

## UNITED STATES DEPARTMENT OF DEFENSE

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## JUDICIAL PROCEEDINGS PANEL

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## SUBCOMMITTEE MEETING

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THURSDAY  
NOVEMBER 19, 2015

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The Subcommittee met via  
teleconference, at 9:06 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  
BGen(R) James Schwenk  
Jill Wine-Banks  
Maj Gen(R) Margaret Woodward

## STAFF:

Lieutenant Colonel Kyle W. Green, U.S. Air  
Force - Staff Director  
Lieutenant Colonel Glen Hines, U.S. Marine  
Corps - JPP Subcommittee Staff Attorney  
Maria Fried - Designated Federal Official

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Barbara Jones, Moderator

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

2 (9:06 a.m.)

3 MS. FRIED: Good morning, panel  
4 members. How are you?

5 CHAIR JONES: Good morning.

6 MS. FRIED: I just wanted to remind  
7 everyone, if you can, when you are speaking to  
8 please identify yourself for the court reporter.  
9 And I believe we know who is all participating  
10 because we did a roll call earlier and the court  
11 reporter has captured that. So, with that, we  
12 can go ahead and begin the meeting, Judge Jones.  
13 Thank you.

14 CHAIR JONES: Okay, thank you, Maria.

15 First, I want to begin by thanking  
16 Glen and Kyle and the whole staff. Terrific job,  
17 as usual, trying to capture us and organize us.  
18 So, again, well done. Thank you very much.

19 I think the order we should go in this  
20 morning is to begin by discussing the two open  
21 issues. There may be more, but at the moment we  
22 are focusing on Issue Number 3, which Lisa Friel,

1 took upon herself and, thankfully, has submitted  
2 something for our review this morning with  
3 respect to the incapable of consent. And also  
4 then I think we could move to Issue, I think it  
5 is 11, with the question of what to do about  
6 indecent acts.

7 So, if we have time after that, and we  
8 may, then I would talk a little bit about how I  
9 would like to present our report through the full  
10 JPP panel in December, and then have other topics  
11 as well.

12 But Lisa, are you with us right now?

13 MS. FRIEL: Yes.

14 CHAIR JONES: Great. Could you kick  
15 this off? And does everybody have Lisa's redraft  
16 of the definition of incapable of consent in  
17 front of them?

18 MS. FRIEL: Yes.

19 CHAIR JONES: Great. Could you just  
20 run through that for us again?

21 MS. FRIEL: Sure. So, this is Lisa.  
22 What I did is go back and look at the issues that

1 we had with just using the Title 18 definition  
2 and that people felt it was too restrictive.

3 And the other issue that had been  
4 brought up even before we talked about Title 18  
5 is the overall problem with not having a  
6 definition of incapable of consent. The  
7 practitioners were tell us it seemed to leave  
8 the jury, or your panel members, as you call  
9 them, feeling like somebody has to be wholly  
10 incapable of appraising what was going on before  
11 they ever found anybody incapable of consent.

12 And as we pointed out, the minute someone  
13 acknowledge on the stand that they understood  
14 that this was sex that was about to occur, they  
15 felt they were losing cases and they wanted a  
16 standard that didn't require wholly incapable of  
17 appraising what was going on.

18 So, I took those points into account.  
19 I also read the Pease case that Kelly was nice  
20 enough to bring back up to us at the last  
21 meeting. And I started with the Title 18  
22 language and then I changed it a little because I

1 changed it from saying incapable of appraising,  
2 which is what Title 18 says and could leave one  
3 thinking you have to be wholly incapable of  
4 appraising. I used some language from the Pease  
5 case and that is the language of not having the  
6 cognitive ability to appreciate the nature of the  
7 conduct and then I also added that it should be -  
8 - I added the mental and physical ability to make  
9 and communicate a decision.

10 So, now there are three things you  
11 could look at. Does somebody have the cognitive  
12 ability to appreciate the nature of the conduct?  
13 Do they have the ability to make a decision about  
14 engaging in that conduct? And do they have the  
15 ability to communicate that decision?

16 And that is how I drafted the  
17 suggested changes to the statute. And then if  
18 you look at the rest of it, I also added a part  
19 that we had all agreed that we liked before that  
20 should go into the explanation of it in the bench  
21 book that says that people should use the  
22 totality of the circumstances when assessing if

1 somebody is incapable of consent. And I just  
2 tweaked a few words but it is basically all the  
3 same bullet points that we looked at and agreed  
4 on at the last meeting.

5 CHAIR JONES: Great. I took a look  
6 through this and also took a look at the minutes.  
7 I like this a great deal.

8 Are there any comments or concerns  
9 that anyone has about, one, either suggesting  
10 that we put a definition in or two, the way Lisa  
11 has now rewritten this for us?

12 DEAN ANDERSON: Lisa, this is Michelle  
13 and I just wanted to clarify. Is there a  
14 difference in the first part of the definition  
15 between cognitive ability and mental ability?

16 MS. FRIEL: I guess it is probably  
17 using two different words for the same thing. I  
18 think the reason I used the cognitive ability  
19 language at the beginning is it comes right from  
20 the Pease case and so there is already some case  
21 authority for that is what we should be looking  
22 at. And I think the only reason I used the word

1 mental at the end was just making it consistent  
2 with physical and mental. We could say cognitive  
3 and physical, if that makes people more  
4 comfortable but there wasn't any real reason,  
5 other than that, that I used two different words.

6 DEAN ANDERSON: Yes, I was just trying  
7 to clarify that. The fact that they are two  
8 different words might lead someone to believe  
9 that you meant something different but I  
10 understood that you meant the same thing. So, I  
11 might make them the same word and I am agnostic  
12 on the question of cognitive or mental. I think  
13 they mean the same thing. I just wouldn't want  
14 to suggest to readers of the statute that there  
15 was a difference between cognitive ability and  
16 mental ability.

17 MS. KEPROS: This is Laurie --

18 MAJ GEN WOODWARD: If I could jump in  
19 real quick. Sorry.

20 As someone who would sit on the panel  
21 as a jury member with the limited knowledge, I  
22 really like using cognitive ability better than

1 mental ability because I can just see it jumping  
2 into their minds that if you say mental ability,  
3 then they start thinking if someone has more of a  
4 developmental problem than cognitive, in my mind,  
5 calls -- is more descriptive in what we are  
6 trying to convey that someone just really can't  
7 think through the problem, rather than they might  
8 have a lower mental state, I guess. So, I prefer  
9 cognitive.

10 DEAN ANDERSON: Yes, this is Michelle.  
11 I agree with that. I have a slight preference to  
12 cognitive, now that you have articulated that.

13 The other question I have is -- there  
14 is an echo on my phone. Is there an echo on  
15 other people's phones?

16 CHAIR JONES: No, I don't have one.

17 DEAN ANDERSON: Okay. My apologies.

18 This is designed to take into account  
19 the circumstance in which someone is falling down  
20 drunk, you know, going in and out of  
21 consciousness. And I wonder -- I understand the  
22 totality of the circumstances test will be part

1 of the interpretive language. But I guess I am  
2 wondering which aspect of the definition itself  
3 would that fall into.

4           Someone is falling down drunk. They  
5 are throwing up. They are floating in and out of  
6 consciousness. They are not completely  
7 unconscious for the duration of time. That would  
8 fall under a different provision. But I am  
9 thinking in particular of the rape case that  
10 involved a police officer who took someone home  
11 who was very drunk and she testified that she was  
12 floating in and out of consciousness and was  
13 immobilized and couldn't respond in such a way.  
14 I understand, certainly, how that comes under  
15 rubric of the totality of the circumstances. But  
16 is the definition itself designed to have that  
17 come under the first, that she doesn't appreciate  
18 the nature of the conduct or the second, that she  
19 doesn't possess the physical or cognitive ability  
20 to make and communicate a decision.

21           BGEN SCHWENK: This is Jim. Or all  
22 three. You know if she is that drunk, maybe her

1 defense is going to be I didn't have the  
2 cognitive ability to appreciate the nature; I  
3 didn't have the physical ability to communicate  
4 my decision; and I didn't have mental ability to  
5 even make a decision or at least not a knowingly  
6 intelligent decision.

7 HON. HOLTZMAN: This is Liz Holtzman.  
8 Can I make a different -- I have a couple of  
9 different points.

10 Number one, why do we have a  
11 requirement that you be able to make and  
12 communicate a decision? Suppose you can make the  
13 decision but you can't communicate it? So, I'm  
14 concerned about the requirement that it be an  
15 and. It should be an and/or in line three, in my  
16 opinion, in line three of your draft.

17 MS. FRIEL: This is Lisa. I agree.  
18 That is what I meant it to read like, that it  
19 could be either one. So we should change the  
20 make and communicate to make or communicate.

21 HON. HOLTZMAN: Okay. Now, the second  
22 point about that is when you introduce the

1 reasons for doing this, you said that you thought  
2 that the existing language suggested that you  
3 have a 100 percent lack of mental ability. I  
4 don't remember the original language that you  
5 were talking about that you wanted to change.  
6 How does this change that?

7 MS. FRIEL: I think by just using the  
8 word incapable of appraising the nature of the  
9 conduct, that is the original language. That is  
10 from Title 18.

11 HON. HOLTZMAN: Right.

12 MS. FRIEL: And that has been  
13 interpreted by lay people who hear it that the  
14 jury people interpret incapable of appraising the  
15 nature of the conduct to mean wholly incapable,  
16 even though that word isn't there.

