for a while. Dillon can tell us  
11 exactly.

12 LTCOL McGOVERN: And then, from  
13 that program, they have selected out their  
14 senior trial counsel specifically for sexual  
15 assault. So that is a valid point, that it is  
16 not just for sexual assault cases.

17 MR. BRYANT: Yes. And I think --  
18 I am satisfied to leave it as it is, and that  
19 is whether or not core litigation facts would  
20 be affected in the other services, in their --  
21 which is what this in effect says.

22 CHAIR HILLMAN: This is Beth. I

1 don't object to that additional language.

2 That's fine.

3 LTCOL McGOVERN: Colonel Morris,  
4 do you have any opinions about the career  
5 litigation track?

6 COL MORRIS: Not as worded. So  
7 it's okay as worded, ma'am.

8 CHAIR HILLMAN: Kelly, this is  
9 Beth.

10 MR. BRYANT: Just on -- she's fine  
11 with adding the language of "increasing  
12 expertise in litigating sexual assault cases."  
13 And Colonel Morris and I are happy with  
14 leaving it as it is: "effective in their  
15 service."

16 CHAIR HILLMAN: I guess -- this is  
17 Beth -- for me, it just runs to what our  
18 objectives are in this particular report. But  
19 I don't -- we can leave it out. I actually --  
20 I think the question should be, is it  
21 effective overall in the services? That  
22 should be the question for the JAGs to answer.

1           I think that, for us, that the  
2 question is, would it increase expertise in  
3 litigating sexual assault cases? So I  
4 actually think for us to task the JAG, I don't  
5 think they should make that change necessarily  
6 only for this reason, but --

7           LTCOL McGOVERN: The additional  
8 language does show that you are keeping your  
9 eye on the task and staying within the sexual  
10 assault lane, which is your charter, so --

11           MR. BRYANT: Well, suppose we say  
12 that -- how about this compromise: "would be  
13 effective in enhancing expertise in litigating  
14 sexual assault cases"? Instead of  
15 "increasing," just "enhancing." If you've got  
16 a career track, that would -- would that lead  
17 to enhancing -- we may we splitting hairs to  
18 say "enhancing" rather than "increasing."

19           But if you got further litigation  
20 practice, it seems to me these are your --  
21 these are your top gun kind of people, and  
22 that's going to enhance the expertise in

1 litigating sexual assault cases, and then,  
2 parenthetically, all cases. But we don't have  
3 to say that. I understand the stay in your  
4 lane concept.

5 LTCOL McGOVERN: Okay. That  
6 sounds like a good compromise. Making  
7 progress, we're now on -- oh, I'm sorry.

8 CHAIR HILLMAN: Sorry, Kelly. I'm  
9 going to -- this is Beth. Just, slowly, for  
10 one second, in 21b, the finding, I want to add  
11 just one word in that. I'd like to add  
12 "informally" before "share." So: "All the  
13 services informally share resources,  
14 personnel, and lessons for training," because  
15 that suggests much more collaboration than  
16 what I think -- the final process and do some  
17 collaboration for training. I just wanted to  
18 add "informally," because there is not an  
19 actually systematic way that happens right  
20 now.

21 MR. BRYANT: Harvey Bryant. I  
22 wholeheartedly agree. I agree.

1 COL HAM: Colonel Morris, I'm  
2 asking for your input here. There is some  
3 formal interaction, because different services  
4 assign their judge advocates to teach at the  
5 different schools. Those are formal  
6 arrangements, aren't they?

7 COL MORRIS: I wondered that. I  
8 know that they are longstanding, but I don't  
9 know that they are more formal than kind of a  
10 firm handshake, you know, that -- you know,  
11 whether there is some MOU behind, you know,  
12 like the one Marine on your faculty and that  
13 sort of thing, I don't know.

14 LTCOL McGOVERN: And based on our  
15 RFIs, for instance, the special victim  
16 counsel, they are having monthly meetings for  
17 all the services to talk, and they are doing  
18 formal collaboration efforts. So I do think  
19 it -- you're right to make that distinction  
20 between formal and informal for our  
21 prosecutors and defense counsel.

22 CHAIR HILLMAN: Okay. So we will



1 throw in informally, recognizing it's not that  
2 there's not some interaction, but even, you  
3 know, sharing instructors isn't the same as  
4 sort of making decisions about personnel and  
5 training.

6 LTCOL McGOVERN: Okay. Are we  
7 ready to move on to Number 23?

8 (No response.)

