UNITED STATES DEPARTMENT OF DEFENSE

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JUDICIAL PROCEEDINGS PANEL

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PUBLIC MEETING

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THURSDAY
JULY 27, 2017

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The Panel met in the Video Conference Room, Suite 150, One Liberty Center, 875 North Randolph Street, 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

STAFF
Captain Tammy P. Tideswell, U.S. Navy - Staff Director
Ms. Julie Carson - Legislative Liaison/Attorney Advisor
Ms. Theresa Gallagher - Attorney Advisor
Ms. Meghan Peters - Attorney Advisor
Ms. Terri Saunders - Attorney Advisor

DESIGNATED FEDERAL OFFICIAL
Mr. Bill Sprance - Alternate Designated Federal Official (DFO)
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MR. SPRANCE: Good morning, everyone,
I'm Bill Sprance, the Designated Federal
Official. The meeting of the Judicial
Proceedings Panel is now open. At this point, I
will turn the meeting over to the chair, the
Honorable Elizabeth Holtzman. Good morning,
Madam Chair.

CHAIR HOLTZMAN: Good morning, Mr.
Sprance. Thank you very much. I'd like to
welcome everyone in attendance today. This is
day two of the 32nd meeting of the Judicial
Proceedings Panel. All five members of the Panel
are present here today.

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

The Judicial Proceedings Panel was
created by the National Defense Authorization Act
for Fiscal Year 2013, as amended. Our mandate is
to conduct an independent review and assessment
of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault and related offenses since the most recent amendment to Article 120 of the UCMJ in 2012.

At today's meeting, the Panel will deliberate on the JPP final report. Each public meeting of the Judicial Proceedings Panel includes time to receive input from the public. The JPP received no requests for public comment at today's meeting. Thank you very much --

CAPT TIDESWELL: I'm sorry, Ms. Holtzman, if I could stop you there. I think we're going to be a little bit out of order. We're not going to do the final report. If you don't mind, we're going to double back based on yesterday's proceedings.

CHAIR HOLTZMAN: Yes, that's what I --

CAPT TIDESWELL: And start with Ms. Saunders, unless you object.

CHAIR HOLTZMAN: Right, that's what I thought.
CAPT TIDESWELL: Yes, ma'am.

CHAIR HOLTZMAN: So I was going to add

that at today's meeting, the Panel will
deliberate on the JPP final report and other
items.

CAPT TIDESWELL: Thank you.

CHAIR HOLTZMAN: Okay, should have
done that. So thank you very much for joining us
today. We're ready to begin the meeting.

Captain Tideswell, no, Terri Saunders, would you
please walk us through where we left off
yesterday and what we need to address this
morning.

MS. SAUNDERS: Certainly. So I have
given you all a recent copy of the Panel Concerns
Report. And you'll notice all of the changes
that you made yesterday or that you approved
yesterday, it should be right there, ma'am. It's
the --

CHAIR HOLTZMAN: Oh, this.

MS. SAUNDERS: That's right, the top
one I think there. Everything that you see in
Track Changes are the changes that were made yesterday. The one I want to specifically draw your attention to is at the bottom of page two. You'll see the red there.

And I know there was some discussion among the Panel yesterday about approve versus adopt. So if you, I'd like to read this sentence to you, and we'll see if that satisfies everyone.

CHAIR HOLTZMAN: What page are you on?

MS. SAUNDERS: I'm at the bottom of page two, the red Track Changes there. And it says: As a result of this deliberation and review of the Subcommittee report included as Appendix A, the JPP issues nine recommendations.

So it doesn't include the word adopt or approve, but it makes it clear that the Subcommittee report is attached. So I throw that out there for discussion.

JUDGE JONES: That sounds good.

MR. STONE: Yeah, me too.

MS. SAUNDERS: And if everyone likes that language, we'll include that in the
investigations report as well.

MR. STONE: Okay, let's make them consistent.

MS. SAUNDERS: Certainly. But if you all want to take a few minutes to go through. Or I can walk you through one by one to make sure that this comports with you discussion yesterday.

CHAIR HOLTZMAN: Have the members had a chance to do that yet?

MR. STONE: I think we could read them.

PROF. TAYLOR: I had a chance to read them. They seemed okay to me.

CHAIR HOLTZMAN: Admiral, do we need some time? Take about three minutes.

VADM TRACEY: Okay.

(Whereupon, the above-entitled matter went off the record at 9:33 a.m. and resumed at 9:51 a.m.)

CHAIR HOLTZMAN: Is everyone finished?

Thank you. Okay, thank you, everyone for your patience. All right, so any comments?
VADM TRACEY: I had two requests and two recommendations.

CHAIR HOLTZMAN: Yes, Admiral.

VADM TRACEY: Starting on page 8. I don't know if anyone has something before that.

CHAIR HOLTZMAN: Well, I do, but let's start with you, Admiral. So you get to, wherever you want to start with, that's fine.

VADM TRACEY: On page 8 in the bullet on U.S. v. Boyce, is there more common language that would explain reversed and remanded to the public? So is there some other way to say that?

MR. STONE: I actually had some comments on that same thing. So I don't know if you have words you want to put in, or you want to?

VADM TRACEY: I'm looking for help from the --

CHAIR HOLTZMAN: Well, reversed, you could say overturned.

VADM TRACEY: Overturned, that's good.

CHAIR HOLTZMAN: I don't know that we
need to have remanded since it's overturned.

VADM TRACEY: I'm good with that.

Yeah, that would do the trick.

MR. STONE: I'm sorry, with what?

CHAIR HOLTZMAN: Just overturned, leave out the remanded.

MR. STONE: Yeah, reversed and --

CHAIR HOLTZMAN: Because it's just --

MS. SAUNDERS: Overturned.

CHAIR HOLTZMAN: Remanded is in it, nobody's going to --

MR. STONE: Reversed and remanded for retrial is what happened.

CHAIR HOLTZMAN: I know that's what happened. But do we have to tell the whole truth and nothing but the truth?

MR. STONE: Yes, yes, we do.

CHAIR HOLTZMAN: Well, okay we could. What I suggested was, because of the jargon here, that we use the word overturned.

VADM TRACEY: For purposes for which we're citing this case, I think that's the point
that we were focused on, is that in fact, they
did end up having to overturn a case around the
apparent --

CHAIR HOLTZMAN: This issue, right.

VADM TRACEY: Command influence.

MR. STONE: Well, in order to be clear
about what these cases stand for, because I think
I made the point yesterday that I think they
stand for the exact opposite of what you can read
in by putting them here. I have a couple of
changes that I'd like you to consider. On --

CHAIR HOLTZMAN: Why don't we, Mr.
Stone, let's take them one at a time here. Let's
do hers first, and then we'll turn to yours on
this section. So you wanted?

VADM TRACEY: On the recommendation
56, that's my request. My recommendation is in
the bullet that leads into these two, discussion
of these two cases, the JPP notes media coverage.

CHAIR HOLTZMAN: Yeah.

VADM TRACEY: I believe it is the
media coverage that underscores, in the last
line, the JPP concerns. I think this gets to Mr. Stone's point that if you do take the time to dig into these two cases, they make an excellent case that the DoD's quite vigilant about avoiding undue command influence and pressure.

CHAIR HOLTZMAN: So --

VADM TRACEY: But what we're focused on is the fact that most people aren't going to do that, and this media coverage underscores the creation of the perception. So I'm looking for, that underscores -- JPP notes media coverage that underscores. So I'm just asking that we make underscore go with media coverage.

CHAIR HOLTZMAN: So how would it read now?

VADM TRACEY: JPP notes media coverage of two sexual assault court-martial appellate cases, both of which came to light following the Subcommittee's issuance of its report, that underscores the JPP's concerns related to perceived pressure on convening authorities.

CHAIR HOLTZMAN: What has changed?
VADM TRACEY: It's not underscore.

Underscore would be that the two cases are what we're concerned about. It's the media coverage that we're concerned about.

CHAIR HOLTZMAN: Oh, I see. That's what you want to do.

MR. STONE: I'd like to propose --

CHAIR HOLTZMAN: Wait, wait, can I just take a second.

MR. STONE: Propose an amendment to that.

CHAIR HOLTZMAN: Yeah, okay, just one second. I just want to understand in my own head.

MS. SAUNDERS: So just adding, making that plural, underscores.

VADM TRACEY: Actually making it singular, but.

MS. SAUNDERS: Oh.

CHAIR HOLTZMAN: Yes, right.

VADM TRACEY: Technical, sorry.

CHAIR HOLTZMAN: Right, okay. Anybody
have any concern about -- well.

MR. STONE: Yes, I do. I'd like to suggest a friendly amendment here, and this is how I saw it. That we leave the word, that underscore, and it should say: That underscore the JPP's concerns and the military Services' close attention to perceived pressure on convening authorities.

Because both of those cases show they took action immediately. In one, he's going to be on his third convening authority. And the other one, they've already decided it, but they said, we decided it, but even so, we're going to stop and remand for more attention.

So both of them show the military Services' close attention. We're jumping on a bandwagon that left the station, as I said, in 2014 with that Howell opinion. It doesn't mean that we shouldn't be saying what we're saying, but I don't want to leave the impression that the military Services haven't been concerned, because both of these cases show they're concerned.
That's why they're reversed or sent back after opinion. So I would just leave it, say: that underscore the JPP's concerns and the military Services' close attention to perceived pressure on convening authorities.

CHAIR HOLTZMAN: Okay, I have an objection to that.

VADM TRACEY: I do as well.

JUDGE JONES: So do I.

CHAIR HOLTZMAN: We have only two cases. We haven't studied that issue. It's anecdotal in these two cases, and I just don't think we need to go there.

MR. STONE: Then I suggest you strike the whole thing. If you want to say we haven't studied the cases, that was my point yesterday.

JUDGE JONES: Why don't we vote?

CHAIR HOLTZMAN: Yeah, I was just about to do that. Okay.

MR. STONE: Well, Mr. Taylor, did you want to say something?

PROF. TAYLOR: Well, I was going to
say that I think what could be accurate would be
to say, and the military court's response.

MR. STONE: Okay.

PROF. TAYLOR: Because we do know what
the response was in both of these cases. I don't
know that the military Services have responded.

MR. STONE: Okay.

PROF. TAYLOR: But the military courts
have responded.

MR. STONE: And the military courts
responded, okay.

PROF. TAYLOR: But I would ask the
chair, does that, would that satisfy your --

CHAIR HOLTZMAN: So how would it read?
I can't -- I don't know.

PROF. TAYLOR: It would read: that
underscores the JPP's concerns and the military
courts' responses to perceived pressure.

CHAIR HOLTZMAN: To me it's not clear,
because --

JUDGE JONES: I think, I see where
you're going, Mr. Taylor. What about: the JPP
notes that -- and I'm not sure I even like this, but -- media coverage of two sexual assault court-martial appellate cases and the media's response to them, put that there. Underscores the JPP's concerns -- see, I don't --

MR. STONE: But we're not citing the media papers. We're only citing the cases down here.

CHAIR HOLTZMAN: I didn't understand your point, Mr. Stone.

MR. STONE: There's no reference to where the media said that. There's only reference to the reports of the cases.

JUDGE JONES: We're citing a fact that it was in the media.

MR. STONE: I know we're saying it, but there's no citation to it.

JUDGE JONES: Well, there's a lot of things we haven't put a citation to. This is a sentence. We've noticed that there's media coverage.

I don't think we're being critical of
the response of the military. I think the point of this is simply to say that we've noticed, and noted, and we're noting that these concerns have come to light in these two cases, and it's a fact. It's not really a statement against the military response. So, you know, I don't.

MR. STONE: But the media's coverage is misleading. They're making it sound like the military's doing nothing, when in both cases, the military really acted extraordinarily.

VADM TRACEY: I think the purpose of this recommendation has to do with the climate in which people are experiencing the military justice system. And the climate is comprised not only of what's in the UCMJ and what the military's implementation of that is, but also what the media says about it, what the Shipmates have to say about it.

And that's what our intent in this discussion is, is that -- our observation is that people subject to the UCMJ and people who have to trust the UCMJ are operating in an environment
which appears to be characterized by extraordinary pressure on convening authorities to prosecute.

CHAIR HOLTZMAN: And I think that --

MR. STONE: Then why don't we just say the media continues to cover, to give extensive coverage to instances of unlawful command influence. Why cite the cases if we're not going to be showing that we're not telling the people who read this that we don't think the military in these cases did their job?

That's what it sounds like by citing the cases. In fact, and that's where I agree with Mr. Taylor's -- I'm fine with his: and the military courts' responses. Either don't cite the case, or at least point out that when it came up in the cases, they acted immediately.

They were solicitous. They didn't put in here, which I would like to put in, that in one case, he's asking for -- he's already had two convening authorities, and he's working for his third, which they gave him a hearing to have.
And then the other one they found there was in fact no unlawful command influence. I mean, it makes it sound like these cases don't show any response by the military, and we're telling the people who are going to get this on the Congressional Armed Services Committee, you know that, hey, there's not enough being done here.

There's something being done, but we're still worried about the media, I guess.

CHAIR HOLTZMAN: I --

MR. STONE: Delete the two bullets if you want.

CHAIR HOLTZMAN: Yeah, my personal view is that we should accept the amendment of the Admiral, which is to add the letter s to underscores, and adopt this. And that underscores, I have a small word question, and not a substantive question but just a wordsmithing question. But let's just take a vote.

PROF. TAYLOR: Well, just a --
JUDGE JONES: Are you adding overturned as well?

CHAIR HOLTZMAN: Oh, yeah, we're going to add overturned.

MR. STONE: Well, I haven't gotten to make any of my suggestions, so --

CHAIR HOLTZMAN: Oh, you have more?

MR. STONE: How are we going to do these?

CHAIR HOLTZMAN: Okay, well, let's go. Do we have any other amendments to the framing bullet?

MR. STONE: Yes.

CHAIR HOLTZMAN: Okay.

MR. STONE: When we get to the first bullet --

CHAIR HOLTZMAN: All right let's go first, let's go first to the Admiral's amendment, which is to add s. Any objection to that?

(No audible response.)

CHAIR HOLTZMAN: Okay, hearing none, that's accepted. Now, Mr. Stone, do you have an
amendment to the framing?

MR. STONE: Yes, in the first bullet, originally I would have had it written: A declaration of the convening authority was submitted --

CHAIR HOLTZMAN: Oh, you were talking -- we're no longer in the framing bullet?

MR. STONE: No.

CHAIR HOLTZMAN: We're in the first bullet.

MR. STONE: I'm in the thing under it.

CHAIR HOLTZMAN: Okay.

MR. STONE: Okay. This, the declaration of the convening authority was submitted. It doesn't point out that this is an adversarial submission at this point. So what I would say was after was submitted, I would add: that has not yet been judicially ruled on. Because what's going on is a remand that hasn't happened.

He hasn't stated it. It's an affidavit, and no judge has found that it means
the way it's been put together. A judge could say, yes, it means it was unlawful command influence. A judge could also say, all you're telling me is that there were concerns in the air.

Nobody's produced those people that they claimed they were going to produce. They haven't testified that way, and I'm sorry, but I don't find it exists. So I just want to say that has not yet been judicially ruled on.

CHAIR HOLTZMAN: Okay.

MR. STONE: Unless you want to say it was submitted by a defense counsel and not yet been judicially ruled on. But I don't think we have to say that. We just have to say that, to be honest about it, it's not yet been judicially ruled on.

CHAIR HOLTZMAN: Mr. Stone, what could a judge do to that affidavit except to find that the person who submitted it lied?

MR. STONE: Well --

CHAIR HOLTZMAN: Or, I mean, in terms
of the facts alleged, they are the facts alleged. What legal weight is given to it is not really of concern. Maybe I'm wrong.

MR. STONE: Gee, I'm very sorry to say an adversarial pleading is not fact. And that at this point is an adversarial pleading.

CHAIR HOLTZMAN: It doesn't mean a pleading, it's an affidavit, isn't it? It says this is what happened to me. So either --

MR. STONE: No, it doesn't say that. It is a basis for him to be put on the stand and cross-examined, that's what it is. That would not --

CHAIR HOLTZMAN: No, you're talking about --

JUDGE JONES: Could you lower your voice? It's bothering me.

CHAIR HOLTZMAN: Anyway I think we're just going to have to vote on this. So can you just state your full amendment please, Mr. Stone, so we can vote on it?

MR. STONE: Yeah, that was it. That
has not yet been judicially ruled on, that
states. And then everything else that's there.

CHAIR HOLTZMAN: Oh, submitted, after
the word submitted, that has not been judicially
ruled on.

MR. STONE: And the footnote down
there to Barry, which says footnote 2, but I
think it's footnote 3. Oh, I see, 3 is the
declaration. Where in footnote 2, it says
rehearing granted, it should just say remanded,
not rehearing granted. Because that court didn't
grant rehearing. They remanded it. So it ought
to be remanded.

And then in the second bullet about
Boyce --

CHAIR HOLTZMAN: Wait a minute. I'm
taking this bullet by bullet. Actually, I wasn't
even up to bullet number 1, Mr. Stone, when you,
because I was up onto the framing bullet.

MR. STONE: Okay.

CHAIR HOLTZMAN: Okay, you're up to
Barry. So let's just deal with that one at a
time. You have if the proposal is -- and we've, I guess because it's a factual correction, we've accepted the change of Ms. Saunders to change rehearing granted to remanded. Okay.

Now you have submitted this, the language, after the word submitted in the first bullet, you're proposing -- you want to repeat it again?

MR. STONE: The words that say it has not yet been judicially ruled on.

CHAIR HOLTZMAN: Okay. Those in favor, say aye.

MR. STONE: Aye.

CHAIR HOLTZMAN: Those opposed.

(Chorus of no.)

CHAIR HOLTZMAN: The no's have it.

The amendment's not agreed to. Any other amendments to bullet one? Okay. I just have a suggestion. It says: In the first case, a declaration of the convening authority was submitted.

Do we need to say to the court, to the
judge? Or do we not? I leave that up to the
Admiral grammarian, or anybody else in terms of
style. I just wondered if we needed to have
that. This is no substantive change. It's just
a clarification change.

PROF. TAYLOR: I think that would be
helpful to say submitted to the court.

JUDGE JONES: Yeah, that's fine.

CHAIR HOLTZMAN: Is that fine. Any
objection to that?

VADM TRACEY: To the court, right?

CHAIR HOLTZMAN: Yes. Okay, we
finished with --

MR. STONE: Well, it should have the
court. I have to add as a comment that,
therefore, it's even more appropriate to say that
has not yet been ruled on, then not say
judicially. But you just put that in, that it's
submitted it to the court. That has not yet been
ruled on.

JUDGE JONES: Look, whether we said to
the court or not, it's obvious that it was
submitted in the case. I don't think that
changes a thing. And we're talking about a
perception, not the results of any, or the
process of any judicial proceeding.

CHAIR HOLTZMAN: All right, are we
inging on "to the court"? Let's vote on the "to
court", the addition, my amendment, after the
word submitted, add the words, to the court.
Those in favor say aye.

(Chorus of aye.)

CHAIR HOLTZMAN: Those opposed.

