

UNITED STATES DEPARTMENT OF DEFENSE

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JUDICIAL PROCEEDINGS PANEL

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MEETING

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FRIDAY
JANUARY 22, 2016

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The Panel met in the Holiday Inn -
Ballston Grand Ballroom, 4610 North Fairfax
Drive, Arlington, Virginia, at 9:00 a.m., Hon.
Elizabeth Holtzman, Chair, presiding.

PRESENT

Hon. Elizabeth Holtzman

Hon. Barbara Jones*

Mr. Victor Stone

Prof. Tom Taylor*

VADM(R) Patricia Tracey

PRESENTERS

Dr. Cassia Spohn

Staff:

Colonel Kyle W. Green, U.S. Air Force - staff

Director

Lieutenant Colonel Kelly L. McGovern, U.S.

Army - Deputy staff Director

Lieutenant Colonel Glen Hines, U.S. Marine Corps

- Attorney Advisor

Nalini Gupta - Attorney Advisor

Kirt Marsh - Attorney Advisor

Meghan Peters - Attorney Advisor

Terri Saunders - Attorney Advisor

Stayce Rozell - Senior Paralegal

Maria Fried - Designated Federal Official

*participating by telephone

TABLE OF CONTENTS

Administrative Work. 4

Panel Deliberations on Annual Report:

Article 120, Retaliation and Restitution
& Compensation 9

Review of military Justice Case Data for
Sexual Assault Offenses:

Introduction by Ms. Meghan Peters.90

Presentation from Dr. Cassia Spohn99

Presentation from Ms. Terri Saunders . . . 148

Presentation from Mr. Kirt Marsh 170

Adjourn. 180

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

2 9:00 a.m.

3 MS. FRIED: Good morning everyone,
4 thank you for being here today. Particularly,
5 since we're under a blizzard warning.

6 Welcome to Judicial Proceedings Since
7 Fiscal Year 2012 Amendments Panel.

8 My name's Maria Fried and I'm the
9 Designated Federal Official to the JPP.

10 Colonel Kyle Green is the staff
11 Director.

12 This Panel was established by Congress
13 in Section 541 of the National Defense
14 Authorization Act of Fiscal Year 2013 as amended.

15 The law mandated that two individuals
16 from the Response Systems to Adult Sexual Assault
17 Crimes Panel be appointed to the successor panel
18 for the JPP.

19 The Department has appointed the
20 following distinguished members to the Panel, the
21 Honorable Elizabeth Holtzman who serves as the
22 Chair to the JPP, she previously served on the

1 Response Systems Panel, the Honorable Barbara
2 Jones, Judge Jones also served as Chair on the
3 Response Systems Panel in adult sexual assault
4 crimes.

5 We have Vice Admiral Patricia Tracey,
6 Professor Tom Taylor and Mr. Victor Stone.

7 members' biographies are available at
8 the JPP website at <http://www.jpp.whs.mil>.

9 The Panel is a federal advisory
10 committee and has complied with the Federal
11 Advisory Committee Act and the Sunshine Act.
12 Publically available information provided by the
13 JPP is posted on its website to include
14 transcripts of the meetings.

15 Any information provided by the public
16 to Panel members must be made available to the
17 public.

18 Thank you.

19 Madam Chair?

20 CHAIR HOLTZMAN: Thank you very much,
21 Ms. Fried.

22 And, good morning everyone. I want to

1 thank the members of the Panel who have joined us
2 today in person despite the threat of a blizzard.
3 And, I want to thank any Panel members -- the two
4 pack -- the Panel members who have joined us by
5 phone.

6 Judge Jones, are you on the phone?

7 HON JONES: Yes, I am.

8 CHAIR HOLTZMAN: I thought I heard
9 that tell-tale click.

10 And, Professor Taylor is on the phone
11 as well.

12 I'd like --

13 MR. TAYLOR: Yes, you're coming in
14 very broken on my phone. I don't know if there's
15 anything you can do about a way of arranging the
16 mics, but that would be helpful because I can
17 barely hear you and it's breaking up. Thank you.

18 CHAIR HOLTZMAN: Okay, can you hear me
19 better now? Is this better?

20 MR. TAYLOR: Yes, I can. Thank you.

21 CHAIR HOLTZMAN: Okay. I wasn't
22 speaking into the mic. How about that for bad

1 form?

2 Okay, so let me welcome everyone to
3 the meeting of the Judicial Proceedings Panel.
4 Let me also thank the members of the staff who've
5 braved the threat of the blizzard today to be
6 here this morning.

7 Today's meeting is being transcribed,
8 although it will not be video recorded, as has
9 been the case in the past.

10 The meeting transcript will be posted
11 on the JPP's website.

12 The Judicial Proceedings Panel was
13 created by the National Defense Authorization Act
14 for FY2013 as amended by the National Defense
15 Authorization Act for Fiscal Years 2014 and '15.

16 Our mandate is to conduct an
17 independent review and assessment of judicial
18 proceedings conducted under the Uniform Code of
19 military Justice involving adult sexual assault
20 or related offenses since the most recent
21 amendment to Article 120 of the UCMJ in 2012.

22 With heavy snow in the forecast later

1 today, I think the term is blizzard, we've
2 shortened today's meeting to avoid travel
3 problems or disruptions for everyone. Indeed,
4 we've been ordered. The federal government will
5 shut down at noon, so that means us.

6 This morning, we will begin by
7 reviewing updates to our recommendations and
8 reports made by the staff after last week's
9 deliberations on Article 120 and retaliation
10 against victims of sexual assault crimes.

11 Our goal is to reach consensus on
12 these reports which will be submitted shortly to
13 Congress and Secretary of Defense.

14 Next, we will hear presentations from
15 Dr. Cassia Spohn and members of the JPP staff on
16 their analysis of military justice case data.

17 The important research and information
18 Dr. Spohn and the staff will share with us today
19 will inform our view of trends and statistics
20 regarding the military's judicial response to
21 sexual assault crimes.

22 And, we plan to deliberate on the

1 information we receive from them at our next
2 public meeting in March, which it's scheduled for
3 March, but we will see.

4 Finally, each public meeting of the
5 Judicial Proceedings Panel includes time to
6 receive input from the public. We received no
7 public submissions or requests for today's
8 meeting.

9 All written materials received by
10 Panel members for today's meeting and previous
11 meetings are available on the JPP's website at
12 jpp.whs.mil.

13 Thanks, again, very much for joining
14 us today and we are ready to proceed with our
15 review of Panel reports.

16 So, we will begin first with the draft
17 report dated January 20, 2016 on Article 120 of
18 the UCMJ.

19 How should we --

20 COL GREEN: Ms. Holtzman, can I --

21 CHAIR HOLTZMAN: Yes, sir?

22 COL GREEN: Just one point, and Mr.

1 Taylor raised this to me just a moment ago.

2 CHAIR HOLTZMAN: Yes, sir?

3 COL GREEN: The Panel, obviously, has
4 one additional report not before you today,
5 that's the Restitution and Compensation Report.

6 CHAIR HOLTZMAN: Correct.

7 COL GREEN: We reviewed that with you
8 in December and the draft to that report, the
9 staff believes that the Panel was comfortable
10 with the report as it was.

11 And so, if -- I just want to verify
12 with the Panel that that's the case and that we
13 can move forward with that report for
14 publication.

15 CHAIR HOLTZMAN: Okay. Is there any
16 objection to the release of that -- I mean, first
17 of all, is there any objection to the report?
18 Are we satisfied -- are all the staff -- are all
19 the Panel members satisfied with the report?

20 I don't hear any objection.

21 MR. TAYLOR: Your Honor, I would say
22 the only reason I raised that is because I

1 noticed it was an agenda item and, yet, I didn't
2 have a recent copy, that is, one more recent than
3 the one we saw.

4 I'm perfectly fine with the report
5 itself.

6 COL GREEN: And --

7 CHAIR HOLTZMAN: Well, do you want us
8 to send it out again to all members and give you
9 until -- today is --

10 COL GREEN: Ma'am, I can --

11 MR. TAYLOR: Not for me.

12 CHAIR HOLTZMAN: Oh, okay.

13 HON JONES: No, I recall reading it at
14 the time and thinking it was fine. So, I don't
15 think I need it.

16 CHAIR HOLTZMAN: Admiral Tracey
17 doesn't need it. Mr. Stone?

18 MR. STONE: I'm fine.

19 CHAIR HOLTZMAN: Okay, so and I'm
20 fine.

21 My plan, by the way, and I mean I
22 think if any of you objects, I'd like to hear

1 that, but my plan is to issue these reports
2 individually as opposed to putting them together.
3 Releasing them individually I think will allow
4 much more attention focused on each one of the
5 points that we're making and allow fuller public
6 and congressional consideration and consideration
7 by the Defense Department in each one of the
8 reports rather than having all three of them in
9 one packet.

10 Any objection to that or any thoughts
11 about that?

12 So, given the work that's already been
13 done, the retaliation report should come out
14 sometime relatively soon. And then, depending on
15 how quickly we do the other reports, probably,
16 the Article 120 report will come out after that.
17 And then, the retaliation will be the third
18 report.

19 COL GREEN: The Restitution and
20 Compensation being the first one, ma'am?

21 CHAIR HOLTZMAN: Yes.

22 COL GREEN: Yes, ma'am.

1 CHAIR HOLTZMAN: Okay. Great, so now
2 we can move --

3 HON JONES: I'm having a little
4 trouble hearing what you said, Kyle.

5 COL GREEN: Ma'am, the Restitution --

6 CHAIR HOLTZMAN: Pull the mic closer
7 to you.

8 COL GREEN: The Restitution and
9 Compensation Report will be -- is with our layout
10 person now. And so, we -- that one should be
11 ready to publish most -- the earliest followed by
12 the Article 120 report and then the retaliation
13 report.

14 HON JONES: Thank you. I like --

15 (Simultaneous speaking.)

16 MR. TAYLOR: Excuse me, go ahead,
17 Judge Jones.

18 HON JONES: I was just going to say,
19 I like the idea of publishing them as they're
20 ready and apart. I think it will get more
21 attention for each subject matter and each of the
22 subjects is really important in and of itself.

1 And, I think it's just an easier read
2 for people. But, I like the idea. Glad we're
3 doing it that way.

4 CHAIR HOLTZMAN: Okay. Thank you for
5 the comment.

6 MR. TAYLOR: I would just like to add
7 that I'm hearing Judge Jones and Kyle quite
8 clearly, but still hearing the Chair breaking in
9 and out. I don't know whether there's something
10 that can be done to adjust the volume or whether
11 it's just the connection, but --

12 CHAIR HOLTZMAN: So, you're still not
13 --

14 MR. TAYLOR: I'm just getting about
15 every other word of the Chair.

16 CHAIR HOLTZMAN: Okay, so you're still
17 not hearing me? I guess he's not.

18 (Pause.)

19 CHAIR HOLTZMAN: Mr. Taylor, this is
20 Liz Holtzman, can you hear me? This is not good.
21 Mr. Taylor, are you on mute? Judge Jones, are you
22 there?

1 (Pause.)

2 CHAIR HOLTZMAN: Good morning, again,
3 Mr. Taylor, can you hear me? Mr. Taylor?

4 MR. TAYLOR: Just barely.

5 CHAIR HOLTZMAN: Just barely. Okay,
6 well, I have the mic just about at my mouth. So,
7 something is wrong.

8 You know, are they hearing through
9 this or through the mic? Is he hearing through
10 the -- oh, he's hearing through the phone,
11 through this. That's why it should be up here.

12 (Pause.)

13 CHAIR HOLTZMAN: Mr. Taylor, can you
14 hear me?

15 MR. TAYLOR: Yes.

16 CHAIR HOLTZMAN: Okay.

17 MR. TAYLOR: Yes. That's much better,
18 thank you.

19 CHAIR HOLTZMAN: All right.

20 Judge Jones, are you on? She's not on
21 yet. We'll wait for her.

22 (Pause.)

1 CHAIR HOLTZMAN: Judge Jones, this is
2 Liz Holtzman, can you hear me?

3 HON JONES: Yes, hi, I can. Sorry
4 about that.

5 CHAIR HOLTZMAN: Wonderful. All of my
6 deathless prose was lost on you.

7 Well, anyway, I'm not repeating it,
8 lucky you.

9 Okay, I guess we're going to our --
10 the draft report on Article 120.

11 MR. TAYLOR: Okay.

12 CHAIR HOLTZMAN: And, I think the way
13 we -- Colonel Hines, do you have some suggestions
14 about how we should proceed?

15 LT COL HINES: Ma'am, what I would
16 suggest is I just briefly hit -- I know we're on
17 a pressed time line -- briefly hit the small
18 changes that were made after last week's meeting
19 by the staff.

20 I also know Mr. Stone sent an email
21 yesterday and I'm ready to address those as well.

22 And then, perhaps we could just open

1 it up for the Panel if you have additional
2 modifications.

3 CHAIR HOLTZMAN: Okay.

4 LT COL HINES: And, I know, Ms.
5 Holtzman, you've got some written comments as
6 well that we're going to take back to the office.

7 CHAIR HOLTZMAN: Well, let me just
8 question why we have to go over the small
9 comments that we agreed to last time. I mean, if
10 nobody's got any comments on your -- the
11 comments, do we have to go over them?

12 LT COL HINES: No, ma'am.

13 CHAIR HOLTZMAN: Okay. So, any
14 comments on the comments? This is almost like
15 the Talmud. You've got to read to the last
16 comment on the last comment.

17 All right, anyhow, so we can just skip
18 that and you could go over the -- Mr. Hines --
19 Colonel Hines, do you want to go over the second
20 thing you wanted to do which was Mr. Stone's --

21 LT COL HINES: Yes, ma'am.

22 CHAIR HOLTZMAN: -- suggestion?

1 LT COL HINES: And, Colonel Green
2 reminded me, I think Mr. Taylor's got perhaps
3 some edits as well that he might --

4 CHAIR HOLTZMAN: Great, so we'll take
5 that -- why don't you start with Mr. Stone and
6 then we'll do Mr. Taylor.

7 LT COL HINES: All right.

8 CHAIR HOLTZMAN: He's not here, so he
9 loses priority.

10 LT COL HINES: So, on Mr. Stone, on
11 page 12, and it would be the second paragraph
12 there that starts with, "The JPP is aware that
13 DoD..."

14 He suggested in his email that we add
15 a sentence to the effect of -- to memorialize the
16 fact that the Panel invited the Director of the
17 military Justice Review Group to address the
18 MJRG's proposal on 120 to -- regarding the
19 definition of sexual act.

20 And, Mr. Stone suggests that we add a
21 sentence to the effect of the JPP invited the
22 Director of the MJRG to speak to the JPP about

1 the substance of the MJRG's proposals while they
2 were being developed.

3 Due to their organizational
4 constraints at the time, the MJRG Director only
5 testified about the testimony -- I'm sorry --
6 about the MJRG's procedural background and
7 provided no information or expert testimony about
8 any of the MJRG's substantive proposals to either
9 the JPP or the JPP Subcommittee.

10 As a result, the JPP makes no
11 recommendation regarding the MJRG's proposal.

12 HON JONES: I'm sorry to say this, but
13 I could only hear some of that, Glen. I think
14 Mr. Stone sent an email, but it's -- I have to
15 look for it, it's not right in front of me at the
16 moment.

17 CHAIR HOLTZMAN: Yeah, she's not going
18 to hear you through the mic. The mic's not going
19 to make any difference to her. So, Colonel, if
20 you just come up here or --

21 LT COL HINES: Yes, ma'am.

22 CHAIR HOLTZMAN: -- move the chair or

1 something. I don't know why this reception on
2 this is not good.

3 LT COL HINES: Judge, can you hear me
4 better now?

5 HON JONES: Perfect, yes.

6 LT COL HINES: So, Mr. Stone submitted
7 a proposed additional sentence that would go in
8 the second paragraph at the top of page 12.

9 HON JONES: I got -- I'm there.

10 CHAIR HOLTZMAN: It's page 11.

11 HON JONES: Okay.

12 LT COL HINES: And, it's essentially
13 a sentence that would in more detail illustrate
14 that the Panel invited the Director of the MJRG,
15 Chief Judge Effron to testify or present before
16 the Panel.

17 And that he was only able -- Judge
18 Effron was only able to testify about the MJRG's
19 procedural background and provided no information
20 or expert testimony about any of the MJRG's
21 substantive proposals to either the JPP or the
22 JPP Subcommittee.

1 And, as a result, the JPP makes no
2 recommendation regarding the MJRG's proposal.

3 CHAIR HOLTZMAN: Can I just make a
4 comment about that, if you don't --

5 I mean, my sense about it is, and I
6 have no objection to the substance, but the way
7 it's worded and referring specifically to Judge
8 Effron suggests that somehow he's at fault here.

9 I'd rather put this in the passive
10 voice in a way and say that the Subcommittee or
11 whoever we're talking about here, sought
12 information from the J -- from the MJRG as to
13 whatever, sought information of the MJRG, but
14 because of the legal constraints on them, they
15 were unable to provide it to us.

16 And, leave it -- and therefore, we
17 make no recommendation.

18 I mean, I think that that, without
19 singling anybody out, it explains that we tried
20 to get the information and we were unable to
21 receive it.

22 MR. STONE: Right, that's fine.

1 CHAIR HOLTZMAN: I don't have the
2 wording in front of me but --

3 MR. STONE: Yeah, I only did that
4 because I thought that the staff might want to
5 drop, as they do, a footnote where we did it. I
6 just don't want someone who's unfamiliar with
7 what happened to think we didn't try and pursue
8 the matter and, therefore, we weren't doing what
9 we were asked to do.

10 CHAIR HOLTZMAN: Right, okay.

11 MR. STONE: We tried to pursue it, but

12 --

13 CHAIR HOLTZMAN: Right.

14 MR. STONE: -- because of the way the
15 time worked out, you know, organizational
16 constraints, he wasn't able to help us.

17 And, I have no problem with the staff
18 working it out with the language. I put in my
19 note that I'm not wedded to any kind of language,
20 I just wanted to show that we made an effort to
21 get it. That we're not taking a position because
22 we couldn't be bothered.

1 CHAIR HOLTZMAN: Right, right.

2 MR. STONE: We just were unable to get
3 it.

4 CHAIR HOLTZMAN: Right. I think my
5 suggestion avoids any blame placing or
6 implication of that. I don't know if other
7 members of the Panel agree, but I would -- that's
8 my own view about it.

9 HON JONES: No, I agree. I agree with
10 your earlier comment and Mr. Stone's. And I --
11 we don't -- there is no blame here, just wasn't
12 possible.

13 CHAIR HOLTZMAN: Correct, correct.

14 HON JONES: So, I think a rewrite --
15 a little bit of a rewrite works just great.

16 CHAIR HOLTZMAN: Okay. Colonel,
17 what's next?

18 LT COL HINES: The only other point
19 was Mr. Stone spotted a typo on page 16.

20 CHAIR HOLTZMAN: Oh no, no, no, we're
21 not going through typos, please. This is not the
22 place for typos. Typos are not substantive and,

1 therefore, we can discuss them on the phone if we
2 have to. Anything grammar, typos, that kind of
3 stuff, style is not substance, so we don't --
4 it's not a public matter.

5 COL HINES: Ma'am, the other comments
6 we received from Mr. Taylor -- Mr. Taylor, just
7 to confirm with you, I would think they're the
8 same way that they're not substantive?

9 CHAIR HOLTZMAN: Mr. Taylor, can you
10 hear Kyle?

11 MR. TAYLOR: Yes, yes I can now.

12 CHAIR HOLTZMAN: Okay. Okay, go
13 ahead, I'm sorry.

14 COL GREEN: And, Mr. Taylor, just to
15 confirm with you, we take those just all as
16 technical edits and nonsubstantive edits unless
17 you see otherwise, sir.

18 MR. TAYLOR: That's fine with me.

19 CHAIR HOLTZMAN: Okay. Do we -- so,
20 that -- so, Mr. Taylor, do you have any other
21 suggested changes that you'd like to make?

22 MR. TAYLOR: Well, I'm not sure what

1 you're including this in. I think you included
2 this in nonsubstantive, but on page 16 of the
3 report, the line just above paragraph six, the
4 people have that available, where we're talking
5 about why we're not adopting the reasonable --
6 while we're not changing the reasonably should
7 have known standard, there's a line there that
8 says that the jury will basically be instructed
9 that the line provides no defense for
10 Servicemembers who claim a negligent or mistaken
11 belief that a victim consented.

12 And, I suggested we take out the words
13 "or mistaken" and just stick with negligent
14 because that's what the reasonable standard is
15 all about.

16 CHAIR HOLTZMAN: I'm not following
17 where you are. What paragraph are you one on
18 page 16? Wait, is this January 20, 2016 version?

19 MR. TAYLOR: Yes, yes. It's the
20 current draft on page 16. It's the third
21 paragraph. And, it's the line I'm focusing on is
22 just about the paragraph numbered six.

1 CHAIR HOLTZMAN: The line -- so it's
2 the last line?

3 MR. TAYLOR: It is the last line where
4 it says the law provides no defense--

5 CHAIR HOLTZMAN: I've got it, okay.

6 MR. TAYLOR: -- for Servicemembers who
7 claim a negligent or mistaken belief that a
8 victim consented.

9 And, I'm questioning whether or
10 mistaken is the best thing to put there because,
11 as we had said in other places in the report,
12 mistake of fact, of course, it's their defense.

13 CHAIR HOLTZMAN: Right.

14 MR. TAYLOR: I just think putting or
15 mistaken makes it a little confusing.

16 CHAIR HOLTZMAN: Oh, so you wanted to
17 strike the word mistaken --

18 MR. TAYLOR: Yes.

19 CHAIR HOLTZMAN: -- who claims a
20 negligent belief?

21 MR. TAYLOR: Yes.

22 CHAIR HOLTZMAN: Is there any objection

1 to that or any comment about that?

2 HON JONES: No, I agree completely.
3 I'm glad you saw that. I missed it and I think
4 it's wrong. And certainly, it's not wrong but
5 it's very misleading so it should come out.

6 CHAIR HOLTZMAN: Mr. Taylor, any other
7 brilliance for us?

8 MR. TAYLOR: That exhausts my supply
9 for the day, ma'am.

10 CHAIR HOLTZMAN: I don't think for the
11 whole day, maybe for the minute.

12 Admiral Tracey, do you have any
13 comments?

14 VADM TRACEY: No, I don't.

15 CHAIR HOLTZMAN: Okay. And, Mr.
16 Stone, do you have any further comments?

17 If not, I have a few comments and let
18 me just -- I'm sorry, maybe it was the fact that
19 I read this in the middle of the night that
20 prompted these thoughts, but in any case.

21 A few kind of big overall points. I'm
22 not going to raise the stylistic points, but I

1 think in the Executive Summary, one of the things
2 it doesn't do is it doesn't say how we responded
3 to the whole Subcommittee report.

4 It says we adopted seven issues -- no,
5 it basically just says that we considered the
6 report but it doesn't really say what -- I mean
7 we do in the substance of the report, say what we
8 did -- how we reacted to the Subcommittee's
9 report, but I do think that in the Executive
10 Summary, we should say we either adopted it all,
11 rejected it all, whatever we did with it.

12 So, I would suggest that that language
13 -- something about that be included.

14 COL GREEN: Ma'am, which version of
15 the Executive Summary are you looking?

16 CHAIR HOLTZMAN: On page 3.

17 COL GREEN: What's the date on the
18 draft, ma'am, at the top?

19 CHAIR HOLTZMAN: The 20th.

20 COL GREEN: Okay, the --

21 CHAIR HOLTZMAN: Is that the wrong
22 version?

1 COL GREEN: Well, at the bottom of the
2 paragraph where it says the -- the paragraph --
3 the third paragraph, the JPP carefully considered
4 the Subcommittee's report, the fifth from the
5 bottom line, to address these concerns, the JPP
6 recommends Congress amend five definitions to
7 Article 120 and adopt a new theory of liability.

8 CHAIR HOLTZMAN: I understand that,
9 but that doesn't say -- that doesn't relate it
10 specifically to the Subcommittee report which we
11 do later.

12 We should say either we accept it all
13 -- what we say in the text of the -- of this
14 document is that we accepted everything that was
15 recommended by the Subcommittee with the
16 exception of one minor -- and we made one minor
17 change.

18 That doesn't appear here, so somebody
19 reading the Executive Summary would have no idea
20 how the JPP's action relates to the
21 Subcommittee's action.

22 COL GREEN: Okay.

1 CHAIR HOLTZMAN: That's my only point.
2 Okay, it's really -- I don't know if it's
3 stylistic.

4 Anyway, let me just see -- and then I
5 have some larger points about whether we want to
6 put in the summary or in the text, for example,
7 sometimes we draw on the Title 18, sometimes we
8 don't. If we do that, don't we want to suggest
9 that we have followed Title 18 or that we have
10 followed most of Title 18 or something like that?
11 So that people have a context for what changes
12 we've made.

13 In other words, that we haven't just
14 simply pulled it out of the hat. For example, I
15 think Lisa Friel's definition of sexual act may
16 rely primarily on Title 18, but it's not exactly
17 the same. But, I think things like that should
18 be identified so that people know that we haven't
19 just pulled this out of the hat.

20 That's all I'm trying to say. So,
21 when we have relied on some precedent in
22 formulating our language, I think that that

1 should be included. That's the overall point I'm
2 trying to make here. I'm not being articulate, I
3 guess.

4 MR. TAYLOR: Well, I think that's a
5 really good point because I think the more we can
6 put this in context to show that we are, in fact,
7 building upon existing law, the more credible the
8 report is. I agree with that.

9 CHAIR HOLTZMAN: I appreciate that
10 comment, Mr. Taylor.

11 Also, do we want to say in some cases
12 where practitioners requested a change that we
13 include that? For example, I think it was in the
14 incapable of consenting point, again, going to
15 what Mr. Taylor said, giving a basis -- I mean
16 that we weren't just saying, oh, well, we don't
17 like this.

18 I mean, I think it would be useful
19 when we were asked to make a change or when
20 people thought a change should be made that that
21 should be -- appear somewhere right there so
22 people, again, don't think we're just being

1 frivolous or just doing our own frolic and
2 detour, as they say in law school.

3 Any disagreement or agreement about
4 that?

5 MR. TAYLOR: I agree with that.

6 HON JONES: I do, too. And, it's just
7 a question of where we're going to put it, I
8 guess, you know, in the summary generally and
9 then with respect to where we can say Title 18 or
10 we can make a comment like with incapable of
11 consenting practically every practitioner thought
12 it -- thought a definition was required.

13 I don't think that's bad. And, I
14 haven't, you know, in the last minute, I've been
15 looking for it and some of that may be in here,
16 but it should be in here for anywhere where we
17 can say that, yes.

18 CHAIR HOLTZMAN: Okay. I think it
19 should be in the -- my own view is if we can keep
20 it concise, it could be in the Executive Summary.

21 HON JONES: Yes, and I'm saying it
22 could go in twice. Right.

1 CHAIR HOLTZMAN: Yes, okay.

2 HON JONES: It'll emphasize it in the
3 summary and then, you know, when you do get to a
4 spot like where we did the definition for
5 incapable of consenting, we say --

6 CHAIR HOLTZMAN: Yeah.

7 HON JONES: We say, you know, what the
8 impetus was.

9 CHAIR HOLTZMAN: Correct.

10 Okay, I don't know if this final,
11 because I can't quite read my handwriting, but --

12 COL GREEN: The staff concurs with
13 that, ma'am.

14 CHAIR HOLTZMAN: Yeah, I know.

15 Well, anyway, I won't say what it
16 appears like.

17 Anyway, on page 6, the concept of
18 bodily harm, I'm just going to talk in
19 generalities here because I don't want to present
20 the specific language to anybody. The staff can
21 work on it.

22 But, the way this is presented, it's

1 very confusing to me. It starts with saying, on
2 page 6, the very top after the recommendation,
3 the concept of bodily harm is useful for cases.

4 Well, my own view is that the concept
5 of bodily harm is useless, if not misleading.
6 So, what -- the point is that we're really trying
7 to make here is that Section 120(b)(1)(B) is
8 designed to criminalize sexual conduct that is
9 engaged in without consent. That should be kind
10 of the major premise.

11 Then say, but the language -- but the
12 way in which it describes it is confusing because
13 it says, instead of just limiting to without
14 consent, it says you need to have bodily harm.
15 And then, it defines bodily harm as being without
16 consent. And therefore --

17 So, I just think that the way they
18 have set this up which is by saying that the
19 concept of bodily harm is useful is kind of self-
20 contradictory and it should be -- I think the way
21 this is described is just incorrect and
22 misleading.

1 I don't know. Mr. Stone, you were --

2 MR. STONE: I agree with that. I
3 think that could be clarified. Just --

4 CHAIR HOLTZMAN: Right. So, I'm not
5 going to suggest the actual language but I think
6 that we could clarify that.

7 COL GREEN: Yes, ma'am.

8 CHAIR HOLTZMAN: Let me just see if
9 there's something else that I wanted to say.

10 I would also -- when we talk about a
11 redline version, is that standard language, by
12 the way? Redline? I mean --

13 PARTICIPANT: It is in DoD.

14 CHAIR HOLTZMAN: -- it is? Okay, so
15 everybody knows that? DoD would understand that?
16 Would Congress understand -- excuse me, that's a
17 rhetorical question.

18 Okay, well, if it's standard operating
19 procedure, I have no problem with that.

20 MR. STONE: Maybe there should be
21 quotations around it because it's not, like you
22 say, a word in everyday use.

1 PARTICIPANT: As long as it's used in
2 its normal use --

3 CHAIR HOLTZMAN: I can't hear what
4 you're saying.

5 PARTICIPANT: As long as it's in normal
6 use even if it's a little unusual for the
7 audience to not have quotes around it.

8 CHAIR HOLTZMAN: All right.

9 Okay, I don't think that -- I don't
10 think I have any other major substantive
11 comments. But, if the staff -- what's our
12 procedure now since we have some changes to make?
13 Perhaps the staff can make these changes,
14 circulate them to us. If we need to have a
15 conference call, we can.

16 Ms. Fried, are you listening to this
17 part and you'll object if it's not --

18 MS. FRIED: Yes, we could have a
19 conference call and if need to open up lines to
20 the public, we can do that if it constitutes a
21 meeting.

22 CHAIR HOLTZMAN: Okay. And so, I

1 suggest that we -- unless there's objection, we
2 should -- unless there's objection, why don't we
3 approve -- well, I guess we don't have to approve
4 -- do we have to approve something subject to the
5 changes or we'll approve it in our final -- when
6 we go over the final draft? What do we -- how do
7 we proceed?

8 MS. FRIED: I would recommend that we
9 would approve the changes. We get it on the
10 record now so that if then we're just tweaking --

11 CHAIR HOLTZMAN: Okay. All right.

12 So, why don't we -- okay, so why don't
13 we approve -- if everyone's in agreement, we can
14 approve this report subject to the changes that
15 were discussed, the substantive changes that were
16 discussed here and agreed to here, plus any
17 stylistic, grammatical or typo changes that have
18 to be made.

19 MR. STONE: And, if any of the Panel
20 members thinks they need a telephone conference
21 call, we'll do it. And, if not, they can all
22 just respond that they're fine with it.

1 CHAIR HOLTZMAN: Okay. Subject to
2 that amendment, is there any disagreement,
3 objection, comment?

4 MR. TAYLOR: I agree.

5 VADM TRACEY: I agree.

6 HON JONES: I agree.

7 CHAIR HOLTZMAN: Mr. Stone, you agree?

8 MR. STONE: Yes, sure.

9 CHAIR HOLTZMAN: And, I agree.

10 Okay, so that's accepted and we are --
11 I won't say finished, but we're well on our way
12 to finishing 120.

13 Okay, now we're up to retaliation.

14 Thank you, Colonel Hines.

15 LT COL HINES: Yes, ma'am, you're
16 welcome.

17 CHAIR HOLTZMAN: And, Mr. Marsh, thank
18 you very much.

19 COL GREEN: Yes, ma'am.

20 And, the staff took similar to the
21 Article 120 brief, although the Panel has already
22 seen a version of the retaliation report, the

1 staff incorporated the Panel's discussion
2 regarding the summary of recommendations and the
3 edits that the Panel has previously proposed to
4 the draft.

5 And so, those have been changed, that
6 the revised version of that report was sent out
7 to the Panel this week.

8 And so, I would propose that we can --
9 the staff can review those for you and go over
10 the changes that we made or, as the Panel wishes,
11 or if the Panel's comfortable with that.

12 There were a couple of points that we
13 thought, based on last week's discussion that
14 probably do need to be discussed by the Panel.

15 CHAIR HOLTZMAN: So, why don't you
16 pull out the -- Lieutenant -- I'm sorry, Colonel
17 Green, why don't you pull out or the staff pull
18 out the issues -- the substantive issues you
19 think we need to address now, let's address them
20 now. And then we'll hear comments from the
21 members of the Panel any other suggestions.

22 LTC MCGOVERN: One of the changes we

1 tried to incorporate based on your discussion
2 last week was Admiral Tracey's concern about
3 reports going directly to the MCIOs. That
4 revision occurs in the summary of recommendations
5 on R-3, and then, also within the body of the
6 report on page -- I just had it -- on page 40.

7 What we -- Admiral Tracey wrote a note
8 expressing her concern that, while this is great
9 for MCIOs to have the situational awareness of
10 all the retaliation reports filed, sometimes,
11 that may create a chilling effect if victims
12 think they have an informal avenue but then hear
13 that everything they say is going to go to a
14 official investigator. Is that correct, ma'am?

