

## UNITED STATES DEPARTMENT OF DEFENSE

+ + + + +

## JUDICIAL PROCEEDINGS PANEL

+ + + + +

## MEETING

+ + + + +

FRIDAY  
NOVEMBER 18, 2016

+ + + + +

The Panel met in the 14th Floor Executive Conference Room, One Liberty Center, 875 North Randolph Street, Arlington, Virginia, at 9:00 a.m., Hon. Elizabeth Holtzman, Chair, presiding.

PRESENT:

Hon. Elizabeth Holtzman  
Hon. Barbara Jones  
Mr. Victor Stone  
Prof. Tom Taylor  
VADM(R) Patricia Tracey

WITNESSES:

Colonel William Pigott, Jr., U.S. Marine Corps  
Colonel(R) William Orr, Jr., U.S. Air Force  
Captain Andrew House, U.S. Navy  
Lieutenant Colonel Mary Catherine Vergona, U.S.  
Army  
Lieutenant Colonel Angela Wissman, U.S. Marine  
Corps  
Stephen McCleary, U.S. Coast Guard

**NEAL R. GROSS**

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

JPP STAFF:

Captain Tammy Tideswell, U.S. Navy - Staff  
Director  
Lieutenant Colonel Patricia Lewis, U.S. Army -  
Deputy Staff Director  
Mr. Dale L. Trexler - Chief of Staff  
Ms. Julie Carson - Legislative Liaison and Staff  
Attorney  
Ms. Nalini Gupta - Staff Attorney

OTHER PARTICIPANTS:

Ms. Maria Fried, Designated Federal Official  
(DFO)

CONTENTS

Welcome and Introduction

DFO Opens Meeting . . . . . 4

Remarks of the Chair . . . . . 5

Joint Services Committee on Military Justice  
Update on Revisions to the Manual for Courts-  
Martial

    Col. William Pigott, Jr. . . . . 7

Deliberations on Victims'  
    Appellate Rights . . . . . 58

Lunch

Deliberations on Victims'  
    Appellate Rights . . . . . 157

JPP Planning Session . . . . . 236

Adjourn . . . . . 287

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

9:05 a.m.

MS. FRIED: Good morning Panel Members. Thank you for being here today. I would like to welcome everyone to the Judicial Proceedings Panel's 24th public meeting. My name's Maria Fried. I'm the Designated Federal Official to the JPP. The JPP's a congressionally mandated Federal Advisory Committee.

Publicly available information provided to the JPP is posted on the JPP website at [www.jpp.whs.mil](http://www.jpp.whs.mil). Reports issued by the JPP are also posted on the website, as are other materials, to include transcripts of past public meetings. The Department has appointed the following distinguished members to the Panel:

The Honorable Elizabeth Holtzman, who serves as the Chair of the JPP; the Honorable Barbara S. Jones; Vice Admiral Retired Patricia Tracey; Professor Tom Taylor; Mr. Victor Stone. Members' biographies are also available at the JPP website.

**NEAL R. GROSS**

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

1                   The       Center       for       Prosecutorial  
2       Integrity, Protect Our Defenders and Lieutenant  
3       Colonel Jeffrey Palomino, Chief of the Air Force  
4       Appellate Defense Division, submitted written  
5       comments for consideration by the JPP. Those  
6       comments had been provided to the Panel Members  
7       and are publicly available on the JPP website.  
8       Thank you. Madam Chair.

9                   CHAIR HOLTZMAN: Thank you very much  
10       Ms. Fried, and good morning to everyone here. I  
11       would like to welcome the participants and  
12       everyone in attendance today to the 24th meeting  
13       of the Judicial Proceedings Panel. All five of  
14       the Panel Members are present here today.

15                   Today's meeting is being transcribed,  
16       and the full written transcript will be posted on  
17       the JPP website. The Judicial Proceedings Panel  
18       was created by the National Defense Authorization  
19       Act for Fiscal year 2013, as amended by the  
20       National Defense Authorization Act for Fiscal  
21       years 2014 and 2015.

22                   Our       mandate       is       to       conduct       an

1 independent review and assessment of judicial  
2 proceedings conducted under the Uniform Code of  
3 Military Justice involving adult sexual assault  
4 and related offenses, since the most recent  
5 amendments to Article 120 of the UCMJ in 2012.

6 Today's session will include an update  
7 on the recent and proposed revisions to the  
8 Manual for Courts-Martial from the Department of  
9 Defense's Joint Service Committee on Military  
10 Justice. The Panel will then deliberate on the  
11 topic of victim's appellate rights. We've  
12 invited representatives -- misread.

13 We've invited representatives from  
14 each of the Services to be present to answer any  
15 service-specific questions that might arise  
16 during these deliberations. The Panel will  
17 conclude with a planning session to discuss  
18 priorities and topics for future meetings through  
19 the remainder of our term which ends on September  
20 30th, 2017.

21 Each public meeting of the Judicial  
22 Proceedings Panel includes time to receive input

1 from the public. We have received no requests  
2 for public comment at today's meeting. Thank you  
3 to the service representatives who will be  
4 present during our deliberations and to those of  
5 you in the audience for joining us.

6 The JPP is pleased to hear from  
7 Colonel William N. Pigott, the United States  
8 Marine Corps, who serves as the Chair of the  
9 Joint Service Committee on Military Justice.  
10 Thank you very much, Colonel.

11 COL. PIGOTT: Good morning Madam  
12 Chair, distinguished Panel Members. My name is  
13 Bill Pigott. It's an honor to be here with you  
14 this Friday. Sitting next to me is Major Harlye  
15 Carlton.

16 We both work for Major General Ewers  
17 in the Marine Corps Judge Advocate Division, and  
18 we are here in our capacity, as in Harlye's case,  
19 she's the Executive Secretary for the Joint  
20 Service Committee, and I've got the distinct  
21 honor and privilege to be chairman of that group.

22 Behind me we've also got

1 representatives from our working group and our  
2 voting group that meet routinely to take care of  
3 the Manual for Courts-Martial and military  
4 justice matters in the Department of Defense.

5 Okay. If I may, I've got a few  
6 housekeeping notes to address up front before I  
7 get started. We are a deliberative and pre-  
8 decisional body, hopefully everyone can hear me  
9 in the back, and the DoD Office of General  
10 Counsel is the release authority for all  
11 information relating to the Joint Service  
12 Committee.

13 We will answer questions to the best  
14 of our abilities, but there are certain answers  
15 that I'm going to have to get back to you on to  
16 research, and I would respectfully request that I  
17 may be permitted to do that, and that's simply to  
18 make sure that I get the answer correct and we  
19 make a record of it and I will need to discuss  
20 any of those responses with the DoD Office of the  
21 General Counsel.

22 Additionally, while we are Marine

**NEAL R. GROSS**

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

1 Officers here today we're this Joint Service  
2 Committee. The third housekeeping matter is we  
3 have copies of the brief. I think there's 12  
4 slides up there that we're going to roll through.  
5 We've got copies for the folks behind us as well  
6 as you all, and the other neat thing that I  
7 wanted to lead off with, I'm reminded, ma'am, of  
8 when I was taught to make presentations when I  
9 was a Second Lieutenant in 1990, and they always  
10 talked about having an attention-getter and I've  
11 got one for us this morning.

12 I'm going to pass this around for  
13 everybody to take a look at. On November 14th,  
14 Brigadier General Donovan, he used to be the  
15 Staff Judge Advocate for the Commandant of the  
16 Marine Corps. He actually became a judge  
17 advocate, a lawyer after a couple of tours in  
18 Vietnam. He was a lieutenant colonel when he  
19 transitioned.

20 But he donated this first edition of  
21 the Manual for Courts-Martial in 1951 to us and  
22 while he has a very, very distinguished career,

**NEAL R. GROSS**

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

1 was a great patriot, he had shared with me this  
2 week when I spoke to his 60th graduating class  
3 from the Basic School, he spoke to us about how  
4 every officer had to buy this for \$3.50 and he  
5 also talks about this idea that it was the first  
6 of its kind, and when it was introduced, it was  
7 trumpeted as a revolutionary reference book.

8 So what we intend to do tomorrow  
9 morning is, I want to put that in the mail to the  
10 Naval Justice School. It's their 70th  
11 anniversary, and that thing is going to be put on  
12 display there. That will tie in nicely when I  
13 get into the portion about the 2016 Manual for  
14 Courts-Martial that was implemented by President  
15 Obama via executive order at the end of  
16 September.

17 So there it is, and you all can take  
18 a look at it as well when we're done with it.  
19 Okay. So this morning I'm going to provide an  
20 overview of the JSC to include why we exist and  
21 who we are. Then I'm going to discuss generally,  
22 ma'am, how we operate. This will include a

**NEAL R. GROSS**

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

1 discussion of the sources of military law and the  
2 approval authorities for changes to those  
3 sources. Last, I will discuss some of the recent  
4 changes to the Manual for Courts-Martial.

5 I'd like to turn first to an overview  
6 of the Joint Service Committee, referred to  
7 hereinafter as the JSC. We were created by the  
8 Department of Defense Office of General Counsel  
9 in response to Executive Order 12473 of April 14,  
10 1984, which required the Secretary of Defense to  
11 cause the Manual for Courts-Martial to be  
12 reviewed annually.

13 Now in response, the Secretary of  
14 Defense signed DoD Directive 5500.17, Roles and  
15 Responsibility of the Joint Service Committee on  
16 Military Justice of May 3rd, 2003 and that was  
17 recently certified current on October 31st, 2006.  
18 The JSC assists the DoD in assisting the  
19 President of the United States in fulfilling  
20 responsibilities to ensure the Manual for Courts-  
21 Martial and the UCMJ achieve their fundamental  
22 purpose of a comprehensive body of criminal law

**NEAL R. GROSS**

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

1 and procedure.

2 Under the direction of the General  
3 Counsel, the JSC is responsible for reviewing the  
4 manual annually and proposing amendments as  
5 necessary. The JSC is comprised of members of  
6 each of the armed services, the Air Force, Army,  
7 Coast Guard, Navy and the Marine Corps. It  
8 consists of a voting group, a working group, a  
9 chair, executive secretary and advisors. We're  
10 very, very lucky to have all of those folks  
11 working with us.

12 Now the voting group is made up of the  
13 top military justice policy members in each  
14 Service, and nothing leaves the Joint Service  
15 Committee without receiving a majority vote from  
16 our voting group. The working group is made up  
17 of one to two members from each of the Services  
18 in the ranks, between lieutenant and captain.  
19 Those are O-3s as well as lieutenant commanders,  
20 majors are O-4s, and we also are lucky enough to  
21 have a handful of Navy commanders, Coast Guard  
22 commanders and Army lieutenant colonels, Marine

**NEAL R. GROSS**

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

1 lieutenant colonels supporting us.

2 The working group receives its  
3 guidance from the voting group, and I would like  
4 to tell you that in all of these years of active  
5 duty, they are the smartest judge advocates that  
6 I have ever encountered in 26 years of active  
7 duty. They're brilliant, and they truly are our  
8 best and brightest.

9 Now the chair and executive secretary  
10 positions rotate every two years. The Marine  
11 Corps now has got this honor. We've got the job  
12 for another couple of months. We're going to  
13 hand it over to the Navy in January 2017.  
14 Additionally, the JSC has three advisors, one  
15 from the Court of Appeals for the Armed Forces,  
16 one from the DoD Office of General Counsel and  
17 one from the chairman of the Joints Chiefs of  
18 Staff Office of Legal Counsel.

19 We rely heavily on the advice of those  
20 individuals, especially Mr. Clark Price and Mr.  
21 Dwight Sullivan. I don't know if they're here  
22 today, but if -- in the event they're not, I want

**NEAL R. GROSS**

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

1 to thank them publicly for everything they do for  
2 us. Membership on the Joint Service Committee is  
3 also a collateral duty for all individuals.

4 I'll now turn to an overview of what  
5 we do and how we do it, beginning with the  
6 discussion of the sources of military law and the  
7 approval authority for changes to those sources.  
8 The Uniform Code of Military Justice is the  
9 statutory source of military law, and Article 6  
10 of the Uniform Code of Military Justice states  
11 that the president may prescribe the rules for  
12 pretrial, trial and post-trial procedures, and  
13 they must be consistent with the Uniform Code of  
14 Military Justice.

15 The rules that the president has  
16 promulgated are contained in the Manual for  
17 Courts-Martial. The Manual for Courts-Martial is  
18 comprised of five parts. You've got the  
19 articles. I'm sorry, we've got the preamble up  
20 front, the Rules for Court-Martial, the Military  
21 Rules of Evidence -- we refer to those as the  
22 MREs -- the punitive articles and the non-

**NEAL R. GROSS**

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

1 judicial punishment procedures.

2 The president is the approval  
3 authority for amendments to these five parts of  
4 the manual, and those changes are promulgated via  
5 executive orders. Now there's also supplementary  
6 materials contained in the manual. These  
7 includes a preface, a table of contents,  
8 discussions, appendices to include the analysis  
9 and an index. The approval authority for changes  
10 to discussions and appendices is the DoD General  
11 Counsel, and those changes are published via the  
12 Federal Register.

13 As recently clarified in Executive  
14 Order 13740, September 16th, 2016, these  
15 supplementary materials do not have the force of  
16 law. Turning to how the JSC recommends changes  
17 to the manual, the JSC may receive input for what  
18 to consider during the course of its annual  
19 review from a number of methods and sources.

20 The primary way is by analyzing  
21 statutory changes and determining whether  
22 implementation is required in the Manual for

**NEAL R. GROSS**

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

1 Courts-Martial. Another way is through our  
2 annual call for proposals. Each year, the JSC  
3 puts out a call for public comments on ways to  
4 amend and improve the Manual for Courts-Martial  
5 via the Federal Register, and simultaneously  
6 requests input from the Services.

7 This call for proposals always results  
8 in numerous proposed amendments to the Manual for  
9 Courts-Martial. Just this past year, we received  
10 recommendations from professors at law schools  
11 from across the country, as well as our citizens,  
12 former Judge Advocates. Another method for  
13 receiving the input is through recommendations  
14 from congressional panels such as the Response  
15 Systems to Adult Sexual Assault Crimes Panel.

16 They have been tasked to the JSC via,  
17 and through the DoD Office of General Counsel.  
18 The JSC also receives input through its study of  
19 case law updates, as well as proposals that go  
20 directly to the executive secretary via the JSC's  
21 public websites. I meant to put it in there.  
22 What is our website?

**NEAL R. GROSS**

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

1 MAJ. CARLTON: It's jsc.defense.gov.  
2 We'll provide that to anybody who would like it.

3 COL. PIGOTT: It's a very, very nice  
4 website. I urge you to take a look at it.  
5 During the course of our annual review, the JSC  
6 will review the proposals received, as well as  
7 any other changes recommended by members of the  
8 voting group, and the working group will draft  
9 proposed changes to the rules.

10 At the end of the calendar year, the  
11 JSC will publish any proposed changes to the  
12 manual, those being either changes to a part of  
13 the MCM or any supplementary materials in the  
14 Federal Register for a 60-day period for comments  
15 from the public. Simultaneously, the Services  
16 will push out the proposed amendments within  
17 their Services to include school houses, in our  
18 case the Naval Justice School, trial judiciaries,  
19 trial counsel assistance programs, defense bars  
20 and special victims' counsel and victims' legal  
21 counsel organizations.

22 After review of the comments, the JSC

1 will take a final vote on the proposed amendments  
2 and will submit a proposed executive order to the  
3 DoD Office of General Counsel, and should the  
4 president eventually sign the proposed executive  
5 order, the relevant parts of the manual will be  
6 amended and the JSC will submit the proposed  
7 corresponding amendments, the supplementary  
8 materials and the DoD Office of General Counsel  
9 for approval.

10           Once approved, these amended  
11 supplementary materials will be published in the  
12 Federal Register, and I'm going to go ahead and  
13 speak for our voting group. I can tell you that  
14 that last portion, about the president eventually  
15 signing that executive order, is one of the most  
16 exciting and fascinating aspects of serving on  
17 this committee.

18           So with that, it's only going to take  
19 me another 20 minutes to get through the  
20 remainder of my material. Are there any  
21 questions from the Panel at this point about what  
22 the Joint Service Committee's role is within the

1 Department of Defense. Anything at all?

2 (No response.)

3 COL. PIGOTT: Okay. Thank you, Madam  
4 Chair. Now I'd like to transition the discussion  
5 to the changes since the 2012 Manual for Courts-  
6 Martial, and we are very, very proud to talk  
7 about our three most recent executive orders.  
8 Since the 2012 Manual for Courts-Martial there  
9 have been three National Defense Authorization  
10 Acts. They have amended the Uniform Code of  
11 Military Justice, five executive orders amending  
12 the parts of the Manual for Courts-Martial and  
13 five Federal Register notices containing changes  
14 to the supplementary materials.

15 JSC attempts to assist the field in  
16 keeping up with these changes via the website.  
17 Once again, it's [jsc.defense.gov](http://jsc.defense.gov), where we hang  
18 the source documents for these changes. Also,  
19 we've got historical executive orders that have  
20 amended the manual and updated inserts for the  
21 Rules for Courts-Martial, Military Rules of  
22 Evidence, the Uniform Code of Military Justice

**NEAL R. GROSS**

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

1 and the punitive articles.

2 JSC, I promise you Madam Chair, is  
3 working very diligently through the weekends and  
4 late into the evening with the 2016 Manual for  
5 Courts-Martial. The first of three executive  
6 orders, I've got the first one up on the slide  
7 behind you all that I'd like to discuss is  
8 Executive Order 13696 of June 17th, 2015.

9 Many of the changes resulting from FY  
10 '14 National Defense Authorization Act may be  
11 found within this executive order. There are  
12 many, many changes contained within Executive  
13 Order 13696. Therefore, I respectfully recommend  
14 reading it in its entirety. But if it's all  
15 right, I'd now like to cover a few key provisions  
16 of that executive order.

17 First, many of the Article 6b's  
18 victims' rights requirements were incorporated  
19 throughout the manual with this executive order.  
20 This included incorporating the victim's right to  
21 notice, the right not to be excluded and the  
22 right to be reasonably heard including, where

**NEAL R. GROSS**

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

1 appropriate, the right to be heard through  
2 counsel.

3 For example, the Rule for Courts-  
4 Martial 305, which covers pretrial confinement,  
5 the EO added provisions regarding the victim's  
6 right to be reasonably heard, which includes the  
7 right to reasonable, accurate, and timely notice  
8 and the right to confer with a representative of  
9 the command and counsel for the government.

10 Additionally, the rule states that the  
11 right to be heard includes the right to be heard  
12 through counsel and the right to be reasonably  
13 protected from the prisoner.

14 Second, Rule for Courts-Martial 405,  
15 rules for preliminary hearings were substantially  
16 amended. RCM 430 Alpha regarding disclosure of  
17 matters following the direction of preliminary  
18 hearing was added. These changes to make  
19 preliminary hearing requirements comply with FY  
20 '14 National Defense Authorization Act amendments  
21 to Article 32, these changes reflect Article 32's  
22 requirement that the preliminary hearing

**NEAL R. GROSS**

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

1 transition from a discovery-like tool to a  
2 probable cause hearing with a limited scope and  
3 purpose.

4 Third, changes to Rule for Courts-  
5 Martial 702 covering depositions. This reflects  
6 the amendments to Article 49 which limits when a  
7 deposition may be ordered, and conforms with  
8 Article 32 providing victims a right to decline  
9 to testify in Article 32s.

10 Specifically Madam Chair, RCM 702  
11 states a deposition may be ordered whenever,  
12 after preferral of charges due to exceptional  
13 circumstances of the case. It is in the interest  
14 of justice that testimony be taken and preserved  
15 for use at a preliminary hearing or court-  
16 martial.

17 It goes on to state "A victim's  
18 declination to testify at a preliminary hearing  
19 or a victim's declination to submit to pretrial  
20 interviews shall not, by themselves, be  
21 considered exceptional circumstances."

22 Fourth, RCM 1001, pre-sentencing

**NEAL R. GROSS**

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

1 procedures was amended in RCM 1001 Alpha, which  
2 addresses crime victims and pre-sentencing was  
3 added and implemented Article 6b's requirement  
4 that victims have the right to be reasonably  
5 heard at a sentencing hearing relating to the  
6 offense.

7 RCM 1001 Alpha provides the procedures  
8 and definitions necessary to implement this  
9 right, and defines the right to be reasonably  
10 heard in non-capital cases, as having the right  
11 to make a sworn or unsworn statement and that  
12 upon good cause shown, the military judge may  
13 permit the victim's counsel to deliver all or  
14 part of the victim's unsworn statement.

15 Fifth, RCM 1107, Action by a Convening  
16 Authority, implemented the numerous changes to  
17 Article 60 and the corresponding limitations to  
18 convening authority post-trial actions.

19 And last for this first executive  
20 order, the first of three that we're going to  
21 cover this morning, Military Rules of Evidence  
22 513 and 514, they cover the psychotherapist-

**NEAL R. GROSS**

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

1 patient privilege and victim advocate-victim and  
2 Department of Defense Safe Helpline staff-victim  
3 privilege respectively were both amended.

4 Both of these rules were amended to  
5 require a military judge to make certain  
6 threshold findings prior to reviewing such  
7 matters *in camera*. This change to MRE 513 was  
8 required by the FY '15 National Defense  
9 Authorization Act. While not required the FY '15  
10 National Defense Authorization Act, the threshold  
11 adopted by MRE 514 was modeled after the Rule 513  
12 threshold.

13 Breaking away from my prepared  
14 testimony for a moment, we were invited to meet  
15 with the pro staff of the Senate Armed Services  
16 Committee earlier this week, where Mr. Barney and  
17 Mr. Leeling back-briefed us on the recent trip  
18 out west through California, Hawaii, and Okinawa,  
19 where they met victims' advocate, defense  
20 counsel, trial counsel and even a couple of  
21 judges they spoke with out there, as well as  
22 staff judge advocates, and according to Mr.

**NEAL R. GROSS**

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

1 Barney this executive order and the changes that  
2 were implemented are working.

3 Okay. So now I'd like to turn to the  
4 next executive order. This one is No. 13730 of  
5 May 20th, 2016 versus the change to RCM 104,  
6 Unlawful Command Influence, which once again was  
7 required by the National Defense Authorization  
8 Act. This time it was from FY '16. RCM 104 was  
9 amended to prohibit giving a less favorable  
10 rating or evaluation to any special victims'  
11 counsel because of the zeal with which such  
12 counsel represented any client.

13 Second, RCM 306, Initial Disposition.  
14 This was amended to require that, for alleged  
15 sex-related offenses committed in the United  
16 States, commanding officers and convening  
17 authorities provided the victim of the sex-  
18 related assault the opportunity to express his or  
19 her preference as to jurisdiction.

20 While not binding, commanding officers  
21 and convening authorities, they all consider such  
22 views prior to making disposition decisions.

1 This is also an FY '15 National Defense  
2 Authorization Act requirement. So we hear of it  
3 rising out of two National Defense Authorization  
4 Act requirements.

5 Third, RCM 705, that addresses  
6 pretrial agreements. We amended this to require  
7 that wherever practicable, prior to accepting a  
8 pretrial agreement convening authorities provide  
9 the victim an opportunity to express views  
10 concerning the pretrial agreement terms and  
11 conditions.

12 If provided, the convening authority  
13 must consider those views prior to accepting the  
14 pretrial agreement. Of important note, this  
15 change is consistent with the Response Systems to  
16 Adult Sexual Assault Crimes Panel, or RSP,  
17 Recommendations 54 series, which focused squarely  
18 on victim input into pretrial agreements.

19 For the benefit of anyone who was not  
20 aware, and there was a time when I was not aware  
21 of this, the RSP was a congressionally-mandated  
22 panel, asked to conduct an independent review and

**NEAL R. GROSS**

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

1 assessment of the systems to investigate,  
2 prosecute and adjudicate crimes involving adult  
3 sexual assault and related offenses.

4 Fourth, RCM 1109. That covers  
5 vacation of suspensions of a sentence. This was  
6 modified to comport with changes to RCM 405.  
7 Vacation proceedings, as we all know, are used  
8 when a convicted Service member violates a  
9 provision of a pretrial agreement, and the  
10 convening authority decides to vacate the  
11 suspended sentence.

12 RCM 1109 used to refer to RCM 405,  
13 preliminary hearing with respect to procedural  
14 rules. However, those rules were no longer  
15 applicable after the 2015 changes to RCM 405.  
16 Therefore, it was necessary to provide new  
17 procedural rules for vacation hearings to include  
18 adding a provision that any victim of the  
19 underlying offense for which the probationer  
20 received a suspended sentence or any victim of  
21 the alleged offense that is the subject of the  
22 vacation hearing has the right to reasonable,

**NEAL R. GROSS**

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

1 accurate and timely notice of that vacation  
2 hearing.

3 Fifth, RCM 1203 addresses review by a  
4 court of criminal appeals that was amended to  
5 delegate the authority for establishing the means  
6 by which Article 6b(e), *Writs of Mandamus*, are  
7 forwarded to the courts of criminal appeals  
8 through The Judge Advocates Generals.

9 Sixth, Military Rules of Evidence  
10 304(c) was amended and implements the  
11 requirements of the FY '16 National Defense  
12 Authorization Act requirement to conform to the  
13 rules governing the admissibility of the  
14 corroboration of admissions and confessions in  
15 the trial of criminal cases in United States  
16 district courts.

17 CHAIR HOLTZMAN: Colonel, I just want  
18 to interrupt one second, because since you  
19 alluded to the Response Panel, I want to alert  
20 you to the fact that three of the culprits  
21 partially responsible for the work of that Panel  
22 are sitting in this room at this moment,

**NEAL R. GROSS**

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

1 including the Honorable Judge Jones, who was the  
2 Chair of that Panel. I was a lowly Member of the  
3 Panel, and the very esteemed staff director of  
4 the Panel, Colonel Ham is sitting here today.  
5 Just be aware of that.

6 COL. PIGOTT: I will. Actually, the  
7 Colonel did a lot of great work in the Military  
8 Justice Review Group. A lot of great ideas out  
9 there and I think that's -- it's important that  
10 we respect one another's views and the  
11 collaboration is key, so we're all trying to do  
12 the right thing.

13 CHAIR HOLTZMAN: Thank you, Colonel.  
14 You may proceed.

15 COL. PIGOTT: Thank you, ma'am.  
16 Thank you very much. I'm almost done with the  
17 second executive order, so please bear with me.  
18 I was required to have this testimony typed up.  
19 So would you like me to go back to 304(c)? I  
20 almost got through with that. I know I've got  
21 one more point, so I got the last point.

22 All right. So unless there's any

1 questions on 304(c), I'd like to just hit on this  
2 last executive order. It's the third one that we  
3 have up there on the slides behind you. That's  
4 Executive Order 13740 of November 16, 2016, last  
5 week. It gives you an idea of the dedication,  
6 the time and effort that this working group is  
7 putting into this collateral duty, which  
8 oftentimes seems like a primary duty, right.

9 Okay. Now this implements portions of  
10 FY '12, '14 and '15 National Defense  
11 Authorization Acts. First, Part 1 of the manual,  
12 the preamble was amended to clarify both the  
13 naming convention for the manual and that the  
14 supplementary materials do not carry the force of  
15 law.

16 Second, RCM 701 and 703, which are  
17 discovery and production of witnesses and  
18 evidence, were respectfully amended and  
19 incorporate the FY '14 and '15 National Defense  
20 Authorization Act requirements, that defense  
21 counsel must request any interview of an alleged  
22 victim of a sex-related offense through the

**NEAL R. GROSS**

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

1 victim's counsel and to conduct any such  
2 interview only in the presence of government  
3 counsel, counsel for the victim or the victim  
4 advocate, if requested by the victim.

5 So I think the point there Madam Chair  
6 is that the work that we're doing for our  
7 victims, and on behalf of them, that provision  
8 demonstrates that it's evolving in the right  
9 direction. It's very positive.

10 Third, Rule for Courts-Martial 906,  
11 Motions for Appropriate Relief. This was  
12 amended, this rule was amended to clarify the  
13 distinction between unreasonable multiplication  
14 of charges and multiplicity. I can tell all of  
15 -- all of you serving on this Panel that I  
16 struggled with that as a captain 15 years ago.

17 Specifically to quote from the  
18 analysis accompanying this change, that  
19 multiplicity and unreasonable multiplication of  
20 charges are two distinct concepts. Unreasonable  
21 multiplication of charges as applied to findings  
22 and sentences is a limitation on the

**NEAL R. GROSS**

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

1 prosecution's discretion to charge separate  
2 offenses, and unreasonable multiplication of  
3 charges does not have a foundation in the  
4 Constitution, but is instead based on the concept  
5 of a reasonableness and is a prohibition against  
6 prosecutorial overreaching.

7 Now in contrast, multiplicity is based  
8 on the double jeopardy clause of the Fifth  
9 Amendment and prevents an accused from being  
10 twice punished for one offense if it is contrary  
11 to the intent of Congress. The charge may be  
12 found not to be multiplicitous but at the same  
13 time it may be dismissed because of unreasonable  
14 multiplication.

15 Fourth, in general Part 4 of the  
16 Manual for Courts-Martial no longer lists the  
17 lesser included offenses. Instead, practitioners  
18 are to reference the newly promulgated Appendix  
19 12(a), which was approved by the General Counsel  
20 and published in the Federal Register just a  
21 couple of weeks ago on November 8th, 2016.

22 Appendix 12(a) provides a non-

1 exhaustive and non-binding list of lesser  
2 included offenses. Actually, it was just a  
3 couple of days ago. A great job. Fifth, to  
4 conform with case law, paragraph 3(b) for Article  
5 79 was amended to state that military judges may,  
6 *sua sponte*, instruct on lesser included offenses.

7 This means that even if either party  
8 fails to request a lesser included offense, the  
9 military judge must instruct the members about  
10 any available lesser included offenses.

11 Fifth, RCM 1203 addresses review by a  
12 court of criminal appeals. Turning to this  
13 again. Oh, I'm sorry. I'm at 11. Sixth, this  
14 EO provided the elements, explanations and  
15 examples, specifications for Article 120 rape and  
16 sexual assault generally.

17 120(b) is rape and sexual assault of  
18 a child, and 120(c), other sexual misconduct, as  
19 amended by the FY National Defense Authorization  
20 Acts. All right.

21 Seventh, modifications reflect the  
22 elimination of consensual sodomy as an offense

**NEAL R. GROSS**

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

1 from the Uniform Code of Military Justice.  
2 Eighth, for Article 134, the general article, it  
3 is made clear that specifications must allege the  
4 terminal elements that the conduct be prejudicial  
5 to good order and discipline or of a nature to  
6 bring discredit upon the Armed Forces, and now  
7 this is a result of changes to case law.

8 For 9 and 10, we have a couple of new  
9 Article 134 offenses, which are Article 134,  
10 animal abuse and Article 134, indecent conduct.  
11 Taking each in turn, animal abuse now provides a  
12 comprehensive offense where the animal no longer  
13 must be a public animal. Again ma'am, just  
14 deviating from the script for a moment, Mr.  
15 Sullivan sent us the blog from the National  
16 Humane Society earlier this month that was  
17 extremely positive about this particular addition  
18 to Article 134, animal abuse.

19 It was really neat to see that, and it  
20 demonstrates to all of us that the American  
21 public is paying attention to what we're doing.  
22 Then, the other Article 134 offense that I just

**NEAL R. GROSS**

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

1 mentioned briefly was indecent conduct. It  
2 includes offenses previously prescribed by  
3 indecent acts with another. This was deleted  
4 pursuant to Executive Order 13447 of 1 October  
5 2007, except that the presence of another person  
6 is not required.

7 Eleventh, Article 134, Pandering and  
8 Prostitution. This was broadened to include any  
9 sexual act rather than just intercourse for  
10 compensation. Like the executive orders  
11 discussed here today, it is important to read  
12 Executive 13740 in its entirety, and most of  
13 these executive orders are anywhere from 90 to  
14 100 pages long.

15 So this is my last paragraph here.  
16 I'd like to wrap up and assure the Panel, Madam  
17 Chair, that the last few years have been a time  
18 of an immense amount of change to the military  
19 justice system, and change is good. We're  
20 embracing that change. The Joint Service  
21 Committee has been very, very busy proposing  
22 changes to the manual to implement and be

**NEAL R. GROSS**

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

1 consistent with statutory changes, Panel  
2 recommendations, case law updates, public and  
3 Service comments.

4 It's not in the script, but we are  
5 going to have that 2016 MCM through Defense  
6 Digital Service. That's going to be available on  
7 the internet, and we believe that will go a good  
8 way in promoting transparency of what we do,  
9 military justice.

10 But in turn, the Services have been  
11 busy pushing these changes down and out to the  
12 respective fields, and ma'am I couldn't be more  
13 proud of the committee and I'm honored to be  
14 here. I want to wish you all a Happy  
15 Thanksgiving and I want to thank you for what you  
16 do for us. That's all I've got, subject to  
17 questions.

18 CHAIR HOLTZMAN: Thank you. I'll  
19 start with -- thank you very much, Colonel. Mr.  
20 Taylor.

21 MR. TAYLOR: First of all thank you  
22 very -- excuse me. Thank you very much for being

1 here today. Thank you for your testimony and  
2 your service. When you decide as a group how to  
3 address the priority in which you tackle the  
4 issues, what kinds of factors do you consider?

5 And I'm particularly interested in  
6 that, because I noticed in this last EO that you  
7 talked about, that it implemented parts of the FY  
8 '12, '14 and '15 National Defense Authorization  
9 Acts, and one might say well why are you just now  
10 implementing a FY '12? So how do you think about  
11 how you do the work and how you order it and how  
12 you prioritize what you're going to do?

13 COL. PIGOTT: Yeah. That's a great  
14 question, and I think it would be all right if we  
15 talked briefly about the proposal log and the  
16 action log, and I'd like you to just take a  
17 minute to explain to them how that works.

18 MAJ. CARLTON: Absolutely, and this is  
19 Major Carlton, and just a note as well about the  
20 most recent executive order. The changes that  
21 were included in that one, I know it may seem  
22 like a surprise to see FY '12, '14 and '15 in

**NEAL R. GROSS**

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

1 there, but those changes were originally put out  
2 for public comment in October of 2012 in the  
3 Federal Register.

4 So, sometimes it may not be so much  
5 that the JSC is prioritizing, so much as the  
6 amount of time that it takes to just go through  
7 the review process to signature. But if there is  
8 -- so that's just to address the one kind of  
9 issue that you had brought up, sir.

10 But in terms of other types of  
11 priorities, we'll certainly look at whether an  
12 NDAA has an implementation deadline. So that  
13 will get it the highest level of priority if  
14 something in an NDAA has a this must be  
15 implemented by the President by this date. That  
16 will have a very high priority obviously.

17 Any NDAA provision will also have the  
18 highest priority, and then beyond that we'll take  
19 a look at everything and put it in our action and  
20 proposal logs. So on our JSC website, we have  
21 all of our internal SOP procedures up so that you  
22 all could see them and you'll see that there's an

**NEAL R. GROSS**

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

1 action log and proposal log, where we keep track  
2 of every single proposal that we get in, discuss  
3 it as a working group, discuss it as a voting  
4 group, move things to the action log, which means  
5 we're going to be setting those for potential  
6 movement onto an Executive Order or some other  
7 way for implementation.

8 MR. TAYLOR: So as part of that, do  
9 you make value judgments about some issues being  
10 more important than others, and therefore put  
11 them in a different bucket and treat them ahead  
12 of others that might seem to be less important,  
13 or is it more of a first-in, first-out --

14 COL. PIGOTT: Well, it's certainly not  
15 first-in, first-out, sir. I will tell you that  
16 we rely on our advisors to assist us as we  
17 prioritize that work. How many, as an example,  
18 what's the current number in the action log and  
19 the proposal log?

20 MAJ. CARLTON: I believe we received  
21 over 50 proposals this year. Most of them make  
22 it to the action log but as a collateral duty,

1 there's only so much time that we can devote. So  
2 we certainly -- we certainly have to prioritize  
3 in some way, shape or form. Like Colonel Pigott  
4 was saying, we rely heavily on the advice of our  
5 advisors.

6 MR. TAYLOR: Who are these advisors  
7 that you're referring to?

8 COL. PIGOTT: This is -- I had  
9 mentioned to them in the brief. This is Mr.  
10 Clark Price from CAAF, Mr. Dwight Sullivan from  
11 OGC, from SECDEF's office and then our -- who's  
12 the Lieutenant Colonel from --

13 MAJ. CARLTON: Lieutenant Colonel  
14 Quituga, sir.

15 COL. PIGOTT: Quituga. I just have a  
16 hard time saying her name. She advises us from  
17 the chairman's legal office. All very, very  
18 bright folks. Mr. Price a retired Colonel, a lot  
19 of experience as a judge.

20 Same thing with Mr. Sullivan. They're  
21 there for all these meetings, and we simply  
22 cannot give all of these proposals priority.

**NEAL R. GROSS**

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

1 There's just simply not enough time in a 168 hour  
2 work week. Hope that answers your question.

3 MR. TAYLOR: Yeah. Just one final  
4 question, if I may. When you have your internal  
5 discussions about implementation, do you  
6 basically make these decisions by consensus, sort  
7 of like the joint staff is accused of doing,  
8 where eventually everybody has to come on board  
9 to the same common denominator, or do you just  
10 take a vote?

11 COL. PIGOTT: Well, we take a vote and  
12 there have been times, you know, and I think that  
13 point that I made up front about being pre-  
14 deliberative and pre-decisional. I'm not  
15 supposed to get into that portion of it, but I  
16 can tell you that there is disagreement. There  
17 is quite a bit of debate on these proposals.

18 Obviously, we're not so much from the  
19 National Defense -- if at all, Authorization  
20 Acts. One of the hardest things, Madam Chair, is  
21 to not harm the collaboration between the  
22 Services. So there are different views that

**NEAL R. GROSS**

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

1 come to the working group and voting group, and  
2 that is a challenge, to debate that continue to  
3 collaborate and move those proposals forward.  
4 So and I can't comment on the way the Joint Staff  
5 operates.

6 MR. TAYLOR: I understand. I  
7 appreciate that. Thank you.

8 JUDGE JONES: I just have one question  
9 really. Thank you for your briefing. It was  
10 very thorough. Is there a sense, and you may not  
11 be able to comment on this, that from time to  
12 time, there is a tremendous amount of legislative  
13 change going on here and it's not only hard to  
14 keep up with but is there a sense that it's too  
15 much, too fast.

16 COL. PIGOTT: So I can tell you that  
17 we're working through the legislative proposals  
18 and changes. It was outside the scope of the  
19 testimony this morning, but this military justice  
20 review group, which my colleague represented with  
21 Judge Effron, put together a very detailed report  
22 which will be a quantum leap for the Manual for

**NEAL R. GROSS**

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

1 Courts-Martial and the Uniform Code of Military  
2 Justice, and we're very anxious to see what  
3 happens with that, the National Defense  
4 Authorization Act when it gets implemented.

5 There's a lot going on. There's a lot  
6 going on, and I will tell you that we are doing  
7 our level best to be responsive and expedient and  
8 getting it done. But there's a lot of work that  
9 goes on with this. It's, you know, where I  
10 talked about that portion that it's a collateral  
11 duty, it's more than a full time job for the  
12 voting group and the working group.

13 But I'm confident that we're getting  
14 it done. I would certainly like more personnel.  
15 I'm just kidding. No, that point that I had made  
16 earlier about the multiplication of charges and  
17 multiplicity, I'm not kidding. As a brand new  
18 judge advocate, I struggled with that and we  
19 could not figure that out.

20 I was so proud of this working group  
21 that are behind me. But it's that level of  
22 talent and expertise that works on this

**NEAL R. GROSS**

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

1 committee. They figured it out, and I was saying  
2 on the ride over here that quite frankly, Your  
3 Honor, for us this might be the most, the very  
4 most important thing that we've done on active  
5 duty. I'm very, very proud of this group.

6 VADM TRACEY: Thank you for your  
7 testimony and thank you for your service, and for  
8 what you do. I have just two questions. I think  
9 you called it an action log. You process things  
10 and they end up in the action log. How often and  
11 to what extent are items in that action log not  
12 able to be completed in the course of a single  
13 year, and do they then lapse over into your  
14 follow-on next year's review.

15 COL. PIGOTT: Okay. I understand that  
16 question, Admiral. Thank you ma'am. Is it  
17 possible to pull up the website from here. If I  
18 was a better Chairman, I would have had that up  
19 there on the screen, because we can actually pull  
20 it up and show you, to give you the exact number,  
21 or I could come back to the Admiral with the  
22 specifics.

**NEAL R. GROSS**

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

1           VADM TRACEY:       Actually, I'm not  
2 looking for exact number. Can you just give me a  
3 sense of is it common that you don't actually  
4 finish all the actions that you decided were a  
5 priority?

6           COL. PIGOTT: Not at all.

7           VADM TRACEY: You typically clear out  
8 the action log in a year?

9           COL. PIGOTT: Yes. So the harder,  
10 ma'am, the harder point for the deliberation is  
11 moving it from the proposal log to the action  
12 log. So it's very clear to that working group  
13 once it is in the action log that we expect  
14 results, and work those to completion so am I  
15 missing anything on that?

16          VADM TRACEY: So then perhaps the  
17 clarification for me is the -- if an item is in  
18 the proposal log and not moved to the action log,  
19 is it a dead proposal? Is the fact that it  
20 didn't move to the action log mean that it's no  
21 longer being worked?

22          COL. PIGOTT: Go ahead, Major Carlton

**NEAL R. GROSS**

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

1 please.

2 MAJ. CARLTON: Yes ma'am. So every  
3 once in a while we'll get a proposal that has  
4 either been recently reviewed by the voting group  
5 or is already actually in implementation, or is  
6 counter to a policy that we know is coming down.  
7 So in those cases, those are usually the ones --  
8 it's really that type of level, where it's really  
9 not feasible to move into the action log.

10 In those cases, we do always get back  
11 to the individual who submitted the proposal, and  
12 let them know the status of their proposal, and  
13 that it has -- that because of whatever reason,  
14 it wasn't moving into the action log. Then we  
15 also let them know if things do move to the  
16 action log.

17 So we try and keep a good, open,  
18 transparent communication with those who do  
19 submit comments.

20 VADM TRACEY: I'm sorry. I think I  
21 heard three things that end up happening. One is  
22 a set of things that are either overtaken by

**NEAL R. GROSS**

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

1 events, they've already been reviewed or there's  
2 something happening that will make that counter  
3 to policy. There's a set of things that move to  
4 the action log, and there's a bucket in the  
5 middle that are -- what's in that bucket?

6 MAJ. CARLTON: Sorry ma'am, I may not  
7 have been clear. So things either stay on the  
8 proposal log and don't go anywhere, and that  
9 means no action will be taken on them, or they  
10 move to the action log. If something moves to  
11 the action log, that just means we're going to  
12 study it further. But if it doesn't move to the  
13 action log, then it's done there, and we'll let  
14 the proponent of that comment know that.

15 VADM TRACEY: Colonel, you made the  
16 point that in one of the executive orders the  
17 fact that the supplementary materials did not  
18 have the force of law. Can you talk very briefly  
19 about what issues gave rise to needing that  
20 clarification? What's the effect of that  
21 clarification?

22 COL. PIGOTT: I honestly don't know.

**NEAL R. GROSS**

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

1 I'm going to turn to Major Carlton. I'm sure you  
2 know the legislative history.

3 MAJ. CARLTON: So, there was in the  
4 preamble, which is kind of opening to the Manual  
5 for Courts-Martial that was promulgated by the  
6 president, there's always been a discussion there  
7 that says the discussions, the supplementary  
8 materials, since those aren't promulgated by the  
9 president, they don't have the force of law that  
10 something that's promulgated by the president  
11 does.

12 It's non-binding, it's helpful, it's  
13 guidance, and there wasn't anything that was  
14 specifically happening that made it necessary to  
15 do that. It was just to help practitioners  
16 understand the difference between a discussion  
17 that doesn't require presidential approval and  
18 the rule that it's supplementing, which would  
19 require presidential approval.

20 So it's just to help folks understand  
21 the approval levels for changes, and just to  
22 really make it clear that discussions, analysis,

1 those types of things aren't binding in and of  
2 themselves, although they may refer to something  
3 that is binding. It may refer to another Rule  
4 for Courts-Martial or a UCMJ article, which would  
5 be binding, but the discussion itself is not  
6 binding.

7 MR. STONE: I must say I was -- I  
8 guess I'm still a little bit confused with the  
9 role of the Joint Services Committee. I don't  
10 know if you've gotten a chance to review our  
11 earlier hearings, but it was no secret that many  
12 times we had presenters tell us when we asked  
13 what was happening in a particular area, that  
14 they would say oh, well we can't act on that  
15 until the Joint Services Committee acts, and it's  
16 tied up there.

17 We got that many times, and I guess it  
18 seems to me looking back now that a lot of the  
19 discussions and conclusions that were raised here  
20 were from the earlier Response System Panel wound  
21 up going to congressional authors of the NDAAs  
22 instead of the Joint Services Committee taking

**NEAL R. GROSS**

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

1 actions on their own, which again it might -- I  
2 was thinking that they were log-jammed.

3 Hearing you today, you just said it's  
4 more than a full time job, but everybody's  
5 collateral duty. It makes me wonder whether or  
6 not one of our recommendations should be that  
7 there should be a core of two or three people who  
8 are full time Joint Service Committee Executive  
9 Staff, to keep things on track and moving along,  
10 that that wouldn't help everybody and I just --

11 I mean I don't know if there is a core  
12 that's full time, but if there isn't, it seems to  
13 me we might want to consider that, to help the  
14 situation out generally. I don't know if you  
15 want to comment on that, or tell me if there is  
16 some, one or two full time people.

17 COL. PIGOTT: So Mr. Stone, thanks for  
18 the question. I leaned over and mentioned to  
19 Major Carlton a moment ago that we're going to  
20 get back to you on the first portion of the  
21 question, which questioned a log jam back there,  
22 because I'm not specifically aware of that. So

**NEAL R. GROSS**

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

1 I'd like to come back to you all with an answer  
2 on that. Do you know the time frame of this, to  
3 help me narrow this down when we go back to  
4 research this?

5 MR. STONE: Well, I think it goes back  
6 to the first question that was raised, that we  
7 get commenters who are telling us about problems.  
8 Admittedly, they're individual problems, not  
9 necessarily systemic problems but some are  
10 systemic in the various Services over all the  
11 time we've been meeting, and suggestions are  
12 thrown out and like you say here, until they get  
13 into an NDAA and then some of the NDAA Fiscal  
14 Year '12 and '13 and you know, it takes that much  
15 time to get through.

16 Where we're thinking isn't a couple of  
17 months enough? So I mean I don't have a  
18 particular time frame, but I just feel like, and  
19 maybe the log jam is that you're having different  
20 Services to deal with, and therefore that each  
21 one of them has to go up and down their chains so  
22 they can talk about it.

**NEAL R. GROSS**

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

1                   But I guess what I'm saying is, might  
2                   the Joint Services Committee be helped and be  
3                   able to push things quicker if they had a core  
4                   executive staff director who kept putting out  
5                   schedules and meetings and proposals, and doesn't  
6                   get affected by their other job, which admittedly  
7                   might have a much higher priority issue going on  
8                   in the Defense Department? They say I have to  
9                   put this aside. This other thing is way higher  
10                  priority.

11                  So I guess I'm asking whether that's  
12                  something we should try and facilitate for the  
13                  future.

14                  COL. PIGOTT:        Okay.        Well, I  
15                  appreciate the recommendation and the comments,  
16                  and I want to assure the Panel that there's no  
17                  log jam up there, period. I'm going to come back  
18                  to you all with a detailed answer and I'm going  
19                  to demonstrate that factually for you, and Madam  
20                  Chair, I'd like a couple of weeks to do that.

21                  The other thing that I would like to  
22                  say is we're not looking for help. We're very

**NEAL R. GROSS**

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

1 grateful that Congress directed us to establish  
2 billets for Victims' Legal Counsel and we've done  
3 that. So we have the -- and we have everything  
4 that we need and it would be disingenuous for me  
5 to be speaking to you as Chairman of this  
6 committee to suggest that I'm up here looking for  
7 additional judge advocates.

8 I can't speak for the TJAGs or the SJ  
9 or the Commandant, but we have what we need, and  
10 it is because they are so bright and so sharp  
11 that we're able to get through this. But I want  
12 to reiterate there's no log jam, Mr. Stone,  
13 period.

14 MR. STONE: Thank you. Then my other  
15 question goes again a little bit more  
16 substantively to what the Joint Services  
17 Committee does that I haven't understood. This  
18 Panel sent me early on, like more than two years  
19 ago to the Charlottesville, Virginia, training,  
20 whole week training for the special victims'  
21 counsel where we heard lots of speakers.

22 One of the things that came up time

1 and time again, that it struck me as odd that the  
2 Manual for Courts-Martial doesn't deal with, and  
3 still to this day doesn't, is that we had  
4 speakers from every Service telling me that when  
5 they got into a court-martial, they didn't know  
6 where they were supposed sit, stand. They didn't  
7 have a table for them.

8           Some of them would go sit in what was  
9 the equivalent of the members box, like a jury  
10 box. Others were not even in front of the bar of  
11 the court. They had military judges who didn't  
12 know whether or not to serve them with pleadings  
13 and some did and some didn't. They had military  
14 judges who didn't know whether or not they should  
15 be hearing victims' counsel because they didn't  
16 have guidance, and they themselves may have just  
17 rotated into that position.

18           So they didn't have a lot of  
19 experience in it, and these were all -- I would  
20 have called them housekeeping rules, and they  
21 varied not only by judge but by Service. I was  
22 sort of saying well, I assume some of that

**NEAL R. GROSS**

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

1 housekeeping stuff is exactly what a manual will,  
2 you know, work out.

3 Am I wrong? Isn't that something that  
4 should be in a Manual for Courts-Martial, so  
5 people know when they can file a pleading, when  
6 they're going to get a copy of a pleading, how  
7 they get a copy of a pleading, where they stand  
8 or sit? I mean it seems to me those aren't  
9 substantive so much as they go to, in Article 6b,  
10 that victim's rights be treated with fairness and  
11 dignity, and their representatives were at sea.

12 I still don't see anything in the  
13 Manual for Courts-Martial that talks about those  
14 procedural housekeeping kinds of things.

15 COL. PIGOTT: So the practice, the  
16 victims' legal practice is evolving, and there  
17 are growing pains that are associated with it. I  
18 can't speak for the other Services, but I know  
19 the Marine Corps, the Navy has orders  
20 implementing how this process is going to work.  
21 So I would ask the Panel for patience as this  
22 process evolves.

**NEAL R. GROSS**

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

1 I had mentioned that Barney and Mr.  
2 Leeling commented about how well things were  
3 going out west, and how pleased victims' legal  
4 counsel were, actually volunteering for these  
5 positions and they continue staying on there.  
6 But I'd also like to take a closer look at it and  
7 come back to you on it.

8 So if there's some specifics, we'll  
9 get up with Mr. Sullivan and OGC's office. We'll  
10 take a look at it and we'll come back.

11 CHAIR HOLTZMAN: Just a quick  
12 question, because our next subject is going to be  
13 reviewing the issue of rights on appeal with  
14 respect to victims of sexual assault. Have you  
15 considered any issues with regard to that?

16 COL. PIGOTT: Ma'am, I'm going to come  
17 back to you with an answer on that. So it's --  
18 we're looking at sealing records currently and  
19 beyond that, that's all I'm aware of. So I'd  
20 have to come back with -- come back.

21 CHAIR HOLTZMAN: Any other questions?

22 MR. STONE: Just if the judges, for

1 example, at the appellate level, some of whom  
2 testified here the last couple of meetings  
3 related to this, were telling us how time-  
4 consuming it is and they barely have enough time  
5 to read pleadings and some of them don't think  
6 they have time to read additional pleadings, if  
7 they needed to adjust the number of people who  
8 are appointed or schedules or whatever, is that  
9 something that Joint Services Committee would  
10 look at, or is that the individual Services, to  
11 make sure that the judges have the time to read  
12 victims' pleadings, is something that the Joint  
13 Services Committee would get into or not?

14 COL. PIGOTT: Sir, the premise, the  
15 assumption is that the judges, you're hearing  
16 that the judges doesn't have enough time to work?

17 MR. STONE: That's what they were  
18 telling us.

19 COL. PIGOTT: Personally, I'm  
20 surprised. I've got to look at it. Never served  
21 as a judge. I'm surprised by the comment and  
22 question, but I'll take a look at it.

**NEAL R. GROSS**

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

1 CHAIR HOLTZMAN: Since there are no  
2 further questions, I want to thank you very much  
3 Colonel, Major, for your time and your input, and  
4 we look forward to receiving the answers you've  
5 promised us. Thanks very much.

6 COL. PIGOTT: Thank you very much.

7 CHAIR HOLTZMAN: We'll take a --

8 COL. PIGOTT: Again, Happy  
9 Thanksgiving in advance.

10 CHAIR HOLTZMAN: Happy Thanksgiving to  
11 both of you too, and we'll take a five minute  
12 break.

13 (Whereupon, the above-entitled matter  
14 went off the record at 10:04 a.m. and resumed at  
15 10:23 a.m.)

16 CHAIR HOLTZMAN: I think our next  
17 subject is to deliberate on victims' appellate  
18 rights. And I think the staff has been kind  
19 enough to help us break down these issues one by  
20 one.

21 CPT. TIDESWELL: Yes, ma'am. At  
22 Tab 7.

1 CHAIR HOLTZMAN: Tab 7. And we have  
2 quite a few questions to answer. The first one  
3 is, what do you think is the -- it's Tab 7, but  
4 we're at page 7, isn't that right? Victim  
5 participation on direct appeal. That's the first  
6 issue and the first question.

7 I guess the first question is, victim  
8 participation on direct appeal, should victims be  
9 allowed to participate on direct appeal? Why  
10 don't we just start the discussion on that?

11 CPT. TIDESWELL: Ma'am, if you don't  
12 mind --

13 CHAIR HOLTZMAN: Oh, go ahead.

14 CPT. TIDESWELL: -- would it be okay  
15 if I, just for the record, introduced --

16 CHAIR HOLTZMAN: Oh, yes, sure.

17 CPT. TIDESWELL: -- our Panel?

18 CHAIR HOLTZMAN: Sorry. Yes.

19 CPT. TIDESWELL: I know you've  
20 permitted us as a staff to sort of break with  
21 what I'll call JPP deliberation tradition, and so  
22 we are fortunate enough to have several members

**NEAL R. GROSS**

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

1 from the armed forces who are specialists in the  
2 appellate world. And if you don't mind, Colonel  
3 William Orr, U.S. Air Force retired, is the  
4 former Chief Judge of the U.S. Air Force Court of  
5 Criminal Appeals; Captain Andrew House, U.S.  
6 Navy, is the Director of the Navy-Marine Corps  
7 Appellate Defense Division; Lieutenant Colonel  
8 Mary Catherine Vergona, U.S. Army, is the Chief,  
9 Policy Branch, Office of the Judge Advocate  
10 General, Criminal Law Division; Lieutenant  
11 Colonel Angela Wissman, United States Marine  
12 Corps Reserve, is the Deputy Officer in Charge of  
13 the Victims' Legal Counsel organization; and Mr.  
14 McCleary is the Senior Military Justice Counsel  
15 for the United States Coast Guard.

16 CHAIR HOLTZMAN: Thank you. Welcome  
17 to all of you. Please forgive my inexcusable  
18 oversight in not introducing you immediately, and  
19 we really appreciate your willingness to help us  
20 think through these issues.

21 So we're at Issue 1, which is, should  
22 victims be allowed to participate on direct

1 appeal? And I think there are -- staff has  
2 outlined the testimony received in favor and the  
3 testimony we have received in opposition. Should  
4 we begin to discuss this? Anybody support  
5 allowing victims to participate on direct appeal?  
6 Need a minute to read it?