17 HON. HOLTZMAN: Right. But how does  
18 this address that problem? I mean just by  
19 changing whatever that is to cognitive ability, I  
20 don't know that this really addresses the  
21 question. That issue that prompted this, which  
22 is that the people have to -- is the panel now

1 going to decide whether you have to possess --  
2 that you don't wholly possess or is partial  
3 enough?

4 Have I made myself clear in my concern  
5 here?

6 MS. WINE-BANKS: I understand what  
7 your concern is. This is Jill.

8 What if we added language something  
9 like either the ability to in whole or in part  
10 even temporarily appreciate the nature?

11 DEAN ANDERSON: This is Michelle. I  
12 want to just clarify that there is some history  
13 here that I think sheds some light on how the  
14 phrasing happens. I don't know how that affects  
15 jurors and I know we are mostly concerned with  
16 jurors. But traditionally, the incapable of  
17 understanding the nature of the conduct or  
18 incapable of doing something is from the  
19 McNaughton Rule, which is an insanity rule, which  
20 is extremely hard to meet historically.

21 And then the substantially appreciate,  
22 we could add the word substantially, is a much

1 softer rule that the Model Penal Code picks up on  
2 the insanity rule. This isn't the insanity rule  
3 but the language -- the distinction between  
4 substantial appreciation or appreciation and  
5 inability to understand or incapable of  
6 understanding is a distinction that is designed  
7 to do exactly what I think Lisa is trying to do  
8 in this and that is move away from complete lack  
9 of cognitive understanding to a more subtle  
10 appreciation.

11 So, the change is not in the word  
12 possessed, as I understand the shift here. It is  
13 in the word appreciate.

14 MS. FRIEL: And that was exactly my  
15 point. Instead of using the language you are  
16 incapable of appraising, now we are using  
17 language, I thought, that softened it by saying  
18 that you -- now I have got to find it -- you  
19 don't have the cognitive ability to appreciate  
20 the nature of. I thought that softened it  
21 significantly but maybe not.

22 MS. WINE-BANKS: I think it does

1       soften it but I do hear what Liz is saying and  
2       think that if we modify the appreciate with  
3       something like in whole or in part, or even  
4       temporarily, something that conveys that it is  
5       not a total lack of appreciation.

6                   MS. KEPROS: This is Laurie. I  
7       actually prefer what Lisa has right now. I  
8       understand the sentiments that are being  
9       expressed.

10                   My concern is when you start to get  
11       into notions of partial understanding, that is  
12       every human interaction in the domain of sexual  
13       behavior. And I am just concerned that we start  
14       covering conduct that really isn't what we are  
15       trying to get at.

16                   I like that this proposal is looking  
17       at that ability, cognitive, physical, whatever  
18       you want to call it, at the time the conduct is  
19       occurring. And I think that provides enough kind  
20       of cabining in terms of the wholly question.

21                   I think the fact is, this definition  
22       only applies to the state of mind of the victim

1 at the time of the assault. So, I guess I don't  
2 know that I see that as being a problem the same  
3 way that Liz is articulating it.

4 CHAIR JONES: I agree, too. I think  
5 we should leave it. This is Barbara Jones.

6 She does not possess the cognitive  
7 ability to appreciate the nature of the conduct.  
8 I mean you either possess that cognitive ability  
9 at a certain point or never or you don't. But we  
10 can't -- that is for a jury to figure out okay,  
11 did she possess at some relevant time or not  
12 possess it in this scenario. So, I really think  
13 this language does it and I like it a lot.

14 LTCOL HINES: Judge Jones?

15 CHAIR JONES: I actually like using  
16 mental in the second one but I understand Dean  
17 Anderson's statement and I think she is totally  
18 right. So, we may have to switch mental ability  
19 to cognitive ability.

20 But I think this does it. And I think  
21 the version does say and/or. So, I think it  
22 doesn't mean it is exclusive. Did everybody have

1 that language and/or?

2 MS. WINE-BANKS: It doesn't have  
3 and/or in the third line.

4 LTCOL HINES: Well, Judge Jones, this  
5 is Lieutenant Colonel Hines.

6 I was thinking if, going to Ms.  
7 Holtzman's concern, if we are concerned about  
8 making this as all-inclusive for our victim as  
9 possible, if we were wanting to cure that  
10 problem, why wouldn't we just use or everywhere?  
11 Get rid of and. And if you use the or --

12 DEAN ANDERSON: Yes, or.

13 LTCOL HINES: -- you give the panel,  
14 if they find any one of those, then the  
15 Government has met the element.

16 DEAN ANDERSON: Yes. Yes because or  
17 includes and.

18 LTCOL HINES: Okay.

19 CHAIR JONES: The less the better.  
20 Right?

21 DEAN SCHENCK: This is Lisa Schenck.  
22 I agree with Colonel Hines' comment with the or.

1 I can understand what Michelle  
2 Anderson is saying about the term mental but I  
3 think if we put the or in there, I think it  
4 covers.

5 The cognitive ability is defined on  
6 the Google, it says cognitive ability is the  
7 capacity to perform higher mental processes of  
8 reasoning, remembering, understanding, and  
9 problem-solving. So, I guess that means your  
10 ability, right? And sometimes, you have some  
11 mental ability but you can't move; you're  
12 physically incapable.

13 So, if we put the or in there, I think  
14 it is good. But I would like to hear what  
15 Maggie's theory is on if we keep cognitive and we  
16 have mental both in there and we have the ors,  
17 does that change your view regarding, as a panel  
18 member, would that confuse you?

19 MAJ GEN WOODWARD: Yes, thanks for  
20 asking. I don't think so. I like it better that  
21 way. I didn't weigh in but I think, to me, it  
22 seems to go too far if we modify the incapable of

1 cognitive with substantially or something. I  
2 think that, to me, tends to go too far. But I  
3 like it the way it is. And I think with or, it  
4 is fine.

5 At first, I was thinking you have to  
6 communicate. I mean that is the whole basis of  
7 this. So, we have to be able to say there was no  
8 communication for this reason that they were  
9 incapable of communicating. But I don't think  
10 that -- the more I think about that, I don't  
11 think that is necessary to say. So, I guess, as  
12 a panel member, the way it is written as is, I  
13 think communicates exactly what we are trying to  
14 do.

15 DEAN ANDERSON: So, this is Michelle.  
16 Go ahead, Liz.

17 HON. HOLTZMAN: This is Liz Holtzman.  
18 Maybe this is too radical a suggestion but I am  
19 concerned about having two different words,  
20 basically, reflecting the same activity. Because  
21 I think even if it doesn't confuse jurors, I  
22 don't know how judges are going to react to it

1 and they might think there really is some  
2 substantial difference because we are using two  
3 different words to describe the same activity.  
4 So, that concerns me, particularly since it is in  
5 the same three lines.

6 But I was just --

7 CHAIR JONES: So you think it should  
8 be cognitive and cognitive? Is that --

9 HON. HOLTZMAN: I don't really care.  
10 I think mental is better in both circumstances  
11 but I don't really care. I'm just concerned  
12 about having two words.

13 CHAIR JONES: Okay, got you.

14 HON. HOLTZMAN: But the other  
15 suggestion I would have is that, and this is  
16 where it reaches the radical part, do we really  
17 need to say possess the cognitive ability to  
18 appreciate? Can we just say incapable of  
19 consenting if he/she does not appreciate? So,  
20 you leave out the cognitive ability. And then  
21 the same thing later on. You don't possess the  
22 physical or mental ability. So, you are just in

1 the -- I don't know if this works, but a person  
2 is incapable of consenting if he/she does not or  
3 did not appreciate the nature of the conduct  
4 and/or did not possess the ability to make or  
5 communicate a decision regarding such conduct.

6 So, you take out all that other stuff.  
7 I don't know whether that -- I really haven't  
8 given it any thought. So, that may be a really  
9 terrible proposal but it is one way of solving  
10 that problem.

11 DEAN SCHENCK: This is Lisa Schenck.  
12 I think that is overly broad if we take it out  
13 because -- and I guess I just think it is overly  
14 broad because you can be unable to appreciate the  
15 nature of the conduct for various reasons.

16 We are addressing the person who is  
17 based on being too intoxicated or under the  
18 influence of some drug or intoxicant. There is  
19 other reasons for being unable to appreciate the  
20 nature of the conduct.

21 MS. FRIEL: And this is Lisa Friel.  
22 I guess my thinking about that is that leave us

1 one -- it leaves a jury going back to well what  
2 does that mean to appreciate the nature of the  
3 conduct. What does the definition of appreciate  
4 mean?

5 And I like the word cognitive. I mean  
6 one, I like the cognitive ability to do it  
7 because it comes from the Pease case and so there  
8 is some authority for it already.

9 But two, when I forget who just read  
10 us the definition of cognitive ability, if a  
11 court were to go to the definition and read that  
12 to tell people what it means, I like that  
13 definition. I think it really gives people an  
14 understanding of what they should be looking at.

15 And thirdly, I think if we just have  
16 it just say appreciate the nature of the conduct,  
17 we are going to go back to have the problem that  
18 we were trying to solve in the first place, that  
19 somebody will think if they have any appreciation  
20 at all that this is sex, that you lose here.

21 MS. WINE-BANKS: Yes, I agree with  
22 Lisa. This is Jill. I'm sorry with Friel. And

1 when the definition was read, it seemed to me  
2 that it included mental in the definition of  
3 cognitive, so that cognitive became the more  
4 inclusive word and would be a good word for both  
5 places.

