

UNITED STATES DEPARTMENT OF DEFENSE

+ + + + +

JUDICIAL PROCEEDINGS PANEL

+ + + + +

JUDICIAL PROCEEDINGS SUBCOMMITTEE

+ + + + +

MEETING

+ + + + +

THURSDAY
JUNE 25, 2015

+ + + + +

The Subcommittee met in Room 850 of the Daniel Patrick Moynihan Federal Courthouse, New York City, New York, at 8:30 a.m., Hon. Barbara Jones, Chair, presiding.

PRESENT:

Hon. Barbara S. Jones
Hon. Elizabeth Holtzman
Dean Michelle J. Anderson
Lisa M. Friel
Laurie R. Kepros
COL(R) Lisa M. Schenck
COL(R) Lee D. Schinasi
Prof. Stephen J. Schulhofer
BGen(R) James R. Schwenk
Jill Wine-Banks
MajGen(R) Margaret H. Woodward

WITNESSES:

Dwight Sullivan
Brigadier General Charles N. Pede
Lieutenant Colonel Christopher Kennebeck

STAFF:

Colonel Kyle W. Green, U.S. Air
Force - Staff Director
Lieutenant Colonel Kelly McGovern - Deputy Staff
Director
Maria Fried - Designated Federal Official
Lieutenant Colonel Glen R. Hines, Jr., U.S.
Marine Corps - Staff Attorney

TABLE OF CONTENTS

	PAGE
Comments from Chair	4
The Executive Order Process Mr. Dwight Sullivan	10
Article 120, Uniform Code of Military Justice, Statutory Construction	
- BG Charles N. Pede	93
- LTC Christopher Kennebeck	107
Lunch	215
Discussion and Deliberations on Issues 1-11	215

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

(8:49 a.m.)

MS. FRIED: Good morning, everyone.

Thank you for being here today. This is the third meeting of the Subcommittee. The Subcommittee was established by the Secretary of Defense at the request of the Subcommittee's parent Panel, the Judicial Proceedings Panel. Since Fiscal Year 2012 Amendments, also known as the JPP.

The Chair of the JPP is the Honorable Elizabeth Holtzman. The Chair of the Subcommittee is the Honorable Barbara Jones.

Additional information on the Subcommittee membership is available on the JPP website at <http://jpp.whs.mil>.

With that, I would like to turn it over to the Chair. Thank you.

CHAIR JONES: Thank you, Maria.

For the morning session, we are going to continue to hear more information about Article 120, and also we have Mr. Dwight Sullivan

1 here again, and I'm very happy that he is here
2 again, to discuss the executive order process and
3 try to explain it to us.

4 In the afternoon, since we have had a
5 lot of information given to us, and have had the
6 opportunity to give it some thought, we are going
7 to begin to discuss and to deliberate on the
8 issue of whether to make -- whether we should
9 recommend or shall recommend any changes to
10 Article 120 or not.

11 And we hope to be able to continue our
12 examination during deliberations and our
13 analysis. And if we are able to arrive at some
14 consensus with respect to any issue, that will be
15 a building block for further deliberations.

16 This is a complex statute. We have
17 heard lots of opinions in many different
18 directions about how we should approach it. And
19 so one thought that I wanted to just mention now
20 before we go to deliberations this afternoon, and
21 before we hear from Mr. Sullivan, is that I think
22 whatever we come up with, because it is a statute

1 that is complicated, and we might not know what
2 we have wrought by the time we suggest -- if we
3 do suggest any changes -- that we then send our
4 suggestions to the Joint Services Committee so
5 they can take a look at it.

6 They are the practitioners. They may
7 see something we hadn't even -- that hadn't even
8 occurred to us. Possibly to the military justice
9 section of the ABA. But I think we should send
10 it out for comment -- not for approval but for
11 comment.

12 All right. So with that, yes, Glen?

13 LT. COL. HINES: Just real quick.

14 Ladies and gentlemen, I apologize up front.
15 You've got some hard copies of materials in front
16 of you. And so before we get going, I just want
17 to make sure that everyone is on the same page.

18 So I'll start with -- I passed out
19 hard copies of Mr. Sullivan's presentation. He
20 is going to be doing what I'd call a tabletop.
21 So I've given you basically note pages. So the
22 packet with the three slides on each page, that's

1 going to be his presentation.

2 The next document is this document
3 that says "Article 120 Slides", and that is
4 Lieutenant Colonel Kennebeck and General Pede's
5 slides. They are going to be going next. In
6 your blue folder -- and that's the blue folder --
7 I just want to make sure you've got everything
8 that we've given you. There is a one page
9 document of the 11 issues that we are going to
10 deliberate over this afternoon.

11 And then, Congresswoman Holtzman
12 brought this to my attention. So now you should
13 have an actual hard copy of the actual statute.

14 In your materials, you have Ms.
15 Kepros' proposed fix. And so there is no heading
16 on that. The way you can tell those apart is Ms.
17 Kepros' proposed fix, if you look down in A, sub
18 A, "with rape," she has inserted the word
19 "knowingly." So "any person subject to the 20
20 chapter who knowingly."

21 So if you want to just take that
22 document out and write "Kepros Proposal" on top

1 of it, that's how you should be able to tell it
2 apart from the document that Ms. Zahn just gave
3 you, which is the actual statute.

4 Yes, ma'am?

5 HON. HOLTZMAN: I didn't get a list of
6 the 11 issues. You said it was going to be in
7 our packet?

8 LT. COL. HINES: It should be on the
9 right side in there.

10 HON. HOLTZMAN: Oh.

11 LT. COL. HINES: The 11 issues for the
12 deliberations, and those are the first 11 issues
13 that you all referred to as "sub A."

14 HON. HOLTZMAN: Can I also suggest in
15 the future that we give these documents headings,
16 so that --

17 LT. COL. HINES: Yes, ma'am. And I
18 apologize for the lack of clarity on that.

19 So you have that, and then you have
20 the marked up version, which is Ms. Kepros'
21 proposal, but it's with the markups. And that's
22 the one that has got the red -- I don't know if

1 it has got red ink on it at the bottom.

2 MAJ. GEN. WOODWARD: It's very clear.

3 LT. COL. HINES: You've got Professor
4 Schulhofer's document that I forwarded to
5 everyone a few days ago. He's going to be on the
6 phone for the deliberation session this
7 afternoon. And then, on the left side, you
8 should have your agenda.

9 If you have any questions before we
10 start, just let me know. Dean Anderson?

11 DEAN ANDERSON: I just wanted to
12 confirm with Judge Jones that once we send it out
13 for comments, which I think is a terrific idea,
14 that we would then reconvene to --

15 CHAIR JONES: Oh, absolutely.

16 DEAN ANDERSON: -- deliberate again
17 and revise on the basis of that. Or choose not
18 to.

19 CHAIR JONES: Right. Absolutely.

20 DEAN ANDERSON: Great. Thank you.

21 LT. COL. HINES: Thank you, Judge.

22 Sorry for the interruption.

1 CHAIR JONES: Oh, no, no, no. That's
2 fine. Thank you, Glen.

3 And, actually, what I should have said
4 at the beginning, and I'll say it again when we
5 have Professor Schulhofer on the phone, is I want
6 to -- I am going to thank him because I think he
7 has sent us a wonderful submission, which gives
8 us an analysis with respect to each of the 11
9 issues, and it is going to be terrific for
10 talking points.

11 And I also want to thank you, Glen,
12 because I think you have really put together some
13 terrific materials here for us, and it makes it
14 so much easier for us to go forward.

15 Thanks.

16 Now, Mr. Sullivan, there you are. And
17 I will make the same comment about you coming
18 again when I get to General Pede. Okay. Go
19 ahead.

20 MR. SULLIVAN: Thank you so much,
21 Judge Jones. As Judge Jones mentioned, I am a
22 repeat offender, and so I am speaking today, and

1 Kyle asked me to come and talk to you about the
2 executive orders, and particularly about what --
3 how the military courts use executive orders and
4 what can be done with an executive order versus
5 what must be done by statute.

6 But you may recall that the last time
7 I spoke with you, I said I feel like a
8 fingerpainter in a room full of Rembrandts and
9 Van Goghs, and I certainly still feel that way,
10 so I'm subtitled this talk "The Return of the
11 Fingerpainter."

12 And so to provide you with a road map
13 of what I plan to talk about this morning, first,
14 I want to talk about the authority to issue
15 executive orders that revise the Manual for
16 Courts-Martial, and from that authority flows
17 certain implications about what can be done with
18 an executive order versus another type of
19 lawmaking function.

20 Second, a quick review of the contents
21 of the Manual for Courts-Martial, and then
22 zeroing in on Part 4 of the Manual for Courts-

1 Martial, which deals with the Punitive Articles.

2 And then, we will talk about the level
3 of judicial deference that the courts give to
4 what is in the Manual for Courts-Martial.

5 And then, finally, time permitting,
6 the President last week issued a new executive
7 order amending the Manual for Courts-Martial, so,
8 time permitting, I will very quickly review with
9 you what is in that executive order, including
10 some provisions to carry out recommendations of
11 the RSP. So some of you may be particularly
12 interested in those provisions.

13 So, as some of you may recall, when I
14 was growing up we had Schoolhouse Rock! on TV,
15 and we learned basic civics from watching
16 Schoolhouse Rock!, and you had the "I'm just a
17 bill, I'm just a bill, sitting there on Capitol
18 Hill." Do you remember that song?

19 General Schwenk is here; perhaps we
20 could get him to sing it for us.

21 (Laughter.)

22 And so this morning we are supposed

1 to --

2 BRIG. GEN. SCHWENK: Are you trying to
3 get out of your presentation by running everybody
4 out of the room?

5 (Laughter.)

6 MR. SULLIVAN: So this morning we are
7 supposed to have a multimedia presentation, and I
8 was going to show you an updated version of that,
9 but we couldn't get the PowerPoint to work, so
10 you have these slides instead.

11 But as my old command Staff
12 instructor, Colonel Trout, used to say, "If you
13 have a plan that counts on everything going
14 right, you have a bad plan." So hopefully we
15 have a backup.

16 So everyone recall that song with the
17 little bill sitting there on the Capitol steps
18 and "I'm just a bill"? Well, Saturday Night Live
19 very helpfully recently updated that song to
20 address executive orders. So, hopefully, I will
21 be able to play for you -- hopefully you'll be
22 able to hear this. I brought on tape this thing,

1 in case we had a snafu, which of course we have.

2 So let's see if everyone can hear
3 this. This is that song updated for executive
4 orders.

5 (Audio playing begins.)

6 VOICE: I'm an executive order, and I
7 pretty much just happen.

8 (Laughter.)

9 That's it.

10 (Audio playing ended.)

11 MR. SULLIVAN: Okay. So there we have
12 it.

13 (Laughter.)

14 So you can contrast that with the
15 old song --

16 CHAIR JONES: I'm sorry. You're going
17 to have to come back again after that.

18 (Laughter.)

19 MR. SULLIVAN: So there we have the
20 executive order song. And, as we know, it's
21 rather more complicated than that. Presumably,
22 we would have guidance for Article 120 if that

1 was it. But there is certainly not the same
2 constitutional formality with the way the
3 executive orders are promulgated compared to the
4 way the statute is adopted.

5 So let's look first, you know, going
6 back to the Constitution, what provides the
7 authority for the President to issue an executive
8 order? And, in specific, an executive order to
9 set out the Rules for Courts-Martial, military
10 Rules of Evidence, and guidance for the Punitive
11 Articles.

12 So we start, of course, with
13 Article 1, Section 8, Clause 14, of the
14 Constitution, which provides to Congress the
15 power and responsibility to make rules for the
16 regulation of the land and naval forces.

17 Now, Congress, acting pursuant to that
18 authority, passed the UCMJ in 1950, and President
19 Truman signed it into law in '51. And included
20 in that provision are certain rather broad
21 delegations of authority. So Article 36 is a
22 broad delegation of rulemaking authority to the

1 President.

2 So it delegates to the President the
3 authority to prescribe pretrial, trial, and post-
4 trial procedures, including Rules of Evidence.
5 And, as we know, there is a further caveat that
6 said the President, to the extent practicable,
7 should follow the rules -- the same rules that
8 would apply in trial of criminal cases in United
9 States District Courts.

10 And then, additionally, Congress
11 delegated to the President the broad authority
12 for sentencing purposes. So almost every offense
13 that the UCMJ sets out -- almost every punitive
14 article -- says that it shall be punished as a
15 court-martial may direct. And then, the
16 President, under Article 56, is authorized to
17 institute limitations on the particular
18 punishment that a court-martial may direct.

19 So if you just look -- for example, a
20 lawful order violation -- if you just look at the
21 statute it says, "A violation of a lawful order
22 shall be punished as a court-martial may direct,"

1 which sounds like life without eligibility for
2 parole might be the sentence for that. But the
3 President steps in and imposes the two-year
4 limitation. So, again, there's a rather broad
5 delegation of authority.

6 Now, beyond that, of course, we also
7 have independent constitutional authority for the
8 President in this area. So we have Article 1 --
9 Article 2, Section 1, which of course says that
10 the President shall -- the executive authority of
11 the United States is vested in the President.
12 And then, of course, we also have Article 2,
13 Section 2, Clause 1, the Commander in Chief
14 clause. So we have independent congressional
15 recognition of the President.

16 And so in *Swain v. United States*, for
17 example -- I have a picture of the eminently
18 forgettable George Shiras, the author of the
19 *Swain* opinion, in the handout. In *Swain*, you had
20 the President acting as a convening authority in
21 a case for which there was no statutory
22 authorization, back in the late 1800s. The

1 President acted as a convening authority. No
2 statute authorized the President to convene a
3 court-martial.

4 The Supreme Court had to assess
5 whether he was authorized to do so, and they said
6 yes -- that the inherent authority as Commander
7 in Chief carried with it authority over the
8 military justice system, including the authority
9 to convene a court as an exercise of the
10 President's own constitutional authority, not as
11 an exercise of delegated authority under what
12 would then have been the laws of the Articles of
13 War.

14 So now let's fast-forward to 1951. We
15 have -- Congress has passed the UCMJ, and the
16 President is going to prescribe a Manual to help
17 carry that out. So you'll recall that before
18 then, we had the Elston Act, which covered the
19 Army and the Air Force; we had a separate
20 statute, the Articles for the Government of the
21 Navy, which hadn't changed a lot since the Civil
22 War, that cover the Navy and Marine Corps.

1 So there was a publication called
2 Naval Courts and Boards that was like the
3 equivalent of the MCM for the Navy and the Marine
4 Corps, and then you had the Manual for Courts-
5 Martial U.S. Army, published in 1949 for the
6 Army, and then you had the U.S. -- you had the
7 Manual for Courts-Martial Air Force. So you had
8 these three different publications before then.

9 So the UCMJ was adopted to make a
10 uniform system. And so President Truman then
11 promulgated the Manual for Courts-Martial that
12 covered all of the Services. And he did so by
13 executive order.

14 And, interestingly, that executive
15 order said that it was executed "by virtue of the
16 authority vested in me by the UCMJ, and as
17 President of the United States." So it seems
18 that he is suggesting an independent authority as
19 President -- not just a delegated authority, but
20 also the authority as President of the United
21 States.

22 Then, of course, in 1968, Congress

1 adopts a major revision of the UCMJ, and the next
2 year President Nixon promulgates a revised Manual
3 for Courts-Martial -- the 1969 Manual for Courts-
4 Martial. Once again, does it by executive order.

5 And just as President Truman before
6 him, President Nixon indicated, "By virtue of the
7 authority vested in me by the UCMJ, and as
8 President of the United States, I am promulgating
9 this."

10 Okay. Now, fast-forward to 1983,
11 Military Justice Act of 1983, another fairly
12 significant rewrite of the UCMJ, although far
13 less significant than the '68 revision. But, in
14 1983, a major rewrite, and then we have a new
15 Manual for Courts-Martial promulgated by
16 President Reagan in 1984. And, once again, it is
17 promulgated by executive order.

18 But this executive order takes a
19 different form than that which had been
20 instituted -- that which had been adopted by
21 Presidents Truman and Nixon. President Reagan
22 began, "By virtue of the authority vested in me

1 as President by the Constitution of the United
2 States, and by the UCMJ, I promulgate." So it
3 was giving a more prominent place to the
4 President's independent authority.

5 And as I mentioned, just last week
6 President Obama instituted -- signed an executive
7 order further amending the UCMJ, and he
8 indicated, "By the authority vested in me as
9 President by the Constitution and the laws of the
10 United States, including the UCMJ." So we have
11 the President's emphasizing their independent
12 constitutional role in the system as one
13 authority for the Manual for Courts-Martial, not
14 limited to simply their delegated authorities
15 from Congress.

16 Okay. So let's talk for a little bit
17 about the case of Loving v. United States, which
18 was a Supreme Court interpretation of
19 presidential authorities in the Manual for
20 Courts-Martial. So you'll recall that in 1972,
21 of course, the Supreme Court in Furman v. Georgia
22 came out with a result that pretty much

1 invalidated all of the death sentences -- all of
2 the death penalty systems in the United States.

3 And then, a number of systems revised
4 their death penalty systems. The basic holding
5 in *Furman*, every Justice wrote separately, so
6 it's difficult to come up with what is the actual
7 holding. But *Furman* has come to be understood as
8 meaning that you -- that it is constitutionally
9 required for a death penalty system to satisfy
10 the 8th Amendment, that it channel the discretion
11 of the sentencer. You can't have unconstrained
12 discretion of the sentencer.

13 And so a number of states came up with
14 different ways to constrain the discretion.
15 North Carolina said, "Okay. Everybody convicted
16 of premeditated murder dies." Supreme Court
17 said, "That's not okay."

18 You had Texas which said, "We are
19 going to ask the jury to answer three specific
20 questions that will help guide their discretion."
21 The Supreme Court said that was okay.

22 You had the Georgia system where there

1 are certain aggravating factors that make -- that
2 are required to make a system death-eligible.

3 The Supreme Court said that was okay.

4 So by 1976, you had the Supreme Court,
5 in Gregg v. Georgia, endorsing a number of
6 systems that had been revised. But Congress
7 didn't change the UCMJ's death penalty system.

8 So just like before Furman, for a
9 court-martial, if an individual was found guilty
10 of premeditated murder or felony murder, the
11 members of the court-martial were simply told,
12 "Decide whether he gets death or life." At that
13 time, those were the only two options, life --
14 confinement for life or death -- and the
15 discretion was unconstrained.

16 So there was a Soldier over in
17 Germany, killed a taxicab driver, sentenced to
18 death. Matthews. His case goes up to the --
19 what was then called the Court of Military
20 Appeals, now the Court of Appeals for the Armed
21 Forces. And so the Court has to decide, does
22 Furman apply to the military? And if it does,

1 then that is going to invalidate not only
2 Matthews' death sentence but the death sentences
3 of all seven Service members then on death row.

4 And the Court held that it did; the
5 Court held that Furman constrained the military,
6 and so we needed a new system.

7 So President Reagan came out with an
8 executive order adopting a new death penalty
9 system that adopted what were called "aggravating
10 factors." So in order for a case to be death-
11 eligible, it has to not only be a death-
12 authorized offense under the UCMJ, but also it
13 has to satisfy a prescribed aggravating factor,
14 so more than one murder in the same case, murder
15 of an officer in the commission of his duties.

16 And there are a number of them, and
17 they are set out by the President -- not by
18 Congress -- in Rule for Court-Martial 1004.

19 So Loving was another Soldier
20 convicted of killing two taxicab drivers, tried
21 to kill a third, and he -- in Fort Hood, Texas --
22 and he was sentenced to death. And his case ends

1 up going up to the Supreme Court. The Supreme
2 Court grants cert on the question of whether
3 President Reagan had the authority to adopt these
4 aggravating factors in order to make the military
5 death penalty system work, or whether that was an
6 inherently legislative function.

7 And so, in *Loving*, the Supreme Court
8 addressed three main issues: one, the defense
9 said the President may not adopt aggravating
10 factors. That is a substantive matter. It is a
11 substantive matter that is committed only to
12 Congress in the exercise of its legislative
13 function.

14 Second, they said even if the
15 President is -- could do it constitutionally,
16 Congress never delegated that authority.

17 And then, the third argument was:
18 okay, even if the President can do it, and even
19 if you find a delegation, the Supreme Court case
20 law on delegation of legislative functions
21 requires that Congress provide an intelligible
22 principle to the delegate, because if you -- if

1 Congress just said to some delegate -- you know,
2 some executive agency said, you know, write all
3 the rules that would make misbehavior in a
4 criminal -- in a national park a crime. They
5 said -- the Supreme Court has said that would be
6 an impermissible delegation of the lawmaking
7 function.

8 So if Congress wants to delegate
9 authority to make some rules for the Park
10 Service, some criminal statutes for parkland,
11 they have to provide an intelligible principle
12 that will guide the delegate in doing that. And
13 that's what keeps it from being an
14 unconstitutional delegation.

15 So those were the three main issues in
16 the Loving case. And so the Supreme Court said
17 that under Article I, Section 8, Clause 14,
18 Congress, like Parliament, exercises a power of
19 precedence over, but not exclusion of executive
20 authority. So they said the President has
21 precedence over the President in terms of making
22 rules and regulations relating to --

1 HON. HOLTZMAN: Congress has
2 precedence.

3 MR. SULLIVAN: I'm sorry. Thank you
4 so much. Thank you so much. Exactly.

5 HON. HOLTZMAN: Right.

6 MR. SULLIVAN: A former member of
7 Congress, so of course they pick up on it.

8 (Laughter.)

9 Inadvertently putting Congress
10 underneath. Thank you so much. Exactly as
11 Representative Holtzman said. So Congress is on
12 top. The President is -- has independent -- the
13 President has authority, but it is subject to
14 congressional precedence.

15 But the Court went on, "It would be
16 contrary to precedent and tradition for us to
17 impose a special limitation on this particular
18 Article I power." So, in other words, Congress
19 can delegate other authorities; there is no
20 reason they can't delegate this authority as
21 well.

22 And the Supreme Court went on in an

1 opinion by Justice Kennedy and said, "It would be
2 contrary to the respect owed the President as
3 Commander in Chief to hold that he may not be
4 given wide discretion and authority." So, once
5 again, emphasizing the independent congressional
6 grant of power to the President as Commander in
7 Chief.

8 They went on to say, "There is nothing
9 in our traditions or the wording of the
10 Constitution that forbids this delegation to the
11 President acting as Commander in Chief," once
12 again emphasizing the President's independent
13 role.

14 Then, the Court went on to say that
15 they found a sufficient delegation in
16 Articles 36, 56, and also Article 18, which sets
17 the jurisdiction of a court-martial -- of a
18 general court-martial -- as being the
19 jurisdiction to impose punishments as being
20 subject to limitations prescribed by the
21 President.

22 So they took that language from 18,

1 36, and 56, rolled them all together, and said
2 that was a sufficient delegation.

3 And then, they got to the intelligible
4 principle, and then -- when the Court of Appeals
5 for the Armed Forces had heard this case, they
6 found that there was an intelligible principle
7 that had been prescribed by Article 36.

8 The Supreme Court really sort of
9 disagreed with that provision and pretty much
10 found that there was no intelligible principle,
11 but also found there didn't have to be, and this
12 language here is particularly instructive.

13 Regarding the intelligible principle,
14 they said, "The delegation here was to the
15 President in his role as Commander in Chief."
16 Perhaps more explicit guidance as to how to
17 select aggravating factors would have been
18 necessary if the delegation were made to a newly
19 created entity without independent authority in
20 this area.

21 "The President's duties as Commander
22 in Chief, however, require him to take

1 responsibility and continuing action to
2 superintend the military, including courts-
3 martial. The delegated duty, then, is
4 interlinked with duties already assigned to the
5 President by express terms of the Constitution.
6 And the same limitations on delegation do not
7 apply where the entity exercising the delegated
8 authority itself possesses authority over the
9 subject matter."

10 And then, they went on to say, "Look,
11 we're not saying necessarily the President could
12 have done this without a delegation." They said,
13 "We need not decide whether the President would
14 have inherent authorities as Commander in Chief
15 to prescribe aggravating factors in capital
16 cases." But "once delegated that power by
17 Congress, the President -- acting in his
18 constitutional office as Commander in Chief --
19 has undoubted competency to prescribe these
20 factors without further guidance."

21 So essentially they do a carve-out of
22 the intelligible principle requirement that would

1 otherwise apply and say it doesn't apply here
2 because the President is acting as Commander in
3 Chief.

4 So something very important to keep in
5 mind when we are assessing what the President may
6 do by executive order, the President clearly is
7 going to be -- have some authority to go beyond
8 what a mere agency could do, because, again, of
9 the independent constitutional grant in Article
10 2, Section 2, Clause 1.

11 CHAIR JONES: Can I ask a quick
12 question?

13 MR. SULLIVAN: Please.

14 CHAIR JONES: Are the -- is what the
15 President wrote describing what -- or prescribing
16 what the aggravating factors are, is that
17 considered a part of -- is it a part of statutory
18 scheme? Or is it, I don't know, procedures?
19 That's where I am always mixed up with exactly
20 how much the President can do.

21 MR. SULLIVAN: And, Your Honor, the
22 Supreme Court wrestled with that as well. And

1 they -- as I mentioned, the second part of the
2 opinion was finding that there was a delegation.
3 And this is what was particularly interesting in
4 there. And the -- I'll give you the short answer
5 to your question. No idea.

6 (Laughter.)

7 I'll tell you how the Supreme Court
8 wrestled with it, which may help to --

9 CHAIR JONES: Okay.

10 MR. SULLIVAN: -- to guide. And one
11 could almost sense the discomfort of Justice
12 Kennedy in this part of the opinion when he is
13 talking about, where does he find the delegation?

14 Congress -- and way after the UCMJ was
15 adopted -- Congress adopted a particular article
16 called Espionage, Article 106a. So Article 106,
17 dealing with spying, applies only in time of war.
18 It became readily apparent that we have spies in
19 the military not merely in time of war; the
20 Walker family would be a prime example of that.

21 And so the -- so Congress passed a
22 specific death-authorized peacetime spying

1 statute, Article 106a. And when Congress passed
2 -- and this preceded the opinion in Loving. And
3 so when Congress passed that, Congress actually
4 wrote into the statute that the President may
5 prescribe -- because this was after 1004. So
6 this is between 1984 and 1996 when Congress
7 passed this, and a statute with which General
8 Schwenk is very familiar. He used that in
9 espionage prosecutions when he was a Marine Corps
10 prosecutor.

11 So in that statute, Congress expressly
12 wrote that the President may prescribe
13 aggravating factors for purposes of this new
14 death penalty statute pursuant to Article 36. So
15 they actually wrote it into the statute.

16 And Justice Kennedy kind of looks
17 askance at that and says, "Does Article 36 really
18 reach these substantive issues?" But a later
19 Congress said they did, and "we're going to give
20 great credence to the interpretation of the later
21 Congress in terms of interpreting what the
22 earlier Congress in 1951 had done."

1 So the Supreme Court essentially says
2 -- they very strongly indicate in later cases
3 when they are even more clear -- that those sorts
4 of aggravating circumstances, aggravating
5 factors, which are necessary to constrain the
6 discretion of the jury, are like elements. They
7 are -- you know, in any other system, they would
8 be statutory.

9 The Court very strongly indicated that
10 that was an inherently legislative function, but
11 one that could be delegated to the President.
12 And so you do have the President making
13 substantive law. So it's not statutory law, and
14 it's clearly -- you know, those RCMs are in this
15 Manual. It is -- you know, RCM1004(c) is in this
16 Manual. So it is clearly a regulatory act, but
17 it a regulatory act in a substantive area of the
18 law.

19 Is that responsive? That's a very
20 long-winded answer to your question.

21 CHAIR JONES: No. I think it's a
22 great answer. Your first answer was "no idea."

1 MR. SULLIVAN: I can't tell you.
2 That's right, that's right. So, you know, we
3 could sit here and discuss very profitably for an
4 entire day.

5 CHAIR JONES: No. I think that's very
6 helpful. Thank you.

7 MR. SULLIVAN: All right. So I
8 probably should have just stuck with, "Who
9 knows?"

10 (Laughter.)

11 So now, having waved around the Manual
12 for Courts-Martial, let's talk about the content
13 of the Manual for Courts-Martial. So there are
14 only five parts in here that are actually
15 prescribed by the President; they make up a
16 relatively small part of this volume.

17 So when we think of this as the Manual
18 for Courts-Martial, we are really thinking
19 imprecisely. It would be thinking about a Bible
20 that also has a number of supplementary materials
21 and essays and a concordance as all being the
22 Bible, rather than just the Old Testament and New

1 Testament parts -- or the Old Testament,
2 depending on whatever one thinks is the Bible.
3 Okay? So, I'm not trying to be prescriptive at
4 all.

5 So, but there is a number of things --
6 of items in here that are not prescribed by the
7 President and that are not actually technically
8 part of the Manual for Courts-Martial, even
9 though they appear between the -- within the
10 binding of something called the Manual for
11 Courts-Martial.

12 So there are five parts: One, the
13 Preamble; two, the rules for courts-martial,
14 exclusive of the discussion; three, the military
15 Rules of Evidence, exclusive of the discussion;
16 four, Part 4 of the Manual dealing with Punitive
17 Articles; and, five, Part 5 of the Manual which
18 deals with nonjudicial punishments. That is what
19 is the actual Manual for Courts-Martial, and the
20 President told us that.

21 So the Preamble to the Manual for
22 Courts-Martial actually explains to us what is

1 the Manual for Courts-Martial. And it says it
2 shall consist of the Preamble, the rules for
3 courts-martial, the military Rules of Evidence,
4 the Punitive Articles, and nonjudicial
5 punishments.

6 And then, the Joint Service Committee
7 put in additional language in a discussion of the
8 Preamble saying, "Hey, the Department of Defense,
9 in conjunction with the Department of Homeland
10 Security," which the Coast Guard falls within,
11 "are also providing additional materials, the
12 discussion of the analysis, various appendices."
13 But those technically are not part of the Manual.

14 So there is things in here that the
15 President does, and then there are things in here
16 that DoD and DHS does that are not official
17 policy; they are simply guidance. As the
18 analysis says, those are in the nature of a
19 treatise.

20 So I mentioned that there are five
21 parts. Now, for purposes of addressing the
22 issues that Kyle asked that we address, we need

1 to zero in on Part 4 of the Manual. So Part 4 of
2 the Manual is the President discussing the
3 Punitive Articles of the Uniform Code of Military
4 Justice.

5 And so most of the provisions --- and
6 there is some flexibility regarding particular
7 portions of particular UCMJ Articles. But for
8 most UCMJ Articles, the Part 4 includes first the
9 text of the statute. So it simply repeats the
10 language that Congress has adopted. Second, it
11 prescribes elements of the offenses. Third, it
12 provides an explanation of the offenses,
13 sometimes including definitions. Fourth, it
14 indicates what is a lesser included offense of
15 that particular UCMJ provision or offense under a
16 UCMJ article. Fifth, it includes the maximum
17 punishment, what we earlier talked about what the
18 President does pursuant to Article 56 --
19 prescribing the maximum punishment for each
20 offense in the UCMJ.

21 And then, finally, it provides a
22 sample specification so that a prosecutor has

1 help in writing up the spec, although sometimes
2 the sample specifications might lead one astray
3 as in the Article 134 context, which Dean Schenck
4 and I were discussing earlier, where some of the
5 model specifications were held by CAAF not to be
6 adequate to state the offense.

7 HON. HOLTZMAN: Can I just ask on
8 that --

9 MR. SULLIVAN: Please.

10 HON. HOLTZMAN: -- so all of these, a
11 through f, are prescribed by the President?

12 MR. SULLIVAN: That is correct.

13 HON. HOLTZMAN: Okay.

14 MR. SULLIVAN: That is correct.

15 So Part 4 is one of the parts that the
16 Preamble tells us is Presidentially prescribed.
17 So it's not the Joint Service Committee. The
18 Joint Service Committee, obviously, makes a
19 recommendation to what the President should do,
20 but the President actually, by executive order,
21 promulgates what is within Part 4, including all
22 of those -- all of that guidance for each

1 particular UCMJ offense.

2 All right. So now I think it would be
3 helpful to consider: how do the courts treats
4 what the President has done in Part 4 of the
5 Manual? And, of course, we have already seen --
6 we have already seen the courts wrestling with
7 how to treat something that is like a substantive
8 law provided in RCM1004.

9 Then we are actually dealing with
10 substantive law. We are dealing with criminal
11 offenses. How do the courts treat what the
12 President said? So this is really inherently a
13 balance of power issue. You know, what is within
14 Congress' exclusive area? What can the President
15 do? And then, how do the courts treat what the
16 President has done?

17 So while the courts that do this,
18 unless the case goes to the Supreme Court, are
19 actually courts that are adopted under Article 1
20 of the Constitution --- not Article III of the
21 Constitution -- and that, for administrative
22 purposes, reside within the executive branch.

1 And so the line drawing is very complicated.

2 But you can see the three functions.
3 Even if it isn't, for the most part, actual
4 Article III judiciary, you see the three
5 functions -- the legislative function, the
6 executive function, and the judicial function --
7 all interacting in this sphere.

8 So let's look at how the courts have
9 treated this. And so let's start with the case
10 of United States v. Miller. And the issue in
11 Miller was whether taking indecent liberties with
12 a child requires that the act be committed in the
13 child's physical presence.

14 So the fact pattern in Miller, you
15 have a Service member who is online engaging in
16 sexual communication -- explicit sexual
17 communication -- with what he thinks is a 14-
18 year-old girl, but is actually a sheriff's
19 deputy. Okay. That is a scenario we see rather
20 routinely -- all too often.

21 And so he -- during this exchange, he
22 uses a camera to show what he thinks is a 14-

1 year-old girl, him masturbating, and then he
2 arranges a meeting, although later says, "But we
3 can't have sex because you're underage."

4 And so the issue was: did that
5 constitute indecent liberties? And so the Manual
6 for Courts-Martial said that the liberties must
7 be taken in the physical presence of the child.
8 So Part 4 of the Manual, in explaining the
9 indecent liberties offense, gives that guidance.

10 And so when the Court of Appeals for
11 the Armed Forces was confronted with that, they
12 cited that guidance from the President, indicated
13 that it was not binding, but also indicated that
14 they would give that great weight when deciding
15 how to construe that particular statute or that
16 particular offense.

17 And so now let's look at the case of
18 United States v. Mance. Mance was a case by the
19 great Chief Judge Robinson Everett of the Court
20 of Appeals for the Armed Forces. And so Mance
21 was a -- it was a marijuana use case. So
22 Congress adopted a specific offense -- a specific

1 punitive article, Article 112a -- to cover
2 wrongful use, possession, and distribution of
3 controlled substances.

4 And so in the Mance case, the Court of
5 -- then the Court of Military Appeals -- was
6 considering, what is the knowledge component that
7 we are going to impose on the government to prove
8 -- in order to get a criminal conviction for
9 wrongful use of a substance? Do you have to
10 prove that the person knew what the substance
11 was? Do you have to prove that the person knew
12 the substance was contraband? They were
13 wrestling with those issues very early in the
14 Article 112 alpha regime.

15 And so Judge Everett looks at what the
16 President had written in the Manual for Courts-
17 Martial, and he says, "The views of the drafters
18 of the various Manuals, in writing the provisions
19 just discussed, and those of the President in
20 promulgating them, are important, but they are
21 not binding on this court in fulfilling our
22 responsibility to interpret the elements of

1 substantive offenses, at least those substantive
2 crimes specifically delineated by Congress in
3 Articles 77 through 132 of the UCMJ."

4 All right. So he is saying, "Look, we
5 are going to look at the views of the President,
6 but they are not binding." It is also
7 interesting -- so -- yes, please.

8 HON. HOLTZMAN: Why not?

9 MR. SULLIVAN: Well, because normally,
10 of course, the courts --

11 HON. HOLTZMAN: I mean, if the
12 President can prescribe how you get to the death
13 penalty, the President can't prescribe -- I mean,
14 if he is acting under congressional delegation,
15 why isn't that final?

16 MR. SULLIVAN: Well, a multi-part
17 answer to that question. All right. So, of
18 course, we have Marbury v. Madison: it is
19 inherently the province of the judicial
20 department to say what the law is.

21 So the element of -- let's take
22 elements, for example.

1 HON. HOLTZMAN: But this is not the
2 judicial department. But anyway.

3 MR. SULLIVAN: So, but let's take
4 elements of the offense. So the elements of the
5 offense, everyone agrees, are prescribed by
6 statute; the elements of the offense are
7 controlled by what Congress says.

8 So the President says, "Here is what
9 I think are the elements of a particular
10 offense." So the President looks at a particular
11 offense and says, you know, "I think the
12 elements" --

13 HON. HOLTZMAN: I'm not saying that
14 the President can't interpret. Maybe he is
15 saying, 'This is not what I think Congress meant;
16 this is what I want to do under the rubric that
17 Congress has set up. This is how I think, as
18 Commander in Chief, in order to discipline the
19 military, this is what you have to have.'

20 MAJ. GEN. WOODWARD: In exercising his
21 delegation.

22 HON. HOLTZMAN: Correct. In

1 exercising both the delegation and the power as
2 Commander in Chief.

3 MR. SULLIVAN: And we will see some
4 development where, after Mance -- also note that
5 Mance was before Loving -- but we will see some
6 development after Mance where the courts
7 recognized some ability of the President to carve
8 out conduct from a statute. We'll see that
9 development.

10 But the courts have consistently said,
11 "Views of the President for what is an element of
12 the offense, what is the explanation of the
13 offenses, and the sample specification -- those
14 views are persuasive, but they are not binding on
15 the courts." The courts say that essentially,
16 you know, what -- the statement of the elements
17 and the explanation are interpretations of the
18 statute, and the courts have primacy over the
19 President in interpretation of statutes.

20 And so, again, there is great
21 deference to the President, but it is not -- they
22 repeatedly say it is not binding.

1 HON. HOLTZMAN: But is this only where
2 the courts think that the President has enlarged
3 the punitive statute?

4 MR. SULLIVAN: It is.

5 HON. HOLTZMAN: --- or is it where he
6 narrows it? Or she narrows it?

7 COL. SCHENCK: Let's look at the
8 Article IO RCM707 debacle.

9 HON. HOLTZMAN: Because if it's a
10 question of enlarging, then that is a different
11 story that I can understand, because then the
12 President is not acting within his delegated
13 power.

14 MR. SULLIVAN: Right.

15 HON. HOLTZMAN: If it's contracting,
16 I don't understand.

17 MR. SULLIVAN: We'll see a specific --
18 we'll see two specific cases where they discussed
19 that very issue. Can the President carve out --
20 why don't we discuss that now.

21 So if we go to the case of United
22 States v. Davis, Davis was an issue of aggravated

1 assault, and so Davis was an interpretation of
2 Article 112 of the UCMJ. We'll go back and later
3 note -- do note that in Mance the Court was
4 saying, "We're limiting this discussion to
5 Articles 79 through 132 of the UCMJ."

6 So Chief Judge Everett specifically
7 kept Article 134 out of that discussion, which is
8 important. We'll come back to that.

9 But let's look at Davis; Davis is
10 helpful because it is an Article 120a case. So
11 it's a case about the congressionally-passed
12 statute on assault. And so, and specifically,
13 the case there was a fact pattern where you had
14 the accused with an unloaded firearm. And so the
15 issue was: is the use of an unloaded firearm an
16 aggravated assault?

17 And so one of the things the Court did
18 was they looked at the Manual, and so the Manual
19 for Courts-Martial said, "An unloaded pistol,
20 when presented as a firearm and not as a
21 bludgeon, is not a dangerous weapon or a means of
22 force likely to produce bodily harm." So that's

1 what the Manual for Courts-Martial said.

2 And so when Congress was faced with
3 this issue, they said, "We're going to follow
4 that language," but, in part, because they found
5 it was not inconsistent with the statute. So the
6 Court -- even here the Court reserved to itself
7 some function of saying -- or some ability to
8 say, "The President's interpretation is too
9 inconsistent with the statute to be given
10 credence."

11 But here is one of the very
12 interesting things that they said. So where does
13 this particular authority of the President come
14 from? And they said that it was appropriate for
15 the President, as a matter of prosecutorial
16 discretion, to say, "We will not prosecute the
17 unloaded firearm as an aggravated assault." So
18 you see exactly where this is going.

19 So it is sort of an executive --
20 unitary executive type theory. So we say all the
21 prosecutors work for the President. The
22 President ultimately is -- has the control of

1 prosecutorial discretion within the United
2 States. And so -- and all of the convening
3 authorities in the military work for the
4 President.

5 So from a constitutional perspective,
6 where does the Court find this power in Davis?
7 And in an earlier case called Guess, which we
8 will also mention, where do they find this power?
9 They find this power in the exercise of
10 prosecutorial discretion. And so that is what --
11 that is the carve-out that you have there.

12 And then, interestingly, so you have
13 this other case called United States v. Guess.
14 Guess -- you have a particular UCMJ offense that
15 deals with writing bad checks, writing checks
16 without sufficient funds. And, once again, you
17 have an early case construing that statute where
18 the particular accused in that case steals
19 someone else's starter checks and then writes --
20 you know, purchases items with those starter
21 checks.

22 And so the question is: was that an

1 example of the statute that prohibits the use of
2 a check without sufficient funds? And the
3 accused said no. The accused said, "Look, the
4 statute presumes that it be my account, and I am
5 overdrawn." That's what the statute is about,
6 where I am deliberately writing an overdrawn
7 check.

8 But when you read the actual language
9 of the statute, it said that the person knew that
10 the maker of the check knew that the maker did
11 not have sufficient funds in the account to cover
12 the check. Well, the maker of that check didn't
13 have any funds in the account from which the
14 check was written, ergo he didn't have sufficient
15 funds.

16 So the defense was saying, 'Look, as
17 a matter of statutory construction, Court, you
18 should say this is limited to the context where
19 the maker of the check is the same person that
20 has the account -- is the account holder.' And
21 the Court said no, and here they use almost the
22 flip side of Davis.

1 In the course of saying no, they said,
2 "The President hasn't construed the statute that
3 way." So the explanation of the statute doesn't
4 have that extra account holder requirement. It
5 is not an element set out by the President, and
6 it is not in the explanation. So they use the
7 absence of executive authority -- the absence of
8 the exercise of executive limitation there -- in
9 order to construe the statute in Guess.

10 So you had the Court rather robustly
11 construing what the President does, but each time
12 doing so making clear that the Court is not --
13 does not think that they don't have the authority
14 to decide the case differently if they think the
15 President's interpretation is inconsistent with
16 the statute.

17 Yes, ma'am?

18 DEAN ANDERSON: I apologize for going
19 back to the basics. But as I understand it, the
20 President has not issued an executive order on
21 the updated 120. Is that correct?

22 MR. SULLIVAN: That is correct.

1 DEAN ANDERSON: So the import of this
2 dialogue is what? In other words, I understand
3 we are going through kind of the minutia of under
4 what circumstances the President is granted
5 authority, but there is no executive order here.

6 MR. SULLIVAN: Right. So as -- I
7 mean, as an interested outsider, I don't purport
8 to tell the committee what it should do or
9 shouldn't do, but just the perspective of an
10 interested outsider is that one thing that I
11 would think the subcommittee would be interested
12 in deciding is if the subcommittee decides, as is
13 widely believed, that more guidance is necessary
14 for the statute, so right now, for example, we
15 have --

16 DEAN ANDERSON: Yes. Yes.

17 MR. SULLIVAN: -- we have -- there is
18 an issue with the Court of Appeals for the Armed
19 Forces in a case right now pending decision on
20 whether sexual contact requires direct touching
21 or can be done with an object; in that case, a
22 stethoscope.

1 So I think everyone agrees that more
2 guidance on that question is -- more guidance on
3 "consent" may be helpful.

4 DEAN ANDERSON: Right.

5 MR. SULLIVAN: More guidance on what
6 constitutes "incapacity" may be helpful. So I
7 think that one question for the Subcommittee is,
8 if it decides that any of those areas should be
9 further developed, should the Subcommittee
10 recommend that that further development come via
11 executive order, or should the Subcommittee
12 recommend that that come by statute?

13 DEAN ANDERSON: And I take it that the
14 upshot of your presentation is that the President
15 could have the authority to make a tremendous
16 number of substantive recommendations, and we
17 might want to recommend that, or we might want to
18 recommend a change in the statute itself.

19 MR. SULLIVAN: And I am -- I came in
20 here with absolutely no intent to try to steer
21 that decision either way.

22 DEAN ANDERSON: I understand you are

1 agnostic on that question.

2 MR. SULLIVAN: Right. Exactly. I'm
3 just hoping to give you information and citations
4 that may be helpful to the Subcommittee in
5 deciding which is the optimal way to go. So --

6 DEAN ANDERSON: Got it.

7 MR. SULLIVAN: So one thing to -- so
8 I think it's important to understand how the
9 courts treat what the President does in the
10 various things that he does in Part 4. You know,
11 what will -- how much deference will the Court
12 give to the President saying, "Hey, I think this
13 -- I think that this is an issue that -- you
14 know, I think sexual conduct can be accomplished
15 in this way."

16 You know, we have already had the --
17 we have already had a divergence of judicial
18 opinion. We had an Army trial judge say it
19 requires actual contact, you know, direct contact
20 from the accused. And then we had the Army Court
21 saying, no, it doesn't. So they are both
22 construing that language.

1 And to give you a suggestion of just
2 how wonky my existence is, you know, right now
3 for fun, outside of work, I am actually writing
4 an article on the use of Chevron deference in
5 interpretation of the Manual. So what I would
6 suggest is that, really, what we have here is a
7 sort of heightened Chevron deference to the
8 President.

9 So if you had a statute like this --
10 please don't write that article before I finish.
11 Okay. So you have -- so I think you have an
12 instance here where -- so Chevron deference is --
13 probably everyone in the room knows -- Chevron
14 deference is a doctrine in administrative law
15 where the courts will generally defer to an
16 executive agency's interpretation of a statute
17 that it has been delegated authority over.

18 So the courts, you know, the FCC
19 interprets the Communications Act. The Court
20 will generally defer to that construction as long
21 as it is not inconsistent with the statute. But
22 you have very specific carve-outs in that area.

1 The Supreme Court twice last term reemphasized
2 that that does not include substantive law, that
3 the Chevron deference doesn't include substantive
4 law, and the Court has emphasized repeatedly that
5 it will not defer to the Department of Justice.

6 In one case last term, the argument
7 was made that the Supreme Court should defer to
8 the U.S. Attorneys Manual's interpretation of a
9 particular criminal statute, and the Court said
10 no. The Court said United States District Courts
11 are the entities created to carry out that law,
12 not the Department of Justice.

13 But I think that -- but here in this
14 area, as we have already seen, the Supreme Court
15 actually has given the President more authority
16 in the substantive arena than in the Chevron. So
17 it is really Chevron on steroids here.

18 MAJ. GEN. WOODWARD: But haven't you
19 shown that if they don't agree with his
20 interpretation that it doesn't necessarily hold?

21 MR. SULLIVAN: Yes.

22 MAJ. GEN. WOODWARD: And so isn't that

1 a risk if we go the executive order route? Is it
2 -- if they don't agree with the interpretation?

3 COL. SCHENCK: They've gone both ways.
4 I mean, there is really -- I feel sorry for
5 Dwight, because depending on what the area is,
6 they can pick that --

7 MAJ. GEN. WOODWARD: So that gives too
8 much discretion on --

9 COL. SCHENCK: You know, we would look
10 cautiously at recommending that we put -- they
11 put this in an executive order -- in other words,
12 because we would believe it would be fine.
13 Right? But we don't know what the Court of
14 Appeals for the Armed Forces' view would be.

15 MR. SULLIVAN: And just like in
16 Chevron itself, there is a carve-out that says
17 the statute has to be ambiguous. So the courts
18 have said, if the statute isn't ambiguous, we
19 won't defer to the agency because then it's just
20 a straight judicial function of interpreting of
21 the statute. So there must be an ambiguity. So
22 Chevron kicks in when there is an ambiguity.

1 And, of course, you know, King v.
2 Burwell, which, you know, may be one of the
3 opinions announced in the next 17 minutes. You
4 know, there is an enormous Chevron aspect to
5 that. So, you know, once again, likely to be,
6 you know, a front burner legal issue.

7 But so the application of Chevron
8 deference is dependent upon an ambiguity. And so
9 here, once again, I think you would have the
10 courts in an area like -- let's take, again, the
11 sexual contact: is it physical or can you do it
12 through an object?

13 I think that if -- let's say the
14 President had weighed in on that before this case
15 was before the courts now. I think the CAAF
16 would essentially ask -- they wouldn't ask the
17 exact Chevron question, is there an ambiguity?
18 They would be more likely to say, "Does the
19 statute plainly speak to the flip side of the
20 ambiguity?" But the same -- it gets to the same
21 place.

22 And if they decide that there was an

1 ambiguity, then the deference to the President is
2 likely. If they decide the statute is
3 unambiguous, then they would not defer to the
4 President.

5 COL. SCHENCK: But they use -- the
6 Court of Appeals for the Armed Forces has used
7 Chevron itself. In Bartlett, for example, they
8 overturned the Army Court of Criminal Appeals.
9 So they have used Chevron to play with what they
10 want to do.

11 MR. SULLIVAN: Right. But there is an
12 important distinction there where, for purposes
13 of Article 36, the delegation is clear. So the
14 President's delegation in a procedural context is
15 far clearer than is the delegation of authority
16 in the punitive article context. So the Chevron
17 application is likely to be more robust in a
18 procedural standpoint than in the substantive
19 interpretation of Punitive Articles.

20 COL. SCHENCK: So is your paper only
21 on the military justice system, or is it focused
22 on the general --

1 MR. SULLIVAN: Oh, no. It is only on
2 the military justice system.

3 HON. HOLTZMAN: But then, of course,
4 this could all be overturned by the Supreme
5 Court.

6 MR. SULLIVAN: It could. It could.

7 HON. HOLTZMAN: So --

8 DEAN ANDERSON: "This" meaning what?
9 The authority of the President to --

10 HON. HOLTZMAN: The decision that he
11 is talking about, what the military courts do,
12 then it could go to the Supreme Court. So then
13 the question really is: if the statute is
14 silent, and there is no Presidential gloss on it,
15 on the question of whether an object can be now
16 included in something that doesn't include the
17 object, we don't know what the answer is to that
18 is.

19 MR. SULLIVAN: Exactly. I mean, the
20 CAAF will tell us, and then that decision itself
21 will be subject to potential Supreme Court
22 review. And as I said last time, I am confident

1 in saying that if the Court were to say that with
2 an object was -- satisfied the statute, I think
3 it is very likely that the Appellant in that case
4 will seek certiorari from the Supreme Court,
5 although it is very unlikely that they would get
6 certiorari.

7 So there has only been statutory
8 certiorari jurisdiction from the Court of Appeals
9 for the Armed Forces, with Supreme Court ability
10 to review directly CAAF opinions, since the
11 Military Justice Act of 1983. So it kicked in,
12 in 1984, and since -- from 1984 until today,
13 there have only been nine cases where the Supreme
14 Court has granted the review of a military
15 justice case and had a plenary argument and
16 decision.

17 Now, there were a couple of additional
18 cases where the Court granted, vacated, and
19 remanded. So for a good example of that, you'll
20 recall the Ashcroft case, you know, the Supreme
21 Court resolution of the online indecency statute.
22 And so in Free Speech Coalition v. Ashcroft, the

1 Supreme Court, you know, narrowed the scope of
2 what could be prosecuted under that statute.

3 And so there was a case pending from
4 the Court of Appeals for the Armed Forces at that
5 time that had a similar issue. So when the Court
6 decided Ashcroft, at the same time it granted the
7 O'Connor petition, which was a petition to review
8 a CAAF opinion, vacated the CAAF opinion and then
9 remanded it. And there have been a couple of
10 other instances like that where the Supreme Court
11 was deciding another civilian case at the same
12 time that there was a military petition up there
13 on a similar issue, and it granted, vacated, and
14 remanded.

15 But, again -- in terms of granting a
16 review, briefing, oral argument -- this has only
17 happened nine times since 1984.

18 HON. HOLTZMAN: So my question would
19 be -- I'm sorry, maybe this is repetitive, but if
20 people have said to this panel, the Subcommittee,
21 "Oh, you can solve this problem by amending the
22 Manual for Courts-Martial, or recommending that

1 the President make that amendment," it's not a
2 guaranteed solution.

3 MR. SULLIVAN: It is not. But I would
4 also point out that you also had Prather finding
5 part of the NDAA for FY2007 version of
6 Article 120 unconstitutional, so the statutory
7 fix also isn't a guarantee.

8 HON. HOLTZMAN: Right. I understand
9 that.

10 MR. SULLIVAN: All right. So with
11 that, I am nearing the end of my hour, and I
12 certainly don't want to impinge on General Pede's
13 time at all. What he is going to say is going to
14 no doubt be far more useful than anything I --
15 than anything this fingerpainter might say.

16 But would it be -- oh, yes, please.

17 MS. KEPROS: Well, I just -- I don't
18 know where you're going, so I want to ask this
19 question, and you can answer it later, perhaps
20 when you're going to --

21 MR. SULLIVAN: General Pede will
22 answer your question. Go ahead.

1 MS. KEPROS: Okay. Or maybe that's
2 what will happen. Well, the point that this has
3 come up often in our presentations is in the
4 availability of affirmative defenses. And so I
5 guess, is that considered procedural? Do we have
6 any guidance on that, whether -- you know, how
7 that might be interpreted, or if we are -- we
8 have a big gap in our statute, if the statute
9 does not explicitly say so or not.

10 MR. SULLIVAN: Right. Would it be
11 patronizing if I said that's a great question?

12 MS. KEPROS: I'm okay with that.

13 MR. SULLIVAN: That's a great
14 question. That's a great question. And, right
15 now, the answer to that question is split. And
16 so I had to do another answer to Judge Jones-
17 type tap dance. I actually came up here early
18 yesterday and took vacation yesterday afternoon
19 and saw a Broadway show. So I feel like tap
20 dancing all of a sudden.

21 Okay. So --

22 MS. KEPROS: It's okay if you want to

1 do that.

2 (Laughter.)

3 MR. SULLIVAN: I would, but I didn't
4 wear my tap shoes. So, right now, the answer to
5 that is rather split. So we have Article 120,
6 which expressly addresses affirmative defenses,
7 but generally affirmative defenses are addressed
8 in the rules for courts-martial, which of course
9 are procedural.

10 So sometimes we have Congress weighing
11 in in the actual statute addressing an
12 affirmative defense. And there are other
13 instances -- lack of mental responsibility --
14 where Congress weighed in. And then, we also
15 have the President weighing in by procedural rule
16 about certain defenses, and then we also have the
17 courts -- like in a case like *Ellis v. Jacob* --
18 the Court weighing in and saying, "Well,
19 sometimes we are going to essentially recognize
20 and affirm the defense through the interpretation
21 of elements," and say, "Okay. If we interpret
22 the element this way, then that gives rise to

1 this -- to a particular affirmative defense."

2 So, for example, the Court -- so
3 Congress essentially trying to get rid of the
4 partial mental responsibility in the military,
5 and then the Court said, "Well, you know what?
6 If you have a specific intent defense, partial
7 mental responsibility negates the specific
8 intent." So you had essentially Congress saying
9 we are going to snuff out that candle, and then
10 the courts relighting it through the
11 interpretation of the elements.

12 So, really, once again, just as in
13 other areas, we have all three branches weighing
14 in on that particular question, and we don't
15 really have any case where the courts have been
16 firmly confronted with that and said, okay, who
17 ultimately controls that authority? We don't
18 have that.

19 So, right now, we can say that the
20 President has asserted the ability to recognize
21 affirmative defenses through his authority to
22 have procedural rules for courts-martial.

1 Ultimately, whether the courts would recognize
2 that as trumping something within the statute I
3 think would be unlikely. But, again, it is
4 within that hyper deference role because it is
5 pursuant to the Article 36 authority. At least
6 that is how it is represented by the President.

7 Yes?

8 LT. COL. HINES: Sorry. Just a quick
9 question. In trying to help the Subcommittee in
10 their deliberative process, as I go through the
11 11 issues, they fall into basically four groups.
12 In fact, most of them fall into what I'll call
13 definitional questions. There is a question
14 about defenses that Ms. Kepros just raised.
15 There is a question about elements. And then,
16 the last question is about a substantive offense.

17 And I guess the last one is an easy
18 answer, as Congress has pretty much got to define
19 those unless they are under --

20 MR. SULLIVAN: That's all for that
21 caveat, right.

22 LT. COL. HINES: But I guess my

1 question is this: since so many questions are
2 definitional, it seems, based on what you've said
3 so far, since Congress hasn't spoken to the
4 definition, the President can define things. But
5 in our present statute, Congress has actually
6 defined several different things.

7 So I guess my question is: when
8 Congress has actually given us a definition, are
9 the courts going to be much less deferential to
10 the President in an EO trying to, you know,
11 change that definition?

12 MR. SULLIVAN: Well, the courts
13 clearly would not allow the President to change
14 the definition. So, but, again, we do -- as we
15 have seen in the sexual contact scenario -- we
16 have instances where there is what seems to be a
17 clear ambiguity. "Clear ambiguity," how is that
18 for an oxymoron? There seems to be an ambiguity
19 in the legislation -- in the language as
20 prescribed by Congress.

21 You know, again, we can look at this
22 instance of the -- is direct contact required, or

1 can I do it through an object? Reasonable minds
2 have looked at that. Reasonable people have
3 looked at that. Reasonable judges, with no dog
4 in the hunt, have looked at that, and interpreted
5 that differently.

6 So even where you have the definition
7 prescribed by Congress, the question is: is
8 there ambiguity? And if there is ambiguity, then
9 I think the courts are extremely likely to defer
10 to the President in resolution of that ambiguity.
11 But if the courts find plain language, no
12 ambiguity, the courts clearly will not -- will
13 not defer to the President in that context.

14 So much like much Chevron litigation,
15 there is the threshold question -- the Chevron
16 step zero of, there is the threshold question of
17 whether the statute is ambiguous or not.

18 All right. Now, so I thought it might
19 be -- I think I may be overstepping my time.

20 LT. COL. HINES: I think that clock is
21 actually four or five minutes fast, so you can
22 conclude --

1 MR. SULLIVAN: Okay. I think by that
2 clock, though, I started an hour ago. But be
3 that as it may, if I can try your patience just
4 -- would it be helpful to hear very quickly what
5 was in the EO that the President promulgated last
6 week?

7 JUDGE JONES: Oh, absolutely.

8 MR. SULLIVAN: Okay. And then, I will
9 also mention, because it is responsive to an
10 earlier recommendation of the JPP, an interesting
11 procedural aspect of the EO.

12 So if you look at the draft EO that
13 was published in the Federal Register, you'll see
14 that the draft EO had changes to Parts 2, 3, 4 in
15 the Manual -- the RCMS, the MREs, and the
16 Punitive Articles -- and it also had changes to
17 discussion, and it had changes to analysis.

18 If you look at what came out of the
19 President, the discussion and the analysis were
20 stripped out. Okay. So the EO includes changes
21 to the part that the President himself
22 prescribes. And so you'll recall that the JPP

1 had recommended that there be a streamlining of
2 the function of revising the Manual.

3 So what is going to happen from now on
4 -- and this will revert back to the system as it
5 was before 1993. Before 1993, EOs included only
6 things that actually changed the Manual. The
7 drafter's analysis, and the analysis, and the
8 discussion were not in the draft executive order.

9 So from now on, the draft executive
10 order will have only what the President
11 prescribes, which allows DoD to independently
12 publish changes to the discussion and the
13 analysis.

14 So this will have two effects. One,
15 DoD now will have the ability to publish
16 discussion and analysis much more quickly than in
17 the past because it doesn't have to go through
18 the interagency process; it doesn't have to be
19 signed by the President, and it doesn't have to
20 be tied to that cycle, so the Pentagon could push
21 it right out.

22 And, secondly, we also expect that

1 this will make the EO itself go through the
2 process more quickly. So, General Pede, you were
3 probably involved in the production of the 2012
4 amendments to the MCM, and so you will recall
5 that it included a number of revisions to Article
6 120. It also changed the way that the Manual
7 deals with lesser included offenses, which
8 essentially -- so you'll recall that one of the
9 things in Part 5 of the Manual are the lesser
10 included offenses.

11 So essentially that change required
12 that the Part 4 discussion of every offense be
13 changed. Of every offense. Because it changed
14 the manner in which LIOs were dealt with.

15 And then, finally, it included the
16 drafter's analysis for the 2013 changes to the
17 military Rules of Evidence. So the military
18 Rules of Evidence have already been signed by the
19 President. The drafter's analysis was separated
20 from that, and the idea was that that would
21 follow in their wake. It was -- that, in and of
22 itself, was more than 100 pages.

1 And so you have this enormous EO
2 trying to get through the White House. It has
3 the 2012 changes, but it also has this LIO, and
4 it also has more than 100 pages of drafter's
5 analysis. So now when something like that tries
6 to go through the system, and the system gets
7 caught -- much like the old squad automatic
8 weapon, there is a lot of stuff to get caught
9 when you're trying to take that through the
10 system.

11 So when you strip all that out, you
12 are going to have a smaller document to try to
13 get through the White House and try to get
14 through the interagency process. So we think
15 that that will be responsive to the JPP's
16 concerns in a couple of ways. One, with DoD
17 being able to push out guidance much more quickly
18 than in the past; and, two, hopefully, the draft
19 EOs themselves going through the process more
20 quickly than in the past.

21 That said, the draft EO that the
22 President signed includes provisions that are

1 responsive to the NDAA for 2015. So Congress
2 passed the NDAA for 2015 in December. The
3 President, in the draft EO that he just signed,
4 already has measures that are responding to
5 provisions from there.

6 So I think we see some sign that
7 certainly the recommendation of the JPP was heard
8 and considered, and we are trying -- and I think
9 we see some signs that -- some signs of progress.

10 BRIG. GEN. SCHWENK: So when you
11 publish it, will it be published in the same book
12 all together when you publish the analysis and
13 discussion?

14 MR. SULLIVAN: So the Department of
15 the Army is the executive agent for the -- for
16 this book. And so what --

17 BRIG. GEN. SCHWENK: The stuckee, is
18 that another word for --

19 MR. SULLIVAN: That's the highfalutin
20 word for stuckee. Exactly.

21 And so what we -- so what will happen
22 is the Army will take at some point, probably in

1 2016, all of the executive orders that have been
2 signed since this one, and all of -- what we'll
3 do is we'll publish those new DoD guidance in the
4 Federal Register -- by Federal Register Notice,
5 and the Department will take both the EOs and the
6 Federal Register Notices and put them all in
7 here.

8 BRIG. GEN. SCHWENK: So it will always
9 stay together like it has been?

10 MR. SULLIVAN: Well, let me also
11 mention something else that I am very excited
12 about, although you have already seen --

13 BRIG. GEN. SCHWENK: It doesn't take
14 much to do --

15 (Laughter.)

16 MR. SULLIVAN: You know me too well,
17 General.

18 So, but I am really excited about
19 this. I really am. So you know how the Federal
20 Acquisition Regulation is an online document? We
21 are going to do that with the MCM. So we are
22 going to -- so right now, the most recent edition

1 of the MCM is 2012. There have been three EOs
2 published since this, and then soon we will have
3 the Federal Register Notice publishing even more
4 changes to the discussion and the analysis.

5 So this is grossly out of date. We
6 actually saw a case from the Coast Guard Court
7 where the Judges of the Coast Guard Court relied
8 on an RCM in here when it wasn't the current
9 rule, and they expressly relied on it. This
10 isn't a good situation.

11 So we are working very closely with
12 the Army, and Lieutenant Colonel Deb Pike is
13 doing great work with us to have -- to put online
14 a constantly up-to-date version of this.

15 And so, again, we anticipate and hope
16 that in 2016 we will have a new published
17 version, but I think much more significantly --
18 especially for the younger generation of
19 litigators -- we are going to have an electronic
20 version of this online at all times.

21 So, am I right in thinking that is
22 exciting?

1 BRIG. GEN. SCHWENK: If the Judge is
2 excited, I am excited.

3 CHAIR JONES: I am excited.

4 (Laughter.)

5 MR. SULLIVAN: It's just like the
6 Federal Acquisition Regulation. Yes.

7 All right. So shall I -- I'm cutting
8 into your time, General. I feel really bad about
9 it.

10 I'll do a real quick rundown on what
11 is in the draft of the EO?

12 CHAIR JONES: Yes, please.

13 MR. SULLIVAN: So it adopts -- and
14 this is in your handout, too. So you all can
15 review this at your leisure. It puts the
16 jurisdictional limits on what certain penetrative
17 sexual -- you know, that penetrative sex assault
18 offenses and attempts to commit them, can no
19 longer go to special or summary courts-martial.
20 That is captured in here.

21 When someone is put into pretrial
22 confinement, if they are retained in there, there

1 has to be a hearing within seven days in front of
2 an officer to review that. A new change
3 indicates that the victim has the right to be --
4 right to notice of that hearing, attend that
5 hearing, be heard at that hearing, and be heard
6 at that hearing through counsel.

7 The victim has the right to notice and
8 release -- notice of release of the alleged
9 offender from pretrial confinement. They have
10 the notice -- they have the right to notice of
11 the escape of the potential offender -- of the
12 alleged offender from pretrial confinement.

13 So once charges are referred, and a
14 judge comes into the case, then the accused who
15 is in pretrial confinement can go to the judge
16 and say, "Hey, Judge, please order my release
17 from pretrial confinement; I shouldn't be
18 confined."

19 The rule gives the victim the right to
20 notice of that hearing, the right to attend that
21 hearing, the right to be heard at that hearing,
22 and the right to be heard through counsel at that

1 hearing.

2 COL. SCHENCK: Victims of all crimes?

3 How is a victim defined?

4 MR. SULLIVAN: There is a specific

5 definition of "victim" in the --

6 COL. SCHENCK: Some personal injury

7 or --

8 MR. SULLIVAN: It is someone that is

9 adversely affected by -- some of the rules --

10 COL. SCHENCK: But it is not

11 restricted to sexual assault?

12 MR. SULLIVAN: It is not restricted to

13 sexual assault. But some of the rules -- and

14 I'll have to look up -- and I'll get back to you,

15 but I'll have to look up whether this is one of

16 them. But some of the rules in the EO define

17 "victim" to include only a person named in a

18 specification.

19 Now, obviously, for purposes of

20 pretrial confinement, that isn't the definition

21 of "victim" because there is no specification, or

22 there often is no specification at that time. By

1 now, there will be a specification, so I'd have
2 to review the rule to see whether that requires
3 identification of the individual in the
4 specification. But it is expressly defined as it
5 is in the pretrial confinement context, because,
6 again, there you can't use the spec to narrow.

7 All right. So the rule -- the new EO
8 includes a complete -- complete rewrite of Rule
9 for Court-Martial 405, which governs Article 32
10 proceedings. A complete rewrite.

11 It also adopts a new rule to provide
12 some pre-Article 32 disclosure requirements on
13 the Government to the defense. And then, at the
14 32, the rules are completely rewritten. I
15 believe it was the JPP, though I may be mistaking
16 it with the RSP, but I believe it was the JPP
17 that had previously opined that the
18 constitutionally-required exception should be
19 removed from the -- at the Article 32. Am I
20 right that that's the JPP?

21 (Simultaneous speaking.)

22 Oh, that was the RSP? Okay. I'm

1 confusing them.

2 Okay. That recommendation was
3 followed, so the President said that the -- there
4 will no longer be a rape shield exception for
5 evidence that is constitutionally-required at the
6 32, the reasoning being that the 32 is not
7 constitutionally required, and the accused does
8 not have a 6th Amendment right to present a
9 defense, or a 5th Amendment due process right to
10 the 32; therefore, there is no -- you know, if
11 you were to interpret that language as it should
12 be interpreted, we believe, it wouldn't allow in
13 anything. However, that is not how Judges were
14 -- that's not how 32 IOs were interpreting it.

15 So the President now has said, "The
16 Constitution required the provision for 412 for
17 rape shield; and 514, victim advocate, victim
18 communications. Neither of those apply at 32s.
19 And, of course, the constitutionally-required
20 exception for purposes of the psychotherapist-
21 patient privilege is gone for courts-martial and
22 32s now.

1 Also, the new provision says that the
2 preliminary hearing officer, the presiding
3 officer at the 32, has no authority to compel the
4 production of either psychotherapist-patient
5 privilege records or victim advocate-victim
6 privilege records. No authority to compel those.

7 If one of the parties happen to have
8 those and wants to put them in, they can, but the
9 -- subject to the exceptions that already apply.
10 However, there is no authority of the PHO to
11 require their production.

12 Maria, you had something?

13 MS. FRIED: Yes. I think just to
14 backtrack, these recommendations tended to be
15 regarding constitutional requirements.

16 MR. SULLIVAN: Oh, good.

17 MS. FRIED: And then, we have still
18 got medical records?

19 MR. SULLIVAN: Yes.

20 MS. FRIED: And that was for, okay,
21 Recommendation 11.

22 MR. SULLIVAN: Yes. So -- okay. So

1 that was the JPP.

2 MS. FRIED: Yes.

3 MR. SULLIVAN: So a couple of things
4 that are responsive to JPP recommendations.

5 Next, the draft EO, this is something
6 that was recommended by the Defense Legal Policy
7 Board that Jim Schwenk works so closely with.

8 The DLPB was concerned about whether the UCMJ was
9 functional in a wartime setting. And they said,
10 "Look, one problem with the way we use the UCMJ
11 in wartime is when our people offend in a foreign
12 country, we tend to bring them back to the United
13 States to try them." And that is bad for a lot
14 of reasons, one of which is the host country
15 doesn't see the trial to see what happens. And,
16 you know, it is also not conducive to good order
17 and discipline in the deployed environment. For
18 a lot of reasons, that's not good.

19 So the DLPB suggested that one way to
20 help with that would be to say, "Look, when one
21 unit is deploying out of the area, and another
22 unit is deploying in" -- and they are comparable

1 units, so 1st Marine Division coming home, 3rd
2 Marine Division coming in -- the CG of 1st Marine
3 Division ought to be able to hand off the case to
4 the incoming convening authority.

5 So the President adopted a rule to
6 provide for that, to provide for handing off
7 cases between what the RCM now calls "parallel
8 convening authorities."

9 Next, the President imposed
10 limitations on ordering depositions. Following a
11 revision of the UCMJ provision, on point, the
12 President provided that "depositions will be
13 limited to exceptional circumstances where it is
14 necessary to preserve the testimony of a witness
15 for use at a 32 or at a court-martial." And it
16 also says that "a victim who declines to make
17 himself or herself available to testify at the
18 32, or a victim who declines to participate in a
19 defense interview, does not constitute
20 extraordinary circumstances."

21 Also, the President revised the
22 deposition rule to provide that, as a general

1 matter, the deposition officer will be a Judge
2 Advocate. The President also eliminated the
3 authority of the officer presiding at the 32 to
4 issue subpoenas.

5 The trial counsel still has -- I'm
6 sorry, there's not a trial counsel at the time of
7 the 32. The counsel for the government still has
8 the authority to issue a subpoena duces tecum to
9 get physical objects or documents to bring into
10 the 32. It can't subpoena testimony for purposes
11 of the 32, but the preliminary hearing officer,
12 or the PHO as we call that person now, cannot --
13 does not exercise subpoena authority.

14 Some of you will recall that after
15 Congress modified Article 47 to provide for
16 subpoena duces tecum for 32s, the President gave
17 the IO -- the PHO's predecessor -- the authority
18 to issue those subpoenas. The preliminary
19 hearing officer no longer has that authority.

20 Both the Rules for Courts-Martial and
21 the military Rules of Evidence were changed to
22 impose strict limits on when a victim can be

1 excluded from a proceeding; they can only be
2 excluded if the presiding officer believes that
3 their testimony would be affected by hearing the
4 testimony of other witnesses.

5 The victim was given the right to
6 confer with the trial counsel. Here is one of
7 the major changes, and certainly the most
8 contentious change within the Pentagon. The
9 President adopted a rule -- and this is also
10 responsive to a recommendation, this time by the
11 RSP -- to allow the victim to make an unsworn
12 victim impact statement in non-capital courts-
13 martial. And there is a new rule for courts-
14 martial to provide for that.

15 The President imposed limits on who
16 can access sealed materials and the purposes for
17 which those materials can be accessed. And then
18 the RCMs were also changed to limit the convening
19 authority's post-trial powers, consistent with
20 the changes in the NDAA for FY'14.

21 The military Rules of Evidence were
22 changed in response to the military rules -- in

1 response to the NDAA for 2015. First, general
2 military character evidence can no longer be
3 admitted for most non-military-specific offenses.
4 The rape shield rule, the psychotherapist-patient
5 privilege rule and the victim advocate-victim
6 privilege rule were all modified to provide that
7 where the victim has the right to be heard at a
8 hearing they can be heard through counsel,
9 basically, codifying the L.R.M. v. Kastenburg
10 decision.

11 A number of changes -- and Maria
12 brought this up -- a number of changes to the
13 psychotherapist-patient privilege to make it more
14 protective. First, the definition of a
15 psychotherapist was broadened. Second, pursuant
16 to a congressional requirement, the
17 constitutionally-required exception was deleted.
18 There is an enormous range of opinion about the
19 effect of that.

20 So there are a number of people who
21 say that doesn't mean anything. The Constitution
22 is still there to the same extent the

1 Constitution was there before. There are others
2 who say, "Well, no one thinks that the attorney-
3 client privilege is subject to a constitutionally
4 required exception."

5 So if I'm a military lawyer, if I'm a
6 military defense counsel, and my client says,
7 "Hey, you know that offense for which Lance
8 Corporal Brown is being prosecuted, I actually
9 did that." No one thinks that I, even though I'm
10 a government-employed lawyer, have a Brady
11 obligation to reveal that information.

12 So there is a dispute about, does the
13 elimination of the Constitution required
14 exception just take the language out of the
15 statute but it is still subject to all of the
16 same provisions that would be there anyway?

17 Or is it more -- we are more like
18 making the psychotherapist-patient privilege
19 certainly not absolute, because there are still a
20 number of exceptions, but more like the attorney-
21 client privilege in that we -- no one would say
22 that there is a Brady obligation that comes upon

1 the government-employed defense counsel.

2 Obviously, we don't have any answer to
3 that at this early stage, but there is a robust
4 debate about that issue.

5 Next, and very significantly, for both
6 the psychotherapist-patient privilege and the
7 victim advocate-victim privilege, there is now
8 threshold requirements that must be shown in
9 order for the Judge to even perform an in-camera
10 review of the documents.

11 Basically, it takes the NMCCA case of
12 Klemick and broadens it, which now applies
13 certain thresholds for in-camera review by the
14 judge, and the Navy and Marine Corps makes that
15 same standard basically apply across the board
16 throughout the Coast Guard.

17 And then, finally, from the MRE
18 perspective, the MRE -- the victim advocate-
19 victim privilege was amended to include the DoD
20 hotline within the communications that are
21 protected by that privilege.

22 And then, finally, three changes to

1 Part 4 of the Manual, which we have been
2 discussing considering today. First, there is --
3 the Military Commissions Act of 2006 actually
4 included an amendment to the UCMJ's conspiracy
5 statute to recognize an offense of conspiracy to
6 violate the law of war. That had never been
7 actually brought into the Manual, so now that
8 provision is brought into the Manual.

9 It is going to be a capital offense as
10 prescribed by Congress, and so the President has
11 provided guidance on this new offense -- not-so-
12 new offense; it's nine years old -- of conspiracy
13 to violate the law of war.

14 Next, I mentioned the work of the
15 Defense Legal Policy Board. The DLPB recommended
16 that where a dereliction of duty harms someone,
17 you know, imposes physical harm, that it should
18 be -- there should be a heightened punishment
19 available. The President agreed and increased
20 the punishment for derelictions of duty that
21 result in either death or grievous bodily harm.

22 And then, finally, the President

1 doubled the maximum authorized confinement for
2 maltreatment of a subordinate from one year to
3 two years.

4 That is just a real quick rundown of
5 what is in there. Again, there is more that -- I
6 write about that in the slide you have, and then
7 this was also published in the Federal Register,
8 all those changes. The citation is 80 Federal
9 Register 35783.

10 All right. And, with that, and I am
11 very -- and, again, I apologize for cutting into
12 your time, General. But unless there are any
13 further questions, I will now yield to General
14 Pede.

15 CHAIR JONES: Thanks very much. Any
16 other questions? I think you did a great job.
17 It is only 10:09, so wonderful. Thank you very
18 much.

19 MR. SULLIVAN: Thank you.

20 CHAIR JONES: All right. We are now
21 going to hear from General Pede, and also from
22 Colonel Kennebeck, as soon as Mr. Sullivan is

1 able to depart.

2 We could take a break; I think that's
3 not a bad idea. Thank you for the suggestion.

4 Ten minutes.

5 (Whereupon, the above-entitled matter
6 went off the record at 10:09 a.m. and resumed at
7 10:25 a.m.)

8 CHAIR JONES: I think we're ready to
9 start. And we'll now hear from General Peđe and
10 Colonel Kennebeck about statutory construction.
11 And you've just heard from Mr. Sullivan, so you
12 have a hard act to follow.

13 (Laughter)

14 CHAIR JONES: Although I understand
15 you guys all go back a very long way, so --

16 BRIG. GEN. PEĐE: We do, yes, ma'am.
17 So I just hope Mr. Sullivan, will hire him and
18 bring him down to our school down in
19 Charlottesville, because I learned quite a bit
20 over there sitting and I thank you for allowing
21 us to sit in today to listen to Mr. Sullivan.

22 So good morning, Committee. All of

1 you may know my background, but I'm Chuck Peде.
2 I'm the commander now at our Legal Center and
3 School in Charlottesville, Virginia where we
4 train all of our judge advocates and paralegals.
5 And Colonel Kennebeck and I served together in
6 the Pentagon when I was the Chief of Criminal Law
7 and Policy for the Army. He was our Policy
8 Chief. That just simply means I was the Chair of
9 the Joint Service Committee, which you heard Mr.
10 Sullivan describe, and Colonel Kennebeck was the
11 Executive Secretary. So I was the person who was
12 responsible and he was the brain behind that
13 effort.

14 (Laughter)

15 BRIG. GEN. PEDE: So, and that's all
16 very, very true.

17 I do have a short opening statement
18 that kind of describes I think what I'd like the
19 Committee to know about my views on your work up
20 front, if I may.

21 CHAIR JONES: That would be great.

22 BRIG. GEN. PEDE: And then I'm happy

1 to answer any questions.

2 So I would like to first thank the
3 Committee very sincerely, and the Subcommittee
4 for the opportunity to appear today and to add
5 what I can to your deliberations on how practice
6 of criminal law in the Department of Defense.
7 And I'm fully aware of your important work of
8 this Subcommittee, the Committee itself, the
9 Response Systems Panel, the Defense Legal Policy
10 Board on Justice in Combat. All of those Panels
11 I consider to be important and historic work as a
12 practitioner now of 27 years.

13 You may already be aware of my
14 background as I've just described. I was the
15 Chair of the Joint Service Committee responsible
16 for publishing the Manual, but also the annual
17 review of the UCMJ and the Manual for Courts-
18 Martial on an annual basis. It's a multi-service
19 and the Chair rotates, but I was responsible for
20 that for two years.

21 I was the Chair during the period that
22 we revised the 2007 version of Article 120, which

1 I'll refer to as version 2, version 1 being the
2 pre-2007. So if there's different terminology
3 you'd prefer, I'm happy to adopt that as well.
4 But I'll call version 2 the change in 2007,
5 version 3 the change we ushered in in 2012.

6 I'll also note that my subsequent
7 assignments following that included the practice
8 of criminal law most recently as the chief judge
9 of our Army Court of Criminal Appeals until just
10 three months ago.

11 At the outset I would like you to know
12 that I have reviewed very carefully the 11 items
13 of interest of this Subcommittee. I've also
14 reviewed the previous testimony of the various
15 witnesses many of whom I know personally and have
16 practiced with and respect immensely their
17 intellectual rigor and the work that they've done
18 over the course of their careers.

19 And honestly, I will tell you I
20 applaud the work of this body. And because as a
21 practitioner having worked a lot of these issues
22 over the years, your work really in my mind

1 becomes the legislative history to any future
2 changes and it's the sort of serious -- what
3 you're doing, it's the sort of serious
4 consideration that in my assessment -- that
5 discussion, that serious discussion of public
6 policy that's often missing in our statutory
7 legislative process now, this kind of discussion.

8 However, this morning I find myself in
9 a curious position because I'm loath to be the
10 general in a fancy uniform to come in and say
11 don't change anything. That's not what I'm going
12 to tell you. I don't want you to see me that
13 way. I am as vigorous about change and desirous
14 of change I think as anyone either in or out of
15 uniform. But I, having my experience at this
16 point, look to change in other ways. So I want
17 to share that with you.