7 Yes, Mr. Stone.

8 MR. STONE: Yes. When a victim's  
9 right is at issue, either because it has been  
10 granted below and it's now one of the issues on  
11 appeal, or it has been denied below and it is one  
12 of the issues on appeal, then because their issue  
13 was a legal issue before the court below and that  
14 issue was on appeal, then that party has to have  
15 a right to defend their position on appeal, so  
16 that the same level of participation that they  
17 had below they get on appeal, and the court is  
18 benefited by hearing the party who has a real  
19 interest in the right that was granted or not  
20 granted say their piece.

21 At the most basic level, if the courts  
22 are going to allow *amicus* briefs to cover that,

1 then this issue about whether it is burdensome or  
2 not fair carries no weight with me, because  
3 whether it's a direct brief or an *amicus* brief it  
4 is still going to be something that the people  
5 are going to read and want to answer.

6 But, more importantly, the point about  
7 victims' consideration and dignity is that they  
8 know that when their right was at stake they got  
9 a chance to say their piece. And on appeal, the  
10 work of writing that brief is going to be done by  
11 the special victims' counsel, and reading an  
12 extra pleading isn't going to take anything like  
13 the time it takes to write it. And arguing it  
14 for 10 or 20 minutes, if there is an argument --  
15 and there often isn't -- is also not going to be  
16 a tremendous incursion on the system.

17 So I think in order for victims to  
18 feel like they've been dealt with fairly, when  
19 their issues are raised on appeal -- and,  
20 typically, that's only going to happen when they  
21 were raised below, either because they prevailed  
22 or they didn't prevail -- when their issues are

**NEAL R. GROSS**

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

1 raised, they should have a right to file a  
2 pleading. It is much less time-consuming and  
3 resource-intensive than it is at the trial level  
4 where the judge and the victim's counsel can go  
5 on for an hour or say, "Well, do you have any  
6 testimony about it?" At the appellate level, it  
7 is very cut and dry.

8 So I really don't see how there can be  
9 fairness for a victim unless you're going to let  
10 them either defend the win they had below or --  
11 if they wish to, or complain about the right that  
12 was deprived of them.

13 And there may well be times -- this  
14 doesn't come up often. If you look across the  
15 country, I'd be surprised if three or five out of  
16 100 cases a victim even wants to participate on  
17 appeal, because their issues are typically not  
18 the dispositive ones. And of those five times,  
19 I'll bet some of those times they are happy with  
20 what the prosecution did. It totally satisfies  
21 them.

22 They don't feel like they have

**NEAL R. GROSS**

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

1 anything they need to add. But where they do  
2 have something to add, in a few cases where it  
3 comes up on appeal, I don't see how, as a matter  
4 of due process or fairness to victims, you're  
5 going to be consistent with Article 6b if you  
6 don't allow them to file a pleading.

7 CHAIR HOLTZMAN: By the way, let me  
8 just -- just a matter of clarification of  
9 procedure. This question doesn't implicate -- I  
10 mean, assume we answered this in the affirmative,  
11 we would still have to answer the questions of  
12 which victims would be allowed to participate,  
13 and the mechanism used to allow, and so forth.

14 So this doesn't answer all the  
15 questions. So I just want to point that out,  
16 just by saying this we haven't resolved the other  
17 questions.

18 But, Judge Jones, you wanted to say  
19 something?

20 HON. JONES: In a situation where  
21 you're only going to be on appeal when the  
22 defendant loses and the government wins, right,

**NEAL R. GROSS**

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

1 in a situation where government wins, defendant  
2 loses, you're on appeal, but in -- but now to the  
3 subset, the victim's information was not  
4 suppressed, so it came in, okay, to the trial,  
5 then I don't know what interest the victim would  
6 have on appeal.

7 The victim might want to say, "That  
8 was a wrong ruling," but -- do you see what I'm  
9 saying?

10 MR. STONE: Oh, yes. Yes, I do.

11 HON. JONES: So it seems to me in that  
12 instance it is -- first, you know, it's not --  
13 it's not a scenario that is going to occur, I  
14 don't think. What would be the victim's interest  
15 be in that situation?

16 MR. STONE: It's hard for me to want  
17 to encompass all hypotheticals. But let's say it  
18 was a victim's prior history of being involved in  
19 other sexual escapades. Last time we took an  
20 example of, oh, this victim was in, I don't know,  
21 a whole bunch of orgies in the past and got  
22 disciplined for it, let's say.

**NEAL R. GROSS**

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

1 HON. JONES: Right, right.

2 MR. STONE: And let's say that it came  
3 in, and it seems to me if that was going to be an  
4 issue on appeal it would have to be the defense  
5 complaining that it shouldn't have come in.

6 HON. JONES: Right. So why --

7 MR. STONE: It's always possible --

8 HON. JONES: I'm saying at that stage  
9 I don't know why -- what the victim would --

10 MR. STONE: I don't either, but it  
11 would be up to their counsel and them to say  
12 whether or not, you know, did they have anything  
13 to say, and, you know, what -- is it persuasive?  
14 I mean, it's hard to prejudge in each situation  
15 what a victim wants to say or how long they want  
16 to say it. And often they want to say it just  
17 because they can't get over the offense and move  
18 on with their lives unless they've said it.

19 It may well be something that all the  
20 judges and everybody in the courtroom already  
21 knows, but they feel the need to briefly say it.  
22 And in an appellate pleading, if they want to

**NEAL R. GROSS**

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

1 file another pleading, you know, what you're  
2 positing is a situation where it's not going to  
3 make much difference. That's true. I think  
4 that's absolutely true.

5 It won't always -- and maybe in a  
6 majority of cases the judges will already have  
7 thought of those considerations, but that's the  
8 point, just like the defense counsel is going to  
9 raise arguments that the appellate court may see  
10 even before they were raised. But if you're  
11 going to give the victims the dignity to have  
12 their say, then if they want to say something  
13 they should have a right to file.

14 And there's no question in my mind  
15 there's lots of times when a victim's counsel  
16 says to the victim, you know, "We'd do better to  
17 sit this out, both at the trial level and the  
18 appellate level. I don't think you want to raise  
19 this because," and I have been in that situation,  
20 and some of my victims say, "Oh, you're right, I  
21 hadn't thought of that. Yeah, let's not raise  
22 it."

**NEAL R. GROSS**

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

1           So, I mean, there is no question that  
2           that can happen. But it seems to me that doesn't  
3           even become a discussion unless they know, just  
4           like in the trial court, it's -- if it was an  
5           issue in the trial court involving this victim  
6           and that issue is up on appeal, then potentially  
7           they have an interest in it. What they will say  
8           or whether they will want to say anything, that  
9           goes to them and their counsel at that time.

10           HON. JONES: Yes. And the other  
11           scenario is, of course, the government won and  
12           they also won on the suppression issue, so the  
13           information was never disclosed. And they get up  
14           on appeal -- and I guess what you're saying is  
15           the victim should be able to put their two cents  
16           in, if it's an issue at all, in the appeal.  
17           Period. No matter the posture.

18           MR. STONE: Well, see, that's a much  
19           easier one. The government, at the trial level,  
20           said, "This information about the victim's  
21           background is not relevant, it shouldn't come  
22           in," and it doesn't come in. Now, on appeal, the

**NEAL R. GROSS**

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

1       appellate panel may say, "Well, that was a very  
2       close decision, and, frankly, we think it would  
3       have been a fair decision if it came in."

4               And sometimes the victim -- the  
5       government counsel will say, "Well, that's right.  
6       We don't feel that strongly about it. We didn't  
7       feel that strongly below. We took the position,  
8       but we didn't feel that strongly." And basically  
9       they concede that maybe it should have come in,  
10      and now they are arguing it was a harmless error  
11      and they could well lose it and have a remand.

12              And the victim may want to say, "Whoa,  
13      it wasn't an error at all." So the victim's  
14      position about whether or not it should be  
15      disclosed if there is a remand is often going to  
16      be different than the government who may feel  
17      they had more than enough evidence and they could  
18      easily retry the case.

19              HON. JONES: Well, I mean, I think  
20      that sort of is an example of a problem I have,  
21      maybe just because I grew up in a different  
22      system. I think there can only -- there really

**NEAL R. GROSS**

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

1 should only be two parties. We have talked about  
2 this before. And I think the government's  
3 interest is to make the decisions they think they  
4 must make in order to obtain justice in this case  
5 and obtain a conviction against someone that has  
6 been charged of a crime.

7 And so I just -- you know, kneejerk  
8 reaction -- worry about having a third voice in  
9 the appeals court in precisely that type of  
10 situation.

11 MR. STONE: You see, I think that --

12 HON. JONES: Also, it is not as though  
13 the victim isn't heard beyond the trial court.  
14 They have *mandamus*, and that goes to the appeals  
15 court, and there is a decision there. So there  
16 is already an appellate response to the victim's  
17 objection. So I don't -- I just worry about the  
18 third voice in what is a two-party situation.

19 MR. STONE: Okay. Well, I just --

20 HON. JONES: And I worry about -- I  
21 worry about the government's right to decide what  
22 is the best course for this case.

**NEAL R. GROSS**

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

1 MR. STONE: You're right. We have a  
2 philosophical disagreement. The Congress has  
3 changed 18 USC 3771 last year to make clear that  
4 the word "*mandamus*" does not have the traditional  
5 *mandamus*. It has been changed in the federal  
6 statute, and they have a right -- victims have a  
7 right to go up on appeal, as an ordinary appeal,  
8 not as a *mandamus*, with ordinary appellate --

9 HON. JONES: No, no. Yes. No, no,  
10 no.

11 MR. STONE: -- rules applying.

12 HON. JONES: Right. I'm not saying --

13 MR. STONE: And that interlocutory --

14 HON. JONES: -- they do have that  
15 right.

16 MR. STONE: Right. But that  
17 interlocutory appeal --

18 HON. JONES: Whether it's called a  
19 *mandamus* or not, it goes up to the appellate  
20 court.

21 MR. STONE: Exactly.

22 HON. JONES: And an appellate panel

**NEAL R. GROSS**

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

1 makes a decision on that victim's appeal.

2 MR. STONE: But that interlocutory  
3 appeal is much more disruptive than a post-  
4 conviction appeal, and I don't think --

5 HON. JONES: Well, but that's --

6 MR. STONE: -- we would want to  
7 encourage interlocutory appeals by saying that's  
8 the only appellate remedy.

9 HON. JONES: A victim certainly wants  
10 to make the interlocutory appeal, and we are  
11 giving them that right.

12 MR. STONE: I know, and a lot --

13 HON. JONES: Because otherwise they  
14 are not going to be able to stop something when  
15 it matters. So I'm just saying the victim has a  
16 tool right now and --

17 MR. STONE: They don't in the scenario  
18 you just gave. They won below. They are only  
19 about to lose on the appellate level, and it is  
20 going to go back for a new trial. So all I'm  
21 saying is that it -- that same right that you  
22 would give them if they lost below they should

**NEAL R. GROSS**

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

1 have if they won below.

2 And since nobody that we heard come  
3 before us said that they shouldn't be allowed to  
4 file an *amicus* brief, that that seems to be an  
5 available alternative, it seems to me that  
6 concedes that there is going to be another voice  
7 on the appeal. I mean, I think Article 6b and,  
8 in the civilian setting, 3771, have put us past  
9 the -- just like in the trial court, the victim  
10 now has a right to counsel and a right to be  
11 heard by the judge as a third party.

12 You can't give somebody that right and  
13 either grant their rights or deny their rights at  
14 the trial level, and then say, "Oh, but it stops  
15 there." And you can see, on an interlocutory  
16 basis, they have it. So it seems to me all we're  
17 doing is recognizing that due process should give  
18 them the same leave at the appellate level.

19 CHAIR HOLTZMAN: Can I just ask a  
20 question here? What is the system right now with  
21 regard to federal criminal trials? How does it  
22 work? You have the interlocutory appeal on

**NEAL R. GROSS**

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

1 questions such as privilege and confidentiality  
2 of records. What happens in those cases?

3 MR. STONE: Well, it starts with  
4 standing at the district court level. Victim's  
5 counsel, under 3771, have standing in a district  
6 court. Even though there is a prosecution and  
7 defense counsel present, they have independent  
8 standing to argue about those victim's issues you  
9 mentioned -- confidentiality, privileges,  
10 et cetera.

11 And if they lose that, and they  
12 believe that the judge has not followed the law,  
13 they have the right to try and get an  
14 interlocutory appeal under ordinary appellate  
15 rules of appeal.

16 CHAIR HOLTZMAN: Okay. And the same  
17 situation applies in the military; is that  
18 correct?

19 HON. JONES: I believe so.

20 CHAIR HOLTZMAN: Okay.

21 HON. JONES: Yes.

22 CHAIR HOLTZMAN: Now, so how are we

**NEAL R. GROSS**

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

1 going -- what is the proposal in terms of  
2 expanding that right? What we're saying here is  
3 that now after the -- whatever interlocutory  
4 appeals have or haven't been taken, and there is  
5 a judgment or a conviction below, now the  
6 proposal is that the victim be able to  
7 participate, even if the victim -- even if the  
8 victim's position was sustained below, the victim  
9 still would have a right to appeal on -- if the  
10 government is appealing, and maybe --

11 MR. STONE: No, the defense would.

12 CHAIR HOLTZMAN: Whoever is appealing,  
13 whoever is appealing, for whatever reasons,  
14 whatever, or cross-appeals, or whatever, that the  
15 victim would also have the right to participate  
16 in that appeal process separately by raising the  
17 arguments, because maybe the government doesn't  
18 raise the argument completely or maybe the victim  
19 is not satisfied with the way the government has  
20 raised the argument, maybe the -- or whatever  
21 reason.

22 So you're saying that that should

**NEAL R. GROSS**

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

1       happen. My question to you is, what happens now  
2       in the civilian world in terms of the federal  
3       criminal justice system? Does the victim right  
4       now, in the federal criminal justice system, get  
5       the right, after conviction, to participate in  
6       the appellate -- direct appellate process.

7                   MR. STONE: There have been a few  
8       cases where the victim has moved to leave to  
9       intervene. There is a 7th Circuit case that  
10      comments on it. Federally, I don't think that  
11      the issue is resolved, but we heard Meg Garvin  
12      say that -- and it's in the materials from last  
13      time -- that there is somewhere between six and  
14      eight states that allow victim participation, and  
15      then there's a lot of states where it's  
16      unsettled.

17                   I don't think there are states that  
18      bar it -- I don't think they've addressed it that  
19      way -- but that there are six or eight that allow  
20      it. I think that your analysis has to be sort of  
21      parsed out in the sense that where the victims  
22      lose, there is an appellate process for them.

**NEAL R. GROSS**

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

1 That's the interlocutory process.

2 But where they win below, the question  
3 is, do they get to defend that win if the parties  
4 don't want to defend it on appeal? That's the  
5 issue. That couldn't have been defended by them  
6 on an interlocutory basis because they won below.

7 The material was considered  
8 privileged, and it didn't come in. And now, on  
9 appeal, both sides are saying, "Well, maybe that  
10 privilege decision was wrong, but it's harmless  
11 anyway." And the argument is only whether it's  
12 harmless and it's going to get a new trial. And  
13 they're saying, "It wasn't harmless, and it  
14 wasn't wrong."

15 CHAIR HOLTZMAN: Right. But that's  
16 not my question. My question is, what I'm trying  
17 to get at here, is not only the substance of what  
18 would happen, but where the military would be  
19 positioning itself vis-à-vis the rest of our  
20 criminal justice system in the United States.

21 That's all -- that's my only point  
22 here, which is, you know, how far are we going to

**NEAL R. GROSS**

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

1 be differentiating, how far is the military going  
2 to be differentiating itself from the rest of the  
3 criminal justice system in the United States?

4 That doesn't mean that it's a good  
5 thing or a bad thing. I'm not putting any value  
6 judgment. I just want to know -- that's what I'm  
7 trying to establish for myself. I know it's --  
8 that's my question.

9 HON. JONES: I think Mr. Stone and I  
10 agree. It is not done in the federal system.  
11 Victims are not being given leave to intervene,  
12 and they are not arguing in the federal courts.  
13 I mean, again, it may be a good or a bad thing,  
14 but right now --

15 MR. STONE: But part of the reason the  
16 federal system is, you could say, not facing this  
17 issue and six or eight states are, is because  
18 like the military, which provides special  
19 victim's counsel, only six or eight states  
20 routinely provide some mechanism for victims to  
21 get counsel.

22 So in the vast majority of cases, both

1 in federal court and in most of the states, the  
2 victims don't have counsel. And having been  
3 victimized, it doesn't even occur to most of them  
4 to go spend thousands of dollars to go, on top of  
5 the injury they suffered, and hire counsel to  
6 fight these issues out.

7 So that's why it only has come up in  
8 a handful of states, because that handful of  
9 states and Military Services make a victim's  
10 counsel available at the trial level. That's why  
11 it is -- it is not decided in multiple places.

12 CHAIR HOLTZMAN: So going to your  
13 point, Mr. Stone, why isn't the right of  
14 intervention on appeal a satisfactory solution?

15 MR. STONE: Okay. I think the answer  
16 to that is what we've seen and heard from the  
17 prior experts here, and also federally why the  
18 statute had to be changed from -- saying the  
19 federal statute had to be changed from *mandamus*  
20 to the rules of ordinary appeal, because judges  
21 are overburdened and they are used to a history.

22 As Judge Jones says, they are all

**NEAL R. GROSS**

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

1 brought up in a system of two parties before  
2 them, and their reaction it seems to me is, well,  
3 we've got two parties who are adversarial. They  
4 will take care of it. We don't need more,  
5 another brief here, even if it's not being  
6 argued.

7 And so the result is that's what they  
8 found in the federal system, and they had to  
9 change the standard, and that's what we heard in  
10 the military, that they have -- they file *writs*,  
11 extraordinary *writs*, to bring the issues up, and  
12 the *writs* are denied without explanation. That's  
13 the problem, that they are denied without  
14 explanation.

15 HON. JONES: Well, I mean, the  
16 experience I have had, even when it used to be  
17 called *mandamus* -- and I'm not talking about  
18 sexual assault now. I'm talking about an  
19 emergency motion made by, let's say, the  
20 defendant himself, but it could be a third party.  
21 Those go to the 2nd Circuit, and they are decided  
22 -- they try to decide them in three days, and

**NEAL R. GROSS**

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

1 they come back and sometimes there is an opinion.

2 I'm just saying it's not -- there is  
3 a procedure to halt a trial, and the circuit will  
4 do it if they get that emergency petition, and  
5 they will be quick because they know they don't  
6 want trials to --

7 MR. STONE: Well, that also  
8 highlights, I might add, a difference between the  
9 military and the federal civilian process. In  
10 the federal civilian process, typically the  
11 victim has control over their own privileged  
12 records. And if they don't want to turn them  
13 over, they play the card of, I'm not turning them  
14 over. You want to hold me in contempt, you can.  
15 I'm not turning them over, and I'll take up the  
16 contempt. I'll litigate it that way.

17 In the military, there is at least two  
18 reasons that doesn't work. The first is that a  
19 lot of times those psychological records are in  
20 the possession of -- they're not in the  
21 possession of the victim, they're in the  
22 possession of a military officer in a military

**NEAL R. GROSS**

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

1 hospital, and the victim can't say, "Don't turn  
2 over the records." They can only argue about  
3 whether they are admissible because they don't  
4 have the ability to stop them from being turned  
5 over because it's a much more all-encompassing  
6 system.

7 So they can't go that contempt route.  
8 And the second thing --

9 HON. JONES: I'm confused.

10 MR. STONE: -- which is --

11 HON. JONES: I thought that --

12 MR. STONE: -- that they didn't want  
13 to go the contempt route -- I'll just finish this  
14 thought -- is because that is going to be in  
15 their record forever. And they like the military  
16 and they want to stay there, so to them it  
17 matters if they are going to have a contempt  
18 citation against them in their military record.

19 In civilian practice, how many people  
20 care if a federal judge, you know, wanted to hold  
21 them in contempt over some privileged record? It  
22 is not going to affect their career. So the

**NEAL R. GROSS**

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

1 military has -- it's an in-house -- it's a much  
2 more closed system, and so a more regularized way  
3 for them to challenge what they won below -- not  
4 what they lost, what they won -- makes some  
5 sense.

6           You can limit the number of pages that  
7 they file. You can limit the amount of time --  
8 the cases aren't argued. I mean, you can limit  
9 that if you want by rule. That's fine. But  
10 they've got to have some way -- I mean, if you  
11 want to say the pages are -- that the victim on  
12 appeal only gets the same number of pages they  
13 would if they filed a *mandamus* petition, that's  
14 fine, which typically is half of what a party  
15 gets, because they have a more limited scope that  
16 they are going to.

17           But it gives them the right to be sure  
18 what -- that, a) they can't go into contempt,  
19 they didn't own those records; and b) they don't  
20 want it on their record. So it regularizes how  
21 they can challenge what they want, defend what  
22 they want is typically what it is.

**NEAL R. GROSS**

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

1           HON. JONES: I'm not sure I quite  
2 understand the distinction you're making.  
3 Whether it's civilian or military, the victim is  
4 concerned about the disclosure, the public  
5 disclosure of these records. They have the same  
6 right now, correct, to get -- to go for an  
7 interlocutory appeal? Even though it used to be  
8 called a *mandamus*.

9           MR. STONE: That's where they have  
10 lost, where they have lost. But when they have  
11 won --

12          HON. JONES: All right. So you're  
13 saying that, when they win, we can't trust the  
14 government who prosecuted the case to want to  
15 continue to get that affirmed.

16          MR. STONE: It isn't trust. They have  
17 different interests. The prosecution is looking  
18 at all of their cases and maybe saying, "Well,  
19 for the greater good here, if they have to give  
20 up these records, we think it's worth it to go  
21 forward with the case."

22          HON. JONES: To go back and retry it.

**NEAL R. GROSS**

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

1 MR. STONE: To retry it and turn this  
2 over.

3 HON. JONES: And admit error.

4 MR. STONE: And the victim -- and I  
5 have had victims say to me, "If you're going to  
6 turn my records over, I'm going to back out of  
7 the case altogether." You know, 10 years ago,  
8 and this is just a hypothetical, "Ten years ago  
9 when I was young and stupid, you know, I tried to  
10 commit suicide. I don't want everybody knowing  
11 that, that when I was 17 years old I tried to  
12 commit suicide. They will all look at me  
13 differently. I don't want them knowing it. If  
14 they're going to know that, I'm going to tell the  
15 prosecutor I am going to be -- I'm not going to  
16 testify at trial."

17 So, I mean, they -- they can have a  
18 different interest, whereas the prosecutor is  
19 trying to maintain, you know, the integrity of  
20 behavior, both civilian and in the military, so  
21 they may say, "So what? It's 10 years ago." But  
22 the victims feel very differently.

**NEAL R. GROSS**

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

1           HON. JONES: I think it's -- what  
2           you're talking about is a situation where the  
3           prosecutor decides, "Okay. I'll take -- I will  
4           agree that there was error and go back down and  
5           retry the case."

6           MR. STONE: Right.

7           HON. JONES: How often is that going  
8           to happen? I think you are raising an issue that  
9           is going to be so -- you know, an insignificant  
10          number of times, if ever. Prosecutors go into  
11          the appeals court, and if they've won below they  
12          are going to keep winning, or try to win, on the  
13          same arguments they made. They are not going to  
14          confess error. I mean, I --

15          MR. STONE: What you just told me is  
16          that --

17          HON. JONES: -- I can't even imagine  
18          they would.

19          MR. STONE: Right. So maybe the  
20          victim's brief is only going to be filed in one  
21          out of 1,000 cases. But I'm saying the fact that  
22          they know they could is what allows victims to

**NEAL R. GROSS**

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

1 feel that their rights are being honored in the  
2 system.

3 And sometimes, by knowing that a  
4 victim could file a brief, it means the  
5 prosecutor is going to talk to the victim's  
6 counsel, and they may have a discussion that  
7 causes the prosecutor to take a little tougher  
8 position on that, which makes the victim's  
9 counsel say to the victim, "We don't need to file  
10 because he agrees with us now. He now has a  
11 reason. He sees us as a participant."

12 HON. JONES: Well, I --

13 MR. STONE: That's why I said at the  
14 outset, this isn't going to come up often, but it  
15 is going to come up. It does come up.

16 HON. JONES: But we are creating a  
17 system where it has become -- it will be routine.  
18 That's what I am thinking. Every victim now will  
19 also have the right to appeal, and they are going  
20 to have victim's appellate legal counsel.

21 And so we're creating a new, you know,  
22 system, and maybe -- I think I'm right that it

**NEAL R. GROSS**

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

1 will come up zero to no times where they either  
2 haven't had a chance to get an appellate decision  
3 in an interlocutory situation or, as you say, the  
4 government has won, so they haven't lost their  
5 privacy interest.

6 And you are hypothesizing a situation  
7 where the government is going to decide, "I'm not  
8 going to fight for this. I am going to confess  
9 error and retry the case," and, you know, I just  
10 don't think it's going to happen. But for that  
11 one instance where it might happen, we are  
12 creating an entire new set of machinery, if you  
13 will, in the appellate courts. I mean --

14 MR. STONE: I don't think we are  
15 creating a new set. We're saying, if you lost  
16 below, you have an interlocutory remedy. If you  
17 won below, you --

18 HON. JONES: You have a right to  
19 appeal.

20 MR. STONE: -- you have a right to  
21 defend your win, if you want to, if it makes  
22 sense, if it's even an issue on appeal and

**NEAL R. GROSS**

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

1 raised.

2 CHAIR HOLTZMAN: Mr. Taylor, you have  
3 been sitting on the sidelines here. Why don't  
4 you help enlighten us?

5 MR. TAYLOR: Based on my lack of  
6 experience in litigation, I should be on the  
7 sidelines. But I have enjoyed the discussion,  
8 and my main concern about this particular issue I  
9 think Judge Jones has just voiced, and that is  
10 that when a decision is adverse to a victim, at  
11 the trial level there should be an immediate  
12 means for that individual to have it reviewed by  
13 someone else.

14 And it just seems to me that if we are  
15 fairly confident that that is going to happen  
16 almost all the time, then we -- this is a  
17 solution in search of a problem, because  
18 otherwise I really don't know why we would create  
19 a system that is so far apart from those that we  
20 try to model ourselves after; that is, the  
21 federal criminal system.

22 So that's kind of where I am on this

1 right now. But I do think there are other  
2 aspects to this that we will address in the later  
3 questions which have to do with what happens if a  
4 criminal court of appeals at the Service level  
5 denies a *writ of mandamus* and then the question  
6 becomes, well, is CAAF going to look at it?

7 I mean, that is more concerning to me,  
8 that the appeal -- the interlocutory appeal gets  
9 shut off at a level where, in my opinion, there  
10 is right good reason to make it go higher, to the  
11 court of appeals.

12 MR. STONE: Maybe I can address what  
13 I think was in there to explain why this is  
14 somewhat like the first example.

15 MR. TAYLOR: Okay.

16 MR. STONE: If the defendant -- I'm  
17 sorry. If the victim loses their right of  
18 privacy in their psychological records, in a  
19 typical case, there is the interlocutory appeal  
20 to address it. If they win, okay? But then they  
21 lose it on appeal, and it comes back for a new  
22 trial. There is already a dispositive ruling.

**NEAL R. GROSS**

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

1 No trial judge is going to say, "Wait. You  
2 didn't get to argue this at the court of appeals.  
3 Now you want to tell me it's wrong. But I have a  
4 court of appeals ruling, and I have to follow  
5 that. I'm not even going to look at it again.  
6 It's the law of the case."

7 They have lost it entirely. They  
8 never get to argue it, because they want it -- or  
9 it may not have even been hotly contested the  
10 first time, and it only got reversed without them  
11 having any input, and that's over. And I can't  
12 imagine a court then taking a second appeal over  
13 an issue they just decided because now, on the  
14 remand, the victim says, "I never got to say two  
15 words about this."

16 I mean, that's the scenario that you  
17 are positing. If they don't get to say something  
18 the first time to defend it, it's going to be  
19 over for them.

20 CHAIR HOLTZMAN: Mr. Taylor?

21 MR. TAYLOR: But if I understood some  
22 of the testimony we have heard in the last two

**NEAL R. GROSS**

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

1 sessions, there would be an option, assuming  
2 there is notice that this is an appellate issue,  
3 for the victim -- victim's counsel to file an  
4 *amicus* brief at that point, so that they would  
5 have an opportunity to be heard. Am I not  
6 correct that that -- that that --

7 MR. STONE: Well, they have to ask  
8 permission for an *amicus* brief, and that is part  
9 of the problem, that this permission question,  
10 it's not routine. They have not been getting  
11 permission -- whether it's *mandamus*, whether it's  
12 *amicus* briefs, they have not been getting  
13 permission to file.

14 And I myself am just -- in a civilian  
15 setting, I just had a court deny permission to  
16 file. You know, do I know why? No. They didn't  
17 write an opinion. But once you have to go with  
18 permission, it means the person whose right is at  
19 stake does not have one chance to litigate it.  
20 It is going to be over for them.

21 CHAIR HOLTZMAN: Just to clarify that,  
22 as a factual matter, is that the testimony we

**NEAL R. GROSS**

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

1 had? I don't recall that *amicus* briefs were  
2 being denied. Now that may be my faulty memory.

3 CPT. TIDESWELL: No, I believe we  
4 heard testimony that -- I think one of the judges  
5 said they always read all of the findings that --

6 CHAIR HOLTZMAN: Okay. So I just want  
7 to clarify that issue. I mean, we have no  
8 testimony, is that correct, that *amicus* briefs  
9 are not being permitted, that a request to file  
10 an *amicus* brief by a victim in a sexual assault  
11 case is being denied? We have no testimony that  
12 that is happening.

13 CPT. TIDESWELL: Not that I'm aware  
14 of. No, ma'am.

15 CHAIR HOLTZMAN: I mean, do we have --  
16 I mean, we have experts here. Great.

17 COL. ORR: I'm the appellate court  
18 guy.

19 CHAIR HOLTZMAN: Okay.

20 COL. ORR: I can tell you that they  
21 are always read. And if they are denied, it is  
22 not necessarily -- it is generally -- you almost,

**NEAL R. GROSS**

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

1 de facto, decide whether or not it is going to be  
2 case dispositive. So -- or a factor in the case  
3 before you deny it.

4 And they do -- routinely in the Air  
5 Force, they actually do write a reason why. It's  
6 not just a --

7 CHAIR HOLTZMAN: So, in other words,  
8 what you're saying is that there might be a  
9 denial --

10 COL. ORR: Yes.

11 CHAIR HOLTZMAN: -- of leave to file  
12 an *amicus* brief.

13 COL. ORR: Yes.

14 CHAIR HOLTZMAN: But that is only  
15 after having read the *amicus* brief?

16 COL. ORR: Absolutely.

17 CHAIR HOLTZMAN: And decided that the  
18 point that is being raised is not relevant or not  
19 --

20 COL. ORR: Or is already captured in  
21 the government's brief.

22 CHAIR HOLTZMAN: Okay. And what about

**NEAL R. GROSS**

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

1 the other Services?

2 COL. ORR: I can only speak to the Air  
3 Force, but I know, just from talking to the other  
4 judges, we all read them. And the benefit of the  
5 *amicus* brief is is it comes right to the top. If  
6 you file without it being a *mandamus* in the  
7 ordinary course of business, it doesn't have the  
8 same priority as an *amicus* brief.

9 CHAIR HOLTZMAN: Okay. Sorry. Judge  
10 Jones, I was interrupting you.

11 HON. JONES: I mean, I think in a --  
12 you go to a trial or a pre-trial stage, and what  
13 happens is the defense wants to put in evidence,  
14 or -- which will disclose and violate the privacy  
15 interests of the witness, the victim, right?

16 The victim is there. The victim has  
17 appellate counsel, and at that very stage is  
18 certainly on notice of what the issue is, and the  
19 counsel files briefs, has standing before the  
20 trial court, and the -- and if they lose, that's  
21 when they get to do their interlocutory appeal.

22 So I don't think it's a situation

**NEAL R. GROSS**

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

1 where they're not aware of the issue or haven't  
2 had a chance to -- to put their position in. I  
3 thought you were saying it could just happen, and  
4 now all of a sudden they would have been denied  
5 any chance to put their two cents in.

6 MR. STONE: That's right. In other  
7 words, it may have not been hotly litigated  
8 below. It may be that defense counsel subpoenaed  
9 the records, the government objected, and the  
10 defense counsel said, "Well, since I'm not  
11 getting to see them, I note my objection, Judge."  
12 Enough to raise it on appeal but not enough to  
13 have a whole hearing and have the victim say  
14 their piece and why they think it is or isn't  
15 relevant, why it is or isn't, for example, a  
16 valid privilege, that it is just confidential,  
17 it's not a privilege. I mean, that happens all  
18 the time. And most of the time, you know --

19 HON. JONES: You know, it's -- I'm  
20 sorry, then. It's just not my experience that  
21 way, but --

22 MR. STONE: I understand that.

1 HON. JONES: Yes.

2 LT. COL. WISSMAN: I've got a note  
3 from Air Force VLC that they have been denied --

4 HON. JONES: I'm sorry. I can't hear  
5 you.

6 LT. COL. WISSMAN: I have been -- I've  
7 got a note from Air Force victims' counsel that  
8 they have been denied a right to file *amicus* at  
9 CAAF and at the Air Force Criminal Courts of  
10 Appeals. So that has happened in their Service.

11 HON. JONES: So we have a conflict in  
12 the testimony?

13 COL. ORR: I'm not saying they're not  
14 denied, but I think you're reading too much into  
15 why they were denied. If the -- if you're  
16 looking at an *amicus* brief, and the reason that  
17 the Air Force court has said you have to file an  
18 *amicus* brief, because we only have three -- two  
19 options.

20 It's either the appellant or the  
21 government, when it comes up, or then there is  
22 everybody else. There is no, really, third

**NEAL R. GROSS**

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

1 option. So the only way you can take the  
2 document is by forms of *amicus*, because we only  
3 have -- the construct that we have at this time  
4 only has two options -- appellant, government --  
5 or the appellee and the government. Those are  
6 it.

7 If anyone else wants to address the  
8 court, the only option left is through the *amicus*  
9 brief. And that's why they are taking it that  
10 way. But they take them, they consider them, and  
11 they decide, is this something that is not  
12 already covered? Is the *amicus* brief helpful?

13 MR. STONE: I don't understand how you  
14 deal with people who are ordinary witnesses who  
15 decide not to testify and get thrown in the brig.  
16 Don't they have an appeal?

17 COL. ORR: Ordinary witnesses that --

18 MR. STONE: Yes. Who decide that in  
19 a court-martial that they are not going to  
20 testify because they don't like what's going to  
21 come out that they are going to have to testify  
22 to.

**NEAL R. GROSS**

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

1           HON. JONES:   So if they get held in  
2           contempt and kept in the brig, I'm assuming they  
3           have appellate rights.

4           MR. STONE:   Well, they didn't start  
5           out as --

6           HON. JONES:   But that's because  
7           they're in jail.

8           MR. STONE:   Well, but they start out  
9           as witnesses. They're not a typical defendant.  
10          I mean, there are always extra parties --

11          HON. JONES:   But that's their own --

12          MR. STONE:   -- based on people who are  
13          witnesses.

14          MS. FRIED:   In the military, though,  
15          if you are held in contempt, then you are  
16          violating an order, a lawful order to  
17          participate, in which case now you have committed  
18          a criminal offense, and you will be tried  
19          separately for the offense you have committed,  
20          not as far as the court-martial of the other  
21          person for which you didn't want to testify.  
22          That's just a point of clarification.

**NEAL R. GROSS**

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

1           There is no such thing as contempt  
2 per se in the military system. You failed to  
3 follow a lawful order, and now you've committed a  
4 criminal offense, and you will be adjudicated  
5 separately and apart from the other parties.

6           MR. STONE: Right. So --

7           MS. FRIED: Your own offense.

8           MR. STONE: Right. It has nothing to  
9 do with the original crime. It's like a crime  
10 upon the court, and so they have converted it  
11 into something they used to. But we are trying  
12 to work out on behalf of victims something that  
13 the military is not used to.

14           I mean, if -- I'll tell you what I  
15 find upsetting about what -- you know, what we're  
16 discussing here, that, well, we're going to read  
17 the *amicus* brief, and if we don't think it's  
18 relevant we will deny it, even if we say so.

19           The victim wants to know that they  
20 have been heard. I really don't understand why a  
21 court would read the brief and then say, "And  
22 we're not allowing it to be filed." You're not

**NEAL R. GROSS**

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

1 going to allow the *amicus* party to argue anyway.

2 If that comes from a victim, that is  
3 precisely the lack of respect that the victim's  
4 new statutory rights are meant to contradict,  
5 that you read the brief and you say, "Well, we  
6 don't think we have to allow the brief, because  
7 we don't think it's on the right issues."

8 The victim just wants to know they've  
9 been heard. They don't have to win. They don't  
10 have to, at least in military appellate courts,  
11 argue. They just want to know that someone is  
12 seeing what they had to say. And when you say,  
13 "We're not allowing the brief to be filed," they  
14 assume it means you're -- just like when you  
15 instruct a jury to ignore something, they're  
16 being ignored. And that's really one of the key  
17 things here. The victims continue to get  
18 ignored.

19 And just because we're recognizing  
20 them at the trial court level doesn't mean,  
21 especially it seems offensive to me, that they  
22 then can be ignored at the appellate level.

**NEAL R. GROSS**

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

1 There is no more investment of resources if  
2 you're going to read the brief anyway.

3 COL. ORR: I cite you to the  
4 *Kastenberg* case, *LRM-Kastenberg*. This is exactly  
5 my point. That was a victim who wanted to be  
6 heard, and the judge said no. It went to the  
7 appellate court, they were heard, and it went to  
8 CAAF and they were heard there.

9 MR. STONE: Because the *writ* process  
10 worked there.

11 COL. ORR: Yes.

12 MR. STONE: But the *writ* process, we  
13 heard from all the Services, is not working well.  
14 Maybe only a few of the *mandamuses* came up and  
15 have a problem, but the *writ* process is  
16 definitely not working well. It happened -- that  
17 case came up because it was one of the few we  
18 were extraordinarily lucky that they entertained  
19 the *writ*.

20 COL. ORR: As an appellate judge, we  
21 got *mandamus* all the time.

22 MR. STONE: But now we have to --

**NEAL R. GROSS**

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

1 COL. ORR: They are not always granted  
2 as well. They're just not.

3 MR. STONE: You know, but the other  
4 response to that is, *LRM* is no longer good law.  
5 The CAAF said it isn't, that they never should  
6 have taken the case. That's what *EV* holds. That  
7 was a mistake. I mean, that discourages  
8 appellate judges from taking *writs*. So, I mean,  
9 the CAAF can't look at any one case as the way it  
10 did at *LRM*.

11 HON. JONES: Maybe since we have our  
12 experts here it would be good to hear exactly  
13 what you think the law is right now with respect  
14 to when a victim witness is -- wants to go to the  
15 appellate court because of an adverse decision  
16 with respect to privacy interest.

17 I was under the impression that they  
18 have the ability to do that, whether you call it  
19 a *mandamus* or an ordinary appeal to the next  
20 military appellate court.

21 COL. ORR: The current state of the  
22 law is they will be heard, and their *mandamus*

**NEAL R. GROSS**

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

1 will be filed.

2 HON. JONES: They will be heard and --

3 COL. ORR: They can be heard -- under  
4 a *mandamus*, under Article 6b, they will be heard.  
5 Period. Not even in dispute.

6 MR. McCLEARY: At the moment, ma'am,  
7 there is a bit of an uncertainty that was created  
8 by *EV v. Martinez* that in terms of whether or not  
9 a victim can bring the matter up to the Court of  
10 Appeals for the Armed Forces, that arguably is  
11 grounded in, you know, what the basis for the  
12 victim intervention and the appeal -- or the  
13 application for a *writ* is.

14 *EV v. Martinez* talked about the *writ*  
15 being grounded in Article 6b. Arguably, if the  
16 reason that the victim was bringing forward for  
17 the right that they are seeking to pursue or  
18 protect is linked directly to, for example, a  
19 particular rule of evidence, I don't know that *EV*  
20 *v. Martinez* would preclude that.

21 They were basically pointing out that  
22 the language in 6b only states that if you're

**NEAL R. GROSS**

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

1 applying for a *writ of mandamus* because of the  
2 language in 6b that, since it doesn't reference  
3 CAAF, we can't hear it. It's not included within  
4 our jurisdiction.

5 CHAIR HOLTZMAN: So are you saying, in  
6 essence, that there are kind of two issues here.  
7 One is -- forgive me for a second, Mr. Stone.  
8 One issue is that the right of a victim witness  
9 to get *mandamus* if 412 has been -- if he or she  
10 believes 412 is being misinterpreted --  
11 misinterpreted or 513 is being misinterpreted, is  
12 squishy, that we don't -- you know, there could  
13 be circumstances in which that would be denied  
14 even -- even though there was a legitimate -- I  
15 mean, the court wouldn't hear it, or they would -  
16 - I mean, what is the ambiguity here that you're  
17 talking about now?

18 That every case doesn't get solved in  
19 favor of the victim? Or is it that there are  
20 standards for review, for even taking the matter,  
21 that are problematic? I'm trying to understand  
22 what is going on here?

**NEAL R. GROSS**

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

1           Because, I mean, I think we are trying  
2 to grapple with two things. One is the point  
3 about *mandamus* itself, is that working properly  
4 so that the interlocutory appeal aspect is being  
5 handled properly? And then there is a separate  
6 question, which Mr. Stone very properly  
7 addressed, which is what happens aside from the  
8 interlocutory appeal, and should there be this  
9 other right of appeal?

10           So since you raised the question about  
11 *mandamus*, maybe you could just raise that -- we  
12 could put that aside for the moment, but that's a  
13 very serious issue if you're saying it's not  
14 working.

15           MR. McCLEARY: I can give you what I  
16 understand right now, and we -- the Coast Guard  
17 had to litigate this relatively recently in front  
18 of CAAF on basically the flip side of Martinez.  
19 We had a Coast Guard Court of Criminal Appeals  
20 *writ* that was granted based on the victim's  
21 application, which then the defendant appealed to  
22 CAAF.

**NEAL R. GROSS**

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

1           And CAAF initially granted the  
2 accused's request to review the substantive issue  
3 as to whether or not the writ should have been  
4 granted, and then specified to the government,  
5 the victim's counsel, and then the accused's  
6 counsel, address the issue of whether or not they  
7 have jurisdiction to hear this. We are basically  
8 building off of *EV v. Martinez*.

9           And when we were looking at it and  
10 trying to build our brief, I think, at least the  
11 way I understand it, is that there are -- I don't  
12 -- *EV* addressed Article 6b and its explicit  
13 statement that there is, you know, a right for  
14 victims to file an application for a writ of  
15 *mandamus* under Article 6b.

16           What it didn't address, and what I  
17 think is perhaps unresolved is, does the All  
18 Writs Act permit a victim to have a separate  
19 basis to bring a writ application because of, for  
20 example, there were -- in the case that we were  
21 dealing with, it was psychotherapist's records.

22           Does MRE 513 provide them a basis to

**NEAL R. GROSS**

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

1 complain and bring a writ application under the  
2 All Writs Act, or does Article 6b basically  
3 occupy the entire field? And then does, you  
4 know, *EV v. Martinez* in statements that -- you  
5 know, since CAAF isn't explicitly mentioned, it's  
6 not within the statutory jurisdiction of CAAF to  
7 hear those kinds of writ applications?

8 CHAIR HOLTZMAN: Okay. Well, that's  
9 really a big question that you've raised, a  
10 biggie.

11 MR. McCLEARY: Well, to some extent,  
12 it may be --

13 CHAIR HOLTZMAN: Maybe we should just  
14 postpone the resolution of that until after we  
15 finish the resolution of the other question,  
16 unless somebody wants to interrupt the order of  
17 that.

18 HON. JONES: I would like to start  
19 with that.

20 CHAIR HOLTZMAN: Oh, you want to start  
21 with that. Okay. That's fine.

22 HON. JONES: Well, my concern is I am

**NEAL R. GROSS**

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

1 sitting here talking about how a victim has this  
2 interlocutory right, and it -- it informs my  
3 opinion about the rest of the argument.

4 CHAIR HOLTZMAN: Fine. So we can --

5 HON. JONES: If it's not clear right  
6 now that a victim can actually bring under a 412  
7 theory or a 513 theory this *writ*, or whatever you  
8 want to call it, to the next -- to the appellate  
9 court, that's what I thought we had already  
10 established.

11 COL. ORR: It is established that it  
12 can get to the Service courts. All *EV* stands for  
13 is that CAAF said that because of the language in  
14 the statute itself that they cannot hear, because  
15 the Service court was there --

16 HON. JONES: It's just the level.  
17 I --

18 COL. ORR: Okay.

19 HON. JONES: It's just the level.  
20 It's not that it's not being heard.

21 HON. JONES: Okay.

22 COL. ORR: As the statute is written

**NEAL R. GROSS**

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

1 today, they believe that it does not give them  
2 the authority to review the decision of the  
3 Service court.

4 CHAIR HOLTZMAN: So that could be a  
5 recommendation that we agree on that we could  
6 move forward on. Did you want to say something?  
7 What? It's Issue 3. Oh, okay. Fine. Great.  
8 All right. So we can go back.

9 Okay. So aside from the question of  
10 whether CAAF is actually taking these *mandamus*  
11 interlocutory appeals -- and we will get to that  
12 issue in Issue Number 3 -- we are right back to  
13 Issue Number 1, which is victim participation on  
14 direct appeal.

15 I mean, I guess where I'm coming out  
16 on this -- and it's a very difficult issue  
17 because I think -- for me they are conflicting  
18 considerations. One is I agree very much with  
19 you, Mr. Stone, that if this decision is going to  
20 be made somehow by the appellate court, there  
21 ought to be input from the victim.

22 On the other hand, we have seen in

1 part of our -- I'm a Member of the JPP  
2 Subcommittee, and we have done some traveling  
3 around the country and the world. And let's just  
4 put it this way: there have been serious  
5 unintended consequences as a result of the  
6 various changes that have been made so far.

7 And so while this has a very appealing  
8 -- appealing message, the proposal to provide a  
9 direct appeal, I think that it could create some  
10 very serious unintended consequences. For  
11 example, you say, well, we're talking about a  
12 very small number of cases. But it may now be a  
13 matter of ethics for every victim's counsel, for  
14 example, to file an appeal.

15 And what does this do to -- because  
16 those issues can be raised by the prosecutor, and  
17 probably in an overwhelming number of instances  
18 will be raised by the prosecutor, what does it do  
19 to the view in the military that this is a system  
20 that is not stacked against the defendant? There  
21 are also very, very important considerations with  
22 regard to that.

**NEAL R. GROSS**

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

1           So I'm -- I have to say that I'm  
2 really quite torn about this, and I don't have a  
3 clear path forward. And you just came in at the  
4 right moment, Admiral Tracey --

5           (Laughter.)

6           CHAIR HOLTZMAN: -- to give us your  
7 views about -- if you want to --

8           VADM TRACEY: -- against the  
9 defendant?

10          CHAIR HOLTZMAN: Yes. About -- we are  
11 just on Issue 1, which is, should victims be  
12 allowed to participate on direct appeal? And I  
13 think Mr. Stone has made some very eloquent and  
14 important arguments in favor, and Judge Jones and  
15 Mr. Taylor -- I'm not going to characterize the  
16 arguments because they can do it better than I  
17 can -- have raised concerns, and I'm just saying  
18 I'm in the middle. And so I don't know if you  
19 have a view to express on this.

20          VADM TRACEY: I'm not sure I  
21 understand what direct appeal is as the non-  
22 lawyer in the group.

**NEAL R. GROSS**

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

1 CHAIR HOLTZMAN: Good.

2 VADM TRACEY: So --

3 MR. STONE: It's really jurisdiction.  
4 Do victims have jurisdiction on appeal if they  
5 want to say something as a matter of right, or  
6 are we going to relegate them to having to file  
7 it as an *amicus* brief or a *writ*, but particularly  
8 an *amicus* brief? This is when they have won  
9 below and they are trying to defend what they  
10 won. Are we going to tell them you don't have a  
11 right to file it? Probably you can file it as an  
12 *amicus* brief.

13 The same document, the same argument  
14 is going to be made to the appellate court. The  
15 same judges are going to read it, they are going  
16 to give the same amount of time to reading it,  
17 but it's really whether the victim is going to  
18 feel like, yes, they recognize I have standing  
19 because I have an interest that won below versus,  
20 well, you can file something and we'll decide if  
21 it's relevant.

22 It is really the jurisdictional issue,

1 because the same -- the defendant -- whether the  
2 defendant sees it as a brief that the victim had  
3 a right to file, or a brief that they filed that  
4 was allowed as an *amicus*, if it's a telling  
5 point, they are still going to want to read it,  
6 and they're going to write a page or two in  
7 answer to it.

8 So, I mean, the issue is going to be  
9 there, and the question is, does the victim get  
10 told, yes, you had the right to litigate below  
11 and you have the right on appeal? Or are they  
12 going to tell them, you had the right below, but  
13 you don't necessarily have that right on appeal?  
14 Which is what the status is now.

15 MS. CARSON: Can I just clarify what  
16 our little piece of the program here is? And  
17 that is that Question A is, should victims be  
18 allowed to participate on direct appeal? The  
19 point that is getting at is post-conviction as  
20 opposed to the right to participate during the  
21 trial, which is the interlocutory right. So  
22 that's kind of where we're trying to go with that

**NEAL R. GROSS**

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

1 question.

2 CHAIR HOLTZMAN: And I just want to  
3 raise one question here with Mr. Stone. Maybe  
4 this will clarify it for me a little bit more.  
5 If we were to say at some point -- if we were to  
6 -- if this committee were to recommend, for  
7 example, that CAAF, which is the appeals court  
8 for all of the Services, could take jurisdiction  
9 in *mandamus* cases, and, therefore, would be in  
10 more of a position to elucidate the law and  
11 elaborate the law with regard to 412 and 513,  
12 don't you think that that would be a substantial  
13 assistance in terms of giving guidance to the  
14 lower courts that they may not have now in terms  
15 of resolving some of these issues that you may  
16 want to appeal, or not?

17 MR. STONE: Yes, that would be of some  
18 guidance. The trouble is, CAAF takes very few  
19 cases. They told us they take, in the course of  
20 a year, a couple dozen cases out of thousands at  
21 the Service courts of appeals. They said they  
22 don't have the capacity to look at them all.

**NEAL R. GROSS**

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

1           So, I mean, it takes a long time  
2 before CAAF reaches a lot of the issues, and a  
3 lot of these issues are fact-dependent. They are  
4 not worth CAAF's time. They are worth an appeal,  
5 but they are not worth CAAF's time.

6           So, I mean, that -- I don't want to  
7 make CAAF start looking at, you know, cases they  
8 would not otherwise ordinarily take. I just --  
9 you know, and, again, if the -- there is  
10 limitations in the subparts of our Issue 1 that  
11 are very important.

12           It is only victims, the particular  
13 victims, whose issues -- I'm sorry, whose rights  
14 or interests have been raised on appeal. If  
15 nobody raises an issue that affects the victim on  
16 appeal, then they -- that excludes them from  
17 filing a brief. They have nothing to do with the  
18 appeal. And it's not every victim; it is only a  
19 victim whose rights are at issue on the appeal.  
20 And that's actually pretty clear from what the  
21 defense counsel raises.

22           They are going to talk about the

1 records of a particular person or they're not.  
2 So, I mean, if there were 10 victims, it's very  
3 likely that most of those 10 have no -- you know,  
4 unless the defense counsel is raising the records  
5 of all 10, which is not typical.

6 So it is limited to a person who has  
7 an interest that has been litigated below.  
8 That's who we know it is. It's the victim whose  
9 interest has been litigated because you can't  
10 defend something on appeal that you haven't  
11 litigated below. You have to do it based on what  
12 the judge ruled. So, I mean, it's -- the  
13 category of people and what it is, is small.

14 HON. JONES: Well, and it also can't  
15 be raised on appeal unless it has been raised in  
16 the court below, which means, I think, that the  
17 victim has the right to this *mandamus* procedure  
18 in the next appellate court. And what we were  
19 just talking about, it's very little different  
20 than the Supreme Court and the circuits. In the  
21 trial court, in a district -- in a district  
22 court, when that *mandamus* petition -- you know

**NEAL R. GROSS**

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

1 this, Mr. Stone, I don't mean to be trying to,  
2 you know, talk -- talk to you about these issues  
3 -- it goes to the district court. It doesn't go  
4 to the Supreme Court. They don't take it.

5 So for that same reason -- and they  
6 don't take a lot of cases. As we all know, you  
7 probably -- as good an idea it would be to have  
8 CAAF decide these things, and they probably will  
9 on the individual case that really, you know,  
10 gets their attention, it wouldn't -- you don't  
11 want CAAF taking all of these.

12 So the victim gets an interlocutory  
13 appeal to the appropriate service appellate  
14 court, and that court decides. And that's going  
15 to be the court presumably -- isn't that the  
16 first court that then will also look at the  
17 ultimate appeal?

18 MR. STONE: You've gone back to the  
19 interlocutory appeals before the conviction when  
20 you talk about --

21 HON. JONES: Right. I have.

22 MR. STONE: Once we do that, then --

1 see, I think that confuses the issue. Yes, the  
2 victims have an appeal when they lose. The  
3 question is: do they have any interest in the  
4 appeal when they have won? I mean, I think that  
5 is a basic part of due process everywhere.

6 HON. JONES: This will bring you up to  
7 date.

8 MR. STONE: When you've won --

9 HON. JONES: And then my only point  
10 is, I think the situation where --

11 MR. STONE: -- do you get to defend  
12 your win?

13 HON. JONES: -- the government is not  
14 going to defend its conviction, which included a  
15 ruling in the trial court that these records were  
16 not going to be permitted into evidence or that  
17 testimony wasn't going to be permitted, I don't  
18 think -- I really don't think that that situation  
19 is going to occur frequently enough to set up a  
20 whole new appellate machine. That's all.

21 MR. STONE: Well, I mean, I --

22 HON. JONES: I don't even know that we

**NEAL R. GROSS**

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

1 have victims' legal counsel who might actually  
2 have to qualify, then, to do appellate work.  
3 Maybe they're all qualified to also do that. I  
4 just don't know.

5 MR. STONE: I mean, but, you know, I  
6 was a federal prosecutor, as people who look at  
7 my bio, for a long time. I'll just leave it at  
8 that. And I did almost exclusively appellate  
9 work for a couple of decades.

10 And I know that the issues that the  
11 government wants to defend on appeal are  
12 typically narrow ones, and they may not overlap  
13 with the victims' issues. I mean, I don't -- I  
14 don't know if there were individual victims --  
15 when there was the complaint after conviction of  
16 Senator Stevens of Alaska, I don't know if there  
17 were individual victims who suffered from the way  
18 various people gave and received bribes, but the  
19 government decided to drop the whole case when it  
20 got to appeal.

21 HON. JONES: Well, that's a very  
22 different -- that's a very different --

1           MR. STONE: All I'm saying is the  
2 victim's interest is not always the same as the  
3 government's.

4           HON. JONES: Yes. But we're talking  
5 about, I think, a class of victims here where the  
6 extraordinarily important issue, which is why we  
7 are trying to protect victims, is the privacy  
8 interest. And it's always an important -- almost  
9 always an important part of this type of case.  
10 That is my point.

11           And so it's -- it's going to go to  
12 that interlocutory level. Fine. Let's go --  
13 let's assume the government wins. They prevailed  
14 on their arguments about privacy. They get to  
15 that next -- the court. That court will, nine  
16 times out of 10, honor the decision, if there was  
17 an interlocutory, right, that ruled in the favor  
18 of the defendant.

