

UNITED STATES DEPARTMENT OF DEFENSE

+ + + + +

JUDICIAL PROCEEDINGS PANEL

+ + + + +

SUBCOMMITTEE MEETING

+ + + + +

THURSDAY
OCTOBER 22, 2015

+ + + + +

The Subcommittee met in Conference Room 150, Judicial Proceedings Panel Conference Room, 875 North Randolph Street, Arlington, Virginia, at 9:17 a.m., Hon. Barbara Jones, Chair, presiding.

PRESENT

Hon. Barbara Jones
Hon. Elizabeth Holtzman
Dean Michelle Anderson
Lisa Friel
Laurie Rose Kepros
Dean Lisa Schenck
Professor Stephen Schulhofer
Jill Wine-Banks
Maj Gen(R) Margaret Woodward

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

WITNESSES

Hon. Andrew Efron

STAFF:

Dwight Sullivan - Designated Federal Official
Colonel Kyle W. Green, U.S. Air Force - Staff
Director

Lieutenant Colonel Glen Hines, U.S. Marine Corps
- JPP Subcommittee Staff Attorney

Lieutenant Colonel Kelly L. McGovern, U.S.
Army - Deputy Staff Director

Sharon H. Zahn - Senior Paralegal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

CONTENTS

Comparing Punishment for Sexual Assault Crimes
in Military and Civilian Courts. 4

Break

How the Department of Defense and the Military
Services Manage Military Justice Data for
Sexual Assault Cases66

Lunch

Deliberations: Restitutions and Compensation for
Victims of Sexual Assault Crimes 153

Deliberations: Retaliation Against Victims of
Sexual Assault Crimes. 247

Public Commentnone

Adjourn

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

2 9:17 a.m.

3 CHAIR JONES: Good morning, everybody.
4 Dwight, would you open the meeting?

5 MR. SULLIVAN: Yes, ma'am. This
6 meeting is now open. I'm Dwight Sullivan from
7 the Department of Defense Office of General
8 Counsel, which serves as the sponsor for the
9 Judicial Proceedings Panel and this subcommittee.
10 Today I'm acting as the designated federal
11 official to this subcommittee because Ms. Fried
12 is TDY. The chair of the JPP subcommittee is the
13 Honorable Barbara Jones. The subcommittee was
14 established by the Deputy Secretary of Defense to
15 assist the Judicial Proceedings Panel with its
16 work. Madam Chair, we're ready to begin.

17 CHAIR JONES: Thank you. We're very
18 lucky this morning to have as our speaker the
19 Honorable Andrew S. Effron. I think almost
20 everyone in the room already knows Judge Effron,
21 but he is the Director of the Military Justice
22 Review Group for the Office of the General

1 Counsel of the Department of Defense. As I think
2 we all know, they're undertaking a comprehensive
3 review of the statutes and rules of the military
4 justice system. Based on that review, they've
5 developed a detailed set of legislative and
6 regulatory proposals that are currently in
7 Executive Branch interagency coordination.

8 As scintillating as that will be to
9 all of us to ask Judge Effron, "So, what did you
10 recommend?" he cannot answer that question. So we
11 shouldn't ask, since we're all polite people.
12 The judge, I think, is going to tell us whatever
13 he can about the process. Judge Effron.

14 JUDGE EFFRON: Thank you, Judge Jones,
15 and thank you for the opportunity to provide the
16 subcommittee with an update on the work of the
17 Military Justice Review Group. I appreciate your
18 comment about the restrictions that I find myself
19 under as a result of an OMB circular that says
20 until the Executive Branch has released a
21 legislative proposal, we're not allowed to talk
22 about it in public, but please ask any questions

1 that you want to ask. I know from having been on
2 the bench and put myself out in the public
3 occasionally for seminars from time to time, my
4 feeling always was any question is fair. It'd
5 then be up to me to determine whether I should
6 answer or not. I don't want anybody to feel
7 inhibited in asking. I will try to give some
8 substance to any answer, rather than simply say,
9 "Gee, I can't answer that question," with all due
10 respect to the OMB circular, which I will, of
11 course, adhere to, now that I am working for
12 these two years in the Executive Branch.

13 My presentation's going to take about
14 15 or 20 minutes. I'll be glad to take questions
15 either during the presentation or afterwards, so
16 please don't hesitate to interrupt me. If this
17 gets to be too much of just the administrative
18 business of what we're doing, if you want to get
19 into the substance, just let me know that.

20 Before I get into the details, I want
21 to note that in conducting our review, which
22 covers the entirety of the UCMJ and the Manual

1 for Courts-Martial, we were the beneficiaries of
2 the superb data collection, analysis, and reports
3 prepared by the Response Systems Panel, and by
4 the Judicial Proceedings Panel, and your staffs.
5 We relied very heavily on those. They're superb,
6 and thank you very much for that.

7 As I'll discuss in my remarks, I am
8 hopeful that our proposals will be cleared
9 through the Executive Branch sooner rather than
10 later. If all goes well, at least in this
11 calendar year, they'll be available to you for
12 your consideration. I can't guarantee that
13 because the interagency process depends on
14 Department of Justice and other agencies giving
15 their views and working with us on ironing things
16 out, but I have every reason to be optimistic at
17 this time.

18 Each of you is providing a vital
19 public service at a critical moment on a topic
20 that's of great importance to the men and women
21 of the armed forces, Congress, the media, and the
22 public at large. Each of you brings a

1 distinguished background and diverse set of
2 experiences to the task, and we look forward to
3 your recommendations.

4 I'll begin with a brief discussion of
5 the Military Justice Review Group, focusing on
6 the circumstances that led to the establishment
7 of our group, the manner in which we approached
8 our task, and a summary of some of the key issues
9 that we're addressing. We'll go to the next
10 slide. We live in a very dynamic period that
11 includes ongoing and intense scrutiny of the
12 military justice system. It's not the first
13 time. I certainly remember well the Vietnam era
14 and the intense scrutiny of the military justice
15 system at that time, the post-Vietnam era, in
16 which the issues of drug abuse in the military
17 led to great scrutiny.

18 Those situations are different from
19 what we face today, but to the extent there are
20 differences, there's also one common feature.
21 That is to the extent there are differences
22 between the military justice system and civilian

1 practice, the military justice system is going to
2 be called upon to defend and explain those
3 circumstances and to make adjustments as
4 necessary, while preserving what's essential to
5 the military.

6 That's been our experience whether
7 it's been through the World War I experience of
8 creating an appellate system; the World War II
9 experience, which led to the creation of a system
10 largely focusing on the role of lawyers at both
11 the judicial level and the counsel level; the
12 Vietnam and post-Vietnam experience, which led to
13 the creation of the opportunity for Supreme Court
14 review.

15 In each one of those eras the military
16 justice system was called upon to look at
17 civilian practice, measure itself against
18 civilian practice, make adjustments, and also
19 retain core values of the military justice
20 system. Where we are right now -- and you're all
21 familiar with this, so I won't go through the
22 history of the last couple of years, but that

1 intense scrutiny has not just been hearings and
2 internal changes.

3 There have been numerous amendments to
4 the UCMJ, as well as the recommendations of the
5 RSP, the JPP, and now Congress has created a
6 follow-on group that's going to be looking at
7 specific cases. Depending on -- apparently, the
8 authorization bill is about to be vetoed today,
9 but I assume that at some point, that legislation
10 will be intact, and that new group will be
11 starting up parallel to your efforts, so it's a
12 very intense time in the military justice system.

13 PROFESSOR SCHULHOFER: I'm sorry, I
14 think we're all hesitant to interrupt.

15 JUDGE EFFRON: No, please do.

16 PROFESSOR SCHULHOFER: This is the
17 first that I've heard of any follow-on group that
18 would be doing anything parallel to our own. Can
19 you say more about that?

20 JUDGE EFFRON: It's a group -- Dwight,
21 you might want to -- Dwight's working closely
22 with the legislation there, but there's a group

1 -- I don't know it's necessarily a follow on.
2 It's more of a parallel group that's going to be
3 examining specific cases with a view towards
4 determining whether there should be changes made
5 as a result of that. Its relationship to your
6 group, I think, is something that's yet to be
7 developed. Dwight?

8 MR. SULLIVAN: So in last year's NDAA,
9 Congress set up a follow-on Federal Advisory
10 Committee called the Defense Advisory Committee
11 on Investigation, Prosecution, and Defense of
12 Sexual Assault Cases in the Military. It was set
13 up to start a month before the JPP goes out of
14 existence.

15 It looked like they were essentially
16 setting up a transition period where the baton
17 would be passed from the JPP to the DACIPAD. In
18 this year's NDAA, which has passed both houses of
19 Congress, in the conference version, it expedited
20 the establishment of that committee to 90 days
21 from enactment of the NDAA for FY16, which means
22 if that is adopted, depending upon when,

1 ultimately, the NDAA and the contretemps between
2 Congress and the White House is resolved, if it
3 is resolved in a way that results in the NDAA
4 being enacted, then that committee would run in
5 parallel to this committee for probably more than
6 18 months.

7 DEAN ANDERSON: And would be seeking
8 changes in -- as a result of examining cases,
9 what would be the scope of its review or
10 recommendations?

11 MR. SULLIVAN: Exactly. [Laughter.]
12 I can also say that the conference report
13 specifically encouraged the DACIPAD to rely upon
14 the case database that the JPP created. The
15 JPP's database was actually referenced in the
16 conference report.

17 JUDGE EFFRON: So I leave it to you to
18 delve into, or not, that development. Again, one
19 can only speculate as to if and when the
20 authorization bill will be passed, but if the
21 past is prologue, at some point, things will work
22 out. I know it's very important to the members

1 of the armed forces, certainly the Armed Services
2 Committees, to get that bill passed. This
3 particular issue is not controversial, at least
4 at the same level as some of the spending issues
5 in the bill, so it's likely to be included in the
6 final legislation.

7 PROFESSOR SCHULHOFER: Is there
8 something in the law that presupposes its
9 membership would not overlap with the membership
10 of either the JPP or this group or any of the
11 other ones that exist?

12 MR. SULLIVAN: Negative. The
13 secretary of defense is to set up the committee
14 establishing up to 20 members. There's a
15 prohibition against active duty military serving
16 as members, but there is no prohibition against
17 overlap between the membership with either the
18 committee or subcommittee, the JPP and the
19 DACIPAD, no restrictions on overlap.

20 JUDGE EFFRON: Those questions,
21 though, are a good segue into -- why don't we go
22 to the next slide -- into why our group was put

1 together. That is that in light of these
2 segmented approaches to dealing with issues of
3 military law, then chairman of the Joint Chiefs,
4 Martin Dempsey, in conjunction with the Chiefs,
5 he asked the secretary of defense to undertake a
6 comprehensive and holistic review of the military
7 justice system, looking at every article. The
8 idea was not to preempt whatever Congress may or
9 may not be doing in the area, but in light of the
10 segmented nature of those amendments, making sure
11 that the system was balanced in working together,
12 all the different articles of the UCMJ.

13 Then Secretary Hagel approved that and
14 directed the general counsel to establish a
15 military justice review group. The idea would be
16 under the direction of the general counsel, and
17 it would be staffed primarily by military justice
18 experts from the five services. This group was
19 given a very tight time frame, basically, by the
20 time it was set up in March of 2014, one year to
21 produce a report on every article of the UCMJ,
22 and then another six months after that to address

1 implementing rules for the Manual for
2 Courts-Martial.

3 When the group was set up, the
4 services responded magnificently. The other
5 aspect of it was this group was required to
6 produce specific legislative proposals. In other
7 words our report and specific Manual for
8 Courts-Martial amendment. Our report is not one
9 that says this should be done or that should be
10 done -- a little of that in there, but it's here
11 is a specific legislative proposal. Here is a
12 specific amendment to the Manual for
13 Courts-Martial. So let me go to the next one.
14 The services responded magnificently. Each of
15 the DoD services provided us with three officers
16 and an experienced NCO, someone who really knew
17 something about the military justice system and
18 management.

19 We had former trial judges, appellate
20 judges, appellate counsel, trial counsel. We had
21 people who really had a diverse set of
22 experiences. Interestingly, they were all

1 unleashed from their services. When they were
2 sent to us, they were -- this was part of the
3 terms and conditions of the program -- they were
4 not required to report back to their services and
5 get approval for what they would say or not say
6 within our group.

7 Reality of life is they came from
8 their service cultures, their service
9 experiences. They undoubtedly had lots of
10 conversation with people in their services as
11 they were doing, but they were told, "You go work
12 on that group for the group and put something
13 together." The general counsel also designated a
14 number of advisors to us, Judge Sentelle, former
15 chief judge of the D.C. Circuit, who not only has
16 terrific experience in all aspects of law and
17 criminal law, but actually has sat with our court
18 on a number of occasions, so he had that hands-on
19 experience with military law.

20 Judy Miller, former general counsel of
21 the Department of Defense. DOJ designated Jon
22 Wroblewski, who is one of their primary criminal

1 policy people to work with us. The court of
2 appeals for the armed forces had two -- one at a
3 time -- different people to act as liaisons. The
4 advisors were all providing us with advice and
5 resources. They did not review the materials for
6 the purposes of concurring or not concurring, so
7 it was very clear from the outside it would be
8 our product, not theirs.

9 The general counsel set up several
10 terms of reference to guide our work. They're
11 pretty general in nature, but they're important.
12 First, we used the UCMJ as a baseline for
13 departure. Secondly, this reflects what I noted
14 before about the history, we've got to look at
15 the practice in U.S. district courts and
16 determine whether they should or should not be
17 adopted for military law. To the extent
18 practical, look for uniformity, look at the
19 recommendations of the RSP and the Defense Legal
20 Policy Board that had looked at combat-related
21 offenses.

22 I'll add we subsequently received

1 further guidance from the general counsel, of
2 course, once you were established, to look at
3 your recommendations, as well. Then to draw upon
4 the experience of the staff members and consider
5 a broad range of information. After that, we
6 developed our own internal guiding procedures.
7 First, that the military justice system was there
8 to serve the purposes of military discipline and
9 national security.

10 Secondly, that discipline involved
11 three key features of military law that we would
12 take as givens. First, that there would be
13 unique military offenses -- desertion,
14 disrespect, disobedience -- things that are not
15 crimes in civilian society, that they would
16 remain, not necessarily that any particular one
17 will remain, but the idea that there would be
18 unique military offenses. Unique military
19 punishments, reductions in rank, forfeitures of
20 pay, discharges, things that, again, are not
21 within the purview of a federal district court in
22 sentencing would be elements of the system.

1 Thirdly, trials would be conducted outside the
2 United States on an ongoing basis, so we'd have
3 to have a system that was portable.

4 Then our next criteria had to do with
5 justice and discipline in a democratic society.
6 That is that we would employ the standards of the
7 civilian sector, insofar as practical, and also
8 where certain aspects of the military justice
9 system are less protective than the rights that
10 individuals get in civilian trials, we might have
11 to counterbalance that. The classic example is
12 the prohibition against unlawful command
13 influence, a prohibition that doesn't exist in
14 civilian society.

15 In civilian society, we have various
16 prohibitions against prejudicial comments, very
17 high standard to make before prejudicial comments
18 by the Attorney General or the President can
19 require a reversal in a trial. Military justice
20 system is just the opposite. Comments by a
21 commander about the specifics of a trial puts the
22 burden on the government to prove beyond a

1 reasonable doubt that those comments didn't
2 influence the trial. That's a counterbalance to
3 the role of the commander in the system, so
4 counterbalancing would be part of it. The next
5 is flexibility across a wide variety of national
6 security environments and military personnel
7 practices.

8 We did not set out to establish or to
9 provide a military justice system for today's
10 military. Today's military is relatively small,
11 highly trained, highly qualified. That's not
12 necessarily the military that many of us have
13 experienced through our lifetimes.

14 Without casting any aspersions on the
15 quality of people who have served over time, if
16 you look at the disciplinary rates certainly in
17 my experience, in my lifetime, whether it's in
18 Vietnam era, the post-Vietnam era, the impact of
19 the draft and those areas, the impact of the
20 economy on recruiting, we have the need for large
21 expansion in various environments. We can't
22 design a system that simply meets today's force.

1 We have to have a system that will work across
2 those range of experiences, experiences in which
3 people may not be that enthused about being in
4 the armed forces and enthused about the mission
5 of it. So we took that into account in
6 developing our recommendations. Finally, we
7 looked for the need for periodic evaluation and
8 recalibration.

9 When Congress established the UCMJ in
10 1950, it set up a committee, composed of the
11 judges and the judge advocate general to provide
12 an annual report on the system. For a variety of
13 reasons, that report has become fairly routine,
14 without having a detailed analysis of the
15 operation of legislation. So we're looking for
16 ways to institutionalize a more useful periodic
17 review. Let's go to the next one.

18 To put our program in a little bit
19 more context, those of you have worked,
20 particularly in the academic area, on
21 codifications and restatements, we did not do a
22 codification or a restatement. That is, when we

1 were looking at the articles, we weren't -- nor
2 were we doing a zero-based analysis. That is,
3 based on the guidance we had from the general
4 counsel and the time frame in which we had to
5 operate, we didn't say, "How would we design a
6 military justice system from scratch if we were
7 doing it?" Nor did we say, "We're going to look
8 at every article and see if we can incorporate
9 current case law." I talked to a variety of
10 people who had done those kinds of studies.

11 They said that's a four or five-year
12 project when you do it at the state level to do a
13 restatement of the law, so we weren't going to do
14 that. We weren't going to codified what we were
15 doing. We were going to look for opportunities,
16 use the UCMJ as a baseline, looking at those
17 three criteria that we had before. Where are our
18 opportunities? Where are our opportunities for
19 making useful changes? Go ahead.

20 MS. KEPROS: Yes, I hope this isn't
21 out of sequence with some of your comments --

22 JUDGE EFFRON: Don't worry about the

1 sequence.

2 MS. KEPROS: Okay, you can handle it.

3 JUDGE EFFRON: Yes, I can handle it,
4 but I'll try.

5 MS. KEPROS: I am just so intrigued by
6 your comments about where you're going to start,
7 what you were going to try to incorporate,
8 because it's become important to our
9 conversations in this group that we have gotten a
10 lot of feedback from practitioners in the
11 military justice system that having had their
12 code significantly revised recently a number of
13 times, there's some resistance to any changes.
14 Has that been relevant in your conversation?

15 JUDGE EFFRON: The process of
16 coordinating our proposals through the Department
17 of Defense produced very vigorous discussions,
18 sure. When we talked to DOJ about the idea of
19 the periodic reviews, one of the points they made
20 was that they have trouble -- they're getting
21 feedback now from the U.S. attorneys about the
22 pace of change in the civilian sector now that

1 there's a lot of attention on criminal law, and
2 that there is a sense that there's a negative
3 effect of too much change too fast.

4 There's a need to figure out how to
5 stabilize things for a while. I'm not suggesting
6 that necessarily applies to what you're doing
7 with Article 120 and the related provisions
8 because you've been asked to take a look at that.
9 But what may be important -- and I'm jumping way
10 ahead now, but when we looked at provisions of
11 the code -- and this relates to the idea of it
12 not being a codification or restatement -- we
13 looked at a number of provisions which are highly
14 litigated and not particularly clear, and we
15 decided not to change some of them because when
16 we looked at those particular provisions, we said
17 no matter what we do, these are at the core of
18 criminal law that are going to be litigated on a
19 day-to-day basis.

20 Adding more words is just going to add
21 more words to be litigated and not necessarily
22 solve things. Again, I'm not making that as a

1 comment about Article 120 or any of the things
2 that you're looking at, but that's at least how
3 we looked at it is that before we made a change,
4 we said wait a minute, are these words going to
5 improve the way these cases are litigated when
6 these matters are going to be highly litigated
7 anyway, or are they going to just create more
8 problems in the area?

9 We made decisions back and forth on
10 that. We have a lot of changes recommended in
11 our report. More than 50 articles of the UCMJ
12 will have changes, so some may say gee, you
13 didn't take your advice very well on that, but
14 you'll see, when you see the report, there are
15 some very controversial aspects of the UCMJ where
16 we didn't make changes just because we looked at
17 it and said we can codify where the law is now,
18 we can say where we think it should be going.
19 That's just going to be a platform for more
20 litigation. Is there something wrong with where
21 the law is right now? So that was part of our
22 thought process. I'll leave it up to you whether

1 that's the way you want to look at it.

2 PROFESSOR SCHULHOFER: You said that
3 your report contains recommendations for change
4 with respect to 50 different articles?

5 JUDGE EFFRON: More than 50, yes.

6 PROFESSOR SCHULHOFER: More than 50?
7 Can you say whether any of them might include
8 120?

9 JUDGE EFFRON: I can say that the
10 issues that you're working on all have
11 recommendations from us, and I would also say
12 that we have an express statement in there of
13 awareness that you are working on this now, so
14 our recommendations have taken into account that
15 you will be going into this in great depth. We
16 had over 146 articles of the UCMJ. I haven't
17 counted all the bump As and bump Bs in there,
18 plus all the Manual for Courts-Martial provision,
19 and did not have the opportunity -- this'll
20 actually go to my next point -- to go into each
21 article with the time and effort that you're
22 putting into it. Also, we made a decision at the

1 beginning we were not going to do any surveys.

2 We were not going to conduct any hearings.

3 We weren't going to do any data calls.

4 We were going to rely on existing information

5 because we have to look at all those articles in

6 one year, then a degree of modesty is

7 recommended. That's by way of saying I don't

8 think that you'll find our recommendations in any

9 way -- or the fact that they're not available

10 right now should in any way inhibit what you're

11 doing. We looked with great modesty in the areas

12 that you're looking at.

13 We saw some things that we thought

14 would be useful, and I hope you get them in time

15 for your work. Dwight's looked at them, as well.

16 My view is that -- again, I'm the one who's seen

17 it -- is that this should not inhibit you in any

18 breadth or depth that you feel that you need to

19 go into in yours. Even if it turns out we came

20 out a slightly different way, it was with modesty

21 that we approached each of these articles.

22 CHAIR JONES: Could you remind me

1 again what you think your timing is?

2 JUDGE EFFRON: We are pressing very
3 hard that before the end of the calendar year,
4 hopefully before Thanksgiving, we can have this
5 released because if it's going to be -- if a
6 project of this magnitude's going to be
7 considered by Congress in the next session, the
8 staff has to have time.

9 CHAIR JONES: Released to whom?

10 JUDGE EFFRON: Once it's released to
11 submit it to Congress, it'll be released to the
12 public.

13 CHAIR JONES: Everybody?

14 JUDGE EFFRON: Yes, that'll be a
15 public release. That'll be a release not only of
16 the legislative proposal, but our full report
17 that's in there. But we did this, again, with
18 the understanding that you're doing the work, and
19 you have -- not that you all have, individually,
20 a lot of free time, but in terms of the time that
21 you've been given or the scope, the time to do
22 data collection and have the hearings that you've

1 been having and hearing from people on the
2 outside that we didn't have. You also bring a
3 different degree of experience to it. Our group,
4 with the exception of me, and now I am internal,
5 was entirely internal.

6 These are all people who had great
7 experience with military justice, but didn't
8 bring the breadth of experience in these areas
9 and the mixture of the military and the
10 non-military experience that you have. So I
11 think it'd be understandable that you all may
12 come out with things that are in greater detail
13 and depth than we have in our report.

14 MAJ GEN WOODWARD: But does it make
15 sense to maybe ask for an exception to policy for
16 us to get what you all thought of, just to
17 further inform us? Is that worth asking the
18 question or possible, since we're going to wrap
19 up soon?

20 JUDGE EFFRON: I certainly wouldn't
21 discourage that at all. I am not an expert on
22 the Federal Advisory Committee Act or your

1 statute or the OMB circular. I don't hesitate to
2 say that if it were my preference from the
3 beginning, that as we had put out for our own
4 work, even if you all didn't exist, we would have
5 made parts of it available for public discussion,
6 but that's not the way the Executive Branch works
7 when it comes to legislation. So we're bound by
8 that, just like I've been bound by all the other
9 interesting things I found about returning to the
10 Executive Branch after not being there for 28
11 years with all the requirements that now exist
12 that didn't exist back then.

13 I will complete some of my computer
14 training. My computer gets shut off on a regular
15 basis anyway without my having failed to do the
16 training, so I don't want to put that up at risk
17 right now. I know that puts you in a somewhat
18 difficult position.

19 Just from having watched your work and
20 watched the RSP work, I'll give you as much
21 assurance as I can that yes, there may be things
22 that we say that are not necessarily in sync with

1 what you've said, but it's through the
2 understanding you're -- express understanding in
3 our report that you're going into it in more
4 depth and with different experiences involved and
5 looking forward to what you have to say. So
6 we're not trying to preempt 120 or retaliation or
7 stalking or any of those types of offenses. We
8 have some ideas on that, but they're modest ideas
9 in those areas.

10 HON. HOLTZMAN: What is the process
11 after this is released? What's the process going
12 to be for adoption? It'll be released by the
13 White House or whoever, the Secretary of Defense.
14 Then what happens?

15 JUDGE EFFRON: Yes, the Secretary of
16 Defense has -- it's now a Department of Defense
17 proposal. It's an official Department of Defense
18 proposal. It's now at OMB, circulated to all the
19 other executive agencies that have an interest.
20 They give us comments. We go back to them.

21 The essence is we have to satisfy OMB
22 that the people in the agencies, the Executive

1 Branch that have an interest in this area are
2 satisfied with the proposal. Once OMB is
3 satisfied, again, I believe that they're able to
4 speak for the administration, but I don't know
5 what their relationship is with the White House
6 on that, so I'll defer on that. But my
7 assumption is once OMB says yes, it then gets
8 transmitted to Congress as an official
9 administration proposal.

10 HON. HOLTZMAN: Do you expect Congress
11 to take that up?

12 JUDGE EFFRON: Having been where you
13 were and I was as a staffer, I won't presume to
14 speak for Congress, as an institution, other than
15 to note that we have briefed the staffs on both
16 the House and the Senate Armed Services Committee
17 on our process, not our result. There is a
18 significant interest in having this proposal and
19 giving it serious consideration next year, but
20 that's -- I think the effort has been worthwhile
21 and is likely to be productive, but there are
22 many other factors that can come into play on

1 that.

2 Also, I would say that -- again,
3 this'll be in the eye of the beholder -- the vast
4 majority of our recommendations are likely to be
5 viewed as non-controversial and worthwhile
6 improvements. There will be some, depending on
7 who is reviewing it and what their perspective
8 is, who will feel that we've done things that
9 shouldn't be done or haven't done enough in other
10 areas. Whether those controversies then subsume
11 the process, I don't know. But I'm optimistic
12 that the weight of the proposals will move the
13 bulk of it forward. What is your time frame for
14 Article 120?

15 HON. HOLTZMAN: I'm not the chair of
16 this panel. You should address it to Barbara
17 Jones.

18 CHAIR JONES: We're hoping to have our
19 recommendations finalized by the end of our next
20 meeting. That's subject to revision if Glen
21 tells me differently. Then our plan was to
22 circulate it before we made a final

1 recommendation to the JPP because something I've
2 learned since I've been here is this law in
3 unintended consequences.

4 We wanted to circulate it to various
5 groups and see -- we give them a short leash, and
6 they have to get back to us very quickly, in a
7 short time frame. Then when we were satisfied
8 that our recommendations were solid, present them
9 to the JPP. I guess we were thinking we'd be
10 submitting them to the JPP in December or
11 January, January more likely.

12 JUDGE EFFRON: If, for some reason,
13 our proposal hadn't gone forward then, then there
14 might be a little dance that goes on as to
15 whether we then say we're not going to recommend
16 anything in these areas because you're doing it.
17 But if it's January, that should -- one only
18 knows --

19 CHAIR JONES: Of course with us --

20 JUDGE EFFRON: -- but that should give
21 you ample time to take into account what we've
22 recommended.

1 CHAIR JONES: Everything we do is
2 public, so you'll see the set of recommendations
3 that this working group, this subcommittee has
4 before -- likely before yours -- well, will you?
5 I don't know. If you make Thanksgiving, you
6 won't. That'll be afterwards. Then the final
7 set wouldn't come until January/February.

8 JUDGE EFFRON: Again, our report will
9 expressly state that we've just taken some steps
10 without having the benefit of all the detailed
11 work you're doing, so it's an express note to
12 Congress that there's more to be said in this
13 area, as opposed to saying we're not going to go
14 up there and say this is your answer.

15 PROFESSOR SCHULHOFER: Also, in terms
16 of timing, we are a subcommittee. January would
17 be -- is the target for us to report to our boss
18 --

19 CHAIR JONES: To report to the JPP,
20 right.

21 PROFESSOR SCHULHOFER: -- to the JPP,
22 and then they have a question of their timing

1 before anything would have any kind of official
2 decision from our process, at large.

3 JUDGE EFFRON: With apologies, that's
4 why my question was addressed to Representative
5 Holtzman --

6 CHAIR JONES: No apologies.

7 JUDGE EFFRON: -- is I might have a
8 sense of what the full committee wants.

9 CHAIR JONES: We're two votes, right,
10 Liz?

11 PROFESSOR SCHULHOFER: Are we in
12 general question period now?

13 JUDGE EFFRON: Sure, let's -- let me
14 just summarize the rest of it by saying what
15 you'll see in our report is that for each article
16 of the UCMJ, we have a proposal. We summarize
17 what the current law says in colloquial language.
18 We describe what contemporary practice is like.
19 We give an overview of what civilian practice is
20 like in that area. We discuss the pros and cons
21 of making changes, and then we have a specific
22 legislative proposal and a specific

1 legislative-type section analysis to go with it.
2 These are not law review articles on each one,
3 but I think it's material that you'll find useful
4 in understanding where we came from and why.

5 CHAIR JONES: Professor.

6 PROFESSOR SCHULHOFER: Yes, I had a
7 general question. I want to preface it with
8 something very brief about my own personal
9 perspective because I think you don't really know
10 my work. Some of my panel members don't really
11 know my work.

12 My interest in this area has always
13 grown out of a concern that the civilian law was
14 not adequate to protect victims at risk, and a
15 sense that they may be true of the military law,
16 also. That's the perspective that I come to it.
17 I'm saying that because one of the things that
18 has shocked me about the military system is the
19 breadth of discretion, with respect to
20 sentencing. So I want to kind of go into that,
21 but I think it's an issue under Article 120. I
22 wanted to preface my perspective because my

1 interest in it has been from a victim's point of
2 view, but when I see how the system is working, I
3 get very concerned about fairness to people who
4 might be potentially accused. We're talking
5 about Article 120 that has, first of all, as far
6 as UCMJ, no sentencing caps.

7 The president has imposed caps that
8 are extraordinarily broad, 30 years for -- life
9 for rape, and then 30 years for the lesser
10 offense. It also occurs to me that we're
11 talking, almost by definition, in every single
12 case, with a first offender because they wouldn't
13 be in the military if they had a felony record.
14 So in the civilian system, when you're talking
15 about 30 years' imprisonment or 20 years'
16 imprisonment or 15 years' imprisonment, you're
17 usually talking about repeat offenders that are
18 anywhere near that range.

19 Even with the cabining that occurs
20 with the President's action on the Manual, you're
21 talking about an extraordinary range of possible
22 punishment. In addition, punishment is set by

1 the members, which is the jury, which is
2 extremely unusual in the civilian system. Where
3 it does exist in, I think, six or seven states,
4 generally considered to work very poorly. Then I
5 think about the fact that we have a volunteer
6 Army, so with respect to the enlisted personnel,
7 we're very often talking about a segment of our
8 population that has relatively fewer
9 opportunities, in terms of -- you mentioned the
10 high degree of specialization in the modern Army,
11 which I think is true, but I'm also concerned
12 that we're drawing from a demographic that is
13 relatively disadvantaged, compared to the
14 population that's going to college and so on.

15 I get very concerned about fairness to
16 our personnel who are serving our country and can
17 be on the receiving end of an accusation -- and
18 they may be guilty -- but that they be facing
19 either very long terms and extraordinary
20 inconsistency.

21 In both respects, I always worry
22 that's a problem for victim interest, as well,

1 because it undermines the reliability and
2 consistency of the system. One of your advisors,
3 Jon Wroblewski, is ex-officio -- the DOJ -- he's
4 the ex-officio -- DOJ's member of the U.S.
5 Sentencing Commission. I don't know -- my
6 question, then, is -- because I think at least to
7 some of us, it impacts on the structure of 120
8 and whether it's going to do its job. Did your
9 group look at sentencing issues?

10 JUDGE EFFRON: Dwight, tell me when
11 I've gone too far. I would say that the
12 sentencing process is one of the most detailed
13 aspects of our proposals. As you've pointed out,
14 the sentencing in the military is very different
15 from sentencing in civilian society, with the
16 exception of a few states that have jury
17 sentencing. Even those states that have jury
18 sentencing operate differently in ways that don't
19 necessarily lend themselves to comparison to the
20 military.

21 What we identified was several
22 important differences between military and

1 civilian life. One is not only the jury role,
2 but the underlying process. There's no
3 pre-sentencing report in the military and no way
4 of developing that information right now, until
5 you get to trial. Secondly, the sentencing's
6 conducted in an adversarial manner, even though
7 the rules of evidence are somewhat relaxed, and
8 this is somewhat hyperbole, but every case is
9 conducted, at the sentencing level, in the way
10 that a federal trial would conduct a capital
11 case, putting aside the difference in
12 consequences. That is each side presents
13 evidence, and there's specific factors that are
14 supposed to be looked at.

15 We do it in an adversarial manner,
16 without the type of information that comes in
17 civilian life. Secondly, there's no parameters
18 and criteria. As you pointed out, the population
19 is so different, and the circumstances are so
20 different, that wholesale adoption of the federal
21 sentencing guidelines may not be the answer on
22 it. But are there opportunities for having

1 parameters and criteria in the military justice
2 system is something that we examined in great
3 detail.

4 If we have those parameters and
5 criteria, who should promulgate them? What
6 number of levels should we have that would work
7 in the military justice system? And how do you
8 use those parameters and criteria for some of the
9 punishments that don't lend themselves to such
10 quantification? For example, we talked about the
11 punishments before. You can't break up a
12 discharge among various offenses. You're either
13 discharged, or you're not. You can't break up a
14 reduction in rank. You're either reduced or not
15 -- pay. But for confinement, maybe you can. The
16 other thing that we don't do in the military
17 justice system is segment our sentences.

18 In other words, if you're convicted of
19 rape, absence, and disrespect, you get a unitary
20 sentence. Nobody can tell you what component of
21 that sentence is related to rape, disrespect, or
22 absence. Is there an opportunity for having

1 segmented sentences, and then a determination of
2 whether they'd run concurrently or consecutively,
3 at least with respect to confinement.

4 Probably can't do it with discharges,
5 but at least with respect to confinement. Again,
6 we'll have to wait until the report is issued,
7 but I think you can have great confidence that
8 the issue of sentencing and the issues that
9 you've raised here is a matter that has received
10 great attention by our group.

11 MAJ GEN WOODWARD: Also, I think if
12 Glen -- if they put together a list of the
13 average sentence for some of these crimes, that
14 you would definitely be put at ease with respect
15 to your fear that the accused is being unfairly
16 -- long sentences. Because I think you'd find
17 that they're pretty -- I know when I was in the
18 SAPR job that the sentences they were getting
19 were pretty minor, based on what they were being
20 convicted of.

21 PROFESSOR SCHULHOFER: For rape?

22 MAJ GEN WOODWARD: It was always a

1 rape.

2 PROFESSOR SCHULHOFER: For rape and
3 sexual assault?

4 MAJ GEN WOODWARD: Sexual assault,
5 sure, yes. You'd have somebody convicted of
6 sexual assault would get six months. We had one
7 at Andrews that got 30 days, and that got set
8 aside.

9 PROFESSOR SCHULHOFER: That would be
10 my concern on the other side. I'm not happy with
11 sentences that are too low, and I worry about
12 sentences that are potentially too severe, and I
13 worry about the unpredictability, which may lead
14 some commanders to hesitate to bring charges if
15 they think they don't want to expose somebody.
16 Didn't your panel hear sentencing testimony at
17 your last meeting? It was on the public notice
18 that it was supposed to be on your agenda. Did
19 that not happen?

20 MAJ GEN WOODWARD: The range give you
21 a flexibility that also is helpful.

22 COL. GREEN: Another point for the

1 subcommittee, the JPP was tasked to a data
2 analysis of cases regarding Article 120 cases
3 that was a specific -- there were three specific
4 Congressional taskings for the JPP. Since the
5 beginning of the year, the staff has been working
6 with the services to obtain the case records for
7 every sexual assault case that's been prosecuted
8 from Fiscal Years '12, '13 and '14, and when the
9 next fiscal year is available, we'll obtain
10 those.

11 Yesterday, we just finished the entry
12 -- we've been working with the services to obtain
13 the records and have obtained over 2,000 case
14 records. We just finished the input of data into
15 a new system yesterday and are working with
16 criminologists and our staff to do an analysis of
17 exactly what those cases are. What our intent is
18 that we will be able to say -- use our system to
19 break down for someone who's been convicted of
20 rape to identify what the specific confinement
21 terms are to the facts of the case. So we will
22 be able to do some analysis. Our hope is in the

1 next couple of months, we'll be able to compile
2 all that information and can provide it to you
3 for your review.

4 PROFESSOR SCHULHOFER: I thought I saw
5 on your witness list for your last meeting that
6 there were people scheduled to testify about
7 civilian and military sentencing practices.

8 HON. HOLTZMAN: Not the detail of
9 those practices, the methodologies, and really
10 related to the data collection. So we weren't
11 doing the issues that you were raising, how long
12 should these sentences be?

13 CHAIR JONES: Either we weren't there.
14 It didn't happen. No one testified about that,
15 that I recall. It was --

16 (Simultaneous speaking.)

17 JUDGE EFFRON: This will be a big
18 challenge for you, too, because you'll find that
19 this happens in civilian life, as well, but
20 particularly military, where you've got the UCMJ
21 being part of the daily life of all the members.
22 You'll find some charges which understate the

1 seriousness of what happened, and some charges
2 that overstate the seriousness of what happened,
3 not in a legal sense of understate or overstate,
4 but in a colloquial sense. That's going to be a
5 tough, but not impossible task for you to
6 undertake and look at.

7 That's something that we did not do.
8 We weren't doing the surveys, and we were not
9 collecting information in that regard. We were
10 relying on the experience as to -- we focused
11 primarily on structure and process, rather than
12 on the substance of what sentences should be, or
13 the substance of what offenses should be.

14 We've addressed that at some point,
15 but we were mainly looking at process and
16 structure as the opportunities for what -- in
17 sentencing you will see, I think, very
18 significant changes in structure and process as
19 to how the sentencing is done.

20 PROFESSOR SCHULHOFER: Would your
21 recommendations with respect to structure be
22 something that we could take on board and import

1 into Article 120?

2 JUDGE EFFRON: I think the way to look
3 at it would be the way that Article 120 is
4 structured might, in some sense, be influenced by
5 the existence of a different way of doing
6 sentencing.

7 But it also may be that you don't have
8 to change Article 120 for that purpose, but that
9 using the President's authority under the Manual
10 for Courts-Martial, how you address the elements
11 and how you address the range of sentences might
12 be a way of doing it without necessarily tying it
13 down in relatively rigid legislation.

14 MS. KEPROS: This is one of those I
15 don't know if you can answer my question. One
16 issue we've been very interested in is whether or
17 not certain offenses, whether in Article 120 or
18 some of the articles -- 92, 134 -- trigger things
19 like sex offender registration.

20 Obviously, in a civilian context,
21 that's considered a collateral consequence and
22 not, strictly speaking, a sentencing

1 consideration. Can you say whether your
2 committee looked at something like that? It's
3 hard to draw a parallel because obviously, a
4 decrease in rank is not traditional civilian
5 sentencing, either, so I don't really know the
6 scope.

7 JUDGE EFFRON: We took the existence
8 of sex registration requirements into account in
9 how we structured things, but we did not do an
10 article by article analysis of whether sex
11 registration is required.

12 That's something that's going to be
13 really important for your group, obviously,
14 because as you're deciding how particular forms
15 of behavior should be treated, there may be
16 things that represent inappropriate military
17 behavior and that involve behavior of a sexual
18 nature, but not necessarily things that trigger
19 sex registration. That's going to be something
20 that you all will have to take a look at.

21 Just to give an example, if you have
22 something that is a consensual relationship

1 between two people -- let me give the example of
2 fraternization. Fraternization can involve --
3 that's an Article 134 offense under the general
4 article. It involves inappropriate sexual
5 relations between two people. You have Article
6 92, orders violation of sexual activity on board
7 a ship. In some cases, maybe there is something
8 in some of those offenses that is analogous to
9 sex registration requirement. In other cases, it
10 may be that these are relationships that you see
11 in civilian society that don't trigger sex
12 registration. Yes, you have to ask yourself how
13 do you denominate those in the military, and what
14 effect does that have on sex registration? I'm
15 not taking a position on any of those, other than
16 saying I think that's an important thing to think
17 of, in terms of how you structure the amendments.
18 Dwight, did you have --

19 MR. SULLIVAN: A couple points, just
20 for your information. By statute now, DoD is
21 required to report to the gaining jurisdiction
22 that an individual's going there that DoD has

1 determined must be registered under the Sex
2 Offender Registration Act.

3 There's a Department of Defense
4 instruction that actually defines which offenses
5 will result in that notification. There was a
6 change to the law this year that was enacted as
7 part of that human trafficking statute that was
8 passed back in the spring that also said -- it
9 used to be that DoD would inform the gaining
10 jurisdiction, "Hey, we're about to release this
11 guy from Leavenworth. He tells us he's coming to
12 your jurisdiction." Then that individual would
13 be required to show up and report, but they
14 wouldn't be on the registry until they showed up
15 and reported. DoD also let the U.S. Marshals
16 Service know, so if the guy didn't show up within
17 30 days at the gaining jurisdiction, the Marshals
18 Service was supposed to track him down.

19 Didn't always happen that way.
20 Congress changed the law to say DoD, when they
21 release the person, will also inform DOJ, and DOJ
22 will put the individual both into the National

1 Sex Offender Registry and into the database, the
2 publicly accessible website, where you can run
3 names of registered offenders. But there is DoDI
4 right now -- Department of Defense Instruction --
5 that specifies we will provide that notification
6 to the gaining jurisdiction for these offenses.

7 JUDGE EFFRON: To follow up on that,
8 in taking account of sex registration and other
9 aspects of it, we thought about that, in terms of
10 how we denominated certain offenses. Because in
11 military life you can make criminal things that
12 are not criminal in civilian life, we were very
13 conscious of that in deciding how to deal with
14 certain aspects of sexual conduct, as to whether
15 they should fall into the areas that trigger sex
16 registration or be unique. Just because we can
17 punish something that somebody does in the
18 military, where you couldn't do it in civilian
19 life, to us didn't necessarily mean that you have
20 to fit it into these more traditional categories.

21 There's a possibility of creating new
22 offenses, and then there would be an independent

1 determination as to whether sex registration or
2 other collateral consequences would flow from
3 that.

4 DEAN ANDERSON: I'm interested in what
5 you were able to share about the decision making
6 that you engaged in about whether or not to make
7 recommended changes in certain provisions.

8 I think I understood you to say that
9 at times, there were provisions that were highly
10 controversial, in which you did not make a
11 recommendation for change because you felt that
12 it went to the core questions that the offense
13 raises, but that in other times there were
14 controversial provisions in which you did make a
15 recommended change. Am I understanding that
16 correctly?

17 JUDGE EFFRON: We'll let others
18 decide. I don't think we were hesitant to delve
19 into controversy. Our determination was whether
20 by adding words -- two things. First, by adding
21 words, would we improve or would we simply create
22 another platform for litigation that wasn't going

1 to improve the situation?

2 DEAN ANDERSON: That's actually the
3 interesting thing that I think I've heard you say
4 twice. How did you make that determination, that
5 adding words would or would not clarify a
6 provision?

7 JUDGE EFFRON: Typically, we were
8 looking at areas that were highly litigated, in
9 which because of the variation of conduct and
10 behavior that would arise under that, you'd be
11 getting all sorts of interpretive questions on a
12 regular basis.

13 Our determination was all we're going
14 to do is add new words for interpretation.
15 Whereas, if we have other provisions that are not
16 -- they may arise frequently, but there's a
17 fairly good understanding of what words mean,
18 even if on the face, they're not clear, practice
19 has been clear, then we said no, we're not going
20 to make a change there. Whereas, in other areas
21 we'd say people have struggled with what this
22 means, and it's causing an inefficiency or

1 ineffectiveness in our practice beyond the mere
2 fact of litigation. We can make those problems
3 go away with words. That would be our criteria.
4 That's an experiential judgment, not something
5 that we quantify.

6 DEAN ANDERSON: I appreciate that
7 we're trying to read tea leaves a little bit here
8 just because we don't have the benefit of the
9 recommendations that you've made, and we will,
10 hopefully, shortly. I forgot the next thing I
11 was going to say. It'll come back to me.

12 JUDGE EFFRON: I have no problem
13 saying Article 120 raises lots of issues, and we
14 were happy to see that you were in existence and
15 you would be making those calls, by and large.
16 Our Article 120 recommendations are quite modest.

17 DEAN ANDERSON: On that question,
18 would it be fair to say -- it sounds as if your
19 -- the language, itself, in Article 120, when you
20 assess 120, suggests if not deference to this
21 committee's recommendations, certainly -- or
22 perhaps you could just clarify. It sounds like

1 you said you're aware of our existence. You know
2 that we're able to go into more -- that we're
3 charged with going into further depth and have
4 more time to go into depth on Article 120 and its
5 provisions. I guess I'm interested in the
6 relationship that's articulated by your
7 recommendations as between the two deliberative
8 bodies.

9 JUDGE EFFRON: Whether it was Article
10 120 or another area of sexual conduct, where we
11 saw very clear opportunities for change, where a
12 useful improvement would be made, we didn't
13 hesitate to make that recommendation. Where we
14 saw issues that are being litigated and struggled
15 with, and we didn't have a high degree of
16 confidence that without having done an in-depth
17 data and hearing analysis, like you're doing,
18 that we could make an improvement, then we
19 stepped back.

20 This is probably going to get into
21 double or triple negatives, but we didn't make a
22 decision that no change was needed, nor did we

1 make a decision that the problems that we looked
2 at would benefit from legislative change. We
3 just said these are areas in which there's not a
4 clear answer right now. We're going to step back
5 and let you take a look at it. It wasn't
6 necessarily a deference that you would come out
7 with an answer that we would agree with. It was
8 that we determined that having a group that was
9 taking a more in-depth look made more sense than
10 us just coming up with words that we thought
11 might be helpful, where we didn't have confidence
12 that changing the words was going to be an
13 improvement.

14 CHAIR JONES: I think your group would
15 be one, certainly, that we would send the
16 subcommittee's recommendations to for feedback.
17 Would you be in a position to help us at that
18 point?

19 JUDGE EFFRON: I think that we would
20 be able to work with the Department of Defense
21 and determine how to do that. I'll add on that,
22 our group, in practice, doesn't exist anymore.

1 CHAIR JONES: That was my next
2 question because I was surprised when I found out
3 the JPP didn't exist anymore the day after we
4 filed our report.

5 (Simultaneous speaking.)

6 CHAIR JONES: I'm sorry, the response
7 panel.

8 JUDGE EFFRON: Technically, we exist,
9 but all of our military members devolved back to
10 the services over the summer, so there's me and
11 Charles Hale, a retired military judge, and Patty
12 Ham, who did such a fabulous job for you --

13 CHAIR JONES: She sure did.

14 JUDGE EFFRON: -- on the RSP is
15 working for us part time now. We have a handful
16 of people who are dealing with the interagency
17 comments right now, but we don't have the
18 military justice review group, as it existed, to
19 respond. But that's not giving you a negative
20 answer. I think to the extent that you're
21 working with OGC and you want to get some views
22 from those of us who were there on a personal

1 level, I don't have any hesitancy about that all.
2 I'll be guided by whatever guidance we get from
3 GC on that.

4 CHAIR JONES: Any other questions?
5 Thank you so much, Judge. I think you did a
6 great job of telling us what you could. Now we
7 have a mystery to unravel here after you walk out
8 the door.

9 DEAN ANDERSON: We're really excited
10 to see your recommendations.

11 JUDGE EFFRON: Again, I hope I've
12 given you at least whatever degree of comfort I
13 could that we're not going to have an answer in
14 there, nor are we going to have something in
15 there that says this in any way inhibits what the
16 JPP -- on the contrary, we're going to recognize
17 -- we have recognized the diverse set of
18 experiences and skills and data opportunities you
19 have to put something together.

20 HON. HOLTZMAN: May I ask just one
21 question before you go? This is sort of a follow
22 up on what Ms. Kepros was asking about before,

1 which is if you've issued 50 recommendations,
2 that means why you've shown a lot of respect for
3 not changing things where they don't need to be
4 changed, you obviously didn't shy away from
5 making changes where you thought they should be
6 made, even though you heard pleas, as we
7 certainly have, that stability is vital and
8 status quo is important and so forth and so on.

9 JUDGE EFFRON: Our report, if it's
10 enacted, will hopefully be a platform for
11 stability over time. Ms. Holtzman, I think your
12 comments are right on point. This is not a
13 stability-inducing set of proposals. It's going
14 to -- one of the reasons why we were asked to
15 produce a Manual for Courts-Martial report before
16 the legislation was enacted -- which is very
17 unusual. Normally, you don't do implementing
18 rules until a statute's -- is because the
19 anticipation was that the changes are so
20 extensive that we would need a full year of
21 training, not simply to draft the rules, but to
22 have rules relatively ready to go and get things

1 done.

2 From an operator's point of view,
3 whether or not people from a political sense see
4 these as significant, from an operator's point of
5 view, if 90 percent-80 percent of our proposals
6 get enacted, there's going to be a lot of change
7 in the military justice system in the short term.

8 HON. HOLTZMAN: Thank you for that
9 answer.

10 CHAIR JONES: I guess it's fair to say
11 that we've taken -- at least begun to make
12 suggestions of not amending the statute, but
13 adding to the Courts-Martial manual, which I
14 guess would sort of be the same operation. It
15 would explain something that's already there, but
16 not require Congressional amendment.

17 JUDGE EFFRON: The military justice
18 system --

19 CHAIR JONES: Any thoughts on that?

20 JUDGE EFFRON: Yes, the military
21 justice system has a gift that doesn't exist. I
22 know your experience, of course, with the rules

1 is there's a lot that can be done with the rules
2 of criminal procedure, but there's a pretty firm
3 cap on how much you can do there.

4 The Manual for Courts-Martial really
5 incorporates a lot of what you find in Title 18.
6 There's a tremendous opportunity in the Manual to
7 go forward with ideas and proposals and put them
8 into a regulatory form so they have some effect,
9 and yet if adjustments are needed, much easier
10 than dealing through the legislative process.
11 Congress has specifically provided that on the
12 procedural end.

13 On the substantive end -- that is what
14 the elements of offenses are -- those are in the
15 legislation itself, but the Manual for
16 Courts-Martial provisions are regarded as highly
17 persuasive, so you can go pretty far with what
18 you do there. The whole sentencing process,
19 that's all -- other than having some very general
20 caps, everything about sentencing, whether it's
21 the process, whether it's the -- if you go to a
22 range, whether it's the maximums, types of

1 punishments, that's almost all Manual for
2 Courts-Martial. You don't have to change --
3 again, I'm not making a recommendation whether
4 something should or should not be in legislation,
5 but you can effect important change without
6 having a legislative proposal.

7 CHAIR JONES: Can you say whether you
8 took that route in any particular area?

9 JUDGE EFFRON: Oh, yes. That is
10 throughout our report, where we've identified
11 certain issues, and at some point -- when I say
12 we have 50 plus legislative changes, some of them
13 simply say the president will set forth -- we
14 have some very general criteria, and the
15 president will set forth the implementing rules
16 or the implementing punishments, etc., in the
17 Manual for Courts-Martial.

18 That was something that was very much
19 in our consciousness and in our report and in the
20 legislation that we're proposing, that there are
21 a significant number of areas in which we've left
22 that for regulatory development.

1 HON. HOLTZMAN: May I follow up with
2 one point? I'm not sure I understood one thing
3 that you said, and maybe I misunderstood. You
4 said that you left the areas of the Manual
5 process and sentencing, but substance was an area
6 for legislative change. Did I misunderstand?

7 JUDGE EFFRON: To clarify, we have
8 extensive recommendations on substance that are
9 in the Manual for Courts-Martial. Congress has
10 not delegated to the president, as a general
11 matter, the authority to set forth the elements
12 of offenses in the Manual for Courts-Martial.
13 There's certain areas where the way the statute
14 is written that has an effect, but by and large,
15 the elements of the offenses are regarded by the
16 courts from the Manual for Courts-Martial as
17 non-binding guidance.

18 We haven't changed that approach. We
19 do have a number of proposals in which we
20 expressly have drafted legislation that allows
21 the Executive Branch to set forth regulations
22 that then would constitute the elements. They're

1 case by case. But as a general proposition, we
2 have not changed the underlying approach of the
3 Manual for Courts-Martial, in that the elements
4 of offenses are found in the statute, and that
5 the discussion of elements in the Manual is
6 treated as authoritative, but non-binding
7 guidance.

8 MR. SULLIVAN: At least in a non-134
9 kind of way.

10 JUDGE EFFRON: Yes.

11 CHAIR JONES: Thank you very much.
12 This has been great.

13 JUDGE EFFRON: Thank you so much.
14 Good luck. We look forward to seeing your work
15 and, to the extent we can, I'm looking forward to
16 staying in touch.

17 CHAIR JONES: You have been very
18 reassuring. Thank you very much.

19 (Whereupon, the above-entitled meeting
20 went off the record at 10:28 a.m. and resumed at
21 11:00 a.m.)

22 CHAIR JONES: Mr. Sullivan, are we

1 back in action here?

2 MR. SULLIVAN: The floor is yours,
3 Madam Chair.

4 CHAIR JONES: Okay, thanks. Glen, I'm
5 going to put the burden on you to go through our
6 17 issues, and let's make sure we're all in
7 agreement with where we stand with each of them.
8 As we go through, I would like the committee
9 members to think about how we should group these
10 because they need to be discussed -- some of the
11 issues are related, and they need to be discussed
12 together, so that we can resolve them once and
13 for all. Hopefully, we can make a fair amount of
14 progress because I believe we did at the last
15 meeting, even if we didn't quite hit the button.
16 Glen.

17 LTCOL HINES: Yes, Judge, thank you.
18 The first thing, quickly, is just to make sure
19 that we're all on the same page with the
20 materials that you have in front of you. In your
21 binder, Attachment 1 was my updated summary of
22 where I, from looking at the transcripts, from

1 where I viewed the deliberations were at the end
2 of the last meeting in September.

3 What I've done there, Ms. Holtzman
4 requested at the last meeting that we try to go
5 back and obtain any material that might have been
6 out there that went up with the 2012 version to
7 the Hill. Dwight was very helpful and got us the
8 document that is set forth at Tab 2, which we
9 also obtained -- the panel obtained with a
10 request for information some months ago. What
11 you have there at Tab 2 is basically the RFI
12 response cover sheet, and then the draft of the
13 2012 version of the statute that went up to
14 Congress.

15 What I've done is I've -- where an
16 issue was addressed in that material that went up
17 to the Hill, at Sub D, going back to my summary,
18 I've tried to state it in that summary if that
19 issue was addressed in the material that went up
20 to the Hill. I don't know if you've had any
21 chance to look at it but, for instance, real
22 quickly, with Issue 1 on consent, that was spoken

1 to in the material that went up to Congress, but
2 in some of the other issues, it was silent.

3 The stuff that went up to the Hill was
4 silent. I don't know how helpful any of that was
5 or is, but it's there for you to look at if you
6 have a chance. Tab 3 was Dean Anderson's
7 proposed new definition for Article 120(g)(7),
8 which is a definition of threatening or placing
9 another person in fear. I believe you
10 deliberated on that some, but haven't reached a
11 conclusion or recommendation on that. She took
12 time to draft that, I believe, during the break
13 at the last meeting, so that's there for our
14 discussion. The final tab is a chart much like I
15 provided you at the meeting in May.

16 It's just a little, quick summary of
17 the unresolved issues -- the ones that I marked
18 as unresolved -- and the various speakers who
19 either recommended a change on that issue or did
20 not. Then in the red folder, you've, again, got
21 a copy of the statute, which is highlighted in
22 yellow ink. You've got our agenda, and of course

1 Judge Effron's bio. Then Colonel Green and I, a
2 couple weeks ago, decided it might be a good idea
3 to go ahead and try to start a preliminary draft
4 of a subcommittee report, so that's the other
5 important document.

6 It's already up at the 40 pages, so
7 that -- the only reason that it's in there is to
8 at least just give you a starting point, perhaps,
9 to start on the written report. If our plan goes
10 according to plan and the subcommittee reports
11 out to the panel in December, you will be
12 submitting the final version of your written
13 report, and then two or three members to be
14 selected or to volunteer for Judge Jones would
15 actually provide an oral report during the JPP's
16 meeting in December. That's there for you to
17 take away and look at and shred or beef up.

18 I think it's just a starting point to
19 start to be circulated to everyone to sort of
20 leave in what they like or don't like. One more
21 quick point. For our purposes today, the way
22 I've structured that is I've listed the issue --

1 this is all Issue 1 to 17 in order now. I put,
2 in Sub A, the JPP's rationale for --

3 HON. HOLTZMAN: What are you on, the
4 draft?

5 LTCOL HINES: Yes, ma'am, the draft
6 report. What I've done, if you page over to Page
7 4, that's just -- so as an example, I've
8 structured each section with the issue, and then
9 the JPP's rationale for referring that issue to
10 the subcommittee. I basically just pulled that
11 right out of the JPP's February 2015 report. B
12 is the testimony information material that was
13 given to the subcommittee. For instance,
14 Practitioner A said this. Defense Counsel B said
15 this, whatever you've been told. Then as a
16 placeholder -- I know that some of these haven't
17 been renumbered, but what it should be is C
18 should be your conclusion, and D would be your
19 recommendation. On most of these, where there
20 was a recommendation that I felt like you got the
21 90 percent solution on, I put it in there.

22 That might be -- that's a big build up

1 to that might be a good starting point, Judge, to
2 continue the discussion for each issue, to maybe
3 look at the recommendation, and then if something
4 about that draft recommendation jumps off the
5 page to you -- for instance, Professor
6 Schulhofer's already, in the break, said, "I
7 don't believe that we've resolved Issue 5." If
8 you see something like that, this is just my
9 preliminary draft of what I've tried to
10 encapsulate your thinking. If it's wrong, that
11 should be one to reschedule.

12 PROFESSOR SCHULHOFER: Personal
13 privilege or apology or whatever, I'm now reading
14 what you said in the executive summary, and I
15 think it's perfectly accurate. I misunderstood
16 you to be saying that we had resolved the issue,
17 but now I see that the way you present your
18 conclusion is that the recommendation is to do
19 this or something else. We are on the same page.
20 In other words, your recollection was consistent
21 with mine, which was that we had only -- we had
22 two ideas on the table, and we hadn't chosen

1 between them.

2 LTCOL HINES: Correct.

3 CHAIR JONES: Starting with one -- go
4 ahead.

5 DEAN ANDERSON: Just a question of
6 clarification because I doubt that we'll be able
7 to -- this document is extremely useful, the
8 beginning of the recommendations. Because this
9 is where the pedal hits the metal. How do we
10 give feedback on this document? Because my guess
11 is that we're not going to be able to go through
12 together in these limited deliberations time and
13 line edit this thing and talk through. Can we
14 send you changes via email, or is that outside
15 the scope of what we're allowed to do?

16 COL. GREEN: The way we have dealt
17 with reports through the RSP and the JPP is any
18 of you can provide the staff -- again, the
19 staff's trying to summarize this as best we can,
20 but this is your report. Individual feedback on
21 that of hey, you've missed something on testimony
22 we've heard that needs to be referenced, this is

1 phrased incorrectly, or even more directly, the
2 conclusions and recommendations, obviously, we
3 want to make sure those reflect yours.

4 Individual feedback on that, send them to us.

5 What we've done with other reports is
6 that if it's non-substantive, if it's just
7 wording changes or clarifications in the staff's
8 determination, doesn't necessarily require a
9 discussion to clarify and it may just be helpful,
10 we'll redline, make those changes, and just note
11 those in future drafts. If it's a substantive
12 change, we'll identify that as a point of
13 discussion for the subcommittee to discuss.

14 DEAN ANDERSON: Perfect.

15 (Simultaneous speaking.)

16 MAJ GEN WOODWARD: Can we ask that
17 everybody do those reply all or send it to all of
18 us, so that we see what's going in, so that we
19 don't redo it?

20 DEAN ANDERSON: I thought we weren't
21 allowed to.

22 MS. WINE-BANKS: And if you could send

1 us a copy of this by email, then we could make
2 the changes directly into the text, rather than
3 having to say on page so-and-so, at line
4 so-and-so, please --

5 COL. GREEN: Our intent today was to
6 give you the hard copy, just so you could see it
7 intently because we didn't want to focus so much
8 on the content of this. What we're trying to do,
9 as a staff, is just start to build the car by
10 which you deliver it. Substantively, Glen is
11 really trying to put this together, and Kirt, and
12 they'll be the staff to do this. I certainly
13 don't want this to necessarily be the staff's
14 effort to -- this is it.

15 HON. HOLTZMAN: I don't think we're
16 allowed to send our views to everybody else, we
17 can just communicate with the staff. Isn't that
18 correct?

19 COL. GREEN: The way the rules on the
20 subcommittee have worked in the past is that if
21 you send us your comments, we can redistribute
22 those among the subcommittee and send those back

1 around.

2 (Simultaneous speaking.)

3 COL. GREEN: It's a bit clunky, I
4 know, in terms of the FACA limitations on that,
5 but we will redistribute and distribute comments
6 out among everybody. But to avoid the offline
7 collaboration or outside meetings that FACA tries
8 to avoid, if you just send them to the staff, we
9 will turn them around to everybody else. It's
10 just an extra step.

11 PROFESSOR SCHULHOFER: Quick question.
12 Where you said there seems to be a substantive
13 issue raised that would require committee
14 deliberation, then does that mean it would
15 require us to meet again to discuss it, or how
16 would you -- what would be the next step when you
17 identify something that requires deliberation?

18 COL. GREEN: That's really your
19 decision. On the schedule, this is the last
20 in-person meeting we have planned for you before,
21 at least, the penciled-in intent to brief the
22 panel at their December meeting, on December the

1 11th. But you can meet by teleconference to
2 discuss issues. Subcommittees have done that in
3 the past.

4 CHAIR JONES: That actually worked on
5 the RSP. In fact, we got more done more quickly
6 on the telephone. It wasn't as much fun sitting
7 around.

8 PROFESSOR SCHULHOFER: If I could go
9 back, maybe, either an illustration of the
10 process issues or on the substance, to go back to
11 this point that Colonel Hines raised before on
12 Issue No. 5, the definition of bodily harm. The
13 executive summary now states, accurately I think,
14 the consensus of where we were at the end of the
15 last meeting.

16 The recommendation on Page 15, it
17 says, "Change the language of 120(b)(1)(b) and
18 replace it with language in quotes, or delete
19 120(b)(1)(b) entirely and make a new --" It's
20 true that those were the two alternatives, but
21 maybe there is a misunderstanding on my part
22 because I don't think we had agreed to make that

1 as our recommendation.

2 I thought we were -- at least my
3 expectation was that we were going to try to
4 choose between those alternatives and recommend
5 one of them, rather than kicking the can upstairs
6 to the other committee. Then with respect to
7 process, if I review this and I say that's
8 obviously a substantive issue, other people may
9 not share my view, we need to discuss it. So
10 then we would be discussing that by
11 teleconference?

12 CHAIR JONES: I think we're going to
13 be able to clean up a number of issues today. We
14 have before lunch, and then we've got a couple
15 more hours after lunch. Glen will be listening,
16 and he'll have the record, so he'll know what to
17 change in the draft. Of course, we're all the
18 guardians of our own opinions here, so we'll be
19 able to tell him if we don't agree.

20 COL. GREEN: Judge, can I make one --

21 CHAIR JONES: Yes.

22 COL. GREEN: -- just one more

1 observation, in terms of -- we've talked about
2 it. Particularly on the C and D, the conclusion
3 and recommendation, if there's a subcommittee
4 member that would like to work with the staff on
5 the drafting of any particular recommendations,
6 or if the subcommittee wants to appoint people,
7 or however that process works, the staff, of
8 course, will try to capture what we do, but I
9 think Professor Schulhofer raises a good point.
10 It's a second voice, so if any of you want to do
11 that, the staff has no problem deferring to you.

12 CHAIR JONES: Yes. No, you're right.
13 One of the things I noticed when I -- and I've
14 noticed it whenever I reread the minutes -- is at
15 the end of our discussions, I have not stepped up
16 and said, "Okay, what is our recommendation
17 here," and tried to have someone, at least,
18 articulate it, so we could all agree, and you'd
19 know our conclusion.

20 Let's see if I can't produce a little
21 more order. But I'm also perfectly happy to have
22 someone help, at any point, in terms of with this

1 draft, making sure it actually does reflect what
2 our recommendations and conclusions are. I hate
3 to start with 1, but I think I'm going to start
4 from 1.

5 LTCOL HINES: Okay, Judge.

6 CHAIR JONES: Why don't you go ahead,
7 and then I do have one comment.

8 LTCOL HINES: What I would plan to do
9 or suggest is with 1, as you see there in the
10 attachment in the read-ahead materials, most of
11 these first 11 issues, a working group has
12 already been working on it, so I pretty much
13 thrown that individual under the bus and said --
14 for instance, Working Group 3 was working on
15 this, and Dean Anderson had done some work on
16 that at a prior meeting. She also drafted the
17 suggested explanatory note on resistance.

18 Because if you all recall, I can
19 remember Ms. Holtzman, at least, for one, but
20 some of the other subcommittee members had some
21 concerns about the language in the consent that
22 appeared to suggest the victim has to resist.

1 That generated a lot of discussion. Dean
2 Anderson responded with drafting what you see
3 there in the suggested explanatory note, which
4 would be --

5 CHAIR JONES: Is this on --- where is
6 the suggested language?

7 LTCOL HINES: I'm sorry; I'm on Page
8 1 of Tab 1, in the read-ahead materials.

9 HON. HOLTZMAN: Oh, I thought you were
10 in your draft report. Okay, we're on 1?

11 LTCOL HINES: Just to start off the
12 discussion, I think maybe it'd be helpful to --
13 Judge, if you want to go back and have --

14 CHAIR JONES: Well, yes. Let me
15 preface this by saying we discussed this from the
16 very beginning. Everyone agreed that it would be
17 helpful to put into the Courts-Martial Manual
18 language that would make it clear that resistance
19 wasn't required. Dean Anderson drafted that
20 language. I actually had thought we had agreed
21 that was what we were going to recommend, but
22 perhaps not. Could you point us to your proposed

1 language?

2 DEAN ANDERSON: Sure. I want to just
3 clarify that -- actually, if you wouldn't mind,
4 if I could just step back one --

5 CHAIR JONES: No, not at all.

6 DEAN ANDERSON: -- step? I won't take
7 long. The testimony was about a number of
8 different things on this. Actually, our concern
9 with the consent provision was not on the
10 fundamental, basic definition of consent, which
11 was largely unobjectionable, and we felt it could
12 be litigated, and it would land fine. Our
13 concern was, again, about the question of
14 resistance and trying to clarify that resistance
15 was not required. What I did -- and by the way,
16 this is the second or third draft of this, so
17 this is taking into account feedback that went on
18 in the dialogue -- did a quick draft, brought it
19 back. We discussed it again and eliminated
20 anything that was not textually tied to what was
21 already in the statute, itself.

22 This is an attempt to define the

1 language of the statute, itself, not go beyond
2 the scope of the language in the statute, itself,
3 try to pull that language together in a way
4 that's very simple, straightforward, frankly
5 non-controversial. That's the provision on Page
6 1 of the bound binder -- of the bound materials
7 in the read-ahead materials.

8 It's a suggested explanatory note. It
9 would be in an executive order. It would not be
10 a change to the definition of consent in the
11 statute, itself, and it would simply be an
12 attempt to clarify the question of consent -- the
13 question of resistance which, historically, has
14 vexed rape law, as you all know, and this would
15 be an attempt to just tightly clarify that
16 through an executive order.

17 PROFESSOR SCHULHOFER: I agree with
18 your summary of the history and how we got here.
19 Part of what attracted me to that approach was
20 the assumption that we would not be making
21 recommendations to change the statute. If we're
22 not making changes to the statute, and we're not

1 taking anything to Congress, we do the best we
2 can, within the boundary of the Manual for
3 Courts-Martial. However, it seems to me that we
4 are now going to Congress. So much as I hate to
5 do it, it really re-opens the issue.

6 It re-opens the issue of whether --
7 why would we try to twist ourselves into doing
8 what you so successfully did, which is to try to
9 hook it into the existing language, when if we're
10 going to Congress anyway, which I think we
11 clearly are, why don't we do it with this?

12 Let me just add one more thing to that
13 because I think your solution is successful and
14 probably would be upheld by the appellate courts,
15 but it's not 100 percent clear that it would be
16 because some of the language -- some of the gloss
17 that you put on this pushes -- tends to
18 disapprove a possible defense.

19 DEAN ANDERSON: -- of a possible
20 interpretation.

21 PROFESSOR SCHULHOFER: A possible
22 interpretation that would be pro-defendant.

1 Well, in particular, there are two commas that
2 are missing from the -- in the definition of --
3 if we can all look at the definition of consent,
4 (g)(8), this language that Michelle was referring
5 to, lack of verbal or physical resistance,
6 etcetera, etcetera, does not constitute consent.

7 DEAN ANDERSON: Okay.

8 PROFESSOR SCHULHOFER: (g)(8)(A).

9 DEAN ANDERSON: Yeah, okay.

10 PROFESSOR SCHULHOFER: The third
11 sentence.

12 HON. HOLTZMAN: Right, got it.

13 PROFESSOR SCHULHOFER: My trouble with
14 this language all along has been the sense that
15 there should have been a comma after the word
16 "resistance." "Lack of verbal or physical
17 resistance, or submission resulting from the use
18 of force."

19 My concern is that a defense argument
20 could be very plausibly made that the phrase
21 "resulting from the use of force" modifies "lack
22 of verbal or physical resistance." So the

1 statute as written should be understood the way
2 Michelle interpreted it. But the argument can
3 certainly be made that Congress has not said
4 that.

5 DEAN ANDERSON: So let me just respond
6 to that, because when we first deliberated on
7 this, this was Issue 1. So when we first
8 deliberated on this, we did not know whether or
9 not we were going to tinker with the statute
10 itself or try to do all of our work, swept into
11 the rubric of the executive order.

12 And we just made a decision, let's go
13 modestly, and then if we decide that we're going
14 to intervene in the statute itself, we can use
15 this theory in the statute itself. I'm fine with
16 either one, and would volunteer to change the
17 language of the statute itself, simply based on
18 the analysis of the explanatory note, in exactly
19 the way that you're suggesting.

20 But I think the body would have to
21 agree that that's a superior alternative, to
22 simply the execute note that attempts to explain

1 the language, complicated as it is and imperfect
2 I think. We all agree or we may all agree,
3 certainly Stephen and I agree that it's
4 imperfect, the language in the statute.

5 MAJ GEN WOODWARD: And can I ask the
6 question as the outsider again? But if we put
7 it -- we believe that if this is what we really
8 want to do, and we're going to change 120 by
9 putting it into the statute, it is more solid to
10 hold that --

11 DEAN ANDERSON: Yes, okay.

12 MAJ GEN WOODWARD: Okay.

13 DEAN ANDERSON: The explanatory note
14 is non-binding. It's authoritative, but non-
15 binding. The statute's binding. It is that
16 which is binding.

17 HON. HOLTZMAN: Right, and the
18 President can't or the courts can't change the
19 statute. So if somebody wants to interpret the
20 statute, as Professor Schulhofer has raised --

21 DEAN ANDERSON: That's up to
22 interpretation.

1 HON. HOLTZMAN: Yeah. They can say
2 well wait a minute, you know. Congress didn't
3 put the comma there, and so therefore this term
4 modifies, you know -- therefore, you know, it
5 should be interpreted a different way. So I
6 personally agree with the Professor on this
7 point, and I think that that's a very -- I hadn't
8 noticed that, and I think that that's a very
9 important question.