18 I would first describe my role as the
19 Chair in '11 and '12. I advocated almost daily
20 during that period of time after version 2 was
21 passed for change, both within the DoD and then
22 on the Hill to the professional staff members and

1 to members of Congress when we could get an
2 audience to do that. The 2007 statute, version
3 2, in my view was a noble and progressive piece
4 of legislation, but it needed a lot of work. Our
5 collective efforts; that is, DoD and the Hill,
6 but particularly DoD, were rejected many times,
7 not in a negative way, but just rejected.

8 Only after CAAF had ruled in the
9 Prather case about the double burden shift and
10 the Constitutional and legal impossibility were
11 we able to persuade members and professional
12 staff members in particular about the need for
13 change. And that took, even after Prather, some
14 very deliberate concerted persuasion on the part
15 of the Joint Service Committee: Colonel Kennebeck
16 and I and others.

17 With the version 3 changes that we
18 proposed at that time, our primary focus among
19 other numerous changes, as you've now found, was
20 to first reduce the number of offenses to
21 generate simplicity, greater simplicity. It's
22 complicated. We wanted to try and reduce the

1 level of complication. We wanted to organize the
2 offenses in a more coherent fashion. We wanted
3 to eliminate the double burden shift, which had
4 the corollary effect of eliminating the defense
5 of mistake of fact which had a burden of
6 production on the defense. So we wanted to
7 eliminate that pursuant to Prather.

8 I note for this Subcommittee that it
9 took us four years of practice, empirical
10 assessment; and by that I mean cultivating
11 empirical data from the field and the case law,
12 our courts, trial courts and appellate courts,
13 and court rulings to fine tune version 2. And I
14 would tell you that as much as I advocated daily
15 and as frustrated as I was at the time with the
16 process, especially dealing with Capitol Hill,
17 cool reflection on my part tells me that there
18 was benefit in that. We all mature. I think we
19 all gain experience through those processes.

20 And I have found in reflecting on
21 where we are now with this statute that the
22 difficulty that I experienced in trying to fine

1 tune and make life better in the trenches for
2 prosecutors and defense counsel were benefited by
3 the difficulty and the friction that I
4 experienced in trying to change the statute. I
5 think there's goodness in some measure of
6 bureaucracy. I would like to think we can all
7 agree that sometimes process in and of itself
8 produces some goodness, not necessarily in the EO
9 process, but --

10 (Laughter)

11 BRIG. GEN. PEDE: -- I'm happy to talk
12 about that.

13 So today I am in a curious place in
14 recommending to the Subcommittee, having listened
15 to most of your witnesses, read about most of
16 your witnesses, that instead that I recommend to
17 you that we allow the law to work as it has truly
18 through the ages, that we allow the common law,
19 our courts and the Manual for Courts-Martial
20 process that Mr. Sullivan outlined so eloquently;
21 that is the president's rulemaking authority, to
22 develop the law that we think we need now.

1 In very broad outlines I do not find
2 the statute creating the issues or the level of
3 confusion that we experienced in 2007 and '8 and
4 '9. I simply don't. And that's at a couple
5 levels of work. I would tell you I've not
6 prosecuted a case under these statutes, but I
7 dealt with a prosecution function. I'm dealing
8 now with the defense function. I was a judge.
9 So I've kind of been around. I just don't see
10 the level of confusion right now. There may be
11 anecdotal stories of confusion, but
12 systematically the courts that are empowered to
13 deal with this are doing I think what you'd hope
14 our trial courts would do, and that is sort out
15 these issues, which is what courts do with
16 statutes.

17 Version 3, I also acknowledge, is not
18 perfect by any measure, but I still find it
19 immensely progressive, nuanced and workable. It
20 has had in my view an extraordinary effect on
21 crime reporting and on prosecution. I'm happy to
22 discuss its effect on the defense community

1 should you be interested in that. It is, as you
2 know, having listened to Major Bateman, who I
3 know very well and have received instruction from
4 and who worked with me at the school house, and I
5 respect immensely, it is being aggressively
6 taught just from people like Major Bateman,
7 trained and executed in the field. It is not
8 perfect by any stretch, but it's a worthy
9 statute.

10 So then more generally, in my mind as
11 a practitioner over these years dealing with
12 statutes on a daily basis, I don't believe they
13 should change in my view unless for substantial
14 and consequential reasons. The public should not
15 have to guess what the law means, nor
16 practitioners should not be concerned; the
17 public, that is, that it means something
18 different year to year.

19 I think of equal moment practitioners
20 on both sides of the bar, and I now include
21 special victim counsel, must have a measure of
22 predictability in their practice to do right by

1 their client, which includes: the public; our
2 communities; the accused, who sometimes I would
3 acknowledge gets lost in our discussions; and the
4 victim.

5 The only matter I would raise and
6 suggest the Committee seriously consider is the
7 matter of defenses. I do in fact find it
8 interesting that there are questions on whether
9 defenses are available under 120, when in fact
10 the Manual states clearly in the statute that the
11 defenses are available in Rule 916. But I also
12 note, having talked on both sides of the bar,
13 that practitioners, after version 3 was passed,
14 viewed that the defenses were deleted and that
15 that was a conscious decision to communicate that
16 they were not available, despite the language
17 that all defenses are available. The dangers of
18 statutory construction and interpretation and the
19 dangers of statutory change.

20 I've yet to see an Army case where the
21 defenses were not permitted to be raised by some
22 evidence. I talked to the trial judges as

1 recently as yesterday, although I do not speak
2 for the judiciary, either the trial or the
3 appellate. I speak to the appellate judges.

4 However, having said that, in the
5 interest of clarity, the area of defenses is one
6 where I would argue for the Subcommittee that we
7 could make the applicability of available
8 defenses clear to the bar. That could either be
9 done through statute and it could be done most
10 easily through the president's rulemaking
11 authority as it has historically been done.

12 I would tell you -- and I note
13 recently the; and Mr. Sullivan mentioned it, the
14 stethoscope issue. Is that a contact offense?
15 We had good trial practitioners think that it
16 was. They tested the law, as trial practitioners
17 do. I always have told my counsel, make law.
18 That's why we're here. They tried the case.
19 It's up on appeal.

20 The courts are doing what courts do.
21 What are the furthest reaches of this statute?
22 What does "competent" mean? Just last week a

1 judge was asked what does "competent" mean in
2 120? He opened up the dictionary. This is
3 Webster's definition of "competent." That's what
4 in my practice, over -- that's what trial courts
5 -- that's what we expect them to do, fill the
6 gaps, as courts will do.

7 So I say this in a context; and Mr.
8 Sullivan's summation at the end is a good example
9 of that, where the NDAA had no less than 34
10 changes to matters relating to sexual assault.
11 Mr. Sullivan just outlined a breathtaking list of
12 changes in an executive order.

13 At the school where I serve we already
14 teach three versions of Article 120. I'm loath
15 to ask a professor and a student to learn a
16 fourth. The velocity of change in our law is
17 almost as breathtaking as the velocity of change
18 in our world today, and I would simply suggest to
19 the Committee that our system of justice needs an
20 opportunity to settle in and find itself within
21 the extraordinary changes over the last 8, I
22 would actually say 11 years, since 2004.

1 Our courts and our practitioners are
2 some of the best in the business, despite what
3 some will say to this Subcommittee. And I've
4 read the testimony. We are not perfect, but I'd
5 be more than happy to elaborate on how we train
6 our counsel and how they practice law and how
7 they compare to anyone in a suit at a state or
8 federal level.

9 And notions to me of stare decisis are
10 not worn out notions of old. They're important
11 features of a legal landscape. The role of
12 courts, the common law in breathing life into
13 statutes which by their nature cannot predict
14 every collision of human behavior with the law
15 does fill the gaps. The Manual for Courts-
16 Martial and the president's rulemaking authority
17 also fill the gaps and has done so I think for
18 years with great effect.

19 And so I close in sum by saying I
20 don't think version 3 has reached a crescendo or
21 cries out for an overhaul on the scale that we
22 conducted in 2007 and 2012. We've made a lot of

1 progress. There is room for improvement always,
2 but I haven't seen anything in the last three
3 years, and mindful that we don't even have an
4 executive order implementing 2012 yet for
5 practitioners to sink their teeth in. So they've
6 been practicing under a statute for three years,
7 and we're doing pretty well without that
8 guidance.

9 I would commend to the Committee that
10 we allow in large part the normal exercise of the
11 judicial role to remedy some of the ills that we
12 see. And this concludes my opening remarks and I
13 do look forward to your questions. And I can go
14 in any direction you like. And I'll turn now to
15 Colonel Kennebeck.

16 LT. COL. KENNEBECK: Yes, sir.

17 BRIG. GEN. PEDE: Thank you.

18 LT. COL. KENNEBECK: I have just a
19 shorter introduction. Does anybody have any
20 questions based on what General Pede said, or
21 should I just jump in?

22 CHAIR JONES: I think we all will, but

1 why don't you --

2 LT. COL. KENNEBECK: Okay.

3 CHAIR JONES: -- go ahead and then
4 we'll start all together.

5 LT. COL. KENNEBECK: Good morning. My
6 name is Lieutenant Colonel Chris Kennebeck. I'm
7 currently the Deputy Staff Judge Advocate at
8 Joint Base Lewis-McChord, which is Fort Lewis,
9 Tacoma, Washington. It's much less humid there.

10 (Laughter)

11 CHAIR JONES: This is a good day.

12 LT. COL. KENNEBECK: This is a good
13 day. But I still felt it walking over here
14 today.

15 I supervise about 45 military and
16 civilian attorneys in my office. We have about
17 40,000 Soldiers and Airmen on JBLM. And with the
18 7th Infantry Division at that installation we
19 tried 100 courts-martial last year. We're about
20 the busiest in the Army. So I see a great deal
21 of sex assault cases now as the Deputy Staff
22 Judge Advocate. I'm farther removed because I

1 have captains who prosecute cases and defense
2 attorneys who work in the same building. Special
3 Victims' Counsel. I have all those people in my
4 office working for me.

5 So Dwight made the analogy he finger
6 paints. I brought a box of crayons. And that's
7 because I'm far enough away from prosecution to
8 not be able to tell you what it's like in the
9 trenches, but I'm close enough to tell you what
10 my trial counsel tell me.

11 Much the same, I was in the Joint
12 Service Committee in '11 to '13, 2011 to 2013.
13 The 2012 statute had pretty much already been
14 built and delivered through DoD to Congress. It
15 was basically on its way to being passed by the
16 time I got the job. But I did talk to my
17 predecessor who's now on the bench. He can't
18 speak. He's Lieutenant Colonel Chris Carrier.
19 And I think we have enough intel between the
20 three of us in our notes to talk about why 2012
21 looks like it does, why it was built like it was.

22 But again, I'm far enough away from

1 that where it's been awhile since I've thought
2 about the Joint Service Committee. However, it's
3 a committee that I love. I'm thrilled to be here
4 today. Not quite as excited as Dwight, but
5 close.

6 (Laughter)

7 LT. COL. KENNEBECK: I will try to be
8 as excited as he was.

9 I've also read the previous testimony,
10 and like General Pede I believe my relevance is
11 really mostly my experience as the Executive
12 Secretary of the Joint Service Committee. And
13 Mr. Sullivan explained the role of the Joint
14 Service Committee, how executive orders are
15 developed, and he actually stole some of my
16 thunder talking about the Manual for Courts-
17 Martial, our bible. I want to just go back and
18 cover a couple things because he talks fast and I
19 think it would be helpful at least, because we'll
20 be talking about this again, to go over a couple
21 things.

22 So he talks about the portions of this

1 Manual that are prescribed by the president under
2 Article 36 in his rulemaking authority. That is
3 a small part of the Manual. This is the first
4 five sections of this book. It's about that much
5 of the book. And then the rest of it is
6 appendices, helpful information. For those of
7 you -- I mean an analogy, this is like the U.S.
8 Attorneys' Manual. It's a prosecution Manual.
9 It has our rules of procedure. It has our
10 military Rules of Evidence in it. And this is
11 our bible.

12 Any practitioner in any service is
13 going to have two books very close by, and that's
14 going to be this book and the Judges' Benchbook.
15 And the Judges' Benchbook is even thicker. It's
16 gotten pretty thick lately because of trying to
17 fill in the gaps of these definitions. I would
18 suggest that some of that volume in the Judges'
19 Benchbook probably belongs in part 4 of this
20 Manual. And that's the part of the Manual that
21 Dwight spent a decent amount of time talking
22 about.

1 I think that it would be helpful if
2 you took a look at Article I28, assault, as an
3 example. It would be good if each of these
4 members had an MCM at some point. And perhaps
5 when you deliberate at a later meeting, if you
6 take a look at Article I28, you'll see that what
7 Congress tells us is about a paragraph long.
8 That's all there is for assault. Everything else
9 that we understand about assault was given to us
10 by the president. And so Congress gives us a
11 paragraph. The president gives us about three-
12 and-a-half pages of prescribed definitions, what
13 aggravated assault is or isn't, examples,
14 explanations. And that's been in the book for
15 many years.

16 And you heard Mr. Sullivan talk about
17 how some of what the president has prescribed has
18 been addressed in appellate courts, but for the
19 most part 98 percent of what's in this book in
20 part 4 of the Manual is essentially law. And
21 that's how CAAF will treat it. At some point if
22 it is incongruous with what Congress prescribed,

1 then there is going to be a problem. But
2 generally it's very powerful. And that's why I
3 think the Article 6 authority probably could
4 address all of these issues, if not most of them.

5 But before I say that I wanted to talk
6 a little bit more about sources of authority. So
7 we all understand this, but I just want to say it
8 out loud because sometimes it's helpful.

9 Congress gives us our statutes. They give the
10 president the authority under Article 36 to
11 prescribe the rules. And then we implement
12 policy in the services through DoD regulations
13 and Army, Air Force regulation. That's policy.

14 And then we have pamphlets, other
15 guides. The Judges' Benchbook is at the bottom
16 of that list. It's a pamphlet. So it doesn't
17 have great authority. It definitely is a
18 practitioner's -- it's a guide. But that
19 benchbook is very useful and binding. In our
20 practice it's something that actually has gained
21 probably more authority than it should have based
22 on the document that it's in. That's why I would

1 think some of what's in that benchbook belongs
2 higher in the hierarchy. The president should
3 prescribe and define some of those words that
4 we're uncertain what is meant by Congress. I
5 think that can be done in such a way that it's
6 not inconsistent with how the statute is written.

7 So if we go to the first issue of
8 consent, you know you heard Judge Grammel and
9 Judge Grammel says let's use the word "voluntary"
10 and not "freely given." If we're going to change
11 consent, let's adjust it. I think that could be
12 explained what the difference, if there is one,
13 or the similarity between freely given and
14 voluntary in part 4 of the MCM without having to
15 statutorily adjust the definition. And that's
16 just one example.

17 If we went through the list, I think
18 my answers would be similar for most if not all
19 the rest of the issues. And I'd be happy to
20 discuss those with you.

21 CHAIR JONES: Just remind me --

22 LT. COL. KENNEBECK: Yes, ma'am.

1 CHAIR JONES: -- what's the title of
2 part 4?

3 LT. COL. KENNEBECK: It's called
4 "Punitive Articles."

5 CHAIR JONES: Punitive Articles?

6 LT. COL. KENNEBECK: Punitive
7 Articles.

8 CHAIR JONES: Which are the
9 substantive Articles, right? Okay.

10 LT. COL. KENNEBECK: That's right. So
11 the Punitive Articles of the UCMJ are Articles 77
12 through 134. Articles 1 through 76 are -- they
13 basically tell us how to do a court-martial and
14 give the authority to the commanders. Those
15 statutes are the procedural aspects of how the
16 Uniform Code of Military Justice functions. And
17 Articles 77 through 134 are the Punitive
18 Articles, those prescribed conduct. And there
19 are a few Articles after 134 as well, just a
20 couple.

21 CHAIR JONES: And typically in the
22 Punitive Articles what commentary -- you'd see

1 anything from the president, right, through
2 executive order relating to that particular
3 article. And there's nothing yet for 120. Am I
4 right?

5 LT. COL. KENNEBECK: That's correct.

6 CHAIR JONES: Okay.

7 LT. COL. KENNEBECK: So when I was in
8 the job in the Joint Service Committee, we built
9 that executive order. So I definitely had a hand
10 in that. It will have the sample specifications,
11 how a practitioner should type it out on the
12 charge sheet. It will have the max punishments.
13 It will have all those mandatory paragraphs that
14 would normally occur. But what it lacks is an
15 explanation because --

16 CHAIR JONES: Well, is that done? Is
17 it allowable? I mean, of the statute?

18 LT. COL. KENNEBECK: It is done. Oh,
19 it's most of --

20 CHAIR JONES: I mean, that's what's
21 been done throughout in Article IV, correct?

22 LT. COL. KENNEBECK: That is standard

1 practice. That's how we practice. The
2 explanation, it just explains what --

3 CHAIR JONES: So there could be for
4 instance an explanation of "voluntary" --

5 LT. COL. KENNEBECK: That's right.

6 CHAIR JONES: -- Is what you're
7 saying.

8 DEAN ANDERSON: Or freely given.

9 CHAIR JONES: Pardon me?

10 DEAN ANDERSON: Freely given.

11 CHAIR JONES: Or freely given. Yes.

12 DEAN ANDERSON: And voluntary or not.

13 CHAIR JONES: Yes, right.

14 LT. COL. KENNEBECK: What does
15 "incapacity to consent" mean?

16 CHAIR JONES: Right.

17 LT. COL. KENNEBECK: What does
18 "incompetent" mean and the definition of
19 "consent."

20 CHAIR JONES: Right.

21 LT. COL. KENNEBECK: All of those
22 things could be explained.

1 CHAIR JONES: Right.

2 LT. COL. KENNEBECK: And that's where
3 I would advocate the explanation belongs. I
4 agree, there would be certainty if you
5 statutorily defined those terms, but if you scan
6 through the UCMJ, you're not going to see too
7 many definitions in these statutes. If you look
8 at 18 U.S.C. 2241 for the federal version of sex
9 offenses, you're not going to see definitions.
10 Congress typically doesn't give us definitions.
11 And I would advocate that that's probably a good
12 thing. If you talk about statutory construction,
13 less is -- keep it simple.

14 CHAIR JONES: Yes.

15 LT. COL. KENNEBECK: And that's
16 probably what I would advocate. That's not
17 probably. I would advocate that here. Let the
18 president give further explanation and
19 definition.

20 I would love to say that it could be
21 more easily edited and remedied if there were a
22 mistake or if CAAF said, oh, no, this -- the

1 president is wrong here. The explanation needs
2 to be amended. Ideally in a perfect world, if
3 Dwight is right and we can streamline the
4 executive order process, then that would be true.
5 We could update it in a year or less. If this
6 Subcommittee were to take a look at a statute
7 that needed attention, then I would --

8 CHAIR JONES: That what?

9 LT. COL. KENNEBECK: A statute, a
10 statutory amendment that --

11 CHAIR JONES: Yes.

12 LT. COL. KENNEBECK: -- could be made
13 that might help. Article 36 might be a good
14 statute. Tell the president he's got a year.
15 Tell DoD you must build a Joint Service Committee
16 that has the resources to require it.

17 CHAIR JONES: I think Ms. Holtzman's
18 going to write that one.

19 (Laughter)

20 LT. COL. KENNEBECK: And I'm not
21 speaking for the Army, obviously. This is Chris
22 Kennebeck.

1 CHAIR JONES: No, no. Of course not.

2 LT. COL. KENNEBECK: I think that
3 would be helpful because the Joint Service
4 Committee -- I'll tell you a little bit about
5 that. That committee is basically comprised of
6 two people per service. You have a colonel from
7 each service and a lieutenant colonel or a major
8 or a captain, depending on what they have
9 available. So the Army typically has a
10 lieutenant colonel, the Air Force typically has a
11 lieutenant colonel, and the other services, you
12 know, it depends. All of the members of the
13 Joint Service Committee have other jobs. It's
14 not a 24/7 job.

15 So this was my job. I got to do this
16 book and AR 2710 needed to be amended and we had
17 to build the executive orders. We built two-and-
18 a-half, some of which are still not through yet
19 because the statutory amendments that happened in
20 the middle that stopped some and we had to go
21 back to the drawing board. So it's busy.

22 And I think that it would be helpful

1 if it were a full-time dedicated Joint Service
2 Committee with the appropriate personnel on it to
3 help, especially at times like this. As General
4 Pede made reference to the volume and the
5 velocity of statutory change in the last seven
6 years. If you added up the number of statutory
7 changes related to sexual assault, I think we're
8 almost at 200 now in seven years. That's a lot
9 to try and account for and make changes in this
10 Manual.

11 So at least now we can have a Joint
12 Service Committee that's --

13 BRIG. GEN. PEDE: I would tell the
14 Subcommittee when that Manual went to paperback,
15 the notion was we'd publish every year. It used
16 to be in this enormous binder and we'd send
17 updates. And we wanted to make it like the U.S.
18 Attorneys' Manual. And so the intent was to go
19 every year. It doesn't cost a lot to produce.
20 But because of the difficulty in getting -- not
21 the publisher, but to get the executive orders
22 through, it's now every three or four years. So

1 instead of an annual cycle, it's a four or five-
2 year cycle. So that is a big challenge for
3 practitioners.

4 I would also note that they're not
5 flying blindly though. So for example, a draft
6 EO that we might create that has sample
7 specifications, that's available but with "draft"
8 watermarked on all of the documents, right? So a
9 practitioner would see it, use it as a guide
10 knowing that it's not finalized and not signed by
11 the president, but it's available for their
12 education and their use and their practice.
13 That's the way we practice in this kind of
14 interim ghost period where we don't have the
15 actual law passed or signed by the president.

16 LT. COL. KENNEBECK: The other thing
17 that unique about the MCM is it's not authority.
18 We cite this as if it's authority. Really this
19 is just a reflection of executive orders, a giant
20 pile of executive orders. And it's important for
21 practitioners to remember that the changes that
22 are made to the rules exist from the power of the

1 president within the executive order. This
2 document to be useful does need to be updated
3 annually and probably should be required that it
4 be updated annually.

5 MAJ. GEN. WOODWARD: Yes, I've got a
6 question. As we were listening to Dwight and he
7 talked about the limits, especially the
8 interpretation in here in the use of the EO, and
9 what I hear you talking about is we need -- you
10 know, you even said the public should not have to
11 guess at what the law means, getting to that
12 ambiguity that everybody is afraid of, if we do
13 that through interpretation in an executive
14 order, don't we still risk the fact that it's --
15 you know, that isn't necessary? It's an
16 interpretation in the EO. What Dwight said was
17 it doesn't necessarily stand the test of the law.
18 So aren't we risking it if we're trying to
19 clarify it in an EO versus the actual law, that
20 that interpretation cannot hold up in a court?

21 BRIG. GEN. PEDE: Yes, ma'am.

22 MAJ. GEN. WOODWARD: But you still

1 would recommend it that way. Why?

2 BRIG. GEN. PEDE: Well, because
3 whether you make a statutory change or whether
4 you make the change through the EO process, it's
5 always going to be subject to interpretation.
6 The court will have to examine -- so for example,
7 the statute changed the word "substantial
8 incapacitation" last time. The reason we deleted
9 "substantial incapacity" was because the field
10 didn't understand it.

11 So the outcry over three or four years
12 about a term in the statute was such that it was
13 not useful inside the courtroom and it was
14 causing confusion. So we changed it hoping that
15 the new term would solve that problem. And so
16 five years of litigation changed it. We can
17 probably expect another three to five years of
18 litigation over the current version of the term.

19 So whether it's a statutory term we
20 inject or a presidential EO, you're always going
21 to get courts trying to -- and counsel contesting
22 the meaning of words, as we would want counsel to

1 do, and making an issue of it. And so my point
2 is there are simply no guarantees in the drafting
3 of legislation or EOs. In my view there's less
4 danger and there's more alacrity I think in the
5 EO process. Even as hard as that is, it's easier
6 than statutory change, most of the time.

7 And it's more flexible and it's more
8 nuanced, because it's not statute and we can have
9 a narrative discussion of what something means
10 like "voluntary," whereas the statute is a fairly
11 Spartan summary of the term. But the discussion
12 that you find in the Manual can be very lengthy
13 and give examples. And that's what as a
14 practitioner when I was trying cases I used a
15 great deal and my trial judges did as well.

16 And so my experience, often I would
17 get suggestions from counsel, anecdotal
18 suggestions and I'd say, well, where have we seen
19 that as a problem? What case prevented you from
20 making that argument? And the answer would be I
21 wasn't prevented from making an argument. That
22 was my interpretation of the term and either the

1 court adopted it or it didn't. Okay. So where's
2 the problem? Well, it would be better if it was
3 better defined. But the resolution of the case
4 resulted in the definition of the term, did it
5 not? Yes.

6 And so, I have tremendous confidence
7 that our courts wrestle with these. Just like
8 the conversation I had yesterday about the term
9 "competent." I could easily have counsel say we
10 need that term defined. The trial judge defined
11 the term, which is what our trial courts do. He
12 looked in the dictionary. If Congress didn't
13 define the term, they expect that the term will
14 be used in common understanding. That's our
15 rules of statutory construction. The judge
16 provided the definition to counsel and they moved
17 on.

18 I don't mean to oversimplify, but I
19 think that we should have some confidence that
20 our courts can handle it and that if there's one
21 that rises above the water and is routinely a
22 problem and the appellate courts get it for

1 resolution, then that's when we take notice of
2 it. And it's not resolved through the appellate
3 process, the circuit's sorting it out, can't
4 resolve it, then perhaps it cries out for
5 statutory change. That's kind of my threshold
6 now. Again, having it seven, eight and nine
7 argued day and day, we've got to change the
8 statute. We've got to change the statute.

9 COL. SCHENCK: I understand your
10 perspective in the no-change theory, but I'm just
11 wondering about the Panel Members. Not the
12 counsel. The counsel are in pretty good shape
13 because they have the great JAG school. It's the
14 Panel Members who are line officers. And my
15 concern -- and I've spoken to some trial judges
16 who've seen a number of acquittals, and counsel
17 when I was on this task force that visited the
18 field. My concern is, yes, we can rely on trial
19 judges who rely on the benchbook, which may or
20 may not be right, right, on the definition, or we
21 have some trial judges who are hesitant to create
22 a definition, right? Because there's a bunch of

1 trial judges out there very hesitant to make any
2 new law. And then you have Panel Members who get
3 a bunch of stuff and rather than sort it out,
4 they're maybe acquitting accused. You see what I
5 mean?

6 BRIG. GEN. PEDE: Yes.

7 COL. SCHENCK: So I'm wondering if
8 there's any feel in the Army JAG Corps for that
9 factor? So where we could recommend an executive
10 order defining something that would not only help
11 counsel, which they may or may not need, but it
12 would really help the Panel Members.

13 BRIG. GEN. PEDE: Well, I was afraid
14 you'd describe my comments as arguing for no
15 change, ma'am. And that's not the gist of my --

16 COL. SCHENCK: Well, except for the
17 one you --

18 (Simultaneous speaking)

19 BRIG. GEN. PEDE: Well, defenses.

20 COL. SCHENCK: Defense. Sorry about
21 that. Yes.

22 BRIG. GEN. PEDE: No, no. That was my

1 concern that you'd interpret my remarks that way.
2 I'm all about change. So I believe in a living
3 law. And as I've said, 2012 is not perfect by
4 any measure.

5 My argument is the method, the vehicle
6 that this Subcommittee recommends. For the
7 defenses I would recommend the Subcommittee
8 seriously consider amending the statute, but oh
9 so carefully.

10 COL. SCHENCK: The statute? Not --

11 BRIG. GEN. PEDE: The statute. But
12 you wouldn't need to use the statute. You could
13 do it through 916 again and just indicate that we
14 meant it when we said all available defenses in
15 the discussion.

16 COL. SCHENCK: Right.

17 BRIG. GEN. PEDE: Right?

18 COL. SCHENCK: Right.

19 BRIG. GEN. PEDE: You wouldn't need to
20 amend the statute. You'd just -- say under the
21 part of the statute that talks about all defenses
22 in 916 are applicable, you'd just put under; and

1 I say this colloquially, we really mean it.

2 Right?

3 COL. SCHENCK: Yes. Right. Yes.

4 BRIG. GEN. PEDE: That's what
5 practitioners need. But consent.

6 CHAIR JONES: Are you saying that
7 would be the recommendation through executive
8 order?

9 BRIG. GEN. PEDE: Yes, ma'am.

10 CHAIR JONES: That's what --

11 (Simultaneous speaking)

12 BRIG. GEN. PEDE: Yes, ma'am. But you
13 could comfortably do a statutory change as well
14 and make sure --

15 CHAIR JONES: Yes, I mean, it's --

16 (Simultaneous speaking)

17 BRIG. GEN. PEDE: -- the consent is
18 there --

19 CHAIR JONES: -- minimum, yes.

20 BRIG. GEN. PEDE: -- mistake of fact.

21 Because I've talked to counsel and I say, well,
22 what do you think this means?

1 CHAIR JONES: Yes.

2 BRIG. GEN. PEDE: And they say, well,
3 I read what it means, but you deleted it.

4 COL. SCHENCK: So there's people
5 arguing the facts that you --

6 (Simultaneous speaking)

7 BRIG. GEN. PEDE: It's the optic --

8 (Simultaneous speaking)

9 COL. SCHENCK: -- intentionally, which
10 means --

11 BRIG. GEN. PEDE: -- of it. And I can
12 show you my briefing slides to the HASC in 2011
13 that says we're deleting the double burden shift,
14 but consent remains a defense as does mistake of
15 fact. So it's very interesting how things,
16 actions are interpreted.

17 Yes, ma'am?

18 HON. HOLTZMAN: General, I just wanted
19 to first of all thank you very much for coming
20 and for enlightening us and for sharing your
21 expertise and your thoughts with us. I'm
22 personally very grateful.

1 I just wanted to follow up on what
2 Colonel Schenck said because I think you may be
3 right in the sense that after time judges and
4 trial counsel and defense counsel sort of figure
5 out where the statute is going, but we're not 100
6 percent sure. And we're worried about messages
7 going, for example, to the Panel, and also the
8 fact that the statute is something that Soldiers
9 are supposed to understand and learn from, not
10 always so clear on the thing.

11 So for example, I have some issues
12 with the implication -- and I'm not sure this was
13 really thought through or what it was, but
14 there's an implication in this statute that the
15 victim has to resist. And you see it a couple of
16 places. And I'm not sure whether that's
17 something that you eliminate.

18 For example, on the definition of
19 "consent," C8, paragraph 8 and subparagraph C, it
20 says "all the surrounding circumstances are to be
21 considered in determining whether a person gave
22 consent." That's fine. But then it goes on to

1 say "or whether a person did not resist."

2 Resistance, that kind of implies -- I'm not
3 saying it requires, but it kind of implies that
4 we expect resistance. And that goes back -- I
5 mean, I had to fight a New York State -- I had to
6 change a New York State statute that said a woman
7 had to put up earnest -- what was called earnest
8 resistance, otherwise it wasn't rape.

9 I mean, so what I hear in this, when
10 I read this; maybe it's just me, so this could be
11 completely idiosyncratic, but this just brings up
12 to me echoes of the old, old, old stereotypes of
13 what rape was and what a woman had to do -- or I
14 guess there wasn't the idea that a man could be
15 raped in those statutes, but what a woman had to
16 do.

17 And so I am concerned that by keeping
18 language like this in the statute we could be
19 sending the wrong signal and confusing the Panel.
20 And along those lines I also have a big problem
21 with the term "bodily harm," because to me
22 normally, I mean, I speak English, "bodily harm"

1 means I'm getting hurt in some way. Somebody
2 punches me or kicks me or drops something on my
3 head or whatever. But we don't mean that by that
4 in this statute. We mean the slightest touching
5 that's offensive. What's a Panel going to say
6 when they ask for a definition and the judge
7 reads that? They'll say, well, I don't get it,
8 but bodily harm has got to mean something like
9 bodily harm.

10 So I go to the point that she's raised
11 and the colonel has raised is that while people
12 aren't telling us that they're confused
13 necessarily, not all trial counsel are coming
14 forward saying I'm confused or the judges aren't
15 saying they're confused or defense counsel aren't
16 saying they're confused, we don't know what
17 impact this is actually having on creating
18 acquittals that shouldn't take place or -- in my
19 opinion shouldn't take place by confusing
20 language; it's not intended to be confusing, I'm
21 not blaming anybody here, or by language that
22 resurrects these old stereotypes that makes it

1 harder to have convictions. So I just throw that
2 out to you for your thoughts.

3 BRIG. GEN. PEDE: Ma'am, I think it's
4 an excellent point. I can tell you that in 2007
5 when the change -- so let's say version 1 was
6 changed, the great emphasis, the entire principle
7 behind that change was to draw attention away
8 from the victim and to focus everything on an
9 accused. And so in doing that, in removing
10 "consent" for example, it's your exact point,
11 exactly what we were intending to do.

12 In the '12 changes we wanted to
13 further that effort and by providing greater
14 definitions to what is not an element. Okay? So
15 we recast consent to try and get after the most
16 subtle forms of lack of consent, which is no
17 affect at all, no resistance, no nothing. So the
18 goal was to do exactly what you've described in
19 the '12 and to try and make that a little bit
20 better.

21 And so for example, if you with your
22 experience are tripping over that sentence, that

1 certainly was not its intent --

2 HON. HOLTZMAN: Right.

3 BRIG. GEN. PEDE: -- as you pointed
4 out. The intent really I think would be better
5 reflected -- and the response perhaps to that is
6 an expression of lack of consent through words or
7 conduct meaning there's no consent. It was the
8 totality of the circumstances. And of course we
9 train everyone that it can come in many different
10 forms.

11 Can it create confusion? Yes, ma'am.

12 I can see that, absolutely. Do our Panels --
13 does it result in confusion to our Panels? I'm
14 not aware of that, but that doesn't mean it's not
15 happening because empirically we'd have to try
16 and sort out some way does that language result
17 in confusion in the Panel arena? And I would
18 simply offer to you that that's not crested above
19 the discussions we might have in this setting
20 that were anecdotal examples that people might be
21 concerned about it. But that doesn't mean it's
22 not worth looking very carefully at and

1 suggesting that perhaps there are better terms,
2 or maybe a further explanation, statutory or
3 through EO, that would clarify for practitioners
4 and there then in the judges' instructions to the
5 -- that is exactly the point.

6 LT. COL. KENNEBECK: Can I chime in
7 before we change or is this a continuation of
8 that?

9 MS. WINE-BANKS: I have a continuation
10 or perhaps it's a question. I agree with her
11 comments, but want to go a little step further.

12 I'm concerned about how trainees --
13 how Soldiers hear the training they get so that
14 someone knows and has adequate notice of what
15 crime is and how a victim of the assault might
16 think, well, this is not exactly that. Or that
17 the victim thinks they have to endanger
18 themselves by resisting because of how this
19 reads.

20 So then it's more than -- I think it's
21 more controllable for the Panel because you have
22 lawyers who are going to argue and present the

1 definitions to them and they supposedly will
2 focus on that and make their decision on that,
3 but it's that training part and the victims and
4 the defendants who I worry about not really
5 understanding it.

6 MAJ. GEN. WOODWARD: If I could --

7 MS. WINE-BANKS: So that's --

8 MAJ. GEN. WOODWARD: -- the number one
9 reason why victims report not reporting is
10 because they don't think it was serious enough.

11 MS. WINE-BANKS: Okay. So that's --

12 MAJ. GEN. WOODWARD: And I think that
13 gets to the bodily harm --

14 MS. WINE-BANKS: Right.

15 MAJ. GEN. WOODWARD: -- piece. Right?

16 MS. WINE-BANKS: So that's -- I guess
17 that's my question as to whether we need to do
18 something to clarify so that when the training
19 happens, and when someone looks at it, they can
20 say, oh, I can understand that.

21 BRIG. GEN. PEDE: Yes, ma'am. I would
22 point out, I guess in response to that -- and I

1 agree with you that we would be concerned what's
2 going on in the courtroom and then what's
3 happening in the training environment.

4 Of course, recruits aren't reading a
5 statute, but derivative of the statute is the
6 training slides that are used --

7 MS. WINE-BANKS: Right.

8 BRIG. GEN. PEDE: -- and so forth.

9 MS. WINE-BANKS: Exactly.

10 BRIG. GEN. PEDE: I've been intrigued
11 to learn recently, and it's been going on for a
12 while, that in some of our training, trainees
13 walk out, and this shows in our Panels through
14 voir dire, that they're being instructed that if
15 you have one beer --

16 MS. WINE-BANKS: I've heard that one.

17 BRIG. GEN. PEDE: -- you cannot
18 consent.

19 MS. WINE-BANKS: Right.

20 BRIG. GEN. PEDE: And so what's
21 happened culturally, I would just argue or
22 suggest to the subcommittee, that we've truly in

1 a way turned the culture on its head in terms of
2 the consent issue.

3 And so, the notions of, do I have to
4 do anything to show lack of consent, I think
5 we've come an awful long way, certainly since
6 2007, by law, but as well by culture.

7 And so our training is -- even though
8 that's wrong, one beer is not enough. The
9 culture is such now that our concern isn't that
10 the trainees aren't aware of the subtleties of
11 these environments, but that we may have gone a
12 bit too far in their understanding of their
13 responsibilities.

14 I don't know if that makes sense, but
15 we have to -- to me, we have to be very careful
16 how we balance that. So why don't I pause there?

17 LT. COL. KENNEBECK: And I'll add my
18 comment at the end and say I agree that, that
19 language does resurrect old notions of how we
20 perceive consent, and I don't like it really for
21 that purpose.

22 I do think though that the concern is

1 an implication. An implication that could be
2 corrected with an explanation. You could also go
3 in and statutorily change it. I just -- what
4 concerns me about statutory changes is there is
5 no laser focus.

6 The concept of laser focused change to
7 Article 120 is, I think, unrealistic because what
8 is open is open. If we change commas, we're
9 afraid of how many things could be changed. So I
10 would go back to if you are considering
11 recommending a statutory change, I would ask for
12 us first to determine, is there an ambiguity,
13 first, warranting a statutory change?

14 Of course, you're going to do the
15 analysis on that, and I would go back to the
16 testimony that I read here. I think if each of
17 those persons who testified, this is how I would
18 change consent, this is how I would change
19 inability or incapacity, et cetera, et cetera.
20 If we added language explaining the statute,
21 under the statute, in Part 4 -- if it was in the
22 Manual now, would you have the same concerns? I

1 believe that most of them would say no.

2 I've talked to Colonel Grammel three
3 days ago and asked that very question, and he
4 said, yes, my concerns could be addressed in an
5 explanation in Part 4 of the Manual. He's
6 another firm believer that the Judges' Benchbook
7 shouldn't be any thicker.

8 If we're going to put guidance in the
9 field, it should be in Part 4 of the Manual when
10 it comes to the application of this statute. I
11 think that your other folks who testified,
12 Pickands and a few others, would also agree. The
13 changes that we're talking about and the
14 potential inferences and implications can be
15 addressed and satisfied with the explanation, and
16 it would be definitive. I think that the true
17 understanding of what consent is matters most
18 when the judge explains it to the Panel.

19 And I will tell you from my experience
20 ---- so I was a Chief of Justice in the 2007
21 version, I had eight prosecutors prosecuting for
22 me and I suffered through substantial

1 incapacitated with my prosecutors and now I'm the
2 deputy and I see it from this perspective here.

3 I think that what happens with the
4 Panel is we have a progressive statute and we are
5 dealing with humans in our culture who go home
6 and watch -- oh, what's that show? The three
7 men, I can't remember the name of -- shows like
8 that. "Two and a Half Men."

9 (Laughter.)

10 LT. COL. KENNEBECK: Those are our
11 Panel Members. They're part of America. They're
12 just like everybody else. They do wear a
13 uniform, but they have some of the same
14 predispositions.

15 Trying to foist a progressive statute
16 upon people who don't necessarily agree
17 sometimes, that can be difficult in any court, I
18 think. I don't think it's unique to us or anyone
19 else.

20 I also don't think that cleaning up
21 statutorily the definition is going to shorten
22 the instructions given to the Members of Panel or

1 make it clearer to the Panel. I do think that
2 the changes we make to the statute will affect
3 practitioners the most.

4 And the instructions that we shape to
5 the Panel, we are I think as a practice trying to
6 make those as digestible and brief as we possibly
7 can. The instructions now, they take about 90
8 minutes in a sex assault case. They take about
9 45 minutes in non-sex assault cases. So that is
10 an impact, and we pay very close attention to
11 that because how the Panel receives that
12 information matters the most.

13 I don't think anecdotally that those
14 Panel instructions are having an impact on
15 whether there's an acquittal or not. I just
16 think it's the underlying facts of the case that
17 -- we try cases that other people don't try.

18 We will try cases that -- obviously we
19 have sufficient evidence, but we try cases that
20 are difficult. That I would suggest -- that I
21 would put that -- and I have no evidence of this
22 either, but I think some offices would say, no, I

1 can't do that case here.

2 BRIG. GEN. PEDE: Well, we do have
3 evidence. So Chris probably does it at First
4 Corps at JBLM. We at the Army -- you've probably
5 seen the data. We will take cases from
6 jurisdictions because they don't want to try
7 them.

8 It could be a money thing. It could
9 be a resource thing, but most often, in my
10 personal experience and in our collective
11 experience, it's they don't typically try those
12 cases because there's no physical evidence.
13 They're he said, she said, and we're willing to
14 try them.

15 So our acquittal rates are going up.
16 It could be they're just tough cases. It could
17 be our advocacy was substandard. It could be the
18 defense did an incredibly good job. It could be
19 this provision, and I could see that. So I don't
20 -- I can't tell you that.

21 But I can tell you, as far as we've
22 come since 2007 to change the focus to the

1 offender, it could be as you've highlighted this
2 vestige still creeps itself in and might affect -
3 --- I admit that, that could happen. I just
4 don't know that, that's happening. So --- yes,
5 ma'am?

6 MS. FRIEL: I can see as we're talking
7 about which things would be better changed by
8 different things that the consent, for instance,
9 the definition perhaps by explanation and
10 executive order, could work that way.

11 I'm wondering what your thoughts are
12 on defining incapable of consent? Because I was
13 a civilian sex crimes prosecutor and I can tell
14 you there are real varied definitions of that
15 state to state.

16 New York State's definition is really
17 narrow. You don't understand the nature and
18 consequences of your action. The minute the
19 defense could show you understood it was a sex
20 act and what sex was and you could get pregnant
21 from it, that was it, we were done and we lost
22 cases.

1 Go across the river to New Jersey,
2 they had a much broader definition. One that we
3 all as prosecutors wanted to have. There were
4 other things that you could not understand that
5 made you incapable of consent. So that seems to
6 me a very substantive change, whether you're
7 going to go a narrow definition or a broad
8 definition.

9 If the president were to do that by
10 executive order, you could look at that as
11 greatly expanding the statute and the number of
12 people that will come within the statute. And
13 that seems to be where we become most at risk.

14 MAJ. GEN. WOODWARD: And is it
15 dangerous if that can change with each year, with
16 each different executive order? Does that create
17 the ambiguity? When you talked about the public
18 should not have to guess what the law means, if
19 we put it in the executive order, is it too
20 malleable? Does it mean we can change it too
21 fast?

22 COL. SCHINASI: It's been a long time

1 since I've done this, so I don't know what the
2 current culture is, but are JAG officers still
3 providing military justice instruction to units?

4 BRIG. GEN. PEDE: Yes, sir.

5 COL. SCHINASI: Okay. So going to
6 Jill's question and maybe taking a broader look
7 at it. The same JAG captain who goes into a
8 courtroom to either prosecute or defend any case,
9 but including a rape case, is the same JAG
10 captain who has military justice instruction for
11 the Soldiers.

12 And at these sessions, depending on
13 what the agenda is for this particular part of
14 the instruction, the very issues that you're
15 concerned about are being talked about by the
16 same officer who's going to prosecute or defend
17 the case.

18 COL. SCHENCK: But not necessarily,
19 sir. They have these new briefings on sexual
20 assault response, the SHARP, Sexual Harassment
21 and Response Program, within the Army and they
22 actually have non-JAGs doing that training.

1 And then it's being wheeled down to
2 the basic training almost, I think, even the
3 drill sergeants. They get it when they walk in
4 the door and they get it at a certain gate. So
5 it's not the JAGs. That's where, again, that one
6 beer rule, it's kind of being --

7 BRIG. GEN. SCHWENK: But it's also
8 still being done at the unit.

9 LT. COL. KENNEBECK: Not by defense
10 attorneys. So defense counsel don't give
11 classes.

12 BRIG. GEN. SCHWENK: Only the --

13 LT. COL. KENNEBECK: It's the
14 prosecutors because they're assigned to,
15 associated --

16 BRIG. GEN. SCHWENK: Okay.

17 LT. COL. KENNEBECK: -- with a unit,
18 they do the --

19 COL. SCHINASI: So --

20 LT. COL. KENNEBECK: -- training.

21 COL. SCHINASI: So we could say from a
22 comparison point of view, I mean, there are lots

1 of studies of very recent Washington Post-Kaiser
2 Family service -- study about the culture of rape
3 in colleges. And about 20 percent of women at
4 some point -- so there's a very interesting
5 culture going on.

6 We have the benefit in our society of
7 being able to provide instruction to our
8 population from virtually the first day that they
9 come on active duty, and so a lot of Jill's
10 concerns, I think we do as much as we can do to
11 alleviate.

12 The other thing -- if we can step back
13 and look at this. The authority system that we
14 have is first the UCMJ, a statute. Changing that
15 statute is a very hard thing to do, as the
16 General just explained to us.

17 But we also have the Manual for
18 Courts-Martial, which is a cookbook. Which tells
19 the prosecutor what to do step-by-step, and then
20 we have the Judges' deskbook, which are the
21 instructions that are given to the Panel.

22 Now if we want to affect, in a timely

1 way and in a way that's sensitive to what our
2 culture's doing and how our culture's changing,
3 going at the UCMJ is the least efficient way to
4 do that. As long as what happens in the Manual
5 for Courts-Martial and what happens in the
6 Judges' Benchbook is not inconsistent with the
7 UCMJ, courts don't generally reverse that. And
8 so, this is kind of --

9 COL. SCHENCK: So you're saying --

10 COL. SCHINASI: -- where we left off
11 the --

12 COL. SCHENCK: -- going against the
13 statute per se as opposed to --

14 COL. SCHINASI: Right. As long as
15 what's in the Manual for Courts-Martial, aside
16 from the UCMJ -- it's that book, which is kind of
17 like a Bible, which was explained.

18 As long as what we do in that book,
19 whether it's executive order or whether it's the
20 Judges' Benchbook, which is the instructions that
21 are given to the court members, as long as that's
22 not inconsistent with the statute, it's not going

1 to get reversed, and it's much easier to change.

2 The thought of going in and changing
3 some portion of the UCMJ, as the General has
4 explained to us, is onerous.

5 COL. SCHENCK: And once they open it,
6 that's a problem. Once they open --

7 COL. SCHINASI: Anything's possible.

8 COL. SCHENCK: -- it on the Hill, you
9 never know what you're going to get.

10 COL. SCHINASI: And so, there's a kind
11 of institutional bias against doing that.

12 COL. SCHENCK: Yes.

13 COL. SCHINASI: What we'd like to do is
14 be able to change the Benchbook or change the
15 executive order or change the Manual for Courts-
16 Martial.

17 So I mean, I think that's where we
18 carried over from last session. If we want to
19 make changes, the changes are most effective, the
20 changes are most flexible, and the changes are
21 most sensitive to our culture if we do something
22 other than change the statute.

1 CHAIR JONES: All right. I think I
2 first saw Dean Anderson's hand up.

3 DEAN ANDERSON: This is a matter of
4 process. And I apologize if it's already been
5 clarified, but it's not clear to -- do we know
6 where the president is on a potential executive
7 order for 120?

8 LT. COL. KENNEBECK: So my
9 understanding, based on what Lieutenant Colonel
10 Deb Pike, who's working in the Joint Service
11 Committee now, is that it's at the White House.
12 So it's been through interagency.

13 DEAN ANDERSON: You mean, it exists?

14 LT. COL. KENNEBECK: It exists.

15 CHAIR JONES: All the explanations of
16 120 have --

17 LT. COL. KENNEBECK: Yes.

18 CHAIR JONES: -- been written?

19 LT. COL. KENNEBECK: Has been --

20 DEAN ANDERSON: It is waiting for
21 review?

22 LT. COL. KENNEBECK: -- for years.

1 BRIG. GEN. PEDE: It's been reviewed.
2 It's waiting for signature at the White House.

3 LT. COL. KENNEBECK: Two executive
4 orders have been signed since that one was --

5 DEAN ANDERSON: Right.

6 BRIG. GEN. SCHWENK: It's at the last
7 stage of review by the Office of Legal Counsel --

8 CHAIR JONES: So does this mean --

9 BRIG. GEN. SCHWENK: -- in the
10 Department of Justice.

11 CHAIR JONES: -- we should hurry up or
12 is it hopeless?

13 (Laughter.)

14 DEAN ANDERSON: But I think it's an
15 important question of where that is procedurally.

16 BRIG. GEN. PEDE: We should get a copy
17 of that.

18 LT. COL. KENNEBECK: We can get you a
19 copy of that.

20 DEAN ANDERSON: We can get a copy?

21 BRIG. GEN. PEDE: I don't think it's
22 going to address all the issues that you're

1 addressing because it was written three years ago
2 effectively. It's been staffed, so there's a lot
3 of --

4 CHAIR JONES: When the 2012 revisions
5 came out --

6 BRIG. GEN. PEDE: Yes, ma'am.

7 CHAIR JONES: -- there was an attempt
8 to try and issue an executive order.

9 DEAN ANDERSON: Okay.

10 BRIG. GEN. PEDE: So, with what Mr.
11 Sullivan said, there's a streamlining to the
12 process. That is huge.

13 So from a practitioner's standpoint,
14 what he said at the end, that we don't have to
15 wait as long anymore and there's only a smaller
16 piece actually going to the White House, that's
17 enormous. That's -- from a standpoint of
18 efficiency, that's great.

19 And, ma'am, your concerns about, well
20 if it's too malleable, if it's too subject to
21 change, should we be concerned about that? I
22 wouldn't as a professional in this business

1 because as hard as Congress is to get something
2 to change that we think in earnest needs
3 changing, DoD's not that easy either, or the
4 President.

5 (Laughter.)

6 CHAIR JONES: The next administration
7 could have a very different view of things, don't
8 you think?

9 BRIG. GEN. PEDE: Yes, ma'am. My
10 experience with changes in administrations means
11 it takes them probably twice as long to get their
12 arms around what it is you're asking.

13 So what I've found is that, just like
14 a new boss, I need the decision from the old boss
15 because they've had two or three years knowing
16 the landscape. If I get a new boss, I know I've
17 got another year before they actually feel
18 comfortable making --

19 MAJ. GEN. WOODWARD: But I'm not
20 talking about speed, I'm talking about our
21 comfort level with the fact that the law remains
22 the same, and we can deal with it.

1 If we feel that with any given
2 administration coming in, they're going to change
3 it, is that a positive thing? Versus being
4 changed by Congress?

5 LT. COL. KENNEBECK: It just hasn't
6 been the experience in 50 years though. I mean,
7 these executive orders get after changes that are
8 relevant --

9 MAJ. GEN. WOODWARD: Okay.

10 LT. COL. KENNEBECK: -- that are needed
11 in the field. I just --

12 CHAIR JONES: Ms. Holtzman?

13 HON. HOLTZMAN: I just want to respond
14 to some statement that was made -- sorry Colonel,
15 that the legislative process is extremely lengthy
16 and difficult and that this other process,
17 executive order, is streamlined and simple.

18 We've had this statute in effect since
19 2012 and there's been no explanation. So I can't
20 -- I don't think -- I mean, I can't agree
21 personally that the EO process is necessarily
22 more streamlined than the Congressional process.

1 In this case. Now, maybe in other cases it is,
2 but in this case, it's not.

3 Secondly, I think as General pointed
4 out, it may be that some of the concerns that we
5 are raising here right now are not concerns
6 addressed in the executive order. So if we just
7 say, okay people we're just not going to do
8 anything because the President's going to address
9 it and it's on his desk, so therefore it's going
10 to happen sometime real soon, which we don't
11 really know, they may decide they don't want to
12 address it.

13 That the changes in the executive
14 order, assuming they come out and assuming they
15 even come out this year or next year, assuming,
16 they have nothing to do with any of these issues
17 that we're raising here.

18 So I think that -- I mean, my own
19 suggestion about how to proceed is that we,
20 rather than deciding the form we want to take,
21 let's look first at what we want to change. And
22 then think about -- I mean, there's no reason

1 that we can't approach this on a belt and
2 suspenders method.

3 We could suggest that it be approached
4 both through executive order, if the President
5 can act quickly enough, assuming we think any
6 changes should be made, or through Congressional
7 actions.

8 I mean, I don't think, for example --
9 just to make a point. If we said to Congress,
10 and that's all we wanted ---- which I assume is
11 not going to be the case, but if we said to
12 Congress, eliminate that sentence that we were
13 talking about in that statute. Just eliminate
14 that because it raises the issue of resistance,
15 and that were the only thing we wanted to do, it
16 might be relatively quick to do that. I'm not
17 saying that's going to be a lot and it wouldn't
18 make major changes.

19 So I just think we should be a little
20 careful about the assumption that going the
21 Congressional route is going to be a major time
22 consumer and won't happen in our lifetime. Or

1 that the executive order approach is going to
2 happen in our lifetime. I would just be a little
3 more agnostic about that.

4 CHAIR JONES: Well and just to -- I
5 mean, we've obviously seen that Congress, when
6 they are interested in a topic, as they have been
7 with this one, can work very speedily.

8 I don't -- at the moment, I don't know
9 the answer. Did I hear you say that you think
10 you can get us what is in the executive order?

11 LT. COL. KENNEBECK: It's been in the
12 Federal Register.

13 CHAIR JONES: Oh, it's in the ---
14 that's right, I thought I heard that.

15 BRIG. GEN. SCHWENK: But we're just
16 going to get the version that was published in
17 the Federal Register. And so, in the interagency
18 --

19 CHAIR JONES: I see.

20 BRIG. GEN. SCHWENK: -- process,
21 there's dialogue back and forth and changes are
22 made and those aren't published anywhere.

1 COL. SCHENCK: Can I ask a question?

2 CHAIR JONES: And we don't have any
3 access to it --

4 COL. SCHENCK: I sat on the Code
5 Committee and we were briefed on the drafts and
6 the Code Committee's a public meeting.

7 CHAIR JONES: I'm sorry. One at a
8 time. Colonel?

9 COL. SCHENCK: So I sat on the Code
10 Committee and the Code Committee receives a
11 briefing from the Joint Service Committee
12 regarding pending EOs. It was public meeting,
13 which means it was transcribed and it's open to
14 the public, and it had the draft EOs in the
15 pipeline.

16 At one of those EOs, which I believe
17 -- we should get those drafts, because one of
18 those EOs has Article 134 amended to include
19 indecent acts. I double-checked with Dwight. I
20 thought it was me. I was thinking, why -- and if
21 that was a public meeting and the drafts were
22 briefed to me and I have the slides and the

1 public was there, why can't we get them?

2 LT. COL. KENNEBECK: I will say a
3 couple things about that. I've given the
4 briefing and so I know what you're talking about.
5 And I'm included in the interagency process and I
6 don't know what the changes were during this
7 interagency process and this EO -- General
8 Schwenk probably does, but I suspect that the
9 changes that may have been made to the EO since
10 it was published in the Federal Register aren't
11 great.

12 COL. SCHENCK: Are or are not?

13 LT. COL. KENNEBECK: Are not.

14 COL. SCHENCK: Are not.

15 LT. COL. KENNEBECK: Are not. I mean,
16 there are some questions that come back in --
17 this is one that's sort of contentious. I was
18 surprised at the time that Department of
19 Transportation wanted to know lots about how we
20 defined consent, which I found interesting. It
21 wasn't DoJ, it was Department of Transportation.
22 But anyway --

1 BRIG. GEN. PEDE: It was DoJ later.

2 LT. COL. KENNEBECK: It was DoJ later.

3 I suspect that whatever version you see will be
4 pretty close to what you see in the end.

5 And then back to what Honorable
6 Holtzman said, I agree. And General Pede, we're
7 on the same page. Sometimes statutes do get
8 reamended, and we aren't afraid of that. And
9 we're not advocating that it shouldn't be
10 changed.

11 We should ask, is there an ambiguity
12 warranting a statutory change? I don't know that
13 there is. I don't know that there is. And then
14 if we do change or recommend changes to Article
15 120, the portion of the Article that matters the
16 most to the practitioner is Sub A and B, rape and
17 sex assault and the varieties by which they can
18 be charged.

19 Subsection C, D, E -- the rest, those
20 definitions and the application, changing that
21 part of the statute will have less of an impact
22 in the field. It'll have more of an impact on

1 the field if you change Sub A and Sub B, the
2 definition of rape and sex assault. That would
3 be harder because then we'd be teaching four
4 versions as opposed to three.

5 In JBLM right now, we have a case that
6 we have all three versions of Article 120 charged
7 on the charge sheet, and we have another one too,
8 because it's an older case. We have three
9 different statutes.

10 When that case goes to trial, the
11 Panel instructions will probably be two, two and
12 a half hours. Just because you have all the
13 different statutes to define and to go through,
14 and that's not helpful.

15 Now of course, that will subside over
16 time, but that doesn't mean you shouldn't change
17 the statute. I'm just putting that out there.
18 First, is there an ambiguity? Second, what part
19 of the statute would you recommend changing? And
20 third, can we solve this with the executive
21 order?

22 BRIG. GEN. SCHWENK: Yes. I just want

1 to say to Representative Holtzman's point, this
2 is a case, I think, right now where we should
3 think about putting the cart before the horse.
4 The horse is the vehicle that we use to take the
5 things on the cart, which are the changes, and EO
6 versus legislation.

7 Well, let's put the cart first. Which
8 is, do we have anything in the cart to do an EO
9 or whatever in? Let's figure that out and then
10 once we get that figured out, we actually have a
11 vehicle to ask opinions that Judge Jones gave us
12 this morning. Which is, send out our cart for
13 views and one of the things we can ask is, do you
14 think it should go in the executive order? And
15 then we can worry about the horse --

16 MAJ. GEN. WOODWARD: I agree. Can I
17 just ask --

18 BRIG. GEN. SCHWENK: -- later.

19 MAJ. GEN. WOODWARD: -- for a
20 clarification? Because I'm really confused and I
21 apologize. But why did they just publish changes
22 to that, but it doesn't include the drafts that

1 you all are talking about? Do we think they get
2 published --

3 BRIG. GEN. PEDE: Because it's
4 iterative and because the President receives from
5 DoD an executive order that has, let's say, the
6 rule for 405, our now preliminary hearing rules.
7 Prior to that, we had an executive order just on
8 our military Rules of Evidence.

9 So we take them in chunks and they're
10 reviewed and staffed in the interagency in chunks
11 as an EO on the Rules of Evidence, and that got
12 through. And then he had sitting on his desk the
13 preliminary hearing EO and all the 120 changes.
14 He signed the preliminary hearing EO and that's
15 now out, and we're still sitting on the 120
16 because it's just -- and it's taken three years.

17 LT. COL. KENNEBECK: And part of the
18 reason that it's taken three years is because in
19 the interagency process, time marches on. A new
20 NDA comes out, it's got 34 provisions in it and
21 we realize, oh some of this is more important.

22 So we actually took an EO back, broke

1 it apart into two different pieces, and pushed
2 the EO up with the 405 in it. That's why that EO
3 was signed. First, because it was chunked off
4 from the rest, sent up with a foot stomping, we
5 need this out there now. We've been foot
6 stomping the 120 as well, but it's voluminous.

7 BRIG. GEN. PEDE: I think as
8 Representative Holtzman point out, we've all
9 lived through, if there's an interest, if there's
10 momentum, it can go like that. Whether it's --
11 most certainly in Congress.

12 The friction that I experienced for
13 five years was primarily born of, you didn't want
14 our 2007 statute, so this is the politics of it.
15 You did not want our 2007 statute, you wanted to
16 stay with the old version, by force and without
17 consent. If this was a bar and we were drinking
18 beer, what I would say to you is, Congress said,
19 you don't like it, here it is anyway. Now like
20 it.

21 So when we started preparing the
22 changes to refine the statute that was passed to

1 get goodness, they're view was we're coming back
2 and trying to go back to an old day and an old
3 time. So a lot of the friction was, we don't
4 trust you. You just want to go back to the old
5 ways.

6 So there's a trust element, there's a
7 political element, there's optics, there's all
8 these things. Just like this counselor I was
9 talking to yesterday, he was saying, oh yes, you
10 took the defenses out. Wait a minute. No, we
11 didn't.

12 So it's fascinating. Yes, the longer
13 we live this, the more you learn about the nature
14 of organizations. EO process can go like that,
15 if somebody wants it, but it typically doesn't.

16 HON. HOLTZMAN: General, I just wanted
17 to make one other point and maybe this would help
18 your thinking on -- not help your thinking, you
19 don't need help in your thinking, but maybe this
20 would clarify a little bit the process.

21 I think Judge Jones' suggestion that
22 any changes that we suggest be widely circulated

1 and open for comment before we make a final
2 decision, much less going to the JPP and then
3 ultimately, it goes to Congress.

4 I think that that should help
5 alleviate some of the concerns that were raised
6 about the importance of having some friction in
7 this process. That it's not just a bunch of
8 people sitting around a table and making up their
9 own thoughts, but that they're going back to the
10 community that's practicing and saying, have we
11 misunderstood? Have we made mistakes? Is this a
12 bad idea? And to continue to get that input to
13 make sure that the work product is not -- I mean,
14 is as good as it could be under the
15 circumstances.

16 BRIG. GEN. PEDE: I think it's a
17 wonderful notion because I'm more concerned about
18 people suggesting changes who are not trying the
19 cases who are identifying an academic disconnect
20 intellectually.

21 HON. HOLTZMAN: Yes. Right.

22 BRIG. GEN. PEDE: But when it hits the

1 trench, nobody's having any problems with it.

2 HON. HOLTZMAN: Right.

3 BRIG. GEN. PEDE: But intellectually,
4 I can say this doesn't make sense. Well, it
5 makes perfect sense in the crucible of a trial.

6 HON. HOLTZMAN: Yes.

7 BRIG. GEN. PEDE: That's my biggest
8 concern. So shopping these notions, I would be
9 very interested to see what the defense or any
10 community says about the last sentence of the
11 consent definition.

12 Because what I would say -- one
13 argument is, our reporting is off the chart now
14 on offenses that we never had reported before.
15 If you looked at 2007, our rape reports were at
16 500 approximately. We had no sexual assault
17 reports, a lesser degree of violation.

18 2008, 2009, 2010, sexual assaults
19 creep up. So now I'm twice what I used to have
20 reported. I've got 500 rapes, I've got 500
21 sexual assaults. Where were those 500 before?

22 So this statute, even with this

1 consent discussion, has emboldened, informed,
2 educated our trainees what they can report, what
3 they experience. And so at least on the front-
4 end of the criminal process, it's smoked out all
5 those people who said that I was at fault. And
6 it's emboldened them to say, no, actually that
7 was me and I'm going to report it now.

8 So it's been incredibly cathartic,
9 incredibly helpful. And that, empirically, I can
10 show you. What I can't show you is, does that --
11 what's the effect of that in an instruction to a
12 Panel in 90 minutes of instructions? My sense
13 is, having tried cases, probably none.

14 Because the surrounding circumstances
15 instruction is so fact dependent. And our focus
16 has been so much on the offender and the
17 environment of rank, the environment of alcohol,
18 that I think we've eliminated that kind of
19 vestige of there's got to be resistance, some
20 kind of action.

21 But I can only say that anecdotally.
22 I would not rely on my view of the world to say

1 that needs to stay or needs to change. I think
2 shopping it is a great idea because you get an
3 empirical assessment.

4 CHAIR JONES: Ms. Kepros?

5 MS. KEPROS: I really appreciate the
6 suggestion about shopping because I agree with
7 you. I think that's what you have to do because
8 you're not going to just buy-in to any change
9 anyway.

10 But I also agree with the idea of
11 let's decide what, if any changes, are
12 appropriate before we even put these things out
13 there. But I think once that happens, if there
14 are changes we support, there is a political
15 reality to any of these forums.

16 And I would so much rather that any
17 changes are very thoroughly vetted and thought
18 through than we start having executive orders
19 every year that are being driven by political
20 concerns or the legislature reacting to political
21 events without the kind of thoughtful, balanced
22 approach that I feel like this subcommittee is

1 really trying to take, with a lot of different
2 stakeholders at the table, trying to get input
3 from the different service branches and the
4 experience of lawyers, judges, and maybe other
5 people as we move forward. So I think that's
6 something we need to be thoughtful about.

7 One question I have -- because I don't
8 want to characterize what you said as no change,
9 but one of the problems I've had, as a civilian
10 defense counsel looking at this statute, is what
11 I will call death by terms of art. And I mean,
12 there are words here that do not mean what
13 English is. And it's sort of the point that
14 Representative Holtzman made, like, bodily harm,
15 sounds like somebody's body is hurt, right? It
16 doesn't just mean non-consent.

17 And I wonder if you think there would
18 be value in just eliminating some of this
19 terminology that just adds multiple layers of
20 instruction and redefine words that could just be
21 avoided altogether? And just say, hey, no
22 consent, instead of saying bodily harm, bodily

1 harm means no consent. And just adding all this
2 kind of words to something.

3 Is there any value to that kind of
4 process? Or do you see that as just more
5 tinkering that doesn't really assist
6 practitioners?

7 BRIG. GEN. PEDE: I wouldn't describe
8 it as tinkering, ma'am. I think that -- because
9 we look at that over in the JSC process.

10 So if we looked at any of these
11 recommended changes, normally my direction as
12 the Chair would be okay, form a subcommittee and
13 spend six months and figure out from the
14 practitioners, the trial judiciary, is there
15 evidence of this being a problem with this term?
16 And do we need to change it? Do we need to
17 adjust it? And then we'd recommend to Congress
18 or the President.

19 So I don't -- so exactly what you're
20 describing is what we're doing all the time and
21 what this subcommittee is chartered -- I think
22 it's very helpful, first of all.

1 CHAIR JONES: And let me just take --

2 BRIG. GEN. PEDE: But --

3 CHAIR JONES: -- everybody back for a
4 moment. The reason that we're hearing about the
5 horse right now is only because we wanted to be
6 able to understand the options, the vehicle,
7 before we began our substantive discussion later
8 this afternoon. And this has been tremendously,
9 tremendously helpful.

10 I'm sorry, now I have a lot of people
11 who want to ask questions. I think Dean
12 Anderson.

13 DEAN ANDERSON: I just wanted to press
14 you, General, on your one area that you may have
15 affirmatively advocated a change in the statute
16 itself, and that is on defenses.

17 It seems to me that, that's the least
18 necessary change though given the explicit nature
19 of the language in the statute itself where it
20 says all applicable defenses remain. So why
21 would you want to change that language?

22 BRIG. GEN. PEDE: Because as I have

1 worked through these issues over the last three
2 years, that's the only part where senior
3 practitioners supervising junior practitioners
4 and junior practitioners have come to me or I've
5 come to them and that's emerged from the
6 conversation.

7 DEAN ANDERSON: But that's only -- as
8 I understand it, that's only by implication of
9 removal of prior language, right?

10 And why would that not ordinarily work
11 itself out in the same way that your argument
12 that any number of ambiguities in the statute
13 would work themselves out through the common law
14 process?

15 BRIG. GEN. PEDE: Honestly, I think it
16 will.

17 DEAN ANDERSON: Okay.

18 BRIG. GEN. PEDE: I think it will. So
19 I'm not a no change person, but if -- because
20 there are a number of things you could refine.

21 Bodily harm might be one of them, but
22 as a lawyer, I always go back to bodily harm

1 under 128. It doesn't need to hurt you. So
2 lawyers, in my view, understand the history of
3 bodily harm. It's anything.

4 DEAN ANDERSON: And that predates quite
5 a few versions.

6 BRIG. GEN. PEDE: And the --

7 DEAN ANDERSON: The bodily harm one.

8 BRIG. GEN. PEDE: Yes, ma'am. And we
9 pull those in to our common understanding and our
10 application of charging and our defenses.

11 Why did I pick defenses? Because, to
12 me, that's the one thing in three years that
13 keeps coming up above the surface, and I'm
14 astonished that senior practitioners are still --
15 -- I'm talking senior practitioners, I'm talking
16 judges. Not trial judges. I've got an appellate
17 judge who says, well, you deleted that. So --

18 DEAN ANDERSON: That must mean
19 something.

20 BRIG. GEN. PEDE: -- it must mean
21 something. So it's for that reason. It's
22 pragmatic, it's just my gut check after years of

1 practice. I said, okay, I've got it now.

2 If I was a Chair, I would have pushed
3 the subcommittee of the JSC, get out, get us some
4 empirical data, cultivate the defense community,
5 what are they thinking? You get that together,
6 then you make a change recommendation to the
7 other services and then to DoD and see if it has
8 traction. I think, frankly, that one would have
9 traction.

10 Honestly, we had conversations at the
11 JAG school after the '12 statute. At least three
12 just to discuss whether consent was still a
13 defense. These are seasoned practitioners. So -
14 ---

15 DEAN ANDERSON: So the suggestion you
16 would make on this language would be for reals.
17 For what --

18 (Laughter.)

19 BRIG. GEN. PEDE: That's it. As
20 referred in 916.

21 DEAN ANDERSON: Right. In the same
22 way, but with the internal reference, right?

1 Because I think the concern is we don't want
2 something unique to rape and sexual assault here.
3 We want it to incorporate by reference
4 traditional defenses that are given in other
5 cases.

6 BRIG. GEN. PEDE: Yes, ma'am. That
7 would be my recommendation to the subcommittee.
8 With respect to other definitions, I think
9 identifying what they are and all your experts
10 have come in, whether there's a tweak to the
11 consent discussion, incapable of consenting.

12 Again, I just simply remind you, we
13 adopted that term because of the difficulties
14 with substantially incapacitated. So we found
15 the second term we thought would work. If your
16 sense is, it ain't working either, we have to
17 find a third term, recognizing that third term
18 could generate three to five years of litigation.

19 So I'm not sure we've actually
20 accomplished anything with certainty because I
21 think our current litigation will shape what our
22 current definition means. That's all. To me,

1 that's just pragmatism. It's not an intellectual
2 argument necessarily.

3 It's just -- I now have three years of
4 litigation figuring out what this means, I'm
5 going to go with this. Because it again, for me,
6 hasn't risen above the surface of outcry and
7 outrage and unjust results. At least on one side
8 of the bar. Maybe going back to your point,
9 acquittals are hard to assess. Sir?

10 COL. SCHINASI: Again, not to go back
11 and make the same point, but if we explained it
12 in the Manual for Courts-Martial and if we
13 explained it in the Judges' Benchbook, we could
14 leave the statute the way it is because what's
15 going to happen is every time you make a change,
16 including a word or taking a word out, counsel is
17 going to challenge that.

18 As they should, but if we explain what
19 we wanted to do in either the Manual for Courts-
20 Martial or in the Judges' Benchbook, we minimize
21 the challenges. There are going to be challenges
22 for sure, but we minimize when we explain it.

1 CHAIR JONES: Lisa, did you have a
2 comment?

3 MS. FRIEL: Yes. And the comment was,
4 well, our concern about does the statute need to
5 be changed because we're using it as a teaching
6 tool too. And I just wanted to say that I
7 definitely think when you write statutes, you
8 consider that. You want them to be clear because
9 that's another purpose of them.

10 But I'll just tell you what's going on
11 on college campuses with the big issue like yours
12 is incapacitation versus intoxication. There are
13 many college policies that could not be clearer
14 in words that intoxication is not enough alone.
15 We are talking about a state of intoxication that
16 reaches incapacitation.

17 And they teach it that way in
18 orientation and they teach it that way here, and
19 then it filters down. And I can tell you, I was
20 at an Ivy League school with all these very smart
21 kids around the table who when we were talking --
22 we were doing training, and the number one thing

1 they learned in training was, really? I thought
2 any drinking was -- and I'm like, how can it be,
3 you heard in orientation.

4 So I think that's a different problem.
5 That's looking at how does it go from here to
6 here and how do we lose it down here? And I
7 don't think that has to do with statute. I think
8 it is something the Military should look it.

9 COL. SCHINASI: The studies will say
10 it's the culture of the community that you're
11 part of. It's what they believe irrespective of
12 what the law is, irrespective of what we tell
13 them.

14 MS. FRIEL: But it means you have to
15 figure out how to do a better job in explaining
16 exactly --

17 COL. SCHINASI: Yes.

18 MS. FRIEL: -- what it is to a
19 resistant culture --

20 COL. SCHINASI: Yes.

21 MS. FRIEL: -- is I think what we're
22 really talking about.

1 COL. SCHENCK: And then different than
2 our culture was, let me just point that out.
3 Right? I mean, when we were kids, it was a
4 little different, I think. Of course --

5 MS. FRIEL: A lot different.

6 COL. SCHENCK: Well, there's the peer
7 pressure the other way.

8 MAJ. GEN. WOODWARD: And I think that's
9 a bit of passive-aggressiveness, to be honest
10 with you. I mean, I know when I was a SAPR
11 chief, I went out and I went to all of -- over 45
12 bases and sat and talked to everybody from Airmen
13 through commanders and the SAPR guys.

14 And the piece about you can have one
15 drink and you can't -- and so I asked at every
16 single element, is anybody being taught this?
17 Where do you hear this? And only one place was
18 there an actual instructor that taught that and
19 we corrected her and ended that.

20 But it becomes the underlying thing.
21 And I honestly believe there's a portion of that,
22 that's passive-aggressiveness. That folks are so

1 angry that we're trying to make this --

2 CHAIR JONES: Cultural change.

3 MAJ. GEN. WOODWARD: -- cultural change
4 that, that's a way that they're passively --

5 CHAIR JONES: You're making it sound --

6 MAJ. GEN. WOODWARD: -- ridicule.

7 CHAIR JONES: Right.

8 MAJ. GEN. WOODWARD: We keep hearing it
9 in all this testimony and it drives me crazy
10 because I go out there in the field and ask about
11 it and --

12 CHAIR JONES: It's not really in the
13 training.

14 MAJ. GEN. WOODWARD: -- you're not
15 really hearing it --

16 CHAIR JONES: Right.

17 MAJ. GEN. WOODWARD: -- in any of the
18 training.

19 COL. SCHENCK: But also I think -- I
20 was talking to the some of the law students and,
21 frankly, the men are saying, if you're drinking,
22 there's drinks involved, just get a phone number

1 and run.

2 Because do not -- seriously, because
3 we have cases of friends, they were -- one guy
4 was a Princeton, and they were both drunk and
5 boom, he's gone. He just is gone. And so, as a
6 male -- and I have a son, four sisters and one
7 son, right?

8 But all of us had boys and we're -- I
9 said to my nephew who just went to basic training
10 for the National -- he's going to go in the
11 National Guard for his free tuition. I said, do
12 not, whatever you do, drink and then do anything
13 with anybody, boys or girls. Do not. Call your
14 aunt and go to bed.

15 LT. COL. KENNEBECK: I would say
16 somewhat I agree with you, ma'am. And I'd say
17 it's somewhat ridicule. And it's also the
18 paternalistic nature of the Military.

19 MAJ. GEN. WOODWARD: Yes.

20 LT. COL. KENNEBECK: So once we decide
21 that something's proscribed, I'm going to hammer
22 it into you as hard as I possibly can, and I'm

1 going to overemphasize.

2 I'm going to say, this is what the
3 rule is, but more than that, if you even touch
4 alcohol, it's too late.

5 MAJ. GEN. WOODWARD: Yes.

6 COL. SCHENCK: Yes.

7 LT. COL. KENNEBECK: Right? And
8 there's some of that as well. The E-5, the E-6
9 who wants to be --

10 CHAIR JONES: General Peede, I think you
11 had mentioned -- well, we've all heard from a lot
12 of Panelists and much of it has been anecdotal.

13 I think you mentioned that you might
14 actually have some data, and you're certainly
15 suggesting that, that's a good way to proceed in
16 terms of trying to figure out what is confusing
17 to practitioners. Do you have any data like
18 that? Or did I mishear you? Or anything you can
19 share?

20 BRIG. GEN. PEDE: I'd have to look,
21 ma'am. The data that I'm talking about is my
22 experience talking with judges and counsel in the

1 three jobs I've most recently --

2 CHAIR JONES: Right.

3 BRIG. GEN. PEDE: -- had.

4 CHAIR JONES: Okay.

5 BRIG. GEN. PEDE: So I use it as --

6 CHAIR JONES: Nothing --

7 BRIG. GEN. PEDE: -- it's more -- to me
8 it's now more than anecdote. But I also use the
9 -- empirically, one of the things we use from '07
10 to '12 was what is the case law producing? What
11 are the trial courts wrestling with? And what
12 are we seeing pop up as issues that are joined at
13 appeal? And so we use that as well.

14 CHAIR JONES: Do you have that
15 analysis?

16 BRIG. GEN. PEDE: Not currently. No,
17 ma'am.

18 CHAIR JONES: And I guess it would only
19 be '07 to '12 right?

20 BRIG. GEN. PEDE: Or '12 to '15.

21 CHAIR JONES: Well, '12 to '15 would be
22 fascinating for us.

1 MS. WINE-BANKS: You guys maintain
2 doing that?

3 BRIG. GEN. PEDE: Not as a deliberate
4 product for consumption in a Panel like this, but
5 I think it's something that could probably be
6 asked of the Joint Service Committee.

7 CHAIR JONES: Well, that might be very
8 helpful.

9 BRIG. GEN. PEDE: No longer sitting on
10 the Joint Service Committee, I can say that.

11 MAJ. GEN. WOODWARD: And don't tell
12 them where that suggestion --

13 BRIG. GEN. PEDE: No.

14 MAJ. GEN. WOODWARD: -- came from.

15 BRIG. GEN. PEDE: Hopefully he's not
16 listening.

17 LT. COL. KENNEBECK: When we derive
18 numbers. A lot of times, we'll use the annual
19 report to Congress. The SHARP report. That's
20 where we get our big numbers.

21 CHAIR JONES: That's something else we
22 should --

1 LT. COL. KENNEBECK: Right.

2 CHAIR JONES: Right.

3 LT. COL. KENNEBECK: We can see trends
4 in that.

5 COL. SCHINASI: You said that the
6 sexual assault numbers have gone up. I'm just
7 wondering, has the child sexual abuse numbers
8 gone down? Has it changed any? Do you know?

9 BRIG. GEN. PEDE: I don't believe so,
10 sir. I think --

11 COL. SCHINASI: It's leveled off?
12 There was a time when my docket was 40 percent
13 child sexual abuse cases, and this was in an
14 infantry division.

15 BRIG. GEN. PEDE: My sense only, I
16 haven't seen the statistics recently, sexual
17 assaults as you know in '07 started to go off the
18 --

19 COL. SCHINASI: Right.

20 BRIG. GEN. PEDE: -- chart, '08, '09,
21 '10 reporting. There was incremental rise in
22 child sexual --

1 COL. SCHINASI: Okay.

2 BRIG. GEN. PEDE: -- abuse reporting.

3 I don't think it compares at all to what the
4 adult reporting looks like. So I wouldn't say
5 it's appreciably different from the past, but I
6 couldn't even tell you what percentage it is of
7 the cases tried.

8 COL. SCHINASI: Thank you.

9 BRIG. GEN. PEDE: We can get that data.
10 I think that data's available. We just published
11 the '14 crime report for the United States Army,
12 anyway. That should be available on the web. I
13 just received that last week. Yes, ma'am?

14 MS. WINE-BANKS: In terms of data, I've
15 read conflicting numbers in the newspapers -- of
16 course, the unreliable source, as to whether the
17 victims are exclusively or majority female. What
18 is the percentage of female victim versus male
19 victim?

20 BRIG. GEN. PEDE: From a reporting
21 standpoint, the lion's share. And I'd probably
22 put it over 90 percent, but we could check that,

1 ma'am, is female. Reporting.

2 MAJ. GEN. WOODWARD: But from the
3 surveys -- the anonymous surveys where we believe
4 the accuracy of those, 53 percent of the victims
5 are male.

6 MS. WINE-BANKS: Okay. So and I also
7 read that the males are not reporting it because
8 of a misunderstanding of what is a crime and
9 believing that it's hazing. Is that an
10 experience that you've had as to why --

11 BRIG. GEN. PEDE: I --

12 MS. WINE-BANKS: -- those reports are
13 falling off?

14 BRIG. GEN. PEDE: That's probably true.
15 I think it has more to do with shame and
16 embarrassment. I think that's the dynamic we've
17 assessed as the principle reason for non-
18 reporting by males.

19 MAJ. GEN. WOODWARD: The RAINN hotline,
20 the rape and incest network that the DoD
21 contracts to do their hotline outside reporting.
22 The Director of that told me that about 90

1 percent of their DoD calls are from males.

