

UNITED STATES DEPARTMENT OF DEFENSE

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JUDICIAL PROCEEDINGS PANEL

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PUBLIC MEETING

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FRIDAY
MAY 13, 2016

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The Panel met at the Judge Advocate
General's Legal Center and School, 600 Massie
Road, Charlottesville, Virginia, at 9:00 a.m.,
Hon. Elizabeth Holtzman, Chair, presiding.

PRESENT

Hon. Elizabeth Holtzman

Hon. Barbara Jones

Victor Stone

Tom Taylor

VADM(R) Patricia Tracey

WITNESSES

Overview of Basic JAG Training and Schools

BG Charles Pede, U.S. Army, Commander/Commandant,
Judge Advocate General's Legal Center and School

Col Kirk Davies, U.S. Air Force,
Commander/Commandant, The Judge Advocate
General's School

CAPT John Luce, U.S. Coast Guard, Chief, Legal
Policy and Program Development

LtCol Hanorah Tyer-Witek, U.S. Marine Corps,
Executive Office, Naval Justice School

Overview of Training and Experience of Attorneys
Prosecuting Sexual Assault Cases

Col Katherine Oler, U.S. Air Force, Chief,
Government Trial & Appellate Counsel
Division

CDR Michael Luken, U.S. Navy, Director, Trial
Counsel Assistance Program

LTC Bret Batdorff, U.S. Army, Chief, Trial
Counsel Assistance Program

Maj Jesse Schweig, U.S. Marine Corps, Officer-In-
Charge, Trial Counsel Assistance Program

Julia Hejazi, U.S. Marine Corps, Highly Qualified
Expert, Trial Counsel Assistance Program

Overview of Training and Experience of Attorneys
Defending Sexual Assault Cases

COL Daniel Brookhart, U.S. Army, Chief, Trial
Defense Service

Col Daniel Higgins, U.S. Air Force, Chief, Trial
Defense Division

Col Terri Zimmermann, Reserve Counterpart to the
Chief Defense Counsel of the Marine
Corps/Head, Defense Services Branch

CDR Stephen Reyes, U.S. Navy, Director, Defense
Counsel Assistance Program

Overview of Training and Experience of Special
Victims' Counsel

Col Andrea deCamara, U.S. Air Force, Chief,
Special Victims' Counsel Division

Col Katherine McDonald, U.S. Marine Corps,
Officer-in-Charge, Victims' Legal Counsel
Organization

LTC Christopher Kennebeck, U.S. Army, Chair and
Professor, Criminal Law Department

Charlotte Cluverius, U.S. Navy, Deputy Chief of
Staff, Victims' Legal Counsel Program

STAFF:

Dale L. Trexler - Chief of Staff

Lt Col Jacqueline Stingl - Designated Federal
Official

C-O-N-T-E-N-T-S

Call to Order and Introductory Remarks 7
 Lt Col Jacqueline Stingl

Introductory Remarks 8
 Elizabeth "Liz" Holtzman, Chair

Overview of Basic JAG Training and Schools

 BG Charles Pede, U.S. Army,
 Commander/Commandant, Judge Advocate
 General's Legal Center and School.11

 Col Kirk Davies, U.S. Air Force, Commandant
 Judge Advocate General's School.19

 CAPT John Luce U.S. Coast Guard Chief
 Legal Policy and Program
 Development.29

 LtCol Hanorah Tyer-Witek, U.S. Marine Corps
 Executive Office, Naval Justice
 School32

Panel Members Q&A.37

Overview of Training and Experience of Prosecuting Sexual Assault Cases

Col Katherine Oler, U.S. Air Force, Chief, Government Trial and Appellate Counsel Division 86

CDR Michael Luken, U.S. Navy, Director Trial Counsel Assistance Program 99

COL Bret Batdorff, U.S. Army, Chief Trial Counsel Assistance Program 107

Maj Jesse Schweig, U.S. Marine Corps Officer-in-Charge Trial Counsel Assistance Program 120

Julia Hejazi, U.S. Marine Corps Highly-Qualified Expert Trial Counsel Advocacy Program 128

Overview of Training and Experience of Attorneys Defending Sexual Assault Cases

COL Daniel Brookhart, U.S. Army, Chief, Trial Defense Service 164

Col Daniel Higgins, U.S. Air Force, Chief, Trial Defense Division. 175

Col Terri Zimmermann, Reserve Counterpart to the Chief Defense Counsel of the Marine Corps/Head, Defense Services Agency 184

CDR Stephen Reyes, U.S. Navy, Defense Counsel Assistance Program 202

Panel Members Q&A. 213

Break

Overview of Training and Experience of
Special Victims' Counsel

Col Andrea deCamara, U.S. Air Force,
Chief, Special Victims' Counsel
Division 249

Col Katherine McDonald, U.S. Marine
Corps, Officer-in-Charge, Victims' Legal
Counsel Organization 264

LTC Christopher Kennebeck, U.S.
Army, Chair and Professor, Criminal
Law Department 274

Ms. Charlotte Cluverius, U.S. Navy,
Deputy Chief of Staff, Victims' Legal
Counsel Program. 285

Panel Members Q&A. 300

Adjourn

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

2 (9:28 a.m.)

3 LT COL STINGL: Good morning. Welcome
4 to this morning's meeting of the Judicial
5 Proceedings Since Fiscal Year 1012 Amendments
6 Panel, also known as the Judicial Proceedings
7 Panel or JPP.

8 I am Lieutenant Colonel Jacqueline
9 Stingl, the Designated Federal Official for the
10 JPP today.

11 The Department has appointed the
12 following distinguished members to the Panel: the
13 Honorable Elizabeth Holtzman, who serves as the
14 Chair of the JPP and previously served on the
15 Response Systems to Adult Sexual Assault Crimes
16 Panel, or RSP for short; the Honorable Barbara
17 Jones, who also served as Chair of the RSP; Vice
18 Admiral, Retired, Patricia Tracey; Professor Tom
19 Taylor, and Mr. Victor Stone.

20 This Panel is a Federal Advisory
21 Committee and must comply with the Federal
22 Advisory Committee Act and the Sunshine Act. Any

1 information provided by the public to the Panel
2 members must also be available to the public.

3 Thank you. Madam Chair?

4 CHAIR HOLTZMAN: Thank you very much,
5 Colonel. Good morning. I would like to welcome
6 everyone to today's meeting of the Judicial
7 Proceedings Panel. All five members of the Panel
8 are here today.

9 Today's meeting is being transcribed,
10 and the meeting transcript will be posted on the
11 JPP's website.

12 Let me apologize for the late start,
13 but technical problems interfered. So, we very
14 much appreciate everyone's patience.

15 Before we begin this morning, I want
16 to thank Brigadier General Chuck Pede and the
17 faculty and staff of the Judge Advocate General's
18 Legal Center and School, who graciously agreed to
19 host the Panel for this meeting. On behalf of
20 the Panel, thanks to all of you for helping us to
21 bring this meeting together.

22 The Judicial Proceedings Panel was

1 created by the National Defense Authorization Act
2 of 2013, as Amended by the National Defense
3 Authorization Act for 2014 and 2015. Our mandate
4 is to conduct an independent review and
5 assessment of judicial proceedings conducted
6 under the Uniform Code of Military Justice
7 involving adult sexual assault since the most
8 recent amendments to 120 of the UCMJ in 2012.

9 Today's meeting focuses on the JPP's
10 congressional task to assess the training and
11 experience level of military counsel who serve as
12 trial defense and Special Victims' Counsel for
13 adult sexual assault cases. We will consider how
14 the Services plan to conduct attorney military
15 justice training, specifically addressing
16 development of litigation skills for adult sexual
17 assault cases.

18 To begin today, the Panel will be
19 pleased to hear from leaders of the Army, Air
20 Force, and Navy JAG schools and the Coast Guard's
21 Chief of Legal Policy and Program Development.
22 Following this overview session, the remainder of

1 the meeting will include three sessions focusing
2 on prosecutor/defense counsel and Special
3 Victims' Counsel training and experience.

4 We appreciate everyone's making the
5 trip to Charlottesville to join us today, and we
6 look forward to hearing from the each of you.

7 Each public meeting of the Judicial
8 Proceedings Panel includes time to receive
9 comments and input from the public. The Panel
10 did not receive any requests from the public to
11 appear at today's meeting, but we did receive a
12 number of written submissions commenting on a
13 proposal received by the JPP at last month's
14 public meeting that addresses the rights of
15 sexual assault victims in the appellate process.
16 These public comments and all materials for
17 today's meeting and previous meetings are
18 available on the JPP's website, which is
19 jpp.whs.mil.

20 The Panel very much appreciates the
21 submissions that we received and we intend to
22 consider this issue in more detail at a future

1 public meeting; namely, the issue of victims'
2 rights in the appellate process.

3 We continue to welcome comments from
4 the public on this matter, the topic of today's
5 meeting, or other issues considered by the Panel.

6 Thank you very much for your
7 attention, and I believe we are ready to begin
8 our first session.

9 Thank you very much, Members of the
10 Panel, for your presence here.

11 I guess we might as well start from my
12 right to left with Brigadier General Charles
13 Pede, U.S. Army Commandant, Judge Advocate
14 General, Legal Center and School.

15 General Pede, you are really a glutton
16 for punishment. You have been here before before
17 this Panel, and I really appreciate your coming
18 back and enlightening us with your experience and
19 your views.

20 BG PEDE: Ma'am, thank you very much.
21 I want to make sure I am talking into the
22 microphone. Is this one okay? Okay.

1 Ma'am, welcome. Members of the Panel,
2 welcome. Welcome to TJAG's Legal Center and
3 School. We are honored to have you here.

4 This is an important committee. We
5 are honored to support your work. And it is a
6 special honor as well to welcome my colleagues at
7 the various schools that educate our lawyers and
8 paralegals to our regimental home as well. So, a
9 very warm welcome to each of you, and we hope
10 your day is productive.

11 I will try to keep my remarks brief,
12 in the hopes of saving time for any questions you
13 may have.

14 TJAG's Legal Center and School -- we
15 know it as the LCS -- is designed as a cradle-to-
16 grave legal institution, legal education
17 institution. We educate and train all Army
18 lawyers and paralegals. We also educate and
19 train large numbers of lawyers and paralegals
20 from all the Services. In fact, we are populated
21 in a very healthy way by professors from all the
22 Services here as well. We educate and train

1 annually upwards of 5,000 students, resident
2 students, and nearly 20,000 students online in
3 our JAG University.

4 As a preliminary point of emphasis,
5 the LCS is the only ABA-accredited DoD law
6 school. This is, in our view, a significant
7 attribute of our Corps' educational model. Our
8 education and training is deliberate, carefully
9 planned and executed, and is comprehensive across
10 our six practice areas in the Army.

11 Over the course of a career, for Army
12 students, we educate and train lawyers and
13 paralegals from the moment they enter our Corps
14 up to and including successive tours as Senior
15 Judge Advocates and paralegals responsible for
16 legal services over large footprints, both in
17 forward areas and in garrison in the United
18 States and elsewhere around the world. In short,
19 our education and training model is continuous
20 and career-long and very deliberate.

21 In the area of criminal justice
22 specifically, and sexual assault more

1 specifically, our education and training begins
2 with newly-minted attorneys. These same
3 attorneys return in regular, predictable
4 intervals to the school over the course of time,
5 jobs, and experience for more and deeper and
6 broader education and training.

7 The bulk of the criminal law education
8 is mandatory over time. So, for example, an
9 officer attends the Officer Basic Course. Then,
10 in order, for example, the New Prosecutor Course,
11 the Intermediate Trial Advocacy Course, and then,
12 the Sexual Assault Trial Advocacy Course, all
13 layered, all sequential.

14 Every lawyer entering a mid-grade
15 supervisory criminal law billet in our Service
16 attends the Justice Managers' Course. New
17 defense counsel, for example, must attend, after
18 Officer Basic Course, a Defense Counsel 101
19 training session, a 201 training session, and
20 then, the Intermediate Trial Advocacy Course, and
21 then, other training courses that are offered.

22 Our new SVC, our Special Victims'

1 Counsel, courses are now part of this progression
2 as well. Each course is designed to refresh
3 judge advocates and continue where they last left
4 off.

5 Our flagship course is our graduate
6 course. The graduate course is a year-long and
7 has as a chief component, significant instruction
8 in criminal law for mid-level managing attorneys.
9 A criminal law specialty is also offered, and
10 this course is ABA-accredited and awards its
11 graduates with an LLM in Military Law, and is
12 also multi-Service, all the Services. All the
13 Services are represented in the graduate course.

14 Our second flagship course is the
15 Military Judge Course. Our longest and most
16 intense short course instruction, it is three
17 weeks. Judges from all the Services attend prior
18 to assuming the Bench and must be certified
19 according to strict academic standards prior to
20 graduation.

21 And that is the schoolhouse,
22 essentially. Taking a step back, it is useful to

1 note that what happens in the classrooms of this
2 building is part of a much larger training
3 program in our Corps. Our education and training
4 model is based on institutional training,
5 education, think the LCS; functional training,
6 think our training arms, TCAP and DCAP,
7 organizations I believe you have heard from; unit
8 training, think the local JAG office, the local
9 legal office, and then, personal development.
10 All four of these components in our view are
11 critical to developing and sustaining criminal
12 law expertise over time.

13 And so, our schoolhouse programs fit
14 into this larger four-tiered program. And this
15 larger plan, then, is best described, in my view,
16 as a series of courses and training synchronized
17 and integrated over time in order that they
18 complement each other, build on each other. This
19 has been very deliberate for us over the last, I
20 would say, eight years, to ensure that
21 synchronization and integration in skills and
22 experience over time.

1 The synchronization is overseen by the
2 Office of the Judge Advocate General, Criminal
3 Law Division, in the Pentagon. The LCS is merely
4 a part of that and is in collaboration with DCAP
5 and TCAP, and we execute the plan.

6 I would add, then, simply as I close,
7 that we overlay this model with a developmental
8 model in criminal law. It is a skill-identifier
9 program, skill identifiers 1 through 4. These
10 are certifications counsel acquire over the
11 course of a career. Our skill-identifiers in
12 criminal law require experience and performance
13 through quantifiable and intangible metrics,
14 numbers of cases tried, training attended, time
15 on the job, and recommendations from supervisors.
16 We reinforce our skill-identifier program with
17 resources, both in personnel and money to back it
18 up.

19 Since no system of education and
20 training is ever perfect or finished, I am
21 pleased to also say that we have a dynamic, I
22 believe a dynamic, honest, and regular process of

1 evaluation, reflection, self-study, student and
2 field input, to critique ourselves. These
3 efforts are programmatic, as is our annual
4 curriculum review, to ensure we remain at the
5 school a vital and in-touch educational
6 institution. And then, the self-reflection is
7 enhanced by the periodic self-study required by a
8 very rigorous ABA certification and accreditation
9 process.

10 I close by offering a highlight of
11 three changes in law and policy which may answer
12 a few of the questions you have asked about what
13 has changed recently in our education. The SVC
14 program, the change in Article 32 and the changes
15 to MRE 513, the Psychotherapist Privilege, all
16 three have necessitated significant changes
17 either in the addition of new certifying courses
18 for our SVCs, for example; changes in curriculum
19 to ensure proper execution of the Article 32
20 hearing procedures, and then, of course, changes
21 in how we teach MRE 513 and the scope of that
22 privilege as amended.

1 All three of those in so many
2 different ways affect how our professors change
3 the curriculum on a daily basis, especially
4 something like a change in an MRE, where there
5 now is no precedent to fall back on. And so, it
6 is a lot of discovery, learning and experiential
7 professorship, as we train judges all the way
8 down to the newest lieutenants that join our
9 Corps. It is what lawyers do and we enjoy doing
10 it, but it is the challenges that we have had
11 most recently over the last two years.

12 This concludes my opening remarks, and
13 I very much look forward to your questions, and
14 once again, welcome you to Charlottesville, to
15 the Legal Center and School. I hope you have a
16 productive day, Ma'am.

17 CHAIR HOLTZMAN: Thank you very much,
18 General Pedde.

19 And now, we are very pleased to hear
20 from Colonel Kirk Davies, U.S. Air Force,
21 Commandant, The Judge Advocate General's School.

22 COL DAVIES: Good morning, Madam Chair

1 and Members of the Panel.

2 I'm Colonel Kirk Davies, Commandant of
3 The Judge Advocate General's School at Maxwell
4 Air Force Base, Alabama.

5 It is my honor to speak with you
6 today. In the interest of time, I am going to
7 focus only on part of the prepared remarks that I
8 made and submitted already to your staff.

9 CHAIR HOLTZMAN: Certainly. Thank
10 you.

11 COL DAVIES: Yes.

12 The Air Force Judge Advocate General
13 School, or as I will refer to it here as AFJAGS,
14 is the focal point of military justice training
15 in the Air Force JAG Corps. In fiscal year 2015,
16 we trained 858 Air Force and other Service judge
17 advocates in military-justice-related courses,
18 including 503 trial counsel, 244 defense counsel,
19 and 111 Special Victims' Counsel. We are
20 currently on-track to exceed those numbers for
21 this fiscal year.

22 Each year the school offers nine

1 resident courses with military justice
2 components, as well as our two online distance
3 learning military justice courses. I will
4 identify three things in describing our approach
5 to military justice and sexual assault litigation
6 training.

7 First, we offer full-spectrum
8 training, by which I mean training for all
9 counsel, trial, defense, and Special Victims'
10 Counsel.

11 Second, we offer multi-level training,
12 by which I mean litigation training at the
13 beginner, intermediate, and advanced levels.

14 Third, we offer collaborative
15 training, by which I mean we collaborate with the
16 other Services.

17 Our full-spectrum training begins with
18 our three entry-level training classes for
19 counsel. As I discuss these courses, I will
20 identify any evolutions in their sexual assault
21 litigation curriculum in recent years,
22 particularly since the publication of the RSP

1 report in 2014.

2 Our full-spectrum training begins with
3 the entry-level Judge Advocate Staff Officer
4 course, also known as JSOC. This is a nine-week
5 Course that includes a foundation in military
6 justice and advocacy skills. The first five
7 weeks, roughly 165 instructional hours, are
8 dedicated to military justice training.

9 Specific sexual assault prosecution
10 training includes four-and-a-half hours of
11 plenary lecture and 16 hours of Moot Court
12 litigation for each student. The Moot Court is
13 divided into three phases held at different
14 times. First, motions and voir dire; second,
15 litigation of the case-in-chief, and, third,
16 sentencing. During the Moot Court, students are
17 divided into two-person trial teams while
18 instructors play the role of defense counsel and
19 military judge.

20 This past academic year the faculty
21 made significant revisions to the Moot Court
22 itself. The case now includes a new fact pattern

1 capable of providing several possible defense
2 theories, including alibi defenses and mistake of
3 fact as to consent. We also have incorporated a
4 more robust motions practice, with each student
5 arguing an MRE 412 motion. In sentence, the Moot
6 Court now includes an unsworn statement by the
7 victim, in addition to the traditional
8 presentation of other victim impact and unit
9 impact sentencing witnesses.

10 Next, the defense orientation course
11 is the mandatory initial training for all Air
12 Force area defense counsel. It is a week-long
13 course designed to prepare defense counsel for
14 their new assignments. Of the 36 hours of
15 training, 20 hours are devoted to general
16 litigation and advocacy training and two hours
17 are devoted specifically to defending sexual
18 assault cases.

19 Finally, our initial training courses
20 are rounded out with the Special Victims' Counsel
21 Course. This course is the mandatory initial
22 training for all Special Victims' Counsel in the

1 Air Force. The entire focus of this eight-day
2 course is sexual assault cases and the role of
3 the Special Victims' Counsel. This course
4 includes 60 hours of instruction. Of this
5 instruction, two hours of plenary lecture and
6 three hours of practical exercise are exclusively
7 dedicated to the litigation of MRE 412 and 513
8 motions in sexual assault cases by the Special
9 Victims' Counsel. Since 2014, we have expanded
10 training to include representation of children
11 and DOE civilians.

12 The SVC course is one of our most
13 collaborative courses. In fact, next week AFJAGS
14 will host 94 students at the SVC course and, of
15 those, 55 will hail from other Services.

16 In relation to the SVC course, perhaps
17 the single most significant improvement at AFJAGS
18 this past year was the hiring in June 2015 of the
19 AFJAGS Senior Counsel Advisor for Special Crimes
20 and Victim Assistance, Mr. Mark Stout. Mr. Stout
21 serves as the primary curriculum developer and
22 instructor for Special Victims' Counsel courses,

1 Victim Witness Assistance Program courses, and
2 other instructional material relating to the
3 special victim matters.

4 Mr. Stout's duty description also
5 allows him to serve as a Special Victims' Counsel
6 for sexual assault victims and appellate counsel
7 for Special Victims' Counsel's represented
8 clients. Mr. Stout collaborates with all other
9 Service JAG schools and SVC communities in the
10 continued development of SAPR and SVC curriculum.

11 Beyond these initial training courses,
12 AFJAGS offers multi-level sexual assault and
13 court martial litigation training at the
14 intermediate and expert level. AFJAGS has two
15 resident courses that focus primarily on
16 litigating sexual assault cases, the Intermediate
17 Sexual Assault Litigation Course and the Advanced
18 Sexual Assault Litigation Course.

19 The Intermediate Sexual Assault
20 Litigation Course is designed to familiarize all
21 litigators, trial, defense, and Special Victims'
22 Counsel, with legal and policy issues pertaining

1 to the litigation of sexual assault cases.

2 AFJAGS offers five ISALCs per year.

3 Since the release of the RSP report in
4 June 2014, ISALC has evolved to include a fully-
5 formed SVC curriculum all alongside the trial and
6 defense counsel blocks of instruction. Also,
7 selected senior trial, defense, and Special
8 Victims' Counsel attend every ISALC and serve as
9 adjunct faculty for the course.

10 We also collaborate with other
11 Services by routinely hosting other students from
12 other Services in this course. For example, next
13 week at Joint Base San Antonio-Lackland, ISALC
14 16D will include four Coast Guard JAGs and one
15 Navy JAG.

16 And I will depart just briefly. We
17 have recently added another block to this course
18 you may be interested in, which is a block
19 addressing resiliency for trial counsel
20 themselves, who are handling these kinds of
21 cases.

22 The Advanced Sexual Assault Litigation

1 Course is a one-week course designed for senior
2 trial counsel, senior defense counsel, and
3 Special Victims' Counsel, and Special Agents of
4 the Air Force Office of Special Investigations.
5 The course is comprised of 11 hours of lectures
6 and includes topics such as sexual assault,
7 victim interviews, direct and cross-examination
8 of the accused in a sexual assault case, and
9 presentation of forensic evidence.

10 Since 2014, ASALC has also evolved to
11 more fully integrate the SVC in an active role in
12 the course curriculum, including engaging SVCs in
13 victim interview practical exercises and an
14 exercise where SVCs practice advocating before a
15 convening authority. For example, an SVC student
16 practices advocating to a convening authority on
17 behalf of a client for an expedited transfer or
18 for a particular case disposition preferred by
19 the client.

20 Our three remaining litigation courses
21 are geared more towards general litigation
22 skills. Those are the trials course, a three-day

1 litigation course held eight times a year, TDAC,
2 the Trial and Defense Advocacy Course, held twice
3 a year, and the Advanced Trial Advocacy Course,
4 held once a year.

5 To enhance the effectiveness of our
6 litigation training, all of our faculty, to
7 include our Reserve faculty, are now formally
8 trained in the National Institute for Trial
9 Advocacy, or NITA, methodology. NITA is the
10 nation's leading provider of legal advocacy
11 skills training. The NITA method trains our
12 faculty in providing specific, relevant,
13 constructive feedback on technique, style, and
14 strategy to improve attorney litigation skills.

15 Finally, I emphasize that, aside from
16 the curriculum changes noted above, AFJAGS
17 conducts ongoing curriculum review and assessment
18 of all of our courses. Courses are subject to
19 yearly formal review and inspection.

20 For some courses, AFJAGS uses academic
21 performance testing to ensure students learn the
22 stated objectives. As a result of these

1 processes, AFJAGS makes continual incremental
2 improvements to all of our academic courses.

3 Thank you for giving me the
4 opportunity to testify here today. I look
5 forward to any questions you may have.

6 CHAIR HOLTZMAN: Thank you very much,
7 Colonel Davies. We very much appreciate your
8 presentation.

9 We are now very pleased to hear from
10 Captain John Luce, U.S. Coast Guard Chief, Legal
11 Policy and Program Development.

12 Captain Luce, thank you.

13 CAPT LUCE: Yes, ma'am. Madam Chair
14 and Distinguished Members of the Panel, good
15 morning.

16 My name is John Luce, and I work in
17 our Coast Guard Headquarters Office of Legal
18 Program and Policy Development.

19 The Coast Guard's small size and
20 relatively small number of court-martial cases
21 present some unique challenges to the way we
22 provide training to our judge advocates. We do

1 not have our own judge advocate school. Instead,
2 we collaborate with all the other Services to
3 provide training for our judge advocates.

4 All of our attorneys go to the Naval
5 Justice School for the basic lawyer course and
6 start there, their introduction to the Coast
7 Guard and being judge advocates through that
8 opportunity. For follow-on training, we work
9 with the Commanding Officer of our Legal Service
10 Command, our largest legal office all of our
11 staff judge advocates in our Headquarters, Office
12 Chiefs, to allocate our training opportunities
13 based on positions and individuals' experiences.
14 We traditionally send our judge advocates to the
15 other Service schools for their follow-on
16 training.

17 For our defense counsel, through
18 agreement with the Navy, we provide seven Coast
19 Guard attorneys to the Navy Defense Service
20 Offices. In return, the Navy provides
21 representation for all of our Coast Guard
22 members. And through that collaboration, we are

1 able to further use the training opportunities
2 available through the Navy for our defense
3 counsel services.

4 For our prosecutors, throughout the
5 course of their careers as they go into legal
6 billets and other positions within the Coast
7 Guard, they will attend schools at the other
8 Service schools for their training and
9 professional development opportunities. In
10 addition, we have agreements informally at the
11 local level with other Service installations,
12 predominantly with the Marine Corps, where we
13 send a lot of our attorneys to get additional
14 trial experience.

15 For our Special Victims' Counsel, they
16 attend both Army and Air Force SVC courses, and
17 we have also done internal training and
18 opportunities as well.

19 With our military judges, they all
20 attend the military judge course here in
21 Charlottesville.

22 In addition to the military justice

1 opportunities, the Coast Guard also has a close
2 relationship with the Department of Justice and
3 we send attorneys to be Special Assistant U.S.
4 Attorneys in Los Angeles, San Diego, Tampa, San
5 Juan, and the Environmental Crime Section at the
6 Department of Justice. Through those
7 opportunities, we are able to leverage some
8 training through the Department of Justice as
9 well.

10 That is a brief overview of the Coast
11 Guard and how we provide training. I am pleased
12 to be here today and I will answer any questions
13 you may have.

14 CHAIR HOLTZMAN: Thank you very much,
15 Captain Luce.

16 Our next presenter will be Lieutenant
17 Colonel Hanorah Tyer-Witek, U.S. Marine Corps,
18 Executive Office, Naval Justice School.

19 Thank you very much, Colonel, for your
20 attendance and we look forward to your
21 presentation.

22 LTCOL TYER-WITEK: Thank you, Madam

1 Chair and fellow Members of the Panel. It is a
2 pleasure to be here today.

3 On behalf of Captain Shannon Kopplin,
4 who is the Commanding Officer of the Naval
5 Justice School, I am here to present some
6 testimony on what we do at the Justice School.

7 The Naval Justice School is a little
8 unique in what you have heard today, in that we
9 train all Sea Service judge advocates. So, we
10 have judge advocates in the Accession Pipeline
11 bringing them into the Service from the Coast
12 Guard, as you have previously heard, the Navy,
13 and the Marine Corps. And we train them all
14 together in a basic lawyer course.

15 It is a 10-week course. As was
16 mentioned in the Response System's Panel report,
17 57 percent of that 10-week course focuses on
18 military justice and criminal justice matters.
19 Since that report came out, we have made some
20 changes to the curriculum, and now, it is a good
21 five weeks that we focus on military justice.

22 It begins with the fundamentals, the

1 basics of the Military Rules of Evidence and it
2 builds to a complete mock trial, where we have
3 two-person trial teams that try a sexual assault
4 case scenario. In the past it used to be 50
5 percent of our students got that sexual assault
6 case scenario, and the other one was an
7 aggravated assault case, but we have switched
8 that now. So, 100 percent of our students are
9 trying a full general court-martial contested
10 case before they depart that 10-week basic lawyer
11 course. They deal with all of the issues
12 associated with it. Our instruction, we think,
13 has greatly improved in the past three years from
14 where we began to where we are now.

15 The second real change we have had at
16 the Justice School is we have hired an
17 Educational Program Specialist. Her name is Ms.
18 Pamela Hicks. She has just come onboard in
19 January, and it has been a labor of love trying
20 to get her hired. It has been about a three-year
21 process. We are so happy to have her here.

22 But she is really revolutionizing the

1 way we plan curriculum. She is bringing what we
2 refer to as the science of education into
3 military training. And it is a bit foreign to
4 those of us who are very military kind of folks,
5 institutionalized, if you will, but she is
6 turning our training on its head, frankly.

7 We do a learn-see-do model. So now,
8 we have a learner-centric focus of effort. We
9 have the students are training each other a lot.
10 They do a lot of small group. It is really
11 focused around the small group.

12 And she is beginning with our basic
13 lawyer course curriculum, and we hope that she
14 will continue to build out to our other courses
15 that we offer. But we are very excited to have
16 her here.

17 The third point for your
18 consideration, Members, is the Military Justice
19 Training Continuum document. I believe you have
20 that in your folder. This is just a visual
21 depiction -- you know a picture speaks a thousand
22 words -- to let the Panel members know how the

1 Navy, in particular, has set out the training
2 over the course of a judge advocate's career.

3 This is the way it looks. You can see
4 from here that we do have courses we integrate
5 very often with the Air Force and the Army to
6 plug holes in what courses we don't offer at the
7 Justice School.

8 The Naval Justice School's mission is
9 really twofold. We train, of course, judge
10 advocates, like I was just talking about and
11 paralegals, legal professionals in the Services,
12 but we also train non-legal professionals. So,
13 senior officers, senior enlisted members, legal
14 officers, and legal clerks; they are other
15 military specialties that come through the
16 Justice School to get their legal training on
17 really how to administer the military justice
18 system from their perspective or from their
19 vantage point.

20 In the yellow on this document, those
21 are all the courses that we offer in residence at
22 the Naval Justice School. We are also offering

1 many courses online, and I don't know if it is
2 the wave of the future, but it is the future for
3 us. So, many in the civilian systems it was 10
4 years ago that they started doing this. We are
5 now embracing this as new and changing. That is
6 one of the things that Ms. Hicks is going to
7 offer and help us with. She does have a
8 specialty area in distance learning.

9 You know, the Navy and the Marine
10 Corps are both very different Services in that we
11 are very dispersed, the Navy, in particular,
12 aboard ship and overseas and in areas where
13 getting back to a resident course is not
14 feasible. So, our distance program really plugs
15 gaps in that training in a way very unique to the
16 Navy, of the Naval Service.

17 Those are my three points. I am very
18 much looking forward to questions, and I am very
19 honored to be here today. Thank you.

20 CHAIR HOLTZMAN: Thank you very much
21 for your presentation.

22 Any questions? Judge Jones?

1 JUDGE JONES: I am interested in the
2 preparation of defense counsel, only because one
3 of the things that we noted early on was that
4 there was at least a perception that they weren't
5 being given as many resources as the government
6 counsel, if you will.

7 I wonder, because I honestly couldn't
8 keep track of how everyone was training everybody
9 as we went along, if each of you could comment on
10 how early in the process you integrate the
11 defendant's counsel and the prosecutor's counsel
12 in training.

13 I know there is one program where they
14 are all in it together and they role-play their
15 own roles, and I assume they trade roles for some
16 period of time. But how are they? What are the
17 distinctions in terms of training? It sounds
18 like the defense gets fewer hours specifically to
19 defense training.

20 If that question made sense, General,
21 could you answer it?

22 BG PEDE: Absolutely, yes, ma'am, it

1 does. I can tell you, as well, part of my role
2 as the Commander of the LCS is to exercise
3 general supervisory responsibility over our Trial
4 Defense Service, but it is actually headed up by
5 Chief of the Trial Defense Service, Colonel Dan
6 Brookhart, who is here today. I believe you will
7 hear from him later as well. So, hopefully, I
8 will simply echo what he would tell you.

9 That is, our training begins at the
10 basic course, where all counsel are together
11 training as new lieutenants. They go through
12 criminal law instruction plus advocacy training,
13 and they do it together. None of those
14 lieutenants are yet either trial counsel or
15 defense counsel. That is the baseline.

16 When they get to their units, at some
17 point they will become defense counsel by
18 assignment. Typically, our policy is that we are
19 not to assign defense counsel until they have had
20 other jobs, preferably trial attorney jobs as a
21 prosecutor. That tends to be our effort. It is
22 not exclusive, though. Some will become DCs

1 before they have been a trial attorney, trial
2 counsel.

3 Once a defense counsel, the defense
4 system in the Army has its own resource. It
5 doesn't have independent funding, but it has its
6 own training. So, we built a number of years ago
7 the Defense Counsel Assistance Program. That
8 organization operates in the field around the
9 world, as Dan will tell you, an enormous variety,
10 healthy, robust set of training environments.

11 I mentioned DC 101. That is a
12 training course that is given onsite to
13 collections of defense counsel, new defense
14 counsel. Then, there's 201. It is layered and
15 designed to be more challenging. There is always
16 platform instruction and, then, there is on-your-
17 feet practical exercises. They typically will
18 either use a sexual assault case that is created
19 for those training environments or they will use
20 their own cases.

21 We have here at the Schoolhouse the
22 Intermediate Trial Advocacy Course. Counsel,

1 defense counsel, return for that. That is done
2 by the faculty here.

3 We have the Sexual Assault Trial
4 Advocacy Course, usually 16 seats for both sides
5 of the bar. So, they are equally represented
6 there.

7 And then, importantly from my
8 standpoint, being responsible in my former life -
9 - I have been responsible as a Chief of the
10 Criminal Law Division for overall resourcing, for
11 training, it is a precept in our training that
12 our counsel for both sides of the bar will be
13 equally resourced. So, we have joint training,
14 but we also ensure an adequate and generally
15 equal amount of funding for both sides of the
16 bar.

17 If Dan Brookhart wants to conduct a
18 course and it costs \$50,000, our goal has been to
19 ensure he has got that money to do that. They
20 can develop new courses. They have got courses
21 planned and orchestrated over time, and they are
22 tried and tested.

1 He can best tell you whether he is
2 getting the resources that he needs, and I know
3 that he will do that, whether he is or not. My
4 view has been over the last eight years they have
5 been very well-resourced, and that is something I
6 watch very closely.

7 JUDGE JONES: Thank you, General.

8 Colonel Davies?

9 COL DAVIES: Thank you, ma'am. Yes,
10 ma'am.

11 Similar to the Army, all of our
12 counsel receive the same basic training at the
13 JSOC course that I described. The defense
14 counsel have a separate training course that is a
15 five-day course, the Defense Orientation Course,
16 that is only defense counsel. The other
17 litigation courses that I described for you,
18 defense counsel are included in equal numbers in
19 all of those courses other than the SVC course,
20 which is a separate course for SVC.

21 Colonel Dan Higgins is the Chief of
22 our Trial Defense Service Branch. He will be

1 here later today. He collaborates with our
2 faculty on the curriculum and the adjunct faculty
3 that we bring into that course. So, he is fully
4 involved in the actual execution of that Defense
5 Orientation Course.

6 JUDGE JONES: Thank you.

7 Go ahead, Captain.

8 CAPT LUCE: Yes, ma'am.

9 JUDGE JONES: Thank you.

10 CAPT LUCE: By agreement, the Coast
11 Guard works through the Navy. In addition to the
12 defense counsel that we provide to the Navy, our
13 Chief of Defense Services Division oversees the
14 Coast Guard Defense Counsel Program, and we have
15 provided additional training for him as well.
16 For example, he recently attended the Trial
17 Lawyers' College and he also did the Advanced
18 Courtroom Communications Course. So, in addition
19 to the training that we do through the Navy, we
20 also fund additional training for our defense
21 counsel.

22 JUDGE JONES: Thank you.

1 Colonel?

2 LTCOL TYER-WITEK: Ma'am, for the
3 Navy, the Marine Corps, and the Coast Guard who
4 participate, the Naval Justice School is neutral,
5 if you will, for the core training elements. We
6 really do a concerted effort to make sure that,
7 if we are offering a trial course, that we have a
8 corresponding defense course.

9 And so, on that chart that I have
10 provided, there is a key and you can see where
11 the green courses are the trial counsel courses;
12 the orange or light orange courses are the
13 defense counsel courses. And then, courses that
14 we offer at the Justice School that are in
15 general military justice are offered in equal
16 part to both trial and defense counsel.

17 Sometimes we just have breakout sessions where
18 the defense counsel can get specific to their
19 cases in a more private setup. But we don't take
20 sides as the leadership of the Justice School.

21 JUDGE JONES: In my experience, it was
22 easier to prosecute a case than it was to defend

1 it. So, I have always thought that, and I think
2 you see it, that defense counsel, at least in the
3 civilian world, tend to be more experienced and
4 go to defense organizations after they have had
5 quite a bit of experience.

6 I think it has already been mentioned.
7 You end up with someone who has never tried a
8 case being a defense counsel. Do you use -- I
9 don't think all the Services use highly-qualified
10 experts, but how do you supplement in that
11 situation, which I gather is bound to happen?

12 Colonel?

13 COL DAVIES: I would say, first of
14 all, we would not have a defense counsel who has
15 never tried a case. Our defense counsel are
16 selected on the highly-qualified model.

17 JUDGE JONES: Right.

18 COL DAVIES: They have to have been in
19 court in order to be certified by the Judge
20 Advocate General as a trial counsel. So, before
21 they shift to the defense counsel role, they will
22 have been certified as competent to serve in a

1 court martial. Colonel Higgins can talk more
2 about those qualifications, but they will not
3 appear as a defense counsel unless they have been
4 in court before.

5 JUDGE JONES: General, the Army?

6 BG PEDE: Army is similar, but there's
7 going to be exceptions. Everybody tries their
8 first case, from our perspective, at some point.

9 JUDGE JONES: You have more volume.

10 BG PEDE: We have more volume. We
11 also have built a structure for this very
12 purpose, to compensate. So, we have senior
13 defense counsel; we have senior attorneys,
14 multiple offices. We typically never try a case
15 -- and this was true when I was a captain -- we
16 typically never tried a case solo. So, the view
17 is, whether you are government or defense, but
18 especially defense, there will be co-counsel.
19 So, if it is your first time, you will have a co-
20 counsel, typically, a more senior counsel,
21 typically, somebody who has tried more cases.
22 And they provide that kind of experience and

1 oversight over that.

2 From a training perspective, the
3 resourcing over the last 10 years has magnified,
4 certainly since I was a captain. If you think
5 about the civilian experts that have been
6 described here, we have one on faculty here that
7 I failed to mention, a civilian, Ms. Patti
8 Sudendorf, who is on the criminal faculty now, a
9 civilian career prosecutor, Chief of the SVU unit
10 in Chicago for a number of years, but just vastly
11 experienced, on the faculty here.

12 The Defense Counsel Assistance Program
13 that Colonel Brookhart will talk about, all of us
14 have experienced the great benefit of having
15 civilian experts come onto our teams to help, and
16 they consult on cases regularly. I talk with
17 them every month. They describe their promotions
18 practice to trial practice, to case consulting on
19 defenses and arguments to make during motions.
20 They are very embedded in the process.

21 So, there's an awful lot of resources
22 devoted to the defense bar. It is never perfect,

1 but we think we have come a long way in the last
2 10 years.

3 JUDGE JONES: Thank you.

4 Thank you, Madam Chair.

5 CHAIR HOLTZMAN: Mr. Taylor?

6 MR. TAYLOR: First of all, thank you
7 very much for being here today. Thank you for
8 your leadership, service in the schools that you
9 are heading.

10 There is a current discussion going on
11 in legal circles about whether the Air Force and
12 the Army have fallen behind the Navy when it
13 comes to the experience level of litigators.
14 There are people who are arguing in the
15 literature now that we need to do a better job of
16 this as a Service in the Army and the Air Force.

17 I guess that one of the answers that
18 I have seen over time -- and I think I heard a
19 little bit of it today in the comments from the
20 two of you -- is that you try to make up this
21 experience with training; that that becomes
22 somewhat of a compensatory factor, if you will,

1 to make up for what is lacking in actual years or
2 numbers of cases tried.

3 But I just wondered if you would
4 comment, General Pele, and then, Colonel Davies,
5 on how well you think that works in terms of this
6 overall discussion? Can you really make up what
7 you lack in experience with the kinds of training
8 opportunities that you have discussed?

9 BG PEDE: Sir, thanks for that
10 question. It is a very healthy debate right now.
11 My short answer is, yes, I think you can
12 compensate, but there is no substitute for
13 experience.

14 I think anybody who has tried a case
15 would know there is simply no substitute. You
16 can train until the cows come home, and you will
17 simply not be as finely-tuned as somebody who is
18 actually trying cases. That doesn't mean that
19 somebody who has tried cases for 20 years is any
20 good, however. We all know that.

21 So, it, to me, is a question of
22 attitude, devotion, effort, skills, trained, and

1 then, tried. And so, it is very intangible in my
2 view.

3 So, yes, part of our system is
4 designed to compensate for the churn, the
5 transitions that we will customarily have to
6 accommodate six practice areas over the worldwide
7 operational spectrum. And I think that does a
8 tremendous job in compensating.

9 Our structure, our supervisory
10 structure compensates for that. It also doesn't
11 just compensate, it infuses expertise. I would
12 never concede the point, in fact, I would make
13 the point adamantly that our supervisory counsel
14 are experienced. They may not be the best
15 prosecutors and defense counsels a courtroom has
16 ever known, but they are competent and they are
17 oftentimes more than competent; they are
18 excellent.

19 I, frankly, would put our counsel,
20 defense or prosecutors, up against any -- it
21 doesn't matter how many years of experience you
22 offer me -- I would put them up against any. I

1 have seen it over and over again.

2 So, it is not that we don't have
3 issues. It is not that we don't have challenges.
4 But I am confident that our systems develop the
5 counsel properly.

6 And more to the point, we created in
7 the Army the Special Victims' Prosecutor Program
8 to deal with this very point. We have highly-
9 vetted, selected trial attorneys whose talents
10 are natural.

11 I was there at the beginning of that
12 program. Our criteria for that program were,
13 they have got to be better than OER good in
14 court, meaning they have to be more than paper
15 good, meaning really good in court through
16 empirical, anecdotal assessments and
17 recommendations.

18 And then, they have got to be really
19 good with people because you can try a good case,
20 but if nobody wants to work with you, you are
21 going to fail.

22 Those are continuing criteria for our

1 Special Victims' Prosecutors. The paradigm is
2 three years in those billets. The paradigm is
3 somebody who has tried cases before. So, we have
4 people who serve repetitive tours in trial
5 billets. Those are our experts. Those are the
6 people we call upon to try our murder cases as
7 well and other high-profile, complex cases.

8 So, all the Services have been focused
9 on this in a very deliberate way. And, yes,
10 there is a weakness in our transitions. There is
11 an embedded weakness in that, but we think, after
12 240 years, we are close to the sweet spot in how
13 we do it. That doesn't mean we can't get better.
14 We are every day trying to figure out how to do
15 it just a little bit better. But I think the
16 complement of all those programs gets us there,
17 sir.

18 MR. TAYLOR: Thank you, General.

19 COL DAVIES: Thank you, sir.

20 I would say that the Air Force has a
21 very comprehensive program for developing trial,
22 defense, and Special Victims' Counsel up to the

1 very senior level. And while it may not have the
2 name of the litigation track, in practicality, it
3 is that in many regards.

4 You are going to hear from Colonel
5 Kate Oler later today. She is the Chief
6 Prosecutor for the Air Force. If you look at her
7 record, between her time as a prosecutor, a
8 defense counsel, and as a military judge, she has
9 probably handled hundreds, well over 100 cases is
10 my guess. And you can ask her that question.

11 So, the point of the experience level
12 in the courtroom, the practice in the Air Force
13 is, if we have a junior counsel in the courtroom,
14 there will always be a more senior experienced
15 counsel in the courtroom with them.

16 And I believe if the Panel looks
17 carefully, they will see that the senior
18 prosecutors and defense counsel in the Air Force
19 actually have very extensive experience and are
20 very qualified for the jobs that they are doing.
21 I would hold them up, you know, to anyone in the
22 civilian sector in the duties that they are

1 doing, keeping in mind, of course, that the Air
2 Force has to develop leaders who are going to be
3 able to train and supervise future judge
4 advocates.

5 So, one of the aspects of our training
6 is not just litigation skills, but also
7 leadership skills. We need to be able to develop
8 judge advocates in accordance with the mission
9 and structure of our individual Services to be
10 able to respond to the mission needs, which
11 includes military justice and criminal
12 prosecutions.

13 MR. TAYLOR: So, as leaders of your
14 respective schools, what kind of feedback
15 mechanisms do you have in place to be sure that
16 those prosecutors, defense counsel, and SVCs that
17 you turn out are actually able to employ the
18 skills in the courtroom and in the military
19 justice process that indicates that your training
20 needs to be tweaked a little bit or is mostly
21 successful or in some cases lacks the
22 effectiveness that you would like to have? Is

1 there a tight feedback mechanism that is
2 anecdotal, not just assessments on paper?

3 General Pede?

4 BG PEDE: Yes, we do, sir. We have
5 got not only the more programmatic evaluations
6 that we conduct here at the school. Any training
7 that is done is evaluated. Quite frankly, they
8 are very honest about what we need to fix and
9 what we need to stop doing or those things we
10 need to sustain.

11 Our training arms do the same thing.
12 They evaluate all their courses, have students
13 evaluated. We have processes where counsel --
14 well, for example, our graduate course writes
15 routinely about things that need to be improved
16 in our Corps and our practice of law. So, there
17 is a number of not only anecdotal mechanisms
18 where younger counsel will communicate their
19 satisfaction or dissatisfaction with programs,
20 but as well with programs.

21 If I may, sir, just go back to your
22 prior point and just add to Kirk's comments, I

1 think the Navy has got a great program. In fact,
2 as we created our own skill-identifier program,
3 we modeled it in part off the Navy at the time
4 back in 2008. But, over time if you look
5 empirically, you know, you look empirically at
6 information, I have never seen any empirical
7 evidence that suggests that one program is
8 particularly better than another or that any
9 particular jurisdiction, whether it is Toledo,
10 San Diego, Cincinnati, is better than what we are
11 doing, or that it is so much better that it
12 necessitates a profound shift in how we practice
13 law for the Army, for example. I have just never
14 seen anything.

15 Quite frankly, the empirical
16 information I have, if you just look at numbers
17 -- and it is never the only thing you would look
18 at -- the numbers for all the Services are
19 powerful in terms of what we have done to get
20 after not just sexual assault, but general crime,
21 if you look at it. It is not perfect, but our
22 numbers are very strong and comparatively to

1 other jurisdictions. So, we use that, too, in
2 how we evaluate, sir.

3 COL DAVIES: Yes, sir, if I could just
4 make a couple of comments?

5 First of all, all of our litigation
6 courses include adjunct faculty from the groups
7 or the Bench of senior litigators, trial,
8 defense, and SVC. So, there is an immediate loop
9 with them in terms of what we are including in
10 the course, how we execute the course, and what
11 we are seeing amongst the students, and
12 identifying really who the excellent litigators
13 are.

14 Second, I would say the role of the
15 military judges is significant in the Air Force.
16 We receive tremendous feedback from the
17 professional development side of what the
18 military judges are actually seeing in the
19 courtroom.

20 Then, last of all, I would say our
21 senior leadership for the JAG Corps is very
22 engaged in overseeing the development of

1 litigation expertise. Within the last year or
2 so, we have reorganized to some degree how we
3 deploy our defense and trial counsel services
4 into circuits, which provides additional
5 oversight and training and feedback, to the point
6 that you are getting at.

7 MR. TAYLOR: Thank you.

8 Captain?

9 CAPT LUCE: Yes, sir.

10 For the Coast Guard, for our trial
11 counsel, we have feedback back to the schools.
12 We also have our Legal Service Command, which is
13 our largest concentration of Coast Guard
14 attorneys in the field, they have their own
15 internal in-house program. For each court
16 martial, they will have a mentor that is there to
17 observe. They do a hotwash and, then, the
18 results of that and their lessons-learned
19 feedback into their internal training program.

20 For our Special Victims' Counsel, our
21 Program Manager has attended the courses with our
22 SVC. We also have an apprenticeship program for

1 our SVCs. So, when they first begin their tours
2 in SVC, they are working with another more
3 experienced SVC, and they are looked to provide
4 the feedback back through those arrangements.

5 MR. TAYLOR: Thank you.

6 Colonel?

7 LTCOL TYER-WITEK: Sir, at the Justice
8 School itself, probably the No. 1 way we get
9 feedback is through the Navy/Marine Corps Trial
10 Judiciary. They put out kind of an Excel
11 spreadsheet of comments of the errors that they
12 are seeing trial and defense counsel make. We,
13 in turn, take that spreadsheet and, then, compare
14 it with what we are teaching and the methodology
15 we are using. And that is how we get feedback,
16 particularly with regard to our trial curriculum.

17 And I will defer to our Trial Counsel
18 Assistance Program and Defense Counsel Assistance
19 Program, who you will hear from later today from
20 both the Navy and the Marine Corps, to see how
21 they do exactly what the other Services were
22 talking about with direct supervisor feedback

1 during training sessions. And I think that is
2 how we get after it, sir.

3 MR. TAYLOR: Thank you, Madam Chair.

4 CHAIR HOLTZMAN: Well, thank you very
5 much.

6 Admiral Tracey?

7 VADM TRACEY: Thank you, and thank you
8 all for being here.

9 I would like to pursue sort of three
10 lines of questioning, and if I could ask one of
11 you to answer, and everyone else can tell if you
12 have dramatic differences or material defenses
13 from that answer.

14 Like Judge Jones, I wasn't sure I
15 followed quite everything about everyone's
16 training and education processes. But, for a
17 profound change, like the Article 120 changes
18 that happen and would drive a need to get
19 everyone up-to-speed relatively quickly, what
20 opportunity do you have to depart from the
21 deliberate training methodology that you use to
22 make that happen relatively evenly across your

1 Service?

2 So, let's start with you, General.

3 BG PEDE: Ma'am, thank you.

4 Instantaneously, so when it is passed,
5 we certainly can execute immediately. So, we
6 don't teach bad law or old law. And we make it a
7 point to track things. In fact, with the
8 notional Military Justice Act of 2016 that is now
9 percolating, we are having a curriculum review
10 just in the way of anticipating. Even with the
11 two-year -- it is argued to be a two-year
12 implementation period -- we are looking at
13 legislation now that is not even passed to see
14 will that affect our curriculum.

15 And so, it is forward-looking, but it
16 is also instantaneous. So, when 120 changes, we
17 anticipate the change, we begin to teach it, and
18 we move on.

19 VADM TRACEY: So, that hits the people
20 who are coming through in the normal life cycle
21 process. How do you hit trial and defense
22 counsels who are in those roles at the time that

1 change would come?

2 BG PEDE: For the Army, ma'am, we have
3 centralized push of information. We have
4 instruction that is offered here, and oftentimes,
5 it is provided on our JAGU. So, it is video
6 training, for example. And then, we have our two
7 training arms, TCAP and DCAP, that move quickly
8 around the world, as they will tell you today, to
9 train.

10 In the case of the MJ, if the Military
11 Justice Act of 2016 comes to pass, I would
12 anticipate, as we did in 1983 or 1969, sending
13 around mobile training teams just on those
14 changes to ensure that it is done in a timely,
15 quick way.

16 VADM TRACEY: Anyone else who has
17 something dramatically different?

18 COL DAVIES: I will add one thing and
19 echo that. And then, our major command's mission
20 is to organize training and equip. So, they also
21 retain a training function for all the personnel
22 within their commands. Whether it is on the

1 trial counsel side, the defense side, that would
2 come through the Air Force Legal Operations
3 Agency down through the supervisors of
4 prosecution and defense counsel as well.

5 VADM TRACEY: Okay. Anyone else?

6 LTC TYER-WITEK: We had a recent
7 example of this when the Article 32 changed to a
8 preliminary hearing. The Judge Advocate General
9 of the Navy, who certifies all of us as judge
10 advocates who practice, made it mandatory that
11 everyone, every practicing judge advocate watched
12 this online training. So, we developed, we
13 produced an online training over a weekend really
14 because the change happened right over Christmas,
15 actually, two years ago. And it was very
16 effective and mandatory.

17 So, you could not conduct a hearing
18 unless you were certified as having been trained
19 in the new process. And it seemed to be very
20 effective at the time, and all of us took it.
21 And then, it is out there for a refresher as
22 well, then, afterwards.

1 VADM TRACEY: Okay. Thank you.

2 What role do you have in the training
3 of convening authorities, commanders, and in the
4 leadership training courses of both enlisted and
5 officers. I'm pretty familiar with Navy, but I
6 don't know others.

7 BG PEDE: Ma'am, for the Army, we
8 conduct a number of courses here at the school
9 for line officers. The first is, we call it the
10 Senior Officer Legal Orientation Course. It is a
11 one-week course. They are here all week. These
12 are battalion and brigade commanders who are
13 about to assume command or have just recently
14 assumed.

15 They spend five days on all practice
16 areas with special emphasis on, of course,
17 military justice and all of those issues related
18 to that, ethics and everything. It is a very
19 comprehensive course.

20 And then, of course, for our general
21 officers assuming general court martial convening
22 authority, they are required to come here, much

1 like the other commanders. They come for a one-
2 day course. In fact, just this very day, we have
3 a general officer taking command at Fort Sill,
4 and he is here all day and he receives one-on-
5 one, he or she receives one-on-one instruction
6 from the faculty all day in a baseline set of
7 topics and, then, selected topics based on where
8 he or she might be going.

9 VADM TRACEY: Thank you.

10 COL DAVIES: Ma'am, the JAG School
11 teaches a couple of courses for our new wing and
12 group commanders. That is the colonel and
13 defense special court martial convening authority
14 level. We have the Senior Officer Legal
15 Orientation, which is a two-day course, and we
16 teach the command chiefs during what is called
17 Senior Enlisted Legal Orientation. It is a two-
18 day course.

19 Maxwell Air Force Base is the home of
20 Air University. Our school is a tenant on that
21 base. We teach different seminars and electives
22 at Air War College, Air Command and Staff

1 College, and the Chiefs' Academy.

2 In process right now, the Judge
3 Advocate General has directed the development of
4 a course for general court martial convening
5 authorities. That will be taught in the MAJCOM
6 arena versus at the JAG School. That is in the
7 process of development right now.

8 CAPT LUCE: Admiral, our Leadership
9 Development Center is in New London, Connecticut,
10 along with our Coast Guard Academy. Our Coast
11 Guard Academy Staff Judge Advocate's Office, as
12 well as our Academy law faculty supplement the
13 Leadership Development Center in providing
14 training to all of our prospective commanding
15 officers and executive officers. In addition,
16 all of our training centers have a Staff Judge
17 Advocate assigned to the training center that
18 provides training on military justice.

19 LTCOL TYER-WITEK: As discussed
20 before, ma'am, we offer senior officer course
21 training for prospective commanding officers in
22 both the Navy and the Marine Corps. We have had

1 other Services attend that. It is a three-day
2 course offered in Newport, Norfolk, San Diego,
3 and then, we take a mobile training team on the
4 road and go to Okinawa. We have just recently
5 done one in Imakuni, and overseas in Rhoda we had
6 our first. So, we are going to the commands
7 where they need the training.

8 VADM TRACEY: Are you invited into the
9 Leadership Training Continuum as well?

10 LTC TYER-WITEK: Yes, ma'am. Yes,
11 ma'am. Speaking of the Leadership Development
12 Training Continuum, in the Navy we do, we are.
13 We have a standing member of that. The JAG is
14 the representative, or the DJAG, Admiral Hannink.

15 We also provide instruction at the
16 Navy Leadership and Ethics Center. So, that is a
17 new -- it used to be Command and Leadership
18 School -- so, it is a new school offered only for
19 the Navy currently, but for all Navy commanders.
20 We provide an instructor. Either the CO or
21 myself go over there and do about an hour-and-a-
22 half to really sometimes three hours with the

1 prospective 06 major commanders, where we just
2 have a closed-door session with the JAG and talk
3 all of those one-on-one topics.

4 VADM TRACEY: Thank you.

5 CHAIR HOLTZMAN: Mr. Stone?

6 MR. STONE: Thank you.

7 I noticed you talk about prosecutors
8 and defense counsel, but some comments that we
9 have heard in other sessions are that the
10 military judges are not familiar with the changes
11 in the last three National Defense Authorization
12 Acts or what is coming down the pike, and they
13 find themselves at a loss. Are any of your
14 Service academies regularly training the judges,
15 too, or are they on a different track?

16 BG PEDE: Sir, I begin by highlighting
17 the three-week training course that we offer here
18 that certifies all military judges for all the
19 Services, sir. And so, annually, we conduct
20 that. It is the longest short course, that is
21 kind of an oxymoron, but it is the longest course
22 we offer, three weeks, for judges. It is

1 certifying.

2 So, they get the most up-to-date
3 information, and it is very much hands-on, very
4 practically-oriented, and there are certified
5 drills of all kinds and, then, of course,
6 academic instruction as well.

7 There typically wouldn't be a judge
8 that hasn't been offered the knowledge and
9 information. We will often see judges on the
10 Bench who interpret the law differently, but the
11 judges are also very good in terms of their
12 networks, at least -- and I am sure this is
13 across the board -- of course, no one is perfect,
14 but I know the judges, having been on our
15 Appellate Court, they have got an extraordinary
16 network passing information and knowledge, and
17 they have their own training plan. So, we offer
18 some at the school, but they do their own
19 training as well to maintain currency in the law.

20 COL DAVIES: Sir, at the Air Force
21 Academy School we host every other year the Joint
22 Military Judges Course. It is open across the

1 Services to come for a week of refresher training
2 for judges. The Judges' Leadership does the
3 curriculum for that course. We don't; as the JAG
4 School, we are the host, but I know that they
5 have that course every other year. It consists
6 of state, you know, platform instruction and
7 seminars as well.

8 CAPT LUCE: Yes, sir. Coast Guard
9 military judges attend the Army Judge Advocate
10 School for the Military Judge Course. And then,
11 we also make available annual training
12 opportunities for our refresher training.

13 LTCOL TYER-WITEK: And we alternate
14 the Justice School or the Department of the Navy
15 alternates with the Air Force. In the off-years
16 that they do not provide that annual training, we
17 provide that annual training. So, there is an
18 annual training every year, in addition to the
19 basic course, which all of the military judges in
20 the Sea Services attend.

21 MR. STONE: In the annual trainings,
22 just roughly, what percentage of the judges can

1 take a break, because they don't have a trial and
2 they are not busy, to fly in those kinds of
3 annual trainings? Is it 10 percent of the
4 sitting judges? Is it 50 percent? Guess. Can
5 you give an idea?

6 COL DAVIES: Based on the numbers I
7 see at the school -- you know, it would be hard
8 to guess because I don't know how many judges
9 there are in the other Services -- but I would
10 say it is over 70 percent, would be my guess.

11 BG PEDE: For the Army, I would put it
12 even higher. These aren't ad-hoc training
13 events, sir. So, they are well-planned, and the
14 Chief Trial Judge mandates their attendance,
15 absent some family emergency or something
16 exceptional. So, from the standpoint I think of
17 probably most of the Services, it would be rare
18 to be missing such an event since they are one,
19 two, three times a year.

20 LTCOL TYER-WITEK: I concur with that,
21 sir, and as said, they are well-attended; plus,
22 they shut down the docket for that week, which

1 allows, then, for the government and the defense
2 counsel to do their training that week as well.
3 And it has been very convenient.

4 CAPT LUCE: Yes, sir, and the same for
5 the Coast Guard.

6 MR. STONE: The other question I have,
7 I don't know if this is too much detail, but you
8 will tell me if there is a different speaker
9 later who will tell me. One of the things that I
10 think I haven't heard much about in terms of
11 training -- and you did mention that you train
12 convening authorities -- in paramilitary U.S.
13 organizations, and they are not strictly
14 paramilitary, but organizations like the FBI and
15 the Bureau of Prisons, if one of their employees
16 is charged with a sexual assault on somebody and
17 the employee is acquitted but took the Fifth
18 Amendment and refused to discuss it on the stand,
19 that employee is probably going to be fired from
20 their job, despite the fact that they were
21 acquitted, because it still reflects on their
22 fitness for duty and the morale of the

1 organization and the way they are able to keep
2 functioning.

3 The military certainly has that same
4 concern, and I guess one of the questions I'm
5 asking you is, the convening authority, is there
6 a course that you give them on even after an
7 acquittal what their options and course of
8 behavior is, despite the fact that a person might
9 be acquitted, because they are trying to do their
10 mission, which is to have a cohesive unit?

11 I guess I would like to hear if any of
12 you, any of the Services, teach that kind of
13 course.

14 BG PEDE: We don't teach a course
15 specifically in the Army on that subject, sir,
16 but I can offer a couple of observations, just
17 based on experience, as I am sure can the other
18 panel members.

19 It would rest likely not with the
20 convening authority, the issues of what needs to
21 be done to make sure somebody, after say an
22 acquittal or even somebody who survives a

1 separation board and is retained. There is
2 always that notion that they are going to have
3 trouble with the unit.

4 So, really, the onus is on the unit
5 leaders at the lowest level to create an
6 environment where the soldier can come back and
7 work successfully. It is more often than not
8 that we would transfer such a soldier, I think,
9 just to get him into a new environment.

10 But the conversations are usually at
11 the lowest level with the judge advocate
12 servicing that unit, that brigade, for example,
13 in the Army, the Staff Judge Advocate.

14 Acquittals are always an emotional event, so are
15 convictions, but acquittals are a little bit more
16 challenging because of all that goes with it.

17 And so, the greatest leadership
18 challenge is at the unit level. I know of no
19 course that would teach that specifically, but I
20 know, having done it, that the first phone call
21 you make, is to the company commander in the Army
22 and say, "He's coming back, and this is what

1 you're going to have to do. You've got to create
2 an environment, so we don't have continuing
3 issues." The best thing is to send him to
4 another company in the battalion or elsewhere on
5 the installation or, in fact, away from that
6 installation.

7 So, it is a challenge, but it is
8 something that I have historically had to address
9 with commanders over time.

10 MR. STONE: Any of the other Services
11 teach anything like that?

12 COL DAVIES: Yes, sir. In the Senior
13 Officer Leader Orientation, there is one lecture
14 on post-trial that gets to sort of other issues.
15 One of the things that is discussed is, if the
16 accused is acquitted, some of the issues the
17 commander may be facing.

18 And it is addressed -- you know, an
19 acquittal doesn't always mean that people are
20 unhappy about the result. The experience shows
21 that some in the units are sort of supporting the
22 person who is being court-martialed and others

1 may think the person should have been found
2 guilty. So, it is a complicated matter for the
3 unit. It isn't a separate course, but it is
4 included briefly in that lecture.

5 MR. STONE: As you point out, that is
6 also a complicated matter for the victim.

7 COL DAVIES: It is, and I was going to
8 get to that point. But, yes, and especially if
9 the accused and the victim are in the same unit.
10 All of us probably have had experience in that
11 regard.

12 Because of the Air Force's
13 organization, it is a little different how you
14 manage that because we don't tend to be at such
15 large installations where it is easy to move
16 someone. But one of the options would be to PCS
17 one or both of the parties if that was better for
18 them and for the unit itself.

19 MR. STONE: Is that a regular
20 practice? I thought it was really tough for
21 people to get PCS.

22 COL DAVIES: Well, first of all, you

1 have the expedited transfer rules for victims.
2 The units can also, at the request of the victim,
3 request an expedited transfer of the accused. I
4 am aware of one case where that has happened. It
5 is not routine. I think if you look
6 statistically, expedited transfer is not used
7 that often, even for victims themselves.

8 MR. STONE: In the case you are
9 talking, was the accused acquitted and they were
10 able to request it and get him transferred or her
11 transferred?

12 COL DAVIES: The expedited transfer
13 happened before trial.

14 MR. STONE: I see.

15 COL DAVIES: He was ultimately
16 acquitted, but the expedited transfer was before
17 trial.

18 MR. STONE: And it stayed in place?
19 He didn't, then, transfer back?

20 COL DAVIES: Correct. Well, to my
21 knowledge. I have since moved, and so, I really
22 can't comment on that.

1 MR. STONE: Do the other Services have
2 experience either with the training in that or
3 real experiences?

4 CAPT LUCE: Yes, sir. The Coast
5 Guard, based on a relatively small number of
6 cases, it is usually one or two instances in a
7 year. Those are typically worked specifically
8 with the Staff Judge Advocate, the convening
9 authority, along with our Staff Judge Advocate
10 for the Personnel Service Center. And then, they
11 are able to connect with either the
12 administrative separation process or with the
13 assignment officers regarding assignment
14 questions.

15 LTCOL TYER-WITEK: And we have the
16 Staff Judge Advocate training, and so, we offer
17 an Advanced Staff Judge Advocate Course that
18 really targets judge advocates who are serving at
19 their first flag or general officer or command.
20 And those are usually where they are getting
21 these questions from their subordinate convening
22 authorities if, you know, how do you handle this?

1 Part of their training really is
2 programmatic. How do you programmatically manage
3 a SAPR program throughout a general officer
4 command?

5 And then, secondarily, we offer -- the
6 Senior Officer Course is a scenario-based course.
7 So, three days of scenarios. One of the
8 scenarios is a sexual assault scenario, and it
9 usually takes about four or five hours to work
10 through. We really rely on the experience of the
11 people who are in the course, the students
12 themselves that talk about their experiences with
13 these cases.

14 One of the most probably robust
15 conversations we have in those courses -- and I'm
16 an instructor in those; in fact, doing that in
17 the next couple of weeks -- is what do you do
18 post-acquittal, because we teach them you've got
19 the statutory right to protect the victim's
20 rights and you also have the obligation to
21 protect the constitutional rights of the accused.
22 "So, how are you going to manage that, CO?"

1 And they really talk through that and
2 how they are going to put processes in place.
3 They have a ton of resources available to them.
4 They have the SARC and the members of the chain
5 of command. And so, they start that dialog
6 there, whether they bring it on and put it into
7 effect their commands. We hope that they do, but
8 we at least start it there.

9 MR. STONE: I think I am a little
10 confused about what constitutional right any
11 Service person has to a particular billet that
12 they are in.