19           But even if that didn't occur, maybe  
20 they just won with the trial court and never went  
21 to the interlocutory appeal. I don't see a  
22 government prosecutor ditching that issue because

**NEAL R. GROSS**

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

1 it's too important.

2 MR. STONE: They don't have to ditch  
3 the issue. Suppose they argue it and they just  
4 simply lose on appeal and the case goes back for  
5 a new trial. It's the law of the case that that  
6 412 or 513 material is going to be turned over.  
7 It's not going to be relitigated with a new  
8 interlocutory appeal the second time and the  
9 victims never got to say anything.

10 CHAIR HOLTZMAN: Just to follow up on  
11 your argument, but the answer, then, is that the  
12 point you're making, then, the implication of it  
13 is that in every single case -- in every single  
14 case -- the victim should file a brief because  
15 you never know what is going to happen on appeal.  
16 Isn't that it?

17 MR. STONE: No. The victim is going  
18 to take a look and see whether they think --

19 CHAIR HOLTZMAN: That's exactly it.

20 MR. STONE: -- their position has been  
21 adequately stated.

22 CHAIR HOLTZMAN: Well, I mean, yes,

1 and they may -- right. They may think it is  
2 adequate. But they don't know what the court is  
3 going to do, and so they say, well, why not put  
4 in another two cents or another 10 cents? I  
5 mean, and that goes back to the point I raised  
6 earlier. Is this going to be a question of  
7 responsibility, ethical responsibility, of the  
8 special victims' counsel to add --

9 MR. STONE: Aren't they going to have  
10 to do that if they file an *amicus* brief? I don't  
11 understand why that's any different, either  
12 procedurally, except for the fact that they don't  
13 have a right to do it, or in terms of what it's  
14 going to cover if they're going to file an *amicus*  
15 brief.

16 Special victims' counsel is going to  
17 feel obligated to do it on behalf of the victim  
18 if they don't think -- if they think the case  
19 could be reversed on the 412 or 513 ground. The  
20 court is still going to read it, we heard, even  
21 before they decide whether to allow it to be  
22 filed. And defense counsel, if they think there

**NEAL R. GROSS**

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

1 is something valid there that they didn't see in  
2 the government's brief, is going to respond to  
3 it.

4 So in terms of substance, the same  
5 thing is going to happen. The only difference is  
6 whether the victim is going to have a right to  
7 file a brief and it is going to stay filed, or  
8 the court is going to say, "Well, we've read the  
9 brief. And since it doesn't state anything  
10 different than the government's brief, we're not  
11 permitting it to be filed."

12 CHAIR HOLTZMAN: Okay.

13 MR. STONE: Which is sort of a slap in  
14 the face of the victim.

15 CHAIR HOLTZMAN: Right. But I think  
16 the point you were making, that this is only  
17 going to be a small number of cases, is not going  
18 to be accurate. It is going to be -- well, most  
19 of the cases, maybe not all of them.

20 MR. STONE: You don't have 412 or 513,  
21 in most cases, in the military.

22 CHAIR HOLTZMAN: No. I'm talking

1 about most of the -- I mean, we are only talking  
2 about sexual assault cases.

3 MR. STONE: Right.

4 CHAIR HOLTZMAN: Yes. And in those  
5 cases, in all of the five -- in almost all of the  
6 512 -- I mean, 513 cases and 412 cases, these  
7 issue are going to be raised on appeal. That's  
8 what is going to happen.

9 LT. COL. VERGONA: Ma'am, if I may  
10 just add --

11 CHAIR HOLTZMAN: Yes, sure.

12 LT. COL. VERGONA: -- the caseload now  
13 is about 50 percent sexual assault cases. So  
14 these issues are routinely litigated. So the  
15 volume of cases are going to be more than a few  
16 years ago. So these cases -- I mean, it is going  
17 to be a significant amount, because of how many  
18 we're taking to trial.

19 CHAIR HOLTZMAN: Anyway, going back to  
20 Admiral Tracey.

21 VADM TRACEY: So I am -- universally  
22 throughout this I am not persuaded by what the

**NEAL R. GROSS**

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

1 workload issues are for the appeals court. That  
2 isn't a factor in my mind in terms of whether  
3 we're protecting the rights of the defendant and  
4 of the victim. So the workload has not been a  
5 factor for me in whether these are good decisions  
6 or not.

7 What is the practice in civil courts  
8 with regard to appeal rights of the victim?

9 MR. STONE: We discussed that briefly.  
10 Most civil courts don't provide victims' counsel  
11 like the military does. So you only have a  
12 handful of states -- Maryland where I practice is  
13 one of them -- and, you know, Oregon, Utah,  
14 Arizona. There's a handful of states where  
15 victims' counsel are regularly involved in the  
16 case.

17 As a result, most states don't --  
18 haven't even addressed whether victims should  
19 have a right to file a brief when a victim's  
20 issue is on appeal after a conviction. But six  
21 or eight states have and allow victims to do it.  
22 Federally, they haven't addressed the issue

**NEAL R. GROSS**

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

1 either.

2 VADM TRACEY: So this would be a lot  
3 of new ground for -- this is plowing new ground.

4 MR. STONE: It's because we provide  
5 those counsel at the trial level that the issue  
6 is sort of ripe for us to discuss. If we didn't  
7 have it litigated at the trial level, the  
8 appellate court would say, there is no record.  
9 There is nothing for us to take here. Nobody  
10 made a record.

11 But you are making a record now, and  
12 you have a lawyer, and the question is, when the  
13 lawyer wins, is there ever a situation in law  
14 when you win and your issue is on appeal that you  
15 don't get to say, I'd like to defend that? And I  
16 don't think the answer is yes. I think the  
17 answer is there is no situation where you don't  
18 get to defend your win on appeal.

19 VADM TRACEY: Is that consistent with  
20 your understanding as well?

21 HON. JONES: No situation?

22 VADM TRACEY: Except in federal.

1           HON. JONES: I mean, I go back to the  
2           notion that there are only two parties in a  
3           criminal case. And I don't -- from a practical  
4           standpoint, I don't see the situation coming up  
5           where the government's won below. The victims'  
6           privacy rights have been respected, and all of a  
7           sudden the government is not going to argue what  
8           they've argued before and isn't -- hasn't or  
9           isn't continuing to consult with the victim.

10           And it -- I do believe that if we  
11           start in the appeals court now having a victim's  
12           right to also appeal, if you will, then we're  
13           creating machinery, a whole extra process that is  
14           -- that I think really isn't necessary because  
15           there is an interlocutory appeal.

16           And I don't see a big danger where the  
17           government's won below and the victim is  
18           concerned they are not going to win in a court of  
19           appeals because the government is going to, you  
20           know, not argue it correctly or strenuously. I  
21           just don't think it's worth it, I guess is the  
22           bottom line.

**NEAL R. GROSS**

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

1           MR. STONE: How is that different from  
2 what we used to have at the trial court, which  
3 was there were two attorneys -- only a  
4 prosecutor, only defense counsel -- and if the  
5 victim's privacy came up, the prosecutor argued  
6 on behalf of it and the judge made a decision,  
7 and the victim's counsel and the victim really  
8 had nothing to say about it, and the judge made  
9 the right decision. And, if not, you might have  
10 the prosecutor go up.

11           I mean, that same logic suggests you  
12 don't need special victims' counsel at the trial  
13 level either, and that they change the paradigm  
14 of two attorneys in the courtroom.

15           HON. JONES: Look, we're in a world  
16 that is changing. I don't have a problem with  
17 victims' counsel in the courtroom. It's new. I  
18 don't know, frankly -- and it may be necessary  
19 with some counsel; it may not be necessary with  
20 other government counsel. But the bottom line  
21 is, I don't think it's at all necessary at the  
22 appellate level, and it's an extra set of

**NEAL R. GROSS**

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

1 procedures and more lawyers' time.

2 You know, we have a tremendous number  
3 of resources that we're putting into victims'  
4 counsel right now. And I think that that's --  
5 this is going to be more routine. Okay. Now we  
6 have to file the appeal brief. That's what I'm  
7 worried about, and I don't think it's necessary.

8 CHAIR HOLTZMAN: Do you have any other  
9 comments or questions?

10 VADM TRACEY: I think the last time we  
11 met I commented on the fact that we did seem to  
12 be modifying the purpose of the appeal from  
13 something that was the defendant's recourse to  
14 something that became -- now it's a victim's  
15 recourse. So, you know, I think I'm in line with  
16 the judge that that's not what the intention was.

17 CHAIR HOLTZMAN: Mr. Taylor, are you  
18 pondering, or are you about to say something?

19 MR. TAYLOR: No. I mean, I, of  
20 course, enjoyed the discussion about the values  
21 that are involved. I tend to approach one of  
22 these, I suppose, as a public policy professor

**NEAL R. GROSS**

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

1 from the viewpoint of conflicting values, both of  
2 which are very important.

3 And I think in any situation like  
4 this, if you're looking to affect the outcome of  
5 what is best for the public good, I think that  
6 there are procedures in place that have been  
7 explained and that we have understood that  
8 provides about all the protection that most  
9 victims are going to be able to use with a  
10 particular situation.

11 And given the unintended consequences  
12 that you referred to, Madam Chair, and also what  
13 we know just about life in general, it seems that  
14 it is a somewhat uncertain future to just put  
15 this out there and then see what happens to it,  
16 given what we know about the requirements that  
17 you mentioned on the part of defense bar to say,  
18 well, am I being -- am I somehow failing my  
19 client if I don't recommend that you pursue this  
20 course of action, and then creating perhaps  
21 another super structure within the appellate  
22 world just to deal with the -- with these types

**NEAL R. GROSS**

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

1 of cases.

2 So I'm persuaded by Judge Jones'  
3 arguments in part, but very sympathetic to Mr.  
4 Stone's arguments about ensuring that the system  
5 we do have -- and I think this is a little bit  
6 about what you're saying because this was my  
7 concern when we started this conversation -- that  
8 the system we do have in place is actually  
9 working for victims, that we don't need any new  
10 procedures to ensure that they are in fact  
11 getting what they need out of the system, the  
12 protection they need.

13 I'm as concerned about that, I  
14 suppose, as I am creating a new system that seeks  
15 to solve the problems that I think we perceive in  
16 the current system.

17 MR. STONE: The two reactions I have  
18 to that is, on the one hand, victim dignity and  
19 fairness goes to whether the victims feel  
20 subjectively that the process is fair. And for  
21 them to know that they have counsel at the trial  
22 level but nothing at the appellate level seems to

**NEAL R. GROSS**

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

1 me goes against that.

2 Now I, obviously, did not travel  
3 around the country. I was not on the  
4 subcommittee or invited to travel around. I  
5 didn't hear whatever those other practical  
6 considerations are.

7 But even assuming there are such  
8 considerations, I think that one way to modify  
9 this if you're worried about there might be a  
10 brief filed in every case, is for us to recommend  
11 that there be -- they have the right to  
12 participate on direct appeal, and then you say to  
13 add any arguments or citations not already before  
14 the court.

15 In other words, make it clear this is  
16 not to file a me-too brief to something that is  
17 already there. And that allows counsel not to  
18 feel, oh, they're going to say I was not a good  
19 counsel because I didn't file anything. In other  
20 words, I have no problem narrowing the scope to  
21 add arguments or citations not already before the  
22 court, because, as I say, the victim may well

**NEAL R. GROSS**

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

1 have a different view. I see that in federal  
2 court all the time.

3 MR. TAYLOR: Just to respond briefly  
4 to that, I mean, it is always a problem, as I  
5 tell my students who are grappling with how to  
6 solve these kinds of problems where we've got  
7 various alternatives, to pick the right criteria.  
8 And the criterion that you seem to be focusing on  
9 more than anything else, with respect, is how the  
10 victim feels subjectively about the way things  
11 turn out.

12 And that fairness issue is a very  
13 tricky criterion to think about because there are  
14 other parties involved with the fairness  
15 equation, and not the least of which is the  
16 accused in a case. So I guess there is a point  
17 at which I can say you can -- that argument only  
18 works so far for me.

19 MR. STONE: The accused is going to  
20 face a brief even if a *mandamus* brief is filed.  
21 Even if it's not -- if the brief is filed and is  
22 not allowed, it's lodged with the court and they

**NEAL R. GROSS**

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

1 don't accept it for filing because the defense  
2 counsel is going to have to file a brief opposing  
3 the filing of the *mandamus* brief. I see that,  
4 too. They have to get in the case because the  
5 victim's counsel feels, if he doesn't see what is  
6 already up there, as defending his client that he  
7 has something to say.

8 So all those issues about fairness to  
9 the defendant or time and writing the brief and  
10 the judge is -- that's all up there anyway. That  
11 is not going to change.

12 VADM TRACEY: It does sound as if the  
13 approach you're suggesting is primarily to give  
14 the victim another belt-and-suspenders sense of  
15 confidence that the system is being fair to the  
16 victim. I'm with Mr. Taylor on that, that that -  
17 - it's -- and I agree with you that it's highly  
18 likely that a victim will see the appellate court  
19 as another place where they may lose, they just  
20 won, and that this is just another place that  
21 they may lose. And any lack of transparency  
22 about that process will contribute to that

**NEAL R. GROSS**

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

1 perception on the part of the victim, highly  
2 unlikely that a victim actually understands the  
3 appellate process or its purpose or the  
4 foundation. So it is a bit of a dilemma.

5 But I think one of the things we  
6 talked about was whether part of the special  
7 victims' counsel's responsibilities would be to  
8 educate their client on what the process is past  
9 conviction, what are the things that happen past  
10 conviction, and how are they protected?

11 And, you know, they may not ever  
12 believe they are fully protected, but it may not  
13 be possible to overcome that issue.

14 CHAIR HOLTZMAN: Well, anybody have  
15 anything else to say? Are we ready to vote? Do  
16 we want more time to reflect? Do we take a five-  
17 minute break? I mean, what -- how should we  
18 proceed now?

19 VADM TRACEY: Can we take a five-  
20 minute break?

21 CHAIR HOLTZMAN: Okay. Let's take a  
22 five-minute break. Good.

**NEAL R. GROSS**

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

1 (Whereupon, the above-entitled matter  
2 went off the record at 11:40 a.m. and  
3 resumed at 11:53 a.m.)

4 CHAIR HOLTZMAN: Before we commence,  
5 I just want to ask a question again about how the  
6 system works. So let's say that there has been a  
7 412 issue raised in the trial court, and that has  
8 been fully litigated. And the government's  
9 position, which is to keep the 412 information  
10 out, has succeeded.

11 On appeal, that trial record is going  
12 to be before the appellate court, is that  
13 correct?

14 COL. ORR: Yes, that's correct.

15 CHAIR HOLTZMAN: So the arguments that  
16 the defense counsel has made -- I mean, the  
17 victims' -- special victims' counsel has made  
18 with regard to 412 is going to be in the  
19 record on appeal.

20 COL. ORR: That is correct.

21 CHAIR HOLTZMAN: And as I understand  
22 it, the rules in the military appeal process

**NEAL R. GROSS**

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

1 require the appellate courts to read the whole  
2 record.

3 COL. ORR: That is correct.

4 CHAIR HOLTZMAN: Is that correct?

5 COL. ORR: Yes.

6 CHAIR HOLTZMAN: So the arguments are  
7 going to be before the appellate court, as I  
8 understand the process. Mr. Stone, do you have a  
9 comment to make about that?

10 MR. STONE: Well, just that when you  
11 have an extensive record -- I know I have had  
12 extensive records, and as my bio shows I was even  
13 an immigration judge for a while. When you have  
14 what could be hundreds of pages, yes, you read  
15 it, but you're reading with a purpose, and  
16 usually the purpose is the issues that have been  
17 raised.

18 So, yes, if something jumps off the  
19 page at you, you might see it, but you're looking  
20 to answer the questions that have been raised on  
21 appeal and to see if there is something that  
22 affects them one way or the other. So if the

**NEAL R. GROSS**

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

1 issue is not raised, it may be buried there, but  
2 it's a lot harder to see.

3 LT. COL. VERGONA: In addition, Mr.  
4 Stone, in the military, the military appellate  
5 courts also specify issues. So independent of  
6 what the defense appellate counsel or what  
7 government appellate counsel has responded to,  
8 once it gets to the court, and a court -- and a  
9 judge has got cases assigned to him or her, then  
10 he is required to read it front to back. And if  
11 he sees any issues, he can specify the issues.  
12 So they are absolutely not limited to what is  
13 raised to their level.

14 CHAIR HOLTZMAN: Okay. Before we vote  
15 or decide whether we're going to vote, Mr. Stone  
16 suggested that Members of the Panel, since you  
17 have heard us talk, I think only -- may want to  
18 make a comment.

19 I think the only thing they may  
20 comment on -- Ms. Fried, please correct me if I'm  
21 wrong -- is if we made a factual error, if any  
22 one of us. Certainly, I could definitely be

**NEAL R. GROSS**

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

1 guilty of that, but nobody else on the Panel.

2 But if there are any factual errors to  
3 correct into our argument, we would -- is that  
4 really what you want us to get at, Mr. Stone?

5 MR. STONE: Yes. To see their  
6 reaction to everything we've been saying.

7 CHAIR HOLTZMAN: Well, I don't know if  
8 they can give us their reaction.

9 MR. STONE: If they have a short --

10 MS. FRIED: They really can't comment  
11 on it. They can't be part of the deliberations.  
12 They can only speak to facts and clarification  
13 based on --

14 MR. STONE: Whether we overstated or  
15 understated a fact.

16 MS. FRIED: Right. Or if something  
17 was not accurately stated, they can clarify it  
18 and come to a specific --

19 MR. STONE: Right.

20 MS. FRIED: -- if needed. But they  
21 cannot get involved in any deliberations. That's  
22 the purview of only the Panel Members.

**NEAL R. GROSS**

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

1 CHAIR HOLTZMAN: So if there is  
2 anything that anybody wants to point out, we  
3 would very much appreciate --

4 LT. COL. WISSMAN: I just wanted to --

5 CHAIR HOLTZMAN: -- clarify something,  
6 if we have been misleading in our comments or  
7 factually erroneous.

8 LT. COL. WISSMAN: I just wanted to  
9 clarify that we are aware of cases where victims'  
10 counsel have filed to -- have asked to file an  
11 *amicus* and have been denied that *amicus*  
12 opportunity. So, again, that motion to file is  
13 very brief. So it just gives the court a brief  
14 idea of what that *amicus* would be, if they are  
15 able to file. So not in every case is -- is a  
16 victim's counsel able to file an *amicus* brief.

17 And, also, that *amicus* brief is --  
18 it's not representing the victim. It's  
19 representing a party, a policy interest, so that  
20 *amicus* brief --

21 HON. JONES: I'm sorry. A what  
22 interest?

1                   LT. COL. WISSMAN:   That *amicus* is  
2 following a policy interest.   It's not  
3 representing a particular victim; it's  
4 representing an overall interest, not a  
5 particular victim.

6                   CHAIR HOLTZMAN:   Could you explain  
7 that or give an example?

8                   LT. COL. WISSMAN:   It's not -- so  
9 you're filing that this -- this overall -- that  
10 if you change -- this ruling in 412 or this  
11 ruling in 413, if you agree with what the  
12 defendant wants, it is going to have overall type  
13 of ramifications, not in particular on this  
14 particular victim. So you're looking at a policy  
15 interest brief, not a particular party.

16                   MR. STONE:   Not the application in the  
17 particular case.

18                   LT. COL. WISSMAN:   Yes.

19                   MR. STONE:   But the board rule.

20                   CHAIR HOLTZMAN:   Is that because of  
21 the rules with regard to *amicus* briefs, or is  
22 that just how it works?

**NEAL R. GROSS**

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

1 LT. COL. WISSMAN: Yes.

2 CHAIR HOLTZMAN: I see. So that's how  
3 it works in the -- *amicus* briefs work in the  
4 military.

5 LT. COL. WISSMAN: Yes.

6 CHAIR HOLTZMAN: Does any other Member  
7 of the Panel want to clarify or --

8 LT. COL. WISSMAN: And there is  
9 also --

10 CHAIR HOLTZMAN: Oh, sorry.

11 LT. COL. WISSMAN: I'm sorry. Another  
12 thing, there is also -- for the *amicus* brief, in  
13 the appellate rules, it is already understood  
14 that it is not a me-too brief. So we're not --  
15 that is already in the rules, so a brief that  
16 would be filed would be something different. So  
17 we already had in the rules that it should not be  
18 a me-too brief.

19 CHAIR HOLTZMAN: Thank you. That's  
20 very helpful. Anybody else want to make any --  
21 yes, sir, Captain.

22 CPT. HOUSE: And please tell me if I'm

**NEAL R. GROSS**

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

1 asking something that I'm not supposed to ask. I  
2 just want to clarify -- I'll have to go back and  
3 brief to my superiors. I want to -- what you're  
4 going to vote on is whether or not a victim  
5 should have the right to participate in a direct  
6 appeal? And what you mean by that is a post-  
7 conviction appeal by the defense. Is that  
8 correct?

9 HON. JONES: That's what I think we  
10 are voting on.

11 MR. STONE: As an appellee -- in other  
12 words, they don't get to set the issues, they  
13 don't bring that appeal, it is just if an  
14 appellant raises a victim issue, which they might  
15 not do.

16 CPT. HOUSE: Okay. Thank you.

17 CHAIR HOLTZMAN: Okay. Any other  
18 comments that anybody -- I mean, factual  
19 corrections or clarifications. Yes, sir.

20 MR. TAYLOR: Madam Chair, if I could,  
21 I would just like to go back and just be sure I  
22 understood that correctly. So is that true for

**NEAL R. GROSS**

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

1 all the courts of criminal appeals, the way she  
2 stated the role and the function, the  
3 limitations, if you will, on an *amicus* brief, was  
4 that true for all Services?

5 COL. ORR: That's certainly what the  
6 rules say, but they don't necessarily brief like  
7 that. I mean, they are pretty generally pointed  
8 to the case.

9 HON. JONES: Well, I was going to ask  
10 that question. I mean, when you see *amicus*  
11 briefs, they are obviously for one side or the  
12 other on the issue. So it's sort of hard to  
13 write an *amicus* without letting your feelings be  
14 known about how you think the merits should come  
15 out in the case before you.

16 So is it any different? I mean, I  
17 heard what you said and I don't disagree with  
18 you. But in practice, is it any different?

19 COL. ORR: No. And the other thing  
20 is, not everything that comes before the court --  
21 filing does not always equate to a win. And I  
22 think that sort of makes it difficult for victims

**NEAL R. GROSS**

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

1 to say, we heard you, but we already have that  
2 information. And sometimes that is interpreted  
3 as we don't care or your voice doesn't matter.

4 MR. TAYLOR: Is the Army the same?

5 LT. COL. VERGONA: As far as I know,  
6 sir. I can't say 100 percent sure.

7 MR. TAYLOR: Thank you.

8 CHAIR HOLTZMAN: Okay. Do we feel  
9 ready to vote on this issue, or do we want more  
10 time? How do we feel?

11 MR. TAYLOR: I'm ready.

12 HON. JONES: I'm ready.

13 CHAIR HOLTZMAN: Okay. So how should  
14 we phrase the motion? Should we say should --  
15 should -- I'm sorry. Does anyone have  
16 language --

17 HON. JONES: I was just going to say,  
18 allowed to participate. I think we -- I think we  
19 were talking about should a victim be allowed to  
20 appeal a conviction. I mean, because we are  
21 giving them a standing of direct appeal, right?

22 MR. STONE: No, no. They are not

**NEAL R. GROSS**

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

1 appealing. It is whether they can participate as  
2 an appellee. They're totally different. They  
3 don't get to raise the issue or frame the issue.

4 HON. JONES: Oh, no, no, no. I'm  
5 sorry. Yes, you're right. But we're still  
6 talking about them being able to participate.

7 MR. STONE: As an appellee.

8 HON. JONES: Right.

9 MR. STONE: When an issue is raised --

10 HON. JONES: As a party in --

11 MR. STONE: -- affecting them. It  
12 doesn't have to say as what. It just has to say  
13 as an appellee. When an issue is raised  
14 affecting them, the victim.

15 HON. JONES: Okay.

16 CHAIR HOLTZMAN: Well, we're not yet  
17 on the -- when they can -- that part is, assuming  
18 this passes, then we'd have to really focus on  
19 exactly when they could participate. So that's  
20 really a shorthand when the issue affects them.  
21 We haven't really gotten to that part yet.

22 MR. STONE: At least we've got to say

**NEAL R. GROSS**

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

1 as an appellee. They're not an appellant ever in  
2 this process that we're talking about post-  
3 conviction.

4 VADM TRACEY: Is that different from  
5 the way the question is phrased?

6 CHAIR HOLTZMAN: Yes, right. Should  
7 victims be allowed to participate on direct  
8 appeal? I think that that is -- doesn't that  
9 solve that problem? I guess it doesn't solve the  
10 issue about participate, because it doesn't solve  
11 the issue that you raised, Mr. Stone, which is  
12 that they can't raise the appeal themselves.  
13 That's what you're saying.

14 MR. STONE: Right.

15 CHAIR HOLTZMAN: The appeal has to be  
16 raised by the defendant.

17 MR. STONE: They didn't get to raise  
18 the appeal.

19 CHAIR HOLTZMAN: Once the defendant --  
20 so maybe this A should read, once a defendant has  
21 brought an appeal, comma, should victims be  
22 allowed to participate in that appeal? Should

**NEAL R. GROSS**

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

1 any victim of a crime -- is that a fairer way of  
2 stating it?

3 HON. JONES: Well, I mean, you could  
4 participate by filing an *amicus*. I just think  
5 participate is too broad.

6 CHAIR HOLTZMAN: I see. Okay. Should  
7 victim be allowed --

8 MS. FRIED: Does the victim have  
9 standing to file --

10 CHAIR HOLTZMAN: Forget standing. We  
11 don't want standing. Bad word. Victim -- may  
12 the victim --

13 MR. STONE: Does victim have standing  
14 to file a pleading in that case?

15 CHAIR HOLTZMAN: That's too technical.  
16 Should victims be allowed to file a brief? What  
17 about a brief?

18 MR. STONE: Well, that's what a  
19 pleading is. I mean, but sometimes --

20 HON. JONES: Well, let me ask this  
21 question. If they lose at that level -- again,  
22 the government, let's say they're aligned with

**NEAL R. GROSS**

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

1 the government and the victim has filed a brief  
2 and has appellee status, then they have the right  
3 to appeal to the next higher court, right? We're  
4 talking about giving them standing in the  
5 appellate process.

6 MR. STONE: Well, except CAAF doesn't  
7 think so right now. That's the question we  
8 postponed because in --

9 CHAIR HOLTZMAN: But it's also a  
10 question that I think shows the problem with  
11 giving, you know, someone who is not the -- look,  
12 you have plaintiffs and defendants here, you have  
13 the government and the defendant. I think that's  
14 -- when you give a third party, right, the victim  
15 witness, appellate standing, then they are a  
16 party in the appeal.

17 And then it goes on up to the -- and  
18 maybe the government decides not to -- not to  
19 take it any further. Do they get to then go to  
20 the next court? I mean, I'm just trying to play  
21 this out.

22 MR. STONE: Not unless we change the

1 CAAF rule, because CAAF doesn't want -- CAAF has  
2 ruled there is no jurisdiction. They don't care  
3 what you are --

4 CHAIR HOLTZMAN: Well, what this  
5 language addresses, should victims be allowed to  
6 initiate -- initiate --

7 MR. STONE: No.

8 CHAIR HOLTZMAN: Excuse me. Should  
9 victims be allowed to initiate -- oh, that  
10 doesn't give you what you want, right. Okay.  
11 Sorry. No, no, no. We have to --

12 VADM TRACEY: Well, if we modified it  
13 the way Mr. Stone originally said, once a  
14 defendant has brought an appeal, should a victim  
15 be allowed to initiate, is that where we were  
16 going with that?

17 CHAIR HOLTZMAN: Yes. I don't know.  
18 That doesn't allow -- because we want them to --

19 MR. STONE: To participate as an  
20 appellee.

21 MS. FRIED: Right now, the government  
22 is the appellee in appeals when the appellant --

**NEAL R. GROSS**

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

1 when the victim is appealing. But when the  
2 defendant is filing an appeal, he is the  
3 appellant; the government is the appellee.

4 MR. STONE: Right.

5 MS. FRIED: If you call the victim an  
6 appellee --

7 MR. STONE: There's two appellees.  
8 That's what happens in Maryland.

9 MS. FRIED: I would give them the same  
10 -- yes, I just don't know about that standing  
11 issue.

12 CHAIR HOLTZMAN: Well, what about just  
13 saying -- once a defendant has filed an appeal,  
14 can the -- is the victim -- should the victim be  
15 allowed to file a brief on direct should the  
16 victim --

17 MR. STONE: In response.

18 CHAIR HOLTZMAN: In response, yes.  
19 Okay.

20 MR. STONE: That's actually very good,  
21 because if no victim issue is raised, there is  
22 nothing for them to respond to.

**NEAL R. GROSS**

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

1 CHAIR HOLTZMAN: Okay. So that would  
2 be the language. Somebody have that language?  
3 Do you want to read it to us, Captain?

4 CPT. TIDSWELL: Once defendant has  
5 brought an appeal, should victims be allowed to  
6 file a brief in response?

7 CHAIR HOLTZMAN: Okay. All in favor,  
8 say aye. Opposed? Okay. The nos have it.

9 Let me just say, Mr. Stone, and  
10 anybody else, that you are certainly permitted to  
11 file an explanation of your views, dissenting  
12 views, or any comment you want to make with  
13 regard to that.

14 Okay. So I guess -- do we need to go  
15 to the other points? Oh, I know what we wanted  
16 to do. I mean, is Point B -- has that -- that  
17 has already been decided, right, Point B? So we  
18 don't have to go to that.

19 Issue 2, which is victim privacy  
20 issues, what should the process be for appellate  
21 counsel review of sealed materials in the record  
22 of trial?

1 MR. TAYLOR: Madam Chair, could I  
2 suggest that, if we're going to do another issue  
3 before lunch, we go to Issue 3?

4 CHAIR HOLTZMAN: Yes, that's right.  
5 That's good. That's a good point, yes, because  
6 we were just focused on that. Right. Issue 3.

7 Yes. So we're going to skip now to  
8 page -- to page 13, Issue Number 3. Should  
9 victims be allowed to appeal a writ denial to  
10 CAAF? A writ denial being the interlocutory  
11 appeal. That's what we're talking about here.  
12 Are you with us, Admiral Tracey?

13 VADM TRACEY: This is -- I'm not --

14 CHAIR HOLTZMAN: This is going to the  
15 highest court.

16 VADM TRACEY: Understood.

17 CHAIR HOLTZMAN: Which right now  
18 doesn't -- it's not clear that it has the  
19 authority to take an appeal -- let's -- okay.  
20 Let's go back. You started at trial court --  
21 this is trial court, and a judge has allowed --  
22 or has allowed medical records to come in, 513

**NEAL R. GROSS**

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

1 medical records. And the victim has taken a  
2 *mandamus* interlocutory appeal. That is denied.

3 Right now, the victim -- that's the  
4 end of it. And this would make it clear that the  
5 highest military court could hear that appeal.  
6 Did I state that correctly?

7 (Laughter.)

8 CHAIR HOLTZMAN: Whew. It has only  
9 taken three years. Okay. So you -- okay. Do we  
10 need any discussion of this? I mean, we sort of  
11 talked about it already. Does anybody want to  
12 make any comment, further comment?

13 HON. JONES: I just wanted to ask a  
14 question. Am I right that CAAF has already  
15 decided -- that's their guidance to the world  
16 that they are not -- they don't have  
17 jurisdiction. So we would be giving them  
18 jurisdiction.

19 CHAIR HOLTZMAN: Right.

20 HON. JONES: Okay. Got it.

21 COL. ORR: That's right.

22 HON. JONES: Okay.

1 COL. ORR: We would be tweaking the  
2 statute.

3 HON. JONES: Correct.

4 CHAIR HOLTZMAN: Okay. Ready to vote  
5 on this? All in favor? Any opposed? You're a  
6 no? Okay. Issue 3 is disposed of.

7 So should we do 2 now or have lunch?  
8 Okay. Lunch it is. All right. We come back  
9 after lunch and we'll do Issue 2. Is that it?  
10 Do we have 4 also? Yes, we have 4, too. Okay.  
11 Maybe we'll only take a half-hour for lunch, so  
12 we can -- yes. Okay.

13 (Whereupon, the above-entitled matter  
14 went off the record at 12:10 p.m. and resumed at  
15 12:52 p.m.)

16 CHAIR HOLTZMAN: Ms. Fried, I think we  
17 are ready to recommence. May we do so?

18 MS. FRIED: Yes.

19 CHAIR HOLTZMAN: Thank you. I think  
20 we are up to Issue 2: Victims' Privacy Interest  
21 During Appellate Counsel Review of Record of  
22 Trial.

**NEAL R. GROSS**

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

1 I think the issue here, if I can  
2 summarize it, or maybe Captain, why don't you  
3 summarize it? Then, I know I can't be making a  
4 mistake.

5 CPT. TIDESWELL: Yes, ma'am. I think  
6 the SVCs and the VLCs expressed concern about how  
7 appellate counsel were handling the sealed  
8 records. They were part of the record of trial  
9 when they reached the appellate level. There is  
10 a discussion as to what the options would be on  
11 how those sealed records would be handled.

12 CHAIR HOLTZMAN: Right, could you just  
13 summarize them for us, please?

14 CPT. TIDESWELL: Yes, ma'am. So, one  
15 option would be Rule for Courts-Martial 1103A,  
16 which is sort of the current governing rule,  
17 which allows the counsel to examine the sealed  
18 materials but only if it is reasonably necessary  
19 for proper fulfillment of their responsibilities.  
20 So, there is a standard --

21 HON. JONES: Is this trial, appellate  
22 -- I'm sorry.

1 CPT. TIDESWELL: This is at the  
2 appellate level.

3 HON. JONES: At appellate level.

4 CPT. TIDESWELL: So, the record of  
5 trial goes up. The materials are sealed. Now  
6 who and how do you get access to those materials?

7 Yes, ma'am.

8 CHAIR HOLTZMAN: And Option 1, isn't  
9 that the present system?

10 CPT. TIDESWELL: Yes, it is.

11 CHAIR HOLTZMAN: And under the present  
12 system, if I am right, appellate counsel can see  
13 the sealed materials.

14 CPT. TIDESWELL: Yes, ma'am. Now, in  
15 your --

16 CHAIR HOLTZMAN: I'm sorry. Counsel  
17 for the defendant, appellate counsel for the  
18 defendant --

19 CPT. TIDESWELL: Yes, ma'am.

20 CHAIR HOLTZMAN: -- can see the sealed  
21 materials.

22 CPT. TIDESWELL: Yes, they can.

**NEAL R. GROSS**

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

1 CHAIR HOLTZMAN: And that is kind of  
2 the real nub of the issue here. Isn't that it?

3 CPT. TIDESWELL: Right.

4 CHAIR HOLTZMAN: Okay.

5 CPT. TIDESWELL: And then if you look,  
6 I believe each of the Services have different  
7 rules as to how that actually occurs.

8 MR. STONE: Tab 6.

9 CPT. TIDESWELL: Tab 6, right.

10 CHAIR HOLTZMAN: And so Option 1 is  
11 the present system.

12 CPT. TIDESWELL: Yes, ma'am.

13 CHAIR HOLTZMAN: Option 2, what is  
14 that?

15 CPT. TIDESWELL: Would be to modify  
16 1103A to give more proper guidance. In other  
17 words, maybe an attempt to standardize. You  
18 would have to do so, I would suspect, under an  
19 executive order because it is an RCM. It is  
20 1103A.

21 CHAIR HOLTZMAN: And what would be the  
22 substance of the change?

**NEAL R. GROSS**

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

1           CPT. TIDESWELL: I think you could  
2 decide whether or not there had to be a showing.  
3 And then -- or do you have the judge do an *in*  
4 *camera* review before it is permitted? Do you  
5 allow the clerk of the court to handle the  
6 records and you go to that individual to gain  
7 access?

8           But I think the second option would  
9 probably give you a more standardized approach,  
10 so it would impose upon all the Services to  
11 handle the records, the sealed records the same  
12 way.

13           MR. STONE: Can I ask a question about  
14 the comment you just made?

15           CPT. TIDESWELL: Yes, sir.

16           MR. STONE: I'm a little bit confused.  
17 If the Air Force is currently doing this, as to  
18 say you don't get them automatically unless you  
19 file a motion and they decide that you need them,  
20 then why do we have to -- wouldn't the Air Force  
21 be -- don't they have to be in compliance with  
22 RCM 1103A? In other words, if they can do it

**NEAL R. GROSS**

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

1 that way under RCM 1103A, can't all the Services?

2 COL. ORR: Could I clarify that? What  
3 the Air Force does is -- it is not a decision as  
4 to whether you get it or not. It is a decision  
5 as to whether you are the appropriate person to  
6 get it or not.

7 So, say for example you have a trial  
8 where you have multiple victims, if your client,  
9 as an SVC is not -- if those charges, they were  
10 found not guilty of it, then you do not get  
11 access to those records. But it is very clear  
12 that 1103A says, ultimately, a defense counsel is  
13 a reviewing authority and they will get the  
14 records.

15 MR. STONE: So, if there is only one  
16 victim, then that Air Force rule really doesn't  
17 matter. They are going to get it.

18 COL. ORR: Correct.

19 MR. STONE: Oh.

20 LT. COL. VERGONA: And ma'am, if I may  
21 interject. I am one of the working group members  
22 of the JSC and I just wanted you to know that the

**NEAL R. GROSS**

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

1 JSC has looked at this issue and we have -- we do  
2 have some recommended changes that are being  
3 proposed. Unfortunately, I can't tell you what  
4 those are.

5 CHAIR HOLTZMAN: To RCM 1103A.

6 LT. COL. VERGONA: Yes, ma'am.

7 CHAIR HOLTZMAN: Okay. So, I guess  
8 the first question is if we put this for -- if we  
9 try to capsulize this issue in a proper way, the  
10 first issue is whether the present system,  
11 however -- whatever the small variations are  
12 Service-by-Service is correct or whether we want  
13 to change, recommend a change in the present  
14 system whereby defense appellate counsel gets  
15 access to the records on appeal that have been  
16 sealed below.

17 Is that really the first question? Do  
18 you agree or disagree with that? Is there a  
19 discussion on it?

20 MR. TAYLOR: Well, perhaps you could  
21 help us here, Colonel, a little bit. My  
22 understanding of the summary and also the

**NEAL R. GROSS**

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

1 testimony is that the Air Force practice is that  
2 there is a motion to have access to the records,  
3 which is then followed by an *in camera* review by  
4 the court and then the decision is made. So, I  
5 thought the nub of the issue for at least part of  
6 the people who testified was whether or not  
7 appellate defense counsel should be given access  
8 to the records *carte blanche* or whether there  
9 should first be an *in camera* review by a judge to  
10 be sure that it was appropriate to do so. But  
11 please help us.

12 COL. ORR: No, it really is less of a  
13 review than what you are stating. It is -- we  
14 are concerned that some of the cases have  
15 multiple victims. And SVCs may want -- appellate  
16 defense counsel wants access to certain -- to the  
17 records of victims that don't really apply.  
18 Because it says, I want all the sealed records  
19 that were not admitted at trial. Those records  
20 may not apply to the offense in which the  
21 appellant was convicted. So, that is the *in*  
22 *camera* review, as to what your client was

**NEAL R. GROSS**

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

1 convicted of. You get those but you don't get  
2 everything that was sealed.

3 MR. TAYLOR: Well, that is a different  
4 impression from the one that I had and I am not  
5 sure what others remember about the testimony  
6 because I thought it was a more substantive  
7 review to determine --

8 COL. ORR: Well, 1103A is pretty  
9 clear. They are a reviewing authority and  
10 because an appellate defense counsel, as it is  
11 written, is considered to be a reviewing  
12 authority, the court doesn't have any authority  
13 to deny them to see it. That's correct.

14 MR. TAYLOR: To say no unless a party  
15 shouldn't receive it for the reason you just  
16 stated.

17 COL. ORR: That's correct.

18 CHAIR HOLTZMAN: Right. So, as I  
19 understand it, the real question here is whether  
20 there ought to be -- as I understand it now,  
21 under RCM 1103A, defense counsel -- defense  
22 appellate counsel gets, basically, automatic

**NEAL R. GROSS**

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

1 access to sealed records. Or should there be  
2 some limiting process, either some kind of  
3 showing first or some kind of review, *in camera*  
4 review, or something else?

5 In other words, the automatic access,  
6 should that be continued? Do we want to  
7 recommend that that be continued or changed? I  
8 think that that's really it. And if we want it -  
9 - then, of course, you could also consider  
10 changing some of the practices. But that basic  
11 concept that the sealed records become available  
12 to you, if they are relevant to the issue on  
13 appeal, should we just -- is there further  
14 discussion of that or do we just take a vote?  
15 Anybody want to talk about it?

16 MS. GUPTA: Ms. Holtzman, can I make  
17 one clarification?

18 CHAIR HOLTZMAN: Yes.

19 MS. GUPTA: While appellate counsel  
20 can access the materials, they cannot disclose it  
21 to their clients. So, it is just the counsel  
22 that will have access.

**NEAL R. GROSS**

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

1 MR. STONE: Well except -- see that  
2 makes almost no sense to me. If they don't  
3 understand the relevance because they are  
4 appellate counsel and they weren't trial counsel,  
5 they may well have to talk about it indirectly  
6 with their client, in order to understand what  
7 was sealed. And if they are going to have to  
8 argue about it, it is going to be in a brief that  
9 they are going to file. And at that point,  
10 everybody is going to see it.

11 So, if it is truly relevant and at  
12 issue, it is going to -- the sealed material is  
13 going to come out.

14 MR. McCLEARY: They sometimes file  
15 briefs under seal.

16 COL. ORR: You file it under seal.

17 MR. STONE: Without consulting with  
18 their client?

19 COL. ORR: I don't know about that.  
20 I'm just saying just because defense counsel has  
21 seen the record, doesn't automatically mean the  
22 information is now open.

**NEAL R. GROSS**

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

1           MR. STONE: No, it opens the door to  
2 it. You are right. It doesn't automatically  
3 mean it but it opens that door.

4           LT. COL. VERGONA: Certainly, at this  
5 point, you cannot reproduce the materials. There  
6 are -- each of the Services have internal court  
7 rules on how they get access to it. They are  
8 allowed to have access to it but how they get  
9 that access to it and then what the limitations  
10 are once they have reviewed those materials.

11           MR. STONE: I think before we vote I  
12 would just make the comment --

13           CHAIR HOLTZMAN: Please.

14           MR. STONE: -- this is an area where  
15 the military is way behind all the courts in the  
16 country. I'm not aware of any court where, when  
17 a record is sealed at the trial court level,  
18 there is an automatic access without a motion and  
19 briefs and an *in camera* review to unseal it.

20           So, I think this is an area that they  
21 are -- maybe they are harking back to many years  
22 ago or different practice, but it is not in step

**NEAL R. GROSS**

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

1 with what people expect when a record is sealed.  
2 For judges' review only on appeal, that is what  
3 they expect.

4 LT. COL. VERGONA: If I could just  
5 suggest that at the trial level it depends on the  
6 type of evidence. 412 evidence is going to have  
7 the defense counsel -- the accused is there and  
8 hears the hearing. The victim is there, if they  
9 choose to be there, and it is fully litigated.  
10 And after that hearing, that is sealed but it is  
11 materials that both parties had access to and was  
12 able to see.

13 Then, you do have the category of  
14 sealed materials that perhaps had an *in camera*  
15 review, the 513 materials that, when the military  
16 judge looked at those, he or she may have decided  
17 no, there isn't anything relevant in here. No  
18 one at the trial level is going to see that and  
19 those materials are also sealed.

20 So, you do have a very unique, two  
21 different situations going on with the one rule  
22 to cover both situations.

1 CHAIR HOLTZMAN: And then you also have  
2 the third situation, isn't that right, where the  
3 trial court has decided he or she does not want  
4 the requested materials to be reviewed.

5 LT. COL. VERGONA: Yes, ma'am.

6 CHAIR HOLTZMAN: What happens to those  
7 materials on appeal?

8 LT. COL. VERGONA: But in those  
9 materials, the trial judge would have never  
10 gotten them because you would have had --

11 CHAIR HOLTZMAN: Okay, so they are not  
12 sealed. So, they are not part of the record.

13 LT. COL. VERGONA: Yes, ma'am.

14 CHAIR HOLTZMAN: Nobody could look at  
15 them.

16 LT. COL. VERGONA: But you do have the  
17 situation where the 513, the judge would have  
18 looked at it and decided to disclose some of  
19 those materials.

20 So, a portion of those would still be  
21 sealed and then the materials that were disclosed  
22 would be fodder during the trial, subject to

**NEAL R. GROSS**

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

1 other rules of evidence.

2 CHAIR HOLTZMAN: Unless there were  
3 some *mandamus* or intermediate action taken.

4 LT. COL. VERGONA: Something like  
5 that, yes, ma'am.

6 MR. STONE: What would happen to the  
7 category of roles, if any of you know if, let's  
8 say during the case that the locale of the sexual  
9 assault was important but it was in a highly  
10 classified location, let's say overseas that the  
11 military didn't want to disclose somehow, either  
12 the operations room or the guy's specialty or  
13 whatever, and it was classified for national  
14 security reasons? Would the trial judge say I  
15 don't want to see it or would he see it and seal  
16 it and would that be available on appeal? What  
17 would happen if that is the case?

18 CPT. HOUSE: That is a national  
19 security case?

20 MR. STONE: Yes.

21 COL. ORR: Different rules.

22 MR. STONE: Okay, so we don't have to

1 worry about that option here.

2 I mean I'm not bringing it up in the  
3 context of a disclosure of national security. I  
4 mean in the context of the sexual assault, the  
5 two people working there, one assaulted the  
6 other.

7 CPT. HOUSE: If there is going to be  
8 classified information revealed during that trial  
9 --

10 MR. STONE: Yes.

11 CPT. HOUSE: -- or as part of the  
12 evidence, it is going to be a national security  
13 case.

14 MR. STONE: Okay.

15 CPT. HOUSE: By its nature. There are  
16 special rules and special things for that.

17 MR. STONE: Okay, so we don't have to  
18 worry about that piece.

19 CHAIR HOLTZMAN: Does anybody else  
20 have any comments to be made with regard to  
21 having defense appellate counsel have access to  
22 the sealed records -- we are talking about 513.

**NEAL R. GROSS**

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

1 These are health records, basically, that we are  
2 talking about on appeal which have been sealed as  
3 part of the record below without judicial or  
4 other kind of intervention.

5 VADM TRACEY: If a brief is filed  
6 subsequent to the defense counsel, appellate  
7 defense counsel reviewing the sealed materials,  
8 if a brief is filed based on those materials, is  
9 that brief required to be sealed or it can be  
10 sealed?

11 COL. ORR: It can be sealed.

12 VADM TRACEY: So, it is not required  
13 to be sealed.

14 COL. ORR: Generally, it would be  
15 sealed. It is talking about sealed information  
16 that would need to be sealed.

17 HON. JONES: Can I just -- this isn't  
18 something that I have ever dealt with. Let me  
19 ask this.

20 CHAIR HOLTZMAN: Go ahead.

21 HON. JONES: If the judge takes the  
22 sealed materials at the trial court level and he

**NEAL R. GROSS**

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

1 is going to make whatever, or she, whatever  
2 decision they do, does the defense lawyer not  
3 already know those records or have seen them at  
4 the trial level?

5 MR. STONE: Normally they don't know  
6 the records, both in military and civilian  
7 practice. And the answer that the judge says,  
8 typically is, if you want to read these records,  
9 you have to give me some independent basis to  
10 open them up. And defense counsel always say,  
11 well I can't have a basis until I see the  
12 records. And the judge says no, no, no.

13 But these are presumptively sealed.  
14 They are confidential. They are under one of the  
15 rules, whatever. So, you have to --

16 HON. JONES: I'm sorry, I meant the  
17 special victims' counsel. Because it is a new  
18 role in the trial court.

19 MR. STONE: Oh, okay.

20 HON. JONES: The government doesn't  
21 see the records. The defense doesn't see them.  
22 Does the special victims' counsel see them?

1                   MR. STONE: It depends. It depends on  
2 who is holding them. I think it depends on the  
3 judge. I was in a civilian proceeding in  
4 Montgomery County and we had some sealed records  
5 that were psychological counseling records and  
6 they were in the hands. And maybe this is like  
7 the military. They were in the hands of a third  
8 party. The school system had them. So, I didn't  
9 know exactly what was in them. The school system  
10 was saying these are psychological counseling  
11 records. They had to know what was in them. I  
12 didn't. But on behalf of the client, I was  
13 saying, but judge, that is not appropriate here.  
14 And then the judge took about an hour break and  
15 my supervisor said why don't you get a release  
16 from your client and at least look at them.

17                   HON. JONES: Well, that's my take --

18                   MR. STONE: Well wait, wait. You have  
19 got to hear the end of this. I got a release  
20 from my client to look at them. And when we came  
21 back on, I said judge, I have a release here from  
22 my client. I would like to see the records. The

**NEAL R. GROSS**

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

1 judge said no, I'm not giving them to you,  
2 either. And the judge didn't give me the records  
3 either because she said I don't think anybody  
4 needs to see them; I don't think they are  
5 relevant. And then the judge actually recused  
6 herself from the case because she had reviewed  
7 them and she thought that they might be  
8 prejudicial.

9 And we wound up with a new judge. We  
10 wound up with a new defense counsel because this  
11 defense counsel had inadvertently reviewed them.  
12 I never reviewed them. We had the same  
13 prosecutor, too.

14 So, I mean the judge felt that reading  
15 them was inappropriate for anybody to decide this  
16 case. And so that is why I think it depends on  
17 the judge and how you go. The victims' counsel  
18 --

19 HON. JONES: Anyone can go and get  
20 their own records if they sign a release, right,  
21 and give them to their lawyer.

22 LT. COL. VERGONA: Yes, ma'am.

1 COL. ORR: And that is how we  
2 typically see this issue arise is --- it's the  
3 VLC raises the trial motion to block distribution  
4 of the records. So, they have seen those records  
5 and have been provided those records by their  
6 client. That is how we normally see the  
7 situation.

8 CHAIR HOLTZMAN: And so what happens,  
9 if you missed this part of the proceeding, what  
10 happens is that yes, at the trial level, defense  
11 counsel doesn't get to see them. But at the  
12 appellate level, the appellate defense counsel  
13 gets to see these records. That is the  
14 difference.

15 HON. JONES: How is the defense  
16 counsel supposed to be able to argue this motion  
17 with the trial court, if they don't even know  
18 what they are arguing about?

19 LT. COL. VERGONA: They do have their  
20 client, ma'am, that may have some information  
21 that they could --

22 HON. JONES: Well, I can see it in a

**NEAL R. GROSS**

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

1 412 but --

2 LT. COL. VERGONA: Well, they would  
3 know it for a 513.

4 HON. JONES: For a 513?

5 LT. COL. VERGONA: Yes, ma'am.

6 HON. JONES: Okay. So, generally,  
7 they would know generally why they asked for it  
8 in the first place, is what you are saying?

9 LT. COL. VERGONA: Yes, ma'am,  
10 absolutely.

11 HON. JONES: Okay. So, the only issue  
12 now is whether it should as a rule, now states, I  
13 gather, automatically go to appellate counsel,  
14 defense counsel.

15 CHAIR HOLTZMAN: Defense counsel, yes.

16 LT. COL. VERGONA: Yes, they have a  
17 right to see it, defense and government.

18 CHAIR HOLTZMAN: Right, and the  
19 arguments on both sides, you were clear, one side  
20 is that, obviously, from the point of view of  
21 defense counsel, I mean they are not -- they  
22 don't have the close relationship with the

**NEAL R. GROSS**

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

1 client. They probably don't have any  
2 relationship with the client. They just get to -  
3 - they walk in and they see it under very  
4 constrained circumstances. This gives them  
5 opportunity, just in case there is a miscarriage  
6 of justice to see what is happening. And from,  
7 of course, from the victim's point of view, their  
8 point of view is, why should anybody see these  
9 records, even if they are protected, even if they  
10 are never disclosed to any other parties. Why  
11 should anybody have any right to see them?

12 MR. STONE: Well, and even worse, it  
13 is hard to understand that there isn't, certainly  
14 in some cases, going to be communication back if  
15 there is a remand for any other circumstances  
16 going to be communication back of what is in the  
17 records.

18 CHAIR HOLTZMAN: Well, that's  
19 speculative.

20 MR. STONE: Yes.

21 CHAIR HOLTZMAN: I mean the fact of  
22 the matter is that wasn't -- you know the issue

**NEAL R. GROSS**

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

1 is just the fact that victims feel that they have  
2 the right to absolute privacy of these records  
3 from anybody, even on the appellate level. Even  
4 in very narrow circumstances.

5 HON. JONES: I just think the  
6 defendant has a right for his counsel to be able  
7 to make the possible argument for him in this  
8 situation at the appellate level. And if he  
9 can't argue, without having had the opportunity  
10 to see these records, then it is a defendant's  
11 right. We are weighing here against an  
12 individual's right to privacy. I don't think  
13 there is a contest there.

14 CHAIR HOLTZMAN: Does anybody else  
15 have a comment? Are we ready to vote?

16 VADM TRACEY: It seems that the *in*  
17 *camera* review at the appellate level should have  
18 struck the balance between both the defendant's  
19 rights and victim's right if you did a parallel  
20 to what had happened at trial. With an *in camera*  
21 review, you would get a balance between the two  
22 sets of rights.

**NEAL R. GROSS**

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

1 MR. TAYLOR: So, we're basically going  
2 to vote on Option 2, which is to modify RCM or  
3 whether or not to.

4 CHAIR HOLTZMAN: Well, I guess that is  
5 -- the question would be should the present  
6 practice be -- should we recommend a change in  
7 the present practice under which, at the  
8 appellate level, defense appellate counsel gets  
9 to review the sealed records below without a  
10 judicial intervention? I think that is a fair  
11 way I am trying to --

12 VADM TRACEY: I didn't understand what  
13 was the difference between Options 2, 3, and 4?  
14 It just seems to be --

15 CHAIR HOLTZMAN: I don't either. I  
16 mean these may have to deal with --

17 MS. GUPTA: Option 2 and 3 is -- so,  
18 Option 4 is the *in camera* review that we have  
19 been discussing. Options 2 and 3 are more under  
20 the Navy-Marine Corps procedures and the Army  
21 procedures, there isn't even a motion filed. You  
22 just have to make a request to the panel or the

**NEAL R. GROSS**

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

1 panel secretary, the secretary or the clerk. So,  
2 it may be something in-between.

3 CHAIR HOLTZMAN: I don't want to get  
4 to the details of how the request is made. I am  
5 talking about the broad principle first.

6 If we approve -- obviously, if we say  
7 we want to recommend a change that you have to  
8 apply to the court for sealed materials, then we  
9 can review that. But whether you make a motion,  
10 you don't make a motion, we should decide that  
11 second as opposed to the first thing. The first  
12 principle is whether the basic principle that we  
13 now have, whether we want to recommend a change  
14 in that so that the defense appellate counsel  
15 cannot automatically, without judicial -- at the  
16 outset, automatically get access to the sealed  
17 records, that have been sealed in the case below.