MR. STONE: Opposed without the
following words, that has not yet been ruled,
after it.

CHAIR HOLTZMAN: Okay. So the
amendment is agreed to. Mr. Stone, do you have
another amendment to bullet number 1?

MR. STONE: No.

CHAIR HOLTZMAN: Okay. Bullet number
1, all in favor as amended say aye.

(Chorus of aye.)

CHAIR HOLTZMAN: Opposed.
Bullet number 2. Any amendments to bullet number 2?

MR. STONE: Yes.

CHAIR HOLTZMAN: Okay.

VADM TRACEY: We've already voted on the overturn versus reversed and remanded. Or were we going to vote on this?

JUDGE JONES: In bullet number 2.

CHAIR HOLTZMAN: No, we haven't voted on that. Now is your moment in the sun.

VADM TRACEY: So I do recommend we substitute overturned for reversed and remanded.

CHAIR HOLTZMAN: Okay. And discussion?

MR. STONE: Yes. I think that that again is misleading. Overturned suggests that that's the end of the case. It is not the end of the case, and they specifically said it was not the end of the case. If you want to say overturned and remanded for retrial.
MS. GALLAGHER: If I may make a point of clarification. In the military, you don't remand back to a lower court.

MR. STONE: They remand to --

MS. GALLAGHER: It's returned to the convening authority.

MR. STONE: That's right.

MS. GALLAGHER: Who has to make a determination of whether or not to refer it back to --

MR. STONE: That's right.

MS. GALLAGHER: The court. So I'm not certain remand is the technical --

MR. STONE: Well, the reason I say that is because if you look in the last footnote of the majority opinion, and if you look in the dissents, the majority opinion says, we do not think -- we think it would be a windfall if we simply reversed with prejudice.

And the two dissents agree with that part of the majority. We can say, and remanded to the convening authority. But I think that
goes over the head of most people who would get this report because they're not sure what that means.

CAPT TIDESWELL: Could it be a --

MR. STONE: If you want to say

remanded to the convening authority to consider whether or not to conduct a retrial, sure.

That's a lot of words.

MS. GALLAGHER: Or returned.

CAPT TIDESWELL: It's sent back,

returned.

MR. SPRANACE: Sent back, returned.

MS. GALLAGHER: The jargon you can say returned to the convening authority with a new trial authorized.

MR. STONE: Yeah, you could say that.

CHAIR HOLTZMAN: What does that mean, a new trial authorized?

MS. GALLAGHER: It means that he -- instead of dismissing with prejudice, which would preclude them from retrying the case. They have allowed, they're sending it back to the convening
authority to make the decision of whether to order a new trial.

CHAIR HOLTZMAN: As to whether to.

But when you say with a new trial authorized, it suggests that the new trial is going to be authorized.

MR. SPRANCE: Yes.

CHAIR HOLTZMAN: As opposed to considering whether or not to authorize.

So I think your formulation is misleading.

MS. GALLAGHER: Yeah, and I apologize, I don't have the case in front of me.

CHAIR HOLTZMAN: That's the problem.

MR. STONE: Well, if it said reversed and remanded, allowing for retrial.

CHAIR HOLTZMAN: Remanded is a, as the Admiral has pointed out, is a term that people reading this mostly will not understand.

VADM TRACEY: What about overturned, allowing for retrial?

MR. STONE: Yes.
VADM TRACEY: Speaks to the common reader.

MR. STONE: Overturned allowing for retrial is fine with me.

CHAIR HOLTZMAN: Do we need the allowing for retrial in the actual text, or can we put it in the footnote?

VADM TRACEY: Yeah, I think a footnote would serve for me.

CHAIR HOLTZMAN: We have it, right, maybe in footnote 4 you can say the, whatever it is, the reversal. Oh, the court allowed for a, or authorized, allowed, whatever your language was, a retrial.

VADM TRACEY: That would work for me.

MR. STONE: That's fine.

PROF. TAYLOR: That's fine with me.

JUDGE JONES: That's fine.

MR. STONE: Okay. Then I have a second.

CHAIR HOLTZMAN: Well, wait a minute. We don't have the language for that, so can we
just -- so what is the language in footnote 4?

MS. SAUNDERS: Should I just say this case was overturned and returned to the convening authority, allowing for retrial?

MR. STONE: Yeah, it's in the footnote, that's okay.

JUDGE JONES: That's the footnote language.

MS. SAUNDERS: That would be the footnote.

JUDGE JONES: Just so I'm sure, what is the actual language in the bullet? I apologize, I lost track.

MS. SAUNDERS: Would we just say overturned in the --

JUDGE JONES: Right, right.

MS. SAUNDERS: Okay.

CHAIR HOLTZMAN: Okay, so instead of reversed and remanded, we have overturned. Okay. And we have a footnote also saying, Ms. Saunders.

MS. SAUNDERS: The footnote could potentially say: This case was overturned and
returned to the convening authority, allowing for a retrial.

CHAIR HOLTZMAN: We have to say overturned again?

MS. SAUNDERS: We don't have to. We could say this case was returned to the convening authority, allowing for retrial.

CHAIR HOLTZMAN: Okay, is there any objection to those changes?

(Chorus of no.)

CHAIR HOLTZMAN: Hearing, none, it's approved. Any other suggestions or amendments to bullet two?

MR. STONE: Yes.

CHAIR HOLTZMAN: The second bullet.

Okay.

MR. STONE: Yes. The last sentence that as it stands is also misleading, where it says, this was primarily due. And to clarify that -- where it talks about its failure to affirm a prior sexual assault case, that isn't why it was returned.
And to clarify that, you have to say those are the facts, but not why it was overturned. You have to say: which resulted in a public appearance of unlawful command influence, comma, even though the court found there was in fact no unlawful command influence.

In other words, it was overturned for a legal reason. Those are the facts behind it, and I'm just giving --

CHAIR HOLTZMAN: Wait a minute, so you're in sentence number one. I thought you were in sentence number two.

MR. STONE: No, I'm at the very end of sentence two. For his failure to refer a prior sexual assault case to court-martial is where it stands now, which resulted in a public appearance of unlawful command influence, comma, even though the court found there was in fact no unlawful command influence. That's what the case holds.

JUDGE JONES: So how would you start the sentence again?

MR. STONE: Just exactly with what's
there.

CHAIR HOLTZMAN: Yeah, I mean this is getting into it being like Proust.

MR. STONE: I mean, or you could make it to a new sentence that said this resulted or these facts resulted in a public appearance of unlawful command influence, comma, even though the court found there was in fact no unlawful command influence.

CHAIR HOLTZMAN: You know what, can I just make a suggestion? Because we say the word appearance in sentence number one, which precedes sentence number two. We could say in a footnote to this case, another footnote or add to that footnote, the court found that there was no unlawful command influence in fact.

MS. SAUNDERS: No actual unlawful.

CHAIR HOLTZMAN: Yes.

JUDGE JONES: As opposed to appearance, right.

CHAIR HOLTZMAN: So we just, is that acceptable?
MR. STONE: There was in fact no unlawful command influence?

CHAIR HOLTZMAN: Yes. And we get to Hemingway style. And objection to that?

PROF. TAYLOR: None.

CHAIR HOLTZMAN: Okay. So that's accepted. I have one -- is there anything else since we're on page 8? I have one suggestion. Again, this is just a kind of wordsmithing. It's no substantive change intended here.

But in the first full bullet on the page, where it says, perceive there to pressure on convening authorities to refer sexual assault cases to trial, even based on weak evidence. That's really not great. Maybe, even when based on weak evidence?

MR. STONE: Yeah, that's okay. It's okay with me.

CHAIR HOLTZMAN: Admiral, does that pass your muster?

VADM TRACEY: Yes, it does.

CHAIR HOLTZMAN: Or you may have a
better suggestion.

VADM TRACEY: I think that we've used this language multiple times.

CHAIR HOLTZMAN: I know I have. I was struck by it several times. I'm not changing the substance, but --

VADM TRACEY: Right, exactly.

PROF. TAYLOR: I would agree with that, since I'm the one that introduced that language to start with.

CHAIR HOLTZMAN: Oh, okay, Mr. Taylor, thank you.

PROF. TAYLOR: And if I may, on that same page.

CHAIR HOLTZMAN: Right.

PROF. TAYLOR: The similar conforming change in the very last bullet on page 8, where we talk about referring cases to trial even when there is a lack of evidence. So what I was trying to look for was consistency, and I missed that one.

CHAIR HOLTZMAN: Right. So when you
say even when there is -- so what do you want to
do with the last bullet?

PROF. TAYLOR: Right, use the same
words, even when based on weak evidence.

CHAIR HOLTZMAN: Okay. Okay, so are
those two, and without objection, those two
changes, one in the first full bullet and then
one in the last bullet are adopted.

Okay, that's page 8. Should we go
back to the beginning?

MR. STONE: Well, unless anybody has
anything. Anybody have anything else?

VADM TRACEY: I did, on page 9.

CHAIR HOLTZMAN: Okay, go to page 9,
Admiral.

VADM TRACEY: At recommendation 59.

CHAIR HOLTZMAN: Wait, wait, wait.

Page 9, 59, yes.

VADM TRACEY: 59, the last bullet.

Again, common language for venire or venire,
what's the --

CHAIR HOLTZMAN: Yeah, okay, where are
we?

VADM TRACEY: The very last line.

CHAIR HOLTZMAN: Right.

PROF. TAYLOR: How about jury pool?

CHAIR HOLTZMAN: There you go, right, beautiful. Any objection?

JUDGE JONES: No.

MR. STONE: You're saying juror pool?

CHAIR HOLTZMAN: Jury pool instead of venire.

MR. STONE: Okay, again, we're talking technically. Technically, they're not a jury. But technically, you would say panel member pool, I think. But if you want, they're not jurors, but I won't object if Mr. Taylor's okay with that language.

CHAIR HOLTZMAN: I think it's accurate. Okay, any other suggested changes?

VADM TRACEY: If I may, on page 10, this is, we have the footnote omitted, up on the very first line.

CHAIR HOLTZMAN: Right.
VADM TRACEY: Does that belong inside the quotes? Because the footnote is actually part of --

CHAIR HOLTZMAN: Yeah, probably.

VADM TRACEY: The reference.

CHAIR HOLTZMAN: Yes. Okay, that changes it. Okay, any other changes, suggestions? Okay, I just have a few, again, wordsmithing, sorry. I'm going to page 1, where it says, the first full -- oh, the second full paragraph.

Kind of next-to-last sentence, where it says, To address these concerns, Congress, et cetera, have all worked to change the military system so that victims of sexual assault will be treated with respect and not -- okay, it's fine. I'm okay with it the way it is. I'm sorry.

Okay, page two, second full paragraph, line two, where it says: visited military installations throughout the United States and Asia. We only went to two installations in Asia, so I don't think throughout can properly modify
Asia. It's not accurate. So throughout the
United States and in Asia.

MR. STONE: Why don't you just say in
the United States and Asia? You did say 25.

CHAIR HOLTZMAN: That's fine. Okay.
That's fine with me. All right, page 3, number
4, the same point, Mr. Taylor, that I had before.
Where it says, Even based on weak evidence. Even
when based on weak evidence. Any objection to
that change?

JUDGE JONES: No.

MR. STONE: No.

CHAIR HOLTZMAN: Agreed to, so that
change is agreed to.

Okay, in point number 6, when we talk
about -- this is more substantive. When we talk
about the training that can confuse military
members, do we want to say that the training -- I
mean the training that we're referring to here is
really with regard to alcohol, and I don't know
whether we want to be specific about that at this
point.
Because what it says now is that military members who potentially may sit on court-martial panels receive sexual assault prevention and response training that may confuse them regarding the legal standard for consent in sexual assault cases. I would suggest saying legal standard for consent --

JUDGE JONES: In alcohol-related sexual assault cases?

CHAIR HOLTZMAN: Yeah, right, or when alcohol is involved in sexual assault, something like that. But just so that we're not talking about the whole universe of the problem of consent. I think it would be better. I mean, that's just my suggestion.

MR. STONE: So response training related to alcohol use, or related to alcohol?

VADM TRACEY: Or consent when alcohol is involved.

CHAIR HOLTZMAN: Yeah, okay.

MR. STONE: Wait, so what language did you have?
CHAIR HOLTZMAN: When alcohol, regarding the legal standard for consent when alcohol is involved in sexual assault cases. So take your language, when alcohol --

PROF. TAYLOR: I think that's a good idea. I thought about the same thing, but I wasn't sure how many changes we were going to make. But I think that's a good fix.

CHAIR HOLTZMAN: Okay.

JUDGE JONES: Can we just say in alcohol-related sexual assault cases?

CHAIR HOLTZMAN: Yeah, that's fine.

VADM TRACEY: I recommend not.

CHAIR HOLTZMAN: Okay.

JUDGE JONES: Too broad, you mean?

VADM TRACEY: Yes, I think that's.

JUDGE JONES: So what was your suggestion again?

MR. STONE: Regarding --

VADM TRACEY: Standard for consent when alcohol is involved in sexual assault cases. That's fine.
CHAIR HOLTZMAN: Okay, without objection, that's agreed to.

Okay, I also had a question with regard to bullet point number 7. Again, the issue's on bullet point number 7, and talks about expedited transfers. But this a kind of, I think it's an incomplete summary of the problems that we identified with expedited transfers, and that's why I'm raising it.

It says that the current policy on expedited transfers can make it difficult for investigators to adequately consult with victims when victims have been transferred to faraway locations. I had no trouble with that. I think that's fine.

But the problem with expedited transfer was not only that. It was an issue that was related with regard to potential -- how this could be used by defense counsel to undermine these cases. That's not addressed here. This is a kind of a summary of our whole report, and that's left out.
So I think we need somehow to add that
to point number 7. I would suggest that. I
don't have the language.

MR. STONE: Let me suggest something
else.

CHAIR HOLTZMAN: Okay.

MR. STONE: Since this is just a
summary, and when we get to it, we talk about it,
what if we just say, don't make it so specific
and say: The current policy on expedited transfer
of sexual assault victims can make it difficult
for investigators and prosecutors? And then jump
to when victims have been transferred to faraway
locations.

Inside this, when we get to the
recommendation, we explain a lot more detail.
And otherwise we're going to be, like you said,
we're going to put in all that detail in here
when you haven't yet gotten the background.

CHAIR HOLTZMAN: I'm okay with that.

MR. STONE: All right.

CHAIR HOLTZMAN: Anybody object?
VADM TRACEY: No.

JUDGE JONES: No.

CHAIR HOLTZMAN: Okay, without objection that's agreed to.

MS. SAUNDERS: So they can make it difficult for investigators and prosecutors --

MR. STONE: When victims, yeah.

MS. SAUNDERS: When victims, okay.

CHAIR HOLTZMAN: Right, because that implies that's the only issue, and it's really not. Okay. There is a -- no. Okay, recommendation 52, it just, after all --

MR. STONE: Can I?

CHAIR HOLTZMAN: Yeah, go ahead.

MR. STONE: Just before you get there, right above that, the title says Summary of JPP. Shouldn't we take out Summary of? Shouldn't that just be JPP Recommendations? These aren't the summary. These are the recommendations with the bullets.

CHAIR HOLTZMAN: We could have list of.
MR. STONE: Yeah, we could have list of. But I think we could just put --

CHAIR HOLTZMAN: Or you can just JPP Recommendations.

MR. STONE: Okay, unless somebody objects.

CHAIR HOLTZMAN: So just, without objection, it's agreed to.

MR. STONE: Yeah. Okay, I'm sorry.

CHAIR HOLTZMAN: Okay, but this was triggered in my mind because of the various conversations we had yesterday. And recommendation 52, line 1, 2, 3, 4, 5, where it says that, basically it says that the preliminary hearing process no longer serves a useful purpose.

I'm not sure that -- do we really want to go that far? Maybe it no longer serves a useful discovery purpose, or -- and I don't know if I'm opening a minefield here, but I just --

VADM TRACEY: I thought we took out that amendment --
JUDGE JONES: I thought we did —

VADM TRACEY: -- someplace else.

PROF. TAYLOR: Yeah, we did in one of
the bullets.

JUDGE JONES: Yeah, I think we did
take it out somewhere.

CHAIR HOLTZMAN: Yeah, that's why it
struck me when I read it.

VADM TRACEY: It is not a meaningful
process for evaluating the strength of the case.

CHAIR HOLTZMAN: Right.

VADM TRACEY: Is in the second bullet.

Or, yeah, second bullet.

MR. STONE: In other words, so in the
recommendation, what if we just, since we're
going to discuss it later, we stop that sentence
after, continue the review of the new Article 32
preliminary hearing process, period. Strike the
rest of the sentence, and then continue with:
This review should look at whether, blah, blah,
blah, blah, blah. And we've got the stuff right
below.
CHAIR HOLTZMAN: Well --

MR. STONE: I mean, or you have a different way you want to get rid of the "no longer"? I mean, because we say it, and then we have process.

CHAIR HOLTZMAN: Well, you could just say maybe, no longer serves the same purpose as it did before. Maybe that would be better. Maybe that's not accurate, because it still does serve a probable cause --

MR. STONE: It does.

CHAIR HOLTZMAN: -- purpose. I just was going to add no longer serves a useful discovery purpose.

MR. STONE: I'm okay with that. I'm fine with that, that's accurate. It's just, this is a pretty long recommendation. That's why I was thinking of shortening it.

CHAIR HOLTZMAN: Yeah, so I --

MR. STONE: Of all our recommendations, this one is gigantic.

CHAIR HOLTZMAN: Right. So does
anybody object to that?

PROF. TAYLOR: I don't.

JUDGE JONES: No.

CHAIR HOLTZMAN: Okay, without objection, that's agreed to.

On page 5, the last bullet under recommendation 52 and just before 53, is there a problem here? It says, because of statutory changes, the Secretary of Defense and DAC-IPAD should continue monitoring court-martial data to see how the statutory changes have affected the data.

Is that what we're looking for? Or have affected the something. But I don't think we're interested in how changes affect data. We want to see how changes affect some process. Is that right?

MS. SAUNDERS: The process, the military justice process?

CHAIR HOLTZMAN: Am I wrong?

PROF. TAYLOR: No.

CHAIR HOLTZMAN: Okay. So I think we
need to fix that.

MS. SAUNDERS: Affected the court-martial process?

CHAIR HOLTZMAN: You could just say how the statutory changes have worked.

JUDGE JONES: Although there's that whole problem with having to be charged under different statutes depending on the dates and all that. Is that what you were alluding to here? I just don't know.

MS. SAUNDERS: This is the change in the Article 32 process.

JUDGE JONES: Right.

MS. SAUNDERS: And to see if that affects how cases are processed, whether more cases are referred, fewer cases, you know, to see how that affects --

CHAIR HOLTZMAN: So do you want to take some time, maybe after we finish going through this, Terri, to try to move on to --

MR. STONE: I'd just go with your word work, how they work. See if or see how well the
statutory changes work.

CHAIR HOLTZMAN: Yes, okay.

VADM TRACEY: I'm sorry, but statutory changes are, we're doing exactly what they intended in the statute. What we're interested in is if those changes in the statute have second- and third-order effects that are desirable or undesirable.