13 LTCOL TYER-WITEK: Well, I was
14 referring to the convening authority, you know,
15 if the accused is in their command, they have the
16 responsibility of protecting the constitutional
17 rights of that accused Service member, including
18 making sure that they have time to see a defense
19 counsel and all those things.

20 But you can see where the convening
21 authority has kind of dual responsibilities to
22 those two members, and it is very difficult. It

1 is a kind of cognitive dissonance to manage both
2 of those things for those Service members.

3 MR. STONE: I was focusing on the
4 post-trial period, which is, as I say, the FBI --

5 LTCOL TYER-WITEK: Yes, sir.

6 MR. STONE: -- and prisons handle very
7 differently. It is much easier for them to
8 separate somebody. So, that is why I was curious
9 to know whether that kind of thing happens.

10 LTCOL TYER-WITEK: Yes, sir.

11 And then, we have, all the Services
12 have an administrative separation process that,
13 then, governs. There are certain criteria for
14 separating someone in a situation, but separate
15 from the court-martial process. So, that is what
16 we would teach the SJAs, is you may have a
17 Service member who is acquitted, but has done
18 other misconduct. And if the convening authority
19 really feels like that person needs to be
20 separated, they would use that administrative
21 process, and the SJA would help them through
22 that.

1 MR. STONE: If you know, and maybe you
2 don't --

3 CHAIR HOLTZMAN: Okay, but --

4 MR. STONE: I will make this the last
5 question, if that is all right?

6 CHAIR HOLTZMAN: Maybe you could ask
7 it afterwards because we are --

8 MR. STONE: Okay.

9 CHAIR HOLTZMAN: -- about an hour
10 late, and we have got a whole long day.

11 Just a quick question that I have
12 about appellate training, one of the things that
13 we learned recently was that, with regard to the
14 Special Victims' Counsel, there has been a lot of
15 training for the trials, which has been very
16 important. But now the trials are getting to the
17 appellate level. And the question of the role of
18 the SVC and a victim at the appellate level is
19 now being raised because that is where we are in
20 this process. I just wonder whether this has
21 been addressed in any of the training programs
22 that you have.

1 BG PEDE: From the Army's perspective,
2 ma'am, it is still a work-in-progress and I think
3 will be for some years, honestly. We have two
4 Appellate Divisions, Government and Defense. We
5 do not yet have, and I don't know that we will
6 have, a separate Appellate Division for Special
7 Victims' Counsel or the third party in the
8 courtroom.

9 In terms of training, the appellate
10 work now being done for SVCs is being done out of
11 the Program Office. So, I would say it is
12 sketchy at this point, appellate-level training.
13 However, I can tell you that both government and
14 appellate defense training is robust from purely
15 an appellate standpoint.

16 The work thus far for SVCs, however,
17 at the appellate level has been mostly in the
18 writ category. And so, because it is still
19 formative my suspicion is training requirements
20 will simply develop over time, because you would
21 argue writs don't necessarily require the same
22 level as a petition for a full record of trial

1 and conviction. So, it is still formative,
2 ma'am.

3 CHAIR HOLTZMAN: So, we should stay
4 tuned?

5 BG PEDE: Stay tuned.

6 CHAIR HOLTZMAN: Colonel?

7 COL DAVIES: Yes, ma'am.

8 Colonel deCamara can talk later about
9 the organization of how we are handling appellate
10 SVC issues. In terms of our JAG School, with Mr.
11 Stout, we have been discussing this, but, to
12 date, have made no new courses or specific
13 changes to our curriculum, but it is under
14 consideration.

15 CHAIR HOLTZMAN: Thank you.

16 CAPT LUCE: Yes, ma'am.

17 I checked with our SVC Program Manager
18 before coming down here. We did send SVCs to
19 appellate advocacy training.

20 LTC TYER-WITEK: And we annually
21 review our curriculums for the Board of Advisors'
22 meeting, and we are meeting in June. There is a

1 proposal to institute a new course for appellate
2 advocacy. So, stay tuned as well for that.

3 CHAIR HOLTZMAN: That will include the
4 SVC?

5 LTCOL TYER-WITEK: Yes, ma'am.

6 CHAIR HOLTZMAN: Thank you very much.
7 Thank you, all of you, for your
8 excellent presentations. We really value that
9 you took the time to come and be with us today.

10 So, I think we will take a five-minute
11 break.

12 (Whereupon, the above-entitled matter
13 went off the record at 10:42 a.m. and resumed at
14 10:50 a.m.)

15 CHAIR HOLTZMAN: I think we are ready
16 to begin.

17 I want to welcome the members of this
18 panel which focuses on the overview of training
19 and experience of attorneys prosecuting sexual
20 assault cases.

21 We will begin with Colonel Katherine
22 Oler, U.S. Air Force, Chief, Government Trial and

1 Appellate Counsel Division.

2 Colonel Oler, thank you very much for
3 coming.

4 COL OLER: Thank you, Madam Chair.
5 Thank you.

6 Madam Chair, Distinguished Members of
7 the Panel, good morning.

8 I am Colonel Kate Oler. I am the Air
9 Force's Chief Prosecutor and Chief Government
10 Appellate Counsel.

11 Thank you for the opportunity to speak
12 with you today regarding training and experience
13 that prosecutors have when addressing sexual
14 assault cases.

15 General Berney has continuously
16 emphasized the importance of the JAG Corps'
17 criminal litigation position and has placed
18 experienced, well-trained JAGs into these
19 critical jobs. In fact, he has recently
20 increased the size of the senior trial counsel
21 corps by six prosecutors, starting in the summer
22 of 2016.

1 In terms of the experience of the
2 trial counsel who are prosecuting such sexual
3 assault cases, there are two categories of
4 counsel that I would like to briefly address.
5 There is the first chair counsel and, then, the
6 second chair counsel, because those counsel have
7 different levels of experience.

8 The first chair prosecutors on sexual
9 assault cases have extensive experience in
10 handling sexual assault prosecution. In fact, in
11 almost every Article 120 case in the Air Force
12 the first chair prosecutor will be a senior trial
13 counsel.

14 The career path of a senior trial
15 counsel begins much like that of any other judge
16 advocate, and it begins at JSOC, which is our 10-
17 week basic course where our new JAGs get
18 immersion in civil law matters, but, in
19 particular, they get immersion in military
20 justice as well.

21 A senior trial counselor, a future
22 senior trial counsel will, then, go on to serve

1 as a base-level prosecutor and a base-level
2 assistant staff judge advocate. Typically, what
3 I see in the senior trial counsel that come to
4 work for me is that they have one or two
5 assignments as a base-level prosecutor in their
6 chain of assignment strings before becoming a
7 senior trial counsel.

8 During their time at the base office,
9 they become trial-certified, which means that the
10 Judge Advocate General has found that they are
11 competent in fundamental litigation skills and
12 are qualified to serve as independent trial
13 counsel on a general court-martial.

14 So, during this one, maybe two,
15 assignments at the Base Legal Office, the trial
16 counsel become involved in military justice.
17 They review evidence. They interview witnesses.
18 They draft charges. And importantly, they
19 prosecute cases.

20 The next step in a senior trial
21 counsel's career path is almost always work as an
22 area defense counsel. In the Air Force, area

1 defense counsel are selected on a worldwide best-
2 qualified basis. What that means is that the
3 very best litigators out of the Base Legal Office
4 are selected to serve as area defense counsel.

5 Ultimately, there is not a requirement
6 to have served as an area defense counsel before
7 coming to work as a senior trial counsel, but I
8 can tell you the snapshot in time right now in
9 terms of our practice, all of my senior trial
10 counsel except one has been an area defense
11 counsel. So, while it is not a requirement, it
12 is very close to one.

13 And, of course, that is fundamentally
14 important, that defense work, not just because
15 they gain additional experience as litigators,
16 but because they gain that perspective that comes
17 with serving in a defense role, and that
18 inherently makes them better prosecutors.

19 So, once they become a senior trial
20 counsel, which is typically, although not always,
21 directly after the area defense counsel tour,
22 they come into the Senior Trial Counsel Billet

1 with between four and seven years of experience
2 in litigation.

3 They are hand-picked by me, by my
4 Chief Senior Trial Counsel, and by the Circuit
5 Chiefs, to come into these roles, of course, with
6 coordination through our Assignment Office.
7 There is a lot of dialog that takes place. And
8 ultimately, the Judge Advocate General decides
9 whether to assign members as senior trial
10 counsel.

11 So, it is an exceptionally-talented
12 group of prosecutors. Within that talented
13 group, there is a subset, and that subset is the
14 Special Victims' Unit. Those are a subset of the
15 Senior Trial Counsel Corps that are especially
16 qualified, trained, and talented in prosecuting
17 cases that involve special victims, so cases that
18 involve adult sexual assault, child sexual and
19 physical abuse, domestic violence, and homicide
20 cases.

21 In this SVU, currently, we have 11 SVU
22 prosecutors in the Senior Trial Counsel Corps.

1 They are detailed almost exclusively to prosecute
2 cases that involve special victims.

3 There was a map that was just up until
4 about two seconds ago that I would to refer to.
5 Thank you. And it relates to the construct that
6 we have moved to in the Air Force, and it is a
7 circuit construct.

8 You can see the world is divided into
9 five judicial circuits, three in the continental
10 United States, one in Europe, and one in Asia.
11 Each of those circuits, in terms of the
12 prosecution function, is headed up by a Chief
13 Senior Trial Counsel. That Chief is a major, as
14 opposed to a captain, and they have extensive
15 litigation experience.

16 They have all served as area defense
17 counsel. They have all served as senior trial
18 counsel. They are all designated as members of
19 the Special Victims' Unit, and their job is to
20 supervise and mentor the prosecutors who work for
21 them. But, in addition, they try cases, and they
22 try the cases, you can imagine, that involve --

1 it is almost exclusively special victims' cases
2 and complex special victims' cases that they
3 prosecute.

4 So, these prosecutors that I have
5 talked about, the senior trial counsel, the SVU,
6 and the Chiefs, they all receive extensive
7 training throughout the course of their career in
8 order to become proficient in the work, and the
9 important work, that they do.

10 Colonel Davies provided a handout that
11 summarizes the training that the litigation
12 positions in the JAG Corps receive throughout the
13 course of a career, whether it is defense
14 training, trial training, military judge
15 training, Special Victims' Counsel training. I
16 would refer you all to that as an excellent
17 summary of the training that Air Force litigators
18 receive during the course of their career.

19 So, I have talked about first chair
20 prosecutors. What about second chair
21 prosecutors? Because always in every case we
22 have at least two prosecutors on a trial,

1 sometimes three in a higher-level, more complex
2 case, but that is the exception. It is almost
3 always two.

4 So, the second chair prosecutors are
5 JAGs from the Base Legal Office. While a judge
6 advocate who has achieved certification is
7 legally permitted to sit as trial counsel in a
8 general court martial, it is Air Force practice
9 to assign a senior trial counsel to these cases.
10 For example, in calendar year 2015, for the
11 sexual assault cases that we prosecuted in the
12 Air Force, nearly 90 percent of the time a senior
13 trial counsel was assigned to sit first chair
14 and, then, someone from the Base Legal Office
15 would sit second chair.

16 The small percentage of cases where a
17 senior trial counsel isn't assigned as the first
18 chair would involve a situation where, for
19 instance, a member of the Base Legal Office like
20 the Deputy Staff Judge Advocate had substantial
21 background and experience in criminal litigation
22 and was able to sit first chair on that

1 prosecution. There is never a situation where we
2 send an inexperienced counsel in first chair on
3 these types of cases. So, bottom line, we have
4 experienced, trained prosecutors leading sexual
5 assault prosecutions.

6 And these prosecutors are continuously
7 evaluated, both by me, by the Chief Senior Trial
8 Counsel, who is also in Washington, D.C., and by
9 those circuit chiefs that you can see on the map
10 that supervise the people, the prosecutors, that
11 work for them.

12 This evaluation is done in a couple of
13 different ways. The first way that I would like
14 to highlight is through case reports. Every time
15 the senior trial counsel travels to prosecute a
16 case, after that case is over, they complete a
17 case report which lays out the facts, the
18 underlying facts, about the case. It lays out
19 witnesses that testified, unique issues that came
20 up, motions that were raised, how they were
21 resolved, and expert witnesses that may or may
22 not have testified. It is a very comprehensive

1 overview of what happens during trial. We use
2 these case reports to train and to have
3 conversations with the prosecutors about how the
4 trial went.

5 Additionally, in the circuit
6 construct, we have Chiefs. Like I said before,
7 those Chiefs are responsible for, of course,
8 prosecuting complex cases, but they are also
9 officers, leaders, and supervisors. Inherent in
10 that responsibility is making sure that the
11 people who work for them are doing everything
12 they can to zealously represent the United States
13 during the court-martial process.

14 And so, routinely, they will observe
15 their subordinate senior trial counsel in court
16 in order to evaluate performance. And sometimes
17 on the right case, they will sit first chair with
18 their subordinate as second chair, so that they
19 can actually try a court martial with their
20 subordinate.

21 Additionally, we routinely solicit and
22 receive reports from military judges, staff judge

1 advocates, and other practitioners in the field
2 regarding the performance of our senior trial
3 counsel.

4 The Air Force JAG Corps has continued
5 to focus on training, both received and provided
6 by senior trial counsel. And so, I am going to
7 talk briefly about two different types of
8 training, the training that the prosecutors
9 receive, but also the training that they provide,
10 and both are very, very important.

11 So, in calendar year 2015, the Senior
12 Trial Counsel Corps received more than 900 hours
13 of sexual assault and litigation training during
14 the course of that year. The training came from
15 a variety of different sources: from the Air
16 Force JAG School, from sister Service JAG schools
17 and courses, but also from outside organizations
18 like the National District Attorneys Association,
19 the National Center for Missing and Exploited
20 Children. So, they have received an extensive
21 amount of training, and it is, and continues to
22 be, a focus area for us.

1 They have also, I think equally
2 important, they have provided an extensive amount
3 of training. And they have provided that
4 training to military justice practitioners in the
5 field, base-level prosecutors. In calendar year
6 2015, they provided more than 2100 man-hours of
7 training to the field, both to base-level
8 Assistant Staff Judge Advocates, paralegals, and
9 other members of the organizations in the Air
10 Force.

11 There are a couple of changes, and I
12 will hit them very quickly, that the Air Force
13 has implemented that I think will encourage and
14 enhance the training that is received and
15 provided.

16 One that I mentioned at the beginning
17 of my remarks is that General Berney has
18 authorized six additional prosecution billets to
19 the Senior Trial Counsel Corps, starting in the
20 summer of 2016. Now, as you can imagine, those
21 six additional billets will make a big difference
22 for the way that we do business in terms of a lot

1 of things: in terms of the way that we prepare
2 cases for trial, the amount of time our
3 prosecutors can spend on the front-end getting a
4 complicated case ready to go to trial, but,
5 additionally, it matters in terms of training, in
6 terms of the time that they have to train and to
7 be trained.

8 And the other change that we have seen
9 in the Air Force that will facilitate increased
10 training is our move to a circuit construct. So,
11 this allows prosecutors to work more closely with
12 specific legal offices that are within their
13 geographic region, and relationships between the
14 local offices develop with the prosecution team.
15 And so, that increases the training and the
16 opportunity for dialog that takes place between
17 those offices and those prosecutors.

18 It further allows the Chief Senior
19 Trial Counsel and the senior trial counsel that
20 worked for that Chief to continue their work in
21 partnering with Base Legal Offices even before a
22 trial, even before charges in a trial are

1 preferred, at the investigative stage, to get
2 involved early, to assist with drafting charges,
3 evidence marshaling, witness interviews, and
4 reviewing evidence.

5 The training and experience of
6 prosecutors are priorities in the Air Force JAG
7 Corps, and there are focus areas. We have an
8 exceptional team of senior trial counsel who are
9 doing an exceptional job prosecuting sexual
10 assault cases.

11 Thank you for the opportunity to speak
12 today, and I look forward to your questions.

13 CHAIR HOLTZMAN: Thank you very, very
14 much, Colonel.

15 We will next hear from Commander
16 Michael Luken, U.S. Navy, Chief, Trial Counsel
17 Assistance Program.

18 Commander, thank you very much for
19 appearing. We look forward to your testimony.

20 CDR LUKEN: Thank you, Madam Chairman,
21 Distinguished Members.

22 To go straight to the identified

1 questions for this panel, I will provide a brief
2 summary of the experience level and the training
3 that our trial counsel complete for consideration
4 for them to be detailed to a sexual assault case
5 or a special victim crime type of case.

6 At each of our nine Regional Legal
7 Service Offices, there is a Senior Trial Counsel
8 who is an 04, lieutenant commander, or an 05, a
9 commander who is also part of our Military
10 Justice Career Track. Based on their experience,
11 training, and education, they are screened and
12 selected into this track or they are selected
13 through detailing process to be able to lead,
14 manage, and supervise corps prosecutors in
15 prosecuting cases.

16 These Senior Trial Counsel detail all
17 cases to corps attorneys based on that corps
18 attorney's ability, aptitude, caseload, and their
19 experience. The Senior Trial Counsel is
20 responsible for supervising the corps attorney
21 throughout the case.

22 Each office has a requisite

1 supervisory counsel overseeing litigation of our
2 special victim crimes. For special victim
3 crimes, including sexual assault cases, a corps
4 attorney is not detailed unless they have the
5 professional ability to competently prosecute the
6 case and, if there is a case requiring even
7 greater expertise than what is available locally,
8 they reach out to our office, the TCAP.

9 Since the Response Systems Panel
10 evaluated counsel training in the report of June
11 2014, there is a greater focus on the effort as
12 to special victim crime training. Training for
13 special victim crimes is prioritized to the corps
14 counsel and is attended earlier on in their
15 billet as a corps counsel.

16 We have also joined training with
17 NCIS, which has been outstanding. We have
18 prosecutors and agents going through the same
19 training to collaborate and better understand
20 what could be challenges to the investigation as
21 well as to the prosecution process.

22 Secondly, the training tone has

1 changed from a victim-centric mindset to an
2 accused-centric. What did the accused do through
3 the assault vice? What did the victim do or not
4 do during the assault?

5 The training has also shifted to
6 address the competencies of victim interviews.
7 Not only the means of how the interview is
8 actually captured, whether it be through the
9 results of trial, a summary, written, or video,
10 but also what questions are asked and how they
11 are asked to get more of what we call a sensory-
12 focused interview.

13 This interviewing technique often
14 addresses or explains what some refer to as the
15 counterintuitive behavior. The way investigators
16 take statements and the way prosecutors work with
17 the victims now import perception and sensory
18 techniques during the interviews and interactions
19 with the victim.

20 Shifting now to our training and
21 evaluation of trial counsel who prosecute sexual
22 assault cases, the Navy has certified each office

1 as SVIP-certified to prosecute cases. With the
2 Military Justice Litigation Career Track, senior
3 trial counsel being an 04 and 05 appointed to
4 that office. And the corps counsel has attended
5 certain courses; we have certified the office as
6 competent to prosecute special victim crimes.

7 In the last six months, we have
8 identified that we are going to shift from that
9 to add in more of a -- we are directing a
10 structure right now to join not only the office
11 certification model, but also individual corps
12 counsel model.

13 The individual certification would
14 involve over 75 hours of specialized trials. For
15 certification, the corps counsel would have to
16 attend one DoD SVIP type of course. The Navy
17 does the Prosecution Special Victim Crimes and,
18 also, does Prosecuting Alcohol-Facilitated Sexual
19 Assaults. Those interchange each year.

20 We now better coordinate with the
21 United States Marine Corps TCAP to join our
22 highly-qualified experts in development of these

1 trainings. We send our people to their SVIP
2 courses, and they send their people to our
3 courses. This coordination offers more options
4 for trial counsel to attend at various times and
5 places throughout the year. The DoD course, this
6 SVIP course, could also be substituted for a
7 civilian course focused on special victim crimes.

8 Also, part of the certification for
9 the individual is they would have to attend one
10 of the two FLETC courses which we work with NCIS,
11 the NCIS Advanced Adult Sexual Assault
12 Investigations Training and the NCIS Advanced
13 Family Sexual Violence Training Program.

14 Next, the counsel to be SVIP-
15 certified, would have to be at least detailed to
16 at least two contested SVIP-type or special-
17 victim-crime-type cases.

18 And finally, they would have to
19 complete five webinars that are identified by
20 TCAP as being special victim crime type of
21 training.

22 Once the counsel completes the

1 training continuum, they request SVIP
2 certification through their training command,
3 which is screened again for aptitude and
4 competency of the individual counsel.

5 Next to ongoing training, TCAP
6 conducts a Targeted Mobile Training Team Course
7 for each trial department. I believe this was
8 one of the questions that was discussed at the
9 last session of how do we get at issues that we
10 catch early on, relatively early in the process.

11 Our three-day training program, we do
12 that by traveling to each RLSO every year. Over
13 the three days we focus on different tactical
14 training issues relating to special victim
15 crimes. A couple of examples, we train to
16 include strategic charging of special victim
17 crimes, updates and shifts in law, and working
18 with victims, adult and child.

19 For one session, I invite one sexual
20 assault survivor who I worked with on a previous
21 case. We take the opportunity for trial counsel
22 and paralegals to hear her experience with the

1 Military Justice System, what worked and what
2 didn't worked through that process, and dealing
3 with investigators, and, of course, having to
4 deal with me. This provides our trial counsel
5 insights as to a survivor's perspective.

6 The prosecutors are able to ask
7 questions that would not be asked survivors
8 during the regular court-martial process. So,
9 this gives them good insight into how they can be
10 better prosecutors.

11 In summary, we seek to have a robust
12 training program for our counsel. We have
13 balanced that with the fact that with experience
14 comes better prosecutions.

15 Again, thank you for inviting me here
16 today, and I look forward to your questions.

17 CHAIR HOLTZMAN: Thank you very much,
18 Commander.

19 Our next presenter will be Lieutenant
20 Colonel Bret Batdorff, U.S. Army, Chief, Trial
21 Counsel Assistance Program.

22 Colonel, thank you very much for

1 coming. We look forward to your presentation.

2 COL BATDORFF: Madam Chair, other
3 Distinguished Members, good morning and welcome
4 to my regimental home.

5 I am Lieutenant Colonel Bret Batdorff,
6 and it is my honor to address this Panel again.
7 I am still the Chief of the Army's Trial Counsel
8 Assistance Program, or TCAP.

9 TCAP's overarching mission in the Army
10 is to provide support and resources to the
11 prosecutorial function in the Army. We
12 accomplish that mission in many different ways.
13 Given the topic on today's agenda -- that is,
14 training -- there's a couple of ways I would like
15 to specifically focus and briefly highlight you
16 on.

17 First, TCAP offers approximately 40
18 different continuing legal education training
19 opportunities for military prosecutors and
20 government paralegals each year.

21 Next, the Army's TCAP also manages the
22 Army's Special Victim Prosecution Program. At

1 last month's meeting of the JPP highlighted for
2 you the many additional personnel and resources
3 that had been dedicated to the Army's Special
4 Victim Prosecution Program, including the
5 addition of in recent years 25 Special Victim
6 Prosecutors, 24 Special Victim Paralegal NCOs, as
7 well as most recently 24 Special Victim Witness
8 Liaisons, each of whom fall under my supervision
9 at TCAP and are exclusively dedicated to ensuring
10 that every allegation of sexual assault, child
11 abuse, and intimate partner violence is properly
12 investigated and, when warranted, properly
13 charged and prosecuted.

14 Before getting into the specifics of
15 what we train, who we train, and how we train, I
16 would like to briefly pause and let you know who
17 it is within our organization who is planning and
18 organizing and conducting the training. So, at
19 TCAP Headquarters we are manned with seven judge
20 advocates, three civilian attorneys, one Senior
21 Paralegal NCO, and one Senior Civilian Special
22 Victim Witness Liaison. All of those personnel

1 are involved in planning and executing our
2 approximately 40 training events per year.

3 Each of the seven judge advocates on
4 my staff were hand-selected by our senior leaders
5 in the Army JAG Corps because of their
6 demonstrated proficiency and expertise as
7 criminal litigators. All of them are former
8 trial counsel, defense counsel, and I actually
9 have now one former Special Victim Counsel. He
10 was one of the first SVCs in the Army and is now
11 a training officer at Army's TCAP.

12 We also have three senior civilian
13 attorneys. Each of these three civilian
14 attorneys were career civilian prosecutors prior
15 to joining our staff. All three of them
16 specialize in the field of special victim
17 prosecutors as civilian prosecutors.

18 Recognizing the need to provide
19 dedicated special victim witness support to the
20 prosecution team, again, we added the Special
21 Victim Witness Liaison Program Manager to my
22 staff just last year, and that is Ms. Christa

1 Thompson who addressed this Panel last month.
2 And our final member of our team was our Special
3 Victim NCO Paralegal Program Manager.

4 Together these seven officers, four
5 civilians, one NCO, coordinate and train all of
6 our events each year. While all the members of
7 our team make significant contributions to the
8 planning and execution of our training events, I
9 would like to pause to momentarily echo some of
10 the comments from the last panel regarding the
11 significant contributions made to our career
12 prosecutors on our staff.

13 Since their hiring, they have injected
14 a more-than-healthy dose of outside wisdom and
15 experience. I have personally attended many
16 military- and civilian-sponsored continuing legal
17 education events, and the training events planned
18 and executed by these three civilians is among
19 the best and most practical that I have ever
20 attended in my experience as an attorney.

21 Much like the testimony of the XO at
22 the Naval Justice School at the last Board up

1 here, they have turned our training program on
2 its head. We now use kind of a hybrid between
3 the NITA model of our advocacy training. That is
4 also what they teach at the National Advocacy
5 Center, and the National District Attorneys
6 Association, it is very similar. We have kind of
7 molded their various approaches to training
8 counsel. We now do that as opposed to the more
9 militaristic training that we often get down at
10 our line units.

11 Also, TCAP, again, supervises the 25
12 SVPs, 24 SVNCOs, and 24 SVWLs. This group of 70
13 professionals are geographically distributed
14 across the Army's installations worldwide. I
15 mention this because TCAP uses each of its SVPs
16 as trainers because, as identified by TJAG, our
17 SVPs have two primary missions. Again, their
18 first mission is to make sure that every
19 allegation, every investigation of a special
20 victim crime is properly investigated, properly
21 charged, and properly prosecuted, when warranted.
22 But, second, and I consider it a "1(b)" more than

1 a "2", is to train, train, train, train and
2 mentor the younger trial counsel and the younger
3 senior trial counsel at their installations.

4 We also frequently bring them to our
5 TCAP training events because they have that
6 credibility. They look at us and they say,
7 "Well, you worked up at Washington, D.C. You
8 don't do this every day." So, bringing the SVPs
9 who are down there, if you will, in the trenches
10 trying these cases, interviewing the victims,
11 working with them, brings credibility also to our
12 training.

13 Much like the Air Force setup, very
14 similar, we have trial counsel, many of whom are
15 very junior. We have senior trial counsel who
16 are a bit more experienced, and then, we have the
17 SVPs. That is kind of hierarchy, if you will, of
18 our trial counsel experience.

19 That is who conducts our training and
20 plans our training, who it is that we are
21 training, what we are training, and how we are
22 training them. We primarily train junior trial

1 counsel, our senior trial counsel, and, also, our
2 Special Victim Prosecutors. We also provide some
3 training -- this is a recent change in the last
4 year -- we have included our paralegals and our
5 Victim Witness Liaisons in a lot of our trainings
6 as well.

7 Our training events range from our
8 very basic New Prosecutor Course to our Effective
9 Strategies for Members or Jury Cases, to our
10 Effective Strategies for Sexual Assault
11 Prosecution Course, our Complex Litigation
12 Course, our Senior Trial Counsel Course, and our
13 Child Abuse Prosecution Course.

14 Most of our courses are based on the
15 use of fact patterns and practical exercise, and
16 all of our fact patterns and practical exercises
17 involve a special victim component to it, usually
18 adult sexual assault and usually an alcohol-
19 facilitated sexual assault fact pattern.

20 Our premier course for the last few
21 years that we started a couple of years ago is
22 the Sexual Assault Trial Advocacy Course. That

1 is a two-week advocacy course focused exclusively
2 on prosecuting and defending sexual assault
3 cases. Last year we conducted it at Baylor Law
4 School. This year it will be at the University
5 of Utah Law School.

6 Although TCAP is responsible for
7 organizing it and putting it on, it is actually a
8 joint training that we do with the Defense
9 Counsel Assistance Program. So, we bring in the
10 trial counsel and the defense counsel, and they
11 train together on things such as interviewing
12 victims, drafting 412 motions, conducting 513
13 motions. Actually, we do hearings and trials and
14 things like that.

15 And for the first time this coming
16 July, we are also inviting the Army SVCs to that
17 training. So, they will also be participating in
18 the victim interview exercises and the 412
19 hearings that we do.

20 We also contract with, although we do
21 most of the planning, we contract with several
22 civilian agencies to conduct some of the training

1 for us. For example, we contract with the
2 CornerHouse Forensic Interviewing organization
3 out of Minnesota, and they provide two week-long
4 courses for our trial counsel on forensic
5 interviewing, defending a forensic interview and
6 trial, if it was challenged by defense.

7 We also contract with the National
8 Center for Missing and Exploited Children to
9 provide two week-long courses on the prosecution
10 and investigation of online exploitation and
11 online sex offenses.

12 Those are all of our trainings offered
13 to all of our trial counsel and SVPs. We also
14 work closely with the JAG School in order to mesh
15 our training, to make sure that we are
16 complementing and not repeating the training.
17 So, all the trial counsel will through the OBC
18 that General Pede talked about. And then, they
19 may go to another job such as legal assistants.
20 But, then, when they start their trial jobs, they
21 will start attending our training. And again, we
22 work very closely with the JAG School to make

1 sure that our training are meshed and make sense.

2 One thing, I wanted to pause here,
3 ma'am, Admiral Tracey. You asked General Pede
4 regarding if there is a new development in the
5 law, whether it is a statute or case law. Every
6 month we put out two or three what we call TCAP
7 Expresses. I often joke because TCAP Express
8 will never be confused with The Harvard Law
9 Review. That is not its intent. Its intent is
10 to rapidly notify all of the trial counsel, "Hey,
11 this statute was just passed" or "This DoD
12 instruction was just signed. You need to be
13 aware of that." It is, my direction to my
14 counsel when we are drafting this, no more than
15 two pages because trial counsel are busy people,
16 and that is really all the time they have to
17 digest. But they can, then, file it away later
18 and use that.

19 Another way, ma'am, that is not really
20 my lane, but our military judges often conduct
21 what they call gateway sessions. It varies from
22 judge to judge. Some only do it once a year, but

1 some do it very frequently, like once a month.
2 And the judge will actually use that opportunity
3 to train trial and defense counsel about recent
4 changes to the law, ma'am.

5 Finally, I would like to highlight for
6 you the training that our SVPs go through prior
7 to, or shortly after they become SVPs.

8 First, they have to attend the NDAA's,
9 the National District Attorneys' Association's
10 Career Prosecutor Course. It is usually in San
11 Diego. This year it is back in Charleston, where
12 I went through it several years ago.

13 Second, they have to attend our SATAC,
14 which I talked about a moment ago.

15 Third, they have to attend our SVP
16 Course, which we hold twice a year, July and
17 December. During that time, we do a deeper dive.
18 We bring in experts to talk about victim
19 behaviors. We bring in experts to talk about
20 forensic analysis and things like that.

21 I have also required -- because now we
22 have had the SVP program in place for a little

1 while and I have noticed that we have had some
2 who have been suffering from vicarious trauma and
3 secondary trauma -- so now, our last couple of
4 iterations of our SVP Course, I mandate that we
5 bring in an outsider, a civilian expert to talk
6 about the impacts and recognize when you are
7 suffering from vicarious trauma from being
8 involved, spending 100 percent of your time
9 investigating and prosecuting special victim
10 cases.

11 Then, finally, they are required to do
12 a two-week on-the-job training at a local DA's
13 office, preferably at an SVU, a Special Victim
14 Unit.

15 So, as I mentioned, an SVP must be
16 involved in every investigation and prosecution
17 of a special victim case. Sometimes that means
18 that they are detailed to the case. They are
19 actually the lead prosecutor. Sometimes it means
20 that they are the second chair in the case. And
21 in some cases they will just be consulting on the
22 case, and they will be directly helping the

1 detailed trial counsel. So, every prosecution of
2 a special victim case in the Army will have the
3 involvement at different levels of a Special
4 Victim Prosecutor who has all this training prior
5 to or shortly after taking the job.

6 In summary, we have made substantial
7 progress in recent years in creating a
8 comprehensive spectrum of training for our
9 prosecutors that mirrors from a new progression
10 from a new prosecutor to a senior trial counsel,
11 to a Special Victims' Prosecutor. And we do so
12 through the use of our organic TCAP assets, our
13 civilian expert attorneys, our SVPs, and some
14 outside civilian agencies. We have also recently
15 started including our paralegals and BWOs in our
16 trainings because we firmly believe that they are
17 going to be out there investigating and
18 prosecuting these cases together; they need to be
19 trained together as well.

20 All these changes are transforming our
21 investigation and prosecution of our cases,
22 especially our special victim cases, in a

1 profoundly positive manner.

2 Thank you for your time. I look
3 forward to your questions.

4 CHAIR HOLTZMAN: Thank you very much,
5 Colonel.

6 Our next presenter is Major Jesse
7 Schweig, U.S. Marine Corps, Officer-in-Charge,
8 Trial Counsel Assistance Program.

9 Major, we are pleased to hear from you
10 now. Welcome.

11 MAJ SCHWEIG: Good morning, Madam
12 Chair. Good morning, Distinguished Panel
13 Members.

14 First, my apologies to Colonel Oler.
15 I inadvertently shut down your presentation while
16 you were speaking. The good news is I know the
17 clicker works, so I can get through this.

18 (Laughter.)

19 MAJ SCHWEIG: So, we at the Marine
20 TCAP Collective, we are bored by things that are
21 boring and interested in things that are
22 interesting, which is why I brought you a lot of

1 pictures, which will also spare you some
2 additional words on my part.

3 First, I will briefly go through our
4 Trial Counsel Continuum. You have an entry-level
5 trial counsel, typically an 02 to 03, that has
6 attended the basic lawyer course at The Naval
7 Justice School. From there, they progress to
8 being a general court-martial-qualified trial
9 counsel, typically an 03, sometimes an 04. And
10 really, this means that they have had six months
11 in the billet and have been designated in writing
12 by someone who says you are competent to be
13 involved in a general court-martial.

14 From there, we progress to what we
15 call a Special Victims' Trial Counsel, which has
16 an unfortunate resemblance to the SVC. But, for
17 our purposes, it is a prosecutor that does
18 special victim cases. It is an 03 to 04 that has
19 contested at least one special victim case and
20 has also attended an Intermediate Trial Advocacy
21 Course.

22 From there, we go to our senior trial

1 counsel, which is an 04 and is a person who
2 possesses in the Marine Corps a 4409 designation,
3 which means they have obtained their master's in
4 military justice, usually at the TJAGLCS, this
5 school, although occasionally also through a
6 civilian institution.

7 And finally, we progress to our
8 regional trial counsel, which is an 05 level.
9 They are hand-selected at the Headquarters level
10 for those billets, and they will also have a 4409
11 master military justice designation.

12 And I'm going to just take a second
13 and focus directly on our Special Victims'
14 Counsel. They have been certified in writing by
15 their regional officer-in-charge. They have a
16 minimum six months as a trial counsel or 18
17 months as a defense counsel. They have tried a
18 special victim case as an assistant counsel, and
19 they have attended the Intermediate Trial
20 Advocacy Course we discussed earlier.

21 Now, for that course, if you are
22 picturing a large, sparsely-furnished room with a

1 bunch of people in it, you're not far from the
2 truth. In fact, there's an example. This was
3 our training venue from Camp Lejeune which took
4 place just a couple of months ago. And I am
5 going to run through a few of the things we do
6 there.

7 First, we pick the most highly-
8 qualified instructors we can find. For this
9 training iteration, we used a mock case, which
10 was sort of a mixed sexual assault with elements
11 of strangulation as well.

12 And one of our instructors, as
13 pictured here, is Ms. Gael Strack, who is one of
14 the foremost strangulation-teaching experts in
15 the country. She worked at the San Diego
16 District Attorney's Office and became interested
17 in the subject of strangulation and turned
18 herself into an expert, and now teaches a lot of
19 people how to do these things.

20 Additionally, we can never forget --

21 CHAIR HOLTZMAN: What? Excuse me.

22 You don't mean strangle.

1 (Laughter.)

2 MAJ SCHWEIG: I probably said
3 something which will be reflected in the
4 transcript, very unfortunately.

5 (Laughter.)

6 CHAIR HOLTZMAN: Sorry for the
7 interruption.

8 MAJ SCHWEIG: Yes. I'm not going to
9 have a chance to excise that, am I?

10 (Laughter.)

11 MAJ SCHWEIG: Nevertheless, we also
12 train our enlisted legal service support
13 specialists at the same time as we train our
14 officers in the same location because, if
15 possible, we do prefer to train as a team. And
16 this is an example teaching one of those classes.

17 Every year we try to do something
18 innovative or different or interesting. And by
19 that, we invite outsiders. This is part of our
20 transparency effort and, also, a way for us to
21 plug additional experience into our training
22 programs.

1 What you see pictured here, our two
2 panelists are representatives from the Manhattan
3 District Attorney's Sex Crimes Unit, Ms. Coleen
4 Balbert and Ms. Vanessa Puzio. This panel was
5 actually moderated by the Staff Judge Advocate to
6 the Commandant, Major General John Ewers. That
7 was a very interesting discussion. We just sort
8 of bounced our practices back and forth off of
9 each other. Frankly, we learned a great deal
10 from them.

11 We incorporate trial advocacy
12 elements. Pictured in the foreground in the blue
13 shirt is actually the Navy TCAP, highly-qualified
14 expert, Mr. Giles, who has taught at the NAC.
15 And you can see there we've got a camera going
16 and we have a Navy lieutenant delivering an
17 opening statement. She videotaped that opening
18 statement, and then, we took her into another
19 room and, of course, gave her some feedback. And
20 then, she got to observe herself. So, we do
21 elements of what is commonly done at the NAC.

22 Your Question No. 2 referred to RSP

1 implementations. And so, actually, I could have
2 just typed it, but I thought it would be more
3 interesting to just actually cut out the thing
4 that we submitted to you several years ago.

5 So, the question here was, what have
6 we done to sustain or increase training in spite
7 of the challenges created by turnover? This
8 chart you probably can't see, and that is
9 partially by design because it includes all of
10 the different training offerings we have for
11 FY16. So, there are more than 30 different
12 distinct trainings that a trial counsel could
13 attend. Obviously, no trial counsel could attend
14 all of them because they would never get any work
15 done otherwise.

16 But the mandatory training days come
17 out to 18 per year. That includes the TCAP
18 annual training. It includes the regional trial
19 counsel training and the senior trial counsel
20 training. So, there's 18 mandatory days, and the
21 rest of the training courses, you know, the trial
22 counsel will attend those as designated by their

1 supervisors. So, if they find that there is a
2 missing skill set with any particular office,
3 they can simply send in trial counsel to one of
4 those trainings, to include NDDA offerings and
5 the other Service schools.

6 The other RSP recommendation I am
7 going to address was No. 119, which is that we
8 should provide a permanent civilian presence.
9 So, again, I would like to reference a photograph
10 you've seen earlier, except this time I'm going
11 to call your attention to Ms. Katherine Maldoon;
12 Ms. Julia Hejazi, who is actually seated right
13 next to me here, and then, in kind of the center
14 is Ms. Martha Bashford, who is actually the Chief
15 of the New York County District Attorney Sex
16 Crimes Unit. All three of them are actually
17 leading our small groups for this training.

18 There is also a recommendation to
19 utilize experienced military Reservists. We
20 incorporated the following people into our
21 training this year, and you can see they come
22 from a wide variety of geographical locations and

1 a wide variety of practice areas. So, there's
2 district counsels, private practice attorneys,
3 United States Attorneys, Assistant District
4 Attorneys, and so on and so forth.

5 Finally, I will look at the Service
6 collaboration. He spoke to you already this
7 morning, but there in the background is Commander
8 Mike Luken from Navy TCAP. And I could
9 incorporate all of his comments into my comments
10 as well, and I wouldn't run afoul of anything.
11 We work together very closely, and we were very
12 honored to have him both attend and instruct at
13 our training this year.

14 And you can see any number of people
15 in blue uniforms from our sister Sea Services who
16 attend our training as well.

17 With that, over to Ms. Hejazi.

18 MS. HEJAZI: Good morning. Thank you
19 for the opportunity to speak with you.

20 As a prosecutor for 16 years, I can
21 tell you that I never experienced the level of
22 training that I have seen in the Marine Corps

1 because we did not have the time or the
2 opportunity to attend this level of training at
3 any time.

4 After becoming the HQE for Marine
5 Corps TCAP, and I also serve at Quantico with the
6 local prosecutors, I reflected back on what
7 affected my career as a prosecutor most, and it
8 was to have attended the National Advocacy Center
9 for their childproof class. That one class
10 affected me in so many ways in my ability to be a
11 prosecutor.

12 We modeled our training this year
13 after the experiences we have at the NAC and in
14 other trial ad-type programs, and created a mock
15 case file that was huge, for the Marine Corps, at
16 Major Schweig's direction, giving us just about
17 every type of evidence that we could add to our
18 story. So that after we did our training this
19 year, our trial counsel could take that mock case
20 back with them and, through their training
21 throughout the year, continue to build on and use
22 pieces of it to practice pieces of evidence and

1 understanding how to utilize and how to just
2 better prepare themselves to walk into the
3 courtroom.

4 Our continual training includes
5 working with our STC. Our senior trial counsel
6 does monthly training at each of the offices, and
7 our regional trial counsel do quarterly training.
8 A lot of that is focused on sexual assault. And
9 the HQEs also participate in that training,
10 although these trainings are not only about
11 sexual assault because we prosecute all kinds of
12 crimes, just as civilian DA's offices do. But
13 our major focus in most of our training would be
14 in the area of sexual assault.

15 In addition, to keep our trial counsel
16 updated, we have a blog that TCAP puts out.
17 Anytime there are changes in the law or cases
18 that come forward that are particularly going to
19 affect the way we practice, we create a post on
20 our blog and send that out to the fleet, so that
21 they can read it.

22 For example, in the Stiletto case,

1 which addressed a lot of issues regarding
2 discovery and how that was handled in the case,
3 we prepared a blog to educate our attorneys on
4 discovery. And I tied that to personal
5 experiences, having been a prosecutor in North
6 Carolina during the Duke lacrosse case. I shared
7 with them the effects of one prosecutor's actions
8 and how that affected every prosecutor in the
9 State, and how we looked at discovery and how we
10 handled our practice as prosecutors.

11 We also have discussion boards where
12 our prosecutors can write in questions, and the
13 entire fleet can respond or TCAP responds with
14 answers to help address issues.

15 All of these things help TCAP to
16 create training that is most effective because we
17 are trying to stay on top of all the issues that
18 are occurring in the Corps, if there are any, and
19 making sure that we are addressing those in
20 training.

21 Our HQEs sit on every sexual assault
22 trial in the courtroom. I can only tell you

1 that, as a prosecutor, how many times,
2 particularly at the beginning of my career, that
3 I was in the middle of a trial and looked back
4 just hoping one of my colleagues was in the
5 courtroom that I could raise my hand and say,
6 "Please help me."

7 Our HQEs are in the courtroom, and we
8 are not distracted by our own caseload or any of
9 the other issues that civilian prosecutors would
10 have when they are sitting in the courtroom
11 trying to help a prosecutor try a case.

12 We assist with witness interviews. We
13 assist in openings, try prep, just about
14 everything that we can do. Because of having the
15 HQE and the caseload within the Marine Corps, our
16 prosecutors have the opportunity to practice
17 their openings, their closings. We do mock
18 directs and crosses to prepare for trial.

19 Again, as a civilian prosecutor, I can
20 tell you that the only time I ever practiced an
21 opening was in the shower the morning before or
22 in the car ride on the way to work. So, our

1 prosecutors have the opportunity to do their
2 opening, receive feedback, try it again and try
3 it again, if they choose to.

4 We also send out a disposition report
5 on our cases, so that we can look at what
6 original charges were, how a case was resolved,
7 and what punishments were given. So, we are
8 always thinking about fairness and equity in our
9 decisions and how we handle our cases.

10 It is an amazing opportunity to work
11 with trial counsel in the Marine Corps. They
12 come in with a background in training, in my
13 experience, much more, at a much higher level
14 than what I experienced as a prosecutor. I went
15 to law school and truly didn't know my State's
16 law as a prosecutor. So, I had to start out
17 learning that. I had to learn my Rules of
18 Evidence, which I had learned Federal Rules at
19 law school. I had a learning curve that occurred
20 for quite a period of time. And the prosecutors
21 I have worked with in the Marine Corps come in
22 lightyears ahead, I believe, of where I was.

1 In addition, the supervision that they
2 receive from their STCs and their RTCs allow them
3 to grow quickly and, in addition, their
4 supervision from HQEs who are there in the
5 courtroom, and when they are marking a mistake or
6 have made a mistake or are headed to a mistake,
7 if possible, the HQE is there to say, "Hold up.
8 Let's talk about this," and to learn from those
9 moments, so that they are never repeated again.
10 We prepare and plan in a way that I think gives
11 amazing opportunities for growth quicker than I
12 certainly experienced as a prosecutor.

13 Finally, I would say that the most
14 encouraging and great part of my job is that I'm
15 working with prosecutors who are never hesitant
16 to receive criticism or suggestion and always
17 take that advice and grow with it. That has been
18 a really wonderful experience for me, working
19 with the Marine Corps.

20 Thank you for the opportunity to speak
21 with you, and I look forward to any questions you
22 might have.

1 CHAIR HOLTZMAN: Thank you, Ms.
2 Hejazi, and thank you, Major Schweig.

3 Mr. Taylor?

4 MR. TAYLOR: Yes. Thanks to each
5 member of the panel for being here today.

6 Ms. Hejazi, I would like to follow up
7 on your last comment, which I found very
8 interesting. Based on your experience, how would
9 you compare the job that military Special Victim
10 Prosecutors are doing to that which you observed
11 from civilian prosecutors? And I guess my
12 question is, are we somehow in the military
13 bridging the experience gap that is otherwise
14 hard to deal with?

15 MS. HEJAZI: I believe we are, and I
16 have been here for 17 months. And so, I have had
17 an opportunity to watch numerous trials and
18 participate in numerous trainings. I believe
19 that the training that we are doing -- well, let
20 me just step back and say that General Pede no
21 one can say that experience isn't the best
22 teacher of all, you know, years and years of

1 experience. But I believe we are doing a
2 fantastic job of bridging some of the gap between
3 the experience of someone being there 16 years
4 and the experience of our trial counsel, based on
5 the training that they are receiving.

6 Their effectiveness and ability in the
7 courtroom cannot be compared, in my opinion, to
8 what we see in the civilian world because of
9 their background and training and because of
10 their level of experience through the training
11 that they receive and what they do in the
12 courtroom.

13 MR. TAYLOR: And my last question is
14 to any member on the panel who would like to
15 address it. Early on in the history of this
16 particular Panel's receiving witnesses'
17 testimony, we heard some discussion about a
18 little bit of tension that had developed over
19 time between the Special Victim Prosecutor and
20 the SVCs in general about relative roles and
21 responsibilities.

22 I will be interested in hearing any of

1 you comment on the extent to which you think that
2 is still around or if you have adopted policies
3 or training specifically to deal with that issue.
4 I thought it was interesting, for example,
5 Colonel Batdorff, that you are inviting the SVCs
6 to participate in this session that previously
7 had just been confined to the prosecution and the
8 defense. But would anyone like to comment on
9 that?

10 COL OLER: I'll go ahead and start.

11 Thank you for the question.

12 The Air Force has been working with
13 the SVC program for the longest time now of all
14 the Services. And bottom line, it has become a
15 partnership, I would say, between the Special
16 Victims' Counsel and the senior trial counsel.
17 We know when the senior trial counsel goes in to
18 prosecute a case that involves a victim, if that
19 victim has a Special Victims' Counsel, the victim
20 is being taken care of in a way that the
21 prosecutor is unable to do because the prosecutor
22 doesn't have an attorney/client relationship with

1 the victim. So, that nets a lot of benefit for
2 our process, just in terms of going forward with
3 a case and in prosecuting a case.

4 We definitely do partner with the SVC
5 community. You will hear from Colonel deCamara
6 later today about some more of this. But SVCs
7 are now incorporated into some of the training
8 that we do in the prosecution function.

9 For instance, the Intermediate Sex
10 Assault Litigation Course, which takes place five
11 times per year at different locations throughout
12 the world, is composed of trial counsel, defense
13 counsel, and Special Victims' Counsel. At least
14 a portion of the training that we do with the
15 prosecution team, when we just break out into an
16 individual group, involves inviting a
17 representative from the Special Victims' Counsel
18 community to come and talk to the prosecutors.
19 Oftentimes, we will have a prosecutor brief with
20 a Special Victims' Counsel to a joint group of
21 Special Victims' Counsel and senior trial counsel
22 and base-level practitioners, about partnering

1 and issues that can come up in sex assault
2 prosecution. So, I would say I have seen a net
3 benefit as a result of the SVC community's
4 involvement in these cases.

5 MR. TAYLOR: Anyone else like to
6 comment on the question?

7 COL BATDORFF: There will always be
8 examples where there's conflict between parties
9 involved in a trial, but I think the number of
10 those incidents where there is conflict between
11 the prosecution and the SVC has gone down
12 substantially.

13 I talk to my 25 SVCs on a pretty
14 regular basis, and I will tell you that the ones
15 who have been in the position for a while will
16 tell you it is night and day from what it was.
17 And that is attributable to a few things, sir,
18 that I attribute it to.

19 First, it is just time and maturity of
20 the program and people realizing that this is a
21 good thing overall, having the SVCs there
22 assisting the survivors through the process.

1 Also, we have in the Army -- and I
2 think the other Services may, too -- we have a
3 policy now that strictly lays out, signed by our
4 Judge Advocate General, what you will provide to
5 the survivors through their SVC. You will
6 provide a copy of the charge sheet, redacted if
7 necessary, if there are other victims' names on
8 there. You will provide a copy of his or her
9 statement to the SVC. So, that has helped, too.

10 And I know later we are also going to
11 have a representative who coordinates the SVC
12 training. But there is a new SVC Handbook that
13 has changed their internal policies as well,
14 which I think has helped, sir.

15 CDR LUKEN: Sir, I would say in the
16 beginning, yes, it was a new program. At that
17 time, I was sitting as a military judge, and even
18 the judiciary was kind of struggling, what's the
19 role going to be of the VLC; what are they going
20 to be able to do; what are they not going to be
21 able to do; what's their standing, those types of
22 things?

1 That has been worked through at this
2 point. And now, I feel we are more in the
3 adolescence stage, still a little awkward, gangly
4 at times; we have our braces on; we are prepared
5 to get them off.

6 (Laughter.)

7 CDR LUKEN: But we are progressing in
8 the right direction. What it comes down to is
9 really communication, and some of that is by
10 integrating, as the Colonel has said, Victim
11 Legal Counsel into our trainings, as well as have
12 some of the TCAP prosecutors integrate into their
13 training.

14 And then, also, we have started doing
15 some post-trial hotwashes and having the VLC
16 there present to discuss what are the things we
17 could have done better, what are the things they
18 could have done better, and so on and so forth.

19 MR. TAYLOR: Major?

20 MAJ SCHWEIG: Sir, I don't have
21 anything to add beyond what we have already said.

22 MR. TAYLOR: Thank you, Madam Chair.

1 CHAIR HOLTZMAN: Thank you.

2 Judge Jones?

3 JUDGE JONES: I just have a quick
4 question to go back to highly-qualified experts
5 again.

6 First of all, I have to say it is very
7 impressive to hear of all the training programs
8 for each of the Services. They sound terrific
9 and they also sound like they are being very
10 effective.

11 But I am curious as to why the
12 Services who do not have HQEs don't. What
13 analysis, if any, has gone into that?

14 CDR LUKEN: Judge, the Navy does have
15 them. I didn't highlight them during my opening
16 statement. But we have two. They are both with
17 the TCAP. One specializes in domestic violence
18 and sexual assault. The other is our child
19 expert.

20 JUDGE JONES: Right.

21 So, the Air Force does not have them,
22 correct?

1 COL OLER: That's correct, yes, ma'am.
2 In terms of our construct, we are organized
3 differently than the other Services, even within
4 the JAG Corps. Our Judge Advocates School in
5 Montgomery is the focal point for the training
6 that is received for all Air Force JAGs.
7 Litigators, non-litigators, all Air Force JAGs,
8 the hub of training comes from our JAG School.

9 In addition, though, I did emphasize
10 the training that the senior trial counsel
11 provide. It is quite extensive.

12 But, organizationally, if I could back
13 up for a second to the construct of my office,
14 the Government Trial and Appellate Counsel
15 Division, we are unique among the Services in
16 that we combine at the government side of the
17 house the trial and the appellate counsel. So,
18 the office contains the government prosecutors,
19 which I've talked extensively about in my opening
20 remarks and what they do day-in and day-out, and
21 the training that they have received, but it also
22 is comprised of government appellate counsel.

1 Now those appellate counsel certainly,
2 as you can imagine, they represent the United
3 States on appeal for the criminal cases, the
4 courts martial that result in conviction. They
5 argue those cases at the Air Force Court of
6 Criminal Appeals and the Court of Appeals for the
7 Armed Forces.

8 But, in addition to that work, they
9 are all litigators themselves. So, they happen
10 to be in appellate government counsel roles right
11 now, but all of them, if not most of them, all of
12 them are former area defense counsel. Actually,
13 two of them out of six are also former senior
14 trial counsel, so full-time prosecutors. So,
15 they have extensive litigation background.

16 Oftentimes, what we do at JAJG, the
17 Appellate Trial and Government Office, is we will
18 send our appellate counsel out if we have a case
19 that is maybe a lower-level case that we wouldn't
20 typically assign a senior trial counsel to, but
21 it is a base that needs some assistance. Say it
22 is a drug case and you have younger counsel who

1 haven't done a lot of criminal litigation before.
2 We will send our appellate counsel out to try
3 those cases with those base offices and help
4 instruct and teach them how to litigate that
5 case, because they have the litigation background
6 to do it.

7 One other point I would like to hit is
8 the three civilians that we do have that work,
9 one of them is in my office. He is the senior
10 appellate counsel. He is a retired colonel from
11 the Air Force and he used to have my role. And
12 before that, he was a prosecutor. He has a long
13 line of criminal litigation jobs. So, he has
14 extensive experience as a criminal litigator.

15 He and the rest of the Appellate
16 Government Office are available and, in fact, do
17 consult with the field every day on issues that
18 arise during the course of litigation. So, when
19 questions come up from a trial counsel who is in
20 trial, literally with a question about what do I
21 do in this situation, they call my office, and
22 the Government Appellate Attorneys roundtable the

1 issue and provide information back to the field
2 on a way forward.

3 Additionally, there are two other
4 civilians that were recently hired in the Air
5 Force judiciary who have background and expertise
6 in criminal litigation. One is Mr. Bill Orr, and
7 he is the Chief Strategic Legislative Trial
8 Policy Attorney. He has a background, extensive
9 background, as a military judge and as an
10 appellate judge. He is available for reach-back
11 assistance as well, as is Ms. Asha Vaghela, who
12 used to work, I believe, as an HQE for the Navy.
13 I think I have that right. She now works for us.
14 She has a background in the Bronx DA's office,
15 and she has provided training to the prosecutors
16 and is sort of a program that we are starting to
17 ramp up and to get going.

18 But thank you for your question.

19 JUDGE JONES: Thank you.

20 I don't necessarily believe that any
21 one training technique or supervisory technique
22 is necessary. There are obviously going to be

1 combinations. I am just curious as to what, if
2 any, analysis goes into not having highly-
3 qualified expert, maybe logistics. I think of
4 the highly-qualified expert as someone who is
5 available in the courtroom and will supplement
6 when maybe there aren't enough senior counsel.
7 But maybe I misunderstand what an HQE is. I am
8 just curious as to the analysis of the Services
9 who don't have them. You obviously have civilian
10 former prosecutors who were in your training
11 programs and supervisory roles.

12 COL BATDORFF: The Army has six HQEs,
13 three of whom work for Army TCP. They help us
14 with our training, as I mentioned previously, but
15 they also do spend at least two-thirds of the
16 year on the road. All three of them are on the
17 road, sitting behind the bar, as Ms. Hejazi
18 details of the Marines, helping them prep
19 witnesses, interview witnesses, practice opening
20 statements, and things like that, the three that
21 work for us.

22 DCAP, our Defense counterpart, has two

1 HQEs, and there is one HQE who works at the
2 strategic level there.

3 JUDGE JONES: Thank you very much.

4 CHAIR HOLTZMAN: Admiral Tracey?

5 VADM TRACEY: Just two questions. I
6 think all of you have described a process during
7 which a trial counsel gets signed off as being
8 eligible to prosecute independently. Does
9 anybody fail?

10 COL BATDORFF: The baseline
11 qualification under UCMJ to try any case is to be
12 qualified and certified under Article 27(b) and
13 sworn under Article 42(a). Usually, that means
14 you have passed your Service's version of the
15 officer basic course.

16 Have lieutenants failed the basic
17 course? It is rare. I think it has happened.
18 So, I think that that's very rare that that has
19 happened. I'm not aware of any particular
20 instances. I am sure it has in the many years
21 that we have been doing that, ma'am, but --

22 VADM TRACEY: Yes, I'm not talking

1 attrition out of the basic course. I'm sure
2 people fail because they are not officer quality,
3 or what have you. But how about people who have
4 been assigned in the field and they are now going
5 to be signed off by the regional trial counsel or
6 the senior trial counsel as eligible? Does
7 anybody fail to be signed off or is that just a
8 matter of time?

9 COL OLER: I don't know about failed
10 to be signed off. There are some people in the
11 Air Force who are signed off sooner than others.
12 So, in order to be trial-certified, our Judge
13 Advocate General -- and there is a requirement --
14 has to find that the counsel are competent to sit
15 first chair in a general court-martial.

16 Typically, although there is not a
17 minimum case requirement, it typically means at
18 least three courts-martial, and it also means
19 that a military judge has to be willing to
20 endorse that counsel's performance. There is an
21 actual process in place whereby the Staff Judge
22 Advocate and the military judge write

1 recommendations for certification. That
2 certification package then goes up through the
3 Pentagon and is acted on by the Judge Advocate
4 General.

5 So, some counsel have, say, a
6 background in criminal litigation and they come
7 into the Air Force JAG Corps as prior Assistant
8 District Attorneys or prior public defenders.
9 And so, they obviously have a leg up. They are
10 maybe more proficient in basic litigation skills
11 than someone who doesn't have that background.
12 So, they might be the type of attorney who gets
13 certified faster than an attorney who doesn't
14 have that same background.

15 I believe -- and I don't want to guess
16 as to the answer to your question, ma'am -- I
17 believe that there are some who have not achieved
18 certification, but that number will be small.

19 CDR LUKEN: Yes, Admiral, the Navy has
20 traditionally done a kind of office
21 certification. So, we haven't done individual.
22 We are shifting to individual.

1 I will say I have seen counsel who
2 have started as assistant trial counsel on cases
3 where their aptitude to do these type of cases
4 just isn't there. What happens is they will get
5 detailed to future cases. They handle other
6 cases and, also, in some cases they get moved
7 onto other jobs where they will be more
8 proficient that aren't necessarily military
9 justice.

10 MAJ SCHWEIG: The office practice
11 sounds like what Commander Luken just described,
12 ma'am.

13 COL BATDORFF: Likewise, ma'am.

14 VADM TRACEY: The second question,
15 also going back to early days of this Panel,
16 concern was expressed that becoming a Special
17 Victims' Counsel would take an officer's career
18 off-track, that that would become ultimately a
19 damaging assignment to have taken.

20 What would be the markers to you that
21 that was not true? What kinds of things would
22 you look for in terms of the presence of prior

1 Special Victims' Counsels in a hierarchy that you
2 have described? And it is probably too early to
3 have seen that.

4 COL OLER: Our senior trial counsel and
5 our Special Victims' Counsel or Special Victims
6 Unit Prosecutors fare very well in promotion
7 categories. They do exceptionally well, and that
8 could be a combination of factors. But it
9 certainly is not an issue. In fact, the reverse
10 is true. They do exceptional jobs getting
11 promoted and moving on to additional leadership
12 billets within the JAG Corps.

13 VADM TRACEY: Did you say Special
14 Victims' Prosecutors?

15 COL OLER: I misspoke. I mean the
16 Special Victims' Unit Prosecutors and the senior
17 trial counsel both. So, one is a subset of the
18 other.

19 VADM TRACEY: My question was about
20 the Special Victims' Counsel.

21 COL OLER: I'm sorry, I misheard your
22 question. I will defer my answer on that one to

1 our Senior Special Victims' Unit SVC.

2 CDR LUKEN: Ma'am, I have not seen
3 that because that is pretty specialized in the
4 sense that promotions would be based on the
5 aptitude of the overall counsel as they progress.
6 So, just because someone is a trial counsel who
7 happens also to be a Special Victims' Counsel,
8 they may not limit them. In fact, they will
9 probably get to do many other complex cases. So,
10 I just don't see how that argument prevails
11 ultimately, that someone would be held back by
12 that. Instead, someone who maybe focuses
13 strictly on military justice their entire career
14 may have challenges, as they get more senior, to
15 make the senior ranks just because of the demand
16 for the service.

17 VADM TRACEY: You're all senior
18 enough, though, to know that there are all some
19 jobs that you expect to have certain
20 representative experiences before people can be
21 assigned to those. And those are important jobs
22 to have held in order to have the opportunity to

1 advance further in the Service. For example,
2 would you expect at some point to see Special
3 Victims' Counsel in your jobs?

4 CDR LUKEN: I'm sorry, ma'am, I
5 misspoke. I was talking about -- the problem
6 with the Navy, one of them is that we affirm the
7 Victim Legal Counsel. I apologize, I
8 misunderstood the question.

9 COL BATDORFF: As you mentioned,
10 ma'am, it really hasn't been long enough yet to
11 see the promotion rates. I know anecdotally I
12 have known several Special Victim Counsel who
13 have been promoted.

14 As I mentioned during my remarks, it
15 is considered a good job for a senior captain to
16 be a TCAP training officer. And one of my
17 training officers was one of the first Special
18 Victim Counsel. So, it hasn't really impacted
19 him or anyone that I am aware of.

20 I know from looking at assignment
21 patterns, when we publish those, many SVCs have
22 gone on to be defense counsel or senior defense

1 counsel. So, it still too early to tell with
2 regard to promotion rate, but as far as
3 assignments, I have not seen any negative impact
4 of having been SVC, ma'am.

5 MAJ SCHWEIG: Ma'am, for the first
6 part of your question, I will defer to Colonel
7 McDonald, who I believe you are going to hear
8 from later today. And for the second part of
9 your question, I would enthusiastically recommend
10 any SVC for this job, my current job.

11 (Laughter.)

12 COL OLER: Really quickly, to address
13 one aspect of your question, ma'am, we do have
14 our first Special Victims' Counsel who has become
15 an area defense counsel. So, the program is new,
16 but we are seeing that transition from Special
17 Victims' Counsel into other areas of litigation,
18 and I do expect to see that continue.

19 VADM TRACEY: Thank you.

20 CHAIR HOLTZMAN: Mr. Stone?

21 MR. STONE: Yes, thank you.

22 My first question relates really to

1 the comment that Professor Taylor made before,
2 about some literature we got that is now in the
3 public record about saying that, pointing out
4 that the prosecutors of sexual assault crimes in
5 the military have way less contested trial
6 experience. In fact, it said something like 90
7 percent, 89 percent haven't tried 10 sexual
8 assault trials.

9 And I didn't know if you wanted to
10 comment on that, but I didn't think a comment was
11 necessary. But now I do, because I heard in
12 Major Schweig's presentation of slides that you
13 can be an SVC with one contested trial and six
14 months of experience, if I heard it right.

15 And I heard in Colonel Oler's
16 presentation that three contested trials can
17 qualify you as a senior trial counsel. I don't
18 think anywhere in any civil jurisdiction in the
19 country that would be true.

20 So, I am curious to know. You know,
21 you've got great training, but that is not the
22 same as just having three contested trials. That

1 would be a beginner in every civil prosecution,
2 of course.

3 COL OLER: Absolutely, sir, and it is
4 a beginner in the Air Force as well. So, the
5 trial certification, the three trials that I was
6 talking about, that is to sit second chair on a
7 case. That is absolutely not to sit first chair
8 as a senior trial counsel.

9 Our senior trial counsel come to us
10 with at least 50 trials, and in the sitting group
11 of senior trial counsel that I have right now, it
12 is, some of them, upwards of 130-150, the
13 majority of those being contested trials.

14 MR. STONE: Okay, because a plea
15 doesn't really count as a trial. I think that is
16 just confusing for everyone to say that. When
17 you say "trials," I would appreciate, if you
18 could, if you could try and talk about contested
19 trials because, otherwise, it doesn't get to the
20 heart of the problem when there is a contested
21 trial.

22 And maybe Major Schweig can comment

1 on, is there always a second chair for an SVC? I
2 didn't think there were. They go in with one
3 trial. I don't know what is likely to be coming
4 down the pike.

5 MAJ SCHWEIG: I will provide a
6 response to your question, sir. I would like to
7 defer to Ms. Hejazi because she actually sits in
8 the courtroom for these trials, which I do not do
9 in my current position. So, I don't feel
10 qualified to directly answer your question.

11 MR. STONE: Okay, okay. The last
12 question I have -- and I don't know if you heard
13 the Chair's question to the last panel; it sort
14 of piggybacks on that question -- and that is,
15 and I will start with, again, Colonel Oler,
16 because you brought up the topic of being
17 responsible for appellate attorneys.

18 The way things stand, Special Victims'
19 Counsel have the right to participate to defend
20 victims' rights/interests, 412 and 513 hearings,
21 when victims have lost that right in a ruling by
22 a military judge, but they don't have that right

1 to defend it when they have won it in front of
2 the military judge and they might well lose it in
3 the appeal. They don't get to be up there to
4 say, "Wait a second. You're about to reverse on
5 that ground. Can we file a brief and get the
6 same 15 or 20 minutes to argue that the other two
7 parties got?"

8 Because, as I was hearing the comments
9 before, at least three of you mentioned -- one
10 said it is a good thing they are there because
11 they have different interests. Another one of
12 you said you can now recognize the differences
13 between them and it is good. And the third one
14 said you have worked out, worked through how you
15 have different pieces to put together.

16 So, I guess I don't understand why
17 their piece, if it is a victims' rights issue,
18 not on issues that don't affect them but on the
19 victims' rights issue up on appeal, shouldn't
20 give them the same rights if they won the issue
21 below as if they have lost it. Now I wonder if
22 you could give me a comment on that.

