

UNITED STATES DEPARTMENT OF DEFENSE

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JUDICIAL PROCEEDINGS PANEL

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PUBLIC MEETING

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FRIDAY
JANUARY 30, 2015

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The Panel met by teleconference at
9:07 a.m. Eastern Standard Time, Hon. Elizabeth
Holtzman, Chair, presiding.

PRESENT:

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

STAFF:

Lt Col Kyle W. Green, U.S. Air Force, Staff
Director
LTC Kelly L. McGovern, U.S. Army, Deputy Staff
Director
William Sprance, Designated Federal Official

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

(9:08 a.m.)

MR. SPRANCE: Good morning, everyone.

This is Bill Sprance, the Designated Federal Official, and this meeting of the Judicial Proceedings Panel is now open. At this time, we turn the meeting over to the Chair, the Honorable Elizabeth Holtzman. Good morning, ma'am.

CHAIR HOLTZMAN: Good morning. Thank you very much, good morning Panel members. Good morning to the staff. Good morning others. Good morning to the public. We're ready to proceed on the review of the executive summary, the report, and the recommendations. And Lieutenant Green, Lieutenant Colonel Green, could you get us started on the recommendations, which is how you propose to proceed?

Lt Col GREEN: Yes, ma'am. I just want to remind all the Members who are in the teleconference. All of you are joining by phone. Just so you know who is here, we have the staff here in our offices. The entire staff is here.

1 Then we do have -- this is a public meeting. So,
2 we do have some of the Service representatives
3 and people who are listening in on the meeting.

4 So, they will attend, if you will,
5 from here in our offices. The other person that
6 we have listening in by phone is the court
7 reporter, and they are recording the meeting and
8 will be transcribing it.

9 So, if you'd please just remember, as
10 much as you can because they can't see faces, to
11 just try to identify yourselves. That way they
12 know who is talking and the transcript will be
13 recorded properly.

14 I sent everyone last night three
15 copies of the documents. These are the latest
16 versions of the summary of recommendations, the
17 executive summary and the full report.

18 The summary of recommendations
19 included comments that everyone had made to that
20 document. There were five comments, as well as a
21 number of other edits that people made for the
22 supporting facts for each of the ten

1 recommendations that the Panel has recorded. So,
2 those are all noted in the report.

3 There are three more substantive
4 comments in the executive summary, and 94
5 comments in the full report. So, my
6 recommendation is just to step through those.

7 The full report I think we tried to
8 err on the side of caution. And so, some of them
9 may be fairly quick to go through. I think the
10 vast majority of them will be very quick to go
11 through, but we wanted to make sure that the
12 staff was not making any changes or doing
13 anything without the Panel having okayed or done
14 that.

15 So, without further review, ma'am,
16 maybe we want to step to the recommendations. I
17 would note, Mr. Stone, I know you sent some
18 additional comments this morning. So, we do have
19 copies of those. I think as we step through the
20 recommendations of the executive summary, if you
21 just want to note those as we go through the
22 discussion, that's probably easiest.

1 CHAIR HOLTZMAN: Lieutenant Colonel
2 Green, how should we proceed? Do we go bullet by
3 bullet? Recommendation by recommendation?

4 Lt Col GREEN: I think through the
5 summary of recommendations and the executive
6 summary. I would recommend that, ma'am. If we
7 can just get -- I think the goal of this meeting
8 is to get everyone's approval and agreement on
9 the recommendations, and general agreement with
10 the executive summary and full report.

11 We will make the final edits or, you
12 know, the staff will input everybody's edits from
13 this meeting and send out a final version of the
14 report just so that you have that in advance.

15 Again, just so everyone is aware, the
16 Panel is required to provide its report within
17 180 days of its first meeting. Day 180 is
18 February the 4th, Wednesday. So, our goal is to
19 have the Panel's approved report to the graphics
20 designer by Monday, which will allow her about a
21 day to complete the layout of the report so that
22 we can deliver it to the Secretary and to

1 Congress by Wednesday.

2 CHAIR HOLTZMAN: Okay, thank you very
3 much for that. Does anybody have any objection,
4 comment, additions in regards to recommendation
5 number 1?

6 MR. STONE: This is Vic Stone. If I
7 could just comment on -- I had a question a
8 moment ago. Certainly, we're doing 180 days. I
9 couldn't understand how come we didn't have until
10 February 8th. Why are we trying to get it out by
11 February 4? Are we putting an unnecessary four-
12 day push on ourselves?

13 CHAIR HOLTZMAN: Can I ask, please,
14 that we defer this until we finish everything
15 else?

16 MR. STONE: Okay, sure. All right.

17 CHAIR HOLTZMAN: Kyle and Kelly and
18 others, timekeepers; can you please make sure
19 you've done the accurate counting and report to
20 us at the end of our deliberations? I'm assuming
21 we'll do it quickly, but I'd like to defer that
22 if you don't mind, Mr. Stone. Please.

1 MR. STONE: Okay, the other issue that
2 you may want to defer is that I told Kyle several
3 days ago my strong preference, if the computer
4 can do it easily, is to put footnotes on the
5 bottom of each page where they are noted, and not
6 at the end.

7 Because it makes us look like we're
8 not talking about our personal preferences, but
9 you have the footnotes there. Someone doesn't
10 have to go back and forth with the finger at the
11 back, and a finger at the front and get tired.
12 They can look right down.

13 If the computer can do it easily, it
14 is my strong preference. I don't know how others
15 feel. If you want to defer that, we can defer
16 that too.