9 Dean Hillman, this one is yours.

10 CHAIR HILLMAN: Yes, sorry. I'm  
11 just still -- I'm looking at 21b.

12 LTCOL McGOVERN: Okay. Sorry.

13 CHAIR HILLMAN: No, no. It's  
14 okay. I don't want to slow down too much  
15 here. But, again, I feel like we want to --  
16 this says that the JAGs and the SJA to the  
17 Commandant -- first, we need just some words  
18 in there. It's not quite grammatically  
19 correct right now. "Should sustain the  
20 emphasis on developing and maintaining  
21 experience and expertise."

22 I would like to encourage them to

1 sort of, maybe "should sustain and broaden the  
2 emphasis on developing and maintaining shared  
3 resources and expertise." Because I feel like  
4 the "send a recommendation here" says direct  
5 the Joint Training Working Group, which is  
6 recommended in the best practices to  
7 continuously review and assess and eliminate  
8 redundancy, ensure streamlined training and  
9 collaboration, which is a great  
10 recommendation. I just wanted the -- in fact,  
11 I'm not sure those should be together, but I  
12 just wanted to add more on the sharing of  
13 resources on 21.

14 LTCOL McGOVERN: Okay.

15 COL MORRIS: Do you mind reading  
16 back what you said on 21b?

17 CHAIR HILLMAN: I added just a  
18 couple of words. First, it -- I added after,  
19 "The Commandant of the Marine Corps should  
20 sustain and broaden the emphasis on developing  
21 and maintaining shared expertise and  
22 experience in prosecuting adult sexual assault

1 crimes." Colonel Morris, does that sound --

2 COL MORRIS: Oh, it sounds fine to  
3 me.

4 CHAIR HILLMAN: -- okay to you?  
5 Okay. So, Kelly, now if -- unless there's  
6 objections, we're on to 23.

7 LTCOL McGOVERN: Okay.

8 CHAIR HILLMAN: Again, this is a  
9 grammatical piece. "The Secretary directs the  
10 service JAGs and SJA to the Commandant to  
11 ensure that only counsel with prior litigation  
12 expertise-experience be allowed to serve as  
13 defense counsel." That was my concern there.

14 LTCOL McGOVERN: Great. If they  
15 could all be that easy.

16 (Laughter.)

17 CHAIR HILLMAN: All right. So are  
18 we on to 25?

19 LTCOL McGOVERN: Yes. Okay. 23b,  
20 you had expressed concern -- Colonel Scholz  
21 expressed concern that she doesn't believe  
22 this is true in the Air Force, at least during

1 her time. The defense counsel most often came  
2 from the installation legal office, but she  
3 wasn't aware of one ever being selected  
4 without trial experience.

5 CHAIR HILLMAN: We heard that it  
6 was -- this is Beth. We heard it was true in  
7 some situations. So we're not saying it's  
8 true in the Air Force or anywhere in  
9 particular, just that it has been the case in  
10 the past.

11 MR. BRYANT: I agree. We did --  
12 this is Harvey Bryant. We did hear that that  
13 was true, and I think even in Norfolk at the  
14 naval base there that came up while we had  
15 defense counsel in the room.

16 COL MORRIS: This is Larry Morris.  
17 I'm okay up to -- 23 itself, this is such a  
18 consequential recommendation. The language  
19 "or be equalized with that of trial counsel,"  
20 do we want to be more -- is there any harm in  
21 being more specific, like setting a minimum  
22 time or a normal -- a norm? Because trial

1 counsel are -- probably, in general, have  
2 shorter tours than defense counsel, and both  
3 sides have been too short. But it's even more  
4 common to pluck some trial counsel out.

5           So I don't know if this is -- if  
6 this is distinct coverage for defense counsel  
7 when -- when so often people are jerked at the  
8 12- or 15-month point. Do we want to set --  
9 does 2710 now express at least a preference  
10 for a two-year tour as counsel? Does anybody  
11 know that offhand?

12           LTCOL McGOVERN: I do not know it  
13 offhand, sir. I think the 12- to 18-month  
14 finding in 23a was expressed by the Marines.  
15 And so just, when they're figuring out their  
16 job, it's time to rotate, was the gist of  
17 their conversation.

18           COL MORRIS: I think we all agreed  
19 that longer tours in general make sense. But  
20 you have to have -- you know, be open to  
21 operational contingencies and all. But that  
22 language, it doesn't seem to me, does much,

1 because we are tying it to people who have an  
2 equally volatile and uncertain tour length.  
3 So my sense is we either tighten the language,  
4 or stick a number in there, a preference for  
5 a two-year assignment.

6 CHAIR HILLMAN: This is Beth. I'm  
7 happy to put in a stronger preference there,  
8 and try to be a little more prescriptive on  
9 it. So that sounds good to me.

10 COL HAM: You want to say, "at  
11 least a two-year assignment"? Colonel Morris?  
12 Or we stick with two years?

13 COL MORRIS: Either is okay. But  
14 I think some number that forces people to see  
15 the system has decided that's the norm. And  
16 I would bet if you scanned the field today,  
17 way less than half would have served a full  
18 two years in any tour as counsel.

