

UNITED STATES DEPARTMENT OF DEFENSE

+ + + + +

JUDICIAL PROCEEDINGS PANEL

+ + + + +

PUBLIC MEETING

+ + + + +

FRIDAY
FEBRUARY 24, 2017

+ + + + +

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

PRESENT:

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

WITNESSES:

Lieutenant Colonel Deanna Daly, U.S. Air Force -
Senior Special Victims' Counsel, Appellate
and Outreach, Special Victims' Counsel
Division
Ms. Lisa Friel - Subcommittee Member
Captain Andrew House, U.S. Navy - Director, Navy
and Marine Corps Appellate Defense
Division
Ms. Laurie Kepros - JPP Subcommittee Member

Mr. Stephen McCleary - Deputy Chief of Staff and
Deputy Managing Counsel, Department of
Homeland Security, Office of the General
Counsel

Colonel Katherine Oler, U.S. Air Force - Chief,
Government Trial and Appellate Counsel
Division

Colonel (Retired) William Orr, Jr., U.S. Air
Force - Chief, Strategic Military Justice
Legislation and Policy, United States Air
Force Judiciary

Colonel Jeffrey Palomino, U.S. Air Force -
Chief, Appellate Division

Dean Lisa Schenck - JPP Subcommittee Member

Lieutenant Colonel Mary Catherine Vergona, U.S.
Army - Chief, Policy Branch, Army Criminal
Law Division

Ms. Jill Wine-Banks - JPP Subcommittee Member

STAFF:

Ms. Nalini Gupta - Attorney Advisor

Ms. Meghan Peters - Attorney Advisor

Ms. Terri Saunders - Attorney Advisor

Captain Tammy P. Tideswell, U.S. Navy - Staff
Director

DESIGNATED FEDERAL OFFICIAL:

Mr. William R. Sprance

C O N T E N T S

Welcome and Introduction	
Mr. William Sprance.	4
Hon. Elizabeth Holtzman.	4
Subcommittee Presentation and Panel Deliberations on Sexual Assault Investigations in the Military Report	
Ms. Lisa Friel	7
Panel Members.62
Panel Deliberations on Experiences in Sexual Assault Cases Report	
Panel Members.99
Panel Deliberations on Military Defense Counsel Resources Report	
Ms. Terri Saunders	104
Panel Members.	141
Lunch	
Panel Deliberations on Victims' Appellate Rights Report; Joint Service Committee on Military Justice's Proposed Amendment to Rule for Courts- Martial 1103A; and the Dissents of Mr. Victor Stone, JPP Member.	241
Public Commentnone
Adjourn.	333

P R O C E E D I N G S

9:02 a.m.

MR. SPRANCE: Good morning, everyone.

I'm Bill Sprance, the Designated Federal Official. This meeting of the Judicial Proceedings Panel is now open.

At this time, I will turn the meeting over to the Chair, the Honorable Elizabeth Holtzman. Good morning, Madam Chairman.

CHAIR HOLTZMAN: Good morning, sir.

And thank you very much, Mr. Sprance, for opening the meeting and good morning. I would like to welcome the participants and everyone in attendance today to the 27th meeting of the Judicial Proceedings Panel. All five of the Panel members are present here today.

Today's meeting is being transcribed and the full written transcript will be posted on the JPP website.

The Judicial Proceedings Panel was created by the National Defense Authorization Act in fiscal year 2013, as amended by the National

1 Defense Authorization Act for fiscal years 2014
2 and '15.

3 Our mandate is to conduct an
4 independent review and assessment of judicial
5 proceedings conducted under the Uniform Code of
6 Military Justice involving adult sexual assault
7 and related offenses since the most recent
8 amendment to Article 120 of the UCMJ in 2012.

9 Today's meeting will begin with a
10 presentation from JPP Subcommittee member Ms.
11 Lisa Friel on the Subcommittee's Sexual Assault
12 Investigations on the Military report. The
13 Panel will then conduct deliberations on this
14 issue.

15 After a break for lunch, the panel
16 will deliberate on its Military Defense Counsel
17 Resources and Experience in Sexual Assault Cases
18 report.

19 Finally, the Panel will conduct
20 deliberations on its Victims' Appellate Rights
21 report. This session will include discussions of
22 the Department of Defense Joint Service Committee

1 on Military Justice's proposed amendment to Rule
2 for Courts-Martial 1103A governing the review of
3 sealed materials by appellate counsel. The Panel
4 will also consider the written dissenting
5 opinions of JPP member Mr. Victor Stone.

6 Each public meeting of the Judicial
7 Proceedings Panel includes time to receive input
8 from the public. The JPP received no requests
9 for public comment at today's meeting. The Panel
10 received nine written public comments. Seven of
11 the comments are related to the Joint Service
12 Committee's proposed amendment to Rule for
13 Courts-Martial 1103A. One is related to defense
14 counsel resources, and one is related to Military
15 Rules of Evidence 412 and 513.

16 These written comments have been
17 provided to the Panel members for their
18 consideration. They're available on the table
19 outside this room, and also posted on the JPP
20 website.

21 Thank you very much for joining us
22 today. We're ready to begin our meeting. Our

1 presenter is Ms. Lisa Friel, as I mentioned
2 before, Special Counsel for Investigations at the
3 National Football League and JPP Subcommittee
4 member.

5 Thank you very much for joining us
6 today, Ms. Friel. I see that she's accompanied
7 by other members of the Subcommittee. I welcome
8 each of you too and thank you for your service.
9 Thanks for joining us today, Ms. Friel, and we
10 look forward to hearing from you. You may
11 commence.

12 MS. FRIEL: Thank you. Good morning,
13 Panel members. I want to start off by thanking
14 you for giving me the opportunity to testify here
15 this morning, and more broadly, the opportunity
16 last year to serve on your Subcommittee. As
17 someone who has worked in this field for over 30
18 years and has seen so many sectors of our country
19 try to best deal with this very difficult and
20 sensitive problem, not just law enforcement but
21 our educational institutions, our professional
22 sports leagues, and what brings us here today,

1 our military.

2 I've seen firsthand over my time with
3 the Subcommittee just how much the military has
4 done to more effectively and sensitively deal
5 with this problem. I've heard from so many
6 caring and dedicated military professionals who
7 are working diligently to make their Services'
8 handling of these very difficult cases better,
9 and we as a Subcommittee hope that our efforts
10 and our expertise will assist them in this
11 regard.

12 I'd like to tell you a little bit
13 about my background as it informs the things I'm
14 going to talk about today. I started, after I
15 got out of law school, at the Manhattan District
16 Attorney's Office as a prosecutor. I spent 28
17 years in that office, 25 of them in the Sex
18 Crimes Prosecution Unit. I was the deputy chief
19 for 11 years and the chief for my last ten years
20 in that office.

21 During that time period, I either
22 handled personally or oversaw thousands of

1 investigations. I had an opportunity to learn
2 from what I always tell people are the best,
3 people who have been in this business for decades
4 before I got there. And I also had the
5 opportunity to work for a great public servant,
6 Robert M. Morgenthau, who taught us exactly one
7 thing about investigating and handling any kind
8 of criminal case, and that was to investigate as
9 thoroughly as possible, get to the bottom of what
10 happened and then do the right thing. And that's
11 the philosophy that all the Subcommittee brought
12 as we assessed how the investigations were being
13 handled, as we learned from our site visits this
14 summer.

15 After I left the DA's office, I went
16 to a consulting firm. And I was there for about
17 3-1/2 years, and I consulted on issues related to
18 sexual misconduct. I helped write policies, I
19 did education and training, and I did private
20 investigations.

21 My clients included lots of
22 educational institutions, K through 12, high

1 schools, colleges and universities, businesses,
2 and professional sports leagues, which is how I
3 came to work at the NFL full-time, helping them
4 enforce their personal conduct policy.

5 So, let me get to what we're here to
6 talk about today. As you know, from July through
7 September 2016, the members of the Judicial
8 Proceedings Panel Subcommittee spoke with more
9 than 200 Navy individuals from 25 military
10 installations throughout the United States and
11 Asia.

12 Our conversations focused on
13 investigation, prosecution and the defense of
14 sexual assault offenses. During this time, we
15 heard very candid perceptions from the people we
16 talked to about the military's handling of sexual
17 assault cases.

18 We spoke to groups of military
19 prosecutors, defense counsel, Special Victims'
20 Counsel, victims' legal counsel, paralegals,
21 investigators, as well as commanders, Sexual
22 Assault Response Coordinators, victim advocates

1 and victim witness liaisons from all the
2 different branches of the military.

3 On the basis of the information we
4 received during these site visits, we determined
5 that we would have to conduct further research
6 into several topic areas in order to best inform
7 the JPP about what we had learned.

8 So we held meetings in September,
9 October, and December of this past year, 2016,
10 and continued in January of 2017, in order to
11 develop information and research needed to report
12 on these issues to all of you.

13 The report that I'm going to present
14 today covers just one particular issue, and that
15 is how the military is handling their sexual
16 assault investigations, and how Department of
17 Defense policies are affecting these
18 investigations, as well as certain practices that
19 we heard about in the field.

20 So I'd like to start with the first
21 topic, which is our finding that military
22 criminal investigative command investigators --

1 and I'm going to call them MCIOs so I don't have
2 to say the whole mouthful every time I talk about
3 them -- how our MCIOs, we determined, lack
4 necessary discretion and resources in handling
5 sexual assault investigations.

6 So let me first talk to you about what
7 we learned during our site visit in that regard.
8 Investigators in every military Service that we
9 spoke to told us that they no longer have all the
10 time they would like to devote to the most
11 serious sexual assault investigations that come
12 before them.

13 They explained that there are a number
14 of factors that have stretched their resources
15 and eliminated their discretion in investigating
16 alleged cases of sexual assault. Perhaps the
17 most often-cited problem is that the MCIOs are no
18 longer able to refer the less serious cases to
19 other military investigative agencies, even when,
20 in their opinion, those other MCIO investigators
21 have adequate training for doing so.

22 So, let me put this in the perspective

1 of changes of the law in this area. Prior to
2 January 2013, sexual contact offense cases, as
3 opposed to penetrative offense cases, were
4 handled by Military Police investigators, with
5 some variation among the Services.

6 However, with the change in DoD policy
7 in 2013, MCIOs are now required to investigate
8 every sexual assault investigation regardless of
9 the nature of that alleged sexual assault.

10 The pre-2013 approach allowed the MCIO
11 special agents the discretion to determine which
12 offenses were more appropriately handled by
13 Military Police investigators, or by an accused
14 unit. And they did that depending on the
15 severity of the allegation and on the victim's
16 desire to participate in an investigation.

17 The MCIO investigators that we spoke
18 to almost universally felt that the 2013 policy
19 change has severely strained their resources, and
20 has undermined their ability to investigate more
21 serious sexual offense cases effectively and
22 thoroughly. A majority of the agents who we

1 spoke to said that investigations involving
2 sexual contact cases, which are often less
3 complex than a rape case, must be given the same
4 time, emphasis, and resources under the present
5 policy as the most serious sexual assault cases.

6 And I think it's important to
7 understand what we're talking about when we talk
8 about sexual contact cases. Those are cases that
9 might involve the touching of someone's buttocks.
10 The touching, under present laws -- recently
11 changed, but not yet effective -- of someone's
12 shoulder. An attempt to kiss was another kind of
13 sexual contact case that we were told by the
14 investigators that they are commonly
15 investigating.

16 Contrast this with a penetrative case.
17 The investigators noted that they have to commit
18 the same resources and time to the kinds of cases
19 I just spoke about, even when the reported facts
20 of what allegedly took place make prosecution of
21 the sexual contact offense unlikely, in their
22 opinion. And they also pointed out to us

1 something that we verified with other
2 information, that over the last number of years,
3 as reporting has increased -- which is of course
4 a good thing-- their caseloads are more and more
5 made up of sexual assault investigations.

6 So, this, in combination with their
7 lack of discretion in now giving sexual contact
8 cases to, for instance, the Military Police, has
9 greatly strained their resources in their
10 opinions.

11 CHAIR HOLTZMAN: Excuse me, I don't
12 mean to interrupt. When you say "caseload," you
13 mean their total caseload of all cases?

14 MS. FRIEL: Yes, yes. We were given
15 the estimate by some of the investigators that as
16 much as 60 to 80 percent of their caseloads are
17 now sexual assault investigations of one kind or
18 another.

19 In addition, they pointed out to us
20 another example of where they have a lack of
21 discretion that severely strains their resources.
22 They told us that if a case comes from a SARC,

1 then regardless of what they find the facts of
2 that case to be, they must continue to handle
3 that as a sexual assault investigation.

4 So if they, in doing an interview of
5 the victim, determine that it's not a sexual
6 assault, it's a non-sexual assault, a physical
7 assault, or they even sometimes find that it
8 doesn't appear to be a crime at all, they told us
9 that it is extremely difficult to close that case
10 or to hand that case off to a Military Police
11 investigator.

12 Another example they told us about of
13 their lack of discretion involves sexual assaults
14 reported by a third party witness, rather than
15 the putative victim. They told us that in some
16 instances they receive investigations reported by
17 a third party who has seen or heard about
18 something that they believe is a sexual assault.
19 And when the investigator looks at that case,
20 they find that either a victim is not at all
21 cooperative, which in the investigator's
22 professional opinion tells them that they're not

1 going to be able to go forward with that case in
2 any way as a prosecution, or the victim actually
3 tells them facts that makes the outcome not a
4 sexual assault at all. And yet they are still
5 told and they must investigate that case as
6 thoroughly as if they had a cooperative victim
7 who is telling them facts that indeed make out a
8 sexual assault.

9 In addition, the investigators noted
10 an ever-growing number of administrative
11 requirements for sexual assault investigations
12 which contribute to the strain of their having to
13 investigate every reported sexual contact
14 offense. They describe burdensome administrative
15 tasks, such as duplicative requirements for
16 documenting investigative activity, retaining
17 evidence, and many internal reports.

18 I mentioned before that the definition
19 of sexual contact is fairly broad at the present
20 time, and it includes the touching of any body
21 part for sexual gratification. That definition,
22 I should point out to the Committee, has been

1 changed, and this change will go into effect, at
2 the earliest, in June of 2017. And it does
3 narrow the bodily parts of the body that would
4 have to be touched to make out a contact sexual
5 offense.

6 However, the combination of this not
7 going into effect, at the earliest, until June,
8 and the fact that we will continue to get cases
9 that occurred before that time, because we all
10 know from sexual assaults that they are often not
11 reported right after they occur. And so our
12 investigators are still going to be investigating
13 contact cases that took place before the
14 effective date of the new law, and that will
15 continue to strain their resources.

16 I would like to point out to the
17 Committee that the Response Systems Panel also
18 addressed this issue, and they made the following
19 recommendation. They recommended to the
20 Secretary of Defense that he direct the
21 commanders and directors of Military Criminal
22 Investigative Organizations to authorize the

1 utilization of Marine Corps Investigative
2 Division, Military Police investigators, and/or
3 security forces investigators to assist in the
4 investigation of some non-penetrative sexual
5 assault cases under the direct supervision of a
6 special victim unit investigator who would retain
7 oversight.

8 On December 15th of 2014, DoD approved
9 this recommendation in part and referred the
10 matter for further examination to the DoD Office
11 of Inspector General, which is responsible for
12 establishing law enforcement policies.

13 Meanwhile, as I just stated, the present policy
14 is still in effect and these non-penetrative
15 contact cases have increased and overburdened our
16 investigators.

17 We reached out for -- the Subcommittee
18 reached out for the IG's office to find out how
19 they were coming along with looking into this
20 issue, and we found out from the Inspector
21 General that the Inspector General has proposed
22 revisions to DoD's policies concerning sexual

1 assault investigations and that DoD is in the
2 final stages of reviewing and updating these
3 existing policies.

4 The policy proposal we were told about
5 implements RSP recommendation, it was 89 that I
6 just quoted you, and includes two requirements
7 that were not specified in the RSP's
8 recommendation: that only the MCIOs will conduct
9 the formal victim interview and the assisting law
10 enforcement agencies must receive the requisite
11 training on sexual assault investigations before
12 they can assist the MCIO.

13 We were told in our site visits that
14 these other investigative agencies are in fact
15 getting that kind of training at this time, and
16 in fact the MCIOs feel that they have sufficient
17 training to be able to handle sexual contact
18 cases at the present time.

19 So our assessment and our
20 recommendations, the Subcommittee's. The changes
21 in 2012 to Article 120 of the UCMJ and the
22 changes in 2013 to the DoD's policies concerning

1 sexual assault investigations has significantly
2 increased the volume of investigations for which
3 the military's MCIOs are solely responsible.

4 Collectively, these changes and other
5 administrative policies have generated a flood of
6 investigative activity for both strong and weak,
7 serious and less serious sexual assault cases.
8 Special agents at the sites stress that the
9 increase in their caseloads has severely strained
10 their investigative resources and they feel has
11 harmed their ability to pursue the most serious
12 sex crimes in a manner they feel is most
13 appropriate.

14 These individuals concurred that the
15 increase in their workload is primarily due to
16 DoD's mandate that MCIOs investigate all reports
17 of sexual contact. Cases that I said earlier may
18 involve a relatively simple one-time touching of
19 the leg or the buttocks, rather than the more
20 serious and violent conduct.

21 The Subcommittee recommends
22 implementing the December 2016 draft changes to

1 DoD's sexual assault investigations policy. The
2 proposal -- that is, the IG's proposal that I
3 mentioned a few minutes ago -- if implemented,
4 will provide the MCIOs with access to needed
5 additional resources.

6 Although MCIOs will remain responsible
7 for all sexual assault investigations, permitting
8 other law enforcement agencies to assist with
9 those investigations should ease the current
10 strain on MCIO resources, and allow the MCIOs to
11 focus on the most serious cases.

12 The Subcommittee further recommends
13 that this new policy be closely monitored and
14 thoroughly reviewed one year after it takes
15 effect, and that the DoD Inspector General assess
16 the effects of new policy on the MCIO's ability
17 to focus their time and effort on the most
18 serious sexual assault cases.

19 Because we as a Subcommittee found in
20 our field interviews of investigators that it's
21 so essential to understanding the effects of
22 statutory and policy changes, we also recommend

1 that DoD's review similarly incorporate site
2 visits. I cannot stress enough how beneficial
3 that we thought having these site visits and
4 having all the different groups that we spoke to
5 that I mentioned at the beginning of my remarks
6 come in and speak to us. And they all spoke to
7 us on a non-attribution basis, which made them,
8 we felt, feel freer to tell us what they really
9 felt about how things were working.

10 And so we recommend that when this is
11 reviewed again in a year, that there be site
12 visits and that they be done, that the people who
13 come and speak to the groups speak on a non-
14 attribution basis.

15 Should the DoD, after that kind of
16 review a year from now, find the MCIOs continue
17 to experience strains on their resources and a
18 diversion of their expertise from the most
19 serious sexual assault cases, we recommend the
20 DoD IG might consider allowing MCIOs to transfer
21 full responsibility to alternative military law
22 enforcement agencies to address the problem.

1 The Subcommittee does not make this
2 recommendation now in recognition that there are
3 inherent difficulties in such transfers,
4 including but not limited to accurately
5 determining the seriousness of some offenses in
6 the early stages of an investigation. The
7 Subcommittee believes it is prudent to give the
8 IG's proposed changes a chance to be implemented
9 before suggesting more extensive policy changes
10 are needed.

11 The JPP, together with the
12 Subcommittee, is going to reach the end of its
13 statutory term in September 2017. Therefore, we
14 will not be in a position to monitor the effects
15 of this policy or make additional recommendations
16 about it to the Secretary of Defense. Congress
17 has created a successor panel, the Defense
18 Advisory Committee on Investigation, Prosecution,
19 and Defense of Sexual Assault in the Armed
20 Forces, and we as a Subcommittee respectfully
21 recommend that this new panel continues to
22 monitor this issue that we have identified.

1 The second area that I want to discuss
2 this morning in terms of investigations is our
3 finding that current policies and practice render
4 investigations less thorough and less expeditious
5 than we think they should be. We've identified
6 six specific contributing factors to this issue,
7 which I'm going to go through for the Panel this
8 morning.

9 The participants in our Subcommittee
10 visits raised a number of other issues that they
11 felt collectively hampered an investigator's
12 ability to conduct these investigations. Now, we
13 do recognize as a Subcommittee that the comments
14 we heard in some measure depend on the military
15 Service, the location, the size of the location,
16 the level of experience of the participants, and
17 we certainly are not making any findings or
18 recommendations based on a single anecdote.

19 However, we did hear across all the
20 bases that there were some common problems,
21 general themes were identified, and so that's
22 what I'm going to address this morning with all

1 of you. And these common problems, as identified
2 to us, suggested that there are some systemic
3 problems that may exist, and we may be able to
4 make recommendations to improve these problems.

5 So, to begin with, we heard that the
6 initial investigatory interview of a sexual
7 assault victim is often delayed, which is
8 detrimental to a case. It's important to note
9 that since the establishment of SARCs, military
10 investigators and Military Police are no longer
11 the first people to receive sexual assault
12 reports.

13 (Phone ringing.)

14 MS. FRIEL: I'm just glad it's you
15 and not me. Since the establishment of SARCs, as
16 I said, the majority of sexual assault reports
17 are coming to our MCIOs through the SARC office.
18 And this is a relatively recent development. We
19 then heard from the investigators that the first
20 interview of victim then must be scheduled
21 through the Special Victim's Counsel or the
22 Victim's Legal Counsel, if the victim already

1 obtained counsel through the SARC office.

2 If the complaining witness has not
3 retained counsel, as you all know, at that point
4 then it's incumbent on the MCIO to notify the
5 victim that they have a right to have an SVC or a
6 VLC assigned to them and they have a right to
7 have that done before this initial first
8 interview.

9 The investigators told us that in fact
10 almost all the complainants in these sexual
11 assault cases are asking for an SVC or a VLC and
12 asserting this right so that they can have the
13 necessary advice before they sit down and have an
14 interview, and have that kind of support at their
15 first interview.

16 The problem has become that there is
17 a delay caused in having that first interview by
18 the fact that an SVC or VLC has to be assigned.
19 They then have to get in touch with the victim
20 and set up a time that they can sit down and talk
21 to the victim. Then the interview has to be set
22 up at a time that works for the victim, the SVC

1 or VLC, and the investigator, and this all leads
2 to a delay.

3 And the longer the time goes between
4 when a complaint is first made or report is made
5 and when that first interview can take place
6 causes issues for the investigations. It's
7 always best, in any kind of investigation of any
8 kind of crime, to talk to the victim as early in
9 time as you possibly can. And we have heard from
10 the investigators in the field that sometimes
11 this delay can take anywhere from weeks, and on
12 some occasions months depending on the attorney's
13 availability.

14 In addition to what I just pointed out
15 as the negative consequence of a delay on a
16 victim's memory, they also pointed out to us
17 other things that are in fact true, that they're
18 losing valuable evidence, perhaps digital
19 evidence that's being written over. Victims are
20 changing phones and you don't have the phone
21 that's important available to you anymore. So
22 there are a number of things, evidentiary things

1 that we are losing during this delayed period of
2 time.

3 And then the final thing they pointed
4 out is that oftentimes they can't really get into
5 an investigation and start, for instance, finding
6 other witnesses and other kinds of evidence that
7 may not be in the victim's possession, until
8 they've done that first interview and they know
9 all the facts of the case and they know where to
10 go to look for other evidence.

11 Another issue that they told us
12 contributes to their ability to do as thorough an
13 investigation as they feel necessary is that they
14 feel discouraged from asking sexual assault
15 victims questions that might be deemed as
16 confrontational.

17 Before I talk a little more about what
18 we heard from the investigators, I'd like to say
19 something based on the over 30 years of
20 experience that I have doing sexual assault
21 investigations, and I've done a lot of training
22 in this regard for a lot of investigators.

1 Investigating a sexual assault, I
2 always say, is like peeling an onion. We know
3 there are very few outright false reports. We
4 all know that from FBI statistics and military
5 statistics. I saw that in civilian life. But
6 what there are are lots of initial reports that
7 don't have all the facts and information told in
8 the first interview that we need to know, and
9 that a good sexual assault investigator knows
10 that areas where victims are perhaps reluctant to
11 reveal information. It may be information they
12 feel makes them look bad, information that may
13 get them in trouble themselves. And a good
14 sexual assault investigator knowing that knows
15 how to sensitively probe to get that information.
16 That starts in a first interview. The hard
17 questions have to get asked in a first interview,
18 and a good investigator does that sensitively.

19 It is confrontational in the regard
20 that you're saying to someone, "I really need to
21 know," for instance, "how much you had to drink,
22 and hiding from me how much you really had to

1 drink is not really going to be helpful to your
2 case because of course the person you've accused
3 knows exactly how much you had to drink. And if
4 I go back to the bar to investigate how much you
5 had to drink, I'm going to find out from the
6 bartender or the waitress, and that's going to be
7 a problem."

8 So that kind of probing questions
9 begins in an initial interview, but it often,
10 almost always, continues in subsequent
11 interviews. An if you don't ask those questions
12 in interviews prior to somebody eventually
13 testifying in court, I've seen it time and time
14 again blow up in court.

15 It doesn't just hurt the case in court
16 and often lead to an acquittal, but it's a very
17 uncomfortable situation for a victim to be on the
18 stand and for the first time to have been
19 confronted with something that they didn't say,
20 that is detrimental, may make them look bad, and
21 now has to try to deal with how to answer that
22 question when they haven't been able to sit down

1 with the prosecutor and talk about how best to
2 deal with that issue.

3 And we heard from many, many senior
4 investigators that we talked to that they were
5 expressing a concern that they are no longer --
6 and this is a change, they told us -- feel that
7 they can interview a victim in a manner best
8 suited to elicit all the facts and circumstances
9 necessary to discovery what occurred.

10 The Subcommittee was told that
11 investigators are now taught not to probe too
12 deeply into the detail of a sexual assault
13 victim's account. They told us that they are
14 discouraged from confronting a complaining
15 witness with aspects of his or her account that
16 do not make logical sense or that conflict with
17 other evidence, including the victim's own
18 inconsistent statements.

19 The investigators stated, something I
20 just told all of you, that when done
21 appropriately such questioning is not
22 insensitive, and indeed is a crucial

1 investigative practice. As one senior agent
2 explained, in investigative circles confrontation
3 is a term of art and it does not entail the
4 hostility connoted by the common use of the word.

5 A confrontational clarifying interview
6 involves questions that invite a witness to
7 explain new or inconsistent evidence or
8 statements. While it's clear from the site
9 visits that many agents -- that the Services
10 differ in their approach to this technique, MCIO
11 training, internal practices, or both, give many
12 agents the impression that they have to accept
13 the victim's account at face value, without
14 thoroughly exploring discrepancies or seeking
15 more detail in that account.

16 Internal MCIO policies may likewise
17 discourage thorough questioning of sexual assault
18 victims. We heard from agents that they are
19 required to obtain a supervisor's approval before
20 conducting any interview subsequent to the
21 initial interview. They told us the imposition
22 of bureaucratic obstacles to interviewing a

1 victim a second or perhaps needed third time was
2 widely viewed as a deterrent, and field agents
3 felt dismayed that their MCIO leadership would
4 question their determination that a subsequent
5 interview was a critical investigative step.

6 The third thing that we were told that
7 the agents feel is impacting on their ability to
8 do the most thorough investigations possible has
9 to do with SVCs and VLCs limiting contact with
10 the victim and also limiting the scope of the
11 interview itself. We were told by a number of
12 agents that SVCs and VLCs who attend the
13 investigative interview sometimes object to
14 certain necessary and relevant questions, or
15 advise the victim not to answer them. Other
16 investigators reported that the mere presence of
17 the SVC or VLC dissuades them from asking probing
18 questions out of a fear that they are going to be
19 accused of being inappropriate or too hard on the
20 victim.

21 The Subcommittee heard that on at
22 least one visit an SVC/VLC objected every time an

1 agent asked a question about what sort of
2 resolution of the case he or she wanted, even
3 though his training courses had taught the agent
4 this was an important and routine question to
5 ask.

6 The Subcommittee was also told that
7 SVCs/VLCs request that investigators who want to
8 do follow-up interviews with the victim provide
9 the questions in advance of the interview,
10 therefore telling the victim before the victim
11 can come in for a subsequent interview what those
12 probing questions are going to be.

13 Sometimes the SVC or VLC will not
14 bring the victim in at all for a subsequent
15 interview, and will instead send written
16 responses back to the investigator's questions.
17 Of course, the investigators pointed this out as
18 problematic because based on those written
19 responses they may have additional questions that
20 they now have to put in writing and send back,
21 and that this is not the most effective way to
22 tease out all the important facts and details of

1 a sexual assault.

2 The Subcommittee heard from the SVCs,
3 we talked to them and VLCs, that indeed they want
4 their clients to only be interviewed once,
5 because they are afraid that if they are
6 interviewed more than once that this creates
7 inconsistent statements that will be written down
8 and turned over to the defense, and something
9 that the victims that they are representing will
10 be cross-examined about at trial.

11 Our investigators also spoke about how
12 this situation, to them, resulted in the loss of
13 rapport-building opportunities with the victims.
14 And this is something we heard from the
15 prosecutors, too, that their inability to have
16 the victim come in as often as they would like to
17 build rapport and to make them comfortable enough
18 to tease out all those important sensitive
19 details was lost by this limitation, or attempted
20 limitation, to just having one interview during
21 the investigative stage.

22 The investigators also pointed out

1 that they were losing information as a result of
2 this, since details about an incident are
3 commonly gathered over time after a traumatic
4 event such as the sexual assault. They also
5 pointed out that follow-up interviews are the
6 norm in the private sector during sexual assault
7 investigations, something that I can testify
8 before you as an absolutely 100 percent true
9 statement. I don't know in 30 years that I ever
10 handled a sexual assault investigation or
11 supervised one in which there was not at least a
12 second interview, and commonly three and four
13 interviews, to tease out all the details.

14 The fourth thing the investigators
15 pointed out to us that impacts on their ability
16 to do thorough investigations is that they
17 experience difficulties in obtaining needed and
18 relevant evidence from the victims who file
19 unrestricted reports of sexual assault. And I
20 emphasize that because, as you all know, in the
21 military, a victim of a sexual assault has a
22 choice. They can file a restricted and

1 unrestricted report. We are talking about the
2 necessary investigation that needs to go forward
3 on an unrestricted report.

4 At several site visit locations, both
5 trial counsel and investigators recounted cases
6 in which victims, on the advice of their SVC or
7 VLC, decline to turn over potential evidence to
8 investigators.

9 The SVCs and VLCs that we spoke to,
10 some of them openly acknowledged that they
11 counsel their clients not to turn over, for
12 instance, their cell phones to investigators,
13 even when they realize that that cell phone may
14 contain potential evidence.

15 Among the reasons that were offered by
16 the SVCs and VLCs for this advice to their client
17 were the financial loss to the victim when
18 investigators retained the phone for forensic
19 analysis, and privacy concerns over the vast
20 amount of personal information that's typically
21 contained on a smartphone.

22 However, the investigators told us

1 that both of these problems can be minimized if
2 not eliminated by modern forensic techniques for
3 imaging and searching cell phones, something that
4 I can tell the Panel is absolutely true. A cell
5 phone can be imaged in a matter of a couple of
6 hours, and it can take place while an
7 investigator is doing an interview. That cell
8 phone then can be searched with certain search
9 terms that narrow down exactly what the
10 investigator is looking for.

11 None of the SVCs or VLCs that we
12 interviewed expressed any concern that their
13 advice or advocacy could hamper the investigation
14 or prosecution of the case, and none seemed
15 concerned that keeping what could be relevant
16 evidence to an investigation could hurt that
17 case.

18 The investigators stressed to us that
19 the issue of searching a victim's cell phone or
20 other digital devices for evidence frequently
21 arises because the victim and accused are often
22 acquaintances who may have communicated by phone

1 or social media around the time of the alleged
2 offense.

3 I think we all know that acquaintance
4 sexual assault cases make up anywhere from 80 to
5 90 percent of sexual assaults, and therefore in
6 80 to 90 percent in these investigations, in
7 today's world with the way people communicate,
8 there is almost always going to be evidence of
9 communication between our complainants and the
10 alleged perpetrators in their cell phones and in
11 other kinds of digital devices.

12 The investigators pointed out that in
13 addition to communicating with the alleged
14 perpetrator on these digital devices, that a
15 victim often will have contacted someone else, a
16 friend, a family member, close in time after the
17 assault took place. And because as we know that
18 delays in making an official report occur in
19 these cases quite commonly, that initial outcry,
20 we call it -- in my business, we call those
21 recent outcry witnesses -- that initial outcry
22 can form real corroborative evidence of what the

1 victim says happened, both in the content of the
2 text messages -- I've often seen victims who take
3 pictures of their injuries and send that picture
4 to someone else at that time.

5 If that report is delayed so long that
6 that evidence no longer exists on the victim's
7 cell phone, we may be asking that witness for
8 that cell phone because we find it there. That's
9 how important it is to get this kind of
10 corroborative evidence. So this is really
11 crucial evidence.

12 The investigators explained to us that
13 they continue the investigation without access to
14 this evidence, and that they have seen the
15 negative consequences of this. One agent
16 described a scenario that I have seen personally
17 and that we can all realize makes perfect sense,
18 the outcome of this, that when the phone didn't
19 get turned over and the victim was on the stand
20 for the first time, the victim was confronted on
21 the stand with text messages that the alleged
22 perpetrator had turned over to his counsel. The

1 prosecutor had no knowledge of those text
2 messages.

3 They were hard to explain for the
4 victim on the stand given her testimony about
5 what had just happened, and it resulted in
6 negative consequences. And I don't just mean
7 these kind of things result in acquittals, which
8 are of course a very negative consequence when
9 you have a real sexual assault, but I've seen
10 this: you see the pain of a victim of a sexual
11 assault having to deal with that kind of
12 difficult confrontation -- and that is a
13 confrontation at a trial. That is not a
14 sensitive question that's getting asked by a
15 defense attorney at the trial. That is a
16 confrontational question in front of a jury, and
17 maybe a whole group of other people, about
18 something that the victim did not disclose.
19 Perhaps there's something embarrassing, but
20 oftentimes I felt, in my experience, that if I
21 knew about it, we could talk about, "Why did you
22 say this after the sexual assault. Why did you

1 say you want to see someone again?" Which is a
2 very common thing in an acquaintance sexual
3 assault. Oftentimes, a sexual assault victim
4 wants to confront the person who assaulted them.
5 "Why did you do this to me?" So they need the
6 time to think about what they said, prepare with
7 the prosecutor to answer that question, and then
8 answer the question, and oftentimes we lose that
9 ability when the first time it's coming out is on
10 cross-examination at trial.

11 So I go back to this is part of the
12 reason it is so incredibly important in a sexual
13 assault investigation or investigations to be as
14 thorough as humanly possible and to get out all
15 the facts and circumstances, all the evidence,
16 give that to the prosecutor so the prosecutor can
17 best prepare a victim to testify at trial, which
18 is the best way to win these cases.

19 The fifth thing that was pointed out
20 to us that is impeding the investigators' and the
21 prosecutors' ability to be as thorough as
22 possible, and therefore best prepare these cases

1 for trial, is that there still seem to be some
2 tensions in the prosecutor/MCIO relationships.
3 Prosecutors and investigators repeatedly
4 described tensions in their working relationships
5 with one another.

6 The trial counsel did generally agree
7 the coordination on sexual assault investigations
8 has improved over the last couple of years, but
9 many still complain that investigators are all
10 too often to decline to follow up on what they
11 see the prosecutors as important leads. For
12 their part, the investigators express the view
13 that many requests for additional investigative
14 activity from trial counsel they feel are
15 unnecessary or are difficult for an investigative
16 unit that is already overburdened and
17 understaffed to execute.

18 Some prosecutors venture that these
19 difficulties may be the result of internal MCIO
20 protocols that stress timely completion of
21 investigative tasks and pressure agents to close
22 a case as quickly as possible. In the same vein,

1 though, prosecutors noted that they do feel
2 investigators are reluctant to reopen a closed
3 case except to document newly received lab
4 results or a similarly significant event.

5 Internal MCIO policies were not
6 clearly defined to us in our site visit, but some
7 agents did mention internal deadlines of six
8 months to close a case in one Service, 90 days in
9 another Service. I think it's important to note
10 that they close a case, MCIOs, when they find
11 probable cause that the alleged sexual assault
12 has occurred.

13 We all know that probable cause is a
14 very minimal standard. It is nowhere near the
15 standard that a prosecutor has to meet to be
16 successful at a trial. So if our MCIOs are
17 closing their investigations just having
18 developed enough evidence to find probable cause,
19 they may not be -- and this is what the
20 prosecutors said, that they are not -- assisting
21 the prosecutor in building enough evidence to
22 prove a case beyond a reasonable doubt.

1 The last thing that -- the sixth and
2 last thing that we were told that impacts on the
3 ability to do a necessarily thorough sexual
4 assault investigation is the length of time that
5 it takes the forensic labs to develop and to
6 report back forensic results. Several
7 prosecutors and investigators raised this issue
8 of delays to us in our site visits.

9 At one installation prosecutors
10 reported that they typically wait at least six
11 months for DNA results, for instance. The
12 Subcommittee members were told that DoD labs
13 generally prioritize cases that are pending
14 court-martial, but notifying the lab that a
15 court-martial is pending does not even
16 necessarily result in expeditious testing.

17 What this does mean, however, is that
18 your investigators are not getting that
19 information prior to the decision being made to
20 go ahead to court-martial. And this is often
21 important. Whether it's DNA results or it's a
22 result from cell phone or digital device

1 analysis, this is important evidence to be
2 assessed to decide whether you should even be
3 going forward to a court-martial.

4 So we also examined, in addition to
5 the information we heard at our site visits, we
6 examined some other sources of information. And
7 I'd like to remind the committee of information
8 that they heard in April of 2016. You all
9 examined how MCIOs and other stakeholders in the
10 military justice process were interacting with
11 their SVCs and VLCs and address some of the
12 issues identified, that I just identified.

13 You heard testimony in April of 2016
14 from senior officials within each MCIO regarding
15 the impact of SVC/VLC representation and
16 corresponding policy on sexual assault
17 investigations.

18 These witnesses echoed for you the
19 same concerns that the Subcommittee members heard
20 at our site visits regarding the investigative
21 delays caused by SVCs and VLCs, and noted that
22 the policies continue to evolve to accommodate

1 SVC and VLC representation.

2 The JPP presenters also acknowledged
3 that it is difficult to assess the impact in
4 these delays on the overall quality of the
5 investigation, and that these issues have become
6 less pronounced over time. I'd also like to
7 remind the JPP that the RSP also looked into this
8 issue, and they examined the thoroughness of
9 sexual assault investigations.

10 And on this subject, in 2013 and '14
11 they heard from prosecutors who at that time
12 voiced concerns similar to those raised during
13 the JPP Subcommittee site visits this past
14 summer. The concerns about the premature closing
15 of sexual assault investigations was particularly
16 addressed to the RSP.

17 The RSP noted the disagreements
18 between trial counsel and MCIOs, the same kind of
19 disagreement that I just mentioned. And they
20 stated at that time, according to MCIO agents,
21 investigators complete thorough investigations
22 following all logical leads prior to reaching any

1 conclusions. Military prosecutors, however,
2 provided mixed reviews of the quality of MCIO
3 investigations and often felt additional
4 investigation was necessary.

5 Military prosecutors also conveyed
6 that investigations are considered closed when
7 they are passed to the commander for review, and
8 that it's difficult to reopen cases for further
9 investigations. Again, this is exactly what we
10 heard this summer in 2016.

11 On the basis of what the RSP heard,
12 they made a recommendation. It's their
13 Recommendation 94A, and they recommended that the
14 Secretary of Defense should direct MCIOs to
15 standardize their procedures to require that MCIO
16 investigators coordinate with trial counsel to
17 review all the evidence and annotate in the case
18 file that the trial counsel agrees all
19 appropriate investigation has taken place before
20 providing a report to the appropriate commander
21 for a disposition. Neither the trial counsel nor
22 the investigators should be permitted to make a

1 dispositive opinion whether probable cause
2 exists.

3 We did hear in our site visits that
4 this kind of coordination is taking place. The
5 investigators are talking to the prosecutor
6 before they make the determination that probable
7 cause exists. But that's where it stops, and
8 that's where the problem is, in the
9 Subcommittee's opinion, is that these
10 investigative resources need to be available to
11 the prosecutors throughout the pendency of a
12 case, indeed, I would say, throughout the trial.
13 Things come up actually during a trial that you
14 need an investigator to go out and investigate.

15 And in fact, the RSP recognized this,
16 and in their Recommendation 94B they said, "to
17 ensure investigators continue to remain
18 responsive to investigative requests after the
19 commander receives the case file, the MCIO
20 commanders and directors should continue to
21 ensure investigators are trained that all sexual
22 assault cases remain open for further

1 investigation until final disposition of the
2 case."

3 The DoD did not adopt these
4 recommendations, but they have referred them to
5 various working groups within the military. At
6 present, the MCIOs have to include in each
7 investigative report the commander's decision
8 whether probable cause exists to believe an
9 offense was committed, as well as the appropriate
10 disposition for the case, and to include
11 information they must either leave open or reopen
12 these cases.

13 Finally, I'd like to remind the JPP
14 that the RSP's Comparative Systems Subcommittee
15 examined processing times at military and
16 civilian crime labs, and at that time heard
17 testimony that the average time, turnaround time
18 was 77 days. That's not what we heard on our
19 site visits, as I stated, that that turnaround
20 time varied anywhere from 90 days in a good case
21 to over six months.

22 Witnesses noted to the RSP that the

1 time frame was dependent on several factors such
2 as lab resources, current caseload, and the
3 amount of evidence to be examined to a request.

4 So what are the Subcommittee's
5 assessment or recommendations based on these six
6 issues that were pointed out to us by the people
7 we interviewed in our site visits that affect the
8 thoroughness of investigations? In the wake of
9 Congress' emphasis on sexual assault cases, DoD
10 and MCIOs have written numerous policies
11 designated to enhance the quality of sexual
12 assault investigations.

13 Unfortunately, most MCIOs' specific
14 policies are not publicly available, owing to the
15 sensitive nature of the investigative methods.
16 However, the Subcommittee repeatedly received
17 comments during our site visits to the effect
18 that investigators today have reduced access to
19 evidence and to victims, but are responsible for
20 investigating a broader spectrum of misconduct
21 than ever before. Their investigations all carry
22 more administrative burdens, such as duplicative

1 reports and forms, yet now contain less evidence
2 owing in part to their own internal policies and
3 practices regarding victim interviews.

4 Because of the strain on investigative
5 resources, and for all the reasons that I've just
6 discussed with you, some investigators resist
7 undertaking, or simply are unable to do, the
8 additional investigative work necessary to fully
9 prepare a case for prosecution.

10 Further complicating the completion of
11 a thorough investigation is the method of SVC/VLC
12 advocacy that restricts the information that
13 investigators and prosecutors can gather from
14 victims.

15 Before I go on, I want to say that all
16 of us on the Subcommittee recognized all the
17 beneficial things that SVCs and VLCs are doing
18 for the victims of sexual assault, the support
19 their giving them, the information they're giving
20 them, the knowledge that they're giving them, and
21 don't want to take away from that at all.

22 But we do feel that, perhaps with

1 further training and education, that the SVCs'
2 input to the victims and advice could be modified
3 in a way that will make investigations more
4 thorough, that will make them more effective and
5 will result in better prosecutions, which of
6 course in the end is the best thing for a victim.

7 As I said, we heard from investigators
8 that they're likely to be the second or third
9 person the victim speaks to about an offense, and
10 they can only talk in the presence of the
11 victims' attorney, who may limit the breadth of
12 the inquiry or even advise the victim not to
13 speak to the investigator more than once.

14 The victims' decision to act on the
15 advice of his or her counsel is, as I said, not
16 inherently problematic. Rather, the problems
17 occur when, on the advice of counsel or on their
18 own, the victim limits their own participation or
19 fails to provide investigators with evidence
20 relevant to the investigation.

21 Even when the SVC/VLC provides the
22 investigator's question to the victim and

1 communicates the response back to the
2 investigator, the investigator is losing valuable
3 information because she or he is unable to
4 personally observe a victim's demeanor or
5 reaction an investigator's question.

6 Moreover, investigators may not fully
7 comprehend or have additional questions based on
8 the written or verbal responses of an SVC/VLC who
9 does not allow the victim to be questioned
10 directly after the initial interview. Denying
11 follow-up interviews therefore prevents
12 investigators from fully exploring and
13 understanding what could potentially become very
14 important issues in a case.

15 When a victim either declines
16 subsequent investigative interviews or refuses to
17 turn over relevant evidence, such as photographs,
18 text messages, social media information,
19 investigators and prosecutors make decisions
20 about investigating and charging cases without
21 processing all available evidence.

22 There's a general sense among the

1 investigators and the prosecutors that we
2 interviewed at the site visits that they must
3 press forward without a victim's full
4 cooperation, and that that is an approach that
5 raises concerns about the fairness of an
6 investigation, but also about the overall
7 fairness of a prosecution.

8 And as I said, they also expressed the
9 concern that this severely impacts on their
10 ability to achieve a positive result at trial on
11 cases of sexual assault.

12 The Subcommittee heard a number of
13 reasons why victims might not cooperate with
14 requests for cell phones, concerns from not
15 having access to their cell phones for an
16 extended period of time to concerns about the
17 privacy of information in their phones.

18 However, the Subcommittee heard from
19 investigators and others that these kinds of
20 concerns are misguided, and that in fact they can
21 be accommodated with what is today's forensic
22 examination techniques.

1 Case delays take many forms, and
2 waiting on forensic lab analysis was one raised
3 by our investigators and prosecutors alike at the
4 site visits. Forensic evidence, as I stated, can
5 yield important critical information, and the
6 sooner an investigator or prosecutor has this
7 information, the better the investigation, the
8 prosecution, and ultimately the trial is going to
9 be.

10 So we make the following
11 recommendations and findings. It's delineated as
12 Recommendation 2 in our report. To ensure prompt
13 initial victim interviews, we find it is critical
14 that the initial interview of the victim by MCIOs
15 or other law enforcement agencies be conducted
16 promptly after MCIOs receive a report of sexual
17 assault.

18 Yet the Subcommittee heard frequent
19 complaints that the MCIOs' initial interviews
20 were being substantially delayed, often because
21 Special Victims' Counsel or Victims' Legal
22 Counsel were unavailable to attend the interview.

1 The Subcommittee therefore recommends
2 that the Secretary of Defense take the necessary
3 steps to ensure that Special Victims' Counsel and
4 Victims' Legal Counsel (1) have the resources to
5 schedule and attend the initial victim interview
6 promptly after a sexual assault report is made,
7 and (2) that they receive the training necessary
8 to recognize the importance of a prompt victim
9 interview by the MCIO to an effective and just
10 prosecution.

11 Delineated Recommendation 3 in our
12 report regards removing impediments to thorough
13 victim interviews. As you heard, the
14 Subcommittee heard complaints from MCIO special
15 agents interviewed that there are various
16 impediments that prevented or discouraged them
17 from conducting victim interviews that were as
18 thorough as they consider necessary.

19 Specifically, they felt procedures and
20 policies discouraged or prohibited investigators
21 from asking any question that could be perceived
22 as confrontational during either the initial or

1 the follow-up interview, even when in their
2 professional judgment such questions were vital
3 to address conflicting statements given by the
4 victim, or other evidence contradicting the
5 victims' account. They also felt their
6 investigations were impeded by policies and
7 procedures that discouraged them from conducting
8 follow-up interviews.

9 The Subcommittee accordingly
10 recommends that the Secretary of Defense identify
11 and remove these and any other identified
12 barriers to thorough questioning of the victim by
13 MCIOs or other law enforcement agency.

14 Our Recommendation 4, regarding
15 examining and removing impediments to MCIO access
16 to tangible evidence. The Subcommittee heard
17 numerous complaints, as I told you, that
18 investigators have difficulty obtaining evidence
19 from the victim, particularly information on
20 cellular phones or other digital devices.
21 Investigators said the reasons that victims
22 and/or attorneys gave for not turning over these

1 devices include financial loss to the victim
2 while investigators retained the phone for
3 forensic analysis and privacy concerns over the
4 vast amount of personal information typically
5 contained on a smartphone.

6 These concerns, while legitimate, can
7 be minimized or eliminated by modern forensic
8 techniques for imaging and searching digital
9 phones. Therefore, the Subcommittee recommends
10 the Secretary of Defense examine these problems
11 and develop appropriate remedies that address
12 victims' legitimate concerns and ensure that
13 sexual assault investigations are complete and
14 are thorough.

15 Finally, Recommendation 5 regarding
16 reducing delays at forensic laboratories. The
17 Subcommittee heard, as I told you, complaints
18 from MCIOs and prosecutors that the length of
19 time it takes to obtain results from forensic
20 laboratory testing of evidence impedes the timely
21 completion of sexual assault investigations.

22 Therefore, the Subcommittee recommends

1 at the Secretary of Defense review the resources,
2 the staffing, procedures and policies at forensic
3 labs within the DoD, to ensure more expeditious
4 testing of evidence by forensic labs. That
5 concludes, ladies and gentlemen of the Panel, the
6 testimony that the Subcommittee would like to put
7 before you this morning, and we're now available
8 for any questions you might have about the
9 material that we just discussed.

10 CHAIR HOLTZMAN: Thank you very much,
11 Ms. Friel. I apologize to the members of the
12 Panel and the public for not introducing the
13 other distinguished, outstanding and experienced
14 members of the Subcommittee who are before you
15 today, starting with Ms. Laurie Kepros, Ms. Jill
16 Wine-Banks and Dean Lisa Schenck. We really
17 appreciate your presence here and your
18 contribution to the work of the Subcommittee, and
19 thank you very much, Ms. Friel, for your
20 presentation.

21 MS. FRIEL: You're welcome.

22 CHAIR HOLTZMAN: We'll start with

1 Judge Jones.

2 JUDGE JONES: I just want to thank you
3 for that very thorough presentation and also,
4 even though I am a member of the Subcommittee, I
5 think I can still thank all of my fellow
6 Subcommittee members for the tremendous amount of
7 work and thought that they put into this. I
8 don't really have any questions with respect to
9 the Subcommittee report on this issue. Thank
10 you.

11 CHAIR HOLTZMAN: Mr. Taylor.

12 PROF. TAYLOR: Yes. Thank you very
13 much. I'd like to start by thanking Judge Jones
14 for her leadership on this Subcommittee. It
15 certainly represents a great effort on the part
16 of you as well as your committee members, and
17 thank you Ms. Friel for this wonderful report, as
18 well as those who accompanied you and assisted
19 you with this.

20 I do have two or three questions that
21 I hope to tease out some things that seemed a
22 little, at least in my mind something that we

1 ought talk about a little bit, and that is I
2 noticed that the draft DoD policy still called
3 for the initial interview to be conducted by an
4 MCIO investigator.

5 I'm curious about your thoughts of how
6 much risk would be assumed if in fact the initial
7 investigation, the initial interview excuse me
8 actually could be conducted by a trained law
9 enforcement officer, assuming that the allegation
10 is something that's relatively minor in the big
11 scheme of things like an offensive touching in
12 the form of a kiss. So is that risk that we
13 should be able to assume in order to move the
14 more serious investigations farther ahead in the
15 queue?

16 MS. FRIEL: I think that one of the
17 reasons that DoD's IG made that recommendation
18 was dual concern that I saw in civilian life as
19 well, is that if the initial interviewer does not
20 recognize in that initial interview that there is
21 more to that case than just what appears, for
22 instance, to be a simple contact case, that that

1 case may stay and proceed through the system as a
2 simple contact case when in fact it might be an
3 attempted more serious sexual assault, and that
4 is something that we saw.

5 I know that information was presented
6 to the various committees that have addressed
7 this issue. So I think that's what the IG was
8 getting at with that. That doesn't mean that
9 there may not be cases that are so obviously just
10 what they are. To give the example of something
11 known as a contact case, someone grabbing another
12 person's buttocks as they go by. There would not
13 appear to be any more to that case than that, and
14 that might be a category of cases that could be
15 left initially to a different kind of
16 investigator.

17 The problem is that when it becomes
18 more than that, it becomes sometimes difficult to
19 say was that just that kind of contact, or was
20 that the beginning of a more serious sexual
21 assault.

22 So I think that's what the IG was

1 getting at when they thought let's have our best
2 investigators, our best trained investigators,
3 our MCIOs, let's have them do the initial
4 interview at least, tease out those details and
5 then if it turns out as just that simple case,
6 then they should be able to let a different kind
7 of investigator take that forward for additional
8 investigation.

9 PROF. TAYLOR: Do you know whether as
10 part of the training for most MCIO investigators,
11 they are at least thinking at the same time
12 they're receiving the initial complaint about the
13 possibility that this same kind of activity may
14 have happened to other people? I know for
15 example in overseeing senior official
16 investigations for many years in the Pentagon,
17 that often a person was a serial offender.

18 So is part of the idea that you don't
19 just talk to the victim, but you find out from
20 the victim whether he or she might be aware of
21 similar instances that have happened to others?

22 MS. FRIEL: Yes. I think that's

1 absolutely true, and I'm so glad you said that,
2 because if you remember at the beginning of my
3 answer I said there's a dual reason for it and
4 then I forgot to mention.

5 That is, the second reason that you'd
6 like your more experienced investigator in the
7 civilian world. We would have wanted our special
8 victims detective to tease out that information
9 because they're more apt to ask about it and to
10 see if there's a pattern going on.

11 PROF. TAYLOR: Right. Regarding your
12 third recommendation, when you were talking about
13 the policies and procedures that MCIO
14 investigators told you that they felt inhibited
15 their work, did you have a chance in your
16 Subcommittee to actually review the training
17 given to MCIO investigators on this question of
18 the extent to which confrontational questions
19 might be used and how they might be used, so that
20 there is actual policy out there that needs to be
21 changed, or do you think this was more of a
22 cultural phenomenon in terms of the interest that

1 we all are correctly focusing on victims at this
2 point in time?

3 MS. FRIEL: We did not have an
4 opportunity after we heard about this issue on
5 our site visits to obtain policies or to get
6 testimony actually on those policies, which is
7 exactly what led us to recommend that the DoD
8 identify and remove any identified barriers,
9 because we did recognize, as you say, that we
10 didn't have that other information.

11 We're just pointing out that we heard
12 that across every site with investigators, that
13 this is an issue for them or at least it's a
14 perceived problem, and whether it's due to
15 policies or as you point out just a feeling about
16 the atmosphere, they all discussed it and in our
17 professional opinion on the Subcommittee it is a
18 real problem if they can't ask all the necessary
19 questions and be as thorough as necessary.

20 PROF. TAYLOR: And of course the
21 reason I ask is that it may be that this is not
22 so much a question of policy as a question of

1 sensitivity in terms of how the training is being
2 delivered and the manner in which it's being
3 received, and how it's being actually implemented
4 when it gets to the field.

5 So it would be interesting to see what
6 that results in. So I do agree with the
7 recommendation, but I was just curious if you
8 could actually identify any policies or
9 principles.

10 My last question for now is that it
11 seemed to me that investigators could get a
12 search warrant if they wanted to, to get access,
13 for example, to a smartphone. Assuming that the
14 probable cause standard is met, assuming that the
15 victim decides on the advice of counsel not to
16 turn over the phone, did you come across
17 instances where MCIO investigators had said that
18 they had sought and been unable to get a search
19 warrant in a situation like this?

20 A commander's authorization would be
21 the military term for it, or was the general idea
22 okay, if he or she doesn't turn over the phone,

1 I'll just live with it, figure out what to do
2 next?

3 MS. FRIEL: And I'm going to ask my
4 Subcommittee members to weigh in on this, because
5 I don't have perfect recollection of everything
6 said at the site visits and didn't go on all the
7 site visits. My recollection is we heard that
8 it's burdensome administratively to get a search
9 warrant, that by the time if they do go that way
10 and get a search warrant, oftentimes they've lost
11 important evidence because they've already asked
12 the victim for that cell phone and that cell
13 phone may no longer be available to them by the
14 time they get a search warrant.

15 Certainly we heard from some people
16 that they feel it's so burdensome and that they
17 are not going to get a search warrant that they
18 don't even ask. But I do want to open it up to
19 my other Subcommittee members, and they may also
20 have some information on the last question that
21 you asked me.

22 MS. WINE-BANKS: I think part of the

1 problem that was raised was that it's often
2 denied, and so they were very discouraged from
3 going for search warrants. The other part, going
4 to your earlier question, I think there was some
5 testimony about being taught that there are
6 limits to what you can ask, and they are being
7 trained in only investigating a certain way, and
8 that that was leading to part of the problem.

9 So that in terms of how they're taught
10 not to be confrontational was more than just a
11 discomfort with it. It was part of what they
12 were taught.

13 DEAN SCHENCK: I'd also like to
14 respond to the issue of the search authorization
15 of the commander. The investigators have got to
16 have probable cause to believe that there's going
17 to be evidence of a crime in that phone, and
18 victims generally don't -- that it's not usually
19 a crime unless it's underage drinking or other,
20 you know, tangential offenses.

21 So it's very difficult for the
22 commanders to say there's probable cause to get

1 that phone from the victims. The accused, you
2 know, a little easier.