17 CHAIR HOLTZMAN: We can do that right
18 now. Does anybody have any objection to that, or
19 a comment on that? Staff, do you want to explain
20 your rationale for not doing it?

21 Lt Col GREEN: Ma'am, this was actually
22 something carried over from the RSP in terms of

1 their report formation, and Mr. Stone, this is
2 easy. We can do it either way. There's no
3 burden in this. It's a click.

4 JUDGE JONES: This is Barbara Jones.
5 I guess all I would say is, because of the bulk
6 of the RSP report, it made for easier reading of
7 the whole report to put the footnotes in
8 endnotes. I guess I'm agnostic to how we do this
9 shorter report, but it made it for an easier
10 read. That's why we did it the other way with
11 the much longer RSP report.

12 MR. TAYLOR: Good morning. This is
13 Tom Taylor. I agree with Mr. Stone that it is
14 easier for me, at least. I thought it was much
15 easier to have a footnote on the same page.

16 VADM TRACEY: This is Pat Tracey. I
17 agree.

18 CHAIR HOLTZMAN: This is Liz Holtzman.
19 I have no strong feelings about it. So, Mr.
20 Stone's suggestion is agreed to.

21 MR. STONE: One other item. And I'm
22 looking at bullet one, where we think we had seen

1 typos which may be -- was disputably drafting, do
2 we just send the typo to you, or the page number?
3 Like words that got misspelled and stuff, because
4 we'd love you to catch them before Monday.

5 Lt Col GREEN: Yes, sir, please. The
6 staff is obviously scrubbing as much as we can,
7 but if you see anything like that, please let us
8 know.

9 MR. STONE: Okay, and I assume they
10 will do a spell check. That should catch some of
11 them. Okay, on the first bullet of the item --
12 and I should say as introductory for a moment.
13 When I read that any changes were made that the
14 staff was going to translate into the main
15 document, I thought it was the opposite way with
16 drafts too: that any comments we made there would
17 carry over here.

18 So, it's a communication slip up, that
19 I didn't get my comments on the recommendations
20 and the summary in. The vast majority are just
21 word changes I don't even think I necessarily
22 need to go over them but I'm going to -- on the

1 ones that I think are at least on the actual
2 bulleted recommendation I'll try and mention.

3 I'm on the very first one. I think on
4 the second line, where it says, "Secretary of
5 Defense examine the DoD interagency review
6 process for establishing." Right there after
7 establishing, I'd insert the words "consistent
8 implementation guidance." Because we don't just
9 want -- we say at a lot of places later -- I mean
10 you could also use the word "uniform," but I
11 thought "consistent" fit better here.

12 Of course, we don't just want the
13 guidance from the outset. We want to make it
14 clear we want consistent guidance from the
15 various Services.

16 CHAIR HOLTZMAN: Mr. Stone, I'm just
17 going to make a comment about that. Here I
18 disagree, unless I'm misunderstanding what this
19 is about. The issue isn't that we haven't had
20 consistent guidance. The issue is that under the
21 statute, Congress in its brilliance, decided that
22 it wouldn't write a complete statute. It would

1 let the President flesh out the meaning of the
2 statute.

3 That's what hasn't happened. Not that
4 it hasn't been consistent. It's just that it
5 hasn't happened, or it hasn't happened in a
6 timely manner.

7 Am I correct that that's what this
8 addresses? So, putting the word "consistent"
9 kind of changes the focus of it entirely.

10 MR. STONE: Okay, I can leave it like
11 that. It's fine.

12 CHAIR HOLTZMAN: Kyle, am I wrong or
13 right?

14 Lt Col GREEN: No, ma'am. On this
15 bullet, you hit it exactly right. This is
16 talking about Presidential executive guidance.

17 CHAIR HOLTZMAN: Okay, thanks. Any
18 other comments or recommendations on
19 Recommendation 1?

20 MR. STONE: I'm going to go down to
21 the very last bullet in the last line, where it
22 says, "This Panel cannot review that

1 implementation." I think it has to say, "This
2 Panel cannot meaningfully review that
3 implementation," or, "This Panel cannot
4 comprehensibly review that implementation."

5 Obviously, we reviewed it if we're
6 writing a report. We've done something, so I
7 think we have to explain. It makes it more
8 difficult to do, not that we can't do it or it
9 suggests we don't know what we're talking about
10 in our report.

11 VADM TRACEY: This is Pat Tracey. I
12 disagree. I think what we've said is there isn't
13 any implementation guidance. That's what we were
14 chartered to review. Therefore, we can't
15 evaluate it.

16 CHAIR HOLTZMAN: What we could do here
17 to clarify is "cannot review that implementation
18 guidance."

19 MR. STONE: Okay. Fine with me. This
20 is Vic Stone.

21 CHAIR HOLTZMAN: Staff, is that okay?
22 Anybody disagree with that?

1 Lt Col GREEN: Yes, ma'am. We can
2 make that addition. Just add the word "guidance"
3 at the end.

4 CHAIR HOLTZMAN: Any other questions
5 on Recommendation 1? Okay, finished with
6 Recommendation 1. It is agreed to with the
7 changes. Recommendation 2: Any comments,
8 suggestions on Recommendation 2? Hearing none --

9 MR. STONE: I got one. I just didn't
10 want to monopolize the floor. Vic Stone. Where
11 it says on the third bullet on the
12 recommendation, "This expounds on a similar
13 recommendation for Response Systems Panel."