19 LTCOL McGOVERN: Okay, sir.

20 Are there any other concerns with  
21 23?

22 (No response.)

1                   Okay. Then, Dean Hillman, you  
2 asked that we look at Number 25?

3                   COL MORRIS: May I ask us to look  
4 at 24? I didn't think of it far enough --

5                   LTCOL McGOVERN: Sure.

6                   COL MORRIS: The recommendation  
7 says, "ensure their training budgets are on  
8 par with military prosecutors." I understand  
9 the intent. It's just, most of them don't  
10 have budgets. So your budget is, you know, a  
11 notional glob that's folded in with government  
12 training.

13                   So maybe instead of "training  
14 budgets," "training opportunities," unless you  
15 want to make an extra recommendation, which I  
16 would endorse, that they be given independent  
17 budgets. But otherwise, let's at least --  
18 maybe "opportunities" is more realistic than  
19 "budgets."

20                   LTCOL McGOVERN: Would it be --

21                   CHAIR HILLMAN: This is Beth.  
22 Sorry, Kelly. I would love to give them

1 budgets, but I think that's likely not to work  
2 so well. So I -- that's -- I think that's  
3 right, "training opportunities" maybe.

4 LTCOL McGOVERN: Would it be safe  
5 to say "to ensure their training opportunities  
6 are funded on par with that of military  
7 prosecutors"?

8 COL MORRIS: Preferably.

9 LTCOL McGOVERN: Because later on  
10 we are making a recommendation they not be  
11 given their own budget. So that's a great  
12 catch, sir, to be consistent through the  
13 report. But the Marines, in particular,  
14 talked about how they had to scramble to even  
15 get money for traveling to different  
16 conferences and things like that.

17 COL MORRIS: Right. I mean, I --  
18 there is no value in living on anecdotes. But  
19 I have a strong recollection of fighting this  
20 stuff with the government, and not getting it  
21 equivalently. And when every little shutdown  
22 happens, you're just -- you're fighting a



1       losing battle.

2                       But with that in mind, you should  
3 probably fix the finding there, too, because  
4 that also implies budget. So maybe we were  
5 just along -- somewhere along the lines of  
6 some defense counsel indicated that, because  
7 they do not have independent training budgets,  
8 their training opportunities were insufficient  
9 and unequal to those of military trial  
10 counsel.

11                      LTCOL McGOVERN: Okay, sir.

12                      COL MORRIS: Thanks.

13                      We are ready for Number 25?

14                      CHAIR HILLMAN: Yes. Number 25,  
15 the second part of the finding here on 25, is  
16 -- says, "While consolidation was considered  
17 and discussed, it would be too costly and  
18 onerous." I don't really want to say that.  
19 Consolidation was discussed. I don't want to  
20 recommend that we consolidate, but I'm not  
21 prepared to say it would just be too  
22 impossible if someone came up with some great

1 approach that would do this. So I'd like to  
2 just cut that piece about consolidation.

3 MR. BRYANT: This is Harvey. I  
4 agree entirely, and I wrote down a question  
5 mark and the word "disagree" with that last  
6 part also. It is possible. I don't know that  
7 it's too costly or too onerous. I think part  
8 of the discussion at the time was that the --  
9 you know, the size of the facility and having  
10 these lawyers and pulling them away from their  
11 units and all that -- but, really, it -- let  
12 me just say I agree with it if we take out  
13 "too costly or too onerous." It's --

14 LTCOL McGOVERN: Did you want to  
15 eliminate the whole second sentence or just  
16 the "too costly and onerous"?

17 MR. BRYANT: Well, then that  
18 leaves us with, "The service predictions are  
19 likely to do what?"

20 LTCOL McGOVERN: Because the  
21 recommendation --

22 MR. BRYANT: I think at that point

1 we are saying -- we are -- "considered and  
2 discussed, but the subcommittee does not  
3 recommend consolidated training at this time,"  
4 or something like that. I think it can be  
5 pulled off. I mean, you know, if somebody  
6 decided to do it, the money would be there and  
7 orders would be issued, and Russ Strand would  
8 be talking to 450 to 500 people. And that's  
9 an exaggerated number, obviously.

10 CHAIR HILLMAN: All right. This  
11 is Beth. Let's say "consolidation of  
12 facilities and training." See, even saying  
13 "considered and discussed," I'm actually not  
14 comfortable with that, because I actually  
15 think that -- to say we considered and  
16 discussed consolidation would entail a sort of  
17 economic analysis that we actually didn't  
18 engage in. We just heard some opinions on it,  
19 but I don't feel like we did some kind of  
20 thoroughgoing review of that the way we did in  
21 some of these other arenas.