3 MS. KEPROS: Can't miss an opportunity
4 to chime in. The other thing I wanted to --

5 MS. FRIEL: She's a lawyer after all.

6 MS. KEPROS: Right. I think there's
7 also interplay between the two topics that you've
8 raised for us. One is that sensitivity topic and
9 the other is search warrants, and I think there
10 is a lot of concern about not making the victim
11 feel in an adversarial position, and that a
12 search warrant would certainly create that kind
13 of dynamic.

14 And so considering that we have, for
15 example, restricted versus unrestricted reports,
16 and there have been very concerted efforts to put
17 the victim more in control of what the process is
18 going to look like in some respects, that even
19 that act of turning to that sort of authoritarian
20 solution may be undesirable, even if there is a
21 loss of evidence.

22 That's partly why we think it's very

1 important that considerations like thorough
2 understanding for the victim of how things can be
3 done in a respectful way, what some of the
4 potential consequences of lost evidence could be,
5 that that's why those, you know, rapport-building
6 opportunities, all those things become so
7 important in terms of the ongoing progress of the
8 prosecution, the investigation and the victim's
9 entire dealings with the justice system.

10 PROF. TAYLOR: Yeah, just building off
11 that question, again just to -- it seemed like
12 just a few years ago, it was a few decades ago
13 when I actually had the responsibility for
14 prosecuting some of these types of offenses.

15 I thought that one of the keys of
16 getting MCIO investigators to cooperate with you
17 as a prosecutor was simply building that kind of
18 rapport and having that kind of relationship, and
19 I'm sure that Dean Schenck would probably echo
20 that, that part of this is a matter of
21 interpersonal relationships.

22 But even so, did you see instances

1 where because MCIO investigators were unable to
2 unwilling to assist, that the prosecution ended
3 up using paralegals or perhaps an assistant trial
4 counsel, assistant prosecutor to go out and
5 interview witnesses or follow up on leads as
6 work-arounds, and overall is that a good work
7 around if that's what's happening?

8 MS. WINE-BANKS: You hear much more
9 about the defense having to use paralegals and
10 not having the investigators. I can't think of
11 any instance where somebody said that they had to
12 use paralegals.

13 CHAIR HOLTZMAN: You mean trial
14 counsel.

15 MS. WINE-BANKS: Trial counsel, yeah.

16 MS. FRIEL: Yeah, I can't either.

17 DEAN SCHENCK: Yeah. I didn't hear
18 anything about that either. I think the
19 prosecutors, because the MCIOs had so many cases
20 that the prosecutors had to do a lot more hands
21 on with those investigations, to try to move the
22 cases that they thought were important along. So

1 there was some conflicts about first in/first out
2 or, you know, this is definitely clear cut.

3 Let's move it along and get it to trial.

4 So they just had a different agenda,
5 I think, and that's why the prosecutors were more
6 hands on about go out and investigate, ask this
7 person, this person, this person. So I did not
8 hear anything about sending out assistant trial
9 counsel or anybody in the office for those kind
10 of matters.

11 PROF. TAYLOR: Thank you, Madam Chair.

12 CHAIR HOLTZMAN: Mr. Stone.

13 MR. STONE: Thank you. I guess the
14 first question I'd like to ask Ms. Friel, because
15 I don't really understand it. But let me start
16 by saying I think that the five recommendations
17 are good recommendations on their face. I don't
18 -- so let me start there.

19 I'm fine with having, you know, I
20 think it's a good idea to have a prompt interview
21 set up and if there's other impediments to them,
22 remove them to the interviews or impediments to

1 tangible evidence or delays at forensic
2 laboratories.

3 So I don't have any problem with those
4 at all. I guess I didn't understand and I don't
5 understand if those are the recommendations from
6 your Subcommittee, how those relate to the other
7 recommendations that are before us for discussion
8 today. Just for example Recommendation 43, that
9 says, and based on your Subcommittee's results,
10 "In order to ensure the fair administration of
11 justice, all the Military Services provide
12 independent and deployable defense investigators
13 under their control in sufficient numbers so that
14 every defense counsel has access to investigators
15 as reasonably needed."

16 I don't understand how these five you
17 just made, do they supersede 43 and 44 and 45 and
18 46? Are they somehow supplemental to them? I
19 don't -- why don't you tell me how they relate.

20 MS. FRIEL: They neither supersede
21 nor supplemental. They are additional
22 recommendations made regarding our findings with

1 regard to defense resources. I don't see them as
2 supplemental or superseding.

3 In our last report, we set out for the
4 Panel what we heard in terms of defense resources
5 and our recommendations based on that. So I
6 would just say these are additional
7 recommendations about a separate area, about the
8 ability of the MCIOs and prosecutors to do
9 investigations.

10 MR. STONE: Okay. Now I'll tell you
11 the reason I asked that question is when I looked
12 at the earlier recommendations, which suggest
13 that the MCIOs are not doing a job that satisfies
14 the defense counsel in a variety of ways, and
15 these recommendations that say the MCIOs are not
16 satisfying the prosecution counsel in a number of
17 ways, it led me to the conclusion, which I didn't
18 see in here but I find almost inescapable that
19 perhaps today the MCIO organization, the way it
20 was set out in the past, is not tuned, fine-tuned
21 enough to continue serving in that manner because
22 now the number of sexual assault prosecutions is

1 probably half of all the prosecutions.

2 It's taking up a huge burden of their
3 time, and it sounds to me like we're trying to
4 fix little pieces of a bigger system that ought
5 to be looked at.

6 Maybe the defense should have their
7 own investigators, the prosecution should have
8 its own investigators, and there should also be
9 investigators available also on demand or on call
10 to the victims counsel, because the old system is
11 not serving really anybody in the way that they
12 would like.

13 I guess it was -- did the Subcommittee
14 ever consider saying maybe it's time to ask to
15 have this whole system of MCIOs reexamined? I
16 know you build a bureaucracy and people have a
17 vested interest, but it sounds from these pieces
18 like it's out of sync with where the military
19 sexual assault prosecutions, which is a huge
20 percentage of the prosecutions, has taken us.
21 Did you get to that? Did you consider it?

22 MS. FRIEL: So let me respond and

1 say, first I'll address something you said later
2 and then go to the earlier part of the question.
3 We did not hear from any of the SVCs or VLCs that
4 we spoke to, none of them expressed a desire to
5 have their own investigators.

6 So I'm going to address now what we
7 did hear. It's prosecutors who need more
8 investigative resources, defense counsel who need
9 investigative resources, and the present
10 investigative resources saying that they are
11 severely strained.

12 So we did look at, overall, what is
13 causing this problem, and I mentioned some of
14 them today and my colleague, Ms. Kepros,
15 mentioned the strains for the defense in our last
16 presentation. So we did look at it more
17 globally, and we think that as you point out, one
18 of the biggest strains on the MCIOs as resources
19 is the explosion of sexual assault cases over the
20 last number of years.

21 It's a good explosion. It has to do
22 with better reporting. It means that people are

1 more trusting of the military justice process to
2 come forward and make these reports and that
3 they'll be handled sensitively and appropriately.
4 But that has left your MCIOs with a much greater
5 caseload than they ever had before.

6 In addition, what's also added to that
7 caseload is something I identified earlier, is
8 the change in 2013 that told the MCIOs, those
9 agencies, that they have to investigate every
10 kind of sexual assault, every sexual contact case
11 and that definition, as we said, got broader for
12 a number of years and it's still going to be
13 broader until about June of 2017.

14 That is severely straining all their
15 resources. So I do think that we have to look at
16 it as a resource thing. Whether you say it's an
17 overhaul or whether you say it's an examination
18 of do they have enough people to thoroughly and
19 adequately investigate these cases, I think we're
20 saying the same thing.

21 But I do think the defense resources
22 is a different thing. I think part of the reason

1 that they don't have all the investigative
2 ability that the Panel or Subcommittee of the
3 Panel thought they should have is what I just
4 said resources, but it's also that they need an
5 investigator who was working for the defense
6 attorney who -- we have a system, whether it's
7 military or a civilian system, that has two sides
8 in a case, who are looking to do two different
9 things.

10 So you do your investigation from that
11 perception, and I think it's very important for a
12 defense investigator to have an investigator who
13 is theirs, who they can discuss their case with
14 confidentially, and can send that investigator
15 out, who may have a different kind of open mind
16 about looking for information than an
17 investigator who is working on the other side
18 might have.

19 That's of course as you heard and you
20 know, that's the way the civilian system works.
21 The defense attorney does not use the police
22 detective to do their investigations. It would

1 be unheard of.

2 MR. STONE: Well that's why I asked
3 whether you would -- your suggestions, you know,
4 go towards whether or not there should be an
5 overall rethinking of what the MCIOs do. We did
6 hear as a JPP Panel -- well you might not have -
7 - we did hear as a Panel SVCs tell us that they
8 don't have investigators in those individual
9 cases where they might want one.

10 For example where their victim, their
11 client says I think this same defendant engaged
12 in the same behavior with his prior girlfriends,
13 and the prosecution may say well, that's not
14 something we're looking into here, unless you've
15 got hard evidence of that, and only the sexual
16 assault counsel is able to get enough detail from
17 his client to maybe ask somebody to investigate
18 that, even if it's a limited investigation.

19 MS. FRIEL: As I said Mr. Stone, we
20 didn't hear that. But one thing I would say,
21 listening to what apparently the Panel heard, is
22 that's concerning to me to hear that it's the

1 Special Victims' Counsel who is the only one with
2 access to enough information, as you say, to send
3 out an investigator to do the kind of thorough
4 investigation that should get done.

5 That's part of one of the issues that
6 we brought up, is that I think it's, and the
7 Subcommittee thinks it's extremely important for
8 there to be a rapport with the prosecutor, such
9 that a victim feels comfortable enough to reveal
10 all the details that they have in their
11 possession that are relevant to the investigation
12 and the prosecution. That seems to have been
13 impacted recently, so we heard.

14 MR. STONE: Have you in the past had
15 legal cases where you had a victim's legal
16 counsel involved, you personally?

17 MS. FRIEL: Yes. Not called victim's
18 legal counsel, called their civilian attorney.

19 MR. STONE: I mean I certainly have,
20 and I guess I don't understand, or I think it's
21 an overstatement when you said before what --
22 that the two sides want different things. There

1 are three sides involved.

2 One of them is the victim, and because
3 this is a closed military system, my opinion --
4 the opinion that I think I've heard from people
5 over the last two years -- is that sometimes the
6 victim knows that going forward is going to
7 embarrass them or change their career in such a
8 way that it will effectively end their career in
9 the military, either from other members of their
10 unit who don't like that the unit's morale was
11 wrecked, or just simply because people are going
12 to feel that they were a tattletail or they
13 should have kept their mouth shut, or that this
14 affects their own personal loyalty.

15 There's an inordinate number of ways,
16 and it's totally unlike the civilian situation
17 that occurs in schools, where they can leave that
18 college and go to a different college, or in the
19 regular civilian world, where people just decide
20 to pick up sticks and move away and avoid that
21 ongoing effect, which here they're going to have
22 even if they opt for a transfer and wind up

1 having to be somebody at someplace else in the
2 military that affects their career.

3 The result is, and I see this in the
4 civilian world where they have options, victims
5 say to me if this testimony or this evidence, it
6 could even be that they're, you know, it could be
7 a text on their cell phone that they find
8 embarrassing. It may or may not be accompanied
9 by pictures they shouldn't have taken of
10 themselves partially or completely unclothed.

11 If that's going to go in, then I'll
12 just eat this thing. I'll forget about it. I
13 don't want this to go forward, and they have the
14 right to do that. All these comments about it
15 will be a more effective investigation and you
16 might get to a better results, that's as you
17 pointed out purely legalistic, and that sets
18 aside the feelings that the victims have about
19 whether or not they will come forward.

20 To the extent and in the past this
21 wasn't recognized, that they have an interest in
22 this, such that they won't come forward but we do

1 want their problems counted, we're just going to
2 wind up with more restrictive reports, if that --
3 if they even provide a restricted report.

4 So I think it's in some sense it's
5 very paternalistic to say that the victim counsel
6 doesn't know what they're doing and shouldn't be
7 explaining to their client, whose only interest
8 they have at stake, what it means if the client
9 doesn't wish to provide every bit of recollection
10 they have or evidence they may have, and they
11 prefer to go forward without it.

12 I am sure, because I know I have done
13 this, I said to those victims you understand this
14 I think is likely to come out a trial, and you
15 may be embarrassed with it at trial if you're
16 cross-examined, and they say well, a ten percent
17 chance that it doesn't come out is preferable to
18 me than a 100 percent chance. That's the choice
19 I want to make.

20 I tell them I don't think you should
21 make that choice, but that is their choice. So
22 you know, hearing that you think that victims

1 aren't always the most forthcoming or that they
2 need to have a rapport with the prosecutor
3 misunderstands the nature of the fact that their
4 attorney-client relationship is not with the
5 prosecutor; it's with their own counsel.

6 Most of these cases that you point out
7 relate to serial episodes and a hostile
8 workplace, and a woman who's patted on the butt
9 every day and sometimes several times a day,
10 because the other individuals in the unit think
11 they can get away with it -- which is intended to
12 drive her out of that unit -- is a very serious
13 offense that requires serious consideration.

14 Now, you've pointed out that the OIG
15 is trying to train people so they can assist the
16 MCIOs, and I think that's absolutely required.

17 But I don't want to see us go back in time to
18 when victims had no control at all over how they
19 were going to be dealt with in the military, and
20 the result is they didn't come forward at all.

21 So no, I don't think there's two sides
22 here. I think there's three sides. I don't

1 disagree with these five recommendations you make
2 because I think they're all good. But I do think
3 that your analysis that you just gave before is
4 somewhat short-sighted. Thank you.

5 CHAIR HOLTZMAN: Admiral.

6 VADM TRACEY: Thank you for your
7 report. I think I understood that an MCIO who
8 needs to re-interview the victim has to get
9 approval from a supervisor to conduct that
10 interview?

11 MS. FRIEL: Yes, that's what we were
12 told.

13 VADM TRACEY: Is it likely that the
14 supervisor has the same training as the MCIO does
15 with regard to sexual assault cases?

16 MS. KEPROS: I can speak to that. I
17 heard that reported to us, so that seems to be
18 true, that the people who are supervising units
19 that are handling these kinds of cases have been
20 in the trenches and had the same training and are
21 now managing that unit.

22 VADM TRACEY: And you may not know

1 this, but some of this training is relatively
2 recent vintage, and if I'm the supervisor, is it
3 likely that I've had to get retrained on the
4 current status?

5 MS. KEPROS: I can't say this is
6 representative at all, Admiral, but I know we
7 heard from at least two supervisors that have
8 sort of had their training tuned up, so that they
9 are consistent with practices that are being
10 embraced at this point.

11 VADM TRACEY: You also said that --
12 I think you said that you were not allowed to
13 review the policy or training materials or
14 procedures of the MCIOs because they're
15 sensitive?

16 MS. FRIEL: I said we didn't see them
17 because they're sensitive. They're not publicly
18 available. I don't know if we're not allowed or
19 not. I'll refer to our staff.

20 MS. PETERS: Right. We would have to
21 make a specific request, but traditionally
22 they're not publicly available. CID's internal

1 regulations are not something we can --

2 VADM TRACEY: And if you look at them
3 they become publicly available?

4 MS. PETERS: It depends on who does
5 see them and the nature of how we wanted to
6 handle that. Certainly any information brought
7 to the Panel would then become public.

8 VADM TRACEY: Okay. Of the
9 recommendations that you made, which of them
10 addresses the prosecutor/MCIO tension that you
11 described?

12 I think Mr. Stone's discussion
13 of the fact that we heard from defense
14 counsel that they believe that trial counsel has
15 extensive investigative resources available to
16 them, as well as SMEs and is it the MCIOs who are
17 their investigative resources, or can they spend
18 money on other kinds of investigative resources?

19 MS. WINE-BANKS: I think what we heard
20 is that they can ask the MCIOs through the trial
21 counsel, but number one, it then goes to the
22 trial counsel. So they don't --

1 VADM TRACEY: I'm sorry. I'm asking
2 about the trial counsel.

3 MS. FRIEL: You're talking about the
4 trial counsel?

5 VADM TRACEY: I'm trying to balance
6 what I thought I understood, which was that trial
7 counsel had access to investigative resources.
8 Is that just the MCIOs, or are there other
9 investigative resources that trial counsel can
10 tap into?

11 MS. FRIEL: We just heard about
12 MCIOs, and while theoretically they have access
13 to them throughout the system, in practical
14 effect they all told us that the minute the MCIO
15 closes the cases, having found a probable --
16 enough evidence for probable cause, that it's
17 extremely difficult to get them to do any more
18 work, and for a combination of reasons.

19 But it seemed like the biggest reason
20 at least that the prosecutors thought was
21 involved is that they're totally overburdened and
22 just have too much work to do, and so resist

1 doing additional work for them that the
2 prosecutor feels is really necessary.

3 MS. KEPROS: I agree with that. It's
4 what we heard in the field site interviews. I
5 wanted to mention in our subsequent research, we
6 have learned that in the special victim capacity,
7 there are some dedicated prosecution
8 investigators. It is Service-specific. It is
9 not a widespread, system-wide policy. But there
10 is a model for that that exists and that is
11 utilized in some Services.

12 VADM TRACEY: But which of these
13 recommendations do we think addresses this issue
14 of an MCIO policy that drives them to close an
15 investigation at the probable cause threshold,
16 and there is the belief that there is an ongoing
17 need for investigatory resources for the
18 prosecutor?

19 MS. FRIEL: I think our
20 recommendations that has to do with reducing the
21 burden on the MCIOs would go towards that, since
22 that was identified as one of the biggest reasons

1 that the prosecutors feel that the MCIOs resist
2 doing additional work after they initially close
3 a case.

4 VADM TRACEY: Okay. So without
5 access to the policies and training, we don't
6 actually know whether that's the policies, that
7 they shut them down at the probable cause
8 threshold or whether it is a matter of
9 prioritization then. So we don't actually know
10 the answer to that?

11 MS. FRIEL: Correct. We did hear
12 reference to some of these time limits, when can
13 stuff be closed, certain thresholds. We don't
14 have the policies in front of us. I think to
15 answer your question as well, I agree with Lisa
16 that 1 does go to that. Recommendations 3 and 4
17 do as well, because they have to do with the
18 ongoing relationship between trial counsel and
19 obviously access to the victim, whether it's
20 through the MCIO or some other means.

21 VADM TRACEY: It seems to me that
22 we've done a lot of hard work to improve the

1 approach to sexual assault cases in a set of
2 stovepipes. Just listening to you, it seems as
3 if there's some critical areas in which there's
4 not a shared view of what the objectives are
5 here.

6 Do these stakeholders ever have to go
7 through a shared training regime, a shared
8 training regime, not their parallel training
9 regimes, ever get in a session together where
10 they're reviewing the effectiveness of what we're
11 doing and the effectiveness of the changes that
12 had been made to your knowledge? Is there any
13 attempt to integrate across?

14 You referenced it in execution it's an
15 adversarial process, but they have a common
16 objective here. Is there any?

17 MS. FRIEL: I totally agree there's
18 a common objective, and in the civilian world we
19 did exactly that kind of, you know, cross-
20 training of getting everybody involved to
21 understand what the other sides did, so they
22 could most effectively deal with what they were

1 doing. But I don't have the answer --

2 DEAN SCHENCK: I did hear some MCIOs
3 say they did go to courses where there were
4 prosecutors, but they weren't the prosecutors
5 they're working with. So they went to the
6 federal school, FLETC, and there may have been
7 prosecutors there. So they were in the audience,
8 and some of the JAGs said they went to courses
9 where there were investigators.

10 But there was never like all Army
11 investigators, Army JAGs attending the same
12 conference, you know, at the JAG school for
13 example.

14 MS. WINE-BANKS: Admiral, I think
15 actually we didn't hear that the existed, and it
16 might be a very good idea because the stovepiping
17 that you reference has been a problem, where
18 investigators do not report to the prosecutor.
19 They report to the top, the investigation head.

20 So they follow those rules and don't
21 always understand when the trial counsel says I
22 need an additional thing or I just heard

1 testimony during trial and I need to rebut that.
2 I need you to go out.

3 They're not available to do that. But
4 maybe with a common understanding, that would be
5 helpful and if there was a common training that
6 might be a good addition.

7 DEAN SCHENCK: We have a pending
8 report on training, so we could address that
9 issue when that -- when we submit that report.

10 JUDGE JONES: I'm sorry. I was just
11 going to say that the testimony that we heard
12 about the special victim capability was obviously
13 an effort to have the investigators in the same
14 module or whatever you want to call it with the
15 prosecutors, so that there wouldn't be a problem
16 if a prosecutor wanted a little bit more done in
17 that special victim capability.

18 They're there, they're an integral
19 part of the unit, and so they don't have that
20 issue or complaint. Again, it's -- I was under
21 the impression it was a pretty well established
22 program, but I can't tell you in which of the

1 Services or, you know, how much. But special
2 victim capability was something we heard a lot
3 about. Maybe we should go back and do a little
4 research on it.

5 So I mean I think that was one effort
6 to get to this problem, and I think barely that
7 we really don't -- we didn't really do it as a
8 subcommittee, how do we increase or better
9 communications between the NCIS and individual
10 prosecutors. We just never got there.

11 CHAIR HOLTZMAN: Admiral, may I ask a
12 question about your question?

13 VADM TRACEY: Sure, okay.

14 CHAIR HOLTZMAN: Are you, because I
15 thought it was even broader than the trial
16 counsel issue, that what you're saying is -- and
17 it related to a little bit to what you were
18 saying, Mr. Stone -- which is: who's looking at
19 the overall picture here of the relationship, of
20 the adequacy of the investigative function in
21 general, and not just defense counsel, not just
22 as we've done here? Is that what you're trying

1 to --

2 I mean part of the problem is that,
3 you know, the Subcommittee may answer it and
4 maybe my colleagues disagree. But there was so
5 much that was heard at these site visits, trying
6 to get that information and the problems we
7 identified from that information in front of the
8 -- in a forum that the JPP could recommend.

9 Obviously there could be larger issues
10 to be addressed by this, and I think that the
11 questions are important and appropriate. But you
12 know, I think it's also important to get these
13 specific issues out and how to address the
14 broader ones, I mean that's a very interesting
15 challenge and point and maybe we can discuss that
16 later this afternoon.

17 Okay. I just wanted to again thank my
18 colleagues for the extraordinary effort that they
19 put into this, and I just wanted to make one
20 point in terms of the suggestion that Mr. Stone
21 made, that somehow there was not an adequate
22 concern or attention to the issue of victims,

1 because I mean as a former prosecutor myself, you
2 get a lot, an enormous amount to deal with
3 victim's concerns.

4 That's vital to having an effective
5 prosecution system. It's also the right thing to
6 do in general. I'm sure that's been true for Ms.
7 Friel, even though the Manhattan DA's office and
8 not the Brooklyn DA's office.

9 (Laughter.)

10 MS. FRIEL: No comment.

11 CHAIR HOLTZMAN: I'm sure it's true
12 with the other boroughs. But I just want to
13 read the last sentence and Recommendation No. 4.

14 "Therefore, the Subcommittee" -- and
15 this to remove impediments to MCIOs' access to
16 tangible evidence, but I think this applies
17 across the board, that the Subcommittee
18 "recommends that the Secretary of Defense examine
19 these problems and develop appropriate remedies
20 to address victims' legitimate concerns, and
21 ensure that sexual assault investigations are
22 complete and thorough."

1 I think that is an important balancing
2 act, and I think that if there's any impression
3 that this report does not reflect concern about
4 victims throughout, I think that's a
5 misimpression. Certainly it's not intended. If
6 there are no further questions, I think we are
7 finished with the Panel.

8 Thank you very much again for your
9 excellent work.

10 MS. FRIEL: Thank you.

11 CHAIR HOLTZMAN: Can we take a five
12 minute break?

13 CAPT TIDESWELL: Yes ma'am.

14 CHAIR HOLTZMAN: Can we do five
15 minutes, because we're on a tight schedule.

16 CAPT TIDESWELL: Yes ma'am.

17 CHAIR HOLTZMAN: Thank you.

18 (Whereupon, the above-entitled matter
19 went off the record at 10:40 a.m. and resumed at
20 10:49 a.m.)

21 CHAIR HOLTZMAN: The new math five
22 minutes. Please, let's okay. So I think we'll

1 proceed. I'll leave it up to the Panel here. So
2 I think we'll proceed to the next item on the
3 agenda, which is the deliberation on the Sexual
4 Assault Investigations in the Military report.
5 Does somebody want to make a motion about that or
6 comment about that?

7 MR. STONE: Wait. Are we talking
8 about the very last report we just heard?

9 CHAIR HOLTZMAN: Yes.

10 MR. STONE: Okay.

11 JUDGE JONES: Well, I would move to
12 accept the recommendations of the Subcommittee as
13 the recommendations of the JPP in their final
14 report.

15 CHAIR HOLTZMAN: Is there any
16 discussion?

17 MR. STONE: I guess the discussion I
18 would probably point out is I think that again,
19 examining the report or taking the approach of
20 the report from one piece of the stovepipe does
21 not, is not something I am ready to endorse. I
22 don't mind the recommendations.

1 I would agree with the
2 recommendations, but I think each time we write a
3 report that just looks at effects on one piece of
4 the system without at each point recognizing the
5 offsetting effects on victims and maybe even
6 defense counsel in this case, I think that that
7 is not the balanced way that I want to get to the
8 recommendations.

9 I think there is sufficient evidence
10 that there aren't enough resources to the MCIO to
11 everybody happy, and as a result and MBSVCs, and
12 therefore they're not getting fast enough
13 interviews and they're not getting, you know,
14 fast enough results on the tests, the forensic
15 tests, and they're not getting people to do
16 follow-ups.

17 I think that's true, but I think it's
18 across the board. I don't think it's just
19 limited to one group. So I'm fine with the
20 recommendations, because the recommendations do
21 not say, at least I don't think they say that
22 this is only a problem for the prosecutors. So I

1 think that that's, you know, something that I
2 don't have a problem with in terms of
3 investigations generally.

4 But I do think that the report itself
5 is just looking at a piece of the problem and
6 that's not going to get us where we want to go.

7 VADM TRACEY: So is it possible for
8 the Panel to accept the report, noting that the
9 issues raised in the defense resources suggest
10 that you -- suggest that there's a common set of
11 issues here around adequacy of investigatory
12 resources, policies and practices?

13 CHAIR HOLTZMAN: Would you like to
14 make that as a suggested addition to the --

15 VADM TRACEY: Well, at least a note
16 from the Panel that we recognized that we've seen
17 now multiple reports raising this family of
18 issues around different sides of --

19 MR. STONE: And make that as sort of
20 an introductory comment to this and maybe the
21 other report as well? I could accept that.

22 JUDGE JONES: I think the principle

1 you state is absolutely correct, each of you,
2 that obviously this is one segment of the problem
3 and the issues, and I don't -- I think we should
4 acknowledge that. That's fine. What's the
5 status of the defense --

6 CHAIR HOLTZMAN: We're going to come
7 to that. We're getting that later, yes.

8 JUDGE JONES: Okay.

9 (Simultaneous speaking.)

10 JUDGE JONES: With that addition,
11 Admiral, I would be happy with, you know, that we
12 should accept this report.

13 MR. STONE: I agree.

14 CHAIR HOLTZMAN: Any other comments?
15 So all in favor of accepting this committee
16 report, with the addition made by -- proposed by
17 Admiral Tracey, say aye?

18 (Chorus of ayes.)

19 CHAIR HOLTZMAN: Opposed?

20 (No response.)

21 CHAIR HOLTZMAN: The report is
22 adopted. Thank you. Okay. Next item on the

1 agenda, Captain, is that the Deliberation on the
2 Defense Counsel Resources?

3 TT Yes ma'am, it is.

4 CHAIR HOLTZMAN: Okay.

5 TT This is on the JPP report.

6 CHAIR HOLTZMAN: Okay. I think it
7 would be a good idea probably -- I'm sure
8 everybody's done his or her homework and read the
9 entire report again -- but just to refresh
10 everyone's memory, should we have someone present
11 a brief precis of this so we can move forward?

12 MS. SAUNDERS: Certainly. Ma'am, as
13 you recall in December, the Subcommittee
14 presented the report on defense resources to you,
15 and at that time the decision was made to hold
16 off on accepting the report, pending some
17 additional information that was requested.

18 Specifically, what was requested was
19 that we inquire as to the status of the Response
20 Systems Panel recommendations that had been made,
21 that corresponded or were very similar to three
22 of the recommendations made in this report. So

1 between December and now, we've gone back to the
2 Services to ask for that information, and they
3 have provided responses, which are --

4 You have at Tab 5 in your materials
5 the complete responses of the Services, but we
6 have also summarized those responses at the
7 appropriate points in the report before you. If
8 you'd like, I can do one of two things. I can
9 either go through the recommendations and then
10 discuss the additional information with each
11 recommendation, or I can summarize it all now,
12 whichever you prefer.

13 CHAIR HOLTZMAN: Well, I think you
14 should do the whole -- summarize the whole thing,
15 and then let us decide whether we want to accept
16 it or not.

17 MS. SAUNDERS: Okay. So this report,
18 as you recall, was divided into several different
19 topics. The first topic was on -- and probably
20 the primary topic -- was on defense
21 investigators, and if you recall Ms. Kepros
22 presented this report in December and she noted a

1 lot of the Subcommittee site visit feedback that
2 they received over the summertime, which was
3 universally among defense counsel.

4 But not just defense counsel, we heard
5 a lot of this -- they heard a lot of this from
6 prosecutors as well at different site locations,
7 that they desperately need, you know,
8 investigators of their own. They talked about
9 there are existing procedures whereby they can
10 request defense or investigative help through the
11 trial counsel and through the convening
12 authority. But we heard during site visits -- and
13 you have also heard testimony corroborating that,
14 which is that those requests are often denied.

15 There was discussion that previously,
16 under the old Article 32 system, that was
17 specifically designated as a discovery tool for
18 defense. The victim in the sexual assault case
19 was frequently called to testify and was able to
20 be cross-examined by the defense counsel.

21 Under the new Article 32 process this
22 is no longer required, and victims -- we heard --

1 and other witnesses frequently do not appear to
2 testify. Typically, what the Subcommittee heard
3 on site visits was that Article 32s have become
4 paper cases, where statements of victims and
5 other witnesses are submitted, as well as other
6 evidence and that is all. Typically, live
7 witnesses are not called.

8 So what had once been a discovery
9 mechanism for the defense counsel is no longer
10 available to them. In fact, in the new Article
11 32 it specifically states that this is not a
12 discovery mechanism for the defense counsel. So,
13 the RSP recommended back in 2014 that defense
14 counsel be provided their own investigators, you
15 know. At that time, it was still under the old 32
16 system.

17 I think the Subcommittee felt and what
18 they told you in December was that if it was
19 required back then, it is even more so now, with
20 the changes in the Article 32 process, and that
21 often they are -- they are trying to use their
22 own paralegals or defense -- the defense counsel

1 themselves are frequently called on to try to do
2 their own investigation of various aspects of the
3 case, but they are hampered by another issue that
4 this report discusses, which is a lack of
5 resources.

6 So they often don't have paralegals
7 available to them or other people who can help
8 with the investigation of these cases. There's
9 also the additional problem of when a defense
10 counsel needs to do -- conduct additional
11 information, whereby they may end up conflicted
12 out of the case, based on becoming a witness in
13 the case.

14 So that kind of covers the defense
15 issue. When we received the responses from the
16 Services regarding the Response Systems Panel
17 recommendations, the Response Systems Panel did
18 recommend that defense counsel be provided their
19 own independent investigators. The responses
20 from the Services varied.

21 Of course, we heard from the Navy --
22 as you've heard before -- that they have

1 implemented that recommendation and that they
2 have at this point hired eight independent
3 defense investigators, which they have testified
4 before you has been incredibly helpful to them
5 and has resulted in them being able to have
6 access to evidence that they have not -- would
7 not previously have been able to get, and has
8 resulted in acquittals in some cases.

9 The Army provided their response.
10 They talked about existing mechanisms such as
11 requesting a defense investigator through the
12 convening authority. But they also did state
13 that they are looking at the Navy's program to
14 determine whether it's feasible for them to
15 implement that. And the Air Force also -- the Air
16 Force also said that they were looking at the
17 Navy's program, to determine the feasibility of
18 implementing that in their Service.

19 The Marine Corps said -- the Marine
20 Corps' response stated that they felt existing
21 mechanisms for the defense to be able to request
22 investigative help were sufficient. They did not

1 feel that anything more was required. I would
2 point out that you did get a public comment from
3 the Marine Corps Defense Counsel Assistance
4 Service basically saying that they, you know,
5 agreed with both the RSP recommendation and with
6 the JPP Subcommittee's recommendation that they
7 be provided additional investigators, because
8 they felt it was necessary for them to be able to
9 do their job adequately.

10 In fact, they pointed out that they
11 had put together a package to go up to their
12 leadership in 2015 requesting such investigators,
13 but that was denied. So that was -- those were
14 the responses from the Services on that
15 particular issue.

16 If you'd like, I would like to read
17 the recommendation for this issue and then Mr.
18 Stone has also provided an alternate
19 recommendation that he would like to see adopted.
20 So I will read both of those, and --

21 CHAIR HOLTZMAN: Can you also indicate
22 whether this -- on recommendation -- I guess

1 you're talking about Recommendation 43? Is that
2 what --

3 MS. SAUNDERS: Recommendation 43.

4 CHAIR HOLTZMAN: But is there anything
5 with regard to the additional work that was done
6 after the last meeting that pertains to
7 Recommendation 43? Is that included in this
8 report at this point?

9 MS. SAUNDERS: It is included. I did
10 summarize the Services' responses to the requests
11 for information.

12 CHAIR HOLTZMAN: And where is that
13 contained?

14 MS. SAUNDERS: That is in --

15 CHAIR HOLTZMAN: In the back of the
16 report?

17 MS. SAUNDERS: It's in the main body
18 of the report. I'm going to provide you --

19 CHAIR HOLTZMAN: At page 12? Is that
20 it? This one --

21 MS. SAUNDERS: It's actually on page
22 11. There's a -- you'll see a box on page 11

1 that has the Services listed and what their
2 responses were -- the summarized responses from
3 them on this issue.

4 CHAIR HOLTZMAN: Right, but there's
5 additional language. I'm just trying to get
6 what's changed from the last time this report was
7 presented to the Panel.

8 MS. SAUNDERS: We did not have the
9 Services' responses the last time.

10 CHAIR HOLTZMAN: Right, and plus on
11 page 12 it looks to me as though you have added
12 some language with regard to the Recommendation
13 43. Am I correct? Because you're referring to
14 the fact that Article 32 -- or am I incorrect in
15 that regard?

16 MS. SAUNDERS: All right. There is --
17 Mr. Stone had made a comment. I don't know if
18 that's what you're referring to, on the --

19 CHAIR HOLTZMAN: What is the blue --

20 MS. SAUNDERS: The blue text.

21 CHAIR HOLTZMAN: -- the blue stuff? Is
22 that Mr. Stone's comment or is that something

1 else?

2 MS. SAUNDERS: No. The blue text is
3 the analysis. It's pulled from the Subcommittee
4 report, you know, perhaps phrased a bit
5 differently, but not substantively different than
6 what the Subcommittee's --

7 CHAIR HOLTZMAN: Okay. So there's
8 nothing here that --

9 MS. SAUNDERS: There's nothing
10 substantively different.

11 CHAIR HOLTZMAN: Okay, all right.

12 MS. SAUNDERS: The phraseology may be
13 a little bit different.

14 CHAIR HOLTZMAN: So -- okay.

15 MS. SAUNDERS: Mr. Stone did -- in the
16 pink highlighted section on that page, Mr. Stone
17 had made the comment that he feels that there
18 should be deleted, because it's conclusory and
19 probably belongs, if anywhere else, in the body
20 of a recommendation.

21 The sentence that he is referring to
22 says, since the RSP issued that report, statutory

1 changes to the Article 32 process have made
2 defense investigators even more necessary. So
3 that is his -- that was his comment -- Mr.
4 Stone's comment regarding that sentence.

5 CHAIR HOLTZMAN: So now you're going
6 to read the Recommendation 43 and the proposed
7 recommendation by Mr. Stone.

8 MS. SAUNDERS: Correct. So the
9 proposed Recommendation 43 for the JPP --

10 MR. STONE: May I ask a question
11 before we get to recommendations?

12 MS. SAUNDERS: Please.

13 MR. STONE: I had also submitted, in
14 addition to the recommendations, some other word
15 changes throughout the report. There weren't
16 very many, maybe -- one, two, three, four, five,
17 maybe -- I don't even think there were ten. Can
18 I ask whether those word changes had been made or
19 not made, as a group or individually?

20 CHAIR HOLTZMAN: Excuse me, I want to
21 take this in order. We're on Recommendation 43.
22 We're not on the rest of the report.

1 MR. STONE: Well some of these relate
2 to that part. They come before 43.

3 CHAIR HOLTZMAN: They come before 43?

4 MR. STONE: Yeah.

5 CHAIR HOLTZMAN: Where? I'm not
6 seeing anything in my version --

7 MR. STONE: Replace the word
8 demonstrate with the word suggest, that kind of
9 thing. That one's before that.

10 CHAIR HOLTZMAN: I have page three.
11 I see no changes on page three and I have page
12 four, which is Recommendation 43.

13 MS. SAUNDERS: Mr. Stone, I did make
14 those changes, and they are notated either in
15 track changes or with a comment in the text.

16 MR. STONE: All right. So then I don't
17 have to be concerned about any dispute about
18 those few semantics changes that are in there,
19 that those didn't bother the people writing the
20 report.

21 MS. SAUNDERS: Well, what I --

22 MR. STONE: They weren't meant to be

1 totally different. They were just meant to be, I
2 thought, slightly clarifying ambiguities. Is
3 that the way they were taken, if they're all
4 adopted? Other than the recommendation changes.

5 MS. SAUNDERS: I included all of the
6 changes submitted by all the members of the
7 Panel, and I put them in track changes and I --
8 you know, depending on the nature of them I also
9 put -- included the comments of the individuals.
10 So that would be -- so that the Panel -- the rest
11 of the Panel members could see those changes and
12 determine whether they were comfortable with
13 those changes, or whether they did not want to
14 adopt them.

15 So what my plan had been to go through
16 the recommendations, and then go through the body
17 of the report to talk about those specific
18 changes. I am happy to address those.

19 MR. STONE: I guess the problem is
20 that the copies we have don't show the track
21 changes that any of the members submitted, except
22 for my -- in yellow the --

1 CHAIR HOLTZMAN: No, they do show
2 changes on pages 12 --

3 MR. STONE: All right. Then I don't
4 have that copy. I'm sorry.

5 CHAIR HOLTZMAN: -- twelve, 13.

6 MS. SAUNDERS: Page 12, page 13.

7 CHAIR HOLTZMAN: Thirteen, page 14,
8 page --

9 MR. STONE: Oh yeah. I do see some on
10 those pages.

11 CHAIR HOLTZMAN: All right. So can we
12 just do this -- Mr. Stone, would you mind if we
13 do this in order? I just want to have --

14 MR. STONE: Well, it's just that it
15 skipped some of my changes, but all right.

16 CHAIR HOLTZMAN: I don't mean to do
17 that, I just --

18 VADM TRACEY: We're looking at page
19 three of the document, page four of the document.

20 CHAIR HOLTZMAN: Right.

21 MR. STONE: Right, I know.

22 MS. SAUNDERS: Mr. Stone, I have the

1 changes that you had suggested. I have them -- I
2 have the email, so I'm happy to go through that
3 with you at some point to make sure.

4 MR. STONE: Okay.

5 MS. SAUNDERS: If I did miss something,
6 it was completely inadvertent. But I believe I
7 got them all.

8 MR. STONE: Okay, okay. No, that's
9 fine. Okay, that's fine. That's all I wanted to
10 hear.

11 CHAIR HOLTZMAN: So -- yeah, and we'll
12 get to them later.

13 MR. STONE: Okay.

14 CHAIR HOLTZMAN: All right. Is that
15 correct, Ms. Saunders?

16 MS. SAUNDERS: Yes, that was my plan
17 to --

18 CHAIR HOLTZMAN: All right, great.
19 Thank you.

20 MS. SAUNDERS: -- go through.

21 CHAIR HOLTZMAN: So, let's do the
22 recommendations on page four.

1 MS. SAUNDERS: Okay. So
2 Recommendation 43, the proposed recommendation in
3 the blue box reads, in order to ensure the fair
4 administration of justice, all of the military
5 Services provide independent and deployable
6 defense investigators under their control in
7 sufficient number so that every defense counsel
8 has access to an investigator as reasonably
9 needed.

10 The word reasonably, you'll note, is
11 in track changes, and that was Ms. Holtzman's
12 suggestion that we add that. So that is the only
13 difference between this recommendation and what
14 was proposed by the Subcommittee.

15 CHAIR HOLTZMAN: And then you have a
16 proposed recommendation by --

17 MS. SAUNDERS: And then Mr. Stone's
18 proposed alternate recommendation for this issue
19 reads, in order to assure the fair administration
20 of justice, all of the military Services provide
21 a mechanism and budget to ensure there are
22 independent and deployable investigators under

1 the independent control of counsel for the
2 prosecution, the defense and the victims, so that
3 every counsel has access to an investigator as
4 needed.

5 MR. STONE: And I would just add the
6 word reasonably that was put into the other
7 recommendation above it. I think that's a useful
8 term.

9 CHAIR HOLTZMAN: Okay.

10 MS. SAUNDERS: So should I continue or
11 do you want to just --

12 CHAIR HOLTZMAN: Yeah, I think we
13 should.

14 MS. SAUNDERS: Okay, so that --

15 CHAIR HOLTZMAN: Unless anybody
16 disagrees, let's just go through all of this and
17 then we can --

18 MS. SAUNDERS: So Recommendation 44
19 deals with the resources of defense counsel, and
20 if you recall what you heard from the
21 Subcommittee back in December, they talked about
22 during their site visits they heard routinely

1 from defense counsel about lack of resources,
2 about -- there was one particular defense counsel
3 who mentioned that in a large office of ten
4 defense counsel, they had only one paralegal to
5 assist them.

6 So they talked about understaffing,
7 both of defense counsel and of administrative and
8 other support for them. So the recommendation
9 based on that was that -- and I'll read the
10 recommendation, Recommendation 44, which states,
11 the military Services immediately review Service
12 defense organization staffing, defense counsel,
13 paralegals, highly qualified experts and
14 administrative support personnel, and augment
15 current levels in order to alleviate the reported
16 understaffing.

17 The Secretary of Defense should direct
18 an independent audit of defense staffing across
19 all military Services, to determine the optimal
20 level of staffing for the Service defense
21 organizations in the long term. Organizations
22 that have conducted similar kinds of assessments

1 of public defender resources in various civilian
2 jurisdictions may be of assistance in conducting
3 this audit. We did add that wording based on the
4 JPP comments during the last meeting on this.

5 The proposed alternate recommendation
6 submitted by Mr. Stone reads as follows. The
7 military Services immediately review Service
8 organizations' staffing of counsel, paralegals,
9 highly qualified experts and administrative
10 support personnel, and take steps to alleviate
11 any reported understaffing.

12 The Secretary of Defense should direct
13 an audit of this staffing across all military
14 Services, to determine and achieve the optimal
15 level of staffing for these Service
16 organizations, and consider the referral of
17 excess cases to civilian prosecution authorities
18 in the medium and long term. Organizations that
19 have conducted similar kinds of assessments in
20 various civilian jurisdictions may be of
21 assistance in conducting this audit.

22 And then moving on to the next topic,

1 which is expert approval, the Subcommittee spoke
2 to you in December and you heard about what they
3 had been told during these site visits, both from
4 prosecution and defense -- so it was not limited
5 to just defense counsel -- about their difficulty
6 in obtaining needed expert -- both witnesses and
7 consultants -- in a timely fashion, and of the --
8 and having the requisite experience and
9 credentials that they need.

10 We had heard -- and I think you had
11 also heard similar things in JPP testimony. They
12 have been -- what they told you is that they
13 frequently made requests for expert witnesses and
14 consultants to the convening authority, which is
15 what's currently required under the Rules for
16 Courts-Martial, and those are often denied.

17 They then have -- the next step for
18 them is to make the same request to the military
19 judge. What they pointed out to the Subcommittee
20 members is that this comes much later in the
21 process, as the military judge does not have
22 jurisdiction over the case until after referral

1 of charges.

2 So now they're after the referral of
3 charges. They're talking about trial dates.
4 It's getting very close to the time where the
5 trial is going to occur before the defense
6 counsel might be provided the expert that they
7 feel that they need.

8 There was also commentary that it's
9 much easier for the prosecution -- and we had
10 several prosecutors who reinforced this -- where
11 because they are working for the convening
12 authority or they have easier access to the
13 convening authority, that they can get experts at
14 a much earlier stage in the process, and
15 typically can get the experts that they
16 specifically want for that case.

17 Defense counsel pointed out that when
18 they do make these requests, it has to go through
19 the convening authority. It has to go to the
20 convening authority and typically through the
21 trial counsel, and they have to provide reasons
22 why these experts are necessary, often tipping

1 their hand to the prosecution about potential
2 defense strategies.

3 So that was -- they identified that as
4 something that they found very problematic. We
5 also included information from the -- from the
6 Response Systems Panel report. They had
7 interviewed a number of civilian defense counsel
8 who have stated that they typically have their
9 own sources of funding for expert witnesses and
10 consultants, and they have to obviously manage
11 their money in an appropriate way to be able to
12 accommodate the various requests that they
13 receive from their individual counsel.

14 That way, they can hire the experts
15 that they need when they need them, often at an
16 earlier stage when they might help inform a
17 defense strategy. So Recommendation 45 goes to
18 this particular issue, and the current proposed
19 recommendation reads as follows.

20 The Secretary of Defense direct the
21 Joint Service Committee on Military Justice to
22 draft appropriate rules and legislation as

1 necessary to vest defense expert approval and
2 expenditure funding in the Service defense
3 organizations.

4 You'll notice as necessary in track
5 changes there. That was a suggestion from Mr.
6 Taylor, I think, who was wondering whether
7 legislation was necessary, and I think that was
8 an appropriate thing to point out, Mr. Taylor.

9 I think what would probably need to be
10 changed would be RCM, Rules for Courts-Martial
11 703. So that is not obviously a legislative
12 change, so that perhaps this statement is too
13 broad and we can certainly address that. Then
14 the word expenditure was suggested for inclusion
15 by Ms. Holtzman.

16 The alternate Recommendation 45
17 submitted by Mr. Stone reads as follows. The
18 Secretary of Defense direct the Joint Service
19 Committee on Military Justice to consider
20 modifications to the MCIO program, so that expert
21 approval authority and the concomitant obligation
22 of expenses are placed under the control of the

1 most senior level of each Service's prosecution,
2 defense and victims' counsel organizations.

3 The next and final issue and
4 recommendation in this report concerns experience
5 in staffing levels for defense counsel among the
6 Services. The Subcommittee members told you in
7 December that what they heard during these site
8 visits, it varied a lot by Service in terms of
9 the experience level of defense counsel.

10 They heard -- particularly from the
11 Army and Marine Corps, and you also heard
12 testimony to this effect back in May from -- at
13 the May public hearing for the JPP. They heard
14 that -- particularly for the Marine Corps and for
15 the Army -- that it is often the case that brand
16 new attorneys -- brand new to the JAG Corps --
17 are assigned to defense billets.

18 What they also stated of course was
19 that these people are typically not the ones who
20 are trying the most complex sexual assault cases.
21 They have -- every branch of Service has, you
22 know, more senior defense counsel that they

1 typically would assign to these types of cases.
2 However, the Subcommittee members did tell you
3 that they did speak with a couple of defense
4 counsel on the site visits who did -- very early
5 in their careers, having not done very many
6 trials -- find themselves as defense counsel on
7 sexual assault cases, and they found it a very
8 uncomfortable experience in doing so.

9 So all defense counsel I think that
10 the Subcommittee members spoke to reported that
11 they did not feel that defense counsel -- or that
12 brand new attorneys should be assigned to defense
13 billets right away, without having any prior
14 litigation or military justice experience.

15 So the -- there was also the
16 additional issue of term, how long these defense
17 counsel serve in their billets. The Response
18 Systems Panel had made the recommendation prior
19 to this, back in 2014, that there should be
20 minimum term limits for defense counsel, that
21 they should -- you know, absent extenuating
22 circumstances, they should serve as defense

1 counsel for a minimum of two years.

2 When we asked for a response for that
3 -- regarding that issue from the Services, most
4 of the Services did say yes, we typically do have
5 our defense counsel serve for two years or more.
6 The Marine Corps did state that that was up to
7 the staff judge advocate or to the leadership,
8 and that they based that on their individual
9 circumstances. So they did not necessarily
10 commit to having members serve for two years.

11 You heard testimony from several
12 Marine Corps representatives that often they are
13 seeing defense counsel in these positions for
14 maybe 12 to 15 months and then they move on.

15 So the proposed Recommendation 46
16 reads, the military Services permit only defense
17 counsel with prior military justice or civilian
18 criminal litigation experience to serve as lead
19 defense counsel in sexual assault cases. The
20 military Services should develop a formal process
21 using objective and subjective criteria, to
22 determine when a defense counsel is qualified to

1 serve as a lead defense counsel in a sexual
2 assault case.

3 In addition, the military Services
4 should set the minimum tour length for defense
5 counsel at two years or more except when a lesser
6 tour length is approved on a case by case basis
7 by the Service Judge Advocate General or Staff
8 Judge Advocate to the Commandant of the Marine
9 Corps. The words on a case by case basis you'll
10 note in track changes were a suggestion submitted
11 by Mr. Taylor that we've included.

12 The proposed alternate recommendation
13 submitted by Mr. Stone reads as follows. The
14 military Services permit only counsel with prior
15 military or criminal litigation experience to
16 serve as lead prosecution, defense, victims'
17 counsel and military trial judges in sexual
18 assault cases.

19 The military Services are urged to
20 expedite the development of a formal process, and
21 to consider using objective and subjective
22 criteria to determine when counsel and trial

1 judges are qualified to serve as lead counsel and
2 as trial judges in a sexual assault case.

3 In addition, the military Services are
4 urged to set a minimum tour length applicable to
5 counsel and trial judges in such cases, except
6 when a lesser tour length is approved in a
7 specific case by the Service Judge Advocate
8 General or the Staff Judge Advocate to the
9 Commandant of the Marine Corps, or voluntarily
10 waived on the record by both the prosecution and
11 defendant in the case.

12 I should have noted also when I was
13 speaking about this earlier that there is a
14 provision in the FY '17 National Defense
15 Authorization Act that does speak a little bit to
16 experience.

17 It speaks to the experience both of
18 trial counsel and defense counsel, and suggests a
19 five year pilot program to determine -- to ensure
20 that the most qualified counsel are prosecuting
21 and defending sexual assault cases. That
22 information is included in the report.

1 CHAIR HOLTZMAN: Okay. Now before we
2 get to vote on various recommendations, do you
3 want to --

4 MS. SAUNDERS: Should I walk you
5 through the remaining changes in the report?

6 CHAIR HOLTZMAN: Yeah right, starting
7 on page, I guess, 12, right?

8 MS. SAUNDERS: So on page 12, within
9 the blue text -- the second paragraph -- the pink
10 highlighted portion of that is a suggestion from
11 Mr. Stone, and the sentence reads, since the RSP
12 issued that report, statutory changes to the
13 Article 32 process have made defense
14 investigators even more necessary.

15 Mr. Stone's comment is delete the
16 first sentence as conclusory and probably
17 belongs, if anywhere, in the body of a
18 recommendation.

19 The next paragraph down -- also within
20 the blue text -- Mr. Stone had suggested another
21 change, which was to in the second line delete
22 the word demonstrate and instead insert the word

1 suggest, so that that sentence would now read,
2 these changes to the Article 32 process, as well
3 as the limitations of MCIO victim interviews,
4 suggest that the need for defense investigators
5 is even greater now than it was when the RSP made
6 its recommendation.

7 MR. STONE: And I might add the second
8 one really takes into account the earlier change.
9 It pretty much says the same thing but in a
10 different way that is not quite so conclusory,
11 and I think reflects what the interviews found.
12 I don't think it's much different, but I don't --
13 it's not a conclusory statement.

14 MS. SAUNDERS: You'll note that the
15 recommendation itself, it appears -- there's
16 track changes and some deletions down there.
17 What we did -- at Mr. Stone's suggestion -- was
18 take the exact language of the recommendation
19 which was down there and simply insert it into
20 the blue box to make it a little easier to read.

21 So there's no substantive change
22 there, it's just simply being placed -- the text

1 is simply being placed into the blue box.

2 CHAIR HOLTZMAN: I'm not sure I
3 understand that.

4 MR. STONE: Before it wasn't in a blue
5 box, and so it was confusing as to whether we
6 were or weren't saying exactly the same thing as
7 Recommendation 43.

8 But since we were, they simply took
9 that paragraph that wasn't in a blue box and they
10 took out any of the that's or extra commas and
11 put the blue box in, so you could see that the
12 conclusion of that section of the report was that
13 recommendation.

14 MS. SAUNDERS: And that's at the
15 bottom of page 12. You'll note that there is
16 some text that has been lined through at the very
17 bottom. That is the text that Mr. Stone is
18 referring to that is now inside the blue box at
19 the bottom of that page.

20 CHAIR HOLTZMAN: How does this
21 recommendation for -- I'm still not following
22 you. On page 43, I'm just trying -- and I'm not

1 arguing, I understand what you've done. There's
2 something called Recommendation 43 on page 12.
3 How does that differ from Recommendation 43 on
4 page four?

5 MS. SAUNDERS: It is exactly the same.
6 It's just being placed at the appropriate point
7 in the body of the report where it's being
8 discussed.

9 CHAIR HOLTZMAN: Where was it before?

10 MS. SAUNDERS: It was still in there.
11 It's just that we didn't have the words
12 Recommendation 43, and --

13 CHAIR HOLTZMAN: What did we have?

14 MS. SAUNDERS: I'm sorry?

15 MR. STONE: It was a little bit
16 different.

17 CHAIR HOLTZMAN: So what you're saying
18 is before, this sentence appeared not as a
19 recommendation.

20 MR. STONE: Right.

21 MS. SAUNDERS: What it -- the way it
22 used to read, the paragraph -- which was not in a

1 blue box -- read, the JPP --

2 CHAIR HOLTZMAN: I don't care whether
3 it was a blue box, green box --

4 MS. SAUNDERS: Okay.

5 CHAIR HOLTZMAN: -- any kind of box.

6 Was there a recommendation --

7 MS. SAUNDERS: There was.

8 CHAIR HOLTZMAN: -- similar to 43?

9 MS. SAUNDERS: There was.

10 CHAIR HOLTZMAN: So the similar -- the
11 language that was similar to 43 is what's in this
12 comment on the side. You changed that.

13 MS. SAUNDERS: Exactly.

14 CHAIR HOLTZMAN: So you've shortened
15 the Recommendation 43?

16 MS. SAUNDERS: We've taken out the
17 words the JPP recommends and then started with in
18 order to.

19 CHAIR HOLTZMAN: So that's all that's
20 changed?

21 MS. SAUNDERS: That is all that has
22 changed.

1 CHAIR HOLTZMAN: Thank you, okay. Got
2 it. Sorry.

3 MS. SAUNDERS: And you'll note that
4 will be the same for all of the other
5 recommendations as well that you see.

6 CHAIR HOLTZMAN: Okay. So you want --

7 MR. STONE: It obviates the necessity
8 of flipping back and forth to see if there's a
9 word that is or isn't the same. That's what it
10 does.

11 CHAIR HOLTZMAN: All right. And page
12 13, you have a change?

13 JUDGE JONES: Can we add this point of
14 discussion, Mr. Stone? I'm completely with you
15 on this one.

16 MS. SAUNDERS: Okay, we will -- going
17 forward, that will be the approved method. At the
18 bottom of page 13, there's an additional change.
19 Right at the very last sentence in the blue text,
20 the very last word on that page, the word show is
21 lined out -- and this is at Mr. Stone's
22 suggestion -- and the very first word on page 14

1 he would rather -- he suggested the word suggest
2 be placed in there, so that the sentence would
3 now read, however, reports of defense counsel
4 from the installation site visits and information
5 presented to the JPP at its May 2016 public
6 meeting suggest that understaffing and under-
7 resourcing of defense offices continue to be a
8 problem, especially for the Army and the Marine
9 Corps.

10 So that is that suggestion. What you
11 see all of -- again, all of the crossed out text
12 and that -- it being placed into the blue box is
13 exactly as worded previous.

14 CHAIR HOLTZMAN: Okay. So then we
15 have, on page 15 -- all right, is that your next
16 change?

17 MS. SAUNDERS: There are no changes on
18 page 15.

19 CHAIR HOLTZMAN: Well you have -- well.

20 MS. SAUNDERS: Oh no, okay. Oh, oh,
21 I'm sorry. We have two different copies floating
22 around. Let me go to the one you are looking at.