15 VADM TRACEY: That, plus.

16 LTC MCGOVERN: Yes?

17 VADM TRACEY: We heard, and I believe
18 my experience is, that a good deal of what is
19 retaliatory behavior occurs after the trial is
20 completed. And, it's an ongoing issue for the
21 victims of the retaliation.

22 The people who are engaging in that

1 retaliatory behavior, if it is the lower end of
2 the scale ostracism and what have you, why am I
3 reporting those people to the military Criminal
4 Investigation Service? Why am I creating that
5 kind of a broad record around something that the
6 commander has not determined to merit an
7 investigator's involvement yet?

8 LTC MCGOVERN: Right. So, we took
9 note of those and, again, the JPP -- or the
10 Response Systems Panel last year heard from the
11 rest that MCIOs actually receive investigative
12 information from a variety of sources in which
13 they don't necessarily act on.

14 So, they are used to receiving
15 information, not necessarily acting on it. But,
16 to try to come up with something to address your
17 two primary concerns, the chilling effect on the
18 victim and then escalating investigative
19 authority automatically for things that occur
20 later on which may not warrant that, we offered
21 to adjust it so that if they elect to file an
22 informal complaint of retaliation, that that stay

1 with the SARC and the commander.

2 But, if they elect a formal, then that
3 will go to the MCIO for their situational
4 awareness to look at the sexual assault offense
5 along with -- and be aware of what's going on
6 with the retaliation.

7 If the retaliatory -- the victim of
8 retaliation elects an informal report, they, of
9 course, have the option of telling their SARC or
10 commander what information they feel comfortable
11 being released at the Case Management Group.

12 And there, in that forum, the MCIO
13 would learn about and receive the situational
14 awareness that we're trying to create in other
15 areas of this report so that everybody who
16 responds to retaliation has the same information
17 going on.

18 So, bottom line is, we are proposing
19 in the summary of recommendations that
20 information from formal retaliation reports
21 should be provided to agents from appropriate
22 military Criminal Investigations so that agents

1 are aware of any information relevant to the
2 underlying sexual assault investigation, even if
3 the MCIO does not conduct the retaliation
4 investigation.

5 VADM TRACEY: Okay, I'm still
6 distinguishing between the time when it is a
7 sexual assault investigation that has not yet
8 been formally disposed of either at trial or
9 dismissal and the occurrences of behavior that
10 constitutes retaliation after that disposition
11 and you're not.

12 LTC MCGOVERN: Yes, ma'am.

13 VADM TRACEY: You're treating it as if
14 the MCIO is still engaging in a sexual assault
15 investigation. They're not. The trial's over,
16 it's done with. What is their role in the
17 retaliatory behavior that occurs afterward if the
18 commander is not referring it to them?

19 I think there is an issue that we're
20 trying to address which is around ensuring that
21 the victim of a sexual assault gets an end to end
22 addressal of the issues that pervade their life

1 once the assault has occurred and there are
2 bystanders who are similarly swept up in that
3 assault. That's --

4 But, it still seems to me that we are
5 taking initiative out of the commanders' hands
6 and we're applying to wrong lens to this set of
7 information.

8 This is about a victim-centric view of
9 whether -- of how the sexual assault is affecting
10 them and what the commander needs to do to try to
11 make them whole.

12 It's not about a criminal
13 investigator's view of a sexual assault case
14 which is closed as far as the investigator is
15 concerned.

16 LTC MCGOVERN: Yes, ma'am.

17 And, the goal isn't to take the
18 investigation to the MCIO level, it is -- you
19 said, prior to the court-martial, the
20 adjudication, to expand their situational
21 awareness so that they are aware of other people
22 that may be involved or adding to it.

1 The way that the DoD regulation states
2 it now is that, if something has happened to a
3 victim of sexual assault, those instances,
4 regardless of the timing of the court-martial,
5 would be, if it's, let's say the court-martial is
6 over but there's damage to personal property or a
7 threat, because there was a sexual assault
8 report, the MCIO would still have jurisdiction
9 over that even though, normally, they wouldn't
10 take those on.

11 So, the MCIOs currently do have an
12 ongoing obligation with a sexual assault case,
13 even though that case may be closed.

14 So, I don't think it would be totally
15 contradictory that they continue to receive
16 information related to a sexual assault.

17 But, we can go back and work it a
18 little bit more to distinguish before court-
19 martial and after the proceedings.

20 CHAIR HOLTZMAN: Admiral, let me just
21 ask you a question here. Is your concern that if
22 the -- your concern is allowing the commander to

1 have some flexibility without having the MCIO
2 involved.

3 Well, maybe one solution here is if
4 the victim does not want a formal investigation,
5 let's say, but wants the commander to handle
6 this, then that could be noted on the information
7 when it goes to the MCIO.

8 VADM TRACEY: I'm sorry, you've
9 already rung the bell as far as I'm concerned.
10 You've given names of individuals who are accused
11 of retaliation --

12 CHAIR HOLTZMAN: Oh, I see, okay.

13 VADM TRACEY: -- to the investigator.
14 So, you're beginning to create records on
15 individuals in the investigator's hands. And,
16 I'm objecting to that as a commander.

17 MR. STONE: Did you have a suggestion,
18 not necessarily a final one, but an idea of the
19 alternative that you think might work better?
20 That's what I was struggling with.

21 CHAIR HOLTZMAN: Right.

22 MR. STONE: And, you know that system

1 a little better than we do.

2 VADM TRACEY: I -- my thought was that,
3 if the commander decides that this needs to be
4 investigated, that that is what triggers an
5 investigation is when the commander decides it
6 needs to be investigated.

7 And, a part of that investigation is
8 access to the information that's been kept by the
9 SARC, in this case, around the reports of
10 retaliation and whatever else the commander has
11 uncovered in the process that he or she applied
12 to the victim's request for help.

13 And this appears, to me, to be
14 automatically opening the opportunity for
15 investigators to investigate. And I am just
16 offended by that as a commander.

17 LTC MCGOVERN: Well, and I think our
18 attempt, then, was to help propose that an
19 informal system would not trigger that
20 communication to the MCIO.

21 So, as you said, Mr. Stone, the victim
22 would have control over how far the information

1 went. But if it were formal, it would at least
2 go to the MCIO, not for them to investigate, but
3 for them to be -- have the situational awareness
4 that there are these other things going on in
5 this case, but the commander is --

6 VADM TRACEY: But I don't typically
7 have the investigator monitoring the tone of my
8 command. That's my job. And if I need their
9 help to address an issue, that's what I use them
10 for.

11 I'm sorry, they're people. We are
12 providing them information that enables them to
13 think they have a monitor-the-tone role to play
14 and they don't.

15 LTC MCGOVERN: But I think that with
16 the Case Management Group is what we've heard is
17 that there's this -- for sexual assault in
18 particular, there is a coordinated effort to meet
19 once a month so that everybody, the SARC, the
20 doctors, the command, the SVCs are all working
21 with the same information so that they can
22 provide the support and services and do their job

1 appropriately.

2 So, the MCIOs are receiving this
3 information verbally at a Case Management Group
4 once a month.

5 VADM TRACEY: But I'm not creating a
6 record with them, which I would be if I provide
7 the record to the MCIO.

8 MR. STONE: I have a -- and maybe I'm
9 wrong, but the concern that sort of pops into my
10 mind is, are we making too many -- are we making
11 this process too difficult to easily be
12 implemented? Because we've got if this happens
13 and this happens and if it's formal, if it's
14 informal, it goes here, it doesn't go there. Are
15 we --

16 VADM TRACEY: I'm not in favor of
17 distinguishing between formal and informal.

18 MR. STONE: I agree.

19 VADM TRACEY: I am in favor of the
20 MCIO gets the information when it's his job, or
21 his or her job, to do that investigation.

22 MR. STONE: Right. I'm afraid if we

1 try and make too many exceptions, it's going to
2 get messed up among people who are used to this
3 or used to that and what we're trying to avoid
4 may not happen. It's sort of -- I think the
5 people on the receiving end are going to say, "Oh
6 my God, all these regulations, am I following
7 them right?" And they're going to make mistakes
8 and it's going to be out there because they have
9 trouble with all the right turns and left turns
10 we're making.

11 CHAIR HOLTZMAN: Let me ask a
12 hypothetical here. Supposed the retaliation
13 that's existing is of a criminal nature -- just a
14 hypothetical -- and the commander says, "I'm
15 handling this." What happens in that case? The
16 MCIO doesn't get the information?

17 And let's say that the investigation
18 done by the commander is not a perfect one, I'm
19 not saying intentional, but whatever, and then
20 time goes by and evidence vanishes or whatever,
21 what happens in that case?

22 Just throwing that out as a

1 hypothetical, if -- so that -- I mean, I'm very
2 sensitive and respectful of the point you're
3 making, sensitive to and respectful of the point
4 you're making, Admiral, but I'm just trying to
5 figure out what happens in a case where there's
6 actual -- where it's not just ostracism, but it's
7 borderline criminal, or may in fact be criminal?
8 Maybe borderline criminal, when you investigate,
9 it's in fact criminal? So, what do we do in
10 those cases? How do we deal with this? What is
11 your sense of this?

12 VADM TRACEY: So, isn't that a
13 question about any criminal conduct? That if the
14 commander chose to treat it inappropriately, you
15 know, that's a risk of the system.

16 In this case, you have an added check
17 and balance in that, in theory, the board is
18 meeting every month to review cases. And the
19 fact that there is an outstanding complaint of
20 retaliation is now part of the record that we're
21 recommending be held by the SARC, and, therefore,
22 part of what is being reviewed at that monthly

1 meeting, along with, how long has it been since
2 the report was made, what was the disposition of
3 the report, what action was taken, and so forth.

4 And so you have a check and balance on
5 sexual assault cases that you don't actually have
6 on any other kind of potential criminal activity.

7 LTC MCGOVERN: Well, and I think that
8 that is the distinction, ma'am, is that early on,
9 Rep. Holtzman had made some points of treating
10 retaliation offenses similar to the attention and
11 processes that have been placed for the actual
12 sexual assault.

13 So, currently, the DoD policy requires
14 that when an MCIO has initiated an adult sexual
15 assault investigation, which is upon every
16 report, it automatically goes from the SARC to
17 the MCIO so that the commander does not have
18 discretion, it's not swept under the rug or
19 there's not any confusion, that it goes straight
20 to the MCIO, that the MCIO will also initial and
21 conduct subsequent investigations related to
22 suspected threats against the sexual assault

1 victim to include minor physical assaults and
2 damage to property.

3 And those the Services are
4 interpreting as retaliatory acts. And that's
5 where it seems that DoD -- the direction they're
6 going is to treat and react to retaliation that's
7 related to a sexual assault be treated in the
8 same manner and information shared in the same
9 manner with the MCIO whether or not the MCIO does
10 that.

11 So, not to completely undermine the
12 option for the commanders' authority, that is
13 where we were offering in the idea of
14 distinguishing between an informal versus formal,
15 just as a complainant for sexual assault can go
16 restricted versus unrestricted because the
17 restricted then never goes to the MCIO.

18 But once it's a formal report, to
19 ensure that it is -- that the MCIOs can conduct a
20 proper sexual assault investigation or handle
21 these allegations properly, DoD has already
22 determined that information should go to the

1 MCIOs to determine who the proper investigative
2 authority is.

3 MR. STONE: Would it alleviate some of
4 the concern if it said something like, "the MCIO
5 may, with notice to the commanding officer,
6 request copies of the blah, blah, blah forms?"

7 In other words, so it certainly wasn't
8 behind their back, the commander understood what
9 -- was given some notice that he knew what was
10 going on, it didn't just happen, so that if he
11 wanted to step in, he could step in.

12 Because then getting it orally at the
13 meeting, and that way, if the MCIO is sort of, "I
14 really do think I need to know more," he'd get
15 some notice. Would that --

16 VADM TRACEY: I still am concerned
17 that we are putting the names of individuals who
18 may respond immediately to counseling from their
19 commander, that that's not the way that we treat
20 people in our organization, their names are now
21 with the MCIO and it doesn't matter if it was
22 resolved immediately or not.

1 CHAIR HOLTZMAN: Well, let me just ask
2 --

3 MR. TAYLOR: Excuse me. I can barely
4 hear part of what Colonel McGovern had to say.
5 But is the essence of what you said that you
6 believe that this simply restates a DoD policy
7 that's already in existence?

8 CHAIR HOLTZMAN: Colonel McGovern, you
9 have to come up to the -- no, no, no, not the
10 mic, come up here if you don't mind. I'm sorry
11 to do that to you.

12 MR. TAYLOR: Would you like for me to
13 repeat the question?

14 LTC MCGOVERN: No, no, sir. I believe
15 that the formal -- a formal retaliation complaint
16 by a victim of sexual assault is going to be
17 investigated by the MCIO, based on the Services'
18 responses and the current policy. And if the
19 MCIO determines that it's better to be handled at
20 the commander level or by the IG, the MCIO will
21 then farm it out to the appropriate investigative
22 authority.

1 What we've done is proposed that, in
2 addition to your offering of an informal versus
3 formal, that so that people do come forward to
4 make retaliation complaints and feel comfortable
5 with the informal process, that it parallel,
6 somehow, the restricted versus unrestricted, so
7 that not everything will go necessarily to the
8 MCIO.

9 CHAIR HOLTZMAN: So, all you are doing
10 is -- let me make sure I understand this. So,
11 what you're doing in this proposal, Colonel
12 McGovern, is to say, okay, right now, any formal
13 report under DoD regulations, if there is an
14 unrestricted report of sexual assault, that goes
15 to MCIO?

16 LTC MCGOVERN: Yes, ma'am.

17 CHAIR HOLTZMAN: And if at the same
18 time or at any other time, that victim comes back
19 to the SARC or anybody and says, I've been
20 retaliated against, that goes to MCIO?

21 But what you're saying is, we're now
22 going to create a new category of complaint about

1 retaliation which is, and this is to encourage
2 victims to come forward saying that, okay, you
3 can make an informal -- or do you want to call it
4 restricted? We could call it restricted. So
5 that it, you know, parallels the restricted
6 report of sexual assault, a restricted report
7 that goes to the SARC only, you know, so that
8 that report is there, but that it doesn't go to
9 the MCIO, is that what you're proposing here?
10 Or, it does go to the MCIO? What are you
11 proposing?

12 LTC MCGOVERN: Yes, ma'am. If I can
13 go back?

14 CHAIR HOLTZMAN: Please.

15 LTC MCGOVERN: The DoD policy that we
16 referred to does not specifically state that any
17 retaliation claim against a sexual assault victim
18 will be complete if the Services had a bit of
19 conflicting information on how serious that
20 offense would have to be following the sexual
21 assault. Specifically, they do need property
22 damage or some sort of threat against the victim

1 will automatically go to the MCIO.

2 So, there is a gray area right now
3 within DoD what goes to the MCIO and that it has
4 to be against the victim.

5 CHAIR HOLTZMAN: I see, okay.

6 LTC MCGOVERN: So, here, we're trying
7 to have some clarity for information sharing that
8 should be going on at the CMG anyway. So, if
9 you're comfortable that it's occurring at the
10 CMG, then maybe this is not even necessary to
11 bring up in the JPP's report about sharing the
12 sexual assault form, that the SARC has the
13 consent of the victim to share it at the Case
14 Management Group. We can adjust the report to
15 eliminate that suggestion and it would eliminate
16 your concerns.

17 But, at the same time, if you
18 distinguish between an informal, staying with the
19 SARC and commander, versus a formal, going to the
20 MCIO, it would guarantee that those that are more
21 formal, the MCIO at least has the situational
22 awareness and the information, which the Navy had

1 pointed out, is really critical to their sexual
2 assault investigation, which is why DoD is coming
3 up with this policy.

4 So, in the end, I mean, we are
5 flexible, whatever you want to do. If you want
6 to specify how informal versus formal information
7 should be share in MCIOs. Or you can remain
8 silent on the issue.

9 But, right now, there is a bit of
10 confusion with the DoD policy what exactly will
11 go to the MCIOs, unless it's a serious offense of
12 a clear threat or damage to property. But they
13 do distinguish it -- those for victims of sexual
14 assault as being escalated to the MCIO level.

15 CHAIR HOLTZMAN: So, let me just make
16 sure I understand this, because I'm getting
17 somewhat confused.

18 Okay, so, certain claims of
19 retaliation, if I'm a victim, or if a victim
20 comes to the SARC and says, "I've been a victim
21 of retaliation." If the victim says that it's
22 been a threat or my property has been damaged,

1 what's the SARC's obligation? The SARC must turn
2 that over to the MCIO in all circumstances?

3 LTC MCGOVERN: Yes, ma'am.

4 CHAIR HOLTZMAN: Okay, so the victim
5 can't say, "listen, this is happening to me but I
6 don't want you to report it to anybody." That
7 doesn't exist for those two categories, is that
8 right?

9 LTC MCGOVERN: Correct.

10 CHAIR HOLTZMAN: So it's not like
11 sexual assault in the sense that a victim has
12 some control as to whether or not this is to be
13 formally investigated, is that right?

14 LTC MCGOVERN: No, it is similar to
15 sexual assault in that if it's an unrestricted
16 report, it goes directly to the MCIO.

17 CHAIR HOLTZMAN: Right. But let's say
18 that, even though it's property damage or a
19 threat, and even though, theoretically, this
20 would automatically go to the MCIO, does the
21 victim have -- are we giving the victim a new
22 right here? Which is to say, "You know

1 something, I don't want this investigated by the
2 MCIO. I don't want this whole formal apparatus."
3 Are we doing that, is that what one of the
4 consequences of your proposal -- of this
5 proposal?

6 LTC MCGOVERN: Yes, ma'am. You could
7 be doing that with this informal report.

8 CHAIR HOLTZMAN: Okay. So, you're
9 creating -- so, one of the things -- and I don't
10 know how you feel about this, Admiral, okay. One
11 of the things that's -- I'm just trying to
12 understand what you're doing here.

13 One of the things that you're doing
14 here is creating an option for the victim, in the
15 categories that the DoD has already said have to
16 go to the MCIO, not to go to the MCIO?

17 MR. STONE: The victim says, "I think
18 they got carried away. Maybe they drank too
19 much, I don't think it's going to happen again, I
20 feel like I should report it because, next time,
21 I'm going to do something. But the fact that
22 they, I don't know, messed up a lot of my clothes

1 and they're not wearable anymore, I want to
2 forget it this time."

3 LTC MCGOVERN: And I don't want to
4 flip-flop on you too much, but I am going to,
5 ma'am.

6 So, once you all --

7 CHAIR HOLTZMAN: Let's make it more
8 complicated, great.

9 (Simultaneous speaking.)

10 LTC MCGOVERN: -- if she tells the
11 SARC and commander there was property damage, "I
12 want my allegation, for it to stop, that's all I
13 want is for it to stop, I want an informal
14 report." You can go and make sure that that
15 person stops retaliating against her.

16 But then, open, as we said, she would
17 be notified that the commander retains the
18 authority to open a separate investigation into
19 other misconduct. So if he finds out that this
20 person is doing the property damage or whatever,
21 he wouldn't open a formal investigation into
22 that.

1 CHAIR HOLTZMAN: Okay, so what you're
2 saying, I want to make sure. So, we're not
3 creating an option here for informal or
4 restricted reports of retaliation?

5 MR. STONE: We're not creating a
6 victim veto.

7 LTC MCGOVERN: You would be, other
8 than those --

9 CHAIR HOLTZMAN: I'm talking about
10 just -- I'm just focusing right now on the
11 property -- on what DoD has said automatically
12 goes to MCIO. Are we creating some kind of
13 little --

14 MR. STONE: A victim veto.

15 CHAIR HOLTZMAN: A victim veto on
16 those kinds of complaints?

17 LTC MCGOVERN: I believe that, no
18 matter what, the commander retains the authority,
19 based on Admiral Tracey's concerns earlier, that
20 if they learn of serious misconduct, they can
21 have the final --

22 CHAIR HOLTZMAN: Okay, so, in other

1 words, we're not doing what exists with regard to
2 sexual assault, where the victim has a veto over
3 sexual assault investigation and how they are to
4 proceed with regard to these two categories.

5 Okay, so we're not creating -- for
6 those two categories, no matter what, it gets
7 reported either to the MCIO or to the commander
8 or both or whatever. So, it's reported, it's out
9 of the victim's hands. I'm just looking at the
10 victim's hands now. Okay.

11 But we had this other category of
12 behavior that's not in these two areas that have
13 been designated by DoD, right? DoD just talked
14 about threats and property damage.

15 Suppose it's, you know, just a whisper
16 campaign, "Liz Holtzman's a terrible person" or
17 "this victim's a terrible person, don't talk to
18 them."

19 MR. STONE: I don't invite this person
20 because --

21 CHAIR HOLTZMAN: Don't invite --
22 right. That is a different category. So, what

1 are we doing in connection with those complaints?
2 Are we giving the victim -- I'm asking the same
3 question that I was going to ask about the other
4 one. In these kinds of complaints that are not
5 required by DoD to go automatically to the MCIO,
6 are we giving the authority to the victim to stop
7 any further investigation of this kind of
8 complaint, this kind of behavior?

9 COL GREEN: Ms. Holtzman, no. And I
10 think the clarity here in the EEO resolution
11 process. When a person makes an EEO complaint,
12 they can elect informal or formal resolution of
13 their complaint.

14 The informal resolution is essentially
15 almost like a mediation. But if information is
16 obtained by the command or an investigator in the
17 process that finds -- either the commander finds
18 misconduct and MCIO determines that there's
19 criminal activity, they always have the
20 opportunity and the right to open an
21 investigation.

22 CHAIR HOLTZMAN: No, but I'm not

1 making that point. I'm making a completely
2 different point, which is the information comes
3 to the commander or to the MCIO from the victim.

4 COL GREEN: Right.

5 CHAIR HOLTZMAN: Only from the victim.

6 COL GREEN: Right.

7 CHAIR HOLTZMAN: Not from anything
8 outside. And when we deal with sexual assault,
9 we give the victim the right not to have an
10 investigation --

11 COL GREEN: The difference --

12 CHAIR HOLTZMAN: -- in order -- wait,
13 let me finish. In order to encourage the
14 reporting of the activity.

15 But here, with regard to retaliation,
16 you're giving me the analogy of EEO. Why is EEO
17 an analogy to the retaliation? Why isn't sexual
18 assault the proper analogy? So, I'm just
19 throwing that out as a theoretical question.

20 COL GREEN: Yes, ma'am.

21 CHAIR HOLTZMAN: By the way, are you
22 both hearing this, Judge Jones and Mr. Taylor?

1 MR. TAYLOR: Yes, ma'am.

2 COL GREEN: And, ma'am, the difference
3 is that the restricted or unrestricted sexual
4 assault reporting process is, if I elect
5 restricted reporting, that information does not
6 go to the command.

7 CHAIR HOLTZMAN: Right, so that's what
8 I'm saying here.

9 COL GREEN: Right.

10 CHAIR HOLTZMAN: So why wouldn't the
11 victim have -- why wouldn't that be a proper
12 analogy?

13 COL GREEN: Because the resolution of
14 the retaliation complaint, at an informal
15 reporting process, we haven't made any statement
16 that that information is not going to go to
17 command or other authorities. There's a very
18 limited amount of disclosure of information
19 regarding a restricted report that an informal
20 EEO process, which is analogous to an informal
21 retaliation report, as the Panel has it phrased
22 now, that information is released.

1 And so if in the course of looking at
2 that, what that informal process says is the
3 victim is saying, "I don't expect or require an
4 investigation or a formal response, I just want
5 it knocked off."

6 CHAIR HOLTZMAN: Okay. I'm sorry,
7 just one more question about that.

8 So, what you are saying is -- maybe
9 I'm introducing a different level of analysis
10 here, or a different point. What you're saying
11 is, when you talk about informal, you're talking
12 about something that's not MCIO, that's
13 commander-based.

14 I'm talking about another kind of
15 situation in which there is a report but no
16 action is taken, just the way you have it with
17 sexual assault. I thought that that was
18 something that --

19 LTC MCGOVERN: Well, ma'am, the reason
20 that you have a restricted report in sexual
21 assault is so that the victim can get medical
22 services. And then, to resolve her issues, you

1 don't need a commander involvement. She just
2 wants help.

3 In these instances, to resolve
4 retaliation, you usually need the commander's
5 help because that's the person who's going to
6 solve the problem. So, that's where it follows
7 the EEO process, that you are going to make --
8 you can check a box on the same standardized form
9 whether it's informal or formal. And if it's
10 informal, then it just stays at the command level
11 for investigation to make the retaliation stop.

12 VADM TRACEY: And if I could
13 distinguish, the two cases, property damage and
14 what's the other one?

15 LTC MCGOVERN: Threats.

16 VADM TRACEY: Property damage and
17 threats are themselves misconduct. Whispering
18 about people is not inherently misconduct, but it
19 is corrosive. It is affecting the victim.

20 And that's where I'm trying to
21 distinguish between what we're doing here in
22 terms of handing names of perpetrators to MCIO.

1 Handing a Sailor's name to the MCIO because he's
2 whispering about a victim is just offensive to
3 me. And that's where I'm trying to draw some
4 distinction here in what we're doing.

5 CHAIR HOLTZMAN: Okay.

6 MR. STONE: But you don't have any
7 trouble handing that name to the commanding
8 officer?

9 VADM TRACEY: No, because it's his job
10 to fix that problem.

11 MR. STONE: I just wondered if that's,
12 in some senses, taking it up to a higher level.

13 VADM TRACEY: No. If the victim is so
14 bothered by the whispering campaign that they're
15 ready to file a retaliation claim, at least one
16 Sailor's performance is being affected by the
17 whispering campaign. That's the commander's
18 responsibility. It's not an investigator's
19 responsibility unless the commander determines
20 that it rises to that level.

21 MR. STONE: Correct me if I'm -- the
22 speakers here will correct me if I'm wrong, but I

1 think, at least to me, the difference that the
2 Chairperson was trying to bring out is that the
3 retaliation typically is not going to involve a
4 touching or it would be charged at a much higher
5 level.

6 And, therefore, it is a little bit
7 more like a discrimination complaint or a
8 whistleblower complaint. And that's why it's
9 this informal/formal and not the kind of level
10 with restricted and unrestricted where you might
11 or might not want to bring a touching -- which is
12 a fight, an assault, a sexual assault -- to
13 somebody's attention because you know that's
14 going to definitely change an awful lot of the
15 dynamics and it's pretty much between two people.

16 Whereas, the retaliation or
17 discrimination or whistleblower goes a little
18 more to the morale and the group cohesiveness,
19 and, therefore, good order. And that's why it's
20 handled a little differently. At least to me, I
21 thought was --

22 VADM TRACEY: Yes, I think that's

1 where my thought is, that, you know, if a member
2 of my command is engaging in property damage of
3 any kind, regardless of the status of a victim of
4 the property damage, I reserve the right to take
5 action on that.

6 If a victim is not invited to the
7 social events that the rest of their peer group
8 are conducting, that's a different matter. I
9 don't want that to be in the MCIO record. I want
10 to deal with that as a commander's issue.

11 If I find there's something more
12 pernicious than that in the next, then I'll
13 escalate up the investigatory chain as I think I
14 need to do as a commander. And so I think that -
15 -

16 CHAIR HOLTZMAN: I wasn't actually
17 being an advocate, I was just trying to
18 understand exactly what we were trying to do
19 here, what the categories of behavior are.

20 And, anyway, it seems to me that we
21 haven't had anyone come to us and tell us that
22 victims needed to be able to make restricted

1 retaliation complaints. They still might be a
2 necessity, but we don't have any basis or any
3 evidence --

4 LTC MCGOVERN: No, the Services did
5 respond to the request for information noting
6 that an informal process may help increase
7 reporting if they knew that it would then be
8 handled expeditiously.

9 So, in the reporting section of the
10 JPP report, we included that information for you
11 all and that's where the informal versus formal
12 distinction -- when we get to the MCIO section of
13 the report, I would propose then, ma'am, that we
14 just take out this suggestion that the
15 information be shared with -- that standardized
16 form be shared with the MCIOs. Let DoD figure
17 out what information will be shared at Case
18 Management Groups based on the victim of
19 retaliation, what they consent to being released.

20 VADM TRACEY: I do have one question
21 then.

22 If a victim who files an unrestricted

1 -- who files a restricted report, I guess the
2 nature of the way we've defined by retaliation,
3 that would not occur, that they would -- since
4 they aren't having an investigation proceed,
5 we're assuming it's unlikely that there's
6 retaliation behavior that affects a victim who is
7 filing only a restricted report.

8 CHAIR HOLTZMAN: No, but there could
9 be.

10 LTC MCGOVERN: Correct.

11 CHAIR HOLTZMAN: No, but I don't think
12 we can make that assumption because we know that,
13 at least the perpetrator doesn't know for sure
14 that a restricted report has been filed, so there
15 may still be the possibility for retaliation. I
16 don't think we can make that assumption.

17 VADM TRACEY: Supposed that someone
18 has filed a restricted report and they come back
19 to the SARC and file a retaliation report under
20 this new process that we're putting in place.

21 That all stays inside the boundary of
22 the restricted report as well so the commander

1 also would not know about the retaliation report?
2 What are we thinking here?

3 LTC MCGOVERN: From the
4 Servicemembers' perspective, if an offender came
5 back and continued to offend the victim, I don't
6 think that the average Servicemember would
7 classify that as retaliation. It would be
8 continued harassment. He assaulted me again. It
9 would be a separate complaint for them to decide
10 whether they're going to go restricted or
11 unrestricted.

12 And, that's where it comes to your
13 definitions of maltreatment and everything else.
14 It's that it's retaliation in response to
15 something. And, if it's a restricted report,
16 there's a very small pool of people who should be
17 knowing that that even exists.

18 VADM TRACEY: We actually don't have
19 a lot of data on retaliation. So, you know, I
20 think you could do a, maybe not a crawl, walk,
21 run but a walk, run sort of a process here and
22 see what the data shows.

1 CHAIR HOLTZMAN: Right. And maybe, I
2 don't know if it's worthwhile even raising that
3 these are questions that an analysis of the
4 information might address.

5 LTC MCGOVERN: That's helpful, ma'am.

6 CHAIR HOLTZMAN: You know, that's one
7 of the things that we're going to look at, should
8 there be a restricted --

9 LTC MCGOVERN: Information sharing,
10 right.

11 CHAIR HOLTZMAN: Should there be
12 information sharing? I mean, these are things
13 that we don't really know. How many times is
14 someone coming to the SARC and saying, I'd really
15 like to report, tell you what's going on, but if
16 we're going to make -- if this is going to go to
17 the commander and an investigation, I'm not going
18 to tell you.

19 I mean, those are the kinds of things
20 that we, you know, nobody knows this now.

21 LTC MCGOVERN: Correct.

22 CHAIR HOLTZMAN: So, maybe somehow in

1 the report we could allude to that. I think
2 that's --

3 VADM TRACEY: Yes, I agree.

4 LTC MCGOVERN: Okay.

5 MR. STONE: And, it's hard to get that
6 data.

7 CHAIR HOLTZMAN: Of course.

8 MR. STONE: So, I mean it's --

9 VADM TRACEY: I think this form is --

10 MR. STONE: Right. But, on the other
11 hand, we don't want to make our recommendations
12 regarding retaliation toothless. So, we're sort
13 of stuck in the middle. That how serious to
14 guess the remedy has to be.

15 CHAIR HOLTZMAN: Right. Well, we
16 won't know what the remedy is because we don't
17 know what the problem really is yet, fully. And,
18 I think that's what one of the things that we're
19 addressing here, correct?

20 LTC MCGOVERN: Yes, ma'am.

21 And, if we can go ahead then and stick
22 with your recommendation that DoD consider, based

1 on the Services' responses, consider implementing
2 an informal and formal standardized form and they
3 can figure out the benefits of that program
4 themselves.

5 CHAIR HOLTZMAN: Right, okay. So,
6 that would be one of the -- and, we'd suggest
7 that these are some of the questions that they
8 might want to address as they get more
9 information about how the process is working.

10 MR. STONE: Well, that they should
11 address, I'd go a little stronger.

12 CHAIR HOLTZMAN: Yes, okay, all right.

13 MR. STONE: That they should address.

14 CHAIR HOLTZMAN: So, we'll see the
15 language and get a change -- and, Admiral, we
16 would love your full thoughts on that subject.

17 VADM TRACEY: I don't feel strongly
18 about it.

19 CHAIR HOLTZMAN: Okay, you don't? Not
20 at all? We noticed.

21 Any other points you want to raise?

22 May I just raise a few points here?

1 I thought the Executive Summary was
2 really good, but I would suggest -- I mean
3 stylistically, that we break this out into bullet
4 points so it's very clear, or numbers, what we're
5 recommending. So, if somebody just eyeballing
6 this can look at that.

7 And, so, but these are just stylistic
8 issues. I'm just trying to see if I have
9 anything -- bigger questions. Let me just see.

10 Oh, okay, I have some questions about
11 -- there seems to be some gaps here, but maybe
12 you've thought about them and answered them and I
13 just wasn't aware of that.

14 When we talk about monitoring, okay,
15 so we're giving the monitoring responsibility to
16 the SARC. What happens -- which is a big
17 responsibility, so I'm going to come up with two
18 examples of, what does the SARC do if, for
19 example, nothing happens?