22 Let's see, so the first sentence

1 here is pretty straightforward. "All services  
2 send members to training courses and JAGs can  
3 go to the other services, which enables  
4 sharing. Consolidation of facilities and  
5 training has been proposed." Actually, but I  
6 don't even want to say that, because we are  
7 not dealing with some pressure about that.  
8 There is no legislation that is pending that  
9 suggests consolidation.

10 So maybe -- let's just leave that  
11 out of what the finding is there. And then in  
12 the recommendation, I mean, Harvey, is that  
13 okay with you, if we just leave  
14 "consolidation" out?

15 MR. BRYANT: Sure. Yes. Yes.

16 CHAIR HILLMAN: And then we could  
17 mention it in the recommendation. If we are  
18 going to establish this working group, then we  
19 could say they should consider consolidation,  
20 which is essentially what we say it is doing  
21 anyway -- strive to eliminate redundancy,  
22 monitor training and experience throughout the

1 services. So we could say, "the working  
2 group should identify best practices, strive  
3 to eliminate redundancy, consider consolidated  
4 training, and monitor training and  
5 experience."

6 MR. BRYANT: So, but the --

7 CHAIR HILLMAN: Go ahead, Harvey.

8 MR. BRYANT: I was just going to  
9 say -- excuse me, Colonel Morris -- that for  
10 the finding sentences, it would stop at the  
11 word approaches. "Today, we are sharing a  
12 successful practice, strategy, and  
13 approaches." Then, we'd go to the  
14 recommendation. Is that -- am I reading your  
15 intent correctly, Beth?

16 CHAIR HILLMAN: Yes.

17 MR. BRYANT: Or did you want to  
18 just -- yes, okay. I'm sorry, Colonel Morris.

19 COL MORRIS: No, that's all right.  
20 I mean, my concern maybe is a shared concern  
21 that -- that consolidation can just be some  
22 distraction that is just not enough to be

1     worth anybody's energy.  So I'm okay with that  
2     wording.  Or if you wanted that sentence to  
3     change, to drop the second part of the  
4     sentence to say something else.  "While  
5     consolidation of facilities and training was  
6     considered and discussed, the paramount  
7     concern is -- the highest quality training can  
8     be best achieved through joint training and  
9     use of the best aspects of each service's  
10    programs initiatives," or something like that.

11    So that somebody doesn't seize on this thing  
12    as some study group to consolidate the JAG  
13    schools, when the main point is get to work,  
14    share each other's stuff.  And, you know, in  
15    the electronic world, being on the same piece  
16    of dirt is less important than collaborating  
17    and getting to work with each other.

18                   CHAIR HILLMAN:  This is Beth.  
19    That's exactly what I'd like it to say, what  
20    Colonel Morris just said: "while consolidation  
21    was considered and discussed, it is of  
22    paramount" -- whatever he just said is right

1 -- "Paramount importance is the actual  
2 quality of the training."

3 COL MORRIS: And, Kelly, if you  
4 want, I can just send suggested language off  
5 to you. Can I give an administrative  
6 interjection here real quick? I have a school  
7 obligation I have to get to by 12:00, so I'm  
8 going to have to detach, like at eight of or  
9 so. I know you all will probably keep going.  
10 If that makes sense, maybe I'll just check  
11 back in with you guys later to find out where  
12 I should supplement in writing or something.

13 CHAIR HILLMAN: Before you go --  
14 this is Beth. Can you tell us what your  
15 primary concerns are? Can you flag those? Or  
16 are there too many?

17 COL MORRIS: You mean as to the  
18 report?

19 CHAIR HILLMAN: Yes.

20 COL MORRIS: I can do it real  
21 quick if you want. How far did we go?  
22 Anybody? What is our last number for this

1 group?

2 LTCOL McGOVERN: We just made it  
3 through 25, sir.

4 COL MORRIS: Right. And are we  
5 going through -- what number?

6 LTCOL McGOVERN: 62.

7 COL MORRIS: Oh, that's right. I  
8 have a bunch of little things. My biggest  
9 concerns are starting at, let's see, in the  
10 40s -- 44. I have some concerns on 44, the  
11 last sentence of 44a, the findings: their  
12 subjectivity didn't quite strike me right, and  
13 the 44 recommendation. And then I think I'm  
14 just going to have to dissent, rather than  
15 argue on the judge thing, so, you know, 45b.