10 DEAN ANDERSON: So would the verbiage
11 stay relatively the same? We would just insert
12 that into the article?

13 HON. HOLTZMAN: A comma.

14 CHAIR JONES: I think we would add a
15 comma.

16 HON. HOLTZMAN: A comma.

17 CHAIR JONES: That's the only problem
18 with this, and I don't anybody interprets it
19 without the comma. But the impression is there.

20 PROFESSOR SCHULHOFER: It could -- a
21 lot of -- based on other conversations I had in a
22 different context, a lot of people of the more

1 traditional attitudes in this area do think that
2 lack of verbal or physical resistance is very
3 relevant, if not decisive as indicating consent,
4 unless it's the result of force, threat or fear.

5 They understand that if you don't
6 protest because of fear, then you haven't
7 consented. But they think -- this was -- we have
8 a vote 24 to 24 on this issue, an equal split of
9 members of the Council of the ALI, which is the
10 pinnacle of the ALI, split 50-50 on the question
11 of whether lack of verbal or physical resistance
12 by itself establishes consent, in the absence of
13 fear. So I think putting those commas there is
14 crucial.

15 MAJ GEN WOODWARD: Is it a comma or a
16 semicolon, because you've got the commas that
17 separate use of force, threat of force or placing
18 another person in fear, and if you -- wouldn't it
19 be, and I'm not an English -- I'm an engineer,
20 but wouldn't it be a semicolon to separate it
21 from any of the other?

22 DEAN ANDERSON: Could I make a

1 suggestion, not to pull rank on anybody? But
2 just in terms of thinking about this particular
3 language, these are two separate ideas. The two
4 separate ideas are collapsed into one sentence
5 and that's the problem, and simply, you know,
6 adding punctuation itself is not going to solve
7 the ambiguity.

8 Separating this into two sentences in
9 the way that I basically did in the explanatory
10 note --

11 PROFESSOR SCHULHOFER: Right, it's
12 better, yeah.

13 DEAN ANDERSON: Which is -- yeah,
14 which just is lack of verbal or physical
15 resistance does not constitute consent. I would
16 also include a sentence that says neither verbal
17 nor physical resistance is required to prove non-
18 consent. Lack of verbal or physical resistance
19 does not constitute consent, and then --

20 PROFESSOR SCHULHOFER: And submission
21 resulting from.

22 DEAN ANDERSON: And submission

1 resulting also does not constitute consent.

2 HON. HOLTZMAN: I just had a problem
3 I noted in your, you know, in the language here.
4 Your statement on submission is a little bit
5 consent, because one says submission alone is
6 insufficient to constitute consent. But then the
7 second point is submission resulting from the use
8 of force is not -- doesn't constitute consent.
9 Those are two very different things.

10 DEAN ANDERSON: What should the
11 statute say, in your opinion?

12 HON. HOLTZMAN: Well, because I'm
13 going back -- I was going to go back to the
14 language about voluntary. I was trying to find
15 that language about where free will, consent.

16 DEAN ANDERSON: Freely given.

17 HON. HOLTZMAN: Freely given.

18 PROFESSOR SCHULHOFER: It's the first
19 sentence of 8(a).

20 HON. HOLTZMAN: Okay. Means a freely
21 given agreement. Well then if it's a freely
22 given agreement, submission, you shouldn't need

1 the use of force, threat or force, etcetera.

2 DEAN ANDERSON: That's why I took it
3 out.

4 HON. HOLTZMAN: But you have it in
5 your -- but you have it in the --

6 DEAN ANDERSON: No, I was just quoting
7 from the -- the explanatory note was an attempt
8 to hew closely to the language of the current
9 statute. If we're going to change the current
10 statute, we should simply ask ourselves what
11 should the language be.

12 HON. HOLTZMAN: Right. Well that's
13 the point. I thought that this was confusing,
14 that paragraph, because it really set up two --

15 (Simultaneous speaking.)

16 DEAN ANDERSON: I was trying give more
17 than the language of the statute.

18 HON. HOLTZMAN: Right. So it set up
19 two conflicting definitions of submission, or
20 ways in which submission --

21 DEAN ANDERSON: Ultimately, yeah.

22 HON. HOLTZMAN: That's how I read it.

1 I thought it would create a confusion. I'm happy
2 to reconsider the whole question of whether we're
3 talking submission alone or submission, which one
4 we should adopt. I haven't really given that
5 much thought to it.

6 But I was -- as I was -- as I had
7 identified this problem, I was trying to find the
8 language about freely given consent, and then,
9 you know. So I didn't come to a conclusion on
10 this, but I think it's worth -- certainly worth a
11 conversation.

12 MS. KEPROS: You know, we had this
13 meeting in June, where we were like oh, we're not
14 going to change the whole statute. I was the
15 minority view on that. I want to change the
16 whole statute. I proposed an alternate statute,
17 and I rewrote the definition of consent to some
18 extent in the statute.

19 While there are things in my proposal
20 structurally that are broader than just the
21 definition of consent, because like I wanted to
22 take the notion of incapable of consenting and

1 really wrap that into the definition of consent,
2 as in you can't if you, you know, are incompetent
3 or if you have these, you know, limitations on
4 your sobriety or whatever is affecting your
5 inability to make an informed decision in that
6 moment.

7 But you know, I'm just noticing,
8 because I'm looking back at my drafts, since I
9 had made a more global attempt at this. You
10 know, I tried to incorporate some of the things
11 that are third issue capture in that kind of
12 litany of different considerations and some of
13 the things that are relevant to the fact finder,
14 and assessing whether not consent is present or
15 not.

16 I mean I think that was a very helpful
17 recommendation, and I don't think that's on our
18 list of things that are resolved yet. But I just
19 -- I wanted to bring it up right now, because if
20 there is an appetite for modifying the statute, I
21 think it's worth thinking about, whether we
22 should be more explicit to include some of those

1 things. And then the other thing --

2 DEAN ANDERSON: Just on that, Laurie,
3 number three is about the definition of incapable
4 of consent.

5 MS. KEPROS: Right, but the proposed
6 solution is to add something to , I think, the
7 Manual for Courts Martial or the jury instruction
8 or something, saying here are various factors
9 that are going to be relevant to assessing
10 whether or not somebody was able to give of
11 consent or not.

12 MAJ GEN WOODWARD: Oh, rather than the
13 statute, you mean.

14 MS. KEPROS: Well I'm saying maybe I
15 read -- if we're talking about changing the
16 statute --

17 HON. HOLTZMAN: Just explain, I mean
18 rather speaking in generalities, maybe to give --
19 to tell us what you're thinking about.

20 MS. KEPROS: Yeah. Well, I'm just --
21 I'm trying to find the draft, since it wasn't my
22 work, so I can bring it to your attention. It's

1 in that tab, if you go to Issue 3.

2 HON. HOLTZMAN: Issue 3?

3 MS. KEPROS: Yeah, and we -- yeah, we
4 can at least see if it's in my copy book. I kind
5 of copied --

6 (Simultaneous speaking.)

7 MS. KEPROS: Oh do you?

8 MS. FRIEL: While Laurie's looking for
9 that, I just have a bigger thought that just
10 occurred to me, with what Professor Schulhofer
11 already started with, and it just struck me.
12 Just because we may decide to recommend certain
13 changes to Article 130, I don't think
14 necessarily, given all the presenters we heard,
15 that means okay, so we're recommending some. We
16 should now just go ahead and run through all of
17 them.

18 I think we really need to think back
19 about what we heard from all those presenters
20 over the last couple of months about every time
21 you change the statute, how difficult that can be
22 for them. I still am of the opinion we should be

1 judicious in any recommendations about statutory
2 change.

3 Not that we shouldn't make any, but
4 just because we make some, we don't want to do
5 the whole thing. If we can accomplish something
6 in another way, we should consider that.

7 MS. KEPROS: Well, and I'm not trying
8 to discount those considerations. I guess my
9 issue is just if we're talking about whether or
10 not to change the statute, I think we should be
11 thinking about the different considerations that
12 are variants of our recommendations, and whether
13 or not they can be accomplished in a statutory
14 change, or whether that would be well advised.

15 So in the -- it's Tab 1, page four.
16 There's draft language for an executive order.

17 MS. FRIEL: Tab 1, page four?

18 MS. KEPROS: Yeah. That has to do
19 with the criteria for capable of consenting,
20 right. So then there's like an enumerated list
21 of factors that should be considered, and I mean
22 again, I understand there's a simpler term,

1 "incapable of consenting" at this point, and that
2 was the reason that we got Issue 3 framed for us
3 the way it has been.

4 But I'm just trying to put it on the
5 table to say, are we looking at a broader
6 response to this question, in light of what we
7 learned this morning.

8 MAJ GEN WOODWARD: Can you give us
9 your recommendation that you already wrote, since
10 we don't have it?

11 MS. KEPROS: Well I could --

12 MS. WINE-BANKS: She gave that to us.

13 (Simultaneous speaking.)

14 MS. KEPROS: Yeah. I mean here's why
15 I -- I'm happy to do that. I don't know that it
16 helps, and here's why, because I changed the
17 entire thing, the entire Article 120. I
18 reorganized it so that it was all contingent on
19 non-consent as a baseline crime, and then
20 additional circumstances potentially aggravating
21 the offense.

22 Then I organized the definition of

1 consent to include considerations of when there
2 could not be consent as a result of incapacity.
3 Simply, you know, they couldn't give consent,
4 versus saying they did or didn't, and then having
5 a separate definition of incapacity.

6 So I can do that. I don't know that
7 that's productive, just given the kind of
8 temperature of the room. But I'm just bringing
9 this up, because I'm trying to figure out are
10 these things we should be looking at doing right
11 now?

12 Because the other thing I think we
13 didn't recognize or remember, or maybe did not
14 ever really understand, but I was looking at the
15 introduction today on Issue 1 in the JPP's
16 rationale for referring it to us.

17 These are all concerns, including many
18 raised by Professor Schulhofer, about the actual
19 text of the consent definition itself. Again, I
20 understand that wasn't the direction that this
21 sub-subcommittee went, because that wasn't the
22 push of this broader group.

1 But you know, there was some critique
2 here at page four of the current draft of the
3 report, and then there's a bunch of, you know,
4 language changes, some of which we've discussed,
5 such as whether we should replace the word
6 "freely given" with voluntary.

7 But you know, some other commentary
8 that we received in testimony. So I guess I just
9 wanted to know if other people had that on their
10 radar, because I hadn't until right now.

11 MS. WINE-BANKS: I do definitely agree
12 with you, that we need to consider all of the
13 factors, which are those testimonies we heard
14 saying don't do it; it's too confusing, and then
15 the comment that Liz heard today from -- possibly
16 from Andy, but from maybe some other source,
17 about the fact that we keep changing it a little
18 bit, and so there keep being problems, and that
19 maybe we really need to look at it and say here's
20 what it really should be in 2015, 2016, whenever,
21 that this is the best that it could be. This
22 meets modern standards. It's clear, it's

1 concise, and just get it over with, so that we
2 don't have 2007, 2012 and 2016 and then in 2018,
3 someone has to make more modifications.

4 So I think there are some that can be
5 done through executive order or the Manual. But
6 I think there are some that maybe we really need
7 to bite the bullet and just say the best way to
8 do this is to propose legislation, and that makes
9 it harder for it to be nibbled at in the future.
10 It makes it clearer.

11 This is only one part of the law. The
12 other committee is going to be looking at the
13 entire code. So if they're making changes to the
14 entire code, then surely this one section, which
15 has been highly criticized, should be subject to
16 being changed completely, and maybe completely
17 even, as you proposed.

18 But I think each individual issue that
19 was referred to us could be considered as well,
20 this one's okay. We could really change this
21 without a problem. This one seems like maybe
22 it's the part that needs legislative change.

1 HON. HOLTZMAN: Just to follow up,
2 maybe I wasn't clear. What I heard this morning
3 was that 120 itself was the problem.

4 The reason that it's a problematic
5 statute is that it itself is the product of a lot
6 of compromise and back and forth, and reluctance,
7 you know, as you mentioned. What are modern
8 theories about this? What are all the fashion
9 theories about this, and that kind of compromise
10 and that kind of --

11 So it reflects that. It may not be
12 the best product therefore of somebody sitting
13 down and saying we have the right statute.
14 What's the best way to do it? So I just raise
15 that, and I don't know if that's true. It's
16 hearsay.

17 MS. FRIEL: Of course that could
18 happen again.

19 MAJ GEN WOODWARD: And isn't that why
20 this runs together if we look at this, when I
21 don't think they've ever done that before, so
22 that you can actually look at it and really say

1 okay, how would we want -- starting fresh, how
2 would we want this to go? I mean it seems to me
3 that that's why this group has been put together.

4 CHAIR JONES: Well, we did discuss as
5 recently as the last session that what we were
6 doing was going through each of these and
7 deciding what the problem was and what a good fix
8 would be, and then figuring out whether we would
9 insist on one amendment or do, you know,
10 amplification in the Courts-Martial Manual.

11 I think it's too late for us to do a
12 wholesale change of the statute, which is
13 Laurie's proposal, and I think it's undoubtedly,
14 I read it three months ago or four months ago, a
15 great model. It should be part of the report, as
16 a -- and dissent in a way.

17 You can adopt many of our brilliant
18 thoughts, Laurie, but you will also dissent and
19 add your voice, because I think people should see
20 this model.

21 DEAN ANDERSON: Could I make a
22 suggestion as to how to resolve this today?

1 CHAIR JONES: Yeah, sure.

2 DEAN ANDERSON: So here's what I could
3 do, if the body would find it useful, and that is
4 make a proposal for changes in the language
5 itself.

6 HON. HOLTZMAN: Of the statute?

7 DEAN ANDERSON: Of the statute, I'm
8 sorry. Make a proposal for taking the language
9 that's currently positioned as a recommendation
10 as an executive order, and turn it into a
11 recommendation for changes in the statute, and
12 try to hew closely to the dialogue that we've
13 articulated today on what we want to see in the
14 statute itself.

15 That would be a modest change to the
16 statute, but it would be a way of making it
17 effective, more effective. So I could do that
18 over lunch. I do these changes over lunch.

19 CHAIR JONES: Well, if we wanted --
20 all right. Well, we can table this. My own
21 opinion on this is I don't see this as big a deal
22 as many of our other issues in this statute. I'm

1 not sure the language is so un-understandable.

2 I would go with an executive order.

3 I don't think I would go with an amendment. But
4 that's just my gut reaction. All right. So
5 shall we go to -- yes Professor.

6 PROFESSOR SCHULHOFER: We're looking
7 again at the executive order that Michelle
8 proposed, and actually see the brilliance of her
9 strategy. If you look on page one of Tab 1,
10 where the suggested explanatory note "lack of
11 verbal or physical resistance . . . does not
12 constitute consent." And that's an effort to
13 take out --

14 CHAIR JONES: To put that comment in.

15 PROFESSOR SCHULHOFER: --the
16 qualifying language. You can -- I would bet
17 millions of dollars. I mean any defense attorney
18 who did not raise this issue would be
19 incompetent.

20 CHAIR JONES: Well are they raising
21 it? This has been around for a while.

22 PROFESSOR SCHULHOFER: Oh yeah.

1 MAJ GEN WOODWARD: And if you look at
2 how many of our testifiers said support
3 modification, I mean it's a large number.

4 CHAIR JONES: Of (g)(8) on this issue?

5 MAJ GEN WOODWARD: Of this issue,
6 yeah. It was, you know, seven and only two said
7 don't change. So I think they're facing -- I
8 just bring that up to say I think they're facing
9 challenges in the field.

10 PROFESSOR SCHULHOFER: For a defense
11 attorney, this just jumps out as a qualifier in
12 the statute, that the drafter of the executive
13 order conveniently replaced by an ellipses. And
14 I think also responsive to your question about
15 the relationship between the two things, the
16 Manual can certainly cut back on liability that
17 Congress has enacted, but it can't go in the
18 other direction.

19 That's the problem. It can't extend
20 liability where Congress has cabined it, and the
21 argument is going to be that what was -- in those
22 three dots was a confining of the liability.

1 HON. HOLTZMAN: And by the way, nobody
2 has had the idea. No defense counsel has ever
3 had that idea before. After they read our
4 deliberations, they certainly will. So we can
5 count on that, and having that come up.

6 (Laughter.)

7 CHAIR JONES: Okay. We thankfully
8 accept your offer.

9 HON. HOLTZMAN: Michelle, are you
10 going to be thinking about some of the other
11 changes, such as use of the word "voluntary"
12 instead of --

13 CHAIR JONES: I think we discussed
14 that. I think we resolved that we were going to
15 leave freely given freely given. Was that --

16 MS. KEPROS: I think so too. I
17 remember that conversation and I think there was
18 consensus.

19 HON. HOLTZMAN: Okay, and what are you
20 going to do about submission?

21 DEAN ANDERSON: So my recommendation
22 is to say -- is to break apart the sentence that

1 says "lack of verbal or physical resistance or
2 submission resulting from" etcetera "does not
3 constitute consent," and actually break that into
4 its constituent parts.

5 My recommendation will be that
6 submission does not constitute consent, and then
7 this body will have to decide whether or not it
8 should be submission does not constitute consent,
9 or whether or not it should be --

10 HON. HOLTZMAN: So that's going to be
11 something for discussion?

12 DEAN ANDERSON: Yes.

13 HON. HOLTZMAN: Okay. Just wanted to
14 --

15 CHAIR JONES: And frankly, if that
16 amendment is one that we can all accept, we don't
17 need an executive order, because it clarifies the
18 statute. Maybe that isn't the better approach.
19 I don't know.

20 LTCOL HINES: Just talking to the
21 point where we are --

22 CHAIR JONES: We're on 1.

1 LTCOL HINES: Statement 1, Dean
2 Anderson's going to go back and rework this, and
3 we're going to float it around. And then at some
4 point, the decision will be made, whether the
5 recommendation is to do that by statute or EO or
6 elsewhere. Is that accurate?

7 CHAIR JONES: Well, we can come back
8 today and come back to one. That would be my
9 hope. I'd rather do this when we're all
10 together.

11 (Simultaneous speaking.)

12 PROFESSOR SCHULHOFER: The concept of
13 lack of physical or -- lack of verbal or physical
14 resistance turns out to be distinct from the
15 concept of submission in the litigated cases.
16 Those are two separate ideas. I don't think we
17 need to elaborate on it now, but the way these
18 things are litigated, those are two separate
19 ideas.

20 You can argue submission separately
21 from the lack of verbal or physical resistance.
22 So I think it's -- in the ideal world, they would

1 have two separate sections or sentences.

2 CHAIR JONES: I think that's your
3 plan, right?

4 DEAN ANDERSON: Right, bingo. We're
5 going to resolve this today.

6 HON. HOLTZMAN: Excellent.

7 CHAIR JONES: All right. So we move
8 to an amendment on that, and we'll see how it
9 looks later. All right, number two.

10 LTCOL HINES: All right. With respect
11 to two, I think you've made your conclusion and
12 recommendation, and that was that -- as listed in
13 the preliminary report on page seven.

14 HON. HOLTZMAN: Wait, where are we
15 now? Are we in this book?

16 (Simultaneous speaking.)

17 LTCOL HINES: All right. Yeah, this
18 is probably a bad decision to break this up. So
19 in the back, in the binder, the only thing I have
20 are the issues that have not been resolved.

21 CHAIR JONES: Right.

22 HON. HOLTZMAN: Okay. So what are you

1 on?

2 LTCOL HINES: So I'm on page seven of
3 the draft report now.

4 HON. HOLTZMAN: Oh, so you're not
5 grabbing the book. Yeah, this is a good idea to
6 have --

7 (Simultaneous speaking.)

8 LTCOL HINES: Noted, noted.

9 HON. HOLTZMAN: Okay. What page are
10 you on sir?

11 MS. WINE-BANKS: Well, it's also the
12 blue highlighted one as the ones the Board
13 decided. So if you just sort of inserted those.
14 So one is --

15 LTCOL HINES: So on number two, the
16 Subcommittee's conclusion, as I heard it, was
17 that --

18 HON. HOLTZMAN: Is this the number two
19 that I'm looking at?

20 LTCOL HINES: Yes, it is.

21 HON. HOLTZMAN: Yes, okay, thank you.

22 LTCOL HINES: That with respect to

1 consent and with respect to the definitions to
2 consent, that your consensus was to leave
3 consent, what do you call that, a defense or
4 something, or an attack on proof, the way that
5 it's presently handled, which is when it is
6 raised by the evidence, the military judge gives
7 the panel an instruction on it. It's already in
8 the benchbook, and that mistake of fact as to
9 consent be specifically listed in the RCMs as an
10 available defense.

11 That was to satisfy those defense
12 counsel who came in and told you there's an
13 argument that we can't raise this, you know, and
14 then General Pede and some others said well, that
15 might be a little disingenuous to make that
16 argument. But let's go ahead and clarify, and
17 restate the fact of consent --

18 MAJ GEN WOODWARD: But you just said
19 RCM, but your write-up says "statute or the RCM."

20 LTCOL HINES: Right, and that General
21 Woodward, because our discussion has really sort
22 of gone back and forth as to okay, do we need to

1 put that in the statute, or can it be satisfied
2 by putting it into the Manual for Courts-Martial.
3 So you could put it either place.

4 CHAIR JONES: My only concern with
5 putting it back into the statute is then people
6 argue well, if they put it back in, it must have
7 been capturing the time period that --

8 (Simultaneous speaking.)

9 CHAIR JONES: So I think I would
10 rather clarify it in just the Manual for Courts-
11 Martial.

12 PROFESSOR SCHULHOFER: This is a good
13 example of one where the Manual for Courts-
14 Martial can clearly say this is a defense, even
15 if Congress hadn't made that clear.

16 CHAIR JONES: Right.

17 PROFESSOR SCHULHOFER: What they can't
18 say is that this is not a defense.

19 CHAIR JONES: So is everyone agreed on
20 that? Okay, great. Take out the into the
21 statute step. So we changed page one by taking
22 out "into the statute" in the next to last line

1 in the -- under paragraph --.

2 PROFESSOR SCHULHOFER: Is rules for
3 court martial, is that the same as the MCM?

4 LTCOL HINES: It is, and I can clarify
5 that.

6 (Simultaneous speaking.)

7 CHAIR JONES: I think we've never
8 gotten to discuss three, so I would wait on that
9 and see that actually is "incapable of
10 consenting" an issue, and I think Lisa, you never
11 had a chance actually to present it in depth, did
12 you?

13 MS. FRIEL: I didn't.

14 LTCOL HINES: It's on page four of Tab
15 1.

16 (Simultaneous speaking.)

17 MS. FRIEL: So it keeps getting
18 deferred, and we never get to present it.

19 LTCOL HINES: I don't see it the
20 draft. What page?

21 CHAIR JONES: Yeah, page eight.

22 CHAIR JONES: Lisa, let me ask you to

1 speak to that. If we take a look at your
2 suggestion on incapable of consenting, is it
3 going to help us with respect to some of the
4 other issues? I thought --

5 MS. FRIEL: I think so, especially
6 when we have a discussion of consent that we have
7 to pick back up after lunch.

8 CHAIR JONES: All right. Then why
9 don't you do it. Thank you.

10 MS. FRIEL: So I guess I'd say it this
11 way. I think we heard from a lot of presenters
12 that they would like a definition of incapable of
13 consenting, and our recommendation from our small
14 group is we should definitely have some kind of
15 definition of incapable of consent.

16 What we did was we looked at the
17 federal civil law for their definition of
18 incapable of consent, and that's what we have
19 pulled out as a suggestion, at least of where to
20 start for that. So if you look at Tab 1, today's
21 materials, Tab 1, page four, okay.

22 We have suggested drafting language

1 for a statutory change, and the language there
2 with A and B is right from the federal law, and
3 it's federal civil law. It's also in line with
4 Laurie's proposal and what rank is Grammel? I
5 hate to -- colonel. I know he doesn't mind if I
6 promote him, but he won't like it if we do the
7 opposite.

8 PROFESSOR SCHULHOFER: When you say
9 "federal civil law," you mean Title 18?

10 MS. FRIEL: Yeah.

11 PROFESSOR SCHULHOFER: Criminal Code?

12 MS. FRIEL: Yes. That's their
13 definition right there.

14 HON. HOLTZMAN: So that's not --
15 that's criminal code.

16 MS. FRIEL: Oh, I'm sorry, no, no, no.
17 I'm sorry. I meant criminal code. I'm sorry.
18 Right, yes, yes. No, I'm sorry. No, no, no, I'm
19 sorry. I missed --

20 (Simultaneous speaking.)

21 HON. HOLTZMAN: Okay, right. This is
22 from the federal criminal statute.

1 MS. FRIEL: Exactly, their definition
2 of incapable of consent, right? What's right
3 there.

4 DEAN SCHENCK: Can I interrupt? This
5 is Lisa, and I've got to go to class. But I did
6 want to say that I drafted the paper on this
7 topic, and I agree with Lisa Friel on her
8 recommendation. Actually, I think that mirrors
9 the language from the 2007 statute.

10 I'm not disinclined to do an executive
11 order. But I do want to say that those cases
12 that the staff provided us reflect the factual
13 sufficiency cases, where the courts -- the Courts
14 of Criminal Appeals have busted cases, because of
15 the lack of definition of incapable of
16 consenting, and because of the blacked out versus
17 passed out.

18 So the paper, the article as drafted
19 is essentially -- articulates factual sufficiency
20 and puts incapable of consenting defined in the
21 statute, and because of the power of the
22 appellate court to disregard the executive

1 orders.

2 Also, to put the language back from
3 the 2007 statute, which does look like the Title
4 18 provision. So on that note, I've got to run
5 to class, and I'll drive over as soon as I'm
6 done. I really appreciate the hard work you guys
7 are doing on all these provisions, and I should
8 be there by two. My class ends at 1:30.

9 CHAIR JONES: Great. Thanks, Lisa.

10 DEAN SCHENCK: Thank you, bye.

11 CHAIR JONES: So as Lisa points out,
12 it has benefits in three ways. It was the 2007
13 statute, so there's a body of law on that. It is
14 18 U.S.C. federal criminal law, the statute body
15 of law with that, and frankly it made sense to us
16 in the subcommittee when we -- the subcommittee
17 subcommittee, sub-sub, when we looked at that.

18 So our suggestion is to adopt that
19 definition as a statutory change, and then we
20 also at the bottom of the page there, on page
21 four, you see we also drafted language for an
22 executive order, which would go into the MCM and

1 the benchbook for guidance, in which we talk
2 about the totality of circumstances and the kinds
3 of things that should be looked at when you're
4 deciding if somebody is incapable of consent.

5 Part of the reason that we did that is
6 one of the big issues we heard was the problem
7 with incapable of consent is this feeling that
8 somebody has to be totally out cold, intoxicated,
9 for somebody to be incapable of consent, and that
10 a lot of cases, when they were tried, started
11 coming down to what is the amount of alcohol?

12 You know, nobody was looking at all
13 the other things. How much did this person drink
14 and were they out cold or were they not out cold?
15 Of course, someone drinks, you know, how much I
16 drink as to how much somebody much bigger than I
17 drinks makes a big difference.

18 So what we wanted to do was list out
19 a bunch of kinds of things that you should look
20 at. So that would be read to a group of people
21 on your jury, on your panel, and that would get
22 their heads wrapped around. We've got to look at

1 something broader than just how many drinks did
2 this person have.

3 So that's our proposal. We can
4 obviously, you know, tweak the things that we set
5 out, things to look at. But that was our
6 thinking behind this, and of course it ends with
7 what the statute already talks about in its
8 present law. The accused must know or reasonably
9 should have known, and we've had all kinds of
10 discussions about that. But I think we all
11 resolved that we need to leave it like that. So
12 that's our proposal for what to do.

13 PROFESSOR SCHULHOFER: I saw you
14 looking at me, and that is --

15 MS. FRIEL: Because I know we all went
16 around in that.

17 PROFESSOR SCHULHOFER: I'm the only
18 dissenter on this, and I accept that, and I'm not
19 going to keep flogging it, on this issue of
20 whether you're going to punish people for
21 negligence on this issue. But since you're
22 relying on Title 18, we have to be aware that

1 Title 18 requires that the defendant know that
2 the person is incapable of consenting.

3 If we're going to rely on the language
4 of Title 18 in its expansiveness or however we
5 take it, you know, I think you have to take the
6 bitter with the sweet, or focus.

7 If you're going to have the negligence
8 standard, we have to think really more carefully
9 about what it is that you're going to hold the
10 person responsible for negligence of. I didn't
11 say that very well, but that's my point.

12 CHAIR JONES: Yeah, I know.

13 PROFESSOR SCHULHOFER: Title 18 says
14 you have to know, and Congress has said they are
15 not going to punish people for negligence with
16 respect to something that's so difficult for
17 anybody to understand. And typically in these
18 cases, the testimony comes from experts, who
19 testify as to the impact of alcohol on a person
20 of that size, weight, etcetera.

21 But it's not always something that the
22 -- maybe it's something that the defendant should

1 have known. But it's very hard to say that he
2 did know something that it takes an expert to
3 know.

4 MS. FRIEL: But I don't think it takes
5 an expert to know.

6 (Simultaneous speaking.)

7 MAJ GEN WOODWARD: That is something
8 that we all can accept. I mean, you know, if I
9 want my airmen to be able to reasonably know if
10 someone is capable of consenting, rather than
11 know factually.

12 PROFESSOR SCHULHOFER: I know I'm an
13 outlier in that. I don't want to keep flogging
14 it. I accept. I throw in the towel. I'm just
15 saying Congress -- I understand your point of
16 view. But Congress has not accepted that point
17 of view in Title 18.

18 (Simultaneous speaking.)

19 LTC McGOVERN: --to give them the
20 opportunity to do that.

21 CHAIR JONES: What are you saying
22 Kelly?

1 LTC McGOVERN: And maybe Mr. Sullivan
2 can shed better light. I can make a copy of this
3 case for you. But it was previously provided to
4 you, the Pease case, 14 July 2015. Talks about
5 incapable of consenting. It goes around and
6 talks about the factual insufficiency, and it
7 specifically gets to the point that they --

8 The Appellate Court was not convinced
9 beyond a reasonable doubt that the complainant
10 was incapable of consenting, because she did go
11 in and out of consciousness, or that the
12 appellant or the accused was in fact expected to
13 know that.

14 So it goes exactly to the point that
15 Professor Schulhofer is making. So just to
16 refresh everybody's memory, maybe I can pass this
17 around. You could take a look at it during lunch
18 and then when Dean Schenck comes in in the
19 afternoon --

20 CHAIR JONES: What's the statute that
21 this is a case about? What's the statute? Is it
22 a rape case?

1 LTC McGOVERN: Yes, yes.

2 MR. SULLIVAN: It's an Article 120.

3 HON. HOLTZMAN: It's an Article 120?

4 CHAIR JONES: Yes.

5 HON. HOLTZMAN: Oh, I thought you were
6 talking about it being a Title 18, okay.

7 LTC McGOVERN: No. What it did decide
8 is that they were not convinced beyond a
9 reasonable doubt that the accused knew that she
10 was incapable of consent.

11 HON. HOLTZMAN: And that's because she
12 went in -- the victim went in and out of
13 consciousness?

14 LTC McGOVERN: Yes ma'am. That's your
15 --

16 MR. SULLIVAN: And I mean there were
17 additional facts that went with that case.

18 LTC McGOVERN: Right. They went by
19 the totality of circumstances, how much she
20 drank, what these other two witnesses were
21 saying, what she in fact said on cross
22 examination. But it's one example of how the

1 Appellate Courts are currently struggling with
2 the factual insufficiency requirements, and
3 whether looking at both the victim and the
4 accused in these cases.

5 MAJ GEN WOODWARD: But don't we give
6 them more latitude as a jury to decide and to
7 take into account all the factors that are out
8 there if we say "reasonably should have known."
9 I mean that "reasonably should have known" to me
10 is very meaningful, because that's what we're
11 looking for in an accused, right, isn't it?

12 I mean rather than definitive
13 knowledge that would have to be proved, we say --

14 PROFESSOR SCHULHOFER: Usually,
15 usually.

16 (Simultaneous speaking.)

17 MS. FRIEL: The language is in the
18 statute here.

19 PROFESSOR SCHULHOFER: In the UCMJ, it
20 says "should have known." But in Title 18, the
21 parallel provision of rape in Title 18 requires
22 actual knowledge. This is a broader --

1 (Simultaneous speaking.)

2 MS. WINE-BANKS: --Title 18 in order
3 to take certain parts of it. We can make it
4 better.

5 MS. FRIEL: We're just defining
6 capable of consent. We're just defining the
7 phrase in the beginning. The two subsections say
8 reasonably should know. So Congress has already
9 agreed.

10 MS. WINE-BANKS: I would come down to
11 the facts at the bottom line, and any court or
12 any jury could say I don't think the facts
13 support that he knew or reasonably should have
14 known, because of A, B and C. I think if we
15 spell out all of the possibilities and say the
16 totality needs to be taken into account, then we
17 do a service.

18 I might tweak, because of the one case
19 we discussed where the blood alcohol was 0.4, but
20 she did not appear to be inebriated, that we may
21 want not just to talk about the amount consumed,
22 but the capacity or tolerance.

1 MS. FRIEL: Well that's the next
2 bullet.

3 (Simultaneous speaking.)

4 CHAIR JONES: One at a time.

5 HON. HOLTZMAN: I just want to -- I'd
6 like to sort of skip over the reasonably should
7 have known, because I think Professor Schulhofer
8 has raised a white flag on that. So let's not
9 spend time on it. But I'm just concerned, before
10 we get to the draft language for an EO, I'm just
11 concerned about the language of Title 18.

12 Just because it's in Title 18, I mean
13 that's a very good starting point, and it's a
14 very unobjectionable starting point. As I look
15 at the language, I find it confusing and
16 concerning.

17 Why is it limited to physically
18 incapable of declining participation? I mean
19 there could be some mental circumstances too,
20 mental handicap, mental retardation, mental
21 something, or maybe the person is just frozen, or
22 whatever, the frozen issue. I don't know.

1 So the physically already creates a
2 problem for me, and then what is the last six
3 words, "or intends to do so." What does that
4 mean? I don't even know what it means.

5 So I'm a little concerned about the
6 definition. I mean I think it's a great starting
7 point, you know. If you want a consensus
8 starting point, it's great. But I'm a little
9 troubled about it, because I think it's too
10 narrow and it's also incomprehensible to me. So
11 I have two problems with it.

12 PROFESSOR SCHULHOFER: And if I just
13 jump the queue quickly, because I know I'm on the
14 defense side of this, but there are just -- the
15 other side of my concern is that apart from the
16 negligence and so on, on the other direction, the
17 definition of what you have to be aware of is
18 much too narrow. This really worries me.

19 What does it mean to say that
20 somebody's physically incapable of communicating
21 unwillingness? I think Lisa takes care of it in
22 the executive order, totality of the

1 circumstances.

2 But the language of the -- this is
3 where you're putting a gloss that's, you know,
4 goes well beyond what the statute says, because
5 the statute says the person has to be physically
6 incapable of communicating unwillingness.

7 That basically means you have to be
8 blacked out, and if you the MCM says otherwise,
9 it's going to be vulnerable.

10 MS. FRIEL: So what if we -- just
11 think about this. Let's just say if you took out
12 the word "physically" and I don't know what the
13 "attempts to do so" either means, if we took
14 those two things out, what's the downside of
15 reading it just like that? Take out the word
16 "physically" or "attempts to do so." You're
17 incapable of declining or --

18 (Simultaneous speaking.)

19 DEAN ANDERSON: So yeah. This is
20 something that I think, you know, the problem is
21 that this is a much more restrictive provision
22 than what's in the statute itself, and it

1 strongly limits an ability to make a claim that
2 someone was incapable of consenting.

3 Because it says that you are
4 incapable. You cannot understand, apprise the
5 nature of the conduct, which means you can't
6 understand that this is sex. That's extreme.
7 The next provision is even if you take out the
8 "physically," incapable of declining
9 participation in means you cannot express the
10 word "no." You cannot communicate unwillingness.
11 You are incapable of it. That means you're
12 essentially unconscious.

13 I don't want to limit incapable of
14 consent to totally unconscious, and this
15 language, I believe, does so. It either says
16 you're completely incapable. In some ways, it
17 mirrors the McNaughton rule. You're either
18 incapable of understanding the nature of the
19 conduct, meaning you don't know that it's sex,
20 which is so limited as to be vanishingly, you
21 know, it's vanishing.

22 And the second is that you are

1 unconscious. Now what that means is now you've
2 erased from the statute incapable of consenting
3 and simply conflated it down to unconsciousness,
4 which the statute already criminalizes. If you
5 want incapable of consent to mean something, I
6 think you could say substantially. I'm not sure
7 what to say.

8 I think that the ALI came up with this
9 same challenge, because I made the same challenge
10 to language that was proposed earlier at the ALI,
11 and then it was modified to something like
12 substantially unable to. You know, I like one of
13 the -- and I don't think the executive order
14 necessarily solves it, because it says these are
15 a bunch of factors, but it doesn't say at what
16 point those factors kick in or are meaningful.

17 If someone cannot speak, if they are
18 --- you know, if they are garbled -- that's
19 going to be nice on the transcript --

20 (Laughter.)

21 DEAN ANDERSON: If their language is
22 garbled, if they cannot stand or walk and they're

1 falling down, that's enough for me. They are
2 incapable of consenting, even if they understand
3 that's what happening is sex, even if they could
4 communicate the word "no" through a garble, and
5 yet they would not meet the definition in the
6 statute.

7 So what I'm concerned about here is
8 that the definition that would go into the
9 language of the statute itself would narrow
10 substantially circumstances in which someone
11 could make a claim that a drug or intoxicant or
12 mental disease or defect rendered them incapable
13 of consenting.

14 CHAIR JONES: Laurie.

15 MS. KEPROS: I have, unsurprisingly,
16 the opposite concern. I think your threatening
17 what would come under incapable of consenting, to
18 include circumstances where I think it would be
19 very reasonable for an accused to believe there
20 is consent, such as where both parties are
21 intoxicated and are engaging in sexual activity.

22 I think there are plenty of

1 circumstances where that is considered okay, and
2 if we say -- if somebody has garbled language, if
3 their language is so garbled that they cannot
4 decline participation, that's kind of a bright
5 line rule that we can provide to people engaging
6 in sex, and say yeah, that's the point that you
7 shouldn't even be considering it.

8 But I just -- I don't think it's
9 reasonable to say that, you know, anybody who's
10 somewhat impaired by alcohol can't consent to
11 sex, because I think they do it all the time, and
12 I think we're going to have a lot of other
13 unintended consequences if we make it that broad.

14 The other concern I guess I'm having
15 is whether some of the situations that may be
16 flashing through your mind as we talk about this
17 could be more situations where there is a lack of
18 consent, as opposed to the incapable of consent
19 scenario.

20 Because I think certainly there are
21 circumstances where someone really isn't
22 consenting, but they're just not really with it,

1 and that gets back to the issues about resistance
2 and submission. I mean that's why I feel like
3 we're probably addressing that case better by
4 tinkering with the consent definition.

5 I'm more comfortable with this idea.
6 Just for the sake of offering it, definitely a
7 definition of incapable of consenting in my
8 draft. It has the similar concepts, which I
9 think we've all drawn from elsewhere, both in the
10 Article 120 as it currently exists, and the body
11 of law that the subcommittee referenced.

12 You know, like my definition talks
13 about the incapacity being the result of
14 impairment by any drug, intoxicant or other
15 similar substance; physical disability; mental
16 disease or defect; the person's unable to
17 appraise the nature of the conduct; physically
18 declined participation; or physically communicate
19 an unwillingness to engage in the sexual conduct.

20 I think it's that communication piece
21 that gets to the knowingly concern that Professor
22 Schulhofer keeps bringing up, and I will say I

1 join his minority vote on that. Not that it
2 matters. My draft does require full knowledge at
3 every step, in terms of the culpable mental
4 state.

5 But you know, I think -- I just -- I'm
6 not saying that I don't think there are
7 situations where it should be criminal to engage
8 with an impaired person. I'm just saying I don't
9 think those are necessarily incapable of
10 appraising situations.

11 HON. HOLTZMAN: Could we look at her
12 language?

13 MS. FRIEL: The first two things are
14 right in the statute.

15 HON. HOLTZMAN: Right.

16 MS. FRIEL: The first two, about
17 impaired by drug, intoxicant, substance, mental
18 disease, physical. That's all statutory
19 language. What you're adding are the two things
20 that I have in the draft definition. But that's
21 your definition, it's basically that --

22 MS. KEPROS: Right, A and B that's

1 already in the statute, and then adding the
2 definition.

3 MS. FRIEL: Well, and some of this is
4 a function of how I reorganized the statute. So
5 I took things that were other sections and put
6 them into the definition itself.

7 PROFESSOR SCHULHOFER: I thought maybe
8 it might help, this is not a substantive comment,
9 but just to try to organize this, to see that
10 what are A and B here, incapable of appraising
11 and B, physically incapable of declining, those
12 are really dealing with two very different
13 problems.

14 The first one is oversimplifying to
15 some extent. The first one, A, is where somebody
16 says "yes," but they're incapable of appraising
17 the nature of what they're consenting to. It's
18 very often with the case with people who -- where
19 you have cognitive delay, developmental delay or
20 maybe somebody's so drunk they really -- they may
21 be saying yes, yes, yes, but they don't know what
22 they're agreeing to. That's one kind of problem.

1 The other kind of problem in B is
2 where the person isn't saying anything, and
3 there, the alcohol is really an aggravating
4 factor, because as Laurie was saying, if the
5 person's not consenting, it's going to be
6 criminal anyway.

7 The problem in trying to capture what
8 we mean in B is we're trying to define an
9 aggravating factor. That's different to me from
10 the situation in A, where we're trying to say
11 that an affirmative yes doesn't count.

12 MAJ GEN WOODWARD: Right yeah, because
13 if we do consent correctly, what we're really
14 trying to capture in this is if somebody consents
15 but we can't accept their consent.

16 PROFESSOR SCHULHOFER: Exactly.

17 MAJ GEN WOODWARD: It's a statutory.
18 It's statutory. It's just like you're under a
19 certain age and you can't consent.

20 PROFESSOR SCHULHOFER: Exactly.

21 LTC MCGOVERN: I do think, reading the
22 last three or four pages of the Pease case is

1 enlightening, because it shows you how the court
2 breaks it down, and that their interpretation is
3 where legally incapable of consenting, as well as
4 reasonable doubt that the Appellant knew or
5 reasonably should have known they were incapable
6 of consenting.

7 How they put that together is by first
8 looking as to whether you can have consent to
9 freely give an agreement as to the conduct by a
10 competent person. So then they look at an
11 incompetent person is first, a person who has
12 either mental or physical ability or consent.

13 I'm sorry. Here, this is to quote the
14 court, "To be able to freely give an agreement, a
15 person must first possess the cognitive ability
16 to appreciate the nature of the conduct in
17 question, then possess the mental and physical
18 ability to make and communicate a decision
19 regarding that conduct to the other person."

20 So this list that you're trying to do,
21 the court already goes through this mental
22 exercise and analysis. Applying the

1 interpretation to this case, they were not
2 convinced beyond a reasonable doubt that the
3 victim was incapable of consenting. They go on
4 to note the government wasn't able to take a
5 blood alcohol test. So you're relying on the
6 totality of the circumstances.

7 The totality of circumstances said she
8 came in and went out. She would come in and say
9 she didn't like things when they were unpleasant,
10 but she would also say she liked things when they
11 were pleasant.

12 So according to their review on
13 appeal, which is a reasonable doubt standard,
14 they determined that the accused could not have
15 known necessarily that she was in fact capable of
16 consenting. So I just find that you're trying to
17 take apart the statute in pieces.

18 It's helpful to go look how a court
19 connects the dots to this statute to reach
20 incapable of consent.

21 (Simultaneous speaking.)

22 LTCOL HINES: I don't know, and if I

1 can find out over the lunch break. But I know
2 there's been some discussion. The Navy-Marine
3 Corps Appellate government division are thinking
4 about certifying that case to the Court of
5 Appeals of the Armed Forces. So we might not
6 have the last answer on that yet.

7 But I do -- I do agree with Kelly,
8 that it could be helpful in resolving this issue.
9 But I think the one -- and Dwight can talk about
10 this, because I know he's aware of the case as
11 well. But that opinion was resolved based on
12 whether the evidence at trial was factually
13 sufficient, which is a standard of appellate
14 review that exists only in military cases.

15 It's not just legal sufficiency, but
16 the Appellate court has to be just like the jury,
17 convinced beyond a reasonable doubt. So the
18 struggle I think in the Pease case is not only is
19 there not a definition, but how does an Appellate
20 court narrow when they don't have -- you don't
21 have a statutory definition provided to them.
22 How are they supposed to sort this out?

1 So I think the case is helpful, but I
2 think it would also be important to -- if I might
3 just, you know, pose an observation. It sounds
4 like with regard to Lisa's proposal, that a lot
5 of the discussion is being generated about,
6 around those two parts of the definition in Title
7 18, the 9(a) and (b).

8 That maybe the Subcommittee would like
9 to think about looking at this laundry list that
10 she's offered below, because I mean I can just
11 tell you anecdotally.

12 The way these cases are played out in
13 the military is that 95 percent of these cases
14 you've got, and I think the presenters have told
15 you this too, you've got an intoxicated victim,
16 but you've also got an intoxicated accused.

17 And so they're looking at all of those
18 issues that I just -- I think this laundry list
19 or a laundry list like this would be very
20 helpful, and maybe you could just remove -- you
21 don't even give 9(a) and (b). What you start off
22 with in deciding whether, at the bottom of four,

1 you just start off with deciding whether a person
2 was incapable of consenting, because that's what
3 is required under the statute. You consider the
4 totality of the circumstances, including the
5 following things.

6 MS. FRIEL: We're not making any
7 change to the statute, right. Just leaving it so
8 that it's broad and then just using this
9 explanation of totality of circumstances as an
10 executive order.

11 LTCOL HINES: I just throw that out as
12 a suggestion.

13 HON. HOLTZMAN: Where is the language
14 in the statute right now?

15 MS. FRIEL: It just says incapable of
16 consenting. So what I'm suggesting is we don't
17 define incapable of consent; we leave it the way
18 it is.

19 HON. HOLTZMAN: Oh, I see.

20 (Simultaneous speaking.)

21 MS. FRIEL: It says right now there's
22 no definition for consent.

1 MAJ GEN WOODWARD: Yeah. The only
2 thing it has is a sleeping, unconscious or
3 incompetent person cannot consent.

4 HON. HOLTZMAN: I'm not sure I agree
5 with that. I'm not sure I agree with that. I
6 think you have to have some definition in the
7 statute --

8 (Simultaneous speaking.)

9 LTC McGOVERN: It's leaving
10 unconscious and went to competent, and then we
11 looked at the definition of competent.

12 HON. HOLTZMAN: Right. But the other
13 question here, which is in Point A, which is
14 incapable of appraising the nature of the
15 conduct, how does a court get to that?

16 DEAN ANDERSON: Through (b)(3)(B),
17 mental disease or defect.

18 LTCOL HINES: That is where this
19 definition takes place.

20 HON. HOLTZMAN: Mental disease or
21 defect.

22 CHAIR JONES: Or physical disability.

1 HON. HOLTZMAN: Where are you reading
2 from?

3 CHAIR JONES: The statute, (B)(3),
4 Sexual Assault, (3), big B, capital B.

5 PROFESSOR SCHULHOFER: That's a cause,
6 not consequence.

7 MS. FRIEL: It's due to that, but it
8 still doesn't define what it is.

9 (Simultaneous speaking.)

10 MS. FRIEL: What does incapable mean?
11 It means you're unable to do something. If we
12 had incapable to walk, we would all understand
13 what that means, right. We know what walking
14 means. I think the issue is incapable to
15 consent, and that's why it ties back to our
16 definition of consent, and we have to think, you
17 know, what the court should do. Okay. You're
18 supposed to be unable to consent. But this
19 really is a statutory "unable to consent" not,
20 you know.

21 PROFESSOR SCHULHOFER: Yeah exactly.
22 That's exactly what I was just thinking. It's a

1 little bit like statutory rape, and I think
2 that's what's getting confusing here, because
3 when we -- do we mean incapable in the sense of
4 lacking ability, or do we mean incapable in the
5 sense of not being legally able to give a valid
6 consent? Like is a 16 year old girl capable of
7 giving consent?

8 MS. FRIEL: Not legally.

9 PROFESSOR SCHULHOFER: Yeah. I mean
10 you can have all the -- you could say it depends
11 on the totality of the circumstances, of her
12 maturity, her verbalization, her reading ability,
13 her age in school. That would be one kind of
14 thing, or you can just say we don't -- you know,
15 the law says she's not legally capable.

16 I think even if -- I think we haven't
17 sorted out and the statute hasn't sorted out are
18 they talking about someone's abilities, or are
19 they talking about their psychological
20 competence, psychological and legal competence to
21 do something validly?

22 I mean suppose a person has an IQ of

1 80. Are they capable of selling real estate,
2 selling their property? I mean they can write
3 their name on a piece of paper, but do we view
4 that as being sufficiently mentally aware to be
5 able to give a legally valid consent to
6 something?

7 MAJ GEN WOODWARD: And why do we say
8 that? We say that because they're not able to
9 apprise the nature of the conduct.

10 PROFESSOR SCHULHOFER: Yeah.

11 MS. FRIEL: I think you're right, but
12 this is where we've always historically run into
13 problems with that. The place and nature of the
14 conduct. That person may know they're selling
15 their house. They get that, the way you get sex
16 at that very basic level.

17 Yet we still go yeah, but you are not
18 -- to make that bigger decision, because of the
19 consequences, for instance, of selling your
20 house. You know, you don't get that. You just
21 get here, give me money and take the house or
22 we're having sex. So we're trying to, I think,

1 come up with language that that's broader thing,
2 not just I'm having sex and I know what the act
3 is.

4 PROFESSOR SCHULHOFER: Right.

5 LTCOL HINES: I think the way it's
6 written is if you could try to distill it down,
7 they're trying to articulate there's two things
8 we have a problem with. The person who is so
9 impaired that mentally they're not clued in
10 enough to even know what's going on, such that
11 they can form the decision mentally to engage in
12 that activity.

13 But also another circumstance is they
14 might be in frozen fear, or they might be
15 paralyzed for some reason. But mentally, they're
16 aware of what's going on, but they can't express
17 the fact that they haven't mentally consented.
18 So I think they're trying to get there.

19 But I agree with the Subcommittee,
20 that it's not articulated very clearly, in my
21 opinion, in the statute. But I think that's the
22 idea --

1 MAJ GEN WOODWARD: Those are the two
2 things we need to be able to say.

3 LTCOL HINES: Right. So we're worried
4 about okay, is the victim able to mentally
5 voluntarily give a, you know, a freely given
6 agreement mentally. But is she also able to
7 express that physically, because that's when you
8 bring in okay, well what is the defendant
9 perceiving, and is he mistaken if he raises a
10 defense of mistake of fact as to consent because
11 of whatever he's aware of.

12 That's the defense that's almost
13 always raised in these cases, because they'll go
14 to the investigators and say yeah, I remember us
15 having sexual intercourse, but I completely
16 thought she was consenting. So he sort of when
17 he does that, he's ordered himself into the
18 defense that he's going to make at trial, and
19 that is instructed on to the panel and then they
20 have to make their decision.

21 So I guess in saying all that is I
22 don't think that's helpful. But I think you're

1 trying to get at both of those interests, the
2 victim's ability to form a mental agreement, but
3 also to protect the victim who might mentally be
4 there, but physically can't express her
5 unwillingness to participate.

6 LTC McGOVERN: Well, on page 13 of the
7 Pease case, it looks like the court, based on the
8 statute, is already doing that at the bottom of
9 page 12 and the top of 13, by looking at what
10 constitutes a freely given agreement.

11 PROFESSOR SCHULHOFER: The word
12 "competent" and the word "capability" have
13 interesting difference in their implications,
14 because when we say "physically incapable" or
15 even if we just say "incapable," it really is
16 focusing more on an ability. Where when you say
17 "competency," it then evokes more this idea of
18 whether the person's cognitive awareness and
19 depth is sufficient to make their judgments
20 legally valid.

21 LTC McGOVERN: I think they're saying
22 this here is incompetence of a broader umbrella

1 --

2 PROFESSOR SCHULHOFER: Right.

3 Competence really I think evokes more the idea
4 that we're thinking about more than incapable.
5 Incompetent, rather than incapable.

6 LTC McGOVERN: Yeah, yeah.

7 MS. KEPROS: Well, the word competent
8 does exist in the definition of consent as it's
9 currently drafted, and so that's another we could
10 do, is try to define competent.

11 PROFESSOR SCHULHOFER: Would it make
12 sense to have another working group on this
13 issue? I mean I think we're getting very, I
14 don't know. Maybe we should just try to decide
15 it today. But it just seems like there's a lot
16 in the air right now.

17 DEAN ANDERSON: This is more
18 complicated, I think, than most of the questions
19 we were asked.

20 HON. HOLTZMAN: Well, and I think it's
21 because just what you said. When you were trying
22 to do it at ALI and when we tried to do it

1 legislatively for years in New York, not
2 necessarily in this area but defining competence
3 for somebody who is mentally disabled, because we
4 kept running up into this.

5 The minute we had somebody who had the
6 mentality of an eight year old, an adult, but
7 knew what sex is, they'd ask them you know what
8 sex is? "Yes, and that's where babies come
9 from."

10 We kept losing those cases, where they
11 were totally taken advantage of, and trying to
12 come up with wording for suggested legislative
13 change for that factual situation, we all went
14 that wasn't okay. We have to be protecting that
15 person. It bogged down the exact same way.

16 It's just extremely difficult to put
17 it into words what we mean, because I think also
18 what the court does here, it goes through three
19 stages of analysis. One is did you understand
20 what the act was; two, were you able to
21 communicate this agreement; and three --

22 MS. FRIEL: Competent to do that.

1 HON. HOLTZMAN: Yeah, and three, well
2 what did the defendant really know? A person is
3 consenting, so that's -- you know, that's a
4 problem. Should we break for lunch?

5 CHAIR JONES: Yes. Also think while
6 you're eating how we would define who's competent
7 to --

8 (Simultaneous speaking.)

9 MS. KEPROS: How about this case we
10 heard about and discussed, I think, earlier on
11 out of Iowa, with the man who had sex with his
12 woman, who's suffering from --

13 PROFESSOR SCHULHOFER: His wife.

14 (Simultaneous speaking.)

15 MS. KEPROS: I think Alzheimer's, and
16 you know, how complex some of these definitions
17 can get. I mean I don't know that it's hard to
18 write the words. I think we have not -- we're
19 not really sure. Like we don't know where to
20 draw some of these lines.

21 I think we are struggling as a society
22 to make the decisions about what's okay or what's

1 not, okay, you know. And so we don't necessarily
2 know it when we see it.

3 MS. FRIEL: I totally agree. I think
4 that if we define competence for that case, that
5 some of us have felt that was okay and he
6 shouldn't have been prosecuted, was because it
7 was her husband, and they had been together
8 forever. But if it had been a nurse at that
9 nursing home, with the exact same person with the
10 same physical disabilities and competencies, we
11 would have said that's ridiculous. So how do you
12 capture that kind of thing?

13 HON. HOLTZMAN: Well, except that the
14 husband may have known -- you see, the issue is
15 what did he know, you know? What is he inferring
16 from her behavior, and he could infer and said
17 consent given past --

18 (Simultaneous speaking.)

19 CHAIR JONES: We're going off the
20 record now and we'll have lunch, okay, and
21 continue.

22 (Whereupon, the above-entitled matter

1 went off the record at 12:22 p.m. and resumed at
2 1:14 p.m.)

3 CHAIR JONES: I think we were coming
4 around to the thought that maybe we leave the
5 statute exactly the way it is, the type of
6 consent so it doesn't get too narrow, and we do
7 something with working on this suggestions for
8 totality of the circumstances things to look at.

9 I just want to tell you I went back
10 over lunch, and if you look at the draft report,
11 pages eight through say ten and a half, where
12 Glen summarized for us what all the presenters
13 said about this. If you want, it only takes two
14 minutes to read.

15 But the summary of that is that almost
16 every one of them wanted a definition. Doesn't
17 mean we have to go there, but they all said they
18 wanted a definition of it in the statute, and to
19 the extent anybody suggested a definition, there
20 was that definition we were looking at, though I
21 think we've all -- they weren't talking it out
22 the way we were and seeing how narrow that could

1 become.

2 But I think it's worth reading all
3 that just real quickly, because it was helpful to
4 me to take a look at that now.

5 MS. KEPROS: Well, I just want to say
6 one thing about that. I think maybe there was no
7 discussion about something like putting something
8 in the Manual for Courts-Martial, because it
9 really wasn't on the table just for conversation.
10 We weren't saying to them, hey could we make a
11 suggestion through some other mechanism?

12 They weren't saying no, you shouldn't
13 do that. That wouldn't be sufficient. We just
14 weren't even really talking about it. We were
15 saying does the statute work, and they were
16 saying no, there's a gap.

17 MS. FRIEL: But I think it's still
18 helpful to read where they said the gap was, so
19 that however we do it, we fill the gap that they
20 all saw, and they were fairly consistent --

21 CHAIR JONES: Now is there anyone who
22 thinks though that we should make a proposal to

1 amend the statute, or do we have agreement?

2 PROFESSOR SCHULHOFER: On this issue.

3 CHAIR JONES: On this issue. I think
4 the statute, I think it's very hard to amend. I
5 think that's been demonstrated, and that we
6 should leave it as it is. After having read the
7 Pease case, which has a totally terrific
8 interpretation which they make using the plain
9 language of the statute, I don't think there's
10 going to be any problem with people mis-arguing
11 the statute.

12 It sounds as though your problem is
13 they say in practice there's a problem. Am I
14 missing something?

15 MS. FRIEL: Yeah. I think -- I think
16 what they were saying, and you can see it,
17 because Glen did a great summary of it on those
18 pages, is that it really a lot came down to.
19 Unlike the Pease case, where they went through a
20 fairly careful analysis of various, all kinds of
21 factors.

22 In fact, I used it to come up with

1 some of the factors in my list, that that's
2 unusual, that most of these cases at the trial
3 level are coming down to how much did the person
4 have to drink and your expert coming in and going
5 "well, based on height and weight, this is what
6 it would be," and not looking at the totality of
7 the circumstances.

8 So they all thought it would be very
9 helpful to define incapable of consent, so that
10 they had more guidance and your jurors had more
11 guidance, and frankly you'll read there in that
12 summary. So when you go to teach people in the
13 military what does that mean, you know. When
14 you're out at the party, what should you be
15 looking for to see if somebody's capable of
16 consenting or not, the definition would help.

17 One thing I'll say that the Pease
18 case, looking at it again, the analysis, I
19 thought, went through exactly the way you would
20 want to do it with one exception. They got down
21 at the end of that analysis to talking about a
22 competent person is somebody who understands and

1 the use the word "the nature of the" -- let me
2 just find it -- "the nature of the conduct."

3 Part of the problem I think we were
4 talking about before when we talked about
5 appraising the nature of the conduct is that
6 phrase has almost become a term of art, and a
7 term of art means if you understand that a penis
8 going in the vagina is sexual intercourse, that's
9 the nature of the conduct.

10 And so that becomes too narrow, if
11 that's what you understand nature of the conduct
12 to be. Otherwise, I think the Pease thing went
13 exactly the right way. So if there's some way we
14 could address --

15 CHAIR JONES: What is the nature of
16 the conduct, if you understand the penis is going
17 in?

18 MS. FRIEL: Well, if you made it that
19 narrow, then almost everybody would be capable.
20 That's the problem we had with people who are
21 mentally disabled. But if we wanted to broaden
22 it to be something more than just understanding

1 what the sex act is, you know, something.

2 What is the nature of what we're doing
3 here? You, me and these circumstances.

4 DEAN ANDERSON: Some statutes include
5 the nature and consequences of the act.

6 MS. FRIEL: Well, I would say nature,
7 circumstances and consequences I was thinking of.

8 MS. KEPROS: I have to say I don't
9 know if I have ever been that, in my own sexual
10 experience honestly. You know, I mean all of the
11 consequences that can flow for sexual behavior?

12 MS. FRIEL: People don't think about
13 that a lot before they do it.

14 MS. KEPROS: Right.

15 (Simultaneous speaking.)

16 CHAIR JONES: That's overbroad.

17 MS. KEPROS: Yeah. I think they still
18 think they're consenting. You know, consequences
19 is pretty broad; circumstance is pretty broad.
20 I'm more comfortable having it more narrow in
21 nature of the conduct, because I think there's a
22 point where you have say do you know you're

1 having sex?

2 Do you know there is some sort of
3 physical interaction occurring, and some of these
4 broader things about, you know, in an ideal
5 world, would people be more tuned in to possible
6 ramifications? Of course. But I don't think we
7 can address it through the criminal code.

8 DEAN ANDERSON: So in 2012, that
9 language on understanding the nature of the
10 conduct and being able to communicate, declining,
11 you know, the ability to decline consent and able
12 to communicate that was removed from the statute.
13 So we would either be reimporting it into the
14 statute, which would be a narrowing move, and we
15 could decide to do that.

16 But it would be a narrowing move to
17 the statute, or we could leave the language of
18 the statute itself as it currently exists and try
19 to provide some guidance in the explanatory, you
20 know, in the executive order, that I think that's
21 what you're suggesting now.

22 MS. FRIEL: Yeah. It says look, this

1 is a totality of the circumstances analysis, and
2 these are some of the things you need to take
3 into account. I think that bridges --

4 CHAIR JONES: But you know consent
5 overall, which includes lack of consent, is a
6 totality of the circumstances concept. But
7 incompetence, I think they've described it. To
8 get to the notion of ramifications of the sex
9 act, I mean I guess I agree with Laurie on that,
10 where the wider, I don't know --

11 I think it should be you know that
12 you're engaged in the sex act, and that's -- and
13 there may be a number of other things, like the
14 fact that you're drunk and possibly have a 70 IQ
15 or whatever the other possible components are
16 that may contribute to a decision by a jury. But
17 I don't know where we're getting with, you know,
18 expanding it.

19 DEAN ANDERSON: I don't think anyone's
20 suggesting that at this point.

21 CHAIR JONES: Oh, I'm sorry. I
22 thought --

1 MS. WINE-BANKS: I think one of the
2 things that Lisa said earlier was that you have
3 the problem of someone with -- who we might think
4 was not capable of consenting by a reasonable
5 person standard. Yet we would think they weren't
6 capable. But if asked the specific question of
7 did you understand that you were engaging in sex,
8 did you understand the nature of the act you
9 engaged in, they would say yes.

10 So if you took a mentally -- who would
11 not be in the military. So this wouldn't really
12 apply here, because if they were mentally
13 incompetent, they couldn't be in the service.

14 MAJ GEN WOODWARD: I don't know.
15 That's a stretch.

16 MS. WINE-BANKS: All right.
17 Theoretically, they could be a lunatic.

18 DEAN ANDERSON: Or the circumstances
19 in which military officials --

20 (Simultaneous speaking.)

21 PROFESSOR SCHULHOFER: The victim
22 doesn't have to be in the military.

1 DEAN ANDERSON: No, no, no.

2 CHAIR JONES: And a person could yes,
3 I understood I was having sex, but that's not the
4 end of the case or the end of the proof or the
5 end of the story. If there's over -- if there's
6 other evidence --

7 MS. WINE-BANKS: But if we say
8 incapable of understanding the nature of the act,
9 and the non-military person who has been raped
10 says yes, I understood that I was engaging in
11 sex, if that's the only requirement and that's
12 why we need more that says that that alone is not
13 enough.

14 Someone suggested language from the
15 testimony that said, you know, the level does not
16 need -- the level of impairment doesn't need to
17 rise to the level of unconsciousness or sleep in
18 order to be incapable.

19 So there -- you know, maybe there's
20 some way of saying it doesn't have to be this
21 level to be impairment and unable to consent, in
22 order to avoid the situation of someone who

1 really none of us would think had the capacity,
2 for a variety of reasons.

3 That's, I think, what we were trying
4 to avoid, was having people who really aren't
5 capable being held accountable for that narrow a
6 standard, that everybody would, you know, based
7 on her experience, that was a killer for
8 prosecutions.

9 PROFESSOR SCHULHOFER: Jill, are you
10 thinking about cases where the victim is
11 staggering, passing in and out of consciousness
12 and basically not verbalizing anything?

13 MS. WINE-BANKS: No. I think when you
14 get -- I think we need to be clear that those
15 things would be included in incapable of
16 consenting, when they get to that level.

17 PROFESSOR SCHULHOFER: Those are
18 covered anyway by the non-consent provision.

19 HON. HOLTZMAN: Can I just -- it's the
20 ability to consent, and I guess, you know, as I
21 look through all these people who say we need a
22 better definition, we need a better definition,

1 and I certainly understand that from somebody
2 who's tried to teach the definition and how
3 difficult that is.

4 But I think the problem becomes is
5 that the definition that we're trying to fix is
6 not the developmentally challenged. I think that
7 fits under what we already have, and I don't
8 think anybody has any problem thinking they could
9 then -- they could prosecute that.

10 I think that the challenge becomes
11 that gray area, and I think the problem there is
12 that we won't be able to come up with a written
13 definition that gives that. That's where
14 judgment has to come in, and all you can say is
15 "reasonably understood that they weren't able
16 to." I don't know. I haven't heard yet one
17 definition that covers that gray area that
18 everybody is so frustrated with.

19 MS. FRIEL: What about -- what if we
20 took -- we've all said we don't want to make it
21 too narrow with that appraising the nature and
22 physically incapable. So what if we didn't

1 change the statute, but we took those two ideas
2 and put them along that list of things that you
3 should be considering, that totality of the
4 circumstances?

5 DEAN ANDERSON: If they were part of
6 the totality, I think that's --

7 MS. FRIEL: Right, appraising the
8 nature of the conduct. That could be on the
9 totality list, but not the only thing.

10 HON. HOLTZMAN: Can I ask a question?
11 Why was this language taken out of the statute?

12 DEAN ANDERSON: We don't know for
13 sure. But what we do have is a redlined version
14 of the 2007 statute that became the 2012 statute
15 that was circulated in the read-ahead materials.

16 PROFESSOR SCHULHOFER: Where is that?

17 DEAN ANDERSON: That is page 27 of Tab
18 2.

19 CHAIR JONES: Tab 2.

20 MS. WINE-BANKS: That's where they had
21 that explanation, because they couldn't figure
22 out what they were talking about.

1 DEAN ANDERSON: That is not unique to
2 this problem. You don't have explanations for a
3 lot of these changes from '12.

4 HON. HOLTZMAN: Does anybody know?

5 DEAN ANDERSON: No, we don't.

6 HON. HOLTZMAN: Do you have any
7 information as to why this was taken out?

8 LTCOL HINES: I don't, Ms. Holtzman.
9 In fact, that was not addressed. This concept of
10 incapable of consenting was not addressed in that
11 material that went up to Congress --

12 HON. HOLTZMAN: So they just took it
13 out --

14 MS. KEPROS: Oh, I think I know why.

15 LTC McGOVERN: You heard from General
16 Pede that before it was substantially incapable
17 when it passed. Then they changed it, that this
18 was indicated --

19 DEAN ANDERSON: Substantially
20 incapable. The language "substantially
21 incapable." But they left some of the provision
22 in. So that can't be the reason they removed

1 this part of the provision.

2 (Simultaneous speaking.)

3 MS. KEPROS: They put this other
4 section --

5 MAJ GEN WOODWARD: These provisions,
6 this language about mental disease or defect,
7 it's in B.

8 MS. KEPROS: In the explanation part,
9 right, where they said --

10 MAJ GEN WOODWARD: It's not in the
11 definition anymore. It's in the substantive.

12 MS. KEPROS: The treatment of consent
13 is simplified and may be disputed where it's
14 relevant. Categories of persons who may not
15 legally give consent for sexual acts or contact
16 are set forth within the statute, to simplify the
17 matters issue in court, which is what you were
18 just saying.

19 DEAN ANDERSON: But in their "by
20 setting forth," they removed the notion of -- the
21 conceptualization of unable to appraise the
22 nature of the conduct, and the second one on the

1 board there, unable to express dissent.

2 MAJ GEN WOODWARD: Yeah. Well the way
3 they put it is "The circular language in the
4 current law, meaning the 2007, using merely the
5 same words to explain the interaction of consent
6 and capacity, as were used to define an offense
7 under sexual assault was deleted," which is
8 interesting. So they were thinking that it was
9 circular in the way it was written.

10 DEAN ANDERSON: Right. So what they
11 did was they took, and this is actually something
12 that when I was redoing the resistance thing and
13 the definition of consent, I went back to where
14 Laurie was originally, which was like why isn't
15 the incapable of consent part of the
16 understanding of consent and defined there?

17 It turns out it was, but then that
18 changed and was pulled into a different provision
19 of the statute. So there wasn't a direction to
20 substantially incapable. That phrase,
21 "substantially incapable" was objected to
22 repeatedly, and was considered circular.

1 So what they did was they pulled in --
2 if you're looking at page 27, the cross out under
3 "substantially incapable," "appraise the nature
4 of the sexual conduct at issue," they took that
5 part out. But they kept the sub-1 sub-2 under
6 that, a mental impairment or unconsciousness
7 resulting from blah blah blah, mental disease or
8 defect, right?

9 (Off mic comments.)

10 DEAN ANDERSON: So right. They put
11 those provisions in the substantive offense
12 provision. They put those, yeah that language in
13 the substantive offense. They also took out
14 incapable of physically declining participation
15 and physically communicating unwillingness, which
16 is essentially what we would be re-importing.

17 Yeah, that's where I think it's a bad
18 idea to re-import. You know, when I look at the
19 provision itself that we currently have today,
20 I'm sort of with Lisa on this, that I'm not sure
21 that this should be revised.

22 I actually think that there might be

1 consensus on that question, that we should not
2 revise, even though there was a lot of objection
3 to this provision, maybe the greatest consensus
4 in terms of the testimony in front of us, that
5 this was an objectionable or difficult, a
6 challenging provision. They could use further
7 guidance.

8 They didn't provide specific guidance
9 that would elucidate this in a way that we could
10 agree on, and it seems like there is an emerging
11 consensus from this group not to change the
12 language of the statute itself, but to provide
13 guidance in an executive order, that lists a
14 series of factors that should be taken into
15 account.

16 CHAIR JONES: Well I'm certainly for
17 not changing the statute. I would leave (B)(3)
18 alone.

19 MR. SULLIVAN: And of course all of
20 the requests we got for additional guidance came
21 before the Navy-Marine Corps court issued its
22 Pease decision.

1 LTCOL HINES: I think if you look at
2 Pease, if you look at that language at the top of
3 the page that Kelly passed around, the language
4 at the top of page 13, and I did during the break
5 go back and confirm that the case was certified
6 to the Court of Appeals for the Armed Forces. So
7 we're going to get an opinion from them within
8 the next term, but that might not be until next
9 summer.

10 But in any event, if you look at the
11 language in the first two paragraphs on the top
12 of page 13 in the opinion, the court has given --
13 comes very close to giving what the definition of
14 incapable of consenting is. If CAAF were to buy
15 off on this, that is to say affirm what the
16 Navy-Marine Corps decision, that would become
17 binding law across DoD.

18 But I still think you could explain it
19 further as you're talking about in the executive
20 order that would go in the Manual or the
21 benchbook. You could give some factors that
22 should be considered in determining the ultimate

1 question of whether the victim was incapable of
2 consenting. I think that would be --

3 DEAN ANDERSON: Colonel Hines, can I
4 just clarify a point of order? Is this -- was
5 this litigated under the 2012 statute?

6 LTCOL HINES: Yes.

7 DEAN ANDERSON: Okay, just yeah,
8 because there's a lot of -- okay. Okay, good.

9 HON. HOLTZMAN: May I just ask another
10 question? What happened to the case of -- this
11 is a -- they took some of this language that was
12 in the 2012, and they put it into sexual assault.
13 What about aggravated sexual conduct, contact? I
14 mean is there -- are issues of incapable of
15 consent, how do those arise in those cases? Do
16 they?