CHAIR HOLTZMAN: Right.

VADM TRACEY: So it's not how they work.

CHAIR HOLTZMAN: Okay.

VADM TRACEY: It's how they affect the court-martial process, I think.

MR. STONE: I'm okay with that.

CHAIR HOLTZMAN: Or you can say to evaluate, could continue monitoring court-martial data to evaluate the effect of the statutory changes.

PROF. TAYLOR: That's what I was thinking.

MR. STONE: Good.
CHAIR HOLTZMAN: All right, without objection, that's --

MR. STONE: Effect of the statutory changes, good.

CHAIR HOLTZMAN: That's accepted.

Okay, page 6, bullet 2. I just thought this might be clarifying, but I could be wrong, because I'm not, never was, never will be a U.S. Attorney or anything involved with that. But here it says, in the second sentence about the official guidance of the Attorney General, the Manual -- full stop there for a moment, who is our Attorney? Okay, never mind.

The Manual provides that an attorney should commence prosecution. Is this only if the admissible evidence will probably be sufficient to obtain and sustain a conviction? Do you need the word only there, and is that correct? Or if we don't know, then we just fudge, so to speak.

MS. SAUNDERS: I'll pull the -- I'm going to have to pull the --

MR. STONE: No, it's not only, because
there's a whole lot of factors.

    MS. SAUNDERS: Yeah.

    MR. STONE: And that can be overridden.

    CHAIR HOLTZMAN: I understand the other factors. I'm just trying to say, but if this factor is not there --

    MR. STONE: No.

    CHAIR HOLTZMAN: They can't do it.

    MR. STONE: It's not a but for.

    CHAIR HOLTZMAN: It's not a but for.

    MR. STONE: No.

    CHAIR HOLTZMAN: Okay.

    MR. STONE: It's a very long section, similar to the new Article 33.

    CHAIR HOLTZMAN: Okay, that's why I raised it.

    MS. SAUNDERS: I do recall there being a provision that says, even in situations where -

    -

    CHAIR HOLTZMAN: Where.

    MS. SAUNDERS: There may be situations
where they don't feel --

CHAIR HOLTZMAN: Okay, fine.

MR. STONE: It's a very long section.

CHAIR HOLTZMAN: All right, okay. And we have a weak evidence issue in the next-to-last bullet. Okay.

MS. SAUNDERS: At the bottom of 6, or --

CHAIR HOLTZMAN: Yeah, on the bottom, next-to-last bullet on the bottom of 6.

MS. SAUNDERS: Even.

CHAIR HOLTZMAN: I have even when, or when based on, or something.

MS. SAUNDERS: Even when based on.

CHAIR HOLTZMAN: Yeah.

MR. STONE: Instead of with.

CHAIR HOLTZMAN: Okay, that's it.

Those are all my suggestions. Oh, wait, excuse me, I had something on 9 and 10. Okay. In recommendation 59, is it only -- and maybe this is just I'm just not familiar enough with this -- but we're talking about the legal definition of
impairment.

Is that the critical term with regard to the use of alcohol, or are there other terms with regard to use of alcohol that we need to be concerned about?

MR. STONE: Well, actually, you get concerned about, it's a finding of voluntariness, but they use impairment as a way --

CHAIR HOLTZMAN: Okay, is that the only -- right.

MR. STONE: To reflect whether the person acted voluntarily.

CHAIR HOLTZMAN: But there's no other, right. Okay, so that's the key trigger term. Okay, it was a question.

Okay, bullet 1 under 59. The way it reads is -- you need to sharpen it because it's too vague. Counsel on site visits reported their perceptions that sexual assault prevention and response training has become so pervasive as to affect the judgement of court-martial panel members.
I mean, it may affect their judgement in a good way. So I don't -- it's not just that it's pervasive. So there are really two problems with regard to the training. One is that it's pervasive, and you have training fatigue. And the other is that they're being trained in such a way as to produce a misapprehension of legal standards.

I mean, we say the training fatigue in the second bullet. So maybe, so I'm not --

MR. STONE: All right, let me make a suggestion. Instead of has become so pervasive as to, why don't we just say counsel on site visits reported their perception that sexual assault prevention and assault training is important because it affects the judgement of court-martial panel members.

Isn't that what we're trying to say in this one? The next bullet talks about training fatigue. This one, you're trying to say it's important, this isn't something you should overlook, because it carries over into the court-
martial context.

MS. SAUNDERS: I think we're talking about perceptions of counsel who were spoken to on site visits. And I don't think that was the gist of what they were trying to say. I don't think they were saying, it's important -- I think they're saying that it's, that perhaps some of the training is not accurate, or it's being taken in the wrong way by --

JUDGE JONES: Well, is this hearkening back to the alcohol?

MS. SAUNDERS: Right.

CHAIR HOLTZMAN: Yeah, this is really a repetition of bullet number 3. You see bullet number 3? So we may not even --

MR. STONE: You want to delete it?

CHAIR HOLTZMAN: Well, you need to talk about what we're -- you know, counsel on site visits, you can just say simply complained about or raised complaints about sexual assault and prevention training, period.

Then you can have the training
fatigue, and then you have the misperception

about the use. I don't know, but the way it is

right now, it's not --

MR. STONE: Complained about sexual

assault training, period.

VADM TRACEY: How about raised

concerns?

CHAIR HOLTZMAN: Okay, raised

concerns. Beautiful, much more diplomatic.

VADM TRACEY: About sexual assault

prevention and response training, period, right?

CHAIR HOLTZMAN: Yeah.

MR. STONE: Raised concerns, and what

did you --

CHAIR HOLTZMAN: About sexual assault

and response training, period.

MR. STONE: Okay, and that's the whole

bullet now?

CHAIR HOLTZMAN: Yeah, I think so.

MR. STONE: Okay.

CHAIR HOLTZMAN: Let's just go to 3

and see if 3 is comprehensive enough. Yeah.
JUDGE JONES: Except we don't have, we have them denying something we haven't -- in other words in 3, we have the coordinator saying we don't train them that way.

VADM TRACEY: But we have, counsel indicated they still hear those misperceptions about --

MR. STONE: That's what they said to the Subcommittee.

JUDGE JONES: I realize that. But I'm saying if all we say in bullet 1 is counsel on the site visits --

CHAIR HOLTZMAN: Okay, so maybe --

JUDGE JONES: Reported, raised concerns about the training, but we don't say specifically what training, that's all.

CHAIR HOLTZMAN: Okay, maybe we could change it to say raised concerns about the training in terms of its pervasiveness and its -- because it was both pervasive and misleading. Or something like that.

JUDGE JONES: I don't care about
pervasive.

CHAIR HOLTZMAN: Okay. Okay, fine.

JUDGE JONES: Because I think that's -- that, to me, is more the fatigue.

CHAIR HOLTZMAN: Because it's, yeah, misleading.

JUDGE JONES: I'm just, one of the concerns that they raised about the SAPR training, they were primarily, every time we talked to anybody --

CHAIR HOLTZMAN: Right.

JUDGE JONES: -- about alcohol.

That's all I'm saying. And then that matches up with 3, with the third bullet.

CHAIR HOLTZMAN: Sexual assault training.

MR. STONE: Let me just say we say that, like in the last two lines of the third bullet. So unless we're going to repeat that exactly, counsel indicated they still hear misperceptions about alcohol use and impairment from court-martial panel members.
JUDGE JONES: I'm sorry, where's that?

MR. STONE: That's the last two lines of bullet 3.

CHAIR HOLTZMAN: Bullet 3. We could --

MR. STONE: I don't know why we have to repeat that.

JUDGE JONES: I'm sorry, are we on page 9?

MR. STONE: Yeah.

CHAIR HOLTZMAN: Yeah, we're still on page 9.

MR. STONE: See, look at the last two lines of, in other words, the first part of bullet 3.

JUDGE JONES: Oh, I see, so we slipped counsel in there. Counsel and --

CHAIR HOLTZMAN: Well, you know what, we could --

MR. STONE: In other words, we showed the two parts of the problem, that the SAPR people say they're doing it correctly, but
counsel indicated they still hear misperceptions.

CHAIR HOLTZMAN: Barbara, a way of
helping you out there is if we change, inverted
those two phrases.

JUDGE JONES: Yeah, then we have the
problem --

CHAIR HOLTZMAN: And started with
counsel.

JUDGE JONES: Yeah.

CHAIR HOLTZMAN: Started with counsel
indicated they still hear misperceptions about
alcohol use, even though, or while sexual assault
 coordinators say --

JUDGE JONES: We could just get rid of
bullet 1 and just start --

MR. STONE: That's what I was going to
say.

JUDGE JONES: Counsel raised -- on
site visits, counsel raised concerns about or
indicated that they still hear, and then the
 coordinators' response. And then we don't need
bullet 1. Does that make any sense? Is that all
right?

VADM TRACEY: I'm okay with removing bullet 1.

MR. STONE: You can -- on site visits or counsel on site visits? This is the order that --

MS. SAUNDERS: So we're going to start with counsel on site visits.

MR. STONE: Indicated that.

MS. SAUNDERS: Indicated. And then we're going to get rid of bullet 1 altogether?

CHAIR HOLTZMAN: Yeah, and then you'll -- but you'll add as part of that sentence, while sexual assault coordinators.

MR. STONE: Or maybe it should be although or even though, one of those two.

CHAIR HOLTZMAN: Right, correct.

MS. SAUNDERS: Would this now be the second bullet in that?

CHAIR HOLTZMAN: First.

MS. SAUNDERS: Or you want --

CHAIR HOLTZMAN: Oh, I see, no, second
bullet. Okay, because we had the last one, the case. Okay. All right, okay, without objection that change is accepted.

All right, now we're up to recommendation number 60. Okay, it's also long. But in the middle of that, commanders and SVCs and VLCs should receive training in how locating victims from less desirable to more desirable locations can be used by defense counsel to suggest abuse of this system and to cast doubt on the victims' credibility.

Abuse of the system is too vague, it seems to me, to suggest victims' abuse of the system and cast doubt on their credibility. I think you need to say who's abusing. So I --

MR. STONE: Isn't it the casting doubt on the credibility what the abuse is?

CHAIR HOLTZMAN: Right, but I would rather put the --

MR. STONE: What if you just said to cast doubt on the victims' credibility?

CHAIR HOLTZMAN: We had that there.
But to suggest -- oh, you mean you want to take out suggest abuse?

MR. STONE: Yeah, and just skip right to that, because that's the abuse that they're, that's the thing we're worried about.

VADM TRACEY: Actually, the abuse that we're talking about is the victims' abuse of the system.

CHAIR HOLTZMAN: Correct, that's what I, so that's why I was going to say that, so that we -- so my suggestion would be to suggest victims' abuse of this system, and to cast doubt on their credibility, possibly leading to more acquittals. Right. So the victims', s', and, see, I'm getting there.

VADM TRACEY: Very good.

CHAIR HOLTZMAN: Yeah, no. And cast doubt on their instead of victims', right. Okay.

PROF. TAYLOR: I'm good with this.

CHAIR HOLTZMAN: Without objection, that's agreed to.

Okay, the only other question I have
is in bullet 3, or bullet 2, sorry, where it
talks about good locations, we use the word
desirable. Is good really -- should we use good
and bad? I don't.

MR. STONE: You want to say desirable
and less desirable?

CHAIR HOLTZMAN: We say that in the
recommendation.

MR. STONE: Well, we could be
consistent.

CHAIR HOLTZMAN: I don't know, so I
raised that. I had that with a question mark,
desirable.

MS. SAUNDERS: Replace good with
desirable?

CHAIR HOLTZMAN: And then are
frequently requested in less, or undesirable.

JUDGE JONES: Can be desirable and
less desirable, I guess, or undesirable.

MR. STONE: Yes.

JUDGE JONES: I like either way.

CHAIR HOLTZMAN: I like undesirable.
But they are frequently requested in undesirable, or you can say less desirable. I don't care.

JUDGE JONES: Yeah, I don't care.

CHAIR HOLTZMAN: I don't care either.

PROF. TAYLOR: I think I would put less desirable. We don't want to say we put people in undesirable locations.

CHAIR HOLTZMAN: Right.

PROF. TAYLOR: Even though it's true.

CHAIR HOLTZMAN: And again, in bullet 1 --

MR. STONE: Actually, I wondered whether you should say popular locations frequently that are requested and less popular locations. Because it really depends on who you are. I mean, if your family is in Omaha, you want a base near Omaha.

CHAIR HOLTZMAN: Well, that's why desirable. Desirable to the victim. I mean desirable is a pretty broad term.

MR. STONE: I think it's the popularity. I mean, some of those locations
would probably, you'd find peculiar. It's like
people want to be on bases, I've heard, in
Southeast Asia because they get a house helper
for almost nothing.

They say, oh, I have a cook and a
gardener and this and that. To me it seems
crazy, but it's a popular location. I just
wonder if that, but I don't care.

CHAIR HOLTZMAN: I just - I prefer --

MR. STONE: If it doesn't strike
anybody that way, leave it as desirable and less
desirable.

CHAIR HOLTZMAN: Okay. And similarly
in bullet number one, where we say some counsel
and commanders feel that expedited transfers are
abused. Again, are abused by victims. Again,
it's vague.

VADM TRACEY: Are these by victim?

CHAIR HOLTZMAN: Yeah, I'd add by
victims. Okay. Without -- you have an
objection?

JUDGE JONES: No, objection, no.
CHAIR HOLTZMAN: Okay, without objection that's agreed. And so I'm finished with my suggestions. Any other comments, suggestions?

Okay, we're ready to vote. Those in favor of adopting Judicial Proceedings Panel report regarding fair administration of military judge sexual assault cases say aye.

(Chorus of aye.)

CHAIR HOLTZMAN: Opposed. Hearing no, the report is agreed to. Thank you, Terri Saunders.

MS. SAUNDERS: Thank you.

CHAIR HOLTZMAN: You have done a miraculous job. We are very grateful. And to the Panel members for their patience.

Okay, shall we take a five-minute break and then we'll come back to do --

MR. STONE: Well I have one question before we do that.

CHAIR HOLTZMAN: Yeah.

MR. STONE: Do we need to just do the
same thing you just did on the investigations
report, now that we clarified that language that
you can conform at the beginning?

   MS. SAUNDERS: I will pass that
information on. I know Meghan is making some
changes based on the, what you all discussed
yesterday.

   MR. STONE: Well, and what you gave us
here. You just said it's going --

   MS. SAUNDERS: Right.

   MR. STONE: To conform to that.

   MS. SAUNDERS: I will make sure --

   MR. STONE: Oh, oh, you mean you think
we still need to look at it again.

   MS. SAUNDERS: I don't know what you
-- I was actually not in the room when you
discussed that report yesterday, so I don't know
where you left it.

   MR. STONE: I thought that was the
only -- wasn't that the only thing left?

   CAPT TIDESWELL: It's my understanding
that we have some hanging issues with the data
MS. SAUNDERS: Right.

CAPT TIDESWELL: I believe, and then the sexual assault investigation report.

MR. STONE: Okay, all right.

CHAIR HOLTZMAN: Okay, well, anyway, let's just take a five-minute break right now, and then we'll come back. Do we have those reports to look at, or are we going to do the final report?

CAPT TIDESWELL: I thought we'd do the final report next.

CHAIR HOLTZMAN: Okay.

CAPT TIDESWELL: Meghan was still in there working on some --

CHAIR HOLTZMAN: Fine, okay. So short break, and then we'll come back.

(Whereupon, the above-entitled matter went off the record at 10:44 a.m. and resumed at 10:54 a.m.)

MR. SPRANCE: Back on the record.

CAPT TIDESWELL: Are we good, Mr.
Sprance?

MR. SPRANCE: Yes, we're on.

CAPT TIDESWELL: Yes, ma'am. So the Staff would like to recommend that the Panel consider issuing a final report. We believe that after all these years of hard work it would be nice to have one sort of reference point for you all to sign out so that the public can see everything that you've accomplished over the past three years.

In Tab 8 of your read ahead materials is the original draft report that we provided you as part of the read ahead. We received a lot of questions yesterday from some of the Members, and so we've also provided you with some additional documents, that we placed at your seats this morning.

CHAIR HOLTZMAN: Right. Which tab is that?

CAPT TIDESWELL: It's Tab 8, ma'am. It's the last tab in the read ahead materials.

CHAIR HOLTZMAN: Oh, I had Tab 7.
That's the wrong on.

CAPT TIDESWELL: Tab 8.

CHAIR HOLTZMAN: I'm at a different date. Okay. Yes, I got it.

CAPT TIDESWELL: You got it, ma'am?

MR. STONE: It's my Tab 7 also.

CHAIR HOLTZMAN: There's another report. There's another one of these big reports. In the second big report, it's Tab 8.

JUDGE JONES: What are we looking for? Would you start me up on this?

CAPT TIDESWELL: Yes, ma'am. So, we're on Tab 8.

JUDGE JONES: Okay, I have a Tab 8.

CAPT TIDESWELL: Okay, so we're all clear there.

JUDGE JONES: Okay.

CAPT TIDESWELL: But there are also some documents that we put at your seats today.

JUDGE JONES: Right. Okay.

CAPT TIDESWELL: So the first one is, literally it's the outline of what we, as a
Staff, thought would be important to put in your final report.

CHAIR HOLTZMAN: Where is that?

CAPT TIDESWELL: And it's a document that looks like this.

CHAIR HOLTZMAN: Oh, okay. Yes, right, got it.

CAPT TIDESWELL: And the title is, Judicial Proceedings Panel final report discussion outline.

CHAIR HOLTZMAN: Okay.

CAPT TIDESWELL: And what we're recommending is, just to sort of break it down into several chapters, with the first chapter being an introduction and a task accomplished.

The idea was we went back and looked at all the statutory taskings that you were given over the years, what the RSP recommended that you all would look at, as well as a couple of items that you all independently decided to take on, such as victims' appellant rights.

And in Chapter 1, there is an
introduction. And we sort of outlined all the
various reports and recommendations that the JPP
has completed.

And I believe Ms. Gallagher was kind
enough yesterday to inform you, a lot of the
language we literally lifted out of the press
releases, when we released the reports. So it
should be noncontroversial, and it's just
language we've used in the past.

The second chapter are the statutory
tasks that were reviewed and assessed by the JPP,
but were not addressed in previous JPP reports.
So, in other words, there were certain tasks that
you did not issue a report on. And this is sort
of what I would call a sweep up chapter.

Stuff we have to just sort of explain
to Congress what was done. And you'll see the
issues that are outlined in that chapter.

And Ms. Gallagher is going to be kind
enough to walk you through that in a moment.

The third chapter are issues not
assessed by the JPP because they were sort of
intervening events that occurred. Other actions
that were taken. And you can see listed on the
outline, those issues that would appear in
Chapter 3.

Chapter 4 would be recommendations to
future military sexual assault commissions, which
in this case is really the DAC-IPAD.

MR. STONE: You're going to lift that
right out?

CAPT TIDESWELL: Lift it right out.

MR. STONE: Okay.