18 Do you have a better way of saying it?  
19 Please --

20 CPT. TIDESWELL: No, ma'am but I do  
21 have a point. I do believe we heard testimony  
22 specifically from multiple, from the appellate

**NEAL R. GROSS**

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

1 defense divisions, from the various Services,  
2 that they, of course, do not want that. And it  
3 sort of almost dovetails into what we heard from  
4 Judge Baker in that judges in the military at the  
5 appellate level may not be as seasoned and  
6 experienced as judges in the civilian sector.  
7 And I think the defense bar expressed concern  
8 about that. In other words, in the military, it  
9 is a tour for us, typically. We are not tenured  
10 judges.

11 So, there is a difference in  
12 experience levels of what you might see in the  
13 civilian sector from a judging perspective.

14 CHAIR HOLTZMAN: The defense counsel  
15 was supposed to engage in this.

16 CPT. TIDESWELL: Yes, ma'am, correct.  
17 They want to maintain access. They believe only  
18 they can best advocate on behalf of their client.

19 CHAIR HOLTZMAN: Ready for a vote?  
20 Anybody --

21 So, all in favor of retaining the  
22 present system, as I explained it before, say aye

**NEAL R. GROSS**

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

1 and those opposed say no. So, aye if you are in  
2 favor of retaining the present system.

3 (Voting.)

4 Opposed?

5 (Voting.)

6 It looks like three noes and two ayes.  
7 So, the motion is rejected. We are going to  
8 change it. okay.

9 So, now, how are we going to change  
10 this? What are the options for changing this, an  
11 *in camera* review?

12 CPT. HOUSE: Did we flesh out what we  
13 mean by *in camera* review? Are we talking about  
14 the fact that either the judge or a clerk ensures  
15 that this appellate defense counsel is working a  
16 case where there is a 513 issue that is an issue  
17 in the case and therefore needs access or it is  
18 either an *in camera* review where a judge actually  
19 reviews the records and makes a decision about  
20 whether or not the defense should get the  
21 records. Because that is a big distinction for  
22 defense counsel.

**NEAL R. GROSS**

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

1 CHAIR HOLTZMAN: Correct. You phrased  
2 it very well. I guess we could take it in order.

3 MR. STONE: We just rejected current  
4 practice. So, that includes the Air Force  
5 practice that it is just oh, that is a victim  
6 involved in the appeal, you get it.

7 CPT. HOUSE: But that is not really  
8 current practice. Current practice is our  
9 defense counsels have to go to the clerk and say  
10 I am the defense counsel in the newer case and  
11 the issue in the newer case is the 513 denial; I  
12 need to see the records.

13 MR. STONE: All the records.

14 CPT. HOUSE: I need to see the records  
15 so that I can make a decision as to whether or  
16 not the military judge in the lower court made a  
17 mistake in denying these records to my client.

18 MR. STONE: Right.

19 CPT. HOUSE: So, it is not automatic  
20 access in the sense that they have to go to  
21 somebody and demonstrate that they are counsel on  
22 an appropriate case and that that issue is an

**NEAL R. GROSS**

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

1 issue in the case.

2 MR. STONE: That just means they are  
3 not a stranger walking in off the street.

4 CPT. HOUSE: Exactly. It is not  
5 automatic access.

6 MR. STONE: But that is not what we  
7 are talking about. What we are talking about --

8 CHAIR HOLTZMAN: Well, no. I mean we  
9 could talk about it. He is saying what are we  
10 talking about when we are saying that we want an  
11 *in camera* review? Does that mean that the judges  
12 are reviewing the substance of the sealed records  
13 in determining whether they are relevant for  
14 defense counsel to obtain?

15 MR. STONE: Yes.

16 CHAIR HOLTZMAN: Or, are we saying  
17 that the level of review is a lesser level, which  
18 would be simply to ascertain whether, without  
19 looking at the actual records, making sure that  
20 the defense counsel who is requesting these  
21 records is in fact the defense counsel, that the  
22 issue that he or she is asking about is an issue

**NEAL R. GROSS**

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

1 in the case and not just a fishing expedition in  
2 that sense? I mean maybe -- it is not the same  
3 level of review by a judge. The first one that  
4 we mentioned you actually will have to have, I  
5 don't know whether it is one appellate judge or a  
6 number of appellate judges who are going to be  
7 sitting and reviewing the sealed record. I mean  
8 I guess we could get to that issue later but they  
9 would actually have to review the sealed record  
10 to determine whether it is relevant and  
11 necessary. It is not even relevant. I guess  
12 they just saw whether it is appropriate on some  
13 level, I don't know what the standard would be,  
14 for defense counsel to get it.

15 MR. STONE: And if a motion is  
16 required, that implies that there will be a  
17 response from the appropriate parties, which, and  
18 this brings up the same issue we had before, the  
19 appropriate parties are not only the prosecutor,  
20 they are the victim. The victim is in a better  
21 position to know whether those sealed records are  
22 relevant and something that they don't want the

**NEAL R. GROSS**

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

1 world to know and why.

2 So, what happens is, the party who  
3 wants to unseal it files a motion. They serve it  
4 on the person whose records it is, even if they  
5 are not a victim, even if they are just a  
6 witness. If you want to unseal a record, you  
7 serve it on the person whose records it is and  
8 they and the state get a chance to respond and  
9 then the judges decide.

10 CHAIR HOLTZMAN: Let's just discuss  
11 the procedure secondarily as to whether who gets  
12 to respond, who gets service, and all of that  
13 stuff. Let's just go to the question first about  
14 whether we are going to have what kind of level  
15 of review is there going to be before the defense  
16 appellate counsel gets to see the sealed records.

17 Are we requiring an *in camera* review  
18 by the appellate judges, again, I don't know the  
19 number of judges or what, and a determination by  
20 them, him or her, one -- I don't know whether  
21 they can delegate it -- determination on the  
22 substance that these records are relevant and

**NEAL R. GROSS**

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

1 appropriate and necessary for the proper defense  
2 of this case. That level of review or a lesser  
3 level of review, which would be to determine  
4 whether -- as the captain said, whether it is the  
5 right case, whether the issue is there, whether  
6 the sealed record is relevant even to the defense  
7 to make the preliminary determinations on that  
8 level. Is that clear?

9 So, maybe before we vote on this, we  
10 should get a better idea of what it would mean to  
11 have an appellate review of the records. Maybe  
12 Colonel Orr, you could explain.

13 COL. ORR: Well, there are two  
14 options. One would be if you have a motion come  
15 in, the judges would get together and actually  
16 rule on whether or not the trial court made the  
17 correct decision. That is one version.

18 CHAIR HOLTZMAN: So, they would have  
19 to read the sealed record, all three of them.

20 COL. ORR: Yes, to determine whether  
21 or not the right call was made before you decide  
22 to release it or not, or whether it is a

**NEAL R. GROSS**

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

1 reasonable decision. And then you could just  
2 say, no, you can't have it. And then that pretty  
3 ends the issue for that particular court.

4 The other would be just basically is  
5 there a reasonable basis to raise this and then  
6 let appellate defense counsel articulate why they  
7 should have these.

8 MR. TAYLOR: So it is the latter of  
9 those two what you do now, what the --

10 COL. ORR: No, what the law clearly,  
11 1103A says is they ultimately give them.

12 What we do now is you take it and say,  
13 is this person representing the client in this  
14 case. Now, is the records we are releasing, do  
15 they relate to an offense of which the accused  
16 was convicted? Because if you have multiple  
17 victims, you will have multiple records  
18 sometimes. And if you were convicted of the  
19 crime, there is no reason for you to see Victim  
20 A's records when that offense is no longer in  
21 play but they are still going to be in the  
22 record.

**NEAL R. GROSS**

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

1 HON. JONES: But am I right, then, in  
2 that scenario, the court doesn't -- the appellate  
3 court doesn't go on to decide whether or not on  
4 the issue the defendant is going to win or lose.

5 COL. ORR: That's correct.

6 HON. JONES: All you decide there is  
7 if someone is going to argue this on behalf of  
8 the defendant, this issue is one that needs to be  
9 argued and he or she is the appropriate person.

10 COL. ORR: That's correct. That's all  
11 you decide.

12 CHAIR HOLTZMAN: But it is not even  
13 clear the court is making that decision. That is  
14 an administrative decision. They can just look.  
15 It doesn't have to be a judge who makes that  
16 decision.

17 COL. ORR: Well, in the Air Force, it  
18 gets to a judge.

19 CHAIR HOLTZMAN: Okay, it goes to a  
20 judge.

21 COL. ORR: Yes.

22 CHAIR HOLTZMAN: But not to three

**NEAL R. GROSS**

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

1 judges on the court.

2 COL. ORR: Generally, no. Generally,  
3 no. It depends on what you are doing but,  
4 generally, no.

5 CHAIR HOLTZMAN: Because it is an  
6 administrative decision, as I understand it. Is  
7 this sealed record a sealed record related to a  
8 conviction in this case?

9 COL. ORR: Yes.

10 CHAIR HOLTZMAN: That is pretty much  
11 a ministerial simple decision. It is not a  
12 discretion -- I mean it doesn't involve a law  
13 degree, let's put it that way.

14 COL. ORR: Correct. That's right.

15 CHAIR HOLTZMAN: You know a clerk  
16 could make that decision. A computer could make  
17 that decision.

18 MR. STONE: In the Army, the clerk  
19 makes the decision.

20 CHAIR HOLTZMAN: Okay, right.

21 COL. ORR: No, we have an actual judge  
22 that actually sits down and makes this

**NEAL R. GROSS**

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

1 comparison.

2 CHAIR HOLTZMAN: So, we are not  
3 talking about that here. I guess basically what  
4 we have been talking about here is that the  
5 appellate judges will have to sit down and  
6 review, the three of them, each of them --

7 COL. ORR: Yes, a panel. That's  
8 correct.

9 CHAIR HOLTZMAN: -- all of them would  
10 then have to review the entire sealed record. I  
11 guess they'd have to make the preliminary  
12 determination that it was relevant. But then  
13 they would have to make a determination on their  
14 own that these were relevant.

15 Defense counsel would not --

16 HON. JONES: They would have to read  
17 the entire trial record to determine that.

18 CHAIR HOLTZMAN: Right. And the  
19 defense appellate counsel, without having seen  
20 those records, wouldn't be able to give them any  
21 assistance in terms of why those records are  
22 relevant. They just have to do it on their own.

**NEAL R. GROSS**

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

1                   LT. COL. VERGONA:     And typically  
2     ma'am, at the stage that you are at where you are  
3     asking for those sealed materials, at least for  
4     the Army, when the record goes to a panel, it is  
5     a three-judge panel, one of the members is  
6     assigned as the lead judge. He or she reads the  
7     record but, typically, they read the record once  
8     the defense and government have filed their  
9     briefs.

10                   So, if you do an *in camera* review of  
11     the sealed materials, they are going to be  
12     reading it sort of with blinders on because they  
13     are only going to be looking at that sealed  
14     material without having the context of the full  
15     record. Because at that point they wouldn't be  
16     reading the whole record yet.

17                   CHAIR HOLTZMAN: How could they decide  
18     if it is relevant without reading the whole  
19     record?

20                   LT. COL. VERGONA: Exactly, ma'am.

21                   MR. STONE: In federal courts, that is  
22     not the way the motion practice works. And I

**NEAL R. GROSS**

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

1        imagine -- I don't know for sure that in the  
2        military it is going to be that way. But even if  
3        it is a three-judge panel, a motions panel is  
4        typically a lead motions judge who will often ask  
5        a second judge. So, they only need two to make a  
6        decision on a motion and it is only if those two  
7        decide that they bring in a third judge.

8                    And I am sure that there is some kind  
9        of procedure to decide if they are going to allow  
10       an *amicus* brief to be filed and you don't  
11       necessarily have to bring in the third judge if  
12       you get two judges to agree. So, it isn't  
13       necessarily three. It depends on your motions  
14       rules in the particular appellate court.

15                   HON. JONES: The only question for me  
16       here is do you want a judge, one, two, or three,  
17       to be making a decision either in a vacuum or  
18       after having had to read the entire record to  
19       figure out whether or not these records should be  
20       unsealed. Do you really want them to make a  
21       decision without giving the defendant an  
22       opportunity to argue? I think the answer is no.

**NEAL R. GROSS**

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

1                   VADM TRACEY:       Can I repeat Mr.  
2 Taylor's question to Captain House? I am also  
3 hearing your formulation of anything other than  
4 the judge actually reviewing the record as what  
5 the current practice is in the Air Force. I'm  
6 still not understanding why you think it is  
7 different from the current practice in the Air  
8 Force.

9                   CPT. HOUSE: I don't really know what  
10 the current Air Force practice is. In order for  
11 our Navy-Marine Corps appellate defense counsel  
12 to access a sealed record, they have to go the  
13 clerk at the Service court and say I am Attorney  
14 Smith. I am representing a sergeant or whatever.  
15 The 513 issue is the issue in this case. I would  
16 like to review the materials.

17                   They have to file a motion before they  
18 can make any copies of those records. And they  
19 also have to file a motion with the court if they  
20 get copies, and the copies have to be destroyed.

21                   CHAIR HOLTZMAN: The copies have to be  
22 what?

1 VADM TRACEY: Destroyed.

2 CHAIR HOLTZMAN: Oh, destroyed.

3 CPT. HOUSE: Yes, ma'am, so that they  
4 are not floating around or no one else has access  
5 to them. So, that is the current Navy-Marine  
6 Corps practice.

7 MR. STONE: And isn't he going to say  
8 that, make that proffer to the clerk in every  
9 case where there was a 513 hearing? Because he  
10 doesn't know, if the records were sealed, having  
11 not seen them, whether or not there is a 513  
12 issue. So, all he is saying is there was a 513  
13 ruling below. Therefore, I want to see the  
14 sealed records. Okay, right.

15 CPT. HOUSE: Of course. And then that  
16 defense counsel, in order to be able to  
17 articulate to the court whether or not there  
18 really is an issue regarding relevance, the only  
19 way to do that is for the defense counsel to see  
20 those records. Otherwise, there is no defense in  
21 513. There is nothing.

22 MR. STONE: Well, there was whatever

**NEAL R. GROSS**

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

1 happened below.

2 CPT. HOUSE: But if we shift that  
3 decision to a judge to decide whether or not  
4 those records were relevant or not, and then we  
5 lose, the defense loses, and we don't get the  
6 records, because under the CAAF, the CAAF does  
7 the same thing.

8 MR. STONE: Right.

9 CPT. HOUSE: We are up to the Supreme  
10 Court. That is where we have got to go because  
11 the defense has not been allowed to see the  
12 records at issue in the case.

13 MR. STONE: And that is the practice  
14 in the civil courts throughout the United States,  
15 which has been held constitutional.

16 CPT. HOUSE: You have to go all the  
17 way to the Supreme Court for records?

18 MR. STONE: No. That unless you make  
19 a proffer about why you want to invade someone's  
20 privilege, you don't get to invade their  
21 privilege. That is what it is.

22 HON. JONES: I don't think they were

**NEAL R. GROSS**

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

1 talking about not making a proffer.

2 MR. STONE: No, no, no. But I mean  
3 you have to make a proffer beyond a substantial  
4 -- you have to make a substantial showing that  
5 there is reason to open up a privilege. Defense  
6 lawyers don't get to open up a privilege. That  
7 is a point of a privilege.

8 Look, I don't know how many murder  
9 cases where husband and wife privilege is raised  
10 but you don't get to find out what that other  
11 spouse would have said to argue later, there was  
12 justification for the murder -- you should have  
13 heard what they said to each other. I mean --

14 LT. COL. VERGONA: But at the trial  
15 level, if you can't make that justification, no  
16 one is going to see those records.

17 MR. STONE: Right.

18 LT. COL. VERGONA: This is only a  
19 review. It is really a review of whether the  
20 trial judge ruled correctly. Because the only  
21 reason those sealed records are in the record is  
22 because someone looked at them at the trial

**NEAL R. GROSS**

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

1 level, that military judge.

2 It is going to go on appeal for the --  
3 his point is for the defense to thoroughly review  
4 the record and represent their client, they need  
5 to be able to see those to determine whether the  
6 trial judge erred.

7 And so now you are balancing the  
8 policy decision -- you are balancing the rights  
9 of the accused with the privacy rights of your  
10 victim.

11 MR. STONE: Well, in all the other  
12 jurisdictions of the United States, what gets  
13 reviewed on appeal is the same proffer. Whatever  
14 the defense counsel could have said at the trial  
15 board, he can say again on appeal and, again,  
16 whatever the trial judge reviewed *in camera*, the  
17 judges on appeal can review *in camera*. They are  
18 in the same shoes. Defense counsel is not in  
19 better shoes on appeal than the trial counsel  
20 was.

21 CHAIR HOLTZMAN: But that's not really  
22 entirely the issue here. The issue here is

**NEAL R. GROSS**

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

1 whether, in order to make sure there is a more  
2 perfect sense of justice that there is, in this  
3 limited situation, a review by the defense  
4 appellate counsel to determine whether the trial  
5 judge made an error. It is true that the defense  
6 appellate counsel is standing in better -- is in  
7 a better situation than the trial counsel was.  
8 There is no question about that. But that is not  
9 the beginning and ending of the argument.

10 The beginning and ending of the  
11 argument is whether there is some real need for  
12 this and whether this advances the cause of  
13 justice.

14 Yes, you have to weigh two issues, two  
15 values here. One side is the privacy right of  
16 the victim. But the privacy right of the victim  
17 is invaded in many instances in this process.  
18 The trial judge will review it. The trial judge  
19 will review the records. That is an invasion of  
20 privacy. The trial judge will review it.

21 And so here, the question is whether  
22 you are going to add, first of all, if you have

**NEAL R. GROSS**

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

1 the defense appellate counsel reviewing it, you  
2 may avoid the need to have any judges or anybody  
3 else review it because the defense appellate  
4 counsel may say there is nothing here. And that  
5 ends the matter. Nobody else has to look at  
6 those records.

7 MR. STONE: That isn't correct. The  
8 trial judge does not automatically get to review  
9 --

10 CHAIR HOLTZMAN: I didn't say -- what?

11 MR. STONE: The trial judge does not  
12 automatically get to review it.

13 CHAIR HOLTZMAN: I didn't say the  
14 trial judge automatically --

15 MR. STONE: You just did.

16 CHAIR HOLTZMAN: No, I didn't.

17 MR. STONE: It may well be that the  
18 proffer is insufficient --

19 CHAIR HOLTZMAN: Well, I'm talking  
20 about the appellate --

21 MR. STONE: -- and the trial judge  
22 says I'm not looking at it either. I'll seal the

**NEAL R. GROSS**

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

1 package but I need to look at it.

2 CHAIR HOLTZMAN: Mr. Stone, I am  
3 talking about the appellate level, being reviewed  
4 by the defense appellate counsel may obviate the  
5 need to have any of the appellate judges review  
6 those sealed records, three additional invasions  
7 of privacy because the defense appellate counsel  
8 may realize that there is nothing in these  
9 records, sealed records, that is relevant.

10 So, it is not necessarily an  
11 additional invasion. It could preclude invasion.  
12 But I am saying you have two factors to weigh  
13 here. You have the factor of the invasion of  
14 privacy but there has been an invasion of privacy  
15 already with regard to the victim because the  
16 trial counsel has reviewed the records.

17 MR. STONE: Not necessarily.

18 CHAIR HOLTZMAN: Because you have a  
19 sealed record. Those records have been brought  
20 to the court.

21 MR. STONE: And sealed. And they  
22 don't necessarily look at them.

1           In the case that I was telling you  
2           about, the judge recused herself because she had  
3           looked at the records.

4           CHAIR HOLTZMAN: Because she looked at  
5           them.

6           MR. STONE: And she said I don't need  
7           to be in this case anymore.

8           CHAIR HOLTZMAN: Okay but she looked  
9           at them.

10          MR. STONE: I shouldn't have looked at  
11          them, she said. There was no proffer that said  
12          these psychological records should have been  
13          looked at.

14          CHAIR HOLTZMAN: Whether she did or  
15          not -- let's talk.

16          MR. STONE: And the judge who decided  
17          the case didn't look at them.

18          CHAIR HOLTZMAN: As a practical  
19          matter, Mr. Stone, if a trial judge is going to  
20          call for the records to be delivered to his or  
21          her courtroom and we just changed the rules on  
22          that to make it not a standard operating

**NEAL R. GROSS**

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

1 procedure -- it used to be the standard operating  
2 procedure. And this is what the RSP did. They  
3 stopped this as standard operating procedure,  
4 judges from calling in these records because once  
5 they are there, it is so easy to look at them.  
6 And that is what was happening.

7 So now, the judge doesn't  
8 automatically call for those records. So, the  
9 chances are, if the judge is making the effort to  
10 call for the records, he or she is going to look  
11 at them. I wouldn't say it would be 100 percent  
12 of the time. Maybe they drop dead before the  
13 records get to the court room. I don't know.  
14 So, it is not 100 percent of the time, granted,  
15 but most of the time they are going to look at  
16 those records.

17 So you do have, already, an invasion  
18 of privacy. We can't have perfect privacy, as  
19 much as I respect that and the need for that.  
20 The question is here we have already probably an  
21 invasion of privacy with regard to the courtroom.  
22 The court has already examined the records. You

**NEAL R. GROSS**

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

1 have doctors and medical personnel who have  
2 looked at the records. The question is, to what  
3 extent is this really an issue for a justice for  
4 the whole system, not just for the defendant but  
5 for the whole system, if defense counsel gets to  
6 see these records or is denied the opportunity to  
7 see the records.

8 And I think Judge Jones talked about  
9 the importance of being able to have a fair  
10 trial. That is a value we can't ignore here.  
11 How much weight we give to it is a separate  
12 issue.

13 MR. STONE: I disagree with your  
14 presumption. I don't think we changed the rule  
15 about how the records get to the judge. All we  
16 did was make sure that the investigators can't  
17 pull the records without going to a judge. We  
18 didn't say that the judge gets them and  
19 automatically looks at them.

20 CHAIR HOLTZMAN: Well, I never said  
21 that. You mischaracterized what I said.

22 MR. STONE: Okay then, maybe I am

1 mischaracterizing it but I don't think we changed  
2 anything about the judge's decision at the trial  
3 level, whether or not he is going to look at  
4 those records.

5 CHAIR HOLTZMAN: He or she.

6 MR. STONE: He or she.

7 CHAIR HOLTZMAN: Right. Well, we did  
8 change it --

9 MR. STONE: And I think that in every  
10 court in the United States, every single one that  
11 I know, except perhaps the military, a judge,  
12 when there is a challenge to privileged records,  
13 looks at all the records. They don't shy away  
14 from their job to look at the privileged records  
15 and then to say make your proffers.

16 LT. COL. VERGONA: Sir, the practice  
17 is not -- just because defense raises a motion  
18 and says I want to look at these records, they  
19 are not automatically brought over to the court  
20 and the trial judge reviews them. They  
21 absolutely are not. Your trial defense counsel  
22 must put on a showing of relevance for those and

**NEAL R. GROSS**

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

1 it cannot be a fishing expedition because if that  
2 trial judge says, tell me what is in it, and the  
3 answer is I don't know until I see it, the answer  
4 is no. They are not going to order those  
5 records. Only after that --

6 CHAIR HOLTZMAN: Excuse me, wasn't that  
7 a change that was made as a result of the  
8 Response Systems Panel?

9 LT. COL. VERGONA: Yes, ma'am.

10 CHAIR HOLTZMAN: Thank you.

11 LT. COL. VERGONA: So, the trial judge  
12 only orders the records after a hearing and after  
13 the defense counsel has made a showing of  
14 necessity. And it is not a low standard, at  
15 least practically, it is not a low standard.  
16 That is the only time those records are going to  
17 come to that court.

18 If the judge says, defense, you have  
19 not made your showing, those records are not  
20 collected. So, there isn't anything the judge is  
21 going to view or not view because he doesn't have  
22 them.

1           Only when the defense has a showing  
2 will the judge order the records, the records  
3 come to the military judge. At that time, is  
4 when he or she does the *in camera* review. And  
5 then he or she is going to make the decision on  
6 whether to release anything or not.

7           So, many times after the *in camera*  
8 review, a military judge is going to say defense,  
9 you don't get it. I didn't see anything in there  
10 that is appropriate for release.

11           MR. STONE: And isn't that exactly the  
12 decision that we want to have reviewed? The  
13 records, based on the showing that was made  
14 below.

15           LT. COL. VERGONA: Yes, except that on  
16 appeal, keep in mind, one of the arguments  
17 defense is making is the military judge erred.  
18 So, the defense counsel is the one that is  
19 looking at the record as a whole. And there may  
20 have been other errors that the military judge  
21 made. And so cumulatively, the accused didn't  
22 have a fair trial with all of these errors that

**NEAL R. GROSS**

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

1 the judge made.

2 The appellate defense counsel is in  
3 the best position to see, overall, the errors in  
4 that record. I mean they really are. For them  
5 to then say the military judge at the trial level  
6 erred when he denied release of those materials.

7 MS. FRIED: I just want to add, unlike  
8 the civilian courts, there is Article 66 rights.  
9 The appellate -- the Service courts had allowed  
10 them to do all this.

11 LT. COL. VERGONA: Yes, ma'am.

12 CHAIR HOLTZMAN: Mr. Taylor, I'm  
13 sorry.

14 MR. TAYLOR: Yes, if I may. When we  
15 took our first vote on Option 1 to keep 1103A as  
16 is, I, for one, did not mean to imply that I  
17 necessarily opted it to the *in camera* review.  
18 Because Option 2, in our menu of options, was to  
19 modify 1103A to better provide procedures,  
20 perhaps uniform procedures, across the criminal  
21 courts of appeal, in how to deal with this.  
22 Because it appeared to me, from the testimony we

**NEAL R. GROSS**

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

1 heard, that the Air Force has a very fine  
2 practice. And it sounds as if Captain House's  
3 description of the Navy practice is not a lot  
4 different from what you've described as the Air  
5 Force practice.

6 So, as it was, again, teed up by the  
7 staff, I thought that we could move in the  
8 direction of a best practices approach that would  
9 combine what we know from all the Services and  
10 how they do this, not going to the extent of  
11 having the *in camera* review, if that makes sense.

12 CHAIR HOLTZMAN: Okay. So, maybe it  
13 was my own fault in terms of how I teed this up.  
14 So, I apologize.

15 MR. TAYLOR: No problem. I just  
16 thought we could perhaps --

17 CHAIR HOLTZMAN: And to anybody else.  
18 Okay.

19 MR. TAYLOR: -- that there might be a  
20 greater sense of consensus among us if we thought  
21 about it in that light.

22 CHAIR HOLTZMAN: Okay. So, maybe I

**NEAL R. GROSS**

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

1 should rephrase it and say -- so, should the  
2 first question be, do we want to have an *in*  
3 *camera* review of any request for the sealed  
4 records on appeal? Is that really the first  
5 question you think we should address?

6 MR. TAYLOR: Well, we would. What I  
7 was thinking was a little bit better system in  
8 implementing 1103A as we now have.

9 HON. JONES: And I confess. I thought  
10 what I was voting on was whether to change the  
11 practice of giving the records to appellate  
12 counsel -- defense appellate counsel. And I  
13 don't think that practice should be changed. I  
14 think they should get it.

15 Now, if we want to figure out a better  
16 way to decide how to get them, is that where we  
17 are at?

18 MR. TAYLOR: That is what I was  
19 suggesting, as a way that might incorporate the  
20 views of some of us. Obviously, not all of us.

21 CHAIR HOLTZMAN: Admiral Tracey --  
22 maybe we need -- Mr. Stone, I think you knew what

**NEAL R. GROSS**

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

1 you were doing. I don't mean to imply anybody  
2 else wasn't.

3 I want to apologize for phrasing the  
4 question in a possibly confusing and misleading  
5 way. So, I want to try to phrase this in a way  
6 that gets us to a vote that accurately reflects  
7 what the consensus or what the views are of the  
8 Members of the Panel. I really apologize for  
9 this.

10 MR. TAYLOR: No, no, I mean I think  
11 that maybe Option 2 on page 11 was what I was  
12 thinking about, which was to provide some more  
13 granularity to 1103A to make it a little clearer  
14 how this could be done in a way that reflects the  
15 best practices of what the Services are now  
16 doing.

17 CHAIR HOLTZMAN: Should we add to  
18 Option 2 without requiring *in camera* review?

19 MR. TAYLOR: That would be fine with  
20 me.

21 CHAIR HOLTZMAN: That clarifies --

22 MR. TAYLOR: I intended to vote for

**NEAL R. GROSS**

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

1 that.

2 CHAIR HOLTZMAN: Okay. Did you intend  
3 to vote for that, Admiral?

4 VADM TRACEY: That would be fine.

5 CHAIR HOLTZMAN: So, it would say  
6 Option 2: Modify RCM 1003A to better guide  
7 procedures for access to records without  
8 requiring *in camera* review -- prior *in camera*  
9 review by the court.

10 Is that okay? Anybody think this is  
11 misleading, inaccurate? Go ahead.

12 COL. ORR: My only concern you said  
13 what we do is an administrative review but it is  
14 done by a judge.

15 CHAIR HOLTZMAN: Right, I got it.

16 COL. ORR: So, I just don't want to  
17 make -- yes.

18 CHAIR HOLTZMAN: No, no, no, I meant  
19 administrative in characterizing the nature --

20 MR. TAYLOR: But that was my point.  
21 I mean I think having a judge do this is probably  
22 the right decision.

**NEAL R. GROSS**

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

1 COL. ORR: Right.

2 MR. TAYLOR: But the Army does not.

3 COL. ORR: Oh, okay.

4 MR. TAYLOR: The Army leaves it up to  
5 the court.

6 CHAIR HOLTZMAN: Okay. Well, we can  
7 address how it is going to be done when we get to  
8 the best procedures.

9 All right. So, I am going to state  
10 this again. Anybody who has got any  
11 disagreement, confusion, please speak up. And  
12 Panel, if you think this is -- expert panel, if  
13 any of you think this is confusing, please let me  
14 know.

15 So, this would then be Option 2. The  
16 proposal is to modify RCM 1103A to better guide  
17 procedures for access to records to be -- it  
18 should be sealed records, without requiring prior  
19 *in camera* review by the appellate court. An  
20 appellate? By the appellate court.

21 Okay, speak now or forever -- okay.  
22 In favor of this motion, everyone say aye.

**NEAL R. GROSS**

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

1           HON. JONES: I don't know what the  
2 system is now but I think we have to make a  
3 distinction between the kind of review that I  
4 think the Colonel was talking about, which is,  
5 and it is done by a judge and maybe we want to  
6 put that in this process, as opposed to an *in*  
7 *camera* on the merits.

8           CHAIR HOLTZMAN: I know. That's what  
9 I said here.

10          HON. JONES: I'm sorry, I didn't --

11          CHAIR HOLTZMAN: Okay, modify RCM  
12 1103A to better guide procedures for access to  
13 sealed records without requiring prior *in camera*  
14 review by the appellate court.

15          HON. JONES: Right.

16          CHAIR HOLTZMAN: Any *in camera* review.

17          HON. JONES: Now, what are the details  
18 on this?

19          CHAIR HOLTZMAN: Okay, well, wait a  
20 minute. You are not the only vote.

21          HON. JONES: Well, I think everyone  
22 else already voted.

**NEAL R. GROSS**

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

1 CHAIR HOLTZMAN: Right, we have to get  
2 everyone's vote.

3 All in favor -- do I have to read the  
4 whole thing? All right, let me try it.

5 Modify RCM 1103A to better guide  
6 procedures for access to sealed records without  
7 requiring prior *in camera* review by the appellate  
8 court.

9 All in favor say aye.

10 All opposed.

11 MR. STONE: I'm opposed because before  
12 privileges are invaded by any judge, a judge has  
13 to review those records and I believe that is  
14 supported by the privilege and immunity clause of  
15 the U.S. Constitution.

16 CHAIR HOLTZMAN: Okay. Okay, thank  
17 you. We finally have some agreement, not  
18 unanimous agreement on this.

19 If we are going to look at the better  
20 procedures, the better guide procedures, what are  
21 the procedures we are going to suggest?

22 MR. TAYLOR: Well, as I said earlier,

**NEAL R. GROSS**

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

1 I think having a judge make that decision --

2 CPT. HOUSE: If it helps, I don't  
3 think we are -- I can only speak for Navy and  
4 Marine Corps. We are not opposed to filing  
5 something with the court that says I am the  
6 attorney for Sergeant so-and-so, 513 is an issue  
7 in this case. I would like access to the  
8 records. We are not opposed to that.

9 The only opposition we would have is  
10 never get to see the records and some appellate  
11 judge gets to decide whether they are relevant or  
12 not, without us ever getting to see the records.

13 That is our opposition. The Air Force  
14 procedure, our procedure, whatever authority you  
15 would recommend we would go to to prove the bona  
16 fides, so to speak, of this is appellate defense  
17 counsel. If they actually have an issue in the  
18 case and they are the right appellate defense  
19 counsel, we are fine with that.

20 CHAIR HOLTZMAN: Can I make a  
21 suggestion about the better procedure because I  
22 feel that we don't have the Air Force procedure

**NEAL R. GROSS**

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

1 in writing before us.

2 MS. GUPTA: We do. Tab 6 has all the  
3 CCA rules, including the motion.

4 CHAIR HOLTZMAN: Do we have the  
5 comments of the other Services on Air Force  
6 rules? So, maybe they have an objection to them.  
7 I think it would be a good idea for us to have a  
8 better sense about how other people feel. So,  
9 maybe the Navy and Marine Corps, they love them  
10 but maybe the Army doesn't love them.

11 LT. COL. VERGONA: The Army procedures  
12 are different, ma'am.

13 CHAIR HOLTZMAN: Right, I know that.  
14 And so maybe you would have objection to adopting  
15 the Air Force procedures. And so we just like to  
16 know that before we approve and the Coast Guard,  
17 too. Do you agree with that?

18 COL. ORR: Yes, I do.

19 CHAIR HOLTZMAN: Okay. I think I  
20 would feel better if we had your comments on  
21 that. So, we could easily take that up. We know  
22 what the issue is. We will see the Air Force

**NEAL R. GROSS**

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

1 rules set out in front of us. We will have any  
2 comments or objections or disagreements in front  
3 of us and we can pretty easily deal with that.  
4 Is that okay with you. I know you are not in  
5 agreement with this procedure, Mr. Stone, but I  
6 think it is at least fairer.

7 MS. FRIED: Just to be clear, the  
8 position as far as the recommendation is to  
9 modify and better guide, that still remains --

10 CHAIR HOLTZMAN: Right but we are  
11 trying to figure out what the procedures are  
12 going to be that we are going to approve. It  
13 seems as though there is consensus to follow the  
14 Air Force procedures but we haven't heard really  
15 commentary from any of the other Services. They  
16 may not like those procedures. They may have  
17 disagreement with aspects of the procedures. So,  
18 I think I would feel more comfortable proving  
19 something if we knew completely what the  
20 consequences were and we had the benefit of the  
21 guidance from the other Service.

22 Of course, the Air Force is going to

**NEAL R. GROSS**

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

1 love its own procedures, right?

2 COL. ORR: That's right. We have no  
3 objections to our own procedures.

4 CHAIR HOLTZMAN: Okay, great. All  
5 right. Thank you very much for your help.

6 And I just want to say, Captain, it  
7 was really a very wise decision to bring these  
8 experts here. Thank you for being here because  
9 you helped us with understanding these issues.

10 Okay, now we have I think the last --  
11 is this the last issue we have to deal with?

12 CPT. TIDESWELL: Yes, ma'am, it is  
13 number four.

14 CHAIR HOLTZMAN: Issue 4: Victim  
15 Notice of Appellate Proceedings. Outline the  
16 problems for us, please.

17 CPT. TIDESWELL: Yes, ma'am. So, the  
18 issue really is in which instances should the  
19 victims receive notice. Under Option 1, there is  
20 legislation pending right now in the Senate  
21 version of the FY17 National Defense  
22 Authorization Act in Section 547. And the

**NEAL R. GROSS**

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

1 proposal is that a victim should receive notice  
2 of any appellate matter, regardless of what the  
3 issues are.

4 Option 2 --

5 CHAIR HOLTZMAN: Any appellate matter  
6 involving the case that they were in.

7 CPT. TIDESWELL: The case, yes, ma'am.

8 Option 2 would be, and this was one I  
9 believe that bore out in the testimony of the  
10 defense bar that we have heard, that was a victim  
11 should only receive notice of pleadings that  
12 reasonably implicate something that is of  
13 interest to the victim.

14 CHAIR HOLTZMAN: Can we have a  
15 discussion of this?

16 MR. TAYLOR: Well, if I may, it seems  
17 that Option 4 talks about implementing technology  
18 similar to PACER and that is, apparently, in the  
19 FY17 NDAA provision to require the creation of  
20 that kind of system.

21 So, it seems that there might be a  
22 really good long-term solution to this but when

**NEAL R. GROSS**

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

1 the parenthetical says that implementation would  
2 occur four years from enactment of the  
3 legislation, I find it a little concerning that  
4 there is not a more immediate policy to address  
5 the issue.

6 So, it seems that there might be a  
7 long-term solution out there. And one question  
8 might be should we try to figure out something  
9 that will bridge the gap.

10 CHAIR HOLTZMAN: Mr. Stone? Judge  
11 Jones? Admiral Tracey?

12 MR. STONE: To comment on the  
13 difference between the two options, I don't know  
14 how anybody other than the special victims'  
15 counsel can decide. Who is supposed to decide  
16 whether a victim's interest is at issue? That is  
17 why you give it to a special victims' counsel.  
18 And certainly, once it is electronically  
19 available onto PACER, that is not a big deal.  
20 They look it up. They read it and they decide.

21 So, I think that, for me, Option 2 is  
22 the only one that makes any sense. How we get

**NEAL R. GROSS**

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

1 there from here in that gap, at least in the  
2 military cases I have been involved in, even  
3 before PACER is up, in every case I have been  
4 involved in, the pleadings have been  
5 electronically served on the other party over the  
6 internet. Everybody had .mil addresses and we  
7 were busy getting and receiving emails from  
8 prosecutors and other people. And I think it  
9 would be enough if we simply recommended that  
10 they make their best efforts, whether it be by  
11 paper or electronically to serve the special  
12 victims' counsel if they were involved in a case  
13 below. I don't think we have any reason to  
14 believe now that there are going to be many cases  
15 without special victims' counsel below. So, they  
16 know who to serve, the victims' counsel below and  
17 that will take care of it.

18 And if we say make their best efforts  
19 if there is a circumstance where they can't do  
20 it, at least because I don't know they were on a  
21 ship or whatever happened, then it will be  
22 understandable. There will be an out. We are

**NEAL R. GROSS**

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

1 not trying to make it an inflexible thing. We  
2 are just trying to have them make their best  
3 effort until, I guess you could say, a more  
4 regularized system is put in place, which might  
5 be something else.

6 CHAIR HOLTZMAN: Okay, so but there  
7 are questions that are implicated by this. Well,  
8 first of all, I have a couple of questions.

9 One, Option 2 says pleadings that  
10 reasonably implicate the victim's interest. Is  
11 that the option that you are -- you said Option  
12 2. Is that what you were --

13 MR. STONE: That's what I am saying.  
14 Nobody can know that but the special victims'  
15 counsel.

16 CHAIR HOLTZMAN: Well, that means --  
17 so who is responsible for giving what notice?

18 I mean I think Option 2 -- I don't  
19 mean to put words in anyone's mouth here because  
20 I really messed up before but aren't we talking  
21 about probably 412 and 513?

22 MR. STONE: Maybe the victim was not

**NEAL R. GROSS**

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

1 allowed to be present in the courtroom. I mean  
2 there is a whole litany of victims' rights. I  
3 don't know which they all are but I just think  
4 that if the defense counsel is filing a brief,  
5 whether they file it on the court or they file it  
6 on the court with an electronic copy to the last  
7 special victims' counsel or it is a hard copy if  
8 they are really doing it. But I tell you I  
9 haven't been involved in ones with the hard copy.  
10 If they make an extra copy and they send it, that  
11 is hardly a resource problem for people. We  
12 serve people all the time.

13 CHAIR HOLTZMAN: But as I remember the  
14 testimony about this, there are some issues here.  
15 One is it is not clear that the SVCs are  
16 representing a victim on appeal. So, the  
17 question is the lawyer.

18 Number two is -- let me see if I can  
19 remember some of the issues here. Number two is  
20 that some victims don't even have -- don't want  
21 to have representation on appeal. And number  
22 three is if we don't have an electronic system in

**NEAL R. GROSS**

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

1 place, how burdensome is this going to be?

2 My impression of this is going to be  
3 amazingly burdensome. I don't know exactly why  
4 but that was my impression about his. Obviously,  
5 the best answer is that we have this system and  
6 it is a PACER system and they can get whatever  
7 they want, anytime. But short of that, I don't  
8 know enough about the burdens here to understand  
9 what we would be doing if we mandated the  
10 Service.

11 MR. STONE: I'm just trying to suggest  
12 something that we know is not a tremendous  
13 inconvenience until they move to the next step.  
14 If there is a special victims' counsel below, it  
15 will become their job to figure out, if they are  
16 not representing on appeal, where to forward it.  
17 If it is a victim who said they didn't want to be  
18 represented, they should know that, too. But  
19 they will know the victim and they will be able  
20 to take it from there and at least it will be an  
21 effort by the military to see that someone who  
22 has the victim's interest and not defense counsel

**NEAL R. GROSS**

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

1 or the court or somebody else has the job because  
2 they also have the victim advocates and stuff,  
3 who have met with the victims who may not have  
4 wanted counsel. They will know the next step to  
5 see that a victim who says, I didn't want  
6 counsel. I didn't want it but I wouldn't mind  
7 just reading the brief. They will send them the  
8 hard copy or they will say here is the electronic  
9 copy. We will forward it to you if you have a  
10 website.

11 I'm just saying the only burden I put  
12 on the person filing the appeal in any of these  
13 cases is to notify the last special victims'  
14 counsel in the case. And I think that that is a  
15 legitimate burden. I don't think it is terrible.  
16 I think it is doable. It may not cover 100  
17 percent of the cases. And you are right. One  
18 percent of the cases may be so complicated that  
19 they would be off the charts. Well, then we  
20 won't be covering that one percent but we will  
21 cover the 99 percent, or special victims' counsel  
22 knows who is representing the victim, or if the

**NEAL R. GROSS**

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

1 victim didn't want counsel. And it is a  
2 legitimate way to show that a legitimate effort  
3 is being made.

4 VADM TRACEY: So, in the event this  
5 victim is not being represented, who will  
6 determine that information is relevant to the  
7 victim?

8 MR. STONE: No, no, no, there is no  
9 screening. They send the brief. They get the  
10 brief.

11 LT. COL. WISSMAN: But there is also  
12 -- I mean clearly, we have victim witness forms,  
13 the 2704 forms, which comes up with the record of  
14 trial where the victim or the witness says, I  
15 want to know if the person is going to comment or  
16 if there is a hearing about that. So, there  
17 could be, as far as the procedure, if it decided  
18 to go that way, the modification on that form, do  
19 you want appellate proceedings and who do you  
20 want that to go to. And you have to decide, as a  
21 Service, if you don't have appellate victims'  
22 counsel, how that would work. But at least there

**NEAL R. GROSS**

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

1 would be a procedure on a form that we already  
2 have that goes up with the record of trial. That  
3 could be --

4 LT. COL. VERGONA: And I believe the  
5 testimony that you heard, at least from the Army,  
6 that they do use these forms when it goes to the  
7 clerk of court and there is a person in the clerk  
8 of court who reviews those forms and, if the  
9 victim elects, then they go ahead and send those.

10 Also, I'm not sure how all the  
11 Services do it but at least the Army, it sounds  
12 like, our representation, special victims'  
13 counsel representation ends at action. So, there  
14 isn't necessarily a continuing relationship.  
15 Just like with the defense counsel, you finish  
16 your case. You don't necessarily represent them  
17 for everything and anything.

18 As they say in the military, we do  
19 have a centralized office, the Special Victims  
20 Policy that would be an option as well but I am  
21 just not sure how the Services, all the Services  
22 do it. So, some Services, once you form an

**NEAL R. GROSS**

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

1 attorney-client relationship, it is possible that  
2 they have it continuously but, at least in the  
3 Army, that is not how it is.

4 CHAIR HOLTZMAN: Let me ask you  
5 another question to follow up on the point  
6 because I think Mr. Stone's point is that  
7 somebody should be getting this material and  
8 making sure that the victim, if she or he wants  
9 it gets it. Is that more or less it?

10 MR. STONE: That's it.

11 CHAIR HOLTZMAN: So, the question is,  
12 is there a better person? I mean is the victim  
13 advocate a better person to get it? I don't  
14 know. I mean that is --

15 HON. JONES: I like the idea of having  
16 it formal on a form. And before there was a  
17 special victims' counsel, there was a complete  
18 SARC and a whole mechanism for aiding victims and  
19 it should be part of that system. Then you don't  
20 need the defense lawyer or the prosecutor.

21 So, I think your idea of having yes,  
22 I want notification -- and I think a witness in a

**NEAL R. GROSS**

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

1 case wants to know everything, not just their own  
2 issues. They are going to want to know who won,  
3 for instance. Was it affirmed or denied? So, I  
4 wouldn't worry about whether the issue was  
5 implicated. I would just ask him do you want to  
6 know what is happening in the appeal and if they  
7 say yes, then it is going to have to become a  
8 part of -- I keep just saying SARC but that would  
9 be --

10 LT. COL. WISSMAN: Ma'am, you probably  
11 remember from -- the Army has the appellate  
12 victim liaison that is working for the ACCA Court  
13 directly. And so that person is that liaison  
14 back and forth to the victim.

15 MR. TAYLOR: That's exactly what I was  
16 going to mention because when the Army was here  
17 talking about this, they said they had an  
18 appellate victim liaison within the clerk of  
19 court. And this is what the Army has used and  
20 somebody left as a form that I just happened to  
21 hold onto called Post-Trial Information for  
22 Victims and Witnesses of Crimes. The sample

**NEAL R. GROSS**

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

1 letters of how something unfolds in a particular  
2 case that is held by the clerk of courts. I mean  
3 the Army practice, it may not be the best  
4 practice but it seems to be a practice that the  
5 Army has found to work.

6 LT. COL. VERGONA: Yes, sir.

7 CHAIR HOLTZMAN: But we don't know  
8 what happens with the other Services and what --

9 COL. ORR: Well, I can share something  
10 with the Air Force. In light of what we heard at  
11 the last meeting, what we have essentially done,  
12 and it is still conceptual because we are still  
13 working through it. But essentially what happens  
14 is at the end of the trial, at action, the SVC  
15 will hand a form that we have created similar to  
16 the 270 whatever that one is. And it says,  
17 essentially, do you want appellate SVC to  
18 represent you. And at that point -- or do you  
19 want to be notified any further. And the witness  
20 actually signs all of that and lets us know what  
21 they want. That form comes up here to Washington  
22 and they will assign a counsel here.

**NEAL R. GROSS**

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

1           Now, our current practice now is that  
2 if there is an SVC or they are represented by  
3 appellate counsel, all the pleadings, once the  
4 appellate decides to file a plea, it goes to  
5 appellate government. And appellate government,  
6 then, at that point, there is a paralegal in  
7 there that actually forwards the pleadings to the  
8 counsel or to whoever they want it to go to.

9           So, they are now, we are in the  
10 process of making sure that they get the  
11 pleadings until the point they say they don't  
12 want to.

13           But essentially, we are like the other  
14 Services. Once the action is done, generally,  
15 the representation ends and then it is passed off  
16 to a different shop up here in Washington.

17           CHAIR HOLTZMAN: Well, how should we  
18 leave it? That the recommendation is that the  
19 various branches formalize -- maybe that is a  
20 better way to do it is formalize proceedings  
21 either similar to what the Army has or whatever  
22 proceedings there may be that will allow full

**NEAL R. GROSS**

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

1 notification of the victim/witness if they want  
2 it.

3 MR. STONE: Yes, give notice. We will  
4 leave it open for them to figure out what works  
5 for them.

6 CHAIR HOLTZMAN: Right.

7 LT. COL. WISSMAN: If I could, for us  
8 to be clear, a copy of the pleadings and the  
9 briefs as well.

10 CHAIR HOLTZMAN: Yes, right. It gives  
11 them the option of what they want. Yes, sorry.

12 MS. GUPTA: I just want to specify  
13 trial, some of the proposals we have heard about  
14 are only for only sexual assault victims. So, do  
15 you want your notice recommendation to apply to  
16 all victims?

17 CHAIR HOLTZMAN: We don't have that  
18 authority. We can just talk about sexual assault  
19 victims. That's it. Whatever we want.

20 So, we have addressed -- I think that  
21 is the last issue. Does any expert have any  
22 other comment about that issue number 4, which is

**NEAL R. GROSS**

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

1 basically we leave it up to you to figure out how  
2 to make sure that the victims get proper  
3 notification, to get the opportunity to respond  
4 as to whether or not they want to be notified,  
5 and then once they say they do, they get the  
6 materials they want?

7 MS. FRIED: To clarify then, Ms.  
8 Holtzman, is the proposal to formalize procedures  
9 to provide notice and pleadings to victims if the  
10 victim so elects, something like that?

11 CHAIR HOLTZMAN: Correct.

12 Okay, I just want to say despite all  
13 my -- I have been thinking back and forth on  
14 this. So, I am just going to change my vote on  
15 Issue 1 from a no to a yes. And that is it.

16 Okay, so we are finished with this  
17 portion and we will take a ten-minute break and  
18 then we are on to planning. And we are early.

19 Okay, thank you very much. Thanks to  
20 the Members of the Panel and, of course, thanks  
21 especially to the expert panel for your good  
22 counsel and advice in helping us think this

**NEAL R. GROSS**

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

1 through.

2 MR. STONE: Is there any public  
3 comment? Nobody wanted to comment?

4 No public comment today?

5 CHAIR HOLTZMAN: We have no public  
6 comment. It is a planning session.

7 MR. STONE: Okay.

8 (Whereupon, the above-entitled matter  
9 went off the record at 2:08 p.m. and resumed at  
10 2:28 p.m.)

11 CHAIR HOLTZMAN: Thank you very much,  
12 everybody. We are going to get -- we are still  
13 ahead of time.

14 So, let me welcome you, Members of the  
15 Panel and the audience back to our second part of  
16 our work today, which is a planning session. And  
17 before I ask Captain -- Ms. Fried, may we  
18 proceed?

19 MS. FRIED: Oh, yes, we haven't closed  
20 yet.

21 CHAIR HOLTZMAN: Before I ask Captain  
22 Tideswell to lead our planning discussion, I

**NEAL R. GROSS**

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

1 thought it would be important to highlight what  
2 the Panel has accomplished thus far, the status  
3 of the JPP Subcommittee site visits and the new  
4 Sexual Assault Advisory Committee authorized by  
5 Congress.

6 Since the Judicial Proceedings Panel  
7 was established on June 24, 2014, we have held 24  
8 public meetings, received testimony from over 200  
9 individuals, received responses to 158 requests  
10 for information submitted to the Department of  
11 Defense and the Services, received and reviewed  
12 thousands of pages of material, published five  
13 reports, and made a total of 38 recommendations  
14 to Congress and the Secretary of Defense related  
15 to victims' privacy and access to information,  
16 the Special Victims' Counsel program, victims'  
17 restitution and compensation, Article 120 of the  
18 Uniform Code of Military Justice, retaliation  
19 against those who report sexual assault, and  
20 court-martial data trends.

21 I am also pleased to report that the  
22 JPP's efforts have led to positive action by

1 Congress and the Department of Defense. The 2016  
2 NDAA enacted four of the recommendations from our  
3 initial report. These recommendations were to:  
4 1) establish guiding principles, standards, and  
5 measures for the Special Victims' Counsel  
6 Program; 2) standardize the requirements and time  
7 frame for SVC training; 3) maximize the  
8 opportunity for victims to have in-person contact  
9 with SVCs; and 4) develop options for  
10 streamlining the process for implementing changes  
11 to the UCMJ.

12 Further, in June 2015, the president  
13 signed an executive order which followed a  
14 recommendation of the JPP to eliminate the quote,  
15 constitutionally required, closed quotes,  
16 exception in Military Rule of Evidence 412 in  
17 Article 32 hearings.

18 Most recently, the Senate-passed  
19 version of the 2017 NDAA incorporates a number of  
20 additional JPP recommendations. These  
21 recommendations include amendments to Article 120  
22 of the UCMJ to 1) revise the definition of

**NEAL R. GROSS**

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

1 consent; 2) define the term of incapable of  
2 consenting; 3) remove the element of causing  
3 bodily harm; 4) amend the definitions of sexual  
4 act and sexual contact; and 5) adopt a new theory  
5 of liability for coercive sexual acts or contacts  
6 in which a perpetrator has used position, rank,  
7 or authority to obtain compliance by another  
8 person.

9           The pending 2017 NDAA legislation also  
10 incorporates four JPP recommendations regarding  
11 retaliation against those who report sexual  
12 assault offenses. These recommendations include  
13 establishing metrics to evaluate efforts of the  
14 Armed Forces to prevent a response to  
15 retaliation, requiring retaliation complaints to  
16 be tracked and included in the annual DoD SAPRO  
17 Sexual Assault Reports, ensuring specialized  
18 training and command personnel assigned to  
19 investigate retaliation complaints and  
20 establishing guidelines on the release of  
21 retaliation complaint disposition information to  
22 complainants.

**NEAL R. GROSS**

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

1           Finally, the proposed FY2017 NDAA also  
2 incorporates both of the recommendations made by  
3 the JPP in its report on data trends. The  
4 recommendations offer DoD to create a document-  
5 based case adjudication data system and to  
6 include data on intimate partner and child sexual  
7 assaults in the DoD SAPRO Annual Sexual Report to  
8 Congress.

9           Coupled with legislative action, the  
10 Department of Defense is independently  
11 implementing other JPP recommendations. These  
12 include requiring uniform guidance for release of  
13 mental health records by military medical  
14 facilities, developing guidance to ensure victims  
15 have appropriate access to docketing information  
16 in case filings, requiring all complaints of  
17 retaliation related to sexual assault be  
18 investigated by the DoD Inspector General and  
19 establishing uniform practices and procedures  
20 concerning SVC participation in military justice  
21 proceedings.

22           In addition, the JPP Subcommittee

1 continues to be very active. This summer, eight  
2 members visited military installations in  
3 Virginia, North Carolina, Colorado, California,  
4 Maryland, Korea, and Japan. The purpose of these  
5 visits was to hear from investigators and  
6 military justice practitioners and victim  
7 advocates in the field about the effect of recent  
8 changes to Uniform Code of Military Justice and  
9 the sexual assault-related policy.

10 As two of the JPP Members designated  
11 to serve on the JPP Subcommittee, Judge Jones and  
12 I personally attended several of the site visits.  
13 We also met with fellow subcommittee Members on  
14 October 14, 2016 to discuss observations made  
15 during these visits and to identify key issues  
16 the subcommittee recommends for further analysis.

17 Two of the issues identified, defense  
18 resources and sexual assault investigations, will  
19 be briefed to the committee during our public  
20 meeting on December 9th.

21 The last matter to highlight is the  
22 upcoming Defense Advisory Committee on the

**NEAL R. GROSS**

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

1 Investigation, Prosecution, and Defense of Sexual  
2 Assault in the Armed Forces. This advisory  
3 committee was authorized by Congress in the 2015  
4 NDAA and was to be established following the  
5 completion of the JPP's term in September 2017.  
6 The start date for the new committee was  
7 accelerated by the 2016 NDAA, which requires that  
8 it start this year. As far as I know, membership  
9 of the DACIPAD has yet to be announced.

10 Before Captain Tideswell proceeds with  
11 the planning session, I would like everyone to  
12 know I am very pleased by our progress. Thank  
13 you to my fellow Members, the current and former  
14 Members, and JPP staff, our Service  
15 representatives and all of those who contributed  
16 to this effort over the last two years.