17 LTCOL HINES: Yes ma'am. So the way
18 that this issue would come up under -- it would
19 not come up -- what you should do is you should
20 read (a) and (c) in conjunction with one another,
21 and (b) and (d) in conjunction with one another,
22 because what aggravated sexual contact and

1 abusive sexual conduct, they basically impose
2 that statutory overlay in (a) and (b), where
3 there's been sexual contact but not a sexual act.

4 So if you wanted to charge a service member --

5 HON. HOLTZMAN: Yeah, but 5 is very
6 different from what we're talking about, because
7 it talks about -- it substantially -- first of
8 all, it uses the word "substantially," and then
9 it says "impairing the ability of that other
10 person to appraise or control conduct," which is
11 different from communicating.

12 So yes. I mean if you want to say
13 that's the standard, but it's -- what you've done
14 then is to create two separate standards for
15 impairment in the statute, one that applies to
16 (a) and (c), and one that applies to (b).

17 MAJ GEN WOODWARD: Right, because (a)
18 and (c) means I am making -- I am doing that to
19 you. I am making you impaired and thereby I'm
20 taking advantage of you. Whereas with (b) and
21 (d), you're just maybe taking advantage of you
22 being impaired.

1 DEAN ANDERSON: But I'm not drugging
2 you --

3 MAJ GEN WOODWARD: Yeah. Therein lies
4 the force that makes it rape or aggravated sexual
5 conduct.

6 HON. HOLTZMAN: Right. But I'm not
7 talking about the fourth part. I'm talking about
8 incapable of consent.

9 MAJ GEN WOODWARD: Right, but it's --
10 the reason it's different is it's being
11 administered. I am making you incapable of
12 consent. That's what makes it rape versus sexual
13 assault.

14 HON. HOLTZMAN: Right. But what about
15 aggravated sexual conduct? What has to happen
16 there?

17 MS. FRIEL: So if somebody were to
18 give you -- you're a 5. If somebody were to
19 purposely give you a drug --

20 HON. HOLTZMAN: No, I understand --

21 MS. FRIEL: --and touched you instead
22 of --

1 HON. HOLTZMAN: Right.

2 MS. FRIEL: --penetrated you, for
3 instance, it would be the aggravated sexual
4 contact. It would still be a sexual crime.

5 HON. HOLTZMAN: Right. But you would
6 have impair that ability of the other person to
7 appraise or control conduct, as opposed to
8 communicate, which is the second part of the
9 point that you used to be in the statute under
10 2012 that was eliminated. It wasn't control.
11 It's a different standard.

12 MAJ GEN WOODWARD: Well because that's
13 -- that's the force aspect versus the consent
14 aspect. Sexual assault is --

15 (Simultaneous speaking.)

16 HON. HOLTZMAN: I understand your
17 point though.

18 MS. FRIEL: No, I see what you're
19 saying. So here, we've decided that what happens
20 if somebody does it to you, what we care about is
21 that you got substantially impaired ability to
22 appraise or control your conduct. If you do it

1 to yourself, then we're saying it's not about
2 substantial impairment; it's about something
3 else, and that seems inconsistent to you
4 logically.

5 HON. HOLTZMAN: Not only somebody
6 else, but also the different standard in
7 response. The first one is to appraise. We've
8 got appraise in both standards. But here in 5,
9 it's control conduct, and what we're thinking
10 about in Title 18 is to communicate that control.

11 MAJ GEN WOODWARD: Because one is
12 consent and one is automatically without consent.
13 See, that's the way I see this, is sexual assault
14 means --

15 HON. HOLTZMAN: Yeah, but we're
16 looking at (c). We're talking about aggravated
17 sexual conduct here, because the definition
18 applies --

19 PROFESSOR SCHULHOFER: Right.

20 (Simultaneous speaking.)

21 MAJ GEN WOODWARD: Which is the same
22 as rape. I mean you don't -- you don't have to

1 -- (c) and (b) synonymous with (a) and (d). It's
2 just how far they go. So we can just compare (a)
3 and (b) and it applies to (c) and (d) the same.
4 But the point is communicating consent. It
5 doesn't matter if you're saying that somebody
6 forced you to do it.

7 HON. HOLTZMAN: That's not correct.
8 That's not correct. I don't think that's
9 correct, because aggravated sexual conduct is
10 somebody who would have violated the rape
11 statute. So we don't have, but I guess as you
12 said Lisa, have the act --

13 MS. FRIEL: Where I see the
14 incompatibility, and maybe it's okay and I'll get
15 to why. But it is. If somebody does it to you
16 and gets you to that state, right, then what we
17 care about is whether you are substantially
18 impaired to appraise or control your conduct.

19 If you do it to yourself, we're not
20 using the same language about the condition you
21 end up in, and is that -- does that
22 intellectually not make sense?

1 (Simultaneous speaking.)

2 PROFESSOR SCHULHOFER: I think it
3 does, because the condition doesn't have to be
4 nearly as acute when the person has deliberately
5 administered the intoxicants without the
6 knowledge of the victim. He's already --

7 MS. FRIEL: So you think it's
8 factually you can have a difference. If I do it
9 to you, then I'm going to be responsible for
10 doing that with lesser impairment.

11 PROFESSOR SCHULHOFER: Yeah, exactly.

12 MS. FRIEL: If you do it to yourself.

13 PROFESSOR SCHULHOFER: Yeah.

14 MAJ GEN WOODWARD: Well and also there
15 is resistance required in the first one, and
16 there isn't resistance required in the second one
17 is the way I look at it. One is forcing the
18 issue and the second one is just not having
19 consent.

20 (Simultaneous speaking.)

21 MS. FRIEL: --so without knowledge or
22 consent. I put something in Professor

1 Schulhofer's Coke now. No force, not threat of
2 force. He just didn't know it, and so he didn't
3 consent to it, and then I only have to get him to
4 a state of substantially impairing his ability.
5 But if he does it to himself, then we're using a
6 different state that he has to be for him not to
7 be competent to consent.

8 HON. HOLTZMAN: Well plus the
9 impairment, the nature of the impairment is
10 different. For one, it's the ability to control
11 conduct and the second one is the ability to
12 communicate as well.

13 MS. KEPROS: But that makes sense, but
14 in the rape scenario, the (A)(5), the person --
15 you know they don't want to have sex with you.
16 That's why you had to drug them. In the B
17 scenario, you are unsure if they want to have sex
18 with you, and that's why you need to assess
19 whether or not they're too impaired to make that
20 decision, and assess their decision they're
21 communicating to you.

22 CHAIR JONES: Can I just ask this

1 question? Does this in any way change anyone's,
2 what I thought was a consensus, that we're not
3 changing the language in --

4 (Simultaneous speaking.)

5 PROFESSOR SCHULHOFER: This, I think
6 this conversation doesn't change my view, but I'm
7 not sure about on the consensus point. I think
8 if we have to make a decision between now and
9 4:45, then we can't recommend any change to this.

10 CHAIR JONES: To the statute?

11 PROFESSOR SCHULHOFER: Yeah.

12 CHAIR JONES: Right.

13 PROFESSOR SCHULHOFER: We can't --

14 CHAIR JONES: I think we all agreed on
15 that so --

16 PROFESSOR SCHULHOFER: Well, we've all
17 agreed that if we have to make a decision within
18 the next hour, we can't do any better than this.
19 But I'm not sure --

20 CHAIR JONES: Well, all what we were
21 talking about though is still taking another shot
22 at the executive order. But we had sort of

1 agreed, if not agreed completely, that the
2 statute was going to remain the same, and we were
3 going to work on an executive order.

4 PROFESSOR SCHULHOFER: Well you know,
5 apologies to everyone. I have some concern about
6 that approach, because I think I'm not sure that
7 the executive order. It may work, and Lisa and I
8 talked about during the break. This was off the
9 record, that we were off the record.

10 But it may work, but the executive
11 order introduces an idea that goes well beyond
12 the language of the statute, and it may not work.

13 CHAIR JONES: I don't think we even
14 need an executive order. But I'm happy to look
15 at one, and I may be persuaded.

16 PROFESSOR SCHULHOFER: I'm not too
17 worried about this, because I think most of the
18 problem that we're concerned about is dealt with
19 by the fact that we are breaking out a separate
20 section to punish penetration without consent.
21 That covers the vast majority of these
22 alcohol-infected scenarios, because those are,

1 regardless of how intoxicated the person was,
2 they didn't consent. That's the end of it.

3 A lot of the testimony that we heard
4 about the need to change this was based on the
5 fact that they were prosecuting the cases under
6 an incapacity theory, because they didn't feel
7 confident that the mere actions of consent by
8 itself was enough. So they tried to fit it under
9 (b)(3)(A), instead of just going, saying that
10 there was "bodily harm."

11 And I think --

12 MAJ GEN WOODWARD: I think you have --
13 I think you have both, to be honest with you. I
14 think you have a lot of the -- or, not a lot, but
15 the ones they're worried about are these cases
16 just like you have in Pease where it's the
17 borderline where there's blackout and, you know,
18 on one hand somebody says I don't remember this -
19 -

20 CHAIR JONES: And then coming back in.

21 MAJ GEN WOODWARD: -- and then the
22 other -- so that's where they want a black and

1 white. I just don't know that we can give them
2 one.

3 CHAIR JONES: But I like your point
4 that when we make bodily harm go away and we make
5 it clear that there can be, you know, the simple
6 act of committing a sexual act without consent I
7 think that helps tremendously.

8 Anyway, all right, Professor, I hear
9 you. At the moment, I think we have at least a
10 consensus. We should not change the statute.

11 HON. HOLTZMAN: I'm not in consensus
12 with that. I'm agnostic on that point. I
13 haven't yet reached a conclusion.

14 CHAIR JONES: Okay.

15 HON. HOLTZMAN: And I don't like the
16 statute which has incoherent definitions, where
17 you had a different definition of impairment in
18 one place and another definition of impairment
19 someplace else. I don't like that as a statutory
20 -- as a matter of just statutory construction.

21 MS. FRIEL: So let me make a
22 suggestion so we don't spend the entire day on

1 the one issue is I see exactly where you're
2 coming from and I started to kind of write
3 something.

4 Why don't we table it at this point,
5 and let us, me or my subcommittee's subcommittee,
6 come up with some suggestions of ways to handle
7 this, whether it's statutory or otherwise, so we
8 have something concrete to look at next time?

9 HON. HOLTZMAN: Okay. And that
10 doesn't mean, Judge Jones, that I don't agree
11 with also setting out a series of criteria, as
12 you have done here, to help in the understanding
13 whether --

14 CHAIR JONES: Okay. So, moving on.

15 DEAN ANDERSON: So I went back and did
16 number one again, if we want to try to finish
17 that.

18 CHAIR JONES: Number one, we went the
19 other way and decided not to be in the executive
20 order but to try to change the language of a
21 statute. And I --

22 DEAN ANDERSON: So you've drafted

1 something to change the language of the statute?

2 CHAIR JONES: Yes, and it's
3 circulated.

4 HON. HOLTZMAN: This is in the page --
5 isn't this -- aren't you talking about Page 1 of
6 the Tab 1?

7 DEAN ANDERSON: Yes, but then we have
8 --

9 PROFESSOR SCHULHOFER: Because this is
10 a new distribution.

11 CHAIR JONES: This is a new
12 distribution.

13 HON. HOLTZMAN: Oh, a new one. Oh.

14 DEAN ANDERSON: Yes, I worked on it
15 over lunch. Yes, worked on it over lunch.

16 CHAIR JONES: There's so many -- here
17 we go. It's right on top.

18 (Simultaneous talking)

19 HON. HOLTZMAN: This is it?

20 DEAN ANDERSON: No, underneath that.
21 Underneath that. So -- okay, so let me just tell
22 you what I did.

1 I took the language of the definition
2 of consent and tried not to change anything that
3 we either did not talk about and therefore agreed
4 on, or talked about and agreed on, and only
5 looked at the language that was troubling, and
6 tried to import some of the language from the
7 proposed executive order into the definition of
8 consent.

9 So the term consent means a freely
10 given agreement to the conduct at issue by a
11 competent person. That's from the statute itself
12 right now, there's not one bit of change there.

13 Second is neither verbal nor physical
14 resistance is required. I found this provision
15 the hardest to draft, so this may need some
16 thinking. But this was an attempt to try to
17 break out the circumstances in which the statute
18 identifies a lack of consent or identifies
19 circumstances in which consent cannot be inferred
20 from the issues -- from the evidence presented,
21 like the person's dress or the fact that there is
22 a marital relationship or another relationship

1 previously.

2 So neither verbal nor physical
3 resistance is required. That's something that
4 was in the executive order to try to clarify. I
5 put it here in the language of the statute. It's
6 language that comes from the Pennsylvania statute
7 on the definition of a crime. It's not
8 particularly controversial.

9 The next part is harder, though.
10 While a lack of verbal or physical resistance
11 does not constitute consent -- that is directly
12 from the statute right now. An expression of
13 resistance through words or conduct constitutes a
14 lack of consent, and I'm not sure that that's the
15 right language. Basically, that's supposed to
16 mean no means no -- an expression of no.

17 MAJ GEN WOODWARD: That's confusing for
18 me to have them put together because it almost
19 seems like the second half of that contradicts
20 the first half, even though it doesn't, I mean,
21 if you literally look at it.

22 DEAN ANDERSON: Yes.

1 MAJ GEN WOODWARD: But I think it could
2 raise --

3 DEAN ANDERSON: So one thing we could
4 do is change the word resistance in the second
5 part of the sentence. An expression of refusal
6 is one that Stephen used just a few minutes ago.

7 MAJ GEN WOODWARD: Well how about,
8 neither verbal or physical resistance is required
9 because a lack of verbal or physical resistance
10 does not constitute consent, period?

11 DEAN ANDERSON: Right. The second
12 part of the sentence tries to say something
13 different.

14 MS. WINE-BANKS: Maybe just make it
15 two sentences.

16 MS. KEPROS: Can I offer my draft? I
17 actually have a sentence on this.

18 DEAN ANDERSON: What does your
19 sentence say?

20 MS. KEPROS: Consent may be conveyed
21 through words or actions. An expression of lack
22 of consent through words or conduct means there

1 is no consent.

2 All the surrounding circumstances are
3 to be considered in determining whether a person
4 gave consent or not, including whether a person
5 did not resist or cease to resist only because of
6 another person's actions. Lack of verbal or
7 physical resistance alone does not constitute
8 consent.

9 DEAN ANDERSON: Right. All of that
10 may or may not be good and some of it is already
11 included here and none of it communicates the
12 second part.

13 CHAIR JONES: But it does, which is no
14 means no.

15 MS. KEPROS: Well, an expression of
16 lack of consent through words or conduct means
17 there is no consent.

18 MS. WINE-BANKS: That's the first half
19 of this.

20 MS. KEPROS: That's no means no.

21 DEAN ANDERSON: That's no means no.

22 CHAIR JONES: So let me separate these

1 two out. Let me separate these two out or we
2 could eliminate them.

3 HON. HOLTZMAN: I like expression of
4 resistance. I mean, you can use the exact same -
5 - I don't know why you didn't just use the exact
6 same language that's in the statute except take
7 out everything --

8 DEAN ANDERSON: I did use the exact
9 same language in the statute and take out the --

10 HON. HOLTZMAN: Well, an expression of
11 lack of consent towards the conduct means --

12 DEAN ANDERSON: Yes. That is --

13 HON. HOLTZMAN: Well, you say while --

14 MS. WINE-BANKS: There's nothing on
15 intent?

16 DEAN ANDERSON: Yes, but I don't think
17 they'd agree to it. I agree to that.

18 MS. WINE-BANKS: Why? Why, what's --

19 MAJ GEN WOODWARD: Neither verbal nor
20 physical resistance is required because a lack of
21 verbal and physical resistance does not
22 constitute a consent.

1 DEAN ANDERSON: So let me try to
2 simplify, in the interests of consolidating and
3 in the interest of moving toward consensus. We
4 could get rid of the second sentence. The first
5 sentence is just neither verbal nor physical
6 resistance is required.

7 CHAIR JONES: And that's starting with
8 the term consent, means they're freely giving
9 consent?

10 DEAN ANDERSON: That's A.

11 CHAIR JONES: That's A. Okay.

12 MAJ GEN WOODWARD: And then you go into
13 the submission piece? Okay.

14 DEAN ANDERSON: No, what is in double
15 brackets is the question of submission, which is
16 the second part of the sentence, which we thought
17 was a separate idea from the lack of resistance
18 idea.

19 But I put it in brackets because I'm
20 not actually sure that it's necessary. I
21 separated it out into two different ideas. One
22 is that submission alone does not constitute

1 consent, and the second is submission due the
2 will of another -- you know, to the will of
3 another due to force, threat of force or fear
4 does not constitute consent.

5 That's also in the statute right now.
6 We could include, if we wanted to hew closely to
7 the statute, we would include the second
8 sentence. It's a fairly narrow sentence and may
9 have negative implications for submission in
10 circumstances that does not include submitting to
11 the -- you know, by virtue of force.

12 So the broader construction is the
13 first sentence -- submission alone does not
14 constitute consent. You could do that alone,
15 right, or we could do the second sentence alone
16 or we could do neither.

17 I put it in brackets because I'm not
18 sure that it's necessary given everywhere else in
19 the statute that talks about the importance of
20 force and how force overcomes will and all that
21 kind of stuff. So --

22 MS. KEPROS: I think we should

1 eliminate it because it says freely given and so
2 to me that's sort of redundant and doesn't -- it
3 doesn't add meaning, to me, and I'm looking to
4 see if anyone can argue against that. That's
5 just my gut.

6 MAJ GEN WOODWARD: You're right.
7 That's submission to the will of another due to
8 the level of law means it's not freely given so
9 what's the point.

10 MS. KEPROS: Right.

11 MAJ GEN WOODWARD: I see. Okay.

12 DEAN ANDERSON: That's why I put it in
13 brackets.

14 MAJ GEN WOODWARD: Okay.

15 MS. KEPROS: I think that was a good
16 idea.

17 DEAN ANDERSON: Next is verbatim from
18 the statute itself so it's noncontroversial.
19 Previous to, you know --

20 HON. HOLTZMAN: Can we just go back to
21 the second sentence? I don't really like
22 expression of resistance. I don't think that

1 that's really the terminology that we want.
2 Resistance and just say no, I mean, or --
3 resistance would imply something much more than
4 just a negative. It implies --

5 CHAIR JONES: Physical resistance.

6 HON. HOLTZMAN: It implies a lot of
7 things but it's -- you know, no is not the same
8 as resisting.

9 DEAN ANDERSON: So how about refusal,
10 the word refusal instead of resistance?

11 HON. HOLTZMAN: I don't know why we
12 have to say anything there. Why do we have to
13 say --

14 DEAN ANDERSON: That's why I suggested
15 we delete the sentence.

16 HON. HOLTZMAN: I mean, I don't mind
17 what it says here, which is an expression of lack
18 of consent through words or conduct means there
19 is no consent. I don't know why that's not --
20 that seems to be perfectly adequate the way it is
21 right now.

22 PROFESSOR SCHULHOFER: Yes.

1 DEAN ANDERSON: Okay, so the first
2 sentence would be neither verbal nor physical
3 resistance is required.

4 HON. HOLTZMAN: Yes.

5 MS. KEPROS: That -- I have to say,
6 looking at that sentence in isolation I don't --
7 I have no idea what it means.

8 CHAIR JONES: I really thought this --
9 we were going to have a modest change here to
10 make this one sentence that should have had a
11 comma easier to understand.

12 HON. HOLTZMAN: Right. Exactly.

13 CHAIR JONES: So I think the term
14 consent, the first line in A, means a freely
15 given agreement -- everyone agrees that stays.
16 The second line, which is no means no, an
17 expression of lack of consent through words or
18 conduct means there is no consent.

19 Then, and I know there may be a
20 wrinkle in this sentence, but lack of verbal or
21 physical resistance, right, does not constitute
22 consent.

1 PROFESSOR SCHULHOFER: Right.

2 MS. KEPROS: Right.

3 CHAIR JONES: Then submission alone
4 does not constitute consent. Is that what we're
5 trying to --

6 HON. HOLTZMAN: We're arguing about
7 that.

8 CHAIR JONES: Well, arguing about
9 that, if we don't need that then it should be
10 submission resulting from the use of force,
11 threat of force or placing another -- well I
12 guess, does not constitute consent and then
13 placing another person in fear does not
14 constitute consent. Is that -- can we break it
15 up that way and just make it easy?

16 HON. HOLTZMAN: I think the easy way
17 to do that, Barbara, is lack of verbal -- well it
18 will be lack of verbal --

19 CHAIR JONES: Or physical resistance.

20 HON. HOLTZMAN: -- resistance does not
21 constitute consent.

22 CHAIR JONES: Does not -- that -- yes.

1 HON. HOLTZMAN: And then the other
2 thing you're proposing is submission resulting
3 from the use of force, threat of force and
4 placing another person in fear does not
5 constitute consent.

6 CHAIR JONES: Okay. Then it's just
7 two sentences.

8 HON. HOLTZMAN: If we make that two
9 sentences --

10 CHAIR JONES: Right.

11 HON. HOLTZMAN: And then the last
12 sentence stays as it is.

13 CHAIR JONES: Right.

14 HON. HOLTZMAN: So the only change is
15 in the third sentence -- is the second sentence -
16 - third sentence.

17 CHAIR JONES: Right. Third sentence.

18 HON. HOLTZMAN: Maybe lacks, which
19 would make -- it becomes two sentences. Once
20 sentence says lack of verbal or physical -- lack
21 of verbal or physical resistance does not
22 constitute consent.

1 And then the next sentence is
2 submission resulting from the use of force,
3 threat of force or placing another person in fear
4 does not constitute consent. So basically we've
5 taken --

6 MAJ GEN WOODWARD: So why don't we just
7 leave that out? I thought we said we didn't need
8 that. So just do that paragraph as is and just
9 delete the, or submission resulting from the use
10 of force, threat of force or placing another in
11 fear. Just delete that.

12 DEAN ANDERSON: The reason I think we
13 might want to delete that, is that I think there
14 is an implication that submission due to another
15 reason --

16 CHAIR JONES: I'm fine with getting
17 rid of that.

18 DEAN ANDERSON: -- may constitute
19 consent.

20 HON. HOLTZMAN: I have no problem
21 either way.

22 CHAIR JONES: And then just add

1 emphasis to what we're saying.

2 DEAN ANDERSON: It makes the provision
3 even simpler. It's essentially, A is the same
4 provision, as I understand the will of the body -
5 -

6 CHAIR JONES: There is no will.

7 DEAN ANDERSON: -- except, or
8 submission resulting from the use of force,
9 threat of force, replacing -- right? From the
10 word or, to fear, is gone, and then everything
11 else stays the same.

12 CHAIR JONES: All right. So that --
13 is everybody agreed that that would be our change
14 to the statute under 8A?

15 DEAN ANDERSON: Can I -- except that
16 there is one more thing. We can continue to talk
17 about this but the last provision was also a
18 problem.

19 CHAIR JONES: Which was --

20 DEAN ANDERSON: Lack of consent may be
21 inferred based on the circumstances. All the
22 circumstances are to be considered in determining

1 whether a person gave consent or whether a person
2 did not resist.

3 CHAIR JONES: Oh this is C, sorry.

4 DEAN ANDERSON: This was the
5 reimportation of this resistance requirement by
6 implication and that would be deleted --

7 PROFESSOR SCHULHOFER: That would be
8 deleted, right?

9 DEAN ANSERSON: -- and so all I did
10 was say the totality of the circumstances may be
11 considered in determining consent or lack of
12 consent.

13 HON. HOLTZMAN: Why do we even change
14 the -- why don't you just say all the surrounding
15 circumstances are considered in determining
16 whether a person gave consent, period, so we're
17 not -- I mean, the less we change in the existing
18 statute the better.

19 CHAIR JONES: The better.

20 DEAN ANDERSON: So you'd just stop it
21 at the comma?

22 HON. HOLTZMAN: Right. Stop it at

1 period.

2 DEAN ANDERSON: Put a period there.

3 CHAIR JONES: We're taking -- I think
4 the proposal is on C. Get rid of the first
5 sentence and just go with all the surrounding
6 circumstances are to be considered --

7 HON. HOLTZMAN: -- in determining
8 whether a person get consent, period.

9 CHAIR JONES: Period. That's short
10 and sweet.

11 MS. FRIEL: I need you to go back at
12 some point, and it doesn't have to be this
13 second, before we decide on B. I'm not clear on
14 exactly what we're doing.

15 CHAIR JONES: I'm sorry. On B, did
16 you say?

17 MS. FRIEL: Well, her B, or A in the
18 present statute.

19 DEAN ANDERSON: So A in the present
20 statute is the same, almost entirely the same
21 except --

22 MS. FRIEL: But this is the only

1 change we'd make?

2 DEAN ANDERSON: Yes.

3 MS. FRIEL: Okay. Got it.

4 MS. KEPROS: So I have one other
5 suggestion. The sentence about lack of verbal or
6 physical resistance --

7 HON. HOLTZMAN: Where is that?

8 MS. KEPROS: I don't know.

9 DEAN ANDERSON: It's in A.

10 MS. KEPROS: Okay.

11 PROFESSOR SCHULHOFER: Third sentence
12 in A.

13 DEAN ANDERSON: It's the second --
14 third sentence in A.

15 MS. KEPROS: And I don't have an issue
16 with how it's being articulated right now. I'm
17 fine with that. I just think it should say lack
18 of verbal or physical resistance alone does not
19 constitute --

20 HON. HOLTZMAN: Oh, yes. That's good.
21 I like that.

22 MS. KEPROS: Because it's part of the

1 context, right?

2 DEAN ANDERSON: I'm fine with that.

3 HON. HOLTZMAN: Well, you know
4 something? I'm not sure I agree with it, because
5 it does suggest still that somehow the lack of
6 resistance has to be taken into account as part
7 of the circumstances.

8 MS. KEPROS: I think it should. I
9 think it's reasonable for someone who has, you
10 know, begun to participate in sexual behavior
11 with another person, who thinks they're
12 consenting to it, if there's a point in the
13 process that something is brought to their
14 attention that it's not okay to keep going I
15 think that should be considered in assessing
16 consent to what happens after that. It is part
17 of why someone thinks it's -- there's consent.

18 CHAIR JONES: You know, the statute
19 itself says, even with all the screwy commas and
20 no commas, lack of verbal or physical resistance
21 does not constitute consent. The concept of
22 alone becomes very difficult there.

1 I think it's understandable without
2 alone, and if you put alone in then I think that,
3 what you're trying to get at, is captured in the
4 totality of the circumstances that you get at in
5 C, which you have to look at all the surrounding
6 circumstances.

7 MS. KEPROS: Another kind of -- I
8 know, I can see that argument because you can
9 say, well --

10 CHAIR JONES: But if you add one thing
11 then it's okay. I mean, it starts to get too
12 complicated when you put alone in there, I think.

13 PROFESSOR SCHULHOFER: I think it's
14 really implicit in the idea of constitute. Lack
15 of verbal or physical resistance does constitute
16 consent.

17 MS. KEPROS: It does not, yes.

18 PROFESSOR SCHULHOFER: It covers the
19 idea.

20 HON. HOLTZMAN: You need more.

21 PROFESSOR SCHULHOFER: Yes.

22 MS. KEPROS: I think one of the

1 challenges I have with this definition is, it
2 says it's defining consent but most of what it
3 defines is lack of consent. And I think it's
4 unclear to the, you know, reader, certainly to
5 me, so then what does consent look like?

6 And so that's kind of the lens I'm
7 trying to look at it and I'm thinking, you know,
8 I think that first sentence is useful. I note,
9 you know, I like the language about considering
10 the totality of the circumstances.

11 I wonder if maybe there should be
12 another line along the lines of consent may be
13 conveyed through words or action immediately
14 after the first sentence.

15 MS. WINE-BANKS: Laurie, say that
16 again.

17 MS. KEPROS: Consent -- after the
18 first sentence about freely given agreement, I
19 would suggest consent may be conveyed through
20 words or action, period. And then an expression
21 of lack of consent or whatever we said goes after
22 that -- what's not consent.

1 PROFESSOR SCHULHOFER: Or you could
2 put it in the first sentence.

3 HON. HOLTZMAN: Or you could put it in
4 the last sentence. You know, it talks about all
5 the surrounding circumstances are to be
6 considered. You can do all the surrounding
7 circumstances are to be considered in determining
8 whether a person gave consent including the
9 actions of the word -- what you say. Words and
10 actions --

11 MS. KEPROS: Yes, I said maybe
12 conveyed through words or actions.

13 HON. HOLTZMAN: Yes. We could go to
14 a lot of different places.

15 PROFESSOR SCHULHOFER: Yes. What I
16 was thinking of, I don't know if it's necessarily
17 better, would just say in -- at the very
18 beginning the term consent means a freely given
19 agreement by words or actions to the conduct at
20 issue.

21 One other thing I was going to
22 mention, which doesn't necessarily need to be

1 changed, but it helps me understand the logic of
2 this. The term consent means a freely given
3 agreement to the conduct at issue by a competent
4 person. An expression of lack of consent to
5 words or conduct means there is no consent.

6 But lack of verbal or physical
7 resistance does not constitute consent. I think
8 that's the thought.

9 DEAN ANDERSON: Yes.

10 PROFESSOR SCHULHOFER: The thought is
11 expression of lack of consent means there's no
12 consent, but on the other hand the lack of such
13 an expression, doesn't mean that there is
14 consent.

15 DEAN ANDERSON: Right, and I have the
16 same thing I think reversed and that was
17 confusing.

18 MS. WINE-BANKS: I think it's clearer
19 the way you're saying it Stephen, yes.

20 DEAN ANDERSON: I agree.

21 MS. KEPROS: Yes, I like that too, but
22 lack.

1 PROFESSOR SCHULHOFER: We could -- we
2 could put in but -- however, or not, but assuming
3 that's the logic of it, to me.

4 CHAIR JONES: I don't mind putting it
5 in, and that also sort of goes to your alone.

6 MS. KEPROS: Well, exactly. That's
7 why I like -- because I feel like otherwise we're
8 not saying what is the converse of that.

9 CHAIR JONES: Right. Right.

10 DEAN ANDERSON: And do we know what
11 the statute's going to say in terms of the word
12 consent? Because right now, under sexual assault
13 have we made that determination?

14 MS. KEPROS: No, provide we haven't --

15 DEAN ANDERSON: Just to point out that
16 we're either -- we're trying in this provision,
17 this is the definition section. Presumably
18 definitions of words that show up in the statute,
19 you know, and are relevant to be defined, and I'm
20 not sure the word or how the word consent shows
21 up here.

22 I think this goes to the question of

1 the emphasis of the provision. Right now it's
2 both on consent and nonconsent. But depending on
3 how the substantive offense is defined, we may
4 want to frame the definition.

5 CHAIR JONES: How do I get to five
6 again? Where is it?

7 (Simultaneous talking)

8 PROFESSOR SCHULHOFER: Would it make
9 sense to jump to five?

10 CHAIR JONES: Yes, let's jump to five
11 and then maybe we can involve -- well, we will be
12 if we jump to five and see if we're doing
13 something.

14 MS. WINE-BANKS: Can I just --
15 because, again, we use the word by a competent
16 person. But we haven't really gotten to defining
17 what incapacity or competence is. So you -- and
18 we're saying well, maybe we don't need a
19 definition but here we're using the word by a
20 competent person.

21 And then if you go further the only
22 thing that's excluded from competence is

1 sleeping, unconscious or incompetent, which is
2 just using the opposite word but still no
3 definition and --

4 CHAIR JONES: Well, yes, it gets
5 defined later.

6 MS. WINE-BANKS: But we haven't --
7 that's where we're still stuck on the -- that
8 definition.

9 CHAIR JONES: That's number three?

10 MS. WINE-BANKS: Yes.

11 DEAN ANDERSON: Issue three.

12 MS. WINE-BANKS: Yes.

13 HON. HOLTZMAN: Well, where is the
14 definition of competence?

15 DEAN ANDERSON: There is none in
16 there.

17 HON. HOLTZMAN: In the whole statute?

18 DEAN ANDERSON: No, there's not in the
19 status quo and I don't think we've proposed one
20 except by implication.

21 MS. WINE-BANKS: That implication of
22 what's incapacity.

1 MS. KEPROS: But we have an appellate
2 court who has defined a competent person.

3 MS. FRIEL: Right. And a competent
4 person according to Pease is a person who lacks
5 either the mental or physical ability to consent
6 due to a cause enumerated in the statute.

7 MS. WINE-BANKS: Yes. But the cause
8 enumerated in the statute is sleeping
9 unconscious.

10 MS. FRIEL: Well, no. There's also --

11 DEAN ANDERSON: Or being incapable of
12 consent.

13 MS. WINE-BANKS: Yes.

14 (Simultaneous talking)

15 CHAIR JONES: No, it talks about a
16 mental defect. It talks about --

17 MS. WINE-BANKS: It says physical
18 disability.

19 HON. HOLTZMAN: Can I suggest that we
20 make all the changes and then put everything
21 together --

22 MS. WINE-BANKS: And then worry about

1 it?

2 HON. HOLTZMAN: -- and then see how it
3 all fits together because there's probably a lot
4 of things that may not quite --

5 DEAN ANDERSON: And we can get another
6 one of these with red lines. (Sneezes) Excuse
7 me.

8 PROFESSOR SCHULHOFER: We could go
9 back to the issue of competence or disability, if
10 we could look at that for a minute just to decide
11 on issue five and then we can come back to
12 whichever issue that was.

13 DEAN ANDERSON: All right. So five is
14 next, right?

15 CHAIR JONES: Well, what have we
16 decided on one? You're working on one. Is that
17 the idea?

18 DEAN ANDERSON: So right now we're
19 very close to solving one. We have it typed up.
20 Got a new version, have it typed up. Just the
21 only thing is we want to make sure that it's
22 consistent with whatever we're trying to define

1 that's in the statute and that's why we're
2 skipping to five, so that we know what is the
3 word that we're trying to define. Is it the word
4 consent? Is it something else?

5 CHAIR JONES: Well, wait a minute.
6 Let's not skip right to five now. I think we've
7 decided we're going to try to plug things in and
8 then -- and then check on whether they're --

9 DEAN ANDERSON: Okay.

10 MS. FRIEL: So I hate to make us go
11 back. Can I just ask -- so we took out the
12 sentence in any form about submission in the face
13 of X, Y and Z is not consent. Why did we take
14 that out?

15 DEAN ANDERSON: We took it out because
16 it suggests by implication that submission due to
17 something other than force may be consent and --

18 MS. FRIEL: It may be. What if I --
19 what if I submit because a -- right, in normal
20 circumstances please, please, please can we have
21 sex tonight and I go, okay, fine. That is okay.
22 That's consensual sex.

1 But the other sentence where, clearly,
2 you can't -- if you submit in the face of being
3 in fear because of something someone did, that's
4 clearly lack of consent. I don't know, as a
5 practitioner I would like the sentence in there
6 to be able to say it's very clear right here.
7 You know, yes, he may be saying she said yes but
8 let's look at what happened before she said yes
9 because he did some things to put her in fear
10 that if she didn't say yes she was going to be
11 hurt.

12 MS. KEPROS: But isn't it then not
13 freely given and therefore not consent?

14 MS. FRIEL: No, no, no. I agree. You
15 could argue it's not freely given but I'm
16 thinking as a practitioner what you've done with
17 the sentence about submission given in the face
18 of these things is giving some clarity to what
19 not freely given means.

20 DEAN ANDERSON: So the only argument
21 against that is that by articulating that
22 explicitly it by implication says that submission

1 under any other circumstances may constitute
2 consent. And for some the win on the side of
3 clarifying that when it's force or fear it's not
4 consent is outweighed by the concern that it
5 allows for submission under all other
6 circumstances or many other circumstances. And
7 so that's a judgment call.

8 I think you're right that that clarity
9 of -- I think it can be argued either way, given
10 the statute without language around submission.
11 Whether or not the clarity is a sufficient
12 benefit to outweigh the other side I think is
13 what's at issue.

14 MS. FRIEL: I have to think about it,
15 yes.

16 PROFESSOR SCHULHOFER: To me, it's a
17 closed question. But one way I can see this
18 playing out is that the substantive offense is
19 defined as committing a sexual act upon another
20 person by, for example, threatening or placing
21 that other person in fear. So if the prosecution
22 proves that fact beyond a reasonable doubt,

1 they've made a prima facie case. But consent is a
2 defense. So someone can come in and make the --
3 so this is going to lead in the direction that
4 you were going.

5 The defendant comes in saying yes,
6 maybe my actions placed that person in fear but
7 they submitted and that constitutes consent. So
8 then you want to say that the affirmative consent
9 -- the affirmative defense of consent is
10 precluded by language that if the submission
11 resulted from da-da-da then it doesn't count.

12 DEAN ANDERSON: So the response to
13 that, I think, is --

14 PROFESSOR SCHULHOFER: Such a
15 complicated -- you want to -- I think that's a
16 plausible -- in the absence of this language that
17 would be a plausible defense argument.

18 MAJ GEN WOODWARD: It closes the door
19 on --

20 PROFESSOR SCHULHOFER: I'm sorry.

21 MAJ GEN WOODWARD: And, you know, this
22 closes the door on that.

1 PROFESSOR SCHULHOFER: Yes, it would
2 close the door on that argument.

3 CHAIR JONES: Statutes aren't perfect,
4 as we know, and the language doesn't have to be
5 so nice. I'm kind of reversing myself.

6 I'm sympathetic to Lisa's point and
7 also I'm sympathetic to leaving this looking as
8 much like it looked before we started changing
9 it. So I would leave it -- I would put that back
10 in and --

11 DEAN ANDERSON: As a separate
12 sentence?

13 CHAIR JONES: As a separate sentence
14 because -- let's just clarify as opposed to
15 deleting.

16 PROFESSOR SCHULHOFER: It's much
17 easier to explain to Congress that we just broke
18 it up into a separate sentence rather than
19 deleting entirely.

20 CHAIR JONES: Right. Exactly. I
21 don't think --

22 MAJ GEN WOODWARD: Because anything we

1 take out they're going to look at it with a
2 microscope. If we just changed the wording
3 they're going to understand that we were just
4 trying to clarify.

5 CHAIR JONES: All right. So --

6 HON. HOLTZMAN: Exactly. And so what
7 we took out is something that could be a possible
8 defense that we didn't want that Congress never
9 intended.

10 CHAIR JONES: Yes.

11 HON. HOLTZMAN: So that's the reason
12 and basically we left the statute as is.

13 CHAIR JONES: All right.

14 HON. HOLTZMAN: So that, I think,
15 makes a lot of sense.

16 CHAIR JONES: So we are -- Glen, do
17 you have any idea what we've agreed upon?

18 LTCOL HINES: I think Dean Anderson
19 does.

20 CHAIR JONES: Okay, great. Okay. So
21 --

22 PROFESSOR SCHULHOFER: In our work on

1 the civilian side we've been deluged with
2 submissions -- yes, civilian -- yes, you're
3 right, we've been deluged with submissions from
4 the BDSM lobby and they are -- they worry about
5 things like this, like, you know, you have
6 threats that place the other person in fear but
7 it's consensual.

8 CHAIR JONES: And as long as they
9 don't try to kill them it's okay. It's legal.

10 PROFESSOR SCHULHOFER: Yes, it's okay.
11 So that's -- that again, that -- yes, but that
12 reinforces your point about the importance of
13 having that -- get that sentence in about
14 submission.

15 CHAIR JONES: Okay. Good.

16 (Simultaneous talking)

17 PROFESSOR SCHULHOFER: Because
18 otherwise they could say where there's consent to
19 placing a person in fear.

20 (Simultaneous talking)

21 PROFESSOR SCHULHOFER: No, if we keep
22 the sentence we're good. But otherwise they

1 would say, people submit after being placed in
2 fear, but they do so consensually.

3 CHAIR JONES: Can we go to four now,
4 please? This was something --

5 MS. FRIEL: Already resolved, right?

6 CHAIR JONES: Well, I thought so too
7 but it appears in Glen's rendition --

8 LTCOL HINES: Where are we?

9 CHAIR JONES: It's administration of
10 a drug or intoxicant.

11 (Simultaneous talking)

12 MS. FRIEL: The only reason it's not
13 resolved is because we all weren't here. Those
14 of us that -- tell me if I'm right. Those of us
15 that were here at the last meeting agreed there
16 should be no change. There were a couple people
17 missing.

18 CHAIR JONES: I see. Okay. Well, I
19 --

20 (Simultaneous talking)

21 HON. HOLTZMAN: Number four? Is it
22 definition concerning the accused administration

1 for drugs that we ruled out?

2 MS. FRIEL: Yes.

3 HON. HOLTZMAN: Okay. Thank you.

4 DEAN ANDERSON: So we deliberated on
5 this and came to an agreement on the basis of the
6 people who were present.

7 CHAIR JONES: Right.

8 DEAN ANDERSON: And wanted to make
9 sure that everyone else was generally on board.

10 (Simultaneous talking)

11 MS. FRIEL: But I'm really waiting for
12 Liz -- Lisa, the other Lisa, because she was one
13 of the people. Oh, she just walked in, great.
14 Perfect timing, because now I think it was Lisa
15 and Liz who weren't here last time, right?

16 MS. KEPROS: I didn't even remember
17 when we talked about this. I would support
18 changing this. I think it is over-broad. It
19 doesn't have the intent. It doesn't require the
20 intent of the actor.

21 MAJ GEN WOODWARD: But it's tied to any
22 person subject to this chapter who commits a

1 sexual act upon another person by administering
2 to that person.

3 CHAIR JONES: Yes, I think -- and I
4 remember the debate and I thought that the by
5 took care of the problem.

6 MS. WINE-BANKS: And I thought that
7 was too -- I don't think that the person has to
8 administer the drug. I think it's enough if you
9 take advantage of it. If you know that they've
10 been administered an intoxicant, that that should
11 be a crime.

12 So making it limited to by having done
13 it, I don't --

14 MAJ GEN WOODWARD: Yes, but even then
15 it says by administering to that other person a
16 drug, intoxicant or other substance and thereby
17 substantially impairing the ability.

18 MS. WINE-BANKS: Right.

19 HON. HOLTZMAN: I think the actor has
20 to -- you can't take advantage, this is not
21 taking advantage.

22 MS. WINE-BANKS: I know, but I think

1 it shouldn't -- what I'm saying is I would like
2 it broader.

3 MAJ GEN WOODWARD: You think it's too
4 narrow?

5 HON. HOLTZMAN: I think it's too
6 narrow. I think that if you -- if I get together
7 with Lisa and say we're going to drug Steve, you
8 do it, you administer the drug.

9 MS. FRIEL: Well, then you're an
10 accomplice. Then you're still going to be guilty
11 of this because you're an accomplice. So but
12 it's the you had nothing to do with the
13 administer.

14 You just watched it happen. You had
15 no mens rea towards that and then you took
16 advantage of her.

17 DEAN ANDERSON: Then it's sexual
18 assault, not rape.

19 MS. FRIEL: And that's what we ended
20 up coming to when we discussed it, that that is
21 covered just one level down. It's still criminal
22 behavior.

1 It's sexual assault but we didn't
2 consider that person as bad as the person who did
3 both administering the drug and doing that. We
4 can disagree but that's where the conversation
5 went.

6 And the other way, Laurie, with the
7 intentional way, we didn't like that, to narrow
8 the statute by putting the word intentionally in,
9 because what if at the time I pour the drug in
10 the punch, and I just want to see how everybody
11 reacts.

12 It's funny, but I did it and I know I
13 did it and later in the evening I go, hey, look
14 at her, she doesn't look too hot. Now I develop
15 the mens rea to go ahead and take advantage of
16 what I did earlier.

17 I didn't intend it at the beginning
18 but I do it later well under the weight of
19 statutory. Now you are.

20 But if we put the word intentionally
21 in, that you have to drug someone with the intent
22 of taking advantage of them later, then we're

1 going to lose that case and we said we didn't. So
2 that's where we came out with saying leave the
3 statute the way it is.

4 MS. KEPROS: Well we agree that you
5 would just end up under the sexual assault
6 provision instead of the rape provision and I do
7 think there is a difference in culpability
8 depending on what your mental state was at the
9 moment that you provided that intoxicant. I
10 recognize I have a minority position here but I
11 just wanted to say I don't agree.

12 PROFESSOR SCHULHOFER: But it's not
13 just that one person gives the drugs to the other
14 person. It has to be by force or without
15 knowledge.

16 It is already substantial culpability.
17 They're already doing something, you know,
18 something very wrong right from the beginning.

19 MS. KEPROS: Is that different,
20 though, when you spike the punch versus -- for
21 everybody, versus putting something in one
22 individual's drink?

1 PROFESSOR SCHULHOFER: Yes. I think
2 if you spike the punch you got to -- you know,
3 you got to be careful what you --

4 MS. FRIEL: And you take advantage of
5 somebody who was now not in a state to give
6 freely given consent because you spiked the punch
7 you're responsible for that.

8 MAJ GEN WOODWARD: You did both, yes.

9 MS. FRIEL: And think about -- I mean,
10 I know you don't want to -- from the prosecutor's
11 point of view, adding the word intentionally
12 between narrowing it and the way I just said I
13 got to prove that now. I have to prove that the
14 moment you threw the Ecstasy in the punch that
15 you were thinking you know what, one of these
16 girls I'm going to take advantage of by the end
17 of the night.

18 That's a hard thing to prove, you had
19 that in mind, whereas it's easier to prove you
20 put the stuff in there, you created the
21 condition, you took advantage of the condition.
22 That should be rape to me and that,

1 unfortunately, is going on.

2 PROFESSOR SCHULHOFER: It's very hard
3 to prove beyond a reasonable doubt, you know,
4 what did he know and when did he know it? And
5 you go back to your ideal and, you know, to -- at
6 what point did he formulate that purpose and to
7 prove when and all he's got to do is say well,
8 when I did it it was just for fun. Very hard to
9 disprove that beyond a reasonable doubt.

10 MAJ GEN WOODWARD: That's my argument
11 that I was having with you about the other one.
12 He reasonably should know. Same thing, thank
13 you.

14 (Simultaneous talking)

15 MS. KEPROS: I just wanted to be
16 clear, I was not in the majority of it.

17 CHAIR JONES: Well, if this makes you
18 feel any better, I think this is an intentional
19 crime. I just don't happen to agree with needing
20 anything more than by there in order to make it
21 work.

22 So are we -- at least there's a

1 consensus and we're going ahead with leaving this
2 one be. Number four is going to stay resolved so
3 we can move it over into the resolved section.

4 Okay. Now I have seven being
5 unresolved, and for some reason -- let's see what
6 that one was.

7 MS. KEPROS: But five is over here.

8 CHAIR JONES: Oh, five. Sorry. Is
9 five unresolved?

10 HON. HOLTZMAN: Sort of.

11 CHAIR JONES: Goodness. Well, this is
12 one where I think we came very close to resolving
13 it at the last meeting.

14 HON. HOLTZMAN: Wait a minute. Where
15 is the five stuff?

16 CHAIR JONES: I know. You got to find
17 it at the -- in the blue. In the blue.

18 HON. HOLTZMAN: Oh, yes. Okay I got
19 it.

20 LTCOL HINES: So five is -- that's --
21 that was your group, right, Laurie?

22 MS. KEPROS: Yes.

1 LTCOL HINES: And I think where we got
2 was --

3 CHAIR JONES: This is yours, I see.
4 And you want to know where we are either.

5 LTCOL HINES: In other words, six has
6 never needed to be changed.

7 CHAIR JONES: No, I'll find it.
8 That's okay.

9 LTCOL HINES: The competing --

10 CHAIR JONES: I'm sorry. What one?

11 LTCOL HINES: I'm sorry, Judge. I'm
12 talking over you. So I believe there was a
13 consensus that that needed to be changed.

14 The proposal by Laurie's working group
15 was you'd either change the language of
16 120(b)(1)(b) or replace it with acting without
17 the consent of the other person, or you delete
18 that entirely and you make a new subsection four
19 or however it's renumbered that would state,
20 commits a sexual act upon another person without
21 the consent of the other person. Which was what
22 General Schwenk called your baseline offense of

1 any nonconsensual --

2 CHAIR JONES: And I don't remember,
3 honestly, and I think I was passionately for one
4 or the other, but would somebody tell me what
5 their -- I'm looking at the bodily harm issue.

6 PROFESSOR SCHULHOFER: It's my
7 recollection -- it's five. Yes, my recollection
8 was that there was two alternatives on the table.

9 CHAIR JONES: Right.

10 PROFESSOR SCHULHOFER: And different
11 people have different preferences. But my
12 recollection was that everybody was comfortable
13 with the second proposal which was adding the new
14 subsection four and some people were not
15 comfortable with the first proposal.

16 CHAIR JONES: Which is the first
17 proposal?

18 PROFESSOR SCHULHOFER: The first
19 proposal is the most minimal change to remove
20 bodily harm and --

21 CHAIR JONES: Bodily harm is getting
22 removed no matter what. We're clear on that,

1 right?

2 MS. FRIEL: Say that again? I'm sorry.

3 CHAIR JONES: So causing bodily harm
4 to that other person is being removed no matter
5 what.

6 MS. FRIEL: Right. We're either going
7 to put the definition there --

8 CHAIR JONES: Right.

9 MS. FRIEL: -- or we're going to add
10 subsection four.

11 CHAIR JONES: Or we're going to put --
12 we're going to add a new section, right.

13 MS. KEPROS: Well, here's the major
14 difference. The proposal one was just take the
15 definition of bodily harm and paste it into
16 (b)(1)(b).

17 The second proposal, this language,
18 what would go into what's currently saying bodily
19 harm, would now say causing nonconsensual
20 physical harm. It created a physical harm option
21 and then it created a new crime that was a merely
22 nonconsensual.

1 PROFESSOR SCHULHOFER: It's not really
2 a new crime. It's just breaking out what was --

3 MS. KEPROS: Right. Well, I was
4 saying that for the purpose of numbering.

5 PROFESSOR SCHULHOFER: Right.

6 MS. KEPROS: A new number.

7 PROFESSOR SCHULHOFER: New number.

8 MS. KEPROS: Okay.

9 (Simultaneous speaking.)

10 HON. HOLTZMAN: So what it did was it
11 created three grades of sexual assault. One
12 grade was grievous bodily harm, the second was
13 physical harm and the third one is without
14 consent.

15 DEAN ANDERSON: And both of the latter
16 two are sexual assault and the first is rape.

17 HON. HOLTZMAN: Right.

18 MS. FRIEL: And then we had a whole
19 discussion around whether we should have the
20 middle thing in the report.

21 HON. HOLTZMAN: Right. Right.

22 MS. FRIEL: You can watch the Liz and

1 Lisa show going back and forth about that.

2 PROFESSOR SCHULHOFER: My
3 recollection, this was at 4:44 in the afternoon.

4 CHAIR JONES: Well, we're getting
5 there, Professor.

6 PROFESSOR SCHULHOFER: My recollection
7 was that nobody objected to the separate
8 subsection four. Nobody thought that was bad.
9 Some people were uncomfortable with folding the
10 two together.

11 But I thought everybody was okay with
12 the second alternative, which is a fourth
13 subsection. Is that right? Is that
14 descriptively right?

15 MAJ GEN WOODWARD: Yes. The only issue
16 I had originally had was whether that made it
17 less, you know, whether there's a prioritization
18 and we decided there wasn't so it didn't matter.

19 CHAIR JONES: Yes. Whether it made it
20 less important coming in as number four when it's
21 such a -- it's the majority of our cases.

22 PROFESSOR SCHULHOFER: Right. That's

1 why I think Laurie wanted to start with that and
2 then have aggravated, right?

3 MS. KEPROS: Right. Exactly. I said
4 let's start with the baseline nonconsensual
5 offense and then say what makes it, you know,
6 arguably worse.

7 PROFESSOR SCHULHOFER: Right.

8 CHAIR JONES: Yes, flipping it, making
9 it A and moving A to B.

10 PROFESSOR SCHULHOFER: Oh, within
11 sexual assault?

12 CHAIR JONES: If we care about that.

13 PROFESSOR SCHULHOFER: It's just a
14 bigger rewrite.

15 CHAIR JONES: Within sexual assault.

16 MS. FRIEL: Yes, and it can be
17 confusing for practitioners who are now using the
18 statute as of this date this was A and after this
19 date this is --

20 MS. KEPROS: Yes, I wouldn't change
21 that.

22 MS. FRIEL: If we can accomplish it

1 without doing that kind of thing, getting the
2 substance of what we want we should do it.

3 CHAIR JONES: Okay. Well, I don't
4 care. Are we getting rid of B or not? I guess
5 we're -- I don't care. Four -- staying four
6 commits a sexual act upon another person by
7 acting without the consent of the other person.
8 Okay. What are we doing here now? Maybe that's
9 what I don't understand.

10 HON. HOLTZMAN: You can change (B) in
11 two ways. You can either get rid of it, so then
12 you have (A), (C), and (D), or you can do what
13 Laurie said, which is something that I had
14 recommended that Lisa disagreed with, is change
15 the term bodily harm to causing physical harm to
16 that other person. Wasn't that the word we used?
17 Non-consensual physical harm.

18 LTCOL HINES: I think that is the
19 second proposal, isn't it?

20 HON. HOLTZMAN: Yes, right, that is
21 the second proposal.

22 LTCOL HINES: Oh, just Laurie

1 disagreed with it. No, Lisa.

2 HON. HOLTZMAN: No, a lot of people
3 disagreed.

4 CHAIR JONES: Maggie, speak up. You're
5 on --

6 (Simultaneous speaking.)

7 DEAN SCHENK: I think we've now split
8 the table to --

9 HON. HOLTZMAN: No, no, no. I think
10 Lisa was the main articulator, but a lot of
11 people agreed with her.

12 MS. FRIEL: There's a line. I hate to
13 minimize it.

14 MS. KEPROS: And the difference
15 between what is reported in Glen's document as
16 the Proposal 2 and from what we discussed at our
17 last meeting as Proposal 2 is that our
18 recommendation from our sub-Subcommittee was that
19 there be a sentencing recommendation and a
20 gradation. And that is what the bigger Committee
21 has rejected. So, I think that is the major
22 difference.

1 CHAIR JONES: You have two kinds of --
2 you want to have physical harm and, then, you
3 want to have --

4 MS. KEPROS: I do remember Jill making
5 the suggestion at our last meeting that we could
6 just turn (B)(1)(b) into "Commits a non-sexual
7 sexual act", if you don't want the physical harm
8 level or if you don't think that should mean
9 something different.

10 CHAIR JONES: Yes, that's coming back
11 to me.

12 HON. HOLTZMAN: Yes, that's the last
13 thing I have on my notes. They're all color-
14 coded.

15 MS. KEPROS: Just turn "bodily harm"
16 into "non-consensual sexual act".

17 HON. HOLTZMAN: I see. Right.

18 MS. KEPROS: And not have a (4)

19 CHAIR JONES: In other words, "commits
20 a sexual act upon another by acting without the
21 consent of the other person"?

22 DEAN SCHENK: Yes.

1 CHAIR JONES: Okay.

2 HON. HOLTZMAN: That's the last note
3 I had from the end of the last meeting. That's
4 where we got to.

5 DEAN ANDERSON: So, not to be picky,
6 but there is slight difference between these
7 different things that have been said in terms of
8 the definition of B now. Saying, for instance,
9 "any offensive touching, including a non-
10 consensual sexual act" is different than saying
11 "a non-consensual sexual act". And it is also
12 different than "a sexual act without consent".

13 I would prefer that one, though,
14 because that is also consistent with the
15 definition because the definition section is
16 about defining consent. And I think that
17 includes what the current statute provides for as
18 any offensive touching would come under the
19 rubric of a sexual act without consent, which is
20 what you said, without the consent --

21 PROFESSOR SCHULHOFER: Where are you
22 picking up "offensive touching"?

1 DEAN ANDERSON: The "bodily harm".

2 HON. HOLTZMAN: Right. I think that
3 that is an interesting point and a point worth
4 discussing, but I think there is kind of like, I
5 would just say, the preliminary point. Do we
6 want to have two gradations here? I mean,
7 putting aside the fact that we have grievous
8 bodily harm and rape, but in B do we want to have
9 two gradations? Do we want to have a physical
10 harm gradation and a simply non-consensual harm?
11 However, non-consensual is -- whatever language
12 you want to do that. Or do you just want to have
13 one which is non-consensual? Again, how do you
14 do it.

15 So, I think that is the preliminary
16 question. Then, when we get past that, then we
17 can easily decide how we want to phrase it.

18 CHAIR JONES: I would like to have
19 just one, the purely non-consensual act. And if
20 there is physical harm, there can be another
21 charge in the --

22 MS. FRIEL: There'd be an assault

1 charge.

2 CHAIR JONES: It could be an assault
3 charge.

4 MS. FRIEL: We talked about it. It
5 would go toward sentencing. It would be part of
6 the facts that would affect somebody in
7 sentencing. Otherwise, you really have to take
8 the pure non-consensual act and almost make it
9 one level down. Grievous bodily harm is rape.
10 Physical injury would be sexual assault. And you
11 need one level down, and we are not talking about
12 doing that. That would be creating a whole new
13 crime.

14 CHAIR JONES: Lesser sexual assault.

15 PROFESSOR SCHULHOFER: It wouldn't
16 have to be --

17 MS. FRIEL: And I had argued that's a
18 bad idea.

19 PROFESSOR SCHULHOFER: Well, 120,
20 Subsection B, already has three sections to it,
21 and this would just be adding a fourth section to
22 that.

1 MS. FRIEL: Right, but --

2 PROFESSOR SCHULHOFER: It wouldn't be
3 a different crime.

4 MS. FRIEL: But what would the sense
5 be of having the same level crime? Here's one if
6 there's physical injury and here's non-consent
7 without physical injury. Why would you have the
8 physical injury then, because that would always
9 equal the non-consensual act?

10 PROFESSOR SCHULHOFER: The way I'm
11 understanding --

12 HON. HOLTZMAN: Well, so would all the
13 others, actually.

14 PROFESSOR SCHULHOFER: Yes, I was
15 going to say --

16 HON. HOLTZMAN: I mean, you wouldn't
17 need anything.

18 PROFESSOR SCHULHOFER: Yes.

19 HON. HOLTZMAN: Actually, you wouldn't
20 need any statute here except non-consent; that's
21 all.

22 PROFESSOR SCHULHOFER: Exactly.

1 That's what I was going to say. Exactly.

2 HON. HOLTZMAN: So this, you know,
3 what it does is help, I think, the jury focus a
4 little bit on seriousness of the crime and allow
5 the prosecutor to make those arguments about
6 that, but --

7 MS. FRIEL: And I guess, boring
8 everybody again, but you know my point. That is,
9 I think people, a lot of people in the field
10 don't feel that seriousness of the crime is
11 defined by physical injury; certainly by serious
12 physical injury, but by the fact you end up with
13 a scratch or a bruise or some of these more minor
14 forms of injury, most of those people are going
15 to say that's not what makes this a more serious
16 crime.

17 HON. HOLTZMAN: Right, but that's not
18 what I'm talking about in terms of physical harm.
19 Physical harm should be serious physical injury,
20 less than grievous bodily harm. But we're not
21 talking scratches.

22 MS. FRIEL: Okay.

1 HON. HOLTZMAN: That's my view. So,
2 we're talking about maybe a broken bone, maybe
3 stabbing.

4 MAJ GEN WOODWARD: Then, you're going
5 to have to start defining that. I think that's
6 just too painful.

7 PROFESSOR SCHULHOFER: Well, what you
8 have in Subsection 1 is "threatening or placing
9 another person in fear, making a fraudulent
10 representation that the act serves a professional
11 purpose, or inducing a belief by any artifice,
12 pretense, or concealment". Those are pretty
13 aggravated egregious conduct.

14 It's always difficult to talk about
15 different degrees of egregiousness when you're
16 starting -- you know, it's bad; any version of
17 this is bad. But, if you do it by threatening or
18 placing another person in fear, that to me is
19 behaviorally different from the guy who just
20 keeps going. So, I think that's why the
21 penetration without consent doesn't involve these
22 aggravated elements.

1 And I think, also, grievous bodily
2 harm does not include --

3 DEAN ANDERSON: Grievous bodily -- it
4 includes a broken bone.

5 PROFESSOR SCHULHOFER: Yes, but it
6 does not include a black eye or a bloody nose.

7 HON. HOLTZMAN: Or a stab wound.
8 Where does it say --

9 DEAN ANDERSON: It does include a stab
10 wound.

11 HON. HOLTZMAN: Where does it say
12 that?

13 DEAN ANDERSON: Deep cuts. Deep cuts.

14 PROFESSOR SCHULHOFER: G.4.

15 HON. HOLTZMAN: "And fractured,
16 dislocated bones". It doesn't say "broken bone".
17 It says "dislocated bone". "Fractured" --

18 DEAN ANDERSON: "Fractured" is a
19 broken bone.

20 HON. HOLTZMAN: Yes. Right, but a
21 bone that is broken without a fracture is not
22 under grievous bodily harm. That's what I'm

1 trying to say. Grievous bodily harm sets a very
2 high standard, serious damage to internal organs.
3 What about a stab wound that doesn't seriously
4 damage, but just gets your internal organ?
5 That's all I'm saying, that that level of --

6 CHAIR JONES: But that distinction
7 gives us the difference -- it's the grievous
8 bodily harm -- between rape and sexual assault.

9 HON. HOLTZMAN: Right, but when you're
10 -- right, okay.

11 CHAIR JONES: And that's all we need
12 right now because, if there was serious physical
13 harm, there can be an assault charge that will
14 lay it out for the jury.

15 HON. HOLTZMAN: Right. Well, I'm
16 saying, though, is that this -- all right, I
17 don't want to go through the whole argument. It
18 seems to me, if you want to try to get -- what
19 this statute does is create four -- right now,
20 three elements of aggravation, none of which is
21 necessary, none of which is logically or legally
22 necessary if all you're starting with is non-

1 consensual sex.

2 So, why do we have those and not this?
3 That's all I'm saying. And I agree with Lisa. I
4 completely agree -- I mean not Lisa. Yes, Lisa,
5 I completely agree with her about the scratches.
6 I'm not talking about that. But I think we
7 somehow have to capture, if we want to try to --
8 and also important for sentencing. Because I do
9 think that, when you have created other injuries,
10 not that I'm in any way minimizing -- please, far
11 from it -- the non-consensual sexual act. But
12 there is a difference, and if you create
13 additional harm, it ought to be recognized
14 somehow in both sentencing and --

15 CHAIR JONES: So, then we --

16 HON. HOLTZMAN: Maybe it can't be
17 otherwise.

18 But, if you think this creates too
19 many problems because it is a new concept,
20 although you could argue that bodily harm does
21 that, too, because it does include that, but, I
22 mean --

1 CHAIR JONES: Yes. I mean, I guess it
2 would be --

3 HON. HOLTZMAN: I'm just going to
4 register my views, and everybody can do what he
5 or she wants.

6 CHAIR JONES: Okay.

7 DEAN SCHENCK: I think this really a
8 major change that's going to cause a lot of
9 issues with, you know, how they have the 2007 --

10 CHAIR JONES: Lisa, I'm sorry, I'm
11 having trouble hearing you.

12 DEAN SCHENCK: I think this, what
13 we're talking about, what I consider to be the
14 gradation plug-in to the statute, even if it's
15 clear to us, I just the people in the field are
16 going to have a lot of difficulty wrapping their
17 arms around it. Plus, we have the 2007 version.
18 Plus, we have the 2012 version.

19 I feel personally more comfortable
20 with the plugging in of bodily harm definition
21 where it exists. In the field, everybody who is
22 a lawyer knows what bodily harm means throughout

1 the UCMJ. It's the Civilian Defense Counsel,
2 it's the junior officers on the panel that don't
3 know.

4 So, I just feel really guilty for
5 completely revamping and going in this other
6 direction. I'm not saying it's not called for.
7 I'm just saying that I just see the ripple effect
8 as opposed to, if you plug in bodily harm and put
9 it where it is, it is going to be easier to
10 implement I think in the field.

11 MS. FRIEL: Just remove the words
12 "bodily harm" and put --

13 CHAIR JONES: And just put the
14 definition in, right.

15 DEAN SCHENCK: Which was Option 1,
16 right. I like Option 1 just because I have this
17 preview of coming attractions in my head, having
18 read all those records of trial where they go
19 through the 2007 version, the 2012 version.

20 CHAIR JONES: So, what's Option 1?
21 Refresh my recollection.

22 MS. FRIEL: It's just get rid of the

1 "bodily harm" words and put the definition there.
2 And then, we don't worry that bodily harm implies
3 to your jurors it had to be a physical injury.

4 CHAIR JONES: Is it acting without the
5 consent of the other person?

6 MS. WINE-BANKS: It means "any
7 offensive touching of another, however slight,
8 including any non-consensual sexual act or non-
9 consensual sexual conduct". So, we just take
10 those words and drop "bodily harm".

11 CHAIR JONES: Oh, I see. You make
12 that B?

13 MS. WINE-BANKS: Right.

14 MS. FRIEL: And simplify it by saying
15 "a sexual act without consent".

16 DEAN SCHENCK: It is already in the
17 definition section of the statute. And so, then,
18 my next question is, what benefit is it going to
19 do for us, and what did the witnesses say
20 regarding making a change? And I'm looking at
21 the summary.

22 DEAN ANDERSON: The draft report.

1 HON. HOLTZMAN: The main reason to do
2 this is because, when you say "bodily harm", the
3 terms "bodily harm" suggests --

4 DEAN SCHENCK: I totally understand
5 that part, ma'am.

6 HON. HOLTZMAN: Right. So, if you put
7 in the definition, you don't confuse the panel,
8 which is what the concern is.

9 MS. WINE-BANKS: But it is not really
10 requiring bodily harm. It is requiring a non-
11 consensual contact.

12 DEAN SCHENCK: Having been in military
13 justice for over 20 years, everybody knows
14 offensive touching, no matter how slight. The
15 only problem are the line officers and enlisted
16 folks on the panel.

17 HON. HOLTZMAN: Right. That's what
18 we're talking about.

19 DEAN SCHENCK: Apparently, what we are
20 saying, if we go in that direction, is that the
21 judge's instructions regarding definitions are
22 not getting through to them.

1 MS. FRIEL: That's our fear, is that
2 the bodily harm words imply there has to be a
3 physical injury, and that's the last thing they
4 remember, which is solved as you say by just
5 taking the definition, moving it into there, and
6 they will never hear the words "bodily harm".

7 HON. HOLTZMAN: Right. So, it doesn't
8 actually do any real harm to the Statute.

9 MS. FRIEL: What about the whole body
10 of case law that everybody loves that we heard,
11 of all the bodily harm case law. But we didn't
12 really do anything, except just put --

13 HON. HOLTZMAN: Right. But the
14 advantage of this is that it incorporates all the
15 case law that has been done, and it removes any
16 question of confusing the panel; that's all.
17 Because I hear "bodily harm", and I'm saying, oh,
18 so, where's the bodily harm? And I don't care
19 that the judge has said whatever, "non-offensive
20 touching". Still, that is what sits in my mind.
21 Bodily harm, well, where is it here? I don't see
22 it.

1 MAJ GEN WOODWARD: This is going to be
2 a stupid question. But, under sexual assault, we
3 have "commits a sexual act upon another person
4 by", you know, blah, blah, blah, blah, "including
5 any non-consensual sexual act or non-consensual
6 sexual contact". But non-consensual sexual
7 contact is really abusive sexual contact.

8 DEAN ANDERSON: So, we don't need that
9 part of the definition.

10 MAJ GEN WOODWARD: No, but I just --
11 okay.

12 DEAN ANDERSON: Because Section D
13 basically says anything from Section B, except
14 that it's contact instead of act, instead of
15 penetration. So, we don't need that part of the
16 definition to be --

17 MS. FRIEL: And I agree, you don't
18 need it, but do you want to take it out, which is
19 anytime we change the Statute, change the
20 definition, it gives a place for somebody to come
21 in and say, oh, see, it doesn't mean what it
22 meant from 2007 to '12. If it is not harmful --

1 MS. WINE-BANKS: But if you leave it
2 in, it is harmful. If you leave it in, it makes
3 the act a sexual assault under B, which is more
4 serious than abusive sexual contact under D.

5 MS. FRIEL: That's what it is right
6 now.

7 MS. KEPROS: No. Right now, if you
8 look at B, it says "sexual act" under every
9 subsection. It uses the term "act" throughout.
10 So, I think to be consistent, we should use the
11 term "act" as well.

12 And then, obviously, in application,
13 under D, if you have contact, it will apply.

14 MS. WINE-BANKS: No, no, no. C and D
15 say "contact". A and B say "sexual acts".

16 MS. KEPROS: (b)(1) and A? Are you
17 looking at the same thing I am?

18 MS. WINE-BANKS: Oh, B? But it's not
19 contact. And the definition says "offensive
20 touching, including a sexual act or contact". If
21 you employed the whole definition in lieu of
22 "bodily harm", you would be elevating sexual

1 contact there into a sexual assault under B.

2 MS. KEPROS: No, I think we're
3 agreeing. I'm just trying to make sure I'm not
4 misunderstanding what you're saying.

5 DEAN ANDERSON: I think everybody
6 agrees that the definition that we import into B
7 need not include the word "contact" because,
8 structurally, the provision of D says anytime it
9 is an act, it would be contact. So, we're fine.
10 Okay, we're all on the same page.

11 MS. FRIEL: And it will just have to
12 read, instead of "causing bodily harm", "causing
13 an offensive touching, however slight", blah,
14 blah, blah.

15 DEAN ANDERSON: Where are we putting
16 that? We are putting that under (b)(1)(B).

17 CHAIR JONES: Oh, so we want to put
18 "causing an offensive touching" --

19 DEAN ANDERSON: Yes. Right.

20 CHAIR JONES: Tether it to what was
21 there before?

22 DEAN ANDERSON: Yes. Right. So,

1 there are two theories.

2 PROFESSOR SCHULHOFER: That seems
3 awfully broad.

4 DEAN ANDERSON: Two theories. One
5 theory is to take explicit definition of bodily
6 harm -- it's a little cumbersome -- but to put it
7 in there under (b)(1)(B).

8 CHAIR JONES: I don't know why we need
9 it.

10 DEAN ANDERSON: An alternative would
11 be "a sexual act without consent".

12 LTCOL HINES: See, that's where I
13 thought --

14 MAJ GEN WOODWARD: I mean, just
15 "commits a sexual act upon another person by" --

16 PROFESSOR SCHULHOFER: Without
17 consent.

18 MAJ GEN WOODWARD: -- "any offensive
19 touching of another, however slight, including
20 non-consensual sexual act". I mean, that doesn't
21 even make sense.

22 CHAIR JONES: It's as bad as it was

1 before.

2 LTCOL HINES: I think that's why, if
3 you look at the top of page 15, I remember
4 writing this down at the last discussion. It was
5 that the discussion came around to how unwieldy
6 it would make it if you import that entire
7 definition, because then you're bringing in this
8 added -- you're requiring the government to prove
9 a sexual act. But, then, if you bring that
10 definition in, you're talking about an offensive
11 touching.

12 My recollection in my notes was that
13 you can whittle down the two alternatives to the
14 following language. So, if you were going to put
15 it in (b)(1)(B), you were going to have the
16 statute read, "Commits a sexual act upon another
17 person by...." The new (B) would be "acting
18 without the consent of the other person". Or you
19 were going to get rid of (B) altogether and
20 create a new sub (4) that would say, "Commits a
21 sexual act upon another person without the
22 consent of that other person."

1 MAJ GEN WOODWARD: So, we all agree to
2 the acting without the consent of the other
3 person.

4 LTCOL HINES: Right. So, what you
5 were doing is you were simply going to use any
6 unconsented to sexual act. And you just need to
7 decide where you placed it.

8 MS. FRIEL: But, then, are we going to
9 lose the whole body of law of bodily harm, and do
10 we care? Because that was the benefit of just
11 taking the definition, because you would still
12 have all that case law. If we don't think that
13 matters because we've now substituted something
14 that's broad enough that it is not going to be a
15 problem to lose that -- but we are removing
16 "bodily harm".

17 CHAIR JONES: Is there a concern that
18 they are going to think that non-consensual sex
19 is not sexual assault without defining it
20 offensive touching?

21 DEAN ANDERSON: Yes, here's the
22 question, actually, to crystalize I think the

1 disparity between the two positions. I think the
2 question is whether or not there are cases, in
3 the experience of the people who have litigated
4 in the military context, whether or not there are
5 cases in which offensive touching is at issue,
6 but non-consent is not.