CAPT TIDESWELL: And we thought it
would be helpful --

MR. STONE: Right. So, we're not
going to add anything to the recommendations,
we're just going to lift them?

CAPT TIDESWELL: No, sir. Exactly.

MR. STONE: Perfect.

CAPT TIDESWELL: We believe, as a
Staff, that none of this should be controversial.

It's literally just sort of lifting and
organizing it in a way so when somebody reflects
back on the accomplishments of the JPP, they see it all in one spot. And of course, there would be a conclusion.

If you look at the appendices, which is the last thing listed on page 2, we have not provided those to you yet. We're still working on them and we're very close to being finished.

But a lot of what you'll see there in the appendices, we typically provide the statute, the charter, the bios. We outline who the members are.

And go down. The things that I would draw your attention to are really --

MS. CARSON: D.

CAPT TIDESWELL: -- D, is where we start. And I'll allow, Ms. Carson, if you want to take over from there.

If you look at what we've provided you next, we talk in terms of appendices. So your next handout that you have in front of you should say Appendix Blank, Judicial Proceedings Panel tasks.
And, Ms. Carson, if you don't mind walking the Panel through what exactly that would entail.

MR. STONE: I have one question.

CAPT TIDESWELL: Yes, sir?

MR. STONE: After, let's look at the first page of the outline, after Chapter 4 recommendations, is there a 5, conclusion? Haven't we done it --

CAPT TIDESWELL: Yes, sir.

MR. STONE: -- one sentence?

CAPT TIDESWELL: Yes, it is.

MR. STONE: I mean, here it is, it's right back here?

CAPT TIDESWELL: Thank you to all who have supported us as the JPP --

MR. STONE: Oh, okay. Okay, so it's really a thank you.

CAPT TIDESWELL: Yes, sir.

MR. STONE: Okay.

CAPT TIDESWELL: Yes, it's very pro forma. It's like a paragraph.
MR. STONE: Okay, got it. Thank you.

CAPT TIDESWELL: Yes, sir.

MS. CARSON: Okay, so the Appendix called Judicial Proceedings Panel tasks breaks your tasks into the three categories.

You have 16 statutory tasks that were assigned in FY13, '14 and '15 NDAAAs. The tasks assigned by the RSP, there were four tasks assigned to you by the predecessor Panel, the Response Systems Panel.

And there were two tasks independently undertaken by the Panel, retaliation and victims' appellant rights. So it essentially lays out the 22 tasks.

The next appendix is reports and recommendations of the Judicial Proceedings Panel. And it lists, in order the reports that you have issued, and in chronological order, the recommendations.

Through Recommendation 46, which is your last published report. And it is on that back page 6.
Ends at 46 because there are three
more substantive reports that will be issued.
And then the final report that won't have any
recommendations in it.

So it looks like, from the discussions
we've had today, yesterday and today, you're
going to go through Recommendation 63. I think
there are eight. We ended at 46, and there are
going to be 17 more recommendations.

The last piece is an attempt to put
together by topic, both the tasks that were
assigned the Panel, the related recommendations
to those tasks, and then the legislative and
policy status of those recommendations.

So the green box, if you look on the
first page, is under Article 120, there were
three tasks assigned. Two were statutory, one
was from the RSP, related to Article 120.

You made nine recommendations related
to Article 120. And you'll see the congressional
action implementing those tasks, on the second
page.
CHAIR HOLTZMAN: Excuse me, can I interrupt one second?

MS. CARSON: Yes, ma'am.

CHAIR HOLTZMAN: Where does the Subcommittee come into this? Do we indicate that we set up the Subcommittee?

CAPT TIDESWELL: We could do that.

And this is the purpose of this discussion.

CHAIR HOLTZMAN: You want to do that? We could have a chapter.

CAPT TIDESWELL: Yes, ma'am.

CHAIR HOLTZMAN: Yes, there should be something about it --

CAPT TIDESWELL: Listed in the reports?

CHAIR HOLTZMAN: Yes. I mean, when we talked about Article 120 --

MS. CARSON: It starts with Article 120. And you'll see, with the recommendations of the Committee in the initial report were, that a Subcommittee be formed to evaluate 17 additional tasks.
So that's where we addressed the Subcommittee --

CHAIR HOLTZMAN: Okay, but I think --

MS. CARSON: -- as far as the recommendations for the points well taken.

CHAIR HOLTZMAN: -- separate chapter about the work of the Subcommittee.

CAPT TIDESWELL: Yes, ma'am.

CHAIR HOLTZMAN: And we made a recommendation that Subcommittees be setup --

CAPT TIDESWELL: Sure.

CHAIR HOLTZMAN: -- both with regard to 120 --

CAPT TIDESWELL: Yes, ma'am.

CHAIR HOLTZMAN: -- and with regard to a broader investigation and what that resulted in.

CAPT TIDESWELL: Yes, ma'am.

CHAIR HOLTZMAN: Does anybody disagree with that?

PROF. TAYLOR: No, I agree.

CHAIR HOLTZMAN: All right, I'm sorry.
CAPT TIDESWELL: Yes. No, that's fine.

PROF. TAYLOR: Excuse me, Madam Chair.

CHAIR HOLTZMAN: Yes, go ahead.

PROF. TAYLOR: Perhaps it was implicit in your question. But also, I would think the Subcommittee reports would be folded into this as part of that.

CAPT TIDESWELL: Yes, sir.

CHAIR HOLTZMAN: I hadn't thought about that, Mr. Taylor, but thank you.

VADM TRACEY: True. But aren't they folded as part of our reports?

MR. STONE: Yes, they're attached to all the other reports. And we didn't -- we issued our own reports as a Committee. I certainly don't mind referring to them, but they're not the JPP's transmittal.

CAPT TIDESWELL: They are always attached to the back of the reports.

MR. STONE: Yes, right.

CAPT TIDESWELL: Yes, sir. So we sort
of subsume them in.

But I think it would be helpful to have a chapter that outlines their work --

MR. STONE: Sure.

CAPT TIDESWELL: -- why they were created, what they've done and identify their reports.

CHAIR HOLTZMAN: And how can people access them?

CAPT TIDESWELL: Well, everything's on the website, ma'am. And it's available for --

CHAIR HOLTZMAN: And will the website be there permanently or what?

CAPT TIDESWELL: Yes, ma'am.

JUDGE JONES: I think the RSP --

CHAIR HOLTZMAN: And we don't get wiped out by a different administration or something like that?

CAPT TIDESWELL: Not that I'm aware of. No, ma'am.

CHAIR HOLTZMAN: Okay.

JUDGE JONES: I don't know. I know
the final product of the RSP had the Subcommittee
reports in it. I don't know whether -- so is
that what we're doing or we're not doing that?

MS. CARSON: The document that's been
put together, at this point, has reference and
links to each of your reports but is not
including every report in it. If that's
something you want to do, that's a decision to
make now.

So, I wouldn't necessarily say we'd
include the Subcommittee reports, other than a
reference and a link to them, the way we've done
to each of your reports. So that's a decision
for you to make.

CHAIR HOLTZMAN: Oh, okay. So you
haven't even put the reports in. So wait a
minute, let's just step back. Where is this
going, this document? This final report. It
goes to the Secretary of Defense --

CAPT TIDESWELL: Yes, ma'am.

CHAIR HOLTZMAN: -- Congress, I mean,
to the House and the Senate Armed Services
Committee?

CAPT TIDESWELL: Yes, ma'am.

JUDGE JONES: And they're going to be bound in books or --

CAPT TIDESWELL: Yes, ma'am. Just like a regular report.

JUDGE JONES: Just like the RSP?

CHAIR HOLTZMAN: Right. Can we issue a separate book that goes with it? That has all these reports, including the Subcommittee report.

CAPT TIDESWELL: We could do a whole compilation. Absolutely.

MS. CARSON: We could make that the -- that's an option for you, for the final report. If you'd like the final report to be this, what we've talked about here, overlaid, each of the reports together in one bound volume, that could be --

CHAIR HOLTZMAN: yes, I think that would be --

MR. STONE: That's going to scare people from reading it unless you do it, Volume 1
of Volume 2.

MS. CARSON: It will look like the RSP report, which is two gigantic volumes that are a little bit overwhelming to people.

MR. STONE: That's right.

MS. CARSON: But it's a way to put all of your work together if you want to --

CHAIR HOLTZMAN: Yes. And so if somebody wants to look at it, like the DAC-IPAD --

MS. CARSON: Yes.

CHAIR HOLTZMAN: -- or people who are in colleges or scholars, or whatever, want to see all the work of it. I think it's handy to have everything bound together. And you said --

JUDGE JONES: Wasn't there only one volume that was the final report for the RSP?

MS. CARSON: The RSP had one volume that was the final report --

JUDGE JONES: And it included --

MS. CARSON: -- and they considered it an appendix that had --
JUDGE JONES: It was called an appendix, but it was in the --

MS. CARSON: -- every Subcommittee report.

JUDGE JONES: -- but it was in the --

MS. CARSON: It was its own individual bound. There were two bound volumes in the RSP.

JUDGE JONES: Oh, there were two.

Okay.

MS. CARSON: One is the RSP report, and the second was the bound volumes of the Subcommittee reports.

CHAIR HOLTZMAN: Well, what do the other members think? What do you think, Mr. Taylor, about including all the reports in a separate appendix?

PROF. TAYLOR: No, I mean, I certainly don't oppose to that. But I think the important thing, for researchers, based on my colleagues at Duke is, that there be internet access to it, because nobody gets bound volumes and goes through them anymore, it's too much trouble.
JUDGE JONES: Right.

MR. STONE: Right.

PROF. TAYLOR: So it's got to be on the internet to be useful.

MR. STONE: I recommend, just for consistency purposes, since we go back and forth, certainly at the beginning with so many things about the RSP, that we not only have the same format, and not a gigantic report so it's not intimidating, but the second volume, and that, insofar as possible, that type styles and the look of it be consistent with the RSP so people sort of can figure out that there's a relationship between these two.

You know, a lot of times we asked, what happened with that RSP recommendation, and we even want to put tasks in the RSP recommendation. I mean, even in our comments yesterday about the people who here have been on the RSP.

So it seems to me, to the extent that somebody actually sits them on the shelf, it
would be nice if it's the same size and has a lot of the same look. And that once they understand the RSP, there's a document here that's their final report, and here's all the backup stuff, that they have the same thing for us.

I think the U.S. Sentencing Commission does that. They have a main document then they have a backup document. And every year those two come out the same you can sort of, it's much easier to follow.

You know what to expect in the first one, and you know where all the other source stuff is. In addition to it being, as was said, on the internet.

So I mean, if we're going to bind it, I'd like to see it look consistent. Type styles, typefaces, all that stuff.

CAPT TIDESWELL: Yes, sir. I have to go back and look, because I'm not familiar with the typeface in the RSP. But what I would argue is, the JPP sort of has a look to it --

CHAIR HOLTZMAN: Yes.
CAPT TIDESWELL: -- actually that your reports have all -- and I would recommend we remain consistent with that.

MS. CARSON: That's modeled on the RSP. They already look like the RSP.

CAPT TIDESWELL: So we should --

MS. CARSON: Just a different cover.

MR. STONE: That's perfect. That's good.

MS. CARSON: The RSP is grey, the JPP is blue.

MR. STONE: Good.

MS. CARSON: Other than that, they're very similar.

MR. STONE: Okay. And we're not going to let DAC-IPAD use blue or grey, right?

MS. CARSON: I think it's red.

CHAIR HOLTZMAN: I agree with what Mr. Taylor said, but I still think it might be a good idea to put all this stuff together until there's some bound volumes, so it's altogether in one place.
CAPT TIDESWELL: We'll do so.

CHAIR HOLTZMAN: If somebody wants to look at that, it's in one place.

CAPT TIDESWELL: Yes, ma'am. Okay, no problem.

CHAIR HOLTZMAN: It's not a problem?

MS. CARSON: It's not a problem at all.

CAPT TIDESWELL: No.

MS. CARSON: Just a matter of your desire. So the report that we talk about, that's sort of this summation, will --

CHAIR HOLTZMAN: The skinny report.

MS. CARSON: Or do you want it as a standalone and then the follow-up is the compilation of all the other reports?

CHAIR HOLTZMAN: Yes, right. I think they should -- should we have the so called skinny one?

MR. STONE: Right.

CHAIR HOLTZMAN: So that we are very contemporary, right up to the moment, and we'll
talk about skinny.

JUDGE JONES: Are you talking about like the pamphlet that came out with the RSP?

CAPT TIDESWELL: No.

MS. CARSON: No, no. It's just like our reports. The JPP reports have been much thinner than any RSP report.

JUDGE JONES: It's going to be a much smaller volume. Yes.

MS. CARSON: So it will be a small report like all of the JPP reports --

CHAIR HOLTZMAN: Right. And then it will be a big report.

MS. CARSON: -- and a big one that combines everything all together in one place.

CHAIR HOLTZMAN: Right. I don't think we have a contemporary word for that, like fat, but whatever it is.

MS. CARSON: It's a comprehensive --

CHAIR HOLTZMAN: If it's skinny it's very --

MS. CARSON: -- book and the summary
is small.

CHAIR HOLTZMAN: Okay.

MS. CARSON: This is what we did book. So it will be two volumes. Is that everybody's desire?

MR. STONE: So the very busy people who get it are not intimidated and actually read it.


MS. CARSON: And it will go to the same distribution all over the reports.

JUDGE JONES: So, I'm sorry, the skinny one just has our recommendations with bullets under it?

MR. STONE: No --

CAPT TIDESWELL: It has what's in the outline.

MS. CARSON: It's what's in that tab.

CHAIR HOLTZMAN: It will be called final report.

MS. CARSON: The final version of
that.

JUDGE JONES: Oh, okay.

CHAIR HOLTZMAN: So we'll have final report, that will be a skinny volume with all the recommendations, whatever is in here.

MS. CARSON: It will be about 17 pages long, 18 pages long.

CHAIR HOLTZMAN: And then there's going to be a separate -- where are the appendices, are they --

MS. CARSON: Well, they'll be these small appendices that you're looking at with, here's a list of all the recommendations --

CHAIR HOLTZMAN: Right, right.

MS. CARSON: -- a list of all the tasking.

CHAIR HOLTZMAN: Right, right. So that's in that volume.

MS. CARSON: Yes.

CHAIR HOLTZMAN: And then there's a separate big volume with all the reports.

MS. CARSON: It's every report.
CHAIR HOLTZMAN: Okay.

MS. CARSON: And do you want a separate -- do you want anything but a compilation of the reports in that second volume? That's just the complete list.

CHAIR HOLTZMAN: I don't know, should we have illustrations, I mean, what are you talking about?

(Laughter.)

MR. STONE: I mean, there's transcripts. There's transcripts. Because who knows --

MS. CARSON: You don't want anything --

(Simultaneous speaking.)

MS. GALLAGHER: -- both the JPP reports and the Subcommittee reports.

PROF. TAYLOR: Yes, I'd just like to clarify. The Subcommittee reports are an integral part of this body of work --

CHAIR HOLTZMAN: Right.

MS. CARSON: Yes, but they're included
in the report.

PROF. TAYLOR: Right.

MS. CARSON: So they're appendices in each of your reports.

CHAIR HOLTZMAN: Oh, okay. But they will be --

MS. CARSON: So you'd be putting them in twice if you --

CHAIR HOLTZMAN: No, no, we're not going to put them twice --

MR. STONE: No, no, I'm talking --

MS. CARSON: Okay.

CHAIR HOLTZMAN: -- but they will be in there, okay.

MS. CARSON: Yes.

CHAIR HOLTZMAN: Perfect.

MS. CARSON: Yes.

CHAIR HOLTZMAN: Okay, great. Okay, I think we got it. And who's that list going to? I mean, what's our distribution list?

CAPT TIDESWELL: Oh, it's as you said, Secretary of Defense. Typically, it goes to the
Hill -- the leaders of the HASC and the SASC, to all of their staffers. We have --

MS. CARSON: We have a FACA requirement that goes to the Library of Congress.


MS. CARSON: Anyone whose...

CHAIR HOLTZMAN: I'm sorry for interrupting, let's go ahead.

PROF. TAYLOR: Hold on to that. In response to your question, if I may. I think that it would really be a good idea to have a press release that's a little less pro forma.

MS. CARSON: Okay.

PROF. TAYLOR: And instead of, I mean, all the ones you have written have been excellent, but I think for the final press release it would be a really good idea to advertise a little bit more, market a little bit more what this has been.

I understood when I asked that question earlier, that there was some reluctance
with the previous administration to do that. But I see no reason not to do that now. To just make it clear what this has been about.

CHAIR HOLTZMAN: Well, I mean -- you mean for the report final?

PROF. TAYLOR: Yes.

CHAIR HOLTZMAN: And what about for the, what do we call it, the justice report that we're issuing now?

MS. CARSON: The three reports.

CHAIR HOLTZMAN: Yes. Three of them, I forgot the name of it. Yes.

MS. CARSON: The data report, the investigations report --

CHAIR HOLTZMAN: No, we're not going to get the data report, no one's going to pick up on that.

MS. CARSON: But they'll each have a release and a press release. And then they'll be the final report that will be sort of your bigger vision of a comprehensive press release.

MR. STONE: Right. In order for us
not to have to review, again, the press release,
I mean I guess it should be words that are lifted
out of stuff we've all approved more or less,
right?

MS. CARSON: Yes. In the past, it's
been the chair whose approved the press release.
They try to keep it to about a page.

MR. STONE: Okay.

MS. CARSON: So helpful guidance would
be, how long do you want this final press release
to be. That gives us the --

MR. STONE: If you have something
special in mind I guess is what I'm asking.

PROF. TAYLOR: Well, just something
that, instead of as more of a compilation of
numbers, perhaps a little more substance about
what it means. But, I don't know, maybe you
disagree, Madam Chair.

CHAIR HOLTZMAN: No, actually, Mr.
Taylor, you made a good point.

CAPT TIDESWELL: We'll get it out for
you, ma'am, to review.
CHAIR HOLTZMAN: Okay, great. And I think we'll, you know, make sure that Mr. Taylor has a chance, and the other members have a chance to see it.

CAPT TIDESWELL: Yes, ma'am.

CHAIR HOLTZMAN: Okay.

MS. CARSON: Okay. So the last piece here is what will be Appendix G probably, but it is -- okay, so we went through this.

So this is our Article 120 that leaves you with, really what I think ultimately the legacy is, which is the implementation status of these recommendations. Do you want to walk through this document and discuss it or do you feel like you're, or do you want to walk through the draft report, where we stand with it right now? I'll kind of take the lead from you on how you feel about the final report.

CHAIR HOLTZMAN: I mean, does anybody want Ms. Carson to go through this? I mean, I think we can just look at the handout.

MS. CARSON: Do you have anything else
you want to discuss?

MR. STONE: I read through with some interest for two, kind of carefully. Are you going to discuss that, or would you like me to suggest some stuff about that now?

MS. GALLAGHER: I think that we were trying to figure out whether you wanted to walk through this attachment.

MR. STONE: Oh, that attachment.

MS. GALLAGHER: Yes.