14 Right in there I would put comma,
15 recommendation number, and whatever it is. I
16 mean if we're going to refer to the RSP on a
17 recommendation, it seems to me we should put the
18 number in that we're referring to.

19 CHAIR HOLTZMAN: Any comment on that?

20 LTC McGOVERN: The number is cited in
21 the report, and we can insert it here as well,
22 sir.

1 CHAIR HOLTZMAN: Is it sufficient to
2 have it in the report, Mr. Stone? Or do you want
3 it here too?

4 MR. STONE: I think I'd want it here
5 because certainly some people are going to start
6 skimming the report once they see this here, and
7 it doesn't -- as long as we've got it handy,
8 that's great.

9 LTC McGOVERN: Not a problem, sir.

10 CHAIR HOLTZMAN: Okay, any objection?
11 Hearing none --

12 VADM TRACEY: No.

13 CHAIR HOLTZMAN: Okay, so we don't
14 have -- okay, so any other comments with regard
15 to Recommendation 2? Okay, hearing none, that is
16 agreed to. Recommendation 3, any comments,
17 suggestions or thoughts on 3?

18 Lt Col GREEN: Ms. Holtzman, you added
19 additional language at the end just to not only
20 maximize face-to-face interactions, but also to
21 develop effective means for SVCs to communicate
22 with clients when face-to-face communication

1 isn't possible.

2 CHAIR HOLTZMAN: Does anybody have any
3 objection to that?

4 JUDGE JONES: I'm sorry. Those are
5 words that are not on this version of the
6 document? Is that right, Kyle?

7 Lt Col GREEN: No, ma'am. It's the
8 bubble comments to Recommendation 3.

9 JUDGE JONES: Okay. Could you go
10 through that again, Kyle?

11 Lt Col GREEN: I can. It's -- Ms.
12 Holtzman, her proposal was to add at the end of
13 Recommendation 3 the words, "And to develop
14 effective means for SVCs to communicate with
15 clients when face-to-face communication is not
16 possible."

17 JUDGE JONES: That sounds fine.

18 MR. TAYLOR: I think that's a nice
19 addition. You know, if you print it out, by the
20 way, then you'll be able to see the bubble
21 comments as opposed to having to click on your
22 screen.

1 CHAIR HOLTZMAN: Okay, any -- so,
2 that's agreed to without any objections. I don't
3 hear any objections, so that is agreed to. Any
4 other comments on recommendation 3?

5 Hearing no objection, we're going to
6 adopt Recommendation 3. Recommendation 4, any
7 comments?

8 MR. STONE: This is Vic Stone. I
9 think that the way it reads, it's not that clear
10 about what the timing is that we're talking
11 about. I simply reworded it to say, "The
12 Department of Defense developed the policy to
13 standardize both the timing within which to
14 receive training and the substantive requirements
15 of SVC training."

16 I think that's the timing we're
17 talking about within which, you know, to receive
18 training.

19 CHAIR HOLTZMAN: Mr. Stone, I had
20 raised the same issue with the staff. So, I am
21 completely in agreement with you. Anybody else
22 have any thoughts or objections to Mr. Stone's

1 proposal?

2 MR. TAYLOR: Tom Taylor. I agree with
3 him.

4 JUDGE JONES: Me too. Barbara Jones.

5 VADM TRACEY: Pat Tracey. I do as
6 well.

7 CHAIR HOLTZMAN: Okay.

8 MR. STONE: Also, on the first line
9 where it said underneath that, "SVCs must be
10 sufficiently trained." I somehow --
11 "sufficiently" struck me as the wrong word. I
12 mean you could say, "Adequately trained," or you
13 could say, "Trained in advance."

14 It could say "Trained in advance."
15 Because I think the training is good. You're
16 just not getting it in time. So, I have that in
17 the bullet under the recommendation. Then under
18 the line that says, "At present, some SVCs may
19 begin to serve clients before they receive SVC
20 training."

21 CHAIR HOLTZMAN: I have no objection.
22 Anybody else?

1 JUDGE JONES: No. I like it.

2 "Training in advance" sounds good to me.

3 MR. STONE: In the second bullet,
4 instead of the words, "DoD should make certain,"
5 I just put, "DoD should ensure." I think it
6 flows better.

7 CHAIR HOLTZMAN: Okay, any objection
8 to the -- well, I guess we've agreed to the first
9 suggestion of Mr. Stone, and now we have a second
10 suggestion about "ensure". Any objection to
11 that? I don't hear any. So, any other -- sorry.
12 Do I have any objections to Recommendation 4 as
13 amended? I don't hear any, so that's adopted.

14 Recommendation 5, any comments or
15 disagreements?

16 MR. STONE: I'm at it again. This is
17 Vic Stone. At the end of the recommendation, I
18 wrote, "And client satisfaction." Because that
19 is not mentioned in the things that were listed
20 there in the recommendation, and we do mention it
21 below, but I think that is something that should
22 be mentioned right up front.

1 CHAIR HOLTZMAN: I see. So, you want
2 it in the recommendation block itself?

3 MR. STONE: The last three words, yes.
4 What they have there, "Standardized assessment of
5 SVC program effectiveness and client
6 satisfaction."

7 CHAIR HOLTZMAN: Any objection to
8 that? Hearing none, that's agreed to. Any other
9 comments with regards to Recommendation 5?

10 MR. STONE: Yes, I do in the bullets,
11 and it relates to my comments that were in the
12 report. Again, Vic Stone.

13 First bullet I changed the language to
14 say, "Assessment metrics are necessary to." And
15 they had, "Communicate realistic expectations and
16 measures of the program's performance." And I
17 just made it, "Necessary to determine how the SVC
18 programs are performing."