7 In other words, what we have done is
8 we have basically said a sexual act without
9 consent. And we think that that covers the
10 entire universe. But, if there are cases in
11 which there is an offensive penetration that is
12 somehow not about consent under the bodily harm
13 provision, and a developed body of case law that
14 we would like to import for some reason, then
15 let's hear that argument. If there is not, and
16 it is just about penetration without consent,
17 then let's proceed, because I think we have a
18 consensus around what that might look like.

19 LTCOL HINES: And I think what you
20 heard was the practitioners, the prosecutors who
21 spoke to this. And I specifically remember
22 Lieutenant Colonel Pickands from the Army saying,

1 although this might appear to what I call the
2 uninitiated to be confusing, he has been able to
3 use that theory to prove the scenario where your
4 victim has little or no recollection, but she
5 does remember being penetrated or sexually
6 contacted. That's where he would charge it as an
7 unconsented-to sexual act or an unconsented-to
8 sexual contact. And he was one of the ones who
9 said, please don't change this because then
10 you'll remove our ability to prosecute that
11 particular set of facts.

12 But I think the discussion that
13 followed off of that was, okay, we can satisfy
14 some of the concerns, that people are saying this
15 might be confusing to panels, by preserving the
16 government's ability to still prosecute that
17 theory, but reducing it down to simply stating it
18 in the statute: this is an unconsented-to act,
19 an unconsented-to contact.

20 DEAN SCHENCK: How is the definition
21 of consent going to impact that? That's what I'm
22 wondering.

1 DEAN ANDERSON: Lisa, this happened
2 just before you came back, I think. We have been
3 going through the definition of consent, right?

4 LTCOL HINES: Right.

5 DEAN ANDERSON: Which is, you know,
6 freely giving agreement to the conduct at issue.

7 DEAN SCHENCK: Okay, but according to
8 this, the testimony, the Government Appellate
9 Division asked us to keep the definition because
10 they use this bodily harm in cases in which the
11 victim doesn't have a clear memory of what
12 happened due to impairment by drugs or alcohol.

13 DEAN ANDERSON: Right, and I think
14 we've still got a provision that is open enough
15 to make an argument. You're not always going to
16 win, but you're not always going to win with the
17 status quo. But it is flexible enough to make an
18 argument that this was an act that happened
19 without the freely-given agreement.

20 PROFESSOR SCHULHOFER: I think it
21 nails it, actually.

22 DEAN ANDERSON: I do, too.

1 PROFESSOR SCHULHOFER: I think it is
2 better than just an argument.

3 DEAN ANDERSON: I do, too.

4 PROFESSOR SCHULHOFER: I think it
5 nails it.

6 DEAN ANDERSON: I think better than the
7 status quo.

8 PROFESSOR SCHULHOFER: I think, Lisa,
9 that in terms of what you were suggesting, I
10 think we are really talking about where to put
11 something. I don't think there's any substantive
12 difference between any of these, between the two
13 principal proposals. It is really a question of
14 where to put it.

15 And there are various pros and cons.
16 From some angles, it might look like a less
17 radical change to plug the definition in, rather
18 than Proposal No. 2. That might be true,
19 particularly from the point of view of
20 practitioners who are very well-versed, like you
21 say, the more senior people.

22 From people who are less well-

1 initiated, I think the second proposal is more
2 readily comprehensible to me. And one of the
3 concerns that I have had, and I may be alone in
4 this, but when you refer to the more junior
5 members of the Panel, one of my major concerns is
6 the 1 million members of our Armed Forces who are
7 in neither of those positions, but we are also
8 trying to communicate with them. And I have been
9 very concerned about the educational process and
10 the educational message. And I don't think they
11 get it unless the message is broken out very
12 clearly. That is a large part of what brings me
13 to the alternative.

14 In (b)(1), you have threatening a
15 person and putting them in fear, causing what the
16 ordinary person understands as bodily harm,
17 physical harm; making a fraudulent
18 representation, artifice and concealment. You
19 have those really bad things.

20 And then, our definition of consent is
21 simply lack of verbal or physical resistance
22 alone does not constitute consent. So, that

1 covers the entirety of situations where there's
2 no force; there's no threat; there's no
3 misrepresentation; there's no fraud. There's
4 just a lack of resistance.

5 And I think we send out the message to
6 the personnel much more clearly if we say that
7 too is a crime.

8 MS. WINE-BANKS: But can I ask just a
9 question? Were you saying that there are cases
10 that prosecutors want to bring where there is no
11 memory of consent or lack of consent, but there's
12 some physical harm? And so they want the
13 physical harm language, which we thought was
14 confusing because the definition of what bodily
15 harm is really makes it non-consensual sex.

16 DEAN SCHENCK: Under the case law, it
17 is offensive touching, no matter how slight.

18 MS. WINE-BANKS: Right.

19 DEAN SCHENCK: I didn't want any
20 touching. Do you see what I mean?

21 MS. WINE-BANKS: Right.

22 DEAN SCHENCK: That's what I'm

1 testifying to: I remember he touched me. I
2 didn't want him to touch me. It was a sexual
3 act. And so, therefore, it was a sexual assault.

4 I didn't say that, but the Government
5 Appellate Division said that in their testimony.

6 MAJ GEN WOODWARD: It is under the
7 lack of consent, acting without the consent of
8 the other person.

9 DEAN SCHENCK: No, I'm fine. I just
10 think -- I was just wondering because I missed
11 the consent thing.

12 So, we're saying, essentially, what
13 page 15 says. We would just plug in "acting
14 without the consent of the other person"?

15 MAJ GEN WOODWARD: Yes.

16 DEAN SCHENCK: Okay, I'm good with
17 that.

18 MS. FRIEL: And maybe it is just too
19 intellectual, but if we're going to say "acting
20 without consent", what would you need the whole
21 rest of that section for, the whole Statute for?
22 You would only need the one, "Commits a sexual

1 act upon another person without consent".

2 Because the definition of consent that we've
3 written encompasses all these other things.

4 So, somebody goes, well, that's
5 without consent, but isn't threatening or placing
6 another person in fear to have sex, that's
7 without consent. And all these other things are
8 --

9 MAJ GEN WOODWARD: No, no, no. That
10 doesn't follow. I can give you my consent to
11 have sex with me, but I'm giving it to you
12 because you fraudulently represented who you
13 were. So, that still needs to be in there. I
14 can give you my consent, but I gave you my
15 consent because you placed me in fear.

16 MS. FRIEL: But we defined consent as
17 that's not consent. Because we defined consent
18 as it has to be a freely-given --

19 MAJ GEN WOODWARD: Okay. Well, maybe
20 that's correct, but the fraudulent representation
21 still needs to be in there.

22 MS. FRIEL: I think the only reason to

1 include it is to not change the Statute any more
2 than it --

3 CHAIR JONES: The Statute tries to
4 pinpoint different types of conduct under sexual
5 assault. And again, I don't think we should be
6 -- I don't disagree with what you're saying,
7 Lisa. It's true; this is all non-consensual.
8 But they're meant to be guideposts for offenses
9 under (b)(1). So, I would leave them in, but I
10 also think it is important to have a very simple,
11 if you want to call it that, non-consensual
12 sexual assault, period.

13 DEAN SCHENCK: And that is what it was
14 before.

15 CHAIR JONES: Hum?

16 DEAN SCHENCK: That is what it was
17 before, what you were saying, the simple, you
18 know, the simple --

19 CHAIR JONES: Well, I think acting
20 without the consent of the other person is about
21 as simple as it gets.

22 DEAN SCHENCK: Right. I think that is

1 what it means, but that is what offensive
2 touching was before.

3 CHAIR JONES: Right.

4 DEAN SCHENCK: And so now, it is
5 clear --

6 MS. FRIEL: And if we use that
7 language here, you won't worry about it?

8 DEAN SCHENCK: No, I think you're --

9 MS. FRIEL: You're removing bodily
10 harm and all that.

11 DEAN SCHENCK: I'm assuming you're
12 talking about this definition of the redline,
13 right?

14 MS. FRIEL: Yes, yes.

15 DEAN SCHENCK: I just think it
16 reinforces what you're saying.

17 MS. FRIEL: Yes.

18 DEAN SCHENCK: I just think they work
19 well together. And my personal opinion is we are
20 just reinstating. You're saying consent is not
21 this, and, oh, by the way, if you do it that way,
22 it's a crime.

1 We had cases on the court where one
2 person was having sex with a woman. She was
3 blindfolded, and there was no alcohol involved.
4 She was blindfolded, and the roommate went in --
5 they shared a bathroom -- he went to a bathroom,
6 and another guy came in. I mean, then she felt
7 assured. And that was what we were talking
8 about; Maggie, the one you pretend to be somebody
9 else.

10 MS. FRIEL: Right.

11 DEAN SCHENCK: Yes. So, I mean, the
12 one about threatening, yes, there's some overlap
13 I think, but I think they run well together from
14 the definition you all came up with.

15 CHAIR JONES: So, we would get rid of
16 the bodily harm language in (b)(1)(B). We would
17 change it to acting without the consent of the
18 other person. And the idea of creating a Section
19 (4) has gone by the wayside. Correct? Okay.

20 PROFESSOR SCHULHOFER: You're deleting
21 the threat or --

22 CHAIR JONES: No, no. Everything

1 stays the same. The only thing we're changing is
2 we're deleting "causing bodily harm" in (b) and
3 changing that to "acting without the consent of
4 the other person".

5 DEAN ANDERSON: And remember, we sort
6 of looked at the first question on the resistance
7 provisions around consent and the definition of
8 consent, and just paused very briefly to
9 circulate the redline on that and to see where
10 (5) landed. And I think (5) has landed entirely
11 appropriately for the changes that we made
12 because it continues to define the word consent
13 rather than non-consensual or bodily harm or
14 something like that. so, I think we're good
15 there. So, we agree on that.

16 PROFESSOR SCHULHOFER: If you say,
17 "Commits a sexual act without the consent of the
18 other person", I understand that. If you say,
19 "Commits a sexual act upon another person by
20 acting without the consent of the other person",
21 I don't understand that.

22 DEAN ANDERSON: We're saying the

1 first, the one that you do understand.

2 MS. WINE-BANKS: We talked about
3 putting the word "by" in the (A), (C), and (D).

4 PROFESSOR SCHULHOFER: Yes, it wasn't
5 the way Judge Jones read it.

6 CHAIR JONES: I separated them.

7 DEAN ANDERSON: I think the answer is
8 "Commits a sexual act upon another person by
9 acting without the consent of that other person."

10 CHAIR JONES: So, we're going to
11 change it to "by threatening," "by acting", "by
12 making", and "by inducing", rather than just
13 talking "by" and then --

14 PROFESSOR SCHULHOFER: No, the "by" is
15 still there then.

16 DEAN ANDERSON: The "by" is there.

17 MS. FRIEL: The only reason to remove
18 the "by" at the end of (1), you know, is because
19 it didn't work with how we're writing (b).

20 MAJ GEN WOODWARD: Yes. So, you would
21 change (b) to "Commits a sexual act upon another
22 person" --

1 MS. FRIEL: "Without consent".

2 MAJ GEN WOODWARD: -- (B) "without the
3 consent of the other person".

4 PROFESSOR SCHULHOFER: Right. So --

5 MS. FRIEL: And what's wrong with
6 leaving the "by" and saying "by acting without
7 the consent of the other person"? We want that
8 distinctly different.

9 CHAIR JONES: Okay. One says,
10 "Commits a sexual act upon another person by"?
11 No, the "by" is gone? Okay.

12 PROFESSOR SCHULHOFER: The "by" would
13 drop. It would drop into (a).

14 CHAIR JONES: That's what I was
15 saying. So, we would have to put a "by" in
16 there?

17 MS. FRIEL: (A), (C), and (D).

18 CHAIR JONES: (A), (C), and (D).

19 PROFESSOR SCHULHOFER: And add it to
20 (A), (C), and (D), right.

21 MS. KEPROS: I'm sorry, why can't we
22 just say "by" and, then, (B) "acting without

1 consent"?

2 DEAN ANDERSON: Right. So, it's a
3 series. It's a series of gerunds, I believe, and
4 the "by" --

5 MS. KEPROS: What does that mean?

6 PROFESSOR SCHULHOFER: Is that not
7 allowed?

8 DEAN ANDERSON: No, no, I think
9 gerunds are fine. I think gerunds would be
10 I-N-G.

11 MS. KEPROS: What's a gerund?

12 DEAN ANDERSON: I think gerunds are
13 the I-N-Gs.

14 CHAIR JONES: Yes. "By threatening,
15 "by acting", "by making", and "by inducing".

16 DEAN ANDERSON: So, correct me.
17 Causing, making, and inducing is the status quo.
18 That's the provision that currently exists, and
19 the "by" modifies "threatening", "causing",
20 "making", and "inducing".

21 And instead of having "causing bodily
22 harm" -- we're only talking about (b) -- we chuck

1 that, and then, we put "acting without the
2 consent of the other person". So, you still have
3 four gerunds modified by a "by". You wouldn't
4 have to change the "by".

5 PROFESSOR SCHULHOFER: Fowler would be
6 okay with this.

7 (Laughter.)

8 MS. FRIEL: We thought that was all
9 okay, but Professor Schulhofer has an issue with
10 the way that's worded.

11 PROFESSOR SCHULHOFER: I do. Maggie's
12 going -- I have no problem -- I have no problem
13 with taking out the word "by" in the first line
14 of (1).

15 MAJ GEN WOODWARD: "By acting without
16 the consent of another person" does not work.

17 PROFESSOR SCHULHOFER: Okay.

18 MAJ GEN WOODWARD: Because, then, we
19 don't have --

20 PROFESSOR SCHULHOFER: In order to do
21 that, I would rather first tell you what I'm
22 perfectly comfortable with, so that you

1 understand where I'm coming from and what I'm not
2 trying to cause problems with.

3 I would be perfectly comfortable
4 saying, "Commits a sexual act upon another
5 person" -- dash -- (A) "by threatening," (B)
6 "without the consent," (C) "by making," and (D)
7 "by inducing". I'm perfectly fine with that.

8 MS. FRIEL: Okay. Can you explain to
9 me why "by acting" -- I just need to know --

10 PROFESSOR SCHULHOFER: Okay.

11 MS. FRIEL: -- why does "by acting"
12 not work?

13 PROFESSOR SCHULHOFER: Okay. "Commits
14 a sexual act upon another person by acting
15 without the consent of that person." Well, let
16 me try to think of a concrete example.

17 Suppose I offer to drive you home, and
18 then, I decide to go for dinner first. And you
19 don't consent to that step of the evening. Then,
20 there's sex.

21 You're getting into a problem --

22 MAJ GEN WOODWARD: It's not clear that

1 the lack of consent is for the sexual act?

2 PROFESSOR SCHULHOFER: Yes.

3 MAJ GEN WOODWARD: Is that what you
4 mean?

5 PROFESSOR SCHULHOFER: Yes, that the
6 acting without the --

7 MS. FRIEL: The sexual act by --

8 MAJ GEN WOODWARD: Acting without
9 consent --

10 PROFESSOR SCHULHOFER: Whether the act
11 that was without consent caused the penetration
12 or motivated or was related to the penetration --
13 there could be a lot of --

14 DEAN ANDERSON: But, then, that's the
15 word "by".

16 MS. WINE-BANKS: What if it said "by
17 doing so without the consent"? Does that make
18 you more comfortable?

19 PROFESSOR SCHULHOFER: "Commits a
20 sexual act upon another person by doing so
21 without the consent"?

22 MS. WINE-BANKS: Yes.

1 MS. FRIEL: "Of the other person".

2 PROFESSOR SCHULHOFER: Do you prefer
3 that to the first alternative I put?

4 MAJ GEN WOODWARD: I just don't want
5 to move all the "by's" around.

6 MS. WINE-BANKS: I agree with you that
7 it sounds better without the consent, but to
8 avoid changing anything that we don't absolutely
9 have to change, I was trying to find an
10 alternative. If you didn't like "by acting
11 without", if it was clear to you that it is "by
12 doing the sex act without" --

13 MAJ GEN WOODWARD: Okay. Okay. So,
14 we've got your side, and the only reason you
15 don't want to change the "by" the way it is is
16 because you like the four gerunds. But can you
17 live without the four gerunds because it
18 doesn't --

19 DEAN ANDERSON: I think as a matter of
20 statutory construction, if you're going to have
21 the "by", you should have the four gerunds. And
22 I think that last time we came up with a

1 resolution to that.

2 MAJ GEN WOODWARD: But we were getting
3 rid of the "by". We were getting rid of the "by"
4 on the second one, too.

5 DEAN ANDERSON: Yes.

6 LTCOL HINES: That's why we did it
7 before. And we were looking at, okay, if you
8 look at (B) where it says "sexual assault",
9 highlighted, "any person subject to the chapter
10 who". Well, the "who" modifies everything that
11 follows after it. And so, the reason we were
12 going to have a sub (4) was it was going to
13 substantially reiterate -- the sub (4) would have
14 said, "Commits a sexual act upon another person
15 without the consent of that person." So, it
16 would all flow consistent with --

17 CHAIR JONES: That is why we were
18 talking about (4).

19 LTCOL HINES: Right. Yes.

20 CHAIR JONES: I'm not so concerned
21 about people being confused about "by acting
22 without the consent of the other person".

1 PROFESSOR SCHULHOFER: But my problem
2 -- I'm not picking -- my mind seems to stop
3 working at 2:30.

4 CHAIR JONES: Yes.

5 PROFESSOR SCHULHOFER: But "by
6 acting", what is the act that the person is doing
7 without consent? "By acting without the consent
8 of the other person" could cover a wide range of
9 actions that were without the consent of the
10 other person. The key thing is the penetration
11 without consent. That has to be the focus, and I
12 think it is going to invite confusion.

13 CHAIR JONES: Well, just stop it after
14 "acting". "Commits a sexual act upon another
15 person by acting." Isn't that close enough? And
16 then, "without the consent". It has to revert
17 back to --

18 PROFESSOR SCHULHOFER: Well, I think
19 the way Joe put it was fine, fine but cumbersome,
20 "by doing so without the consent".

21 MAJ GEN WOODWARD: "By doing so"? It
22 seems to me that the easiest way to solve this is

1 just to get rid of the "by" up at the top.

2 PROFESSOR SCHULHOFER: Yes, exactly.

3 MAJ GEN WOODWARD: And just do the
4 "Commits a sexual act upon another person", and
5 then, "by threatening", "without consent", "by
6 making", and "by inducing".

7 PROFESSOR SCHULHOFER: Yes.

8 MAJ GEN WOODWARD: I mean, it just
9 seems that that works, right? I mean, you can
10 see --

11 DEAN ANDERSON: It is aesthetically
12 somewhat displeasing, but perfectly adequate in
13 terms of its coverage.

14 (Laughter.)

15 PROFESSOR SCHULHOFER: I prefer that
16 one myself. I think that does it.

17 HON. HOLTZMAN: Can we do that, Judge?

18 CHAIR JONES: Sure.

19 PROFESSOR SCHULHOFER: You think that
20 is aesthetically displeasing? And you prefer the
21 other one?

22 HON. HOLTZMAN: Stop, both of you.

1 (Laughter.)

2 CHAIR JONES: Just tell me what it is
3 I have just agreed to?

4 PROFESSOR SCHULHOFER: This was an
5 inside joke.

6 DEAN ANDERSON: I can't take it
7 anymore.

8 (Laughter.)

9 CHAIR JONES: So, the "by" addressing
10 "without the consent", "by making", and "by
11 inducing". Okay.

12 Where do we go from here? This was
13 (5), right? So, are we on (6) now, which
14 apparently is resolved?

15 LTCOL HINES: So, just to make sure
16 I'm clear -- sorry --

17 CHAIR JONES: Sure.

18 LTCOL HINES: -- we're going with
19 leaving the "by" down to (A), (B), (C), and (D)
20 now?

21 CHAIR JONES: Yes. It's going to say
22 "by threatening", and then it won't say -- it

1 will just say -- (B) will be "Commits a sexual
2 act upon another person." (B) will read,
3 "without the consent of the other person", no
4 "by" there.

5 PROFESSOR SCHULHOFER: Yes.

6 CHAIR JONES: And then, "by making"
7 and "by inducing". Isn't that what everybody
8 wanted?

9 LTCOL HINES: I guess you have to have
10 a "by" somewhere. So, it either has to go in (1)
11 or, if you're going to move it, you're going to
12 have to put it --

13 MAJ GEN WOODWARD: The "by" goes in
14 front of (A), (C), and (D).

15 CHAIR JONES: Right.

16 MS. WINE-BANKS: And then, for (B),
17 it's just "without the consent".

18 CHAIR JONES: It would read, "(A) by
19 threatening". (B) would be "without the
20 consent". (C) would be "by making"; (D) "by
21 inducing". So, you would add "by" three times
22 and take it out once, and substitute --

1 LTCOL HINES: Does anyone else see the
2 problem that I'm identifying? If you move "by",
3 at (b)(1), if you move "by" out of there and you
4 don't put it everywhere down here, you've got --

5 CHAIR JONES: You would only put it in
6 three places.

7 DEAN ANDERSON: This is where the "by"
8 goes. The "by" goes "(A) by threatening". So,
9 it goes out there. And then, this is just
10 "without consent". And then, this is "by
11 inducing".

12 LTCOL HINES: Okay.

13 DEAN ANDERSON: Do you see what I'm
14 saying?

15 CHAIR JONES: Okay.

16 LTCOL HINES: All right, Judge, I'm
17 sorry.

18 CHAIR JONES: No, no, no, that's all
19 right.

20 Are we on (6), whatever (6) is? We
21 think we've resolved it? Resolved preliminarily?

22 LTCOL HINES: (6), if you recall, was

1 one of the ones that we decided to move to the
2 second group of issues. But I don't see any
3 reason that we can't address it in order. But we
4 moved it to the abuse of authority and coercive
5 --

6 CHAIR JONES: Okay. Well, no, that's
7 fine. We can go back to it when they're all
8 together.

9 What would be the next one, then? (7)
10 appears to be unresolved? And what section does
11 that refer to, (7)?

12 DEAN ANDERSON: I thought that we
13 tentatively agreed, tentatively, without the full
14 wisdom of everybody here, that we had no changes
15 to this.

16 CHAIR JONES: Well, I have down here,
17 "Voted no change". So, we must have discussed it
18 to some extent. But what section is this, if
19 anyone can enlighten me?

20 LTCOL HINES: This is 120(g)(7),
21 Judge.

22 CHAIR JONES: The definition? Okay.

1 LTCOL HINES: "Threatening or placing
2 another person in fear". But, also, the issue
3 here was --

4 MAJ GEN WOODWARD: The wrongful action
5 I think was the one thing we were --

6 LTCOL HINES: Well, (7) went to should
7 the Statute continue to require not only that the
8 fear of the victim be an actual or subjective
9 fear, but that it also be objectively reasonable.
10 And I don't believe there were any presenters who
11 testified that it should be changed. There may
12 have been one or two.

13 CHAIR JONES: Well, I don't know.
14 Does anybody think we should change it? For
15 whatever reason, I have -- we must have discussed
16 this -- I thought there was a no change, but --

17 DEAN ANDERSON: That's what I
18 remember.

19 CHAIR JONES: Okay. So, then, (7) can
20 move to the column of resolved with a "no
21 change".

22 (8)?

1 PROFESSOR SCHULHOFER: I'm sorry, what
2 happened to (6)?

3 DEAN ANDERSON: It's with the abuse of
4 authority.

5 CHAIR JONES: So, we're going to come
6 back to it, yes.

7 PROFESSOR SCHULHOFER: Okay.

8 CHAIR JONES: All right. Number (8),
9 is the definition of "force" too narrow? I have
10 no change on that as well, but let me see what
11 section it is.

12 LTCOL HINES: That was 120(g)(5),
13 Judge.

14 CHAIR JONES: Yes. Force means use of
15 weapon, use of physical strength.

16 MAJ GEN WOODWARD: We just put it
17 aside while we were debating on No. (1). And now
18 that we've resolved No. (1), it shouldn't
19 change --

20 LTCOL HINES: Right.

21 CHAIR JONES: I don't think so. So,
22 we're okay? All right. So, move it over, Glen,

1 to resolved.

2 LTCOL HINES: Okay.

3 CHAIR JONES: (9), oh, definitions of
4 sexual act and sexual contact. I don't have a
5 note by that. Is that what that is? What's the
6 issue?

7 DEAN ANDERSON: Yes, that's the
8 genitalia.

9 CHAIR JONES: Oh, we need Lisa for
10 this.

11 DEAN ANDERSON: Lisa Friel?

12 MS. KEPROS: I don't think we've
13 gotten the proposal from the Subcommittee on this
14 yet.

15 LTCOL HINES: Well, which one, (9),
16 No. (9)?

17 MS. KEPROS: Yes.

18 CHAIR JONES: We may not have.

19 LTCOL HINES: Lisa's working group
20 worked on that, but they didn't have time. It
21 was one of those meetings they didn't have time
22 to agree.

1 CHAIR JONES: Right. So, we should at
2 least wait for her.

3 MR. SULLIVAN: And you may also recall
4 the CAAF in the Schloff case spoke to this issue.

5 LTCOL HINES: The CAAF said that
6 contact could be accomplished with an object.

7 CHAIR JONES: Said what, Glen? Said
8 what?

9 LTCOL HINES: That contact could be
10 object to body or body --

11 CHAIR JONES: Oh, right. Right,
12 right. They took care of that other piece that
13 wasn't clear in the Statute.

14 DEAN ANDERSON: They motivated the
15 question really, I think.

16 LTCOL HINES: Well, Judge, we have
17 been going for a couple of hours. Do you want to
18 take a quick break maybe, and then we'll have
19 Lisa, when she comes back --

20 CHAIR JONES: Okay.

21 LTCOL HINES: -- pick up with issue
22 (9)?

1 CHAIR JONES: Sure. Fair enough.

2 (Whereupon, the above-entitled matter
3 went off the record at 3:04 p.m. and resumed at
4 3:22 p.m.)

5 MS. FRIEL: Okay. So, everyone, please
6 turn to the definition section to G, and we're
7 going to be talking about 1 and 2; that is the
8 definition of sexual act, and the definition of
9 sexual contact. And as you all know, sexual act
10 is the act for rape and sexual assault and sexual
11 contact is the act for aggravated sexual contact,
12 and abusive sexual contact, just to put it in
13 context.

14 So, one of the first things we did is
15 looking at the way A is written, and it talks
16 about contact between the penis and various
17 different things, and then goes on to say, "For
18 the purpose of this paragraph, contact means
19 penetration." And we went, well -- and then later
20 you're going to talk about contact, but it's not
21 going to mean penetration. And we just thought
22 that didn't make a lot of sense. So, what we did

1 is split the definition of sexual contact into
2 three subsections. It's going to be an A, and a
3 B, and a C.

4 We left A reading, "Penetration,
5 however slight, of the penis into the vulva, or
6 anus, or mouth." So, the first -- A is going to
7 have to do with different kinds of slight
8 penetration, and it all has to do with the penis
9 going in those three areas.

10 DEAN ANDERSON: Same orifices.

11 MS. FRIEL: Same orifices. And then we
12 split out a B to be the contact. And B would
13 read, "Contact between the mouth and the penis,
14 or scrotum, or anus." And that's a new thing to
15 add scrotum, because as we had a discussion, that
16 could be a way of having, obviously, some kind of
17 oral sexual contact that without consent would be
18 fairly offensive, I understand.

19 DEAN ANDERSON: Is it not included
20 within the idea of the penis?

21 MS. FRIEL: No. I mean, technically,
22 the scrotum isn't the penis. They are two

1 different things. And we had to discuss whether
2 the testicles --

3 (Simultaneous speaking.)

4 MS. FRIEL: Well, that's the other way
5 -- the other way to do it is to just use the
6 overall word contact between the mouth and
7 genitalia. But, again, in an effort to do the
8 least damage, so to speak, to the statute, to
9 change the words as little as possible, we just
10 figured we would use the words they already use
11 there, and all we're doing is adding the word
12 scrotum to it.

13 And then the third change we made to
14 that --

15 PROFESSOR SCHULHOFER: I'm sorry.

16 MS. FRIEL: Okay, sure.

17 PROFESSOR SCHULHOFER: Have you
18 distributed this, or you're reading it to us?

19 MS. WINE-BANKS: Reading.

20 PROFESSOR SCHULHOFER: Okay, so could
21 you read B again?

22 MS. FRIEL: Sure. So, B would say,

1 "Contact between the mouth and the penis,
2 scrotum, or anus."

3 PROFESSOR SCHULHOFER: What about the
4 vulva?

5 MS. WINE-BANKS: Yes, vulva.

6 MS. FRIEL: Where did we not -- oh, we
7 lost that somewhere.

8 LTCOL HINES: It is there.

9 PROFESSOR SCHULHOFER: It is?

10 LTCOL HINES: Unless you crossed it
11 out.

12 MS. FRIEL: Yes, I just didn't -- no,
13 you're right.

14 DEAN ANDERSON: This is supposed to be
15 gender neutral.

16 MS. FRIEL: Sorry. Yes, that's part of
17 what we were doing. There was one of those
18 missing before.

19 And then C, we would take what is
20 presently B, and just re-letter it to C. But
21 we're going to remove the words "or mouth,"
22 because in C, we're talking about penetrations of

1 orifices with other parts of the body. And the
2 way that reads now is if I stick my finger in
3 your mouth to abuse you or humiliate you, that
4 would be covered as a sexual act and, therefore,
5 a sexual assault. And we thought it shouldn't be
6 that broad, it should be penetration if we're
7 going -- using other parts of the body or an
8 object to do it, it should be limited to sexual
9 parts of the body. So that it should be
10 penetration of the vulva, or the anus. You can't
11 -- now, and the one question I had is, guys,
12 should we have penis there? I mean, you can't
13 penetrate the scrotum unless you're committing
14 some kind of assault. That's not going to happen
15 in a sex act.

16 I don't know whether we need to add a
17 penetrative crime for say an object penetrating
18 the penis. I haven't seen that, but I --
19 theoretically --

20 MS. KEPROS: I know of something that
21 has happened.

22 MS. FRIEL: Okay. Well, that's why --

1 MS. KEPROS: With razor blades.

2 MS. FRIEL: So, then that answers the
3 question. So, we're talking about if somebody
4 were to penetrate, then it should be the vulva --
5 -

6 PROFESSOR SCHULHOFER: Well, that would
7 be an aggravated assault.

8 MS. FRIEL: -- penis, or anus there.

9 PROFESSOR SCHULHOFER: Wouldn't it?

10 MS. KEPROS: I'm sorry. I'm just trying
11 to think through, does it come under the other
12 section already, the A?

13 MS. FRIEL: But I think our ideas --

14 DEAN ANDERSON: These are objects.

15 MS. FRIEL: No, A is penetration.

16 DEAN ANDERSON: C is objects.

17 MS. FRIEL: C is a hand or an object.

18 It's something other than -- C was there before.

19 We're just removing the "or mouth."

20 MS. KEPROS: The A can only be
21 committed by the penis.

22 DEAN ANDERSON: A is penetration, B is

1 contact --

2 HON. HOLTZMAN: Contact between the
3 mouth and the vulva would be covered --

4 DEAN ANDERSON: And C is objects.

5 (Simultaneous speaking.)

6 MS. KEPROS: So, for A, the only object
7 that can be penetrating is the penis?

8 MS. FRIEL: Yes, A is just about penis.

9 MR. SULLIVAN: And your new B doesn't
10 have any specific intent?

11 MS. FRIEL: Right.

12 MR. SULLIVAN: Okay. I'm sorry. Could
13 you read B one more time?

14 MS. FRIEL: Sure. "Contact between the
15 mouth and the penis, or vulva, or scrotum, or
16 anus."

17 MR. SULLIVAN: Thank you.

18 MS. FRIEL: The reason -- what we were
19 missing before in A, besides that it just read
20 kind of funny, contact is penetration, it didn't
21 have as this kind of most serious offense, mouth
22 to vulva, which would be a female to female kind

1 of very offensive non-consensual sexual act. It
2 only had a penis doing those things, so it really
3 only covered male to female, and not female to
4 female.

5 MR. SULLIVAN: And the female to female
6 could have been captured under B if it had the
7 right intent. I mean, I think the idea of A was
8 there was no intent requirement because the
9 intent was implicit --

10 MS. FRIEL: Right. So, we wanted to
11 make it more gender-equal, because why should --
12 if a -- so, why should it -- why should you have
13 to have an intent if a woman makes contact with
14 another woman's vagina, let's say, with her
15 mouth, which would be as serious as you could get
16 in a non-consensual way.

17 MR. SULLIVAN: But if a man did the
18 same thing, he'd have to have the intent, as
19 well.

20 MS. FRIEL: No, because we've made B
21 contact between the mouth and the penis --

22 (Simultaneous speaking.)

1 MR. SULLIVAN: Under the existing one,
2 there was still parity that any cunnilingus,
3 regardless of the gender of the person performing
4 the act would have been under B, not A.

5 MS. FRIEL: Yes.

6 DEAN ANDERSON: Is that right? Just to
7 clarify, just trying to understand and forgive
8 the graphicness. But the -- does penetration
9 include penetration of the -- by the tongue of
10 the outer labia, rather than the vagina? Do you
11 see what I'm saying?

12 MS. FRIEL: Yes, that's why we used the
13 word vulva instead of vagina.

14 DEAN ANDERSON: Okay.

15 MS. FRIEL: Vulva includes --

16 DEAN ANDERSON: Right.

17 MS. FRIEL: -- both labia.

18 DEAN ANDERSON: Right. So, would the
19 ---do we -- is there -- I guess this is one
20 question. Is there sufficient clarity currently
21 that penetration with a tongue of the vulva is
22 sufficient for the penetration provision, rather

1 than the contact provision? Maybe it doesn't
2 matter because they're both sexual acts. Is that
3 right?

4 MS. WINE-BANKS: They would both be
5 equal.

6 DEAN ANDERSON: Okay.

7 MR. SULLIVAN: Today.

8 MS. WINE-BANKS: No, I mean under our
9 definition it would be.

10 MR. SULLIVAN: But today you've have
11 the specific intent element, and under that
12 definition you would no longer.

13 DEAN ANDERSON: Right.

14 MS. WINE-BANKS: In the current one,
15 only a penis can penetrate.

16 DEAN ANDERSON: Right. That's what I --
17 - yes, okay. I see.

18 (Simultaneous speaking.)

19 MS. FRIEL: Without the added element
20 of having to prove an intent.

21 MR. SULLIVAN: Right. Exactly.

22 MS. WINE-BANKS: Yes.

1 MS. FRIEL: So, why should you only
2 have to prove --

3 CHAIR JONES: Why is intent necessary
4 for a woman, when a woman is the --

5 MR. SULLIVAN: Conceivably, you could
6 have a woman prosecuted for forcing a man to
7 penetrate her, and then there wouldn't be a
8 specific intent requirement there. So, it isn't
9 that only a man could be the accused --

10 MS. FRIEL: Right.

11 PROFESSOR SCHULHOFER: Lisa, can we get
12 copies of that --

13 MS. FRIEL: Yes. We can get somebody
14 to write this up.

15 PROFESSOR SCHULHOFER: -- passed
16 around? It's starting to get hard to follow.

17 MS. FRIEL: Yes, I agree.

18 DEAN ANDERSON: Just in terms of the
19 differences, because it sounds like it's not
20 insubstantially different. Although it's not an
21 enormous change --

22 MS. WINE-BANKS: It really isn't. It

1 would be -- the first one was really lack of
2 clarity in how it was phrased. It sort of had
3 contact equals penetration, and that made no
4 sense so we just said it's penetration.

5 DEAN ANDERSON: So, we're still under
6 G1. Is that correct?

7 MS. WINE-BANKS: Yes.

8 DEAN ANDERSON: We're not to G2 at all.

9 MS. WINE-BANKS: No.

10 DEAN ANDERSON: So, we're only talking
11 about sexual acts which includes cunnilingus,
12 whether or not there's penetration with it.

13 MS. WINE-BANKS: Yes.

14 DEAN ANDERSON: Got it, because either
15 there's penetration, and it would come under the
16 penetration A provision; where there's none, it
17 comes under the contact provision.

18 WS. WINE-BANKS: Yes.

19 DEAN ANDERSON: Because it's
20 sufficiently grave.

21 MS. WINE-BANKS: Exactly.

22 MR. SULLIVAN: But that wouldn't be the

1 case today. Right? That's a change.

2 MS. WINE-BANKS: Right.

3 MR. SULLIVAN: And then B becomes C.

4 DEAN ANDERSON: Yes, I understand
5 that. Right.

6 MS. WINE-BANKS: And keeps the --

7 DEAN ANDERSON: Except that mouth gets
8 deleted under C.

9 MS. WINE-BANKS: Right. Remember the
10 toothbrush example. So, we thought it was over-
11 broad. It cuts it back.

12 MS. FRIEL: Somebody is typing it up,
13 so we'll be able to look at it.

14 DEAN ANDERSON: So, does -- just in
15 terms of intent or any additional mens rea under
16 this provision, am I correct in understanding
17 that under your new revised Statute, A has no
18 intent, B has no intent, and C retains an intent
19 because it's about objects.

20 MR. SULLIVAN: Right.

21 MS. FRIEL: Or other body parts.

22 DEAN ANDERSON: Correct.

1 MS. FRIEL: Right. To make it serious
2 enough to be way up there, using something other
3 than those kind of more egregious body parts to
4 have sexual contact. And that's, obviously, the
5 intent of the statute was, if you're only using
6 say a finger, or a toothbrush, or something there
7 should be some added element to that to make it
8 serious enough it should be considered a sexual
9 act.

10 DEAN ANDERSON: But given the privacy
11 of these body parts other than mouth, you've got
12 a fairly broad intent; abuse, humiliate, harass,
13 degrade, so that would include quite a bit, which
14 I think is appropriate.

15 MS. FRIEL: Yes.

16 DEAN ANDERSON: Appropriate given, you
17 know, that you're talking about very private,
18 private parts.

19 MS. WINE-BANKS: And on the subject of
20 intent, in 2, jumping ahead to 2, there are two
21 different intents; the degrade, humiliate, and
22 the sexual desire. And we did some rewording of

1 that and thought that they really could be in the
2 same group, that you didn't need an A --

3 MS. FRIEL: You didn't need an A, and
4 a B. So, what happened, if you look at sexual
5 contact, and the reason that they took that group
6 of intents that are all together in C above, and
7 they split them into two subsections, is because
8 when you get to B, that is sexual contact, B,
9 they were talking about any body part being
10 touched. Right? Any touching causing a person --
11 that's any body part. And they felt that if
12 you're going to talk, again, about any body part,
13 it should only be with the more strict, just the
14 intent for sexual desire.

15 Well, we want to change that anyway.
16 For the same reason we thought it was over-broad
17 above, we don't think it should be sexual contact
18 for the touching or causing another person to
19 touch directly or through clothing any body part.
20 Because, again, I --

21 MS. WINE-BANKS: I help her by touching
22 her elbow to cross the street.

1 MS. FRIEL: No, but you'd have to have
2 some intent.

3 MS. WINE-BANKS: Right.

4 MS. FRIEL: Even if you had the other
5 -- what if I touch your toes with my hand because
6 that gratifies my sexual desire. Okay? Should
7 that be a sexual contact, and that kind of sex
8 crime? Should that be as serious as some of the
9 other things we cover here? And we ended up
10 saying no, we didn't think so.

11 MAJ GEN WOODWARD: Well, that's why
12 it's under sexual contact, not sexual assault.

13 MS. FRIEL: Do you want to be that
14 broad? I mean, we thought it was too broad. We
15 thought --

16 PROFESSOR SCHULHOFER: You're talking
17 about contact now.

18 MS. FRIEL: Yes.

19 PROFESSOR SCHULHOFER: You're saying
20 that should not even be sexual contact.

21 MS. FRIEL: Yes.

22 MS. KEPROS: Well, I think if you -- if

1 all you're required under the current statute is
2 to touch a body part and have sexual desire, that
3 could be a massage. It says sexual desire in any
4 person. I mean, it's very broad as it's written
5 right now.

6 MS. FRIEL: Well, that was my fear, you
7 know. I have a desire to have sex with Jill
8 later, and so I start rubbing her arm. I mean,
9 that would fit the way the statute is written
10 right now. Right?

11 MAJ GEN WOODWARD: Well, if I have a
12 boss who comes up to me and starts rubbing my
13 shoulder or something like that because, I mean,
14 I guess you've got to draw the line. I guess that
15 just falls under sexual harassment.

16 MS. FRIEL: And that's the discussion
17 we started to have a couple of meetings ago when
18 we touched on this stuff, is that do you want
19 that to be, and part of the discussion went to
20 sexually registerable offenses. Should that be
21 sexual harassment and, therefore, not criminal
22 behavior.

1 MAJ GEN WOODWARD: It would help a lot,
2 because there's so much angst out there, you
3 know, with people saying I can -- you know, if I
4 touch anything, then I'm in trouble and stuff. I
5 mean, it actually, I think, would be well-
6 received or would help. Yes.

7 MS. FRIEL: So, we would limit it --

8 PROFESSOR SCHULHOFER: It's not even --
9 -it's not a -- the kinds of examples we're
10 talking about so far are ones where I think
11 people disagree about whether it should be
12 covered, or they feel maybe it should be covered,
13 but it's kind of a stretch.

14 The other one that falls very
15 naturally into this is that if two people are
16 walking home after the first date, and one person
17 holds the other person's hand. That's innocuous,
18 but it could be with intent to arouse or gratify
19 sexual desire. I mean, in many ways holding a
20 person's hand --

21 MS. FRIEL: Without their consent.

22 PROFESSOR SCHULHOFER: Without their

1 consent, but I don't think it should be -- I
2 mean, this is way over-broad, if it reaches that.

3 MS. FRIEL: That's what we thought, so
4 what we were going to do is take out, in B, the
5 any body part of any person, and take all the
6 things that are listed in A, and just make it
7 look just like A. Again, repeat, genitalia,
8 anus, groin, breast, inner-thing, or buttocks.
9 By doing that, you could really just collapse A
10 and B, and all you have to do is take the intent
11 to arouse or gratify sexual desire and put it on
12 the end of A, and just have one Statute. And the
13 reason to do that, that that's a better way to do
14 it; I found this out the hard way.

15 When we passed, got passed that
16 forcible touching Statute in New York City, which
17 was a Statute that added these intents of abuse,
18 degrade and stuff. When there was sexual
19 contact, it didn't just have to be for sexual
20 gratification. We originally had an A and a B,
21 just like the way this is. So, the prosecutor,
22 if you don't know what the intent is, you charged

1 A and B. You had to prove beyond a reasonable
2 doubt either A or B. Right? You had to have a
3 jury --

4 MS. WINE-BANKS: Right.

5 MS. FRIEL: -- all agree that it was
6 one or the other. Whereas, if you collapse them
7 the way we have up in sexual act, and there is
8 or, or, or, you just have to prove a jury one of
9 those intents. And they don't all have to agree
10 on which one it is, so Laurie can decide it was
11 to degrade, and Steven could decide it was for
12 sexual purpose. You just have to all agree it
13 was one of those intents. That's a better way to
14 do it, and that then will mirror the way they did
15 it in A. It makes much more sense.

16 DEAN ANDERSON: So, you're essentially
17 using what's now going to be C under 1, which is
18 "abuse, humiliate, harass, degrade, or arouse,
19 gratify." You're using that whole litany for
20 genitalia, anus, et cetera. And then there's one
21 provision, rather than two.

22 MS. FRIEL: Yes.

1 MR. SULLIVAN: And then any other --
2 touching of any other body part unwelcome would
3 be prosecutable at the -- assault consummated by
4 a battery under 128, or --

5 DEAN ANDERSON: Right.

6 MR. SULLIVAN: -- maltreatment of a
7 subordinate if there's already a relationship --

8 MS. FRIEL: But not a 120.

9 MS. WINE-BANKS: I think that's good.

10 CHAIR JONES: This is a defined issue,
11 but it's good. Are you saying that when you have
12 intent to abuse, or degrade, or arouse, and you
13 give it to the jury, doesn't the entire jury
14 still have to pick one?

15 MS. FRIEL: They all have to find that
16 one of them are present beyond a reasonable
17 doubt.

18 CHAIR JONES: Yes, that's all I'm
19 saying.

20 MS. FRIEL: But they don't have to
21 agree on which one. So, they could -- for each
22 individual purpose --

1 MS. WINE-BANKS: They each have their
2 own.

3 MS. FRIEL: Right.

4 CHAIR JONES: Okay.

5 DEAN ANDERSON: So, that's the benefit
6 to doing it that way.

7 MS. FRIEL: And here's the last little
8 wrinkle to this. Okay? So, as you see in sexual
9 contact, already there they had used the words
10 genitalia, which is why we just kept that. But
11 the way A is written, the way sexual act is
12 written, they list all the different kinds of
13 genitalia, rather than use the common word. Now,
14 we can leave it this way. It does less change to
15 the statute, or we can remove the word genitalia
16 and sexual contact, and list them all out, so
17 there's no confusion about what we're talking
18 about. So, what --

19 DEAN ANDERSON: So, 1B has anus. That
20 would just mean changing vulva and penis,
21 swapping vulva and penis --

22 MS. FRIEL: And scrotum.

1 PROFESSOR SCHULHOFER: And scrotum.

2 MS. FRIEL: Which we added, because we
3 added that to sexual act, so we would change it
4 and list them out, so it would say vulva, penis,
5 scrotum, anus, groin, blah, blah, blah, blah.
6 And that will make them consistent, or we just
7 leave their word, genitalia.

8 MS. KEPROS: I think we should list
9 them, because --

10 MS. WINE-BANKS: Not everybody knows
11 what that means.

12 (Simultaneous speaking.)

13 MAJ GEN WOODWARD: -- each of them,
14 then have a genitalia definition.

15 MS. FRIEL: So, we might as well just
16 list them because, otherwise, we're going to have
17 to change sexual act.

18 MS. KEPROS: You're going to have to
19 -- I have juries not know what cunnilingus was.
20 I've had juries not know all kinds of interesting
21 things.

22 PROFESSOR SCHULHOFER: So they say.

1 MS. FRIEL: Okay, so we've agreed we
2 should list that out.

3 (Off the record comments.)

4 PROFESSOR SCHULHOFER: So, if you have
5 digital contact with the scrotum, is that the
6 penetration? Is that a sexual act, or a sexual
7 contact?

8 MS. FRIEL: That would be sexual
9 contact. That would be not as serious as some
10 of the sexual acts that we --

11 PROFESSOR SCHULHOFER: So, it's only

12 ---

13 MS. FRIEL: -- have defined.

14 PROFESSOR SCHULHOFER: With the
15 scrotum, it would have to be contact with mouth
16 or penis.

17 MS. FRIEL: To be the more serious --

18 PROFESSOR SCHULHOFER: To be the more
19 serious --

20 MS. FRIEL: Which means the same. If
21 you have digital contact with the vulva, that's
22 sexual contact. That's not --

1 DEAN ANDERSON: Unless there's
2 penetration.

3 MS. FRIEL: Unless there's
4 penetration.

5 PROFESSOR SCHULHOFER: Right.

6 MS. FRIEL: Once you penetrate, then

7 ---

8 PROFESSOR SCHULHOFER: Yes.

9 MS. FRIEL: Does that make sense?

10 MS. KEPROS: And then they'll require
11 the sexual intent. So, it's not -- you're
12 handling a -- diapering a child.

13 MR. SULLIVAN: Not unless you really
14 want to humiliate them.

15 MS. KEPROS: That's a lot to follow,
16 isn't it?

17 MS. FRIEL: So, you're saying if
18 you're making contact with the buttocks, so it's
19 just not any part.

20 MS. KEPROS: Yes.

21 MS. FRIEL: It's one of the parts we
22 listed, then it's got to be for the purpose --

1 one of these purposes. There has to be a
2 purpose. It doesn't have to be a sexual purpose,
3 but it could be if you're making contact with the
4 buttocks with the intent to abuse, humiliate,
5 degrade, or for sexual gratification.

6 MS. KEPROS: Okay.

7 DEAN ANDERSON: I guess my question is

8 --

9 MS. FRIEL: Removes diapering. At
10 least when I did it.

11 DEAN ANDERSON: Because you're not
12 deploying a sexual part of your body to make
13 contact when you're -- you know, the diapering
14 challenge, which I think is a good one for us to
15 consider.

16 MS. KEPROS: I'm just trying to think
17 what are the limits of any of these?

18 DEAN ANDERSON: Yes, absolutely. So,
19 because you're using, you know, a wipe, or you're
20 washing the child with your hand, or with a
21 washcloth, or whatever, there is -- the mental
22 state, the additional mental intent is important.

1 So, for -- just because we don't have it in front
2 of us, Lisa, I apologize. So, we're talking
3 about B, what is going to be G1(b), and does that
4 include a mental state?

5 MS. FRIEL: It does not, and part of
6 the idea --

7 DEAN ANDERSON: Oh, but G1(b) --

8 MS. FRIEL: It's contact -- it's the
9 mouth and different areas.

10 DEAN ANDERSON: B is mouth.

11 MS. FRIEL: B is mouth.

12 DEAN ANDERSON: So, that's different.

13 MS. FRIEL: That's going to be --

14 DEAN ANDERSON: That's different.

15 MS. WINE-BANKS: Yes, yes.

16 DEAN ANDERSON: So, it's C. And C
17 includes abuse, humiliate, or arouse.

18 MS. FRIEL: Right.

19 DEAN ANDERSON: Okay. Then we're
20 good.

21 (Simultaneous speaking.)

22 MS. WINE-BANKS: Yes, that was good.

1 DEAN ANDERSON: So, what number is
2 this?

3 MS. FRIEL: Issue 9.

4 DEAN ANDERSON: That's 9. 10 is
5 resolved already. Right?

6 LTCOL HINES: 10 is -- it's over in
7 the resolved. And that was, should the accused's
8 knowledge of the victim be a required element.
9 And the statute already requires the government
10 to prove both the incapacity and that the accused
11 knew or reasonably should know the incapacity.

12 And I think that's pretty much resolved unless
13 there were --

14 CHAIR JONES: So, 10 is resolved.

15 MS. FRIEL: Yes.

16 CHAIR JONES: Okay.

17 MS. FRIEL: 11.

18 CHAIR JONES: 11, indecent act.

19 PROFESSOR SCHULHOFER: What's the
20 decision?

21 MS. FRIEL: On what?

22 PROFESSOR SCHULHOFER: Indecent act?

1 MS. FRIEL: We haven't --

2 (Simultaneous speaking.)

3 MS. FRIEL: -- that's the one where
4 it's about to go back in on Article 120.

5 LTCOL HINES: Right. And Dean Schenck
6 pointed out, and she pointed it out a couple of
7 times, that there is an offensive indecent
8 conduct that I believe I sent that out with some
9 of the previous materials, but it has gone into
10 the Federal Register, and it would be put back in
11 Article 134 where indecent acts was traditionally
12 put. And Dwight can probably speak to that
13 better as part of the background of where that
14 used to be, and it was changed around a little
15 bit as part of the 2007 Statute, but it was
16 completely absent in the 2012 version.

17 MR. SULLIVAN: The Manual version will
18 no longer require a physical proximity as the
19 previous version had been held by the courts to
20 require.

21 MS. FRIEL: Somebody else being
22 present. That was the other thing, somebody else

1 used to have to be present.

2 MR. SULLIVAN: Yes, the physical
3 proximity requirement --

4 MS. FRIEL: Oh, that's what you mean
5 by proximity. Okay.

6 MS. KEPROS: Well, and I don't -- I
7 know we don't have the whole UCMJ, but looking at
8 the list of registerable offenses, 120(c), which
9 is not what -- our 120. It's a whole other
10 thing. It's not (c) of our 120. It's 120(c)
11 all run together.

12 MR. SULLIVAN: Forcible handling,
13 indecent exposure --

14 MS. KEPROS: Right. A lot of those
15 behaviors are what used to be contained in the
16 pre -- like the 2007 version of indecent acts, it
17 looks like, at least based on what's described as
18 being in that part. So, I am completely
19 mystified why this is being put back, and what
20 isn't already covered?

21 DEAN SCHENCK: Oh, there's a whole
22 line of cases on sex in the presence of others,

1 sex in the barracks --

2 MR. SULLIVAN: Or increasing the acts
3 that are done over Skype, you know, upon an
4 unwitting other party, seeing something over
5 Skype. That's an actual case that --

6 PROFESSOR SCHULHOFER: Indecent
7 viewing of recorded --

8 MS. KEPROS: Yes, wasn't that indecent
9 viewing -- wasn't that indecent exposure? I
10 guess I'm not -- because we haven't studied this
11 as a group. If we are going to recommend
12 anything around this, I need some more
13 information. This is way too mysterious to me.

14 CHAIR JONES: We probably have it, but
15 we ought to get it again.

16 LTCOL HINES: Yes, Judge. It's -- if
17 you look at 11 in the binder, page 10. I put the
18 new offensive indecent conduct that was in the
19 Federal Register, and that shows you what the
20 elements would be, it gives the definition of
21 indecent, and it says it provides for a maximum
22 punishment of five years and dishonorable

1 discharge.

2 MS. KEPROS: And I invite you guys to
3 study that, because I read that over and over.
4 It is so broad. I have no idea what it means.
5 It's, you know, sexual morality, things that --
6 you know, I mean, very abstract concepts.

7 DEAN ANDERSON: Am I understanding
8 just procedurally, this now is being put into the
9 UCMJ?

10 MR. SULLIVAN: It has been recommended
11 to the President.

12 DEAN ANDERSON: Okay. So --

13 PROFESSOR SCHULHOFER: Is that a --
14 I'm sorry.

15 DEAN ANDERSON: Yes, just to
16 understand.

17 CHAIR JONES: So, it has already been
18 recommended.

19 DEAN ANDERSON: So, when we were asked
20 should this be added, we currently on the table
21 have a recommendation by another deliberative
22 body, or who's making the recommendation?

1 MR. SULLIVAN: The Department of
2 Defense.

3 LTCOL HINES: So, I think this kind of
4 came out concurrently --

5 DEAN ANDERSON: I see.

6 LTCOL HINES: And the Panel heard from
7 presenters last year who said hey, we don't have
8 this anymore. We recommend that it go back in.
9 While that was going on, the -- what you see
10 there on page 10 was pushed out through the
11 Executive Branch. So, I guess the mandate here
12 for the Subcommittee is, you can certainly take
13 into consideration the fact that now the
14 Executive Branch seems to be heading towards
15 putting it back in, or you can come up with your
16 own. You know, you can say this is fine, we
17 agree with it, or you can say, as Laurie says,
18 well, we have problems with this, and we want to
19 make our own recommendation.

20 PROFESSOR SCHULHOFER: Is this out for
21 notice and comment then?

22 LTCOL HINES: I believe so.

1 PROFESSOR SCHULHOFER: Is that --

2 LTCOL HINES: Is that right?

3 MR. SULLIVAN: It's past that point.

4 LTCOL HINES: It was in the Federal

5 Register on --

6 PROFESSOR SCHULHOFER: Does that mean

7 there's a comment period before the President can

8 act on it?

9 MR. SULLIVAN: Page 10 of what?

10 LTCOL HINES: I'm sorry.

11 CHAIR JONES: Page 10 of the green

12 binder.

13 LTCOL HINES: Tab 1.

14 MR. SULLIVAN: Tab 1.

15 CHAIR JONES: I mean, if we're going

16 to actually discuss this, at least I would need

17 you to tell me what the reasons were that

18 persuaded them to move it back into 120. Is that

19 --

20 MS. WINE-BANKS: No, it's not going

21 into 120. It's going into 130.

22 CHAIR JONES: Oh, 130.

1 MS. WINE-BANKS: So, we still have --

2 CHAIR JONES: So, in other words now
3 it's in something totally different. It's not in
4 120, 134, it's just, as you said, Laurie, in
5 120(c)?

6 MS. KEPROS: There's provisions in
7 120(c) that include indecent viewing --

8 CHAIR JONES: Yes.

9 MS. KEPROS: -- like indecent
10 exposure, and things that when I read this, I was
11 imagining what it was trying to cover, but then I
12 see other provisions have been created that cover
13 some of that kind of behavior.

14 DEAN SCHENCK: That's the other sex
15 offenses. It's a provision that entails like
16 pandering --

17 MS. KEPROS: Exactly.

18 DEAN SCHENCK: Those really --
19 indecent acts with another existed, and then when
20 they made the modification somehow it wasn't
21 brought under 120, but other ones were. It just
22 kind of disappeared.

1 We originally talked about whether or
2 not it should be in 120, whether or not it should
3 be an Executive Order, part of the Executive
4 Order for the President to put in under Article
5 134. Article 134 requires proof of the specific
6 terminal element of proving prejudicial to good
7 order and discipline, or proving service
8 discrediting. So, I think Dwight actually talked
9 to us a little bit about that.

10 I raised -- I thought it was coming
11 out in the EO. We were in New York City. I
12 don't remember when, so, we were in New York
13 City, and it was already in the EO. So, now
14 we've got the draft binders. It looked similar
15 to what the indecent acts with another was
16 previously.

17 MR. SULLIVAN: Except no longer
18 requiring physical proximity.

19 DEAN SCHENK: Right. Except no more
20 physical --

21 PROFESSOR SCHULHOFER: I think if
22 we're going to decide to say anything on the

1 merits about this, or even if we're going to
2 decide whether we should say anything on the
3 merits, I think we need more information. But as
4 I look at it, I share I think many of Laurie's
5 instincts, especially in that it says indecent
6 acts -- the presence of another person is no
7 longer required.

8 MS. KEPROS: Right.

9 PROFESSOR SCHULHOFER: And among other
10 things, I think one of the concerns that I've
11 heard about anecdotally, I don't consider myself
12 well-informed, but one of the things I've heard
13 about is that provisions like this in the UCMJ
14 have been used as a substitute for Don't Ask,
15 Don't Tell as a way of -- that some commanders
16 have used in charging indecent -- consensual same
17 sex activity as being indecent acts under a
18 provision like this. So, I don't know --

19 immorality relating to sexual impurity, which is
20 vulgar, obscene, repugnant to common propriety.
21 That may be unconstitutionally vague, among other
22 things.

1 DEAN SCHENCK: For 100,000 years.

2 PROFESSOR SCHULHOFER: All I know --
3 yes.

4 MR. SULLIVAN: Yes, in Parker versus
5 Levy, the Supreme Court said that the void for
6 vagueness test for Article 134 is different than
7 it would be in a civilian context. Specifically
8 about --

9 CHAIR JONES: Because it's for good
10 order and discipline.

11 PROFESSOR SCHULHOFER: Yes.

12 MR. SULLIVAN: And it also is pointed
13 to the Manual For Courts-Martial and said it
14 provides some limiting, such that not every
15 disorder can be a violation of Article 134. But
16 there was an express void for vagueness in a
17 political speech context in Parker versus Levy
18 and the Supreme Court upheld it.

19 PROFESSOR SCHULHOFER: That's 30 years
20 old, Parker versus Levy?

21 MR. SULLIVAN: I think it was from
22 '74. Parker versus Levy was '74.

1 PROFESSOR SCHULHOFER: So, it's 41
2 years old. There has been a lot of recent case
3 law, including one right last year on void for
4 vagueness. Justice Scalia has been very
5 aggressive on this issue, and anything that
6 touches on same sex, any possible application of
7 this to same sex relationships I think would
8 raise many hackles.

9 I'm not expressing a view on the
10 merits, but I think we need more information
11 before we decide whether we should weigh in on
12 this, because on its face, it's not --

13 DEAN SCHENCK: I personally think the
14 train has left the station. This is already
15 headed for Presidential signature. To me, they
16 use this provision to try things such as sex with
17 dead bodies.

18 MR. SULLIVAN: Or specifically asking
19 a young person to expose their genitalia.

20 PROFESSOR SCHULHOFER: I don't doubt
21 that there are legitimate --

22 (Simultaneous speaking.)

1 PROFESSOR SCHULHOFER: I don't doubt
2 that there are legitimate applications of this,
3 and I'm sure Laurie doesn't either.

4 MS. KEPROS: I totally don't. I just
5 --- I don't know when I look at that 120(c), that
6 seems to cover the stuff you're talking about.

7 MR. SULLIVAN: One good example, I
8 think one of the examples of why this one
9 expressly was proposed, is that there was a CAAF
10 opinion that held that it wasn't an indecent act
11 to ask a 15-year old stepdaughter to expose her
12 breasts over Skype to a Servicemember in Saudi
13 Arabia. So, this was designed to get --

14 actually, it wouldn't be an indecent exposure
15 because it's not the individual exposing himself
16 to the other individual. It's the individual
17 requesting that the minor expose herself.

18 DEAN SCHENCK: Was it charged as a
19 solicitation?

20 MR. SULLIVAN: That was charged as an
21 indecent act, and that's where CAAF said --
22 that's where the physical proximity test came

1 from. And then this was written in a way to read
2 that out.

3 PROFESSOR SCHULHOFER: I can
4 understand that the train may have left the
5 station, but we were asked should the offense be
6 added back in? So, we could answer that by
7 saying, you know, we've been preempted. But
8 that's a different answer from saying that we
9 choose not to --

10 CHAIR JONES: Before it was added back
11 in, were the penalties lower? Is that the issue?

12 LTCOL HINES: I'm not sure what the
13 previous penalties were.

14 CHAIR JONES: I'm trying to figure out
15 if it matters.

16 LTCOL HINES: Well, I think the
17 majority of what you heard, Judge, was -- and I
18 can -- when you say go back and get more
19 information, it's sort of -- honestly, when we
20 talked about this, that's what we've done.
21 What's out there is -- and I forwarded it at some
22 point, and I can do it again.

1 CHAIR JONES: I know you did.

2 LTCOL HINES: But there are three --
3 basically, three iterations. I sent out first
4 the indecent acts offense prior to 2007, and then
5 in 2007 there were several things that were
6 brought into Article 120. And then in 2012, they
7 narrowed that set of offenses down to basically
8 three offenses into Article 120. So, what you've
9 heard from the counsel who've asked for this to
10 be put back in, is that you used under the old,
11 very broad indecent acts -- it was sort of -- it
12 was sort of in the eye of the beholder, you know.
13 But it was an effort to capture things, and I
14 think one of the retired Military Judges who
15 spoke to you said, there are all kinds of things
16 out there that we will see in court that no one
17 ever conceived of, that people engage in that --

18 CHAIR JONES: Right.

19 LTCOL HINES: -- when you apply the
20 definition of indecent or indecent conduct. So,
21 I think what some of the presenters said was now
22 we have a gap in the Statute. If we can't charge

1 indecent acts, we have to charge it as a novel
2 Article 134 offense which, you know, is wrongful
3 conduct that is prejudicial to good order and
4 discipline. And I don't want to get too graphic,
5 but you heard testimony from some prosecutors
6 that talked about very specific factual scenarios
7 they prosecuted that are a no-brainer with
8 indecent acts that are unconsidered to sexual
9 offenses that they have a hard time capturing if
10 they don't have the ability to charge it as
11 indecent conduct.

12 PROFESSOR SCHULHOFER: Well, if
13 they're non-consensual, why is there a problem
14 reaching it under the statute? If they are
15 consenting adults. This seems to reach
16 situations that involve consenting adults without
17 the presence of any other person.

18 MR. SULLIVAN: Some instances that we
19 often see would be two individuals consenting to
20 having sex in a barracks room where there is a
21 third party present, and that third party may not
22 be wanting to hear --

1 PROFESSOR SCHULHOFER: Yes, but this
2 --- the presence of another person is no longer
3 required.

4 MR. SULLIVAN: Right, that's to get
5 the Skype situation. That's there to address a
6 very specific problem that arose from the old
7 case law under the old -- you know, CAAF
8 construed the old indecent acts provision to
9 actually require physical presence.

10 PROFESSOR SCHULHOFER: Physical, so
11 it's a question of interpretation. So, physical
12 presence not required.

13 MR. SULLIVAN: Right.

14 PROFESSOR SCHULHOFER: But are you not
15 -- there's -- you're not familiar with a case
16 where a Servicemember, I can't remember what
17 Service, was involved in a consensual
18 relationship with a foreign individual in Turkey,
19 I think.

20 MR. SULLIVAN: Oh, yes, sure. It's
21 the chaplain case.

22 DEAN SCHENCK: Is that the Air Force

1 where they taped over Air Force One video?

2 MR. SULLIVAN: It was the chaplain
3 case. That's exactly the case, yes.

4 DEAN SCHENCK: I used it as exam
5 question.

6 MR. SULLIVAN: Yes.

7 PROFESSOR SCHULHOFER: And it was held
8 to be -- but it was a consensual relationship.
9 Right?

10 MR. SULLIVAN: It was, but that was
11 under the old Article 125. You know, it used to
12 be the case that consensual sex could be charged
13 under Article 125. Congress took that away.

14 DEAN SCHENCK: Consensual sodomy --

15 PROFESSOR SCHULHOFER: But now that
16 relationship could have been prosecuted under
17 this, if it had been in effect.

18 MR. SULLIVAN: I think under Lawrence
19 versus Texas, I don't think anybody would think
20 that we could prosecute that.

21 PROFESSOR SCHULHOFER: Well, if there
22 is -- we shouldn't take more time with this, but

1 I'm troubled by this.

2 MS. WINE-BANKS: It's pretty broad.

3 DEAN SCHENCK: I think the question
4 that the Panel actually gave us, though, if you
5 look at -- at least, I'm assuming this is the
6 exact direction. Should the offense of indecent
7 acts be added to the UCMJ as an enumerated
8 offense? That's different than a 134 offense.
9 And I'm just wondering what the Panel was asking
10 us. They want us to think the difference between
11 a 120 offense versus a 134 offense.

12 LTCOL HINES: That's a question that
13 the presenters have addressed, so it's a two-part
14 question. Should it be pulled back? And, if so,
15 where should it go, should it go under Article
16 120 or 134? And we've pushed out the proposed
17 134 offense just for the information of --

18 DEAN SCHENCK: Glen gave us a lot of
19 stuff on this, a lot of historical documents.

20 LTCOL HINES: Right. And I guess my
21 only concern would be, I understand if we want to
22 go back and get other information, if you can

1 just specifically tell me what would be more
2 helpful.

3 CHAIR JONES: Can you just
4 redistribute it? I think --

5 LTCOL HINES: Yes. Sure, Judge.

6 CHAIR JONES: -- it came out, I
7 probably didn't read it. But if I had it now,
8 I'd be focused.

9 LTCOL HINES: I'll send it back out.

10 CHAIR JONES: Great.

11 DEAN SCHENCK: Glen, do you have an
12 opinion as to whether it's necessary --

13 LTCOL HINES: I don't know if I should
14 really do it. I probably shouldn't. Should I?

15 MR. SULLIVAN: As long as you're
16 caveating it as your personal opinion.

17 LTCOL HINES: I tend to agree with
18 most of the prosecutors just based on my
19 experience as a prosecutor and a judge, that it
20 should be added back. I do agree there's a whole
21 panoply of things that everyone can engage in,
22 but especially our -- 95 percent of the people

1 who are charged with this in the military in the
2 18-22 age bracket. And when those things happen
3 on a military installation, which is typically
4 where they happen, in the barracks or somewhere
5 else, they are prejudicial to good order and
6 discipline. And, typically, the circumstances --

7 CHAIR JONES: So, what do they get, up
8 to a year or two?

9 MR. SULLIVAN: Five years for this.

10 LTCOL HINES: Five years under the
11 Statute.

12 CHAIR JONES: It's five years, but
13 right now before it gets moved --

14 LTCOL HINES: Right now you have to
15 charge it as a general disorder, and I believe
16 that's --

17 MR. SULLIVAN: Three months.

18 LTCOL HINES: -- three months
19 maximum.

20 CHAIR JONES: Okay, so this is upping
21 the ante. That's why they want to move it.

22 MR. SULLIVAN: Right.

1 CHAIR JONES: Okay.

2 (Simultaneous speaking.)

3 MR. SULLIVAN: Four months. And no
4 discharge for enlisted --

5 LTCOL HINES: So, that's my opinion;
6 it should be put back in.

7 MR. SULLIVAN: Put back into 134, or
8 put back into the new --

9 LTCOL HINES: I would say 134, because
10 that's where it was when -- we grew up under the
11 old statute, and it was under 134. And to put it
12 under 120, I think I sort of --

13 CHAIR JONES: I'm not for putting it
14 under 120.

15 LTCOL HINES: I agree with Professor
16 Schulhofer. If you're going to put it under 120,
17 it needs to be a non-consensual, and most of this
18 stuff is not -- there's not an issue of consent.
19 It's someone engaging in indecent common law,
20 indecent --

21 MAJ GEN WOODWARD: So, it's in 134
22 now, but it's just enumerated. Right?

1 LTCOL HINES: Well, no, ma'am. It's ---
2 you would have to charge indecent act or indecent
3 conduct as just a general -- under the present
4 scheme, as a general disorder under Article 134
5 and the maximum punishment is --

6 MS. WINE-BANKS: But this proposes it
7 go back to 134 --

8 LTCOL HINES: Right.

9 MS. WINE-BANKS: -- as an enumerated
10 offense.

11 LTCOL HINES: Right.

12 MS. WINE-BANKS: So, we wouldn't have
13 to do anything. It would only be if we thought it
14 should absolutely not be, that we should take
15 action. Otherwise, someone else has done it. We
16 don't have to spend time on it.

17 LTCOL HINES: Or, you know, if you have
18 concerns like Laurie, or Professor Schulhofer, or
19 any others, if you think this version is too
20 broad, you could certainly say look, we're not
21 going to recommend. It looks like the Executive
22 Branch is already pushing this up. But anyone who

1 had any concerns with it being overly broad could
2 certainly articulate that in a report.

3 MS. WINE-BANKS: I would say without
4 knowing the examples that are causing the concern
5 or the need for prosecution, it's -- this is so
6 subjective. I mean, it is in the eyes of the
7 beholder. It's anything.

8 And it's not even -- it does say
9 common propriety, which I assume is within the
10 military community. So, that's some limitation
11 but it's pretty broad.

12 CHAIR JONES: So, I'm sorry to be dense
13 about this, but what's the difference between
14 being in 134 but not being an enumerated offense?

15 MR. SULLIVAN: So, the -- literally any
16 conduct that has never been thought of before by
17 the President or by the --

18 CHAIR JONES: Right.

19 MR. SULLIVAN: -- you know,
20 Commanders, whatever, could be charged as what's
21 called a general disorder. So, any conduct that
22 is prejudicial to good order and discipline could

1 be charged. Sometimes we also call that a novel
2 134.

3 CHAIR JONES: Okay.

4 MR. SULLIVAN: And where it doesn't
5 marry up to any existing offense --

6 CHAIR JONES: In 134.

7 MR. SULLIVAN: Correct.

8 CHAIR JONES: Yes.

9 MR. SULLIVAN: Or analogous to a non-
10 Article 134 offense. Then I believe the maximum
11 punishment is three months, kicked up to four
12 months if it's service discrediting. Is that
13 right?

14 LTCOL HINES: Right.

15 MR. SULLIVAN: And then no discharge
16 authorized for an enlisted member.

17 CHAIR JONES: Okay.

18 MR. SULLIVAN: So, there's a very low
19 maximum punishment. You're just saying basically,
20 this is a general disorder --

21 CHAIR JONES: Got it. So, if you
22 specifically put it in 134, then the penalties

1 go --

2 MR. SULLIVAN: Then the President
3 specifies a particular maximum punishment.

4 CHAIR JONES: Right.

5 MR. SULLIVAN: So, in this case, DoD
6 has recommended that the President make it the
7 five year max.

8 CHAIR JONES: I got it. Thank you.

9 MR. SULLIVAN: And a DD as opposed to
10 no discharge.

11 CHAIR JONES: All right. I don't know,
12 do people want to -- shall we learn more? We can
13 probably -- this is one that I would feel
14 comfortable once we've taken a look at what you
15 have to send us again, Glen. My apologies.

16 LTCOL HINES: Not at all.

17 CHAIR JONES: We could do it in a
18 telephone conference. I'm not too concerned about
19 meeting in person again on this one.

20 PROFESSOR SCHULHOFER: What I would
21 like in particular, I don't know if this tracks
22 onto other people, but I would like some specific

1 examples, if you can do it, you know,
2 comfortably. But, I mean, there's no way to do
3 this without being graphic, because it has to be.
4 Some examples of consenting adults engaging in
5 conduct that would be covered by this when no
6 other person is physically or virtually present,
7 that would be appropriate subjects for
8 punishment.