16 LTCOL McGOVERN: Colonel Morris,  
17 will you be able to join us this afternoon  
18 still?

19 COL MORRIS: Yes, I will.

20 LTCOL McGOVERN: Okay.

21 COL MORRIS: Are we doing another  
22 part this afternoon?



1 LTCOL McGOVERN: Yes.

2 COL MORRIS: So we aren't doing  
3 that this morning?

4 LTCOL McGOVERN: No. The 40s and  
5 sentencing will be this afternoon.

6 COL MORRIS: So this morning we're  
7 not doing the 60s, then. Where are we ending  
8 this morning?

9 MR. BRYANT: It looks like we're  
10 ending somewhere around 41, 42, just based on  
11 what we're -- what I've printed off here.

12 COL MORRIS: Then, I really have a  
13 bunch of little stuff. I don't have anything  
14 that's driving me nuts between here and that  
15 point. So I'll be able to either catch up or  
16 just send some small suggestions.

17 LTCOL McGOVERN: Okay.

18 CHAIR HILLMAN: Okay. That's  
19 great.

20 LTCOL McGOVERN: And could we try  
21 Number 27, the finding. Colonel Scholz  
22 recommended we add "of counsel" after the word

1 "evaluation."

2 MR. BRYANT: This is Harvey  
3 Bryant. Actually, I had put there that it  
4 should read down at the bottom, "similar, to  
5 ensure effective evaluation of counsel," as  
6 opposed to "effective training." I don't know  
7 that that's -- a quarterly evaluation ensures  
8 effective evaluations. But I don't -- Colonel  
9 Scholz's suggestion is fine. That's fine.

10 LTCOL McGOVERN: And, Dean  
11 Hillman, you had also flagged 27.

12 CHAIR HILLMAN: I wondered why we  
13 were telling them to consider implementing an  
14 evaluation system, instead of just  
15 implementing one. Unless we think that the --  
16 I mean, we don't have to say they -- all the  
17 services need to do quarterly evaluations by  
18 judges. Do we not want to require judges to  
19 require -- to assess counsel? That's really  
20 what the question is. So --

21 LTCOL McGOVERN: So in 27  
22 recommendations, delete the word "consider"

1 and say, "implement the Navy's evaluation  
2 system, and also" -- so we would delete the  
3 word "quarterly."

4 CHAIR HILLMAN: I just want  
5 something similar. You know, implement an  
6 evaluation system similar to the Navy's.

7 LTCOL McGOVERN: Okay.

8 CHAIR HILLMAN: I don't think I  
9 was in on the detailed discussion of this, but  
10 that seems -- I mean, we find it useful that  
11 judges are evaluating counsel, so why wouldn't  
12 we ask the rest of them to do something along  
13 those lines?

14 LTCOL McGOVERN: Okay.

15 MR. BRYANT: And I agree with  
16 Lieutenant Colonel McGovern's suggestion of  
17 taking out "consider" and just put the word  
18 "implement" in there. If that's our  
19 recommendation, you don't just "consider" it,  
20 but you do it. "Implement the Navy's  
21 evaluation system" or something similar  
22 thereto.

1 LTCOL McGOVERN: Okay. Number 28.

2 COL MORRIS: Actually, excuse me,  
3 may I ask you to look at 26 real quick?

4 LTCOL McGOVERN: Sure.

5 COL MORRIS: I'm tracking the  
6 intent there. My concern is only that we not  
7 tie it too much to the HQE program, which is,  
8 you know, weird and intended to be transitory.  
9 So the recommendation would be under finding,  
10 the HQE to start that. Just say, "experienced  
11 civilian trial advocates play an important  
12 role," blah, blah.

13 And then -- and then under  
14 recommendation, something like, "the Marine  
15 Corps should continue to fund and expand" --  
16 again, instead of "HQE programs," just say  
17 "fund and expand programs that ensure -- that  
18 provide permanent civilian presence in the  
19 training structure for trial and defense  
20 counsel." Something like that.

21 LTCOL McGOVERN: Okay. So is the  
22 recommendation to continue to fund and expand,

1 or continue to fund?

2 COL MORRIS: I don't have a strong  
3 feeling on that.

4 LTCOL McGOVERN: Are we ready to  
5 move on to 28?

6 CHAIR HILLMAN: I think so.

7 MR. BRYANT: I'm ready. This is  
8 Harvey. I'm ready.

9 CHAIR HILLMAN: I think we are.

10 LTCOL McGOVERN: Okay. Dean  
11 Hillman?

12 CHAIR HILLMAN: This is -- yes.  
13 So this is, you know, one of the things that  
14 we have not talked about. And if we still  
15 have Colonel Morris, do we have you for a  
16 couple more minutes here? This says we are  
17 going to need more funding. We didn't -- it  
18 says the increased funding for training and  
19 additional training. We don't really assess  
20 the economic consequences of much of this. I  
21 mean, we don't say elsewhere that we need  
22 increased funding for lots of things. We say

1 we need enduring funding, or we need funding.