17 Thank you again, very much, Members of  
18 the Panel.

19 Captain Tideswell, please proceed.

20 CPT. TIDESWELL: Yes, ma'am. And if  
21 I could just draw the committee's attention to  
22 the read-ahead materials, specifically Tabs 11

**NEAL R. GROSS**

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

1 and 12. I think the goal of this session, ma'am,  
2 is to sort of set the way ahead for the Panel for  
3 the remainder of the time that it is empaneled  
4 through September of 2017.

5 The staff prepared two documents. The  
6 one behind Tab 12 literally outlines by FY NDAA  
7 and the sections, by year what exactly it is the  
8 JPP was tasked with. You will notice that there  
9 are several columns in that document. First, we  
10 identify the law that has sort of given the  
11 tasking, a brief description of the tasking, what  
12 the tasking was and the action taken to date.

13 You will notice, as you make your way  
14 through that document that some of the issues are  
15 highlighted in gray and some of them are  
16 highlighted in yellow. And we can get to those  
17 in a minute because I think it might be easier to  
18 review those on what is contained at Tab 11.

19 But this is sort of the long form that  
20 contains all the eaches of everything. But if  
21 you look at Tab 11, this is more of a snapshot  
22 that what the staff is left by tasking for the

**NEAL R. GROSS**

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

1 JPP to do.

2 The items that appear in yellow are  
3 issues that we would recommend that the JPP needs  
4 to take action on. And so for example, the first  
5 issue listed is review and assess use of MRE 412.  
6 Another remaining item --

7 CHAIR HOLTZMAN: At courts-martial.

8 CPT. TIDESWELL: At courts-martial,  
9 yes, ma'am.

10 Another tasking that remains is from  
11 the FY2013 NDAA, which is to assess the trends  
12 and training and experience of trial and defense  
13 counsel. You will note that on the bullets that  
14 are listed as number two and number three here,  
15 the number two being the assessment of trends and  
16 training, there actually has been action taken by  
17 the JPP. There have been requests for  
18 information on that issue. There was a public  
19 meeting held on the 13th of May and the  
20 subcommittee also gathered information as they  
21 made their way through the various sites,  
22 collecting data and getting a feel for what the

**NEAL R. GROSS**

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

1 reactions are in the field. And so, that might  
2 be a matter the committee may want to consider as  
3 ready for a report to be done by the staff.

4 Number three is sort of similarly  
5 situated to number two in that the JPP has done a  
6 lot on that matter, except there has not been a  
7 report. So number three is monitoring trends and  
8 special victims' capabilities are now referred to  
9 as SVIP capabilities. The JPP, thus far, has in  
10 fact sent out requests for information on that  
11 issue. You all have received testimony in April  
12 on the matter and the JPP subcommittee also  
13 gathered sort of in their interview questions at  
14 the site visits information on this matter.

15 So, the staff would recommend that  
16 this might be a matter that is now ripe for you  
17 all to consider us having us write a report on.

18 The fourth issue that remains is  
19 monitoring the withholding authority for the  
20 initial disposition policy, where now the O-6 has  
21 to make that decision as opposed to somebody of a  
22 lesser rank. That comes out of the NDAA in FY13.

**NEAL R. GROSS**

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

1

2

3

4

5

6

7

8

9

10

11

This seems to be a smaller item. There was information gathered on this during the subcommittee site visits this summer. So, we do have some information to work on. The staff would recommend that this should be addressed in a report but probably because it is a smaller issue not in a stand-alone. So, you may want to consider embedding that in either the SVIP or the data report that comes out usually in the February/March time frame.

12

13

14

15

16

17

18

19

20

21

22

So, ma'am, if you look further down, there is a couple of tasks that are listed that are in gray. We would argue they are sort of in the gray zone. But those are the JPP tasks that remain but have been affected by intervening actions. So, as a Panel, one could argue that either it has been overcome by events, or this is a matter that some other change is going to be effectuated and maybe you don't assess and leave it, perhaps, for the next Panel that is coming.

And I could run through those, if you

**NEAL R. GROSS**

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

1 would like. The first is the review and  
2 assessment of MRE 412, but that is at the Article  
3 32. And we all know that there has been an  
4 executive order that has changed and eliminated  
5 the constitutionally required reception under  
6 that rule. And this was based, actually, on a  
7 recommendation that you all had made. So, one  
8 could argue that that has sort of been overcome  
9 by events. If the Panel was so inclined and said  
10 well, we still would like to get a feel for what  
11 might be going on in that area, you could easily  
12 make that part of a hearing that you do with MRE  
13 412, evidence at courts-martial and sort of just  
14 do both of those at the same time.

15 The second item listed, assess use of  
16 depositions, including whether a military judge  
17 should serve as a deposition officer. There was  
18 a change that was made in the FY15 NDAA, which  
19 now requires that a party requesting a deposition  
20 actually demonstrate exceptional circumstances  
21 and that it is in the interest of justice to take  
22 the deposition. So, they have, sort of, raised

**NEAL R. GROSS**

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

1 the bar in that.

2 We do know that the Military Justice  
3 Act that is currently pending in the FY17 NDAA  
4 does have language that talks about depositions  
5 and in there is recommending that judge advocates  
6 be the deposition officers whenever practicable.

7 Just as a side note, we do, on the  
8 December 9th schedule, have scheduled Judge  
9 Effron and Mr. Dwight Sullivan, who is the  
10 military justice expert from DoD, they are  
11 scheduled to come in on your agenda to give a  
12 briefing on what is in the Military Justice Act.  
13 We are not sure when the NDAA is going to be  
14 passed. We will all keep our fingers crossed  
15 for, hopefully, early December so when they come  
16 in on the 9th they will be able to share what  
17 actually does exist but nobody is sure about that  
18 yet.

19 The third issue is studying the plea  
20 bargaining process. That is another matter that  
21 is contained in the Military Justice Act and they  
22 are proposing a new Article 53 within the rule.

**NEAL R. GROSS**

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

1 And it basically changes the way negotiations are  
2 conducted, the military judges' determination on  
3 whether or not to accept the plea or not, and the  
4 operation of the plea agreement as far as the  
5 sentence limitations.

6 That sort of goes hand in hand with  
7 what is also pending in the Military Justice Act,  
8 which is the fourth bullet. It appears that  
9 there is a recommendation being made in the  
10 Military Justice Act to sort of replace the broad  
11 sentencing authorities that currently exist with  
12 sentencing parameters, or guidelines, criteria.  
13 And that would sort of change on some level the  
14 way sentence is approached in the military.  
15 Right now, we do not have sentencing criteria or  
16 sentencing guidelines.

17 And probably for the Panel, one thing  
18 that should be highlighted is that would, also,  
19 then in a sense, sunset sort of the mandatory  
20 punitive discharge that now comes with  
21 convictions under certain parts of Article 120  
22 where, if you are found guilty of rape or sodomy,

**NEAL R. GROSS**

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

1 you are facing mandatory dishonorable discharge  
2 or a mandatory dismissal, if you are an officer.

3 The fifth bullet that is listed there  
4 is the review and assessment of MRE 513 evidence  
5 during Article 32 hearings. There was a DoD  
6 policy memo that directed the JSC to recommend  
7 uniform guidance on that matter specifically for  
8 the release of mental health records. And I  
9 believe that is based on a recommendation that  
10 you all made that it be standardized and looked  
11 into. And so it is my understanding that that is  
12 pending right now. We did not have a firm answer  
13 on that from Colonel Pigott today.

14 The last issue that is listed in gray  
15 is number six, to review and assess establishment  
16 of privilege of victim communications with the  
17 DoD Self-Help Line in helping personnel. The  
18 staff would argue that this has, in fact, been  
19 finished with the issuance of EO 13696 that was  
20 published in June of 2015, where it did, in fact,  
21 amend MRE 513 to establish privilege for  
22 confidential communications with the DoD Help

**NEAL R. GROSS**

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

1 Line staff.

2 So, ma'am, I believe some of these  
3 issues that the Panel, if they so identified as  
4 either being overcome by events or something that  
5 might be better served by the successor panel, I  
6 think that is something that we would recommend  
7 could be easily put into an Executive Summary  
8 perhaps at the end of the Panel to sort of sweep  
9 up and make sure we address everything that we  
10 have been tasked with doing.

11 CHAIR HOLTZMAN: Okay, so if I  
12 understand this -- let me make sure I understand  
13 it. So, I don't know if I could explain it,  
14 given my past very bad history of this session  
15 today.

16 But what I am hearing from you is that  
17 we took -- the yellow bars are the ones that have  
18 really not been addressed. We can't even make  
19 any pretend argument that somehow they have been  
20 addressed in some way.

21 CPT. TIDESWELL: Yes, ma'am.

22 CHAIR HOLTZMAN: We haven't addressed

**NEAL R. GROSS**

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

1       them at all.

2                   But so the review and assessment of  
3       the use of MRE 412 has to be addressed.

4                   CPT. TIDESWELL:  Yes, ma'am.

5                   CHAIR HOLTZMAN:  But the training and  
6       experience of trial and defense counsel, that  
7       could be done because enough substantial work has  
8       been done so that the staff is ready to write a  
9       report if we instructed it.

10                  CPT. TIDESWELL:  Yes, ma'am, we are.

11                  CHAIR HOLTZMAN:       Number three,  
12       monitoring trends and special victims'  
13       capabilities, the staff could -- the same with  
14       that.  The staff could write a report on that,  
15       too.  You have done -- the Panel has done enough  
16       work on that for a report to be written and we  
17       could fulfill our responsibility on that.

18                  And the same with number four, that  
19       enough work has been done so that maybe not a  
20       stand-alone report but enough could be written so  
21       that it could be part of another report.

22                  CPT. TIDESWELL:  Yes, ma'am.

**NEAL R. GROSS**

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

1                   CHAIR   HOLTZMAN:        So,   the   key  
2   unaddressed tasks, the only one we haven't really  
3   addressed is MRE 412 in courts-martial.   But  
4   there is time, as you say, to address this  
5   because we have -- I mean we don't really have  
6   until the end of September because if we do a  
7   little bit of a backwards calendar, I mean we  
8   have to finish our work in enough time so that  
9   the staff has a report and we have to approve it.  
10   So, I am thinking probably the end of June or the  
11   end of July at the latest is the deadline.

12                   But particularly also because we could  
13   throw in some MRE 412 at Article 32 hearings,  
14   which is the first item in the gray area, I would  
15   strongly recommend that we address 412.

16                   We are going to have other things to  
17   do because we have to -- we will have reports  
18   from the -- these reports under 2 and 3 and 4  
19   that we will have to review and approve and we  
20   will have the reports from the Subcommittee that  
21   we are going to be briefed on in December.   But  
22   unless anybody really objects, I would suggest

**NEAL R. GROSS**

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

1 that we try to set up a schedule for hearings in  
2 January, if not before. I don't know whether we  
3 could do it before, but hearings as soon as  
4 possible on the MRE 412.

5 MS. FRIED: And so I just want to  
6 point out to the extent we are going to rely on  
7 the JPP Subcommittee-gathered information, that  
8 needs to be briefed to the Panel in public before we  
9 can incorporate it in the report. So, that is  
10 true for 2 and 3.

11 Number 4, though, it says that the  
12 Subcommittee gathered information but it is not  
13 clear that the Panel considered that information  
14 in a public setting either. So, I think,  
15 actually, it is 1 and 4, right?

16 CHAIR HOLTZMAN: Yes, 4 will also have  
17 to get the information from the Subcommittee.

18 So, Item 1, we haven't done, aside  
19 from the 412 at Article 32. No, I think Item 1  
20 we can just do 412. And 2 and 3, the staff can  
21 just -- well, I guess to the extent there is  
22 Subcommittee information there, we may have to be

**NEAL R. GROSS**

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

1 briefed on it first.

2 MS. FRIED: Correct.

3 CHAIR HOLTZMAN: But basically, these  
4 are reports that have to be written. Some  
5 briefing of us, possibly, and reports that have  
6 to be written and then approved.

7 Maybe we can approve the reports and  
8 get the briefing at the same time?

9 MS. FRIED: I think they can start  
10 writing the report.

11 CHAIR HOLTZMAN: Yes, they can start  
12 writing.

13 MS. FRIED: But with respect to what  
14 the subcommittee presented, I would probably hold  
15 off on that until you all had taken a position on  
16 what the subcommittee presented and they can just  
17 add or not add that to the report.

18 CHAIR HOLTZMAN: I guess we will  
19 figure out how to exactly proceed on that in  
20 consultation with you. But basically, that is  
21 how I would suggest we deal with the yellows and  
22 the first item of gray.

**NEAL R. GROSS**

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

1                   Okay, what about the balance? Do we  
2 have time to address the balance of the gray area  
3 at all?

4                   HON. JONES: Can I ask a question  
5 first?

6                   CHAIR HOLTZMAN: Go ahead, please.

7                   HON. JONES: I don't remember our  
8 statutory tasking but what is it that we are  
9 assessing about Rule 412 evidence? It comes in  
10 or it doesn't come in. Are we looking for  
11 trends?

12                   CPT. TIDESWELL: Yes, ma'am.

13                   HON. JONES: I just don't remember  
14 what the point is.

15                   CPT. TIDESWELL: The language is, I'm  
16 paraphrasing, but it is review and assess  
17 instances in which evidence of prior sexual  
18 conduct is introduced by defense counsel and its  
19 impact.

20                   CHAIR HOLTZMAN: And its impact, yes.  
21 So, basically how it is being used now and then  
22 -- and its problems, any problems that we see

**NEAL R. GROSS**

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

1 with it.

2 MR. STONE: On that and some of these  
3 others here, I read those to suggest that over a  
4 year ago we had reports on how they were putting  
5 in a data system and the various -- and they were  
6 putting in things for the first time and trying  
7 to do it in a uniform way. And I presumed that  
8 meant we were going to try and get an update to  
9 see how many -- now that they have better  
10 numbers, how many sexual assault cases does a 412  
11 motion get made in? And how many of those does  
12 it get granted and how many of those is it  
13 denied? And how many of those have been on  
14 appeal? I don't think we know yet how many of  
15 those appeals have gone one way or the other.  
16 But if we do, I thought that was the whole point  
17 of us getting that data thing in to try and see  
18 if we could report on it a little better -- basis  
19 of a little better data than a lot of the  
20 impressions we had at the first couple meetings,  
21 which were by knowledgeable people but we didn't  
22 have data. And I thought some of that was also

**NEAL R. GROSS**

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

1 true for three and four, that by monitoring the  
2 trends, we were going to see if there is  
3 something in that data we are collecting that  
4 lets us know now we have data that says all SVC  
5 counsel have gotten training or the percentage  
6 has gone way up or they get it within the first  
7 two months and they used to get it within the  
8 first eight months if they were lucky.

9 I mean I thought we were going to use  
10 the data that everybody was spending money to  
11 figure out how to collect to see if we could say  
12 something a little better there.

13 CPT. TIDESWELL: Yes, sir, it is my  
14 understanding that our data project does not  
15 encompass a look into MRE 412. I think part of  
16 the problem is the documents are sealed in some  
17 instances is part of the issue, but that is not  
18 data we are collecting now.

19 MR. STONE: Well, what is sealed is  
20 the substance of it, not whether a docket sheet  
21 says made a Rule 412 motion, granted/denied.

22 CPT. TIDESWELL: Yes, I agree.

1 MR. STONE: We don't have that.

2 CHAIR HOLTZMAN: What would that tell  
3 us, Mr. Stone?

4 MR. STONE: Well, they are asking for  
5 trends. It would just tell us that yes, this is  
6 important because it comes up in 80 percent of  
7 the cases or it is only coming up in 5 percent of  
8 the cases. I mean I think that is kind of a  
9 relevant --

10 HON. JONES: Well, you know it is  
11 interesting. I mean part of the reason I asked  
12 my question is because I am not sure how helpful  
13 this going to be if we do research this. I think  
14 it is a given that trying to introduce 412  
15 evidence is always important, whether it is five  
16 percent or 80 percent. And then after that, I  
17 think all we are going to see is how the trial  
18 court may have decided it and then if it went on  
19 appeal, how the appellate court would decide it.

20 MR. STONE: Right.

21 HON. JONES: But I'm not sure where we  
22 go from there because I don't think we are going

1 to be deciding, well, we think that CAAF was  
2 wrong on that or the other appellate court, if  
3 it only got to that level, was right on this.

4 I am just trying to figure out what is  
5 to be gained from a look at this.

6 MR. STONE: Well, it impacts a lot of  
7 the stuff we discussed this morning if it turns  
8 out 412 motions are almost never granted or  
9 almost always granted. That makes some  
10 difference on how you structure the rest of it.  
11 That is why I would like to see it.

12 In other words, does it look like  
13 defense counsels feel they have to make these  
14 motions, even when it looks like, looking across  
15 the system, there isn't that much substance to  
16 them, they just feel obligated to make it on  
17 behalf of their client and they are mostly denied  
18 or are they making the motions and, in 90 percent  
19 of the time, they grant it, so it is an important  
20 topic.

21 CPT. TIDESWELL: So, sir, to your  
22 point, although we are not collecting the data

**NEAL R. GROSS**

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

1 now, that does not prevent the committee. We  
2 could always do a request for information from  
3 the Services and try to collect the data that  
4 way, if you all were so inclined.

5 CHAIR HOLTZMAN: Right, the  
6 quantitative stuff may be interesting but I think  
7 it would also be useful to hear from trial  
8 counsel, special victims' counsel, defense  
9 counsel, about how this actually works in  
10 practice. To what extent are these 412 -- I mean  
11 to what extent are the 412 motions -- I mean  
12 maybe defense counsel feels that the judges are  
13 being unfair or the standard is wrong in terms of  
14 the interpretation. We don't know that. I mean  
15 maybe we can tell from the statistics.

16 Maybe trial counsel will say the  
17 judges have the standard and the review is wrong  
18 or there was some impropriety or something needs  
19 to be changed. I mean we have no sense of how it  
20 is working. And we know that in terms of 412 at  
21 Article 32 hearings, it is not happening because  
22 nobody is testifying there. So, that doesn't

**NEAL R. GROSS**

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

1 even become an issue.

2 So the question is, what happens now  
3 that 412 is coming up for the first time at  
4 trial? What does this mean? What is the impact  
5 on the system? And maybe special victims'  
6 counsel has some thoughts about it.

7 So, I mean with all due respect, Barb,  
8 it is possible that you are right. It is  
9 probably likely that you are right. I don't know  
10 any time that you are not right but maybe, maybe,  
11 slight possibility that there could be something  
12 else here.

13 HON. JONES: Well, I mean look, we  
14 might hear the judges are overwhelmingly going  
15 one way or the other.

16 CHAIR HOLTZMAN: A rubber stamp or  
17 whatever. I don't know.

18 But I think that since this is a  
19 mandate we have been given and haven't really  
20 looked at it at all, it is probably worth --

21 HON. JONES: So, are we -- well, I  
22 mean a hearing is certainly along the lines of

**NEAL R. GROSS**

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

1 what the kinds of questions you would like to ask  
2 -- how is it actually working sounds fine.

3 CHAIR HOLTZMAN: Maybe it is not a  
4 whole day of hearings but maybe that is at least  
5 one subject we could have and we could certainly  
6 try, as Mr. Stone suggested, try to get some of  
7 the data, if there is any that we can get easily.

8 CPT. TIDESWELL: Yes, ma'am.

9 CHAIR HOLTZMAN: Is there any further  
10 objections to it?

11 Okay. All right. Now, I guess the  
12 other question has to do with the Items 2, 3, 4,  
13 5 and 6 in the gray area. Whether you feel --  
14 whether we have done enough -- I don't know what  
15 in Item 2 RSP 2014 Report -- are you saying that  
16 the RSP made that recommendation and the question  
17 is --

18 CPT. TIDESWELL: Yes, ma'am, they  
19 recommended that you all take a look.

20 CHAIR HOLTZMAN: Oh, that we take a  
21 look --

22 CPT. TIDESWELL: Yes, ma'am.

**NEAL R. GROSS**

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

1 CHAIR HOLTZMAN: -- at how -- what is  
2 happening with depositions.

3 CPT. TIDESWELL: Yes, ma'am. I think  
4 they were worried that, with the change in the  
5 Article 32 investigation, that it would then  
6 shift to depositions.

7 CHAIR HOLTZMAN: Does anybody know  
8 what has happened with the depositions? Is that  
9 something that --

10 MS. CARSON: What has happened in the  
11 intervening is the FY15 NDAA has made it much  
12 more -- a much higher standard to get a  
13 deposition. So, they have taken into account the  
14 issue. So, it appears -- we haven't heard  
15 testimony directly on it but from what we have  
16 heard, depositions aren't happening because you  
17 have to meet this new higher standard to get one.

18 CHAIR HOLTZMAN: Is it worthwhile  
19 making a request for information about this?

20 MR. TAYLOR: Is that even information  
21 that the Services are collecting?

22 CPT. TIDESWELL: I don't know. We

**NEAL R. GROSS**

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

1 would have to find out.

2 CHAIR HOLTZMAN: Oh, okay.

3 MR. TAYLOR: I think it would be too  
4 granular for them to --

5 CHAIR HOLTZMAN: So, if we are not  
6 going to approach this issue, what is our answer,  
7 that because of the changes in 2015 and 2016,  
8 it's premature? I mean how do we explain our  
9 failure to address this? Do we say because of  
10 these changes, NDAA changes, statutory changes in  
11 2015 and 2016 that it doesn't make -- it was  
12 premature for us to study?

13 CPT. TIDESWELL: It is premature and  
14 not right to make an assessment.

15 CHAIR HOLTZMAN: Okay. And then maybe  
16 that is for the other committee. Any  
17 disagreement with that? Okay, fine.

18 All right, so now we are up to study  
19 plea bargaining process. Are we actually  
20 required to study the plea bargaining process?  
21 Is that one of our tasks or was that just a  
22 recommendation from the RSP?

**NEAL R. GROSS**

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

1 CPT. TIDESWELL: It was recommended by  
2 the RSP.

3 CHAIR HOLTZMAN: But we are not  
4 required to. I mean nothing in our tasking from  
5 our --

6 CPT. TIDESWELL: Not through NDAA.

7 CHAIR HOLTZMAN: That is a very big --

8 HON. JONES: It's big and obviously  
9 someone else has studied it and probably know  
10 more about it -- certainly know more about it  
11 than we do at this point.

12 MR. TAYLOR: I just don't think it is  
13 central to the function of our committee to do  
14 that.

15 HON. JONES: That's an even better  
16 point.

17 MR. TAYLOR: It is certainly a  
18 collateral issue but it hasn't been the focus of  
19 our attention.

20 MR. STONE: I kind of think we could  
21 listen to see what Judge Efron thinks on the  
22 issues that they have proposed something in the

**NEAL R. GROSS**

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

1 Military Justice Act of 2016 and whether or not  
2 it is neutral, positive or negative on the roles  
3 of the SVC. And if it is accounted for the SVC,  
4 it may be that he has done as much as we would  
5 cover, as long as they have taken it into  
6 account. If it's either ignored the special  
7 victims' counsel on all those issues there in the  
8 middle, then it is possible we would want to be  
9 able to have a written comment in our last report  
10 that basically says that the Military Justice Act  
11 of 2016 doesn't seem to take into account when  
12 they are doing this new plea bargaining stuff or  
13 this new sentencing stuff or that SVC should be  
14 factored into the process.

15 I'm guessing he has taken it into  
16 account but I have no idea. I would want to hear  
17 from him.

18 CHAIR HOLTZMAN: Okay, so right now,  
19 the view is that because new changes were made in  
20 the 2016 Military Justice Act, that -- unless it  
21 doesn't take into account the point that you are  
22 making, that there is really nothing for us -- I

**NEAL R. GROSS**

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

1 mean it is way too early for us to undertake it.  
2 And it is such a big subject we couldn't  
3 undertake it and finish it in time. But we  
4 would, when Mr. Efron comes, we could ask him.  
5 Staff, just make sure we ask him about SVC.

6 Okay, number 4, Assessment of  
7 Mandatory Minimum Sentencing, which was a tasking  
8 of the FY2014 NDAA. Well, the question is -- I  
9 mean that is also another very big subject.

10 I guess if the Military Justice Act is  
11 adopted by the Conference Committee, in the  
12 Conference Report, then what is there for us to  
13 look at?

14 CPT. TIDESWELL: There isn't, ma'am.  
15 In fact, it would sunset out the requirement that  
16 you get the dishonorable discharge or the  
17 dismissal if there is a conviction under --

18 CHAIR HOLTZMAN: Yes, but it would  
19 also -- how could we -- what would there be for  
20 us to look at because it is new? This Act would  
21 just take effect now.

22 CPT. TIDESWELL: Yes, ma'am. It would

**NEAL R. GROSS**

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

1 change the landscape.

2 CHAIR HOLTZMAN: It would change the  
3 whole landscape. And there is not enough time for  
4 us to really look at this. No way. Am I right?

5 CPT. TIDSWELL: I believe you are  
6 correct.

7 MS. FRIED: I think, though, what this  
8 is looking at is --

9 CHAIR HOLTZMAN: Ms. Fried, tell me.

10 MS. FRIED: I'm sorry. The mandatory  
11 minimum sentencing that is currently in place  
12 right now, is that happening? Are people getting  
13 those discharges for the cases that have been  
14 adjudicated since that time? But there probably  
15 isn't enough to really make any assessment on it  
16 anyway because by the time they get through the  
17 process, you can really see the action.

18 So, I think it is a little bit  
19 different than what the Military Justice Act --  
20 the Military Justice Act of 2016 would amend that  
21 but I think looking at what the requirement was,  
22 is for us to assess or the Panel to assess how

**NEAL R. GROSS**

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

1 that was being implemented up until the change.  
2 But I think there is not enough information,  
3 perhaps.

4 MR. STONE: Well, we could get one  
5 person to testify on that. It's not a terrible  
6 idea.

7 CHAIR HOLTZMAN: But why do we want to  
8 know about how the law worked, a law that is  
9 being replaced?

10 MR. STONE: Because it may not be  
11 replaced, I think is the --

12 CHAIR HOLTZMAN: Oh, no, but we will  
13 know by the end of December whether they pass the  
14 Conference Report. And if it is in those two --

15 MR. STONE: Okay, so we can table this  
16 until then.

17 CHAIR HOLTZMAN: Yes, because  
18 otherwise, it seems to me that, if this has all  
19 been undone by a new statutory framework, what's  
20 the point of looking at what happened in the  
21 past?

22 MR. TAYLOR: I agree. It's the so-

**NEAL R. GROSS**

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

1 what factor.

2 CHAIR HOLTZMAN: Yes, I mean, and it  
3 is going to be -- we won't have enough time to  
4 evaluate the new law. And the Conference  
5 Reports, it is in both -- since the Military  
6 Justice Act is in both -- it might be slightly  
7 different in both House and Senate versions or is  
8 it exactly --

9 CPT. TIDESWELL: I believe it is  
10 different.

11 CHAIR HOLTZMAN: Okay, so they will  
12 probably try to resolve those issues but I can't  
13 imagine that that is not going to be adopted.  
14 They are going to adopt the Conference Report,  
15 right? They never have not adopted the  
16 Conference Report.

17 So, I think this is probably going to  
18 be our responsibility is going to be superseded  
19 by the new law. But we can see. You can let us  
20 know --

21 CPT. TIDESWELL: Yes, ma'am.

22 CHAIR HOLTZMAN: -- whether we need to

**NEAL R. GROSS**

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

1 add that. And then we have the MRE 513 evidence  
2 during Article 32 hearings and courts-martial.  
3 Well, there is no MRE 513 evidence during Article  
4 32 hearings.

5 Is there time to do this, the use of  
6 MRE 513 evidence during courts-martial?

7 CPT. TIDSWELL: There is but right  
8 now, per a DoD policy memo, they have got the JSC  
9 looking into it and standardizing the approach to  
10 the release.

11 So, just so you know, there is  
12 movement afoot by another body, which is Colonel  
13 Pigott's group acting on a JPP recommendation.

14 CHAIR HOLTZMAN: But that is the  
15 uniform guidance. Well, aside from the uniform  
16 guidance issue, what else would we look at with  
17 regard to the use of MRE 513 evidence?

18 Is there anything else for us to look  
19 at?

20 CPT. TIDSWELL: I don't believe so,  
21 again, except for the data that Mr. Stone talked  
22 about.

**NEAL R. GROSS**

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

1                   MR. STONE: Or if we wait to see if  
2 the JSC publishes their Federal Register comment  
3 and if it is similar to or inconsistent with the  
4 road we have been going down -- I mean they may  
5 be trying to make it like JPP Recommendation 11  
6 and we may decide their version of it misses the  
7 mark or hits the mark. So, again, that is  
8 another thing we can keep our eye on, since  
9 apparently you should see something in the  
10 Federal Register soon from them. I don't know if  
11 it will be on this issue but hopefully we will  
12 see some stuff in the Federal Register.

13                   CHAIR HOLTZMAN: Item 6 -- well, I  
14 guess I don't know. I mean I am just going back  
15 to 5. Is there any issue about once you release  
16 the records the whole question of relevance? I  
17 mean has that been looked at? Is that something  
18 to look at? I am just grasping at straws here in  
19 terms of -- they may set standards for the  
20 release but then -- I don't know. I need to  
21 think about this one.

22                   CPT. TIDSWELL: Chair Holtzman, if

1 you don't mind, let me just read the tasking.  
2 That might help us.

3 CHAIR HOLTZMAN: Okay.

4 CPT. TIDESWELL: "Conduct a review and  
5 assessment regarding the impact of the use of any  
6 mental health records of the victim of an offense  
7 under the UCMJ by the accused during the  
8 preliminary hearing conducted under Article 32  
9 and during court-marital proceedings, as compared  
10 to the use of similar records in civilian  
11 criminal legal proceedings."

12 HON. JONES: That sounds like the  
13 original tasking of comparing the entire civil  
14 system with the military justice system that we  
15 got in the RSP.

16 CPT. TIDESWELL: Yes, ma'am.

17 HON. JONES: We are never going to  
18 have enough data or even be able to figure out  
19 what the data means from the civilian system. So,  
20 we couldn't do the comparison.

21 And I mean if that is the point, I  
22 don't think we can do it.

**NEAL R. GROSS**

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

1 CPT. TIDESWELL: Right.

2 CHAIR HOLTZMAN: Right. We discovered  
3 that during the RSP Panel, Admiral Tracey and Mr.  
4 Stone. And Mr. Taylor, just to bring you up to  
5 date, we figured out that there was no way to  
6 compare those two systems, and there was one  
7 whole subcommittee that did nothing but try to  
8 figure that out because that was the tasking in  
9 the RSP, the tasking of the RSP was to compare  
10 the military justice system with the criminal  
11 justice system and there was no way to do that  
12 comparison. So, I don't think that has changed.

13 But I guess the other question is, I  
14 mean maybe it is worthwhile thinking through  
15 whether there is anything, any residue that we  
16 could look at or that we should look at with our  
17 513, forgetting the civilian system.

18 HON. JONES: I mean, I guess it would  
19 be the same thing we were thinking about doing  
20 with 412, look and see what is happening or ask  
21 people how it is going. It would be the same --

22 CHAIR HOLTZMAN: Yes, right, the same

1 kind of inquiry.

2 HON. JONES: I mean, if it is one  
3 panel with both --

4 CHAIR HOLTZMAN: Yes, right. How is  
5 it going? What are the problems with its use? I  
6 mean that might be useful and if we have one --  
7 depending on how many people we have, we could  
8 have a whole day of hearings or two sets of  
9 hearings. I think that is a good idea.

10 At least we can say we have looked at  
11 it. Here are some problems that nobody has paid  
12 attention to or this is fine and everybody is  
13 happy.

14 Okay, great. And 6, review and assess  
15 establishment of privilege of victims'  
16 communications. That is already -- that has been  
17 set up. It just got set up.

18 So, do we have to --

19 CPT. TIDESWELL: I think the executive  
20 -- I mean if someone would just acknowledge that  
21 it has been done.

22 CHAIR HOLTZMAN: Right, that's it.

**NEAL R. GROSS**

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

1           VADM TRACEY: Could I go back to Item  
2 4? Is it conceivable that under the Article 56  
3 amendment you could be on the sexual predator  
4 register and not be discharged from active duty?

5           CPT. TIDESWELL: Could they change it?  
6 Potentially, yes.

7           MS. CARSON: I think the Services --  
8 well, I can't speak to the Services but I believe  
9 they have policies now. I think it is about  
10 being in the Service at all.

11          MR. STONE: It is the state registry.  
12 These are state registries.

13          MS. FRIED: And I believe it is based  
14 on conviction not the position, like the actual  
15 adjudication. So, if the offense that is a  
16 qualifying offense, that would trigger the  
17 registration, not the sentence, necessarily.

18          VADM TRACEY: I'm still saying just  
19 harmonic dissonance of having someone who is on  
20 the registry and might not be discharged from  
21 active duty.

22          CPT. TIDESWELL: Well, at that point,

**NEAL R. GROSS**

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

1 I guess the administrative separation process  
2 would kick in. I think there are other ways of  
3 discharging an individual.

4 CHAIR HOLTZMAN: Okay, so as I am  
5 hearing this, we have two --

6 MR. STONE: Before you end it, I read  
7 in from this list and also stuff that I heard at  
8 the last meeting another question which I don't  
9 see exactly set out here and it comes from the  
10 number two in yellow, overview of judge advocate  
11 training programs and number four in yellow,  
12 monitor withholding to initial disposition  
13 policy, and also, number two in the gray,  
14 including whether military judges should serve as  
15 deposition officers. And what we heard at the  
16 last meeting that there is at least some  
17 sentiment that the military judges who are being  
18 appointed aren't getting enough training or  
19 experience for the sexual assault cases. And  
20 that is why they are saying some of the officers  
21 getting them their withholding or changing the  
22 nature of who gets them it has to be they want it

**NEAL R. GROSS**

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

1 to be a different convening authority, et cetera.

2 And I wonder whether there isn't a  
3 question there that could be probed whether they  
4 would like to see that in these kinds of cases.  
5 Like for example, maybe also in capital cases you  
6 have to have a military judge who has at least  
7 two years of training on the job. Maybe there is  
8 some thought that in sexual assault cases, given  
9 the nature of the seriousness that there ought,  
10 that it should only be a judge who has undergone  
11 x training courses and had 20 cases that they  
12 have presided over, that it went to trial, not  
13 just pleas, or two years on the job or something.

14 I feel like that training thing  
15 doesn't just go to the prosecutors and the  
16 defense counsel and the SVC. I feel like, from  
17 the comments we heard last time that said, well,  
18 some of these problems aren't even today. Some  
19 of these problems are, some of these military  
20 judges don't have enough experience. That is why  
21 we have got to get the review because they are  
22 making mistakes.

**NEAL R. GROSS**

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

1 I mean maybe that is a suggestion that  
2 we ought to take seriously that these kinds of  
3 cases we would like to see judges who have been  
4 around more than a year.

5 CHAIR HOLTZMAN: I think that is a  
6 good point. The only problem I have is we have  
7 certain taskings. I want to make sure we finish  
8 our taskings and let the staff set out a schedule  
9 for those taskings plus the Subcommittee reports.  
10 And if we have time left over --

11 MR. STONE: You don't think that is  
12 part of number 2, at least number 2, and maybe  
13 what is behind 4 and the gray 2?

14 CHAIR HOLTZMAN: Well, I don't recall  
15 that we ever were -- I don't think we were ever  
16 charged or tasked with looking at judges in any  
17 of the tasks. I could be wrong about that but  
18 maybe --

19 CPT. TIDSWELL: No, the language is  
20 specific to trial and defense counsel.

21 MR. STONE: See, I don't think it came  
22 up until our witnesses started to say well you

**NEAL R. GROSS**

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

1 know, and it was including some of the judges  
2 themselves. We have so many judges and they  
3 rotate in and they rotate out and they are having  
4 trouble administering some of these things. I  
5 mean they said that to us and we know that there  
6 is this rotation policy that you have got to get  
7 rotated to get promoted. And so I just wonder  
8 whether that is within the scope of the overview  
9 of the training, that we would want to look at it  
10 enough to be able to put a couple of sentences in  
11 about what some testimony shows.

12 CPT. TIDESWELL: I mean there is  
13 catch-all to the committee's tasking. And that  
14 is, other things as deemed appropriate. It is  
15 sort of the same path with the victims -- just  
16 priority-wise.

17 CHAIR HOLTZMAN: But what I am saying  
18 is I think we should have a schedule made up. We  
19 have the Subcommittee reports. We have all the  
20 stuff. We have to hear from the Subcommittee and  
21 then decide. We have these two issues, 412 and  
22 513, that we are going to have to meetings on.

**NEAL R. GROSS**

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

1 Let's make a schedule with that.

2 And if we have time left over, we can  
3 look at these other issues. This might be one.  
4 Maybe someone has got something else.

5 MR. STONE: Right, because these might  
6 be --

7 CHAIR HOLTZMAN: Right. Let me put it  
8 this way. I don't think it is part of our  
9 existing tasking and I am just really concerned  
10 that we meet our tasking requirements first. But  
11 if we have time left over --

12 MR. STONE: And while we are looking  
13 at drafts of long reports on some of these other  
14 things, we can hear testimony. Because I don't  
15 think it takes a lot for us to make a  
16 recommendation at the end that the testimony  
17 suggests that this is a category of cases that  
18 should be treated more carefully with judges who  
19 have had more time.

20 I mean I can see sexual assault  
21 defendants and victims being upset if they get  
22 someone who was just appointed as a judge who

**NEAL R. GROSS**

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

1 they think is making crazy rulings and neither  
2 one is comfortable with what happens. It either  
3 leads to more appeals or more reversals.

4 CHAIR HOLTZMAN: Well, if we have the  
5 time.

6 MR. STONE: These are all the  
7 consequences involved.

8 CHAIR HOLTZMAN: Right, it is a  
9 question of our time.

10 MR. STONE: Yes.

11 CHAIR HOLTZMAN: I want to see that  
12 schedule first and then let's see what time we  
13 have that is left over and what other issues are  
14 outstanding, including this one.

15 And when we get together the next time  
16 in December, we will decide whether we want to  
17 add it, whether we can add it.

18 MS. FRIED: And then to Admiral  
19 Tracey's point, it may be that Judge Effron and  
20 Mr. Sullivan can speak to the issue if they get  
21 retained, but not discharged. What does that do?  
22 I can't imagine that he would consider that but

**NEAL R. GROSS**

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

1 they may be able to speak to that. And if not,  
2 maybe in that same meeting you can have someone  
3 speak to that, if that is something the Panel  
4 wants to consider.

5 CHAIR HOLTZMAN: That's a good idea,  
6 too.

7 MS. FRIED: But that shouldn't take  
8 that long, I don't think.

9 MS. PETERS: Ma'am, if I may, a point  
10 of research the staff may be able to provide  
11 after the meeting. This is Meghan Peters for the  
12 record.

13 So, one of the recent NDAA's, I think  
14 the 2015 NDAA required that for somebody who was  
15 not discharged at court-martial, at some point  
16 along the way they said if they are not  
17 discharged they have to be processed for  
18 administrative separation.

19 MS. FRIED: Processed is not the same  
20 as being discharged, though.

21 MS. PETERS: Right, it doesn't  
22 guarantee the discharge but it is probably the

1 end goal of the process.

2 MS. FRIED: Right.

3 CHAIR HOLTZMAN: So, if there's  
4 nothing else, we are ready to hear from you, Ms.  
5 Fried. Oh, I'm sorry.

6 VADM TRACEY: With respect to Mr.  
7 Stone's point, does anything preclude us in our  
8 reporting from suggesting that a number of panels  
9 have, in fact, suggested that military judges  
10 have less experience than may be necessary for  
11 these kinds of trials and the standing committee  
12 that is being stood up might want to take a look  
13 at that, if we don't have time to look at that.

14 CHAIR HOLTZMAN: I'm not 100 percent  
15 sure that that is what the testimony was.

16 CPT. TIDESWELL: Judge Baker did  
17 mention and he pushed fairly hard for tenured  
18 positions.

19 CHAIR HOLTZMAN: That is a different  
20 point, though, tenure.

21 CPT. TIDESWELL: Yes, ma'am, but I  
22 think the point was the experience level was

**NEAL R. GROSS**

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

1       lacking and I wasn't sure --

2                   VADM TRACEY: Yes, but experience level  
3       has been mentioned by several different panels.

4                   CHAIR HOLTZMAN: Right, but experience  
5       is not the same thing as training.

6                   MR. STONE: Well, I'm more interested  
7       in experience, really. I just thought that the  
8       tasking about training might be stretched to  
9       cover it.

10                   But I am looking at experience level  
11       because that is what would happen in a capital  
12       case. You wouldn't take a new judge, even if he  
13       was trained, and ask him to sit on a capital  
14       case.

15                   CHAIR HOLTZMAN: Or she. Maybe.  
16       Sometimes it happens.

17                   Personally, just having two or three  
18       judges mention that, I think I would personally  
19       rather have a more systematic addressing of that  
20       issue before we made a recommendation. That's  
21       all.

22                   I'm not opposed to looking at it at

**NEAL R. GROSS**

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

1 all. I think it is a very important point.

2 I remember when I was district  
3 attorney, we had a very serious issue of judges'  
4 training with regard to issues of sexual assault  
5 and domestic violence and all the rest. So there  
6 is no question that that is an issue. I'm not  
7 minimizing it. I'm just trying to figure out how  
8 we have time to address it and address it in a  
9 responsible way.

10 MR. STONE: Well, that's what I'm  
11 saying, in those last meetings when reports are  
12 being written on the other stuff, we may be able  
13 to cover this slightly different topic.

14 CHAIR HOLTZMAN: It's possible. I'm not  
15 opposed to that. Anybody else opposed to that?

16 Great. Ms. Fried, we are up to you.

17 MS. FRIED: Thank you. The meeting is  
18 closed. And Happy Thanksgiving, everyone.

19 CHAIR HOLTZMAN: Happy Thanksgiving,  
20 everyone. Thank you very much.

21 (Whereupon, the above-entitled matter  
22 went off the record at 3:17 p.m.)

**NEAL R. GROSS**

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

<b>A</b>		
<b>A's</b> 189:20	248:12,21 249:7,10	<b>adjust</b> 57:7
<b>a.m</b> 1:12 4:2 58:14,15 137:2,3	267:1,10,20 268:10 268:20 269:19,20 271:6	<b>administering</b> 281:4
<b>abilities</b> 8:14	<b>acting</b> 272:13	<b>administrative</b> 190:14 191:6 213:13,19 278:1 284:18
<b>ability</b> 82:4 103:18	<b>action</b> 23:15 37:16 38:19 39:1,4,18,22 44:9,10,11 45:8,11,13 45:18,20 46:9,14,16 47:4,9,10,11,13 131:20 170:3 229:13 232:14 233:14 237:22 240:9 243:12 244:4 244:16 269:17	<b>Admiral</b> 4:19 44:16,21 112:4 125:20 154:12 211:21 213:3 222:11 275:3 283:18
<b>able</b> 42:11 44:12 52:3 53:11 68:15 72:14 75:6 131:9 141:15,16 147:6 168:12 176:16 179:6 192:20 196:16 199:5 205:9 226:19 248:16 267:9 274:18 281:10 284:1,10 287:12	<b>actions</b> 23:18 45:4 50:1 246:17	<b>admissibility</b> 28:13
<b>above-entitled</b> 58:13 137:1 156:13 236:8 287:21	<b>active</b> 13:4,6 44:4 241:1 277:4,21	<b>admissible</b> 82:3
<b>absolute</b> 179:2	<b>acts</b> 19:10 30:11 33:20 35:3 37:9 41:20 49:15 239:5	<b>admissions</b> 28:14
<b>absolutely</b> 37:18 67:4 94:16 139:12 177:10 206:21	<b>actual</b> 185:19 191:21 277:14	<b>admit</b> 85:3
<b>abuse</b> 34:10,11,18	<b>add</b> 64:1,2 81:8 123:8 125:10 133:13,21 200:22 209:7 212:17 255:17,17 272:1 283:17,17	<b>admitted</b> 163:19
<b>ACCA</b> 231:12	<b>added</b> 21:5,18 23:3	<b>admittedly</b> 51:8 52:6
<b>accelerated</b> 242:7	<b>adding</b> 27:18	<b>adopt</b> 239:4 271:14
<b>accept</b> 135:1 249:3	<b>addition</b> 34:17 139:3 240:22	<b>adopted</b> 24:11 268:11 271:13,15
<b>accepting</b> 26:7,13	<b>additional</b> 53:7 57:6 202:6,11 238:20	<b>adopting</b> 218:14
<b>access</b> 158:6 160:7 161:11 162:15 163:2 163:7,16 165:1,5,20 165:22 167:7,8,9,18 168:11 171:21 181:16 182:17 183:17 184:20 185:5 195:12 196:4 213:7 214:17 215:12 216:6 217:7 237:15 240:15	<b>Additionally</b> 8:22 13:14 21:10	<b>adult</b> 6:3 16:15 26:16 27:2
<b>accompanying</b> 31:18	<b>address</b> 8:6 37:3 38:8 90:2,12,20 98:7 107:6 107:16 211:5 214:7 222:4 251:9 253:4,15 256:2 265:9 287:8,8	<b>advance</b> 58:9
<b>accomplished</b> 237:2	<b>addressed</b> 76:18 106:7 107:12 126:18,22 234:20 246:6 251:18 251:20,22 252:3 253:3	<b>advances</b> 200:12
<b>account</b> 264:13 267:6 267:11,16,21	<b>addresses</b> 23:2 26:5 28:3 33:11 151:5 223:6	<b>adversarial</b> 80:3
<b>accounted</b> 267:3	<b>addressing</b> 286:19	<b>adverse</b> 89:10 103:15
<b>accurate</b> 21:7 28:1 124:18	<b>adequate</b> 123:2	<b>advice</b> 13:19 40:4 235:22
<b>accurately</b> 140:17 212:6	<b>adequately</b> 122:21	<b>advices</b> 40:16
<b>accused</b> 32:9 41:7 134:16,19 168:7 189:15 199:9 208:21 274:7	<b>Adjourn</b> 3:22	<b>advisors</b> 12:9 13:14 39:16 40:5,6
<b>accused's</b> 107:2,5	<b>adjudicate</b> 27:2	<b>advisory</b> 4:9 237:4 241:22 242:2
<b>achieve</b> 11:21	<b>adjudicated</b> 100:4 269:14	<b>advocate</b> 7:17 9:15,17 24:19 31:4 43:18 60:9 182:18 230:13 278:10
<b>acknowledge</b> 276:20	<b>adjudication</b> 240:5 277:15	<b>advocate-victim</b> 24:1
<b>act</b> 5:19,20 20:10 21:20 24:9,10 25:8 26:2,4 28:12 30:20 35:9 43:4 49:14 107:18 108:2 220:22 239:4 248:3		<b>advocates</b> 13:5 16:12 24:22 28:8 53:7 227:2 241:7 248:5
		<b>affect</b> 82:22 131:4
		<b>affirmative</b> 64:10
		<b>affirmed</b> 84:15 231:3 107:12 126:18,22 234:20 246:6 251:18 251:20,22 252:3 253:3
		<b>afford</b> 272:12
		<b>agenda</b> 248:11
		<b>ago</b> 31:16 32:21 33:3 50:19 53:19 85:7,8,21 125:16 167:22 257:4
		<b>agree</b> 78:10 86:4 110:5 110:18 135:17 142:11 162:18 194:12 218:17 258:22 270:22
		<b>agreement</b> 26:8,10,14 27:9 216:17,18 219:5 249:4
		<b>agreements</b> 26:6,18
		<b>agrees</b> 87:10
		<b>ahead</b> 18:12 39:11 45:22 59:13 172:20
		213:11 229:9 236:13 243:2 256:6
		<b>aiding</b> 230:18
		<b>Air</b> 1:18 5:3 12:6 60:3,4 94:4 95:2 97:3,7,9,17 160:17,20 161:3,16 163:1 184:4 190:17 195:5,7,10 210:1,4 217:13,22 218:5,15 218:22 219:14,22 232:10
		<b>Alaska</b> 120:16
		<b>alert</b> 28:19
		<b>aligned</b> 149:22
		<b>all-encompassing</b> 82:5
		<b>allege</b> 34:3
		<b>alleged</b> 25:14 27:21 30:21
		<b>allow</b> 61:22 64:6,13 76:14,19 101:1,6 123:21 126:21 151:18 160:5 194:9 233:22
		<b>allowed</b> 59:9 60:22 64:12 73:3 112:12 114:4,18 134:22 146:18,19 148:7,22 149:7,16 151:5,9,15 152:15 153:5 154:9 154:21,22 167:8 197:11 209:9 225:1
		<b>allowing</b> 61:5 100:22 101:13
		<b>allows</b> 86:22 133:17 157:17
		<b>alluded</b> 28:19
		<b>Alpha</b> 21:16 23:1,7
		<b>alternative</b> 73:5
		<b>alternatives</b> 134:7
		<b>altogether</b> 85:7
		<b>amazingly</b> 226:3
		<b>ambiguity</b> 105:16
		<b>amend</b> 16:4 239:3 250:21 269:20
		<b>amended</b> 5:19 18:6,10 19:10,20 21:16 23:1 24:3,4 25:9,14 26:6 28:4,10 30:12,18 31:12,12 33:5,19
		<b>amending</b> 19:11
		<b>amendment</b> 32:9 277:3
		<b>amendments</b> 6:5 12:4 15:3 16:8 17:16 18:1 18:7 21:20 22:6 238:21
		<b>American</b> 34:20
		<b>amicus</b> 61:22 62:3 73:4 92:4,8,12 93:1,8,10 94:12,15 95:5,8 97:8

- 97:16,18 98:2,8,12  
100:17 101:1 113:7,8  
113:12 114:4 123:10  
123:14 141:11,11,14  
141:16,17,20 142:1  
142:21 143:3,12  
145:3,10,13 149:4  
194:10  
**amount** 35:18 38:6  
42:12 83:7 113:16  
125:17  
**analysis** 15:8 31:18  
48:22 76:20 241:16  
**analyzing** 15:20  
**Andrew** 1:19 60:5  
**Angela** 1:20 60:11  
**animal** 34:10,11,12,13  
34:18  
**anniversary** 10:11  
**announced** 242:9  
**annual** 15:18 16:2 17:5  
239:16 240:7  
**annually** 11:12 12:4  
**another's** 29:10  
**answer** 6:14 8:13,18  
51:1 52:18 56:17 59:2  
62:5 64:11,14 79:15  
114:7 122:11 127:16  
127:17 138:20 173:7  
194:22 207:3,3 226:5  
250:12 265:6  
**answered** 64:10  
**answers** 8:14 41:2 58:4  
**anxious** 43:2  
**anybody** 17:2 61:4  
136:14 141:2 143:20  
144:18 153:10 155:11  
165:15 171:19 175:3  
175:15 178:8,11  
179:3,14 182:20  
201:2 210:17 212:1  
213:10 214:10 222:14  
253:22 264:7 287:15  
**anymore** 203:7  
**anyone's** 224:19  
**anytime** 226:7  
**anyway** 77:11 101:1  
102:2 125:19 135:10  
269:16  
**apart** 89:19 100:5  
**apologize** 210:14 212:3  
212:8  
**apparently** 221:18  
273:9  
**appealed** 106:21  
**appealing** 75:10,12,13  
111:7,8 147:1 152:1  
**appeals** 13:15 28:4,7  
33:12 60:5 70:9,14  
72:7 75:4 86:11 90:4  
90:11 91:2,4 97:10  
104:10 106:19 110:11  
115:7,21 118:19  
126:1 128:11,19  
145:1 151:22 257:15  
283:3  
**appear** 244:2  
**appeared** 209:22  
**appears** 249:8 264:14  
**appellant** 97:20 98:4  
144:14 148:1 151:22  
152:3 163:21  
**appellee** 144:11 147:2  
147:7,13 148:1 150:2  
151:20,22 152:3,6  
**appellees** 152:7  
**appendices** 15:8,10  
**Appendix** 32:18,22  
**applicable** 27:15  
**application** 104:13  
106:21 107:14,19  
108:1 142:16  
**applications** 108:7  
**applied** 31:21  
**applies** 74:17  
**apply** 163:17,20 181:8  
234:15  
**applying** 71:11 105:1  
**appointed** 4:15 57:8  
278:18 282:22  
**appreciate** 42:7 52:15  
60:19 141:3  
**approach** 130:21  
135:13 160:9 210:8  
265:6 272:9  
**approached** 249:14  
**appropriate** 21:1 31:11  
118:13 161:5 163:10  
174:13 184:22 186:12  
186:17,19 188:1  
190:9 208:10 240:15  
281:14  
**approval** 11:2 14:7 15:2  
15:9 18:9 48:17,19,21  
**approve** 181:6 218:16  
219:12 253:9,19  
255:7  
**approved** 18:10 32:19  
255:6  
**April** 11:9 245:11  
**area** 49:13 167:14,20  
247:11 253:14 256:2  
263:13  
**arguably** 104:10,15  
**argue** 74:8 82:2 91:2,8  
101:1,11 122:3 128:7  
128:20 166:8 176:16  
179:9 190:7 194:22  
198:11 246:14,17  
247:8 250:18  
**argued** 80:6 83:8 128:8  
129:5 190:9  
**arguing** 62:13 69:10  
78:12 176:18  
**argument** 62:14 75:18  
75:20 77:11 109:3  
113:13 122:11 134:17  
140:3 179:7 200:9,11  
251:19  
**arguments** 67:9 75:17  
86:13 112:14,16  
121:14 132:3,4  
133:13,21 137:15  
138:6 177:19 208:16  
**Arizona** 126:14  
**Arlington** 1:11  
**armed** 12:6 13:15 24:15  
34:6 60:1 104:10  
239:14 242:2  
**Army** 1:20 2:9 12:6,22  
60:8 146:4 180:20  
191:18 193:4 214:2,4  
218:10,11 229:5,11  
230:3 231:11,16,19  
232:3,5 233:21  
**article** 6:5 14:9 20:17  
21:21,21 22:6,8,9  
23:3,17 28:6 33:4,15  
34:2,2,9,9,10,18,22  
35:7 49:4 55:9 64:5  
73:7 104:4,15 107:12  
107:15 108:2 209:8  
237:17 238:17,21  
247:2 248:22 249:21  
250:5 253:13 254:19  
261:21 264:5 272:2,3  
274:8 277:2  
**articles** 14:19,22 20:1  
**articulate** 189:6 196:17  
**ascertain** 185:18  
**aside** 52:9 106:7,12  
110:9 254:18 272:15  
**asked** 26:22 49:12  
141:10 177:7 259:11  
**asking** 52:11 144:1  
185:22 193:3 259:4  
**aspect** 106:4  
**aspects** 18:16 90:2  
219:17  
**assault** 6:3 16:15 25:18  
26:16 27:3 33:16,17  
56:14 80:18 93:10  
125:2,13 170:9 171:4  
234:14,18 237:4,19  
239:12,17 240:17  
241:18 242:2 257:10  
278:19 279:8 282:20  
287:4  
**assault-related** 241:9  
**assaulted** 171:5  
**assaults** 240:7  
**assess** 244:5,11 246:20  
247:15 250:15 256:16  
269:22,22 276:14  
**assessing** 256:9  
**assessment** 6:1 27:1  
244:15 247:2 250:4  
252:2 265:14 268:6  
269:15 274:5  
**assign** 232:22  
**assigned** 139:9 193:6  
239:18  
**assist** 19:15 39:16  
**assistance** 17:19  
115:13 192:21  
**assisting** 11:18  
**assists** 11:18  
**associated** 55:17  
**assume** 54:22 64:10  
101:14 121:13  
**assuming** 92:1 99:2  
133:7 147:17  
**assumption** 57:15  
**assure** 35:16 52:16  
**attempt** 159:17  
**attempts** 19:15  
**attendance** 5:12  
**attended** 241:12  
**attention** 34:21 118:10  
242:21 266:19 276:12  
**attention-getter** 9:10  
**attorney** 2:13,14 195:13  
217:6 287:3  
**attorney-client** 230:1  
**attorneys** 129:3,14  
**audience** 7:5 236:15  
**authorities** 11:2 25:17  
25:21 26:8 249:11  
**authority** 8:10 14:7  
15:3,9 23:16,18 26:12  
27:10 28:5 110:2  
154:19 161:13 164:9  
164:12,12 217:14  
234:18 239:7 245:19  
279:1  
**Authorization** 5:18,20  
19:9 20:10 21:20 24:9  
24:10 25:7 26:2,3  
28:12 30:11,20 33:19  
37:8 41:19 43:4  
220:22  
**authorized** 237:4 242:3