9 MR. SULLIVAN: Although, this also
10 covers conduct where another person is present.

11 PROFESSOR SCHULHOFER: Yes.

12 MR. SULLIVAN: It doesn't only cover --
13 --and, again, that was in there for the Skype
14 situation. You know, the no physical presence
15 requirement is in there to cover instances where
16 this is happening via -- I mean, the actual
17 impetus for that was Skype. But also, again, it -
18 - you do see this charged sometimes, when you
19 have two people having sex in a barracks room,
20 not in the physical view of a third person in the
21 barracks room, but able to hear it and such. So,
22 that is an instance in which things like this are

1 charged. And then sometimes it's just charged as
2 when you have --

3 CHAIR JONES: Disorderly conduct.

4 MR. SULLIVAN: -- sex parties in the
5 barracks.

6 PROFESSOR SCHULHOFER: What was it,
7 that chaplain case, was there any other person
8 physically present or virtually?

9 MR. SULLIVAN: No, there was a
10 videotape which is how that came up. But, again,
11 that was under a regime where consensual sodomy
12 was a specific Congressionally-passed Article 125
13 offense. Congress has since gone back and
14 repealed consensual sodomy as a UCMJ offense.

15 CHAIR JONES: It should be in it. That
16 won't be any -- that conduct will not be an
17 offense under 134 generally or enumerated.

18 MR. SULLIVAN: And I can certainly say
19 that there was no intent of the people that
20 recommended this to the President, there was no
21 intent to cover consensual sodomy. Except to the
22 same extent that a consensual heterosexual act

1 might in some instance be chargeable because
2 you're subjecting some third party to --

3 PROFESSOR SCHULHOFER: Oh, if you have
4 consensual heterosexual sex in the barracks with
5 other people present, I get that.

6 MR. SULLIVAN: Exactly.

7 PROFESSOR SCHULHOFER: I mean, I
8 understand that, but --

9 MR. SULLIVAN: Exactly.

10 PROFESSOR SCHULHOFER: So, there's no
11 -- this wouldn't apply to any situation where no
12 one was within sight, sound, hearing of --
13 physically or virtually?

14 MR. SULLIVAN: I wouldn't go so far as
15 to say that. I wouldn't go so far as to say that
16 there wouldn't necessarily be some consensual
17 aberrant sex act that wouldn't be charged. In
18 fact, I would think that it's likely that there
19 may be an aberrant consensual act that might be
20 charged. And, you know, we can all imagine
21 situations.

22 PROFESSOR SCHULHOFER: I'm sorry. You

1 said we can all?

2 MR. SULLIVAN: I said we can all
3 imagine situations where that might be the case.

4 PROFESSOR SCHULHOFER: I can imagine
5 acts. I'm having trouble imagining when
6 prosecution would be appropriate, if they're
7 consenting adults and when no one else is aware
8 of it at the time.

9 DEAN SCHENCK: Having group sex acts
10 in a barracks is indecent. I'm sorry. I live in a
11 barracks. I don't want to be listening to a bunch
12 of people having sex. I don't want to listen to
13 people --

14 MS. WINE-BANKS: But then you would be
15 present. He's saying where no one else is
16 present.

17 DEAN SCHENCK: Well, it doesn't -- you
18 may not be present in the room. You're in the
19 hallway. You may not be present.

20 CHAIR JONES: You shouldn't have to
21 walk in on it, either. There are probably places
22 where you just shouldn't be having sex. But,

1 anyway, I think we can move along. So, where are
2 we, 6?

3 DEAN SCHENCK: We're on 6.

4 CHAIR JONES: This is one that says
5 resolved preliminarily, so I have high hopes for
6 this.

7 DEAN ANDERSON: So, there were a group
8 of these, the rest of these, 6, 13, 14, 15 are
9 all about abuse of authority.

10 CHAIR JONES: Oh, yes.

11 DEAN ANDERSON: And we went through
12 these. We deliberated extensively on 6, and that
13 resolved many of -- 13, 14, and 15 in some ways.
14 So, I think we're close. We didn't have everybody
15 here. We came to a preliminary decision.

16 CHAIR JONES: Okay. Well, would you
17 tell us what you resolved on 6?

18 DEAN ANDERSON: Sure.

19 CHAIR JONES: And we'll talk, if we
20 need to.

21 DEAN ANDERSON: So, threatening
22 wrongful action did not have -- the question

1 posed is whether or not threatening wrongful
2 action was ambiguous or too narrow?

3 CHAIR JONES: Right.

4 DEAN ANDERSON: And there was guidance
5 in the 2007 definition in Article 120 that was
6 removed that we thought was a good starting
7 point. There were objections to the 2007
8 provision, specifically -- well, there were
9 various objections to the 2007. We didn't adopt
10 the 2007 provision verbatim. We took it as a
11 starting point and tried to amend each of the --
12 amended to address each of the objections.

13 I'm on page 11 and 12 of the read-
14 ahead materials. On page 12, we came up with a
15 proposed definition of threatening wrongful
16 action, which is what we were asked to try to
17 grapple with, on whether or not it's too
18 ambiguous or no. And threatening another person
19 in fear, and then trying to define it in the
20 statute itself. This would be conduct of a
21 sufficient consequence to cause a reasonably --
22 so it's still an objective standard.

1 CHAIR JONES: Where are you,
2 threatening?

3 DEAN ANDERSON: Yes, threatening or
4 placing another person in fear with a
5 communication, action, or course of conduct
6 that's of sufficient consequence to cause a
7 reasonable belief, so it's an objective standard,
8 that noncompliance will result in the victim or
9 another person being subjected to wrongful
10 action, which among other things includes, but is
11 not limited to --

12 That slightly cumbersome language
13 right there was so that the list was not
14 exhaustive. It was a non-exhaustive list. These
15 were examples.

16 A, physical injury or damage to a
17 person or another person's property. That's
18 pretty straightforward. B is an expressed or
19 implied threat to accuse a person of a crime, to
20 expose a secret, and those are pretty
21 straightforward. That's extortion and, you know,
22 has traditional analogs in other parts of the

1 law.

2 And then 3, Sub 3, so I'm at B, Sub 3,
3 is through the use or abuse of position, rank, or
4 authority to effect the military career or
5 conditions of service of some person. So,
6 initially --

7 CHAIR JONES: All of this is going into
8 G7?

9 DEAN ANDERSON: Yes. And the --
10 initially, this was just about the military
11 career, but we thought well, there will be
12 conditions where give me 50 pushups or give me
13 this sexual act, and that that is the conditions
14 of service, and that that should be included.

15 MAJ GEN WOODWARD: And, originally,
16 remember it had the affected positively or
17 negatively --

18 DEAN ANDERSON: And that got people all
19 twisted up. People really objected to that one
20 way or the other, and so we just thought well,
21 that's not necessary. What we're looking at is
22 whether or not there's an implicit use -- well,

1 there's the use of authority to affect someone's
2 career, or the conditions of service, either for
3 them or a third party.

4 And, again, we're talking about a
5 reasonable belief, so it's an objective standard,
6 which makes it still somewhat -- which narrows
7 it, the objectiveness narrows it. So, this is
8 what we came to. I think there was broad or
9 general agreement. We wanted to bring it to the
10 full team, because I think you weren't there.

11 CHAIR JONES: I was not, and I think
12 someone else wasn't, as well.

13 MS. WINE-BANKS: I don't think Liz was
14 there either.

15 CHAIR JONES: Liz Holtzman, Liz wasn't
16 here either.

17 MS. WINE-BANKS: I think you and Liz
18 weren't there, and somebody else maybe.

19 MS. ZAHN: Schinasi.

20 MS. WINE-BANKS: Schinasi.

21 PROFESSOR SCHULHOFER: Before we
22 started our deliberations, I had -- have a strong

1 preference for a per se rule against any sexual
2 act, ostensibly consensual sexual acts, between
3 personnel of different rank. And I was convinced
4 by the testimony that we had that it was -- the
5 issue was adequately dealt with, and that
6 something like B(iii) would deal with the
7 situation.

8 My first preference was for a per se
9 rule without having to go through this song and
10 dance for a whole variety of reasons, but I was
11 convinced that this is a better approach. So, I
12 was comfortable with that.

13 The only remaining issue I have is
14 with the breadth of B(ii) to expose a secret, or
15 publicize an asserted fact whether true or false,
16 tending to subject a person to ridicule. That's
17 very broad, and particular -- although, we do
18 have that in other kinds of extortion, financial
19 extortion, but when --

20 CHAIR JONES: Is this all out of 2007?
21 Is that where this language came from?

22 DEAN ANDERSON: That is where --

1 PROFESSOR SCHULHOFER: That's where it
2 came from. But I think maybe it's identical, but
3 I'm looking at the blue language, which I think
4 is what Dean Anderson's proposing.

5 I think when you move into a sexual
6 context and involve a situation where somebody
7 says, you know, I'm going to be telling people
8 that you're frigid unless, you know, we have
9 better sex or something like that, that fits
10 within this. And I think it's just -- it's
11 broader than it really needs to be. And I'd
12 prefer to see it tightened a little bit.

13 DEAN ANDERSON: So, just to clarify,
14 Barbara --

15 CHAIR JONES: Yes.

16 DEAN ANDERSON: We didn't talk through
17 that issue last time. It was, I thought, fairly
18 non-controversially taken from the 2007 language.
19 It wasn't objected to by the affiants in front of
20 us, but that's not to say that we shouldn't
21 deliberate on it. I just don't think we
22 deliberated on it yet.

1 CHAIR JONES: Right.

2 PROFESSOR SCHULHOFER: There are
3 authorities, and something published by me which
4 proposed a model statute that uses exactly this
5 language in my 1998 book. The model statute in
6 the appendix is almost verbatim like this. I've
7 been persuaded that the application of that very
8 conventional language in the context of sexual
9 interaction and all that goes on these days with
10 sexting and everything else, that it's opening a
11 dangerous door.

12 CHAIR JONES: So, I gather -- do we
13 know why they took it out of 2007? I apologize if
14 I'm going back over old territory here.

15 DEAN ANDERSON: They took out the
16 entire --

17 CHAIR JONES: They have no -- they
18 have, I gather -- well, obviously, in the current
19 one there are no examples in 7.

20 DEAN ANDERSON: Right, and I think they
21 took it out because there was some objection to
22 a number of different provisions, not least the

1 one that General Woodward pointed to, the either
2 positively or negatively, which too aggressively
3 highlighted the opportunity for positive
4 enhancements to one's career. I think the way
5 that we finessed that, though, was just to talk
6 about the ability, or the abuse of authority to
7 affect the career. So, yes.

8 MAJ GEN WOODWARD: It's just -- yes,
9 any time you list stuff, it always makes me
10 uncomfortable --

11 CHAIR JONES: Me, too.

12 MAJ GEN WOODWARD: -- because there
13 are so many different ways you --

14 DEAN ANDERSON: That was another
15 reason.

16 MAJ GEN WOODWARD: -- can have a
17 threat. And, to me, I remember when I first read
18 this, I thought it was just so odd, the top two
19 just seemed so strange to me, why would they pick
20 those two? But that's what they had in the
21 previous one, I guess, but --

22 CHAIR JONES: Did anybody say it was a

1 problem trying to prosecute this without these
2 examples? I don't remember.

3 MS. WINE-BANKS: Yes, I think they
4 did.

5 (Simultaneous speaking.)

6 MS. WINE-BANKS: It was a question of
7 there was no definition of what wrongful action
8 was.

9 DEAN ANDERSON: And there was also --

10 MS. WINE-BANKS: And it was too vague,
11 that we needed to fill it in. The favorable part,
12 the objection was really that if it's -- if I'm
13 going to promise -- sleep with me, and I will
14 promote you even though you are a terrible
15 soldier and you don't deserve a promotion.

16 That's -- it's maybe bribery, in a
17 way, but it's not forcing you. You don't deserve
18 it. You can easily say well, I don't deserve the
19 promotion, and I'm not going to sleep with you,
20 and I'll just take my promotion when and if I
21 ever earn it, so that it's not the same kind of
22 abuse of authority. So, that's why people were

1 objecting to the favorable or unfavorable in 3.

2 PROFESSOR SCHULHOFER: The other

3 concern was --

4 CHAIR JONES: I wonder if, I have one

5 --

6 PROFESSOR SCHULHOFER: -- with respect

7 to wrongful action.

8 CHAIR JONES: I'm sorry, yes.

9 PROFESSOR SCHULHOFER: That if the

10 sergeant or commanding officer says you are late

11 returning to base from your leave, and I'm going

12 to report you unless -- is that wrongful action

13 to say --

14 MAJ GEN WOODWARD: Yes, of course. It's

15 abuse of authority.

16 PROFESSOR SCHULHOFER: But it's

17 wrongful, but it should be covered. I think we

18 all agree.

19 MAJ GEN WOODWARD: Yes, and that's why

20 we frame it this way.

21 PROFESSOR SCHULHOFER: There's no doubt

22 that it should be covered. But the problem I

1 think there was potential -- there was room for
2 argument that we didn't want to allow, about
3 whether it would be wrongful to say I'm going to
4 report you. What he's threatening to do is to
5 report the person for a dereliction of duty,
6 that's not wrongful for him to do that.

7 DEAN ANDERSON: So, I think the shift
8 that we've made, or tried to make, from the 2007
9 version is that it no longer matters -- that the
10 relevant question is not positively or
11 negatively, but the relevant question is, is it a
12 use or abuse of authority to affect the career --
13 -

14 MAJ GEN WOODWARD: Is it possible to
15 write this where you take out the I and the, you
16 know, the 1 and the 2, basically, the sub-ones,
17 you know. And you just include as a specific, you
18 know, to include, and then you have that spelled
19 out as far as the use and abuse of military
20 position, because that's the one you really need
21 to clarify. Right? But will that work?

22 MS. WINE-BANKS: Well, no, because I

1 think, number one, for example, doesn't have to
2 be a superior officer. Doesn't have to be someone
3 using their rank. You could be colleagues --

4 MAJ GEN WOODWARD: Right, that's what
5 I'm saying just delete 1 and 2, is what I'm
6 saying.

7 MS. WINE-BANKS: But then you --

8 MAJ GEN WOODWARD: Because there could
9 be any number of different things that are a
10 threat. I just don't know why we list two of them
11 there. They seem very bizarre to me.

12 MS. WINE-BANKS: Me, too.

13 DEAN SCHENCK: I found the changes on
14 page 16. It doesn't -- it explains the changes.

15 CHAIR JONES: I'm sorry. I can't hear
16 what you --

17 DEAN SCHENCK: The 2007 version to the
18 2012 version on page 16, Glen provided us
19 background materials. And in the middle of the
20 page it says, threatening or placing the other
21 person in fear. This definition was greatly
22 simplified and the overlaps with force were

1 reduced or eliminated to simplify charging
2 decisions. The ability to carry out the threat
3 was removed as a proof requirement for the
4 government.

5 So, that's the explanation that they
6 gave when they forwarded the proposed --

7 CHAIR JONES: Who's -- just read me
8 the last line again.

9 DEAN SCHENCK: The ability to carry out
10 the threat was removed as a proof requirement for
11 the government.

12 CHAIR JONES: Right.

13 DEAN SCHENCK: So, that's the support
14 for the proposed change.

15 LTCOL HINES: I think what you heard
16 and how we arrived at what Dean Anderson drafted
17 is both the prosecutors -- there were some
18 prosecutors and training command Staff Judge
19 Advocate Advisors, it was pretty entry-level
20 training environment, who all said that when the
21 2012 definition was shortened, we lost in the
22 statute the example of abusing your military rank

1 or authority. And so perhaps in an effort by
2 Congress to actually make it broader by making it
3 more generally worded, prosecutors lost the
4 ability to make that argument.

5 I think this came from some of the Air
6 Force prosecutors with the Lackland cases, ma'am,
7 that they didn't have that example anymore that
8 the Judge was instructing a Panel, that made it
9 easy for the prosecutor to say here's the example
10 of what we're talking about.

11 DEAN SCHENCK: This is the provision.

12 LTCOL HINES: So, that's why they want
13 something like that back. And I think the first
14 two are in there, ma'am, because they were in the
15 2007 statute --

16 CHAIR JONES: I'm a little confused
17 with the first one, anyway. It says, will --
18 let's see, threatening means a communication of
19 sufficient consequence to cause a reasonable
20 belief that noncompliance will result in the
21 victim being subjected to a wrongful action. So,
22 if you accuse a person of a crime, presumably

1 you're accusing them of a crime that they did not
2 commit?

3 PROFESSOR SCHULHOFER: No, it could be
4 that they committed it. There will be classic
5 extortion, you say you committed a crime, and I'm
6 going to report you unless you pay me a bribe.

7 DEAN ANDERSON: Or have sex with me.

8 PROFESSOR SCHULHOFER: Yes. My --

9 CHAIR JONES: So, basically, what
10 they're saying, will result in the victim or
11 another person being subjected to a wrongful
12 action. The wrongful action --

13 (Simultaneous speaking.)

14 CHAIR JONES: -- could be the rape, or
15 the sexual assault. Right?

16 DEAN ANDERSON: So, let me just
17 provide a little context. Historically, under
18 2007, noncompliance will result in the victim or
19 another person being subjected to a lesser degree
20 of harm than death, grievous bodily injury,
21 kidnapping. Such lesser degree of harm includes,
22 and then there was an articulation of these

1 different kinds of harms that were lesser than
2 grievous bodily injury.

3 So, grievous bodily injury throws
4 something right into rape. This threat is for
5 sexual assault, and it's something less than the
6 grievous bodily harm that would get one to the
7 rape level.

8 CHAIR JONES: I know. I just don't
9 understand, what's the wrongful action?

10 DEAN ANDERSON: So, that's what we're
11 trying to identify. So, instead of saying --

12 DEAN SCHENCK: It's saying to have sex
13 with me, basically, yes.

14 MS. WINE-BANKS: But, actually, the way
15 it's phrased, that's -- Barbara is right.

16 (Simultaneous speaking.)

17 MS. WINE-BANKS: The wrongful action is
18 report -- if you committed a crime and I say I'm
19 going to report you unless you sleep with me,
20 reporting is not a wrongful action. Reporting it
21 is actually the right action.

22 DEAN ANDERSON: But telling somebody

1 you're going to report them for a crime in order
2 to get something from them is extortion.

3 MS. WINE-BANKS: Yes, but that's not
4 how it's phrased.

5 CHAIR JONES: Honestly, if the purpose
6 of all of this is to do consistently what we're
7 going to do later, which is talk about abuse of
8 authority.

9 DEAN ANDERSON: This is the only
10 provision that we're suggesting abuse of
11 authority goes into.

12 CHAIR JONES: Then I would just put it
13 -- I mean -- oh, I thought we had another one, as
14 well.

15 DEAN ANDERSON: No, the others all
16 refer back to this one. And, you know, 13, 14,
17 and 15 all refer back to this recommendation. I
18 believe.

19 CHAIR JONES: Hold on.

20 MAJ GEN WOODWARD: Yes, I thought we
21 were going to cover it under this one.

22 DEAN ANDERSON: Does the 2012 version

1 -- 13 says, does the 2012 version of the UCMJ
2 afford prosecutors the ability to effectively
3 charge coercive sexual relationships? There are
4 opportunities -- we heard that there are
5 opportunities to charge --

6 MAJ GEN WOODWARD: Under 92.

7 DEAN ANDERSON: Under 92.

8 MAJ GEN WOODWARD: Remember, that was
9 the big discussion we had about do we want to put
10 it in 120, or do we leave it in 92. And the
11 consensus from most of our presenters was leave
12 it in 92. And we went back and forth, but I
13 thought we ultimately agreed with okay, 92.

14 DEAN ANDERSON: Well, we --

15 MAJ GEN WOODWARD: But you still have
16 this.

17 DEAN ANDERSON: There are a lot of
18 inappropriate relationships that fall outside the
19 purview and can be prosecuted outside of 120. We
20 thought, though, that abuse of authority, right,
21 not the per se sex between people of different
22 rank, not per se in the circumstances of --

1 MAJ GEN WOODWARD: Right.

2 DEAN ANDERSON: -- even training --

3 CHAIR JONES: I thought we did agree
4 that abuse of authority could be prosecuted under
5 120(b) under certain circumstances.

6 DEAN ANDERSON: Yes.

7 MAJ GEN WOODWARD: If you could prove
8 the threat.

9 CHAIR JONES: Right. Which means to me
10 that -- I thought what we were saying is that
11 under 120(b) we were thinking of adding, commits
12 a sexual act upon another person. Oh, the
13 Professor is gone, good. By using their
14 position, rank, or authority to compel
15 compliance.

16 DEAN ANDERSON: That's not --

17 CHAIR JONES: Weren't we talking about
18 that at some point?

19 DEAN ANDERSON: We were, but then we
20 decided that the -- many of the presenters wanted
21 us to go back to the 2007 version. And so I
22 think that's where we started in our

1 deliberations.

2 I don't have a problem with making it
3 much simpler. I think the question is -- for me,
4 this would go under --

5 CHAIR JONES: Well, how do you find --I
6 guess, so in other words, if you wanted to
7 prosecute the -- because the big discussion was
8 after the presentation by Congresswoman Frankel
9 and the victim. And so the question was without,
10 you know, this specific 120(b) --

11 MAJ GEN WOODWARD: Well, it goes under
12 threat. You know, it's in her rewrite, so you --

13 CHAIR JONES: I'm perfectly fine. I
14 just misunderstood. I thought we were -- we had
15 decided that -- well, maybe all we decided was
16 what we've always known, which is that it could
17 be prosecuted as a 120, even with the current
18 language. And if we -- if time and tide has rode
19 by and we're not planning to put it specifically
20 into 120(b), then that's fine with me. So, we're
21 going to try to cover it in the threat section.

22 MAJ GEN WOODWARD: Yes, but what we

1 were debating about was do you make it
2 irrespective -- can they consent or not? For
3 instance, a trainee who consents to sex with
4 their instructor, is that against 120 or not? And
5 we ultimately said no, we're not going to put
6 that under 120. We would put that under Article
7 92 because they said they were effectively
8 prosecuting that --

9 CHAIR JONES: Yes, I --

10 MAJ GEN WOODWARD: But we still had the
11 abuse of authority one.

12 CHAIR JONES: Because I thought we had
13 a long conversation about whether to include
14 induce, to compel or induce. Remember? And that
15 was in the context, I thought, of 120(b).

16 MS. WINE-BANKS: It was.

17 CHAIR JONES: We've gone beyond that.
18 Okay.

19 MS. WINE-BANKS: Well, no, no, no. I
20 think 120(b)(1)(A) is threatening or placing the
21 other person in fear. The definition of that now
22 would include fear from the abuse of a position

1 of authority.

2 MAJ GEN WOODWARD: The other --

3 CHAIR JONES: Oh, I see.

4 (Simultaneous speaking.)

5 MAJ GEN WOODWARD: You have to prove a
6 reasonable threat, you know what I mean?

7 CHAIR JONES: Right.

8 MAJ GEN WOODWARD: Where was the
9 reasonable --

10 DEAN ANDERSON: It's reasonable fear.

11 MAJ GEN WOODWARD: Fear.

12 CHAIR JONES: Yes.

13 DEAN SCHENCK: Okay. I did a match-up
14 with the 2007 with our proposed on page 12 that
15 we're talking about, and on page 26 in this bound
16 version you see the overstrike proposal that went
17 from -- that reflects the 2007 version to the
18 2012 version. We're all familiar with the 2012
19 because it's right here. So, if you look at Dean
20 Anderson's proposal --

21 DEAN ANDERSON: It's right on the page
22 before.

1 DEAN SCHENCK: Right, on page 12. This
2 page 12, that's your proposal.

3 DEAN ANDERSON: Right.

4 DEAN SCHENCK: And it's almost nearing
5 the 2007, with just a few modifications.

6 DEAN ANDERSON: Right, that was the
7 plan. And that's on page 11, right before page
8 12.

9 DEAN SCHENCK: Okay. So, the thought --
10 --the only -- the huge distinction is that triple
11 -- is that under a threat, number 3, is that the
12 addition that's going to --

13 DEAN ANDERSON: So, there are -- I
14 think that there are two -- I'm sorry, there are
15 three changes that I would identify from the 2007
16 version.

17 DEAN SCHENCK: Yes.

18 DEAN ANDERSON: And these were supposed
19 to be -- were designed to be in response to the
20 challenges to the 2007 version that were
21 articulated by the people who testified. So, one
22 is that it needed to be broader, that the

1 provision needed to be broader than some lesser
2 degree of harm than death, grievous bodily
3 injury, kidnapping, and that wrongful action was
4 the way to think about it because that's what the
5 statute currently did.

6 Secondly, that the term includes,
7 suggested or insufficiently identified that this
8 was a non-exhaustive list. So, what I did was
9 which, among other things, includes but is not
10 limited to. So I tried twice to make the sort of
11 inter alia, you know, among other things idea out
12 there.

13 And then the third change was with the
14 last, (B)(iii), and that used to be about the use
15 or abuse of military position, rank, or authority
16 to affect or threaten to affect either positively
17 or negatively the military career. When we looked
18 at that, there was lots of objection to the
19 negatively/positively language, so we got rid of
20 that.

21 There was also a lot of objection to
22 the --limiting it just to the career, as opposed

1 to the conditions of service itself at the time,
2 which we felt was more common. Right? The threat
3 to recycle you is not -- may not affect your
4 career long term but, you know -- or the threat
5 to make you do extra pushups, or run laps, or
6 whatever.

7 So, those are the three main changes
8 from 2007. Now, that's one theory to proceed on.
9 Another theory that you've articulated is to have
10 another -- you know, under (b)(1) have an (e),
11 you know, which says, commits sexual act upon
12 another person. We've gotten rid of the by.
13 Terms are not entirely consistent. Nevertheless,
14 it says commits a sexual act upon another person,
15 and then it could say, by using or abusing the
16 position, rank, or authority to affect the
17 military career or conditions of service.

18 CHAIR JONES: No, to compel compliance
19 because this is the section --

20 DEAN ANDERSON: Right. I'm just saying
21 that that would be the provision, that would be
22 where it would go. So, the question is -- one of

1 the questions posed by this -- with these two
2 variables and a decision as among them is, which
3 does less -- which is more cognizable by people
4 reading these?

5 CHAIR JONES: I'm not opposed to
6 putting it in under a definition of whatever the
7 heck we're talking.

8 DEAN ANDERSON: Right, the fear.

9 CHAIR JONES: Threatening or placing
10 that other person in fear.

11 DEAN ANDERSON: Right.

12 CHAIR JONES: Let me see what the
13 options are again under 2012.

14 DEAN ANDERSON: So, 2012 --

15 CHAIR JONES: Oh, no, it has nothing,
16 so we need 2007.

17 DEAN ANDERSON: So, here's 2007, and
18 then here's my proposal with the three changes to
19 it.

20 MR. SULLIVAN: Which is more
21 esthetically pleasing.

22 DEAN ANDERSON: Yes, right. That should

1 be dispositive.

2 DEAN SCHENCK: There is one thing in
3 here, it says, express or implied threat. And I
4 don't see that in the 2007.

5 LTCOL HINES: I think Dean Anderson
6 spoke to that. The Dean's take was that there was
7 a concern that unless you -- in most of these
8 cases, there is never an express threat, and so
9 it's an implied threat. So, she broadened that
10 to lay out this can be an express or an implied
11 threat.

12 DEAN ANDERSON: I do kind of agree
13 with the Professor now that I look at it. That is
14 really very broad.

15 MAJ GEN WOODWARD: So, I think the
16 question for that, I think we could change that.

17 MS. WINE-BANKS: I didn't hear you,
18 Maggie.

19 MAJ GEN WOODWARD: Just 2, to me, is
20 very broad, you know. I mean, threatening to
21 expose a secret or publicize something that would
22 expose somebody to ridicule. I think that -- you

1 know, to put that in a sexual assault threat
2 category to me is really pretty --

3 DEAN SCHENCK: That was in the 2007.

4 MAJ GEN WOODWARD: I know, but --

5 (Simultaneous speaking.)

6 MS. WINE-BANKS: If it's sufficient to
7 compel compliance with the request for sex of
8 unwanted, unconsensual sex, and the only reason
9 I'm agreeing is because you said that you were
10 going to make me look bad by doing this exposure.

11 MAJ GEN WOODWARD: Yes, but --

12 CHAIR JONES: Well, I guess you have to
13 read all of these by first going back to B, and
14 reading, "commits a sexual assault upon another
15 person by threatening or placing that other
16 person in fear." So, you've got --

17 MAJ GEN WOODWARD: Threatening to
18 expose them to ridicule.

19 CHAIR JONES: Yes. I mean, I think
20 there was a reason they got rid of these.

21 DEAN ANDERSON: I think there was,
22 too. I just don't -- at least on the record that

1 we have --

2 CHAIR JONES: We don't know what it
3 was.

4 DEAN ANDERSON: The reason doesn't
5 have anything to do with these provisions that
6 you all are objecting to now. Now, those --

7 CHAIR JONES: No.

8 DEAN ANDERSON: At least on the record
9 that we have.

10 MS. WINE-BANKS: You know, if we want
11 it to be esthetically pleasing, it should
12 probably read -- 3 should be, to affect the
13 career conditions of some person through the use
14 of, because the others all start with a to.

15 DEAN SCHENCK: Very nice. So, the
16 choices are -- are we still with the two choices,
17 the modification of the definition, adding enough
18 in there, or adding a specific provision under
19 sexual assault?

20 DEAN ANDERSON: It seems to me, I think
21 we have two options. But it seems to me that
22 adding a new provision under B, sexual assault,

1 is in some sense a more radical alternative.

2 DEAN SCHENCK: Well, it's --

3 DEAN ANDERSON: Only in the sense that
4 this language, very similar language showed up
5 earlier in the definition section. I'm all for
6 the changing of the provision and making it
7 explicit under B, but that's a consideration
8 because I think we've tried to, as a matter of
9 practice here, do the least damage, or the least
10 revision possible.

11 DEAN SCHENCK: So do you think --

12 (Simultaneous speaking.)

13 CHAIR JONES: But in this sense, this
14 is so much more narrow. I mean, we're talking
15 here about inducing or compelling, whatever you
16 want to call it, having non-consensual sex by a
17 threat of affecting the military career or
18 conditions of service of some person. I think
19 what we were talking about when we were
20 discussing it is probably 120(b), went beyond
21 that. I think a use or abuse of rank, there may
22 not be any threat to affect the military career.

1 DEAN ANDERSON: True.

2 CHAIR JONES: It could simply be total
3 intimidation through abusing rank. So, this does
4 not do the job for what -- if we want to put the
5 concept in here of sexual assault.

6 DEAN SCHENCK: The second question I
7 have is, if we chose to add to (b) sexual assault
8 with the specific provision, are we then not
9 changing the threat definition? And does that
10 solve all the problems we're seeking to address?

11 CHAIR JONES: I wouldn't bother with
12 this, if I had it in (b). I mean, 120(b).

13 DEAN ANDERSON: Under (b), I think it
14 would come under 1, (b)(1), and instead of being
15 a redefinition of a re-engineering or reverse --
16 a back-engineering to the 2007 version, (a),
17 instead of doing that, it would be (e).

18 CHAIR JONES: Yes, you'd still have
19 threat -- well, I guess you'd still have
20 threatening or placing another person in fear.

21 DEAN ANDERSON: Yes, because there are
22 other ways --

1 CHAIR JONES: And would we leave it
2 the way it is now, and let people figure out what
3 placing in fear was? But then have an (e) that
4 was specific as to the abuse of rank?

5 DEAN ANDERSON: Yes.

6 CHAIR JONES: And we're not just
7 talking about a threat. This is much more
8 encompassing.

9 DEAN SCHENCK: Yes, and although we do
10 -- have been taking the minimalist approach, I
11 think that's the clearest approach.

12 DEAN ANDERSON: It is.

13 DEAN SCHENCK: You know, adding, it's
14 in there, there you go. It's not strict
15 liability.

16 (Simultaneous speaking.)

17 DEAN SCHENCK: We don't have any
18 definition for threatening or placing the other
19 person --

20 CHAIR JONES: Well, we could back to
21 that.

22 MAJ GEN WOODWARD: Because at some

1 point you need to talk about whether it's a
2 reasonable fear --

3 DEAN ANDERSON: We do, we do have one.
4 It just doesn't go as far as it would.

5 MAJ GEN WOODWARD: So you just stay
6 with the one that --

7 DEAN ANDERSON: We stick with the
8 current definition of threatening or placing
9 someone in fear.

10 MS. WINE-BANKS: Just as wrongful
11 action, which is unclear.

12 (Simultaneous speaking.)

13 DEAN ANDERSON: I have to go through
14 all 10 sets here before I get to the right one.

15 MS. WINE-BANKS: What do you need?

16 MAJ GEN WOODWARD: The thing that I --

17 CHAIR JONES: It could be this, it
18 could be this.

19 DEAN ANDERSON: It's one of these
20 guys. There we go. Okay, so how about this?

21 So, this is a new proposal.

22 120(b)(1)(E), "by using or abusing one's

1 position, rank, or authority to affect the
2 military career or conditions of service of some
3 person."

4 CHAIR JONES: No. I think we had a huge
5 conversation about this, and I thought what we
6 wanted to talk about here was compelling
7 compliance somehow or other. I have that exact
8 language. Using their position, rank, or
9 authority, maybe using or abusing, there was a
10 lot of conversation about that. And it was
11 something about compel compliance. Where is --

12 MS. WINE-BANKS: This was sexual act by
13 using the authority, so that's compelling the
14 compliance by --

15 CHAIR JONES: Right.

16 MS. WINE-BANKS: -- using their
17 military rank.

18 CHAIR JONES: Exactly. Let me see
19 where this was. I have it here somewhere.

20 DEAN ANDERSON: Let me see that page,
21 because I think I can pull it together from your
22 notes from last time.

1 CHAIR JONES: From my notes?

2 DEAN ANDERSON: Yes.

3 CHAIR JONES: Great, the first time my
4 notes ever had any value whatsoever.

5 MAJ GEN WOODWARD: And one thing, if
6 we're going to retain the definition of
7 threatening or placing another person in fear,
8 wasn't there somebody that said it was really
9 confusing when we said will result in the victim
10 or other person being subjected to the wrongful
11 action contemplated by the communication or
12 action? And there was a lot of --

13 CHAIR JONES: Yes, the whole thing is
14 very confused. I agree.

15 MS. WINE-BANKS: But the wrongful
16 action is really what is being defined in this
17 new version.

18 DEAN ANDERSON: So, here we go. This
19 is one thing. "Commits a sexual act upon another
20 person by using their position, rank, or
21 authority to compel compliance."

22 MS. WINE-BANKS: I'm sorry. Say that

1 one more time.

2 DEAN ANDERSON: Commits a sexual act
3 upon another person by using their position,
4 rank, or authority to compel compliance.

5 MAJ GEN WOODWARD: That's good.

6 MS. WINE-BANKS: Now, we're going to
7 retain the --

8 MAJ GEN WOODWARD: Threatening.

9 MS. WINE-BANKS: -- thing where it
10 says threatening or place that person --

11 CHAIR JONES: We're still leaving A in.

12 MAJ GEN WOODWARD: So, we still need
13 a definition of threatening or placing the person
14 in fear, that makes sense --

15 MS. WINE-BANKS: Well, is the existing
16 one okay?

17 MAJ GEN WOODWARD: Well, that's why I
18 was saying, the existing one has that, will
19 result in the victim or another person being
20 subjected to the wrongful action contemplated by
21 the communication or action.

22 As long as that's okay, as long as

1 that's clear, then we can leave it as is, but I
2 know there was some discussion about whether --

3 LTCOL HINES: I would think if you were
4 going to create a new sub-E, that you would
5 probably leave --

6 CHAIR JONES: Leave the one the way it
7 is.

8 MAJ GEN WOODWARD: And it's clear
9 enough as it --

10 CHAIR JONES: Well, if the whole reason
11 was because it was -- that one section about
12 abuse of authority was confusing, then I agree
13 with you. That was the whole reason to take it
14 out.

15 MS. WINE-BANKS: Well, the wrongful --
16 as the new definition would have included
17 physical injury, which is causing bodily harm to
18 that other person, as opposed to -- I might say
19 I'm going to hurt your daughter if you don't have
20 sex with me. So, that would be omitted if we
21 didn't change this definition, or injury to the
22 property, which isn't covered. I'm going to burn

1 your house down if you don't.

2 DEAN ANDERSON: Why isn't it covered,
3 Jill?

4 MS. WINE-BANKS: Because the definition
5 as it currently exists just says the wrongful
6 action --

7 MAJ GEN WOODWARD: Contemplated by the
8 communication or action. I guess that's the
9 burning the house down. Right?

10 MS. WINE-BANKS: But will result in
11 the victim -- oh, it does say victim or another
12 person --

13 MAJ GEN WOODWARD: Yes.

14 MS. WINE-BANKS: -- being subjected to
15 the wrongful action.

16 MAJ GEN WOODWARD: It seems like
17 that's clear enough.

18 (Simultaneous speaking.)

19 DEAN ANDERSON: I mean, if this -- go
20 ahead.

21 MS. WINE-BANKS: It's threat, placing
22 the other person in fear. Well, it could be fear

1 of their house burning down, or the daughter
2 being kidnapped, yes.

3 DEAN ANDERSON: And it's a
4 reasonableness --

5 MS. WINE-BANKS: Yes.

6 DEAN ANDERSON: -- limitation.

7 CHAIR JONES: Now we have believe
8 somewhere instead of fear. Did we make that
9 change, or do we need to make it here? I can't
10 remember.

11 DEAN ANDERSON: Well, that's the
12 reasonable fear.

13 MS. WINE-BANKS: Right. Well, you
14 said to cause a reasonable belief in the new
15 definition, which isn't in the old one.

16 MAJ GEN WOODWARD: Well, I think
17 reasonable fear makes sense to me because, I
18 mean, the whole point of it is it's got to be a
19 fear, or else --

20 CHAIR JONES: It's not just a belief.

21 MAJ GEN WOODWARD: -- they're not
22 going to be compelled.

1 DEAN ANDERSON: So, we will say that
2 13, 14, and 15 are related to this. And if we
3 agree on making E, I think we --

4 MAJ GEN WOODWARD: Being enough.

5 DEAN ANDERSON: Being sufficient and
6 not changing the definition of threat of fear.

7 MAJ GEN WOODWARD: Right.

8 DEAN ANDERSON: 13 is -- the question
9 is whether or not the UCMJ affords prosecutors
10 the ability to effectively charge with abuse of
11 authority.

12 The answer that we came to was yes,
13 they do have other provisions, but it could use
14 some clarification under 120. They have other
15 provisions outside of 120. 14 is should be
16 threatening or placing a person of fear be
17 amended to insure coercive relationships? I
18 think the answer now is no, that we would add it
19 -- which is slightly different because we've gone
20 a different route in deliberations. And then 15,
21 should a new provision specifically address
22 coercive sexual relationships? Yes, we just did

1 with the E provision.

2 CHAIR JONES: Well, that provision 2
3 should be one that will be popular, which is not
4 a reason to do it, but I also -- I'm saying it
5 because I think it can get through, and it's
6 clear.

7 LTCOL HINES: Well, I agree with Dean
8 Anderson. I think that you decided if you could
9 fix this issue on the definition, then that
10 caveat when you answered 13, 14, and 15, which
11 was -- and 12, which was, is the present
12 framework sufficient to prosecute these coercive?
13 And your answer was yes, but.

14 CHAIR JONES: But.

15 LTCOL HINES: You know, we need to fix
16 number 6, and so it sounds like we're fixing
17 number 6, and so we've answered the rest of the
18 questions.

19 CHAIR JONES: That was very efficient.
20 All right. Well, this is going to come as a big
21 surprise to everyone who's not here right now.

22 I would like to do two things, Glen,

1 if you would. We've now resolved -- we probably
2 still haven't resolved the 134 indecent act
3 issue. I think we've hopefully truly resolved the
4 rest, not to say there was no dissent.

5 Can you do two things? One,
6 obviously, take your supplemental report, or your
7 preliminary report and put our resolutions and
8 recommendations in it. And then, two, could you
9 send us a copy of the statute with our changes
10 redlined?

11 LTCOL HINES: Yes.

12 CHAIR JONES: Because I still have this
13 lurking fear, and it's also a reasonable belief
14 that --

15 LTCOL HINES: Right.

16 CHAIR JONES: -- we may have some work
17 to do in order to make sure we have it -- got
18 some things at cross-purposes here.

19 LTCOL HINES: Yes, ma'am.

20 CHAIR JONES: Now, we're not set for
21 another meeting? I guess not, in November.

22 COL GREEN: And that's really up to

1 you, ma'am.

2 CHAIR JONES: Yes.

3 COL GREEN: Whether you feel like --

4 CHAIR JONES: I think we can go off the
5 record. This is just going to be --

6 MR. SULLIVAN: For the record, the
7 Subcommittee meeting was closed.

8 CHAIR JONES: Thank you, Dwight.

9 (Whereupon, the proceedings went off
10 the record at 4:49 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

A

- a.m** 1:12 4:2 65:20
65:21
- aberrant** 343:17,19
- abilities** 144:18
- ability** 129:1 137:12
137:15,18 144:4
144:12 148:2,16
159:11 163:20
173:9 175:6,21
179:4,10,11 211:5
222:17 259:10,16
330:10 353:6
358:2,9 359:4
363:2 385:10
- able** 32:3 45:18,22
46:1 53:5 56:2
57:20 72:6,11
77:13,19 94:10
121:9 137:14
138:4 144:5 145:5
145:8 147:2,4,6
150:20 159:10,11
164:12,15 214:6
259:2 300:13
341:21
- above-entitled**
65:19 152:22
288:2
- absence** 42:19,22
88:12 216:16
- absent** 316:16
- absolutely** 276:8
313:18 337:14
- abstract** 319:6
- abuse** 8:16 283:4
285:3 292:3
301:12 306:17
307:18 308:12
313:4 314:17
345:9 348:3 353:6
354:22 355:15
356:12,19 362:7
362:10 363:20
364:4 366:11,22
369:15 375:21
377:4 382:12
385:10
- abusing** 358:22
370:15 376:3
378:22 379:9
- abusive** 173:1
252:7 253:4
288:12
- academic** 21:20
- accept** 106:8
107:16 119:18
121:8,14 136:15
- accepted** 121:16
- accessible** 52:2
- accomplice** 223:10
223:11
- accomplish** 96:5
234:22
- accomplished**
96:13 287:6
- account** 21:5 26:14
34:21 49:8 52:8
81:17 124:7
125:16 160:3
170:15 203:6
- accountable** 163:5
- accurate** 71:15
108:6
- accurately** 76:13
- accusation** 39:17
- accuse** 347:19
359:22
- accused** 38:4 43:15
119:8 122:12
123:9 124:4,11
131:19 138:14
140:16 220:22
298:9 315:10
- accused's** 315:7
- accusing** 360:1
- act** 17:3 29:22 51:2
146:2 150:20
158:1,5 160:9,12
161:8 162:8 173:3
177:12 183:6,6
215:19 222:1
229:20 235:6
237:7,16,20
238:10,11,12,19
239:19 240:8
241:9 243:10
246:11 249:8,15
252:3,5,14 253:3
253:8,9,11,20
254:9 255:11,15
255:20 256:9,16
256:21 257:6
258:8 259:7,18
260:18 264:3
265:1 269:17,19
270:8,21 271:10
274:4,14 275:1,7
275:10,20 276:12
277:14 278:6,14
279:4 281:2 286:4
288:8,9,10,11
292:4,15 295:1
296:4 301:9 307:7
309:11 310:3,17
311:6 315:18,22
321:8 327:10,21
337:2 342:22
343:17,19 348:13
350:2 364:12
370:11,14 379:12
380:19 381:2
387:2
- acting** 4:10 229:16
235:7 237:20
249:4 256:17
257:2 264:7,13,19
266:19 268:17
269:3,20 270:9,11
271:6,22 272:15
273:1,15 274:9,11
274:14 275:6,8
276:10 277:21
278:6,7,14,15
- action** 38:20 66:1
205:13,20 284:4
337:15 345:22
346:2,16 347:5,10
354:7 355:7,12
359:21 360:12,12
361:9,17,20,21
369:3 378:11
380:11,12,16
381:20,21 383:6,8
383:15
- actions** 182:7
188:21 189:6
206:9,10,12,19
216:6 278:9
- active** 13:15
- activity** 50:6 131:21
146:12 324:17
- actor** 221:20
222:19
- acts** 167:15 253:15
297:2 299:11
311:10 316:11
317:16 318:2
322:19 323:15
324:6,17 329:4,11
330:1,8 331:8
333:7 344:5,9
350:2
- actual** 98:18 124:22
284:8 318:5
341:16
- acute** 178:4
- add** 17:22 24:20
54:14 57:21 83:12
87:14 94:6 102:19
193:3 198:22
204:10 231:9,12
271:19 281:21
289:15 292:16
376:7 385:18
- added** 256:8 297:19
301:7 306:17
310:2,3 319:20
328:6,10 333:7
334:20
- adding** 24:20 53:20
53:20 54:5 61:13
89:6 134:19 135:1
226:11 230:13
240:21 290:11
364:11 374:17,18
374:22 377:13
- addition** 38:22
368:12
- additional** 97:20
123:17 170:20
246:13 300:15

313:22
address 14:22
 33:16 48:10,11
 157:14 159:7
 283:3 331:5
 346:12 376:10
 385:21
addressed 36:4
 47:14 67:16,19
 166:9,10 333:13
addressing 8:9
 133:3 280:9
adequate 37:14
 194:20 279:12
adequately 350:5
adhere 6:11
Adjourn 3:20
adjustments 9:3,18
 62:9
administer 222:8
 223:8,13
administered
 174:11 178:5
 222:10
administering
 222:1,15 224:3
administration
 32:4,9 220:9,22
administrative 6:17
adopt 92:4 102:17
 117:18 346:9
adopted 11:22
 17:17
adoption 31:12
 41:20
adult 150:6
adults 330:15,16
 341:4 344:7
advantage 150:11
 173:20,21 222:9
 222:20,21 223:16
 224:15,22 226:4
 226:16,21 251:14
adversarial 41:6,15
advice 17:4 25:13
advised 96:14
advisors 16:14
 17:4 40:2 358:19

Advisory 11:9,10
 29:22
advocate 21:11
 358:19
aesthetically
 279:11,20
affect 240:6 349:1
 353:7 356:12
 369:16,16 370:3
 370:16 374:12
 375:22 379:1
affiants 351:19
affirm 171:15
affirmative 136:11
 216:8,9
afford 363:2
affords 385:9
afternoon 122:19
 233:3
age 136:19 144:13
 335:2
agencies 7:14
 31:19,22
agenda 44:18 68:22
aggravated 172:13
 172:22 174:4,15
 175:3 176:16
 177:9 234:2
 243:13,22 288:11
 293:7
aggravating 97:20
 136:3,9
aggravation 245:20
aggressive 326:5
aggressively 353:2
agnostic 183:12
ago 67:10 69:2
 102:14,14 188:6
 304:17
agree 57:7 77:19
 78:18 82:17 85:21
 86:2,2,3 87:6
 99:11 116:7 139:7
 142:4,5 146:19
 152:3 160:9
 170:10 184:10
 190:17,17 203:4
 207:20 214:14

225:4,11 227:19
 246:3,4,5 252:17
 257:1 269:15
 276:6 286:22
 298:17 307:5,9,12
 308:21 320:17
 334:17,20 336:15
 355:18 364:3
 372:12 380:14
 382:12 385:3
 386:7
agreed 76:22 80:16
 80:20 112:19
 125:9 180:14,17
 181:1,1 186:3,4
 199:13 218:17
 220:15 236:11
 280:3 283:13
 311:1 363:13
agreeing 135:22
 254:3 373:9
agreement 66:7
 90:21,22 137:9,14
 147:6 148:2,10
 150:21 155:1
 186:10 195:15
 205:18 206:19
 207:3 221:5 260:6
 260:19 349:9
agrees 195:15
 254:6
ahead 22:19 24:10
 69:3 72:4 79:6
 95:16 111:16
 224:15 228:1
 301:20 346:14
 383:20
air 2:16 149:16
 331:22 332:1
 359:5
airmen 121:9
alcohol 118:11
 120:19 125:19
 132:10 136:3
 138:5 260:12
 268:3
alcohol-infected
 181:22

ALI 88:9,10 130:8
 130:10 149:22
alia 369:11
allow 242:4 356:2
allowed 5:21 72:15
 73:21 74:16 272:7
allows 64:20 215:5
alternate 92:16
alternative 85:21
 233:12 255:10
 262:13 276:3,10
 375:1
alternatives 76:20
 77:4 230:8 256:13
altogether 256:19
Alzheimer's 151:15
ambiguity 89:7
ambiguous 346:2
 346:18
amend 155:1,4
 346:11
amended 346:12
 385:17
amending 61:12
amendment 15:8
 15:12 61:16 102:9
 104:3 107:16
 109:8
amendments 10:3
 14:10 50:17
amount 66:13
 118:11 125:21
ample 34:21
amplification
 102:10
analogous 50:8
 339:9
analogs 347:22
analysis 7:2 21:14
 22:2 37:1 45:2,16
 45:22 49:10 56:17
 85:18 137:22
 150:19 155:20
 156:18,21 160:1
Anderson 1:15
 12:7 53:4 54:2
 55:6,17 59:9 72:5
 73:14,20 79:15

80:2,19 81:2,6
 83:19 84:7,9 85:5
 86:11,13,21 87:10
 88:22 89:13,22
 90:10,16 91:2,6
 91:16,21 94:2
 102:21 103:2,7
 106:21 107:12
 109:4 128:19
 130:21 142:16
 149:17 158:4
 159:8 160:19
 161:18 162:1
 165:5,12,17 166:1
 166:5,19 167:19
 168:10 169:10
 172:3,7 174:1
 184:15,22 185:7
 185:14,20 187:22
 188:3,11,18 189:9
 189:21 190:8,12
 190:16 191:1,10
 191:14 193:12,17
 194:9,14 195:1
 198:12,18 199:2,7
 199:15,20 200:4
 200:20 201:2,19
 202:2,9,13 203:2
 207:9,15,20
 208:10,15 210:11
 210:15,18 211:11
 212:5,13,18 213:9
 213:15 214:20
 216:12 217:11
 218:18 221:4,8
 223:17 232:15
 238:5 239:1 244:3
 244:9,13,18
 249:22 252:8,12
 254:5,15,19,22
 255:4,10 257:21
 260:1,5,13,22
 261:3,6 269:5,22
 270:7,16 272:2,8
 272:12,16 275:14
 276:19 277:5
 279:11 280:6
 282:7,13 283:12

284:17 285:3
 286:7,11 287:14
 289:10,19 291:14
 293:14,16,22
 294:4 296:6,14,16
 296:18 297:6,13
 297:16 298:18
 299:5,8,10,14,19
 300:4,7,14,22
 301:10,16 307:16
 308:5 309:5,19
 312:1 313:7,11,18
 314:7,10,12,14,16
 314:19 315:1,4
 319:7,12,15,19
 320:5 345:7,11,18
 345:21 346:4
 347:3 348:9,18
 350:22 351:13,16
 352:15,20 353:14
 354:9 356:7
 358:16 360:7,16
 361:10,22 362:9
 362:15,22 363:7
 363:14,17 364:2,6
 364:16,19 367:10
 367:21 368:3,6,13
 368:18 370:20
 371:8,11,14,17,22
 372:5,12 373:21
 374:4,8,20 375:3
 376:1,13,21 377:5
 377:12 378:3,7,13
 378:19 379:20
 380:2,18 381:2
 383:2,19 384:3,6
 384:11 385:1,5,8
 386:8
Anderson's 68:6
 108:2 351:4
 367:20
Andrew 2:11 4:19
Andrews 44:7
Andy 99:16
anecdotally 140:11
 324:11
angles 261:16
angst 305:2

annual 21:12
ANSERSON 200:9
answer 5:10 6:6,8,9
 35:14 41:21 48:15
 57:4,7 58:20
 59:13 61:9 139:6
 270:7 328:6,8
 385:12,18 386:13
answered 386:10
 386:17
answers 293:2
ante 335:21
anticipation 60:19
anus 289:6,14
 291:2 292:10
 293:8 294:16
 306:8 307:20
 309:19 310:5
anybody 6:6 87:18
 89:1 120:17 132:9
 153:19 164:8
 166:4 284:14
 332:19 353:22
anymore 57:22
 58:3 167:11 280:7
 320:8 359:7
anyone's 160:19
 180:1
anytime 252:19
 254:8
anyway 25:7 30:15
 83:10 136:6
 163:18 183:8
 302:15 345:1
 359:17
apart 106:22
 127:15 138:17
apologies 36:3,6
 181:5 340:15
apologize 314:2
 352:13
apology 71:13
apparently 10:7
 250:19 280:14
appeal 138:13
appeals 17:2
 116:14 139:5
 171:6

appear 125:20
 259:1
appeared 79:22
appears 220:7
 283:10
appellant 122:12
 137:4
appellate 9:8 15:19
 15:20 83:14
 116:22 122:8
 124:1 139:3,13,16
 139:19 211:1
 260:8 264:5
appendix 352:6
appetite 93:20
application 253:12
 326:6 352:7
applications 327:2
applies 24:6 173:15
 173:16 176:18
 177:3
apply 161:12
 253:13 329:19
 343:11
Applying 137:22
appoint 78:6
appraise 133:17
 167:21 169:3
 173:10 175:7,22
 176:7,8 177:18
appraising 134:10
 135:10,16 142:14
 157:5 164:21
 165:7
appreciate 5:17
 55:6 117:6 137:16
apprise 129:4
 145:9
approach 64:18
 65:2 82:19 107:18
 181:6 350:11
 377:10,11
approached 8:7
 27:21
approaches 14:2
appropriate 301:14
 301:16 341:7
 344:6

- appropriately** 269:11
approval 16:5
approved 14:13
Arabia 327:13
area 14:9 21:20
 25:8 32:1 35:13
 36:20 37:12 56:10
 63:8 64:5 88:1
 150:2 164:11,17
areas 20:19 27:11
 29:8 31:9 33:10
 34:16 52:15 54:8
 54:20 57:3 63:21
 64:4,13 289:9
 314:9
arguably 234:6
argue 108:20 112:6
 193:4 214:15
 246:20
argued 215:9
 240:17
arguing 196:6,8
argument 84:19
 85:2 105:21
 111:13,16 204:8
 214:20 216:17
 217:2 227:10
 245:17 258:15
 260:15,18 261:2
 356:2 359:4
arguments 242:5
Arlington 1:11
arm 304:8
armed 7:21 13:1,1
 17:2 21:4 32:16
 139:5 171:6 262:6
arms 247:17
Army 2:21 39:6,10
 258:22
arose 331:6
arouse 305:18
 306:11 307:18
 308:12 314:17
arrived 358:16
art 157:6,7
article 14:7,21 22:8
 24:7 25:1 26:21
 33:14 36:15 37:21
 38:5 45:2 48:1,3,8
 48:17 49:10,10
 50:3,4,5 55:13,16
 55:19 56:4,9 68:7
 87:12 95:13 97:17
 116:18 123:2,3
 133:10 316:4,11
 323:4,5 325:6,15
 329:6,8 330:2
 332:11,13 333:15
 337:4 339:10
 342:12 346:5
 366:6
articles 14:12 22:1
 25:11 26:4,16
 27:5,21 37:2
 48:18
articulate 78:18
 146:7 338:2
articulated 56:6
 103:13 146:20
 202:16 368:21
 370:9
articulates 116:19
articulating 214:21
articulation 360:22
articulator 236:10
artifice 243:11
 262:18
aside 41:11 44:8
 239:7 285:17
asked 14:5 24:8
 60:14 149:19
 161:6 260:9
 319:19 328:5
 329:9 346:16
asking 6:7 29:17
 59:22 326:18
 333:9
aspect 15:5 175:13
 175:14
aspects 16:16 19:8
 25:15 40:13 52:9
 52:14
aspersions 20:14
assault 3:2,8,13,16
 11:12 44:3,4,6
 45:7 143:4 168:7
 172:12 174:13
 175:14 176:13
 208:12 223:18
 224:1 225:5
 232:11,16 234:11
 234:15 239:22
 240:2,10,14 245:8
 245:13 252:2
 253:3 254:1
 257:19 264:3
 266:5,12 277:8
 288:10 292:5,14
 293:7 303:12
 308:3 360:15
 361:5 373:1,14
 374:19,22 376:5,7
asserted 350:15
assess 55:20
 179:18,20
assessing 93:14
 94:9 203:15
assist 4:15
assume 10:9 338:9
assuming 208:2
 267:11 333:5
assumption 32:7
 82:20
assurance 30:21
assured 268:7
attachment 66:21
 79:10
attack 111:4
attempt 81:22
 82:12,15 91:7
 93:9 186:16
attempts 85:22
 128:13,16
attention 24:1
 43:10 94:22
 203:14
attitudes 88:1
attorney 2:19 19:18
 104:17 105:11
attorneys 23:21
attracted 82:19
attractions 248:17
authoritative 65:6
 86:14
authorities 352:3
authority 48:9
 64:11 283:4 285:4
 345:9 348:4 349:1
 353:6 354:22
 355:15 356:12
 359:1 362:8,11
 363:20 364:4,14
 366:11 367:1
 369:15 370:16
 379:1,9,13 380:21
 381:4 382:12
 385:11
authorization 10:8
 12:20
authorized 339:16
automatically
 176:12
available 7:11 27:9
 30:5 45:9 111:10
average 43:13
avoid 75:6,8 162:22
 163:4 276:8
aware 56:1 119:22
 127:17 139:10
 145:4 146:16
 147:11 344:7
awareness 26:13
 148:18
awfully 255:3
-
- B**
-
- b** 70:11,14 115:2
 125:14 134:22
 135:10,11 136:1,8
 140:7,21 142:16
 142:16 143:3,4,4
 167:7 170:17
 172:21 173:2,16
 173:20 177:1,3
 179:16 182:9
 201:13,15,17
 231:16,16 234:9
 235:4,10 237:6,6
 238:8 239:8
 240:20 249:12
 252:13 253:3,8,15

- 253:16,18 254:1,6
254:16,16 255:7,7
256:15,15,17,19
262:14 266:9
268:16,16 269:2
270:19,21 271:2
271:22 272:22
274:5 277:8
280:19 281:1,2,16
281:19 282:3
289:3,12,12
290:21,22 291:20
293:22 294:9,13
295:6,20 296:4
300:3,18 302:4,8
302:8 306:4,10,20
307:1,2 314:3,10
314:11 347:18
348:2 369:14
370:10 373:13
374:22 375:7
376:7,12,13,14
- B(ii)** 350:14
B(iii) 350:6
- babies** 150:8
- back** 16:4 25:9
30:12 31:20 34:6
51:8 55:11 56:19
57:4 58:9 66:1
67:5,17 74:22
76:9,10 80:13
81:4,19 90:13,13
93:8 95:18 101:6
105:16 108:2,7,8
109:19 111:22
112:5,6 114:7
117:2 133:1
143:15 153:9
168:13 171:5
182:20 184:15
193:20 201:11
212:9,11 213:11
217:9 227:5 233:1
237:10 260:2
278:17 283:7
285:6 287:19
300:11 316:4,10
317:19 320:8,15
- 321:18 328:6,10
328:18 329:10
333:14,22 334:9
334:20 336:6,7,8
337:7 342:13
352:14 359:13
362:16,17 363:12
364:21 373:13
377:20
- back-engineering**
376:16
- background** 8:1
316:13 357:19
- bad** 109:18 169:17
224:2 233:8
240:18 243:16,17
255:22 262:19
373:10
- balanced** 14:11
- Barbara** 1:12,14
4:13 33:16 196:17
351:14 361:15
- barracks** 318:1
330:20 335:4
341:19,21 342:5
343:4 344:10,11
- base** 355:11
- based** 5:4 22:3
43:19 85:17 87:21
139:11 148:7
156:5 163:6 182:4
199:21 317:17
334:18
- baseline** 17:12
22:16 97:19
229:22 234:4
- basic** 81:10 145:16
- basically** 14:19
67:11 70:10 89:9
128:7 134:21
163:12 173:1
187:15 198:4
218:12 252:13
258:8 329:3,7
339:19 356:16
360:9 361:13
- basis** 19:2 24:19
30:15 54:12 221:5
- bathroom** 268:5,5
- baton** 11:16
- battery** 308:4
- BDSM** 219:4
- beef** 69:17
- beginning** 27:1
30:3 45:5 72:8
80:16 125:7
206:18 224:17
225:18
- begun** 61:11
203:10
- behavior** 49:15,17
49:17 54:10
152:16 158:11
203:10 223:22
304:22 322:13
- behaviorally**
243:19
- behaviors** 317:15
- beholder** 33:3
329:12 338:7
- belief** 243:11 347:7
349:5 359:20
384:14,20 387:13
- believe** 32:3 66:14
68:9,12 71:7 86:7
129:15 131:19
229:12 272:3
284:10 316:8
320:22 335:15
339:10 362:18
384:7
- bench** 6:2
- benchbook** 111:8
118:1 171:21
- beneficiaries** 7:1
- benefit** 35:10 55:8
57:2 215:12
249:18 257:10
309:5
- benefits** 117:12
- best** 72:19 83:1
99:21 100:7
101:12,14
- bet** 104:16
- better** 89:12 107:18
122:2 125:4 133:3
- 163:22,22 180:18
200:18,19 206:17
227:18 261:2,6
276:7 306:13
307:13 316:13
350:11 351:9
- beyond** 19:22 55:1
82:1 122:9 123:8
128:4 138:2
139:17 181:11
215:22 227:3,9
307:1 308:16
366:17 375:20
- big** 46:17 70:22
103:21 118:6,17
143:4 363:9 365:7
386:20
- bigger** 95:9 118:16
145:18 234:14
236:20
- bill** 10:8 12:20 13:2
13:5
- binder** 66:21 82:6
109:19 318:17
321:12
- binders** 323:14
- binding** 86:15,15
86:16 171:17
- bingo** 109:4
- bio** 69:1
- bit** 21:18 55:7 75:3
90:4 99:18 144:1
186:12 242:4
301:13 316:15
323:9 351:12
- bite** 100:7
- bitter** 120:6
- bizarre** 357:11
- black** 182:22 244:6
- blacked** 116:16
128:8
- blackout** 182:17
- blades** 293:1
- blah** 169:7,7,7
252:4,4,4,4
254:13,14,14
310:5,5,5,5
- blindfolded** 268:3,4

blood 125:19 138:5
bloody 244:6
blue 110:12 228:17
 228:17 351:3
board 17:20 47:22
 50:6 110:12 168:1
 221:9
bodies 56:8 326:17
bodily 76:12 182:10
 183:4 230:5,20,21
 231:3,15,18
 232:12 235:15
 237:15 239:1,8
 240:9 242:20
 244:1,3,22 245:1
 245:8 246:20
 247:20,22 248:8
 248:12 249:1,2,10
 250:2,3,10 251:2
 251:6,11,17,18,21
 253:22 254:12
 255:5 257:9,16
 258:12 260:10
 262:16 263:14
 267:9 268:16
 269:2,13 272:21
 360:20 361:2,3,6
 369:2 382:17
body 85:20 103:3
 107:7 117:13,14
 133:10 199:4
 251:9 257:9
 258:13 287:10,10
 292:1,7,9 300:21
 301:3,11 302:9,11
 302:12,19 304:2
 306:5 308:2
 313:12 319:22
bogged 150:15
bone 243:2 244:4
 244:16,17,19,21
bones 244:16
book 95:4 109:15
 110:5 352:5
borderline 182:17
boring 242:7
boss 35:17 304:12
bother 376:11

bottom 117:20
 125:11 140:22
 148:8
bound 30:7,8 82:6
 82:6 367:15
boundary 83:2
bracket 335:2
brackets 191:15,19
 192:17 193:13
Branch 5:7,20 6:12
 7:9 30:6,10 32:1
 64:21 320:11,14
 337:22
breadth 27:18 29:8
 37:19 350:14
break 3:4 42:11,13
 45:19 68:12 71:6
 106:22 107:3
 109:18 139:1
 151:4 171:4 181:8
 186:17 196:14
 287:18
breaking 181:19
 232:2
breaks 137:2
breast 306:8
breasts 327:12
bribe 360:6
bribery 354:16
bridges 160:3
brief 8:4 37:8 75:21
briefed 32:15
briefly 269:8
bright 132:4
brilliance 104:8
brilliant 102:17
bring 29:2,8 44:14
 93:19 94:22 105:8
 147:8 256:9
 263:10 349:9
bringing 98:8
 133:22 256:7
brings 7:22 262:12
broad 18:5 38:8
 132:13 141:8
 158:19,19 255:3
 257:14 292:6
 300:11 301:12

303:14,14 304:4
 319:4 329:11
 333:2 337:20
 338:1,11 349:8
 350:17 372:14,20
broaden 157:21
broadened 372:9
broader 92:20 97:5
 98:22 119:1
 124:22 146:1
 148:22 159:4
 192:12 223:2
 351:11 359:2
 368:22 369:1
broke 217:17
broken 243:2 244:4
 244:16,19,21
 262:11
brought 81:18
 203:13 322:21
 329:6
bruise 242:13
Bs 26:17
build 70:22 74:9
bulk 33:13
bullet 100:7 126:2
bump 26:17,17
bunch 99:3 118:19
 130:15 344:11
burden 19:22 66:5
burn 382:22
burning 383:9
 384:1
bus 79:13
business 6:18
busted 116:14
buttocks 306:8
 312:18 313:4
button 66:15
buy 171:14
by's 276:5
bye 117:10

C

c 70:17 78:2 125:14
 172:20 173:16,18
 176:16 177:1,3
 200:3 201:4 204:5

235:12 253:14
 270:3 271:17,18
 271:20 274:6
 280:19 281:14,20
 289:3 291:19,20
 291:22 293:16,17
 293:18 294:4
 300:3,8,18 302:6
 307:17 314:16,16
 317:10
CAAF 171:14 287:4
 287:5 327:9,21
 331:7
cabined 105:20
cabining 38:19
calendar 7:11 28:3
call 111:3 215:7
 259:1 266:11
 339:1 375:16
called 9:2,16 11:10
 229:22 248:6
 338:21
calls 27:3 55:15
cap 62:3
capability 148:12
capable 96:19
 121:10 125:6
 138:15 144:6,15
 145:1 156:15
 157:19 161:4,6
 163:5
capacity 125:22
 163:1 168:6
capital 41:10 143:4
caps 38:6,7 62:20
capture 78:8 93:11
 136:7,14 152:12
 246:7 329:13
captured 204:3
 295:6
capturing 112:7
 330:9
car 74:9
care 127:21 175:20
 177:17 222:5
 234:12 235:4,5
 251:18 257:10
 287:12

career 348:4,11 349:2 353:4,7 356:12 369:17,22 370:4,17 374:13 375:17,22 379:2	211:7 247:8 274:2 346:21 347:6 359:19 384:14	109:2,7,21 112:4 112:9,16,19 113:7 113:21,22 114:8 117:9,11 120:12 121:21 122:20 123:4 126:4 131:14 142:22 143:3 151:5 152:19 153:3 154:21 155:3 157:15 158:16 160:4,21 162:2 165:19 170:16 179:22 180:10,12 180:14,20 181:13 182:20 183:3,14 184:14,18 185:2 185:11,16 189:13 189:22 191:7,11 194:5 195:8,13 196:3,8,19,22 197:6,10,13,17 198:16,22 199:6 199:12,19 200:3 200:19 201:3,9,15 203:18 204:10 208:4,9 209:5,10 210:4,9 211:15 212:15 213:5 217:3,13,20 218:5 218:10,13,16,20 219:8,15 220:3,6 220:9,18 221:7 222:3 227:17 228:8,11,16 229:3 229:7,10 230:2,9 230:16,21 231:3,8 231:11 233:4,19 234:8,12,15 235:3 236:4 237:1,10,19 238:1 239:18 240:2,14 245:6,11 246:15 247:1,6,10 248:13,20 249:4 249:11 254:17,20 255:8,22 257:17 266:3,15,19 267:3 268:15,22 270:6	270:10 271:9,14 271:18 272:14 277:17,20 278:4 278:13 279:18 280:2,9,17,21 281:6,15,18 282:5 282:15,18 283:6 283:16,22 284:13 284:19 285:5,8,14 285:21 286:3,9,18 287:1,7,11,20 288:1 298:3 308:10,18 309:4 315:14,16,18 318:14 319:17 321:11,15,22 322:2,8 325:9 328:10,14 329:1 329:18 334:3,6,10 335:7,12,20 336:1 336:13 338:12,18 339:3,6,8,17,21 340:4,8,11,17 342:3,15 344:20 345:4,10,16,19 346:3 347:1 348:7 349:11,15 350:20 351:15 352:1,12 352:17 353:11,22 355:4,8 357:15 358:7,12 359:16 360:9,14 361:8 362:5,12,19 364:3 364:9,17 365:5,13 366:9,12,17 367:3 367:7,12 370:18 371:5,9,12,15 373:12,19 374:2,7 375:13 376:2,11 376:18 377:1,6,20 378:17 379:4,15 379:18 380:1,3,13 381:11 382:6,10 384:7,20 386:2,14 386:19 387:12,16 387:20 388:2,4,8
careful 155:20 226:3	caused 275:11		
carefully 120:8	causing 54:22 231:3,19 235:15 254:12,12,18 262:15 269:2 272:17,19,21 302:10,18 338:4 382:17		
carry 358:2,9	caveat 386:10		
case 12:14 22:9 38:12 41:8,11 45:6,7,13,21 65:1 65:1 122:3,4,21 122:22 123:17 125:18 133:3 135:18 136:22 138:1 139:4,10,18 140:1 148:7 151:9 152:4 155:7,19 156:18 162:4 171:5 172:10 216:1 225:1 251:10,11,15 257:12 258:13 263:16 287:4 300:1 318:5 326:2 331:7,15,21 332:3 332:3,12 340:5 342:7 344:3	caveating 334:16		
cases 3:8 10:7 11:3 11:12 12:8 25:5 45:2,2,17 50:7,9 108:15 116:11,13 116:14 118:10 120:18 124:4 139:14 140:12,13 147:13 150:10 156:2 163:10 172:15 182:5,15 233:21 258:2,5,10 260:10 263:9 268:1 317:22 359:6 372:8	cease 189:5		
casting 20:14	certain 19:8 48:17 52:10,14 53:7 63:11 64:13 95:12 125:3 136:19 364:5		
categories 52:20 167:14	certainly 8:13 13:1 20:16 29:20 55:21 57:15 60:7 74:12 85:3 86:3 92:10 105:16 106:4 132:20 164:1 170:16 205:4 242:11 320:12 337:20 338:2 342:18		
category 373:2	certified 171:5		
cause 143:5 211:6	certifying 139:4		
	cetera 307:20		
	chair 1:12 4:3,12 4:16,17 27:22 28:9,13 33:15,18 34:19 35:1,19 36:6,9 37:5 46:13 57:14 58:1,6,13 59:4 61:10,19 63:7 65:11,17,22 66:3,4 72:3 76:4 77:12,21 78:12 79:6 80:5,14 81:5 87:14,17 102:4 103:1,19 104:14 104:20 105:4 106:7,13 107:15 107:22 108:7		
	chairman 14:3		
	challenge 46:18		

130:9,9 164:10
313:14
challenged 164:6
challenges 105:9
205:1 368:20
challenging 170:6
chance 67:21 68:6
113:11
change 23:22 24:3
24:15 25:3 26:3
48:8 51:6 53:11
53:15 54:20 56:11
56:22 57:2 61:6
63:2,5 64:6 68:19
73:12 76:17 77:17
82:10,21 85:16
86:8,18 91:9
92:14,15 95:21
96:2,10,14 100:20
100:22 102:12
103:15 105:7
115:1 117:19
141:7 150:13
165:1 170:11
180:1,6,9 182:4
183:10 184:20
185:1 186:2,12
188:4 195:9
197:14 199:13
200:13,17 202:1
220:16 229:15
230:19 234:20
235:10,14 247:8
249:20 252:19,19
259:9 261:17
266:1 268:17
270:11,21 273:4
276:9,15 283:17
284:14,16,21
285:10,19 290:9
290:13 298:21
300:1 302:15
309:14 310:3,17
358:14 369:13
372:16 382:21
384:9
changed 51:20
60:4 64:18 65:2