20 The victim comes to the SARC and says
21 I'm being retaliated against and it's a whisper
22 campaign or it's ostracism or something of the

1 kind that the Admiral was talking about. And,
2 that is not resolved after there have been
3 several, you know, of these big meetings and so
4 forth.

5 And three months or four months later
6 it's still going on at the same level and the
7 victim is still unhappy.

8 What does the SARC do in that
9 circumstance? Is there a responsibility and to
10 whom does the SARC then go and say this is not
11 being resolved?

12 LTC MCGOVERN: With the victim's
13 consent, he or she raises that at the Case
14 Management Group.

15 CHAIR HOLTZMAN: I know, but let's
16 assume -- but that's not being resolved in the
17 Case Management Group. Let's just say that it's
18 been going on three, four, six months, not
19 resolved, still ongoing.

20 What does the SARC then do? SARC has
21 responsibility for monitoring, what -- does the
22 SARC go to somebody else? Does the SARC just

1 leave it there? I mean, what happens to that
2 kind of complaint?

3 And, I'm really going to raise the
4 same issue with regard to the IG. You can answer
5 it the same with the IG. This goes to the IG's
6 office. Six months later, zilch. What does the
7 SARC do? I mean, what does it mean then to have
8 the responsibility of monitoring?

9 Monitoring means, at some point, there
10 has to be accountability. So, what do you do?

11 LTC MCGOVERN: The CMG is the
12 accountability mechanism, ma'am. So, whether
13 it's the SARC or now frequently it will be the
14 SVC who continues to receive the complaint and is
15 advocating on behalf of the victim.

16 It's where they are -- the unit
17 commander is present and the installation
18 commander is saying, this -- my client continues
19 --

20 CHAIR HOLTZMAN: I get that. I'm
21 asking what happens when that mechanism doesn't
22 work? What happens when the problem is not

1 resolved? I mean do we then -- we need to say
2 what happens in that case. I don't know what it
3 means to monitor something.

4 I'm the SARC and I've got all this
5 information that nothing is happening, what do I
6 do with it after a point?

7 LTC MCGOVERN: Well, the proposal --

8 COL GREEN: That's a chain of command
9 issue, ma'am. I mean you put this in the hands
10 of the installation commander as the chair of the
11 Case Management Group. So, that person is
12 ultimately responsible for overseeing the SARC's
13 reporting in these issues.

14 CHAIR HOLTZMAN: Right, I got that.
15 But suppose they're -- I know they're ultimately
16 responsible, but nothing's happening, now what?

17 COL GREEN: That's what I'm saying,
18 then the installation commander, I mean, if I'm a
19 victim who feels that I'm not getting response by
20 my installation commander, if I'm a SARC who
21 believes my installation commander is not
22 properly addressing the issue, then the military

1 system is to take it up the chain of command.

2 CHAIR HOLTZMAN: Okay, so that's --

3 COL GREEN: And so, the installation
4 commander's --

5 CHAIR HOLTZMAN: -- understood. So,
6 we don't have to say anything about that, that
7 the SARC then would be -- if nothing happens,
8 that the SARC then can go up the Chain of
9 command. Do we have to say that or is that
10 understood?

11 COL GREEN: I think that's inherent in
12 our system --

13 CHAIR HOLTZMAN: Okay.

14 COL GREEN: -- that if a commander is
15 not responding, I mean --

16 CHAIR HOLTZMAN: All right.

17 COL GREEN: Personnel are briefed and
18 they understand if I'm not happy with my
19 commander --

20 CHAIR HOLTZMAN: Okay, I just --

21 COL GREEN: -- I always have the
22 option --

1 CHAIR HOLTZMAN: -- make sure that
2 that's understood or, if not, then we need --
3 that we don't have to do anything about it.

4 Now, what happens if it's referred to
5 the IG, which is no longer a commander issue and
6 nothing happens? What the SARC's responsibility
7 then? Six months go by, four months go by, eight
8 months go by, zilch. What does the SARC do then?

9 LTC MCGOVERN: Again, ma'am, the SARC
10 is the information collector.

11 CHAIR HOLTZMAN: Correct.

12 LTC MCGOVERN: They will relay that
13 and according to your proposal, the IG now --

14 CHAIR HOLTZMAN: I'm not making a
15 proposal, I'm asking a question.

16 LTC MCGOVERN: The IG now will report
17 their status, no change, still investigating.
18 The SARC can notify the Case Management Group
19 Chair, I received information that there's been
20 no change.

21 That installation commander has the
22 authority and power to reach out to the head IG

1 and say, there's been no progress, what's going
2 on with this case?

3 The SARC is just bringing it up on the
4 agenda. So, I want to make sure that you all are
5 comfortable this monitoring function is
6 monitoring to make sure it stays noted in the
7 minutes and on the agenda. That's the SARC's
8 responsibility.

9 The monitoring to make sure that the
10 retaliation is being taken care of is the
11 installation commander.

12 CHAIR HOLTZMAN: Okay. So, let's just
13 -- I'm understanding that now a little better.

14 LTC MCGOVERN: Okay.

15 CHAIR HOLTZMAN: But, suppose after
16 six months goes by and it's been reported that
17 nothing's been happening, that the commander
18 doesn't call the IG and say, hey, what's going on
19 here? Is that noted in the record as well by the
20 SARC?

21 LTC MCGOVERN: Certainly showing no
22 progress will continue to be noted on the form

1 that you all proposed. But, whether the SARC
2 wants to call up to -- I mean, everybody has a
3 higher beyond the installation.

4 So, as Colonel Green was saying, they
5 can always escalate it up to the Corps level or
6 the Army level if they're not seeing the support
7 needed for the victim in that case.

8 VADM TRACEY: The SARC's roll up also,
9 right? They're --

10 LTC MCGOVERN: Correct, ma'am.

11 VADM TRACEY: So, there's a separate
12 --

13 LTC MCGOVERN: Chain.

14 VADM TRACEY: -- organization that the
15 SARCs roll into? So, if that became an issue
16 that the line is not responding, the SARC can
17 roll up the SARC channel.

18 CHAIR HOLTZMAN: Okay. I would really
19 like to see something in the report saying that.
20 It doesn't have to be in the summary, but
21 somewhere in the report indicating that, you
22 know, if there's no action, it'll be noted,

1 should be noted by the SARC and then, in any
2 case, there is always the chain of command to
3 resort to whether it's the SARC chain of command,
4 as you well point out or the installation chain
5 of command or whatever.

6 LTC MCGOVERN: Yes, ma'am.

7 CHAIR HOLTZMAN: Thank you.

8 Let me just see -- oh, on the page 8
9 where we talk about the expedited transfers and
10 somebody from a -- you say here's a victim from a
11 small specialty career field and they continue to
12 experience retaliation even after moving to a new
13 duty or duty location.

14 I thought one of the points that we
15 were going to address was, what happens, or maybe
16 I'm thinking of a different circumstance, but
17 what happens when you're being trained to be in a
18 very small unit which is maybe unreproducible, is
19 a very, you know, limited skill set that you're
20 being taught and there is no equivalent unit
21 someplace else, we don't address that. Do you
22 want to address that point here?

1 MS. GUPTA: We have in the blue that
2 one of our recommendations is to expand the
3 expedited transfer program to include job
4 retraining.

5 MR. STONE: That's recommendation --

6 MS. GUPTA: That's in the blue
7 section.

8 MR. STONE: It's on the page before,
9 that on a case by case basis they can get job
10 retraining.

11 CHAIR HOLTZMAN: I understand that.

12 MR. STONE: I think that's what
13 they're asking.

14 CHAIR HOLTZMAN: Right. But, it's not
15 in the bullet points, that's all I'm saying.

16 MS. GUPTA: Okay, ma'am, we can add
17 that.

18 CHAIR HOLTZMAN: Okay. No, that's
19 what I thought, but it's not in the bullet
20 points, that's why I was reading it.

21 Okay, okay, let me just see -- so, I
22 think those are my only substantive comments.

1 So, I think our next -- any other
2 comments? Mr. Taylor, you've been very patient.
3 Do you have any thoughts?

4 MR. TAYLOR: Thank you, no, I made a
5 couple of editorial comments that I provided to
6 the staff yesterday.

7 CHAIR HOLTZMAN: Okay, great.

8 So, and I guess, Judge Jones is not on
9 the phone.

10 Are we prepared now to adopt this
11 report subject to stylistic, typo and grammatical
12 changes, that we will approve at a later point?

13 VADM TRACEY: And, the changes that
14 we're going to make around --

15 CHAIR HOLTZMAN: Yes, yes.

16 VADM TRACEY: -- the MCIO reporting.

17 CHAIR HOLTZMAN: Correct.

18 Are we ready to approve that?

19 MR. STONE: Yes, I'm fine.

20 CHAIR HOLTZMAN: Me, too.

21 MR. TAYLOR: I agree.

22 CHAIR HOLTZMAN: Okay. So, that's

1 where we are. We've finished these two reports.
2 Excellent, thank you very much.

3 LTC MCGOVERN: Thank you, ma'am.

4 CHAIR HOLTZMAN: Thank you, Colonel.

5 And, thank you, Ms. Gupta.

6 And now, I guess we're up to -- should
7 we take -- why don't we take a, yes, a ten minute
8 break, five minute break. Let's do a five minute
9 break if we can because we're going to try to get
10 out of here.

11 Thank you.

12 (Whereupon, the above-entitled matter
13 went off the record at 10:21 a.m. and resumed at
14 10:32 a.m.)

15 CHAIR HOLTZMAN: Okay, everybody, I
16 think we're ready to commence.

17 I'd like to welcome Dr. Cassia Spohn
18 as a presenter to us. And, members of the staff,
19 Ms. Saunders, Ms. Peters.

20 So, let's begin. And, Mr. Marsh?

21 MS. PETERS: All right, thank you and
22 good morning members of the Panel.

1 I'm just going to orient you to the
2 presentations you'll hear this morning.

3 CHAIR HOLTZMAN: Thank you.

4 MS. PETERS: And then, we'll begin
5 with Dr. Spohn's presentation and everybody
6 else's.

7 This morning, we are addressing three
8 congressional tasks that deal with courts-martial
9 and disciplinary action trends that the staff
10 could assess for the Panel.

11 I'm not going to go over the tasks in
12 detail. We presented these and discussed these,
13 I think, with the Panel before.

14 But, generally, what we're focusing on
15 today with the data that we will present are
16 information concerning case dispositions, case
17 outcomes as in conviction or other result and the
18 punishments rendered at courts-martial and via
19 some other disciplinary action.

20 And so, we're going to cover that,
21 again, in multiple presentations and we will do
22 that with Dr. Spohn's analysis of court-martial

1 data, we'll spend part of the time on that,
2 followed by some information about non-judicial
3 punishment and separation actions from Ms. Terri
4 Saunders.

5 And then, other panel members, if we
6 have time, will address appellant data.

7 What we did in the beginning of this,
8 and I'm just going to show you that we have
9 identified and have in front of you, foundational
10 issues.

11 So, we have these three complicated
12 tasks that have a lot of different components to
13 them.

14 The three tasks do overlap quite a
15 bit. But, what we did, and just as a reminder to
16 underscore our process, the staff looked at and
17 said, what are these tasks about?

18 They have words like assessing the
19 appropriateness and the consistency or certain
20 command decisions as to disposition, assessing
21 those aspects of case outcomes and then, also, of
22 punishments.

1 And, there's also language in these
2 tasks about assessing the facts of individual
3 cases.

4 So, the panel or the staff went back
5 and asked, you know, to what extent can you
6 provide a full analysis based on the information
7 we have?

8 In previous meetings, as you pointed
9 out, Ms. Holtzman, we don't have all of the facts
10 of these cases. We don't have the investigative
11 files, we don't always have the complete record
12 of trial.

13 We had a select set of court documents
14 that showed the charges, the outcome and some of
15 the procedural stopping points along the way to a
16 final result. And, that's what we based our data
17 on.

18 Next slide?

19 Additionally, aside from looking at --

20 CHAIR HOLTZMAN: Excuse me, could I
21 just ask a question about that?

22 Where does the question come from, are

1 sexual assault charges being resolved at the
2 appropriate level? Who gave us that question?

3 MS. PETERS: The --

4 CHAIR HOLTZMAN: Is that the --

5 MS. PETERS: Congress did in the
6 statutory task --

7 CHAIR HOLTZMAN: Okay.

8 MS. PETERS: -- to assess the
9 consistency and appropriateness of the decisions
10 and punishments --

11 CHAIR HOLTZMAN: But, did they also --

12 MS. PETERS: -- arrived at in court-
13 martial.

14 CHAIR HOLTZMAN: But, they didn't ask
15 us to look at whether it was resolved at an
16 appropriate level. Is that something that the
17 staff has decided we should look at?

18 MS. PETERS: Yes, yes.

19 CHAIR HOLTZMAN: Okay. Would you, in
20 the future, you know, designate which are
21 congressional requirements and which are
22 suggested requirements from the staff?

1 MS. PETERS: Yes, ma'am.

2 CHAIR HOLTZMAN: Thank you.

3 MS. PETERS: These questions right now
4 that we're looking at are the staff's derived
5 foundational issues from the tasks.

6 CHAIR HOLTZMAN: Okay, okay. Good.

7 MS. PETERS: So, again, these were
8 things that we said we had to parse out, you
9 know, to begin with, what do we think these
10 congressional tasks are really asking us to
11 highlight?

12 So, in looking at case dispositions,
13 outcomes and punishments, what are the aspects
14 Congress wanted us to look at? And they used
15 words like look at the consistency and the
16 appropriateness, but without giving us really a
17 sense of what they thought those influential
18 factors would be.

19 So, we were fortunate to have the
20 benefit of Dr. Spohn's expertise in the area of
21 criminology to give us that guidance and
22 direction informed by a lot of research in the

1 area of criminology and on civilian data
2 collection as to punishments, outcomes and
3 whatnot in the state and federal courts.

4 So, she can lend her expertise to what
5 are important factors, potentially predictive
6 issues, that might be common to these cases.
7 And, she will give you that analysis and also
8 highlight, even to the extent possible, as some
9 of these tasks ask about comparing federal and
10 state data. She's going to address the
11 feasibility of that aspect of the statutory task.

12 Because the statutory task
13 specifically says, look at punishments in the
14 military and compare that to the federal and
15 state punishments as well.

16 All right, I'll move on to one more
17 set of foundational issues. These last two
18 issues identified by the staff are related to
19 appellate decisions. And, that's because the
20 third task relating to trends and statistics asks
21 how often are appellate courts creating some sort
22 of relief in Article 120 or sex assault cases?

1 Meaning, the findings are set aside or
2 the punishment is reassessed on appeal.

3 And then, specifically, we will also
4 look at cases in which the defendant pled guilty
5 to an Article 120 or sex assault offense and, to
6 what extent or how often are appellant courts
7 setting aside those verdicts or taking issue with
8 those verdicts?

9 And those are the two narrow issues
10 the task asked the Panel to look at with regard
11 to appellate decisions.

12 So, we have looked at all appellate
13 decisions rendered in 2012, 2013 and 2014 and
14 said, which ones involved an Article 120 issue?
15 And got a sense of the caseload there and then,
16 really, we'll break down for you number by number
17 how many decisions set aside a verdict,
18 reassessed a sentence and what was the legal
19 basis for their decision. We came up with
20 several categories of those decisions.

21 CHAIR HOLTZMAN: Okay, great.

22 MR. STONE: I wouldn't mind, just so

1 that I can, as an introduction for, you know, for
2 you to give me summarily where you're going with
3 questions five and six as I listen to the rest.

4 I don't want to wait until the very
5 end to hear, if you don't mind, the conclusion
6 which you're then going to lead us through is
7 whether -- what the answers to five and six are.

8 Can you give me just in two sentences
9 where we're going with five and six? Did you
10 generally find and then you could take us through
11 the data that the punishments are harsher or more
12 lenient and that they compare well --

13 CHAIR HOLTZMAN: Excuse me.

14 MR. STONE: -- or they don't compare
15 well with what happens in state and federal
16 courts?

17 CHAIR HOLTZMAN: Mr. Stone, Ms. Spohn
18 came from Arizona. We've got to hear from her
19 first. Sorry, we will hear from the staff, if
20 you don't mind. We can get a brief summary,
21 we'll save five minutes at the end, but I'd
22 really like her to get going, if you don't mind.

1 I'm sorry.

2 And, she's got to get back to Arizona.
3 Before Monday, ideally.

4 DR. SPOHN: So, the task that I was
5 given was to take the data that the JPP staff
6 collected from documents that were provided by
7 the military and look at case characteristics,
8 case outcomes and then punishments that were
9 imposed in these cases.

10 So, just in terms of the process, they
11 provided me with an Excel data file that I then
12 imported into a data analysis program called
13 SPSS, which is Statistical Package for the Social
14 Sciences.

15 And then, I conducted the analysis
16 using the data that they provided.

17 We've already talked about some of the
18 limitations of the data, so I won't go into this
19 in any great detail.

20 The staff did request the universe of
21 all cases that involved a preferred sexual
22 assault charge in the three fiscal years. It's

1 not clear that they received the universe of all
2 cases. They requested them, but whether they
3 actually received every single case, it's not
4 clear.

5 And then, our data collection efforts
6 were constrained by the documents that were
7 provided and the information that was included in
8 the documents and potentially relevant variables
9 are not included in those documents that they
10 were provided. They did not have access to the
11 actual court records.

12 So, just an overview of the findings
13 and, I think Mr. Stone, this is kind of what you
14 were asking for. So, I'll give an overview first
15 and then walk through some of the more details.

16 In terms of the descriptive data, not
17 surprisingly, most of the cases were generated by
18 the Army followed by the Air Force, the Navy, the
19 Marine Corps and very few came from the Coast
20 Guard.

21 The typical accused was a male
22 enlisted member. The typical victim was a female

1 member of one of the military services.

2 Though there were a substantial number
3 of cases involving civilian victims and involving
4 both military and civilian victims.

5 Most of the cases involved multiple
6 charges. The mean was almost six charges; it
7 ranged from one to 30. And, many cases involved
8 multiple victims that the mean number of victims
9 was just over 1.2.

10 In terms of dispositions, that is, how
11 was the case disposed? What kind of court-
12 martial proceeding was held?

13 Three-quarters of the cases that went
14 to court-martial and about three-quarters of all
15 cases were referred to trial, and of those, about
16 three-fourths of them went to a general court-
17 martial as opposed to a special or a summary
18 court-martial.

19 The type of disposition, that is, how
20 the case was disposed, varied across the years.
21 It varied by the military service of the accused
22 and by the type of offense charged.

1 CHAIR HOLTZMAN: Are you going to
2 break this down for us?

3 DR. SPOHN: Yes.

4 CHAIR HOLTZMAN: Okay.

5 DR. SPOHN: Yes.

6 So, among the cases in which charges
7 were preferred, that is the universe of cases
8 that we looked at was 1,761, the conviction rate,
9 that is for any charge regardless of what the
10 most serious charge was, was 51.2 percent for the
11 penetrative offenses and it was almost 60 percent
12 for the contact offenses.

13 If we look at those cases that were
14 referred to trial, that is separating out those
15 that resulted in a dismissal and those that
16 resulted in some sort of alternative disposition,
17 the conviction rate, again, for any offense was
18 70.3 percent for the penetrative offenses and
19 almost 80 percent for the contact offenses.

20 VADM TRACEY: And, that's across all
21 years?

22 DR. SPOHN: Yes.

1 So, in terms of punishments, a large
2 majority of those who were convicted received a
3 term of confinement. This was especially true
4 for those who were convicted of the penetrative
5 offenses. Ninety-five point two percent of them
6 received confinement. Most of them also received
7 a punitive separation.

8 And the imprisonment rate was 67.6
9 percent for the contact offenses. The average
10 sentence overall was about two and a half years.
11 It was substantially longer for the penetrative
12 offenses than for the contact offenses.

13 At the end of the presentation, I'll
14 talk about the multivariate analysis that
15 controls simultaneously for about eight different
16 predictors. These analyses revealed that
17 outcomes in sexual assault cases were affected
18 primarily by the type of charge, penetrative
19 versus contact, the number of victims and the
20 number of charges.

21 Outcomes and punishments generally did
22 not vary by fiscal year, rank of the accused or

1 gender and status of the victim. But, there were
2 some differences among the military services in
3 how these cases were disposed and in the outcomes
4 and punishments.

5 So, turning first to the descriptive
6 data, again, there were 1,761 cases which
7 involved at least one count of a penetrative or a
8 sexual contact offense.

9 Most of these, almost three-quarters
10 were cases in which the most serious charge was a
11 penetrative offense. The remainder were cases in
12 which the most serious charge was a sexual
13 contact offense.

14 The number of cases increased somewhat
15 over the fiscal years. And, as I indicated
16 before, the bulk of the cases were cases
17 involving members of the Army followed by the Air
18 Force, the Navy and so on.

19 CHAIR HOLTZMAN: Can I just ask a
20 question? You have for fiscal year a percentage
21 next to the number of cases. What does the
22 percentage refer to?

1 DR. SPOHN: That is the percentage of
2 all cases that were from that fiscal year. So,
3 24.2 --

4 CHAIR HOLTZMAN: All criminal cases?

5 DR. SPOHN: All of these cases, these
6 1,761.

7 CHAIR HOLTZMAN: Oh, I see, I'm sorry,
8 okay.

9 DR. SPOHN: Most of the accused were
10 enlisted members of the military service, though
11 there were 120 who involved -- cases that
12 involved officers, most of them, the accused were
13 male.

14 There were 11 cases that involved
15 female offenders.

16 In terms of the characteristics of the
17 victims, I already mentioned that most were from
18 the military, but almost a quarter were from the
19 civilian population and then there were just over
20 50 cases that involved victims who were both
21 military and civilian.

22 Most victims were --

1 CHAIR HOLTZMAN: Does that mean one
2 civilian -- at one civilian and one military
3 person?

4 DR. SPOHN: At least one of each.

5 CHAIR HOLTZMAN: Okay, got it.

6 DR. SPOHN: Yes, and it could be
7 multiple of each.

8 CHAIR HOLTZMAN: Okay.

9 DR. SPOHN: Most of the victims, 92
10 percent, were female, but there were just over a
11 100 cases in which the victim was male. And
12 then, there were 14 cases in which there was at
13 least one female and one male victim.

14 The number of victims ranged from one
15 to 11 and the mean was just over one. So, the
16 number of charges or specifications ranged from
17 one to 30 and the mean number of charges was just
18 under six.

19 I think it's important to point out
20 that only ten percent of these cases involved a
21 single charge. So, the majority of them did
22 involve multiple charges. And, I think about 50

1 percent involved four or fewer charges.

2 So, these are the cases that went to
3 a court-martial. Over three-quarters were
4 decided or adjudicated at a general court-martial
5 followed by a special court-martial and then a
6 summary court-martial.

7 And, the type of trial forum, about
8 just over four out of ten were decided by a
9 military judge. Close to half by a Panel of
10 military members and then the same 109 cases that
11 went to a summary court-martial were decided by a
12 summary court-martial officer.

13 In most of these cases, an Article 32
14 Hearing was held. It was waived in a few cases
15 and in just about a quarter of the cases, no
16 hearing was held.

17 And then, the accused was placed in
18 pre-trial confinement in a minority of these
19 cases.

20 So, do you want to --

21 MS. PETERS: Yes, and I will just
22 interject to note the staff, in collaboration

1 with Dr. Spohn, asked that we just include some
2 statistics about referral.

3 And, referred cases represent those
4 cases where a convening authority has said there
5 will be a court-martial. Our universe is
6 preferral which happens much earlier in the
7 process. There's no judge involved. There's a
8 lot of charge vetting that goes on after
9 preferral.

10 So, referral from a practitioner's
11 standpoint is where we believe a trial is going
12 to happen. These are the stronger of the charges
13 and the more formal procedures begin at referral.

14 So, these statistics represent that,
15 out of our universe of cases, 72 percent were
16 referred to trial. And, of those cases that were
17 dismissed or went to alternate disposition, prior
18 to referral, about 75 percent or three-quarters
19 of those cases that did not go to trial were
20 dismissed or decided after an Article 32 Hearing
21 was held.

22 And the staff thought that was

1 important because the Article 32 is that
2 preliminary hearing, grand jury-like function
3 where, in a civilian system, it might take place
4 prior to indictment, in the military it takes
5 place after the filing of charges and is often
6 used as sort of a charge vetting mechanism.

7 And there is an impartial law officer
8 hearing evidence. It's an adversarial
9 proceeding. There's a detailed report and that
10 report is provided to a convening authority often
11 to make that referral decision.

12 Now, an Article 32, again, is not held
13 in every case. It can be waived by the accused
14 or it could not take place because they
15 contemplate only going to a special court-
16 martial. And, a 32 only has to be held if you're
17 going to a general court-martial.

18 But, we thought it appropriate to
19 bring you statistics that show how many cases are
20 referred and how they got there via a 32 or not.

21 CHAIR HOLTZMAN: Where's the number of
22 the percentage of cases that are dismissed prior

1 to referral? What's the total there?

2 MS. PETERS: It's -- I guess it's --

3 VADM TRACEY: It's the 1,761 minus
4 1,269.

5 CHAIR HOLTZMAN: No, no, dismissed.

6 VADM TRACEY: Yes, 1,761 minus 1,269
7 were dismissed, not referred to trial.

8 MS. PETERS: So, the remainder --

9 CHAIR HOLTZMAN: Wait, 1,269 of 1,761
10 were dismissed prior to referral?

11 MS. PETERS: No, 1,269 out of the
12 1,761 were referred.

13 CHAIR HOLTZMAN: I'm asking -- that's
14 not my question.

15 MS. PETERS: Okay.

16 CHAIR HOLTZMAN: My question is, what
17 is the percentage of cases that was dismissed
18 prior to referral? What's the number of cases?

19 MS. PETERS: Right, it is 28 percent
20 of the cases were dismissed.

21 CHAIR HOLTZMAN: I'm sorry?

22 MS. PETERS: Twenty-eight.

1 CHAIR HOLTZMAN: Okay.

2 MS. PETERS: Twenty-eight percent were
3 either dismissed or were sent to an alternative
4 disposition, likely discharge from the Service.

5 VADM TRACEY: That's like 429 or
6 something like that?

7 MS. PETERS: Roughly, yes, ma'am.

8 CHAIR HOLTZMAN: Okay, sorry.

9 MS. PETERS: Oh no.

10 And, the additional note we wanted to
11 provide to the Panel is that we then looked at,
12 to the extent possible, the -- out of the
13 referred cases now we're facing at trial, now the
14 issue of whether there's a pre-trial agreement
15 that comes into play.

16 And, we found that 30 percent of the
17 referred cases involved a pre-trial agreement.
18 And, that pre-trial agreement includes all forms
19 of agreement, meaning he's -- it could involve a
20 plea to a sex offense or a plea only to the non-
21 sex offenses.

22 But here's a statistic that gives you

1 a sense -- a ballpark of how often the accused is
2 pleading guilty after referral where the gravamen
3 of the offense is a sex assault offense.

4 DR. SPOHN: So, the next few slides
5 talk about case outcomes.

6 MR. STONE: If I may, does that imply,
7 if I understand you correctly, that what's going
8 on here is people did not want to plead to a case
9 if they thought they were going to have to plead
10 to a sexual assault offense? Because, among
11 other things, then they're going to have to
12 sexual offender registration? Is that what's
13 going on there? That's why the pleas don't
14 involve sexual assault offenses?

15 MS. PETERS: Right, it was really a
16 smaller fraction of the pleas overall that
17 involved a plea to an actual sexual offense, draw
18 from that what you may, but that's what we found.

19 CHAIR HOLTZMAN: Do you have a
20 percentage some place? You don't have to give it
21 to us now, but you could give it to us at some
22 point.

1 MS. PETERS: It looks like only about
2 roughly 12 percent of the referred cases involved
3 a plea to a sex assault offense.

4 CHAIR HOLTZMAN: Okay.

5 MS. PETERS: And the issue with
6 analyzing pre-trial agreements, there's so many
7 permutations, we just had to be really --

8 CHAIR HOLTZMAN: And, I'm just going
9 to the numbers, that's all. No defense
10 necessary, just the numbers.

11 DR. SPOHN: So, the next few slides
12 talk about case outcomes. And, when we began the
13 analysis, we discovered, not surprisingly, that
14 outcomes are very different for the penetrative
15 versus the contact offenses. So, these are
16 broken down by those two categories of offenses.

17 And, this slide shows that the -- of
18 the 1,275 penetrative offenses, 24.5 percent were
19 convicted of a penetrative offense.

20 An additional 16.7 were convicted of
21 a contact offense. They may have been charged
22 with a contact offense as well as penetrative or

1 they may have been convicted of a lesser included
2 offense.

3 So, the overall conviction rate then
4 for these penetrative offenses, that is of --
5 convicted of a sex offense is about 40 percent.

6 And, if we add in the ten percent of
7 the cases that were convicted of a non-sex
8 offense, that brings us to the 51.2 percent for
9 an overall conviction rate.

10 And, of the cases that did not result
11 in conviction, 11.8 percent were an alternative
12 disposition, 21.6 percent went to trial but were
13 acquitted of all charges and then 15.5 percent
14 were dismissed without further action.

15 So, those are the penetrative
16 offenses.

17 The patterns are a little bit
18 different for the contact offenses in that fewer
19 charges are dismissed and fewer charges are
20 acquitted.

21 But, the overall conviction rate for
22 the contact offenses is somewhat higher at almost

1 60 percent compared to just over 50 percent for
2 the penetrative offenses.

3 So we also then looked at cases that
4 were referred to trial. The previous slide
5 looked at all preferred cases.

6 So, there were 928 penetrative
7 offenses that were referred to trial. And, you
8 can see that the overall conviction rate for
9 these cases is higher, as one would expect since
10 the dismissals and the alternative dispositions
11 have already been taken out of here.

12 And, of the cases that were referred
13 to trial, close to 30 percent were acquitted at
14 trial.

15 And, similarly for the contact
16 offenses, we see that a larger percentage of
17 these offenses were -- that were referred to
18 trial were convicted, a smaller percentage -
19 well, actually, the acquittal rate is a little
20 bit higher because the other cases have already
21 been removed from this.

22 In terms of sentences, as I indicated

1 at the beginning of the presentation, most of the
2 penetrative offenses resulted in a sentence of
3 confinement, over 95 percent of these cases did,
4 that resulted in a conviction, again.

5 A large portion of those resulted in
6 a punitive separation and, over 88 percent of the
7 cases resulted in a confinement and punitive
8 separation.

9 And, the mean approved sentence was
10 almost 55 months.

11 CHAIR HOLTZMAN: What's approved mean?

12 DR. SPOHN: As opposed to adjudged.

13 So, it's the sentence that was approved by the --

14 CHAIR HOLTZMAN: Panel?

15 MS. PETERS: By the convening
16 authority.

17 CHAIR HOLTZMAN: Authority?

18 MS. PETERS: It factors in pre-trial
19 agreements made prior to trial, any potential
20 clemency of which we saw very little, but it's
21 the approved -- it's when --

22 CHAIR HOLTZMAN: The final sentence?

1 MS. PETERS: Right, the final. The
2 final trial level sentence because when a
3 sentence is adjudged at trial, they then read the
4 pre-trial agreement and the pre-trial agreement
5 then still has to be approved at the convening
6 authority level.

7 And, the convening authority has the
8 authority, after a trial or a jury assesses a
9 sentence, the convening authority technically is
10 the authority to reduce that sentence.

11 So, we looked at approved sentences
12 just to make sure we factored in those
13 adjustments.

14 CHAIR HOLTZMAN: But, I think those
15 numbers need to be in there of how many instances
16 in which the sentences were not approved --

17 MS. PETERS: Yes, ma'am.

18 CHAIR HOLTZMAN: -- or something like
19 that.

20 MS. PETERS: Okay.

21 CHAIR HOLTZMAN: I mean, you need to
22 give some backup to that.

1 MS. PETERS: Yes, ma'am, we can do
2 that.

3 CHAIR HOLTZMAN: Thank you.

4 MR. TAYLOR: Madam Chair?

5 CHAIR HOLTZMAN: Yes, sir?

6 MR. TAYLOR: I'm having difficulty
7 hearing the speakers. Excuse me, the speakers
8 are coming through well but the Panel members not
9 so much.

10 CHAIR HOLTZMAN: Yes.

11 MR. TAYLOR: So, I couldn't hear the
12 question from the Chair --

13 CHAIR HOLTZMAN: Okay, sorry.

14 MR. TAYLOR: -- the staff --

15 CHAIR HOLTZMAN: I was sitting back.

16 MR. TAYLOR: -- or something so that
17 I could hear as well as I did during the first
18 session? Thank you very much.

19 CHAIR HOLTZMAN: Okay. No, no, no, I
20 -- can you hear me now? Mr. Taylor, can you hear
21 me?

22 MR. TAYLOR: That's much better, still

1 not as good as the first session.

2 CHAIR HOLTZMAN: Okay. Ms. Peters --

3 MR. TAYLOR: But, I can hear you now.

4 CHAIR HOLTZMAN: Ms. Peters, would you
5 repeat the question for him?

6 MS. PETERS: Yes, ma'am, I can.

7 Mr. Taylor, we were asked to follow up
8 these statistics with the number of times that
9 the adjudged sentence at trial differed from the
10 approved sentence and we can look at the
11 differences there as well. But, we will provide
12 those statistics to the Panel in response to the
13 Chair's questions.