**authors** 49:21  
**automatic** 164:22 165:5  
 167:18 184:19 185:5  
**automatically** 160:18  
 166:21 167:2 177:13  
 181:15,16 201:8,12  
 201:14 204:8 205:19  
 206:19  
**available** 4:10,21 5:7  
 33:10 36:6 73:5 79:10  
 165:11 170:16 222:19  
**avoid** 201:2  
**aware** 26:20,20 29:5  
 50:22 56:19 93:13  
 96:1 141:9 167:16  
**aye** 153:8 182:22 183:1  
 214:22 216:9  
**eyes** 183:6

---

**B**


---

**b** 83:19 153:16,17  
**back** 8:9,15 29:19 44:21  
 46:10 49:18 50:20,21  
 51:1,3,5 52:17 56:7  
 56:10,17,20,20 72:20  
 81:1 84:22 85:6 86:4  
 90:21 110:8,12  
 118:18 122:4 123:5  
 125:19 128:1 139:10  
 144:2,21 154:20  
 156:8 167:21 174:21  
 178:14,16 231:14  
 235:13 236:15 273:14  
 277:1  
**back-briefed** 24:17  
**background** 68:21  
**backwards** 253:7  
**bad** 78:5,13 149:11  
 251:14  
**Baker** 182:4 285:16  
**balance** 179:18,21  
 256:1,2  
**balancing** 199:7,8  
**bar** 54:10 76:18 131:17  
 182:7 221:10 248:1  
**Barb** 262:7  
**Barbara** 1:15 4:19  
**barely** 57:4  
**bargaining** 248:20  
 265:19,20 267:12  
**Barney** 24:16 25:1 56:1  
**bars** 17:19 251:17  
**based** 32:4,7 89:5  
 99:12 106:20 117:11  
 140:13 172:8 208:13  
 240:5 247:6 250:9  
 277:13  
**basic** 10:3 61:21 119:5

165:10 181:12  
**basically** 41:6 69:8  
 104:21 106:18 107:7  
 108:2 164:22 172:1  
 180:1 189:4 192:3  
 235:1 249:1 255:3,20  
 256:21 267:10  
**basis** 73:16 77:6 104:11  
 107:19,22 173:9,11  
 189:5 257:18  
**bear** 29:17  
**beginning** 14:5 200:9  
 200:10  
**behalf** 31:7 100:12  
 123:17 129:6 174:12  
 182:18 190:7 260:17  
**behavior** 85:20  
**believe** 36:7 39:20  
 74:12,19 93:3 110:1  
 128:10 136:12 159:6  
 181:21 182:17 216:13  
 221:9 223:14 229:4  
 250:9 251:2 269:5  
 271:9 272:20 277:8  
 277:13  
**believes** 105:10  
**belt-and-suspenders**  
 135:14  
**benefit** 26:19 95:4  
 219:20  
**benefited** 61:18  
**best** 8:13 13:8 43:7  
 70:22 131:5 182:18  
 209:3 210:8 212:15  
 214:8 223:10,18  
 224:2 226:5 232:3  
**bet** 63:19  
**better** 44:18 67:16  
 112:16 181:18 186:20  
 188:10 199:19 200:6  
 200:7 209:19 211:7  
 211:15 213:6 214:16  
 215:12 216:5,19,20  
 217:21 218:8,20  
 219:9 230:12,13  
 233:20 251:5 257:9  
 257:18,19 258:12  
 266:15  
**beyond** 38:18 56:19  
 70:13 198:3  
**big** 108:9 128:16  
 183:21 222:19 266:7  
 266:8 268:2,9  
**biggie** 108:10  
**Bill** 7:13  
**billets** 53:2  
**binding** 25:20 49:1,3,5  
 49:6

**bio** 120:7 138:12  
**biographies** 4:21  
**bit** 41:17 49:8 53:15  
 104:7 115:4 132:5  
 136:4 160:16 162:21  
 211:7 253:7 269:18  
**blanche** 163:8  
**blinders** 193:12  
**block** 176:3  
**blog** 34:15  
**board** 41:8 142:19  
 199:15  
**bodily** 239:3  
**body** 8:8 11:22 272:12  
**bona** 217:15  
**book** 10:7  
**bore** 221:9  
**bottom** 128:22 129:20  
**box** 54:9,10  
**Branch** 60:9  
**branches** 233:19  
**brand** 43:17  
**break** 58:12,19 59:20  
 136:17,20,22 174:14  
 235:17  
**Breaking** 24:13  
**bribes** 120:18  
**bridge** 222:9  
**brief** 9:3 40:9 62:3,3,10  
 73:4 80:5 86:20 87:4  
 92:4,8 93:10 94:12,15  
 94:21 95:5,8 97:16,18  
 98:9,12 100:17,21  
 101:5,6,13 102:2  
 107:10 113:7,8,12  
 114:2,3 116:17  
 122:14 123:10,15  
 124:2,7,9,10 126:19  
 130:6 133:10,16  
 134:20,20,21 135:2,3  
 135:9 141:13,13,16  
 141:17,20 142:15  
 143:12,14,15,18  
 144:3 145:3,6 149:16  
 149:17 150:1 152:15  
 153:6 166:8 172:5,8,9  
 194:10 225:4 227:7  
 228:9,10 243:11  
**briefed** 241:19 253:21  
 254:8 255:1  
**briefing** 42:9 248:12  
 255:5,8  
**briefly** 35:1 37:15 47:18  
 66:21 126:9 134:3  
**briefs** 61:22 92:12 93:1  
 93:8 95:19 142:21  
 143:3 145:11 166:15  
 167:19 193:9 234:9

**brig** 98:15 99:2  
**Brigadier** 9:14  
**bright** 40:18 53:10  
**brightest** 13:8  
**brilliant** 13:7  
**bring** 34:6 80:11 104:9  
 107:19 108:1 109:6  
 119:6 144:13 194:7  
 194:11 220:7 275:4  
**bringing** 104:16 171:2  
**brings** 186:18  
**broad** 149:5 181:5  
 249:10  
**broadened** 35:8  
**brought** 38:9 80:1  
 148:21 151:14 153:5  
 202:19 206:19  
**bucket** 39:11 47:4,5  
**build** 107:10  
**building** 107:8  
**bullet** 249:8 250:3  
**bullets** 244:13  
**bunch** 65:21  
**burden** 227:11,15  
**burdens** 226:8  
**burdensome** 62:1  
 226:1,3  
**buried** 139:1  
**business** 95:7  
**busy** 35:21 36:11 223:7  
**buy** 10:4

---

**C**


---

**C** 4:1  
**CAAF** 40:10 90:6 97:9  
 102:8 103:5,9 105:3  
 106:18,22 107:1  
 108:5,6 109:13  
 110:10 115:7,18  
 116:2,7 118:8,11  
 150:6 151:1,1,1  
 154:10 155:14 197:6  
 197:6 260:1  
**CAAF's** 116:4,5  
**calendar** 17:10 253:7  
**California** 24:18 241:3  
**call** 16:2,3,7 59:21  
 103:18 109:8 152:5  
 188:21 203:20 204:8  
 204:10  
**called** 44:9 54:20 71:18  
 80:17 84:8 231:21  
**calling** 204:4  
**camera** 24:7 160:4  
 163:3,9,22 165:3  
 167:19 168:14 179:17  
 179:20 180:18 183:11  
 183:13,18 185:11

187:17 193:10 199:16  
 199:17 208:4,7  
 209:17 210:11 211:3  
 212:18 213:8,8  
 214:19 215:7,13,16  
 216:7  
**capabilities** 245:8,9  
 252:13  
**capacity** 7:18 115:22  
**capital** 279:5 286:11,13  
**capsulize** 162:9  
**captain** 1:19 2:7 12:18  
 31:16 60:5 143:21  
 153:3 157:2 188:4  
 195:2 210:2 220:6  
 236:17,21 242:10,19  
**captured** 94:20  
**card** 81:13  
**care** 8:2 80:4 82:20  
 146:3 151:2 223:17  
**career** 9:22 82:22  
**carefully** 282:18  
**Carlton** 7:15 17:1 37:18  
 37:19 39:20 40:13  
 45:22 46:2 47:6 48:1  
 48:3 50:19  
**Carolina** 241:3  
**carries** 62:2  
**carry** 30:14  
**Carson** 2:12 114:15  
 264:10 277:7  
**carte** 163:8  
**case** 7:18 16:19 17:18  
 22:13 33:4 34:7 36:2  
 69:18 70:4,22 76:9  
 84:14,21 85:7 86:5  
 88:9 90:19 91:6 93:11  
 94:2,2 99:17 102:4,17  
 103:6,9 105:18  
 107:20 118:9 120:19  
 121:9 122:4,5,13,14  
 123:18 126:16 128:3  
 133:10 134:16 135:4  
 141:15 142:17 145:8  
 145:15 149:14 170:8  
 170:17,19 171:13  
 175:6,16 178:5  
 181:17 183:16,17  
 184:10,11,22 185:1  
 186:1 188:2,5 189:14  
 191:8 195:15 196:9  
 197:12 203:1,7,17  
 217:7,18 221:6,7  
 223:3,12 227:14  
 229:16 231:1 232:2  
 240:5,16 286:12,14  
**caseload** 125:12  
**cases** 23:10 28:15 46:7

46:10 63:16 64:2 67:6  
 74:2 76:8 78:22 83:8  
 84:18 86:21 111:12  
 115:9,19,20 116:7  
 118:6 124:17,19,21  
 125:2,5,6,6,13,15,16  
 132:1 139:9 141:9  
 163:14 178:14 198:9  
 223:2,14 227:13,17  
 227:18 257:10 259:7  
 259:8 269:13 278:19  
 279:4,5,8,11 280:3  
 282:17  
**catch-all** 281:13  
**category** 117:13 168:13  
 170:7 282:17  
**Catherine** 1:19 60:8  
**cause** 11:11 22:2 23:12  
 200:12  
**causes** 87:7  
**causing** 239:2  
**CCA** 218:3  
**Center** 1:11 5:1  
**central** 266:13  
**centralized** 229:19  
**cents** 68:15 96:5 123:4  
 123:4  
**certain** 8:14 24:5  
 163:16 249:21 280:7  
**certainly** 38:11 39:14  
 40:2,2 43:14 72:9  
 95:18 139:22 145:5  
 153:10 167:4 178:13  
 222:18 262:22 263:5  
 266:10,17  
**certified** 11:17  
**cetera** 74:10 279:1  
**chains** 51:21  
**chairman** 7:21 13:17  
 44:18 53:5  
**chairman's** 40:17  
**challenge** 42:2 83:3,21  
 206:12  
**chance** 49:10 62:9 88:2  
 92:19 96:2,5 187:8  
**chances** 204:9  
**change** 24:7 25:5 26:15  
 31:18 35:18,19,20  
 42:13 80:9 129:13  
 135:11 142:10 150:22  
 159:22 162:13,13  
 180:6 181:7,13 183:8  
 183:9 206:8 207:7  
 211:10 235:14 246:19  
 247:18 249:13 264:4  
 269:1,2 270:1 277:5  
**changed** 71:3,5 79:18  
 79:19 165:7 203:21

205:14 206:1 211:13  
 247:4 261:19 275:12  
**changes** 11:2,4 14:7  
 15:4,9,11,16,21 17:7  
 17:9,11,12 19:5,13,16  
 19:18 20:9,12 21:18  
 21:21 22:4 23:16 25:1  
 27:6,15 34:7 35:22  
 36:1,11 37:20 38:1  
 42:18 48:21 111:6  
 162:2 238:10 241:8  
 249:1 265:7,10,10,10  
 267:19  
**changing** 129:16  
 165:10 183:10 278:21  
**characterize** 112:15  
**characterizing** 213:19  
**charge** 32:1,11 60:12  
**charged** 70:6 280:16  
**charges** 22:12 31:14,20  
 31:21 32:3 43:16  
 161:9  
**Charlottesville** 53:19  
**charts** 227:19  
**Chief** 2:11 5:3 60:4,8  
**Chiefs** 13:17  
**child** 33:18 240:6  
**choose** 168:9  
**circuit** 76:9 80:21 81:3  
**circuits** 117:20  
**circumstance** 223:19  
**circumstances** 22:13  
 22:21 105:13 178:4  
 178:15 179:4 247:20  
**citation** 82:18  
**citations** 133:13,21  
**cite** 102:3  
**citizens** 16:11  
**civil** 126:7,10 197:14  
 274:13  
**civilian** 73:8 76:2 81:9  
 81:10 82:19 84:3  
 85:20 92:14 173:6  
 174:3 182:6,13 209:8  
 274:10,19 275:17  
**clarification** 45:17  
 47:20,21 64:8 99:22  
 140:12 165:17  
**clarifications** 144:19  
**clarified** 15:13  
**clarifies** 212:21  
**clarify** 30:12 31:12  
 92:21 93:7 114:15  
 115:4 140:17 141:5,9  
 143:7 144:2 161:2  
 235:7  
**Clark** 13:20 40:10  
**class** 10:2 121:5

**classified** 170:10,13  
 171:8  
**clause** 32:8 216:14  
**clear** 34:3 45:7,12 47:7  
 48:22 71:3 109:5  
 112:3 116:20 133:15  
 154:18 155:4 161:11  
 164:9 177:19 188:8  
 190:13 219:7 225:15  
 234:8 254:13  
**clearer** 212:13  
**clearly** 189:10 228:12  
**clerk** 160:5 181:1  
 183:14 184:9 191:15  
 191:18 195:13 196:8  
 229:7,7 231:18 232:2  
**client** 25:12 131:19  
 135:6 136:8 161:8  
 163:22 166:6,18  
 174:12,16,20,22  
 176:6,20 178:1,2  
 182:18 184:17 189:13  
 199:4 260:17  
**clients** 165:21  
**close** 69:2 177:22  
**closed** 83:2 236:19  
 238:15 287:18  
**closer** 56:6  
**Coast** 1:21 12:7,21  
 60:15 106:16,19  
 218:16  
**Code** 6:2 14:8,10,13  
 19:10,22 34:1 43:1  
 237:18 241:8  
**coercive** 239:5  
**collaborate** 42:3  
**collaboration** 29:11  
 41:21  
**collateral** 14:3 30:7  
 39:22 43:10 50:5  
 266:18  
**colleague** 42:20  
**collect** 258:11 261:3  
**collected** 207:20  
**collecting** 244:22 258:3  
 258:18 260:22 264:21  
**colonel** 1:18,19,20 2:9  
 5:3 7:7,10 9:18 28:17  
 29:4,7,13 36:19 40:3  
 40:12,13,18 47:15  
 58:3 60:2,7,11 162:21  
 188:12 215:4 250:13  
 272:12  
**Colonel(R)** 1:18  
**colonels** 12:22 13:1  
**Colorado** 241:3  
**columns** 243:9  
**combine** 210:9

- come** 41:8 42:1 44:21  
51:1 52:17 56:7,10,16  
56:20,20 63:14 66:5  
68:21,22 69:9 73:2  
77:8 79:7 81:1 87:14  
87:15,15 88:1 98:21  
140:18 145:14 154:22  
156:8 166:13 188:14  
207:17 208:3 248:11  
248:15 256:10
- comes** 64:3 90:21 95:5  
97:21 101:2 145:20  
228:13 232:21 245:22  
246:10 249:20 256:9  
259:6 268:4 278:9
- comfortable** 219:18  
283:2
- coming** 46:6 110:15  
128:4 246:21 259:7  
262:3
- comma** 148:21
- command** 21:9 25:6  
239:18
- Commandant** 9:15 53:9
- commanders** 12:19,21  
12:22
- commanding** 25:16,20
- commence** 137:4
- comment** 7:2 38:2 42:4  
42:11 47:14 50:15  
57:21 138:9 139:18  
139:20 140:10 153:12  
155:12,12 160:14  
167:12 179:15 222:12  
228:15 234:22 236:3  
236:3,4,6 267:9 273:2
- commentary** 219:15
- commented** 56:2  
130:11
- commenters** 51:7
- comments** 5:5,6 16:3  
17:14,22 36:3 46:19  
52:15 76:10 130:9  
141:6 144:18 171:20  
218:5,20 219:2  
279:17
- commit** 85:10,12
- committed** 25:15 99:17  
99:19 100:3
- committee** 3:7 4:9 6:9  
7:9,20 8:12 9:2 11:6  
11:15 12:15 14:2  
18:17 24:16 35:21  
36:13 44:1 49:9,15,22  
50:8 52:2 53:6,17  
57:9,13 115:6 237:4  
241:19,22 242:3,6  
245:2 261:1 265:16  
266:13 268:11 285:11
- committee's** 18:22  
242:21 281:13
- common** 41:9 45:3
- communication** 46:18  
178:14,16
- communications**  
250:16,22 276:16
- compare** 275:6,9
- compared** 274:9
- comparing** 274:13
- comparison** 192:1  
274:20 275:12
- compensation** 35:10  
237:17
- complain** 63:11 108:1
- complainants** 239:22
- complaining** 66:5
- complaint** 120:15  
239:21
- complaints** 239:15,19  
240:16
- complete** 230:17
- completed** 44:12
- completely** 75:18  
219:19
- completion** 45:14 242:5
- compliance** 160:21  
239:7
- complicated** 227:18
- comply** 21:19
- comport** 27:6
- comprehensive** 11:22  
34:12
- comprised** 12:5 14:18
- computer** 191:16
- concede** 69:9
- concedes** 73:6
- conceivable** 277:2
- concept** 32:4 165:11
- conceptional** 232:12
- concepts** 31:20
- concern** 89:8 108:22  
132:7 157:6 182:7  
213:12
- concerned** 84:4 128:18  
132:13 163:14 282:9
- concerning** 26:10 90:7  
222:3 240:20
- concerns** 112:17
- conclude** 6:17
- conclusions** 49:19
- conditions** 26:11
- conduct** 5:22 26:22  
31:1 34:4,10 35:1  
256:18 274:4
- conducted** 6:2 249:2  
274:8
- confer** 21:8
- Conference** 1:11  
268:11,12 270:14  
271:4,14,16
- confess** 86:14 88:8  
211:9
- confessions** 28:14
- confidence** 135:15
- confident** 43:13 89:15
- confidential** 96:16  
173:14 250:22
- confidentiality** 74:1,9
- confinement** 21:4
- conflict** 97:11
- conflicting** 110:17  
131:1
- conform** 28:12 33:4
- conforms** 22:7
- confused** 49:8 82:9  
160:16
- confuses** 119:1
- confusing** 212:4 214:13
- confusion** 214:11
- Congress** 32:11 53:1  
71:2 237:5,14 238:1  
240:8 242:3
- congressional** 16:14  
49:21
- congressionally** 4:8
- congressionally-man...**  
26:21
- consensual** 33:22
- consensus** 41:6 210:20  
212:7 219:13
- consent** 239:1
- consenting** 239:2
- consequences** 111:5  
111:10 131:11 219:20  
283:7
- consider** 15:18 25:21  
26:13 37:4 50:13  
98:10 165:9 245:2,17  
246:9 283:22 284:4
- consideration** 5:5 62:7
- considerations** 67:7  
110:18 111:21 133:6  
133:8
- considered** 22:21 56:15  
77:7 164:11 254:13
- consistent** 14:13 26:15  
36:1 64:5 127:19
- consists** 12:8
- Constitution** 32:4  
216:15
- constitutional** 197:15
- constitutionally** 238:15  
247:5
- constrained** 178:4
- construct** 98:3
- consult** 128:9
- consultation** 255:20
- consulting** 166:17
- consuming** 57:4
- contact** 238:8 239:4
- contacts** 239:5
- contained** 14:16 15:6  
20:12 243:18 248:21
- containing** 19:13
- contains** 243:20
- contempt** 81:14,16 82:7  
82:13,17,21 83:18  
99:2,15 100:1
- contents** 3:1 15:7
- contest** 179:13
- contested** 91:9
- context** 171:3,4 193:14
- continue** 42:2 56:5  
84:15 101:17
- continued** 165:6,7
- continues** 241:1  
229:14
- continuously** 230:2
- contradict** 101:4
- contrary** 32:10
- contrast** 32:7
- contribute** 135:22
- contributed** 242:15
- control** 81:11
- convening** 23:15,18  
25:16,21 26:8,12  
27:10 279:1
- convention** 30:13
- conversation** 132:7
- converted** 100:10
- convicted** 27:8 163:21  
164:1 189:16,18
- conviction** 70:5 72:4  
75:5 76:5 118:19  
119:14 120:15 126:20  
136:9,10 144:7  
146:20 148:3 191:8  
268:17 277:14
- convictions** 249:21
- copies** 9:3,5 195:18,20  
195:20,21
- copy** 55:6,7 225:6,7,9  
225:10 227:8,9 234:8
- core** 50:7,11 52:3
- Corps** 1:18,21 7:8,17  
9:16 12:7 13:11 55:19  
60:6,12 180:20  
195:11 196:6 217:4  
218:9
- correct** 8:18 74:18 84:6  
92:6 93:8 137:13,14

- 137:20 138:3,4  
139:20 140:3 144:8  
156:3 161:18 162:12  
164:13,17 182:16  
184:1 188:17 190:5  
190:10 191:14 192:8  
201:7 235:11 255:2  
269:6  
**corrections** 144:19  
**correctly** 128:20 144:22  
155:6 198:20  
**corresponding** 18:7  
23:17  
**corroboration** 28:14  
**counsel's** 136:7  
**counseling** 174:5,10  
**counsels** 184:9 260:13  
**counter** 46:6 47:2  
**country** 16:11 63:15  
111:3 133:3 167:16  
**County** 174:4  
**couple** 9:17 13:12  
24:20 32:21 33:3 34:8  
51:16 52:20 57:2  
115:20 120:9 224:8  
246:13 257:20 281:10  
**Coupled** 240:9  
**course** 15:18 17:5  
44:12 68:11 70:22  
95:7 115:19 130:20  
131:20 165:9 178:7  
182:2 196:15 219:22  
235:20  
**courses** 279:11  
**court-** 22:15  
**court-marital** 274:9  
**court-martial** 14:20  
54:5 98:19 99:20  
237:20 284:15  
**courtroom** 66:20  
129:14,17 203:21  
204:21 225:1  
**courts** 28:7,16 61:21  
78:12 88:13 97:9  
101:10 109:12 115:14  
115:21 126:7,10  
138:1 139:5 145:1  
167:15 193:21 197:14  
209:8,9,21 232:2  
**Courts-** 3:8 11:20 19:5  
21:3 22:4  
**courts-martial** 6:8 8:3  
9:21 10:14 11:4,11  
14:17,17 16:1,4,9  
19:8,12,21 20:5 21:14  
31:10 32:16 43:1 48:5  
49:4 54:2 55:4,13  
157:15 244:7,8  
247:13 253:3 272:2,6  
**cover** 20:15 23:21,22  
61:22 123:14 168:22  
227:16,21 267:5  
286:9 287:13  
**covered** 98:12  
**covering** 22:5 227:20  
**covers** 21:4 27:4  
**CPT** 58:21 59:11,14,17  
59:19 93:3,13 143:22  
144:16 153:4 157:5  
157:14 158:1,4,10,14  
158:19,22 159:3,5,9  
159:12,15 160:1,15  
170:18 171:7,11,15  
181:20 182:16 183:12  
184:7,14,19 185:4  
195:9 196:3,15 197:2  
197:9,16 217:2  
220:12,17 221:7  
242:20 244:8 251:21  
252:4,10,22 256:12  
256:15 258:13,22  
260:21 263:8,18,22  
264:3,22 265:13  
266:1,6 268:14,22  
269:5 271:9,21 272:7  
272:20 273:22 274:4  
274:16 275:1 276:19  
277:5,22 280:19  
281:12 285:16,21  
**crazy** 283:1  
**create** 89:18 111:9  
240:4  
**created** 5:18 11:7 104:7  
232:15  
**creating** 87:16,21 88:12  
88:15 128:13 131:20  
132:14  
**creation** 221:19  
**crime** 23:2 70:6 100:9,9  
149:1 189:19  
**crimes** 16:15 26:16  
27:2 231:22  
**criminal** 11:22 28:4,7  
28:15 33:12 60:5,10  
73:21 76:3,4 77:20  
78:3 89:21 90:4 97:9  
99:18 100:4 106:19  
128:3 145:1 209:20  
274:11 275:10  
**criteria** 134:7 249:12,15  
**criterion** 134:8,13  
**cross-appeals** 75:14  
**crossed** 248:14  
**culprits** 28:20  
**cumulatively** 208:21  
**current** 11:17 39:18  
103:21 132:16 157:16  
184:3,8,8 195:5,7,10  
196:5 233:1 242:13  
**currently** 56:18 160:17  
248:3 249:11 269:11  
**cut** 63:7
- 
- D**
- 
- D** 4:1  
**DACIPAD** 242:9  
**Dale** 2:11  
**danger** 128:16  
**data** 237:20 240:3,5,6  
244:22 246:10 257:5  
257:17,19,22 258:3,4  
258:10,14,18 260:22  
261:3 263:7 272:21  
274:18,19  
**date** 38:15 119:7 242:6  
243:12 275:5  
**day** 54:3 263:4 276:8  
**days** 33:3 80:22  
**de** 94:1  
**dead** 45:19 204:12  
**deadline** 38:12 253:11  
**deal** 51:20 54:2 98:14  
131:22 180:16 209:21  
219:3 220:11 222:19  
255:21  
**dealing** 107:21  
**dealt** 62:18 172:18  
**debate** 41:17 42:2  
**decades** 120:9  
**December** 241:20  
248:8,15 253:21  
270:13 283:16  
**decide** 37:2 70:21  
80:22 88:7 94:1 98:11  
98:15,18 113:20  
118:8 123:21 139:15  
160:2,19 175:15  
181:10 187:9 188:21  
190:3,6,11 193:17  
194:7,9 197:3 211:16  
217:11 222:15,15,20  
228:20 259:19 273:6  
281:21 283:16  
**decided** 45:4 79:11  
80:21 91:13 94:17  
120:19 153:17 155:15  
168:16 169:3,18  
203:16 228:17 259:18  
**decides** 27:10 86:3  
118:14 150:18 233:4  
**deciding** 260:1  
**decision** 69:2,3 70:15  
72:1 77:10 88:2 89:10  
103:15 110:2,19  
121:16 129:6,9 161:3  
161:4 163:4 173:2  
183:19 184:15 188:17  
189:1 190:13,14,16  
191:6,11,16,17,19  
194:6,17,21 197:3  
199:8 206:2 208:5,12  
213:22 217:1 220:7  
245:21  
**decisional** 8:8  
**decisions** 25:22 41:6  
70:3 126:5  
**declination** 22:18,19  
**decline** 22:8  
**dedication** 30:5  
**deemed** 281:14  
**defend** 61:15 63:10  
77:3,4 83:21 88:21  
91:18 113:9 117:10  
119:11,14 120:11  
127:15,18  
**defendant** 64:22 65:1  
80:20 90:16 99:9  
106:21 111:20 112:9  
114:1,2 121:18 126:3  
135:9 142:12 148:16  
148:19,20 150:13  
151:14 152:2,13  
153:4 158:17,18  
179:6 190:4,8 194:21  
205:4  
**defendant's** 130:13  
179:10,18  
**defendants** 150:12  
282:21  
**defended** 77:5  
**Defenders** 5:2  
**defending** 135:6  
**Defense's** 6:9  
**define** 239:1  
**defines** 23:9  
**definitely** 102:16  
139:22  
**definition** 238:22  
**definitions** 23:8 239:3  
**degree** 191:13  
**delegate** 28:5 187:21  
**deleted** 35:3  
**deliberate** 6:10 58:17  
**deliberation** 45:10  
59:21  
**deliberations** 3:12,17  
6:16 7:4 140:11,21  
**deliberative** 8:7 41:14  
**deliver** 23:13  
**delivered** 203:20  
**demonstrate** 52:19  
184:21 247:20

**demonstrates** 31:8  
34:20  
**denial** 94:9 154:9,10  
184:11  
**denied** 61:11 80:12,13  
93:2,11,21 96:4 97:3  
97:8,14,15 105:13  
141:11 155:2 205:6  
209:6 231:3 257:13  
260:17  
**denies** 90:5  
**denominator** 41:9  
**deny** 73:13 92:15 94:3  
100:18 164:13  
**denying** 184:17  
**Department** 1:1 4:15  
6:8 8:4 11:8 19:1 24:2  
52:8 237:10 238:1  
240:10  
**depending** 276:7  
**depends** 168:5 174:1,1  
174:2 175:16 191:3  
194:13  
**deposition** 22:7,11  
247:17,19,22 248:6  
264:13 278:15  
**depositions** 22:5  
247:16 248:4 264:2,6  
264:8,16  
**deprived** 63:12  
**Deputy** 2:10 60:12  
**described** 210:4  
**description** 210:3  
243:11  
**designated** 2:18 4:7  
241:10  
**despite** 235:12  
**destroyed** 195:20 196:1  
196:2  
**detailed** 42:21 52:18  
**details** 181:4 215:17  
**determination** 187:19  
187:21 192:12,13  
249:2  
**determinations** 188:7  
**determine** 164:7 186:10  
188:3,20 192:17  
199:5 200:4 228:6  
**determining** 15:21  
185:13  
**develop** 238:9  
**developing** 240:14  
**deviating** 34:14  
**devote** 40:1  
**DFO** 2:19 3:4  
**difference** 48:16 67:3  
81:8 124:5 176:14  
180:13 182:11 222:13

260:10  
**different** 39:11 41:22  
51:19 69:16,21 84:17  
85:18 117:19 120:22  
120:22 123:11 124:10  
129:1 134:1 143:16  
145:16,18 147:2  
148:4 159:6 164:3  
167:22 168:21 170:21  
195:7 210:4 218:12  
233:16 269:19 271:7  
271:10 279:1 285:19  
286:3 287:13  
**differentiating** 78:1,2  
**differently** 85:13,22  
**difficult** 110:16 145:22  
**Digital** 36:6  
**dignity** 55:11 62:7  
67:11 132:18  
**dilemma** 136:4  
**diligently** 20:3  
**direct** 59:5,8,9 60:22  
61:5 62:3 76:6 110:14  
111:9 112:12,21  
114:18 133:12 144:5  
146:21 148:7 152:15  
**directed** 53:1 250:6  
**direction** 12:2 21:17  
31:9 210:8  
**Directive** 11:14  
**directly** 16:20 104:18  
231:13 264:15  
**director** 2:8,10 29:3  
52:4 60:6  
**disagree** 145:17 162:18  
205:13  
**disagreement** 41:16  
71:2 214:11 219:17  
265:17  
**disagreements** 219:2  
**discharge** 249:20 250:1  
268:16 284:22  
**discharged** 277:4,20  
283:21 284:15,17,20  
**discharges** 269:13  
**discharging** 278:3  
**discipline** 34:5  
**disciplined** 65:22  
**disclose** 95:14 165:20  
169:18 170:11  
**disclosed** 68:13 69:15  
169:21 178:10  
**disclosure** 21:16 84:4,5  
171:3  
**discourages** 103:7  
**discovered** 275:2  
**discovery** 30:17  
**discovery-like** 22:1

**discredit** 34:6  
**discretion** 32:1 191:12  
**discuss** 6:17 8:19  
10:21 11:3 20:7 39:2  
39:3 61:4 127:6  
187:10 241:14  
**discussed** 35:11 126:9  
260:7  
**discussing** 100:16  
180:19  
**discussion** 11:1 14:6  
19:4 48:6,16 49:5  
59:10 68:3 87:6 89:7  
130:20 155:10 157:10  
162:19 165:14 221:15  
236:22  
**discussions** 15:8,10  
41:5 48:7,22 49:19  
**dishonorable** 250:1  
268:16  
**disingenuous** 53:4  
**dismissal** 250:2 268:17  
**dismissed** 32:13  
**display** 10:12  
**disposed** 156:6  
**disposition** 25:13,22  
239:21 245:20 278:12  
**dispositive** 63:18 90:22  
94:2  
**dispute** 104:5  
**disruptive** 72:3  
**dissenting** 153:11  
**dissonance** 277:19  
**distinct** 7:20 31:20  
**distinction** 31:13 84:2  
183:21 215:3  
**distinguished** 4:16  
7:12 9:22  
**distribution** 176:3  
**district** 28:16 74:4,5  
117:21,21 118:3  
287:2  
**ditch** 122:2  
**ditching** 121:22  
**Division** 5:4 7:17 60:7  
60:10  
**divisions** 182:1  
**doable** 227:16  
**docket** 258:20  
**docketing** 240:15  
**doctors** 205:1  
**document** 98:2 113:13  
243:9,14  
**document-** 240:4  
**documents** 19:18 243:5  
258:16  
**DoD** 8:9,20 11:14,18  
13:16 15:10 16:17

18:3,8 239:16 240:4,7  
240:18 248:10 250:5  
250:17,22 272:8  
**doing** 31:6 34:21 41:7  
43:6 73:17 160:17  
191:3 212:1,16 225:8  
226:9 251:10 267:12  
275:19  
**dollars** 79:4  
**domestic** 287:5  
**donated** 9:20  
**Donovan** 9:14  
**door** 167:1,3  
**double** 32:8  
**dovetails** 182:3  
**dozen** 115:20  
**draft** 17:8  
**drafts** 282:13  
**draw** 242:21  
**drop** 120:19 204:12  
**dry** 63:7  
**due** 22:12 64:4 73:17  
119:5 262:7  
**duty** 13:5,7 14:3 30:7,8  
39:22 43:11 44:5 50:5  
277:4,21  
**Dwight** 13:21 40:10  
248:9

---

**E**


---

**E** 4:1,1  
**eaches** 243:20  
**earlier** 24:16 34:16  
43:16 49:11,20 123:6  
216:22  
**early** 53:18 235:18  
248:15 268:1  
**easier** 68:19 243:17  
**easily** 69:18 218:21  
219:3 247:11 251:7  
263:7  
**easy** 204:5  
**edition** 9:20  
**educate** 136:8  
**effect** 47:20 241:7  
268:21  
**effectuated** 246:20  
**effort** 30:6 204:9 224:3  
226:21 228:2 242:16  
**efforts** 223:10,18  
237:22 239:13  
**Effron** 42:21 248:9  
266:21 268:4 283:19  
**eight** 76:14,19 78:17,19  
126:21 241:1 258:8  
**Eighth** 34:2  
**either** 17:12 33:7 46:4  
46:22 47:7 61:9 62:21

63:10 66:10 73:13  
 88:1 97:20 123:11  
 127:1 129:13 165:2  
 170:11 175:2,3  
 180:15 183:14,18  
 194:17 201:22 233:21  
 246:9,18 251:4  
 254:14 267:6 283:2  
**elaborate** 115:11  
**electronic** 225:6,22  
 227:8  
**electronically** 222:18  
 223:5,11  
**elects** 229:9 235:10  
**element** 239:2  
**elements** 33:14 34:4  
**Eleventh** 35:7  
**eliminate** 238:14  
**eliminated** 247:4  
**elimination** 33:22  
**Elizabeth** 1:12,14 4:17  
**eloquent** 112:13  
**elucidate** 115:10  
**emails** 223:7  
**embedding** 246:9  
**embracing** 35:20  
**emergency** 80:19 81:4  
**empaneled** 243:3  
**enacted** 238:2  
**enactment** 222:2  
**encompass** 65:17  
 258:15  
**encountered** 13:6  
**encourage** 72:7  
**ends** 6:19 189:3 201:5  
 229:13 233:15  
**engage** 182:15  
**enjoyed** 89:7 130:20  
**enlighten** 89:4  
**ensure** 11:20 132:10  
 240:14  
**ensures** 183:14  
**ensuring** 132:4 239:17  
**entertained** 102:18  
**entire** 88:12 108:3  
 192:10,17 194:18  
 274:13  
**entirely** 91:7 199:22  
**entirety** 20:14 35:12  
**EO** 21:5 33:14 37:6  
 250:19  
**equate** 145:21  
**equation** 134:15  
**equivalent** 54:9  
**erred** 199:6 208:17  
 209:6  
**erroneous** 141:7  
**error** 69:10,13 85:3

86:4,14 88:9 139:21  
 200:5  
**errors** 140:2 208:20,22  
 209:3  
**escapades** 65:19  
**especially** 13:20 101:21  
 235:21  
**essence** 105:6  
**essentially** 232:11,13  
 232:17 233:13  
**establish** 53:1 78:7  
 238:4 250:21  
**established** 109:10,11  
 237:7 242:4  
**establishing** 28:5  
 239:13,20 240:19  
**establishment** 250:15  
 276:15  
**esteemed** 29:3  
**et** 74:10 279:1  
**ethical** 123:7  
**ethics** 111:13  
**EV** 103:6 104:8,14,19  
 107:8,12 108:4  
 109:12  
**evaluate** 239:13 271:4  
**evaluation** 25:10  
**evening** 20:4  
**event** 13:22 228:4  
**events** 47:1 246:18  
 247:9 251:4  
**eventually** 18:4,14 41:8  
**everybody** 9:13 41:8  
 50:10 66:20 85:10  
 97:22 166:10 223:6  
 236:12 258:10 276:12  
**everybody's** 50:4  
**everyone's** 216:2  
**evidence** 14:21 19:22  
 23:21 28:9 30:18  
 69:17 95:13 104:19  
 119:16 168:6,6 170:1  
 171:12 238:16 247:13  
 250:4 256:9,17  
 259:15 272:1,3,6,17  
**evolves** 55:22  
**evolving** 31:8 55:16  
**Ewers** 7:16  
**exact** 44:20 45:2  
**exactly** 55:1 71:21  
 102:4 103:12 122:19  
 147:19 174:9 185:4  
 193:20 208:11 226:3  
 231:15 243:7 255:19  
 271:8 278:9  
**examine** 157:17  
**examined** 204:22  
**example** 21:3 39:17

57:1 65:20 69:20  
 90:14 96:15 104:18  
 107:20 111:11,14  
 115:7 142:7 161:7  
 244:4 279:5  
**examples** 33:15  
**exception** 238:16  
**exceptional** 22:12,21  
 247:20  
**exciting** 18:16  
**excluded** 20:21  
**excludes** 116:16  
**exclusively** 120:8  
**excuse** 36:22 151:8  
 207:6  
**executive** 1:11 7:19  
 10:15 11:9 12:9 13:9  
 15:5,13 16:20 18:2,4  
 18:15 19:7,11,19 20:5  
 20:8,11,12,16,19  
 23:19 25:1,4 29:17  
 30:2,4 35:4,10,12,13  
 37:20 39:6 47:16 50:8  
 52:4 159:19 238:13  
 247:4 251:7 276:19  
**exhaustive** 33:1  
**exist** 10:20 248:17  
 249:11  
**existing** 282:9  
**expanding** 75:2  
**expect** 45:13 168:1,3  
**expedient** 43:7  
**expedition** 186:1 207:1  
**experience** 40:19 54:19  
 80:16 89:6 96:20  
 182:12 244:12 252:6  
 278:19 279:20 285:10  
 285:22 286:2,4,7,10  
**experienced** 182:6  
**expert** 214:12 234:21  
 235:21 248:10  
**expertise** 43:22  
**experts** 79:17 93:16  
 103:12 220:8  
**explain** 37:17 90:13  
 142:6 188:12 251:13  
 265:8  
**explained** 131:7 182:22  
**explanation** 80:12,14  
 153:11  
**explanations** 33:14  
**explicit** 107:12  
**explicitly** 108:5  
**express** 25:18 26:9  
 112:19  
**expressed** 157:6 182:7  
**extensive** 138:11,12  
**extent** 44:11 108:11

205:3 210:10 254:6  
 254:21 261:10,11  
**extra** 62:12 99:10  
 128:13 129:22 225:10  
**extraordinarily** 102:18  
 121:6  
**extraordinary** 80:11  
**extremely** 34:17  
**eye** 273:8

---

**F**


---

**face** 124:14 134:20  
**facilitate** 52:12  
**facilities** 240:14  
**facing** 78:16 250:1  
**fact** 28:20 45:19 47:17  
 86:21 123:12 130:11  
 132:10 140:15 178:21  
 179:1 183:14 185:21  
 245:10 250:18,20  
 268:15 285:9  
**fact-dependent** 116:3  
**facto** 94:1  
**factor** 94:2 126:2,5  
 202:13 271:1  
**factored** 267:14  
**factors** 37:4 202:12  
**facts** 140:12  
**factual** 92:22 139:21  
 140:2 144:18  
**factually** 52:19 141:7  
**failed** 100:2  
**failing** 131:18  
**fails** 33:8  
**failure** 265:9  
**fair** 62:2 69:3 132:20  
 135:15 180:10 205:9  
 208:22  
**fairer** 149:1 219:6  
**fairly** 62:18 89:15  
 285:17  
**fairness** 55:10 63:9  
 64:4 132:19 134:12  
 134:14 135:8  
**far** 77:22 78:1 89:19  
 99:20 111:6 134:18  
 146:5 219:8 228:17  
 237:2 242:8 245:9  
 249:4  
**fascinating** 18:16  
**fast** 42:15  
**fault** 210:13  
**faulty** 93:2  
**favor** 61:2 105:19  
 112:14 121:17 153:7  
 156:5 182:21 183:2  
 214:22 216:3,9  
**favorable** 25:9

- feasible** 46:9  
**February/March** 246:11  
**federal** 2:18 4:7,9 15:12  
 16:5 17:14 18:12  
 19:13 32:20 38:3 71:5  
 73:21 76:2,4 78:10,12  
 78:16 79:1,19 80:8  
 81:9,10 82:20 89:21  
 120:6 127:22 134:1  
 193:21 273:2,10,12  
**federally** 76:10 79:17  
 126:22  
**feel** 51:18 62:18 63:22  
 66:21 69:6,7,8,16  
 85:22 87:1 113:18  
 123:17 132:19 133:18  
 146:8,10 179:1  
 217:22 218:8,20  
 219:18 244:22 247:10  
 260:13,16 263:13  
 279:14,16  
**feelings** 145:13  
**feels** 134:10 135:5  
 261:12  
**fellow** 241:13 242:13  
**felt** 175:14  
**fides** 217:16  
**field** 19:15 108:3 241:7  
 245:1  
**fields** 36:12  
**fifth** 23:15 28:3 32:8  
 33:3,11 250:3  
**fight** 79:6 88:8  
**figure** 43:19 194:19  
 211:15 219:11 222:8  
 226:15 234:4 235:1  
 255:19 258:11 260:4  
 274:18 275:8 287:7  
**figured** 44:1 275:5  
**file** 55:5 63:1 64:6 67:1  
 67:13 73:4 80:10 83:7  
 87:4,9 92:3,13,16  
 93:9 94:11 95:6 97:8  
 97:17 107:14 111:14  
 113:6,11,11,20 114:3  
 122:14 123:10,14  
 124:7 126:19 130:6  
 133:16,19 135:2  
 141:10,12,15,16  
 149:9,14,16 152:15  
 153:6,11 160:19  
 166:9,14,16 195:17  
 195:19 225:5,5 233:4  
**filed** 83:13 86:20  
 100:22 101:13 104:1  
 114:3 123:22 124:7  
 124:11 133:10 134:20  
 134:21 141:10 143:16  
 150:1 152:13 172:5,8  
 180:21 193:8 194:10  
**files** 95:19 187:3  
**filing** 116:17 135:1,3  
 142:9 145:21 149:4  
 152:2 217:4 225:4  
 227:12  
**filings** 240:16  
**final** 18:1 41:3  
**finally** 216:17 240:1  
**find** 100:15 198:10  
 222:3 265:1  
**findings** 24:6 31:21  
 93:5  
**fine** 83:9,14 108:21  
 109:4 110:7 121:12  
 210:1 212:19 213:4  
 217:19 263:2 265:17  
 276:12  
**fingers** 248:14  
**finish** 45:4 82:13  
 108:15 229:15 253:8  
 268:3 280:7  
**finished** 235:16 250:19  
**firm** 250:12  
**first** 9:20 10:5 11:5 20:5  
 20:6,17 23:19,20  
 30:11 36:21 50:20  
 51:6 59:2,5,6,7 65:12  
 81:18 90:14 91:10,18  
 118:16 162:8,10,17  
 163:9 165:3 177:8  
 181:5,11,11 186:3  
 187:13 200:22 209:15  
 211:2,4 224:8 243:9  
 244:4 247:1 253:14  
 255:1,22 256:5 257:6  
 257:20 258:6,8 262:3  
 282:10 283:12  
**first-in** 39:13,15  
**first-out** 39:13,15  
**Fiscal** 5:19,20 51:13  
**fishing** 186:1 207:1  
**five** 5:13 14:18 15:3  
 19:11,13 58:11 63:15  
 63:18 125:5 237:12  
 259:15  
**five-** 136:16,19  
**five-minute** 136:22  
**flesh** 183:12  
**flip** 106:18  
**floating** 196:4  
**Floor** 1:10  
**focus** 147:18 266:18  
**focused** 26:17 154:6  
**focusing** 134:8  
**fodder** 169:22  
**folks** 9:5 12:10 40:18  
 48:20  
**follow** 91:4 100:3  
 122:10 219:13 230:5  
**follow-on** 44:14  
**followed** 74:12 163:3  
 238:13  
**following** 4:16 21:17  
 142:2 242:4  
**force** 1:18 5:3 12:6  
 15:15 30:14 47:18  
 48:9 60:3,4 94:5 95:3  
 97:3,7,9,17 160:17,20  
 161:3,16 163:1 184:4  
 190:17 195:5,8,10  
 210:1,5 217:13,22  
 218:5,15,22 219:14  
 219:22 232:10  
**forces** 13:15 34:6 60:1  
 104:10 239:14 242:2  
**forever** 82:15 214:21  
**Forget** 149:10  
**forgetting** 275:17  
**forgive** 60:17 105:7  
**form** 40:3 228:18 229:1  
 229:22 230:16 231:20  
 232:15,21 243:19  
**formal** 230:16  
**formalize** 233:19,20  
 235:8  
**former** 16:12 60:4  
 242:13  
**forms** 98:2 228:12,13  
 229:6,8  
**formulation** 195:3  
**forth** 64:13 231:14  
 235:13  
**fortunate** 59:22  
**forward** 42:3 58:4 84:21  
 104:16 110:6 112:3  
 226:16 227:9  
**forwarded** 28:7  
**forwards** 233:7  
**found** 20:11 32:12 80:8  
 161:10 232:5 249:22  
**foundation** 32:3 136:4  
**four** 220:13 222:2 238:2  
 239:10 252:18 258:1  
 278:11  
**fourth** 22:22 27:4 32:15  
 245:18 249:8  
**frame** 51:2,18 147:3  
 238:7 246:11  
**framework** 270:19  
**frankly** 44:2 69:2  
 129:18  
**frequently** 119:19  
**Friday** 1:7 7:14  
**Fried** 2:18 4:3,7 5:10  
 99:14 100:7 139:20  
 140:10,16,20 149:8  
 151:21 152:5,9  
 156:16,18 209:7  
 219:7 235:7 236:17  
 236:19 254:5 255:2,9  
 255:13 269:7,9,10  
 277:13 283:18 284:7  
 284:19 285:2,5  
 287:16,17  
**front** 8:6 14:20 41:13  
 54:10 106:17 139:10  
 219:1,2  
**fulfill** 252:17  
**fulfilling** 11:19  
**fulfillment** 157:19  
**full** 5:16 43:11 50:4,8  
 50:12,16 193:14  
 233:22  
**fully** 136:12 137:8  
 168:9  
**function** 145:2 266:13  
**fundamental** 11:21  
**further** 47:12 58:2  
 150:19 155:12 165:13  
 232:19 238:12 241:16  
 246:12 263:9  
**future** 6:18 52:13  
 131:14  
**FY** 20:9 21:19 24:8,9  
 25:8 26:1 28:11 30:10  
 30:19 33:19 37:7,10  
 37:22 243:6  
**FY13** 245:22  
**FY15** 247:18 264:11  
**FY17** 220:21 221:19  
 248:3  
**FY2013** 244:11  
**FY2014** 268:8  
**FY2017** 240:1

---

**G**


---

- G** 4:1  
**gain** 160:6  
**gained** 260:5  
**gap** 222:9 223:1  
**Garvin** 76:11  
**gather** 177:13  
**gathered** 244:20 245:13  
 246:3 254:12  
**general** 7:16 8:9,21  
 9:14 11:8 12:2 13:16  
 15:10 16:17 18:3,8  
 28:8 32:15,19 34:2  
 60:10 131:13 240:18  
**generally** 10:21 33:16  
 50:14 93:22 145:7  
 172:14 177:6,7 191:2

191:2,4 233:14  
**getting** 43:8,13 92:10  
 92:12 96:11 114:19  
 132:11 217:12 223:7  
 230:7 244:22 257:17  
 269:12 278:18,21  
**give** 40:22 44:20 45:2  
 67:11 72:22 73:12,17  
 84:19 106:15 110:1  
 112:6 113:16 135:13  
 140:8 142:7 150:14  
 151:10 152:9 159:16  
 160:9 173:9 175:2,21  
 189:11 192:20 205:11  
 222:17 234:3 248:11  
**given** 78:11 131:11,16  
 163:7 243:10 251:14  
 259:14 262:19 279:8  
**gives** 30:5 83:17 141:13  
 178:4 234:10  
**giving** 25:9 72:11  
 115:13 146:21 150:4  
 150:11 155:17 175:1  
 194:21 211:11 224:17  
**goal** 243:1 285:1  
**gotten** 49:10 147:21  
 169:10 258:5  
**governing** 28:13  
 157:16  
**government** 21:9 31:2  
 64:22 65:1 68:11,19  
 69:5,16 75:10,17,19  
 84:14 88:4,7 96:9  
 97:21 98:4,5 107:4  
 119:13 120:11,19  
 121:13,22 128:7,19  
 129:20 139:7 149:22  
 150:1,13,18 151:21  
 152:3 173:20 177:17  
 193:8 233:5,5  
**government's** 70:2,21  
 94:21 121:3 124:2,10  
 128:5,17 137:8  
**graduating** 10:2  
**grant** 73:13 260:19  
**granted** 61:10,19,20  
 103:1 106:20 107:1,4  
 204:14 257:12 260:8  
 260:9  
**granted/denied** 258:21  
**granular** 265:4  
**granularity** 212:13  
**grapple** 106:2  
**grappling** 134:5  
**grasping** 273:18  
**grateful** 53:1  
**gray** 243:15 246:14,15  
 250:14 253:14 255:22

256:2 263:13 278:13  
 280:13  
**greater** 84:19 210:20  
**grew** 69:21  
**ground** 123:19 127:3,3  
**grounded** 104:11,15  
**group** 7:21 8:1,2 12:8,8  
 12:12,16,16 13:2,3  
 17:8,8 18:13 29:8  
 30:6 37:2 39:3,4 42:1  
 42:1,20 43:12,12,20  
 44:5 45:12 46:4  
 112:22 161:21 272:13  
**growing** 55:17  
**guarantee** 284:22  
**Guard** 1:21 12:7,21  
 60:15 106:16,19  
 218:16  
**guess** 49:8,17 52:1,11  
 59:7 68:14 110:15  
 128:21 134:16 148:9  
 153:14 162:7 180:4  
 184:2 186:8,11 192:3  
 192:11 224:3 254:21  
 255:18 263:11 268:10  
 273:14 275:13,18  
 278:1  
**guessing** 267:15  
**guidance** 13:3 48:13  
 54:16 115:13,18  
 155:15 159:16 219:21  
 240:12,14 250:7  
 272:15,16  
**guide** 213:6 214:16  
 215:12 216:5,20  
 219:9  
**guidelines** 239:20  
 249:12,16  
**guiding** 238:4  
**guilty** 140:1 161:10  
 249:22  
**Gupta** 2:14 165:16,19  
 180:17 218:2 234:12  
**guy's** 170:12

---

**H**


---

**half** 83:14  
**half-hour** 156:11  
**halt** 81:3  
**Ham** 29:4  
**hand** 13:13 110:22  
 132:18 232:15 249:6  
 249:6  
**handful** 12:21 79:8,8  
 126:12,14  
**handle** 160:5,11  
**handled** 106:5 157:11  
**handling** 157:7

**hands** 174:6,7  
**hang** 19:17  
**happen** 62:20 68:2 76:1  
 77:18 86:8 88:10,11  
 89:15 96:3 122:15  
 124:5 125:8 136:9  
 170:6,17 286:11  
**happened** 97:10 102:16  
 179:20 197:1 223:21  
 231:20 264:8,10  
 270:20  
**happening** 46:21 47:2  
 48:14 49:13 93:12  
 178:6 204:6 231:6  
 261:21 264:2,16  
 269:12 275:20  
**happens** 43:3 74:2 76:1  
 90:3 95:13 96:17  
 106:7 131:15 152:8  
 169:6 176:8,10 187:2  
 232:8,13 262:2 283:2  
 286:16  
**happy** 36:14 58:8,10  
 63:19 276:13 287:18  
 287:19  
**hard** 40:16 42:13 65:16  
 66:14 145:12 178:13  
 225:7,9 227:8 285:17  
**harder** 45:9,10 139:2  
**hardest** 41:20  
**harking** 167:21  
**Harlye** 7:14  
**Harlye's** 7:18  
**harm** 41:21 239:3  
**harmless** 69:10 77:10  
 77:12,13  
**harmonic** 277:19  
**Hawaii** 24:18  
**health** 172:1 240:13  
 250:8 274:6  
**hear** 7:6 8:8 26:2 97:4  
 103:12 105:3,15  
 107:7 108:7 109:14  
 133:5 155:5 174:19  
 241:5 261:7 262:14  
 267:16 281:20 282:14  
 285:4  
**heard** 20:22 21:1,6,11  
 21:11 23:5,10 46:21  
 53:21 70:13 73:2,11  
 76:11 79:16 80:9  
 91:22 92:5 93:4  
 100:20 101:9 102:6,7  
 102:8,13 103:22  
 104:2,3,4 109:20  
 123:20 139:17 145:17  
 146:1 181:21 182:3  
 198:13 210:1 219:14

221:10 229:5 232:10  
 234:13 264:14,16  
 278:7,15 279:17  
**hearing** 21:18,19,22  
 22:2,15,18 23:5 27:13  
 27:22 28:2 50:3 54:15  
 57:15 61:18 96:13  
 168:8,10 195:3 196:9  
 207:12 228:16 247:12  
 251:16 262:22 274:8  
 278:5  
**hearings** 21:15 27:17  
 49:11 238:17 250:5  
 253:13 254:1,3  
 261:21 263:4 272:2,4  
 276:8,9  
**hears** 168:8  
**heavily** 13:19 40:4  
**held** 99:1,15 197:15  
 232:2 237:7 244:19  
**help** 48:15,20 50:10,13  
 51:3 52:22 58:19  
 60:19 89:4 162:21  
 163:11 220:5 250:22  
 274:2  
**helped** 52:2 220:9  
**helpful** 48:12 98:12  
 143:20 259:12  
**helping** 235:22 250:17  
**Helpline** 24:2  
**helps** 217:2  
**hereinafter** 11:7  
**high** 38:16  
**higher** 52:7,9 90:10  
 150:3 264:12,17  
**highest** 38:13,18  
 154:15 155:5  
**highlight** 237:1 241:21  
**highlighted** 243:15,16  
 249:18  
**highlights** 81:8  
**highly** 135:17 136:1  
 170:9  
**hire** 79:5  
**historical** 19:19  
**history** 48:2 65:18  
 79:21 251:14  
**hit** 30:1  
**hits** 273:7  
**hold** 81:14 82:20  
 231:21 255:14  
**holding** 174:2  
**holds** 103:6  
**honestly** 47:22  
**honor** 7:13,21 13:11  
 44:3 121:16  
**Honorable** 4:17,18 29:1  
**honored** 36:13 87:1