1 At the bottom of page 15, this is one of Mr.
2 Stone's recommendations.

3 The sentence that is highlighted,
4 furthermore, military defense counsel, like their
5 civilian counterparts, should not be required to
6 reveal their theory or defense or defense
7 strategies to the government so early in the
8 process before trial.

9 The comment from Mr. Stone reads,
10 delete third sentence beginning furthermore, as
11 this is not part of the factual report.

12 MR. STONE: It's also true that there
13 are some defenses that do have to be revealed
14 early, like alibi defenses. So it overstates
15 something and it's not necessary to what's coming
16 next. So I don't think there was -- I don't
17 think we should be saying something that isn't
18 true and wasn't documented and isn't necessary to
19 the recommendation.

20 CHAIR HOLTZMAN: Okay, next one.

21 MS. SAUNDERS: Okay, the next one on
22 page 16, the first --

1 CHAIR HOLTZMAN: Same change that you
2 made before?

3 MS. SAUNDERS: Right, exactly, and
4 then -- but then we also note in sexual -- the
5 words in sexual assault cases --

6 CHAIR HOLTZMAN: Where? Where are
7 you?

8 MS. SAUNDERS: I'm on page 16 and I'm
9 under A, site visit information.

10 CHAIR HOLTZMAN: Well we don't -- oh
11 I see, yeah.

12 MS. SAUNDERS: Okay. The words in
13 sexual assault cases -- Ms. Holtzman, you had
14 asked that those words be included in that
15 sentence. The next change --

16 CHAIR HOLTZMAN: On page 18.

17 MS. SAUNDERS: Page 18 is again
18 another comment from Mr. Stone. The first
19 highlighted portion in pink reads, at least two
20 years -- I'll read the whole sentence. In order
21 for defense counsel to build core skills and
22 necessary experience, it is important that they

1 have the opportunity to serve in the position for
2 at least two years.

3 That portion that reads at least two
4 years, Mr. Stone's comment reads, replace at
5 least two years with a specified minimum period
6 of time, absent a particularized exception by
7 either a superior officer or the client.

8 The next highlighted portion, simply
9 not. The sentence reads, this is simply not
10 sufficient time to enable defense counsel to gain
11 necessary experience, as defense counsel on site
12 visits attested. The words simply not -- Mr.
13 Stone's comment is replace simply not with not
14 always.

15 CHAIR HOLTZMAN: Okay. So now we can
16 get -- I guess we can start with the
17 recommendations and then go to specific language,
18 if that's okay. So let's -- is there something
19 we've missed?

20 CAPT TIDESWELL: No, ma'am.

21 CHAIR HOLTZMAN: Is that okay?

22 MS. SAUNDERS: Yes.

1 CHAIR HOLTZMAN: All right. So going
2 to Recommendation 43, Mr. Stone you want to speak
3 on behalf of your proposed substitute?

4 MR. STONE: Yes. In terms of this and
5 all the other recommendations we're going to get
6 to -- so that I don't have to repeat it each time
7 -- I'm not in favor of building the stovepipes
8 higher. I'm in favor of us sending the message
9 that -- and we've heard it here today that the
10 prosecution also doesn't think they have control
11 and sufficient numbers of deployable
12 investigators when they want to follow up on
13 something.

14 Therefore, I believe that we should
15 tell them that we need all the Services to have
16 independent and deployable investigators under
17 the control of that Service. I know -- and
18 you'll see in the later recommendations related -
19 - well this even says provides a mechanism and a
20 budget.

21 I mean, it seems to me that's what the
22 top people in each Service are there for, to

1 decide how they're going to spend their
2 resources, I mean, and whether a particular case
3 is so important that they put two lawyers on it
4 or one lawyer on it, or whether they assign, you
5 know, one investigator and they tell him he's got
6 a week to do this or three days to do this, it
7 depends on how they evaluate the cases and what
8 their client wants.

9 So I do agree to move the deployment
10 mechanism and the budget to the various Services,
11 but I want to do it in tandem, so that they
12 understand we're moving them together. We're not
13 going to move one stovepipe and then say later
14 well wait, is there something left for the others
15 and have you gauged them?

16 So that's the idea, to move them in
17 tandem. If there's another question about
18 language that I changed, feel free to ask me.

19 JUDGE JONES: I don't -- I don't
20 actually have a problem talking about mechanism
21 and budget, although I don't know if that
22 necessarily needs to be there. But my real issue

1 with this is that, you know, the Subcommittee
2 looked into the needs of defense investigators,
3 and we also -- as you just heard this afternoon -
4 - looked into the investigators themselves and
5 their needs and issues.

6 Your recommendation or this
7 recommendation expands it to the prosecution and
8 victims' counsel, giving sort of a general
9 recommendation that each of those categories also
10 needs additional investigators. We haven't
11 really examined that, and I don't think there's a
12 basis in this report to say that with respect to
13 victims' counsel or to some extent even with
14 respect to prosecution.

15 I mean, the history here is that as
16 the RSP saw in 2013, early '14, the defense
17 counsel did not have access to any investigators.
18 The prosecutors have always used NCIS as their
19 primary investigators, and NCIS has never really
20 been available to defense. So there's been a
21 need there since the beginning of our look at
22 this problem.

1 This report was meant to focus on a
2 need that continues today into 2017 for defense
3 counsel. I'm concerned that if we try to broaden
4 this to prosecution and victim counsel, we're
5 going into uncharted territories and it's
6 something that hasn't been looked at yet. There
7 can be very little doubt that the prosecution --
8 and I know I mentioned special victim capability
9 already.

10 But the prosecution tends to get the
11 resources it needs, and the defense tends not to.
12 It seems to me with that background and the focus
13 of this report, we should stick to the defense.

14 CHAIR HOLTZMAN: Any other comments?
15 Mr. Taylor.

16 PROF. TAYLOR: Yes. First of all, I
17 endorse everything that the Judge said. But
18 there's an additional problem that I see here,
19 and that is that the way the proposed
20 recommendation that you made, Mr. Stone, is
21 written -- and maybe you didn't intend it this
22 way -- you talked about deployable independent

1 investigators under the independent control of
2 counsel for the prosecution.

3 Because of scandals that dated back to
4 the 70's and 80's, all of the MCIO investigators
5 work in a stovepipe. The reason that it's that
6 way is because commanders in those earlier years
7 were shutting down cases that should have been
8 investigated. When it came to light that that
9 was the case, the solution was to create these
10 independent stovepipes for MCIOs.

11 So in order to maintain that
12 independence and integrity, it would not be
13 possible really -- unless you changed the whole
14 structure in a way that seems undesirable to me -
15 - to reorient them and have them work for the
16 prosecution.

17 CHAIR HOLTZMAN: Admiral Tracey, if
18 you have a comment.

19 VADM TRACEY: I think I agree with
20 Mr. Taylor in that regard, although I think the
21 sentence construct would put independent control
22 for prosecution investigators under the

1 prosecution and defense investigators under
2 defense, and victims' counsel under victims. I
3 think that's what your sentence construct is
4 intended to do.

5 PROF. TAYLOR: But to the extent that
6 it involved prosecutors having control over
7 MCIOs, that would be contrary to the settled
8 history about what happens when that occurs.

9 CHAIR HOLTZMAN: I would like to make
10 another point there, which is not only that that
11 would change the present system, but there's no
12 evidence that the Committee had -- Subcommittee
13 had on this subject. So I think it would be
14 irresponsible to make a recommendation without
15 having looked into the subject matter at all in
16 connection with this Subcommittee report.

17 MR. STONE: Well my general response
18 is that we heard testimony this morning that the
19 prosecution can't get investigators because there
20 aren't enough to go back when they want them to
21 go back and do more, and they can't get results
22 in time. It delays the cases.

1 So I think we do have the evidence in
2 front of us that came from the same Subcommittee,
3 and to the extent that the OIG is out there and
4 maybe wasn't out there in the past to look into
5 abuses when investigators work for the
6 prosecutors or are under their control, I think
7 that's sufficient and I would not object if
8 somebody wants to change the language so that it
9 says that there are sufficient numbers of
10 independent and deployable investigators
11 available to, instead of under the independent
12 control. That's fine with me.

13 But I object to us piecemealing this
14 thing at this point. I think that we did hear
15 enough to know that the MCIOs are just -- as we
16 kept hearing -- overburdened and I don't see the
17 point of saying this for one group without
18 recognizing it goes across the board because our
19 job here is to get a process that works better
20 all around.

21 That's why this Committee was set up.
22 As I said earlier today, it may be that the MCIO

1 organization has to think about some
2 reorganizational modifications. That's maybe
3 just a fact of that there are so many more sexual
4 assault cases than there were.

5 But I object to keeping it the same
6 and saying how we're going to throw resources to
7 one slice of what it does or another slice of
8 what it does, without thinking about the whole
9 system.

10 So that's where my recommendation is
11 coming from, and if Mr. Taylor wants to suggest
12 some words. If the rest of it doesn't bother
13 him, I'm perfectly happy to accept friendly
14 amendments to the words. But I would continue
15 here and in the other recommendations to treat
16 all the independent groups, because we certainly
17 heard from some victims' counsel in some of the
18 Services earlier on in testimony before us that
19 they also do not have investigators or sufficient
20 investigators to meet their needs.

21 It's way lower than what the
22 prosecution and defense need, I think. I think

1 the defense's need is less than the prosecution,
2 because by then the prosecution has put together
3 a body of evidence to be looked at, so you don't
4 have to start from scratch.

5 But in any case, I think that all
6 three have to be examined, and they all have to
7 be dealt with at the same time.

8 CHAIR HOLTZMAN: Are we ready to vote?
9 Okay.

10 VADM TRACEY: Is there an opportunity
11 to talk about the bullets underneath after we
12 vote on the recommendation?

13 CHAIR HOLTZMAN: Sure, we can --
14 absolutely, I'll agree. If you want to do that,
15 yes we could. Let's -- does that affect your
16 vote on --

17 VADM TRACEY: No, it doesn't.

18 CHAIR HOLTZMAN: Okay. So let's just
19 -- since we have the arguments fresh in our mind,
20 let's vote on the proposed recommendation first
21 by Mr. Stone. All in favor say aye?

22 (Chorus of aye.)

1 PROF. TAYLOR: Oh, I'm sorry.

2 JUDGE JONES: What are we voting on?

3 I'm a little confused.

4 CHAIR HOLTZMAN: In favor of the
5 proposed recommendation by Mr. Stone.

6 PROF. TAYLOR: I'm sorry, I take that
7 back.

8 CHAIR HOLTZMAN: Okay. All in favor?

9 MR. STONE: Aye.

10 CHAIR HOLTZMAN: Opposed, say no?

11 (Chorus of no.)

12 CHAIR HOLTZMAN: The no's have it.

13 Now we go to Recommendation 43. All in favor say
14 aye?

15 (Chorus of aye.)

16 CHAIR HOLTZMAN: Opposed.

17 MR. STONE: No.

18 CHAIR HOLTZMAN: The ayes have it.

19 The recommendation is adopted.

20 VADM TRACEY: So if I could?

21 CHAIR HOLTZMAN: Admiral, please.

22 VADM TRACEY: I have the same comment

1 in several of these. We refer to the RSP
2 recommendation in the notes. I am mindful of the
3 fact that executives tend to read executive
4 summaries and not much else, so we refer to the
5 RSP recommendation. We don't capture in the
6 bullets what the status of those recommendations
7 are. I would recommend that you can encapsulate
8 that in a single sentence.

9 In this particular instance, the fact
10 of the Article 32 changes coming after the RSP
11 recommendation is a significant issue that I
12 think deserves to be called out. You do call it
13 out in the text, but I would just bring that up
14 forward in a bullet. I would recommend --

15 MS. SAUNDERS: Thank you, ma'am.

16 CHAIR HOLTZMAN: So the bullet would
17 say more or less what Admiral --

18 VADM TRACEY: I think it's the
19 sentence that's in the body of the report. It is
20 actually -- unfortunately, it's the one that Mr.
21 Stone objects to. I can live with some
22 modifications to that. It's on page 12, "Since

1 the RSP issued that report, statutory changes to
2 Article 32 process." I mean, you could combine
3 these two sentences I think into one that just
4 states the facts, that the Article 32 process was
5 changed after the RSP recommendation went in.
6 People who are not tracking this as closely as
7 the JPP --

8 CHAIR HOLTZMAN: Right.

9 VADM TRACEY: -- won't realize the
10 timing.

11 MS. SAUNDERS: Okay.

12 CHAIR HOLTZMAN: Right. So in other
13 words, what you are proposing is that paragraph 2
14 in the blue on page 12 --

15 VADM TRACEY: However we modify it
16 with Mr. Stone's --

17 CHAIR HOLTZMAN: Yes --

18 VADM TRACEY: -- recommendation --

19 CHAIR HOLTZMAN: -- should be
20 incorporated as a bullet --

21 VADM TRACEY: Yes, just incorporated
22 as a bullet under the --

1 CHAIR HOLTZMAN: -- under
2 Recommendation 43. Okay. Any objection to that?

3 MR. STONE: I am not sure I got what
4 we're doing here.

5 CHAIR HOLTZMAN: All right. What --

6 MR. STONE: Are we using --

7 CHAIR HOLTZMAN: But we have --

8 MR. STONE: -- the last paragraph --

9 CHAIR HOLTZMAN: No. We are going to
10 the first --

11 MR. STONE: -- before the
12 Recommendation 43 on --

13 CHAIR HOLTZMAN: No.

14 MR. STONE: -- page 12?

15 VADM TRACEY: No, no.

16 CHAIR HOLTZMAN: The middle paragraph.

17 MR. STONE: The middle paragraph.

18 CHAIR HOLTZMAN: On page 12.

19 VADM TRACEY: Again, "Since the RSP
20 issued that report" --

21 MR. STONE: Okay.

22 VADM TRACEY: And you recommended a

1 change to that. However --

2 MR. STONE: Yes.

3 VADM TRACEY: -- we change that
4 paragraph when we get done reviewing page 12, I
5 recommend that sentence, the resulting sentence,
6 be included as a sub-bullet under the
7 recommendation in the executive summary because I
8 think it's a principal change in the environment
9 that factors into why people should look at this.

10 CHAIR HOLTZMAN: Right, and we're not
11 reaching the question of whether to adopt your
12 suggested change, Mr. Stone, or not, okay? That
13 is not -- that will be determined at a later
14 point, so we're not ignoring your proposal, we're
15 just deferring it.

16 JUDGE JONES: So it's the second
17 bullet --

18 CHAIR HOLTZMAN: It would be --

19 JUDGE JONES: -- Admiral?

20 VADM TRACEY: It would be the second
21 bullet.

22 JUDGE JONES: Right, okay.

1 CHAIR HOLTZMAN: Okay. Any objection
2 to that?

3 MR. STONE: I object only because we
4 don't have data that shows it. This is all
5 anecdotal evidence, so without --

6 CHAIR HOLTZMAN: So --

7 MR. STONE: -- data, that is why I had
8 --

9 VADM TRACEY: The fact --

10 MR. STONE: -- said --

11 VADM TRACEY: -- that --

12 MR. STONE: -- "suggest."

13 VADM TRACEY: -- Article 32 has
14 changed is a fact.

15 MR. STONE: That is true.

16 VADM TRACEY: The fact that it has
17 changed the number of witnesses who actually
18 appear and can be questioned, that's a fact.

19 MR. STONE: Okay.

20 VADM TRACEY: So I am suggesting that
21 the fact of Article 32 changes occurring after
22 the June 2014 RSP report is an important fact for

1 someone who only reads the executive summary to
2 consider.

3 MR. STONE: What you just said, I had
4 no objection to, but I am not sure if that's what
5 is incorporated in that language, so it is --

6 VADM TRACEY: Page 12 to --

7 CHAIR HOLTZMAN: Well, in fairness,
8 there is one other fact that she -- that is
9 contained. They are making it more difficult for
10 defense counsel to gain access to important
11 information regarding the government's case. I
12 don't think there is really any dispute about
13 that.

14 MR. STONE: Oh, I think there is. I
15 do, until I see --

16 CHAIR HOLTZMAN: Oh, you don't --

17 MR. STONE: -- some evidence --

18 CHAIR HOLTZMAN: You don't think --

19 MR. STONE: -- because --

20 CHAIR HOLTZMAN: -- that --

21 MR. STONE: -- I don't think --

22 CHAIR HOLTZMAN: -- the 32 changes

1 made it more difficult for defense counsel to get
2 access --

3 MR. STONE: I --

4 CHAIR HOLTZMAN: -- to the
5 government's --

6 MR. STONE: -- haven't seen evidence.
7 I know that the defense counsel don't like the
8 changes --

9 CHAIR HOLTZMAN: No, no, no --

10 MR. STONE: -- but I don't know that
11 it makes it more difficult for them to gain
12 access to important information regarding the
13 government's case, because the government still
14 has to turn over anything that is exculpatory
15 that's in their possession.

16 CHAIR HOLTZMAN: But they don't have
17 to turn over the witness, the victim.

18 MR. STONE: They've got to turn over
19 the statement that they have from the victim.

20 CHAIR HOLTZMAN: That is -- but they
21 don't have to turn over the victim, and the
22 victim had to testify in the past. That is a big

1 difference.

2 MR. STONE: She had to show up and be
3 put on the stand. She didn't have to testify.

4 CHAIR HOLTZMAN: Oh, okay. All right.
5 I am just pointing that out. So if that is your
6 objection, then we note that. So let's --

7 MR. STONE: Thank you.

8 CHAIR HOLTZMAN: -- do we want to also
9 address the other issue that Mr. Stone commented
10 on so we can -- so we can decide how much of this
11 paragraph to -- on page 12 to adopt into the
12 bullet?

13 Mr. Stone's comment, "Delete the first
14 sentence as conclusory," so we wouldn't say that
15 since the RSP issued that report, statutory
16 changes have made defense investigations even
17 more necessary, investigators more necessary.

18 VADM TRACEY: So with your edit, Mr.
19 Stone, I think that paragraph would then say "The
20 new Article 32 pre-trial hearing process" -- it
21 is blotted out on my copy, I don't know what the
22 next word is -- "witnesses including victim

1 testify at Article 32" -- "fewer witnesses
2 including the victim testify at Article 32
3 hearing unless evidence is presented, making it
4 more difficult for defense counsel to gain access
5 to important information regarding the
6 government's case." Just that sentence I think
7 addresses my concern that a reader of the
8 executive summary won't realize that the Article
9 32 changed after the RSP recommendation was made.

10 CHAIR HOLTZMAN: Well, yes, that is --
11 anybody else have a comment about that?

12 JUDGE JONES: I don't have a problem
13 with that.

14 CHAIR HOLTZMAN: Well, I do have a
15 problem with that because I do think that we need
16 to say -- need to have some introductory sentence
17 which says -- which is a factual sentence that
18 since the RSP issued the report, statutory
19 changes have been made to the Article 32.

20 I also personally do not have -- I do
21 not think there is any -- because I think the
22 Subcommittee has adduced enormous amount of -- of

1 material on this subject, has made defense
2 investigators even more necessary, but there may
3 be some way, less conclusory way of making --

4 JUDGE JONES: I guess --

5 CHAIR HOLTZMAN: -- that point.

6 JUDGE JONES: -- I am content with the
7 sentence on 12 that basically says these changes
8 suggest that the need for defense investigators
9 is even greater, so I am just saying the concept
10 --

11 CHAIR HOLTZMAN: Okay.

12 JUDGE JONES: -- is in there on page
13 12.

14 CHAIR HOLTZMAN: Okay. So maybe we
15 could just --

16 JUDGE JONES: So we may not --

17 CHAIR HOLTZMAN: -- say --

18 JUDGE JONES: -- need it in the
19 bullet, that's all.

20 CHAIR HOLTZMAN: But I think we do
21 need something that says that the report -- that
22 the statutory changes have been made.

1 JUDGE JONES: Oh yeah.

2 CHAIR HOLTZMAN: So part of the first
3 sentence needs to be there.

4 JUDGE JONES: So you would -- oh --

5 CHAIR HOLTZMAN: You could say since
6 RSP issued that report, statutory changes have
7 been made to the Article 32, period.

8 MR. STONE: Okay. That -- that, no,
9 no, no, changes have been made, I understand.
10 That is fine.

11 CHAIR HOLTZMAN: Okay.

12 MR. STONE: That is factual.

13 CHAIR HOLTZMAN: Okay. So now we can
14 vote on whether we, as amended, move that
15 paragraph to the bullet, second bullet on page 4.
16 All in favor?

17 (Chorus of ayes.)

18 CHAIR HOLTZMAN: Any opposed?

19 MR. STONE: I am going to abstain
20 because I don't agree with the recommendation, so
21 it doesn't make sense to move it.

22 CHAIR HOLTZMAN: Okay. It is carried,

1 adopted.

2 Okay. We are up to Recommendation 44.
3 Mr. Stone, do you want to speak in behalf of your
4 proposed changes?

5 MR. STONE: Sure.

6 CHAIR HOLTZMAN: Great.

7 MR. STONE: Let's see. The changes
8 that I have made here again go to staffing across
9 all Military Services in terms of counsel,
10 paralegals, highly qualified experts, and
11 administrative support personnel, which is the
12 same types of people that are being looked at.

13 Let's see. And I -- the reason I look
14 at all of them, because it says in the JPP
15 recommendation, not mine, "to determine the
16 optimal level of staffing for the Service defense
17 organizations in the long term," and instead, I
18 put in here "to consider" -- "achieve the optimal
19 level of staffing for these Services or
20 organizations, and consider the referral of
21 excess cases to civilian prosecution authorities
22 in the medium and long term."

1 It may well be that the -- that there
2 are not sufficient resources to fairly staff or
3 correctly staff at an adequate level all the
4 various Services. I have no doubt in looking at
5 things that go on in the government that many
6 times, people have to steal from Peter to pay
7 Paul, and I don't want to just look again at one
8 organization and say, oh, we'll take them from
9 here and we'll put them over there, because that
10 in itself can upset the balance.

11 So therefore, I think they have to
12 look to all of the people that they have
13 available, what the budget is for those people,
14 decide what they can do, and decide if they can't
15 find what they think is the necessary minimum
16 amount, then they should consider referral of
17 excess cases to civilian authorities, either in
18 the medium or long term. If the number of sexual
19 assault cases goes from 50 percent of their
20 caseload to 90 percent of their caseload, I think
21 that is going to be inevitable, but that's a
22 projection they should think about, and that is

1 why I want them to think about that, because they
2 do at all portions have to be properly funded,
3 and that includes the defense counsel and the
4 defense side of the equation.

5 So that is the main change that I made
6 in there, and that is the reason. Again, I am
7 not interested in building one stovepipe higher.
8 I am interested in doing, based on what we heard
9 here from the subcommittee, both on defense and
10 prosecution, and previously to this Panel from
11 SVCs who said in some of the organizations that
12 they didn't have enough -- in fact, that is borne
13 out by what we heard this morning, that there
14 aren't enough SVCs to get around, and that is why
15 interviews of victims are often delayed, because
16 they can't get them there in time.

17 So that supports this recommendation
18 that says you have to look at all three. You
19 can't unbalance the situation without thinking
20 about what you're doing elsewhere and make a -- a
21 proper evaluation. If you're providing the
22 services, you do it to everybody at an adequate

1 level, and if you can't, you think outside the
2 box. That is what my recommendation is.

3 CHAIR HOLTZMAN: Yes, Judge Jones?

4 JUDGE JONES: Yes, I have pretty much
5 the same argument to this, to including the
6 prosecution organizations in this recommendation
7 -- which I assume that is what you meant when you
8 took defense out of there, correct, you are
9 broadening this recommendation -- for the simple
10 reason that we have an imbalance that we know
11 about already, and it's a serious one.

12 Defense organizations had no
13 investigators, and defense organizations, when
14 you look into the testimony that we have now
15 heard at least twice, through two panels, have
16 virtually no extra help in the form of paralegals
17 and other types of staffing. They are simply
18 totally underfunded. It is something we found in
19 2014. We have seen it again. We are not getting
20 the same kind of outcry from the prosecution, and
21 we have not examined the notion of victim's
22 counsel also receiving these resources at all.

1 So I am -- I am opposed to taking this
2 beyond a recommendation related to the defense
3 because they are the ones who need it, and we
4 have the demonstrated evidence to show that, and
5 much more extensive than, you know, some of the
6 other things that we heard. Of course,
7 prosecutors would always like to not just have an
8 investigator, but to have him do more for them.
9 We're talking about a defense organization that
10 is totally underfunded for what it needs to do.

11 CHAIR HOLTZMAN: Any other comment?

12 MR. TAYLOR: I just have -- I just
13 have a couple thoughts on that one.

14 As you are probably aware, there are
15 a few military installations that have exclusive
16 jurisdiction, so where there is exclusive federal
17 jurisdiction, there would be a problem I suspect
18 in getting local civilian courts to take it
19 because they have no jurisdiction, which means
20 you would have to rely upon the U.S. Attorney's
21 Office or something like that, and then the
22 question would be the same questions we are

1 considering now in terms of capabilities,
2 training skills, and so forth.

3 But I understand what -- I think I
4 understand what you're trying to say or do here,
5 but I would just throw out one other way to think
6 about this. There was a time when Services that
7 had a little excess capacity were willing to loan
8 on a temporary basis Special Victims' -- not
9 Special Victims' Counsel, but prosecutors and
10 defense counsel to another Service so that they
11 would be temporarily detailed, let's say, to
12 handle cases on behalf of another Service, and
13 these again would be fully qualified people.

14 So I don't know whether the
15 Subcommittee thought about that or not, Judge
16 Jones, or whether that is something that you
17 think would be worth considering at least as part
18 of this independent audit to consider the
19 feasibility of having Services shared among the
20 Military Services when it comes to dealing with
21 an excess number of cases in one Service and a
22 little extra capacity in another Service.

1 JUDGE JONES: It is not something that
2 anyone specifically raised during -- that I
3 remember or recall or have seen from the review.
4 I don't -- I have absolutely no problem with that
5 notion. It makes perfect sense. I did not get
6 the impression that -- that from any of the
7 prosecution people who got -- you know, came
8 before us, that they had extra time on their
9 hands, but there may be, you know, Services
10 somewhere -- we certainly did not speak to
11 everybody -- that could share or, you know, send
12 their prosecutors to help out.

13 But no, it is not something that we
14 looked into at all. I don't think it is a bad
15 thing when you're trying to figure out how to
16 fund to look at every possible source, you know,
17 that might help make more sense in terms of the
18 distribution of resources, but -- but no, we --
19 we didn't -- we didn't hear anything about that.

20 CHAIR HOLTZMAN: Do you -- do you want
21 to include that? Are you making --

22 PROF. TAYLOR: Well, I would suggest

1 a friendly amendment, and it would be at the end
2 of the sentence that begins "The Secretary of
3 Defense should" --

4 CHAIR HOLTZMAN: Right.

5 PROF. TAYLOR: -- "direct an
6 independent audit of defense staffing across
7 Military Service organizations, et cetera," "in
8 the long term and temporary details from one
9 Service to another to ensure expeditious
10 disposition of allegations," or words to that
11 effect, and we're talking about Defense Services
12 here of course only.

13 CHAIR HOLTZMAN: Okay. Let's take
14 this in order. So any objection to Mr. Taylor's
15 proposed amendment? Well, why don't we do --
16 before we take his amendment, why don't we do Mr.
17 Stone's first? That is the proper order.

18 So first, Mr. Stone's proposed
19 recommendation, ready to vote on that? All in
20 favor, say aye.

21 MR. STONE: Aye.

22 CHAIR HOLTZMAN: Opposed?

1 (Chorus of nays.)

2 CHAIR HOLTZMAN: The no's have it.

3 Now going to Recommendation 44, Mr. Taylor's
4 amendment, all those in favor, say aye. I mean,
5 is there any further comment?

6 (Chorus of ayes.)

7 CHAIR HOLTZMAN: Hearing no no's, that
8 suggestion is adopted.

9 Okay. Recommendation 45. Oh, sorry,
10 yes, sure.

11 VADM TRACEY: In this instance, the
12 Services have actually -- there has been a
13 request for the Services to respond to the
14 recommendation, and they responded in I think May
15 2016 saying that defense resources were adequate.

16 MS. SAUNDERS: Ma'am, we actually just
17 requested an update on that from the Services,
18 and it is summarized in the report, but the
19 Services generally felt that they were -- that
20 their defense Services were adequately resourced.

21 VADM TRACEY: So I do think it is
22 important again to inform a reader of the

1 executive summary that the RSP recommendation has
2 been acted on and responded to, and then what
3 we're saying is that in our site visits, which
4 took place after that response was submitted, we
5 were still hearing that defense resources were
6 inadequate. So I think there is a sequencing of
7 events for this one that is important.

8 MS. SAUNDERS: Yes. I will note that
9 even in the January 2017 responses from the
10 Services, they still maintain that they feel that
11 they are adequately resourced, so -- but I can
12 include that as well. Okay.

13 MR. STONE: I already asked that there
14 also be a sentence there at that point that
15 states that the JPP heard testimony on this date
16 that the prosecution services are not able to get
17 investigators to follow up as often as they would
18 like, and they complain about the fact that there
19 were not enough SVCs to allow quick interviews of
20 victims, and they often have to wait to hear
21 them.

22 CHAIR HOLTZMAN: Okay. First, let's

1 go to Mr. Stone's recommendation -- well, anybody
2 want to comment on that?

3 VADM TRACEY: Just seems that that
4 would belong in the report that we're going to do
5 on prosecution resources.

6 MR. STONE: We did that report. Isn't
7 that what we just did a few --

8 CAPT TIDESWELL: No sir.

9 MR. STONE: -- minutes ago?

10 CAPT TIDESWELL: What we did this
11 morning was the Subcommittee report.

12 MR. STONE: Oh --

13 CAPT TIDESWELL: There will now be a
14 follow-on --

15 MR. STONE: -- the Subcommittee --

16 CAPT TIDESWELL: -- period for
17 adopting and --

18 MR. STONE: Yes.

19 CAPT TIDESWELL: -- modifying, however
20 you all wish.

21 CHAIR HOLTZMAN: Well, we have already
22 adopted --

1 CAPT TIDESWELL: We have already done
2 it.

3 CHAIR HOLTZMAN: -- that report.

4 CAPT TIDESWELL: Well, yes, yes, but
5 he wants some additions made.

6 CHAIR HOLTZMAN: In the report? We
7 have already voted on that.

8 CAPT TIDESWELL: Then --

9 CHAIR HOLTZMAN: It's finished.

10 CAPT TIDESWELL: -- it's a moot point.

11 CHAIR HOLTZMAN: That is finished.

12 CAPT TIDESWELL: Yes ma'am.

13 CHAIR HOLTZMAN: I mean, I guess you
14 could make some comments --

15 CAPT TIDESWELL: Fair enough.

16 CHAIR HOLTZMAN: -- with regard to the
17 report, but that report has been adopted.

18 CAPT TIDESWELL: Yes ma'am.

19 CHAIR HOLTZMAN: I'm not going back
20 over that.

21 CAPT TIDESWELL: Yes ma'am.

22 CHAIR HOLTZMAN: Sorry.

1 (Laughter.)

2 MR. STONE: My comments are based on
3 the fact that Recommendation 44 says "optimal
4 level of staffing." It does not say "alleviate a
5 problem." Well, it says that, "alleviate
6 reported understaffing," but it also directs them
7 to determine optimal level of staffing for the
8 Service defense organizations. I think when you
9 talk about optimal level of staffing, at that
10 point, you have to look at what the staffing is
11 for everybody when you're looking at optimal
12 levels, or otherwise I just think it is too
13 parochial. That is why I asked for those other
14 two sentences.

15 CHAIR HOLTZMAN: I -- I join with what
16 Judge Jones said, which is what the Subcommittee
17 heard, and it was not only from defense counsel,
18 it was from trial counsel as well and other
19 people associated with the criminal -- with the
20 military criminal justice system, that the
21 defense, the absence of proper resources for
22 defense organizations was undermining the whole

1 military justice system.

2 And the failure to focus just on that,
3 in my opinion, dilutes the concentration on that
4 issue and dilutes attention to that issue, and --
5 and I think that's an issue that is critical
6 because it has not been addressed properly since
7 the RSP made its recommendations several years
8 ago, and it is not likely to be addressed because
9 it is not, frankly, politically as sexy as
10 prosecution. We all know that, and we see that
11 in states and localities, budget for defense
12 organizations are -- are way down on the totem
13 pole.

14 So I don't think that just talking
15 about general levels of -- of resources for all
16 attorneys in the military justice system is
17 really the appropriate way to go when there is
18 such a stark need that the -- that the -- the
19 Subcommittee's visits uncovered, so I am opposed
20 to it.

21 MR. STONE: And I would just add for
22 the record to my last comment on this is that we

1 have not seen published cases that show reversals
2 because of an objection that the defense did not
3 have enough investigators, which is where those
4 objections should show up, and we have not seen a
5 tremendous increase in the percentage of
6 prosecutions as a result of defense investigators
7 not being available, so without any kind of data
8 that contradicts what the military responded, I
9 don't take anecdotal evidence as warranting a new
10 recommendation in a parochial fashion.

11 CHAIR HOLTZMAN: Okay. All in favor
12 of Mr. Stone's Recommendation 44, say aye.

13 MR. STONE: Aye.

14 CHAIR HOLTZMAN: All opposed?

15 (Chorus of nays.)

16 CHAIR HOLTZMAN: The no's have it.

17 VADM TRACEY: I think we were --

18 CHAIR HOLTZMAN: Yes.

19 VADM TRACEY: -- working on --

20 CHAIR HOLTZMAN: Your --

21 VADM TRACEY: -- sub-bullets to that
22 recommendation --

1 CHAIR HOLTZMAN: Correct.

2 VADM TRACEY: -- and the addition of
3 disposition of the RSP recommendation has been
4 approved and referred to the Service Secretaries,
5 who have reported --

6 CHAIR HOLTZMAN: Right.

7 VADM TRACEY: -- back that defense
8 resources are adequate.

9 CHAIR HOLTZMAN: Right.

10 VADM TRACEY: That is different from
11 what our site visits suggest.

12 CHAIR HOLTZMAN: Right. So what was
13 the language saying, roughly?

14 VADM TRACEY: I think we have on page
15 13, "The Secretary of Defense approved the RSP's
16 recommendation that defense offices be adequately
17 resources and staffed and forwarded it to the
18 Service Secretaries for action. According to the
19 recent Services' response to the RFI," the first
20 two sentences there, I think --

21 CHAIR HOLTZMAN: Right, are adequately
22 -- okay. So you would want those first two

1 sentences to be incorporated --

2 VADM TRACEY: As the --

3 CHAIR HOLTZMAN: -- in a bullet?

4 VADM TRACEY: -- second bullet.

5 CHAIR HOLTZMAN: That's the second
6 bullet.

7 VADM TRACEY: Right.

8 CHAIR HOLTZMAN: All -- any comment on
9 that?

10 (No audible response.)

11 CHAIR HOLTZMAN: No? All in favor,
12 say aye.

13 (Chorus of ayes.)

14 CHAIR HOLTZMAN: Opposed?

15 MR. STONE: Abstain.

16 CHAIR HOLTZMAN: Okay. The
17 recommendation about the bullet addition is
18 adopted.

19 Okay. I think we're up to
20 Recommendation 45, and Mr. Stone, do you want to
21 discuss your proposed recommendation?

22 MR. STONE: Yes. My recommendation,

1 unlike the JPP Recommendation 45, directs the
2 Joint Service Committee to consider modifications
3 to the MCIO program, the whole program, so that
4 the control of each Service's expert approval
5 authority is under that organization. We just --
6 you know, then the defense -- the prosecution, as
7 we heard this morning, won't be complaining about
8 how long it takes to get back forensic reports.
9 They will be deciding where they go and how much
10 resources they're going to put to that.

11 They are not going to be able to
12 complain about they can't get follow-up
13 investigators except in their own chain of
14 command. They will have a chain of command, and
15 it won't be the MCIO program that seems to be
16 taking the criticism for not being in every place
17 at once.

18 And so it seems to me again that is
19 the way we ought to be proceeding, and that is
20 what my modification is intended to do. And
21 again, I am not opposed to modification in the
22 language, but as you can see, it is broader than

1 continuing to build up the stovepipes. Thank
2 you.

3 JUDGE JONES: I think --

4 CHAIR HOLTZMAN: Judge Jones?

5 JUDGE JONES: -- this particular
6 recommendation speaks to expert approval
7 authority, and I would again not make a
8 recommendation beyond the defense organizations
9 for all the reasons I have already stated. I
10 don't know -- I am a little confused about where
11 the MCIO program comes in, Mr. Stone?

12 MR. STONE: Well, they are talking
13 about defense expert approval and expenditure
14 funding, and I think it relates to both
15 investigators and experts, if you'll see --

16 JUDGE JONES: This is really limited
17 --

18 MR. STONE: I think they are both
19 involved.

20 JUDGE JONES: This is really limited
21 to experts, where we have heard over and over
22 again, if they get expert approval at all, it is

1 too late in the defense function, and -- and
2 again, and this has been uniform for several
3 years in the testimony I have heard, frequently,
4 almost always, the prosecution function has no
5 problem getting, you know, the expenditures they
6 need for experts. So this is really very limited
7 I think to experts. I mean, I know it is because
8 that's all --

9 MR. STONE: Well my question --

10 JUDGE JONES: -- we are really talking
11 --

12 MR. STONE: -- for the staff --

13 JUDGE JONES: -- about.

14 MR. STONE: -- is it -- do the -- is
15 it through the MCIO organization that the expert
16 request is approved? No?

17 JUDGE JONES: No, no, they have
18 nothing --

19 MR. STONE: Okay.

20 JUDGE JONES: -- to do with it as far
21 as I know.

22 MS. SAUNDERS: It is through the

1 convening authority, sir.

2 JUDGE JONES: So this moves it from
3 the convening authority to the --

4 MR. STONE: Okay.

5 JUDGE JONES: -- so that the defense
6 organization itself --

7 MR. STONE: Right, okay, so in that
8 case, I accept that correction, and I change
9 modifications to the convening authority's
10 authority -- well, convening authority's
11 authority is not good English, but the convening
12 official's authority so that expert approval and
13 a concomitant obligation of expenses are placed
14 under control, et cetera, each senior level of
15 the Services.

16 JUDGE JONES: And that is broader too
17 because there is no recommendation here to take
18 the convening authority's approval out of the
19 system for the prosecution. We didn't hear that
20 there was any need for that whatsoever. This is
21 very narrow. It is a big change, but it is a
22 narrow recommendation, and we are just

1 recommending that the defense organizations
2 themselves will be able to -- to give expert
3 approval to defense counsel.

4 MR. STONE: Doesn't that mean --

5 JUDGE JONES: We are not --

6 MR. STONE: -- that --

7 JUDGE JONES: -- touching, we are
8 taking --

9 MR. STONE: Doesn't that mean --

10 JUDGE JONES: -- away --

11 MR. STONE: -- the convening authority
12 can't veto it?

13 JUDGE JONES: Yes, it does mean they
14 can't --

15 MR. STONE: So it is --

16 JUDGE JONES: -- because it's a
17 budgetary --

18 MR. STONE: -- affecting their
19 authority.

20 JUDGE JONES: It's a -- well, you are
21 right, but we are not -- we are not taking the --
22 it away completely. We are not saying that the

1 convening authority does not still deal with the
2 prosecution requests. There has been no
3 discussion about taking the prosecution's
4 requests away from the convening authority. This
5 is just for defense expert approval.

6 CHAIR HOLTZMAN: Any other comments?

7 PROF. TAYLOR: I would just like to
8 add that the only reason I added "as necessary,"
9 and of course it is highlighted there, was
10 because as a matter of internal regulations, I
11 think the Secretary of Defense can do this
12 without having legislation. So unless it was the
13 intent of the -- unless it was the intent --

14 CHAIR HOLTZMAN: Oh, wait, wait, wait
15 --

16 PROF. TAYLOR: -- of the Subcommittee
17 --

18 CHAIR HOLTZMAN: Mr. Taylor, we are
19 not up to Recommendation 45 in the blue, we're in
20 --

21 PROF. TAYLOR: Oh, I am sorry.

22 CHAIR HOLTZMAN: -- Recommendation 45

1 in the yellow.

2 PROF. TAYLOR: I thought we were
3 moving on --

4 CHAIR HOLTZMAN: Sorry.

5 PROF. TAYLOR: -- fair enough, thank
6 you.

7 CHAIR HOLTZMAN: Okay. Any further
8 comment on Mr. Stone's proposed recommendation as
9 amended?

10 (No audible response.)

11 CHAIR HOLTZMAN: All in favor, say
12 aye.

13 MR. STONE: Aye.

14 CHAIR HOLTZMAN: All opposed?

15 (Chorus of nays.)

16 CHAIR HOLTZMAN: The no's have it.

17 Now we are up to Recommendation 45, and Mr.
18 Taylor --

19 PROF. TAYLOR: Thank you.

20 CHAIR HOLTZMAN: -- we're in the blue,
21 so you're --

22 PROF. TAYLOR: Sorry for my premature

1 comment there.

2 Unless the Subcommittee intended this
3 to be elevated to congressional level and
4 actually have legislation put a firmer stamp on
5 it than the Secretary of Defense, I thought it
6 might be helpful to suggest "as necessary"
7 because it certainly is within the Secretary of
8 Defense's purview to create this funding stream
9 without legislation.

10 CHAIR HOLTZMAN: Mr. Taylor, would you
11 accept a modification to your proposal? What
12 about instead of "draft appropriate rules and
13 legislation," if we said "appropriate measures as
14 necessary"?

15 PROF. TAYLOR: That would be fine with
16 me, but of course that -- that is Judge Jones's
17 language --

18 CHAIR HOLTZMAN: Oh yeah.

19 PROF. TAYLOR: -- not mine.

20 JUDGE JONES: Well, I don't think
21 there was significant thought given to what we
22 might create if we had to go to the legislature,

1 so I take your point on that, and I would accept
2 that as an amendment. And I -- appropriate
3 measures in the hands of the Secretary --

4 CHAIR HOLTZMAN: Or you could say
5 "appropriate rules and other measures" -- "or
6 other measures." I am not wedded to that. I
7 just think the legislation is very narrow.

8 JUDGE JONES: Right, and may not be
9 necessary.

10 CHAIR HOLTZMAN: Be necessary, right.

11 JUDGE JONES: Right. Rules and
12 measures as necessary? I am happy to have the
13 Staff play with that if they don't like "rules
14 and measures as necessary," but that would be
15 fine with me.

16 CHAIR HOLTZMAN: Any comment about
17 that, opposition?

18 (No audible response.)

19 CHAIR HOLTZMAN: Okay. All in favor
20 of the amendment, say aye.

21 (Chorus of ayes.)

22 CHAIR HOLTZMAN: Opposed?

1 (No audible response.)

2 CHAIR HOLTZMAN: The ayes have it.

3 Now Recommendation 45 as amended. All
4 in favor, say aye.

5 (Chorus of ayes.)

6 CHAIR HOLTZMAN: Opposed?

7 MR. STONE: Aye.

8 CHAIR HOLTZMAN: Wait. Yes, you are
9 opposed, or no, you're --

10 MR. STONE: I am opposed.

11 CHAIR HOLTZMAN: Okay.

12 MR. STONE: I am opposed.

13 CHAIR HOLTZMAN: Sorry. Just want to
14 make sure we get you on record.

15 VADM TRACEY: Again on the sub-
16 bullets?

17 CHAIR HOLTZMAN: Yes, sure.

18 VADM TRACEY: Is it correct that the
19 procedures require that the request for defense
20 counsel is processed through the trial counsel
21 and approved by the --

22 CHAIR HOLTZMAN: Convening authority.

1 VADM TRACEY: -- convening authority?

2 JUDGE JONES: Yes.

3 VADM TRACEY: Again, for purposes of
4 people who will only read this, may I recommend
5 that in the second bullet, we amend the last
6 sentence, something to this effect: "Given that
7 defense counsel's requests must be processed
8 through the trial counsel, such statements often
9 force defense counsel to prematurely reveal trial
10 strategy." My argument being the convening
11 authority is responsible for both, right?

12 CHAIR HOLTZMAN: Right. So that would
13 be a third bullet, right?

14 VADM TRACEY: I think you would just
15 amend the last sentence of the second bullet.

16 CHAIR HOLTZMAN: Okay. And so what
17 would it say now? I am sorry.

18 VADM TRACEY: "Given the requirement"
19 --

20 CHAIR HOLTZMAN: Right.

21 VADM TRACEY: -- "for defense counsel
22 to submit such requests through the trial

1 counsel, such statements often force defense
2 counsel to prematurely reveal trial strategy."

3 CHAIR HOLTZMAN: Okay. So you're
4 adding some language at the --

5 VADM TRACEY: Correct.

6 CHAIR HOLTZMAN: -- at the beginning
7 of that?

8 VADM TRACEY: Yes.

9 CHAIR HOLTZMAN: Okay. Any further
10 discussion?

11 (No audible response.)

12 CHAIR HOLTZMAN: All in favor of the
13 amendment, the bullet amendment, say aye.

14 (Chorus of ayes.)

15 CHAIR HOLTZMAN: Opposed?

16 MR. STONE: Abstain.

17 CHAIR HOLTZMAN: Okay. The amendment
18 is adopted. I guess we are up to number 46,
19 Recommendation 46. Mr. Stone, do you want to
20 discuss your proposed recommendations?

21 MR. STONE: Sure.

22 CHAIR HOLTZMAN: Thank you.

1 MR. STONE: My recommendation is based
2 on a couple things. The first is that we know
3 that the military is already considering a way to
4 figure out what kind of tour length
5 qualifications, maybe even certifications, they
6 want to give people for -- in order to
7 participate in sexual assault cases. I think we
8 can encourage them to expedite that process. I
9 think it's a good process, but I don't think we
10 should be out ahead of them.

11 I don't know that we can set a minimum
12 tour length and decide. I don't think we have
13 any evidence about a particular number of years
14 or days. Myself, I would not be surprised if
15 they come back and they say it's a number of
16 trials. You might have been -- you might have a
17 two-year tour and had one sexual assault trial
18 because of where you're located, and somebody
19 else might only be on that tour four months and
20 have already seen ten of those trials.

21 So -- so I don't think talking about
22 minimum tour length is necessarily where they are

1 going to wind up in terms of figuring out who is
2 properly qualified to hear that, so I didn't want
3 to say a minimum tour length of two years or
4 more, especially since the military is
5 considering that. I think that we heard
6 testimony here in our prior sessions complaining
7 about the short tour lengths of some trial
8 judges, and we also heard it about some counsel
9 previously for the prosecution, that people wind
10 up getting transferred into a situation where
11 they have to take over because somebody else is
12 unavailable, and they really are not qualified to
13 handle a case of this seriousness, so I think it
14 has to apply -- definitely has to apply, even for
15 the defense's sake, to have a qualified trial
16 judge and other counsel.

17 And I believe that what the
18 recommendation that the Fiscal Year '17
19 recommendation is that the Military Services
20 are considering and have the freedom to consider
21 qualifications for all of the participants, not
22 just the defense counsel, so I think it is good

1 for us to urge them to do it.

2 And the last change I have at the end
3 is "were voluntarily waived on the record by both
4 the prosecution and defendant in a case," and
5 that again is meant to cover the situation where
6 you have a brand new judge or a brand new defense
7 counsel or prosecution, and nobody has an
8 objection because this is a person, although they
9 have only been on the bench two months, all they
10 have heard was sexual assault cases, including
11 some very big ones. They have a lot of
12 experience. They previously served in a
13 different capacity where they dealt with sexual
14 assault cases, and everybody is confident that
15 that person is going to do a good job.

16 And so I think that, like with any
17 other right, you have to recognize that people
18 may want to waive that situation, and in that
19 situation, I just put down "prosecution and
20 defendant." I did not include the victim in that
21 particular one. It does not mean the victim
22 should not have -- victim's counsel should not

1 have minimum qualifications, but I don't think
2 deciding on whether there are enough
3 qualifications for the other participants is a
4 particular victims' issue, and when we're not
5 involved in a victims' issue, I am satisfied to
6 let the parties who were previously there decide
7 what should happen.

8 And if they can both agree that they
9 are happy with a judge who is one month shy of
10 the minimum tour length, or a defense counsel who
11 is one month shy, or you may have -- you may have
12 a defendant who was previously represented by a
13 defense counsel on a non-sexual-assault case and
14 really liked that counsel, and so that person
15 says I want Mr. X, if you don't mind, I know he's
16 on this base, I have complete faith in him
17 because of my prior experience with him, and if
18 he wants a waiver to get that defense counsel who
19 is available, I don't imagine the prosecution is
20 going to care either.

21 So I think that has to be looked at
22 before you set inflexible rules because we're

1 dealing with a big system, and there's lots of
2 circumstances that can arise.

3 CHAIR HOLTZMAN: Judge Jones?

4 JUDGE JONES: Yeah. The first part of
5 this really relates to how much the Military
6 Services permit only defense counsel with prior
7 military justice or civilian criminal litigation
8 experience to serve as lead defense counsel in
9 sexual assault cases, so -- and that does not --
10 that does not really talk about, you know, you
11 had to have been a defense counsel for two years,
12 more or less.

13 The section about two years is a
14 different concern, and I was not sure whether --
15 whether you were criticizing that because you
16 thought we were saying you had to have a minimum
17 tour length in order to be lead counsel. I --

18 MR. STONE: Yes, I was looking at the
19 next sentence, that says "Military Services
20 should develop a formal process using objective
21 and subjective criteria to determine when a
22 defense counsel is qualified to serve as a lead

1 defense counsel."

2 JUDGE JONES: Right.

3 MR. STONE: So therefore I think we
4 are talking about the lead counsel, and --

5 JUDGE JONES: No, we are talking about
6 the lead counsel --

7 MR. STONE: Okay.

8 JUDGE JONES: -- that is still a very
9 flexible standard. Then, when we say "In
10 addition, the Military Services should set the
11 minimum tour length for defense counsel at two
12 years or more," the point of that, obviously, the
13 Marine Corps told us we can't do it, and we're
14 never doing it, so -- because we're always moving
15 our people around.

16 The point of that was that once
17 someone became a defense counsel as opposed to
18 the section on lead, they would at least have two
19 years of experience in order to -- to develop the
20 expertise. I mean, that is -- that was what I
21 intended by that. It obviously is not clear.

22 We did not want defense counsel being

1 moved around. We wanted them to have a two-year
2 tour --

3 MR. STONE: So you --

4 JUDGE JONES: -- as defense counsel.

5 MR. STONE: Right. I guess I don't
6 understand then how the two pieces relate. If
7 you have someone who is really qualified, but now
8 there is a promotion waiting for him, I don't see
9 why we have to say, no, you can't leave, you have
10 to stay here for another couple of months because
11 you have to do a minimum two-year tour, even
12 though there's enough other people on this base
13 who would be qualified to serve as lead defense
14 counsel. So I am not even sure in that case, if
15 that's how these are supposed to be read, why a
16 tour length fits into qualified.

17 I think we want qualified counsel, and
18 if that minimum tour length is not related to
19 qualified, then --

20 VADM TRACEY: So we could set a
21 minimum tour length so that defense counsel can
22 get experience, defense counsel can get

1 experience.

2 MR. STONE: Well, any counsel, but
3 okay, let's say defense counsel --

4 VADM TRACEY: Staying in the role for
5 some minimum amount of time, and I think that as
6 framed, the recommendation allows for case-by-
7 case exceptions to be approved by the SJA.

8 MR. STONE: If they are qualified, I
9 guess I don't understand, if you want somebody,
10 you needed him in a different role, why the tour
11 length matters at all as long as there are
12 qualified people behind him to fill the slot.

13 VADM TRACEY: If it's as extreme a
14 demand as to require them to get pulled out, this
15 recommendation would allow the staff to -- you'd
16 have a staff judge advocate make that call, the
17 TJAG or the Marine Corps SJA to make that --

18 MR. STONE: Well --

19 PROF. TAYLOR: Could I ask a
20 clarifying question? Do you mean literally two
21 years in the same tour, or could it be two one-
22 year tours? For example, people often deploy for

1 nine months or six months, and they might have a
2 stint as a defense counsel for shorter periods
3 than two years for the reasons Mr. Stone
4 outlined, so I am just -- this is a clarifying
5 question.

6 JUDGE JONES: We meant two years as
7 defense counsel.

8 PROF. TAYLOR: Two consecutive --

9 JUDGE JONES: In the --

10 PROF. TAYLOR: -- years.

11 JUDGE JONES: -- in the role of a
12 defense counsel.

13 CHAIR HOLTZMAN: But he is asking
14 consecutive years.

15 JUDGE JONES: Oh, oh yes, that was the
16 point.

17 PROF. TAYLOR: That was -- that was my
18 question --

19 JUDGE JONES: Yes --

20 PROF. TAYLOR: -- right.

21 JUDGE JONES: -- I am sorry, yes.

22 CHAIR HOLTZMAN: I mean, am I correct?

1 Doesn't this kind of imitate or reflect --

2 JUDGE JONES: The Navy --

3 CHAIR HOLTZMAN: -- a report -- well,
4 one, I think the, right, the Navy has it, but
5 isn't it something that the RSP also recommended?

6 JUDGE JONES: Yes, it is.

7 CHAIR HOLTZMAN: So it's not coming
8 out of the blue, in other words, totally, am I
9 correct?

10 JUDGE JONES: No, you are completely
11 correct.

12 CHAIR HOLTZMAN: So maybe --

13 JUDGE JONES: This is something the
14 RSP recommended. My recollection of it then and
15 now is that we're talking about making sure that
16 defense counsel -- what we saw is that the
17 prosecution counsel tended to have more
18 experience at their role than defense counsel
19 did, which is a separate matter from who you are
20 going to make a lead defense counsel, I
21 completely agree.

22 There may be somebody who comes in who

1 has civilian experience, as you say, who is ready
2 to go right in there and be lead defense counsel.
3 But what we saw as a system problem was that
4 defense counsel were getting moved out of that
5 role and thrown into another role, with at least
6 what I recall from two or three years ago, and
7 not -- not being able to develop their skills,
8 and -- and some of it -- I think some of it was
9 drawn from the fact that of course in the Navy,
10 you know, they have their system where you don't
11 get moved around so much from one role to the
12 other, and so there is -- there is, you know, you
13 have the chance to develop an expertise. It was
14 meant to give people a chance to serve in one
15 role for this length of time.

16 I mean, I am happy to go back and dig
17 up the research we did before.

18 MR. STONE: Did anybody look at
19 whether or not this is going to discourage
20 certain people from taking that tour because
21 their normal tour, as was mentioned, might be
22 nine months or a year, and therefore it will set

1 back their qualifications to get promotions and
2 various things? Because you are starting from
3 the proposition that they have to be skilled, so
4 I don't know how able to develop their skills
5 plays into tour length if we are going to say we
6 want them skilled from the first sexual assault
7 case they take.

8 CHAIR HOLTZMAN: No, it doesn't --

9 JUDGE JONES: No --

10 CHAIR HOLTZMAN: -- say that, that
11 they have to be skilled for the first sexual
12 assault case. It says that they can develop --
13 we want them to develop their -- how can they be
14 skilled for the first sexual assault --

15 MR. STONE: Because --

16 CHAIR HOLTZMAN: -- case?

17 MR. STONE: -- they take non-sexual-
18 assault cases and try them, just like new
19 prosecutors start with misdemeanors before they
20 go to felonies.

21 CHAIR HOLTZMAN: Well, exactly, so we
22 don't know how experienced they are, but we want

1 them to have experience in the handling of sexual
2 assault cases, and that requires a certain period
3 of time.

4 I think you heard Ms. Friel talk about
5 the number of years she served as Bureau Chief.
6 She had to be really experienced after ten years
7 -- maybe I misstated --

8 MS. FRIEL: Just old.

9 CHAIR HOLTZMAN: Sorry?

10 MS. FRIEL: I said just old.

11 CHAIR HOLTZMAN: Oh, just, oh, right,
12 well, and experienced. I mean, how many years
13 did you serve as Deputy Bureau Chief?

14 MS. FRIEL: 11.

15 CHAIR HOLTZMAN: 11, and ten years as
16 Bureau Chief?

17 MS. FRIEL: Yes.

18 CHAIR HOLTZMAN: 21 years? You think
19 she was experienced? I do.

20 MR. STONE: But that is not going to
21 come close to a minimum of --

22 CHAIR HOLTZMAN: I understand --

1 MR. STONE: -- two years.

2 CHAIR HOLTZMAN: -- that, but --

3 MR. STONE: It's not the --

4 CHAIR HOLTZMAN: -- let's try --

5 MR. STONE: -- same thing.

6 CHAIR HOLTZMAN: -- seven months

7 against two years --

8 MR. STONE: Well --

9 CHAIR HOLTZMAN: -- I mean, I think
10 there is some point, just to support what the
11 Subcommittee recommended and what Judge Jones is
12 talking about, is that there is some real value
13 in having people have the benefit of going
14 through a lot of cases, being able to evaluate
15 them, evaluate witnesses, evaluate victims,
16 handle cross-examination, all the techniques in
17 these cases, understand where the investigator
18 needs to do more or needs to do different things.

19 I just think that that kind of
20 experience is invaluable. In the private, in the
21 civilian sector, 21 years. I mean, that tells
22 you something about the value of that experience.

1 We're talking about two years. Yes, of course,
2 there are negatives. I think Mr. Stone you
3 absolutely are correct in pointing out the
4 disadvantages.