6 DEAN ANDERSON: All right. That was  
7 too radical, Liz.

8 HON. HOLTZMAN: I'm not disagreeing.  
9 It just was a potential solution. I don't feel  
10 strongly about it.

11 CHAIR JONES: Well, you know what, it  
12 is a much easier read if you simplify it, I  
13 agree. But I also believe this is the better way  
14 to go.

15 Are there any other comments or should  
16 we just see if we have a consensus on this as our  
17 recommendation?

18 HON. HOLTZMAN: I do have some other  
19 comments. This is Liz Holtzman. But if other  
20 people want to talk.

21 CHAIR JONES: Please.

22 HON. HOLTZMAN: Okay. In the list, I

1 want to go over some concerns I have because  
2 there are some typos and other things.

3 CHAIR JONES: Oh, I agree with you on  
4 that.

5 So maybe if we could go on the  
6 proposed list.

7 HON. HOLTZMAN: Oh, are you taking the  
8 first paragraph?

9 CHAIR JONES: Yes, for the statute.  
10 There are a couple of typos and stuff. We could  
11 talk about the second part. But if you don't  
12 mind, I would like to -- on the first language.

13 HON. HOLTZMAN: Good.

14 CHAIR JONES: So, is there anybody who  
15 is unhappy about this or -- that is a bad way to  
16 put it -- who has any further comments with  
17 respect to this? And just so we all know what we  
18 are talking about, it would be as Lisa has  
19 drafted it but as I understand it, we will get  
20 rid of the and. So, it will read nature of the  
21 conduct or did not possess. And I think that we,  
22 most people, although I kind of like the word

1 mental better because of the Pease case and  
2 because we want symmetry or whatever you want to  
3 call it, we would put cognitive and cognitive.  
4 Is that everybody's understanding?

5 MS. WINE-BANKS: Yes, and also take  
6 out the and before communicate, so that it would  
7 read or.

8 CHAIR JONES: Right. Yes.

9 DEAN ANDERSON: The only other thing,  
10 and I am sure that Glen and others will get this,  
11 is that I think the statute tries to avoid the he  
12 and she question, that is Article 120, in general  
13 does not use gender pronouns. So, that is  
14 something that the drafters can make consonant  
15 with the rest of the statute.

16 LTCOL HINES: This is Colonel Hines.  
17 I think what we will do, the rest of the statute  
18 uses the term the person or that person. So,  
19 what if I replace it with that person or the  
20 person.

21 HON. HOLTZMAN: Right.

22 CHAIR JONES: Yes, that is what I'm

1 thinking. Yes, that works. Did I miss -- is  
2 there a second or that someone just said?

3 MS. WINE-BANKS: Yes, in the third  
4 line. It should be to make or communicate a  
5 decision.

6 LTCOL HINES: Yes, ma'am.

7 CHAIR JONES: I see. Got it. All  
8 right, well now I also understand what we are  
9 proposing for a vote, I guess. Maybe I should  
10 just say is there anyone who has any objection or  
11 can we go ahead and make this our recommendation?

12 BGEN SCHWENK: This is Jim Schwenk, I  
13 don't have any objection but by going to  
14 cognitive in both places, which is fine by me, it  
15 will bring up the issue in two years what does  
16 cognitive mean and whether people are looking at  
17 one dictionary or another. So, do we want to  
18 leave it or do we want to put a definition of  
19 cognitive in, one that we like, that we think  
20 explains it in a manner that a juror or a court  
21 member would understand and that separates it  
22 from the broader term mental and makes it that

1 aspect of mental that is knowing, like awareness,  
2 perception, and stuff like that? There are some  
3 on the web.

4 HON. HOLTZMAN: I think that is an  
5 excellent suggestion.

6 CHAIR JONES: What, to add a  
7 definition of cognitive? Is that what I heard?

8 BGEN SCHWENK: Yes, that was my  
9 thought.

10 MS. FRIEL: This is Lisa Friel. And  
11 would you add it in the actual definition in  
12 subsection (8) right there or would you leave it  
13 to the explanation part, where we are also  
14 talking about totality of circumstances?

15 BGEN SCHWENK: I would probably put it  
16 in the statute itself --

17 MS. FRIEL: Okay.

18 BGEN SCHWENK: -- under all the other  
19 definitions in (8).

20 MS. WINE-BANKS: Lisa Schenck, do you  
21 want to read the one you read?

22 DEAN SCHENCK: Sure, I can read it.

1 All I do is put Google definition of cognitive  
2 ability. Cognitive ability is the capacity to  
3 perform higher mental processes of reasoning,  
4 remembering, understanding, and problem-solving.

5 BGEN SCHWENK: I like it. This is  
6 Jim.

7 MS. FRIEL: I like it, too. It's Lisa  
8 Friel.

9 HON. HOLTZMAN: Liz Holtzman. I like  
10 it.

11 DEAN SCHENCK: From the website  
12 college.cengage, C, the letter, Charlie, echo,  
13 November --

14 BGEN SCHWENK: Why don't you just send  
15 that to Glen and then Glen will know what it is?

16 DEAN SCHENCK: Sounds like a plan.

17 DEAN ANDERSON: This is Michelle and  
18 I have another concern about the last sentence  
19 before the strike. The accused must know or  
20 reasonably should have known that the person with  
21 whom they were engaging in the conduct was  
22 incapable of consenting. Is it appropriate to

1 raise that concern at this point?

2 CHAIR JONES: Well, I guess we the  
3 issue before that of whether we are putting the  
4 definition of cognitive right in the statute.

5 DEAN ANDERSON: Oh, I'm sorry. I  
6 thought we resolved that.

7 CHAIR JONES: And I guess the  
8 consensus is that we should. Lisa, that was you  
9 who thinks it is a good idea, right? I heard  
10 somebody say that.

11 MS. FRIEL: Yes, it's Lisa Friel. I  
12 think it is. And we can just add the line right  
13 there, use that definition and make it a sentence  
14 right in subsection (8) and say cognitive ability  
15 means just what Lisa Schenck just read to us.

16 CHAIR JONES: Okay. Now, Dean  
17 Anderson, are you all set with what we have just  
18 discussed as the black letter statutory  
19 suggestion?

20 DEAN ANDERSON: Yes.

21 CHAIR JONES: Okay. Then we can move  
22 to what I think is being recommended as for the

1 bench book and, as I think Lisa put it, or  
2 possibly executive order. So, go ahead, Dean.

3 DEAN ANDERSON: So, I have no  
4 objection to the theory of totality of the  
5 circumstances analysis for the purposes of the  
6 bench book. And I think these circumstances are  
7 fine to articulate. My concern is with the last  
8 sentence, which seems to import a question about  
9 the defendant's mental state. At this juncture,  
10 when I don't see it crucial at this juncture, I  
11 think that we have already clarified elsewhere  
12 in the statute what the mental state of the  
13 Defendant needs to be, in terms of consent. And  
14 I don't -- it just seems to come out of left  
15 field.

16 We are talking about totality of the  
17 circumstances and then the accused must know or  
18 reasonably should have known that the person with  
19 whom they were engaging in the conduct was  
20 incapable of consenting.

21 CHAIR JONES: Yes, I think we are  
22 switching from the victim, if you will, of the

1 assault versus assessing to see whether or not  
2 they could consent and all of a sudden we are  
3 going to the accused.

4 DEAN ANDERSON: Right and I think both  
5 are important issues but they are separate legal  
6 questions. Someone may be incapable of  
7 consenting but the defendant may not be guilty  
8 because he or she does not possess the requisite  
9 mental state to understand that. And that is  
10 fine but that is about mental state. So, that is  
11 about mens rea, rather than the actus reus of  
12 having sex with someone who is incapable of  
13 consenting.

14 CHAIR JONES: Right. Do you have a  
15 real need to put that in there, Lisa? I kind of  
16 think we should just stick with one topic, as  
17 opposed to introducing the second.

18 MS. FRIEL: This is Lisa. And I  
19 don't. If you look back at the statute, it is a  
20 substantive statute under 120(b)(3). Both  
21 subsections talk about the accused should know or  
22 reasonably should have known. So, it is there.

1 CHAIR JONES: I think it is there.

2 MS. FRIEL: You don't need it again.

3 If anybody has a problem, I don't see any problem  
4 taking it out.

5 CHAIR JONES: Okay. Well, I agree  
6 with the Dean. I think we ought to take it out.

7 Liz, I know you noticed some typos and  
8 other problems.

9 HON. HOLTZMAN: Yes, on the list,  
10 first of all on line two, there is a typo, it  
11 should be "ability to foresee consequences," so  
12 the of doesn't belong there. But I think foresee  
13 is not enough. It should be, in my opinion,  
14 foresee and understand or appreciate or something  
15 like that. It seems to me that foresee is -- so,  
16 I would like to add that word, either to  
17 appreciate or to foresee and appreciate or  
18 something like that.

19 And the second line also, maybe just  
20 awareness of the person with whom instead of with  
21 whom.

22 CHAIR JONES: Yes, that seems more

1 eloquent.

2 HON. HOLTZMAN: So, those are the two  
3 suggestions I had on that.

4 MS. FRIEL: This is Lisa Friel and I  
5 agree with both of them.

6 CHAIR JONES: Did these come from  
7 Pease? I can't remember Pease well enough.

8 HON. HOLTZMAN: Did these come from --  
9 you mean my suggestions? Definitely not.

10 CHAIR JONES: No, no, I mean the basic  
11 bullet points here.

12 MS. KEPROS: This is Laurie Kepros.

13 CHAIR JONES: Go ahead.

14 MS. KEPROS: I agree with those  
15 changes. I think that they are good improvements  
16 and I like what is here, otherwise.