97:16 100:16
112:21 166:17
168:18 207:1
218:2 229:6,13
284:11 316:14
changes 10:2 11:4
12:8 22:19 23:13
25:10,12,16 36:21
47:18 53:7 60:5
60:19 63:12 72:14
73:7,10 74:2
82:22 95:13 99:4
100:13 103:4,11
103:18 106:11
166:3 211:20
269:11 283:14
357:13,14 368:15
370:7 371:18
387:9
changing 57:12
60:3 94:15 99:17
170:17 180:3
217:8 221:18
269:1,3 276:8
309:20 375:6
376:9 385:6
chaplain 331:21
332:2 342:7
chapter 221:22
277:9
charge 173:4
239:21 240:1,3
245:13 259:6
329:22 330:1,10
335:15 337:2
363:3,5 385:10
chargeable 343:1
charged 56:3
306:22 327:18,20
332:12 335:1
338:20 339:1
341:18 342:1,1
343:17,20
charges 44:14
46:22 47:1
charging 324:16
358:1
Charles 58:11

chart 68:14
check 213:8
chief 16:15
Chiefs 14:3,4
child 312:12 313:20
choices 374:16,16
choose 77:4 328:9
chose 376:7
chosen 71:22
chuck 272:22
Circuit 16:15
circular 5:19 6:10
30:1 168:3,9,22
circulate 33:22
34:4 269:9
circulated 31:18
69:19 165:15
185:3
circumstance
146:13 158:19
circumstances 8:6
9:3 41:19 97:20
118:2 123:19
126:19 128:1
131:10,18 132:1
132:21 138:6,7
141:4,9 144:11
153:8 156:7 158:3
158:7 160:1,6
161:18 165:4
186:17,19 189:2
192:10 199:21,22
200:10,15 201:6
203:7 204:4,6
205:10 206:5,7
213:20 215:1,6,6
335:6 363:22
364:5
City 306:16 323:11
323:13
civil 114:17 115:3,9
civilian 3:2 8:22
9:17,18 18:15
19:7,10,14,15
23:22 36:19 37:13
38:14 39:2 40:15
41:1,17 46:7,19
48:20 49:4 50:11

52:12,18 219:1,2
248:1 325:7
claim 129:1 131:11
clarification 72:6
385:14
clarifications 73:7
clarifies 107:17
clarify 54:5 55:22
64:7 73:9 81:3,14
82:12,15 111:16
112:10 113:4
172:4 187:4
217:14 218:4
296:7 351:13
356:21
clarifying 215:3
clarity 214:18 215:8
215:11 296:20
299:2
class 116:5 117:5,8
classic 19:11 360:4
clean 77:13
clear 17:7 24:14
54:18,19 56:11
57:4 80:18 83:15
99:22 101:2
112:15 163:14
183:5 201:13
214:6 227:16
230:22 247:15
260:11 267:5
274:22 276:11
280:16 287:13
382:1,8 383:17
386:6
cleared 7:8
clearer 100:10
207:18
clearest 377:11
clearly 83:11
112:14 146:20
214:1,4 262:12
263:6
close 171:13
212:19 217:2
228:12 278:15
345:14
closed 215:17

388:7
closely 10:21 91:8
 103:12 192:6
closes 216:18,22
clothing 302:19
clued 146:9
clunky 75:3
code 23:12 24:11
 100:13,14 115:11
 115:15,17 159:7
coded 237:14
codification 21:22
 24:12
codifications 21:21
codified 22:14
codify 25:17
coercive 283:4
 363:3 385:17,22
 386:12
cognitive 135:19
 137:15 148:18
cognizable 371:3
Coke 179:1
COL 44:22 72:16
 74:5,19 75:3,18
 77:20,22 387:22
 388:3
cold 118:8,14,14
collaboration 75:7
collapse 306:9
 307:6
collapsed 89:4
collateral 48:21
 53:2
colleagues 357:3
collecting 47:9
collection 7:2
 28:22 46:10
college 39:14
colloquial 36:17
 47:4
colonel 2:16,18,20
 69:1 76:11 115:5
 172:3 258:22
color 237:13
column 284:20
combat-related
 17:20

come 29:12 32:22
 35:7 37:16 55:11
 57:6 92:9 106:5
 108:7,8 125:10
 131:17 138:8
 146:1 150:8,12
 155:22 164:12,14
 172:18,19 184:6
 212:11 216:2
 238:18 252:20
 285:5 293:11
 299:15 320:15
 376:14 386:20
comes 30:7 41:16
 120:18 122:18
 171:13 187:6
 216:5 287:19
 299:17 304:12
comfort 59:12
comfortable 133:5
 158:20 230:12,15
 247:19 273:22
 274:3 275:18
 340:14 350:12
comfortably 341:2
coming 51:11
 57:10 118:11
 153:3 156:3,4
 182:20 184:2
 223:20 233:20
 237:10 248:17
 274:1 323:10
comma 84:15 87:3
 87:13,15,16,19
 88:15 195:11
 200:21
command 19:12
 358:18
commander 19:21
 20:3
commanders 44:14
 324:15 338:20
commanding
 355:10
commas 84:1 88:13
 88:16 203:19,20
comment 3:18 5:18
 25:1 79:7 99:15

104:14 135:8
 320:21 321:7
commentary 99:7
comments 19:16
 19:17,20 20:1
 22:21 23:6 31:20
 58:17 60:12 74:21
 75:5 169:9 311:3
Commission 40:5
commit 360:2
commits 221:22
 229:20 235:6
 237:6,19 252:3
 255:15 256:16,20
 264:22 269:17,19
 270:8,21 271:10
 274:4,13 275:19
 277:14 278:14
 279:4 281:1
 364:11 370:11,14
 373:14 380:19
 381:2
committed 293:21
 360:4,5 361:18
committee 11:10
 11:10,20 12:4,5
 13:13,18 21:10
 29:22 32:16 36:8
 49:2 66:8 75:13
 77:6 100:12
 236:20
committee's 55:21
Committees 13:2
committing 183:6
 215:19 292:13
common 8:20
 309:13 324:20
 336:19 338:9
 370:2
communicate
 74:17 129:10
 131:4 133:18
 137:18 150:21
 159:10,12 175:8
 176:10 179:12
 262:8
communicates
 189:11

communicating
 127:20 128:6
 169:15 173:11
 177:4 179:21
communication
 133:20 347:5
 359:18 380:11
 381:21 383:8
community 338:10
compare 177:2
compared 39:13
Comparing 3:2
comparison 40:19
compel 364:14
 366:14 370:18
 373:7 379:11
 380:21 381:4
compelled 384:22
compelling 375:15
 379:6,13
Compensation
 3:12
competence
 144:20,20 149:3
 150:2 152:4
 209:17,22 210:14
 212:9
competencies
 152:10
competency
 148:17
competent 137:10
 142:10,11 148:12
 149:7,10 150:22
 151:6 156:22
 179:7 186:11
 207:3 209:15,20
 211:2,3
competing 229:9
compile 46:1
complainant 122:9
complete 30:13
completely 100:16
 100:16 129:16
 147:15 181:1
 246:4,5 248:5
 316:16 317:18
complex 151:16

- compliance** 364:15
370:18 373:7
379:7,11,14
380:21 381:4
- complicated** 86:1
149:18 204:12
216:15
- component** 42:20
- components**
160:15
- composed** 21:10
- comprehensible**
262:2
- comprehensive** 5:2
14:6
- compromise** 101:6
101:9
- computer** 30:13,14
- concealment**
243:12 262:18
- Conceivably** 298:5
- conceived** 329:17
- concept** 108:12,15
160:6 166:9
203:21 246:19
376:5
- concepts** 133:8
319:6
- conceptualization**
167:21
- concern** 37:13
44:10 81:8,13
84:19 112:4
127:15 131:16
132:14 133:21
181:5 215:4 250:8
257:17 333:21
338:4 355:3 372:7
- concerned** 38:3
39:11,15 126:9,11
127:5 131:7
181:18 262:9
277:20 340:18
- concerning** 126:16
220:22
- concerns** 79:21
98:17 259:14
262:3,5 324:10
- 337:18 338:1
- concise** 100:1
- conclusion** 68:11
70:18 71:18 78:2
78:19 92:9 109:11
110:16 183:13
- conclusions** 73:2
79:2
- concrete** 184:8
274:16
- concurrently** 43:2
320:4
- concurring** 17:6,6
- condition** 177:20
178:3 226:21,21
- conditions** 16:3
348:5,12,13 349:2
370:1,17 374:13
375:18 379:2
- conduct** 27:2 41:10
52:14 54:9 56:10
129:5,19 133:17
133:19 137:9,16
137:19 142:15
145:9,14 157:2,5
157:9,11,16
158:21 159:10
165:8 167:22
169:4 172:13
173:1,10 174:5,15
175:7,22 176:9,17
177:9,18 179:11
186:10 187:13
188:22 189:16
190:11 194:18
195:18 206:19
207:3,5 243:13
249:9 260:6 266:4
316:8 318:18
329:20 330:3,11
337:3 338:16,21
341:5,10 342:3,16
346:20 347:5
- conducted** 19:1
41:6,9
- conducting** 6:21
- conference** 1:10,11
11:19 12:12,16
- 340:18
- confidence** 43:7
56:16 57:11
- confident** 182:7
- confinement** 42:15
43:3,5 45:20
- confining** 105:22
- confirm** 171:5
- conflated** 130:3
- conflicting** 91:19
- confuse** 250:7
- confused** 277:21
359:16 380:14
- confusing** 91:13
99:14 126:15
144:2 187:17
207:17 234:17
251:16 259:2,15
263:14 380:9
382:12
- confusion** 92:1
278:12 309:17
- Congress** 7:21 10:5
11:9,19 12:2 14:8
21:9 28:7,11 32:8
32:10,14 35:12
51:20 62:11 64:9
67:14 68:1 83:1,4
83:10 85:3 87:2
105:17,20 112:15
120:14 121:15,16
125:8 166:11
217:17 218:8
332:13 342:13
359:2
- Congressional**
45:4 61:16
- Congressionally-...**
342:12
- Congresswoman**
365:8
- conjunction** 14:4
172:20,21
- connects** 138:19
- cons** 36:20 261:15
- conscious** 52:13
- consciousness**
63:19 122:11
- 123:13 163:11
- consecutively** 43:2
- consensual** 49:22
213:22 219:7
238:10 246:1
249:9 250:11
324:16 331:17
332:8,12,14
342:11,14,21,22
343:4,16,19 350:2
- consensually**
220:2
- consensus** 76:14
106:18 111:2
127:7 170:1,3,11
180:2,7 183:10,11
191:3 228:1
229:13 258:18
363:11
- consent** 67:22
79:21 81:9,10
82:10,12 84:3,6
88:3,12 89:15,18
89:19 90:1,5,6,8
90:15 92:8,17,21
93:1,14 94:4,11
98:1,2,3,19
104:12 107:3,6,8
111:1,2,3,9,17
114:6,15,18 116:2
118:4,7,9 123:10
125:6 129:14
130:5 131:20
132:10,18,18
133:4 136:13,15
136:19 137:8,12
138:20 141:17,22
142:3 143:15,16
143:18,19 144:6,7
145:5 147:10
149:8 152:17
153:6 156:9
159:11 160:4,5
162:21 163:20
167:12,15 168:5
168:13,15,16
172:15 174:8,12
175:13 176:12,12

177:4 178:19,22
 179:3,7 181:20
 182:2,7 183:6
 186:2,8,9,18,19
 187:11,14 188:10
 188:20,22 189:1,4
 189:8,16,17
 190:11,22 191:8,9
 192:1,4,14 194:18
 194:19 195:14,17
 195:18,22 196:4
 196:12,14,21
 197:5,22 198:4,19
 199:20 200:1,11
 200:12,16 201:8
 203:16,17,21
 204:16 205:2,3,5
 205:12,17,19,21
 205:22 206:8,18
 207:2,4,5,7,11,12
 207:14 208:12,20
 209:2 211:5,12
 213:4,13,17 214:4
 214:13 215:2,4
 216:1,7,8,9
 219:18 226:6
 229:17,21 232:14
 235:7 237:21
 238:12,16,19,20
 243:21 249:5,15
 255:11,17 256:18
 256:22 257:2
 258:9,12,16
 259:21 260:3
 262:20,22 263:11
 263:11 264:7,7,11
 264:14,20 265:1,2
 265:5,7,10,14,15
 265:16,17,17
 266:20 267:20
 268:17 269:3,7,8
 269:12,17,20
 270:9 271:1,3,7
 272:1 273:2,16
 274:6,15,19 275:1
 275:9,11,17,21
 276:7 277:15,22
 278:7,7,9,11,16

278:20 279:5
 280:10 281:3,17
 281:20 282:10
 289:17 305:21
 306:1 336:18
 366:2
consented 88:7
 146:17
consenting 92:22
 96:19 97:1 113:10
 114:2,13 116:16
 116:20 120:2
 121:10 122:5,10
 129:2 130:2 131:2
 131:13,17 132:22
 133:7 135:17
 136:5 137:3,6
 138:3,16 141:2,16
 147:16 151:3
 156:16 158:18
 161:4 163:16
 166:10 171:14
 172:2 203:12
 330:15,16,19
 341:4 344:7
consents 136:14
 366:3
consequence
 48:21 143:6
 346:21 347:6
 359:19
consequences
 34:3 41:12 53:2
 132:13 145:19
 158:5,7,11,18
consider 18:4 96:6
 99:12 141:3 224:2
 247:13 313:15
 324:11
consideration 7:12
 32:19 49:1 320:13
 375:7
considerations
 93:12 96:8,11
 98:1
considered 28:7
 39:4 48:21 96:21
 100:19 132:1

168:22 171:22
 189:3 199:22
 200:11,15 201:6
 203:15 206:6,7
 301:8
considering 132:7
 165:3 205:9
consistency 40:2
consistent 71:20
 154:20 212:22
 238:14 253:10
 277:16 310:6
 370:13
consistently 362:6
consolidating
 191:2
constituent 107:4
constitute 64:22
 84:6 89:15,19
 90:1,6,8 104:12
 107:3,6,8 187:11
 188:10 189:7
 190:22 191:22
 192:4,14 195:21
 196:4,12,14,21
 197:5,22 198:4,18
 202:19 203:21
 204:14,15 207:7
 215:1 262:22
constitutes 148:10
 187:13 216:7
construction
 183:20 192:12
 276:20
construed 331:8
consumed 125:21
consummated
 308:3
contact 167:15
 172:13,22 173:3
 175:4 250:11
 252:6,7,7,14
 253:4,13,15,19,20
 254:1,7,9 259:8
 259:19 286:4
 287:6,9 288:9,11
 288:11,12,16,18
 288:20 289:1,12

289:13,17 290:6
 291:1 294:1,2,14
 294:20 295:13,21
 297:1 299:3,17
 301:4 302:5,8,17
 303:7,12,17,20
 306:19 309:9,16
 311:5,7,9,15,21
 311:22 312:18
 313:3,13 314:8
contacted 259:6
contained 317:15
contains 26:3
contemplated
 380:11 381:20
 383:7
contemporary
 36:18
content 74:8
CONTENTS 3:1
context 21:19
 48:20 87:22 203:1
 258:4 288:13
 325:7,17 351:6
 352:8 360:17
 366:15
contingent 97:18
continue 71:2
 152:21 199:16
 284:7
continues 269:12
contradicts 187:19
contrary 59:16
contretemps 12:1
contribute 160:16
control 173:10
 175:7,10,22 176:9
 176:10 177:18
 179:10
controversial 13:3
 25:15 53:10,14
 187:8
controversies
 33:10
controversy 53:19
conveniently
 105:13
conventional 352:8

- conversation** 16:10
23:14 92:11
106:17 154:9
180:6 224:4
366:13 379:5,10
- conversations** 23:9
87:21
- converse** 208:8
- conveyed** 188:20
205:13,19 206:12
- convicted** 42:18
43:20 44:5 45:19
- convinced** 122:8
123:8 138:2
139:17 350:3,11
- coordinating** 23:16
- coordination** 5:7
- copied** 95:5
- copies** 298:12
- copy** 68:21 74:1,6
95:4 122:2 387:9
- core** 9:19 24:17
53:12
- Corps** 2:18 139:3
170:21 171:16
- correct** 72:2 74:18
177:7,8,9 265:20
268:19 272:16
299:6 300:16,22
339:7
- correctly** 53:16
136:13
- Council** 88:9
- counsel** 4:8 5:1
9:11 14:14,16
15:20,20 16:13,20
17:9 18:1 22:4
70:14 106:2
111:12 248:1
329:9
- count** 106:5 136:11
216:11
- counted** 26:17
- counterbalance**
19:11 20:2
- counterbalancing**
20:4
- country** 39:16
- couple** 9:22 46:1
50:19 69:2 77:14
95:20 220:16
287:17 304:17
316:6
- course** 6:11 18:2
34:19 61:22 68:22
77:17 78:8 101:17
118:15 119:6
159:6 170:19
347:5 355:14
- court** 9:13 16:17
17:1 18:21 113:3
116:22 122:8
125:11 137:1,14
137:21 138:18
139:4,16,20
142:15 143:17
148:7 150:18
167:17 170:21
171:6,12 211:2
268:1 325:5,18
329:16
- courts** 3:2 17:15
64:16 83:14 86:18
94:7 112:10,13
116:13,13 124:1
316:19
- Courts-Martial** 7:1
15:2,8,13 26:18
48:10 60:15 61:13
62:4,16 63:2,17
64:9,12,16 65:3
80:17 83:3 102:10
112:2 154:8
325:13
- cover** 67:12 278:8
303:9 322:11,12
327:6 341:12,15
342:21 362:21
365:21
- coverage** 279:13
- covered** 163:18
223:21 292:4
294:3 295:3
305:12,12 317:20
341:5 355:17,22
382:22 383:2
- covers** 6:22 164:17
181:21 204:18
258:9 263:1
341:10
- create** 25:7 53:21
92:1 173:14
245:19 246:12
256:20 382:4
- created** 10:5 12:14
226:20 231:20,21
232:11 246:9
322:12
- creates** 127:1
246:18
- creating** 9:8 52:21
240:12 268:18
- creation** 9:9,13
- crime** 97:19 175:4
187:7 222:11
227:19 231:21
232:2 240:13
241:3,5 242:4,10
242:16 263:7
267:22 292:17
303:8 347:19
359:22 360:1,5
361:18 362:1
- crimes** 3:2,13,16
18:15 43:13
- criminal** 16:17,22
24:1,18 52:11,12
62:2 115:11,15,17
115:22 116:14
117:14 134:7
136:6 159:7
223:21 304:21
- criminalizes** 130:4
- criminologists**
45:16
- criteria** 19:4 22:17
41:18 42:1,5,8
55:3 63:14 96:19
184:11
- critical** 7:19
- criticized** 100:15
- critique** 99:1
- cross** 123:21 169:2
302:22
- cross-purposes**
387:18
- crossed** 291:10
- crucial** 88:14
- crystalize** 257:22
- culpability** 225:7
225:16
- culpable** 134:3
- cultures** 16:8
- cumbersome** 255:6
278:19 347:12
- cunnilingus** 296:2
299:11 310:19
- current** 22:9 36:17
91:8,9 99:2 168:4
238:17 297:14
304:1 352:18
365:17 378:8
- currently** 5:6 103:9
124:1 133:10
149:9 159:18
169:19 231:18
272:18 296:20
319:20 369:5
383:5
- cut** 105:16
- cuts** 244:13,13
300:11
-
- D**
-
- d** 67:17 70:18 78:2
172:21 173:21
177:1,3 235:12
252:12 253:4,13
253:14 254:8
270:3 271:17,18
271:20 274:6
280:19 281:14,20
- D.C** 16:15
- da-da-da** 216:11
- DACIPAD** 11:17
12:13 13:19
- daily** 46:21
- damage** 245:2,4
290:8 347:16
375:9
- dance** 34:14 350:10
- dangerous** 352:11

dash 274:5	190:16 191:1,10	314:7,10,12,14,16	212:10 239:17
data 3:7 7:2 27:3	191:14 193:12,17	314:19 315:1,4	257:7 274:18
28:22 45:1,14	194:9,14 195:1	316:5 317:21	307:10,11 323:22
46:10 56:17 59:18	198:12,18 199:2,7	319:7,12,15,19	324:2 326:11
database 12:14,15	199:15,20 200:4,9	320:5 322:14,18	decided 24:15 69:2
52:1	200:20 201:2,19	323:19 325:1	110:13 175:19
date 234:18,19	202:2,9,13 203:2	326:13 327:18	184:19 212:16
305:16	207:9,15,20	331:22 332:4,14	213:7 233:18
daughter 382:19	208:10,15 210:11	333:3,18 334:11	283:1 364:20
384:1	210:15,18 211:11	344:9,17 345:3,7	365:15,15 386:8
day 58:3 183:22	212:5,13,18 213:9	345:11,18,21	deciding 49:14
day-to-day 24:19	213:15 214:20	346:4 347:3 348:9	52:13 102:7 118:4
days 11:20 44:7	216:12 217:11	348:18 350:22	140:22 141:1
51:17 352:9	218:18 221:4,8	351:4,13,16	decision 26:22 36:2
DD 340:9	223:17 232:15	352:15,20 353:14	53:5 56:22 57:1
dead 326:17	236:7 237:22	354:9 356:7	75:19 85:12 93:5
deal 52:13 103:21	238:5 239:1 244:3	357:13,17 358:9	108:4 109:18
350:6	244:9,13,18 247:7	358:13,16 359:11	137:18 145:18
dealing 14:2 58:16	247:12 248:15	360:7,16 361:10	146:11 147:20
62:10 135:12	249:16,22 250:4	361:12,22 362:9	160:16 170:22
dealt 72:16 181:18	250:12,19 252:8	362:15,22 363:7	171:16 179:20,20
350:5	252:12 254:5,15	363:14,17 364:2,6	180:8,17 315:20
Dean 1:15,17 12:7	254:19,22 255:4	364:16,19 367:10	345:15 371:2
53:4 54:2 55:6,17	255:10 257:21	367:13,19,21	decisions 25:9
59:9 68:6 72:5	259:20 260:1,5,7	368:1,3,4,6,9,13	151:22 358:2
73:14,20 79:15	260:13,22 261:3,6	368:17,18 370:20	decisive 88:3
80:1,19 81:2,6	263:16,19,22	371:8,11,14,17,22	decline 132:4
83:19 84:7,9 85:5	264:9,16 266:13	372:2,5,12 373:3	159:11
86:11,13,21 87:10	266:16,22 267:4,8	373:21 374:4,8,15	declined 133:18
88:22 89:13,22	267:11,15,18	374:20 375:2,3,11	declining 126:18
90:10,16 91:2,6	268:11 269:5,22	376:1,6,13,21	128:17 129:8
91:16,21 94:2	270:7,16 272:2,8	377:5,9,12,13,17	135:11 159:10
102:21 103:2,7	272:12,16 275:14	378:3,7,13,19	169:14
106:21 107:12	276:19 277:5	379:20 380:2,18	decrease 49:4
108:1 109:4 116:4	279:11 280:6	381:2 383:2,19	Deep 244:13,13
117:10 122:18	282:7,13 283:12	384:3,6,11 385:1	defect 131:12
128:19 130:21	284:17 285:3	385:5,8 386:7	133:16 142:17,21
142:16 149:17	286:7,11 287:14	Dean's 372:6	167:6 169:8
158:4 159:8	289:10,19 291:14	death 360:20 369:2	211:16
160:19 161:18	293:14,16,22	debate 222:4	defend 9:2
162:1 165:5,12,17	294:4 296:6,14,16	debating 285:17	defendant 120:1,22
166:1,5,19 167:19	296:18 297:6,13	366:1	147:8 151:2 216:5
168:10 169:10	297:16 298:18	December 34:10	defense 1:1 3:6 4:7
172:3,7 174:1	299:5,8,10,14,19	69:11,16 75:22,22	4:14 5:1 11:10,11
184:15,22 185:7	300:4,7,14,22	decide 53:18 85:13	13:13 14:5 16:21
185:14,20 187:22	301:10,16 307:16	95:12 107:7 123:7	17:19 23:17 31:13
188:3,11,18 189:9	308:5 309:5,19	124:6 149:14	31:16,16,17 51:3
189:21 190:8,12	312:1 313:7,11,18	159:15 201:13	52:4 57:20 70:14

83:18 84:19	163:22,22 164:2,5	198:9,11,13	described 160:7
104:17 105:10	164:13,17 167:11	229:17 357:5	317:17
106:2 111:3,10,11	168:13 171:13	deleted 168:7 200:6	descriptively
112:14,18 127:14	176:17 183:17,18	200:8 300:8	233:14
147:10,12,18	186:1,7 187:7	deleting 217:15,19	desertion 18:13
216:2,9,17 218:8	205:1 208:17	268:20 269:2	deserve 354:15,17
248:1 320:2	209:4,19 210:3,8	deliberate 351:21	354:18
defer 32:6	210:14 220:22	deliberated 68:10	design 20:22 22:5
deference 55:20	231:7,15 238:8,15	85:6,8 221:4	designated 2:15
57:6	238:15 247:20	345:12 351:22	4:10 16:13,21
deferred 113:18	248:14 249:1,17	deliberately 178:4	designed 327:13
deferring 78:11	250:7 251:5 252:9	deliberation 75:14	368:19
define 81:22 136:8	252:16,20 253:19	75:17	desire 301:22
141:17 143:8	253:21 254:6	deliberations 3:12	302:14 303:6
149:10 151:6	255:5 256:7,10	3:15 67:1 72:12	304:2,3,7 305:19
152:4 156:9 168:6	257:11 259:20	106:4 349:22	306:11
212:22 213:3	260:3,9 261:17	365:1 385:20	detail 29:12 42:3
269:12 346:19	262:20 263:14	deliberative 56:7	46:8
defined 116:20	265:2 267:12	319:21	detailed 5:5 21:14
168:16 208:19	268:14 269:7	deliver 74:10	35:10 40:12
209:3 210:5 211:2	283:22 285:9	deluged 219:1,3	details 6:20
215:19 242:11	288:6,8,8 289:1	delve 12:18 53:18	determination 43:1
265:16,17 308:10	297:9,12 310:14	democratic 19:5	53:1,19 54:4,13
311:13 380:16	318:20 329:20	demographic 39:12	73:8 208:13
defines 51:4 205:3	346:5,15 354:7	demonstrated	determine 6:5
defining 125:5,6	357:21 358:21	155:5	17:16 57:21
150:2 205:2	366:21 371:6	Dempsey 14:4	determined 51:1
209:16 238:16	374:17 375:5	denominate 50:13	57:8 138:14
243:5 257:19	376:9 377:18	denominated 52:10	determining 11:4
definitely 43:14	378:8 380:6	dense 338:12	171:22 189:3
99:11 114:14	381:13 382:16,21	Department 1:1 3:6	199:22 200:11,15
133:6	383:4 384:15	4:7 5:1 7:14 16:21	201:7 206:7
definition 38:11	385:6 386:9	23:16 31:16,17	develop 224:14
68:7,8 76:12	definitions 91:19	51:3 52:4 57:20	developed 5:5 11:7
81:10 82:10 84:2	111:1 151:16	320:1	18:6 258:13
84:3 92:17,21	183:16 208:18	departure 17:13	developing 21:6
93:1 94:3 97:22	250:21 286:3	depending 10:7	41:4
98:5,19 114:12,15	definitive 124:12	11:22 33:6 209:2	development 12:18
114:17 115:13	degrade 301:13,21	225:8	63:22
116:1,15 117:19	306:18 307:11,18	depends 7:13	developmental
127:6,17 131:5,8	308:12 313:5	144:10	135:19
133:4,7,12 134:20	degree 27:6 29:3	deploying 313:12	developmentally
134:21 135:2,6	39:10 56:15 59:12	depth 26:15 27:18	164:6
139:19,21 140:6	360:19,21 369:2	29:13 31:4 56:3,4	devolved 58:9
141:22 142:6,11	degrees 243:15	113:11 148:19	dialogue 81:18
142:19 143:16	delay 135:19,19	Deputy 2:21 4:14	103:12
149:8 153:16,18	delegated 64:10	dereliction 356:5	diapering 312:12
153:19,20 156:16	delete 76:18 194:15	describe 36:18	313:9,13

- difference** 41:11
118:17 148:13
178:8 225:7
231:14 236:14,22
238:6 245:7
246:12 261:12
333:10 338:13
- differences** 8:20,21
40:22 298:19
- different** 8:18 14:12
17:3 26:4 27:20
29:3 31:4 40:14
41:19,20 48:5
81:8 87:5,22 90:9
93:12 96:11
135:12 136:9
168:18 173:6,11
174:10 175:11
176:6 179:6,10
183:17 188:13
191:21 206:14
225:19 230:10,11
237:9 238:7,10,12
241:3 243:15,19
266:4 271:8
288:17 289:7
290:1 298:20
301:21 309:12
314:9,12,14 322:3
325:6 328:8 333:8
350:3 352:22
353:13 357:9
361:1 363:21
385:19,20
- differently** 33:21
40:18
- difficult** 30:18
95:21 120:16
150:16 164:3
170:5 203:22
243:14
- difficulty** 247:16
- digital** 311:5,21
- dinner** 274:18
- directed** 14:14
- direction** 14:16
98:20 105:18
127:16 168:19
- 216:3 248:6
250:20 333:6
- directly** 73:1 74:2
187:11 302:19
- Director** 2:17,21
4:21
- disabilities** 152:10
- disability** 133:15
142:22 211:18
212:9
- disabled** 150:3
157:21
- disadvantaged**
39:13
- disagree** 224:4
266:6 305:11
- disagreed** 235:14
236:1,3
- disappeared**
322:22
- disapprove** 83:18
- discharge** 42:12
319:1 336:4
339:15 340:10
- discharged** 42:13
- discharges** 18:20
43:4
- disciplinary** 20:16
- discipline** 18:8,10
19:5 323:7 325:10
330:4 335:6
338:22
- discount** 96:8
- discourage** 29:21
- discrediting** 323:8
339:12
- discretion** 37:19
- discuss** 7:7 36:20
73:13 75:15 76:2
77:9 102:4 113:8
290:1 321:16
- discussed** 66:10,11
80:15 81:19 99:4
106:13 125:19
151:10 223:20
236:16 283:17
284:15
- discussing** 77:10
- 239:4 375:20
- discussion** 8:4
30:5 65:5 68:14
71:2 73:9,13 80:1
80:12 107:11
111:21 114:6
139:2 140:5 154:7
232:19 256:4,5
259:12 289:15
304:16,19 363:9
365:7 382:2
- discussions** 23:17
78:15 119:10
- disease** 131:12
133:16 134:18
142:17,20 167:6
169:7
- dishonorable**
318:22
- disinclined** 116:10
- disingenuous**
111:15
- dislocated** 244:16
244:17
- disobedience**
18:14
- disorder** 325:15
335:15 337:4
338:21 339:20
- Disorderly** 342:3
- disparity** 258:1
- displeasing** 279:12
279:20
- dispositive** 372:1
- disprove** 227:9
- disputed** 167:13
- disregard** 116:22
- disrespect** 18:14
42:19,21
- dissent** 102:16,18
168:1 387:4
- dissenter** 119:18
- distill** 146:6
- distinct** 108:14
- distinction** 245:6
368:10
- distinctly** 271:8
- distinguished** 8:1
- distribute** 75:5
- distributed** 290:18
- distribution** 185:10
185:12
- district** 17:15 18:21
- diverse** 8:1 15:21
59:17
- division** 139:3
260:9 264:5
- document** 67:8
69:5 72:7,10
236:15
- documents** 333:19
- DoD** 15:15 50:20,22
51:9,15,20 171:17
340:5
- DoDI** 52:3
- doing** 6:18 10:18
14:9 16:11 22:2,7
22:15 24:6 27:11
28:18 34:16 35:11
46:11 47:8 48:5
48:12 56:17 83:7
98:10 102:6 117:7
148:8 158:2
173:18 178:10
201:14 209:12
224:3 225:17
235:1,8 240:12
257:5 275:17,20
276:12 278:6,20
278:21 290:11
291:17 295:2
306:9 309:6
373:10 376:17
- DOJ** 16:21 23:18
40:3 51:21,21
- DOJ's** 40:4
- dollars** 104:17
- door** 59:8 216:18
216:22 217:2
352:11
- dots** 105:22 138:19
- double** 56:21
191:14
- doubt** 20:1 72:6
122:9 123:9 137:4
138:2,13 139:17

215:22 227:3,9
 307:2 308:17
 326:20 327:1
 355:21
downside 128:14
draft 20:19 60:21
 67:12 68:12 69:3
 70:4,5 71:4,9
 77:17 79:1 80:10
 81:16,18 94:21
 96:16 99:2 110:3
 113:20 126:10
 133:8 134:2,20
 153:10 186:15
 188:16 249:22
 323:14
drafted 64:20 79:16
 80:19 116:6,18
 117:21 149:9
 184:22 358:16
drafter 105:12
drafting 78:5 80:2
 114:22
drafts 73:11 93:8
drank 123:20
draw 18:3 49:3
 151:20 304:14
drawing 39:12
drawn 133:9
dress 186:21
drink 118:13,16
 156:4 225:22
drinks 118:15,17
 119:1
drive 117:5 274:17
drop 249:10 271:13
 271:13
drug 8:16 131:11
 133:14 134:17
 174:19 179:16
 220:10 222:8,16
 223:7,8 224:3,9
 224:21
drugging 174:1
drugs 221:1 225:13
 260:12
drunk 135:20
 160:14

due 6:9 143:7 192:1
 192:3 193:7
 198:14 211:6
 213:16 260:12
duty 13:15 356:5
Dwight 2:15 4:4,6
 10:20 11:7 40:10
 50:18 67:7 139:9
 316:12 323:8
 388:8
Dwight's 10:21
 27:15
dynamic 8:10

E

e 370:10 376:17
 377:3 385:3 386:1
earlier 130:10
 151:10 161:2
 224:16 375:5
earn 354:21
ease 43:14
easier 62:9 195:11
 217:17 226:19
 248:9
easiest 278:22
easily 239:17
 354:18
easy 196:15,16
 359:9
eating 151:6
economy 20:20
Ecstasy 226:14
edit 72:13
educational 262:9
 262:10
effect 24:3 50:14
 62:8 63:5 64:14
 248:7 332:17
 348:4
effective 103:17,17
effectively 363:2
 366:7 385:10
efficient 386:19
effort 26:21 32:20
 74:14 104:12
 290:7 329:13
 359:1

efforts 10:11
Effron 2:11 4:19,20
 5:9,13,14 10:15
 10:20 12:17 13:20
 22:22 23:3,15
 26:5,9 28:2,10,14
 29:20 31:15 32:12
 34:12,20 35:8
 36:3,7,13 40:10
 46:17 48:2 49:7
 52:7 53:17 54:7
 55:12 56:9 57:19
 58:8,14 59:11
 60:9 61:17,20
 63:9 64:7 65:10
 65:13
Effron's 69:1
egregious 243:13
 301:3
egregiousness
 243:15
eight 113:21 150:6
 153:11
either 6:15 13:10
 13:17 39:19 42:12
 42:14 46:13 49:5
 68:19 76:9 85:16
 112:3 128:13
 129:15,17 137:12
 159:13 186:3
 198:21 208:16
 211:5 215:9 229:4
 229:15 231:6
 235:11 281:10
 299:14 307:2
 327:3 344:21
 349:2,14,16 353:1
 369:16
elaborate 108:17
elbow 302:22
element 297:11,19
 301:7 315:8 323:6
elements 18:22
 48:10 62:14 64:11
 64:15,22 65:3,5
 243:22 245:20
 318:20
elevating 253:22

eliminate 190:2
 193:1
eliminated 81:19
 175:10 358:1
Elizabeth 1:15
ellipses 105:13
elucidate 170:9
email 72:14 74:1
emerging 170:10
emphasis 199:1
 209:1
employ 19:6
employed 253:21
enacted 12:4 51:6
 60:10,16 61:6
 105:17
enactment 11:21
encapsulate 71:10
encompasses
 265:3
encompassing
 377:8
encouraged 12:13
ended 223:19 303:9
ends 117:8 119:6
engage 133:19
 134:7 146:11
 329:17 334:21
engaged 53:6
 160:12 161:9
engaging 131:21
 132:5 161:7
 162:10 336:19
 341:4
engineer 88:19
English 88:19
enhancements
 353:4
enlighten 283:19
enlightening 137:1
enlisted 39:6
 250:15 336:4
 339:16
enormous 298:21
entails 322:15
enthused 21:3,4
entire 97:17,17
 100:13,14 183:22

256:6 258:10
 308:13 352:16
entirely 29:5 76:19
 201:20 217:19
 229:18 269:10
 370:13
entirety 6:22 263:1
entry 45:11
entry-level 358:19
enumerated 96:20
 211:6,8 333:7
 336:22 337:9
 338:14 342:17
environment
 358:20
environments 20:6
 20:21
EO 108:5 126:10
 323:11,13
equal 88:8 241:9
 297:5
equals 299:3
era 8:13,15 20:18
 20:18
eras 9:15
erased 130:2
especially 114:5
 324:5 334:22
essence 31:21
essential 9:4
essentially 11:15
 116:19 129:12
 169:16 199:3
 264:12 307:16
establish 14:14
 20:8
established 4:14
 18:2 21:9
establishes 88:12
establishing 13:14
establishment 8:6
 11:20
estate 145:1
esthetically 371:21
 374:11
et 307:20
etcetera 84:6,6
 91:1 107:2 120:20

evaluation 21:7
evening 224:13
 274:19
event 171:10
everybody 4:3
 28:13 73:17 74:16
 75:6,9 157:19
 163:6 164:18
 199:13 224:10
 225:21 230:12
 233:11 242:8
 247:4,21 250:13
 251:10 254:5
 281:7 283:14
 310:10 345:14
everybody's 122:16
evidence 41:7,13
 111:6 139:12
 162:6 186:20
evokes 148:17
 149:3
ex-officio 40:3,4
exact 150:15 152:9
 190:4,5,8 333:6
 379:7
exactly 12:11 45:17
 85:18 116:1
 122:14 136:16,20
 143:21,22 153:5
 156:19 157:13
 178:11 184:1
 195:12 201:14
 208:6 217:20
 218:6 234:3
 241:22 242:1
 279:2 297:21
 299:21 322:17
 332:3 343:6,9
 352:4 379:18
exam 332:4
examination
 123:22
examined 42:2
examining 11:3
 12:8
example 19:11
 42:10 49:21 50:1
 70:7 112:13

123:22 215:20
 274:16 300:10
 327:7 357:1
 358:22 359:7,9
examples 305:9
 327:8 338:4 341:1
 341:4 347:15
 352:19 354:2
Excellent 109:6
exception 29:4,15
 40:16 156:20
excited 59:9
excluded 209:22
Excuse 212:6
execute 85:22
executive 5:7,20
 6:12 7:9 30:6,10
 31:19,22 64:21
 71:14 76:13 82:9
 82:16 85:11 96:16
 100:5 103:10
 104:2,7 105:12
 107:17 116:10,22
 117:22 127:22
 130:13 141:10
 159:20 170:13
 171:19 180:22
 181:3,7,10,14
 184:19 186:7
 187:4 320:11,14
 323:3,3 337:21
exercise 137:22
exhaustive 347:14
exist 13:11 19:13
 30:4,11,12 39:3
 57:22 58:3,8
 61:21 149:8
existed 58:18
 322:19
existence 11:14
 48:5 49:7 55:14
 56:1
existing 27:4 83:9
 200:17 296:1
 339:5 381:15,18
exists 133:10
 139:14 159:18
 247:21 272:18

383:5
expanding 160:18
expansion 20:21
expansiveness
 120:4
expect 32:10
expectation 77:3
expected 122:12
expedited 11:19
experience 9:6,7,9
 9:12 16:16,19
 18:4 20:17 29:3,7
 29:8,10 47:10
 61:22 158:10
 163:7 258:3
 334:19
experienced 15:16
 20:13
experiences 8:2
 15:22 16:9 21:2,2
 31:4 59:18
experiential 55:4
expert 29:21 121:2
 121:5 156:4
experts 14:18
 120:18
explain 9:2 61:15
 85:22 94:17 168:5
 171:18 217:17
 274:8
explains 357:14
explanation 141:9
 165:21 167:8
 358:5
explanations 166:2
explanatory 79:17
 80:3 82:8 85:18
 86:13 89:9 91:7
 104:10 159:19
explicit 93:22 255:5
 375:7
explicitly 214:22
expose 44:15
 326:19 327:11,17
 347:20 350:14
 372:21,22 373:18
exposing 327:15
exposure 317:13

318:9 322:10
327:14 373:10
express 26:12 31:2
35:11 129:9
146:16 147:7
148:4 168:1
325:16 372:3,8,10
expressed 347:18
expressing 326:9
expression 187:12
187:16 188:5,21
189:15 190:3,10
193:22 194:17
195:17 205:20
207:4,11,13
expressly 35:9
64:20 327:9
extend 105:19
extensive 60:20
64:8
extensively 345:12
extent 8:19,21
17:17 58:20 65:15
92:18 135:15
153:19 283:18
342:22
extortion 347:21
350:18,19 360:5
362:2
extra 75:10 370:5
extraordinarily
38:8
extraordinary
38:21 39:19
extreme 129:6
extremely 39:2
72:7 150:16
eye 33:3 244:6
329:12
eyes 338:6

F

fabulous 58:12
FACA 75:4,7
face 8:19 54:18
213:12 214:2,17
326:12
facie 216:1

facing 39:18 105:7
105:8
fact 27:9 39:5 55:2
76:5 93:13 99:17
111:8,17 122:12
123:21 138:15
146:17 147:10
155:22 160:14
166:9 181:19
182:5 186:21
215:22 239:7
242:12 320:13
343:18 350:15
factor 136:4,9
factors 32:22 41:13
94:8 96:21 99:13
124:7 130:15,16
155:21 156:1
170:14 171:21
facts 45:21 123:17
125:11,12 240:6
259:11
factual 116:12,19
122:6 124:2
150:13 330:6
factually 121:11
139:12 178:8
failed 30:15
fair 6:4 55:18 61:10
66:13 288:1
fairly 21:13 54:17
154:20 155:20
192:8 289:18
301:12 351:17
fairness 38:3 39:15
fall 52:15 363:18
falling 131:1
falls 304:15 305:14
false 350:15
familiar 9:21
331:15 367:18
far 38:5 40:11
62:17 177:2
246:10 305:10
343:14,15 356:19
378:4
fashion 101:8
fast 24:3

favorable 354:11
355:1
fear 43:15 68:9
88:4,6,13,18
146:14 192:3
196:13 197:4
198:3,11 199:10
214:3,9 215:3,21
216:6 219:6,19
220:2 243:9,18
251:1 262:15
265:6,15 284:2,8
284:9 304:6
346:19 347:4
357:21 366:21,22
367:10,11 371:8
371:10 373:16
376:20 377:3
378:2,9 380:7
381:14 383:22,22
384:8,12,17,19
385:6,16 387:13
feature 8:20
features 18:11
February 70:11
federal 2:15 4:10
11:9 18:21 29:22
41:10,20 114:17
115:2,3,9,22
117:14 316:10
318:19 321:4
feedback 23:10,21
57:16 72:10,20
73:4 81:17
feel 6:6 27:18 33:8
133:2 182:6 208:7
227:18 242:10
247:19 248:4
305:12 340:13
388:3
feeling 6:4 118:7
felony 38:13
felt 53:11 70:20
81:11 152:5 268:6
302:11 370:2
female 294:22,22
295:3,3,4,5,5
fewer 39:8

field 105:9 242:9
247:15,21 248:10
figure 24:4 98:9
165:21 328:14
377:2
figured 290:10
figuring 102:8
filed 58:4
fill 154:19 354:11
final 13:6 33:22
35:6 68:14 69:12
finalized 33:19
Finally 21:6
financial 350:18
find 5:18 27:8 37:3
43:16 46:18,22
62:5 90:14 92:7
94:21 103:3
126:15 138:16
139:1 157:2
228:16 229:7
276:9 308:15
365:5
finder 93:13
fine 81:12 85:15
198:16 202:17
203:2 213:21
254:9 264:9 272:9
274:7 278:19,19
283:7 320:16
365:13,20
finessed 353:5
finger 292:2 301:6
finish 184:16
finished 45:11,14
firm 62:2
first 8:12 10:17
17:12 18:7,12
38:5,12 53:20
66:18 79:11 85:6
85:7 90:18 134:13
134:16 135:14,15
137:7,11,15
171:11 173:7
176:7 178:15
187:20 189:18
191:4 192:13
195:1,14 201:4

205:8,14,18 206:2 230:15,16,18 232:16 269:6 270:1 273:13,21 274:18 276:3 288:14 289:6 299:1 305:16 329:3 350:8 353:17 359:13,17 373:13 380:3	265:10 298:16 312:15 follow-on 10:6,17 11:9 followed 259:13 following 141:5 256:14 follows 277:11 force 2:16 20:22 84:18,21 88:4,17 88:17 90:8 91:1,1 174:4 175:13 179:1,2 192:3,3 192:11,20,20 196:10,11 197:3,3 198:2,3,10,10 199:8,9 213:17 215:3 225:14 263:2 285:9,14 331:22 332:1 357:22 359:6	forwarded 328:21 358:6 found 30:9 58:2 65:4 186:14 306:14 357:13 four 22:11 96:15,17 99:2 102:14 113:14 114:21 117:21 136:22 140:22 220:3,21 228:2 229:18 230:14 231:10 233:8,20 235:5,5 245:19 273:3 276:16,17,21 336:3 339:11 fourth 174:7 233:12 240:21 Fowler 273:5 fracture 244:21 fractured 244:15,17 244:18 frame 14:19 22:4 33:13 34:7 209:4 355:20 framed 97:2 framework 386:12 Frankel 365:8 frankly 82:4 107:15 117:15 156:11 fraternization 50:2 50:2 fraud 263:3 fraudulent 243:9 262:17 265:20 fraudulently 265:12 free 28:20 90:15 freely 90:16,17,20 90:21 92:8 99:6 106:15,15 137:9 137:14 147:5 148:10 186:9 191:8 193:1,8 195:14 205:18 206:18 207:2 214:13,15,19 226:6 260:6 freely-given 260:19	265:18 frequently 54:16 fresh 102:1 Fried 4:11 Friel 1:16 95:8 96:17 101:17 113:13,17 114:5 114:10 115:10,12 115:16 116:1,7 119:15 121:4 124:17 125:5 126:1 128:10 134:13,16 135:3 141:6,15,21 143:7 143:10 144:8 145:11 150:22 152:3 154:17 155:15 157:18 158:6,12 159:22 164:19 165:7 174:17,21 175:2 175:18 177:13 178:7,12,21 183:21 201:11,17 201:22 202:3 211:3,10 213:10 213:18 214:14 215:14 220:5,12 221:2,11 223:9,19 226:4,9 231:2,6,9 232:18,22 234:16 234:22 236:12 239:22 240:4,17 241:1,4 242:7,22 248:11,22 249:14 251:1,9 252:17 253:5 254:11 257:8 264:18 265:16,22 267:6,9 267:14,17 268:10 270:17 271:1,5,17 273:8 274:8,11 275:7 276:1 286:11 288:5 289:11,21 290:4 290:16,22 291:6 291:12,16 292:22 293:2,8,13,15,17
fiscal 45:8,9 fit 52:20 182:8 304:9 fits 164:7 212:3 351:9 five 14:18 209:5,9 209:10,12 212:11 212:13 213:2,6 228:7,8,9,15,20 230:7 318:22 335:9,10,12 340:7 five-year 22:11 fix 102:7 164:5 386:9,15 fixing 386:16 flag 126:8 flashing 132:16 flexibility 20:5 44:21 flexible 260:17 flipping 234:8 float 108:3 flogging 119:19 121:13 floor 66:2 flow 53:2 158:11 277:16 focus 74:7 120:6 242:3 278:11 focused 47:10 334:8 focusing 8:5 9:10 148:16 folder 68:20 folding 233:9 folks 250:16 follow 11:1 52:7 59:21 64:1 101:1	forced 177:6 forces 7:21 13:1 17:2 21:4 139:5 171:6 262:6 forcible 306:16 317:12 forcing 178:17 298:6 354:17 foreign 331:18 forever 152:8 forfeitures 18:19 forgive 296:7 forgot 55:10 form 62:8 146:11 148:2 213:12 former 15:19 16:14 16:20 forms 49:14 242:14 formulate 227:6 forth 25:9 60:8 63:13,15 64:11,21 67:8 101:6 111:22 167:16,20 233:1 363:12 forward 8:2 31:5 33:13 34:13 62:7 65:14,15		

294:8,11,14,18
 295:10,20 296:5
 296:12,15,17
 297:19 298:1,10
 298:13,17 300:12
 300:21 301:1,15
 302:3 303:1,4,13
 303:18,21 304:6
 304:16 305:7,21
 306:3 307:5,22
 308:8,15,20 309:3
 309:7,22 310:2,15
 311:1,8,13,17,20
 312:3,6,9,17,21
 313:9 314:5,8,11
 314:13,18 315:3
 315:15,17,21
 316:1,3,21 317:4
frigid 351:8
front 66:20 170:4
 281:14 314:1
 351:19
frozen 126:21,22
 146:14
frustrated 164:18
full 28:16 36:8
 60:20 134:2
 283:13 349:10
fun 76:6 227:8
function 135:4
fundamental 81:10
funny 224:12
 294:20
further 18:1 29:17
 56:3 170:6 171:19
 209:21
future 73:11 100:9
FY16 11:21

G

g 84:4,8 105:4
 288:6
G.4 244:14
G1 299:6
G1(b) 314:3,7
G2 299:8
G7 348:8
gaining 50:21 51:9

51:17 52:6
gap 154:16,18,19
 329:22
garble 131:4
garbled 130:18,22
 132:2,3
gather 352:12,18
GC 59:3
gee 6:9 25:12
GEN 29:14 43:11
 43:22 44:4,20
 73:16 86:5,12
 88:15 94:12 97:8
 101:19 105:1,5
 111:18 121:7
 124:5 136:12,17
 142:1 145:7 147:1
 161:14 167:5,10
 168:2 173:17
 174:3,9 175:12
 176:11,21 178:14
 182:12,21 187:17
 188:1,7 190:19
 191:12 193:6,11
 193:14 198:6
 216:18,21 217:22
 221:21 222:14
 223:3 226:8
 227:10 233:15
 243:4 252:1,10
 255:14,18 257:1
 264:6,15 265:9,19
 270:20 271:2
 273:15,18 274:22
 275:3,8 276:4,13
 277:2 278:21
 279:3,8 281:13
 284:4 285:16
 303:11 304:11
 305:1 310:13
 336:21 348:15
 353:8,12,16
 355:14,19 356:14
 357:4,8 362:20
 363:6,8,15 364:1
 364:7 365:11,22
 366:10 367:2,5,8
 367:11 372:15,19

373:4,11,17
 377:22 378:5,16
 380:5 381:5,8,12
 381:17 382:8
 383:7,13,16
 384:16,21 385:4,7
Gen(R) 1:20
gender 291:15
 296:3
gender-equal
 295:11
general 4:7,22
 14:14,16 16:13,20
 17:9,11 18:1
 19:18 21:11 22:3
 36:12 37:7 50:3
 62:19 63:14 64:10
 65:1 111:14,20
 166:15 229:22
 335:15 337:3,4
 338:21 339:20
 349:9 353:1
generalities 94:18
generally 39:4
 221:9 342:17
 359:3
generated 80:1
 140:5
genitalia 286:8
 290:7 306:7
 307:20 309:10,13
 309:15 310:7,14
 326:19
gerund 272:11
gerunds 272:3,9,9
 272:12 273:3
 276:16,17,21
getting 23:20 43:18
 54:11 113:17
 144:2 149:13
 160:17 198:16
 230:21 233:4
 235:1,4 250:22
 274:21 277:2,3
gift 61:21
girl 144:6
girls 226:16
give 6:7 30:20

31:20 34:5,20
 36:19 44:20 49:21
 50:1 69:8 72:10
 74:6 91:16 94:10
 94:18 97:8 98:3
 121:19 124:5
 137:9,14 140:21
 144:5 145:5,21
 147:5 167:15
 171:21 174:18,19
 183:1 226:5
 265:10,14 308:13
 348:12,12
given 14:19 28:21
 59:12 70:13 90:16
 90:17,21,22 92:4
 92:8 95:14 98:7
 99:6 106:15,15
 147:5 148:10
 152:17 171:12
 186:10 192:18
 193:1,8 195:15
 205:18 206:18
 207:2 214:13,15
 214:17,19 215:9
 226:6 301:10,16
givens 18:12
gives 111:6 164:13
 225:13 245:7
 252:20 318:20
giving 7:14 32:19
 58:19 144:7
 171:13 191:8
 214:18 260:6
 265:11
glad 6:14
Glen 2:18 33:20
 43:12 66:4,16
 74:10 77:15
 153:12 155:17
 218:16 285:22
 287:7 333:18
 334:11 340:15
 357:18 386:22
Glen's 220:7
 236:15
global 93:9
gloss 83:16 128:3

go 8:9 9:21 13:21
 15:13 16:11 21:17
 22:19 26:20,20
 27:19 31:20 35:13
 37:1,20 55:3 56:2
 56:4 59:21 60:22
 62:7,17,21 66:5,8
 67:4 69:3 72:3,11
 76:8,10 79:6
 80:13 82:1 85:12
 90:13 95:1,16
 102:2 104:2,3,5
 105:17 108:2
 111:16 116:5
 117:22 122:10
 131:8 138:3,18
 145:17 147:13
 153:17 156:12
 171:5,20 177:2
 183:4 185:17
 191:12 193:20
 201:5,11 206:13
 209:21 212:8
 213:10,21 220:3
 224:13,15 227:5
 231:18 240:5
 245:17 248:18
 250:20 274:18
 280:12 281:10
 283:7 316:4 320:8
 328:18 333:15,15
 333:22 337:7
 340:1 343:14,15
 350:9 364:21
 365:4 370:22
 377:14 378:4,13
 378:20 380:18
 383:19 388:4
goes 7:10 11:13
 34:14 69:9 122:5
 122:14 128:4
 137:21 150:18
 181:11 205:21
 208:5,22 265:4
 281:13 282:8,8,9
 288:17 352:9
 362:11 365:11
going 5:12 6:13 9:1

10:6 11:2 22:7,13
 22:14,15 23:6,7
 24:18,20 25:4,6,7
 25:18,19 26:15
 27:1,2,3,4 28:5,6
 29:18 31:3,11
 34:15 35:13 39:14
 40:8 47:4 49:12
 49:19 50:22 53:22
 54:13,19 55:11
 56:3,20 57:4,12
 59:13,14,16 60:13
 61:6 66:5 67:17
 72:11 73:18 77:3
 77:12 79:3 80:21
 83:4,10 85:9,13
 86:8 89:6 90:13
 90:13 91:9 92:14
 94:9 100:12 102:6
 105:21 106:10,14
 106:20 107:10
 108:2,3 109:5
 114:3 119:19,20
 120:3,7,9,15
 128:9 130:19
 132:12 136:5
 146:10,16 147:18
 152:19 155:10
 156:4 157:8,16
 171:7 178:9 181:2
 181:3 182:9 195:9
 203:14 206:21
 208:11 213:7
 214:10 216:3,4
 218:1,3 223:7,10
 225:1 226:16
 227:1 228:1,2
 231:6,9,11,12
 233:1 241:15
 242:1,14 243:4,20
 247:3,8,16 248:5
 248:9 249:18
 252:1 256:14,15
 256:19 257:5,8,14
 257:18 259:21
 260:3,15,16
 264:19 270:10
 273:12 276:20

277:12,12 278:12
 280:18,21 281:11
 281:11 285:5
 287:17 288:7,20
 288:21 289:2,6,9
 291:21 292:7,14
 302:12 306:4
 307:17 310:16,18
 314:3,13 318:11
 320:9 321:15,20
 321:21 323:22
 324:1 336:16
 337:21 348:7
 351:7 352:14
 354:13,19 355:11
 356:3 360:6
 361:19 362:1,7,21
 365:21 366:5
 368:12 373:10,13
 380:6 381:6 382:4
 382:19,22 384:22
 386:20 388:5
good 4:3 13:21
 54:17 65:14 69:2
 71:1 78:9 102:7
 110:5 112:12
 126:13 172:8
 189:10 193:15
 202:20 219:15,22
 264:16 269:14
 308:9,11 313:14
 314:20,22 323:6
 325:9 327:7 330:3
 335:5 338:22
 346:6 364:13
 381:5
Goodness 228:11
gotten 23:9 113:8
 209:16 286:13
 370:12
government 19:22
 138:4 139:3 256:8
 260:8 264:4 315:9
 358:4,11
government's
 259:16
grabbing 110:5
gradation 236:20

239:10 247:14
gradations 239:6,9
grade 232:12
grades 232:11
Grammel 115:4
graphic 330:4
 341:3
graphicness 296:8
grapple 346:17
gratification 306:20
 313:5
gratifies 303:6
gratify 305:18
 306:11 307:19
grave 299:20
gray 164:11,17
great 7:20 8:17
 26:15 27:11 29:6
 42:2 43:7,10 59:6
 65:12 102:15
 112:20 117:9
 127:6,8 155:17
 218:20 221:13
 334:10 380:3
greater 29:12
greatest 170:3
greatly 357:21
green 2:16 44:22
 69:1 72:16 74:5
 74:19 75:3,18
 77:20,22 321:11
 387:22 388:3
grew 336:10
grievous 232:12
 239:7 240:9
 242:20 244:1,3,22
 245:1,7 360:20
 361:2,3,6 369:2
groin 306:8 310:5
group 4:22 5:17 8:5
 8:7 10:6,10,17,20
 10:22 11:2,6
 13:10,22 14:15,18
 15:3,5 16:6,12,12
 23:9 29:3 35:3
 40:9 43:10 49:13
 57:8,14,22 58:18
 66:9 79:11,14

98:22 102:3
 114:14 118:20
 149:12 170:11
 228:21 229:14
 283:2 286:19
 302:2,5 318:11
 344:9 345:7
groups 34:5
grown 37:13
guarantee 7:12
guardians 77:18
guess 34:9 56:5
 61:10,14 72:10
 96:8 99:8 114:10
 132:14 147:21
 160:9 163:20
 177:11 196:12
 235:4 242:7 247:1
 281:9 296:19
 304:14,14 313:7
 318:10 320:11
 333:20 353:21
 365:6 373:12
 376:19 383:8
 387:21
guidance 18:1 22:3
 59:2 64:17 65:7
 118:1 156:10,11
 159:19 170:7,8,13
 170:20 346:4
guide 17:10
guided 59:2
guidelines 41:21
guideposts 266:8
guiding 18:6
guilty 39:18 223:10
 248:4
gut 104:4 193:5
guy 51:11,16
 243:19 268:6
guys 117:6 292:11
 319:2 378:20

H

H 2:22
hackles 326:8
Hagel 14:13
Hale 58:11

half 153:11 187:19
 187:20 189:18
hallway 344:19
Ham 58:12
hand 182:18 207:12
 293:17 303:5
 305:17,20 313:20
handful 58:15
handicap 126:20
handle 23:2,3 184:6
handled 111:5
handling 312:12
 317:12
hands-on 16:18
happen 44:19
 46:14 51:19
 101:18 174:15
 223:14 227:19
 292:14 335:2,4
happened 47:1,2
 172:10 214:8
 260:1,12,18 285:2
 292:21 302:4
happening 131:3
 341:16
happens 31:14
 46:19 175:19
 203:16
happy 44:10 55:14
 78:21 92:1 97:15
 181:14
harass 301:12
 307:18
harassment 304:15
 304:21
hard 28:3 49:3 74:6
 117:6 121:1
 151:17 155:4
 226:18 227:2,8
 298:16 306:14
 330:9
harder 100:9 187:9
hardest 186:15
harm 76:12 182:10
 183:4 230:5,20,21
 231:3,15,19,20,20
 232:12,13 235:15
 235:15,17 237:2,7

237:15 239:1,8,10
 239:10,20 240:9
 242:18,19,20
 244:2,22 245:1,8
 245:13 246:13,20
 247:20,22 248:8
 248:12 249:1,2,10
 250:2,3,10 251:2
 251:6,8,11,17,18
 251:21 253:22
 254:12 255:6
 257:9,16 258:12
 260:10 262:16,17
 263:12,13,15
 267:10 268:16
 269:2,13 272:22
 360:20,21 361:6
 369:2 382:17
harmful 252:22
 253:2
harms 361:1
hate 79:2 83:4
 115:5 213:10
 236:12
he'll 77:16,16
head 248:17
headed 326:15
heading 320:14
heads 118:22
hear 44:16 183:8
 251:6,17 258:15
 330:22 341:21
 357:15 372:17
heard 10:17 54:3
 60:6 72:22 95:14
 95:19 99:13,15
 101:2 110:16
 114:11 118:6
 151:10 164:16
 166:15 182:3
 251:10 258:20
 320:6 324:11,12
 328:17 329:9
 330:5 358:15
 363:4
hearing 29:1 56:17
 247:11 343:12
hearings 10:1 27:2

28:22
hearsay 101:16
heavily 7:5
heck 371:7
height 156:5
held 163:5 316:19
 327:10 332:7
help 57:17 78:22
 114:3 135:8
 156:16 184:12
 242:3 302:21
 305:1,6
helpful 44:21 57:11
 67:7 68:4 73:9
 80:12,17 93:16
 138:18 139:8
 140:1,20 147:22
 154:3,18 156:9
 334:2
helps 97:16 183:7
 207:1
hesitancy 59:1
hesitant 10:14
 53:18
hesitate 6:16 30:1
 44:14 56:13
heterosexual
 342:22 343:4
hew 91:8 103:12
 192:6
hey 51:10 72:21
 154:10 224:13
 320:7
high 19:17 39:10
 56:15 245:2 345:5
highlighted 68:21
 110:12 277:9
 353:3
highly 20:11,11
 24:13 25:6 53:9
 54:8 62:16 100:15
Hill 67:7,17,20 68:3
Hines 2:18 66:17
 70:5 72:2 76:11
 79:5,8 80:7,11
 107:20 108:1
 109:10,17 110:2,8
 110:15,20,22

111:20 113:4,14
 113:19 138:22
 141:11 142:18
 146:5 147:3 166:8
 171:1 172:3,6,17
 218:18 220:8
 228:20 229:1,5,9
 229:11 235:18,22
 255:12 256:2
 257:4 258:19
 260:4 277:6,19
 280:15,18 281:9
 282:1,12,16,22
 283:20 284:1,6
 285:12,20 286:2
 286:15,19 287:5,9
 287:16,21 291:8
 291:10 315:6
 316:5 318:16
 320:3,6,22 321:2
 321:4,10,13
 328:12,16 329:2
 329:19 333:12,20
 334:5,9,13,17
 335:10,14,18
 336:5,9,15 337:1
 337:8,11,17
 339:14 340:16
 358:15 359:12
 372:5 382:3 386:7
 386:15 387:11,15
 387:19
historical 333:19
historically 82:13
 145:12 360:17
history 9:22 17:14
 82:18
hit 66:15
hits 72:9
hold 86:10 120:9
 362:19
holding 305:19
holds 305:17
holistic 14:6
Holtzman 1:15
 31:10 32:10 33:15
 36:5 46:8 59:20
 60:11 61:8 64:1

67:3 70:3 74:15
 79:19 80:9 84:12
 86:17 87:1,13,16
 90:2,12,17,20
 91:4,12,18,22
 94:17 95:2 101:1
 103:6 106:1,9,19
 107:10,13 109:6
 109:14,22 110:4,9
 110:18,21 115:14
 115:21 123:3,5,11
 126:5 134:11,15
 141:13,19 142:4
 142:12,20 143:1
 149:20 151:1
 152:13 163:19
 165:10 166:4,6,8
 166:12 172:9
 173:5 174:6,14,20
 175:1,5,16 176:5
 176:15 177:7
 179:8 183:11,15
 184:9 185:4,13,19
 190:3,10,13
 193:20 194:6,11
 194:16 195:4,12
 196:6,16,20 197:1
 197:8,11,14,18
 198:20 200:13,22
 201:7 202:7,20
 203:3 204:20
 206:3,13 210:13
 210:17 211:19
 212:2 218:6,11,14
 220:21 221:3
 222:19 223:5
 228:10,14,18
 232:10,17,21
 235:10,20 236:2,9
 237:12,17 238:2
 239:2 241:12,16
 241:19 242:2,17
 243:1 244:7,11,15
 244:20 245:9,15
 246:16 247:3
 250:1,6,17 251:7
 251:13 279:17,22
 294:2 349:15

home 152:9 274:17
 305:16
Hon 1:12,14,15
 2:11 31:10 32:10
 33:15 46:8 59:20
 61:8 64:1 70:3
 74:15 80:9 84:12
 86:17 87:1,13,16
 90:2,12,17,20
 91:4,12,18,22
 94:17 95:2 101:1
 103:6 106:1,9,19
 107:10,13 109:6
 109:14,22 110:4,9
 110:18,21 115:14
 115:21 123:3,5,11
 126:5 134:11,15
 141:13,19 142:4
 142:12,20 143:1
 149:20 151:1
 152:13 163:19
 165:10 166:4,6,12
 172:9 173:5 174:6
 174:14,20 175:1,5
 175:16 176:5,15
 177:7 179:8
 183:11,15 184:9
 185:4,13,19 190:3
 190:10,13 193:20
 194:6,11,16 195:4
 195:12 196:6,16
 196:20 197:1,8,11
 197:14,18 198:20
 200:13,22 201:7
 202:7,20 203:3
 204:20 206:3,13
 210:13,17 211:19
 212:2 218:6,11,14
 220:21 221:3
 222:19 223:5
 228:10,14,18
 232:10,17,21
 235:10,20 236:2,9
 237:12,17 238:2
 239:2 241:12,16
 241:19 242:2,17
 243:1 244:7,11,15
 244:20 245:9,15
 246:16 247:3
 250:1,6,17 251:7
 251:13 279:17,22
 294:2 349:15

246:16 247:3
 250:1,6,17 251:7
 251:13 279:17,22
 294:2
honest 182:13
honestly 158:10
 230:3 328:19
 362:5
Honorable 4:13,19
hook 83:9
hope 22:20 27:14
 45:22 59:11 108:9
hopeful 7:8
hopefully 28:4
 55:10 60:10 66:13
 387:3
hopes 345:5
hoping 33:18
hot 224:14
hour 180:18
hours 77:15 287:17
house 12:2 31:13
 32:5,16 145:15,20
 145:21 383:1,9
 384:1
houses 11:18
huge 368:10 379:4
Hum 266:15
human 51:7
humiliate 292:3
 301:12,21 307:18
 312:14 313:4
 314:17
hurt 214:11 382:19
husband 152:7,14
hyperbole 41:8

I

I-N-G 272:10
I-N-Gs 272:13
idea 14:8,15 18:17
 23:18 24:11 69:2
 106:2,3 110:5
 133:5 146:22
 148:17 149:3
 169:18 181:11
 191:17,18 193:16
 195:7 204:14,19

- 212:17 218:17
240:18 268:18
289:20 295:7
314:6 319:4
369:11
ideal 108:22 159:4
227:5
ideas 31:8,8 62:7
71:22 89:3,4
108:16,19 165:1
191:21 293:13
identical 351:2
identified 40:21
63:10 92:7 369:7
identifies 186:18
186:18
identify 45:20
73:12 75:17
361:11 368:15
identifying 282:2
II 9:8
iii 369:14
illustration 76:9
imagine 343:20
344:3,4
imagining 322:11
344:5
immediately
205:13
immorality 324:19
impact 20:18,19
120:19 259:21
impacts 40:7
impair 175:6
impaired 132:10
134:8,17 146:9
173:19,22 175:21
177:18 179:19
impairing 173:9
179:4 222:17
impairment 133:14
162:16,21 169:6
173:15 176:2
178:10 179:9,9
183:17,18 260:12
imperfect 86:1,4
impetus 341:17
implement 248:10
implementing 15:1
60:17 63:15,16
implication 198:14
200:6 210:20,21
213:16 214:22
implications
148:13 192:9
implicit 204:14
295:9 348:22
implied 347:19
372:3,9,10
implies 194:4,6
249:2
imply 194:3 251:2
import 47:22 186:6
254:6 256:6
258:14
importance 7:20
192:19 219:12
important 12:22
17:11 23:8 24:9
40:22 49:13 50:16
60:8 63:5 69:5
87:9 140:2 233:20
246:8 266:10
313:22
impose 173:1
imposed 38:7
impossible 47:5
impression 87:19
imprisonment
38:15,16,16
improve 25:5 53:21
54:1
improvement 56:12
56:18 57:13
improvements 33:6
impurity 324:19
in-depth 56:16 57:9
in-person 75:20
inability 93:5
inappropriate
49:16 50:4 363:18
incapable 92:22
94:3 97:1 113:9
114:2,12,15,18
116:2,15,20 118:4
118:7,9 120:2
122:5,10 123:10
126:18 127:20
128:6,17 129:2,4
129:8,11,13,16,18
130:2,5 131:2,12
131:17 132:18
133:7 134:9
135:10,11,16
137:3,5 138:3,20
141:2,15,17
142:14 143:10,12
143:14 144:3,4
148:14,15 149:4,5
156:9 162:8,18
163:15 164:22
166:10,16,20,21
168:15,20,21
169:3,14 171:14
172:1,14 174:8,11
211:11
incapacity 98:2,5
133:13 182:6
209:17 210:22
315:10,11
include 26:7 89:16
93:22 98:1 131:18
158:4 192:6,7,10
244:2,6,9 246:21
254:7 266:1 296:9
301:13 314:4
322:7 356:17,18
366:13,22
included 13:5
163:15 189:11
289:19 348:14
382:16
includes 8:11 160:5
238:17 244:4
296:15 299:11
314:17 347:10
360:21 369:6,9
including 98:17
141:4 189:4 206:8
238:9 249:8 252:4
253:20 255:19
326:3
incoherent 183:16
incompatibility
177:14
incompetence
148:22 160:7
incompetent 93:2
104:19 137:11
142:3 149:5
161:13 210:1
incomprehensible
127:10
inconsistency
39:20
inconsistent 176:3
incorporate 22:8
23:7 93:10
incorporates 62:5
251:14
incorrectly 73:1
increasing 318:2
indecent 315:18,22
316:7,11 317:13
317:16 318:6,8,9
318:18,21 322:7,9
322:19 323:15
324:5,16,17
327:10,14,21
329:4,11,20,20
330:1,8,11 331:8
333:6 336:19,20
337:2,2 344:10
387:2
independent 52:22
indicated 166:18
indicating 88:3
individual 51:12,22
72:20 73:4 79:13
100:18 308:22
327:15,16,16
331:18
individual's 50:22
225:22
individually 28:19
individuals 19:10
330:19
induce 366:14,14
inducing 243:11
270:12 272:15,17
272:20 274:7
279:6 280:11

281:7,21 282:11
375:15
inebriated 125:20
ineffectiveness
55:1
inefficiency 54:22
infer 152:16
inferred 186:19
199:21
inferring 152:15
influence 19:13
20:2
influenced 48:4
inform 29:17 51:9
51:21
information 18:5
27:4 41:4,16 46:2
47:9 50:20 67:10
70:12 166:7
318:13 324:3
326:10 328:19
333:17,22
informed 93:5
inhibit 27:10,17
inhibited 6:7
inhibits 59:15
initially 348:6,10
initiated 262:1
injuries 246:9
injury 240:10 241:6
241:7,8 242:11,12
242:14,19 249:3
251:3 347:16
360:20 361:2,3
369:3 382:17,21
ink 68:22
inner-thing 306:8
innocuous 305:17
input 45:14
insert 87:11
inserted 110:13
inside 280:5
insist 102:9
insofar 19:7
installation 335:3
instance 67:21
70:13 71:5 79:14
145:19 175:3