2 But this is just sort of different.

3 And, actually, Colonel Morris,  
4 since you're concerned about what we're saying  
5 about judges, if you -- do you have a response  
6 to this particular part? Or if you can flag  
7 some of your other concerns, too -- I'd be  
8 interested in hearing them -- about what we  
9 say about judges later.

10 COL MORRIS: Now, tell me which  
11 one we're at again?

12 CHAIR HILLMAN: 28, where it says,  
13 "military judges do joint training at the  
14 Army's Judge Advocate Legal Center and  
15 School." It says the recommendation -- there  
16 is this -- the part that is in yellow on that  
17 says that we need more funding for training.

18 COL MORRIS: You know, I reacted  
19 to it and then let it go. It didn't - You  
20 have to accept the rest of the premise on the,  
21 you know, the increased judicial involvement  
22 than I think the majority agrees with. So I

1       suppose that means -- I guess that does mean  
2       more training. I guess my sense is judges  
3       aren't as often training-starved as counsel  
4       are.

5                   CHAIR HILLMAN: Right. Okay. So  
6       I --

7                   COL MORRIS: You are going to have  
8       to do some --

9                   LTCOL McGOVERN: Go ahead.

10                  COL MORRIS: I'm sorry. You're  
11       going to have to do some corrective training,  
12       whatever you would say, of the current judges  
13       if you switched -- you make all of these  
14       changes. So it's less the new ones than the  
15       ones that are under the old system. That's a  
16       lot of changes of competencies and  
17       expectations of the judges.

18                  CHAIR HILLMAN: Okay. And just to  
19       preview, then, your objection for that part,  
20       your sense is that the benefits aren't worth  
21       the changes in the -- giving military judges  
22       an increased role.

1 COL MORRIS: And, actually, it is  
2 probably a little more annoyingly specific.  
3 I don't agree with the whole -- give them all  
4 of the expansions that we called for. I do in  
5 some aspects of case management of witness  
6 production, that kind of stuff.

7 But, you know, one of my concerns  
8 is we make a lot of sweeping statements in  
9 there that suggest disputes earlier in the  
10 process than currently exist now. So you talk  
11 about getting witnesses and that sort of thing  
12 where, you know, pre-preferred. That's rarely  
13 a dispute, except for witness production at  
14 Article 32.

15 And then, also, my sense is that  
16 for those advocating the increased role,  
17 probably we need to talk about what's left of  
18 Article 32, because you really want to switch  
19 to a preliminary hearing model. And maybe  
20 taking all of those recommendations together  
21 we sort of say so, but it might be useful  
22 especially as a -- as a threshold matter as



1 you get to that set of recommendations to make  
2 that even clearer.

3 CHAIR HILLMAN: Okay. Understood  
4 on that. I'm curious to see, you know, your  
5 sense of what you are comfortable with moving,  
6 although I understand the -- you know, maybe  
7 it's the effect on the 32 that is your core  
8 concern. So, anyway, thank you for staying  
9 on. I guess you have to go shortly. I  
10 understand. So --

11 COL MORRIS: Yes. So thanks,  
12 everybody, but I need to go get to my other  
13 work here.

14 LTCOL McGOVERN: Thank you, sir.

15 CHAIR HILLMAN: Okay. Thanks,  
16 Larry.

17 COL MORRIS: Thanks, you all.  
18 Bye.

19 MR. BRYANT: While we're having  
20 that good-bye -- this is Harvey Bryant -- I  
21 agree -- I have a neighbor next door who had  
22 a stroke. He needs to go to physical therapy,

1 and he doesn't have a ride. So I'm going to  
2 have to take a pause here, and see if we can  
3 work something out. So I -- if you all will  
4 excuse me for just a minute or two, I need to  
5 make a phone call on another line to see if I  
6 can work something out with another neighbor  
7 to take him.

8 COL HAM: Sir, we have to end at  
9 noon. We have to end in 10 -- nine minutes,  
10 anyway.

11 MR. BRYANT: Oh, I'm sorry. Well,  
12 let's -- yes, I'm fine. I'm fine then. I'm  
13 fine. Go ahead.

14 LTCOL McGOVERN: Okay. Maybe we  
15 can get through one or two more. Number 29,  
16 Dean Hillman, you had wanted to address that?

17 CHAIR HILLMAN: Yes. I think this  
18 is one that needs more context, again, for the  
19 finding and recommendation to stand on its  
20 own. So I'd add an initial clause in that  
21 recommendation which is about our decision to  
22 not recommend a single organizational

1 structure.

2 And I altered that first sentence  
3 to something like, "given the range of  
4 military installations in terms of size,  
5 location, and mission, no single  
6 organizational structure for prosecution and  
7 defense is optimal."