19 CHAIR HOLTZMAN: Mr. Stone, I don't
20 want to interrupt you, but please look at the
21 changed language as it appears. Do you have it?

22 MR. STONE: Let me look. I've got

1 many things up here on the screen.

2 LTC McGOVERN: Mr. Stone, if you're
3 going off the version that you sent us this
4 morning, all of the Members have the changes
5 except for the ones which are in your capital
6 blue.

7 MR. STONE: Okay, good.

8 LTC McGOVERN: Ms. Holtzman had
9 already recommended a series of changes.

10 MR. STONE: Excellent. Well, then I
11 just have to go down to the second bullet, where
12 I added at the end of the second bullet, which
13 is, "Impeding the JPP statutory mandate to
14 reflect on those metrics."

15 In other words, there has to be some
16 reason really why the metrics matter, and it is
17 because it is impeding us from doing our job.

18 VADM TRACEY: This is Pat Tracey. I
19 disagree. Whether the JPP had a responsibility
20 to report or not, the metrics are required for
21 this to be a solid program.

22 JUDGE JONES: I agree with that. This

1 is Barbara Jones.

2 CHAIR HOLTZMAN: I agree with the
3 Admiral as well. This is Liz Holtzman.

4 MR. STONE: Okay, forget it. I
5 withdraw that one. Down to the third bullet,
6 item number 2, where it says, "The rate at which
7 victims use the services of SVCs." I would've
8 liked to put in there the rate at which both
9 restricted and unrestricted victims use the
10 services of SVCs.

11 Because I want to make it clear that
12 they're going to have to, as best they can,
13 collect the data on the unrestricted victims.

14 CHAIR HOLTZMAN: Okay, is there any
15 objection to that? I don't hear any. So, that
16 is agreed to.

17 MR. STONE: In number 5 down below,
18 same thing. Use of the Expedited Transfer
19 Program, and I put in, "Among restricted and
20 unrestricted victims who do and do not remain in
21 the Services."

22 There I think -- where we're talking

1 about the transfer program. We not only want to
2 capture it for the restricted and unrestricted,
3 but we also want to be sure that as factors in
4 looking at it, they look at other -- people to
5 stay in the Services, or it didn't make any
6 difference. They dropped out anyway after a
7 period of time.

8 Lt Col GREEN: Mr. Stone, this is
9 Kyle. Two things. The Expedited Transfer
10 Program is only available to someone filing an
11 unrestricted report. It is not available to
12 anyone filing a restricted report. That was a
13 recommendation or a point of discussion within
14 the RSP but that has not been changed.

15 In terms of the remaining in the
16 Service, it's point six that was attempting to
17 address the Service members staying in the
18 military.

19 (Simultaneous Speaking)

20 MR. STONE: If it'll cross reference
21 it, then that's okay.

22 Lt Col GREEN: Okay.

1 VADM TRACEY: Mr. Stone is correct
2 that you do want the correlation. That's how you
3 would get to effectiveness of the Expedited
4 Transfer Program.

5 Lt Col GREEN: Okay.

6 CHAIR HOLTZMAN: You want the
7 correlation between what and what?

8 MR. STONE: The transfer made them
9 stay in the program or it made no difference
10 whatsoever. They still -- their reputation
11 caught up to them, and they had to leave anyway.
12 So, it is not effective for them.

13 CHAIR HOLTZMAN: I have no objection.
14 Does anybody have an objection to the change?

15 Lt Col GREEN: I found the
16 recommendation, and it's to remove the restricted
17 and unrestricted because that's not accurate.

18 MR. STONE: That's fine.

19 JUDGE JONES: This is Barbara Jones.
20 This can be easily fixed. I think -- I hate to
21 take it back -- we really don't have restricted
22 and unrestricted victims. So, we just have to

1 change the language in there. The rate at which
2 victims -- unrestricted reports. I don't know
3 what we mean when we say restricted and
4 unrestricted victim. But I might have missed
5 something.

6 CHAIR HOLTZMAN: Where are we saying
7 unrestricted victims?

8 Lt Col GREEN: There's the modified
9 language, Mr. Stone's language, and number 2.
10 Judge Jones, you're right. Just to say that what
11 we're really talking about is victims who file
12 restricted and unrestricted reports.

13 JUDGE JONES: Just make it a little
14 longer.

15 CHAIR HOLTZMAN: Can you say the
16 language so we can all hear what the language
17 actually is?

18 Lt Col GREEN: The language that the
19 Panel just discussed was "the rate at which both
20 restricted and unrestricted victims use the
21 services of SVCs." And Judge Jones, I think, is
22 proposing to say, "the rate at which victims who

1 make restricted and unrestricted reports use the
2 services of SVCs."

3 CHAIR HOLTZMAN: My view is that's
4 really redundant because we're talking about all
5 victims here. It doesn't say a special class of
6 victims. So, it seems to me as unnecessary. But
7 if you want to say it --

8 JUDGE JONES: The only reason I said
9 that is because I thought we needed the words
10 "restricted and unrestricted". If we're not, I
11 think victims means all victims, whether they --
12 whatever kind of report they file. I don't
13 disagree with that. I thought we were adding
14 language.

15 LTC McGOVERN: During your
16 deliberation session two weeks ago, there was a
17 table that pointed out a very low rate of victims
18 who file restricted reports use SVCs, most likely
19 because they're filing medical while those who
20 file unrestricted -- so, if you do include the
21 language here, it may then point out to the
22 Services that they should be tracking those rates

1 separately to see a correlation there.