238:8 341:22
343:1 366:3
instances 330:18
341:15
instincts 324:5
institution 32:14
institutionalize
21:16
instructed 147:19
instructing 359:8
instruction 51:4
52:4 94:7 111:7
instructions 250:21
instructor 366:4
insubstantially
298:20
insufficiency 122:6
124:2
insufficient 90:6
insufficiently 369:7
insure 385:17
intact 10:10
intellectual 264:19
intellectually
177:22
intend 224:17
intended 218:9
intends 127:3
intense 8:11,14
10:1,12
intent 45:17 74:5
75:21 190:15
221:19,20 224:21
294:10 295:7,8,9
295:13,18 297:11
297:20 298:3,8
300:15,18,18,18
301:5,12,20
302:14 303:2
305:18 306:10,22
308:12 312:11
313:4,22 342:19
342:21
intentional 224:7
227:18
intentionally 224:8
224:20 226:11
intently 74:7

intents 301:21
302:6 306:17
307:9,13
inter 369:11
interaction 159:3
168:5 352:9
interagency 5:7
7:13 58:16
intercourse 147:15
157:8
interest 31:19 32:1
32:18 37:12 38:1
39:22 191:3
interested 48:16
53:4 56:5
interesting 30:9
54:3 148:13 168:8
239:3 310:20
Interestingly 15:22
interests 148:1
191:2
internal 10:2 18:6
29:4,5 245:2,4
interpret 86:19
interpretation
54:14 83:20,22
86:22 137:2 138:1
155:8 331:11
interpreted 85:2
87:5
interpretive 54:11
interprets 87:18
interrupt 6:16
10:14 116:4
intervene 85:14
intimidation 376:3
intoxicant 131:11
133:14 134:17
220:10 222:10,16
225:9
intoxicants 178:5
intoxicated 118:8
131:21 140:15,16
182:1
intrigued 23:5
introduces 181:11
introduction 98:15
Investigation 11:11

investigators
147:14
invite 278:12 319:2
involve 49:17 50:2
209:11 243:21
330:16 351:6
involved 18:10 31:4
268:3 331:17
involves 50:4
Iowa 151:11
IQ 144:22 160:14
ironing 7:15
irrespective 366:2
isolation 195:6
issue 13:3 37:21
43:8 48:16 67:16
67:19,22 68:19
69:22 70:1,8,9
71:2,7,16 75:13
76:12 77:8 83:5,6
85:7 88:8 93:11
95:1,2 96:9 97:2
98:15 100:18
104:18 105:4,5
113:10 119:19,21
126:22 139:8
143:14 149:13
152:14 155:2,3
167:17 169:4
172:18 178:18
184:1 186:10
202:15 206:20
207:3 210:11
212:9,11,12
215:13 230:5
233:15 258:5
260:6 273:9 284:2
286:6 287:4,21
308:10 315:3
326:5 328:11
336:18 350:5,13
351:17 386:9
387:3
issued 43:6 60:1
170:21
issues 8:8,16 13:4
14:2 26:10 40:9
43:8 46:11 55:13

56:14 63:11 66:6
 66:11 68:2,17
 76:2,10 77:13
 79:11 103:22
 109:20 114:4
 118:6 133:1
 140:18 172:14
 186:20 247:9
 283:2
it'd 6:4 29:11 80:12
it'll 28:11 31:12
 55:11
iterations 329:3

J

January 34:11,11
 34:17 35:16
January/February
 35:7
Jill 1:19 163:9
 237:4 304:7 383:3
job 40:8 43:18
 58:12 59:6 376:4
Joe 278:19
join 134:1
Joint 14:3
joke 280:5
Jon 16:21 40:3
Jones 1:12,14 4:3
 4:13,17 5:14
 27:22 28:9,13
 33:17,18 34:19
 35:1,19 36:6,9
 37:5 46:13 57:14
 58:1,6,13 59:4
 61:10,19 63:7
 65:11,17,22 66:4
 69:14 72:3 76:4
 77:12,21 78:12
 79:6 80:5,14 81:5
 87:14,17 102:4
 103:1,19 104:14
 104:20 105:4
 106:7,13 107:15
 107:22 108:7
 109:2,7,21 112:4
 112:9,16,19 113:7
 113:21,22 114:8

117:9,11 120:12
 121:21 122:20
 123:4 126:4
 131:14 142:22
 143:3 151:5
 152:19 153:3
 154:21 155:3
 157:15 158:16
 160:4,21 162:2
 165:19 170:16
 179:22 180:10,12
 180:14,20 181:13
 182:20 183:3,14
 184:10,14,18
 185:2,11,16
 189:13,22 191:7
 191:11 194:5
 195:8,13 196:3,8
 196:19,22 197:6
 197:10,13,17
 198:16,22 199:6
 199:12,19 200:3
 200:19 201:3,9,15
 203:18 204:10
 208:4,9 209:5,10
 210:4,9 211:15
 212:15 213:5
 217:3,13,20 218:5
 218:10,13,16,20
 219:8,15 220:3,6
 220:9,18 221:7
 222:3 227:17
 228:8,11,16 229:3
 229:7,10 230:2,9
 230:16,21 231:3,8
 231:11 233:4,19
 234:8,12,15 235:3
 236:4 237:1,10,19
 238:1 239:18
 240:2,14 245:6,11
 246:15 247:1,6,10
 248:13,20 249:4
 249:11 254:17,20
 255:8,22 257:17
 266:3,15,19 267:3
 268:15,22 270:5,6
 270:10 271:9,14
 271:18 272:14

277:17,20 278:4
 278:13 279:18
 280:2,9,17,21
 281:6,15,18 282:5
 282:15,18 283:6
 283:16,22 284:13
 284:19 285:5,8,14
 285:21 286:3,9,18
 287:1,7,11,20
 288:1 298:3
 308:10,18 309:4
 315:14,16,18
 318:14 319:17
 321:11,15,22
 322:2,8 325:9
 328:10,14 329:1
 329:18 334:3,6,10
 335:7,12,20 336:1
 336:13 338:12,18
 339:3,6,8,17,21
 340:4,8,11,17
 342:3,15 344:20
 345:4,10,16,19
 346:3 347:1 348:7
 349:11,15 350:20
 351:15 352:1,12
 352:17 353:11,22
 355:4,8 357:15
 358:7,12 359:16
 360:9,14 361:8
 362:5,12,19 364:3
 364:9,17 365:5,13
 366:9,12,17 367:3
 367:7,12 370:18
 371:5,9,12,15
 373:12,19 374:2,7
 375:13 376:2,11
 376:18 377:1,6,20
 378:17 379:4,15
 379:18 380:1,3,13
 381:11 382:6,10
 384:7,20 386:2,14
 386:19 387:12,16
 387:20 388:2,4,8
JPP 2:19 4:12 10:5
 11:13,17 12:14
 13:10,18 34:1,9
 34:10 35:19,21

45:1,4 58:3 59:16
 72:17
JPP's 12:15 69:15
 70:2,9,11 98:15
judge 4:20 5:9,12
 5:13,14,14 10:15
 10:20 12:17 13:20
 16:14,15 21:11
 22:22 23:3,15
 26:5,9 28:2,10,14
 29:20 31:15 32:12
 34:12,20 35:8
 36:3,7,13 40:10
 46:17 48:2 49:7
 52:7 53:17 54:7
 55:12 56:9 57:19
 58:8,11,14 59:5
 59:11 60:9 61:17
 61:20 63:9 64:7
 65:10,13 66:17
 69:1,14 71:1
 77:20 79:5 80:13
 111:6 184:10
 229:11 251:19
 270:5 279:17
 282:16 283:21
 285:13 287:16
 318:16 328:17
 334:5,19 358:18
 359:8
judge's 250:21
judges 15:19,20
 21:11 329:14
judgment 55:4
 164:14 215:7
judgments 148:19
judicial 1:3,11 4:9
 4:15 7:4 9:11
judicious 96:1
Judy 16:20
July 122:4
jump 127:13 209:9
 209:10,12
jumping 24:9
 301:20
jumps 71:4 105:11
June 92:13
junior 248:2 262:4

juries 310:19,20
jurisdiction 50:21
 51:10,12,17 52:6
jurors 156:10 249:3
jury 39:1 40:16,17
 41:1 94:7 118:21
 124:6 125:12
 139:16 160:16
 242:3 245:14
 307:3,8 308:13,13
justice 3:7 4:21 5:4
 5:17 7:14 8:5,12
 8:14,22 9:1,16,19
 10:12 14:7,15,17
 15:17 18:7 19:5,8
 19:19 20:9 22:6
 23:11 29:7 42:1,7
 42:17 58:18 61:7
 61:17,21 250:13
 326:4

K

keep 99:17,18
 119:19 121:13
 203:14 219:21
 260:9
keeps 113:17
 133:22 243:20
 300:6
Kelly 2:20 121:22
 139:7 171:3
Kepros 1:16 22:20
 23:2,5 48:14
 59:22 92:12 94:5
 94:14,20 95:3,7
 96:7,18 97:11,14
 106:16 131:15
 134:22 149:7
 151:9,15 154:5
 158:8,14,17
 166:14 167:3,8,12
 179:13 188:16,20
 189:15,20 192:22
 193:10,15 195:5
 196:2 202:4,8,10
 202:15,22 203:8
 204:7,17,22
 205:17 206:11

207:21 208:6,14
 211:1 214:12
 221:16 225:4,19
 227:15 228:7,22
 231:13 232:3,6,8
 234:3,20 236:14
 237:4,15,18 253:7
 253:16 254:2
 271:21 272:5,11
 286:12,17 292:20
 293:1,10,20 294:6
 303:22 310:8,18
 312:10,15,20
 313:6,16 317:6,14
 318:8 319:2 322:6
 322:9,17 324:8
 327:4
kept 150:4,10 169:5
 309:10
key 8:8 18:11
 278:10
kick 130:16
kicked 339:11
kicking 77:5
kidnapped 384:2
kidnapping 360:21
 369:3
kill 219:9
killer 163:7
kind 36:1 37:20
 65:9 93:11 95:4
 98:7 101:9,10
 114:14 132:4
 135:22 136:1
 144:13 152:12
 184:2 192:21
 204:7 205:6 217:5
 235:1 239:4
 289:16 292:14
 294:20,21,22
 301:3 303:7
 305:13 320:3
 322:13,22 354:21
 372:12
kinds 22:10 118:2
 118:19 119:9
 155:20 237:1
 289:7 305:9

309:12 310:20
 329:15 350:18
 361:1
Kirt 74:11
knew 15:16 123:9
 125:13 137:4
 150:7 315:11
know 5:2 6:1,19
 11:1 12:22 30:17
 32:4 33:11 35:5
 37:9,11 40:5
 43:17 48:15 49:5
 51:16 56:1 61:22
 67:20 68:4 70:16
 75:4 77:16 78:19
 82:14 85:8 87:2,4
 87:4 89:5 90:3
 92:9,12 93:2,3,7
 93:10 97:15 98:3
 98:6 99:1,3,7,9
 101:7,15 102:9
 105:6 107:19
 111:13 115:5
 118:12,15 119:4,8
 119:15 120:1,5,12
 120:14 121:2,3,5
 121:8,9,11,12
 122:13 125:8
 126:22 127:4,7,13
 128:3,12,20
 129:19,21 130:12
 130:18 132:9
 133:12 134:5
 135:21 138:22
 139:1,10 140:3
 143:13,17,20
 144:14 145:14,20
 146:2,10 147:5
 149:14 150:7
 151:2,3,16,17,19
 152:1,2,15,15
 156:13 158:1,9,10
 158:18,22 159:2,4
 159:11,20 160:4
 160:10,11,17,17
 161:14 162:15,19
 163:6,20 164:16
 165:12 166:4,14

169:18 179:2,15
 181:4 182:17
 183:1,5 190:5
 192:2,11 193:19
 194:7,11,19
 195:19 202:8
 203:3,10,18 204:8
 205:4,7,9 206:4
 206:16 208:10,19
 213:2 214:4,7
 216:21 217:4
 219:5 222:9,22
 224:12 225:17
 226:2,10,15 227:3
 227:4,4,5,12
 228:16 229:4
 233:17 234:5
 242:2,8 243:16
 247:9 248:3 252:4
 255:8 260:5
 266:18 270:18
 274:9 284:13
 288:9 292:16,20
 301:17 304:7
 305:3,3 306:22
 310:19,20 313:13
 313:19 315:11
 317:7 318:3 319:5
 319:6 320:16
 324:18 325:2
 327:5 328:7 329:1
 329:12 330:2
 331:7 332:11
 334:13 337:17
 338:19 340:11,21
 341:1,14 343:20
 347:21 351:7,8
 352:13 356:16,17
 356:18 357:10
 361:8 362:16
 365:10,12 367:6
 369:11 370:4,10
 370:11 372:20
 373:1,4 374:2,10
 377:13 382:2
 386:15
knowing 338:4
knowingly 133:21

knowledge 124:13
124:22 134:2
178:6,21 225:15
315:8
known 119:9 121:1
124:8,9,20 125:14
126:7 137:5
138:15 152:14
365:16
knows 4:20 34:18
247:22 250:13
310:10
Kyle 2:16

L

L 2:20
labia 296:10,17
lack 84:5,16,21
88:2,11 89:14,18
104:10 107:1
108:13,13,21
116:15 132:17
160:5 186:18
187:10,14 188:9
188:21 189:6,16
190:11,20 191:17
194:17 195:17,20
196:17,18 197:20
197:20 199:20
200:11 202:5,17
203:5,20 204:14
205:3,21 207:4,6
207:11,12,22
214:4 262:21
263:4,11 264:7
275:1 299:1
lacking 144:4
Lackland 359:6
lacks 197:18 211:4
land 81:12
landed 269:10,10
language 36:17
55:19 76:17,18
79:21 80:6,18,20
81:1 82:1,2,3 83:9
83:16 84:4,14
85:17 86:1,4 89:3
90:3,14,15 91:8

91:11,17 92:8
96:16 99:4 103:4
103:8 104:1,16
114:22 115:1
116:9 117:2,21
120:3 124:17
126:10,11,15
128:2 129:15
130:10,21 131:9
132:2,3 134:12,19
141:13 146:1
155:9 159:9,17
162:14 165:11
166:20 167:6
168:3 169:12
170:12 171:2,3,11
172:11 177:20
180:3 181:12
184:20 185:1
186:1,5,6 187:5,6
187:15 190:6,9
205:9 215:10
216:10,16 217:4
229:15 231:17
239:11 256:14
263:13 267:7
268:16 347:12
350:21 351:3,18
352:5,8 365:18
369:19 375:4,4
379:8
laps 370:5
large 7:22 20:20
36:2 55:15 64:14
105:3 262:12
largely 9:10 81:11
late 102:11 355:10
latitude 124:6
Laughter 273:7
Laughter 12:11
106:6 130:20
279:14 280:1,8
laundry 140:9,18
140:19
Laurie 1:16 94:2
102:18 131:14
136:4 160:9
168:14 205:15

224:6 228:21
234:1 235:13,22
307:10 320:17
322:4 327:3
337:18
Laurie's 95:8
102:13 115:4
229:14 324:4
law 13:8 14:3 16:16
16:17,19 17:17
18:11 22:9,13
24:1,18 25:17,21
34:2 36:17 37:2
37:13,15 51:6,20
82:14 100:11
114:17 115:2,3,9
117:13,14,15
119:8 133:11
144:15 168:4
171:17 193:8
251:10,11,15
257:9,12 258:13
263:16 326:3
331:7 336:19
348:1
Lawrence 332:18
lawyer 247:22
lawyers 9:10
lay 245:14 372:10
lead 44:13 216:3
learn 340:12
learned 34:2 97:7
leash 34:5
leave 12:17 25:22
69:20 106:15
111:2 119:11
141:17 153:4
155:6 159:17
170:17 198:7
217:9 225:2 253:1
253:2 266:9
309:14 310:7
355:11 363:10,11
377:1 382:1,5,6
Leavenworth 51:11
leaves 55:7
leaving 141:7 142:9
217:7 228:1 271:6

280:19 381:11
led 8:6,17 9:9,12
left 63:21 64:4
166:21 218:12
289:4 326:14
328:4
legal 17:19 47:3
139:15 144:20
219:9
legally 137:3 144:5
144:8,15 145:5
148:20 167:15
245:21
legislation 10:9,22
13:6 21:15 30:7
48:13 60:16 62:15
63:4,20 64:20
100:8
legislative 5:5,21
15:6,11 28:16
36:22 57:2 62:10
63:6,12 64:6
100:22 150:12
legislative-type
37:1
legislatively 150:1
legitimate 326:21
327:2
lend 40:19 42:9
lens 205:6
lesser 38:9 178:10
240:14 360:19,21
361:1 369:1
let's 21:17 36:13
66:6 78:20 85:12
111:16 126:8
128:11 209:10
213:6 214:8
217:14 228:5
234:4 258:15,17
295:14 359:18
level 9:11,11 13:4
22:12 41:9 59:1
145:16 156:3
162:15,16,17,21
163:16 193:8
223:21 237:8
240:9,11 241:5

245:5 361:7
levels 42:6
Levy 325:5,17,20
 325:22
liability 105:16,20
 105:22 377:15
liaisons 17:3
lies 174:3
lieu 253:21
Lieutenant 2:18,20
 258:22
life 16:7 38:8 41:1
 41:17 46:19,21
 52:11,12,19
lifetime 20:17
lifetimes 20:13
light 14:1,9 97:6
 122:2
liked 138:10
limit 129:13 305:7
limitation 338:10
 384:6
limitations 75:4
 93:3
limited 72:12
 126:17 129:20
 222:12 292:8
 347:11 369:10
limiting 325:14
 369:22
limits 129:1 313:17
line 72:13 74:3
 112:22 115:3
 125:11 132:5
 195:14,16 205:12
 236:12 250:15
 273:13 304:14
 317:22 358:8
lines 151:20 205:12
 212:6
Lisa 1:16,17 113:10
 113:22 116:5,7
 117:9,11 127:21
 161:2 169:20
 177:12 181:7
 221:12,12,14
 223:7 233:1
 235:14 236:1,10

246:3,4,4 247:10
 260:1 261:8 266:7
 286:9,11 287:19
 298:11 314:2
Lisa's 140:4 217:6
 286:19
list 43:12 46:5
 93:18 96:20
 118:18 137:20
 140:9,18,19 156:1
 165:2,9 309:12,16
 310:4,8,16 311:2
 317:8 347:13,14
 353:9 357:10
 369:8
listed 69:22 109:12
 111:9 306:6
 312:22
listen 344:12
listening 77:15
 344:11
lists 170:13
litany 93:12 307:19
literally 187:21
 338:15
litigated 24:14,18
 24:21 25:5,6 54:8
 56:14 81:12
 108:15,18 172:5
 258:3
litigation 25:20
 53:22 55:2
little 15:10 21:18
 34:14 55:7 68:16
 78:20 90:4 99:17
 111:15 127:5,8
 144:1 242:4 255:6
 259:4 290:9 309:7
 316:14 323:9
 351:12 359:16
 360:17
live 8:10 276:17
 344:10
Liz 36:10 99:15
 221:12,15 232:22
 349:13,15,15,17
lobby 219:4
logic 207:1 208:3

logically 176:4
 245:21
long 39:19 43:16
 46:11 81:7 219:8
 334:15 366:13
 370:4 381:22,22
longer 297:12
 316:18 323:17
 324:7 331:2 356:9
look 8:2 9:16 17:14
 17:18,18 18:2
 20:16 22:7,15
 24:8 26:1 27:5
 40:9 47:6 48:2
 49:20 57:5,9
 65:14 67:21 68:5
 69:17 71:3 84:3
 99:19 101:20,22
 104:9 105:1 114:1
 114:20 117:3
 118:19,22 119:5
 122:17 126:14
 134:11 137:10
 138:18 153:8,10
 154:4 159:22
 163:21 169:18
 171:1,2,10 178:17
 181:14 184:8
 187:21 204:5
 205:5,7 212:10
 214:8 218:1
 224:13,14 253:8
 256:3 258:18
 261:16 277:8
 300:13 302:4
 306:7 318:17
 324:4 327:5 333:5
 337:20 340:14
 367:19 372:13
 373:10
looked 11:15 17:20
 21:7 24:10,13,16
 25:3,16 27:11,15
 41:14 49:2 57:1
 114:16 117:17
 118:3 142:11
 186:5 217:8 269:6
 323:14 369:17

looking 10:6 14:7
 21:15 22:1,16
 25:2 27:12 31:5
 47:15 54:8 65:15
 66:22 93:8 95:8
 97:5 98:10,14
 100:12 104:6
 110:19 118:12
 119:14 124:3,11
 137:8 140:9,17
 148:9 153:20
 156:6,15,18 169:2
 176:16 193:3
 195:6 217:7 230:5
 249:20 253:17
 277:7 288:15
 317:7 348:21
 351:3
looks 109:9 148:7
 317:17 337:21
lose 225:1 257:9,15
losing 150:10
lost 291:7 358:21
 359:3
lot 23:10 24:1 25:10
 28:20 60:2 61:6
 62:1,5 80:1 87:21
 87:22 101:5
 114:11 118:10
 132:12 140:4
 149:15 155:18
 158:13 166:3
 170:2 172:8 182:3
 182:14,14 194:6
 206:14 212:3
 218:15 236:2,10
 242:9 247:8,16
 275:13 288:22
 305:1 312:15
 317:14 326:2
 333:18,19 363:17
 369:21 379:10
 380:12
lots 16:9 55:13
 369:18
loves 251:10
low 44:11 339:18
lower 328:11

LTC 121:19 122:1
123:1,7,14,18
136:21 142:9
148:6,21 149:6
166:15

LTCOL 66:17 70:5
72:2 79:5,8 80:7
80:11 107:20
108:1 109:10,17
110:2,8,15,20,22
111:20 113:4,14
113:19 138:22
141:11 142:18
146:5 147:3 166:8
171:1 172:6,17
218:18 220:8
228:20 229:1,5,9
229:11 235:18,22
255:12 256:2
257:4 258:19
260:4 277:6,19
280:15,18 281:9
282:1,12,16,22
283:20 284:1,6
285:12,20 286:2
286:15,19 287:5,9
287:16,21 291:8
291:10 315:6
316:5 318:16
320:3,6,22 321:2
321:4,10,13
328:12,16 329:2
329:19 333:12,20
334:5,9,13,17
335:10,14,18
336:5,9,15 337:1
337:8,11,17
339:14 340:16
358:15 359:12
372:5 382:3 386:7
386:15 387:11,15
387:19

luck 65:14

lucky 4:18

lunatic 161:17

lunch 3:10 77:14,15
103:18,18 114:7
122:17 139:1

151:4 152:20
153:10 185:15,15
lurking 387:13

M

ma'am 4:5 70:5
123:14 172:17
250:5 337:1 359:6
359:14 387:19
388:1

Madam 4:16 66:3

Maggie 236:4 268:8
372:18

Maggie's 273:11

magnificently 15:4
15:14

magnitude's 28:6

main 236:10 250:1
370:7

Maj 1:20 29:14

43:11,22 44:4,20
73:16 86:5,12
88:15 94:12 97:8
101:19 105:1,5
111:18 121:7
124:5 136:12,17
142:1 145:7 147:1
161:14 167:5,10
168:2 173:17
174:3,9 175:12
176:11,21 178:14
182:12,21 187:17
188:1,7 190:19
191:12 193:6,11
193:14 198:6
216:18,21 217:22
221:21 222:14
223:3 226:8
227:10 233:15
243:4 252:1,10
255:14,18 257:1
264:6,15 265:9,19
270:20 271:2
273:15,18 274:22
275:3,8 276:4,13
277:2 278:21
279:3,8 281:13
284:4 285:16

303:11 304:11
305:1 310:13
336:21 348:15
353:8,12,16
355:14,19 356:14
357:4,8 362:20
363:6,8,15 364:1
364:7 365:11,22
366:10 367:2,5,8
367:11 372:15,19
373:4,11,17
377:22 378:5,16
380:5 381:5,8,12
381:17 382:8
383:7,13,16
384:16,21 385:4,7

major 231:13

236:21 247:8
262:5

majority 33:4

181:21 227:16
233:21 328:17
making 14:10 22:19
24:22 36:21 53:5
55:15 60:5 63:3
79:1 82:20,22
100:13 103:16
122:15 141:6
173:18,19 174:11
222:12 234:8
237:4 243:9
249:20 262:17
270:12 272:15,17
272:20 274:6
279:6 280:10
281:6,20 312:18
313:3 319:22
359:2 365:2 375:6
385:3

male 295:3

maltreatment 308:6

man 151:11 295:17
298:6,9

Manage 3:7

management 15:18

mandate 320:11

manner 8:7 41:6,15

manual 6:22 15:1,7

15:12 26:18 38:20
48:9 60:15 61:13
62:4,6,15 63:1,17
64:4,9,12,16 65:3
65:5 80:17 83:2
94:7 100:5 102:10
105:16 112:2,10
112:13 154:8
171:20 316:17
325:13

March 14:20

Margaret 1:20

Marine 2:18

marital 186:22

marked 68:17

marry 339:5

Marshals 51:15,17

martial 94:7 112:11

112:14 113:3

Martin 14:4

massage 304:3

match-up 367:13

material 37:3 67:5

67:16,19 68:1

70:12 166:11

materials 17:5

66:20 79:10 80:8

82:6,7 114:21

165:15 316:9

346:14 357:19

matter 24:17 43:9

64:11 152:22

177:5 183:20

230:22 231:4

233:18 250:14

263:17 276:19

288:2 297:2 375:8

matters 25:6 134:2

167:17 257:13

328:15 356:9

maturity 144:12

max 340:7

maximum 318:21

335:19 337:5

339:10,19 340:3

maximums 62:22

McGovern 2:20

121:19 122:1

- 123:1,7,14,18
136:21 142:9
148:6,21 149:6
166:15
MCM 113:3 117:22
128:8
McNaughton
129:17
mean 52:19 54:17
75:14 93:16 94:13
94:17 96:21 97:14
102:2 104:17
105:3 115:9 121:8
123:16 124:9,12
126:12,18 127:4,6
127:19 130:5
133:2 136:8
140:10 143:10
144:3,4,9,22
145:2 149:13
150:17 151:17
153:17 156:13
158:10 160:9
172:14 173:12
176:22 184:10
187:16,20 190:4
194:2,16 200:17
204:11 207:13
226:9 237:8 239:6
241:16 246:4,22
247:1 252:21
255:14,20 263:20
268:6,11 272:5
275:4 279:8,9
288:21 289:21
292:12 295:7
297:8 303:14
304:4,8,13 305:5
305:19 306:2
309:20 317:4
319:6 321:6,15
338:6 341:2,16
343:7 362:13
367:6 372:20
373:19 375:14
376:12 383:19
384:18
meaning 129:19
168:4 193:3
meaningful 124:10
130:16
means 11:21 54:22
60:2 90:20 95:15
127:4 128:7,13
129:5,9,11 130:1
143:11,13,14
157:7 173:18
176:14 186:9
187:16 188:22
189:14,16,20,21
190:11 191:8
193:8 194:18
195:7,14,16,18
206:18 207:2,5,11
214:19 247:22
249:6 267:1
285:14 288:18
310:11 311:20
319:4 359:18
364:9
meant 115:17
252:22 266:8
measure 9:17
mechanism 154:11
media 7:21
meet 75:15 76:1
131:5
meeting 1:5 4:4,6
33:20 44:17 46:5
65:19 66:15 67:2
67:4 68:13,15
69:16 75:20,22
76:15 79:16 92:13
220:15 228:13
236:17 237:5
238:3 340:19
387:21 388:7
meetings 75:7
286:21 304:17
meets 20:22 99:22
member 40:4 78:4
173:4 339:16
members 12:22
13:14,16 18:4
37:10 39:1 46:21
58:9 66:9 69:13
79:20 88:9 262:5
262:6
membership 13:9,9
13:17
memory 122:16
260:11 263:11
men 7:20
mens 223:15
224:15 300:15
mental 126:19,20
126:20,20 131:12
133:15 134:3,17
137:12,17,21
142:17,20 148:2
167:6 169:6,7
211:5,16 225:8
313:21,22 314:4
mentality 150:6
mentally 145:4
146:9,11,15,17
147:4,6 148:3
150:3 157:21
161:10,12
mention 206:22
mentioned 39:9
101:7
mere 55:1 182:7
merely 168:4
231:21
merits 324:1,3
326:10
message 262:10,11
263:5
met 1:10
metal 72:9
methodologies
46:9
mic 169:9
Michelle 1:15 84:4
85:2 104:7 106:9
microscope 218:2
middle 232:20
357:19
military 3:2,6,7
4:21 5:3,17 8:5,12
8:14,16,22 9:1,5
9:15,19 10:12
11:12 13:15 14:3
14:6,15,17 15:17
16:19 17:17 18:7
18:8,11,13,18,18
19:8,19 20:6,9,10
20:10,12 22:6
23:11 29:7,9
37:15,18 38:13
40:14,20,22 41:3
42:1,7,16 46:7,20
49:16 50:13 52:11
52:18 58:9,11,18
61:7,17,20 111:6
139:14 140:13
156:13 161:11,19
161:22 250:12
258:4 329:14
335:1,3 338:10
348:4,10 356:19
358:22 369:15,17
370:17 375:17,22
379:2,17
Miller 16:20
million 262:6
millions 104:17
mind 81:3 115:5
132:16 194:16
208:4 226:19
251:20 278:2
mine 71:21
minimal 230:19
minimalist 377:10
minimize 236:13
minimizing 246:10
minor 43:19 242:13
327:17
minority 92:15
134:1 225:10
minute 25:4 87:2
150:5 212:10
213:5 228:14
minutes 6:14 78:14
153:14 188:6
mirror 307:14
mirrors 116:8
129:17
mis-arguing 155:10
misrepresentation
263:3

missed 72:21
 115:19 264:10
missing 84:2
 155:14 220:17
 291:18 294:19
mission 21:4
mistake 111:8
 147:10
mistaken 147:9
misunderstand
 64:6
misunderstanding
 76:21 254:4
misunderstood
 64:3 71:15 365:14
mixture 29:9
model 102:15,20
 352:4,5
modern 39:10
 99:22 101:7
modest 31:8 55:16
 103:15 195:9
modestly 85:13
modesty 27:6,11
 27:20
modification 105:3
 322:20 374:17
modifications
 100:3 368:5
modified 130:11
 273:3
modifies 84:21
 87:4 272:19
 277:10
modifying 93:20
moment 7:19 93:6
 183:9 225:9
 226:14
money 145:21
month 11:13
months 12:6 14:22
 44:6 46:1 67:10
 95:20 102:14,14
 335:17,18 336:3
 339:11,12
morality 319:5
morning 4:3,18
 97:7 101:2

motivated 275:12
 287:14
mouth 289:6,13
 290:6 291:1,21
 292:3 293:19
 294:3,15,21
 295:15,21 300:7
 301:11 311:15
 314:9,10,11
move 33:12 109:7
 159:14,16 228:3
 276:5 281:11
 282:2,3 283:1
 284:20 285:22
 321:18 335:21
 345:1 351:5
moved 283:4
 335:13
moving 184:14
 191:3 234:9 251:5
mysterious 318:13
mystery 59:7
mystified 317:19

N

nails 260:21 261:5
name 145:3
names 52:3
narrow 127:10,18
 131:9 139:20
 153:6,22 157:10
 157:19 158:20
 163:5 164:21
 192:8 223:4,6
 224:7 285:9 346:2
 375:14
narrowed 329:7
narrowing 159:14
 159:16 226:12
narrows 349:6,7
national 18:9 20:5
 51:22
naturally 305:15
nature 14:10 17:11
 49:18 129:5,18
 133:17 135:17
 137:16 142:14
 145:9,13 157:1,2

157:5,9,11,15
 158:2,5,6,21
 159:9 161:8 162:8
 164:21 165:8
 167:22 169:3
 179:9
Navy-Marine 139:2
 170:21 171:16
NCO 15:16
NDAA 11:8,18,21
 12:1,3
near 38:18
nearing 368:4
nearly 178:4
necessarily 11:1
 18:16 20:12 24:6
 24:21 30:22 40:19
 48:12 49:18 52:19
 57:6 73:8 74:13
 95:14 130:14
 134:9 138:15
 150:2 152:1
 206:16,22 343:16
necessary 9:4
 191:20 192:18
 245:21,22 298:3
 334:12 348:21
need 20:20 21:7
 24:4 27:18 60:3
 60:20 66:10,11
 77:9 90:22 95:18
 99:12,19 100:6
 107:17 108:17
 111:22 119:11
 147:2 160:2
 162:12,16,16
 163:14,21,22
 179:18 181:14
 182:4 186:15
 196:9 198:7
 201:11 204:20
 206:22 209:18
 240:11 241:17,20
 245:11 252:8,15
 252:18 254:7
 255:8 257:6
 264:20,22 274:9
 286:9 292:16

302:2,3 318:12
 321:16 324:3
 326:10 338:5
 345:20 356:20
 371:16 378:1,15
 381:12 384:9
 386:15
needed 56:22 62:9
 229:6,13 354:11
 368:22 369:1
needing 227:19
needs 72:22 100:22
 125:16 265:13,21
 336:17 351:11
negative 13:12 24:2
 58:19 192:9 194:4
negatively 348:17
 353:2 356:11
 369:17
negatively/positi...
 369:19
negatives 56:21
negligence 119:21
 120:7,10,15
 127:16
neither 89:16
 186:13 187:2
 188:8 190:19
 191:5 192:16
 195:2 262:7
neutral 291:15
never 113:7,10,18
 218:8 229:6 251:6
 338:16 372:8
Nevertheless
 370:13
new 10:10 45:15
 52:21 54:14 68:7
 76:19 150:1
 185:10,11,13
 212:20 229:18
 230:13 231:12,21
 232:2,6,7 240:12
 246:19 256:17,20
 289:14 294:9
 300:17 306:16
 318:18 323:11,12
 336:8 374:22

378:21 380:17
 382:4,16 384:14
 385:21
nibbled 100:9
nice 130:19 217:5
 374:15
night 226:17
no-brainer 330:7
non 86:14 89:17
 238:9 245:22
 249:8 250:10
 339:9
non-134 65:8
non-binding 64:17
 65:6 86:14
non-consensual
 235:17 237:16
 238:11 239:10,11
 239:13,19 240:8
 241:9 246:11
 249:8 252:5,5,6
 255:20 257:18
 263:15 266:7,11
 269:13 295:1,16
 330:13 336:17
 375:16
non-consent 97:19
 163:18 241:6,20
 258:6
non-controversial
 33:5 82:5
non-controversia...
 351:18
non-exhaustive
 347:14 369:8
non-military 29:10
 162:9
non-offensive
 251:19
non-sexual 237:6
non-substantive
 73:6
noncompliance
 347:8 359:20
 360:18
nonconsensual
 230:1 231:19,22
 234:4

nonconsent 209:2
noncontroversial
 193:18
normal 213:19
Normally 60:17
North 1:11
nose 244:6
note 6:21 32:15
 35:11 73:10 79:17
 80:3 82:8 85:18
 85:22 86:13 89:10
 91:7 104:10 117:4
 138:4 205:8 238:2
 286:5
noted 17:13 90:3
 110:8,8
notes 237:13
 256:12 379:22
 380:1,4
notice 44:17 320:21
noticed 78:13,14
 87:8
noticing 93:7
notification 51:5
 52:5
notion 92:22 160:8
 167:20
novel 330:1 339:1
November 387:21
number 16:14,18
 23:12 24:13 42:6
 63:21 64:19 77:13
 81:7 94:3 105:3
 109:9 110:15,18
 160:13 184:16,18
 210:9 220:21
 228:2 232:6,7
 233:20 285:8
 315:1 352:22
 357:1,9 368:11
 386:16,17
numbering 232:4
numerous 10:3
nurse 152:8
nursing 152:9

O

object 287:6,10

292:8,17 293:17
 294:6
objected 168:21
 233:7 348:19
 351:19
objecting 355:1
 374:6
objection 170:2
 352:21 354:12
 369:18,21
objectionable
 170:5
objections 346:7,9
 346:12
objective 346:22
 347:7 349:5
objectively 284:9
objectiveness
 349:7
objects 293:14,16
 294:4 300:19
obscene 324:20
observation 78:1
 140:3
obtain 45:6,9,12
 67:5
obtained 45:13
 67:9,9
obviously 48:20
 49:3,13 60:4 73:2
 77:8 119:4 253:12
 289:16 301:4
 352:18 387:6
occasionally 6:3
occasions 16:18
occurred 95:10
occurring 159:3
occurs 38:10,19
OCTOBER 1:7
odd 353:18
offender 38:12
 48:19 51:2 52:1
offenders 38:17
 52:3
offense 38:10 50:3
 53:12 97:21 168:6
 169:11,13 209:3
 215:18 229:22

234:5 294:21
 328:5 329:4 330:2
 333:6,8,8,11,11
 333:17 337:10
 338:14 339:5,10
 342:13,14,17
offenses 17:21
 18:13,18 31:7
 42:12 47:13 48:17
 50:8 51:4 52:6,10
 52:22 62:14 64:12
 64:15 65:4 266:8
 304:20 317:8
 322:15 329:7,8
 330:9
offensive 238:9,18
 238:22 249:7
 250:14 253:19
 254:13,18 255:18
 256:10 257:20
 258:5,11 263:17
 267:1 289:18
 295:1 316:7
 318:18
offer 106:8 188:16
 274:17
offered 140:10
offering 133:6
Office 4:7,22
officer 355:10
 357:2
officers 15:15
 248:2 250:15
official 2:15 4:11
 31:17 32:8 36:1
officials 161:19
offline 75:6
OGC 58:21
oh 63:9 80:9 92:13
 94:12 95:7 104:22
 110:4 115:16
 123:5 141:19
 160:21 166:14
 185:13,13 200:3
 202:20 221:13
 228:8,18 234:10
 235:22 249:11
 251:17 252:21

253:18 254:17
 267:21 286:3,9
 287:11 291:6
 314:7 317:4,21
 321:22 331:20
 343:3 345:10
 362:13 364:12
 367:3 371:15
 383:11
okay 23:2 66:4
 78:16 79:5 80:10
 84:7,9 86:11,12
 90:20 95:15
 100:20 102:1
 106:7,19 107:13
 109:22 110:9,21
 111:22 112:20
 114:21 115:21
 123:6 132:1
 143:17 147:4,8
 150:14 151:22
 152:1,5,20 172:7
 172:8,8 177:14
 183:14 184:9,14
 185:21 191:11,13
 193:11,14 195:1
 197:6 202:3,10
 203:14 204:11
 213:9,21,21
 218:20,20 219:9
 219:10,15 220:18
 221:3 228:4,18
 229:8 232:8
 233:11 235:3,8
 238:1 242:22
 245:10 247:6
 252:11 254:10
 259:13 260:7
 264:16 265:19
 268:19 271:9,11
 273:6,9,17 274:8
 274:10,13 276:13
 276:13 277:7
 280:11 282:12,15
 283:6,22 284:19
 285:7,22 286:2
 287:20 288:5
 290:16,20 292:22

294:12 296:14
 297:6,17 303:6
 309:4,8 311:1
 313:6 314:19
 315:16 317:5
 319:12 335:20
 336:1 339:3,17
 345:16 363:13
 366:18 367:13
 368:9 378:20
 381:16,22
old 144:6 150:6
 325:20 326:2
 327:11 329:10
 331:6,7,8 332:11
 336:11 352:14
 384:15
OMB 5:19 6:10 30:1
 31:18,21 32:2,7
omitted 382:20
once 18:2 28:10
 32:2,7 66:12
 197:19 281:22
 312:6 340:14
one's 100:20 353:4
 378:22
ones 13:11 68:17
 110:12 182:15
 259:8 283:1
 305:10 322:21
ongoing 8:11 19:2
open 4:4,6 260:14
opening 352:10
operate 22:5 40:18
operation 21:15
 61:14
operator's 61:2,4
opinion 90:11
 95:22 103:21
 139:11 146:21
 171:7,12 267:19
 327:10 334:12,16
 336:5
opinions 77:18
opportunities
 22:15,18,18 39:9
 41:22 47:16 56:11
 59:18 363:4,5

opportunity 5:15
 9:13 26:19 42:22
 62:6 121:20 353:3
opposed 35:13
 132:18 175:7
 217:14 248:8
 340:9 369:22
 371:5 382:18
opposite 19:20
 115:7 131:16
 210:2
optimistic 7:16
 33:11
option 231:20
 248:15,16,20
options 371:13
 374:21
oral 69:15 289:17
order 70:1 78:21
 82:9,16 85:11
 96:16 100:5
 103:10 104:2,7
 105:13 107:17
 116:11 117:22
 125:2 127:22
 130:13 141:10
 159:20 162:18,22
 170:13 171:20
 172:4 180:22
 181:3,7,11,14
 184:20 186:7
 187:4 227:20
 273:20 283:3
 323:3,4,7 325:10
 330:3 335:5
 338:22 362:1
 387:17
ordered 147:17
orders 50:6 117:1
ordinary 262:16
organ 245:4
organize 135:9
organized 97:22
organs 245:2
orifices 289:10,11
 292:1
originally 168:14
 233:16 306:20

323:1 348:15
ostensibly 350:2
ought 246:13
 318:15
outer 296:10
outlier 121:13
outside 17:7 19:1
 29:2 72:14 75:7
 363:18,19 385:15
outsider 86:6
outweigh 215:12
outweighed 215:4
over-broad 221:18
 302:16 306:2
overall 160:5 290:6
overbroad 158:16
overcomes 192:20
overlap 13:9,17,19
 268:12
overlaps 357:22
overlay 173:2
overly 338:1
oversimplifying
 135:14
overstate 47:2,3
overstrike 367:16
overview 36:19

P

P-R-O-C-E-E-D-I-...
 4:1
p.m 153:1,2 288:3,4
 388:10
pace 23:22
page 66:19 70:6,6
 71:5,19 74:3
 76:16 80:7 82:5
 96:15,17 99:2
 104:9 109:13
 110:2,9 112:21
 113:14,20,21
 114:21 117:20,20
 148:6,9 165:17
 169:2 171:3,4,12
 185:4,5 254:10
 256:3 264:13
 318:17 320:10
 321:9,11 346:13

346:14 357:14,18
 357:20 367:14,15
 367:21 368:1,2,7
 368:7 379:20
pages 69:6 136:22
 153:11 155:18
painful 243:6
pandering 322:16
panel 1:3,11 4:9,15
 7:3,4 33:16 37:10
 44:16 58:7 67:9
 69:11 75:22 111:7
 118:21 147:19
 248:2 250:7,16
 251:16 262:5
 320:6 333:4,9
 359:8
panels 259:15
panoply 334:21
paper 116:6,18
 145:3
paragraph 91:14
 113:1 198:8
 288:18
paragraphs 171:11
Paralegal 2:22
parallel 10:11,18
 11:2 12:5 49:3
 124:21
paralyzed 146:15
parameters 41:17
 42:1,4,8
parity 296:2
Parker 325:4,17,20
 325:22
part 16:2 20:4
 25:21 46:21 51:7
 58:15 76:21 82:19
 100:11,22 102:15
 118:5 157:3 165:5
 167:1,8 168:15
 169:5 174:7 175:8
 187:9 188:5,12
 189:12 191:16
 202:22 203:6,16
 240:5 250:5 252:9
 252:15 262:12
 291:16 302:9,11

302:12,19 304:2
 304:19 306:5
 308:2 312:19
 313:12 314:5
 316:13,15 317:18
 323:3 354:11
participate 148:5
 203:10
participation
 126:18 129:9
 132:4 133:18
 169:14
particular 13:3
 18:16 24:16 49:14
 63:8 78:5 84:1
 89:2 259:11 340:3
 340:21 350:17
particularly 21:20
 24:14 46:20 78:2
 187:8 261:19
parties 131:20
 342:4
parts 30:5 107:4
 125:3 140:6 292:1
 292:7,9 300:21
 301:3,11,18
 312:21 347:22
party 156:14 318:4
 330:21,21 343:2
 349:3
pass 122:16
passed 11:17,18
 12:20 13:2 51:8
 116:17 166:17
 171:3 298:15
 306:15,15
passing 163:11
passionately 230:3
paste 231:15
Patty 58:11
paused 269:8
pay 18:20 42:15
 360:6
Pease 122:4 136:22
 139:18 148:7
 155:7,19 156:17
 157:12 170:22
 171:2 182:16

211:4
pedal 72:9
Pede 111:14
 166:16
penalties 328:11,13
 339:22
penciled-in 75:21
penetrate 292:13
 293:4 297:15
 298:7 312:6
penetrated 175:2
 259:5
penetrating 292:17
 294:7
penetration 181:20
 243:21 252:15
 258:11,16 275:11
 275:12 278:10
 288:19,21 289:4,8
 292:6,10 293:15
 293:22 294:20
 296:8,9,21,22
 299:3,4,12,15,16
 311:6 312:2,4
penetrations
 291:22
penetrative 292:17
penis 157:7,16
 288:16 289:5,8,13
 289:20,22 291:1
 292:12,18 293:8
 293:21 294:7,8,15
 295:2,21 297:15
 309:20,21 310:4
 311:16
Pennsylvania
 187:6
people 5:11 15:21
 16:10 17:1,3
 20:15 21:3 22:10
 29:1,6 31:22 38:3
 46:6 50:1,5 54:21
 58:16 61:3 77:8
 78:6 87:22 99:9
 102:19 112:5
 118:20 119:20
 120:15 132:5
 135:18 155:10

156:12 157:20
 158:12 159:5
 163:4,21 220:1,16
 221:6,13 230:11
 230:14 233:9
 236:2,11 242:9,9
 242:14 247:15
 258:3 259:14
 261:21,22 277:21
 305:3,11,15
 329:17 334:22
 340:12,22 341:19
 342:19 343:5
 344:12,13 348:18
 348:19 351:7
 354:22 363:21
 368:21 371:3
 377:2
perceiving 147:9
percent 61:5 70:21
 83:15 140:13
 334:22
percent-80 61:5
perfect 73:14 217:3
 221:14
perfectly 71:15
 78:21 194:20
 273:22 274:3,7
 279:12 365:13
performing 296:3
period 8:10 11:16
 36:12 112:7
 188:10 200:16
 201:1,2,8,9
 205:20 266:12
 321:7
periodic 21:7,16
 23:19
person 51:21 68:9
 88:18 118:13
 119:2 120:2,10,19
 126:21 128:5
 134:8 136:2
 137:10,11,11,15
 137:19 141:1
 142:3 144:22
 145:14 146:8
 150:15 151:2

152:9 156:3,22
 161:5 162:2,9
 173:10 175:6
 178:4 179:14
 182:1 186:11
 189:3,4 196:13
 197:4 198:3 200:1
 200:1,16 201:8
 203:11 206:8
 207:4 209:16,20
 211:2,4,4 215:20
 215:21 216:6
 219:6,19 221:22
 222:1,2,7,15
 224:2,2 225:13,14
 229:17,20,21
 231:4 235:6,7,16
 237:21 243:9,18
 249:5 252:3
 255:15 256:17,18
 256:21,22 257:3
 262:15,16 264:8
 264:14 265:1,6
 266:20 268:2,18
 269:4,18,19,20
 270:8,9,22 271:3
 271:7,10 273:2,16
 274:5,14,15
 275:20 276:1
 277:9,14,15,22
 278:6,8,10,15
 279:4 281:2,3
 284:2 296:3
 302:10,18 304:4
 305:16 306:5
 324:6 326:19
 330:17 331:2
 340:19 341:6,10
 341:20 342:7
 346:18 347:4,9,17
 347:19 348:5
 350:16 356:5
 357:21 359:22
 360:11,19 364:12
 366:21 370:12,14
 371:10 373:15,16
 374:13 375:18
 376:20 377:19

379:3 380:7,10,20
 381:3,10,13,19
 382:18 383:12,22
 385:16
person's 133:16
 136:5 148:18
 186:21 189:6
 305:17,20 347:17
personal 37:8
 58:22 71:12
 267:19 334:16
personally 87:6
 247:19 326:13
personnel 20:6
 39:6,16 263:6
 350:3
persons 167:14
perspective 33:7
 37:9,16,22
persuaded 181:15
 321:18 352:7
persuasive 62:17
phrase 84:20 125:7
 157:6 168:20
 239:17
phrased 73:1 299:2
 361:15 362:4
physical 84:5,16,22
 88:2,11 89:14,17
 89:18 104:11
 107:1 108:13,13
 108:21 133:15
 134:18 137:12,17
 142:22 152:10
 159:3 186:13
 187:2,10 188:8,9
 189:7 190:20,21
 191:5 194:5 195:2
 195:21 196:19
 197:20,21 202:6
 202:18 203:20
 204:15 207:6
 211:5,17 231:20
 231:20 232:13
 235:15,17 237:2,7
 239:9,20 240:10
 241:6,7,8 242:11
 242:12,18,19,19

245:12 249:3
 251:3 262:17,21
 263:12,13 285:15
 316:18 317:2
 323:18,20 327:22
 331:9,10,11
 341:14,20 347:16
 382:17
physically 126:17
 127:1,20 128:5,12
 128:16 129:8
 133:17,18 135:11
 147:7 148:4,14
 164:22 169:14,15
 341:6 342:8
 343:13
pick 114:7 287:21
 308:14 353:19
Pickands 258:22
picking 238:22
 278:2
picky 238:5
piece 133:20 145:3
 191:13 287:12
pieces 138:17
pinnacle 88:10
pinpoint 266:4
place 112:3 142:19
 145:13 183:18
 219:6 252:20
 381:10
placed 216:6 220:1
 257:7 265:15
placeholder 70:16
places 206:14
 282:6 344:21
placing 68:8 88:17
 196:11,13 197:4
 198:3,10 215:20
 219:19 243:8,18
 265:5 284:1 347:4
 357:20 366:20
 371:9 373:15
 376:20 377:3,18
 378:8 380:7
 381:13 383:21
 385:16
plain 155:8

plan 33:21 69:9,10
 79:8 109:3 368:7
planned 75:20
planning 365:19
platform 25:19
 53:22 60:10
plausible 216:16,17
plausibly 84:20
play 32:22
played 140:12
playing 215:18
pleas 60:6
pleasant 138:11
please 5:22 6:16
 10:15 74:4 213:20
 213:20,20 220:4
 246:10 259:9
 288:5
pleasing 371:21
 374:11
plenty 131:22
plug 213:7 248:8
 261:17 264:13
plug-in 247:14
plugging 247:20
plus 26:18 63:12
 179:8 247:17,18
point 10:9 12:21
 26:20 38:1 44:22
 47:14 57:18 60:12
 61:2,4 63:11 64:2
 69:8,18,21 71:1
 73:12 76:11 78:9
 78:22 80:22 87:7
 90:7 91:13 97:1
 107:21 108:4
 120:11 121:15,16
 122:7,14 126:13
 126:14 127:7,8
 130:16 132:6
 142:13 158:22
 160:20 172:4
 175:9,17 177:4
 180:7 183:3,12
 184:4 193:9
 201:12 203:12
 208:15 217:6
 219:12 226:11

227:6 239:3,3,5
 242:8 261:19
 321:3 328:22
 346:7,11 364:18
 378:1 384:18
pointed 40:13
 41:18 316:6,6
 325:12 353:1
points 23:19 50:19
 117:11
policy 17:1,20
 29:15
polite 5:11
political 61:3
 325:17
poorly 39:4
popular 386:3
population 39:8,14
 41:18
portable 19:3
pose 140:3
posed 346:1 371:1
position 30:18
 50:15 57:17
 225:10 348:3
 356:20 364:14
 366:22 369:15
 370:16 379:1,8
 380:20 381:3
positioned 103:9
positions 258:1
 262:7
positive 353:3
positively 348:16
 353:2 356:10
 369:16
possess 137:15,17
possibilities
 125:15
possibility 52:21
possible 29:18
 38:21 83:18,19,21
 159:5 160:15
 218:7 290:9 326:6
 356:14 375:10
possibly 99:15
 160:14
post-Vietnam 8:15

9:12 20:18
potential 356:1
potentially 38:4
 44:12 97:20
pour 224:9
power 116:21
practical 17:18
 19:7
practice 9:1,17,18
 17:15 36:18,19
 54:18 55:1 57:22
 155:13 375:9
practices 20:7 46:7
 46:9
practitioner 70:14
 214:5,16
practitioners 23:10
 234:17 258:20
 261:20
pre 317:16
pre-sentencing
 41:3
precluded 216:10
preempt 14:8 31:6
preempted 328:7
preface 37:7,22
 80:15
prefer 238:13 276:2
 279:15,20 351:12
preference 30:2
 350:1,8
preferences 230:11
prejudicial 19:16
 19:17 323:6 330:3
 335:5 338:22
preliminarily
 282:21 345:5
preliminary 69:3
 71:9 109:13 239:5
 239:15 345:15
 387:7
prepared 7:3
presence 317:22
 324:6 330:17
 331:2,9,12 341:14
present 1:13 34:8
 71:17 93:14
 113:11,18 119:8

201:18,19 221:6
 308:16 316:22
 317:1 330:21
 337:3 341:6,10
 342:8 343:5
 344:15,16,18,19
 386:11
presentation 6:15
 365:8
presentation's 6:13
presented 186:20
presenters 95:14
 95:19 114:11
 140:14 153:12
 284:10 320:7
 329:21 333:13
 363:11 364:20
presently 111:5
 291:20
presents 41:12
preserving 9:4
 259:15
president 19:18
 38:7 63:13,15
 64:10 86:18
 319:11 321:7
 323:4 338:17
 340:2,6 342:20
President's 38:20
 48:9
Presidential 326:15
presiding 1:12
pressing 28:2
presumably 208:17
 359:22
presume 32:13
presupposes 13:8
pretend 268:8
pretense 243:12
pretty 17:11 43:17
 43:19 62:2,17
 79:12 158:19,19
 243:12 315:12
 333:2 338:11
 347:18,20 358:19
 373:2
preview 248:17
previous 193:19

316:9,19 328:13
 353:21
previously 122:3
 187:1 323:16
prima 216:1
primarily 14:17
 47:11
primary 16:22
principal 261:13
prior 79:16 329:4
prioritization
 233:17
privacy 301:10
private 301:17,18
privilege 71:13
pro-defendant
 83:22
probably 12:5 43:4
 56:20 83:14
 109:18 133:3
 212:3 316:12
 318:14 334:7,14
 340:13 344:21
 374:12 375:20
 382:5 387:1
problem 39:22
 55:12 78:11 87:17
 89:5 90:2 92:7
 100:21 101:3
 102:7 105:19
 118:6 127:2
 128:20 135:22
 136:1,7 146:8
 151:4 155:10,12
 155:13 157:3,20
 161:3 164:4,8,11
 166:2 181:18
 198:20 199:18
 222:5 250:15
 257:15 273:12,12
 274:21 278:1
 282:2 330:13
 331:6 354:1
 355:22 365:2
problematic 101:4
problems 25:8 55:2
 57:1 99:18 127:11
 135:13 145:13

246:19 274:2
 320:18 376:10
procedural 62:12
procedurally 319:8
procedure 62:2
procedures 18:6
proceed 258:17
 370:8
proceedings 1:3,11
 4:9,15 7:4 388:9
process 5:13 7:13
 23:15 25:22 31:10
 31:11 32:17 33:11
 36:2 40:12 41:2
 47:11,15,18 62:10
 62:18,21 64:5
 76:10 77:7 78:7
 203:13 262:9
produce 14:21 15:6
 60:15 78:20
produced 23:17
product 17:8 101:5
 101:12
productive 32:21
 98:7
professional
 243:10
Professor 1:18
 10:13,16 13:7
 26:2,6 35:15,21
 36:11 37:5,6
 43:21 44:2,9 46:4
 47:20 71:5,12
 75:11 76:8 78:9
 82:17 83:21 84:8
 84:10,13 86:20
 87:6,20 89:11,20
 90:18 95:10 98:18
 104:5,6,15,22
 105:10 108:12
 112:12,17 113:2
 115:8,11 119:13
 119:17 120:13
 121:12 122:15
 124:14,19 126:7
 127:12 133:21
 135:7 136:16,20
 143:5,21 144:9

145:10 146:4
 148:11 149:2,11
 151:13 155:2
 161:21 163:9,17
 165:16 176:19
 178:2,11,13,22
 180:5,11,13,16
 181:4,16 183:8
 185:9 194:22
 196:1 200:7
 202:11 204:13,18
 204:21 206:1,15
 207:10 208:1
 209:8 212:8
 215:16 216:14,20
 217:1,16 218:22
 219:10,17,21
 225:12 226:1
 227:2 230:6,10,18
 232:1,5,7 233:2,5
 233:6,22 234:7,10
 234:13 238:21
 240:15,19 241:2
 241:10,14,18,22
 243:7 244:5,14
 255:2,16 260:20
 261:1,4,8 268:20
 269:16 270:4,14
 271:4,12,19 272:6
 273:5,9,11,17,20
 274:10,13 275:2,5
 275:10,19 276:2
 278:1,5,18 279:2
 279:7,15,19 280:4
 281:5 285:1,7
 290:15,17,20
 291:3,9 293:6,9
 298:11,15 303:16
 303:19 305:8,22
 310:1,22 311:4,11
 311:14,18 312:5,8
 315:19,22 318:6
 319:13 320:20
 321:1,6 323:21
 324:9 325:2,11,19
 326:1,20 327:1
 328:3 330:12
 331:1,10,14 332:7

332:15,21 336:15
 337:18 340:20
 341:11 342:6
 343:3,7,10,22
 344:4 349:21
 351:1 352:2 355:2
 355:6,9,16,21
 360:3,8 364:13
 372:13
program 16:3 21:18
progress 66:14
prohibition 13:15
 13:16 19:12,13
prohibitions 19:16
project 22:12 28:6
prologue 12:21
promise 354:13
promote 115:6
 354:14
promotion 354:15
 354:19,20
promulgate 42:5
proof 111:4 162:4
 323:5 358:3,10
property 145:2
 347:17 382:22
proposal 5:21
 15:11 28:16 31:17
 31:18 32:2,9,18
 34:13 36:16,22
 63:6 92:19 102:13
 103:4,8 115:4
 119:3,12 140:4
 154:22 201:4
 229:14 230:13,15
 230:17,19 231:14
 231:17 235:19,21
 236:16,17 261:18
 262:1 286:13
 367:16,20 368:2
 371:18 378:21
proposals 5:6 7:8
 15:6 23:16 33:12
 40:13 60:13 61:5
 62:7 64:19 261:13
propose 100:8
proposed 68:7
 80:22 92:16 94:5

100:17 104:8
 130:10 186:7
 210:19 327:9
 333:16 346:15
 352:4 358:6,14
 367:14
proposes 337:6
proposing 63:20
 197:2 351:4
proposition 65:1
propriety 324:20
 338:9
pros 36:20 261:15
prosecutable 308:3
prosecute 164:9
 259:10,16 332:20
 354:1 365:7
 386:12
prosecuted 45:7
 152:6 298:6 330:7
 332:16 363:19
 364:4 365:17
prosecuting 182:5
 366:8
prosecution 11:11
 215:21 338:5
 344:6
prosecutions 163:8
prosecutor 242:5
 306:21 334:19
 359:9
prosecutor's
 226:10
prosecutors
 258:20 263:10
 330:5 334:18
 358:17,18 359:3,6
 363:2 385:9
protect 37:14 148:3
protecting 150:14
protective 19:9
protest 88:6
prove 19:22 89:17
 226:13,13,18,19
 227:3,7 256:8
 259:3 297:20
 298:2 307:1,8
 315:10 364:7

367:5
proved 124:13
proves 215:22
provide 5:15 20:9
 21:11 46:2 52:5
 69:15 72:18 132:5
 159:19 170:8,12
 208:14 360:17
provided 15:15
 62:11 68:15
 116:12 122:3
 139:21 225:9
 357:18
provides 238:17
 318:21 325:14
providing 7:18 17:4
proving 323:6,7
provision 26:18
 54:6 81:9 82:5
 117:4 124:21
 128:21 129:7
 163:18 166:21
 167:1 168:18
 169:12,19 170:3,6
 186:14 199:2,4,17
 208:16 209:1
 225:6,6 254:8
 258:13 260:14
 272:18 296:22
 297:1 299:16,17
 300:16 307:21
 322:15 324:18
 326:16 331:8
 346:8,10 359:11
 362:10 369:1
 370:21 374:18,22
 375:6 376:8
 385:21 386:1,2
provisions 24:7,10
 24:13,16 53:7,9
 53:14 54:15 56:5
 62:16 117:7 167:5
 169:11 269:7
 322:6,12 324:13
 352:22 374:5
 385:13,15
proximity 316:18
 317:3,5 323:18

327:22
psychological
 144:19,20
public 3:18 5:22 6:2
 7:19,22 28:12,15
 30:5 35:2 44:17
publicize 350:15
 372:21
publicly 52:2
published 352:3
pull 82:3 89:1
 379:21
pulled 70:10 114:19
 168:18 169:1
 333:14
punch 224:10
 225:20 226:2,6,14
punctuation 89:6
punish 52:17
 119:20 120:15
 181:20
punishment 3:2
 38:22,22 318:22
 337:5 339:11,19
 340:3 341:8
punishments 18:19
 42:9,11 63:1,16
pure 240:8
purely 239:19
purpose 48:8 227:6
 232:4 243:11
 288:18 307:12
 308:22 312:22
 313:2,2 362:5
purposely 174:19
purposes 17:6 18:8
 69:21 313:1
purview 18:21
 363:19
push 98:22
pushed 320:10
 333:16
pushes 83:17
pushing 337:22
pushups 348:12
 370:5
put 6:2 13:22 16:12
 21:18 30:3,16

43:12,14 51:22
 59:19 62:7 66:5
 70:1,21 74:11
 80:17 83:17 86:6
 87:3 97:4 102:3
 104:14 112:1,3,6
 117:2 135:5 137:7
 150:16 165:2
 167:3 168:3
 169:10,12 172:12
 178:22 187:5,18
 191:19 192:17
 193:12 201:2
 204:2,12 206:2,3
 208:2 211:20
 214:9 217:9
 224:20 226:20
 231:7,11 248:8,12
 248:13 249:1
 250:6 251:12
 254:17 255:6
 256:14 261:10,14
 271:15 273:1
 276:3 278:19
 281:12 282:4,5
 285:16 288:12
 306:11 316:10,12
 317:19 318:17
 319:8 323:4
 329:10 336:6,7,8
 336:11,16 339:22
 362:12 363:9
 365:19 366:5,6
 373:1 376:4 387:7
puts 19:21 30:17
 116:20
putting 26:22 41:11
 86:9 88:13 112:2
 112:5 128:3 154:7
 208:4 224:8
 225:21 239:7
 254:15,16 262:15
 270:3 320:15
 336:13 371:6

Q

qualified 20:11
qualifier 105:11

qualifying 104:16
quality 20:15
quantification
 42:10
quantify 55:5
question 5:10 6:4,9
 29:18 35:22 36:4
 36:12 37:7 40:6
 48:15 55:17 58:2
 59:21 72:5 75:11
 81:13 82:12,13
 86:6 87:9 88:10
 92:2 97:6 105:14
 137:17 142:13
 161:6 165:10
 170:1 172:1,10
 180:1 191:15
 208:22 215:17
 239:16 249:18
 251:16 252:2
 257:22 258:2
 261:13 263:9
 269:6 287:15
 292:11 293:3
 296:20 313:7
 331:11 332:5
 333:3,12,14
 345:22 354:6
 356:10,11 365:3,9
 370:22 372:16
 376:6 385:8
questions 5:22
 6:14 13:20 53:12
 54:11 59:4 149:18
 371:1 386:18
queue 127:13
quick 68:16 69:21
 75:11 81:18
 287:18
quickly 34:6 66:18
 67:22 76:5 127:13
 154:3
quite 55:16 66:15
 212:4 301:13
quo 60:8 210:19
 260:17 261:7
 272:17
quote 137:13

quotes 76:18
quoting 91:6

R

radar 99:10
radical 261:17
375:1
raise 101:14 104:18
111:13 188:2
326:8
raised 43:9 75:13
76:11 86:20 98:18
111:6 126:8
147:13 323:10
raises 53:13 55:13
78:9 147:9
raising 46:11
104:20
ramifications 159:6
160:8
Randolph 1:11
range 18:5 21:2
38:18,21 44:20
48:11 62:22 278:8
rank 18:19 42:14
49:4 89:1 115:4
348:3 350:3 357:3
358:22 363:22
364:14 369:15
370:16 375:21
376:3 377:4 379:1
379:8,17 380:20
381:4
rape 38:9 42:19,21
43:21 44:1,2
45:20 82:14
122:22 124:21
144:1 174:4,12
176:22 177:10
179:14 223:18
225:6 226:22
232:16 239:8
240:9 245:8
288:10 360:14
361:4,7
raped 162:9
rates 20:16
rationale 70:2,9

98:16
razor 293:1
RCM 111:19,19
RCMs 111:9
re-engineering
376:15
re-import 169:18
re-importing
169:16
re-letter 291:20
re-opens 83:5,6
rea 223:15 224:15
300:15
reach 138:19
330:15
reached 68:10
183:13
reaches 306:2
reaching 330:14
reaction 104:4
reacts 224:11
read 55:7 91:22
94:15 102:14
106:3 118:20
153:14 154:18
155:6 156:11
172:20 248:18
254:12 256:16
270:5 281:2,18
289:13 290:21
294:13,19 319:3
322:10 328:1
334:7 346:13
353:17 358:7
373:13 374:12
read-ahead 79:10
80:8 82:7 165:15
reader 205:4
readily 262:2
reading 71:13
128:15 136:21
143:1 144:12
154:2 289:4
290:18,19 371:4
373:14
reads 292:2
ready 4:16 60:22
real 67:21 145:1

154:3 251:8
Reality 16:7
really 15:16,21 37:9
37:10 46:9 49:5
49:13 59:9 62:4
74:11 75:18 83:5
86:7 91:14 92:4
93:1 95:18 98:14
99:19,20 100:6,20
101:22 111:21
117:6 120:8
127:18 132:21,22
135:12,20 136:3
136:13 143:19
148:15 149:3
151:2,19 154:9,14
155:18 161:11
163:1,4 193:21
194:1 195:8
204:14 209:16
221:11 232:1
240:7 247:7 248:4
250:9 251:12
252:7 261:10,13
262:19 263:15
287:15 295:2
298:22 299:1
302:1 306:9
312:13 322:18
334:14 348:19
351:11 354:12
356:20 372:14
373:2 380:8,16
387:22
reason 7:16 34:12
69:7 97:2 101:4
118:5 146:15
166:22 174:10
198:12,15 218:11
220:12 228:5
250:1 258:14
265:22 270:17
276:14 277:11
283:3 284:15
294:18 302:5,16
306:13 353:15
373:8,20 374:4
382:10,13 386:4

reasonable 20:1
122:9 123:9
131:19 132:9
137:4 138:2,13
139:17 161:4
203:9 215:22
227:3,9 284:9
307:1 308:16
347:7 349:5
359:19 367:6,9,10
378:2 384:12,14
384:17 387:13
reasonableness
384:4
reasonably 119:8
121:9 124:8,9
125:8,13 126:6
137:5 164:15
227:12 315:11
346:21
reasons 21:13
60:14 163:2
321:17 350:10
reassuring 65:18
recalibration 21:8
recall 46:15 79:18
282:22 287:3
received 17:22 43:9
99:8 305:6
receiving 39:17
recognize 59:16
98:13 225:10
recognized 59:17
246:13
recollection 71:20
230:7,7,12 233:3
233:6 248:21
256:12 259:4
recommend 5:10
34:15 77:4 80:21
95:12 180:9
318:11 320:8
337:21
recommendation
34:1 53:11 56:13
63:3 68:11 70:19
70:20 71:3,4,18
76:16 77:1 78:3

- 78:16 93:17 97:9
103:9,11 106:21
107:5 108:5
109:12 114:13
116:8 236:18,19
319:21,22 320:19
362:17
- recommendations**
8:3 10:4 12:10
17:19 18:3 21:6
26:3,11,14 27:8
33:4,19 34:8 35:2
47:21 55:9,16,21
56:7 57:16 59:10
60:1 64:8 72:8
73:2 78:5 79:2
82:21 96:1,12
387:8
- recommended**
25:10 27:7 34:22
53:7,15 68:19
235:14 319:10,18
340:6 342:20
- recommending**
95:15
- reconsider** 92:2
- record** 38:13 65:20
77:16 152:20
153:1 181:9,9
288:3 311:3
373:22 374:8
388:5,6,10
- recorded** 318:7
- records** 45:6,13,14
248:18
- recruiting** 20:20
- recycle** 370:3
- red** 68:20 212:6
- redefinition** 376:15
- redistribute** 74:21
75:5 334:4
- redline** 73:10
267:12 269:9
- redlined** 165:13
387:10
- redo** 73:19
- redoing** 168:12
- reduced** 42:14
358:1
- reducing** 259:17
- reduction** 42:14
- reductions** 18:19
- redundant** 193:2
- refer** 262:4 283:11
362:16,17
- reference** 17:10
- referenced** 12:15
72:22 133:11
- referred** 100:19
- referring** 70:9 84:4
98:16
- reflect** 73:3 79:1
116:12
- reflects** 17:13
101:11 367:17
- refresh** 122:16
248:21
- refusal** 188:5 194:9
194:10
- regard** 47:9 140:4
- regarded** 62:16
64:15
- regarding** 45:2
137:19 249:20
250:21
- regardless** 182:1
296:3
- regime** 342:11
- register** 247:4
316:10 318:19
321:5
- registerable** 304:20
317:8
- registered** 51:1
52:3
- registration** 48:19
49:8,11,19 50:9
50:12,14 51:2
52:8,16 53:1
- registry** 51:14 52:1
- regular** 30:14 54:12
- regulations** 64:21
- regulatory** 5:6 62:8
63:22
- reimportation**
200:5
- reimporting** 159:13
- reinforces** 219:12
267:16
- reinstating** 267:20
- reiterate** 277:13
- rejected** 236:21
- related** 24:7 42:21
46:10 66:11
275:12 385:2
- relates** 24:11
- relating** 324:19
- relations** 50:5
- relationship** 11:5
32:5 49:22 56:6
105:15 186:22,22
308:7 331:18
332:8,16
- relationships** 50:10
326:7 363:3,18
385:17,22
- relatively** 20:10
39:8,13 48:13
60:22 87:11
- relaxed** 41:7
- release** 28:15,15
51:10,21
- released** 5:20 28:5
28:9,10,11 31:11
31:12
- relevant** 23:14 88:3
93:13 94:9 167:14
208:19 356:10,11
- reliability** 40:1
- relied** 7:5
- reluctance** 101:6
- rely** 12:13 27:4
120:3
- relying** 47:10
119:22 138:5
- remain** 18:16,17
181:2
- remaining** 350:13
- remarks** 7:7
- remember** 8:13
79:19 98:13
106:17 147:14
182:18 221:16
222:4 230:2 237:4
- 251:4 256:3
258:21 259:5
264:1 269:5
284:18 300:9
323:12 331:16
348:16 353:17
354:2 363:8
366:14 384:10
- remind** 27:22
- remove** 140:20
230:19 248:11
259:10 270:17
291:21 309:15
- removed** 159:12
166:22 167:20
230:22 231:4
346:6 358:3,10
- removes** 251:15
313:9
- removing** 257:15
267:9 293:19
- rendered** 131:12
- rendition** 220:7
- renumbered** 70:17
229:19
- reorganized** 97:18
135:4
- repealed** 342:14
- repeat** 38:17 306:7
- repeatedly** 168:22
- replace** 76:18 99:5
229:16
- replaced** 105:13
- replacing** 199:9
- reply** 73:17
- report** 12:12,16
14:21 15:7,8 16:4
21:12,13 25:11,14
26:3 28:16 29:13
31:3 35:8,17,19
36:15 41:3 43:6
50:21 51:13 58:4
60:9,15 63:10,19
69:4,9,13,15 70:6
70:11 72:20 80:10
99:3 102:15
109:13 110:3
153:10 232:20