1 COL OLER: Sure. I believe that the
2 issue involving victim appellate rights is an
3 evolving one, and it is one that has been
4 recently presented to the Services. And so, we
5 are absolutely trying to work our way through it
6 as best we can.

7 I know that the Court of Appeals for
8 the Armed Forces recently heard a case this past
9 week involving a writ appeal on this very topic.
10 And so, how that Court rules in that case will
11 sort of dictate and indicate how we move forward
12 with respect to victim involvement on appellate
13 issues.

14 There is proposed legislation; I
15 understand that as well. And we are amenable to
16 working through the issues as best we can. But
17 it is very much in the new stage of practice
18 right now.

19 MR. STONE: No, no, I know that. I
20 guess what I am asking is, do you see from your
21 job a problem on the appeals on what may involve
22 a victim rights issue if only the victim

1 participated? Do you see that as raising a
2 problem for your appellate attorneys?

3 COL OLER: No. I mean, my appellate
4 attorneys right now, when there is an issue that
5 involves a victim issue, a 412 motion or a 513
6 motion, my attorneys are doing the absolute best
7 they can to take that pleading and forward it to
8 the SVC community, so that they have awareness of
9 that issue. So, we don't have a concern with
10 involving them in the process.

11 MR. STONE: I don't know if anybody
12 else has that appellate scope and, therefore,
13 would like to comment on it, too. But I am happy
14 to hear it.

15 CDR LUKEN: The appellate doesn't fall
16 under TCAP in the Navy. It is a different code
17 or a different policy.

18 But, having interacted with them, my
19 position for TCAP, I could say I don't see an
20 issue with, if someone has an interest at the
21 appellate level, 412 or 513, that they would be
22 able to brief, I don't see that affecting from a

1 trial counsel standpoint an issue.

2 COL BATDORFF: We are co-located, our
3 TCAP is co-located with the Government Appellate
4 Division. We work with them, but we are kind of
5 separate. I agree with Commander Luken that we
6 don't have a problem.

7 Fortunately, in most of those
8 circumstances, the Government and the SVC won an
9 appeal regarding the protection of, say, for
10 instance, 513 rights. So, the Government
11 Appellate Division's interests are going to be
12 aligned in every case with the interest of the
13 victim because they want to preserve that ruling
14 at the trial level, too.

15 But I agree that the victims and
16 survivors should be also notified and afforded
17 the opportunity to weigh-in, too, sir.

18 MAJ SCHWEIG: And, sir, we are
19 entirely separate entities in the Marine Corps,
20 and I am not co-located with them.

21 CHAIR HOLTZMAN: Okay. Well, I have
22 no questions. So, I just want to thank all the

1 members of the panel for very interesting and
2 important presentations.

3 And we will adjourn for lunch.

4 (Whereupon, the above-entitled matter
5 went off the record at 12:03 p.m. and resumed at
6 1:01 p.m.)

7 CHAIR HOLTZMAN: Thank you very much.

8 The Judicial Proceedings Panel is
9 ready to commence its afternoon session.

10 We are -- I want to welcome all the
11 Members of the Panel and thank them very much for
12 taking the time to come and share their expertise
13 with us.

14 Excuse me, could those in the back who
15 want to speak privately, please find some other
16 place to talk.

17 We will begin with Colonel Daniel
18 Brookhart, U.S. Army, Chief, Trial Defense
19 Services Panel will focus on the overview of
20 training and experience of attorneys defending
21 sexual assault cases.

22 Colonel Brookhart, thank you for your

1 appearance and we look forward to your testimony.

2 COL BROOKHART: Madam Chairman,
3 Members of the Panel, thank you for inviting me
4 here.

5 My name is Colonel Dan Brookhart. I'm
6 the Chief of the U.S. Army Trial Defense Service.

7 I would like to say up front, any
8 views I might express today are my own and not
9 those of the Judge Advocate General and the
10 United States Army.

11 We were presented with a series of
12 questions from the Panel to answer and I'd start
13 by answering those up front and then would
14 happily take any questions you might have.

15 The first question dealt with a brief
16 summary and the experience level and training
17 defense counsel must go through before being
18 assigned to a sexual assault case.

19 And, I would say that, in the U.S.
20 Army Trial Defense Service, we don't have any
21 specific requirements for either experience or
22 training that must be met before counsel are

1 assigned to any particular type of case.

2 Now, in most instances, the senior
3 defense counsel, who is the field level leader of
4 a defense office, assigns and details counsel to
5 cases based upon factors such as complexity of
6 the case, prior experience and capabilities of
7 the counsel and also the number of counsel they
8 have available.

9 And, approximately 80 percent of
10 defense counsel arrive in my organization with
11 some prior experience usually as a trial counsel,
12 but that's only 80 percent. So, some arrive with
13 no prior experience.

14 So, we can have an experienced counsel
15 in every case, but some do come without
16 experience.

17 Even in those cases, ideally, you
18 would not want to assign counsel to a sexual
19 assault or any complex case until they've
20 completed at least our DC 101 training, which I
21 believe you've heard about -- some about earlier
22 today and served as a lead counsel on one or more

1 less complex cases or at least a second chair on
2 a more complex case.

3 However, the realities of TDS manning
4 and caseload often weigh against such a
5 deliberate developmental process.

6 In those instances where, out of
7 necessity, defense counsel with less than ideal
8 training and experience are assigned to defend
9 sexual assault cases and the guidance and input
10 of their supervisor, the senior defense counsel.

11 And, they also have access to the
12 advice and assistance of our defense counsel
13 assistance program who are available 24 hours a
14 day to help counsel with any challenges they
15 might have in a particular case.

16 Now, the second question was, since
17 the Response System Panel evaluated counsel
18 training in 2014, what, if any, changes have been
19 made for the defense counsel training programs?

20 And, again, I would say the trial and
21 defense service organization training model, I
22 mean those classes that we teach as an

1 organization to all counsel, including the DC 101
2 and 201, have not changed since 2014.

3 So, our model is still the same.

4 Obviously, the content of those training programs
5 within the classes has changed based on changes
6 in the law and based on what we perceive through
7 input from the field as areas where counsel need
8 more training.

9 The third question was, what types of
10 continuous training and continuous evaluation are
11 done for defense counsel who defend sexual
12 assault cases?

13 Now, over the course of a normal tour
14 in TDS, which would be two years ideally, defense
15 counsel will receive a significant amount of both
16 field office level training and the program
17 training I discussed earlier.

18 Both categories are training while
19 often addressing sexual assault because that's
20 our most common type of case right and it's a
21 complex issue.

22 But, they're both really designed to

1 make counsel competent to try any kind of case,
2 not sexual assault specifically.

3 Now, the first category of training I
4 had mentioned is the field office level training.
5 And, in the Army TDS, training is first and
6 foremost to supervisory responsibility.

7 And our TDS SOP, our standard
8 operating procedure, requires the senior defense
9 counsel to conduct training on a weekly basis.
10 And, that training is often done by the senior
11 defense counsel or they might select one of the
12 Captains.

13 They have the Captain learn a subject
14 and then teach that subject to other counsel.

15 And, they're allowed a lot of leeway
16 in what classes they teach in this part of this
17 training program because they have the SVC as the
18 best idea of the experience level of his counsel,
19 the types of cases they have and whatever the
20 unique challenges might be in their jurisdiction.

21 So, they can tailor their program to
22 meet those needs.

1 They are required, as part of the
2 policy, to also submit a training plan to their
3 regional defense counsel, their immediate
4 supervisor and then up to my office and myself.

5 So, I review the quarterly training
6 programs of every office in the Army Trial
7 Defense Service to make sure that they're on
8 track, they're training the right things and also
9 to get an idea of what challenges they may be
10 facing.

11 Or, if I see something that looks
12 particularly good, I might have DCAP share that
13 out with other offices, an avenue of training or
14 sometimes, they bring in an expert who I find is
15 particularly good and I'll share that with the
16 rest of the trial defense service.

17 And, you know, to aid in that, each
18 quarterly report also contains a summary of the
19 training they've done over the quarter in
20 addition to their plan for the next quarter so we
21 get some idea of what's been done. And, it's
22 sort of a check to make sure that, in the busy

1 schedule; they don't lose sight of the training
2 and not do it.

3 In addition to the field office
4 training, then counsel attend our programmatic
5 training that's sponsored by the organization,
6 taught through the Defense Counsel Assistance
7 Program.

8 And, that includes our bedrock courses
9 of Defense Counsel 101, which is taught worldwide
10 six times a year. So, we do one course in Korea,
11 one in Germany and the other four are in the
12 continental United States.

13 So, that's for new defense counsel,
14 new to the organization, new to the job that
15 teaches them the fundamentals of being a defense
16 counsel and then refresher on other fundamentals
17 such as cross examination, openings, closings,
18 that sort of thing.

19 And then, the follow on to that is
20 Defense Counsel 201, which is taught four times,
21 again, worldwide where they get more advanced
22 training and more training directed towards

1 whatever specific issues might be out there in
2 the defense community.

3 Now, they might also attend courses
4 during the typical tour or might also attend one
5 of two joint DCAP/TCAP conferences, one of which
6 is the sexual assault trial advocacy course which
7 was at Baylor University last year.

8 And then, the advanced trial advocacy
9 course, which I think was spoken about earlier
10 today, which we use that sort of a professionally
11 trained actor to help with counsel's presentation
12 capabilities.

13 So, it's not necessarily law-focused,
14 but it's more focused on getting up in front of
15 people and being an effective speaker and
16 conveying information in front of people.

17 So, they'll typically attend one of
18 those two courses. And, if they haven't already
19 turned -- attended the intermediate trial
20 advocacy course here, normally, they would do
21 that as a trial counsel, but then they would be
22 sent back to attend that course as well.

1 We're also able to, depending, you
2 know, depending on funding available, send
3 counsel to outside courses in the civilian world.

4 As an example of this, I received
5 funding recently to send ten defense counsel to
6 the Defense of the Damned Course at the Trial
7 Lawyers College, which is a lengthy course, but
8 quite good.

9 So, we're very happy to be able to
10 find some select people, they applied to that.
11 We went through the applications and selected ten
12 to go out and receive that training, so we can
13 build a bench of counsel for our more high-
14 profile cases or capital cases, should they
15 arise.

16 Now, the second part of the question
17 addresses evaluation of counsel. In monitoring
18 and evaluating counsel, this is, again, an
19 obligation of leadership.

20 So, we put a lot on the shoulders of
21 the senior defense counsel out in the field
22 offices and they're usually Majors. So, it's

1 their job to monitor the development of counsel.

2 And they do this, by helping counsel
3 through the preparation of their cases and then
4 mentoring those counsel through case preparation.

5 And then, observing, if not directly
6 participating in as the second chair, in their
7 in-court advocacy and then, you know, back
8 briefing and going through a study process on how
9 they perform in court.

10 Regional defense counsel will travel
11 throughout the region. They'll meet with the
12 Military Judges, they'll meet with the Staff
13 Judge Advocates, they'll meet with the Chiefs of
14 Justice to get an idea of how their counsel are
15 performing.

16 And, they use that information to help
17 evaluate their counsel and identify areas where
18 more training might be needed.

19 To that end, I also travel to these
20 training opportunities, DC 101 and 201 and I meet
21 with the SJAs and the Trial Judges while I'm out
22 traveling and we obtain their input on how,

1 generally not specifically, but generally, how
2 counsel are performing and what areas they might
3 need work in.

4 And finally, another aid in our
5 evaluation process was recently adopted by the
6 Army Trial Judiciary, and that's a survey that a
7 Military Judge completes after each trial across
8 some broad categories, direct examination, cross
9 examination.

10 And, they rate the counsel,
11 anonymously, they rate the counsel in those areas
12 and then that feedback is posted on a website
13 that either the Government or the defense can
14 access and use that to drive development of the
15 training program.

16 So, that summarizes my response to the
17 questions that were specifically provided.

18 Subject to any questions you might
19 have, that's all I have at this time.

20 CHAIR HOLTZMAN: Thank you very much
21 Colonel Brookhart.

22 Our next presenter will be Colonel

1 Daniel Higgins, U.S. Air Force, Chief, Trial
2 Defense Division.

3 Welcome, Colonel.

4 COL HIGGINS: Thank you, ma'am.

5 Madam Chairwoman and distinguished
6 Members of the Panel, thank you for the
7 opportunity to speak with you today about the Air
8 Force Trial Defense Division and our efforts at
9 training counsel to defend the Airmen.

10 As a defense counsel, I'm very
11 grateful for the opportunity to discuss this
12 topic with you today.

13 As the Chief of Trial Defense
14 Division, I am privileged to lead the Air Force's
15 187 defense counsel and defense paralegals
16 worldwide. These are our professional officers
17 and Noncommissioned Officers dedicated to
18 providing defense services in a zealous, ethical,
19 professional manner to more than a 100,000 Airmen
20 stationed around the globe.

21 By way of a quick overview, the Trial
22 Defense Division is broadly divided into five

1 regional circuits, one covering the Pacific and
2 Asia, one covering Europe and the Middle East, if
3 you will, and then three here in the States.

4 Each of these circuits is headed by a
5 O5 Lieutenant Colonel, Chief Senior Defense
6 Counsel, responsible for the provision of defense
7 services within their circuit or circuits.

8 They're also responsible for the
9 training of their subordinate counsel.

10 So, to support them, they have between
11 five and -- I'm sorry -- between six and seven
12 senior defense counsel. These are O4 Majors.
13 These form kind of the backbone of the counsel
14 who are going to be trying sex assault cases.

15 Each of these senior defense counsel,
16 or SDC, total of 19, in turn, supervise four or
17 five geographically disbursed area defense
18 counsel offices at the base level.

19 And, it's these teams of the ADCs and
20 defense paralegals, DPs, that form the core of
21 the defense community.

22 They'll represent eligible Military

1 Members in administrative and judicial matters at
2 their installation and are primarily responsible
3 for -- excuse me -- as I said, representing
4 Members at their installation, but they may also
5 be detailed to cases at other installations as
6 needed to balance the workload or avoid a
7 conflict of interest.

8 With respect to the specific questions
9 that I was asked to comment on today, let me talk
10 first about the experience level of our counsel.

11 Area defense counsel are competitively
12 selected following one or two base level
13 assignments. In general terms, they will have
14 spent between two and five years in the Judge
15 Advocate General's Corps at the base level wing
16 office, wing legal office, and have prosecuted,
17 excuse me, approximately ten courts martial prior
18 to assuming their duties as a defense counsel.

19 On average, an annual workload for one
20 of our defense counsel is about eight to ten
21 court martials per year, 75 non-judicial
22 punishments and then another 300 to 400 adverse

1 administrative actions.

2 ADCs come to us using kind of a best
3 qualified standard. They come from across the
4 Air Force.

5 Their individual supervising Staff
6 Judge Advocate is going to first nominate those
7 individuals from within their staff with the
8 litigation skills, maturity, judgment,
9 organizational skills necessary to operate
10 independently as an area defense counsel.

11 Once that SJA has identified those
12 Captains they feel that are ready for the
13 challenge of serving as defense counsel, my
14 division, the Trial Defense Division, will
15 evaluate and concur or nonconcur with each
16 individual nomination.

17 From there, it's going to go to the
18 major command's Staff Judge Advocate, one of ten
19 in the Air Force who is going to, again, review
20 the nomination and concur or nonconcur.

21 Our professional development division,
22 I'm sorry directorate, will then review the

1 nomination.

2 And, finally, the Judge Advocate
3 General will personally act to approve or
4 disapprove the nomination.

5 So, all of our defense counsel have
6 been through a pretty rigorous vetting process.

7 Every one of them meets the minimum
8 qualifications for service as a Judge Advocate.
9 They are all certified under Article 27 of the
10 Uniform Code of Military Justice.

11 And, once selected as a defense
12 counsel utilizing that process I just laid out,
13 they are expected to represent Airmen at their
14 local installation in need of representation
15 without regard of the offense.

16 Our senior defense counsel, and again,
17 there are 19 of those, selection of them is, if
18 anything, more rigorous.

19 Our senior defense counsel are tasked
20 with providing not only the day to day
21 supervision and then administrative maintenance
22 of the defense teams at the installations they

1 supervise, but they're responsible, as I
2 mentioned earlier, for defending Airmen in our
3 most serious cases at trial which would include,
4 obviously, allegations of sexual assault.

5 A senior defense counsel typically
6 enters their duties having completed two base
7 level assignments and having served for between
8 six and eight years in the Judge Advocate
9 General's Corps.

10 All have successfully completed a tour
11 as an ADC.

12 Currently, about a third of them, six,
13 have served a prior tour as a senior trial
14 counsel where they spent approximately two years
15 prosecuting the most serious cases we have.

16 One of the biggest challenges we face
17 as the teams spread geographically across the
18 world is training. We could not be successful
19 without the skills developed by and the
20 confidence that comes from the training our
21 counsel received, were able to meet this
22 challenge only with the help of our Judge

1 Advocate General School which works tremendously
2 hard to support our training needs.

3 Each defense counsel has been through
4 initial Staff Judge Advocate Office Course and
5 the Defense Orientation Course which is a week
6 long course focused on assuming those duties, the
7 responsibilities of a defense counsel.

8 Each of them is expected to attend a
9 Trial Defense Advocacy Course which is a two-week
10 course dedicated to advocacy prior to or shortly
11 after becoming a defense counsel.

12 Additionally, each counsel will attend
13 annually an intermediate sex assault litigation
14 course, a two and a half day course offered five
15 times per year tied to those regional circuits
16 that I mentioned. And, that course is dedicated
17 solely and focused solely on improving advocacy
18 in sex assault litigation.

19 That is taught by sitting senior
20 defense counsel in conjunction with the Judge
21 Advocate General School.

22 In addition to those above courses,

1 our senior defense counsel are expected to attend
2 the Advanced Trial Advocacy Course and the
3 Advanced Sex Assault Litigation Course.

4 These are both hands on, on your feet
5 advocacy courses where students are performing
6 and give a student faculty ratio of around three
7 to one. So, it's very small class sizes.

8 These are taught by our most
9 experienced litigators.

10 Further, we supplement the schools
11 training by sending counsel to civilian sponsored
12 courses including the National Association of
13 Criminal Defense Lawyers, the Center for American
14 and International Law, the Bronx Defenders and
15 the Trial Lawyers College.

16 Over the past three years, our
17 training program has evolved as we have
18 intentionally looked to incorporate more civilian
19 sponsored training into our curriculum.

20 As a result, we send about 20 percent
21 of our counsel annually to training offered by
22 someone other than the Air Force.

1 Counsel who attend these training
2 sessions are expected to then return to us as
3 they teach an ISOC and those intermediate courses
4 incorporate the lessons they've learned and pass
5 it on to the rest of the division.

6 The courses that we run and manage,
7 the Intermediate Sex Assault Litigation Course is
8 evaluated annually. We are consistently
9 evaluating the training efforts to ensure that
10 they remain both current and relevant to the
11 environment in which our counsel operate.

12 In conjunction with the school, we
13 evaluate every course to identify areas for
14 modification and improvement and will conduct an
15 annual detailed review of the defense orientation
16 course so that we can adjust that course to meet
17 the needs of our students.

18 In closing, let me say that I am very
19 grateful to be here today with you. And, I
20 appreciate the opportunity to discuss these
21 issues and look forward to taking your questions.

22 CHAIR HOLTZMAN: Thank you very much,

1 Colonel.

2 Our next presenter will be Colonel
3 Terri Zimmermann, U.S. Marine Corps, Officer in
4 Charge Reserve, Defense Services Agency.

5 By the way, forgive me, I can't,
6 because of the light behind you --

7 HON JONES: Yes, I can't see you.

8 CHAIR HOLTZMAN: -- I can't see your
9 faces.

10 COL ZIMMERMANN: Would you like us to
11 pull the curtain?

12 CHAIR HOLTZMAN: No, no, no, because
13 we've got to get warm air in here.

14 COL ZIMMERMANN: Okay.

15 Well, thank you, Madam and Members of
16 the --

17 CHAIR HOLTZMAN: Welcome.

18 COL ZIMMERMANN: -- thank you very
19 much. It's a pleasure to see you all again.
20 This is not my first time, I'm happy to be here.
21 Thank you for having me.

22 I'm actually the Reserve counterpart

1 to the Chief Defense Counsel of the Marine Corps
2 who, until June 1st of this year will be Colonel
3 Stephen Newman. But he's home on terminal leave.
4 He's going to take a new job, he's retired.

5 So, I'm filling in for him now until
6 his replacement arrives which is sometime in
7 July. So, I'm really happy to be trusted with
8 that responsibility.

9 So, to jump right into the questions
10 that the Panel wants answers on, experience.

11 Our defense counsel come from a
12 different mold. We have a completely different
13 system in the Marine Corps, than what you've
14 heard from the other services.

15 Our counsel do not do some other job
16 necessarily first before they become defense
17 counsel.

18 In fact, a vast majority of our
19 counsel, it's their first tour. They're brand
20 new lawyers, sometimes right out of law school.

21 And so, to me, I think that's
22 important for the Committee to know.

1 And, the reasons for that are beyond
2 the scope of what we're here for today. I have
3 some strong opinions about that, but suffice it
4 to say that many of our defense counsel have not
5 prosecuted a case. They have not been in some
6 other job as a lawyer in the Marine Corps or
7 necessarily anywhere else.

8 So, they're very bright. They're very
9 enthusiastic. They're very dedicated but they're
10 not very experienced, most of them.

11 And so, I really appreciate the
12 opportunity to talk to you about this training
13 piece of your job because it is very important,
14 especially to the Marine Corps.

15 Of course, they're all -- have their
16 basic certification under Article 27(b) and
17 they've been to the basic office course at the
18 Naval Justice School.

19 And then, at some point, maybe not
20 before they start their official job, but at some
21 point early in their tour, we try to send them to
22 our new defense counsel orientation class which

1 is sponsored by the Naval Justice School.

2 So, the focus really, the primary
3 thrust of our training, we don't have an official
4 certification process, but basically, we have a
5 CDC, a chief defense counsel possibly memo that
6 contains a check list. I think that's been
7 provided to the Committee, excuse me, to the
8 Panel.

9 And, it's very intensive. It requires
10 counsel to do a lot of reading, rules, cases,
11 relevant statutes, on the various aspects of
12 being a defense counsel.

13 It requires them to consult with
14 folks, people in their chain of command. It
15 requires them to have an in-call with a Military
16 Judge, with an SJA to sort of figure out how the
17 defense counsel fits in with the whole Military
18 Justice scheme so they get some practical advice
19 from people outside of the defense.

20 It requires them to do some practical
21 applications, write motions, write clemency
22 requests that then get reviewed, obviously, by

1 more seasoned counsel.

2 And, they are required to second chair
3 both guilty pleas, contested cases as well as the
4 administrative matters that they're going to
5 handle.

6 So, we don't throw them in the
7 courtroom first case on their own. I don't want
8 to imply that.

9 They have been in the court. They've
10 been observed. They've had some of their work
11 evaluated before we put them in the courtroom as
12 lead counsel.

13 But, they are not required to have any
14 certain number of trials in some other capacity
15 before they become Marine Corps defense lawyers.

16 And, they are -- always have co-
17 counsel. We don't ever throw them in there by
18 themselves.

19 They're also -- each case is assigned
20 to a specific counsel. It's not a random lottery
21 type system. It's an actual deliberate decision
22 made by the senior defense counsel at that

1 installation in consultation with the regional
2 defense counsel.

3 But, that region decides who is the
4 best lawyer to assign to a particular case based
5 on its complexity, based on the nature of the
6 charges, based on other legal issues that may be
7 involved.

8 And finally, I'd like to point out
9 with respect to their experience; they are with
10 us just a very short time, usually 12 to 14
11 months. And, that's also a manpower and
12 personnel issue that's beyond the scope of today,
13 but I wanted to mention it.

14 They're not with us for two years or
15 three years, they're with us for a short time.

16 Now, to answer the second and third
17 questions that were propounded to us, kind of
18 blend together in my mind. What are the changes
19 in training and what is the training? I know you
20 want to know that.

21 So, probably the biggest development
22 we've had in the Marine Corps DSO is Colonel

1 Newman developed what we call our training
2 campaign plan.

3 It's an 18-month plan. It's top down
4 where every defense counsel in the Marine Corps
5 is, ideally, supposed to receive the same or
6 similar training and everyone gets the same
7 training regardless of when in the year they join
8 our organization.

9 By the time they finish an 18-month
10 tour, in a perfect world, we have more than 14
11 months, they, theoretically, should have been
12 through all this training.

13 And, what it consists of is basically
14 monthly training.

15 Now, we have one big training event
16 per year that the entire DSO -- we call it the
17 DSO Worldwide Community Training, that takes
18 place for one week and all of our defense counsel
19 attend that as well as our enlisted support
20 staff. That's once a year.

21 And then, the other three-quarters of
22 the year, the regions, you know, East Coast, West

1 Coast, national, Capitol Region and Pacific, they
2 hold a training, okay, for that region.

3 And, the other eight months of the
4 year, the senior defense counsel at each
5 installation are expected to do training for
6 those local counsel there.

7 So, we want them to have some sort of
8 training every month.

9 In providing that training, it's done
10 in-house, if you will, by the local lawyers who
11 are stationed there.

12 We also have a Reserve Branch that I'm
13 in charge of. I have eight Marine Reservists
14 that work for me that are experienced civilian
15 practitioners and they are expected -- I mean,
16 their job is to train and mentor the active duty
17 defense counsel.

18 So, they help to create and execute
19 these curricula items that are given in these
20 trainings.

21 We also have two HQEs, two highly
22 qualified experts, and they are very heavily

1 involved in developing and executing our training
2 plans.

3 As far as outside training, we do try
4 to send as many counsel as we can to the Bronx
5 Defenders and to some NACDL, National Association
6 of Criminal Defense Lawyers, sponsored training.

7 But, as you know, resources and
8 particular funds are a battle. We're always
9 fighting, can never have enough money.

10 Now, we've had some extra money in the
11 last couple of years. We've had the SAPR funds
12 which have been very helpful.

13 We have sent many of our counsel to,
14 specifically with respect to sexual assault, we
15 have a course called Defending Sexual Assault
16 Cases that, for the past couple of years, taken
17 place in Plano.

18 It's my understanding, and I'm not an
19 expert on the fiscal issues, but it's my
20 understanding that those funds are being reduced
21 substantially this year and in years to come.
22 So, that's going to be a challenge we're going to

1 face. I don't know how we're going to replicate
2 that.

3 But, the basic idea with our training
4 is sex assault training is now intrinsic to all
5 of our lawyer training.

6 And, what I mean by that is, if we are
7 training on some other trial skill such as how to
8 conduct voir dire or how to cross examine a
9 witness or how to prepare a client, all of those
10 training evolutions, we use sexual assault fact
11 patterns.

12 In other words, how to conduct voir
13 dire in a sex assault case instead of just some
14 random larceny or drug case.

15 So, every training evolution pretty
16 much is going to involve sexual assault because
17 it is such a heavy part of our docket and such,
18 you know, such a big part of our practice.

19 So, sex assault training is all of our
20 training, even though we may be focusing on a
21 particular trial advocacy skill or particular
22 area of the law, we do tie it into sexual

1 assault.

2 We do require each counselor to have
3 at least eight hours specifically of sexual
4 assault training per year.

5 As far as other input that our counsel
6 get to train them and evaluate them, you asked
7 about evaluation is, obviously, peer support and
8 peer supervision is very important in our
9 organization.

10 We're a very tightknit small group and
11 the regional defense counsels are expected to
12 know what's going on in their regions. The
13 senior defense counsel are expected to critique
14 their folks.

15 The Military Judges in the Marine
16 Corps and the Navy are very good about critiquing
17 our counsel after court martial.

18 Obviously, without going into
19 deliberative processes, but you need to work on
20 this skill. Like, you don't know how to refresh
21 recollection properly. You need to go back and
22 study that.

1 They're very good about giving our
2 counsel specific critiques. You did this well,
3 you didn't do this well. So, that's been very
4 helpful to our counsel.

5 We also have a SharePoint site, which,
6 I didn't really know what SharePoint was until I
7 got in this job. It's basically a big website
8 that everybody in the organization can access.

9 And, we have motions on there. We
10 have briefs on there. We have announcements. We
11 have other resources, training materials.

12 Whenever we have a class, we put the
13 training materials on the SharePoint site so
14 people, if they miss that class, they can go and
15 pull the materials down and review it. And so,
16 that's a good source of training for our folks.

17 I think that answers the Panel's
18 questions, but if I may, I have three really
19 quick things I'd like to mention as far as
20 training and the challenges ahead, I've already
21 mentioned funding.

22 The other challenge I'd like to

1 address, Judge Jones, you very -- you mentioned
2 earlier that there's a perception of a disparity
3 in resources.

4 And, with all due respect, I'd like to
5 say it's more than a perception, it's a reality.
6 And, you heard testimony this morning that proves
7 the point, the Government has four highly
8 qualified experts, we have two.

9 And, our highly qualified experts have
10 to cover the same territory that the Government's
11 highly qualified experts have to cover.

12 And, you heard that the Government has
13 a highly qualified expert in the courtroom during
14 every court martial.

15 We can't possibly do that. There's
16 only two of them, one on the East Coast, one on
17 the West Coast. They can't possibly be in every
18 courtroom when there's a court martial going on.

19 And so, they do try to get to court to
20 evaluate counsel and critique and help when they
21 can, but they just can't possibly do that. They
22 also have other obligations besides just

1 critiquing the courts.

2 They have to help counsel with
3 preparing their case and strategy and that sort
4 of thing, reviewing motions.

5 The other thing is this whole idea of
6 investigators and investigation. You know, the
7 law requires a defense lawyer to properly and
8 adequately investigate the facts and the law of
9 every case or else you're ineffective.

10 So, we have incorporated some
11 investigation into our training like how to
12 investigate this, how to investigate that. That
13 is part of our new training.

14 And, it's a fine line we walk because,
15 if the courts say that you don't get a court
16 appointed investigator unless it's for something
17 you can't do yourself as a lawyer.

18 So, how well we train our lawyers to
19 be investigators could actually work against us
20 when we ask for investigative help. It's a
21 catch-22.

22 Well, if you're that good of an

1 investigator, we don't need to give you one.

2 But, what I'm saying is, that takes
3 their time away from working on their cases. I
4 mean, our lawyers should be doing lawyer stuff,
5 not investigator stuff.

6 So, when we have to train them on
7 investigations, that's a period of instruction
8 that's not being used to train them on how to
9 cross examine a SANE nurse.

10 So, that's a challenge that we have is
11 walking that fine line of how much do we want our
12 counsel to get extra training on investigations
13 because we're not getting our own investigators.

14 I mean, again, a disparity in
15 resources, the complex trial teams on the
16 Government side have their own dedicated
17 investigators.

18 I ran across one just by coincidence
19 last week, I was on active duty and I was in the
20 hallway and I saw this very nicely dressed young
21 man and found out -- I introduced myself, he was
22 a Gunnery Sergeant, works -- he's the

1 investigator for the complex trial team.

2 And, I said, my goodness, I said to
3 the prosecutor, you don't have all of CID at your
4 disposal? You don't have all of NCIS at your
5 disposal? You have to get your own guy and dress
6 him all spiffy in this suit? I get nobody. I
7 don't have any investigator.

8 So, with all due respect, there --
9 it's more than a perception, at least, if you
10 look at the hard numbers, the Government does
11 have more resources than we have and we have the
12 same caseload. They file the charges; we have to
13 defend against them.

14 So, I would like to bring that to your
15 attention.

16 And, finally, Mr. Stone, to address
17 your question earlier about, if somebody is
18 acquitted at a court martial, there's a couple of
19 things I want to say.

20 One is, if the -- if somebody's
21 acquitted in a civilian trial, they might get
22 fired. You know, if somebody works for IBM or

1 the FBI or somebody else and their supervisor
2 doesn't like what he heard in the course of that
3 litigation, he can fire them.

4 Because most states, or at least some
5 states, Texas where I live, is an at-will
6 employment state. Okay? So, you can be fired or
7 hired for any reason at all as long as it's not
8 illegal.

9 We're not like that in the Military.
10 We're under contract. Okay? You can't be fired
11 for no reason at all. You can't be fired because
12 your boss doesn't like something that you do,
13 unless it rises to the level of misconduct or
14 some other specified basis in our regulations
15 that where the Service regulations authorize
16 separation for that.

17 So, just mere fact of a supervisor
18 hears something in a court martial like, for
19 example, if -- of particular concern to me was
20 your comment that, well, if somebody exercises
21 his right to remain silent, maybe we should fire
22 him.

1 I hope you understand from a defense
2 perspective, that was a little alarming to hear
3 because if somebody exercises his rights to
4 remain silent, he shouldn't be punished for that,
5 including he shouldn't lose his employment and
6 his retirement, all the things that we have as
7 Members of the Military which distinguish us from
8 civilian employees.

9 And then, finally, on that note, I'll
10 mentioned that, I don't want to speak for the
11 other Services, but my preliminary research is
12 that, that situation wouldn't come up in the
13 other three Services, the Army, Air Force or the
14 Navy.

15 If an officer is acquitted of
16 misconduct at court martial, then the other
17 Services will not administratively separate that
18 officer. But, the Marine Corps specifically has
19 a provision in our rules that are relatively
20 recent that specifically authorize administrative
21 separation of an officer based on misconduct that
22 the officer was acquitted of committing at court

1 martial. So, obviously, I have issues with that.

2 Again, that particular issue is beyond
3 the scope of this hearing today, but I wanted to
4 bring that your attention that, in the other
5 Services, that wouldn't come up. He wouldn't be
6 fired, if you will, for conduct that he was
7 acquitted of at court marital, but in the Marine
8 Corps, he could be or he or she could be.

9 So, with that, I'll answer any
10 questions the Panel has.

11 Thank you.

12 CHAIR HOLTZMAN: Thank you very much,
13 Colonel Zimmermann.

14 Now, we will hear from Commander
15 Stephen Reyes, U.S. Navy, Director, Defense
16 Counsel Assistance Program.

17 Commander Reyes, welcome and we look
18 forward to your testimony.

19 CDR REYES: Good afternoon, Madam
20 Chairwoman, Members, esteemed Panel Members, it's
21 a pleasure to be back here before the JPP.

22 As you will see up above, I actually

1 had some slides I prepared to assist in my
2 presentation and I actually have some hard copies
3 since the glare. Would you --

4 CHAIR HOLTZMAN: Yes, I see it right
5 here.

6 CDR REYES: Can you? Okay.

7 CHAIR HOLTZMAN: Everybody can see
8 that?

9 HON. JONES: Yes.

10 CDR REYES: Okay, fantastic.

11 If we can just go to the next slide?

12 Specifically, to answer the question
13 regarding the training, I think before I actually
14 put some more meat on the bone for that, is talk
15 about the structure that defense counsel face
16 when they're at the DSOs because the structures
17 will provide -- it's kind of the on-the-job
18 training, the assistance when they're new defense
19 counsel that need some type of assistance from
20 other more experienced counsel.

21 So, this is the structure that an
22 attorney faces for encounters when they report to

1 the DSO.

2 The first thing I want to mention is
3 that we have four DSOs that are headed by 06s and
4 05s.

5 What's unique about the Navy is that,
6 we are trying to do a preference of detailing
7 Military Justice litigation qualified individuals
8 in the 06 and 05 ranks to act as CO and XO.

9 So, what this allows the CO to do,
10 given job duties and responsibilities, it allows
11 the CO to actually be detailed as a defense
12 counsel to be in the court martial.

13 So, think about that, just from a
14 perspective aspect. You have an 06 Colonel
15 representing a Sailor who, this 06 Captain,
16 Colonel, is very experienced, may have been a
17 former Military Judge. But, we're assigning them
18 to these 120 cases.

19 In addition is that, that CO also
20 takes with him or her another corps defense
21 counsel so they can provide on-the-job training.

22 So, on-the-job mentoring, on-the-job

1 training but, in addition, providing
2 representation to that client, to that Service
3 member.

4 The second bullet point is that every
5 senior defense counsel or OIC is an MJLQ
6 qualified person at the DSO.

7 I mean, take, for example, the
8 Bremerton office, and I just highlighted here,
9 what this means is that you have an individual
10 who is department head level leading the troops,
11 spearheading the training on a daily basis.

12 This individual has an LL.M. in trial
13 advocacy from Temple University. He was an AUSA.
14 He had a tour as a defense counsel, senior
15 defense counsel, senior trial counsel, trial
16 counsel and appellate clerk.

17 That's the person who's the department
18 head, who is doing the daily supervision,
19 training and mentoring of our corps defense
20 counsel.

21 And, this is duplicated in other
22 offices, too. We have an individual in Naples

1 all the way -- that takes care of the Europe AOR.
2 That person also has an LL.M. from George
3 Washington, senior trial counsel, defense
4 counsel.

5 These are the types of folks that
6 we're putting in the department head level.

7 The third thing is the number of corps
8 defense counsel are also MJLQ qualified.

9 So, I know there's an alarm going on
10 in the back, I don't know if I should be alarmed.
11 I guess it's stopped.

12 A number of corps defense counsel are
13 also MJLQ qualified. So, this means is that
14 they, in addition to their department head as
15 being qualified, they also have been qualified,
16 too, as well.

17 So, you know, if a new defense counsel
18 comes in who has no experience whatsoever, they
19 may have a commanding officer who is qualified.
20 He also has a department head who is qualified,
21 but their fellow junior counsel who's next door
22 to them are also qualified, too.

1 The fourth bullet is the DCAP
2 assistance on both East Coast and West Coast.

3 What we decided to do in the Navy is
4 we separated our DCAPs. I'm located on the West
5 Coast. We have also assets on the East Coast.

6 What this allows is that individuals
7 can have access to DCAP assistance beyond their
8 normal corps business hours. This also opens up
9 the spectrum for folks in Japan overseas so they
10 can have access to DCAP during their business
11 hours as well.

12 Then, the one thing that Colonel
13 Zimmermann had mentioned that I wanted to
14 highlight is that our SharePoint database, and
15 this isn't just some of computer program or
16 website, it actually essentially acts as a
17 virtual town hall.

18 And so, for instance, if something
19 happens in Hawaii, say an issue comes up in
20 Hawaii first impression or a counsel needs some
21 help in Bahrain, what they do is, they
22 essentially just post a question or a motion up

1 on our SharePoint site. Everybody in the entire
2 DSO now has access to that. Everybody in the
3 entire DSO can rally together and answer that
4 question.

5 So, not only do they have their
6 immediate supervisors, but they have the entire
7 DSO writ large.

8 And, the last thing I'll mention is
9 the support staff we have and Colonel Zimmermann
10 had touched upon this.

11 We now have what we call defense
12 litigation support specialists or what has been
13 normally called defense investigators. We've
14 hired them. We have eight of them. They are
15 solely dedicated individuals to assist our corps
16 defense counsel to investigate these highly
17 complex sexual assault cases.

18 They're civilians, come with a number
19 of experiences from law enforcement to defense
20 experience.

21 And, they essentially clear the docket
22 for our defense counsel so that they can focus

1 more on actual -- the lawyer stuff, preparing the
2 case, getting the training they need.

3 And then, lastly, the LNs that we have
4 are all graduates of the Roger Williams
5 University Paralegal program. So, that'll come
6 to be LPEP or paralegals. So, they also assist
7 with our corps defense counsel with that
8 expertise.

9 So, that's the structure this base.

10 And, this is kind of a busy slide,
11 this next slide and I won't talk amongst all of
12 the individual items in there, but that
13 demonstrates to you this is our continuum.

14 Colonel Zimmermann talked about the
15 program that the Marine Corps has, the Navy has
16 set up a continuum for all defense counsel. This
17 is what we would like all of our new defense or
18 our defense counsel and our new defense counsel
19 to go through during their three years at the
20 DSO.

21 The one item or the couple items I
22 want to highlight first is this FTJA program, you

1 see that on the -- on my left, I think your
2 right, is that FTJA program is new.

3 It's called a First Tour Judge
4 Advocate program. Every Navy Judge Advocate that
5 comes out of our basic school goes through this
6 two-year long program. That requires them to go
7 through rotations through all of the departments,
8 trial, command services, legal assistance and
9 then defense.

10 What this allows the individual to do
11 is get experience in representing clients in an
12 administrative separation board hearing type
13 procedure, the firing type cases or first rep.
14 Someone comes in for NJP advice.

15 This allows them to get their -- cut
16 their teeth stuff before they actually get an
17 opportunity to work in a court-martial, so that
18 when they do come to a defense service office
19 that they have some defense experience dealing
20 with clients and defense issues.

21 The other things I want to focus on,
22 too, are these DCAP MTTs. We do -- my team goes

1 to every single DSO headquarters and major
2 detachments and we provide training every six
3 months on areas of concerns, trends that we're
4 seeing, new evolutions in the law, et cetera.

5 So, that provides a continuing legal
6 education aspect for the Navy counsel.

7 And, the last thing is that black line
8 that says weekly training, I mean, this is really
9 where the rubber meets the road here is because,
10 keep in mind, we have those experienced
11 department heads, those experienced COs with
12 LL.M.s, with the mass amounts of experience.

13 And, they're providing the weekly
14 training, you know, the weekly -- spotting the
15 issues and resolving those issues for the counsel
16 that work for them.

17 So, next slide, please?

18 And then, lastly, you had asked how do
19 we evaluate counsel?

20 I can tell you the first thing is
21 going to be the front line supervisors, the DSOs
22 individual assessments.

1 You know, we have experienced people
2 there for a reason to provide experience and also
3 knowledgeable critique and criticism of counsel.

4 The second thing we have, are these
5 quarterly Military Judge debrief sheets. Every
6 quarter, we get DCAP and TCAP both get compiled.
7 Debrief sheets from the Military Judges and then
8 we design our training in accordance with what
9 are the errors that we're seeing from the
10 Military Judges.

11 And, the third way that we're able to
12 evaluate our counsel is DCAP evaluations. We do
13 onsite assessments.

14 Keep in mind, we are on the East Coast
15 and West Coast, so we can kind of go to different
16 offices and see how counsel are doing in court.

17 And then, lastly, every six months, we
18 go to these offices and we actually go into the
19 trial and observe cases if they happen to be
20 going on at that time.

21 So, subject to your questions, Madam
22 Chairwoman, that ends my presentation.

1 CHAIR HOLTZMAN: Thank you very much,
2 Commander.

3 CDR REYES: Thank you.

4 CHAIR HOLTZMAN: Judge Jones?

5 HON JONES: Actually, one of the
6 things that we were concerned about, as I
7 mentioned in my past question was the perception,
8 at least, that defense resources were not what
9 they should be and there was a disparity.

10 You know, the model in the civilian
11 world with federal or state defenders versus
12 prosecution, and let's just take one example
13 which was just discussed, which is how many
14 investigators or what investigative resources are
15 available isn't really very good either.

16 But, I think you said you had eight
17 investigators available to you, Commander Reyes?

18 CDR REYES: Yes, ma'am.

19 HON JONES: Could you use more?

20 CDR REYES: Yes, we can.

21 HON JONES: Okay.

22 And, if I asked that question of

1 either of you gentlemen, Colonel Brookhart or
2 Colonel Higgins?

3 COL BROOKHART: Definitely, ma'am, we
4 could -- we have no investigators and we could
5 certainly use them. We have a plan in place
6 where we're -- we'd like to see around 20 to 24
7 investigators, but that's still in its infancy.

8 HON JONES: Well, even in the civilian
9 model, there's more than zero.

10 COL BROOKHART: Yes, ma'am.

11 COL HIGGINS: Likewise, the Air Force
12 does not currently have dedicated defense
13 investigators. We're looking at the question.
14 We would love to have it, but as of today, no, we
15 do not have it.

16 HON JONES: There may be other areas
17 as well just in terms of -- I mean, is there --
18 are there enough defense counsel?

19 I mean, obviously, your counsel are
20 showing up for every contested trial, so they're
21 there. Are their caseloads higher?

22 COL BROOKHART: Yes, ma'am.

1 HON JONES: I'm sorry, I can't see
2 your faces, either, so I'm kind of lost.

3 COL BROOKHART: This is Colonel
4 Brookhart.

5 HON JONES: Okay, Colonel, thank you.

6 COL BROOKHART: Yes, my biggest
7 challenge in terms of resources is not financial.
8 We get about a quarter of the budget that the
9 Government gets, but it's enough for our
10 training. It's enough to train the counsel I
11 have.

12 My biggest challenge is in manpower.
13 So, when the RSP met just 2014, there were
14 authorized billets for 154 defense counsel. Now,
15 the number of authorized billets is down to 44.

16 So, as part of the downsizing, we've
17 lost some of our billets. But, that's only part
18 of the problem. I can't fill all the billets
19 that I have.

20 So, right now, out of those
21 authorizations, I have about 135 counsel on hand
22 when I should have 144.

1 So, and in terms of experience, I'm
2 facing pressure, too. Thirty of those counsel
3 out of that 130 have no prior experience at any
4 level and, with the advent of the Special Victims
5 Counsel program, I'm forced to compete for
6 qualified experienced counsel with that program
7 and it's a battle we're losing.

8 They will -- I think their head will
9 be here and they'll tell you that this latest
10 cycle of bringing people into that program, they
11 all have some prior experience.

12 Whereas, our numbers of inexperienced
13 defense counsel have gone up. So, we've set up a
14 situation where, you know, the accused in a given
15 case might have less experienced counsel than the
16 victim has in that case, which is concerning to
17 me.

18 Which is also why training is so
19 important to us. But, if I had, you know,
20 there's a challenge that training can't solve and
21 that's just the numbers of cases.

22 Unlike a federal public defender's

1 office or a state defender's office, we don't
2 just have the courts-martials. We have to
3 represent counsels at these lower level adverse
4 actions.

5 We, I think, last year saw over 20,000
6 clients for Article 15s and other 200,000 for
7 administrative separation. That takes up a lot
8 of counsels' time, too, in addition to the courts
9 martial part of their practice.

10 So, that is a significant area of
11 under resourcing on the Army side.

12 HON JONES: How about the Air Force,
13 Colonel Higgins?

14 COL HIGGINS: Yes, ma'am.

15 You know, we, like Colonel Brookhart
16 said, we see about 230,000 client visits a year
17 on everything. I've got 107 defense counsel to
18 handle that.

19 But, I think that's sufficient. I
20 mean, I'm a 100 percent manned in defense counsel
21 and I have been for the entire three years I've
22 been in --

1 CHAIR HOLTZMAN: Can I just interrupt
2 for one second? I would really appreciate when
3 you refer to -- that we try to speak with gender
4 neutral language. I don't mean to pick anyone
5 out because I think this has happened before.
6 But, I think, you know, we're now in 2016 and we
7 can manage that.

8 Thank you.

9 COL HIGGINS: Very good.

10 I have 107 defense counsel. We are at
11 a 100 percent of our manning document.

12 CHAIR HOLTZMAN: Can you say
13 personnel?

14 COL HIGGINS: Personnel.

15 CHAIR HOLTZMAN: Staffing?

16 COL HIGGINS: Staffing.

17 CHAIR HOLTZMAN: Things like that.

18 COL HIGGINS: Very well.

19 CHAIR HOLTZMAN: Thank you.

20 COL HIGGINS: We are -- I don't need
21 more counsel, in all honesty. A lack of counsel
22 is not something that keeps me up at night. We

1 are well staffed.

2 Likewise, our training budget is more
3 than adequate for our needs. I believe we are
4 very well resourced, in all honesty.

5 HON JONES: And, I'm sorry, did you
6 already respond to the investigator resource
7 question?

8 COL HIGGINS: To your last question,
9 yes, I think I did, ma'am.

10 HON JONES: You said you could use
11 more?

12 COL HIGGINS: We don't have any. We
13 proposed, you know, there's been a proposal
14 floating through the system to get some and we'd
15 love to see that approved.

16 HON JONES: Thank you.

17 CHAIR HOLTZMAN: Admiral Tracey?

18 VADM TRACEY: So, it did sound as if
19 Air Force has more robust program for defense
20 than the others who spoke here today and that it
21 parallels the structure that you have for trial
22 counsel.

1 And, you get your defense counsels out
2 of the trial counsel, did I understand that
3 correctly, Colonel Higgins?

4 COL HIGGINS: Yes, ma'am. I'll have
5 to let the other services decide if we're more
6 robust than they are, but we do pull experienced
7 counsel, hand selected from among the best
8 prosecutors, absolutely.

9 VADM TRACEY: Could I ask, Colonel
10 Brookhart, you said about 20 percent of your
11 defense counsels come with no experience?

12 COL BROOKHART: Yes, ma'am.

13 VADM TRACEY: For that 20 percent,
14 given your situation, for that 20 percent, are
15 you able to do the sort of parallel processes
16 that Air Force uses where there's a senior
17 defense counsel who sits with them and they
18 second chair for so many trials and so forth
19 before they're on their own?

20 COL BROOKHART: Yes, ma'am. That's
21 how we have to approach it. We don't have a
22 structured formalized way to achieve that

1 objective, but, in practice, that's how the
2 senior defense counsel do it.

3 We always put those people in a bigger
4 office so they're surrounded by more personnel,
5 more experienced counsel and they can gain
6 experience that way and be slowly brought along
7 until they're capable of doing defense work on
8 their own.

9 VADM TRACEY: And, do you have highly
10 qualified expert participation?

11 COL BROOKHART: Yes, ma'am, we do. I
12 just don't -- and my defense counsel assistance
13 program has two highly qualified experts.

14 VADM TRACEY: And, the trial counsel
15 has a similar --

16 COL BROOKHART: The trial counsel
17 assistance program has three and then there's one
18 that's sort of serves as a general function for
19 either side.

20 VADM TRACEY: Okay. And, I have no
21 other questions.

22 Thank you.

1 CHAIR HOLTZMAN: Mr. Stone?

2 MR. STONE: Yes. I heard two of you
3 who presented say that the sexual assault
4 prosecutions make up, I think you said, the
5 largest proportion of your cases that go to
6 trial. Why is that?

7 It strikes me as really odd. There
8 are so many different kinds of crimes in the
9 Military. Do you have -- can you enlighten me at
10 all with what you think, any of you four who
11 would like to comment on it?

12 COL BROOKHART: Well, for one, it's an
13 area that's, obviously, you're here because it's
14 received so much interest and attention, and
15 rightly so. It's something that -- a problem
16 that the military is looking to solve.

17 That's going to create a force in
18 function to bring those cases forward.

19 But, we also have implemented, at the
20 direction of Congress, a referral system that I
21 think it serves to expedite a lot of cases to
22 trial, sexual assault cases to trial.

1 Because a Commander, if he elects not
2 to send the case to trial, then it has to go to
3 the next higher headquarters or possibly all the
4 way up to the Secretarial level for a second
5 look.

6 And, I think there's a reluctance to
7 have that happen. And, as a result, the easier
8 course of action is just to send the case to
9 trial.

10 COL ZIMMERMANN: I second all of that.

11 I believe, and again, please let me be
12 clear, sexual assault or any crime against
13 another person is not okay. We are not here to
14 say that people who actually commit sexual
15 assault should not be punished for that.

16 But, my perception from both my
17 Military and my civilian practices is that we
18 have incentivized people to come forward with
19 claims that may not be, let's call them, a 100
20 percent accurate.

21 We have also incentivized Commanders,
22 as Colonel Brookhart said, to send everything to

1 trial to protect themselves.

2 And, I don't say that lightly. I
3 don't like to ever accuse another officer of not
4 having the moral courage to do the right thing.

5 But, I am personally aware of Generals
6 who have made the comment, I don't want to be the
7 next General Franklin. Okay?

8 So, there is a perception, and I think
9 also a reality that Commanders are fearful for
10 their own careers if they do not send these cases
11 to trial.

12 And, again, my personal analysis, and
13 I'm speaking in my purely personal capacity here,
14 is that, for -- I've been practicing Military
15 Justice since 1993 and I've seen the Military
16 prosecute cases that I don't think a civilian
17 prosecutor would take to trial.

18 And, I think a lot of the -- the
19 majority of that time when I was a young lawyer
20 and a prosecutor, I thought it was the right
21 thing to do, even if I didn't necessarily think
22 it was the strongest Government case, I thought

1 it was the right thing to do to let the jury
2 decide.

3 In fact, I had a Commander once tell
4 me when I told him I wasn't worried about maybe
5 not being -- having the strongest case, he said,
6 well, that's why God made juries. Okay?

7 So, I think that the Military has
8 always been very pro-complaining witness, has
9 always wanted to err on the side of caution. If
10 there's a complaint out there, let's fully
11 investigate it. Let's let the legal process take
12 its course.

13 And, I think that the pendulum, in my
14 personal opinion, has just swung too far the
15 other way where we have this culture of believe
16 the "victim" before she's even determined to be a
17 victim.

18 I mean, again, beyond the scope of
19 this Panel, but using the word victim for
20 somebody who there's been no adjudication
21 whatsoever by any administrative or judicial body
22 that a crime even occurred; we have a culture now

1 that supports people who make claims.

2 In my own personal practice in the
3 past two months, I have litigated a case where a
4 woman waited 17 years to report a rape and
5 another one where she waited eight years.

6 Now, that alone does not have anything
7 to do with the merits of the case. They could
8 have been very legitimately raped 17 years ago,
9 eight years ago.

10 But, what I'm saying is, there's
11 incentives now to, you know, expedite a chance
12 for financial, VA benefits. There's incentives
13 now for people to report.

14 And, God bless them, if they were
15 really, truly assaulted, I want them to come
16 forward. I want the process to work for them.
17 We should protect them.

18 But, I honestly believe that there are
19 some claims being made that are not accurate and
20 it's all tied together, right, because, if you
21 don't have the resources to adequately
22 investigate these cases, you can't necessarily

1 expose the weaknesses in the Government's case.

2 And then, the whole thing with Article
3 32 being rewritten, I mean, the Article 32
4 investigation used to be a way for not only the
5 defense to learn about the case, but also the
6 prosecution. A lot of cases didn't go to trial
7 after an Article 32, not because the "defense"
8 won but because the prosecutors saw the
9 weaknesses in the case and decided to handle it a
10 different way.

11 That's not happening so much anymore
12 because the process has been so streamlined, it's
13 almost to the point of, if somebody makes a
14 claim, it's presumed to be valid. It's going to
15 be blessed by an Article 32 and it's got to go to
16 trial because no convening authority wants to put
17 the brakes on it.

18 I hope that answered your question.

19 MR. STONE: Well, if we can just stay
20 with that a second, I mean, victims have
21 complained that, oh, these go to trial as opposed
22 to other kinds because, having been traumatized,

1 it's easier. They're walking around with PTSD.
2 It's easier to get them to cry or pull out of the
3 case totally.

4 So, I mean, they have a slightly
5 different view of why so many go to trial.

6 Do you think that perhaps in this
7 narrow category of cases or maybe in a broader
8 category, since the Military can set a lot of its
9 own rules, we should have lie detectors
10 admissible vis-a-vis victims, maybe victims and
11 defendants to cut the number that are going to
12 trial?

13 COL ZIMMERMANN: That's a fantastic
14 question, to be honest. I haven't thought about
15 that.

16 I use polygraphs in my private
17 practice. They're not admissible in court, but
18 they can be useful. They can be presented to a
19 convening authority at pretrial. They can be
20 presented in an Article 32 if the preliminary
21 hearing officer will accept it, of course.
22 Things are changing now.

1 But, I don't know that I would ever
2 mandate them because it is still not an exact
3 science. It's helpful, I think, but not
4 dispositive.

5 So, I would hesitate to say the case
6 can't go to trial unless the alleged victim
7 passes and the accused fails, but --

8 MR. STONE: No, I was just responding
9 to your comment that that might give commanding
10 officers more comfort in deciding in a close case
11 not to go forward. That they'd say --

12 HON JONES: I don't know.

13 MR. STONE: -- well, the person hasn't
14 passed a lie detector and so, it's a close case
15 but that, you know, does not push me over the
16 edge into sending it for prosecution.

17 I'm trying to think where -- oh, in
18 clearances all the time, people have to take a
19 lie detector test. It's not dispositive, but it
20 pushes the -- it has a lot to do with the
21 administrative determination.

22 And, I think the administrative

1 determination's outside of just a pure
2 prosecution's have to be looked at because this
3 is taking up such a large part of the trial
4 docket, at least according to you, and it sounds
5 like it, an inordinately big piece of the trial
6 docket.

7 COL ZIMMERMANN: It is and I think
8 that's a really interesting question. I'm not
9 sure that our courts or our personnel are ready
10 to go quite there where we mandate it in every
11 case, whether it's dispositive or not, I'm not
12 sure we're quite there.

13 But, I think it can be used as a tool
14 in the appropriate case on a case by case basis.
15 And, the problem is, if these active duty counsel
16 don't have access to a private polygrapher, if
17 they're going to have their client polygraphed,
18 it's going to be by a law enforcement polygraph
19 examiner.

20 MR. STONE: CID would have to do it.

21 COL ZIMMERMANN: So, and there's a
22 whole bunch -- I mean I think you could have a

1 whole hearing on that. I don't know that that's
2 the best solution.

3 I not -- I personally will not let a
4 client take a polygraph from a Government
5 polygrapher unless I had him polygraphed by an
6 expert that I chose. That's just me.

7 So --

8 MR. STONE: Does anybody else think
9 that that's an interesting line of inquiry that
10 we ought to --

11 COL BROOKHART: Sir, I would just say,
12 years ago, I was a -- after being a trial
13 counsel, I was a legal advisor to a Military
14 Intelligence Command and I got to meet several
15 counterintelligence polygraphers. And, they have
16 a very different view on the reliability of the
17 polygraph compared to a CID polygrapher.

18 So, I asked him a lot about that
19 because if you ever meet a CID polygrapher, they
20 believe it should be absolutely admissible and
21 it's almost infallible.

22 The counterintelligence polygraphers

1 would tell you the Russians have ten different
2 ways beat it and it's not very reliable.

3 You know, it's just one of many tools
4 that we use for counterintelligence. So, I would
5 think it's not nearly reliable enough and it
6 would be unfair, I think, too, to expect a victim
7 to undergo a polygraph just as it would to direct
8 an accused to undergo a polygraph.

9 MR. STONE: I thought maybe you were
10 saying the point is that we should keep Russians
11 out of the U.S. Military.

12 COL ZIMMERMANN: Well, because it also
13 infringes on the right of the accused to remain
14 silent. I mean, that goes without -- I didn't
15 say that out loud because that goes without
16 saying.

17 You couldn't mandate the accused to
18 take a polygraph because he doesn't have to say
19 anything at all.

20 MR. STONE: Should we let victims
21 volunteer to take a polygraph in a closed case?

22 COL ZIMMERMANN: Should we let them

1 volunteer?

2 MR. STONE: Yes, if they want to.

3 COL ZIMMERMANN: I think so, of
4 course. And, I'm not sure that that's not done.
5 I think sometimes victims volunteer to take
6 polygraphs. I don't know that they're always
7 given.

8 MR. STONE: Okay. The other question
9 that I had, three of you spoke about these
10 administrative separations taking up a large part
11 of your time and I do want to touch on that.

12 As it was mentioned, I touched on it
13 before, I mean, I believe that if a Military
14 officer refuses to take a drug test and he's
15 prosecuted for possession or dealing drugs in a
16 large amount, he can be acquitted and still
17 separated even though he refused to take the test
18 and/or testify.

19 And, I guess, I'm curious to know,
20 other than the Marine Corps, have the other
21 services thought about what the Marine Corps just
22 said, it's now instituted that it looks at

1 separations in acquittals and whether you think
2 there's any standards review of that going on
3 with respect to whether, you know, absolutely, in
4 a civilian sphere, the failure to testify is a
5 consideration that's allowed when the FBI or the
6 Bureau of Prisons or some other sensitive
7 organizations, intelligence organizations, where
8 you have clearance when you refuse to do it even
9 if you're -- whether you're convicted or
10 acquitted.

11 Because they realize, that that says
12 something about your ability to function. If you
13 came into that superior or commanding officer and
14 said, when he wanted to question you, what
15 happened here? We're not prosecuting, but you
16 said I'm not talking. You'd wind up with a
17 changed assignment for sure.

18 So, I'm just wondering whether
19 anybody's looking at that or if you think that's
20 an issue that might resolve some of the cases
21 that are more difficult that a person might say,
22 I want, you know, I need to be in a different

1 unit. I don't want to talk about it. I may not
2 think there's a rape but I don't want to talk
3 about it.

4 And, not necessarily separation, but
5 some other administrative proceeding would be
6 helpful.

7 COL HIGGINS: This is Colonel Higgins.

8 I would not be in -- I'm not aware of
9 the Air Force looking at this. I would
10 personally not be in favor of something like this
11 which would seem to punish an individual for
12 exercising their right to remain silent.

13 As I think the defense counsel in me
14 talking, I don't think that would be an
15 appropriate response from the Government to take
16 somebody and say, because you exercised your
17 constitutional rights, we're now going to take
18 some sort of other adverse action against you.

19 MR. STONE: Do you have any problem
20 then doing it in a drug case?

21 CHAIR HOLTZMAN: Excuse me, sir, you
22 asked a question, let the other person finish.

1 MR. STONE: Yes, sure.

2 CHAIR HOLTZMAN: And then we'll finish
3 -- conclude this line of questioning.

4 COL BROOKHART: I tend to agree that
5 I don't think we necessarily want to punish
6 someone for exercising a constitutional right.
7 And, I don't know what happens in the prison
8 system or the FBI. That sounds like it's
9 possible.

10 And, I think it's just a matter of
11 administrative due process. If it meets the
12 Goldberg v. Kelly standard, then I think you
13 could do it and we probably could do it in the
14 Army.

15 But, I'm not aware of any push to do
16 that at this time.

17 CHAIR HOLTZMAN: Thank you.

18 I just want to ask a few questions now
19 because I'm very concerned that the area that was
20 raised by Judge Jones which is adequacy of the
21 representation of defendants in the Military in
22 sexual assault cases.

1 Now, because I understand that you
2 don't have your own investigators. Maybe I'm
3 incorrect here, but I understand that you don't
4 have your defense counsel now may not have its
5 own or they may not have their own investigators.

6 But, you can ask the prosecution or
7 the Government, if you will, to supply
8 investigators. Is that how it works?

9 CDR REYES: Yes, yes, ma'am.

10 COL ZIMMERMANN: And they always say
11 no.

12 COL BROOKHART: Yes, ma'am.

13 And, in the Army, they'll supply them
14 by contracting that it with them. It's not
15 possible in the Army to have a CID agent sort of
16 some over and serve as a defense investigator.
17 Their regulations prohibit --

18 CHAIR HOLTZMAN: So, what's the
19 problem with this system?

20 COL BROOKHART: One problem is I have
21 to ask for the money --

22 CDR REYES: Yes.

1 COL BROOKHART: -- in the first place.
2 I shouldn't have to go to the Government and ask
3 for that money.

4 The second problem is --

5 CHAIR HOLTZMAN: Okay. Can you
6 explain that?

7 COL BROOKHART: Yes.

8 CHAIR HOLTZMAN: I mean --

9 COL BROOKHART: Yes, the Trial Defense
10 Service --

11 CHAIR HOLTZMAN: I'm not
12 understanding, but I want a --

13 COL BROOKHART: Yes, ma'am, no I
14 understand.

15 CHAIR HOLTZMAN: -- this on the
16 record.

17 COL BROOKHART: Trial Defense Service
18 does not have an independent funding for anything
19 other than travel to and from courts martial and
20 training. So, I don't have any way to fund an
21 investigator. We rely on the convening
22 authority.

1 CHAIR HOLTZMAN: You want to ask for
2 one, but why don't you want to ask for one?

3 COL BROOKHART: Oh no, we do want to
4 ask. We encourage our counsel to ask for one.
5 We've drafted the request in briefs for them to
6 ask for investigators.

7 CHAIR HOLTZMAN: So, what's the
8 problem with the system?

9 CDR REYES: The reason why -- one of
10 the fundamental problems, and this is why the
11 Navy went to its own --

12 HON JONES: I'm having a little
13 trouble hearing you.

14 CDR REYES: Yes, ma'am, I'll speak up.

15 CHAIR HOLTZMAN: Maybe use the mic.

16 CDR REYES: Yes, I guess this is just
17 recording.

18 One of the fundamental problems with
19 that structure essentially is that you have to,
20 in order to get investigators or prove to the
21 convening authority you have to demonstrate why
22 you need them. What's the relevance? What's the

1 necessity?

2 So, you have to say, I need to speak
3 to this witness and these are the questions or
4 these are the topics that I need to talk about.

5 So, while you're doing that, you're
6 intimating to both the prosecution as well as the
7 convening authority the strategy of your case.

8 So, often times, and there have been
9 occasions where this has happened in the Navy and
10 in Coast Guard cases where we would inform the
11 convening authority our investigative structure
12 and planning and, come to find out, some of the
13 law enforcement investigation goes to those
14 witnesses before we had an opportunity to get
15 those approved to talk to our witnesses.

16 That's the fundamental problem with
17 asking the prosecution for investigators.

18 CHAIR HOLTZMAN: Okay. So, that's one
19 problem.

20 Do you -- are your -- I think, Colonel
21 Zimmermann, you said these requests are always
22 turned down. Is that always true?

1 COL ZIMMERMANN: I may have
2 overstated. I believe that they're granted much
3 more liberally in the capital litigation context,
4 mitigation experts for sentencing.

5 I just litigated this.

6 CHAIR HOLTZMAN: I'm talking about
7 sexual assault cases only.

8 COL ZIMMERMANN: I have never seen an
9 investigator granted. That doesn't mean it's
10 never happened --

11 CHAIR HOLTZMAN: In a sexual assault
12 case?

13 COL ZIMMERMANN: Correct. That
14 doesn't mean it's never happened, but I'm not
15 personally aware of it, but it's very infrequent
16 if it happens.

17 CHAIR HOLTZMAN: Can the others
18 comment?

19 COL BROOKHART: Yes, ma'am. We did
20 sort of an informal survey over a number of
21 months of our counsel making these requests and
22 whether they were approved by the Judge or by the

1 convening authority.

2 So, if the convening authority says
3 no, our next step is to file a motion with the
4 Trial Judge and hope that he will order the
5 convening authority to provide that expert
6 assistance.

7 And, we found about one in 12 was
8 approved in sexual assault cases.

9 CHAIR HOLTZMAN: And, Colonel Higgins,
10 do you have your response?

11 COL HIGGINS: Yes, ma'am. In the Air
12 Force, our own kind of internal look at this is
13 similar to what the Army has found is that it's -
14 - they're very infrequently granted.

15 CHAIR HOLTZMAN: And, Commander Reyes?

16 CDR REYES: That's the same, too.
17 That was one of our bases for doing that as well.

18 CHAIR HOLTZMAN: Let me ask you
19 another question. Is this a deprivation of due
20 process for defendants?

21 COL ZIMMERMANN: Yes, ma'am.

22 COL BROOKHART: Yes, ma'am. I think

1 if you look at the federal and state case law on
2 the obligation of a defense counsel to
3 investigate his case and how we accomplish that
4 obligation, I would be very concerned that we're
5 not meeting that standard.