MS. CARSON: Yes, let's say we're in Chapter 1 --

(Simultaneous speaking.)

MR. STONE: I'm sorry.

MS. GALLAGHER: -- report. We're not quite there yet.

MR. STONE: Okay.

MS. CARSON: So if you have any questions about where you've been and what the implementation is and what's left, you'll see what's highlighted in this document is what is yet to be reported.
MR. STONE: Not going finished.

MS. CARSON: And where I've made notes on the issues that were not, either were not covered because there were intervening. Military Justice Review Group mostly did some comprehensive review of a couple of the topics.

There was an executive order on this DoD Safe Helpline that came out almost the same time as we were tasked to do that.

And then the other issue, the Chapter 2 that Ms. Gallagher will focus on, are there issues where you heard testimony, you've done work, you've done some assessments on these topics, but recommendations in reference to what you've done has not been made, yet, in a report. So at this point it will just be, this is the status of what the JPP did and the way things stand as this final report is issued, without recommendations.

CHAIR HOLTZMAN: Okay, so --

PROF. TAYLOR: So if I may, I just have one suggestion. And that is, I did have a
chance to look at the Chair's proposed edits to
the report, I think we got it this morning, so I
took a quick look at those, and I noticed that in
a couple of places --

MR. STONE: Wait, so we're done with
this color thing?

PROF. TAYLOR: Well, no, I'm coming
back to this.

CHAIR HOLTZMAN: Okay.

MR. STONE: Oh, okay. Go ahead. Yes,
okay.

PROF. TAYLOR: So this is about this,
but it's also about your edits.

MR. STONE: Got it.

CHAIR HOLTZMAN: Okay.

PROF. TAYLOR: And they have to do
with whether you characterize what Congress does
as something as a result of the Committee or
following the Committee.

And I noticed that in a place or two
you had changed following to, as a result of.
Which I'm perfectly okay with.
I'm just suggesting that the two should conform to each other so that whatever we come up with is reflected accurately in both documents.

MS. CARSON: Well, that was a wise perception of yours, Mr. Taylor, because we put this document together first, and then the narrative was kind of built from this document.

PROF. TAYLOR: Right.

MS. CARSON: So as we go through and edit this document, we'll go back and make those revisions --

PROF. TAYLOR: Just to assure that they're consistent.

CHAIR HOLTZMAN: Right. Now, I'm not sure that, Mr. Taylor, I'm giving you too much credit, that I actually, factually, was correct when I said, as a result of.

MS. CARSON: There's only one that --

CHAIR HOLTZMAN: That I was wrong on?

MS. CARSON: -- may not be correct --

CHAIR HOLTZMAN: Okay.
MS. CARSON: -- and the EO for removing the constitutionally required --

CHAIR HOLTZMAN: Right.

MS. CARSON: -- exception on M.R.E. 412.

MR. STONE: Yes.

MS. CARSON: That EO was already out there. And the JPPs assessment was, we support that and we think that should be --

CHAIR HOLTZMAN: Oh, okay. So please change it.

MS. CARSON: So that's one --

PROF. TAYLOR: That was one of the examples that I thought --

MR. STONE: Me too.

PROF. TAYLOR: -- well, we really can't --

CHAIR HOLTZMAN: Okay, fine.

MS. CARSON: A few of them is a little --

--

CHAIR HOLTZMAN: Part of the reason I made the change was because you kept saying,
following and following and following. And I was trying to find some alternative that way --

MS. CARSON: No, it's kind of an attempt to be a little bit vague. So that's okay.

CHAIR HOLTZMAN: But if it's not accurate, of course, we can't include it.

MS. CARSON: Yes.

CHAIR HOLTZMAN: So please be sure that --

PROF. TAYLOR: That was my only comment. To look at that.

MR. STONE: There's also the question of, if you're going to say, as a result, do we have to go back and cite congressional testimony? Whereas following blurs it. It may have been as a result of, as to one member, but somebody else might have spoken about it before that or proposed it before that. And I wonder if it's going to be a little presumptuous or strike some people as arrogant. Because we're sending this to Congress to think that our report is why they
1. did it as opposed to we added to the mix.

   PROF. TAYLOR: I mean, I think you can
   think of ways to say that, like consistent with
   our record.

   MR. STONE: Oh, right.

   PROF. TAYLOR: Something like that.

   MR. STONE: I like that.

   JUDGE JONES: And we still get credit
   for either having prescience or --

   PROF. TAYLOR: Sure.

   JUDGE JONES: -- just being good.

   PROF. TAYLOR: Sure.

   CHAIR HOLTZMAN: Right. It was just
   a word thing. I wasn't trying to actually --

   MR. STONE: I like that one better.

   CHAIR HOLTZMAN: But I think in some
   cases it was what we did.

   MS. CARSON: I think the retaliation
   and victims' appellant rights, in particular, the
   work of JPP definitely drove what was -- I mean,
   that's pretty easy to sort of see how that all
   happens. Some of the others, it's a little less
clear. Things sort of happen.

I think the JPP definitely had a big impact, but I don't know that we can go back and draw --

CHAIR HOLTZMAN: Fine.

(Simultaneous speaking.)

CHAIR HOLTZMAN: We can't claim credit for what we're not responsible for. There's no question about that.

Okay, so we are finished now. Any other comments on the green document.

JUDGE JONES: Excuse me, I'm sorry.

CHAIR HOLTZMAN: Go ahead.

JUDGE JONES: I'm just confused. Is there some statistic though about how many of our recommendations the Secretary adopted?

MS. CARSON: We have one --

JUDGE JONES: As opposed to Congress --

MS. CARSON: Right.

JUDGE JONES: -- and acting legislation.
MS. CARSON: We have one memo from DoD that was provided to us after the initial report that came down and accepted, or accepted in part, all of the recommendations from the initial report. We don't have any --

JUDGE JONES: Nothing since then.

MS. CARSON: -- DoD input since --

JUDGE JONES: Okay.

MS. CARSON: -- except one DoD IG policy that we found a press release about. That's really everything that we've heard from DoD about.

JUDGE JONES: Okay. Because there was a lot in RSP, I thought.

MS. CARSON: Yes. We got a response from DoD to all of the reports.

JUDGE JONES: All hundred and --

MS. CARSON: It's all of the recommendations --

JUDGE JONES: Yes. And we didn't get that in this.

MS. CARSON: Just got the first
report.

JUDGE JONES: Okay. Thank you.

CHAIR HOLTZMAN: So what's next?

CAPT TIDESWELL: So with that said, ma'am, if you could turn to the document with the blue cross outs, the cross outs are Track Changes from Ms. Holtzman's review. And we'll work off of that document.

And I thought I would turn it over to --

MS. GALLAGHER: I think Julie was going to just walk through Chapter 1 real quick.

MS. CARSON: I think everybody, they're pretty --

MS. GALLAGHER: Are there any questions about --

MS. CARSON: -- copy edit kind of edits in the first part. So I think we discussed --

CHAIR HOLTZMAN: The first part. Oh --

MS. CARSON: The Chapter 1 A.
MR. STONE: Yes, I have some --

CHAIR HOLTZMAN: Do you have some --

MR. STONE: -- edits. Just a consistency. Say, on page 2, the second paragraph, where we do talk about the Subcommittee, we need that language to conform with what we just decided on that other report. Where instead of saying installations across Asia, blah, blah, blah, we just said, in, in don't know, whatever --

MS. CARSON: We'll conform with the other report.

MR. STONE: Yes. And we also put the word panels in.

MS. CARSON: Yes.

MR. STONE: Just so it conforms with the same language.

MS. CARSON: Yes. Got it.

MR. STONE: And you may not need an extra chapter, because it's in here. We're talking right out at the front. I mean page 2 about the Subcommittee.
So I'm not sure that we need it. I mean, that's an integral part right up front. Do we still need a, we had said something about a separate chapter, do you want them to stay right there in the front in Chapter 1?

CHAIR HOLTZMAN: What? I'm sorry.

MR. STONE: The Subcommittee. It's on page 2 of the report. It's right at the beginning.

MS. CARSON: It's addressed in the methodology. That they set up a Subcommittee and what it did.

MR. STONE: Yes. It's right at the beginning.

CHAIR HOLTZMAN: Right.

MS. CARSON: So do you want an additional chapter about the Subcommittee --

MR. STONE: It repeats that again.

MS. CARSON: -- is the question, in the final report?

CHAIR HOLTZMAN: Let me see. Is it complete enough?
MS. CARSON: Could we beef that up, would that be --

MR. STONE: Well that's what I just asked. It's going to be more complete if she lifts from the last report we just did. Because it was a little more complete there. Where we're lifting from.

CHAIR HOLTZMAN: Well, I'm not sure what the recommendation is now, with regard to the Subcommittee. What are you proposing?

MS. CARSON: Well, we went through the outline to start with.

CHAIR HOLTZMAN: Right. I said they should be a separate part to address the Subcommittee.

MS. CARSON: Correct.

CHAIR HOLTZMAN: Right.

MS. CARSON: So the question is, is this sufficient or do you want another part? Now we're into the report, so this is what you'll read as the final report.

MR. STONE: It's got all the reports
listed, it tells what they did. It says that
they, you know, and you can expand this based on
what's in that last report.

Which had the number of hearings they
had, and even outlined the number of reports. I
think it even footnoted them in that one. And
you can lift that right into here now that you
have that. That we just finished it.

MS. CARSON: So if you go back to the
outline, under Chapter 1, Part A, that's where
we're discussing the Subcommittee now.
Currently.

CAPT TIDESWELL: Or you can put it in
its own category.

MS. CARSON: Or we can make it a part
of --

(Simultaneous speaking.)

MS. CARSON: -- or we can make it a
Chapter 1, Part B --

MS. GALLAGHER: Right.

MS. CARSON: -- and specifically
highlight the Subcommittee. That's the question.
MS. GALLAGHER: And reports and recommendations would become C.

PROF. TAYLOR: Well it seems to me, and I could be wrong about this, to start discussing the JPP Subcommittee substantive reports, before you actually discuss the JPP final report and the chapters, just doesn't suit.

CHAIR HOLTZMAN: Right.

PROF. TAYLOR: It seems to me that it belongs at the end of that, not at the beginning.

CHAIR HOLTZMAN: Correct.

PROF. TAYLOR: So I think that as a methodology, it's fine to talk about the tasking of the Subcommittee. But when you get to that third paragraph on page 2, I'm not sure that belongs there. And that might be a better introduction to the separate chapter that lists the Subcommittee reports that follows the actual substance of the JPP reports.

CHAIR HOLTZMAN: You mean the third paragraph or do you mean the first full paragraph on page 2?
PROF. TAYLOR: Well, the one that says, the JPP Subcommittee issued a --

CHAIR HOLTZMAN: Right.

PROF. TAYLOR: -- total of --

CHAIR HOLTZMAN: Right.

PROF. TAYLOR: -- that's the one I'm referring to.

CHAIR HOLTZMAN: Okay.

PROF. TAYLOR: Yes.

MR. STONE: Okay. I'm fine with that.

VADM TRACEY: I'm sorry, and were you suggesting that we're going to have a chapter on the Subcommittee that is similar to the structure we're doing on the JPP itself, where we're going to list out all of the recommendations of the Subcommittee?

We subsequently modified those recommendations, will that not be confusing?

CAPT TIDESWELL: Yes, I would not recommend that.

MS. CARSON: I think we just explain --
CAPT TIDESWELL: What they did --

MS. CARSON: -- we had Subcommittees,

Subcommittee did these reports, period --

CAPT TIDESWELL: That's it.

MS. CARSON: -- and then leave their

work stand as the reports that they issued.

PROF. TAYLOR: But that's the reason

why it seemed to me that you wouldn't want to

actually have a discussion to highlight what the

Subcommittees did before what we did.

VADM TRACEY: I think that's right.

PROF. TAYLOR: Because they won't know

of a supplement.

VADM TRACEY: I agree with that. I

agree with that. I was just thinking I was

hearing that we were going to do a structure on

their reports that mirrors the structure we're

doing on the JPP's report.

PROF. TAYLOR: I see.

MR. STONE: And I agree with that too.

CHAIR HOLTZMAN: Yes, because I think

this paragraph is a little skimpy when it is
referred to, Mr. Taylor, in terms of describing what the Subcommittee did. I mean, you might want another several paragraphs.

CAPT TIDESWELL: We'll tease it out.

PROF. TAYLOR: Oh, I agree with that.

CHAIR HOLTZMAN: But definitely not the kind of discussion about things that we're talking about that we haven't brought up.

MR. STONE: So --

JUDGE JONES: Are we leaving some reference to the fact that we obtained a lot of our information from the Subcommittees?

CHAIR HOLTZMAN: No, no, that's going to be in.

JUDGE JONES: I'm just kidding.

CHAIR HOLTZMAN: So all that would come out basically, as I understand Mr. Taylor's suggestion, is what would come out of A, 1 A, this paragraph, I think on page 2.

MS. CARSON: The third paragraph.

CHAIR HOLTZMAN: The first -- yes.

MS. CARSON: The third paragraph that
starts, the JPP --

CHAIR HOLTZMAN: Are you working from this, okay, you're working from the same --

MS. GALLAGHER: Would it be the second and third paragraph?

MR. STONE: No, I think it would go into --

CHAIR HOLTZMAN: No, just the third paragraph.

MR. STONE: -- B and B Number 11 in B. Because it's before we get to that statutory tasks not reviewed --

CHAIR HOLTZMAN: Yes.

MR. STONE: -- and it's after you've talked all about what the JPP did.

MS. GALLAGHER: Okay.

PROF. TAYLOR: Yes, it could be Number 11, as Mr. Stone pointed out, and then three subparagraphs with three reports are. That's where you actually have the meat of what the subcommittee did.

CHAIR HOLTZMAN: Right.
PROF. TAYLOR: Excuse me, what the
Subcommittees did.

CHAIR HOLTZMAN: Right. But the first
discussion of the Subcommittee --

MS. CARSON: Will that stay in where
it is?

CHAIR HOLTZMAN: Yes, I think it
should be there.

MS. CARSON: Okay.

CHAIR HOLTZMAN: But the third
paragraph --

MS. CARSON: The results of the
Subcommittee --

CHAIR HOLTZMAN: Yes, the third
paragraph on page 2 --

MS. CARSON: Right.

CHAIR HOLTZMAN: -- we could move over
to the --

MS. CARSON: Got it.

CHAIR HOLTZMAN: -- other one,
correct?

PROF. TAYLOR: That was my idea. I
think you're just following up on what Ms. Carson said about this sort of just sets up the structure, it doesn't really get into the detail.

CHAIR HOLTZMAN: I got it.

JUDGE JONES: All right. And it fits under the topic, which is how our methodology --

PROF. TAYLOR: Exactly.

JUDGE JONES: -- how we got it.

CHAIR HOLTZMAN: Now the really big question is, do we mention Judge Jones write-up?

JUDGE JONES: My what?

(Laughter.)

CHAIR HOLTZMAN: As Chair, we need to at some point. Okay, so are we going through --

MR. STONE: Yes, what do you want to tell us next --

CHAIR HOLTZMAN: -- the track changes?

MR. STONE: -- or should we just -- do you want to proceed or --

CHAIR HOLTZMAN: Yes. What do we do know?

MS. CARSON: So that was page 2. Do
you want to go page by page? I don't know if you have other edits you want to review, but that's where we kind of start going with this.

CHAIR HOLTZMAN: Okay. Oh, I see, so the track changes, the blue are my --

MS. CARSON: Are Ms. Holtzman's proposed changes.

CHAIR HOLTZMAN: -- edits, which of course you're totally free to reject or change or whatever.

MR. STONE: Well, on page 3 then, the comment that's out there in the blue, consistent with what we said before. Do we want to say, a number of JPP recommendations contained in its initial report, were implemented or consistent with actions by Congress and the Department of Defense?

CHAIR HOLTZMAN: I don't think --

MR. STONE: It just fuzzes it up a little bit, using the language you suggested before?

CHAIR HOLTZMAN: I think, were
implemented by Congress and Department of Defense

is fudgey. It doesn't say that --

MS. CARSON: It was because --

CHAIR HOLTZMAN: -- resolved --

MS. CARSON: -- you recommended it and

it was done.

CHAIR HOLTZMAN: Right. Why it's not

addressed. So I think it's vague enough.

Personally.

Mr. Stone has --

JUDGE JONES: Yes, as long we're not

saying followed our recommendation --

CHAIR HOLTZMAN: Right.

JUDGE JONES: -- or as a result of --

CHAIR HOLTZMAN: Right.

JUDGE JONES: -- is probably okay.

MR. STONE: Which we're going to take

out on page 4.

CHAIR HOLTZMAN: Yes.

VADM TRACEY: Then on the second

sentence in that same paragraph, are we changing,

following the JPPs recommendation to be
consistent with?

MS. CARSON: Which? Where?

VADM TRACEY: Second sentence of the third paragraph, page 3. It currently says, following the JPP’s recommendations relating to the DoD and interagency review process, Congress enacted.

CHAIR HOLTZMAN: Well, I think following may be accurate --

MS. CARSON: But following is not as a result of. Following means they did it.

MR. STONE: It's a timeline.

CHAIR HOLTZMAN: Right.

MS. CARSON: And the JPP recommended it, which is causal.

CHAIR HOLTZMAN: Right. Exactly. It's not causal, it's acting as a suggestion. I see what you're saying because it sounds like a --

MR. STONE: You know, you would rather --

(Simultaneous speaking.)
MR. STONE: -- maybe you just want to say after. Or shortly after Congress and enacted.

VADM TRACEY: Consistent with.

JUDGE JONES: I think consistent with is the best.

MR. STONE: Consistent with?

PROF. TAYLOR: Well, consistent with is the ultimate fudge on this.

(Laughter.)

PROF. TAYLOR: You know, following has two meanings.

CHAIR HOLTZMAN: Right.

MS. CARSON: Yes.

MR. STONE: Consistent with sounds good.

JUDGE JONES: I don't even remember this recommendation, so I don't want to overstate this.

(Laughter.)

CHAIR HOLTZMAN: Well, it says the Secretary of Defense also approved this
recommendation.

MS. CARSON: I think this was pretty safely because of your --

JUDGE JONES: Because of us.

MS. CARSON: -- what you did. Yes.

CHAIR HOLTZMAN: So --

MS. CARSON: Because this was because Article 120, the change in 2012, at the time of your report in 2015 there was still no guidance. And so your recommendation was, got to fix this interagency review process.

CHAIR HOLTZMAN: Right.

MS. CARSON: And then it came out in the NDAA. So I think this one flows pretty well.

JUDGE JONES: And this isn't Congress, or it is Congress. Yes.

CHAIR HOLTZMAN: Right. I'm okay with that. I'm okay with that.

MS. CARSON: Really, the only one I had to question about was the one with the EO on the 412's.

CHAIR HOLTZMAN: Okay. So if
everything is factually correct I'm okay --

MS. CARSON: Okay. And we changed

that one.

CHAIR HOLTZMAN: All right, now we're

up to page 4. And second paragraph, you're going
to put inconsistent with, right?

MS. CARSON: If you like.