8 LTCOL McGOVERN: Okay.

9 CHAIR HILLMAN: Just to be clear,  
10 I just want us to front that issue.

11 LTCOL McGOVERN: Okay. Great.

12 CHAIR HILLMAN: Okay. Related to  
13 that was in 30a. Is that -- was there  
14 anything before 30a that anybody had?

15 LTCOL McGOVERN: No.

16 CHAIR HILLMAN: So that last  
17 sentence in 30a, which 30a, the  
18 recommendation, which says, "the subcommittee  
19 does not recommend that the SARC, victim  
20 advocate, SVC, or other victim support  
21 personnel be collocated with prosecutors and  
22 investigators." They are currently

1       collocated, right?

2                       I mean, there is a -- they do  
3       that. I just was not clear what that meant,  
4       because the consolidation facilities that we  
5       saw, they are -- they're not -- there is a  
6       barrier between them, but they are essentially  
7       collocated, right? I mean, what were we  
8       trying to get at there?

9                       LTCOL McGOVERN: Well, we  
10       illustrate that there's four different models  
11       that you will see, with JBLM and Dawson Place  
12       being one of them. We discussed the concerns  
13       of Brady piercing the military victim advocate  
14       privilege. Then we compare it to Austin and  
15       the Philadelphia Center, the PSARC, and then  
16       compare it to Fort Hood where it is just  
17       investigators and prosecutors, and then all  
18       others where it is not consolidated at all.

19                      So, of all those different models,  
20       it seems like it is helpful to have that  
21       investigator and prosecutor working closely  
22       together and possibly offices at -- for these

1 other players in the system. But because of  
2 those complicated issues that could arise at  
3 Dawson Place or JBLM, that's not -- we don't  
4 recommend that as the new -- or you all won't  
5 recommend that as the new gold standard.

6 CHAIR HILLMAN: That helps, Kelly.  
7 Thank you.

8 LTCOL MCGOVERN: Okay.

9 CHAIR HILLMAN: I just feel like  
10 that we're saying a little more than that here  
11 by saying, don't put them together. I think  
12 the first part of that says just what you  
13 said, that it's most important to do  
14 prosecutors and investigators, and then the  
15 forensic exam room.

16 And then the second recommendation  
17 actually says, we should assess the strengths  
18 and weaknesses and continue to improve and pay  
19 attention. And you flag the problem with that  
20 -- victim advocates being too close. But I  
21 feel like this could necessitate a change in,  
22 for instance, what they're doing at JBLM right

1 now, wouldn't it? I mean, wouldn't this say  
2 that they can't continue to have their special  
3 victim counsel in the same building that they  
4 have their prosecutors and investigators?

5 LTCOL McGOVERN: Sure. And then  
6 if it would be helpful, we can delete that  
7 last sentence and save it for the discussion,  
8 the sentence of 30a, that the subcommittee  
9 does not recommend. Would that --

10 CHAIR HILLMAN: That would be  
11 fine.

12 LTCOL McGOVERN: Okay. Do we have  
13 time for 31?

14 CHAIR HILLMAN: We do. We've got  
15 a couple minutes. My objection was to "fully  
16 implemented." So, I don't know. It's -- do  
17 we know that based on what -- I agree they've  
18 implemented it, but "fully" sounds too  
19 complete to me, so --

20 LTCOL McGOVERN: And they had to  
21 report to Congress on that in January -- in  
22 January 14, they had to tell Congress that

1 they basically fully manned the special victim  
2 capability as required by Congress. So --

3 CHAIR HILLMAN: Then that's --

4 LTCOL McGOVERN: -- we can  
5 certainly delete "fully," because personnel do  
6 change and, you know, they may end up with 22  
7 special victim prosecutors instead of 23, or  
8 whatever. So --

9 CHAIR HILLMAN: You know what?  
10 Can we just say, then, what you just said?  
11 Actually, the military services reported to  
12 Congress in January that they fully  
13 implemented the special victim capability. To  
14 me, that's totally fine, but that's not the  
15 same thing as us deciding, based on our  
16 investigation and study, that this has  
17 actually been, you know, fully implemented.

18 Because I just -- I can't tell  
19 yet, and it's just too -- it's big and too new  
20 a program to -- to me, it puts in a -- it  
21 makes it appear more mature than what I think  
22 it is, in terms of my own sense of how it's

1 working out on the ground.

2 LTCOL McGOVERN: Okay.

3 COL HAM: And we'll check the  
4 language of the report and make sure we're  
5 reflecting exactly what they said.

6 CHAIR HILLMAN: That's fine.

7 COL HAM: I think they were  
8 required to have it fully implemented, so  
9 that's probably what they said in -- we'll  
10 make sure we're accurately reflecting the  
11 language.