2 MS. WINE-BANKS: Really?

3 MAJ. GEN. WOODWARD: So it's a huge
4 number. So --

5 MS. WINE-BANKS: Wow.

6 MAJ. GEN. WOODWARD: -- those males are
7 recognizing that something wrong was done, but
8 they're just very uncomfortable about reporting
9 it within the DoD system.

10 MS. WINE-BANKS: Thank you.

11 LT. COL. MCGOVERN: The Army has
12 published a video, which we shared with the JPP,
13 which we can share with the subcommittee as well,
14 for male-on-male sexual assault.

15 And the incident in that video was
16 during a hazing event ---- or an initiation event
17 that turned into what was hazing and
18 inappropriate touching and exposure and things
19 like that. So within the culture of the
20 Military, that is one place where they're finding
21 these sexual assaults or offenses are occurring.

22 BRIG. GEN. PEDE: As a data point for

1 the subcommittee, again, I think I'd recommend to
2 you the Army crime report, which is available.
3 It gives you kind of nice pie charts and graphs
4 of types of crime, prevalence, and reporting and
5 prosecution. That's very good.

6 The other thing I think that's very
7 interesting in our practice now, and this is
8 Army, is that the bulk, roughly 60 or 70 percent
9 of our trials now are sexual assault offenses.
10 That's an extraordinary change, and that's
11 occurred over the last seven, eight years.

12 There's a significant increase in
13 contested cases, those cases that are not pleas.
14 So that a good chunk of the cases -- so when I
15 was growing up, a lot of my trials were guilty
16 pleas. You develop the evidence -- you'd have
17 the allegation develop the evidence, and then
18 you'd have overwhelming evidence that you would
19 plead guilty.

20 Well, the bulk of those sexual assault
21 cases are contests. Partly, again, because of
22 the kind of cases we're trying. There's not a

1 lot of forensics, there's not a lot of physical
2 evidence. So I have found it interesting, just
3 in reflecting on it, what does that mean?

4 What we also find is our general
5 crimes, crimes against property, crimes against
6 person not sexually-related, are not prevalent.
7 But when you look at the Army crime report, they
8 are. As you look at these matters, this is just
9 a data point for consideration.

10 It's very interesting where we've come
11 in eight years and I think we've come a long way,
12 and I think we still have a lot of work to do.
13 So there's things you can digest and bring your
14 own lens to that might be useful for us to
15 consider.

16 CHAIR JONES: And didn't the ---- at
17 the DoD, the SAPR report just come out for 2014?

18 COL. GREEN: I think so, ma'am

19 CHAIR JONES: So that will have a lot
20 in there.

21 DEAN ANDERSON: Do we have that on a
22 PDF that could be circulated?

1 COL. GREEN: The SAPR report? We've
2 got those. They're voluminous.

3 DEAN ANDERSON: Right. That's what I
4 was thinking that we had.

5 COL. GREEN: The main report details
6 across DoD and then each of the services has an
7 enclosure where they provide a specific report on
8 sexual offenses as mandated by Congress. And so,
9 again, that's not the broad -- it doesn't reach
10 child offenses or other --

11 DEAN ANDERSON: Right.

12 COL. GREEN: -- non-sexual crimes. But
13 it's specific to the DoD.

14 CHAIR JONES: There's a link on the DoD
15 site.

16 LT. COL. KENNEBECK: But it's got
17 charts and a break out.

18 COL. GREEN: Plenty of charts.

19 CHAIR JONES: It's really helpful.

20 LT. COL. KENNEBECK: Before we run out
21 of time, we had provided some slides and I
22 thought it might be -- just so you know what --

1 to give you some context. We talked about them.

2 So these slides were from 2012. When
3 we talked about the changes in 2012. So they're
4 -- I didn't make any edits. These are three
5 years old. I'll let you find them --

6 CHAIR JONES: Yes.

7 LT. COL. KENNEBECK: I think they're in
8 your blue folder, maybe. They're called Article
9 120 slides. So the first slide was really just a
10 picture of how we built this Manual.

11 In 2012, the big push really then was
12 the Military Rules of Evidence, which was in an
13 executive order that the President signed shortly
14 thereafter.

15 Interestingly, I'll point out that
16 Military Rules of Evidence state that if the
17 Federal Rules of Evidence are amended, the
18 President has 18 months to amend the Military
19 Rules of Evidence or the Federal Rule of Evidence
20 amendment applies to the Military Rules of
21 Evidence.

22 So it gives a default end-time, and

1 that drove that EO to signature. So, hence, my
2 reference with respect to Article 36. Enough on
3 that.

4 Okay, and the next slide was just a
5 listing of EOs that were in the pipe, the changes
6 that were going to be incorporated into this
7 book. Once again, we're in the same boat. We
8 have several EOs and statutory amendments to
9 incorporate.

10 This is the slide I really wanted to
11 point out. This is how we viewed Article 120.
12 The top half of the slide was the 2007 version.
13 It had all of the varieties in one ginormous
14 omnibus statute. And you don't have ---- might
15 not have color versions, but the bottom, the
16 forcible sodomy was a change. The burden shift
17 was an issue. The affirmative defense -- those
18 were sort of standout issues that had to be
19 fixed.

20 The bottom was our concept of what
21 2012 did. And that was -- and the rest of the
22 slides talk about the 2012 version, and the

1 differences. Which weren't great, except to make
2 it easier for practitioners. But that slide --

3 BRIG. GEN. PEDE: That's what we used
4 on the Hill to try and persuade that this needed
5 to be done for practitioners to get after what we
6 were trying to get after.

7 LT. COL. KENNEBECK: And then the next
8 slides are all just charts describing the
9 different varieties that -- slide 5 is the 2007
10 version, and then slide 6, 7, 8, and 9, are '12
11 version with its different definitions.

12 If you look in the back, slide 8 and
13 slide 10. The red language, the highlighted
14 language you see in there, reflected slight
15 definition changes. So we got rid of substantial
16 incapacitation.

17 You can see that from the left to the
18 right, and then we also have knows or should know
19 that the person was asleep, unconscious,
20 otherwise unaware. That was new language that we
21 added in '12.

22 MS. KEPROS: We don't have color

1 copies.

2 LT. COL. KENNEBECK: Yes.

3 MS. KEPROS: What particular colors?

4 LT. COL. KENNEBECK: Oh. Hopefully
5 it's a slightly lighter grey. We can get you the
6 color copies.

7 MS. KEPROS: Okay. Thank you.

8 LT. COL. KENNEBECK: Yes. It's number
9 5, you'll see it in color. The point being this
10 is how we explained the statutory changes at the
11 time and how we viewed them and the purpose
12 behind them.

13 So ---- because I noticed from some of
14 the testimony there's uncertainty about what was
15 the intent, specifically with defenses. Did we
16 intend to get rid of mistaken facts as a defense?
17 The answer is no.

18 I don't think that the other changes
19 within the statute, the definition of consent --
20 I think the amendments that were implemented were
21 designed to be similar and hopefully clearer to
22 the field. Not to -- and maybe a slightly

1 broader.

2 BRIG. GEN. PEDE: Well, we were trying
3 to expand definitions to create greater
4 opportunity to identify conduct that was very
5 subtle, very nuanced, very potentially coercive.
6 To equip prosecutors to identify it and to
7 encourage victims to report it, and so I see that
8 as a progressive thing too.

9 It doesn't end in '12, obviously as we
10 see and you see things, we can anticipate a
11 little bit better. Maybe it's the statute, maybe
12 it's through an EO. And maybe -- ma'am, I go
13 back to your point about the language on consent.

14 If you'd raised that again with me on
15 the JSC, I would have said, okay, let's figure it
16 out. Let's see if we can find a way to see if
17 it's truly having some impact in the courtroom,
18 and I think there's ways to do that. I do.

19 I'm intrigued that one of your issues
20 is the definition of sexual act and sexual
21 contact too narrow or is it too broad? Our
22 purpose in '07 and '12 was to broaden it and to

1 anticipate all potential possibilities.

2 I think we charted carefully -- very
3 deliberately, very carefully, but we didn't
4 anticipate objects that were an extension of the
5 arm, but we thought we would write a statute
6 broad enough to incorporate such a notion.

7 One appellate court seems to go down
8 that road, so we'll see, but they were certainly
9 written -- it was certainly written with the
10 notion that we might get it wrong because we got
11 it wrong the first time. We might get it wrong
12 the second time.

13 LT. COL. KENNEBECK: So that's an
14 example of how it's not broad enough.

15 BRIG. GEN. PEDE: Right.

16 LT. COL. KENNEBECK: Another example of
17 how it might be too broad is if you put your
18 finger in somebody's mouth with the intent to
19 humiliate --

20 COL. SCHENCK: Exactly. That's what I
21 was thinking.

22 LT. COL. KENNEBECK: -- it might be

1 rape. So it could be both.

2 BRIG. GEN. PEDE: I responded to that
3 argument more times than I can count. And I
4 said, well, at some point, you're going to have
5 to trust the responsible people in the criminal
6 justice system to do the right thing.

7 But they said, but it's too over-
8 broad. Well, okay. Rewrite it and give me a
9 version that you think would allow for someone to
10 do that in a bad way without compromising that
11 compatibility to get after that.

12 LT. COL. KENNEBECK: Would that case
13 even make it to the Panel anyway? I mean, really
14 it's almost an academic debate.

15 LT. COL. HINES: Sir, just one more
16 question, briefly for the benefit of the Panel.

17 Colonel Schinasi brought up a couple
18 statements about the Benchbook, and since that's
19 an Army product, I mean, having been a judge and
20 worked with the Benchbook, I just want to clarify
21 it.

22 The Bench book is not a product of

1 statute or even an EO. The judiciary puts the
2 Benchbook together and the Army does that, but
3 all of us as judges use it.

4 The way the Benchbook is refined is
5 when counsel appeal an instruction that a judge
6 has been given, that goes up. The appellate
7 court either blesses that or not, and so that's
8 how the Benchbook is refined, and I didn't know,
9 Sir or Chris, if you wanted to just explain that
10 real briefly.

11 CHAIR JONES: Can I ask a quick
12 question before that goes on?

13 LT. COL. HINES: Yes, ma'am.

14 CHAIR JONES: Because I was wondering
15 -- or at least I thought, as the judges' sit to
16 create their Article 120 instructions, and
17 there's an -- wouldn't they go ---- obviously
18 they go to the statute, wouldn't they then go to
19 the EO for the explanations?

20 LT. COL. HINES: Yes, ma'am. My
21 understanding is --

22 CHAIR JONES: I just wanted to make

1 sure that --

2 LT. COL. HINES: -- they would --

3 CHAIR JONES: -- that would be an --

4 LT. COL. HINES: -- they have the --

5 CHAIR JONES: -- automatic --

6 LT. COL. HINES: Right. They would

7 automatically look --

8 CHAIR JONES: -- input to the

9 Benchbook.

10 LT. COL. HINES: -- to the statute. If

11 the statute doesn't speak to it, is there

12 anything the President has given us? And if

13 there's still a vacuum, like there has been since

14 2012, the judiciary does the best that they can

15 to put --

16 CHAIR JONES: Got you.

17 LT. COL. HINES: -- an instruction

18 together with these definitions and explanations.

19 BRIG. GEN. PEDE: And all the cases.

20 CHAIR JONES: Oh, yes.

21 LT. COL. HINES: But then that's --

22 BRIG. GEN. PEDE: And all the

1 litigation.

2 LT. COL. HINES: And that's why they
3 challenge --

4 COL. SCHENCK: But the Benchbook has
5 the comments with the cases. When I was on the
6 appellate bench, I actually wrote two opinions
7 that had an appendix to my opinion with the
8 Benchbook instruction, so they could just take
9 it.

10 LT. COL. KENNEBECK: So the military
11 judges in all the Services have input into the
12 Benchbook. They have a little committee that
13 they manage internally, judges only, that review
14 the changes. And then the Services agree. And
15 then the Army pretty much acts as executive
16 agents, so they put this pamphlet together. But
17 it's a Joint Service product that is -- yes, and
18 it's certainly gotten thicker.

19 I think if we did add explanation to
20 Article 120, it would be able to reduce the
21 Benchbook a little bit, and maybe simplify some
22 instructions. So explanation would be helpful.

1 I also agree -- although there's an executive
2 order out there, like I said, it has sample
3 specifications, it has the elements of the
4 offenses, it doesn't have much explanation.

5 BRIG. GEN. PEDE: Right.

6 LT. COL. KENNEBECK: So there's much
7 work that --

8 CHAIR JONES: Right.

9 LT. COL. KENNEBECK: -- much
10 contribution that could be made to the next
11 executive order because at the time that
12 executive order was built, it was difficult to
13 anticipate what the issues might be, what needs
14 further defining. That's what we need time for.

15 Now we've had some of that time and,
16 as you know, the Joint Service Committee is very
17 responsive to inputs from Panels like this. It's
18 such a great time. What we miss, in my
19 experience and looking -- reading historically,
20 in 1948 -- 1949, we worked with Congress and over
21 half of Congress were former veterans.

22 In '69 when we built our appellate

1 court system, a good portion of Congress had
2 military experience. Then in the early '80s, we
3 had another iteration. Once again, there's a
4 decent number of folks who at least had a decent
5 amount of trust still. Now I don't know that
6 that exists. We don't have that liaison with
7 sitting Members that we used to have.

8 And that seems to be the missing link
9 a lot of times. We have Joint Service Committee,
10 we have Panels like this, but we don't
11 communicate as effectively as I wish we would
12 with the Hill, from my perspective.

13 BRIG. GEN. PEDE: And I would offer as
14 well, the 11 notions that you have, the 11
15 questions, I would venture to say are not
16 delineated in the EO for 120 that's sitting on
17 the President's desk.

18 LT. COL. KENNEBECK: Except Number 11,
19 sir.

20 BRIG. GEN. PEDE: Except for Number 11,
21 I apologize.

22 LT. COL. KENNEBECK: Number 11 is in

1 the EO.

2 BRIG. GEN. PEDE: The subtleties of
3 these questions and whether they've reached a
4 gravity level to necessitate a change, have
5 probably not entered ---- I'm confident in
6 saying, are not in the EO.

7 DEAN ANDERSON: Well, a lot of these
8 are definitional.

9 LT. COL. KENNEBECK: Yes, ma'am.

10 DEAN ANDERSON: And you're saying that
11 the EO as it's currently -- the draft that's
12 currently pending doesn't include clarifications
13 of the ambiguity --

14 LT. COL. KENNEBECK: Not all of these.
15 It's been a while since I've looked at it. There
16 are, I think, three paragraphs in the -- two or
17 three paragraphs in the explanation. So when you
18 see the copy, which you'll see --

19 DEAN ANDERSON: Yes.

20 LT. COL. KENNEBECK: -- eventually,
21 you'll see that there's some explanation, but not
22 much.

1 DEAN ANDERSON: Okay.

2 LT. COL. KENNEBECK: I don't think any
3 of these issues are addressed.

4 DEAN ANDERSON: Okay.

5 CHAIR JONES: Ms. Holtzman?

6 HON. HOLTZMAN: So are you saying then
7 that even if we don't think there's a statutory
8 change that needs to be made, that raising some
9 of these issues for the Joint Services Committee
10 in terms of getting clarification of these
11 points, would nonetheless be very important?

12 LT. COL. KENNEBECK: Absolutely.

13 HON. HOLTZMAN: Do you agree with that,
14 General?

15 BRIG. GEN. PEDE: Oh, more than
16 important.

17 HON. HOLTZMAN: Okay.

18 BRIG. GEN. PEDE: We are all finely
19 attuned to what you're doing, and as I said up
20 front in my comments, this is our legislative
21 history. We don't get this on the Hill.

22 That's not a disparagement. It's just

1 we don't get good public policy discussion like
2 this on these kinds of issues on the Hill. At
3 least in my limited experience, ma'am. I know
4 you're far more experienced than I, but this
5 level of discussion is not happening.

6 So what you're doing here -- this
7 report that you've written -- the committee
8 wrote, is phenomenal. It's a phenomenal -- I
9 don't agree with all of it, but it's a wonderful
10 report. Collective effort to craft this report
11 is wonderful for all of us practicing criminal
12 law.

13 So what you write will be immediately
14 pushed through the JSC, digested by the Judge
15 Advocates General and OSD and I'm confident, will
16 move out.

17 CHAIR JONES: Any other questions?

18 LT. COL. MCGOVERN: General Pede or
19 Colonel Kennebeck, with the EO that's pending, my
20 understanding is it will contain the sample
21 specifications. Will those specifications help
22 practitioners with definitions in any way?

1 As they begin their deliberations this
2 afternoon, can you just explain the preferral
3 charge process and how to standardize people use
4 those draft specifications, how is the EO going
5 to help?

6 LT. COL. KENNEBECK: Okay. So a
7 specification is how we describe our charge. So
8 we have charges and specifications and the charge
9 is just the number of the offense. So the charge
10 would be Article 120, and the specifications
11 listed under each would be each iteration of the
12 120 that was committed -- allegedly committed.

13 And the specification is generally a
14 long sentence in that Soldier X, at certain date,
15 at certain location did do X, Y, and Z in
16 violation of Article 120. That's a sample
17 specification, and it basically covers the
18 elements.

19 Notice pleading. So the
20 specifications lay out notice to the accused as
21 to what he or she is being charged with, and
22 those specifications won't necessarily help with

1 definitions. The elements though -- it spells
2 out the elements for each offense.

3 So each of the version -- the
4 varieties of rape and varieties of sexual assault
5 that exist in Article 120 will have the elements,
6 one, three, four, five, six -- however many
7 elements there are. Those elements will help
8 practitioners understand, okay, this is what I
9 must prove beyond a reasonable doubt, these six
10 things, before I'm guilty of this offense, before
11 I can prove this offense. That will help.

12 I don't know about definitions because
13 we're going to use the same words. So I suspect
14 you're not going to get much definition help, but
15 understanding of what was meant can be applied
16 when you see it spelled out in the elements
17 sometimes. So I think it would be some help, but
18 not the level of assistance you're looking for
19 here.

20 LT. COL. MCGOVERN: And we actually
21 were looking through the JPP website and we do
22 have the -- I believe they provided the Federal

1 Register previously --

2 LT. COL. KENNEBECK: You probably could
3 ask the Joint Service Committee -- it's a direct
4 question. Is the pending executive order much
5 different from the one in the Federal Register
6 and if it's different, how is it different? And
7 then you'd know.

8 COL. GREEN: We'll provide that to the
9 subcommittee. We gave it to the Panel at the
10 September meeting, and so the guidance -- which
11 includes the Article 120 information that's been
12 discussed. And it does include a proposed
13 Article 134 offense for indecent conduct. And so
14 the terms of that -- we can get that to the
15 subcommittee.

16 LT. COL. KENNEBECK: And so just to
17 clean that issue up. So you don't need indecent
18 conduct in Article 134 to charge it. You can
19 charge it in 134 right now, today.

20 The reason that it is out of the
21 Manual is because in the 2007 prior version --
22 the original version of Article 120, there was an

1 indecent acts in 134. When the 2007 omnibus sex
2 assault statute came to be, it was sucked into
3 120. So indecent conduct was pulled into 120 to
4 try and put all the sex offenses together in one
5 place.

6 When the 2012 version came out, it
7 didn't fit neatly in any of the categories. It
8 didn't fit as an adult offense or a child offense
9 or an other. So it was left out with the intent
10 of adding it back to 134.

11 And so all along we could have charged
12 ---- regardless of its absence, we still can
13 charge it today. It's just cleaner for the
14 practitioner to have it in 134 so that we all
15 agree what the precise elements are, what the
16 precise definition is, and what the max
17 punishment is.

18 If you don't have that established,
19 then you have to write it in a way that makes
20 sense to the accused and makes it through the
21 judge's scrutiny and then you have to argue about
22 what the maximum punishment is. If it's in 134

1 and in the book, then we all know what the
2 offense is and what the max punishment is.

3 CHAIR JONES: I want to thank you both
4 very much. It's been really very, very helpful,
5 and we appreciate it.

6 BRIG. GEN. PEDE: Our pleasure. Thank
7 you very much for having us.

8 CHAIR JONES: All right. We'll break
9 for lunch now.

10 (Whereupon, the above-entitled matter
11 went off the record at 12:12 p.m. and resumed at
12 1:06)

13 CHAIR JONES: Okay. First I wanted to
14 thank you so much, Professor, for sending in what
15 I found to be an incredibly helpful -- can you
16 hear me?

17 DR. SCHULHOFER: Yes, I can. Can you
18 hear me?

19 CHAIR JONES: Yes.

20 DR. SCHULHOFER: Great.

21 CHAIR JONES: Now I'm thanking you for
22 having sent in an incredibly helpful memo to us

1 all laying out the 11 issues and giving us an
2 analysis, and my thoughts for these deliberations
3 this afternoon were to sort of take these issues
4 in order and just see what people's general
5 thoughts were about them.

6 We had a very terrific presentation
7 this morning where we were, at least I learned,
8 and I think I understand it now, you know, what
9 you can do through the executive order process
10 versus trying to have Congress amend a statute.

11 Hello?

12 DR. SCHULHOFER: Hello.

13 CHAIR JONES: Yes, okay.

14 In any event, so -- so that was very
15 helpful, and I think that that transcript will be
16 helpful for you.

17 Let me start --

18 DR. SCHULHOFER: I discussed this with
19 Colonel Hines, and I --

20 CHAIR JONES: Oh, shoot. You know,
21 now we have you coming in and out, and I -- Dale
22 is here shaking his head. Are you on a cell

1 phone, Professor?

2 DR. SCHULHOFER: No, this is a land
3 line.

4 CHAIR JONES: Okay, we'll call back.
5 If you can't hear us, you'll let us know, and
6 when you're speaking, if we can't hear you, I'll
7 try to let you know, and we'll play it by ear.

8 DR. SCHULHOFER: It seems like this
9 may be a criterion --

10 CHAIR JONES: Yeah. You know,
11 Professor, Professor, I can hear the first few
12 words typically when you begin to speak, and then
13 after that, it's intermittent, and we can't hear
14 you.

15 We'll keep trying.

16 DR. SCHULHOFER: You can't hear me --

17 CHAIR JONES: No, I am -- now, it's
18 impossible to -- we can -- we know you're
19 speaking, but we can't make out any of the words.
20 It's a bad transmission.

21 DR. SCHULHOFER: Okay, I'll just
22 listen.

1 CHAIR JONES: Okay. I think you just
2 said you'll just listen.

3 DR. SCHULHOFER: Yes.

4 CHAIR JONES: Okay.

5 LT. COL. HINES: Professor Schulhofer,
6 this is Lieutenant Colonel Hines. Can you hear
7 me?

8 DR. SCHULHOFER: Yes.

9 LT. COL. HINES: It may have something
10 to do, if you -- do you have your cell phone on
11 speaker?

12 CHAIR JONES: It's a land line he
13 said.

14 LT. COL. HINES: Oh, okay. You're on
15 a land --

16 DR. SCHULHOFER: Can we try it on
17 speaker?

18 LT. COL. HINES: Right, well whenever
19 you're on, if you could try to --

20 DR. SCHULHOFER: Is this better?

21 LT. COL. HINES: Okay, I am sorry, go
22 ahead?

1 DR. SCHULHOFER: Is this better?

2 CHAIR JONES: Yes.

3 LT. COL. HINES: Yes.

4 It's probably inconvenient for you,
5 sir, but we can hear much clearer however you
6 have it. If the phone is up to your ear right
7 now, it's much clearer.

8 DR. SCHULHOFER: Yes. Is that Colonel
9 Hines?

10 LT. COL. HINES: Yes sir.

11 DR. SCHULHOFER: Okay, do you
12 understand what I was trying to say that I'm
13 afraid the system is going to be --

14 LT. COL. HINES: Professor, you're
15 breaking up again, so here is what I would
16 suggest. I guess it's a problem, a transmission
17 problem maybe on this end.

18 If I give you my cell phone number,
19 could you -- could you text, or do you want to
20 just send me emails when you want something
21 reflected on the record?

22 DR. SCHULHOFER: Yes, I'll email you.

1 LT. COL. HINES: Okay.

2 HON. HOLTZMAN: Well, I have a cell
3 phone that's got speaker on it, if you wanted --
4 if you wanted to try that.

5 LT. COL. HINES: Well, Ms. Holtzman
6 said she has a cell phone with a speaker on it.

7 HON. HOLTZMAN: Why don't you call
8 into that, see how that works?

9 LT. COL. HINES: All right, and what
10 --

11 HON. HOLTZMAN: (Number redacted.)

12 LT. COL. HINES: Okay, Professor,
13 we're going to try this backup. If you will hang
14 up and call back Ms. Holtzman's cell phone.

15 DR. SCHULHOFER: Yes.

16 LT. COL. HINES: And she's going to
17 put it on speaker, and I'm going to read you the
18 number. Are you ready?

19 DR. SCHULHOFER: Yes.

20 LT. COL. HINES: (Number redacted.)

21 HON. HOLTZMAN: Professor?

22 DR. SCHULHOFER: Yes.

1 HON. HOLTZMAN: All right. It's not
2 loud enough. Maybe if we put it on the
3 microphone right here.

4 Professor, talk please.

5 DR. SCHULHOFER: Is this better?

6 HON. HOLTZMAN: We need to get you --
7 yeah, it's on our side.

8 DR. SCHULHOFER: If I could just talk

9 --

10 HON. HOLTZMAN: Perfect, perfect.

11 DR. SCHULHOFER: -- can you hear me?

12 HON. HOLTZMAN: Yes, now we're okay,
13 and when mine runs sort of out of battery, we'll
14 put someone else's phone up.

15 DR. SCHULHOFER: Okay. Well I was
16 just saying that I really think this -- despite
17 good intentions, I think this approach may wind
18 up being more disruptive than helpful, and I will
19 just listen, and if I'm moved to jump in, I will
20 send an email, but I really don't want the entire
21 afternoon to be disrupted with this.

22 HON. HOLTZMAN: Professor, we've

1 solved the problem. Professor, we've solved the
2 problem.

3 CHAIR JONES: You're coming in --
4 you're coming in loud and clear, so this is
5 great.

6 DR. SCHULHOFER: Great, terrific.

7 CHAIR JONES: All right. I'm not
8 going to thank you again, though, but thank you.
9 It was a wonderful memo, and I intend to use it
10 to order our deliberations.

11 I guess, if I didn't say this already,
12 we start these deliberations without any
13 preconceived notions that we intend to offer
14 changes, whether statutory or explanations, to
15 the -- for an executive order.

16 We're -- we really want to do an
17 analysis from scratch, if you want to call it
18 that, with respect to each of these 11 issues,
19 and see on the -- on the merits, what we want to
20 do, if anything.

21 And I think if we reach some sort of
22 consensus that we might want to do something on

1 one or more of these, then I -- several Members
2 of the Subcommittee have suggested to me that I
3 ask two or three of the Panel of Members of the
4 Subcommittee to actually work together and come
5 up with a proposal after these deliberations for
6 circulation to the full Subcommittee and for
7 further deliberations, but let's see how far we
8 get.

9 I don't have any particular design in
10 mind for how we do these, so I'm -- other than to
11 go in order, the order that the issues have been
12 presented to us in, and then ask for your -- your
13 basic general comments.

14 I will say this: Ms. Kepros has
15 submitted her -- her version of what she believes
16 would be a terrific substitute for the current
17 120, and I've spoken with Ms. Kepros, and she has
18 graciously agreed that we are going to table that
19 until we've had a chance to talk about the 11
20 issues that we have in front of us, so I thank
21 you for that courtesy, Ms. Kepros.

22 I am going to ask General Schwenk

1 because I happen to know he has some strong views
2 on this to kick off the discussion, and why don't
3 we go from there? General?

4 BRIG. GEN. SCHWENK: Okay. I'm not --
5 well, I guess my strongest view is that I would
6 like to put myself on the side of no change at
7 the moment, so Chuck Pede didn't want to be the
8 no-change person, so I'll be the no-change
9 person, and put the burden on everybody who
10 believes change to one of the 11 needs to be made
11 in the near-term to justify what's broken -- if
12 it ain't broke, don't fix it, justify what's
13 broken -- and if it's not broken but there is
14 some other reason why it needs to be changed,
15 then whatever that is, and then propose the
16 change, which we may do through working groups or
17 whatever.

18 And then evaluate that other saying
19 besides "If it ain't broke, don't fix it," is
20 "Beware of the unintended consequences," and so
21 we want to make sure that we give ourselves
22 plenty of time with whatever we think is a great

1 idea to do what Judge Jones said earlier and get
2 it out for comment and find out whether it was
3 such a great idea or not.

4 As far as this afternoon goes, some
5 other ideas I had is it would be interesting to
6 know at some point, and maybe after we all get,
7 you know, five minutes each to go around the
8 table, whether there is anyone on 1 through 11,
9 we could just go down quickly, that nobody thinks
10 ought to be changed, so we have a quick kill
11 right away, that, you know, everybody agrees no
12 change is needed to number whatever, then we
13 could eliminate those.

14 And then we could have a discussion of
15 of the remaining ones, which ones are
16 complicated? Like obviously, 1 is complicated,
17 you know? Some of the others don't seem to be as
18 complicated. Those could be quick fixes, and
19 maybe we could sort of get an idea of one or two,
20 just, you know, language today, and then the
21 working group people could be left with the ones
22 that are more difficult, and it needs to be

1 thought and battled out.

2 So the reason that I am an if-it-
3 ain't-broke-don't-fix-it person is I didn't hear
4 any compelling reason from anybody that this
5 statute is in such need of repair, imminent
6 repair, that we are -- justice is at risk in the
7 short term.

8 I did hear there is a lot of
9 confusion. I did hear that it would be a lot
10 better if things were clarified, and those are
11 good reasons, but I -- and I think those are
12 reasons that you can wait a while, you don't have
13 to jump.

14 On the other hand, I am happy to be in
15 a working group and work out language of
16 proposals, but I'm sort of in the if it ain't
17 broke, we don't need to fix it camp at the
18 moment. Thank you.

19 CHAIR JONES: Can I just ask if any
20 other Panel member would -- or Subcommittee
21 member would like to discuss that particular
22 issue, like let's not change anything, or is it

1 the general consensus that we should at least
2 explore each of these and see whether or not we
3 want to make changes?

4 I am seeing nod -- yes, Ms. Kepros?

5 MS. KEPROS: I just think we should go
6 through issue-by-issue since that's what the JPP
7 asked us to do. I think we owe them a response,
8 even if it's fairly cursory.

9 CHAIR JONES: Right, okay. Well I
10 think that makes perfect sense, and I like the
11 way you've thought it through, General, because
12 we might have some that -- we certainly have some
13 that are easier than others. Whether we'll get
14 to a quick kill, I don't know, but we'll see.

15 All right. Glen has provided us with
16 11 issues as well, and the first one is whether
17 the current definition of consent should be
18 modified. Is it unclear or ambiguous? And that
19 -- I am happy to open up the floor to anyone who
20 would like to discuss that.

21 Yes, Dean Anderson?

22 DEAN ANDERSON: Okay.

1 We're all trying to still use these.

2 CHAIR JONES: I think that's probably

3 still --

4 DEAN ANDERSON: Okay.

5 CHAIR JONES: -- a good idea.

6 DEAN ANDERSON: Yeah.

7 CHAIR JONES: Professor Schulhofer,

8 you're there, and you hear us?

9 DR. SCHULHOFER: Yes, I can.

10 CHAIR JONES: Great.

11 DEAN ANDERSON: Okay.

12 So I think that I would have written

13 the definition of consent differently. However,

14 that's not what's at issue.

15 And the question posed I think is

16 posed correctly by General Schwenk, and that is

17 the presumption should be against changes unless

18 it's clear that the change is necessary. That's

19 just sort of the burden should be on the status

20 quo.

21 I like Stephen Schulhofer's definition

22 better, but I am not sure, I am not yet

1 convinced, that we have enough evidence that
2 there is a problem around how consent is defined
3 that it's sufficiently ambiguous or has a lack of
4 clarity.

5 Nor am I convinced, although I
6 completely agree with the argument that
7 Congresswoman Holtzman puts forward, that there
8 is a problem potentially with the residual
9 reference to resistance. It's not clear that in
10 the field, that -- we haven't been presented with
11 evidence, it seems to me, that in the field, that
12 that leads to problems, and I'd certainly be open
13 to hearing that evidence.

14 So I do agree with the revisions. I
15 think they're -- they're clearer than the status
16 quo, but I am not sure that the revisions rise to
17 the level of unnecessary change.

18 CHAIR JONES: Ms. Holtzman?

19 HON. HOLTZMAN: Yes, I -- I am not
20 sure that I understand exactly how Professor
21 Schulhofer wants to revise the statute.

22 I -- I should begin by saying that I

1 am not sure that I agree with the formulation of
2 how we should proceed. I don't know that there
3 is a burden one way or another on us that we have
4 to overcome in terms of making a suggested
5 change. I think that if you heard the comments
6 of the General and his associate, the
7 suggestions, even if they are not statutory,
8 could be very important in terms of clarifying
9 language in an executive order.

10 So if we start out saying we -- the
11 burden has to be to show that there needs to be a
12 statutory change, I think that that is a
13 misconception, and I would not agree with that
14 approach at all.

15 I think we should look and see, at the
16 statute, whether the -- whether the concerns are
17 legitimate. I think the question you asked is
18 appropriate. Do we know that this makes any
19 difference in the real world? I am not sure that
20 we do.

21 And then the question is what do we do
22 about it? My own approach would be basically to

1 recognize that if there is an issue here, it
2 could be an abstract issue, or we could have
3 evidence that there is a problem, as the General
4 pointed out himself with regard to the issue of
5 defenses, I think we should raise it. If we
6 think it's a legitimate concern, we should say
7 it's a legitimate concern.

8 And then the question is based I guess
9 on further discussion whether this needs
10 correction in any way, or whether it needs
11 correction through an executive order, through
12 some explanation, or through a statute.

13 But I think to start off and say we
14 can't do a -- if this doesn't require statutory
15 change, then we don't want to do anything, that's
16 not what I heard the General saying, but maybe I
17 misunderstood what the General was saying. My
18 understanding was that --

19 CHAIR JONES: Well I agree that we
20 don't -- we should not just say well, we can't do
21 a statutory change, therefore we're not going to
22 do anything. No, I agree completely with what

1 you just said. Actually, I didn't understand
2 that to be what General Schwenk said, but I may
3 not have heard --

4 HON. HOLTZMAN: If I misunderstood --

5 CHAIR JONES: -- him --

6 HON. HOLTZMAN: -- you General, I
7 apologize.

8 BRIG. GEN. SCHWENK: That's fine.

9 HON. HOLTZMAN: Did I?

10 BRIG. GEN. SCHWENK: We'll have plenty
11 of discussion time.

12 HON. HOLTZMAN: Did I misunderstand
13 you?

14 CHAIR JONES: But the bottom line is
15 that's not going to be our burden. I couldn't
16 agree with you more.

17 HON. HOLTZMAN: Okay. So I'd like to
18 address the definition of consent issue, if
19 that's okay, because I do think that there is a
20 -- and I don't know if ambiguity is the right
21 word, but the language in the statute pulls in
22 two directions.

1 On the one hand, it wants to say -- in
2 the definition of consent, I like the term
3 "freely given." I don't like the change,
4 suggested change to "voluntary."

5 But, you know, it does suggest in the
6 last paragraph that -- where it says all the
7 surrounding circumstances are to be considered in
8 determining whether a person gave consent, I
9 would put a period there because I think if you
10 say or whether a person did not resist or ceased
11 to resist only because of another person's
12 actions does suggest to me that some kind of
13 resistance may be required, and it raises that as
14 a point, and I don't -- to me, it's -- it's just
15 mischievous.

16 If it -- that's all. I don't know if
17 it's actually harmful, but I would say that --
18 that if that language could be deleted, I don't
19 know what kind of problem that would create. I
20 think that would be better. There may be another
21 point in the statute, 120, where also, and I
22 think you pointed that out Professor, but I can't

1 remember now where it is, where the issue of
2 resistance is raised, and again -- yeah, for
3 example, (b), in the definition of force, (b),
4 5(b), and that may raise the same issue.

5 And so I -- my own preference somehow
6 would be to address the fact that resistance is -
7 - is raising its ugly head in this statute, and
8 what we -- you know, I am not -- I am not sure
9 that we need a statute or an executive order, but
10 to address that to -- to point that problem out
11 and to suggest that that be addressed.

12 CHAIR JONES: Yes. Maggie?

13 MAJ. GEN. WOODWARD: Yes, Professor,
14 I just have a question.

15 I agree that I like your input for
16 redoing the definition of consent, and in my
17 opinion, I think we've heard a lot of testimony
18 that shows that it has been a problem for the
19 practitioners that it's not clearly defined, so I
20 do think the sense I get from hearing everybody
21 and also the folks that support the modification,
22 the number of them that do, that says that we

1 should look at that, modifying it.

2 And I like the Professor's suggested
3 one, but except for the very opening half of the
4 first paragraph, or first sentence, where you say
5 "For any offence require proof of penetration."
6 I don't understand why that phrase should be in
7 there, and I would strike it, but I just wanted
8 to ask Professor, you know, why you have it in
9 there I guess so that I understand.

10 DR. SCHULHOFER: I think -- can you
11 hear me?

12 CHAIR JONES: Yes.

13 DR. SCHULHOFER: The only reason I put
14 that in was because I remain undecided myself
15 about whether affirmative consent is appropriate
16 with respect to contact, and that depends in part
17 on how broadly the definition of sexual contact
18 is couched.

19 So if it's a kiss on the cheek, then
20 we run into this problem of whether it makes
21 sense to require affirmative permission before
22 you can give someone a peck on the cheek.

1 I just intended that to reserve
2 judgment on that issue, not to say that it would
3 be required the other way, but just to -- just in
4 my personal opinion, I'm undecided about it.

5 MAJ. GEN. WOODWARD: I guess I would
6 ask the question that if you --

7 CHAIR JONES: He can't hear you.

8 DR. SCHULHOFER: -- to what
9 Representative Holtzman said, I think she's
10 suggesting that we not focus on whether -- that
11 we focus only on whether there's a problem and
12 not whether it should be fixed in the statute or
13 executive order or some other way, and so we get
14 to the end of the road thinking about whether
15 there is a problem, and I agree with that. I
16 think that is very helpful.

17 I just wanted to add as a footnote
18 that I believe that -- I am not an expert on this
19 -- but I believe that if there are to be any
20 changes by executive order, I think they can go
21 only in one direction. I think they can only be
22 ones that make the statute narrower in favor of

1 the consent.

2 So for example, if the statute implies
3 that the victim is required, but you have the
4 President say by executive order that it isn't, I
5 think there is issue with whether that can now be
6 precluded by executive order. I don't have the
7 answer to that, but my guess from a civilian
8 context would be that it's provided by the
9 statute.

10 So if the statute does imply, then it
11 may be that a change, if clarification is needed,
12 it may have to come from the statute.

13 CHAIR JONES: Well, just generally,
14 from the presentation we had this morning,
15 Professor, the executive order, the President in
16 the Punitive Articles, and it would go to 120,
17 the President is allowed to explain the elements,
18 basically, and so that's the kind of -- now, I'd
19 have to go to very specific language.

20 You can't change the clear meaning of
21 the statutes, but you can explain the elements if
22 you're the President, and I'm sure that there

1 will be times when people will debate whether
2 that commentary is an explanation or -- or it
3 violates the rule that he can't change the clear
4 meaning of the statute.

5 But which particular provision are you
6 talking about that you think might narrow
7 something here? I couldn't hear you.

8 DR. SCHULHOFER: I am sorry, can you
9 repeat that?

10 CHAIR JONES: Yes.

11 DR. SCHULHOFER: Hello?

12 CHAIR JONES: Yes, can you hear me?

13 DR. SCHULHOFER: Yes.

14 I was thinking of Representative
15 Holtzman's comment that the statute leaves some
16 inference that resistance might be required, and
17 that that -- that's something that she feels the
18 implication should be resisted and rejected.

19 That would be an example of one where
20 if it's true that the statute doesn't require --
21 I am sorry -- if it's true that the statute does
22 allow lack of resistance as to consent, I have a

1 question whether that can be stated during the
2 executive order.

3 CHAIR JONES: Well, if we were --
4 Professor, if there was a consensus that that
5 language is confusing or is causing more trouble
6 than it's worth in terms of making it look as
7 though resistance is required, we might decide to
8 go with the proposal of -- of Ms. Holtzman and
9 just delete that language.

10 I think you're right that that could
11 not be -- that wouldn't be the explanatory
12 writings by the President in, you know, the
13 Punitive Articles section of the UCMJ.

14 What it would have to be, and this is
15 just me, my opinion, is that would probably have
16 to be a statutory fix.

17 But -- but we -- on the merits, we
18 haven't really discussed whether we -- whether we
19 would think that that language there, which is,
20 just to be specific, the last clause in Section
21 8(c), under Consent, which reads "or whether a
22 person did not resist or ceased to resist only

1 because of another person's actions," we really
2 haven't discussed among the whole Subcommittee
3 yet whether or not we think that is a problem, is
4 a sufficient problem, or what have you.

5 But I take your point. I think on
6 this, my opinion would be it probably has to be a
7 statutory fix.

8 Lisa?

9 MS. FRIEL: Yes.

10 CHAIR JONES: Here, sorry.

11 MS. FRIEL: Okay. It's Lisa Friel,
12 Professor.

13 I think -- I have a couple thoughts.
14 One is that if we were to go to some form of
15 affirmative consent, that that would have to be
16 statutory. That's a major difference in the way
17 this is written.

18 I am not convinced even, and I was a
19 sex crimes prosecutor for years, that that is the
20 right thing to do in the military justice system.
21 It's one thing to do it on a college campus where
22 the worst that can happen to you is get expelled.

1 It's another thing when the worst that can happen
2 to you is imprisonment for a significant period
3 of time.

4 So I am not even convinced of that,
5 but if you go that way, I think it has to be
6 statutory, so given a lot of things we've talked
7 about, I am more leaning towards what can we do
8 to make the -- the definition that we have here
9 clearer by executive order?

10 And I -- and my thoughts on that are,
11 one is, perhaps we need by executive order to say
12 what we mean by competent person. We heard that
13 one judge opened a dictionary to look at that,
14 but others apparently are having an issue with
15 what exactly am I supposed to tell somebody is a
16 competent person? I would think that's something
17 we could, for lack of better lingo, get away with
18 in an executive order.

19 I also think it's interesting, this
20 line that -- that Representative Holtzman is
21 bothered by. I think the problem with the line
22 is just the order it's written in, and tell me if

1 I'm wrong.

2 If you were to flip and take the end
3 of the line and put it at the beginning and say,
4 and we -- you can't do that by statute, but you
5 could explain it in executive order -- if it said
6 "There is no" -- it's something like this, but
7 "There is no consent just because of a lack of
8 verbal or physical resistance," and the rest of
9 the line, I don't think there would be any
10 confusion what they are trying to say there.

11 I actually think what they were trying
12 to do was get rid of this idea that you have to
13 resist, and that is why they used the words
14 "resistance." Take the whole middle of the line
15 out and just do the "lack of verbal or physical
16 resistance does not constitute consent." I think
17 that would be clear, it's just that they add
18 those other things in the middle that -- and by
19 the time you get to "does not constitute
20 consent," you're wondering what they are saying.

21 Because I did not have a problem -- I
22 did not see that that implied that you had to

1 resist at all. Now clearly --

2 HON. HOLTZMAN: (c), I am talking
3 about (c), not (a).

4 MS. FRIEL: Oh, I am sorry, I thought
5 you were talking about --

6 HON. HOLTZMAN: No --

7 MS. FRIEL: -- (a).

8 HON. HOLTZMAN: -- (c) and then 5(b)
9 are the two issues that trouble me, 8(c) and
10 5(b). But (c) particularly.

11 MS. FRIEL: 8(A) you were fine with?

12 HON. HOLTZMAN: I don't know about
13 fine, but --

14 (Laughter.)

15 DR. SCHULHOFER: I do think 8(A) is a
16 problem too because it says "lack of verbal or
17 physical resistance resulting from the use of
18 force does not constitute consent," but that
19 implies a lack of verbal or physical resistance
20 not resulting from the use of --

21 HON. HOLTZMAN: But the --

22 DR. SCHULHOFER: -- constitute

1 consent.

2 HON. HOLTZMAN: Right. I agree with
3 that. Okay. I stand corrected about that, I am
4 sorry.

5 I have a problem with (a) then, too.
6 So 8(A) and 8(c) raise -- so, I'm sorry, you were
7 making a point, I don't mean to --

8 MS. FRIEL: No no no no, that's okay,
9 I was mistaken about the point that you made.

10 COL. SCHINASI: If we look at what did
11 the drafter of 8(c) intend, it could simply be
12 that in 8(c), the drafter intended that
13 circumstantial evidence is usable to prove
14 consent or a lack of consent materially, meaning
15 anything else.

16 Because if you compare that with
17 paragraph 8(A), 8(A) talks about a lack of
18 physical resistance. And so the only thing that
19 (c) would add is that this is --

20 DEAN ANDERSON: So I think I have --

21 CHAIR JONES: Professor? Yes, that's
22 right, we have a couple.

1 DEAN ANDERSON: Yeah. So I think I
2 might have -- you know, I tend to be someone who
3 is reticent to try to open up the statute again.
4 On the other hand, I think there are two simple
5 fixes that it's possible that we all agree on, or
6 at least a majority of us might agree on, and
7 that would be two deletions of clauses that are
8 -- I like this idea that they are potentially
9 mischievous.

10 And that is in 8(A), the clause that
11 says "or submission resulting from the use of
12 force or threat of force or placing a person in
13 fear," so that the sentence would simply say what
14 everyone agrees, which is lack of verbal or
15 physical resistance does not constitute consent.

16 That is a way of mentioning the
17 consent, but not going into some implication that
18 it has to be -- that it's required unless it's by
19 force -- you know, right?

20 So that's -- that's one simple
21 deletion. And then the simple deletion in (c),
22 which I think gets to what you just suggested, is

1 to delete the "or whether a person did -- did not
2 resist or ceased to resist only because of
3 another person's actions," so then it simply just
4 says "lack of consent may be inferred. All the
5 surrounding circumstances are to be considered on
6 the question of consent," so it does the least --
7 the least number of moves in the statute to solve
8 the problem of the question -- the residual
9 question of resistance and its effect and
10 implication on questions of consent.

11 COL. SCHINASI: If we say we're going
12 to delete something from the statute, then we
13 can't do that by executive order.

14 DEAN ANDERSON: That's right, that's
15 right, that's right.

16 COL. SCHINASI: Okay.

17 DEAN ANDERSON: No, this would be --

18 COL. SCHINASI: But the question is --

19 DEAN ANDERSON: -- a proposal for --

20 COL. SCHINASI: -- the question is
21 could you, by executive order, explain 8(A) and
22 8(c)?

1 DEAN ANDERSON: Well, I thought that
2 in what we're doing, just procedurally, this may
3 help, is that we're not at this juncture in the
4 dialogue asking how we do it, but we're asking
5 what we think would be the -- the -- my
6 preference would be minimal fixes, but what are
7 the minimal fixes that we could do? And then
8 we're going to decide how we would want to do it.
9 Maybe that's academic.

10 COL. SCHINASI: Well no, it isn't.
11 It's very practical -- the reason why this is
12 important is because once we start playing with
13 the statute, then the whole statute becomes open,
14 you know, to be redrafted, as opposed to saying,
15 okay, this is a problem that has developed, and
16 the interpretation that the President would give
17 it in the executive order would clear that up.
18 That is why the whole conversation about
19 executive order versus the statute.

20 Now, we may get to the point where we
21 say this cannot be fixed by executive order or by
22 the judges, this has to be changed in the

1 statute, in which case we might as well change
2 everything.

3 CHAIR JONES: All right. We have two
4 suggestions with respect to the section on
5 consent, one in 8(A), which is the removal of
6 everything other than to say "Lack of verbal or
7 physical resistance does not constitute consent,"
8 the other in 8(c), which would be to get rid of
9 the last clause, which would mean that it would
10 simply read "All the surrounding circumstances
11 are to be considered in determining whether a
12 person gave consent."

13 We are nowhere near the end, or even
14 the middle, of our deliberations, but I'd like to
15 just get a sense from everyone, and let's not
16 worry at the moment, and I take your point,
17 Colonel Schinasi, about -- and we all understand
18 the vehicle here is very important, but how many
19 are generally in favor of those two changes with
20 respect to Section 8 on consent?

21 And I say "changes," but it could be
22 an explanation.

1 HON. HOLTZMAN: Can I just add one
2 little thing?

3 CHAIR JONES: Of course, of course,
4 Liz.

5 HON. HOLTZMAN: Professor Schulhofer
6 made a very I think useful suggestion in his
7 revision of (c), which I don't think needs to be
8 in a statute, but I would suggest if we make any
9 change that we urge that there be an explanation
10 of what we've done here so that it's clear in (c)
11 that when we say all the surrounding
12 circumstances, he has these words "including both
13 words and conduct." I don't know that you need
14 that in the statute, but it would be nice to have
15 that kind of an explanation accompanying it so
16 that people understand what that means given how
17 much confusion there is.

18 MAJ. GEN. WOODWARD: So they don't do
19 what they did --

20 HON. HOLTZMAN: Yeah.

21 MAJ. GEN. WOODWARD: -- and
22 automatically say because you took it out that

1 you -- that you --

2 HON. HOLTZMAN: Yeah, right.

3 MAJ. GEN. WOODWARD: -- you infer why
4 we took it out --

5 HON. HOLTZMAN: Correct. That would
6 be -- Professor Schulhofer, you missed this part
7 of the conversation, but there was a lot of
8 concern --

9 DR. SCHULHOFER: I think I heard you,
10 and I did -- I put that in because sometimes
11 people say oh, you required a contract with a --
12 a notarized signature and everything, or it has
13 to be words, and that's not realistic, so I just
14 put that in to emphasize that this is not saying
15 that it has to be "Yes, I do" in any formalized
16 sense.

17 CHAIR JONES: So I -- yes, go on.

18 LT. COL. HINES: If I may just clarify
19 something for the record?

20 CHAIR JONES: Yes.

21 LT. COL. HINES: You went around the
22 room and asked --

1 CHAIR JONES: Yes, and the record
2 doesn't show --

3 LT. COL. HINES: -- was that 9? I
4 know Brigadier General Schwenk, sir, I don't
5 think you had your hand up, but everyone else
6 said yes to that on 8(A) and 8(C)?

7 CHAIR JONES: I think.

8 LT. COL. HINES: I realize you can
9 change your minds, but --

10 CHAIR JONES: So this is just to get
11 a sense of --

12 LT. COL. HINES: Right.

13 CHAIR JONES: -- where we're at, just
14 to get the ball rolling.

15 LT. COL. HINES: And what about
16 Professor Schulhofer? Did you have an opinion on
17 that one way or the other?

18 DR. SCHULHOFER: I agree with that
19 proposal, thank you.

20 LT. COL. HINES: Okay, thank you.

21 CHAIR JONES: Thank you, Glen.

22 Yes, Ms. Kepros?

1 MS. KEPROS: I do not know the most
2 useful way to have this conversation. I do
3 support that suggested change, but I have sort of
4 a broader view of what we should be doing with
5 consent, and frankly, it touches multiple issues
6 here. Certainly, it touches issue 1, 2, 3, I
7 mean, lots of them.

8 And I guess there is the change to
9 consent that I would be advocating for that
10 affects the entire structure of this statute, and
11 that's sort of what my proposal starts getting
12 to, and I don't care about going into the weeds
13 on that at all, but I just kind of wanted to lay
14 my broader concerns out if this is the right time
15 to do that.

16 CHAIR JONES: Go ahead.

17 MS. KEPROS: Okay.

18 So one of the concerns that I have, I
19 share with the Professor's written comments here,
20 and that is it has to do with the role of mens
21 rea in these crimes, which are really among the
22 most serious crimes that somebody could be

1 accused of, even in the military context.

2 And I think that understanding what we
3 are requiring of an accused, what that mental
4 culpability is, needs to be very, very clear.

5 And one of the confusions that I have in
6 wrangling with this entire Article 120 is that,
7 you know, there's different perspectives taken at
8 different points in this statute.

9 Sometimes, you're looking at
10 definitions of consent that are sort of
11 subjective to the alleged victim's point of view.
12 Sometimes there, you know, are questions around
13 whether or not the accused would have some sort
14 of affirmative defense, or as Professor pointed
15 out in his notes on issue 2, whether there should
16 be instances where it's a failure of proof issue.

17 And what I think would be so much more
18 workable, and I'm going to give you my
19 justification for it, General, is a scheme that
20 is really organized around consent, and that the
21 basic crime is there is no consent, and that we
22 attempt to capture within the definition of

1 consent inability to consent, what is or isn't
2 consent, that that is where I think intuitively
3 any member is going to be wanting to go in their
4 own decision-making anyway, and despite the I
5 think completely good intentions of the 2007
6 drafters, that is like the elephant in the room
7 with these -- with these definitions, with these
8 crimes.

9 If you make the crime about the
10 absence or presence of consent and the
11 defendant's perception of that, that is I think
12 very cognizable to laypeople, and I really agree
13 with the comments that were made this morning
14 about, you know, numbers aren't lawyers, and they
15 are not sitting there sitting on the case law,
16 and they are not reading the judge's benchbook,
17 and frankly, there are lawyers and judges coming
18 in and out of the military justice system,
19 varying levels of experience and varying levels
20 of, you know, practice, even though we are
21 evidently seeing a pretty sharp learning curve in
22 terms of mastering the sex assault laws because

1 of the increased reporting.

2 I don't think that necessarily quiets
3 my concerns that this is just not easily
4 comprehensible to a layperson. I thought there
5 was a really good point made in the read-ahead
6 materials for today under tab 6 from Major Payne,
7 and she points out that, you know, when Members
8 are being instructed on these statutes or the
9 elements of these offenses, they are not looking
10 at the whole statute even, so they don't get to
11 say oh, well there is this whole other provision
12 that speaks to this piece of it, and so they
13 might not be getting things fully in context, and
14 that could make things like defining competent
15 very agonizing for them because they don't know
16 if there is some other provision that makes that
17 seem to mean something else.

18 And so I think there is a case to be
19 made, and I am trying to make it, for making a
20 fairly dramatic change, not to what behavior is
21 covered so much as in how clearly those behaviors
22 that are prohibited are described and

1 communicated, and in my draft, you will see if
2 you look at it, I have eliminated all the
3 different subsections under (b) and basically
4 drawn them into the definition of consent and
5 said hey, if you're impaired, you're not -- you
6 cannot consent.

7 If you have, you know, this kind of
8 problem, if you're intoxicated, whatever that is,
9 you can't be consenting to these things, and sort
10 of trying to tackle everything through the lens
11 of consent and then limit under the offense of
12 rape those special aggravating circumstances that
13 may warrant even more enhanced penalty. Just not
14 consent is certainly a serious crime, but if
15 there is also the addition of physical force, if
16 there is also, you know, these additional
17 aggravating factors, then that would elevate it
18 to the even more serious sanctions.

19 So I, you know, I don't know how to
20 make that just an answer to one, even though I
21 just said I think we should take these issue by
22 issue, but that is a broader change that I think

1 we should consider, and obviously, I think we
2 should do.

3 CHAIR JONES: I have one reaction to
4 a part of what you just said, which is that I
5 think if we looked at the instructions actually
6 given by the military judge, we would see that
7 consent is probably in every single one of them,
8 so it's not something that would be ignored
9 because no good defense counsel would let it go
10 through without a consent.

11 And I would like to see more -- more
12 of the -- more data. I hesitate to call it that,
13 but I don't get the sense that -- that -- I don't
14 think Panels -- I haven't -- I don't -- I am not
15 really sure, let me put it that way, that Panels
16 are having any trouble in terms of knowing that
17 there has to be -- that consent is a defense, and
18 that if there is no consent, there is a crime.
19 But I could be wrong. I am just not sure it's a
20 problem.

21 And honestly, the amount of change
22 that your proposal would cause I think would be

1 seismic, which is not to say it is wrong, but
2 I've heard enough from people that what's
3 happened in between pre-2007 to 2007 to now 2012,
4 that I am just very -- I feel very cautious about
5 us even -- well, one, about whether it's wise to
6 do it, but beyond that, whether we -- we know
7 enough at this point even to take that -- that
8 belief.

9 And I actually am not pushing your
10 proposal aside or away. I would -- I was sort of
11 hoping to get through these, and then, with all
12 of this discussion behind us, take a look at it
13 and see what -- what, you know, either use we
14 could make of it, or whether it is a viable
15 approach, but it's -- it would be a new statute.
16 Fair enough?

17 MS. KEPROS: Yes, I am not taking --

18 CHAIR JONES: I know.

19 MS. KEPROS: -- any sort of comment.

20 I am not sure if my own feelings will change as
21 this process evolves. I am really benefitting
22 from comments from --

1 CHAIR JONES: Yeah, exactly.

2 MS. KEPROS: -- you all.

3 But I guess in terms of is there a
4 problem here, I just started to picture what it
5 would be like to serve as a member, and yeah, you
6 have definitions of consent, but you only get to
7 them because you have a definition of bodily
8 harm. You need to understand what bodily harm
9 is, and then you've got to -- like, there's three
10 layers you have to go through to get to what I
11 think is a very intuitive position as a member of
12 society that we think sex assault is non-
13 consensual, you know, contact that is unwanted,
14 that is, you know, harmful in that sense.

15 So it's -- it's sort of that mismatch
16 in my brain between this really complicated
17 language and an idea that I think has some
18 intuitive appeal to most of us.

19 CHAIR JONES: I would rather hear
20 about the statute as a member of the Panel based
21 on the way you just, you know, articulated it,
22 but we do have this statute.

1 Colonel Schinasi?

2 COL. SCHINASI: The statute itself is
3 not written from a -- the statute is not written
4 for the accused or for the victim. The statute
5 is written for lawyers and judges.

6 I continue to believe that our record
7 is incomplete if -- if we're talking about what
8 the judge's benchbook may say is an instruction
9 with respect to Article 120, we should have
10 Article 120 as part of the judge's benchbook with
11 respect to Article 120 as part of the material
12 that we consider.

13 We should also have those portions of
14 the Manual for Courts-Martial which discuss
15 Article 120. Right now, we are making
16 assumptions based on the quality of information
17 available that we shouldn't be making.

18 HON. HOLTZMAN: I think we got those
19 originally, didn't we, in the prep for the first
20 meeting?

21 COL. SCHINASI: But the --

22 HON. HOLTZMAN: In the much thicker

1 prep Manual.

2 CHAIR JONES: I'd like to see some
3 actual charges given by judges. I think that
4 would be very helpful. Not just, you know, the
5 benchbook.

6 COL. SCHINASI: We should be
7 discussing that now --

8 CHAIR JONES: Aren't there --

9 COL. SCHINASI: -- let's look at the
10 instructions, see what it says, see if it is
11 sufficient.

12 CHAIR JONES: All right. Yes --

13 MAJ. GEN. WOODWARD: I was just going
14 to say --

15 CHAIR JONES: -- General Woodward.

16 MAJ. GEN. WOODWARD: -- I like the
17 logic of the way this -- I mean, to me, it's not
18 a sea change, it's much more logically laid out,
19 but I am not sure I understand when you talk
20 about it gets to 2, 3, and some of the other
21 ones, because I think it lays it out more
22 logically, but I am not sure that it helps define

1 mistake of fact or lay out the defense thing for
2 defining what's incapable of consent any better
3 than what we have now.

4 CHAIR JONES: Yeah, Ms. Kepros?

5 MS. KEPROS: So the reason it gets to
6 those other issues is that I kind of made the
7 definition of consent and what is and is not
8 consent into more of a subjective victim's point
9 of view, but I have inserted a "knowingly, mens
10 rea" to the crimes, as in the accused has to be
11 aware of that non-consent.

12 And by doing so, I have created
13 knowledge of non-consent as an element of the
14 crime. If that is an element of the crime, there
15 need not be an affirmative defense of non-
16 consent, and there need not be an affirmative
17 defense of mistake of fact as to non-consent,
18 because it is literally part of the proof, and so
19 I know that's a super-legalese answer, but that
20 is the technical reason.

21 CHAIR JONES: No, that's not -- I
22 understand what you're saying, but I think the

1 whole history here has been that -- and maybe
2 they are confused now -- but that mistake of fact
3 has always been a defense, and that's a -- that's
4 number 2 on our list here in terms of trying to
5 figure out what, you know, if any fixes we want.

6 It sounded to me like the military has
7 been using mistake of fact and it understands it,
8 at least now, as a practical matter, the lawyers
9 know it, that is how they are using it as a
10 defense, and this confusion over this, you know,
11 we all know about it because those two -- two
12 defenses were deleted even though, if you read
13 the whole thing, it says all defenses in 916, I
14 think it is, are still applicable.

15 It's just, you know, it may be
16 something we want to try to remedy. I think that
17 with the kind of history and the practice that
18 has gone on, I wouldn't -- I wouldn't want to --
19 I wouldn't change the statute in that manner.

20 Yeah, Ms. Kepros.

21 MS. KEPROS: I was actually really
22 grateful in the written comments we got from

1 Professor Schulhofer that he mentioned the Elonis
2 case that came out in July, or excuse me, June
3 1st, where we got the U.S. Supreme Court saying
4 quite strongly mens rea is very important, we
5 really don't intend there to be strict liability
6 crimes and criminal prosecution, and that was --

7 CHAIR JONES: That was your impetus.

8 MS. KEPROS: Yeah, that really jumped
9 off the page at me the first time I read this
10 statute, and I was unfamiliar with the military
11 practice of having this affirmative defense, but
12 I do think that is another -- requirements on
13 these issues to be raised by affirmative defense
14 significantly complicates instructional issues,
15 it relies on the specification of defense counsel
16 to identify and raise the issues, I mean, all of
17 these things just make it harder for the Members
18 to understand what questions they are being
19 required to answer, and I think all of that
20 provides opportunities for injustice.

21 And, I mean, it is sort of an ironic
22 argument for me to make as the defense attorney

1 on this committee, but I think the more confusing
2 these statutes are, the less finality there is in
3 verdicts because it does create confusion, it
4 does create possibilities for differences among
5 judicial officers in appeals and reversals on
6 appeal, and, you know, we've looked at several --
7 acquittals -- we've looked at several published
8 appellate decisions in our read-ahead materials
9 over these last few meetings, and certainly, you
10 can't say that this is a settled area or that it
11 is so clearly drafted that there are not
12 questions arising.

13 CHAIR JONES: No no, I don't think --
14 we are certainly not saying that. Excuse me,
15 Liz. Yes, Ms. Friel?

16 MS. FRIEL: I just had a quick
17 question.

18 So in -- in -- we say here in Article
19 120 you have all the defenses available to you in
20 916, a mistake of fact is in 916. Is consent in
21 916?

22 LT. COL. HINES: It is not, Ms. Friel.

1 Rule 916, it mentions the statement of
2 fact, it mentions a couple of other substantive
3 defenses, but it is not an all-inclusive list,
4 and everyone who practices knows that, so consent
5 is not in there.

6 Mistake of fact is, and that's mistake
7 of fact not just on a sexual assault case, but
8 any mistake of fact. So everyone has always
9 known in military practice that is available. It
10 has been blessed by the appellate courts. They
11 said this is a defense.

12 Consent, on the other hand, is just
13 something the judges have always instructed on
14 because, as a matter, I think, of due process in
15 the case law, it's available whether you say it's
16 available in the statute or the rules or not,
17 it's always available.

18 The other point that was raised with
19 respect to affirmative defenses, I just want to
20 follow up on that.

21 The problem with the 2007 version, and
22 this is -- when you talk about how does the

1 military view the phrase "affirmative defense,"
2 affirmative defense, in our rules, has always
3 been -- it's something the defense has to give
4 the government notice of, so insanity or
5 something like that, the defense also has the
6 burden of raising it and then proving it by the
7 preponderance of the evidence or whatever the
8 burden, and then the government has to rebut.

9 That is what the appellate courts had
10 problems with in the previous statute, was that
11 consent, or mistake of fact, is that consent was
12 made an affirmative defense.

13 And so I think some of the speakers
14 have said if you want to put those back in,
15 whether you put it into the Manual or into the
16 statute, don't call it an affirmative defense
17 because that will create all these problems, and
18 just state that it is another available defense.

19 HON. HOLTZMAN: I have a question.

20 CHAIR JONES: Ms. Holtzman?

21 HON. HOLTZMAN: I mean, I want to
22 thank you for -- I want to thank you, Ms. Kepros,

1 for your work on this because I have been
2 troubled about the statute for a long time. I
3 think its structure -- it's incoherent, and I
4 think the bottom harm issue that I have pointed
5 out and that, you know, is a backwards way of
6 getting to something that should be, you know, at
7 the front, the forefront, which is the non-
8 consensual touching and then the level of harm or
9 force or violence that's used.

10 My question is really for the Staff,
11 has to do with -- I mean, number one, this is a
12 substantial reworking of the statute, whether
13 it's right or wrong.

14 But -- and I like a lot of what you
15 have done. But the problem is, as I see it, just
16 being practical, putting on a new hat today,
17 being practical, that a lot of these changes came
18 about because Congress was furious at the idea
19 that these cases were looking at the whole issue
20 of consent because that may put the victim on
21 trial.

22 And so these statutes represent a way

1 of climbing -- of avoiding what the Constitution
2 I think requires as a matter of due process,
3 which is that you have to prove consent, and they
4 get around it in all these kind of weird ways,
5 and so that's why you have a statute that is kind
6 of -- incoherent may be too strong, but it is not
7 logical, is that the word you use? Clear,
8 logical.

9 So that is part of the problem here.
10 Congress didn't want consent to be part of the
11 story and part of the statutes, so everybody has
12 been twisting themselves in pretzel form to get
13 away from consent, even though it's the -- it's
14 the 100-pound gorilla, 1,000-pound gorilla in the
15 room --

16 CHAIR JONES: It's the gravamen of the
17 offense --

18 HON. HOLTZMAN: Exactly.

19 CHAIR JONES: -- it's what it's all
20 about.

21 HON. HOLTZMAN: Right, so I -- I
22 completely agree with you in terms of saying hey,

1 wait a minute, why aren't we dealing with what is
2 the essential thing here centrally? Okay.

3 But then, putting on my practical hat,
4 I don't know that there's a prayer that if you --
5 if we were to recommend a change that put consent
6 right back in the -- in the center of things,
7 that either the Congress would pay any attention
8 to it or that the President would in any way do
9 anything about it.

10 So I just raise that with you, and
11 there may be other ways of dealing with some of
12 the problems raised by trying to avoid consent
13 when they should really be dealing with it other
14 than just kind of confronting it frontally. I
15 mean, that's just an issue I wanted to put on the
16 table here from that point of view.

17 CHAIR JONES: Ms. Friel?

18 MS. FRIEL: One of the things I think
19 that makes the statute look odd is most of the
20 statutory schemes for sex crimes have a basic
21 crime of, you know, some kind of sex act without
22 consent, and it -- and it's generally some

1 misdemeanor or lower-level misdemeanor, and then
2 you have your aggravators that go all the way up
3 to rape by force.

4 That's one thing I noticed in the
5 statutory scheme. The closest thing you have to
6 just some kind of sex act without consent is the
7 bodily harm thing. It finally made me realize
8 why they're saying the bodily harm can be the
9 harm from the actual contact, because in New
10 York, under our statutory scheme, the bodily harm
11 would have to be a separate harm that has nothing
12 to do with the sex act.

13 But otherwise, you would have nothing
14 even close to just a section that says non-
15 consensual sexual contact, and I think that's
16 what's odd here. You just have all the
17 aggravators and not the lesser.

18 MAJ. GEN. WOODWARD: So in New York,
19 if somebody has sex with somebody who is asleep
20 or incoherent, it's not considered rape?

21 MS. FRIEL: No, it is. What happens
22 is that the bottom-line crime is some kind of

1 sexual contact without consent, and then you
2 would go up from there and lack of consent, for
3 instance, if you have sex with somebody who is
4 considered mentally disabled, that would be a
5 higher-level crime.

6 And if you have sex by forcible
7 compulsion, it's called in New York, we have a
8 much broader definition than the force that you
9 have here, if you have sex with somebody who is
10 physically helpless, which would be defined as
11 somebody who is unconscious, that is rape one,
12 that is the most serious.

13 But what I am saying is the lowest
14 level of it could be sexual contact, I go up and
15 grab your butt as I walk by, you didn't consent
16 to that, I touched an intimate part of your body
17 without your consent. That is a misdemeanor in
18 New York.

19 MAJ. GEN. WOODWARD: Well that's what
20 the sexual --

21 MS. FRIEL: Well --

22 MAJ. GEN. WOODWARD: -- contact is.

1 MS. FRIEL: -- well that's a -- but
2 that's -- but you also have to have, in addition
3 to the contact, you have to fit with what --
4 within one of your other subsections here, right?
5 It's sexual contact, either done by 1 through 5,
6 or -- or (a) through (d), and so it -- I think
7 here, that would have to come under bodily harm.
8 What else would that come under, right?

9 COL. SCHENCK: But our traditional
10 definition -- and this is what it says about the
11 Article I28 referral. When we saw the term
12 bodily harm throughout the Punitive Articles, we
13 always considered it to be offensive touching, no
14 matter how slight. If I have a plate in my hand
15 and you snatch it out, it's bodily harm.

16 That's just a traditional military
17 justice term that's been -- so what they did, and
18 I think this was in some of the comments of folks
19 that testified last time, whoever did it -- I
20 think General Pede said they took that comment
21 language out of the 128 assault and pulled it in.
22 Because we used to have indecent assault under

1 128 assault.

2 When they morphed these two Articles
3 and created 120, they pulled that in. At least
4 that's -- Colonel Schinasi can correct me if I'm
5 not correct, but I think that's my --

6 MS. FRIEL: You think clearly under
7 what the military understands the term bodily
8 harm that the example I just posited, somebody
9 walks by and gooses you, would fit under bodily
10 harm?

11 COL. SCHENCK: Absolutely.

12 LT. COL. MCGOVERN: Ms. Friel,
13 actually, if you look at Subsection D, Abusive
14 Sexual Contact, that's all that -- that's our
15 lowest. Then it builds up to C, B, and A, up to
16 rape. Under D, Abusive Sexual Contact, the JPP
17 and RSP heard testimony that there were cases
18 where someone simply -- a male grabbing a
19 female's bun was considered abusive sexual
20 contact without an intent to gratify a sexual
21 desire.

22 MS. FRIEL: Right, I see. I think

1 part of the issue I have what you're saying.
2 It's different, and it's going to get used
3 militarily, and all us civilians here, when we
4 see the words bodily harm, we expect there has to
5 be a physical injury to the bodily harm, which is
6 why we didn't recognize it as such. But if it's
7 clear to all of you when you use it, then --

8 LT. COL. MCGOVERN: I don't think
9 there's any bodily injury requirement for D.

10 MS. FRIEL: No.

11 HON. HOLTZMAN: My point about that
12 was a little bit different, which is that -- my
13 point about the bodily harm is yes, all the
14 military justice people understand it, but I went
15 to law school, and I didn't understand it.

16 SPEAKER: Did the troops?

17 HON. HOLTZMAN: And the troops and the
18 Members of the Panel. That's my concern with the
19 bodily harm, which is that they may come with the
20 same preconception is that bodily harm means some
21 kind of injury, not just --

22 SPEAKER: Not just, yes, an offensive

1 touch.

2 HON. HOLTZMAN: Not just the touching.

3 LT. COL. MCGOVERN: Again, I just
4 would like to clarify the structure of the
5 statute and look at A through D. Those are the
6 four types of sexual misconduct chargeable here.
7 Just like General Pede says, this is a very
8 progressive statute because in the civilian
9 sector, in New York, I think you're talking about
10 really focus on A and B being rape and sexual
11 assault. Here, we also have C and D included as
12 sexual misconduct. They are chargeable,
13 registerable, and prevented. Just want to make
14 sure everybody gets the big concept of the four
15 and for that last -- for D, there is no bodily
16 injury requirement.

17 CHAIR JONES: Professor, are you still
18 on?

19 DR. SCHULHOFER: I'm sorry, were you
20 asking me a question?

21 CHAIR JONES: No, I was just trying to
22 make sure you were still there. Did you have any

1 comments from what you've heard so far?

2 DR. SCHULHOFER: None so far. I think
3 that this meeting's been very helpful. It's
4 getting a lot at what's been in the back of my
5 mind. There's been a lot of focus on what the
6 judge's textbook says and what the Members of the
7 Panel understand. I think that's a very
8 appropriate and inevitable focus for us, as a
9 subcommittee, as we continue the Panel.

10 Another concern that's in the
11 background and has been very prominent for me is
12 how these standards of behavior are understood by
13 the recruits and the ordinary Soldier or sailor
14 who is trying to understand what their
15 expectations are when they're involved in a
16 justice situation, and that's somewhat in the
17 background, but I think it's worth highlighting.
18 Inevitably, the statute itself and the way it's
19 written has a role in whether we are successfully
20 communicating to the wider audience what the
21 expectations are in the Manual. The whole way the
22 guide grew up -- for many, many years, we've had

1 -- the guide does take the initiative and comes
2 pushing until it comes clean back. Are people
3 being properly educated as to what the
4 expectations are? That's in the background of my
5 concern about the guidelines.

6 CHAIR JONES: That is an issue that's
7 been raised. It was raised this morning, as
8 well. Does anyone have any comments on that?
9 Generally, I don't think the statute is the -- I
10 hope it isn't the primary teaching tool for
11 people in the military because we don't
12 understand it on the first read through. I guess
13 we could take a look at the training programs.
14 We've heard criticisms of them. I think we have
15 to look at this for what it is.

16 There are lots of other statutes, not
17 just the military ones, that are pretty
18 incomprehensible sometimes as well. I take your
19 point, and it is something that we have talked
20 about. Certainly the training has to be -- the
21 people doing the training have to understand the
22 statute. Let me put it that way. I think the

1 military is striving very hard to see that that
2 happens (Simultaneous speaking)

3 MAJ. GEN WOODWARD: I think --

4 CHAIR JONES: General Woodward?

5 MAJ. GEN. WOODWARD: That's the key --
6 yes, whether we understand the verbiage, that we
7 understand the background to it if we're going to
8 communicate to our troops. I think either way,
9 as long as there's a good understanding of what
10 it means, I just think it's easier to follow the
11 logic that way.

12 COL. SCHINASI: In my background, I
13 was responsible for the course of instruction at
14 the Army JAG school for several years. I've been
15 teaching civilian law school now for 20. I can
16 tell you that the approach that we use at the JAG
17 school to teach this, and to teach everything
18 else, is exactly the same approach I use now in
19 law school. It's what's the statute? What are
20 the rules? What are the cases? How is this
21 interpreted? It's the logical process.

22 I don't think there's anything

1 defective in the way that we're teaching this.
2 We had an example. We've had an Army JAG school
3 professor come and talk to us. I think it was
4 last time we met. I think she did a remarkable
5 job. If you look at the code, the code is
6 written from the point of view of explaining to
7 prosecutors and defenders what the elements are.
8 That's why it looks like it does. It's very bare
9 bones. It's in an outline form. Then the
10 president has provided a model specification,
11 which mirrors this, and it demonstrates to the
12 prosecutor, to the defender, and to the military
13 judge exactly what has to be done to get past the
14 motion. It's not very flowery. It doesn't
15 contain a lot of extra material.

16 A through D is aimed at making the
17 case. This particular statute goes on to add
18 definitions. I think when we look at the 11
19 issues that we have been given, it's largely
20 about these terms. I'm not sure that the
21 question that we've been given is actually the
22 right question. Is the current definition of

1 consent unclear or ambiguous? That answer would
2 be yes irrespective of who drafted the statute
3 and when the statute was drafted.

4 The real question is does it need to
5 be improved? So far, I haven't heard anyone come
6 up with a viable alternative, present company
7 excluded, that says this thing is so defective --
8 and I asked several people about that when we met
9 last time. No one said this thing was so
10 defective that we can't use it. My sense was,
11 let's give the statute a chance. Let's see
12 what's going to happen. What will happen is the
13 common law judges will flesh it out.

14 MAJ. GEN. WOODWARD: How long do you
15 wait?

16 COL. SCHINASI: It isn't broken now.
17 You heard, last time we met, from everybody that
18 has a piece of this pie. I don't remember
19 anybody banging the table, as I have seen them do
20 sometimes in the past -- banging the table and
21 say this thing is broken. I understand that
22 there are people who have problems with it.

1 MAJ. GEN. WOODWARD: And the one star
2 today said the same thing.

3 COL. SCHINASI: Said what?

4 MAJ. GEN. WOODWARD: That he thinks it
5 should be clarified, that it's too ambiguous.

6 COL. SCHINASI: Clarified, but that
7 doesn't mean it's broken. That doesn't mean that
8 there are a loss of acquittals, a loss of
9 convictions, a loss of confusion, or people who
10 don't know what they're doing. I haven't heard
11 that. Yes, the question is is consent unclear
12 and ambiguous? Yes. Every term in this statute
13 -- and I hate to say every term in any statute --
14 is subject to different interpretations of what
15 it means. That's what we do as lawyers. That's
16 what we do as judges.

17 CHAIR JONES: Okay, but there is the
18 general question of whether or not we -- which
19 you're raising, which is if it's not broken,
20 should we do anything? I understand the position
21 of both you and General Schenck and where you
22 stand, but as we go through these, people are

1 recommending suggestions. We're getting a sense
2 of where people think there may be improvements.
3 Whatever the vehicle is or is not, I'd just like
4 to continue with that process.

5 COL. SCHINASI: Then can I raise
6 another issue?

7 CHAIR JONES: Sure.

8 COL. SCHINASI: The question of freely
9 giving consent. Professor goes through and talks
10 about freely giving consent and the concept of
11 voluntary and doesn't want to adopt voluntary
12 because voluntary has a long pedigree that's not
13 necessarily helpful. It has a long pedigree that
14 is well understood. It may not be one that
15 everybody agrees with, but we know what voluntary
16 is. Freely, I don't have a clue. I have no idea
17 what the criminal legal definition of freely is.
18 I do know voluntary.

19 CHAIR JONES: Freely is currently in
20 the statute, right.

21 COL. SCHINASI: So the question is do
22 we want to -- what's the current view?

1 HON. HOLTZMAN: The current view is
2 freely given agreement.

3 COL. SCHINASI: So the question is
4 voluntary, I understand. That's a suggestion I
5 think Colonel Grammel made.

6 CHAIR JONES: That we should change it
7 back to voluntary.

8 HON. HOLTZMAN: How long has this
9 language been --

10 SPEAKER: Since 2012.

11 CHAIR JONES: This is new in 2012, the
12 freely given agreement? That's the question.

13 (Simultaneous speaking.)

14 MS. FRIEL: When did freely given
15 agreement come to be said?

16 SPEAKER: It was before --

17 COL. SCHINASI: In the copy of the
18 statute I have now it says freely. Is this --

19 (Simultaneous speaking.)

20 SPEAKER: That's the '12 statute for
21 sure.

22 DEAN ANDERSON: But the 2007 statute

1 includes it as well, at least according to this
2 information we got this morning. So it's not a
3 2012 revision. It's either a 2007 or before
4 revision. The words freely given were in the '07
5 revision. It's not a recent vintage, I guess, is
6 the upshot.

7 SPEAKER: Laurie has a question.

8 CHAIR JONES: I'm sorry. Ms. Kepros.

9 MS. KEPROS: I'm so glad you brought
10 this up because I think as a lay person, those
11 words are the same. I bet you could look in a
12 thesaurus and find one term or the other. I had
13 inserted in the draft I submitted for today,
14 voluntary because we had some analysts who
15 recommended it, who seemed to feel like it was
16 better. I didn't really have a problem with
17 their idea. I was actually very interested by
18 the concerns that were raised in Professor
19 Schulhofer's comments about, it doesn't really
20 mean voluntary sometimes in the context of Sixth
21 Amendment jurisprudence and Jackson v. Denno kind
22 of case law on voluntariness. I don't know that

1 it would make the slightest difference to --

2 MAJ. GEN. WOODWARD: Thank you.

3 MS. KEPROS: As to what we decide.

4 MAJ. GEN. WOODWARD: Only a group of
5 lawyers would sit around the table and argue
6 about the difference between --

7 MS. KEPROS: I'm totally ready to hear
8 arguments. I'm even excited about it because to
9 me, I'm not sure -- even though, as a lawyer, I
10 can come up with all kinds of things I would
11 argue about it, but I don't think as a person
12 deciding how to apply facts to law it would mean
13 that much to me.

14 CHAIR JONES: I think I agree with you
15 on that. Liz.

16 HON. HOLTZMAN: But the question is,
17 is this unclear? Is voluntary --- well, anyway,
18 I'm satisfied with the language. Certainly, if
19 it's been in there for quite some time, and it's
20 been litigated over quite some time, I'm not sure
21 that this would be a top point for change.

22 LT. COL. MCGOVERN: We could research

1 for you and find out the case law surrounding
2 that, if there were issues with voluntary Article
3 120 contacts, and why they changed it to freely
4 given at some point.