**Hope** 41:2  
**hopefully** 8:8 248:15  
 273:11  
**hospital** 82:1  
**hotly** 91:9 96:7  
**hour** 41:1 63:5 174:14  
**House** 1:19 60:5 143:22  
 144:16 170:18 171:7  
 171:11,15 183:12  
 184:7,14,19 185:4  
 195:2,9 196:3,15  
 197:2,9,16 217:2  
 271:7  
**House's** 210:2  
**housekeeping** 8:6 9:2  
 54:20 55:1,14  
**houses** 17:17  
**Humane** 34:16  
**hundreds** 138:14  
**husband** 198:9  
**hypothesizing** 88:6  
**hypothetical** 85:8  
**hypotheticals** 65:17

## I

**idea** 10:5 30:5 118:7  
 141:14 188:10 218:7  
 230:15,21 267:16  
 270:6 276:9 284:5  
**ideas** 29:8  
**identified** 241:17 251:3  
**identify** 241:15 243:10  
**ignore** 101:15 205:10  
**ignored** 101:16,18,22  
 267:6  
**imagine** 86:17 91:12  
 194:1 271:13 283:22  
**immediate** 89:11 222:4  
**immediately** 60:18  
**immense** 35:18  
**immigration** 138:13  
**immunity** 216:14  
**impact** 256:19,20 262:4  
 274:5  
**impacts** 260:6  
**implement** 23:8 35:22  
**implementation** 15:22  
 38:12 39:7 41:5 46:5  
 222:1  
**implemented** 10:14  
 23:3,16 25:2 37:7  
 38:15 43:4 270:1  
**implementing** 37:10  
 55:20 211:8 221:17  
 238:10 240:11  
**implements** 28:10 30:9  
**implicate** 64:9 221:12  
 224:10

**implicated** 224:7 231:5  
**implication** 122:12  
**implies** 186:16  
**imply** 209:16 212:1  
**importance** 205:9  
**important** 26:14 29:9  
 35:11 39:10,12 44:4  
 111:21 112:14 116:11  
 121:6,8,9 122:1 131:2  
 170:9 237:1 259:6,15  
 260:19 287:1  
**importantly** 62:6  
**impose** 160:10  
**impression** 103:17  
 164:4 226:2,4  
**impressions** 257:20  
**impropriety** 261:18  
**improve** 16:4  
**in-between** 181:2  
**in-house** 83:1  
**in-person** 238:8  
**inaccurate** 213:11  
**inadvertently** 175:11  
**inappropriate** 175:15  
**incapable** 239:1  
**inclined** 247:9 261:4  
**include** 4:14 6:6 10:20  
 10:22 15:8 17:17  
 27:17 35:8 238:21  
 239:12 240:6,12  
**included** 20:20 32:17  
 33:2,6,8,10 37:21  
 105:3 119:14 239:16  
**includes** 6:22 15:7 21:6  
 21:11 35:2 184:4  
**including** 20:22 29:1  
 218:3 247:16 278:14  
 281:1 283:14  
**inconsistent** 273:3  
**inconvenience** 226:13  
**incorporate** 30:19  
 211:19 254:9  
**incorporated** 20:18  
**incorporates** 238:19  
 239:10 240:2  
**incorporating** 20:20  
**incursion** 62:16  
**indecent** 34:10 35:1,3  
**independent** 6:1 26:22  
 74:7 139:5 173:9  
**independently** 240:10  
**index** 15:9  
**indirectly** 166:5  
**individual** 46:11 51:8  
 57:10 89:12 118:9  
 120:14,17 160:6  
 278:3  
**individual's** 179:12

**individuals** 13:20 14:3  
 237:9  
**inexcusable** 60:17  
**inflexible** 224:1  
**Influence** 25:6  
**information** 4:10 8:11  
 65:3 68:13,20 137:9  
 146:2 166:22 171:8  
 172:15 176:20 228:6  
 231:21 237:10,15  
 239:21 240:15 244:18  
 244:20 245:10,14  
 246:3,5 254:7,12,13  
 254:17,22 261:2  
 264:19,20 270:2  
**informs** 109:2  
**initial** 25:13 238:3  
 245:20 278:12  
**initially** 107:1  
**initiate** 151:6,6,9,15  
**injury** 79:5  
**input** 6:22 15:17 16:6  
 16:13,18 26:18 58:3  
 91:11 110:21  
**inquiry** 276:1  
**inserts** 19:20  
**insignificant** 86:9  
**Inspector** 240:18  
**installations** 241:2  
**instance** 65:12 88:11  
 231:3  
**instances** 111:17  
 200:17 220:18 256:17  
 258:17  
**instruct** 33:6,9 101:15  
**instructed** 252:9  
**insufficient** 201:18  
**integrity** 5:2 85:19  
**intend** 10:8 213:2  
**intended** 212:22  
**intent** 32:11  
**intention** 130:16  
**intercourse** 35:9  
**interest** 22:13 61:19  
 65:5,14 68:7 70:3  
 85:18 88:5 103:16  
 113:19 117:7,9 119:3  
 121:2,8 141:19,22  
 142:2,4,15 156:20  
 221:13 222:16 224:10  
 226:22 247:21  
**interested** 37:5 286:6  
**interesting** 259:11  
 261:6  
**interests** 84:17 95:15  
 116:14  
**interject** 161:21  
**interlocutory** 71:13,17

72:2,7,10 73:15,22  
 74:14 75:3 77:1,6  
 84:7 88:3,16 90:8,19  
 95:21 106:4,8 109:2  
 110:11 114:21 118:12  
 118:19 121:12,17,21  
 122:8 128:15 154:10  
 155:2  
**intermediate** 170:3  
**internal** 38:21 41:4  
 167:6  
**internet** 36:7 223:6  
**interpretation** 261:14  
**interpreted** 146:2  
**interrupt** 28:18 108:16  
**interrupting** 95:10  
**intervene** 76:9 78:11  
**intervening** 246:16  
 264:11  
**intervention** 79:14  
 104:12 172:4 180:10  
**interview** 30:21 31:2  
 245:13  
**interviews** 22:20  
**intimate** 240:6  
**introduce** 259:14  
**introduced** 10:6 59:15  
 256:18  
**introducing** 60:18  
**Introduction** 3:3  
**invade** 197:19,20  
**invaded** 200:17 216:12  
**invasion** 200:19 202:11  
 202:11,13,14 204:17  
 204:21  
**invasions** 202:6  
**investigate** 27:1 239:19  
**investigated** 240:18  
**investigation** 242:1  
 264:5  
**investigations** 241:18  
**investigators** 205:16  
 241:5  
**investment** 102:1  
**invited** 6:12,13 24:14  
 133:4  
**involve** 191:12  
**involved** 65:18 126:15  
 130:21 134:14 140:21  
 184:6 223:2,4,12  
 225:9 283:7  
**involving** 6:3 27:2 68:5  
 221:6  
**issuance** 250:19  
**issued** 4:12  
**issues** 37:4 39:9 47:19  
 56:15 58:19 60:20  
 61:10,12 62:19,22

63:17 74:8 79:6 80:11  
101:7 105:6 111:16  
115:15 116:2,3,13  
118:2 120:10,13  
125:14 126:1 135:8  
138:16 139:5,11,11  
144:12 153:20 200:14  
220:9 221:3 225:14  
225:19 231:2 241:15  
241:17 243:14 244:3  
251:3 266:22 267:7  
271:12 281:21 282:3  
283:13 287:4  
**item** 45:17 244:6 246:2  
247:15 253:14 254:18  
254:19 255:22 263:15  
273:13 277:1  
**items** 44:11 244:2  
263:12

---

**J**

---

**jail** 99:7  
**jam** 50:21 51:19 52:17  
53:12  
**January** 13:13 254:2  
**Japan** 241:4  
**Jeffrey** 5:3  
**jeopardy** 32:8  
**job** 13:11 33:3 43:11  
50:4 52:6 206:14  
226:15 227:1 279:7  
279:13  
**joining** 7:5  
**joint** 3:7 6:9 7:9,19 8:11  
9:1 11:6,15 12:14  
14:2 18:22 35:20 41:7  
42:4 49:9,15,22 50:8  
52:2 53:16 57:9,12  
**Joints** 13:17  
**Jones'** 132:2  
**JPP** 2:5 3:20 4:8,11,11  
4:12,18,22 5:5,7,17  
7:6 59:21 111:1 237:3  
238:14,20 239:10  
240:3,11,22 241:10  
241:11 242:14 243:8  
244:1,3,17 245:5,9,12  
246:15 254:7 272:13  
273:5  
**JPP's** 4:8 237:22 242:5  
**Jr** 1:18,18 3:10  
**JSC** 10:20 11:7,18 12:3  
12:5 13:14 15:16,17  
16:2,16,18 17:5,11,22  
18:6 19:15 20:2 38:5  
38:20 161:22 162:1  
250:6 272:8 273:2  
**JSC's** 16:20

**jsc.defense.gov** 17:1  
19:17  
**judge's** 206:2  
**judges** 24:21 33:5  
54:11,14 56:22 57:11  
57:15,16 66:20 67:6  
79:20 93:4 95:4 103:8  
113:15 182:4,6,10  
185:11 186:6 187:9  
187:18,19 188:15  
191:1 192:5 194:12  
199:17 201:2 202:5  
204:4 261:12,17  
262:14 278:14,17  
279:20 280:3,16  
281:1,2 282:18 285:9  
286:18  
**judges'** 168:2 249:2  
287:3

**judging** 182:13

**judgment** 75:5 78:6

**judgments** 39:9

**judicial** 1:3 4:5 5:13,17

6:1,21 15:1 172:3

180:10 181:15 237:6

**judiciaries** 17:18

**Julie** 2:12

**July** 253:11

**jumps** 138:18

**June** 20:8 237:7 238:12

250:20 253:10

**jurisdiction** 25:19

105:4 107:7 108:6

113:3,4 115:8 151:2

155:17,18

**jurisdictional** 113:22

**jurisdictions** 199:12

**jury** 54:9 101:15

**justice** 3:7 6:3,10 7:9

8:4 10:10 11:16 12:13

14:8,10,14 17:18

19:11,22 22:14 29:8

34:1 35:19 36:9 42:19

43:2 60:14 70:4 76:3

76:4 77:20 78:3 178:6

200:2,13 205:3

237:18 240:20 241:6

241:8 247:21 248:2

248:10,12,21 249:7

249:10 267:1,10,20

268:10 269:19,20

271:6 274:14 275:10

275:11

**justification** 198:12,15

---

**K**

---

**Kastenberg** 102:4

**keep** 39:1 42:14 46:17

50:9 86:12 137:9  
208:16 209:15 231:8  
248:14 273:8

**keeping** 19:16

**kept** 52:4 99:2

**key** 20:15 29:11 101:16

241:15 253:1

**kick** 278:2

**kidding** 43:15,17

**kinds** 37:4 55:14 108:7

134:6 263:1 279:4

280:2 285:11

**kneejerk** 70:7

**knew** 211:22 219:19

**knowing** 85:10,13 87:3

**knowledgeable** 257:21

**known** 145:14

**knows** 66:21 227:22

**Korea** 241:4

---

**L**

---

**L** 2:11

**lack** 89:5 101:3 135:21

**lacking** 286:1

**landscape** 269:1,3

**language** 104:22 105:2

109:13 146:16 151:5

153:2,2 248:4 256:15

280:19

**lapse** 44:13

**late** 20:4

**latest** 253:11

**Laughter** 112:5 155:7

**law** 11:1,22 14:6,9

15:16 16:10,19 30:15

33:4 34:7 36:2 47:18

48:9 60:10 74:12 91:6

103:4,13,22 115:10

115:11 122:5 127:13

189:10 191:12 243:10

270:8,8 271:4,19

**lawful** 99:16 100:3

**lawyer** 9:17 112:22

127:12,13 173:2

175:21 225:17 230:20

**lawyers** 198:6

**lawyers'** 130:1

**lead** 9:7 193:6 194:4

236:22

**leads** 283:3

**leaned** 50:18

**leap** 42:22

**leave** 73:18 76:8 78:11

94:11 120:7 233:18

234:4 235:1 246:20

**leaves** 12:14 214:4

**led** 237:22

**Leeling** 24:17 56:2

**left** 98:8 231:20 243:22  
280:10 282:2,11  
283:13

**legal** 13:18 17:20 40:17

53:2 55:16 56:3 60:13

61:13 87:20 120:1

274:11

**legislation** 220:20

222:3 239:9

**legislative** 2:12 42:12

42:17 48:2 240:9

**legitimate** 105:14

227:15 228:2,2

**lesser** 32:17 33:1,6,8

33:10 185:17 188:2

245:22

**let's** 65:17,22 66:2

67:21 80:19 111:3

121:12,13 136:21

137:6 149:22 154:19

154:20 170:7,10

187:10,13 191:13

203:15 282:1 283:12

**letters** 232:1

**letting** 145:13

**level** 38:13 43:7,21 46:8

57:1 61:16,21 63:3,6

67:17,18 68:19 72:19

73:14,18 74:4 79:10

89:11 90:4,9 101:20

101:22 109:16,19

121:12 127:5,7

129:13,22 132:22,22

139:13 149:21 157:9

158:2,3 167:17 168:5

168:18 172:22 173:4

176:10,12 179:3,8,17

180:8 182:5 185:17

185:17 186:3,13

187:14 188:2,3,8

198:15 199:1 202:3

206:3 209:5 249:13

260:3 285:22 286:2

286:10

**levels** 48:21 182:12

**Lewis** 2:9

**liability** 239:5

**liaison** 2:12 231:12,13

231:18

**Liberty** 1:11

**lieutenant** 1:19,20 2:9

5:2 9:9,18 12:18,19

12:22 13:1 40:12,13

60:7,10

**life** 131:13

**light** 210:21 232:10

**limit** 83:6,7,8

**limitation** 31:22

**limitations** 23:17  
 116:10 145:3 167:9  
 249:5  
**limited** 22:2 83:15  
 117:6 139:12 200:3  
**limiting** 165:2  
**limits** 22:6  
**line** 128:22 129:20  
 130:15 250:17 251:1  
**lines** 262:22  
**linked** 104:18  
**list** 33:1 278:7  
**listed** 244:5,14 246:13  
 247:15 250:3,14  
**listen** 266:21  
**lists** 32:16  
**litany** 225:2  
**literally** 243:6  
**litigate** 81:16 92:19  
 106:17 114:10  
**litigated** 96:7 117:7,9  
 117:11 125:14 127:7  
 137:8 168:9  
**litigation** 89:6  
**little** 49:8 53:15 87:7  
 114:16 115:4 117:19  
 132:5 160:16 162:21  
 211:7 212:13 222:3  
 253:7 257:18,19  
 258:12 269:18  
**lives** 66:18  
**locale** 170:8  
**location** 170:10  
**lodged** 134:22  
**log** 37:15,16 39:1,1,4  
 39:18,19,22 44:9,10  
 44:11 45:8,11,12,13  
 45:18,18,20 46:9,14  
 46:16 47:4,8,10,11,13  
 50:21 51:19 52:17  
 53:12  
**log-jammed** 50:2  
**logic** 129:11  
**logs** 38:20  
**long** 35:14 66:15 116:1  
 120:7 243:19 267:5  
 282:13 284:8  
**long-term** 221:22 222:7  
**longer** 27:14 32:16  
 34:12 45:21 103:4  
 189:20  
**look** 9:13 10:18 17:4  
 38:11,19 56:6,10  
 57:10,20,22 58:4  
 63:14 85:12 90:6 91:5  
 103:9 115:22 118:16  
 120:6 122:18 129:15  
 150:11 159:5 169:14

174:16,20 190:14  
 198:8 201:5 202:1,22  
 203:17 204:5,10,15  
 206:3,14,18 216:19  
 222:20 243:21 246:12  
 258:15 260:5,12  
 262:13 263:19,21  
 268:13,20 269:4  
 272:16,18 273:18  
 275:16,16,20 281:9  
 282:3 285:12,13  
**looked** 162:1 168:16  
 169:18 198:22 203:3  
 203:4,8,10,13 205:2  
 250:10 262:20 273:17  
 276:10  
**looking** 45:2 49:18  
 52:22 53:6 56:18  
 84:17 97:16 107:9  
 116:7 131:4 138:19  
 142:14 185:19 193:13  
 201:22 208:19 256:10  
 260:14 269:8,21  
 270:20 272:9 280:16  
 282:12 286:10,22  
**looks** 183:6 205:19  
 206:13 260:14  
**lose** 69:11 72:19 74:11  
 76:22 90:21 95:20  
 119:2 122:4 135:19  
 135:21 149:21 190:4  
 197:5  
**loses** 64:22 65:2 90:17  
 197:5  
**lost** 72:22 83:4 84:10  
 84:10 88:4,15 91:7  
**lot** 29:7,8 40:18 43:5,5  
 43:8 49:18 54:18  
 72:12 76:15 81:19  
 116:2,3 118:6 127:2  
 139:2 210:3 245:6  
 257:19 260:6 282:15  
**lots** 53:21 67:15  
**love** 218:9,10 220:1  
**low** 207:14,15  
**lower** 115:14 184:16  
**lowly** 29:2  
**LRM** 103:4,10  
**LRM-Kastenberg** 102:4  
**LT** 97:2,6 125:9,12  
 139:3 141:4,8 142:1,8  
 142:18 143:1,5,8,11  
 146:5 161:20 162:6  
 167:4 168:4 169:5,8  
 169:13,16 170:4  
 175:22 176:19 177:2  
 177:5,9,16 193:1,20  
 198:14,18 206:16

207:9,11 208:15  
 209:11 218:11 228:11  
 229:4 231:10 232:6  
 234:7  
**lucky** 12:10,20 102:18  
 258:8  
**lunch** 3:15 154:3 156:7  
 156:8,9,11

## M

**ma'am** 9:7 10:22 29:15  
 34:13 36:12 44:16  
 45:10 46:2 47:6 56:16  
 58:21 59:11 93:14  
 104:6 125:9 157:5,14  
 158:7,14,19 159:12  
 161:20 162:6 169:5  
 169:13 170:5 175:22  
 176:20 177:5,9  
 181:20 182:16 193:2  
 193:20 196:3 207:9  
 209:11 218:12 220:12  
 220:17 221:7 231:10  
 242:20 243:1 244:9  
 246:12 251:2,21  
 252:4,10,22 256:12  
 263:8,18,22 264:3  
 268:14,22 271:21  
 274:16 284:9 285:21  
**machine** 119:20  
**machinery** 88:12  
 128:13  
**Madam** 5:8 7:11 19:3  
 20:2 22:10 31:5 35:16  
 41:20 52:19 131:12  
 144:20 154:1  
**mail** 10:9  
**main** 89:8  
**maintain** 85:19 182:17  
**MAJ** 17:1 37:18 39:20  
 40:13 46:2 47:6 48:3  
**Major** 7:14,16 37:19  
 45:22 48:1 50:19 58:3  
**majority** 12:15 67:6  
 78:22  
**majors** 12:20  
**making** 25:22 84:2  
 122:12 124:16 127:11  
 157:3 185:19 190:13  
 194:17 198:1 204:9  
 208:17 230:8 233:10  
 260:18 264:19 267:22  
 279:22 283:1  
**mandamus** 28:6 70:14  
 71:4,5,8,19 79:19  
 80:17 83:13 84:8 90:5  
 92:11 95:6 102:21  
 103:19,22 104:4

105:1,9 106:3,11  
 107:15 110:10 115:9  
 117:17,22 134:20  
 135:3 155:2 170:3  
**mandamuses** 102:14  
**mandate** 5:22 262:19  
**mandated** 4:9 226:9  
**mandatory** 249:19  
 250:1,2 268:7 269:10  
**manual** 3:8 6:8 8:3 9:21  
 10:13 11:4,11,20 12:4  
 14:16,17 15:4,6,17,22  
 16:4,8 17:12 18:5  
 19:5,8,12,20 20:4,19  
 30:11,13 32:16 35:22  
 42:22 48:4 54:2 55:1  
 55:4,13  
**Maria** 2:18 4:7  
**Marine** 1:18,20 7:8,17  
 8:22 9:16 12:7,22  
 13:10 55:19 60:11  
 217:4 218:9  
**mark** 273:7,7  
**martial** 3:9 11:21 19:6  
 21:4 22:5,16  
**Martinez** 104:8,14,20  
 106:18 107:8 108:4  
**Mary** 1:19 60:8  
**Maryland** 126:12 152:8  
 241:4  
**material** 18:20 77:7  
 122:6 166:12 193:14  
 230:7 237:12  
**materials** 4:14 15:6,15  
 17:13 18:8,11 19:14  
 30:14 47:17 48:8  
 76:12 153:21 157:18  
 158:5,6,13,21 165:20  
 167:5,10 168:11,14  
 168:15,19 169:4,7,9  
 169:19,21 172:7,8,22  
 181:8 193:3,11  
 195:16 209:6 235:6  
 242:22  
**matter** 9:2 58:13 64:3,8  
 68:17 92:22 104:9  
 105:20 111:13 113:5  
 137:1 146:3 156:13  
 161:17 178:22 201:5  
 203:19 221:2,5 236:8  
 241:21 245:2,6,12,14  
 245:16 246:19 248:20  
 250:7 287:21  
**matters** 8:4 21:17 24:7  
 72:15 82:17  
**maximize** 238:7  
**McCleary** 1:21 60:14  
 104:6 106:15 108:11

166:14  
**MCM** 17:13 36:5  
**me-too** 133:16 143:14  
 143:18  
**means** 28:5 33:7 39:4  
 47:9,11 87:4 89:12  
 92:18 101:14 117:16  
 185:2 224:16 274:19  
**meant** 16:21 101:4  
 173:16 213:18 257:8  
**measures** 238:5  
**mechanism** 64:13  
 78:20 230:18  
**medical** 154:22 155:1  
 205:1 240:13  
**meet** 8:2 24:14 264:17  
 282:10  
**meeting** 1:5 3:4 4:6  
 5:12,15 6:21 7:2  
 51:11 232:11 241:20  
 244:19 278:8,16  
 284:2,11 287:17  
**meetings** 4:15 6:18  
 40:21 52:5 57:2 237:8  
 257:20 281:22 287:11  
**Meg** 76:11  
**Meghan** 284:11  
**member** 27:8 29:2  
 111:1 143:6  
**members** 4:4,16 5:6,14  
 7:12 12:5,13,17 17:7  
 33:9 54:9 59:22  
 139:16 140:22 161:21  
 193:5 212:8 235:20  
 236:14 241:2,10,13  
 242:13,14,17  
**Members'** 4:21  
**membership** 14:2  
 242:8  
**memo** 250:6 272:8  
**memory** 93:2  
**mental** 240:13 250:8  
 274:6  
**mention** 231:16 285:17  
 286:18  
**mentioned** 35:1 40:9  
 50:18 56:1 74:9 108:5  
 131:17 186:4 286:3  
**menu** 209:18  
**merits** 145:14 215:7  
**message** 111:8  
**messed** 224:20  
**met** 1:10 24:19 130:11  
 227:3 241:13  
**method** 16:12  
**methods** 15:19  
**metrics** 239:13  
**middle** 47:5 112:18

267:8  
**mil** 223:6  
**mind** 59:12 60:2 67:14  
 126:2 208:16 227:6  
 274:1  
**minimizing** 287:7  
**minimum** 268:7 269:11  
**ministerial** 191:11  
**minute** 37:17 58:11  
 61:6 136:17,20  
 215:20 243:17  
**minutes** 18:19 62:14  
**miscarriage** 178:5  
**mischaracterized**  
 205:21  
**mischaracterizing**  
 206:1  
**misconduct** 33:18  
**misinterpreted** 105:10  
 105:11,11  
**misleading** 141:6 212:4  
 213:11  
**misread** 6:12  
**missed** 176:9  
**misses** 273:6  
**missing** 45:15  
**mistake** 103:7 157:4  
 184:17  
**mistakes** 279:22  
**model** 89:20  
**modeled** 24:11  
**modification** 228:18  
**modifications** 33:21  
**modified** 27:6 151:12  
**modify** 133:8 159:15  
 180:2 209:19 213:6  
 214:16 215:11 216:5  
 219:9  
**modifying** 130:12  
**moment** 24:14 28:22  
 34:14 50:19 104:6  
 106:12 112:4  
**money** 258:10  
**monitor** 278:12  
**monitoring** 245:7,19  
 252:12 258:1  
**Montgomery** 174:4  
**month** 34:16  
**months** 13:12 51:17  
 258:7,8  
**morning** 4:3 5:10 7:11  
 9:11 10:9,19 23:21  
 42:19 260:7  
**motion** 80:19 141:12  
 146:14 160:19 163:2  
 167:18 176:3,16  
 180:21 181:9,10  
 183:7 186:15 187:3

188:14 193:22 194:6  
 195:17,19 206:17  
 214:22 218:3 257:11  
 258:21  
**motions** 31:11 194:3,4  
 194:13 260:8,14,18  
 261:11  
**mouth** 224:19  
**move** 39:4 42:3 45:20  
 46:9,15 47:3,10,12  
 66:17 110:6 210:7  
 226:13  
**moved** 45:18 76:8  
**movement** 39:6 272:12  
**moves** 47:10  
**moving** 45:11 46:14  
 50:9  
**MRE** 24:7,11 107:22  
 244:5 247:2,12 250:4  
 250:21 252:3 253:3  
 253:13 254:4 258:15  
 272:1,3,6,17  
**MREs** 14:22  
**multiple** 79:11 161:8  
 163:15 181:22 189:16  
 189:17  
**multiplication** 31:13,19  
 31:21 32:2,14 43:16  
**multiplicitous** 32:12  
**multiplicity** 31:14,19  
 32:7 43:17  
**murder** 198:8,12

---

**N**

---

**N** 4:1 7:7  
**Nalini** 2:14  
**name** 7:12 40:16  
**name's** 4:7  
**naming** 30:13  
**narrow** 51:3 120:12  
 179:4  
**narrowing** 133:20  
**national** 5:18,20 19:9  
 20:10 21:20 24:8,10  
 25:7 26:1,3 28:11  
 30:10,19 33:19 34:15  
 37:8 41:19 43:3  
 170:13,18 171:3,12  
 220:21  
**nature** 34:5 171:15  
 213:19 278:22 279:9  
**Naval** 10:10 17:18  
**Navy** 1:19 2:7 12:7,21  
 13:13 55:19 60:6  
 210:3 217:3 218:9  
**Navy-Marine** 60:6  
 180:20 195:11 196:5  
**NDAA** 38:12,14,17

51:13,13 221:19  
 238:2,19 239:9 240:1  
 242:4,7 243:6 244:11  
 245:22 247:18 248:3  
 248:13 264:11 265:10  
 266:6 268:8 284:14  
**NDAs** 49:21 284:13  
**neat** 9:6 34:19  
**necessarily** 51:9 93:22  
 114:13 145:6 194:11  
 194:13 202:10,17,22  
 209:17 229:14,16  
 277:17  
**necessary** 12:5 23:8  
 27:16 48:14 128:14  
 129:18,19,21 130:7  
 157:18 186:11 188:1  
 285:10  
**necessity** 207:14  
**need** 8:19 53:4,9 61:6  
 64:1 66:21 80:4 87:9  
 129:12 132:9,11,12  
 153:14 155:10 160:19  
 172:16 184:12,14  
 194:5 199:4 200:11  
 201:2 202:1,5 203:6  
 204:19 211:22 230:20  
 271:22 273:20  
**needed** 57:7 140:20  
**needing** 47:19  
**needs** 175:4 183:17  
 190:8 244:3 254:8  
 261:18  
**negative** 267:2  
**negotiations** 249:1  
**neither** 283:1  
**neutral** 267:2  
**never** 57:20 68:13 91:8  
 91:14 103:5 121:20  
 122:9,15 169:9  
 175:12 178:10 205:20  
 217:10 260:8 271:15  
 274:17  
**new** 27:16 34:8 43:17  
 72:20 77:12 87:21  
 88:12,15 90:21 101:4  
 119:20 122:5,7 127:3  
 127:3 129:17 132:9  
 132:14 173:17 175:9  
 175:10 237:3 239:4  
 242:6 248:22 264:17  
 267:12,13,19 268:20  
 270:19 271:4,19  
 286:12  
**newer** 184:10,11  
**newly** 32:18  
**nice** 17:3  
**nicely** 10:12

**nine** 121:15  
**noes** 183:6  
**non-** 14:22 32:22  
     112:21  
**non-binding** 33:1 48:12  
**non-capital** 23:10  
**normally** 173:5 176:6  
**North** 1:11 241:3  
**nos** 153:8  
**note** 26:14 37:19 96:11  
     97:2,7 244:13 248:7  
**notes** 8:6  
**notice** 20:21 21:7 28:1  
     92:2 95:18 220:15,19  
     221:1,11 224:17  
     234:3,15 235:9 243:8  
     243:13  
**noticed** 37:6  
**notices** 19:13  
**notification** 230:22  
     234:1 235:3  
**notified** 232:19 235:4  
**notify** 227:13  
**notion** 128:2  
**November** 1:7 9:13  
     30:4 32:21  
**nub** 159:2 163:5  
**number** 15:19 39:18  
     44:20 45:2 57:7 83:6  
     83:12 86:10 110:12  
     110:13 111:12,17  
     124:17 130:2 154:8  
     186:6 187:19 220:13  
     225:18,19,21 234:22  
     238:19 244:14,14,15  
     245:4,5,7 250:15  
     252:11,18 254:11  
     268:6 278:10,11,13  
     280:12,12 285:8  
**numbers** 257:10  
**numerous** 16:8 23:16

---

**O**


---

**O** 4:1  
**O-3s** 12:19  
**O-4s** 12:20  
**O-6** 245:20  
**Obama** 10:15  
**objected** 96:9  
**objection** 70:17 96:11  
     218:6,14  
**objections** 219:2 220:3  
     263:10  
**objects** 253:22  
**obligated** 123:17  
     260:16  
**observations** 241:14  
**obtain** 70:4,5 185:14

    239:7  
**obviate** 202:4  
**obviously** 38:16 41:18  
     133:2 145:11 177:20  
     181:6 211:20 226:4  
     266:8  
**occupy** 108:3  
**occur** 65:13 79:3  
     119:19 121:19 222:2  
**occurs** 159:7  
**October** 11:17 35:4  
     38:2 241:14  
**odd** 54:1  
**offense** 23:6 27:19,21  
     30:22 32:10 33:8,22  
     34:12,22 66:17 99:18  
     99:19 100:4,7 163:20  
     189:15,20 274:6  
     277:15,16  
**offenses** 6:4 25:15 27:3  
     32:2,17 33:2,6,10  
     34:9 35:2 239:12  
**offensive** 101:21  
**offer** 240:4  
**office** 8:9,20 11:8 13:16  
     13:18 16:17 18:3,8  
     40:11,17 56:9 60:9  
     229:19  
**officer** 10:4 60:12 81:22  
     247:17 250:2  
**officers** 9:1 25:16,20  
     248:6 278:15,20  
**Official** 2:18 4:8  
**oftentimes** 30:8  
**OGC** 40:11  
**OGC's** 56:9  
**Okinawa** 24:18  
**old** 85:11  
**once** 18:10 19:17 25:6  
     45:13 46:3 92:17  
     118:22 139:8 148:19  
     148:20 151:13 152:13  
     153:4 167:10 193:7  
     204:4 222:18 229:22  
     233:3,14 235:5  
     273:15  
**ones** 46:7 63:18 120:12  
     225:9 251:17  
**open** 46:17 166:22  
     173:10 198:5,6 234:4  
**opening** 48:4  
**opens** 3:4 167:1,3  
**operate** 10:22  
**operates** 42:5  
**operating** 203:22 204:1  
     204:3  
**operation** 249:4  
**operations** 170:12

**opinion** 81:1 90:9 92:17  
     109:3  
**opportunity** 25:18 26:9  
     92:5 141:12 178:5  
     179:9 194:22 205:6  
     235:3 238:8  
**opposed** 114:20 153:8  
     156:5 181:11 183:1,4  
     215:6 216:10,11  
     217:4,8 245:21  
     286:22 287:15,15  
**opposing** 135:2  
**opposition** 61:3 217:9  
     217:13  
**opted** 209:17  
**option** 92:1 98:1,8  
     157:15 158:8 159:10  
     159:13 160:8 171:1  
     180:2,17,18 209:15  
     209:18 212:11,18  
     213:6 214:15 220:19  
     221:4,8,17 222:21  
     224:9,11,11,18  
     229:20 234:11  
**options** 97:19 98:4  
     157:10 180:13,19  
     183:10 188:14 209:18  
     222:13 238:9  
**order** 10:15 11:9 15:14  
     18:2,5,15 20:8,11,13  
     20:16,19 23:20 25:1,4  
     29:17 30:2,4 34:5  
     35:4 37:11,20 39:6  
     62:17 70:4 99:16,16  
     100:3 108:16 159:19  
     166:6 184:2 195:10  
     196:16 200:1 207:4  
     208:2 238:13 247:4  
**ordered** 22:7,11  
**orders** 15:5 19:7,11,19  
     20:6 35:10,13 47:16  
     55:19 207:12  
**ordinarily** 116:8  
**ordinary** 71:7,8 74:14  
     79:20 95:7 98:14,17  
     103:19  
**Oregon** 126:13  
**organization** 60:13  
**organizations** 17:21  
**orgies** 65:21  
**original** 100:9 274:13  
**originally** 38:1 151:13  
**Orr** 1:18 60:3 93:17,20  
     94:10,13,16,20 95:2  
     97:13 98:17 102:3,11  
     102:20 103:1,21  
     104:3 109:11,18,22  
     137:14,20 138:3,5

    145:5,19 155:21  
     156:1 161:2,18  
     163:12 164:8,17  
     166:16,19 170:21  
     172:11,14 176:1  
     188:12,13,20 189:10  
     190:5,10,17,21 191:2  
     191:9,14,21 192:7  
     213:12,16 214:1,3  
     218:18 220:2 232:9  
**ought** 110:21 164:20  
     279:9 280:2  
**outcome** 131:4  
**Outline** 220:15  
**outlined** 61:2  
**outlines** 243:6  
**outset** 87:14 181:16  
**outside** 42:18  
**outstanding** 283:14  
**overall** 142:4,9,12  
     209:3  
**overburdened** 79:21  
**overcome** 136:13  
     246:18 247:8 251:4  
**overlap** 120:12  
**overreaching** 32:6  
**overseas** 170:10  
**oversight** 60:18  
**overstated** 140:14  
**overtaken** 46:22  
**overview** 10:20 11:5  
     14:4 278:10 281:8  
**overwhelming** 111:17  
**overwhelmingly** 262:14

---

**P**


---

**P** 4:1  
**p.m** 156:14,15 236:9,10  
     287:22  
**PACER** 221:18 222:19  
     223:3 226:6  
**package** 202:1  
**page** 59:4 114:6 138:19  
     154:8,8 212:11  
**pages** 35:14 83:6,11,12  
     138:14 237:12  
**paid** 276:11  
**pains** 55:17  
**Palomino** 5:3  
**Pandering** 35:7  
**panel** 1:3,10 4:3,16 5:6  
     5:13,14,17 6:10,16,22  
     7:12 16:15 18:21  
     26:16,22 28:19,21  
     29:2,3,4 31:15 35:16  
     36:1 49:20 52:16  
     53:18 55:21 59:17  
     69:1 71:22 139:16

- 140:1,22 143:7  
180:22 181:1 192:7  
193:4,5 194:3,3 207:8  
212:8 214:12,12  
235:20,21 236:15  
237:2,6 242:18 243:2  
246:17,21 247:9  
249:17 251:3,5,8  
252:15 254:8,13  
269:22 275:3 276:3  
284:3  
**Panel's** 4:6  
**panels** 16:14 285:8  
286:3  
**paper** 223:11  
**paradigm** 129:13  
**paragraph** 33:4 35:15  
**paralegal** 233:6  
**parallel** 179:19  
**parameters** 249:12  
**paraphrasing** 256:16  
**parenthetical** 222:1  
**parsed** 76:21  
**part** 17:12 23:14 30:11  
32:15 39:8 78:15 92:8  
111:1 119:5 121:9  
131:17 132:3 136:1,6  
140:11 147:17,21  
157:8 163:5 169:12  
171:11 172:3 176:9  
230:19 231:8 236:15  
247:12 252:21 258:15  
258:17 259:11 280:12  
282:8  
**partially** 28:21  
**participant** 87:11  
**participants** 2:16 5:11  
**participate** 59:9 60:22  
61:5 63:16 64:12 75:7  
75:15 76:5 99:17  
112:12 114:18,20  
133:12 144:5 146:18  
147:1,6,19 148:7,10  
148:22 149:4,5  
151:19  
**participation** 59:5,8  
61:16 76:14 110:13  
240:20  
**particular** 34:17 49:13  
51:18 89:8 104:19  
116:12 117:1 131:10  
142:3,5,13,14,15,17  
189:3 194:14 232:1  
**particularly** 37:5 113:7  
253:12  
**parties** 70:1 77:3 80:1,3  
99:10 100:5 128:2  
134:14 168:11 178:10  
186:17,19  
**partner** 240:6  
**parts** 14:18 15:3 18:5  
19:12 37:7 249:21  
**party** 33:7 61:14,18  
73:11 80:20 83:14  
101:1 141:19 142:15  
147:10 150:14,16  
164:14 174:8 187:2  
223:5 247:19  
**pass** 9:12 270:13  
**passed** 233:15 248:14  
**passes** 147:18  
**path** 112:3 281:15  
**patience** 55:21  
**patient** 24:1  
**Patricia** 1:16 2:9 4:19  
**patriot** 10:1  
**paying** 34:21  
**pending** 220:20 239:9  
248:3 249:7 250:12  
**people** 50:7,16 55:5  
57:7 62:4 82:19 98:14  
99:12 117:13 120:6  
120:18 163:6 168:1  
171:5 218:8 223:8  
225:11,12 257:21  
269:12 275:21 276:7  
**perceive** 132:15  
**percent** 125:13 146:6  
204:11,14 227:17,18  
227:20,21 259:6,7,16  
259:16 260:18 285:14  
**percentage** 258:5  
**perception** 136:1  
**perfect** 200:2 204:18  
**period** 17:14 52:17  
53:13 68:17 104:5  
**permission** 92:8,9,11  
92:13,15,18  
**permit** 23:13 107:18  
**permitted** 8:17 59:20  
93:9 119:16,17  
153:10 160:4  
**permitting** 124:11  
**perpetrator** 239:6  
**person** 35:5 92:18  
99:21 117:1,6 161:5  
187:4,7 189:13 190:9  
227:12 228:15 229:7  
230:12,13 231:13  
239:8 270:5  
**personally** 57:19  
241:12 286:17,18  
**personnel** 43:14 205:1  
239:18 250:17  
**perspective** 182:13  
**persuaded** 125:22  
132:2  
**persuasive** 66:13  
**Peters** 284:9,11,21  
**petition** 81:4 83:13  
117:22  
**philosophical** 71:2  
**phrase** 146:14 212:5  
**phrased** 148:5 184:1  
**phrasing** 212:3  
**pick** 134:7  
**piece** 61:20 62:9 96:14  
114:16 171:18  
**Pigott** 1:18 3:10 7:7,11  
7:13 17:3 19:3 29:6  
29:15 37:13 39:14  
40:3,8,15 41:11 42:16  
44:15 45:6,9,22 47:22  
50:17 52:14 55:15  
56:16 57:14,19 58:6,8  
250:13  
**Pigott's** 272:13  
**place** 131:6 132:8  
135:19,20 177:8  
224:4 226:1 269:11  
**places** 79:11  
**plaintiffs** 150:12  
**planning** 3:20 6:17  
235:18 236:6,16,22  
242:11  
**play** 81:13 150:20  
189:21  
**plea** 233:4 248:19 249:3  
249:4 265:19,20  
267:12  
**pleading** 55:5,6,7 62:12  
63:2 64:6 66:22 67:1  
149:14,19  
**pleadings** 54:12 57:5,6  
57:12 221:11 223:4  
224:9 233:3,7,11  
234:8 235:9  
**pleas** 279:13  
**please** 29:17 46:1 60:17  
139:20 143:22 157:13  
163:11 167:13 181:19  
214:11,13 220:16  
242:19 256:6  
**pleased** 7:6 56:3  
237:21 242:12  
**plowing** 127:3  
**plus** 280:9  
**point** 18:21 29:21,21  
31:5 41:13 43:15  
45:10 47:16 62:6  
64:15 67:8 77:21  
79:13 92:4 94:18  
99:22 102:5 106:2  
114:5,19 115:5 119:9  
121:10 122:12 123:5  
124:16 134:16 141:2  
153:16,17 154:5  
166:9 167:5 177:20  
178:7,8 181:21  
193:15 198:7 199:3  
213:20 230:5,6  
232:18 233:6,11  
254:6 256:14 257:16  
260:22 266:11,16  
267:21 270:20 274:21  
277:22 280:6 283:19  
284:9,15 285:7,20,22  
287:1  
**pointed** 145:7  
**pointing** 104:21  
**points** 153:15  
**policies** 277:9  
**policy** 12:13 46:6 47:3  
60:9 130:22 141:19  
142:2,14 199:8 222:4  
229:20 241:9 245:20  
250:6 272:8 278:13  
281:6  
**pondering** 130:18  
**portion** 10:13 18:14  
41:15 43:10 50:20  
169:20 235:17  
**portions** 30:9  
**positing** 67:2 91:17  
**position** 54:17 61:15  
69:7,14 75:8 87:8  
96:2 115:10 122:20  
137:9 186:21 209:3  
219:8 239:6 255:15  
277:14  
**positioning** 77:19  
**positions** 13:10 56:5  
285:18  
**positive** 31:9 34:17  
237:22 267:2  
**possession** 81:20,21  
81:22  
**possibility** 262:11  
**possible** 44:17 66:7  
136:13 179:7 230:1  
254:4 262:8 267:8  
287:14  
**possibly** 212:4 255:5  
**post-** 72:3 144:6 148:2  
**post-conviction** 114:19  
**post-trial** 14:12 23:18  
231:21  
**posted** 4:11,13 5:16  
**postpone** 108:14  
**postponed** 150:8  
**posture** 68:17  
**potential** 39:5

**potentially** 68:6 277:6  
**practicable** 26:7 248:6  
**practical** 128:3 133:5  
 203:18  
**practically** 207:15  
**practice** 55:15,16 82:19  
 126:7,12 145:18  
 163:1 167:22 173:7  
 180:6,7 184:4,5,8,8  
 193:22 195:5,7,10  
 196:6 197:13 206:16  
 210:2,3,5 211:11,13  
 232:3,4,4 233:1  
 261:10  
**practices** 165:10 210:8  
 212:15 240:19  
**practitioners** 32:17  
 48:15 241:6  
**pre-** 8:7 41:13  
**pre-decisional** 41:14  
**pre-sentencing** 22:22  
 23:2  
**pre-trial** 95:12  
**preamble** 14:19 30:12  
 48:4  
**precisely** 70:9 101:3  
**preclude** 104:20 202:11  
 285:7  
**predator** 277:3  
**preface** 15:7  
**preference** 25:19  
**preferral** 22:12  
**prejudge** 66:14  
**prejudicial** 34:4 175:8  
**preliminary** 21:15,17  
 21:19,22 22:15,18  
 27:13 188:7 192:11  
 274:8  
**premature** 265:8,12,13  
**premise** 57:14  
**prepared** 24:13 243:5  
**prescribe** 14:11  
**prescribed** 35:2  
**presence** 31:2 35:5  
**present** 1:13 5:14 6:14  
 7:4 74:7 158:9,11  
 159:11 162:10,13  
 180:5,7 182:22 183:2  
 225:1  
**presentations** 9:8  
**presented** 255:14,16  
**presenters** 49:12  
**preserved** 22:14  
**presided** 279:12  
**president** 10:14 11:19  
 14:11,15 15:2 18:4,14  
 38:15 48:6,9,10  
 238:12

**presidential** 48:17,19  
**presiding** 1:12  
**presumably** 118:15  
**presumed** 257:7  
**presumption** 205:14  
**presumptively** 173:13  
**pretend** 251:19  
**pretrial** 14:12 21:4  
 22:19 26:6,8,10,14,18  
 27:9  
**pretty** 116:20 145:7  
 164:8 189:2 191:10  
 219:3  
**prevail** 62:22  
**prevailed** 62:21 121:13  
**prevent** 239:14 261:1  
**prevents** 32:9  
**previously** 35:2  
**Price** 13:20 40:10,18  
**primarily** 135:13  
**primary** 15:20 30:8  
**principle** 181:5,12,12  
**principles** 238:4  
**prior** 24:6 25:22 26:7,13  
 65:18 79:17 213:8  
 214:18 215:13 216:7  
 256:17  
**priorities** 6:18 38:11  
**prioritize** 37:12 39:17  
 40:2  
**prioritizing** 38:5  
**priority** 37:3 38:13,16  
 38:18 40:22 45:5 52:7  
 52:10 95:8  
**priority-wise** 281:16  
**prisoner** 21:13  
**privacy** 88:5 90:18  
 95:14 103:16 121:7  
 121:14 128:6 129:5  
 153:19 156:20 179:2  
 179:12 199:9 200:15  
 200:16,20 202:7,14  
 202:14 204:18,18,21  
 237:15  
**privilege** 7:21 24:1,3  
 74:1 77:10 96:16,17  
 197:20,21 198:5,6,7,9  
 216:14 250:16,21  
 276:15  
**privileged** 77:8 81:11  
 82:21 206:12,14  
**privileges** 74:9 216:12  
**pro** 24:15  
**probable** 22:2  
**probably** 111:17 113:11  
 118:7,8 160:9 178:1  
 204:20 213:21 224:21  
 231:10 246:7 249:17

253:10 255:14 262:9  
 262:20 266:9 269:14  
 271:12,17 284:22  
**probationer** 27:19  
**probed** 279:3  
**problem** 69:20 80:13  
 89:17 92:9 102:15  
 129:16 133:20 134:4  
 148:9 150:10 210:15  
 225:11 258:16 280:6  
**problematic** 105:21  
**problems** 51:7,8,9  
 132:15 134:6 220:16  
 256:22,22 276:5,11  
 279:18,19  
**procedural** 27:13,17  
 55:14  
**procedurally** 123:12  
**procedure** 12:1 64:9  
 81:3 117:17 187:11  
 194:9 204:1,2,3  
 217:14,14,21,22  
 219:5 228:17 229:1  
**procedures** 14:12 15:1  
 23:1,7 38:21 130:1  
 131:6 132:10 180:20  
 180:21 209:19,20  
 213:7 214:8,17  
 215:12 216:6,20,20  
 216:21 218:11,15  
 219:11,14,16,17  
 220:1,3 235:8 240:19  
**proceed** 29:14 136:18  
 236:18 242:19 255:19  
**proceeding** 174:3  
 176:9  
**proceedings** 1:3 4:6  
 5:13,17 6:2,22 27:7  
 220:15 228:19 233:20  
 233:22 237:6 240:21  
 274:9,11  
**proceeds** 242:10  
**process** 38:7 44:9  
 55:20,22 64:4 73:17  
 75:16 76:6,22 77:1  
 81:9,10 102:9,12,15  
 119:5 128:13 132:20  
 135:22 136:3,8  
 137:22 138:8 148:2  
 150:5 153:20 165:2  
 200:17 215:6 233:10  
 238:10 248:20 265:19  
 265:20 267:14 269:17  
 278:1 285:1  
**processed** 284:17,19  
**production** 30:17  
**Prof** 1:16  
**professor** 4:20 130:22

**professors** 16:10  
**proffer** 196:8 197:19  
 198:1,3 199:13  
 201:18 203:11  
**proffers** 206:15  
**program** 114:16 237:16  
 238:6  
**programs** 17:19 278:11  
**progress** 242:12  
**prohibit** 25:9  
**prohibition** 32:5  
**project** 258:14  
**promise** 20:2  
**promised** 58:5  
**promoted** 281:7  
**promoting** 36:8  
**promulgated** 14:16  
 15:4 32:18 48:5,8,10  
**proper** 157:19 159:16  
 162:9 188:1 235:2  
**properly** 106:3,5,6  
**proponent** 47:14  
**proposal** 37:15 38:20  
 39:1,2,19 45:11,18,19  
 46:3,11,12 47:8 75:1  
 75:6 111:8 214:16  
 221:1 235:8  
**proposals** 16:2,7,19  
 17:6 39:21 40:22  
 41:17 42:3,17 52:5  
 234:13  
**proposed** 6:7 16:8 17:9  
 17:11,16 18:1,2,4,6  
 162:3 240:1 266:22  
**proposing** 12:4 35:21  
 248:22  
**prosecute** 27:2  
**prosecuted** 84:14  
**prosecution** 63:20 74:6  
 84:17 242:1  
**prosecutor's** 32:1  
**prosecutor** 85:15,18  
 86:3 87:5,7 111:16,18  
 120:6 121:22 129:4,5  
 129:10 175:13 186:19  
 230:20  
**prosecutorial** 5:1 32:6  
**prosecutors** 86:10  
 223:8 279:15  
**Prostitution** 35:8  
**protect** 5:2 104:18  
 121:7  
**protected** 21:13 136:10  
 136:12 178:9  
**protecting** 126:3  
**protection** 131:8  
 132:12  
**proud** 19:6 36:13 43:20

44:5  
**prove** 217:15  
**provide** 10:19 17:2 26:8  
 27:16 78:20 107:22  
 111:8 126:10 127:4  
 209:19 212:12 235:9  
 284:10  
**provided** 4:11 5:6 25:17  
 26:12 33:14 176:5  
**provides** 23:7 32:22  
 34:11 78:18 131:8  
**providing** 22:8  
**proving** 219:18  
**provision** 27:9,18 31:7  
 38:17 221:19  
**provisions** 20:15 21:5  
**psychological** 81:19  
 90:18 174:5,10  
 203:12  
**psychotherapist's**  
 107:21  
**psychotherapist-** 23:22  
**public** 4:6,14 6:21 7:1,2  
 16:3,21 17:15 34:13  
 34:21 36:2 38:2 84:4  
 130:22 131:5 236:2,4  
 236:5 237:8 241:19  
 244:18 254:8,14  
**publicly** 4:10 5:7 14:1  
**publish** 17:11  
**published** 15:11 18:11  
 32:20 237:12 250:20  
**publishes** 273:2  
**pull** 44:17,19 205:17  
**punished** 32:10  
**punishment** 15:1  
**punitive** 14:22 20:1  
 249:20  
**purpose** 11:22 22:3  
 130:12 136:3 138:15  
 138:16 241:4  
**pursuant** 35:4  
**pursue** 104:17 131:19  
**purview** 140:22  
**push** 17:16 52:3  
**pushed** 285:17  
**pushing** 36:11  
**put** 10:9,11 16:21 38:1  
 38:19 39:10 42:21  
 52:9 68:15 73:8 95:13  
 96:2,5 106:12 111:4  
 123:3 131:14 162:8  
 191:13 206:22 215:6  
 224:4,19 227:11  
 251:7 281:10 282:7  
**puts** 16:3  
**putting** 30:7 52:4 78:5  
 130:3 257:4,6

## Q

**qualified** 120:3  
**qualify** 120:2  
**qualifying** 277:16  
**quantitative** 261:6  
**quantum** 42:22  
**question** 37:14 41:2,4  
 42:8 44:16 50:18,21  
 51:6 53:15 56:12  
 57:22 59:6,7 64:9  
 67:14 68:1 73:20 76:1  
 77:2,16,16 78:8 90:5  
 92:9 106:6,10 108:9  
 108:15 110:9 114:9  
 114:17 115:1,3 119:3  
 123:6 127:12 137:5  
 145:10 148:5 149:21  
 150:7,10 155:14  
 160:13 162:8,17  
 164:19 180:5 187:13  
 194:15 195:2 200:8  
 200:21 204:20 205:2  
 211:2,5 212:4 222:7  
 225:17 230:5,11  
 256:4 259:12 262:2  
 263:12,16 268:8  
 273:16 275:13 278:8  
 279:3 283:9 287:6  
**questioned** 50:21  
**questions** 6:15 8:13  
 18:21 30:1 36:17 44:8  
 56:21 58:2 59:2 64:11  
 64:15,17 74:1 90:3  
 130:9 138:20 224:7,8  
 245:13 263:1  
**quick** 56:11 81:5  
**quicker** 52:3  
**quite** 41:17 44:2 59:2  
 84:1 112:2  
**Quituga** 40:14,15  
**quote** 31:17 238:14  
**quotes** 238:15

## R

**R** 4:1  
**raise** 67:9,18,21 75:18  
 96:12 106:11 115:3  
 147:3 148:12,17  
 189:5  
**raised** 49:19 51:6 62:19  
 62:21 63:1 67:10  
 75:20 89:1 94:18  
 106:10 108:9 111:16  
 111:18 112:17 116:14  
 117:15,15 123:5  
 125:7 137:7 138:17  
 138:20 139:1,13  
 147:9,13 148:11,16

152:21 198:9 247:22  
**raises** 116:15,21  
 144:14 176:3 206:17  
**raising** 75:16 86:8  
 117:4  
**ramifications** 142:13  
**Randolph** 1:11  
**rank** 239:6 245:22  
**ranks** 12:18  
**rape** 33:15,17 249:22  
**rating** 25:10  
**RCM** 21:16 22:10,22  
 23:1,7,15 25:5,8,13  
 26:5 27:4,6,12,12,15  
 28:3 30:16 33:11  
 159:19 160:22 161:1  
 162:5 164:21 180:2  
 213:6 214:16 215:11  
 216:5  
**reached** 157:9  
**reaches** 116:2  
**reaction** 70:8 80:2  
 140:6,8  
**reactions** 132:17 245:1  
**read** 35:11 57:5,6,11  
 61:6 62:5 93:5,21  
 94:15 95:4 100:16,21  
 101:5 102:2 113:15  
 114:5 123:20 124:8  
 138:1,14 139:10  
 148:20 153:3 173:8  
 188:19 192:16 193:7  
 194:18 216:3 222:20  
 257:3 274:1 278:6  
**read-ahead** 242:22  
**reading** 20:14 62:11  
 97:14 113:16 138:15  
 175:14 193:12,16,18  
 227:7  
**reads** 193:6  
**ready** 136:15 146:9,11  
 146:12 156:4,17  
 179:15 182:19 245:3  
 252:8 285:4  
**real** 61:18 159:2 164:19  
 200:11  
**realize** 202:8  
**reason** 46:13 75:21  
 78:15 87:11 90:10  
 94:5 97:16 104:16  
 118:5 164:15 189:19  
 198:5,21 223:13  
 259:11  
**reasonable** 21:7 27:22  
 189:1,5  
**reasonableness** 32:5  
**reasonably** 20:22 21:6  
 21:12 23:4,9 157:18