17 I just wanted to suggest in our  
18 substantive report there is a reference to the  
19 fact that the language is coming from Pease. I  
20 think it might be nice to quote or cite the  
21 specific parts of Pease that talk about that in  
22 the report.

1 HON. HOLTZMAN: That's a good idea.

2 CHAIR JONES: Yes, I like that idea.  
3 I like Pease a lot, frankly. It is very well  
4 written, so we ought to cite it.

5 So, getting back to the totality of  
6 the circumstances, then, we have got a typo we  
7 are going to fix. But also what was your  
8 specific recommendation? The ability to foresee  
9 -- Liz, I'm sorry.

10 HON. HOLTZMAN: Oh, foresee or  
11 understand -- foresee and understand. I don't  
12 know what conjunction to use there. I'm sorry.  
13 And take out the word of.

14 CHAIR JONES: Yes, I've got that.  
15 Everything else is fine with everyone?

16 HON. HOLTZMAN: Well, this is a  
17 nitpick but a little two lines or three lines up  
18 where it says many factors should be considered  
19 and balanced should be considered and weighed  
20 instead of balanced. It's just a small one. I  
21 don't feel strongly about that.

22 MS. WINE-BANKS: I like that idea.

1                   CHAIR JONES: Yes, I think I do, too.  
2                   Yes, I don't know what we are balancing here. I  
3                   don't think.

4                   BGEN SCHWENK: And Glen, while you are  
5                   at it, you can decide whether include is the  
6                   right form of that word or not, based on the way  
7                   the rest of the sentence is written.

8                   LTCOL HINES: Yes, sir. I will put  
9                   all the redrafts in and I will disseminate that  
10                  this afternoon after the meeting for everyone to  
11                  check my work.

12                  CHAIR JONES: Okay, that will be  
13                  great. So, are we essentially content now and  
14                  enthusiastic on Issue 3? Is it done?

15                  MS. WINE-BANKS: I vote that it is.  
16                  This is Jill.

17                  CHAIR JONES: Okay, excellent. Anyone  
18                  else? Any dissenters? Okay, great.

19                  Then, I think we have a decision, Glen  
20                  and we have got the language and you have got  
21                  that resolved for the report. We have it  
22                  resolved for our recommendation.

1 I guess whether we do the bench book  
2 and maybe I'm getting confused again. Would this  
3 go in the executive order, Glen, the totality of  
4 circumstances?

5 LTCOL HINES: Yes, ma'am. I think  
6 Lisa's idea was that so the first paragraph would  
7 go into the statute and then everything below  
8 that would go into an executive order, which  
9 would then go into the bench book instructions as  
10 well. Is that right, Mr. Friel?

11 MS. FRIEL: Yes, that's right.

12 CHAIR JONES: Oh, so you want -- I  
13 didn't realize that. So, in other words, the  
14 language about a totality of circumstances would  
15 be in the statute?

16 MS. FRIEL: No, the opposite.

17 CHAIR JONES: That's what I thought.

18 MS. FRIEL: Yes.

19 CHAIR JONES: The statute ends after  
20 the third line, providing such conduct, and  
21 everything beginning with the totality of  
22 circumstances through the end would go in the

1 bench book/executive order. Right?

2 MS. FRIEL: The only difference is  
3 when you put it in EO to go into the bench book,  
4 it would still start with for the purposes of  
5 Article 120(b)(3).

6 CHAIR JONES: Oh, sure. Oh, I'm  
7 sorry. I see what you are all saying. Okay,  
8 good.

9 MS. FRIEL: So, that goes in the EO  
10 and the bench book but we will have the  
11 definition that we all just agreed on would be  
12 sub (8) in the actual statute.

13 CHAIR JONES: Got it. Okay, that all  
14 sounds great. Then, I think we are done with  
15 Issue 3.

16 So, if we can, if everyone is all  
17 right, I am going to move on to is it Issue 11,  
18 Indecent Acts? Is it 10 or 11?

19 LTCOL HINES: It's 11.

20 CHAIR JONES: Eleven, okay.

21 Well, we have a lot of options here.  
22 We already have something that -- this has

1 already been approved and come out and  
2 recommended that indecent acts go back into the  
3 UCMJ. Is that right, Glen?

4 LTCOL HINES: Yes, ma'am.

5 CHAIR JONES: And tell me again who  
6 the organization was that did this.

7 LTCOL HINES: The JSC, Judge. And  
8 that is the draft and proposed executive order  
9 that was in the Federal Register.

10 CHAIR JONES: Right.

11 LTCOL HINES: The offense was going to  
12 be called indecent conduct, conduct pretty much  
13 interchangeable with the word act.

14 I also would note Kirt Marsh on our  
15 staff prepared an excellent memorandum that is at  
16 Tab 3 in your materials --

17 CHAIR JONES: Yes.

18 LTCOL HINES: -- kind of giving you  
19 the historical background to the old indecent  
20 acts offense that existed prior to '07, what  
21 those elements were, what existed under Article  
22 120 from '07 to 2012 and then how one would have

1 to charge that today. If alleged indecent acts  
2 came up, it would have to be charged as a general  
3 disorder under Article 134.

4 In Kirt's take and I think Colonel  
5 Green and the staff's take on this new offense  
6 that is going up is pretty much the same as what  
7 the old offense was. I will let Kirt pipe in if  
8 he disagrees with me. But it is very similar to  
9 what the old indecent acts offense was before  
10 2007. The proposed offense is punishable by a  
11 five year max and a dishonorable discharge.

12 HON. HOLTZMAN: This is Liz Holtzman.  
13 I just have one question here. Are we talking  
14 about adding it into 120?

15 LTCOL HINES: No, ma'am, the new  
16 executive order, the new proposed offense would  
17 go into Article 134, as a specifically enumerated  
18 134 offense.

19 HON. HOLTZMAN: Okay. All right  
20 because I am just scanning your memo and it  
21 doesn't say that in the very beginning. So, I  
22 just wanted to get that clarified. Okay, thank

1       you.

2                   CHAIR JONES:  So, Glen, somewhere you  
3       told us suggestions that Professor Schulhofer had  
4       and he gave us four alternatives.  I think the  
5       first one was leaving it alone and not making any  
6       recommendations.  Am I right?

7                   LTCOL HINES:  That is correct.  And I  
8       think his two suggestions were to first not speak  
9       to it at all and just say the subcommittee  
10      understands this is going up.  We are not going  
11      to speak to it.  The second was that we needed  
12      more time to analyze it and if we felt like -- if  
13      you felt like you had reached the point where you  
14      could make a comment, that you could address the  
15      EO with comments or concerns.

16                   And of course Professor Schulhofer and  
17      a few others have expressed concerns that maybe  
18      it is overly broad and it would sweep in conduct  
19      -- and Kirt addresses this but it might sweep in  
20      conduct that occurs between two consenting adults  
21      and is private conduct.  And so that would be  
22      option 2, I think in my email, that you could say

1 we understand this is going up but we have  
2 concerns with it and then you state your  
3 concerns.

4 And then I think my other two  
5 suggested options were number three, you could  
6 suggest your own offense. And we are probably  
7 too late in the game to do that. That would just  
8 be my personal opinion.

9 Or four, on the other end of the  
10 spectrum, you recommend that the status quo  
11 remain, which is no indecent acts offense  
12 whatsoever. The idea being, as a few presenters  
13 have said, you can charge this conduct, perhaps,  
14 under Article 120 or under Article 134. And my  
15 opinion on that would be that is probably the  
16 least aggressive statement you could make. And I  
17 don't know how everyone feels about that.

18 DEAN SCHENCK: Could you say that  
19 again? This is Lisa. I didn't understand the  
20 last thing you said, Glen. Are you saying that  
21 we recommend that the EO not go forward and let  
22 them use 134 as it exists now?

1 LTCOL HINES: Right. And I just put  
2 that out there, Dean --

3 DEAN SCHENCK: Okay, I have a comment  
4 as to that. Okay, first of all, it has been  
5 taken out of the code. So, on the appellate  
6 bench, if you are telling -- if the service goes  
7 forward with a general Article 134 drafting, then  
8 the court is going to say, the appellate bench, I  
9 would personally say, that the accused was not on  
10 notice that this conduct was criminal. And  
11 because it was previously an indecent acts  
12 provision in the code and it was taken out, that  
13 not only is there no notice but there is an  
14 inclination that maybe this should be a crime.

15 So, I, personally, think, my personal  
16 opinion is that last one is not a good idea.

17 Also, I just want to point out that I  
18 kind of agree with Professor Schulhofer, although  
19 I, and I am sure Colonel Schinasi, and Colonel  
20 Schwenk understand indecent acts and I completely  
21 understand it being taken out. And I wrote an  
22 article and one of the things in my article was

1 that they should put it back in and make it a  
2 crime.

3 But I don't think the rest of our  
4 subcommittee has wrapped -- and everybody can  
5 disagree with me but I'm not sure you all have  
6 wrapped your arms around this issue enough to  
7 make a recommendation.

8 Secondly, I think the Joint Service  
9 Committee, prior to putting this executive order  
10 together, did a lot of research in all the  
11 services. And they wouldn't be making this  
12 recommendation haphazardly.

13 And so if we were going to do  
14 anything, if we are going to take a stance on  
15 anything, I would like to hear testimony or some  
16 information from the Joint Service Committee,  
17 since it comprises all the services, before they  
18 draft this executive order. That is just my two  
19 cents.

20 DEAN ANDERSON: Yes, for what it is  
21 worth, this is Michelle, and I think that I don't  
22 feel entirely confident making a recommendation

1 one way or the other.