5 But on the other hand, if we're
6 talking about a system that has so hollowed out
7 in my opinion from what I have heard -- now maybe
8 it is anecdotal and maybe it's not correct, I am
9 certainly willing to admit that I could be making
10 a mistake here -- but when you have a system that
11 has so hollowed out the defense capacity -- I am
12 not saying it is intentional or it is mean or it
13 is deliberate or anything like that, but that is
14 so hollowed out, you need to build it up. In my
15 opinion, that is what this is about. Maybe I
16 misstated it.

17 JUDGE JONES: No, but you know what,
18 it's a fair question. I am virtually certain
19 this meant serving as a defense counsel for two
20 years, not -- not that you had to stay in one
21 place for two years.

22 PROF. TAYLOR: Well, that was exactly

1 my point --

2 JUDGE JONES: Right.

3 PROF. TAYLOR: -- because it could be
4 that you could be working in a defense position
5 in a tour in -- in continental United States and
6 then deploy for a year as a defense counsel. You
7 have two consecutive years --

8 JUDGE JONES: Right.

9 PROF. TAYLOR: -- but it's not like a
10 tour --

11 JUDGE JONES: Right.

12 PROF. TAYLOR: -- if that makes sense.

13 JUDGE JONES: Well, we may have the
14 wrong word, and we may have had that wrong word
15 since we started.

16 PROF. TAYLOR: I think -- I think if
17 we think in terms of two consecutive years of
18 service as a defense counsel --

19 JUDGE JONES: Yes.

20 PROF. TAYLOR: -- that is what you're
21 really after as opposed to tour lengths, tying it
22 to tour lengths. Is that correct?

1 MS. SAUNDERS: Can I mention one thing
2 too, that the Subcommittee also considered, just
3 to bring this up, is that the two-year tour
4 length also was so that clients could have the
5 same attorney, that that person would be in the
6 position for two years. There were some
7 complaints from defense counsel that they were
8 having to leave and get -- get -- they were --
9 their clients were having to get new attorneys,
10 so it alleviated that -- that problem --

11 JUDGE JONES: Well Terri then correct
12 me, either from your recollection from RSP or the
13 most recent ones, is this also location, a two-
14 year tour, meaning what it probably means in the
15 military, which is a tour at one place?

16 MS. SAUNDERS: A tour is typically at
17 one location. I don't know that we specifically
18 parsed it out that way, or that the Subcommittee
19 specifically parsed it out that way, but that was
20 one of the concerns that was raised, was you did
21 have one of the defense counsel from the Marine
22 Corps testify before you in May, and I know she

1 pointed out these 12 to 15 months, counsel is
2 coming in, and they are moving on after this very
3 short period of time, that the -- that means that
4 some of the clients did not have -- you know,
5 were forced to get new attorneys, you know,
6 during that period of time before their case went
7 to trial, because sometimes these cases take so
8 long to go to court. I just wanted to throw that
9 out there for consideration.

10 JUDGE JONES: Well, I don't know how
11 the rest of the Panel feels about this second
12 half of this recommendation, because I do -- I am
13 not sure that's in the -- it's in the body of the
14 report itself.

15 MS. SAUNDERS: And that may have been
16 in the Subcommittee report body, but perhaps that
17 part didn't transfer over, but we could certainly
18 include information to that effect, because we
19 did --

20 JUDGE JONES: Well maybe --

21 MS. SAUNDERS: -- the Subcommittee did

22 --

1 JUDGE JONES: Yes, I wouldn't ask the
2 -- this Panel to vote on the second half of that
3 until we're sure what we are recommending, or we
4 can decide what we think a good recommendation is
5 if one is needed.

6 I -- my thinking on it was, as I said,
7 that somebody should have two years, at least two
8 years before they get transferred out of the
9 defense role. I don't know if anyone is ever
10 going to be happy in terms of clients because you
11 are always going to be moving, and there's always
12 going to be some clients you're going to be
13 leaving behind, so I am not so persuaded that it
14 has to be a two-year tour at one place.

15 I at least have -- was always focused
16 on making sure they got two years of defense
17 experience before they became either a prosecutor
18 or some other capacity in the legal system.

19 PROF. TAYLOR: And Judge Jones, I
20 agree with that. I agree with the two
21 consecutive years of defense experience. I think
22 it may be unnecessarily tying the hands of

1 military commanders who have to move people
2 around to say it has to be in the same location
3 as opposed to two consecutive years.

4 VADM TRACEY: So could we modify this?
5 "In addition, the Military Services should
6 consider assignment policies that ensure that
7 defense counsel gains a minimum of two years, two
8 consecutive years of experience in the role"?

9 CHAIR HOLTZMAN: Well, and maybe, to
10 the fullest extent practicable, at the same
11 location.

12 JUDGE JONES: Yes, at the same
13 location.

14 PROF. TAYLOR: Yes, that would be
15 fine.

16 CHAIR HOLTZMAN: Am I allowed to say
17 that Subcommittee members sitting in the audience
18 are shaking their heads yes?

19 MR. STONE: I am sorry --

20 CHAIR HOLTZMAN: Because they have a
21 better idea of what they meant than I did?

22 (Laughter.)

1 JUDGE JONES: Well, that encompasses
2 both the thoughts, Admiral, so I would accept
3 that.

4 CHAIR HOLTZMAN: So just maybe Mr.
5 Stone do you want to have it read back to you,
6 more or less, what it is --

7 MR. STONE: Well, did we -- we haven't
8 voted on I don't think my recommendation yet or
9 this one, have we? We haven't voted --

10 CHAIR HOLTZMAN: No.

11 MR. STONE: -- on proposed, my
12 proposed 46 or the blue --

13 CHAIR HOLTZMAN: Let's do -- let's --

14 MR. STONE: -- 46, so --

15 CHAIR HOLTZMAN: Okay.

16 MR. STONE: -- you're in --

17 CHAIR HOLTZMAN: Let's vote on --

18 MR. STONE: -- charge, go ahead.

19 CHAIR HOLTZMAN: All right. Let's
20 vote on Mr. Stone's proposed 46.

21 MR. STONE: And let me start by saying
22 that based on this last discussion, I would

1 entirely strike the language in my proposal that
2 says "In addition, the Military Services are
3 urged to set a minimum tour length applicable to
4 counsel and trial judges in such cases," and then
5 I would just have the phrase "except when an
6 exception is approved in a specific case," et
7 cetera, and I would leave that in related to the
8 -- when people are qualified to serve.

9 And I say that because I believe
10 people have to be qualified to serve as lead
11 counsel no matter how long or short they have
12 been there. I don't think it helps the Service
13 in finding people to do that to say that they are
14 locked into minimum tour lengths for people who
15 would like to do that job, and I think this has
16 to include the qualifications of lead
17 prosecution, defense, and victim's counsel and
18 trial judges because I think as we have heard in
19 prior JPP sessions, sometimes the complaint is
20 that the prosecution counsel was naive and might
21 not have brought the case if he had had more
22 experience and/or might have acted differently,

1 and therefore I think they should have experience
2 as well.

3 I think that we have not seen cases
4 reversed on this basis by the military courts of
5 appeals. We have not seen an increase in the
6 number of acquittal -- acquittals because of
7 experienced or inexperienced counsel. I think
8 that there is no question it would be nice to
9 have some kind of a process because these are
10 serious cases, but I think that has to be across
11 the board.

12 And I would just like to add, and this
13 goes for all my recommendations, these
14 recommendations have been explicitly harking back
15 to recommendations from the Response Systems
16 Panel. Those recommendations came about from
17 testimony that was never presented to me or this
18 Panel, so I have no problem making the
19 suggestions that I am making that hark back to
20 testimony that this Panel heard earlier in its
21 existence. So that does not trouble me at all.

22 I am not saying I would reject

1 responses to those Panel recommendations, I am
2 just saying it is clear that the JPP has the
3 authority to look back at what it has heard and
4 what has been presented, and that is exactly what
5 I am doing in my alternatives. So that is how I
6 justify wanting all of these counsel, including
7 the trial judge, to be experienced. We have
8 heard complaints about that, with exceptions
9 being made by these high officials that are named
10 or voluntarily waived.

11 CHAIR HOLTZMAN: Judge Jones, do you
12 want to make a comment?

13 JUDGE JONES: Yes. I am not sure what
14 -- what your actual recommendation is, Mr. Stone.

15 MR. STONE: You want me to read it?

16 JUDGE JONES: No, I can read it. You
17 took out the last part of it?

18 MR. STONE: I took out from the
19 sentence that says "In addition," which is the
20 last sentence, and I modified it so that the
21 exception language being approved in a specific
22 case relates to the qualifications of lead

1 counsel.

2 JUDGE JONES: All right. Well just
3 reading your first sentence again, for the same
4 reasons, I would not expand this recommendation
5 to victim's counsel and military judges, since we
6 have not considered that. So -- so I -- and I
7 think that the first part of the Subcommittee's
8 recommendation is virtually the same as yours
9 without that.

10 CHAIR HOLTZMAN: Any further
11 discussion?

12 (No audible response.)

13 CHAIR HOLTZMAN: Let's vote on Mr.
14 Stone's Recommendation 46. All in favor, say
15 aye.

16 MR. STONE: Aye.

17 CHAIR HOLTZMAN: Opposed, say no.

18 (Chorus of nays.)

19 CHAIR HOLTZMAN: The no's have it.
20 Now we go to Recommendation -- and the proposed
21 recommendation not accepted. Recommendation 46
22 in blue, is there any discussion of this?

1 PROF. TAYLOR: I would just like to
2 add, Madam Chair, that when I asked to put it on
3 a case-by-case basis for the approval, what I was
4 fearful of was blanket approvals --

5 CHAIR HOLTZMAN: Yes.

6 PROF. TAYLOR: -- by a senior
7 official.

8 CHAIR HOLTZMAN: Right.

9 PROF. TAYLOR: And I think I would
10 like to add a friendly amendment to my own
11 friendly amendment, and that is to put
12 "personally approved" so that that cannot be
13 delegated to some lesser official, which under
14 normal interpretation you might be able to do, so
15 how it would read is "personally approved on a
16 case-by-case basis."

17 CHAIR HOLTZMAN: And also, is there
18 any objection to that?

19 (No audible response.)

20 CHAIR HOLTZMAN: All right. Secondly,
21 should we incorporate the prior conversation
22 about your --

1 PROF. TAYLOR: Yes.

2 CHAIR HOLTZMAN: -- proposal?

3 PROF. TAYLOR: Yes.

4 CHAIR HOLTZMAN: So --

5 PROF. TAYLOR: I think between what
6 Admiral Tracey and you said, that's it, the
7 substance of it.

8 CHAIR HOLTZMAN: Ms. Saunders, do you
9 have it down?

10 MS. SAUNDERS: I am afraid I do not
11 have all of it --

12 (Simultaneous speaking.)

13 VADM TRACEY: "In addition, the
14 Military Services should consider," and we may
15 need to modify that given Mr. Taylor's amendment
16 to that, "should consider assignment policies
17 that provide defense counsel two or more
18 consecutive years of experience in the role to
19 the maximum extent possible at the same
20 location."

21 CHAIR HOLTZMAN: Right, feasible.

22 VADM TRACEY: Right, "to the maximum

1 extent feasible at the same location," period,
2 and then "Exceptions to this policy should be
3 personally approved."

4 PROF. TAYLOR: Well, I would just add
5 that that changes it considerably if you say
6 "consider" instead --

7 MR. STONE: Right.

8 PROF. TAYLOR: -- of "set."

9 MR. STONE: Yes.

10 PROF. TAYLOR: So I think we need to
11 stick to "set." At least, that was my -- my
12 suggestion. Judge Jones?

13 JUDGE JONES: Yes, set, sorry.

14 CHAIR HOLTZMAN: All right. Everyone
15 in favor of those amendments, say aye.

16 (Chair Holtzman, Judge Jones, Prof.
17 Taylor, and VADM Tracey said aye.)

18 CHAIR HOLTZMAN: Opposed?

19 MR. STONE: Opposed.

20 CHAIR HOLTZMAN: Recommendation 46,
21 the amendments are accepted. Recommendation 46
22 as amended in the blue box, all in favor say aye.

(Chorus of ayes.)

1 CHAIR HOLTZMAN: All opposed, say no.

2 MR. STONE: No.

3 CHAIR HOLTZMAN: The ayes have it.

4 Recommendation is adopted.

5 VADM TRACEY: Again, just the status

6 --

7 CHAIR HOLTZMAN: Sure.

8 VADM TRACEY: -- of RSP

9 recommendation?

10 CHAIR HOLTZMAN: You mean bullet

11 number 3?

12 VADM TRACEY: Yes, just request status

13 if it has been approved in part --

14 CHAIR HOLTZMAN: Oh.

15 VADM TRACEY: -- referred for further

16 study?

17 MR. STONE: Which one are you

18 suggesting?

19 CHAIR HOLTZMAN: Bullet 3 on page 6,

20 Mr. Stone, just to explain what happened to the

21 RSP recommendation --

22 MR. STONE: Oh, okay.

1 CHAIR HOLTZMAN: -- by the Defense
2 Department, okay? Now just a procedural
3 question: if we had not actually approved the
4 language, can we do that on a phone call? Can we
5 do that if we circulate? What is the -- Mr.
6 Sprance, what is our --

7 Oh, okay, fine.

8 PROF. TAYLOR: Well we have also done
9 it just based on circulation.

10 CHAIR HOLTZMAN: Okay, fine, so we
11 could circulate --

12 PROF. TAYLOR: It's too hard to do a
13 --

14 CHAIR HOLTZMAN: -- it, and if there's
15 any --

16 PROF. TAYLOR: -- conference call --

17 CHAIR HOLTZMAN: -- objection to the
18 language, fine, then we will -- if necessary,
19 we'll have a phone conversation, okay.

20 So are we up to page 12? Yes, we have
21 Mr. Stone's language on page 12 to consider. The
22 -- I guess the first is the one in I would say

1 it's paragraph -- in the blue, are we all in the
2 blue? -- 1, 2, paragraph 3, where you propose
3 changing "demonstrate" to "suggest." Is that
4 correct, Mr. Stone? Is that what you are --

5 MR. STONE: "Suggest," yes, "suggest"
6 is the word I put in.

7 CHAIR HOLTZMAN: Okay.

8 MR. STONE: Used to say "demonstrate."

9 CHAIR HOLTZMAN: Do you want to
10 explain that?

11 MR. STONE: Oh, I -- to demonstrate
12 something, you've got to have evidence. Suggest
13 is what anecdotal testimony means.

14 CHAIR HOLTZMAN: Okay. Any objection?

15 JUDGE JONES: No.

16 CHAIR HOLTZMAN: I have no objection
17 either. So without objection, that is adopted.

18 I guess the next one is on page 13.

19 MR. STONE: Same comment.

20 CHAIR HOLTZMAN: Okay. "Suggest"
21 instead of "show" --

22 MR. STONE: Yes.

1 CHAIR HOLTZMAN: -- any objection to
2 that?

3 JUDGE JONES: No.

4 CHAIR HOLTZMAN: No objection, it is
5 adopted.

6 Next one is -- do we have a next one?
7 It is on page 16. Where does it start? Oh, I am
8 sorry, it starts on page 15, the bottom of 15.
9 Is that correct? Is that the next, Mr. Stone,
10 bottom of page 15?

11 MR. STONE: Yes.

12 CHAIR HOLTZMAN: That sentence, do you
13 want to explain your proposal, sir?

14 MR. STONE: Excuse me?

15 CHAIR HOLTZMAN: Do you want to
16 explain your --

17 MR. STONE: Sure --

18 CHAIR HOLTZMAN: -- proposal?

19 MR. STONE: -- sure. That is not part
20 of the report either. That is commenting on a
21 legal matter which I don't think is even accurate
22 because there's plenty of times when the strategy

1 has to be replied -- disclosed early, like in an
2 alibi situation, and it is not necessary to what
3 follows. That is not the reason that we want to
4 invest expert approval authority and expenditure
5 funding in the Service defense organizations. We
6 want to do it because they have not been getting
7 them.

8 JUDGE JONES: So I agree that you do
9 have to notice alibi, but in the context of what
10 we are talking about here, I think all that was
11 intended is -- is to say, and this is a fact,
12 that since it has to go to trial counsel, the
13 trial counsel inevitably get information about
14 the defense that they would not otherwise get.

15 MR. STONE: I don't know that that is
16 the case when it goes up through the chain. I
17 don't know that they don't have an independent
18 person in a prosecution service who is not
19 related who signs off and sends it to the
20 commanding officer. I don't think they comment
21 and say no, don't give them the expert, so I
22 don't know. We didn't hear testimony about

1 whether that is insulated or not, and as I said,
2 this jumps to a conclusion we don't have evidence
3 on.

4 MS. SAUNDERS: On site visits --

5 JUDGE JONES: Well --

6 MS. SAUNDERS: -- I think --

7 JUDGE JONES: -- it is my

8 understanding that --

9 MS. SAUNDERS: -- a number of members
10 did hear from defense counsel and prosecutors
11 that that is the process, that it goes to the
12 trial counsel.

13 JUDGE JONES: It goes to the trial
14 counsel on that specific case, to the convening
15 authority, so that is why I -- and I totally
16 agree that alibi does not make a difference, but,
17 you know, when you are asking for, you know, a
18 psychiatric expert on something and you have to
19 develop the relevance, you may not want the trial
20 counsel to see that on their way to getting
21 approval from the convening authority, so that
22 was the intent of this.

1 VADM TRACEY: And we comment on that
2 in the --

3 JUDGE JONES: Yes, we do.

4 VADM TRACEY: -- changes that we made
5 in the executive summary, so we made some
6 reference to it. It might be editable, what we
7 say here.

8 CHAIR HOLTZMAN: Maybe we wanted to
9 add that it could say should not in general be
10 required to reveal.

11 PROF. TAYLOR: Yes, or you could add
12 something like at the end "unless otherwise
13 required by law."

14 CHAIR HOLTZMAN: Yes, all right, okay,
15 good.

16 PROF. TAYLOR: If you added that at
17 the very end, "unless otherwise required by law,"
18 then it would cover alibi and anything else we
19 can't think of right now.

20 CHAIR HOLTZMAN: Right. Okay.

21 JUDGE JONES: That would do it for me.

22 CHAIR HOLTZMAN: Yes. Any objection

1 to Mr. Taylor's amendment to this language? No
2 objection?

3 JUDGE JONES: No.

4 CHAIR HOLTZMAN: The language is
5 amended. Now in light of that, do we accept Mr.
6 Stone's -- Mr. Stone, are you still proposing
7 your amendment in light of Mr. Taylor's
8 amendment?

9 MR. STONE: No, I will accept that
10 friendly language --

11 CHAIR HOLTZMAN: Okay.

12 MR. STONE: -- friendly amendment
13 language.

14 CHAIR HOLTZMAN: Great, so we don't
15 have to vote on that, so that -- so the
16 "furthermore" language as amended remains. Is
17 that it?

18 MR. STONE: No, page 18.

19 CHAIR HOLTZMAN: Okay. Sorry.

20 MS. SAUNDERS: Ma'am, also on page 16,
21 the words "in sexual assault cases" --

22 CHAIR HOLTZMAN: Okay.

1 MS. SAUNDERS: -- in the --

2 CHAIR HOLTZMAN: Is there an objection
3 to that language?

4 MS. SAUNDERS: That was, Ms. Holtzman,
5 that was your suggestion.

6 JUDGE JONES: No objection.

7 CHAIR HOLTZMAN: Yes, it seems --
8 okay. Since there is no objection, that is
9 accepted.

10 Now we are up to page 18. I guess
11 we're in the last paragraph. Wow, okay.

12 (Laughter.)

13 CHAIR HOLTZMAN: All right. So Mr.
14 Stone, do you want to explain the two --

15 MR. STONE: Yes.

16 CHAIR HOLTZMAN: -- proposals that you
17 have made --

18 MR. STONE: Sure.

19 CHAIR HOLTZMAN: -- please? Thank
20 you.

21 MR. STONE: The first substitution
22 would be for, instead of "at least two years," it

1 would say "for a specified minimum period of time
2 absent a particularized exception by either a
3 superior officer or the client," because I don't
4 want to prejudge the military group that is
5 examining how long the tour should be. If they
6 decide it is 23 months or 22 months or 21 months,
7 based on what assignments of tours are, two tours
8 might be 18 months, or they might even come back
9 and say, you know, a number of days rather than
10 months.

11 I don't know how they determine it,
12 but I think it's enough for us to recommend a
13 specified minimum period of time, especially
14 since you have now approved a recommendation that
15 goes to two years. I don't think we have to be
16 quite so directive when this is pending before
17 them.

18 CHAIR HOLTZMAN: Judge Jones?

19 JUDGE JONES: I -- I -- so what is
20 your actual change that you would like?

21 MR. STONE: Instead of -- it's in the
22 first box that says TS-3. Instead of --

1 JUDGE JONES: I am on page 18.

2 MR. STONE: -- the declaratory --

3 JUDGE JONES: Oh, I see.

4 MR. STONE: -- statement would confirm
5 that we think it is --

6 JUDGE JONES: I got it.

7 MR. STONE: -- important for them to
8 serve a minimum tour, which is something I am not
9 sure anymore that I agree with. Actually, based
10 on what I just heard, I guess my recommendation
11 now is to strike that entire sentence and just
12 begin with the next sentence. I just don't think
13 it adds anything that I am in favor of. I want
14 qualified counsel. I don't care how long the
15 tour is.

16 JUDGE JONES: Well, this goes to what
17 we just discussed and voted --

18 MR. STONE: Yes.

19 JUDGE JONES: -- on in the other
20 recommendation, which is that in order to gather
21 the skills and experience, we would like them to
22 serve in the position for at least two years. I

1 think we already voted on that. This does not
2 say you have to serve in a position for two years
3 to be lead counsel.

4 CHAIR HOLTZMAN: Okay. Are we ready
5 to vote? Everyone in favor of Mr. Stone's
6 proposal, say aye.

7 MR. STONE: Aye.

8 CHAIR HOLTZMAN: Those opposed, say
9 no.

10 (Chorus of nays.)

11 CHAIR HOLTZMAN: The proposal is not
12 accepted. Mr. Stone, you have a next one --

13 MR. STONE: Yes.

14 CHAIR HOLTZMAN: -- next-to-the-last
15 -- three lines down from the end.

16 MR. STONE: The next one is right at
17 the bottom, the last sentence of the report
18 before the recommendation. I would strike the
19 whole sentence now because now that I understand
20 that you want them to serve a tour irrespective
21 of whether they are qualified to be the defense
22 counsel, I don't think it makes sense to say this

1 is simply not sufficient for -- to enable them to
2 gain the necessary experience. They needed to
3 have it before they even served as lead counsel,
4 so I am not going to -- I can't endorse the whole
5 sentence. I would strike the whole sentence.

6 I think you're tying the military's
7 hands at times when we're pushing them to come up
8 with resources and -- and make allocations and
9 solve all the problems, and I don't want to make
10 their life any tougher than it is to try and
11 figure out where to get attorneys to volunteer
12 who are experienced and maybe have moved on that
13 will come back to that position because their
14 commanding officer says I need you, you have been
15 advising the commanding officer for the last
16 three or four months or whatever, but, you know,
17 in the past, you were a terrific defense counsel,
18 and we don't have any around here that can
19 fulfill that role. I would like you to go back
20 there.

21 So I don't want to -- I would simply
22 strike that whole sentence as unnecessary.

1 JUDGE JONES: All right. I think
2 there is the -- there is the possibility, and in
3 fact, it is built right into the recommendation,
4 that there's a case-by-case basis analysis, and
5 you have just been talking about specific cases
6 where a different decision would be made.

7 And again, just so there is no
8 misunderstanding, everyone has to try their first
9 sexual assault case without having tried any
10 others before it, but they are not the lead
11 counsel. So we are talking about building the
12 skills here of new defense counsel so that they
13 can get two years of defense experience, and that
14 is not the same as finding someone who is
15 qualified to be lead counsel. And as I
16 understand it, frequently, you know, when there
17 is a need for a more senior counsel, that person
18 travels to help out, case-by-case basis.

19 CHAIR HOLTZMAN: Okay. Those in favor
20 of -- well, let me just say, I don't have any
21 objection myself to striking the words "simply
22 not" and just leaving it at "this is not

1 sufficient time" so that we don't -- but I don't
2 --

3 JUDGE JONES: Oh, I am sorry, didn't
4 even focus on that.

5 CHAIR HOLTZMAN: So I --

6 JUDGE JONES: Mr. Stone's
7 recommendation to go to this is "not always
8 sufficient"?

9 CHAIR HOLTZMAN: I would just say --
10 I would just say that this is just not sufficient
11 time instead of this is "simply" not, just making
12 it not as emphatic, that's all. It's a not very
13 strong --

14 MR. STONE: I will just add that we
15 don't have any statistical evidence that that is
16 the case. Again, you are going on anecdotal
17 evidence. It is not statistical. There has not
18 been stuff presented to us that says two years is
19 not -- that what is happening now, 12 to 24
20 months, is not sufficient, and as long as we're
21 going on anecdotal evidence, I will throw in that
22 I have known plenty of terrific lawyers as to

1 whom that is sufficient, and that's why
2 originally I said "not always" for "simply not."

3 But I just don't think tour length, at
4 least the way the sentence reads -- if you want
5 to change it to say "not sufficient time to
6 enable non-lead defense counsel to gain the
7 necessary experience," maybe -- maybe that would
8 make more sense. But as it reads at the moment,
9 it doesn't make any sense to me, so I have to
10 recommend against the whole sentence.

11 CHAIR HOLTZMAN: Well, that proposal
12 was rejected. Well, did we vote on that? Wait,
13 I am just getting confused now. Did we vote on
14 Mr. Stone's proposal on that? Not yet?

15 MS. SAUNDERS: Not yet.

16 CHAIR HOLTZMAN: All right. So Mr.
17 Stone wants to remove the entire last sentence,
18 proposes that we remove the entire last sentence.
19 All in favor, say aye.

20 MR. STONE: Aye.

21 CHAIR HOLTZMAN: Opposed, say no.

22 (Chorus of nays.)

1 CHAIR HOLTZMAN: The ayes have it --
2 I am sorry, the no's have it, so the sentence is
3 not -- is -- remains in. I just was -- I just
4 withdraw my proposal on that.

5 So are we finished now?

6 MS. SAUNDERS: Ma'am, can I clarify?
7 Do you not want the word "simply" to be struck,
8 or --

9 CHAIR HOLTZMAN: It's not worth --

10 MS. SAUNDERS: Okay.

11 CHAIR HOLTZMAN: -- discussing. Any
12 further -- so we're finished with --

13 MR. STONE: Well, don't we have to
14 vote on the report as a whole --

15 CHAIR HOLTZMAN: Okay, yes.

16 MR. STONE: -- whether we're accepting
17 --

18 CHAIR HOLTZMAN: Sure, let's vote on
19 the whole report, right, you are exactly right.
20 So someone want to move the --

21 JUDGE JONES: Yes.

22 CHAIR HOLTZMAN: -- adoption of the

1 report?

2 CAPT TIDESWELL: Chairman Holtzman, or
3 Chairwoman Holtzman, I would recommend that you
4 allow us to make the required changes, and we
5 could either send it out over the email for one
6 last look before you all actually approve.

7 CHAIR HOLTZMAN: Why don't we adopt
8 it, or whatever vote --

9 CAPT TIDESWELL: Yes ma'am.

10 CHAIR HOLTZMAN: -- subject to
11 receiving so that if we vote to adopt it, it
12 should be subject to receiving --

13 CAPT TIDESWELL: Yes ma'am.

14 CHAIR HOLTZMAN: -- your final
15 comments and -- and having the opportunity to
16 make those -- you know, to edit any of those
17 comments that you --

18 CAPT TIDESWELL: Yes ma'am.

19 CHAIR HOLTZMAN: -- send us. Okay.
20 Was that --

21 JUDGE JONES: I would move to adopt
22 the Subcommittee's report as the Judicial

1 Proceedings Panel Report on Military Defense
2 Counsel Resources and Experience in Sexual
3 Assault Cases.

4 CHAIR HOLTZMAN: Subject to --

5 JUDGE JONES: Yes, subject to us
6 seeing anything that has been changed that would
7 change our minds about our vote this afternoon
8 when we see the edits.

9 PROF. TAYLOR: Just a friendly
10 amendment, excuse me, and that would be also
11 subject to the changes we made in the JPP report
12 today, which does adopt the report. I think is
13 that implicit?

14 JUDGE JONES: Yes.

15 PROF. TAYLOR: Thank you.

16 JUDGE JONES: I think that is right.

17 CHAIR HOLTZMAN: Okay. All in favor,
18 say aye.

19 (Chorus of ayes.)

20 CHAIR HOLTZMAN: Opposed?

21 MR. STONE: No, and I would just say
22 that is based on the fact that I don't believe

1 that the report, which does take into account
2 material presented and recommendations of the
3 Response Systems Panel, takes into account all of
4 the testimony that the JPP has heard over the
5 last 24 months. Thank you.

6 CHAIR HOLTZMAN: Okay. I think we can
7 take a lunch break now.

8 CAPT TIDESWELL: Yes ma'am.

9 CHAIR HOLTZMAN: We will come back in
10 what, a half-hour?

11 MR. STONE: No, come on.

12 CHAIR HOLTZMAN: No, 45 minutes?

13 MR. STONE: At least, yes.

14 CHAIR HOLTZMAN: Okay, 45 minutes, and
15 then we still have the Victims' Appellate Rights
16 to review.

17 (Whereupon, the above-entitled matter
18 went off the record at 12:52 p.m. and resumed at
19 1:42 p.m.)

20 CHAIR HOLTZMAN: Okay. Captain
21 Tideswell, please begin.

22 CAPT TIDESWELL: Yes ma'am.

1 CHAIR HOLTZMAN: Thank you.

2 CAPT TIDESWELL: We're here during
3 this block of time to deliberate as a Committee
4 on the report on victim's appellate rights, but
5 prior to doing so, if you don't mind, we have
6 several subject matter experts standing by from
7 the various Services that are at your disposal to
8 answer questions if required. If you don't mind,
9 I will introduce each one, starting from my
10 right, and their bios are in your folder, ma'am.

11 CHAIR HOLTZMAN: Great, thank you.

12 CAPT TIDESWELL: I am going to review
13 those.

14 But first we have Colonel Katherine
15 Oler. She is the Chief, Government Trial and
16 Appellate Counsel Division for the United States
17 Air Force; Colonel Jeffrey Palomino, who is the
18 Chief of the Appellate Division for the U.S. Air
19 Force; Lieutenant Colonel Deanna Daly, who is the
20 Senior Special Victims' Counsel for Appellate and
21 Outreach at the Special Victims' Counsel
22 Division, U.S. Air Force; Mr. Orr is not here.

1 He has testified before, Retired Colonel William
2 Orr, he is the Chief, Strategic Military Justice
3 Legislation and Policy for the United States Air
4 Force Judiciary.

5 Immediately to my right is a Staff
6 attorney, Ms. Nalini Gupta. On my left is
7 Lieutenant Colonel Katherine Vergona. She is the
8 Chief, Policy Branch with the Army Criminal Law
9 Division. Captain Andrew House is the Director
10 of the Navy and Marine Corps Appellate Defense
11 Division, and Mr. Stephen McCleary is the Deputy
12 Chief of Staff and Deputy Managing Counsel at the
13 Department of Homeland Security, Office of the
14 General Counsel.

15 CHAIR HOLTZMAN: Okay. Well, welcome.
16 We appreciate your -- your willingness to be
17 gluttons for punishment and try to help us figure
18 this out, so thank you. We really appreciate
19 that, that you -- that you are here with us
20 today.

21 CAPT TIDESWELL: Yes ma'am. And I
22 will defer now to Ms. Gupta to sort of take us

1 back through the history.

2 CHAIR HOLTZMAN: Okay.

3 MS. GUPTA: Good afternoon, Panel
4 Members. In April --

5 CHAIR HOLTZMAN: Pull the mic closer
6 to you, that would be better.

7 MS. GUPTA: In April of last year, the
8 JPP heard from the SVC and VLC program managers,
9 who identified issues related to the military
10 appellate practice affecting victims. The SVCs
11 and VLCs submitted a legislative proposal for the
12 JPP to consider which would, among other things,
13 allow victims to participate in appellate
14 proceedings as a real party in interest. The
15 proposal would also require that victims receive
16 notice of all appellate matters.

17 Separately, a provision was included
18 in the Senate version of last year's National
19 Defense Authorization Act, and this was called
20 Section 547, which would also permit victims to
21 participate in appellate proceedings as a real
22 party in interest. This provision was not

1 passed, and Congress's conference report noted it
2 as waiting upon the JPP's analysis of appellate
3 issues.

4 JPP heard testimony in September and
5 October of last year from, among other groups,
6 appellate defense counsel, appellate government
7 counsel, appellate judges, and victim's counsel
8 on the legislative proposals and generally on
9 appellate issues. Based on the testimony, the
10 JPP identified four main issues for its review
11 and analysis: first, appellate counsel review of
12 sealed materials not disclosed to counsel at
13 trial. This is currently governed by Rule for
14 Courts-Martial 1103A.

15 Two, notice to victims of appellate
16 matters. Three, victim standing in post-
17 conviction appellate proceedings. And four,
18 whether victims should be able to appeal to the
19 CAAF if a Service court of criminal appeals
20 denies their petition for a writ of mandamus.

21 The JPP deliberated in November, and
22 based on those deliberations, the Staff has put

1 together a list of draft recommendations. This
2 is available in your blue folder on pages 5 to 7
3 of the report, and I have also passed out copies
4 for all the subject matter experts to follow
5 along.

6 JUDGE JONES: Do you have any others?
7 I apologize. I don't know what I did with it.

8 MS. GUPTA: I would be happy to walk
9 through the recommendations, and as I do that, I
10 would like to point out some additional
11 information that the Staff and the Panel has
12 obtained since the Panel's last set of
13 deliberations in November.

14 So starting on page 5, Recommendation
15 39, the -- the current recommendation states "The
16 President amend Rule for Courts-Martial 1103A to
17 establish uniform procedures for appellate
18 counsel access to sealed materials without
19 requiring prior in camera review by military
20 appellate courts." This recommendation reflects
21 the Panel's deliberations in a 4-1 vote in
22 November.

1 I would like to draw your attention to
2 four developments from the past couple of months.
3 First, shortly after the Panel's public meeting
4 in November, the Joint Service Committee, or JSC,
5 proposed an amendment to R.C.M. 1103A. The JSC's
6 proposal is available at Tab 9 of your booklet.

7 The JCS's proposal --

8 CHAIR HOLTZMAN: Oh, you mean this
9 booklet?

10 MS. GUPTA: Of this booklet, yes, Tab
11 9.

12 CHAIR HOLTZMAN: All right.

13 MS. GUPTA: And just as a quick
14 summary, the JSC's proposal would, among other
15 things, prevent appellate counsel from examining
16 sealed materials not released to counsel at trial
17 unless a reviewing or appellate authority, which
18 is defined to include judges of the Service
19 courts of criminal appeals and the CAAF, first
20 examines the materials and determines that there
21 is good cause for appellate counsel examination.

22 Second, at the November meeting, Ms.

1 Holtzman asked the Staff to submit a Request for
2 Information to the Services asking for feedback
3 on the Air Force's practice, which requires that
4 counsel submit a motion to the court requesting
5 authorization to review sealed materials. The
6 JPP had identified the Air Force practice as a
7 potential best practice back in November.

8 The responses to the RFI are available
9 at Tab 11 of the booklet. As a quick summary,
10 the Army objected to the JPP's recommendation to
11 modify R.C.M. 1103A to reflect the Air Force
12 practice, highlighting that the Army courts'
13 internal rules already impose sufficient access
14 controls to ensure only attorneys of record have
15 access to the sealed materials. The Air Force,
16 Navy Marine Corps, and Coast Guard all deferred
17 to the Joint Service Committee's proposed
18 amendment to R.C.M. 1103A. Service
19 representatives are here and are available to
20 answer your questions about the Services'
21 responses, if you have any.

22 Third, Mr. Taylor requested at the

1 JPP's January 6th meeting that the Panel review
2 public comments submitted in response to the
3 JSC's proposal. There are seven public comments
4 which we received, and those are available again
5 in your blue folder. These include comments
6 received from defense counsel and from victim's
7 counsel, and in general, both groups expressed
8 opposition to the JSC's proposal. Some of the
9 Servicemembers who submitted public comments are
10 here today and can answer your questions, should
11 you have any.

12 And finally, after we sent out the
13 draft report a couple weeks ago, Mr. Stone
14 submitted an alternate recommendation to the
15 JPP's recommendation from November, and Mr.
16 Stone's proposed recommendation is highlighted in
17 yellow, and Panel Members' comments are also
18 reflected in the bubble comments. So Ms.
19 Holtzman, we recommend that the Panel begin by
20 considering the proposed recommendation in blue
21 as well as Mr. Stone's alternate recommendation
22 in yellow, determine what the final

1 recommendation should be, and then look at the
2 bullets addressing the JPP's findings as well.

3 CHAIR HOLTZMAN: Excuse me, didn't we
4 vote on Recommendation 40 already? I am just
5 trying to understand what you are recommending we
6 do because I am not necessarily wedded to the
7 idea, or enamored of the idea, I should say -- I
8 am sorry, Recommendation 39 -- of redoing what we
9 have already done.

10 MS. GUPTA: Sure. The JPP did discuss
11 but has not approved the final language at this
12 time, so --

13 CHAIR HOLTZMAN: Well, what did it
14 vote on?

15 MS. GUPTA: It voted in general on
16 what the recommendation should be, but did not --
17 did not have final language, so the Staff drafted
18 language for the JPP's review and final approval.

19 CHAIR HOLTZMAN: So this is just -- so
20 we approved the concept, but we have not approved
21 the language, is that --

22 MS. GUPTA: I think that is --

1 CHAIR HOLTZMAN: -- what you're saying
2 about 39?

3 MS. GUPTA: 39, that is right, and 39
4 has also been affected by a number of intervening
5 events, including the JSC's proposal and a number
6 of public comments that have been submitted, so I
7 know the JPP during November deliberations did
8 want to wait until it approved the final
9 recommendation and wanted to review those -- the
10 JSC's proposal and the public comments in
11 response to the JSC's proposal.

12 CHAIR HOLTZMAN: Well, well, whether
13 we -- I mean, it sounds like we are re-voting on
14 the same thing. Did -- did Mr. Stone make this
15 proposal the last time, in essence, or --

16 MS. GUPTA: I don't believe --

17 MR. STONE: There was no language
18 circulated.

19 MS. GUPTA: There was no language
20 circulated --

21 MR. STONE: As soon as --

22 MS. GUPTA: -- so this --

1 MR. STONE: -- the language was
2 circulated, I made the proposal.

3 MS. GUPTA: Right, so this was
4 received by the Staff after the November -- in
5 the past couple weeks.

6 CHAIR HOLTZMAN: Okay. I am still not
7 happy with this procedure because it sounds like
8 we are redoing what we already did, but okay.
9 Let's not worry about that, then.

10 So Mr. Stone, do you want to talk
11 about -- do you want to explain your proposed
12 recommendation?

13 MR. STONE: Sure.

14 CHAIR HOLTZMAN: Please.

15 MR. STONE: I don't know if everybody
16 at the table and others who are observing read
17 copies of my proposed dissent, which were out
18 there on the table for you to receive, but in
19 looking at the materials, I did not see a single
20 person who read and commented on the M.R.E.s,
21 including Military Rule of Evidence 513, which
22 this Panel has strongly endorsed in the past, and

1 Military Rule of Evidence 1101B, which is
2 entitled Privileges and says that Military Rule
3 of Evidence 513 -- that actually it says all
4 privileges in Chapter 3 and Chapter 5, which
5 includes Military Rule of Evidence 513, apply at
6 all stages of a criminal case.

7 Instead, I saw a lot of comment about
8 Rule for Courts-Martial 1103A, the comment on it
9 which in its text says it's involved with
10 covering national security materials, and when
11 you read the history of that in the Manual for
12 Courts-Martial, it says it was enacted after the
13 rape shield law was enacted, and it was done
14 specifically to be able to seal those materials.

15 Those materials, whether they are
16 national security materials in the case where a
17 defendant is being prosecuted, or whether they
18 are rape shield materials, are not privileged
19 materials. They are typically known to the
20 defendant. That is why he's being prosecuted,
21 either for possessing or distributing national
22 security materials or because he wants to

1 introduce a sexual assault victim's prior
2 history, and they get sealed by a judge to
3 preserve the status quo.

4 That is not the case when privileged
5 materials which are specifically stated by M.R.E.
6 1101B are involved in a case because those are
7 typically materials that the defense counsel has
8 not seen. That's why we're having this whole
9 discussion. And often they are materials the
10 judge has decided there is no basis for him to
11 see.

12 And when we reaffirmed Military Rule
13 of Evidence 513, we put -- shined a light on the
14 fact that military investigators were simply
15 routinely going to military hospitals and
16 demanding psychotherapists' records without any
17 process at all, and that material was
18 subsequently stopped because it didn't comply
19 with M.R.E. 513.

20 And so it seemed to me that there are
21 two different topics at issue, and I haven't
22 heard or seen any of the comments, whether from

1 the Joint Service Committee or the prior
2 testimony that we had, that distinguished between
3 confidential materials where a judge seals them
4 to maintain the status quo and the parties do
5 know what's in them -- at least the defense
6 counsel certainly does, or he may, and why the
7 judge is sealing them is because he doesn't want
8 everybody else to find out what, I don't know,
9 Mr. Snowden or somebody like him in the military
10 may already know about documents he is not
11 supposed to know, and they don't want them to go
12 out to the public and be part of the public
13 record -- and privileged documents, which by name
14 are required at all stages of the proceedings by
15 M.R.E. 1101B and its history that says it was
16 enacted to follow Federal Rule of Evidence 1101,
17 and those are handled because they are privileged
18 documents in a totally different way.

19 And no, the defense counsel is trying
20 to get access. They haven't gotten access unless
21 the judge has previously decided based on the
22 trial-level hearing that they are not privileged,

1 so defense counsel does not have access. Often
2 the judge has decided not to review them because
3 there wasn't a sufficient proffer, and any
4 distribution of them at all stages of the
5 litigation by M.R.E. 110 -- I am sorry, 1101B, or
6 in a civil -- in a non-military case, non-
7 military setting, by Federal Rule of Evidence
8 1101, has nothing to do with sealing. It has to
9 do with following an adversarial proceeding like
10 Rule 513.

11 And so my proposed recommendation is
12 in here that makes it clear that whatever happens
13 to 1103A, which never says on its face that it
14 deals with privileged documents, has nothing to
15 do with counsel or the court complying with
16 M.R.E. 513 and 1101B that says 513 applies at all
17 stages of the proceeding. And that is why the
18 language is in there, and I actually would invite
19 members of our military legal community who are
20 sitting around the table to please comment and
21 tell me.

22 I couldn't find any decisions, and I

1 didn't see anything cited to me that suggests
2 that Military Rule of Evidence 1101B, which is
3 pretty explicit on its face, on its history, is
4 irrelevant to this discussion, and so I am trying
5 to avoid us mixing up apples and oranges here.
6 And maybe can tell me.

7 CHAIR HOLTZMAN: Can I just
8 understand, before we go to anybody else, can I
9 just understand what you're trying to do here?
10 Basically, what -- as I understand it, and I
11 don't mean to -- to misstate this, I am just
12 trying to understand it, you have not changed the
13 basic Recommendation 39. What you have done is
14 say that 39, whatever we have done, does not
15 apply to M.R.E. 513 and M.R.E. --

16 MR. STONE: 1101B.

17 CHAIR HOLTZMAN: -- 513. And what
18 does 1101B say?

19 MR. STONE: 1101B is the -- is the
20 document, and if you like, I can read it verbatim
21 --

22 CHAIR HOLTZMAN: No --

1 MR. STONE: -- it's in the proposed
2 dissent that I circulated to you, that says --
3 1101B is entitled "Privileges."

4 CHAIR HOLTZMAN: Okay. So what --

5 MR. STONE: And it says privileges at
6 all stages shall be governed, all stages of the
7 case, shall be governed by M.R.E. 513, which is
8 what happens in federal court.

9 CHAIR HOLTZMAN: Okay. Well --

10 MR. STONE: And it --

11 CHAIR HOLTZMAN: Was there any -- let
12 me just ask you this question. Was there any
13 reason to believe that what we were doing would
14 affect 513, or is this just --

15 MR. STONE: Sure.

16 CHAIR HOLTZMAN: -- an abundance of
17 caution on your part?

18 MR. STONE: No, no, no. As I
19 understood it, the informal discussion was oh,
20 513 materials will also be subject to the 1103A
21 rules. That is what everybody has been
22 informally telling us, and formally telling us

1 that when it got up to appeal, the reason they
2 were changing this is because they wanted access
3 to the privileged documents they had not
4 previously seen, defense counsel did, and that is
5 not necessarily true in a confidential setting.
6 But if everybody is comfortable that the 1103A
7 rules have nothing to do with privileged
8 documents and don't try and -- and are not
9 intended to overrule presidentially-approved
10 M.R.E. 513 or 1101B, then we have no problem.

11 So I just wanted to make that explicit
12 because I see this confusion permeating all the
13 prior discussions that we have had about this
14 Rule, and again, I would like to hear the
15 discussion, the comments from the people sitting
16 around this table. I invite them.

17 COL ORR: Well, if I may, sir? Part
18 of the reason for the 1103A change was to limit
19 the access to defense counsel to those records.
20 Right now, the Rule reads that defense counsel
21 are appellate reviewing authorities, so if it is
22 in the appellate court and it is attached to the

1 record, they have access to it.

2 MR. STONE: Excuse me: what records?

3 Are we talking --

4 COL ORR: The record for --

5 MR. STONE: -- confidential records
6 that have been sealed or are you including -- you
7 are including, right, you are including
8 privileged records --

9 COL ORR: Anything.

10 MR. STONE: -- that have been sealed?

11 COL ORR: Anything that is attached --

12 MR. STONE: Okay.

13 COL ORR: -- to the record --

14 MR. STONE: Right.

15 COL ORR: -- they are reviewing --

16 MR. STONE: So you don't understand
17 the sealing process as a housekeeping status quo
18 process that judges use to maintain the status
19 quo of documents during an appeal?

20 COL ORR: I understand both. Some
21 records are sealed, some portions of the record
22 or evidence is sealed just to maintain the status

1 quo and to keep it from being released through
2 the Freedom of Information Act. That is one
3 aspect.

4 The other aspect is -- is sealed
5 because someone, either at the trial level has
6 recommended or has requested that it not be
7 disclosed. So there's two avenues for being
8 there.

9 MR. STONE: But you include privileged
10 records in your discussion, am I correct?

11 COL ORR: All records --

12 MR. STONE: That is --

13 COL ORR: -- so yes.

14 MR. STONE: The answer is yes, right?

15 COL ORR: Yes, the answer is yes.

16 MR. STONE: Okay. So tell me, if you
17 would please for my edification, what weight you
18 are giving to Rule 1101B, which has been on the
19 books long before the 1103A even came into being,
20 even before rape shield laws.

21 CHAIR HOLTZMAN: Wait, 11 --

22 MR. STONE: 1101B --

1 CHAIR HOLTZMAN: -- 1101B came into
2 effect before 1101A?

3 MR. STONE: Long, long before.

4 PARTICIPANT: 1103A.

5 CHAIR HOLTZMAN: I am sorry --

6 MR. STONE: 1103A.

7 CHAIR HOLTZMAN: -- 1103A, okay.

8 COL ORR: Well, the truth of the
9 matter is for the last 10, 12 years, our superior
10 court, the Court of Appeals of the Armed Forces,
11 has said they are reviewing authorities. The law
12 is very clear. If they are a defense counsel
13 seeking those records, we as an appellate court
14 are to release them.

15 MR. STONE: That -- I don't think you
16 answered my question. Has anybody addressed, to
17 your knowledge, why they are ignoring the terms
18 of M.R.E. 1101B? I haven't seen it.

19 COL ORR: I don't think it mattered.
20 It was very clear that -- and advocates have
21 actually challenged this in court, but the rule
22 is if it is attached to the record, appellate

1 defense counsel are reviewing authorities, give
2 it to them.

3 MR. STONE: And do prosecution
4 authorities get it too?

5 COL ORR: Everyone gets it.

6 MR. STONE: Okay. So if, in a case
7 where --

8 COL ORR: Everyone that's a reviewing
9 authority.

10 MR. STONE: So I guess what you're
11 telling me is, just to make it into a context
12 that shows how privileged documents are different
13 from simply national security or rape shield
14 documents, so if the prosecution comes in and
15 says, Your Honor, I think that we have a
16 violation of the defendant's attorney-client
17 privilege due to the crime-fraud exception, and
18 the judge hears them at the trial court and says
19 no, no, no, no, and I am not even going to look
20 at those records, I am just going to seal them,
21 as soon as they get to the courts of appeals,
22 under your interpretation, the prosecution at the

1 appellate level, the judges at the appellate
2 level, and the defense counsel get to see those
3 attorney-client records which the judge decided
4 below he wasn't going to look at and nobody
5 should get. Is that what you're telling me?

6 COL ORR: If they are attached to the
7 record, they will --

8 MR. STONE: Okay. I don't think that
9 that is possible. I don't think you have a case
10 like that to show me, and I have searched the
11 records of the case law myself to see a
12 discussion of 1101B, and it isn't anywhere that I
13 can find, so I guess I ask anybody else here if
14 there is a discussion in a case that is published
15 by CAAF that draws the distinction, doesn't just
16 assume that there is no distinction between
17 confidential records or national security
18 classified records or rape shield records and
19 privileged records, which are specifically dealt
20 with in 1101B. It is called "Privileges."

21 Does anybody else have something to
22 add? Because that is what I am looking for.

1 Col OLER: Well, one thing I would add
2 is that at the end of M.R.E. 513, at the very end
3 of the rule, it references back to R.C.M. 1103A
4 --

5 MR. STONE: Yes.

6 Col OLER: -- and so that kind of by
7 its nature almost loops us back into the 1103A
8 analysis.

9 MR. STONE: Well, well, it does
10 mention it, but it does not mention the
11 privileged documents. It talks about the
12 pleadings and the exhibits in that part of 513,
13 and yes, the pleadings and exhibits, which would
14 otherwise be public documents, may well throw a
15 suspicion on a person who had psychological
16 counseling records, and if you just say there are
17 psychological counseling records we want access
18 to, that in itself may harm the person, but it
19 does not talk about the actual privileged
20 records.

21 If it said the word "and the
22 privileged records may be sealed," that would be

1 a different story. But are you aware of any case
2 law that interprets even that language in 1103A
3 to cover the actual privileged material versus
4 the pleadings that the court and the exhibits the
5 court may have had on it?

6 Col OLER: I am -- I am not aware of
7 a case that addresses that specific --

8 MR. STONE: Okay.

9 Col OLER: -- issue that you're --

10 MR. STONE: Okay.

11 Col OLER: -- asking about, but just
12 the way I read the plain language of the Rule 6,
13 it says "The motion-related papers and the record
14 of the hearing must be sealed in accordance with
15 R.C.M. 1103A and must remain under seal unless
16 the military judge or an appellate court orders
17 otherwise."

18 MR. STONE: Right.

19 Col OLER: And my interpretation of
20 that was just bringing us from 513 back into
21 1103A.

22 MR. STONE: Well, except that in many

1 of the cases which are reported, the judge has
2 decided not to look at the 513 documents, so what
3 he is sealing are not documents that he has ever
4 looked at, and so the actual privileged documents
5 are different from the pleadings.

6 JUDGE JONES: I thought that what's
7 happening now, and it's a good thing, is a lot of
8 defense arguments being made, we need these
9 documents, and judges are deciding I am not even
10 going to bring them in for in camera review.
11 You're not talking about documents that have
12 never come in.

13 MR. STONE: Yes, I am talking about
14 those too. If they are privileged, that the
15 judge does not always order them in, and there
16 are appellate decisions --

17 JUDGE JONES: So there are documents
18 out there that he has said you don't have any
19 right to, and they're not even in the court? Is
20 that what --

21 MR. STONE: Sure.

22 JUDGE JONES: -- you're talking about?

1 MR. STONE: And they may be attorney-
2 client privilege, and they may be psychological
3 --

4 CHAIR HOLTZMAN: Wait a minute.

5 JUDGE JONES: But what is --

6 MR. STONE: -- psychotherapist
7 privilege.

8 JUDGE JONES: How is that relevant to
9 what we're talking about now? If they are not
10 even there, there is -- the judge has not done
11 any review, they don't go up on appeal.

12 MR. STONE: Oh yes, no, they certainly
13 do, and the appellate court --

14 CHAIR HOLTZMAN: You mean --

15 MR. STONE: -- has --

16 CHAIR HOLTZMAN: -- the hospital
17 records in the hospital are going to go up to the
18 appellate courts?

19 MR. STONE: Absolutely.

20 JUDGE JONES: Just to be clear, the
21 judge says no --

22 CHAIR HOLTZMAN: No, I don't think

1 that happens, Mr. Stone.

2 MR. STONE: There are -- I just read
3 one of the recent Air Force decisions where in
4 the course of it, when the appellate court did
5 not have the record, they ordered the prosecution
6 to go get the record and lodge it with the
7 military court, but right, you may even know the
8 name of the decision. But -- but --

9 CHAIR HOLTZMAN: That is not sealed
10 under 1101A because that is coming in --

11 MR. STONE: 1103A.

12 CHAIR HOLTZMAN: -- under the
13 appellate -- or 1103A, because that is coming in
14 directly to the appellate division. This is not
15 being sealed by the trial judge or not sealed by
16 the trial judge, so it is an entirely different
17 procedure. So --

18 MR. STONE: That is right --

19 CHAIR HOLTZMAN: -- I think what Judge
20 Jones --

21 MR. STONE: -- that is right, and it
22 reflects that --

1 CHAIR HOLTZMAN: -- is asking you --

2 MR. STONE: Yes.

3 CHAIR HOLTZMAN: -- is M.R. -- this --
4 how much of an issue, I don't mean to take words
5 out of your mouth --

6 JUDGE JONES: No, go ahead.

7 CHAIR HOLTZMAN: -- but how much of an
8 issue is this with regard to 513 right now? I
9 mean, this may be basically a theoretical problem
10 because the judges are not ordering 513
11 materials, and they are not part of the record.

12 MR. STONE: In the --

13 CHAIR HOLTZMAN: Am I -- am I
14 incorrect in that statement?

15 COL ORR: You are correct.

16 CHAIR HOLTZMAN: I am --

17 MR. STONE: In the --

18 CHAIR HOLTZMAN: -- correct or --

19 COL ORR: You --

20 CHAIR HOLTZMAN: -- incorrect?

21 COL ORR: -- are correct.

22 MR. STONE: In the vast majority of

1 the --

2 COL ORR: You are correct.

3 MR. STONE: -- cases which have been
4 presented for us, the judges take the records,
5 seal them, even when they haven't --

6 CHAIR HOLTZMAN: No, that is --

7 MR. STONE: -- looked at them --

8 CHAIR HOLTZMAN: -- before the -- that
9 is before the law was changed.

10 COL ORR: The law was changed, though.

11 CHAIR HOLTZMAN: The law has changed
12 on 513.

13 MR. STONE: Right.

14 CHAIR HOLTZMAN: And you have to make
15 a threshold ruling before the judge even gets
16 them from the hospital or from the doctor into
17 the courtroom.

18 MR. STONE: But that is not the same
19 ruling that he makes when you come into his --

20 CHAIR HOLTZMAN: He or she.

21 MR. STONE: -- court and you litigate.

22 CHAIR HOLTZMAN: He or she.

1 MR. STONE: When -- he or she makes --

2 CHAIR HOLTZMAN: Yes.

3 MR. STONE: -- when you litigate it --

4 CHAIR HOLTZMAN: No, but that --

5 MR. STONE: -- when you litigate it,

6 it's --

7 CHAIR HOLTZMAN: -- is exactly --

8 MR. STONE: -- a different -- it's a

9 different --

10 CHAIR HOLTZMAN: No.

11 MR. STONE: -- burden.

12 CHAIR HOLTZMAN: The records still are
13 not there. The point is -- I am sorry.

14 Lt Col DALY: I think there -- I think
15 there might be some confusion because there's
16 three -- there's three situations where you have
17 -- when you're dealing with 513 records now.

18 They file a motion, and if the judge
19 -- they argue the motion to see if they have
20 satisfied the four requirements. If they have
21 not, those records are never entered into
22 evidence, so there is no in camera review. If

1 they have, then the judge issues an order saying
2 I want the records, I am going to do an in camera
3 review.

4 At that point, those become appellate
5 exhibits. He may not release them, and that is
6 what I think the issue at 1103A is, is those
7 records are not released, but then they are
8 attached because the military judge has done an
9 in camera review.

10 And then you have the third part,
11 where of course they are released to the parties,
12 or limited release, narrowly tailored. So the
13 issue is when a military judge does perform an
14 1103 -- I mean, an in camera review under 513 and
15 then does not release those records, when it gets
16 up to the appellate court, that is when in the
17 Air Force the defense is filing -- appellate
18 defense is filing a motion, and once they file
19 the motion, under 1103A, they are granted access
20 as well as appellate government.