6 CHAIR HOLTZMAN: Colonel Higgins?

7 COL HIGGINS: I think that's the
8 argument we're making that it is a deprivation of
9 due process. I don't think the appellate courts
10 are agreeing with us.

11 CHAIR HOLTZMAN: Have you -- oh, so
12 you're making the argument in individual cases?

13 COL HIGGINS: Yes, ma'am.

14 CHAIR HOLTZMAN: Has anyone every
15 brought a suit against -- outside the -- a class
16 action case, for example? Or, is that beyond
17 what you do in defending your cases?

18 COL ZIMMERMANN: We don't have
19 authority to file civil lawsuits. And then you
20 have the --

21 CHAIR HOLTZMAN: I'm sorry?

22 COL ZIMMERMAN: We don't have

1 authority as defense counsel to get involved in
2 any civil litigation or file any lawsuits.

3 And, I'm not expert in the Federal
4 Tort Claims Act, but I would assume that the
5 Government's probably immune from such -- they
6 have not waived their immunity on that. But, I
7 could be wrong on that.

8 But, it is beyond the scope of what
9 we're permitted to do as defense lawyers in
10 uniform. Some other law firm, civilian law firm
11 would have to do that on our behalf or on the
12 Service member's behalf.

13 CHAIR HOLTZMAN: I see. And, none of
14 these motions -- how many times have you made
15 such a motion for a due process claim?

16 In other words, any inadequate
17 resources? Do you have any idea?

18 COL HIGGINS: I don't know, ma'am.

19 COL BROOKHART: No, ma'am, I don't
20 know the exact number of times it went to the
21 Judge versus the convening authority. So, I'm
22 not --

1 CHAIR HOLTZMAN: And, you've raised it
2 on appeal?

3 COL BROOKHART: And, I'm not aware of
4 any appellate case on the defense investigator
5 that's been successful.

6 There are some appellate cases where
7 other investigators were denied at the trial
8 level and in appellate court found that was
9 error.

10 I can't think of a single one where it
11 dealt with a defense investigator, usually
12 psychologists or accident type investigator.

13 CHAIR HOLTZMAN: I'm sorry, just one
14 more question.

15 Then, why hasn't it been raised in the
16 appellate context?

17 COL BROOKHART: I have to assume it
18 has, it just hasn't been successful, ma'am. The
19 standard I don't think is particularly hard for
20 the Government to meet.

21 CHAIR HOLTZMAN: And, there's no
22 opinion on this? So, I mean, the fact that

1 you're telling -- that's what I'm having a hard
2 time understanding.

3 The courts haven't addressed this?
4 It's not referred to in an appellate decision?
5 Or it hasn't been raised on the appeal? I don't
6 --

7 COL BROOKHART: Yes, ma'am. I can't
8 answer that for certainty.

9 CHAIR HOLTZMAN: I'm having a hard
10 time understanding what the exact posture of this
11 issue is on the appellate level.

12 CDR REYES: Ma'am, to your question
13 with respect to sexual assault cases --

14 CHAIR HOLTZMAN: Yes?

15 CDR REYES: -- that question is still
16 first impression. So, there isn't any hard CAAF
17 case where there's -- or NMCCA case for our
18 branch.

19 But, with respect to defense
20 investigators, there have been opinions, mostly
21 related in the death penalty context that talks
22 about the need for defense investigators.

1 Now, all defense investigator requests
2 or motions have fallen in the rubric of a due
3 process, at least in the Navy, from a due process
4 claim. Those have not made it in the sexual
5 assault context have not made it to either the
6 Navy or Marine Corps Court or to the CAAF.

7 CHAIR HOLTZMAN: And, I'm sorry, I
8 just have one further question.

9 Has the issue of adequacy of the
10 defense counsel and workload and the authority of
11 your personnel to raise the issues and handle the
12 cases, have those been raised before the Military
13 courts?

14 COL BROOKHART: I'm not aware of a
15 specific case where it has been.

16 CHAIR HOLTZMAN: Okay, I don't have
17 any further questions.

18 COL ZIMMERMANN: Ma'am, if I might?

19 In addition to being a due process
20 violation, I also believe it's a Sixth Amendment
21 right to counsel issue because I can't do my job
22 as a Military defense lawyer --

1 CHAIR HOLTZMAN: Have you raised this?

2 COL ZIMMERMANN: I think it has been
3 raised and I don't -- and I've made myself a note
4 to do a Westlaw search later and I will submit
5 something to the Panel.

6 CHAIR HOLTZMAN: Thank you.

7 COL ZIMMERMANN: Because I just don't
8 want to say anything off the top of my head
9 that's not correct. But, I know it hasn't been
10 successful because we are where we are.

11 CHAIR HOLTZMAN: Okay.

12 Thank you again very, very much for
13 the presentation and your testimony. We very
14 much appreciate it.

15 We can take five minutes, really five
16 minutes and then we'll come back.

17 Thank you.

18 (Whereupon, the above-entitled matter
19 went off the record at 2:21 p.m. and resumed at
20 2:21 p.m.)

21 CHAIR HOLTZMAN: Thank you very much
22 everyone.

1 We're now up to our, I think it's our
2 last panel which will provide an overview of
3 training and experience of Sexual Victims'
4 Counsel.

5 And, I guess we're going to start with
6 another person who's a glutton for punishment,
7 Colonel Andrea deCamara, U.S. Air Force, Chief,
8 Special Victims' Counsel Division.

9 We very much welcome you here and
10 thank you, again, for the help you gave to the
11 Panel in the last session by joining with your
12 colleagues in giving us a draft of legislation,
13 which is really extraordinary beyond and above
14 the call of duty endeavor on your part for which
15 we're very grateful.

16 MR. STONE: Yes, at our request, we
17 pushed you. Sorry.

18 CHAIR HOLTZMAN: At our request,
19 exactly, exactly. So, we welcome you and thank
20 you very much for being here.

21 COL DECAMARA: Thank you, Chairman
22 Holtzman, Panel Members.

1 I was honored to be asked back to talk
2 to you today about the Air Force Special Victims'
3 Counsel and Special Victims' Paralegal Training
4 that we currently conduct.

5 The Air Force provides training to our
6 SVCs and SVPs, I know I heard earlier today that
7 people, I think the Navy calls their folks SVPs.

8 For the purposes of my talk, SVP is
9 our paralegals because we do have specific
10 paralegals that are part of our team.

11 The Air Force provides comprehensive
12 and continuous training through formal in-
13 residence courses, distance learning including
14 uses of DCS and VTC technology, attendance at
15 nationally recognized victim advocacy conferences
16 and symposiums, regionally developed joint
17 seminars and internal online lessons learned
18 collaboration tools.

19 First, as you heard earlier today from
20 our Commandant, Colonel Davies, the Air Force JAG
21 School provides several comprehensive formal
22 courses for SVCs and SVPs.

1 As required by Air Force instruction,
2 all incoming SVCs must attend a certification
3 training prior to representing clients to the
4 extent practicable.

5 This is accomplished either through
6 attendance at the Air Force or the Army Judge
7 Advocate School courses.

8 These courses provide comprehensive
9 instruction including lectures, seminar and
10 practical application exercises.

11 I will speak more about the recent
12 development and content changes of the course
13 later in my remarks.

14 In addition to the certification
15 courses, the JAG School offers five intermediate
16 sexual assault litigation courses, or ISALCs, as
17 you heard Colonel Oler refer to, a year, which
18 SVCs have a curriculum tailored to their unique
19 challenges of victim representation.

20 Assault courses are aligned with the
21 five judicial circuits and are conducted at a
22 base within each circuit so trial practitioners

1 within that circuit can collaborate and discuss
2 common issues.

3 The circuits senior SVC as well as
4 myself and one other SVC leader attends each
5 ISALC to ensure leadership perspectives and
6 mentoring as part of that instruction.

7 The informal feedback of the senior
8 SVCs is that ISALC is incredibly helpful to the
9 SVCs in their continued development and their
10 advocacy role of their clients.

11 Additionally, each year, six Special
12 Victims' Counsel participate in the Advanced
13 Sexual Assault Litigation course held at the Air
14 Force's JAG School.

15 This innovative course provides
16 exceptional instruction to SVCs to further refine
17 their litigation skills in aspects of the trial,
18 including pretrial investigative interviews,
19 motions practice and sentencing arguments.

20 In addition to these formal courses,
21 the SVC program also endeavors to send every SVC
22 and SVP to at least on national advocacy

1 organization training conference each year.

2 Examples of such forums are NCVLI,
3 NSEC, EVAWI or regional or state courses such as
4 TAASA and CALCASA.

5 These established training courses
6 provide SVCs opportunity for outreach to victim
7 resources located within their states or that
8 their clients may be eligible to receive.

9 They encourage an understanding of
10 successful mechanisms for representing clients
11 and cross feed of best practices from outside of
12 the Military.

13 Our SVCs have also been frequently
14 asked to present on their successes and best
15 practices at these venues.

16 Our European region collaborated with
17 the other services to host a joint European
18 SVC/VLC training symposium that allowed those in
19 the European region to collaborate on tactics and
20 techniques for representations of clients in the
21 OCONUS environment.

22 All those who attended thought it was

1 especially useful and allowed for a cross flow of
2 information between the Services as cross Service
3 representation when the accused and victim are
4 from different Services happens seemingly more
5 frequently OCONUS.

6 Several Air Force SVCs also attended
7 and participated in the Navy led Legal Assistance
8 Medical Evaluation Board training held last fall.

9 By all accounts, this training was
10 also fantastic and provided practical information
11 when a client has medical issues that interfere
12 with their continued service resulting from the
13 sexual assault.

14 Our SVC program also relies on
15 internal training through technology such as DCS
16 and VTCs. The program holds biweekly training
17 sessions to enhance SVCs' knowledge based and
18 advocacy skills.

19 Our paralegals also hold paralegal-
20 specific training via VTC every Friday to ensure
21 they are satisfying Air Force training
22 requirements and remaining current with SVC

1 issues.

2 Finally, SVCs and SVPs actively post
3 comments on our internal cohort website that
4 allows for immediate cross feed of lessons
5 learned and best practices.

6 Since November of 2014, the SVC
7 courses curriculum has dramatically changed.
8 Prior to this time, the SVC discipline was so new
9 to the Military that much of the instruction
10 focused on advocating for standing, program
11 authority and basics of client representation.

12 Since then, the dynamic nature of the
13 practice, the advances of victims' rights and
14 expansion of the SVC program either through case
15 law or legislation necessitated continual
16 comprehensive review and changes of the course.

17 First, we added three days of child
18 representation instruction to our SVC course.
19 Unlike the Army, the Air Force combines the
20 initial SVC certification course with the child
21 representation block.

22 While the advantages of having the

1 courses -- while there are advantages of having
2 the courses separate, the Air Force prefers a
3 combined course because it allows SVCs to be
4 prepared for child clients from the start of
5 their assignment and ensures they receive
6 training.

7 We have found that it can be difficult
8 to send the SVC back for a week long course after
9 the SVC has begun representation with scheduling
10 conflicts such as courts, Article 32 and other
11 client needs.

12 Second, this year, we've added almost
13 three hours of instruction regarding DoD civilian
14 representation.

15 We are very concerned that our SVCs
16 can competently represent their civilian clients.
17 And, once this became required by Congress, this
18 competency became an important part of the
19 curriculum.

20 We have also added sections such as
21 vicarious trauma to alert SVCs and SCPs to the
22 impact that this representation may have on them

1 and the importance of taking care of themselves
2 and each other.

3 Because mental health records are so
4 prevalently requested, we added a block on how to
5 read mental health records and what some of the
6 basic diagnoses mean.

7 Retaliation and ostracism is something
8 encountered by our clients and has been
9 highlighted by Congress as a concern.

10 As such, this has been added at all
11 our courses including revisiting the topics at
12 each ISALC and ASALC to ensure SVCs are best
13 prepared with the techniques to deal with this
14 issue.

15 With the changes from the NDAA as well
16 as the recognition of the potential for post-
17 trial advocacy and writ appeals, we have also
18 added blocks at ISALC and the SVC course with
19 regard to writ appeals and post-trial matters.

20 Specifically, we have three blocks,
21 one on post-trial, clemency and parole, one on
22 writ appeals and one on an appellate update.

1 As the centerpiece in the Air Force's
2 SVC course, we also strive to bring in at least
3 three SVC client teams to provide a client-based
4 perspective on the representation and how an
5 individual SVC helped them in their case.

6 The SVCs are then able to act as peer
7 mentors for the incoming SVCs.

8 The certification is also joint in its
9 development and execution. Since 2014, adjunct
10 instructors from all the Services have assisted
11 in teaching and facilitating the course.

12 This is especially important as only
13 the Army and Air Force JAG Schools provide
14 certification courses.

15 The school provides Service-specific
16 source documents to all the students on the JAG's
17 campus website and are available for months after
18 the course for easy access and reference.

19 Air Force JAGC training is managed by
20 the Judge Advocate General's Office of
21 Professional Development. I coordinate with them
22 and the JAG School to ensure all our SVCs get the

1 formal training at the appropriate time, such as
2 the SVC certification course, ISALC and ASALC.

3 But, I also manage the informal
4 training mentioned, such as the biweekly DCSS
5 regional conference and attendance at civilian
6 advocacy conferences and trainings.

7 The Air Force has focused on enhancing
8 the staffing of our training capability. The
9 JAGC has recently added a new civilian position
10 at the JAG School and I'm sure you heard Colonel
11 Davies speak earlier about the responsibilities
12 of Mr. Stout.

13 We have worked closely with him on
14 course development administration. And, while he
15 belongs to Colonel Davies, he is plugged into my
16 leadership team intricately, participating in my
17 biweekly leadership huddles and our biweekly
18 trainings.

19 He brings a wealth of experience and
20 knowledge to our SVCs and our SVCs regularly call
21 on him for support and advice.

22 Next, one of the questions you had

1 earlier was about how SVCs are being integrated
2 into next assignments and moving on.

3 Over the past three assignment cycles,
4 a graduated SVC has moved into a faculty position
5 at our Air Force JAG School which is considered a
6 very prime position for a Captain.

7 These former SVCs provide unique
8 perspectives and capabilities and are relied upon
9 for course development and execution as well as
10 peer mentors.

11 And, additionally, as of today, I have
12 a senior SVC located with me at Joint Base
13 Andrews who is responsible for outreach among
14 other responsibilities.

15 In this capacity, she will ensure
16 continuing contacts with civilian advocacy
17 organizations and she coordinates attendance at
18 such training opportunities and disseminates
19 information to our SVCs through internal cohorts
20 and websites.

21 We also utilize our senior SVCs to
22 provide instruction at all of our SVC-specific

1 courses.

2 The Air Force employs several methods
3 to determine effectiveness of training courses.

4 First, the Air Force JAG School
5 requires all students to provide end of course
6 critiques. This provides immediate feedback
7 while the material and teaching methods are fresh
8 in the minds of the students.

9 Then, approximately six to 12 months
10 after attendance, the school sends students a
11 post-course assessment survey. This survey
12 utilizes the Kirkpatrick Level III Graduate
13 Assessment and responses are used to shape course
14 methods of instruction.

15 Students are evaluated also during
16 practical exercises and small group seminars.

17 Senior SVCs then periodically travel
18 to observe their counsel during Article 32 and
19 courts-martial.

20 The senior SVC evaluation of the SVCs'
21 performance is then used to shape future
22 training, both formal courses as well as our

1 internal biweekly training.

2 Lastly, the SVC program does not
3 manage staff or evaluate the training of Military
4 Judges. Because I have no authority over them, I
5 posed your question to the Air Force's Chief
6 Trial Judge. The following is a synopsis of his
7 response to your question.

8 All in all, since November of 2014,
9 the Military Judges have transitioned from
10 viewing the SVC as some "new program" to a
11 program that is respected and expected in many
12 courts.

13 Military Judges are focused on
14 treating all the players courteously and
15 respectfully and the Chief Military Judge teaches
16 that way as well to both new Judges and the
17 currently assigned Judges.

18 It is certainly more robust and it is
19 very practical and it has matured.

20 Three notable trainings include,
21 AFCAT, which was conducted in August 2015. This
22 was the Air Force -- this Air Force Judge focused

1 training with one hour presentation by the SVC
2 Program Chief, myself, and then an hour of
3 discussion with just the Military Judges
4 regarding SVC interaction and methodology type
5 scenario-based questions.

6 Next, in 2016, the Military Judges
7 participated in the Joint Military Judges
8 Training with Military Judges from all of the
9 Services and included an hour long plenary
10 session and then a 45 minute Air Force specific
11 breakout discussion of SVC interactions.

12 Then, in April 2016, the new Judges
13 course hosted at the Army JAG School had the
14 first two weeks focused on issues related to
15 sexual assault.

16 The Military Judges watched MRE 412
17 and MRE 513 demonstrations from start to finish.
18 The scenario included an SVC.

19 Additionally, the Judges were tasked
20 to prepare instruction and motion rulings in the
21 case on both the 412 and 513 issues.

22 There is a one-hour Army led block

1 focused solely on SVCs and in the Air Force
2 specific breakout the Chief Trial Judge spent an
3 hour on SVC issues, including methodology
4 problems.

5 That is taken from Chief Judge Vance
6 Spath.

7 Again, hopefully, I answered your
8 questions posed to us and I thank you for the
9 opportunity to speak to you today about training
10 and I look forward to answering your questions.

11 CHAIR HOLTZMAN: Thank you very much,
12 Colonel.

13 Next, we'll hear from Colonel
14 Katherine McDonald, U.S. Marine Corps, Officer-
15 in-Charge, Victims' Legal Counsel Organization.

16 Colonel, we welcome you and look
17 forward to your testimony.

18 COL MCDONALD: Well, good afternoon,
19 Madam Chair and distinguished Panel and thank
20 you, again, for another opportunity to appear
21 before you today to describe the training of
22 Marine Corps Victim Legal Counsel.

1 The Marine Corps Victims' Legal
2 Counsel training program consists of three
3 general types of training, certification
4 training, annual training and what we call
5 sustainment specialized training.

6 I'll first address certification
7 training in summary.

8 Before a Judge Advocate is certified
9 to represent victims, the Judge Advocate must
10 complete an SVC/VLC certification course at
11 either the Army or the Air Force JAG Schools.

12 With annual training, approximately
13 six months after certification, all VLC,
14 paralegals and Military legal specialists attend
15 advanced training at the Marine Corps annual VLC
16 symposium.

17 The symposium consists of three days
18 of victim-focused training with an emphasis on
19 current legal issues and developments in our
20 victim legal representation and practice,
21 professional responsibility and victimology.

22 Sustainment specialized training is a

1 type of training that is afforded to our VLC to
2 enhance their VLC skill sets and allow them
3 opportunities to interface with victim advocates
4 from both the civilian and military.

5 A significant number of our VLC attend
6 the National Crime Victim Law Institute's NCVLI
7 annual crime victim law conference.

8 Additionally, the Marine Corps sends
9 its VLCs to other training events such as the
10 annual End Violence Against Women International,
11 the EVAWI conference, which was recently held in
12 Washington, D.C.

13 Also, last fall, the Marine Corps was
14 invited to attend some great training which was
15 already mentioned by the Air Force SVC by the
16 Navy entitled Legal Assistance for Victims of
17 Sexual Offenses and Other Crimes Training
18 Symposium.

19 Additionally, during each 12-month
20 period, the four regional VLCs are required to
21 provide region-specific training for all VLC and
22 their paralegal staff in that region.

1 As most of our VLCs have at least six
2 months of either trial or defense experience
3 before being screened and selected for the
4 program, our initial training objective is to
5 identify incoming VLC as early as possible so
6 they can attend the VLC/SVC certification courses
7 that are sponsored either by the Judge Advocate
8 General of the Army or the Air Force Judge
9 Advocate General of the Air Force.

10 These are usually conducted in late
11 spring or early summer. By doing so, we are able
12 to orient our incoming VLCs to their new role as
13 Victim Legal Advocate and increase their
14 competency in navigating the Military Justice
15 System from the perspective of the victim as they
16 begin their tour as a VLC.

17 The Marine Corps annual training
18 symposium brings together the entire VLCO team to
19 include, VLCs, our paralegals and our Military
20 legal specialists.

21 The objectives of this training event
22 are to share and reinforce best practices

1 developed by all the Services, update on any new
2 or emerging legal developments or requirements
3 and provide instruction on specific issues or
4 topics relevant to our practice.

5 For example, this year, the training
6 included blocks of instruction on familiarization
7 with the new USNCVLC manual, also working with
8 the disability evaluation system and a half day
9 workshop on the neurobiology of trauma and the
10 legal system's response to sexual assault
11 survivors which was conducted by Professor Meg
12 Garvin and Dr. Wilson of NCVLI.

13 As I already mentioned, we have also
14 found great value in sending our VLCs to an
15 annual two-day training event sponsored by the
16 NCVLI in Portland, Oregon.

17 We find that the NCVLI training
18 provides an invaluable opportunity for our Marine
19 VLCs to network among members of the civilian
20 victim legal advocacy community and familiarize
21 themselves with outside resources available to
22 victims since a number of our victim clients will

1 still need some form of victim services to move
2 forward with their lives once outside of the
3 Marine Corps.

4 Last, each of our four RVLCs are
5 required to conduct their own regional training,
6 both formal and informal.

7 For the past couple of years, the
8 regional training has been informal and more ad
9 hoc. But, recently, in response to the
10 maturation of the program, we have turned our
11 focus towards standardizing the regional training
12 while affording the RVLC some latitude in
13 adjusting the training to suit regional demands.

14 For example, one region trained on the
15 new circuit rules impacting the VLC practice in
16 the courtroom.

17 RVLCs have also found benefit in
18 conducting local roundtable discussions moderated
19 by the VLC on recent articles or developments
20 from both Military and civilian sources and
21 publications as well as some recent court
22 opinions.

1 In Okinawa, the RVLC often
2 incorporates 30 minutes of training during the
3 region's weekly conference calls.

4 I will now address changes that have
5 been made to the Marine Corps VLCO training
6 curricula since November of 2014.

7 Since November 2014, the Marine Corps
8 VLCO training curricula has been refined but has
9 not been altered significantly.

10 Our primary focus continues to be on
11 developing and maintaining a high level of
12 competence in victim legal representation
13 advocacy within the Military Justice System.

14 In this regard, the Services and the
15 program managers of each Service endeavor to work
16 together to teach and train all of the SVCs and
17 VLCs, whether it be at one of the certification
18 courses sponsored by the Army or the Air Force or
19 at the regional level.

20 This cross Service training is
21 essential to producing quality victim advocates
22 who are just as comfortable and competent

1 advocating for their own victim within another
2 Service as they are within their own.

3 We also recognize that a number of
4 victims exercise their voice and opt out of
5 participating in the court martial process which
6 necessitates that our VLCs understand and can
7 effectively navigate alternative administrative
8 avenues that can otherwise hold the perpetrator
9 accountable.

10 Additionally, as part of its
11 refinement, the Marine Corps VLCO has begun
12 training VLCs in the disability evaluation
13 process and in appellate advocacy.

14 And, as our practice matures, we have
15 been able to refine and better focus our training
16 of professional responsibility issues and
17 Military Justice overall.

18 I must note that the Navy-Marine Corps
19 Appellate Division has been very inclusive with
20 the VLCO in allowing us to participate in the
21 development of their annual training and
22 participation.

1 This is definitely a positive trend
2 and I look forward to sending a number of our
3 folks to the Joint Appellate Advocacy Training
4 later this year in September.

5 I'll last address how these changes
6 have addressed specific problems, challenges the
7 SVCs and VLCs in the field have encountered.

8 The manning and staffing and
9 evaluation of VLC training is the responsibility
10 of the Marine VLCO Program Manager, which is
11 myself.

12 To assist me with this effort, our GS-
13 11 paralegal tracks the certification and
14 training of our VLCs.

15 When a VLC or paralegal attends any
16 form of training, they are asked to provide an
17 after-action report on the topics covered, the
18 quality of instruction and any general
19 observations or comments.

20 We then use this information to decide
21 whether the training will be included in the next
22 year's offerings.

1 The fine tuning of the training our
2 VLCs now receive has better equipped them to make
3 a more comprehensive approach to victim advocacy
4 that results in a more consistent, credible and
5 effective approach to victim care and
6 representation at courts-martial or the
7 alternative venues.

8 Moreover, we have found that most
9 problems and/or challenges the VLCs have
10 encountered are best resolved when all parties
11 involved have a common understanding of victims'
12 rights, not just the VLC.

13 While I must defer to the Navy and
14 Marine Corps Trial Judiciary to answer the
15 question on the training of Military Judges, I
16 can say confidently that I've seen a positive
17 trend in the bench's enforcement of victims'
18 right over the past year.

19 Madam Chair and distinguished Panel
20 Members, thank you again for the opportunity to
21 talk about the Marine Corps VLC program,
22 specifically, our training efforts.

1 As our practice matures, I can assure
2 you that our training will continue to evolve to
3 reflect changes in the law and developments into
4 victim legal advocacy.

5 Thank you for your time.

6 CHAIR HOLTZMAN: Thank you very much,
7 Colonel.

8 Our next presenter will be Lieutenant
9 Colonel Christopher Kennebeck, U.S. Army, Chair
10 and Professor, Criminal Law Department.

11 Welcome, Colonel and look forward to
12 your testimony.

13 LTC KENNEBECK: Good afternoon, Madam
14 Chair and distinguished Panel. Thank you for
15 inviting me to talk to you today about the Army
16 Special Victim Counsel Training Program.

17 As you said, I'm the Chair and
18 Professor. I have a faculty of nine associate
19 professors and a civilian professor, a highly
20 qualified expert who is an experienced prosecutor
21 and exception advocate.

22 And, together, we're responsible for

1 developing the criminal law curriculum to train
2 our Judge Advocates. But, I am -- I manage the
3 execution of the SVC training here in the school
4 and I will speak to you in that capacity today
5 regarding our SVC training.

6 The training program is designed,
7 obviously, to educate and prepare our Judge
8 Advocates who have not previously represented
9 crime victims and it's a mandatory prerequisite
10 before certification.

11 We have two adult certification
12 courses and one child certification course
13 annually. And then, of course, we send Judge
14 Advocates to the Air Force certification course.
15 Thank you, Air Force.

16 One of my faculty is going next week,
17 so we appreciate that.

18 Also, the adult SVC certification
19 course is four and a half days. It's 22 hours of
20 lectures, four and a half hours of panel
21 discussion and six hours of small group sessions.

22 Obviously, it's substantive,

1 procedural law as well as practical exercises,
2 subject matter experts to address victim
3 behavior, medical issues and sexual assault cases
4 interviewing techniques, resiliency.

5 We also invite guest speakers who are
6 stakeholders in the process. And, we think we,
7 you know, benefit a lot from including them,
8 including representatives from the SAPRO program,
9 defense counsel, special victim prosecutors,
10 Staff Judge Advocates, Military Judges,
11 practicing SVCs and investigators from CID.

12 The SVCs from the field facilitate
13 dialogue in small groups. They participate in
14 panel discussions and they provide context and
15 concrete examples with anecdotes which provides
16 definitely some, you know, helpful information
17 for those SVCs who are the student SVCs.

18 And, overall, this interaction
19 improves the student SVC's ability to
20 communicate, negotiate and advocate to protect
21 their clients' interests.

22 And, it supports a multi-disciplinary

1 approach to victim care overall.

2 As for the child course, it's a four-
3 day course devoted exclusively to educating SVCs
4 on the nuances on dealing with child clients and
5 their guardians.

6 We offer this course independently
7 from the SVC certification course. As you heard,
8 the Air Force mentioned, we generally, we want to
9 have a break between because we think there's a
10 benefit in allowing a counsel to represent an
11 adult and understand the role of being an
12 advocate for a victim before we bring them back
13 to teach them the child nuances.

14 But, once again, that's something that
15 we continuously look at. We might make the child
16 course part of the adult course in the future.
17 So, we will continue to review that decision.

18 We include, obviously, subject matter
19 experts in the area of competency, child
20 psychology, familial dynamics and incorporate
21 panel discussions and experts in this child
22 course as well and in with the practical exercise

1 where we have a mock interview with a child, a
2 role-playing child, at the end of the course.

3 And, much like the services you've
4 heard from so far, we have regional specific
5 training for Special Victim Counsel, a great deal
6 of online collaboration.

7 I'd say the SVC community is much like
8 the defense community. They share writs. They
9 share motions. They share experiences whether
10 it's online, face to face or just over the
11 telephone. They're a very tightknit community.

12 We take advantage of cross Service
13 training as well and all of our shore courses are
14 now open to SVCs which just helps, especially in
15 the advocacy realm to have actual SVCs in the
16 room to play those parts when you have a mock 412
17 motion or a mock 513 motion which now, we
18 incorporate and I'll talk more about that in a
19 minute.

20 So, since November 2014, we have made
21 several changes in addition to that curriculum.

22 First, we created a standalone SVC

1 course.

2 Second, we added more stakeholders to
3 the adult certification course, specifically,
4 defense counsel and SVP primarily to address more
5 effective and efficient means of communication
6 between and among the parties. But, sometimes
7 their interests diverge most times with defense,
8 but sometimes with the Government as well.

9 Third, we added a block of instruction
10 and a workshop on writ and appellant practice as
11 we see that remedy being exercised more often
12 over time.

13 And, fourth, we've added more in depth
14 training on retaliation and CID interviewing
15 techniques.

16 To further improve communication
17 interaction, we invited SVCs to attend our two-
18 week advocacy course taught here at the school,
19 the ITAC, Intermediate Trial Advocacy Course.

20 It provides an excellent opportunity
21 -- it was targeted for prosecution and defense
22 attorneys in their first year of practice, but

1 now it gets those folks together in the rooms to
2 talk about their different interests.

3 And then, of course, they role-play it
4 out in all the advocacy exercises, too. So, we
5 have a sex assault hypothetical that we use and
6 we try that case from beginning to end, from
7 opening statements to closing.

8 And, we argue 412 and 513 motions with
9 those students in the room.

10 The most significant change
11 implemented since 2014 is the purposeful
12 injection of the SVC content into all of our
13 courses here at the JAG School, the basic course,
14 the graduate course, ITAC, the Military Justice
15 Managers course and the Military Judge course as
16 well as our courses for Commanders and SOLO and
17 GOLO.

18 We use the sex assault fact pattern as
19 a teaching tool in all of these courses,
20 particularly the Judge Advocate courses and the
21 fact pattern includes an SVC, it includes medical
22 records, it includes an embedded 412 issue which

1 allows for very complex motion practice in the
2 advocacy courses.

3 Moving forward, we're adding the
4 following subjects to our next certification
5 course, you've heard this as well, labor law
6 experts to address how to handle DoD civilians
7 and their unique concerns, VA benefits experts,
8 MEB/PEB counsel for Soldiers facing medical
9 discharge.

10 And, borrowing from the Air Force, we
11 are probably going to add a class on reading
12 medical reports, excellent idea, more in depth
13 instruction on the SVCs role in clemency, parole
14 and restitution.

15 The SVC Program Manager's Office
16 actually owns this course so, you know, that's
17 Colonel Marotta, you've heard her testify before,
18 Mark Meixell and their staff. They help manage
19 and evaluate this program and the course
20 curriculum while my department manages and staffs
21 the execution of the training.

22 So, back in November 2014, Major

1 Marcus Misinec, one of my faculty, you know,
2 built this course with the Program Manager at the
3 time and has, you know, developed those courses
4 from the infancy, the child and the adult course.

5 Since that time, we've added Ms. Patty
6 Sudendorf, my highly qualified expert. She was
7 hired in February of 2015 and is here in the room
8 with us.

9 Many years of prosecution experience
10 taught at the NAC, so brings a wealth of
11 expertise to us.

12 And, Major Misinec will move on and
13 Major Kristen Frischionne will take his place and
14 be the Program Manager for this course here in
15 the school. She's the one attending the Air
16 Force JAG School next week.

17 Together with the SVC Program
18 Manager's Office, our department continuously
19 reviews curriculum. We evaluate and engage
20 subject matter experts for more input on how to
21 improve this curriculum, especially civilian
22 experts.

1 We share information with sister
2 Services and victims' rights entities to ensure
3 we capture best practices.

4 Much like the Air Force, after the,
5 you know, our courses here in the school, we have
6 a survey which is, you know, required to be
7 filled out by all students.

8 And then, we don't quite formally ping
9 them six months later, but I like that idea,
10 another thing I might steal, but we do get
11 feedback after the fact to continue to improve
12 and develop the SVC courses.

13 Finally, with regard to the Military
14 Judge course, since 2014, SVC-related content has
15 been injected purposefully to include motion
16 practice, 412 and 513 exercise, evidence of
17 privilege, professional responsibility and
18 sentencing.

19 So, although we have one dedicated
20 hour on SVC, we actually inject that into many
21 aspects of the course and as I said, the fact
22 pattern.

1 So, the student judges must consider
2 a written motion filed by an SVC. They have to
3 preside over a mock hearing with the SVC present,
4 have all those arguments about standing, when
5 they speak, how they speak, listen to the SVC
6 make their arguments and then they have to make
7 findings of fact and conclusions of law at the
8 end of that mock hearing.

9 And, of course, we keep them updated
10 with SVC representation issues and, of course,
11 recent case like, like the Duckworth opinion.

12 So, I believe my comments address the
13 four questions you asked us today and I'd be
14 happy to answer any more if you have them
15 afterwards.

16 Thank you.

17 CHAIR HOLTZMAN: Thank you very much,
18 Colonel.

19 Our final presenter will be Ms.
20 Charlotte Cluverius, did I pronounce that
21 correctly?

22 MS. CLUVERIUS: You did, ma'am, thank

1 you.

2 CHAIR HOLTZMAN: Thank you.

3 U.S. Navy Deputy Chief of Staff,
4 Victims' Legal Counsel Program.

5 Welcome before the Panel, we are eager
6 to hear your testimony.

7 MS. CLUVERIUS: Good afternoon, Madam
8 Chair, distinguished Members of the Panel, thank
9 you for the opportunity to provide comments today
10 on behalf of the Navy Victims' Legal Counsel
11 Program.

12 Before I address my prepared remarks
13 about training, I wanted to go back and answer a
14 question, that I believe the Admiral asked
15 earlier before lunch about whether or not SVC or
16 VLC are getting off track in their careers with
17 regard to Military Justice.

18 And, I can speak for the Navy,
19 obviously. We have a Military Justice Litigation
20 track which Commander Reyes discussed, the MJLQ.
21 And, we have two VLC who are currently MJLQ
22 certified and there are several layers within

1 that program and they have to apply to move up.

2 And, in order to apply and
3 successfully move up, the Board wants to see that
4 they've had enough litigation, Military Justice
5 litigation, experience. And, we had one of our
6 VLC move up a level while she was with us and
7 she's also about to transfer to a senior trial
8 counsel job.

9 So, we feel like that's not being a
10 VLC in the Navy, is not being held against or
11 holding anyone back from the Military Justice
12 litigation career.

13 As background to the training of our
14 VLCs, I wanted to share a bit about our VLC
15 selection process, since that informs our
16 training.

17 Our VLC candidates are all volunteers
18 to the program except for three in the initial
19 wave when the program was initially stood up.
20 Otherwise, now, the program is entirely
21 volunteer-based if we can do it that way. And,
22 so far, we've been successful.

1 They are interviewed by the Chief of
2 Staff for the Navy Victims' Legal Counsel Program
3 then by a Commander Navy Legal Service Command
4 and, ultimately, the Judge Advocate General of
5 the Navy.

6 In addition to being screened for
7 maturity, judgment and demeanor, VLC candidates
8 are specifically vetted for Military Justice
9 litigation experience. Or, in the case of our
10 Reservists who are taking active duty orders to
11 the VLC, civilian criminal litigation experience.

12 So, they arrive at our program already
13 fairly experienced on the trial counsel side or
14 the defense counsel side or both in many cases.
15 And so, this would include that they've attended
16 the basic law course at NJS as well as the
17 Advanced Trial Advocacy for Defense Counsel
18 and/or Trial Counsel before we see them. So,
19 they have all of that background.

20 And, with regard to the basic law
21 course at the Naval Justice School, though we are
22 not what you would call a first line customer of

1 that course because we do not take any attorneys
2 that are not beyond their second tour.

3 We have been asked by the Naval
4 Justice School and included in their review of
5 their training objectives. So, we've been
6 allowed to provide input from the VLC perspective
7 and we're grateful for that opportunity.

8 Specific VLC training requirements
9 start with, as you've heard from all my
10 counterparts here, a VLC or an SVC certification
11 course. That is required in order for our VLC to
12 be able to represent and advise clients.

13 Due to our smaller Service and
14 staggered and longer rotation cycle, the Navy has
15 only conducted one VLC certification course at
16 the Naval Justice School and that was in January
17 2014, at the start of the program, when we had a
18 large number of VLC reporting at one time.

19 Since then, we have required our
20 incoming VLC to attend an SVC certification
21 training course either here with the Army or at
22 the Air Force JAG School, thank you both very

1 much.

2 And, for example, we have five
3 incoming VLC attending the Air Force SVC
4 certification course that starts on Monday and we
5 have four others attending the Army certification
6 course here starting in August.

7 These certification courses are,
8 obviously, staffed through the respective Service
9 schoolhouses; however, the Navy VLC program
10 routinely provides one to two instructors,
11 depending on what the schoolhouse requires to
12 join the school staff in support of the course.

13 For the upcoming Air Force SVC
14 certification course, for example, we're
15 providing two of our more seasoned instructors in
16 appellate and motions practice, as well as the
17 representation of child victims at the request of
18 Colonel Stout.

19 The certification courses are
20 evaluated through critiques on the attendee
21 level, as you have heard, as well as through open
22 dialogue at the VLC Service -- or SVC Program

1 Manager level.

2 Every month or six weeks, the SVC/VLC
3 Program Managers meet to include the Army, the
4 Air Force, Navy, Marine Corps, Coast Guard and
5 the National Guard to discuss any emerging
6 issues.

7 And, this frequently includes emerging
8 and changing areas in training.

9 And, any changes in the curricula at
10 the SVC certification courses are shared amongst
11 the Services for input and recommendation for
12 which we are so grateful to participate.

13 All Navy VLC are required to attend
14 training on the representation of child victims
15 offered by both the Army and the Air Force JAG
16 Schools.

17 Within our own program, we conduct
18 required monthly training via -- since we're
19 spread out all over the world, we do this live
20 online via VTC or DCS.

21 Last year's topics included discovery,
22 Article 32 practice, appellate case law updates,

1 mental health records and the expert witness,
2 retaliation and social ostracism, protecting
3 client privacy, working with minor victims and
4 vicarious trauma.

5 Our notable additions to monthly
6 training since November 2014 include retaliation
7 and social ostracism which was being seen in the
8 field and that is an annual update and training
9 item for the Navy VLC as well as the larger
10 courses that we attend.

11 As our VLC are often in their billets
12 for more than two years, we're concerned about
13 empathy fatigue, also known as vicarious trauma.
14 In response, we've instituted mandatory annual
15 training on this topic and conducted this
16 training internally as part of our monthly
17 training requirement, as well as having a mental
18 health professional conduct this training at our
19 recent VLC symposium which I'll talk a little bit
20 more a second.

21 As case law has developed since
22 November 2014, particularly related to the

1 motions practice under Military Rules of Evidence
2 412, 513 and 514, we've increased our case law
3 updates and motion practice training within our
4 program, obviously, to match that.

5 This training is part of our regular
6 monthly curriculum and we've provided it at our
7 symposium as well as via our online SharePoint
8 site as relevant cases and decisions occur.

9 VLC representation and eligibility was
10 extended to minor victims in June 2014, as you
11 know. Since that time, we've continued to
12 develop more sophisticated internal training in
13 that area as well as requiring our VLC to attend
14 the formal child victim trainings required by the
15 Army and the Air Force.

16 Our required monthly training is
17 conducted by senior VLC or occasionally by an
18 outside Military or civilian experts, as
19 appropriate.

20 VLC leadership, including myself,
21 attend and all program members evaluate the
22 training for future changes and updates. So,

1 it's a constant evolving program.

2 This April, we conducted our first
3 ever VLC program training symposium where we
4 gathered 24 out of 29 VLC and eight of ten yeomen
5 who comprise our support staff for VLC-specific
6 training which included social media and
7 retaliation, motions practice and appellate
8 issues.

9 We brought in outside resources to
10 provide the Military Judges' perspective and the
11 Staff Judge Advocate perspective, as well as
12 leadership and vicarious trauma training.

13 Sessions on career development were
14 also provided for both the officers and the
15 enlisted staff.

16 The symposium training was conducted
17 by a mixture of internal VLC experts as well as
18 external presenters including a leadership expert
19 from the Naval Academy staff, a vicarious trauma
20 expert from the Naval Mental Health staff and a
21 civilian professor who specializes in the subject
22 of social media and the victims.

1 Attendees completed critiques of the
2 training symposium and we found the comments to
3 be overwhelmingly positive. A detailed after-
4 action report has been produced and it, along
5 with all of the original critiques will be filed
6 for use and planning and improving the next
7 training symposium.

8 Our hope is that we will be able to
9 conduct this at least biannually, if not
10 annually.

11 In March 2016, our designated
12 appellate team currently comprised of four Navy
13 VLC and one Marine Corps VLC came to Washington,
14 D.C. to attend VLC-specific appellate training
15 conducted, in part, by the Navy's Appellate
16 Government Division known as Code 46 over the
17 course of three days.

18 Their training included motions
19 practice instruction, appellate writing,
20 attending a CAAF argument and being admitted to
21 the Navy-Marine Corps Court of Criminal Appeals.

22 With the maturation of the motions

1 practice where victims' interests and privacy
2 rights are in play, we're focusing on the
3 appellate issues that can arise both at the trial
4 stage as well as in post-trial processes.

5 In response, we've assembled this VLC
6 appellate team not only to support VLC with trial
7 writs as they arise and post-trial appellate
8 cases that arise, but also as a sounding board
9 and training resource for the entire VLC on all
10 appellant matters.

11 In addition to this required training,
12 we support the following additional training.

13 As previously mentioned, we
14 participated robustly in a joint regional
15 European training that was cross Service held in
16 Ramstein in September. Overwhelmingly a positive
17 experience and it's already being planned to be
18 repeated in September.

19 It resulted in a shared website intra-
20 Service that's still being used today and will
21 continue to be used for the -- a resources
22 sharing venue.

1 Each year in June, a group of Navy
2 VLC, usually the most recently reported, are sent
3 to the National Crime Victim Law Institute,
4 NCVLI, in Portland.

5 Or, again, this June, we have four new
6 VLC attending.

7 In the future our program will also be
8 sending several VLC actually to attend the EVAWI,
9 End Violence Against Women International
10 conference.

11 Captain Fischer-Anderson attended and
12 presented it at this part year's conference in
13 Washington, D.C.

14 In August 2015, we sent more than a
15 third to the legal assistance for victims'
16 training sponsored by the Navy Legal Assistance
17 Division known at Code 16 in Orlando, Florida.

18 As you'd already heard, this was
19 interdisciplinary as well as inter-Service, so it
20 covered disability evaluation attorneys, legal
21 assistance attorneys and VLCA and SVC. Over 200
22 attorneys attended at that was a very, very

1 productive training to strengthen the team
2 approach to representing and serving victims.

3 That four-and-a-half day training was
4 conducted by Military and civilian presenters
5 from all three of the disciplines and across the
6 Services as well.

7 In 2015, we sent several VLC to the
8 prosecuting Special Victims' course at the Naval
9 Justice School in Newport, Rhode Island as well
10 as several VLC to the courtroom communication
11 course put on by Joshua, which is a trial
12 advocacy training.

13 We rely heavily on our VLC internally
14 to identify deficiencies in existing training and
15 burgeoning areas of practice as well as to
16 suggest local or national training events
17 relevant to our practice.

18 We're open to other stakeholders'
19 recommendations as well, with regard to
20 appropriate training opportunities for VLC such
21 as from Staff Judge Advocates, Military Judges
22 and the Naval Criminal Investigative Service.

1 We're lucky in that we control our own
2 travel and training budget within the Navy VLC
3 program, so we're able to send VLC to relevant
4 and required training without having to rely on
5 externally funded seats at desired training
6 courses.

7 And so far, we have not had to say no
8 to anybody for a relevant training opportunity.

9 Finally, with regard to changes made
10 to the training of Navy and Marine Corps Military
11 Judges since November 2014, like my colleagues
12 here, I cannot speak with authority from the VLC
13 perspective, except I can share what our Chief
14 Judge of the Navy-Marine Corps Court of Criminal
15 Appeals has authorized me to share with you,
16 which is that all new Judges are trained at the
17 Military Judges course hosted every year by the
18 Army here at the JAG School.

19 The curriculum includes a block of
20 instruction from an Army SVC representative who
21 discusses the SVC program in general, parameters
22 of the practice and representation, their

1 training and their role both pretrial and during
2 trial.

3 During the Joint Military Judges
4 Annual Training for sitting Judges held every
5 February, this past year an Air Force SVC
6 presented on the same topics covered at the
7 Military Judges course.

8 At every Joint Military Judges Annual
9 Training since 2014, SVC/VLC training has been
10 conducted.

11 In August 2015, the Navy-Marine Corps
12 Trial Judiciary held Special Victims' training
13 for their Judges where the Navy and Marine Corps
14 VLC Program Managers address the judiciary
15 discussing their respective programs, their
16 concerns, the parameters of VLC practice and the
17 evolving issues such as appellate representation.

18 That concludes my comments. Thank
19 you, again, for the opportunity to address you.
20 I look forward to answering any questions.

21 CHAIR HOLTZMAN: Thank you very much.

22 Judge Jones?

1 HON JONES: So, earlier today, we
2 heard, and it's true, that the positions of the
3 VLC or SVC are usually aligned with those of the
4 prosecutor but can be different.

5 And, I was wondering if you had any
6 information, even anecdotal or any data at all on
7 like the number of times when there was a
8 diversion or just disagreement between the
9 victims' counsel and the prosecutor? And, what
10 kind of training do you give then?

11 I'll take a volunteer.

12 COL DECAMARA: You're looking at me,
13 Judge Jones.

14 HON JONES: I'm sorry, what?

15 COL DECAMARA: I said you're looking
16 at me, so I guess I'll go.

17 HON JONES: I'm not really, I can't
18 see a thing, don't worry about it.

19 Maybe it doesn't happen that
20 frequently or you don't know yet. I'm just
21 curious.

22 COL DECAMARA: Well, so, for us, I

1 require my counsel to provide an after-action
2 report after every Article 32 and every court
3 martial.

4 And, it includes in there what motions
5 are filed, if they were included, if they were
6 provided the written documents, if they were
7 heard on the issue.

8 And, I would say generally speaking,
9 we are seeing that there -- as the practice
10 develops, more coordination, once we are at the
11 trial stage with the senior trial counsel, I
12 think we're getting better. We're not perfect at
13 it yet.

14 I think one of the areas that is right
15 for development without the SVC becoming the
16 Government, and I think our counsel are very
17 concerned about that, that they are not an arm of
18 the Government, they are not there to be the
19 Government, but to understand the strategic
20 perspective of the trial counsel so they can
21 better inform their clients to make a decision
22 with regards to maybe it's a cell phone record.

1 And so, for instance, we just had a
2 case at a northeastern base and the issue was the
3 mental health records of the victim. And,
4 because of the understanding that SVC had from
5 the STC, the senior trial counsel, as to the
6 their theory and theme, instead of the SVC filing
7 a 513 motion, the victim did waive the 513 issue
8 to try and help with what that theme and theory
9 was because the victim felt like maybe it was a
10 battle that she could win, but it might help win
11 the war, if you will, by giving that waiver.

12 And so, I don't think we're perfect at
13 it yet, I think there's definitely areas. I
14 would say, actually, those disagreements or
15 diverging of where people want to go probably
16 happen prior to the court, and where that is, is
17 in alternate dispositions not in --

18 Once we are at the court and we are
19 litigating, I think they are probably more
20 aligned, but it is whether or not I want to
21 continue on with this prosecution? Do I want to
22 support either a PTA or an alternative

1 disposition such as we call them Chapter 4s in
2 the Air Force, a discharge in lieu of court-
3 martial.

4 And so, I think that's probably where
5 you're seeing because, generally speaking, the
6 prosecutor wants to go forward and prosecute the
7 case. The victim might have some alternate
8 dispositions that they would like to see.

9 So, I think we're getting better. I
10 think it's an area to work on, but I think we're
11 definitely getting better at it.

12 CHAIR HOLTZMAN: And is it possible
13 that 412 issues are aired during this process and
14 before you get to trial, and maybe that's --

15 COL. deCAMARA: I think where --

16 CHAIR HOLTZMAN: -- part of the
17 equation?

18 COL. deCAMARA: I think it is. I
19 think where we're actually seeing -- even though
20 the Article 32s are becoming -- everyone at first
21 -- now it's paper cases. We're still seeing that
22 STCs are earning their money at those 32s. My

1 philosophy for my counsel is that I want my
2 counsel to go to the 32 regardless of whether or
3 not their client is testifying because we're
4 seeing that maybe a lack of understanding or not
5 necessarily combing through the information with
6 that type of eye by the early stages of the
7 prosecution.

8 And so, we're seeing where we are
9 making objections. And that's where the
10 disagreements are happening is at the 32 where
11 they're putting in information. Like wait a
12 second, this is some 412 information that we
13 don't want the FO to hear or the victim doesn't
14 want this, this is not appropriate.

15 And so that's where we're seeing --
16 and I wouldn't necessarily say there are
17 disagreements. I think it's just maybe a lack of
18 recognition because there's not their processing
19 yet. And so, I do -- I think that's where those
20 type of issues are coming to light earlier.

21 CHAIR HOLTZMAN: I just have one more
22 question --

1 COL. deCAMARA: Yes, ma'am.

2 CHAIR HOLTZMAN: -- about writs unless
3 someone else has any other additional experience.

4 COL. McDONALD: All I would say is,
5 Your Honor, is I agree. Colonel McDonald. We
6 make it very clear and my VLC make it very clear
7 with trial counsel that we're not there to help
8 you perfect your case. We're not here to
9 persuade our victim to do something that our
10 victim is not in a position to do or does not
11 desire to do.

12 And I think again over the past couple
13 years as this practice has developed I think
14 there is a much better understanding of what the
15 VLC role is independent of the trial counsel.
16 And you see that maturation of the trial counsel
17 as well. And I think you agree with that. And I
18 also agree with everything else that Colonel
19 deCamara said.

20 CHAIR HOLTZMAN: So I have no
21 knowledge of this. I gather there have been some
22 writs and -- or maybe a writ or two. Can anyone

1 fill me in on that?

2 COL. deCAMARA: Yes, ma'am. So we
3 just had a writ appeal that was in a Marine Corps
4 case that was appealed to the Navy-Marine Corps
5 Court of Criminal Appeals. It was a 513 issue,
6 and in that 513 issue was whether or not the
7 military judge properly applied 513 and whether
8 or not he allowed the victim to have notice and
9 the right to be heard on what the exception was
10 that the defense was asking for.

11 And so, that was appealed to the Navy-
12 Marine Corps court. That was -- the appeal was
13 denied. The victim -- our counsel, again it was
14 a Navy-Marine Corps case. Air Force counsel was
15 -- appealed to CAAF. CAAF heard oral arguments
16 this past Wednesday. And that decision is
17 pending.

18 However, I think the main issue was not the
19 513 substantive issue. Rather, it is fallen on
20 whether or not CAAF has jurisdiction over it from
21 how the language of 6(b) is written with regards
22 to how that writ appeal can be taken. And that

1 it says specifically the CCA and is silent on
2 CAAF.

3 CHAIR HOLTZMAN: All right.

4 COL. deCAMARA: So that's our current
5 writ appeal. Right now we've had others that our
6 clients have not -- have decided not to take.
7 The area that we have concern about is not
8 unnecessarily taking the writ appeals, but it's
9 on what writ appeals are not available
10 necessarily under 6(b), such as a spousal
11 privilege. And an adverse ruling in a spousal
12 privilege is not explicitly specified on the writ
13 appeal, so that to-be-determined if someone
14 wanted to appeal that, if that would even have --

15 CHAIR HOLTZMAN: Right.

16 COL. deCAMARA: But we have not had
17 that happen yet.

18 CHAIR HOLTZMAN: Do you mind one more
19 question?

20 So are your lawyers typically getting
21 up and representing the victims' position,
22 whether it's -- I'm assuming even if it is

1 aligned with the Government's, when are they
2 writing? Do you have enough experience yet
3 there? Do they only write if the Government's
4 not on their side, or how is that working out?

5 COL. deCAMARA: Generally speaking, I
6 think for our cases our counsel are prepared --
7 they're preparing their motions ahead of time,
8 and then if the Government has the same line of
9 rationale, they may or may not submit. But
10 generally speaking, they will --

11 CHAIR HOLTZMAN: They're ready?

12 COL. deCAMARA: -- submit at least a
13 motion in writing. It might be that the military
14 judge under the limits of LRM v. Kastenberg might
15 say your position is aligned with the Government.
16 You don't need to be heard on this. But
17 generally speaking, I would say from the after
18 action reports from our cases that they are
19 writing and requesting to be heard on most of
20 them.

21 CHAIR HOLTZMAN: Thank you.

22 COL. deCAMARA: Yes.

1 COL. McDONALD: That's the same for my
2 claim.

3 LTC KENNEBECK: And the same here,
4 ma'am. I was a deputy secretary again last year.

5 For two years we tried almost 200
6 cases, and of those cases about half were sex
7 assault cases. I had three special victim
8 counsel who worked for me and they wrote three
9 writs in that period of time, one of the first
10 three. And they're all generally 513-related and
11 how the judge handled the 513 motion.

12 So first of all, we pick the best
13 qualified to be SVCs. And from the leadership
14 perspective we had their interests and their
15 back. They could raise their concerns to us and
16 they filed those writs with support from the
17 special victims' counsel program manager and
18 assistance from GAD or DAD practitioners to help
19 them with the writ practice, which has become
20 robust now.

21 CHAIR HOLTZMAN: And what was the
22 results on those writs?

1 LTC KENNEBECK: Well, Duckworth is one
2 of them and --

3 CHAIR HOLTZMAN: Oh.

4 LTC KENNEBECK: -- that was definitely
5 a wake-up call for how we handled -- how we
6 should be handling 513. Now of course, that's
7 going to continue to -- we'll see what CAAF has
8 to say. Or, no, CAAF did speak on that one.

9 COL. McDONALD: Not yet.

10 LTC KENNEBECK: Yes, that's right.
11 They're going to rule shortly. So I think we
12 will see a trend over time where CAAF and the
13 Service Corps start to make clear what is
14 expected of judges at 513 hearings.

15 CHAIR HOLTZMAN: But have you -- and
16 you go to the Service Corps now. And have you
17 won one there, or how many writs have been taken
18 up? The one you've been talking about.

19 COL. deCAMARA: We have that one and
20 then we also supported an amicus on Duckworth. I
21 think DD v. Lippert. And then I think the Army
22 had a second one that they were successful on on

1 a 513 that was -- that preceded Duckworth. Those
2 are the --

3 LTC KENNEBECK: We have had success at
4 least once. I don't know that I'm ready to break
5 down how --

6 CHAIR HOLTZMAN: You don't have a
7 sample?

8 LTC KENNEBECK: I can get back to you
9 on that.

10 CHAIR HOLTZMAN: I understand, yes.
11 Thank you.

12 Admiral Tracey?

13 VADM. TRACEY: Colonel McDonald, would
14 you just refresh me, what are the minimum
15 experience requirements for a VLC?

16 COL. McDONALD: A VLC should have at
17 least; and most of them do with the exception of
18 one, six months of trial, of litigation
19 experience, whether it was with the prosecution
20 or the defense. Other requirements are they need
21 to show a requisite level of maturity, composure,
22 all of those attributes that we would look for

1 leadership. Also the desire to be a VLC is not
2 inconsequential.

3 So those are really the main criteria.
4 That and then we put them through a check of
5 sorts, both for the disciplinary and so and so
6 forth. But as far as experience level, a
7 successful, albeit maybe a short tour, or a
8 longer tour, but at least six months of trial
9 experience.

10 VADM. TRACEY: What roles do you all
11 have, Colonel Kennebeck, you indicated that you
12 do have an opportunity to participate in the
13 training of military judges with regard to SVCs.
14 What roles do you have with regard to shaping the
15 training for commanders, general court martial
16 convening authorities, the line officers in this
17 process?

18 LTC KENNEBECK: So here at the school
19 we have our senior officer legal orientation
20 course, a one-week course with battalion and
21 brigade commanders. That's the lieutenant
22 colonels and colonels who command 600 to 10,000

1 or 5,000 Service members. Those -- that week-
2 long course has SVC content injected and I get to
3 control what crim law or legal assistance-
4 oriented that touches crim law is injected in
5 that course, along with our administrative law
6 chair in this school. So we have a decent amount
7 of autonomy in shaping the curriculum.

8 For military judges that's pretty much
9 my course. And the senior judges own that
10 course. Once again, I get to execute their
11 intent, but together we collaborate. And once
12 again, we have great autonomy in shaping that
13 curriculum.

14 VADM. TRACEY: Others?

15 COL. McDONALD: Ma'am, I found my
16 regional VLCs have -- through their outreach
17 program, will provide training to the local
18 commanders. However, VLC, although we contribute
19 to the development of the commanders' conference
20 for those that are at the higher level, we don't
21 directly participate in that training as of yet.

22 VADM. TRACEY: But you do have an

1 opportunity to make input to --

2 (Simultaneous speaking.)

3 COL. McDONALD: We certainly do,
4 ma'am.

5 COL. deCAMARA: The Air Force began
6 last year, in the spring of '15, a senior officer
7 legal orientation similar to the Army's course.
8 I brief at that. I have an hour block at that as
9 well. The first day is all military justice.
10 Last year it focused solely on a sexual assault
11 case and followed it basically from start to
12 finish with vignettes through it.

13 And this year it is a domestic, so not
14 sexual, but still a victim who is in there. So
15 they're getting information about transitional
16 compensation and victims' advocacy. And I have a
17 block in that as well where we get to speak. And
18 those are the SVC MCAs and then their vice-
19 commanders and the group commanders. So it is at
20 that senior level as well.

21 MS. CLUVERIUS: And for the Navy the
22 -- we're very similar to the Marine Corps. Our

1 commanders, our COs are trained on obviously the
2 sexual assault program, and part of that is going
3 to be the role of the VLC. In addition to that,
4 we participate in the training, the advanced SJA,
5 staff judge advocate training, who are the main
6 advisors to the commanders.

7 And on a more personal level the chief
8 of staff, Captain Fischer-Anderson and I, try to
9 visit every location where we have VLCs
10 operating. And during those visits we meet with
11 all available COs personally, and that happens
12 just about every year. One of us gets to every
13 single base where we have a VLC and we're able to
14 meet with multiple COs and commodores in that
15 vein. So we're able to find out.

16 And overwhelmingly, especially this
17 last year, we found that the commanding officers
18 are very well-versed in the role of the VLC and
19 usually have a very good working relationship
20 with our local VLCs. So I'm sure we're not
21 getting to everybody, but we are able to test it
22 that way.

1 COL. McDONALD: And, ma'am, likewise
2 with the Marine Corps during my site visits when
3 the opportunity affords itself, I do go and see
4 all of the commanders. And it's great to have
5 that one on one discussion with them.

6 VADM. TRACEY: Thank you.

7 MR. STONE: Yes, I represent victims
8 in a civilian practice and one of the things that
9 comes up in virtually every case after a
10 conviction is going to be me helping them
11 articulate what they want to say at a parole
12 hearing and sometimes when there's a clemency
13 application posted. It's not will it happen. It
14 does happen. It's very common.

15 And I noticed in the comments about
16 the Army program that you do exercises, these
17 mock exercises, and I wondered if you do a mock
18 exercise on what a victim can do and might do in
19 a parole and in a clemency situation so they
20 understand what the questions are that those
21 boards ask.

22 So they respond to -- some of them

1 only want to know how is the person now. Some of
2 them want to know a whole history. Some of them
3 say I don't even get the original file. I don't
4 even know anything except a recommendation about
5 the guy's behavior in prison. I mean, do you or
6 have you thought about adding that, if you know?

7 LTC KENNEBECK: So we definitely have
8 a block of instruction on the post-trial and the
9 clemency submission that goes to the commander
10 before final action is taken. And there's a
11 formalized process for that for when the victim
12 can inject comments and how that is handled and
13 what happens then.

14 And then we invite a guest speaker
15 from our parole board to talk about the parole
16 process and how victims can provide input to that
17 parole board. And so we educate our SVCs on that
18 process as well. Obviously that can take much
19 longer and sometimes a victim will have to
20 exercise some patience until the parole board is
21 interested in input and is ready for input.

22 And sometimes that means you'll have

1 a change in victim counsel. But that is a
2 reality that we deal with and we -- a victim who
3 needs assistance in the parole process will have
4 eligibility to see a lawyer and they are trained
5 in how to plug into that process.

6 MR. STONE: Have you thought about an
7 exercise though? Because I took the course
8 here --

9 LTC KENNEBECK: Oh, I see.

10 MR. STONE: -- and I heard some of
11 those speakers --

12 LTC KENNEBECK: Yes.

13 MR. STONE: -- but it didn't leave me
14 knowing it should be a one-page typically that
15 they're looking for, or two pages.

16 LTC KENNEBECK: Right.

17 MR. STONE: There's a form, there
18 isn't a form, where it goes. I just wondered if
19 you have an exercise that nails it down so they
20 have a sample.

21 LTC KENNEBECK: Not at this time, but
22 I will consider.

1 MR. STONE: Great. Okay. The second
2 question that arises out of some of the comments
3 is; particularly this goes to I think the Marine
4 Corps because you have some short rotations, are
5 we losing to rotations or even to this school
6 some of the best educated now SVCs, because it's
7 not like we have a long history of them in this
8 -- they're all brand new and now your best ones
9 -- are we stripping of the experienced people and
10 you're getting people who've never -- generally
11 had the experience that they need to see the SVC
12 experience?

13 I was greeted here by someone who was
14 a wonderful SVC and he's now going to be -- I
15 mean, he's here for a while, meaning the school,
16 and he's no longer going to be in the SVC Corps.
17 And I sort of feel bad because I know he did a
18 great job on victims.

19 I just wonder if the rotation speed
20 and promoting them to supervisory and training
21 slots is a problem.

22 COL. McDONALD: Well, ideally, sir, I

1 can speak for the Marine Corps is we were very
2 fortunate that we had two of our four regional
3 victims that we had two of our four regional
4 victims, legal counsel, be selected to attend
5 this fall's Army school, the one-year TJAGLCSJ
6 graduate program. And we also have another one,
7 Will Ivans, who you all may know. He's testified
8 before, you all know. Though he's not going to
9 school, he actually was selected for one of our
10 coveted major SJA billets at New River.

11 So, I mean, he's been recognized for
12 his VLC accomplishment, but also he is just one
13 of those just really rock solid Marines that I
14 think is going to really carry on the tradition.
15 He's going to be one of the first SJAs to have
16 been a VLC, which I think is a real, real plus
17 for the program overall.

18 We try to select the best, and when
19 you select the best, you do run the risk that
20 they're going to be taken from you sooner.
21 That's a risk I'm willing to take, but I will
22 say; and I will compliment all of the eligible

1 SOICs from which we get our VLCs, who also detail
2 and staff the defense as well as the prosecution,
3 that when everybody is -- when you have good
4 people working in all of those billets, you
5 choose your best. The system does tend to work
6 better.

7 And I've been very fortunate to have
8 really the cream of the crop. And I think this
9 next year will really prove that. The next group
10 coming in may not have had that VLC experience
11 per se, but they certainly have all those
12 attributes that are going to set them self and
13 the program for success.

14 COL. deCAMARA: Back to the question
15 from earlier about how are people doing? First
16 of all, I'd like to say our promotion results
17 just came out this past Tuesday, and for the --
18 we had one major who was in the zone for
19 lieutenant colonel. She made it. And of the
20 sitting SVCs, of which I had seven, and six
21 former SVC, full-time SVCs, all 13 were promoted.
22 So we had a 100 percent promotion rate, which is

1 phenomenal.

2 I think there is good and bad in what
3 you're talking about, and I'm going to take the
4 good of our folks after doing about two years
5 going onto something else, because number one,
6 they're going to be disciples for the program.
7 And I think we need disciples out there to
8 educate both commanders who are coming in about
9 the program, as well as growing those young new
10 counsel coming into legal offices into how to be
11 SVCs and what the program is and to think from
12 outside of just a prosecution or defense mind
13 set. And then I look forward to trying to put
14 the hooks in to pull them back to be senior SVCs
15 and come back to be the major to then be that
16 mentor to the new SVCs coming in.

17 So I think while the immediate loss of
18 having that experience and that knowledge is --
19 but it's a cycle of life that we have to bring
20 new people in to get that discipline and to get
21 that experience. And then I'm going to do
22 everything I can to bring those best and

1 brightest back to be senior SVCs or deputy
2 program managers or eventually have someone grow
3 into be the program director.

4 LTC KENNEBECK: I would echo those
5 comments. I think that they go away, they
6 develop, they come back, and they come back in a
7 leadership or a management role. And meanwhile
8 they're disciples along the way. I totally agree
9 with that.

10 And I also believe this has become a
11 more coveted job, I think. I can say that from
12 the grass roots. What was initially maybe a
13 concern has become, oh, this is an opportunity to
14 maybe get back in court. This is an opportunity
15 to really fight for something that I can believe
16 in. And I see that in captains.

17 So I think it's a more popular job and
18 I think it's not hurting careers. And I think
19 you're going to see them come back as more
20 developed leaders down the road and provide more
21 to the system. So I think that's a natural part
22 of how we practice, and I think it works.

1 MR. STONE: Is it true in the Navy,
2 too?

3 MS. CLUVERIUS: Yes, sir. We I think
4 have the dubious honor of having the longest
5 orders, with a few exceptions. We have three-
6 year orders for our VLC. And we actually --
7 within the program we have some concerns about
8 that with regard to empathy fatigue. It's a
9 tough job to do full time for that long, so we
10 watch that very carefully and we've been
11 discussing whether or not the orders should be
12 shortened.

13 But we also like to grow experts. We
14 would like them to get good at what they're doing
15 and do it and do it for a long time. And as a
16 result we've had some great promotion results and
17 we've had -- we also -- it's become a very
18 popular program and we're seeing a lot of --
19 during this upcoming billeting cycle we're seeing
20 a lot of folks raising their hand, both in the
21 Reserves as well as on the active duty side to
22 come on active duty and do that.

1 MR. STONE: My last question, because
2 we asked it of the other panels; and I presume
3 from everything we know, because we've gotten
4 lots of information, that none of your services
5 have any highly-qualified experts that are
6 retained like civilian experts who stayed there
7 forever because they don't have to rotate, or
8 independent investigators. If I'm wrong, please
9 correct me.