2 And it sounds a little bit like the  
3 train has left the station on this question. And  
4 are we obligated to address this issue at this  
5 time or can we say there are other things going  
6 on that -- well, actually, I don't know. I would  
7 just ask the question maybe to Colonel Hines, are  
8 we obligated to address this issue? Because I  
9 feel like we are under a time crunch to complete  
10 this document and to present to the Panel and I  
11 don't feel like, personally, particularly  
12 sufficiently apprised of the issues to be able to  
13 make a judgment one way or the other. And so I  
14 am a little bit stymied on it and I wonder what  
15 your thoughts are on that, Colonel Hines.

16 LTCOL HINES: You do not -- to answer  
17 your question, Dean, you do not have to make a  
18 recommendation one way or the other. You could  
19 say look, we just feel like we need deeper  
20 analysis on this issue and more time. I mean I  
21 would say if the answer is like number one, you  
22 feel like well, we don't have a strong beef with

1 the executive order, you don't necessarily need  
2 to come out and say we don't like the executive  
3 order and we don't think it should go up. Your  
4 job is just to look at the issue and make a  
5 recommendation. And if you feel like you're not  
6 comfortable doing that right now, we can hold  
7 off.

8 But I think you would need to state in  
9 the report exactly that, that you looked at it  
10 but you just feel like you need more time to hear  
11 from more presenters. Dean Schenck's idea to try  
12 to get more input is something we can look into  
13 but you don't have to make a recommendation right  
14 now.

15 DEAN ANDERSON: Thank you.

16 MS. KEPROS: This is Laurie Kepros.  
17 I guess looking at the options, as Glen has laid  
18 them out, I think there could be some value in  
19 sort of adopting 2 and 4. And in a weird way, 1,  
20 2, and 4 could all be part of our ultimate  
21 recommendation, which is to say given what has  
22 been put forth in the Federal Register, there are

1 some concerns we have about it. And I think  
2 Professor Schulhofer has laid those out in his  
3 email. Maybe those concerns would be resolved  
4 with further investigation into the issue but I  
5 just feel like, given the information that we  
6 have had before us, those concerns are real.

7 And in terms of making a  
8 recommendation, a recommendation is first do no  
9 harm and that we would want to know that those  
10 concerns were either outweighed by other military  
11 interests or something else that made it a good  
12 idea to return indecent conduct/acts to this  
13 code.

14 BGEN SCHWENK: I guess my thought in  
15 looking at it -- this is Jim. My thought in  
16 looking at it was we don't have the time to do  
17 the analysis that we have been able to do in the  
18 other issues.

19 So, then on the other hand, I sort of  
20 feel like it would be nice to have some kind of  
21 indecent acts and we can argue, if we had the  
22 time, over the specific language. So, I wrote

1 something that says the subcommittee understands  
2 that DoD has drafted and intends to submit to  
3 Congress a legislative proposal to add indecent  
4 acts as an enumerated offense under the UCMJ.

5 Although the subcommittee did not have sufficient  
6 time to study DoD's proposal in detail, the  
7 subcommittee generally supports enactment of an  
8 enumerated offense of indecent acts. You know  
9 something that would say, at least my view, we  
10 ought to have something in the UCMJ that covers  
11 indecent acts. We don't have time to decide what  
12 that something ought to be. So, that is what we  
13 tell the JPP. Just a thought.

14 MAJ GEN WOODWARD: This is Maggie. I  
15 agree with that. But I guess I have to ask the  
16 question that has been coming to my mind is is  
17 this a self-imposed time constraint that we are  
18 on or is this a specific one imposed by the JPP  
19 itself, so does it make sense to say we don't  
20 have time to address this.

21 LTCOL HINES: Well, this is Lieutenant  
22 Colonel Hines. So, the answer, ma'am, is the JPP

1 referred these issues to you for your analysis  
2 and consideration and to make recommendations, if  
3 any. So, it is sort of pliable language. I mean  
4 I think you can make recommendations. For  
5 instance, you are making recommendations for  
6 change on several other issues. You are also  
7 making recommendations for no change. And so I  
8 think it is perfectly acceptable for you to say  
9 you have analyzed it to the extent that you have  
10 but you just don't feel that you should make a  
11 recommendation, given the nature of one, wanting  
12 to hear additional evidence, but also the fact  
13 that there is this EO or this proposed offense  
14 hanging out there that is already going up  
15 simultaneously.

16 So, to answer your question, you are  
17 not statutorily mandated or even mandated by the  
18 JPP to make a firm recommendation one way or the  
19 other.

20 MAJ GEN WOODWARD: Right. But it  
21 seems there is a difference between saying we are  
22 not making a recommendation on this one, i.e., we

1 are not recommending a change. But to me, to sit  
2 there and say hey, in the language that we are  
3 talking about, we are articulating that we really  
4 believe that it should be looked at in order for  
5 us to make a recommendation, we just don't have  
6 time to look at it, to me, that only holds water  
7 if we really are under a time constraint that we  
8 can't get around. We are basically saying we  
9 can't do what you have asked us to do in the time  
10 limits you have given us.

11 MS. KEPROS: This is Laurie. I'm  
12 wondering could our recommendation be that we get  
13 further guidance from the JPP, in light of all  
14 these circumstances as to whether we undertake  
15 further investigation in this.

16 HON. HOLTZMAN: This is Liz Holtzman.  
17 Well, isn't there a problem here in the sense,  
18 without going to the JPP issue for a minute,  
19 isn't there a problem with the fact that this  
20 could be adopted, regardless of what  
21 recommendations we made because of the present  
22 posture of the situation? Am I wrong, Colonel

1 Hines?

2 LTCOL HINES: No, that's correct.

3 HON. HOLTZMAN: Could this proposal be  
4 adopted?

5 LTCOL HINES: Yes, ma'am, it could be.

6 HON. HOLTZMAN: So, in a way, it could  
7 be adopted before -- if we don't -- in other  
8 words, if we ask for more time, let's say we got  
9 to the JPP and say we want more time to consider  
10 this because we haven't really been able to  
11 address it fully or we don't feel we have fully  
12 addressed all the issues, is that just going to  
13 be a waste of time because this is going to be  
14 issued in an executive order like within the next  
15 month or two months? I mean what time frame are  
16 we talking about here?

17 So, I am just talking about the  
18 practicalities of this. I mean it may be if we  
19 need an excuse just to simply say because of the  
20 work of the Joint Services Committee and the  
21 likely adoption -- of the issuance of the  
22 executive order, we haven't made a recommendation

1 on this. That's all. Something like that.

2 MAJ GEN WOODWARD: I think if we say  
3 it that way, it is better. I mean to just say we  
4 don't have enough time, to me, is strange, unless  
5 we truly -- I mean if we truly have that time  
6 constraint that is hard and fast, then I guess  
7 that makes sense. I just didn't know we did.

8 HON. HOLTZMAN: I was just thinking if  
9 the time constraint came from the work of the  
10 JSC, as opposed to the JPP.

11 But my other concern --

12 BGEN SCHWENK: This is Jim. I thought  
13 the time constraint was that the JPP had to put  
14 another annual report out in February or  
15 something and there was somebody's desire, I  
16 don't know Glen, who, but somebody's desire to  
17 have our report done and to the JPP in time for  
18 them to consider it before they finished their  
19 report that was due whenever it is due. Is that  
20 right, Glen?

21 LTCOL HINES: Yes, sir. I mean that  
22 is sort of our desire, as a staff, was to get the

1 subcommittee's work on these 17 issues completed  
2 in time for the JPP to address in their next  
3 report, which is supposed to be issued in  
4 February.

5 So, I mean if you go back to the  
6 specific -- I mean maybe I could try to narrow  
7 down our focus. If you go back to the specific  
8 question that was asked by the JPP of the  
9 subcommittee, it is should the offense of  
10 indecent act be added to the UCMJ as an  
11 enumerated offense.

12 Now, I understand our analysis has  
13 been a lot broader than that but it is really a  
14 yes or no -- really, to simplify it, you could  
15 say it is a very simple answer. It is a yes or  
16 no, which is the easy answer.

17 I think any of these options you are  
18 considering would be acceptable. As Professor  
19 Schulhofer says, you could speak in the report  
20 and say we understand that this EO is going up.  
21 And to answer, I think, Ms. Holtzman's question,  
22 it would be speculative to know when that EO is

1 going to come out of the White House. So, I  
2 don't know that it is very helpful to our  
3 analysis, our planning, to sort of base what we  
4 are going to do on when that EO is going to come  
5 out. It could be in a month. It could be in 12  
6 months. I don't know.

7 And so you could speak to the fact  
8 that you are aware that it is out there and then  
9 express the subcommittee's concerns. You could  
10 say we do think that this should be an enumerated  
11 offense, to answer question 11, but here are our  
12 concerns with the EO that is going to come out  
13 soon and whether those are Professor Schulhofer's  
14 concerns or anything else, you could certainly  
15 speak to that.

16 But to answer General Woodward's  
17 question, I tend to agree that, as we have seen  
18 with some of these other issues, you have an  
19 independent, the JPP has an independent statutory  
20 duty, irrespective of what the JSC is doing with  
21 their new EO. And that is not to say that you  
22 can't wait but I think you can maybe have your

1 cake and eat it to in the sense of you can answer  
2 the question and voice maybe your concerns,  
3 knowing that that EO is likely going to hit  
4 sometime soon.

5 CHAIR JONES: Is this group now on the  
6 phone still sufficiently ready to discuss and  
7 answer the question, whether or not we think it  
8 should become part of the UCMJ?