12 CHAIR HILLMAN: Okay. Thank you.

13 LTCOL McGOVERN: And you also were  
14 concerned with 31c?

15 CHAIR HILLMAN: Yes. Let's see,  
16 why was I concerned about this? So  
17 standardization of the titles, I do agree with  
18 that, and efforts to reduce public confusion,  
19 enable comparability. Ah, I don't know why I  
20 wrote this. So that's why I'm looking at it  
21 now.

22 I agree with the standardization.



1 That would help. I wondered if we should  
2 suggest it. Should we say -- but I don't --  
3 just because when we say they need to  
4 standardize, then everyone wants to have their  
5 own label put on it.

6 So, and I thought the public  
7 confusion is not so much, sort of, to reduce  
8 -- if we are -- we are recommending continued  
9 shared resources and continued collaborative  
10 training, which is happening now. So, I feel  
11 like it would help enhance that, as well as  
12 enhancing the comparability of the programs  
13 and confusion.

14 LTCOL McGOVERN: And in the  
15 discussion we --

16 CHAIR HILLMAN: Do you have a  
17 language proposal?

18 LTCOL McGOVERN: Well, in the  
19 discussion, we illustrate how every service  
20 calls their special victim prosecutors  
21 something different, which serves no purpose  
22 at all. It's just nobody wants to say that

1 they are doing what someone else did. So we  
2 can certainly add in if --

3 CHAIR HILLMAN: Well, let's choose  
4 one.

5 LTCOL McGOVERN: I think "special  
6 victim prosecutor" works well.

7 (Simultaneous speaking.)

8 CHAIR HILLMAN: I'd like for you  
9 to all to -- you to come up with an acronym  
10 recommendation for us, and then we follow  
11 that. That's what I think. So, and I agree  
12 it should be standardized.

13 LTCOL McGOVERN: Okay.

14 MS. FRIED: This is Maria Fried.  
15 I think the Navy's is Victim Legal Counsel.

16 LTCOL McGOVERN: No. We're --  
17 that is --

18 MS. FRIED: That is the Marine  
19 Corps.

20 LTCOL McGOVERN: And that's the  
21 difference -- that's the difference in the  
22 special victim counsel titles. We are talking

1 about the special victim prosecutors. Some  
2 call them senior trial counsel. Some call  
3 them special victim prosecutors.

4 CHAIR HILLMAN: I'm all for that.  
5 Okay. So are we out of time? How far behind  
6 are we? We're like 10 recommendations,  
7 findings and recommendations behind? That's  
8 not too bad.

9 LTCOL McGOVERN: No. And, again,  
10 tomorrow is designed to catch the ones we  
11 aren't able to cover today. So I think we're  
12 doing great.

13 CHAIR HILLMAN: Okay. Mr. Bryant,  
14 is this --

15 MR. BRYANT: I've lost track of  
16 the times for tomorrow.

17 LTCOL McGOVERN: Tomorrow, I  
18 believe, is from 12:00 to 2:00. Yep. Eastern  
19 Standard time. Today, this afternoon, from  
20 2:00 to 3:00, we'll also be discussing with  
21 General Cooke, Colonel Morris, Colonel Henley,  
22 and if Dean Hillman is available after her

1 other call, the sentencing portion and the  
2 judge involvement. So working backwards this  
3 afternoon.

4 MR. BRYANT: All right. Tomorrow  
5 I'm going to be able to participate on the  
6 cell phone, but I will be in my car driving to  
7 Richmond. So I won't be reading stuff; I'll  
8 just be -- try to absorb what everybody is  
9 saying.

10 LTCOL McGOVERN: All right. We  
11 appreciate that. That's great.

12 CHAIR HILLMAN: That's right. I  
13 second what Kelly said. Harvey, whatever you  
14 can do for us, and we'll try to pose some  
15 pointed questions for you to keep you on the  
16 road, and to have us benefit from your insight  
17 on that tomorrow.

18 MR. BRYANT: Okay. It will be  
19 hands-free.

20 (Laughter.)

21 CHAIR HILLMAN: Okay. Thanks,  
22 everybody. So I'll be back on this afternoon

1 after I get out of this other call. So I'll  
2 be calling in late, but I'm grateful for  
3 whatever you all do before I get there.

4 LTCOL McGOVERN: Okay. Thank you.  
5 Maria?

6 MS. FRIED: So we'll reconvene  
7 this afternoon. Thank you. Meeting closed.  
8 (Whereupon, at 12:01 p.m., the proceedings in  
9 the foregoing matter were concluded.)

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MATTER: DOHA Adult Sexual Assault Crimes Panel

DATE: Thursday, April 24, 2014

I hereby certify that the attached transcription of pages 1 to 143 inclusive are to the best of my belief and ability a true, accurate, and complete record of the above referenced proceedings as contained on the provided audio recording.

*Neal R Gross*

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**NEAL R. GROSS**

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