5 HON. HOLTZMAN: Do we know it was
6 every changed from voluntary to freely given?

7 LT. COL. MCGOVERN: I personally do
8 not.

9 DEAN ANDERSON: Do we know it was ever
10 voluntary?

11 HON. HOLTZMAN: That's what I mean. I
12 don't know.

13 DEAN ANDERSON: That would be helpful.

14 LT. COL. MCGOVERN: We can find out if
15 it's been a litigated issue.

16 CHAIR JONES: Yes.

17 DEAN ANDERSON: I have a suggestion.
18 We're sort of skipping around, I think, between
19 one and two and five and three. I think that we
20 have a potential -- we have agreement generally
21 on the deletion of certain language around
22 resistance in 8A and C, and then I think we have

1 -- I'm getting a sense from this dialogue that
2 there's not a powerful impulse to change freely
3 given to voluntary, or back to voluntary,
4 depending on what the history of that is, but
5 that we should probably look at it and see if
6 it's been litigated. It does seem to me that the
7 question of bodily harm is a very interesting one
8 that we've talked about, as well. My initial
9 reaction to the term of bodily harm was very
10 similar to those around the table. However, I
11 changed my position on the basis that in the
12 military, it sounds like there's a long history
13 of this term, independent of this provision, that
14 makes a lot of sense and works from a systemic
15 point of view.

16 I would continue with it for that
17 reason. Although again, I may draft the statute
18 differently and agree that the structure to a
19 person who doesn't come from a background where
20 bodily harm means this would draft it in a more
21 logical way, focused on non-consent, because I do
22 think that's sort of the upshot of bodily harm.

1 Nevertheless, it has a context. It
2 has meaning outside of 120. That meaning is
3 fully delineated and has a long and noble
4 history. I don't see why we would want to
5 intervene at this juncture, just for this
6 statute, to remove bodily harm as a result.
7 That's just my comment on that.

8 MS. FRIEL: It's also defined right in
9 the statute. I think it helps that it's one of
10 the definitions right there. You flip and see
11 it.

12 HON. HOLTZMAN: Are we discussing this
13 now, or are we making a final determination?
14 Where are we jumping to.

15 CHAIR JONES: We were still on one.
16 I don't disagree with you, Professor, that --

17 DEAN ANDERSON: I apologize. I probably
18 did --

19 CHAIR JONES: Oh, no.

20 DEAN ANDERSON: --- move to bodily
21 harm.

22 CHAIR JONES: We did, and we went

1 back. Why don't we try this? Under any other --
2 let me just say this about the freely given
3 versus voluntary. I'm not sure we should even
4 look into that. It's there. It's been there. I
5 don't think it was ever in our focus. I
6 personally agree completely with Ms. Kepros. The
7 lay people know what freely given means, so I
8 think we should take that off -- I don't know if
9 everybody else agrees -- and not bother to look
10 into that one at all. Everyone's nodding their
11 head, so we're taking that one off the agenda.
12 Are there any other points that anyone wants to
13 raise today?

14 SPEAKER: Wait, I think --

15 DR. SCHULHOFER: When you say taking
16 it off, do you mean leaving in the term freely
17 given?

18 CHAIR JONES: Yes, I do, Professor.
19 That's better. I think we should just leave
20 that. I think it works. I'm sorry. How do you
21 feel about that?

22 DR. SCHULHOFER: I agree.

1 CHAIR JONES: That's not going to be
2 on the boards. We do indeed have a number of
3 suggestions with respect to the consent
4 definition. Are there any others before we move
5 on to two, which I think is going to be an easy
6 discussion?

7 (No audible response.)

8 I don't hear anything.

9 You can always bring it up later, but
10 I'm moving on to two. We've discussed this now a
11 few times. The question is simply should we do
12 something to make it clear that the defense of
13 mistake of fact is still a defense in the context
14 of sexual assault cases? We heard General Pede
15 on it this morning. I think we've all talked
16 about it before. The one thing that I think we
17 should be very careful about is -- and Professor,
18 you made this recommendation, and I completely
19 agree with you -- whatever we do, we should make
20 it clear that it's not an affirmative defense, so
21 that we don't run into the problem of shifting
22 the burden to the defendant.

1 I don't know if anyone else wants to
2 comment on this, but I think basically Issue 2,
3 which is, should the statute make exclusive that
4 mistake of fact as to consent is a defense? I
5 think we should say -- I don't know. Do we think
6 we need to do it or not? That's really the
7 issue.

8 SPEAKER: I think we need to do it.

9 COL. SCHENCK: I think we need to do
10 it just because General Pede said he's got senior
11 practitioners requesting it, and he specifically
12 said it was trial judges. Trial judges have a
13 question about it because they don't know the
14 history that General Pede has because that's not
15 part -- no one's looking at the legislative
16 history, in other words. I think we should go
17 ahead and do it. There's no harm in it. It's
18 already -- that's really -- also, the Court of
19 Appeals of the Armed Forces has specifically
20 cited, in numerous cases, that the trial judges
21 have to instruct on mistake of fact as to
22 consent. When we do it, the stat can help with

1 that. They can still give a recommendation on
2 how to do it, but they can cite to all those CAAF
3 cases that say --

4 CHAIR JONES: I agree with that, and
5 I think we should do this. I was persuaded by
6 General Pede saying that senior people were
7 concerned about it.

8 SPEAKER: Including appellate judges,
9 by the way, not just trial judges.

10 COL. SCHENCK: Right. Frankly, I know
11 what he's talking about.

12 CHAIR JONES: Does anybody disagree?
13 Liz.

14 HON. HOLTZMAN: I just think we could
15 add the words right after --- in F, on Page 1 of
16 the statute. It says, an accused may raise any
17 applicable defenses. I'd just put a comma there
18 and add including mistake of fact.

19 CHAIR JONES: Mistake of fact.

20 HON. HOLTZMAN: Another comma, and
21 that's it.

22 CHAIR JONES: Perfect.

1 COL. SCHENCK: I would just say
2 mistake of fact as to consent. That's the only
3 --

4 CHAIR JONES: Oh, mistake of fact as
5 to consent?

6 LT. COL. MCGOVERN: Ms. Kepros put it
7 in hers, as well, if you wanted to look at the
8 proposed language.

9 CHAIR JONES: I'm sorry, Kelly, what
10 did you say? It's in Ms. Kepros' as well?

11 LT. COL. MCGOVERN: Yes, she must have
12 predicted that to come up. She had it in here
13 already.

14 MS. FRIEL: If we're going to
15 recommend amending the statute, we would
16 recommend adding that language. Otherwise, you
17 could do it as an executive order, say. What
18 they meant by that was mistake of fact after
19 consent because it's in 916. So there are two
20 ways to accomplish the same thing.

21 CHAIR JONES: Right, and we haven't
22 decided which way --

1 MS. FRIEL: And we haven't decided.

2 CHAIR JONES: -- but we have decided
3 that we should do it. I think with two, it's
4 unanimous? Everybody --

5 MS. WINE-BANKS: Laurie also added
6 consent as a --

7 CHAIR JONES: Pardon me?

8 MS. WINE-BANKS: Laurie also added
9 consent in her proposal for identifying defenses,
10 so hers said including consent and mistake of
11 fact.

12 DEAN ANDERSON: There was no -- as I
13 understand the testimony to us, the query,
14 particularly by the appellate judges, was on
15 whether or not mistake of fact was available, not
16 on -- everybody has said consent is always --
17 there are instructions given. That's not an
18 issue. My concern with adding it might be
19 confusion because it's not cross-listed in the
20 other provisions. I think we accomplish what we
21 want to accomplish by just saying mistake of
22 fact.

1 HON. HOLTZMAN: Correct. I agree with
2 that. Because if you limit it to consent, then
3 people want to say mistake of fact is consent.
4 Does that really include intoxication? Does that
5 include health, all those other factors. I think
6 mistake of fact is broader, so that's how I would
7 do it.

8 SPEAKER: That's good, and
9 incapacitation.

10 CHAIR JONES: Ms. Kepros.

11 MS. KEPROS: What I proposed is to add
12 language, including, but not limited to, consent
13 and mistake of fact. The reason that I do think
14 it would be useful to specifically mention
15 consent is because it is so central to so many of
16 these defenses. It's constantly coming up as an
17 issue. I think maybe it is redundant. I hope it
18 is, but I don't see any harm in having it.

19 The reason I would say not limited to,
20 is that although it would be a rare circumstance,
21 it is possible that there could be a self-defense
22 case, or you mentioned intoxication, if that is a

1 defense -- I don't know that it ever would be. I
2 don't know what is available. I know in my
3 jurisdiction, voluntary intoxication is only a
4 defense to a specific intent crime. I don't know
5 if any of this has been interpreted to be that.
6 I just would try to include it, so that it's
7 clear it should be, since we're doing it just
8 sort of in an exercise of caution anyway. That
9 also doesn't get to the first point that Judge
10 Jones made about whether it's a defense versus an
11 affirmative defense.

12 HON. HOLTZMAN: Or whether it's an
13 element of the crime. That's my problem with
14 putting it in as a defense --

15 MS. KEPROS: Right.

16 HON. HOLTZMAN: -- is that it may be
17 viewed as an element of the crime.

18 MS. FRIEL: I don't think we should
19 put consent with mistake of fact or mistake of
20 fact as to consent. I think we should just have
21 mistake of fact. Consent is not listed anywhere,
22 and Colonel Hines can correct me if I'm wrong,

1 but as I recall, when I did an appellate opinion
2 on defenses specifically, consent's not in there,
3 in this Manual for Courts-Martial, as a defense.

4 There are many defenses not listed,
5 but as my opinion, which hasn't been busted or
6 returned yet, says, trial judges are bound by the
7 Supreme Court, the Court of Appeals of the Armed
8 Forces, but not all these other defenses made up
9 in the civilian sector. Automatism, some states
10 say that's a defense. The military isn't bound
11 by that. If you put consent listed in this
12 provision under the term defense, it's going to
13 kind of mess up the rest of the Punitive
14 Articles, I think. I just think that. I think
15 it can be raised because it would be argued as
16 part -- if it's defined in here, people will be
17 able to argue mistake of fact as to consent. Do
18 you see what I mean?

19 LT. COL. HINES: I think the confusion
20 comes from -- there's a legal distinction for the
21 difference, but there really isn't. The defense
22 can raise both of them. They can raise consent

1 because going to Ms. Holtzman's question, is it
2 an element or not, the defense can raise it, but
3 it's viewed as, legally, an attack on the
4 government's proof, rebutting the idea that this
5 was non-consensual.

6 Whereas, we're going to choose to call
7 mistake of fact as to consent an actual defense.
8 It's really creating confusion where there's not
9 really any confusion. The judge will instruct --
10 if the evidence raises consent, the judge will
11 instruct on it. It's in the charge given to the
12 jury. If they go with mistake of fact as to
13 consent, there's an instruction for that, as
14 well. I guess in the end, I think what I'm
15 hearing from some of the counsel -- my personal
16 view is that they just want it written somewhere
17 that they can raise consent. I think everyone
18 understands they can raise mistake of fact as to
19 consent, but the only place that you see it
20 anywhere is in the judge's bench book.

21 I don't know that you really need to
22 do anything here to clarify that. You could

1 probably say both of these are available to the
2 Defense. You could maybe clarify it just through
3 subcommittee or Panel dicta. I don't know if
4 that's the correct terminology. You don't
5 necessarily need to recommend a statutory or a
6 change in the Manual, but you could make an
7 emphatic statement to say whatever we call this,
8 whatever moniker we put on it, the defense can
9 raise consent.

10 They could attack the government's
11 proof, or they can raise mistake of fact as to
12 consent. I think it's been confused by the
13 different places that they've been addressed in
14 the statute and the Manual or --

15 CHAIR JONES: If all we're trying to
16 do is tell people that they shouldn't be
17 concerned that it was taken out, let's just put
18 it back in the way it was before. I think that
19 was simply to say mistake of fact is a defense --
20 am I right -- in the prior statute?

21 COL. SCHENCK: -- affirmative defense
22 with mistake of fact as to consent, and then with

1 --- Chair Jones?

2 CHAIR JONES: I'm sorry, I can't hear
3 you.

4 COL. SCHENCK: I think originally it
5 had an affirmative defense of mistake of fact as
6 to consent. You see what I mean? It was in
7 there, and then Prather of the Court of Appeals
8 for the Armed Forces.

9 CHAIR JONES: That was a big problem.
10 I agree.

11 COL. SCHENCK: Then they took it out.
12 They left mistake of fact in the Manual; it's in
13 there. No one's getting that connection.

14 LT. COL. HINES: They took it out
15 because it was an affirmative defense. The
16 previous statute said the defense had not only to
17 raise this, they had to prove it by a
18 preponderance of the evidence. That's what the
19 report found unconstitutional, so that's why they
20 took those out.

21 HON. HOLTZMAN: I think the safest
22 course of action here, in terms of not raising

1 other issues, is just to say mistake of fact. If
2 somebody thinks it's not broad enough, we're
3 sending this out for comment. If General Pede
4 thinks this is not broad enough, or someone else
5 thinks this is not broad enough, we'll hear about
6 that.

7 I'm just concerned if we do put in
8 consent and create that as a defense, then that
9 creates all kinds of questions that someone's
10 going to challenge us in the Supreme Court. This
11 isn't a defense. It's part of the government's
12 case. I think we're just asking for litigation
13 over that issue, so I'd just be as narrow as the
14 general was.

15 CHAIR JONES: Mistake of fact?

16 HON. HOLTZMAN: Yes, that would be it.
17 Clearly the mistake of fact can be about all of
18 these points.

19 CHAIR JONES: It can be about any
20 element because it all goes to mens rea.

21 HON. HOLTZMAN: Correct.

22 CHAIR JONES: I think that's -- I

1 completely agree with that, as well. Why don't
2 we suggest, in writing, what a change would be.
3 We can discuss it at our next deliberation.
4 It'll be something we'll definitely send out for
5 comment. No. 3, is should the statute define
6 incapable of consenting? I don't know that we've
7 touched on that -- this afternoon, in any event.

8 LT. COL. HINES: Judge, I'm sorry.

9 I'll just key that up a little bit to say if you
10 look at the chart, that's the one -- one of these
11 questions where it's almost -- I'll call it
12 overwhelming agreed that we need a definition,
13 and that's from both prosecutor and defense
14 counsel. It's also the one where there isn't a
15 definition. I mentioned earlier that the
16 statute's given us a bunch of definitions.

17 But there is not, in the statute, a
18 definition of incapable of consenting. There's
19 not one in -- the judiciary is sort of making
20 this one up as they go along, as well. I just
21 would throw that out. I know Colonel Grammel has
22 given us a suggested fix on that, and a few of

1 the other presenters have.

2 COL. SCHENCK: Is there anyone in the
3 bench book on that? Anyone?

4 LT. COL. HINES: I don't believe there
5 is, Dean. I've got it right here. I'll look it
6 up while you --

7 COL. SCHENCK: I was looking at Judge
8 Grammel's suggested definition, which is under
9 Tab 2 in that packet. I was just wondering if
10 you may have understood that. It looks like the
11 Title 18.

12 DEAN ANDERSON: What tab was that?

13 COL. SCHENCK: It's Tab 2, on Page 4.

14 SPEAKER: Actually, it's Tab 3 in this
15 one's materials.

16 SPEAKER: There's a Tab 3 and a Tab 2.

17 DEAN ANDERSON: So could I --

18 CHAIR JONES: Professor --

19 SPEAKER: It's right here, yes.

20 DEAN ANDERSON: I appreciate that this
21 is an area in which there's -- at least it does
22 seem like a significant number of folks who've

1 testified have requested guidance on incapable of
2 consenting. I think that my concern with some of
3 the proposals -- and I think this includes
4 Grammel's proposal -- is that it requires,
5 essentially, that someone be unconscious, that is
6 that they are unable to decline to participate or
7 to communicate unwillingness, which is another
8 way of saying they're unable to say no, which
9 means they're unconscious. Even if someone is
10 falling down drunk, they could communicate no. I
11 think that's a higher burden than we should
12 impose.

13 SPEAKER: But doesn't he say --

14 COL. SCHENCK: The very first one,
15 unable to appraise the nature of the sexual
16 conduct at issue, that, to me is --

17 DEAN ANDERSON: Right, so my concern
18 is on the word unable -- to appraise the nature
19 of the sexual conduct means that I don't know
20 that it's sex, or that -- that is a higher burden
21 than unable to consent or incapable of
22 consenting. It's imposing upon the person who is

1 either consenting or non-consenting a higher
2 burden, I think, than the idea of consent itself
3 imposes. Unable to understand what sex is means
4 you're either unconscious or unable to
5 communicate or to understand the nature or engage
6 in -- unable to physically communicate
7 unwillingness means unable to say no, which means
8 you're unconscious. That shouldn't be a
9 requirement for being unable to consent -- or
10 incapable, rather, is the language -- incapable
11 of consent.

12 COL. SCHENCK: I disagree with that.
13 That's just my personal opinion. I don't think
14 that unable to appraise the nature of sexual
15 conduct is that narrowly interpreted. That's
16 just my opinion. Frankly, there's nothing on
17 that, but I do wonder if the Staff could check
18 for us if that's in Title 18? I think at least
19 previous provisions of Title 18 have that type
20 language, at least the second two provisions. We
21 could look to see if Title 18 does have a
22 definition that we might look at.

1 HON. HOLTZMAN: May I also make a
2 point? I'm not sure that -- first of all, I'm
3 not sure -- I don't like the word physical. I
4 don't know that we need those words, physically
5 decline participation. I think that the person
6 is unable to communicate -- you might have
7 something in your head, but you can't get the
8 words out -- doesn't mean you're unconscious. It
9 just means you are in a point of either
10 intoxication or some other situation where you
11 can formulate the thought, and you do not want
12 this, but you just can't get the words out.
13 Sometimes that happens. You could be so afraid,
14 too. That's a different circumstance, but I
15 don't know that means necessarily unconscious. I
16 don't read it that way.

17 I could be wrong, but I don't read it
18 as meaning unconscious because we have
19 unconscious someplace -- don't we have
20 unconscious someplace else?

21 SPEAKER: Yes. Someplace else.

22 HON. HOLTZMAN: I think this is not --

1 I don't think this is designed --

2 COL. SCHENCK: Also, it notes on No.
3 3 that there was a previous definition. In the
4 notes, it says, "By removing the 2007 definition
5 of substantially incapacitated." Did we have a
6 2007 definition of substantially incapacitated we
7 could refer to as a starting point? I probably
8 wouldn't want to recreate something that already
9 didn't work.

10 SPEAKER: Yes, I think I do.

11 MS. WINE-BANKS: I think that given
12 the discussion we're having, obviously this
13 proposed definition is not clear. If it's so
14 debatable, then it needs more clarification. It
15 sounds like everybody does agree we need a
16 definition, so that it's a question of maybe
17 someone needs to sit down and start drafting --
18 looking up what other states have done and what
19 the possibilities are.

20 CHAIR JONES: Professor Schulhofer
21 suggests that. I think this is one where we need
22 to have a working group and come back and have

1 them make a presentation. That will be what
2 we'll do.

3 HON. HOLTZMAN: Can I just ask where
4 this language comes from about inability to
5 communicate and so forth? Where's it taken from?

6 LT. COL. MCGOVERN: There's been a lot
7 of litigation and Articles written about blackout
8 versus pass out in this argument. We can gather
9 those for you.

10 HON. HOLTZMAN: I'm just asking
11 where'd the language come from? Grammel? From
12 him, right.

13 LT. COL. MCGOVERN: General Grammel was
14 saying that was what they came up with.

15 HON. HOLTZMAN: I see. So he's the
16 one who's the drafter of this language that we're
17 looking at here? It doesn't come from any other
18 source that you're aware of?

19 LT. COL. HINES: I think he based it
20 -- Colonel Grammel and Lt. Col. Pickands, who did
21 the F4 -- maybe Lt. Col. Pickands is a little
22 more clear on Page 5. He goes back to the 2007

1 definition as being -- about the definition of
2 substantial incapacitation. I think that's what
3 his proposed language is based on.

4 HON. HOLTZMAN: So that's what this
5 is?

6 LT. COL. HINES: Yes.

7 SPEAKER: Anyway, somebody will
8 clarify that.

9 LT. COL. HINES: We will do that.

10 CHAIR JONES: Okay, going to No. 4.
11 We're in, I think it's 120, A5, committing a sex
12 act by administering an intoxicant. It's our
13 Issue No. 4. Professor Schulhofer actually
14 agrees with Colonel Grammel and acknowledges that
15 they're a minority, but he wants to add, as I'm
16 reading this, for the purpose of impairing. Let
17 me let everybody read it for a minute. I have to
18 say when this was discussed and presented to us
19 previously, that made sense to me.

20 COL. SCHENCK: I would agree with
21 Professor Schulhofer, as well. I think they
22 refer to some instances where they didn't

1 intentionally -- there was no mens rea element to
2 these, you know, because you get put on sex
3 offender from being the doser, then comes sex
4 offender.

5 HON. HOLTZMAN: Let me just raise two
6 issues about that. Suppose you don't have the
7 specific defendant -- specific victim in mind,
8 but you just spiked the punch, so now I'm waiting
9 to see who becomes a victim. Then what's the
10 intention there, and is that case captured? The
11 second might be you didn't spike the punch, but
12 you see the person who did spike the punch, and
13 you're now taking advantage of the victim. Where
14 does that fall in this range of behaviors?

15 COL. SCHENCK: For me, on the first
16 comment, maybe you take out specific to the
17 victim. You see what I mean?

18 HON. HOLTZMAN: What language?

19 COL. SCHENCK: In other words, I
20 spiked the punch with intent to take advantage of
21 whoever drinks the punch. Maybe you don't say my
22 purpose -- my mens rea is not to you

1 specifically, it's just to get to the sex. It's
2 not specific to that victim's capacity. Do you
3 see what I mean? I don't know how you do that in
4 the language. What was the second?

5 HON. HOLTZMAN: The second one was
6 what happens if you don't spike the punch, but
7 you're standing around and you see somebody else
8 doing it --

9 COL. SCHENCK: Right, and then I would
10 charge that as a permissible incoherent offense.
11 I would charge the person who did take action, I
12 would charge that as someone who -- depends what
13 we know about that accused, but I would charge
14 them as principles to the offense or the act of
15 offense. Because you're going to have to figure
16 out how that person knew or saw, so there's a --

17 HON. HOLTZMAN: Let's say they saw the
18 punch being spiked and just said I'm going to
19 wait around and see if I can get some of this,
20 too.

21 COL. SCHENCK: So a principal before
22 the fact?

1 SPEAKER: Dean Anderson.

2 DEAN ANDERSON: I don't know. I just
3 raised those examples. Maybe there are others.

4 SPEAKER: I'll come back.

5 CHAIR JONES: Okay. Oh, sorry.

6 MAJ. GEN. WOODWARD: My answer to that
7 is that you watch somebody spike the punch, and
8 then you take advantage of somebody who's been
9 made incoherent by drinking that punch, then to
10 me you fall back on you were having sex with
11 somebody who's unable to consent, but you didn't
12 spike the punch, I would think. That would be --

13 MS. WINE-BANKS: Right, but why would
14 that be a lesser offense than if you did it
15 yourself? If you know that it was done -- the
16 argument that Professor Schulhofer made about it
17 shouldn't be a sex crime to do the spiking of the
18 drink, well that's true. If I spike the drink,
19 and I leave the party, I'm not having any sex
20 with anybody, so I'm not guilty of the sex. But
21 if my friend saw me do it and does have sex,
22 that's more than just taking advantage. That's

1 --

2 MAJ. GEN. WOODWARD: One's taking
3 advantage, and one's an overt act. I think for
4 me, the overt act is a stronger thing to --

5 MS. WINE-BANKS: But I didn't say to
6 the victim don't drink that. I saw it spiked.
7 So I'm letting someone else -- I'm standing
8 around waiting for it to happen. I think that's
9 a serious --

10 (Simultaneous speaking)

11 COL. SCHENCK: But I think that if you
12 see it, and the other person tells you, "I'm
13 going to spike the punch so I can take advantage
14 of someone," you have a specific offense with the
15 co-accused, that that guy that you told takes no
16 action. Judge Hines can correct me if I'm wrong.

17 There's a number of military offenses
18 you can charge that person with. You've got your
19 conspiracy with one overt act. You've got your
20 failure to act. You've got dereliction of duty.
21 You've got a number of military offenses.

22 LT. COL. HINES: I think to answer Ms.

1 Holtzman's concern, I think it's exactly as
2 General Woodward laid out. I think what they've
3 done here is they just made a policy judgment
4 that the person in A5 -- A, Sub 5 -- who actually
5 puts the intoxicant or the drug in the drink and
6 is the active individual who's rendered the
7 victim unconscious, that, as a matter of policy,
8 is more aggravating than the person who, under
9 B3, stumbles upon that person, or even knows from
10 watching throughout the evening and sees her
11 becoming more and more intoxicated, and then
12 commits the act.

13 For some reason, there's a policy
14 judgment in the statute saying that person's less
15 culpable. Reasonable minds can differ, and I
16 think as Ms. Wine-Banks has noted, why is the
17 second person not as bad as the first person? I
18 think General Woodward answered the question.
19 Ms. Holtzman, I think we could get at that
20 person. We could prosecute that person, but we
21 have to go under B3, as a sexual assault, if he's
22 not the person spiking --

1 SPEAKER: B3A.

2 SPEAKER: Yes.

3 SPEAKER: Right.

4 HON. HOLTZMAN: I guess my concern is
5 that Professor Schulhofer recommended that the
6 language be narrowed. Am I correct? That the
7 language be narrowed in --

8 SPEAKER: A5.

9 CHAIR JONES: I think the concern --

10 HON. HOLTZMAN: -- in A5?

11 SPEAKER: Yes.

12 CHAIR JONES: The concern is that
13 somebody could spike a drink, but not intend --
14 I'm sorry.

15 DR. SCHULHOFER: -- as one person
16 said, that would still leave the possibility of
17 prosecuting under 120, D3 for somebody who's
18 taking advantage of the situation that's
19 presented to them without having created the
20 situation intentionally themselves. What I worry
21 about in A5 is the guy who spikes the drink. I
22 think this is a common kind of event in partying

1 that goes on.

2 People think it's funny so they add
3 some extra vodka to the punch, and then several
4 people get more intoxicated than they intended,
5 and then a person, without having intended to
6 rape someone has sex with her. That would be a
7 very serious offense under 120a, as it's
8 currently written. I've seen too many go further
9 than what's really appropriate.

10 HON. HOLTZMAN: That's my concern.
11 I'm not -- I have a real problem with somebody
12 actually facilitating a sex act. They know what
13 they're doing. If they're putting vodka in and
14 then trip and fall, and all of the sudden the
15 vodka spilled out of their hands, that's a
16 different story.

17 You're talking about somebody who
18 makes -- who's deliberating creating -- whether
19 they think it's a joke or not -- somebody may
20 think rape is a joke. The issue is not how funny
21 they think the act is. The issue is they are
22 facilitating and trying actually to create the

1 situation in which there will be a sex crime
2 committed. You put a bomb someplace with a
3 ticker --

4 DR. SCHULHOFER: Imagine what I was
5 thinking of, and maybe it's just reacting too
6 much to what I've heard about a lot of college
7 partying is that it's not with any sexual idea in
8 mind that people very, very frequently add
9 something to the punch to heighten the atmosphere
10 of the party. They're not necessarily thinking
11 about sex at all. That was the situation that I
12 thought would be covered inappropriately by A5.

13 SPEAKER: But that's not covered by
14 this. You have to --

15 DR. SCHULHOFER: I agree with you,
16 that's a dereliction of duty, but --

17 SPEAKER: But you commit a sex act
18 upon another person by doing this. You're just
19 leaving off the top line.

20 MS. WINE-BANKS: Unless the person who
21 spiked the drink has the sex act, it's not under
22 A5.

1 SPEAKER: Right. That's right.

2 MS. WINE-BANKS: So then the person
3 who spiked the drink is guilty of spiking a drink
4 and whatever crime that might be, but it's not a
5 sex act. If the person who spiked the drink has
6 a sex act, then it's A5. If the person who
7 watched the spiking, but didn't actually
8 physically do it and wasn't a co-conspirator in
9 saying let's pour it together and just handed it
10 to him and let someone else do it, that person
11 would be under B.

12 SPEAKER: B3.

13 HON. HOLTZMAN: So the person who
14 spiked --

15 MS. WINE-BANKS: Is guilty of some
16 crime.

17 HON. HOLTZMAN: Spiking.

18 MS. WINE-BANKS: Of spiking. The
19 person who spiked and had sex is guilty of a sex
20 crime. The person who watched, but didn't do the
21 spiking, is taking advantage of the spiking, but
22 isn't guilty of the rape, is guilty of sexual

1 assault.

2 MS. FRIEL: Especially the latter
3 makes sense if you think about -- take it out of
4 the spiking the drink. You stand around at a
5 party. You watch somebody get really, really
6 drunk, and you take advantage of them. One is
7 not that much different than the other.

8 SPEAKER: Exactly.

9 SPEAKER: She's being very polite.

10 CHAIR JONES: Ms. Kepros, thank you.

11 SPEAKER: She never talks without you
12 calling on her.

13 MS. KEPROS: I think we need to
14 remember it isn't like B3 is not an extremely
15 serious crime with massive sanctions and lifetime
16 consequences. It's not like this is not a crime.
17 It's not an A5. I do think it is a much more
18 aggravated circumstance that someone is
19 maliciously trying to intoxicate someone
20 intentionally to sexually assault them. To me,
21 that does warrant that more intentional behavior
22 in A5, so I support the change that Professor

1 Schulhofer's recommending.

2 CHAIR JONES: When I first looked at
3 this, I thought that the issue was the concern
4 that -- yes, we all agree that the person who's
5 going to be found guilty first and foremost has
6 to have committed a sexual act. But then under
7 5, by, the word by -- and this is how you're
8 going to commit it -- is by spiking the drink and
9 thereby substantially impairing the ability.

10 If you just read that, it's clear. If
11 you look at it a little more closely, I can
12 understand Professor Schulhofer's concern. I
13 think I had it at one point, but it was a while
14 ago, that it's not entirely clear if it's for the
15 purpose of substantially -- it's a question of
16 whether thereby is enough to show the purpose of
17 spiking the drink, even though this is a person
18 who engages in a sexual act, actually spiked it
19 in order to do that. I think we ought to take a
20 look at this again because we may be talking a
21 little bit at cross purposes. I may actually not
22 care because I think everybody probably knows

1 what this means. I think the concern is that
2 it's a little unclear about whether or not the
3 person administering it has to do it with the
4 intent to impair, not just thereby impairing.

5 MS. WINE-BANKS: I guess my concern in
6 narrowing it is proving, as a prosecutor, that it
7 was done with the intent, at that moment, to have
8 sex, as opposed to, I thought it would be funny,
9 but then after I did it, I formed the intent to
10 have sex. That should be included in the crime
11 of rape as a more serious offense. If you add
12 the words for the purpose of, I think it --

13 SPEAKER: You need premeditation.

14 MS. WINE-BANKS: I think the
15 premeditation may be more than I would think
16 necessary. But I think you're right. We should
17 probably look at what the reality is.

18 CHAIR JONES: Professor, I was trying
19 to speak for your --

20 DR. SCHULHOFER: It's really a
21 question of the temporal -- the time difference,
22 whether the exploitation or abuse was planned

1 from the beginning, at the time the drink was
2 spiked, or was it spiked with no sexual purpose
3 and the malicious intent or the wrongful intent
4 arose later, when the opportunity presented
5 itself. I think that states the issue. Bottom
6 line, I think that the last speaker stated the
7 issue very clearly.

8 I would disagree about how it should
9 be resolved because I think it's fine for the
10 prosecutor to prove that the intent was
11 premeditated, then it shouldn't be bumped up to
12 that very aggravated different category, but I
13 think the issue is clearly drawn. I don't think
14 that there's anything unreasonable that the
15 person winds up being convicted under B3.
16 Anyway, that states the issue, and I think we all
17 have different opinions about it.

18 CHAIR JONES: I agree. I think we
19 ought to think about it, whether they intended
20 this to be -- that the prosecutor would have to
21 prove premeditation.

22 COL. SCHENCK: I also want to just

1 point out, now that -- I think Jill was the one
2 who said it -- in the first line, we say sexual
3 act, and then sexual act, itself, in 1B, has its
4 own intent element in there. I just want to
5 throw that out. I don't know how the two mens
6 rea elements are going to play together.
7 Originally, I was all for this added in there.
8 Now I'm just concerned about this sexual act, to
9 me, with that intent to abuse, annoy, or harass.
10 This goes to, I can stick my finger in your
11 mouth, and end up with a sex act.

12 SPEAKER: I'm sorry, where are you?

13 COL. SCHENCK: Under rape, in the
14 first line, is who commits a sexual act. I think
15 Jill pointed that out. By. But sexual act itself
16 is defined, so when you turn to sexual act
17 itself, it's that broad meaning of I can stick my
18 finger in your mouth, if I have the intent to
19 abuse, then I'm guilty of a sexual act. You see
20 what I mean? So 1B has its own mens rea element
21 in there. I don't know how those two mens rea
22 elements work if you put another one in.

1 Under Definitions, G1, Sexual Act, V,
2 with an intent to abuse, annoy, harass, or arouse
3 -- can anyone -- I don't know. I'm just throwing
4 it out now that Jill drew my attention to it.

5 CHAIR JONES: I think we have to think
6 about that. Dean Anderson.

7 DEAN ANDERSON: Yes, I just want to
8 point out that we've got a couple of bad things
9 happening in A5. Not only do we have the
10 presentation of alcohol into the punch -- let's
11 just take the party punch example -- and the mens
12 rea associated with a sex act itself, but we've
13 got administering it either by force or threat of
14 force or without the knowledge or consent.

15 What that means is it's not just that
16 it's the alcoholic drink that we're going to make
17 stronger. It's that this is non-alcoholic punch,
18 and without your consent, we're making it an
19 alcoholic punch. Do you see what I'm saying?
20 Without consent means that someone's presenting
21 the alcohol. I think there's an element there
22 that's implicitly a problem. It's more than just

1 let's make the party drink a lot more intense to
2 enhance the party mood.

3 It's that we're going to take
4 something that's not -- here's a Coca-Cola, but
5 I've placed Rohypnol in it, for instance. That
6 is, without consent, something like that. By
7 force or threat of force or without knowledge and
8 consent also adds a culpable element here that I
9 don't think we've paid attention to in this
10 provision.

11 COL. SCHENCK: That's a good point.
12 I think we've got that definition of force or
13 threat of force. We need to leave that.

14 COL. SCHINASI: How about simply
15 encouraging them to drink to the point that they
16 are --

17 SPEAKER: That's a-whole-nother
18 ballgame.

19 DEAN ANDERSON: Right, and that's
20 different than this. That seems to me to be
21 squarely within sexual assault, B3A.

22 HON. HOLTZMAN: Because it requires

1 without the knowledge or consent. If you're
2 encouraging people to drink, they know they're
3 drinking.

4 DEAN ANDERSON: That's the more
5 culpable act involved. It's not just handing
6 someone a drink until they're very drunk. This
7 is not an alcoholic beverage.

8 CHAIR JONES: Well, it could be, but
9 if you put additional amounts of alcohol into ---
10 or a pill or --

11 HON. HOLTZMAN: That's the aggravating
12 element here. The aggravating element is that
13 not only -- that the ability of the other person
14 to appraise or control conduct has been affected,
15 but that you have deliberately, intentionally,
16 knowingly done something here that has that
17 consequence. To me, it seems -- I don't think it
18 needs --

19 CHAIR JONES: It's fine the way it is?

20 HON. HOLTZMAN: I think it's fine. I
21 don't know why the standard here is different at
22 the end. If you look at it, the other person to

1 appraise or control conduct, the control conduct
2 doesn't appear anywhere else, I think, in the
3 statute, so they've thrown in some new term here.
4 I wouldn't have written the statute like that.
5 You should use consistent terms throughout, but
6 what are you going to do?

7 CHAIR JONES: How many people think
8 it's fine the way it is, in the sense that if you
9 look at the word by right at the beginning, that
10 establishes the only connection you need. You
11 basically committed a sex act by administering.
12 Is that enough? What's the consensus on that?
13 Dean Anderson?

14 DEAN ANDERSON: Yes, just to clarify
15 the call question for the straw poll, are people
16 satisfied that this describes sufficiently
17 culpable conduct, that it should be rape and
18 should not be revised?

19 CHAIR JONES: All right, I'll take a
20 --

21 SPEAKER: I don't know if that was a
22 clarification, actually.

1 CHAIR JONES: No, that's what I was
2 trying to say. Thank you. How many people agree
3 with that, that we should not try to revise it?

4 HON. HOLTZMAN: Wait, the professor
5 wants to say something.

6 CHAIR JONES: Yes, Professor?

7 DR. SCHULHOFER: Sorry. I heard two
8 different points of view. One was that if
9 there's no sexual abuse intended at the time a
10 person starts to drink, and the insidious intent
11 arises later, that's and A5, and it should be
12 covered. The other point of view was that no,
13 this is focused on the person who does this from
14 the beginning with premeditation, but that the
15 word by takes care of that. Those are two very
16 different reasons for leaving the statute as it
17 is. Personally, I think the idea is if you think
18 premeditation is key, I'm comfortable with
19 putting all the weight on that those two letters,
20 by, to achieve that purpose. I just wonder
21 whether people are going to leave it as is
22 because they think it does require premeditation

1 as it is?

2 MS. FRIEL: I think -- the rest of the
3 table can correct me if I'm wrong. I thought our
4 discussion was we didn't think premeditation was
5 necessary or was appropriate. It doesn't matter
6 whether you have it or you don't have it. If you
7 put the stuff in the drink and you later decide
8 to take advantage of that, you should be as
9 guilty as if you premeditated it. I think we
10 want to cover both situations. We think the
11 statute does, as written.

12 CHAIR JONES: Everybody's nodding,
13 Professor. You can't see that, but they're all
14 nodding.

15 MS. FRIEL: It sounds right to me.

16 LT. COL. HINES: Judge, what was our
17 vote again, if you don't mind, on that? I just
18 counted six people.

19 CHAIR JONES: I guess we should take
20 the vote again.

21 SPEAKER: The vote for not changing?

22 CHAIR JONES: For not changing, not

1 changing, no change.

2 SPEAKER: We have a consensus.

3 CHAIR JONES: Professor, are you still
4 for changing it?

5 DR. SCHULHOFER: Yes, I would change
6 it.

7 CHAIR JONES: Thank you.

8 MS. KEPROS: Me, too.

9 CHAIR JONES: Ms. Kepros, okay,
10 thanks. We have made it to bodily harm.

11 SPEAKER: Once again.

12 LT. COL. HINES: Judge Jones?

13 CHAIR JONES: Yes?

14 LT. COL. HINES: We've been going for
15 little, I thought --

16 CHAIR JONES: You want to take a
17 break?

18 LT. COL. HINES: --- we might take a
19 brief break, yes.

20 CHAIR JONES: Sure, take a ten-minute
21 break.

22 (Whereupon, the above-entitled matter

1 went off the record at 3:06 p.m. and
2 resumed at 3:34 p.m.)

3 CHAIR JONES: All right, we're going
4 to start up again. And Professor, can you hear
5 me?

6 DR. SCHULHOFER: Yes, I can.

7 CHAIR JONES: Oh, you sound even
8 better than earlier today. This is improving.
9 Okay, we are at number five. As posed, does the
10 definition of bodily harm require clarification?
11 And that's throughout the statute. And I know
12 you have strong feelings, Liz, so I'm going to
13 interrupt you and make you tell us.

14 HON. HOLTZMAN: Well, I go back to the
15 point -- I'm sorry. I go back to the point I
16 made earlier. Professor Schulhofer, you weren't
17 here to hear my comment to General Pede.

18 But I am concerned that the language
19 is so -- it's backwards. And most people -- you
20 have to get, read to the end of the statute to
21 understand that bodily harm means any kind of
22 offensive touching.

1 My -- I have two -- I just have a
2 problem with this because I think that we don't
3 know, and I admit this, we don't know what impact
4 this is having on the Panels and on jurors,
5 prospective jurors, but it's easy to be confused
6 because the normal meaning of bodily harm is not
7 offensive.

8 Harm and -- what's offensive and
9 what's harmful are two different things. They're
10 different in normal speech. Everybody knows
11 something that's harmful. I mean, it's not the
12 same as being offensive.

13 Somebody can use bad language that's
14 offensive or can smile at the wrong point, it's
15 offensive, or doesn't say, thank you, sir, or,
16 ma'am, that could be offensive to some people,
17 but that's different from bodily harm. And so
18 I'm just very -- I'm just concerned that this
19 lack of clarity is affecting jury verdicts and
20 there could be improper acquittals in my view.

21 And I was thinking about the comment
22 earlier that this statute is written for lawyers

1 and judges, and I just think that no statute is
2 written for lawyers and judges. It's written for
3 the public that's affected by it, which is the
4 prospective defendants and the public in general.

5 And no defendant has the right to come
6 into court and say, I'm not guilty of murder
7 because I didn't understand the murder statute.
8 The only time you can really rely on the advice
9 of counsel is when you have a tax statute, and we
10 all know why, because tax statutes are
11 incomprehensible. You need a lawyer for that.

12 You shouldn't need a lawyer to
13 understand the rape statute. It should be
14 clearly comprehensible to the public, to the
15 military, to the recruits, and to the Panel.

16 And so I, I mean, I'm not somebody who
17 was really -- wants wholesale change here, but I
18 do think that this could be harmful in the sense
19 that we're getting, not just offensive, harmful,
20 in the sense that we're getting improper
21 acquittals, and so I would like to see that
22 language changed.

1 And the fact that it's well known in
2 the military, I mean, they took it from a
3 different statute, an assault statute. I
4 understand it was handy. It was probably close
5 to the statute in terms of numbers. Maybe it was
6 128 to 120 or whatever it is. It was close by
7 and it was handy dandy. I get that.

8 But I don't think -- I don't get
9 improper acquittals and that's what I worry about
10 now. You can be exactly right and say, what is
11 your proof and what is your evidence; and they're
12 going to say, mea culpa, I don't have any proof
13 or evidence except that this is just a violation
14 of the normal English language.

15 And I think the statute should be
16 clear, particularly this statute should be very
17 clear to the people who are going to be
18 prosecuted under it, and to the public who wants
19 to understand what's going on.

20 MS. WINE-BANKS: Liz, would it solve
21 your problem if the definition of bodily harm
22 were actually the element? So that instead of

1 saying it's a sexual act by causing bodily harm,
2 it's a sexual act by offensive touching of
3 another?

4 HON. HOLTZMAN: Yes, that would be --

5 MS. WINE-BANKS: So that it was clear
6 up front what the crime was.

7 HON. HOLTZMAN: Yes, well, that's the
8 other problem with this, not only the lack of
9 clarity, but you have the logical issue which is
10 that you're committing the crime by committing
11 the crime. I mean, in print it's illogical --
12 it's an illogically drafted provision. So I
13 haven't really thought, and I apologize, it's
14 just I haven't thought of an alternative. I
15 don't know whether that would work. I'd have to
16 give it some real thought.

17 CHAIR JONES: Ms. Kepros?

18 MS. KEPROS: I guess I have sort of a
19 question about this in terms of real life
20 practice, and maybe somebody here can speak to
21 it. My impression from the testimony we've heard
22 has been that this is usually used to prosecute

1 non-consensual sexual contact.

2 And so, to me, it keeps coming back to
3 isn't the crime, really, that you committed sex
4 assault upon another person by having that
5 contact without their consent? And if that is
6 really the crime that this tries to get at,
7 shouldn't it just say that?

8 Then you could eliminate bodily harm
9 from this entire article. It doesn't appear
10 anywhere else. I know grievous bodily harm is
11 here for other reasons, but that has its own
12 separate definition.

13 I just don't believe it's serving much
14 purpose to create this term of art just to
15 provide another definition and require everybody
16 to go look somewhere else to find that it means
17 something contrary to the plain language.

18 MS. WINE-BANKS: Right, but short of
19 redrafting it in a dramatic way, one way to fix
20 it might be to eliminate the words bodily harm as
21 the means of committing the sex act that causes
22 it to be a Class B crime, is to take the

1 definition and substitute it in there and just
2 say, by offensive touching.

3 MS. KEPROS: I think I'm agreeing with
4 what you're saying, but what I'm sort of trying
5 to get at is to me the phrase offensive touching
6 is just terrifying because I have no idea what
7 that means, and that's almost worse to me because
8 it's so weird, and vague.

9 And is it just my feelings are hurt,
10 or is it, you know, that, you know, I take
11 offense even? You know, I don't know quite what
12 that is, and again, to make that a serious sex
13 crime is --

14 MS. WINE-BANKS: It's unwanted, any
15 unwanted --

16 MS. KEPROS: Right, exactly.

17 MS. WINE-BANKS: -- non-consensual --

18 MS. KEPROS: Well, unwanted, non-
19 consensual. I mean, this definition uses the
20 word, you know, in reference to consent. And
21 again, that's why I'm trying to pose a broader
22 question.

1 Does it infer anything else or is the
2 issue really non-consent, and if so, maybe this
3 is a place we should talk about either
4 redefinition or you know, something that's a
5 little bit easier to process as a reader?

6 HON. HOLTZMAN: I think you make a
7 very good very point here, which is if you
8 actually look at whatever it is, (g)(3), the term
9 bodily harm means any offensive touching of
10 another. That doesn't mean in any sexual way.
11 It's just offensive. And it could be I'm
12 offended if, you know, you patted me on the
13 shoulder. I mean, that obviously --

14 (Simultaneous speaking)

15 HON. HOLTZMAN: I mean, am I missing
16 something?

17 LT. COL. MCGOVERN: If you go back to
18 the front of the page where under (a) and (b),
19 degrees and sexual assault, that definition is
20 when you commit for grievous bodily harm which is
21 defined in (g)(4) --

22 HON. HOLTZMAN: Right.

1 LT. COL. MCGOVERN: -- and then (c)(1)
2 and B, causing bodily harm. So when you're
3 looking at the statute itself rather than just
4 the definition, those are really the only two
5 instances --

6 HON. HOLTZMAN: Right, but what I'm
7 saying here too, is if you want to look at the
8 definition of bodily harm --

9 LT. COL. MCGOVERN: But first degree
10 requires a sex act, so B, any person subject to
11 this subject who 1) commits a sexual act upon
12 another person by causing bodily harm. It seems
13 to indicate there that it would require a sexual
14 act.

15 Now, if the charge of bodily harm was
16 something above and beyond that in addition to
17 the sex act, I think we've heard testimony that
18 bodily harm would not have to be additional
19 sexual conduct.

20 CHAIR JONES: Kelly, this is
21 important. Could you take me through that again?
22 What are you saying?

1 LT. COL. MCGOVERN: I'm saying the
2 only provision we're really -- you all are really
3 considering right now is for offense (b)(1)(b), a
4 sexual act upon another person by causing bodily
5 harm to that person is one way we can be accused
6 of a sexual assault, right?

7 So then you flip to the back to
8 substitute the definition of bodily harm into
9 (1)(b), a sexual act upon another person by
10 causing an offensive touching no matter how
11 slight to that person.

12 CHAIR JONES: Thank you, I got it.

13 BRIG. GEN. SCHWENK: So I think this
14 is another example of the desire to keep away
15 from the consent issue, so they do in a
16 roundabout. So you have the sex act, then you
17 have bodily harm, right? So now we have bodily
18 harm, which is what? It's the sex act. It can
19 be no more than the sex act.

20 So what does this definition give us?
21 One thing, offensive. It's the only thing it
22 gives us. So not any sex act is a crime, but if

1 it comes down to bodily harm, it's an offensive
2 sex act. So it's another way to get by consent
3 without saying the word consent.

4 MS. WINE-BANKS: But it doesn't
5 include consent, because the definition in -- it
6 goes on beyond --

7 BRIG. GEN. SCHWENK: Right, but it
8 says including --

9 MS. WINE-BANKS: -- offensive
10 touching, including any non-consensual.

11 BRIG. GEN. SCHWENK: Including any
12 non-consensual.

13 MS. WINE-BANKS: Right.

14 BRIG. GEN. SCHWENK: So offensive is
15 broader than non-consensual, and it's something -
16 - but it's still got to be offensive. So that's
17 what makes (b)(1)(b) crime is the offensive.
18 That's all that's there. So we almost could say,
19 "commits a sexual act upon another person --

20 (Simultaneous speaking.)

21 BRIG. GEN. SCHWENK: --- by an
22 offensive, you know. I mean, it's a roundabout

1 mess. So I think working group ought to look at
2 it and look at how is a clear way to say that?

3 And I'd like to get rid of bodily harm
4 because when you look at grievous bodily harm,
5 because I'm slow, I thought it would start with
6 bodily harm that is grievous, and that's not what
7 grievous meant. Instead it goes completely -- it
8 doesn't even mention bodily harm.

9 So if we could make it simpler and
10 clearer in, you know, some working group, make it
11 simpler and clearer and then get rid of the
12 bodily harm, then we could just leave grievous
13 bodily harm which I think is fine the way it's
14 defined.

15 CHAIR JONES: Before we can assign
16 this to a working group, which we'll do at the
17 end of this meeting, does anyone want to make any
18 other comments? Yes?

19 MS. KEPROS: Well, the only question
20 I guess I have -- obviously I love that idea --
21 is what behavior would we want to capture?

22 BRIG. GEN. SCHWENK: Then I want to

1 change what I --

2 MS. KEPROS: But I wonder what
3 behavior you want to criminalize beyond non-
4 consensual sex touching? Because I don't know
5 what offensive means, and so --

6 HON. HOLTZMAN: You might not need to.
7 I mean, if someone took a really hard look at it,
8 you might not need -- this might just be the
9 simple, non-consensual sexual contact.

10 MS. KEPROS: Well and that's what I've
11 been --- and I just want to make sure there isn't
12 a gap here that I'm, you know, I'm
13 misinterpreting this or there's some other
14 behavior that, you know, that other people think
15 we need to describe in this.

16 LT. COL. HINES: Judge, I think one
17 nice takeaway that was -- Lt. Col. Pickands and
18 Major Rosenow both in their materials at four and
19 seven, I think they went into this.

20 Their answer to this was sometimes
21 when you have a fact scenario, that they like to
22 have the bodily harm scenario, because when there

1 is the victim who wakes up and doesn't really
2 remember anything beyond the offensive act, if
3 any, she knows -- she can tell that someone's had
4 sexual intercourse with her, but she really can't
5 tell investigators anything else.

6 That allows, according to Lt. Col.
7 Pickands and Major Rosenow, the government can
8 proceed and just charge that offensive touching,
9 or that sex act or contact as the bodily harm.

10 So I would just suggest that the
11 working group look at what they both had to say
12 about that because they both expressed concern
13 that if you took this away they might not -- they
14 would have a hard time charging that fact pattern
15 under one of the other provision in the statute.

16 MS. WINE-BANKS: It wasn't taking it
17 away. It was just redefining it by putting the
18 definition in instead of the words bodily harm.

19 BRIG. GEN. SCHWENK: Right, I think I
20 agree with Jill. I was just talking about
21 getting rid of "bodily harm" as the definition
22 and a term that's used except in grievous bodily

1 harm, and instead making it simpler, and then
2 that brought Laurie's problem up, simpler, how?

3 MS. FRIEL: Yes, it sounds to me like
4 they're making -- sorry, we're making two
5 suggestions. One is to either replace bodily
6 harm with the words "offensive touching", or
7 replace the words with "without consent", as
8 consent is defined in the statute, and those are
9 the two choices.

10 DEAN ANDERSON: Or replace it with the
11 definition of bodily harm which is "any offensive
12 touching, comma however slight, comma including
13 any non-consensual sexual act."

14 MS. FRIEL: Right, and I guess the odd
15 thing about that to me is I'm just used to a
16 factor scheme where we have serious physical
17 injury and physical injury. One is a lesser of
18 the other. Here, we have grievous bodily harm is
19 serious bodily injury.

20 One would think that bodily harm then
21 is some bodily injury, still the word injury and
22 I think that's one of the issues Representative

1 Holtzman has with this is it just still seems to
2 imply you have to have an injury.

3 HON. HOLTZMAN: Well, right, and the
4 point -- and also there's -- which is very -- you
5 know, you've raised a really important point. Is
6 there a gradation that's been omitted here?

7 Because if it's just simply non-
8 consensual sexual contact, what's the level of
9 that crime as opposed to -- if that's all that
10 happens. It's non-consensual. The person's not
11 intoxicated. They're not whatever.

12 There's been no other -- but then you
13 also -- and you -- and what's the difference
14 between that and then you have the grievous
15 bodily harm which is very serious, or they've
16 used a gun or something like that.

17 But what about the intermediate which
18 is a step above simply sexual -- a simple sexual
19 act and grievous bodily harm? There is none.
20 That's the -- I don't know. Maybe -- am I
21 missing something here?

22 MS. KEPROS: I think it's (a)(1),

1 unlawful force. I think that would cover that
2 level of physical violence that you're
3 describing.

4 DEAN ANDERSON: Yes.

5 BRIG. GEN. SCHWENK: But we don't have
6 that in B.

7 HON. HOLTZMAN: But we -- yes, that's
8 not in (b). That's (a). That's rape. So what
9 you would be doing is --

10 BRIG. GEN. SCHWENK: I just thought
11 maybe the answer is that's one of those they
12 didn't want to have so many -- remember one of
13 the things they were trying to do, according to
14 Chuck and Chris, was keep things simpler and not
15 have it be so voluminous in different levels.

16 So maybe they did what we
17 traditionally do in the military where in
18 sentencing they're going to have sentencing
19 guidelines. Leave it to the Members or the Judge
20 to decide, based on the facts, how aggravated
21 this (b)(1) violation is. And if it's only the
22 sex act itself, then, you know, when it comes you

1 come for sentencing, it's worth whatever that's
2 worth.

3 But if it's some kind of bodily harm,
4 in the traditional sense of bodily harm, above
5 the sex act, but not grievous bodily harm, then
6 maybe you add onto what you gave last week to the
7 other cases which seems to be a higher one
8 because they beat the person up pretty badly, but
9 they didn't get to grievous bodily harm. Maybe
10 that's how they left it. I don't know. That's
11 my guess.

12 CHAIR JONES: All right, I'm going to
13 move on since we know we're going to be working
14 on bodily harm in the working group to number 6
15 which is the definition of threatening, wrongful
16 action, ambiguous or too narrow?

17 And that comes up, let's see, it's
18 120(g)(7), and we had a split. Two presenters
19 thought we should modify it. Two presenters,
20 including Colonel Grammel said no change.
21 Professor Schulhofer, and you can hear me, right,
22 Professor?

1 DR. SCHULHOFER: Yes, I can.

2 CHAIR JONES: Okay.

3 DEAN ANDERSON: I apologize, can you
4 tell us where that is in the statute, the
5 definition -- not the definition section, but the
6 --

7 LT. COL. MCGOVERN: (a)(3).

8 DEAN ANDERSON: (a)(3).

9 BRIG. GEN. SCHWENK: And (b)(1)(a).

10 DEAN ANDERSON: But threatening
11 wrongful action comes under the definition of
12 fear, but it's a subsection of fear.

13 (Simultaneous speaking)

14 CHAIR JONES: So where do we think we
15 are then, (g)(7)?

16 HON. HOLTZMAN: (g)(7), but it refers
17 back to (b)(1)(a).

18 CHAIR JONES: Okay.

19 BRIG. GEN. SCHWENK: It's also in
20 (b)(3).

21 HON. HOLTZMAN: Well, that's specific
22 --- subjected to death and bodily harm.

1 BRIG. GEN. SCHWENK: True, but the
2 term is there.

3 CHAIR JONES: So the question is, is
4 that too ambiguous? I'm trying to find it, so I
5 don't have an opinion yet.

6 HON. HOLTZMAN: It's G7.

7 CHAIR JONES: Yes. Wasn't one of the
8 issues here that this wouldn't actually cover a
9 kind of coercion? You know, not the positive,
10 but even the negative, that that ---

11 HON. HOLTZMAN: Well, I think you're
12 talking -- yes, Professor Schulhofer is talking
13 about -- he wants to make clear that it's
14 unacceptable to obtain consent by offering
15 undeserved privileges or mitigation of deserved
16 criticism, and he'd like us to discuss it and
17 wants to hear more about it.

18 MAJ. GEN. WOODWARD: But this is where
19 you hear from some people that say we shouldn't
20 say that if somebody offers something positive to
21 someone, or detracts from that, whether they're
22 not truly in fear. They're only in fear of their

1 career, or they're in fear of losing something of
2 monetary value, that that's not a fair thing to
3 put into this article.

4 It should be in some other article,
5 and I think that's what the Professor is saying
6 by, should we address it in some other article?

7 DR. SCHULHOFER: I think some of the
8 witnesses said that, for example, that in the
9 concrete cases you had a drill instructor, or as
10 you call it, a military training instructor now,
11 something like that, for basic training.

12 The drill instructor said, I'll let
13 you get leave this weekend to go home to your
14 parents, but, you know, if we have sex first, or
15 something of that nature. So the witnesses said
16 that would be wrongful, and others said, well,
17 that's not clear that's wrongful. The person's
18 not entitled to leave, so he's just offering a
19 benefit. The person would not be in fear.

20 I think it should be impermissible, so
21 it's just a question of, you know, is this
22 sufficiently clear or this is not -- I'm sorry,

1 is this sufficiently clear that this would be
2 covered?

3 MS. WINE-BANKS: Would that be covered
4 by a different crime within the military system?

5 COL. GREEN: This goes to the second
6 set of issues that the subcommittee is going to
7 address in the future, and this carries over to
8 that.

9 But I think the issue is the 2007
10 version of the statute specifically enumerated an
11 offense based on -- incorporated within the
12 definition of threat, positive or negative
13 conduct through the abuse of authority, and that
14 was removed in the 2012 version, and then we're
15 left this question.

16 And so, I think you all will take this
17 up more specifically in terms of coercion and
18 abuse of authority in that context and whether
19 that needs to be enumerated. Currently, there is
20 no enumerated offense, and to reach that conduct
21 under 120, this is the only channel in which to
22 do that.

1 MS. KEPROS: We have an issue 14 that
2 we will reach in our next set of issues that I
3 cannot distinguish from this one at all. It
4 looks like exactly the same question.

5 Should the definition of threatening
6 or placing another person in fear be amended to
7 ensure that coercive sexual relationships or
8 those involving abuse of authority are covered
9 under an existing article 120 provision?

10 All of those other issues are around
11 the issues of abuse of power. So my
12 recommendation is that we table this until we
13 look at the other issues.

14 CHAIR JONES: It sounds good to me.

15 MAJ. GEN. WOODWARD: Yes, the two
16 differences are the consent or, you know, that
17 the other one is getting to whether someone who's
18 under -- they willingly consent, but if they're
19 under that level of power of authority, do they
20 really have the ability to consent?

21 CHAIR JONES: What number do you say
22 this is identical to? Did you say ---

1 MS. KEPROS: 14 is what I just read to
2 you.

3 BRIG. GEN. SCHWENK: Which is the
4 second batch of questions that the JPP gave us
5 that have to do with inappropriate relationships.

6 CHAIR JONES: Oh, I see.

7 BRIG. GEN. SCHWENK: And so we divided
8 them out.

9 CHAIR JONES: They're not in our -- I
10 got it.

11 BRIG. GEN. SCHWENK: We get 1 to 11 on
12 120, and then the others were --

13 CHAIR JONES: Got you, okay.

14 MS. KEPROS: 12 through 17 are all
15 about the abuse of power and those kinds of
16 coercive dynamics. That's why I was wondering if
17 it might be better put to the directive end.

18 DR. SCHULHOFER: I don't have any
19 objections to deferring this until we can think
20 about it in a broader context. That obviously
21 makes sense.

22 But I would just put on the table that

1 I think when you have a training situation where
2 recruits are under the authority of the drill
3 instructor, and that authority is used to coerce
4 or induce sexual sedition, I think that's a very
5 different crime from other sorts.

6 You know, if the sergeant has the
7 person come over and paint their garage, this is
8 very different. And it seems to me that the
9 abuse of authority for sexual coercion could fit
10 in as a very distinct category.

11 MAJ. GEN. WOODWARD: Right, but we're
12 going to address that.

13 MS. WINE-BANKS: Will the issue of
14 unlawful force also get bound up in this issue of
15 improper use of authority? I mean, it's not one
16 of the definitions we're looking at, but I've
17 always wondered what unlawful force is as opposed
18 to lawful force?

19 I mean, lawful force for a sex act?
20 I don't -- I can't envision a lawful use of force
21 that -- I mean, I just can't even conceive of
22 what that would be. So I've therefore wondered

1 why we have something that's unlawful use of
2 force.

3 MS. FRIEL: S&M. That's -- I mean,
4 you could, the way the use of force is defined
5 here, somebody could consent to having force used
6 upon them that is sufficient to restrain them.
7 There are people who agree who to be bound, and
8 beaten, and God knows why, in the act of having
9 sex. So I think that would make sense to me that
10 that's what they're getting at there.

11 MS. WINE-BANKS: Would that be lawful
12 force if I consented -- that you can consent --
13 when you can consent, as in, I'm okay, but would
14 you then consider it lawful force? It would be
15 consensual force. And there is somewhere that
16 says you can't consent to grievous bodily harm.

17 MS. FRIEL: Right.

18 MS. WINE-BANKS: And so if S&M gets
19 out of control, or the choking thing, and you
20 die, you couldn't consent to that even though you
21 did consent to that. So maybe it would be the
22 issue of authority, but I still wonder about

1 lawful force and unlawful force.

2 CHAIR JONES: Okay.

3 BRIG. GEN. SCHWENK: I agree with
4 Laurie's thought that this would be better looked
5 at in the whole context of those kinds of
6 relationships, so I think that's ---

7 HON. HOLTZMAN: You mean official
8 relationships, not accidental.

9 BRIG. GEN. SCHWENK: Official
10 relationships. Yes, thank you. There was a DoD
11 directive on those kinds of -- at least on
12 recruiters and the person to be recruited, and
13 trainers and trainees. I don't know if it's out
14 yet. But --- to figure that out.

15 MAJ. GEN. WOODWARD: Yes.

16 CHAIR JONES: So I think we're all in
17 agreement that we're going to defer talking about
18 the definition of threatening wrongful action
19 until we get to the 12 through 17 issues.

20 And are we saying the same thing about
21 the next question which is, how should fear be
22 defined? Or, no, I'm sorry, no, okay. Well,

1 it's in 120(g)(7) as well, and the question is,
2 how should it be defined to acknowledge both
3 subjective and objective factors?

4 The professor's opinion is to date he
5 hasn't heard a compelling reason for change. Is
6 there anyone who has a compelling reason to
7 change the -- or add to the definition so that
8 people would better understand what fear is or
9 whether it's subjective or objective, I guess?
10 I'm trying to figure out what the problem is.

11 LT. COL. MCGOVERN: Well, it was
12 someone who said that you take your victim as you
13 find them, and it's a fragile, fearful person,
14 then their subjective fear, even though not all
15 reasonable fear by normal standards, should be
16 included. So was that the argument?

17 LT. COL. HINES: I think that's right.
18 And Judge Orr and maybe one other a submission to
19 the Panel had indicated that the fear should be
20 simple fear alone. It's the witnesses or the
21 victim's fear, and you don't instruct the Panel,
22 but it also has to be an --- objectively

1 reasonable based on community standards.

2 And so I think the majority of people
3 that you've heard from have said, don't change
4 it. Leave it as the victim's fear, but there's
5 the added step that the fear has to be
6 objectively reasonable.

7 CHAIR JONES: It has to be objectively
8 reasonable right now under the statute. So do we
9 want to discuss this further or do we have the
10 statute as it is?

11 LT. COL. HINES: Professor Schulhofer,
12 did you have a comment? I thought I heard you
13 trying to speak.

14 DR. SCHULHOFER: Are we on number
15 seven?

16 CHAIR JONES: Seven, yes.

17 DR. SCHULHOFER: No, I agree that it
18 shouldn't -- the fear should have to be
19 objectively reasonable, so I would not change the
20 current definition.

21 CHAIR JONES: All right.

22 DEAN ANDERSON: Why, I guess, is my

1 question?

2 CHAIR JONES: Why should it have to be

3 --

4 DEAN ANDERSON: If the fear is
5 legitimate, honestly held, it means the act was
6 coerced from the perspective of the victim.

7 MS. FRIEL: So here's the example I
8 gave when I talked --

9 DEAN ANDERSON: We can always come up
10 with an irrational person.

11 MS. FRIEL: No, that's -- but their --
12 here's the example, and this was a real case. A
13 woman dating a detective goes back to his home.
14 He says, come on in the bedroom and have sex with
15 me. She has sex with him. She tells me
16 afterwards she was in fear. She thought that he
17 might kill her.

18 I go, what did he do or say to make
19 you think that? She said, well, I knew he had a
20 gun. He's a detective. He's got to have an off
21 duty gun. And I said, did he show it to you or
22 did he say anything? Did he even say it's in my

1 night table'? He said nothing about it.

2 I'm telling you, she really did. She
3 was not lying to me. It was legitimate. She
4 subjectively had that fear. Is that detective
5 guilty because she had that subjective fear?

6 I mean, that's, you know, I think
7 that's why we have the, do you truly have a
8 subjective belief? And then, is that subjective
9 belief reasonable under the circumstances?

10 DEAN ANDERSON: So, I apologize, we're
11 where in the statute on the fear thing because I
12 think fear shows up two times, right? So we're
13 talking about the ---

14 (Simultaneous speaking)

15 MS. FRIEL: I think it's in the
16 definition of threatening or placing someone in
17 fear.

18 DEAN ANDERSON: No, no, I understand
19 that we're talking about the definition of fear,
20 but fear shows up in the statute under rape, A3,
21 but again, this is someone commits the sexual act
22 by doing this. The mens rea of the defendant is

1 that they are threatening or placing the other
2 person in fear, and I can't see how that
3 detective did that under --

4 BRIG. GEN. SCHWENK: He took his gun
5 off and put it on the table next to the bed.

6 (Simultaneous speaking)

7 MS. FRIEL: He did place her in fear,
8 but he just didn't know he was. So, I mean, I
9 could see this --

10 MAJ. GEN. WOODWARD: That is how he
11 accomplished -- that's how the sex act got
12 accomplished, he just didn't know it.

13 DEAN ANDERSON: In (b)(1)(a), I think
14 there's another place other than (b)(1)(a),
15 threatening or placing the other person in fear.
16 Well, actually, did you prosecute the case?

17 MS. FRIEL: No, of course not.

18 DEAN ANDERSON: Yes, right, so --

19 MS. FRIEL: No, but it didn't fit our
20 statute because we had a, what is your subjective
21 belief, and is your subjective belief reasonable?
22 I didn't even have to get the prosecutorial

1 discretion. It didn't fit within the definition.

2 BRIG. GEN. SCHWENK: So this statute
3 is like yours?

4 MS. FRIEL: Yes.

5 HON. HOLTZMAN: Where is the objective
6 standard here?

7 DEAN ANDERSON: A reasonable fear that
8 noncompliance will result in the other person --

9 HON. HOLTZMAN: Oh, reasonable fear,
10 okay, sorry, yes, okay, thank you.

11 CHAIR JONES: So are we okay with
12 this?

13 MS. FRIEL: I mean, think about it ---
14 in the military context, what if somebody asks
15 you to have sex with them and another -- let's
16 take the rank out of it. Another person of equal
17 rank asks you to have sex with them, you say yes,
18 and then afterwards you say, I had a fear that if
19 we went out in a combat, he wouldn't have my
20 back, and he, you know.

21 I mean, we don't sit there and go, how
22 is that reasonable? Did he say something or do

1 anything that suggested that --- but somebody
2 could have that kind of fear. I needed to comply
3 so people would have my back. I don't know
4 whether you'd want to make that rape then.

5 MAJ. GEN. WOODWARD: Wouldn't you mean
6 that -- I think it's more that -- not that her
7 fear or his fear, whichever the victim was, was
8 reasonable. That was probably a reasonable fear.
9 It was the overt act on the part of the other
10 person that made that fear possible, i.e., the
11 detective didn't do anything overt to make that
12 victim afraid of him.

13 Did anybody in that unit make that --
14 do anything over to bring that fear to the person
15 that they wouldn't --

16 CHAIR JONES: Yes, the concern ---
17 that he wouldn't watch my back, could be a
18 reasonable fear. Yes, we're not saying by
19 definition that's never a reasonable fear. But
20 yes, you're right, if there's nothing that would
21 have caused that, then it's not a reasonable
22 fear. I think that's what you're saying.

1 MAJ. GEN. WOODWARD: Well, no, I think
2 it could be reasonable that that was caused, it's
3 just that nobody did any --- you know, that the
4 individual is not responsible for it because he
5 didn't do anything overt to make that a
6 reasonable fear.

7 I guess there could be like a unit-
8 wide cultural thing that makes that a reasonable
9 fear that, if I do something out of the way, you
10 know, that I could be alienated and left to hang
11 in combat.

12 CHAIR JONES: Right.

13 MAJ. GEN. WOODWARD: But it didn't
14 mean the individual who is the accused did that.

15 MS. WINE-BANKS: If you take away the
16 definition that includes reasonable, you open it
17 up to being prosecutable, whereas as long as the
18 word reasonable is there, the fact that the
19 alleged defendant didn't do anything overt would
20 mean he would have, he or she, would have no
21 culpability.

22 COL. SCHINASI: Reasonable always

1 means under the circumstances, and so what
2 circumstances do you have that make it
3 objectively reasonable? And in the scenario we
4 are discussing, none.

5 HON. HOLTZMAN: She has a fear. No
6 one is saying that the victim doesn't have a
7 fear. But the point is if the fear is not
8 reasonable under the circumstances, there's no
9 justifiable basis for that fear, in other words,
10 justifiable in the sense that most people would
11 be afraid in that circumstance, then I think it's
12 a problem.

13 And so what we're saying is that the
14 defendant -- because the language placing
15 somebody in fear is too vague, and so the fact
16 that you're carrying a gun because you're a
17 detective, you could be placing somebody in fear.
18 It's just not a reasonable fear if this person's
19 been your friend for 20 years and --

20 MS. FRIEL: That if you don't have sex
21 with them, you're going to get hurt.

22 HON. HOLTZMAN: Right, so they could

1 very well have that fear, but if it's not
2 reasonable, then people could be prosecuted
3 simply because somebody had any fear, and that's
4 the question.

5 DEAN ANDERSON: On this question I'm
6 looking at this definition of threatening or
7 placing another person in fear, and it just seems
8 to be that there could be a way in which the
9 definition is duplicative of reasonableness.

10 There is language that says that the
11 defendant communicates or acts in a way that is
12 of sufficient consequence to cause fear, that
13 noncompliance will lead to wrongful action or --

14 CHAIR JONES: Are you in seven? You
15 are?

16 DEAN ANDERSON: Yes, I'm looking at
17 the definition of seven. So you have to have
18 action that is of sufficient moment --

19 MS. FRIEL: He carries his gun. He's
20 required to carry his gun in the example I gave
21 you. But he carries his gun, so he did
22 something.

1 DEAN ANDERSON: But simply carrying a
2 gun is not an action --

3 HON. HOLTZMAN: Well, communication,
4 I have a gun. He told her 20 years ago. I mean,
5 how long did they see each other, five years?

6 MS. FRIEL: Twice.

7 HON. HOLTZMAN: Twice, okay.

8 MS. FRIEL: Maybe once, I can't
9 remember.

10 HON. HOLTZMAN: Whatever it was, maybe
11 he told her, I have a gun.

12 MS. KEPROS: He told her he was a
13 detective.

14 MS. WINE-BANKS: So she knew, I'm a
15 detective, and she went out with me voluntarily.
16 She assumed I carried a gun because I'm a
17 detective.

18 MAJ. GEN. WOODWARD: No, but we're
19 talking about his overt action which was, I have
20 a gun, not specifically threatening her, but it
21 could be an implied threat.

22 MS. WINE-BANKS: Well, I think the

1 story that you told was she just knew he was a
2 detective and assumed he had a gun. She didn't
3 see it.

4 MAJ. GEN. WOODWARD: But I think
5 that's what the deal was, I think.

6 DEAN ANDERSON: I'm just trying to
7 understand it mostly, and identify which side I
8 believe. I'm just not sure right now. I'm not
9 necessarily persuaded that we should pause any
10 more on this, but I did want to parse this
11 statute to make sure I understood what's
12 necessary under the statute to constitute the
13 kind of fear that triggers the import of the
14 statute.

15 MS. WINE-BANKS: Well, for it to be --
16 - in the circumstance, if the detective
17 communicated to her in some way, you know, of
18 course I carry a gun all the time because I'm
19 never off duty, that would be a communication of
20 sufficient consequence that could cause a fear.
21 Whether that's a reasonable fear that, if you
22 don't do what I say, I'm going to use my gun, is

1 of question.

2 DEAN ANDERSON: I agree, except that
3 the statute doesn't say they could cause a fear.
4 It says that it's a communication or action that
5 is of sufficient consequence to cause the fear.

6 MS. WINE-BANKS: Right.

7 DEAN ANDERSON: Yes.

8 HON. HOLTZMAN: But if you on, it says
9 that noncompliance, so --

10 DEAN ANDERSON: Yes, just not any
11 fear, but that noncompliance would --

12 HON. HOLTZMAN: Yes, so there's kind
13 of a request implicit --

14 DEAN ANDERSON: Or demand.

15 HON. HOLTZMAN: -- or demand in item
16 seven. So it can't be just -- your scenario I
17 don't think would fall under seven.

18 MS. FRIEL: No, but the one that Jill
19 contemplated would.

20 HON. HOLTZMAN: Say it again, Jill.
21 What happened?

22 MS. WINE-BANKS: I don't remember what

1 I said. That, "I'm a detective." That's the
2 only communication. And she just assumes that
3 he's carrying a weapon, and that is of sufficient
4 consequence to cause a fear -- I'm not saying
5 reasonable -- to cause a fear that if she doesn't
6 comply with his secondary communication of,
7 "Let's have sex," that she could be hurt.
8 "Contemplated by the communication or action."

9 So it seems to me that actually that
10 wouldn't - the communication has to be, "I'm
11 carrying a gun and I'll use it on you."

12 DEAN ANDERSON: Yes, that would have
13 to be the kind of communication that would work
14 under the second part of this.

15 MS. WINE-BANKS: Yeah, I think it
16 would.

17 DEAN ANDERSON: So I guess I'm
18 wondering what independent work the word
19 "reasonable" is doing, given that the rest of the
20 construction of the provision requires that the
21 communication or action be of sufficient
22 consequence to cause the fear, and not just any

1 old random fear, but a fear that noncompliance
2 will result in something bad, not just any old
3 noncompliance resulting in something bad, but bad
4 that is bad that was contemplated by the
5 communication or action.

6 MS. KEPROS: I'm not identifying the
7 scenario where there's an inability to prosecute
8 something. I don't see how removing the word
9 reasonable solves the problem.

10 MS. WINE-BANKS: Wouldn't it make the
11 problem worse?

12 MS. KEPROS: That's my fear, my
13 reasonable fear.

14 (Laughter.)

15 MS. KEPROS: Every other person here,
16 I believe, was a prosecutor, so you tell me a
17 case you can't prosecute under this statute.

18 MS. FRIEL: Or flip the question the
19 other way, what's the problem with the word being
20 in there other than it may be redundant?
21 Because, again, to remove the word is a statutory
22 change. Someone will consider it a significant

1 change. They'll be charging yet a third version
2 of this statute. Well, let's flip it the other
3 way. Do we see a problem with the fact that the
4 word's there?

5 COL. SCHINASI: You could see
6 reasonable as negating subjective, because
7 reasonable means under the circumstances.

8 DEAN ANDERSON: Right, it's just not
9 you could see it. Reasonable is an objective
10 standard. It negates the subjective element.

11 (Simultaneous speaking.)

12 MS. FRIEL: Right, but you're also
13 saying the other language does that anyway.

14 DEAN ANDERSON: Exactly, subjectively.

15 COL. SCHINASI: So if you take that
16 out, then you could say her subjective fear,
17 whatever it is, is sufficient. So "reasonable"
18 carries that baggage.

19 DEAN ANDERSON: For better or worse.

20 BRIG. GEN. SCHWENK: Or that
21 protection.

22 DEAN ANDERSON: Exactly.

1 HON. HOLTZMAN: How many people said
2 that this was a problem? Do we have any
3 presenters who -

4 COL. GREEN: The JPP heard from two
5 people. Dean Schenck, in your law review
6 article, this is something that you noted, and
7 also Colonel Jackson from the Air Force noted
8 that it does not include a subjective and an
9 objective standard, and advocated for considering
10 the addition of a subjective standard in addition
11 to the objective reasonable standard.

12 HON. HOLTZMAN: Wait a minute. Why?
13 We don't need to have an objective and a
14 subjective standard.

15 COL. SCHINASI: There really are two
16 standards here. The first is the set of facts
17 that determine what the victim thought. That's
18 not a standard. The standard is how that's going
19 to be interpreted. That's the objective
20 standard. There is no subjective standard.

21 COL. SCHENCK: But I want to point out
22 that my Articles, I don't have any personal

1 attachment to those --

2 (Laughter.)

3 COL. SCHENCK: But at the time it was
4 to draw attention to the policy statute. Now
5 there seems to be discussion. I'm fine with
6 leaving the "reasonable" in, but when I addressed
7 it, it was the eggshell skull theory victim
8 aspect that I was addressing.

9 COL. SCHINASI: I teach torts, so it's
10 near and dear to my heart. That's a scenario
11 totally different than this.

12 COL. SCHENCK: Yeah, I totally
13 understand. But I mean, as far as when I was
14 writing it, what I was focusing on, I was focused
15 on vulnerable victims.

16 COL. SCHINASI: So what's strange to
17 me -

18 COL. SCHENCK: But I mean, I agree
19 with Dean Anderson. There's a lot of limiting
20 language in there. I mean, there's a lot of
21 gates in there when you're talking about defining
22 threatening or placing that other person in fear.

1 So writing in "reasonable" isn't
2 really going to make a hill of beans by taking it
3 out or keeping it in. Everything else is there.

4 DEAN ANDERSON: I just want to state
5 for the record that I think that there -- because
6 I'm the one who said why, you know. But I think
7 it's important to go through this language and to
8 try to understand what the statute means. And
9 upon parsing this fairly carefully, it does seem
10 like there are a number of provisions that
11 essentially require reasonableness already.

12 And we may disagree with that and want
13 to overhaul the entire statute, but I don't see a
14 reason -- there certainly haven't been arguments
15 to that effect in front of us. And I don't think
16 reasonableness here does a lot of independent
17 work from the rest of the language of the
18 statute, and so I don't object to it.

19 CHAIR JONES: Okay. Then we're going
20 onto the definition of force in Number 8. But I
21 guess we should say, then, with respect to fear,
22 we're leaving that alone. No change. Is that

1 everybody's sense? Okay, good.

2 All right, should the definition of
3 force -- is it too narrow? Should it be made
4 broader, 120(g)(5)? Professor, do you want to
5 speak to this one?

6 DR. SCHULHOFER: Well, I guess I felt
7 that the definition of force was adequate, but
8 this really ties into the question of resistance.
9 The concern was the definition of force might
10 need to be made broader to make clear that, if a
11 victim didn't resist, there could be a broad
12 spectrum of circumstances that would excuse the
13 failure to resist.

14 But it seems to me it's not necessary
15 to get into all if we just say directly that it
16 never matters why a victim resisted, that the
17 lack of resistance does not amount to consent
18 either way.

19 LT. COL. MCGOVERN: If I can draw your
20 attention back to the statute, and two places
21 where the word force is particularly used are in
22 the rape portion, (a)(2) and (a)(5). The

1 unlawful force that's in (a)(1) is separately
2 defined. So just when you're plugging that
3 definition, that it's in that context.

4 DEAN ANDERSON: And it doesn't come up
5 under sexual assault. I only say that because,
6 to the extent that it's narrow, it's narrow with
7 the most serious offense, which is why it's
8 narrow.

9 MS. FRIEL: I have a question. So
10 here's my question about the way it's defined
11 now. So you have weapons clear. Inflicting
12 physical harm seems to suggest to me you're
13 inflicting some kind of injury or something.

14 So what about in the case under (b)
15 where somebody actually uses some physical
16 strength on someone but it's not really
17 sufficient to overcome their resistance. They
18 don't resist. That's what happens a lot, that
19 somebody gets pushed down, they might be able to
20 fight back, especially if you're talking about
21 two Soldiers who are in better shape than I am,
22 and I can just -- you tell me if in practice this

1 works out -- but I could see somebody saying,
2 "Come on, that pushing down on the bed, that's
3 not sufficient force, that Soldier could have
4 fought back," and so it wasn't sufficient to
5 overcome them.

6 But actually the pushing of somebody
7 down, people get really scared when there's any
8 force, and they tend to comply once any force is
9 used. That's why in a civilian statute it
10 usually says force or threat of force, expressed
11 or implied, that puts you in fear of some kind of
12 physical injury or something else.