14 CHAIR HOLTZMAN: Because I didn't
15 understand why the --

16 MR. TAYLOR: Thank you.

17 CHAIR HOLTZMAN: -- that we needed
18 some clarification that adjudged -- what is the
19 terminology here -- approved is different from a
20 sentence after trial in the civilian world.

21 VADM TRACEY: Can you tell when that's
22 -- because there was a pre-trial agreement and

1 when it was the court-martial convening authority
2 that --

3 MS. PETERS: Yes, absolutely.

4 CHAIR HOLTZMAN: Okay. Can you repeat
5 that for him?

6 MS. ROZELL: And, we can also tell
7 whether it was because of the terms of a PTA or
8 if clemency was granted.

9 CHAIR HOLTZMAN: Well, all that
10 information I think needs to be broken out
11 because there's been a lot of focus on the
12 commander and the role of the command, so we need
13 to be able to, I think, explain that to Congress
14 and to DoD.

15 MS. PETERS: Okay, ma'am, will do.

16 CHAIR HOLTZMAN: Okay, thank you.

17 DR. SPOHN: So, the contact offenses
18 were less likely than the penetrative offenses to
19 result in confinement or punitive separation.
20 And, the mean approved sentence was substantially
21 shorter.

22 CHAIR HOLTZMAN: Didn't you skip case

1 outcomes? Oh no, I'm sorry. I'm in the wrong
2 place. Well, no, I did -- page 18, did you skip
3 18?

4 DR. SPOHN: No.

5 CHAIR HOLTZMAN: Oh, okay, fine.
6 Sorry.

7 DR. SPOHN: So, one of the things that
8 the Panel has been asked to do is to compare
9 outcomes and punishments in the civilian and the
10 military justice system.

11 This is very, very difficult to do.
12 In many respects, it involves comparing apples
13 and oranges just because the systems are so
14 different.

15 And, especially this is true when
16 we're comparing preferred cases in the military
17 to cases in which charges were filed in the
18 civilian courts because, in the civilian courts,
19 often district attorneys use a proof beyond
20 reasonable doubt standard in making charging
21 decisions in sexual assault cases.

22 And so, they don't file charges unless

1 they have sufficient evidence to take the case to
2 trial before a jury and they're fairly confident
3 that they could secure a conviction.

4 And so, if that is the case, then
5 these weak or problematic cases have already been
6 filtered out of the civilian system and we would
7 actually expect to see a higher conviction rate
8 in the civilian system than in the military
9 system based on the preferred cases because
10 they've not yet been subject to that kind of
11 formal screening.

12 Nonetheless, we did receive data from
13 the Bureau of Justice Statistics. They collect
14 data from state courts in the largest 75 counties
15 in the United States.

16 They used to do this every two years.
17 They've since eliminated this data collection
18 effort. And so, the most recent data that they
19 have are from 2009. And, that's, obviously,
20 problematic in that the data for this study are
21 from different fiscal years.

22 In addition, the ways in which they

1 define and calculate things are different.

2 But, nonetheless, if we look at the
3 military justice system and we look at just the
4 penetrative offenses, which would be analogous to
5 the rape cases that BJS looks at, we can see
6 that, if we compare the referred cases and the
7 conviction rate for those cases in the military
8 system to the conviction rate in the state court
9 systems, it's very similar, 68 percent to 70.3
10 percent with the appropriate caveats that these
11 are not necessarily the same cases. They may be
12 similar, but they're not going to be the same.

13 We can see that acquittals are more
14 common in the military system than they are in
15 the state court system. But, of course, in the
16 state court system, most offenders plead guilty
17 and very few cases go to trial. And, that's not
18 the case in the military justice system.

19 So, I think, again, I think we have to
20 be very cautious in comparing those acquittal
21 rates.

22 In terms of dismissals, the rate in

1 the military system is actually substantially
2 lower than the rate in the state court system.

3 Punishments, at least in terms of the
4 likelihood of some sort of confinement are
5 similar.

6 Where the difference is is in terms of
7 the mean sentence is substantially higher in the
8 state courts than in the federal court system.

9 But, I think we have to keep in mind
10 that there are other kinds of punishments that
11 can be imposed in the military system with
12 punitive separation, restitution, fines and
13 forfeitures and, in many cases, those
14 punishments, a sort of a cornucopia of
15 punishments were imposed in the military cases.

16 MR. STONE: You could have those in
17 civilian cases, too. You have fines and
18 forfeiture and --

19 DR. SPOHN: Sure. But, I mean I just
20 -- I'm just saying -- I'm trying to contextualize
21 the imprisonment -- the mean sentence in the
22 state court system versus the mean sentence in

1 the military system. I mean, it's substantially
2 shorter.

3 MR. STONE: Do you think that's what
4 adds import to the lesser number of pleas?

5 DR. SPOHN: Certainly, if there were
6 fewer --

7 MR. TAYLOR: Can I ask a question,
8 please?

9 DR. SPOHN: Sure.

10 MR. TAYLOR: It seems to me that one
11 of the differences here could be that most people
12 in the military justice system don't come with a
13 string of prior convictions. So, is there any
14 way for you to determine whether the prior
15 criminal history of the people being sentenced
16 was a factor? I'm sure it was, but do you have a
17 way of breaking that out?

18 DR. SPOHN: We do not.

19 MR. STONE: But, you do have
20 sentencing --

21 MR. TAYLOR: Thank you.

22 MR. STONE: -- for example, federal

1 sentencing guidelines, that relate to what the
2 sentence range would be for people who are first
3 offenders.

4 DR. SPOHN: And, we did -- the Panel
5 did request that, or the staff did request that
6 data from the Federal Sentencing Commission.
7 They asked for data on sentences imposed on
8 offenders who were charged with the equivalent of
9 sexual assault with no criminal history and who
10 had adult victims.

11 Unfortunately, there were only nine of
12 those cases in the federal system.

13 MR. STONE: No, no, no, I wasn't
14 asking for the actual sentences, I was asking for
15 the guideline sentencing range.

16 Sentencing range doesn't depend on
17 nine victims or a thousand victims, they figure
18 out after a lot of statistical analysis and 20
19 years of, you know, of experience what the range
20 should be. I'm just wondering if the 54 months
21 is way under the range for what the sentencing
22 guidelines would call for.

1 DR. SPOHN: I think that data is
2 included in your packet. The packet that you
3 received today. But, I can summarize that for
4 you right now.

5 So, when they included offenders who
6 had criminal history scores of one or two, which
7 would be very minor criminal histories, they
8 found that there were 94 offenders in the federal
9 data from three years who met those criteria,
10 adult victims, rape charges and criminal history
11 scores of one or two.

12 So, there were -- the sentences -- the
13 average sentences for these various kinds of
14 sexual assaults were 156 months, 84 months, 31
15 months and 32 months, depending upon the type of
16 charge.

17 CHAIR HOLTZMAN: I think he was asking
18 what the guidelines were, not the actuality. Do
19 we have the guidelines for that handy? If not,
20 we'll provide it to you at some other point.

21 MS. PETERS: Not at the moment, but we
22 can provide that.

1 CHAIR HOLTZMAN: Okay, sure.

2 Okay, could we go to the next slide,
3 please? Twenty-three?

4 DR. SPOHN: I think we're going to
5 skip some of this and maybe we'll just look at --
6 if you go to slide number 26.

7 So, Mr. Taylor, this is a slide who's
8 title is Case Outcomes Preferred Cases and the
9 military service of the Accused.

10 So, these are bivariate analyses in
11 which we are able to test for statistically
12 significant differences in the relationship
13 between an outcome and a predictor variable.

14 And so we looked at outcomes and
15 punishments and broke that down by the Service of
16 the accused, the characteristics of the victim
17 and the characteristics of the accused.

18 And, you can see that, on this first
19 slide, for the penetrative offenses, there were
20 differences across the military Services in
21 conviction for either a penetrative or a sexual
22 contact offense with the Army having the highest

1 conviction rate, the Air Force having the lowest
2 rate and the other Services ranged or arrayed
3 between those two ends of the continuum.

4 The acquittal rate for, that is
5 acquitted of all charges at trial, as 8.8 percent
6 for the Coast Guard as the low, 26 percent for
7 the Air Force as the high.

8 And, all charges dismissed, the Army
9 had the lowest rate, the Coast Guard had the
10 highest rate.

11 We were unable to calculate
12 statistical significance for the contact offenses
13 because there were too few in some of the
14 categories.

15 CHAIR HOLTZMAN: Would these numbers
16 be any different -- I see you referred to
17 preferred cases, would it be any different if we
18 referred to referred cases on 26 -- slide 26?

19 DR. SPOHN: Possibly.

20 CHAIR HOLTZMAN: Okay.

21 DR. SPOHN: In terms of the status of
22 the accused, there were no differences in case

1 outcomes between enlisted members and officers
2 for either penetrative or contact offenses.

3 In terms of the status -- the gender
4 and status of the victim, there were no
5 differences in outcomes between cases with female
6 and male victims for either contact or
7 penetrative offenses.

8 The only area in which there was a
9 statistically significant difference is that the
10 conviction rate was higher for cases with both
11 military and civilian victims.

12 This could simply be a function of the
13 number of victims and not necessarily the type of
14 victims.

15 If we look at the factors that are
16 associated with the confinement sentence, the
17 likelihood of confinement was affected by the
18 type of conviction charge, the status of the
19 victim, so that cases with civilian or military
20 and civilian victims had somewhat higher
21 confinement rates than did cases with only
22 military victims.

1 It's also affected by the type of
2 court-martial with cases that went to general
3 versus special having higher confinement rates
4 and summary court-martials having the lowest rate
5 of confinement.

6 Now contrast, likelihood of
7 confinement was not affected by fiscal year,
8 whether the -- or the military Service of the
9 accused, the rank of the accused or the gender of
10 the victim.

11 VADM TRACEY: I'm sorry, there's no
12 difference in confinement based on the rank of
13 the accused?

14 DR. SPOHN: No, that is correct.

15 VADM TRACEY: Were you able to look at
16 whether the duration of confinement was
17 different?

18 DR. SPOHN: That's the next.

19 VADM TRACEY: Okay.

20 DR. SPOHN: So, when we looked at the
21 length of the confinement sentence, we found that
22 it varied by the type of conviction charged, the

1 status of the victim, the type of court-martial
2 and it was not affected by fiscal year, military
3 service, rank or gender of the victim.

4 CHAIR HOLTZMAN: Is there any way of
5 explaining why the status of the victim was a
6 factor here? In other words, if military victims
7 and the length of sentence was the lowest when
8 there was a military victim as opposed to a
9 military and civilian or a civilian victim?

10 DR. SPOHN: We don't have any other
11 data on those cases.

12 CHAIR HOLTZMAN: Okay.

13 MS. PETERS: Yes, there's no other
14 information.

15 CHAIR HOLTZMAN: Okay, fine. All
16 right.

17 MS. PETERS: The treatment of the
18 system of those victims.

19 VADM TRACEY: But, can you connect
20 this -- earlier, you indicated that you thought
21 there might be an explanation that the cases --

22 DR. SPOHN: Multiple victims.

1 VADM TRACEY: -- might have multiple
2 victims or more --

3 DR. SPOHN: Right.

4 CHAIR HOLTZMAN: Exactly. That's
5 military and civilian. But, there's still a
6 difference between civilian and military.

7 VADM TRACEY: But, I'm suggesting that
8 here. Is that a --

9 DR. SPOHN: It could be the number of
10 the victims.

11 VADM TRACEY: -- look at as whether
12 the number of victims --

13 DR. SPOHN: And, we do look at that in
14 the multivariate analysis.

15 And so, the last set of analyses which
16 I'm just going to summarize is a multivariate
17 analysis that takes into consideration the
18 variables that are listed on slide number 31.

19 So, fiscal year, military Service, the
20 rank of the accused, the gender of the victim,
21 the status of the victim, number of victims, the
22 type of charge and the type of court-martial.

1 Actually, we took that out of the
2 analysis.

3 So, this kind of analysis controls
4 simultaneously for all of these factors. So,
5 essentially, it says, if you compare similar
6 cases to similar cases, what are the outcomes
7 that you see?

8 So, this is basically, this is a type
9 of analysis that lets us arrive at conclusions
10 about the treatment of similar kinds of cases.

11 So, when we looked at whether the
12 offender was convicted of a penetrative offense,
13 so these would have been offenders charged with
14 penetrative offenses, whether they were convicted
15 of a penetrative offense, we found that this was
16 affected by only two variables, the military
17 Service of the accused, those from the Coast
18 Guard were about half as likely as those from the
19 Army to be convicted of a penetrative offense.

20 There were no differences between
21 those in the Army and any of the other Services.

22 And then, the number of victims was

1 associated with a greater likelihood of
2 conviction for a penetrative offense.

3 So, looking at whether the offender --
4 whether the accused was convicted for any
5 offense, we found that these outcomes were
6 affected by the fiscal year. So, that conviction
7 was less likely in 2014 than in previous years.

8 The sex of the victim, conviction was
9 less likely if the victim was female.

10 The number of victims, the more
11 victims equals a greater likelihood of
12 convictions.

13 Number of charges, same relationship.

14 And, individuals who are charged with
15 penetrative offenses were less likely than those
16 charged with contact offenses to be convicted.

17 So, we then looked at what explains
18 whether cases were acquitted or dismissed, so
19 these are the -- our -- we're almost finished.

20 So, the significant predictors of
21 acquittal were the military service of the
22 accused. Acquittal was 1.6 times more likely if

1 the accused was in the Air Force compared to
2 those in the Army.

3 Again, the number of victims, the
4 number of charges, more victims, more charges
5 equals a lower likelihood of acquittal. And,
6 individuals who are charged with penetrative
7 offenses were 1.4 times more likely than those
8 charged with contact offenses to be acquitted.

9 A very similar pattern of results with
10 respect to dismissal, except for the fact that we
11 saw more differences among the military Services.
12 So, again, we're comparing the other services to
13 those in the Army.

14 And, we find that, compared to those
15 in the Army, those in the Air Force were 1.7
16 times more likely to have the case dismissed.
17 Those in the Navy were three times more likely.
18 Those in the Marine Corps were almost four times
19 more likely and those in the Coast Guard were
20 about three times more likely to have the case
21 dismissed.

22 And, similarly to the other -- the

1 previous slide, we find that the number of
2 charges is associated with a lower likelihood of
3 case dismissal, and that those who are charged
4 with the penetrative offenses were almost two and
5 a half times more likely to have the charge --
6 the case dismissed, not the charge, the case
7 dismissed without further action.

8 So, the final two slides look at
9 sentences.

10 The significant predictors of whether
11 the offender would be sentenced to confinement,
12 the victim was a member of the military, they
13 were less likely to get a sentence of
14 confinement.

15 Number of charges, more charges equals
16 a greater likelihood of confinement.

17 And, individuals convicted of
18 penetrative offenses were almost 12 times more
19 likely than those convicted of contact offenses
20 to receive a confinement sentence.

21 And then, finally, in terms of
22 sentence length, we didn't find any differences

1 based on the military service of the accused or
2 the rank of the accused.

3 We did find, again, it was the number
4 of victims, the number of charges and the type of
5 offense with which the accused was charged that
6 predicted the length of the sentence.

7 So, I think the takeaway from this is
8 that, if you look at the multivariate analyses,
9 the primary predictors of outcomes in these cases
10 are the type of offense, the number of charges,
11 the number of victims. Those are pretty
12 consistent predictors across all of the outcomes
13 that we look at.

14 And then, for some of the outcomes, we
15 find differences based on the military Service of
16 the accused and, for some, we find differences
17 based on sort of random other factors.

18 But, the three primary predictors are
19 charges, victims and type of offense.

20 That's it.

21 CHAIR HOLTZMAN: Thank you very much.

22 DR. SPOHN: That's it.

1 CHAIR HOLTZMAN: And now, Ms. Peters,
2 do you have a presentation to make?

3 MS. PETERS: No, I'm going to
4 transition to Mr. Terri Saunders who's going to
5 talk to you about the non-judicial punishment and
6 administrative separation data.

7 CHAIR HOLTZMAN: Before we go to that
8 --

9 MR. STONE: I still never got a
10 summary of your answer in one sentence to
11 questions five and six and I want an answer in
12 one sentence to five and six so we know where
13 we're going. I need the forest, the big picture
14 and not just the trees.

15 Five was, are the punishments imposed
16 to sexual assault offense under the UCMJ any
17 harsher or more lenient than expected?

18 And, how do those punishments compare
19 with similar offenses in state and federal
20 courts?

21 Where are you taking us on those two
22 questions?

1 MS. PETERS: One, I think the
2 sentences, we wanted to provide to you as a
3 standalone. These are military sentences. Do we
4 think that for penetrative offenses, in your
5 opinion, do they sound higher or lower than what
6 you would expect or do you need more information?

7 And then, separately, we felt the
8 second aspect of that, to compare that to
9 civilian data, if possible.

10 So, I really put to the Panel whether
11 we think that the sentences are high and low in
12 its opinion and we want to inform that debate in
13 that answer.

14 It would appear that having four and
15 a half to five years as the average sentence for
16 a penetrative offense seems high in and of
17 itself.

18 We know it's coupled with a punitive
19 separation very often and other forms of
20 punishment.

21 Whereas, we're only comparing it to a
22 term of confinement in the civilian sector which

1 may be higher, but there's so many other factors
2 affecting that severity that probably aren't
3 present in our military cases.

4 Our takeaway was just that it was
5 difficult if not near impossible to really draw a
6 direct comparison between whether it's fair to
7 say how military sentences compare to civilian
8 data.

9 And, that's what we wanted to have
10 your takeaway today, sir, if that gives you an
11 answer, not as straightforward maybe as you would
12 have liked. That's where we'd like the Panel to
13 go with those two questions.

14 What do you think of the sentences in
15 and of themselves? What do you think of them in
16 comparison to civilian data? If that's a fair
17 question to ask, because it's in the tasking.

18 VADM TRACEY: So, we might need the
19 answer to the question we asked earlier about
20 what's the sentencing guideline for first
21 offenders.

22 MR. STONE: Yes.

1 MS. PETER: Okay.

2 VADM TRACEY: So, I think that might
3 be a comparison that you don't have that would be
4 good to have.

5 MR. STONE: I mean it seems to me
6 adding separation as a separate consequence is
7 covered by the fact that, in the civilian
8 context, if you give somebody at least 120
9 months, ten year sentences, you've separated them
10 from whatever their career was for ten years and
11 they're not going back to it either.

12 So, they've been separated, you know,
13 from their career as well and their life and
14 their marriage and their home. They're not going
15 to keep paying rent on a place for ten years.

16 So, I'm not, you know, I'm not
17 persuaded that these are apples and oranges that
18 don't have some meaning. I think they do have
19 meaning and we do have to look at what the
20 Sentencing Guideline Commission that spends years
21 on it gives to first offenders, particularly when
22 there's more than one victim because we have 1.2

1 victims.

2 CHAIR HOLTZMAN: Well, my only issue
3 with regard to that is that the sentencing
4 guidelines are not, in the end, binding.

5 And, number two, the number of rape
6 cases that are dealt with in the federal system
7 is pretty small. It's not a big part of their
8 job. Maybe they should be doing more,
9 particularly with regard to Native American
10 issues, but anyway.

11 But, I think the real issue here,
12 which is worth -- I mean I think you've put your
13 finger on something important. I think that the
14 -- one of the issues here is that the numbers by
15 themselves could raise -- could be misleading.

16 Because -- and that's what I was going
17 to suggest that maybe this data -- this report
18 needs to be annotated in the sense that we could
19 say, we can't really account for the disparity
20 between the state sentences, the length of time,
21 for example, state sentences and federal -- and
22 military justice sentences because we don't have

1 enough information about the state sentences.

2 But, you said one factor that could be
3 involved here to explain the difference, we don't
4 know, but possibly, is that in the state system,
5 it may well be that these people have a
6 substantial criminal record.

7 So, I'm just throwing these numbers
8 out like this could be misleading. So, I'm just
9 -- where the --

10 And, for example, also with regard to
11 the number of victims. You know, when you have
12 several victims, you've got two people versus the
13 accused. I mean, there may be other bystanders
14 or witnesses, but that strengthens the case of
15 the -- against the accused because you have two
16 people or three or whatever the number is.

17 So, that strengthens the case, too, so
18 that, you know, it's -- I understand why that's
19 there, but it helps strengthen the case and maybe
20 some explanation on some of these numbers would
21 be warranted.

22 I mean, I understand it's totally

1 speculative because we don't really know what
2 explains. But, we don't want -- I think the
3 thing I would be concerned about is that people
4 come away with this and say, oh well, our
5 sentences are so much lower and this is a
6 terrible thing and how horrible it is.

7 I mean, maybe they are really lower
8 and we should be aware of it, but we're not a 100
9 percent sure that, in fact, we are comparing the
10 same kinds of things, with people with criminal
11 records or whatever.

12 DR. SPOHN: And, I was very reluctant
13 to make that comparison for those very reasons.

14 CHAIR HOLTZMAN: Okay. So, but, maybe
15 some kind of footnotes in here could help make
16 sure that we don't get misleading because this is
17 by -- this is an excellent report and I want to
18 compliment you on it and I feel that this has
19 been very, very helpful.

20 But, I think it's possible for people
21 to draw misleading conclusions or inaccurate
22 conclusions.

1 DR. SPOHN: And, I think with respect
2 to the Federal Sentencing Guidelines, the ranges
3 for these various kinds of offenses, we don't
4 have data in this database that would allow us
5 to, for example, calculate what the enhancements
6 would be for use of a weapon or serious injury to
7 the victim.

8 CHAIR HOLTZMAN: Oh, that's right.

9 DR. SPOHN: And, all of those things
10 that are going to take -- you're going to take
11 the base offense level and then that's going to
12 result in the actual offense level for the
13 offender. And, we simply don't have any of that
14 kind of data.

15 So, even if we limit it to individuals
16 with one or two criminal history points convicted
17 of the same kinds of offenses, we don't have
18 those details about the cases that, in terms of
19 the enhancements to the base offense level.

20 CHAIR HOLTZMAN: So, maybe one of the
21 takeaways from this is what additional
22 information the military needs to keep track of -

1 -

2 DR. SPOHN: Exactly.

3 CHAIR HOLTZMAN: -- so that they
4 really want, you know, effective data here, what
5 additional information they need to collect.

6 MR. STONE: I think we're dealing in
7 the military with people who know each other.
8 We're not talking about rapes in an alley
9 committed at knife point. And, therefore, I
10 don't really think use of a weapon is going to be
11 that relevant.

12 I do want to see the base level for
13 rapes by first offenders where there's more than
14 one event or victim involved. And, I'm sure
15 there's a range and that's been developed and
16 refined over the -- since 1986 by not just one,
17 but a whole panel of statistical experts with a
18 lot of criticism.

19 And, it seems to me, whether judges
20 find a particular reason in a case to depart from
21 it, which, by the way, they have to justify on
22 paper or not, the public and even now that it's

1 advisory, Judges understand that's what they call
2 the heartland and I want to see if that heartland
3 is something that the military sentences fall
4 into or don't fall into.

5 CHAIR HOLTZMAN: Well --

6 MR. STONE: I think that's a fair
7 question --

8 CHAIR HOLTZMAN: Nobody has disagreed.

9 MR. STONE: -- a fair answer to
10 question six.

11 CHAIR HOLTZMAN: Nobody has --

12 MR. STONE: And, that's why I would
13 like that data.

14 CHAIR HOLTZMAN: All right. Nobody is
15 disagreeing with you about the importance of that
16 information.

17 Ms. Saunders, let's move on because we
18 have a half hour left.

19 MS. SAUNDERS: And I have less
20 information to get through, so it should go
21 fairly quickly.

22 CHAIR HOLTZMAN: Okay.

1 MS. SAUNDERS: Okay. I'm going to be
2 talking --

3 CHAIR HOLTZMAN: And, maybe leave some
4 time -- maybe if you could do it in 15 minutes
5 because we want to get to the appellate stuff if
6 we can.

7 MS. SAUNDERS: Yes, I can definitely
8 do that.

9 CHAIR HOLTZMAN: All right.

10 MS. SAUNDERS: I'm going to be talking
11 to you about the trends and statistics in non-
12 judicial punishment, adverse administrative
13 actions and administrative discharges.

14 Going to the next slide.

15 This is the statutory task given by
16 Congress that directly relates to what I'm going
17 to talk to you about. And, as you see, I've
18 highlighted in blue there, non-judicial
19 punishment and then administrative actions.

20 So, the Congress has asked us to look
21 at trends and respond to sexual assault crimes
22 and I'm going to do that in the context of non-

1 judicial punishment and then administrative
2 actions.

3 And, the next slide?

4 And, these are the foundational issues
5 formulated by the staff, basically, our
6 interpretation of that statutory task by
7 Congress.

8 Are sexual assault charges being
9 resolved at the appropriate level and are
10 disposition decisions consistent for similar
11 charges?

12 The data, this is where things are a
13 little different for what I'm going to talk to
14 you about as opposed to the court-martial data.

15 You have had information provided to
16 you both at this meeting and previous meetings
17 about the data collection efforts to gather all
18 of the court-martial records that formed the
19 basis for the data that they collected.

20 They actually got a certain number of
21 documents from each of the Services for -- to be
22 able to put together their information.

1 We did not have that for the non-
2 judicial punishment and administrative action
3 data primarily for two reasons.

4 One is that data is Privacy Act
5 material whereas court-martial records are
6 largely, you know, open to the public with some
7 limitations.

8 Things like letters of reprimand, non-
9 judicial punishments, administrative discharges
10 are covered by the Privacy Act and more difficult
11 to obtain.

12 But, I think probably the better
13 reason or the more difficult reason is just pure
14 logistics. These records are not centrally
15 maintained by the military Services.

16 And the response to some of the RFIs
17 that we sent out to the military, they provided
18 us some of their dispositions for some of these
19 types of actions.

20 Typically, two to three years they are
21 maintained, sometimes less. For example, in a
22 non-judicial punishment in the Army if a member

1 moves from one duty station to another, that non-
2 judicial punishment would typically disappear.

3 And so, and they are maintained at the
4 installation.

5 CHAIR HOLTZMAN: Well, I don't know
6 what that means, disappear?

7 MS. SAUNDERS: It would be taken out
8 of --

9 CHAIR HOLTZMAN: The record disappears
10 or the punishment ends?

11 MS. SAUNDERS: The punishment would,
12 of course, have already ended but it would be
13 taken out of that member's record. So, that
14 would no longer be in that member's record.

15 And, the dispositions vary a little
16 bit from Service to Service, but what is true is
17 that they are typically -- these records are
18 typically maintained at the installation level.
19 So, there is no central repository for non-
20 judicial punishments or administrative discharge
21 paperwork that we could go to them and say,
22 please give us all of the non-judicial punishment

1 actions for sexual assault offenses for these
2 particular years or please give us all of your
3 administrative discharge paperwork for those
4 years.

5 That would, from a purely logistical
6 aspect, that would have been difficult if not
7 impossible.

8 MR. STONE: So, does that mean that if
9 a person had a sexual assault complaint brought
10 against them at one installation and that was the
11 only one and there was administrative punishment
12 and they decided to delete it from his records
13 and then he goes to another installation and the
14 same thing happens.

15 And then, over his career he's
16 transferred to three or four more installations,
17 there'll be no records to show that he's had
18 sexual assault complaints at five or six
19 different installations. Is that right?

20 MS. SAUNDERS: Well, not necessarily,
21 Mr. Stone. And, the answer to that is a little
22 bit complicated.

1 For example, if somebody is accused of
2 a sexual assault offense, obviously, now, with
3 some of the more recent statutory changes, that
4 has to go up to the special court-martial
5 convening authority level for decisions.

6 So, it's not being handled at a low
7 level by some low level commander as it used to
8 be perhaps in the past.

9 So, for example, if even if that
10 member is perhaps given a lower level type of
11 punishment, maybe it's non-judicial punishment or
12 an administrative action, that would also be
13 noted in a performance appraisal.

14 I think the Services also typically
15 have in their regulations, you know, other ways
16 of making sure that this information is passed
17 along.

18 And, more recently, the Services, in
19 response to congressional taskings and
20 congressional law, have now said -- have now
21 changed their policies to say, if a member is
22 found to have -- and I'm going to get into this a

1 little bit later when I talk about discharges --
2 if a member is found to have committed a sexual
3 assault offense, then they must be -- the
4 administrative discharge must be initiated.

5 MR. STONE: I think what I hear you
6 telling me is that you are tasked with looking at
7 data from fiscal years 2012 to 2014, but that may
8 not be -- we may be in a better situation now?

9 MS. SAUNDERS: Absolutely. Certainly.

10 Okay, I'll go ahead with the next
11 slide.

12 So, we'll start out with non-judicial
13 punishment. And, where I took this data from,
14 and I will say I have a higher degree of
15 confidence in the numbers that I'm going to
16 present to you for non-judicial punishment than
17 for some of the things I'll talk about later.

18 In each of the packets of information
19 that you were provided, there's a sampling of
20 something called the Case Synopsis Chart for each
21 of the Services. Each of the Services provided
22 this as part of the fiscal years 2012, '13 and

1 '14 information in the DoD SAPRO report that goes
2 to Congress every year.

3 And, what this chart is is it's a
4 synopsis or summary of every sexual assault case
5 that reached some kind of legal disposition in
6 that fiscal year.

7 And, obviously, we didn't want to
8 provide you the whole thing because it's very
9 thick, but we did provide you a sampling of that
10 just so that you can kind of see the types of
11 information that are available.

12 But, what it is they'll talk about,
13 what the offense was that was investigated, what
14 was the response to that, whether it was court-
15 martial, whether it was non-judicial punishment
16 and then, often, there will be some little
17 comments at the end and what the ultimate -- how
18 those cases were ultimately resolved.

19 So, for non-judicial punishment, this
20 slide just talks to you a little bit about what
21 is a non-judicial punishment. And, you know,
22 obviously, it's a lower level response than

1 court-martial.

2 The next slide, please?

3 VADM TRACEY: It's also a lower
4 standards group?

5 MS. SAUNDERS: Well, actually, you
6 have to be prepared to have a higher level
7 standard of approach.

8 VADM TRACEY: Correct.

9 MS. SAUNDERS: And, the reason is, for
10 non-judicial punishment, in most circumstances, a
11 member can turn down non-judicial punishment. It
12 could be offered to the member and he or she can
13 say, I do not accept this. I demand a trial by
14 court-martial.

15 So, in that situation, or in any
16 situation that non-judicial punishment is
17 offered, that commander must be prepared or that
18 JAG must be prepared to take that to court and be
19 able to meet that beyond a reasonable doubt
20 standard.

21 VADM TRACEY: Should --

22 MS. SAUNDERS: I mean absolutely.

1 VADM TRACEY: And, I think that's what
2 most commanders and what most judge advocates are
3 looking at.

4 MS. SAUNDERS: So, what we looked at
5 and the data we gathered, we wanted to look at
6 all cases that originated as non-judicial
7 punishment actions.

8 Sometimes, you may have a case that's
9 -- where court-martial charges are preferred, but
10 ultimately, what happens is that those charges
11 are dismissed and it may end up at a non-judicial
12 punishment for one reason or another.

13 We excluded those cases because we
14 wanted to look at the initial decision.

15 So, cases that originated as non-
16 judicial punishment actions where a sexual
17 assault offense was alleged and the type of
18 offense and what the ultimate decision was that
19 came out of that non-judicial punishment.

20 Because, in a non-judicial punishment,
21 that commander may decide that the member has the
22 opportunity to present information in their own

1 defense. That commander, at the very end of
2 that, may decide that the member did commit the
3 offense, he can decide -- that commander or that
4 commander can decide that the member maybe only
5 committed a nonsexual assault offense or didn't
6 commit any offense at all.

7 So, we included all -- so we wanted to
8 gather the data for those elements.

9 Next slide?

10 And so, this is the overall synopsis
11 for fiscal years 2012 through 2014, there were a
12 total of 691 non-judicial punishment actions
13 initiated for sexual assault offenses.

14 MR. STONE: As to that number, given
15 your comments a few moments ago, are you
16 suggesting there would be a much higher number
17 because 691 sounds pretty good, are you telling
18 me that people withheld data because of the
19 Privacy Act? And, you should have twice as many?

20 MS. SAUNDERS: No, no, that's not what
21 I'm suggesting. I'm just -- when I mentioned the
22 Privacy Act before, I was simply referring to

1 getting a hold of the actual non-judicial
2 punishment forms --

3 MR. STONE: But, you get all the
4 numbers --

5 MS. SAUNDERS: -- from the Services.

6 MR. STONE: -- and statistics you need
7 without violating the Privacy Act, isn't that
8 right?

9 MS. SAUNDERS: Right, exactly. And so
10 --

11 MR. STONE: Okay.

12 MS. SAUNDERS: -- all of those numbers
13 were provided as part of the DoD annual SAPRO
14 reports.

15 MR. STONE: Okay. And, does this 691,
16 do you think this is adversely affected by the
17 number that got, let's call it expunged by the
18 local institutions and levels or do you think
19 that you got them before they were deleted from
20 their records?

21 MS. SAUNDERS: No, no, as far as the
22 numbers, they are provided in real time in that

1 fiscal year. So, those numbers should be
2 accurate. Those numbers should be available to
3 that Service Representative.

4 MR. STONE: So, the only thing we're
5 missing is the last bullet on the page before
6 this that says, no punishment data?

7 MS. SAUNDERS: Right. They do break
8 that down somewhat in the report and I can
9 provide you what we have from this DoD SAPRO
10 reports that do -- they talk about X number of
11 forfeitures.