2 MR. STONE: That's what I want to do:
3 make that prior table data more useful. This is
4 Vic Stone.

5 CHAIR HOLTZMAN: Okay, well, then the
6 language should be -- you can't say restricted
7 and unrestricted victims.

8 MR. STONE: I'm fine with however Kyle
9 wants to fix the language.

10 CHAIR HOLTZMAN: Well, if it's put at
11 the end, we should agree on the language.
12 Something like "the rate at which victims use the
13 services of SVCs, regardless of whether they file
14 restricted or unrestricted reports."

15 MR. STONE: How about instead of
16 regardless, "when they file restricted or
17 unrestricted."

18 CHAIR HOLTZMAN: That means just at
19 the time. I think that's too restrictive.
20 Anyway, let's let Kyle do it. If people are in
21 agreement -- first of all, do people agree with
22 Mr. Stone's suggestion, leaving exact language

1 aside? Any disagreement with it?

2 Okay, so then we'll let -- Mr. Stone,
3 are you satisfied to let Kyle develop the
4 language? Excuse me.

5 Lt Col GREEN: I think we have the
6 concept, ma'am. We'll make sure it reflects what
7 the Panel is saying here.

8 CHAIR HOLTZMAN: Okay, any other
9 suggestions with regard to Recommendation 5?

10 MR. STONE: I'd like to clarify item
11 7. This is Vic Stone. After it says, "Delays in
12 investigations or judicial proceedings," I wanted
13 to put, comma, "compared to the delays needed to
14 accommodate SVC schedules."

15 I don't want them just to track delays
16 unless we can have something to compare it to
17 that is a -- that is a baseline.

18 JUDGE JONES: Could you tell me that
19 again, Mr. Stone? I'm sorry.

20 MR. STONE: The way it reads right
21 now, it sounds like the Services only need to
22 track delays due to accommodating SVC schedules.

1 I also want them to track the data or look back
2 at the data in all cases, or cases where they
3 haven't had to accommodate an SVC because they're
4 not on the case.

5 So, we need -- we need to have
6 something to compare if the delay is two days.
7 It is two days more than what? If it's two days
8 more than 100 days, it's not that important. If
9 it's two days more than what used to be three
10 days, it more or less doubles the time.

11 I don't know, but it seems to me when
12 we look at the delay caused by having an SVC in
13 the program, we need to have the baseline data as
14 well.

15 JUDGE JONES: I agree with you. It
16 makes sense.

17 VADM TRACEY: I agree with what Mr.
18 Stone is trying to get at. We need to formulate
19 it though in a way that doesn't assume that we're
20 asking them to go back and create a baseline. We
21 need a forward measurement.

22 MR. STONE: I'm happy to let the staff

1 work this out as long as they now know what we
2 want.

3 CHAIR HOLTZMAN: Well, I don't know
4 that we need this language. How are they going
5 to assess? Remember this is an assessment. How
6 are they going to assess what a delay means
7 unless they're looking at it in some kind of a
8 context. I mean I -- okay, if you think they
9 need to be instructed, but I don't think it's
10 serious enough to object to it. So, I'm prepared
11 to agree with it and have the staff develop the
12 language.

13 LTC McGOVERN: Real quickly. When
14 we're trying to develop this language, I guess I
15 just want to be clear what kind of baseline we --
16 you're asking going forward then, that they track
17 every defense delay, every prosecution delay and
18 every SVC request for delay so that you can
19 compare those? I mean I just am not sure. We're
20 asking the Service for a lot of information.

21 MR. STONE: I wasn't actually asking
22 that. This is Vic Stone. I'm asking for the

1 overall times it takes in cases either generally
2 or without SVCs, where an SVC has been declined
3 compared with a case where an SVC has been asked
4 for and utilized.

5 CHAIR HOLTZMAN: But isn't that
6 exactly what number 7 says?

7 MR. STONE: No, I don't think so. I
8 think the way 7 could be interpreted now is
9 they'll look at only the cases with SVCs and tell
10 you they waited three more days until the SVC
11 came down to meet with his client. Then they
12 waited another four days for this, and they
13 calculate the SVC delay as two weeks. That's a
14 lot.

15 CHAIR HOLTZMAN: But knowing what the
16 SVC delay is is important by itself, whether or
17 not it's ten times worse or just marginally worse
18 than what defense counsel do. I don't understand
19 what the baseline is going to tell you here.
20 When you compare this -- because if the SVC in a
21 case adds ten additional days, then it adds ten
22 additional days. So, what are we comparing it

1 to? I'm missing the point here.

2 JUDGE JONES: This is Barbara Jones.

3 It may be that from the date of referral to the
4 date of final disposition after court-martial
5 took 100 days, or 200 days. If you don't sort of
6 have that line, then it just looks like we're --
7 I mean we can all say, "It took an extra seven
8 days. It took an extra ten." But if it took an
9 extra seven in something that would've been over
10 in two weeks, that's different than it took an
11 extra seven if it were some proceeding that
12 wasn't going to be over after three months
13 anyway.