221:12 224:10  
**reasons** 75:13 81:18  
 170:14  
**recall** 93:1 280:14  
**receive** 6:22 15:17  
 164:15 220:19 221:1  
 221:11  
**received** 7:1 16:9 17:6  
 27:20 39:20 61:2,3  
 120:18 237:8,9,11  
 245:11  
**receives** 13:2 16:18  
**receiving** 12:15 16:13  
 58:4 223:7  
**reception** 247:5  
**recognize** 113:18  
**recognizing** 73:17  
 101:19  
**recommence** 156:17  
**recommend** 20:13  
 115:6 131:19 133:10  
 162:13 165:7 180:6  
 181:7,13 217:15  
 244:3 245:15 246:6  
 250:6 251:6 253:15  
**recommendation** 52:15  
 110:5 219:8 233:18  
 234:15 238:14 247:7  
 249:9 250:9 263:16  
 265:22 272:13 273:5  
 282:16 286:20  
**recommendations**  
 16:10,13 26:17 36:2  
 50:6 237:13 238:2,3  
 238:20,21 239:10,12  
 240:2,4,11  
**recommended** 17:7  
 162:2 223:9 263:19  
 266:1  
**recommending** 248:5  
**recommends** 15:16  
 241:16  
**record** 8:19 58:14 59:15  
 82:15,18,21 83:20  
 127:8,10,11 137:2,11  
 137:19 138:2,11  
 153:21 156:14,21  
 157:8 158:4 166:21  
 167:17 168:1 169:12  
 172:3 186:7,9 187:6  
 188:6,19 189:22  
 191:7,7 192:10,17  
 193:4,7,7,15,16,19  
 194:18 195:4,12  
 198:21 199:4 202:19  
 208:19 209:4 228:13  
 229:2 236:9 284:12  
 287:22

- recourse** 130:13,15  
**recused** 175:5 203:2  
**refer** 14:21 27:12 49:2,3  
**reference** 10:7 32:18  
 105:2  
**referred** 11:6 131:12  
 245:8  
**referring** 40:7  
**reflect** 21:21 33:21  
 136:16  
**reflects** 22:5 212:6,14  
**regard** 56:15 73:21  
 111:22 115:11 126:8  
 137:18 142:21 153:13  
 171:20 202:15 204:21  
 272:17 287:4  
**regarding** 21:5,16  
 196:18 239:10 274:5  
**regardless** 221:2  
**register** 15:12 16:5  
 17:14 18:12 19:13  
 32:20 38:3 273:2,10  
 273:12 277:4  
**registration** 277:17  
**registries** 277:12  
**registry** 277:11,20  
**regularized** 83:2 224:4  
**regularizes** 83:20  
**regularly** 126:15  
**reiterate** 53:12  
**rejected** 183:7 184:3  
**relate** 189:15  
**related** 6:4 25:18 27:3  
 57:3 191:7 237:14  
 240:17  
**relating** 8:11 23:5  
**relationship** 177:22  
 178:2 229:14 230:1  
**relatively** 106:17  
**release** 8:10 174:15,19  
 174:21 175:20 188:22  
 208:6,10 209:6  
 239:20 240:12 250:8  
 272:10 273:15,20  
**releasing** 189:14  
**relegate** 113:6  
**relevance** 166:3 196:18  
 206:22 273:16  
**relevant** 18:5 68:21  
 94:18 96:15 100:18  
 113:21 165:12 166:11  
 168:17 175:5 185:13  
 186:10,11,22 187:22  
 188:6 192:12,14,22  
 193:18 197:4 202:9  
 217:11 228:6 259:9  
**Relief** 31:11  
**relitigated** 122:7
- rely** 13:19 39:16 40:4  
 254:6  
**remain** 246:16  
**remainder** 6:19 18:20  
 243:3  
**remaining** 244:6  
**remains** 219:9 244:10  
 245:18  
**remand** 69:11,15 91:14  
 178:15  
**Remarks** 3:5  
**remedy** 72:8 88:16  
**remember** 164:5  
 225:13,19 231:11  
 256:7,13 287:2  
**reminded** 9:7  
**remove** 239:2  
**repeat** 195:1  
**rephrase** 211:1  
**replace** 249:10  
**replaced** 270:9,11  
**report** 42:21 237:19,21  
 238:3 239:11 240:3,7  
 245:3,7,17 246:7,10  
 252:9,14,16,20,21  
 253:9 254:9 255:10  
 255:17 257:18 263:15  
 267:9 268:12 270:14  
 271:14,16  
**reporting** 285:8  
**reports** 4:12 237:13  
 239:17 253:17,18,20  
 255:4,5,7 257:4 271:5  
 280:9 281:19 282:13  
 287:11  
**represent** 199:4 229:16  
 232:18  
**representation** 225:21  
 229:12,13 233:15  
**representative** 21:8  
**representatives** 6:12  
 6:13 7:3 8:1 55:11  
 242:15  
**represented** 25:12  
 42:20 226:18 228:5  
 233:2  
**representing** 141:18,19  
 142:3,4 189:13  
 195:14 225:16 226:16  
 227:22  
**reproduce** 167:5  
**request** 8:16 30:21 33:8  
 93:9 107:2 180:22  
 181:4 211:3 261:2  
 264:19  
**requested** 31:4 169:4  
**requesting** 185:20  
 247:19
- requests** 7:1 16:6 237:9  
 244:17 245:10  
**require** 24:5 25:14 26:6  
 48:17,19 138:1  
 221:19  
**required** 11:10 15:22  
 24:8,9 25:7 29:18  
 35:6 139:10 172:9,12  
 186:16 238:15 247:5  
 265:20 266:4 284:14  
**requirement** 21:22 23:3  
 26:2 28:12 268:15  
 269:21  
**requirements** 20:18  
 21:19 26:4 28:11  
 30:20 131:16 238:6  
 282:10  
**requires** 242:7 247:19  
**requiring** 187:17  
 212:18 213:8 214:18  
 215:13 216:7 239:15  
 240:12,16  
**research** 8:16 51:4  
 259:13 284:10  
**Reserve** 60:12  
**residue** 275:15  
**resolution** 108:14,15  
**resolve** 271:12  
**resolved** 64:16 76:11  
**resolving** 115:15  
**resource** 225:11  
**resource-intensive**  
 63:3  
**resources** 102:1 130:3  
 241:18  
**respect** 27:13 29:10  
 56:14 101:3 103:13  
 103:16 134:9 204:19  
 255:13 262:7 285:6  
**respected** 128:6  
**respectfully** 8:16 20:13  
 30:18  
**respective** 36:12  
**respectively** 24:3  
**respond** 124:2 134:3  
 152:22 187:8,12  
 235:3  
**responded** 139:7  
**response** 11:9,13 16:14  
 19:2 26:15 28:19  
 49:20 70:16 103:4  
 152:17,18 153:6  
 186:17 207:8 239:14  
**responses** 8:20 237:9  
**responsibilities** 11:20  
 136:7 157:19  
**responsibility** 11:15  
 123:7,7 252:17
- 271:18  
**responsible** 12:3 28:21  
 224:17 287:9  
**responsive** 43:7  
**rest** 77:19 78:2 109:3  
 260:10 287:5  
**restitution** 237:17  
**result** 34:7 80:7 111:5  
 126:17 207:7  
**resulting** 20:9  
**results** 16:7 45:14  
**resumed** 58:14 137:3  
 156:14 236:9  
**retained** 283:21  
**retaining** 182:21 183:2  
**retaliation** 237:18  
 239:11,15,15,19,21  
 240:17  
**retired** 4:19 40:18 60:3  
**retry** 69:18 84:22 85:1  
 86:5 88:9  
**revealed** 171:8  
**reversals** 283:3  
**reversed** 91:10 123:19  
**review** 6:1 15:19 17:5,6  
 17:22 26:22 28:3 29:8  
 33:11 38:7 42:20  
 44:14 49:10 105:20  
 107:2 110:2 153:21  
 156:21 160:4 163:3,9  
 163:13,22 164:7  
 165:3,4 167:19 168:2  
 168:15 179:17,21  
 180:9,18 181:9  
 183:11,13,18 185:11  
 185:17 186:3,9  
 187:15,17 188:2,3,11  
 192:6,10 193:10  
 195:16 198:19,19  
 199:3,17 200:3,18,19  
 200:20 201:3,8,12  
 202:5 208:4,8 209:17  
 210:11 211:3 212:18  
 213:8,9,13 214:19  
 215:3,14,16 216:7,13  
 243:18 244:5 247:1  
 250:4,15 252:2  
 253:19 256:16 261:17  
 274:4 276:14 279:21  
**reviewed** 11:12 46:4  
 47:1 89:12 167:10  
 169:4 175:6,11,12  
 199:13,16 202:3,16  
 208:12 237:11  
**reviewing** 12:3 24:6  
 56:13 161:13 164:9  
 164:11 172:7 185:12  
 186:7 195:4 201:1

**reviews** 183:19 206:20  
 229:8  
**revise** 238:22  
**revisions** 3:8 6:7  
**revolutionary** 10:7  
**ride** 44:2  
**rights** 3:13,18 6:11  
 20:18 55:10 56:13  
 58:18 73:13,13 87:1  
 99:3 101:4 116:13,19  
 126:3,8 128:6 179:19  
 179:22 199:8,9 209:8  
 225:2  
**ripe** 127:6 245:16  
**rise** 47:19  
**rising** 26:3  
**road** 273:4  
**role** 18:22 49:9 145:2  
 173:18  
**roles** 11:14 170:7 267:2  
**roll** 9:4  
**room** 1:11 28:22 170:12  
 204:13  
**rotate** 13:10 281:3,3  
**rotated** 54:17 281:7  
**rotation** 281:6  
**route** 82:7,13  
**routine** 87:17 92:10  
 130:5  
**routinely** 8:2 78:20 94:4  
 125:14  
**RSP** 26:16,21 204:2  
 263:15,16 265:22  
 266:2 274:15 275:3,9  
 275:9  
**rubber** 262:16  
**rule** 21:3,10,14 22:4  
 24:11 31:10,12 48:18  
 49:3 83:9 104:19  
 142:19 151:1 157:15  
 157:16 161:16 168:21  
 177:12 188:16 205:14  
 238:16 247:6 248:22  
 256:9 258:21  
**ruled** 117:12 121:17  
 151:2 198:20  
**rules** 14:11,15,20,21  
 17:9 19:21,21 21:15  
 23:21 24:4 27:14,14  
 27:17 28:9,13 54:20  
 71:11 74:15 79:20  
 137:22 142:21 143:13  
 143:15,17 145:6  
 159:7 167:7 170:1,21  
 171:16 173:15 194:14  
 203:21 218:3,6 219:1  
**ruling** 65:8 90:22 91:4  
 119:15 142:10,11

196:13  
**rulings** 283:1  
**run** 246:22

---

**S**

---

**S** 4:1,19  
**Safe** 24:2  
**sample** 231:22  
**SAPRO** 239:16 240:7  
**SARC** 230:18 231:8  
**satisfactory** 79:14  
**satisfied** 75:19  
**satisfies** 63:20  
**saw** 186:12  
**saying** 40:4,16 44:1  
 52:1 54:22 64:16 65:9  
 66:8 68:14 71:12 72:7  
 72:15,21 75:2,22 77:9  
 77:13 79:18 81:2  
 84:13,18 86:21 88:15  
 94:8 96:3 97:13 105:5  
 106:13 112:17 121:1  
 132:6 140:6 148:13  
 152:13 166:20 174:10  
 174:13 177:8 181:18  
 185:9,10,16 196:12  
 202:12 224:13 227:11  
 231:8 263:15 277:18  
 278:20 281:17 287:11  
**says** 48:7 67:16 79:22  
 91:14 161:12 163:18  
 173:7,12 189:11  
 201:22 206:18 207:2  
 207:18 217:5 222:1  
 224:9 227:5 228:14  
 232:16 254:11 258:4  
 258:21 267:10  
**scenario** 65:13 68:11  
 72:17 91:16 190:2  
**schedule** 248:8 254:1  
 280:8 281:18 282:1  
 283:12  
**scheduled** 248:8,11  
**schedules** 52:5 57:8  
**school** 10:3,10 17:17  
 17:18 174:8,9  
**schools** 16:10  
**scope** 22:2 42:18 83:15  
 133:20 281:8  
**screen** 44:19  
**screening** 228:9  
**script** 34:14 36:4  
**se** 100:2  
**sea** 55:11  
**seal** 166:15,16 170:15  
 201:22  
**sealed** 153:21 157:7,11  
 157:17 158:5,13,20

160:11 162:16 163:18  
 164:2 165:1,11 166:7  
 166:12 167:17 168:1  
 168:10,14,19 169:12  
 169:21 171:22 172:2  
 172:7,9,10,11,13,15  
 172:15,16,22 173:13  
 174:4 180:9 181:8,16  
 181:17 185:12 186:7  
 186:9,21 187:16  
 188:6,19 191:7,7  
 192:10 193:3,11,13  
 195:12 196:10,14  
 198:21 202:6,9,19,21  
 211:3 214:18 215:13  
 216:6 258:16,19  
**sealing** 56:18  
**search** 89:17  
**seasoned** 182:5  
**SECDEF's** 40:11  
**second** 9:9 21:14 25:13  
 28:18 29:17 30:16  
 82:8 91:12 105:7  
 122:8 160:8 181:11  
 194:5 236:15 247:15  
**secondarily** 187:11  
**secret** 49:11  
**secretary** 7:19 11:10,13  
 12:9 13:9 16:20 181:1  
 181:1 237:14  
**Section** 220:22  
**sections** 243:7  
**sector** 182:6,13  
**security** 170:14,19  
 171:3,12  
**seeing** 101:12  
**seeking** 104:17  
**seeks** 132:14  
**seen** 79:16 110:22  
 166:21 173:3 176:4  
 192:19 196:11  
**sees** 87:11 114:2  
 139:11  
**Self-Help** 250:17  
**Senate** 24:15 220:20  
 271:7  
**Senate-passed** 238:18  
**Senator** 120:16  
**send** 225:10 227:7  
 228:9 229:9  
**Senior** 60:14  
**sense** 42:10,14 45:3  
 76:21 83:5 88:22  
 135:14 166:2 184:20  
 186:2 200:2 210:11  
 210:20 218:8 222:22  
 249:19 261:19  
**sent** 34:15 53:18

245:10  
**sentence** 27:5,11,20  
 249:5,14 277:17  
**sentences** 31:22  
 281:10  
**sentencing** 23:5 249:11  
 249:12,15,16 267:13  
 268:7 269:11  
**sentiment** 278:17  
**separate** 32:1 106:5  
 107:18 205:11  
**separately** 75:16 99:19  
 100:5  
**separation** 278:1  
 284:18  
**September** 6:19 10:16  
 15:14 242:5 243:4  
 253:6  
**sergeant** 195:14 217:6  
**series** 26:17  
**serious** 106:13 111:4  
 111:10 287:3  
**seriously** 280:2  
**seriousness** 279:9  
**serve** 54:12 187:3,7  
 223:11,16 225:12  
 241:11 247:17 278:14  
**served** 57:20 223:5  
 251:5  
**serves** 4:18 7:8  
**service** 6:9 7:3,9,20  
 8:11 9:1 11:6,15  
 12:14,14 14:2 18:22  
 27:8 35:20 36:3,6  
 37:2 44:7 50:8 54:4  
 54:21 90:4 97:10  
 109:12,15 110:3  
 115:21 118:13 187:12  
 195:13 209:9 219:21  
 226:10 228:21 242:14  
 277:10  
**Service-by-Service**  
 162:12  
**service-specific** 6:15  
**services** 3:7 6:14 12:6  
 12:17 16:6 17:15,17  
 24:15 36:10 41:22  
 49:9,15,22 51:10,20  
 52:2 53:16 55:18 57:9  
 57:10,13 79:9 95:1  
 102:13 115:8 145:4  
 159:6 160:10 161:1  
 167:6 182:1 210:9  
 212:15 218:5 219:15  
 229:11,21,21,22  
 232:8 233:14 237:11  
 261:3 264:21 277:7,8  
**servicing** 18:16 31:15

- session** 3:20 6:6,17  
 236:6,16 242:11  
 243:1 251:14  
**sessions** 92:1  
**set** 46:22 47:3 88:12,15  
 119:19 129:22 144:12  
 219:1 243:2 254:1  
 273:19 276:17,17  
 278:9 280:8  
**sets** 179:22 276:8  
**setting** 39:5 73:8 92:15  
 254:14  
**Seventh** 33:21  
**sex-** 25:17  
**sex-related** 25:15 30:22  
**sexual** 6:3 16:15 26:16  
 27:3 33:16,17,18 35:9  
 56:14 65:19 80:18  
 93:10 125:2,13 170:8  
 171:4 234:14,18  
 237:4,19 239:3,4,5,11  
 239:17 240:6,7,17  
 241:9,18 242:1  
 256:17 257:10 277:3  
 278:19 279:8 282:20  
 287:4  
**shape** 40:3  
**share** 232:9 248:16  
**shared** 10:1  
**sharp** 53:10  
**sheet** 258:20  
**shift** 197:2 264:6  
**ship** 223:21  
**shoes** 199:18,19  
**shop** 233:16  
**short** 140:9 226:7  
**shorthand** 147:20  
**show** 44:20 228:2  
**showing** 160:2 165:3  
 198:4 206:22 207:13  
 207:19 208:1,13  
**shown** 23:12  
**shows** 138:12 150:10  
 281:11  
**shut** 90:9  
**shy** 206:13  
**side** 106:18 145:11  
 177:19 200:15 248:7  
**sidelines** 89:3,7  
**sides** 77:9 177:19  
**sign** 18:4 175:20  
**signature** 38:7  
**signed** 11:14 238:13  
**significant** 125:17  
**signing** 18:15  
**signs** 232:20  
**similar** 221:18 232:15  
 233:21 273:3 274:10
- similarly** 245:4  
**simple** 191:11  
**simply** 8:17 40:21 41:1  
 122:4 185:18 223:9  
**simultaneously** 16:5  
 17:15  
**single** 39:2 44:12  
 122:13,13 206:10  
**sir** 38:9 39:15 40:14  
 57:14 143:21 144:19  
 146:6 160:15 206:16  
 232:6 258:13 260:21  
**sit** 54:6,8 55:8 67:17  
 192:5 286:13  
**site** 237:3 241:12  
 245:14 246:4  
**sites** 244:21  
**sits** 191:22  
**sitting** 7:14 28:22 29:4  
 89:3 109:1 186:7  
**situated** 245:5  
**situation** 50:14 64:20  
 65:1,15 66:14 67:2,19  
 70:10,18 74:17 86:2  
 88:3,6 95:22 119:10  
 119:18 127:13,17,21  
 128:4 131:3,10 169:2  
 169:17 176:7 179:8  
 200:3,7  
**situations** 168:21,22  
**six** 76:13,19 78:17,19  
 126:20 250:15  
**Sixth** 28:9 33:13  
**SJ** 53:8  
**skip** 154:7  
**slap** 124:13  
**slide** 20:6  
**slides** 9:4 30:3  
**slight** 262:11  
**slightly** 271:6 287:13  
**small** 111:12 117:13  
 124:17 162:11  
**smaller** 246:2,7  
**smartest** 13:5  
**Smith** 195:14  
**snapshot** 243:21  
**so-** 270:22  
**so-and-so** 217:6  
**Society** 34:16  
**sodomy** 33:22 249:22  
**solution** 79:14 89:17  
 221:22 222:7  
**solve** 132:15 134:6  
 148:9,9,10  
**solved** 105:18  
**somebody** 73:12  
 108:16 153:2 184:21  
 227:1 230:7 231:20
- 245:21 284:14  
**someone's** 197:19  
**somewhat** 90:14  
 131:14  
**soon** 254:3 273:10  
**SOP** 38:21  
**sorry** 14:19 33:13 46:20  
 47:6 59:18 90:17 95:9  
 96:20 97:4 116:13  
 141:21 143:10,11  
 146:15 147:5 151:11  
 157:22 158:16 173:16  
 209:13 215:10 234:11  
 269:10 285:5  
**sort** 41:6 54:22 59:20  
 69:20 76:20 124:13  
 127:6 145:12,22  
 155:10 157:16 182:3  
 193:12 243:2,10,19  
 245:4,13 246:14  
 247:8,13,22 249:6,10  
 249:13,19 251:8  
 281:15  
**sound** 135:12  
**sounds** 210:2 229:11  
 263:2 274:12  
**source** 14:9 19:18  
**sources** 11:1,3 14:6,7  
 15:19  
**speak** 18:13 53:8 55:18  
 95:2 140:12 214:11  
 214:21 217:3,16  
 277:8 283:20 284:1,3  
**speakers** 53:21 54:4  
**speaking** 53:5  
**special** 17:20 25:10  
 53:20 62:11 78:18  
 123:8,16 129:12  
 136:6 137:17 171:16  
 171:16 173:17,22  
 222:14,17 223:11,15  
 224:14 225:7 226:14  
 227:13,21 229:12,19  
 230:17 237:16 238:5  
 245:8 252:12 261:8  
 262:5 267:6  
**specialists** 60:1  
**specialized** 239:17  
**specialty** 170:12  
**specific** 140:18 280:20  
**specifically** 22:10  
 31:17 48:14 50:22  
 181:22 242:22 250:7  
**specifications** 33:15  
 34:3  
**specifcs** 44:22 56:8  
**specified** 107:4  
**specify** 139:5,11
- 234:12  
**speculative** 178:19  
**spend** 79:4  
**spending** 258:10  
**spoke** 10:2,3 24:21  
**sponte** 33:6  
**spouse** 198:11  
**squarely** 26:17  
**squishy** 105:12  
**stacked** 111:20  
**staff** 2:5,7,10,11,12,14  
 9:15 13:18 24:15,22  
 29:3 41:7 42:4 50:9  
 52:4 58:18 59:20 61:1  
 210:7 242:14 243:5  
 243:22 245:3,15  
 246:5 250:18 251:1  
 252:8,13,14 253:9  
 254:20 268:5 280:8  
 284:10  
**staff-victim** 24:2  
**stage** 66:8 95:12,17  
 193:2  
**stake** 62:8 92:19  
**stamp** 262:16  
**stand** 54:6 55:7  
**stand-alone** 246:8  
 252:20  
**standard** 80:9 157:20  
 186:13 203:22 204:1  
 204:3 207:14,15  
 261:13,17 264:12,17  
**standardize** 159:17  
 238:6  
**standardized** 160:9  
 250:10  
**standardizing** 272:9  
**standards** 105:20 238:4  
 273:19  
**standing** 74:4,5,8 95:19  
 113:18 146:21 149:9  
 149:10,11,13 150:4  
 150:15 152:10 200:6  
 285:11  
**standpoint** 128:4  
**stands** 109:12  
**start** 36:19 59:10 99:4,8  
 108:18,20 116:7  
 128:11 242:6,8 255:9  
 255:11  
**started** 8:7 132:7  
 154:20 280:22  
**starts** 74:3  
**state** 22:17 33:5 103:21  
 124:9 155:6 187:8  
 214:9 277:11,12  
**stated** 122:21 140:17  
 145:2 164:16

**statement** 23:11,14  
107:13  
**statements** 108:4  
**states** 1:1 7:7 11:19  
14:10 21:10 22:11  
25:16 28:15 60:11,15  
76:14,15,17 77:20  
78:3,17,19 79:1,8,9  
104:22 126:12,14,17  
126:21 177:12 197:14  
199:12 206:10  
**stating** 149:2 163:13  
**statistics** 261:15  
**status** 46:12 114:14  
150:2 237:2  
**statute** 71:6 79:18,19  
109:14,22 156:2  
**statutory** 14:9 15:21  
36:1 101:4 108:6  
256:8 265:10 270:19  
**stay** 47:7 82:16 124:7  
**staying** 56:5  
**step** 167:22 226:13  
227:4  
**Stephen** 1:21  
**Stevens** 120:16  
**Stone's** 132:4 230:6  
285:7  
**stood** 285:12  
**stop** 72:14 82:4  
**stopped** 204:3  
**stops** 73:14  
**stranger** 185:3  
**straws** 273:18  
**streamlining** 238:10  
**street** 1:11 185:3  
**strenuously** 128:20  
**stretched** 286:8  
**strongly** 69:6,7,8  
253:15  
**struck** 54:1 179:18  
**structure** 131:21  
260:10  
**struggled** 31:16 43:18  
**students** 134:5  
**studied** 266:9  
**study** 16:18 47:12  
265:12,18,20  
**studying** 248:19  
**stuff** 55:1 187:13 227:2  
260:7 261:6 267:12  
267:13 273:12 278:7  
281:20 287:12  
**stupid** 85:9  
**sua** 33:6  
**subcommittee** 111:2  
133:4 237:3 240:22  
241:11,13,16 244:20

245:12 246:4 253:20  
254:12,17,22 255:14  
255:16 275:7 280:9  
281:19,20  
**Subcommittee-gathe...**  
254:7  
**subject** 27:21 36:16  
56:12 58:17 169:22  
263:5 268:2,9  
**subjectively** 132:20  
134:10  
**submit** 18:2,6 22:19  
46:19  
**submitted** 5:4 46:11  
237:10  
**subparts** 116:10  
**subpoenaed** 96:8  
**subsequent** 172:6  
**subset** 65:3  
**substance** 77:17 124:4  
159:22 185:12 187:22  
258:20 260:15  
**substantial** 115:12  
198:3,4 252:7  
**substantially** 21:15  
**substantive** 55:9 107:2  
164:6  
**substantively** 53:16  
**succeeded** 137:10  
**successor** 251:5  
**sudden** 96:4 128:7  
**suffered** 79:5 120:17  
**suggest** 53:6 154:2  
168:5 216:21 226:11  
253:22 255:21 257:3  
**suggested** 139:16  
263:6 285:9  
**suggesting** 135:13  
211:19 285:8  
**suggestion** 217:21  
280:1  
**suggestions** 51:11  
**suggests** 129:11  
282:17  
**suicide** 85:10,12  
**Sullivan** 13:21 34:15  
40:10,20 56:9 248:9  
283:20  
**summarize** 157:2,3,13  
**summary** 162:22 251:7  
**summer** 241:1 246:4  
**sunset** 249:19 268:15  
**super** 131:21  
**superiors** 144:3  
**superseded** 271:18  
**supervisor** 174:15  
**supplementary** 15:5,15  
17:13 18:7,11 19:14

30:14 47:17 48:7  
**supplementing** 48:18  
**support** 61:4  
**supported** 216:14  
**supporting** 13:1  
**suppose** 122:3 130:22  
132:14  
**supposed** 41:15 54:6  
144:1 176:16 182:15  
222:15  
**suppressed** 65:4  
**suppression** 68:12  
**Supreme** 117:20 118:4  
197:9,17  
**surprise** 37:22  
**surprised** 57:20,21  
63:15  
**suspect** 159:18  
**suspended** 27:11,20  
**suspensions** 27:5  
**sustained** 75:8  
**SVC** 161:9 232:14,17  
233:2 238:7 240:20  
258:4 267:3,3,13  
268:5 279:16  
**SVCs** 157:6 163:15  
225:15 238:9  
**SVI** 245:9 246:9  
**sweep** 251:8  
**sworn** 23:11  
**sympathetic** 132:3  
**system** 35:19 49:20  
62:16 69:22 73:20  
76:3,4 77:20 78:3,10  
78:16 80:1,8 82:6  
83:2 87:2,17,22 89:19  
89:21 100:2 111:19  
132:4,8,11,14,16  
135:15 137:6 158:9  
158:12 159:11 162:10  
162:14 174:8,9  
182:22 183:2 205:4,5  
211:7 215:2 221:20  
224:4 225:22 226:5,6  
230:19 240:5 257:5  
260:15 262:5 274:14  
274:14,19 275:10,11  
275:17  
**systematic** 286:19  
**systemic** 51:9,10  
**systems** 16:15 26:15  
27:1 207:8 275:6

---

**T**

---

**Tab** 58:22 59:1,3 159:8  
159:9 218:2 243:6,18  
243:21  
**table** 15:7 54:7 270:15

**Tabs** 242:22  
**tackle** 37:3  
**taken** 22:14 47:9 75:4  
103:6 155:1,9 170:3  
243:12 244:16 255:15  
264:13 267:5,15  
**takes** 38:6 51:14 62:13  
115:18 116:1 172:21  
282:15  
**talent** 43:22  
**talk** 19:6 47:18 51:22  
87:5 116:22 118:2,2  
118:20 139:17 165:15  
166:5 185:9 203:15  
234:18  
**talked** 9:10 37:7,15  
43:10 70:1 104:14  
136:6 155:11 205:8  
272:21  
**talking** 80:17,18 86:2  
95:3 105:17 109:1  
111:11 117:19 121:4  
124:22 125:1 146:19  
147:6 148:2 150:4  
154:11 171:22 172:2  
172:15 181:5 183:13  
185:7,7,10 192:3,4  
198:1 201:19 202:3  
215:4 224:20 231:17  
**talks** 10:5 55:13 221:17  
248:4  
**Tammy** 2:7  
**tasked** 16:16 243:8  
251:10 280:16  
**tasking** 243:11,11,12  
243:22 244:10 256:8  
266:4 268:7 274:1,13  
275:8,9 281:13 282:9  
282:10 286:8  
**taskings** 280:7,8,9  
**tasks** 246:13,15 253:2  
265:21 280:17  
**taught** 9:8  
**Taylor** 1:16 4:20 36:20  
36:21 39:8 40:6 41:3  
42:6 89:2,5 90:15  
91:20,21 112:15  
130:17,19 134:3  
135:16 144:20 146:4  
146:7,11 154:1  
162:20 164:3,14  
180:1 189:8 209:12  
209:14 210:15,19  
211:6,18 212:10,19  
212:22 213:20 214:2  
214:4 216:22 221:16  
231:15 264:20 265:3  
266:12,17 270:22

275:4  
**Taylor's** 195:2  
**technical** 149:15  
**technology** 221:17  
**teed** 210:6,13  
**tell** 13:4 18:13 31:14  
 39:15 41:16 42:16  
 43:6 49:12 50:15  
 85:14 91:3 93:20  
 100:14 113:10 114:12  
 134:5 143:22 162:3  
 207:2 225:8 259:2,5  
 261:15 269:9  
**telling** 51:7 54:4 57:3  
 57:18 114:4 203:1  
**Ten** 85:8  
**ten-minute** 235:17  
**tend** 130:21  
**tenure** 285:20  
**tenured** 182:9 285:17  
**term** 6:19 239:1 242:5  
**terminal** 34:4  
**terms** 26:10 38:10 75:1  
 76:2 104:8 115:13,14  
 123:13 124:4 126:2  
 192:21 210:13 261:13  
 261:20 273:19  
**terrible** 227:15 270:5  
**testified** 57:2 163:6  
**testify** 22:9,18 85:16  
 98:15,20,21 99:21  
 270:5  
**testifying** 261:22  
**testimony** 22:14 24:14  
 29:18 37:1 42:19 44:7  
 61:2,3 63:6 91:22  
 92:22 93:4,8,11 97:12  
 119:17 163:1 164:5  
 181:21 209:22 221:9  
 225:14 229:5 237:8  
 245:11 264:15 281:11  
 282:14,16 285:15  
**thank** 4:4 5:8,9 7:2,10  
 14:1 19:3 29:13,15,16  
 36:15,18,19,21,22  
 37:1 42:7,9 44:6,7,16  
 53:14 58:2,6 60:16  
 143:19 144:16 146:7  
 156:19 207:10 216:16  
 220:5,8 235:19  
 236:11 242:12,17  
 287:17,20  
**thanks** 50:17 58:5  
 235:19,20  
**Thanksgiving** 36:15  
 58:9,10 287:18,19  
**theory** 109:7,7 239:4  
**they'd** 192:11

**things** 39:4 41:20 44:9  
 46:15,21,22 47:3,7  
 49:1 50:9 52:3 53:22  
 55:14 56:2 101:17  
 106:2 118:8 134:10  
 136:5,9 171:16  
 253:16 257:6 281:4  
 281:14 282:14  
**thinks** 266:21  
**third** 9:2 22:4 26:5 30:2  
 31:10 70:8,18 73:11  
 80:20 97:22 150:14  
 169:2 174:7 194:7,11  
 248:19  
**thorough** 42:10  
**thoroughly** 199:3  
**thought** 67:7,21 82:11  
 82:14 96:3 109:9  
 163:5 164:6 175:7  
 210:7,16,20 211:9  
 237:1 257:16,22  
 258:9 279:8 286:7  
**thoughts** 262:6  
**thousands** 79:4 115:20  
 237:12  
**three** 13:14 19:7,9 20:5  
 23:20 28:20 46:21  
 50:7 63:15 80:22  
 97:18 155:9 183:6  
 188:19 190:22 192:6  
 194:13,16 202:6  
 225:22 244:14 245:4  
 245:7 252:11 258:1  
 286:17  
**three-judge** 193:5  
 194:3  
**threshold** 24:6,10,12  
**throw** 253:13  
**thrown** 51:12 98:15  
**Tideswell** 2:7 58:21  
 59:11,14,17,19 93:3  
 93:13 153:4 157:5,14  
 158:1,4,10,14,19,22  
 159:3,5,9,12,15 160:1  
 160:15 181:20 182:16  
 220:12,17 221:7  
 236:22 242:10,19,20  
 244:8 251:21 252:4  
 252:10,22 256:12,15  
 258:13,22 260:21  
 263:8,18,22 264:3,22  
 265:13 266:1,6  
 268:14,22 269:5  
 271:9,21 272:7,20  
 273:22 274:4,16  
 275:1 276:19 277:5  
 277:22 280:19 281:12  
 285:16,21

**tie** 10:12  
**tied** 49:16  
**time-** 57:3  
**time-consuming** 63:2  
**timely** 21:7 28:1  
**times** 41:12 49:12,17  
 63:13,18,19 67:15  
 81:19 86:10 88:1  
 121:16 208:7  
**TJAGs** 53:8  
**today** 4:4 5:12,14 9:1  
 13:22 29:4 35:11 37:1  
 50:3 110:1 236:4,16  
 250:13 251:15 279:18  
**today's** 5:15 6:6 7:2  
**told** 86:15 114:10  
 115:19  
**Tom** 1:16 4:20  
**tomorrow** 10:8  
**tool** 22:1 72:16  
**top** 12:13 79:4 95:5  
**topic** 6:11 260:20  
 287:13  
**topics** 6:18  
**torn** 112:2  
**total** 237:13  
**totally** 63:20 147:2  
**tougher** 87:7  
**tour** 182:9  
**tours** 9:17  
**Tracey** 1:16 4:20 44:6  
 45:1,7,16 46:20 47:15  
 112:4,8,20 113:2  
 125:20,21 127:2,19  
 127:22 130:10 135:12  
 136:19 148:4 151:12  
 154:12,13,16 172:5  
 172:12 179:16 180:12  
 195:1 196:1 211:21  
 213:4 222:11 228:4  
 275:3 277:1,18 285:6  
 286:2  
**Tracey's** 283:19  
**track** 39:1 50:9  
**tracked** 239:16  
**tradition** 59:21  
**traditional** 71:4  
**trained** 286:13  
**training** 53:19,20 238:7  
 239:18 244:12,16  
 252:5 258:5 278:11  
 278:18 279:7,11,14  
 281:9 286:5,8 287:4  
**transcribed** 5:15  
**transcript** 5:16  
**transcripts** 4:14  
**transition** 19:4 22:1  
**transitioned** 9:19

**transparency** 36:8  
 135:21  
**transparent** 46:18  
**travel** 133:2,4  
**traveling** 111:2  
**treat** 39:11  
**treated** 55:10 282:18  
**tremendous** 42:12  
 62:16 130:2 226:12  
**trends** 237:20 240:3  
 244:11,15 245:7  
 252:12 256:11 258:2  
 259:5  
**Trexler** 2:11  
**trials** 73:21 81:6 285:11  
**tricky** 134:13  
**tried** 85:9,11 99:18  
**trigger** 277:16  
**trip** 24:17  
**trouble** 115:18 281:4  
**true** 67:3,4 144:22  
 145:4 200:5 254:10  
 258:1  
**truly** 13:7 166:11  
**trumpeted** 10:7  
**trust** 84:13,16  
**try** 46:17 52:12 74:13  
 80:22 86:12 89:20  
 162:9 212:5 216:4  
 222:8 254:1 257:8,17  
 261:3 263:6,6 271:12  
 275:7  
**trying** 29:11 77:16 78:7  
 85:19 100:11 105:21  
 106:1 107:10 113:9  
 114:22 118:1 121:7  
 150:20 180:11 219:11  
 224:1,2 226:11 257:6  
 259:14 260:4 273:5  
 287:7  
**turn** 11:5 14:4 25:3  
 34:11 36:10 48:1  
 81:12 82:1 85:1,6  
 134:11  
**turned** 82:4 122:6  
**turning** 15:16 33:12  
 81:13,15  
**turns** 260:7  
**tweaking** 156:1  
**twice** 32:10  
**two** 12:17 13:10 26:3  
 31:20 44:8 50:7,16  
 53:18 68:15 70:1 80:1  
 80:3 81:17 91:14,22  
 96:5 97:18 98:4 105:6  
 106:2 114:6 123:4  
 128:2 129:3,14  
 132:17 152:7 168:20

171:5 179:21 183:6  
 188:13 189:9 194:5,6  
 194:12,16 200:14,14  
 202:12 222:13 225:18  
 225:19 241:10,17  
 242:16 243:5 244:14  
 244:15 245:5 258:7  
 270:14 275:6 276:8  
 278:5,10,13 279:7,13  
 281:21 286:17  
**two-party** 70:18  
**type** 46:8 70:9 121:9  
 142:12 168:6  
**typed** 29:18  
**types** 38:10 49:1  
 131:22  
**typical** 90:19 99:9  
 117:5  
**typically** 45:7 62:20  
 63:17 81:10 83:14,22  
 120:12 173:8 176:2  
 182:9 193:1,7 194:4

## U

**U.S.** 1:18,18,19,19,20,21  
 2:7,9 60:3,4,5,8  
 216:15  
**UCMJ** 6:5 11:21 49:4  
 238:11,22 274:7  
**ultimate** 118:17  
**ultimately** 161:12  
 189:11  
**unaddressed** 253:2  
**unanimous** 216:18  
**uncertain** 131:14  
**uncertainty** 104:7  
**undergone** 279:10  
**underlying** 27:19  
**understand** 42:6 44:15  
 48:16,20 84:2 96:22  
 98:13 100:20 105:21  
 106:16 107:11 112:21  
 123:11 137:21 138:8  
 164:19,20 166:3,6  
 178:13 180:12 191:6  
 226:8 251:12,12  
**understandable** 223:22  
**understanding** 127:20  
 162:22 195:6 220:9  
 250:11 258:14  
**understands** 136:2  
**understated** 140:15  
**understood** 53:17  
 91:21 131:7 143:13  
 144:22 154:16  
**undertake** 268:1,3  
**undone** 270:19  
**unfair** 261:13

**unfolds** 232:1  
**Unfortunately** 162:3  
**uniform** 6:2 14:8,10,13  
 19:10,22 34:1 43:1  
 209:20 237:18 240:12  
 240:19 241:8 250:7  
 257:7 272:15,15  
**unintended** 111:5,10  
 131:11  
**unique** 168:20  
**United** 1:1 7:7 11:19  
 25:15 28:15 60:11,15  
 77:20 78:3 197:14  
 199:12 206:10  
**universally** 125:21  
**Unlawful** 25:6  
**unreasonable** 31:13,19  
 31:20 32:2,13  
**unresolved** 107:17  
**unseal** 167:19 187:3,6  
**unsealed** 194:20  
**unsettled** 76:16  
**unsworn** 23:11,14  
**upcoming** 241:22  
**update** 3:8 6:6 257:8  
**updated** 19:20  
**updates** 16:19 36:2  
**upset** 282:21  
**upsetting** 100:15  
**urge** 17:4  
**USC** 71:3  
**use** 22:15 131:9 229:6  
 244:5 247:15 252:3  
 258:9 272:5,17 274:5  
 274:10 276:5  
**useful** 261:7 276:6  
**usually** 46:7 138:16  
 246:10  
**Utah** 126:13

## V

**v** 104:8,14,20 107:8  
 108:4  
**vacate** 27:10  
**vacation** 27:5,7,17,22  
 28:1  
**vacuum** 194:17  
**VADM** 44:6 45:1,7,16  
 46:20 47:15 112:8,20  
 113:2 125:21 127:2  
 127:19,22 130:10  
 135:12 136:19 148:4  
 151:12 154:13,16  
 172:5,12 179:16  
 180:12 195:1 196:1  
 213:4 228:4 277:1,18  
 285:6 286:2  
**VADM(R)** 1:16

**valid** 96:16 124:1  
**value** 39:9 78:5 205:10  
**values** 130:20 131:1  
 200:15  
**variations** 162:11  
**varied** 54:21  
**various** 51:10 111:6  
 120:18 134:7 182:1  
 233:19 244:21 257:5  
**vast** 78:22  
**Vergona** 1:19 60:8  
 125:9,12 139:3 146:5  
 161:20 162:6 167:4  
 168:4 169:5,8,13,16  
 170:4 175:22 176:19  
 177:2,5,9,16 193:1,20  
 198:14,18 206:16  
 207:9,11 208:15  
 209:11 218:11 229:4  
 232:6  
**version** 188:17 220:21  
 238:19 273:6  
**versions** 271:7  
**versus** 25:5 113:19  
**Vice** 4:19  
**victim's** 6:11 20:20 21:5  
 22:17,19 23:13,14  
 31:1 55:10 61:8 63:4  
 65:3,14,18 67:15  
 68:20 69:13 70:16  
 72:1 74:4,8 75:8  
 78:19 79:9 86:20 87:5  
 87:8,20 92:3 101:3  
 106:20 107:5 111:13  
 121:2 126:19 128:11  
 129:5,7 130:14 135:5  
 141:16 178:7 179:19  
 222:16 224:10 226:22  
**victim/witness** 234:1  
**victimized** 79:3  
**victims** 22:8 23:2,4  
 31:7 56:14 59:8 60:22  
 61:5 62:17 64:4,12  
 67:11,20 71:6 76:21  
 78:11,20 79:2 85:5,22  
 86:22 100:12 101:17  
 107:14 112:11 113:4  
 114:17 116:12,13  
 117:2 119:2 120:14  
 120:17 121:5,7 122:9  
 126:18,21 131:9  
 132:9,19 145:22  
 148:7,21 149:16  
 151:5,9 153:5 154:9  
 161:8 163:15,17  
 179:1 189:17 220:19  
 225:20 227:3 229:19  
 230:18 231:22 234:14  
 234:16,19 235:2,9  
 238:8 240:14 281:15  
 282:21  
**victims'** 3:12,17 17:20  
 17:20 20:18 24:19  
 25:10 53:2,20 54:15  
 55:16 56:3 57:12  
 58:17 60:13 62:7,11  
 97:7 120:1,13 123:8  
 123:16 126:10,15  
 128:5 129:12,17  
 130:3 136:7 137:17  
 137:17 141:9 156:20  
 173:17,22 175:17  
 222:14,17 223:12,15  
 223:16 224:14 225:2  
 225:7 226:14 227:13  
 227:21 228:21 229:12  
 230:17 237:15,16,16  
 238:5 245:8 252:12  
 261:8 262:5 267:7  
 276:15  
**Victor** 1:15 4:20  
**Vietnam** 9:18  
**view** 111:19 112:19  
 134:1 177:20 178:7,8  
 207:21,21 267:19  
**viewpoint** 131:1  
**views** 25:22 26:9,13  
 29:10 41:22 112:7  
 153:11,12 211:20  
 212:7  
**violate** 95:14  
**violates** 27:8  
**violating** 99:16  
**violence** 287:5  
**Virginia** 1:11 53:19  
 241:3  
**vis-à-vis** 77:19  
**visited** 241:2  
**visits** 237:3 241:5,12,15  
 245:14 246:4  
**VLC** 97:3 176:3  
**VLCs** 157:6  
**voice** 70:8,18 73:6  
 146:3  
**voiced** 89:9  
**volume** 125:15  
**volunteering** 56:4  
**vote** 12:15 18:1 41:10  
 41:11 136:15 139:14  
 139:15 144:4 146:9  
 156:4 165:14 167:11  
 179:15 180:2 182:19  
 188:9 209:15 212:6  
 212:22 213:3 215:20  
 216:2 235:14  
**voted** 215:22

**voting** 8:2 12:8,12,16  
13:3 17:8 18:13 39:3  
42:1 43:12 46:4  
144:10 183:3,5  
211:10

---

**W**

---

**wait** 91:1 174:18,18  
215:19 273:1  
**walk** 178:3  
**walking** 185:3  
**wanted** 9:7 64:18 82:20  
102:5 141:4,8 153:15  
155:13 161:22 227:4  
236:3  
**wants** 63:16 66:15 72:9  
95:13 98:7 100:19  
101:8 103:14 108:16  
120:11 141:2 142:12  
163:16 187:3 230:8  
231:1 284:4  
**Washington** 232:21  
233:16  
**wasn't** 46:14 48:13  
69:13 77:13,14  
119:17 178:22 207:6  
212:2 286:1  
**way** 15:20 16:1 36:8  
39:7 40:3 42:4 52:9  
64:7 75:19 76:19  
81:16 83:2,10 96:21  
98:1,10 103:9 107:11  
111:4 120:17 133:8  
134:10 138:22 145:1  
148:5 149:1 151:13  
160:12 161:1 162:9  
167:15 180:11 181:18  
191:13 193:22 194:2  
196:19 197:17 211:16  
211:19 212:5,5,14  
228:2,18 233:20  
243:2,13 244:21  
249:1,14 251:20  
257:7,15 258:6 261:4  
262:15 268:1 269:4  
275:5,11 282:8  
284:16 287:9  
**ways** 16:3 278:2  
**website** 4:11,13,22 5:7  
5:17 16:22 17:4 19:16  
38:20 44:17 227:10  
**websites** 16:21  
**week** 10:2 24:16 30:5  
41:2 53:20  
**weekends** 20:3  
**weeks** 32:21 52:20  
**weigh** 200:14 202:12  
**weighing** 179:11

**weight** 62:2 205:11  
**welcome** 3:3 4:5 5:11  
60:16 236:14  
**went** 58:14 102:6,7  
121:20 137:2 156:14  
236:9 259:18 279:12  
283:16 287:22  
**weren't** 166:4  
**west** 24:18 56:3  
**Whew** 155:8  
**Whoa** 69:12  
**wife** 198:9  
**William** 1:18,18 3:10  
7:7 60:3  
**willingness** 60:19  
**win** 63:10 77:2,3 84:13  
86:12 88:21 90:20  
101:9 119:12 127:14  
127:18 128:18 145:21  
190:4  
**winning** 86:12  
**wins** 64:22 65:1 121:13  
127:13  
**wise** 220:7  
**wish** 36:14 63:11  
**Wissman** 1:20 60:11  
97:2,6 141:4,8 142:1  
142:8,18 143:1,5,8,11  
228:11 231:10 234:7  
**withholding** 245:19  
278:12,21  
**witness** 95:15 103:14  
105:8 150:15 187:6  
228:12,14 230:22  
232:19  
**witnesses** 1:17 30:17  
98:14,17 99:9,13  
231:22 280:22  
**won** 68:11,12 72:18  
73:1 77:6 83:3,4  
84:11 86:11 88:4,17  
113:8,10,19 119:4,8  
121:20 128:5,17  
135:20 231:2  
**wonder** 50:5 279:2  
281:7  
**word** 71:4 149:11  
**words** 91:15 94:7 96:7  
133:15,20 144:12  
159:17 160:22 165:5  
182:8 224:19 260:12  
**work** 7:16 28:21 29:7  
31:6 37:11 39:17 41:2  
43:8 45:14 55:2,20  
57:16 62:10 73:22  
81:18 100:12 120:2,9  
143:3 228:22 232:5  
236:16 246:5 252:7

252:16,19 253:8  
**worked** 45:21 102:10  
270:8  
**working** 8:1 12:8,11,16  
13:2 17:8 20:3 25:2  
30:6 39:3 42:1,17  
43:12,20 45:12  
102:13,16 106:3,14  
132:9 161:21 171:5  
183:15 231:12 232:13  
261:20 263:2  
**workload** 126:1,4  
**works** 37:17 43:22  
134:18 137:6 142:22  
143:3 193:22 234:4  
261:9  
**world** 60:2 76:2 111:3  
129:15 131:22 155:15  
187:1  
**worried** 130:7 133:9  
264:4  
**worry** 70:8,17,20,21  
171:1,18 231:4  
**worse** 178:12  
**worth** 84:20 116:4,4,5  
128:21 262:20  
**worthwhile** 264:18  
275:14  
**wouldn't** 50:10 105:15  
118:10 160:20 192:20  
193:15 204:11 227:6  
231:4 286:12  
**wound** 49:20 175:9,10  
**wrap** 35:16  
**writ** 90:5 102:9,12,15  
102:19 104:13,14  
105:1 106:20 107:3  
107:14,19 108:1,7  
109:7 113:7 154:9,10  
**write** 62:13 92:17 94:5  
114:6 145:13 245:17  
252:8,14  
**writing** 62:10 135:9  
218:1 255:10,12  
**writs** 28:6 80:10,11,12  
103:8 107:18 108:2  
**written** 5:4,16 109:22  
164:11 252:16,20  
255:4,6 267:9 287:12  
**wrong** 55:3 65:8 77:10  
77:14 91:3 139:21  
260:2 261:13,17  
280:17  
**www.jpp.whs.mil** 4:12

---

**X**

---

**x** 279:11

---

**Y**

---

**year** 5:19 16:2,9 17:10  
39:21 44:13 45:8  
51:14 71:3 115:20  
242:8 243:7 257:4  
280:4  
**year's** 44:14  
**years** 5:21 13:4,6,10  
31:16 35:17 53:18  
85:7,8,11,21 125:16  
155:9 167:21 222:2  
242:16 279:7,13  
**yellow** 243:16 244:2  
251:17 278:10,11  
**yellows** 255:21  
**young** 85:9

---

**Z**

---

**zeal** 25:11  
**zero** 88:1  
**zone** 246:15

---

**0**

---



---

**1**

---

**1,000** 86:21  
**10** 34:8 62:14 85:7,21  
117:2,3,5 121:16  
123:4  
**10:04** 58:14  
**10:23** 58:15  
**100** 35:14 63:16 146:6  
204:11,14 227:16  
285:14  
**1001** 22:22 23:1,7  
**1003A** 213:6  
**104** 25:5,8  
**11** 33:13 212:11 242:22  
243:18,21 273:5  
**11:40** 137:2  
**11:53** 137:3  
**1103A** 157:15 159:16  
159:20 160:22 161:1  
161:12 162:5 164:8  
164:21 189:11 209:15  
209:19 211:8 212:13  
214:16 215:12 216:5  
**1107** 23:15  
**1109** 27:4,12  
**12** 9:3 30:10 37:8,10,22  
51:14 243:1,6  
**12(a)** 32:19,22  
**12:10** 156:14  
**12:52** 156:15  
**120** 6:5 33:15 237:17  
238:21 249:21  
**120(b)** 33:17

**120(c)** 33:18  
**1203** 28:3 33:11  
**12473** 11:9  
**13** 51:14 154:8  
**134** 34:2,9,9,10,18,22  
 35:7  
**13447** 35:4  
**13696** 20:8,13 250:19  
**13730** 25:4  
**13740** 15:14 30:4 35:12  
**13th** 244:19  
**14** 11:9 20:10 21:20  
 30:10,19 37:8,22  
 241:14  
**14th** 1:10 9:13  
**15** 24:8,9 26:1 30:10,19  
 31:16 37:8,22  
**157** 3:18  
**158** 237:9  
**16** 25:8 28:11 30:4  
**168** 41:1  
**16th** 15:14  
**17** 85:11  
**17th** 20:8  
**18** 1:7 71:3  
**1951** 9:21  
**1984** 11:10  
**1990** 9:9

---

**2**

**2** 153:19 156:7,9,20  
 159:13 180:2,13,17  
 180:19 209:18 212:11  
 212:18 213:6 214:15  
 221:4,8 222:21 224:9  
 224:12,18 238:6  
 239:1 253:18 254:10  
 254:20 263:12,15  
 280:12,12,13  
**2:08** 236:9  
**2:28** 236:10  
**20** 18:19 62:14 279:11  
**200** 237:8  
**2003** 11:16  
**2006** 11:17  
**2007** 35:5  
**2012** 6:5 19:5,8 38:2  
**2013** 5:19  
**2014** 5:21 237:7 263:15  
**2015** 5:21 20:8 27:15  
 238:12 242:3 250:20  
 265:7,11 284:14  
**2016** 1:7 10:13 15:14  
 20:4 25:5 30:4 32:21  
 36:5 238:1 241:14  
 242:7 265:7,11 267:1  
 267:11,20 269:20  
**2017** 6:20 13:13 238:19

239:9 242:5 243:4  
**20th** 25:5  
**236** 3:20  
**24** 237:7,7  
**24th** 4:6 5:12  
**26** 13:6  
**270** 232:16  
**2704** 228:13  
**287** 3:22  
**2nd** 80:21

---

**3**

**3** 110:7,12 154:3,6,8  
 156:6 180:13,17,19  
 238:7 239:2 253:18  
 254:10,20 263:12  
**3(b)** 33:4  
**3.50** 10:4  
**3:17** 287:22  
**304(c)** 28:10 29:19 30:1  
**305** 21:4  
**306** 25:13  
**30th** 6:20  
**31st** 11:17  
**32** 21:21 22:8 238:17  
 247:3 250:5 253:13  
 254:19 261:21 264:5  
 272:2,4 274:8  
**32's** 21:21  
**32s** 22:9  
**3771** 71:3 73:8 74:5  
**38** 237:13  
**3rd** 11:16

---

**4**

**4** 3:4 32:15 156:10,10  
 180:13,18 220:14  
 221:17 234:22 238:9  
 239:3 253:18 254:11  
 254:15,16 263:12  
 268:6 277:2 280:13  
**405** 21:14 27:6,12,15  
**412** 105:9,10 109:6  
 115:11 122:6 123:19  
 124:20 125:6 137:7,9  
 137:18 142:10 168:6  
 177:1 224:21 238:16  
 244:5 247:2,13 252:3  
 253:3,13,15 254:4,19  
 254:20 256:9 257:10  
 258:15,21 259:14  
 260:8 261:10,11,20  
 262:3 275:20 281:21  
**413** 142:11  
**430** 21:16  
**49** 22:6

---

**5**

**5** 3:5 239:4 259:7  
 263:13 273:15  
**50** 39:21 125:13  
**512** 125:6  
**513** 23:22 24:7,11  
 105:11 107:22 109:7  
 115:11 122:6 123:19  
 124:20 125:6 154:22  
 168:15 169:17 171:22  
 177:3,4 183:16  
 184:11 195:15 196:9  
 196:11,12,21 217:6  
 224:21 250:4,21  
 272:1,3,6,17 275:17  
 281:22  
**514** 23:22 24:11  
**53** 248:22  
**54** 26:17  
**547** 220:22  
**5500.17** 11:14  
**56** 277:2  
**58** 3:13

---

**6**

**6** 14:9 159:8,9 218:2  
 263:13 273:13 276:14  
**60** 23:17  
**60-day** 17:14  
**60th** 10:2  
**66** 209:8  
**6b** 55:9 64:5 73:7 104:4  
 104:15,22 105:2  
 107:12,15 108:2  
**6b's** 20:17 23:3  
**6b(e)** 28:6

---

**7**

**7** 3:10 58:22 59:1,3,4  
**701** 30:16  
**702** 22:5,10  
**703** 30:16  
**705** 26:5  
**70th** 10:10  
**79** 33:5  
**7th** 76:9

---

**8**

**80** 259:6,16  
**875** 1:11  
**8th** 32:21

---

**9**

**9** 34:8  
**9:00** 1:12  
**9:05** 4:2  
**90** 35:13 260:18  
**906** 31:10  
**99** 227:21

**9th** 241:20 248:8,16

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Judicial Proceedings Panel

Before: US DOD

Date: 11-18-16

Place: Arlington, VA

was duly recorded and accurately transcribed under  
my direction; further, that said transcript is a  
true and accurate record of the proceedings.

*Neal R Gross*

-----  
Court Reporter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701