12 The reason we didn't include -- that
13 I didn't include that in here is, going back to
14 the foundational issues, what we, as the staff,
15 felt that perhaps you might be most concerned
16 with is, are these types of offenses being
17 handled at the appropriate forum? Is it
18 appropriate that these offense are being handled
19 by non-judicial punishment or administrative
20 discharge or some --

21 CHAIR HOLTZMAN: How would we know
22 that if we don't know what the charges really

1 are, the underlying offense? How do we know
2 whether it's appropriate to be handled this way?

3 MS. SAUNDERS: I mean, we mean, we
4 have information in terms of whether these were
5 contact offenses or penetrative. But, in terms
6 of the facts of the case, we don't have that
7 information.

8 CHAIR HOLTZMAN: So, how can we
9 possibly make a judgment about appropriateness?

10 MS. SAUNDERS: That may be very
11 difficult.

12 CHAIR HOLTZMAN: Let me just say one
13 thing. We've got 20 minutes to go and we've got
14 another person, can we just -- I'd like to get
15 through just your presentation. We can kind of
16 save our questions for --

17 MS. SAUNDERS: Absolutely.

18 CHAIR HOLTZMAN: -- our next meeting
19 or --

20 MS. SAUNDERS: Absolutely.

21 CHAIR HOLTZMAN: -- email or something
22 so we can just get through this quickly?

1 MS. SAUNDERS: Okay.

2 This slide --

3 MR. STONE: I just want to make a one
4 sentence statement and that is, if we don't know
5 roughly in some parameter what the punishments
6 are, if it turns out the punishments, when you go
7 non-judicial, are two months of restricted duty
8 or even imprisonment, it seems to me, that's
9 going to make a huge difference as to whether
10 offenders and their lawyers say, go non-judicial
11 if you possibly can.

12 So, unless we have some guide to what
13 non-judicial punishments look like --

14 MS. SAUNDERS: Absolutely.

15 MR. STONE: -- it's hard to decide if
16 they're appropriate.

17 VADM TRACEY: But, I think you can get
18 a view of the maximum that you can --

19 MS. SAUNDERS: Absolutely.

20 VADM TRACEY: -- under NJP is
21 dramatically different from what --

22 MS. SAUNDERS: It is and, as an

1 example --

2 VADM TRACEY: -- you can get a
3 sentence -- they could provide --

4 MS. SAUNDERS: Absolutely.

5 And, when I'm filing out the report,
6 I have all of that information in there.

7 As an example, for an enlisted member,
8 the maximum punishment that you could potentially
9 get at a non-judicial punishment would be loss of
10 some rank, forfeitures, perhaps being restricted
11 to the base or a certain location, confinement is
12 not an authorized punishment for non-judicial
13 punishment.

14 CHAIR HOLTZMAN: Okay, let's move on,
15 please.

16 MS. SAUNDERS: Okay.

17 So, this just breaks down that number
18 that I just showed you by Service and by fiscal
19 year. You know, what I did, the two left hand
20 columns initiated for a contact offense and
21 initiated for a penetrative offense, this is just
22 supposed to give you an idea of what types of

1 offenses are going to non-judicial punishment.

2 And, of course, I've already been
3 informed this morning by one of our Service Reps
4 that one of the numbers is -- that the five NJPs
5 initiated for a penetrative offense for the Army
6 for fiscal year 2012 is not accurate. So, these
7 numbers might change a little bit.

8 But, as you can see, they are largely
9 for contact offenses.

10 Going to the next slide.

11 And, this is the summary of that. The
12 vast majority for NJP, of cases that went to non-
13 judicial punishment were for contact offenses.
14 They were primarily abusive sexual contact and
15 wrongful sexual contact.

16 And, in no case was a member found to
17 have committed a penetrative offense at non-
18 judicial punishment.

19 And then, I just give a couple of
20 quotes here from the SAPRO report from the
21 services. It's -- it shows -- it seems to be
22 primarily unwanted touching over clothing or

1 kissing without consent.

2 But, again, I don't -- we don't have
3 the facts of all the cases. So, that is a
4 limitation.

5 Adverse administrative actions, these
6 numbers, as you see right here, purport to be
7 only for a case where only an administrative
8 action was taken against that member.

9 Where I think this number is very
10 deceptive is that is often not the case.
11 Administrative actions routinely take place often
12 in conjunction with other forms of action.

13 If you have a member going to court-
14 martial, that -- or non-judicial punishment, that
15 member is probably going to have something
16 negative put in their performance report. If
17 they're on a promotion list, they're probably
18 going to be taken off the promotion list.

19 And, there are other types of actions
20 that are considered administrative in nature that
21 are probably going to take place against that
22 member.

1 So, just by -- so, to limit it to just
2 these few numbers where only an administrative
3 action takes place is somewhat deceptive. And,
4 where you may see this more is if a sexual
5 assault case is going to court in the civilian
6 sector, then court-martial or non-judicial
7 punishment would not be available to the
8 military. So, they may choose to memorialize
9 that in an administrative action.

10 Next slide?

11 Administrative discharges, a couple of
12 pieces of legislation that I think are going to
13 affect this that we haven't really seem much yet,
14 in the 2014 National Defense Authorization Act,
15 it provides a mandatory punitive discharge for a
16 member who is convicted at general court-martial
17 of a penetrative sexual assault offense.

18 So, those are now going to require
19 that the member receive a punitive discharge.

20 And, as I spoke to you a little bit
21 earlier about, the service policies are much
22 broader. They actually require that discharge be

1 initiated if a member is found to have committed
2 a sexual assault offense, and that's contact or
3 penetrative.

4 Next slide?

5 The administrative discharge data --
6 the big issue with the data for administrative
7 discharges is I have a very low level of
8 confidence in the data that comes out of the
9 SAPRO reports. I think it's probably under
10 reported.

11 And, the reason is, number one, we
12 know that the Service policies require a
13 discharge for a member found to have committed an
14 offense.

15 They have this system that you've
16 heard about before of bucketing offenses based on
17 seriousness of the outcome. So, and they can
18 only -- something can only be placed into one
19 bucket. Dr. Galbreath has talked to you about
20 this before.

21 So, if a member was court-martialed,
22 it's going to be put down as a court-martial

1 because that's the most serious. Next is non-
2 judicial punishment and then, after that, comes
3 administrative discharge.

4 So, if a member is court-martialed but
5 does not receive a punitive discharge or is taken
6 to NJP, it's likely that member is going to be
7 discharged later, but that information may not
8 necessarily be in the report because it's
9 considered a lower form of action.

10 So, if you go to the next slide,
11 please?

12 So, here are the numbers. Obviously,
13 they've gone up from 2012 to 2013 to 2014. For
14 2014, only we have characterization data
15 available there.

16 But, one of the problems and the one
17 point I want you to take away from this --

18 CHAIR HOLTZMAN: What's UOTHC?

19 MS. SAUNDERS: I'm sorry, Under Other
20 Than Honorable Conditions Discharge. That's the
21 worst form of administrative discharge.

22 CHAIR HOLTZMAN: Okay, could you put

1 that in English.

2 MS. SAUNDERS: I certainly will.

3 The one point I think that I would
4 like you to take away from this is, in gathering
5 the data, it's very unclear from the reports
6 whether the Services are to include discharges
7 that were initiated but not completed by the end
8 of that fiscal year or not and or only for
9 completed actions.

10 So, for example, if somebody receives
11 a non-judicial punishment --

12 CHAIR HOLTZMAN: I don't need that
13 explained.

14 MS. SAUNDERS: Okay, got you.

15 But, you know, by requiring them to
16 include pending administrative discharge data,
17 that might provide a more full number that might
18 more accurately reflect.

19 CHAIR HOLTZMAN: Excellent, thank you.

20 MS. SAUNDERS: Thank you.

21 CHAIR HOLTZMAN: Our next presenter?
22 Is that you giving us the appellate stuff?

1 MR. MARSH: Yes, ma'am.

2 CHAIR HOLTZMAN: Okay, great. Shoot.

3 MR. MARSH: Good morning, Madam Chair,
4 members of the Panel, I'll be talking today about
5 appellate review of courts-martial convictions.

6 I realize that I am standing between
7 everyone in the room getting out before the storm
8 so I'll try to give the ten minute version of
9 this brief.

10 CHAIR HOLTZMAN: You have to.

11 MR. MARSH: Yes, ma'am.

12 Okay, I've got about 11 slides.
13 Actually, Stayce, can we go back to the slide
14 before this? There we go, thank you, that's
15 perfect.

16 This is the statutory task. It's from
17 fiscal year '13 NDAA. The highlighted text is
18 the portion that we're addressing in this brief.

19 The number and description of
20 instances when punishments were reduced or set
21 aside upon appeal, number one.

22 And, number two, the instances in

1 which a defendant appealed following a plea
2 agreement.

3 Next slide, please?

4 And, these are the foundational issues
5 that we broke out in response to that.

6 And so, the first is really when
7 appellate courts are taking action on a
8 conviction.

9 And then, number two, how often is
10 appellate action occurring when there's a case
11 with a plea agreement? Which is pretty unique to
12 the military.

13 In federal court, a plea is often
14 looked at as the highest form of proof. In the
15 military, guilty plea cases are still reviewed by
16 the appellate courts. So, that's probably what
17 as one of the things that generated this tasking.

18 I've got a little bit of background on
19 the military appellant review --

20 CHAIR HOLTZMAN: Let's skip that.

21 MR. MARSH: Yes, ma'am.

22 CHAIR HOLTZMAN: Please.

1 MR. MARSH: Next slide?

2 On to the data, military appellate
3 court-martial data, these numbers represent all
4 the opinions, both published and unpublished by
5 the military appellate courts as well as their
6 summary dispositions that deal with adult sexual
7 assault offenses.

8 So, those are cases that involve
9 conviction under Article 120 or 125.

10 The cases themselves came from the
11 Services uniquely with this information. It's
12 also public record. The appellate courts publish
13 it on their websites so we're able to -- anyone
14 in the public can access it via PDF.

15 So, this is the total number of
16 opinions issued annually by the Service Criminal
17 Courts of Appeal, that's that first level of
18 appellate court in the military.

19 And so, in the three fiscal years
20 studied, fiscal year '12 through fiscal year '14,
21 it's 380 total. About 128 a year, it varies a
22 little bit.

1 The Army, not surprisingly, had the
2 highest total number followed by the Navy and the
3 Air Force.

4 The other thing worth noting is the
5 Service Criminal Courts of Appeal, there are
6 four, one for each service except for the Navy --
7 I'm sorry, there's a little feedback in this
8 microphone -- except for the Navy and the Marine
9 Corps which are joined in the Navy-Marine Corps
10 Court of Criminal Appeals.

11 However, in this chart, we've broken
12 it out by the service of the accused.

13 If no questions, next slide, please?

14 Yes, ma'am?

15 VADM TRACEY: You've got these, as a
16 kind of a base for that service so the Army
17 number's big, but the Army number's base number
18 is big. So, is there a break?

19 MR. MARSH: Yes, ma'am.

20 We can do that. The one caveat is
21 that appellate cases can span multiple years.
22 So, in other words, there can be -- it won't link

1 up exactly one to one, but we could get right on
2 that.

3 And then, this table represents the
4 number -- the instances where appellate courts
5 took action or granted relief in adult sexual
6 offense. And, this is in response to a
7 foundational question one.

8 As you can see, this is overall about
9 12 percent of the 380 cases, 46 total over those
10 three years. Nearly all of the cases involved
11 relief where a charge was set aside. It was very
12 rare for just a sentence to be reduced where no
13 charge was set aside, which it appears to be
14 logical and the gravity of the offense, it's
15 unlikely that -- of course the judge can reduce
16 punishment without actually setting it aside.

17 In terms of the reasons cases were set
18 aside, they varied. Unreasonable multiplication
19 of charges in 13 of those cases where an offense
20 was charged multiple ways and one was set aside
21 by the court as being multiplicitious.

22 Factual insufficiency occurred in

1 eight cases which is a unique feature of the
2 military justice system that the appellate courts
3 review cases for both factual and legal
4 sufficiency. They grant deference to the trial
5 court, but they can set aside a case for factual
6 sufficiency.

7 A case that you're familiar with,
8 *United States v. Pease* --

9 CHAIR HOLTZMAN: Okay, let's speed it
10 up.

11 MR. MARSH: Yes, ma'am.

12 Okay, you got it.

13 So, bottom line, in response to that
14 first question, sexual assault convictions are
15 rarely set aside by the Service Criminal Courts
16 of Appeal.

17 Next slide?

18 This is in response to the second
19 question, how often are cases set aside following
20 a plea agreement and the answer is very rarely.

21 Eight cases total over the three years
22 studied, that's about two percent.

1 And, the reasons for relief were
2 typically pretty technical, errors made in the
3 initial charging of the case, also in the
4 military there is something called the providence
5 inquiry where, during the guilty plea, there's
6 very specific criteria that shows the accused
7 understands the nature of the plea, if there's
8 errors made in that, Criminal Court of Appeals
9 can set aside the case.

10 And then, finally, the last table
11 represents action taken by the United States
12 Court of Appeals for the Armed Forces. This is
13 the federal circuit equivalent in the military
14 justice system.

15 And, again, it's rare that CAAF sets
16 aside a case, nine total over the three years.
17 And, there wasn't really a predominate reason.

18 CHAIR HOLTZMAN: Can you give the
19 baseline issue? How many cases came to them?

20 MR. MARSH: Of just sexual assault
21 cases?

22 CHAIR HOLTZMAN: Yes.

1 MR. MARSH: We'd have to pull that
2 information. It's not something that we have
3 publically available based on the type of charge,
4 but we can get it.

5 CHAIR HOLTZMAN: All right, we have
6 six minutes.

7 MR. STONE: I have two requests and
8 you're in the unlucky position of getting my
9 requests because you presented this data.

10 But, the staff will know who's the
11 right person to ultimately respond.

12 First of all, I'd like the names and
13 military citations of these last nine cases from
14 the CAAF that you listed. You can just put that
15 on a piece of paper so that we can look at them,
16 like for example, to see what denial a victim
17 testimony or improper application of the
18 privilege to testimony, what the court was saying
19 and so I'd like those citations.

20 MR. MARSH: Yes, sir.

21 MR. STONE: And, I could, in addition
22 to before I asked for the sentencing guideline

1 data for particular area of cases, I'd also like
2 just a list of citations of the cases from the
3 CAAF or any published decisions, for that matter,
4 or opinion of the Attorney General, let's say
5 that the Privacy Act applies to the military
6 files. I heard that mentioned today, I heard at
7 the last meeting.

8 I do not believe, I could be wrong,
9 but I don't believe that the Administrative
10 Procedure Act applies to the military directly.

11 And, the Privacy Act is a constituent
12 part, although it was enacted at a different time
13 than the Administrative Procedure Act, so I'd
14 like to see those citations so I can review them
15 as well.

16 I find it hard to believe that
17 military officials, senior military officials,
18 even if they are not in the direct chain of
19 command, can't look at personnel records because
20 of the Privacy Act.

21 So, I'd like to see citations about
22 the Privacy Act in the military if you don't

1 mind.

2 MS. PETERS: Yes, sir. Yes, Mr.
3 Stone, we can delve into that further. We did
4 see systems of records notices accompanying
5 various personnel records in our --

6 CHAIR HOLTZMAN: Okay, just yes or no
7 or whatever. Let's -- no questions -- I've got
8 no questions.

9 So, we are adjourned. Thank you very
10 much, staff members for the very excellent
11 presentation and, Dr. Spohn, your presentation
12 and everyone, get home safely.

13 (Whereupon, the above-entitled matter
14 went off the record at 11:57 a.m.)

15

16

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A			
a.m 1:10 4:2 90:13,14 180:14	actual 35:5 51:6 52:11 100:11 112:17 126:14 146:12 160:1	advocating 81:15	answered 79:12
able 20:17,18 22:16 72:22 120:13 128:11 131:15 150:22 157:19 173:13	actuality 127:18	affect 167:13	answers 98:7
above-entitled 90:12 180:13	add 14:6 18:14,20 88:16 114:6	afraid 49:22	anybody 21:19 33:20 56:19 60:6
absolutely 120:3 155:9 157:22 162:17,20 163:14,19 164:4	added 51:16	afterward 43:17	anymore 62:1
abusive 165:14	adding 44:22 142:6	agenda 11:1 85:4,7	anyway 16:7 30:4 33:15 33:17 58:8 72:20 143:10
accept 29:12 157:13	addition 56:2 122:22 178:21	agents 42:21,22	apart 13:20
accepted 29:14 38:10	additional 10:4 17:1 20:7 111:10 113:20 146:21 147:5	ago 10:1 159:15	apparatus 61:2
access 47:8 100:10 173:14	Additionally 93:19	agree 23:7,9,9 27:2 31:8 32:5 35:2 38:4,5 38:6,7,9 49:18 77:3 89:21	appeal 97:2 171:21 173:17 174:5 176:16
accompanying 180:4	address 16:21 18:17 29:5 39:19,19 41:16 43:20 48:9 76:4 78:8 78:11,13 87:15,21,22 92:6 96:10	agreed 17:9 37:16	appealed 172:1
account 143:19	addressal 43:22	agreement 32:3 37:13 111:14,17,18,19 117:4,4 119:22 172:2 172:11 176:20	Appeals 174:10 177:8 177:12
accountability 81:10,12	addressing 77:19 82:22 91:7 171:18	agreements 113:6 116:19	appear 29:18 31:21 140:14
accurate 161:2 165:6	adds 125:4	ahead 13:16 24:13 77:21 155:10	appears 33:16 47:13 175:13
accurately 170:18	Adjoin 3:20	Air 2:9 100:18 104:17 129:1,7 136:1,15 174:3	appellant 92:6 97:6 172:19
accused 46:10 100:21 101:21 103:22 105:9 105:12 107:17 109:13 112:1 128:9,16,17 129:22 131:9,9,13 133:20 134:17 135:4 135:22 136:1 138:1,2 138:5,16 144:13,15 154:1 174:12 177:6	adjudged 116:12 117:3 119:9,18	allegation 62:12	appellate 96:19,21 97:11,12 149:5 170:22 171:5 172:7 172:10,16 173:2,5,12 173:18 174:21 175:4 176:2
acquittal 115:19 123:20 129:4 135:21,22 136:5	adjudicated 107:4	allegations 53:21	apples 121:12 142:17
acquittals 123:13	adjudication 44:20	alleged 158:17	application 178:17
acquitted 114:13,20 115:13 129:5 135:18 136:8	adjust 14:10 41:21 58:14	alleviate 54:3	applied 47:11
act 4:14 5:11,11 7:13,15 18:19 30:15 41:13 151:4,10 159:19,22 160:7 167:14 179:5 179:10,11,13,20,22	adjustments 117:13	alley 147:8	applies 179:5,10
acting 41:15	administrative 3:3 139:6 149:12,13,19 150:1 151:2,9 152:20 153:3,11 154:12 155:4 161:19 166:5,7 166:11,20 167:2,9,11 168:5,6 169:3,21 170:16 179:9,13	allow 12:3,5 146:4	applying 44:6
action 29:20,21 52:3 68:16 72:5 86:22 91:9 91:19 114:14 137:7 151:2 154:12 166:8 166:12 167:3,9 169:9 172:7,10 175:5 177:11	Admiral 5:5 11:16 27:12 40:2,7 45:20 51:4 61:10 63:19 78:15 80:1	allowing 45:22	appointed 4:17,19
actions 92:3 149:13,19 150:2 151:19 153:1 158:7,16 159:12 166:5,11,19 170:9	adopt 29:7 89:10	allude 77:1	appraisal 154:13
activity 52:6 65:19 66:14	adopted 28:4,10	alternate 108:17	appreciate 31:9
acts 53:4	adopting 25:5	alternative 46:19 102:16 111:3 114:11 115:10	approach 157:7
	adult 4:16 5:3 7:19 52:14 126:10 127:10 173:6 175:5	amend 29:6	appropriate 42:21 55:21 94:2,16 109:18 123:10 150:9 161:17 161:18 162:2 163:16
	adversarial 109:8	amended 4:14 7:14	appropriately 49:1
	adverse 149:12 166:5	amendment 7:21 38:2	appropriateness 92:19 94:9 95:16 162:9
	adversely 160:16	Amendments 4:7	approve 37:3,3,4,5,9,13 37:14 89:12,18
	Advisor 2:14,15,16,17 2:18	American 143:9	approved 116:9,11,13 116:21 117:5,11,16 119:10,19 120:20
	advisory 5:9,11 148:1	amount 67:18	area 58:2 95:20 96:1 130:8 179:1
	advocate 72:17	analogous 67:20 123:4	areas 42:15 64:12
	advocates 158:2	analogy 66:16,17,18 67:12	Arizona 98:18 99:2
		analyses 103:16 128:10 133:15 138:8	Arlington 1:10
		analysis 8:16 68:9 76:3 91:22 93:6 96:7 99:12 99:15 103:14 113:13 126:18 133:14,17 134:2,3,9	Armed 177:12
		analyzing 113:6	Army 2:12 86:6 100:18 104:17 128:22 129:8 134:19,21 136:2,13 136:15 151:22 165:5
		annotated 143:18	
		annual 3:5 160:13	
		annually 173:16	
		answer 81:4 139:10,11 140:13 141:11,19 148:9 153:21 176:20	

174:1,16,17
arranging 6:15
arrayed 129:2
arrive 134:9
arrived 94:12
Article 3:6 7:21 8:9 9:17
 12:16 13:12 16:10
 29:7 38:21 96:22 97:5
 97:14 107:13 108:20
 109:1,12 173:9
articulate 31:2
aside 93:19 97:1,7,17
 171:21 175:11,13,16
 175:18,20 176:5,15
 176:19 177:9,16
asked 22:9 31:19 93:5
 97:10 108:1 119:7
 121:8 126:7 141:19
 149:20 178:22
asking 65:2 81:21
 84:15 88:13 95:10
 100:14 110:13 126:14
 126:14 127:17
asks 96:20
aspect 96:11 140:8
 153:6
aspects 92:21 95:13
assault 3:10 4:16 5:3
 7:19 8:10,21 42:4
 43:2,7,14,21 44:1,3,9
 44:13 45:3,7,12,16
 48:17 52:5,12,15,22
 53:7,15,20 55:16
 56:14 57:6,17,21
 58:12 59:2,14 60:11
 60:15 64:2,3 66:8,18
 67:4 68:17,21 71:12
 71:12 94:1 96:22 97:5
 99:22 103:17 112:3
 112:10,14 113:3
 121:21 126:9 139:16
 149:21 150:8 153:1,9
 153:18 154:2 155:3
 156:4 158:17 159:5
 159:13 167:5,17
 168:2 173:7 176:14
 177:20
assaulted 75:8
assaults 53:1 127:14
assess 91:10 94:8
assesses 117:8
assessing 92:18,20
 93:2
assessment 7:17
associated 130:16
 135:1 137:2
assume 80:16
assuming 74:5

assumption 74:12,16
attempt 47:18
attention 12:4 13:21
 52:10 71:13
Attorney 2:14,15,16,17
 2:18 179:4
attorneys 121:19
audience 36:7
authorities 67:17
authority 41:19 53:12
 54:2 55:22 62:18
 63:18 65:6 84:22
 108:4 109:10 116:16
 116:17 117:6,7,8,9,10
 120:1 154:5
Authorization 4:14 7:13
 7:15 167:14
authorized 164:12
automatically 41:19
 47:14 52:16 58:1
 60:20 63:11 65:5
available 5:7,12,16 9:11
 25:4 156:11 161:2
 167:7 169:15 178:3
avenue 40:12
average 75:6 103:9
 127:13 140:15
avoid 8:2 50:3
avoids 23:5
aware 18:12 42:5 43:1
 44:21 79:13 145:8
awareness 40:9 42:4
 42:14 44:21 48:3
 58:22
awful 71:14

B

back 17:6 45:17 54:8
 56:18 57:13 74:18
 75:5 93:4 99:2 118:15
 142:11 161:13 171:13
background 19:6 20:19
 172:18
backup 117:22
bad 6:22 32:13
balance 51:17 52:4
ballpark 112:1
Ballroom 1:10
Ballston 1:10
Barbara 1:14 5:1
barely 6:17 15:4,5 55:3
base 146:11,19 147:12
 164:11 174:16,17
based 39:13 40:1 55:17
 63:19 73:18 77:22
 93:6,16 122:9 131:12
 138:1,15,17 168:16
 178:3

baseline 177:19
basically 25:8 28:5
 134:8 150:5
basis 31:15 73:2 88:9
 97:19 150:19
began 113:12
beginning 46:14 92:7
 116:1
behalf 81:15
behavior 40:19 41:1
 43:9,17 64:12 65:8
 72:19 74:6
belief 25:11 26:7,20
believe 40:17 55:6,14
 63:17 108:11 179:8,9
 179:16
believes 10:9 82:21
bell 46:9
benefit 95:20
benefits 78:3
best 26:10
better 6:19,19 15:17
 20:4 46:19 47:1 55:19
 85:13 118:22 151:12
 155:8
beyond 86:3 121:19
 157:19
big 27:21 79:16 80:3
 139:13 143:7 168:6
 174:17,18
bigger 79:9
binding 143:4
biographies 5:7
bit 23:15 45:18 57:18
 59:9 71:6 92:15
 114:17 115:20 152:16
 153:22 155:1 156:20
 165:7 167:20 172:18
 173:22
bivariate 128:10
BJS 123:5
blah 54:6,6,6
blame 23:5,11
blizzard 4:5 6:2 7:5 8:1
blue 88:1,6 149:18
board 51:17
bodily 33:18 34:3,5,14
 34:15,19
body 40:5
borderline 51:7,8
bothered 22:22 70:14
bottom 29:1,5 42:18
 176:13
boundary 74:21
box 69:8
braved 7:5
break 79:3 90:8,8,9
 97:16 102:2 161:7

174:18
breaking 6:17 14:8
 125:17
breaks 164:17
brief 38:21 98:20 171:9
 171:18
briefed 83:17
briefly 16:16,17
brilliance 27:7
bring 58:11 71:2,11
 109:19
bringing 85:3
brings 114:8
broad 41:5
broader 167:22
broke 128:15 172:5
broken 6:14 113:16
 120:10 174:11
brought 153:9
bucket 168:19
bucketing 168:16
building 31:7
bulk 104:16
bullet 79:3 88:15,19
 161:5
Bureau 122:13
bystanders 44:2 144:13

C

CAAF 177:15 178:14
 179:3
calculate 123:1 129:11
 146:5
call 36:15,19 37:21 57:3
 57:4 85:18 86:2
 126:22 148:1 160:17
called 99:12 155:20
 177:4
campaign 64:16 70:14
 70:17 79:22
care 85:10
career 87:11 142:10,13
 153:15
carefully 29:3
carried 61:18
case 3:9 7:9 8:16 10:12
 27:20 42:11 44:13
 45:12,13 47:9 48:5,16
 49:3 50:15,21 51:5,16
 58:13 73:17 80:13,17
 82:2,11 84:18 85:2
 86:7 87:2 88:9,9
 91:16,16 92:21 95:12
 99:7,8 100:3 101:11
 101:20 109:13 112:5
 112:8 113:12 120:22
 122:1,4 123:18 128:8
 129:22 136:16,20

137:3,6,6 144:14,17
 144:19 147:20 155:20
 156:4 158:8 162:6
 165:16 166:7,10
 167:5 172:10 176:5,7
 177:3,9,16
caseload 97:15
cases 31:11 34:3 51:10
 51:18 52:5 69:13 93:3
 93:10 96:6,22 97:4
 99:9,21 100:2,17
 101:3,5,7,13,15 102:6
 102:7,13 103:17
 104:3,6,10,11,14,16
 104:16,21 105:2,4,5
 105:11,14,20 106:11
 106:12,20 107:2,10
 107:13,14,15,19
 108:3,4,15,16,19
 109:19,22 110:17,18
 110:20 111:13,17
 113:2 114:7,10 115:3
 115:5,9,12,20 116:3,7
 121:16,17,21 122:5,9
 123:5,6,7,11,17
 124:13,15,17 126:12
 128:8 129:17,18
 130:5,10,19,21 131:2
 132:11,21 134:6,6,10
 135:18 138:9 141:3
 143:6 146:18 156:18
 158:6,13,15 165:12
 166:3 172:15 173:8
 173:10 174:21 175:9
 175:10,17,19 176:1,3
 176:19,21 177:19,21
 178:13 179:1,2
Cassia 1:20 3:14 8:15
 90:17
categories 60:7 61:15
 64:4,6 72:19 97:20
 113:16 129:14
category 56:22 64:11
 64:22
cautious 123:20
caveat 174:20
caveats 123:10
central 152:19
centrally 151:14
certain 59:18 92:19
 150:20 164:11
certainly 27:4 54:7
 85:21 125:5 155:9
 170:2
chain 72:13 82:8 83:1,8
 86:13 87:2,3,4 179:18
chair 1:11 4:22 5:2,19
 5:20 6:8,18,21 9:21

10:2,6,15 11:7,12,16
 11:19 12:21 13:1,6
 14:4,8,12,15,16,19
 15:2,5,13,16,19 16:1
 16:5,12 17:3,7,13,22
 18:4,8 19:17,22,22
 20:10 21:3 22:1,10,13
 23:1,4,13,16,20 24:9
 24:12,19 25:16 26:1,5
 26:13,16,19,22 27:6
 27:10,15 28:16,19,21
 29:8 30:1 31:9 32:18
 33:1,6,9,14 35:4,8,14
 36:3,8,22 37:11 38:1
 38:7,9,17 39:15 45:20
 46:12,21 50:11 55:1,8
 56:9,17 57:14 58:5
 59:15 60:4,10,17 61:8
 62:7 63:1,9,15,22
 64:21 65:22 66:5,7,12
 66:21 67:7,10 68:6
 70:5 72:16 74:8,11
 76:1,6,11,22 77:7,15
 78:5,12,14,19 80:15
 81:20 82:10,14 83:2,5
 83:13,16,20 84:1,11
 84:14,19 85:12,15
 86:18 87:7 88:11,14
 88:18 89:7,15,17,20
 89:22 90:4,15 91:3
 93:20 94:4,7,11,14,19
 95:2,6 97:21 98:13,17
 102:1,4 104:19 105:4
 105:7 106:1,5,8
 109:21 110:5,9,13,16
 110:21 111:1,8
 112:19 113:4,8
 116:11,14,17,22
 117:14,18,21 118:3,4
 118:5,10,12,13,15,19
 119:2,4,14,17 120:4,9
 120:16,22 121:5
 127:17 128:1 129:15
 129:20 132:4,12,15
 133:4 138:21 139:1,7
 143:2 145:14 146:8
 146:20 147:3 148:5,8
 148:11,14,22 149:3,9
 152:5,9 161:21 162:8
 162:12,18,21 164:14
 169:18,22 170:12,19
 170:21 171:2,3,10
 172:20,22 176:9
 177:18,22 178:5
 180:6
Chair's 119:13
Chairperson 71:2
change 29:17 31:12,19

31:20 71:14 78:15
 84:17,20 165:7
changed 39:5 154:21
changes 16:18 24:21
 30:11 36:12,13 37:5,9
 37:14,15,17 39:10,22
 89:12,13 154:3
changing 25:6
channel 86:17
characteristics 99:7
 105:16 128:16,17
characterization
 169:14
charge 99:22 102:9,10
 103:18 104:10,12
 106:21 108:8 109:6
 127:16 130:18 133:22
 137:5,6 175:11,13
 178:3
charged 71:4 101:22
 113:21 126:8 131:22
 134:13 135:14,16
 136:6,8 137:3 138:5
 175:20
charges 93:14 94:1
 101:6,6 102:6 103:20
 106:16,17,22 107:1
 108:12 109:5 114:13
 114:19,19 121:17,22
 127:10 129:5,8
 135:13 136:4,4 137:2
 137:15,15 138:4,10
 138:19 150:8,11
 158:9,10 161:22
 175:19
charging 121:20 177:3
chart 155:20 156:3
 174:11
check 51:16 52:4 69:8
Chief 20:15
chilling 40:11 41:17
choose 167:8
chose 51:14
circuit 177:13
circulate 36:14
circumstance 80:9
 87:16
circumstances 60:2
 157:10
citations 178:13,19
 179:2,14,21
civilian 96:1 101:3,4
 105:19,21 106:2,2
 109:3 119:20 121:9
 121:18,18 122:6,8
 124:17 130:11,19,20
 132:9,9 133:5,6 140:9
 140:22 141:7,16

142:7 167:5
claim 25:10 26:7 57:17
 70:15
claims 26:19 59:18
clarification 119:18
clarified 35:3
clarify 35:6
clarity 58:7 65:10
classify 75:7
clear 59:12 79:4 100:1
 100:4
clearly 14:8
clemency 116:20 120:8
client 6:9
client 81:18
close 107:9 115:13
closed 44:14 45:13
closer 13:6
clothes 61:22
clothing 165:22
CMG 58:8,10 81:11
Coast 100:19 129:6,9
 134:17 136:19
Code 7:18
cohesiveness 71:18
COL 9:20,22 10:3,7
 11:6,10 12:19,22 13:5
 13:8 16:15 17:4,12,21
 18:1,7,10 19:21 20:3
 20:6,12 23:18 24:5,14
 28:14,17,20 29:1,22
 33:12 35:7 38:15,19
 65:9 66:4,6,11,20
 67:2,9,13 82:8,17
 83:3,11,14,17,21
collaboration 107:22
collect 122:13 147:5
collected 99:6 150:19
collection 96:2 100:5
 122:17 150:17
collector 84:10
Colonel 2:9,11,13 4:10
 16:13 17:19 18:1
 19:19 23:16 38:14
 39:16 55:4,8 56:11
 86:4 90:4
columns 164:20
come 12:13,16 19:20
 27:5 41:16 55:9,10
 56:3 57:2 72:21 74:18
 79:17 93:22 125:12
 145:4
comes 56:18 59:20
 66:2 75:12 79:20
 111:15 168:8 169:2
comfortable 10:9 39:11
 42:10 56:4 58:9 85:5
coming 6:13 59:2 76:14