14 I think that's what we're talking
15 about here.

16 MR. STONE: Exactly.

17 CHAIR HOLTZMAN: Yes, but you see --
18 okay, what that does is minimize -- I mean you're
19 trying to say, "Well," -- I mean there's an
20 implicit point that you're trying to make here,
21 which is, "Okay, well, if this is going to be a
22 lengthy proceeding anyway, so what?" I'm not

1 sure that we know enough to say so what. So, the
2 delay itself should be -- when they have figured
3 out what the delays are, maybe they can figure
4 out the significance of it, but I'm not sure I
5 want to minimize it at this point, which is what
6 the suggestion is by giving all these comparative
7 figures.

8 Now, maybe I'm still misinterpreting
9 it --

10 JUDGE JONES: I'm not trying to
11 minimize it. I just think it helps for the
12 analysis. And you can decide then whether it is
13 a big deal, or not such a big deal.

14 CHAIR HOLTZMAN: What is an average?
15 What is a baseline? Is it an average? Is it
16 last year? Is it an average of the last five
17 years? What is the baseline?

18 Lt Col GREEN: Ma'am, I think what the
19 Services would provide you is in the average
20 general courts-martial, it takes 120 days to get
21 from referral to the date of trial. In cases
22 involving an SVC, it takes 127 days.

1 I don't know that you're going to --
2 so, I think that's really the comparison that the
3 Services would be able to do to try to break out.
4 More specific data, I think, would be a
5 challenge.

6 MR. STONE: This is Vic Stone. I'm not
7 asking for more specific data. I just want them
8 to collect that data. Whether we minimize it, or
9 we don't minimize it later is not what I care
10 about. I want them to collect that data so they
11 don't say later, "Oh, we didn't collect the
12 overall time, the 120 days or whatever, because
13 you didn't ask us to. We just collected the
14 seven."

15 VADM TRACEY: This is Pat Tracey.
16 This is not a stupid organization. So, we are
17 asking them to establish assessment measures, and
18 we believe that the measures should include the
19 amount of delay that is attributable to SVCs
20 participating in the case, and we would want them
21 to understand how material that is by comparison
22 to trials for which SVCs are not included.

1 Can we just frame it that way? And
2 the government can actually figure out what data
3 they need to collect to determine materiality?

4 JUDGE JONES: Admiral Tracey, I think
5 that's great. That's well said.

6 MR. STONE: Fine with me.

7 CHAIR HOLTZMAN: That's fine with me.

8 Lt Col GREEN: Our proposal is just,
9 and if this works Alice had a re-word on this
10 that I think accommodates exactly that. So, the
11 re-word would be, "Delays in investigations or
12 judicial proceedings specifically caused by the
13 need to accommodate SVCs schedules." I think
14 that would capture both sides of the -- because
15 it would imply that you would be making a
16 comparison there.

17 JUDGE JONES: I would just ask that
18 you go back and take a look at Admiral Tracey's
19 wording, and see if any of that is slightly more
20 specific or easier. I'll take a look. I'd be
21 happy with it either way. I think I prefer
22 Admiral Tracey's.

1 MR. STONE: This is Vic Stone. I
2 think I do too.

3 LtCol GREEN: Yes, ma'am, we can do
4 that.

5 JUDGE JONES: Thanks.

6 CHAIR HOLTZMAN: Okay. Any other
7 questions, criticisms, thoughts on Recommendation
8 5? Okay, so, I don't hear any, and we've
9 approved Article 5 with the changes that the
10 transcript will reflect. Recommendation number -
11 - I'm sorry, Recommendation 5. Recommendation 6,
12 any comments on this?

13 MR. STONE: Yes. This is Vic Stone.
14 On the recommendation at the end, and I -- and I
15 see that there's a comment that you have about --
16 that Admiral Tracey added about whether we have
17 to let the general public know.

18 I will say in the draft report itself,
19 I pointed out that every federal and state court
20 in the country with regards to publicly filed
21 documents lets the public get them, and putting
22 something on paper would do that, but the other

1 thing that ever single federal and state court in
2 the country does is they participate in the FBI's
3 annual crime reports, and I would add that at the
4 end of this recommendation say "and participate
5 in the FBI's annual crime reports."

6 That gives us a global number, which
7 like right now, everybody is guessing at and
8 trying to feel around. "Oh, how many did we have
9 last year? How many cases? What does it look
10 like?"

11 What they could will have to be put in
12 the same parameters that the states do, and send
13 to the FBI annually -- their statistical branch -
14 - and there's just no reason that I can see
15 anywhere that we shouldn't be doing this and
16 either calming down the people who think there
17 were millions of rapes, by showing what the
18 actual number is or think that the rate is
19 increasing or decreasing crazily.

20 It shows a certain openness that these
21 are federal rates, could've been prosecuted
22 federally and been counted but pursuant to the

1 1950 MOU with the Department of Justice, these
2 rapes, which are called federal crimes, are
3 prosecuted by the military but their numbers
4 aren't included in the FBI's annual crime
5 reports.

6 CHAIR HOLTZMAN: So, excuse me.
7 Recommendation 6 doesn't deal with anything
8 related to FBI reports or reporting. All it does
9 is talk about access of special victims' counsel
10 and the victim to document information and case
11 filings.

12 MR. STONE: It only talks about access
13 to the general public, and that's exactly what
14 participation in the FBI annual crime reports
15 does. And by the way, that does it to counsel
16 too because if they bring a case that was not
17 brought at all last year, that's the way counsel
18 make an argument that this is selective
19 prosecution.

20 "See, none of these were prosecuted in
21 the last five years. Why are you doing it
22 today?"

1 CHAIR HOLTZMAN: Okay, but we haven't
2 heard testimony on whether the absences of
3 federal crimes, FBI crimes figures, has impeded
4 defense counsel.