21 JUDGE JONES: That is what we have
22 understood.

1 LT COL DALY: Right. So that is the
2 issue, are those records that are not released at
3 the trial level, but then they are getting access
4 and violating victims' privacy rights without
5 notice or the right to be heard, or satisfying
6 any of those requirements that were required at
7 the trial level under M.R.E. 513.

8 CHAIR HOLTZMAN: But the point I was
9 making is that that is not the common occurrence
10 now, that that was the -- might have been the
11 practice before, but now in general -- I could be
12 wrong -- judges are not -- find that the
13 threshold showing is not made, and so the M.R.E.
14 513 materials are not even coming into the court.
15 Is that correct? I mean --

16 LT COL DALY: We --

17 CHAIR HOLTZMAN: -- there will be some
18 instances, I got that, but we're talking about
19 now a relatively smaller number of cases.

20 LT COL DALY: It has decreased, but
21 the issue is those clients that the judge does
22 perform that in camera review, they are still

1 getting their privacy rights violated at the
2 appellate level without any notice or right to be
3 heard or satisfaction -- you know, satisfying the
4 requirements or similar requirements that were
5 necessitated at the trial level. So therefore,
6 their privacy rights are violated at the
7 appellate level.

8 MR. STONE: And I should think that
9 the trial judges -- the defense counsel want the
10 trial judges, in any case that is even close, to
11 review those records in camera. But once the
12 judge has reviewed those, he has made a
13 determination at that point which has not been
14 overruled that they are privileged, so they
15 remain privileged as well as sealed when they go
16 up to the court.

17 And if nobody thinks that that is a
18 problem that they have to stay sealed under 1101B
19 at all stages absent this adversarial-type
20 hearing that is required under 513, which is
21 specifically covered by 1101B, then nobody should
22 object to my language, which frankly I don't

1 understand why it hasn't been further discussed
2 before this time, but I am certainly happy as
3 long as any recommendation that we make does not
4 ignore Rule 1101B, which, as I say, says in its
5 history it was drafted to be parallel with the
6 Federal Rule of Evidence, and under the Federal
7 Rule of Evidence, you would not automatically get
8 access to privileged documents. That will in no
9 way change what happens to merely classified,
10 unprivileged documents under any changes to Rule
11 1103A.

12 JUDGE JONES: Well I guess I was
13 imagining the scenario where defense counsel
14 wants to challenge the rule of the trial court
15 that these documents should have remained
16 privileged, and therefore, that ticks off
17 appellate review --

18 MR. STONE: Right.

19 JUDGE JONES: -- by the appellate
20 judges.

21 MR. STONE: Right.

22 JUDGE JONES: Are you objecting to

1 that?

2 MR. STONE: I am saying that they have
3 to meet the same burden the trial judge did
4 before the documents are distributed, and yes, if
5 it has to do with documents that for example were
6 attorney-client privilege --

7 JUDGE JONES: No, I -- all I am saying
8 is --

9 MR. STONE: -- you wouldn't allow the
10 appellate judges to look at them either until
11 there was a little adversarial proceeding where
12 the person who said everybody should look at
13 these, we should get them had made their case and
14 the defense counsel had gotten a chance to say,
15 whoa, that was -- that was a crazy suggestion,
16 nobody gets to see this.

17 And I am well aware that it may be
18 that we would have more justice in terms of more
19 proper outcomes in sexual assault cases if you
20 did look at the attorney-client privilege
21 documents, but we have decided as a society that
22 defense counsel has to have absolute rights to

1 privacy with their counsel and that people who
2 have been to see a psychotherapist have rights to
3 discuss with them, and -- and other privileges
4 like that, husband-wife and priest-penitent, and
5 we have been doing that for 200 years because we
6 decided we don't want those people jumping off
7 bridges, we want them to have somebody they can
8 talk to, and we don't allow any of those in
9 without some determination first that they are
10 not privileged or not presumptively privileged,
11 and that is something that the judicial system,
12 whether it is civil or military, has recognized
13 for an awful lot of years.

14 And the -- if you extend 1103A, as has
15 been suggested here, to anything that has been
16 sealed, anything, then you override the specific
17 language of M.R.E. 1101B, and also this general
18 privilege that people have, which is enshrined in
19 the Privileges and Immunities Clause of the
20 Constitution, that even the privilege against
21 self-incrimination, that privileges are on a
22 different standing than documents that are not

1 privilege. There are not too many categories of
2 them, but 1101B makes clear that they are
3 covering anything that is in Chapter 5 of the
4 Rules.

5 JUDGE JONES: Are you saying a
6 judge's, trial court judge's decision that these
7 documents are privileged makes them immune from
8 appellate review?

9 MR. STONE: No, no --

10 JUDGE JONES: I just want to figure
11 out --

12 MR. STONE: -- no, no --

13 JUDGE JONES: -- where we're going
14 here.

15 MR. STONE: No, it does not make them
16 immune from appellate review, it just requires --
17 they can be challenged either the exact same way
18 they were below, but now with the advantage of
19 the whole record to say --

20 JUDGE JONES: Right.

21 MR. STONE: -- I didn't get these
22 documents below, but I should have gotten them

1 because look how the trial played out. They are
2 relevant. Or they can say, we would like to be
3 able to review them before we make our arguments,
4 and here is the -- the showing we made below, and
5 that showing is -- is amplified by what --

6 JUDGE JONES: Right --

7 MR. STONE: -- happened later --

8 JUDGE JONES: -- so that's --

9 MR. STONE: -- we would like you to --

10 JUDGE JONES: -- what a -- that's what
11 a defense counsel, appellate defense counsel
12 would like to do --

13 MR. STONE: Exactly right.

14 JUDGE JONES: -- we are agreed. Okay,
15 I am just --

16 MR. STONE: That is exactly right.

17 JUDGE JONES: -- trying to make sure
18 I --

19 MR. STONE: And but what it does is it
20 gives the person whose psychological counseling
21 record it was --

22 JUDGE JONES: Yes.

1 MR. STONE: -- a chance to respond,
2 and that person may not be a victim, sexual
3 assault victim. It may be somebody -- it may be
4 the sexual assault victim's friend. It could be
5 -- it is any witness whose psychological
6 counseling records or attorney-client records or
7 husband-wife privilege records, any person who
8 has a privilege is covered by 1101B. It
9 specifically says privileges. These are a
10 separate category of documents.

11 And so I just wanted to show that
12 there is a carve-out because people, at least to
13 me here, have been confused and lumping together
14 under 1103A that procedure to cover this very
15 narrow category of privileged --

16 CHAIR HOLTZMAN: Okay.

17 MR. STONE: -- documents.

18 CHAIR HOLTZMAN: So I am just trying
19 to understand something. So what you're telling
20 me is that for all of these years, litigation and
21 procedure under 1103A, courts, counsel, tout le
22 monde has been ignoring 1103B, is that what

1 you're telling me?

2 MR. STONE: No, what I am --

3 CHAIR HOLTZMAN: 1101B.

4 MR. STONE: -- telling --

5 CHAIR HOLTZMAN: Well, that is what
6 you're saying.

7 MR. STONE: No, it --

8 CHAIR HOLTZMAN: What you are saying

9 --

10 MR. STONE: -- no, no --

11 CHAIR HOLTZMAN: -- is that this whole
12 -- that 1101B has not been followed in the
13 proceedings under 1101A.

14 MR. STONE: And the --

15 CHAIR HOLTZMAN: And how long -- well,
16 let me finish.

17 MR. STONE: Go ahead.

18 CHAIR HOLTZMAN: How long has 1101B
19 been there?

20 MR. STONE: A long time.

21 CHAIR HOLTZMAN: A long time. How
22 could it be that nobody ever saw this? So what

1 you're doing, it seems to me, is you are changing
2 the practice. We haven't -- what we said here,
3 what the -- what the suggestion was here is that
4 the practice be maintained, okay, as it is now,
5 with a small change, which is establishing
6 uniform procedures under 1101A. That is all we
7 have done. We have said whatever the procedures
8 are now, whatever the practice is now, that is
9 fine, keep it, but make this small change by
10 making those practices uniform.

11 What you are doing, and maybe it is
12 right, and maybe it is not right, I don't know
13 because we have never really studied the impact
14 and the practice under 1101B, is to say all of a
15 sudden, we are going to take the existing
16 practice, and we're going to make it subject to
17 1101B, which it may be now. But we have not
18 looked at that whole issue.

19 MR. STONE: That is correct.

20 CHAIR HOLTZMAN: So I think that
21 really, before we make such a change, we really
22 ought to understand what we're doing, that is

1 all.

2 MR. STONE: That is correct.

3 CHAIR HOLTZMAN: Okay.

4 MR. STONE: And let me --

5 CHAIR HOLTZMAN: No, I mean so --

6 MR. STONE: -- explain -- let me

7 answer your --

8 CHAIR HOLTZMAN: -- so then I don't
9 understand why -- so that may be something that
10 we could decide that we want to do in the
11 remaining time with the Panel, but I think to
12 bring in the implications of 1101B, which, as you
13 say, has been there for a long time, so I don't
14 know why people have not figured out that there
15 may be a relationship between 1101A and 1101B,
16 but if they haven't, why are we trying to change
17 that at this point without having studied the
18 implications of it?

19 MR. STONE: Okay --

20 CHAIR HOLTZMAN: That is my concern.

21 MR. STONE: -- great. Now let me

22 answer what I think -- give you what I think the

1 answer to that is.

2 As we know in one of these other
3 recommendations, until now, victims were not told
4 of the status of the case on appeal. They could
5 not get it. There was no public docket. They
6 were not advised what was happening with the
7 records. If there was an 1103A disclosure, by
8 the time they found out, it was probably long
9 after the appeal was decided. So number one,
10 they had absolutely no knowledge, and number two,
11 they didn't have, as we still know, any standing
12 or any rights, and it is only after Article 6B
13 came in, which gave them certain rights and
14 certain standing on 513 proceedings, and then we
15 have the fact that now we're going to require
16 that they have knowledge of what is going on in
17 the court of appeals, that this issue was not
18 moot, that the documents were not distributed
19 long before they had any idea of what was going
20 on.

21 Which, by the way, the fact that this
22 did continue so long only confirms my own

1 personal experience that I had just this week in
2 state court where a prosecutor, when confronted
3 with a situation where the victim is going to
4 lose some rights, said, well, I want to get this
5 case underway, and I think we can live with it,
6 Your Honor. That is okay.

7 And I had to stand up in civil court
8 on behalf of the victim and say, Your Honor, the
9 defense wants certain things, the prosecution is
10 saying this doesn't really affect them one way or
11 the other. You want to do it, it's not going to
12 change their life any. They want to go ahead
13 with the case. But it does change the privacy
14 interests and the life of the person who is the
15 victim here, and therefore, I have to disagree
16 with both of them and say you need to uphold
17 these rights.

18 And that is exactly what is going on
19 here. There has been no victim's counsel on
20 appeal. There has been no notice to victim's
21 counsel below. There was no standing that was
22 clear before 513 and UCMJ 6B that victims had

1 something to raise, and so people were assuming
2 that government counsel's interest was always
3 completely aligned with the victim's, and that is
4 not true. If they had the trial already, they
5 want to see an affirmance and move on to the next
6 trial, and the victim is not necessarily going to
7 say just because you got a conviction and now
8 it's on appeal, I am happy to have my privileged
9 psychotherapy records, or, if it was a defendant,
10 my attorney-client records, distributed to other
11 people here.

12 I don't think that is proper, and that
13 is doubly the case because in the military,
14 unlike the civilian sector, there is a much
15 broader scope and availability to bring up issues
16 that were not previously litigated, so the result
17 is new arguments can be made which, if you don't
18 follow 513 procedures, the -- the victim's
19 counsel has had no opportunity to consider and
20 explain or rebut at the trial-level 513 hearing
21 because he is not a counsel or in any way
22 involved in the appellate unsealing of the

1 privileged materials, which 1101B says has to be
2 followed.

3 So why hasn't it happened? Because
4 only now, we gave, and this is mostly sexual
5 assault victims, until they had counsel, right to
6 a counsel, which they didn't have for a long
7 time, they had a right to find out about the
8 appellate proceedings, which they have not even
9 gotten yet, and they had rights established under
10 Article 6B, statutory rights, by the time they
11 found out, it had already been done.

12 So what was the conclusion? The
13 conclusion was -- and I think this is one of the
14 practical issues that we're trying to help -- is
15 that when victims find out that their
16 psychological counseling records, even if
17 protected by the judge after a review, are going
18 to be disclosed on appeal, they are not going to
19 come forward if they find those records, like
20 that says they are gay or whatever it is, is
21 going to harm they think their career or their
22 social friendships, maybe even their marriage,

1 they are not going to come forward, which is one
2 thing we don't like.

3 And the second thing that it's going
4 to do, as I mentioned in my proposed dissent, is
5 you are going to cause them to go outside of the
6 military for counseling, and there will be sexual
7 assault organizations that will direct them to
8 private psychotherapists who are not in the
9 military, which number one is bad because it
10 means that our discussions about how the military
11 cares for its people and has resources out there
12 to care for them are not used and will have fake
13 numbers, and they're going to go to private
14 doctors who are going to have been vetted to
15 protest and refuse military subpoenas for their
16 records, which makes the military have to go to
17 the local U.S. Marshals Service and U.S.
18 Attorney's Office to ask them to enforce them,
19 and they're going to be enforced in state,
20 civilian court under state rules of what is
21 privileged, not military rules.

22 So what you're going to do is you're

1 going to deny the victims of the feeling that
2 they should freely go seek psychotherapy help at
3 the military hospitals and you're going to wind
4 up pushing these disclosures and the -- and the
5 requests for them into civilian court, which I
6 don't think the military really wants when they
7 try and hold non-military doctors in contempt for
8 not turning over those records.

9 So, I mean, I don't see how there is
10 a good outcome to ignoring Military Rule of
11 Evidence 1101B now that there's some sunshine on
12 it, now that we have counsel for victims, victims
13 have rights, and victims are going to know what
14 is going on at the appellate level. It just does
15 not make, frankly, any sense to continue down
16 that road, especially when everybody is
17 considering this right now and focusing on it, so
18 they need to focus on what's out there.

19 Now, if they want to get the President
20 to change the Rule, 1101B, on privilege, and be
21 different from the Federal Rules of Evidence
22 1101B, which it says it was drafted for the same

1 exact purpose, then I think that they have to
2 come back and tell us that and explain why they
3 want to diverge, what some military justification
4 is for treating it differently, but I would feel
5 just as strongly if I was defense counsel and
6 they wanted my attorney-client privilege records,
7 and I was not going to give them those records
8 because my defendant was telling me things which
9 I don't think they would otherwise hear, and I
10 don't think they should be entitled to,
11 especially if it turns out later there is a
12 remand and the case goes back for a retrial.

13 So for all of those reasons, I can't
14 understand how at this day and age -- maybe
15 previously, when there were not victims' counsel
16 and they didn't get notice of what was going on
17 -- how you could endorse any proposal, either to
18 keep the system the same, make the Air Force
19 procedure uniform across the various Services --
20 which by the way the Air Force itself seems to --

21 CHAIR HOLTZMAN: Mr. Stone --

22 MR. STONE: -- not be maintaining --

1 CHAIR HOLTZMAN: -- could you begin to
2 wrap up now, please? We've had a --

3 MR. STONE: Well --

4 CHAIR HOLTZMAN: -- substantial --

5 MR. STONE: -- you asked me the
6 question, and I am explaining what the answer --

7 CHAIR HOLTZMAN: Well --

8 MR. STONE: -- is.

9 CHAIR HOLTZMAN: -- I understand --

10 MR. STONE: That --

11 CHAIR HOLTZMAN: -- that.

12 MR. STONE: -- is the answer, and it
13 is outlined in my dissent, which I note is now
14 attached to these materials and on the public
15 record.

16 PARTICIPANT: Madam Chair?

17 CHAIR HOLTZMAN: Is there any other
18 comment anybody wants to make?

19 JUDGE JONES: I'd just like to hear
20 someone go through the JSC proposal, which is
21 different from our recommendation.

22 LTC VERGONA: Yes ma'am. I'm a

1 working group member of the JSC, and what was put
2 out for public comment. If for sealed -- so I'm
3 just going to focus on the sealed materials that
4 were released at trial to both trial counsel and
5 to defense counsel, that the judge is going to do
6 a sealing order at the trial level.

7 It will come on appeal at the
8 appellate level. Before an appellate counsel can
9 view, they must upon a colorable showing to the
10 reviewing appellate authority, so to the service
11 court, that examination is reasonably necessary
12 to the proper fulfillment of their
13 responsibilities.

14 So even for materials that were
15 released at trial, appellate level, you must show
16 a colorable showing. That's not defined. That's
17 going to be each Service determines what that is.

18 JUDGE JONES: So even materials that
19 arguably are on the public record?

20 LTC VERGONA: They were released to
21 the counsel and they would have been -- and they
22 may or may not have been used at trial.

1 MR. STONE: They're sealed. They're
2 not on the record.

3 LTC VERGONA: Well they're -- but
4 there are hearings where the hearing is sealed.
5 So it's in the record, but it would not have been
6 a part of hearing. Then for the materials that
7 the Judge does order, does an in camera review
8 and determines that it's not proper to release to
9 any party.

10 At the appellate level, the appellate
11 authorities. So that appellate service court is
12 going to review those materials. They don't ask
13 the defense or government counsel. They don't
14 file a motion to look at that.

15 It's the appellate authorities, the
16 reviewing authority. After examination of the
17 materials, the reviewing or appellate authority
18 may permit examination by the appellate counsel
19 for good cause.

20 So the intent is that the appellate
21 court is going to take a look at it and see if
22 there's any possibility of an issue, and then

1 that appellate authority will permit the
2 appellate counsel to review that for good cause.

3 JUDGE JONES: So they'll look at the
4 arguments of counsel about why it shouldn't be
5 disclosed.

6 LTC VERGONA: Yes ma'am.

7 JUDGE JONES: Then they'll read the
8 trial record to see how the evidence played out,
9 and then they'll review the undisclosed records.
10 And then if they decide there might be an
11 argument an appellate counsel could make, they
12 will reveal it to the defense appellate counsel.
13 Is that basically it?

14 LTC VERGONA: Yes ma'am. I can't say
15 for sure how each Service is going to, the
16 process. But yes ma'am.

17 MR. STONE: And has JSC addressed
18 1101B or not addressed it?

19 LTC VERGONA: Well unfortunately Mr.
20 Stone, what's discussed at the JSC, I can't
21 discuss that.

22 MR. STONE: Okay. But on their record

1 comments, in the stuff they published, they
2 haven't discussed it?

3 LTC VERGONA: It is not part of the
4 Federal Register notice.

5 MR. STONE: Okay.

6 CHAIR HOLTZMAN: Okay. Any other
7 comments anybody wants to make because I just
8 want to make one. I just -- I said this before
9 and I'll just repeat myself. You may be 100
10 percent right Mr. Stone, that MRE 1101B is
11 essential to an analysis and understanding of the
12 operation of 1103A. But we have not had an
13 opportunity to review that, to understand that,
14 have experts talk to us about it.

15 I think personally I've been
16 privileged to be part of this Panel for -- since
17 its inception, as you have as well, and I think
18 one of the reasons that Congress and the Defense
19 Department have respected the decisions we've
20 come up with has been because they've been based
21 on solid homework.

22 I appreciate that you've done the

1 homework on 1101B. I haven't, and I feel very
2 uncomfortable voting in favor of something that
3 we haven't had expert testimony on and had a
4 chance to deliberate on. You may be right. I
5 just don't know that you're right, and so I find
6 myself reluctantly but having to oppose your
7 proposal, because it brings in another element
8 that hasn't --

9 That we haven't studied, discussed,
10 understood, chewed on, had other people help us
11 with it, and so I mean I just have to oppose it
12 on that ground.

13 Col PALOMINO: Madam Chair, if I could
14 address what you just said. I'm Colonel Jeff
15 Palomino and I've been on record with the JPP
16 before, but I'm in charge of the Air Force --

17 CHAIR HOLTZMAN: You're forgiven.

18 (Laughter.)

19 Col PALOMINO: I'm in charge of the
20 Air Force Appellate Defense Division.

21 CHAIR HOLTZMAN: Thank you for being
22 here sir.

1 Col PALOMINO: Thank you, Madam Chair.
2 What I will say is I have to confess I don't have
3 the entire manual memorized, so I don't --

4 CHAIR HOLTZMAN: Is that so?

5 Col PALOMINO: Maybe I should know one
6 of these military justice tracks so --

7 CHAIR HOLTZMAN: You need counsel at
8 this point.

9 Col PALOMINO: But I'm just not -- I'm
10 not familiar with the legislative history, any
11 case law, progeny of case law related to 1101B.
12 Nor did I read Mr. Stone's dissent in advance to
13 address 1101B. It sounds very important, but I'm
14 not prepared to really look at that.

15 What I will say is there was a body
16 out there that did look at the competing
17 interests involved, and that was the body that
18 created 1103 Alpha in the first place. If you
19 actually look at the discussion section for 1103
20 Alpha, it addresses the tension. Do we need to
21 go get court orders for everything, or are there
22 going to be certain cases where we'll allow

1 trusted people in the appellate arena to review
2 them.

3 What it says is the rule is designed
4 to respect the privacy and other interests that
5 justified sealing in the material in the first
6 place, while recognizing the need for certain
7 military justice functions to review that same
8 information. So our opinion, along with the Army
9 and the Navy, I don't want to speak for my
10 colleague Captain House, but he's been on record
11 too with the JSC and the JPP, to say that the
12 current rule does strike that balance.

13 And I'll say that while it doesn't
14 mean 1101B, I think the drafters of this did try
15 to strike a balance between privacy interests and
16 allowing the rule to rely on the integrity and
17 professional responsibility of those involved in
18 the process. So thank you, Madam Chair.

19 Col OLER: Madam Chair, if I may?

20 CHAIR HOLTZMAN: Yes, please.

21 Col OLER: Colonel Kate Oler from Air
22 Force Appellate Government. I also own the

1 senior trial counsel as well.

2 CHAIR HOLTZMAN: But do you know the
3 whole manual?

4 Col OLER: I don't, no. So just to
5 come on record from Air Force Appellate
6 Government, I believe that the JSC's proposed
7 change to RCM 1103A draws an appropriate
8 distinction between records reviewed and released
9 to the parties at trial, and those not released
10 by the military judge.

11 So in the case of the former, where
12 you have a military judge who reviews record in
13 camera and releases them to trial defense
14 counsel, it is in our view wholly appropriate
15 that appellate defense counsel review those
16 materials in order to adequately and sufficiently
17 represent their client on appeal.

18 But in the converse situation, in the
19 situation where the military judge finds the
20 records to be irrelevant, and refuses to release
21 them to the trial participants, in my view there
22 needs to be some mechanism in place that

1 appropriately balances the right of the appellant
2 against those of the victim.

3 The JSC proposal that the CCAs conduct
4 what is in effect an in camera review in this
5 specific situation seems to be the logical and
6 appropriate solution to this balance that needs
7 to be struck.

8 I would just add that from my
9 perspective, one improvement to this otherwise
10 apt recommendation by the JSC would be to include
11 a requirement to notify the victim and to provide
12 for an opportunity to be heard before the release
13 of records. Thank you.

14 CHAIR HOLTZMAN: Thank you very much.

15 CAPT HOUSE: And if I could just make
16 one more comment. From my perspective, any -- no
17 matter whether you placed the vetting of these
18 records at the Courts of Criminal Appeals for the
19 military or you place them at CAF or you place
20 them in the United States Supreme Court, if
21 defense counsel have to go through --

22 If defense counsel are not allowed, if

1 there is a path wherein defense counsel will
2 never get to see records that a military judge or
3 an appellate judge felt the defense shouldn't
4 see, there is no appellate defense, and there's
5 no --

6 The people who do appellate work in
7 the Navy, Air Force, Marine Corps or the Army,
8 these are military officers. They have to --
9 they have to live by all the professional
10 responsibility, ethics regulations that every
11 other attorney in the United States has to do.

12 They're expected to do their jobs.
13 They're expected to be responsible. They're
14 expected to follow the rules. So this great fear
15 these records are going to get out, I have never
16 heard -- I mean I don't see that happening. I
17 haven't seen it happen anywhere in the Navy or
18 Marine Corps appellate defense.

19 I mean the people, the government
20 defense counsel look at these records. They
21 determine whether or not they want to file a
22 motion as to whether or not either there was some

1 mistake in the trial court that they should have
2 gotten some records they didn't, or that they
3 want to use those records that were released to
4 make some type of appeal before the Courts of
5 Criminal Appeal for the Navy.

6 So if we strip the ability of defense
7 counsel to be able to do that, what are we to do?

8 CHAIR HOLTZMAN: Well, I appreciate
9 your contribution. I appreciate the contribution
10 of the other experts here. I go back to the
11 point I raised earlier, Captain. I thought we
12 had voted on this issue.

13 CAPT TIDESWELL: We did, yes ma'am.
14 It's a matter of improving the language.

15 MR. STONE: I'd like to respond to the
16 last comment. We've already stripped the ability
17 of the investigating officer to just go to the
18 hospital and say I want the records, and he is
19 also a career officer who doesn't randomly
20 divulge those records and understand if he gets
21 them, he has to hold them private.

22 So it isn't a question of do we or

1 don't we trust various military officers to do
2 their job. We do. It's a question of privilege,
3 which goes back 200 years and the Constitution of
4 the United States and a Presidential order, and
5 people are going to have to recognize that.

6 You would understand that a gut level
7 if I wanted your client's attorney-client records
8 and you didn't want them distributed, because you
9 knew they were inculpatory, but it was nobody's
10 business because he didn't take the stand.

11 CHAIR HOLTZMAN: Okay. I'm just going
12 to ask my question again. I thought we had voted
13 on this very point before. I don't understand
14 why we're revoting it.

15 CAPT TIDESWELL: We are recommending
16 that the language which adopted in concept, which
17 you all voted on at the last meeting, be approved
18 by the committee. We're asking you to vote on
19 the language. Mr. Stone has put in additional
20 verbiage that he would like, which in some sense
21 changes sort of the substance of the
22 recommendation.

1 But you are correct, chair. You all
2 voted in concept on what you see in
3 Recommendation 39. We're asking you to approve
4 the language.

5 MR. STONE: We can vote again. That's
6 not a big deal.

7 CHAIR HOLTZMAN: Well it's --

8 PROF. TAYLOR: Madam Chair, I think I
9 -- I think I understand what's happening here,
10 but I may be wrong. When we discussed this back
11 in November, the staff had prepared for us
12 several issue sheets, and we were going through
13 issues, talking about issues. And on this
14 particular issue we had four options.

15 One of the options that I supported at
16 the time was to take the best practices from the
17 current Criminal Courts of Appeal, which at that
18 time, relying upon things that the judge said, we
19 thought was the Air Force best practice. At the
20 conclusion, we said well, maybe we should find
21 out if they're still doing that, or if the best
22 practice that we understood is the one that we're

1 recommending.

2 In the meantime, we had the Joint
3 Service Committee come out with a rule, which now
4 the Air Force has I guess officially said they
5 prefer to the practice that they had before. So
6 I think that is why we are now at the point where
7 we are perhaps at a position where we say we're
8 either at the -- I'm sorry.

9 Col ORR: Those are different things.

10 PROF. TAYLOR: Okay. Go ahead.

11 Col ORR: The discussion from last
12 time was we have a practice that we, Air Force,
13 that we currently use and we like it. The
14 proposal was what do the other Services think
15 about what we're doing. So that's where we are.

16 PROF. TAYLOR: Right, except so but
17 part of that of course now is 1103.

18 COL. ORR: Right. I mean that's
19 different.

20 PROF. TAYLOR: Well, how is it
21 different?

22 Col ORR: Okay. You can go ahead.

1 LT COL DALY: Mr. Taylor it's
2 different because what I think the SBC appellate
3 program and Appellate Government have supported
4 is that there should be similar practice as the
5 JSC has recommended, and also allowing the victim
6 to receive notice of when there's a request.

7 PROF. TAYLOR: Okay.

8 LT COL DALY: To view the records, as
9 part of the due process of victims' rights.

10 PROF. TAYLOR: Okay. I was actually
11 -- go ahead.

12 LT COL DALY: And then also we have a
13 right to be heard on the issue before that Court
14 ultimately makes a decision or a colorable
15 showing determination to release the records to
16 the appellate counsel.

17 PROF. TAYLOR: Okay, the point being
18 that that is different from the way it was back
19 when. It is different.

20 LT COL DALY: Yes, it is different.

21 PROF. TAYLOR: You stated, and I think
22 that you, if I understood what you said Colonel,

1 you're saying the same thing that Colonel Oler
2 just said; is that correct?

3 LT COL DALY: I support the JSC
4 proposal.

5 PROF. TAYLOR: Yeah, but you also said
6 --

7 Col ORR: With an amendment.

8 LT COL DALY: Yes, with the amendment.

9 PROF. TAYLOR: --with the amendment.
10 If I understood you correctly, that would provide
11 for a notice to the victim.

12 LT COL DALY: Yes.

13 PROF. TAYLOR: What I'm proposing is
14 that that might make sense for us as a position
15 for us to take, because unless we're not prepared
16 to take a position on the Joint Service
17 Committee's proposal, that position just makes a
18 lot of sense because it seems to pull together a
19 lot of the elements we're struggling with.

20 JUDGE JONES: I just want to make sure
21 I'm understanding. Right now, you don't require
22 the appellate judges to review without any motion

1 or explanation or anything else from defense,
2 right? But whereas the JSC says they get to
3 review with no submissions and just decide
4 whether or not they're going to --

5 CAPT HOUSE: The defense would have to
6 make a motion.

7 JUDGE JONES: Well I thought it was
8 something different. That's where I'm confused.

9 CAPT HOUSE: In the Navy and Marine
10 Corps practice currently was we do not have to
11 make a motion to see those records.

12 JUDGE JONES: Right. You can get --

13 CAPT HOUSE: We simply --

14 (Simultaneous speaking.)

15 JUDGE JONES: Right. Under the JSC
16 doctrine, you don't get them and you don't get to
17 argue about them. They just decide; is that
18 right? You don't get them unsealed.

19 CAPT HOUSE: My understanding of the
20 proposal is depending on whether or not they --
21 there's two sets of records. There is records
22 that weren't released to the defense and others

1 that were. The records that were released to the
2 defense, we'd have to show good cause, that's
3 reasonable necessity to get to see them. If they
4 were never released to the defense, we'd have to
5 show good cause --

6 JUDGE JONES: Even records that the
7 defense counsel at trial had, you would have to
8 show good cause?

9 CAPT HOUSE: We have to show
10 reasonable necessity.

11 LTC VERGONA: Colorable showing.

12 CAPT HOUSE: Colorable showing is what
13 the words are.

14 JUDGE JONES: Okay.

15 LTC VERGONA: Colorable showing that
16 the examination is reasonably necessary for the
17 proper fulfillment of your duties. It's a very,
18 very low threshold.

19 JUDGE JONES: Okay.

20 LTC VERGONA: But that will require
21 counsel to file that motion.

22 JUDGE JONES: Right.

1 LTC VERGONA: So that will, you know,
2 more protections that the Panel was concerned
3 about before, having too many people --

4 JUDGE JONES: Seeing them.

5 LTC VERGONA: Seeing them, yes ma'am.

6 JUDGE JONES: And have never seen them
7 once they were --

8 (Simultaneous speaking.)

9 LTC VERGONA: So the proposal is that
10 at the appellate level -- yes ma'am. The
11 proposal is that the appellate judge, we don't
12 know how it's going to work. The JSC isn't
13 directing how to do this, but the appellate court
14 would do a review of the record and they could
15 permit the defense counsel then to look at it for
16 good cause.

17 That's also not going to preclude
18 again, each Service may interpret this
19 differently, but certainly defense appellate
20 counsel don't have to wait for the appellate
21 counsel to their appellate court to grant them.
22 They could certainly raise that motion as well,

1 and highlight some issues that they may know from
2 the trial level.

3 Hey, I need to see those materials
4 that were sealed for these reasons, and then when
5 the appellate courts are looking at that, the
6 appellate court will have them in their mind.

7 JUDGE JONES: But they're not allowed
8 under the JSC to just get the records to inform
9 their motion?

10 LTC VERGONA: Correct ma'am.

11 CHAIR HOLTZMAN: So they changed the
12 present -- just to follow up --

13 LTC VERGONA: Yes ma'am.

14 CHAIR HOLTZMAN: Changed the present
15 procedure, which is appellate counsel, no matter
16 what, no matter what happened below on that
17 disclosure.

18 LTC VERGONA: Yes ma'am.

19 CHAIR HOLTZMAN: But no matter what
20 happened below, appellate counsel, defense
21 counsel has the right to examine the records?

22 LTC VERGONA: Yes ma'am.

1 CHAIR HOLTZMAN: The sealed records?

2 LTC VERGONA: Yes ma'am.

3 CHAIR HOLTZMAN: Okay, and that would
4 change that practice so that in one case it would
5 be a lesser standard and in another case it would
6 be a higher standard. But you'd still need the
7 appellate court to release those documents?

8 LTC VERGONA: Yes ma'am.

9 CHAIR HOLTZMAN: Okay. Why does that
10 -- I'm sorry.

11 CAPT HOUSE: Should have gone to law
12 school.

13 (Simultaneous speaking.)

14 VADM TRACEY: Is a judge's
15 determination that the 513 evidence is not even
16 going to be called for at the trial level, is
17 that decision able to be overturned on that
18 appeal?

19 LT COL DALY: Yes, yes, and it has
20 been. I think the analysis of the military judge
21 has been in previous cases, I think Mr. Orr will
22 agree with me, that has been the basis to which

1 these cases have been overturned, not the actual
2 content of those records.

3 It's usually based on the judge's
4 analysis that is incorrect on the first place,
5 that --

6 JUDGE JONES: And they review the
7 records to determine that or --

8 (Simultaneous speaking.)

9 CHAIR HOLTZMAN: If the records have
10 never been brought in, then they can't review the
11 records. They would just --

12 VADM TRACEY: Oh no. We're talking
13 about ones that were not disclosed.

14 LT COL DALY: Right.

15 (Simultaneous speaking.)

16 VADM TRACEY: But I'm asking about
17 the records that never get to the court, and that
18 decision you review at the appellate level?

19 Col ORR: The answer to that is yes.

20 LT COL DALY: Yes.

21 Col ORR: And just to make clear, in
22 the Air Force system, it doesn't matter what

1 1103A says right now. If you want a sealed
2 document, you must file a motion. So it's not
3 you just walk in. They actually file a motion --

4 VADM TRACEY: That's the system that
5 Mr. Keller was referring to, that we've got --

6 (Simultaneous speaking.)

7 Col ORR: Correct.

8 VADM TRACEY: That's not been
9 something -- they could repudiate it but maybe
10 not.

11 MR. STONE: But it's an ex parte
12 procedure. The defense doesn't have an automatic
13 right to say why they want them; the prosecution
14 doesn't get to file a pleading about whether they
15 should or shouldn't be disclosed, and the owner
16 of the records doesn't get to do that either
17 before the judge rules, right?

18 Col ORR: That's correct.

19 MR. STONE: Now it seems to me, here's
20 a question for the JSC again, the appellate
21 records. I don't understand again these two.
22 Maybe we're not mixing apples and oranges here,

1 but there's two varieties of apples. In a case
2 where the trial judge has ruled that the
3 documents should be distributed, obviously the
4 trial judge has decided they aren't privileged,
5 because if they were privileged, he wouldn't have
6 distributed them.

7 So their status at that point is as
8 non-privileged documents, and therefore the only
9 thing, the only status quo he's maintaining by
10 sealing them is that just the participants to the
11 trial see them. But there's no reason they
12 shouldn't be handed freely to other appeal on a
13 sealing motion that's basically pro forma.

14 The question that's troubling us is
15 when they're not distributed and they are still
16 privileged, no judge has ever said they're not
17 privileged, you're using exactly the same, pretty
18 much the same procedure without letting the
19 holder of the records get it.

20 VADM TRACEY: The JSC is adding a
21 level of scrutiny that is the -- at the appellate
22 judge's level.

1 LTC VERGONA: A significant change.

2 MR. STONE: It's an ex parte, right.

3 It's an ex parte review.

4 (Simultaneous speaking.)

5 LTC VERGONA: But the ex parte review
6 is by the service court. It's another judge
7 that's --

8 MR. STONE: I understand.

9 CHAIR HOLTZMAN: But I wouldn't get
10 too caught up, by the way, in the privilege issue
11 because this is -- it can be privilege that's is
12 granted by statute and can be removed by statute.
13 So I don't think it's a Constitutional issue
14 here. So if in essence the military wants to say
15 we release these, we can release them. They
16 could say there's no privilege with regard to
17 medical records too if they want.

18 So I'm not saying they shouldn't do
19 that, but I just don't think there's a
20 Constitutional issue. I think it's a statutory
21 interpretation. If the statute allows the courts
22 to make these records public, then they don't

1 have to make a privilege finding or not a
2 privilege finding. Whether they're privileged or
3 not doesn't really -- it's not as relevant it
4 seems to me.

5 But I haven't studied this issue, and
6 that's what bothers me about it. I'd like to see
7 if we can kind of finish this conversation for a
8 moment, and deal with the proposed Recommendation
9 39 by Mr. Stone, and then focus on what we want
10 to do with the proposed --

11 JUDGE JONES: I'm just worried that
12 our proposed, what is it 49?

13 CHAIR HOLTZMAN: 39.

14 JUDGE JONES: 39 is sort of irrelevant
15 at this point, without basically taking a
16 position on JSC procedures.

17 PROF. TAYLOR: And it's been overtaken
18 by --

19 JUDGE JONES: They've gotten way past
20 us.

21 PROF. TAYLOR: Right.

22 JUDGE JONES: So we should -- I think

1 I would withdraw it, this topic or recommendation
2 at this point in time.

3 CHAIR HOLTZMAN: Well what do we do
4 with Mr. Stone's recommendation?

5 JUDGE JONES: So for all the reasons
6 you've stated, I wouldn't vote for that.

7 CHAIR HOLTZMAN: So that's what my --
8 that's why I wanted to split these into two, so
9 we can first deal with Mr. Stone's
10 recommendation.

11 JUDGE JONES: Okay.

12 CHAIR HOLTZMAN: And then go to 39 and
13 see whether we want to drop it, amend it in some
14 other way or support it.

15 JUDGE JONES: Okay. That's
16 acceptable. Are you following me Admiral? So
17 we're going to vote on --

18 VADM TRACEY: I am concerned that
19 because we have not studied 1101B and because
20 there's currently no evidence in the record that
21 people can tie 1101B and 1103A together the way
22 that Mr. Stone has, that we're never going to ask

1 a question about whether 1101B trumps 1103A with
2 regard to privileged records, and that --

3 MR. McCLEARY: I just don't think that
4 they're inconsistent with that.

5 MR. STONE: I'm sorry, could you say
6 that louder?

7 MR. McCLEARY: I don't think that
8 they're inconsistent. If the reason why
9 something was sealed is actually in the record of
10 trial, was that a judge determined that it was
11 privileged, then when someone at the appellate
12 level wishes to seek access via 1103 Alpha, the
13 analysis is, is this privileged or not, and is
14 there a reason for breaking or getting around the
15 privilege? So I don't think 1101B and 1103 Alpha
16 are inconsistent.

17 MR. STONE: But under the new JSC
18 proposal unless you accept Colonel Oler and
19 Colonel Daly's suggestions that the owner of the
20 records get some notice and a chance to say
21 something, and I would even think the prosecution
22 or the defense too to file a document, then

1 they're inconsistent with the JSC
2 recommendations. That's the problem.

3 VADM TRACEY: Mr. Stone's real issue
4 is that we're separating the victims' ability to
5 be heard on the decision to open records that had
6 been previously been privileged. That's what
7 your real issue is.

8 MR. STONE: Well, it's even a little
9 more than that. If the record is held to be not
10 privileged by the trial judge, there's an
11 immediate interlocutory appeal that the statute
12 6(b) now gives to the defendant to go up to the
13 appellate court and say whoa, whoa. They don't
14 get this. I can appeal it now.

15 But if they win and then it's
16 attacked, all of the sudden it's going to be it's
17 still privileged. The judge says you're right.
18 I looked at it; it's still privileged. Whether
19 that's defense attorney-client or a victim's
20 medical record.

21 Now I don't have to ask you, although
22 if it was unprivileged according to the trial

1 judge, you got an appeal and you got to say
2 something before we did something with it. Now
3 you get to say nothing. That's inconsistent
4 right there.

5 CHAIR HOLTZMAN: Not necessarily. If
6 the statutory scheme calls for that, then that's
7 the statutory scheme.

8 MR. STONE: Well, the statutory
9 scheme. The only statute we're talking about
10 6(b). The rest are rules, and 6(b) gives right
11 to appeal 513 matters, and this is a 513 matters.

12 CHAIR HOLTZMAN: But these are rules
13 adopted pursuant to statute.

14 MR. STONE: Before 6(b) was enacted.

15 Panel Members

16 CHAIR HOLTZMAN: So the way I'd like
17 to proceed now is to, unless anyone has an
18 objection to it, is to vote on whether we go with
19 Recommendation 39 by Mr. Stone. And then we'll
20 address Recommendation 39 by the Panel. So
21 everyone, let's take up Mr. Stone's --

22 MR. STONE: Well, I'm going to amend

1 it right here and say based on the chair's
2 comments, I don't believe we should be voting on
3 Recommendation 39.

4 I think we should be hearing more
5 experts, more consideration and frankly a
6 statement by the JSC what they think about it,
7 particularly since Air Force counsel here, who
8 had the procedure that the JPP initial
9 recommendation was designed to adopt, goes along
10 with the procedure that I find would be in
11 compliance with 513 by Colonel Oler and Colonel
12 Daly.

13 I realize they're individuals. They
14 may not be speaking for their service, but and I
15 wouldn't want to say that. But I'd like to call
16 representatives of their service and the others
17 and have further deliberations before we jump on
18 a bandwagon that has no engine.

19 CHAIR HOLTZMAN: Well Mr. Stone, with
20 all due respect, you submitted this
21 recommendation.

22 MR. STONE: I didn't say that it could

1 be considered today.

2 (Simultaneous speaking.)

3 CHAIR HOLTZMAN: Excuse me, and you
4 want -- and you are the one who now wants to have
5 hearings and more expert elaboration of it. I
6 think it was --

7 MR. STONE: Okay. I stand by my
8 Recommendation 39 as 39A, and my recommendation
9 which is not in here that I'm making now, 39B, is
10 that we propose that we put off all consideration
11 of this until we've heard and asked for experts
12 on this topic. Those are my two recommendations,
13 and you can vote on both of them.

14 CHAIR HOLTZMAN: Okay. So you want --
15 so your second recommendation is that we hear
16 experts on the connection between 1103A and
17 1101B, MRE 1101B?

18 MR. STONE: Yes.

19 CHAIR HOLTZMAN: Before we vote on
20 anything. Well, okay. Let's take that up. All
21 in favor say aye?

22 MR. STONE: Aye.

1 CHAIR HOLTZMAN: Opposed?

2 (Chorus of no.)

3 CHAIR HOLTZMAN: Okay, not accepted.

4 The second recommendation, the second item is to
5 adopt or not adopt Recommendation 39 by Mr.

6 Stone. All in favor say aye?

7 MR. STONE: Aye.

8 CHAIR HOLTZMAN: Opposed?

9 (Chorus of no.)

10 CHAIR HOLTZMAN: The no's have it.

11 Not accepted. All right. Let's go to

12 Recommendation 39 as originally proposed by the

13 JSC, I mean by JPP staff. Mr. Taylor, did you

14 have a --

15 PROF. TAYLOR: Well, I have a friendly

16 amendment I think, and the friendly amendment

17 would be that the JPP recommend that the JSC

18 consider affording victims the right to be heard

19 before making a final determination on the issue

20 of releasing sealed materials that had not been

21 released for basically the second part of the

22 proposal.

1 I think that is the spirit of what
2 Colonel Oler said, which sounded like to me and
3 Colonel Daly as well, that I'm not asking them to
4 chime in.

5 MR. STONE: I'll second that
6 amendment.

7 VADM TRACEY: Isn't that
8 Recommendation No. 40?
9 Isn't just -- well, the meat of 39 is the
10 established uniform procedures?

11 CHAIR HOLTZMAN: Correct. That's all
12 it says.

13 VADM TRACEY: Right, right.

14 MR. STONE: I don't think it is
15 covered by 40 because 40 doesn't deal with --
16 this is a preliminary matter before the actual
17 appeal is heard, what materials are available to
18 the parties in order for them to write their
19 briefs, and I think 40 deals with what happens
20 when they are writing their briefs.

21 CHAIR HOLTZMAN: Okay, you're right.
22 Is that --

1 MS. GUPTA: 40 deals with notice --
2 are you talking about 41 on standing?

3 CHAIR HOLTZMAN: Well, you've got --

4 MS. GUPTA: So 40 doesn't, I think,
5 address Mr. Taylor's comment about the right to
6 be heard. It is only about providing victims
7 with notice of significant appellate matters.

8 CHAIR HOLTZMAN: Yeah. You don't
9 think the release of sealed documents is a
10 significant appellate matter?

11 MS. GUPTA: No. I think the notice
12 would be covered. I think Mr. Taylor proposed
13 the right to be heard.

14 VADM TRACEY: Which is different.

15 MS. GUPTA: Which is different.

16 CHAIR HOLTZMAN: Oh, I'm sorry, okay.

17 VADM TRACEY: Chair, if I might
18 propose an amendment to Mr. Taylor's amendment.
19 I think that the language in 39, present in the
20 Manual for Courts-martial 1103A, establishing
21 procedures for appellate counsel access to sealed
22 material and to provide opportunity for a victim

1 to be heard in the case of previously sealed
2 privileged information. I'm sorry Mr. Taylor,
3 I've lost the words that you had.

4 An important part of 39 is that we're
5 looking for standard procedures across all of the
6 service corps.

7 JUDGE JONES: And may I just say that
8 I think we have to look at Recommendation 41 if
9 we're going to start talking about giving victims
10 the right to be heard at the pre-argument, let's
11 say, stage, because there our prior
12 recommendation was that Congress not enact
13 statutory provisions granting victims standing to
14 file briefs or pleadings in post-conviction
15 appellate procedures, which would be different.
16 I'm just saying we have to look at all these
17 recommendations together.

18 CHAIR HOLTZMAN: Well, I would say
19 that there were two aspects, with all due respect
20 Admiral, in Recommendation 39. One is to
21 establish uniform procedures for receiving sealed
22 materials. You're absolutely correct about that.

1 The other aspect was not to change the present
2 system with regard to access by appellate defense
3 counsel, and that's what I thought we had voted
4 on before.

5 But so there were two aspects to that,
6 and I agree that we've probably been overtaken by
7 events. The JSC proposals become -- they've been
8 issued. They become, or are they subject to
9 public comment? Do they become automatically the
10 rules or what?

11 LTC VERGONA: No ma'am. So they have
12 gone out, this one has gone out for public
13 comment and service comments. The JSC needs to
14 get back together and they'll vote after
15 reviewing the comments.

16 CHAIR HOLTZMAN: Okay. So in other
17 words, I'm not 100 percent sure that that's,
18 correct me if I'm wrong, that it's accurate that
19 we've been overtaken, because if our view is that
20 those changes shouldn't be made, then that's
21 something that the JSC could consider; is that
22 correct?

1 LTC VERGONA: Yes ma'am.

2 CHAIR HOLTZMAN: Okay.

3 JUDGE JONES: And I guess I would like
4 to consider the JSC. I assume the JSC proposal
5 would become the Uniform procedure; correct?

6 LTC VERGONA: Yes ma'am.

7 JUDGE JONES: Okay.

8 PROF. TAYLOR: And that was my
9 assumption --

10 (Simultaneous speaking.)

11 JUDGE JONES: And we will or would or
12 whatever. So if we're uncomfortable with the JSC
13 procedure, which I'm not sure this actually
14 speaks to; I'm don't know at this point, I don't
15 know, but then we should be talking about the JSC
16 procedure. I guess to the extent I understand
17 it, I still believe that appellate counsel should
18 be able to look at the materials that no one has
19 even seen at the trial level, in order to make an
20 appellate argument with respect to the
21 withholding of those based on privilege.

22 But so to the extent I understand, I

1 probably don't agree with JSC. But that doesn't
2 mean that I think we can vote on the first one,
3 because we don't really have the procedure yet.
4 There is no Uniform procedure. I think we have
5 to examine JSC, not talk about Uniform
6 procedures.

7 MR. STONE: But we have examined JSC.
8 That was presented in the materials, and I'd like
9 to see a vote on Vice Admiral Tracey's proposal
10 even orally, and it can be circulated in written
11 form later to us, because I think that it's an
12 important point that we have finally gotten to.

13 I might add giving victims a chance to
14 say something before materials are distributed
15 complies with most of my concerns in my proposed
16 dissent, which would probably turn into a
17 concurrence, assuming that Admiral Tracey's
18 language is adopted by a majority of the Panel.

19 LTC VERGONA: Ma'am, if I may
20 interject. The JSC has not voted on this yet.

21 JUDGE JONES: Oh.

22 LTC VERGONA: We do have some time, so

1 if the -- even though it's past the public
2 comment period, if the JPP would like to provide
3 a public comment I would say you have about two
4 months to provide that to us, so that they could
5 consider it.

6 CHAIR HOLTZMAN: Well, let me throw
7 something out. I mean this is too radical, that
8 we get the JSC proposal in writing in front of
9 us, and that we schedule another session just on
10 those proposals, maybe circulate our own comments
11 before the next meeting that we have.

12 Whether it's your view, Mr. Stone,
13 that we should have -- and your view, I don't
14 know if that is your view, Admiral Tracey, about
15 notice and an opportunity to be heard or any
16 other proposals in connection with that, and then
17 we can discuss them at the next meeting. Does
18 that make sense or not?

19 JUDGE JONES: I think so, because I
20 think --

21 PROF. TAYLOR: No, I agree with that.

22 CHAIR HOLTZMAN: And I think our next

1 meeting is --

2 (Simultaneous speaking.)

3 CHAIR HOLTZMAN: I think our next
4 meeting is early March, right.

5 MR. STONE: No, it's late March.

6 CAPT TIDESWELL: March 10th. It's
7 March 10th.

8 MR. STONE: March 10th, okay.

9 CHAIR HOLTZMAN: Do we have a
10 concurrence and agreement? Wow. I mean
11 consensus. Okay. Mr. Stone, is that procedure
12 okay with you?

13 MR. STONE: As long as we're not going
14 to be untimely, it's okay with me and I gather
15 with the nodding of heads I'll say --

16 LTC VERGONA: Yes sir. I can say that
17 --

18 MR. STONE: It will not be untimely.

19 LTC VERGONA: --I will make sure that
20 there will not be a JSC vote until we've received
21 your proposal.

22 CHAIR HOLTZMAN: Wow.

1 MR. STONE: And I would just like to
2 add to that, if we can get anybody in the
3 Services to provide us background on 110(b) in
4 the meantime, 1101(b) that they ought to be put
5 on the speaker list too, if somebody wants to
6 confer with them.

7 CHAIR HOLTZMAN: Okay. But I think
8 that that's really a -- that's a big issue to
9 chew off on. I'm not saying that it's not
10 important, but I'm not sure that we start dealing
11 with both issues will get either one of them
12 solved probably. I'd like to really focus on
13 this whole issue, because there are very
14 important issues raised with regard to the
15 notice, the hearing and the basic issue that
16 Judge Jones raised.

17 So and that's not to say that maybe we
18 won't consider that at a future date. So if
19 anybody's got these materials on 1101(b), is that
20 right?

21 CAPT TIDESWELL: Yes.

22 CHAIR HOLTZMAN: Okay, we'd probably

1 welcome them and share them with the staff, and
2 maybe there's some opportunity for us to review
3 that. Do we have anything else on our agenda?

4 CAPT TIDESWELL: No ma'am.

5 CHAIR HOLTZMAN: Wow. Okay everybody,
6 then the meeting will stand adjourned, and thank
7 you to all of you for your participation in
8 helping us. This is a thorny problem as you can
9 see, and we really appreciate your guidance.
10 Thank you so much for coming back and helping us.
11 Thanks to all the Panel members.