9 I mean and then assuming we feel we  
10 could do that, I think the even more thorny area  
11 is what kind of comments do we want to make? And  
12 I understand why Professor Schulhofer or any of  
13 us are uncomfortable with respect to intimate  
14 acts between consenting adults, but I think -- I  
15 don't know whether we are prepared to make a  
16 recommendation right now on either.

17 PROFESSOR SCHULHOFER: Hi. My  
18 apologies. I just heard that I was the 11th  
19 person to join the meeting. So, my apologies.

20 CHAIR JONES: Welcome, Professor. We  
21 are talking about the indecent acts question.  
22 And I guess my question was, basically, what has

1       been put to us is whether or not we think that  
2       indecent acts should now become part of the UCMJ  
3       and that we already have a recommendation by the  
4       Joint Services Committee to do that.

5               And so just to take part one of the  
6       question, how many of us feel that we want to say  
7       yes, we agree, it should become part of the UCMJ?  
8       Is that accurately enough stated, Glen?

9               LTCOL HINES:   Yes, ma'am.

10              PROFESSOR SCHULHOFER:  I'm coming in  
11       late.  Have you discussed this to the point where  
12       you feel ready to vote?

13              CHAIR JONES:  No, I'm asking whether we  
14       can vote on it because what a lot of people are  
15       saying is we are kind of still in the same place  
16       we were a while ago, which is many of us are not  
17       comfortable about how we feel about this yet.

18              And so we have talking about saying  
19       well, we still feel we need more information.  We  
20       are not able to make a recommendation now, et  
21       cetera, et cetera, various different ways to sort  
22       of, for lack of a better term, punt on this.

1           But I just want to make sure that that  
2 is the case. And so I am just asking, of the 11  
3 or 9 of us that are voting on this, are there  
4 people who think we can at least answer the  
5 question in the affirmative, regardless of what  
6 is actually in the recommended language. Because  
7 the question to us, as I understand it is, should  
8 indecent acts go into the UCMJ.

9           So, I don't know. Are there people  
10 who feel firmly yes, and think we could at least  
11 answer that question?

12           BGEN SCHWENK: This is Jim. I think  
13 there should be some indecent acts offense under  
14 the UCMJ, whether under 134 and I'm not sure what  
15 the exact scope is; that is for later. But for  
16 the basic question is there a hole that we could  
17 fill of offenses under the UCMJ, I think yes.  
18 And so I think indecent acts ought to go back in  
19 some form.

20           DEAN SCHENCK: This is Lisa Schenck.  
21 I agree with the General.

22           MS. KEPROS: This is Laurie Kepros --

1 MAJ GEN WOODWARD: Laurie, I'm sorry,  
2 because I have got run. So, I would say yes and  
3 can we say just yes and acknowledge that it needs  
4 to be addressed in more detail or something along  
5 those lines.

6 And then the only other question I  
7 have, completely off subject because I am  
8 leaving, after reading the report, I was confused  
9 because under JPP Issue 2, I thought we had all  
10 agreed that mistake of fact wasn't going to go in  
11 the statute, that we were just going to put it in  
12 the manual because if we put in the statute, it  
13 would raise all kinds of issues.

14 I will throw that out there, I guess,  
15 as a bomb. You can talk about it, as I depart.  
16 Sorry.

17 CHAIR JONES: I think we are not going  
18 to have enough time to go through the proposed  
19 report this morning, I don't think. But we can  
20 hear back from Colonel Hines and people to make  
21 comments in writing and the maybe we will have  
22 another telephone conference for people who are

1 able to get on because we haven't even gotten to  
2 looking to the report. I think we do need to. I  
3 know Professor Schulhofer has sent written  
4 comments in to Glen and I'm not sure how many  
5 others of us have.

6 But thanks, Laurie. And I know you  
7 have to go.

8 MAJ GEN WOODWARD: Okay, thanks,  
9 ma'am. Bye-bye.

10 PROFESSOR SCHULHOFER: Judge, this is  
11 Stephen Schulhofer.

12 MS. KEPROS: This is Laurie.

13 PROFESSOR SCHULHOFER: Oh, go ahead.

14 MS. KEPROS: I wanted to give absolute  
15 respect and deference to the opinions of Jim,  
16 Lisa, and Maggie but I would say I definitely do  
17 not think I could recommend that there needs to  
18 be an indecent acts defense added, whatever it  
19 would because I just don't have any evidence that  
20 would support that recommendation, at this point.  
21 Even the presenter's level of reference to it,  
22 did not get into detail, did not provide me with,

1 I feel like, a strong enough basis to say there  
2 is a gap or there is a need that is not  
3 addressable by other provisions of the code.

4 So, in terms of can we answer the  
5 question, for me, personally, the answer is no.

6 CHAIR JONES: I got you.

7 MS. WINE-BANKS: And this is Jill. I  
8 agree with Laurie. I hate to not go along with  
9 the military opinion because I think they  
10 probably are correct but I just don't feel we  
11 heard any testimony or had any discussion that  
12 would allow me to feel comfortable that I had  
13 enough background to say yes or no. And if yes  
14 or no, what the recommendation would be, where it  
15 should be, what it should say.

16 I would feel more comfortable if there  
17 was some way that we could say that we recognize  
18 there is this pending EO and would like to have  
19 further input so that we would feel comfortable  
20 commenting on the question put to us, rather than  
21 commenting on what they are doing but that would,  
22 of course, be part of it.

1 CHAIR JONES: Right. Anyone else?

2 PROFESSOR SCHULHOFER: Yes, Judge this  
3 is Stephen Schulhofer. I agree with the concern  
4 as you summarized it, about the lack of  
5 information that goes by Laurie and Jill.

6 I feel like I don't have enough  
7 information about the implications of adding it  
8 to the UCMJ as an enumerated offense and if so,  
9 whether it is possible to define it in a  
10 sufficiently clear way. Maybe it would be we  
11 really -- I don't feel that we really studied it  
12 enough to be in a position to make a  
13 recommendation on the part of our committee. And  
14 to answer the question yes really implies we have  
15 had enough time and material to think about it,  
16 which from my perspective, I think is just not  
17 yet the case.

18 HON. HOLTZMAN: This is Liz Holtzman.  
19 I agree with the comments about with Laurie, and  
20 with Professor Schulhofer and with Jill. I  
21 personally don't feel we have enough information.

22 It may well be that they are correct,

1 the advocates of adding it, but I don't  
2 personally feel that way because I know there are  
3 a lot of vague sections of the UCMJ and you can  
4 get a lot covered under that. So, I don't know  
5 whether this is really redundant or not. And so  
6 I feel very uncomfortable making a  
7 recommendation.

8 MS. FRIEL: This is Lisa Friel and I  
9 agree with what everybody has been saying as  
10 well.

11 CHAIR JONES: Okay. And is there  
12 anyone else who has a comment?

13 All right, I, too, really don't know  
14 what I would want to do in terms of voting on  
15 this yes or no.

16 And Glen, I know that you have made an  
17 effort to send us a lot of materials. And,  
18 personally, I think there was a request for more  
19 information and you sent us more stuff. I'm sure  
20 I read it but I still don't feel confident about  
21 this.

22 Do we have any additional testimony or

1 did we not do that? I know I missed at least one  
2 panel meeting, subcommittee meeting I mean.

3 LTCOL HINES: If your question Judge  
4 Jones, I don't think you missed any extra  
5 testimony. I think what you have heard on this  
6 issue has come anecdotally from different  
7 presenters during different meetings and in  
8 written materials.

9 If the second question is what do we  
10 do now as far as getting more material or having  
11 someone come in, I will defer -- I will throw  
12 Colonel Green under the bus on that and defer to  
13 him as far as the way ahead on this issue.

14 CHAIR JONES: The status of Issue 11  
15 is we have not reached any decision as a  
16 subcommittee. And I don't think we have to say  
17 that we didn't have enough time or anything. I  
18 think they should charge forward and they need,  
19 if there is some way to get us this information,  
20 we can do it, even if it is not reported out on  
21 December 11th, maybe we can report it in time for  
22 the February report after all. I don't know.

1 But I think we should press forward, no excuses.  
2 I guess we are tasked to do it but I don't know  
3 what else you can rustle up for us to provide to  
4 us.

5 LTCOL HINES: Yes, just thinking off  
6 the top of my head, I mean we could always, the  
7 first question, sure you can wait, but as far as  
8 what else could be done, I mean would always try  
9 to find an expert or someone in military justice  
10 who could come in and brief. And I think Kirt  
11 went into this in his memo but we could try to  
12 have somebody come in and give a primer on  
13 indecent acts pre-2007, why this was an offense,  
14 why there are unique considerations in the  
15 military, as opposed to anywhere else for  
16 criminalizing this kind of conduct and those sort  
17 of things.

18 But in the end, I think you are  
19 probably still -- and I think I got to some of  
20 this and Professor Schulhofer gets to it in his  
21 input, you know everywhere else, the  
22 criminalizing, for lack of a better term, of

1 indecency is getting narrower and narrower. And  
2 I think that is the concern that some of the  
3 subcommittee members have.

4 So, we can go back and bring some  
5 people in. I just think your concerns are still  
6 probably going to be there, after whatever they  
7 tell you.

8 CHAIR JONES: I think the concerns  
9 raised about what indecent acts covered is a very  
10 large discussion topic. I don't disagree.

11 What I am asking is is there someone  
12 who can come in and satisfy the rest of us, some  
13 expert or whatever, that there is indeed some  
14 need to put indecent acts back into the code,  
15 which is the first question and, at the moment,  
16 the only one we are being asked to answer.