10 COL. McDONALD: The Marine Corps does
11 not have any highly-qualified experts
12 specifically for their VLC program.

13 MR. STONE: Or independent
14 investigators?

15 COL. McDONALD: Or independent
16 investigators.

17 MR. STONE: Okay.

18 COL. deCAMARA: We don't have an
19 independent investigator. I would consider our
20 associate chief a highly-qualified expert. We
21 don't have that tag name for it, but --

22 MR. STONE: Can he rotate?

1 COL. deCAMARA: -- she came in --

2 MR. STONE: Can she rotate? The point
3 about highly-qualified expert --

4 COL. deCAMARA: No.

5 MR. STONE: -- is they don't have to
6 rotate.

7 COL. deCAMARA: No, she's -- it's a
8 GS-14 position at the headquarters as the
9 associate chief, so it's not a rotating position.

10 MR. STONE: Yes.

11 LTC KENNEBECK: We have a highly-
12 qualified expert. She's an integral part of the
13 SVC curriculum here at the school. We do not
14 have investigators.

15 MS. CLUVERIUS: I can't rotate without
16 significant effort and finding another job, but I
17 wouldn't necessarily at this point.

18 (Laughter.)

19 MS. CLUVERIUS: So technically I would
20 be that corporate knowledge and that part of the
21 leadership, but my role is not necessarily as the
22 expert in the courtroom. I've never been a VLC.

1 MR. STONE: Yes. Okay.

2 MS. CLUVERIUS: Although I feel like
3 I'm getting there in terms of what I've been
4 observing with our VLC, but we don't have what
5 you would term as a highly-qualified expert as
6 part of the Navy VLC program.

7 MR. STONE: Or investigators?

8 MS. CLUVERIUS: No investigators, no,
9 sir.

10 MR. STONE: Thank you.

11 CHAIR HOLTZMAN: A couple of
12 questions, a couple of areas. First, on sharing
13 information and best practices on the Marine
14 services. I mean, I'm gathering from just in
15 between the lines that there's a lot of sharing
16 and a lot of comradery and cooperation. Is that
17 true? Can it be improved? What's your --

18 (Simultaneous speaking.)

19 COL. McDONALD: Absolutely, ma'am, and
20 particularly the Marine Corps doesn't have a
21 program, so we really again, thankfully with the
22 -- to the Air Force and the Army and the Navy.

1 And the Marine Corps puts on -- sometimes in
2 regional training we're able to maybe give
3 something back a little bit. Maybe not on the
4 same scale, but I can say almost daily, if not
5 weekly, we're all talking.

6 And it may just be, hey, I've got a
7 set of facts here, or is this the type of -- we
8 have a victim that's presenting a certain way
9 that may or may not be eligible for legal
10 assistance, but here's the fact scenario. Let's
11 kind of dive into what the intent is of the
12 program. And we talk about just using that as an
13 example, but routinely or whether it's something
14 with the appellate practice. And we get on the
15 phone with each other once a month where we'll on
16 a conference call and talking about those issues
17 or best practices, or trends routinely.

18 Routinely, ma'am.

19 COL. deCAMARA: I think the other
20 thing is, I mentioned; and your staff member will
21 be able to see it, a campus web site that is
22 being -- that's created for this next Air Force

1 SVC certification course. And on it it has
2 already not only all the lectures and the
3 PowerPoints, but every service there is all of
4 their source documents.

5 So the Army JAG man that you heard and
6 then all of the instructions that they rely upon,
7 the section with the Marine Corps and everything,
8 which I think is very important considering again
9 the CAAF argument that you saw. It's an Air
10 Force member in a Marine Corps court. And so, we
11 -- that's one things that's been surprising to me
12 is actually how many cross-service cases we
13 actually do have. And I do think it is OCONUS
14 more so than CONUS where we're seeing that.

15 (Off microphone comment.)

16 COL. deCAMARA: Because the Air --
17 it's an Air Force of a Marine accused. And so
18 we're seeing that kind of cross-service.

19 PARTICIPANT: I see.

20 COL. deCAMARA: And so, having that
21 web site there to be able to access those
22 documents I think is going to be exceptional.

1 And then at some our courses the ISLC
2 courses, for instance, we've had Coast Guard,
3 National Guard and Navy who've come, I think, to
4 all of those ISLC courses. And so, they're
5 meeting each other. They are talking to each
6 other, not only at our level, but I believe it's
7 fostered at the SVC VLC level.

8 For instance, in the National Capital
9 Region I know those SVC VLCs in the National
10 Capital Region hold a quarterly luncheon where
11 they all get together and talk about what they're
12 seeing.

13 And so, I haven't -- I've been in a
14 semi-joint-type environment, but from my
15 experience I -- the collaboration that I have
16 seen among the services, including the Coast
17 Guard and the National Guard has been
18 exceptional.

19 CHAIR HOLTZMAN: That's what I'm
20 gathering; it's good to hear that, but is there
21 something else that should be done in this area
22 is really what I'm asking.

1 COL. deCAMARA: I think it's being
2 codified under 535, what was required with 535
3 and what from -- the '16 NDAA is what I'm
4 referring to, with that oversight that OSD is
5 exercising. I know it's still in a draft. I
6 really don't see -- I mean, I think it's
7 formalizing what is already being done so that
8 there is a mechanism for them to record it, but I
9 think the natural -- the dynamic nature of the
10 practice and -- and while I think we all have
11 great personalities, I don't think it's
12 necessarily just personality-driven.

13 And so, people have rotated in and
14 out. From 2014 to now nobody else was up here in
15 2014 when I was up here. And so, it's not
16 necessarily personality-dependent. And I think
17 that's -- and I think it's because of the
18 discipline and because of -- I think our TJAGs
19 are picking -- if we want to speak for ourselves,
20 they're picking good people to put in this that
21 are energized for the program and are
22 collaborative in nature. And I think that's --

1 you're seeing the results of the support that is
2 being given by them as well.

3 CHAIR HOLTZMAN: Great.

4 Ms. Cluverius, did you have something
5 you wanted to say?

6 MS. CLUVERIUS: No, I agree completely
7 with Colonel deCamara.

8 CHAIR HOLTZMAN: Okay.

9 MS. CLUVERIUS: I believe that there's
10 been a very robust collaboration. I've never
11 seen anything inter-service like this before.
12 It's been very satisfying and I expect it to
13 continue regardless, as you say, of
14 personalities. It's been very helpful, and it
15 really can be on a daily basis that we share
16 emerging issues. Have you seen this? Have you
17 seen that? And we all pitch in.

18 CHAIR HOLTZMAN: The other area I
19 wanted to focus on was something that you just
20 addressed or raised, which is the vicarious
21 trauma, because I see that everybody's got a
22 training segment on this. But if people are

1 actually suffering from vicarious trauma, is it
2 the training session that helps solve the
3 problem, or something --

4 MR. STONE: Do we know what it is
5 first? I'm not --

6 (Simultaneous speaking.)

7 CHAIR HOLTZMAN: Well, let me finish
8 the question, and then whoever answers it first
9 can explain what it is.

10 Is it really a training program that's
11 going to help solve that problem or is there
12 something else? I mean, do people need to be
13 moved? Do they need to have a break? So I was
14 just curious as to why there's a training
15 program, and if so -- Ms. Cluverius, did you want
16 to respond?

17 MS. CLUVERIUS: Yes, ma'am. So we --

18 CHAIR HOLTZMAN: Can you explain
19 what --

20 (Simultaneous speaking.)

21 MS. CLUVERIUS: Sure. We actually --
22 and this came out in our recent symposium when we

1 had a psychologist come and talk to us about
2 this. We always call it vicarious trauma, but
3 there's levels of it. And so, what we're really
4 sort of looking for is empathy fatigue, which is
5 a lower grade level of vicarious trauma.

6 But what it; this is my layperson's
7 paraphrasing, is is that it's the holdover
8 emotional sort of draining or struggle when you
9 deal with either an exceptionally difficult case
10 -- oftentimes most of our VLC complain about how
11 they feel when they're dealing with a minor
12 client who's experienced some sort of sexual
13 offense. That's sort of the most common. But it
14 can also be over time having so many cases with
15 the same --

16 CHAIR HOLTZMAN: It's kind of a burn
17 out --

18 MS. CLUVERIUS: It's burn out, yes.

19 CHAIR HOLTZMAN: -- of the prosecutor,
20 basically is what we're talking about.

21 MS. CLUVERIUS: And that's what --
22 yes. And that's -- yes, ma'am, that's --

1 CHAIR HOLTZMAN: Or it's the victim's
2 counsel?

3 MS. CLUVERIUS: And so we watch for
4 that. And so what the training does, at least
5 what we've been looking for, is just to be
6 educated that this exists to understand what the
7 signs might be in yourself. We go a pretty long
8 way to -- we talk to our VLCs. Between Captain
9 Fischer-Anderson and I we try to talk to
10 everybody once a week. There's 30 of them, so
11 that doesn't always work out. But one way or
12 another we're in touch with them.

13 They also submit weekly reports and we
14 encourage on that. That's not just numbers
15 collection, but it's also an outline of what
16 they're doing and what kind of cases they have
17 and what's happening with them. And they'll put
18 on there I'm burning out, or they'll talk about a
19 particularly difficult case. And we call them
20 immediately when we see that every week and we
21 give them time off. They are encouraged to take
22 leave. I approve their leave, and I've been on

1 board almost a year. I've never denied anybody's
2 leave.

3 And so, we really work hard at
4 watching that, especially with such long tours
5 that we have. We've been watching that on the
6 burn out side as well as the actual -- maybe the
7 one case vicarious trauma. And we have VLC who
8 have raised their hands and said I need to --
9 when this case is over on Wednesday, I need to --
10 can I get a leave chit to get out of here? And
11 we absolutely encourage that. And we'll give
12 liberty in an emergency situation as well.

13 CHAIR HOLTZMAN: So the training
14 program, just so that I can be clear about this,
15 basically calls itself a consciousness raising
16 program in the sense that you're telling the VLC
17 or the SVC, look, this happens. Don't be
18 alarmed.

19 MS. CLUVERIUS: It's normal.

20 CHAIR HOLTZMAN: This is normal.

21 Okay.

22 MS. CLUVERIUS: Yes, ma'am.

1 CHAIR HOLTZMAN: Is that a fair
2 characterization?

3 MS. CLUVERIUS: That is fair. It also
4 gives a little bit of ideas of how to combat
5 that, how to take care of themselves. And then
6 we reinforce that by encouraging all that.

7 CHAIR HOLTZMAN: Did anyone else want
8 to comment on my question?

9 COL. McDONALD: I was just going to
10 say the other thing is that Captain and personnel
11 in ours gives techniques. And it was
12 interesting. We had this last class. One of our
13 counsel was a former area defense counsel and
14 came to us and then went through our training
15 class, and she commented in her feedback in the
16 end-of-course critique I wish the defense counsel
17 actually had this because I'm calling my husband
18 tonight and telling him that we need to -- I need
19 to make sure that I do this technique to help,
20 because I know that this is something that I did
21 when I was a defense counsel that I need to make
22 sure I don't do when I'm an SVC. So I do think

1 that it's not the end-all-be-all, but those
2 techniques to at least spark something.

3 And the other thing I think from our
4 perspective -- I know the Army doesn't
5 necessarily have it, but for those of our offices
6 that are a one-deep office, for me the other
7 thing that I think is important is getting those
8 paralegals, which we are working very hard to do
9 so that it is in the paradigm of the area defense
10 counsel, defense paralegal so that they are not
11 going -- they're not taking that phone call or
12 meeting with that client and then sitting in an
13 office by themselves. I think having that other
14 person there to talk to is so incredibly
15 important.

16 And while our paralegals have performed
17 phenomenally for us, winning quarterly and annual
18 awards because they are so engaged and so helpful
19 in the process, one of the big reasons that I
20 want them is because I want my -- we call it an
21 wingman in the Air Force -- I want my counsel to
22 have that wingman with them. And I think that's

1 one area where that paralegal -- a phone call
2 away isn't sufficient.

3 CHAIR HOLTZMAN: Did you want to say
4 something, colonel?

5 COL. McDONALD: Oh, I was just going
6 to say; I'm nodding my head in assent, I agree.
7 And also the other thing that we try to do, I
8 know all of us, because we've had conversations,
9 is trying to encourage -- because some of them
10 are younger counsel, is the work-life balance.
11 And it's up to us as the leaders to set the
12 command climate that says, hey, if you need to
13 take the afternoon off to take a deep breath or
14 to go do something to get yourself re-balanced,
15 then do so and we'll run the traps if we need to.
16 But really being hands on. It's probably as much
17 hands on as any command billet would be. And I
18 know all of us feel that same way because we talk
19 about it quite often. But it's that balance that
20 we try to get folks to strive for.

21 CHAIR HOLTZMAN: Okay. Lieutenant
22 colonel, you've been quiet.

1 (Laughter.)

2 LTC KENNEBECK: They're saying
3 everything. I don't need to say anything.

4 CHAIR HOLTZMAN: Well, I guess that
5 concludes the panel. Thank you very much again
6 for your willingness to appear and for the
7 valuable testimony. And thanks to the other
8 members of the JPP.

9 LTC STINGL: Absent anything else for
10 the record, the meeting today is closed.

11 CHAIR HOLTZMAN: Thank you.

12 (Whereupon, the above-entitled matter
13 went off the record at 3:42 p.m.)

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- a.m** 1:12 7:2 85:13,14
ABA 18:8
ABA-accredited 13:5
 15:10
ability 100:18 101:5
 129:10 136:6 234:12
 276:19
able 31:1 32:7 54:3,7,10
 54:17 73:1 77:10
 78:11 93:22 100:13
 106:6 140:20,21
 161:22 172:1,9
 180:21 212:11 220:15
 258:6 267:11 271:15
 288:12 294:8 298:3
 315:13,15,21 328:2
 328:21 329:21
aboard 37:12
above-entitled 85:12
 163:4 248:18 340:12
absent 71:15 340:9
absolute 161:6
absolutely 38:22 157:3
 157:7 160:5 220:8
 231:20 234:3 327:19
 336:11
abuse 90:19 108:11
 113:13
academic 15:19 22:20
 28:20 29:2 69:6
academies 68:14
Academy 66:1,10,11,12
 69:21 293:19
accept 228:21
access 166:11 174:14
 195:8 207:7,10 208:2
 230:16 258:18 329:21
Accession 33:10
accident 245:12
accommodate 50:6
accomplish 107:12
 243:3
accomplished 251:5
accomplishment
 320:12
accountable 271:9
accounts 254:9
accreditation 18:8
accurate 223:20 226:19
accuse 224:3
accused 27:8 75:16
 76:9 77:3,9 79:21
 80:15,17 102:2
 216:14 229:7 232:8
 232:13,17 254:3
 329:17
accused-centric 102:2
- achieve** 220:22
achieved 93:6 150:17
acquire 17:10
acquittal 73:7,22 75:19
acquittals 74:14,15
 234:1
acquitted 72:17,21 73:9
 75:16 77:9,16 81:17
 199:18,21 201:15,22
 202:7 233:16 234:10
act 7:22,22 9:1,3 61:8
 62:11 179:3 204:8
 244:4 258:6
acted 150:3
action 223:8 235:18
 243:16 294:4 308:18
 317:10
actions 131:7 178:1
 217:4
active 27:11 191:16
 198:19 230:15 287:10
 324:21,22
actively 255:2
actor 171:11
acts 68:12 207:16
actual 43:4 49:1 149:21
 188:21 209:1 278:15
 336:6
ad 269:8
ad-hoc 71:12
ad-type 129:14
adamantly 50:13
ADC 180:11
ADCs 176:19 178:2
add 17:6 55:22 62:18
 103:9 129:17 141:21
 281:11
added 26:17 109:20
 255:17 256:12,20
 257:4,10,18 259:9
 279:2,9,13 282:5
adding 281:3 317:6
addition 18:17 23:7
 31:10,22 43:11,18
 66:15 70:18 91:21
 108:5 130:15 134:1,3
 143:9 144:8 169:20
 170:3 181:22 204:19
 205:1 206:14 217:8
 247:19 251:14 252:20
 278:21 287:6 295:11
 315:3
additional 31:13 43:15
 43:20 58:4 89:15
 97:18,21 108:2 121:2
 124:21 152:11 295:12
 305:3
additionally 95:5,21
- 98:5 123:20 146:3
 181:12 252:11 260:11
 263:19 266:8,19
 271:10
additions 291:5
address 75:8 87:4
 102:6 107:6 127:7
 131:14 136:15 155:12
 196:1 199:16 265:6
 270:4 272:5 276:2
 279:4 281:6 284:12
 285:12 299:14,19
addressed 75:18 82:21
 110:1 131:1 246:3
 272:6 332:20
addresses 10:14
 102:14 172:17
addressing 9:15 26:19
 86:13 131:19 167:19
adequacy 236:20 247:9
adequate 41:14 219:3
adequately 197:8
 226:21
adjourn 6:22 163:3
adjudication 225:20
adjunct 26:9 43:2 57:6
 258:9
adjust 183:16
adjusting 269:13
administer 36:17
administration 259:14
administrative 78:12
 81:12,20 177:1 178:1
 179:21 188:4 201:20
 210:12 217:7 225:21
 229:21,22 233:10
 235:5 236:11 271:7
 313:5
administratively
 201:17
Admiral 7:18 60:6 66:8
 67:14 116:3 148:4
 150:19 219:17 285:14
 311:12
admissible 228:10,17
 231:20
admitted 294:20
adolescence 141:3
adopted 137:2 174:5
adult 7:15 9:7,13,16
 90:18 104:11 105:18
 113:18 275:11,18
 277:11,16 279:3
 282:4
advance 154:1
advanced 21:13 25:17
 26:22 28:3 43:17
 78:17 104:11,12
- 170:21 171:8 182:2,3
 252:12 265:15 287:17
 315:4
advances 255:13
advantage 278:12
advantages 255:22
 256:1
advent 216:4
adverse 177:22 217:3
 235:18 307:11
advice 134:17 166:12
 187:18 210:14 259:21
advise 288:12
advisor 24:19 231:13
advisors 315:6
Advisors' 84:21
Advisory 7:20,22
advocacy 5:10 14:11,12
 14:20 22:6 23:16 28:2
 28:3,9,10 39:12 40:22
 41:4 84:19 85:2 111:3
 111:4 113:22 114:1
 121:20 122:20 125:11
 129:8 171:6,8,20
 173:7 181:9,10,17
 182:2,5 193:21
 205:13 250:15 252:10
 252:22 254:18 257:17
 259:6 260:16 268:20
 270:13 271:13 272:3
 273:3 274:4 278:15
 279:18,19 280:4
 281:2 287:17 297:12
 314:16
advocate 1:10 2:3,4 4:7
 4:11 8:17 11:13 17:2
 19:21 20:3,12 22:3
 30:1 45:20 63:8,11
 66:3,17 70:9 74:11,13
 78:8,9,16,17 87:16
 88:2,10 90:8 93:6,20
 125:5 140:4 149:13
 149:22 150:3 164:9
 177:15 178:6,18
 179:2,8 180:8 181:1,4
 181:21 210:4,4 251:7
 258:20 265:8,9 267:7
 267:9,13 274:21
 276:20 277:12 280:20
 287:4 293:11 315:5
advocate's 36:2 66:11
advocates 13:15 15:3
 20:17 29:22 30:3,7,11
 30:14 33:9,10 36:10
 54:4,8 63:10 78:18
 96:1 97:8 108:20
 109:3 143:4 173:13
 266:3 270:21 275:2,8

275:14 276:10 297:21
advocating 27:14,16
 255:10 271:1
AFCAT 262:21
affect 19:2 61:14
 130:19 159:18
affirm 154:6
afforded 162:16 266:1
affording 269:12
affords 316:3
AFJAGS 20:13 24:13
 24:17,19 25:12,14
 26:2 28:16,20 29:1
afoul 128:10
after- 294:3
after-action 272:17
 301:1
afternoon 163:9 202:19
 264:18 274:13 285:7
 339:13
agencies 114:22
 119:14
Agency 5:17 63:3 184:4
agenda 107:13
agent 237:15
agents 27:3 101:18
aggravated 34:7
ago 37:4 40:6 63:15
 91:4 113:21 117:12
 117:14 123:4 126:4
 226:8,9 231:12
agree 162:5,15 236:4
 305:5,17,18 323:8
 332:6 339:6
agreed 8:18
agreeing 243:10
agreement 30:18 43:10
agreements 31:10
ahead 43:7 133:22
 137:10 195:20 308:7
aid 169:17 174:4
air 2:4,9,18 3:7 4:10 5:2
 5:14 6:4 9:19 19:20
 20:4,12,15,16 23:11
 24:1 27:4 31:16 36:5
 48:11,16 52:20 53:6
 53:12,18 54:1 57:15
 63:2 65:19,20,22,22
 69:20 70:15 76:12
 85:22 86:8 87:11
 88:22 91:6 92:17 93:8
 93:12 96:4,15 97:9,12
 98:9 99:6 112:13
 137:12 142:21 143:6
 143:7 144:5 145:11
 146:4 149:11 150:7
 157:4 175:1,7,14
 178:4,19 182:22

184:13 201:13 214:11
 217:12 219:19 220:16
 235:9 242:11 249:7
 250:2,5,11,20 251:1,6
 252:13 254:6,21
 255:19 256:2 258:1
 258:13,19 259:7
 260:5 261:2,4 262:5
 262:22,22 263:10
 264:1 265:11 266:15
 267:8,9 270:18
 275:14,15 277:8
 281:10 282:15 283:4
 288:22 289:3,13
 290:4,15 292:15
 299:5 303:2 306:14
 314:5 327:22 328:22
 329:9,16,17 338:21
aired 303:13
Airmen 175:9,19
 179:13 180:2
Alabama 20:4
alarm 206:9
alarmed 206:10 336:18
alarming 201:2
albeit 312:7
alcohol- 113:18
Alcohol-Facilitated
 103:18
alert 256:21
alibi 23:2
aligned 162:12 251:20
 300:3 302:20 308:1
 308:15
allegation 108:10
 111:19
allegations 180:4
alleged 229:6
allocate 30:12
allow 134:2 266:2
allowed 168:15 234:5
 253:18 254:1 288:6
 306:8
allowing 271:20 277:10
allows 25:5 72:1 98:11
 98:18 204:9,10 207:6
 210:10,15 255:4
 256:3 281:1
alongside 26:5
altered 270:9
alternate 70:13 302:17
 303:7
alternates 70:15
alternative 271:7 273:7
 302:22
amazing 133:10 134:11
amenable 160:15
amended 9:2 18:22

Amendment 72:18
 247:20
amendments 7:5 9:8
American 182:13
amicus 310:20
amount 41:15 96:21
 97:2 98:2 167:15
 233:16 313:6
amounts 211:12
analysis 117:20 142:13
 147:2,8 224:12
and/or 233:18 273:9
 287:18
Andrea 3:7 6:4 249:7
Andrews 260:13
anecdotal 51:16 55:2
 55:17 300:6
anecdotally 154:11
anecdotes 276:15
Angeles 32:4
announcements
 195:10
annual 18:3 70:11,16
 70:17,18,21 71:3
 126:18 177:19 183:15
 265:4,12,15 266:7,10
 267:17 268:15 271:21
 291:8,14 299:4,8
 338:17
annually 13:1 68:19
 84:20 181:13 182:21
 183:8 275:13 294:10
anonymously 174:11
answer 18:11 32:12
 38:21 49:11 60:11,13
 150:16 152:22 158:10
 164:12 189:16 202:9
 203:12 208:3 246:8
 273:14 284:14 285:13
answered 227:18 264:7
answering 164:13
 264:10 299:20
answers 48:17 131:14
 185:10 195:17 333:8
anticipate 61:17 62:12
anticipating 61:10
Antonio-Lackland
 26:13
anybody 49:14 148:9
 149:7 161:11 231:8
 298:8
anybody's 234:19
 336:1
anymore 227:11
Anytime 130:17
AOR 206:1
apologies 120:14
apologize 8:12 154:7

appeal 144:3 159:3,19
 160:9 162:9 245:2
 246:5 306:3,12,22
 307:5,13,14
appealed 306:4,11,15
appeals 144:6,6 160:7
 160:21 257:17,19,22
 294:21 298:15 306:5
 307:8,9
appear 10:11 46:3
 264:20 340:6
appearance 164:1
appearing 99:19
appellant 279:10
 295:10
appellate 2:10 5:3
 10:15 11:2 25:6 69:15
 82:12,17,18 83:4,6,9
 83:14,15,17 84:9,19
 85:1 86:1,10 143:14
 143:17,22 144:1,10
 144:17,18 145:2,10
 145:15,22 146:10
 158:17 160:2,12
 161:2,3,12,15,21
 162:3,11 205:16
 243:9 245:4,6,8,16
 246:4,11 257:22
 271:13,19 272:3
 289:16 290:22 293:7
 294:12,14,15,19
 295:3,6,7 299:17
 328:14
appellate-level 83:12
application 251:10
 316:13
applications 172:11
 187:21
applied 172:10 306:7
apply 286:1,2
appointed 7:11 103:3
 197:16
appreciate 8:14 10:4
 11:17 29:7 157:17
 183:20 186:11 218:2
 248:14 275:17
appreciates 10:20
apprenticeship 58:22
approach 21:4 220:21
 273:3,5 277:1 297:2
approaches 111:7
appropriate 230:14
 235:15 259:1 292:19
 297:20 304:14
approve 179:3 335:22
approved 219:15
 240:15 241:22 242:8
approximately 107:17

109:2 165:9 177:17
 180:14 261:9 265:12
April 263:12 293:2
aptitude 100:18 105:3
 151:3 153:5
area 13:21 23:12 37:8
 88:22,22 89:4,6,10,21
 91:16 96:22 130:14
 144:12 155:15 176:17
 177:11 178:10 193:22
 217:10 222:13 236:19
 277:19 292:13 303:10
 307:7 330:21 332:18
 337:13 338:9 339:1
areas 13:10,17 37:12
 50:6 64:16 99:7 128:1
 155:17 167:7 173:17
 174:2,11 183:13
 211:3 214:16 290:8
 297:15 301:14 302:13
 327:12
arena 66:6
argue 83:21 144:5
 159:6 280:8
argued 61:11
arguing 23:5 48:14
argument 153:10 243:8
 243:12 294:20 329:9
arguments 47:19
 252:19 284:4,6
 306:15
arises 319:2
arm 301:17
Armed 144:7 160:8
arms 16:6 55:11 62:7
Army 2:3,12,17 3:12 4:6
 5:6,13 6:13 9:19
 11:13 12:17 13:10,11
 31:16 36:5 40:4 42:11
 46:5,6 48:12,16 51:7
 56:13 62:2 64:7 70:9
 71:11 73:15 74:13,21
 106:20 107:9,11
 109:5,10 114:16
 119:2 140:1 147:12
 147:13 163:18 164:6
 164:10,20 168:5
 169:6 174:6 201:13
 217:11 236:14 237:13
 237:15 242:13 251:6
 255:19 258:13 263:13
 263:22 265:11 267:8
 270:18 274:9,15
 288:21 289:5 290:3
 290:15 292:15 298:18
 298:20 310:21 316:16
 320:5 327:22 329:5
 338:4

Army's 83:1 107:7,21
 107:22 108:3 109:11
 111:14 314:7
arrangements 59:4
arrive 165:10,12 287:12
arrives 185:6
Article 18:14,19 60:17
 63:7 87:11 148:12,13
 179:9 186:16 217:6
 227:2,3,7,15 228:20
 256:10 261:18 290:22
 301:2 303:20
articles 269:19
articulate 316:11
ASALC 27:10 257:12
 259:2
Asha 146:11
Asia 91:10 176:2
aside 28:15
asked 18:12 102:10,11
 106:7 116:3 177:9
 194:6 211:18 213:22
 231:18 235:22 250:1
 253:14 272:16 284:13
 285:14 288:3 325:2
asking 73:5 160:20
 240:17 306:10 330:22
aspect 155:13 204:14
 211:6
aspects 54:5 187:11
 252:17 283:21
assault 2:8,16 5:1,12
 7:15 9:7,13,17 10:15
 13:22 14:12 21:5,20
 22:9 23:18 24:2,8
 25:6,12,16,17,18,19
 26:1,22 27:6,8 34:3,5
 34:7 40:18 41:3 56:20
 72:16 79:8 85:20
 86:14 87:3,9,10 90:18
 93:11 94:5 96:13
 99:10 100:4 101:3
 102:3,4,22 104:11
 105:20 108:10 113:10
 113:18,19,22 114:2
 123:10 130:8,11,14
 131:21 138:10 139:1
 142:18 156:4,8
 163:21 164:18 165:19
 166:9 167:12,19
 168:2 171:6 176:14
 180:4 181:13,18
 182:3 183:7 192:14
 192:15 193:4,10,13
 193:16,19 194:1,4
 208:17 222:3,22
 223:12,15 236:22
 241:7,11 242:8

246:13 247:5 251:16
 251:20 252:13 254:13
 263:15 268:10 276:3
 280:5,18 309:7
 314:10 315:2
assaulted 226:15
Assaults 103:19
assembled 295:5
assent 339:6
assess 9:10
assessment 9:5 28:17
 261:11,13
assessments 51:16
 55:2 211:22 212:13
assets 119:12 207:5
assign 39:19 90:9 93:9
 144:20 165:18 189:4
assigned 66:17 93:13
 93:17 149:4 153:21
 164:18 165:1 166:8
 188:19 262:17
assigning 204:17
assignment 39:18
 78:13,13 88:6 90:6
 151:19 154:20 234:17
 256:5 260:3
assignments 23:14
 88:5,15 155:3 177:13
 180:7 260:2
assigns 165:4
assist 99:2 132:12,13
 203:1 208:15 209:6
 272:12
assistance 2:11,12,13
 2:14,21 5:5,6,8,19
 24:20 25:1 40:7 47:12
 59:18,18 99:17
 106:21 107:8 114:9
 120:8 144:21 146:11
 166:12,13 170:6
 202:16 203:18,19
 207:2,7 210:8 221:12
 221:17 242:6 254:7
 266:16 296:15,16,21
 309:18 318:3 328:10
assistance- 313:3
assistant 32:3 88:2
 97:8 122:18 128:3
 150:7 151:2
assistants 115:19
assisted 258:10
assisting 139:22
associate 274:18
 325:20 326:9
associated 34:12
Association 96:18
 111:6 182:12 192:5
Association's 117:9

assume 38:15 64:13
 244:4 245:17
assumed 64:14
assuming 15:18 64:21
 177:18 181:6 307:22
assure 274:1
at-will 200:5
attend 14:17 15:17 26:8
 31:7,16,20 67:1 70:9
 70:20 103:16 104:4,9
 117:8,13,15 126:13
 126:13,22 128:12,16
 129:2 170:4 171:3,4
 171:17,22 181:8,12
 182:1 183:1 190:19
 251:2 265:14 266:5
 266:14 267:6 279:17
 288:20 290:13 291:10
 292:13,21 294:14
 296:8 320:4
attendance 32:20 71:14
 250:14 251:6 259:5
 260:17 261:10
attended 17:14 43:16
 58:21 101:14 103:4
 110:15,20 121:6,20
 122:19 129:8 171:19
 253:22 254:6 287:15
 296:11,22
attendee 289:20
Attendees 294:1
attending 115:21
 282:15 289:3,5
 294:20 296:6
attends 14:9,16 252:4
 272:15
attention 11:7 127:11
 199:15 202:4 222:14
attitude 49:22
attorney 9:14 28:14
 39:20 40:1 100:20
 101:4 110:20 127:15
 146:8 150:12,13
 203:22
attorney's 100:18
 123:16 125:3
attorney/client 137:22
attorneys 2:8,16 5:12
 14:2,3 15:8 30:4,19
 31:13 32:3,4 46:13
 51:9 58:14 85:19
 96:18 100:17 108:20
 109:13,14 111:5
 119:13 128:2,3,4
 131:3 145:22 150:8
 158:17 161:2,4,6
 163:20 279:22 288:1
 296:20,21,22

Attorneys' 117:9
attributable 139:17
attribute 13:7 139:18
attributes 311:22
 321:12
attrition 149:1
August 262:21 289:6
 296:14 299:11
AUSA 205:13
authorities 64:3 66:5
 72:12 78:22 312:16
authority 27:15,16
 64:22 65:13 73:5,20
 78:9 80:14,21 81:18
 227:16 228:19 238:22
 239:21 240:7,11
 242:1,2,5 243:19
 244:1,21 247:10
 255:11 262:4 298:12
Authorization 9:1,3
 68:11
authorizations 215:21
authorize 200:15
 201:20
authorized 97:18
 215:14,15 298:15
autonomy 313:7,12
available 8:2 10:18 31:2
 70:11 80:3 101:7
 145:16 146:10 147:5
 165:8 166:13 172:2
 213:15,17 258:17
 268:21 307:9 315:11
avenue 169:13
avenues 271:8
average 177:19
avoid 177:6
awards 15:10 338:18
aware 77:4 116:13
 148:19 154:19 224:5
 235:8 236:15 241:15
 245:3 247:14
awareness 161:8
awful 47:21
awkward 141:3

B

back 11:18 15:22 17:17
 19:5 37:13 55:21 56:4
 58:11 59:4 74:6,22
 77:19 117:11 125:8
 129:6,20 132:3
 135:20 142:4 143:12
 146:1 151:15 153:11
 163:14 171:22 173:7
 194:21 202:21 206:10
 248:16 250:1 256:8
 277:12 281:22 285:13

286:11 309:15 311:8
 321:14 322:14,15
 323:1,6,6,14,19 328:3
backbone 176:13
background 93:21
 128:7 133:12 136:9
 144:15 145:5 146:5,8
 146:9,14 150:6,11,14
 286:13 287:19
bad 61:6 319:17 322:2
Bahrain 207:21
balance 177:6 339:10
 339:19
balanced 106:13
Balbert 125:4
bar 41:5,12,16 47:22
 147:17
Barbara 1:18 7:16
base 20:4 26:13 65:19
 65:21 88:8,15 89:3
 93:5,14,19 98:21
 144:21 145:3 176:18
 177:12,15 180:6
 209:9 251:22 260:12
 302:2 315:13
base-level 88:1,1,5
 97:5,7 138:22
based 16:4 30:13 65:7
 71:6 73:17 78:5
 100:10,17 113:14
 135:8 136:4 153:4
 165:5 167:5,6 189:4,5
 189:6 201:21 254:17
baseline 39:15 65:6
 148:10
bases 242:17
Bashford 127:14
basic 2:2 4:5 14:9,18
 30:5 33:14 34:10
 35:12 39:10 42:12
 70:19 87:17 113:8
 121:6 148:15,16
 149:1 150:10 186:16
 186:17 193:3 210:5
 257:6 280:13 287:16
 287:20
basically 187:4 190:13
 195:7 314:11 334:20
 336:15
basics 34:1 255:11
basis 19:3 89:2 139:14
 168:9 200:14 205:11
 230:14 332:15
Batdorff 2:12 5:6
 106:20 107:2,5 137:5
 139:7 147:12 148:10
 151:13 154:9 162:2
battalion 64:12 75:4

312:20
battle 192:8 216:7
 302:10
Baylor 114:3 171:7
beat 232:2
becoming 88:6 129:4
 151:16 181:11 301:15
 303:20
bedrock 170:8
began 34:14 314:5
beginner 21:13 157:1,4
beginning 35:12 51:11
 97:16 132:2 140:16
 280:6
begins 14:1 21:17 22:2
 33:22 39:9 87:15,16
begun 256:9 271:11
behalf 8:19 27:17 33:3
 244:11,12 285:10
behavior 73:8 102:15
 276:3 317:5
behaviors 117:19
believe 11:7 16:7 17:22
 35:19 39:6 53:16
 105:7 119:16 133:22
 135:15,18 136:1
 146:12,20 150:15,17
 155:7 160:1 165:21
 219:3 223:11 225:15
 226:18 231:20 233:13
 241:2 247:20 284:12
 285:14 323:10,15
 330:6 332:9
belongs 259:15
bench 15:18 57:7 69:10
 172:13
bench's 273:17
benefit 47:14 138:1
 139:3 269:17 276:7
 277:10
benefits 226:12 281:7
Berney 86:15 97:17
best 16:15 42:1 50:14
 75:3 89:3 110:19
 135:21 160:6,16
 161:6 168:18 178:2
 189:4 220:7 231:2
 253:11,14 255:5
 257:12 267:22 273:10
 283:3 309:12 319:6,8
 320:18,19 321:5
 322:22 327:13 328:17
best- 89:1
better 48:15 51:13
 52:13,15 56:8,10,11
 76:17 89:18 101:19
 103:20 106:10,14
 130:2 141:17,18

271:15 273:2 301:12
 301:21 303:9,11
 305:14 321:6
beyond 25:11 141:21
 186:1 189:12 202:2
 207:7 225:18 243:16
 244:8 249:13 288:2
BG 2:3 4:6 11:20 38:22
 46:6,10 49:9 55:4
 61:3 62:2 64:7 68:16
 71:11 73:14 83:1 84:5
biannually 294:9
big 97:21 190:15
 193:18 195:7 230:5
 338:19
bigger 221:3
biggest 180:16 189:21
 215:6,12
Bill 146:6
billet 14:15 80:11 89:22
 101:15 121:11 339:17
billeting 324:19
billets 31:6 52:2,5
 97:18,21 122:10
 152:12 215:14,15,17
 215:18 291:11 320:10
 321:4
bit 35:3 45:5 48:19
 52:15 54:20 74:15
 112:16 136:18 286:14
 291:19 328:3 337:4
biweekly 254:16 259:4
 259:17,17 262:1
black 211:7
blend 189:18
bless 226:14
blessed 227:15
block 26:17,18 255:21
 257:4 263:22 279:9
 298:19 314:8,17
 317:8
blocks 26:6 257:18,20
 268:6
blog 130:16,20 131:3
blue 125:12 128:15
board 69:13 74:1 84:21
 110:22 210:12 254:8
 286:3 295:8 317:15
 317:17,20 336:1
boards 131:11 316:21
body 225:21
bone 203:14
bored 120:20
boring 120:21
borrowing 281:10
boss 200:12
bottom 94:3 137:14
bounced 125:8

bound 45:11
bourgeoning 297:15
braces 141:4
brakes 227:17
branch 2:20 42:22
 191:12 246:18
brand 185:19 319:8
break 5:21 71:1 85:11
 138:15 277:9 311:4
 333:13
breakout 44:17 263:11
 264:2
breath 339:13
Bremerton 205:8
Bret 2:12 5:6 106:20
 107:5
bridging 135:13 136:2
brief 12:11 32:10 100:1
 138:19 159:5 161:22
 164:15 314:8
briefing 173:8
briefly 26:16 76:4 87:4
 96:7 107:15 108:16
 121:3
briefs 195:10 239:5
brigade 64:12 74:12
 312:21
Brigadier 8:16 11:12
bright 186:8
brightest 323:1
bring 8:21 43:3 80:6
 112:4 114:9 117:18
 117:19 118:5 169:14
 199:14 202:4 222:18
 258:2 277:12 322:19
 322:22
bringing 33:11 35:1
 112:8 216:10
brings 112:11 259:19
 267:18 282:10
broad 174:8
broader 14:6 228:7
broadly 175:22
Bronx 146:14 182:14
 192:4
Brookhart 2:17 5:13
 39:6 41:17 47:13
 163:18,22 164:2,5
 174:21 214:1,3,10,22
 215:3,4,6 217:15
 220:10,12,20 221:11
 221:16 222:12 223:22
 231:11 236:4 237:12
 237:20 238:1,7,9,13
 238:17 239:3 241:19
 242:22 244:19 245:3
 245:17 246:7 247:14
brought 120:22 158:16

221:6 243:15 293:9
budget 215:8 219:2
 298:2
build 16:18 35:14
 129:21 172:13
building 16:2
builds 34:2
built 40:6 46:11 282:2
bulk 14:7
bullet 205:4 207:1
bunch 123:1 230:22
Bureau 72:15 234:6
burn 334:16,18 336:6
burning 335:18
business 97:22 207:8
 207:10
busy 71:2 116:15
 169:22 209:10
BWOs 119:15

C

C-O-N-T-E-N-T-S 4:1
CAAF 246:16 247:6
 294:20 306:15,15,20
 307:2 310:7,8,12
 329:9
CALCASA 253:4
calendar 93:10 96:11
 97:5
call 4:2 52:6 64:9 74:20
 102:11 116:6,21
 121:15 127:11 145:21
 190:1,16 208:11
 223:19 249:14 259:20
 265:4 287:22 303:1
 310:5 328:16 334:2
 335:19 338:11,20
 339:1
called 65:16 192:15
 208:13 210:3
calling 337:17
calls 250:7 270:3
 336:15
camera 125:15
Camp 123:3
campaign 190:2
campus 258:17 328:21
candidates 286:17
 287:7
capabilities 165:6
 171:12 260:8
capability 259:8
capable 23:1 221:7
capacity 188:14 224:13
 260:15 275:4
capital 172:14 241:3
 330:8,10
Capitol 191:1

CAPT 2:5 4:13 29:13
 43:8,10 58:9 66:8
 70:8 72:4 78:4 84:16
captain 29:10,12 32:15
 33:3 43:7 46:15 47:4
 58:8 91:14 154:15
 168:13 204:15 260:6
 296:11 315:8 335:8
 337:10
captains 168:12 178:12
 323:16
capture 283:3
captured 102:8
car 132:22
care 137:20 206:1
 257:1 273:5 277:1
 337:5
career 13:11 17:11 36:2
 47:9 87:14 88:21 92:7
 92:13,18 100:10
 103:2 109:14 110:11
 117:10 129:7 132:2
 151:17 153:13 286:12
 293:13
career-long 13:20
careers 31:5 224:10
 285:16 323:18
carefully 13:8 53:17
 324:10
Carolina 131:6
carry 320:14
case 22:22 27:8,18 34:4
 34:6,7,10 40:18 44:22
 45:8,15 46:8,14,16
 47:18 49:14 51:19
 62:10 77:4,8 87:11
 92:21 93:2 94:14,16
 94:16,17,18 95:2,17
 98:4 100:4,5,21 101:6
 101:6 105:21 116:5
 118:17,18,20,22
 119:2 121:19 122:18
 123:9 129:15,19
 130:22 131:2,6
 132:11 133:6 137:18
 138:3,3 144:18,19,22
 145:5 148:11 149:17
 157:7 160:8,10
 162:12 164:18 165:1
 165:6,15,19 166:2,15
 167:20 168:1 173:4
 186:5 188:7,19 189:4
 193:13,14 197:3,9
 209:2 216:15,16
 223:2,8 224:22 225:5
 226:3,7 227:1,5,9
 228:3 229:5,10,14
 230:11,14,14,14

232:21 235:20 240:7
 241:12 243:1,3,16
 245:4 246:17,17
 247:15 255:14 258:5
 263:21 280:6 284:11
 287:9 290:22 291:21
 292:2 302:2 303:7
 305:8 306:4,14
 314:11 316:9 334:9
 335:19 336:7,9
case-in-chief 22:15
caseload 100:18 132:8
 132:15 166:4 199:12
caseloads 214:21
cases 2:8,16 5:1,12
 9:13,17 17:14 23:18
 24:2,8 25:16 26:1,21
 29:20 40:20 44:19
 46:21 47:16 49:2,18
 49:19 52:3,6,7 53:9
 54:21 78:6 79:13
 85:20 86:14 87:3,9
 88:19 90:17,17,20
 91:2,21,22 92:1,2
 93:9,11,16 94:3 95:8
 98:2 99:10 100:15,17
 101:3 102:22 103:1
 104:17 112:10 113:9
 114:3 118:10,21
 119:18,21,22 121:18
 130:17 133:5,9 139:4
 144:3,5 145:3 151:2,3
 151:5,6,6 153:9
 163:21 165:5,17
 166:1,9 167:12
 168:19 172:14,14
 173:3 176:14 177:5
 180:3,15 187:10
 188:3 192:16 198:3
 204:18 208:17 210:13
 212:19 216:21 222:5
 222:18,21,22 224:10
 224:16 226:22 227:6
 228:7 234:20 236:22
 240:10 241:7 242:8
 243:12,17 245:6
 246:13 247:12 276:3
 287:14 292:8 295:8
 303:21 308:6,18
 309:6,6,7 329:12
 334:14 335:16
catch 105:10
catch-22 197:21
categories 87:3 152:7
 167:18 174:8
category 83:18 168:3
 228:7,8
caution 225:9

- CCA** 307:1
CDC 187:5
CDR 2:11,21 5:4,18
 99:20 140:15 141:7
 142:14 150:19 153:2
 154:4 161:15 202:19
 203:6,10 213:3,18,20
 237:9,22 239:9,14,16
 242:16 246:12,15
cell 301:22
center 1:11 2:3 4:8 8:18
 11:14 12:2,14 19:15
 66:9,13,17 67:16
 78:10 96:19 111:5
 115:8 127:13 129:8
 182:13
centerpiece 258:1
centers 66:16
centralized 62:3
certain 81:13 103:5
 153:19 188:14 328:8
certainly 20:9 47:4 61:5
 73:3 134:12 144:1
 152:9 214:5 262:18
 314:3 321:11
certainty 246:8
certification 18:8 93:6
 103:11,13,15 104:8
 105:2 150:1,2,18,21
 157:5 186:16 187:4
 251:2,14 255:20
 258:8,14 259:2 265:3
 265:6,10,13 267:6
 270:17 272:13 275:10
 275:11,12,14,18
 277:7 279:3 281:4
 288:10,15,20 289:4,5
 289:7,14,19 290:10
 329:1
certifications 17:10
certified 15:18 45:19,22
 63:18 69:4 102:22
 103:5 104:15 122:14
 148:12 150:13 179:9
 265:8 285:22
certifies 63:9 68:18
certifying 18:17 69:1
cetera 211:4
chain 80:4 88:6 187:14
chair 1:13 3:12 4:4 6:13
 7:14,17 8:3,4 19:17
 19:22 20:9 29:6,13
 32:14 33:1 37:20 48:4
 48:5 60:3,4 68:5 82:3
 82:6,9 84:3,6,15 85:3
 85:6,15 86:4,6 87:5,6
 87:8,12 92:19,20 93:4
 93:13,15,18,22 94:2
 95:17,18 99:13
 106:17 107:2 118:20
 120:4,12 123:21
 124:6 135:1 141:22
 142:1 148:4 149:15
 155:20 157:6,7 158:1
 162:21 163:7 166:1
 173:6 174:20 183:22
 184:8,12,17 188:2
 202:12 203:4,7 213:1
 213:4 218:1,12,15,17
 218:19 219:17 220:18
 222:1 235:21 236:2
 236:17 237:18 238:5
 238:8,11,15 239:1,7
 239:15 240:18 241:6
 241:11,17 242:9,15
 242:18 243:6,11,14
 243:21 244:13 245:1
 245:13,21 246:9,14
 247:7,16 248:1,6,11
 248:21 249:18 264:11
 264:19 273:19 274:6
 274:9,14,17 284:17
 285:2,8 299:21
 303:12,16 304:21
 305:2,20 307:3,15,18
 308:11,21 309:21
 310:3,15 311:6,10
 313:6 327:11 330:19
 332:3,8,18 333:7,18
 334:16,19 335:1
 336:13,20 337:1,7
 339:3,21 340:4,11
Chair's 158:13
Chairman 99:20 164:2
 249:21
Chairwoman 175:5
 202:20 212:22
challenge 74:18 75:7
 178:13 180:22 192:22
 195:22 198:10 215:7
 215:12 216:20
challenged 115:6
challenges 19:10 29:21
 51:3 101:20 126:7
 153:14 166:14 168:20
 169:9 180:16 195:20
 251:19 272:6 273:9
challenging 40:15
 74:16
chance 124:9 226:11
change 18:14 19:2,4
 34:15 60:17 61:17
 62:1 63:14 98:8 113:3
 280:10 318:1
changed 18:13 63:7
 102:1 140:13 167:2,5
 234:17 255:7
changes 18:11,14,16
 18:18,20 28:16 33:20
 60:17 61:16 62:14
 68:10 84:13 97:11
 117:4 119:20 130:17
 166:18 167:5 189:18
 251:12 255:16 257:15
 270:4 272:5 274:3
 278:21 290:9 292:22
 298:9
changing 37:5 228:22
 290:8
Chapter 303:1
characterization 337:2
charge 2:13 140:6
 184:4 191:13
charged 72:16 108:13
 111:21
charges 88:18 98:22
 99:2 133:6 189:6
 199:12
charging 105:16
Charles 2:3 4:6 11:12
Charleston 117:11
Charlotte 3:14 6:16
 284:20
Charlottesville 1:12
 10:5 19:14 31:21
chart 44:9 126:8
check 169:22 187:6
 312:4
checked 84:17
Chicago 47:10
chief 2:5,9,12,17,18,20
 3:7,14,20 4:13 5:2,6
 5:13,15,16 6:5,17
 9:21 15:7 29:10 39:5
 41:9 42:21 43:13 47:9
 53:5 71:14 85:22 86:9
 86:9 90:4 91:12,13
 94:7 98:18,20 99:16
 106:20 107:7 127:14
 146:7 163:18 164:6
 175:1,13 176:5 185:1
 187:5 249:7 262:5,15
 263:2 264:2,5 285:3
 287:1 298:13 315:7
 325:20 326:9
chiefs 30:12 65:16 90:5
 92:6 94:9 95:6,7
 173:13
Chiefs' 66:1
child 90:18 105:18
 108:10 113:13 142:18
 255:17,20 256:4
 275:12 277:2,4,13,15
 277:19,21 278:1,2
 282:4 289:17 290:14
 292:14
childproof 129:9
children 24:10 96:20
 115:8
chit 336:10
choose 133:3 321:5
chose 231:6
Christa 109:22
Christmas 63:14
Christopher 3:12 6:12
 274:9
Chuck 8:16
churn 50:4
CID 199:3 230:20
 231:17,19 237:15
 276:11 279:14
Cincinnati 56:10
circles 48:11
circuit 90:4 91:7 94:9
 95:5 98:10 176:7
 251:22 252:1 269:15
circuits 58:4 91:9,11
 176:1,4,7 181:15
 251:21 252:3
circumstances 162:8
civil 87:18 156:18 157:1
 243:19 244:2
civilian 37:3 45:3 47:5,7
 47:9,15 53:22 104:7
 108:20,21 109:12,13
 109:14,17 114:22
 118:5 119:13,14
 122:6 127:8 130:12
 132:9,19 135:11
 136:8 147:9 172:3
 182:11,18 191:14
 199:21 201:8 213:10
 214:8 223:17 224:16
 234:4 244:10 256:13
 256:16 259:5,9
 260:16 266:4 268:19
 269:20 274:19 282:21
 287:11 292:18 293:21
 297:4 316:8 325:6
civilian-sponsored
 110:16
civilians 24:11 110:5,18
 145:8 146:4 208:18
 281:6
claim 227:14 244:15
 247:4 309:2
claims 223:19 226:1,19
 244:4
class 129:9,9 182:7
 186:22 195:12,14
 243:15 281:11 337:12
 337:15

classes 21:18 124:16
166:22 167:5 168:16
classrooms 16:1
clear 208:21 223:12
305:6,6 310:13
336:14
clearance 234:8
clearances 229:18
clemency 187:21
257:21 281:13 316:12
316:19 317:9
clerk 205:16
clerks 36:14
clicker 120:17
client 27:17,19 193:9
205:2 217:16 230:17
231:4 254:11 255:11
256:11 258:3 291:3
304:3 334:12 338:12
client-based 258:3
clients 25:8 210:11,20
217:6 251:3 252:10
253:8,10,20 256:4,16
257:8 268:22 277:4
288:12 301:21 307:6
clients' 276:21
climate 339:12
close 17:6 18:10 32:1
52:12 89:12 229:10
229:14
closed 232:21 340:10
closed-door 68:2
closely 42:6 98:11
115:14,22 128:11
259:13
closing 183:18 280:7
closings 132:17 170:17
Cluverius 3:14 6:16
284:20,22 285:7
314:21 324:3 326:15
326:19 327:2,8 332:4
332:6,9 333:15,17,21
334:18,21 335:3
336:19,22 337:3
co- 46:19 188:16
co-counsel 46:18
co-located 162:2,3,20
Coast 2:5 4:13 9:20
26:14 29:10,17,19
30:6,18,21 31:6 32:1
32:10 33:11 43:10,14
44:3 58:10,13 66:10
66:10 70:8 72:5 78:4
190:22 191:1 196:16
196:17 207:2,2,5,5
212:14,15 240:10
290:4 330:2,16
code 9:6 161:16 179:10

294:16 296:17
codified 331:2
cognitive 81:1
cohesive 73:10
cohort 255:3
cohorts 260:19
coincidence 198:18
Col 2:4,9,17,18,19 3:7,9
3:21 4:2,10 5:2,6,13
5:14,16 6:4,8 7:3
19:22 20:11 42:9
45:13,18 52:19 57:3
62:18 65:10 69:20
71:6 75:12 76:7,22
77:12,15,20 84:7 86:4
107:2 137:10 139:7
143:1 147:12 148:10
149:9 151:13 152:4
152:15,21 154:9
155:12 157:3 160:1
161:3 162:2 164:2
175:4 184:10,14,18
214:3,10,11,22 215:3
215:6 217:14 218:9
218:14,16,18,20
219:8,12 220:4,12,20
221:11,16 222:12
223:10 228:13 230:7
230:21 231:11 232:12
232:22 233:3 235:7
236:4 237:10,12,20
238:1,7,9,13,17 239:3
241:1,8,13,19 242:11
242:21,22 243:7,13
243:18,22 244:18,19
245:3,17 246:7
247:14,18 248:2,7
249:21 264:18 300:12
300:15,22 303:15,18
305:1,4 306:2 307:4
307:16 308:5,12,22
309:1 310:9,19
311:16 313:15 314:3
314:5 316:1 319:22
321:14 325:10,15,18
326:1,4,7 327:19
328:19 329:16,20
331:1 337:9 339:5
Coleen 125:3
collaborate 21:15 26:10
30:2 101:19 252:1
253:19 313:11
collaborated 253:16
collaborates 25:8 43:1
collaboration 17:4
30:22 128:6 250:18
278:6 330:15 332:10
collaborative 21:14

24:13 331:22
colleagues 12:6 132:4
249:12 298:11
collection 335:15
collections 40:13
Collective 120:20
College 43:17 65:22
66:1 172:7 182:15
colonel 7:8 8:5 19:20
20:2 29:7 32:17,19
39:5 42:8,21 44:1
45:12 46:1 47:13 49:4
53:4 59:6 65:12 84:6
84:8 85:21 86:2,8
92:10 99:14 106:20
106:22 107:5 120:5
120:14 137:5 138:5
141:10 145:10 155:6
156:15 158:15 163:17
163:22 164:5 174:21
174:22 175:3 176:5
184:1,2 185:2 189:22
202:13 204:14,16
207:12 208:9 209:14
214:1,2 215:3,5
217:13,15 220:3,9
223:22 235:7 240:20
242:9 243:6 249:7
250:20 251:17 259:10
259:15 264:12,13,16
274:7,9,11 281:17
284:18 289:18 305:5
305:18 311:13 312:11
321:19 332:7 339:4
339:22
colonels 312:22,22
combat 337:4
combination 152:8
combinations 147:1
combine 143:16
combined 256:3
combines 255:19
combining 304:5
come 34:18 36:15
47:15 48:1 49:16 62:1
63:2 64:22 65:1 70:1
74:6 85:9 88:3 89:22
90:5 126:16 127:21
130:18 133:12,21
138:18 139:1 145:19
150:6 157:9 163:12
165:15 178:2,3
185:11 192:21 201:12
202:5 208:18 209:5
210:18 220:11 223:18
226:15 240:12 248:16
322:15 323:6,6,19
324:22 330:3 334:1

comes 48:13 62:11
89:16 106:14 141:8
143:8 180:20 206:18
207:19 210:5,14
316:9
comfort 229:10
comfortable 270:22
coming 11:17 61:20
68:12 74:22 84:18
86:3 89:7 107:1
114:15 158:3 304:20
321:10 322:8,10,16
command 30:10 58:12
64:13 65:3,16,22
67:17 78:19 79:4 80:5
80:15 105:2 187:14
210:8 231:14 287:3
312:22 339:12,17
command's 62:19
178:18
Commandant 2:3 4:10
11:13 19:21 20:2
125:6 250:20
commander 39:2 74:21
75:17 99:15,18 100:8
100:9 106:18 128:7
151:11 162:5 202:14
202:17 213:2,17
223:1 225:3 242:15
285:20 287:3 317:9
Commander/Comma...
2:4 4:7
commanders 64:3,12
65:1,12 67:19 68:1
75:9 223:21 224:9
280:16 312:15,21
313:18 314:19,19
315:1,6 316:4 322:8
commanders' 313:19
commanding 30:9 33:4
66:14,21 206:19
229:9 234:13 315:17
commands 62:22 67:6
80:7
commence 163:9
comment 38:9 49:4
77:22 135:7 137:1,8
139:6 156:1,10,10
157:22 159:22 161:13
177:9 200:20 222:11
224:6 229:9 241:18
329:15 337:8
commented 337:15
commenting 10:12
comments 10:9,16 11:3
48:19 55:22 57:4
59:11 68:8 110:10
128:9,9 159:8 255:3

- 272:19 284:12 285:9
294:2 299:18 316:15
317:12 319:2 323:5
commit 223:14
committee 7:21,22 12:4
185:22 187:7
committing 201:22
commodores 315:14
common 167:20 252:2
273:11 316:14 334:13
commonly 125:21
communicate 55:18
276:20
communication 141:9
279:5,16 297:10
Communications 43:18
communities 25:9
community 138:5,18
161:8 171:2 176:21
190:17 268:20 278:7
278:8,11
community's 139:3
company 74:21 75:4
comparatively 56:22
compare 59:13 135:9
compared 136:7 231:17
compensate 46:12
49:12 50:4,11
compensates 50:10
compensating 50:8
compensation 314:16
compensatory 48:22
compete 216:5
competence 270:12
competencies 102:6
competency 105:4
256:18 267:14 277:19
competent 45:22 50:16
50:17 88:11 103:6
121:12 149:14 168:1
270:22
competently 101:5
256:16
competitively 177:11
compiled 212:6
complain 334:10
complained 227:21
complaint 225:10
complement 16:18
52:16
complementing 115:16
complete 34:2 94:16
100:3 104:19 265:10
completed 165:20
180:6,10 294:1
completely 185:12
332:6
completes 104:22
174:7
complex 52:7 92:2 93:1
95:8 113:11 153:9
165:19 166:1,2
167:21 198:15 199:1
208:17 281:1
complexity 165:5 189:5
complicated 76:2,6
98:4
compliment 320:22
comply 7:21
component 15:7
113:17
components 16:10
21:2
composed 138:12
composure 311:21
comprehensive 13:9
52:21 64:19 94:22
119:8 250:11,21
251:8 255:16 273:3
comprise 293:5
comprised 27:5 143:22
294:12
computer 207:15
comradery 327:16
concede 50:12
concentration 58:13
concern 73:4 151:16
161:9 200:19 257:9
307:7 323:13
concerned 213:6
236:19 243:4 256:15
291:12 301:17
concerning 216:16
concerns 211:3 281:7
299:16 309:15 324:7
concerted 44:6
conclude 236:3
concludes 19:12
299:18 340:5
conclusions 284:7
concrete 276:15
concur 71:20 178:15,20
conduct 9:4,14 41:17
55:6 63:17 64:8 68:19
114:22 116:20 168:9
183:14 193:8,12
202:6 250:4 269:5
290:17 291:18 294:9
conducted 9:5 114:3
251:21 262:21 267:10
268:11 288:15 291:15
292:17 293:2,16
294:15 297:4 299:10
conducting 108:18
114:12 269:18
conducts 28:17 105:6
112:19
conference 253:1 259:5
266:7,11 270:3
296:10,12 313:19
328:16
conferences 171:5
250:15 259:6
confidence 180:20
confident 51:4
confidently 273:16
confined 137:7
conflict 139:8,10 177:7
conflicts 256:10
confused 80:10 116:8
confusing 157:16
Congress 222:20
256:17 257:9
congressional 9:10
conjunction 181:20
183:12
connect 78:11
Connecticut 66:9
consciousness 336:15
consent 23:3
consider 9:13 10:22
111:22 284:1 318:22
325:19
consideration 35:18
84:14 100:3 234:5
considered 11:5 154:15
260:5
considering 329:8
consistent 273:4
consistently 183:8
consists 70:5 190:13
265:2,17
constant 293:1
constitutional 79:21
80:10,16 235:17
236:6
construct 91:5,7 95:6
98:10 143:2,13
constructive 28:13
consult 47:16 145:17
187:13
consultation 189:1
consulting 47:18
118:21
contacts 260:16
contains 143:18 169:18
187:6
content 167:4 251:12
280:12 283:14 313:2
contested 34:9 104:16
121:19 156:5,13,16
156:22 157:13,18,20
188:3 214:20
context 241:3 245:16
246:21 247:5 276:14
continental 91:9 170:12
continual 29:1 130:4
255:15
continue 11:3 15:3
35:14 98:20 129:21
155:18 274:2 277:17
283:11 295:21 302:21
310:7 332:13
continued 25:10 96:4
252:9 254:12 292:11
continues 96:21 270:10
continuing 51:22 75:2
107:18 110:16 211:5
260:16
continuous 13:19
167:10,10 250:12
continuously 86:15
94:6 277:15 282:18
continuum 35:19 67:9
67:12 105:1 121:4
209:13,16
contract 114:20,21
115:1,7 200:10
contracting 237:14
contribute 313:18
contributions 110:7,11
control 298:1 313:3
CONUS 329:14
convenient 72:3
convening 27:15,16
64:3,21 65:13 66:4
72:12 73:5,20 78:8,21
80:14,20 81:18
227:16 228:19 238:21
239:21 240:7,11
242:1,2,5 244:21
312:16
conversations 74:10
79:15 95:3 339:8
conveying 171:16
convicted 234:9
conviction 84:1 144:4
316:10
convictions 74:15
cooperation 327:16
coordinate 103:20
110:5 258:21
coordinates 140:11
260:17
coordination 90:6
104:3 301:10
copies 203:2
copy 140:6,8
core 44:5 176:20
CornerHouse 115:2
corporate 326:20
corps 2:6,13,14 3:9

4:17 5:7,9 6:9 13:13
 16:3 19:9 20:15 31:12
 32:17 33:13 37:10
 44:3 55:16 57:21 59:9
 59:20 66:22 86:21
 90:15,22 92:12 96:4
 96:12 97:19 99:7
 100:14,17,17,20
 101:3,13,15 103:4,11
 103:15,21 109:5
 120:7 122:2 128:22
 129:5,15 131:18
 132:15 133:11,21
 134:19 143:4 150:7
 152:12 162:19 177:15
 180:9 184:3 185:1,13
 186:6,14 188:15
 189:22 190:4 194:16
 201:18 202:8 204:20
 205:19 206:7,12
 207:8 208:15 209:7
 209:15 233:20,21
 247:6 264:14,22
 265:1,15 266:8,13
 267:17 269:3 270:5,7
 271:11,18 273:14,21
 290:4 294:13,21
 298:10,14 299:11,13
 306:3,4,12,14 310:13
 310:16 314:22 316:2
 319:4,16 320:1
 325:10 327:20 328:1
 329:7,10
Corps' 13:7 86:16
Corps/Head 2:20 5:17
correct 77:20 142:22
 143:1 241:13 248:9
 325:9
correctly 220:3 284:21
corresponding 44:8
COs 211:11 315:1,11
 315:14
costs 41:18
council 171:3
counsel 2:10,11,12,13
 2:14,20,21 3:5,8,10
 3:15 5:3,5,6,8,10,16
 5:19 6:2,5,10,18 9:11
 9:12 10:2,3 14:17,18
 15:1 17:10 20:18,18
 20:19 21:9,10,19
 22:18 23:12,13,20,22
 24:3,9,19,22 25:5,6
 25:22 26:6,8,19 27:2
 27:2,3 30:17 31:3,15
 38:2,6,11,11 39:10,14
 39:15,17,19 40:2,3,7
 40:13,14,22 41:1,12

42:12,14,16,18 43:12
 43:14,21 44:11,13,16
 44:18 45:2,8,14,15,20
 45:21 46:3,13,20,20
 47:12 50:13,19 51:5
 52:22 53:8,13,15,18
 54:16 55:13,18 58:3
 58:11,20 59:12,17,18
 63:1,4 68:8 72:2
 80:19 82:14 83:7 86:1
 86:10,20 87:2,4,5,6,6
 87:13,15,22 88:3,7,13
 88:16,22 89:1,4,6,7
 89:10,11,20,21,22
 90:4,10,15,22 91:13
 91:17,18 92:5,15 93:7
 93:9,13,17 94:2,8,15
 95:15 96:3,6,12 97:19
 98:19,19 99:8,16
 100:3,7,16,19 101:1
 101:10,14,15 102:21
 103:3,4,12,15 104:4
 104:14,22 105:4,21
 106:4,12,21 107:7
 109:8,8,9 111:8 112:2
 112:3,14,15,18 113:1
 113:1,12 114:9,10,10
 115:4,13,17 116:10
 116:14,15 117:3
 119:1,10 120:8 121:4
 121:5,9,15 122:1,8,14
 122:16,17,18 126:12
 126:13,19,19,22
 127:3 129:19 130:5,7
 130:15 133:11 136:4
 137:16,16,17,19
 138:12,13,13,17,20
 138:21,21 141:11
 143:10,14,17,22
 144:1,10,12,14,18,20
 144:22 145:2,10,19
 147:6 148:7 149:5,6
 149:14 150:5 151:1,2
 151:17 152:4,5,17,20
 153:5,6,7 154:3,7,12
 154:18,22 155:1,14
 155:15,17 156:17
 157:8,9,11 158:19
 162:1 164:17,22
 165:3,4,7,7,10,11,14
 165:18,22 166:7,10
 166:12,14,17,19
 167:1,7,11,15 168:1,9
 168:11,14,18 169:3
 170:4,6,9,13,16,20
 171:21 172:3,5,13,17
 172:18,21 173:1,2,4
 173:10,14,17 174:2