118:8
command 48:8,20
 65:16 67:6,17 69:10
 72:2 82:8 83:1,9 87:2
 87:3,5 92:20 120:12
 179:19
commander 41:6 42:1
 42:10 43:18 44:10
 45:22 46:5,16 47:3,5
 47:10,16 48:5 50:14
 50:18 51:14 52:17
 54:8,19 55:20 58:19
 62:11,17 63:18 64:7
 65:17 66:3 69:1 70:19
 72:14 74:22 76:17
 81:17,18 82:10,18,20
 82:21 83:14,19 84:5
 84:21 85:11,17
 120:12 154:7 157:17
 158:21 159:1,3,4
commander's 69:4
 70:17 72:10 83:4
commander-based
 68:13
commanders 44:5
 53:12 158:2
commanding 54:5 70:7
commence 90:16
comment 14:5 17:16,16
 21:4 23:10 27:1 31:10
 32:10 38:3
comments 17:5,9,10,11
 17:14,14 24:5 27:13
 27:16,17 36:11 39:20
 88:22 89:2,5 156:17
 159:15
Commission 126:6
 142:20
commit 159:2,6
committed 147:9 155:2
 159:5 165:17 168:1
 168:13
committee 5:10,11
common 96:6 123:14
communication 47:20
compare 96:14 98:12
 98:14 121:8 123:6
 134:5 139:18 140:8
 141:7
compared 115:1 136:1
 136:14
comparing 96:9 121:12
 121:16 123:20 136:12
 140:21 145:9
comparison 141:6,16
 142:3 145:13
Compensation 3:7 10:5
 12:20 13:9

complainant 53:15
complaint 41:22 51:19
 55:15 56:22 65:8,11
 65:13 67:14 71:7,8
 75:9 81:2,14 153:9
complaints 56:4 63:16
 65:1,4 73:1 153:18
complete 57:18 93:11
completed 40:20 170:7
 170:9
completely 27:2 53:11
 66:1
complicated 62:8 92:11
 153:22
complied 5:10
compliment 145:18
components 92:12
concept 33:17 34:3,4
 34:19
concern 40:2,8 45:21
 45:22 49:9 54:4
concerned 44:15 46:9
 54:16 145:3 161:15
concerning 91:16
concerns 29:5 41:17
 58:16 63:19
concise 32:20
conclusion 98:5
conclusions 134:9
 145:21,22
concur 33:12
Conditions 169:20
conduct 7:16 34:8 43:3
 51:13 52:21 53:19
conducted 7:18 99:15
conducting 72:8
conference 36:15,19
 37:20
confidence 155:15
 168:8
confident 122:2
confinement 103:3,6
 107:18 116:3,7
 120:19 124:4 130:16
 130:17,21 131:3,5,7
 131:12,16,21 137:11
 137:14,16,20 140:22
 164:11
confirm 24:7,15
conflicting 57:19
confused 59:17
confusing 26:15 34:1
 34:12
confusion 52:19 59:10
Congress 4:12 8:13
 29:6 35:16 94:5 95:14
 120:13 149:16,20
 150:7 156:2

congressional 12:6
 91:8 94:21 95:10
 154:19,20
conjunction 166:12
connect 132:19
connection 14:11 65:1
consensus 8:11
consent 34:9,14,16
 58:13 73:19 80:13
 166:1
consented 25:11 26:8
consenting 31:14 32:11
 33:5
consequence 142:6
consequences 61:4
consider 77:22 78:1
consideration 12:6,6
 133:17
considered 28:5 29:3
 166:20 169:9
consistency 92:19 94:9
 95:15
consistent 138:12
 150:10
constituent 179:11
constitutes 36:20 43:10
constrained 100:6
constraints 19:4 21:14
 22:16
contact 102:12,19
 103:9,12,19 104:8,13
 113:15,21,22 114:18
 114:22 115:15 120:17
 128:22 129:12 130:2
 130:6 135:16 136:8
 137:19 162:5 164:20
 165:9,13,14,15 168:2
contemplate 109:15
CONTENTS 3:1
context 30:11 31:6
 142:8 149:22
contextualize 124:20
continue 45:15 85:22
 87:11
continued 75:5,8
continues 81:14,18
continuum 129:3
contradictory 34:20
 45:15
contrast 131:6
control 47:22 60:12
controls 103:15 134:3
convening 108:4
 109:10 116:15 117:5
 117:7,9 120:1 154:5
convicted 103:2,4
 113:19,20 114:1,5,7
 115:18 134:12,14,19

135:4,16 137:17,19
 146:16 167:16
conviction 91:17 102:8
 102:17 114:3,9,11,21
 115:8 116:4 122:3,7
 123:7,8 128:21 129:1
 130:10,18 131:22
 135:2,6,8 172:8 173:9
convictions 125:13
 135:12 171:5 176:14
coordinated 48:18
copies 54:6
copy 11:2
cornucopia 124:14
Corps 2:13 86:5 100:19
 136:18 174:9,9
correct 10:6 23:13,13
 33:9 40:14 60:9 70:21
 70:22 74:10 76:21
 77:19 84:11 86:10
 89:17 131:14 157:8
correctly 112:7
corrosive 69:19
counseling 54:18
count 104:7
counties 122:14
couple 39:12 89:5
 165:19 167:11
coupled 140:18
course 26:12 42:9 68:1
 77:7 123:15 152:12
 165:2 175:15
court 45:18 93:13 94:12
 100:11 101:11,16
 109:15 123:8,15,16
 124:2,8,22 156:14
 157:18 166:13 167:5
 172:13 173:18 174:10
 175:21 176:5 177:8
 177:12 178:18
court-martial 44:19
 45:4,5 91:22 101:14
 101:18 107:3,4,5,6,11
 107:12 108:5 109:17
 120:1 131:2 132:1
 133:22 150:14,18
 151:5 154:4 157:1,14
 158:9 167:6,16
 168:22 173:3
court-martialed 168:21
 169:4
court-martials 131:4
courts 96:3,21 97:6
 98:16 121:18,18
 122:14 124:8 139:20
 172:7,16 173:5,12,17
 174:5 175:4 176:2,15
courts-martial 91:8,18

171:5
cover 91:20
covered 142:7 151:10
crawl 75:20
create 40:11 42:14
 46:14 56:22
created 7:13
creating 41:4 49:5 61:9
 61:14 63:3,5,12 64:5
 96:21
credible 31:7
crimes 4:17 5:4 8:10,21
 149:21
criminal 41:3 42:22
 44:12 50:13 51:7,7,8
 51:9,13 52:6 65:19
 105:4 125:15 126:9
 127:6,7,10 144:6
 145:10 146:16 173:16
 174:5,10 176:15
 177:8
criminalize 34:8
criminology 95:21 96:1
criteria 127:9 177:6
critical 59:1
criticism 147:18
current 25:20 55:18
currently 45:11 52:13

D

damage 45:6 53:2
 57:22 59:12 60:18
 62:11,20 64:14 69:13
 69:16 72:2,4
damaged 59:22
data 3:9 8:16 75:19,22
 77:6 91:15 92:1,6
 93:16 96:1,10 98:11
 99:5,11,12,16,18
 100:5,16 104:6
 122:12,14,17,18,20
 126:6,7 127:1,9
 132:11 139:6 140:9
 141:8,16 143:17
 146:4,14 147:4
 148:13 150:12,14,17
 150:19 151:3,4 155:7
 155:13 158:5 159:8
 159:18 161:6 168:5,6
 168:8 169:14 170:5
 170:16 173:2,3 178:9
 179:1
database 146:4
date 28:17
dated 9:17
day 27:9,11
deal 40:18 51:10 66:8
 72:10 91:8 173:6

dealing 147:6
dealt 143:6
deathless 16:6
debate 140:12
December 10:8
deceptive 166:10 167:3
decide 75:9 158:21
 159:2,3,4 163:15
decided 94:17 107:4,8
 107:11 108:20 153:12
decides 47:3,5
decision 97:19 109:11
 158:14,18
decisions 92:20 94:9
 96:19 97:11,13,17,20
 121:21 150:10 154:5
 179:3
defendant 97:4 172:1
defense 1:1 4:13 7:13
 7:14 8:13 12:7 25:9
 26:4,12 113:9 159:1
 167:14
deference 176:4
define 123:1
defined 74:2
defines 34:15
definitely 71:14 149:7
definition 18:19 30:15
 32:12 33:4
definitions 29:6 75:13
degree 155:14
delete 153:12
deleted 160:19
deliberate 8:22
deliberations 3:5 8:9
delve 180:3
demand 157:13
denial 178:16
depart 147:20
Department 1:1 4:19
 12:7
depend 126:16
depending 12:14
 127:15
Deputy 2:12
derived 95:4
described 34:21
describes 34:12
description 171:19
descriptive 100:16
 104:5
designate 94:20
designated 2:20 4:9
 64:13
designed 34:8
despite 6:2
detail 20:13 91:12
 99:19

detailed 109:9
details 100:15 146:18
determine 54:1 125:14
determined 41:6 53:22
determines 55:19 65:18
 70:19
detour 32:2
developed 19:2 147:15
differed 119:9
difference 19:19 66:11
 67:2 71:1 124:6 130:9
 131:12 133:6 144:3
 163:9
differences 104:2
 119:11 125:11 128:12
 128:20 129:22 130:5
 134:20 136:11 137:22
 138:15,16
different 64:22 66:2
 68:9,10 72:8 87:16
 92:12 103:15 113:14
 114:18 119:19 121:14
 122:21 123:1 129:16
 129:17 131:17 150:13
 153:19 163:21 179:12
differently 71:20
difficult 49:11 121:11
 141:5 151:10,13
 153:6 162:11
difficulty 118:6
direct 141:6 179:18
direction 53:5 95:22
directly 40:3 60:16
 149:16 179:10
Director 2:10,12 4:11
 18:16,22 19:4 20:14
disagreed 148:8
disagreeing 148:15
disagreement 32:3
 38:2
disappear 152:2,6
disappears 152:9
discharge 111:4 152:20
 153:3 155:4 161:20
 167:15,19,22 168:5
 168:13 169:3,5,20,21
 170:16
discharged 169:7
discharges 149:13
 151:9 155:1 167:11
 168:7 170:6
disciplinary 91:9,19
disclosure 67:18
discovered 113:13
discretion 52:18
discrimination 71:7,17
discuss 24:1
discussed 37:15,16

39:14 91:12
discussion 39:1,13
 40:1
dismissal 43:9 102:15
 136:10 137:3
dismissals 115:10
 123:22
dismissed 108:17,20
 109:22 110:5,7,10,17
 110:20 111:3 114:14
 114:19 129:8 135:18
 136:16,21 137:6,7
 158:11
disparity 143:19
disposed 43:8 101:11
 101:20 104:3
disposition 43:10 52:2
 92:20 101:19 102:16
 108:17 111:4 114:12
 150:10 156:5
dispositions 91:16
 95:12 101:10 115:10
 151:18 152:15 173:6
disruptions 8:3
distinction 52:8 70:4
 73:12
distinguish 45:18 58:18
 59:13 69:13,21
distinguished 4:20
distinguishing 43:6
 49:17 53:14
district 121:19
doctors 48:20
document 29:14
documents 93:13 99:6
 100:6,8,9 150:21
DoD 18:13 35:13,15
 45:1 52:13 53:5,21
 55:6 56:13 57:15 58:3
 59:2,10 61:15 63:11
 64:13,13 65:5 73:16
 77:22 120:14 156:1
 160:13 161:9
doing 14:3 22:8 32:1
 56:9,11 61:3,7,12,13
 62:20 64:1 65:1 69:21
 70:4 143:8
doubt 121:20 157:19
Dr 1:20 3:14 8:15,18
 90:17 91:5,22 95:20
 99:4 102:3,5,22 105:1
 105:5,9 106:4,6,9
 108:1 112:4 113:11
 116:12 120:17 121:4
 121:7 124:19 125:5,9
 125:18 126:4 127:1
 128:4 129:19,21
 131:14,18,20 132:10

132:22 133:3,9,13
 138:22 145:12 146:1
 146:9 147:2 168:19
 180:11
draft 9:16 10:8 16:10
 25:20 28:18 37:6 39:4
dramatically 163:21
drank 61:18
draw 30:7 70:3 112:17
 141:5 145:21
Drive 1:10
drop 22:5
Due 19:3
duration 131:16
duty 87:13,13 152:1
 163:7
dynamics 71:15

E

earlier 23:10 63:19
 108:6 132:20 141:19
 167:21
earliest 13:11
early 52:8
easier 14:1
easily 49:11
editorial 89:5
edits 18:3 24:16,16
 39:3
EEO 65:10,11 66:16,16
 67:20 69:7
effect 18:15,21 40:11
 41:17
effective 147:4
effort 22:20 48:18
 122:18
efforts 100:5 150:17
Effron 20:15,18 21:8
eight 84:7 103:15 176:1
 176:21
either 19:8 20:21 28:10
 29:12 43:8 64:7 65:17
 111:3 128:21 130:2,6
 142:11
elect 41:21 42:2 65:12
 67:4
elects 42:8
elements 159:8
eliminate 58:15,15
eliminated 122:17
Elizabeth 1:11,13 4:21
else's 91:6
email 16:20 18:14 19:14
 162:21
emphasize 33:2
enables 48:12
enacted 179:12
encourage 57:1 66:13

ended 152:12
ends 129:3 152:10
engaged 34:9
engaging 40:22 43:14
 72:2
English 170:1
enhancements 146:5
 146:19
enlisted 100:22 105:10
 130:1 164:7
ensure 53:19
ensuring 43:20
equals 135:11 136:5
 137:15
equivalent 87:20 126:8
 177:13
errors 177:2,8
escalate 72:13 86:5
escalated 59:14
escalating 41:18
especially 103:3 121:15
essence 55:5
essentially 20:12 65:14
 134:5
established 4:12
event 147:14
events 72:7
everybody 35:15 42:15
 48:19 86:2 90:15 91:5
everyday 35:22
everyone's 37:13
evidence 50:20 73:3
 109:8 122:1
exactly 30:16 59:10
 72:18 133:4 147:2
 160:9 175:1
example 30:6,14 31:13
 79:19 125:22 143:21
 144:10 146:5 151:21
 154:1,9 164:1,7
 170:10 178:16
examples 79:18
Excel 99:11
excellent 90:2 145:17
 170:19 180:10
exception 29:16
exceptions 50:1
excluded 158:13
excuse 13:16 35:16
 55:3 93:20 98:13
 118:7
Executive 28:1,9,15
 29:19 32:20 79:1
exhausts 27:8
exist 60:7
existence 55:7
existing 31:7 50:13
exists 64:1 75:17

expand 44:20 88:2
expect 68:3 115:9
 122:7 140:6
expected 139:17
expedited 87:9 88:3
expeditiously 73:8
experience 40:18 87:12
 126:19
expert 19:7 20:20
expertise 95:20 96:4
experts 147:17
explain 120:13 144:3
explained 170:13
explaining 132:5
explains 21:19 135:17
 145:2
explanation 132:21
 144:20
expressing 40:8
expunged 160:17
extent 93:5 96:8 97:6
 111:12
eyeballing 79:5

F

facing 111:13
fact 18:16 26:12 27:18
 31:6 51:7,9,19 61:21
 136:10 142:7 145:9
factor 125:16 132:6
 144:2
factored 117:12
factors 95:18 96:5
 116:18 130:15 134:4
 138:17 141:1
facts 93:2,9 162:6
 166:3
factual 175:22 176:3,5
fair 141:6,16 148:6,9
Fairfax 1:10
fairly 122:2 148:21
fall 148:3,4
familiar 176:7
far 44:14 46:9 47:22
 160:21
farm 55:21
fault 21:8
favor 49:16,19
feasibility 96:11
feature 176:1
federal 2:20 4:9 5:9,10
 8:4 96:3,9,14 98:15
 124:8 125:22 126:6
 126:12 127:8 139:19
 143:6,21 146:2
 172:13 177:13
feedback 174:7
feel 42:10 56:4 61:10,20
 78:17 145:18
feels 82:19
felt 140:7 161:15
female 100:22 105:15
 106:10,13 130:5
 135:9
fewer 107:1 114:18,19
 125:6
field 87:11
fifth 29:4
fight 71:12
figure 51:5 73:16 78:3
 126:17
file 41:21 70:15 74:19
 99:11 121:22
filed 40:10 74:14,18
 121:17
files 73:22 74:1 93:11
 179:6
filing 74:7 109:5 164:5
filtered 122:6
final 33:10 37:5,6 46:18
 63:21 93:16 116:22
 117:1,2 137:8
finally 9:4 137:21
 177:10
find 72:11 98:10 136:14
 137:1,22 138:3,15,16
 147:20 179:16
findings 97:1 100:12
finds 62:19 65:17,17
fine 11:4,14,18,20
 21:22 24:18 37:22
 89:19 121:5 132:15
finer 124:12,17
finger 143:13
finish 66:13
finished 38:11 90:1
 135:19
finishing 38:12
first 9:16 10:16 12:20
 98:19 100:14 104:5
 118:17 119:1 126:2
 128:18 141:20 142:21
 147:13 172:6 173:17
 176:14 178:12
fiscal 4:7,14 7:15 99:22
 103:22 104:15,20
 105:2 122:21 131:7
 132:2 133:19 135:6
 155:7,22 156:6
 159:11 161:1 164:18
 165:6 170:8 171:17
 173:19,20,20
five 29:6 90:8,8 98:3,7,9
 98:21 139:11,12,15
 140:15 153:18 165:4
fix 70:10

flexibility 46:1
flexible 59:5
flip-flop 62:4
focus 120:11
focused 12:4
focusing 25:21 63:10
 91:14
follow 119:7
followed 13:11 30:9,10
 92:2 100:18 104:17
 107:5 174:2
following 4:20 25:16
 50:6 57:20 172:1
 176:19
follows 69:6
footnote 22:5
footnotes 145:15
Force 2:9 100:18
 104:18 129:1,7 136:1
 136:15 174:3
Forces 177:12
forecast 7:22
forest 139:13
forfeiture 124:18
forfeitures 124:13
 161:11 164:10
forget 62:2
form 7:1 58:12 69:8
 73:16 77:9 78:2 85:22
 169:9,21 172:14
formal 42:2,20 46:4
 48:1 49:13,17 53:14
 53:18 55:15,15 56:3
 56:12 58:19,21 59:6
 61:2 62:21 65:12 68:4
 69:9 73:11 78:2
 108:13 122:11
formally 43:8 60:13
formed 150:18
forms 54:6 111:18
 140:19 160:2 166:12
formulated 150:5
formulating 30:22
forth 52:3 80:4
fortunate 95:19
forum 42:12 107:7
 161:17
forward 10:13 56:3 57:2
found 111:16 112:18
 127:8 131:21 134:15
 135:5 154:22 155:2
 165:16 168:1,13
foundational 92:9 95:5
 96:17 150:4 161:14
 172:4 175:7
four 80:5,18 84:7 107:1
 107:8 136:18 140:14
 153:16 174:6

fraction 112:16
frequently 81:13
FRIDAY 1:7
Fried 2:20 4:3,8 5:21
 36:16,18 37:8
Friel's 30:15
frivolous 32:1
frolic 32:1
front 19:15 22:2 92:9
full 78:16 93:6 170:17
fuller 12:5
fully 77:17
function 85:5 109:2
 130:12
further 27:16 65:7
 114:14 137:7 180:3
future 94:20
FY2013 7:14

G

Galbreath 168:19
gaps 79:11
gather 150:17 159:8
gathered 158:5
gathering 170:4
gender 104:1 130:3
 131:9 132:3 133:20
general 101:16 107:4
 109:17 131:2 167:16
 179:4
generalities 33:19
generally 32:8 91:14
 98:10 103:21
generated 100:17
 172:17
getting 14:14 54:12
 59:16 82:19 160:1
 171:7 178:8
give 11:8 66:9 95:21
 96:7 98:2,8 100:14
 112:20,21 117:22
 142:8 152:22 153:2
 164:22 165:19 171:8
 177:18
given 12:12 46:10 54:9
 99:5 149:15 154:10
 159:14
gives 111:22 141:10
 142:21
giving 31:15 60:21 65:2
 65:6 66:16 79:15
 95:16 170:22
glad 14:2 27:3
Glen 2:13 19:13
go 13:16 17:8,11,18,19
 20:7 24:12 32:22 37:6
 39:9 40:13 42:3 45:17
 48:2 49:14 53:15,22

56:7 57:8,10,13 58:1
 59:11 60:20 61:16,16
 62:14 65:5 67:6,16
 75:10 76:16 77:21
 78:11 80:10,22 83:8
 84:7,7,8 91:11 99:18
 108:19 123:17 128:2
 128:6 139:7 141:13
 148:20 152:21 154:4
 155:10 162:13 163:6
 163:10 169:10 171:13
 171:14
goal 8:11 44:17
God 50:6
goes 46:7 49:14 50:20
 52:16,19 53:17 56:14
 56:20 57:7 58:3 60:16
 63:12 71:17 81:5
 85:16 108:8 153:13
 156:1
going 13:18 16:9 17:6
 19:17,18 23:21 27:22
 31:14 32:7 33:18 35:5
 40:3,13 42:5,17 48:4
 50:1,5,7,8 53:6 54:10
 55:16 56:22 58:8,19
 61:19,21 62:4 65:3
 67:16 69:5,7 71:3,14
 75:10 76:7,15,16,16
 76:17 79:17 80:6,18
 81:3 85:1,18 87:15
 89:14 90:9 91:1,11,20
 92:8 96:10 98:2,6,9
 98:22 102:1 108:11
 109:15,17 112:7,9,11
 112:13 113:8 123:12
 128:4 133:16 139:3,4
 139:13 142:11,14
 143:16 146:10,10,11
 147:10 149:1,10,14
 149:16,22 150:13
 154:22 155:15 161:13
 163:9 165:1,10
 166:13,15,18,21
 167:5,12,18 168:22
 169:6
good 4:3 5:22 14:20
 15:2 20:2 31:5 40:18
 71:19 79:2 90:22 95:6
 119:1 142:4 159:17
 171:3
government 8:4
grammar 24:2
grammatical 37:17
 89:11
grand 1:10 109:2
grant 176:4
granted 120:8 175:5

gravamen 112:2
gravity 175:14
gray 58:2
great 13:1 18:4 23:15
 40:8 62:8 89:7 97:21
 99:19 171:2
greater 135:1,11 137:16
Green 2:9 4:10 9:20,22
 10:3,7 11:6,10 12:19
 12:22 13:5,8 18:1
 24:14 28:14,17,20
 29:1,22 33:12 35:7
 38:19 39:17 65:9 66:4
 66:6,11,20 67:2,9,13
 82:8,17 83:3,11,14,17
 83:21 86:4
group 18:17 42:11
 48:16 49:3 58:14
 71:18 72:7 80:14,17
 82:11 84:18 157:4
Groups 73:18
guarantee 58:20
Guard 100:20 129:6,9
 134:18 136:19
guess 14:17 16:9 31:3
 32:8 37:3 74:1 77:14
 89:8 90:6 110:2
guidance 95:21
guide 163:12
guideline 126:15
 141:20 142:20 178:22
guidelines 126:1,22
 127:18,19 143:4
 146:2
guilty 97:4 112:2
 123:16 172:15 177:5
Gupta 2:15 88:1,6,16
 90:5

H

half 103:10 107:9
 134:18 137:5 140:15
 148:18
hand 77:11 164:19
handing 69:22 70:1,7
handle 46:5 53:20
handled 55:19 71:20
 73:8 154:6 161:17,18
 162:2
handling 50:15
hands 44:5 46:15 64:9
 64:10 82:9
handwriting 33:11
handy 127:19
happen 50:4 54:10
 61:19 108:12
happened 22:7 45:2
happening 60:5 82:5,16

85:17
happens 49:12,13
 50:15,21 51:5 79:16
 79:19 81:1,21,22 82:2
 83:7 84:4,6 87:15,17
 98:15 108:6 153:14
 158:10
happy 83:18
harassment 75:8
hard 77:5 163:15
 179:16
harm 33:18 34:3,5,14
 34:15,19
harsher 98:11 139:17
hat 30:14,19
head 84:22
hear 6:17,18 8:14 10:20
 11:22 14:20 15:3,14
 16:2 19:13,18 20:3
 24:10 36:3 39:20
 40:12 55:4 91:2 98:5
 98:18,19 118:11,17
 118:20,20 119:3
 155:5
heard 6:8 40:17 41:10
 48:16 168:16 179:6,6
hearing 13:4 14:7,8,17
 15:8,9,10 66:22
 107:14,16 108:20
 109:2,8 118:7
heartland 148:2,2
heavy 7:22
held 51:21 101:12
 107:14,16 108:21
 109:12,16
help 22:16 47:12,18
 48:9 69:2,5 73:6
 145:15
helpful 6:16 76:5
 145:19
helps 144:19
hey 85:18
hi 16:3
high 129:7 140:11,16
higher 70:12 71:4 86:3
 114:22 115:9,20
 122:7 124:7 130:10
 130:20 131:3 140:5
 141:1 155:14 157:6
 159:16
highest 128:22 129:10
 172:14 174:2
highlight 95:11 96:8
highlighted 149:18
 171:17
Hines 2:13 16:13,15
 17:4,12,18,19,21 18:1
 18:7,10 19:21 20:3,6

20:12 23:18 24:5
 38:14,15
histories 127:7
history 125:15 126:9
 127:6,10 146:16
hit 16:16,17
hold 160:1
Holiday 1:9
Holtzman 1:11,13 4:21
 5:20 6:8,18,21 9:20
 9:21 10:2,6,15 11:7
 11:12,16,19 12:21
 13:1,6 14:4,12,16,19
 14:20 15:2,5,13,16,19
 16:1,2,5,12 17:3,5,7
 17:13,22 18:4,8 19:17
 19:22 20:10 21:3 22:1
 22:10,13 23:1,4,13,16
 23:20 24:9,12,19
 25:16 26:1,5,13,16,19
 26:22 27:6,10,15
 28:16,19,21 29:8 30:1
 31:9 32:18 33:1,6,9
 33:14 35:4,8,14 36:3
 36:8,22 37:11 38:1,7
 38:9,17 39:15 45:20
 46:12,21 50:11 52:9
 55:1,8 56:9,17 57:14
 58:5 59:15 60:4,10,17
 61:8 62:7 63:1,9,15
 63:22 64:21 65:9,22
 66:5,7,12,21 67:7,10
 68:6 70:5 72:16 74:8
 74:11 76:1,6,11,22
 77:7,15 78:5,12,14,19
 80:15 81:20 82:14
 83:2,5,13,16,20 84:1
 84:11,14 85:12,15
 86:18 87:7 88:11,14
 88:18 89:7,15,17,20
 89:22 90:4,15 91:3
 93:9,20 94:4,7,11,14
 94:19 95:2,6 97:21
 98:13,17 102:1,4
 104:19 105:4,7 106:1
 106:5,8 109:21 110:5
 110:9,13,16,21 111:1
 111:8 112:19 113:4,8
 116:11,14,17,22
 117:14,18,21 118:3,5
 118:10,13,15,19
 119:2,4,14,17 120:4,9
 120:16,22 121:5
 127:17 128:1 129:15
 129:20 132:4,12,15
 133:4 138:21 139:1,7
 143:2 145:14 146:8
 146:20 147:3 148:5,8

148:11,14,22 149:3,9
 152:5,9 161:21 162:8
 162:12,18,21 164:14
 169:18,22 170:12,19
 170:21 171:2,10
 172:20,22 176:9
 177:18,22 178:5
 180:6
Holtzman's 64:16
home 142:14 180:12
Hon 1:10,13,14 6:7
 11:13 13:3,14,18 16:3
 19:12 20:5,9,11 23:9
 23:14 27:2 32:6,21
 33:2,7 38:6
Honor 10:21
Honorable 4:21 5:1
 169:20
horrible 145:6
hour 148:18
http 5:8
huge 163:9
hypothetical 50:12,14
 51:1

I

idea 13:19 14:2 29:19
 46:18 53:13 164:22
ideally 99:3
identified 30:18 92:9
 96:18
IG 55:20 81:4,5 84:5,13
 84:16,22 85:18
IG's 81:5
illustrate 20:13
immediately 54:18,22
impartial 109:7
impetus 33:8
implemented 49:12
implementing 78:1
implication 23:6
imply 112:6
import 125:4
importance 148:15
important 8:17 13:22
 96:5 106:19 109:1
 143:13
imported 99:12
imposed 99:9 124:11
 124:15 126:7 139:15
impossible 141:5 153:7
imprisonment 103:8
 124:21 163:8
improper 178:17
inaccurate 145:21
inappropriately 51:14
incapable 31:14 32:10
 33:5
include 5:13 31:13 53:1
 88:3 108:1 161:12,13
 170:6,16
included 25:1 28:13
 31:1 73:10 100:7,9
 114:1 127:2,5 159:7
includes 9:5 111:18
including 25:1
incorporate 40:1
incorporated 39:1
incorrect 34:21
increase 73:6
increased 104:14
independent 7:17
indicated 104:15
 115:22 132:20
indicating 86:21
indictment 109:4
individual 93:2
individually 12:2,3
individuals 4:15 46:10
 46:15 54:17 135:14
 136:6 137:17 146:15
influential 95:17
inform 8:19 140:12
informal 40:12 41:22
 42:8 47:19 49:14,17
 53:14 56:2,5 57:3
 58:18 59:6 61:7 62:13
 63:3 65:12,14 67:14
 67:19,20 68:2,11 69:9
 69:10 73:6,11 78:2
informal/formal 71:9
information 5:12,15
 8:17 9:1 19:7 20:19
 21:12,13,20 41:12,15
 42:10,16,20 43:1 44:7
 45:16 46:6 47:8,22
 48:12,21 49:3,20
 50:16 53:8,22 57:19
 58:7,22 59:6 65:15
 66:2 67:5,16,18,22
 73:5,10,15,17 76:4,9
 76:12 78:9 82:5 84:10
 84:19 91:16 92:2 93:6
 100:7 120:10 132:14
 140:6 144:1 146:22
 147:5 148:16,20
 150:15,22 154:16
 155:18 156:1,11
 158:22 162:4,7 164:6
 169:7 173:11 178:2
informed 95:22 165:3
inherent 83:11
inherently 69:18
initial 52:20 158:14
 177:3
initiated 52:14 155:4

159:13 164:20,21
165:5 168:1 170:7
initiative 44:5
injury 146:6
Inn 1:9
input 9:6
inquiry 177:5
inside 74:21
installation 81:17 82:10
82:18,20,21 83:3
84:21 85:11 86:3 87:4
152:4,18 153:10,13
installations 153:16,19
instances 45:3 69:3
117:15 171:20,22
175:4
institutions 160:18
instructed 25:8
insufficiency 175:22
intentional 50:19
interject 107:22
interpretation 150:6
interpreting 53:4
introducing 68:9
introduction 3:12 98:1
investigate 47:15 48:2
51:8
investigated 47:4,6
55:17 60:13 61:1
156:13
investigating 84:17
investigation 41:4 43:2
43:4,7,15 44:18 46:4
47:5,7 49:21 50:17
52:15 53:20 59:2
62:18,21 64:3 65:7,21
66:10 68:4 69:11 74:4
76:17
investigations 42:22
52:21
investigative 41:11,18
54:1 55:21 93:10
investigator 40:14
44:14 46:13 48:7
65:16
investigator's 41:7
44:13 46:15 70:18
investigators 47:15
investigatory 72:13
invite 64:19,21
invited 18:16,21 20:14
72:6
involve 71:3 106:22
111:19 112:14 173:8
involved 44:22 46:2
97:14 99:21 101:5,7
104:7 105:11,12,14
105:20 106:20 107:1

108:7 111:17 112:17
113:2 144:3 147:14
175:10
involvement 41:7 69:1
involves 121:12
involving 7:19 101:3,3
104:17
issue 12:1 40:20 43:19
48:9 59:8 72:10 81:4
82:9,22 84:5 86:15
97:7,14 111:14 113:5
143:2,11 168:6
177:19
issued 173:16
issues 28:4 39:18,18
43:22 68:22 79:8
82:13 92:10 95:5 96:6
96:17,18 97:9 143:10
143:14 150:4 161:14
172:4
it'll 33:2 86:22
item 11:1

J

J 21:12
JAG 157:18
January 1:7 9:17 25:18
job 48:8,22 49:20,21
70:9 88:3,9 143:8
joined 6:1,4 174:9
joining 9:13
Jones 1:14 5:2,2 6:6,7
11:13 13:3,14,17,18
14:7,21 15:20 16:1,3
19:12 20:5,9,11 23:9
23:14 27:2 32:6,21
33:2,7 38:6 66:22
89:8
JPP 4:9,18,22 5:8,13
8:15 18:12,21,22 19:9
19:9,10 20:21,22 21:1
29:3,5 41:9 73:10
99:5
JPP's 7:11 9:11 29:20
58:11
jpp.whs.mil 9:12
judge 5:2 6:6 13:17
14:7,21 15:20 16:1
20:3,15,17 21:7 66:22
89:8 107:9 108:7
158:2 175:15
judges 147:19 148:1
judgment 162:9
judicial 1:3 4:6 7:3,12
7:17 8:20 9:5 149:12
150:1 151:2,9 152:2
152:20 158:16 165:13
165:18 169:2

jurisdiction 45:8
jury 25:8 117:8 122:2
jury-like 109:2
justice 3:9 7:19 8:16
18:17 121:10 122:13
123:3,18 125:12
143:22 176:2 177:14
justify 147:21