13 And so this seems narrower than most
14 of the civilian statutes that I've seen. And I
15 don't know where you would cover the scenario I
16 just gave you where some force was used but it
17 wasn't sufficient to overcome somebody's
18 resistance.

19 MS. KEPROS: Would it be (b)(1)(a)?

20 MS. FRIEL: Threatening or placing
21 that person in fear.

22 HON. HOLTZMAN: Well, is it bodily

1 harm again?

2 MS. FRIEL: No, she's saying under A.
3 So you're saying somebody pushes somebody down,
4 uses some, what we would call, in laymen's terms,
5 physical force, and so -

6 LT. COL. MCGOVERN: Causing or likely
7 to cause grievous bodily harm. So you don't
8 actually have to cause the harm. And then in 5
9 it does say by force or threat of force.

10 DEAN ANDERSON: Yeah, but that's for
11 intoxicants. 5 is substances, right? So,
12 shoving someone onto a bed, let's just take that
13 because it's a kind of -- sorry, pushing someone
14 onto a bed and pinning them, right, that's
15 classic.

16 It's not going to fall under rape
17 because it's not likely to cause death or
18 grievous bodily injury. It's not force that's
19 likely to do that. It's not going to -- it may
20 or may not threaten the person or put them in
21 fear, if we talk about the definition of fear
22 again. We parsed that recently. But I think it

1 would come within the rubric of just non-
2 consensual sex, potentially.

3 HON. HOLTZMAN: I think it's number
4 one, (a)(1), because unlawful force, if you see
5 it defined, means any act of force done without
6 legal justification or excuse. So pushing
7 someone on the bed would be an act of force. So
8 I think it would come under (a)(1).

9 MAJ. GEN. WOODWARD: And that fits
10 under 5B.

11 HON. HOLTZMAN: It also fits under the
12 definition of force, just whatever the use of --

13 DEAN ANDERSON: Sufficient to overcome
14 or restrain.

15 HON. HOLTZMAN: Yeah, right, but you
16 need the force as part of the sexual assault or
17 rape. But I think it comes under rape.

18 MS. WINE-BANKS: Also you've raised a
19 different question which is, I think, Kelly, what
20 you said, that force is also implied. The
21 definition of force has no applicability to, you
22 know, putting something into somebody's drink by

1 force.

2 That's not -- you know, did I hold a
3 gun at your head while I dropped it in and then
4 forced you to drink it? Well, that would
5 certainly be it, but I don't think that's what 5
6 is intended to cover.

7 So the word "force" used in two
8 different subsections of A, having the same
9 definition, is a problem that I hadn't focused
10 that until she just said that.

11 MS. FRIEL: And your unlawful force
12 still says -- the term unlawful force means an
13 act of force done without, so you still have to
14 go back to the definition of force which requires
15 "to be sufficient to overcome resistance."

16 HON. HOLTZMAN: I see, okay, right, all
17 right, fine. So we don't really have -- that
18 goes back to the point I made earlier on the
19 bodily harm. We don't have an intermediate --
20 this is really what we covered under bodily harm.
21 So you're under (b)(1)(b), because it's bodily
22 harm. It's an offensive touch.

1 BRIG. GEN. SCHWENK: Right.

2 HON. HOLTZMAN: So there you go.

3 (Simultaneous speaking.)

4 LT. COL. MCGOVERN: You don't think
5 that force under -- the force in C, inflicting
6 physical harm sufficient to coerce or compel
7 submission, that doesn't cover pushing someone
8 onto the bed?

9 MS. FRIEL: I would think pushing
10 someone on the bed, I could see a lot of jurors
11 saying that's not sufficient to overcome,
12 restrain, or injure a person. They could get
13 right back up. They could push you back. They
14 have the physical ability to do that.

15 CHAIR JONES: And if there a
16 definition for physical harm?

17 LT. COL. MCGOVERN: But these are
18 "or's." That's all that they have to do, is A,
19 B, or C. So if that was enough to coerce or
20 compel submission of the victim, that was
21 sufficient force.

22 MS. FRIEL: Well, except that requires

1 harm. C requires physical harm, which suggests -
2 - so that's not defined.

3 HON. HOLTZMAN: Right, it's not bodily
4 harm. Who knows what physical harm is, right?

5 CHAIR JONES: Physical harm is what
6 bodily harm is.

7 BRIG. GEN. SCHWENK: Oh, there we go.
8 That will be our definition.

9 MS. FRIEL: Well, I do see though that
10 the scenario I'm suggesting would fit under
11 (b)(1)(b), however we change the words, right?

12 MS. KEPROS: That's just what I wanted
13 to check in. Since we have still this looming
14 issue about what we're going to do with bodily
15 harm, I mean, I think what you're describing is a
16 non-consensual event.

17 And so I'm just checking in to say,
18 hey, does the word non-consensual cover that or
19 is there something else going on?

20 BRIG. GEN. SCHWENK: It's a (b)(1)(b),
21 but it's not a rape, so you're down to sexual
22 assault.

1 MS. KEPROS: Okay.

2 COL. SCHINASI: But it also may not be
3 harm. Just pushing somebody down on a bed
4 doesn't necessarily harm them.

5 BRIG. GEN. SCHWENK: Well, but under
6 (b)(1)(b), if we ever get finished with it, it's
7 going to be -- the sex act itself may be enough.

8 HON. HOLTZMAN: Bodily harm doesn't
9 require --

10 (Simultaneous speaking.)

11 MS. KEPROS: It's just non-consensual
12 bodily -- or excuse me, sexual touching.

13 COL. SCHINASI: And the question is
14 force, not harm. It's not a contest. I mean,
15 you could very well have the victim saying,
16 "Yeah, I wasn't afraid of this guy. I could take
17 this guy," which is kind of the important point
18 of it.

19 HON. HOLTZMAN: Yeah, but it's still
20 an act of force. The term unlawful force means
21 an act of force, so then you have to go back to
22 what force means, and force means the use of such

1 physical strength or violence that's sufficient
2 to overcome.

3 Well, the jury might decide that
4 pushing someone on a bed is not sufficient. So
5 that's the problem. And then you go to bodily
6 harm, which is not bodily harm. This is a quite
7 wonderful statute.

8 BRIG. GEN. SCHWENK: But maybe when
9 they wrote it, that's what they intended, you
10 know? If the jury decides it's not sufficient,
11 then it shouldn't be at that level. It should be
12 down a level. And then you get a sexual assault
13 instead of a rape.

14 LT. COL. MCGOVERN: Previous versions
15 of rape were simply force without consent.

16 MS. FRIEL: Right.

17 LT. COL. MCGOVERN: That's where you
18 got the changes then in 2007, so you should use
19 that in context. I believe, traditionally, if
20 there was any level of force, it equated to rape.

21 (Simultaneous speaking.)

22 HON. HOLTZMAN: It's offensive

1 touching.

2 MS. WINE-BANKS: Oh, right, that's
3 offensive touching.

4 BRIG. GEN. SCHWENK: It doesn't mean
5 bodily harm, though. It means bodily harm in the
6 military.

7 MS. KEPROS: You guys are raising a
8 question in my mind that I understand probably
9 isn't really on the agenda. I'm just curious if
10 there's any quick response.

11 Well, how can (a)(1) and (a)(2) both
12 exist and not violate equal protection? Because
13 it seems like 2 is way worse.

14 (Simultaneous speaking.)

15 BRIG. GEN. SCHWENK: Well, doesn't it
16 seem like the line is broader in 2?

17 MS. KEPROS: That's my first question.
18 2 seems worse, and so how can those be punished
19 to the same extent?

20 BRIG. GEN. SCHWENK: The only
21 difference between 1 and 2, as far as 1 being
22 able to eat up 2, is the unlawful.

1 MS. KEPROS: Right.

2 BRIG. GEN. SCHWENK: You know, because
3 if it just said force, it wouldn't eat up 2. So
4 that means you have to have unlawful.

5 (Simultaneous speaking.)

6 COL. SCHINASI: It's a matter of, (a)
7 is anything, and (b) is a specific kind.

8 MS. WINE-BANKS: But almost by
9 definition, 2 is a more serious thing than
10 unlawful force. Which could be nothing.

11 LT. COL. MCGOVERN: I think -- and to
12 kind of sum up what you've heard today, one,
13 again, is those circumstances where there appears
14 to have been some sort of consent, in the S&M
15 sort of circumstances, so there actually is quite
16 a bit of force involved, you know, perhaps to the
17 point of asphyxiation, and so it does become a
18 rape.

19 So I just don't want everybody
20 minimizing (a)(1) so much, because that really
21 could cover very serious circumstances that are
22 quite different.

1 MAJ. GEN. WOODWARD: Yeah, but
2 couldn't (a)(1) be exactly the same as (b)(1)(b)?

3 DEAN ANDERSON: Do we know,
4 historically, just to clarify in terms of the
5 word "unlawful," when did that enter the statute
6 here? I know that there's a history of having
7 the word "unlawful" floating around of unlawful
8 sexual penetration, but that has to do with the
9 marital rape exemption. When did the word
10 "unlawful" get hooked up with force?

11 LT. COL. MCGOVERN: In the 2012
12 version. And I think we can send an RFI to
13 Colonel Kennebeck. They've had conversations
14 with Colonel --

15 DEAN ANDERSON: And were those
16 conversations about sexual proclivities toward
17 sado-masochistic sex?

18 LT. COL. MCGOVERN: Yes.

19 DEAN ANDERSON: Oh, okay, so that's
20 actually what they intended to have this be
21 about.

22 MS. WINE-BANKS: If that's what was

1 meant, then that's what it should say. And
2 saying "using unlawful force against the other
3 person," and defining unlawful force as an act of
4 force done without legal justification, which is
5 tautological, isn't -- I'm giving you permission
6 to use force. Does that make it lawful? Well,
7 it makes it lawful, but it's not unlawful.

8 COL. SCHINASI: You're avoiding the
9 word consent.

10 MS. WINE-BANKS: And when does it
11 become lawful?

12 HON. HOLTZMAN: Well, see, it says
13 "without excuse," so it may be that the fact that
14 I have permission gives me an excuse.

15 COL. SCHINASI: You're avoiding
16 consent, right? Lawful force is when you consent
17 to being forced to do something.

18 HON. HOLTZMAN: Right.

19 COL. SCHINASI: And so it would be
20 nice if they said consent, but they don't want to
21 say consent.

22 LT. COL. MCGOVERN: Socially, in the

1 law, and as a community, we proscribe some things
2 which other people would agree to. I mean, with
3 assisted suicides, you know, it's the same sort
4 of thing. Where do you draw the line in the
5 military for force and what is consensual?

6 HON. HOLTZMAN: It's just odd that
7 that would be the number one item.

8 LT. COL. MCGOVERN: We can submit an
9 RFI and get some additional background
10 information for you all.

11 CHAIR JONES: That would be good. So
12 that's Number 8, which is really, I gather,
13 wrapped up with Number 5 do we think?

14 HON. HOLTZMAN: Does the professor
15 have something to say about 8? Because he had a
16 big paragraph on it in this letter.

17 CHAIR JONES: Professor, did you have
18 anything you wanted to say about Issue 8 about
19 the definition of force?

20 DR. SCHULHOFER: Well, there was a lot
21 of byplay and I'm not sure I followed it, but it
22 seems to me that -- I see the semantic problems,

1 but it seems to me that (a)(1) and (a)(2) are
2 doing different things because you can consent to
3 the use of low-level force, as people discussed,
4 an S&M situation, for example, and somebody
5 agrees to be tied up. That would normally be
6 sufficient to compel submission. But if you
7 agree to it, that's okay. It's not unlawful
8 force.

9 But then you need A2 because you can't
10 consent to force that can cause grievous harm.
11 So I think there's some disagreement within the
12 group but at least my own view is personally I
13 don't see any compelling need to make the change
14 here.

15 CHAIR JONES: Alright, why don't we
16 get the information on (a)(1)? And I don't think
17 we need to change it either, but let's look at
18 the information when it comes in.

19 HON. HOLTZMAN: Excuse me, Judge.

20 CHAIR JONES: Yeah.

21 HON. HOLTZMAN: Professor, in your
22 comment about the definition of force, you were

1 concerned about the implication of the Soto case.

2 DR. SCHULHOFER: Yes.

3 HON. HOLTZMAN: Are you still, or has
4 that vanished?

5 DR. SCHULHOFER: Well, I was referring
6 to Major Payne bringing it up, and I think she
7 was right to bring that up. I read the case and
8 I had to read it again, because it's really under
9 the pre-2012 statute. So she's drawing some
10 speculation about how that court might react
11 under the current statute.

12 I think she's right to see that the
13 court implies that the prosecution case might not
14 be strong enough if all they show is the absence
15 of resistance. And that's why she was suggesting
16 that the current definition of force, which has
17 to be sufficient to compel submission, leaves you
18 in that situation where a failure to resist might
19 not be sufficient to establish the assent. And
20 so I'm not sure what to say about it. I think
21 this is just, you know, embedded in the other
22 question about the implications of resistance or

1 failure to resist.

2 CHAIR JONES: Alright, well, we'll
3 take this up again when we get that additional
4 information, which may or may not bear on what
5 we're talking about, but it will give us the
6 occasion to look at 8 again.

7 Alright, Issue 9, is the definition of
8 sexual act - I'm sorry, Professor, what?

9 DR. SCHULHOFER: I was thinking out
10 loud here, but I guess if we leave the definition
11 of consent the way it is, then we might need to
12 do something about the definition of force to
13 expand the circumstances that would excuse the
14 failure to resist. I think that just gets folded
15 into the point you just made about taking another
16 look at this.

17 CHAIR JONES: Okay.

18 HON. HOLTZMAN: Well, I think also if
19 there's a suggestion that if we take out some of
20 the language that we were talking about with
21 regard to consent in 8, and we suggest that there
22 be language, for example, in an executive order

1 otherwise indicating that there's no requirement
2 for resistance, making that clearer, if it could
3 be, than now, that might solve the problem.

4 Isn't that correct, Professor, or am I wrong?

5 DR. SCHULHOFER: That's right.

6 HON. HOLTZMAN: Okay.

7 DEAN ANDERSON: All the more reason
8 for that on the first issue of resistance.

9 CHAIR JONES: Okay, onto 9, are the
10 definitions of sexual act and contact too narrow
11 or are they overly broad? There are a lot of
12 people supporting change in this. It's
13 120(g)(2). By that, I mean presenters.

14 MAJ. GEN. WOODWARD: This is the one
15 with the object?

16 CHAIR JONES: Yeah. We're still
17 waiting for that case, is that right, the one
18 that's up there, yeah?

19 COL. GREEN: Yes, Judge. They haven't
20 issued a decision on that yet.

21 MS. KEPROS: I liked Colonel Grammel's
22 suggestions around this. He identified both ways

1 -- in one way it was too broad, and in another it
2 was too narrow, so I think that's a good change
3 to make. I don't like, you know, the forced
4 toothbrush for harassment scenario. Do I think
5 most prosecutors would pursue that? I hope not.

6 But with respect to all of you former
7 prosecutors sitting here, I don't like having
8 these things unclear in the law. Why have things
9 that could potentially be charged if it's not
10 something we think should be a crime, and
11 particularly shouldn't be a sex crime? We should
12 fix it.

13 HON. HOLTZMAN: So what are you
14 suggesting, specifically?

15 MS. KEPROS: I want to adopt Grammell's
16 proposed changes.

17 HON. HOLTZMAN: Can you explain what
18 that is?

19 MS. KEPROS: Yeah, let me pull it out.
20 Okay, so, for sexual acts, he suggests deleting
21 the words "or mouth" from only Subparagraph B,
22 and that deals with the toothbrush problem.

1 For sexual contact, because it allows
2 a body part to body part to be kind of anything,
3 he suggests making sure that you've got that
4 specific intent to arouse or gratify sexual
5 desire of any person. And the last phrase for
6 specific intent should be added to Subparagraph
7 A.

8 In addition, an ambiguity in the last
9 sentence can be corrected, and "or by any
10 object," can be added after, "by any body part,"
11 to address the pending case we keep discussing
12 with the stethoscope.

13 I just think he really does a nice job
14 narrowing the parameters of what I think we all
15 think this needs to get at.

16 CHAIR JONES: Any discussion on that?

17 DR. SCHULHOFER: I think that the
18 suggestions that I was making with respect to
19 narrowing there were consistent with -- was that
20 Ms. Kepros that was just speaking?

21 CHAIR JONES: Yes, it was.

22 DR. SCHULHOFER: Yeah, I think my

1 approach was very consistent with that, and I
2 think was also inspired by what she suggested in
3 her written comment.

4 The concern I had about the one area
5 where it seems to be that the definition of
6 sexual act was too narrow was that it didn't
7 include the tongue unless you think that's part
8 of the mouth.

9 And in addition, it requires
10 penetration under Section (1)(a), which really is
11 a little narrow with respect to situations where
12 you have contact between the mouth and penis.

13 So, in that one small respect, I would
14 broaden g(1)(A), but then I agree with the
15 narrowing that everybody else suggests on the
16 other provision.

17 HON. HOLTZMAN: So what words would
18 you use?

19 DR. SCHULHOFER: I'm sorry?

20 HON. HOLTZMAN: What words would you
21 use to narrow g(1)?

22 DR. SCHULHOFER: To narrow it, I would

1 use the same language as Colonel Grammel and Ms.
2 Kepros for narrowing it. But broadening it, in
3 g(1)(a) I would say "contact between the penis,
4 vulva, or anus, or mouth, or tongue," and I would
5 take out the language that says contact involving
6 the penis bears upon penetration however slight.

7 MS. FRIEL: So I don't know that you
8 really need to say tongue other than mouth. I've
9 never seen a case where the tongue wasn't
10 considered a part of the mouth. In any statute
11 I've ever read that talks about different kinds
12 of sex acts refer to the mouth for oral sex. So
13 you probably don't need to do that.

14 I agree that if we're going to fix
15 this statute, I don't understand why in (a),
16 which is about contact, and (b) is about
17 penetration, (a) goes on after it says, "contact
18 between the penis and these things," and then it
19 says, "but contact means penetration." That's
20 just bizarre to me. It doesn't make any sense.

21 Tell me something else, and just maybe
22 I'm reading this wrong, and maybe it's because

1 it's late. So, if the penis and the vulva touch
2 each other, that's covered in A. What about the
3 mouth and the vulva? What about -- that's the
4 other way of having oral sex, and it seems to me
5 that, by not covering that in A, the only place
6 that's covered is in B, and you would have to
7 have penetration of the mouth.

8 HON. HOLTZMAN: (a) involves the vulva,
9 or anus, or mouth.

10 MS. FRIEL: But it says penis and the
11 vulva --

12 HON. HOLTZMAN: Oh, yeah, right.

13 MS. FRIEL: -- or anus, or mouth, so
14 (a) seems to --

15 HON. HOLTZMAN: You're right.

16 MS. FRIEL: Right? Everything in (a)
17 requires a contact or penetration, depending on
18 which way you read that, with the penis in those
19 things. What about the mouth and the vulva?

20 MS. KEPROS: That is covered by
21 g(1)(e) even with the amendment. The penetration
22 of the vulva by any other part of the body would

1 be accomplished by the mouth. It wouldn't be
2 penetration of the mouth. It's penetration of
3 the vulva with the mouth.

4 MS. FRIEL: But what if there's no
5 penetration? What if somebody puts their mouth
6 to the outside and does not penetrate?

7 (Simultaneous speaking.)

8 MS. KEPROS: I mean, that's what it
9 is.

10 MS. FRIEL: Or it's contact, which is
11 why --

12 HON. HOLTZMAN: But contact requires
13 penetration. too.

14 MS. FRIEL: Right, that's what's
15 bizarre, then it should just be penetration. I
16 mean, I'll just say, in New York, rape is a penis
17 penetrating the vagina however slight.

18 Oral sex, however we want to do it,
19 just requires contact. You could just touch the
20 mouth without penetrating it. You could touch
21 the vulva without penetrating it. Those are all
22 covered by contact because that to everyone made

1 more sense. So this is just really odd to me.

2 And it also, by treating penis
3 differently -- that is, oral sex basically with a
4 man, and oral sex between two women differently -
5 - that doesn't make sense to me in terms of
6 evenness.

7 If you have some kind of, say,
8 forcible oral sex between two women Soldiers, why
9 should that be different than between a man and a
10 woman?

11 MS. KEPROS: We got some legislative
12 history on this. And I don't remember if it was
13 in writing or something people talked about, and
14 there were weird things just because of the
15 gender history of the military, and I suspect
16 that is a byproduct of that.

17 MS. WINE-BANKS: And either way, it's
18 the same penalty. It's the same crime.

19 (Simultaneous speaking.)

20 COL. SCHENCK: It's no longer a crime.
21 On the forcible side, it's still a crime. On the
22 consensual side, it is not, so maybe that had

1 something to do with it.

2 MS. FRIEL: Right, but the way it's
3 defined now, mouth to vulva without penetration
4 is not a sex act, is not a sexual act, because it
5 requires penetration.

6 MS. KEPROS: Isn't it sexual contact?

7 MS. FRIEL: Yes, but then oral sex
8 between two women is treated less seriously than
9 oral sex between a man and a woman under the same
10 lack of consent situations. Why would that be?

11 MS. KEPROS: I'm not understanding why
12 oral sex, mouth to vulva, is not penetration.
13 Why wouldn't it be?

14 MS. FRIEL: Well, if you don't
15 penetrate, however slight, if you -- I mean, this
16 is getting gross. If you lick the outside and
17 not stick your tongue inside, then you don't have
18 penetration. This is what my life has become.

19 (Laughter.)

20 (Simultaneous speaking)

21 COL. SCHENCK: On this issue, I
22 specifically had a forcible sodomy case, was one

1 of the charges, and -- it was a forcible sodomy
2 case. It was one of the charges. It was anal
3 sodomy. And the oral sodomy, the victim had
4 clenched her teeth. That was what she said. She
5 had spaces in her teeth. But the issue was did
6 the penis pass the lips? I mean, this was a
7 full-blown contested case and it came down to the
8 clenching of the teeth. It was a horrible case.

9 MS. FRIEL: Which is why we have it be
10 contact under New York State law.

11 MS. KEPROS: I think you can say it
12 shouldn't be that. I just think this is a policy
13 decision that we've seen a lot of different
14 legislators make, and they say, "We're going to
15 treat penetration as different from contact."

16 COL. SCHENCK: I mean, is that less
17 traumatic, you know, than not getting past her
18 teeth?

19 HON. HOLTZMAN: I think this is
20 irrational and I think we should have some
21 working group that's going to review this,
22 because it doesn't make sense.

1 CHAIR JONES: I've heard enough. I
2 agree with you.

3 So, now where are we? That was 9?
4 We've lost a couple people. Okay, we only have
5 two left. Should we go for them here?

6 All right. Should the accused's
7 knowledge of a victim's capacity to consent be a
8 required element of sexual assault? This is
9 Number 10, let's see, 120(b)(2) and (b)(3).

10 The question stated differently:
11 Should the statute be amended to remove the
12 requirement that an accused knows of the victim's
13 incapacity to consent?

14 I don't see anyone in the box for
15 supporting the change, and Colonel Grammel, among
16 others, says no change.

17 Professor Schulhofer, do you have some
18 comments on this?

19 DR. SCHULHOFER: I think I agreed with
20 the consensus that provision does not need to be
21 changed.

22 CHAIR JONES: Okay.

1 HON. HOLTZMAN: Well, actually what it
2 says, it leaves recklessness to be -- sorry.
3 Your comment, sir, in your memo, says that the
4 accused's knowledge of the victim's capacity to
5 consent should be - there should be knowledge or
6 at least recklessness instead of where there's a
7 negligence standard here at present. What's this
8 provision?

9 CHAIR JONES: It's 120(b)(2) and
10 (b)(3) according to the chart.

11 HON. HOLTZMAN: So when you reasonably
12 should know is a negligent standard.

13 DR. SCHULHOFER: Right.

14 HON. HOLTZMAN: And I thought your
15 view was that it should be at least a
16 recklessness standard, which is a little bit
17 higher,

18 DR. SCHULHOFER: Yes, I'm just looking
19 at (b)(2). The kind of language says "knows or
20 reasonably should know" in (b)(2).

21 HON. HOLTZMAN: Right.

22 DR. SCHULHOFER: Well, I guess - I'm

1 sorry, I guess I spoke too quickly. I do support
2 change in that respect. I misread that, because
3 the statement as it was put just said, "Should
4 the accused's knowledge be a required element?"

5 But the statute actually as it
6 currently stands says, knowledge or negligence,
7 "should know." And I think it should be that the
8 person knows or is aware of the risks if the
9 person is unconscious or unaware.

10 MAJ. GEN. WOODWARD: Is aware of the
11 risk?

12 CHAIR JONES: I think you have to
13 speak up, everybody.

14 MS. WINE-BANKS: How would you be
15 unaware? How could you possibly not notice that
16 someone is asleep or unconscious?

17 DR. SCHULHOFER: What?

18 LT. COL. MCGOVERN: If the accused is
19 still intoxicated as well.

20 MS. KEPROS: I think you could be in
21 a dark room and the person you are touching is
22 moving their body in response, you think, to your

1 overtures, and you don't realize they're not
2 really with it.

3 HON. HOLTZMAN: Right, and it's not
4 only asleep or unconscious, but otherwise unaware
5 that the sex act is occurring. So you might not
6 know that they're otherwise unaware. They may
7 not be asleep and they may not be unconscious.
8 They may be in this other state --

9 MAJ. GEN. WOODWARD: Blacked out.

10 HON. HOLTZMAN: -- you know, where
11 they can't communicate. Maybe it's a dark room
12 or whatever, and the person maybe should know. I
13 don't know. But what the professor is suggesting
14 is a recklessness standard, which is a little bit
15 higher. I mean, you can either know or be
16 reckless.

17 MAJ. GEN. WOODWARD: Well, is this
18 where we get to, you know, the how many drinks
19 can someone have and, you know, what is
20 reasonable to understand that someone is so drunk
21 that they don't have the capacity?

22 I mean, "reasonably," to me, makes

1 that more reasonable. I mean, to say "reasonably
2 know" makes me feel more comfortable that we're
3 giving someone at least the latitude to
4 understand whether somebody is --

5 HON. HOLTZMAN: What the professor is
6 suggesting, or maybe -- Professor, you can
7 explain yourself better than I can. Maybe he
8 should explain.

9 MAJ. GEN. WOODWARD: Professor,
10 exactly what would the wording change that you
11 would change what now says "reasonably should
12 know" to what?

13 DR. SCHULHOFER: I would say knows or
14 is aware of the risk that the other person is
15 asleep or unconscious.

16 MAJ. GEN. WOODWARD: What is "aware of
17 the risk?"

18 DR. SCHULHOFER: So I'm substituting
19 "reasonably should know." I'm substituting "is
20 aware of the risk that."

21 MAJ. GEN. WOODWARD: I think it makes
22 sense that we should hold them accountable if

1 they should reasonably know if the other person
2 is incapacitated.

3 DR. SCHULHOFER: I'm sorry, who was
4 speaking?

5 MAJ. GEN. WOODWARD: This is Maggie
6 Woodward.

7 DR. SCHULHOFER: Oh, yes. Well,
8 generally, I understand that that's a very widely
9 shared intuition, but I think my hesitation about
10 it is that it really amounts to convicting
11 somebody on the basis of negligence, convicting
12 them of a very serious criminal offense.

13 So they put in the criminal law that
14 supposition that we generally resist. So if the
15 jury is persuaded that the person was aware of
16 the possibility -- they don't have to actually
17 know that the person was unconscious -- but if
18 they realize that the person might be
19 unconscious, might not be conscious, that's
20 enough.

21 And if you can convince the jury that
22 the person was aware of that possibility then a

1 criminal conviction really takes it to the
2 extreme.

3 LT. COL. HINES: Ladies and gentlemen,
4 I would note that the Benchbook addresses this
5 issue, and I think it goes back to General
6 Woodward's statement, and maybe Ms. Wine-Banks'
7 question.

8 All of the evidence, the facts and
9 circumstances surrounding the alleged assault,
10 that will come up at trial. So the way the
11 Government would prove this is to call witnesses
12 to come in and say, "Okay, the accused was there.
13 The victim was there," to show that the accused
14 saw the victim during the night. He was able to
15 observe her condition. He maybe even handed her
16 some of the alcohol that she consumed.

17 Even his testimony, and he's got to
18 get on the stand and make a mistake of fact in
19 defense. He's going to have to articulate,
20 "Well, based on her demeanor, I thought she was
21 consenting." So, my point is all of that stuff
22 will come out at trial.

1 And the judge has a boilerplate
2 Benchbook charge where he explains to the Panel
3 to consider all of the evidence on the issue of
4 whether the accused's belief that -- or the fact
5 that the victim was incompetent, on whether the
6 accused knew that or whether he reasonably should
7 have known that.

8 So it's not just him getting up and
9 saying, "Well, I thought she was competent or I
10 thought she was consenting." It's all of that
11 other evidence filtered through that other
12 instruction to the Panel. It's not just his
13 subjective belief that he's saying he had a
14 mistake of fact here, was it under all of the
15 circumstances and evidence that you have here,
16 was that reasonable?

17 MS. WINE-BANKS: So how much of a
18 difference is there between "reasonably should
19 have known" based on those circumstances you've
20 articulated, which make a lot of sense, and he
21 was in "reckless disregard" of those facts?
22 What's the burden of proof shift for those two

1 words?

2 DR. SCHULHOFER: The space between
3 those two is very, very small because if a
4 reasonable person would have realized, then it's
5 very likely that the defendant himself would have
6 realized, unless there's some reason why he
7 wasn't.

8 Of course, in the situation where the
9 defendant is drunk, it may become plausible that
10 a reasonable sober person might have realized the
11 circumstances. But in a lot of these situations,
12 you're going to have mutual drunkenness on both
13 sides, and there is a kind of culpability there.
14 There's carelessness. There's disregard in a
15 variety of ways.

16 But for criminal culpability, it's
17 really crucial that there be that subjective
18 awareness that you're at risk of abusing
19 somebody. And if you can say, "Well, a sober" --
20 well, I would just repeat or stress what I said,
21 that the space between the two things is very
22 small.

1 And in the overwhelming majority of
2 cases, if a reasonable person would have believed
3 it, then this defendant was aware of it himself.
4 The point is that the jury has to be convinced
5 that this defendant himself was culpable and not
6 be imposing criminal liability just on the basis
7 that somebody else would have realized it.

8 I'd refer to this case the Supreme
9 Court just decided last week, two weeks ago, and
10 it may be somewhat surprising to many people, but
11 this Elonis case involved a defendant who posted
12 abusive language about his wife on his Facebook
13 page. And he was prosecuted for making a threat,
14 threatening serious bodily harm. And the judge
15 instructed the jury just in the terms that -- I
16 think, was that Colonel Hines that was reading
17 from the Benchbook?

18 LT. COL. HINES: Yes, sir.

19 DR. SCHULHOFER: Yes, I thought so.

20 So the judge instructed the jury on those kind of
21 terms that you just read, that either the
22 defendant himself realized that this was being a

1 threat, or a reasonable person would have
2 realized that his language would be taken as a
3 threat, and he was convicted on that basis.

4 And the Supreme Court, in the *Elonis*
5 case, reversed that conviction, and they said,
6 No, for the purposes of criminal law, it's
7 crucial that the defendant himself have
8 subjective culpability, that it's not a world of
9 tort liability.

10 So that's the perspective that is
11 untraditional, and I think an important one when
12 you're talking about conviction of very serious
13 crimes. And it may not make a difference in the
14 great majority of cases, but I think the main
15 point is that we have confidence that the jury,
16 that the members, the court-martial members, are
17 coming back and saying, "Yes, this defendant
18 himself was culpable of abusing his victim."

19 MS. FRIEL: But by that argument, the
20 drunk accused, who is drunk enough that they
21 don't have any mens rea, they don't think they're
22 doing anything wrong because they've gotten

1 themselves so drunk they're not seeing the signs
2 of lack of consent, then they shouldn't be guilty
3 of anything because they have no bad mens rea.
4 That's where that argument would end up going.

5 DR. SCHULHOFER: Right.

6 MS. FRIEL: Yeah, but they have to be
7 able to know. A reasonable sober person would
8 have seen somebody, you know, was either too
9 intoxicated to consent or was actually resisting.

10 So if you're going to take the
11 reasonable sober person, which we all agree that
12 should be the standard, not the drunk person's
13 standard, then why is this different here?

14 What if somebody says, "I never drank
15 before, I have no idea what the signs of
16 intoxication are. And although this woman was
17 stumbling, slurring her words, and throwing up, I
18 didn't realize she was incapacitated to consent"?
19 Do we really care that he didn't get it or do we
20 care what a reasonable person would have seen
21 under those circumstances?

22 DR. SCHULHOFER: I think we have to

1 remember that people don't get acquitted just
2 because they claim that they're not culpable.
3 They have to convince the jury that they -- the
4 jury has to believe that this person really,
5 truly wasn't aware he was engaged in any abusive
6 conduct.

7 MS. FRIEL: Well, it's the opposite
8 the way you change it. That puts the burden on
9 the Government to prove something, not the
10 defendant to prove it. Now the government's got
11 a higher burden here to prove that this person
12 subjectively believed something or had some bad
13 mens rea.

14 I don't know. I just can't -- we have
15 enough trouble trying to prove these cases. I
16 can't see doing that. But I'd like to reread --
17 I read the coverage of the case that you're
18 talking about, so I'd like to read the case and
19 see what the Supreme Court said. But I can't see
20 that it applies here in this kind of thing, as
21 opposed to posting something online which
22 implicates freedom of speech and things like

1 that.

2 MAJ. GEN. WOODWARD: I disagree with
3 you that -- so if someone is drunk and then takes
4 advantage of somebody else, and because they're
5 too drunk to be reasonable, I guess, is what
6 you're saying, that we shouldn't hold him
7 accountable. But I really reject that premise.

8 CHAIR JONES: I think this is
9 something that we ought to think about. And what
10 was the -- do you know the name of the case? Was
11 it *Elonis*?

12 MS. KEPROS: I think it's E-L-O-N-I-S.

13 LT. COL. HINES: Professor, can you
14 read us the name of that Supreme Court case
15 again?

16 DR. SCHULHOFER: Yes, sure, let me
17 just get that.

18 LT. COL. HINES: Oh, okay, it's in
19 your handout. We're fine.

20 DR. SCHULHOFER: Yeah, it's E-L-O-N-I-
21 S. It was decided on June 1st. And on the free
22 speech issue, incidentally, it was argued at the

1 Supreme Court on this free speech issue. And the
2 Supreme Court said they weren't going to consider
3 whether it was different for freedom of speech or
4 not, because they said they had long enough cases
5 over a wide range of different issues.

6 They cited a number in which whether
7 it was protected or potentially protected conduct
8 or not, that actual awareness of wrongdoing was
9 crucial for criminal liability. And among the
10 cases, for example, they cite a case that
11 involved the use of food stamps where the
12 defendant had to know that he was making improper
13 use of the food stamps, so it was not a question
14 of freedom of speech.

15 Now, I note, you know, having said
16 that, it is certainly a very common instinct for
17 people to say, "Well, you know, he was drunk, and
18 he should have known, and a sober person would
19 have known, and we should hold him responsible."
20 That's a very common intuition, but I'm
21 comfortable with the decision to just take a
22 further look at it.

1 But what I'm suggesting, of course,
2 would change the current statute to require the
3 prosecution to prove culpability. Does that make
4 things more difficult for the prosecution than
5 the current law? Yes, it certainly does. But,
6 you know, I don't think that ends the
7 conversation just because it means that the
8 prosecution has to prove guilt.

9 CHAIR JONES: I think we are going to
10 take a further look at it. I'd like to read that
11 case, which I haven't. And I understand the
12 concern you're raising, Professor. I think it's
13 serious, and we certainly need to think about it.

14 HON. HOLTZMAN: Maybe some people in
15 the military who have to think about this too
16 could give us their views on the impact of that
17 case on the statute.

18 CHAIR JONES: Okay, last.

19 MS. WINE-BANKS: Can I ask a question

20 --

21 CHAIR JONES: Oh, sure, I'm sorry.

22 MS. WINE-BANKS: About the drunkenness

1 issue, because this is making me mull this over
2 about we don't excuse drunk people who drive.
3 They're culpable. We hold them accountable for
4 what a reasonable person would know. They
5 shouldn't get behind the car. Why wouldn't we
6 hold a drunk person accountable for physical
7 abuse of another person? And are we going to let
8 them get away with that?

9 MS. FRIEL: Am I less harmed by being
10 raped by a really drunk person than by somebody
11 who was a little less drunk or sober?

12 MS. WINE-BANKS: Right, right, no, or
13 stoned or whatever.

14 MS. FRIEL: No, I don't care what
15 their condition is.

16 LT. COL. MCGOVERN: I think the way
17 the law is structured is the conduct, first, is
18 illegal, to either rape or drive, and then
19 there's no defense to being drunk. Being drunk
20 is not a defense.

21 MS. KEPROS: That's the question I was
22 going to ask. Is there any kind of voluntary

1 intoxication in military jurisprudence? Because
2 there is for specific intent crimes in many
3 civilian jurisdictions. You are not guilty of
4 first degree murder if you are absolutely
5 voluntarily intoxicated.

6 LT. COL. HINES: In the military, if
7 it's a specific intent crime and the accused
8 comes in and says, "I was so intoxicated, I
9 couldn't form that specific intent," then that's
10 a defense.

11 And to go back to Ms. Friel's
12 question, this is a specific intent crime because
13 the Government's got to show that the accused
14 knew or reasonably should have known of the
15 victim's condition. So I see that as a specific
16 intent requirement. So the Professor's point is
17 well taken, I think.

18 MS. WINE-BANKS: When you're looking
19 at this, can you -- I want to know a little bit
20 more about the difference in standard of proof
21 for a reasonable person and reckless disregard.
22 Because, again, this would take legislative

1 change, and I'd like maybe if you could address
2 whether it would be that much harder to do
3 legislatively than through executive order.

4 HON. HOLTZMAN: Oh, nobody's going to
5 want to make this change legislatively.

6 MS. WINE-BANKS: Okay, so if it would
7 take a legislative change, I think that, as a
8 realistic matter, unless there's a dramatic
9 difference between the two standards of proof,
10 it's probably not worth our time debating it
11 because it's not going to happen.

12 So I would be really interested in
13 what it would mean in terms of prosecution.
14 Would more people be convicted or would it really
15 not have much impact? Would a jury find a
16 reasonable person standard to be the same as
17 disregard?

18 HON. HOLTZMAN: Well, the other thing
19 is just --

20 DR. SCHULHOFER: As a matter of
21 practicality and prudence, I wouldn't be
22 optimistic about my proposal getting unanimous

1 approval from Congress. So I agree with you that
2 this is probably not one that's worth investing a
3 lot of political capital in.

4 But, I mean, I do think it's the right
5 result, and I think it reflects the Supreme
6 Court's thinking. And I think it's very clear
7 that the fact that the victim would be dead
8 anyway, or the fact that the victim would have
9 been, you know, found the sexual assault
10 unwelcome. The fact that the victim is harmed
11 doesn't determine whether the defendant is
12 criminally responsible. So, this is the right
13 result.

14 In this case, the President could
15 clarify this by executive order, but at this
16 point, I'm not pushing either of those. But in
17 terms of what's really the right approach, I
18 think we should come down very hard on sexual
19 abuse and focus on the abusers and people who are
20 culpable.

21 MS. WINE-BANKS: And there's the
22 consideration that if the Supreme Court ruling is

1 clear that these would be voidable, that, you
2 know, they'd be overturned on appeal,
3 convictions, because they didn't meet the
4 constitutional standard, then maybe Congress
5 would actually do what it had to do, or an
6 executive order.

7 HON. HOLTZMAN: One of the things we
8 could do maybe is to refer this to the Joint
9 Services Committee to consider in light of this
10 case. Not take any position on it, just say,
11 "This case has come to light, and in our
12 consideration of it, we think you should examine
13 it." We could do something like that, which
14 would take it out of our hands, and give it to
15 them, and they can decide.

16 CHAIR JONES: Personally, I'd like to
17 take a look at it. I'd like to analyze it. And
18 then that could be a perfectly reasonable way to
19 deal with it. I think it's too late to have a
20 review of everything we've done today.

21 So, Colonel Hines is going to give us
22 a quick review, a written review, of where we

1 ended up on 1 through 11.

2 In terms of working groups, I'm going
3 to give everybody 48 hours to send me an email
4 saying what you want to work on. And then if you
5 don't volunteer for anything, I will assign you
6 to a working group. How about that?

7 MS. WINE-BANKS: Can we just send you
8 the one we don't want?

9 (Laughter.)

10 CHAIR JONES: There's a thought.

11 MS. KEPROS: I wonder, I just wanted
12 to endorse Professor Schulhofer's request
13 regarding Issue 11 that we get some additional
14 presentation, or training, or something.

15 CHAIR JONES: Oh, I'm sorry, yeah, I
16 didn't even notice. I forgot about 11. We sort
17 of talked about it earlier today, yeah.

18 COL. SCHENCK: Have you seen the
19 executive order that's pending? It's in Article
20 134. I think the Staff's going to provide us
21 with a draft of the executive order that's
22 pending.

1 MS. KEPROS: Well, because it's asking
2 us to weigh in on this, and so I'm just wondering
3 if we could get some, in addition to the
4 executive order, some more education around how
5 Article 134 operates versus 120?

6 I got some information off the record
7 about this, and I think it's something we should
8 learn more about.

9 CHAIR JONES: Okay, so -

10 LT. COL. HINES: And that information
11 -- this is to comply -- Ms. Kepros and I had a
12 brief conversation. This is for the benefit of
13 everyone else. The question came up because, I
14 believe, Col. Schenck or Chris Kennebeck talked
15 about the draft, and the indecent act was in the
16 draft around Article 134.

17 And I'm sort of the one who suggested,
18 well, we need to actually get that and look at it
19 because Article 134, if the President puts an
20 offense under 134, there's an additional element
21 that the Government has to prove which is what's
22 called the "terminal element."

1 So it's not only an indecent act, in
2 this example, but also that that indecent act was
3 prejudicial to good order and discipline or
4 service discrediting. And there's a lot of
5 debate out there about, well, if you're going to
6 charge something as a sexual assault or a sexual
7 offense, should you really make the Government
8 prove that it was also service discrediting?

9 CHAIR JONES: It should be per se.

10 LTCOL HINES: Or should be under
11 Article 120. So I just wanted to put that out
12 there.

13 CHAIR JONES: When is our next
14 meeting?

15 LT. COL. HINES: July 22nd.

16 CHAIR JONES: July 22, okay. In
17 Arlington, right? Okay, great.

18 (Whereupon, the meeting in the above-
19 entitled matter went off the record at 5:13 p.m.)
20
21
22

A

- a-half** 120:18
a-whole-nother 326:17
a.m 1:12 4:2 93:6,7
A2 393:9
A3 362:20
A5 310:11 315:4 316:8
 316:10,21 318:12,22
 319:6 320:17,22
 325:9 329:11
ABA 6:9
ability 46:7 49:7 62:9
 67:20 72:15 321:9
 327:13 354:20 384:14
able 5:11,13 8:1 13:21
 13:22 74:17 85:3 93:1
 98:11 109:8 150:7
 152:14 175:6 205:20
 298:17 379:19 388:22
 412:14 417:7
above-entitled 93:5
 215:10 331:22
absence 52:7,7 214:12
 254:10 394:14
absolute 89:19
absolutely 9:15,19
 54:20 71:7 136:12
 209:12 274:11 423:4
abstract 231:2
abuse 189:7,13 190:2
 322:22 324:9,19
 325:2 329:9 353:13
 353:18 354:8,11
 355:15 356:9 422:7
 425:19
abusers 425:19
abusing 414:18 416:18
abusive 274:13,16,19
 415:12 418:5
academic 169:19
 202:14 247:9
access 87:16 161:3
accessed 87:17
accidental 358:8
accompanying 249:15
accomplish 294:20
 295:20,21
accomplished 55:14
 179:20 363:11,12
 402:1
account 51:4,11,13,20
 51:20 52:4 121:9
accountable 410:22
 419:7 422:3,6
accuracy 191:4
accused 48:14 50:18
 51:3,3 55:20 79:14
 82:7 103:2 128:4
 135:9 211:20 214:20
 253:1,3,13 260:4
 262:10 293:16 312:13
 341:5 366:14 406:12
 408:18 412:12,13
 413:6 416:20 423:7
 423:13
accused's 406:6 407:4
 408:4 413:4
achieve 329:20
acknowledge 101:17
 103:3 359:2
acknowledges 310:14
Acquisition 76:20 78:6
acquittal 144:15 145:15
acquittals 127:16
 134:18 180:9 265:7
 282:8 333:20 334:21
 335:9
acquitted 418:1
acquitting 128:4
act 18:18 20:11 34:16
 34:17 41:12 56:19
 62:11 91:3 93:12
 146:20 159:5 200:20
 270:21 271:6,12
 310:12 312:14 314:3
 314:4,19,20 315:12
 317:12,21 318:17,21
 319:5,6 321:6,18
 324:3,3,8,11,14,15,16
 324:19 325:1,12
 327:5 328:11 336:1,2
 337:21 340:10,11,14
 340:17 341:4,9,16,18
 341:19,22 342:2,19
 345:2,9 346:13
 347:19 348:22 349:5
 356:19 357:8 361:5
 362:21 363:11 365:9
 382:5,7 383:13 386:7
 386:20,21 391:3
 395:8 396:10 399:6
 404:4,4 409:5 428:15
 429:1,2
acted 18:1
acting 15:17 17:20
 28:11 30:17 31:2
 44:14 47:12
action 30:1 146:18
 171:20 301:22 312:11
 314:16 349:16 350:11
 358:18 368:13,18
 369:2,19 371:4 372:8
 372:21 373:5
actions 131:16 159:7
 233:12 240:1 246:3
active 150:9 315:6
acts 161:19 205:15
 214:1 368:11 397:20
 400:12
actual 7:13,13 8:3 22:6
 36:19 41:3 51:8 55:19
 66:11 122:15 123:19
 183:18 261:3 271:9
 299:7 420:8
add 95:4 140:17 205:19
 236:17 242:17 244:19
 249:1 280:17 293:15
 293:18 296:11 310:15
 317:2 318:8 322:11
 349:6 359:7
added 121:6 141:20
 198:21 295:5,8 324:7
 360:5 398:6,10
adding 174:1 214:10
 294:16 295:18
addition 256:15 273:2
 340:16 375:10,10
 398:8 399:9 428:3
additional 4:14 37:7,11
 62:17 256:16 327:9
 340:18 392:9 395:3
 427:13 428:20
additionally 16:10
address 13:20 37:22
 113:4 154:22 158:8
 158:12 232:18 234:6
 234:10 352:6 353:7
 356:12 398:11 424:1
addressed 25:8 66:7
 112:18 142:4,15
 158:6 209:3 234:11
 300:13 376:6
addresses 66:6 412:4
addressing 37:21 66:11
 155:1 376:8
adds 173:19 326:8
adequate 39:6 137:14
 378:7
adjust 114:11,15
 174:17
administering 310:12
 322:3 325:13 328:11
administration 156:6
 157:2
administrations 156:10
administrative 40:21
 56:14
admit 146:3 333:3
admitted 88:3
adopt 25:3,9 96:3
 283:11 397:15
adopted 15:4 19:9
 20:20 24:9 32:15,15
 38:10 40:19 42:22
 85:5 87:9 126:1
 179:13
adopting 24:8
adopts 20:1 78:13
 81:11
adult 190:4 214:8
advantage 311:13,20
 313:8,22 314:3,13
 316:18 319:21 320:6
 330:8 419:4
adversely 80:9
advice 334:8
advocacy 145:17
advocate 82:17 86:2
 90:18 108:7,22 118:3
 118:11,16,17
advocate-victim 83:5
 88:5 90:7
advocated 97:19 99:14
 175:15 375:9
advocates 94:4 210:15
advocating 163:9 252:9
affect 135:17 144:2
 146:2 150:22
affirm 66:20
affirmative 65:4 66:6,7
 66:12 67:1,21 197:17
 235:15,21 240:15
 253:14 262:15,16
 264:11,13 266:19
 267:1,2,12,16 291:20
 297:11 300:21 301:5
 301:15
affirmatively 175:15
afraid 123:12 128:13
 141:9 163:8 219:13
 307:13 365:12 367:11
 386:16
afternoon 5:4,20 7:10
 9:7 65:18 175:8 211:2
 216:3 221:21 225:4
 303:7
agency 26:2 31:8 58:19
agency's 56:16
agenda 9:8 148:13
 290:11 388:9
agent 75:15
agents 205:16
ages 100:18
aggravated 47:22 48:16
 49:17 112:13 320:18
 323:12 348:20
aggravating 23:1 24:9
 24:13 25:4,9 29:17
 30:15 31:16 33:13
 34:4,4 256:12,17
 315:8 327:11,12
aggravators 271:2,17
aggressively 102:5
agnostic 55:1 160:3
ago 9:5 71:2 96:10

142:3 155:1 321:14
369:4 415:9
agonizing 255:15
agree 57:19 58:2 100:7
118:4 137:10 139:1
140:18 142:12 143:16
157:20 163:6 165:16
172:6,10 185:16
205:14 206:1 209:13
210:9 214:15 229:6
229:14 230:1,13
231:19,22 232:16
234:15 236:15 244:2
245:5,6 251:18
254:12 269:22 286:14
288:18 290:6,22
291:19 293:4 296:1
301:10 303:1 308:15
310:20 318:15 321:4
323:18 329:2 345:20
357:7 358:3 360:17
371:2 376:18 392:2
393:7 399:14 400:14
406:2 417:11 425:1
agreed 91:19 223:18
303:12 406:19
agreeing 338:3
agreement 284:2,12,15
287:20 358:17
agrees 45:5 54:1
225:11 245:14 283:15
290:9 310:14 393:5
ahead 10:19 64:22
108:3 218:22 252:16
292:17
aimed 280:16
ain't 179:16 224:12,19
226:16
ain't-broke-don't-fix-it
226:3
Air 2:5 18:19 19:7
113:13 120:10 375:7
Airmen 108:17 183:12
alacrity 125:4
alcohol 171:17 186:4
325:10,21 327:9
412:16
alcoholic 325:16,19
327:7
alienated 366:10
all-inclusive 266:3
allegation 193:17
alleged 79:8,12 253:11
366:19 412:9
allegedly 211:12
alleviate 150:11 169:5
allow 69:13 82:12 87:11
100:17,18 107:10
202:9 238:22

allowable 116:17
allowed 237:17
allowing 93:20
allows 72:11 345:6
398:1
alpha 43:14
Alright 393:15 395:2,7
alternative 281:6
336:14
altogether 173:21
ambiguities 176:12
ambiguity 58:21,22
59:8,17,20 60:1 69:17
69:17,18 70:8,8,10,12
123:12 141:12 147:17
163:11 164:18 208:13
232:20 398:8
ambiguous 58:17,18
70:17 227:18 229:3
281:1 282:5,12
349:16 351:4
amend 129:20 196:18
216:10
amended 90:19 119:2
120:16 161:18 196:17
354:6 406:11
amending 12:7 21:7
63:21 129:8 294:15
amendment 22:10 64:1
82:8,9 91:4 119:10
196:20 285:21 401:21
amendments 4:9 73:4
120:19 197:8 199:20
America 143:11
amount 111:21 207:5
257:21 378:17
amounts 327:9 411:10
anal 405:2
analogy 109:5 111:7
analysis 5:13 10:8
37:12,18 71:17,19
72:7,7,13,16 73:16,19
74:5 75:12 77:4
141:15 187:15 216:2
222:17
analysts 285:14
analyze 426:17
and-a-half 112:12
Anderson 1:16 9:10,11
9:16,20 52:18 53:1,16
54:4,13,22 55:6 61:8
117:8,10,12 153:3,13
153:20 154:5,14,20
155:9 175:12,13
176:7,17 177:4,7,18
178:15,21 194:21
195:3,11 208:7,10,19
209:1,4 227:21,22
228:4,6,11 244:20

245:1 246:14,17,19
247:1 284:22 287:9
287:13,17 289:17,20
295:12 304:12,17,20
305:17 313:1,2 325:6
325:7 326:19 327:4
328:13,14 346:10
348:4 350:3,8,10
360:22 361:4,9
362:10,18 363:13,18
364:7 368:5,16 369:1
370:6 371:2,7,10,14
372:12,17 374:8,14
374:19,22 376:19
377:4 379:4 381:10
382:13 390:3,15,19
396:7
Anderson's 153:2
anecdotal 101:11
125:17 136:20 186:12
anecdotally 144:13
171:21
anecdote 187:8
angry 184:1
announced 59:3
annoy 324:9 325:2
annual 95:16,18 122:1
188:18
annually 123:3,4
anonymous 191:3
answer 22:19 32:4
34:20,22,22 44:17
61:17 64:19,22 65:15
65:16 66:4 68:18 90:2
95:1 125:20 160:9
199:17 237:7 256:20
262:19 264:19 281:1
313:6 314:22 344:20
348:11
answered 315:18
answers 114:18
anticipate 77:15 200:10
201:1,4 206:13
anus 400:4 401:9,13
anybody 107:19 134:21
183:16 185:13 226:4
281:19 293:12 313:20
365:13
anymore 155:15
Anything's 152:7
anyway 45:2 89:16
162:22 167:19 172:9
190:12 202:13 254:4
286:17 297:8 310:7
323:16 374:13 425:8
apart 7:16 8:2 167:1
apologize 6:14 8:18
52:18 92:11 153:4
165:21 207:21 232:7

289:17 336:13 350:3
362:10
apparent 32:18
apparently 241:14
appeal 104:19 187:13
203:5 259:18 265:6
426:2
appeals 23:20,20 29:4
42:10,20 43:5 53:18
58:14 60:6,8 62:8
63:4 96:9 265:5
292:19 298:7 301:7
appear 36:9 95:4 328:2
337:9
appears 389:13
Appellant 62:3
appellate 99:12 104:3,3
112:18 126:22 127:2
177:16 201:7 203:6
205:6 206:22 265:8
266:10 267:9 293:8
295:14 298:1
appendices 37:12
111:6
appendix 205:7
applaud 96:20
applicability 104:7
382:21
applicable 129:22
175:20 263:14 293:17
application 59:7 60:17
142:10 163:20 177:10
applied 212:15
applies 32:17 90:12
196:20 418:20
apply 16:8 23:22 30:7
31:1,1 82:18 83:9
90:15 286:12
appraise 305:15,18
306:14 327:14 328:1
appreciably 190:5
appreciate 172:5 215:5
304:20
approach 5:18 159:1
160:1 172:22 221:17
230:14,22 258:15
279:16,18 399:1
425:17
approached 159:3
appropriate 49:14
121:2 172:12 230:18
235:15 277:8 317:9
330:5
approval 6:10 425:1
approximately 170:16
AR 120:16
area 17:8 29:20 34:17
40:14 56:22 57:14
58:5 59:10 84:21

104:5 175:14 265:10
304:21 399:4
areas 54:8 67:13
arena 57:16 136:17
argue 104:6 137:22
139:21 214:21 286:5
286:11 298:17
argued 127:7 298:15
419:22
arguing 128:14 131:5
argument 25:17 57:6
62:15 63:16 125:20
125:21 129:5 170:13
176:11 180:2 202:3
229:6 264:22 309:8
313:16 359:16 416:19
417:4
arguments 286:8
377:14
arises 329:11
arising 265:12
Arlington 429:17
arm 201:5
Armed 23:20 29:5 42:11
42:20 53:18 58:14
60:6 62:9 63:4 292:19
298:7 301:8
arms 156:12
Army 18:19 19:5,6
55:18,20 60:8 75:15
75:22 77:12 94:7 96:9
103:20 108:20 113:13
119:21 120:9 128:8
145:4 148:21 190:11
192:11 193:2,8 194:7
202:19 203:2 205:15
279:14 280:2
arose 323:4
arouse 325:2 398:4
arranges 42:2
arrive 5:13
art 173:11 337:14
article 3:5 4:22 5:10 7:3
14:22 15:13,21 16:14
16:16 17:8,9,12 26:17
27:18 28:16 29:7 31:9
32:15,16,16 33:1,14
33:17 38:16,18 39:3
40:19,20 41:4 43:1,1
43:14 47:8 48:2,7,10
56:4,10 60:13,16 64:6
66:5 68:5 73:5 81:9
81:19 86:15 95:22
105:14 111:2 112:2,6
113:3,10 116:3,21
119:13 141:7 161:18
163:14,15 164:6
196:8 197:2,11
203:16 205:20 211:10

211:16 212:5 213:11
213:13,18,22 253:6
260:9,10,11,15
265:18 273:11 287:2
337:9 352:3,4,6 354:9
375:6 427:19 428:5
428:16,19 429:11
Articles 12:1 15:11
18:12,20 28:16 36:17
37:4 38:3,7,8 44:3
48:5 60:19 71:16
115:4,5,7,9,11,11,12
115:17,18,19,22
237:16 239:13 273:12
274:2 298:14 309:7
375:22
articulate 412:19
articulated 259:21
413:20
Ashcroft 62:20,22 63:6
aside 151:15 258:10
askance 33:17
asked 11:1 37:22 105:1
142:3 183:15 188:6
227:7 230:17 250:22
281:8
asking 156:12 247:4,4
276:20 302:12 309:10
428:1
asks 364:14,17
asleep 198:19 271:19
408:16 409:4,7
410:15
aspect 59:4 71:11
376:8
aspects 115:15
asphyxiation 389:17
assault 48:1,12,16
49:17 78:17 80:11,13
105:10 108:21 112:2
112:8,9,13 121:7
137:15 144:8,9
148:20 163:17 164:2
170:16 179:2 189:6
192:14 193:9,20
212:4 214:2 254:22
259:12 266:7 273:21
273:22 274:1 276:11
291:14 315:21 320:1
320:20 326:21 335:3
337:4 339:19 341:6
379:5 382:16 385:22
387:12 406:8 412:9
425:9 429:6
assaults 170:18,21
189:17 192:21
assent 394:19
asserted 67:20
assess 18:4 180:9

assessed 191:17
assessing 31:5
assessment 97:4 99:10
172:3
assign 343:15 427:5
assigned 30:4 149:14
assignments 96:7
assist 174:5
assistance 212:18
assisted 392:3
associate 230:6
associated 149:15
325:12
assume 159:10
assumed 369:16 370:2
assumes 372:2
assuming 158:14,14,15
159:5
assumption 159:20
assumptions 260:16
astonished 177:14
astray 39:2
atmosphere 318:9
attachment 376:1
attack 299:3 300:10
attempt 155:7 253:22
attempts 78:18
attend 79:4,20
attention 7:12 119:7
135:7 144:10 270:7
325:4 326:9 376:4
378:20
attorney 2:8 89:2,20
264:22
attorneys 57:8 108:16
109:2 111:8 121:18
149:10
attuned 209:19
audible 291:7
audience 98:2 277:20
Audio 14:5,10
aunt 185:14
author 17:18
authorities 21:14,19
27:19 30:14 50:3 85:8
authority 11:14,16 15:7
15:18,21,22 16:3,11
17:5,7,10,20 18:1,6,7
18:8,10,11 19:16,18
19:19,20 20:7,22 21:4
21:8,13 25:3,16 26:9
26:20 27:13,20 28:4
29:19 30:8,8 31:7
49:13 52:7,13 53:5
54:15 56:17 57:15
60:15 61:9 67:17,21
68:5 83:3,6,10 85:4
86:3,8,13,17,19
100:21 104:11 106:16

111:2 113:3,6,10,17
113:21 115:14 122:17
122:18 150:13 353:13
353:18 354:8,19
356:2,3,9,15 357:22
authority's 87:19
authorization 17:22
authorized 16:16 18:2,5
24:12 92:1
automatic 74:7 204:5
automatically 204:7
249:22
Automatism 298:9
availability 65:4
available 4:15 85:17
91:19 103:9,11,16,17
104:7 120:9 122:7,11
129:14 190:10,12
193:2 260:17 265:19
266:9,15,16,17
267:18 295:15 297:2
300:1
avoid 270:12
avoided 173:21
avoiding 269:1 391:8
391:15
aware 95:7,13 136:14
140:10 262:11 309:18
408:8,10 410:14,16
410:20 411:15,22
415:3 418:5
awareness 414:18
420:8
awful 140:5
awhile 110:1

B

b 163:16 164:1 234:3,3
256:3 274:15 276:10
319:11 337:22 339:18
340:2,10 341:3,3,9
342:17,17 348:6,8,21
350:9,17,20 363:13
363:14 379:14 380:19
383:21,21 384:19
385:11,11,20,20
386:6,6 389:7 390:2,2
397:21 400:16 401:6
406:9 407:10,19,20
B3 315:9,21 319:12
320:14 323:15
B3A 316:1 326:21
back 14:17 15:6 17:22
48:2,8 52:19 72:4
80:14 84:12 93:15
110:17 120:21 133:4
141:10,15 150:12
160:21 162:16 163:5
166:22 168:1,2,4

- 169:9 175:3 176:22
180:8,10 198:12
200:13 214:10 217:4
220:14 267:14 270:6
277:4 278:2 284:7
288:3 290:1 300:18
308:22 309:22 313:4
313:10 332:14,15
337:2 339:17 341:7
350:17 361:13 364:20
365:3,17 378:20
379:20 380:4 383:14
383:18 384:13,13
386:21 412:5 416:17
423:11
background 94:1 95:14
277:11,17 278:4
279:7,12 288:19
392:9
backtrack 83:14
backup 13:15 220:13
backwards 268:5
332:19
bad 13:14 50:15 78:8
84:13 93:3 169:12
202:10 217:20 315:17
325:8 333:13 373:2,3
373:3,4 417:3 418:12
badly 349:8
baggage 374:18
balance 40:13 140:16
balanced 172:21
ball 251:14
ballgame 326:18
banging 281:19,20
bar 102:20 103:12
104:8 167:17 180:8
Barbara 1:13,15 4:13
bare 280:8
Bartlett 60:7
Base 108:8
based 69:2 107:20
113:21 153:9 231:8
259:20 260:16 309:19
310:3 348:20 353:11
360:1 412:20 413:19
bases 183:12
basic 12:15 22:4 149:2
185:9 223:13 253:21
270:20 352:11
basically 6:21 68:11
88:9 90:11,15 109:15
115:13 120:5 211:17
230:22 237:18 256:3
292:2 328:11 403:3
basics 52:19
basis 9:17 95:18 102:12
288:11 367:9 411:11
415:6 416:3
batch 355:4
Bateman 102:2,6
battery 221:13
battled 226:1
beans 377:2
bear 395:4
bears 400:6
beat 349:8
beaten 357:8
becoming 315:11
bed 185:14 363:5 380:2
381:12,14 382:7
384:8,10 386:3 387:4
bedroom 361:14
beer 139:15 140:8
149:6 167:18
began 20:22 175:7
beginning 10:4 242:3
323:1 328:9 329:14
begins 14:5
behavior 106:14 255:20
277:12 320:21 343:21
344:3,14
behaviors 255:21
311:14
belief 258:8 362:8,9
363:21,21 413:4,13
believe 58:12 81:15,16
82:12 102:12 110:10
129:2 142:1 161:16
182:11 183:21 189:9
191:3 212:22 236:18
236:19 260:6 304:4
337:13 370:8 373:16
387:19 418:4 428:14
believed 53:13 415:2
418:12
believer 142:6
believes 87:2 223:15
224:10
believing 191:9
belongs 111:19 114:1
118:3
belt 159:1
bench 109:17 202:22
205:6 299:20 304:3
benchbook 111:14,15
111:19 113:15,19
114:1 127:19 142:6
151:6,20 152:14
180:13,20 202:18,20
203:2,4,8 204:9 205:4
205:8,12,21 254:16
260:8,10 261:5 412:4
413:2 415:17
benefit 99:18 150:6
202:16 352:19 428:12
benefited 100:2
benefitting 258:21
best 106:2 204:14
bet 285:11
better 100:1 126:2,3
135:20 136:4 137:1
146:7 182:15 200:11
218:20 219:1 221:5
226:10 228:22 233:20
241:17 262:2 285:16
290:19 332:8 355:17
358:4 359:8 374:19
379:21 410:7
beverage 327:7
Beware 224:20
beyond 17:6 31:7 212:9
258:6 340:16 342:6
344:3 345:2
BG 2:2 3:6
BGen(R) 1:19
bias 152:11
bible 35:19,22 36:2
110:17 111:11 151:17
big 65:8 122:2 133:20
181:11 188:20 196:11
276:14 301:9 392:16
biggest 170:7
bill 12:17,17 13:17,18
binder 121:16
binding 36:10 42:13
43:21 44:6 46:14,22
113:19
bit 21:16 93:19 113:6
120:4 135:19 140:12
168:20 183:9 200:11
205:21 275:12 303:9
321:21 339:5 389:16
407:16 409:14 423:19
bizarre 400:20 402:15
Blacked 409:9
blackout 309:7
blaming 134:21
blessed 266:10
blesses 203:7
blindly 122:5
block 5:15
bludgeon 48:21
blue 7:6,6 196:8
board 84:7 90:15 91:15
95:10 120:21
boards 19:2 291:2
boat 197:7
bodily 48:22 91:21
133:21,22 134:8,9
138:13 173:14,22,22
176:21,22 177:3,7
259:7,8 271:7,8,10
273:7,12,15 274:7,9
275:4,5,9,13,19,20
276:15 288:7,9,20,22
289:6,20 331:10
332:10,21 333:6,17
335:21 336:1 337:8
337:10,20 339:9,20
340:2,8,12,15,18
341:4,8,17,17 342:1
343:3,4,6,8,12,13
344:22 345:9,18,21
345:22 346:5,11,18
346:19,20,21 347:15
347:19 349:3,4,5,9,14
350:22 357:16 380:22
381:7,18 383:19,20
383:21 385:3,6,14
386:8,12 387:5,6
388:5,5 415:14
body 96:20 173:15
272:16 398:2,2,10
401:22 408:22
boilerplate 413:1
bomb 318:2
bones 280:9
book 75:11,16 111:4,5
111:14 112:14,19
120:16 151:16,18
197:7 202:22 215:1
299:20 304:3
books 111:13
boom 185:5
born 167:13
boss 156:14,14,16
bother 290:9
bothered 241:21
bottom 9:1 113:15
197:15,20 232:14
268:4 323:5
bottom-line 271:22
bound 298:6,10 356:14
357:7
box 109:6 406:14
boys 185:8,13
Brady 89:10,22
brain 94:12 259:16
branch 40:22
branches 67:13 173:3
break 93:2 195:17
215:8 331:17,19,21
breaking 219:15
breathing 106:12
breathtaking 105:11,17
brief 144:6 331:19
428:12
briefed 161:5,22
briefing 63:16 131:12
161:11 162:4
briefings 148:19
briefly 202:16 203:10
BRIG 13:2 75:10,17
76:8,13 78:1 93:16
94:15,22 100:11

107:17 121:13 123:21
 124:2 128:6,13,19,22
 129:11,17,19 130:4,9
 130:12,17,20 131:2,7
 131:11 135:3 136:3
 138:21 139:8,10,17
 139:20 145:2 148:4
 149:7,12,16 154:1,6,9
 154:16,21 155:6,10
 156:9 160:15,20
 163:1 164:22 165:18
 166:3 167:7 169:16
 169:22 170:3,7 174:7
 175:2,22 176:15,18
 177:6,8,20 178:19
 179:6 186:20 187:3,5
 187:7,16,20 188:3,9
 188:13,15 189:9,15
 189:20 190:2,9,20
 191:11,14 192:22
 198:3 200:2 201:15
 202:2 204:19,22
 206:5 207:13,20
 208:2 209:15,18
 215:6 224:4 232:8,10
 341:13 342:7,11,14
 342:21 343:22 345:19
 348:5,10 350:9,19
 351:1 355:3,7,11
 358:3,9 363:4 364:2
 374:20 384:1 385:7
 385:20 386:5 387:8
 388:4,15,20 389:2
Brigadier 251:4
bring 84:12 86:9 93:18
 194:13 291:9 365:14
 394:7
bringing 394:6
brings 133:11
broad 15:20,22 16:11
 17:4 101:1 147:7
 195:9 200:21 201:6
 201:14,17 202:8
 302:2,4,5 324:17
 378:11 396:11 397:1
broaden 200:22 399:14
broadened 88:15
broadening 400:2
broadens 90:12
broader 147:2 148:6
 200:1 252:4,14
 256:22 272:8 296:6
 338:21 342:15 355:20
 378:4,10 388:16
broadly 235:17
Broadway 65:19
broke 166:22 224:12,19
 226:17
broken 224:11,13,13

281:16,21 282:7,19
brought 7:12 13:22
 88:12 91:7,8 109:6
 202:17 285:9 346:2
Brown 89:8
build 119:15 120:17
building 5:15 109:2
builds 274:15
built 109:14,21 116:8
 120:17 196:10 206:12
 206:22
bulk 193:8,20
bumped 323:11
bun 274:19
bunch 127:22 128:3
 169:7 303:16
burden 98:9 99:3,5
 131:13 197:16 224:9
 228:19 230:3,11
 232:15 267:6,8
 291:22 305:11,20
 306:2 413:22 418:8
 418:11
bureaucracy 100:6
burner 59:6
Burwell 59:2
busiest 108:20
business 106:2 155:22
busted 298:5
busy 120:21
butt 272:15
buy-in 172:8
byplay 392:21
byproduct 403:16

C

c 132:19 163:19 243:2,3
 243:8,10 244:19
 245:21 249:7,10
 274:15 276:11 287:22
 340:1 384:5,19 385:1
C8 132:19
CAAF 39:5 59:15 61:20
 62:10 63:8,8 98:8
 112:21 118:22 293:2
call 6:20 68:12 86:12
 96:4 173:11 185:13
 217:4 220:7,14
 222:17 257:12 267:16
 299:6 300:7 303:11
 328:15 352:10 381:4
 412:11
called 19:1 23:19 24:9
 32:16 36:10 50:7,13
 115:3 133:7 196:8
 272:7 428:22
calling 320:12
calls 85:7 192:1

camera 41:22
camp 226:17
campus 240:21
campuses 181:11
candle 67:9
capacity 312:2 406:7
 407:4 409:21
capital 30:15 91:9
 425:3
Capitol 12:17 13:17
 99:16
captain 120:8 148:7,10
captains 109:1
capture 253:22 343:21
captured 78:20 311:10
car 422:5
care 252:12 321:22
 329:15 417:19,20
 422:14
career 352:1
careers 96:18
careful 140:15 159:20
 291:17
carefully 96:12 129:9
 136:22 201:2,3 377:9
carelessness 414:14
Carolina 22:15
carried 18:7 152:18
 369:16
Carrier 109:18
carries 353:7 368:19,21
 374:18
carry 12:10 18:17 57:11
 368:20 370:18
carrying 367:16 369:1
 372:3,11
cart 165:3,5,7,8,12
carve 46:7 47:19
carve-out 30:21 50:11
 58:16
carve-outs 56:22
case 14:1 17:21 21:17
 23:18 24:10,14,22
 25:19 26:16 29:5
 40:18 41:9 42:17,18
 42:21 43:4 47:21
 48:10,11,13 50:7,13
 50:17,18 52:14 53:19
 53:21 57:6 59:14 62:3
 62:15,20 63:3,11
 66:17 67:15 77:6
 79:14 85:3 90:11 98:9
 99:11 101:6 103:20
 104:18 125:19 126:3
 144:8,16 145:1 148:8
 148:9,17 158:1,2
 159:11 164:5,8,10
 165:2 187:10 202:12
 248:1 254:15 255:18

264:2 266:7,15
 280:17 285:22 287:1
 296:22 302:12 311:10
 361:12 363:16 373:17
 379:14 394:1,7,13
 396:17 398:11 400:9
 404:22 405:2,7,8
 415:8,11 416:5
 418:17,18 419:10,14
 420:10 421:11,17
 425:14 426:10,11
cases 16:8 30:16 34:2
 47:18 62:13,18 85:7
 108:21 109:1 125:14
 144:9,17,18,19 145:5
 145:12,16 146:22
 158:1 169:19 171:13
 179:5 185:3 189:13
 190:7 193:13,13,14
 193:21,22 204:19
 205:5 268:19 274:17
 279:20 291:14 292:20
 293:3 349:7 352:9
 415:2 416:14 418:15
 420:4,10
categories 214:7
category 323:12 356:10
cathartic 171:8
caught 74:7,8
cause 257:22 368:12
 370:20 371:3,5 372:4
 372:5,22 381:7,8,17
 393:10
caused 365:21 366:2
causes 337:21
causing 124:14 239:5
 336:1 340:2,12 341:4
 341:10 381:6
caution 297:8
cautious 258:4
cautiously 58:10
caveat 16:5 68:21
ceased 233:10 239:22
 246:2
cell 216:22 218:10
 219:18 220:2,6,14
center 94:2 270:6
central 296:15
centrally 270:2
cert 25:2
certain 11:17 15:20
 23:1 66:16 78:16
 90:13 149:4 211:14
 211:15 287:21
certainly 11:9 15:1
 64:12 75:7 87:7 89:19
 136:1 140:5 167:11
 186:14 201:8,9
 205:18 227:12 229:12

252:6 256:14 265:9
 265:14 278:20 286:18
 377:14 383:5 420:16
 421:5,13
certainty 118:4 179:20
certiorari 62:4,6,8
cetera 141:19,19
CG 85:2
Chair 1:13 3:3 4:11,12
 4:18,19 9:15,19 10:1
 14:16 31:11,14 32:9
 34:21 35:5 78:3,12
 92:15,20 93:8,14 94:8
 94:21 95:15,19,21
 97:19 107:22 108:3
 108:11 114:21 115:1
 115:5,8,21 116:6,16
 116:20 117:3,6,9,11
 117:13,16,20 118:1
 118:14 119:8,11,17
 120:1 130:6,10,15,19
 131:1 153:1,15,18
 154:8,11 155:4,7
 156:6 157:12 160:4
 160:13,19 161:2,7
 172:4 174:12 175:1,3
 178:2 181:1 184:2,5,7
 184:12,16 186:10
 187:2,4,6,14,18,21
 188:7,21 189:2
 194:16,19 195:14,19
 196:6 203:11,14,22
 204:3,5,8,16,20 206:8
 209:5 210:17 215:3,8
 215:13,19,21 216:13
 216:20 217:4,10,17
 218:1,4,12 219:2
 222:3,7 226:19 227:9
 228:2,5,7,10 229:18
 231:19 232:5,14
 234:12 235:12 236:7
 237:13 238:10,12
 239:3 240:10 244:21
 248:3 249:3 250:17
 250:20 251:1,7,10,13
 251:21 252:16 257:3
 258:18 259:1,19
 261:2,8,12,15 262:4
 262:21 264:7 265:13
 267:20 269:16,19
 270:17 276:17,21
 278:6 279:4 282:17
 283:7,19 284:6,11
 285:8 286:14 287:16
 289:15,19,22 290:18
 291:1 293:4,12,19,22
 294:4,9,21 295:2,7
 296:10 300:15 301:1
 301:2,9 302:15,19,22

304:18 308:20 310:10
 313:5 316:9,12
 320:10 321:2 322:18
 323:18 325:5 327:8
 327:19 328:7,19
 329:1,6 330:12,19,22
 331:3,7,9,13,16,20
 332:3,7 336:17
 340:20 341:12 343:15
 349:12 350:2,14,18
 351:3,7 354:14,21
 355:6,9,13 358:2,16
 360:7,16,21 361:2
 364:11 365:16 366:12
 368:14 377:19 384:15
 385:5 392:11,17
 393:15,20 395:2,17
 396:9,16 398:16,21
 406:1,22 407:9
 408:12 419:8 421:9
 421:18,21 426:16
 427:10,15 428:9
 429:9,13,16
challenge 122:2 180:17
 205:3 302:10
challenges 180:21,21
chance 223:19 281:11
change 23:7 54:18
 69:11,13 73:11 79:2
 87:8 96:4,5 97:11,13
 97:14,16,21 98:13
 100:4 102:13 103:19
 105:16,17 114:10
 121:5 124:3,4 125:6
 127:5,7,8 128:15
 129:2 130:13 133:6
 135:5,7 137:7 141:3,6
 141:8,11,13,18,18
 145:22 147:6,15,20
 152:1,14,14,15,22
 155:21 156:2 157:2
 158:21 163:12,14
 164:1,16 172:1,8
 173:8 174:16 175:15
 175:18,21 176:19
 178:6 180:15 184:2,3
 193:10 197:16 208:4
 209:8 224:6,10,16
 225:12 226:22 228:18
 229:17 230:5,12
 231:15,21 233:3,4
 237:11,20 238:3
 248:1 249:9 251:9
 252:3,8 255:20
 256:22 257:21 258:20
 261:18 263:19 270:5
 284:6 286:21 288:2
 300:6 303:2 320:22
 331:1,5 334:17 344:1

349:20 359:5,7 360:3
 360:19 373:22 374:1
 377:22 385:11 393:13
 393:17 396:12 397:2
 406:15,16 408:2
 410:10,11 418:8
 421:2 424:1,5,7
changed 18:21 72:6
 73:6,13,13 86:21
 87:18,22 124:7,14,16
 135:6 141:9 146:7
 157:4 163:10 181:5
 189:8 224:14 225:10
 247:22 287:3,6
 288:11 334:22 406:21
changes 5:9 6:3 71:14
 71:16,17,20 72:12
 73:16 74:3 77:4 87:7
 87:20 88:11,12 90:22
 92:8 97:2 98:17,19
 105:10,12,21 121:7,9
 122:21 135:12 141:4
 142:13 144:2 152:19
 152:19,20,20 156:10
 157:7 158:13 159:6
 159:18 160:21 162:6
 162:9 163:14 165:5
 165:21 166:13 167:22
 168:22 169:18 172:11
 172:14,17 174:11
 196:3 197:5 198:15
 199:10,18 205:14
 222:14 227:3 228:17
 236:20 248:19,21
 268:17 387:18 397:16
changing 150:14 151:2
 152:2 156:3 163:20
 164:19 330:21,22
 331:1,4
channel 22:10 353:21
chapter 7:20
character 88:2
characterize 173:8
charge 116:12 164:7
 211:3,7,8,9 213:18,19
 214:13 299:11 312:10
 312:11,12,13 314:18
 340:15 345:8 413:2
 429:6
chargeable 276:6,12
charged 163:18 164:6
 211:21 214:11 397:9
charges 79:13 211:8
 261:3 405:1,2
charging 177:10 345:14
 374:1
Charles 2:2 3:6
Charlottesville 93:19
 94:3

chart 170:13 189:20
 303:10 407:10
charted 201:2
chartered 174:21
charts 193:3 195:17,18
 198:8
check 51:2,7,10,12,12
 51:14,19 177:22
 190:22 306:17 385:13
checking 385:17
checks 50:15,15,19,21
cheek 235:19,22
Chevron 56:4,7,12,13
 57:3,16,17 58:16,22
 59:4,7,17 60:7,9,16
 70:14,15
chief 17:13 18:7 28:3,7
 28:11 29:15,22 30:14
 30:18 31:3 42:19
 45:18 46:2 48:6 94:6
 94:8 96:8 142:20
 183:11
child 41:12 42:7 189:7
 189:13,22 195:10
 214:8
child's 41:13
chime 137:6
choices 346:9
choking 357:19
choose 9:17 299:6
Chris 108:6 109:18
 119:21 145:3 203:9
 348:14 428:14
Christopher 2:3 3:7
Chuck 94:1 224:7
 348:14
chucks 166:10
chunk 193:14
chunked 167:3
chunks 166:9
circuit's 127:3
circulated 168:22
 194:22
circulation 223:6
circumstance 296:20
 307:14 320:18 367:11
 370:16
circumstances 34:4
 53:4 85:13,20 132:20
 136:8 169:15 171:14
 233:7 246:5 248:10
 249:12 256:12 362:9
 367:1,2,8 374:7
 378:12 389:13,15,21
 395:13 412:9 413:15
 413:19 414:11 417:21
circumstantial 244:13
citation 92:8
citations 55:3