17 COL GREEN: And Judge Jones, this is  
18 Colonel Green. I'm just looking back through the  
19 subcommittee's report and then I looked back  
20 through the JPP's report and both documents  
21 summarize the testimony you heard from  
22 practitioners and judges regarding the removal of

1 it and the recommendations that you heard from  
2 practitioners was to add it back in.

3 So, I think that the nature of just  
4 the basic question posed to the subcommittee that  
5 you have received testimony on that --

6 CHAIR JONES: Yes, we do have -- so  
7 you are saying we have got it. And you probably  
8 sent it to me and I probably didn't focus on it.

9 COL GREEN: Well, we can summarize  
10 that for you to make it a little more easy to  
11 pinpoint that. I think the second question, and,  
12 obviously, what it sounds like you all are  
13 struggling with is the nature of that offense.  
14 And so I think we can also look back. I think  
15 Kirt's memo does a really good job of how  
16 indecent acts is treated or used within the code  
17 and has been interpreted by our appellate courts  
18 throughout time. And so I think that answer can  
19 come from his memo. But we can look back and see  
20 what other testimony we received that may spell  
21 out a little bit more about the nature of the  
22 offense itself.

1           HON. HOLTZMAN: Colonel Green, this is  
2 Liz Holtzman. I guess one of my questions,  
3 though, is whether these acts can be prosecuted  
4 or covered under other sections of the code right  
5 now.

6           COL GREEN: Right. And I think that,  
7 ma'am, is the testimony that you heard from some  
8 presenters is that there are instances of what  
9 would be considered criminal conduct that because  
10 of the removal of indecent acts, presenters told  
11 you they are not able to charge. And so I think  
12 the recommendation to add indecent acts back into  
13 Article 134 is based on that; that we lack a tool  
14 to prosecute these offenses.

15           And I don't want to summarize what  
16 those specifically are but we can go back in and  
17 look at exactly what those presenters said to  
18 give you an idea of exactly the type of conduct  
19 is that not chargeable under the modified Article  
20 120 with the removal of indecent acts.

21           MS. KEPROS: This is Laurie Kepros.  
22 I would actually really like that to be included

1 in our report. And one of the notes I made on  
2 the report was there was a reference to witnesses  
3 saying things like that. And I certainly vaguely  
4 remember that, you know seeing it in some of the  
5 written materials, a few people, again, panels  
6 that were kind of directed to other topics in a  
7 more general sense, it would come up from time to  
8 time.

9 I would like it to be enumerated that  
10 the nature of the things that people expressed  
11 concerns about just because I think it better  
12 helps frame the question, even if it is not a  
13 question we are prepared to answer.

14 PROFESSOR SCHULHOFER: This is Stephen  
15 Schulhofer, again, I didn't mean to cut anyone  
16 off.

17 But again, this goes to my question of  
18 feeling that I don't have sufficient information.  
19 But in light of what Colonel Green just said, to  
20 explain why I continue to feel that way, my  
21 understanding of that testimony was that the  
22 reason the government it felt it needed this

1 offense was that to charge it under Article 134  
2 required them to prove that the conduct was  
3 prejudicial to good order and discipline or  
4 service discrediting. And my initial feeling  
5 about it is that if you are talking about  
6 consenting adults in private, you should have to  
7 prove something like prejudicial to good order in  
8 order to reach consenting adults -- sexual  
9 activity by consenting adults in private.

10 That is not my fully informed opinion  
11 but that is my first intuition about why the  
12 testimony didn't convince me.

13 And I'm worried that adding this as an  
14 enumerated offense not Article 134 or as a  
15 subsection of Article 134 would create momentum  
16 to make it registerable, which is something that  
17 I think many of us were uncomfortable with. So,  
18 that is conduct of legitimate concern can be  
19 prosecuted in some other way.

20 COL GREEN: Well, and Professor  
21 Schulhofer, this is Colonel Green again.

22 I will say that, in the previous

1 versions of the DoD's SORNA and the Sexual  
2 Assault Registry, indecent acts was a registrable  
3 offense. So, I think that that is a reasonable  
4 question for the subcommittee to consider is  
5 that although the only offenses under the current  
6 framework that are registerable under DoD policy  
7 are the 120 offenses. Previously, indecent acts  
8 was.

9 CHAIR JONES: Well, I think the more  
10 we talk, the more we are still not comfortable  
11 going ahead and making a decision on this phone  
12 conference.

13 Maybe between, in the next week or so,  
14 we could put a little subgroup of the  
15 subcommittee together, take a look at what you  
16 have already sent us, Colonel Hines, and maybe be  
17 able to answer the first question. But it does  
18 seem very complex and I'm not sure we will  
19 achieve that goal and be ready. But you know if  
20 two or three of us are forced to concentrate on  
21 it, maybe we could make a quick phone  
22 presentation on where we come out.

1                   And I don't know. It sounds like the  
2 reason that one of the problems is that there has  
3 been testimony about this but it has been here  
4 and there. And I know Kirt wrote something and I  
5 skimmed it but I would have to go back and really  
6 work and figure out if that was enough.

7                   Does it give us, I think what Laurie  
8 was talking about, sort of an enumeration of what  
9 we have heard about it?

10                  COL GREEN: No, Judge. I think Kirt's  
11 memo is the opposite. Kirt's memo really  
12 provides you how historically indecent acts has  
13 been used in practice.

14                  CHAIR JONES: I see.

15                  COL GREEN: And so I think the  
16 combination of if the staff can summarize more  
17 specifically for you the testimony we have heard  
18 and the opinions either way regarding the  
19 treatment of indecent acts as an enumerated  
20 offense under Article 120 or its inclusion or  
21 exclusion from Article 134, we can pull all that  
22 together and I think, maybe, help you hone in on

1 that issue.

2 And then I would say --

3 CHAIR JONES: That would be great if  
4 you would do that work for us. I think that  
5 would help everyone.

6 COL GREEN: And I think Kirt's goes to  
7 the second question about whether the quality of  
8 the current version, if the subcommittee wants to  
9 make any statement on that about the nature of  
10 the offense itself, the second question.

11 CHAIR JONES: Yes, that is going to be  
12 in --

13 HON. HOLTZMAN: I'm having a problem  
14 hearing because I think people are breaking up or  
15 they are not talking into the phone. I'm missing  
16 a lot of words.

17 CHAIR JONES: I'm hearing things touch  
18 and go. I think what Colonel Green has offered  
19 to do is put together all the evidence we have  
20 heard in one place and then we would also still  
21 have Kirt's submission, which gives us the  
22 historical background. And then maybe it would

1 help us to answer the first question, maybe the  
2 second area about what we think about the current  
3 recommendation from the Joint Services.

4 I think the latter is going to be a  
5 very large task. Maybe we can achieve the answer  
6 to the question of whether we think it should  
7 become an enumerated offense.

8 But, Colonel, I accept your offer to  
9 put it together for us.

10 HON. HOLTZMAN: Judge Jones?

11 CHAIR JONES: Yes.

12 HON. HOLTZMAN: Judge Jones, may I  
13 just add one thing to that, to what Colonel Green  
14 has offered to do?

15 CHAIR JONES: Oh, of course.

16 HON. HOLTZMAN: I think it is really  
17 important, even if we haven't heard it from the  
18 presenters -- I would hope the analysis is not  
19 limited, in other words, to what the presenters  
20 have told us. Because I think it would be really  
21 good to go back to what I had said earlier and  
22 what Ms. Kepros had said earlier, which is to

1 have an idea of what acts would not be covered  
2 under the existing -- under the UCMJ as it stands  
3 now. And therefore, explain the need for the  
4 inclusion of the indecent acts.

5 CHAIR JONES: Yes, I think Colonel  
6 Green, correct me if I am wrong, you intended to  
7 have that in this synopsis in summary, right?

8 COL GREEN: Yes, Judge and I think  
9 what we can do is show you, again, using Kirt's  
10 analysis of the types of offenses that have been  
11 charged under indecent acts historically, we can  
12 look at that and determine whether those acts  
13 would be chargeable under the current framework  
14 or would not.

15 So, I think we can give you a pretty  
16 comprehensive look of what is and is not covered.

17 LTCOL HINES: And Judge Jones --

18 CHAIR JONES: Great.

19 MS. WINE-BANKS: This is Jill. I  
20 would also note that Kirt did include the  
21 potential concerns with the events that it  
22 included the possibility of prosecuting private

1 conduct between consenting adults, et cetera.

2 And so that part is there for our consideration.

3 LTCOL HINES: And we will also go back  
4 and point out that you had anecdotal -- I think  
5 what I am hearing is what are anecdotal fact  
6 patterns that could be charged. And the  
7 presenters that you have heard from have given  
8 you some types of fact patterns that occur, that  
9 have occurred that they are not able to charge.  
10 And so we will include those as well, Ms.  
11 Holtzman.

12 HON. HOLTZMAN: Yes, thank you.

13 CHAIR JONES: Okay, that is great.  
14 And I mean depending on how fast we get this out,  
15 we can all try to respond quickly and we will  
16 send out -- the Colonel will send out an email  
17 and we will have another telephone conference  
18 after we have had a chance to take a look at  
19 these materials and see if we can come up with  
20 something that we want to say and report out to  
21 the JPP about it by December 11th and if not by  
22 December 11th, maybe we will be close enough to

1 do something that will still be in time for  
2 February.

3 But I agree with everyone that, at  
4 this point, or most everyone, that this is the  
5 way to proceed.

6 I don't know where you want to go  
7 next, Colonel. I think I have about ten more  
8 minutes before I am going to have to get off the  
9 call.