174:10,11 175:9,10
 175:15 176:6,9,12,13
 176:15,18 177:10,11
 177:18,20 178:10,13
 179:5,12,16,19 180:5
 180:14,21 181:3,7,11
 181:12,20 182:1,11
 182:21 183:1,11
 185:1,11,15,17,19
 186:4,22 187:5,10,12
 187:17 188:1,12,17
 188:20,22 189:2
 190:4,18 191:4,6,17
 192:4,13 194:5,13,17
 195:2,4 196:20 197:2
 198:12 202:16 203:15
 203:19,20 204:12,21
 205:5,14,15,15,16,20
 206:3,4,8,12,17,21
 207:20 208:16,22
 209:7,16,18,18 211:6
 211:15,19 212:3,12
 212:16 214:18,19
 215:10,14,21 216:2,5
 216:6,13,15 217:17
 217:20 218:10,21,21
 219:22 220:2,7,17
 221:2,5,12,14,16
 230:15 231:13 235:13
 237:4 239:4 241:21
 243:2 244:1 247:10
 247:21 249:4,8 250:3
 252:12 261:18 264:15
 264:22 265:2 274:16
 276:9 277:10 278:5
 279:4 281:8 285:4,10
 286:8 287:2,13,14,17
 287:18 300:9 301:1
 301:11,16,20 302:5
 304:1,2 305:7,15,16
 306:13,14 308:6
 309:8,17 318:1 320:4
 322:10 335:2 337:13
 337:13,16,21 338:10
 338:21 339:10
counsel's 25:7 88:21
 149:20 171:11
counselor 87:21 194:2
counsels 50:15 61:22
 128:2 152:1 194:11
 217:3 220:1,11
counsels' 217:8
count 157:15
counterintelligence
 231:15,22 232:4
counterintuitive 102:15
counterpart 2:19 5:16
 147:22 184:22

counterparts 288:10
country 123:15 156:19
County 127:15
couple 57:4 65:11
 73:16 79:17 94:12
 97:11 105:15 107:14
 113:21 118:3 123:4
 192:11,16 199:18
 209:21 269:7 305:12
 327:11,12
courage 224:4
course 13:11 14:4,9,10
 14:11,12,16,18,20
 15:2,5,6,6,10,13,14
 15:15,16 17:11 18:20
 22:4,5 23:10,13,21,21
 24:2,3,12,14,16 25:17
 25:18,20 26:9,12,17
 27:1,1,5,12,22 28:1,2
 28:3 30:5 31:5,20
 33:14,15,17 34:11
 35:13 36:2,9 37:13
 39:10 40:12,22 41:4
 41:18 42:13,14,15,15
 42:19,20 43:3,5,18
 44:7,8 54:1 55:14
 57:10,10 64:10,11,16
 64:19,20 65:2,15,18
 66:4,20 67:2 68:17,20
 68:21 69:5,13,22 70:3
 70:5,10,19 73:6,7,13
 73:14 74:19 76:3
 78:17 79:6,6,11 85:1
 87:17 89:13 90:5 92:7
 92:13,18 95:7 96:14
 103:16 104:5,6,7
 105:6 106:3 113:8,11
 113:12,12,13,20,22
 114:1 117:10,16
 118:4 121:6,21
 122:20,21 125:19
 138:10 145:18 148:15
 148:17 149:1 157:2
 167:13 170:10 171:6
 171:9,20,22 172:6,7
 181:4,5,6,9,10,14,14
 181:16 182:2,3 183:7
 183:13,16,16 186:15
 186:17 192:15 200:2
 223:8 225:12 228:21
 233:4 251:12 252:13
 252:15 255:16,18,20
 256:3,8 257:18 258:2
 258:11,18 259:2,14
 260:9 261:5,13
 263:13 265:10 275:12
 275:13,14,19 277:2,3
 277:6,7,16,16,22

- 278:2 279:1,3,18,19
280:3,13,14,15,15
281:5,16,19 282:2,4
282:14 283:14,21
284:9,10 287:16,21
288:1,11,15,21 289:4
289:6,12,14 294:17
297:8,11 298:17
299:7 310:6 312:20
312:20 313:2,5,9,10
314:7 318:7 329:1
courses 14:21 15:1
16:16 18:17 20:17
21:1,3,19 23:19 24:13
24:22 25:1,11,15
27:20 28:18,18,20
29:2 31:16 35:14 36:4
36:6,21 37:1 41:20,20
42:17,19 44:11,11,12
44:13,13 55:12 57:6
58:21 64:4,8 65:11
79:15 84:12 96:17
103:5 104:2,3,10
113:14 115:4,9
126:21 170:8 171:18
172:3 181:22 182:5
182:12 183:3,6
250:13,22 251:7,8,15
251:16,20 252:20
253:3,5 255:7 256:1,2
257:11 258:14 261:1
261:3,22 267:6
270:18 275:12 278:13
280:13,16,19,20
281:2 282:3 283:5,12
289:7,19 290:10
291:10 298:6 330:1,2
330:4
court 22:11,12,16,21
23:6 25:13 45:19 46:1
46:4 51:14,15 58:15
64:21 65:13 66:4
69:15 93:8 95:15,19
144:5,6 160:7,10
173:9 177:21 188:9
194:17 196:14,18,19
197:15 199:18 200:18
201:16,22 202:7
204:12 212:16 228:17
245:8 247:6 269:21
271:5 294:21 298:14
301:2 302:16,18
306:5,12 312:15
323:14 329:10
court- 303:2
court-martial 29:20
34:9 81:15 88:13
95:13 106:8 121:13
149:15 210:17
court-martial-qualified
121:8
court-martialed 75:22
courteously 262:14
courtroom 43:18 50:15
53:12,13,15 54:18
57:19 83:8 130:3
131:22 132:5,7,10
134:5 136:7,12 147:5
158:8 188:7,11
196:13,18 269:16
297:10 326:22
courts 144:4 177:17
197:1,15 217:8 230:9
238:19 243:9 246:3
247:13 256:10 262:12
courts-martial 149:18
261:19 273:6
courts-martials 217:2
cover 196:10,11
covered 272:17 296:20
299:6
covering 176:1,2
coveted 320:10 323:11
cows 49:16
cradle-to- 12:15
cream 321:8
create 74:5 75:1 130:19
131:16 191:18 222:17
created 9:1 40:18 51:6
56:2 126:7 129:14
278:22 328:22
creating 119:7
credibility 112:6,11
credible 273:4
crim 313:3,4
crime 32:5 56:20 100:5
101:12 104:20 111:20
223:12 225:22 266:6
266:7 275:9 296:3
crimes 7:15 24:19
101:2,3,13 103:6,17
104:7 105:15,17
125:3 127:16 130:12
156:4 222:8 266:17
criminal 3:13 6:13
13:21 14:7,15 15:8,9
16:11 17:2,8,12 33:18
39:12 41:10 47:8
54:11 86:17 93:21
109:7 144:3,6 145:1
145:13,14 146:6
150:6 182:13 192:6
274:10 275:1 287:11
294:21 297:22 298:14
306:5
criteria 51:12,22 81:13
312:3
critical 16:11 86:19
criticism 134:16 212:3
critique 18:2 194:13
196:20 212:3 337:16
critiques 195:2 261:6
289:20 294:1,5
critiquing 194:16 197:1
crop 321:8
cross 170:17 174:8
193:8 198:9 253:11
254:1,2 255:4 270:20
278:12 295:15
cross-examination
27:7
cross-service 329:12
329:18
crosses 132:18
cry 228:2
culture 225:15,22
curious 81:8 142:11
147:1,8 156:20
233:19 300:21 333:14
currency 69:19
current 48:10 155:10
158:9 183:10 254:22
265:19 307:4
currently 20:20 67:19
90:21 180:12 214:12
250:4 262:17 285:21
294:12
curricula 191:19 270:6
270:8 290:9
curriculum 18:4,18
19:3 21:21 24:21
25:10 26:5 27:12
28:16,17 33:20 35:1
35:13 43:2 59:16 61:9
61:14 70:3 84:13
182:19 251:18 255:7
256:19 275:1 278:21
281:20 282:19,21
292:6 298:19 313:7
313:13 326:13
curriculums 84:21
curtain 184:11
curve 133:19
customarily 50:5
customer 287:22
cut 126:3 210:15
228:11
cycle 61:20 216:10
288:14 322:19 324:19
cycles 260:3
-
- D**
-
- D.C** 94:8 112:7 266:12
294:14 296:13
DA's 118:12 130:12
146:14
DAD 309:18
daily 19:3 205:11,18
328:4 332:15
Dale 3:20
damaging 151:19
Damned 172:6
Dan 39:5 40:9 41:17
42:21 164:5
Daniel 2:17,18 5:13,14
163:17 175:1
data 300:6
database 207:14
date 84:12
Davies 2:4 4:10 19:20
19:22 20:2,11 29:7
42:8,9 45:13,18 49:4
52:19 57:3 62:18
65:10 69:20 71:6
75:12 76:7,22 77:12
77:15,20 84:7 92:10
250:20 259:11,15
day 12:10 19:16 52:14
65:2,2,4,6,18 82:10
112:8 139:16 145:17
166:14 179:20,20
181:14 268:8 277:3
297:3 314:9
day-in 143:20
day-out 143:20
days 64:15 79:7 105:13
126:16,20 151:15
255:17 265:17 275:19
294:17
DC 40:11 165:20 167:1
173:20
DCAP 16:6 17:4 62:7
147:22 169:12 207:1
207:7,10 210:22
212:6,12
DCAP/TCAP 171:5
DCAPs 207:4
DCs 39:22 250:14
254:15 290:20
DCSs 259:4
DD 310:21
deal 34:11 51:8 106:4
125:9 135:14 137:3
257:13 278:5 318:2
334:9
dealing 106:2 210:19
233:15 277:4 334:11
dealt 164:15 245:11
death 246:21
debate 49:10
debrief 212:5,7
deCamara 3:7 6:4 84:8

138:5 249:7,21
 300:12,15,22 303:15
 303:18 305:1,19
 306:2 307:4,16 308:5
 308:12,22 310:19
 314:5 321:14 325:18
 326:1,4,7 328:19
 329:16,20 331:1
 332:7
December 117:17
decent 313:6
decide 220:5 225:2
 272:20
decided 207:3 227:9
 307:6
decides 90:8 189:3
deciding 229:10
decision 188:21 246:4
 277:17 301:21 306:16
decisions 133:9 292:8
dedicated 22:8 24:7
 108:3,9 109:19
 175:17 181:10,16
 186:9 198:16 208:15
 214:12 283:19
deep 339:13
deeper 14:5 117:17
defend 44:22 158:19
 159:1 166:8 167:11
 175:9 199:13
defendant's 38:11
defendants 228:11
 236:21 242:20
defender's 216:22
 217:1
defenders 150:8 182:14
 192:5 213:11
defending 2:16 5:12
 23:17 114:2 115:5
 163:20 180:2 192:15
 243:17
defense 1:1 2:18,19,20
 2:20,21 5:13,15,16,17
 5:19 9:1,2,12 14:17
 14:18 20:18 21:9
 22:18 23:1,10,12,13
 25:21 26:6,7 27:2
 28:2 30:17,19 31:2
 38:2,18,19 39:4,5,15
 39:17,19 40:3,3,7,13
 40:13 41:1 42:13,15
 42:16,18,22 43:4,12
 43:13,14,20 44:8,13
 44:16,18 45:2,4,8,14
 45:15,21 46:3,13,17
 46:18 47:12,22 50:15
 50:20 52:22 53:8,18
 54:16 57:8 58:3 59:12

59:18 61:21 63:1,4
 65:13 68:8,11 72:1
 80:18 83:4,14 88:22
 89:1,4,6,10,14,17,21
 91:16 92:13 109:8
 114:8,10 115:6 117:3
 122:17 137:8 138:12
 144:12 147:22 154:22
 154:22 155:15 163:18
 164:6,17,20 165:3,4
 165:10 166:7,10,12
 166:19,21 167:11,14
 168:8,11 169:3,7,16
 170:6,9,13,15,20
 171:2 172:5,6,21
 173:10 174:13 175:2
 175:8,10,13,15,15,18
 175:22 176:5,6,12,15
 176:17,20,21 177:11
 177:18,20 178:10,13
 178:14 179:5,11,16
 179:19,22 180:5
 181:3,5,7,9,11,20
 182:1,13 183:15
 184:4 185:1,11,16
 186:4,22 187:5,12,17
 187:19 188:15,22
 189:2 190:4,18 191:4
 191:17 192:6 194:11
 194:13 197:7 201:1
 202:15 203:15,18
 204:11,20 205:5,14
 205:15,19 206:3,8,12
 206:17 208:11,13,16
 208:19,22 209:7,16
 209:17,18,18 210:9
 210:18,19,20 213:8
 214:12,18 215:14
 216:13 217:17,20
 218:10 219:19 220:1
 220:11,17 221:2,7,12
 227:5,7 235:13 237:4
 237:16 238:9,17
 243:2 244:1,9 245:4
 245:11 246:19,22
 247:1,10,22 267:2
 276:9 278:8 279:4,7
 279:21 287:14,17
 306:10 311:20 321:2
 322:12 337:13,16,21
 338:9,10
defenses 23:2 47:19
 60:12
defer 59:17 152:22
 155:6 158:7 273:13
deficiencies 297:14
definitely 138:4 214:3
 272:1 276:16 302:13

303:11 310:4 317:7
degree 58:2
deliberate 13:8,20
 16:19 52:9 60:21
 166:5 188:21
deliberative 194:19
delivering 125:16
demand 153:15
demands 269:13
demeanor 287:7
demonstrate 239:21
demonstrated 109:6
demonstrates 209:13
demonstrations 263:17
denied 245:7 306:13
 336:1
depart 26:16 34:10
 60:20
department 1:1 3:13
 6:14 7:11 32:2,6,8
 70:14 105:7 205:10
 205:17 206:6,14,20
 211:11 274:10 281:20
 282:18
departments 210:7
depending 172:1,2
 289:11
depiction 35:21
deploy 58:3
depravation 242:19
 243:8
depth 279:13 281:12
deputy 3:14 6:17 93:20
 285:3 309:4 323:1
describe 47:17 264:21
described 16:15 42:13
 42:17 47:6 148:6
 151:11 152:2
describing 21:4
description 25:4
design 126:9 212:8
designated 3:21 7:9
 91:18 121:11 126:22
 294:11
designation 122:2,11
designed 12:15 15:2
 23:13 25:20 27:1
 40:15 50:4 167:22
 275:6
desire 305:11 312:1
desired 298:5
despite 72:20 73:8
detachments 211:2
detail 10:22 72:7
 100:16 321:1
detailed 91:1 100:4
 101:4 104:15 118:18
 119:1 151:5 177:5

183:15 204:11 294:3
detailing 100:13 204:6
details 147:18 165:4
detector 229:14,19
detectors 228:9
determination 229:21
determination's 230:1
determine 261:3
determined 225:16
develop 41:20 51:4
 54:2,7 83:20 98:14
 283:12 292:12 323:6
developed 63:12
 136:18 180:19 190:1
 250:16 268:1 282:3
 291:21 305:13 323:20
developer 24:21
developing 16:11 52:21
 192:1 270:11 275:1
development 2:6 4:15
 9:16,21 16:9 25:10
 29:11,18 31:9 57:17
 57:22 66:3,7,9,13
 67:11 103:22 116:4
 173:1 174:14 178:21
 189:21 251:12 252:9
 258:9,21 259:14
 260:9 271:21 293:13
 301:15 313:19
developmental 17:7
 166:5
developments 265:19
 268:2 269:19 274:3
develops 301:10
devoted 23:15,17 47:22
 277:3
devotion 49:22
diagnoses 257:6
dialog 80:5 90:7 98:16
dialogue 276:13 289:22
dictate 160:11
Diego 32:4 56:10 67:2
 117:11 123:15
difference 97:21
differences 60:12
 159:12
different 19:2 22:13
 37:10 62:17 65:21
 68:15 72:8 76:13 87:7
 94:13 96:7,15 105:13
 107:12,18 119:3
 124:18 126:10,11
 138:11 159:11,15
 161:16,17 185:12,12
 212:15 222:8 227:10
 228:5 231:16 232:1
 234:22 254:4 280:2
 300:4

- differently** 69:10 81:7
 143:3
difficult 80:22 234:21
 256:7 334:9 335:19
digest 116:17
dire 22:14 193:8,13
direct 27:7 59:22 174:8
 232:7
directed 66:3 170:22
directing 103:9
direction 116:13 129:16
 141:8 222:20
directly 89:21 118:22
 122:13 158:10 173:5
 313:21
director 2:11,21 5:4
 202:15 323:3
directorate 178:22
directs 132:18
disability 268:8 271:12
 296:20
disagreement 300:8
disagreements 302:14
 304:10,17
disapprove 179:4
disbursed 176:17
discharge 281:9 303:2
disciples 322:6,7 323:8
disciplinary 312:5
discipline 255:8 322:20
 331:18
disciplines 297:5
discovery 19:6 131:2,4
 131:9 290:21
discuss 21:19 72:18
 141:16 175:11 183:20
 252:1 290:5
discussed 49:8 66:19
 75:15 105:8 122:20
 167:17 213:13 285:20
discusses 298:21
discussing 84:11
 299:15 324:11
discussion 48:10 49:6
 125:7 131:11 136:17
 263:3,11 275:21
 316:5
discussions 269:18
 276:14 277:21
disparity 196:2 198:14
 213:9
dispersed 37:11
disposal 199:4,5
disposition 27:18 133:4
 303:1
dispositions 302:17
 303:8
dispositive 229:4,19
 230:11
dissatisfaction 55:19
disseminates 260:18
dissonance 81:1
distance 21:2 37:8,14
 250:13
distinct 126:12
distinctions 38:17
distinguish 201:7
distinguished 7:12
 29:14 86:6 99:21
 107:3 120:12 175:5
 264:19 273:19 274:14
 285:8
distracted 132:8
distributed 111:13
district 96:18 111:5
 117:9 123:16 125:3
 127:15 128:2,3 150:8
dive 117:17 328:11
diverge 279:7
diverging 302:15
diversion 300:8
divided 22:13,17 91:8
 175:22
division 2:10,19 3:8 5:3
 5:15 6:6 17:3 41:10
 43:13 83:6 86:1
 143:15 162:4 175:2,8
 175:14,22 178:14,14
 178:21 183:5 249:8
 271:19 294:16 296:17
Division's 162:11
Divisions 83:4
DJAG 67:14
docket 71:22 193:17
 208:21 230:4,6
document 35:19 36:20
 218:11
documents 258:16
 301:6 329:4,22
DoD 13:5 103:16 104:5
 116:11 256:13 281:6
DOE 24:11
doing 19:9 37:4 53:20
 54:1 55:9 56:11 79:16
 95:11 99:9 135:10,19
 136:1 141:14 148:21
 161:6 198:4 205:18
 212:16 221:7 235:20
 240:5 242:17 267:11
 321:15 322:4 324:14
 335:16
domestic 90:19 142:17
 314:13
door 206:21
dose 110:14
downsizing 215:16
 196:16 207:2,5
 212:14
easy 76:15 258:18
echo 39:8 62:19 110:9
 323:4
edge 229:16
educate 12:7,17,18,22
 13:12 131:3 275:7
 317:17 322:8
educated 319:6 335:6
educating 277:3
education 12:16 13:8
 13:19 14:1,6,7 16:3,5
 17:19 18:13 35:2
 60:16 100:11 107:18
 110:17 211:6
educational 13:7 18:5
 34:17
effect 80:7
effective 63:16,20
 113:8,10 131:16
 142:10 171:15 273:5
 279:5
effectively 271:7
effectiveness 28:5
 54:22 136:6 261:3
effects 131:7
efficient 279:5
effort 35:8 39:21 44:6
 49:22 101:11 124:20
 272:12 326:16
efforts 18:3 175:8 183:9
 273:22
eight 16:20 28:1 42:4
 177:20 180:8 191:3
 191:13 194:3 208:14
 213:16 226:5,9 293:4
eight-day 24:1
either 18:17 39:14
 40:18 67:20 78:2,11
 164:21 174:13 213:15
 214:1 215:2 221:19
 247:5 251:5 255:14
 265:11 267:2,7
 288:21 302:22 334:9
electives 65:21
elects 223:1
elements 44:5 123:10
 125:12,21
eligibility 292:9 318:4
eligible 148:8 149:6
 176:22 253:8 320:22
 328:9
Elizabeth 1:13,17 4:4
 7:13
embedded 47:20 52:11
 280:22
embracing 37:5
DPs 176:20
Dr 268:12
draft 88:18 249:12
 331:5
drafted 239:5
drafting 99:2 114:12
 116:14
draining 334:8
dramatic 60:12
dramatically 62:17
 255:7
dress 199:5
dressed 198:20
drills 69:5
drive 60:18 174:14
drug 144:22 193:14
 233:14 235:20
drugs 233:15
DSO 189:22 190:16,17
 204:1 205:6 208:2,3,7
 209:20 211:1
DSOs 203:16 204:3
 211:21
dual 80:21
dubious 324:4
Duckworth 284:11
 310:1,20 311:1
due 196:4 199:8 236:11
 242:19 243:9 244:15
 247:2,3,19 288:13
Duke 131:6
duplicated 205:21
duties 53:22 177:18
 180:6 181:6 204:10
duty 25:4 72:22 191:16
 198:19 230:15 249:14
 287:10 324:21,22
dynamic 17:21,22
 255:12 331:9
dynamics 277:20

E

eager 285:5
earlier 101:14 122:20
 127:10 165:21 167:17
 171:9 180:2 196:2
 199:17 250:6,19
 259:11 260:1 285:15
 300:1 304:20 321:15
early 38:3,10 99:2
 105:10,10 136:15
 151:15 152:2 155:1
 186:21 267:5,11
 304:6
earning 303:22
easier 44:22 81:7 223:7
 228:1,2
East 176:2 190:22

- emergency** 71:15
336:12
- emerging** 268:2 290:5,7
332:16
- emotional** 74:14 334:8
- empathy** 291:13 324:8
334:4
- emphasis** 13:4 64:16
265:18
- emphasize** 28:15 143:9
- emphasized** 86:16
- empirical** 51:16 56:6,15
- empirically** 56:5,5
- employ** 54:17
- employee** 72:17,19
- employees** 72:15 201:8
- employment** 200:6
201:5
- employs** 261:2
- encountered** 257:8
272:7 273:10
- encounters** 203:22
- encourage** 97:13 239:4
253:9 335:14 336:11
339:9
- encouraged** 335:21
- encouraging** 134:14
337:6
- end-all-be-all** 338:1
- end-of-course** 337:16
- endeavor** 249:14
270:15
- endeavors** 252:21
- endorse** 149:20
- ends** 212:22
- energized** 331:21
- enforcement** 208:19
230:18 240:13 273:17
- engage** 282:19
- engaged** 57:22 338:18
- engaging** 27:12
- enhance** 28:5 97:14
254:17 266:2
- enhanced** 18:7
- enhancing** 259:7
- enjoy** 19:9
- enlighten** 222:9
- enlightening** 11:18
- enlisted** 36:13 64:4
65:17 124:12 190:19
293:15
- enormous** 40:9
- ensure** 16:20 18:4,19
28:21 41:14,19 62:14
183:9 252:5 254:20
257:12 258:22 260:15
283:2
- ensures** 256:5
- ensuring** 108:9
- enter** 13:13
- entering** 14:14
- enters** 180:6
- enthusiastic** 186:9
- enthusiastically** 155:9
- entire** 24:1 131:13
153:13 190:16 208:1
208:3,6 217:21
267:18 295:9
- entirely** 162:19 286:20
- entities** 162:19 283:2
- entitled** 266:16
- entry-level** 21:18 22:3
121:4
- environment** 74:6,9
75:2 183:11 253:21
330:14
- Environmental** 32:5
- environments** 40:10,19
- equal** 41:15 42:18
44:15
- equally** 41:5,13 97:1
- equation** 303:17
- equip** 62:20
- equipped** 273:2
- equity** 133:8
- err** 225:9
- error** 245:9
- errors** 59:11 212:9
- especially** 19:3 46:18
76:8 90:15 119:22
186:14 254:1 258:12
278:14 282:21 315:16
336:4
- essential** 270:21
- essentially** 15:22
207:16,22 208:21
239:19
- established** 253:5
- esteemed** 202:20
- et** 211:4
- ethical** 175:18
- ethics** 64:18 67:16
- Europe** 91:10 176:2
206:1
- European** 253:16,17,19
295:15
- evaluate** 55:12 57:2
95:16 173:17 178:15
183:13 194:6 196:20
211:19 212:12 262:3
281:19 282:19 292:21
- evaluated** 55:7,13 94:7
101:10 166:17 183:8
188:11 261:15 289:20
- evaluating** 172:18
183:9
- evaluation** 18:1 94:12
102:21 167:10 172:17
174:5 194:7 254:8
261:20 268:8 271:12
272:9 296:20
- evaluations** 55:5
212:12
- EVAWI** 253:3 266:11
296:8
- evenly** 60:22
- event** 71:18 74:14
190:15 267:21 268:15
- events** 71:13 109:2
110:6,8,17,17 112:5
113:7 266:9 297:16
- eventually** 323:2
- everybody** 38:8 46:7
195:8 203:7 208:1,2
315:21 321:3 335:10
- everybody's** 332:21
- everyone's** 8:14 10:4
60:15
- evidence** 27:9 34:1
56:7 88:17 99:3,4
129:17,22 133:18
283:16 292:1
- evolution** 193:15
- evolutions** 21:20
193:10 211:4
- evolve** 274:2
- evolved** 26:4 27:10
182:17
- evolving** 160:3 293:1
299:17
- Ewers** 125:6
- exact** 229:2 244:20
246:10
- exactly** 59:21 249:19,19
- examination** 170:17
174:8,9
- examine** 193:8 198:9
- examiner** 230:19
- example** 14:8,10,17
18:18 26:12 27:15
43:16 55:14 56:13
62:6 63:7 74:12 93:10
115:1 123:2 124:16
130:22 137:4 154:1
172:4 200:19 205:7
213:12 243:16 268:5
269:14 289:2,14
328:13
- examples** 105:15 139:8
253:2 276:15
- exceed** 20:20
- Excel** 59:10
- excell** 50:18 57:12
85:8 92:16 279:20
- 281:12
- exception** 93:2 274:21
306:9 311:17
- exceptional** 71:16 99:8
99:9 152:10 252:16
329:22 330:18
- exceptionally** 152:7
334:9
- exceptionally-talented**
90:11
- exceptions** 46:7 324:5
- excise** 124:9
- excited** 35:15
- exclusive** 39:22
- exclusively** 24:6 91:1
92:1 108:9 114:1
277:3
- excuse** 123:21 163:14
177:3,17 187:7
235:21
- execute** 17:5 57:10
61:5 191:18 313:10
- executed** 13:9 110:18
- executing** 109:1 192:1
- execution** 18:19 43:4
110:8 258:9 260:9
275:3 281:21
- executive** 2:7 4:18
32:18 66:15
- exercise** 24:6 27:14
39:2 113:15 271:4
277:22 283:16 316:18
317:20 318:7,19
- exercised** 235:16
279:11
- exercises** 27:13 40:17
113:16 114:18 200:20
201:3 251:10 261:16
276:1 280:4 316:16
316:17
- exercising** 235:12
236:6 331:5
- existing** 297:14
- exists** 335:6
- expanded** 24:9
- expansion** 255:14
- expect** 153:19 154:2
155:18 232:6 332:12
- expected** 179:13 181:8
182:1 183:2 191:5,15
194:11,13 262:11
310:14
- expedite** 222:21 226:11
- expedited** 27:17 77:1,3
77:6,12,16
- experience** 2:8,16 3:4
5:1,11 6:1 9:11 10:3
11:18 14:5 16:22

17:12 31:14 44:21
 45:5 46:22 48:13,21
 49:7,13 50:21 53:11
 53:19 73:17 75:20
 76:10 78:2 79:10
 85:19 86:12 87:1,7,9
 89:15 90:1 91:15
 93:21 99:5 100:2,10
 100:19 105:22 106:13
 110:15,20 112:18
 124:21 133:13 134:18
 135:8,13,21 136:1,3,4
 136:10 145:14 156:6
 156:14 163:20 164:16
 164:21 165:6,11,13
 165:16 166:8 168:18
 177:10 185:10 189:9
 206:18 208:20 210:11
 210:19 211:12 212:2
 216:1,3,11 220:11
 221:6 249:3 259:19
 267:2 282:9 286:5
 287:9,11 295:17
 305:3 308:2 311:15
 311:19 312:6,9
 319:11,12 321:10
 322:18,21 330:15
experienced 45:3 47:11
 47:14 50:14 53:14
 59:3 86:18 94:4
 112:16 127:19 128:21
 133:14 134:12 165:14
 182:9 186:10 191:14
 203:20 204:16 211:10
 211:11 212:1 216:6
 216:15 220:6 221:5
 274:20 287:13 319:9
 334:12
experiences 30:13 78:3
 79:12 129:13 131:5
 153:20 208:19 278:9
experiential 19:6
expert 2:14 5:10 25:14
 94:21 118:5 119:13
 123:18 125:14 142:19
 147:3,4 169:14
 192:19 196:13 221:10
 231:6 242:5 244:3
 274:20 282:6 291:1
 293:18,20 325:20
 326:3,12,22 327:5
expertise 16:12 50:11
 58:1 101:7 109:6
 146:5 163:12 209:8
 282:11
experts 45:10 47:5,15
 52:5 103:22 117:18
 117:19 123:14 142:4

191:22 196:8,9,11
 221:13 241:4 276:2
 277:19,21 281:6,7
 282:20,22 292:18
 293:17 324:13 325:5
 325:6,11
explain 238:6 333:9,18
explains 102:14
explicitly 307:12
exploitation 115:10
Exploited 96:19 115:8
expose 227:1
express 116:7 164:8
expressed 151:16
Expresses 116:7
extended 292:10
extensive 53:19 87:9
 91:14 92:6 96:20 97:2
 143:11 144:15 145:14
 146:8
extensively 143:19
extent 137:1 251:4
external 293:18
externally 298:5
extra 192:10 198:12
extraordinary 69:15
 249:13
eye 304:6

F

face 180:16 193:1
 203:15 278:10,10
faces 184:9 203:22
 215:2
facilitate 98:9 276:12
facilitated 113:19
facilitating 258:11
facing 75:17 169:10
 216:2 281:8
fact 12:20 22:22 23:3
 24:13 50:12 56:1 61:7
 65:2 72:20 73:8 75:5
 79:16 86:19 87:10
 106:13 113:15,16,19
 123:2 145:16 152:9
 153:8 156:6 185:18
 193:10 200:17 225:3
 245:22 280:18,21
 283:11,21 284:7
 328:10
factor 48:22
factors 152:8 165:5
facts 94:17,18 197:8
 328:7
faculty 8:17 22:20 26:9
 28:6,7,12 41:2 43:2,2
 47:6,8,11 57:6 65:6
 66:12 182:6 260:4
 274:18 275:16 282:1
fail 51:21 148:9 149:2,7
failed 47:7 148:16
 149:9
fails 229:7
failure 234:4
fair 337:1,3
fairly 287:13
fairness 133:8
fall 19:5 108:8 161:15
 254:8 266:13
fall's 320:5
fallen 48:12 247:2
 306:19
familial 277:20
familiar 64:5 68:10
familiarization 268:6
familiarize 25:20
 268:20
family 71:15 104:13
fantastic 136:2 203:10
 228:13 254:10
far 83:16 123:1 155:2
 192:3 194:5 195:19
 225:14 278:4 286:22
 298:7 312:6
fare 152:6
faster 150:13
fatigue 291:13 324:8
 334:4
favor 235:10
FBI 72:14 81:4 200:1
 234:5 236:8
fearful 224:9
feasible 37:14
February 282:7 299:5
federal 3:21 7:9,20,21
 133:18 213:11 216:22
 243:1 244:3
feed 253:11 255:4
feedback 28:13 54:14
 55:1 57:16 58:5,11,19
 59:4,9,15,22 125:19
 133:2 174:12 252:7
 261:6 283:11 337:15
feel 141:2 158:9 178:12
 286:9 319:17 327:2
 334:11 339:18
feels 81:19
feet 40:17 182:4
fellow 33:1 206:21
felt 302:9
fewer 38:18
field 18:2 40:8 58:14
 96:1 97:5,7 109:16
 145:17 146:1 149:4
 165:3 167:7,16 168:4
 170:3 172:21 272:7

276:12 291:8
Fifth 72:17
fight 323:15
fighting 192:9
figure 52:14 187:16
file 116:17 129:15 159:5
 199:12 242:3 243:19
 244:2 317:3
filed 284:2 294:5 301:5
 309:16
filing 302:6
fill 215:18 306:1
filled 283:7
filling 185:5
final 110:2 284:19
 317:10
finally 23:19 28:15
 104:18 117:5 118:11
 122:7 128:5 134:13
 174:4 179:2 189:8
 199:16 201:9 255:2
 283:13 298:9
financial 215:7 226:12
find 68:13 123:8 127:1
 149:14 163:15 169:14
 172:10 240:12 268:17
 315:15
finding 326:16
findings 284:7
fine 197:14 198:11
 273:1
finely-tuned 49:17
finish 190:9 235:22
 236:2 263:17 314:12
 333:7
finished 17:20
fire 200:3,21
fired 72:19 199:22
 200:6,10,11 202:6
firing 210:13
firm 244:10,10
firmly 119:16
first 11:8 21:7 22:6,14
 45:13 46:8,19 48:6
 57:5 59:1 64:9 67:6
 74:20 76:22 78:19
 87:5,8,12 92:19 93:13
 93:17,22 94:2,13
 95:17 107:17 109:10
 111:18 114:15 117:8
 120:14 121:3 123:7
 139:19 142:6 149:15
 154:17 155:5,14,22
 157:7 164:15 168:3,5
 177:10 178:6 184:20
 185:16,19 188:7
 204:2 207:20 209:22
 210:3,13 211:20

238:1 246:16 250:19
 255:17 261:4 263:14
 265:6 278:22 279:22
 287:22 293:2 303:20
 309:9,12 314:9
 320:15 321:15 327:12
 333:5,8
fiscal 7:5 20:15,21
 192:19
Fischer-Anderson
 296:11 315:8 335:9
fit 16:13
fitness 72:22
fits 187:17
five 8:7 22:6 26:2 33:21
 64:15 79:9 91:9
 104:19 138:10 175:22
 176:11,17 177:14
 181:14 248:15,15
 251:15,21 289:2
five-day 42:15
five-minute 85:10
fix 55:8
flag 78:19
flagship 15:5,14
fleet 130:20 131:13
FLETC 104:10
floating 219:14
Florida 296:17
flow 254:1
fly 71:2
FO 304:13
focal 20:14 143:5
focus 20:7 24:1 25:15
 33:21 35:8 96:5,22
 99:7 101:11 105:13
 107:15 122:13 130:13
 163:19 187:2 208:22
 210:21 269:11 270:10
 271:15 332:19
focused 35:11 52:8
 102:12 104:7 114:1
 130:8 171:14 181:6
 181:17 255:10 259:7
 262:13,22 263:14
 264:1 314:10
focuses 9:9 33:17
 85:18 153:12
focusing 10:1 81:3
 193:20 295:2
folder 35:20
folks 35:4 187:14
 194:14 195:16 206:5
 207:9 250:7 272:3
 280:1 322:4 324:20
 339:20
follow 135:6 170:19
follow-on 30:8,15

followed 60:15 314:11
following 7:12 9:22
 127:20 177:12 262:6
 281:4 295:12
footprints 13:16
force 2:4,9,18 3:7 4:10
 5:2,14 6:4 9:20 19:20
 20:4,12,15,16 23:12
 24:1 27:4 31:16 36:5
 48:11,16 52:20 53:6
 53:12,18 54:2 57:15
 63:2 65:19 69:20
 70:15 85:22 87:11
 88:22 91:6 92:17 93:8
 93:12 96:4,16 97:10
 97:12 98:9 99:6
 112:13 137:12 142:21
 143:6,7 144:5 145:11
 146:5 149:11 150:7
 157:4 175:1,8 178:4
 178:19 182:22 201:13
 214:11 217:12 219:19
 220:16 222:17 235:9
 242:12 249:7 250:2,5
 250:11,20 251:1,6
 254:6,21 255:19
 256:2 258:13,19
 259:7 260:5 261:2,4
 262:22,22 263:10
 264:1 265:11 266:15
 267:8,9 270:18
 275:14,15 277:8
 281:10 282:16 283:4
 288:22 289:3,13
 290:4,15 292:15
 299:5 303:2 306:14
 314:5 327:22 328:22
 329:10,17 338:21
Force's 76:12 86:9
 175:14 252:14 258:1
 262:5
forced 216:5
Forces 144:7 160:8
foreground 125:12
foreign 35:3
foremost 123:14 168:6
forensic 27:9 115:2,4,5
 117:20
forever 325:7
forget 123:20
forgive 184:5
form 176:13,20 269:1
 272:16 318:17,18
formal 28:19 250:12,21
 252:20 259:1 261:22
 269:6 292:14
formalized 220:22
 317:11

formalizing 331:7
formally 28:7 283:8
formative 83:19 84:1
formed 26:5
former 41:8 109:7,9
 144:12,13 147:10
 204:17 260:7 321:21
 337:13
Fort 65:3
forth 125:8 128:4
 141:18 220:18 312:6
fortunate 320:2 321:7
Fortunately 162:7
forums 253:2
forward 10:6 13:17
 19:13 29:5 32:20
 37:18 99:12,19
 106:16 107:1 120:3
 130:18 134:21 138:2
 146:2 160:11 161:7
 164:1 183:21 202:18
 222:18 223:18 226:16
 229:11 264:10,17
 269:2 272:2 274:11
 281:3 299:20 303:6
 322:13
forward-looking 61:15
fostered 330:7
found 76:1 88:10 135:7
 198:21 242:7,13
 245:8 256:7 268:14
 269:17 273:8 294:2
 313:15 315:17
foundation 22:5
four 16:10 26:14 79:9
 90:1 110:4 170:11,20
 176:16 196:7 204:3
 222:10 266:20 269:4
 275:19,20 284:13
 289:5 294:12 296:5
 320:2,3
four- 277:2
four-and-a-half 22:10
 297:3
four-tiered 16:14
fourth 207:1 279:13
Franklin 224:7
frankly 35:6 50:19 55:7
 56:15 125:9
frequently 112:4 117:1
 253:13 254:5 290:7
 300:20
fresh 261:7
Friday 1:7 254:20
Frischionne 282:13
front 159:1 164:7,13
 171:14,16 211:21
front-end 98:3

FTJA 209:22 210:2
full 34:9 83:22 324:9
full-spectrum 21:7,17
 22:2
full-time 144:14 321:21
fully 27:11 43:3 225:10
fully- 26:4
function 62:21 91:12
 107:11 138:8 221:18
 222:18 234:12
functional 16:5
functioning 73:2
fund 43:20 238:20
fundamental 88:11
 239:10,18 240:16
fundamentally 89:13
fundamentals 33:22
 170:15,16
funded 298:5
funding 40:5 41:15
 172:2,5 195:21
 238:18
funds 192:8,11,20
further 31:1 98:18
 154:1 182:10 247:8
 247:17 252:16 279:16
future 10:22 37:2,2 54:3
 87:21 151:5 261:21
 277:16 292:22 296:7
FY16 126:11

G

GAD 309:18
Gael 123:13
gain 89:15,16 221:5
gangly 141:3
gap 135:13 136:2
gaps 37:15
garrison 13:17
Garvin 268:12
gateway 116:21
gather 45:11 305:21
gathered 293:4
gathering 327:14
 330:20
geared 27:21
gender 218:3
general 8:16 11:12,14
 11:15 17:2 19:18
 20:12 23:15 27:21
 34:9 38:20 39:3 42:7
 44:15 45:20 46:5 49:4
 52:18 55:3 56:20 61:2
 63:8 64:20,21 65:3
 66:3,4 78:19 79:3
 86:15 88:10,13 90:8
 93:8 97:17 115:18
 116:3 121:8,13 125:6

135:20 136:20 140:4
 149:13,15 150:4
 164:9 177:13 179:3
 181:1,21 221:18
 224:7 265:3 267:8,9
 272:18 287:4 298:21
 312:15
General's 1:11 2:3,5 4:8
 4:11 8:17 19:21 20:3
 177:15 180:9 258:20
generally 41:14 174:1,1
 277:8 301:8 303:5
 308:5,10,17 309:10
 319:10
Generals 224:5
gentlemen 214:1
geographic 98:13
geographical 127:22
geographically 111:13
 176:17 180:17
George 206:2
Germany 170:11
getting 37:13 42:2 58:6
 78:20 82:16 98:3
 108:14 152:10 171:14
 198:13 209:2 285:16
 301:12 303:9,11
 307:20 314:15 315:21
 319:10 327:3 338:7
Giles 125:14
give 71:5 73:6 159:20
 159:22 182:6 198:1
 229:9 300:10 328:2
 335:21 336:11
given 38:5 40:12
 107:13 133:7 191:19
 204:10 216:14 220:14
 233:7 332:2
gives 106:9 134:10
 337:4,11
giving 29:3 129:16
 195:1 249:12 302:11
glare 203:3
globe 175:20
glutton 11:15 249:6
go 30:4 31:5 39:11 43:7
 45:4 55:21 67:4,21
 87:22 98:4 99:22
 115:19 117:6 121:3
 121:22 137:10 142:4
 158:2 164:17 172:12
 178:17 194:21 195:14
 203:11 209:19 210:6
 212:15,18,18 222:5
 223:2 227:6,15,21
 228:5 229:6,11
 230:10 238:2 285:13
 300:16 302:15 303:6

304:2 310:16 316:3
 323:5 335:7 339:14
goal 41:18
God 225:6 226:14
goes 74:16 137:17
 147:2 150:2 210:5,22
 232:14,15 240:13
 317:9 318:18 319:3
going 20:6 37:6 46:7
 48:10 51:21 53:4 54:2
 65:8 67:6 72:19 74:2
 75:1 76:7 79:22 80:2
 96:6 101:18 103:8
 119:17 122:12 123:5
 124:8 125:15 127:7
 127:10 130:18 138:2
 140:10,19,19,20
 146:17,22 149:4
 151:15 155:7 162:11
 173:8 176:14 178:6
 178:17,19 185:4
 188:4 192:22,22
 193:1,16 194:12,18
 196:18 206:9 211:21
 212:20 222:17 227:14
 228:11 230:17,18
 234:2 235:17 249:5
 275:16 281:11 310:7
 310:11 315:2 316:10
 319:14,16 320:8,14
 320:15,20 321:12
 322:3,5,6,21 323:19
 329:22 333:11 337:9
 338:11 339:5
Goldberg 236:12
GOLO 280:17
good 7:3 8:5 19:22
 29:14 33:20 49:20
 51:13,15,15,19,19
 69:11 86:7 106:9
 107:3 120:11,12,16
 128:18 139:21 154:15
 159:10,13 169:12,15
 172:8 194:16 195:1
 195:16 197:22 202:19
 213:15 218:9 264:18
 274:13 285:7 315:19
 321:3 322:2,4 324:14
 330:20 331:20
goodness 199:2
gotten 325:3
government 2:10 5:3
 38:5 46:17 72:1 83:4
 83:13 85:22 86:9
 107:20 143:14,16,18
 143:22 144:10,17
 145:16,22 162:3,8,10
 174:13 196:7,12

198:16 199:10 215:9
 224:22 231:4 235:15
 237:7 238:2 245:20
 279:8 294:16 301:16
 301:18,19 308:8,15
Government's 196:10
 227:1 244:5 308:1,3
governs 81:13
graciously 8:18
grade 334:5
graduate 15:5,6,13
 55:14 261:12 280:14
 320:6
graduated 260:4
graduates 15:11 209:4
graduation 15:20
granted 241:2,9 242:14
grass 323:12
grateful 175:11 183:19
 249:15 288:7 290:12
grave 12:16
great 47:14 56:1 125:9
 134:14 156:21 266:14
 268:14 278:5 313:12
 316:4 319:1,18
 324:16 331:11 332:3
greater 101:7,11
greatest 74:17
greatly 34:13
green 44:11
greeted 319:13
ground 159:5
group 35:10,11 65:12
 90:12,13 111:12
 138:16,20 157:10
 194:10 261:16 275:21
 296:1 314:19 321:9
groups 57:6 127:17
 276:13
grow 134:3,17 323:2
 324:13
growing 322:9
growth 134:11
GS- 272:12
GS-14 326:8
Guard 2:5 4:13 26:14
 29:10,17 30:7,19,21
 31:7 32:1,11 33:12
 43:11,14 44:3 58:10
 58:13 66:10,11 70:8
 72:5 78:5 240:10
 290:4,5 330:2,3,17,17
Guard's 9:20 29:19
guardians 277:5
guess 11:11 48:17
 53:10 71:4,8,10 73:4
 73:11 135:11 150:15
 159:16 160:20 206:11

233:19 239:16 249:5
 300:16 340:4
guest 276:5 317:14
guidance 166:9
guilty 76:2 188:3
Gunnery 198:22
guy 199:5
guy's 317:5

H

hail 24:15
half 67:22 181:14 268:8
 275:19,20 309:6
hall 207:17
hallway 198:20
hand 132:5 215:21
 220:7 324:20
hand-picked 90:3
hand-selected 109:4
 122:9
Handbook 140:12
handle 78:22 81:6
 133:9 151:5 188:5
 217:18 227:9 247:11
 281:6
handled 53:9 131:2,10
 309:11 310:5 317:12
handling 26:20 84:9
 87:10 310:6
handout 92:10
hands 182:4 336:8
 339:16,17
hands-on 69:3
Hannink 67:14
Hanorah 2:6 4:17 32:17
happen 45:11 60:18,22
 144:9 212:19 223:7
 300:19 302:16 307:17
 316:13,14
happened 63:14 77:4
 77:13 148:17,19
 218:5 234:15 240:9
 241:10,14
happening 227:11
 304:10 335:17
happens 16:1 81:9 95:1
 151:4 153:7 207:19
 236:7 241:16 254:4
 315:11 317:13 336:17
happily 164:14
happy 34:21 161:13
 172:9 184:20 185:7
 284:14
hard 71:7 135:14 181:2
 199:10 203:2 245:19
 246:1,9,16 336:3
 338:8
Harvard 116:8

Hawaii 207:19,20
head 35:6 111:2 205:10
 205:18 206:6,14,20
 216:8 248:8 339:6
headed 39:4 91:12
 134:6 176:4 204:3
heading 48:9
headquarters 29:17
 30:11 108:19 122:9
 211:1 223:3 326:8
heads 211:11
health 257:3,5 291:1,18
 293:20 302:3
healthy 12:21 40:10
 49:10
hear 9:19 19:19 29:9
 39:7 53:4 59:19 73:11
 99:15 105:22 120:9
 138:5 142:7 155:7
 161:14 201:2 202:14
 264:13 285:6 304:13
 330:20
heard 16:7 33:8,12
 48:18 68:9 72:10
 136:17 156:11,14,15
 158:12 160:8 165:21
 185:14 196:6,12
 200:2 222:2 250:6,19
 251:17 259:10 277:7
 278:4 281:5,17 288:9
 289:21 296:18 300:2
 301:7 306:9,15
 308:16,19 318:10
 329:5
hearing 10:6 18:20 63:8
 63:17 136:22 159:8
 202:3 210:12 228:21
 231:1 239:13 284:3,8
 316:12
hearings 114:13,19
 158:20 310:14
hears 200:18
heart 157:20
heavily 191:22 297:13
heavy 193:17
Hejazi 2:14 5:9 127:12
 128:17,18 135:2,6,15
 147:17 158:7
held 22:13 28:1,2,4
 153:11,22 252:13
 254:8 266:11 286:10
 295:15 299:4,12
help 37:7 47:15 81:21
 131:14,15 132:6,11
 145:3 147:13 166:14
 171:11 173:16 180:22
 191:18 196:20 197:2
 197:20 207:21 249:10

281:18 302:8,10
 305:7 309:18 333:11
 337:19
helped 140:9,14 258:5
helpful 192:12 195:4
 229:3 235:6 252:8
 276:16 332:14 338:18
helping 8:20 118:22
 147:18 173:2 316:10
helps 278:14 333:2
hesitant 134:15
hesitate 229:5
hey 116:10 328:6
 339:12
Hicks 34:18 37:6
hierarchy 112:17 152:1
Higgins 2:18 5:14 42:21
 46:1 175:1,4 214:2,11
 217:13,14 218:9,14
 218:16,18,20 219:8
 219:12 220:3,4 235:7
 235:7 242:9,11 243:6
 243:7,13 244:18
high 270:11
high- 172:13
high-profile 52:7
higher 71:12 133:13
 214:21 223:3 313:20
higher-level 93:1
highlight 18:10 94:14
 107:15 117:5 142:15
 207:14 209:22
highlighted 108:1
 205:8 257:9
highlighting 68:16
highly 2:14 191:21
 196:7,9,11,13 208:16
 221:9,13 274:19
 282:6
highly- 51:8 123:7
 147:2 326:11
highly-qualified 5:10
 45:9,16 103:22
 125:13 142:4 147:4
 325:5,11,20 326:3
 327:5
hired 34:16,20 146:4
 200:7 208:14 282:7
hiring 24:18 110:13
historically 75:8
history 136:15 317:2
 319:7
hit 61:21 97:12 145:7
hits 61:19
hoc 269:9
hold 53:21 117:16
 134:7 191:2 254:19
 271:8 330:10

holding 286:11
holdover 334:7
holds 254:16
holes 36:6
Holtzman 1:13,17 4:4
 7:13 8:4 19:17 20:9
 29:6 32:14 37:20 48:5
 60:4 68:5 82:3,6,9
 84:3,6,15 85:3,6,15
 99:13 106:17 120:4
 123:21 124:6 135:1
 142:1 148:4 155:20
 162:21 163:7 174:20
 183:22 184:8,12,17
 202:12 203:4,7 213:1
 213:4 218:1,12,15,17
 218:19 219:17 222:1
 235:21 236:2,17
 237:18 238:5,8,11,15
 239:1,7,15 240:18
 241:6,11,17 242:9,15
 242:18 243:6,11,14
 243:21 244:13 245:1
 245:13,21 246:9,14
 247:7,16 248:1,6,11
 248:21 249:18,22
 264:11 274:6 284:17
 285:2 299:21 303:12
 303:16 304:21 305:2
 305:20 307:3,15,18
 308:11,21 309:21
 310:3,15 311:6,10
 327:11 330:19 332:3
 332:8,18 333:7,18
 334:16,19 335:1
 336:13,20 337:1,7
 339:3,21 340:4,11
home 12:8 49:16 65:19
 107:4 185:3
homicide 90:19
Hon 1:13,17,18 184:7
 203:9 213:5,19,21
 214:8,16 215:1,5
 217:12 219:5,10,16
 229:12 239:12 300:1
 300:14,17
honest 17:22 55:8
 228:14
honestly 38:7 83:3
 226:18
honesty 218:21 219:4
honor 12:6 20:5 107:6
 305:5 324:4
Honorable 7:13,16
honored 12:3,5 37:19
 128:12 250:1
hooks 322:14
hope 12:9 19:15 35:13

80:7 201:1 227:18
 242:4 294:8
hopefully 39:7 264:7
hopes 12:12
hoping 132:4
host 8:19 24:14 69:21
 70:4 253:17
hosted 263:13 298:17
hosting 26:11
hotwash 58:17
hotwashes 141:15
hour 82:9 263:1,2,9
 264:3 283:20 314:8
hour-and-a- 67:21
hours 22:7,10,11 23:14
 23:15,16 24:4,5,6
 27:5 38:18 67:22 79:9
 96:12 103:14 166:13
 194:3 207:8,11
 256:13 275:19,20,21
house 143:17
HQE 129:4 132:15
 134:7 146:12 147:7
 148:1
HQEs 130:9 131:21
 132:7 134:4 142:12
 147:12 148:1 191:21
hub 143:8
huddles 259:17
huge 129:15
hundreds 53:9
hurting 323:18
husband 337:17
hybrid 111:2
hypothetical 280:5

I

IBM 199:22
idea 71:5 168:18 169:9
 169:21 173:14 193:3
 197:5 244:17 281:12
 283:9
ideal 166:7
ideally 165:17 167:14
 190:5 319:22
ideas 337:4
identified 99:22 103:8
 104:19 111:16 178:11
identifiers 17:9
identify 21:4,20 173:17
 183:13 267:5 297:14
identifying 57:12
Ill 261:12
illegal 200:8
imagine 91:22 97:20
 144:2
Imakuni 67:5
immediate 57:8 169:3

208:6 255:4 261:6
322:17
immediately 61:5
335:20
immersion 87:18,19
immune 244:5
immunity 244:6
impact 23:8,9 155:3
256:22
impacted 154:18
impacting 269:15
impacts 118:6
implementation 61:12
implementations 126:1
implemented 97:13
222:19 280:11
imply 188:8
import 102:17
importance 86:16
257:1
important 12:4 82:16
89:14 92:9 96:10 97:2
153:21 163:2 185:22
186:13 194:8 216:19
256:18 258:12 329:8
338:7,15
importantly 41:7 88:18
impression 207:20
246:16
impressive 142:7
improve 28:14 279:16
282:21 283:11
improved 34:13 55:15
327:17
improvement 24:17
183:14
improvements 29:2
improves 276:19
improving 181:17
294:6
in- 250:12
in-call 187:15
in-Charge 264:15
in-court 173:7
in-house 58:15 191:10
in-touch 18:5
inadequate 244:16
inadvertently 120:15
incentives 226:11,12
incentivized 223:18,21
incidents 139:10
include 10:1 24:10 26:4
26:14 28:7 57:6 85:3
105:16 127:4 180:3
262:20 267:19 277:18
283:15 287:15 290:3
291:6
included 42:18 76:4

113:4 263:9,18 268:6
272:21 288:4 290:21
293:6 294:18 301:5
includes 10:8 22:5,10
22:22 23:6 24:4 27:6
54:11 126:9,17,18
130:4 170:8 280:21
280:21,22 290:7
298:19 301:4
including 13:14 20:18
23:2 27:12 57:9 80:17
101:3 108:4 119:15
167:1 182:12 201:5
250:13 251:9 252:18
257:11 264:3 276:7,8
292:20 293:18 330:16
inclusive 271:19
incoming 251:2 258:7
267:5,12 288:20
289:3
inconsequential 312:2
incorporate 125:11
128:9 182:18 183:4
277:20 278:18
incorporated 23:3
127:20 138:7 197:10
incorporates 270:2
incorrect 237:3
increase 126:6 267:13
increased 86:20 98:9
292:2
increases 98:15
incredibly 252:8 338:14
incremental 29:1
independent 9:4 40:5
88:12 238:18 305:15
325:8,13,15,19
independently 148:8
178:10 277:6
indicate 160:11
indicated 312:11
indicates 54:19
individual 54:9 103:11
103:13 104:9 105:4
138:16 150:21,22
178:5,16 205:9,12,22
209:12 210:10 211:22
235:11 243:12 258:5
individuals 178:7 204:7
207:6 208:15
individuals' 30:13
ineffective 197:9
inexperienced 94:2
216:12
infallible 231:21
infancy 214:7 282:4
inform 240:10 301:21
informal 241:20 252:7

259:3 269:6,8
informally 31:10
information 8:1 56:6,16
62:3 69:3,9,16 146:1
171:16 173:16 254:2
254:10 260:19 272:20
276:16 283:1 300:6
304:5,11,12 314:15
325:4 327:13
informs 286:15
infrequent 241:15
infrequently 242:14
infringes 232:13
infuses 50:11
Inherent 95:9
inherently 89:18
initial 23:11,19,21
25:11 181:4 255:20
267:4 286:18
initially 286:19 323:12
inject 283:20 317:12
injected 110:13 283:15
313:2,4
injection 280:12
innovative 124:18
252:15
inordinately 230:5
input 10:9 18:2 166:9
167:7 173:22 194:5
282:20 288:6 290:11
314:1 317:16,21,21
inquiry 231:9
insight 106:9
insights 106:5
inspection 28:19
installation 75:5,6
177:2,4 179:14 189:1
191:5
installations 31:11
76:15 111:14 112:3
177:5 179:22
instance 93:19 138:9
162:10 207:18 302:1
330:2,8
instances 78:6 148:20
165:2 166:6
instantaneous 61:16
Instantaneously 61:4
institute 28:8 85:1
296:3
Institute's 266:6
instituted 233:22
291:14
institution 12:16,17
18:6 122:6
institutional 16:4
institutionalized 35:5
instruct 128:12 145:4

instruction 15:7,16
24:4,5 26:6 34:12
39:12 40:16 62:4 65:5
67:15 69:6 70:6
116:12 198:7 251:1,9
252:6,16 255:9,18
256:13 260:22 261:14
263:20 268:3,6
272:18 279:9 281:13
294:19 298:20 317:8
instructional 22:7 25:2
instructors 329:6
instructor 24:22 67:20
79:16
instructors 22:18 123:8
123:12 258:10 289:10
289:15
intangible 17:13 50:1
integral 326:12
integrate 27:11 36:4
38:10 141:12
integrated 16:17 260:1
integrating 141:10
integration 16:21
intelligence 231:14
234:7
intend 10:21
intense 15:16
intensive 187:9
intent 116:9,9 313:11
328:11
intentionally 182:18
inter-service 296:19
332:11
interacted 161:18
interaction 263:4
276:18 279:17
interactions 102:18
263:11
interchange 103:19
interdisciplinary
296:19
interest 20:6 161:20
162:12 177:7 222:14
interested 26:18 38:1
120:21 123:16 136:22
317:21
interesting 120:22
124:18 125:7 126:3
135:8 137:4 163:1
230:8 231:9 337:12
interests 159:11 162:11
276:21 279:7 280:2
295:1 309:14
interface 266:3
interfere 254:11
interfered 8:13
intermediate 14:11,20

21:13 25:14,16,19
 40:22 121:20 122:19
 138:9 171:19 181:13
 183:3,7 251:15
 279:19
internal 31:17 58:15,19
 140:13 242:12 250:17
 254:15 255:3 260:19
 262:1 292:12 293:17
internally 291:16
 297:13
International 182:14
 266:10 296:9
interpret 69:10
interrupt 218:1
interruption 124:7
intervals 14:4
interview 27:13 88:17
 102:7,12 114:18
 115:5 147:19 278:1
interviewed 287:1
interviewing 102:13
 112:10 114:11 115:2
 115:5 276:4 279:14
interviews 27:7 99:3
 102:6,18 132:12
 252:18
intimate 108:11
intimating 240:6
intra- 295:19
intricately 259:16
intrinsic 193:4
introduced 198:21
introduction 30:6
Introductory 4:2,3
invaluable 268:18
investigate 197:8,12,12
 208:16 225:11 226:22
 243:3
investigated 108:12
 111:20
investigating 118:9
 119:17
investigation 101:20
 111:19 115:10 118:16
 119:21 197:6,11
 227:4 240:13
investigations 27:4
 104:12 198:7,12
investigative 99:1
 197:20 213:14 240:11
 252:18 297:22
investigator 197:16
 198:1,5 199:1,7 219:6
 237:16 238:21 241:9
 245:4,11,12 247:1
 325:19
investigators 102:15

106:3 197:6,19
 198:13,17 208:13
 213:14,17 214:4,7,13
 237:2,5,8 239:6,20
 240:17 245:7 246:20
 246:22 276:11 325:8
 325:14,16 326:14
 327:7,8
invite 105:19 124:19
 276:5 317:14
invited 67:8 266:14
 279:17
inviting 106:15 114:16
 137:5 138:16 164:3
 274:15
involve 90:17,18 91:2
 91:22 93:18 103:14
 113:17 160:21 193:16
involved 43:4 88:16
 99:2 109:1 118:8,16
 121:13 139:9 189:7
 192:1 244:1 273:11
involvement 119:3
 139:4 160:12
involves 137:18 138:16
 161:5
involving 9:7 160:2,9
 161:10
ISALC 26:4,8,13 252:5
 252:8 257:12,18
 259:2
ISALCs 26:2 251:16
Island 297:9
ISLC 330:1,4
ISOC 183:3
issue 10:22 11:1 137:3
 146:1 152:9 159:17
 159:19,20 160:2,22
 161:4,5,9,20 162:1
 167:21 189:12 202:2
 207:19 234:20 246:11
 247:9,21 257:14
 280:22 301:7 302:2,7
 306:5,6,18,19
issues 11:5 25:22 34:11
 51:3 64:17 73:20 75:3
 75:14,16 84:10 94:19
 105:9,14 131:1,14,17
 132:9 139:1 145:17
 159:18 160:13,16
 171:1 183:21 189:6
 192:19 202:1 210:20
 211:15,15 247:11
 252:2 254:11 255:1
 263:14,21 264:3
 265:19 268:3 271:16
 276:3 284:10 290:6
 293:8 295:3 299:17

303:13 304:20 328:16
 332:16
ITAC 279:19 280:14
item 209:21 291:9
items 191:19 209:12,21
iteration 123:9
iterations 118:4
Ivans 320:7

J

Jacqueline 3:21 4:2 7:8
JAG 2:2 4:5 9:20 13:3
 16:8 20:15 25:9 26:15
 57:21 65:10 66:6
 67:13 68:2 70:3 84:10
 86:16 92:12 96:4,16
 96:16 99:6 109:5
 115:14,22 143:4,8
 150:7 152:12 250:20
 251:15 252:14 258:13
 258:22 259:10 260:5
 261:4 263:13 265:11
 280:13 282:16 288:22
 290:15 298:18 329:5
JAG's 258:16
JAGC 258:19 259:9
JAGs 26:14 86:18
 87:17 93:5 143:6,7
JAGU 62:5
JAJG 144:16
January 34:19 288:16
Japan 207:9
Jesse 2:13 5:7 120:6
job 17:15 48:15 50:8
 72:20 91:19 99:9
 115:19 119:5 134:14
 135:9 136:2 154:15
 155:10,10 160:21
 170:14 173:1 185:4
 185:15 186:6,13,20
 191:16 195:7 204:10
 247:21 286:8 319:18
 323:11,17 324:9
 326:16
jobs 14:5 39:20,20
 53:20 86:19 115:20
 145:13 151:7 152:10
 153:19,21 154:3
John 2:5 4:13 29:10,16
 125:6
join 10:5 19:8 103:10
 103:21 190:7 289:12
joined 101:16
joining 109:15 249:11
joint 26:13 41:13 69:21
 114:8 138:20 171:5
 250:16 253:17 258:8
 260:12 263:7 272:3

295:14 299:3,8
joke 116:7
Jones 1:18 7:17 37:22
 38:1 42:7 43:6,9,22
 44:21 45:17 46:5,9
 48:3 60:14 142:2,3,20
 146:19 148:3 184:7
 196:1 203:9 213:4,5
 213:19,21 214:8,16
 215:1,5 217:12 219:5
 219:10,16 229:12
 236:20 239:12 299:22
 300:1,13,14,17
Joshua 297:11
JPP 7:7,10,14 10:13
 108:1 202:21 340:8
JPP's 8:11 9:9 10:18
jpp.whs.mil 10:19
JSOC 22:4 42:13 87:16
Juan 32:5
judge 1:10 2:3,4 4:7,11
 8:17 11:13 13:15 15:3
 15:15 17:2 19:21 20:3
 20:12,16 22:3,19
 29:22 30:1,3,7,11,14
 31:20 33:9,10 36:2,9
 37:22 38:1 42:7 43:6
 43:9,22 44:21 45:17
 45:19 46:5,9 48:3
 53:8 54:3,8 60:14
 63:8,9,11 66:2,11,16
 69:7 70:9,10 71:14
 74:11,13 78:8,9,16,17
 78:18 87:15 88:2,10
 90:8 92:14 93:5,20
 95:22 97:8 108:19
 109:3 116:22,22
 117:2 125:5 140:4,17
 142:2,3,14,20 143:4
 146:9,10,19 148:3
 149:12,19,21,22
 150:3 158:22 159:2
 164:9 173:13 174:7
 177:14 178:6,18
 179:2,8 180:8,22
 181:4,20 187:16
 196:1 204:17 210:3,4
 212:5 213:4 236:20
 241:22 242:4 244:21
 251:6 258:20 262:6
 262:15,22 264:2,5
 265:8,9 267:7,8 275:2
 275:7,13 276:10
 280:15,20 283:14
 287:4 293:11 297:21
 298:14 299:22 300:13
 306:7 308:14 309:11
 315:5

judges 15:17 19:7
31:19 57:15,18 68:10
68:14,18,22 69:9,11
69:14,22 70:2,9,19,22
71:4,8 95:22 116:20
173:12,21 194:15
212:7,10 262:4,9,13
262:16,17 263:3,6,7,8
263:12,16,19 273:15
276:10 284:1 297:21
298:11,16,17 299:3,4
299:7,8,13 310:14
312:13 313:8,9
Judges' 70:2 293:10
judgment 178:8 287:7
judicial 1:3 7:4,6 8:6,22
9:5 10:7 91:9 163:8
177:1 225:21 251:21
judiciary 59:10 140:18
146:5 174:6 273:14
299:12,14
Julia 2:14 5:9 127:12
July 114:16 117:16
185:7
jump 185:9
June 24:18 26:4 84:22
101:10 185:2 292:10
296:1,5
junior 53:13 112:15,22
206:21
juries 225:6
jurisdiction 56:9
156:18 168:20 306:20
jurisdictions 57:1
jury 113:9 225:1
justice 2:7 4:18 9:6,15
13:21 14:16 20:14
21:1,3,5 22:6,8 30:5
31:22 32:2,6,8,18
33:5,6,7,18,18,21
34:16 35:18 36:7,8,16
36:17,22 44:4,14,15
44:20 54:11,19 59:7
61:8 62:11 64:17
66:18 70:14 87:20
88:16 97:4 100:10
103:2 106:1 110:22
121:7 122:4,11 151:9
153:13 173:14 179:10
186:18 187:1,18
204:7 224:15 267:14
270:13 271:17 280:14
285:17,19 286:4,11
287:8,21 288:4,16
297:9 314:9

K

Kastenberg 308:14

Kate 53:5 86:8
Katherine 2:9 3:9 5:2
6:8 85:21 127:11
264:14
keep 12:11 38:8 73:1
130:15 211:10 212:14
232:10 284:9
keeping 54:1
keeps 218:22
Kelly 236:12
Kennebeck 3:12 6:12
274:9,13 309:3 310:1
310:4,10 311:3,8
312:11,18 317:7
318:9,12,16,21 323:4
326:11 340:2
key 44:10
kind 35:4 46:22 54:14
59:10 68:21 73:12
80:21 81:1,9 111:2,6
112:17 127:13 140:18
150:20 162:4 168:1
176:13 178:2 189:17
203:17 209:10 212:15
215:2 242:12 300:10
328:11 329:18 334:16
335:16
kinds 26:20 49:7 69:5
71:2 130:11 151:21
222:8 227:22
Kirk 2:4 4:10 19:20 20:2
Kirk's 55:22
Kirkpatrick 261:12
know 12:15 35:21,22
37:1,9 38:13 42:2
49:15,20 53:21 56:5
64:6 69:14 70:4,6
71:7,8 72:7 74:18,20
75:18 78:22 80:14
81:9 82:1 83:5 108:16
120:16 126:21 133:15
135:22 137:17 140:10
149:9 153:18 154:11
154:20 156:9,20,20
158:3,12 160:7,19
161:11 169:17 172:2
173:7 185:22 189:19
189:20 190:22 192:7
193:1,18 194:12,20
195:6 197:6 199:22
206:9,10,17 211:14
212:1 213:10 216:14
216:19 217:15 218:6
219:13 226:11 229:1
229:12,15 231:1
232:3 233:6,19 234:3
234:22 236:7 244:18
244:20 248:9 250:6