CHAIR HOLTZMAN: That's --

MS. CARSON: Your recommendation was

the President sign it. And the President did

sign it.

CHAIR HOLTZMAN: Oh, okay. Well, I

added, as a result of, I just don't think so.

MS. CARSON: No, no, but as the

following I think is okay. If you want to keep

that.

CHAIR HOLTZMAN: Yes, following.

Right.

MS. CARSON: I think that --

CHAIR HOLTZMAN: But we have -- oh, I

see, because we changed in response to. Okay,

fine. So we don't have following in these two
paragraphs.

VADM TRACEY: I'm sorry, I'm confused.

On page 4, doesn't the notes say that the executive order was actually out there before the JPP recommendation, so what are we doing in that paragraph?

MS. CARSON: The executive order was out there but had not yet been signed. And so the JPP was aware of the order and evaluated it and considered it and recommended that it be signed. And the President signed it. So, you supported what was out there.

VADM TRACEY: Okay.

MS. CARSON: How you want to characterize that.

CHAIR HOLTZMAN: You think that's too much of a --

VADM TRACEY: It's been out there for so long, I would find it hard to take credit for pushing it to the front of the desk.

MS. GALLAGHER: So you're advocating consistently?
JUDGE JONES: This is on the --

CHAIR HOLTZMAN: President signing.

Well, it could be that our, you know, remember, this stuff was sitting out for a long time, that was part of the problem when we first started. Nothing was happening on executive orders and the whole process was taking forever.

JUDGE JONES: I think --

CHAIR HOLTZMAN: I mean, I don't know that we have to be so shy, but maybe we should.

JUDGE JONES: Yes, I think we should be shy.

CHAIR HOLTZMAN: Okay. So you want to say consistent with?

MR. STONE: Yes.

CHAIR HOLTZMAN: In addition, consistent with the JPPs recommendation?

MR. STONE: Yes.

CHAIR HOLTZMAN: Fine, I'm okay with that.

MR. STONE: On the top of 5, looking at the very first line at the moment, which is
the edit, I just wonder if in describing state
compensation systems you want to say, this is the
first line as it reads now, in blue, victim
compensation program is varied as to who and what
is covered, to how long, and the amounts
provided.

I mean, I don't know that I go into
all the detail, except that we're already talking
about who and what is covered, that maybe there's
also this issue that some allow you to do it for
two years and some three years and some one year.
And it's hard for the military people to know, or
even be state side or whatever.

CHAIR HOLTZMAN: That's fine. I don't
have an objection.

JUDGE JONES: I like that amendment.

CHAIR HOLTZMAN: That's good. Without
objection, that's accepted.

MR. STONE: And I took out the words,
in terms of only, because I --

CHAIR HOLTZMAN: Yes, right.

JUDGE JONES: Right.
CHAIR HOLTZMAN: We got your whole amendment. And it's been accepted.

MR. STONE: Careful, people are going to start thinking you and I are agreeing on everything.

CHAIR HOLTZMAN: Yes, I know.

(Laughter.)

CHAIR HOLTZMAN: Don't worry about that one. We'll fix that. Okay, what's next?

MS. GALLAGHER: Anything else on page 5?

JUDGE JONES: So we don't have any trouble with adopting our recommendation?

CHAIR HOLTZMAN: We're on page 5?

MR. STONE: On page 5 in the middle.

JUDGE JONES: Yes. The President adopted our recommendation?

MR. STONE: Is that one okay, Ms. Carson?

MS. CARSON: I don't really know how related -- I don't know on that one.

CHAIR HOLTZMAN: All right, so just
not following, that's all.

VADM TRACEY: So consistently?

CHAIR HOLTZMAN: Well, I guess if we haven't used following on two pages we can say it. We can say it. I don't know if we said following.

MS. CARSON: We say following and consistent with are sort of acceptable for us for things that happened close in time and may be related, but not necessarily causal, right? So we'll make those -- I'll make sure those are interspersed.

MR. STONE: Okay. And where it's grey, go to consistent with --

MS. CARSON: Okay. The more greyer it is --

MR. STONE: Yes. When it's more grey than white or black.

MS. CARSON: Got it.

CHAIR HOLTZMAN: Are we up to page 6? Actually, the change I proposed in paragraph, the second full paragraph, it says, use the
definition, in federal law. Maybe it should be
contained in federal law. Might be better.

PROF. TAYLOR: Yes, I agree.

CHAIR HOLTZMAN: I think in the last
Paragraph, 2, too much is taken out. I think it
should be, to understand and mitigate the
effects, you don't need incidents of retaliation.

So just would have, the Panel stressed
a critical importance of such data to understand
and mitigate the effects of retaliation on
individual Servicemembers. And the only thing
that comes out is, of incidents.

MR. STONE: Do you need the effects
even, and mitigate retaliation?

CHAIR HOLTZMAN: No, I think the
effects, to understand the effects of
retaliation. Okay, fine. Maybe if you could
take that out.

MS. CARSON: Take out --

CHAIR HOLTZMAN: But mitigate is
important --

MR. STONE: Okay.
MS. CARSON: Understand and mitigate retaliation.

CHAIR HOLTZMAN: No, that doesn't sound right.

VADM TRACEY: Understand --

JUDGE JONES: Mitigate retaliation as often.

VADM TRACEY: -- and mitigate. You're right, it isn't. Understand and mitigate the effects --

PROF. TAYLOR: Well, I like to keep effects in there because I think the impact on the Servicemembers, we had testimony about --

CHAIR HOLTZMAN: Right.

PROF. TAYLOR: -- was pretty pervasive, I mean.

CHAIR HOLTZMAN: Okay. So how about, to understand the causes or the nature of retaliation -- to understand the nature and effects of retaliation.

JUDGE JONES: The nature of retaliation and its effects on --
CHAIR HOLTZMAN: Fine. All right, fine.

MS. CARSON: The nature of retaliation and its effects --

JUDGE JONES: Wait. I don't want to lose mitigate, I guess.

CHAIR HOLTZMAN: Oh, yes.

JUDGE JONES: Yes.

CHAIR HOLTZMAN: Yes, so I was going to -- well, I think just mitigate, understand and mitigate the effects of retaliation is fine. I'm okay with that. And maybe someone can figure out a better way, I don't care.

PROF. TAYLOR: Sounds good.

CHAIR HOLTZMAN: It's just we don't need the incidents.

MS. CARSON: Got it.

CHAIR HOLTZMAN: I guess we have, claiming too much credit on page 7.

MR. STONE: We can go with consistent with.

CHAIR HOLTZMAN: And then following?
MR. STONE: Yes.

JUDGE JONES: You know, we may have
been the cause of all of these. Isn't it --

MS. CARSON: I think --

JUDGE JONES: -- in the record?

MS. CARSON: Well, you don't --

JUDGE JONES: It's hard.

MS. CARSON: There's not really a
direct -- we did this because the JPP recommended
it. We recommended it and then we see it
happening.

JUDGE JONES: Yes, right. I got you.

MS. CARSON: So we can infer --

JUDGE JONES: Right. Okay.

MS. CARSON: -- that there was a
pretty big impact.

MR. STONE: There's no cause and
effect with regard to anything Congress does.

JUDGE JONES: So we could just take
adopting it and say -- was that your suggestion,
we get rid of adopting, on 7? We just say,
another JPP recommendation Congress also enacted.
It's sort of saying the same thing, but --

CHAIR HOLTZMAN: What would you have it? Just start with another JPP recommendation?

JUDGE JONES: I don't know, maybe nobody -- maybe adopting is fine, I don't know. Adopting implies there's a choice of our recommendation, that's all. I'm trying to decide how sensitive we all are to this.

CHAIR HOLTZMAN: I don't think -- what's the problem with adopting? I mean --

MS. CARSON: Unless it's clear it was something that was already there, I think if you want to adopt it, say it was adopted.

JUDGE JONES: Okay. Yes, that's fine.

MS. CARSON: There's no evidence that wasn't the case.

JUDGE JONES: Then let's leave it. I take it back.

MR. STONE: That's on 7?

MS. CARSON: Yes. Deleting adopting.

JUDGE JONES: Sure.

CHAIR HOLTZMAN: On the bottom, you
want to leave following? In the last paragraph.

    MS. CARSON: I think that was
definitely in response to your recommendation.

    CHAIR HOLTZMAN: Oh, it was? Oh,
okay. Fine. Then leave it.

    We finished with page 8. Page 9.
Page 9, just conform that language where it says
installations in the United States and Asia. And
how have we met with panels, that has to be
changed.

    MS. CARSON: Yes, we'll conform all
that.

    CHAIR HOLTZMAN: Okay. Anything else
on 9? Okay, page 10. Are we okay with 10?

    MR. STONE: I was speed reading it.
It's a little difficult to be sure.

    CHAIR HOLTZMAN: Oh, okay.

    MR. STONE: And we don't yet have 8,
9 and 10 and what will be 11, but with their
things.

    CHAIR HOLTZMAN: Well, on page 9
they're going to conform the language in
paragraph, the first full paragraph, to change it in the way we had previously.

Are we finished with 9 or are we still reading 9? I guess you're still reading 9.

PROF. TAYLOR: I guess while -- I'm sorry, are we ready to go to page 10?

CHAIR HOLTZMAN: I'm up to page 10, but I was asking people if they've finished page 9. I didn't hear anything so.

Okay, we're up to page 10. Are we finished with 9?

JUDGE JONES: I am.

PROF. TAYLOR: Yes.

MR. STONE: I am.

CHAIR HOLTZMAN: Okay. So, on page 10 -- so 9 is okay because I'm not hearing any objection, so page 10, Mr. Taylor.

PROF. TAYLOR: Yes. So, I supposed that by adding in the one that you've amended, Subparagraph 2, to grant by legislation, you're distinguishing these first two categories of things that Congress need to do from
Subparagraphs 3 and 4 --

CHAIR HOLTZMAN: Right.

PROF. TAYLOR: -- which can be done within the department.

CHAIR HOLTZMAN: Right.

PROF. TAYLOR: Correct.

CHAIR HOLTZMAN: Or -- yes, because they said through congressional action. I don't know what that would be.

So, I mean, you can also state, and it might be more -- it might be better to say, provide victims with a statutory ability to protect their rights. Or provide victims -- yes. I don't know. It's fine the way it is.

MR. STONE: Statutory rights, impose conviction appellant. Take their own words.

CHAIR HOLTZMAN: No, because they already have their rights. So we're giving them a statutory ability I guess.

MR. STONE: Okay.

CHAIR HOLTZMAN: The legislation is fine. In both places, I guess it's fine.
PROF. TAYLOR: Yes --

(Simultaneous speaking.)

PROF. TAYLOR: I just want to be sure that I understood the distinction between --

CHAIR HOLTZMAN: Yes.

PROF. TAYLOR: -- 1 and 2 versus 3 and 4.

CHAIR HOLTZMAN: Right.

PROF. TAYLOR: Got you.

CHAIR HOLTZMAN: Because we said that the problem with the Court of Appeals is that they needed to have the specific jurisdiction in the statute.

PROF. TAYLOR: Right.

JUDGE JONES: I think it's okay.

CHAIR HOLTZMAN: Yes, I think it's okay. Any other corrections on page 10, if not, 10 is adopted. 11.

MR. STONE: Ms. Gallagher, I think you're up.

MS. GALLAGHER: Yes. Now we're on to Chapter 2?
MR. STONE: Yes.

MS. GALLAGHER: If we --

CHAIR HOLTZMAN: Are we up to Chapter 2? Wait a minute. Oh, statutory task review --

MS. GALLAGHER: Right.

CHAIR HOLTZMAN: Yes, right. Okay.

MS. GALLAGHER: And this is the one that is not a straight lift out of documents that you've already done.

CHAIR HOLTZMAN: Right.

MS. GALLAGHER: It's out of different testimony and Subcommittee material. And RFI responses.

And I suggest we go through the same way as we've been going through, just page by page, if you have any.

CHAIR HOLTZMAN: All right. So, are there any issues on page 11?

MR. STONE: No, I just have a question.

CHAIR HOLTZMAN: Okay.

MR. STONE: And I guess starts really
on 12. These blues comments --

CHAIR HOLTZMAN: All right, wait a minute.

MR. STONE: -- and these red comments --

CHAIR HOLTZMAN: Wait, wait, wait.

MS. GALLAGHER: Yes.

CHAIR HOLTZMAN: If it starts on 12, let's just get through 11. Are we okay with 11?

MR. STONE: I'm just --

MS. GALLAGHER: Yes, the blue comments are Ms. Holtzman's --

MR. STONE: And the red?

MS. GALLAGHER: -- and the red are administrative. It's been a work in progress.

We're still --

MR. STONE: Okay, yours.

CHAIR HOLTZMAN: Staffs.

MS. GALLAGHER: -- informed --

MR. STONE: Staffs. Staffs. Okay, that's all I wanted to know.

MS. GALLAGHER: The footnotes and
stuff.

MR. STONE: Okay. Fine.

MS. GALLAGHER: So the red is Staff.

CHAIR HOLTZMAN: You could read it Democratic, Republican. Okay, so we've finished with page 11 now, right? So 11 is adopted without objection.

And page 12. Oh, I haven't had a chance to read the Staff's changes.

MS. GALLAGHER: And the sole reason for the changes in Paragraphs 3 and 4 on 12, is originally it was just straight lifted out of the Subcommittee --

CHAIR HOLTZMAN: Right.

MS. GALLAGHER: -- a one-page memorandum. And this was just to summarize, instead of having to do a block quote to make it more readable.

CHAIR HOLTZMAN: Okay. Also, we say counsel universally stated, we changed that. So obviously, any place that we have made changes you'll conform to the changes that we've already
made.

MS. GALLAGHER: Yes.

MR. STONE: Okay, I have a question on 12. On two lines above B, where it says, and the policy.

I wonder if we shouldn't say, which we endorse, has improved the public perception in the military's handling of sexual assault cases.

We haven't previously issued an opinion on them. I mean there's a nice little summary here.

It's something that we're saying we like to, I mean, should we just -- we don't have to say, which we endorse, but it seemed to me that that was an appropriate place to put in those three words, if the other Members of the Panel agree. I guess I just wanted to throw that out there.

MS. GALLAGHER: Yes. It has been written without any of those recommendations or conclusions, because we didn't have them from you.
And if there are recommendations or conclusions the Panel wants to make, with regards to each section, that's certainly something to discuss.

CHAIR HOLTZMAN: Well, didn't the RSP make a recommendation on those?

JUDGE JONES: All I know is, hasn't withholding regulation been around since Panetta?

CHAIR HOLTZMAN: Yes, a long time.

MS. CARSON: It was The Invisible War.

JUDGE JONES: Right.

MS. CARSON: It was right after the documentary --

JUDGE JONES: Right. So it's a little late to be --

CHAIR HOLTZMAN: Right.

MS. GALLAGHER: Yes. The SECDEF memo was April 20th of 2012.

JUDGE JONES: Yes.

MS. CARSON: But you were asked to assess it, so --

MS. GALLAGHER: Yes, it was a specific
task to assess it.

VADM TRACEY: So we don't recommend any changes to it?

MS. CARSON: So you might want to make a comment --

(Simultaneous speaking.)

JUDGE JONES: -- recommending a change.

MS. CARSON: Yes, if you accept it and don't make any changes. If you want to make a comment.

CAPT TIDESWELL: I think Mr. Stone makes a good point.

CHAIR HOLTZMAN: So --

MS. GALLAGHER: Which we endorse it, you want to add that in?

MR. STONE: It's consistent, right?

CHAIR HOLTZMAN: Well, I mean --

MR. STONE: We can just leave it if you want to just leave it.

CHAIR HOLTZMAN: Yes, we haven't really --
MR. STONE: I just thought --

CHAIR HOLTZMAN: -- examined that, so
to endorse it at this point without, I don't --

MR. STONE: If it's good, it's good.

MS. CARSON: So what we did is just
lay out there, here's the state of things. So,
you can just leave it at that or you can make a
comment to what your --

MS. GALLAGHER: And if no change is
needed and you're just stating, here it is and
you're not making any change, you're not, I mean,
maybe you don't need to say anything.

CHAIR HOLTZMAN: Are we required to
say something?

MS. CARSON: No.

MS. GALLAGHER: No.

PROF. TAYLOR: No.

CHAIR HOLTZMAN: Well, if we're not
required to.

MR. STONE: Okay. I have a change.

Go up one paragraph to the, during the JPP's
Subcommittee site visits.
MS. GALLAGHER: Yes, sir.

MR. STONE: In their other stuff, and again, this is conforming, we would say counsel stated, we took out the universally.

MS. GALLAGHER: Yes, sir.

CHAIR HOLTZMAN: Yes, I just said that.

MS. GALLAGHER: Yes, sir.

MR. STONE: Okay. Sorry, I missed that.

VADM TRACEY: Page 11 says that we were tasked to review and assess.

MS. GALLAGHER: Correct.

VADM TRACEY: Five issues.

MS. GALLAGHER: Yes.

VADM TRACEY: I do believe assess suggests some statement about, this is the monitoring, this the review, what is our assessment. Recommend no changes at this time, endorse it --

CHAIR HOLTZMAN: Oh, okay, wait a minute.
VADM TRACEY: I don't think you can just report.

CHAIR HOLTZMAN: Where is the, oh, the initial disposition withholding policy. I see.

Well, can we say something like, based on the foregoing there seems to be no reason to suggest any change from this policy?

PROF. TAYLOR: I would agree with that.

VADM TRACEY: Based on the foregoing, the JPP does not recommend any changes?

CHAIR HOLTZMAN: Yes. In this policy.

JUDGE JONES: That's fine.

CHAIR HOLTZMAN: I just want to go back to the, you changed, on the other hand to additionally. I do think that the other hand is correct there.

Because, first, you're talking about the negative, possible negative impacts on slight delays. But here the people are talking about the positive impacts so I think on the other hand is correct.
MR. STONE: So we're taking out the word, many? Is that the stuff too, because it's another one of these unnecessary sorts of cumulative words that we struck before. And just say, on the other hand, site visit participants observe?

CHAIR HOLTZMAN: Yes, fine. So, we're going to insert, on the other hand, I mean, we're going to retain on the other hand, strike additionally and strike many. Any objection to that?

MS. GALLAGHER: No.

JUDGE JONES: No.

CHAIR HOLTZMAN: Hearing none, it's approved. We're up to page, are we up to page 13 now?

MR. STONE: You could put this one -- just one question on that.

CHAIR HOLTZMAN: Yes, go ahead.

MR. STONE: The line right after the one we just dealt with, which says, O-6 typically has more. Do we want to say O-6 officers or
something?

CHAIR HOLTZMAN: Yes, that's better.

MR. STONE: O-6 is sort of left out there, I'm not sure who O-6 --

CHAIR HOLTZMAN: Or maybe you'd have to say --

VADM TRACEY: It says an O-6.

CHAIR HOLTZMAN: Yes, so you need, an O-6 officer.

MR. STONE: An O-6 officer.

VADM TRACEY: It's an O-6.

CHAIR HOLTZMAN: Is that what it's called?

VADM TRACEY: Yes, an O-6.