- cite** 122:18 293:2
420:10
cited 42:12 292:20
420:6
City 1:12
civics 12:15
Civil 18:21
civilian 63:11 108:16
146:13 173:9 237:7
276:8 279:15 298:9
380:9,14 423:3
civilians 275:3
claim 418:2
clarification 165:20
209:10 237:11 308:14
328:22 332:10
clarifications 208:12
clarified 153:5 226:10
282:5,6
clarify 123:19 137:3
138:18 168:20 202:20
250:18 276:4 299:22
300:2 310:8 328:14
390:4 425:15
clarifying 230:8
clarity 8:18 104:5 229:4
333:19 336:9
Class 337:22
classes 149:11
classic 381:15
clause 15:13 17:13,14
26:17 31:10 239:20
245:10 248:9
clauses 245:7
clean 213:17 278:2
cleaner 214:13
cleaning 143:20
clear 9:2 34:3 52:12
60:13 69:17,17 104:8
132:10 153:5 181:8
222:4 228:18 229:9
237:20 238:3 242:17
247:17 249:10 253:4
269:7 275:7 291:12
291:20 297:7 308:13
309:22 321:10,14
335:16,17 336:5
343:2 351:13 352:17
352:22 353:1 378:10
379:11 425:6 426:1
clearer 60:15 144:1
181:13 199:21 219:5
219:7 229:15 241:9
343:10,11 396:2
clearly 31:6 34:14,16
69:13 70:12 103:10
234:19 243:1 255:21
265:11 274:6 302:17
323:7,13 334:14
- clenched** 405:4
clenching 405:8
client 89:3,6,21 103:1
climbing 269:1
clock 70:20 71:2
close 106:19 109:9
110:5 111:13 144:10
163:4 271:14 335:4,6
closely 77:11 84:7
321:11
closest 271:5
clue 283:16
co-accused 314:15
co-conspirator 319:8
Coalition 62:22
Coast 37:10 77:6,7
90:16
Coca-Cola 326:4
code 3:5 38:3 115:16
161:4,6,9,10 280:5,5
codifying 88:9
coerce 356:3 384:6,19
coerced 361:6
coercion 351:9 353:17
356:9
coercive 200:5 354:7
355:16
cognizable 254:12
coherent 99:2
Col 6:13 8:8,11,17 9:3
9:21 47:7 58:3,9 60:5
60:20 68:8,22 70:20
80:2,6,10 107:16,18
108:2,5,12 110:7
114:22 115:3,6,10
116:5,7,18,22 117:5
117:14,17,21 118:2
118:15 119:9,12,20
120:2 122:16 127:9
128:7,16,20 129:10
129:16,18 130:3
131:4,9 137:6 140:17
143:10 147:22 148:5
148:18 149:9,13,17
149:19,20,21 151:9
151:10,12,14 152:5,7
152:8,10,12,13 153:8
153:14,17,19,22
154:3,18 157:5,10
160:11 161:1,4,9
162:2,12,13,14,15
163:2 166:17 180:10
182:9,17,20 183:1,6
184:19 185:15,20
186:6,7 188:17 189:1
189:3,5,11,19 190:1,8
192:11 194:18 195:1
195:5,12,16,18,20
196:7 198:7 199:2,4,8
- 201:13,16,20,22
202:12,15 203:13,20
204:2,4,6,10,17,21
205:2,4,10 206:6,9
207:18,22 208:9,14
208:20 209:2,12
210:18 211:6 212:20
213:2,8,16 218:5,9,14
218:18,21 219:3,10
219:14 220:1,5,9,12
220:16,20 244:10
246:11,16,18,20
247:10 250:18,21
251:3,8,12,15,20
260:2,21 261:6,9
265:22 273:9 274:11
274:12 275:8 276:3
279:12 281:16 282:3
282:6 283:5,8,21
284:3,17 286:22
287:7,14 292:9
293:10 294:1,6,11
298:19 300:21 301:4
301:11,14 303:8
304:2,4,7,13 305:14
306:12 308:2 309:6
309:13,19,20,21
310:6,9,20 311:15,19
312:9,21 314:11,22
323:22 324:13 326:11
326:14 330:16 331:12
331:14,18 339:17
340:1,9 341:1 344:16
344:17 345:6 350:7
353:5 359:11,17
360:11 366:22 374:5
374:15 375:4,15,21
376:3,9,12,16,18
378:19 381:6 384:4
384:17 386:2,13
387:14,17 389:6,11
390:11,18 391:8,15
391:19,22 392:8
396:19 403:20 404:21
405:16 408:18 412:3
415:18 419:13,18
422:16 423:6 427:18
428:10,14 429:15
COL(R) 1:18,18
collective 98:5 145:10
210:10
college 181:11,13
240:21 318:6
colleges 150:3
collision 106:14
colloquially 130:1
colonel 2:5,6,8 7:4
13:12 77:12 92:22
93:10 94:5,10 98:15
- 107:15 108:6 109:18
120:6,7,10,11 132:2
134:11 142:2 153:9
157:14 161:8 202:17
210:19 216:19 218:6
219:8 248:17 260:1
274:4 284:5 297:22
303:21 309:20 310:14
349:20 375:7 390:13
390:14 396:21 400:1
406:15 415:16 426:21
color 197:15 198:22
199:6,9
colors 199:3
combat 95:10 364:19
366:11
come 5:22 11:1 14:17
22:6,7 48:8 49:13
54:10,12 65:3 97:10
136:9 140:5 145:22
147:12 150:9 158:14
158:15 162:16 176:4
176:5 179:10 194:10
194:11,17 223:4
237:12 273:7,8
275:19 280:3 281:5
284:15 286:10 288:19
294:12 308:22 309:11
309:17 313:4 334:5
349:1 356:7 361:9,14
379:4 380:2 382:1,8
412:10,12,22 425:18
426:11
comes 79:14 89:22
142:10 166:20 278:1
278:2 298:20 309:4
311:3 342:1 348:22
349:17 350:11 382:17
393:18 423:8
comfort 156:21
comfortable 156:18
329:18 410:2 420:21
comfortably 130:13
coming 10:17 85:1,2
131:19 134:13 157:2
168:1 177:13 216:21
222:3,4 254:17
296:16 337:2 416:17
comma 293:17,20
346:12,12
command 13:11
commander 17:13 18:6
28:3,6,11 29:15,21
30:14,18 31:2 45:18
46:2 94:2
commanders 115:14
183:13
commas 141:8
commend 107:9

- comment** 6:10,11 10:17
140:18 169:1 181:2,3
225:2 238:15 258:19
273:20 289:7 292:2
302:3 303:5 311:16
332:17 333:21 360:12
393:22 399:3 407:3
- commentary** 115:22
238:2
- comments** 3:3 9:13
128:14 137:11 205:5
209:20 223:13 230:5
252:19 254:13 258:22
263:22 273:18 277:1
278:8 285:19 343:18
406:18
- commission** 24:15
- Commissions** 91:3
- commit** 78:18 318:17
321:8 339:20
- commits** 315:12 324:14
340:11 342:19 362:21
- committed** 25:11 41:12
211:12,12 318:2
321:6 328:11 337:3
- committee** 6:4 37:6
39:17,18 53:8 93:22
94:9,19 95:3,8,15
98:15 103:6 105:19
107:9 109:12 110:2,3
110:12,14 116:8
119:15 120:4,5,13
121:2,12 153:11
161:5,10,10,11 188:6
188:10 205:12 206:16
207:9 209:9 210:7
213:3 265:1 426:9
- Committee's** 161:6
- committing** 310:11
336:10,10 337:21
- common** 100:18 106:12
126:14 176:13 177:9
281:13 316:22 420:16
420:20
- communicate** 103:15
207:11 279:8 305:7
305:10 306:5,6 307:6
309:5 409:11
- communicated** 256:1
370:17
- communicates** 368:11
- communicating** 277:20
- communication** 41:16
41:17 369:3 370:19
371:4 372:2,6,8,10,13
372:21 373:5
- communications** 56:19
82:18 90:20
- communities** 103:2
- community** 101:22
169:10 170:10 178:4
182:10 360:1 392:1
- company** 281:6
- comparable** 84:22
- compare** 106:7 244:16
- compared** 15:3
- compares** 190:3
- comparison** 149:22
- compatibility** 202:11
- compel** 83:3,6 384:6,20
393:6 394:17
- compelling** 226:4 359:5
359:6 393:13
- competency** 30:19
- competent** 104:22
105:1,3 126:9 241:12
241:16 255:14 413:9
- complete** 81:8,8,10
- completely** 81:14
133:11 229:6 231:22
254:5 269:22 290:6
291:18 303:1 343:7
- complex** 5:16
- complicated** 6:1 14:21
41:1 98:22 225:16,16
225:18 259:16
- complicates** 264:14
- complication** 99:1
- comply** 365:2 372:6
380:8 428:11
- component** 43:6
- comprehensible** 255:4
334:14
- comprised** 120:5
- compromising** 202:10
- compulsion** 272:7
- conceive** 356:21
- concept** 141:6 197:20
276:14 283:10
- concern** 127:15,18
129:1 140:9,22 170:8
179:1 181:4 231:6,7
250:8 275:18 277:10
278:5 295:18 305:2
305:17 315:1 316:4,9
316:12 317:10 321:3
321:12 322:1,5
345:12 365:16 378:9
399:4 421:12
- concerned** 84:8 102:16
133:17 136:21 137:12
139:1 148:15 155:21
169:17 293:7 300:17
302:7 324:8 332:18
333:18 394:1
- concerns** 74:16 141:4
141:22 142:4 150:10
155:19 158:4,5 169:5
172:20 230:16 252:14
252:18 255:3 285:18
- concerted** 98:14
- conclude** 70:22
- concludes** 107:12
- concordance** 35:21
- concrete** 352:9
- condition** 412:15
422:15 423:15
- conductive** 84:16
- conduct** 46:8 55:14
115:18 136:7 200:4
213:13,18 214:3
249:13 305:16,19
306:15 327:14 328:1
328:1,17 340:19
353:13,20 418:6
420:7 422:17
- conducted** 106:22
- confer** 87:6
- confidence** 126:6,19
416:15
- confident** 61:22 208:5
210:15
- confined** 79:18
- confinement** 23:14
78:22 79:9,12,15,17
80:20 81:5 92:1
- confirm** 9:12
- conflicting** 190:15
- confronted** 42:11 67:16
- confronting** 270:14
- confused** 134:12,14,15
134:16 165:20 263:2
300:12 333:5
- confusing** 82:1 133:19
134:19,20 186:16
239:5 265:1
- confusion** 101:3,10,11
124:14 136:11,13,17
226:9 242:10 249:17
263:10 265:3 282:9
295:19 298:19 299:8
299:9
- confusions** 253:5
- Congress** 15:14,17
16:10 18:15 19:22
21:15 23:6 24:18
25:12,16,21 26:1,8,18
27:1,7,9,11,18 30:17
32:14,15,21 33:1,3,3
33:6,11,19,21,22
38:10 40:14 42:22
44:2 45:7,15,17 49:2
66:10,14 67:3,8 68:18
69:3,5,8,20 70:7 75:1
86:15 91:10 98:1
109:14 112:7,10,22
113:9 114:4 118:10
- 126:12 156:1 157:4
159:9,12 160:5
167:11,18 169:3
174:17 188:19 195:8
206:20,21 207:1
216:10 268:18 269:10
270:7 425:1 426:4
- congressional** 17:14
27:14 28:5 44:14
88:16 157:22 159:6
159:21
- congressionally-pas...**
48:11
- Congresswoman** 7:11
229:7
- conjunction** 37:9
- connection** 301:13
328:10
- conscious** 103:15
411:19
- consensual** 259:13
268:8 271:15 338:19
344:4 347:8 357:15
382:2 403:22
- consensus** 5:14 222:22
227:1 239:4 328:12
331:2 406:20
- consent** 54:3 114:8,11
117:15,19 130:5,17
131:14 132:19,22
135:10,15,16 136:6,7
139:18 140:2,4,20
141:18 142:17 146:8
146:12 147:5 162:20
167:17 170:11 171:1
173:22 174:1 178:12
179:11 199:19 200:13
227:17 228:13 229:2
232:18 233:2,8
234:16 235:15 237:1
238:22 239:21 240:15
242:7,16,20 243:18
244:1,14,14 245:15
245:17 246:4,6,10
248:5,7,12,20 252:5,9
253:10,20,21 254:1,1
254:2,10 256:4,6,11
256:14 257:7,10,17
257:18 259:6 262:2,7
262:8,16 265:20
266:4,12 267:11,11
268:20 269:3,10,13
270:5,12,22 271:6
272:1,2,15,17 281:1
282:11 283:9,10
291:3 292:4,22 294:2
294:5,19 295:6,9,10
295:16 296:2,3,12,15
297:19,20,21 298:11

- 298:17,22 299:7,10
299:13,17,19 300:9
300:12,22 301:6
302:8 305:21 306:2,9
306:11 313:11 325:14
325:18,20 326:6,8
327:1 337:5 338:20
341:15 342:2,3,5
346:7,8 351:14
354:16,18,20 357:5
357:12,13,16,20,21
378:17 387:15 389:14
391:9,16,16,20,21
393:2,10 395:11,21
404:10 406:7,13
407:5 417:2,9,18
consent's 298:2
consented 357:12
consenting 179:11
256:9 303:6,18 305:2
305:22 306:1 412:21
413:10
consensual 392:5
consequence 327:17
368:12 370:20 371:5
372:4,22
consequences 146:18
224:20 320:16
consequential 102:14
consider 40:3 95:11
103:6 129:8 181:8
194:15 257:1 260:12
357:14 373:22 413:3
420:2 426:9
consideration 97:4
194:9 425:22 426:12
considered 31:17 65:5
75:8 132:21 233:7
246:5 248:11 271:20
272:4 273:13 274:19
400:10
considering 43:6 91:2
141:10 341:3 375:9
consist 37:2
consistent 87:19 328:5
398:19 399:1
consistently 46:10
conspiracy 91:4,5,12
314:19
constantly 77:14
296:16
constitute 42:5 85:19
242:16,19 243:18,22
245:15 248:7 370:12
constitutes 54:6
Constitution 15:6,14
21:1,9 28:10 30:5
40:20,21 82:16 88:21
89:1,13 269:1
constitutional 15:2
17:7 18:10 21:12
30:18 31:9 50:5 83:15
98:10 426:4
constitutionally 22:8
25:15 82:7 89:3
constitutionally-requ...
81:18 82:5,19 88:17
constrain 22:14 34:5
constrained 24:5
construction 3:6 51:17
56:20 93:10 103:18
118:12 126:15 372:20
construe 42:15 52:9
construed 52:2
construing 50:17 52:11
55:22
consumed 412:16
consumer 159:22
consumption 188:4
contact 53:20 55:19,19
59:11 69:15,22
104:14 200:21 235:16
235:17 259:13 271:9
271:15 272:1,14,22
273:3,5 274:14,16,20
337:1,5 344:9 345:9
347:8 396:10 398:1
399:12 400:3,5,16,17
400:19 401:17 402:10
402:12,19,22 404:6
405:10,15
contacts 287:3
contain 210:20 280:15
contemplated 371:19
372:8 373:4
content 35:12
contentious 87:8
162:17
contents 3:1 11:20
contest 386:14
contested 193:13 405:7
contesting 124:21
contests 193:21
context 39:3 51:18
60:14,16 70:13 81:5
105:7 196:1 237:8
253:1 255:13 285:20
289:1 291:13 353:18
355:20 358:5 364:14
379:3 387:19
continuation 137:7,9
continue 4:21 5:11
169:12 260:6 277:9
283:4 288:16
continuing 30:1
contraband 43:12
contract 250:11
contracting 47:15
contracts 191:21
contrary 27:16 28:2
337:17
contrast 14:14
contribution 206:10
control 49:22 327:14
328:1,1 357:19
controllable 137:21
controlled 43:3 45:7
controls 67:17
convene 18:2,9
convening 17:20 18:1
50:2 85:4,8 87:18
conversation 126:8
176:6 247:18 250:7
252:2 421:7 428:12
conversations 178:10
390:13,16
convicted 22:15 24:20
323:15 416:3 424:14
convicting 411:10,11
conviction 43:8 412:1
416:5,12
convictions 135:1
282:9 426:3
convince 411:21 418:3
convinced 229:1,5
240:18 241:4 415:4
cookbook 150:18
cool 99:17
copies 6:15,19 199:1,6
copy 7:13 154:16,19,20
208:18 284:17
corollary 99:4
Corporal 89:8
Corps 2:8 18:22 19:4
33:9 90:14 128:8
145:4
correct 39:12,14 45:22
52:21,22 116:5,21
250:5 274:4,5 296:1
297:22 300:4 302:21
314:16 316:6 330:3
396:4
corrected 141:2 183:19
244:3 398:9
correction 231:10,11
correctly 228:16
cost 121:19
couched 235:18
counsel 79:6,22 86:5,6
86:7 87:6 88:8 89:6
90:1 100:2 102:21
104:17 106:6 109:3
109:10 124:21,22
125:17 126:9,16
127:12,12,16 128:11
130:21 132:4,4
134:13,15 149:10
154:7 173:10 180:16
186:22 203:5 257:9
264:15 299:15 303:14
334:9
counselor 168:8
count 202:3
counted 330:18
country 84:12,14
counts 13:13
couple 62:17 63:9
74:16 84:3 101:4
110:18,20 115:20
132:15 162:3 202:17
240:13 244:22 266:2
325:8 406:4
course 14:1 15:12 17:6
17:9,12 19:22 21:21
27:7 40:5 44:10,18
52:1 59:1 61:3 66:8
82:19 96:18 120:1
136:8 139:4 141:14
164:15 183:4 190:16
249:3,3 279:13
301:22 363:17 370:18
414:8 421:1
court 18:4,9 21:18,21
22:16,21 23:3,4,19,20
23:21 24:4,5 25:1,2,7
25:19 26:5,16 27:15
27:22 28:14 29:4,8
31:22 32:7 34:1,9
40:18 42:10,19 43:4,5
43:21 48:3,17 49:6,6
50:6 51:17,21 52:10
52:12 53:18 55:11,20
56:19 57:1,4,7,9,10
57:14 58:13 60:6,8
61:5,12,21 62:1,4,8,9
62:14,18,21 63:1,4,5
63:10 66:18 67:2,5
77:6,7 96:9 99:13
123:20 124:6 126:1
143:17 151:21 201:7
203:7 207:1 264:3
292:18 298:7,7 301:7
302:10 334:6 394:10
394:13 415:9 416:4
418:19 419:14 420:1
420:2 425:22
Court's 425:6
court-martial 16:15,18
16:22 18:3 23:9,11
24:18 28:17,18 81:9
85:15 115:13 416:16
courtesy 223:21
Courthouse 1:12
courtroom 124:13
139:2 148:8 200:17
courts 11:3,22 12:3

16:9 19:2,4 20:3 30:2
 40:3,6,11,15,17,19
 41:8 43:16 44:10 46:6
 46:10,15,15,18 47:2
 55:9 56:15,18 57:10
 58:17 59:10,15 61:11
 66:17 67:10,15 68:1
 69:9,12 70:9,11,12
 87:12,13 95:17 99:12
 99:12,12 100:19
 101:12,14,15 104:20
 104:20 105:4,6 106:1
 106:12,15 110:16
 112:18 124:21 126:7
 126:11,20,22 151:7
 152:15 180:19 187:11
 266:10 267:9
courts-martial 11:16,21
 12:4,7 15:9 19:7,11
 20:3,15 21:13,20
 35:12,13,18 36:8,11
 36:13,19,22 37:1,3
 42:6 48:19 49:1 63:22
 66:8 67:22 78:19
 82:21 86:20 100:19
 108:19 150:18 151:5
 151:15 180:12 260:14
 298:3
cover 18:22 43:1 51:11
 110:18 330:10 348:1
 351:8 380:15 383:6
 384:7 385:18 389:21
coverage 418:17
covered 18:18 19:12
 255:21 318:12,13
 329:12 353:2,3 354:8
 383:20 401:2,6,20
 402:22
covering 401:5
covers 211:17
craft 210:10
crayons 109:6
crazy 184:9
create 122:6 127:21
 136:11 147:16 200:3
 203:16 233:19 265:3
 265:4 267:17 302:8
 317:22 337:14
created 29:19 57:11
 262:12 274:3 316:19
creates 302:9
creating 101:2 134:17
 299:8 317:18
credence 33:20 49:10
creep 170:19
creeps 146:2
crescendo 106:20
crested 136:18
cries 106:21 127:4

crime 26:4 101:21
 137:15 190:11 191:8
 193:2,4 194:7 253:21
 254:9 256:14 257:18
 262:14,14 270:21
 271:22 272:5 297:4
 297:13,17 313:17
 318:1 319:4,16,20
 320:15,16 322:10
 336:6,10,11 337:3,6
 337:22 338:13 341:22
 342:17 347:9 353:4
 356:5 397:10,11
 403:18,20,21 423:7
 423:12
crimes 44:2 80:2
 146:13 194:5,5,5
 195:12 240:19 252:21
 252:22 254:8 262:10
 264:6 270:20 416:13
 423:2
criminal 16:8 26:4,10
 40:10 43:8 57:9 60:8
 94:6 95:6 96:8,9
 171:4 202:5 210:11
 264:6 283:17 411:12
 411:13 412:1 414:16
 415:6 416:6 420:9
criminalize 344:3
criminally 425:12
criterion 217:9
criticism 351:16
criticisms 278:14
cross 321:21
cross-listed 295:19
crucial 414:17 416:7
 420:9
crucible 170:5
culpa 335:12
culpability 253:4
 366:21 414:13,16
 416:8 421:3
culpable 315:15 326:8
 327:5 328:17 415:5
 416:18 418:2 422:3
 425:20
cultivate 178:4
cultivating 99:10
cultural 184:2,3 366:8
culturally 139:21
culture 140:1,6,9 143:5
 148:2 150:2,5 152:21
 182:10,19 183:2
 192:19
culture's 151:2,2
curious 97:9 100:13
 388:9
current 77:8 124:18
 148:2 179:21,22

223:16 227:17 280:22
 283:22 284:1 360:20
 394:11,16 421:2,5
currently 108:7 187:16
 208:11,12 283:19
 317:8 353:19 408:6
cursor 227:8
curve 254:21
cutting 78:7 92:11
cycle 72:20 122:1,2

D

d 1:18 163:19 273:6
 274:13,16 275:9
 276:5,11,15 280:16
D3 316:17
daily 97:19 99:14
 102:12
Dale 216:21
dance 65:17
dancing 65:20
dandy 335:7
danger 125:4
dangerous 48:21
 147:15
dangers 103:17,19
Daniel 1:12
dark 408:21 409:11
data 99:11 145:5 178:4
 186:14,17,21 190:9
 190:14 192:22 194:9
 257:12
data's 190:10
date 77:5 211:14 359:4
dating 361:13
Davis 47:22,22 48:1,9,9
 50:6 51:22
day 35:4 108:11,13
 127:7,7 150:8 168:2
days 9:5 79:1 142:3
dead 425:7
deal 101:13 108:20
 125:15 156:22 370:5
 426:19
dealing 32:17 36:16
 40:9,10 99:16 101:7
 102:11 143:5 270:1
 270:11,13
deals 12:1 36:18 50:15
 73:7 397:22
dealt 73:14 101:7
Dean 1:16 9:10,11,16
 9:20 39:3 52:18 53:1
 53:16 54:4,13,22 55:6
 61:8 117:8,10,12
 153:2,3,13,20 154:5
 154:14,20 155:9
 175:11,13 176:7,17
 177:4,7,18 178:15,21

194:21 195:3,11
 208:7,10,19 209:1,4
 227:21,22 228:4,6,11
 244:20 245:1 246:14
 246:17,19 247:1
 284:22 287:9,13,17
 289:17,20 295:12
 304:5,12,17,20
 305:17 313:1,2 325:6
 325:7 326:19 327:4
 328:13,14 346:10
 348:4 350:3,8,10
 360:22 361:4,9
 362:10,18 363:13,18
 364:7 368:5,16 369:1
 370:6 371:2,7,10,14
 372:12,17 374:8,14
 374:19,22 375:5
 376:19 377:4 379:4
 381:10 382:13 390:3
 390:15,19 396:7
dear 376:10
death 22:1,2,4,9 23:7
 23:12,14,18 24:2,2,3
 24:8,10,11,22 25:5
 33:14 44:12 91:21
 173:11 350:22 381:17
death-authorized 32:22
death-eligible 23:2
Deb 77:12 153:10
debacle 47:8
debatable 308:14
debate 90:4 202:14
 238:1 429:5
debating 424:10
December 75:2
decent 111:21 207:4,4
decide 23:12,21 30:13
 52:14 59:22 60:2
 158:11 172:11 185:20
 239:7 247:8 286:3
 330:7 348:20 387:3
 426:15
decided 63:6 294:22
 295:1,2 415:9 419:21
decides 53:12 54:8
 387:10
deciding 42:14 53:12
 55:5 63:11 158:20
 286:12
decision 53:19 54:21
 61:10,20 62:16 88:10
 103:15 138:2 156:14
 169:2 396:20 405:13
 420:21
decision-making 254:4
decisions 265:8
decisis 106:9
decline 305:6 307:5

- declines** 85:16,18
dedicated 121:1
default 196:22
defective 280:1 281:7
 281:10
defend 148:8,16
defendant 291:22 311:7
 334:5 362:22 366:19
 367:14 368:11 414:5
 414:9 415:3,5,11,22
 416:7,17 418:10
 420:12 425:11
defendant's 254:11
defendants 138:4 334:4
defender 280:12
defenders 280:7
defense 1:1 4:7 25:8
 37:8 51:16 66:12,20
 67:1,6 81:13 82:9
 84:6 85:19 89:6 90:1
 91:15 95:6,9 99:4,6
 100:2 101:8,22 109:1
 128:20 131:14 132:4
 134:15 145:18 146:19
 149:9,10 170:9
 173:10 178:4,13
 197:17 199:16 253:14
 257:9,17 262:1,15,17
 263:3,10 264:11,13
 264:15,22 266:11
 267:1,2,3,5,12,16,18
 291:12,13,20 292:4
 297:1,4,10,11,14
 298:3,10,12,21 299:2
 299:7 300:2,8,19,21
 301:5,15,16 302:8,11
 303:13 412:19 422:19
 422:20 423:10
defenses 65:4 66:6,7
 66:16 67:21 68:14
 103:7,9,11,14,17,21
 104:5,8 128:19 129:7
 129:14,21 168:10
 175:16,20 177:10,11
 179:4 199:15 231:5
 263:12,13 265:19
 266:3,19 293:17
 295:9 296:16 298:2,4
 298:8
defer 56:15,20 57:5,7
 58:19 60:3 70:9,13
 358:17
deference 12:3 46:21
 55:11 56:4,7,12,14
 57:3 59:8 60:1 68:4
deferential 69:9
deferring 355:19
define 68:18 69:4 80:16
 114:3 126:13 164:13
 261:22 303:5
defined 69:6 80:3 81:4
 118:5 126:3,10,10
 162:20 229:2 234:19
 272:10 289:8 298:16
 324:16 339:21 343:14
 346:8 357:4 358:22
 359:2 379:2,10 382:5
 385:2 404:3
defining 128:10 146:12
 206:14 255:14 262:2
 376:21 391:3
definitely 113:17 116:9
 181:7 303:4
definition 69:4,8,11,14
 70:6 80:5,20 88:14
 105:3 114:15 117:18
 118:19 126:4,16
 127:20,22 132:18
 134:6 143:21 146:9
 146:16 147:2,7,8
 164:2 170:11 179:22
 198:15 199:19 200:20
 212:14 214:16 227:17
 228:13,21 232:18
 233:2 234:3,16
 235:17 241:8 253:22
 256:4 259:7 262:7
 272:8 273:10 280:22
 283:17 291:4 303:12
 303:15,18 304:8
 306:22 308:3,4,6,13
 308:16 310:1,1
 326:12 332:10 335:21
 337:12,15 338:1,19
 339:19 340:4,8 341:8
 341:20 342:5 345:18
 345:21 346:11 349:15
 350:5,5,11 353:12
 354:5 358:18 359:7
 360:20 362:16,19
 364:1 365:19 366:16
 368:6,9,17 377:20
 378:2,7,9 379:3
 381:21 382:12,21
 383:9,14 384:16
 385:8 389:9 392:19
 393:22 394:16 395:7
 395:10,12 399:5
definitional 68:13 69:2
 208:8
definitions 38:13
 111:17 112:12 118:7
 118:9,10 135:14
 138:1 146:14 163:20
 179:8 198:11 200:3
 204:18 210:22 212:1
 212:12 253:10 254:7
 259:6 280:18 289:10
 303:16 325:1 356:16
 396:10
definitive 142:16
degree 170:17 340:9
 423:4
degrees 339:19
delegate 25:22 26:1,8
 26:12 27:19,20
delegated 16:11 18:11
 19:19 21:14 25:16
 30:3,7,16 34:11 47:12
 56:17
delegates 16:2
delegation 15:22 17:5
 25:19,20 26:6,14
 28:10,15 29:2,14,18
 30:6,12 32:2,13 44:14
 45:21 46:1 60:13,14
 60:15
delegations 15:21
delete 239:9 246:1,12
deleted 88:17 103:14
 124:8 131:3 177:17
 233:18 263:12
deleting 131:13 397:20
deletion 245:21,21
 287:21
deletions 245:7
deliberate 5:7 7:10 9:16
 98:14 112:5 188:3
deliberately 51:6 201:3
 327:15
deliberating 317:18
deliberation 9:6 303:3
deliberations 3:9 5:12
 5:15,20 8:12 95:5
 211:1 216:2 222:10
 222:12 223:5,7
 248:14
deliberative 68:10
delineated 44:2 207:16
 289:3
delivered 109:14
demand 371:14,15
demeanor 412:20
demonstrates 280:11
Denno 285:21
depart 93:1
department 1:1 37:8,9
 44:20 45:2 57:5,12
 75:14 76:5 95:6
 154:10 162:18,21
dependent 59:8 171:15
depending 36:2 58:5
 120:8 148:12 288:4
 401:17
depends 120:12 235:16
 312:12
deployed 84:17
deploying 84:21,22
deposition 85:22 86:1
depositions 85:10,12
deputy 2:6 41:19 108:7
 108:21 143:2
dereliction 91:16
 314:20 318:16
derelictions 91:20
derivative 139:5
derive 188:17
describe 94:10 97:18
 128:14 174:7 211:7
 344:15
described 95:14 135:18
 255:22
describes 94:18 328:16
describing 31:15
 174:20 198:8 348:3
 385:15
deserved 351:15
design 223:9
Designated 2:7
designed 199:21 308:1
desire 274:21 341:14
 398:5
desirous 97:13
desk 158:9 166:12
 207:17
deskbook 150:20
despite 103:16 106:2
 221:16 254:4
details 195:5
detective 361:13,20
 362:4 363:3 365:11
 367:17 369:13,15,17
 370:2,16 372:1
determination 289:13
determine 141:12
 375:17 425:11
determining 132:21
 233:8 248:11
detracts 351:21
develop 100:22 193:16
 193:17
developed 54:9 110:15
 247:15
development 46:4,6,9
 54:10
DHS 37:16
dialogue 53:2 160:21
 247:4 288:1
dicta 300:3
dictionary 105:2 126:12
 241:13
die 357:20
dies 22:16
differ 315:15
difference 114:12
 230:19 240:16 286:1

286:6 298:21 322:21
347:13 388:21 413:18
416:13 423:20 424:9
differences 198:1 265:4
354:16
different 5:17 19:8
20:19 22:14 47:10
69:6 96:2 102:18
136:9 146:8 147:16
156:7 164:9,13 167:1
173:1,3 182:4 183:1,4
183:5 190:5 198:9,11
213:5,6,6 253:7,8
256:3 275:2,12
282:14 300:13 307:14
317:16 320:7 323:12
323:17 326:20 327:21
329:8,16 333:9,10,17
335:3 348:15 353:4
356:5,8 376:11
382:19 383:8 389:22
393:2 400:11 403:9
405:13,15 417:13
420:3,5
differently 52:14 70:5
228:13 288:18 403:3
403:4 406:10
difficult 22:6 143:17
144:20 157:16 206:12
225:22 421:4
difficulties 179:13
difficulty 99:22 100:3
121:20
digest 194:13
digested 210:14
digestible 144:6
dire 139:14
direct 16:15,18,22
53:20 55:19 69:22
213:3
direction 107:14 174:11
236:21
directions 5:18 232:22
directive 355:17 358:11
directly 62:10 378:15
Director 2:6,7 191:22
disabled 272:4
disagree 289:16 293:12
306:12 323:8 377:12
419:2
disagreed 29:9
disagreement 393:11
discipline 45:18 84:17
429:3
disclosure 81:12
discomfort 32:11
disconnect 169:19
discrediting 429:4,8
discretion 22:10,12,14

22:20 23:15 28:4 34:6
49:16 50:1,10 58:8
364:1
discuss 5:2,7 35:3
47:20 101:22 114:20
178:12 226:21 227:20
260:14 303:3 351:16
360:9
discussed 43:19 47:18
213:12 216:18 239:18
240:2 291:10 310:18
393:3
discussing 38:2 39:4
91:2 261:7 289:12
367:4 398:11
discussion 3:9 36:14
36:15 37:7,12 48:4,7
71:17,19 72:8,12,16
73:12 75:13 77:4 97:5
97:5,7 125:9,11
129:15 171:1 175:7
179:11 210:1,5 224:2
225:14 231:9 232:11
258:12 291:6 308:12
330:4 376:5 398:16
discussions 103:3
136:19
disparagement 209:22
dispute 89:12
disregard 413:21
414:14 423:21 424:17
disrupted 221:21
disruptive 221:18
distinct 356:10
distinction 60:12
298:20
distinguish 354:3
distribution 43:2
District 16:9 57:10
divergence 55:17
divided 355:7
division 85:1,2,3
108:18 189:14
DLPB 84:8,19 91:15
docket 189:12
doctrine 56:14
document 7:2,2,9,22
8:2 9:4 74:12 76:20
113:22 123:2
documents 8:15 86:9
90:10 122:8
DoD 37:16 72:11,15
74:16 76:3 90:19
97:21 98:5,6 109:14
113:12 119:15 166:5
178:7 191:20 192:1,9
194:17 195:6,13,14
358:10
DoD's 156:3

dog 70:3
doing 6:20 26:12 52:12
77:13 97:3 101:13
104:20 107:7 135:9
148:22 151:2 152:11
174:20 181:22 188:2
209:19 210:6 247:2
252:4 262:12 278:21
282:10 297:7 312:8
317:13 318:18 348:9
362:22 372:19 393:2
416:22 418:16
DoJ 162:21 163:1,2
door 149:4
doser 311:3
double 98:9 99:3
131:13
double-checked
161:19
doubled 92:1
doubt 64:14 212:9
DR 215:17,20 216:12,18
217:2,8,16,21 218:3,8
218:16,20 219:1,8,11
219:22 220:15,19,22
221:5,8,11,15 222:6
228:9 235:10,13
236:8 238:8,11,13
243:15,22 250:9
251:18 276:19 277:2
290:15,22 316:15
318:4,15 322:20
329:7 331:5 332:6
350:1 352:7 355:18
360:14,17 378:6
392:20 394:2,5 395:9
396:5 398:17,22
399:19,22 406:19
407:13,18,22 408:17
410:13,18 411:3,7
414:2 415:19 417:5
417:22 419:16,20
424:20
draft 71:12,14 72:8,9
74:18,21 75:3 78:11
84:5 122:5,7 161:14
208:11 211:4 256:1
285:13 288:17,20
427:21 428:15,16
drafted 265:11 281:2,3
336:12
drafter 244:11,12
309:16
drafter's 72:7 73:16,19
74:4
drafters 43:17 254:6
drafting 125:2 308:17
drafts 161:5,17,21
165:22

dramatic 255:20 337:19
424:8
drank 417:14
draw 135:7 376:4
378:19 392:4
drawing 41:1 120:21
394:9
drawn 256:4 323:13
drew 325:4
drill 149:3 352:9,12
356:2
drink 183:15 185:12
313:18,18 314:6
315:5 316:13,21
318:21 319:3,3,5
320:4 321:8,17 323:1
325:16 326:1,15
327:2,6 329:10 330:7
382:22 383:4
drinking 167:17 182:2
184:21 313:9 327:3
drinks 184:22 311:21
409:18
drive 422:2,18
driven 172:19
driver 23:17
drivers 24:20
drives 184:9
dropped 383:3
drops 134:2
drove 197:1
drug 315:5
drunk 185:4 305:10
320:6 327:6 409:20
414:9 416:20,20
417:1,12 419:3,5
420:17 422:2,6,10,11
422:19,19
drunkenness 414:12
421:22
duces 86:8,16
due 82:9 266:14 269:2
duplicative 368:9
duties 24:15 29:21 30:4
duty 30:3 91:16,20
150:9 314:20 318:16
361:21 370:19
Dwight 2:2 3:4 4:22
58:5 109:5 110:4
111:21 119:3 123:6
123:16 161:19
dynamic 191:16
dynamics 355:16

E

E 163:19
E-5 186:8
E-6 186:8

- E-L-O-N-I** 419:20
E-L-O-N-I-S 419:12
ear 217:7 219:6
earlier 33:22 38:17 39:4
 50:7 71:10 225:1
 303:15 332:8,16
 333:22 383:18 427:17
early 43:13 50:17 65:17
 90:3 207:2
earnest 133:7,7 156:2
easier 10:14 125:5
 152:1 198:2 227:13
 279:10 339:5
easily 104:10 118:21
 126:9 255:3
easy 68:17 156:3 291:5
 333:5
eat 388:22 389:3
echoes 133:12
edited 118:21
edition 76:22
edits 196:4
educated 171:2 278:3
education 122:12 428:4
effect 88:19 99:4
 101:20,22 106:18
 157:18 171:11 246:9
 377:15
effective 152:19
effectively 155:2
 207:11
effects 72:14
efficiency 155:18
efficient 151:3
effort 94:13 135:13
 210:10
efforts 98:5
eggshell 376:7
eight 127:6 142:21
 193:11 194:11
either 54:21 83:4 91:21
 97:14 104:2,8 125:22
 144:22 148:8 156:3
 179:16 180:19 203:7
 258:13 270:7 273:5
 279:8 285:3 306:1,4
 307:9 325:13 339:3
 346:5 378:18 393:17
 403:17 409:15 415:21
 417:8 422:18 425:16
elaborate 106:5
electronic 77:19
element 44:21 46:11
 52:5 66:22 135:14
 168:6,7 183:16
 262:13,14 297:13,17
 299:2 302:20 311:1
 324:4,20 325:21
 326:8 327:12,12
 335:22 374:10 406:8
 408:4 428:20,22
elements 34:6 38:11
 43:22 44:22 45:4,4,6
 45:9,12 46:16 66:21
 67:11 68:15 206:3
 211:18 212:1,2,5,7,7
 212:16 214:15 237:17
 237:21 255:9 280:7
 324:6,22
elephant 254:6
elevate 256:17
eligibility 17:1
eligible 24:11
eliminate 99:3,7 132:17
 159:12,13 225:13
 337:8,20
eliminated 86:2 171:18
 256:2
eliminating 99:4 173:18
elimination 89:13
Elizabeth 1:16 4:12
Ellis 66:17
Elonis 264:1 415:11
 416:4 419:11
eloquently 100:20
else's 50:19 221:14
Elston 18:18
email 219:22 221:20
 427:3
emails 219:20
embarrassment 191:16
embedded 394:21
emboldened 171:1,6
emerged 176:5
eminently 17:17
emphasis 135:6
emphasize 250:14
emphasized 57:4
emphasizing 21:11
 28:5,12
emphatic 300:7
empirical 99:9,11 172:3
 178:4
empirically 136:15
 171:9 187:9
empowered 101:12
enclosure 195:7
encourage 200:7
encouraging 326:15
 327:2
end-time 196:22
endanger 137:17
ended 14:10 183:19
 427:1
endorse 427:12
endorsing 23:5
ends 24:22 421:6
engage 306:5
engaged 418:5
engages 321:18
engaging 41:15
English 133:22 173:13
 335:14
enhance 326:2
enhanced 256:13
enlarged 47:2
enlarging 47:10
enlightening 131:20
enormous 59:4 74:1
 88:18 121:16 155:17
ensure 354:7
enter 390:5
entered 208:5
entire 35:4 135:6
 221:20 252:10 253:6
 337:9 377:13
entirely 321:14
entities 57:11
entitled 352:18 429:19
entity 29:19 30:7
enumerated 353:10,19
 353:20
environment 84:17
 139:3 171:17,17
environments 140:11
envision 356:20
EO 69:10 71:5,11,12,14
 71:20 73:1 74:1,21
 75:3 78:11 80:16 81:7
 84:5 100:8 122:6
 123:8,16,19 124:4,20
 125:5 137:3 157:21
 162:7,9 165:5,8
 166:11,13,14,22
 167:2,2 168:14 197:1
 200:12 203:1,19
 207:16 208:1,6,11
 210:19 211:4
EOs 72:5 74:19 76:5
 77:1 125:3 161:12,14
 161:16,18 197:5,8
equal 102:19 364:16
 388:12
equated 387:20
equip 200:6
equivalent 19:3
ergo 51:14
escape 79:11
especially 77:18 99:16
 121:3 123:7 320:2
 379:20
espionage 32:16 33:9
essays 35:21
essential 270:2
essentially 30:21 34:1
 46:15 59:16 66:19
 67:3,8 73:8,11 112:20
 305:5 377:11
establish 394:19
established 4:6 214:18
establishes 328:10
et 141:19,19
evaluate 224:18
evening 315:10
evenness 403:6
event 192:16,16 216:14
 303:7 316:22 385:16
events 172:21
eventually 208:20
Everett 42:19 43:15
 48:6
everybody 13:3 22:15
 123:12 143:12 175:3
 183:12 224:9 225:11
 234:20 269:11 276:14
 281:17 283:15 290:9
 295:4,16 308:15
 310:17 321:22 333:10
 337:15 389:19 399:15
 408:13 427:3
everybody's 330:12
 378:1
Everyone's 290:10
evidence 15:10 16:4
 36:15 37:3 73:17,18
 82:5 86:21 87:21 88:2
 103:22 111:10 144:19
 144:21 145:3,12
 166:8,11 174:15
 193:16,17,18 194:2
 196:12,16,17,19,19
 196:21 229:1,11,13
 231:3 244:13 267:7
 299:10 301:18 335:11
 335:13 412:8 413:3
 413:11,15
evidently 254:21
evolves 258:21
exact 59:17 135:10
exactly 27:4,10 31:19
 49:18 55:2 61:19
 75:20 135:11,18
 137:5,16 139:9
 174:19 182:16 201:20
 229:20 241:15 259:1
 269:18 279:18 280:13
 315:1 320:8 335:10
 338:16 354:4 374:14
 374:22 390:2 410:10
examination 5:12
examine 124:6 426:12
example 16:19 17:17
 32:20 44:22 51:1
 53:14 60:7 62:19 67:2
 105:8 112:3 114:16
 122:5 124:6 132:7,11

132:18 135:10,21
 159:8 201:14,16
 234:3 237:2 238:19
 274:8 280:2 325:11
 341:14 352:8 361:7
 361:12 368:20 393:4
 395:22 420:10 429:2
examples 112:13
 125:13 136:20 313:3
excellent 135:4
exception 81:18 82:4
 82:20 88:17 89:4,14
exceptional 85:13
exceptions 83:9 89:20
exchange 41:21
excited 76:11,18 78:2,2
 78:3 110:4,8 286:8
exciting 77:22
excluded 87:1,2 281:7
exclusion 26:19
exclusive 36:14,15
 40:14 292:3
exclusively 190:17
excuse 264:2 265:14
 378:12 382:6 386:12
 391:13,14 393:19
 395:13 422:2
executed 19:15 102:7
executive 3:4 5:2 11:2
 11:3,4,15,18 12:6,9
 13:20 14:3,6,20 15:3
 15:7,8 17:10 19:13,14
 20:4,17,18 21:6 24:8
 26:2,19 31:6 39:20
 40:22 41:6 49:19,20
 52:7,8,20 53:5 54:11
 56:16 58:1,11 72:8,9
 75:15 76:1 94:11
 105:12 107:4 110:11
 110:14 116:2,9 119:4
 120:17 121:21 122:19
 122:20 123:1,13
 128:9 130:7 146:10
 147:10,16,19 151:19
 152:15 153:6 154:3
 155:8 157:7,17 158:6
 158:13 159:4 160:1
 160:10 164:20 165:14
 166:5,7 172:18
 196:13 205:15 206:1
 206:11,12 213:4
 216:9 222:15 230:9
 231:11 234:9 236:13
 236:20 237:4,6,15
 239:2 241:9,11,18
 242:5 246:13,21
 247:17,19,21 294:17
 395:22 424:3 425:15
 426:6 427:19,21

428:4
exemption 390:9
exercise 18:9,11 25:12
 50:9 52:8 86:13
 107:10 297:8
exercises 26:18
exercising 30:7 45:20
 46:1
exist 122:22 212:5
 388:12
existence 56:2
existing 354:9
exists 153:13,14 207:6
expand 200:3 395:13
expanding 147:11
expect 72:22 105:5
 124:17 126:13 133:4
 275:4
expectations 277:15,21
 278:4
expelled 240:22
experience 97:15 99:19
 110:11 125:16 135:22
 142:19 145:10,11
 156:10 157:6 171:3
 173:4 186:22 191:10
 206:19 207:2 210:3
 254:19
experienced 99:22
 100:4 101:3 167:12
 210:4
expert 236:18
expertise 131:21
experts 179:9
explain 5:3 180:18,22
 203:9 211:2 237:17
 237:21 242:5 246:21
 397:17 410:7,8
explained 110:13
 114:12 117:22 150:16
 151:17 152:4 180:11
 180:13 199:10
explaining 42:8 141:20
 182:15 280:6
explains 36:22 117:2
 142:18 413:2
explanation 38:12
 46:12,17 52:3,6
 116:15 117:2,4 118:3
 118:18 119:1 137:2
 141:2 142:5,15 146:9
 157:19 205:19,22
 206:4 208:17,21
 231:12 238:2 248:22
 249:9,15
explanations 112:14
 153:15 203:19 204:18
 222:14
explanatory 239:11

explicit 29:16 41:16
 175:18
explicitly 65:9
exploitation 322:22
explore 227:2
exposure 192:18
express 30:5
expressed 345:12
 380:10
expression 136:6
expressly 33:11 66:6
 77:9 81:4
extension 201:4
extent 16:6 88:22 379:6
 388:19
extra 52:4 280:15 317:3
extraordinary 85:20
 101:20 105:21 193:10
extreme 412:2
extremely 70:9 157:15
 320:14

F

f 39:11 293:15
F4 309:21
Facebook 415:12
faced 49:2
facilitating 317:12,22
fact 41:14 48:13 68:12
 99:5 103:7,9 123:14
 130:20 131:15 132:8
 156:21 171:15 234:6
 262:1,17 263:2,7
 265:20 266:2,6,7,8
 267:11 291:13 292:4
 292:21 293:18,19
 294:2,4,18 295:11,15
 295:22 296:3,6,13
 297:19,20,21 298:17
 299:7,12,18 300:11
 300:19,22 301:5,12
 302:1,15,17 312:22
 335:1 344:21 345:14
 366:18 367:15 374:3
 391:13 412:18 413:4
 413:14 425:7,8,10
factor 24:13 128:9
 346:16
factors 23:1 24:10 25:4
 25:10 29:17 30:15,20
 31:16 33:13 34:5
 256:17 296:5 359:3
facts 131:5 144:16
 199:16 286:12 348:20
 375:16 412:8 413:21
failure 253:16 314:20
 378:13 394:18 395:1
 395:14

fair 258:16 352:2
fairly 20:11 125:10
 227:8 255:20 377:9
fall 68:11,12 311:14
 313:10 317:14 371:17
 381:16
falling 191:13 305:10
falls 37:10
familiar 33:8
family 32:20 150:2
fancy 97:10
far 20:12 60:15 64:14
 69:3 109:7,22 140:12
 145:21 210:4 223:7
 225:4 277:1,2 281:5
 376:13 388:21
farther 108:22
fascinating 168:12
 187:22
fashion 99:2
fast 70:21 110:18
 147:21
fast-forward 18:14
 20:10
fault 171:5
favor 236:22 248:19
FCC 56:18
fear 245:13 350:12,12
 351:22,22 352:1,19
 354:6 358:21 359:8
 359:14,15,19,20,21
 360:4,5,18 361:4,16
 362:4,5,11,12,17,19
 362:20 363:2,7,15
 364:7,9,18 365:2,7,7
 365:8,10,14,18,19,22
 366:6,9 367:5,7,7,9
 367:15,17,18 368:1,3
 368:7,12 370:13,20
 370:21 371:3,5,11
 372:4,5,22 373:1,1,12
 373:13 374:16 376:22
 377:21 380:11,21
 381:21,21
fearful 359:13
features 106:11
federal 1:12 2:7 71:13
 76:4,4,6,19 77:3 78:6
 92:7,8 106:8 118:8
 160:12,17 162:10
 196:17,19 212:22
 213:5
feel 11:7,9 58:4 65:19
 78:8 128:8 156:17
 157:1 172:22 258:4
 285:15 290:21 410:2
feelings 258:20 332:12
 338:9
feels 238:17

felony 23:10
felt 108:13 378:6
female 190:17,18 191:1
female's 274:19
field 99:11 102:7 124:9
 127:18 142:9 157:11
 163:22 164:1 184:10
 199:22 229:10,11
Fifth 38:16
fight 133:5 379:20
figure 132:4 165:9
 174:13 182:15 186:16
 200:15 263:5 312:15
 358:14 359:10
figured 165:10
figuring 180:4
fill 105:5 106:15,17
 111:17
filtered 413:11
filters 181:19
final 44:15 169:1
 289:13
finality 265:2
finalized 122:10
finally 12:5 38:21 73:15
 90:17,22 91:22 271:7
find 25:19 32:13 50:6,8
 50:9 70:11 97:8 101:1
 101:18 103:7 105:20
 125:12 179:17 194:4
 196:5 200:16 225:2
 285:12 287:1,14
 337:16 351:4 359:13
 424:15
finding 32:2 64:4
 192:20
fine 10:2 58:12 99:13
 99:22 132:22 232:8
 243:11,13 323:9
 327:19,20 328:8
 343:13 376:5 383:17
 419:19
finely 209:18
finger 109:5 201:18
 324:10,18
fingerpainter 11:8,11
 64:15
finish 56:10
finished 386:6
firearm 48:14,15,20
 49:17
firm 142:6
firmly 67:16
first 8:12 11:13 15:5
 34:22 38:8 88:1,14
 91:2 95:2 97:18 98:20
 111:3 114:7 131:19
 141:12,13 145:3
 150:8,14 153:2

158:21 164:18 165:7
 167:3 174:22 196:9
 201:11 215:13 217:11
 227:16 235:4,4
 260:19 264:9 278:12
 297:9 305:14 307:2
 311:15 315:17 321:2
 321:5 324:2,14 340:9
 352:14 375:16 388:17
 396:8 422:17 423:4
Fiscal 4:9
fit 214:7,8 273:3 274:9
 356:9 363:19 364:1
 385:10
fits 382:9,11
five 35:14 36:12,17
 37:20 70:21 111:4
 122:1 124:16,17
 167:13 179:18 212:6
 225:7 287:19 332:9
 369:5
fix 7:15,17 64:7 224:12
 224:19 226:17 239:16
 240:7 303:22 337:19
 397:12 400:14
fixed 197:19 236:12
 247:21
fixes 225:18 245:5
 247:6,7 263:5
flesh 281:13
flexibility 38:6
flexible 125:7 152:20
flip 51:22 59:19 242:2
 289:10 341:7 373:18
 374:2
floating 390:7
floor 227:19
flowery 280:14
flows 11:16
flying 122:5
focus 98:18 135:8
 138:2 141:5 145:22
 171:15 236:10,11
 276:10 277:5,8 290:5
 425:19
focused 60:21 141:6
 288:21 329:13 376:14
 383:9
focusing 376:14
foist 143:15
folded 395:14
folder 7:6,6 196:8
folks 142:11 183:22
 207:4 234:21 273:18
 304:22
follow 16:7 49:3 73:21
 93:12 132:1 266:20
 279:10
followed 82:3 392:21

following 85:10 96:7
food 420:11,13
foot 167:4,5
footnote 236:17
forbids 28:10
force 2:6 18:19 19:7
 48:22 113:13 120:10
 127:17 167:16 234:3
 243:18 245:12,12,19
 256:15 268:9 271:3
 272:8 325:13,14
 326:7,7,12,13 348:1
 356:14,17,18,19,20
 357:2,4,5,12,14,15
 358:1,1 375:7 377:20
 378:3,7,9,21 379:1
 380:3,8,8,10,10,16
 381:5,9,9,18 382:4,5
 382:7,12,16,20,21
 383:1,7,11,12,13,14
 384:5,5,21 386:14,20
 386:20,21,22,22
 387:15,20 389:3,10
 389:16 390:10 391:2
 391:3,4,6,16 392:5,19
 393:3,8,10,22 394:16
 395:12
forced 383:4 391:17
 397:3
forces 15:16 23:21 29:5
 42:11,20 53:19 58:14
 60:6 62:9 63:4 292:19
 298:8 301:8
forcible 197:16 272:6
 403:8,21 404:22
 405:1
forefront 268:7
foreign 84:11
foremost 321:5
forensics 194:1
forgettable 17:18
forgot 427:16
form 20:19 158:20
 174:12 240:14 269:12
 280:9 423:9
formality 15:2
formalized 250:15
formed 322:9
former 27:6 206:21
 397:6
forms 135:16 136:10
formulate 307:11
formulation 230:1
Fort 24:21 108:8
forth 139:8 160:21
 309:5
forums 172:15
forward 10:14 107:13
 134:14 173:5 229:7

forwarded 9:4
fought 380:4
found 23:9 28:15 29:6
 29:10,11 49:4 98:19
 99:20 156:13 162:20
 179:14 194:2 215:15
 301:19 321:5 425:9
four 36:16 68:11 70:21
 99:9 121:22 122:1
 124:11 164:3 185:6
 212:6 276:6,14
 344:18
fourth 38:13 105:16
fragile 359:13
frankly 178:8 184:21
 252:5 254:17 293:10
 306:16
free 62:22 185:11
 419:21 420:1
freedom 418:22 420:3
 420:14
freely 114:10,13 117:8
 117:10,11 233:3
 283:8,10,16,17,19
 284:2,12,14,18 285:4
 287:3,6 288:2 290:2,7
 290:16
frequently 318:8
friction 100:3 167:12
 168:3 169:6
Fried 2:7 4:3 83:13,17
 83:20 84:2
Friel 1:17 146:6 181:3
 182:14,18,21 183:5
 240:9,11,11 243:4,7
 243:11 244:8 265:15
 265:16,22 270:17,18
 271:21 272:21 273:1
 274:6,12,22 275:10
 284:14 289:8 294:14
 295:1 297:18 320:2
 330:2,15 346:3,14
 357:3,17 361:7,11
 362:15 363:7,17,19
 364:4,13 367:20
 368:19 369:6,8
 371:18 373:18 374:12
 379:9 380:20 381:2
 383:11 384:9,22
 385:9 387:16 400:7
 401:10,13,16 402:4
 402:10,14 404:2,7,14
 405:9 416:19 417:6
 418:7 422:9,14
Friel's 423:11
friend 313:21 367:19
friends 185:3
front 6:14,15 59:6 79:1
 94:20 171:3 209:20

223:20 268:7 336:6
339:18 377:15
frontally 270:14
frustrated 99:15
fulfilling 43:21
full 11:8 223:6
full-blown 405:7
full-time 121:1
fully 95:7 255:13 289:3
fun 56:3
function 11:19 25:6,13
26:7 34:10 41:5,6,6
49:7 58:20 72:2 101:7
101:8
functional 84:9
functions 25:20 41:2,5
115:16
funds 50:16 51:2,11,13
51:15
funny 317:2,20 322:8
furious 268:18
Furman 21:21 22:5,7
23:8,22 24:5
further 5:15 16:5 21:7
30:20 54:9,10 92:13
118:18 135:13 137:2
137:11 206:14 223:7
231:9 317:8 360:9
420:22 421:10
furthest 104:21
future 8:15 97:1 353:7
FY'14 87:20
FY2007 64:5

G

g 339:8,21 350:15,16
g(1) 399:21
g(1)(a) 399:14 400:3
g(1)(e) 401:21
G1 325:1
G1B 324:3
G7 351:6
gain 99:19
gained 113:20
gap 65:8 344:12
gaps 105:6 106:15,17
111:17
garage 356:7
gate 149:4
gates 376:21
gather 309:8 392:12
GEN 9:2 13:2 45:20
57:18,22 58:7 75:10
75:17 76:8,13 78:1
93:16 94:15,22
100:11 107:17 121:13
123:5,21,22 124:2
128:6,13,19,22
129:11,17,19 130:4,9

130:12,17,20 131:2,7
131:11 135:3 136:3
138:6,8,12,15,21
139:8,10,17,20 145:2
147:14 148:4 149:7
149:12,16 154:1,6,9
154:16,21 155:6,10
156:9,19 157:9
160:15,20 163:1
164:22 165:16,18,19
166:3 167:7 169:16
169:22 170:3,7 174:7
175:2,22 176:15,18
177:6,8,20 178:19
179:6 183:8 184:3,6,8
184:14,17 185:19
186:5,20 187:3,5,7,16
187:20 188:3,9,11,13
188:14,15 189:9,15
189:20 190:2,9,20
191:2,11,14,19 192:3
192:6,22 198:3 200:2
201:15 202:2 204:19
204:22 206:5 207:13
207:20 208:2 209:15
209:18 215:6 224:4
232:8,10 234:13
236:5 249:18,21
250:3 261:13,16
271:18 272:19,22
279:3,5 281:14 282:1
282:4 286:2,4 313:6
314:2 341:13 342:7
342:11,14,21 343:22
345:19 348:5,10
350:9,19 351:1,18
354:15 355:3,7,11
356:11 358:3,9,15
363:4,10 364:2 365:5
366:1,13 369:18
370:4 374:20 382:9
384:1 385:7,20 386:5
387:8 388:4,15,20
389:2 390:1 396:14
408:10 409:9,17
410:9,16,21 411:5
419:2
gender 403:15
general 7:4 10:18 12:19
28:18 33:7 60:22
64:12,21 73:2 76:17
78:8 85:22 88:1 92:12
92:13,21 93:9 97:10
107:20 110:10 121:3
131:18 150:16 152:3
158:3 162:7 163:6
168:16 175:14 186:10
194:4 209:14 210:15
210:18 216:4 223:13

223:22 224:3 227:1
227:11 228:16 230:6
231:3,16,17 232:2,6
251:4 253:19 261:15
273:20 276:7 279:4
282:18,21 291:14
292:10,14 293:6
302:3,14 309:13
315:2,18 332:17
334:4 412:5
generally 56:15,20 66:7
102:10 113:2 151:7
211:13 237:13 248:19
270:22 278:9 287:20
411:8,14
generate 98:21 179:18
generation 77:18
gentlemen 6:14 412:3
George 17:18
Georgia 21:21 22:22
23:5
Germany 23:17
getting 121:20 123:11
134:1 209:10 252:11
255:13 268:6 277:4
283:1 288:1 301:13
334:19,20 345:21
354:17 357:10 404:16
405:17 413:8 424:22
ghost 122:14
giant 122:19
ginormous 197:13
girl 41:18 42:1
girls 185:13
gist 128:15
give 5:6 8:15 12:3 32:4
33:19 42:14 55:3,12
56:1 113:9 115:14
118:10,18 125:13
149:10 196:1 202:8
219:18 224:21 235:22
247:16 253:18 267:3
281:11 293:1 336:16
341:20 395:5 421:16
426:14,21 427:3
given 5:5 6:21 7:8 28:4
49:9 57:15 69:8 87:5
112:9 114:10,13
117:8,10,11 143:22
150:21 151:21 157:1
162:3 175:18 179:4
203:6 204:12 233:3
241:6 249:16 257:6
261:3 280:19,21
284:2,12,14 285:4
287:4,6 288:3 290:2,7
290:17 295:17 299:11
303:16,22 308:11
372:19

gives 10:7 42:9 58:7
66:22 79:19 112:10
112:11 113:9 193:3
196:22 341:22 391:14
giving 21:3 216:1 283:9
283:10 391:5 410:3
glad 285:9
Glen 2:8 6:12 10:2,11
227:15 251:21
gloss 61:14
go 5:20 10:14,18 31:7
47:21 48:2 55:5 58:1
61:12 64:22 68:10
72:17 73:1 74:6 78:19
79:15 93:15 107:13
108:3 110:17,20
114:7 120:20 121:18
134:10 137:11 141:2
141:10,15 143:5
147:1,7 164:13
165:14 167:10 168:2
168:4,14 176:22
180:5,10 182:5
184:10 185:10,14
189:17 200:12 201:7
203:17,18,18 218:21
223:11 224:3 225:7,9
227:5 236:20 237:16
237:19 239:8 240:14
241:5 250:17 252:16
254:3 257:9 259:10
271:2 272:2,14
282:22 292:16 299:12
303:20 315:21 317:8
332:14,15 337:16
339:17 352:13 361:18
364:21 377:7 383:14
384:2 385:7 386:21
387:5 406:5 423:11
goal 135:18
God 357:8
goes 23:18 40:18
132:22 133:4 148:7
164:10 169:3 203:6
203:12 225:4 280:17
283:9 302:20 309:22
317:1 324:10 342:6
343:7 353:5 361:13
383:18 400:17 412:5
Goghs 11:9
going 4:20 5:6 6:16,20
7:1,5,5,9 8:6 9:5 10:6
10:9 13:8,13 14:16
15:5 18:16 22:19 24:1
25:1 31:7 33:19 43:7
44:5 49:3,18 52:18
53:3 64:13,13,18,20
66:19 67:9 69:9 72:3
74:12,19 76:21,22

- 77:19 91:9 92:21
97:11 111:13,14
113:1 114:10 118:6,9
119:18 124:5,20
132:5,7 134:5 137:22
139:2,11 141:14
142:8 143:21 145:15
147:7 148:5,16 150:5
151:3,12,22 152:2,9
154:22 155:16 157:2
158:7,8,9 159:11,17
159:20,21 160:1,16
169:2,9 171:7 172:8
180:5,8,15,17,21
181:10 185:10,21
186:1,2 197:6 202:4
211:4 212:13,14
219:13 220:13,16,17
222:8 223:18,22
231:21 232:15 245:17
246:11 247:8 252:12
253:18 254:3 261:13
275:2 279:7 281:12
291:1,5 294:14
298:12 299:1,6
302:10 310:10 312:15
312:18 314:13 321:5
321:8 324:6 325:16
326:3 328:6 329:21
331:14 332:3,12
335:12,17,19 348:18
349:12,13 353:6
356:12 358:17 367:21
370:22 375:18 377:2
377:19 381:16,19
385:14,19 386:7
400:14 405:14,21
412:19 414:12 417:4
417:10 420:2 421:9
422:7,22 424:4,11
426:21 427:2,20
429:5
- good** 4:3 62:19 77:10
83:16 84:16,18 93:22
104:15 105:8 108:5
108:11,12 112:3
118:11 119:13 127:12
145:18 169:14 186:15
193:5,14 207:1 210:1
221:17 226:11 228:5
254:5 255:5 257:9
279:9 296:8 326:11
339:7 354:14 378:1
392:11 397:2 429:3
- goodness** 100:5,8
168:1
- gooses** 274:9
gorilla 269:14,14
gotten 111:16 205:18
- 416:22
- government** 18:20 43:7
81:13 86:7 267:4,8
345:7 412:11 418:9
428:21 429:7
- government's** 299:4
300:10 302:11 418:10
423:13
- government-employed**
89:10 90:1
- governs** 81:9
- grab** 272:15
- grabbing** 274:18
- graciously** 223:18
- gradation** 347:6
- Gammell** 114:8,9 142:2
284:5 303:21 309:11
309:13,20 310:14
349:20 400:1 406:15
- Gammell's** 304:8 305:4
396:21 397:15
- grant** 28:6 31:9
- granted** 53:4 62:14,18
63:6,13
- granting** 63:15
- grants** 25:2
- graphs** 193:3
- grateful** 131:22 263:22
- gratify** 274:20 398:4
- gravamen** 269:16
- gravity** 208:4
- great** 9:20 33:20 34:22
42:14,19 46:20 65:11
65:13,14 77:13 92:16
94:21 106:18 108:20
113:17 125:15 127:13
135:6 155:18 162:11
172:2 198:1 206:18
215:20 222:5,6
224:22 225:3 228:10
416:14 429:17
- greater** 98:21 135:13
200:3
- greatly** 147:11
- Green** 2:5 194:18 195:1
195:5,12,18 213:8
353:5 375:4 396:19
- Gregg** 23:5
- grew** 277:22
- grey** 199:5
- grievous** 91:21 337:10
339:20 343:4,6,7,12
345:22 346:18 347:14
347:19 349:5,9
357:16 381:7,18
393:10
- gross** 404:16
- grossly** 77:5
- group** 225:21 226:15
- 286:4 308:22 343:1
343:10,16 345:11
349:14 393:12 405:21
427:6
- groups** 68:11 224:16
427:2
- growing** 12:14 193:15
- guarantee** 64:7
- guaranteed** 64:2
- guarantees** 125:2
- Guard** 37:10 77:6,7
90:16 185:11
- guess** 50:7,13,14 52:9
65:5 68:17,22 69:7
102:15 123:11 133:14
138:16,22 147:18
187:18 219:16 222:11
224:5 231:8 235:9
236:5 237:7 252:8
259:3 278:12 285:5
299:14 316:4 322:5
330:19 336:18 343:20
346:14 349:11 359:9
360:22 366:7 372:17
377:21 378:6 395:10
407:22 408:1 419:5
- guidance** 14:22 15:10
29:16 30:20 37:17
39:22 42:9,12 53:13
54:2,2,5 65:6 74:17
76:3 91:11 107:8
142:8 213:10 305:1
- guide** 22:20 26:12
32:10 113:18 122:9
277:22 278:1
- guidelines** 278:5
348:19
- guides** 113:15
- guilt** 421:8
- guilty** 23:9 193:15,19
212:10 313:20 319:3
319:15,19,22,22
321:5 324:19 330:9
334:6 362:5 417:2
423:3
- gun** 347:16 361:20,21
363:4 367:16 368:19
368:20,21 369:2,4,11
369:16,20 370:2,18
370:22 372:11 383:3
- gut** 177:22
- guy** 185:3 314:15
316:21 386:16,17
- guys** 93:15 183:13
188:1 388:7
-
- H**
-
- H** 1:20
- half** 143:8 164:12
197:12 206:21 235:3
- hammer** 185:21
- hand** 85:3 116:9 153:2
226:14 233:1 245:4
251:5 266:12 273:14
- handed** 319:9 412:15
- handing** 85:6 327:5
- handle** 126:20
- handout** 17:19 78:14
419:19
- hands** 317:15 426:14
- handy** 335:4,7
- hang** 220:13 366:10
- happen** 14:7 65:2 72:3
75:21 83:7 146:3
158:10 159:22 160:2
180:15 224:1 240:22
241:1 281:12,12
314:8 424:11
- happened** 63:17 120:19
139:21 258:3 371:21
- happening** 136:15
139:3 146:4 210:5
325:9
- happens** 84:15 138:19
143:3 151:4,5 172:13
271:21 279:2 307:13
312:6 347:10 379:18
- happy** 5:1 94:22 96:3
100:11 101:21 106:5
114:19 226:14 227:19
- harass** 324:9 325:2
- harassment** 148:20
397:4
- hard** 6:15,19 7:13 93:12
125:5 150:15 156:1
180:9 185:22 279:1
344:7 345:14 425:18
- harder** 135:1 164:3
264:17 424:2
- harm** 48:22 91:17,21
133:21,22 134:8,9
138:13 173:14,22
174:1 176:21,22
177:3,7 259:8,8 268:4
268:8 271:7,8,9,10,11
273:7,12,15 274:8,10
275:4,5,13,19,20
288:7,9,20,22 289:6
289:21 292:17 296:18
331:10 332:10,21
333:6,8,17 335:21
336:1 337:8,10,20
339:9,20 340:2,8,12
340:15,18 341:5,8,17
341:18 342:1 343:3,4
343:6,8,12,13 344:22
345:9,18,21 346:1,6

346:11,18,20 347:15
 347:19 349:3,4,5,9,14
 350:22 357:16 379:12
 381:1,7,8 383:19,20
 383:22 384:6,16
 385:1,1,4,4,5,6,15
 386:3,4,8,14 387:6,6
 388:5,5 393:10
 415:14
harmed 422:9 425:10
harmful 233:17 259:14
 333:9,11 334:18,19
harms 91:16
HASC 131:12
hat 268:16 270:3
hate 282:13
hazing 191:9 192:16,17
head 134:3 140:1
 216:22 234:7 290:11
 307:7 383:3
heading 7:15
headings 8:15
health 296:5
hear 4:21 5:21 13:22
 14:2 71:4 92:21 93:9
 123:9 133:9 137:13
 160:9 183:17 215:16
 215:18 217:5,6,11,13
 217:16 218:6 219:5
 221:11 226:3,8,9
 228:8 235:11 236:7
 238:7,12 259:19
 286:7 291:8 301:2
 302:5 332:4,17
 349:21 351:17,19
hear 5:17 29:5 75:7
 79:5,5,21,22 88:7,8
 93:11 94:9 112:16
 114:8 139:16 160:14
 182:3 186:11 230:5
 231:16 232:3 234:17
 241:12 250:9 258:2
 274:17 277:1 278:14
 281:5,17 282:10
 291:14 318:6 329:7
 336:21 340:17 359:5
 360:3,12 375:4
 389:12 406:1
hearing 79:1,4,5,5,6,20
 79:21,21 80:1 83:2
 86:11,19 87:3 88:8
 166:6,13,14 175:4
 184:8,15 229:13
 234:20 299:15
heart 376:10
heighten 318:9
heightened 56:7 91:18
held 24:4,5 39:5 361:5
Hello 216:11,12 238:11

help 18:16 22:20 32:8
 39:1 68:9 84:20
 119:13 121:3 128:10
 128:12 168:17,18,19
 169:4 210:21 211:5
 211:22 212:7,11,14
 212:17 247:3 292:22
helpful 35:6 40:3 48:10
 54:3,6 55:4 71:4
 110:19 111:6 112:1
 113:8 120:3,22
 164:14 171:9 174:22
 175:9 188:8 195:19
 205:22 215:4,15,22
 216:15,16 221:18
 236:16 261:4 277:3
 283:13 287:13
helpfully 13:19
helpless 272:10
helps 261:22 289:9
hesitant 127:21 128:1
hesitate 257:12
hesitation 411:9
hey 37:8 55:12 79:16
 89:7 173:21 256:5
 269:22 385:18
hierarchy 114:2
higher 114:2 305:11,20
 306:1 349:7 407:17
 409:15 418:11
higher-level 272:5
highfalutin 75:19
highlighted 146:1
 198:13
highlighting 277:17
hill 12:18 97:22 98:5
 99:16 152:8 198:4
 207:12 209:21 210:2
 377:2
Hines 2:8 6:13 8:8,11
 8:17 9:3,21 68:8,22
 70:20 202:15 203:13
 203:20 204:2,4,6,10
 204:17,21 205:2
 216:19 218:5,6,9,14
 218:18,21 219:3,9,10
 219:14 220:1,5,9,12
 220:16,20 250:18,21
 251:3,8,12,15,20
 265:22 297:22 298:19
 301:14 303:8 304:4
 309:19 310:6,9
 314:16,22 330:16
 331:12,14,18 344:16
 359:17 360:11 412:3
 415:16,18 419:13,18
 423:6 426:21 428:10
 429:10,15
hire 93:17

historic 95:11
historically 104:11
 206:19 390:4
history 97:1 177:2
 209:21 263:1,17
 288:4,12 289:4
 292:14,16 390:6
 403:12,15
hits 169:22
hold 28:3 57:20 123:20
 383:2 410:22 419:6
 420:19 422:3,6
holder 51:20 52:4
holding 22:4,7
Holtzman 1:16 4:12
 7:11 8:5,10,14 27:1,5
 27:11 39:7,10,13 44:8
 44:11 45:1,13,22 47:1
 47:5,9,15 61:3,7,10
 63:18 64:8 131:18
 136:2 157:12,13
 163:6 167:8 168:16
 169:21 170:2,6
 173:14 209:5,6,13,17
 220:2,5,7,11,21 221:1
 221:6,10,12,22 229:7
 229:18,19 232:4,6,9
 232:12,17 236:9
 239:8 241:20 243:2,6
 243:8,12,21 244:2
 249:1,5,20 250:2,5
 260:18,22 267:19,20
 267:21 269:18,21
 275:11,17 276:2
 284:1,8 286:16 287:5
 287:11 289:12 293:14
 293:20 296:1 297:12
 297:16 301:21 302:16
 302:21 307:1,22
 309:3,10,15 310:4
 311:5,18 312:5,17
 315:19 316:4,10
 317:10 319:13,17
 326:22 327:11,20
 329:4 332:14 336:4,7
 339:6,15,22 340:6
 344:6 347:1,3 348:7
 350:16,21 351:6,11
 358:7 364:5,9 367:5
 367:22 369:3,7,10
 371:8,12,15,20 375:1
 375:12 380:22 382:3
 382:11,15 383:16
 384:2 385:3 386:8,19
 387:22 391:12,18
 392:6,14 393:19,21
 394:3 395:18 396:6
 397:13,17 399:17,20
 401:8,12,15 402:12

405:19 407:1,11,14
 407:21 409:3,10
 410:5 421:14 424:4
 424:18 426:7
Holtzman's 119:17
 165:1 220:14 238:15
 299:1 315:1
home 85:1 143:5
 352:13 361:13
Homeland 37:9
Hon 1:12,15,16 8:5,10
 8:14 27:1,5 39:7,10
 39:13 44:8,11 45:1,13
 45:22 47:1,5,9,15
 61:3,7,10 63:18 64:8
 131:18 136:2 157:13
 168:16 169:21 170:2
 170:6 209:6,13,17
 220:2,7,11,21 221:1,6
 221:10,12,22 229:19
 232:4,6,9,12,17 243:2
 243:6,8,12,21 244:2
 249:1,5,20 250:2,5
 260:18,22 267:19,21
 269:18,21 275:11,17
 276:2 284:1,8 286:16
 287:5,11 289:12
 293:14,20 296:1
 297:12,16 301:21
 302:16,21 307:1,22
 309:3,10,15 310:4
 311:5,18 312:5,17
 316:4,10 317:10
 319:13,17 326:22
 327:11,20 329:4
 332:14 336:4,7 339:6
 339:15,22 340:6
 344:6 347:3 348:7
 350:16,21 351:6,11
 358:7 364:5,9 367:5
 367:22 369:3,7,10
 371:8,12,15,20 375:1
 375:12 380:22 382:3
 382:11,15 383:16
 384:2 385:3 386:8,19
 387:22 391:12,18
 392:6,14 393:19,21
 394:3 395:18 396:6
 397:13,17 399:17,20
 401:8,12,15 402:12
 405:19 407:1,11,14
 407:21 409:3,10
 410:5 421:14 424:4
 424:18 426:7
honest 183:9
honestly 96:19 176:15
 178:10 183:21 257:21
 361:5
Honor 31:21

- Honorable** 4:11,13
163:5
- Hood** 24:21
- hooked** 390:10
- hope** 5:11 77:15 93:17
101:13 278:10 296:17
397:5
- hopefully** 13:14,20,21
74:18 188:15 199:4
199:21
- hopeless** 154:12
- hoping** 55:3 124:14
258:11
- horrible** 405:8
- horse** 165:3,4,15 175:5
- host** 84:14
- hotline** 90:20 191:19,21
- hour** 64:11 71:2
- hours** 164:12 427:3
- house** 74:2,13 102:4
153:11 154:2 155:16
- http** 4:16
- huge** 155:12 192:3
- human** 106:14
- humans** 143:5
- humid** 108:9
- humiliate** 201:19
- hunt** 70:4
- hurry** 154:11
- hurt** 134:1 173:15 177:1
338:9 367:21 372:7
- hyper** 68:4
-
- I
-
- i.e** 365:10
- IO** 47:8
- I06a** 32:16 33:1
- I12** 43:14 48:2
- I12a** 43:1
- I20** 3:5 4:22 5:10 7:3
14:22 66:5 73:6 95:22
105:14 141:7 163:15
164:6 196:9 197:11
203:16 205:20 211:10
211:16 212:5 213:11
213:22 253:6 260:9
260:10,11,15 265:19
287:3 429:11
- I20a** 48:10
- I28** 112:2,6 273:11
- I34** 39:3 48:7 161:18
213:13,18 427:20
428:5,16,19
- I8** 28:16
- idea** 9:13 32:5 34:22
73:20 93:3 133:14
169:12 172:2,10
225:1,3,19 228:5
242:12 245:8 259:17
- 268:18 283:16 285:17
299:4 306:2 318:7
329:17 338:6 343:20
417:15
- Ideally** 119:2
- ideas** 225:5
- identical** 354:22
- identification** 81:3
- identified** 396:22
- identify** 200:4,6 264:16
370:7
- identifying** 169:19
179:9 295:9 373:6
- idiosyncratic** 133:11
- if-it** 226:2
- ignored** 257:8
- Ill** 40:20 41:4
- illegal** 422:18
- illogical** 336:11
- illogically** 336:12
- ills** 107:11
- Imagine** 318:4
- immediately** 210:13
- immensely** 96:16
101:19 102:5
- imminent** 226:5
- impact** 87:12 134:17
144:10,14 163:21,22
200:17 333:3 421:16
424:15
- impair** 322:4
- impaired** 256:5
- impairing** 310:16 321:9
322:4
- impermissible** 26:6
352:20
- impetus** 264:7
- impinge** 64:12
- implement** 113:11
- implemented** 199:20
- implementing** 107:4
- implicates** 418:22
- implication** 132:12,14
141:1,1 176:8 238:18
245:17 246:10 394:1
- implications** 11:17
142:14 394:22
- implicit** 371:13
- implicitly** 325:22
- implied** 242:22 369:21
380:11 382:20
- implies** 133:2,3 237:2
243:19 394:13
- imply** 237:10 347:2
- import** 53:1 370:13
- importance** 169:6
- important** 31:4 43:20
48:8 55:8 60:12 95:7
95:11 106:10 122:20
- 154:15 166:21 209:11
209:16 230:8 247:12
248:18 264:4 340:21
347:5 377:7 386:17
416:11
- impose** 27:17 28:19
43:7 86:22 305:12
- imposed** 85:9 87:15
- imposes** 17:3 91:17
306:3
- imposing** 305:22 415:6
- impossibility** 98:10
- impossible** 217:18
- imprecisely** 35:19
- impression** 336:21
- imprisonment** 241:2
- improper** 333:20
334:20 335:9 356:15
420:12
- improved** 281:5
- improvement** 107:1
- improvements** 283:2
- improving** 332:8
- impulse** 288:2
- in-camera** 90:9,13
- inability** 141:19 254:1
309:4 373:7
- Inadvertently** 27:9
- inappropriate** 192:18
355:5
- inappropriately** 318:12
- incapable** 146:12 147:5
179:11 262:2 303:6
303:18 305:1,21
306:10,10
- incapacitated** 143:1
179:14 308:5,6 411:2
417:18
- incapacitation** 124:8
181:12,16 198:16
296:9 310:2
- incapacity** 54:6 117:15
124:9 141:19 406:13
- incest** 191:20
- incident** 192:15
- incidentally** 419:22
- include** 57:2,3 61:16
80:17 90:19 102:20
161:18 165:22 208:12
213:12 296:4,5 297:6
342:5 375:8 399:7
- included** 15:19 38:14
61:16 72:5 73:5,7,10
73:15 91:4 96:7 162:5
276:11 322:10 359:16
- includes** 38:8,16 71:20
74:22 81:8 103:1
213:11 285:1 305:3
366:16
- including** 12:9 16:4
18:8 21:10 30:2 38:13
39:21 148:9 180:16
249:12 293:8,18
295:10 296:12 342:8
342:10,11 346:12
349:20
- incoherent** 268:3 269:6
271:20 312:10 313:9
- incoming** 85:4
- incompetent** 117:18
413:5
- incomplete** 260:7
- incomprehensible**
278:18 334:11
- incongruous** 112:22
- inconsistent** 49:5,9
52:15 56:21 114:6
151:6,22
- inconvenient** 219:4
- incorporate** 179:3
197:9 201:6
- incorporated** 197:6
353:11
- increase** 193:12
- increased** 91:19 255:1
- incredibly** 145:18 171:8
171:9 215:15,22
- incremental** 189:21
- indecent** 62:21
- indecent** 41:11 42:5,9
161:19 213:13,17
214:1,3 273:22
428:15 429:1,2
- independent** 17:7,14
19:18 21:4,11 27:12
28:5,12 29:19 31:9
288:13 372:18 377:16
- independently** 72:11
- indicate** 34:2 129:13
340:13
- indicated** 20:6 21:8
34:9 42:12,13 359:19
- indicates** 38:14 79:3
- indicating** 396:1
- individual** 23:9 81:3
315:6 366:4,14
- induce** 356:4
- inevitable** 277:8
- Inevitably** 277:18
- infantry** 108:18 189:14
- infer** 250:3 339:1
- inference** 238:16
- inferences** 142:14
- inferred** 246:4
- inflicting** 379:11,13
384:5
- information** 4:14,21 5:5
55:3 89:11 111:6