276:7,16 281:16
282:1,3 283:5,6
292:11 300:20 311:4
317:1,2,4,6 319:17
320:7,8 325:3 330:9
331:5 333:4 337:20
338:4 339:8,18
knowing 318:14
knowledge 69:8,16
77:21 254:17 259:20
305:21 322:18 326:20
knowledgeable 212:3
known 7:6 22:4 50:16
154:12 291:13 294:16
296:17
Kopplin 33:3
Korea 170:10
Kristen 282:13

L

L 3:20
labor 34:19 281:5
lack 49:7 218:21 304:4
304:17
lacking 49:1
lacks 54:21
lacrosse 131:6
laid 179:12
lane 116:20
language 218:4 306:21
larceny 193:14
large 12:19 13:16 76:15
122:22 208:7 230:3
233:10,16 288:18
larger 16:2,14,15 291:9
largest 30:10 58:13
222:5
lastly 209:3 211:18
212:17 262:2
late 8:12 82:10 267:10
latest 216:9
latitude 269:12
Laughter 120:18 124:1
124:5,10 141:6
155:11 326:18 340:1
law 3:13 6:14 13:5 14:7
14:15 15:8,9,11 16:12
17:3,8,12 18:11 39:12
41:10 55:16 56:13
61:6,6 66:12 69:10,19
87:18 105:17 114:3,5
116:5,5,8 117:4
130:17 133:15,16,19
167:6 182:14 185:20
193:22 197:7,8
208:19 211:4 230:18
240:13 243:1 244:10
244:10 255:15 266:6

266:7 274:3,10 275:1
276:1 281:5 284:7
287:16,20 290:22
291:21 292:2 296:3
313:3,4,5
law-focused 171:13
lawsuits 243:19 244:2
lawyer 14:14 30:5 33:14
34:10 35:13 121:6
186:6 189:4 193:5
197:7,17 198:4 209:1
224:19 247:22 318:4
lawyers 12:7,18,19
13:12 19:9 172:7
182:13,15 185:20
188:15 191:10 192:6
197:18 198:4 244:9
307:20
Lawyers' 43:17
layered 14:13 40:14
layers 285:22
layperson's 334:6
lays 94:17,18 140:3
LCS 12:15 13:5 16:5
17:3 39:2
lead 100:13 118:19
165:22 175:14 188:12
leader 75:13 165:3
252:4
leaders 9:19 54:2,13
74:5 95:9 109:4
323:20 339:11
leadership 44:20 48:8
54:7 57:21 64:4 66:8
66:13 67:9,11,16,17
70:2 74:17 152:11
172:19 252:5 259:16
259:17 292:20 293:12
293:18 309:13 312:1
323:7 326:21
leading 28:10 94:4
127:17 205:10
learn 28:21 133:17
134:8 168:13 227:5
learn-see-do 35:7
learned 82:13 125:9
133:18 183:4 250:17
255:5
learner-centric 35:8
learning 19:6 21:3 37:8
133:17,19 250:13
leave 185:3 318:13
335:22,22 336:2,10
lecture 22:11 24:5
75:13 76:4
lectures 27:5 251:9
275:20 329:2
led 254:7 263:22

leeway 168:15
left 11:12 15:3 210:1
leg 150:9
legal 1:11 2:3,5 3:10,15
 4:8,14 6:9,17 8:18
 9:21 11:14 12:2,14,16
 12:16 13:16 16:9
 19:15 25:22 28:10
 29:10,17 30:9,10 31:5
 36:11,13,14,16 48:11
 58:12 63:2 64:10
 65:14,17 88:15 89:3
 93:5,14,19 98:12,21
 100:6 107:18 110:16
 115:19 124:12 141:11
 154:7 177:16 189:6
 210:8 211:5 225:11
 231:13 254:7 264:15
 264:22 265:1,14,19
 265:20 266:16 267:13
 267:20 268:2,10,20
 270:12 274:4 285:4
 285:10 287:2,3
 296:15,16,20 312:19
 313:3 314:7 320:4
 322:10 328:9
legally 93:7
legislation 61:13
 160:14 249:12 255:15
Legislative 146:7
legitimately 226:8
Lejeune 123:3
lengthy 172:7
lessons 183:4 250:17
 255:4
lessons-learned 58:18
let's 61:2 134:8 213:12
 223:19 225:10,11
 328:10
level 9:11 25:14 31:11
 48:13 53:1,11 65:14
 74:5,11,18 82:17,18
 83:17,22 100:2 122:8
 122:9 128:21 129:2
 133:13 136:10 148:2
 161:21 162:14 164:16
 165:3 167:16 168:4
 168:18 176:18 177:10
 177:12,15 180:7
 200:13 205:10 206:6
 216:4 217:3 223:4
 245:8 246:11 261:12
 270:11,19 286:6
 289:21 290:1 311:21
 312:6 313:20 314:20
 315:7 330:6,7 334:5
levels 21:13 87:7 119:3
 334:3

leverage 32:7
Liaison 108:22 109:21
Liaisons 108:8 113:5
liberally 241:3
liberty 336:12
lie 228:9 229:14,19
lieu 303:2
lieutenant 7:8 32:16
 100:8 106:19 107:5
 125:16 176:5 274:8
 312:21 321:19 339:21
lieutenants 19:8 39:11
 39:14 148:16
life 41:8 61:20 322:19
light 44:12 184:6
 304:20
lightly 224:2
lightyears 133:22
likewise 151:13 214:11
 219:2 316:1
limit 153:8
limits 308:14
line 64:9 94:3 111:10
 137:14 145:13 197:14
 198:11 211:7,21
 231:9 236:3 287:22
 308:8 312:16
lines 60:10 327:15
Lippert 310:21
list 187:6
listen 284:5
literally 145:20
literature 48:15 156:2
litigate 145:4
litigated 226:3 241:5
litigating 25:16 302:19
litigation 9:16 21:5,12
 21:21 22:12,15 23:16
 24:7 25:13,17,18,20
 26:1,22 27:20,21 28:1
 28:6,14 42:17 53:2
 54:6 57:5 58:1 86:17
 88:11 90:2 91:15
 92:11 93:21 96:13
 101:1 103:2 113:11
 138:10 144:15 145:1
 145:5,13,18 146:6
 150:6,10 155:17
 178:8 181:13,18
 182:3 183:7 200:3
 204:7 208:12 241:3
 244:2 251:16 252:13
 252:17 285:19 286:4
 286:5,12 287:9,11
 311:18
litigator 145:14
litigators 25:21 48:13
 57:7,12 89:3,15 92:17

109:7 143:7 144:9
 182:9
little 33:7 48:19 52:15
 54:20 74:15 76:13
 80:9 117:22 136:18
 141:3 201:2 239:12
 291:19 328:3 337:4
live 200:5 290:19
lives 269:2
Liz 4:4
LL.M 205:12 206:2
LL.M.s 211:12
LLM 15:11
LNs 209:3
local 16:8,8 31:11 98:14
 118:12 129:6 179:14
 191:6,10 269:18
 297:16 313:17 315:20
locally 101:7
located 207:4 253:7
 260:12
location 124:14 315:9
locations 127:22
 138:11
logistics 147:3
London 66:9
long 48:1 82:10 145:12
 154:10 181:6 200:7
 210:6 256:8 263:9
 313:2 319:7 324:9,15
 335:7 336:4
longer 288:14 312:8
 317:19 319:16
longest 15:15 68:20,21
 137:13 324:4
look 10:6 19:13 29:4
 32:20 53:6 56:4,5,16
 56:17,21 77:5 99:12
 99:19 106:16 107:1
 112:6 120:2 128:5
 133:5 134:21 151:22
 164:1 183:21 199:10
 202:17 223:5 242:12
 243:1 264:10,16
 272:2 274:11 277:15
 299:20 311:22 322:13
 336:17
looked 59:3 131:9
 132:3 182:18 230:2
looking 37:18 61:12
 154:20 214:13 222:16
 234:19 235:9 300:12
 300:15 318:15 334:4
 335:5
looks 36:3 53:16
 169:11 233:22
loop 57:8
Los 32:4

lose 159:2 170:1 201:5
losing 216:7 319:5
loss 68:13 322:17
lost 158:21 159:21
 215:2,17
lot 19:6 31:13 35:9,10
 47:21 82:14 90:7
 97:22 113:5 120:22
 123:18 130:8 131:1
 138:1 145:1 168:15
 172:20 187:10 217:7
 222:21 224:18 227:6
 228:8 229:20 231:18
 276:7 324:18,20
 327:15,16
lots 325:4
lottery 188:20
loud 232:15
love 34:19 214:14
 219:15
lower 217:3 334:5
lower-level 144:19
lowest 74:5,11
LPEP 209:6
LRM 308:14
Lt 3:21 4:2 7:3
LTC 2:12 3:12 6:12 63:6
 67:10 84:20 274:13
 309:3 310:1,4,10
 311:3,8 312:18 317:7
 318:9,12,16,21 323:4
 326:11 340:2,9
LtCol 2:6 4:17 32:22
 44:2 59:7 66:19 70:13
 71:20 78:15 80:13
 81:5,10 85:5
Luce 2:5 4:13 29:10,12
 29:13,16 32:15 43:8
 43:10 58:9 66:8 70:8
 72:4 78:4 84:16
lucky 298:1
Luken 2:11 5:4 99:16
 99:20 128:8 140:15
 141:7 142:14 150:19
 151:11 153:2 154:4
 161:15 162:5
lunch 163:3 285:15
luncheon 330:10

M

ma'am 11:20 12:1 19:16
 29:13 38:22 42:9,10
 43:8 44:2 61:3 62:2
 64:7 65:10 66:20
 67:10,11 83:2 84:2,7
 84:16 85:5 116:3,19
 117:4 143:1 148:21
 150:16 151:12,13

- 153:2 154:4,10 155:4
155:5,13 175:4
213:18 214:3,10,22
217:14 219:9 220:4
220:12,20 221:11
237:9,12 238:13
239:14 241:19 242:11
242:21,22 243:13
244:18,19 245:18
246:7,12 247:18
284:22 305:1 306:2
309:4 313:15 314:4
316:1 327:19 328:18
333:17 334:22 336:22
- Madam** 8:3 19:22 29:13
32:22 48:4 60:3 86:4
86:6 99:20 107:2
120:11 141:22 164:2
175:5 184:15 202:19
212:21 264:19 273:19
274:13 285:7
- magnified** 47:3
- main** 306:18 312:3
315:5
- maintain** 69:19
- maintaining** 270:11
- maintenance** 179:21
- Maj** 2:13 5:7 120:11,19
124:2,8,11 141:20
151:10 155:5 158:5
162:18
- major** 62:19 68:1 91:13
120:6,9 125:6 129:16
130:13 135:2 141:19
156:12 157:22 178:18
211:1 281:22 282:12
282:13 320:10 321:18
322:15
- majority** 157:13 185:18
224:19
- Majors** 172:22 176:12
- making** 10:4 80:18
95:10 131:19 241:21
243:8,12 304:9
- Maldoon** 127:11
- man** 198:21 329:5
- man-hours** 97:6
- manage** 76:14 79:2,22
81:1 100:14 183:6
218:7 259:3 262:3
275:2 281:18
- managed** 258:19
- management** 323:7
- manager** 58:21 84:17
109:21 110:3 272:10
282:2,14 290:1
309:17
- Manager's** 281:15
- 282:18
- managers** 270:15
280:15 290:3 299:14
323:2
- Managers'** 14:16
- manages** 107:21
281:20
- managing** 15:8
- mandate** 9:3 118:4
229:2 230:10 232:17
- mandates** 71:14
- mandatory** 14:8 23:11
23:21 63:10,16
126:16,20 275:9
291:14
- Manhattan** 125:2
- manned** 108:19 217:20
- manner** 120:1 175:19
- manning** 166:3 218:11
272:8
- manpower** 189:11
215:12
- manual** 268:7
- map** 91:3 94:9
- March** 294:11
- Marcus** 282:1
- Marine** 2:6,13,14,20 3:9
4:17 5:7,9,16 6:8
31:12 32:17 33:13
37:9 44:3 59:20 66:22
103:21 120:7,19
122:2 128:22 129:4
129:15 132:15 133:11
133:21 134:19 162:19
184:3 185:1,13 186:6
186:14 188:15 189:22
190:4 191:13 194:15
201:18 202:7 209:15
233:20,21 247:6
264:14,22 265:1,15
266:8,13 267:17
268:18 269:3 270:5,7
271:11 272:10 273:14
273:21 290:4 294:13
298:10 299:13 306:3
306:12 314:22 316:2
319:3 320:1 325:10
327:13,20 328:1
329:7,10,17
- Marines** 147:18 320:13
- marital** 202:7
- Mark** 24:20 281:18
- markers** 151:20
- marking** 134:5
- Marotta** 281:17
- marshaling** 99:3
- Martha** 127:14
- martial** 25:13 46:1
58:16 64:21 65:13
66:4 93:8 95:19 144:4
177:17 194:17 196:14
196:18 199:18 200:18
201:16 202:1 204:12
217:9 238:19 271:5
301:3 303:3 312:15
- martials** 177:21
- mass** 211:12
- Massie** 1:11
- master** 122:11
- master's** 122:3
- match** 292:4
- material** 25:2 60:12
261:7
- materials** 10:16 195:11
195:13,15
- matter** 11:4 50:21 76:2
76:6 85:12 149:8
163:4 236:10 248:18
276:2 277:18 282:20
340:12
- matters** 25:3 33:18
87:18 98:5 177:1
188:4 257:19 295:10
- maturation** 269:10
294:22 305:16
- matured** 262:19
- matures** 271:14 274:1
- maturity** 139:19 178:8
287:7 311:21
- Maxwell** 20:3 65:19
- MCAs** 314:18
- McDonald** 3:9 6:8 155:7
264:14,18 305:4,5
309:1 310:9 311:13
311:16 313:15 314:3
316:1 319:22 325:10
325:15 327:19 337:9
339:5
- mean** 21:8,12,15 49:18
52:13 75:19 123:22
152:15 161:3 166:22
191:15 193:6 198:4
198:14 205:7 211:8
214:17,19 217:20
218:4 225:18 227:3
227:20 228:4 230:22
232:14 233:13 238:8
241:9,14 245:22
257:6 317:5 319:15
320:11 327:14 331:6
333:12
- meaning** 51:14,15
319:15
- means** 88:9 89:2 102:7
118:17,19 121:10
122:3 148:13 149:17
- 149:18 205:9 206:13
279:5 317:22
- meat** 203:14
- MEB/PEB** 281:8
- mechanism** 55:1 331:8
- mechanisms** 54:15
55:17 253:10
- media** 293:6,22
- medical** 254:8,11 276:3
280:21 281:8,12
- meet** 168:22 173:11,12
173:13,20 180:21
183:16 231:14,19
245:20 290:3 315:10
315:14
- meeting** 1:5 7:4 8:6,9
8:10,19,21 9:9 10:1,7
10:11,14,17 11:1,5
84:22,22 108:1 243:5
330:5 338:12 340:10
- meetings** 10:17
- meets** 179:7 211:9
236:11
- Meg** 268:11
- Meixell** 281:18
- member** 67:13 80:17
81:17 93:19 110:2
135:5 136:14 205:3
328:20 329:10
- member's** 244:12
- members** 4:21 5:20
6:20 7:12 8:2,7 11:9
12:1 20:1 29:14 30:22
33:1 35:18,22 36:13
73:18 80:4,22 81:2
85:17 86:6 90:9 91:18
97:9 99:21 107:3
110:6 113:9 120:13
163:1,11 164:3 175:6
177:1,4 184:15 201:7
202:20,20 249:22
268:19 273:20 285:8
292:21 313:1 340:8
- memo** 187:5
- mental** 257:3,5 291:1
291:17 293:20 302:3
- mention** 47:7 72:11
111:15 189:13 195:19
204:2 208:8
- mentioned** 33:16 40:11
45:6 97:16 118:15
147:14 154:9,14
159:9 168:4 180:2
181:16 195:21 196:1
201:10 207:13 213:7
233:12 259:4 266:15
268:13 277:8 295:13
328:20

mentor 58:16 91:20
 112:2 191:16 322:16
mentoring 173:4
 204:22 205:19 252:6
mentors 258:7 260:10
mere 200:17
merely 17:3
merits 226:7
mesh 115:14
meshed 116:1
met 1:10 164:22 215:13
method 28:11
methodology 28:9
 59:14 60:21 263:4
 264:3
methods 261:2,7,14
metrics 17:13
mic 239:15
Michael 2:11 5:4 99:16
MICHCOM 66:5
microphone 11:22
 329:15
mid-grade 14:14
mid-level 15:8
middle 132:3 176:2
Mike 128:8
militaristic 111:9
military 9:6,11,14 15:11
 15:15 20:14 21:1,3,5
 22:5,8,19 31:19,20,22
 33:18,21 34:1 35:3,4
 35:18 36:15,17 44:15
 53:8 54:11,18 57:15
 57:18 61:8 62:10
 64:17 66:18 68:10,18
 69:22 70:9,10,19 73:3
 87:19 88:16 92:14
 95:22 97:4 100:9
 103:2 106:1 107:19
 116:20 122:4,11
 127:19 135:9,12
 140:17 146:9 149:19
 149:22 151:8 153:13
 156:5 158:22 159:2
 173:12 174:7 176:22
 179:10 187:15,17
 194:15 200:9 201:7
 204:7,17 212:5,7,10
 222:9,16 223:17
 224:14,15 225:7
 228:8 231:13 232:11
 233:13 236:21 247:12
 247:22 253:12 255:9
 262:3,9,13,15 263:3,6
 263:7,8,16 265:14
 266:4 267:14,19
 269:20 270:13 271:17
 273:15 276:10 280:14

280:15 283:13 285:17
 285:19 286:4,11
 287:8 292:1,18
 293:10 297:4,21
 298:10,17 299:3,7,8
 306:7 308:13 312:13
 313:8 314:9
military- 110:16
military-justice-related
 20:17
mind 54:1 189:18
 211:10 212:14 307:18
 322:12
minds 261:8
mindset 102:1
minimum 122:16
 149:17 179:7 311:14
Minnesota 115:3
minor 291:3 292:10
 334:11
minute 263:10 278:19
minutes 159:6 248:15
 248:16 270:2
mirrors 119:9
misconduct 81:18
 200:13 201:16,21
misheard 152:21
Misinec 282:1,12
missing 71:18 96:19
 115:8 127:2
mission 36:8 54:8,10
 62:19 73:10 107:9,12
 111:18
missions 111:17
misspoke 152:15 154:5
mistake 23:2 134:5,6,6
misunderstand 147:7
misunderstood 154:8
mitigation 241:4
mixed 123:10
mixture 293:17
MJLQ 62:10
MJLQ 205:5 206:8,13
 285:20,21
mobile 62:13 67:3
 105:6
mock 34:2 123:9
 129:14,19 132:17
 278:1,16,17 284:3,8
 316:17,17
model 13:7,19 16:4
 17:7,8 35:7 45:16
 103:11,12 111:3
 166:21 167:3 213:10
 214:9
modeled 56:3 129:12
moderated 125:5
 269:18

modification 183:14
mold 185:12
molded 111:7
moment 13:13 117:14
momentarily 110:9
moments 134:9
Monday 289:4
money 17:17 41:19
 192:9,10 237:21
 238:3 303:22
monitor 173:1
monitoring 172:17
Montgomery 143:5
month 47:17 110:1
 116:6 117:1 191:8
 290:2 328:15
month's 10:13 108:1
monthly 130:6 190:14
 290:18 291:5,16
 292:6,16
months 103:7 121:10
 122:16,17 123:4
 135:16 156:14 189:11
 190:11 191:3 211:3
 212:17 226:3 241:21
 258:17 261:9 265:13
 267:2 283:9 311:18
 312:8
Moot 22:11,12,16,21
 23:5
moral 224:4
morale 72:22
more-than-healthy
 110:14
morning 7:3 8:5,15
 19:22 29:15 86:7
 107:3 120:11,12
 128:7,18 132:21
 196:6
morning's 7:4
motion 23:5 161:5,6
 207:22 242:3 244:15
 263:20 278:17,17
 281:1 283:15 284:2
 292:3 302:7 308:13
 309:11
motions 22:14 23:4
 24:8 47:19 94:20
 114:12,13 187:21
 195:9 197:4 244:14
 247:2 252:19 278:9
 280:8 289:16 292:1
 293:7 294:18,22
 301:4 308:7
move 61:18 62:7 76:15
 98:10 160:11 269:1
 282:12 286:1,3,6
moved 77:21 91:6

151:6 260:4 333:13
moving 152:11 260:2
 281:3
MRE 18:15,21 19:4 23:5
 24:7 263:16,17
MTTs 210:22
multi-disciplinary
 276:22
multi-level 21:11 25:12
multi-Service 15:12
multiple 46:14 315:14
murder 52:6

N

NAC 125:14,21 129:13
 282:10
NACDL 192:5
nails 318:19
name 29:16 34:17 53:2
 164:5 325:21
names 140:7
Naples 205:22
narrow 228:7
nation's 28:10
national 9:1,2 28:8
 68:11 96:18,19 111:4
 111:5 115:7 117:9
 129:8 182:12 191:1
 192:5 252:22 266:6
 290:5 296:3 297:16
 330:3,8,9,17
nationally 250:15
natural 51:10 323:21
 331:9
nature 189:5 255:12
 331:9,22
Naval 2:7 4:18 30:4
 32:18 33:4,7 36:8,22
 37:16 44:4 110:22
 121:6 186:18 187:1
 287:21 288:3,16
 293:19,20 297:8,22
navigate 271:7
navigating 267:14
Navy 2:11,21 3:14 5:4
 5:18 6:16 9:20 26:15
 30:18,19,20 31:2
 33:12 36:1 37:9,11,16
 43:11,12,19 44:3
 48:12 56:1,3 59:20
 63:9 64:5 66:22 67:12
 67:16,19,19 70:14
 99:16 102:22 103:16
 125:13,16 128:8
 142:14 146:12 150:19
 154:6 161:16 194:16
 201:14 202:15 204:5
 207:3 209:15 210:4

211:6 239:11 240:9
 247:3,6 250:7 254:7
 266:16 273:13 285:3
 285:10,18 286:10
 287:2,3,5 288:14
 289:9 290:4,13 291:9
 294:12 296:1,16
 298:2,10 299:13
 314:21 324:1 327:6
 327:22 330:3
Navy's 294:15
Navy- 306:11
Navy-Marine 271:18
 294:21 298:14 299:11
 306:4,14
Navy/Marine 59:9
NCIS 101:17 104:10,11
 104:12 199:4
NCO 108:21 110:3,5
NCOs 108:6
NCVLI 253:2 266:6
 268:12,16,17 296:4
NDAA 257:15 331:3
NDAA's 117:8
NDDA 127:4
nearly 13:2 93:12 232:5
necessarily 83:21
 146:20 151:8 171:13
 185:16 186:7 224:21
 226:22 235:4 236:5
 304:5,16 307:10
 326:17,21 331:12,16
 338:5
necessary 140:7
 146:22 156:11 178:9
necessitated 18:16
 255:15
necessitates 56:12
 271:6
necessity 166:7 240:1
need 48:15 54:7 55:8,9
 55:10,15 60:18 67:7
 109:18 116:12 119:18
 167:7 174:3 179:14
 194:19,21 198:1
 203:19 209:2 218:20
 234:22 239:22 240:2
 240:4 246:22 269:1
 308:16 311:20 319:11
 322:7 333:12,13
 336:8,9 337:18,18,21
 339:12,15 340:3
needed 173:18 177:6
needs 42:2 54:10,20
 73:20 81:19 144:21
 168:22 181:2 183:17
 207:20 219:3 256:11
 318:3

negative 155:3
negotiate 276:20
net 139:2
nets 138:1
network 69:16 268:19
networks 69:12
neurobiology 268:9
neutral 44:4 218:4
never 45:7,15 46:14,16
 47:22 50:12 56:6,13
 56:17 94:1 116:8
 123:20 126:14 128:21
 134:9,15 192:9 241:8
 241:10,14 319:10
 326:22 332:10 336:1
Nevertheless 124:11
new 14:10,16,22 18:17
 22:22 23:14 37:5
 39:11 40:13 41:20
 63:19 65:11 66:9
 67:17,18 74:9 84:12
 85:1 87:17 113:8
 116:4 119:9,10
 127:15 140:12,16
 155:15 160:17 170:13
 170:14,14 185:4,20
 186:22 197:13 203:18
 206:17 209:17,18
 210:2 211:4 255:8
 259:9 262:10,16
 263:12 267:12 268:1
 268:7 269:15 296:5
 298:16 319:8 320:10
 322:9,16,20
newest 19:8
newly-minted 14:2
Newman 185:3 190:1
Newport 67:2 297:9
news 120:16
nicely 198:20
night 139:16 218:22
nine 20:22 100:6
 274:18
nine-week 22:4
NITA 28:9,9,11 111:3
NJP 210:14
NJS 287:16
NMCCA 246:17
nodding 339:6
nominate 178:6
nomination 178:16,20
 179:1,4
non-judicial 177:21
non-legal 36:12
non-litigators 143:7
Noncommissioned
 175:17
nonconcur 178:15,20

Norfolk 67:2
normal 61:20 167:13
 207:8 336:19,20
normally 171:20 208:13
North 131:5
northeastern 302:2
notable 262:20 291:5
note 16:1 201:9 248:3
 271:18
noted 28:16 38:3
notice 306:8
noticed 68:7 118:1
 316:15
notified 162:16
notify 116:10
notion 74:2
notional 61:8
November 255:6 262:8
 270:6,7 278:20
 281:22 291:6,22
 298:11
NSEC 253:3
nuances 277:4,13
number 10:12 29:20
 40:6 47:10 55:17 64:8
 78:5 128:14 139:9
 150:18 165:7 188:14
 206:7,12 208:18
 215:15 228:11 241:20
 244:20 266:5 268:22
 271:3 272:2 288:18
 300:7 322:5
numbers 12:19 17:14
 20:20 42:18 49:2
 56:16,18,22 71:6
 199:10 216:12,21
 335:14
numerous 135:17,18
nurse 198:9

O

OBC 115:17
objections 304:9
objective 221:1 267:4
objectives 28:22
 267:21 288:5
obligation 79:20 172:19
 243:2,4
obligations 196:22
observations 73:16
 272:19
observe 58:17 95:14
 125:20 212:19 261:18
observed 135:10
 188:10
observing 173:5 327:4
obtain 173:22
obtained 122:3

obviously 126:13
 146:22 147:9 150:9
 167:4 180:4 187:22
 194:7,18 202:1
 214:19 222:13 275:7
 275:22 277:18 285:19
 289:8 292:4 315:1
 317:18
occasionally 122:5
 292:17
occasions 240:9
occur 292:8
occurred 133:19
 225:22
occurring 131:18
OCONUS 253:21 254:5
 329:13
odd 222:7
OER 51:13
off-track 151:18
off-years 70:15
offense 179:15 334:13
offenses 115:11 266:17
offer 21:7,11,14 35:15
 36:6,21 37:7 44:14
 50:22 66:20 68:17,22
 69:17 73:16 78:16
 79:5 277:6
offered 14:21 15:9
 44:15 62:4 67:2,18
 69:8 115:12 181:14
 182:21 290:15
offering 18:10 36:22
 44:7
offerings 126:10 127:4
 272:22
offers 20:22 25:12 26:2
 104:3 107:17 251:15
office 2:7 4:18 16:8,9
 17:2 27:4 29:17 30:10
 30:11 32:18 66:11
 83:11 88:8,15 89:3
 90:6 93:5,14,19
 100:22 101:8 102:22
 103:4,5,10 118:13
 123:16 127:2 143:13
 143:18 144:17 145:9
 145:16,21 146:14
 150:20 151:10 165:4
 167:16 168:4 169:4,6
 170:3 177:16,16
 181:4 186:17 205:8
 210:18 217:1,1 221:4
 258:20 281:15 282:18
 338:6,13
officer 14:9,9,18 22:3
 30:9 33:4 64:10 65:3
 65:14 66:20 75:13

78:19 79:3,6 109:11
 148:15 149:2 154:16
 184:3 201:15,18,21
 201:22 206:19 224:3
 228:21 233:14 234:13
 312:19 314:6
officer's 151:17
Officer- 264:14
Officer-In- 2:13
officer-in-charge 3:10
 5:8 6:9 120:7 122:15
officers 36:13,14 64:5,9
 64:21 66:15,15,21
 78:13 95:9 110:4
 124:14 154:17 175:16
 175:17 229:10 293:14
 312:16 315:17
offices 30:20 46:14
 98:12,14,17,21 100:7
 130:6,12 145:3
 169:13 172:22 176:18
 205:22 212:16,18
 322:10 338:5
official 3:22 7:9 186:20
 187:3
oftentimes 50:17 62:4
 138:19 144:16 334:10
oh 227:21 229:17 239:3
 243:11 310:3 318:9
 323:13 339:5
OIC 205:5
okay 11:22,22 63:5 64:1
 82:3,8 157:14 158:11
 158:11 162:21 184:14
 191:2 200:6,10 203:6
 203:10 213:21 215:5
 221:20 223:13 224:7
 225:6 233:8 238:5
 240:18 247:16 248:11
 319:1 325:17 327:1
 332:8 336:21 339:21
Okinawa 67:4 270:1
old 61:6
Oler 2:9 5:2 53:5 85:22
 86:2,4,8 120:14
 137:10 143:1 149:9
 152:4,15,21 155:12
 157:3 158:15 160:1
 161:3 251:17
Oler's 156:15
on-the-job 118:12
 203:17 204:21,22,22
on-track 20:20
on-your- 40:16
onboard 34:18
once 19:14 28:4 40:3
 89:19 104:22 116:22
 117:1 178:11 179:11

190:20 225:3 256:17
 269:2 277:14 301:10
 302:18 311:4 313:10
 313:11 328:15 335:10
one- 65:1
one-deep 338:6
one-hour 263:22
one-on- 65:4
one-on-one 65:5 68:3
one-page 318:14
one-week 27:1 64:11
 312:20
one-year 320:5
ones 139:14 319:8
ongoing 28:17 105:5
online 13:2 21:2 37:1
 63:12,13 115:10,11
 250:17 278:6,10
 290:20 292:7
onsite 40:12 212:13
onus 74:4
open 69:22 278:14
 289:21 297:18
opening 19:12 125:17
 125:17 132:21 133:2
 142:15 143:19 147:19
 280:7
openings 132:13,17
 170:17
opens 207:8
operate 178:9 183:11
operates 40:8
operating 168:8 315:10
operational 50:7
Operations 63:2
opinion 136:7 225:14
 245:22 284:11
opinions 186:3 246:20
 269:22
opportunities 30:12
 31:1,9,18 32:1,7 49:8
 70:12 107:19 134:11
 173:20 260:18 266:3
 297:20
opportunity 29:4 30:8
 60:20 86:11 98:16
 99:11 105:21 117:2
 128:19 129:2 132:16
 133:1,10 134:20
 135:17 153:22 162:17
 175:7,11 183:20
 186:12 210:17 240:14
 253:6 264:9,20
 268:18 273:20 279:20
 285:9 288:7 298:8
 299:19 312:12 314:1
 316:3 323:13,14
opposed 91:14 111:8

227:21
opt 271:4
options 73:7 76:16
 104:3
oral 306:15
orange 44:12,12
orchestrated 41:21
order 4:2 14:10 16:17
 45:19 92:8 95:16
 115:14 149:12 153:22
 239:20 242:4 286:2
 288:11
orders 287:10 324:5,6
 324:11
Oregon 268:16
organic 119:12
organization 3:11 6:10
 40:8 73:1 76:13 84:9
 108:17 115:2 165:10
 166:21 167:1 170:5
 170:14 190:8 194:9
 195:8 253:1 264:15
organizational 178:9
organizationally
 143:12
organizations 16:7
 45:4 72:13,14 96:17
 97:9 234:7,7 260:17
organize 62:20
organized 143:2
organizing 108:18
 114:7
orient 267:12
orientation 23:10 42:15
 43:5 64:10 65:15,17
 75:13 181:5 183:15
 186:22 312:19 314:7
oriented 313:4
original 133:6 294:5
 317:3
Orlando 296:17
Orr 146:6
OSD 331:4
ostracism 257:7 291:2
 291:7
ought 231:10
outline 335:15
outreach 253:6 260:13
 313:16
outside 96:17 110:14
 119:14 172:3 187:19
 192:3 230:1 243:15
 253:11 268:21 269:2
 292:18 293:9 322:12
outsider 118:5
outsiders 124:19
outstanding 101:17
overall 41:10 49:6

139:21 153:5 271:17
 276:18 277:1 320:17
overarching 107:9
overlay 17:7
overseas 37:12 67:5
 207:9
overseeing 57:22 101:1
overseen 17:1
oversees 43:13
oversight 47:1 58:5
 331:4
overstated 241:2
overview 2:2,8,16 3:4
 4:5 5:1,11 6:1 9:22
 32:10 85:18 95:1
 163:19 175:21 249:2
overwhelmingly 294:3
 295:16 315:16
owns 281:16
oxymoron 68:21

P

P-R-O-C-E-E-D-I-N-G-S
 7:1
p.m 163:5,6 248:19,20
 340:13
Pacific 176:1 191:1
package 150:2
pages 116:15 318:15
Pamela 34:18
panel 1:3,10 4:21 5:20
 6:20 7:6,7,12,16,20
 8:1,7,7,19,20,22 9:18
 10:8,9,20 11:5,10,17
 12:1 20:1 29:14 33:1
 33:16 35:22 53:16
 73:18 85:18 86:7
 100:1 101:9 107:6
 110:1,10 120:12
 125:4 135:5 136:14
 151:15 158:13 163:1
 163:8,11,19 164:3,12
 166:17 175:6 185:10
 187:8 202:10,20
 225:19 248:5 249:2
 249:11,22 264:19
 273:19 274:14 275:20
 276:14 277:21 285:5
 285:8 340:5
Panel's 136:16 195:17
panelists 125:2
panels 325:2
paper 51:14 55:2
 303:21
paradigm 52:1,2 338:9
paralegal 108:6,21
 110:3 209:5 250:3
 266:22 272:13,15

338:10 339:1
paralegal- 254:19
paralegals 12:8,18,19
 13:13,15 36:11 97:8
 105:22 107:20 113:4
 119:15 175:15 176:20
 209:6 250:9,10
 254:19 265:14 267:19
 338:8,16
parallel 220:15
parallels 219:21
parameters 298:21
 299:16
paramilitary 72:12,14
paraphrasing 334:7
parole 257:21 281:13
 316:11,19 317:15,15
 317:17,20 318:3
part 15:1 16:2 17:4 20:7
 39:1 44:16 50:3 56:3
 79:1 100:9 104:8
 121:2 124:19 134:14
 155:6,8 168:16 169:1
 172:16 193:17,18
 197:13 215:16,17
 217:9 230:3 233:10
 249:14 250:10 252:6
 256:18 271:10 277:16
 291:16 292:5 294:15
 296:12 303:16 315:2
 323:21 326:12,20
 327:6
partially 126:9
PARTICIPANT 329:19
participate 44:4 130:9
 135:18 137:6 158:19
 252:12 271:20 276:13
 290:12 312:12 313:21
 315:4
participated 161:1
 254:7 263:7 295:14
participating 114:17
 173:6 259:16 271:5
participation 221:10
 271:22
particular 27:18 36:1
 37:11 56:9 80:11
 87:19 127:2 136:16
 148:19 165:1 166:15
 189:4 192:8 193:21
 193:21 200:19 202:2
particularly 21:22 56:8
 59:16 130:18 132:2
 169:12,15 245:19
 280:20 291:22 319:3
 327:20 335:19
parties 76:17 139:8
 159:7 273:10 279:6

partner 108:11 138:4
partnering 98:21
 138:22
partnership 137:15
parts 278:16
party 83:7
pass 62:11 183:4
passed 61:4,13 116:11
 148:14 229:14
passes 229:7
passing 69:16
path 87:14 88:21
patience 8:14 317:20
Patricia 1:21 7:18
pattern 22:22 113:19
 280:18,21 283:22
patterns 113:15,16
 154:21 193:11
Patti 47:7
Patty 282:5
pause 108:16 110:9
 116:2
PCS 76:16,21
Pede 2:3 4:6 8:16 11:13
 11:15,20 19:18 38:22
 46:6,10 49:4,9 55:3,4
 61:3 62:2 64:7 68:16
 71:11 73:14 83:1 84:5
 115:18 116:3 135:20
peer 194:7,8 258:6
 260:10
penalty 246:21
pending 306:17
pendulum 225:13
Pentagon 17:3 150:3
people 48:14 51:19
 52:4,6 61:19 75:19
 76:21 79:11 94:10
 95:11 104:1,2 116:15
 123:1,19 127:20
 128:14 139:20 149:2
 149:3,10 153:20
 171:15,16 172:10
 187:14,19 195:14
 212:1 216:10 221:3
 223:14,18 226:1,13
 229:18 250:7 302:15
 319:9,10 321:4,15
 322:20 331:13,20
 332:22 333:12
perceive 167:6
percent 33:17 34:5,8
 71:3,4,10 93:12 118:8
 156:7,7 165:9,12
 182:20 217:20 218:11
 220:10,13,14 223:20
 321:22
percentage 70:22 93:16

perception 38:4 102:17
 196:2,5 199:9 213:7
 223:16 224:8
percolating 61:9
perfect 17:20 47:22
 56:21 69:13 190:10
 301:12 302:12 305:8
perform 173:9
performance 17:12
 28:21 95:16 96:2
 149:20 261:21
performed 338:16
performing 173:15
 174:2 182:5
period 38:16 61:12 81:4
 133:20 198:7 266:20
 309:9
periodic 18:7
periodically 261:17
permanent 127:8
permitted 93:7 244:9
perpetrator 271:8
person 73:8 75:22 76:1
 80:11 81:19 122:1
 205:6,17 206:2
 223:13 229:13 234:21
 235:22 249:6 317:1
 338:14
personal 16:9 131:4
 224:12,13 225:14
 226:2 315:7
personalities 331:11
 332:14
personality-dependent
 331:16
personality-driven
 331:12
personally 110:15
 179:3 224:5 231:3
 235:10 241:15 315:11
personnel 17:17 62:21
 78:10 108:2,22
 189:12 218:13,14
 221:4 230:9 247:11
 337:10
perspective 36:18 46:8
 47:2 83:1 89:16 106:5
 201:2 204:14 258:4
 267:15 288:6 293:10
 293:11 298:13 301:20
 309:14 338:4
perspectives 252:5
 260:8
persuade 305:9
pertaining 25:22
petition 83:22
phases 22:13
phenomenal 322:1

phenomenally 338:17
philosophy 304:1
phone 74:20 301:22
 328:15 338:11 339:1
photograph 127:9
physical 90:19
pick 123:7 218:4 309:12
picking 331:19,20
picture 35:21
pictured 123:13 125:1
 125:12
pictures 121:1
pictureing 122:22
piece 159:17 186:13
 230:5
pieces 129:22,22
 159:15
piggybacks 158:14
pike 68:12 158:4
ping 283:8
Pipeline 33:10
pitch 332:17
place 54:15 77:18 80:2
 90:7 98:16 117:22
 123:4 138:10 149:21
 163:16 190:18 192:17
 214:5 238:1 282:13
placed 86:17
places 104:5
plan 9:14 16:15 17:5
 35:1 69:17 134:10
 169:2,20 190:2,3
 214:5
planned 13:9 41:21
 110:17 295:17
planning 108:17 109:1
 110:8 114:21 240:12
 294:6
Plano 192:17
plans 112:20 192:2
platform 40:16 70:6
play 22:18 278:16 295:2
players 262:14
plea 157:14
pleading 161:7
pleas 188:3
please 132:6 163:15
 211:17 223:11 325:8
pleased 9:19 17:21
 19:19 29:9 32:11
 120:9
pleasure 33:2 184:19
 202:21
plenary 22:11 24:5
 263:9
plug 36:6 124:21 318:5
plugged 259:15
plugs 37:14

- plus** 39:12 71:21
320:16
- point** 13:4 20:14 35:17
36:19 39:17 46:8
50:12,13 51:6,8 53:11
55:22 58:5 61:7 76:5
76:8 83:12 141:2
143:5 145:7 154:2
186:19,21 189:8
196:7 205:4 227:13
232:10 326:2,17
- pointing** 156:3
- points** 37:17
- policies** 137:2 140:13
- policy** 2:6 4:14 9:21
18:11 25:22 29:11,18
39:18 140:3 146:8
161:17 169:2
- polygraph** 230:18
231:4,17 232:7,8,18
232:21
- polygraphed** 230:17
231:5
- polygrapher** 230:16
231:5,17,19
- polygraphers** 231:15
231:22
- polygraphs** 228:16
233:6
- popular** 323:17 324:18
- populated** 12:20
- portion** 138:14
- Portland** 268:16 296:4
- posed** 262:5 264:8
- position** 86:17 139:15
158:9 161:19 259:9
260:4,6 305:10
307:21 308:15 326:8
326:9
- positions** 30:13 31:6
92:12 300:2
- positive** 120:1 272:1
273:16 294:3 295:16
- possesses** 122:2
- possession** 233:15
- possible** 23:1 124:15
134:7 236:9 237:15
267:5 303:12
- possibly** 187:5 196:15
196:17,21 223:3
- post** 130:19 207:22
255:2
- post-** 257:16
- post-acquittal** 79:18
- post-course** 261:11
- post-trial** 75:14 81:4
141:15 257:19,21
295:4,7 317:8
- posted** 8:10 174:12
316:13
- posture** 246:10
- potential** 257:16
- powerful** 56:19
- PowerPoints** 329:3
- practicable** 251:4
- practical** 24:6 27:13
40:17 110:19 113:15
113:16 187:18,20
251:10 254:10 261:16
262:19 276:1 277:22
- practicality** 53:2
- practically-oriented**
69:4
- practice** 13:10 23:4
27:14 47:18,18 50:6
53:12 55:16 56:12
63:10 64:15 76:20
89:9 93:8 128:1,2
129:22 130:19 131:10
132:16 147:19 151:10
160:17 193:18 217:9
221:1 226:2 228:17
252:19 255:13 265:20
268:4 269:15 271:14
274:1 279:10,22
281:1 283:16 289:16
290:22 292:1,3 293:7
294:19 295:1 297:15
297:17 298:22 299:16
301:9 305:13 309:19
316:8 323:22 328:14
331:10
- practiced** 132:20
- practices** 27:16 125:8
223:17 253:11,15
255:5 267:22 283:3
327:13 328:17
- practicing** 63:11 224:14
276:11
- practitioners** 96:1 97:4
138:22 191:15 251:22
309:18
- preceded** 311:1
- precedent** 19:5
- precept** 41:11
- predictable** 14:3
- predominantly** 31:12
- prefer** 124:15
- preferably** 39:20
118:13
- preference** 204:6
- preferred** 27:18 99:1
- prefers** 256:2
- preliminary** 13:4 63:8
201:11 228:20
- premier** 113:20
- prep** 132:13 147:18
- preparation** 38:2 173:3
173:4
- prepare** 23:13 98:1
130:2 132:18 134:10
193:9 263:20 275:7
- prepared** 20:7 131:3
141:4 203:1 256:4
257:13 285:12 308:6
- preparing** 197:3 209:1
308:7
- prerequisite** 275:9
- presence** 11:10 127:8
151:22
- present** 1:15 29:21 33:5
141:16 253:14 284:3
- presentation** 23:8 27:9
29:8 32:21 37:21
107:1 120:15 156:12
156:16 171:11 203:2
212:22 248:13 263:1
- presentations** 85:8
163:2
- presented** 160:4 164:11
222:3 228:18,20
296:12 299:6
- presenter** 32:16 106:19
120:6 174:22 184:2
274:8 284:19
- presenters** 293:18
297:4
- presenting** 328:8
- preserve** 162:13
- preside** 284:3
- presiding** 1:13
- pressure** 216:2
- presume** 325:2
- presumed** 227:14
- pretrial** 228:19 252:18
299:1
- pretty** 64:5 139:13
153:3 179:6 193:15
313:8 335:7
- prevails** 153:10
- prevalently** 257:4
- previous** 10:17 105:20
- previously** 7:14 33:12
137:6 147:14 275:8
295:13
- primarily** 25:15 112:22
177:2 279:4
- primary** 24:21 111:17
187:2 270:10
- prime** 260:6
- prior** 15:17,19 55:22
109:14 117:6 119:4
150:7,8 151:22 165:6
165:11,13 177:17
- 180:13 181:10 216:3
216:11 251:3 255:8
302:16
- priorities** 99:6
- prioritized** 101:13
- prison** 236:7 317:5
- prisons** 72:15 81:6
234:6
- privacy** 291:3 295:1
- private** 44:19 128:2
228:16 230:16
- privately** 163:15
- privilege** 18:15,22
283:17 307:11,12
- privileged** 175:14
- pro-complaining** 225:8
- probably** 53:9 59:8
71:17 72:19 76:10
79:14 124:2 126:8
152:2 153:9 189:21
236:13 244:5 281:11
302:15,19 303:4
339:16
- problem** 154:5 157:20
160:21 161:2 162:6
215:18 222:15 230:15
235:19 237:19,20
238:4 239:8 240:16
240:19 319:21 333:3
333:11
- problems** 8:13 239:10
239:18 264:4 272:6
273:9
- procedural** 276:1
- procedure** 168:8
210:13
- procedures** 18:20
- proceeding** 235:5
- proceedings** 1:3 7:5,6
8:7,22 9:5 10:8 163:8
- process** 10:15 11:2
17:22 18:9 34:21
38:10 47:20 54:19
61:21 63:19 66:2,7
78:12 81:12,15,21
82:20 95:13 100:13
101:21 105:10 106:2
106:8 138:2 139:22
148:6 149:21 161:10
166:5 173:8 174:5
179:6,12 187:4
225:11 226:16 227:12
236:11 242:20 243:9
244:15 247:3,3,19
271:5,13 276:6
286:15 303:13 312:17
317:11,16,18 318:3,5
338:19

- processes** 29:1 55:13
60:16 80:2 194:19
220:15 295:4
- processing** 304:18
- produced** 63:13 294:4
- producing** 270:21
- productive** 12:10 19:16
297:1
- professional** 31:9
57:17 101:5 175:16
175:19 178:21 258:21
265:21 271:16 283:17
291:18
- professionally** 171:10
- professionals** 36:11,12
111:13
- professor** 3:13 6:13
7:18 156:1 268:11
274:10,18,19 293:21
- professors** 12:21 19:2
274:19
- professorship** 19:7
- proficiency** 109:6
- proficient** 92:8 150:10
151:8
- profile** 172:14
- profound** 56:12 60:17
- profoundly** 120:1
- program** 2:6,11,12,13
2:14,21 3:15 4:14 5:5
5:6,8,10,19 6:18 9:21
16:3,14 17:9,16 18:14
25:1 29:11,18 34:17
37:14 38:13 40:7
43:14 47:12 51:7,12
51:12 52:21 56:1,2,7
58:15,19,21,22 59:18
59:19 79:3 83:11
84:17 99:17 104:13
105:11 106:12,21
107:8,22 108:4
109:21 110:3 111:1
114:9 117:22 120:8
137:13 139:20 140:16
146:16 155:15 166:13
167:16 168:17,21
170:7 174:15 182:17
202:16 207:15 209:5
209:15,22 210:2,4,6
216:5,6,10 219:19
221:13,17 252:21
254:14,16 255:10,14
262:2,10,11 263:2
265:2 267:4 269:10
270:15 272:10 273:21
274:16 275:6 276:8
281:15,19 282:2,14
282:17 285:4,11
- 286:1,18,19,20 287:2
287:12 288:17 289:9
289:22 290:3,17
292:4,21 293:1,3
296:7 298:3,21
299:14 309:17 313:17
315:2 316:16 320:6
320:17 321:13 322:6
322:9,11 323:2,3
324:7,18 325:12
327:6,21 328:12
331:21 333:10,15
336:14,16
- programmatically** 18:3
55:5 79:2 170:4
- programmatically** 79:2
- programs** 16:13 52:16
55:19,20 82:21
124:22 129:14 142:7
147:11 166:19 167:4
169:6 299:15
- progress** 119:7 121:7
121:14 122:7 153:5
- progressing** 141:7
- progression** 15:1 119:9
- prohibit** 237:17
- promoted** 152:11
154:13 321:21
- promoting** 319:20
- promotion** 152:6
154:11 155:2 321:16
321:22 324:16
- promotions** 47:17
153:4
- pronounce** 284:20
- proper** 18:19
- properly** 51:5 108:11
108:12 111:20,20,21
194:21 197:7 306:7
- proportion** 222:5
- proposal** 10:13 85:1
219:13
- proposed** 160:14
219:13
- propounded** 189:17
- prosecute** 44:22 88:19
91:1 92:3 94:15 101:5
102:21 103:1,6
130:11 137:18 148:8
224:16 303:6
- prosecuted** 93:11
108:13 111:21 177:16
186:5 233:15
- prosecuting** 2:8 5:1
85:19 87:2 90:16 95:8
99:9 100:15 103:18
114:2 118:9 119:18
138:3 180:15 234:15
- 297:8
- prosecution** 22:9 63:4
87:10 91:12 94:1
97:18 98:14 101:21
103:17 107:22 108:4
109:20 113:11,13
115:9 118:16 119:1
119:21 137:7 138:8
138:15 139:2,11
157:1 213:12 227:6
229:16 237:6 240:6
240:17 279:21 282:9
302:21 304:7 311:19
321:2 322:12
- prosecution's** 230:2
- prosecutions** 54:12
94:5 106:14 222:4
- prosecutor** 14:10 39:21
47:9 51:7 53:6,7 86:9
87:12 88:1,5 113:8
117:10 118:19 119:4
119:10,11 121:17
128:20 129:7,11
131:5,8 132:1,11,19
133:14,16 134:12
136:19 137:21,21
138:19 145:12 199:3
224:17,20 274:20
300:4,9 303:6 334:19
- prosecutor's** 38:11
131:7
- prosecutor/defense**
10:2
- prosecutorial** 107:11
- prosecutors** 31:4 50:15
50:20 52:1 53:18
54:16 68:7 86:13,21
87:8 89:18 90:12,22
91:20 92:4,20,21,22
93:4 94:4,6,10 95:3
96:8 97:5 98:3,11,17
99:6 100:14 101:18
102:16 106:6,10
107:19 108:6 109:14
109:17,17 110:12
113:2 119:9 129:6
131:10,12 132:9,16
133:1,20 134:15
135:10,11 138:18
141:12 143:18 144:14
146:15 147:10 152:6
152:14,16 156:4
220:8 227:8 276:9
- prospective** 66:14,21
68:1
- protect** 79:19,21 224:1
226:17 276:20
- protecting** 80:16 291:2
- protection** 162:9
- prove** 239:20 321:9
- proves** 196:6
- provide** 29:22 30:3,18
32:11 43:12 46:22
59:3 67:15,20 70:16
70:17 96:9 100:1
107:10 109:18 113:2
115:3,9 127:8 140:4,6
140:8 143:11 146:1
158:5 203:17 204:21
211:2 212:2 242:5
249:2 251:8 253:6
258:3,13 260:7,22
261:5 266:21 268:3
272:16 276:14 285:9
288:6 293:10 301:1
313:17 317:16 323:20
- provided** 8:1 43:15
44:10 62:5 92:10 96:5
97:2,3,6,15 146:15
174:17 187:7 254:10
292:6 293:14 301:6
- provider** 28:10
- provides** 30:20 58:4
66:18 106:4 211:5
250:5,11,21 252:15
258:15 261:6 268:18
276:15 279:20 289:10
- providing** 23:1 28:12
66:13 175:18 179:20
191:9 205:1 211:13
289:15
- provision** 176:6 201:19
- psychologist** 334:1
- psychologists** 245:12
- psychology** 277:20
- Psychotherapist** 18:15
- PTA** 302:22
- PTSD** 228:1
- public** 1:5 8:1,2 10:7,9
10:10,14,16 11:1,4
150:8 156:3 216:22
- publication** 21:22
- publications** 269:21
- publish** 154:21
- pull** 184:11 195:15
220:6 228:2 322:14
- punish** 235:11 236:5
- punished** 201:4 223:15
- punishment** 11:16
249:6
- punishments** 133:7
177:22
- pure** 230:1
- purely** 83:14 224:13
- purpose** 46:12
- purposeful** 280:11

purposefully 283:15
purposes 121:17 250:8
pursue 60:9
push 62:3 229:15
 236:15
pushed 249:17
pushes 229:20
put 50:19,22 59:10
 71:11 80:2,6 116:6
 159:15 172:20 188:11
 195:12 203:14 221:3
 227:16 297:11 312:4
 322:13 331:20 335:17
puts 130:16 328:1
putting 114:7 206:6
 304:11
Puzio 125:4

Q

Q&A 4:21 5:20 6:20
qualification 148:11
qualifications 46:2
 179:8
qualified 2:14 53:20
 88:12 89:2 90:16
 123:8 147:3 148:12
 158:10 178:3 191:22
 196:8,9,11,13 204:7
 205:6 206:8,13,15,15
 206:19,20,22 216:6
 221:10,13 274:20
 282:6 309:13 326:12
qualify 156:17
quality 149:2 270:21
 272:18
Quantico 129:5
quantifiable 17:13
quarter 169:19,20
 212:6 215:8
quarterly 130:7 169:5
 169:18 212:5 330:10
 338:17
question 38:20 49:10
 49:21 53:10 72:6 82:5
 82:11,17 125:22
 126:5 135:12 136:13
 137:11 139:6 142:4
 145:20 146:18 150:16
 151:14 152:19,22
 154:8 155:6,9,13,22
 158:6,10,12,13,14
 164:15 166:16 167:9
 172:16 199:17 203:12
 207:22 208:4 213:7
 213:22 214:13 219:7
 219:8 227:18 228:14
 230:8 233:8 234:14
 235:22 242:19 245:14

246:12,15 247:8
 262:5,7 273:15
 285:14 304:22 307:19
 319:2 321:14 325:1
 333:8 337:8
questioning 60:10
 236:3
questions 12:12 18:12
 19:13 29:5 32:12
 37:18,22 73:4 78:14
 78:21 99:12 100:1
 102:10 105:8 106:7
 106:16 120:3 131:12
 134:21 145:19 148:5
 162:22 164:12,14
 174:17,18 177:8
 183:21 185:9 189:17
 195:18 202:10 212:21
 221:21 236:18 240:3
 247:17 259:22 263:5
 264:8,10 284:13
 299:20 316:20 327:12
quick 62:15 82:11
 142:3 175:21 195:19
quicker 134:11
quickly 60:19 62:7
 97:12 134:3 155:12
quiet 339:22
quite 45:5 55:7 56:15
 60:15 133:20 143:11
 172:8 230:10,12
 283:8 339:19

R

raise 132:5 247:11
 309:15
raised 82:19 94:20
 236:20 245:1,15
 246:5 247:12 248:1,3
 332:20 336:8
raising 161:1 324:20
 336:15
rally 208:3
ramp 146:17
Ramstein 295:16
ran 198:18
random 188:20 193:14
range 113:7
ranks 153:15 204:8
rape 226:4 235:2
raped 226:8
rapidly 116:10
rare 71:17 148:17,18
rate 155:2 174:10,11
 321:22
rates 154:11
ratio 182:6
rationale 308:9

re-balanced 339:14
reach 101:8
reach-back 146:10
read 130:21 257:5
reading 187:10 281:11
ready 11:7 85:15 98:4
 163:9 178:12 230:9
 308:11 311:4 317:21
real 34:15 78:3 320:16
 320:16
realities 166:3
reality 196:5 224:9
 318:2
realize 234:11
realizing 139:20
really 11:15,17 34:22
 35:10 36:9,17 37:14
 44:6 49:6 51:15,18
 57:12 63:13 67:22
 74:4 76:20 77:21
 78:18 79:1,10 80:1
 81:19 85:8 116:16,19
 121:10 134:18 141:9
 154:10,18 155:12,22
 157:15 167:22 185:7
 186:11 187:2 195:6
 195:18 211:8 213:15
 218:2 222:7 226:15
 230:8 248:15 249:13
 300:17 312:3 320:13
 320:14 321:8,9
 323:15 327:21 330:22
 331:6 332:15 333:10
 334:3 336:3 339:16
realm 278:15
reason 200:7,11 212:2
 239:9
reasons 186:1 338:19
receive 10:8,10,11
 42:12 57:16 92:6,12
 92:18 95:22 96:9
 133:2 134:2,16
 136:11 167:15 172:12
 190:5 253:8 256:5
 273:2
received 10:13,21 96:5
 96:12,20 97:14 143:6
 143:21 172:4 180:21
 222:14
receives 65:4,5
receiving 136:5,16
recognition 257:16
 304:18
recognize 118:6 159:12
 271:3
recognized 250:15
 320:11
Recognizing 109:18

recollection 194:21
recommend 155:9
recommendation 127:6
 127:18 290:11 317:4
recommendations
 17:15 51:17 150:1
 297:19
record 53:7 83:22 85:13
 156:3 163:5 238:16
 248:19 301:22 331:8
 340:10,13
recording 239:17
records 257:3,5 280:22
 291:1 302:3
redacted 140:6
reduced 192:20
refer 20:13 35:2 91:4
 92:16 102:14 218:3
 251:17
reference 127:9 258:18
referral 222:20
referred 125:22 246:4
referring 80:14 331:4
refine 252:16 271:15
refined 270:8
refinement 271:11
reflect 274:3
reflected 124:3 129:6
reflection 18:1
reflects 72:21
refresh 15:2 194:20
 311:14
refresher 63:21 70:1,12
 170:16
refuse 234:8
refused 72:18 233:17
refuses 233:14
regard 59:16 76:11
 82:13 155:2 179:15
 257:19 270:14 283:13
 285:17 287:20 297:19
 298:9 312:13,14
 324:8
regarding 78:13 86:12
 96:2 110:10 116:4
 131:1 162:9 203:13
 256:13 263:4 275:5
regardless 190:7 304:2
 332:13
regards 53:3 301:22
 306:21
regimental 12:8 107:4
region 98:13 173:11
 189:3 191:1,2 253:16
 253:19 266:22 269:14
 330:9,10
region's 270:3
region-specific 266:21

- regional** 100:6 122:8,15
126:18 130:7 149:5
169:3 173:10 176:1
181:15 189:1 194:11
253:3 259:5 266:20
269:5,8,11,13 270:19
278:4 295:14 313:16
320:2,3 328:2
- regionally** 250:16
- regions** 190:22 194:12
- regular** 14:3 17:22
76:19 106:8 139:14
292:5
- regularly** 47:16 68:14
259:20
- regulations** 200:14,15
237:17
- reinforce** 17:16 267:22
337:6
- related** 64:17 246:21
263:14 291:22
- relates** 91:5 155:22
- relating** 25:2 105:14
- relation** 24:16
- relationship** 32:2
137:22 315:19
- relationships** 98:13
- relative** 136:20
- relatively** 29:20 60:19
60:22 78:5 105:10
201:19
- release** 26:3
- relevance** 239:22
- relevant** 28:12 183:10
187:11 268:4 292:8
297:17 298:3,8
- reliability** 231:16
- reliable** 232:2,5
- relied** 260:8
- relies** 254:14
- reluctance** 223:6
- rely** 79:10 238:21
297:13 298:4 329:6
- remain** 18:4 183:10
200:21 201:4 232:13
235:12
- remainder** 9:22
- remaining** 27:20 254:22
- remarks** 4:2,3 12:11
19:12 20:7 97:17
143:20 154:14 251:13
285:12
- remedy** 279:11
- reorganized** 58:2
- rep** 210:13
- repeated** 134:9 295:18
- repeating** 115:16
- repetitive** 52:4
- replacement** 185:6
- replicate** 193:1
- report** 22:1 26:3 33:16
33:19 94:17 101:10
133:4 169:18 203:22
226:4,13 272:17
294:4 301:2
- reported** 296:2
- reporting** 288:18
- reports** 94:14 95:2,22
281:12 308:18 335:13
- represent** 95:12 144:2
176:22 179:13 217:3
256:16 265:9 277:10
288:12 316:7
- representation** 24:10
30:21 179:14 205:2
236:21 251:19 254:3
255:11,18,21 256:9
256:14,22 258:4
265:20 270:12 273:6
284:10 289:17 290:14
292:9 298:22 299:17
- representations** 253:20
- representative** 67:14
138:17 140:11 153:20
298:20
- representatives** 125:2
276:8
- represented** 15:13 25:7
41:5 275:8
- representing** 177:3
204:15 210:11 251:3
253:10 297:2 307:21
- request** 77:2,3,10 105:1
239:5 249:16,18
289:17
- requested** 257:4
- requesting** 308:19
- requests** 10:10 187:22
240:21 241:21 247:1
- require** 17:12 83:21
194:2 301:1
- required** 18:7 64:22
117:21 118:11 169:1
188:2,13 251:1
256:17 266:20 269:5
283:6 288:11,19
290:13,18 292:14,16
295:11 298:4 331:2
- requirement** 89:5,11
149:13,17 291:17
- requirements** 83:19
164:21 254:22 268:2
288:8 311:15,20
- requires** 168:8 187:9,13
187:15,20 197:7
210:6 261:5 289:11
- requiring** 101:6 292:13
- requisite** 100:22 311:21
- research** 201:11
- resemblance** 121:16
- Reserve** 2:19 5:16 28:7
184:4,22 191:12
- Reserves** 324:21
- Reservists** 127:19
191:13 287:10
- residence** 36:21 250:13
- resident** 13:1 21:1
25:15 37:13
- resiliency** 26:19 276:4
- resolve** 234:20
- resolved** 94:21 133:6
273:10
- resolving** 211:15
- resource** 40:4 219:6
295:9
- resourced** 41:13 219:4
- resources** 17:17 38:5
42:2 47:21 80:3
107:10 108:2 192:7
195:11 196:3 198:15
199:11 213:8,14
215:7 226:21 244:17
253:7 268:21 293:9
295:21
- resourcing** 41:10 47:3
217:11
- respect** 160:12 177:8
189:9 192:14 196:4
199:8 234:3 246:13
246:19
- respected** 262:11
- respectfully** 262:15
- respective** 54:14 289:8
299:15
- respond** 54:10 131:13
219:6 316:22 333:16
- responding** 229:8
- responds** 131:13
- response** 7:15 33:16
101:9 158:6 166:17
174:16 235:15 242:10
262:7 268:10 269:9
291:14 295:5
- responses** 261:13
- responsibilities** 80:21
136:21 181:7 204:10
259:11 260:14
- responsibility** 39:3
80:16 95:10 168:6
185:8 265:21 271:16
272:9 283:17
- responsible** 13:15 41:8
41:9 95:7 100:20
114:6 158:17 176:6,8
177:2 180:1 260:13
274:22
- rest** 73:19 126:21
145:15 169:16 183:5
- restitution** 281:14
- result** 28:22 75:20
139:3 144:4 182:20
223:7 324:16
- resulted** 295:19
- resulting** 254:12
- results** 58:18 102:9
273:4 309:22 321:16
324:16 332:1
- resumed** 85:13 163:5
248:19
- retain** 62:21
- retained** 74:1 325:6
- retaliation** 257:7 279:14
291:2,6 293:7
- retired** 7:18 145:10
185:4
- retirement** 201:6
- return** 14:3 30:20 41:1
183:2
- reverse** 152:9 159:4
- review** 9:4 18:4 28:17
28:19 61:9 84:21
88:17 116:9 169:5
178:19,22 183:15
195:15 234:2 255:16
277:17 288:4
- reviewed** 187:22
- reviewing** 99:4 197:4
- reviews** 282:19
- revisions** 22:21
- revisiting** 257:11
- revolutionizing** 34:22
- rewritten** 227:3
- Reyes** 2:21 5:18 202:15
202:17,19 203:6,10
213:3,17,18,20 237:9
237:22 239:9,14,16
242:15,16 246:12,15
285:20
- Rhoda** 67:5
- Rhode** 297:9
- ride** 132:22
- right** 11:12 45:17 49:10
63:14 66:2,7 79:19
80:10 82:5 89:8 95:17
103:10 127:12 141:8
142:20 144:10 146:13
156:14 157:11 158:19
158:21,22 160:18
161:4 167:20 169:8
185:9,20 200:21
203:4 210:2 215:20
224:4,20 225:1

226:20 232:13 235:12
 236:6 247:21 273:18
 301:14 306:9 307:3,5
 307:15 310:10 318:16
rightly 222:15
rights 10:14 11:2 79:20
 79:21 80:17 159:17
 159:19,20 160:2,22
 162:10 201:3 235:17
 255:13 273:12 283:2
 295:2
rights/interests 158:20
rigorous 18:8 179:6,18
rises 200:13
risk 320:19,21
River 320:10
RLSO 105:12
road 1:12 67:4 147:16
 147:17 211:9 323:20
robust 23:4 40:10 79:14
 83:14 106:11 219:19
 220:6 262:18 309:20
 332:10
robustly 295:14
rock 320:13
Roger 209:4
role 22:18 24:2 27:11
 39:1 45:21 57:14 64:2
 82:17 89:17 140:19
 145:11 252:10 267:12
 277:11 281:13 299:1
 305:15 315:3,18
 323:7 326:21
role-play 38:14 280:3
role-playing 278:2
roles 38:15,15 61:22
 90:5 136:20 144:10
 147:11 312:10,14
room 122:22 125:19
 278:16 280:9 282:7
rooms 280:1
roots 323:12
rotate 325:7,22 326:2,6
 326:15
rotated 331:13
rotating 326:9
rotation 288:14 319:19
rotations 210:7 319:4,5
roughly 22:7 70:22
rounded 23:20
roundtable 145:22
 269:18
routine 77:5
routinely 26:11 55:15
 95:14,21 289:10
 328:13,17,18
RSP 7:16,17 21:22 26:3
 125:22 127:6 215:13

RTCs 134:2
rubber 211:9
rubric 247:2
rule 310:11
rules 34:1 77:1 133:17
 133:18 160:10 187:10
 201:19 228:9 269:15
 292:1
ruling 158:21 162:13
 307:11
rulings 263:20
run 123:5 128:10 183:6
 320:19 339:15
Russians 232:1,10
RVLC 269:12 270:1
RVLCs 269:4,17