K

keep 32:19 124:9
142:15 146:22
Kelly 2:11
kept 47:8
kind 22:19 24:2 27:21
34:9,19 41:5 52:6
63:12 65:7,8 68:14
71:9 72:3 80:1 81:2
100:13 101:11 122:10
134:3 145:15 146:14
156:5,10 162:15
174:16
kinds 63:16 65:4 76:19
124:10 127:13 134:10
145:10 146:3,17
Kirt 2:16 3:18
kissing 166:1
knew 54:9 73:7
knife 147:9
knocked 68:5
know 6:14 14:9 15:8
16:16,20 17:4 20:1
22:15 23:6 30:2,18
32:8,14 33:3,7,10,14
35:1 46:22 51:15
54:14 57:5,7 60:22
61:10,22 64:15 71:13
72:1 74:12,13 75:1,19
76:2,6,13,20 77:16,17
80:3,15 82:2,15 86:22
87:19 93:5 94:20 95:9
98:1 126:19 139:12
140:18 142:12,16
144:4,11,18 145:1
147:4,7 151:6 152:5
154:15 156:21 161:21
161:22 162:1 163:4
164:19 168:12 170:15
178:10
knowing 75:17
known 25:7
knows 35:15 76:20
Kyle 2:9 4:10 13:4 14:7
24:10

L

L 2:11
language 22:18,19

28:12 30:22 33:20
34:11 35:5,11 78:15
93:1
large 103:1 116:5
largely 151:6 165:8
larger 30:5 115:16
largest 122:14
law 4:15 26:4 31:7 32:2
109:7 154:20
lawyers 163:10
layout 13:9
lead 98:6
learn 42:13 63:20
leave 21:16 81:1 149:3
left 50:9 148:18 164:19
legal 21:14 97:18 156:5
176:3
legislation 167:12
lend 96:4
length 131:21 132:7
137:22 138:6 143:20
lenient 98:12 139:17
lens 44:6
lesser 114:1 125:4
let's 39:19 45:5 46:5
50:17 60:17 62:7
80:15,17 85:12 90:8
90:20 148:17 160:17
164:14 172:20 176:9
179:4 180:7
letters 151:8
level 44:18 55:20 59:14
68:9 69:10 70:12,20
71:5,9 80:6 86:5,6
94:2,16 117:2,6
146:11,12,19 147:12
150:9 152:18 154:5,7
154:7,10 156:22
157:6 168:7 173:17
levels 160:18
liability 29:7
Lieutenant 2:11,13
39:16
life 43:22 142:13
liked 141:12
likelihood 124:4 130:17
131:6 135:1,11 136:5
137:2,16
limit 146:15 167:1
limitation 166:4
limitations 99:18 151:7
limited 67:18 87:19
limiting 34:13
line 16:17 25:3,7,9,21
26:1,2,3 29:5 42:18
86:16 176:13
lines 36:19
link 174:22

Lisa 30:15
list 166:17,18 179:2
listed 133:18 178:14
listen 60:5 98:3
listening 36:16
little 13:3 23:15 26:15
 36:6 45:18 47:1 63:13
 71:6,17,20 78:11
 85:13 114:17 115:19
 116:20 150:13 152:15
 153:21 155:1 156:16
 156:20 165:7 167:20
 172:18 173:22 174:7
Liz 14:20 16:2 64:16
local 160:18
location 87:13 164:11
logical 175:14
logistical 153:5
logistics 151:14
long 36:1,5 52:1
longer 84:5 103:11
 152:14
look 19:15 42:4 76:7
 79:6 94:15,17 95:14
 95:15 96:13 97:4,10
 99:7 102:13 119:10
 123:2,3 128:5 130:15
 131:15 133:11,13
 137:8 138:8,13
 142:19 149:20 158:5
 158:14 163:13 178:15
 179:19
looked 92:16 97:12
 102:8 111:11 115:3,5
 117:11 128:14 131:20
 134:11 135:17 158:4
 172:14
looking 28:15 32:15
 64:9 68:1 93:19 95:4
 95:12 135:3 155:6
 158:3
looks 113:1 123:5
loses 18:9
loss 164:9
lost 16:6
lot 61:22 71:14 75:19
 92:12 95:22 108:8
 120:11 126:18 147:18
love 78:16
low 129:6 140:11 154:6
 154:7 168:7
lower 41:1 124:2 136:5
 137:2 140:5 145:5,7
 154:10 156:22 157:3
 169:9
lowest 129:1,9 131:4
 132:7
LT 16:15 17:4,12,21

18:1,7,10 19:21 20:3
 20:6,12 23:18 38:15
LTC 39:22 40:16 41:8
 43:12 44:16 47:17
 48:15 52:7 55:14
 56:16 57:12,15 58:6
 60:3,9,14 61:6 62:3
 62:10 63:7,17 68:19
 69:15 73:4 74:10 75:3
 76:5,9,21 77:4,20
 80:12 81:11 82:7 84:9
 84:12,16 85:14,21
 86:10,13 87:6 90:3
lucky 16:8

M

ma'am 11:10 12:20,22
 13:5 16:15 17:12,21
 19:21 24:5 27:9 28:14
 28:18 33:13 35:7
 38:15,19 40:14 43:12
 44:16 52:8 56:16
 57:12 60:3 61:6 62:5
 66:20 67:1,2 68:19
 73:13 76:5 77:20
 81:12 82:9 84:9 86:10
 87:6 88:16 90:3 95:1
 111:7 117:17 118:1
 119:6 120:15 171:1
 171:11 172:21 174:14
 174:19 176:11
Madam 5:19 118:4
 171:3
maintained 151:15,21
 152:3,18
major 34:10 36:10
majority 103:2 106:21
 165:12
making 12:5 49:10,10
 50:10 51:3,4 66:1,1
 84:14 121:20 154:16
male 100:21 105:13
 106:11,13 130:6
maltreatment 75:13
Management 42:11
 48:16 49:3 58:14
 73:18 80:14,17 82:11
 84:18
mandate 7:16
mandated 4:15
mandatory 167:15
manner 53:8,9
March 9:2,3
Maria 2:20 4:8
Marine 2:13 100:19
 136:18 174:8
marriage 142:14
Marsh 2:16 3:18 38:17

90:20 171:1,3,11
 172:21 173:1 174:19
 176:11 177:20 178:1
 178:20
martial 45:19 94:13
 101:12,17 109:16
 156:15 166:14
material 151:5
materials 9:9
matter 13:21 22:8 24:4
 54:21 63:18 64:6 72:8
 90:12 179:3 180:13
maximum 163:18 164:8
McGovern 2:11 39:22
 40:16 41:8 43:12
 44:16 47:17 48:15
 52:7 55:4,8,14 56:12
 56:16 57:12,15 58:6
 60:3,9,14 61:6 62:3
 62:10 63:7,17 68:19
 69:15 73:4 74:10 75:3
 76:5,9,21 77:4,20
 80:12 81:11 82:7 84:9
 84:12,16 85:14,21
 86:10,13 87:6 90:3
MCIO 42:3,12 43:3,14
 44:18 45:8 46:1,7
 47:20 48:2 49:7,20
 50:16 52:14,17,20,20
 53:9,9,17 54:4,13,21
 55:17,19,20 56:8,15
 56:20 57:9,10 58:1,3
 58:20,21 59:14 60:2
 60:16,20 61:2,16,16
 63:12 64:7 65:5,18
 66:3 68:12 69:22 70:1
 72:9 73:12 89:16
MCIOs 40:3,9 41:11
 45:11 49:2 53:19 54:1
 59:7,11 73:16
mean 10:16 11:21 17:9
 21:5,18 28:6 31:15,18
 35:12 51:1 59:4 76:12
 76:19 77:8 79:2 81:1
 81:7,7 82:1,9,18
 83:15 86:2 101:6,8
 106:1,15,17 116:9,11
 117:21 120:20 124:7
 124:19,21,22 125:1
 142:5 143:12 144:13
 144:22 145:7 153:8
 157:22 162:3,3
meaning 97:1 111:19
 142:18,19
means 8:5 81:9 82:3
 152:6
mechanism 81:12,21
 109:6

mediation 65:15
medical 68:21
meet 48:18 157:19
meeting 1:5 7:3,7,10
 8:2 9:2,4,8,10 16:18
 36:21 51:18 52:1
 54:13 150:16 162:18
 179:7
meetings 5:14 9:11
 80:3 93:8 150:16
Meghan 2:17 3:12
member 72:1 100:22
 101:1 137:12 151:22
 154:10,21 155:2
 157:11,12 158:21
 159:2,4 164:7 165:16
 166:8,13,15,22
 167:16,19 168:1,13
 168:21 169:4,6
member's 152:13,14
members 4:20 5:7,16
 6:1,3,4 7:4 8:15 9:10
 10:19 11:8 23:7 37:20
 39:21 90:18,22 92:5
 104:17 105:10 107:10
 118:8 130:1 171:4
 180:10
memorialize 18:15
 167:8
mentioned 105:17
 159:21 179:6
merit 41:6
messed 50:2 61:22
met 1:9 127:9
mic 6:22 13:6 15:6,9
 19:18 55:10
mic's 19:18
microphone 174:8
mics 6:16
middle 27:19 77:13
military 3:9 7:19 8:16
 18:17 41:3 42:22
 82:22 96:14 99:7
 101:1,4,21 104:2
 105:10,18,21 106:2
 107:9,10 109:4
 121:10,16 122:8
 123:3,7,14,18 124:1
 124:11,15 125:1,12
 128:9,20 130:11,19
 130:22 131:8 132:2,6
 132:8,9 133:5,6,19
 134:16 135:21 136:11
 137:12 138:1,15
 140:3 141:3,7 143:22
 146:22 147:7 148:3
 151:15,17 167:8
 172:12,15,19 173:2,5

173:18 176:2 177:4
 177:13 178:13 179:5
 179:10,17,17,22
military's 8:20
mind 49:10 55:10 97:22
 98:5,20,22 124:9
 180:1
minor 29:16,16 53:1
 127:7
minority 107:18
minus 110:3,6
minute 27:11 32:14
 90:7,8,8 171:8
minutes 85:7 98:21
 149:4 162:13 178:6
misconduct 62:19
 63:20 65:18 69:17,18
misleading 27:5 34:5
 34:22 143:15 144:8
 145:16,21
missed 27:3
missing 161:5
mistake 26:12
mistaken 25:10,13 26:7
 26:10,15,17
mistakes 50:7
MJRG 18:22 19:4 20:14
 21:12,13
MJRG's 18:18 19:1,6,8
 19:11 20:18,20 21:2
modifications 17:2
moment 10:1 19:16
 127:21
moments 159:15
Monday 99:3
monitor 82:3
monitor-the-tone 48:13
monitoring 48:7 79:14
 79:15 80:21 81:8,9
 85:5,6,9
month 48:19 49:4 51:18
monthly 51:22
months 80:5,5,18 81:6
 84:7,7,8 85:16 116:10
 126:20 127:14,14,15
 127:15 142:9 163:7
morale 71:18
morning 4:3 5:22 7:6
 8:6 15:2 90:22 91:2,7
 165:3 171:3
mouth 15:6
move 10:13 13:2 19:22
 96:16 148:17 164:14
moves 152:1
moving 87:12
multiple 91:21 101:5,8
 106:7,22 132:22
 133:1 174:21 175:20

multiplication 175:18
multiplicious 175:21
multivariate 103:14
 133:14,16 138:8
mute 14:21

N

Nalini 2:15
name 70:1,7
name's 4:8
names 46:10 54:17,20
 69:22 178:12
narrow 97:9
National 4:13 7:13,14
 167:14
Native 143:9
nature 50:13 74:2
 166:20 177:7
Navy 58:22 100:18
 104:18 136:17 174:2
 174:6,8
Navy-Marine 174:9
NDAA 171:17
near 141:5
Nearly 175:10
necessarily 41:13,15
 46:18 56:7 123:11
 130:13 153:20 169:8
necessary 58:10
 113:10
necessity 73:2
need 11:15,17 34:14
 36:14,19 37:20 39:14
 39:19 48:8 54:14
 57:21 69:1,4 72:14
 82:1 84:2 117:15,21
 120:12 139:13 140:6
 141:18 147:5 160:6
 170:12
needed 72:22 86:7
 119:17
needs 44:10 47:3,6
 120:10 143:18 146:22
negative 166:16
negligent 25:10,13 26:7
 26:20
never 53:17 139:9
new 29:7 56:22 60:21
 74:20 87:12
night 27:19
nine 126:11,17 177:16
 178:13
Ninety-five 103:5
NJP 163:20 165:12
 169:6
NJPs 165:4
nobody's 17:10
non 111:20 149:11,22

151:1,8 152:1,19
 158:15 165:12,17
 169:1
non-judicial 92:2 139:5
 149:18 151:22 152:22
 154:11 155:12,16
 156:15,19,21 157:10
 157:11,16 158:6,11
 158:19,20 159:12
 160:1 161:19 163:7
 163:10,13 164:9,12
 165:1 166:14 167:6
 170:11
non-sex 114:7
nonsexual 159:5
nonsubstantive 24:16
 25:2
noon 8:5
normal 36:2,5
normally 45:9
North 1:10
note 22:19 40:7 41:9
 107:22 111:10
noted 46:6 85:6,19,22
 86:22 87:1 154:13
nothing's 82:16 85:17
notice 54:5,9,15
noticed 11:1 78:20
notices 180:4
notified 62:17
notify 84:18
noting 73:5 174:4
number 97:16,16 101:2
 101:8 103:19,20
 104:14,21 106:14,16
 106:17 109:21 110:18
 119:8 125:4 128:6
 130:13 133:9,12,18
 133:21 134:22 135:10
 135:13 136:3,4 137:1
 137:15 138:3,4,10,11
 143:5,5 144:11,16
 150:20 159:14,16
 160:17 161:10 164:17
 166:9 168:11 170:17
 171:19,21,22 172:9
 173:15 174:2,17
 175:4
number's 174:17,17
numbered 25:22
numbers 79:4 113:9,10
 117:15 129:15 143:14
 144:7,20 155:15
 160:4,12,22 161:1,2
 165:4,7 166:6 167:2
 169:12 173:3

O

object 36:17
objecting 46:16
objection 10:16,17,20
 12:10 21:6 26:22 37:1
 37:2 38:3
objects 11:22
obligation 45:12 60:1
obtain 151:11
obtained 65:16
obviously 10:3 122:19
 154:2 156:7,22
 169:12
occur 41:19 74:3
occurred 44:1 175:22
occurrences 43:9
occurring 58:9 172:10
occurs 40:4,19 43:17
offend 75:5
offended 47:16
offender 75:4 112:12
 134:12 135:3 137:11
 146:13
offenders 105:15
 123:16 126:3,8 127:5
 127:8 134:13 141:21
 142:21 147:13 163:10
offense 42:4 57:20
 59:11 97:5 101:22
 102:17 104:8,11,13
 111:20 112:3,3,10,17
 113:3,19,21,22 114:2
 114:5,8 128:22
 134:12,15,19 135:2,5
 138:5,10,19 139:16
 140:16 146:11,12,19
 154:2 155:3 156:13
 158:17,18 159:3,5,6
 161:18 162:1 164:20
 164:21 165:5,17
 167:17 168:2,14
 175:6,14,19
offenses 3:10 7:20
 52:10 102:11,12,18
 102:19 103:5,9,12,12
 111:21 112:14 113:15
 113:16,18 114:4,16
 114:18,22 115:2,7,16
 115:17 116:2 120:17
 120:18 123:4 128:19
 129:12 130:2,7
 134:14 135:15,16
 136:7,8 137:4,18,19
 139:19 140:4 146:3
 146:17 153:1 159:13
 161:16 162:5 165:1,9
 165:13 168:16 173:7
offensive 70:2
offered 41:20 157:12,17

offering 53:13 56:2
office 17:6 81:6
officer 54:5 70:8 107:12
 109:7
officers 105:12 130:1
official 2:20 4:9 40:14
officials 179:17,17
oh 11:12 15:10 23:20
 26:16 31:16 46:12
 50:5 79:10 87:8 105:7
 111:9 121:1,5 145:4
 146:8
okay 6:18,21 7:2 10:15
 11:12,19 13:1 14:4,16
 15:5,16 16:9,11 17:3
 17:13 20:11 22:10
 23:16 24:12,12,19
 26:5 27:15 28:20
 29:22 30:2 32:18 33:1
 33:10 35:14,18 36:9
 36:22 37:11,12 38:1
 38:10,13 43:5 46:12
 56:12 57:2 58:5 59:18
 60:4 61:8,10 63:1,22
 64:5,10 68:6 70:5
 77:4 78:5,12,19 79:10
 79:14 83:2,13,20
 85:12,14 86:18 88:16
 88:18,21,21 89:7,22
 90:15 94:7,19 95:6,6
 97:21 102:4 105:8
 106:5,8 110:15 111:1
 111:8 113:4 117:20
 118:13,19 119:2
 120:4,15,16 121:5
 128:1,2 129:20
 131:19 132:12,15
 142:1 145:14 148:22
 149:1 155:10 160:11
 160:15 163:1 164:14
 164:16 169:22 170:14
 171:2,12 176:9,12
 180:6
once 44:1 48:19 49:4
 53:18 62:6
ones 97:14
ongoing 40:20 45:12
 80:19
open 16:22 36:19 62:16
 62:18,21 65:20 151:6
opening 47:14
operating 35:18
opinion 140:5,12 179:4
opinions 173:4,16
opportunity 47:14
 65:20 158:22
opposed 12:2 101:17
 116:12 132:8 150:14

option 42:9 53:12 61:14
 63:3 83:22
orally 54:12
oranges 121:13 142:17
order 66:12,13 71:19
ordered 8:4
organization 54:20
 86:14
organizational 19:3
 22:15
orient 91:1
originated 158:6,15
ostracism 41:2 51:6
 79:22
outcome 93:14 128:13
 168:17
outcomes 91:17 92:21
 95:13 96:2 99:8
 103:17,21 104:3
 112:5 113:12,14
 121:1,9 128:8,14
 130:1,5 134:6 135:5
 138:9,12,14
outside 66:8
outstanding 51:19
overall 27:21 31:1
 103:10 112:16 114:3
 114:9,21 115:8
 159:10 175:8
overlap 92:14
overseeing 82:12
overview 100:12,14

P

P-R-O-C-E-E-D-I-N-G-S
 4:1
pack 6:4
Package 99:13
packet 12:9 127:2,2
packets 155:18
page 18:11 20:8,10
 23:19 25:2,18,20
 28:16 33:17 34:2 40:6
 40:6 87:8 88:8 121:2
 161:5
panel 1:3,9 3:5 4:7,12
 4:17,17,20 5:1,3,9,16
 6:1,3,4 7:3,12 9:5,10
 9:15 10:3,9,12,19
 17:1 18:16 20:14,16
 23:7 37:19 38:21 39:3
 39:7,10,14,21 41:10
 67:21 90:22 91:10,13
 92:5 93:4 97:10 107:9
 111:11 116:14 118:8
 119:12 121:8 126:4
 140:10 141:12 147:17
 171:4

Panel's 39:1,11
paper 147:22 178:15
paperwork 152:21
 153:3
paragraph 18:11 20:8
 25:3,17,21,22 29:2,2
 29:3
Paralegal 2:19
parallel 56:5
parallels 57:5
parameter 163:5
parse 95:8
part 36:17 47:7 51:20
 51:22 55:4 92:1 143:7
 155:22 160:13 179:12
PARTICIPANT 35:13
 36:1,5
participating 2:22
particular 48:18 147:20
 153:2 179:1
particularly 4:4 142:21
 143:9
passed 154:16
passive 21:9
patient 89:2
Patricia 1:17 5:5
pattern 136:9
patterns 114:17
Pause 14:18 15:1,12,22
paying 142:15
PDF 173:14
Pease 176:8
peer 72:7
pending 170:16
penetrative 102:11,18
 103:4,11,18 104:7,11
 113:14,18,19,22
 114:4,15 115:2,6
 116:2 120:18 123:4
 128:19,21 130:2,7
 134:12,14,15,19
 135:2,15 136:6 137:4
 137:18 140:4,16
 162:5 164:21 165:5
 165:17 167:17 168:3
people 14:2 25:4 30:11
 30:18 31:20,22 40:22
 41:3 44:21 48:11 50:2
 50:5 54:20 56:3 69:18
 71:15 75:16 112:8
 125:11,15 126:2
 144:5,12,16 145:3,10
 145:20 147:7 159:18
percent 102:10,11,18
 102:19 103:5,9
 106:10,20 107:1
 108:15,18 110:19
 111:2,16 113:2,18

114:5,6,8,11,12,13
 115:1,1,13 116:3,6
 123:9,10 129:5,6
 145:9 175:9 176:22
percentage 104:20,22
 105:1 109:22 110:17
 112:20 115:16,18
perfect 20:5 50:18
 171:15
perfectly 11:4
performance 70:16
 154:13 166:16
permutations 113:7
pernicious 72:12
perpetrator 74:13
perpetrators 69:22
person 6:2 13:10 62:15
 62:20 64:16,17,19
 65:11 69:5 82:11
 106:3 153:9 162:14
 178:11
personal 45:6
personnel 83:17 179:19
 180:5
perspective 75:4
persuaded 142:17
persuade 43:22
PETER 142:1
Peters 2:17 3:12 90:19
 90:21 91:4 94:3,5,8
 94:12,18 95:1,3,7
 107:21 110:2,8,11,15
 110:19,22 111:2,7,9
 112:15 113:1,5
 116:15,18 117:1,17
 117:20 118:1 119:2,4
 119:6 120:3,15
 127:21 132:13,17
 139:1,3 140:1 180:2
phone 6:5,6,10,14
 15:10 24:1 89:9
phrased 67:21
physical 53:1
picture 139:13
piece 178:15
pieces 167:12
place 23:22 74:20 109:3
 109:5,14 112:20
 121:2 142:15 166:11
 166:21 167:3
placed 52:11 107:17
 168:18
places 26:11
placing 23:5
plan 8:22 11:21 12:1
play 48:13 111:15
plea 111:20,20 112:17
 113:3 172:1,11,13,15

176:20 177:5,7
plead 112:8,9 123:16
pleading 112:2
pleas 112:13,16 125:4
please 23:21 57:14
 125:8 128:3 152:22
 153:2 157:2 164:15
 169:11 172:3,22
 174:13
pled 97:4
plus 37:16 40:15
point 9:22 23:18 30:1
 31:1,5,14 34:6 51:2,3
 66:1,2 68:10 81:9
 82:6 87:4,22 89:12
 103:5 106:19 112:22
 127:20 147:9 169:17
 170:3
pointed 59:1 93:8
points 12:5 27:21,22
 30:5 39:12 52:9 78:21
 78:22 79:4 87:14
 88:15,20 93:15
 146:16
policies 154:21 167:21
 168:12
policy 52:13 55:6,18
 57:15 59:3,10
pool 75:16
pops 49:9
population 105:19
portion 116:5 171:18
position 22:21 178:8
possibility 74:15
possible 23:12 96:8
 111:12 140:9 145:20
possibly 129:19 144:4
 162:9 163:11
posted 5:13 7:10
potential 52:6 116:19
potentially 96:5 100:8
 164:8
power 84:22
practically 32:11
practitioner 32:11
practitioner's 108:10
practitioners 31:12
pre-trial 107:18 111:14
 111:17,18 113:6
 116:18 117:4,4
 119:22
precedent 30:21
predicted 138:6
predictive 96:5
predictor 128:13
predictors 103:16
 135:20 137:10 138:9
 138:12,18

predominate 177:17
preferral 108:6,9
preferred 99:21 102:7
 115:5 121:16 122:9
 128:8 129:17 158:9
preliminary 109:2
premise 34:10
prepared 89:10 157:6
 157:17,18
present 1:12 20:15
 33:19 81:17 91:15
 141:3 155:16 158:22
presentation 3:14,16
 3:18 91:5 103:13
 116:1 139:2 162:15
 180:11,11
presentations 8:14
 91:2,21
presented 33:22 91:12
 178:9
presenter 90:18 170:21
PRESENTERS 1:19
presiding 1:11
pressed 16:17
pretty 71:15 138:11
 143:7 159:17 172:11
 177:2
previous 9:10 93:8
 115:4 135:7 137:1
 150:16
previously 4:22 39:3
primarily 30:16 103:18
 151:3 165:14,22
primary 41:17 138:9,18
prior 44:19 108:17
 109:4,22 110:10,18
 116:19 125:13,14
priority 18:9
Privacy 151:4,10
 159:19,22 160:7
 179:5,11,20,22
privilege 178:18
probably 12:15 39:14
 141:2 151:12 166:15
 166:17,21 168:9
 172:16
problem 22:17 35:19
 69:6 70:10 77:17
 81:22
problematic 122:5,20
problems 8:3 169:16
procedural 19:6 20:19
 93:15
procedure 35:19 36:12
 179:10,13
procedures 108:13
proceed 9:14 16:14
 37:7 64:4 74:4

proceeding 101:12
 109:9
proceedings 1:3 4:6
 7:3,12,18 9:5 45:19
process 47:11 49:11
 56:5 65:11,17 67:4,15
 67:20 68:2 69:7 73:6
 74:20 75:21 78:9
 92:16 99:10 108:7
processes 52:11
Prof 1:16
Professor 5:6 6:10
program 78:3 88:3
 99:12
progress 85:1,22
promotion 166:17,18
prompted 27:20
proof 121:19 172:14
proper 53:20 54:1
 66:18 67:11
properly 53:21 82:22
property 45:6 53:2
 57:21 59:12,22 60:18
 62:11,20 63:11 64:14
 69:13,16 72:2,4
proposal 18:18 19:11
 21:2 56:11 61:4,5
 82:7 84:13,15
proposals 19:1,8 20:21
propose 39:8 47:18
 73:13
proposed 20:7 39:3
 56:1 86:1
proposing 42:18 57:9
 57:11
prose 16:6
provide 21:15 48:22
 49:6 93:6 111:11
 119:11 127:20,22
 140:2 156:8,9 161:9
 164:3 170:17
provided 5:12,15 19:7
 20:19 42:21 89:5 99:6
 99:11,16 100:7,10
 109:10 150:15 151:17
 155:19,21 160:13,22
providence 177:4
provides 25:9 26:4
 167:15
providing 48:12
PTA 120:7
public 5:15,17 9:2,4,6,7
 12:5 24:4 36:20
 147:22 151:6 173:12
 173:14
publically 5:12 178:3
publication 10:14
publish 13:11 173:12

published 173:4 179:3
publishing 13:19
pull 13:6 39:16,17,17
 178:1
pulled 30:14,19
punishment 92:3 97:2
 139:5 140:20 149:12
 149:19 150:1 151:2
 151:22 152:2,10,11
 152:22 153:11 154:11
 154:11 155:13,16
 156:15,19,21 157:10
 157:11,16 158:7,12
 158:16,19,20 159:12
 160:2 161:6,19 164:8
 164:9,12,13 165:1,13
 165:18 166:14 167:7
 169:2 170:11 175:16
punishments 91:18
 92:22 94:10 95:13
 96:2,13,15 98:11 99:8
 103:1,21 104:4 121:9
 124:3,10,14,15
 128:15 139:15,18
 151:9 152:20 163:5,6
 163:13 171:20
punitive 103:7 116:6,7
 120:19 124:12 140:18
 167:15,19 169:5
pure 151:13
purely 153:5
purport 166:6
pursue 22:7,11
put 21:9 22:18 26:10
 30:6 31:6 32:7 82:9
 140:10 143:12 150:22
 166:16 168:22 169:22
 178:14
putting 12:2 26:14
 54:17 74:20

Q

quarter 105:18 107:15
question 17:8 32:7
 35:17 45:21 51:13
 55:13 65:3 66:19 68:7
 73:20 84:15 93:21,22
 94:2 104:20 110:14
 110:16 118:12 119:5
 125:7 141:17,19
 148:7,10 175:7
 176:14,19
questioning 26:9
questions 76:3 78:7
 79:9,10 95:3 98:3
 119:13 139:11,22
 141:13 162:16 174:13
 180:7,8

quickly 12:15 148:21
162:22
quite 14:7 33:11 92:14
quotations 35:21
quotes 36:7 165:20

R

R-3 40:5
raise 27:22 78:21,22
81:3 143:15
raised 10:1,22
raises 80:13
raising 76:2
random 138:17
range 126:2,15,16,19
126:21 147:15
ranged 101:7 106:14,16
129:2
ranges 146:2
rank 103:22 131:9,12
132:3 133:20 138:2
164:10
rape 123:5 127:10
143:5
rapes 147:8,13
rare 175:12 177:15
rarely 176:15,20
rate 102:8,17 103:8
114:3,9,21 115:8,19
122:7 123:7,8,22
124:2 129:1,2,4,9,10
130:10 131:4
rates 123:21 130:21
131:3
reach 8:11 84:22
reached 156:5
react 53:6
reacted 28:8
read 14:1 17:15 27:19
33:11 117:3
reading 11:13 29:19
88:20
ready 9:14 13:11,20
16:21 70:15 89:18
90:16
real 143:11 160:22
realize 171:6
really 13:22 28:6 30:2
31:5 34:6 54:14 59:1
76:13,14 77:17 79:2
81:3 86:18 95:10,16
97:16 98:22 112:15
113:7 140:10 141:5
143:19 145:1,7 147:4
147:10 161:22 167:13
172:6 177:17
reason 10:22 68:19
147:20 151:13,13

157:9 158:12 161:12
168:11 177:17
reasonable 25:5,14
121:20 157:19
reasonably 25:6
reasons 145:13 151:3
175:17 177:1
reassessed 97:2,18
recall 11:13
receive 9:1,6 21:21
41:11 42:13 45:15
81:14 122:12 137:20
167:19 169:5
received 9:6,9 24:6
84:19 100:1,3 103:2,6
103:6 127:3
receives 170:10
receiving 41:14 49:2
50:5
reception 20:1
recommend 37:8
recommendation 19:11
21:2,17 34:2 77:22
88:5
recommendations 8:7
39:2 40:4 42:19 77:11
88:2
recommended 29:15
recommending 51:21
79:5
recommends 29:6
record 37:10 41:5 49:6
49:7 51:20 72:9 85:19
90:13 93:11 144:6
152:9,13,14 173:12
180:14
recorded 7:8
records 46:14 100:11
145:11 150:18 151:5
151:14 152:17 153:12
153:17 160:20 179:19
180:4,5
redline 35:11,12
reduce 117:10 175:15
reduced 171:20 175:12
refer 104:22
referral 108:2,10,13,18
109:11 110:1,10,18
112:2
referred 57:16 84:4
101:15 102:14 108:3
108:16 109:20 110:7
110:12 111:13,17
113:2 115:4,7,12,17
123:6 129:16,18,18
referring 21:7 43:18
159:22
refined 147:16

reflect 170:18
regard 64:1,4 66:15
81:4 97:10 143:3,9
144:10
regarding 8:20 18:18
19:11 21:2 39:2 67:19
77:12
regardless 45:4 72:3
102:9
registration 112:12
regulation 45:1
regulations 50:6 56:13
154:15
rejected 28:11
relate 29:9 126:1
related 7:20 45:16
52:21 53:7 96:18
relates 29:20 149:16
relating 96:20
relationship 128:12
135:13
relatively 12:14
relay 84:12
release 10:16
released 42:11 67:22
73:19
Releasing 12:3
relevant 43:1 100:8
147:11
relied 30:21
relief 96:22 175:5,11
177:1
reluctant 145:12
rely 30:16
remain 59:7
remainder 104:11
110:8
remedy 77:14,16
reminded 18:2
reminder 92:15
removed 115:21
rendered 91:18 97:13
rent 142:15
Rep 52:9
repeat 55:13 119:5
120:4
repeating 16:7
report 3:5 9:17 10:4,5,8
10:10,13,17,19 11:4
12:13,16,18 13:9,12
13:13 16:10 25:3
26:11 28:3,6,7,9 29:4
29:10 31:8 37:14
38:22 39:6 40:6 42:8
42:15 45:8 52:2,3,16
53:18 56:13,14 57:6,6
57:8 58:11,14 60:6,16
61:7,20 62:14 67:19

67:21 68:15,20 73:10
73:13 74:1,7,14,18,19
74:22 75:1,15 76:15
77:1 84:16 86:19,21
89:11 109:9,10
143:17 145:17 156:1
161:8 164:5 165:20
166:16 169:8
reported 64:7,8 85:16
168:10
reporting 41:3 66:14
67:4,5,15 73:7,9
82:13 89:16
reports 8:8,12 9:15
12:1,8,15 40:3,10
42:20 47:9 63:4 90:1
160:14 161:10 168:9
170:5
repository 152:19
represent 108:3,14
173:3
Representative 161:3
represents 175:3
177:11
reprimand 151:8
Reps 165:3
request 47:12 54:6 73:5
99:20 126:5,5
requested 31:12 100:2
requests 9:7 178:7,9
require 68:3 167:18,22
168:12
required 32:12 65:5
requirements 94:21,22
requires 52:13
requiring 170:15
research 8:17 95:22
reserve 72:4
resolution 65:10,12,14
67:13
resolve 68:22 69:3
resolved 54:22 80:2,11
80:16,19 82:1 94:1,15
150:9 156:18
resort 87:3
respect 32:9 136:10
146:1
respectful 51:2,3
respects 121:12
respond 37:22 54:18
73:5 149:21 178:11
responded 28:2
responding 83:15
86:16
responds 42:16
response 4:16 5:1,3
8:20 41:10 68:4 75:14
82:19 119:12 151:16