12 MR. SPRANCE: The meeting's closed.

13 (Whereupon, the above-entitled matter
14 went off the record at 3:07 p.m.)
15
16
17
18
19
20
21
22

A	
a.m 1:10 4:2 99:19,20	84:8
ability 13:20 21:11	account 32:13,15 33:13
22:16 25:12 29:12	33:15 59:5 133:8
34:7 37:15 43:9,21	239:1,3
46:3 56:10 76:8 80:2	accurate 223:21 327:18
301:6,16 319:4	accurately 24:4
able 12:18 17:1 20:17	accused 13:13 31:2
26:3 31:22 63:13 65:6	34:19 39:21 71:1
81:16 106:19 109:5,7	achieve 56:10 122:14
109:21 110:8 125:11	163:18
172:16 180:11 184:2	acknowledge 103:4
202:7 203:4 205:14	acknowledged 38:10
217:14 243:18 251:14	48:2
278:3 301:7 311:17	acquaintance 40:3 43:2
328:18	acquaintances 39:22
above-entitled 99:18	acquittal 31:16 214:6
239:17 333:13	acquittals 42:7 109:8
absence 175:21	214:6
absent 128:21 141:6	act 4:21 5:1 54:14 71:19
229:2 273:19	99:2 131:15 242:19
absolute 275:22	259:2
absolutely 37:8 39:4	acted 172:2 213:22
66:1 86:16 103:1	action 178:18
150:14 169:4 206:3	activity 17:16 21:6
266:19 283:10 326:22	44:14 65:13
abstain 162:19 179:15	actual 66:20 215:14
191:16	229:20 263:19 264:3
abundance 256:16	265:4 312:1 324:16
abuses 148:5	add 119:12 120:5 122:3
accept 33:12 100:12	133:7 137:13 176:21
102:8,21 103:12	185:8 214:12 217:2
105:15 149:13 183:8	217:10 219:4 226:9
187:11 188:1 212:2	226:11 234:14 262:22
227:5,9 318:18	263:1 299:8 329:13
acceptable 317:16	332:2
accepted 216:21	added 79:6 112:11
219:20 228:9 231:12	185:8 226:16
323:3,11	adding 191:4 314:20
accepting 103:15	addition 15:19 17:9
104:16 236:16	28:14 40:13 47:4 79:6
access 22:4 41:13	95:6 102:14 103:10
52:18 56:15 59:15	103:16 114:14 130:3
68:12 75:14 82:2 90:7	131:3 178:2 179:17
90:12 92:5,19 98:15	197:10 211:5 213:2
109:6 119:8 120:3	215:19 218:13
124:12 144:17 157:10	additional 22:5 24:15
158:2,12 160:4	35:19 44:13 49:3 53:8
244:18 246:13,15	55:7 65:7 75:21 76:6
253:20,20 254:1	91:1 92:2 94:22
257:2,19 258:1	104:17 105:10 108:9
263:17 271:19 272:3	108:10 110:7 111:5
274:8 318:12 325:21	112:5 128:16 137:18
327:2	144:10 145:18 244:10
accommodate 47:22	302:19
125:12	additions 174:5
accommodated 56:21	address 23:22 25:22
accompanied 7:6 62:18	47:11 59:3 60:11 78:1
	78:6 95:8 97:13 98:20
	116:18 126:13 159:9
	295:14 296:13 320:20
	325:5
	addressed 18:18 48:16
	64:6 97:10 176:6,8
	260:16 293:17,18
	addresses 89:10 91:13
	160:7 264:7 296:20
	addressing 248:2
	adds 230:13
	adduced 160:22
	adequacy 96:20 102:11
	adequate 12:21 97:21
	164:3 165:22 171:15
	178:8
	adequately 79:19 110:9
	171:20 172:11 178:16
	178:21 298:16
	Adjourn 3:16
	adjourned 333:6
	administration 75:10
	119:4,19
	administrative 17:10
	17:14 21:5 52:22
	121:7,14 122:9
	163:11
	administratively 69:8
	Admiral 87:5 88:6
	94:14 96:11 103:11
	103:17 146:17 151:21
	152:17 155:19 212:2
	218:6 317:16 326:20
	329:9,17 330:14
	admit 206:9
	adopt 51:3 116:14
	155:11 159:11 237:7
	237:11,21 238:12
	321:9 323:5,5
	adopted 103:22 110:19
	116:4 151:19 163:1
	171:8 173:22 174:17
	179:18 191:18 220:4
	222:17 223:5 302:16
	320:13 329:18
	adopting 173:17
	adoption 236:22
	adult 5:6
	advance 35:9 296:12
	advantage 277:18
	adversarial 71:11 93:15
	254:9 275:11
	adversarial-type
	273:19
	advice 27:13 38:6,16
	39:13 54:2,15,17
	68:15
	advise 34:15 54:12
	advised 283:6
	advising 232:15
	Advisor 2:11,12,12
	Advisory 24:18
	advocacy 39:13 53:12
	advocate 129:7 130:7,8
	131:7,8 199:16
	advocates 10:22
	260:20
	affect 52:7 150:15
	256:14 284:10
	affirmance 285:5
	affording 323:18
	afraid 36:5 218:10
	afternoon 97:16 144:3
	238:7 242:3
	age 289:14
	agencies 12:19 20:10
	20:14 22:8 23:22
	57:15 79:9
	agency 59:13
	agenda 74:4 100:3
	104:1 333:3
	agent 33:1 35:1,3 41:15
	agents 13:11,22 21:8
	33:9,12,18 34:2,7,12
	44:21 45:7 48:20
	58:15
	ago 22:3 72:12,12
	173:9 176:8 202:6
	247:13
	agree 44:6 68:6 91:3
	92:15 93:17 101:1
	103:13 143:9 146:19
	150:14 162:20 195:8
	201:21 210:20,20
	224:8 225:16 230:9
	311:22 327:6 329:1
	330:21
	agreed 110:5 278:14
	agreement 331:10
	agrees 49:18
	ahead 46:20 63:14
	192:10 212:18 268:6
	280:17 284:12 304:10
	304:22 305:11
	Air 1:17 2:3,4,5,6
	109:15,15 240:17,18
	240:22 241:3 246:3,6
	246:11,15 267:3
	271:17 289:18,20
	295:16,20 297:21
	298:5 300:7 303:19
	304:4,12 312:22
	321:7
	alibi 139:14 224:2,9
	225:16 226:18
	aligned 285:3
	alike 57:3

allegation 13:15 63:9
allegations 170:10
alleged 12:16 13:9 40:1
 40:10,13 41:21 45:11
allegedly 14:20
alleviate 121:15 122:10
 175:4,5
alleviated 208:10
allocations 232:8
allow 22:10 55:9 172:19
 199:15 237:4 242:13
 275:9 276:8 296:22
allowed 13:10 88:12,18
 211:16 299:22 310:7
allowing 23:20 297:16
 305:5
allows 199:6 315:21
Alpha 296:18,20 318:12
 318:15
alternate 110:18 119:18
 122:5 126:16 130:12
 247:14,21
alternative 23:21
alternatives 215:5
ambiguities 116:2
amend 190:5,15 244:16
 317:13 320:22
amended 4:22 162:14
 186:9 189:3 219:21
 227:5,16
amendment 3:13 5:8
 6:1,12 170:1,15,16
 171:4 188:2,20
 191:13,13,17 217:10
 217:11 218:15 227:1
 227:7,8,12 238:10
 245:5 246:18 306:7,8
 306:9 323:16,16
 324:6 325:18,18
amendments 149:14
 219:15,20
amount 38:20 52:3 60:4
 62:6 98:2 160:22
 164:16 199:5
amplified 278:5
analysis 38:19 47:1
 57:2 60:3 87:3 113:3
 233:4 243:2,11 263:8
 294:11 311:20 312:4
 318:13
and/or 19:2 59:22
 213:22
Andrew 1:19 241:9
anecdotal 156:5 177:9
 206:8 222:13 234:16
 234:21
anecdote 25:18
annotate 49:17

answer 31:21 34:15
 43:7,8 66:3 92:10,15
 94:1 97:3 240:8
 246:20 247:10 259:14
 259:15 282:7,22
 283:1 290:6,12
 312:19
answered 260:16
anybody 74:9 77:11
 120:15 160:11 173:1
 202:18 255:8 260:16
 262:13,21 290:18
 294:7 332:2
anybody's 332:19
anymore 28:21 230:9
apologize 61:11 244:7
apparently 81:21
appeal 243:18 257:1
 258:19 266:11 283:4
 283:9 284:20 285:8
 286:18 291:7 298:17
 301:4,5 303:17
 311:18 314:12 319:11
 319:14 320:1,11
 324:17
appeals 214:5 243:19
 245:19 260:10 261:21
 283:17 299:18
appear 16:8 64:13
 107:1 156:18
appeared 135:18
appears 63:21 133:15
appellant 299:1
apples 255:5 313:22
 314:1
applicable 131:4 213:3
applies 98:16 254:16
apply 193:14,14 251:5
 255:15
appreciate 61:17
 241:16,18 294:22
 301:8,9 333:9
approach 13:10 33:10
 56:4 93:1 100:19
appropriate 21:13
 49:19,20 51:9 60:11
 97:11 98:19 105:7
 125:11,22 126:8
 135:6 176:17 187:12
 187:13 188:2,5 298:7
 298:14 299:6
appropriately 13:12
 32:21 79:3 299:1
approval 33:19 87:9
 123:1 126:1,21 180:4
 181:6,13,22 183:12
 183:18 184:3 185:5
 217:3 224:4 225:21

248:18
approvals 217:4
approve 237:6 303:3
approved 19:8 130:6
 131:6 137:17 178:4
 178:15 182:16 189:21
 199:7 213:6 215:21
 217:12,15 219:3
 220:13 221:3 229:14
 248:11,20,20 249:8
 302:17
April 47:8,13 242:4,7
apt 66:9 299:10
area 13:1 25:1 76:7
areas 11:6 30:10 93:3
arena 297:1
arguably 291:19
argue 270:19 307:17
arguing 135:1
argument 166:5 190:10
 293:11 328:20
arguments 150:19
 265:8 278:3 285:17
 293:4
arises 39:21
Arlington 1:10,10
Armed 24:19 260:10
Army 2:8,8 94:10,11
 109:9 127:11,15
 138:8 241:8 246:10
 246:12 297:8 300:7
art 33:3
Article 5:8 20:21 106:16
 106:21 107:3,10,20
 112:14 114:1 132:13
 133:2 152:10 153:2,4
 156:13,21 159:20
 160:1,2,8,19 162:7
 283:12 286:10
Asia 10:11
aside 84:18
asked 30:17 35:1 42:14
 69:11,21 76:11 81:2
 129:2 140:14 172:13
 175:13 217:2 246:1
 290:5 322:11
asking 27:11 29:14
 34:17 41:7 58:21 90:1
 200:13 225:17 246:2
 264:11 268:1 302:18
 303:3 312:16 324:3
aspect 259:3,4 327:1
aspects 32:15 108:2
 326:19 327:5
assaulted 43:4
assaults 16:13 18:10
 40:5
asserting 27:12

assess 22:15 48:3
assessed 9:12 47:2
assessment 5:4 20:19
 52:5
assessments 121:22
 122:19
assign 128:1 143:4
assigned 27:6,18
 127:17 128:12
assignment 211:6
 218:16
assignments 229:7
assist 8:10 19:3 20:12
 22:8 73:2 86:15 121:5
assistance 110:3 122:2
 122:21
assistant 73:3,4 74:8
assisted 62:18
assisting 20:9 45:20
associated 175:19
assume 63:13 166:7
 262:16 328:4
assumed 63:6
assuming 63:9 68:13
 68:14 285:1 329:17
assumption 328:9
assure 119:19
atmosphere 67:16
attached 257:22 258:11
 260:22 262:6 271:8
 290:14
attacked 319:16
attempt 14:12 93:13
attempted 36:19 64:3
attend 34:12 57:22 58:5
attendance 4:14
attending 94:11
attention 97:22 176:4
 245:1
attested 141:12
attorney 2:11,12,12
 42:15 54:11 80:6,21
 82:18 208:5 241:6
 300:11
attorney's 8:16 28:12
 167:20 287:18
attorney- 266:1
attorney-client 86:4
 261:16 262:3 275:6
 275:20 279:6 285:10
 289:6 302:7 319:19
attorneys 59:22 127:16
 128:12 176:16 208:9
 209:5 232:11 246:14
attribution 23:14
audible 179:10 186:10
 188:18 189:1 191:11
 216:12 217:19

audience 94:7 211:17
audit 121:18 122:3,13
 122:21 168:18 170:6
augment 121:14
authoritarian 71:19
authorities 122:17
 163:21 164:17 257:21
 260:11 261:1,4
 292:11,15
authority 106:12
 109:12 123:14 124:12
 124:13,19,20 126:21
 180:5 181:7 183:1,3
 183:10,11,12 184:11
 184:19 185:1,4
 189:22 190:1,11
 215:3 224:4 225:15
 225:21 245:17 261:9
 291:10 292:16,17
 293:1
authority's 183:9,10,18
authorization 4:21 5:1
 68:20 70:14 131:15
 242:19 246:5
authorize 18:22
automatic 313:12
automatically 274:7
 327:9
availability 28:13
 285:15
available 6:18 28:21
 50:10 52:14 55:21
 61:7 69:13 77:9 88:18
 88:22 89:3,15 95:3
 107:10 108:7 144:20
 148:11 164:13 177:7
 195:19 244:2 245:6
 246:8,19 247:4
 324:17
avenues 259:7
average 51:17
avoid 83:20 255:5
aware 65:20 167:14
 264:1,6 275:17
awful 276:13
aye 103:17 150:21,22
 151:9,14,15 170:20
 170:21 171:4 177:12
 177:13 179:12 186:12
 186:13 188:20 189:4
 189:7 191:13 216:15
 216:16 219:15,21
 231:6,7 235:19,20
 238:18 322:21,22
 323:6,7
eyes 103:18 151:18
 162:17 171:6 179:13
 188:21 189:2,5

191:14 219:16,22
 220:3 236:1 238:19

B

back 31:4 35:16,20
 43:11 46:6 55:1 86:17
 96:3 105:1 107:13,19
 111:15 120:21 127:12
 128:19 137:8 146:3
 147:20,21 151:7
 174:19 178:7 180:8
 192:15 202:16 203:1
 212:5 214:14,19
 215:3 229:8 232:13
 232:19 239:9 242:1
 246:7 263:3,7 264:20
 289:2,12 301:10
 302:3 303:10 305:18
 327:14 333:10
background 8:13
 145:12 332:3
bad 30:12 31:20 169:14
 287:9
balance 90:5 164:10
 297:12,15 299:6
balanced 101:7
balances 299:1
balancing 99:1
Ballroom 1:9
Ballston 1:10
bandwagon 321:18
bar 31:4
Barbara 1:13
barely 96:6
barriers 59:12 67:8
bartender 31:6
base 195:16 198:12
based 25:18 29:19
 35:18 52:5 55:7 75:9
 76:5 108:12 121:9
 122:3 129:8 165:8
 175:2 192:1 212:22
 221:9 229:7 230:9
 238:22 243:9,22
 253:21 294:20 312:3
 321:1 328:21
bases 25:20
basic 255:13 332:15
basically 110:4 161:7
 255:10 268:9 293:13
 314:13 316:15 323:21
basis 11:3 23:7,14
 49:11 130:6,9 144:12
 168:8 214:4 217:3,16
 233:4,18 252:10
 311:22
becoming 108:12
beginning 23:5 64:20

66:2 139:10 144:21
 191:6
begins 31:9 170:2
behalf 142:3 163:3
 168:12 284:8
behavior 81:12
belief 91:16
believe 16:18 51:8
 70:16 89:14 118:6
 142:14 193:17 213:9
 238:22 249:16 256:13
 298:6 321:2 328:17
believes 24:7
belong 173:4
belongs 113:19 132:17
bench 194:9
beneficial 23:2 53:17
benefit 205:13
best 7:19 9:2 11:6 28:7
 32:1,7 43:17,18,22
 54:6 65:1,2 246:7
 303:16,19,21
better 8:8 54:5 57:7
 78:22 84:16 96:8
 148:19 211:21 242:6
beyond 45:22 167:2
 181:8
big 63:10 158:22
 183:21 194:11 196:1
 303:6 332:8
bigger 77:4
biggest 78:18 90:19
 91:22
Bill 4:4
billets 127:17 128:13
 128:17
bios 240:10
bit 8:12 63:1 85:9 95:16
 96:17 113:4,13
 131:15 135:15
blanket 217:4
block 240:3
blotted 159:21
blow 31:14
blue 112:19,20,21
 113:2 119:3 132:9,20
 133:20 134:1,4,9,11
 134:18 136:1,3
 137:19 138:12 153:14
 185:19 186:20 201:8
 212:12 216:22 219:21
 222:1,2 244:2 247:5
 247:20
board 98:17 101:18
 148:18 214:11
bodily 18:3
body 17:20 18:3 111:17
 113:19 116:16 132:17

135:7 150:3 152:19
 209:13,16 296:15,17
booklet 245:6,9,10
 246:9
books 259:19
borne 165:12
boroughs 98:12
bother 115:19 149:12
bothers 316:6
bottom 9:9 134:15,17
 134:19 137:18 139:1
 223:8,10 231:17
box 111:22 119:3
 133:20 134:1,5,9,11
 134:18 136:1,3,3,5
 138:12 166:2 219:21
 229:22
branch 2:8 127:21
 241:8
branches 11:2
brand 127:15,16 128:12
 194:6,6
breadth 54:11
break 5:15 99:12 239:7
breaking 318:14
bridges 276:7
brief 104:11
briefs 324:19,20 326:14
bring 35:14 152:13
 208:3 265:10 282:12
 285:15
bringing 264:20
brings 7:22 295:7
broad 17:19 126:13
broaden 145:3
broadening 166:9
broader 52:20 79:11,13
 96:15 97:14 180:22
 183:16 285:15
broadly 7:15
Brooklyn 98:8
brought 9:11 82:6 89:6
 213:21 312:10
bubble 247:18
budget 119:21 142:20
 143:10,21 164:13
 176:11
budgetary 184:17
build 36:17 77:16
 140:21 181:1 206:14
building 45:21 72:10,17
 142:7 165:7 233:11
built 233:3
bullet 152:14,16 153:20
 153:22 155:17,21
 159:12 161:19 162:15
 162:15 179:3,4,6,17
 190:5,13,15 191:13

220:10,19
bullets 150:11 152:6
 189:16 248:2
burden 77:2 91:21
 270:11 275:3
burdens 52:22
burdensome 17:14
 69:8,16
Bureau 204:5,13,16
bureaucracy 77:16
bureaucratic 33:22
business 9:3 40:20
 302:10
businesses 10:1
butt 86:8
buttocks 14:9 21:19
 64:12

C

C 3:1 4:1
CAAF 243:19 245:19
 262:15
CAF 299:19
call 12:1 40:20,20 77:9
 95:14 152:12 199:16
 221:4,16 321:15
called 63:2 82:17,18
 106:19 107:7 108:1
 135:2 152:12 242:19
 262:20 311:16
calls 320:6
camera 244:19 265:10
 270:22 271:2,9,14
 272:22 273:11 292:7
 298:13 299:4
candid 10:15
capabilities 168:1
capability 95:12,17
 96:2 145:8
capacity 91:6 168:7,22
 194:13 206:11 210:18
CAPT 99:13,16 141:20
 173:8,10,13,16,19
 174:1,4,8,10,12,15,18
 174:21 237:2,9,13,18
 239:8,22 240:2,12
 241:21 299:15 301:13
 302:15 307:5,9,13,19
 308:9,12 311:11
 331:6 332:21 333:4
Captain 1:19 2:13 104:1
 239:20 241:9 297:10
 301:11
capture 152:5
care 136:2 195:20
 230:14 287:12
career 83:7,8 84:2
 286:21 301:19

careers 128:5
cares 287:11
caring 8:6
carried 162:22
carry 52:21
carve-out 279:12
case-by- 199:6
case-by-case 217:3,16
 233:4,18
caseload 15:12,13 52:2
 79:5,7 164:20,20
caseloads 15:4,16 21:9
cases 3:7 5:17 8:8
 10:17 12:16,18 13:2,3
 13:21 14:2,5,8,8,18
 15:8,13 18:8,13 19:5
 19:15 20:18 21:7,17
 22:11,18 23:19 27:11
 38:5 40:4,19 43:18,22
 46:13 49:8 50:22
 51:12 52:9 55:20
 56:11 64:9,14 73:19
 73:22 78:19 79:19
 81:9 82:15 86:6 87:15
 87:19 90:15 93:1
 107:4 108:8 109:8
 122:17 127:20 128:1
 128:7 129:19 130:18
 131:5,21 140:5,13
 143:7 146:7 147:22
 149:4 163:21 164:17
 164:19 168:12,21
 177:1 192:7 194:10
 194:14 196:9 203:18
 204:2 205:14,17
 209:7 213:4 214:3,10
 227:21 233:5 238:3
 265:1 269:3 272:19
 275:19 296:22 311:21
 312:1
categories 144:9 277:1
category 64:14 279:10
 279:15
Catherine 2:8
caught 315:10
cause 45:11,13,18 50:1
 50:7 51:8 68:14 70:16
 70:22 90:16 91:15
 92:7 245:21 287:5
 292:19 293:2 308:2,5
 308:8 309:16
caused 27:17 47:21
causes 28:6
causing 78:13
caution 256:17
CCAs 299:3
cell 38:12,13 39:3,4,7
 39:19 40:10 41:7,8

46:22 56:14,15 69:12
 69:12 84:7
cellular 59:20
certain 11:18 34:14
 39:8 70:7 92:13
 202:20 204:2 206:18
 283:13,14 284:9
 296:22 297:6
certainly 25:17 62:15
 69:15 71:12 82:19
 89:6 99:5 104:12
 126:13 149:16 169:10
 187:7 206:9 209:17
 253:6 266:12 274:2
 309:19,22
certifications 192:5
cetera 170:7 183:14
 213:7
chain 180:13,14 224:16
chair's 321:1
Chairman 4:9 237:2
Chairwoman 237:3
challenge 97:15 274:14
challenged 260:21
 277:17
chance 24:8 66:15
 85:17,18 202:13,14
 275:14 279:1 295:4
 318:20 329:13
change 13:6,19 18:1
 32:6 79:8 83:7 126:12
 132:21 133:8,21
 137:12,18 138:16
 140:1,15 147:11
 148:8 155:1,3,8,12
 165:5 183:8,21 194:2
 229:20 235:5 238:7
 257:18 274:9 281:5,9
 281:21 282:16 284:12
 284:13 288:20 298:7
 311:4 315:1 327:1
changed 14:11 18:1
 66:21 112:6 126:10
 136:12,20,22 143:18
 146:13 153:5 156:14
 156:17 160:9 238:6
 255:12 269:9,10,11
 310:11,14
changes 13:1 20:20,22
 21:4,22 22:22 24:8,9
 93:11 107:20 114:1
 114:15,18 115:11,14
 115:15,18 116:4,6,7
 116:11,13,18,21
 117:2,15 118:1
 119:11 126:5 130:10
 132:5,12 133:2,16
 138:17 152:10 153:1

156:21 157:22 158:8
 159:16 160:19 161:7
 161:22 162:6,9 163:4
 163:7 219:5 226:4
 237:4 238:11 274:10
 302:21 327:20
changing 28:20 222:3
 257:2 281:1
Chapter 251:4,4 277:3
charge 212:18 295:16
 295:19
charges 124:1,3
charging 55:20
chew 332:9
chewed 295:10
chief 2:1,3,5,7,8 8:18
 8:19 204:5,13,16
 240:15,18 241:2,8,12
chime 71:4 324:4
choice 37:22 85:18,21
 85:21
Chorus 103:18 150:22
 151:11,15 162:17
 171:1,6 177:15
 179:13 186:15 188:21
 189:5 191:14 216:18
 219:16,22 231:10
 235:22 238:19 323:2
 323:9
CID's 88:22
circles 33:2
circulate 221:5,11
 330:10
circulated 249:18,20
 250:2 256:2 329:10
circulation 221:9
circumstances 32:8
 43:15 128:22 129:9
 196:2
cited 255:1
civil 254:6 276:12 284:7
civilian 30:5 51:16
 63:18 66:7 80:7,20
 82:18 83:16,19 84:4
 93:18 122:1,17,20
 125:7 129:17 139:5
 163:21 164:17 167:18
 196:7 202:1 205:21
 285:14 287:20 288:5
clarify 236:6
clarifying 33:5 116:2
 199:20 200:4
classified 262:18 274:9
Clause 276:19
clear 33:8 74:2 197:21
 215:2 254:12 260:12
 260:20 266:20 277:2
 284:22 312:21

- clearly** 45:6
client 38:16 81:11,17
 85:7,8 141:7 143:8
 229:3 266:2 298:17
client's 302:7
clients 9:21 36:4 38:11
 208:4,9 209:4 210:10
 210:12 272:21
close 16:9 40:16 44:21
 45:8,10 91:14 92:2
 124:4 204:21 273:10
closed 45:2 49:6 83:3
 92:13 333:12
closely 22:13 153:6
commander 242:5
closes 90:15
closing 45:17 48:14
Coast 246:16
Code 5:5
Col 257:17 258:4,9,11
 258:13,15,20 259:11
 259:13,15 260:8,19
 261:5,8 262:6 263:1,6
 264:6,9,11,19 268:15
 268:19,21 269:2,10
 270:14 272:1,16,20
 295:13,19 296:1,5,9
 297:19,21 298:4
 304:9,11,18,22 305:1
 305:8,12,20 306:3,7,8
 306:12 311:19 312:14
 312:19,20,21 313:7
 313:18
colleague 78:14 297:10
colleagues 97:4,18
collectively 21:4 25:11
college 83:18,18
colleges 10:1
Colonel 1:17 2:3,4,6,8
 240:14,17,19 241:1,7
 295:14 297:21 305:22
 306:1 318:18,19
 321:11,11 324:2,3
colorable 291:9,16
 305:14 308:11,12,15
combination 15:6 18:6
 90:18
combine 153:2
come 12:11 23:6,13
 35:11 36:16 50:13
 68:16 79:2 84:19,22
 85:14,17 86:20 103:6
 115:2,3 192:15
 204:21 229:8 232:7
 232:13 239:9,11
 265:12 269:19 286:19
 287:1 289:2 291:7
 294:20 298:5 304:3
- comes** 15:22 123:20
 168:20 181:11 201:22
 261:14
comfortable 36:17 82:9
 116:12 257:6
coming 19:19 26:17
 43:9 139:15 149:11
 152:10 201:7 209:2
 267:10,13 272:14
 333:10
command 11:22 180:14
 180:14
Commandant 130:8
 131:9
commander 49:7,20
 50:19 70:15
commander's 51:7
 68:20
commanders 10:21
 18:21 50:20 70:22
 146:6 211:1
commanding 224:20
 232:14,15
commas 134:10
commence 7:11
comment 3:15 6:9
 98:10 100:6 102:20
 110:2 112:17,22
 113:17 114:3,4
 115:15 132:15 136:12
 139:9 140:18 141:4
 141:13 146:18 151:22
 159:13 160:11 167:11
 171:5 173:2 176:22
 179:8 186:8 187:1
 188:16 215:12 222:19
 224:20 226:1 251:7,8
 254:20 290:18 291:2
 299:16 301:16 325:5
 327:9,13 330:2,3
commentary 124:8
commented 159:9
 250:20
commenting 223:20
comments 6:10,11,16
 25:13 52:17 84:14
 103:14 116:9 122:4
 145:14 174:14 175:2
 185:6 237:15,17
 247:2,3,5,9,17,18
 249:6,10 252:22
 257:15 294:1,7 321:2
 327:13,15 330:10
commit 14:17 129:10
committed 51:9
committee 3:13 5:22
 17:22 18:17 24:18
 47:7 62:16 103:15
 125:21 126:19 147:12
 148:21 180:2 240:3
 245:4 253:1 302:18
 304:3
Committee's 6:12
 246:17 306:17
committees 64:6
common 25:20 26:1
 33:4 43:2 93:15,18
 95:4,5 102:10 272:9
commonly 14:14 37:3
 37:12 40:19
communicate 40:7
communicated 39:22
communicates 55:1
communicating 40:13
communication 40:9
communications 96:9
community 254:19
Comparative 51:14
competing 296:16
complain 44:9 172:18
 180:12
complainants 27:10
 40:9
complaining 27:2 32:14
 180:7 193:6
complaint 28:4 65:12
 95:20 213:19
complaints 57:19 58:14
 59:17 60:17 208:7
 215:8
complete 48:21 60:13
 98:22 105:5 195:16
completely 84:10 118:6
 137:14 184:22 201:10
 201:21 285:3
completion 44:20 53:10
 60:21
complex 14:3 127:20
compliance 321:11
complicating 53:10
complicates 329:15
comply 252:18
complying 254:15
comprehend 55:7
concentration 176:3
concept 161:9 248:20
 302:16 303:2
concern 32:5 39:12
 56:9 63:18 71:10
 97:22 99:3 160:7
 196:14 282:20
concerned 39:15
 115:17 145:3 309:2
 317:18
concerning 19:22
 20:22 81:22
- concerns** 38:19 47:19
 48:12,14 56:5,14,16
 56:20 60:3,6,12 98:3
 98:20 127:4 208:20
 329:15
concerted 71:16
concludes 61:5
conclusion 76:17
 134:12 225:2 286:12
 286:13 303:20
conclusions 49:1
conclusory 113:18
 132:16 133:10,13
 159:14 161:3
concomitant 126:21
 183:13
concurred 21:14
concurrence 329:17
 331:10
conduct 5:3,13,19 10:4
 11:5 20:8 21:20 25:12
 87:9 108:10 299:3
conducted 5:5 57:15
 63:3,8 121:22 122:19
conducting 33:20
 58:17 59:7 122:2,21
confer 332:6
conference 94:12
 221:16 243:1
confess 296:2
confident 194:14
confidential 253:3
 257:5 258:5 262:17
confidentially 80:14
confirm 230:4
confirms 283:22
conflict 32:16
conflicted 108:11
conflicting 59:3
conflicts 74:1
confront 43:4
confrontation 33:2
 42:12,13
confrontational 29:16
 30:19 33:5 42:16
 58:22 66:18 70:10
confronted 31:19 41:20
 284:2
confronting 32:14
confused 151:3 181:10
 235:13 279:13 307:8
confusing 134:5
confusion 257:12
 270:15
Congress 24:16 294:18
 326:12
Congress' 52:9
Congress's 243:1

congressional 187:3
connection 147:16
 322:16 330:16
connoted 33:4
consecutive 200:8,14
 207:7,17 210:21
 211:3,8 218:18
consensus 331:11
consequence 28:15
 42:8
consequences 41:15
 42:6 72:4
consider 6:4 23:20
 58:18 77:14,21
 122:16 126:19 130:21
 157:2 163:18,20
 164:16 168:18 180:2
 193:20 211:6 218:14
 218:16 219:6 221:21
 242:12 285:19 323:18
 327:21 328:4 330:5
 332:18
considerably 219:5
consideration 6:18
 86:13 209:9 321:5
 322:10
considerations 72:1
considered 49:6 208:2
 216:6 322:1
considering 71:14
 168:1,17 192:3 193:5
 193:20 247:20 288:17
consistent 88:9
Constitution 276:20
 302:3
Constitutional 315:13
 315:20
construct 146:21 147:3
consultants 123:7,14
 125:10
consulted 9:17
consulting 9:16
contact 13:2 14:2,8,13
 14:21 15:7 17:13,19
 18:4,13 19:15 20:17
 21:17 34:9 63:22 64:2
 64:11,19 79:10
contacted 40:15
contain 38:14 53:1
contained 38:21 60:5
 111:13 157:9
contempt 288:7
content 41:1 161:6
 312:2
context 224:9 261:11
continental 207:5
continue 16:2 18:8,15
 23:16 41:13 47:22

50:17,20 76:21
 120:10 138:7 149:14
 283:22 288:15
continued 11:10
continues 24:21 31:10
 145:2
continuing 181:1
contradicting 59:4
contradicts 177:8
contrary 147:7
Contrast 14:16
contribute 17:12
contributes 29:12
contributing 25:6
contribution 61:18
 301:9,9
control 71:17 75:13
 86:18 119:6 120:1
 126:22 142:10,17
 146:1,21 147:6 148:6
 148:12 180:4 183:14
controls 246:14
convening 106:11
 109:12 123:14 124:11
 124:13,19,20 183:1,3
 183:9,10,11,18
 184:11 185:1,4
 189:22 190:1,10
 225:14,21
conversation 217:21
 221:19 316:7
conversations 10:12
converse 298:18
conveyed 49:5
conviction 243:17
 285:7
cooperate 56:13 72:16
cooperation 56:4
cooperative 16:21 17:6
coordinate 49:16
coordination 44:7 50:4
Coordinators 10:22
copies 116:20 138:21
 244:3 250:17
copy 117:4 159:21
core 140:21
corps 1:20 19:1 109:19
 110:3 127:11,14,16
 129:6,12 130:9 131:9
 138:9 197:13 199:17
 208:22 241:10 246:16
 300:7,18 307:10
 326:6
Corps' 109:20
correct 92:11 103:1
 112:13 114:8 118:15
 166:8 178:1 189:18
 191:5 200:22 201:9

201:11 206:3,8
 207:22 208:11 222:4
 223:9 259:10 268:15
 268:18,21 269:2
 272:15 281:19 282:2
 303:1 306:2 310:10
 313:7,18 324:11
 326:22 327:18,22
 328:5
correction 183:8
correctly 67:1 164:3
 306:10
corresponded 104:21
corresponding 47:16
corroborating 106:13
corroborative 40:22
 41:10
counsel's 190:7 285:2
counseling 263:16,17
 278:20 279:6 286:16
 287:6
counted 85:1
counterparts 139:5
country 7:18
couple 39:5 44:8 128:3
 167:13 192:2 198:10
 245:2 247:13 250:5
course 15:3 31:2 35:17
 42:8 54:6 67:20 80:19
 108:21 127:18 167:6
 170:12 185:9 187:16
 202:9 206:1 267:4
 271:11 304:17
courses 35:3 94:3,8
court 31:13,14,15 209:8
 243:19 246:4 254:15
 256:8 257:22 260:10
 260:10,13,21 261:18
 264:4,5,16 265:19
 266:13 267:4,7
 269:21 271:16 272:14
 273:16 274:14 277:6
 283:17 284:2,7
 287:20 288:5 291:11
 292:11,21 296:21
 299:20 301:1 305:13
 309:13,21 310:6
 311:7 312:17 315:6
 319:13
court-martial 46:14,15
 46:20 47:3
courtroom 269:17
courts 167:18 214:4
 244:20 245:19 261:21
 266:18 279:21 299:18
 301:4 303:17 310:5
 315:21
courts' 246:12

Courts- 3:13
Courts-Martial 6:2,13
 123:16 126:10 243:14
 244:16 251:8,12
 325:20
cover 194:5 226:18
 264:3 279:14
covered 273:21 279:8
 324:15 325:12
covering 251:10 277:3
covers 11:14 108:14
crazy 275:15
create 71:12 146:9
 187:8,22
created 4:21 24:17
 296:18
creates 36:6
credentials 123:9
crime 16:8 28:8 51:16
 70:17,19
crime-fraud 261:17
crimes 8:18 21:12
criminal 2:8 9:8 11:22
 18:21 129:18 130:15
 175:19,20 196:7
 241:8 243:19 245:19
 251:6 299:18 301:5
 303:17
criteria 129:21 130:22
 196:21
critical 34:5 57:5,13
 93:3 176:5
criticism 180:16
criticizing 196:15
cross- 93:19
cross-examination
 43:10 205:16
cross-examined 36:10
 85:16 106:20
crossed 138:11
crucial 32:22 41:11
cultural 66:22
curious 63:5 68:7
current 22:9 25:3 52:2
 88:4 121:15 125:18
 244:15 297:12 303:17
currently 123:15
 243:13 304:13 307:10
 317:20
cut 74:2

D

D 4:1
DA's 9:15 98:7,8
Daly 1:17 240:19
 270:14 272:1,16,20
 305:1,8,12,20 306:3,8
 306:12 311:19 312:14

- 312:20 321:12 324:3
Daly's 318:19
data 156:4,7 177:7
date 18:14 172:15
332:18
dated 146:3
dates 124:3
day 86:9,9 289:14
days 45:8 51:18,20
143:6 192:14 229:9
deadlines 45:7
deal 7:19 8:4 31:21 32:2
42:11 93:22 98:2
185:1 303:6 316:8
317:9 324:15
dealing 168:20 196:1
270:17 332:10
dealings 72:9
deals 120:19 254:14
324:19 325:1
dealt 86:19 150:7
194:13 262:19
Dean 2:7 61:16 70:13
72:19 73:17 94:2 95:7
Deanna 1:17 240:19
decades 9:3 72:12
December 11:9 19:8
21:22 104:13 105:1
105:22 107:18 120:21
123:2 127:7
decide 47:2 83:19
105:15 143:1 159:10
164:14,14 192:12
195:6 210:4 229:6
282:10 293:10 307:3
307:17
decided 252:10 253:21
254:2 262:3 265:2
275:21 276:6 283:9
314:4
decides 68:15
deciding 180:9 195:2
265:9
decision 46:19 51:7
54:14 104:15 233:6
267:8 277:6 305:14
311:17 312:18 319:5
decisions 55:19 254:22
265:16 267:3 294:19
declaratory 230:2
decline 38:7 44:10
declines 55:15
decreased 272:20
dedicated 8:6 91:7
deemed 29:15
deeply 32:12
defendant 81:11 131:11
194:4,20 195:12
251:17,20 285:9
289:8 319:12
defendant's 261:16
defender 122:1
defending 131:21
defense's 150:1 187:8
193:15
defenses 139:13,14
defer 241:22
deferred 246:16
deferring 155:15
defined 45:6 245:18
291:16
definitely 74:2 193:14
definition 17:18,21
79:11
delay 27:17 28:2,11,15
delayed 26:7 29:1 41:5
57:20 165:15
delays 40:18 46:8 47:21
48:4 57:1 60:16 75:1
147:22
delegated 217:13
delete 132:15,21
139:10 159:13
deleted 113:18
deletions 133:16
deliberate 5:16 206:13
240:3 295:4
deliberated 243:21
deliberation 100:3
104:1
deliberations 3:4,7,9
3:12 5:13,20 243:22
244:13,21 249:7
321:17
delineated 57:11 58:11
delivered 68:2
demand 77:9 199:14
demanding 252:16
demeanor 55:4
demonstrate 115:8
132:22 222:3,8,11
demonstrated 167:4
denied 70:2 106:14
110:13 123:16
denies 243:20
deny 288:1
Denying 55:10
Department 1:1 2:1
5:22 11:16 221:2
241:13 294:19
depend 25:14
dependent 52:1
depending 13:14 28:12
116:8 307:20
depends 89:4 143:7
deploy 199:22 207:6
deployable 75:12 119:5
119:22 142:11,16
145:22 148:10
deployment 143:9
deputy 2:1,1 8:18
204:13 241:11,12
describe 17:14
described 41:16 44:4
89:11
deserves 152:12
designated 2:14 4:4
52:11 106:17
designed 297:3 321:9
desire 13:16 78:4
desperately 106:7
detail 32:12 33:15
81:16
detailed 168:11
details 35:22 36:19
37:2,13 65:4 82:10
170:8
detective 66:8 80:22
determination 34:4
50:6 273:13 276:9
305:15 311:15 323:19
determine 13:11 16:5
109:14,17 116:12
121:19 122:14 129:22
130:22 131:19 163:15
175:7 196:21 229:11
247:22 291:17 300:21
312:7
determined 11:4 12:3
155:13 318:10
determines 245:20
292:8
determining 24:5
deterrent 34:2
detrimental 26:8 31:20
develop 11:11 46:5
60:11 98:19 129:20
196:20 197:19 202:7
202:13 203:4,12,13
225:19
developed 45:18
development 26:18
130:20
developments 245:2
device 46:22
devices 39:20 40:11,14
59:20 60:1
devote 12:10
differ 33:10 135:3
difference 119:13 159:1
225:16
different 11:2 23:4
64:15 65:6 74:4 79:22
80:8,15 82:22 83:18
102:18 105:18 106:6
113:5,10,13 116:1
133:10,12 135:16
138:21 178:10 194:13
196:14 199:10 205:18
233:6 252:21 253:18
261:12 264:1 265:5
267:16 270:8,9
276:22 288:21 290:21
304:9,19,21 305:2,18
305:19,20 307:8
325:14,15 326:15
differently 113:5
213:22 289:4 309:19
difficult 7:19 8:8 16:9
42:12 44:15 48:3 49:8
64:18 70:21 90:17
157:9 158:1,11 160:4
difficulties 24:3 37:17
44:19
difficulty 59:18 123:5
dig 202:16
digital 28:18 39:20
40:11,14 46:22 59:20
60:8
diligently 8:7
dilutes 176:3,4
direct 18:20 19:5 49:14
121:17 122:12 125:20
126:18 170:5 287:7
directing 309:13
directive 229:16
directly 55:10 267:14
Director 1:19 2:13
241:9
directors 18:21 50:20
directs 175:6 180:1
disadvantages 206:4
disagree 87:1 97:4
284:15
disagreement 48:19
disagreements 48:17
disagrees 120:16
disclose 42:18
disclosed 224:1 243:12
259:7 286:18 293:5
312:13 313:15
disclosure 283:7
310:17
disclosures 288:4
discomfort 70:11
discourage 33:17
202:19
discouraged 29:14
32:14 58:16,20 59:7
70:2
discovery 32:9 106:17
107:8,12

discrepancies 33:14
discretion 12:4,15
 13:11 15:7,21 16:13
discuss 25:1 80:13
 97:15 105:10 179:21
 191:20 248:10 276:3
 293:21 330:17
discussed 53:6 61:9
 67:16 135:8 230:17
 274:1 293:20 294:2
 295:9 303:10
discusses 108:4
discussing 236:11
discussion 75:7 89:12
 89:13 100:16,17
 106:15 137:14 185:3
 191:10 212:22 216:11
 216:22 252:9 255:4
 256:19 257:15 259:10
 262:12,14 296:19
 304:11
discussions 5:21
 257:13 287:10
dismayed 34:3
disposal 240:7
disposition 49:21 51:1
 51:10 170:10 178:3
dispositive 50:1
dispute 115:17 157:12
dissent 250:17 256:2
 287:4 290:13 296:12
 329:16
dissenting 6:4
Dissents 3:14
dissuades 34:17
distinction 262:15,16
 298:8
distinguished 61:13
 253:2
distributed 275:4
 283:18 285:10 302:8
 314:3,6,15 329:14
distributing 251:21
distribution 169:18
 254:4
District 8:15
diverge 289:3
diversion 23:18
divided 105:18
division 1:18,21 2:4,7,9
 19:2 240:16,18,22
 241:9,11 267:14
 295:20
divulge 301:20
DNA 46:11,21
docket 283:5
doctor 269:16
doctors 287:14 288:7

doctrine 307:16
document 45:3 117:19
 117:19 255:20 313:2
 318:22
documented 139:18
documenting 17:16
documents 253:10,13
 253:18 254:14 257:3
 257:8 258:19 261:12
 261:14 263:11,14
 265:2,3,4,9,11,17
 274:8,10,15 275:4,5
 275:21 276:22 277:7
 277:22 279:10,17
 283:18 311:7 314:3,8
 325:9
DoD 13:6 19:8,10 20:1
 22:15 23:15,20 46:12
 51:3 52:9 61:3 63:2
 67:7
DoD's 19:22 20:22
 21:16 22:1 23:1 63:17
doing 12:21 16:4 29:20
 39:7 53:17 76:13 85:6
 91:1 92:2 93:11 94:1
 128:8 154:4 165:8,20
 197:14 215:5 240:5
 256:13 276:5 281:1
 281:11,22 303:21
 304:15
doubly 285:13
doubt 45:22 145:7
 164:4
draft 21:22 63:2 125:22
 187:12 244:1 247:13
drafted 248:17 274:5
 288:22
drafters 297:14
draw 245:1
drawn 202:9
draws 262:15 298:7
drink 30:21 31:1,3,5
drinking 70:19
drive 1:10 86:12
drives 91:14
drop 317:13
dual 63:18 66:3
due 21:15 67:14 261:17
 305:9 321:20 326:19
duplicative 17:15 52:22
duties 308:17
dynamic 71:13

E

E 3:1 4:1,1
earlier 21:17 70:4 76:12
 78:2 79:7 124:14
 125:16 131:13 133:8

146:6 148:22 149:18
 214:20 301:11
earliest 18:2,7
early 24:6 28:8 128:4
 139:7,14 144:16
 224:1 331:4
ease 22:9
easier 71:2 124:9,12
 133:20
eat 84:12
echo 72:19
echoed 47:18
edification 259:17
edit 159:18 237:16
editable 226:6
edits 238:8
education 9:19 54:1
educational 7:21 9:22
effect 18:1,7 19:14
 22:15 52:17 83:21
 90:14 127:12 170:11
 190:6 209:18 260:2
 299:4
effective 14:11 18:14
 35:21 54:4 58:9 84:15
 98:4
effectively 8:4 13:21
 83:8 93:22
effectiveness 93:10,11
effects 22:16,21 24:14
 101:3,5
effort 22:17 62:15 95:13
 96:5 97:18
efforts 8:9 71:16
eight 109:2
either 8:21 16:20 51:11
 55:15 58:22 73:16,18
 83:9 105:9 115:14
 141:7 164:17 195:20
 208:12 210:17 222:17
 223:20 229:2 237:5
 251:21 259:5 275:10
 277:17 289:17 300:22
 304:8 313:16 332:11
elaboration 322:5
element 295:7
elements 306:19
elevated 187:3
elicit 32:8
eliminated 12:15 39:2
 60:7
Elizabeth 1:11,13 3:3
 4:8
email 118:2 237:5
embarrass 83:7
embarrassed 85:15
embarrassing 42:19
 84:8

embraced 88:10
emphasis 14:4 52:9
emphasize 37:20
emphatic 234:12
enable 141:10 232:1
 235:6
enact 326:12
enacted 251:12,13
 253:16 320:14
enamored 248:7
encapsulate 152:7
encompasses 212:1
encourage 192:8
ended 73:2
endorse 100:21 145:17
 232:4 289:17
endorsed 250:22
enforce 10:4 287:18
enforced 287:19
enforcement 7:20
 19:12 20:10 22:8
 23:22 57:15 59:13
 63:9
engaged 81:11
engine 321:18
English 183:11
enhance 52:11
enormous 98:2 160:22
enshrined 276:18
ensure 50:17,21 57:12
 58:3 60:12 61:3 75:10
 98:21 119:3,21
 131:19 170:9 211:6
 246:14
entail 33:3
entered 270:21
entire 72:9 104:9
 230:11 235:17,18
 296:3
entirely 213:1 267:16
entitled 251:2 256:3
 289:10
environment 155:8
episodes 86:7
equation 165:4
especially 138:8 193:4
 229:13 288:16 289:11
essence 249:15 315:14
essential 22:21 294:11
establish 244:17
 326:21
established 95:21
 286:9 324:10
establishing 19:12
 281:5 325:20
establishment 26:9,15
estimate 15:15
et 170:7 183:14 213:6

ethics 300:10
evaluate 143:7 205:14
 205:15,15
evaluation 165:21
event 37:4 45:4
events 172:7 249:5
 327:7
eventually 31:12
ever-growing 17:10
everybody 93:20
 101:11 165:22 169:11
 175:11 194:14 250:15
 253:8 256:21 257:6
 275:12 288:16 333:5
everybody's 104:8
everyone's 104:10
evidence 6:15 17:17
 28:18,19 29:6,10
 32:17 33:7 37:18 38:7
 38:14 39:16,20 40:8
 40:22 41:6,10,11,14
 43:15 45:18,21 47:1
 49:17 52:3,19 53:1
 54:19 55:17,21 57:4
 59:4,16,18 60:20 61:4
 69:11 70:17 71:21
 72:4 75:1 81:15 84:5
 85:10 90:16 98:16
 101:9 107:6 109:6
 147:12 148:1 150:3
 156:5 157:17 158:6
 160:3 167:4 177:9
 192:13 222:12 225:2
 234:15,17,21 250:21
 251:1,3,5 252:13
 253:16 254:7 255:2
 258:22 270:22 274:6
 274:7 288:11,21
 293:8 311:15 317:20
evidentiary 28:22
evolve 47:22
ex 313:11 315:2,3,5
exact 133:18 277:17
 289:1
exactly 9:6 31:3 39:9
 49:9 67:7 93:19 134:6
 135:5 136:13 138:13
 140:3 203:21 206:22
 215:4 236:19 270:7
 278:13,16 284:18
 314:17
examination 19:10
 56:22 79:17 245:21
 291:11 292:16,18
 308:16
examine 60:10 98:18
 310:21 329:5
examined 47:4,6,9 48:8

51:15 52:3 144:11
 150:6 166:21 329:7
examines 245:20
examining 59:15
 100:19 229:5 245:15
example 15:20 16:12
 64:10 65:15 68:13
 71:15 75:8 81:10
 94:13 199:22 275:5
excellent 99:9
exception 141:6 213:6
 215:21 229:2 261:17
exceptions 199:7 215:8
 219:2
excess 122:17 163:21
 164:17 168:7,21
exclusive 167:15,16
exculpatory 158:14
excuse 15:11 63:7
 114:20 223:14 238:10
 248:3 258:2 322:3
execute 44:17
execution 93:14
executive 152:3 155:7
 157:1 160:8 172:1
 226:5
executives 152:3
exhibits 263:12,13
 264:4 271:5
exist 26:3
existed 94:15
existence 214:21
existing 20:3 106:9
 109:10,20 281:15
exists 41:6 50:2,7 51:8
 91:10
expand 216:4
expands 144:7
expected 300:12,13,14
expedite 130:20 192:8
expeditious 25:4 46:16
 61:3 170:9
expenditure 126:2,14
 181:13 224:4
expenditures 182:5
expenses 126:22
 183:13
experience 5:17 23:17
 25:16 29:20 37:17
 42:20 123:8 127:4,9
 128:8,14 129:18
 130:15 131:16,17
 140:22 141:11 194:12
 195:17 196:8 197:19
 198:22 199:1 201:18
 202:1 204:1 205:20
 205:22 210:17,21
 211:8 213:22 214:1

218:18 230:21 232:2
 233:13 235:7 238:2
 284:1
experienced 61:13 66:6
 203:22 204:6,12,19
 214:7 215:7 232:12
Experiences 3:7
expert 123:1,6,13 124:6
 125:9 126:1,20 180:4
 181:6,13,22 182:15
 183:12 184:2 185:5
 224:4,21 225:18
 295:3 322:5
expertise 8:10 23:18
 197:20 202:13
experts 121:13 122:9
 124:13,15,22 125:14
 163:10 181:15,21
 182:6,7 240:6 244:4
 294:14 301:10 321:5
 322:11,16
explain 33:7 42:3
 220:20 222:10 223:13
 223:16 228:14 250:11
 282:6 285:20 289:2
explained 12:13 33:2
 41:12
explaining 85:7 290:6
explanation 307:1
explicit 255:3 257:11
explicitly 214:14
exploring 33:14 55:12
explosion 78:19,21
express 44:12
expressed 39:12 56:8
 78:4 247:7
expressing 32:5
extend 276:14
extended 56:16
extensive 24:9 89:15
 167:5
extent 66:18 84:20
 144:13 147:5 148:3
 211:10 218:19 219:1
 328:16,22
extenuating 128:21
extra 134:10 166:16
 168:22 169:8
extraordinary 97:18
extreme 199:13
extremely 16:9 82:7
 90:17

F

face 33:13 74:17 254:13
 255:3
fact 18:8 20:14,16 27:9
 27:18 28:17 50:15

56:20 63:6 64:2 86:3
 89:13 107:10 110:10
 112:14 149:3 152:3,9
 156:9,14,16,18,21,22
 157:8 165:12 172:18
 175:3 202:9 224:11
 233:3 238:22 252:14
 283:15,21
factors 12:14 25:6 52:1
 155:9
facts 14:19 16:1 17:3,7
 29:9 30:7 32:8 35:22
 43:15 153:4
factual 139:11 160:17
 162:12
fails 54:19
failure 176:2
fair 75:10 119:3,19
 174:15 186:5 206:18
Fairfax 1:10
fairly 17:19 164:2
fairness 56:5,7 157:7
faith 195:16
fake 287:12
false 30:3
familiar 296:10
family 40:16 102:17
far 182:20
farther 63:14
fashion 123:7 177:10
fast 101:12,14
favor 103:15 142:7,8
 150:21 151:4,8,13
 162:16 170:20 171:4
 177:11 179:11 186:11
 188:19 189:4 191:12
 216:14 219:15,21
 230:13 231:5 233:19
 235:19 238:17 295:2
 322:21 323:6
FBI 30:4
fear 34:18 300:14
fearful 217:4
feasibility 109:17
 168:19
feasible 109:14 218:21
 219:1
FEBRUARY 1:7
federal 2:14 4:4 94:6
 167:16 253:16 254:7
 256:8 274:6,6 288:21
 294:4
feedback 106:1 246:2
feel 20:16 21:10,12 23:8
 29:13,14 30:12 32:6
 34:7 44:14 45:1 53:22
 69:16 71:11 83:12
 92:1 110:1 124:7

128:11 143:18 172:10
289:4 295:1
feeling 67:15 288:1
feelings 84:18
feels 82:9 91:2 113:17
209:11
fellow 62:5
felonies 203:20
felt 13:18 23:8,9 25:11
34:3 42:20 49:3 58:19
59:5 66:14 107:17
109:20 110:8 171:19
300:3
fewer 160:1
field 7:17 11:19 22:20
28:10 34:2 68:4 91:4
fifth 43:19
figure 69:1 169:15
192:4 232:11 241:17
277:10
figured 282:14
figuring 193:1
file 37:18,22 49:18
50:19 270:18 271:18
292:14 300:21 308:21
313:2,3,14 318:22
326:14
filing 271:17,18
fill 199:12
final 20:2 29:3 51:1
100:13 127:3 237:14
247:22 248:11,17,18
249:8 323:19
finally 5:19 51:13 60:15
247:12 329:12
financial 38:17 60:1
find 16:1,7,20 19:18
23:16 31:5 41:8 45:10
45:18 57:13 65:19
76:18 84:7 128:6
164:15 253:8 254:22
262:13 272:12 286:7
286:15,19 295:5
303:20 321:10
finding 11:21 25:3 29:5
213:13 233:14 316:1
316:2
findings 25:17 57:11
75:22 248:2
finds 298:19
fine 74:19 101:19 103:4
118:9,9 148:12
162:10 187:15 188:15
211:15 221:7,10,18
281:9
fine-tuned 76:20
finish 280:16 316:7
finished 99:7 174:9,11

236:5,12
firm 9:16
firmer 187:4
first 11:20 12:6 26:11
26:19 27:7,15,17 28:4
28:5 29:8 30:8,16,17
31:18 41:20 43:9 74:1
74:14 78:1 105:19
132:16 137:22 139:22
140:18 145:16 150:20
154:10 159:13 162:2
170:17,18 172:22
178:19,22 192:2
196:4 203:6,11,14
216:3,7 221:22
228:21 229:22 233:8
240:14 243:11 245:3
245:19 276:9 296:18
297:5 312:4 317:9
329:2
firsthand 8:2
fiscal 4:22 5:1 193:18
fits 198:16
five 4:15 74:16 75:16
87:1 99:11,14,21
114:16 131:19
fix 77:4
FLETC 94:6
flexible 197:9
flipping 137:8
floating 138:21
flood 21:5
focus 22:11,17 145:1
145:12 176:2 234:4
288:18 291:3 316:9
332:12
focused 10:12 210:15
focusing 67:1 288:17
folder 240:10 244:2
247:5
follow 44:10 73:5 94:20
142:12 172:17 244:4
253:16 285:18 300:14
310:12
follow-on 173:14
follow-up 35:8 37:5
55:11 59:1,8 180:12
follow-ups 101:16
followed 280:12 286:2
following 18:18 48:22
57:10 134:21 254:9
317:16
follows 122:6 125:19
126:17 130:13 224:3
Football 7:3
force 1:17 2:3,5,6,6
109:15,16 190:9
191:1 240:17,19,22

241:4 246:6,11,15
267:3 271:17 289:18
289:20 295:16,20
297:22 298:5 300:7
303:19 304:4,12
312:22 321:7
Force's 246:3
forced 209:5
forces 19:3 24:20
260:10
forensic 38:18 39:2
46:5,6 56:21 57:2,4
60:3,7,16,19 61:2,4
75:1 101:14 180:8
forget 84:12
forgiven 295:17
forgot 66:4
form 40:22 63:12
166:16 329:11
forma 314:13
formal 20:9 129:20
130:20 196:20
formally 256:22
former 98:1 298:11
forms 53:1 57:1
forth 137:8 168:2
forthcoming 86:1
forum 97:8
forward 7:10 17:1 38:2
47:3 56:3 65:7 79:2
83:6 84:13,19,22
85:11 86:20 104:11
137:17 152:14 286:19
287:1
forwarded 178:17
found 19:20 22:19
90:15 125:4 128:7
133:11 166:18 283:8
286:11
four 37:12 114:16
115:12 117:19 118:22
135:4 192:19 232:16
243:10,17 245:2
270:20 303:14
fourth 37:14
frame 52:1
framed 199:6
frankly 176:9 273:22
288:15 321:5
free 143:18
freedom 193:20 259:2
freely 288:2 314:12
freer 23:8
frequent 57:18
frequently 39:20
106:19 107:1 108:1
123:13 182:3 233:16
fresh 150:19

FRIDAY 1:7
Friel 1:19 3:5 5:11 7:1,6
7:9,12 15:14 26:14
61:11,19,21 62:17
63:16 65:22 67:3 69:3
71:5 73:16 74:14
75:20 77:22 81:19
82:17 87:11 88:16
90:3,11 91:19 92:11
93:17 98:7,10 99:10
204:4,8,10,14,17
friend 40:16 279:4
friendly 149:13 170:1
217:10,11 227:10,12
238:9 323:15,16
friendships 286:22
front 42:16 92:14 97:7
148:2 330:8
fulfill 232:19
fulfillment 291:12
308:17
full 4:18 23:21 56:3
full-time 10:3
fullest 211:10
fully 53:8 55:6,12
168:13
function 96:20 182:1,4
functions 297:7
fund 169:16
funded 165:2
funding 125:9 126:2
181:14 187:8 224:5
further 11:5 19:10
22:12 49:8 50:22
53:10 54:1 99:6 171:5
186:7 191:9 216:10
220:15 236:12 274:1
321:17
furthermore 139:4,10
227:16
future 332:18
FY 131:14

G

G 4:1
gain 141:10 157:10
158:11 160:4 232:2
235:6
gains 211:7
gather 53:13 230:20
331:14
gathered 37:3
gauged 143:15
gay 286:20
general 2:2 19:11,21,21
22:15 25:21 55:22
68:21 96:21 98:6
130:7 131:8 144:8

147:17 176:15 226:9
241:14 247:7 248:15
272:11 276:17
generally 44:6 46:13
70:18 102:3 171:19
243:8
generated 21:5
gentlemen 61:5
getting 20:15 42:14
46:18 64:8 65:1 72:16
93:20 101:12,13,15
103:7 124:4 166:19
167:18 182:5 193:10
202:4 224:6 225:20
235:13 272:3 273:1
318:14
girlfriends 81:12
give 24:7 33:11 43:16
64:10 184:2 192:6
202:14 224:21 261:1
282:22 289:7
given 14:3 15:14 42:4
59:3 66:17 187:21
190:6,18 218:15
gives 278:20 319:12
320:10
giving 7:14 15:7 53:19
53:19,20 144:8
259:18 326:9 329:13
glad 26:14 66:1
globally 78:17
gluttons 241:17
gotten 253:20 275:14
277:22 286:9 301:2
316:19 329:12
governed 243:13 256:6
256:7
governing 6:2
government 2:3 139:7
158:13 164:5 240:15
243:6 271:20 285:2
292:13 297:22 298:6
300:19 305:3
government's 157:11
158:5,13 160:6
grabbing 64:11
Grand 1:9
grant 309:21
granted 271:19 315:12
granting 326:13
gratification 17:21
greater 79:4 133:5
161:9
greatly 15:9
green 136:3
ground 295:12
group 42:17 101:19
114:19 148:17 229:4

291:1
groups 10:18 23:4,13
51:5 149:16 243:5
247:7
Guard 246:16
guess 74:13 75:4 77:13
82:20 100:17 110:22
116:19 132:7 141:16
161:4 174:13 191:18
198:5 199:9 221:22
222:18 228:10 230:10
261:10 262:13 274:12
304:4 328:3,16
guidance 333:9
Gupta 2:11 241:6,22
242:3,7 244:8 245:10
245:13 248:10,15,22
249:3,16,19,22 250:3
325:1,4,11,15
gut 302:6

H

half 77:1 209:12 210:2
half-hour 239:10
hamper 39:13
hampered 25:11 108:3
hand 16:10 125:1 206:5
handed 314:12
handle 16:2 20:17 89:6
168:12 193:13 205:16
handled 8:22 9:13 13:4
13:12 37:10 79:3
253:17
handling 8:8 9:7 10:16
11:15 12:4 87:19
204:1
hands 73:20 74:6 169:9
188:3 210:22 232:7
happen 195:7 300:17
happened 9:10 41:1
42:5 65:14,21 220:20
278:7 286:3 310:16
310:20
happening 73:7 234:19
265:7 283:6 300:16
303:9
happens 147:8 254:12
256:8 267:1 274:9
324:19
happy 101:11 103:11
116:18 118:2 149:13
188:12 195:9 202:16
210:10 244:8 250:7
274:2 285:8
hard 30:16 34:19 42:3
81:15 92:22 221:12
hark 214:19
harking 214:14

harm 263:18 286:21
harmed 21:11
head 94:19
heads 211:18 331:15
hear 25:19 50:3 73:8,17
74:8 78:3,7 81:6,7,20
81:22 92:11 94:2,15
118:10 148:14 169:19
172:20 183:19 193:2
224:22 225:10 257:14
289:9 290:19 322:15
hearing 7:10 85:22
127:13 148:16 159:20
160:3 171:7 172:5
253:22 264:14 273:20
285:20 292:4,6 321:4
332:15
hearings 292:4 322:5
hears 261:18
held 11:8 319:9
help 106:10 108:7
109:22 125:16 166:16
169:12,17 233:18
241:17 286:14 288:2
295:10
helped 9:18
helpful 31:1 95:5 109:4
187:6
helping 10:3 333:8,10
helps 213:12
Hey 310:3
hiding 30:22
high 9:22 215:9
higher 142:8 165:7
311:6
highlight 310:1
highlighted 113:16
132:10 139:3 140:19
141:8 185:9 247:16
highlighting 246:12
highly 121:13 122:9
163:10
hire 125:14
hired 109:2
history 144:15 147:8
242:1 251:11 252:2
253:15 255:3 274:5
296:10
hold 104:15 288:7
301:21
holder 314:19
Holiday 1:10
hollowed 206:6,11,14
Holtzman's 119:11
Homeland 2:2 241:13
homework 104:8
294:21 295:1
Hon 1:11,13,13 3:3