249:22 338:2
 355:12 356:4,5
 360:6 361:18,19
 362:1 387:6,7
reported 51:15
 236:15
reporting 361:20
 361:20
reports 7:2 69:10
 72:17 73:5
represent 49:16
representation
 243:10 262:18
 265:20
Representative
 36:4
represented 265:12
repugnant 324:20
request 67:10
 373:7
requested 67:4
requesting 327:17
requests 170:20
require 19:19 61:16
 73:8 75:13,15
 134:2 221:19
 284:7 312:10
 316:18,20 331:9
required 15:5 16:4
 49:11 50:21 51:13
 80:19 81:15 89:17
 141:3 178:15,16
 186:14 187:3
 188:8 190:20
 191:6 195:3 304:1
 315:8 324:7 331:3
 331:12
requirement 50:9
 162:11 200:5
 295:8 298:8 317:3
 341:15 358:3,10
requirements
 30:11 49:8 124:2
requires 75:17
 120:1 124:21
 315:9 323:5
requiring 250:10,10
 256:8 323:18

reread 78:14
reschedule 71:11
resist 79:22 189:5
 189:5 200:2
resistance 23:13
 79:17 80:18 81:14
 81:14 82:13 84:5
 84:16,17,22 88:2
 88:11 89:15,17,18
 104:11 107:1
 108:14,21 133:1
 168:12 178:15,16
 186:14 187:3,10
 187:13 188:4,8,9
 189:7 190:4,20,21
 191:6,17 193:22
 194:2,3,5,10
 195:3,21 196:19
 196:20 197:21
 200:5 202:6,18
 203:6,20 204:15
 207:7 262:21
 263:4 269:6
resisting 194:8
resolution 277:1
resolutions 387:7
resolve 66:12
 102:22 109:5
resolved 12:2,3
 71:7,16 93:18
 106:14 109:20
 119:11 139:11
 220:5,13 228:2,3
 280:14 282:21,21
 284:20 285:18
 286:1 315:5,7,12
 315:14 345:5,13
 345:17 387:1,2,3
resolving 139:8
 228:12
resources 17:5
respect 6:10 26:4
 37:19 39:6 43:3,5
 43:14 47:21 60:2
 77:6 109:10
 110:22 111:1
 114:3 120:16
 355:6

respects 39:21
respond 58:19 85:5
responded 15:4,14
 80:2
response 7:3 58:6
 67:12 97:6 176:7
 216:12 368:19
responsible 120:10
 178:9 226:7
responsive 105:14
rest 36:14 264:21
 345:8 386:17
 387:4
restate 111:17
restatement 21:22
 22:13 24:12
restatements 21:21
Restitutions 3:12
restrictions 5:18
 13:19
restrictive 128:21
result 5:19 11:5
 12:8 32:17 51:5
 88:4 98:2 133:13
 347:8 359:20
 360:10,18 380:9
 381:19 383:10
resulted 216:11
resulting 84:17,21
 89:21 90:1,7
 107:2 169:7
 196:10 197:2
 198:2,9 199:8
results 12:3
resumed 65:20
 153:1 288:3
retain 9:19 380:6
 381:7
retains 300:18
retaliation 3:15
 31:6
retardation 126:20
retired 58:11
 329:14
returning 30:9
 355:11
revamping 248:5
reversal 19:19

reverse 376:15
reversed 207:16
reversing 217:5
revert 278:16
review 4:22 5:3,4
 5:17 6:21 8:5 9:14
 12:9 14:6,15 17:5
 21:17 37:2 46:3
 58:18 77:7 138:12
 139:14
reviewing 33:7
reviews 23:19
revise 170:2
revised 23:12
 169:21 300:17
revision 33:20
 375:10
rewording 301:22
rework 108:2
rewrite 234:14
 365:12
rewrote 92:17
RFI 67:11
rid 191:4 198:17
 201:4 235:4,11
 248:22 256:19
 268:15 277:3,3
 279:1 369:19
 370:12 373:20
ridicule 350:16
 372:22 373:18
ridiculous 152:11
right 9:20 25:21
 27:10 30:17 35:20
 36:9 41:4 52:4
 57:4 58:17 60:12
 70:11 78:12 84:12
 86:17 89:11 91:12
 91:18 93:19 94:5
 96:20 98:10 99:10
 101:13 103:20
 104:4 109:3,4,7,9
 109:10,17,21
 111:20 112:16
 114:8 115:2,13,18
 115:21 116:2,2
 123:18 124:11
 134:14,15,22

136:12 141:7,14
 141:21 142:12
 143:13 145:11
 146:4 147:3 149:2
 149:16 157:13
 158:14 161:16
 165:7 167:9
 168:10 169:8,10
 173:17 174:6,9,14
 175:1,5 176:19
 177:16 180:12
 183:8 185:17
 186:12 187:12,15
 188:11 189:9
 192:5,15 193:6,10
 194:21 195:12,21
 196:1,2 197:10,13
 197:17 199:9,12
 200:8,22 202:16
 203:1 207:15
 208:9,9,12 209:1
 211:3 212:13,14
 212:18 213:6,19
 214:6 215:8
 217:20 218:5,13
 219:3 220:5,14
 221:7,15 222:18
 225:18 228:21
 230:9 231:1,6,8
 231:12 232:3,5,17
 232:21,21 233:13
 233:14,22 234:2,3
 234:7 235:20
 237:17 239:2
 241:1 242:17
 244:20 245:9,10
 245:12,15,16,19
 248:14,16 249:13
 250:6,17 251:7,13
 253:5,7 254:19,22
 257:4 260:3,4,13
 263:18,21 266:22
 267:3,13 268:10
 271:4,20 272:2
 277:19 279:9
 280:13 281:15
 282:16,19 285:8
 285:20,22 287:1

287:11,11,12
 291:13 294:11
 295:7,10 296:6,16
 296:18 297:3,13
 297:16,21 298:10
 300:1,2,5,9,20
 301:1 302:10
 303:3 304:5,10,10
 307:2,4 308:5
 309:3 312:5
 314:18 315:5
 316:5 317:14
 321:2 323:19
 324:8 326:3
 329:18 331:4,13
 332:9 333:20
 335:13,14,22
 336:22 337:8,11
 338:18 339:13,14
 340:4,11 346:3
 347:13 352:1,20
 356:21 357:4
 358:12 360:15
 361:4,15,21
 363:20 364:1,9
 367:7,19,21 368:1
 368:3,6,7 370:2
 370:20 371:8,11
 371:22 378:14
 379:15 383:9
 384:13 385:7
 386:20,21 387:15
rights 19:9
rigid 48:13
ripple 248:7
rise 162:17
risk 30:16 37:14
rode 365:18
role 9:10 20:3 41:1
room 1:11,11 4:20
 98:8 330:20
 341:19,21 344:18
 356:1
roommate 268:4
Rose 1:16
route 63:8 385:20
routine 21:13
RSP 10:5 17:19

30:20 58:14 72:17
 76:5
rubbing 304:8,12
rubric 85:11 238:19
rule 129:17 132:5
 350:1,9
ruled 221:1
rules 5:3 15:1 41:7
 60:18,21,22 61:22
 62:1 63:15 74:19
 113:2
run 12:4 43:2 52:2
 95:16 117:4
 145:12 268:13
 317:11 370:5
running 150:4
runs 101:20

S

S 4:19
sake 133:6
SAPR 43:18
sat 16:17
satisfied 32:2,3
 34:7 112:1
satisfy 31:21
 111:11 259:13
Saudi 327:12
saw 27:13 46:4
 56:11,14 119:13
 154:20
saying 27:7 35:13
 36:14 37:17 50:16
 55:13 71:16 80:15
 94:8,14 98:4
 99:14 101:13
 121:15,21 123:21
 134:6,8 135:21
 136:2,4 147:21
 148:21 154:10,12
 154:15,16 155:16
 162:20 167:18
 175:19 176:1
 177:5 182:9 199:1
 207:19 208:8
 209:18 214:7
 216:5 223:1 225:2
 231:18 232:4

238:8,10 245:5,16
 246:3 248:6,7
 249:14 250:20
 251:17 254:4
 258:22 259:14
 263:9 264:12
 266:6,17 267:16
 267:20 269:22
 271:6,15 274:4
 282:14 296:11
 303:10,19 305:3
 308:11,19 312:17
 328:7,8 339:19
 344:15 357:5,6
 360:10 361:11,12
 364:10 370:20
 381:18 386:4
says 5:19 15:9 32:7
 36:17 59:15 76:17
 89:16 90:5 107:1
 111:19 120:13
 124:20 128:4,5,8
 129:3,15 130:14
 135:16 141:15,21
 144:15 159:22
 162:10,12 173:9
 182:18 193:1
 194:17 197:20
 203:19 205:2
 211:17 214:22
 222:15 244:17
 252:13 253:8,19
 254:8 264:13
 271:9 277:8 304:3
 318:21 320:17
 324:5 345:4 351:7
 355:10 357:20
 359:17 363:1
 370:11,14 372:3
 381:10 383:5
Scalia 326:4
scenario 132:19
 179:14,17 259:3
scenarios 181:22
 330:6
schedule 75:19
scheduled 46:6
scheme 337:4

- Schenck** 1:17
 116:4 117:10
 122:18 247:7,12
 248:15 249:16
 250:4,12 259:20
 260:7 263:16,19
 263:22 264:9,16
 266:13,16,22
 267:4,8,11,15,18
 268:11 316:5
 317:21 322:14,18
 325:1 326:13
 327:18 331:22
 332:4,14 333:3,18
 334:11 344:9,17
 345:3 357:13,17
 358:9,13 359:11
 361:12 367:13
 368:1,4,9,17
 372:2 373:3
 374:15 375:2,11
 376:6 377:9,13,17
SCHENK 236:7
 237:22 250:19
 323:19
Schinasi 349:19,20
Schloff 287:4
school 144:13
Schulhofer 1:18
 10:13,16 13:7
 26:2,6 35:15,21
 36:11 37:6 43:21
 44:2,9 46:4 47:20
 71:12 75:11 76:8
 78:9 82:17 83:21
 84:8,10,13 86:20
 87:20 89:11,20
 90:18 95:10 98:18
 104:6,15,22
 105:10 108:12
 112:12,17 113:2
 115:8,11 119:13
 119:17 120:13
 121:12 122:15
 124:14,19 126:7
 127:12 133:22
 135:7 136:16,20
 143:5,21 144:9
 145:10 146:4
 148:11 149:2,11
 151:13 155:2
 161:21 163:9,17
 165:16 176:19
 178:2,11,13 180:5
 180:11,13,16
 181:4,16 185:9
 194:22 196:1
 200:7 202:11
 204:13,18,21
 206:1,15 207:10
 208:1 209:8 212:8
 215:16 216:14,20
 217:1,16 218:22
 219:10,17,21
 225:12 226:1
 227:2 230:6,10,18
 232:1,5,7 233:2,6
 233:22 234:7,10
 234:13 238:21
 240:15,19 241:2
 241:10,14,18,22
 243:7 244:5,14
 255:2,16 260:20
 261:1,4,8 268:20
 269:16 270:4,14
 271:4,12,19 272:6
 273:5,9,11,17,20
 274:10,13 275:2,5
 275:10,19 276:2
 278:1,5,18 279:2
 279:7,15,19 280:4
 281:5 285:1,7
 290:15,17,20
 291:3,9 293:6,9
 298:11,15 303:16
 303:19 305:8,22
 310:1,22 311:4,11
 311:14,18 312:5,8
 315:19,22 318:6
 319:13 320:20
 321:1,6 323:21
 324:9 325:2,11,19
 326:1,20 327:1
 328:3 330:12
 331:1,10,14 332:7
 332:15,21 336:16
 337:18 340:20
 341:11 342:6
 343:3,7,10,22
 344:4 349:21
 351:1 352:2 355:2
 355:6,9,16,21
 360:3,8
Schulhofer's 71:6
 179:1
Schwenk 229:22
scintillating 5:8
scope 12:9 28:21
 49:6 72:15 82:2
scratch 22:6
 242:13
scratches 242:21
 246:5
screwy 203:19
scrotum 289:14,15
 289:22 290:12
 291:2 292:13
 294:15 309:22
 310:1,5 311:5,15
scrutiny 8:11,14,17
 10:1
se 350:1,8 363:21
 363:22
second 78:10 81:16
 90:7 129:22
 167:22 175:8
 178:16,18 179:11
 186:13 187:19
 188:4,11 189:12
 191:4,16 192:1,7
 192:15 193:21
 195:16 197:15
 201:13 202:13
 230:13 231:17
 232:12 233:12
 235:19,21 262:1
 277:4 283:2 376:6
Secondly 17:13
 18:10 41:5,17
 369:6
secret 347:20
 350:14 372:21
secretary 4:14
 13:13 14:5,13
 31:13,15
section 37:1 70:8
 100:14 167:4
 181:20 208:17
 228:3 231:12
 238:15 240:21
 249:17 252:12,13
 264:21 268:18
 283:10,18 285:11
 288:6 293:12
 365:21 370:19
 375:5 382:11
sections 109:1
 135:5 240:20
sector 19:7 23:22
security 18:9 20:6
see 22:8 25:14,14
 34:5 35:2 36:15
 38:2 47:17 50:10
 55:14 59:10 61:3
 71:8,17 73:18
 74:6 78:20 79:9
 80:2 95:4 102:19
 103:13,21 104:8
 109:8 113:9,19
 117:21 135:9
 141:19 152:2,14
 155:16 156:15
 175:18 176:13,13
 177:13 184:1
 193:4,11 204:8
 209:12 212:2
 215:17 220:18
 224:10 228:5
 229:3 237:17
 248:7 249:11
 251:21 252:21
 255:12 263:20
 269:9 279:10
 282:1,13 283:2
 285:10 296:11
 297:17 309:8
 320:5,9 322:12
 329:16 330:19
 341:18 351:12
 359:18 367:3,16
 371:12 372:4
 379:18,20

- seeing** 65:14
 153:22 318:4
seeking 12:7
 376:10
seen 27:16 292:18
segment 39:7
 42:17
segmented 14:2,10
 43:1
segue 13:21
selected 69:14
selling 145:1,2,14
 145:19
semicolon 88:16
 88:20
seminars 6:3
Senate 32:16
send 57:15 72:14
 73:4,17,22 74:16
 74:21,22 75:8
 263:5 334:9
 340:15 387:9
senior 2:22 261:21
sense 24:2 29:15
 36:8 37:15 47:3,4
 48:4 57:9 61:3
 84:14 117:15
 144:3,5 149:12
 177:22 179:13
 209:9 218:15
 241:4 255:21
 288:22 299:4
 307:15 312:9
 375:1,3,13 381:14
 384:17
sent 16:2 316:8
 329:3
Sentelle 16:14
sentence 42:20,21
 43:13 84:11 89:4
 89:16 90:19
 106:22 188:5,12
 188:17,19 191:4,5
 191:16 192:8,8,13
 192:15 193:21
 194:15 195:2,6,10
 195:20 197:12,15
 197:15,16,17,20
 198:1 201:5 202:5
 202:11,14 205:8
 205:14,18 206:2,4
 213:12 214:1,5,17
 217:12,13,18
 219:13,22
sentences 42:17
 43:1,16,18 44:11
 44:12 46:12 47:12
 48:11 89:8 109:1
 188:15 197:7,9,19
sentencing 18:22
 37:20 38:6 40:5,9
 40:12,14,15,17,18
 41:9,21 43:8
 44:16 46:7 47:17
 47:19 48:6,22
 49:5 62:18,20
 64:5 236:19 240:5
 240:7 246:8,14
sentencing's 41:5
separate 88:17,20
 89:3,4 98:5
 108:16,18 109:1
 173:14 181:19
 189:22 190:1
 191:17 217:11,13
 217:18 233:7
separated 191:21
 270:6
separately 108:20
Separating 89:8
September 67:2
sequence 22:21
 23:1
sergeant 355:10
series 170:14
 184:11 272:3,3
serious 32:19
 242:11,15,19
 245:2,12 253:4
 294:21 295:15
 301:1,8 303:8
 311:9,17,19
seriously 245:3
seriousness 47:1,2
 242:4,10
serve 18:8
 20:15
serves 4:8 243:10
service 7:19 16:8,8
 51:16,18 125:17
 161:13 173:4
 323:7 331:17
 339:12 348:5,14
 349:2 370:1,17
 375:18 379:2
Servicemember
 327:12 331:16
services 3:7 13:1
 14:18 15:4,14,15
 16:1,4,10 32:16
 45:6,12 58:10
serving 13:15
 39:16
session 28:7 102:5
set 5:5 8:1 11:9,12
 13:13 14:20 15:3
 15:21 17:9 20:8
 21:10 35:2,7
 38:22 44:7 59:17
 60:13 63:13,15
 64:11,21 67:8
 91:14,18 119:4
 167:16 259:11
 329:7 387:20
sets 245:1 378:14
setting 11:16
 167:20 184:11
seven 39:3 105:6
 109:13 110:2
 228:4
severe 44:12
sex 48:19 49:8,10
 49:19 50:9,11,14
 51:1 52:1,8,15
 53:1 129:6,19
 131:3 132:6,11
 145:15,22 146:2
 150:7,8 151:11
 158:1 159:1 160:8
 160:12 161:7
 162:3,11 179:15
 179:17 213:21,22
 246:1 257:18
 263:15 265:6,11
 268:2 274:20
 276:12 292:15
 303:7 304:7
 317:22 318:1
 322:14 324:17
 326:6,7,16 330:20
 332:12 341:19
 342:4 343:4,17
 344:9,12,22 351:9
 360:7 361:12
 363:21 366:3
 373:7,8 375:16
 382:20
sexting 352:10
sexual 3:2,8,13,16
 11:12 44:3,4,6
 45:7 49:17 50:4,6
 52:14 56:10
 131:21 133:19
 143:4 147:15
 157:8 158:9,11
 167:15 168:7
 169:4 172:12,13
 172:22 173:1,3,3
 174:4,12,15 175:3
 175:4,14 176:13
 176:17 177:9
 183:6 203:10
 208:12 215:19
 222:1 223:17
 224:1 225:5
 229:20 232:11,16
 234:11,15 235:6
 237:7,16,20
 238:10,11,12,19
 240:10,14 245:8
 246:11 249:8,9,15
 252:2,3,5,6,6,7
 253:3,4,8,15,20
 253:22 254:1
 255:11,15,20
 256:9,16,21 257:6
 257:19 258:8
 259:7,8 264:2,3
 264:22 266:4,12
 269:17,19 270:8
 270:21 271:10
 274:4,14 275:1,7

275:20 277:8,14
 278:14 279:4
 281:1 286:4,4
 288:8,9,9,10,10
 288:11,12 289:1
 289:17 292:4,5,8
 295:1 297:2
 299:11 301:4,8,22
 302:4,8,14,17
 303:6,7,12,12,20
 304:2,3,15,21
 305:19 306:11,18
 306:19 307:7,12
 309:8,11,16 310:3
 310:17 311:6,6,8
 311:10,22 312:11
 313:2,5,12 319:5
 324:19 330:8
 348:13 350:1,2
 351:5 352:8
 360:15 361:5
 363:3 364:12
 370:11,14 373:1
 373:14 374:19,22
 376:5,7 379:12
 380:19 381:2
 385:22
sexually 259:5
 304:20
share 53:5 77:9
 324:4
shared 268:5
Sharon 2:22
shed 122:2
sheet 67:12
shift 356:7
ship 50:7
shocked 37:18
short 34:5,7 61:7
 201:9
shortened 358:21
shortly 55:10
shot 180:21
shoulder 304:13
show 51:13,16
 208:18 233:1
showed 51:14
 375:4

shown 60:2
shows 137:1
 208:20 318:19
shred 69:17
shut 30:14
shy 60:4
side 41:12 44:10
 127:14,15 215:2
 215:12 219:1
 276:14
sight 343:12
signature 326:15
significant 32:18
 47:18 61:4 63:21
significantly 23:12
silent 68:2,4
similar 133:8,15
 323:14 375:4
simple 82:4 183:5
 266:10,17,18,21
simpler 96:22
 199:3 365:3
simplified 167:13
 357:22
simplify 167:16
 191:2 249:14
 358:1
simply 6:8 20:22
 53:21 60:21 63:13
 82:11 85:17,22
 89:5 91:10 98:3
 130:3 239:10
 257:5 259:17
 262:21 376:2
Simultaneous
 46:16 58:5 73:15
 75:2 91:15 95:6
 97:13 108:11
 109:16 110:7
 112:8 113:6,16
 115:20 121:6,18
 124:16 125:1
 126:3 128:18
 138:21 141:20
 142:8 143:9 151:8
 151:14 152:18
 158:15 161:20
 167:2 175:15

176:20 178:1,20
 180:4 185:18
 209:7 211:14
 219:16,20 220:11
 220:20 221:10
 227:14 232:9
 236:6 290:3 294:5
 295:22 297:18
 310:12 314:21
 316:2 326:22
 336:2 354:5
 360:13 361:16
 367:4 373:5
 375:12 377:16
 378:12 383:18
single 38:11
sir 110:10
sits 251:20
sitting 76:6 101:12
situation 54:1
 136:10 150:13
 162:22 331:5
 341:14 343:11
 350:7 351:6
situations 8:18
 132:15,17 134:7
 134:10 263:1
 330:16 343:21
 344:3
six 14:22 39:3 44:6
 127:2 229:5
size 120:20
skills 59:18
skip 126:6 213:6
skipping 213:2
Skype 318:3,5
 327:12 331:5
 341:13,17
sleep 162:17
 354:13,19 361:19
sleeping 142:2
 210:1 211:8
slide 8:10 13:22
slight 238:6 249:7
 250:14 254:13
 255:19 263:17
 289:5,7
slightly 27:20

347:12 385:19
small 20:10 114:13
Sneezes 212:6
so-and-so 74:3,4
sobriety 93:4
society 18:15 19:5
 19:14,15 40:15
 50:11 151:21
sodomy 332:14
 342:11,14,21
soldier 354:15
solicitation 327:19
solid 34:8 86:9
solution 70:21
 83:13 94:6
solve 24:22 89:6
 278:22 376:10
solved 251:4
solves 130:14
solving 212:19
somebody 44:5,15
 52:17 86:19 94:10
 101:12 118:4,8,9
 118:16 132:2
 135:15 136:14
 150:3,5 156:22
 164:1 174:17,18
 175:20 176:5
 177:5,10,15
 182:18 226:5
 230:4 240:6
 252:20 265:4
 268:8 293:3
 298:13 300:12
 316:21,22 349:18
 351:6 361:22
 372:22 380:8
somebody's
 127:20 135:20
 156:15
someone's 144:18
 349:1
someplace 183:19
somethingto 94:6
somewhat 30:17
 41:7,8 132:10
 279:12 349:6
song 350:9

- soon** 29:19 117:5
sooner 7:9
sorry 10:13 58:6
 80:7 103:8 115:16
 115:17,17,18,19
 137:13 160:21
 200:3 201:15
 216:20 228:8
 229:10,11 231:2
 247:10 271:21
 280:16 282:17
 285:1 290:15
 291:16 293:10
 294:12 319:14
 321:10 338:12
 343:22 344:10
 355:8 357:15
 368:14 380:22
sort 59:21 61:14
 69:19 110:13
 111:21 126:6
 139:22 147:16
 159:2 169:20
 180:22 193:2
 208:5 228:10
 269:5 299:2
 328:19 329:11,12
 336:12 369:10
sorted 144:17,17
sorts 54:11
sound 343:12
sounds 55:18,22
 140:3 155:12
 276:7 298:19
 386:16
source 99:16
speak 32:4,14
 114:1 130:17
 236:4 290:8
 316:12
speaker 4:18
speakers 68:18
speaking 46:16
 48:22 58:5 73:15
 75:2 91:15 94:18
 95:6 97:13 108:11
 109:16 110:7
 112:8 113:6,16
 115:20 121:6,18
 124:16 125:1
 126:3 128:18
 138:21 141:20
 142:8 143:9 151:8
 151:14 152:18
 158:15 161:20
 167:2 175:15
 176:20 178:1,20
 180:4 232:9 236:6
 290:3 294:5
 295:22 297:18
 310:12 314:21
 316:2 326:22
 336:2 354:5
 360:13 361:16
 367:4 373:5
 375:12 377:16
 378:12 383:18
specialization
 39:10
specific 10:7 11:3
 15:6,7,11,12
 36:21,22 41:13
 45:3,3,20 161:6
 170:8 294:10
 297:11 298:8
 323:5 330:6 331:6
 340:22 342:12
 356:17 365:10
 374:18 376:8
 377:4
specifically 12:13
 62:11 111:9 122:7
 258:21 325:7
 326:18 334:1
 339:22 346:8
 365:19 385:21
specifics 19:21
specifies 52:5
 340:3
speculate 12:19
speech 325:17
spell 125:15
spelled 356:18
spend 126:9 183:22
 337:16
spending 13:4
 115:20 226:2
spiked 226:6
split 88:8,10 236:7
 289:1,12 302:7
spoke 258:21 287:4
 329:15 372:6
spoken 67:22
sponsor 4:8
spring 51:8
stab 244:7,9 245:3
stabbing 243:3
stability 60:7,11
stability-inducing
 60:13
stabilize 24:5
staff 2:13,16,19,21
 18:4 28:8 45:5,16
 72:18 74:9,12,17
 75:8 78:4,7,11
 116:12 358:18
staff's 72:19 73:7
 74:13
staffed 14:17
staffer 32:13
staffs 7:4 32:15
stages 150:19
staggering 163:11
stalking 31:7
stand 66:7 130:22
standard 19:17
 120:8 138:13
 139:13 161:5
 163:6 173:13
 175:11 176:6
 245:2 346:22
 347:7 349:5
standards 19:6
 99:22 173:14
 176:8
start 11:13 23:6
 69:3,9,19 74:9
 79:3,3 80:11
 114:20 140:21
 141:1 234:1,4
 243:5 304:8
 374:14
started 95:11
 118:10 184:2
 217:8 304:17
 349:22 364:22
starting 10:11 69:8
 69:18 71:1 72:3
 102:1 126:13,14
 127:6,8 191:7
 243:16 245:22
 298:16 346:6,11
starts 204:11
 304:12
state 22:12 35:9
 67:18 134:4
 177:16 179:4,6
 225:8 226:5
 229:19 313:22
 314:4
statement 26:12
 90:4 108:1
states 1:1 19:2 39:3
 40:16,17 76:13
stating 259:17
station 326:14
 328:5
status 60:8 210:19
 260:17 261:7
 272:17
statute 30:1 50:20
 51:7 61:12 64:13
 65:4 67:13 68:21
 81:21 82:1,2,11
 82:21,22 85:1,9
 85:14,15,17 86:4
 86:9,19,20 90:11
 91:9,10,17 92:14
 92:16,16,18 93:20
 94:13,16 95:21
 96:10 101:5,13
 102:12 103:6,7,11
 103:14,16,22
 105:12 107:18
 108:5 111:19
 112:1,5,21,22
 115:22 116:9,21
 117:3,13,14 119:7
 122:20,21 124:18
 128:4,5,22 130:2
 130:4 131:6,9
 134:14 135:1,4

- 138:17,19 141:3,7
141:14 142:7
143:3 144:17
146:21 148:8
153:5,18 154:15
155:1,4,9,11
159:12,14,17,18
165:1,11,14,14
167:16 168:19
170:12,17 172:5
173:15 175:9
177:11 180:10
181:2,12 183:10
183:16 184:21
185:1 186:11,17
187:5,6,12 190:6
190:9 192:5,7,19
193:18 199:14
200:18 201:18,20
203:18 208:18
210:17 211:6,8
213:1 215:10
218:12 224:8
225:3 234:18
238:17 241:20
245:19 247:14
249:17 251:8
252:19 256:16
259:18 264:21
266:1,3 284:7
287:13 290:8
300:17 301:5
304:1,9 306:12,16
306:17 309:15
315:9 316:15
329:22 330:14
335:11 336:11
346:20 352:4,5
358:22 359:15
369:5 387:9
statute's 60:18
86:15 208:11
statutes 5:3 158:4
217:3
statutory 96:1,13
115:1 117:19
134:18 136:17,18
139:21 143:19
- 144:1 173:2
183:19,20 184:7
224:19 276:20
stay 87:11 228:2
378:5
staying 65:16 235:5
stays 195:15
197:12 199:11
269:1
step 57:4 75:10,16
81:4,6 112:21
134:3 274:19
stepdaughter
327:11
Stephen 1:18 86:3
188:6 207:19
stepped 56:19
78:15
steps 35:9
Steve 223:7
Steven 307:11
stick 292:2 378:7
stop 200:20,22
278:2,13 279:22
story 162:5
straightforward
82:4 347:18,21
strange 353:19
strategy 104:9
street 1:11 302:22
strength 285:15
stretch 161:15
305:13
strict 302:13
377:14
strictly 48:22
strong 349:22
strongly 129:1
struck 95:11
structurally 92:20
254:8
structure 40:7
47:11,16,18,21
50:17
structured 48:4
49:9 69:22 70:8
struggle 139:18
struggled 54:21
- 56:14
struggling 124:1
151:21
stuck 210:7
studied 318:10
studies 22:10
study 319:3
stuff 68:3 192:21
226:20 228:15
304:18 305:4
306:18 327:6
333:19 336:18
353:9
stupid 252:2
sub 67:17 70:2
256:20 277:12,13
348:2,2
sub-1 169:5
sub-2 169:5
sub-E 382:4
sub-ones 356:16
sub-sub 117:17
sub-subcommittee
98:21 236:18
subcommittee 1:5
1:10 2:19 4:9,11
4:12,13 5:16
13:18 35:3,16
45:1 69:4,10
70:10,13 73:13
74:20,22 78:3,6
79:20 117:16,16
117:17 133:11
140:8 146:19
184:5 286:13
320:12 388:7
subcommittee's
57:16 110:16
184:5
Subcommittees
76:2
subject 33:20
100:15 221:22
277:9 301:19
350:16
subjected 347:9
359:21 360:11,19
380:10 381:20
- 383:14
subjecting 343:2
subjective 284:8
338:6
subjects 341:7
submission 84:17
89:20,22 90:4,5,7
90:22 91:19,20
92:3,3 106:20
107:2,6,8 108:15
108:20 133:2
191:13,15,22
192:1,9,13 193:7
196:3,10 197:2
198:2,9,14 199:8
213:12,16 214:17
214:22 215:5,10
216:10 219:14
submissions 219:2
219:3
submit 28:11
213:19 214:2
220:1
submitted 216:7
submitting 34:10
69:12 192:10
subordinate 308:7
subsection 229:18
230:14 231:10
233:8,13 240:20
243:8 253:9
subsections 125:7
289:2 302:7
subsequently
17:22
substance 6:8,19
47:12,13 64:5,8
76:10 133:15
134:17 222:16
235:2
substantial 176:2
225:16
substantially 130:6
130:12 131:10
166:16,19,20
168:20,21 169:3
173:7,8 175:21
177:17 179:4

222:17 277:13
substantive 62:13
 73:11 75:12 77:8
 135:8 167:11
 169:11,13 209:3
 215:18 261:11
Substantively
 74:10
substitute 281:22
 324:14
substituted 257:13
subsume 33:10
successful 83:13
successfully 83:8
suffering 151:12
sufficiency 116:13
 116:19 139:15
sufficient 139:13
 148:19 154:13
 215:11 296:20,22
 346:21 347:6
 359:19 373:6
 385:5 386:12
sufficiently 145:4
 299:20
suggest 79:9,22
 203:5 205:19
 211:19
suggested 79:17
 80:3,6 82:8
 104:10 114:22
 150:12 153:19
 162:14 194:14
 369:7
suggesting 24:5
 85:19 141:16
 159:21 160:20
 261:9 362:10
suggestion 89:1
 102:22 114:2,19
 117:18 141:12
 154:11 183:22
 202:5 237:5
suggestions 61:12
 153:7 184:6
suggests 55:20
 213:16 250:3
Sullivan 2:15 4:5,6

11:8 12:11 13:12
 50:19 65:8,22
 66:2 122:1 123:2
 123:16 170:19
 287:3 294:9,12,17
 295:5,17 296:1
 297:7,10,21 298:5
 299:22 300:3,20
 308:1,6 312:13
 316:17 317:2,12
 318:2 319:10
 320:1 321:3,9,14
 323:17 325:4,12
 325:21 326:18
 327:7,20 330:18
 331:4,13,20 332:2
 332:6,10,18
 334:15 335:9,17
 335:22 336:3,7
 338:15,19 339:4,7
 339:9,15,18 340:2
 340:5,9 341:9,12
 342:4,9,18 343:6
 343:9,14 344:2
 371:20 388:6
summarize 36:14
 36:16 72:19
summarized
 153:12
summary 8:8 66:21
 67:17,18 68:16
 71:14 76:13 82:18
 153:15 155:17
 156:12 249:21
summer 58:10
 171:9
superb 7:2,5
superior 85:21
 357:2
supplemental
 387:6
support 105:2
 125:13 221:17
 358:13
suppose 144:22
 274:17
supposed 41:14
 44:18 51:18

139:22 143:18
 187:15 291:14
 368:18
Supreme 9:13
 325:5,18
sure 14:10 23:18
 36:13 44:5 58:13
 64:2 66:6,18 73:3
 79:1 81:2 103:1
 104:1 130:6 142:4
 142:5 151:19
 165:13 169:20
 180:7,19 181:6
 187:14 191:20
 192:18 203:4
 208:20 212:21
 221:9 254:3
 279:18 280:15,17
 288:1 290:16,22
 294:14 327:3
 328:12 331:20
 334:5 345:18
 387:17
surely 100:14
surprise 386:21
surprised 58:2
surrounding 189:2
 200:14 201:5
 204:5 206:5,6
surveys 27:1 47:8
swapping 309:21
sweet 120:6 201:10
swept 85:10
sympathetic 217:6
 217:7
sync 30:22
synonymous 177:1
system 5:4 8:12,15
 8:22 9:1,8,9,16,20
 10:12 14:7,11
 15:17 18:7,22
 19:3,9,20 20:3,9
 20:22 21:1,12
 22:6 23:11 37:18
 38:2,14 39:2 40:2
 42:2,7,17 45:15
 45:18 61:7,18,21
Systems 7:3

T

tab 67:8,11 68:6,14
 80:8 95:1 96:15
 96:17 104:9
 113:14 114:20,21
 165:17,19 185:6
 321:13,14
table 71:22 97:5
 103:20 154:9
 184:4 230:8 236:8
 319:20
take 6:13,14 18:12
 24:8 25:13 32:11
 34:21 47:22 49:20
 57:5 69:17 81:6
 92:22 104:13
 112:20 114:1
 120:5,5 122:17
 124:7 125:3
 128:15 129:7
 138:4,17 145:21
 154:4 160:2 190:6
 190:9 213:13
 218:1 222:9,20
 224:15 226:4,16
 231:14 240:7
 249:9 252:18
 255:5 280:6
 281:22 287:18
 291:19 306:4,5,10
 320:12 332:22
 337:14 354:20
 356:15 372:6
 382:13 387:6
taken 26:14 35:9
 61:11 125:16
 150:11 165:11
 166:7 170:14
 198:5 203:6
 340:14 351:18
takes 121:2,4
 127:21 142:19
 153:13
talk 5:21 72:13
 118:1 125:21
 132:16 139:9
 186:3 199:16
 243:14 288:20

302:12 345:19
 351:16 353:5
 362:7 378:1 379:6
talked 22:9 23:18
 42:10 78:1 157:4
 181:8 186:4
 221:17 240:4
 270:2 323:1,8
 328:20 330:6
talking 38:4,11,14
 38:17,21 39:7
 92:3 94:15 96:9
 107:20 123:6
 144:18,19 153:21
 154:14 156:21
 157:4 165:22
 171:19 173:6
 174:7,7 176:16
 180:21 185:5,18
 209:7 211:14
 219:16,20 220:11
 220:20 221:10
 227:14 229:12
 240:11 242:18,21
 243:2 246:6
 247:13 250:18
 256:10 261:10
 267:12 268:7
 270:13 272:22
 277:18 288:7
 291:22 293:3
 299:10 301:17
 302:9 303:16
 305:10 309:17
 314:2 327:6 349:4
 359:10 364:17
 367:15 371:7
 375:14,19 377:7
talks 119:7 122:4,6
 133:12 173:7
 192:19 206:4
 211:15,16 288:15
taped 332:1
target 35:17
task 8:2,8 47:5
tasked 45:1
taskings 45:4
TDY 4:12

tea 55:7
teach 156:12 164:2
team 349:10
technically 58:8
 289:21
teleconference
 76:1 77:11
telephone 76:6
 340:18
tell 5:12 40:10
 42:20 77:19 94:19
 140:11 153:9
 185:21 220:14
 230:4 273:21
 280:2 321:17
 324:15 334:1
 345:17
telling 59:6 351:7
 361:22
tells 33:21 51:11
temperature 98:8
ten 153:11
tend 334:17
tending 350:16
tends 83:17
tentatively 283:13
 283:13
term 61:7 87:3
 96:22 157:6,7
 171:8 186:9 191:8
 195:13 206:18
 207:2 235:15
 253:9,11 369:6
 370:4
terminal 323:6
terminology 194:1
terms 16:3 17:10
 28:20 35:15 39:9
 39:19 45:21 50:17
 52:9 75:4 78:1,22
 89:2 134:3 170:4
 208:11 238:7
 242:18 250:3
 261:9 279:13
 298:18 300:15
 370:13
terrible 354:14
terrific 16:16 155:7

territory 352:14
test 138:5 325:6
 327:22
testicles 290:2
testified 46:14
 284:11 368:21
testifiers 105:2
testify 46:6 120:19
testifying 264:1
testimonies 99:13
testimony 44:16
 70:12 72:21 81:7
 99:8 120:18
 162:15 170:4
 182:3 260:8 264:5
 330:5 350:4
Tether 254:20
Texas 332:19
text 74:2 98:19
textually 81:20
thank 4:17 5:14,15
 7:6 59:5 61:8
 65:11,13,18 66:17
 110:21 114:9
 117:10 221:3
 227:12 294:17
 340:8 388:8
thankfully 106:7
thanks 66:4 117:9
Thanksgiving 28:4
 35:5
theirs 17:8
theoretically
 161:17 292:19
theories 101:8,9
 255:1,4
theory 85:15 182:6
 255:5 259:3,17
 370:8,9
they'd 43:2 150:7
 190:17
thing 42:16 50:16
 54:3 55:10 64:2
 66:18 72:13 83:12
 94:1 96:5 97:17
 98:12 109:19
 142:2 144:14
 146:1 152:12

154:6 156:17
 157:12 165:9
 168:12 188:3
 197:2 199:16
 204:10 206:21
 207:16 209:22
 212:21 226:18
 227:12 232:20
 235:1 237:13
 251:3 253:17
 264:11 269:1
 278:10 284:5
 289:14 295:18
 316:22 317:10
 372:2 378:16
 380:5,13,19 381:9
things 7:15 12:21
 18:14,20 24:5,22
 25:1 27:13 29:12
 30:9,21 33:8
 37:17 48:18 49:9
 49:16,18 52:11
 53:20 60:3,22
 78:13 81:8 90:9
 92:19 93:10,13,18
 94:1 98:10 105:15
 108:18 118:3,13
 118:19 119:4,5
 128:14 134:13,19
 135:5 138:9,10
 141:5 146:7 147:2
 153:8 159:4 160:2
 160:13 161:2
 163:15 165:2
 194:7 212:4 213:7
 214:9,18 219:5
 238:7 262:19
 265:3,7 288:14,17
 290:1 295:2 303:9
 306:6 310:21
 319:5 322:10
 324:10,12,22
 326:16 329:5,13
 329:15 334:21
 335:2 341:22
 347:10 357:9
 369:9,11 386:22
 387:5,18

think 4:19 5:1,12
 10:14 11:6 25:18
 27:8 28:1 29:11
 32:20 37:3,9,21
 39:3,5,11 40:6
 43:7,11,16 44:15
 47:17 48:2 50:16
 50:16 53:8,18
 54:3 57:14,19
 58:20 59:5 60:11
 66:9 69:18 71:15
 74:15 76:13,22
 77:12 78:9 79:3
 80:12 83:10,13
 85:20 86:2 87:7,8
 87:14 88:1,7,13
 92:10 93:16,17,21
 94:6 95:13,18,18
 96:10 98:12 100:4
 100:6,18 101:21
 102:11,13,19
 104:3 105:7,8,14
 106:13,14,16,17
 108:16,22 109:2
 109:11 112:9
 113:7,10 114:5,11
 116:8 119:10
 120:5,8 121:4
 125:12,14 126:7
 127:6,9,21 128:11
 128:20 130:6,8,13
 131:16,18,22
 132:8,11,12,20
 133:9,20 134:5,6
 134:9 136:21
 139:9,18 140:1,2
 140:9,14,18 142:6
 143:14,16 144:1
 144:16,16 145:11
 145:22 146:5,18
 146:21 147:22,22
 148:21 149:3,13
 149:18,20 150:17
 151:5,10,15,18,21
 152:3 153:3,21
 154:2,6,17 155:3
 155:4,5,9,15,15
 157:3,12 158:12

158:17,18,21
 159:6,20 160:3,7
 160:11,19 161:1,3
 161:5 163:1,3,13
 163:14 164:4,6,8
 164:10,11 165:6
 166:14 169:17,22
 171:1,18 172:2
 177:8 178:2,7
 180:5,7,14 181:6
 181:13,17 182:11
 182:12,13,14
 183:7,9 188:1
 190:16 192:22
 193:15,22 195:13
 196:16 198:12,13
 201:3 202:17
 203:8,9,15 204:1
 204:2,12,13,22
 205:3,8 207:7,16
 207:18 208:22
 210:19 213:6
 215:8,9,12,14
 216:13,15 217:21
 218:14,18 221:14
 221:18 222:3,7,8
 222:19,22 223:3,5
 223:6 225:7 226:1
 226:9 227:18
 228:12 229:1
 230:3 234:1
 235:18 236:7,9,21
 237:8 238:16
 239:2,4,15 242:3
 242:9 243:5,20
 244:1 246:6,9,18
 247:7,12 248:10
 253:10 254:2,5
 256:2 257:12,18
 257:22 258:1,9,17
 258:19 259:12
 260:2,13,20 261:1
 261:4,6,8,10,11
 262:1,10 263:5
 264:10 265:22
 266:5,10,19,22
 267:8,15,18
 268:13,13 269:10

269:14 270:7
 272:8,9,12 274:16
 276:19,22 278:12
 278:18 279:16,19
 282:21 284:5,14
 285:21 286:12
 287:15 293:11,13
 295:7 301:14
 302:17 303:10,22
 305:5,10 306:1
 308:9 310:8
 313:14,16 315:12
 320:3 323:8,21
 324:3,4,10 325:21
 326:7,10,13 327:8
 328:16 329:14,21
 331:19 332:18,19
 332:19 333:3,10
 334:4 336:12
 337:19 343:18
 345:1,14 349:8,10
 349:11,13,17
 351:2,3,5,10,21
 352:20 353:4
 354:3 355:17
 356:1,7 357:1
 358:15 359:5,13
 364:22 365:3
 366:20 368:14
 369:4 372:5,15,16
 372:22 373:19,21
 374:20 375:8,11
 375:18,21 376:13
 377:11 379:4,21
 382:3 384:16
 385:3,18 386:5,8
 387:3 388:4
thinking 34:9 71:10
 89:2 93:21 94:19
 96:11 106:10
 119:6 139:3
 143:22 149:4
 158:7 163:10
 164:8 168:8 176:9
 186:16 205:7
 206:16 214:16
 226:15 364:11
thinks 154:22

203:11,17
third 81:16 84:10
 93:11 197:15,16
 197:17 202:11,14
 232:13 290:13
 330:21,21 341:20
 343:2 349:3
 369:13
Thirdly 19:1
this'll 26:19 33:3
thought 25:22
 27:13 29:16 46:4
 52:9 57:10 60:5
 73:20 77:2 80:9
 80:20 91:13 92:1
 92:5 95:9 114:4
 123:5 135:7
 147:16 153:4
 156:8,19 160:22
 180:2 191:16
 195:8 198:7 207:8
 207:10 220:6
 222:4,6 233:8,11
 255:13 263:13
 273:8 283:12
 284:16 288:21
 292:5 300:10
 302:1,16 303:14
 303:15 306:3
 323:10 337:13
 338:16 346:6
 348:11,20 351:17
 353:18 362:13,20
 363:13,20 364:3
 364:10 365:14
 366:12,15 368:9
 379:5
thoughts 61:19
 102:18
threat 88:4,17 91:1
 179:1 192:3
 196:11 197:3
 198:3,10 199:9
 263:2 268:21
 347:19 353:17
 357:10 358:2,10
 361:4 364:8
 365:12,21 367:6

368:11 370:2,4
 372:3,8,9,11
 373:1 375:17,22
 376:9,19 377:7
 383:21 385:6
threaten 369:16
threatening 68:8
 131:16 215:20
 243:8,17 262:14
 265:5 268:12
 270:11 272:14,19
 274:5 279:5
 280:22 281:19
 282:8 284:1
 345:21 346:1,15
 346:18 347:2,3
 356:4 357:20
 359:18 366:20
 371:9 372:20
 373:15,17 376:20
 377:18 378:8
 380:7 381:8,10,13
 385:16
threats 219:6
three 15:15 18:11
 22:17 45:3 69:13
 94:3 102:14
 105:22 113:8
 117:12 136:22
 150:18,21 151:1
 210:9,11 232:11
 240:20 245:20
 281:21 282:6
 289:2,9 329:2,3,8
 335:17,18 339:11
 368:15 370:7
 371:18
threw 226:14
throw 121:14
 141:11
thrown 79:13
throws 361:3
THURSDAY 1:7
tide 365:18
tied 81:20 221:21
ties 143:15
tight 14:19
tightened 351:12

tightly 82:15
time 6:3,3 7:17 8:13
 8:15 10:12 14:19
 14:20 17:3 20:15
 22:4 26:21 27:14
 28:8,20,20,21
 33:13 34:7,21
 56:4 58:15 60:11
 68:12 72:12 95:20
 112:7 126:4,9
 132:11 184:8
 221:15 224:9
 276:22 286:20,21
 294:13 330:9
 332:22 337:16
 344:8 351:17
 353:9 365:18
 370:1 379:22
 380:3 381:1
times 23:13 53:9,13
 281:21 316:7
timing 28:1 35:16
 35:22 221:14
tinker 85:9
tinkering 133:4
Title 62:5 115:9
 117:3 119:22
 120:1,4,13 121:17
 123:6 124:20,21
 125:2 126:11,12
 140:6 176:10
today 4:10 8:19
 10:8 69:21 74:5
 77:13 98:15 99:15
 102:22 103:13
 108:8 109:5
 149:15 169:19
 297:7,10 300:1
today's 20:9,10,22
 114:20
toes 303:5
told 16:11 70:15
 111:12 140:14
tolerance 125:22
tongue 296:9,21
tonight 213:21
toothbrush 300:10
 301:6

top 148:9 171:2,4
 171:11 185:17
 256:3 279:1
 353:18
topic 7:19 116:7
total 376:2
totality 118:2
 123:19 125:16
 127:22 138:6,7
 141:4,9 144:11
 153:8 156:6 160:1
 160:6 165:3,6,9
 200:10 204:4
 205:10
totally 118:8 129:14
 150:11 152:3
 155:7 250:4 322:3
 327:4
touch 65:16 264:2
 302:19 303:5
 304:2 305:4
touched 174:21
 264:1 302:10
 304:18
touches 326:6
touching 238:9,18
 238:22 249:7
 250:14 251:20
 253:20 254:13,18
 255:19 256:11
 257:20 258:5
 263:17,20 267:2
 302:10,18,21
 306:16 308:2
tough 47:5
towel 121:14
track 51:18
tracks 340:21
traditional 49:4
 52:20 88:1 347:22
traditionally 316:11
trafficking 51:7
train 326:14 328:4
trained 20:11
trainee 366:3
training 30:14,16
 60:21 358:18,20
 364:2

transcript 130:19
transcripts 66:22
transition 11:16
transmitted 32:8
treated 49:15 65:6
treatment 167:12
tremendous 62:6
tremendously
 183:7
trial 15:19,20 19:19
 19:21 20:2 41:5
 41:10 139:12
 147:18 156:2
 248:18
trials 19:1,10
tried 67:18 71:9
 78:17 93:10
 118:10 149:22
 164:2 182:8 186:2
 186:6 346:11
 356:8 369:10
 375:8
tries 75:7 188:12
 266:3
trigger 48:18 49:18
 50:11 52:15
triple 56:21 368:10
trouble 23:20 84:13
 247:11 305:4
 344:5
troubled 127:9
 333:1
troubling 186:5
true 37:15 39:11
 76:20 101:15
 261:18 266:7
 350:15 376:1
truly 387:3
try 6:7 23:4,7 67:4
 69:3 77:3 78:8
 82:3 83:7,8 85:10
 103:12 135:9
 146:6 149:10,14
 159:18 184:16,20
 186:16 187:4
 191:1 213:7 219:9
 245:18 246:7
 274:16 326:16

346:16 365:21
trying 31:6 55:7
 72:19 74:8,11
 81:14 90:14 91:16
 92:7 94:21 96:7
 97:4 98:9 136:7,8
 136:10,14 137:20
 138:16 145:22
 146:7,18 148:1
 149:21 150:11
 163:3 164:5 196:5
 204:3 205:7
 208:16 212:22
 213:3 218:4 245:1
 254:3 262:8 274:2
 276:9 293:10
 296:7 313:16
 322:11 328:14
 346:19 354:1
 361:11
tuned 159:5
Turkey 331:18
turn 75:9 103:10
 237:6,15 288:6
turns 27:19 108:14
 168:17
tweak 119:4 125:18
twice 54:4 369:10
twist 83:7
twisted 348:19
two 6:12 17:2 36:9
 50:1,5 53:20 56:7
 69:13 71:22 76:20
 84:1 89:3,3,8 90:9
 91:14,19 105:6,15
 108:16,18 109:1,9
 109:11 110:15,18
 117:8 123:20
 125:7 127:11
 128:14 134:13,16
 134:19 135:12
 140:6 146:7 147:1
 150:20 153:13
 165:1 171:11
 173:14 188:15
 190:1,1 191:21
 197:7,8,19 230:8
 232:16 233:10

235:11 237:1
 239:6,9 255:1,4
 256:13 258:1
 261:12 284:12
 289:22 301:20
 302:7 305:15
 307:21 330:19
 335:8 341:19
 353:18,20 357:10
 359:14 368:14
 371:1 374:16,21
 386:22 387:5,8
two-part 333:13
tying 48:12
type 41:16 153:5
typed 212:19,20
types 31:7 62:22
 266:4
typically 54:7
 120:17 335:3,6
typing 300:12

U

U.S. 2:16,18,20
 17:15 23:21 40:4
 51:15
U.S.C. 117:14
UCMJ 6:22 10:4
 14:12,21 17:12
 21:9 22:16 25:11
 25:15 26:16 36:16
 38:6 46:20 124:19
 248:1 317:7 319:9
 324:13 333:7
 342:14 363:1
 385:9
ultimate 171:22
ultimately 12:1
 91:21 363:13
 366:5
umbrella 148:22
un-understandable
 104:1
unable 130:12
 133:16 143:11,18
 143:19 162:21
 167:21 168:1
unclear 205:4

378:11
uncomfortable
 233:9 353:10
unconscious
 129:12,14 130:1
 142:2,10 210:1
 211:9
unconsciousness
 130:3 162:17
 169:6
unconsensual
 373:8
unconsented 257:6
unconsented-to
 259:7,7,18,19
unconsidered
 330:8
unconstitutionally
 324:21
underlying 41:2
 65:2
undermines 40:1
underneath 185:20
 185:21
understand 88:5
 96:22 98:14,20
 120:17 121:15
 129:4,6 131:2
 143:12 150:19
 157:7,11,16 161:7
 161:8 164:1
 174:20 175:16
 195:11 199:4
 207:1 218:3 235:9
 250:4 269:18,21
 270:1 274:1
 289:18 296:7
 300:4 319:16
 328:4 333:21
 343:8 361:9
understandable
 29:11 204:1
understanding
 28:18 31:2,2 37:4
 53:15 54:17
 129:18 157:22
 159:9 162:8
 168:16 184:12

241:11 300:16
 319:7
understands
 156:22 262:16
understate 46:22
 47:3
understood 53:8
 64:2 85:1 162:3
 162:10 164:15
undertake 14:5
 47:6
undertaking 5:2
undoubtedly 16:9
 102:13
unfairly 43:15
unfavorable 355:1
unfortunately
 227:1
uniformity 17:18
uninitiated 259:2
unintended 34:3
 132:13
unique 18:13,18,18
 52:16 166:1
unitary 42:19
United 1:1 19:2
universe 258:10
unlawful 19:12
unleashed 16:1
unobjectionable
 81:11 126:14
unpleasant 138:9
unpredictability
 44:13
unravel 59:7
unresolved 68:17
 68:18 228:5,9
 283:10
unsure 179:17
unsurprisingly
 131:15
unusual 39:2 60:17
 156:2
unwanted 373:8
unwelcome 308:2
unwieldy 256:5
unwillingness
 127:21 128:6

129:10 133:19
148:5 169:15
unwitting 318:4
update 5:16
updated 66:21
upheld 83:14
325:18
upping 335:20
upstairs 77:5
use 22:16 42:8
45:18 84:17,21
85:14 88:17 90:7
91:1 106:11 157:1
170:6 190:4,5,8
196:10 197:3
198:2,9 199:8
209:15 253:10
257:5 259:3
260:10 267:6
285:14,15 290:5
290:10,10 309:13
326:16 348:3,22
349:1 356:12,19
369:14 374:13
375:21 385:13
useful 21:16 22:19
27:14 37:3 56:12
72:7 103:3 205:8
uses 173:8 253:9
352:4
usually 38:17
124:14,15

V

vagina 157:8
295:14 296:10,13
vague 324:21
354:10
vagueness 325:6
325:16 326:4
valid 144:5 145:5
148:20
validly 144:21
value 380:4
values 9:19
vanishing 129:21
vanishingly 129:20
variables 371:2

variants 96:12
variation 54:9
variety 20:5 21:12
22:9 163:2 350:10
various 19:15
20:21 34:4 42:12
68:18 94:8 155:20
261:15 288:16
346:9
vast 33:3 181:21
verbal 84:5,16,22
88:2,11 89:14,16
89:18 104:11
107:1 108:13,21
186:13 187:2,10
188:8,9 189:6
190:19,21 191:5
195:2,20 196:17
196:18 197:20,21
202:5,18 203:20
204:15 207:6
262:21
verbalization
144:12
verbalizing 163:12
verbatim 193:17
346:10 352:6
verbiage 87:10
version 11:19 67:6
67:13 69:12
165:13 212:20
243:16 247:17,18
248:19,19 316:16
316:17,19 317:16
337:19 356:9
357:17,18 362:22
363:1 364:21
367:16,17,18
368:16,20 376:16
380:17
versus 98:4 116:16
174:12 175:13
225:20,21 325:4
325:17,20,22
332:19 333:11
vetoed 10:8
vexed 82:14
victim 39:22 79:22

123:12 124:3
138:3 140:15
147:4 148:3
161:21 163:10
172:1 178:6 259:4
260:11 284:8
315:8 347:8
359:21 360:10,18
365:9 380:9
381:19 383:11,11
victim's 38:1 148:2
victims 3:13,15
37:14
video 332:1
videotape 342:10
Vietnam 8:13 9:12
20:18
view 11:3 27:16
38:2 61:2,5 77:9
92:15 121:16,17
145:3 180:6
226:11 243:1
261:19 326:9
341:20
viewed 33:5 67:1
viewing 318:7,9
322:7
views 7:15 58:21
74:16 247:4
vigorous 23:17
violated 177:10
violation 50:6
325:15
Virginia 1:12
virtually 341:6
342:8 343:13
virtue 192:11
vital 7:18 60:7
voice 78:10 102:19
void 325:5,16 326:3
voluntarily 147:5
voluntary 90:14
99:6 106:11
volunteer 39:5
69:14 85:16
vote 88:8 134:1
Voted 283:17
votes 36:9

vulgar 324:20
vulnerable 128:9
vulva 289:5 291:4,5
292:10 293:4
294:3,15,22
296:13,15,21
309:20,21 310:4
311:21

W

W 2:16
wait 25:4 43:6 87:2
109:14 113:8
213:5 228:14
287:2
waiting 221:11
walk 59:7 130:22
143:12 344:21
walked 221:13
walking 143:13
305:16
want 6:1,6,18,20
10:21 26:1 30:16
37:7,20 44:15
58:21 73:3 74:7
74:13 78:10 80:13
81:2 86:8 92:15
96:4 102:1,2
103:13 116:6,11
121:9,13 125:21
126:5 127:7
129:13 130:5
153:9,13 154:5
156:20 164:20
173:12 179:15,17
182:22 184:16
194:1 198:13
209:4 212:21
216:8,15 218:8
224:10 226:10
229:4 235:2 237:2
237:3,7 239:6,8,9
239:12,12,17
245:17,18 246:7
252:18 254:17
263:10,12,19
264:2 266:11
271:7 276:4,15

287:17 302:15	96:6 97:3 100:7	29:18 30:7 31:6	323:22 324:1
303:13 304:18	101:14 102:16	33:18 34:15 35:13	337:20 345:3,14
312:14 320:18	103:16 106:1	36:9 38:4,10 39:7	348:21 349:4
330:4 333:10,21	108:17 111:4	39:12 51:10 54:13	359:10 361:10
335:21 340:12	114:11 140:12	54:19 55:7 56:2,2	362:6,10 365:19
344:11,12 356:2	141:17 145:15	57:4 59:9,13,16	365:20 366:5
359:12 363:9	146:5 150:15	63:20 66:6,19	367:15,18 371:7
374:10 375:16	153:5,22 156:19	72:11,15 74:8,15	375:14 376:10
376:4	157:13,13 162:20	77:12,17 80:10	377:6 380:6 381:6
wanted 34:4 37:22	168:2,9 170:9	82:21,22 83:9	381:11 386:16
92:21 93:19 99:9	172:17 176:13	85:13 86:8 91:9	387:20
103:19 107:13	178:17 180:1	92:2,13 94:15	we've 17:14 33:8
118:18 153:16,18	184:19 194:20	95:15 96:9 104:6	34:21 35:9 45:12
157:21 173:4	196:15,16 198:21	107:22 108:3,9	47:14 48:16 61:11
192:6 221:8	207:19 215:9,17	109:4 120:3	63:10,21 71:7
225:11 227:15	224:6,7 225:3	124:10 125:5,6	72:22 73:5 77:14
234:1 281:8	226:12 241:10	132:12 133:3	78:1 99:4 103:12
295:10 349:9	246:10 267:21,21	136:8,10,13 141:6	113:7 118:22
364:20 365:6	270:5 273:10	145:22,22 147:3	119:9 133:9
379:6	276:15 278:19,22	149:4,13 151:18	145:12 153:21
wanting 330:22	288:15 289:16	152:19 158:2	164:20 175:19
wants 36:8 78:6	290:4,5 292:2	160:17 164:5	176:7 180:16
86:19 247:5	295:16 301:2	171:7 173:6 176:1	198:4 210:19
War 9:7,8	304:9 306:2,13,14	176:9,15,16	213:6 218:17
washcloth 313:21	306:21 307:7,13	177:19 179:5	219:1,3 236:7
washing 313:20	307:14 309:6,11	180:2 181:18	257:13 260:14
wasn't 53:22 57:5	309:11,14 318:13	196:4,6 199:1	265:2 276:14
76:6 80:19 94:21	324:15 328:1	200:16 201:3,14	282:21 285:18
98:20,21 101:2	341:2 348:20	208:7,16,16	286:12 295:20
138:4 150:14	353:4 354:17	209:12,18,19	311:1 323:14
154:9 168:19	355:20 361:14	210:7 212:18,22	328:7,20 333:16
175:10 233:18	369:4 377:2 382:6	213:1,3,7 219:22	340:14 356:8
235:16 270:4	ways 21:16 40:18	223:7 224:22	365:16 366:17
287:13 318:8,9	91:20 117:12	228:1 230:22	370:12 375:8
322:20 327:10	129:16 184:6	231:6,9,11,12	385:19 386:17
349:12,15 351:19	235:11 305:19	233:4 235:5	387:1,3
380:8	345:13 353:13	242:20 243:2	weapon 285:15
watch 232:22	376:22	247:13 250:18	website 52:2
watched 30:19,20	wayside 268:19	254:2,9,10 264:12	weeks 69:2
223:14	we'll 8:9 43:6 45:9	264:19 269:1,2,14	weigh 326:11
way 12:3 24:9 25:5	46:1 53:17 72:6	269:22 270:10,19	weight 33:12
26:1 27:7,9,10,20	73:10,12 77:18	272:22 280:18	120:20 156:5
30:6 41:3,9 48:2,3	109:8 152:20	285:5,22 288:6	224:18
48:5,12 51:19	287:18 300:13	290:11 291:21,22	well-informed
59:15 64:13 65:9	345:19	292:6 293:3,19	324:12
69:21 71:17 72:16	we're 4:16,17 5:11	299:5,8,10 305:9	well-versed 261:20
74:19 81:15 82:3	5:21 6:18 8:9	309:17 310:16	went 53:12 65:20
85:1,19 87:5 89:9	10:14 21:15 22:7	314:2,19 321:15	67:6,13,16,19

68:1,3 81:17
 98:21 119:15
 123:12,12,17,18
 138:8 142:10
 150:13 153:1,9
 155:19 156:19
 157:12 166:11
 168:13 184:15,18
 224:5 268:4,5
 284:6 288:3,19
 304:19 345:11
 363:12 367:16
 375:20 388:9
weren't 22:1,13,14
 27:3 46:10,13
 47:8 73:20 153:21
 154:10,12,14
 161:5 164:15
 220:13 221:15
 349:10,18 364:17
whatsoever 380:4
whichever 212:12
white 12:2 31:13
 32:5 126:8 183:1
whittle 256:13
who've 329:9
wholesale 41:20
 102:12
wide 20:5 278:8
wider 160:10
wife 151:13
win 215:2 260:16
 260:16
Wine-Banks 1:19
 73:22 97:12 99:11
 110:11 125:2,10
 161:1,16 162:7
 163:13 165:20
 188:14 189:18
 190:14,18 205:15
 207:18 209:14
 210:6,10,12,21
 211:7,13,17,22
 222:6,18,22 249:6
 249:13 250:9
 253:1,14,18 263:8
 263:18,21 270:2
 275:16,22 276:6

281:16 290:19
 291:5 297:4,8,14
 297:22 298:22
 299:7,9,13,18,21
 300:2,6,9 301:19
 302:21 303:3
 307:4 308:9 309:1
 310:10 314:15,22
 321:20 322:1
 333:2 337:6,9,12
 338:3 344:14
 349:13,17,20
 354:3,6,10 356:22
 357:7,12 361:14
 361:17 362:3
 366:16,19 372:17
 373:6 374:10
 378:10,15 379:12
 379:16 380:15,22
 381:6,9,15 382:15
 383:4,10,14,21
 384:5,13
wipe 313:19
wisdom 283:14
witness 46:5
witnesses 2:9
 123:20 249:19
woman 151:12
 268:2 295:13
 298:4,4,6
woman's 295:14
women 7:20
wonder 205:11
 355:4
wondering 259:22
 264:10 333:9
Woodward 1:20
 29:14 43:11,22
 44:4,20 73:16
 86:5,12 88:15
 94:12 97:8 101:19
 105:1,5 111:18,21
 121:7 124:5
 136:12,17 142:1
 145:7 147:1
 161:14 167:5,10
 168:2 173:17
 174:3,9 175:12

176:11,21 178:14
 182:12,21 187:17
 188:1,7 190:19
 191:12 193:6,11
 193:14 198:6
 216:18,21 217:22
 221:21 222:14
 223:3 226:8
 227:10 233:15
 243:4 252:1,10
 255:14,18 257:1
 264:6,15 265:9,19
 270:20 271:2
 273:15,18 274:22
 275:3,8 276:4,13
 277:2 278:21
 279:3,8 281:13
 284:4 285:16
 303:11 304:11
 305:1 310:13
 336:21 348:15
 353:1,8,12,16
 355:14,19 356:14
 357:4,8 362:20
 363:6,8,15 364:1
 364:7 365:11,22
 366:10 367:2,5,8
 367:11 372:15,19
 373:4,11,17
 377:22 378:5,16
 380:5 381:5,8,12
 381:17 382:8
 383:7,13,16
 384:16,21 385:4,7
word 84:15 99:5
 106:11 128:12,15
 129:10 131:4
 148:11,12 149:7
 157:1 173:8 188:4
 194:10 199:10
 206:9 208:11,20
 208:20 209:15,19
 210:2 213:3,3
 224:8,20 226:11
 235:16 254:7
 269:12 270:3
 273:13 275:15
 290:6,11 296:13

309:13,15 310:7
worded 273:10
 359:3
wording 73:7
 150:12 218:2
words 15:7 24:20
 24:21 25:4 42:18
 53:20,21 54:5,14
 54:17 55:3 57:10
 57:12 71:20 127:3
 150:17 151:18
 168:5 187:13
 188:21,22 189:16
 194:18 195:17
 205:13,20 206:9
 206:12,19 207:5
 208:18 229:5
 237:19 248:11
 249:1,10 251:2,6
 258:7 290:9,10
 291:21 309:9
 322:2 365:6
work 4:16 5:16
 12:21 16:11 17:1
 17:10 21:1 27:15
 28:18 30:4,19,20
 35:11 37:10,11
 39:4 42:6 57:20
 65:14 78:4 79:15
 85:10 94:22 117:6
 154:15 181:3,7,10
 181:12 218:22
 227:21 267:18
 270:19 273:16
 274:12 356:21
 387:16
worked 21:19
 74:20 76:4 185:14
 185:15 286:20
working 6:11 7:15
 10:21 14:11 26:10
 26:13 35:3 38:2
 45:5,12,15 58:15
 58:21 79:11,12,14
 79:14 149:12
 153:7 212:16
 229:14 278:3
 286:19

works 30:6 78:7
279:9
world 9:7,8 108:22
159:5
worried 147:3
181:17 182:15
worries 127:18
worry 22:22 39:21
44:11,13 211:22
219:4 249:2 267:7
worse 234:6
worth 29:17 92:10
92:10 93:21 154:2
239:3
worthwhile 32:20
33:5
wouldn't 29:20
35:7 38:12 51:14
81:3 88:18,20
154:13 161:11
234:20 240:15
241:2,16,19 273:3
293:9 298:7
299:22 327:14
337:12 343:11,14
343:15,16,17
376:11
wound 244:7,10
245:3
wrap 29:18 93:1
wrapped 118:22
wrapping 247:16
wrinkle 195:20
309:8
write 145:2 151:18
184:2 298:14
356:15
write-up 111:19
writing 256:4
270:19
written 64:14 69:9
69:12 85:1 146:6
164:12 168:9
265:3 288:15
304:4,9 309:11,12
328:1
Wroblewski 16:22
40:3

wrong 25:20 71:10
225:18 271:5
wrongful 284:4
330:2 345:22
346:1,15 347:9
354:7 355:7,12,17
356:3,6 359:21
360:11,12 361:9
361:17,20 369:3
378:10 380:10,15
381:20 382:15
383:5,15
wrote 97:9
WS 299:18

X

X 213:13

Y

Y 213:13
yeah 84:9 87:1
89:12,13 91:21
94:20 95:3,3
96:18 97:14 103:1
104:22 105:6
109:17 110:5
113:21 115:10
120:12 128:19
132:6 136:12
142:1 143:21
144:9 145:10,17
147:14 149:6,6
151:1 155:15
158:17 159:22
168:2 169:12,17
172:7 173:5 174:3
176:15 178:11,13
180:11
year 7:11 14:20
27:6 28:3 32:19
45:5,9 51:6 60:20
144:6 150:6 320:7
326:3 335:8 340:7
year's 11:8,18
years 6:12 9:22
30:11 38:8,9,15
38:15,16 45:8
150:1 250:13

318:22 325:1,19
326:2 335:9,10,12
yellow 68:22
yesterday 45:11,15
York 150:1 306:16
323:11,12
young 326:19

Z

Z 213:13
Zahn 2:22 349:19
zero-based 22:2

0

0.4 125:19

1

1 66:21 67:22 70:1
79:3,4,9 80:8,8,10
82:6 85:7 96:15
96:17 98:15 104:9
107:22 108:1
113:15 114:20,21
185:5,6 231:16
237:6 243:8
248:15,16,20
253:16 254:16
255:7 256:15
262:6,14 266:9
268:16 270:18
273:14 281:10
282:3 285:17,18
288:7 307:17
321:13,14 356:16
357:5 370:10
376:14,14
1:14 153:2
1:30 117:8
10 315:4,6,14
318:17 320:10
321:9,11 378:14
10:28 65:20
100 83:15
100,000 325:1
11 79:11 315:17,18
318:17 346:13
368:7
11:00 65:21

11th 76:1
12 45:8 148:9 166:3
252:22 346:13,14
367:14 368:1,2,8
386:11
12:22 153:1
120 24:7 25:1 26:8
31:6 33:14 37:21
38:5 40:7 45:2
48:1,3,8,17 55:13
55:16,19,20 56:4
56:10 86:8 97:17
101:3 123:2,3
133:10 240:19
308:8 316:4 317:9
317:10 321:18,21
322:4,21 323:2
329:6,8 333:11,16
336:12,14,16
346:5 363:10,19
365:17 366:4,6
385:14,15
120(b) 364:5,11
365:10,20 366:15
375:20 376:12
120(b)(1)(A) 366:20
120(b)(1)(b) 76:17
76:19 229:16
120(b)(1)(E) 378:22
120(c) 317:8,10
322:5,7 327:5
120(g)(5) 285:12
120(g)(7) 68:7
283:20
125 332:11,13
342:12
128 308:4
13 45:8 148:6,9
171:4,12 345:8,13
362:16 363:1
385:2,8 386:10
130 95:13 321:21
321:22
134 48:18 50:3
316:11 322:4
323:5,5 325:6,15
330:2 333:8,11,16
333:17 336:7,9,11

336:21 337:4,7 338:14 339:2,6,10 339:22 342:17 387:2 14 45:8 122:4 345:8 345:13 362:16 385:2,15 386:10 146 26:16 15 6:14 38:16 76:16 256:3 264:13 345:8,13 362:17 385:2,20 386:10 15-year 327:11 150 1:11 153 3:13 16 144:6 357:14,18 17 66:6 70:1 18 12:6 62:5 115:9 117:4,14 119:22 120:1,4,13 121:17 123:6 124:20,21 125:2 126:11,12 140:7 176:10 18-22 335:2 1950 21:10 1998 352:5 1B 309:19	364:21 367:14,17 368:5,15,20 370:8 371:16,17 372:4 373:3 376:16 2012 67:6,13 100:2 159:8 165:14 172:5,12 175:10 247:18 248:19 316:16 329:6 357:18 358:21 362:22 363:1 367:18,18 371:13 371:14 2014 14:20 2015 1:7 70:11 99:20 122:4 2016 99:20 100:2 2018 100:2 22 1:7 24 88:8,8 247 3:16 26 367:15 27 165:17 169:2 28 30:10	5 71:7 76:12 173:5 174:18 176:8 179:14 269:10,10 280:13 50 25:11 26:4,5,6 60:1 63:12 348:12 50-50 88:10
<hr/> 2 <hr/>	<hr/> 3 <hr/>	<hr/> 6 <hr/>
2 67:8,11 165:18,19 236:16,17 261:18 288:7 301:20,20 356:16 357:5 372:19 386:2 2,000 45:13 2:30 278:3 20 6:14 13:14 38:15 250:13 2007 100:2 116:9 117:3,12 165:14 168:4 247:9,17 248:19 252:22 316:15 317:16 329:4,5 346:5,7,9 346:10 350:20 351:18 352:13 356:8 357:17 359:15 360:18	3 68:6 79:14 95:1,2 97:2 142:16 143:3 143:4 170:17 182:9 348:2,2,2 355:1 368:11 374:12 3:04 288:3 3:22 288:4 30 38:8,9,15 44:7 51:17 325:19	6 280:13 282:20,20 282:22 285:2 345:2,3,8,12,17 386:16,17 66 3:8
	<hr/> 4 <hr/>	<hr/> 7 <hr/>
	4 3:2 70:7 237:18 256:20 268:19 277:12,13,18 4:44 233:3 4:45 180:9 4:49 388:10 40 69:6 41 326:1	7 283:9,11 284:6,19 352:19 70 160:14 74 325:22,22
	<hr/> 5 <hr/>	<hr/> 8 <hr/>
		8 84:4,8 105:4 284:22 285:8 8(a) 90:19 80 145:1 875 1:11 8A 199:14
		<hr/> 9 <hr/>
		9 286:3,15,16 287:22 315:3,4 9(a) 140:7,21 9:17 1:12 4:2 90 11:20 61:5 70:21 92 48:18 50:6 363:6 363:7,10,12,13 366:7 95 140:13 334:22

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Subcommittee Meeting

Before: DOD Judicial Proceedings Panel

Date: 10-22-15

Place: Arlington, Virginia

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701