5 So, I would be a little reluctant to
6 make a recommendation about that. Nor have we
7 heard -- I think the suggestion may be very valid
8 and very important about the need to be part of
9 the FBI's statistics, and we ought to hear
10 something about it, but I don't think, number
11 one, that we have the background at this point,
12 and the testimony and the presentations, to
13 warrant either one of those suggestions.

14 And number two, the reference here in
15 this recommendation to the general public was not
16 a reference with regards to statistics. It was a
17 reference -- I don't know why it got in there,
18 but the basis for us is to focus on the ability -
19 - the problem that was noted to us, which was the
20 difficulty that special victims' counsel were
21 having accessing information, basic information.

22 When was the -- when was this pleading

1 filed? What is going on in the case? I think
2 the references to the general public came about
3 because of the Freedom of Information Act stuff
4 and the -- which special victims' counsel had to
5 utilize, which was a tool available to the
6 general public.

7 That's a different story. Am I -- I
8 think that's what my concern is here. I mean
9 Kyle is --

10 MR. TAYLOR: This is Tom Taylor. I'd
11 like to weigh in on this one too. I agree with
12 the Chair's recommendation to place the language
13 to focus on ensuring SVCs and victims have
14 appropriate access. And to the extent that we
15 get into this issue of the access of the general
16 public; I think it actually may be outside the
17 scope of what we're doing with Recommendation 6.

18 Any time you are attempting to levy a
19 new requirement or a new reporting requirement on
20 the Defense Department, you got to think about
21 how many different kinds of levers you are
22 affecting. So, I agree with the Chair on this.

1 JUDGE JONES: This is Barbara Jones.
2 Also, really being able to report military crime
3 statistics to the FBI and -- and turn that into
4 FBI statistics is something the RSP Panel looked
5 at and thought was a great idea, but is really a
6 different topic and requires a -- it would
7 require a heck of a lot more uniformity than we
8 have now about definitions of rape and sexual
9 assault.

10 So, it is really a very different
11 topic, and I don't think we've really touched on
12 it here in the JPP.

13 VADM TRACEY: Admiral Tracey. That
14 was my concern was that what we were talking
15 about -- I did not recall that we had actually
16 made any conclusions about it.

17 CHAIR HOLTZMAN: So, what we have
18 before us is --

19 MR. STONE: That's okay. I agree to
20 be out-voted.

21 CHAIR HOLTZMAN: Okay, we have
22 language from me to replace the blue, the item in

1 blue. Is there agreement to that or disagreement
2 with that?

3 MR. TAYLOR: Tom Taylor. I agree with
4 that entirely.

5 VADM TRACEY: I agree with that as
6 well. Pat Tracey.

7 JUDGE JONES: Yes, I do.

8 CHAIR HOLTZMAN: Mr. Stone?

9 MR. STONE: I'm fine with it.

10 CHAIR HOLTZMAN: Okay, fine. So, the
11 text of Recommendation 6 as amended by that
12 bubble, there's no objection to that. Do we have
13 any objection or comments on the -- how many
14 bullets are --

15 MR. STONE: There's word there --
16 before you leave it, those two bullets. On the
17 first bullet, it says "administrative law
18 paradigms." It should be "mechanisms." It's not
19 a paradigm. It's a mechanism. It's just a word
20 change.

21 CHAIR HOLTZMAN: Okay, that sounds
22 reasonable. Any objection to that?

1 VADM TRACEY: No. This is Pat Tracey.

2 CHAIR HOLTZMAN: Line 5. So, it would
3 say "administrative law mechanisms," instead of,
4 "paradigms."

5 JUDGE JONES: Or we could just say
6 "administrative law."

7 MR. STONE: That's okay, too.

8 CHAIR HOLTZMAN: Everyone in agreement
9 with that, with Barbara's amendment to Mr.
10 Stone's suggestion?

11 MR. TAYLOR: This is Tom Taylor.
12 "Administrative law" and then leave out any
13 further noun?

14 CHAIR HOLTZMAN: Leave out any further
15 what?

16 MR. TAYLOR: Noun. So, it would just
17 be "grounded in administrative law, specifically
18 to Privacy Act," et cetera.

19 CHAIR HOLTZMAN: That suggestion --
20 you're correct --

21 MR. TAYLOR: I'm okay with it.

22 CHAIR HOLTZMAN: Okay, so, we have no

1 objection to that. So, bullet 1 is okay. Bullet
2 2, any objection to that?

3 Okay, so, Recommendation 6 as amended
4 is approved without objection. I don't hear any.
5 Recommendation 7? Any objection or comment? I
6 don't hear any. So, Recommendation 7 and the
7 bullet are agreed to.

8 Okay, Recommendation 8, any comment,
9 any disagreement? Any thoughts?

10 MR. STONE: Yes, but I'll wait if
11 somebody else wants to go first.

12 CHAIR HOLTZMAN: It's okay. Anybody
13 else have a comment besides Mr. Stone? Okay, Mr.
14 Stone?

15 MR. STONE: The last line, where it
16 says "of any alleged violation of the rights set
17 forth in Article 6b of the UCMJ." That is too
18 narrow, both here and later in the other items
19 that we deal with. "Of any alleged violation of
20 victims' rights."

21 In other words, it may be a service of
22 guideline or even a rule or a benchmark saying

1 about something else, like for example where the
2 -- you know, we're going to have all victims'
3 counsel be allowed to stand in the well when they
4 argue. And then some particulars, like presiding
5 judge says, "No, no. I don't care. In my
6 courtroom, you don't stand in the well."