154:19 156:14,22
 172:5 175:6 176:13
 176:18
responses 55:18 78:1
responsibility 70:18,19
 79:15,17 80:9,21 81:8
 84:6 85:8
responsible 82:12,16
rest 41:11 72:7 98:3
restates 55:6
restitution 3:6 10:5
 12:19 13:5,8 124:12
restricted 53:16,17
 56:6 57:4,4,5,6 63:4
 67:3,5,19 68:20 71:10
 72:22 74:1,7,14,18,22
 75:10,15 76:8 163:7
 164:10
result 19:10 21:1 91:17
 93:16 114:10 120:19
 146:12
resulted 102:15,16
 116:2,4,5,7
results 136:9
resumed 90:13
retains 62:17 63:18
retaliated 56:20 79:21
retaliating 62:15
retaliation 3:6 8:9 12:13
 12:17 13:12 38:13,22
 40:10,21 41:22 42:6,8
 42:16,20 43:3,10
 46:11 47:10 50:12
 51:20 52:10 53:6
 55:15 56:4 57:1,17
 59:19,21 63:4 66:15
 66:17 67:14,21 69:4
 69:11 70:15 71:3,16
 73:1,19 74:2,6,15,19
 75:1,7,14,19 77:12
 85:10 87:12
retaliatory 40:19 41:1
 42:7 43:17 53:4
retraining 88:4,10
revealed 103:16
review 3:9 7:17 9:15
 18:17 39:9 51:18
 171:5 172:19 176:3
 179:14
reviewed 10:7 51:22
 172:15
reviewing 8:7
revised 39:6
revision 40:4
rewrite 23:14,15
RFIs 151:16
rhetorical 35:17
right 15:19 17:17 18:7

19:15 21:22 22:10,13
 23:1,1,4 26:13 31:21
 32:22 35:4 36:8 37:11
 41:8 46:21 49:22 50:7
 50:9 56:12 58:2 59:9
 60:8,13,17,22 63:10
 64:13,22 65:20 66:4,6
 66:9 67:7,9 72:4 76:1
 76:10 77:10,15 78:5
 78:12 82:14 83:16
 86:9 88:14 90:21 95:3
 96:16 110:19 112:15
 117:1 127:4 132:16
 133:3 146:8 148:14
 149:9 153:19 160:8,9
 161:7 166:6 175:1
 178:5,11
rises 70:20
risk 51:15
role 43:16 48:13 120:12
roll 86:8,15,17
room 171:7
roughly 111:7 113:2
 163:5
routinely 166:11
Rozell 2:19 120:6
rug 52:18
run 75:21,21
rung 46:9

S

safely 180:12
Sailor's 70:1,16
sampling 155:19 156:9
SAPRO 156:1 160:13
 161:9 165:20 168:9
SARC 42:1,9 47:9 48:19
 51:21 52:16 56:19
 57:7 58:12,19 59:20
 60:1 62:11 74:19
 76:14 79:16,18,20
 80:8,10,20,20,22,22
 81:7,13 82:4,20 83:7
 83:8 84:8,9,18 85:3
 85:20 86:1,16,17 87:1
 87:3
SARC's 60:1 82:12 84:6
 85:7 86:8
SARCs 86:15
satisfied 10:18,19
Saunders 2:18 3:16
 90:19 92:4 139:4
 148:17,19 149:1,7,10
 152:7,11 153:20
 155:9 157:5,9,22
 158:4 159:20 160:5,9
 160:12,21 161:7
 162:3,10,17,20 163:1

163:14,19,22 164:4
 164:16 169:19 170:2
 170:14,20
save 98:21 162:16
saw 11:3 27:3 116:20
 136:11
saying 31:16 32:21
 34:1,18 36:4 50:19
 56:21 57:2 63:2 67:8
 68:3,8,10 76:14 81:18
 82:17 86:4,19 88:15
 124:20 178:18
says 25:8 26:4 28:4,5
 29:2 34:13,14 50:14
 56:19 59:20,21 61:17
 68:2 79:20 96:13
 134:5 161:6
scale 41:2
scheduled 9:2
school 32:2
Sciences 99:14
scores 127:6,11
screening 122:11
second 17:19 18:11
 20:8 140:8 176:18
Secretary 8:13
section 4:13 34:7 73:9
 73:12 88:7
sector 140:22 167:6
secure 122:3
see 9:3 24:17 30:4 35:8
 46:12 58:5 75:22
 78:14 79:8,9 86:19
 87:8 88:21 105:7
 115:8,16 122:7 123:5
 123:13 128:18 129:16
 134:7 147:12 148:2
 149:17 156:10 165:8
 166:6 167:4 175:8
 178:16 179:14,21
 180:4
seeing 86:6
seen 38:22
select 93:13
self 34:19
send 11:8
senior 2:19 179:17
sense 21:5 51:11 60:11
 95:17 97:15 112:1
 143:18
senses 70:12
sensitive 51:2,3
sent 16:20 19:14 39:6
 111:3 151:17
sentence 18:15,21 20:7
 20:13 97:18 103:10
 116:2,9,13,22 117:2,3
 117:9,10 119:9,10,20

120:20 124:7,21,22
 126:2 130:16 131:21
 132:7 137:13,20,22
 138:6 139:10,12
 140:15 163:4 164:3
 175:12
sentenced 125:15
 137:11
sentences 98:8 115:22
 117:11,16 126:7,14
 127:12,13 137:9
 140:2,3,11 141:7,14
 142:9 143:20,21,22
 144:1 145:5 148:3
sentencing 125:20
 126:1,6,15,16,21
 141:20 142:20 143:3
 146:2 178:22
separate 62:18 75:9
 86:11 142:6
separated 142:9,12
separately 140:7
separating 102:14
separation 92:3 103:7
 116:6,8 120:19
 124:12 139:6 140:19
 142:6
serious 57:19 59:11
 63:20 77:13 102:10
 104:10,12 146:6
 169:1
seriousness 168:17
served 4:22 5:2
serves 4:21
service 41:4 101:21
 105:10 111:4 128:9
 128:15 131:8 132:3
 133:19 134:17 135:21
 138:1,15 152:16,16
 161:3 164:18 165:3
 167:21 168:12 173:16
 174:5,6,12,16 176:15
Servicemember 75:6
Servicemembers 25:10
 26:6 75:4
services 48:22 53:3
 55:17 57:18 68:22
 73:4 78:1 101:1 104:2
 128:20 129:2 134:21
 136:11,12 150:21
 151:15 154:14,18
 155:21,21 160:5
 165:21 170:6 173:11
session 118:18 119:1
set 34:18 44:6 87:19
 93:13 96:17 97:1,17
 133:15 171:20 175:11
 175:13,17,20 176:5

176:15,19 177:9
sets 177:15
setting 97:7 175:16
seven 28:4
severity 141:2
sex 96:22 97:5 111:20
 111:21 112:3 113:3
 114:5 135:8
sexual 3:10 4:16 5:3
 7:19 8:10,21 18:19
 30:15 34:8 42:4 43:2
 43:7,14,21 44:9,13
 45:3,7,12,16 48:17
 52:5,12,14,22 53:7,15
 53:20 55:16 56:14
 57:6,17,20 58:12 59:1
 59:13 60:11,15 64:2,3
 66:8,17 67:3 68:17,20
 71:12 94:1 99:21
 103:17 104:8,12
 112:10,12,14,17
 121:21 126:9 127:14
 128:21 139:16 149:21
 150:8 153:1,9,18
 154:2 155:2 156:4
 158:16 159:13 165:14
 165:15 167:4,17
 168:2 173:6 175:5
 176:14 177:20
share 8:18 58:13 59:7
shared 53:8 73:15,16
 73:17
sharing 58:7,11 76:9,12
Shoot 171:2
shortened 8:2
shorter 120:21 125:2
shortly 8:12
show 22:20 31:6 92:8
 109:19 153:17
showed 93:14 164:18
showing 85:21
shows 75:22 113:17
 165:21 177:6
shut 8:5
significance 129:12
significant 128:12
 130:9 135:20 137:10
silent 59:8
similar 38:20 52:10
 60:14 123:9,12 124:5
 134:5,6,10 136:9
 139:19 150:10
similarly 44:2 115:15
 136:22
simply 30:14 55:6
 130:12 146:13 159:22
Simultaneous 13:15
 62:9

simultaneously 103:15
 134:4
single 100:3 106:21
singling 21:19
sir 9:21 10:2 24:17
 55:14 118:5 141:10
 178:20 180:2
sitting 118:15
situation 68:15 155:8
 157:15,16
situational 40:9 42:3,13
 44:20 48:3 58:21
six 25:3,22 80:18 81:6
 84:7 85:16 98:3,7,9
 101:6 106:18 139:11
 139:12 148:10 153:18
 178:6
skill 87:19
skip 17:17 120:22 121:2
 128:5 172:20
slide 93:18 113:17
 115:4 128:2,6,7,19
 129:18 133:18 137:1
 149:14 150:3 155:11
 156:20 157:2 159:9
 163:2 165:10 167:10
 168:4 169:10 171:13
 172:3 173:1 174:13
 176:17
slides 112:4 113:11
 137:8 171:12
small 16:17 17:8 75:16
 87:11,18 143:7
smaller 112:16 115:18
snow 7:22
social 72:7 99:13
solution 46:3
solve 69:6
somebody 29:18 79:5
 80:22 87:10 142:8
 154:1 170:10
somebody's 71:13
someplace 87:21
somewhat 59:17
 104:14 114:22 130:20
 161:8 167:3
soon 12:14
sorry 16:3 19:5,12
 24:13 27:18 39:16
 46:8 48:11 55:10 68:6
 98:19 99:1 105:7
 110:21 111:8 118:13
 121:1,6 131:11
 169:19 174:7
sort 49:9 50:4 54:13
 57:22 75:21 77:12
 96:21 102:16 109:6
 124:4,14 138:17

sought 21:11,13
sound 140:5
sounds 159:17
sources 41:12
span 174:21
speak 18:22
speakers 70:22 118:7,7
speaking 6:22 13:15
 62:9
special 101:17 107:5
 109:15 131:3 154:4
specialty 87:11
specific 33:20 177:6
specifically 21:7 29:10
 57:16,21 96:13 97:3
specifications 106:16
specify 59:6
speculative 145:1
speed 176:9
spend 92:1
spends 142:20
Spohn 1:20 3:14 8:15
 8:18 90:17 98:17 99:4
 102:3,5,22 105:1,5,9
 106:4,6,9 108:1 112:4
 113:11 116:12 120:17
 121:4,7 124:19 125:5
 125:9,18 126:4 127:1
 128:4 129:19,21
 131:14,18,20 132:10
 132:22 133:3,9,13
 138:22 145:12 146:1
 146:9 147:2 180:11
Spohn's 91:5,22 95:20
spoke 167:20
spot 33:4
spotted 23:19
SPSS 99:13
staff 2:8,9,12 4:10 7:4
 8:8,15,18 10:9,18
 16:19 22:4,17 33:12
 33:20 36:11,13 38:20
 39:1,9,17 89:6 90:18
 91:9 92:16 93:4 94:17
 94:22 96:18 98:19
 99:5,20 107:22
 108:22 118:14 126:5
 150:5 161:14 178:10
 180:10
staff's 95:4
standalone 140:3
standard 25:7,14 35:11
 35:18 121:20 157:7
 157:20
standardized 69:8
 73:15 78:2
standards 157:4
standing 171:6

standpoint 108:11
start 18:5 155:12
starts 18:12 34:1
state 57:16 96:3,10,15
 98:15 122:14 123:8
 123:15,16 124:2,8,22
 139:19 143:20,21
 144:1,4
statement 67:15 163:4
states 1:1 45:1 122:15
 176:8 177:11
station 152:1
statistic 111:22
statistical 99:13 126:18
 129:12 147:17
statistically 128:11
 130:9
statistics 8:19 96:20
 108:2,14 109:19
 119:8,12 122:13
 149:11 160:6
status 72:3 84:17 104:1
 129:21 130:3,4,18
 132:1,5 133:21
statutory 94:6 96:11,12
 149:15 150:6 154:3
 171:16
stay 41:22
Stayce 2:19 171:13
staying 58:18
stays 69:10 74:21 85:6
step 54:11,11
stick 25:13 77:21
Stone 1:15 5:6 11:17,18
 16:20 18:5,10,20
 19:14 20:6 21:22 22:3
 22:11,14 23:2,19
 27:16 35:1,2,20 37:19
 38:7,8 46:17,22 47:21
 49:8,18,22 54:3 61:17
 63:5,14 64:19 70:6,11
 70:21 77:5,8,10 78:10
 78:13 88:5,8,12 89:19
 97:22 98:14,17
 100:13 112:6 124:16
 125:3,19,22 126:13
 139:9 141:22 142:5
 147:6 148:6,9,12
 153:8,21 155:5
 159:14 160:3,6,11,15
 161:4 163:3,15 178:7
 178:21 180:3
Stone's 17:20 23:10
stop 62:12,13 65:6
 69:11
stopping 93:15
stops 62:15
storm 171:7

straight 52:19
straightforward 141:11
strengthen 144:19
strengthens 144:14,17
strike 26:17
string 125:13
stronger 78:11 108:12
strongly 78:17
struggling 46:20
stuck 77:13
studied 173:20 176:22
study 122:20
stuff 24:3 149:5 170:22
style 24:3
stylistic 27:22 30:3
 37:17 79:7 89:11
stylistically 79:3
Subcommittee 19:9
 20:22 21:10 28:3
 29:10,15
Subcommittee's 28:8
 29:4,21
subject 13:21 37:4,14
 38:1 78:16 89:11
 122:10
subjects 13:22
submissions 9:7
submitted 8:12 20:6
subsequent 52:21
substance 19:1 21:6
 24:3 28:7
substantial 101:2 144:6
substantially 103:11
 120:20 124:1,7 125:1
substantive 19:8 20:21
 23:22 24:8 36:10
 37:15 39:18 88:22
successor 4:17
sufficiency 176:4,6
sufficient 122:1
suggest 16:16 28:12
 30:8 35:5 37:1 78:6
 79:2 143:17
suggested 18:14 24:21
 25:12 94:22
suggesting 133:7
 159:16,21
suggestion 17:22 23:5
 46:17 58:15 73:14
suggestions 16:13
 39:21
suggests 18:20 21:8
summarily 98:2
summarize 127:3
 133:16
summary 28:1,10,15
 29:19 30:6 32:8,20
 33:3 39:2 40:4 42:19

79:1 86:20 98:20
 101:17 107:6,11,12
 131:4 139:10 156:4
 165:11 173:6
Sunshine 5:11
supply 27:8
support 48:22 86:6
suppose 64:15 82:15
 85:15
supposed 50:12 74:17
 164:22
sure 24:22 38:8 56:10
 59:16 62:14 63:2
 74:13 84:1 85:4,6,9
 117:12 124:19 125:9
 125:16 128:1 145:9
 145:16 147:14 154:16
surprisingly 100:17
 113:13 174:1
suspected 52:22
SVC 81:14
SVCs 48:20
swept 44:2 52:18
synopsis 155:20 156:4
 159:10
system 46:22 47:19
 51:15 83:1,12 109:3
 121:10 122:6,8,9
 123:3,8,14,15,16,18
 124:1,2,8,11,22 125:1
 125:12 126:12 132:18
 143:6 144:4 168:15
 176:2 177:14
systems 4:16 5:1,3
 41:10 121:13 123:9
 180:4

T

table 3:1 175:3 177:10
take 17:6 18:4 24:15
 25:12 44:17 45:10
 72:4 73:14 83:1 90:7
 90:7 98:10 99:5 109:3
 109:14 122:1 146:10
 146:10 157:18 166:11
 166:21 169:17 170:4
takeaway 138:7 141:4
 141:10
takeaways 146:21
taken 52:3 68:16 85:10
 115:11 152:7,13
 166:8,18 169:5
 177:11
takes 109:4 133:17
 167:3
talk 33:18 35:10 64:17
 68:11 79:14 87:9
 103:14 112:5 113:12

139:5 149:17 150:13
 155:1,17 156:12
 161:10
talked 64:13 99:17
 168:19
talking 21:11 25:4 63:9
 68:11,14 80:1 147:8
 149:2,10 171:4
talks 156:20
Talmud 17:15
task 94:6 96:11,12,20
 97:10 99:4 149:15
 150:6 171:16
tasked 155:6
tasking 141:17 172:17
taskings 154:19
tasks 91:8,11 92:12,14
 92:17 93:2 95:5,10
 96:9
taught 87:20
Taylor 1:16 5:6 6:10,13
 6:20 10:1,21 11:11
 13:16 14:6,14,19,21
 15:3,3,4,13,15,17
 16:11 18:6 24:6,6,9
 24:11,14,18,20,22
 25:19 26:3,6,14,18,21
 27:6,8 31:4,10,15
 32:5 38:4 55:3,12
 66:22 67:1 89:2,4,21
 118:4,6,11,14,16,20
 118:22 119:3,7,16
 125:7,10,21 128:7
Taylor's 18:2
technical 24:16 177:2
technically 117:9
telephone 2:22 37:20
tell 72:21 76:15,18
 119:21 120:6
tell-tale 6:9
telling 42:9 155:6
 159:17
tells 62:10
ten 90:7 106:20 107:8
 114:6 142:9,10,15
 171:8
term 8:1 103:3 140:22
terminology 119:19
terms 69:22 99:10
 100:16 101:10 103:1
 105:16 115:22 120:7
 123:22 124:3,6
 129:21 130:3 137:21
 146:18 162:4,5
 175:17
Terri 2:18 3:16 92:3
 139:4
terrible 64:16,17 145:6

test 128:11
testified 19:5
testify 20:15,18
testimony 19:5,7 20:20
 178:17,18
text 29:13 30:6 171:17
thank 4:4 5:18,20 6:1,3
 6:17,20 7:4 13:14
 14:4 15:18 38:14,17
 87:7 89:4 90:2,3,4,5
 90:11,21 91:3 95:2
 118:3,18 119:16
 120:16 125:21 138:21
 170:19,20 171:14
 180:9
Thanks 9:13
theoretical 66:19
theoretically 60:19
theory 29:7 51:17
thick 156:9
thing 17:20 26:10 145:3
 145:6 153:14 156:8
 161:4 162:13 174:4
things 28:1 30:17 41:19
 48:4 61:9,11,13 76:7
 76:12,19 77:18 95:8
 112:11 121:7 123:1
 145:10 146:9 150:12
 151:8 155:17 172:17
think 8:1 11:15,22 12:3
 13:20 14:1 16:12 18:2
 19:13 21:18 22:7 23:4
 23:14 24:7 25:1 26:14
 27:3,10 28:1,9 30:15
 30:17,22 31:4,5,13,18
 31:22 32:13,18 34:17
 34:20 35:3,5 36:9,10
 39:19 40:12 43:19
 45:14 46:19 47:17
 48:13,15 50:4 52:7
 54:14 61:17,19 65:10
 71:1,22 72:13,14
 74:11,16 75:6,20 77:1
 77:9,18 83:11 88:12
 88:22 89:1 90:16
 91:13 95:9 100:13
 106:19,22 117:14
 120:10,13 123:19,19
 124:9 125:3 127:1,17
 128:4 138:7 140:1,4
 140:11 141:14,15
 142:2,18 143:11,12
 143:13 145:2,20
 146:1 147:6,10 148:6
 151:12 154:14 155:5
 158:1 160:16,18
 163:17 166:9 167:12
 168:9 170:3

thinking 11:14 75:2
87:16
thinks 37:20
third 12:17 25:20 29:3
96:20
thought 6:8 22:4 31:20
32:11,12 39:13 47:2
68:17 71:21 72:1 79:1
79:12 87:14 88:19
95:17 108:22 109:18
112:9 132:20
thoughts 12:10 27:20
78:16 89:3
thousand 126:17
threat 6:2 7:5 45:7
57:22 59:12,22 60:19
threats 52:22 64:14
69:15,17
three 12:8 80:5,18 91:7
92:11,14 99:22 127:9
136:17,20 138:18
144:16 151:20 153:16
173:19 175:10 176:21
177:16
three-fourths 101:16
three-quarters 101:13
101:14 104:9 107:3
108:18
throwing 50:22 66:19
144:7
time 9:5 11:14 16:17
17:9 19:4 22:15 43:6
50:20 56:18,18 58:17
61:20 62:2 92:1,6
143:20 149:4 160:22
179:12
times 76:13 119:8
135:22 136:7,16,17
136:18,20 137:5,18
timing 45:4
title 30:7,9,10,16 32:9
128:8
today 4:4 6:2 7:5 8:1,18
9:14 10:4 11:9 91:15
127:3 141:10 171:4
179:6
today's 7:7 8:2 9:7,10
Tom 1:16 5:6
tone 48:7
toothless 77:12
top 20:8 28:18 34:2
total 110:1 159:12
173:15,21 174:2
175:9 176:21 177:16
totally 45:14 144:22
touching 71:4,11
165:22
Tracey 1:17 5:5 11:16

27:12,14 38:5 40:7,15
40:17 43:5,13 46:8,13
47:2 48:6 49:5,16,19
51:12 54:16 69:12,16
70:9,13 71:22 73:20
74:17 75:18 77:3,9
78:17 86:8,11,14
89:13,16 102:20
110:3,6 111:5 119:21
131:11,15,19 132:19
133:1,7,11 141:18
142:2 157:3,8,21
158:1 163:17,20
164:2 174:15
Tracey's 40:2 63:19
track 146:22
trained 87:17
transcribed 7:7
transcript 7:10
transcripts 5:14
transfer 88:3
transferred 153:16
transfers 87:9
transition 139:4
travel 8:2
treat 51:14 53:6 54:19
treated 53:7
treating 43:13 52:9
treatment 132:17
134:10
trees 139:14
trends 8:19 91:9 96:20
149:11,21
trial 40:19 43:8 93:12
101:15 102:14 107:7
108:11,16,19 110:7
111:13 114:12 115:4
115:7,13,14,18
116:19 117:2,3,8
119:9,20 122:2
123:17 129:5 157:13
176:4
trial's 43:15
tried 21:19 22:11 40:1
trigger 47:19
triggers 47:4
trouble 13:4 50:9 70:7
true 103:3 121:15
152:16
try 22:7 41:16 44:10
50:1 90:9 171:8
trying 30:20 31:2 34:6
42:14 43:20 50:3 51:4
58:6 61:11 69:20 70:3
71:2 72:17,18 79:8
124:20
turn 60:1 157:11
turning 104:5

turns 50:9,9 163:6
tweaking 37:10
Twenty-eight 110:22
111:2
Twenty-three 128:3
twice 32:22 159:19
two 4:15 6:3 41:17 60:7
64:4,6,12 69:13 71:15
79:17 90:1 96:17 97:9
98:8 103:5,10 113:16
122:16 127:6,11
129:3 134:16 137:4,8
139:21 141:13 143:5
144:12,15 146:16
151:3,20 163:7
164:19 171:22 172:9
176:22 178:7
type 101:19,22 103:18
107:7 127:15 130:13
130:18 131:1,22
132:1 133:22,22
134:8 138:4,10,19
154:10 158:17 178:3
types 151:19 156:10
161:16 164:22 166:19
typical 100:21,22
typically 48:6 71:3
151:20 152:2,17,18
154:14 177:2
typo 23:19 37:17 89:11
typos 23:21,22,22 24:2

U

U.S. 2:9,11,13
UCMJ 7:21 9:18 139:16
ultimate 156:17 158:18
ultimately 82:12,15
156:18 158:10 178:11
unable 21:15,20 23:2
129:11
unclear 170:5
uncovered 47:11
underlying 43:2 162:1
undermine 53:11
underscore 92:16
understand 29:8 35:15
35:16 56:10 59:16
61:12 72:18 83:18
88:11 112:7 119:15
144:18,22 148:1
understanding 85:13
understands 177:7
understood 54:8 83:5
83:10 84:2
unfamiliar 22:6
Unfortunately 126:11
unhappy 80:7
Uniform 7:18

unique 172:11 176:1
uniquely 173:11
unit 81:16 87:18,20
United 1:1 122:15 176:8
177:11
universe 99:20 100:1
102:7 108:5,15
unlucky 178:8
unpublished 173:4
Unreasonable 175:18
unreproducible 87:18
unrestricted 53:16 56:6
56:14 60:15 67:3
71:10 73:22 75:11
unusual 36:6
unwanted 165:22
UOTHC 169:18
updates 8:7
use 35:22 36:2,6 48:9
121:19 146:6 147:10
useful 31:18 34:3,19
useless 34:5
usually 69:4

V

v 176:8
VADM 27:14 38:5 40:15
40:17 43:5,13 46:8,13
47:2 48:6 49:5,16,19
51:12 54:16 69:12,16
70:9,13 71:22 73:20
74:17 75:18 77:3,9
78:17 86:8,11,14
89:13,16 102:20
110:3,6 111:5 119:21
131:11,15,19 132:19
133:1,7,11 141:18
142:2 157:3,8,21
158:1 163:17,20
164:2 174:15
VADM(R) 1:17
vanishes 50:20
variable 128:13
variables 100:8 133:18
134:16
varied 101:20,21
131:22 175:18
varies 173:21
variety 41:12
various 127:13 146:3
180:5
vary 103:22 152:15
vast 165:12
verbally 49:3
verdict 97:17
verdicts 97:7,8
verify 10:11
version 25:18 28:14,22

35:11 38:22 39:6
171:8
versus 53:14,16 56:2,6
58:19 59:6 73:11
103:19 113:15 124:22
131:3 144:12
veto 63:6,14,15 64:2
vetting 108:8 109:6
Vice 5:5
victim 25:11 26:8 41:18
42:7 43:21 45:3 46:4
47:21 53:1 55:16
56:18 57:17,22 58:4
58:13 59:19,19,20,21
60:4,11,21,21 61:14
61:17 63:6,14,15 64:2
65:2,6 66:3,5,9 67:11
68:3,21 69:19 70:2,13
72:3,6 73:18,22 74:6
75:5 79:20 80:7 81:15
82:19 86:7 87:10
100:22 104:1 106:11
106:13 128:16 130:4
130:19 131:10 132:1
132:3,5,8,9 133:20,21
135:8,9 137:12
142:22 146:7 147:14
178:16
victim's 47:12 64:9,10
64:17 80:12
victim-centric 44:8
victims 8:10 40:11,21
57:2 59:13 72:22
101:3,4,8,8 103:19
105:17,20,22 106:9
106:14 126:10,17,17
127:10 130:6,11,13
130:14,20,22 132:6
132:18,22 133:2,10
133:12,21 134:22
135:10,11 136:3,4
138:4,11,19 143:1
144:11,12
Victor 1:15 5:6
video 7:8
view 8:19 23:8 32:19
34:4 44:8,13 163:18
violating 160:7
Virginia 1:10
voice 21:10
volume 14:10

W

W 2:9
wait 15:21 25:18 66:12
98:4 110:9
waived 107:14 109:13
walk 75:20,21 100:15

want 5:22 6:3 10:11
11:7 17:19 22:4,6
30:5,8 31:11 33:19
46:4 57:3 59:5,5 60:6
61:1,2 62:1,3,12,13
62:13 63:2 68:4 71:11
72:9,9 77:11 78:8,21
85:4 87:22 98:4
107:20 112:8 139:11
140:12 145:2,17
147:4,12 148:2 149:5
156:7 163:3 169:17
wanted 17:20 22:20
26:16 35:9 54:11
95:14 111:10 140:2
141:9 158:5,14 159:7
wants 46:5 69:2 86:2
warning 4:5
warrant 41:20
warranted 144:21
wasn't 6:21 22:16 23:11
54:7 72:16 79:13
126:13 177:17
way 6:15 11:21 14:3
16:12 21:6,10 22:14
24:8 33:22 34:12,17
34:20 35:12 38:11
45:1 54:13,19 66:21
68:16 74:2 93:15
125:14,17 126:21
132:4 147:21 162:2
ways 122:22 154:15
175:20
we'll 15:21 18:4,6 37:5
37:21 39:20 78:14
91:4 92:1 97:16 98:21
127:20 128:5 155:12
we're 4:5 12:5 14:2 16:9
16:16 17:6 21:11
22:21 23:20 25:4,5,6
31:22 32:7 34:6 37:10
38:11,13 42:14 43:19
44:6 50:3,10 51:20
56:21 58:6 63:2,5
64:1,5 69:21 70:4
74:5,20 76:7,16 77:12
77:18 79:4,15 89:14
90:6,9,16 91:14,20
95:4 98:9 111:13
121:16 128:4 135:19
136:12 139:13 140:21
145:8 147:6,8 161:4
171:18 173:13
we've 8:1,4 30:12 48:16
49:12 56:1 74:2 90:1
98:18 99:17 162:13
162:13 174:11
weak 122:5

weapon 146:6 147:10
wearable 62:1
website 5:8,13 7:11
9:11
websites 173:13
wedded 22:19
week 39:7 40:2
week's 8:8 16:18 39:13
welcome 4:6 7:2 38:16
90:17
went 48:1 90:13 93:4
101:13,16 107:2,11
108:17 114:12 131:2
165:12 180:14
weren't 22:8 31:16
whatnot 96:3
whisper 64:15 79:21
whispering 69:17 70:2
70:14,17
whistleblower 71:8,17
who've 7:4
wishes 39:10
withheld 159:18
witnesses 144:14
wondered 70:11
Wonderful 16:5
wondering 126:20
word 14:15 26:17 35:22
worded 21:7
wording 22:2
words 25:12 30:13 54:7
64:1 92:18 95:15
132:6 174:22
work 3:3 12:12 33:21
45:17 46:19 81:22
worked 22:15
working 22:18 48:20
78:9
works 23:15
world 119:20
worst 169:21
worth 143:12 174:4
worthwhile 76:2
wouldn't 45:9 62:21
67:10,11 97:22
written 9:9 17:5
wrong 15:7 27:4,4
28:21 44:6 49:9 70:22
121:1 179:8
wrongful 165:15
wrote 40:7
www.jpp.whs.mil 5:8

X

X 161:10

Y

Yeah 19:17 22:3 33:6

33:14
year 4:7,14 41:10
103:22 104:20 105:2
131:7 132:2 133:19
135:6 142:9 156:2,6
161:1 164:19 165:6
170:8 171:17 173:20
173:20,21
years 7:15 99:22
101:20 102:21 103:10
104:15 122:16,21
126:19 127:9 135:7
140:15 142:10,15,20
151:20 153:2,4 155:7
155:22 159:11 173:19
174:21 175:10 176:21
177:16
yesterday 16:21 89:6

Z

zilch 81:6 84:8

0

1

1,269 110:4,6,9,11
1,275 113:18
1,761 102:8 104:6 105:6
110:3,6,9,12
1.2 101:9 142:22
1.4 136:7
1.6 135:22
1.7 136:15
10:21 90:13
10:32 90:14
100 106:11 145:8
109 107:10
11 20:10 105:14 106:15
171:12
11.8 114:11
11:57 180:14
12 18:11 20:8 113:2
137:18 173:20 175:9
120 3:6 7:21 8:9 9:17
12:16 13:12 16:10
18:18 29:7 38:12,21
96:22 97:5,14 105:11
142:8 173:9
120(b)(1)(B) 34:7
125 173:9
128 173:21
13 155:22 171:17
175:19
14 106:12 156:1 173:20
148 3:16
15 7:15 149:4
15.5 114:13
156 127:14

16 23:19 25:2,18,20
 16.7 113:20
 170 3:18
 18 30:7,9,10,16 32:9
 121:2,3
 180 3:20
 1986 147:16

2

20 9:17 25:18 126:18
 162:13
 2009 122:19
 2012 4:7 7:21 97:13
 155:7,22 159:11
 165:6 169:13
 2013 4:14 97:13 169:13
 2014 7:15 97:13 135:7
 155:7 159:11 167:14
 169:13,14
 2016 1:7 9:17 25:18
 20th 28:19
 21.6 114:12
 22 1:7
 24.2 105:3
 24.5 113:18
 26 128:6 129:6,18,18
 28 110:19

3

3 28:16
 30 101:7 106:17 111:16
 115:13
 31 127:14 133:18
 32 107:13 108:20 109:1
 109:12,16,20 127:15
 380 173:21 175:9

4

4 3:3
 40 40:6 114:5
 429 111:5
 46 175:9
 4610 1:10

5

50 105:20 106:22 115:1
 51.2 102:10 114:8
 54 126:20
 541 4:13
 55 116:10

6

6 33:17 34:2
 60 102:11 115:1
 67.6 103:8
 68 123:9
 691 159:12,17 160:15

7

70.3 102:18 123:9
 72 108:15
 75 108:18 122:14

8

8 87:8
 8.8 129:5
 80 102:19
 84 127:14
 88 116:6

9

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In the matter of: Judicial Proceedings Panel

Before: US DoD

Date: 01-22-16

Place: Arlington, VA

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Court Reporter

NEAL R. GROSS

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