144:12 213:11 260:16
285:2 392:10 393:16
393:18 395:4 428:6
428:10
informed 171:1
inherent 18:6 30:14
inherently 25:6 34:10
40:12 44:19
initial 288:8
initiation 192:16
initiative 278:1
inject 124:20
injure 384:12
injury 80:6 275:5,9,21
276:16 346:17,17,19
346:21,21 347:2
379:13 380:12 381:18
injustice 264:20
ink 9:1
input 169:12 173:2
204:8 205:11 234:15
inputs 206:17
insanity 267:4
inserted 7:18 262:9
285:13
inside 124:13 404:17
insidious 329:10
inspired 399:2
installation 108:18
instance 56:12 69:22
117:4 146:8 272:3
326:5
instances 63:10 66:13
69:16 253:16 310:22
340:5
instinct 420:16
institute 16:17
instituted 20:20 21:6
institutional 152:11
instruct 292:21 299:9
299:11 359:21
instructed 139:14
255:8 266:13 415:15
415:20
instruction 102:3 148:3
148:10,14 150:7
171:11,15 173:20
203:5 204:17 205:8
260:8 279:13 299:13
413:12
instructional 264:14
instructions 137:4
143:22 144:4,7,14
150:21 151:20 164:11
171:12 203:16 205:22
257:5 261:10 295:17
instructive 29:12
instructor 13:12 183:18
352:9,10,12 356:3

intel 109:19
intellectual 96:17 180:1
intellectually 169:20
170:3
intelligible 25:21 26:11
29:3,6,10,13 30:22
intend 199:16 222:9,13
244:11 264:5 316:13
intended 134:20 236:1
244:12 317:4,5
323:19 329:9 383:6
387:9 390:20
intending 135:11
intense 326:1
intent 54:20 67:6,8
121:18 136:1,4
199:15 201:18 214:9
274:20 297:4 311:20
322:4,7,9 323:3,3,10
324:4,9,18 325:2
329:10 398:4,6 423:2
423:7,9,12,16
intention 311:10
intentional 320:21
intentionally 131:9
311:1 316:20 320:20
327:15
intentions 221:17 254:5
interacting 41:7
interagency 72:18
74:14 153:12 160:17
162:5,7 166:10,19
intercourse 345:4
interest 96:13 104:5
167:9
interested 12:12 53:7
53:10,11 102:1 160:6
170:9 285:17 424:12
interesting 32:3 44:7
49:12 71:10 103:8
131:15 150:4 162:20
193:7 194:2,10 225:5
241:19 288:7
interestingly 19:14
50:12 196:15
interim 122:14
interlinked 30:4
intermediate 347:17
383:19
intermittent 217:13
internal 178:22
internally 205:13
interpret 43:22 45:14
66:21 82:11 129:1
interpretation 21:18
33:20 46:19 48:1 49:8
52:15 56:5,16 57:8,20
58:2 60:19 66:20
67:11 103:18 123:8

123:13,16,20 124:5
125:22 247:16
interpretations 46:17
282:14
interpreted 65:7 70:4
82:12 131:16 279:21
297:5 306:15 375:19
interpreting 33:21
58:20 82:14
interprets 56:19
interrupt 332:13
interruption 9:22
intervene 289:5
interview 85:19
intimate 272:16
intoxicant 310:12 315:5
intoxicants 381:11
intoxicate 320:19
intoxicated 256:8
315:11 317:4 347:11
408:19 417:9 423:5,8
intoxication 181:12,14
181:15 296:4,22
297:3 307:10 417:16
423:1
intrigued 139:10
200:19
introduction 107:19
intuition 411:9 420:20
intuitive 259:11,18
intuitively 254:2
invalidate 24:1
invalidated 22:1
investigators 345:5
investing 425:2
involved 73:3 184:22
277:15 327:5 389:16
415:11 420:11
involves 401:8
involving 354:8 400:5
IO 86:17
IOs 82:14
ironic 264:21
irrational 361:10
405:20
irrespective 182:11,12
281:2
issue 5:8,14 11:14 15:7
40:13 41:10 42:4
47:19,22 48:15 49:3
53:18 55:13 59:6 63:5
63:13 86:4,8,18 90:4
104:14 114:7 125:1
140:2 155:8 159:14
181:11 197:17 213:17
226:22 228:14 231:1
231:2,4 232:18 234:1
234:4 236:2 237:5
241:14 252:6 253:15

253:16 256:21,22
268:4,19 270:15
275:1 278:6 283:6
287:15 292:2,7
295:18 296:17 302:13
305:16 310:13 317:20
317:21 321:3 323:5,7
323:13,16 336:9
339:2 341:15 353:9
354:1 356:13,14
357:22 385:14 392:18
395:7 396:8 404:21
405:5 412:5 413:3
419:22 420:1 422:1
427:13
issue-by-issue 227:6
issued 12:6 52:20
396:20
issues 3:9 7:9 8:6,11,12
10:9 25:8 26:15 33:18
37:22 43:13 68:11
96:21 101:2,15 113:4
114:19 132:11 148:14
154:22 158:16 176:1
187:12 197:18 200:19
206:13 209:3,9 210:2
216:1,3 222:18
223:11,20 227:16
243:9 252:5 262:6
264:13,14,16 280:19
287:2 302:1 311:6
346:22 351:8 353:6
354:2,10,11,13
358:19 420:5
It'll 163:22 303:4
item 371:15 392:7
items 36:6 50:20 96:12
iteration 207:3 211:11
iterative 166:4
IV 116:21
Ivy 181:20

J

J 1:16,19
Jackson 285:21 375:7
Jacob 66:17
JAG 127:13 128:8 148:2
148:7,9 178:11
279:14,16 280:2
JAGs 149:5
James 1:19
JBLM 108:17 145:4
164:5
Jersey 147:1
Jill 1:20 324:1,15 325:4
345:20 371:18,20
Jill's 148:6 150:9
Jim 84:7

job 92:16 109:16 116:8
120:14,15 145:18
182:15 280:5 398:13
jobs 120:13 187:1
joined 187:12
Joint 6:4 37:6 39:17,18
94:9 95:15 98:15
108:8 109:11 110:2
110:12,13 116:8
119:15 120:3,13
121:1,11 153:10
161:11 188:6,10
205:17 206:16 207:9
209:9 213:3 426:8
joke 317:19,20
Jones 1:13,15 4:13,19
9:12,15,19 10:1,21,21
14:16 31:11,14 32:9
34:21 35:5 65:16 71:7
78:3,12 92:15,20 93:8
93:14 94:21 107:22
108:3,11 114:21
115:1,5,8,21 116:6,16
116:20 117:3,6,9,11
117:13,16,20 118:1
118:14 119:8,11,17
120:1 130:6,10,15,19
131:1 153:1,15,18
154:8,11 155:4,7
156:6 157:12 160:4
160:13,19 161:2,7
165:11 168:21 172:4
175:1,3 181:1 184:2,5
184:7,12,16 186:10
187:2,4,6,14,18,21
188:7,21 189:2
194:16,19 195:14,19
196:6 203:11,14,22
204:3,5,8,16,20 206:8
209:5 210:17 215:3,8
215:13,19,21 216:13
216:20 217:4,10,17
218:1,4,12 219:2
222:3,7 225:1 226:19
227:9 228:2,5,7,10
229:18 231:19 232:5
232:14 234:12 235:12
236:7 237:13 238:10
238:12 239:3 240:10
244:21 248:3 249:3
250:17,20 251:1,7,10
251:13,21 252:16
257:3 258:18 259:1
259:19 261:2,8,12,15
262:4,21 264:7
265:13 267:20 269:16
269:19 270:17 276:17
276:21 278:6 279:4
282:17 283:7,19

284:6,11 285:8
286:14 287:16 289:15
289:19,22 290:18
291:1 293:4,12,19,22
294:4,9,21 295:2,7
296:10 297:10 300:15
301:1,2,9 302:15,19
302:22 304:18 308:20
310:10 313:5 316:9
316:12 320:10 321:2
322:18 323:18 325:5
327:8,19 328:7,19
329:1,6 330:12,19,22
331:3,7,9,12,13,16,20
332:3,7 336:17
340:20 341:12 343:15
349:12 350:2,14,18
351:3,7 354:14,21
355:6,9,13 358:2,16
360:7,16,21 361:2
364:11 365:16 366:12
368:14 377:19 384:15
385:5 392:11,17
393:15,20 395:2,17
396:9,16 398:16,21
406:1,22 407:9
408:12 419:8 421:9
421:18,21 426:16
427:10,15 428:9
429:9,13,16
JPP 4:10,11,15 71:10
71:22 75:7 81:15,16
81:20 84:1,4 169:2
192:12 212:21 227:6
274:16 355:4 375:4
JPP's 74:15
Jr 2:8
JSC 174:9 178:3 200:15
210:14
judge 9:12,21 10:21,21
42:19 43:15 48:6
55:18 65:16 71:7 78:1
79:14,15,16 86:1 90:9
90:14 94:4 96:8 101:8
105:1 108:7,22 114:8
114:9 126:10,15
134:6 142:18 165:11
168:21 177:17 202:19
203:5 210:14 225:1
241:13 257:6 280:13
297:9 299:9,10 303:8
304:7 314:16 330:16
331:12 344:16 348:19
359:18 393:19 396:19
413:1 415:14,20
judge's 214:21 254:16
260:8,10 277:6
299:20
judges 70:3 77:7 82:13

103:22 104:3 111:14
111:15,18 113:15
125:15 127:15,19,21
128:1 132:3 134:14
137:4 142:6 150:20
151:6,20 173:4
177:16,16 180:13,20
186:22 203:3,15
205:11,13 247:22
254:17 260:5 261:3
266:13 281:13 282:16
292:12,12,20 293:8,9
295:14 298:6 334:1,2
judgment 236:2 315:3
315:14
judicial 1:3,5 4:8 12:3
41:6 44:19 45:2 55:17
58:20 107:11 265:5
judiciary 41:4 104:2
174:14 203:1 204:14
303:19
July 264:2 429:15,16
jump 107:21 221:19
226:13
jumped 264:8
jumping 289:14
junction 247:3 289:5
June 1:9 264:2 419:21
junior 176:3,4
jurisdiction 28:17,19
62:8 297:3
jurisdictional 78:16
jurisdictions 145:6
423:3
jurisprudence 285:21
423:1
jurors 333:4,5 384:10
jury 22:19 34:6 299:12
333:19 387:3,10
411:15,21 415:4,15
415:20 416:15 418:3
418:4 424:15
justice 3:6 6:8 18:8
20:11 22:5 28:1 32:11
33:16 38:4 57:5,12
60:21 61:2 62:11,15
95:10 105:19 115:16
142:20 148:3,10
154:10 202:6 226:6
240:20 254:18 273:17
275:14 277:16
justifiable 367:9,10
justification 253:19
382:6 391:4
justify 224:11,12

K

Kastenburg 88:9

keep 31:4 118:13 184:8
217:15 341:14 348:14
398:11
keeping 133:17 377:3
keeps 26:13 177:13
337:2
Kelly 2:6 294:9 340:20
382:19
Kennebeck 2:3 3:7 7:4
92:22 93:10 94:5,10
98:15 107:15,16,18
108:2,5,6,12 110:7
114:22 115:3,6,10
116:5,7,18,22 117:5
117:14,17,21 118:2
118:15 119:9,12,20
119:22 120:2 122:16
137:6 140:17 143:10
149:9,13,17,20 153:8
153:14,17,19,22
154:3,18 157:5,10
160:11 162:2,13,15
163:2 166:17 185:15
185:20 186:7 188:17
189:1,3 195:16,20
196:7 198:7 199:2,4,8
201:13,16,22 202:12
205:10 206:6,9
207:18,22 208:9,14
208:20 209:2,12
210:19 211:6 213:2
213:16 390:13 428:14
Kennedy 28:1 32:12
33:16
Keptos 1:17 7:15,17,22
8:20 64:17 65:1,12,22
68:14 172:4,5 198:22
199:3,7 223:14,17,21
227:4,5 251:22 252:1
252:17 258:17,19
259:2 262:4,5 263:20
263:21 264:8 267:22
285:8,9 286:3,7 290:6
294:6,10 296:10,11
297:15 320:10,13
331:8,9 336:17,18
338:3,16,18 343:19
344:2,10 347:22
354:1 355:1,14
369:12 373:6,12,15
380:19 385:12 386:1
386:11 388:7,17
389:1 396:21 397:15
397:19 398:20 400:2
401:20 402:8 403:11
404:6,11 405:11
408:20 419:12 422:21
427:11 428:1,11
kept 48:7

key 279:5 303:9 329:18
kick 224:2
kicked 62:11
kicks 58:22 134:2
kids 181:21 183:3
kill 24:21 225:10 227:14
 361:17
killed 23:17
killing 24:20
kind 33:16 53:3 94:18
 97:7 101:9 122:13
 127:5 133:2,3 149:6
 151:8,16 152:10
 171:18,20 172:21
 174:2,3 193:3,22
 233:12,19 237:18
 249:15 252:13 256:7
 262:6 263:17 269:4,5
 270:14,21 271:6,22
 275:21 285:21 298:13
 316:22 332:21 349:3
 351:9 365:2 370:13
 371:12 372:13 379:13
 380:11 381:13 386:17
 389:7,12 398:2 403:7
 407:19 414:13 415:20
 418:20 422:22
kinds 210:2 286:10
 302:9 355:15 358:5
 358:11 400:11
King 59:1
kiss 235:19
Klemick 90:12
knew 43:10,11 51:9,10
 312:16 361:19 369:14
 370:1 413:6 423:14
know 6:1 8:22 9:10
 14:20 15:5 16:5 26:1
 26:2 31:18 34:7,14,15
 35:2 40:13 45:11
 46:16 50:20 55:10,14
 55:16,19 56:2,18 58:9
 58:13 59:1,2,4,5,6
 61:17 62:20 63:1
 64:18 65:6 67:5 69:10
 69:21 76:16,19 78:17
 82:10 84:16 89:7
 91:17 94:1,19 96:11
 96:15 102:2,3 114:8
 120:12 123:10,15
 134:16 140:14 146:4
 148:1 152:9 153:5
 156:16 158:11 160:8
 162:4,6,19 163:12,13
 183:10 189:8,17
 195:22 198:18 203:8
 206:16 207:5 210:3
 212:12 213:7 215:1
 216:8,20 217:5,7,10

217:18 224:1 225:6,7
 225:11,17,20 227:14
 230:2,18 232:20
 233:5,16,19 234:8
 235:8 239:12 243:12
 245:2,19 247:14
 249:13 251:4 252:1
 253:7,12 254:14,20
 255:7,15 256:7,16,19
 256:19 258:6,13,18
 259:13,14,21 261:4
 262:19 263:5,9,10,11
 263:15 265:6 268:5,6
 270:4,21 282:10
 283:15,18 285:22
 287:5,9,12 290:7,8
 292:1,5,13 293:10
 297:1,2,2,4 299:21
 300:3 303:6,21
 305:19 307:4,15
 311:2 312:3,13 313:2
 313:15 317:12 324:5
 324:21 325:3 327:2
 327:21 328:21 332:11
 333:3,3 334:10
 336:15 337:10 338:10
 338:10,11,11,20
 339:4,12 342:22
 343:10 344:4,12,14
 347:5,20 348:22
 349:10,13 351:9
 352:14,21 354:16
 356:6 358:13 362:6
 363:8,12 364:20
 365:3 366:3,10
 370:17 377:6 380:15
 382:22 383:2 387:10
 389:2,16 390:3,6
 392:3 394:21 397:3
 400:7 405:17 407:12
 407:20 408:7 409:6
 409:10,12,13,15,18
 409:19 410:2,12,19
 411:1,17 417:7,8
 418:14 419:10 420:12
 420:15,17 421:6
 422:4 423:19 425:9
 426:2
knowing 122:10 156:15
 257:16
knowingly 7:19,20
 262:9 327:16
knowledge 43:6 262:13
 325:14 326:7 327:1
 406:7 407:4,5 408:4,6
known 4:9 266:9 335:1
 413:7,19 420:18,19
 423:14
knows 35:9 56:13

137:14 198:18 266:4
 315:9 321:22 333:10
 345:3 357:8 385:4
 406:12 407:19 408:8
 410:13
Kyle 2:5 11:1 37:22

L

L.R.M 88:9
lack 8:18 66:13 135:16
 136:6 140:4 229:3
 238:22 241:17 242:7
 242:15 243:16,19
 244:14,17 245:14
 246:4 248:6 272:2
 333:19 336:8 378:17
 404:10 417:2
lacks 116:14
Ladies 6:14 412:3
laid 261:18 315:2
Lance 89:7
land 15:16 217:2
 218:12,15
landscape 106:11
 156:16
language 28:22 29:12
 37:7 38:10 49:4 51:8
 55:22 69:19 70:11
 82:11 89:14 103:16
 133:18 134:20,21
 136:16 140:19 141:20
 175:19,21 176:9
 178:16 198:13,14,20
 200:13 225:20 226:15
 230:9 232:21 233:18
 237:19 239:5,9,19
 259:17 273:21 284:9
 286:18 287:21 294:8
 294:16 296:12 306:10
 306:20 309:4,11,16
 310:3 311:18 312:4
 316:6,7 332:18
 333:13 334:22 335:14
 337:17 367:14 368:10
 374:13 376:20 377:7
 377:17 395:20,22
 400:1,5 407:19
 415:12 416:2
large 107:10
largely 280:19
laser 141:5,6
late 17:22 186:4 401:1
 426:19
lately 111:16
latitude 410:3
Laughter 12:21 13:5
 14:8,13,18 27:8 32:6
 35:10 66:2 76:15 78:4
 93:13 94:14 100:10

108:10 110:6 119:19
 143:9 154:13 156:5
 178:18 243:14 373:14
 376:2 404:19 427:9
Laurie 1:17 285:7 295:5
 295:8
Laurie's 346:2 358:4
law 15:19 25:20 34:13
 34:13,18 40:8,10
 44:20 56:14 57:2,4,11
 91:6,13 94:6 95:6
 96:8 99:11 100:17,18
 100:22 102:15 104:16
 104:17 105:16 106:6
 106:12,14 112:20
 122:15 123:11,17,19
 128:2 129:3 140:6
 147:18 156:21 176:13
 182:12 184:20 187:10
 210:12 254:15 266:15
 275:15 279:15,19
 281:13 285:22 286:12
 287:1 375:5 392:1
 397:8 405:10 411:13
 416:6 421:5 422:17
lawful 16:20,21 356:18
 356:19,20 357:11,14
 358:1 391:6,7,11,16
lawmaking 11:19 26:6
laws 18:12 21:9 254:22
lawyer 89:5,10 176:22
 286:9 334:11,12
lawyers 137:22 173:4
 177:2 254:14,17
 260:5 263:8 282:15
 286:5 333:22 334:2
lay 211:20 252:13 262:1
 285:10 290:7
layers 173:19 259:10
laying 216:1
laymen's 381:4
laypeople 254:12
layperson 255:4
lays 261:21
lead 39:2 368:13
leads 229:12
League 181:20
leaning 241:7
learn 105:15 132:9
 139:11 168:13 428:8
learned 12:15 93:19
 182:1 216:7
learning 254:21
leave 180:14 290:19
 313:19 316:16 326:13
 329:21 343:12 348:19
 352:13,18 360:4
 395:10
leaves 238:15 394:17

- 407:2
leaving 290:16 318:19
 329:16 376:6 377:22
Lee 1:18
left 9:7 151:10 198:17
 214:9 225:21 301:12
 349:10 353:15 366:10
 406:5
legal 59:6 84:6 91:15
 94:2 95:9 98:10
 106:11 154:7 283:17
 298:20 382:6 391:4
legally 299:3
legislation 69:19 98:4
 125:3 165:6
legislative 25:6,12,20
 34:10 41:5 97:1,7
 157:15 209:20 292:15
 403:11 423:22 424:7
legislatively 424:3,5
legislators 405:14
legislature 172:20
legitimate 230:17 231:6
 231:7 361:5 362:3
leisure 78:15
lengthy 125:12 157:15
lens 194:14 256:10
lesser 38:14 73:7,9
 170:17 271:17 313:14
 346:17
let's 14:2 15:5 18:14
 21:16 35:12 41:8,9
 42:17 44:21 45:3 47:7
 48:9 59:10,13 114:9
 114:11 135:5 158:21
 165:7,9 166:5 172:11
 200:15,16 223:7
 226:22 248:15 261:9
 281:11,11 300:17
 312:17 319:9 325:10
 326:1 349:17 364:15
 372:7 374:2 381:12
 393:17 406:9
letter 392:16
letters 329:19
letting 314:7
level 12:2 99:1 101:2,10
 106:8 156:21 208:4
 210:5 212:18 229:17
 268:8 272:14 347:8
 348:2 354:19 387:11
 387:12,20
leveled 189:11
levels 101:5 254:19,19
 348:15
Lewis 108:8
Lewis-McChord 108:8
liability 264:5 415:6
 416:9 420:9
- liaison** 207:6
liberties 41:11 42:5,6,9
lick 404:16
lieutenant 2:6,8 7:4
 77:12 108:6 109:18
 120:7,10,11 153:9
 218:6
life 17:1 23:12,13,14
 100:1 106:12 336:19
 404:18
lifetime 159:22 160:2
 320:15
light 426:9,11
lighter 199:5
liked 396:21
limit 87:18 256:11
 296:2
limitation 17:4 27:17
 52:8
limitations 16:17 28:20
 30:6 85:10
limited 21:14 51:18
 85:13 210:3 296:12
 296:19
limiting 48:4 376:19
limits 78:16 86:22
 87:15 123:7
line 41:1 127:14 217:3
 218:12 232:14 241:20
 241:21 242:3,9,14
 318:19 323:6 324:2
 324:14 388:16 392:4
lines 133:20
lingo 241:17
link 195:14 207:8
LIO 74:3
lion's 190:21
LIOs 73:14
lips 405:6
Lisa 1:17,18 181:1
 240:8,11
list 8:5 105:11 113:16
 114:17 263:4 266:3
listed 211:11 297:21
 298:4,11
listen 93:21 217:22
 218:2 221:19
listened 100:14 102:2
listening 123:6 188:16
listing 197:5
literally 262:18
litigated 286:20 287:15
 288:6
litigation 70:14 124:16
 124:18 179:18,21
 180:4 205:1 302:12
 309:7
litigators 77:19
little 13:17 21:16 113:6
 120:4 135:19 137:11
 159:19 160:2 168:20
 183:4 200:11 205:12
 205:21 249:2 275:12
 303:9 309:21 321:11
 321:21 322:2 331:15
 339:5 399:11 407:16
 409:14 422:11 423:19
live 13:18 168:13
lived 167:9
living 129:2
Liz 249:4 265:15 286:15
 293:13 332:12 335:20
loath 97:9 105:14
location 211:15
logic 261:17 279:11
logical 269:7,8 279:21
 288:21 336:9
logically 261:18,22
long 56:20 93:15 112:7
 140:5 147:22 151:4
 151:14,18,21 155:15
 156:11 194:11 211:14
 268:2 279:9 281:14
 283:12,13 284:8
 288:12 289:3 366:17
 369:5 420:4
long-winded 34:20
longer 78:19 82:4 86:19
 88:2 168:12 188:9
 403:20
look 6:5 7:17 15:5
 16:19,20 30:10 41:8
 42:17 44:4,5 47:7
 48:9 51:3,16 58:9
 69:21 71:12,18 80:14
 80:15 84:10,20 97:16
 107:13 112:2,6 118:7
 119:6 147:10 148:6
 150:13 158:21 174:9
 182:8 186:20 194:7,8
 198:12 204:7 230:15
 235:1 239:6 241:13
 244:10 256:2 258:12
 261:9 270:19 274:13
 276:5 278:13,15
 280:5,18 285:11
 288:5 290:4,9 294:7
 303:10 304:5 306:21
 306:22 321:11,20
 322:17 327:22 328:9
 337:16 339:8 340:7
 343:1,2,4 344:7
 345:11 354:13 393:17
 395:6,16 420:22
 421:10 426:17 428:18
looked 48:18 70:2,3,4
 126:12 170:15 174:10
 208:15 257:5 265:6,7
 321:2 358:4
looking 136:22 173:10
 182:5 206:19 212:18
 212:21 253:9 255:9
 268:19 292:15 304:7
 308:18 309:17 340:3
 356:16 368:6,16
 407:18 423:18
looks 33:16 43:15
 45:10 109:21 138:19
 190:4 280:8 304:10
 354:4
looming 385:13
lose 182:6
losing 352:1
loss 282:8,8,9
lost 103:3 146:21 406:4
lot 5:5 18:21 74:8 84:13
 84:18 96:21 98:4
 106:22 121:8,19
 150:9 155:2 159:17
 168:3 173:1 175:10
 183:5 186:11 188:18
 193:15 194:1,1,12,19
 207:9 208:7 226:8,9
 234:17 241:6 250:7
 268:14,17 277:4,5
 280:15 288:14 309:6
 318:6 326:1 376:19
 376:20 377:16 379:18
 384:10 392:20 396:11
 405:13 413:20 414:11
 425:3 429:4
lots 5:17 149:22 162:19
 252:7 278:16
loud 113:8 221:2 222:4
 395:10
love 110:3 118:20
 343:20
Loving 21:17 24:19
 25:7 26:16 33:2 46:5
low-level 393:3
lower-level 271:1
lowest 272:13 274:15
Lt 6:13 8:8,11,17 9:3,21
 68:8,22 70:20 107:16
 107:18 108:2,5,12
 110:7 114:22 115:3,6
 115:10 116:5,7,18,22
 117:5,14,17,21 118:2
 118:15 119:9,12,20
 120:2 122:16 137:6
 140:17 143:10 149:9
 149:13,17,20 153:8
 153:14,17,19,22
 154:3,18 157:5,10
 160:11 162:2,13,15
 163:2 166:17 185:15
 185:20 186:7 188:17

189:1,3 192:11
 195:16,20 196:7
 198:7 199:2,4,8
 201:13,16,22 202:12
 202:15 203:13,20
 204:2,4,6,10,17,21
 205:2,10 206:6,9
 207:18,22 208:9,14
 208:20 209:2,12
 210:18 211:6 212:20
 213:2,16 218:5,9,14
 218:18,21 219:3,10
 219:14 220:1,5,9,12
 220:16,20 250:18,21
 251:3,8,12,15,20
 265:22 274:12 275:8
 276:3 286:22 287:7
 287:14 294:6,11
 298:19 301:14 303:8
 304:4 309:6,13,19,20
 309:21 310:6,9
 314:22 330:16 331:12
 331:14,18 339:17
 340:1,9 341:1 344:16
 344:17 345:6 350:7
 359:11,17 360:11
 378:19 381:6 384:4
 384:17 387:14,17
 389:11 390:11,18
 391:22 392:8 408:18
 412:3 415:18 419:13
 419:18 422:16 423:6
 428:10 429:15
LTC 2:3 3:7
LTCOL 429:10
lunch 3:8 215:9
lying 362:3

M

M 1:17,18
ma'am 8:4,17 52:17
 93:16 114:22 123:21
 128:15 130:9,12
 131:17 135:3 136:11
 138:21 146:5 155:6
 155:19 156:9 174:8
 177:8 179:6 185:16
 186:21 187:17 190:13
 191:1 194:18 200:12
 203:13,20 208:9
 210:3 333:16
Madison 44:18
Maggie 234:12 411:5
main 25:8 26:15 195:5
 416:14
maintain 188:1
MAJ 9:2 45:20 57:18,22
 58:7 123:5,22 138:6,8
 138:12,15 147:14

156:19 157:9 165:16
 165:19 183:8 184:3,6
 184:8,14,17 185:19
 186:5 188:11,14
 191:2,19 192:3,6
 234:13 236:5 249:18
 249:21 250:3 261:13
 261:16 271:18 272:19
 272:22 279:3,5
 281:14 282:1,4 286:2
 286:4 313:6 314:2
 351:18 354:15 356:11
 358:15 363:10 365:5
 366:1,13 369:18
 370:4 382:9 390:1
 396:14 408:10 409:9
 409:17 410:9,16,21
 411:5 419:2

MajGen(R) 1:20

major 20:1,14 87:7
 102:2,6 120:7 159:18
 159:21 240:16 255:6
 344:18 345:7 394:6
majority 190:17 245:6
 360:2 415:1 416:14
maker 51:10,10,12,19
making 26:21 34:12
 52:12 89:18 125:1,20
 125:21 156:18 169:8
 184:5 230:4 239:6
 244:7 255:19 260:15
 260:17 280:16 289:13
 303:19 325:18 346:1
 346:4,4 396:2 398:3
 398:18 415:13 420:12
 422:1

male 185:6 190:18

191:5 274:18

male-on-male 192:14

males 191:7,18 192:1,6

malicious 323:3

maliciously 320:19

malleable 147:20

155:20

maltreatment 92:2

man 133:14 403:4,9

404:9

manage 205:13

Mance 42:18,18,20 43:4

46:4,5,6 48:3

mandated 195:8

mandatory 116:13

manner 73:14 263:19

Manual 11:15,21,22

12:4,7 18:16 19:4,7

19:11 20:2,3,15 21:13

21:19 34:15,16 35:11

35:13,17 36:8,10,16

36:17,19,21 37:1,13

38:1,2 40:5 42:5,8
 43:16 48:18,18 49:1
 56:5 63:22 71:15 72:2
 72:6 73:6,9 91:1,7,8
 95:16,17 100:19
 103:10 106:15 110:16
 111:1,3,8,8,20,20
 112:20 121:10,14,18
 125:12 141:22 142:5
 142:9 150:17 151:4
 151:15 152:15 180:12
 180:19 196:10 213:21
 260:14 261:1 267:15
 277:21 298:3 300:6
 300:14 301:12

Manual's 57:8

Manuals 43:18

map 11:12

Marbury 44:18

marches 166:19

Margaret 1:20

Maria 2:7 4:19 83:12

88:11

marijuana 42:21

Marine 2:8 18:22 19:3

33:9 85:1,2,2 90:14

marital 390:9

marked 8:20

markups 8:21

martial 12:1 19:5 20:4

30:3 43:17 87:13,14

95:18 106:16 110:17

152:16 180:20

massive 320:15

mastering 254:22

masturbating 42:1

material 260:11 280:15

materially 244:14

materials 6:15 7:14

10:13 35:20 37:11

87:16,17 255:6 265:8

304:15 344:18

matter 25:10,11 30:9

49:15 51:17 86:1 93:5

103:5,7 153:3 215:10

263:8 266:14 269:2

273:14 315:7 330:5

331:22 341:10 389:6

424:8,20 429:19

matters 105:10 142:17

144:12 163:15 194:8

378:16

Matthews 23:18 24:2

mature 99:18

max 116:12 214:16

215:2

maximum 38:16,19

92:1 214:22

McGovern 2:6 192:11

210:18 212:20 274:12
 275:8 276:3 286:22
 287:7,14 294:6,11
 309:6,13 339:17
 340:1,9 341:1 350:7
 359:11 378:19 381:6
 384:4,17 387:14,17
 389:11 390:11,18
 391:22 392:8 408:18
 422:16

MCM 19:3 73:4 76:21

77:1 112:4 114:14

122:17

mea 335:12

mean 44:11,13 53:7

58:4 61:19 88:21

99:10 104:22 105:1

111:7 116:17,20

117:15,18 126:18

128:5 130:1,15 133:5

133:9,22 134:3,4,8

136:14,21 147:20

149:22 152:17 153:13

154:8 157:6,20

158:18,22 159:8

160:5 162:15 164:16

169:13 173:11,12,16

177:18,20 183:3,10

194:3 202:13,19

241:12 244:7 248:9

252:7 255:17 261:17

264:16,21 267:21

268:11 270:15 282:7

282:7 285:20 286:12

287:11 290:16 298:18

301:6 307:8 311:17

312:3 324:20 333:11

334:16 335:2 336:11

338:19 339:10,13,15

342:22 344:7 356:15

356:19,21 357:3

358:7 362:6 363:8

364:13,21 365:5

366:14,20 369:4

376:13,18,20 385:15

386:14 388:4 392:2

396:13 402:8,16

404:15 405:6,16

409:15,22 410:1

424:13 425:4

meaning 22:8 61:8

124:22 136:7 237:20

238:4 244:14 289:2,2

307:18 324:17 333:6

means 48:21 94:8

102:15,17 123:11

125:9 130:22 131:3

131:10 134:1 147:18

156:10 161:13 174:1

179:22 180:4 182:14
 249:16 275:20 279:10
 282:15 288:20 290:7
 305:9,19 306:3,7,7
 307:9,15 322:1
 325:15,20 332:21
 337:16,21 338:7
 339:9 344:5 361:5
 367:1 374:7 377:8
 382:5 383:12 386:20
 386:22,22 388:5
 389:4 400:19 421:7
meant 45:15 114:4
 129:14 212:15 294:18
 343:7 391:1
measure 100:5 101:18
 102:21 129:4
measures 75:4
medical 83:18
meet 426:3
meeting 1:7 4:5 42:2
 112:5 161:6,12,21
 213:10 260:20 343:17
 429:14,18
meeting's 277:3
meetings 265:9
member 27:6 41:15
 226:20,21 254:3
 259:5,11,20
members 23:11 24:3
 97:22 98:1,11,12
 112:4 120:12 127:11
 127:14 128:2,12
 143:11,22 151:21
 207:7 223:1,3 255:7
 264:17 275:18 277:6
 348:19 416:16,16
membership 4:15
memo 215:22 222:9
 407:3
men 143:7,8 184:21
mens 252:20 262:9
 264:4 302:20 311:1
 311:22 324:5,20,21
 325:11 362:22 416:21
 417:3 418:13
mental 66:13 67:4,7
 253:3
mentally 272:4
mention 5:19 50:8 71:9
 76:11 296:14 343:8
mentioned 10:21 21:5
 32:1 37:20 91:14
 104:13 186:11,13
 264:1 296:22 303:15
mentioning 245:16
mentions 266:1,2
mere 31:8
merely 32:19

merits 222:19 239:17
mess 298:13 343:1
messages 132:6
met 1:11 280:4 281:8
 281:17
method 129:5 159:2
Michelle 1:16
microphone 221:3
middle 120:20 242:14
 242:18 248:14
militarily 275:3
military 3:5 6:8 11:3
 15:9 18:8 20:11 23:19
 23:22 24:5 25:4 30:2
 32:19 36:14 37:3 38:3
 43:5 45:19 50:3 60:21
 61:2,11 62:11,14
 63:12 67:4 73:17,17
 86:21 87:21,22 88:2
 89:5,6 91:3 108:15
 111:10 115:16 148:3
 148:10 166:8 182:8
 185:18 192:20 196:12
 196:16,18,20 205:10
 207:2 240:20 253:1
 254:18 257:6 263:6
 264:10 266:9 267:1
 273:16 274:7 275:14
 278:11,17 279:1
 280:12 288:12 298:10
 314:17,21 334:15
 335:2 348:17 352:10
 353:4 364:14 388:6
 392:5 403:15 421:15
 423:1,6
Miller 41:10,11,14
mind 31:5 96:22 102:10
 223:10 277:5 311:7
 318:8 330:17 388:8
mindful 107:3
minds 70:1 251:9
 315:15
mine 221:13
minimal 247:6,7
minimize 180:20,22
minimizing 389:20
minimum 130:19
minority 310:15
minute 146:18 168:10
 270:1 310:17 375:12
minutes 59:3 70:21
 93:4 144:8,9 171:12
 225:7
minutia 53:3
mirrors 280:11
misbehavior 26:3
mischievous 233:15
 245:9
misconception 230:13

misconduct 276:6,12
misdeemeanor 271:1,1
 272:17
mishear 186:18
misinterpreting 344:13
mismatch 259:15
misread 408:2
missed 250:6
missing 97:6 207:8
 339:15 347:21
mistake 99:5 118:22
 130:20 131:14 262:1
 262:17 263:2,7
 265:20 266:6,6,8
 267:11 291:13 292:4
 292:21 293:18,19
 294:2,4,18 295:10,15
 295:21 296:3,6,13
 297:19,19,21 298:17
 299:7,12,18 300:11
 300:19,22 301:5,12
 302:1,15,17 412:18
 413:14
mistaken 199:16 244:9
mistakes 169:11
mistaking 81:15
misunderstand 232:12
misunderstanding
 191:8
misunderstood 169:11
 231:17 232:4
mitigation 351:15
mixed 31:19
model 39:5 280:10
modification 234:21
modified 86:15 88:6
 227:18
modify 349:19
modifying 235:1
moment 102:19 160:8
 175:4 224:7 226:18
 248:16 322:7 368:18
momentum 167:10
monetary 352:2
money 145:8
moniker 300:8
months 96:10 174:13
 196:18
mood 326:2
morning 4:3,20 11:13
 12:22 13:6 93:22 97:8
 108:5 165:12 216:7
 237:14 254:13 278:7
 285:2 291:15
morphed 274:2
motion 280:14
mouth 201:18 324:11
 324:18 397:21 399:8
 399:12 400:4,8,10,12

401:3,7,9,13,19 402:1
 402:2,3,5,20 404:3,12
move 173:5 210:16
 289:20 291:4 349:13
moved 126:16 221:19
moves 246:7
moving 291:10 408:22
Moynihan 1:12
MRE 90:17,18
MREs 71:15
mull 422:1
multi-part 44:16
multi-service 95:18
multimedia 13:7
multiple 173:19 252:5
murder 22:16 23:10,10
 24:14,14 334:6,7
 423:4
mutual 414:12

N

N 2:2 3:6
name 108:6 143:7
 419:10,14
named 80:17
narrative 125:9
narrow 81:6 146:17
 147:7 200:21 238:6
 302:13 349:16 378:3
 379:6,6,8 396:10
 397:2 399:6,11,21,22
narrowed 63:1 316:6,7
narrower 236:22
 380:13
narrowing 322:6
 398:14,19 399:15
 400:2
narrowly 306:15
narrows 47:6,6
national 26:4 185:10,11
nature 37:18 106:13
 146:17 168:13 175:18
 185:18 305:15,18
 306:5,14 352:15
naval 15:16 19:2
Navy 18:21,22 19:3
 90:14
NDA 166:20
NDAA 64:5 75:1,2 87:20
 88:1 105:9
near 248:13 376:10
near-term 224:11
nearing 64:11
neatly 214:7
necessarily 30:11
 57:20 100:8 123:17
 134:13 143:16 148:18
 157:21 180:2 211:22
 255:2 283:13 300:5

307:15 318:10 370:9
386:4
necessary 29:18 34:5
53:13 85:14 123:15
175:18 228:18 322:16
330:5 370:12 378:14
necessitate 208:4
need 30:13 37:22 98:12
100:22 123:2,9
126:10 128:11 129:12
129:19 130:5 138:17
156:14 167:5 168:19
173:6 174:16,16
177:1 181:4 206:14
213:17 221:6 226:5
226:17 234:9 241:11
249:13 259:8 262:15
262:16 281:4 292:6,8
292:9 299:21 300:5
303:12 307:4 308:15
308:21 320:13 322:13
326:13 328:10 334:11
334:12 344:6,8,15
375:13 378:10 382:16
393:9,13,17 395:11
400:8,13 406:20
421:13 428:18
needed 24:6 98:4 119:7
120:16 157:10 198:4
225:12 237:11 365:2
needs 105:19 119:1
156:2 172:1,1 206:13
209:8 224:10,14
225:22 230:11 231:9
231:10 249:7 253:4
308:14,17 327:18
353:19 398:15
negates 67:7 374:10
negating 374:6
negative 98:7 351:10
353:12
negligence 407:7 408:6
411:11
negligent 407:12
Neither 82:18
nephew 185:9
network 191:20
never 25:16 91:6 152:9
170:14 320:11 365:19
370:19 378:16 400:9
417:14
Nevertheless 289:1
new 1:12,12 12:6 20:14
24:6,8 33:13 35:22
76:3 77:16 79:2 81:7
81:11 83:1 87:13
91:11,12 124:15
128:2 133:5,6 146:16
147:1 148:19 156:14

156:16 166:19 198:20
258:15 268:16 271:9
271:18 272:7,18
276:9 284:11 328:3
402:16 405:10
newly 29:18
newspapers 190:15
nice 193:3 249:14
344:17 391:20 398:13
night 13:18 362:1
412:14
nine 62:13 63:17 91:12
127:6
Nixon 20:2,6,21
NMCCA 90:11
no-change 127:10
224:8,8
noble 98:3 289:3
nobody's 170:1 424:4
nod 227:4
nodding 290:10 330:12
330:14
non 191:17 259:12
262:15 268:7 271:14
338:18 344:3 347:7
382:1
non-alcoholic 325:17
non-capital 87:12
non-consensual 299:5
337:1 338:17 342:10
342:12,15 344:9
346:13 347:10 385:16
385:18 386:11
non-consent 173:16
262:11,13,17 288:21
339:2
non-consenting 306:1
non-JAGs 148:22
non-military-specific
88:3
non-sex 144:9
non-sexual 195:12
noncompliance 364:8
368:13 371:9,11
373:1,3
nonjudicial 36:18 37:4
normal 107:10 333:6,10
335:14 359:15
normally 44:9 116:14
133:22 174:11 393:5
North 22:15
not-so 91:11
notarized 250:12
note 6:21 46:4 48:3,3
96:6 99:8 103:12
104:12 122:4 412:4
420:15
noted 315:16 375:6,7
notes 109:20 253:15

308:2,4
notice 76:4 77:3 79:4,7
79:8,10,10,20 127:1
137:14 211:19,20
267:4 408:15 427:16
noticed 199:13 271:4
Notices 76:6
notion 121:15 169:17
201:6,10
notions 106:9,10 140:3
140:19 170:8 207:14
222:13
nuanced 101:19 125:8
200:5
number 22:3,13 23:5
24:16 35:20 36:5
54:16 73:5 88:11,12
88:20 89:20 98:20
121:6 127:16 138:8
147:11 176:12,20
181:22 184:22 192:4
199:8 207:4,18,20,22
211:9 219:18 220:11
220:18,20 225:12
234:22 246:7 263:4
268:11 291:2 304:22
314:17,21 332:9
349:14 354:21 360:14
377:10,20 382:3
392:7,12,13 406:9
420:6
numbers 188:18,20
189:6,7 190:15
254:14 335:5
numerous 98:19
292:20

O

O'Connor 63:7
Obama 21:6
object 53:21 59:12
61:15,17 62:2 70:1
377:18 396:15 398:10
objections 355:19
objective 359:3,9 364:5
374:9 375:9,11,13,19
objectively 359:22
360:6,7,19 367:3
objects 86:9 201:4
obligation 89:11,22
observe 412:15
obtain 351:14
obviously 39:18 80:19
90:2 119:21 144:18
160:5 200:9 203:17
225:16 257:1 308:12
339:13 343:20 355:20
occasion 395:6
occur 116:14
occurred 6:8 193:11
occurring 192:21 409:5
odd 270:19 271:16
346:14 392:6 403:1
offence 235:5
offend 84:11
offended 339:12
offender 10:22 79:9,11
79:12 146:1 171:16
311:3,4
offense 16:12 24:12
38:14,15,20 39:6 40:1
42:9,16,22 45:4,5,6
45:10,11 46:12 50:14
68:16 73:12,13 89:7
91:5,9,11,12 104:14
211:9 212:2,10,11
213:13 214:8,8 215:2
256:11 269:17 312:10
312:14,15 313:14
314:14 317:7 322:11
338:11 341:3 353:11
353:20 379:7 411:12
428:20 429:7
offenses 38:11,12
40:11 44:1 46:13 73:7
73:10 78:18 88:3
98:20 99:2 118:9
170:14 192:21 193:9
195:8,10 206:4 214:4
255:9 314:17,21
offensive 134:5 273:13
275:22 332:22 333:7
333:8,12,14,15,16
334:19 336:2 338:2,5
339:9,11 341:10,21
342:1,9,14,16,17,22
344:5 345:2,8 346:6
346:11 383:22 387:22
388:3
offer 136:18 207:13
222:13
offering 351:14 352:18
offers 351:20
office 30:18 108:16
109:4 154:7
officer 24:15 79:2 83:2
83:3 86:1,3,11,19
87:2 148:16
officers 127:14 148:2
265:5
offices 144:22
official 2:7 37:16 358:7
358:9
oh 8:10 9:15 10:1 61:1
63:21 64:16 71:7
81:22 83:16 116:18
118:22 129:8 138:20

143:6 160:13 166:21
 168:9 199:4 204:20
 209:15 216:20 218:14
 243:4 250:11 255:11
 289:19 294:4 313:5
 332:7 355:6 364:9
 385:7 388:2 390:19
 401:12 411:7 419:18
 421:21 424:4 427:15
okay 10:18 14:11 20:10
 21:16 22:15,17,21
 23:3 25:18 32:9 36:3
 39:13 41:19 56:11
 65:1,12,21,22 66:21
 67:16 71:1,8,20 81:22
 82:2 83:20,22 108:2
 115:9 116:6 126:1
 135:14 138:11 148:5
 149:16 155:9 157:9
 158:7 174:12 176:17
 178:1 187:4 190:1
 191:6 197:4 199:7
 200:15 202:8 209:1,4
 209:17 211:6 212:8
 215:13 216:13 217:4
 217:21 218:1,4,14,21
 219:11 220:1,12
 221:12,15 224:4
 227:9,22 228:4,11
 232:17,19 240:11
 244:3,8 246:16
 247:15 251:20 252:17
 270:2 282:17 310:10
 313:5 331:9 332:9
 350:2,18 355:13
 357:13 358:2,22
 364:10,10,11 369:7
 377:19 378:1 383:16
 386:1 390:19 393:7
 395:17 396:6,9
 397:20 406:4,22
 412:12 419:18 421:18
 424:6 428:9 429:16
 429:17
old 13:11 14:15 35:22
 36:1 74:7 91:12
 106:10 133:12,12,12
 134:22 140:19 156:14
 167:16 168:2,2,4
 196:5 373:1,2
older 164:8
omitted 347:6
omnibus 197:14 214:1
once 9:12 20:4,16 28:4
 28:11 30:16 50:16
 59:5,9 67:12 79:13
 152:5,6 165:10
 172:13 185:20 197:7
 207:3 247:12 331:11

369:8 380:8
one's 292:15 301:13
 304:15 314:2,3
onerous 152:4
ones 225:15,15,21
 236:22 261:21 278:17
online 41:15 62:21
 76:20 77:13,20
 418:21
open 141:8,8 152:5,6
 161:13 169:1 227:19
 229:12 245:3 247:13
 366:16
opened 105:2 241:13
opening 94:17 107:12
 235:3
operates 428:5
opined 81:17
opinion 17:19 28:1 32:2
 32:12 33:2 55:18 63:8
 63:8 88:18 134:19
 205:7 234:17 236:4
 239:15 240:6 251:16
 298:1,5 306:13,16
 351:5 359:4
opinions 5:17 59:3
 62:10 165:11 205:6
 323:17
opportunities 264:20
opportunity 5:6 95:4
 105:20 200:4 323:4
opposed 151:13 164:4
 247:14 322:8 347:9
 356:17 418:21
opposite 418:7
optic 131:7
optics 168:7
optimal 55:5
optimistic 424:22
options 23:13 175:6
or's 384:18
oral 63:16 400:12 401:4
 402:18 403:3,4,8
 404:7,9,12 405:3
order 3:4 5:2 11:4,18
 12:7,9 14:6,20 15:8,8
 16:20,21 19:13,15
 20:4,17,18 21:7 24:8
 24:10 25:4 31:6 39:20
 43:8 45:18 52:9,20
 53:5 54:11 58:1,11
 72:8,10 79:16 84:16
 90:9 105:12 107:4
 116:2,9 119:4 123:1
 123:14 128:10 130:8
 146:10 147:10,16,19
 151:19 152:15 153:7
 155:8 157:17 158:6
 158:14 159:4 160:1

160:10 164:21 165:14
 166:5,7 196:13 206:2
 206:11,12 213:4
 216:4,9 222:10,15
 223:11,11 230:9
 231:11 234:9 236:13
 236:20 237:4,6,15
 239:2 241:9,11,18,22
 242:5 246:13,21
 247:17,19,21 294:17
 321:19 395:22 424:3
 425:15 426:6 427:19
 427:21 428:4 429:3
ordering 85:10
orders 11:2,3,15 13:20
 14:4 15:3 76:1 110:14
 120:17 121:21 122:19
 122:20 154:4 157:7
 172:18
ordinarily 176:10
ordinary 277:13
organizations 168:14
organize 99:1
organized 253:20
orientation 181:18
 182:3
original 213:22
originally 260:19 301:4
 324:7
Orr 359:18
OSD 210:15
ought 85:3 225:10
 321:19 323:19 343:1
 419:9
outcry 124:11 180:6
outline 280:9
outlined 100:20 105:11
outlines 101:1
outrage 180:7
outset 96:11
outside 56:3 191:21
 289:2 402:6 404:16
outsider 53:7,10
overcome 230:4 379:17
 380:5,17 382:13
 383:15 384:11 387:2
overdrawn 51:5,6
overemphasize 186:1
overhaul 106:21 377:13
overly 396:11
oversimplify 126:18
overstepping 70:19
overt 314:3,4,19 365:9
 365:11 366:5,19
 369:19
overtures 409:1
overturned 60:8 61:4
 426:2
overwhelming 193:18

303:12 415:1
owe 227:7
owed 28:2
oxymoron 69:18

P

P-R-O-C-E-E-D-I-N-G-S
 4:1
p.m 215:11 332:1,2
 429:19
packet 6:22 8:7 304:9
page 3:2 6:17,22 7:8
 163:7 264:9 293:15
 304:13 309:22 339:18
 415:13
pages 6:21 73:22 74:4
 112:12
paid 326:9
paint 356:7
paints 109:6
pamphlet 113:16
 205:16
pamphlets 113:14
panel 1:3 4:8,8 63:20
 95:9 127:11,14 128:2
 128:12 132:7 133:19
 134:5 136:17 137:21
 142:18 143:4,11,22
 144:1,5,11,14 150:21
 164:11 171:12 188:4
 202:13,16 213:9
 223:3 226:20 259:20
 275:18 277:7,9 300:3
 334:15 359:19,21
 413:2,12
Panelists 186:12
Panels 95:10 136:12,13
 139:13 206:17 207:10
 257:14,15 333:4
paper 60:20
paperback 121:14
paragraph 112:7,11
 132:19 233:6 235:4
 244:17 392:16
paragraphs 116:13
 208:16,17
paralegals 94:4
parallel 85:7
parameters 398:14
Pardon 117:9 295:7
parent 4:8
parents 352:14
park 26:4,9
parkland 26:10
Parliament 26:18
parole 17:2
parse 370:10
parsed 381:22

parsing 377:9
part 11:22 31:17,17
 32:1,12 35:16 36:8,16
 36:17 37:13 38:1,1,8
 39:15,21 40:4 41:3
 42:8 49:4 55:10 64:5
 71:21 73:9,12 91:1
 98:14 99:17 107:10
 111:3,19,20 112:19
 112:20 114:14 115:2
 129:21 138:3 141:21
 142:5,9 143:11
 148:13 163:21 164:18
 166:17 176:2 182:11
 235:16 250:6 257:4
 260:10,11 262:18
 269:9,10,11 272:16
 275:1 292:15 298:16
 302:11 365:9 372:14
 382:16 398:2,2,10
 399:7 400:10 401:22
partial 67:4,6
participate 85:18 305:6
participation 307:5
particular 16:17 27:17
 32:15 38:6,7,15 40:1
 42:15,16 45:9,10
 49:13 50:14,18 57:9
 67:1,14 98:12 116:2
 148:13 199:3 223:9
 226:21 238:5 280:17
particularly 11:2 12:11
 29:12 32:3 98:6
 243:10 295:14 335:16
 378:21 397:11
parties 83:7
Partly 193:21
parts 35:14 36:1,12
 37:21 39:15 71:14
party 313:19 318:10
 320:5 325:11 326:1,2
partying 316:22 318:7
pass 309:8 405:6
passed 6:18 15:18
 18:15 32:21 33:1,3,7
 75:2 97:21 103:13
 109:15 122:15 167:22
passive-aggressiven...
 183:9,22
passively 184:4
paternalistic 185:18
patience 71:3
patient 82:21
Patrick 1:12
patronizing 65:11
patted 339:12
pattern 41:14 48:13
 345:14
pause 140:16 370:9

pay 144:10 270:7
Payne 255:6 394:6
PDF 194:22
peacetime 32:22
peck 235:22
Pede 2:2 3:6 10:18
 64:21 73:2 92:14,21
 93:9,16 94:1,15,22
 100:11 107:17,20
 110:10 121:4,13
 123:21 124:2 128:6
 128:13,19,22 129:11
 129:17,19 130:4,9,12
 130:17,20 131:2,7,11
 135:3 136:3 138:21
 139:8,10,17,20 145:2
 148:4 154:1,16,21
 155:6,10 156:9 163:1
 163:6 166:3 167:7
 169:16,22 170:3,7
 174:7 175:2,22
 176:15,18 177:6,8,20
 178:19 179:6 186:10
 186:20 187:3,5,7,16
 187:20 188:3,9,13,15
 189:9,15,20 190:2,9
 190:20 191:11,14
 192:22 198:3 200:2
 201:15 202:2 204:19
 204:22 206:5 207:13
 207:20 208:2 209:15
 209:18 210:18 215:6
 224:7 273:20 276:7
 291:14 292:10,14
 293:6 302:3 332:17
Pede's 7:4 64:12
pedigree 283:12,13
peer 183:6
penalty 22:2,4,9 23:7
 24:8 25:5 33:14 44:13
 256:13 403:18
pending 53:19 63:3
 161:12 208:12 210:19
 213:4 398:11 427:19
 427:22
penetrate 402:6 404:15
penetrating 402:17,20
 402:21
penetration 235:5
 390:8 399:10 400:6
 400:17,19 401:7,17
 401:21 402:2,2,5,13
 402:15 404:3,5,12,18
 405:15
penetrative 78:16,17
penis 399:12 400:3,6
 400:18 401:1,10,18
 402:16 403:2 405:6
Pentagon 72:20 87:8

94:6
people 63:20 70:2
 84:11 88:20 102:6
 109:3 120:6 131:4
 134:11 136:20 143:16
 144:17 147:12 158:7
 169:8,18 171:5 173:5
 175:10 202:5 211:3
 225:21 238:1 249:16
 250:11 258:2 275:14
 278:2,11,21 281:8,22
 282:9,22 283:2 290:7
 293:6 296:3 298:16
 300:16 317:2,4 318:8
 327:2 328:7,15 329:2
 329:21 330:18 332:19
 333:16 335:17 344:14
 351:19 357:7 359:8
 360:2 365:3 367:10
 368:2 375:1,5 380:7
 392:2 393:3 396:12
 403:13 406:4 415:10
 418:1 420:17 421:14
 422:2 424:14 425:19
people's 216:4
perceive 140:20
percent 112:19 132:6
 150:3 189:12 190:22
 191:4 192:1 193:8
percentage 190:6,18
perception 254:11
perfect 101:18 102:8
 106:4 119:2 129:3
 170:5 221:10,10
 227:10 293:22
perfectly 426:18
perform 90:9
period 95:21 97:20
 122:14 233:9 241:2
permissible 312:10
permission 235:21
 391:5,14
permitted 103:21
permitting 12:5,8
person 7:19 43:10,11
 51:9,19 80:17 86:12
 94:11 132:21 133:1
 176:19 194:6 198:19
 224:8,9 226:3 233:8
 233:10 239:22 241:12
 241:16 245:12 246:1
 248:12 285:10 286:11
 288:19 305:22 307:5
 311:12 312:11,16
 314:12,18 315:4,8,9
 315:17,17,20,20,22
 316:15 317:5 318:18
 318:20 319:2,5,6,10
 319:13,19,20 321:4

321:17 322:3 323:15
 327:13,22 329:10,13
 337:4 340:10,12
 341:4,5,9,11 342:19
 349:8 352:19 354:6
 356:7 358:12 359:13
 361:10 363:2,15
 364:8,16 365:10,14
 368:7 373:15 376:22
 380:21 381:20 384:12
 391:3 398:5 408:8,9
 408:21 409:12 410:14
 411:1,15,17,18,22
 414:4,10 415:2 416:1
 417:7,11,20 418:4,11
 420:18 422:4,6,7,10
 423:21 424:16
person's 233:11 240:1
 246:3 315:14 347:10
 352:17 367:18 417:12
personal 80:6 145:10
 236:4 299:15 306:13
 375:22
personally 96:15
 131:22 157:21 287:7
 290:6 329:17 393:12
 426:16
personnel 121:2
persons 141:17
perspective 50:5 53:9
 90:18 127:10 143:2
 207:12 361:6 416:10
perspectives 253:7
persuade 98:11 198:4
persuaded 293:5 370:9
 411:15
persuasion 98:14
persuasive 46:14
petition 63:7,7,12
phenomenal 210:8,8
PHO 83:10 86:12
PHO's 86:17
phone 9:6 10:5 184:22
 217:1 218:10 219:6
 219:18 220:3,6,14
 221:14
phrase 235:6 267:1
 338:5 398:5
physical 41:13 42:7
 59:11 86:9 91:17
 145:12 194:1 242:8
 242:15 243:17,19
 244:18 245:15 248:7
 256:15 275:5 307:3
 346:16,17 348:2
 379:12,15 380:12
 381:5 384:6,14,16
 385:1,4,5 387:1 422:6
physically 272:10 306:6

307:4 319:8
pick 27:7 58:6 177:11
Pickands 142:12
 309:20,21 344:17
 345:7
picture 17:17 196:10
 259:4
pie 193:3 281:18
piece 98:3 138:15
 155:16 183:14 255:12
 281:18
pieces 167:1
Pike 77:12 153:10
pile 122:20
pill 327:10
pinning 381:14
pipe 197:5
pipeline 161:15
pistol 48:19
place 21:3 59:21 100:13
 134:18,19 183:17
 192:20 214:5 299:19
 339:3 363:7,14 401:5
placed 326:5
places 132:16 300:13
 378:20
placing 245:12 354:6
 362:16 363:1,15
 367:14,17 368:7
 376:22 380:20
plain 70:11 337:17
plainly 59:19
plan 11:13 13:13,14
planned 322:22
plate 273:14
plausible 414:9
play 13:21 60:9 217:7
 324:6
playing 14:5,10 247:12
plead 193:19
pleading 211:19
pleas 193:13,16
please 31:13 39:9 44:7
 56:10 64:16 78:12
 79:16 221:4
pleasure 215:6
plenary 62:15
plenty 195:18 224:22
 232:10
plugging 379:2
point 64:4 65:2 75:22
 85:11 97:16 112:4,21
 125:1 134:10 135:4
 135:10 137:5 138:22
 149:22 150:4 159:9
 165:1 167:8 168:17
 173:13 180:8,11
 183:2 192:22 194:9
 196:15 197:11 199:9

200:13 202:4 225:6
 233:14,21 234:10
 240:5 244:7,9 247:20
 248:16 253:11 255:5
 258:7 262:8 266:18
 270:16 275:11,13
 278:19 280:6 286:21
 287:4 288:15 297:9
 307:2,9 308:7 321:13
 324:1 325:8 326:11
 326:15 329:12 332:15
 332:15 333:14 339:7
 347:4,5 367:7 375:21
 383:18 386:17 389:17
 395:15 412:21 415:4
 416:15 423:16 425:16
pointed 136:3 158:3
 231:4 233:22 253:14
 268:4 324:15
points 10:10 209:11
 253:8 255:7 290:12
 302:18 329:8
policies 181:13
policy 37:17 84:6 91:15
 94:7,7 95:9 97:6
 113:12,13 210:1
 315:3,7,13 376:4
 405:12
polite 320:9
political 168:7 172:14
 172:19,20 425:3
politics 167:14
poll 328:15
pop 187:12
population 150:8
portion 152:3 163:15
 183:21 207:1 378:22
portions 38:7 110:22
 260:13
pose 338:21
posed 228:15,16 332:9
posited 274:8
position 97:9 259:11
 282:20 288:11 426:10
positive 157:3 351:9,20
 353:12
possesses 30:8
possession 43:2
possibilities 201:1
 265:4 308:19
possibility 316:16
 411:16,22
possible 152:7 245:5
 296:21 365:10
possibly 6:8 144:6
 185:22 408:15
post 16:3
Post-Kaiser 150:1
post-trial 87:19

posted 415:11
posting 418:21
potential 61:21 79:11
 142:14 153:6 201:1
 287:20
potentially 200:5 229:8
 245:8 382:2 397:9
 420:7
pour 319:9
power 15:15 26:18
 27:18 28:6 30:16
 40:13 46:1 47:13 50:6
 50:8,9 122:22 354:11
 354:19 355:15
powerful 113:2 288:2
PowerPoint 13:9
powers 87:19
practicable 16:6
practical 247:11 263:8
 268:16,17 270:3
practicality 424:21
practice 95:5 96:7 99:9
 102:22 105:4 106:6
 113:20 117:1,1
 122:12,13 144:5
 178:1 193:7 254:20
 263:17 264:11 266:9
 336:20 379:22
practiced 96:16
practices 266:4
practicing 107:6 169:10
 210:11
practitioner 95:12
 96:21 102:11 111:12
 116:11 122:9 125:14
 163:16 214:14
practitioner's 113:18
 155:13
practitioners 6:6
 102:16,19 103:13
 104:15,16 106:1
 107:5 122:3,21 130:5
 137:3 144:3 174:6,14
 176:3,3,4 177:14,15
 178:13 186:17 198:2
 198:5 210:22 212:8
 234:19 292:11
pragmatic 177:22
pragmatism 180:1
Prather 64:4 98:9,13
 99:7 301:7
prayer 270:4
pre-2007 96:2 258:3
pre-2012 394:9
pre-Article 81:12
Preamble 36:13,21 37:2
 37:8 39:16
preceded 33:2
precedence 26:19,21

27:2,14
precedent 27:16
precise 214:15,16
precluded 237:6
preconceived 222:13
preconception 275:20
predates 177:4
predecessor 86:17
 109:17
predict 106:13
predictability 102:22
predicted 294:12
predispositions 143:14
prefer 96:3
preference 234:5 247:6
preferral 211:2
pregnant 146:20
prejudicial 429:3
preliminary 83:2 86:11
 86:18 166:6,13,14
premeditated 22:16
 23:10 323:11 330:9
premeditation 322:13
 322:15 323:21 329:14
 329:18,22 330:4
premise 419:7
prep 260:19 261:1
preparing 167:21
preponderance 267:7
 301:18
prescribe 16:3 18:16
 30:15,19 33:5,12
 44:12,13 113:11
 114:3
prescribed 24:13 28:20
 29:7 35:15 36:6 39:11
 39:16 45:5 69:20 70:7
 91:10 111:1 112:12
 112:17,22 115:18
prescribes 38:11 71:22
 72:11
prescribing 31:15
 38:19
prescriptive 36:3
presence 41:13 42:7
 254:10
present 1:14 69:5 82:8
 137:22 281:6 407:7
presentation 6:19 7:1
 13:3,7 54:14 216:6
 237:14 309:1 325:10
 427:14
presentations 65:3
presented 48:20 223:12
 229:10 310:18 316:19
 323:4
presenters 304:1
 349:18,19 375:3
 396:13

- presenting** 325:20
preserve 85:14
president 12:6 15:7,18
 16:1,2,6,11,16 17:3,8
 17:10,11,15,20 18:1,2
 18:16 19:10,17,19,20
 20:2,5,6,8,16,21 21:1
 21:6,9 24:7,17 25:3,9
 25:15,18 26:20,21
 27:12,13 28:2,6,11,21
 29:15 30:5,11,13,17
 31:2,5,6,15,20 33:4
 33:12 34:11,12 35:15
 36:7,20 37:15 38:2,18
 39:11,19,20 40:4,12
 40:14,16 42:12 43:16
 43:19 44:5,12,13 45:8
 45:10,14 46:7,11,19
 46:21 47:2,12,19
 49:13,15,21,22 50:4
 52:2,5,11,20 53:4
 54:14 55:9,12 56:8
 57:15 59:14 60:1,4
 61:9 64:1 66:15 67:20
 68:6 69:4,10,13 70:10
 70:13 71:5,19,21
 72:10,19 73:19 74:22
 75:3 82:3,15 85:5,9
 85:12,21 86:2,16 87:9
 87:15 91:10,19,22
 111:1 112:10,11,17
 113:10 114:2 116:1
 118:18 119:1,14
 122:11,15 123:1
 147:9 153:6 156:4
 159:4 166:4 174:18
 196:13,18 204:12
 237:4,15,17,22
 239:12 247:16 270:8
 280:10 425:14 428:19
president's 18:10 21:4
 21:11 28:12 29:21
 49:8 52:15 60:14
 100:21 104:10 106:16
 158:8 207:17
presidential 21:19
 61:14 124:20
Presidentially 39:16
Presidents 20:21
presiding 1:13 83:2
 86:3 87:2
press 175:13
pressure 183:7
Presumably 14:21
presumes 51:4
presumption 228:17
pretrial 16:3 78:21 79:9
 79:12,15,17 80:20
 81:5
- pretty** 14:7 21:22 29:9
 68:18 107:7 109:13
 111:16 127:12 163:4
 205:15 254:21 278:17
 349:8
pretzel 269:12
prevalence 193:4
prevalent 194:6
prevented 125:19,21
 276:13
previous 96:14 110:9
 267:10 301:16 306:19
 308:3 387:14
previously 81:17 213:1
 310:19
primacy 46:18
primarily 167:13
primary 98:18 278:10
prime 32:20
Princeton 185:4
principal 312:21
principle 25:22 26:11
 29:4,6,10,13 30:22
 135:6 191:17
principles 312:14
print 336:11
prior 166:7 176:9
 213:21 300:20
privilege 82:21 83:5,6
 88:5,6,13 89:3,18,21
 90:6,7,19,21
privileges 351:15
probably 35:8 56:13
 73:3 75:22 111:19
 113:3,21 118:11,16
 118:17 123:3 124:17
 145:3,4 156:11 162:8
 164:11 171:13 188:5
 190:21 191:14 208:5
 213:2 219:4 228:2
 239:15 240:6 257:7
 288:5 289:17 300:1
 308:7 321:22 322:17
 335:4 365:8 388:8
 400:13 424:10 425:2
problem 63:21 84:10
 113:1 124:15 125:19
 126:2,22 133:20
 152:6 174:15 182:4
 219:16,17 222:1,2
 229:2,8 231:3 233:19
 234:10,18 235:20
 236:11,15 240:3,4
 241:21 242:21 243:16
 244:5 246:8 247:15
 256:8 257:20 259:4
 266:21 268:15 269:9
 285:16 291:21 297:13
 301:9 317:11 325:22
- 333:2 335:21 336:8
 346:2 359:10 367:12
 373:9,11,19 374:3
 375:2 383:9 387:5
 396:3 397:22
problems 170:1 173:9
 229:12 267:10,17
 270:12 281:22 392:22
procedural 60:14,18
 65:5 66:9,15 67:22
 71:11 115:15
procedurally 154:15
 247:2
procedure 111:9
procedures 16:4 31:18
proceed 158:19 186:15
 230:2 345:8
proceeding 87:1
proceedings 1:3,5 4:8
 81:10
process 3:4 5:2 68:10
 72:18 73:2 74:14,19
 82:9 97:7 99:16 100:7
 100:9,20 119:4 124:4
 125:5 127:3 153:4
 155:12 157:15,16,21
 157:22 160:20 162:5
 162:7 166:19 168:14
 168:20 169:7 171:4
 174:4,9 176:14 211:3
 216:9 258:21 266:14
 269:2 279:21 283:4
 339:5
processes 99:19
proclivities 390:16
produce 48:22 121:19
produces 100:8
producing 187:10
product 169:13 188:4
 202:19,22 205:17
production 73:3 83:4
 83:11 99:6
Prof 1:19
professional 97:22
 98:11 155:22
professor 9:3 10:5
 105:15 215:14 217:1
 217:11,11 218:5
 219:14 220:12,21
 221:4,22 222:1 228:7
 229:20 233:22 234:13
 235:8 237:15 239:4
 240:12 244:21 249:5
 250:6 251:16 253:14
 264:1 276:17 280:3
 283:9 285:18 289:16
 290:18 291:17 304:18
 308:20 310:13,21
 313:16 316:5 320:22
- 321:12 322:18 329:4
 329:6 330:13 331:3
 332:4,16 349:21,22
 351:12 352:5 360:11
 378:4 392:14,17
 393:21 395:8 396:4
 406:17 409:13 410:5
 410:6,9 419:13
 421:12 427:12
professor's 235:2
 252:19 359:4 423:16
profitably 35:3
Program 148:21
programs 278:13
progress 75:9 107:1
progressive 98:3
 101:19 143:4,15
 200:8 276:8
prohibited 255:22
prohibits 51:1
prominent 21:3 277:11
promulgate 21:2
promulgated 15:3
 19:11 20:15,17 71:5
promulgates 20:2
 39:21
promulgating 20:8
 43:20
proof 235:5 253:16
 262:18 299:4 300:11
 335:11,12 413:22
 423:20 424:9
properly 278:3
property 194:5
proposal 7:22 8:21
 223:5 239:8 246:19
 251:19 252:11 257:22
 258:10 295:9 305:4
 424:22
proposals 226:16 305:3
propose 224:15
proposed 7:15,17
 98:18 213:12 294:8
 296:11 308:13 310:3
 397:16
proscribe 392:1
proscribed 185:21
prosecutable 366:17
prosecute 49:16 109:1
 148:8,16 315:20
 336:22 363:16 373:7
 373:17
prosecuted 63:2 89:8
 101:6 335:18 368:2
 415:13
prosecuting 142:21
 316:17
prosecution 101:7,21
 109:7 111:8 193:5

264:6 394:13 421:3,4
421:8 424:13
prosecutions 33:9
prosecutor 33:10 38:22
146:13 150:19 240:19
280:12 303:13 322:6
323:10,20 373:16
prosecutorial 49:15
50:1,10 363:22
prosecutors 49:21
100:2 142:21 143:1
147:3 149:14 200:6
280:7 397:5,7
prospective 333:5
334:4
protected 90:21 420:7
420:7
protection 374:21
388:12
protective 88:14
prove 43:7,10,11 212:9
212:11 244:13 269:3
301:17 323:10,21
412:11 418:9,10,11
418:15 421:3,8
428:21 429:8
provide 11:12 25:21
26:11 81:11 85:6,6,22
86:15 87:14 88:6
150:7 195:7 213:8
337:15 427:20
provided 40:8 85:12
91:11 126:16 195:21
212:22 227:15 237:8
280:10
provides 15:6,14 38:12
38:21 264:20
providing 37:11 135:13
148:3
province 44:19
proving 267:6 322:6
provision 15:20 29:9
38:15 82:16 83:1
85:11 91:8 145:19
238:5 255:11,16
288:13 298:12 326:10
336:12 341:2 345:15
354:9 372:20 399:16
406:20 407:8
provisions 12:10,12
38:5 43:18 74:22 75:5
89:16 166:20 295:20
306:19,20 377:10
prudence 424:21
psychotherapist 82:20
88:15
psychotherapist-pati...
83:4 88:4,13 89:18
90:6

public 97:5 102:14,17
103:1 123:10 147:17
161:6,12,14,21 162:1
210:1 334:3,4,14
335:18
publication 19:1
publications 19:8
publish 72:12,15 75:11
75:12 76:3 121:15
165:21
published 19:5 71:13
75:11 77:2,16 92:7
160:16,22 162:10
166:2 190:10 192:12
265:7
publisher 121:21
publishing 77:3 95:16
pull 177:9 397:19
pulled 214:3 273:21
274:3
pulls 232:21
punch 311:8,11,12,20
311:21 312:6,18
313:7,9,12 314:13
317:3 318:9 325:10
325:11,17,19
punches 134:2
punished 16:14,22
388:18
punishment 16:18
38:17,19 91:18,20
214:17,22 215:2
punishments 28:19
36:18 37:5 116:12
punitive 12:1 15:10
16:13 36:16 37:4 38:3
43:1 47:3 60:16,19
71:16 115:4,5,6,11,17
115:22 237:16 239:13
273:12 298:13
purchases 50:20
purport 53:7
purpose 140:21 181:9
199:11 200:22 310:16
311:22 321:15,16
322:12 323:2 329:20
337:14
purposes 16:12 33:13
37:21 40:22 60:12
80:19 82:20 86:10
87:16 321:21 416:6
pursuant 15:17 33:14
38:18 68:5 88:15 99:7
pursue 397:5
push 72:20 74:17
196:11 384:13
pushed 167:1 178:2
210:14 379:19
pushes 381:3

pushing 258:9 278:2
380:2,6 381:13 382:6
384:7,9 386:3 387:4
425:16
put 10:12 37:7 58:10,11
76:6 77:13 78:21 83:8
129:22 133:7 142:8
144:21 147:19 165:7
172:12 190:22 201:17
204:15 205:16 214:4
220:17 221:2,14
224:6,9 233:9 235:13
242:3 250:10,14
257:15 267:14,15
268:20 270:5,15
278:22 293:17 294:6
297:19 298:11 300:8
300:17 302:7 311:2
318:2 324:22 327:9
330:7 352:3 355:17
355:22 363:5 381:20
408:3 411:13 429:11
puts 78:15 203:1 229:7
315:5 380:11 402:5
418:8 428:19
putting 27:9 164:17
165:3 268:16 270:3
297:14 317:13 329:19
345:17 382:22

Q

quality 260:16
query 295:13
question 25:2 31:12
32:5 34:20 44:17
47:10 50:22 54:2,7
55:1 59:17 61:13,15
63:18 64:19,22 65:11
65:14,14,15 67:14
68:9,13,15,16 69:1,7
70:7,15,16 123:6
137:10 138:17 142:3
148:6 154:15 161:1
173:7 202:16 203:12
213:4 228:15 230:17
230:21 231:8 234:14
236:6 239:1 246:6,8,9
246:18,20 265:17
267:19 268:10 276:20
280:21,22 281:4
282:11,18 283:8,21
284:3,12 285:7
286:16 288:7 291:11
292:13 299:1 308:16
315:18 321:15 322:21
328:15 336:19 338:22
343:19 351:3 352:21
353:15 354:4 358:21
359:1 361:1 368:4,5

371:1 373:18 378:8
379:9,10 382:19
386:13 388:8,17
394:22 406:10 412:7
420:13 421:19 422:21
423:12 428:13
questions 9:9 22:20
68:13 69:1 92:13,16
95:1 103:8 107:13,20
162:16 175:11 207:15
208:3 210:17 246:10
253:12 264:18 265:12
302:9 303:11 355:4
quick 6:13 11:20 31:11
68:8 78:10 92:4
159:16 203:11 225:10
225:18 227:14 265:16
388:10 426:22
quickly 12:8 71:4 72:16
73:2 74:17,20 159:5
225:9 408:1
quiets 255:2
quite 93:19 110:4 177:4
264:4 286:19,20
338:11 387:6 389:15
389:22
quo 228:20 229:16

R

R 1:17,19 2:8
RAINN 191:19
raise 103:5 231:5 234:4
244:6 264:16 270:10
283:5 290:13 293:16
298:22,22 299:2,17
299:18 300:9,11
301:17 311:5
raised 68:14 103:21
134:10,11 169:5
200:14 234:2 264:13
266:18 270:12 278:7
278:7 285:18 298:15
313:3 347:5 382:18
raises 159:14 233:13
299:10
raising 158:5,17 209:8
234:7 267:6 282:19
301:22 388:7 421:12
random 373:1
range 88:18 311:14
420:5
rank 171:17 364:16,17
rape 7:18 82:4,17 88:4
133:8,13 148:9 150:2
163:16 164:2 170:15
179:2 191:20 202:1
212:4 256:12 271:3
271:20 272:11 274:16
276:10 317:6,20

319:22 322:11 324:13
 328:17 334:13 348:8
 362:20 365:4 378:22
 381:16 382:17,17
 385:21 387:13,15,20
 389:18 390:9 402:16
 422:18
raped 133:15 422:10
rapes 170:20
rare 296:20
rates 145:15
RCM 77:8 85:7
RCM1004 40:8
RCM1004(c) 34:15
RCM707 47:8
RCMs 34:14 71:15
 87:18
rea 252:21 262:10 264:4
 302:20 311:1,22
 324:6,20,21 325:12
 362:22 416:21 417:3
 418:13
reach 33:18 195:9
 222:21 353:20 354:2
reached 106:20 208:3
reaches 104:21 181:16
react 394:10
reacting 172:20 318:5
reaction 257:3 288:9
read 51:8 100:15 106:4
 110:9 131:3 133:10
 141:16 190:15 191:7
 220:17 248:10 263:12
 264:9 278:12 307:16
 307:17 310:17 321:10
 332:20 355:1 394:7,8
 400:11 401:18 415:21
 418:17,18 419:14
 421:10
read-ahead 255:5 265:8
reader 339:5
readily 32:18
reading 139:4 206:19
 254:16 310:16 400:22
 415:16
reads 134:7 137:19
 239:21
ready 93:8 220:18
 286:7
Reagan 20:16,21 24:7
 25:3
real 6:13 78:10 92:4
 146:14 158:10 203:10
 230:19 281:4 317:11
 336:16,19 361:12
realistic 250:13 424:8
reality 172:15 322:17
realize 166:21 251:8
 271:7 409:1 411:18

417:18
realized 414:4,6,10
 415:7,22 416:2
really 10:12 29:8 33:17
 35:18 40:12 56:6
 57:17 58:4 61:13
 67:12,15 76:18,19
 78:8 96:22 110:11
 122:18 128:12 130:1
 132:13 136:4 138:4
 140:20 146:16 158:11
 165:20 172:5 173:1
 174:5 182:1,22
 184:12,15 192:2
 195:19 196:9,11
 197:10 202:13 215:4
 221:16,20 222:16
 239:18 240:1 252:21
 253:20 254:12 255:5
 257:15 258:21 259:16
 263:21 264:5,8
 268:10 270:13 276:10
 285:16,19 292:6,18
 296:4 298:21 299:8,9
 299:21 317:9 320:5,5
 322:20 334:8,17
 336:13 337:3,6 339:2
 340:4 341:2,2 344:7
 345:1,4 347:5 354:20
 362:2 375:15 377:2
 378:8 379:16 380:7
 383:17,20 388:9
 389:20 392:12 394:8
 398:13 399:10 400:8
 403:1 409:2 411:10
 412:1 414:17 417:19
 418:4 419:7 422:10
 424:12,14 425:17
 429:7
reals 178:16
reamended 163:8
reason 27:20 124:8
 138:9 158:22 166:18
 175:4 177:21 191:17
 213:20 224:14 226:2
 226:4 235:13 247:11
 262:5,20 288:17
 296:13,19 315:13
 359:5,6 377:14 396:7
 414:6
reasonable 70:1,2,3
 212:9 315:15 359:15
 360:1,6,8,19 362:9
 363:21 364:7,9,22
 365:8,8,18,19,21
 366:2,6,8,16,18,22
 367:3,8,18 368:2
 370:21 372:5,19
 373:9,13 374:6,7,9,17

375:11 376:6 377:1
 409:20 410:1 413:16
 414:4,10 415:2 416:1
 417:7,11,20 419:5
 422:4 423:21 424:16
 426:18
reasonableness 368:9
 377:11,16
reasonably 407:11,20
 409:22 410:1,11,19
 411:1 413:6,18
 423:14
reasoning 82:6
reasons 84:14,18
 102:14 226:11,12
 329:16 337:11
rebut 267:8
rebutting 299:4
recall 11:6 12:13 13:16
 18:17 21:20 62:20
 71:22 73:4,8 86:14
 298:1
recast 135:15
received 102:3 190:13
receives 144:11 161:10
 166:4
reckless 409:16 413:21
 423:21
recklessness 407:2,6
 407:16 409:14
recognition 17:15
recognize 66:19 67:20
 68:1 91:5 231:1 275:6
recognized 46:7
recognizing 179:17
 192:7
recommend 5:9,9
 54:10,12,17,18
 100:16 124:1 128:9
 129:7 163:14 164:19
 174:17 193:1 270:5
 294:15,16 300:5
recommendation 39:19
 71:10 75:7 82:2 83:21
 87:10 130:7 178:6
 179:7 291:18 293:1
 354:12
recommendations
 12:10 54:16 83:14
 84:4
recommended 72:1
 84:6 91:15 174:11
 285:15 316:5
recommending 58:10
 63:22 100:14 141:11
 283:1 321:1
recommends 129:6
reconvene 9:14
record 93:6 215:11