CHAIR HOLTZMAN: Okay.

MR. STONE: But don't we still have to say officer?

CAPT TIDESWELL: That's what O stands for.

MR. STONE: And O-6 officer.

MS. GALLAGHER: An officer in the rank of O-6, if that --
CAPT TIDESWELL: The O means officer.

CHAIR HOLTZMAN: Even I know what an O-6 is.

(Laughter.)

MR. STONE: I think there are people who get this, in Congress, who haven't been in the military nowadays and they're not going to know what in the world an O-6 is.

CHAIR HOLTZMAN: I don't know what it's good for, I just know that it was a rank.

MR. STONE: Yes.

CAPT TIDESWELL: Sometimes between colonels, captains --

CHAIR HOLTZMAN: I don't know why it would be incorrect to say, officers of an O-6 rank are holding an O-6 rank.

MR. STONE: That's okay.

PROF. TAYLOR: That would be fine.

CHAIR HOLTZMAN: All right. An officer with an O-6 rank typically has more military justice experience.

Okay. And without objection, that
change is accepted. Page 13.

MR. STONE: Wait. So, what did we do on the last line of our policy, did we have actual language there? We talked about it, but I didn't get what the language --

MS. GALLAGHER: The language I have is that the JPP does not recommend any changes to -- oh, based on the foregoing, the JPP does not recommend any changes to this policy.

MR. STONE: Okay, so that's a new sentence after the footnote, or before the Footnote 44?

MS. GALLAGHER: It would be after Footnote 44.

MR. STONE: Okay.

VADM TRACEY: Why is there a footnote in the statement in a paragraph?

PROF. TAYLOR: No, it would be in the text, but it's just after Number 44.

VADM TRACEY: Oh, I'm sorry.

PROF. TAYLOR: Just the last sentence.

VADM TRACEY: Okay.
CHAIR HOLTZMAN: All right, without objection that's all that is agreed to. Page 13. Any objection on 13?

JUDGE JONES: No.

CHAIR HOLTZMAN: It's approved. We're up to page 14. Any objection to 14?

PROF. TAYLOR: No.

CHAIR HOLTZMAN: We approve 14. We're up to page 15.

MR. STONE: On the top of 15, after the footnote, again, I'd like the sentence sort of like we just did after 44. Something about based on the blah, blah, blah, the JPP either recommends no change or endorses this policy or blah, blah, blah. It's --

CHAIR HOLTZMAN: Okay.

MR. STONE: -- logical place. But somebody else can wordsmith it.

CHAIR HOLTZMAN: What are we endorsing?

MS. GALLAGHER: We could put something like the JPP believes that trial counsel training
and experience is moving in the right direction.
Or something like that.

CHAIR HOLTZMAN: As appropriate, can you say that?

MS. GALLAGHER: Yes.

MR. STONE: This enhanced trial counseling training is appropriate.

VADM TRACEY: So we have a quasi-assessment on page 13 in the third paragraph. The Subcommittee's observation is that the program is running well, but there is a lack of in-court experience.

MS. GALLAGHER: Correct.

VADM TRACEY: For the trial counsel.

CHAIR HOLTZMAN: From a different perspective -- well, here it says, a recently enacted NDAA provision specifically addresses counsel training and experience, so do we need an endorsement?

MS. GALLAGHER: No. That is, I mean, it does kind of direct them to look at it internally. And I don't know what more we would
be doing at this point.

MR. STONE: So that's why the last one said -- what did the last one say? Have you got that language --

CHAIR HOLTZMAN: I don't think we need --

MS. CARSON: It doesn't recommend any changes at this time.

MR. STONE: So that's what I'd say here too. But I --

CHAIR HOLTZMAN: I don't know, but if Congress has --

MS. CARSON: In the middle of something --

CHAIR HOLTZMAN: -- done something, I don't know that we can say we don't recommend changes.

MS. CARSON: Based on the congressional statutory requirements. You can say, based on Congress' requirement --

CHAIR HOLTZMAN: Or you can say --

(Simultaneous speaking.)
CHAIR HOLTZMAN: Why don't you say, in light of Congress' actions --

MS. CARSON: Right.

CHAIR HOLTZMAN: -- we make no further recommendation --

JUDGE JONES: Further recommendations.

CHAIR HOLTZMAN: -- at this time.

PROF. TAYLOR: That's good.

MR. STONE: That's okay.

PROF. TAYLOR: I like that.

CHAIR HOLTZMAN: All right, page, that was 13, 14. So that change is accepted without objection and --

MR. STONE: Wait, is that change on 13 or 15?

MS. CARSON: It's on 15. Carries over, it's on 15.

MS. GALLAGHER: It would be on 15.

MR. STONE: It's on 15.

MS. GALLAGHER: The very --

MR. STONE: That's what I thought.

MS. CARSON: Yes.
MR. STONE: Okay, because when I heard we were on 14 I got confused.

MS. GALLAGHER: -- last sentence.

CHAIR HOLTZMAN: Okay, so we're on 15.

Any other changes to 15? Okay, if not, 15 is approved.

Page 16. Any objections on 16? If not, 16 is approved. 17.

MR. STONE: Yes.

CHAIR HOLTZMAN: Do we have a problem on 17?

MR. STONE: Well, it's not a problem, it's again, after the -- looking at the paragraph that's at the top of the page, that continues on, that says, the Marine Corps is the only Service that has added investigators to its complex trial team to complete any additional investigation needed for the prosecution effort.

I thought we should say something like, our Recommendations 39 and 40, support meeting the need for demonstrative investigative resources, consequently we recommend that these
Marine Corps actions be duplicated by all these Services. Because this is consistent with our 39 and 40, where we said defense investigators.

CAPT TIDESWELL: Those were for the defense counsel.

JUDGE JONES: Those are for the defense counsel, yes.

MR. STONE: Yes. I mean, if we're going to say that everybody should have them, and we point here that the Marine Corps is the only one that stepped up to the plate here --

CAPT TIDESWELL: Superiority.

MS. GALLAGHER: There is one of those, whether or not we have the data and have done enough research and heard enough evidence to make a determination that the trial counsel isn't able to rely on the MCIOs for their investigation versus requiring the Services to fund.

MR. STONE: That's what you got here though. That's exactly what's in the prior paragraphs. That's the data that we collect.

I mean, I don't know if we have to
make it a formal recommendation, I'm just saying we support.

JUDGE JONES: Well, except that they have special victim -- What's the name of that group where they have their own investigators at the trial, counsel, inlaid already?

MS. GALLAGHER: Well, just the Marine Corps.

JUDGE JONES: Well, no, no, throughout.

(Simultaneous speaking.)

JUDGE JONES: I was under the impression all the Services --

MS. CARSON: The SVIP.

JUDGE JONES: Yes.

MS. CARSON: But this is in spite of the SVIP.

CAPT TIDESWELL: Yes, capability.

MS. CARSON: This is in spite of the SVIP. There are still some --

JUDGE JONES: Oh, these are additional --
MS. CARSON: -- concerns once a case is -- the SVIP that requires them to work together till the case is closed.

JUDGE JONES: Right.

MS. CARSON: Then once the case is closed before the trial there is still that kind of window where there may be --

MR. STONE: And you've got to get --

(Simultaneous speaking.)

CHAIR HOLTZMAN: The case is closed before trial.

JUDGE JONES: Yes.

MR. STONE: Yes, they send the whole package.

MS. GALLAGHER: Wait a minute, I'm not following that.

(Simultaneous speaking.)

MS. CARSON: Sometimes the investigative --

MS. GALLAGHER: The investigative case, oh.

MS. CARSON: The investigation is
closed by investigator's in some cases prior --

MS. GALLAGHER: Oh, okay.

JUDGE JONES: Before the Committee probably makes their decision on --

MR. STONE: And just to read into the record here for us, you know, you've got: Prosecutors asserted that the investigators often decline to follow up on important leads while investigators asserted that requested additional investigation is unnecessary or is difficult for an already overburdened and understaffed investigative unit to execute. Which you've got footnoted to the Subcommittee.

So that's why you have -- the Marine Corps has addressed it basically and it seems to me it's hanging there, whether we shouldn't give them a little pat on the back and say it is consistent with what we did in saying that when there is need for investigators see Recommendation 39 and 40, it ought to be addressed. Even that would be enough.

MS. GALLAGHER: That would be an area
that would perhaps be ripe for the DAC-IPAD to
investigate further and, you know --

    MR. STONE: Well, that's another way
to look at it.

    MS. GALLAGHER: -- and between the
investigative organizations and the prosecutors
to see whether --

    JUDGE JONES: I feel better about that
only because we heard that the defense have no
investigators and there was a lot of study with
respect to a lot, with a lot of data.

    CHAIR HOLTZMAN: Right.

    (Simultaneous speaking.)

    MS. CARSON: It's a slightly different
issue.

    JUDGE JONES: Well, it's a different
issue. This is --

    PROF. TAYLOR: Well, in addition to
that, Judge Jones, this is a tasker that asked us
only to monitor trends, it doesn't ask us to
assess it.

    CHAIR HOLTZMAN: Right.
PROF. TAYLOR: It says monitor trends and the development utilization --

CHAIR HOLTZMAN: Right, so then --

Correct. So I don't think we need to add anything.

PROF. TAYLOR: -- and effectiveness.

So I think we've done that.

CHAIR HOLTZMAN: No, I don't think we need to add anything after, on page 17.

PROF. TAYLOR: I agree.

MS. CARSON: And it speaks for itself, that block.

JUDGE JONES: Yes, right.

MS. CARSON: I mean somebody reads that it raises the question, so --

CHAIR HOLTZMAN: Right.

JUDGE JONES: Thank you, Mr. Taylor.

I didn't realize that was our mission.

CHAIR HOLTZMAN: Okay, so --

JUDGE JONES: Monitor, okay.

CHAIR HOLTZMAN: Any other issues on page 17?
JUDGE JONES: On that one.

CHAIR HOLTZMAN: Okay, if not 17 is approved. 18? Any objection to anything on 17 or, I mean on 18? If not, that's approved.

We're up to 19. Any issues on 19? If not, 19 is approved.

VADM TRACEY: So this is the place where we are supposed to assess?

MS. GALLAGHER: Yes, 19 is review and assess.

MR. STONE: Nineteen what?

MS. GALLAGHER: For the mental health it is review and assess, because --

JUDGE JONES: Our task.

MS. CARSON: Yes. And also for 412.

MS. GALLAGHER: No, the 412 is just follow-up from your initial report, kind of your own taskings. You told yourselves to continue to monitor and --

CHAIR HOLTZMAN: Right, but --

MS. GALLAGHER: So 412 doesn't need anything, the mental health is a review and
assess task.

CHAIR HOLTZMAN: That's right.

VADM TRACEY: So I'm reading on page 15, which is Paragraph 6, right --

MS. GALLAGHER: Yes.

VADM TRACEY: -- that applies to the task.

MS. GALLAGHER: Right.

VADM TRACEY: That it is an NDAA tasking to monitor trends.

MS. GALLAGHER: We're on 15 with regards to the SVIP.

CHAIR HOLTZMAN: Where are we? Admiral, where are you reading from?

VADM TRACEY: Page 15, the task is to monitor.

CHAIR HOLTZMAN: That's just special victims, isn't it? Special Victim --

MS. GALLAGHER: Right.

CHAIR HOLTZMAN: -- IP Program.

MS. GALLAGHER: The 412 tasking is on page 17.
VADM TRACEY: I'm sorry, page 17.

CHAIR HOLTZMAN: 412 on 17?

MS. GALLAGHER: It's 17, yes, okay.

VADM TRACEY: So it is a review and assess --

MS. GALLAGHER: And my thought process --

VADM TRACEY: -- on very specific instances, right?

MS. GALLAGHER: -- on that was you did an entire chapter, or a whole section in the initial report that was a review and assessment of M.R.E. 412 that meets the tasking of review and assess, but you left some due-outs in light of some significant changes that were occurring, and I think --

CHAIR HOLTZMAN: What's a due-out?

MS. GALLAGHER: Oh, I'm sorry, that would be military shorthand --

CHAIR HOLTZMAN: That there are other issues --

MS. GALLAGHER: Yes. There is -- Yes.
CHAIR HOLTZMAN: Okay.

MS. GALLAGHER: You said you would continue to monitor.

MS. CARSON: In the initial report.

CHAIR HOLTZMAN: Well, and maybe to solve your problem, Admiral, we can say, don't we say here that we issued a report in response to this, so --

MR. STONE: Yes, we say that.

CHAIR HOLTZMAN: Okay, so --

MR. STONE: That's the last paragraph before assessment.

CHAIR HOLTZMAN: Right. In its initial report JPP assessed but noted that pending changes should be monitored. So I think we have responded to the tasking.

VADM TRACEY: Okay.

MR. STONE: Agree.

CHAIR HOLTZMAN: All right. So without objection page 18 is agreed to. We are up to 19, which is mental health records. Any objection on 19?
(No audible response.)

CHAIR HOLTZMAN: Nineteen is agreed to. Page 20, any objections on 20?

(No audible response.)

CHAIR HOLTZMAN: If not, 20 is agreed to. Page 21 -- And without objection 20 is agreed to. 21?

(No audible response.)

CHAIR HOLTZMAN: Without objection 21 is accepted. Going to 22?

(No audible response.)

CHAIR HOLTZMAN: Without objection 22 is agreed upon. Twenty-three?

MR. STONE: Yes, I got --

CHAIR HOLTZMAN: Okay.

MR. STONE: I have a concern in 23. Take a look down at Footnote 116, maybe you can tell me if this is accurate, but I think it would be accurate to write near the end of the first line of the footnote: The CAAF granted review but determined it lacked jurisdiction, which we have separately recommended should be explicitly
provided -- JPP Recommendation 46 -- over the case. Something like that.

CHAIR HOLTZMAN: Maybe we don't put --

MR. STONE: Maybe say it after the words, over the case.

CHAIR HOLTZMAN: Maybe at the end of that --

MR. STONE: Somewhere.

CHAIR HOLTZMAN: -- determined it lacked jurisdiction. The JPP has recommended that specific jurisdiction be granted. See page whatever it is, above.

MR. STONE: Yes.

MS. GALLAGHER: Good, good.

MR. STONE: And Recommendation 46.

CHAIR HOLTZMAN: Okay.

MR. STONE: Because you have it in the note.

CHAIR HOLTZMAN: Right. Well, with that change is page 23 accepted?

(No audible response.)

CHAIR HOLTZMAN: Hearing no objection
23 is accepted. We are up to 24. Without any objection 24 is accepted. Twenty-five?

(No audible response.)

CHAIR HOLTZMAN: Without objection 25 is accepted. Twenty-six?

(No audible response.)

CHAIR HOLTZMAN: Without objection 26 is accepted. Twenty-seven?

(No audible response.)

CHAIR HOLTZMAN: Without objection 27 is accepted. Twenty-eight?

MR. STONE: I have an objection on 27.

(Laughter.)

JUDGE JONES: I thought it was easy.

MR. STONE: I can't accept 27 until I get something.

MS. GALLAGHER: And that's going to be exactly verbatim, your recommendations --

MR. STONE: Sure, okay.

MS. GALLAGHER: -- to the DAC-IPAD.

MR. STONE: Oh, here, and here is a draft conclusion on 28. Let me just --
CHAIR HOLTZMAN: Okay. And he just wrote a conclusion if anybody wants to take a second to read that we can. And where do we mention our staff?

MR. STONE: It's in there.

CHAIR HOLTZMAN: No.

(Simultaneous speaking.)

MR. STONE: Tell us where you want to put it.

CHAIR HOLTZMAN: Yes, I think we should add something about the staff.

CAPT TIDESWELL: Yes, ma'am.

CHAIR HOLTZMAN: And the first sentence is a little skinny.

MR. STONE: Yes, do we need the words sincere gratitude instead of gratitude?

CHAIR HOLTZMAN: Yes, right, correct, I think Mr. Stone is right. I think we should take sincere out, but I'd like to add: to examine the important issues of sexual assault in the military and to propose recommendations for reform, or something like that, not just to
examine, but -- yes, I mean maybe something like, we hope our work has led to, I don't know, more effective prosecution of these cases and more effective and fairer prosecution of these cases.

And what can we say about victims?

And more sensitive --

MR. STONE: Treatment of.

CHAIR HOLTZMAN: -- treatment of victims in the military justice system. Okay.

And, well, maybe the --

VADM TRACEY: Should --

CHAIR HOLTZMAN: -- last sentence then, JPP says, with deep appreciation to its hardworking and dedicated staff and to everyone else who helped fulfill this mission. I'm sorry, Admiral, I didn't mean to cut you off.

VADM TRACEY: I'm sorry. Just our task was not the issue of sexual assault in the military, it was about the --

CHAIR HOLTZMAN: Oh, yes, I'm sorry, sexual assault, an important issue of --

VADM TRACEY: You said the words, and
I --

(Simultaneous speaking.)

CHAIR HOLTZMAN: In the military justice system - sexual assault --

VADM TRACEY: Should probably have been, military justice system's handling of sexual assault in the military.

CHAIR HOLTZMAN: Fine, okay. Yes, and if you could -- so could you kind of read that back to us, I mean if you can? Let me give you a few seconds to do that. I'm counting. I can't believe this.

PROF. TAYLOR: It seems that somewhere we all have the idea of independent review and assessment because --

CHAIR HOLTZMAN: Right.

PROF. TAYLOR: -- that seems to me what we have been about.

CHAIR HOLTZMAN: Well, you can say to engage --

VADM TRACEY: So expresses gratitude to the Congress for the opportunity to provide
the independent review and assessment of --

CHAIR HOLTZMAN: All right. Well, what about, the opportunity to engage and examine an independent -- oh, I don't know, maybe what you want to say is: to provide an independent --

the opportunity to --

MS. CARSON: So you want to talk about the judicial proceedings related to sexual assault?

VADM TRACEY: Something about the military justice system I think is what we are --

CHAIR HOLTZMAN: Right.

MS. CARSON: Right.

PROF. TAYLOR: I was just going back to the statutory language --

CHAIR HOLTZMAN: Yes.

PROF. TAYLOR: -- which is: conduct an independent review and assessment of judicial proceedings conducted under the UCMJ involving adult sexual assault and related offenses.

CHAIR HOLTZMAN: Right.

PROF. TAYLOR: I was just going back
to the fundamental language --

    MS. CARSON: Right.

    CHAIR HOLTZMAN: All right.

    PROF. TAYLOR: -- for the purpose of
    developing recommendations for improvements to
    such proceedings.

    CHAIR HOLTZMAN: Yes, right, okay.

And then we hope that our work has contributed,
has made positive contribution to this result, or
something to this.

    JUDGE JONES: It's a very small bound.

If they need anything further, I think it should
just be the JPP would not have been able to --

    CHAIR HOLTZMAN: Right.

    JUDGE JONES: Right.

    MR. STONE: I agree.