Honor 261:15 284:6,8
Honorable 4:8
hope 8:9 62:21
hospital 266:16,17
269:16 301:18
hospitals 252:15 288:3
hostile 86:7
hostility 33:4
hours 39:6
House 1:19 241:9
297:10 299:15 307:5
307:9,13,19 308:9,12
311:11
housekeeping 258:17
huge 77:2,19
humanly 43:14
hurt 31:15 39:16
husband-wife 276:4
279:7

I

idea 65:18 68:21 74:20
94:16 104:7 143:16
211:21 248:7,7
283:19
identified 24:22 25:5,21
26:1 47:12,12 59:11
67:8 79:7 91:22 97:7
125:3 242:9 243:10
246:6
identify 59:10 67:8 68:8
IG 23:20 63:17 64:7,22
IG's 19:18 22:2 24:8
ignore 274:4
ignoring 155:14 260:17
279:22 288:10
imaged 39:5
imagine 195:19
imaging 39:3 60:8
imagining 274:13
imbalance 166:10
imitate 201:1
immediate 319:11
immediately 121:11
122:7 241:5
immune 277:7,16
Immunities 276:19
impact 47:15 48:3
281:13
impacted 82:13
impacting 34:7
impacts 37:15 46:2
56:9
impeded 59:6
impedes 60:20
impediments 58:12,16
59:15 74:21,22 98:15
impeding 43:20

- implement** 109:15
implemented 22:3 24:8
68:3 109:1
implementing 21:22
109:18
implements 20:5
implications 282:12,18
implicit 238:13
importance 58:8
important 14:6 26:8
28:21 35:4,22 36:18
41:9 43:12 44:11 45:9
46:21 47:1 55:14 57:5
69:11 72:1,7 73:22
80:11 82:7 97:11,12
99:1 140:22 143:3
156:22 157:10 158:12
160:5 171:22 172:7
230:7 296:13 326:4
329:12 332:10,14
impose 246:13
imposition 33:21
impression 33:12 95:21
99:2 169:6
improve 26:4 92:22
improved 44:8
improvement 299:9
improving 301:14
in/first 74:1
inability 36:15
inadequate 172:6
inadvertent 118:6
inappropriate 34:19
inception 294:17
incident 37:2
include 5:21 51:6,10
60:1 169:21 172:12
194:20 209:18 213:16
245:18 247:5 259:9
299:10
included 9:21 111:7,9
116:5,9 125:5 130:11
131:22 140:14 155:6
242:17
includes 6:7 17:20 20:6
165:3 251:5
including 24:4 32:17
159:22 160:2 166:5
194:10 215:6 249:5
250:21 258:6,7,7
inclusion 126:14
inconsistent 32:18 33:7
36:7 318:4,8,16 319:1
320:3
incorporate 23:1
217:21
incorporated 153:20,21
157:5 179:1
- incorrect** 112:14
268:14,20 312:4
increase 21:9,15 96:8
177:5 214:5
increased 15:3 19:15
21:2
incredibly 43:12 109:4
inculpatory 302:9
incumbent 27:4
independence 146:12
independent 5:4 75:12
108:19 109:2 119:5
119:22 120:1 121:18
142:16 145:22 146:1
146:10,21 148:10,11
149:16 168:18 170:6
224:17
indicate 110:21
individual 81:8 96:9
125:13 129:8
individually 114:19
individuals 10:9 21:14
86:10 116:9 321:13
inescapable 76:18
inevitable 164:21
inevitably 224:13
inexperienced 214:7
inflexible 195:22
inform 11:6 125:16
171:22 310:8
informal 256:19
informally 256:22
information 11:3,11
15:2 30:7,11,11,12,15
37:1 38:20 46:19 47:5
47:6,7 51:11 53:12,19
55:3,18 56:17 57:5,7
59:19 60:4 64:5 66:8
67:10 69:20 80:16
82:2 89:6 97:6,7
104:17 105:2,10
108:11 111:11 125:5
131:22 138:4 140:9
157:11 158:12 160:5
209:18 224:13 244:11
246:2 259:2 297:8
326:2
informs 8:13
inherent 24:3
inherently 54:16
inhibited 66:14
initial 26:6 27:7 30:6
31:9 33:21 40:19,21
55:10 57:13,14,19
58:5,22 63:3,6,7,19
63:20 65:3,12 321:8
initially 64:15 92:2
injuries 41:3
- Inn** 1:10
inordinate 83:15
input 6:7 54:2
inquire 104:19
inquiry 54:12
insensitive 32:22
insert 132:22 133:19
inside 134:18
Inspector 19:11,20,21
22:15
installation 46:9 138:4
installations 10:10
167:15
instance 15:8 29:5
30:21 38:12 46:11
63:22 73:11 152:9
171:11
instances 16:16 65:21
68:17 72:22 272:18
institutions 7:21 9:22
insulated 225:1
integral 95:18
integrate 93:13
integrity 146:12 297:16
intend 145:21
intended 86:11 99:5
147:4 180:20 187:2
197:21 224:11 257:9
intent 185:13,13 225:22
292:20
intentional 206:12
interacting 47:10
interest 66:22 77:17
84:21 85:7 242:14,22
285:2
interested 165:7,8
interesting 68:5 97:14
interests 284:14 296:17
297:4,15
interject 329:20
interlocutory 319:11
internal 17:17 33:11,16
44:19 45:5,7 53:2
88:22 185:10 246:13
interpersonal 72:21
interplay 71:7
interpret 309:18
interpretation 217:14
261:22 264:19 315:21
interprets 264:2
interrupt 15:12
intervening 249:4
interview 16:4 20:9
26:6,20 27:8,14,15,17
27:21 28:5 29:8 30:8
30:16,17 31:9 32:7
33:5,20,21 34:5,11,13
35:9,11,15 36:20
- 37:12 39:7 55:10
57:14,22 58:5,9 59:1
63:3,7,20 65:4 73:5
74:20 87:10
interviewed 36:4,6
39:12 52:7 56:2 58:15
125:7
interviewer 63:19
interviewing 33:22
interviews 22:20 31:11
31:12 35:8 37:5,13
53:3 55:11,16 57:13
57:19 58:13,17 59:8
74:22 91:4 101:13
133:3,11 165:15
172:19
introduce 240:9 252:1
introducing 61:12
Introduction 3:2
introductory 102:20
160:16
invaluable 205:20
invest 224:4
investigate 9:8 13:7,20
17:5,13 21:16 31:4
50:14 74:6 79:9,19
81:17
investigated 146:8
investigating 9:7 12:15
14:15 18:12 30:1
52:20 55:20 70:7
301:17
investigation 10:13
13:8,16 16:3 19:4
24:6,18 28:7 29:5,13
37:10 38:2 39:13,16
41:13 43:13 46:4 48:5
49:4,19 51:1 53:11
54:20 56:6 57:7 63:7
65:8 72:8 80:10 81:18
82:4,11 84:15 91:15
94:19 108:2,8
investigations 3:4 5:12
7:2 9:1,12,20 11:16
11:18 12:5,11 14:1
15:5,17 16:16 17:11
20:1,11 21:1,2 22:1,7
22:9 25:2,4,12 28:6
29:21 34:8 37:7,16
40:6 43:13 44:7 45:17
47:17 48:9,15,21 49:3
49:6,9 52:8,12,21
54:3 59:6 60:13,21
63:14 65:16 73:21
76:9 80:22 98:21
100:4 102:3 159:16
investigative 11:22
12:19 17:16 18:22

19:1 20:14 21:6,10
 33:1,2 34:5,13 36:21
 44:13,15,21 47:20
 50:10,18 51:7 52:15
 53:4,8 55:16 78:8,9
 78:10 80:1 89:15,17
 89:18 90:7,9 96:20
 106:10 109:22
investigator 16:11,19
 19:6 28:1 30:9,14,18
 39:7,10 50:14 54:13
 55:2,2 57:6 63:4
 64:16 65:7 66:6 80:5
 80:12,12,14,17 82:3
 109:11 119:8 120:3
 143:5 167:8 205:17
investigator's 16:21
 25:11 35:16 54:22
 55:5
investigators' 43:20
investigatory 26:6
 91:17 102:11
invite 33:6 254:18
 257:16
involve 14:9 21:18
involved 82:16 83:1
 90:21 93:20 147:6
 181:19 195:5 251:9
 252:6 285:22 296:17
 297:17
involves 16:13 33:6
involving 5:6 14:1
irrelevant 255:4 298:20
 316:14
irrespective 231:20
irresponsible 147:14
issue 5:14 11:14 18:18
 19:20 24:22 25:6
 29:11 32:2 39:19 46:7
 48:8 62:9 64:7 67:4
 67:13 70:14 91:13
 95:9,20 96:16 97:22
 108:3,15 110:15,17
 112:3 119:18 125:18
 127:3 128:16 129:3
 143:22 152:11 159:9
 176:4,4,5 195:4,5
 252:21 264:9 268:4,8
 271:6,13 272:2,21
 281:18 283:17 292:22
 301:12 303:12,14
 305:13 315:10,13,20
 316:5 319:3,7 323:19
 332:8,13,15
issued 113:22 132:12
 153:1 154:20 159:15
 160:18 162:6 327:8
issues 9:17 11:12 25:10

28:6 47:12 48:5 52:6
 55:14 82:5 97:9,13
 102:9,11,18 103:3
 144:5 242:9 243:3,9
 243:10 271:1 285:15
 286:14 303:13,13
 310:1 332:11,14
item 100:2 103:22
 323:4

J

JAG 94:12 127:16
JAGs 94:8,11
January 11:10 13:2
 172:9 247:1
JCS's 245:7
Jeff 295:14
Jeffrey 2:6 240:17
Jill 2:9 61:15
job 76:13 110:9 148:19
 194:15 213:15 302:2
jobs 300:12
join 175:15
joining 6:21 7:5,9
Joint 3:13 5:22 6:11
 125:21 126:18 180:2
 245:4 246:17 253:1
 304:2 306:16
Jones's 187:16
JPP 1:22 2:7,9 3:14
 4:19 5:10 6:5,8,19 7:3
 11:7 24:11 48:2,7,13
 51:13 81:6 97:8
 100:13 104:5 110:6
 114:9 122:4 123:11
 127:13 136:1,17
 138:5 153:7 163:14
 172:15 180:1 213:19
 215:2 238:11 239:4
 242:8,12 243:4,10,21
 246:6 248:10 249:7
 295:15 297:11 321:8
 323:13,17 330:2
JPP's 243:2 246:10
 247:1,15 248:2,18
Jr 2:4
JSC 245:4 290:20 291:1
 293:17,20 297:11
 299:3,10 305:5 306:3
 307:2,15 309:12
 310:8 313:20 314:20
 316:16 318:17 319:1
 321:6 323:13,17
 327:7,13,21 328:4,4
 328:12,15 329:1,5,7
 329:20 330:8 331:20
JSC's 245:5,14 247:3,8
 249:5,10,11 298:6

judge's 277:6,6 311:14
 312:3 314:22
judges 130:17 131:1,2
 131:5 193:8 213:4,18
 216:5 243:7 245:18
 258:18 262:1 265:9
 268:10 269:4 272:12
 273:9,10 274:20
 275:10 306:22
judgment 59:2
judicial 1:3 4:5,15,20
 5:4 6:6 10:7 237:22
 276:11
Judiciary 2:6 241:4
July 10:6
jump 321:17
jumping 276:6
jumps 225:2
June 18:2,7 79:13
 156:22
jurisdiction 123:22
 167:16,17,19
jurisdictions 122:2,20
jury 42:16
justice 2:5 5:6 47:10
 72:9 75:11 79:1 119:4
 119:20 125:21 126:19
 128:14 129:17 175:20
 176:1,16 196:7 241:2
 275:18 296:6 297:7
Justice's 3:13 6:1
justification 289:3
justified 297:5
justify 215:6

K

K 9:22
Kate 297:21
Katherine 2:3 240:14
 241:7
keep 259:1 281:9
 289:18
keeping 39:15 149:5
Keller 313:5
Kepros 1:22 61:15 71:3
 71:6 78:14 87:16 88:5
 91:3 105:21
kept 83:13 148:16
keys 72:15
kinds 14:18 29:6 40:11
 56:19 87:19 89:18
 121:22 122:19
kiss 14:12 63:12
knew 42:21 302:9
knowing 30:14
knowledge 42:1 53:20
 93:12 260:17 283:10
 283:16

known 64:11 234:22
 251:19
knows 30:9,14 31:3
 83:6

L

lab 45:3 46:14 52:2 57:2
laboratories 60:16 75:2
laboratory 60:20
labs 46:5,12 51:16 61:3
 61:4
lack 12:3 15:7,20 16:13
 108:4 121:1
ladies 61:5
language 112:5,12
 133:18 136:11 141:17
 143:18 148:8 157:5
 178:13 180:22 187:17
 191:4 213:1 215:21
 221:4,18,21 227:1,4
 227:10,13,16 228:3
 248:11,17,18,21
 249:17,19 250:1
 254:18 264:2,12
 273:22 276:17 301:14
 302:16,19 303:4
 325:19 329:18
large 121:3
larger 97:9
late 182:1 331:5
Laughter 98:9 175:1
 211:22 228:12 295:18
Laurie 1:22 61:15
law 2:9 7:20 8:15 13:1
 18:14 19:12 20:9 22:8
 23:21 57:15 59:13
 63:8 226:13,17 241:8
 251:13 260:11 262:11
 264:2 269:9,10,11
 296:11,11 311:11
laws 14:10 259:20
lawyer 71:5 143:4
lawyers 143:3 234:22
le 279:21
lead 31:16 129:18 130:1
 130:16 131:1 196:8
 196:17,22 197:4,6,18
 198:13 201:20 202:2
 213:10,16 215:22
 231:3 232:3 233:10
 233:15
leadership 34:3 62:14
 110:12 129:7
leading 70:8
leads 28:1 44:11 48:22
 73:5
League 7:3
leagues 7:22 10:2

- learn** 9:1
learned 9:13 11:7 12:7 91:6
leave 51:11 83:17 100:1 198:9 208:8 213:7
leaving 210:13 233:22
led 67:7 76:17
left 9:15 64:15 79:4 143:14 241:6
leg 21:19
legal 10:20 26:22 57:21 58:4 82:15,15,18 210:18 223:21 254:19
legalistic 84:17
legislation 2:5 125:22 126:7 185:12 187:4,9 187:13 188:7 241:3
legislative 126:11 242:11 243:8 296:10
legislature 187:22
legitimate 60:6,12 98:20
length 46:4 60:18 130:4 130:6 131:4,6 192:4 192:12,22 193:3 195:10 196:17 197:11 198:16,18,21 199:11 202:15 203:5 208:4 213:3 235:3
lengths 193:7 207:21 207:22 213:14
lesser 130:5 131:6 217:13 311:5
let's 65:1,3 74:3 99:22 118:21 120:16 141:18 150:15,18,20 159:6 163:7,13 168:11 170:13 172:22 199:3 205:4 212:13,13,17 212:19 216:13 236:18 250:9 320:21 322:20 323:11 326:10
letting 314:18
level 25:16 121:20 122:15 127:1,9 163:16,19 164:3 166:1 175:4,7,9 183:14 187:3 259:5 262:1,2 272:3,7 273:2 273:5,7 288:14 291:6 291:8,15 292:10 302:6 309:10 310:2 311:16 312:18 314:21 314:22 318:12 328:19
levels 121:15 127:5 175:12 176:15
liaisons 11:1
Lieutenant 1:17 2:8 240:19 241:7
life 30:5 63:18 232:10 284:12,14
light 146:8 227:5,7 252:13
liked 195:14
likewise 33:16
limit 54:11 257:18
limitation 36:19,20
limitations 133:3
limited 24:4 81:18 101:19 123:4 181:16 181:20 182:6 271:12
limiting 34:9,10
limits 54:18 70:6 92:12 128:20
line 132:21
lined 134:16 137:21
lines 231:15
Lisa 1:19 2:7 3:5 5:11 7:1 61:16 92:15
list 244:1 332:5
listed 112:1
listening 81:21 93:2
literally 199:20
litigate 269:21 270:3,5
litigated 285:16
litigation 128:14 129:18 130:15 196:7 254:5 279:20
little 8:12 29:17 62:22 63:1 71:2 77:4 95:16 96:3,17 113:13 131:15 133:20 135:15 145:7 151:3 168:7,22 181:10 275:11 319:8
live 69:1 107:6 152:21 284:5 300:9
loan 168:7
local 167:18 287:17
localities 176:11
located 192:18
location 25:15,15 208:13,17 211:2,11 211:13 218:20 219:1
locations 38:4 106:6
locked 213:14
lodge 267:6
logical 32:16 48:22 299:5
long 41:5 121:21 122:18 128:16 163:17 163:22 164:18 170:8 180:8 199:11 209:8 213:11 229:5 230:14 234:20 259:19 260:3 260:3 274:3 280:15 280:18,20,21 282:13 283:8,19,22 286:6 331:13
longer 12:9,18 26:10 28:3 32:5 41:6 69:13 106:22 107:9
look 7:10 29:10 30:12 31:20 71:18 78:12,16 79:15 89:2 144:21 148:4 155:9 163:13 164:7,12 165:18 166:14 169:16 175:10 202:18 215:3 237:6 248:1 261:19 262:4 265:2 275:10,12,20 278:1 292:14,21 293:3 296:14,16,19 300:20 309:15 326:8 326:16 328:18
looked 48:7 76:11 77:5 144:2,4 145:6 147:15 150:3 163:12 169:14 195:21 265:4 269:7 281:18 319:18
looking 19:19 39:10 80:8,16 81:14 96:18 102:5 109:13,16 117:18 138:22 164:4 175:11 196:18 250:19 262:22 310:5 326:5
looks 16:19 101:3 112:11
loops 263:7
lose 43:8 284:4
losing 28:18 29:1 37:1 55:2
loss 36:12 38:17 60:1 71:21
lost 36:19 69:10 72:4 326:3
lot 29:21,22 71:10 73:20 92:22 96:2 98:2 106:1,5,5 127:8 194:11 205:14 251:7 265:7 276:13 306:18 306:19
lots 9:21 30:6 196:1
louder 318:6
low 308:18
lower 149:21
loyalty 83:14
Lt 270:14 272:1,16,20 305:1,8,12,20 306:3,8 306:12 311:19 312:14 312:20
LTC 290:22 291:20 292:3 293:6,14,19 294:3 308:11,15,20 309:1,5,9 310:10,13 310:18,22 311:2,8 315:1,5 327:11 328:1 328:6 329:19,22 331:16,19
lumping 279:13
lunch 3:11 5:15 239:7

M

M 9:6
M.R 268:3
M.R.E 252:5,19 253:15 254:5,16 255:15,15 256:7 257:10 260:18 263:2 272:7,13 276:17
M.R.E.s 250:20
ma'am 99:13,16 104:3 104:12 141:20 152:15 171:16 174:12,18,21 227:20 236:6 237:9 237:13,18 239:8,22 240:10 241:21 290:22 293:6,14,16 301:13 309:5,10 310:10,13 310:18,22 311:2,8 327:11 328:1,6 329:19 333:4
Madam 4:9 74:11 217:2 290:16 295:13 296:1 297:18,19 303:8
main 111:17 165:5 243:10
maintain 146:11 172:10 253:4 258:18,22
maintained 281:4
maintaining 289:22 314:9
majority 13:22 26:16 268:22 329:18
making 25:17 40:18 71:10 157:9 160:3 161:3 169:21 201:15 206:9 210:16 214:18 214:19 234:11 272:9 281:10 322:9 323:19
manage 125:10
managers 242:8
managing 2:1 87:21 241:12
mandamus 243:20
mandate 5:3 21:16
Manhattan 8:15 98:7
manner 21:12 32:7 68:2 76:21
manual 251:11 296:3 298:3 325:20
March 331:4,5,6,7,8
Marine 1:20 19:1

109:19,19 110:3
 127:11,14 129:6,12
 130:8 131:9 138:8
 197:13 199:17 208:21
 241:10 246:16 300:7
 300:18 307:9
marriage 286:22
Marshals 287:17
Martial 3:14
Mary 2:8
material 61:9 161:1
 239:2 252:17 264:3
 297:5 325:22
materials 6:3 88:13
 105:4 243:12 244:18
 245:16,20 246:5,15
 250:19 251:10,14,15
 251:16,18,19,22
 252:5,7,9 253:3
 256:20 268:11 272:14
 286:1 290:14 291:3
 291:14,18 292:6,12
 292:17 298:16 310:3
 323:20 324:17 326:22
 328:18 329:8,14
 332:19
math 99:21
matter 19:10 39:5 72:20
 92:8 99:18 147:15
 185:10 201:19 213:11
 223:21 239:17 240:6
 244:4 260:9 299:17
 301:14 310:15,16,19
 312:22 324:16 325:10
 333:13
mattered 260:19
matters 74:10 199:11
 242:16 243:16 320:11
 320:11 325:7
maximum 218:19,22
MBSVCs 101:11
McCleary 2:1 241:11
 318:3,7
MCIO 12:20 13:10,17
 20:12 22:10 27:4
 33:10,16 34:3 44:19
 45:5 47:14 48:20 49:2
 49:15 50:19 58:9,14
 59:15 63:4 65:10
 66:13,17 68:17 72:16
 73:1 76:19 87:7,14
 90:14 91:14 92:20
 101:10 126:20 133:3
 146:4 148:22 180:3
 180:15 181:11 182:15
MCIO's 22:16
MCIOs 12:1,3,17 13:7
 20:8,16 21:3,16 22:4

22:6,10 23:16,20
 26:17 45:10,16 47:9
 48:18 49:14 51:6
 52:10 57:14,16 59:13
 60:18 65:3 73:19 76:8
 76:13,15 77:15 78:18
 79:4,8 81:5 86:16
 88:14 89:16,20 90:8
 90:12 91:21 92:1 94:2
 146:10 147:7 148:15
MCIOs' 52:13 57:19
 98:15
mean 15:12,13 42:6
 46:17 64:8 73:13
 82:19 96:5 97:2,14
 98:1 117:16 142:21
 143:2 144:15 153:2
 171:4 174:13 182:7
 184:4,9,13 194:21
 197:20 199:20 200:22
 202:16 204:12 205:9
 205:21 206:12 220:10
 245:8 249:13 255:11
 266:14 268:4,9
 271:14 272:15 282:5
 288:9 295:11 297:14
 300:16,19 304:18
 323:13 329:2 330:7
 331:10
meaning 208:14
means 78:22 85:8
 92:20 167:19 208:14
 209:3 222:13 287:10
meant 115:22 116:1
 145:1 166:7 194:5
 200:6 202:14 206:19
 211:21
measure 25:14
measures 187:13 188:3
 188:5,6,12,14
meat 324:9
mechanism 107:9,12
 119:21 142:19 143:10
 143:20 298:22
mechanisms 109:10,21
media 40:1 55:18
medical 315:17 319:20
medium 122:18 163:22
 164:18
meet 45:15 149:20
 275:3
meeting 1:5 4:5,7,12,14
 4:17 5:9 6:6,9,22
 111:6 122:4 138:6
 245:3,22 247:1
 302:17 330:11,17
 331:1,4 333:6
meeting's 333:12

meetings 11:8
Meghan 2:12
member 1:19,22 2:7,9
 3:14 5:10 6:5 7:4
 40:16 62:4 291:1
members 3:6,8,10 4:16
 6:17 7:7,13 10:7
 46:12 47:19 61:11,14
 62:6,16 69:4,19 83:9
 116:6,11,21 123:20
 127:6 128:2,10
 129:10 211:17 225:9
 242:4 254:19 320:15
 333:11
Members' 247:17
memorized 296:3
memory 28:16 104:10
mention 45:7 66:4 91:5
 208:1 263:10,10
mentioned 7:1 17:18
 22:3 23:5 48:19 78:13
 78:15 121:3 145:8
 202:21 287:4
mere 34:16
merely 274:9
message 142:8
messages 41:2,21 42:2
 55:18
met 1:9 68:14
method 53:11 137:17
methods 52:15
mic 242:5
middle 154:16,17
military's 10:16 21:3
 232:6
mind 62:22 80:15
 100:22 117:12 150:19
 195:15 240:5,8 310:6
mindful 152:2
minds 238:7
mine 163:15 187:19
minimal 45:14
minimized 39:1 60:7
minimum 128:20 129:1
 130:4 131:4 141:5
 164:15 192:11,22
 193:3 195:1,10
 196:16 197:11 198:11
 198:18,21 199:5
 204:21 211:7 213:3
 213:14 229:1,13
 230:8
minor 63:10
minute 90:14 99:12
 266:4
minutes 22:3 99:15,22
 173:9 239:12,14
misconduct 9:18 52:20

misdeemeanors 203:19
misguided 56:20
misimpression 99:5
missed 141:19
misstate 255:11
misstated 204:7 206:16
mistake 206:10 301:1
misunderstanding
 233:8
misunderstands 86:3
mixed 49:2
mixing 255:5 313:22
model 91:10
modern 39:2 60:7
modification 180:20,21
 187:11
modifications 126:20
 149:2 152:22 180:2
 183:9
modified 54:2 215:20
modify 153:15 211:4
 218:15 246:11
modifying 173:19
module 95:14
moment 235:8 316:8
monde 279:22
money 89:18 125:11
monitor 24:14,22
monitored 22:13
month 195:9,11
months 28:12 45:8
 46:11 51:21 129:14
 192:19 194:9 198:10
 200:1,1 202:22 205:6
 209:1 229:6,6,6,8,10
 232:16 234:20 239:5
 245:2 330:4
moot 174:10 283:18
morale 83:10
Morgenthau 9:6
morning 4:3,9,10,12
 7:12,15 25:2,8,22
 61:7 147:18 165:13
 173:11 180:7
motion 100:5 246:4
 270:18,19 271:18,19
 292:14 300:22 306:22
 307:6,11 308:21
 309:22 310:9 313:2,3
 314:13
motion-related 264:13
mouth 83:13 268:5
mouthful 12:2
move 63:13 73:21 74:3
 83:20 100:11 104:11
 129:14 143:9,13,16
 162:14,21 211:1
 236:20 237:21 285:5

moved 198:1 202:4,11
232:12
moves 183:2
moving 122:22 143:12
186:3 197:14 209:2
210:11
MRE 294:10 322:17
multiple 102:17

N

N 3:1,1 4:1
naive 213:20
Nalini 2:11 241:6
name 253:13 267:8
named 215:9
narrow 18:3 39:9
183:21,22 188:7
279:15
narrowly 271:12
national 4:21,22 7:3
131:14 242:18 251:10
251:16,21 261:13
262:17
nature 13:9 52:15 86:3
89:5 116:8 263:7
Navy 1:19,19 2:13 10:9
108:21 201:2,4 202:9
241:10 246:16 297:9
300:7,17 301:5 307:9
Navy's 109:13,17
nays 171:1 177:15
186:15 216:18 231:10
235:22
NCIS 96:9 144:18,19
near 45:14
necessarily 46:3,16
129:9 143:22 192:22
248:6 257:5 285:6
320:5
necessary 12:4 27:13
29:13 32:9 34:14 38:2
49:4 53:8 58:2,7,18
67:18,19 91:2 110:8
114:2 124:22 126:1,4
126:7 132:14 139:15
139:18 140:22 141:11
159:17,17 161:2
164:15 185:8 187:6
187:14 188:9,10,12
188:14 221:18 224:2
232:2 235:7 291:11
308:16
necessitated 273:5
necessity 137:7 308:3
308:10
need 30:8,20 43:5
50:10,14 78:7,8 80:4
86:2 91:17 94:22 95:1

95:2 106:7 123:9
124:7 125:15,15
126:9 133:4 142:15
144:21 145:2 149:22
150:1 160:15,16
161:8,18,21 167:3
176:18 182:6 183:20
206:14 218:15 219:10
232:14 233:17 265:8
284:16 288:18 296:7
296:20 297:6 310:3
311:6
needed 11:11 22:4
24:10 34:1 37:17
75:15 119:9 120:4
123:6 199:10 210:5
232:2
needs 38:2 66:20 87:8
108:10 143:22 144:2
144:5,10 145:11
149:20 162:3 167:10
205:18,18 298:22
299:6 327:13
negative 28:15 41:15
42:6,8
negatives 206:2
neither 49:21 75:20
never 94:10 96:10
144:19 197:14 214:17
254:13 265:12 270:21
281:13 300:2,15
308:4 309:6 312:10
312:17 317:22
new 18:14 22:13,16
24:21 33:7 99:21
106:21 107:10 127:16
127:16 128:12 159:20
177:9 194:6,6 203:18
208:9 209:5 233:12
285:17 318:17
newly 45:3
next-to-the-last 231:14
NFL 10:3
nice 214:8
nine 6:10 200:1 202:22
no's 151:12 171:2,7
177:16 186:16 216:19
236:2 323:10
nobody's 302:9
nodding 331:15
non- 23:13 254:6
non-attribution 23:7
non-lead 235:6
non-military 254:6
288:7
non-penetrative 19:4
19:14
non-privileged 314:8

non-sexual 16:6
non-sexual- 203:17
non-sexual-assault
195:13
norm 37:6
normal 202:21 217:14
North 1:10
notated 115:14
note 26:8 45:9 102:15
119:10 130:10 133:14
134:15 137:3 140:4
159:6 172:8 290:13
noted 14:17 17:9 45:1
47:21 48:17 51:22
105:22 131:12 243:1
notes 152:2
notice 126:4 224:9
242:16 243:15 272:5
273:2 284:20 289:16
294:4 305:6 306:11
318:20 325:1,7,11
330:15 332:15
noticed 63:2
notify 27:4 299:11
notifying 46:14
noting 102:8
notation 166:21 169:5
November 243:21
244:13,22 245:4,22
246:7 247:15 249:7
250:4 303:11
number 12:13 15:2
17:10 25:10 28:22
34:11 56:12 76:16,22
78:20 79:12 83:15
89:21 119:7 125:7
156:17 164:18 168:21
191:18 192:13,15
204:5 214:6 220:11
225:9 229:9 249:4,5
272:19 283:9,10
287:9
numbers 75:13 142:11
148:9 287:13
numerous 52:10 59:17

O

O 3:1 4:1
object 34:13 148:7,13
149:5 156:3 273:22
objected 34:22 246:10
objecting 274:22
objection 154:2 156:1
157:4 159:6 170:14
177:2 194:8 217:18
221:17 222:14,16,17
223:1,4 226:22 227:2
228:2,6,8 233:21

320:18
objections 177:4
objective 93:16,18
129:21 130:21 196:20
objectives 93:4
objects 152:21
obligation 126:21
183:13
observe 55:4
observing 250:16
obstacles 33:22
obtain 33:19 60:19 67:5
obtained 27:1 244:12
obtaining 37:17 59:18
123:6
obviates 137:7
obviously 64:9 92:19
95:12 97:9 103:2
125:10 126:11 197:12
197:21 314:3
occasions 28:12
occur 18:11 40:18
54:17 124:5
occurred 18:9 32:9
45:12
occurrence 272:9
occurring 156:21
occurs 83:17 147:8
October 11:9 243:5
offender 65:17
offense 13:2,3,21 14:21
17:14 18:5 40:2 51:9
54:9 86:13
offenses 5:7 10:14
13:12 24:5 70:20
72:14
offensive 63:11
offered 38:15
office 2:2 8:16,17,20
9:15 19:10,18 26:17
27:1 74:9 98:7,8
121:3 167:21 241:13
287:18
officer 63:9 141:7
224:20 229:3 232:14
232:15 301:17,19
officers 300:8 302:1
offices 138:7 178:16
official 2:14 4:5 40:18
65:15 217:7,13
official's 183:12
officially 304:4
officials 47:14 215:9
offsetting 101:5
often-cited 12:17
oftentimes 29:4 42:20
43:3,8 69:10
OIG 86:14 148:3

old 77:10 106:16
 107:15 204:8,10
Oler 2:3 240:15 263:1,6
 264:6,9,11,19 297:19
 297:21,21 298:4
 306:1 318:18 321:11
 324:2
once 36:4,6 54:13
 107:8 180:17 197:16
 271:18 273:11 309:7
one's 115:9
one- 199:21
one-time 21:18
ones 97:14 127:19
 167:3 194:11 208:13
 312:13
ongoing 72:7 83:21
 91:16 92:18
onion 30:2
open 4:6 50:22 51:11
 69:18 80:15 319:5
opening 4:11
openly 38:10
operation 294:12
opinion 12:20 14:22
 16:22 50:1,9 67:17
 83:3,4 176:3 206:7,15
 297:8
opinions 6:5 15:10
opportunities 36:13
 72:6
opportunity 7:14,15 9:1
 9:5 67:4 71:3 141:1
 150:10 237:15 285:19
 294:13 299:12 325:22
 330:15 333:2
oppose 295:6,11
opposed 13:3 103:19
 151:10,16 162:18
 167:1 170:22 176:19
 177:14 179:14 180:21
 186:14 188:22 189:6
 189:9,10,12 191:15
 197:17 207:21 211:3
 216:17 219:17,18
 220:1 231:8 235:21
 238:20 323:1,8
opposition 188:17
 247:8
opt 83:22
optimal 121:19 122:14
 163:16,18 175:3,7,9
 175:11
options 84:4 303:14,15
orally 329:10
oranges 255:5 313:22
order 11:6,10 63:13
 75:10 114:21 117:13

119:3,19 121:15
 136:18 140:20 146:11
 170:14,17 192:6
 196:17 197:19 230:20
 265:15 271:1 291:6
 292:7 298:16 302:4
 324:18 328:19
ordered 267:5
ordering 268:10
orders 264:16 296:21
organization 76:19
 121:12 149:1 164:8
 167:9 180:5 182:15
 183:6
organizations 18:22
 121:21,21 122:16,18
 126:3 127:2 163:17
 163:20 165:11 166:6
 166:12,13 170:7
 175:8,22 176:12
 181:8 184:1 224:5
 287:7
organizations' 122:8
originally 235:2 323:12
Orr 2:4 240:22 241:2
 257:17 258:4,9,11,13
 258:15,20 259:11,13
 259:15 260:8,19
 261:5,8 262:6 268:15
 268:19,21 269:2,10
 304:9,11,18,22 306:7
 311:21 312:19,21
 313:7,18
ought 63:1 77:4 180:19
 281:22 332:4
outcome 17:3 41:18
 288:10
outcomes 275:19
outcry 40:19,21,21
 166:20
outlined 200:4 290:13
Outreach 1:18 240:21
outright 30:3
outside 6:19 166:1
 287:5
outstanding 61:13
overall 48:4 56:6 73:6
 78:12 81:5 96:19
overburdened 19:15
 44:16 90:21 148:16
overhaul 79:17
override 276:16
overrule 257:9
overruled 273:14
oversaw 8:22
overseeing 65:15
oversight 19:7
overstatement 82:21

overstates 139:14
overtaken 316:17 327:6
 327:19
overturned 311:17
 312:1
owing 52:14 53:2
owner 313:15 318:19

P

P 2:13 4:1
p.m 239:18,19 333:14
package 110:11
page 111:19,21,22
 112:11 113:16 115:10
 115:11,11 117:6,6,7,8
 117:18,19 118:22
 132:7,8 134:15,19,22
 135:2,4 137:11,18,20
 137:22 138:15,18
 139:1,22 140:8,16,17
 152:22 153:14 154:14
 154:18 155:4 157:6
 159:11 161:12 162:15
 178:14 220:19 221:20
 221:21 222:18 223:7
 223:8,10 227:18,20
 228:10 230:1 244:14
pages 117:2,10 244:2
pain 42:10
Palomino 2:6 240:17
 295:13,15,19 296:1,5
 296:9
panel 1:3,9 3:4,6,7,8,9
 3:10,12 4:6,15,16,20
 5:13,15,19 6:3,7,9,17
 7:13 10:8 18:17 24:17
 24:21 25:7 39:4 61:5
 61:12 76:4 80:2,3
 81:6,7,21 89:7 99:7
 100:1 102:8,16
 104:20 108:16,17
 112:7 116:7,10,11
 125:6 128:18 165:10
 209:11 210:2 214:16
 214:18,20 215:1
 238:1 239:3 242:3
 244:11 247:1,17,19
 250:22 282:11 294:16
 309:2 320:15,20
 329:18 333:11
Panel's 244:12,21
 245:3
panels 166:15
paper 107:4
papers 264:13
paragraph 132:9,19
 134:9 135:22 153:13
 154:8,16,17 155:4
 159:11,19 162:15
 222:1,2 228:11
paralegal 121:4
paralegals 10:20 73:3,9
 73:12 107:22 108:6
 121:13 122:8 163:10
 166:16
parallel 93:8 274:5
parochial 175:13
 177:10
parsed 208:18,19
part 17:21 19:9 43:11
 44:12 53:2 62:15
 65:10,18 69:22 70:3,8
 70:11 72:20 78:2
 79:22 82:5 95:19 97:2
 115:2 139:11 162:2
 168:17 196:4 209:17
 215:17 216:7 220:13
 223:19 253:12 256:17
 257:17 263:12 268:11
 271:10 292:6 294:3
 294:16 304:17 305:9
 323:21 326:4
parte 313:11 315:2,3,5
partially 84:10
PARTICIPANT 260:4
 290:16
participants 4:13 25:9
 25:16 193:21 195:3
 298:21 314:10
participate 13:16 192:7
 242:13,21
participation 54:18
 333:7
particular 11:14 110:15
 121:2 125:18 143:2
 152:9 181:5 192:13
 194:21 195:4 303:14
particularized 141:6
 229:2
particularly 48:15
 59:19 127:10,14
 321:7
parties 195:6 253:4
 271:11 298:9 324:18
partly 71:22
parts 18:3
party 16:14,17 242:14
 242:22 292:9
passed 49:7 243:1
 244:3
paternalistic 85:5
path 300:1
Patricia 1:15
patted 86:8
pattern 66:10
Paul 164:7

pay 164:6
peeling 30:2
pendency 50:11
pending 46:13,15 95:7
 104:16 229:16
penetrative 13:3 14:16
Pentagon 65:16
people 9:2,3 10:15
 23:12 26:11 40:7
 42:17 52:6 65:14
 69:15 77:16 78:22
 79:18 83:4,11,19
 86:15 87:18 101:15
 108:7 115:19 127:19
 142:22 153:6 155:9
 163:12 164:6,12,13
 168:13 169:7 175:19
 190:4 192:6 193:9
 194:17 197:15 198:12
 199:12,22 202:14,20
 205:13 211:1 213:8
 213:10,13,14 257:15
 276:1,6,18 279:12
 282:14 285:1,11
 287:11 295:10 297:1
 300:6,19 302:5 309:3
 317:21
perceived 58:21 67:14
percent 15:16 37:8 40:5
 40:6 85:16,18 164:19
 164:20 294:10 327:17
percentage 77:20 177:5
perception 80:11
perceptions 10:15
perfect 41:17 69:5
 169:5
perfectly 149:13
perform 271:13 272:22
period 8:21 29:1 56:16
 141:5 162:7 173:16
 204:2 209:3,6 219:1
 229:1,13 330:2
periods 200:2
permeating 257:12
permit 129:16 130:14
 196:6 242:20 292:18
 293:1 309:15
permitted 49:22
permitting 22:7
perpetrator 40:14 41:22
perpetrators 40:10
person 31:2 43:4 54:9
 65:17 74:7,7,7 194:8
 194:15 195:14 208:5
 224:18 233:17 250:20
 263:15,18 275:12
 278:20 279:2,7
 284:14

person's 64:12
personal 10:4 38:20
 60:4 83:14 284:1
personally 8:22 41:16
 55:4 82:16 160:20
 217:12,15 219:3
 294:15
personnel 121:14
 122:10 163:11
perspective 12:22
 299:9,16
persuaded 210:13
pertains 111:6
Peter 164:6
Peters 2:12 88:20 89:4
petition 243:20
phenomenon 66:22
philosophy 9:11
phone 26:13 28:20
 38:13,18 39:5,8,19,22
 41:7,8,18 46:22 60:2
 68:16,22 69:12,13
 70:17 71:1 84:7 221:4
 221:19
phones 28:20 38:12
 39:3 40:10 56:14,15
 56:17 59:20 60:9
photographs 55:17
phrase 213:5
phrased 113:4
phraseology 113:12
physical 16:6
pick 83:20
picture 41:3 96:19
pictures 41:3 84:9
piece 100:20 101:3
 102:5
piecemealing 148:13
pieces 77:4,17 198:6
pilot 131:19
pink 113:16 132:9
 140:19
place 14:20 18:13 28:5
 39:6 40:17 49:19 50:4
 172:4 180:16 206:21
 208:15 210:14 296:18
 297:6 298:22 299:19
 299:19 312:4
placed 126:22 133:22
 134:1 135:6 138:2,12
 183:13 299:17
plain 264:12
plan 116:15 118:16
play 188:13
played 278:1 293:8
plays 203:5
pleading 313:14
pleadings 263:12,13

264:4 265:5 326:14
please 99:22 114:12
 151:21 228:19 239:21
 250:14 254:20 259:17
 290:2 297:20
plenty 223:22 234:22
plus 112:10
point 17:22 18:16 27:3
 67:2,15 78:17 86:6
 88:10 97:15,20
 100:18 101:4 109:2
 110:2 111:8 118:3
 126:8 135:6 137:13
 147:10 148:14,17
 155:14 161:5 172:14
 174:10 175:10 188:1
 197:12,16 200:16
 205:10 207:1 244:10
 270:13 271:4 272:8
 273:13 282:17 296:8
 301:11 302:13 304:6
 305:17 314:7 316:15
 317:2 328:14 329:12
pointed 14:22 15:19
 28:14,16 29:3 35:17
 36:22 37:5,15 40:12
 43:19 52:6 84:17
 86:14 110:10 123:19
 124:17 209:1
pointing 67:11 159:5
 206:3
points 105:7
pole 176:13
police 13:4,13 15:8
 16:10 19:2 26:10
 80:21
policies 9:18 11:17
 19:12,22 20:3,22 21:5
 25:3 33:16 45:5 47:22
 52:10,14 53:2 58:20
 59:6 61:2 66:13 67:5
 67:6,15 68:8 92:5,6
 92:14 102:12 211:6
 218:16
policy 2:5,8 10:4 13:6
 13:18 14:5 19:13 20:4
 22:1,13,16,22 24:9,15
 47:16 63:2 66:20
 67:22 88:13 91:9,14
 219:2 241:3,8
politically 176:9
portion 132:10 140:19
 141:3,8
portions 165:2 258:21
position 24:14 71:11
 141:1 207:4 208:6
 230:22 231:2 232:13
 304:7 306:14,16,17

316:16
positions 129:13
positive 56:10
possessing 251:21
possession 29:7 82:11
 158:15
possibility 65:13 233:2
 292:22
possible 9:9 34:8 43:14
 43:22 44:22 102:7
 146:13 169:16 218:19
 262:9
possibly 28:9
post-243:16
post-conviction 326:14
posted 4:18 6:19
potential 38:7,14 72:4
 125:1 246:7
potentially 55:13
practicable 211:10
practical 90:13 286:14
practice 25:3 33:1
 242:10 246:3,6,7,12
 272:11 281:2,4,8,14
 281:16 303:19,22
 304:5,12 305:4
 307:10 311:4
practices 11:18 33:11
 53:3 88:9 102:12
 281:10 303:16
pre-2013 13:10
pre-argument 326:10
pre-trial 159:20
precis 104:11
preclude 309:17
prefer 85:11 105:12
 304:5
preferable 85:17
prejudge 229:4
preliminary 324:16
premature 48:14
 186:22
prematurely 190:9
 191:2
prepare 43:6,17,22 53:9
prepared 296:14
 303:11 306:15
presence 34:16 54:10
 61:17
present 1:12 4:16 11:13
 14:4,10 17:19 19:13
 20:18 51:6 78:9
 104:10 147:11 310:12
 310:14 325:19 327:1
presentation 3:4 5:10
 61:20 62:3 78:16
presented 64:5 104:14
 105:22 112:7 138:5

160:3 214:17 215:4
234:18 239:2 269:4
329:8
presenter 7:1
presenters 48:2
preserve 252:3
President 244:16
288:19
Presidential 302:4
presidentially-appro...
257:9
presiding 1:11
press 56:3
pressure 44:21
presumptively 276:10
pretty 95:21 133:9
166:4 255:3 314:17
prevent 245:15
prevented 58:16
prevents 55:11
previous 138:13 311:21
previously 106:15
109:7 165:10 193:9
194:12 195:6,12
253:21 257:4 285:16
289:15 319:6 326:1
priest-penitent 276:4
primarily 21:15
primary 105:20 144:19
principal 155:8
principle 102:22
principles 68:9
prior 13:1 31:12 46:19
48:22 81:12 128:13
128:18 129:17 130:14
193:6 195:17 196:6
213:19 217:21 240:5
244:19 252:1 253:1
257:13 326:11
prioritization 92:9
prioritize 46:13
privacy 38:19 56:17
60:3 272:4 273:1,6
276:1 284:13 297:4
297:15
private 9:19 37:6
205:20 287:8,13
301:21
privilege 261:17 266:2
266:7 275:6,20
276:18,20 277:1
279:7,8 288:20 289:6
302:2 315:10,11,16
316:1,2 318:15
328:21
privileged 251:18 252:4
253:13,17,22 254:14
257:3,7 258:8 259:9

261:12 262:19 263:11
263:19,22 264:3
265:4,14 273:14,15
274:8,16 276:10,10
277:7 279:15 285:8
286:1 287:21 294:16
314:4,5,16,17 316:2
318:2,11,13 319:6,10
319:17,18 326:2
privileges 251:2,4
256:3,5 262:20 276:3
276:19,21 279:9
pro 314:13
probable 45:11,13,18
50:1,6 51:8 68:14
70:16,22 90:15,16
91:15 92:7
probably 72:19 77:1
100:18 104:7 105:19
113:19 126:9 132:16
167:14 208:14 283:8
327:6 329:1,16
332:12,22
probe 30:15 32:11
probing 31:8 34:17
35:12
problem 7:20 8:5 12:17
23:22 27:16 31:7 50:8
64:17 67:14,18 70:1,8
75:3 78:13 94:17
95:15 96:6 97:2
101:22 102:2,5 103:2
108:9 116:19 138:8
143:20 144:22 145:18
160:12,15 167:17
169:4 175:5 182:5
202:3 208:10 214:18
257:10 268:9 273:18
319:2 333:8
problematic 35:18
54:16 125:4
problems 25:20 26:1,3
26:4 39:1 54:16 60:10
85:1 97:6 98:19 232:9
procedural 221:2
procedure 250:7
267:17 279:14,21
289:19 310:15 313:12
314:18 321:8,10
328:5,13,16 329:3,4
331:11
procedures 49:15
58:19 59:7 61:2 66:13
88:14 106:9 189:19
244:17 281:6,7
285:18 316:16 324:10
325:21 326:5,15,21
329:6

proceed 64:1 100:1,2
320:17
proceeding 180:19
254:9,17 275:11
proceedings 1:3 4:6,15
4:20 5:5 6:7 10:8
238:1 242:14,21
243:17 253:14 280:13
283:14 286:8
process 47:10 71:17
79:1 93:15 106:21
107:20 114:1 123:21
124:14 129:20 130:20
132:13 133:2 139:8
148:19 153:2,4
159:20 192:8,9
196:20 214:9 225:11
252:17 258:17,18
293:16 297:18 305:9
processed 189:20
190:7
processing 51:15 55:21
PROF 62:12 65:9 66:11
67:20 72:10 74:11
145:16 147:5 151:1,6
169:22 170:5 185:7
185:16,21 186:2,5,19
186:22 187:15,19
199:19 200:8,10,17
200:20 206:22 207:3
207:9,12,16,20
210:19 211:14 217:1
217:6,9 218:1,3,5
219:4,8,10 221:8,12
221:16 226:11,16
238:9,15 303:8
304:10,16,20 305:7
305:10,17,21 306:5,9
306:13 316:17,21
323:15 328:8 330:21
professional 7:21 10:2
16:22 59:2 67:17
297:17 300:9
professionals 8:6
proffer 254:3
progeny 296:11
program 95:22 109:13
109:17 126:20 131:19
180:3,3,15 181:11
242:8 305:3
progress 72:7
prohibited 58:20
projection 164:22
promotion 198:8
promotions 203:1
prompt 57:12 58:8
74:20
promptly 57:16 58:6

pronounced 48:6
proper 165:21 170:17
175:21 275:19 285:12
291:12 292:8 308:17
properly 165:2 176:6
193:2
proposal 20:4 22:2,2
155:14 187:11 213:1
218:2 223:13,18
231:6,11 235:11,14
236:4 242:11,15
245:6,7,14 247:3,8
249:5,10,11,15 250:2
289:17 290:20 295:7
299:3 304:14 306:4
306:17 307:20 309:9
309:11 318:18 323:22
328:4 329:9 330:8
331:21
proposals 228:16 243:8
327:7 330:10,16
propose 222:2 322:10
325:18
proposed 3:13 6:1,12
19:21 24:8 103:16
114:6,9 119:2,14,16
119:18 122:5 125:18
129:15 130:12 142:3
145:19 150:20 151:5
163:4 170:15,18
179:21 186:8 191:20
212:11,12,20 216:20
245:5 246:17 247:16
247:20 250:11,17
254:11 256:1 287:4
298:6 316:8,10,12
323:12 325:12 329:15
proposes 235:18
proposing 153:13
227:6 306:13
proposition 203:3
prosecuted 251:17,20
prosecuting 72:14
131:20
prosecution 8:18 10:13
14:20 17:2 24:18
39:14 53:9 56:7 57:8
58:10 72:8 73:2 76:16
77:7 81:13 82:12 91:7
98:5 120:2 122:17
123:4 124:9 125:1
127:1 130:16 131:10
142:10 144:7,14
145:4,7,10 146:2,16
146:22 147:1,19
149:22 150:1,2
163:21 165:10 166:6
166:20 169:7 172:16

173:5 176:10 180:6
 182:4 183:19 185:2
 193:9 194:4,7,19
 195:19 201:17 213:17
 213:20 224:18 261:3
 261:14,22 267:5
 284:9 313:13 318:21
prosecution's 185:3
prosecutions 54:5
 76:22 77:1,19,20
 177:6
prosecutor 8:16 32:1
 42:1 43:7,16,16 45:15
 45:21 50:5 57:6 72:17
 73:4 82:8 86:2,5 91:2
 91:18 94:18 95:16
 98:1 210:17 284:2
prosecutor/MCIO 44:2
 89:10
prosecutors 10:19
 36:15 44:3,11,18 45:1
 45:20 46:7,9 48:11
 49:1,5 50:11 53:13
 55:19 56:1 57:3 60:18
 73:19,20 74:5 76:8
 78:7 90:20 92:1 94:4
 94:4,7 95:15 96:10
 101:22 106:6 124:10
 144:18 147:6 148:6
 167:7 168:9 169:12
 203:19 225:10
prosecutors' 43:21
protected 286:17
protections 309:2
protest 287:15
protocols 44:20
prove 45:22
provide 22:4 35:8 54:19
 75:11 85:3,9 111:18
 119:5,20 124:21
 218:17 299:11 306:10
 325:22 330:2,4 332:3
provided 6:17 49:2
 105:3 107:14 108:18
 109:9 110:7,18 124:6
provides 54:21 142:19
providing 49:20 165:21
 325:6
provision 131:14
 242:17,22
provisions 326:13
prudent 24:7
psychiatric 225:18
psychological 263:15
 263:17 266:2 278:20
 279:5 286:16
psychotherapist 266:6
 276:2

psychotherapists
 287:8
psychotherapists'
 252:16
psychotherapy 285:9
 288:2
public 1:5 3:15 6:6,8,9
 6:10 9:5 61:12 89:7
 110:2 122:1 127:13
 138:5 245:3 247:2,3,9
 249:6,10 253:12,12
 263:14 283:5 290:14
 291:2,19 315:22
 327:9,12 330:1,3
publicly 52:14 88:17,22
 89:3
published 177:1 262:14
 294:1
pull 242:5 306:18
pulled 113:3 199:14
punishment 241:17
purely 84:17
purpose 289:1
purposes 190:3
pursuant 320:13
pursue 21:11
purview 187:8
pushing 232:7 288:4
put 12:22 35:20 61:6
 62:7 71:16 97:19
 110:11 116:7,9 120:6
 134:11 143:3 146:21
 150:2 159:3 163:18
 164:9 180:10 187:4
 194:19 217:2,11
 222:6 243:22 252:13
 291:1 302:19 322:10
 332:4

putative 16:15

Q

qualifications 192:5
 193:21 195:1,3 203:1
 213:16 215:22
qualified 121:13 122:9
 129:22 131:1,20
 163:10 168:13 193:2
 193:12,15 196:22
 198:7,13,16,17,19
 199:8,12 213:8,10
 230:14 231:21 233:15
quality 48:4 49:2 52:11
question 31:22 34:4
 35:1,4 42:14,16 43:7
 43:8 54:22 55:5 58:21
 66:17 67:22,22 68:10
 69:20 70:4 72:11
 74:14 76:11 78:2

92:15 96:12,12
 114:10 143:17 155:11
 167:22 182:9 199:20
 200:5,18 206:18
 214:8 221:3 256:12
 260:16 290:6 301:22
 302:2,12 313:20
 314:14 318:1
questioned 55:9 156:18
questioning 32:21
 33:17 59:12
questions 29:15 30:17
 31:8,11 33:6 34:14,18
 35:9,12,16,19 55:7
 59:2 61:8 62:8,20
 66:18 67:19 97:11
 99:6 167:22 240:8
 246:20 247:10
queue 63:15
quick 172:19 245:13
 246:9
quickly 44:22
quite 40:19 133:10
 229:16
quo 252:3 253:4 258:17
 258:19 259:1 314:9
quoted 20:6

R

R 2:15 4:1
R.C.M 245:5 246:11,18
 263:3 264:15
radical 330:7
raise 285:1 309:22
raised 25:10 46:7 48:12
 57:2 70:1 71:8 102:9
 169:2 208:20 301:11
 332:14,16
raises 56:5
raising 102:17
randomly 301:19
rape 14:3 251:13,18
 259:20 261:13 262:18
rapport 36:17 72:18
 82:8 86:2
rapport-building 36:13
 72:5
RCM 126:10 298:7
re-interview 87:8
re-voting 249:13
reach 24:12
reached 19:17,18
reaching 48:22 155:11
reaction 55:5
read 98:13 104:8
 110:16,20 114:6
 121:9 133:1,20
 135:22 136:1 138:3
 140:20 152:3 190:4
 198:15 212:5 215:15
 215:16 217:15 250:16
 250:20 251:11 255:20
 264:12 267:2 293:7
 296:12
reader 160:7 171:22
reading 216:3
reads 119:3,19 122:6
 125:19 126:17 129:16
 130:13 132:11 139:9
 140:19 141:3,4,9
 157:1 235:4,8 257:20
ready 6:22 100:21
 150:8 170:19 202:1
 231:4
reaffirmed 252:12
real 40:22 42:9 67:18
 143:22 205:12 242:14
 242:21 319:3,7
realize 38:13 41:17
 153:9 160:8 321:13
reason 43:12 66:3,5
 67:21 76:11 79:22
 90:19 146:5 163:13
 165:6 166:10 185:8
 224:3 256:13 257:1
 257:18 314:11 318:8
 318:14
reasonable 45:22 308:3
 308:10
reasonably 75:15 119:8
 119:10 120:6 291:11
 308:16
reasons 38:15 53:5
 56:13 59:21 63:17
 90:18 91:22 124:21
 181:9 200:3 216:4
 289:13 294:18 310:4
 317:5
rebut 95:1 285:20
recall 104:13 105:18,21
 120:20 169:3 202:6
receive 6:7 16:16 20:10
 26:11 57:16 58:7
 125:13 242:15 250:18
 305:6
received 6:8,10 11:4
 45:3 52:16 68:3 106:2
 108:15 247:4,6 250:4
 331:20
receives 50:19
receiving 65:12 166:22
 237:11,12 326:21
recognition 24:2
recognize 25:13 58:8
 63:20 67:9 194:17
 302:5

recognized 50:15 53:16
84:21 102:16 276:12
recognizing 101:4
148:18 297:6
recollection 69:5,7 85:9
201:14 208:12
recommend 22:22
23:10,19 24:21 67:7
97:8 108:18 152:7,14
155:5 190:4 229:12
235:10 237:3 247:19
323:17
recommendations
20:20 24:15 25:18
26:4 51:4 52:5 57:11
74:16,17 75:5,7,22
76:5,7,12,15 87:1
89:9 91:13,20 92:16
100:12,13,22 101:2,8
101:20,20 104:20,22
105:9 108:17 114:11
114:14 116:16 118:22
132:2 137:5 139:2
141:17 142:5,18
149:15 152:6 176:7
191:20 214:13,14,15
214:16 215:1 239:2
244:1,9 283:3 319:2
322:12 326:17
recommended 18:19
49:13 107:13 154:22
201:5,14 205:11
259:6 305:5
recommending 184:1
210:3 248:5 302:15
304:1
recommends 21:21
22:12 58:1 59:10 60:9
60:22 98:18 136:17
record 99:19 131:10
176:22 189:14 194:3
239:18 246:14 253:13
258:1,4,13,21 260:22
262:7 264:13 267:5,6
268:11 277:19 278:21
290:15 291:19 292:2
292:5 293:8,22
295:15 297:10 298:5
298:12 309:14 317:20
318:9 319:9,20
333:14
records 252:16 257:19
258:2,5,8,21 259:10
259:11 260:13 261:20
262:3,11,17,18,18,19
263:16,17,20,22
266:17 269:4 270:12
270:17,21 271:2,7,15