S

Sailor 204:15
sample 311:7 318:20
San 26:13 32:4,4 56:10
 67:2 117:10 123:15
SANE 198:9
SAPR 25:10 79:3
 192:11
SAPRO 276:8
SARC 80:4
SATAC 117:13
satisfaction 55:19
satisfying 254:21
 332:12
saving 12:12
saw 198:20 217:5 227:8
 329:9
saying 156:3 198:2
 226:10 232:10,16
 340:2
says 121:12 211:8
 234:11 242:2 307:1
 339:12
scale 328:4
scenario 34:4,6 79:8
 263:18 328:10
scenario-based 79:6
 263:5
scenarios 79:7,8
schedule 170:1
scheduling 256:9
scheme 187:18
school 1:11 2:3,5,7 4:8
 4:11,19 8:18 11:14
 12:3,14 13:6 14:4
 18:5 19:15,21 20:3,13
 20:22 30:1,5 32:18
 33:5,6,7 34:16 36:7
 36:16,22 44:4,14,20
 55:6 59:8 64:8 65:10
 65:20 66:6 67:18,18

69:18,21 70:4,10,14
 71:7 84:10 96:16
 110:22 114:4,5
 115:14,22 121:7
 122:5 133:15,19
 143:4,8 181:1,21
 183:12 185:20 186:18
 187:1 210:5 250:21
 251:7,15 252:14
 258:15,22 259:10
 260:5 261:4,10
 263:13 275:3 279:18
 280:13 282:15,16
 283:5 287:21 288:4
 288:16,22 289:12
 297:9 298:18 312:18
 313:6 319:5,15 320:5
 320:9 326:13
School's 36:8
schoolhouse 15:21
 16:13 40:21 289:11
schoolhouses 289:9
schools 2:2 4:5 9:20
 12:7 25:9 30:15 31:7
 31:8 48:8 54:14 58:11
 96:16 127:5 182:10
 258:13 265:11 290:16
Schweig 2:13 5:7 120:7
 120:11,19 124:2,8,11
 135:2 141:20 151:10
 155:5 157:22 158:5
 162:18
Schweig's 129:16
 156:12
science 35:2 229:3
scope 18:21 161:12
 186:2 189:12 202:3
 225:18 244:8
SCPs 256:21
screened 100:11 105:3
 267:3 287:6
SDC 176:16
se 321:11
Sea 33:9 70:20 128:15
search 248:4
seasoned 188:1 289:15
seated 127:12
seats 41:4 298:5
second 15:14 21:11
 22:14 34:15 57:14
 87:6 92:20 93:4,15
 95:18 111:22 117:13
 118:20 122:12 143:13
 151:14 155:8 157:6
 158:1 159:4 166:1,16
 172:16 173:6 188:2
 189:16 205:4 212:4
 218:2 220:18 223:4

223:10 227:20 238:4
 256:12 279:2 288:2
 291:20 304:12 310:22
 319:1
secondarily 79:5
secondary 118:3
Secondly 101:22
seconds 91:4
Secretarial 223:4
secretary 309:4
section 32:5 329:7
sections 256:20
sector 53:22
see 36:3 44:10 45:2
 53:17 59:20 61:13
 69:9 71:7 77:14 80:18
 80:20 88:3 91:8 94:9
 125:1,15 126:8
 127:21 128:14 136:8
 153:10 154:2,11
 155:18 160:20 161:1
 161:19,22 169:11
 184:7,8,19 202:22
 203:4,7 210:1 212:16
 214:6 215:1 217:16
 219:15 244:13 279:11
 286:3 287:18 300:18
 303:8 305:16 310:7
 310:12 316:3 318:4,9
 319:11 323:16,19
 328:21 329:19 331:6
 332:21 335:20
seeing 57:11,18 59:12
 155:16 211:4 212:9
 301:9 303:5,19,21
 304:4,8,15 324:18,19
 329:14,18 330:12
 332:1
seek 106:11
seemingly 254:4
seen 48:18 51:1 56:6,14
 98:8 127:10 128:22
 139:2 151:1 152:3
 153:2 155:3 224:15
 241:8 273:16 291:7
 330:16 332:11,16,17
segment 332:22
select 168:11 172:10
 320:18,19
selected 26:7 45:16
 51:9 65:7 89:1,4
 100:12,12 172:11
 177:12 179:11 220:7
 267:3 320:4,9
selection 179:17
 286:15
self 321:12
self-reflection 18:6

- self-study** 18:1,7
semi-joint-type 330:14
seminar 251:9
seminars 65:21 70:7
 250:17 261:16
send 30:14 31:13 32:3
 75:3 84:18 94:2 104:1
 104:2 127:3 130:20
 133:4 144:18 145:2
 172:2,5 182:20
 186:21 192:4 223:2,8
 223:22 224:10 252:21
 256:8 275:13 298:3
sending 62:12 182:11
 229:16 268:14 272:2
 296:8
sends 261:10 266:8
senior 13:14 24:19 26:7
 27:1,2 36:13,13 46:12
 46:13,20 53:1,14,17
 57:7,21 64:10 65:14
 65:17 66:20 75:12
 79:6 86:20 87:12,14
 87:21,22 88:3,7,20
 89:7,9,19,22 90:4,9
 90:15,22 91:13,17
 92:5 93:9,12,17 94:7
 94:15 95:15 96:2,6,11
 97:19 98:18,19 99:8
 100:7,16,19 103:2
 108:20,21 109:4,12
 112:3,15 113:1,12
 119:10 121:22 126:19
 130:5 137:16,17
 138:21 143:10 144:13
 144:20 145:9 147:6
 149:6 152:4,16 153:1
 153:14,15,17 154:15
 154:22 156:17 157:8
 157:9,11 165:2
 166:10 168:8,10
 172:21 176:5,12,15
 179:16,19 180:5,13
 181:19 182:1 188:22
 191:4 194:13 205:5
 205:14,15 206:3
 220:16 221:2 252:3,7
 260:12,21 261:17,20
 286:7 292:17 301:11
 302:5 312:19 313:9
 314:6,20 322:14
 323:1
sense 38:20 116:1
 153:4 336:16
sensitive 234:6
sensory 102:17
sensory- 102:11
sent 171:22 192:13
 296:2,14 297:7
sentence 23:5
sentencing 22:16 23:9
 241:4 252:19 283:18
separate 42:14,20 76:3
 81:8,14 83:6 162:5,19
 201:17 256:2
separated 81:20 207:4
 233:17
separating 81:14
separation 74:1 78:12
 81:12 200:16 201:21
 210:12 217:7 235:4
separations 233:10
 234:1
September 272:4
 295:16,18
sequential 14:13
Sergeant 198:22
series 16:16 164:11
serious 180:3,15
serve 9:11 25:5 26:8
 45:22 52:4 87:22
 88:12 89:4 129:5
 237:16
served 7:14,17 89:6
 91:16,17 165:22
 180:7,13
serves 7:13 24:21
 221:18 222:21
service 2:18 5:13 14:15
 20:16 25:9 30:9,15,19
 31:8,11 33:9,11 37:16
 39:4,5 42:22 48:8,16
 58:12 61:1 68:14
 78:10 80:11,17 81:2
 81:17 96:16 100:7
 124:12 127:5 128:5
 153:16 154:1 164:6
 164:20 166:21 169:7
 169:16 179:8 200:15
 205:2 210:18 238:10
 238:17 244:12 254:2
 254:12 270:15,20
 271:2 278:12 287:3
 288:13 289:8,22
 295:15,20 297:22
 310:13,16 313:1
 329:3
Service's 148:14
Service-specific
 258:15
services 2:20 5:17 9:14
 12:20,22 13:16 15:12
 15:13,17 21:16 24:15
 26:11,12 30:2 31:3
 36:11 37:10 43:13
 45:9 52:8 54:9 56:18
 58:3 59:21 67:1 68:19
 70:1,20 71:9,17 73:12
 75:10 78:1 81:11
 128:15 137:14 140:2
 142:8,12 143:3,15
 147:8 160:4 163:19
 175:18 176:7 184:4
 185:14 201:11,13,17
 202:5 210:8 220:5
 233:21 253:17 254:2
 254:4 258:10 263:9
 268:1 269:1 270:14
 278:3 283:2 290:11
 297:6 325:4 327:14
 330:16
servicing 74:12
serving 78:18 89:17
 178:13 297:2
session 9:22 11:8
 14:19,19 68:2 105:9
 105:19 137:6 163:9
 249:11 263:10 333:2
sessions 10:1 44:17
 60:1 68:9 116:21
 183:2 254:17 275:21
 293:13
set 36:1 40:10 65:6
 127:2 209:16 216:13
 228:8 321:12 322:13
 328:7 339:11
sets 266:2
setup 44:19 112:13
seven 30:18 90:1
 108:19 109:3 110:4
 176:11 321:20
sex 115:11 125:3
 127:15 138:9 139:1
 176:14 181:13,18
 182:3 183:7 193:4,13
 193:19 280:5,18
 309:6
sexual 2:8,16 5:1,12
 7:15 9:7,13,16 10:15
 13:22 14:12 21:5,20
 22:9 23:17 24:2,8
 25:6,12,16,17,18,19
 26:1,22 27:6,8 34:3,5
 40:18 41:3 56:20
 72:16 79:8 85:19
 86:13 87:2,8,10 90:18
 90:18 93:11 94:4
 96:13 99:9 100:4
 101:3 102:21 103:18
 104:11,13 105:19
 108:10 113:10,18,19
 113:22 114:2 123:10
 130:8,11,14 131:21
 142:18 156:4,7
 163:21 164:18 165:18
 166:9 167:11,19
 168:2 171:6 180:4
 192:14,15 193:10,16
 193:22 194:3 208:17
 222:3,22 223:12,14
 236:22 241:7,11
 242:8 246:13 247:4
 249:3 251:16 252:13
 254:13 263:15 266:17
 268:10 276:3 314:10
 314:14 315:2 334:12
Shannon 33:3
shape 261:13,21
shaping 312:14 313:7
 313:12
share 163:12 169:12,15
 267:22 278:8,9,9
 283:1 286:14 298:13
 298:15 332:15
shared 131:6 290:10
 295:19
SharePoint 195:5,6,13
 207:14 208:1 292:7
sharing 295:22 327:12
 327:15
sheet 140:6
sheets 212:5,7
shift 45:21 56:12 103:8
shifted 102:5
shifting 102:20 150:22
shifts 105:17
ship 37:12
shirt 125:13
shore 278:13
short 7:16 13:18 15:16
 49:11 68:20 189:10
 189:15 312:7 319:4
shortened 324:12
shortly 117:7 119:5
 181:10 310:11
shoulders 172:20
show 311:21
shower 132:21
showing 214:20
shows 75:20
shut 71:22 120:15
side 57:17 63:1,1
 143:16 198:16 217:11
 221:19 225:9 287:13
 287:14 308:4 324:21
 336:6
sides 41:4,12,15 44:20
sight 170:1
signed 116:12 140:3
 148:7 149:5,7,10,11
significant 13:6 15:7
 18:16 22:21 24:17

57:15 110:7,11
 167:15 217:10 266:5
 280:10 326:16
significantly 270:9
signs 335:7
silent 200:21 201:4
 232:14 235:12 307:1
Sill 65:3
similar 42:11 46:6
 111:6 112:14 190:6
 221:15 242:13 314:7
 314:22
simply 17:6 39:8 49:15
 49:17 83:20 127:3
Simultaneous 314:2
 327:18 333:6,20
single 24:17 211:1
 245:10 315:13
sir 49:9 52:17,19 55:4
 55:21 57:2,3 58:9
 59:7 60:2 68:16,19
 69:20 70:8 71:13,21
 72:4 73:15 75:12 78:4
 81:5,10 139:17
 140:14,15 141:20
 157:3 158:6 162:17
 162:18 231:11 235:21
 319:22 324:3 327:9
sister 96:16 128:15
 283:1
sit 93:7,13,15,22 95:17
 131:21 149:14 157:6
 157:7
site 195:5,13 208:1
 292:8 316:2 328:21
 329:21
sits 158:7 220:17
sitting 71:4 132:10
 140:17 147:17 157:10
 181:19 299:4 321:20
 338:12
situation 45:11 81:14
 93:18 94:1 145:21
 201:12 216:14 220:14
 316:19 336:12
six 13:10 50:6 86:21
 97:18,21 103:7
 121:10 122:16 144:13
 147:12 156:13 170:10
 176:11 180:8,12
 211:2 212:17 252:11
 261:9 265:13 267:1
 275:21 283:9 290:2
 311:18 312:8 321:20
Sixth 247:20
size 29:19 86:20
sizes 182:7
SJA 81:21 178:11

187:16 315:4 320:10
SJAs 81:16 173:21
 320:15
sketchy 83:12
skill 17:9 127:2 193:7
 193:21 194:20 266:2
skill-identifier 17:8,16
 56:2
skill-identifiers 17:11
skills 9:16 16:21 22:6
 27:22 28:11,14 49:22
 54:6,7,18 88:11
 150:10 178:8,9
 180:19 252:17 254:18
slide 203:11 209:10,11
 211:17
slides 156:12 203:1
slightly 228:4
slots 319:21
slowly 221:6
small 29:19,20 35:10,11
 78:5 93:16 127:17
 150:18 182:7 194:10
 261:16 275:21 276:13
smaller 288:13
snapshot 89:8
social 291:2,7 293:6,22
SOICs 321:1
soldier 74:6,8
Soldiers 281:8
solely 181:17,17 208:15
 264:1 314:10
solicit 95:21
solid 320:13
solo 46:16 280:16
solution 231:2
solve 216:20 222:16
 333:2,11
somebody 46:21 49:17
 49:19 52:3 72:16
 73:21,22 81:8 199:17
 199:22 200:1,20
 201:3 225:20 227:13
 235:16
somebody's 199:20
somewhat 48:22
sooner 149:11 320:20
SOP 168:7
sophisticated 292:12
sorry 124:6 152:21
 154:4 176:11 178:22
 215:1 219:5 243:21
 245:13 247:7 249:17
 300:14
sort 60:9 75:14,21
 123:10 125:7 146:16
 158:13 160:11 169:22
 170:18 171:10 187:16

191:7 197:3 220:15
 221:18 235:18 237:15
 241:20 319:17 334:4
 334:8,12,13
sorts 312:5
sound 142:8,9 219:18
sounding 295:8
sounds 38:17 151:11
 230:4 236:8
source 195:16 258:16
 329:4
sources 96:15 269:20
spare 121:1
spark 338:2
sparsely-furnished
 122:22
Spath 264:6
speak 20:5 86:11 99:11
 128:19 134:20 163:15
 175:7 201:10 218:3
 239:14 240:2 251:11
 259:11 264:9 275:4
 284:5,5 285:18
 298:12 310:8 314:17
 320:1 331:19
speaker 72:8 171:15
 317:14
speakers 276:5 318:11
speaking 67:11 120:16
 224:13 301:8 303:5
 308:5,10,17 314:2
 327:18 333:6,20
speaks 35:21
spearheading 205:11
special 3:4,8 6:2,5 9:12
 10:2 12:6 14:22 20:19
 21:9 23:20,22 24:3,8
 24:19,22 25:3,5,7,21
 26:7 27:3,3,4 31:15
 32:3 51:7 52:1,22
 58:20 64:16 65:13
 82:14 83:6 90:14,17
 91:2,19 92:1,2,15
 100:5 101:2,2,12,13
 103:6,17 104:7,20
 105:14,16 107:22
 108:3,5,6,7,21 109:9
 109:16,19,20 110:2
 111:19 113:2,17
 118:9,13,17 119:2,3
 119:11,22 121:15,18
 121:19 122:13,18
 135:9 136:19 137:15
 137:19 138:13,17,20
 138:21 151:16 152:1
 152:5,5,13,16,20
 153:1,7 154:2,12,17
 155:14,16 158:18

216:4 249:8 250:2,3
 252:11 274:16 276:9
 278:5 297:8 299:12
 309:7,17
special- 104:16
Specialist 34:17
specialists 124:13
 208:12 265:14 267:20
specialize 109:16
specialized 103:14
 153:3 265:5,22
specializes 142:17
 293:21
specialties 36:15
specialty 15:9 37:8
specific 22:9 28:12
 44:18 84:12 98:12
 164:21 171:1 177:8
 188:20 195:2 247:15
 250:9 254:20 263:10
 264:2 268:3 272:6
 278:4 288:8
specifically 9:15 13:22
 14:1 23:17 38:18
 73:15 74:19 78:7
 107:15 137:3 168:2
 174:1,17 192:14
 194:3 201:18,20
 203:12 257:20 273:22
 279:3 287:8 307:1
 325:12
specifics 108:14
specified 200:14
 307:12
spectrum 50:7 119:8
 207:9
speed 319:19
spend 64:15 98:3
 147:15
spending 118:8
spent 177:14 180:14
 264:2
sphere 234:4
spiffy 199:6
spite 126:6
spoke 128:6 219:20
 233:9
spoken 171:9
sponsored 170:5
 182:11,19 187:1
 192:6 267:7 268:15
 270:18 296:16
spot 52:12
spotting 211:14
spousal 307:10,11
spread 180:17 290:19
spreadsheet 59:11,13
spring 267:11 314:6

- staff** 3:15,18,20 6:17
8:17 20:8 22:3 30:11
65:22 66:11,16 74:13
78:8,9,16,17 88:2
93:20 95:22 97:8
109:4,15,22 110:12
125:5 149:21 173:12
178:5,7,18 181:4
190:20 208:9 262:3
266:22 276:10 281:18
285:3 287:2 289:12
293:5,11,15,19,20
297:21 315:5,8 321:2
328:20
- staffed** 219:1 289:8
- staffing** 218:15,16
259:8 272:8
- staffs** 281:20
- stage** 99:1 141:3
160:17 295:4 301:11
- stages** 304:6
- staggered** 288:14
- stakeholders** 276:6
279:2
- stakeholders'** 297:18
- stand** 72:18 158:18
- standalone** 278:22
- standard** 168:7 178:3
236:12 243:5 245:19
- standardizing** 269:11
- standards** 15:19 234:2
- standing** 67:13 140:21
255:10 284:4
- standpoint** 41:8 71:16
83:15 162:1
- start** 8:12 11:11 30:6
61:2 80:5,8 115:20,21
133:16 137:10 158:15
164:12 186:20 249:5
256:4 263:17 288:9
288:17 310:13 314:11
- started** 37:4 113:21
119:15 141:14 151:2
- starting** 86:21 97:19
146:16 289:6
- starts** 289:4
- state** 70:6 131:9 200:6
213:11 217:1 243:1
253:3
- State's** 133:15
- stated** 28:22
- statement** 23:6 125:17
125:18 140:9 142:16
- statements** 102:16
147:20 280:7
- states** 1:1 13:18 91:10
95:12 103:21 128:3
144:3 164:10 170:12
176:3 200:4,5 253:7
- stationed** 175:20
191:11
- statistically** 77:6
- statute** 116:5,11
- statutes** 187:11
- statutory** 79:19
- stay** 84:3,5 85:2 131:17
227:19
- stayed** 77:18 325:6
- STC** 130:5 302:5
- STCs** 134:2 303:22
- steal** 283:10
- step** 15:22 88:20
135:20 242:3
- Stephen** 2:21 5:18
185:3 202:15
- Stiletto** 130:22
- Stingl** 3:21 4:2 7:3,9
340:9
- Stone** 1:19 7:19 68:5,6
70:21 72:6 75:10 76:5
76:19 77:8,14,18 78:1
80:9 81:3,6 82:1,4,8
155:20,21 157:14
158:11 160:19 161:11
199:16 222:1,2
227:19 229:8,13
230:20 231:8 232:9
232:20 233:2,8
235:19 236:1 249:16
316:7 318:6,10,13,17
319:1 324:1 325:1,13
325:17,22 326:2,5,10
327:1,7,10 333:4
- stood** 286:19
- stop** 55:9
- stopped** 206:11
- story** 129:18
- Stout** 24:20,20 25:8
84:11 259:12 289:18
- Stout's** 25:4
- Strack** 123:13
- straight** 99:22
- strangle** 123:22
- strangulation** 123:11
123:17
- strangulation-teaching**
123:14
- strategic** 105:16 146:7
148:2 301:19
- Strategies** 113:9,10
- strategy** 28:14 197:3
240:7
- streamlined** 227:12
- strengthen** 297:1
- strict** 15:19
- strictly** 72:13 140:3
153:13
- strikes** 222:7
- strings** 88:6
- stripping** 319:9
- strive** 258:2 339:20
- strong** 56:22 186:3
- strongest** 224:22 225:5
- structure** 46:11 50:9,10
54:9 103:10 203:15
203:21 209:9 219:21
239:19 240:11
- structured** 220:22
- structures** 203:16
- struggle** 334:8
- struggling** 140:18
- student** 18:1 22:12 23:4
27:15 182:6 276:17
276:19 284:1
- students** 13:1,2,2,12
22:16 24:14 26:11
28:21 34:5,8 35:9
55:12 57:11 79:11
182:5 183:17 258:16
261:5,8,10,15 280:9
283:7
- study** 173:8 194:22
- stuff** 198:4,5 209:1
210:16
- style** 28:13
- subject** 28:18 73:15
123:17 168:13,14
174:18 212:21 276:2
277:18 282:20 293:21
- subjects** 281:4
- submission** 317:9
- submissions** 10:12,21
- submit** 169:2 248:4
308:9,12 335:13
- submitted** 20:8 126:4
- subordinate** 78:21
95:15,18,20 176:9
- subset** 90:13,13,14
152:17
- substantial** 93:20 119:6
- substantially** 139:12
192:21
- substantive** 275:22
306:19
- substitute** 49:12,15
- substituted** 104:6
- success** 311:3 321:13
- successes** 253:14
- successful** 54:21
180:18 245:5,18
248:10 253:10 286:22
310:22 312:7
- successfully** 74:7
180:10 286:3
- successive** 13:14
- Sudendorf** 47:8 282:6
- suffering** 118:2,7 333:1
- suffice** 186:3
- sufficient** 217:19 339:2
- suggest** 297:16
- suggestion** 134:16
- suggests** 56:7
- suit** 199:6 243:15
269:13
- summarizes** 92:11
174:16
- summary** 92:17 100:2
102:9 106:11 119:6
164:16 169:18 265:7
- summer** 86:21 97:20
267:11
- Sunshine** 7:22
- superior** 234:13
- supervise** 54:3 91:20
94:10 100:14 176:16
180:1
- supervises** 111:11
- supervising** 100:20
178:5
- supervision** 108:8
134:1,4 179:21 194:8
205:18
- supervisor** 59:22
166:10 169:4 200:1
200:17
- supervisors** 17:15 63:3
95:9 127:1 208:6
211:21
- supervisory** 14:15 39:3
50:9,13 101:1 146:21
147:11 168:6 319:20
- supplement** 45:10
66:12 147:5 182:10
- supply** 237:7,13
- support** 12:5 107:10
109:19 124:12 176:10
181:2 190:19 194:7
208:9,12 259:21
289:12 293:5 295:6
295:12 302:22 309:16
332:1
- supported** 310:20
- supporting** 75:21
- supports** 226:1 276:22
- supposed** 190:5
- sure** 11:21 44:6 54:15
60:14 69:12 73:17,21
80:18 95:10 111:18
115:15 116:1 131:19
148:20 149:1 160:1
169:7,22 230:9,12
233:4 234:17 236:1

259:10 315:20 333:21
337:19,22
surprising 329:11
surrounded 221:4
survey 174:6 241:20
261:11,11 283:6
survives 73:22
survivor 105:20
survivor's 106:5
survivors 106:7 139:22
140:5 162:16 268:11
suspicion 83:19
sustain 55:10 126:6
sustaining 16:11
sustainment 265:5,22
SVC 14:22 18:13 24:12
24:14,16 25:9,10 26:5
27:11,15 31:16 42:19
42:20 57:8 58:22 59:2
59:3 82:18 84:10,17
85:4 121:16 137:13
138:4 139:3,11 140:5
140:9,11,12 153:1
155:4,10 156:13
158:1 161:8 162:8
168:17 252:3,4,21,21
254:14,22 255:6,8,14
255:18,20 256:8,9
257:18 258:2,3,5
259:2 260:4,12
261:20 262:2,10
263:1,4,11,18 264:3
266:15 275:3,5,18
277:7 278:7,22
280:12,21 281:15
282:17 283:12,20
284:2,3,5,10 285:15
288:10,20 289:3,13
289:22 290:10 296:21
298:20,21 299:5
300:3 301:15 302:4,6
313:2 314:18 319:11
319:14,16 321:21
326:13 329:1 330:7,9
336:17 337:22
SVC's 276:19
SVC-related 283:14
SVC-specific 260:22
SVC/VLC 253:18
265:10 290:2 299:9
SVCs 18:18 27:12,14
54:16 59:1 83:10,16
84:18 109:10 114:16
136:20 137:5 138:6
139:13,21 154:21
250:6,22 251:2,18
252:8,9,16 253:6,13
254:6 255:2 256:3,15

256:21 257:12 258:6
258:7,22 259:20,20
260:1,7,19,21 261:17
264:1 270:16 272:7
276:11,12,17,17
277:3 278:14,15
279:17 281:13 309:13
312:13 317:17 319:6
321:20,21 322:11,14
322:16 323:1
SVCs' 254:17 261:20
SVIP 103:16 104:1,6
105:1
SVIP- 104:14
SVIP-certified 103:1
SVIP-type 104:16
SVNCOs 111:12
SVP 117:15,22 118:4,15
250:8 252:22 279:4
SVPs 111:12,15,17
112:8,17 115:13
117:6,7 119:13 250:6
250:7,22 255:2
SVU 47:9 90:21,21 92:5
118:13
SVWLs 111:12
sweet 52:12
switched 34:7
sworn 148:13
swung 225:14
symposium 253:18
265:16,17 266:18
267:18 291:19 292:7
293:3,16 294:2,7
333:22
symposiums 250:16
synchronization 16:21
17:1
synchronized 16:16
synopsis 262:6
system 17:19 36:18
40:4 50:3 106:1
166:17 185:13 188:21
219:14 222:20 236:8
237:19 239:8 267:15
268:8 270:13 321:5
323:21
system's 33:16 268:10
systems 7:15 37:3 51:4
101:9

T

TAASA 253:4
tactical 105:13
tactics 253:19
tag 325:21
tailor 168:21
tailored 251:18

take 44:19 59:13 67:3
71:1 85:10 102:16
105:21 122:12 129:19
134:17 151:17 161:7
164:14 185:4 205:7
213:12 224:17 225:11
229:18 231:4 232:18
232:21 233:5,14,17
235:15,17 248:15
278:12 282:13 288:1
300:11 307:6 317:18
320:21 322:3 335:21
337:5 339:13,13
taken 137:20 151:19
192:16 264:5 306:22
310:17 317:10 320:20
takes 79:9 90:7 98:16
138:10 190:17 198:2
204:20 206:1 217:7
talented 90:12,16
talents 51:9
talk 46:1 47:13,16 68:2
68:7 79:12 80:1 84:8
96:7 117:18,19 118:5
134:8 138:18 139:13
157:18 163:16 177:9
186:12 203:14 209:11
235:1,2 240:4,15
250:1,8 273:21
274:15 278:18 280:2
291:19 317:15 328:12
330:11 334:1 335:8,9
335:18 338:14 339:18
talked 92:5,19 115:18
117:14 143:19 209:14
talking 11:21 36:10
59:22 77:9 148:22
154:5 157:6 234:16
235:14 241:6 310:18
322:3 328:5,16 330:5
334:20
talks 246:21
Tampa 32:4
targeted 105:6 279:21
targets 78:18
task 9:10
tasked 179:19 263:19
taught 66:5 125:14
170:6,9,20 181:19
182:8 279:18 282:10
Taylor 1:20 7:19 48:5,6
52:18 54:13 58:7 59:5
60:3 135:3,4 136:13
139:5 141:19,22
156:1
TCAP 16:6 17:5 62:7
101:8 103:21 104:20
105:5 107:8,17,21

108:9,19 109:11
111:11,15 112:5
114:6 116:6,7 119:12
120:20 125:13 126:17
128:8 129:5 130:16
131:13,15 141:12
142:17 154:16 161:16
161:19 162:3 212:6
TCAP's 107:9
TCP 147:13
TDAC 28:1
TDS 166:3 167:14 168:5
168:7
teach 18:21 61:6,17
65:16,21 73:12,14
74:19 75:11 79:18
81:16 111:4 145:4
166:22 168:14,16
183:3 270:16 277:13
teacher 135:22
teaches 65:11 123:18
170:15 262:15
teaching 59:14 124:16
258:11 261:7 280:19
team 67:3 98:14 99:8
105:6 109:20 110:2,7
124:15 138:15 199:1
210:22 250:10 259:16
267:18 294:12 295:6
297:1
teams 22:17 34:3 47:15
62:13 176:19 179:22
180:17 198:15 258:3
technical 8:13
technically 326:19
technique 28:13 102:13
146:21,21 337:19
techniques 102:18
253:20 257:13 276:4
279:15 337:11 338:2
technology 250:14
254:15
teeth 210:16
telephone 278:11
tell 39:1,8 40:9 42:1
60:11 62:8 72:8,9
83:13 89:8 128:21
131:22 132:20 139:14
139:16 155:1 211:20
216:9 225:3 232:1
telling 246:1 336:16
337:18
Temple 205:13
ten 172:5,11 177:17,20
178:18 232:1 293:4
tenant 65:20
tend 45:3 76:14 236:4
321:5

tends 39:21
tension 136:18
term 327:5
terminal 185:3
terms 38:17 49:5 56:19
 57:9 69:11 72:10 83:9
 84:10 87:1 89:9 91:11
 97:22 98:1,5,6 138:2
 143:2 151:22 177:13
 214:17 215:7 216:1
 327:3
Terri 2:19 5:16 184:3
terrific 142:8
territory 196:10
test 229:19 233:14,17
 315:21
tested 41:22
testified 94:19,22 320:7
testify 29:4 233:18
 234:4 281:17
testifying 304:3
testimony 33:6 99:19
 110:21 136:17 164:1
 196:6 202:18 248:13
 264:17 274:12 285:6
 340:7
testing 28:21
Texas 200:5
thank 8:3,4,16 11:6,9
 11:20 19:17 20:9 29:3
 29:6,12 32:14,19,22
 37:19,20 42:7,9 43:6
 43:9,22 48:3,4,6,7
 52:18,19 58:7 59:5
 60:3,4,7,7 61:3 64:1
 65:9 68:4,6 84:15
 85:6,7 86:2,4,5,11
 91:5 99:11,13,18,20
 106:15,17,22 120:2,4
 128:18 134:20 135:1
 135:2 137:11 141:22
 142:1 146:18,19
 148:3 155:19,21
 162:22 163:7,11,22
 164:3 174:20 175:4,6
 183:22 184:15,18,21
 202:11,12 213:1,3
 215:5 218:8,19
 219:16 221:22 236:17
 248:6,12,17,21
 249:10,19,21 264:8
 264:11,19 273:20
 274:5,6,14 275:15
 284:16,17,22 285:2,8
 288:22 299:18,21
 308:21 311:11 316:6
 327:10 340:5,11
thankfully 327:21

thanks 8:20 49:9 135:4
 340:7
theme 302:6,8
theoretically 190:11
theories 23:2
theory 302:6,8
they'd 229:11
thing 55:11 56:17 62:18
 75:3 81:9 116:2 126:3
 139:21 159:10 170:18
 197:4,5 204:2 206:7
 207:12 208:8 211:7
 211:20 212:4 224:4
 224:21 225:1 227:2
 283:10 300:18 328:20
 337:10 338:3,7 339:7
things 21:4 37:6 38:3
 55:9,15 61:7 72:9
 75:15 80:19 81:2
 82:12 98:1 114:11,14
 117:20 120:20,21
 123:5,19 131:15
 139:17 140:22 141:16
 141:17 147:20 151:21
 158:18 169:8 195:19
 199:19 201:6 210:21
 213:6 218:17 228:22
 316:8 329:11
think 16:5,6,8 34:12
 45:1,6,9 47:4 48:1,18
 49:5,11,14 50:7 52:11
 52:15 56:1 60:1 71:16
 72:10 74:8 76:1 77:5
 80:9 83:2 85:10,15
 97:1,13 134:10 137:1
 139:9 140:2,14
 146:13 147:3 148:6
 148:17,18 156:10,18
 157:15 158:2 171:9
 185:21 187:6 195:17
 203:13 204:13 210:1
 213:16 216:8 217:5
 217:19 218:5,6 219:9
 222:4,10,21 223:6
 224:8,16,18,21 225:7
 225:13 228:6 229:3
 229:17,22 230:7,13
 230:22 231:8 232:5,6
 233:3,5 234:1,19
 235:2,13,14 236:5,10
 236:12 240:20 242:22
 243:7,9 245:10,19
 248:2 249:1 250:7
 276:6 277:9 301:12
 301:14,16 302:12,13
 302:19 303:4,9,10,10
 303:15,18,19 304:17
 304:19 305:12,13,17

306:18 308:6 310:11
 310:21,21 319:3
 320:14,16 321:8
 322:2,7,11,17 323:5
 323:11,17,18,18,21
 323:22 324:3 328:19
 329:8,13,22 330:3
 331:1,6,9,10,11,16,17
 331:18,22 337:22
 338:3,7,13,22
thinking 133:8
third 21:14 22:15 35:17
 83:7 117:15 159:13
 167:9 180:12 189:16
 206:7 212:11 279:9
 296:15
Thirty 216:2
Thompson 110:1
thought 45:1 76:20
 126:2 137:4 224:20
 224:22 228:14 232:9
 233:21 253:22 317:6
 318:6
thousand 35:21
three 10:1 15:16 18:11
 18:16 19:1 21:4,18
 22:13 24:6 27:20
 34:13 37:17 52:2 60:9
 67:22 68:11,22 71:19
 79:7 91:9 93:1 105:13
 108:20 109:12,13,15
 110:18 116:6 127:16
 145:8 147:13,16,20
 149:18 156:16,22
 157:5 159:9 176:3
 182:6,16 189:15
 195:18 201:13 209:19
 217:21 221:17 233:9
 255:17 256:13 257:20
 258:3 260:3 262:20
 265:2,17 286:18
 294:17 297:5 309:7,8
 309:10
three- 324:5
three-day 27:22 67:1
 105:11
three-quarters 190:21
three-week 68:17
three-year 34:20
throw 188:6,17
thrust 187:3
tie 193:22
tied 131:4 181:15
 226:20
tight 55:1
tightknit 194:10 278:11
time 10:8 12:12 14:4,8
 16:12,17,22 17:14

20:6 38:16 41:21
 46:19 48:18 53:7 56:3
 56:4 61:22 63:20 75:9
 80:18 83:20 85:9 88:8
 89:8 93:12 94:14 98:2
 98:6 114:15 116:16
 117:17 118:8 120:2
 124:13 127:10 129:1
 129:3 132:20 133:20
 136:19 137:13 139:19
 140:17 149:8 163:12
 174:19 184:20 189:10
 189:15 190:9 198:3
 212:20 217:8 224:19
 229:18 233:11 236:16
 246:2,10 255:8 259:1
 274:5 279:12 282:3,5
 288:18 292:11 308:7
 309:9 310:12 318:21
 324:9,15 334:14
 335:21
timely 62:14
times 22:14 28:1 71:19
 104:4 132:1 138:11
 141:4 170:10,20
 181:15 240:8 244:14
 244:20 279:7 300:7
TJAG 111:16
TJAG's 12:2,14
TJAGLCS 122:4
TJAGLCSJ 320:5
TJAGs 331:18
to-be-determined
 307:13
today 7:10 8:8 9:18
 10:5 20:6 29:4 32:12
 33:2,8 37:19 39:6
 43:1 48:7,19 53:5
 59:19 62:8 85:9 86:12
 99:12 106:16 135:5
 138:6 155:8 164:8
 165:22 171:10 175:7
 175:12 177:9 183:19
 186:2 189:12 202:3
 214:14 219:20 250:2
 250:6,19 260:11
 264:9,21 274:15
 275:4 284:13 285:9
 295:20 300:1 340:10
today's 8:6,9 9:9 10:11
 10:17 11:4 107:13
told 225:4
Toledo 56:9
Tom 1:20 7:18
ton 80:3
tone 101:22
tonight 337:18
tool 230:13 280:19

- tools** 232:3 250:18
top 131:17 190:3 248:8
topic 11:4 107:13
 158:16 160:9 175:12
 291:15
topics 27:6 65:7,7 68:3
 240:4 257:11 268:4
 272:17 290:21 299:6
Tort 244:4
total 176:16
totally 228:3 323:8
touch 233:11 335:12
touched 208:10 233:12
touches 313:4
tough 76:20 324:9
tour 89:21 167:13 171:4
 180:10,13 185:19
 186:21 190:10 205:14
 210:3 267:16 288:2
 312:7,8
tours 13:14 52:4 59:1
 336:4
town 207:17
Tracey 1:21 7:18 60:6,7
 61:19 62:16 63:5 64:1
 65:9 67:8 68:4 116:3
 148:4,5,22 151:14
 152:13,19 153:17
 155:19 219:17,18
 220:9,13 221:9,14,20
 311:12,13 312:10
 313:14,22 316:6
track 38:8 53:2 61:7
 68:15 100:10,12
 103:2 169:8 285:16
 285:20
tracks 272:13
trade 38:15
tradition 320:14
traditional 23:7
traditionally 30:14
 150:20
train 12:17,19,22 13:12
 19:7 33:9,13 36:9,12
 49:16 54:3 62:9 72:11
 95:2 98:6 105:15
 108:15,15,15 110:5
 112:1,1,1,1,22 114:11
 117:3 124:12,13,15
 191:16 194:6 197:18
 198:6,8 215:10
 270:16 275:1
trained 20:16 28:8
 49:22 63:18 90:16
 94:4 98:7 119:19
 171:11 269:14 298:16
 315:1 318:4
trainers 111:16
- training** 2:2,8,16 3:4 4:5
 5:1,11 6:1 9:10,15
 10:3 13:8,19 14:1,6
 14:19,19,21 16:2,3,4
 16:5,6,8,16 17:14,20
 20:14 21:6,8,8,11,12
 21:15,17,18 22:2,8,10
 23:11,15,16,19,22
 24:10 25:11,13 28:6
 28:11 29:22 30:3,8,12
 30:16 31:1,8,17 32:8
 32:11 35:3,6,9,19
 36:1,16 37:15 38:8,12
 38:17,19 39:9,11,12
 40:6,10,12,19 41:11
 41:11,13 42:12,14
 43:15,19,20 44:5 47:2
 48:21 49:7 54:5,19
 55:6,11 58:5,19 60:1
 60:16,21 62:6,7,13,20
 62:21 63:12,13 64:2,4
 66:14,16,17,18,21
 67:3,7,9,12 68:14,17
 69:17,19 70:1,11,12
 70:16,17,18 71:12
 72:2,11 78:2,16 79:1
 82:12,15,21 83:9,12
 83:14,19 84:19 85:18
 86:12 92:7,11,14,14
 92:15,15,17 96:5,8,8
 96:9,13,14,21 97:3,4
 97:7,14 98:5,10,15
 99:5 100:2,11 101:10
 101:12,12,16,19,22
 102:5,20 104:12,13
 104:21 105:1,2,5,6,11
 105:14 106:12 107:14
 107:18 108:18 109:2
 109:11 110:8,17
 111:1,3,7,9 112:5,12
 112:19,20,21,21,22
 113:3,7 114:8,17,22
 115:15,16,21 116:1
 117:6 118:12 119:4,8
 123:3,9 124:21 126:6
 126:10,16,18,19,20
 126:21 127:17,21
 128:13,16,22 129:2
 129:12,18,20 130:4,6
 130:7,9,13 131:16,20
 133:12 135:19 136:5
 136:9,10 137:3 138:7
 138:14 140:12 141:13
 142:7 143:5,8,10,21
 146:15,21 147:10,14
 154:16,17 156:21
 163:20 164:16,22
 165:20 166:8,18,19
- 166:21 167:4,8,10,16
 167:17,18 168:3,4,5,9
 168:10,17 169:2,5,8
 169:13,19 170:1,4,5
 170:22,22 172:12
 173:18,20 174:15
 175:9 176:9 180:18
 180:20 181:2 182:11
 182:17,19,21 183:1,9
 186:12 187:3 189:19
 189:19 190:1,6,7,12
 190:14,15,17 191:2,5
 191:8,9 192:1,3,6
 193:3,4,5,7,10,15,19
 193:20 194:4 195:11
 195:13,16,20 197:11
 197:13 198:12 203:13
 203:18 204:21 205:1
 205:11,19 209:2
 211:2,8,14 212:8
 215:10 216:18,20
 219:2 238:20 249:3
 250:3,5,12 251:3
 253:1,5,18 254:8,9,15
 254:16,20,21 256:6
 258:19 259:1,4,8
 260:18 261:3,22
 262:1,3 263:1,8 264:9
 264:21 265:2,3,4,4,5
 265:7,12,15,18,22
 266:1,9,14,17,21
 267:4,17,21 268:5,15
 268:17 269:5,8,11,13
 270:2,5,8,20 271:12
 271:15,21 272:3,9,14
 272:16,21 273:1,15
 273:22 274:2,16
 275:3,5,6 278:5,13
 279:14 281:21 285:13
 286:13,16 288:5,8,21
 290:8,14,18 291:6,8
 291:15,16,17,18
 292:3,5,12,16,22
 293:3,6,12,16 294:2,7
 294:14,18 295:9,11
 295:12,15 296:16
 297:1,3,12,14,16,20
 298:2,4,5,8,10 299:1
 299:4,9,9,12 300:10
 312:13,15 313:17,21
 315:4,5 319:20 328:2
 332:22 333:2,10,14
 335:4 336:13 337:14
trainings 70:21 71:3
 104:1 113:5 115:12
 119:16 126:12 127:4
 130:10 135:18 141:11
 191:20 259:6,18
- 262:20 292:14
trains 28:11
transcribed 8:9
transcript 8:10 124:4
transfer 27:17 74:8
 77:1,3,6,12,16,19
 286:7
transferred 77:10,11
transforming 119:20
transition 155:16
transitional 314:15
transitioned 262:9
transitions 50:5 52:10
transparency 124:20
traps 339:15
trauma 118:2,3,7
 256:21 268:9 291:4
 291:13 293:12,19
 332:21 333:1 334:2,5
 336:7
traumatized 227:22
travel 173:10,19 238:19
 261:17 298:2
traveling 105:12 173:22
travels 94:15
treating 262:14
tremendously 50:8 57:16
tremendously 181:1
trenches 112:9
trend 272:1 273:17
 310:12
trends 211:3 328:17
Trexler 3:20
trial 2:10,11,12,13,14
 2:17,18 5:3,5,6,8,10
 5:13,15 9:12 14:11,12
 14:20 20:18 21:9
 22:17 25:21 26:5,7,19
 27:2 28:2,3,8 31:14
 34:2,3 39:3,5,14,20
 40:1,1,22 41:3 42:22
 43:16 44:7,11,16
 45:20 47:18 51:9 52:4
 52:21 57:7 58:3,10
 59:9,12,16,17 61:21
 63:1 71:1,14 77:13,17
 83:22 85:22 86:20
 87:2,12,14,21,22 88:3
 88:7,12,15,20 89:7,9
 89:19,22 90:4,9,15,22
 91:13,17 92:5,14,22
 93:7,9,13,17 94:7,15
 95:1,4,15 96:2,6,12
 97:19 98:2,4,19,19,22
 98:22 99:8,16 100:3,7
 100:16,19 102:9,21
 103:3 104:4 105:7,21
 106:4,20 107:7 109:8

112:2,3,14,15,18,22
 113:1,12,22 114:10
 115:4,6,13,17,20
 116:10,15 117:3
 119:1,10 120:8 121:4
 121:5,8,15,20,22
 122:8,16,19 125:11
 126:12,13,18,19,21
 127:3 129:14,19
 130:5,7,15 131:22
 132:3,18 133:11
 136:4 137:16,17
 138:12,21 139:9
 143:10,14,17 144:14
 144:17,20 145:19,20
 146:7 148:7 149:5,6
 151:2 152:4,17 153:6
 156:5,13,17 157:5,8,9
 157:11,15,21 158:3
 162:1,14 163:18
 164:6,20 165:11
 166:20 169:6,16
 171:6,8,19,21 172:6
 173:21 174:6,7 175:1
 175:8,13,21 178:14
 180:3,13 181:9 182:2
 182:15 193:7,21
 198:15 199:1,21
 205:12,15,15 206:3
 210:8 212:19 214:20
 219:21 220:2 221:14
 221:16 222:6,22,22
 223:2,9 224:1,11,17
 227:6,16,21 228:5,12
 229:6 230:3,5 231:12
 238:9,17 242:4 245:7
 251:22 252:17 257:17
 262:6 264:2 267:2
 273:14 279:19 286:7
 287:13,17,18 295:3,6
 297:11 299:2,12
 301:11,11,20 302:5
 303:14 305:7,15,16
 311:18 312:8
trial-certified 88:9
 149:12
trials 27:22 82:15,16
 103:14 114:13 135:17
 156:8,16,22 157:5,10
 157:13,17,19 158:8
 188:14 220:18
tried 17:14 41:22 45:7
 45:15 46:16,21 49:2
 49:14,19 50:1 52:3
 122:17 156:7 309:5
tries 46:7
trip 10:5
troops 205:10

trouble 74:3 239:13
true 46:15 151:21
 152:10 156:19 240:22
 300:2 324:1 327:17
truly 133:15 226:15
trusted 185:7
truth 123:2
try 12:11 34:3 46:14
 48:20 51:19 52:6
 91:21,22 95:19
 124:17 132:11,13
 133:2,2 145:2 148:11
 157:18 168:1 186:21
 192:3 196:19 218:3
 280:6 302:8 315:8
 320:18 335:9 339:7
 339:20
trying 34:9,19 49:18
 52:14 73:9 112:10
 131:17 132:11 160:5
 176:14 204:6 229:17
 322:13 339:9
Tuesday 321:17
tuned 84:4,5 85:2
tuning 273:1
turn 54:17 59:13 176:16
turned 111:1 123:17
 171:19 240:22 269:10
turning 35:6
turnover 126:7
tweaked 54:20
twice 28:2 117:16
two 19:11 21:2 23:16
 24:5 25:14 48:20 62:6
 63:15 71:19 78:6
 80:22 83:3 87:3 88:4
 88:14 91:4 92:22 93:3
 96:7 104:10,16
 111:17 115:3,9 116:6
 116:15 125:1 142:16
 144:13 146:3 147:22
 148:5 159:6 167:14
 171:5,18 177:12,14
 180:6,14 181:14
 189:14 191:21,21
 196:8,16 221:13
 222:2 226:3 263:14
 275:11 285:21 289:10
 289:15 291:12 305:22
 309:5 318:15 320:2,3
 322:4
two- 65:17 279:17
two-day 65:15 268:15
two-person 22:17 34:3
two-thirds 147:15
two-week 114:1 118:12
 181:9
two-year 61:11,11

210:6
twofold 36:9
Tyer-Witek 2:6 4:17
 32:17,22 44:2 59:7
 63:6 66:19 67:10
 70:13 71:20 78:15
 80:13 81:5,10 84:20
 85:5
type 100:5 103:16
 104:20 129:17 150:12
 151:3 165:1 167:20
 188:21 203:19 210:12
 210:13 245:12 263:4
 266:1 304:6,20 328:7
typed 126:2
types 94:3 96:7 140:21
 167:9 168:19 206:5
 265:3
typical 171:4
typically 39:18 40:17
 46:14,16,20,21 69:7
 78:7 88:2 89:20 121:5
 121:9 144:20 149:16
 149:17 171:17 180:5
 307:20 318:14

U

U.S 2:3,4,5,6,9,11,12,13
 2:14,17,18,21 3:7,9
 3:12,14 4:6,10,13,17
 5:2,4,6,7,9,13,14,18
 6:4,8,12,16 11:13
 19:20 29:10 32:3,17
 72:12 85:22 99:16
 106:20 120:7 163:18
 164:6,19 175:1 184:3
 202:15 232:11 249:7
 264:14 274:9 285:3
UCMJ 9:8 148:11
ultimately 77:15 89:5
 90:8 151:18 153:11
 287:4
unable 137:21
undergo 232:7,8
underlying 94:18
understand 101:19
 159:16 160:15 201:1
 220:2 237:1,3 238:14
 271:6 277:11 301:19
 311:10 316:20 335:6
understanding 130:1
 192:18,20 238:12
 246:2,10 253:9
 273:11 302:4 304:4
 305:14
unfair 232:6
unfortunate 121:16
unfortunately 124:4

unhappy 75:20
uniform 9:6 179:10
 244:10
uniforms 128:15
unique 29:21 33:8
 37:15 94:19 143:15
 168:20 204:5 251:18
 260:7 281:7
unit 16:7 23:8 47:9
 73:10 74:3,4,12,18
 76:3,9,18 90:14 91:19
 118:14 125:3 127:16
 152:6,16 153:1 235:1
United 1:1 13:17 91:10
 95:12 103:21 128:3
 144:2 164:10 170:12
units 39:16 75:21 77:2
 111:10
University 13:3 65:20
 114:4 171:7 205:13
 209:5
unnecessarily 307:8
unsworn 23:6
up-to-date 69:2
up-to-speed 60:19
upcoming 289:13
 324:19
update 257:22 268:1
 291:8
updated 130:16 284:9
updates 105:17 290:22
 292:3,22
upwards 13:1 157:12
use 31:1 40:18,19 45:8
 45:9 57:1 60:21 81:20
 95:1 111:2 113:15
 116:18 117:2 119:12
 129:21 171:10 173:16
 174:14 193:10 213:19
 214:5 219:10 228:16
 232:4 239:15 272:20
 280:5,18 294:6
useful 15:22 228:18
 254:1
uses 28:20 111:15
 220:16 250:14
USNCVLC 268:7
usually 41:4 74:10 78:6
 78:20 79:9 113:17,18
 117:10 122:4 148:13
 165:11 172:22 189:10
 245:11 267:10 296:2
 300:3 315:19
Utah 114:5
utilize 127:19 130:1
 260:21
utilizes 261:12
utilizing 179:12

V

v 236:12 308:14 310:21
VA 226:12 281:7
VADM 60:7 61:19 62:16
 63:5 64:1 65:9 67:8
 68:4 148:5,22 151:14
 152:13,19 153:17
 155:19 219:18 220:9
 220:13 221:9,14,20
 311:13 312:10 313:14
 313:22 316:6
VADM(R) 1:21
Vagheia 146:11
valid 227:14
valuable 340:7
value 85:8 268:14
Vance 264:5
Vanessa 125:4
vantage 36:19
varies 116:21
variety 40:9 96:15
 127:22 128:1
various 12:7 104:4
 111:7 187:11
vast 185:18
vastly 47:10
vein 315:15
venue 123:3 295:22
venues 253:15 273:7
version 148:14
versus 66:6 213:11
 244:21
vetted 51:9 287:8
vetting 179:6
vicarious 118:2,7
 256:21 291:4,13
 293:12,19 332:20
 333:1 334:2,5 336:7
vice 7:17 102:3
vice- 314:18
victim 23:7,8 24:20
 25:1,3 27:7,13 76:6,9
 77:2 82:18 100:5
 101:2,2,12,13 102:3,6
 102:19 103:6,17
 104:7,20 105:14,16
 107:22 108:4,5,6,7,22
 109:9,16,19,21 110:3
 111:20 113:2,5,17
 114:18 117:18 118:9
 118:13,17 119:2,4,22
 121:18,19 122:18
 135:9 136:19 137:18
 137:19,19 138:1
 141:10 154:7,12,18
 160:2,12,22,22 161:5
 162:13 216:16 225:16
 225:17,19 229:6

232:6 250:15 251:19
 253:6 254:3 264:22
 265:20 266:3,6,7
 267:13,15 268:20,22
 269:1 270:12,21
 271:1 273:3,5 274:4
 274:16 276:2,9 277:1
 277:12 278:5 292:14
 296:3 302:3,7,9 303:7
 304:13 305:9,10
 306:8,13 309:7
 314:14 316:18 317:11
 317:19 318:1,2 328:8
victim's 79:19 335:1
victim-centric 102:1
victim-crime-type
 104:17
victim-focused 265:18
victimology 265:21
victims 10:15 25:6 77:1
 77:7 90:17 91:2
 102:17 105:18 112:10
 114:12 152:5 158:21
 162:15 216:4 227:20
 228:10,10 232:20
 233:5 265:9 266:16
 268:22 271:4 275:9
 289:17 290:14 291:3
 292:10 293:22 297:2
 316:7 317:16 319:18
 320:3,4
victims' 3:5,8,10,15 6:2
 6:5,9,17 9:12 10:3
 11:1 14:22 20:19 21:9
 23:20,22 24:3,9,22
 25:5,7,21 26:8 27:3
 31:15 51:7 52:1,22
 58:20 82:14 83:7
 90:14 91:19 92:1,2,15
 119:11 121:15 122:13
 137:16,19 138:13,17
 138:20,21 140:7
 151:17 152:1,5,14,16
 152:20 153:1,7 154:3
 155:14,17 158:18,20
 159:17,19 249:3,8
 250:2,3 252:12
 255:13 264:15 265:1
 273:11,17 283:2
 285:4,10 287:2 295:1
 296:15 297:8 299:12
 300:9 307:21 309:17
 314:16
Victor 1:19 7:19
video 62:5 102:9
videotaped 125:17
view 13:6 16:10,15 42:4
 46:16 50:2 228:5

231:16
viewing 262:10
views 11:19 164:8
vignettes 314:12
violation 247:20
violence 90:19 104:13
 108:11 142:17 266:10
 296:9
Virginia 1:12
virtual 207:17
virtually 316:9
vis-a-vis 228:10
visit 315:9
visits 217:16 315:10
 316:2
visual 35:20
vital 18:5
VLC 140:19 141:15
 265:13,15 266:1,2,5
 266:21 267:5,16
 269:15,19 272:9,15
 273:12,21 285:16,21
 286:6,10,14,17 287:7
 287:11 288:6,8,10,11
 288:15,18,20 289:3,9
 289:22 290:13 291:9
 291:11,19 292:9,13
 292:17,20 293:3,4,17
 294:13,13 295:5,6,9
 296:2,6,8 297:7,10,13
 297:20 298:2,3,12
 299:14,16 300:3
 305:6,15 311:15,16
 312:1 313:18 315:3
 315:13,18 320:12,16
 321:10 324:6 325:12
 326:22 327:4,6 330:7
 334:10 336:7,16
VLC-specific 293:5
 294:14
VLC/SVC 267:6
VLCA 296:21
VLCO 267:18 270:5,8
 271:11,20 272:10
VLCS 266:9,20 267:1,12
 267:19 268:14,19
 270:17 271:6,12
 272:7,14 273:2,9
 286:14 313:16 315:9
 315:20 321:1 330:9
 335:8
voice 271:4
voir 22:14 193:8,12
volume 46:9,10
volunteer 232:21 233:1
 233:5 300:11
volunteer-based
 286:21

volunteers 286:17
VTC 250:14 254:20
 290:20
VTCs 254:16

W

wait 159:4 304:11
waited 226:4,5
waive 302:7
waived 244:6
waiver 302:11
wake-up 310:5
walk 130:2 197:14
walking 198:11 228:1
want 8:15 11:21 85:17
 150:15 162:13,22
 163:10,15 165:18
 188:7 189:20 191:7
 198:11 199:19 201:10
 204:2 209:22 210:21
 224:6 226:15,16
 233:2,11 234:22
 235:1,2 236:5,18
 238:12 239:1,2,3
 248:8 277:8 302:15
 302:20,21 304:1,13
 304:14 316:11 317:1
 317:2 331:19 333:15
 337:7 338:20,20,21
 339:3
wanted 116:2 156:9
 189:13 202:3 207:13
 225:9 234:14 285:13
 286:14 307:14 332:5
 332:19
wants 41:17 51:20
 185:10 227:16 286:3
 303:6
war 65:22 302:11
warm 12:9 184:13
warranted 108:12
 111:21
Washington 94:8 112:7
 206:3 266:12 294:13
 296:13
wasn't 60:14 225:4
watch 42:6 135:17
 324:10 335:3
watched 63:11 263:16
watching 336:4,5
wave 37:2 286:19
way 12:21 19:7 29:21
 35:1 36:3 37:15 48:1
 52:9 59:8 61:10 62:15
 73:1 94:13 97:22 98:1
 102:15,16 116:19
 124:20 130:19 132:22
 134:10 137:20 146:2

156:5 158:18 160:5
 175:21 184:5 206:1
 212:11 220:22 221:6
 223:4 225:15 227:4
 227:10 238:20 262:16
 286:21 315:22 323:8
 328:8 335:8,11
 339:18
ways 19:2 94:13 107:12
 107:14 129:10 232:2
we'll 236:2 248:16
 264:13 310:7 328:15
 336:11 339:15
we're 172:1,9 186:2
 192:8,22 193:1
 194:10 198:13 200:9
 200:10 204:17 206:6
 211:3 212:9,11 214:6
 214:13 216:7 218:6
 220:5 230:12 234:15
 235:17 243:4,8 244:9
 249:1,5,15 274:22
 281:3 288:7 289:14
 290:18 291:12 295:2
 297:18 298:1,3
 301:12,12 302:12
 303:9,10,19,21 304:3
 304:8,15 305:7,8
 314:22 315:13,15,20
 324:18,19 328:2,5
 329:14,18 334:3,20
 335:12
we've 125:15 184:13
 189:22 192:10,11
 208:13 215:16 216:13
 239:5 256:12 279:13
 282:5 286:22 288:5
 291:14 292:2,6,11
 295:5 307:5 324:10
 324:16,17 325:3
 330:2 335:5 336:5
 339:8
weakness 52:10,11
weaknesses 227:1,9
wealth 259:19 282:10
web 328:21 329:21
webinars 104:19
website 8:11 10:18
 174:12 195:7 207:16
 255:3 258:17 295:19
websites 260:20
Wednesday 306:16
 336:9
week 24:13 26:13 64:11
 70:1 71:22 72:2 87:17
 160:9 181:5 190:18
 198:19 256:8 275:16
 279:18 282:16 335:10

335:20
week- 313:1
week-long 23:12 115:3
 115:9
weekend 63:13
weekly 168:9 211:8,13
 211:14 270:3 328:5
 335:13
weeks 15:17 22:7 33:21
 68:22 79:17 263:14
 290:2
weigh 166:4
weigh-in 162:17
welcome 7:3 8:5 11:3
 12:1,2,2,6,9 19:14
 85:17 107:3 120:10
 163:10 175:3 184:17
 202:17 249:9,19
 264:16 274:11 285:5
well-attended 71:21
well-planned 71:13
well-resourced 42:5
well-trained 86:18
well-versed 315:18
went 38:9 85:13 95:4
 117:12 133:14 163:5
 172:11 239:11 244:20
 248:19 337:14 340:13
weren't 38:4
West 190:22 196:17
 207:2,4 212:15
Westlaw 248:4
whatsoever 206:18
 225:21
who've 319:10 330:3
wide 127:22 128:1
Williams 209:4
willing 149:19 320:21
willingness 340:6
Wilson 268:12
win 302:10,10
wind 234:16
wing 65:11 177:15,16
wingman 338:21,22
winning 338:17
wisdom 110:14
wish 337:16
witness 25:1 99:3 108:7
 108:22 109:19,21
 113:5 132:12 193:9
 225:8 240:3 291:1
witnesses 2:1 23:9
 88:17 94:19,21
 147:19,19 240:14,15
witnesses' 136:16
woman 226:4
Women 266:10 296:9
won 159:1,20 162:8

227:8 310:17
wonder 38:7 82:20
 159:21 319:19
wondered 49:3 316:17
 318:18
wonderful 134:18
 319:14
wondering 234:18
 300:5
word 225:19
words 35:22 121:2
 193:12 244:16
work 12:5 29:16 30:8
 51:20 74:7 79:9 83:10
 83:16 88:4,21 89:7,14
 91:20 92:8,9 94:11
 95:11 98:11,20
 102:16 104:10 115:14
 115:22 126:14 128:11
 132:22 133:10 144:8
 145:8 146:12 147:13
 147:21 160:5 162:4
 174:3 188:10 191:14
 194:19 197:19 210:17
 211:16 221:7 226:16
 270:15 303:10 321:5
 335:11 336:3
work-in-progress 83:2
work-life 339:10
worked 78:7 98:20
 105:20 106:1,2 112:7
 123:15 133:21 141:1
 159:14,14 259:13
 309:8
working 59:2 105:17
 112:11 130:5 134:15
 134:18 137:12 160:16
 198:3 268:7 291:3
 308:4 315:19 321:4
 338:8
workload 177:6,19
 247:10
works 43:11 49:5
 120:17 146:13 148:1
 181:1 198:22 199:22
 237:8 323:22
workshop 268:9 279:10
world 13:18 40:9 45:3
 62:8 91:8 136:8
 138:12 172:3 180:18
 190:10 213:11 290:19
worldwide 50:6 89:1
 111:14 170:9,21
 175:16 190:17
worried 225:4
worry 300:18
wouldn't 69:7 128:10
 144:19 201:12 202:5

202:5 304:16 326:17
writ 83:18 160:9 208:7
 257:17,19,22 279:10
 305:22 306:3,22
 307:5,8,9,12 309:19
write 131:12 149:22
 187:21,21 308:3
writes 55:14
writing 121:11 122:14
 294:19 308:2,13,19
writs 83:21 278:8 295:7
 305:2,22 309:9,16,22
 310:17
written 10:12 102:9
 284:2 301:6 306:21
wrong 244:7 325:8
wrote 309:8

X

XO 110:21 204:8

Y

year 7:5 20:15,21,22
 22:20 24:18 26:2 28:1
 28:3,4 58:1 69:21
 70:5,18 71:19 78:7
 93:10 96:11,14 97:5
 103:19 104:5 105:12
 107:20 109:2,22
 110:6 113:4 114:3,4
 116:22 117:11,16
 124:17 126:17 127:21
 128:13 129:12,19,21
 138:11 147:16 170:10
 171:7 177:21 181:15
 185:2 190:7,16,20,22
 191:4 192:21 194:4
 217:5,16 251:17
 252:11 253:1 256:12
 268:5 272:4 273:18
 279:22 296:1 298:17
 299:5 309:4 314:6,10
 314:13 315:12,17
 321:9 324:6 336:1
year's 272:22 290:21
 296:12
year-long 15:6
yearly 28:19
years 16:20 19:11
 21:21 34:13 37:4 40:6
 42:4 47:3,10 48:2
 49:1,19 50:21 52:2,12
 63:15 83:3 90:1 108:5
 113:21,21 117:12
 119:7 126:4 128:20
 135:22,22 136:3
 148:20 167:14 177:14
 180:8,14 182:16

189:14,15 192:11,16
192:21 209:19 217:21
226:4,5,8,9 231:12
269:7 282:9 291:12
305:13 309:5 322:4
yellow 36:20
yeomen 293:4
York 127:15
young 198:20 224:19
322:9
younger 55:18 112:2,2
144:22 339:10

Z

zealous 175:18
zealously 95:12
zero 214:9
ZIMMERMAN 243:22
Zimmermann 2:19 5:16
184:3,10,14,18
202:13 207:13 208:9
209:14 223:10 228:13
230:7,21 232:12,22
233:3 237:10 240:21
241:1,8,13 242:21
243:18 247:18 248:2
248:7
zone 321:18

0

02 121:5
03 121:5,9,18
04 100:8 103:3 121:9,18
122:1 176:12
05 100:8 103:3 122:8
176:5 204:8
05s 204:4
06 68:1 204:8,14,15
06s 204:3

1

1 17:9 59:8
1(b) 111:22
1:01 163:6
10 37:3 47:3 48:2 71:3
156:7
10- 87:16
10-week 33:15,17 34:10
10,000 312:22
10:42 85:13
10:50 85:14
100 34:8 53:9 118:8
217:20 218:11 223:19
321:22
100,000 175:19
101 14:18 40:11 165:20
167:1 170:9 173:20
1012 7:5

107 5:6 217:17 218:10
11 4:8 27:5 90:21
272:13
111 20:19
119 127:7
12 189:10 242:7 261:9
12-month 266:19
12:03 163:5
120 5:8 9:8 60:17 61:16
87:11 204:18
128 5:10
13 1:7 321:21
130 216:3
130-150 157:12
135 215:21
14 189:10 190:10
144 215:22
15 159:6 314:6
154 215:14
15s 217:6
16 22:11 41:4 128:20
136:3 296:17 331:3
164 5:13
165 22:7
16D 26:14
17 135:16 226:4,8
175 5:15
18 122:16 126:17,20
18-month 190:3,9
184 5:17
187 175:15
19 4:11 176:16 179:17
1969 62:12
1983 62:12
1993 224:15
1st 185:2

2

2 112:1 125:22
2:21 248:19,20
20 23:15 49:19 159:6
182:20 214:6 220:10
220:13,14
20,000 13:2 217:5
200 296:21 309:5
200,000 217:6
2008 56:4
201 14:19 40:14 167:2
170:20 173:20
2012 9:8
2013 9:2
2014 9:3 22:1 24:9 26:4
27:10 101:11 166:18
167:2 215:13 255:6
258:9 262:8 270:6,7
278:20 280:11 281:22
283:14 288:17 291:6
291:22 292:10 298:11

299:9 331:14,15
2015 9:3 20:15 24:18
93:10 96:11 97:6
262:21 282:7 296:14
297:7 299:11
2016 1:7 61:8 62:11
86:22 97:20 218:6
263:6,12 294:11
202 5:19
2100 97:6
213 5:20
22 275:19
230,000 217:16
24 108:6,7 111:12,12
166:13 214:6 293:4
240 52:12
244 20:18
249 6:6
25 108:5 111:11 139:13
264 6:10
27 179:9
27(b) 148:12 186:16
274 6:14
285 6:18
29 4:15 293:4

3

3:42 340:13
30 126:11 270:2 335:10
300 6:20 177:22
32 4:19 18:14,19 63:7
227:3,3,7,15 228:20
256:10 261:18 290:22
301:2 304:2,10
32s 303:20,22
36 23:14
37 4:21

4

4 17:9
40 107:17 109:2
400 177:22
412 23:5 24:7 114:12,18
158:20 161:5,21
263:16,21 278:16
280:8,22 283:16
292:2 303:13 304:12
42(a) 148:13
44 215:15
4409 122:2,10
45 263:10
46 294:16
4s 303:1

5

5,000 13:1 313:1
50 34:4 71:4 157:10
50,000 41:18

503 20:18
513 18:15,21 24:7
114:12 158:20 161:5
161:21 162:10 263:17
263:21 278:17 280:8
283:16 292:2 302:7,7
306:5,6,7,19 309:11
310:6,14 311:1
513-related 309:10
514 292:2
535 331:2,2
55 24:15
57 33:17

6

6(b) 306:21 307:10
60 24:4
600 1:11 312:22

7

7 4:2
70 71:10 111:12
75 103:14 177:21

8

8 4:3
80 165:9,12
858 20:16
86 5:3
89 156:7

9

9:00 1:12
9:28 7:2
90 93:12 156:6
900 96:12
94 24:14
99 5:5

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In the matter of: Judicial Proceedings Panel

Before: US DOD

Date: 05-13-16

Place: Charlottesville, VA

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