    CHAIR HOLTZMAN: So we can have a kind
    of, for a second, or do we have --

    MS. GALLAGHER: What I would suggest
    is that we take all of the thoughts that you've
given once we get the transcript and we put it
together to make sure we've got our grammar
flowing with all of the ideas and when we send
out the report, because, clearly, it has to come
back to you, because we have these sections that
have to be filled in, when it comes around
administratively for you to assess you can come
back with your track changes --

MR. STONE: To the Captain.

MS. GALLAGHER: -- on the language.

Yes, yes, absolutely.

CAPT TIDESWELL: Individually, yes.

MS. GALLAGHER: Yes.

MR. STONE: Individually.

CAPT TIDESWELL: Yes, like what Bill
was telling --

CHAIR HOLTZMAN: And how do we approve
the report then, Mr. Sprance? I would really
like to get --

(Simultaneous speaking.)

MR. STONE: Could we, if this, if all
the track changes are circulated by the Captain
as technical ones could we individually respond
to her that we approve and sign it? Because we
approved something and signed it that way?

MR. SPRANCE: I don't know that we
could do that, by doing it by email or that way,
I don't know that that could be --

CAPT TIDESWELL: Is this a solution, Bill? I would argue the conclusion is probably
not controversial. It's more just the grammar
and all and the paragraph structure. If you all
are comfortable sort of approving the report
subject to the changes --

MR. SPRANCE: Subject to the changes.

CAPT TIDESWELL: -- as well as sending
this back to Meghan --

MS. PETERS: With regards to the --

MR. SPRANCE: Yes, subject to the
changes that you have addressed.

CAPT TIDESWELL: And then if there is
a discomfort on some level then we just reopen
and have a meeting over the phone.

CHAIR HOLTZMAN: Yes, over the phone.

MR. SPRANCE: I think that would be
the best course --
(Simultaneous speaking.)

MR. STONE: That's what I would say.

I'm with you.

CHAIR HOLTZMAN: All right. So without objection -- Is there any objection?

(No audible response.)

CHAIR HOLTZMAN: Then that's what the Committee decides, I mean the Panel decides.

CAPT TIDESWELL: Yes, ma'am, very well.

CHAIR HOLTZMAN: Okay, great.

CAPT TIDESWELL: We have two minor things to take up, data and sexual assault investigations, and you all have a 12:30 cab, so

CHAIR HOLTZMAN: Yes.

CAPT TIDESWELL: So I think we're going to --

CHAIR HOLTZMAN: So our first recommendation is on the Data Report. What do we have to do, Ms. Peters?

MS. PETERS: I would recommend, ma'am,
that we look at the Investigations Report, the page that I provided to you with yellow highlights.

CHAIR HOLTZMAN: Okay, page 5, yes.

MS. PETERS: Yes, ma'am.

CHAIR HOLTZMAN: So you want us to read that?

MS. PETERS: Yes, ma'am.

CHAIR HOLTZMAN: Okay.

MR. STONE: I'm sorry, I'm lost. We have a page that says 5 --

MS. PETERS: Yes, and that's what -- Sorry, sir, I ask that you review at this time so that we can look at the bullets to Recommendation 50 in the Investigations Report.

MR. STONE: Okay. We're missing stuff in the last bullet that was talking about --

(Simultaneous speaking)

CHAIR HOLTZMAN: All right, just wait until everybody finishes.

MR. STONE: But it was that thing about --
CHAIR HOLTZMAN: Mr. Stone, why don't you wait until everybody finishes, please.

MR. STONE: Okay.

(Whereupon, the above-entitled matter went off the record at 12:18 p.m. and resumed at 12:22 p.m.)

CHAIR HOLTZMAN: All right. Changes on page 5 or any suggestions?

MR. STONE: Yes. There are words missing in the second bullet on the one, two, third line before the word investigators, it should say: which may aid investigators and prosecutors making decisions about investigating and charging sexual assault crimes, instead of, without possessing all of the available evidence, as I read what we had. In order for it to read -- I just --

CHAIR HOLTZMAN: So it would read how?

When a victim refuses to turn over relevant evidence, such as photographs, text messages, or social media information contained on the victim's cell phone --
MR. STONE: That -- okay, I didn't know -- okay, that may -- Oh, no, it's --

CHAIR HOLTZMAN: Okay, so you wanted, would turn over relevant evidence that may --

MR. STONE: Okay, wait. When a victim refuses to turn over --

(Simultaneous speaking.)

MS. PETERS: Sir, if I may make a point. I believe that yesterday the Committee voted on Recommendation 2 in its original form, and that did not contain "which may aid".

MR. STONE: Okay. All right, leave that one. Go to the next paragraph, F.

CHAIR HOLTZMAN: Okay, so you don't have a problem with paragraph, Bullet 2?

MR. STONE: I'm okay.

CHAIR HOLTZMAN: We're okay with Bullet 2?

MR. STONE: Let's go to Bullet 3.

CHAIR HOLTZMAN: All right. Well, wait a minute, let's just formally do this. Any other objection or problem with Bullet 2?
MR. TAYLOR: None.

CHAIR HOLTZMAN: So that's accepted, okay, without objection, all right.

MR. STONE: Bullet 3, we add --

CHAIR HOLTZMAN: I have -- Yes.

MR. STONE: We add a phrase at the end of the first sentence that says: as well as the loss of the use of the phone.

CHAIR HOLTZMAN: Right.

MR. STONE: I thought it was supposed to be the loss of the use of -- and any data on the phone, because they have their calendar, their, you know, address book --

CHAIR HOLTZMAN: But that's -- I think that's implicit in the use of it.

(Simultaneous speaking.)

CHAIR HOLTZMAN: I think it's implicit, yes.

MR. STONE: Everybody agree it's implicit.

JUDGE JONES: I agree.

CHAIR HOLTZMAN: Yes.
VADM TRACEY: I agree.

MR. STONE: Because it sounds like a lot of people don't have smart phones, but, all right. All right, and then in the last --

CHAIR HOLTZMAN: Well, wait, I'm still on three, Bullet 3. I have -- when you say, typically contained on a smart phone, that was fine when you didn't have self-incriminating.

MS. PETERS: Four. Yes, ma'am.

CHAIR HOLTZMAN: Now that we have self-incriminating I don't think you can say typically. I think you say, that may be contained on a smart phone.

MS. PETERS: Yes, ma'am, noted. Got it.

CHAIR HOLTZMAN: Any objection to that?

(No audible response.)

CHAIR HOLTZMAN: Okay.

MR. STONE: Okay.

CHAIR HOLTZMAN: Okay, so without objection Bullet Number 3 is accepted. Okay,
Bullet Number 4.

PROF. TAYLOR: I have an objection to that.

CHAIR HOLTZMAN: Yes, sir?

PROF. TAYLOR: So yesterday the one we approved had struck the words, unless there is a valid military search authorization for a cellular phone, the victims -- and the one we approved said: some SVCs/VLCs reported that they advised clients that they should not voluntarily turn over their cellular phones to investigators.

CHAIR HOLTZMAN: Right. So what do you want to do?

MS. PETERS: So that's my omission. I think I -- It looked more like an underline than a cross-out --

PROF. TAYLOR: Strike the words, unless there is a valid military search authorization for a cellular phone, victims. And instead put the word they. So it will read --

CHAIR HOLTZMAN: So some SVCs -- Okay, go ahead.
PROF. TAYLOR: Some SVCs/VLCs reported that they advised clients that they should not voluntarily --

MR. STONE: Should be victims.

PROF. TAYLOR: -- turn over their --

CHAIR HOLTZMAN: Should be, they advise victims, really, instead of clients.

PROF. TAYLOR: Yes.

CHAIR HOLTZMAN: Okay.

PROF. TAYLOR: Advise -- yes, thank you -- turn over their cellular phones to investigators.

CHAIR HOLTZMAN: Okay. So without objection that amendment is agreed to.

(No audible response.)

CHAIR HOLTZMAN: Okay. Last bullet?

MR. STONE: Yes, last bullet, first line, I thought we added after, forensic techniques for imaging and searching cellular phones. And I thought there was an insert: and well-crafted consent forms. I thought --

(Simultaneous speaking.)
CHAIR HOLTZMAN: Yes, right.

MR. STONE: It may minimize -- That's what I had --

(Simultaneous speaking.)

PROF. TAYLOR: I agree with that change.

JUDGE JONES: Yes.

MR. STONE: Well-crafted consent forms.

CHAIR HOLTZMAN: Well, maybe not putting and. Because we are talking forensic techniques and we don't want that to apply to well-crafted.

MR. STONE: What --

CHAIR HOLTZMAN: Maybe --

VADM TRACEY: How about use, coupled with use of --

CHAIR HOLTZMAN: Oh, yes, coupled with use of well-crafted. Excellent. Coupled with use of well-crafted consent forms. And I would like to add, and, therefore, should be explored.

I would like to add, and, therefore, it should be
fully explored.

MR. STONE: No problem, okay.

CHAIR HOLTZMAN: Okay. So with those changes do we accept -- Without objection the last bullet is accepted with those two changes.

I have just two, again, wordsmithing changes, one on the Recommendation 50 itself. I don't know that the, to ensure that sexual, the last part of it, doesn't that -- I would like to say where it says, and develop appropriate remedies. See, the problem I have is, develop appropriate remedies and address a victim's legitimate concerns about turning over this evidence -- all right, well, let's leave it the way it is.

MR. STONE: Do you want to stop it sooner? We could stop it at --

CHAIR HOLTZMAN: I was going to put the "to ensure" right after remedies, but I don't know if that does any --

MR. STONE: But it -- They're not turning over this evidence you could stop the
whole sentence there because we -- The rest of it
is sort of redundant and we discuss it below.
Now we have made those bullets longer.

        CHAIR HOLTZMAN: No, let's leave it.
I'd just leave it. I'm sorry to raise that.
Okay, and the second part is -- So, the framing
is accepted without objection.

        The first bullet, I don't think you
can -- Can you impede the investigations as a
whole? Okay, fine. I have no problem with
Bullet 1. Okay, so --

        CAPT TIDESWELL: Ma'am, may I ask a
question?

        CHAIR HOLTZMAN: For the framing, yes.

        CAPT TIDESWELL: In Recommendation 50
you all sort of suggested to the Secretary of
Defense that he develop appropriate remedies, is
guidance a better word than remedies?

        MR. TAYLOR: I don't know.

        VADM TRACEY: Well, guidance might be
the remedy.

        CAPT TIDESWELL: Might be the remedy.
MR. STONE: No, it's plural, it's appropriate remedies --

CHAIR HOLTZMAN: Right.

MR. STONE: -- because there is different things he might do.

CHAIR HOLTZMAN: Okay. So without objection now 5 is amended, is adopted, okay.

MS. PETERS: Yes. Yes, ma'am.

CHAIR HOLTZMAN: Now we are up to data. What do we have to do on this?

MS. PETERS: Yes, ma'am. So the Panel is aware, I have taken the edits approved in the Concerns Report and the Ex Sum that relate the handling of the Subcommittee Report and put those in the Investigations Report as well, because it's the exact same verbiage.

Where it's the exact same verbiage about the installation site visits in the Subcommittee Report, those edits will be reflected in the Investigations Report as well.

CHAIR HOLTZMAN: Okay. So what do we have to do about this?
MS. PETERS: The two issues, ma'am, are on page 4, 54(c), statistics have now been inserted instead of words like low or high in 54(c), and so that the sex assault offense conviction rate is 36 percent and conviction on any offense is 59 percent.

CHAIR HOLTZMAN: Okay.

MS. PETERS: As well, you asked that certain verbiage be eliminated from the parentheses and that's why that is highlighted, to reflect that change.

Conforming edits have been on page 42, because page 42 contains the Panel's analysis in blue text, so, yes, you will see on page 42 that it's been highlighted.

CHAIR HOLTZMAN: Okay. So without objection those --

MS. PETERS: Oh, sorry, ma'am.

CHAIR HOLTZMAN: And then we can say without objection those changes are adopted.

What else?

MS. PETERS: Page 21, ma'am. Page 21
contains a chart with the active duty population size in response to Admiral Tracey's question about whether that contains Reserve members or mobilized under Title 10.

CHAIR HOLTZMAN: Right.

MS. PETERS: The DoD resource cited does not include those people mobilized, therefore, the --

CHAIR HOLTZMAN: Okay. So we have these --

MS. PETERS: -- caveat has been added in highlight below.

CHAIR HOLTZMAN: Right, good.

MS. PETERS: Below the table.

CHAIR HOLTZMAN: Okay.

VADM TRACEY: So if I could just, the language here, these figures do not include Reserve and Guard component members --

MS. PETERS: Does the Reserve component include both Reserve and Guard?

PROF. TAYLOR: It does, the Reserve components.
VADM TRACEY: But I think that the Guard is particularly sensitive.

MS. PETERS: Okay. Yes, ma'am.

VADM TRACEY: The Guard and Reserve component members --

MR. STONE: Do you say Guard, or did you say National Guard?

VADM TRACEY: Guard and Reserve component members.

MS. PETERS: Okay.

VADM TRACEY: Supplemented the active component, I mean that's just not the right term of art here.

MS. PETERS: Served in --

CHAIR HOLTZMAN: Well, why don't we need -- Why don't you just do not include the number of Reserve and Guard component members period. Is that enough?

VADM TRACEY: Let me just explain what's troubling me.

CHAIR HOLTZMAN: Okay.

VADM TRACEY: I realize you are under
a time crunch, but we have flagged the Army as having a higher rate of incidents than anybody else does.

CHAIR HOLTZMAN: Right.

VADM TRACEY: And part of that conclusion comes from the fact that we are using a percentage that is based only on the active component and at least my understanding is there is a pretty big chunk of the Guard that is on active duty right now and the Reserves that are on active duty, so the denominator would be different if we had the accurate account.

We can't get the accurate account from the data that is available to us, so I am concerned that we are signaling something about the Army that may not be accurate, and we don't have a way to resolve the numbers.

So I was trying to get a footnote that would drive whoever follows up on this to first clarify whether the number is bigger in the Army just because the Army is that much bigger than everybody else is.
CHAIR HOLTZMAN: Okay. So we can --

Why don't we just say that, that the numbers,
these numbers do not -- The Army -- The numbers,
the active duty population for the Army may be
larger, may not be comparable with the other
Services because it may include Reserve and
National Guard elements that are not included in
the other Services.

We have no way of determining the
number, and, therefore, caution has to be
applied. I don't know. Is that kind of what you
have in mind?

VADM TRACEY: Yes. Yes.

CHAIR HOLTZMAN: Well, it may not even
be -- So --

VADM TRACEY: So it is not that the
figures from the DMDC are incorrect, it's that
the percentages were calculated --

CHAIR HOLTZMAN: Right. So you can't
compare them.

VADM TRACEY: -- only against the
active duty population to the extent that Guard
and Reserve members -- Because everybody has Reserve members activated right now.

CHAIR HOLTZMAN: Oh, they do, oh, okay.

VADM TRACEY: The problem is that the Army is so much bigger than everybody else that it could be a significant, statistically significant problem, that we have used the wrong denominator and we can't get the right denominator.

CHAIR HOLTZMAN: And why would it make a difference if -- If everybody has got Army, have got Reserve and Guard units, why does that make a difference?

VADM TRACEY: The Army is the most heavily engaged right now, and so they are likely to have a bigger share of their Reservists --

CHAIR HOLTZMAN: Yes.

VADM TRACEY: -- on active duty subject to the UCMJ than anybody else does. And so we may be seeing a proportionate distribution of incidents if we had the right denominator.
Maybe it doesn't bother anybody else, but it troubles me that we seem to have called out and passed on to the follow-on Committee this signal that the Army has this higher than typical incident rate and we don't actually know that that's the case.

MR. STONE: Doesn't the last sentence say that though? Isn't that exactly what the last sentence says? Except that maybe it should be courts-martial, right. I thought that was pretty good there.

VADM TRACEY: So, these figures do not include the number of Guard and Reserve component members who were mobilized and subject to the UCMJ in Fiscal Year 2015.

CHAIR HOLTZMAN: Is that okay with you?

VADM TRACEY: I think that is the edit to that sentence.

CHAIR HOLTZMAN: Okay.

VADM TRACEY: Okay. My problem with the last sentence is that we are saying we
shouldn't do that to calculate --

CHAIR HOLTZMAN: Yes.

VADM TRACEY: -- but we have done it, right.

CHAIR HOLTZMAN: Right.

VADM TRACEY: So, these figures should not be used to compare the proportion of courts-martial --

MR. STONE: Okay.

VADM TRACEY: -- relative to the other Services.

PROF. TAYLOR: That's good. I agree with that.

CHAIR HOLTZMAN: The proportion of courts-martial in the Army --

VADM TRACEY: In the Army relative to the other Services.

CHAIR HOLTZMAN: So the way it would read now is: These figures do not include the number of Guard and Reserve component members who were activated --

MR. STONE: Mobilized.
VADM TRACEY: Mobilized.

CHAIR HOLTZMAN: Who were mobilized and subject to --

VADM TRACEY: Subject to the UCMJ in Fiscal Year 2015.

CHAIR HOLTZMAN: Okay. Who were mobilized and who were also subject to the UCMJ in Fiscal Year 2015, and, therefore, these figures should not be used to calculate the proportion of --

MR. STONE: No, no, to compare.

VADM TRACEY: To compare.

CHAIR HOLTZMAN: To compare the proportion of courts-martial in the Army relative to the other Services. Right?

VADM TRACEY: Correct.

CHAIR HOLTZMAN: And then we don't need total calculation.

JUDGE JONES: And they'll have to know that more people got activated into the Army?

CHAIR HOLTZMAN: Yes --

PROF. TAYLOR: I just have one
friendly amendment to that, Admiral Tracey.

VADM TRACEY: Yes?

PROF. TAYLOR: If we said instead of the word mobilized, on active duty, because there are various displays of getting on active duty, not just mobilized.

VADM TRACEY: That's correct. No, you're right about that. You are right about that.

CHAIR HOLTZMAN: All right. So now I am going to read it again. These figures do not include the number of Guard and Reserve component members who --

MR. STONE: On active duty.

CHAIR HOLTZMAN: -- were on active duty and were also subject to the UCMJ in fiscal year 2015.

MR. STONE: I don't think you need also and were subject.

CHAIR HOLTZMAN: No, I'm saying: were also subject to the UCMJ in fiscal year 2015. Therefore, these figures should not be used to
compare the proportion of courts-martial in the
Army relative to the other Services. Right, is
that it?

VADM TRACEY: Right.

CHAIR HOLTZMAN: Okay. Without
objection this is adopted. So the Data Report
without objection is adopted as amended.

MS. PETERS: Have you all adopted the
Investigations Report as a whole as amended?

CHAIR HOLTZMAN: Oh, okay. So we
adopted page 5, so with the amendment to page 5
without objection the Investigations Report is
adopted. I think we have finished our work.

Congratulations, members. Thank you.

Thank you, staff. Thank you, everybody who
contributed to this. It's really amazing. I
mean, more or less, all the time. Great.

MR. SPRANCE: The meeting is closed.

(Whereupon, the above-entitled matter
went off the record at 12:38 p.m.)
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Judicial Proceedings Panel

Before: US DOD

Date: 07-27-17

Place: Arlington, VA

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

[Signature]

Court Reporter