272:2 273:11 279:6,6
279:7 283:7 285:9,10
286:16,19 287:16
288:8 289:6,7 293:9
298:8,20 299:13,18
300:2,15,20 301:2,3
301:18,20 302:7
305:8,15 307:11,21
307:21 308:1,6 310:8
310:21 311:1 312:2,7
312:9,11,17 313:16
313:21 314:19 315:17
315:22 318:2,20
319:5
recounted 38:5
redoing 248:8 250:8
reduced 52:18
reducing 60:16 91:20
reexamined 77:15
refer 12:18 88:19 152:1
152:4
reference 92:12 94:17
226:6
referenced 93:14
references 263:3
referral 122:16 123:22
124:2 163:20 164:16
referred 19:9 51:4
178:4 220:15
referring 112:13,18
113:21 134:18 313:5
reflect 99:3 201:1
246:11
reflected 247:18
reflects 133:11 244:20
267:22
refresh 104:9
refuse 287:15
refuses 55:16 298:20
regard 8:11 12:7 29:22
30:19 76:1 87:15
111:5 112:12,15
146:20 174:16 268:8
315:16 318:2 327:2
332:14
regarding 47:14,20
53:3 59:14 60:15
66:11 75:22 108:16
114:4 129:3 157:11
158:12 160:5
regardless 13:8 16:1
regards 58:12
regime 93:7,8
regimes 93:9
Register 294:4
regular 83:19
regulations 89:1
185:10 300:10

reinforced 124:10
reject 214:22
rejected 235:12
relate 75:6,19 86:7
115:1 198:6
related 5:7 6:11,13,14
9:17 96:17 142:18
167:2 198:18 213:7
224:19 242:9 296:11
relates 181:14 196:5
215:22
relationship 72:18 86:4
92:18 96:19 282:15
relationships 44:2,4
72:21
relatively 21:18 26:18
63:10 88:1 272:19
release 260:14 271:5
271:12,15 292:8
298:20 299:12 305:15
311:7 315:15,15
325:9
released 245:16 259:1
271:7,11 272:2 291:4
291:15,20 298:8,9
301:3 307:22 308:1,4
323:21
releases 298:13
releasing 323:20
relevance 225:19
relevant 34:14 37:18
39:15 54:20 55:17
82:11 266:8 278:2
316:3
reluctant 30:10 45:2
reluctantly 295:6
rely 167:20 297:16
relying 303:18
remain 22:6 50:17,22
264:15 273:15
remained 274:15
remaining 132:5 282:11
remains 227:16 236:3
remand 289:12
remarks 23:5
remedies 60:11 98:19
remember 66:2 169:3
remind 47:7 48:7 51:13
remove 59:11 67:8
74:22 98:15 235:17
235:18
removed 315:12
removing 58:12 59:15
render 25:3
reopen 45:2 49:8 51:11
reorganizational 149:2
reorient 146:15
repeat 142:6 294:9

repeatedly 44:3 52:16
replace 115:7 141:4,13
replied 224:1
reported 14:19 16:14
16:16 17:13 18:11
34:16 46:10 87:17
121:15 122:11 128:10
175:6 178:5 265:1
reporting 15:3 78:22
reports 17:17 21:16
26:12,16 30:3,6 37:19
53:1 71:15 79:2 85:2
102:17 138:3 180:8
represent 298:17
representation 47:15
48:1
representative 88:6
representatives 129:12
246:19 321:16
represented 195:12
representing 36:9
represents 62:15
repudiate 313:9
request 35:7 52:3 88:21
106:10 109:21 123:18
171:13 182:16 189:19
220:12 246:1 305:6
requested 104:17,18
171:17 246:22 259:6
requesting 109:11
110:12 246:4
requests 6:8 44:13
50:18 56:14 106:14
111:10 123:13 124:18
125:12 185:2,4 190:7
190:22 288:5
require 49:15 189:19
199:14 242:15 283:15
306:21 308:20
required 13:7 33:19
86:16 106:22 107:19
110:1 123:15 139:5
226:10,13,17 237:4
240:8 253:14 272:6
273:20
requirement 190:18
299:11
requirements 17:11,15
20:6 270:20 272:6
273:4,4
requires 86:13 204:2
246:3 277:16
requiring 244:19
requisite 20:10 123:8
research 11:5,11 91:5
96:4 202:17
resist 53:6 90:22 92:1
resolution 35:2

resource 79:16
resourced 171:20
 172:11
resources 3:9 5:17 6:14
 12:4,14 13:19 14:4,18
 15:9,21 18:15 21:10
 22:5,10 23:17 50:10
 52:2 53:5 58:4 61:1
 76:1,4 78:8,9,10,18
 79:15,21 80:4 89:15
 89:17,18 90:7,9 91:17
 101:10 102:9,12
 104:2,14 108:5
 120:19 121:1 122:1
 143:2 145:11 149:6
 164:2 166:22 169:18
 171:15 172:5 173:5
 175:21 176:15 178:8
 178:17 180:10 232:8
 238:2 287:11
resourcing 138:7
respect 62:8 144:12,14
 297:4 321:20 326:19
 328:20
respected 294:19
respectful 72:3
respectfully 24:20
respects 71:18
respond 70:14 77:22
 171:13 279:1 301:15
responded 171:14
 172:2 177:8
response 10:22 18:17
 55:1 103:20 104:19
 108:16,17 109:9,20
 125:6 128:17 129:2
 147:17 172:4 178:19
 179:10 186:10 188:18
 189:1 191:11 214:15
 216:12 217:19 239:3
 247:2 249:11
responses 35:16,19
 55:8 105:3,5,6 108:15
 108:19 110:14 111:10
 112:2,2,9 172:9 215:1
 246:8,21
responsibilities 291:13
responsibility 23:21
 72:13 297:17 300:10
responsible 19:11 21:3
 22:6 52:19 190:11
 300:13
responsive 50:18
rest 114:22 116:10
 149:12 209:11 320:10
restricted 37:22 71:15
 85:3
restrictive 85:2

restricts 53:12
result 37:1 42:7 44:19
 46:16,22 54:5 56:10
 84:3 86:20 101:11
 177:6 285:16
resulted 36:12 42:5
 109:5,8
resulting 155:5
results 45:4 46:6,11,21
 60:19 68:6 75:9 84:16
 101:14 147:21
resumed 99:19 239:18
retain 19:6
retained 27:3 38:18
 60:2
retaining 17:16
rethinking 81:5
Retired 2:4 241:1
retrained 88:3
retrial 289:12
reveal 30:11 82:9 139:6
 190:9 191:2 226:10
 293:12
revealed 139:13
reversals 177:1
reversed 214:4
review 5:4 6:2 23:1,16
 49:7,17 61:1 66:16
 88:13 121:11 122:7
 169:3 239:16 240:12
 243:10,11 244:19
 246:5 247:1 248:18
 249:9 254:2 265:10
 266:11 270:22 271:3
 271:9,14 272:22
 273:11 274:17 277:8
 277:16 278:3 286:17
 292:7,12 293:2,9
 294:13 297:1,7
 298:15 299:4 306:22
 307:3 309:14 312:6
 312:10,18 315:3,5
 333:2
reviewed 22:14 23:11
 273:12 298:8
reviewing 20:2 93:10
 155:4 245:17 257:21
 258:15 260:11 261:1
 261:8 291:10 292:16
 292:17 327:15
reviews 49:2 298:12
revisions 19:22
revoting 302:14
RFI 178:19 246:8
rights 3:12 5:20 239:15
 240:4 272:4 273:1,6
 275:22 276:2 283:12
 283:13 284:4,17

286:9,10 288:13
 305:9
ringing 26:13
risk 63:6,12
road 288:16
Robert 9:6
role 199:4,10 200:11
 201:18 202:5,5,11,15
 210:9 211:8 218:18
 232:19
room 6:19
roughly 178:13
routine 35:4
routinely 120:22 252:15
RSP 20:5 48:7,16,17
 49:11 50:15 51:22
 107:13 110:5 113:22
 132:11 133:5 144:16
 152:1,5,10 153:1,5
 154:19 156:22 159:15
 160:9,18 162:6 172:1
 176:7 178:3 201:5,14
 208:12 220:8,21
RSP's 20:7 51:14
 178:15
rule 3:13 6:1,12 243:13
 244:16 250:21 251:1
 251:2,5,8 252:12
 253:16 254:7,10
 255:2 257:14,20
 259:18 260:21 263:3
 264:12 274:4,6,7,10
 274:14 288:10,20
 297:3,12,16 304:3
ruled 314:2
rules 6:15 94:20 123:15
 125:22 126:10 187:12
 188:5,11,13 195:22
 246:13 256:21 257:7
 277:4 287:20,21
 288:21 300:14 313:17
 320:10,12 327:10
ruling 269:15,19

S

s 3:1 4:1 37:11
sake 193:15
SARC 15:22 26:17 27:1
SARCs 26:9,15
satisfaction 273:3
satisfied 195:5 270:20
satisfies 76:13
satisfying 76:16 272:5
 273:3
Saunders 2:12 3:10
 104:12 105:17 111:3
 111:9,14,17,21 112:8
 112:16,20 113:2,9,12

113:15 114:8,12
 115:13,21 116:5
 117:6,22 118:5,15,16
 118:20 119:1,17
 120:10,14,18 132:4,8
 133:14 134:14 135:5
 135:10,14,21 136:4,7
 136:9,13,16,21 137:3
 137:16 138:17,20
 139:21 140:3,8,12,17
 141:22 152:15 153:11
 171:16 172:8 182:22
 208:1,16 209:15,21
 218:8,10 225:4,6,9
 227:20 228:1,4
 235:15 236:6,10
saw 30:5 63:18 64:4
 144:16 201:16 202:3
 251:7 280:22
saying 30:20 74:16
 77:14 78:10 79:20
 96:16,18 110:4 134:6
 135:17 139:17 148:17
 149:6 161:9 171:15
 172:3 178:13 184:22
 196:16 206:12 212:21
 214:22 215:2 249:1
 271:1 275:2,7 277:5
 280:6,8 284:10 306:1
 315:18 326:16 332:9
says 41:1 75:9 81:11
 94:21 113:22 133:9
 142:19 148:9 160:17
 161:7,21 163:14
 165:18 175:3,5
 195:15 196:19 203:12
 213:2 215:19 229:22
 232:14 234:18 251:2
 251:3,9,12 253:15
 254:13,16 256:2,5
 261:15,18 264:13
 266:21 274:4 279:9
 286:1,20 288:22
 297:3 307:2 313:1
 319:17 324:12
SBC 305:2
scandals 146:3
scenario 41:16 274:13
schedule 58:5 99:15
 330:9
scheduled 26:20
scheme 63:11 320:6,7
 320:9
Schenck 2:7 61:16
 70:13 72:19 73:17
 94:2 95:7
school 8:15 94:6,12
 311:12

- schools** 10:1 83:17
scope 34:10 285:15
scratch 150:4
scrutiny 314:21
seal 251:14 261:20
 264:15 269:5
sealed 6:3 243:12
 244:18 245:16 246:5
 246:15 252:2 258:6
 258:10,21,22 259:4
 263:22 264:14 267:9
 267:15,15 273:15,18
 276:16 291:2,3 292:1
 292:4 310:4 311:1
 313:1 318:9 323:20
 325:9,21 326:1,21
sealing 253:7 254:8
 258:17 265:3 291:6
 297:5 314:10,13
seals 253:3
search 39:8 68:12,18
 69:8,10,14,17 70:3,14
 71:9,12
searched 39:8 262:10
searching 39:3,19 60:8
second 25:1 34:1 37:12
 54:8 66:5 132:9,21
 133:7 155:16,20
 162:15 179:4,5 190:5
 190:15 209:11 210:2
 245:22 287:3 322:15
 323:4,4,21 324:5
Secondly 217:20
Secretaries 178:4,18
Secretary 18:20 24:16
 49:14 58:2 59:10
 60:10 61:1 98:18
 121:17 122:12 125:20
 126:18 170:2 178:15
 185:11 187:5,7 188:3
section 113:16 134:12
 196:13 197:18 242:20
 296:19
sector 37:6 205:21
 285:14
sectors 7:18
security 2:2 19:3
 241:13 251:10,16,22
 261:13 262:17
seeing 115:6 129:13
 238:6 309:4,5
seek 288:2 318:12
seeking 33:14 260:13
seen 7:18 8:2 16:17
 31:13 41:2,14,16 42:9
 102:16 158:6 166:19
 169:3 177:1,4 192:20
 214:3,5 252:8,22
 257:4 260:18 300:17
 309:6 328:19
segment 103:2
self-incrimination
 276:21
semantics 115:18
Senate 242:18
send 35:15,20 41:3
 80:14 82:2 169:11
 237:5,19
sending 74:8 142:8
sends 224:19
senior 1:17 32:3 33:1
 47:14 65:15 127:1,22
 183:14 217:6 233:17
 240:20 298:1
sense 32:16 41:17
 55:22 85:4 162:21
 169:5,17 207:12
 231:22 235:8,9
 288:15 302:20 306:14
 306:18 330:18
sensitive 7:20 36:18
 42:14 52:15 88:15,17
sensitively 8:4 30:15,18
 79:3
sensitivity 68:1 71:8
sent 247:12
sentence 98:13 113:21
 114:4 132:11,16
 133:1 135:18 137:19
 138:2 139:3,10
 140:15,20 141:9
 146:21 147:3 152:8
 152:19 155:5,5
 159:14 160:6,16,17
 161:7 162:3 170:2
 172:14 190:6,15
 196:19 215:19,20
 216:3 223:12 230:11
 230:12 231:17,19
 232:5,5,22 235:4,10
 235:17,18 236:2
sentences 153:3
 175:14 178:20 179:1
separate 76:7 201:19
 279:10
Separately 242:17
separating 319:4
September 10:7 11:8
 24:13 243:4
sequencing 172:6
serial 65:17 86:7
serious 12:11,18 13:21
 14:5 21:7,7,11,20
 22:11,18 23:19 63:14
 64:3,20 86:12,13
 166:11 214:10
seriousness 24:5
 193:13
servant 9:5
serve 7:16 128:17,22
 129:5,10,18 130:1,16
 131:1 141:1 196:8,22
 198:13 202:14 204:13
 213:8,10 230:8,22
 231:2,20
served 194:12 204:5
 232:3
service 3:13 5:22 6:11
 7:8 12:8 25:15 45:8,9
 109:18 110:4 121:11
 121:20 122:7,15
 125:21 126:2,18
 127:8,21 130:7 131:7
 142:17,22 163:16
 168:10,12,21,22
 170:7,9 175:8 178:4
 178:18 180:2 207:18
 213:12 224:5,18
 243:19 245:4,18
 246:17,18 253:1
 287:17 291:10,17
 292:11 293:15 304:3
 306:16 309:18 315:6
 321:14,16 326:6
 327:13
Service's 127:1 180:4
Service-specific 91:8
Servicemembers 247:9
services 13:5 33:9
 75:11 91:11 96:1
 105:2,5 108:16,20
 110:14 112:1 119:5
 119:20 121:11,19
 122:7,14 127:6 129:3
 129:4,16,20 130:3,14
 130:19 131:3 142:15
 143:10 149:18 163:9
 163:19 164:4 165:22
 168:6,19,20 169:9
 170:11 171:12,13,17
 171:19,20 172:10,16
 183:15 193:19 196:6
 196:19 197:10 211:5
 213:2 218:14 240:7
 246:2 289:19 304:14
 332:3
Services' 8:7 111:10
 112:9 178:19 246:20
serving 76:21 77:11
 206:19
session 5:21 93:9
 330:9
sessions 193:6 213:19
set 27:20,21 74:21 76:3
 76:20 93:1 102:10
 130:4 131:4 148:21
 192:11 195:22 197:10
 198:20 202:22 213:3
 219:8,11,13 244:12
sets 84:17 307:21
setting 254:7 257:5
settled 147:7
seven 6:10 205:6 247:3
severely 13:19 15:21
 21:9 56:9 78:11 79:14
severity 13:15
sex 8:17 21:12
sexy 176:9
shaking 211:18
share 169:11 333:1
shared 93:4,7,7 168:19
sheets 303:12
shield 251:13,18
 259:20 261:13 262:18
shined 252:13
short 193:7 209:3
 213:11
short-sighted 87:4
shortened 136:14
shorter 200:2
shortly 245:3
shoulder 14:12
show 116:20 117:1
 137:20 159:2 167:4
 177:1,4 222:21
 262:10 279:11 291:15
 308:2,5,8,9
showing 272:13 278:4
 278:5 291:9,16
 305:15 308:11,12,15
shows 156:4 261:12
shut 83:13 92:7
shutting 146:7
shy 195:9,11
side 80:17 136:12 165:4
sides 80:7 82:22 83:1
 86:21,22 93:21
 102:18
significant 45:4 152:11
 187:21 315:1 325:7
 325:10
significantly 21:1
signs 224:19
similar 48:12 65:21
 104:21 121:22 122:19
 123:11 136:8,10,11
 273:4 305:4
similarly 23:1 45:4
simple 21:18 63:22
 64:2 65:5 166:9
simply 53:7 72:17
 83:11 133:19,22

134:1,8 141:8,9,12,13
 166:17 232:1,21
 233:21 234:11 235:2
 236:7 252:14 261:13
 307:13
Simultaneous 103:9
 218:12 307:14 309:8
 311:13 312:8,15
 313:6 315:4 322:2
 328:10 331:2
single 25:18 152:8
 250:19
sir 4:10 173:8 183:1
 223:13 257:17 295:22
 331:16
sit 27:13,20 31:22
site 9:13 11:4 12:7
 20:13 23:1,3,11 33:8
 38:4 45:6 46:8 47:5
 47:20 48:13 50:3
 51:19 52:7,17 56:2
 57:4 67:5,12 69:6,7
 91:4 97:5 106:1,6,12
 107:3 120:22 123:3
 127:7 128:4 138:4
 140:9 141:11 172:3
 178:11 225:4
sites 21:8
sitting 211:17 254:20
 257:15
situation 31:17 36:12
 68:19 83:16 165:19
 193:10 194:5,18,19
 224:2 284:3 298:18
 298:19 299:5
situations 270:16
six 25:6 45:7 46:10
 51:21 52:5 200:1
sixth 46:1
size 25:15
SJA 199:7,17
skilled 203:3,6,11,14
skills 140:21 168:2
 202:7 203:4 230:21
 233:12
skipped 117:15
slice 149:7,7
slightly 116:2
slot 199:12
small 281:5,9
smaller 272:19
smartphone 38:21 60:5
 68:13
SMEs 89:16
Snowden 253:9
social 40:1 55:18
 286:22
society 275:21

solely 21:3
solid 294:21
solution 71:20 146:9
 299:6
solve 232:9
solved 332:12
somebody 31:12 73:11
 81:17 84:1 100:5
 148:8 192:18 193:11
 199:9 201:22 210:7
 253:9 276:7 279:3
 332:5
someone's 14:9,11
someplace 84:1
somewhat 87:4
soon 249:21 261:21
sooner 57:6
sorry 90:1 95:10 117:4
 135:14 137:2 138:21
 151:1,6 171:9 174:22
 185:21 186:4,22
 189:13 190:17 200:21
 204:9 211:19 219:13
 223:8 227:19 234:3
 236:2 248:8 254:5
 260:5 270:13 304:8
 311:10 318:5 325:16
 326:2
sort 35:1 71:19 88:8
 102:19 144:8 241:22
 302:21 316:14
sought 68:18
sounded 324:2
sounds 77:3,17 249:13
 250:7 296:13
source 169:16
sources 47:6 125:9
speak 23:6,13,13 54:13
 87:16 128:3 131:15
 142:2 163:3 169:10
 297:9
speaker 332:5
speaking 103:9 131:13
 218:12 307:14 309:8
 311:13 312:8,15
 313:6 315:4 321:14
 322:2 328:10 331:2
speaks 54:9 131:17
 181:6 328:14
special 1:17,18 7:2
 10:19 13:11 19:6 21:8
 26:21 57:21 58:3,14
 66:7 82:1 91:6 95:12
 95:17 96:1 145:8
 168:8,9 240:20,21
specific 25:6 52:13
 88:21 97:13 116:17
 131:7 141:17 213:6

215:21 225:14 233:5
 264:7 276:16 299:5
specifically 58:19
 104:18 106:17 107:11
 124:16 169:2 208:17
 208:19 251:14 252:5
 262:19 273:21 279:9
specified 20:7 141:5
 229:1,13
spectrum 52:20
spend 89:17 143:1
spent 8:16
spirit 324:1
split 317:8
spoke 10:8,18 12:9
 13:17 14:1,19 23:4,6
 36:11 38:9 78:4 123:1
 128:10
sports 7:22 10:2
Sprance 2:15 3:2 4:3,4
 4:11 221:6 333:12
staff 2:1,10,13 88:19
 129:7 130:7 131:8
 164:2,3 182:12
 188:13 199:15,16
 241:5,12 243:22
 244:11 246:1 248:17
 250:4 303:11 323:13
 333:1
staffed 178:17
staffing 61:2 121:12,18
 121:20 122:8,13,15
 127:5 163:8,16,19
 166:17 170:6 175:4,7
 175:9,10
stage 36:21 124:14
 125:16 326:11
stages 20:2 24:6 251:6
 253:14 254:4,17
 256:6,6 273:19
stake 85:8
stakeholders 47:9 93:6
stamp 187:4
stand 31:18 41:19,21
 42:4 159:3 284:7
 302:10 322:7 333:6
standard 45:14,15
 68:14 197:9 311:5,6
 326:5
standardize 49:15
standing 240:6 243:16
 276:22 283:11,14
 284:21 325:2 326:13
stark 176:18
start 7:13 11:20 29:5
 61:22 62:13 74:15,18
 141:16 150:4 203:19
 212:21 223:7 326:9

332:10
started 8:14 136:17
 207:15
starting 61:15 132:6
 203:2 240:9 244:14
starts 30:16 223:8
state 103:1 109:12
 129:6 284:2 287:19
 287:20
stated 19:13 32:19
 48:20 51:19 57:4
 109:20 125:8 127:18
 181:9 252:5 305:21
 317:6
statement 37:9 126:12
 133:13 158:19 230:4
 268:14 321:6
statements 32:18 33:8
 36:7 59:3 107:4 190:8
 191:1
states 1:1 2:5 10:10
 107:11 121:10 153:4
 172:15 176:11 207:5
 240:16 241:3 244:15
 299:20 300:11 302:4
statistical 234:15,17
statistics 30:4,5
status 88:4 103:5
 104:19 152:6 220:5
 220:12 252:3 253:4
 258:17,18,22 283:4
 314:7,9
statute 315:12,12,21
 319:11 320:9,13
statutory 22:22 24:13
 113:22 132:12 153:1
 159:15 160:18 161:22
 162:6 286:10 315:20
 320:6,7,8 326:13
stay 64:1 198:10 206:20
 273:18
Staying 199:4
steal 164:6
step 34:5 123:17
Stephen 2:1 241:11
steps 58:3 122:10
stick 145:13 219:11
sticks 83:20
stint 200:2
Stone's 89:12 112:22
 114:4 119:17 132:15
 133:17 137:21 139:2
 141:4,13 153:16
 159:13 170:17,18
 173:1 177:12 186:8
 212:20 216:14 221:21
 227:6 231:5 234:6
 235:14 247:16,21

296:12 317:4,9 319:3
320:21
stopped 252:18
stops 50:7
story 264:1
stovepipe 100:20
143:13 146:5 165:7
stovepipes 93:2 142:7
146:10 181:1
stovepiping 94:16
strain 17:12 18:15
22:10 53:4
strained 13:19 15:9
21:9 78:11
straining 79:14
strains 15:21 23:17
78:15,18
Strategic 2:5 241:2
strategies 125:2 139:7
strategy 125:17 190:10
191:2 223:22
stream 187:8
stress 21:8 23:2 44:20
stressed 39:18
stretched 12:14
strike 213:1 230:11
231:18 232:5,22
297:12,15
striking 233:21
strip 301:6
stripped 301:16
strong 21:6 234:13
strongly 250:22 289:5
struck 236:7 299:7
structure 146:14
struggling 306:19
studied 281:13 282:17
295:9 316:5 317:19
study 220:16
stuff 92:13 112:21
234:18 294:1
sub- 189:15
sub-bullet 155:6
sub-bullets 177:21
subcommittee 1:19,22
2:7,9 3:4 5:10 7:3,7
7:16 8:3,9 9:11 10:8
19:17 21:21 22:12,19
24:1,7,12,20 25:9,13
32:10 34:21 35:6 36:2
46:12 47:19 48:13
51:14 52:16 53:16
56:12,18 57:18 58:1
58:14 59:9,16 60:9,17
60:22 61:6,14,18 62:4
62:6,9,14 66:16 67:17
69:4,19 75:6 77:13
80:2 82:7 96:8 97:3

98:14,17 100:12
104:13 106:1 107:2
107:17 113:3 119:14
120:21 123:1,19
127:6 128:2,10 144:1
147:12,16 148:2
160:22 165:9 168:15
173:11,15 175:16
185:16 187:2 205:11
208:2,18 209:16,21
211:17
Subcommittee's 5:11
20:20 50:9 52:4 75:9
110:6 113:6 176:19
216:7 237:22
subject 48:10 147:13
147:15 161:1 237:10
237:12 238:4,5,11
240:6 244:4 256:20
281:16 327:8
subjective 129:21
130:21 196:21
submissions 307:3
submit 95:9 190:22
246:1,4
submitted 107:5 114:13
116:6,21 122:6
126:17 130:10,13
172:4 242:11 247:2,9
247:14 249:6 321:20
subpoenas 287:15
subsequent 31:10
33:20 34:4 35:11,14
55:16 91:5
subsequently 252:18
substance 218:7
302:21
substantial 290:4
substantially 57:20
substantive 133:21
substantively 113:5,10
substitute 142:3
substitution 228:21
successful 45:16
successor 24:17
sudden 281:15 319:16
sufficient 20:16 75:13
101:9 109:22 119:7
141:10 142:11 148:7
148:9 149:19 164:2
232:1 234:1,8,10,20
235:1,5 246:13 254:3
sufficiently 298:16
suggest 76:12 102:9,10
115:8 133:1,4 138:1,6
149:11 156:12 161:8
169:22 178:11 187:6
222:3,5,5,12,20

suggested 26:2 102:14
118:1 126:14 132:20
138:1 155:12 276:15
suggesting 24:9 156:20
220:18
suggestion 97:20
119:12 126:5 130:10
132:10 133:17 137:22
138:10 171:8 219:12
228:5 275:15 281:3
suggestions 81:3
214:19 318:19
suggests 131:18 255:1
suited 32:8
summaries 152:4
summarize 105:11,14
111:10
summarized 105:6
112:2 171:18
summary 155:7 157:1
160:8 172:1 226:5
245:14 246:9
summer 9:14 48:14
49:10
summertime 106:2
sunshine 288:11
superior 141:7 229:3
260:9
supersede 75:17,20
superseding 76:2
supervised 37:11
supervising 87:18
supervision 19:5
supervisor 87:9,14
88:2
supervisor's 33:19
supervisors 88:7
supplemental 75:18,21
76:2
support 27:14 53:18
121:8,14 122:10
163:11 205:10 306:3
317:14
supported 303:15
305:3
supports 165:17
supposed 198:15
253:11
Supreme 299:20
surprised 192:14
suspect 167:17
suspicion 263:15
SVC 27:5,11,18,22
34:17 35:13 38:6 48:1
242:8
SVC/VLC 34:22 47:15
53:11 54:21 55:8
SVCs 34:9,12 36:2 38:9

38:16 39:11 47:11,21
53:17 78:3 81:7
165:11,14 172:19
242:10
SVCs' 54:1
SVCs/VLCs 35:7
sync 77:18
system 64:1 72:9 77:4
77:10,15 80:6,7,20
83:3 90:13 98:5 101:4
106:16 107:16 147:11
149:9 175:20 176:1
176:16 183:19 196:1
202:3,10 206:6,10
210:18 276:11 289:18
312:22 313:4 327:2
system-wide 91:9
systemic 26:2
Systems 18:17 51:14
104:20 108:16,17
125:6 128:18 214:15
239:3

T

T 3:1,1
Tab 105:4 245:6,10
246:9
table 6:18 250:16,18
254:20 257:16
tailored 271:12
taken 49:19 77:20 84:9
116:3 136:16
takes 22:14 46:5 60:19
133:8 180:8 239:3
talk 8:14 10:6 12:2,6
14:7 27:20 28:8 29:17
32:1 42:21 54:10 63:1
65:19 116:17 150:11
175:9 196:10 204:4
250:10 263:19 276:8
294:14 329:5
talked 10:16 32:4 36:3
106:8 109:10 120:21
121:6 145:22
talking 14:7 38:1 50:5
66:12 90:3 100:7
111:1 124:3 143:20
167:9 170:11 176:14
181:12 182:10 192:21
197:4,5 201:15
205:12 206:1,6
224:10 233:5,11
258:3 265:11,13,22
266:9 272:18 303:13
312:12 320:9 325:2
326:9 328:15
talks 263:11
Tammy 2:13

tandem 143:11,17
tangential 70:20
tangible 59:16 75:1
 98:16
tap 90:10
tasks 17:15 44:21
tattle-tail 83:12
taught 9:6 32:11 35:3
 70:5,9,12
Taylor 1:14 62:11,12
 65:9 66:11 67:20
 72:10 74:11 126:6,8
 130:11 145:15,16
 146:20 147:5 149:11
 151:1,6 167:12
 169:22 170:5 185:7
 185:16,18,21 186:2,5
 186:18,19,22 187:10
 187:15,19 199:19
 200:8,10,17,20
 206:22 207:3,9,12,16
 207:20 210:19 211:14
 217:1,6,9 218:1,3,5
 219:4,8,10 221:8,12
 221:16 226:11,16
 238:9,15 246:22
 303:8 304:10,16,20
 305:1,7,10,17,21
 306:5,9,13 316:17,21
 323:13,15 325:12
 326:2 328:8 330:21
Taylor's 170:14 171:3
 218:15 227:1,7 325:5
 325:18
tease 35:22 36:18 37:13
 62:21 65:4 66:8
technique 33:10
techniques 39:2 56:22
 60:8 205:16
tell 8:12 9:2 23:8 39:4
 75:19 76:10 81:7
 85:20 95:22 128:2
 142:15 143:5 254:21
 255:6 259:16 289:2
telling 17:7 35:10
 256:22,22 261:11
 262:5 279:19 280:1,4
 289:8
tells 16:22 17:3 205:21
temporarily 168:11
temporary 168:8 170:8
ten 8:19 85:16 114:17
 121:3 192:20 204:6
 204:15
tend 152:3
tended 201:17
tends 145:10,11
tension 89:10 296:20

tensions 44:2,4
term 24:13 33:3 68:21
 120:8 121:21 122:18
 128:16,20 163:17,22
 164:18 170:8
terms 25:2 39:9 66:22
 68:1 70:9 72:7 76:4
 97:20 102:2 127:8
 142:4 163:9 168:1
 169:17 193:1 207:17
 210:10 260:17 275:18
Terri 2:12 3:10 208:11
terrific 232:17 234:22
territories 145:5
testified 109:3 241:1
testify 7:14 37:7 43:17
 106:19 107:2 158:22
 159:3 160:1,2 208:22
testifying 31:13
testimony 42:4 47:13
 51:17 61:6 67:6 70:5
 84:5 95:1,11 106:13
 123:11 127:12 129:11
 147:18 149:18 166:14
 172:15 182:3 193:6
 214:17,20 222:13
 224:22 239:4 243:4,9
 253:2 295:3
testing 46:16 60:20
 61:4
tests 101:14,15
text 41:2,21 42:1 55:18
 84:7 112:20 113:2
 115:15 132:9,20
 133:22 134:16,17
 137:19 138:11 152:13
 251:9
thank 4:11 6:21 7:5,8
 7:12 61:10,19 62:2,5
 62:9,12,17 74:11,13
 87:4,6 97:17 99:8,10
 99:17 103:22 118:19
 137:1 152:15 159:7
 181:1 186:5,19
 191:22 228:19 238:15
 239:5 240:1,11
 241:18 295:21 296:1
 297:18 299:13,14
 333:6,10
thanking 7:13 62:13
Thanks 7:9 333:11
theirs 80:13
themes 25:21
theoretical 268:9
theoretically 90:12
theory 139:6
thing-- 15:4
things 8:13 23:9 28:17
 28:22,22 42:7 50:13
 53:17 62:21 63:11
 72:2,6 80:9 82:22
 105:8 123:11 164:5
 167:6 192:2 203:2
 205:18 242:12 245:15
 284:9 289:8 303:18
 304:9
thinks 82:7 273:17
third 16:14,17 34:1,6
 54:8 66:12 139:10
 190:13 246:22 271:10
Thirteen 117:7
thorny 333:8
thorough 25:4 29:12
 33:17 34:8 37:16
 43:14,21 46:3 48:21
 53:11 54:4 58:12,18
 59:12 60:14 62:3
 67:19 72:1 82:3 98:22
thoroughly 9:9 13:22
 17:6 22:14 33:14
 79:18
thoroughness 48:8
 52:8
thought 23:3 62:7 65:1
 72:15 73:22 80:3 90:6
 90:20 96:15 116:2
 168:15 186:2 187:5
 187:21 196:16 265:6
 301:11 302:12 303:19
 307:7 327:3
thoughts 63:5 167:13
 212:2
thousands 8:22
three 37:12 62:20 83:1
 86:22 104:21 114:16
 115:10,11 117:19
 143:6 150:6 165:18
 202:6 231:15 232:16
 243:16 270:16,16
threshold 91:15 92:8
 269:15 272:13 308:18
thresholds 92:13
throw 149:6 168:5
 209:8 234:21 263:14
 330:6
thrown 202:5
ticks 274:16
Tideswell 2:13 99:13,16
 141:20 173:8,10,13
 173:16,19 174:1,4,8
 174:10,12,15,18,21
 237:2,9,13,18 239:8
 239:21,22 240:2,12
 241:21 301:13 302:15
 331:6 332:21 333:4
tie 317:21

tight 99:15
timely 44:20 60:20
 123:7
times 51:15 86:9 164:6
 223:22 232:7
timing 153:10
tippling 124:22
TJAG 199:17
today 4:14,16 6:22 7:6
 7:9,22 8:14 10:6
 11:14 52:18 61:15
 75:8 76:19 78:14
 142:9 145:2 148:22
 238:12 241:20 247:10
 322:1
today's 4:17 5:9 6:9
 40:7 56:21
told 12:9 14:13 15:22
 16:8,12,15 17:5 20:4
 20:13 27:9 29:11 30:7
 32:6,10,13,20 33:21
 34:6,11 35:6 38:22
 46:2,12 59:17 60:17
 66:14 79:8 87:12
 90:14 107:18 123:3
 123:12 127:6 197:13
 283:3
Tom 1:14
tool 106:17
top 94:19 142:22
topic 11:6,21 71:8
 105:19,20 122:22
 317:1 322:12
topics 71:7 105:19
 252:21
total 15:13
totally 83:16 90:21
 93:17 116:1 166:18
 167:10 201:8 225:15
 253:18
totem 176:12
touch 27:19
touched 18:4
touching 14:9,10 17:20
 21:18 63:11 184:7
tougher 232:10
tour 130:4,6 131:4,6
 192:4,12,17,19,22
 193:3,7 195:10
 196:17 197:11 198:2
 198:11,16,18,21
 199:10,21 202:20,21
 203:5 207:5,10,21,22
 208:3,14,15,16
 210:14 213:3,14
 229:5 230:8,15
 231:20 235:3
tours 199:22 229:7,7

tout 279:21
Tracey 1:15 87:6,13,22
 88:11 89:2,8 90:1,5
 91:12 92:4,21 96:13
 102:7,15 103:17
 117:18 146:17,19
 150:10,17 151:20,22
 152:18 153:9,15,18
 153:21 154:15,19,22
 155:3,20 156:9,11,13
 156:16,20 157:6
 159:18 171:11,21
 173:3 177:17,19,21
 178:2,7,10,14 179:2,4
 179:7 189:15,18
 190:1,3,14,18,21
 191:5,8 198:20 199:4
 199:13 211:4 218:6
 218:13,22 220:5,8,12
 220:15 226:1,4
 311:14 312:12,16
 313:4,8 314:20
 317:18 319:3 324:7
 324:13 325:14,17
 330:14
Tracey's 329:9,17
track 115:15 116:7,20
 119:11 126:4 130:10
 133:16
tracking 153:6
tracks 296:6
traditionally 88:21
train 86:15
trained 50:21 63:8 65:2
 70:7
training 9:19 12:21
 20:11,15,17 29:21
 33:11 35:3 54:1 58:7
 65:10 66:16 68:1
 87:14,20 88:1,8,13
 92:5 93:7,8,8,20 95:5
 95:8 168:2
transcribed 4:17
transcript 4:18
transfer 23:20 83:22
 209:17
transferred 193:10
 210:8
transfers 24:3
traumatic 37:3
travels 233:18
treat 149:15
treating 289:4
tremendous 62:6 177:5
trenches 87:20
trial-level 253:22
 285:20
trials 128:6 192:16,20

tried 233:9
trouble 30:13 214:21
troubling 314:14
true 28:17 37:8 39:4
 66:1 87:18 98:6,11
 101:17 139:12,18
 156:15 257:5 285:4
trumps 318:1
trust 302:1
trusted 297:1
trusting 79:1
truth 260:8
try 7:19 31:21 73:21
 108:1 145:3 203:18
 205:4 232:10 233:8
 241:17 257:8 288:7
 297:14
trying 77:3 86:15 90:5
 96:22 97:5 107:21
 112:5 127:20 134:22
 168:4 169:15 248:5
 253:19 255:4,9,12
 278:17 279:18 282:16
 286:14
TS-3 229:22
TT 104:3,5
tuned 76:20 88:8
turn 4:7 38:7,11 55:17
 68:16,22 158:14,17
 158:18,21 329:16
turnaround 51:17,19
turned 36:8 41:19,22
turning 59:22 71:19
 288:8
turns 65:5 289:11
twelve 117:5
twice 166:15
two 20:6 62:20 71:7
 80:7,8 82:22 83:5
 86:21 88:7 105:8
 114:16 129:1,5,10
 130:5 138:21 140:19
 141:2,3,5 143:3 153:3
 166:15 175:14 178:20
 178:22 193:3 194:9
 196:11,13 197:11,18
 198:6 199:20,21
 200:3,6,8 202:6 205:1
 205:7 206:1,19,21
 207:7,17 208:6 210:7
 210:7,16,20 211:3,7,7
 218:17 228:14,22
 229:7,15 230:22
 231:2 233:13 234:18
 243:15 252:21 259:7
 283:10 307:21 313:21
 314:1 317:8 322:12
 326:19 327:5 330:3

two- 208:13
two-year 192:17 198:1
 198:11 208:3 210:14
tying 207:21 210:22
 232:6
type 301:4
types 72:14 128:1
 163:12 166:17
typically 38:20 46:10
 60:4 107:2,6 124:15
 124:20 125:8 127:19
 128:1 129:4 208:16
 251:19 252:7

U

U.S 1:17,19 2:3,4,6,8,13
 167:20 240:18,22
 287:17,17
UCMJ 5:8 20:21 284:22
ultimately 57:8 305:14
unable 53:7 55:3 68:18
 73:1
unavailable 57:22
 193:12
unbalance 165:19
uncharted 145:5
unclothed 84:10
uncomfortable 31:17
 128:8 295:2 328:12
uncovered 176:19
under- 138:6
underage 70:19
underfunded 166:18
 167:10
undermined 13:20
undermining 175:22
underneath 150:11
understaffed 44:17
understaffing 121:6,16
 122:11 138:6 175:6
understand 14:7 74:15
 75:4,5,16 82:20 85:13
 93:21 94:21 134:3
 135:1 143:12 162:9
 168:3,4 198:6 199:9
 204:22 205:17 231:19
 233:16 248:5 255:8,9
 255:10,12 258:16,20
 274:1 279:19 281:22
 282:9 289:14 290:9
 294:13 301:20 302:6
 302:13 303:9 313:21
 315:8 328:16,22
understanding 22:21
 55:13 72:2 95:4 225:8
 294:11 306:21 307:19
understood 87:7 90:6
 256:19 271:22 295:10

303:22 305:22 306:10
undertaking 53:7
underway 284:5
undesirable 71:20
 146:14
undisclosed 293:9
unfortunately 52:13
 152:20 293:19
unheard 81:1
uniform 5:5 182:2
 244:17 281:6,10
 289:19 324:10 326:21
 328:5 329:4,5
unit 8:18 13:14 19:6
 44:16 83:10 86:10,12
 87:21 95:19
unit's 83:10
United 1:1 2:5 10:10
 207:5 240:16 241:3
 299:20 300:11 302:4
units 87:18
universally 13:18 106:3
universities 10:1
unnecessarily 210:22
unnecessary 44:15
 232:22
unprivileged 274:10
 319:22
unrestricted 37:19 38:1
 38:3 71:15
unsealed 307:18
unsealing 285:22
untimely 331:14,18
unwilling 73:2
update 171:17
updating 20:2
uphold 284:16
upset 164:10
urge 194:1
urged 130:19 131:4
 213:3
use 33:4 73:9,12 80:21
 107:21 258:18 301:3
 304:13
useful 120:7
usually 70:18 312:3
utilization 19:1
utilized 91:11

V

VADM 87:6,13,22 88:11
 89:2,8 90:1,5 91:12
 92:4,21 96:13 102:7
 102:15 117:18 146:19
 150:10,17 151:20,22
 152:18 153:9,15,18
 153:21 154:15,19,22
 155:3,20 156:9,11,13

156:16,20 157:6
 159:18 171:11,21
 173:3 177:17,19,21
 178:2,7,10,14 179:2,4
 179:7 189:15,18
 190:1,3,14,18,21
 191:5,8 198:20 199:4
 199:13 211:4 218:13
 218:22 220:5,8,12,15
 226:1,4 311:14
 312:12,16 313:4,8
 314:20 317:18 319:3
 324:7,13 325:14,17
VADM(R) 1:15
valuable 28:18 55:2
value 33:13 205:12,22
variation 13:5
varied 51:20 108:20
 127:8
varieties 314:1
variety 76:14
various 51:5 58:15 64:6
 108:2 122:1,20
 125:12 132:2 143:10
 164:4 203:2 240:7
 289:19 302:1
vast 38:19 60:4 268:22
vein 44:22
venture 44:18
verbal 55:8
verbatim 255:20
verbiage 302:20
Vergona 2:8 241:7
 290:22 291:20 292:3
 293:6,14,19 294:3
 308:11,15,20 309:1,5
 309:9 310:10,13,18
 310:22 311:2,8 315:1
 315:5 327:11 328:1,6
 329:19,22 331:16,19
verified 15:1
version 115:6 242:18
versus 71:15 264:3
vest 126:1
vested 77:17
veto 184:12
vetted 287:14
vetting 299:17
Vice 329:9
victim 10:22 11:1 16:5
 16:15,20 17:2,6 19:6
 20:9 26:7,20,22 27:5
 27:19,21,22 28:8
 31:17 32:7 34:1,10,15
 34:20 35:8,10,10,14
 36:16 37:21 38:17
 39:21 40:15 41:1,19
 41:20 42:4,10,18 43:3

43:17 53:3 54:6,9,12
 54:18,22 55:9,15
 57:13,14 58:5,8,13,17
 59:4,12,19 60:1 65:19
 65:20 68:15 69:12
 71:10,17 72:2 81:10
 82:9 83:2,6 85:5 87:8
 91:6 92:19 95:12,17
 96:2 106:18 133:3
 145:4,8 158:17,19,21
 158:22 159:22 160:2
 194:20,21 243:16
 279:2,3 284:3,8,15
 285:6 299:2,11 305:5
 306:11 325:22
victim's 13:15 26:21,22
 28:16 29:7 32:13,17
 33:13 39:19 41:6 55:4
 56:3 72:8 82:15,17
 98:3 166:21 194:22
 213:17 216:5 240:4
 243:7 247:6 252:1
 279:4 284:19,20
 285:3,18 319:19
victims 28:19 29:15
 30:10 33:18 36:9,13
 37:18 38:6 41:2 52:19
 53:14,18 54:2 56:13
 59:21 66:8 67:1 70:18
 71:1 77:10 84:4,18
 85:13,22 86:18 97:22
 99:4 101:5 106:22
 107:4 120:2 147:2
 165:15 172:20 205:15
 242:10,13,15,20
 243:15,18 283:3
 284:22 286:5,15
 288:1,12,12,13
 323:18 325:6 326:9
 326:13 329:13
victims' 1:17,18 3:12
 5:20 10:19,20 54:11
 54:14 57:21,21 58:3,4
 59:5 60:12 82:1 98:20
 127:2 130:16 144:8
 144:13 147:2 149:17
 168:8,9 195:4,5
 239:15 240:20,21
 272:4 289:15 305:9
 319:4
Victor 1:14 3:14 6:5
view 44:12 93:4 291:9
 298:14,21 305:8
 327:19 330:12,13,14
viewed 34:2
vintage 88:2
violated 273:1,6
violating 272:4

violation 261:16
violent 21:20
Virginia 1:10
virtually 166:16 206:18
 216:8
visit 12:7 34:22 38:4
 45:6 106:1 140:9
visits 9:13 11:4 20:13
 23:2,3,12 25:10 33:9
 46:8 47:5,20 48:13
 50:3 51:19 52:7,17
 56:2 57:4 67:5 69:6,7
 97:5 106:12 107:3
 120:22 123:3 127:8
 128:4 138:4 141:12
 172:3 176:19 178:11
 225:4
vital 59:2 98:4
VLC 27:6,11,18 28:1
 34:17 35:13 38:7 48:1
 242:8
VLCs 34:9,12 36:3 38:9
 38:16 39:11 47:11,21
 53:17 78:3 242:11
voiced 48:12
volume 21:2
voluntarily 131:9 194:3
 215:10
volunteer 232:11
vote 132:2 150:8,12,16
 150:20 162:14 170:19
 210:2 212:17,20
 216:13 227:15 231:5
 235:12,13 236:14,18
 237:8,11 238:7
 244:21 248:4,14
 302:18 303:5 317:6
 317:17 320:18 322:13
 322:19 327:14 329:2
 329:9 331:20
voted 174:7 212:8,9
 230:17 231:1 248:15
 301:12 302:12,17
 303:2 327:3 329:20
voting 151:2 295:2
 321:2

W

wait 46:10 100:7 143:14
 172:20 185:14,14,14
 189:8 235:12 249:8
 259:21 266:4 309:20
waiting 57:2 198:8
 243:2
waitress 31:6
waive 194:18
waived 131:10 194:3
 215:10

waiver 195:18
wake 52:8
walk 132:4 244:8 313:3
wanted 35:2 66:7 68:12
 71:4 89:5 91:5 95:16
 97:17,19 118:9 198:1
 209:8 226:8 249:9
 257:2,11 279:11
 289:6 302:7 317:8
wanting 215:6
wants 43:4 143:8 148:8
 149:11 174:5 195:18
 235:17 251:22 274:14
 284:9 288:6 290:18
 294:7 315:14 322:4
 332:5
warrant 68:12,19 69:9
 69:10,14,17 71:12
warranting 177:9
warrants 70:3 71:9
wasn't 84:21 134:4,9
 139:18 148:4 254:3
 262:4
way 17:2 35:21 40:7
 43:18 54:3 69:9 70:7
 72:3 76:19 77:11
 80:20 83:8 101:7
 116:3 125:11,14
 133:10 135:21 145:19
 145:22 146:6,14
 149:21 161:3,3 168:5
 176:12,17 180:19
 192:3 208:18,19
 225:20 235:4 253:18
 264:12 274:9 277:17
 283:21 284:10 285:21
 289:20 305:18 315:10
 316:19 317:14,21
 320:16
ways 76:14,17 83:15
weak 21:6
website 4:19 6:20
wedded 188:6 248:6
week 143:6 284:1
weeks 28:11 247:13
 250:5
weigh 69:4
weight 259:17
welcome 3:2 4:13 7:7
 61:21 241:15 333:1
went 9:15 94:5,8 99:19
 153:5 209:6 239:18
 333:14
weren't 94:4 114:15
 115:22 134:6 307:22
whatsoever 183:20
whichever 105:12
whoa 275:15 319:13,13

wholly 298:14
widely 34:2
widespread 91:9
William 2:4,15 3:2
 241:1
willing 168:7 206:9
willingness 241:16
win 43:18 319:15
wind 83:22 85:2 193:1,9
 288:3
Wine-Banks 2:9 61:16
 69:22 73:8,15 89:19
 94:14
wish 85:9 173:20
wishes 318:12
withdraw 236:4 317:1
withholding 328:21
witness 11:1 16:14 27:2
 32:15 33:6 41:7
 108:12 158:17 279:5
witnesses 1:16 29:6
 40:21 47:18 51:22
 73:5 107:1,5,7 123:6
 123:13 125:9 156:17
 159:22 160:1 205:15
woman 86:8
wonderful 62:17
wondering 126:6
word 33:4 114:14,18
 115:7,8 119:10 120:6
 126:14 132:22,22
 137:9,20,20,22 138:1
 159:22 207:14,14
 222:6 236:7 263:21
worded 138:13
wording 122:3
words 130:9 135:11
 136:17 140:5,12,14
 141:12 149:12,14
 153:13 170:10 201:8
 227:21 233:21 268:4
 308:13 326:3 327:17
work 9:5 10:3 53:8
 61:18 62:7 66:15 73:6
 90:18,22 91:1 92:2,22
 99:9 111:5 146:5,15
 148:5 300:6 309:12
work-arounds 73:6
worked 7:17
working 8:7 23:9 44:4
 51:5 80:5,17 94:5
 124:11 177:19 207:4
 291:1
workload 21:15
workplace 86:8
works 27:22 80:20
 148:19
world 40:7 66:7 83:19

84:4 93:18
worried 316:11
worry 250:9
worth 168:17 236:9
wouldn't 95:15 159:14
 210:1 275:9 314:5
 315:9 317:6 321:15
Wow 228:11 331:10,22
 333:5
wrap 290:2
wrecked 83:11
writ 243:20
write 9:18 101:2 324:18
writing 35:20 115:19
 324:20 330:8
written 4:18 6:4,10,16
 28:19 35:15,18 36:7
 52:10 55:8 145:21
 329:10
wrong 207:14,14
 272:12 303:10 327:18

X

X 195:15

Y

year 4:22 7:16 11:9
 22:14 23:11,16
 131:19 193:18 199:22
 202:22 207:6 208:14
 242:7 243:5
year's 242:18
years 5:1 7:18 8:17,19
 8:19 9:17 15:2 29:19
 37:9 44:8 65:16 72:12
 78:20 79:12 83:5
 129:1,5,10 130:5
 140:20 141:2,4,5
 146:6 176:7 182:3
 192:13 193:3 196:11
 196:13 197:12,19
 199:21 200:3,6,10,14
 202:6 204:5,6,12,15
 204:18 205:1,7,21
 206:1,20,21 207:7,17
 208:6 210:7,8,16,21
 211:3,7,8 218:18
 228:22 229:15 230:22
 231:2 233:13 234:18
 260:9 276:5,13
 279:20 302:3
yellow 116:22 186:1
 247:17,22
yield 57:5

Z

0

1

1:42 239:19
10 260:9
10:40 99:19
10:49 99:20
100 37:8 85:18 294:9
 327:17
104 3:10
10th 331:6,7,8
11 8:19 111:22,22
 204:14,15 246:9
 259:21
110 254:5
110(b) 332:3
1101 253:16 254:8
1101(b) 332:4,19
1101A 260:2 267:10
 280:13 281:6 282:15
1101B 251:1 252:6
 253:15 254:5,16
 255:2,16,18,19 256:3
 257:10 259:18,22
 260:1,18 262:12,20
 273:18,21 274:4
 276:17 277:2 279:8
 280:3,12,18 281:14
 281:17 282:12,15
 286:1 288:11,20,22
 293:18 294:10 295:1
 296:11,13 297:14
 317:19,21 318:1,15
 322:17,17
1103 271:14 296:18,19
 304:17 318:12,15
1103A 3:14 6:2,13
 243:14 244:16 245:5
 246:11,18 251:8
 254:13 256:20 257:6
 257:18 259:19 260:4
 260:6,7 263:3,7 264:2
 264:15,21 267:11,13
 271:6,19 274:11
 276:14 279:14,21
 283:7 294:12 298:7
 313:1 317:21 318:1
 322:16 325:20
1103B 279:22
12 9:22 111:19 112:11
 117:2,6 129:14 132:7
 132:8 134:15 135:2
 152:22 153:14 154:14
 154:18 155:4 157:6
 159:11 161:7,13
 209:1 221:20,21
 234:19 260:9
12:52 239:18
120 5:8 20:21
13 117:5,6 137:12,18

178:15 222:18
14 48:10 117:7 137:22
 144:16
141 3:10
15 5:2 129:14 138:15,18
 139:1 209:1 223:8,8
 223:10
15th 19:8
16 139:22 140:8 223:7
 227:20
17 131:14 193:18
18 140:16,17 227:18
 228:10 229:8 230:1

2

2 57:12 58:7 153:13
 222:2
200 10:9 276:5 302:3
2012 5:8 20:21
2013 4:22 13:2,7,18
 20:22 48:10 79:8
 144:16
2014 5:1 19:8 107:13
 128:19 156:22 166:19
2015 110:12
2016 1:7 10:7 11:9
 21:22 47:8,13 49:10
 138:5 171:15
2017 11:10 18:2 24:13
 79:13 145:2 172:9
21 204:18 205:21 229:6
22 229:6
23 229:6
24 1:7 234:19 239:5
241 3:14
25 8:17 10:9
27th 4:14
28 8:16

3

3 58:11 92:16 220:11,19
 222:2 251:4
3-1/2 9:17
3:07 333:14
30 7:17 29:19 37:9
32 106:16,21 107:11,15
 107:20 112:14 114:1
 132:13 133:2 152:10
 153:2,4 156:13,21
 157:22 159:20 160:1
 160:2,9,19 162:7
32s 107:3
333 3:16
39 244:15 248:8 249:2,3
 249:3 255:13,14
 303:3 316:9,13,14
 317:12 320:19,20
 321:3 322:8 323:5,12

324:9 325:19 326:4
326:20
39A 322:8
39B 322:9

4

4 3:2,3 59:14 92:16
98:13 162:15
4-1 244:21
40 248:4 324:8,15,15,19
325:1,4
41 325:2 326:8
412 6:15
43 75:8,17 111:1,3,7
112:13 114:6,9,21
115:2,3,12 119:2
134:7,22 135:2,3,12
136:8,11,15 142:2
151:13 154:2,12
44 75:17 120:18 121:10
163:2 171:3 175:3
177:12
45 75:17 125:17 126:16
171:9 179:20 180:1
185:19,22 186:17
189:3 239:12,14
46 75:18 129:15 191:18
191:19 212:12,14,20
216:14,21 219:19,20
4610 1:10
49 316:12

5

5 60:15 105:4 244:2,14
251:4 277:3
50 164:19
513 6:15 250:21 251:3,5
252:13,19 254:10,16
254:16 255:15,17
256:7,14,20 257:10
263:2,12 264:20
265:2 268:8,10
269:12 270:17 271:14
272:7,14 273:20
283:14 284:22 285:18
285:20 311:15 320:11
320:11 321:11
547 242:20

6

6 220:19 264:12
6(b) 319:12 320:10,10
320:14
60 15:16
62 3:6
6B 283:12 284:22
286:10
6th 247:1

7

7 3:5 244:2
70's 146:4
703 126:11
77 51:18

8

80 15:16 40:4,6
80's 146:4
89 20:5

9

9 245:6,11
9:00 1:10
9:02 4:2
90 40:5,6 45:8 51:20
164:20
94A 49:13
94B 50:16
99 3:8