219:21 250:19 251:1
 260:6 332:1 377:5
 428:6 429:19
records 83:5,6,18
recreate 308:8
recruited 358:12
recruiters 358:12
recruits 139:4 277:13
 334:15 356:2
red 8:22 9:1 198:13
redacted 220:11,20
redefine 173:20
redefining 345:17
redefinition 339:4
redoing 234:16
redrafted 247:14
redrafting 337:19
reduce 98:20,22 205:20
redundant 296:17
 373:20
reemphasized 57:1
refer 96:1 308:7 310:22
 400:12 415:8 426:8
reference 121:4 178:22
 179:3 197:2 229:9
 338:20
referral 273:11
referred 8:13 79:13
 178:20
referring 394:5
refers 350:16
refine 167:22 176:20
refined 203:4,8
reflected 136:5 198:14
 219:21
reflecting 99:20 194:3
reflection 99:17 122:19
reflects 425:5
regard 231:4 395:21
regarding 29:13 38:6
 83:15 161:12 427:13
regardless 214:12
regime 43:14
Register 71:13 76:4,4,6
 77:3 92:7,9 160:12,17
 162:10 213:1,5
registerable 276:13
regulation 15:16 76:20
 78:6 113:13
regulations 26:22
 113:12
regulatory 34:16,17
reject 419:7
rejected 98:6,7 238:18
related 121:7
relating 26:22 105:10
 116:2
relationships 354:7
 355:5 358:6,8,10

relatively 35:16 159:16
release 79:8,8,16
relevance 110:10
relevant 157:8
relied 77:7,9
relies 264:15
relighting 67:10
rely 127:18,19 171:22
 334:8
remain 175:20 235:14
remaining 225:15
remains 131:14 156:21
remanded 62:19 63:9
 63:14
remarkable 280:4
remarks 107:12 129:1
Rembrandts 11:8
remedied 118:21
remedy 107:11 263:16
remember 12:18
 122:21 143:7 234:1
 281:18 320:14 345:2
 348:12 369:9 371:22
 403:12 418:1
remind 114:21 179:12
removal 176:9 248:5
remove 289:6 373:21
 406:11
removed 81:19 108:22
 353:14
removing 135:9 308:4
 373:8
rendered 315:6
repair 226:5,6
repeat 10:22 238:9
 414:20
repeatedly 46:22 57:4
repeats 38:9
repetitive 63:19
replace 346:5,7,10
report 138:9 171:2,7
 188:19,19 190:11
 193:2 194:7,17 195:1
 195:5,7 200:7 210:7
 210:10,10 301:19
reported 170:14,20
reporting 101:21 138:9
 170:13 189:21 190:2
 190:4,20 191:1,7,18
 191:21 192:8 193:4
 255:1
reports 170:15,17
 191:12
represent 268:22
Representative 27:11
 165:1 167:8 173:14
 236:9 238:14 241:20
 346:22
represented 68:6

request 4:7 371:13
 427:12
requested 305:1
requesting 292:11
require 29:22 83:11
 119:16 231:14 235:5
 235:21 238:20 329:22
 332:10 337:15 340:13
 377:11 386:9 421:2
required 22:9 23:2
 69:22 73:11 82:7,16
 89:4,13 123:3 233:13
 236:3 237:3 238:16
 239:7 245:18 250:11
 264:19 368:20 406:8
 408:4
requirement 30:22 52:4
 88:16 275:9 276:16
 306:9 396:1 406:12
 423:16
requirements 81:12
 83:15 90:8 264:12
requires 25:21 41:12
 53:20 55:19 81:2
 133:3 269:2 305:4
 326:22 340:10 372:20
 383:14 384:22 385:1
 399:9 401:17 402:12
 402:19 404:5
requiring 253:3
reread 418:16
research 286:22
reserve 236:1
reserved 49:6
reside 40:22
residual 229:8 246:8
resist 132:15 133:1
 233:10,11 239:22,22
 242:13 243:1 246:2,2
 378:11,13 379:18
 394:18 395:1,14
 411:14
resistance 133:2,4,8
 135:17 159:14 171:19
 229:9 233:13 234:2,6
 238:16,22 239:7
 242:8,14,16 243:17
 243:19 244:18 245:15
 246:9 248:7 287:22
 378:8,17 379:17
 380:18 383:15 394:15
 394:22 396:2,8
resistant 182:19
resisted 238:18 378:16
resisting 137:18 417:9
resolution 62:21 70:10
 126:3 127:1
resolve 127:4
resolved 127:2 323:9

resource 145:9
resources 119:16
respect 5:14 10:8 28:2
 96:16 102:5 179:8
 197:2 222:18 235:16
 248:4,20 260:9,11
 266:19 291:3 377:21
 397:6 398:18 399:11
 399:13 408:2
respond 157:13
responded 202:2
responding 75:4
response 87:22 88:1
 95:9 136:5 138:22
 148:20,21 227:7
 291:7 388:10 408:22
responsibilities 140:13
responsibility 15:15
 30:1 43:22 66:13 67:4
 67:7
responsible 94:12
 95:15,19 202:5
 279:13 366:4 420:19
 425:12
responsive 34:19 71:9
 74:15 75:1 84:4 87:10
 206:17
rest 111:5 114:19
 163:19 167:4 197:21
 242:8 298:13 330:2
 372:19 377:17
restrain 357:6 382:14
 384:12
restricted 80:11,12
result 21:22 91:21
 136:13,16 289:6
 364:8 373:2 425:5,13
resulted 126:4
resulting 243:17,20
 245:11 373:3
results 180:7
resumed 93:6 215:11
 332:2
resurrect 140:19
resurrects 134:22
retained 78:22
reticent 245:3
Return 11:10
returned 298:6
reveal 89:11
reversals 265:5
reverse 151:7
reversed 152:1 416:5
revert 72:4
review 11:20 12:8 61:22
 62:10,14 63:7,16
 78:15 79:2 81:2 90:10
 90:13 95:17 153:21
 154:7 205:13 375:5

405:21 426:20,22,22
reviewed 96:12,14
 154:1 166:10
revise 9:17 11:15
 229:21 329:3
revised 20:2 22:3 23:6
 85:21 95:22 328:18
revising 72:2
revision 20:1,13 85:11
 249:7 285:3,4,5
revisions 73:5 155:4
 229:14,16
rewriting 268:12
rewrite 20:12,14 81:8
 81:10 202:8
rewritten 81:14
RFI 390:12 392:9
rid 67:3 198:15 199:16
 242:12 248:8 343:3
 343:11 345:21
ridicule 184:6 185:17
right 6:12 8:9 9:19
 13:14 27:5 35:2,7
 40:2 44:4,17 47:14
 53:6,14,19 54:4 55:2
 56:2 58:13 60:11 64:8
 64:10 65:10,14 66:4
 67:19 68:21 70:18
 72:21 76:22 77:21
 78:7 79:3,4,7,10,19
 79:20,21,22 81:7,20
 82:8,9 87:5 88:7
 92:10,20 101:10
 102:22 115:9,10
 116:1,4 117:5,13,16
 117:20 118:1 119:3
 122:8 127:20,20,22
 129:16,17,18 130:2,3
 132:3 136:2 138:14
 138:15 139:7,19
 151:14 153:1 154:5
 158:5 160:14 164:5
 165:2 169:21 170:2
 173:15 175:5 176:9
 178:21,22 183:3
 184:7,16 185:7 186:7
 187:2,19 189:1,2,19
 195:3,11 198:18
 201:15 202:6 204:6
 206:5,8 213:19 215:8
 218:18 219:6 220:9
 221:1,3 222:7 225:11
 227:9,15 232:20
 239:10 240:20 244:2
 244:22 245:19 246:14
 246:15,15 248:3
 250:2 251:12 252:14
 260:15 261:12 268:13
 269:21 270:6 273:4,8

274:22 280:22 283:20
 289:8,10 293:10,15
 294:21 297:15 300:20
 304:5,19 305:17
 309:12 312:9 313:13
 316:3 319:1,1 322:16
 326:19 328:9,19
 330:15 332:3 334:5
 335:10 337:18 338:16
 339:22 340:6 341:3,6
 341:17 342:7,13
 345:19 346:14 347:3
 349:12,21 356:11
 357:17 359:17 360:8
 360:21 362:12 363:18
 365:20 366:12 367:22
 370:8 371:6 374:8,12
 378:2 381:11,14
 382:15 383:16,17
 384:1,13 385:3,4,11
 387:16 388:2 389:1
 391:16,18 394:7,12
 396:5,17 401:12,15
 401:16 402:14 404:2
 406:6 407:13,21
 409:3 417:5 422:12
 422:12 425:4,12,17
 429:17
rigor 96:17
rise 66:22 189:21
 229:16
risen 180:6
rises 126:21
risk 58:1 123:14 147:13
 226:6 408:11 410:14
 410:17,20 414:18
risking 123:18
risks 408:8
river 147:1
road 11:12 201:8
 236:14
Robinson 42:19
robust 60:17 90:3
robustly 52:10
Rock 12:14,16
Rohypnol 326:5
role 21:12 28:13 29:15
 68:4 97:18 106:11
 107:11 110:13 252:20
 277:19
rolled 29:1
rolling 251:14
room 1:11 11:8 13:4
 56:13 107:1 250:22
 254:6 269:15 408:21
 409:11
Rosenow 344:18 345:7
rotates 95:19
roughly 193:8

roundabout 341:16
 342:22
route 58:1 159:21
routinely 41:20 126:21
row 24:3
RSP 12:11 81:16,22
 87:11 274:17
rubric 45:16 382:1
rule 24:18 66:15 77:9
 79:19 81:2,7,8,11
 85:5,22 87:9,13 88:4
 88:5,6 103:11 149:6
 166:6 186:3 196:19
 238:3 266:1
ruled 98:8
rulemaking 15:22
 100:21 104:10 106:16
 111:2
rules 15:9,10,15 16:4,7
 16:7 26:3,9,22 36:13
 36:15 37:2,3 66:8
 67:22 73:17,18 80:9
 80:13,16 81:14 86:20
 86:21 87:21,22 111:9
 111:10 113:11 122:22
 126:15 166:6,8,11
 196:12,16,17,19,20
 266:16 267:2 279:20
ruling 425:22
rulings 99:13
run 185:1 195:20
 235:20 291:21
rundown 78:10 92:4
running 13:3
runs 221:13

S

S 1:15 419:21
S&M 357:3,18 389:14
 393:4
sado-masochistic
 390:17
safest 301:21
sailor 277:13
sample 38:22 39:2
 46:13 116:10 122:6
 206:2 210:20 211:16
sanctions 256:18
 320:15
SAPR 183:10,13 194:17
 195:1
sat 161:4,9 183:12
satisfied 62:2 142:15
 286:18 328:16
satisfy 22:9 24:13
Saturday 13:18
saw 65:19 77:6 153:2
 273:11 312:16,17
 313:21 314:6 412:14

saying 30:11 37:8 44:4
 45:13,15 48:4 49:7
 51:16 52:1 55:12,21
 62:1 66:18 67:8
 106:19 117:7 130:6
 133:3 134:14,15,16
 151:9 159:17 168:9
 169:10 173:22 184:21
 208:6,10 209:6
 221:16 224:18 229:22
 230:10 231:16,17
 242:20 247:14 250:14
 262:22 264:3 265:14
 269:22 271:8 272:13
 275:1 293:6 295:21
 305:8 309:14 315:14
 319:9 325:19 336:1
 338:4 340:7,22 341:1
 342:3 352:5 358:20
 365:18,22 367:6,13
 372:4 374:13 380:1
 381:2,3 384:11
 386:15 391:2 413:9
 413:13 416:17 419:6
 427:4
says 7:3 16:14,21 17:9
 33:17 34:1 37:1,18
 42:2 43:17 45:7,8,11
 58:16 83:1 85:16 89:6
 114:9 131:13 132:20
 170:10 175:20 177:17
 233:6 234:22 243:16
 245:11 246:4 261:10
 263:13 271:14 273:10
 276:7 277:6 281:7
 284:18 293:16 298:6
 308:4 342:8 357:16
 361:14 368:10 371:4
 371:8 380:10 383:12
 391:12 400:5,17,19
 401:10 406:16 407:2
 407:3,19 408:6
 410:11 417:14 423:8
scale 106:21
scan 118:5
scared 380:7
scenario 41:19 69:15
 344:21,22 367:3
 371:16 373:7 376:10
 380:15 385:10 397:4
scheme 31:18 253:19
 271:5,10 346:16
schemes 270:20
Schenck 1:18 39:3 47:7
 58:3,9 60:5,20 80:2,6
 80:10 127:9 128:7,16
 128:20 129:10,16,18
 130:3 131:4,9 132:2
 148:18 151:9,12

152:5,8,12 161:1,4,9
 162:12,14 183:1,6
 184:19 186:6 201:20
 205:4 273:9 274:11
 282:21 292:9 293:10
 294:1 300:21 301:4
 301:11 304:2,7,13
 305:14 306:12 308:2
 310:20 311:15,19
 312:9,21 314:11
 323:22 324:13 326:11
 375:5,21 376:3,12,18
 403:20 404:21 405:16
 427:18 428:14
Schinasi 1:18 147:22
 148:5 149:19,21
 151:10,14 152:7,10
 152:13 180:10 182:9
 182:17,20 189:5,11
 189:19 190:1,8
 202:17 244:10 246:11
 246:16,18,20 247:10
 248:17 260:1,2,21
 261:6,9 274:4 279:12
 281:16 282:3,6 283:5
 283:8,21 284:3,17
 326:14 366:22 374:5
 374:15 375:15 376:9
 376:16 386:2,13
 389:6 391:8,15,19
school 93:18 94:3
 102:4 105:13 127:13
 178:11 181:20 275:15
 279:14,15,17,19
 280:2
Schoolhouse 12:14,16
Schulhofer 1:19 10:5
 215:17,20 216:12,18
 217:2,8,16,21 218:3,5
 218:8,16,20 219:1,8
 219:11,22 220:15,19
 220:22 221:5,8,11,15
 222:6 228:7,9 229:21
 235:10,13 236:8
 238:8,11,13 243:15
 243:22 249:5 250:6,9
 251:16,18 264:1
 276:19 277:2 290:15
 290:22 308:20 310:13
 310:21 313:16 316:5
 316:15 318:4,15
 322:20 329:7 331:5
 332:6,16 349:21
 350:1 351:12 352:7
 355:18 360:11,14,17
 378:6 392:20 394:2,5
 395:9 396:5 398:17
 398:22 399:19,22
 406:17,19 407:13,18

- 407:22 408:17 410:13
410:18 411:3,7 414:2
415:19 417:5,22
419:16,20 424:20
Schulhofer's 9:4
228:21 285:19 321:1
321:12 427:12
Schwenk 1:19 12:19
13:2 33:8 75:10,17
76:8,13 78:1 84:7
149:7,12,16 154:6,9
160:15,20 162:8
164:22 165:18 223:22
224:4 228:16 232:2,8
232:10 251:4 341:13
342:7,11,14,21
343:22 345:19 348:5
348:10 350:9,19
351:1 355:3,7,11
358:3,9 363:4 364:2
374:20 384:1 385:7
385:20 386:5 387:8
388:4,15,20 389:2
scope 63:1
scratch 222:17
scrutiny 214:21
se 151:13 429:9
sea 261:18
sealed 87:16
seasoned 178:13
second 11:20 25:14
32:1 38:10 88:15
164:18 179:15 201:12
306:20 311:11 312:4
312:5 315:17 353:5
355:4 372:14
secondary 372:6
secondly 72:22 158:3
Secretary 4:6 94:11
110:12
section 6:9 15:13 17:9
17:13 26:17 31:10
239:13,20 248:4,20
271:14 350:5 399:10
sections 111:4
sector 276:9 298:9
Security 37:10
sedition 356:4
see 6:7 14:2 41:2,4,19
46:3,5,8 47:17,18
49:18 71:13 75:6,9
81:2 84:15,15 97:12
101:9 103:20 107:12
108:20 112:6 115:22
118:6,9 122:9 128:4
132:15 136:12 143:2
145:19 146:6 160:19
163:3,4 170:9 174:4
178:7 189:3 198:14
198:17 199:9 200:7
200:10,10,16,16
201:8 208:18,18,21
212:16 216:4 220:8
222:19 223:7 227:2
227:14 230:15 242:22
256:1 257:6,11
258:13 261:2,10,10
268:15 274:22 275:4
279:1 281:11 288:5
289:4,10 296:18
298:18 299:19 301:6
306:21 309:15 311:9
311:12,17 312:3,7,19
314:12 324:19 325:19
330:13 334:21 349:17
355:6 363:2,9 369:5
370:3 373:8 374:3,5,9
377:13 380:1 382:4
383:16 384:10 385:9
391:12 392:22 393:13
394:12 406:9,14
418:16,19,19 423:15
seeing 187:12 227:4
254:21 417:1
seek 62:4
seen 40:5,6 57:14 69:15
76:12 107:2 125:18
127:16 145:5 160:5
189:16 281:19 317:8
380:14 400:9 405:13
417:8,20 427:18
sees 315:10
seismic 258:1
select 29:17
self-defense 296:21
semantic 392:22
send 6:3,9 9:12 121:16
165:12 219:20 221:20
303:4 390:12 427:3,7
sending 133:19 215:14
302:3
senior 176:2 177:14,15
292:10 293:6
sense 32:11 132:3
140:14 170:4,5
171:12 179:16 189:15
214:20 227:10 234:20
235:21 248:15 250:16
251:11 257:13 259:14
281:10 283:1 288:1
288:14 310:19 320:3
328:8 334:18,20
349:4 355:21 357:9
367:10 378:1 400:20
403:1,5 405:22
410:22 413:20
sensitive 151:1 152:21
sent 10:7 167:4 215:22
sentence 17:2 24:2
135:22 159:12 170:10
211:14 235:4 245:13
398:9
sentenced 23:17 24:22
sentencer 22:11,12
sentences 22:1 24:2
sentencing 16:12
348:18,18 349:1
separate 18:19 271:11
337:12
separated 73:19
separately 22:5 379:1
September 213:10
sergeant 356:6
sergeants 149:3
serious 97:2,3,5 138:10
252:22 256:14,18
272:12 314:9 317:7
320:15 322:11 338:12
346:16,19 347:15
379:7 389:9,21
411:12 415:14 416:12
421:13
seriously 103:6 129:8
185:2 404:8
serve 105:13 259:5
served 94:5
service 24:3 26:10 37:6
39:17,18 41:15 94:9
95:15 98:15 109:12
110:2,12,14 111:12
116:8 119:15 120:3,6
120:7,13 121:1,12
150:2 153:10 161:11
173:3 188:6,10
205:17 206:16 207:9
213:3 429:4,8
services 6:4 19:12
113:12 120:11 178:7
195:6 205:11,14
209:9 426:9
serving 337:13
session 4:20 9:6
152:18
sessions 148:12
set 15:9 24:17 45:17
52:5 353:6 354:2
375:16
sets 16:13 28:16
setting 84:9 136:19
settle 105:20
settled 265:10
seven 24:3 79:1 121:5,8
127:6 193:11 344:19
360:15,16 368:14,17
371:16,17
sex 42:3 78:17 108:21
118:8 144:8 146:13
146:19,20 163:17
164:2 214:1,4 240:19
254:22 259:12 270:20
270:21 271:6,12,19
272:3,6,9 305:20
306:3 310:11 311:2,3
312:1 313:10,17,19
313:20,21 317:6,12
318:1,11,17,21 319:5
319:6,19,19 322:8,10
324:11 325:12 328:11
337:3,21 338:12
340:10,17 341:16,18
341:19,22 342:2
344:4 345:9 348:22
349:5 352:14 356:19
357:9 361:14,15
363:11 364:15,17
367:20 372:7 382:2
386:7 390:17 397:11
400:12,12 401:4
402:18 403:3,4,8
404:4,7,9,12 409:5
sexual 41:16,16 53:20
55:14 59:11 69:15
78:17 80:11,13
105:10 121:7 148:19
148:20 170:16,18,21
179:2 189:6,7,13,16
189:22 192:14,21
193:9,20 195:8
200:20,20 212:4
235:17 266:7 271:15
272:1,14,20 273:5
274:14,16,19,20
276:6,10,12 291:14
305:15,19 306:14
315:21 318:7 319:22
321:6,18 323:2 324:2
324:3,8,14,15,16,19
325:1 326:21 329:9
336:1,2 337:1 339:10
339:19 340:11,13,19
341:4,6,9 342:19
344:9 345:4 346:13
347:8,18,18 354:7
356:4,9 362:21 379:5
382:16 385:21 386:12
387:12 390:8,16
395:8 396:10 397:20
398:1,4 399:6 404:4,6
406:8 425:9,18 429:6
429:6
sexually 320:20
sexually-related 194:6
shaking 216:22
shame 191:15
shape 127:12 144:4
179:21 379:21

share 97:17 186:19
 190:21 192:13 252:19
shared 192:12 411:9
sharing 131:20
sharp 148:20 188:19
 254:21
sheet 116:12 164:7
sheriff's 41:18
shield 82:4,17 88:4
shift 98:9 99:3 131:13
 197:16 413:22
shifting 291:21
Shiras 17:18
shoes 66:4
shoot 216:20
shopping 170:8 172:2,6
short 32:4 94:17 226:7
 337:18
shorten 143:21
shorter 107:19
shortly 196:13
shoulder 339:13
shoving 381:12
show 13:8 41:22 65:19
 131:12 140:4 143:6
 146:19 171:10,10
 230:11 251:2 321:16
 361:21 394:14 412:13
 423:13
shown 57:19 90:8
shows 139:13 143:7
 234:18 362:12,20
side 8:9 9:7 51:22 59:19
 180:7 221:7 224:6
 370:7 403:21,22
sides 102:20 103:12
 414:13
sign 75:6
signal 133:19
signature 154:2 197:1
 250:12
signed 15:19 21:6
 72:19 73:18 74:22
 75:3 76:2 122:10,15
 154:4 166:14 167:3
 196:13
significant 20:12,13
 193:12 241:2 304:22
 373:22
significantly 77:17 90:5
 264:14
signs 75:9,9 417:1,15
silent 61:14
similar 63:5,13 114:18
 199:21 288:10
similarity 114:13
simple 118:13 157:17
 245:4,20,21 344:9
 347:18 359:20

simpler 343:9,11 346:1
 346:2 348:14
simplicity 98:21,21
simplify 205:21
simply 21:14 23:11
 37:17 38:9 94:8 101:4
 105:18 125:2 136:18
 179:12 244:11 245:13
 246:3 248:10 274:18
 291:11 300:19 326:14
 347:7,18 368:3 369:1
 387:15
Simultaneous 81:21
 128:18 130:11,16
 131:6,8 279:2 284:13
 284:19 314:10 339:14
 342:20 350:13 362:14
 363:6 374:11 384:3
 386:10 387:21 388:14
 389:5 402:7 403:19
 404:20
sincerely 95:3
sing 12:20
single 183:16 257:7
sink 107:5
sir 107:16 148:4,19
 180:9 189:10 202:15
 203:9 207:19 219:5
 219:10 251:4 333:15
 407:3 415:18
sisters 185:6
sit 35:3 93:21 203:15
 286:5 308:17 364:21
site 195:15
sitting 12:17 13:17
 93:20 166:12,15
 169:8 188:9 207:7,16
 254:15,15 397:7
situation 77:10 277:16
 307:10 316:18,20
 318:1,11 356:1 393:4
 394:18 414:8
situations 330:10
 399:11 404:10 414:11
six 174:13 212:6,9
 330:18
Sixth 285:20
skipping 287:18
skull 376:7
slide 92:6 196:9 197:4
 197:10,12 198:2,9,10
 198:12,13
slides 6:22 7:3,5 13:10
 131:12 139:6 161:22
 195:21 196:2,9
 197:22 198:8
slight 198:14 273:14
 341:11 346:12 400:6
 402:17 404:15

slightest 134:4 286:1
slightly 199:5,22
slow 343:5
slurring 417:17
small 35:16 111:3
 399:13 414:3,22
smaller 74:12 155:15
smart 181:20
smile 333:14
smoked 171:4
snafu 14:1
snatch 273:15
snuff 67:9
sober 414:10,19 417:7
 417:11 420:18 422:11
Socially 391:22
society 150:6 259:12
sodomy 197:16 404:22
 405:1,3,3
Soldier 23:16 24:19
 211:14 277:13 380:3
Soldiers 108:17 132:8
 137:13 148:11 379:21
 403:8
solution 64:2
solve 63:21 124:15
 164:20 246:7 335:20
 396:3
solved 222:1,1
solves 373:9
somebody 134:1
 168:15 241:15 252:22
 271:19,19 272:3,9,11
 274:8 302:2 310:7
 312:7 313:7,8,11
 316:13,17 317:11,17
 317:19 320:5 333:13
 334:16 336:20 351:20
 357:5 364:14 365:1
 367:15,17 368:3
 379:15,19 380:1,6
 381:3,3 386:3 393:4
 402:5 410:4 411:11
 414:19 415:7 417:8
 417:14 419:4 422:10
somebody's 173:15
 201:18 380:17 382:22
someone's 302:9
 325:20 345:3
someplace 307:19,20
 307:21 318:2
something's 185:21
somewhat 185:16,17
 277:16 415:10
son 185:6,7
song 12:18 13:16,19
 14:3,15,20
soon 77:2 92:22 158:10
sorry 9:22 14:16 27:3

58:4 63:19 68:8 86:6
 128:20 157:14 161:7
 175:10 218:21 238:8
 238:21 240:10 243:4
 244:4,6 276:19 285:8
 290:20 294:9 301:2
 303:8 313:5 316:14
 324:12 329:7 332:15
 346:4 352:22 358:22
 364:10 381:13 395:8
 399:19 407:2 408:1
 411:3 421:21 427:15
sort 29:8 49:19 56:7
 97:2,3 101:14 128:3
 132:4 136:16 162:17
 173:13 197:18 216:3
 221:13 222:21 225:19
 226:16 228:19 252:3
 252:11 253:10,13
 256:9 258:10,19
 259:15 264:21 287:18
 288:22 297:8 303:19
 336:18 338:4 389:14
 389:15 392:3 427:16
 428:17
sorting 127:3
sorts 34:3 356:5
Soto 394:1
sound 184:5 332:7
sounded 263:6
sounds 17:1 173:15
 288:12 308:15 330:15
 346:3 354:14
source 190:16 309:18
sources 113:6
space 414:2,21
spaces 405:5
Spartan 125:11
speak 59:19 104:1,3
 109:18 133:22 204:11
 217:12 322:19 336:20
 360:13 378:5 408:13
speaker 218:11,17
 220:3,6,17 275:16,22
 284:10,16,20 285:7
 290:14 292:8 293:8
 296:8 304:14,16,19
 305:13 307:21 308:10
 310:7 313:1,4 316:1,2
 316:3,8,11 318:13,17
 319:1,12 320:8,9,11
 322:13 323:6 324:12
 326:17 328:21 330:21
 331:2,11
speakers 267:13
speaking 10:22 81:21
 119:21 128:18 130:11
 130:16 131:6,8 217:6
 217:19 279:2 284:13

- 284:19 314:10 339:14
342:20 350:13 362:14
363:6 374:11 384:3
386:10 387:21 388:14
389:5 398:20 402:7
403:19 404:20 411:4
speaks 255:12
spec 39:1 81:6
special 27:17 78:19
102:21 109:2 256:12
specific 15:8 22:19
32:22 42:22,22 47:17
47:18 56:22 67:6,7
80:4 195:7,13 237:19
239:20 297:4 311:7,7
311:16 312:2 314:14
350:21 389:7 398:4,6
423:2,7,9,12,15
specifically 44:2 48:6
48:12 199:15 292:11
292:19 296:14 298:2
312:1 353:10,17
369:20 397:14 404:22
specification 38:22
46:13 80:18,21,22
81:1,4 211:7,13,17
264:15 280:10
specifications 39:2,5
116:10 122:7 206:3
210:21,21 211:4,8,10
211:20,22
spectrum 378:12
speculation 394:10
speech 62:22 333:10
418:22 419:22 420:1
420:3,14
speed 156:20
speedily 160:7
spelled 212:16
spells 212:1
spend 174:13
spent 111:21
sphere 41:7
spies 32:18
spike 311:11,12 312:6
313:7,12,18 314:13
316:13
spiked 311:8,20 312:18
314:6 318:21 319:3,5
319:14,19 321:18
323:2,2
spikes 316:21
spiking 313:17 315:22
319:3,7,17,18,21,21
320:4 321:8,17
spilled 317:15
split 65:15 66:5 349:18
spoke 11:7 408:1
spoken 69:3 127:15
223:17
spying 32:17,22
squad 74:7
squarely 326:21
staff 2:4,6,6,8 13:11
97:22 98:12 108:7,21
268:10 306:17
Staff's 427:20
staffed 155:2 166:10
stage 90:3 154:7
stakeholders 173:2
stamps 420:11,13
stand 123:17 244:3
282:22 320:4 412:18
standard 90:15 116:22
327:21 364:6 374:10
375:9,10,11,14,18,18
375:20,20 407:7,12
407:16 409:14 417:12
417:13 423:20 424:16
426:4
standardize 211:3
standards 277:12
359:15 360:1 375:16
424:9
standing 312:7 314:7
standout 197:18
standpoint 60:18
155:13,17 190:21
stands 408:6
star 282:1
stare 106:9
start 6:18 9:10 15:12
41:9 93:9 108:4
172:18 216:17 222:12
230:10 231:13 247:12
308:17 332:4 343:5
started 71:2 167:21
189:17 259:4
starter 50:19,20
starting 308:7
starts 252:11 329:10
stat 292:22
state 39:6 106:7 133:5
133:6 146:15,15
181:15 196:16 267:18
377:4 405:10 409:8
State's 146:16
stated 239:1 323:6
406:10
statement 46:16 87:12
94:17 157:14 266:1
300:7 408:3 412:6
statements 202:18
states 1:1 16:9 17:11
17:16 19:17,21 20:8
21:2,10,17 22:2,13
41:10 42:18 47:22
50:2,13 57:10 84:13
103:10 190:11 298:9
308:18 323:5,16
statistics 189:16
status 228:19 229:15
statute 5:16,22 7:13 8:3
11:5 15:4 16:21 18:2
18:20 33:1,4,7,11,14
33:15 38:9 42:15 45:6
46:8,18 47:3 48:12
49:5,9 50:17 51:1,4,5
51:9 52:2,3,9,16
53:14 54:12,18 56:9
56:16,21 57:9 58:17
58:18,21 59:19 60:2
61:13 62:2,21 63:2
65:8,8 66:11 68:2
69:5 70:17 89:15 91:5
98:2 99:21 100:4
101:2 102:9 103:10
104:9,21 107:6
109:13 114:6 116:17
119:6,9,14 124:7,12
125:8,10 127:8,8
129:8,10,11,12,20,21
132:5,8,14 133:6,18
134:4 139:5,5 141:20
141:21 142:10 143:4
143:15 144:2 147:11
147:12 150:14,15
151:13,22 152:22
157:18 159:13 163:21
164:17,19 167:14,15
167:22 170:22 173:10
175:15,19 176:12
178:11 180:14 181:4
182:7 197:14 199:19
200:11 201:5 203:1
203:18 204:10,11
214:2 216:10 226:5
229:21 230:16 231:12
232:21 233:21 234:7
234:9 236:12,22
237:2,9,10,12 238:4
238:15,20,21 242:4
245:3 246:7,12
247:13,13,19 248:1
249:8,14 252:10
253:8 255:10 258:15
259:20,22 260:2,3,4
263:19 264:10 266:16
267:10,16 268:2,12
269:5 270:19 276:5,8
277:18 278:9,22
279:19 280:17 281:2
281:3,11 282:12,13
283:20 284:18,20,22
288:17 289:6,9 292:3
293:16 294:15 300:14
300:20 301:16 303:5
303:17 315:14 328:3
328:4 329:16 330:11
332:11,20 333:22
334:1,7,9,13 335:3,3
335:5,15,16 340:3
345:15 346:8 350:4
353:10 360:8,10
362:11,20 363:20
364:2 370:11,12,14
371:3 373:17 374:2
376:4 377:8,13,18
378:20 380:9 387:7
390:5 394:9,11
400:10,15 406:11
408:5 421:2,17
statute's 303:16
statutes 26:10 46:19
101:6,16 102:12
106:13 113:9 115:15
118:7 133:15 163:7
164:9,13 181:7
237:21 255:8 265:2
268:22 269:11 278:16
334:10 380:14
statutorily 114:15
118:5 141:3 143:21
statutory 3:6 17:21
31:17 34:8,13 51:17
62:7 64:6 93:10 97:6
103:18,19 118:12
119:10 120:19 121:5
121:6 124:3,19 125:6
126:15 127:5 130:13
137:2 141:4,11,13
163:12 197:8 199:10
209:7 222:14 230:7
230:12 231:14,21
239:16 240:7,16
241:6 270:20 271:5
271:10 300:5 373:21
stay 76:9 167:16 172:1
steals 50:18
steer 54:20
step 70:16 137:11
150:12 347:18 360:5
step-by-step 150:19
Stephen 1:19 228:21
steps 13:17 17:3
stereotypes 133:12
134:22
steroids 57:17
stethoscope 53:22
104:14 398:12
stick 324:10,17 404:17
stole 110:15
stomping 167:4,6
stoned 422:13
stopped 120:20
stories 101:11

story 47:11 269:11
317:16 370:1
straight 58:20
strange 376:16
straw 328:15
streamline 119:3
streamlined 157:17,22
streamlining 72:1
155:11
strength 379:16 387:1
stress 414:20
stretch 102:8
strict 86:22 264:5
strike 235:7
strip 74:11
stripped 71:20
striving 279:1
strong 224:1 269:6
332:12 394:14
stronger 314:4 325:17
strongest 224:5
strongly 34:2,9 264:4
structure 252:10 268:3
276:4 288:18
structured 422:17
stuck 35:8
stuckee 75:17,20
student 105:15
students 184:20
studies 150:1 182:9
study 150:2
stuff 74:8 128:3 330:7
412:21
stumbles 315:9
stumbling 417:17
sub 7:17 8:13 163:16
164:1,1 315:4
subcommittee 1:5,11
4:5,6,13,15 53:11,12
54:7,9,11 55:4 63:20
68:9 95:3,8 96:13
99:8 100:14 104:6
106:3 119:6 121:14
129:6,7 139:22
172:22 174:12,21
178:3 179:7 192:13
193:1 213:9,15 223:2
223:4,6 226:20 240:2
277:9 300:3 353:6
Subcommittee's 4:7
subject 7:19 27:13
28:20 30:9 61:21 83:9
89:3,15 124:5 155:20
282:14 340:10,11
subjected 350:22
subjective 253:11
262:8 359:3,9,14
362:5,8,8 363:20,21
374:6,10,16 375:8,10

375:14,20 413:13
414:17 416:8
subjectively 362:4
374:14 418:12
submission 10:7
245:11 359:18 384:7
384:20 393:6 394:17
submit 392:8
submitted 223:15
285:13
subordinate 92:2
subparagraph 132:19
397:21 398:6
subpoena 86:8,10,13
86:16
subpoenas 86:4,18
subsection 163:19
274:13 350:12
subsections 256:3
273:4 383:8
subsequent 96:6
subside 164:15
substance 43:9,10,12
substances 43:3
381:11
substandard 145:17
substantial 102:13
124:7,9 142:22
198:15 268:12 310:2
substantially 179:14
308:5,6 321:9,15
substantive 25:10,11
33:18 34:13,17 40:7
40:10 44:1,1 54:16
57:2,3,16 60:18 68:16
115:9 147:6 175:7
266:2
substitute 223:16 338:1
341:8
substituting 410:18,19
subtitling 11:10
subtle 135:16 200:5
subtleties 140:10 208:2
successfully 277:19
sucked 214:2
sudden 65:20 317:14
suffered 142:22
sufficient 28:15 29:2
50:16 51:2,11,14
144:19 240:4 261:11
357:6 368:12,18
370:20 371:5 372:3
372:21 374:17 379:17
380:3,4,17 382:13
383:15 384:6,11,21
387:1,4,10 393:6
394:17,19
sufficiently 229:3
328:16 352:22 353:1

suggest 6:2,3 8:14 56:6
103:6 105:18 111:18
139:22 144:20 159:3
168:22 219:16 233:5
233:12 234:11 249:8
303:2 345:10 379:12
395:21
suggested 84:19 223:2
230:4 233:4 235:2
245:22 252:3 303:22
304:8 365:1 399:2
428:17
suggesting 19:18 137:1
169:18 186:15 236:10
385:10 394:15 397:14
409:13 410:6 421:1
suggestion 56:1 93:3
158:19 168:21 172:6
178:15 188:12 249:6
284:4 287:17 395:19
suggestions 6:4 125:17
125:18 230:7 248:4
283:1 291:3 346:5
396:22 398:18
suggests 308:21 385:1
397:20 398:3 399:15
suicides 392:3
suit 106:7
Sullivan 2:2 3:4 4:22
5:21 10:16,20 13:6
14:11,19 27:3,6 31:13
31:21 32:10 35:1,7
39:9,12,14 44:9,16
45:3 46:3 47:4,14,17
52:22 53:6,17 54:5,19
55:2,7 57:21 58:15
60:11 61:1,6,19 64:3
64:10,21 65:10,13
66:3 68:20 69:12 71:1
71:8 75:14,19 76:10
76:16 78:5,13 80:4,8
80:12 83:16,19,22
84:3 92:19,22 93:11
93:17,21 94:10
100:20 104:13 105:11
110:13 112:16 155:11
Sullivan's 6:19 105:8
sum 106:19 389:12
summary 78:19 125:11
summation 105:8
super-legalesey 262:19
superintend 30:2
supervise 108:15
supervising 176:3
supplementary 35:20
support 172:14 234:21
252:3 320:22 408:1
supporting 396:12
406:15

Suppose 311:6
supposed 12:22 13:7
132:9 241:15
supposedly 138:1
supposition 411:14
Supreme 18:4 21:18,21
22:16,21 23:3,4 25:1
25:1,7,19 26:5,16
27:22 29:8 31:22 32:7
34:1 40:18 57:1,7,14
61:4,12,21 62:4,9,13
62:20 63:1,10 264:3
298:7 302:10 415:8
416:4 418:19 419:14
420:1,2 425:5,22
sure 6:17 7:7 130:14
132:6,12,16 169:13
179:19 180:22 204:1
224:21 228:22 229:16
229:20 230:1,19
234:8 237:22 257:15
257:19 258:20 261:19
261:22 276:14,22
280:20 283:7 284:21
286:9,20 290:3 307:2
307:3 331:20 344:11
370:8,11 392:21
394:20 398:3 419:16
421:21
surface 177:13 180:6
surprised 162:18
surprising 415:10
surrounding 132:20
171:14 233:7 246:5
248:10 249:11 287:1
412:9
surveys 191:3,3
survey 162:8 163:3
212:13 403:15
suspenders 159:2
Swain 17:16,19,19
system 18:8 19:10
21:12 22:9,22 23:2,7
24:6,9 25:5 34:7
60:21 61:2 72:4 74:6
74:6,10 105:19
150:13 192:9 202:6
207:1 219:13 240:20
254:18 353:4
systematically 101:12
systemic 288:14
systems 22:2,3,4 23:6
95:9

T

tab 255:6 304:9,12,13
304:14,16,16
table 3:1 169:8 173:2
181:21 223:18 225:8

270:16 281:19,20
 286:5 288:10 330:3
 354:12 355:22 362:1
 363:5
tabletop 6:20
tackle 256:10
Tacoma 108:9
take 6:5 7:21 29:22
 44:21 45:3 54:13
 59:10 74:9 75:22 76:5
 76:13 89:14 93:2
 112:6 119:6 127:1
 134:18,19 144:7,8
 145:5 158:20 165:4
 166:9 173:1 175:1
 205:8 216:3 240:5
 242:2,14 248:16
 256:21 258:7,12
 278:1,13,18 290:8
 311:16,20 312:11
 313:8 314:13 320:3,6
 321:19 325:11 326:3
 328:19 330:8,19
 331:16,18,20 337:22
 338:10 340:21 353:16
 359:12 364:16 366:15
 374:15 381:12 386:16
 395:3,19 400:5
 417:10 420:21 421:10
 423:22 424:7 426:10
 426:14,17
takeaway 344:17
taken 42:7 166:16,18
 253:7 300:17 309:5
 416:2 423:17
takes 20:18 90:11
 156:11 314:15 329:15
 412:1 419:3
talk 11:1,10,13,14 12:2
 21:16 35:12 100:11
 109:16,20 112:16
 113:5 118:12 197:22
 221:4,8 223:19
 261:19 266:22 280:3
 339:3 381:21
talked 38:17 103:12,22
 123:7 130:21 142:2
 147:17 148:15 183:12
 196:1,3 241:6 278:19
 288:8 291:15 361:8
 403:13 427:17 428:14
talking 10:10 32:13
 61:11 110:16,20
 111:21 123:9 142:13
 146:6 156:20,20
 159:13 162:4 166:1
 168:9 177:15,15
 181:15,21 182:22
 184:20 186:21,22

238:6 243:2,5 260:7
 276:9 293:11 317:17
 321:20 345:20 351:12
 351:12 358:17 362:13
 362:19 369:19 376:21
 379:20 395:5,20
 416:12 418:18
talks 110:18,22 129:21
 244:17 283:9 320:11
 400:11
tap 65:17,19 66:4
tape 13:22
task 127:17
taught 102:6 183:16,18
tautological 391:5
tax 334:9,10
taxicab 23:17 24:20
teach 105:14 181:17,18
 279:17,17 376:9
teaching 164:3 181:5
 278:10 279:15 280:1
technical 262:20
technically 36:7 37:13
tecum 86:8,16
teeth 107:5 405:4,5,8
 405:18
tell 7:16 8:1 32:7 35:1
 53:8 61:20 96:19
 97:12 99:14 101:5
 104:12 109:8,9,10
 115:13 119:14,15
 120:4 121:13 135:4
 142:19 145:20,21
 146:13 181:10,19
 182:12 188:11 190:6
 241:15,22 279:16
 300:16 332:13 345:3
 345:5 350:4 373:16
 379:22 400:21
telling 134:12 362:2
tells 39:16 99:17 112:7
 150:18 314:12 361:15
temporal 322:21
Ten 93:4
ten-minute 331:20
tend 84:12 245:2 380:8
tended 83:14
term 57:1,6 124:12,15
 124:18,19 125:11,22
 126:4,8,10,11,13,13
 133:21 174:15 179:13
 179:15,17,17 226:7
 233:2 273:11,17
 274:7 282:12,13
 285:12 288:9,13
 290:16 298:12 328:3
 337:14 339:8 345:22
 351:2 383:12 386:20
terminal 428:22

terminology 96:2
 173:19 300:4
terms 26:21 30:5 33:21
 63:15 118:5 137:1
 140:1 173:11 186:16
 190:14 209:10 213:14
 230:4,8 239:6 254:22
 257:16 259:3 263:4
 269:22 280:20 301:22
 328:5 335:5 336:19
 353:17 381:4 390:4
 403:5 415:15,21
 424:13 425:17 427:2
terrific 9:13 10:9,13
 216:6 222:6 223:16
terrifying 338:6
test 123:17
Testament 35:22 36:1,1
tested 104:16
testified 141:17 142:11
 273:19 305:1
testify 85:17
testimony 85:14 86:10
 87:3,4 96:14 106:4
 110:9 141:16 184:9
 199:14 234:17 274:17
 295:13 336:21 340:17
 412:17
Texas 22:18 24:21
text 38:9 219:19
textbook 277:6
thank 4:4,18,19 9:20,21
 10:2,6,11,20 27:3,4
 27:10 35:6 92:17,19
 93:3,20 95:2 107:17
 131:19 190:8 192:10
 199:7 215:3,6,14
 222:8,8 223:20
 226:18 251:19,20,21
 267:22,22 286:2
 320:10 329:2 331:7
 333:15 341:12 358:10
 364:10
thanking 215:21
thanks 10:15 92:15
 331:10
theory 49:20 127:10
 376:7
thesaurus 285:12
they'd 426:2
thick 111:16
thicker 111:15 142:7
 205:18 260:22
thing 13:22 53:10 55:7
 118:12 122:16 132:10
 145:8,9 150:12,15
 157:3 159:15 177:12
 181:22 183:20 193:6
 200:8 202:6 240:20

240:21 241:1 244:18
 249:2 262:1 263:13
 270:2 271:4,5,7 281:7
 281:9,21 282:2
 291:16 294:20 314:4
 341:21,21 346:15
 352:2 357:19 358:20
 362:11 366:8 389:9
 392:4 418:20 424:18
things 36:5 37:14,15
 48:17 49:12 55:10
 69:4,6 72:6 73:9 84:3
 110:18,21 117:22
 131:15 141:9 146:7,8
 147:4 156:7 162:3
 165:5,13 168:8
 172:12 176:20 187:9
 192:18 194:13 200:10
 212:10 226:10 241:6
 242:18 255:13,14
 256:9 264:17 270:6
 270:18 286:10 325:8
 333:9 348:13,14
 392:1 393:2 397:8,8
 400:18 401:19 403:14
 414:21 418:22 421:4
 426:7
think 5:21 6:9 9:13 10:6
 10:12 34:21 35:5,17
 40:2 45:9,11,15,17
 47:2 52:13,14 53:11
 54:1,7 55:8,12,13,14
 56:11 57:13 59:9,13
 59:15 62:2 68:3 70:9
 70:19,20 71:1 74:14
 75:6,8 77:17 83:13
 92:16 93:2,8 94:18
 97:14 99:18 100:5,6
 100:22 101:13 102:19
 104:15 106:17,20
 107:22 109:19 110:19
 112:1 113:3 114:1,5
 114:11,17 119:17
 120:2,22 121:7 125:4
 126:19 130:22 132:2
 135:3 136:4 137:16
 137:20 138:10,12
 140:4,22 141:7,16
 142:11,16 143:3,18
 143:18,20 144:1,5,13
 144:16,22 149:2
 150:10 152:17 153:1
 154:14,21 156:2,8
 157:20 158:3,18,22
 159:5,8,19 160:9
 165:2,3,14 166:1
 167:7 168:21 169:4
 169:16 171:18 172:1
 172:7,13 173:5,17

174:8,21 175:11
 176:15,18 178:8
 179:1,8,21 181:7
 182:4,7,7,21 183:4,8
 184:19 186:10,13
 188:5 189:10 190:3
 190:10 191:15,16
 193:1,6 194:11,12,18
 196:7 199:18,20
 200:18 201:2 202:9
 205:19 208:16 209:2
 209:7 212:17 216:8
 216:15 218:1 221:16
 221:17 222:21 224:22
 226:11 227:5,7,10
 228:2,12,15 229:15
 230:5,12,15,17 231:5
 231:6,13 232:19
 233:9,20,22 234:17
 234:20 235:10 236:9
 236:16,20,21 237:5
 238:6 239:10,19
 240:3,5,13 241:5,16
 241:19,21 242:9,11
 242:16 243:15 244:20
 245:1,4,22 247:5
 249:6,7 250:9 251:5,7
 253:2,17 254:2,5,11
 255:2,18 256:21,22
 257:1,5,14,22 259:11
 259:12,17 260:18
 261:3,21 262:22
 263:14,16 264:12,19
 265:1,13 266:14
 267:13 268:3,4 269:2
 270:18 271:15 273:6
 273:18,20 274:5,6,22
 275:8 276:9 277:2,7
 277:17 278:9,14,22
 279:3,8,10,22 280:3,4
 280:18 283:2 284:5
 285:10 286:11,14
 287:18,19,22 288:22
 289:9 290:5,8,14,19
 290:20 291:5,15,16
 292:2,5,5,8,9,16
 293:5,14 295:3,20
 296:5,13,17 297:18
 297:20 298:14,14,14
 298:19 299:14,17
 300:12,18 301:4,21
 302:12,22 305:2,3,11
 306:2,13,18 307:5,22
 308:1,10,11,21
 309:19 310:2,11,21
 313:12 314:3,8,11,22
 315:1,2,16,18,19
 316:9,22 317:2,19,20
 317:21 320:3,13,17

321:13,19,22 322:1
 322:12,14,15,16
 323:5,6,9,13,13,16,18
 323:19 324:1,14
 325:5,5,21 326:9,12
 327:17,20 328:2,7
 329:17,17,22 330:2,4
 330:9,10 333:2 334:1
 334:18 335:8,15
 338:3 339:6 340:17
 341:13 343:1,13
 344:14,16,19 345:19
 346:20,22 347:22
 348:1 350:14 351:11
 352:5,7,20 353:9,16
 355:19 356:1,4 357:9
 358:6,16 359:17
 360:2 361:19 362:6
 362:12,15 363:13
 364:13 365:6,22
 366:1 367:11 369:22
 370:4,5 371:17
 372:15 377:5,6,15
 381:22 382:3,8,17,19
 383:5 384:4,9 385:15
 389:11 390:12 392:13
 393:11,16 394:6,12
 394:20 395:14,18
 397:2,4,10 398:13,14
 398:15,17,22 399:2,7
 405:11,12,19,20
 406:19 408:7,12,20
 408:22 410:21 411:9
 412:5 415:16 416:11
 416:14,21 417:22
 419:8,9,12 421:6,9,12
 421:13,15 422:16
 423:17 424:7 425:4,5
 425:6,18 426:12,19
 427:20 428:7
thinking 35:18,19 77:21
 161:20 168:18,18,19
 178:5 195:4 201:21
 236:14 238:14 318:5
 318:10 333:21 395:9
 425:6
thinks 36:2 41:17,22
 89:2,9 137:17 225:9
 282:4 302:2,4,5
third 4:5 24:21 25:17
 38:11 164:20 179:17
 179:17 374:1
thoroughly 172:17
thought 5:6,19 70:18
 110:1 132:13 152:2
 160:14 161:20 172:17
 179:15 182:1 195:22
 201:5 203:15 226:1
 227:11 243:4 247:1

255:4 307:11 318:12
 321:3 322:8 330:3
 331:15 336:13,14,16
 343:5 348:10 349:19
 358:4 360:12 361:16
 375:17 407:14 412:20
 413:9,10 415:19
 427:10
thoughtful 172:21
 173:6
thoughts 131:21 135:2
 146:11 169:9 216:2,5
 240:13 241:10
threat 245:12 325:13
 326:7,13 353:12
 369:21 380:10 381:9
 415:13 416:1,3
threaten 381:20
threatening 349:15
 350:10 354:5 358:18
 362:16 363:1,15
 368:6 369:20 376:22
 380:20 415:14
three 6:22 19:8 22:19
 25:8 26:15 36:14 41:2
 41:4 67:13 77:1 90:22
 96:10 105:14 107:2,6
 109:20 112:11 121:22
 124:11,17 142:2
 143:6 155:1 156:15
 164:4,6,8 166:16,18
 176:1 177:12 178:11
 179:18 180:3 187:1
 196:4 208:16,17
 212:6 223:3 259:9
 287:19
threshold 70:15,16
 90:8 127:5
thresholds 90:13
thrilled 110:3
throw 135:1 303:21
 324:5
throwing 325:3 417:17
thrown 328:3
thunder 110:16
THURSDAY 1:9
ticker 318:3
tied 72:20 393:5
ties 378:8
time 6:2 11:6 12:5,8
 23:13 32:17,19 52:11
 61:22 63:5,6,12 64:13
 70:19 78:8 80:22 86:6
 87:10 92:12 97:20
 98:18 99:15 109:16
 111:21 124:8 125:6
 132:3 147:22 159:21
 161:8 162:18 164:16
 166:19 168:3 174:20

180:15 189:12 195:21
 199:11 201:11,12
 206:11,14,15,18
 224:22 232:11 241:3
 242:19 252:14 264:9
 268:2 273:19 280:4
 281:9,17 286:19,20
 322:21 323:1 329:9
 334:8 345:14 370:18
 376:3 424:10
timely 150:22
times 63:17 77:20 98:6
 121:3 188:18 202:3
 207:9 238:1 291:11
 362:12
tinkering 174:5,8
title 115:1 304:11
 306:18,19,21
today 4:4 10:22 62:12
 91:2 93:21 95:4
 100:13 105:18 108:14
 110:4 213:19 214:13
 225:20 255:6 268:16
 282:2 285:13 290:13
 332:8 389:12 426:20
 427:17
told 23:11 36:20 104:17
 191:22 314:15 369:4
 369:11,12 370:1
tongue 399:7 400:4,8,9
 404:17
tool 181:6 278:10
toothbrush 397:4,22
top 7:22 27:12 197:12
 286:21 318:19
topic 160:6
tort 416:9
torts 376:9
totality 136:8
totally 286:7 376:11,12
touch 186:3 276:1
 383:22 401:1 402:19
 402:20
touched 272:16 303:7
touches 252:5,6
touching 53:20 134:4
 192:18 268:8 273:13
 276:2 332:22 336:2
 338:2,5 339:9 341:10
 342:10 344:4 345:8
 346:6,12 386:12
 388:1,3 408:21
tough 145:16
traction 178:8,9
tradition 27:16
traditional 179:4 273:9
 273:16 349:4
traditionally 348:17
 387:19

traditions 28:9
train 94:4 106:5 136:9
trained 102:7
trainees 137:12 139:12
 140:10 171:2 358:13
trainers 358:13
training 137:13 138:3
 138:18 139:3,6,12
 140:7 148:22 149:2
 149:20 181:22 182:1
 184:13,18 185:9
 278:13,20,21 352:10
 352:11 356:1 427:14
transcribed 161:13
transcript 216:15
transmission 217:20
 219:16
Transportation 162:19
 162:21
traumatic 405:17
treat 40:7,11,15 55:9
 112:21 405:15
treated 41:9 404:8
treating 403:2
treatise 37:19
treats 40:3
tremendous 54:15
 126:6
tremendously 175:8,9
trench 170:1
trenches 100:1 109:9
trends 189:3
trial 16:3,4,8 55:18
 84:15 86:5,6 87:6
 99:12 101:14 103:22
 104:2,15,16 105:4
 109:10 125:15 126:10
 126:11 127:15,18,21
 128:1 132:4 134:13
 164:10 170:5 174:14
 177:16 187:11 268:21
 292:12,12,20 293:9
 298:6 412:10,22
trials 193:9,15
tried 24:20 104:18
 108:19 171:13 190:7
tries 74:5 337:6
triggers 370:13
trip 317:14
tripping 135:22
troops 275:16,17 279:8
trouble 239:5 243:9
 257:16 418:15
troubled 268:2
Trout 13:12
true 94:16 119:4 142:16
 191:14 238:20,21
 313:18 351:1
truly 100:17 139:22

200:17 351:22 362:7
 418:5
Truman 15:19 19:10
 20:5,21
trumping 68:2
trust 168:4,6 202:5
 207:5
try 5:3 54:20 71:3 74:12
 74:13 84:13 98:22
 110:7 121:9 135:15
 135:19 136:15 144:17
 144:17,18,19 145:6
 145:11,14 155:8
 198:4 214:4 217:7
 218:16,19 220:4,13
 245:3 263:16 290:1
 297:6 329:3 377:8
trying 13:2 36:3 67:3
 68:9 69:10 74:2,9
 75:8 99:22 100:4
 111:16 123:18 124:21
 125:14 143:15 144:5
 168:2 169:18 173:1,2
 184:1 186:16 193:22
 198:6 200:2 216:10
 217:15 219:12 228:1
 242:10,11 255:19
 256:10 263:4 270:12
 276:21 277:14 300:15
 317:22 320:19 322:18
 329:2 338:4,21
 348:13 351:4 359:10
 360:13 370:6 418:15
tuition 185:11
tune 99:13 100:1
turn 4:17 107:14 324:16
turned 140:1 192:17
TV 12:14
tweak 179:10
twice 57:1 156:11
 170:19 369:6,7
twisting 269:12
two 23:13 24:20 36:13
 47:18 72:14 74:18
 92:3 95:20 111:13
 120:6 143:8 154:3
 156:15 164:11,11
 167:1 205:6 208:16
 223:3 225:19 232:22
 243:9 245:4,7 248:3
 248:19 263:11,11
 274:2 287:19 291:5
 291:10 294:19 295:3
 306:20 311:5 324:5
 324:21 329:7,15,19
 333:1,9 340:4 346:4,9
 349:18,19 354:15
 362:12 375:4,15
 378:20 379:21 383:7

403:4,8 404:8 406:5
 413:22 414:3,21
 415:9 424:9
two-and 120:17
two-year 17:3
type 11:18 49:20 65:17
 116:11 306:19
types 193:4 276:6
typically 115:21 118:10
 120:9,10 145:11
 168:15 217:12

U

U.S 2:5,8 19:5,6 57:8
 111:7 121:17 264:3
U.S.C 118:8
UCMJ 15:18 16:13
 18:15 19:9,16 20:1,7
 20:12 21:2,7,10 24:12
 32:14 38:7,8,15,16,20
 40:1 44:3 48:2,5
 50:14 84:8,10 85:11
 95:17 115:11 118:6
 150:14 151:3,7,16
 152:3 239:13
UCMJ's 23:7 91:4
ugly 234:7
ultimately 49:22 67:17
 68:1 169:3
unable 305:6,8,15,18
 305:21 306:3,4,6,7,9
 306:14 307:6 313:11
unacceptable 351:14
unambiguous 60:3
unanimous 295:4
 424:22
unaware 198:20 408:9
 408:15 409:4,6
uncertain 114:4
uncertainty 199:14
unclear 227:18 281:1
 282:11 286:17 322:2
 397:8
uncomfortable 192:8
unconscious 198:19
 272:11 305:5,9 306:4
 306:8 307:8,15,18,19
 307:20 315:7 408:9
 408:16 409:4,7
 410:15 411:17,19
unconstitutional 26:14
 64:6 301:19
unconstrained 22:11
 23:15
undecided 235:14
 236:4
underage 42:3
underlying 144:16
 183:20

underneath 27:10
understand 47:11,16
 52:19 53:2 54:22 55:8
 64:8 93:14 112:9
 113:7 124:10 127:9
 132:9 138:20 146:17
 147:4 175:6 176:8
 177:2 212:8 216:8
 219:12 229:20 232:1
 235:6,9 248:17
 249:16 259:8 261:19
 262:22 264:18 275:14
 275:15 277:7,14
 278:12,21 279:6,7
 281:21 282:20 284:4
 295:13 306:3,5
 321:12 332:21 334:7
 334:13 335:4,19
 359:8 362:18 370:7
 376:13 377:8 388:8
 400:15 409:20 410:4
 411:8 421:11
understanding 126:14
 138:5 140:12 142:17
 153:9 177:9 203:21
 210:20 212:15 231:18
 253:2 279:9 404:11
understands 263:7
 274:7 299:18
understood 22:7
 146:19 277:12 283:14
 304:10 370:11
undeserved 351:15
undoubted 30:19
unfamiliar 264:10
uniform 3:5 19:10 38:3
 97:10,15 115:16
 143:13
unintended 224:20
unique 122:17 143:18
 179:2
unit 84:21,22 149:8,17
 365:13 366:7
unitary 49:20
United 1:1 16:8 17:11
 17:16 19:17,20 20:8
 21:1,10,17 22:2 41:10
 42:18 47:21 50:1,13
 57:10 84:12 190:11
units 85:1 148:3
unjust 180:7
unlawful 348:1 356:14
 356:17 357:1 358:1
 379:1 382:4 383:11
 383:12 386:20 388:22
 389:4,10 390:5,7,7,10
 391:2,3,7 393:7
unloaded 48:14,15,19
 49:17

unnecessary 229:17
 unrealistic 141:7
 unreasonable 323:14
 unreliable 190:16
 unsworn 87:11
 untraditional 416:11
 unwanted 259:13
 338:14,15,18
 unwelcome 425:10
 unwillingness 305:7
 306:7
 up-to-date 77:14
 update 119:5
 updated 13:8,19 14:3
 52:21 123:2,4
 updates 121:17
 upshot 54:14 285:6
 288:22
 urge 249:9
 usable 244:13
 use 11:3 42:21 43:2,9
 48:15 51:1,21 52:6
 56:4 60:5 81:6 84:10
 85:15 114:9 122:9,12
 123:8 129:12 165:4
 187:5,8,9,13 188:18
 203:3 211:3 212:13
 222:9 228:1 243:17
 243:20 245:11 258:13
 269:7 275:7 279:16
 279:18 281:10 328:5
 333:13 356:15,20
 357:1,4 370:22
 372:11 382:12 386:22
 387:18 391:6 393:3
 399:18,21 400:1
 420:11,13
 useful 64:14 113:19
 123:2 124:13 194:14
 249:6 252:2 296:14
 uses 41:22 338:19
 379:15 381:4
 ushered 96:5
 usually 336:22 380:10

V

v 17:16 21:17,21 23:5
 41:10 42:18 44:18
 47:22 50:13 59:1
 62:22 66:17 88:9
 285:21 325:1
 vacated 62:18 63:8,13
 vacation 65:18
 vacuum 204:13
 vagina 402:17
 vague 338:8 367:15
 value 173:18 174:3
 352:2

Van 11:9
 vanished 394:4
 varied 146:14
 varieties 163:17 197:13
 198:9 212:4,4
 variety 414:15
 various 37:12 43:18
 55:10 96:14
 varying 254:19,19
 vehicle 129:5 165:4,11
 175:6 248:18 283:3
 velocity 105:16,17
 121:5
 venture 207:15
 verbal 242:8,15 243:16
 243:19 245:14 248:6
 verbiage 279:6
 verdicts 265:3 333:19
 version 8:20 13:8 64:5
 77:14,17,20 95:22
 96:1,1,4,5 97:20 98:2
 98:17 99:13 101:17
 103:13 106:20 118:8
 124:18 135:5 142:21
 160:16 163:3 167:16
 197:12,22 198:10,11
 202:9 212:3 213:21
 213:22 214:6 223:15
 266:21 353:10,14
 374:1 390:12
 versions 105:14 164:4
 164:6 177:5 197:15
 387:14
 versus 11:4,18 123:19
 157:3 165:6 181:12
 190:18 216:10 247:19
 290:3 297:10 309:8
 428:5
 vested 17:11 19:16
 20:7,22 21:8
 vestige 146:2 171:19
 veterans 206:21
 vetted 172:17
 viable 258:14 281:6
 victim 79:3,7,19 80:3,5
 80:17,21 82:17,17
 83:5 85:16,18 86:22
 87:5,11,12 88:5,7
 90:7,18,19 102:21
 103:4 132:15 135:8
 137:15,17 190:18,19
 237:3 260:4 268:20
 311:7,9,13,17 314:6
 315:7 345:1 359:12
 361:6 365:7,12 367:6
 375:17 376:7 378:11
 378:16 384:20 386:15
 405:3 412:13,14
 413:5 416:18 425:7,8
 425:10
 victim's 253:11 262:8
 312:2 359:21 360:4
 406:7,12 407:4
 423:15
 victims 80:2 109:3
 138:3,9 190:17 191:4
 200:7 376:15
 video 192:12,15
 view 58:14 98:3 101:20
 102:13 125:3 149:22
 156:7 168:1 171:22
 177:2 224:5 252:4
 253:11 262:9 267:1
 270:16 280:6 283:22
 284:1 288:15 299:16
 329:8,12 333:20
 393:12 407:15
 viewed 103:14 197:11
 199:11 297:17 299:3
 views 43:17 44:5 46:11
 46:14 94:19 165:13
 224:1 421:16
 vigorous 97:13
 vintage 285:5
 violate 91:6,13 388:12
 violates 238:3
 violation 16:20,21
 170:17 211:16 335:13
 348:21
 violence 268:9 348:2
 387:1
 Virginia 94:3
 virtually 150:8
 virtue 19:15 20:6,22
 visited 127:17
 vodka 317:3,13,15
 VOICE 14:6
 voidable 426:1
 voir 139:14
 volume 35:16 111:18
 121:4
 voluminous 167:6
 195:2 348:15
 voluntarily 369:15
 423:5
 voluntariness 285:22
 voluntary 114:9,14
 117:4,12 125:10
 233:4 283:11,11,12
 283:15,18 284:4,7
 285:14,20 286:17
 287:2,6,10 288:3,3
 290:3 297:3 422:22
 volunteer 427:5
 vote 330:17,20,21
 vulnerable 376:15
 vulva 400:4 401:1,3,8
 401:11,19,22 402:3

402:21 404:3,12

W

W 2:5
 wait 155:15 168:10
 226:12 270:1 281:15
 290:14 312:19 329:4
 375:12
 waiting 153:20 154:2
 311:8 314:8 396:17
 wake 73:21
 wakes 345:1
 walk 139:13 149:3
 272:15
 Walker 32:20
 walking 108:13
 walks 274:9
 want 6:16 7:7,21 10:5
 10:11 11:14 45:16
 54:17,17 60:10 64:12
 64:18 65:22 97:12,16
 110:17 113:7 124:22
 137:11 145:6 150:22
 152:18 157:13 158:11
 158:20,21 164:22
 167:13,15 168:4
 173:8 175:11,21
 179:1,3 181:8 202:20
 215:3 219:19,20
 221:20 222:16,17,19
 222:22 224:7,21
 227:3 231:15 247:8
 263:5,16,18 266:19
 267:14,21,22 269:10
 276:13 283:11,22
 289:4 295:21 296:3
 299:16 307:11 308:8
 323:22 324:4 325:7
 330:10 331:16 340:7
 343:17,21,22 344:3
 344:11 348:12 360:9
 365:4 370:10 375:21
 377:4,12 378:4
 389:19 391:20 397:15
 402:18 423:19 424:5
 427:4,8
 wanted 5:19 9:11 98:22
 99:1,2,6 113:5 121:17
 131:18 132:1 135:12
 147:3 159:10,15
 162:19 167:15 168:16
 175:5,13 180:19
 181:6 197:10 203:9
 203:22 215:13 220:3
 220:4 235:7 236:17
 252:13 270:15 294:7
 385:12 392:18 427:11
 429:11

wanting 254:3
wants 26:8 83:8 168:15
 186:9 229:21 233:1
 290:12 292:1 310:15
 329:5 334:17 335:18
 351:13,17
war 18:13,22 32:17,19
 91:6,13
warrant 256:13 320:21
warranting 141:13
 163:12
wartime 84:9,11
Washington 108:9
 150:1
wasn't 77:8 125:21
 133:8,14 162:21
 319:8 345:16 351:7
 380:4,17 386:16
 400:9 414:7 418:5
watch 143:6 313:7
 320:5 365:17
watched 319:7,20
watching 12:15 315:10
water 126:21
watermarked 122:8
waved 35:11
way 7:16 11:9 15:2,4
 32:14 52:3 54:21 55:5
 55:15 66:22 73:6
 84:10,19 93:15 97:13
 98:7 109:15 114:5
 122:13 124:1 129:1
 134:1 136:16 140:1,5
 146:10 151:1,1,3
 176:11 178:22 180:14
 181:17,18 183:7
 184:4 186:15 194:11
 200:16 202:10 203:4
 210:22 214:19 227:11
 230:3 231:10 236:3
 236:13 240:16 241:5
 245:16 251:17 252:2
 257:15 259:21 261:17
 268:5,22 270:8 271:2
 277:18,21 278:22
 279:8,11 280:1
 288:21 293:9 294:22
 300:18 305:8 307:16
 327:19 328:8 337:19
 337:19 339:10 341:5
 342:2 343:2,13 357:4
 366:9 368:8,11
 370:17 373:19 374:3
 378:18 379:10 388:13
 395:11 397:1 401:4
 401:18 403:17 404:2
 412:10 418:8 422:16
 426:18
ways 22:14 58:3 74:16

97:16 168:5 200:18
 269:4 270:11 294:20
 396:22 414:15
we'll 46:8 47:17,18 48:2
 48:8 76:2,3 93:9
 108:4 110:19 188:18
 201:8 213:8 215:8
 217:4,7,15 221:13
 227:13,14 232:10
 302:5 303:4 309:2
 343:16 395:2
we're 30:11 33:19 48:4
 49:3 93:8 104:18
 107:7 108:19 114:4
 114:10 121:7 123:18
 131:13 132:5,6 141:8
 142:8,13 145:13
 146:6 158:7,17
 160:15 163:6,9
 166:15 168:1 174:20
 175:4 181:5 182:21
 184:1 185:8 193:22
 197:7 212:13 220:13
 221:12 222:16 228:1
 231:21 246:11 247:2
 247:3,4,8 251:13
 260:7 279:7 280:1
 283:1 287:18 290:11
 294:14 297:7 299:6
 300:15 302:2,12
 308:12 309:16 310:11
 325:16,18 326:3
 332:3 334:19,20
 341:2 346:4 349:13
 353:14 356:11,16
 358:16,17 362:10,12
 362:19 365:18 367:13
 369:18 377:19,22
 385:14 395:5 396:16
 400:14 405:14 410:2
 419:19
we've 7:8 106:22 127:7
 127:8 139:22 140:5
 145:21 157:18 160:5
 167:5,8 171:18
 179:19 186:11 191:16
 194:10,11 195:1
 206:15 221:22 222:1
 223:19 234:17 241:6
 249:10 265:6,7
 277:22 278:14 280:2
 280:21 288:8 291:10
 291:15 303:6 325:8
 325:12 326:9,12
 331:14 336:21 340:17
 405:13 406:4 426:20
weapon 48:21 74:8
 372:3
weapons 379:11

wear 66:4 143:12
web 190:12
website 4:16 212:21
Webster's 105:3
weeds 252:12
week 12:6 21:5 71:6
 104:22 190:13 349:6
 415:9
weekend 352:13
weeks 415:9
weigh 428:2
weighed 59:14 66:14
weighing 66:10,15,18
 67:13
weight 42:14 329:19
weird 269:4 338:8
 403:14
went 27:15,22 28:8,14
 30:10 93:6 114:17
 121:14 183:11,11
 185:9 215:11 250:21
 275:14 289:22 332:1
 344:19 364:19 369:15
 429:19
weren't 198:1 332:16
 420:2
wheeled 149:1
where'd 309:11
whichever 365:7
White 74:2,13 153:11
 154:2 155:16
who've 127:16 304:22
wholesale 334:17
wide 28:4 366:8 420:5
widely 53:13 168:22
 411:8
wider 277:20
wife 415:12
willing 145:13
willingly 354:18
wind 221:17
winds 323:15
Wine-Banks 1:20 137:9
 138:7,11,14,16 139:7
 139:9,16,19 188:1
 190:14 191:6,12
 192:2,5,10 295:5,8
 308:11 313:13 314:5
 315:16 318:20 319:2
 319:15,18 322:5,14
 335:20 336:5 337:18
 338:14,17 342:4,9,13
 345:16 353:3 356:13
 357:11,18 366:15
 369:14,22 370:15
 371:6,22 372:15
 373:10 382:18 388:2
 389:8 390:22 391:10
 403:17 408:14 412:6

413:17 421:19,22
 422:12 423:18 424:6
 425:21 427:7
wise 258:5
wish 207:11
witness 85:14
witnesses 2:1 87:4
 96:15 100:15,16
 352:8,15 359:20
 412:11
woman 133:6,13,15
 361:13 403:10 404:9
 417:16
women 150:3 403:4,8
 404:8
wonder 173:17 306:17
 329:20 344:2 357:22
 427:11
wondered 356:17,22
wonderful 10:7 92:17
 169:17 210:9,11
 222:9 387:7
wondering 127:11
 128:7 146:11 189:7
 203:14 242:20 304:9
 355:16 372:18 428:2
wonky 56:2
Woodward 1:20 9:2
 45:20 57:18,22 58:7
 123:5,22 138:6,8,12
 138:15 147:14 156:19
 157:9 165:16,19
 183:8 184:3,6,8,14,17
 185:19 186:5 188:11
 188:14 191:2,19
 192:3,6 234:13 236:5
 249:18,21 250:3
 261:13,15,16 271:18
 272:19,22 279:3,4,5
 281:14 282:1,4 286:2
 286:4 313:6 314:2
 315:2,18 351:18
 354:15 356:11 358:15
 363:10 365:5 366:1
 366:13 369:18 370:4
 382:9 390:1 396:14
 408:10 409:9,17
 410:9,16,21 411:5,6
 419:2
Woodward's 412:6
word 7:18 75:18,20
 114:9 124:7 180:16
 180:16 232:21 269:7
 305:18 307:3 321:7
 328:9 329:15 338:20
 342:3 346:21 366:18
 372:18 373:8,19,21
 378:21 383:7 385:18
 390:5,7,9 391:9

word's 374:4
wording 28:9 410:10
words 27:18 53:2 58:11
 114:3 124:22 136:6
 173:12,20 174:2
 181:14 212:13 217:12
 217:19 242:13 249:12
 249:13 250:13 275:4
 285:4,11 292:16
 293:15 307:4,8,12
 311:19 322:12 337:20
 345:18 346:6,7 367:9
 385:11 397:21 399:17
 399:20 414:1 417:17
work 13:9 25:5 49:21
 50:3 56:3 77:13 91:14
 94:19 95:7,11 96:17
 96:20,22 98:4 100:17
 101:5 109:2 146:10
 160:7 169:13 176:10
 176:13 179:15 194:12
 206:7 223:4 226:15
 268:1 308:9 324:22
 336:15 372:13,18
 377:17 427:4
workable 101:19
 253:18
worked 96:21 102:4
 176:1 202:20 206:20
working 77:11 109:4
 153:10 179:16 224:16
 225:21 226:15 308:22
 343:1,10,16 345:11
 349:13,14 405:21
 427:2,6
works 84:7 220:8
 288:14 290:20 380:1
world 105:18 119:2
 171:22 230:19 416:8
worn 106:10
worried 132:6
worry 138:4 165:15
 248:16 316:20 335:9
worse 338:7 373:11
 374:19 388:13,18
worst 240:22 241:1
worth 136:22 239:6
 277:17 349:1,2
 424:10 425:2
worthy 102:8
wouldn't 59:16 82:12
 129:12,19 155:22
 159:17 174:7 190:4
 203:17,18 239:11
 263:18,18,19 308:8
 328:4 351:8 364:19
 365:5,15,17 372:10
 373:10 389:3 402:1
 404:13 422:5 424:21

Wow 192:5
wrangling 253:6
wrapped 392:13
wrestle 126:7
wrestled 31:22 32:8
wrestling 40:6 43:13
 187:11
write 7:22 26:2 56:10
 92:6 119:18 181:7
 201:5 210:13 214:19
writes 50:19
writing 39:1 43:18
 50:15,15 51:6 56:3
 303:2 376:14 377:1
 403:13
writings 239:12
written 43:16 51:14
 114:6 153:18 155:1
 201:9,9 210:7 228:12
 240:17 241:22 252:19
 260:3,3,5 263:22
 277:19 280:6 299:16
 309:7 317:8 328:4
 330:11 333:22 334:2
 334:2 399:3 426:22
wrong 119:1 133:19
 140:8 192:7 201:10
 201:11,11 242:1
 257:19 258:1 268:13
 297:22 307:17 314:16
 330:3 333:14 396:4
 400:22 416:22
wrongdoing 420:8
wrongful 43:2,9 323:3
 349:15 350:11 352:16
 352:17 358:18 368:13
wrote 22:5 31:15 33:4
 33:12,15 205:6 210:8
 387:9
wrought 6:2
www.jpp.whs.mil 4:16

X

X 211:14,15

Y

Y 211:15
yeah 217:10 221:7
 228:6 234:2 245:1
 249:20 250:2 259:1,5
 262:4 263:20 264:8
 372:15 376:12 381:10
 382:15 386:16,19
 390:1 393:20 396:16
 396:18 397:19 398:22
 401:12 417:6 419:20
 427:15,17
year 4:9 20:2 92:2

102:18,18 108:19
 119:5,14 121:15,19
 122:2 147:15 156:17
 158:15,15 172:19
year-old 41:18 42:1
years 91:12 92:3 95:12
 95:20 96:22 99:9
 102:11 105:22 106:18
 107:3,6 112:15 121:6
 121:8,22 124:11,16
 124:17 153:22 155:1
 156:15 157:6 166:16
 166:18 167:13 176:2
 177:12,22 179:18
 180:3 193:11 194:11
 196:5 240:19 277:22
 279:14 367:19 369:4
 369:5
yesterday 65:18,18
 104:1 126:8 168:9
yield 92:13
York 1:12,12 133:5,6
 146:16 271:10,18
 272:7,18 276:9
 402:16 405:10
younger 77:18

Z

Z 211:15
Zahn 8:2
zero 38:1 70:16
zeroing 11:22

0

07 187:9,19 189:17
 200:22 285:4
08 189:20
09 189:20

1

1 15:13 17:8,9,13 31:10
 40:19 96:1 115:12
 135:5 225:8,16 252:6
 273:5 293:15 340:1
 340:11 341:3,9
 342:17 347:22 348:21
 350:9,17 355:11
 363:13,14 379:1
 380:19 382:4,8
 383:21 385:11,20
 386:6 388:11,21,21
 389:20 390:2,2 393:1
 393:16 399:10 427:1
1-11 3:9
1,000-pound 269:14
1:06 215:12
10 3:4 189:21 198:13
 406:9

10:09 92:17 93:6
10:25 93:7
100 73:22 74:4 108:19
 132:5
100-pound 269:14
1004 24:18 33:5
106 32:16
107 3:7
11 7:9 8:6,11,12 10:8
 68:11 83:21 96:12
 97:19 105:22 109:12
 207:14,14,18,20,22
 216:1 222:18 223:19
 224:10 225:8 227:16
 280:18 355:11 427:1
 427:13,16
12 97:19 135:12,19
 178:11 187:10,19,20
 187:21 198:10,21
 200:9,22 284:20
 355:14 358:19
12:12 215:11
120 52:21 64:6 103:9
 105:2 116:3 153:7,16
 166:13,15 167:6
 207:16 211:12 214:3
 214:3 223:17 233:21
 237:16 274:3 289:2
 310:11 316:17 335:6
 353:21 354:9 355:12
 428:5
120(b)(2) 406:9 407:9
120(g)(2) 396:13
120(g)(5) 378:4
120(g)(7) 349:18 359:1
120a 317:7
128 177:1 273:21 274:1
 335:6
13 109:12
132 44:3 48:5
134 115:12,17,19
 213:19 214:1,10,14
 214:22 428:20
14 15:13 26:17 41:17,22
 190:11 354:1 355:1
15 187:20,21
17 59:3 355:14 358:19
18 28:22 118:8 196:18
 304:11 306:18,19,21
1800s 17:22
1948 206:20
1949 19:5 206:20
1950 15:18
1951 18:14 33:22
1968 19:22
1969 20:3
1972 21:20
1976 23:4
1983 20:10,11,14 62:11

1984 20:16 33:6 62:12
62:12 63:17
1993 72:5,5
1996 33:6
1B 324:20
1st 85:1,2 264:3 419:21

2

2 17:9,12,13 31:10,10
71:14 96:1,4 97:20
98:3 99:13 252:6
253:15 261:20 263:4
292:2 304:9,13,16
378:22 388:11,13,16
388:18,21,22 389:3,9
393:1 407:19,20
20 7:19 150:3 279:15
367:19 369:4
200 121:8
2004 105:22
2006 91:3
2007 95:22 96:4 98:2
101:3 106:22 135:4
140:6 142:20 145:22
167:14,15 170:15
197:12 198:9 213:21
214:1 254:5 258:3
266:21 284:22 285:3
308:4,6 309:22 353:9
387:18
2008 170:18
2009 170:18
2010 170:18
2011 109:12 131:12
2012 4:9 73:3 74:3 77:1
96:5 106:22 107:4
109:13,20 129:3
155:4 157:19 196:2,3
196:11 197:21,22
204:14 214:6 258:3
284:10,11 285:3
353:14 390:11
2013 73:16 109:12
2014 194:17
2015 1:9 75:1,2 88:1
2016 76:1 77:16
215 3:8,9
22 429:16
2241 118:8
22nd 429:15
24/7 120:14
25 1:9
27 95:12
2710 120:16

3

3 71:14 96:5 98:17
101:17 103:13 106:20

252:6 261:20 303:5
304:14,16 308:3
339:8 350:7,8,20
406:9 407:10
3:06 332:1
3:34 332:2
32 81:9,12,14,19 82:6,6
82:10,14 83:3 85:15
85:18 86:3,7,10,11
32s 82:18,22 86:16
34 105:9 166:20
35783 92:9
36 15:21 28:16 29:1,7
33:14,17 60:13 68:5
111:2 113:10 119:13
197:2
3rd 85:1

4

4 3:3 11:22 36:16 38:1,1
38:8 39:15,21 40:4
42:8 55:10 71:14
73:12 91:1 111:19
112:20 114:14 115:2
141:21 142:5,9
304:13 310:10,13
339:21
40 189:12
40,000 108:17
405 81:9 166:6 167:2
412 82:16
45 108:15 144:9 183:11
47 86:15
48 427:3

5

5 36:17 73:9 198:9
199:9 273:5 309:22
315:4 321:7 378:22
381:8,11 383:5
392:13
5(b) 234:4 243:8,10
5:13 429:19
50 157:6
500 170:16,20,20,21
51 15:19
514 82:17
53 191:4
56 16:16 28:16 29:1
38:18
5B 382:10
5th 82:9

6

6 113:3 198:10 255:6
349:14
60 193:8
68 20:13

69 206:22
6th 82:8

7

7 198:10 350:15,16
70 193:8
76 115:12
77 44:3 115:11,17
79 48:5
7th 108:18

8

8 15:13 26:17 101:3
105:21 132:19 198:10
198:12 248:20 377:20
392:12,15,18 395:6
395:21
8(A) 243:11,15 244:6,17
244:17 245:10 246:21
248:5 251:6
8(c) 239:21 243:9 244:6
244:11,12 246:22
248:8 251:6
8:30 1:12
8:49 4:2
80 92:8
80s 207:2
850 1:11
8A 287:22
8th 22:10

9

9 101:4 198:10 251:3
395:7 396:9 406:3
90 144:7 171:12 190:22
191:22
916 103:11 129:13,22
178:20 263:13 265:20
265:20,21 266:1
294:19
93 3:6
98 112:19

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Judicial Proceedings Subcommittee

Before: US DOD

Date: 06-25-2015

Place: New York City, New York

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701