10 LTCOL HINES: Well, Judge, I --

11 MS. KEPROS: Could I ask an  
12 administrative question?

13 CHAIR JONES: Sure.

14 MS. KEPROS: I'm sorry, this is Laurie  
15 Kepros.

16 CHAIR JONES: Yes, Laurie.

17 MS. KEPROS: I have annotated -- and  
18 I agree with your initial comments. This report  
19 is excellent. I have a lot of nit-picky things,  
20 questions, things that we could clarify and I am  
21 prepared to submit that in writing.

22 CHAIR JONES: Well, we can all --

1 understood, yes. Go ahead.

2 MS. KEPROS: And one issue I was  
3 hoping maybe I could get a little guidance from  
4 the broader subcommittee on how to handle is you  
5 know we have discussed possibly including not so  
6 much a minority report, but just articulating  
7 some of the committee's minority positions, which  
8 I am interested in because I have held some of  
9 the minority positions. And I was wondering is  
10 that the kind of thing that would be  
11 appropriately addressed in a sentence in the  
12 substantive provisions of the report or like in a  
13 footnote? Because I will draft something.

14 CHAIR JONES: Here is what I would do.  
15 I would very much want your, if you want to call  
16 it, dissenting opinion or just your opinions that  
17 are different from ours on what has been  
18 recommended here. We did it with the RSP and  
19 they were published as dissenting opinions. So  
20 you don't have to leave yourself to just a  
21 footnote here or there.

22 And I would also, I was going to say

1 when we go back to that and I guess we are there  
2 now, so the presentation to the JPP, I hope  
3 everyone comes. I am going to divvy up the  
4 presentation of our whole report among three of  
5 us but I would hope everyone would come. And Ms.  
6 Kepros, I would very much welcome your speaking  
7 at it. In discussing this with Colonel Hines --  
8 but also preparing something to go into the  
9 report.

10 In discussing this with Colonel Hines,  
11 we thought what we would do is have just three  
12 presenters for an hour cover what our  
13 recommendations are with respect to 120. And  
14 then the rest of the time would be open for the  
15 panel itself to ask questions and also hear from  
16 our -- have all of the subcommittee members who  
17 are able to make it to actually be there to  
18 discuss issues, answer questions, et cetera.

19 But if you are ready to go and I have  
20 a feeling you are, I think after the actual  
21 report of the consenting view is presented, then  
22 you should open up either the next session, we

1 will see how much time there is, or finish the  
2 first one and give your dissenting views.

3 MS. KEPROS: Great.

4 COL GREEN: Judge Jones, the other  
5 thing I would point out that we did with the RSP  
6 that worked well is any of those alternate  
7 opinions, Ms. Kepros, we will circulate those  
8 among all of you. So, you may not be on an  
9 island. There may be multiple and those can be  
10 formed and we can circulate those to kind of  
11 figure out if other people wish to join those  
12 opinions.

13 HON. HOLTZMAN: Judge Jones, I have  
14 some comments just as Laurie does, nitpicking  
15 things. I am going to send them in probably  
16 tomorrow.

17 But there is an overall format issue  
18 that I would like to raise. For me, when we  
19 discuss a statute, I always like to have the  
20 language in front of me. So, I would suggest if  
21 there is some way in each one of the sections  
22 discussing the statutory language, that that

1 language be right there at the front so people  
2 can see it rather than either -- I don't know  
3 where else they would refer to it, going down to  
4 the bottom. Sometimes it is at the bottom.  
5 Sometimes it is not even there.

6 So, I would just suggest putting the  
7 language at issue at the beginning of every  
8 section that we deal with it or figure out some  
9 way to do that so that whoever is trying to read  
10 this and figure out what we are doing, we will  
11 have the statutory language right handy.

12 LTCOL HINES: Yes, ma'am.

13 Judge Jones, this is Glen. The only  
14 other thing I would just throw out there is  
15 Colonel Green and I have already started working  
16 on whoever your three, and I know we have  
17 discussed but I'm not going to steal your  
18 thunder, I will leave that to you, but we have  
19 started preparing the presentation, the  
20 PowerPoint presentation that would go along with  
21 the report. And so whenever those three people  
22 are identified, I will obviously start to

1 communicate with them and sort of route that back  
2 and forth until we get it where they are  
3 comfortable with it.

4 Judge Jones, are you still there? I  
5 think we might have lost Judge Jones. Judge  
6 Jones, are you still there?

7 COL GREEN: All right. I guess just  
8 in case Judge Jones gets back in, this is Colonel  
9 Green again, please if any of you do have those  
10 comments, the way that we have handled this in  
11 the past with reports is if you will just send in  
12 any comments, substantive, administrative,  
13 whatever they may be, to us, the staff will  
14 consolidate all those. And what we do is look at  
15 them and if they are just administrative format,  
16 grammar, those types of things, we will make  
17 redlined changes to the draft, based on those.

18 If they are substantive comments that  
19 we think the subcommittee needs to discuss, we  
20 will add those in as a bubble comment on the  
21 draft and kind of consolidate those so that the  
22 next teleconference you have an idea of anything

1 that you all need to discuss substantively to  
2 come --

3 Hi, Judge Jones.

4 CHAIR JONES: Hi.

5 COL GREEN: We were flying solo,  
6 ma'am. We pretty much finished the report while  
7 you were gone.

8 CHAIR JONES: That's good! Have you  
9 resolved everything?

10 (Laughter.)

11 CHAIR JONES: Just tell me what the  
12 answers are.

13 COL GREEN: Judge Jones, I was just  
14 telling people that if they do have comments to  
15 please send those in to Colonel Hines and to Kirt  
16 and that way we will incorporate all of those.  
17 And the next teleconference, we can run through  
18 any substantive comments that the subcommittee  
19 needs to resolve.

20 CHAIR JONES: Right. And so have we  
21 resolved everything?

22 I'm going to ask Lisa, I understand

1 you are not going to be able to make to the full  
2 committee meeting.

3 MS. FRIEL: Yes, I'm really sorry. I  
4 have another thing I have to do that day. I will  
5 be down in Georgia.

6 CHAIR JONES: No, no, it is totally  
7 understandable.

8 Is there anyone else who cannot make  
9 it? My thinking was to ask, as I think I  
10 mentioned earlier, three of you to present on the  
11 issues that your working group had focused on.

12 And I was hoping that Jill, you might  
13 handle your working group's issues. And Professor  
14 Schulhofer, I would be very pleased if you would  
15 present on the recommendations that fit in with  
16 your subcommittee. And Dean Anderson, I think I  
17 have got each of the subcommittee's represented,  
18 and I was hoping that you would also present.

19 And we will, the four of us, will talk  
20 about this before December 11th, certainly, but  
21 are all of you going to be able to be there and  
22 can you do it?

1 PROFESSOR SCHULHOFER: I will be there.

2 MS. WINE-BANKS: Yes, I will be.

3 CHAIR JONES: Great.

4 DEAN ANDERSON: Yes, ma'am.

5 CHAIR JONES: Great. That's terrific.

6 And we will have a conference call on that just  
7 in terms of getting organized for the  
8 presentation. And anyone who wants to be on that,  
9 we will send out an invite for the entire  
10 subcommittee.

11 I'm just trying to think what else.  
12 I think for myself, all I am going to do is give  
13 a brief opening set of remarks, basically talking  
14 about what our tasks were and what our process  
15 was, and then hand it over to three of you.

16 And then Laurie, you are already set  
17 up to give us your remarks with respect to your  
18 perspective on this and we will give you that  
19 opportunity.

20 And then I think that there will be  
21 lots of opportunity for comments and answers to  
22 questions from the JPP itself from all of us,

1 once it is opened up after the more formal  
2 presentation just to get the information out  
3 there.

4 So, that is my plan. And I will  
5 circulate something very shortly so that the  
6 presenters, at least, and ultimately all of you  
7 might want to chime in to talk about how we are  
8 actually -- you know, what each person is going  
9 to talk about and how we are going to set it up.

10 Glen, anything else?

11 LTCOL HINES: No, Judge. I just real  
12 quick will hit so I will go back and fix Issue 3  
13 to reflect what we talked about today.

14 Kirt and I will go back and gather  
15 everything together for Issue 11 and get that  
16 back out to you.

17 And then when you dropped off going  
18 through the tunnel, I had mentioned, without  
19 naming them to steal your thunder, that I have  
20 already started working on the PowerPoint or the  
21 presentation that three are going to give.

22 And so I will, obviously, with you, be

1 sending that, I'm sure, back and forth between  
2 the three of us to get it to where the four of  
3 you are comfortable with it for that presentation  
4 that is going to take place in the first hour.

5 CHAIR JONES: I think that would be  
6 great. It will be wonderful for people to have a  
7 big screen that shows them the statute and where  
8 we have changed it as we go along with the  
9 presentation. And who knows what else we can  
10 come up with that might hold people's interest?

11 LTCOL HINES: Yes, ma'am.

12 CHAIR JONES: Okay, then I'm done.  
13 Any other topics from anybody?

14 Okay, great. Thank you. Thank you  
15 very much, especially Colonel Hines and Colonel  
16 Green and the staff. Thanks a million.

17 LTCOL HINES: Thank you, ma'am.

18 CHAIR JONES: Thanks everybody.

19 MS. FRIED: Thank you, the meeting is  
20 closed.

21 (Whereupon, the above-entitled matter  
22 went off the record at 10:36 a.m.)

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Before: US DOD

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