7 It seems to me everything is not in
8 Article 6b. Some of them will be in what they're
9 promulgating that implement the various rights.
10 We get around that problem by saying "of any
11 alleged violation of the victim's rights." And
12 we end the sentence there.

13 CHAIR HOLTZMAN: Mr. Stone, may I ask
14 you a question?

15 MR. STONE: Yes.

16 CHAIR HOLTZMAN: Under the CVRA, what
17 does the CVRA allow a mandatory and expedited
18 interlocutory review for? Is it only for items
19 under an act, or anything else?

20 MR. STONE: I believe it's anything.
21 In other words, the victims have the right to
22 file for the review, it's an expedited review.

1 The court can deny it quickly, but they have the
2 right to do it.

3 CHAIR HOLTZMAN: I know. My point is

4 --

5 MR. STONE: I have the language right
6 here. Give me one second, and I will open it and

7 --

8 CHAIR HOLTZMAN: Are we creating any
9 bigger rights here than would be created under
10 the CVRA?

11 MR. STONE: I don't believe we are. I
12 think we're --

13 LTC McGOVERN: Mr. Stone is correct.
14 The CVRA says that the district courts shall take
15 up and decide any motion asserting a victim's
16 right forthwith. And in LRM v. Kastenberg, they
17 actually found that MRE 412 and 513 created the
18 right for a victim to be heard.

19 So, Article 6b captures your right to
20 be heard, but sometimes that right then is
21 embedded in other rules. So, it would be safe to
22 say "victims' rights," and omit the language in

1 Article 6b.

2 CHAIR HOLTZMAN: Okay, well, if the
3 staff is in agreement. Does anybody object?
4 We'll accept Mr. Stone's suggestion.

5 MR. STONE: And to conform it in the
6 third bullet below that on the second line, it
7 says "have legal standing there." It just should
8 say "rights." You'd have to strike Article 6b
9 just to conform that to the recommendation.

10 CHAIR HOLTZMAN: Well, but that's a
11 little unclear because that could be any right.
12 Then we would be creating --

13 MR. STONE: Okay, you want to say
14 "victims' rights"? Again, so we cover 412 and
15 513 among other things?

16 CHAIR HOLTZMAN: Maybe the better way
17 to say it is to clarify that there is legal
18 standings for victims to enforce. Oh, same
19 thing.

20 MR. STONE: At any relevant time in
21 the proceeding.

22 CHAIR HOLTZMAN: But I don't want to

1 broaden it to any kind of right that they don't
2 have under CVRA.

3 LTC MCGOVERN: Ma'am, that's actually
4 just quoting what the RSP recommended. It's just
5 noting the RSP recommendation that you're
6 reiterating a similar issue.

7 CHAIR HOLTZMAN: Okay. If you have no
8 problem with that language, Kelly, then I
9 withdraw my --

10 MR. STONE: Okay.

11 LTC MCGOVERN: You have a problem with
12 it because we would be changing what the RSP
13 said.

14 MR. STONE: That's why I was just
15 going to -- in summarizing it, I was just -- I
16 would just have "legal standing," and take out
17 the words "Article 6b rights." Because what
18 you're doing -- it has an element of confusion in
19 it, but if you don't think it's confusing, leave
20 it in.

21 MR. TAYLOR: Well, my point to that
22 would be that this is what the RSP recommended.

1 So, we shouldn't be tinkering with the thoughts
2 that they recommended. That's what they
3 recommended, and that's what we should say they
4 recommended.

5 CHAIR HOLTZMAN: Right. You're
6 absolutely right. Absolutely right. Kelly, is
7 this correct the way it is?

8 LTC MCGOVERN: Yes, ma'am.

9 CHAIR HOLTZMAN: Okay.

10 MR. STONE: Move onto the next one,
11 unless anybody has other changes.

12 VADM TRACEY: This is Patricia. Can I
13 ask a question about where we landed on this?
14 So, I think that you made an important material
15 change in the recommendation. We're quoting the
16 RSP Panel, or not quoting but citing the RSP
17 Panel recommendation, which is narrower than what
18 we are now recommending.

19 Should we point out the fact that
20 we've deliberately modified that language in our
21 recommendation?

22 CHAIR HOLTZMAN: Admiral, I'm not sure

1 that it's 100 percent correct that we have
2 enlarged what the Response Panel requested or
3 suggested. Lieutenants -- Kyle and Kelly, can
4 you enlighten us on that? I just want to make
5 sure that that's in fact true?

6 Lt Col GREEN: I think Admiral Tracey
7 brings up a point. Because the language in the
8 RSP's recommendation was specific to the Article
9 6b rights, then obviously providing interlocutory
10 review of any victim's rights is different.

11 The RSP's recommendation was not
12 exactly on point with this. It was more just
13 victims' standing at any point in a proceeding.
14 So, it didn't just have to do with interlocutory
15 rights. But I think the body of the report
16 actually makes that distinction, ma'am, that this
17 builds on the RSP's recommendation and expands
18 it.

19 CHAIR HOLTZMAN: Are you satisfied
20 with that, Admiral Tracey?

21 VADM TRACEY: Could we just add a
22 sentence to this last bullet that the JPP

1 recommendation builds on this recommendation?
2 Whatever language that's in the report.

3 CHAIR HOLTZMAN: Sure.

4 Lt Col GREEN: We can conform that to
5 exactly what it says in the report.

6 LTC McGOVERN: Admiral Tracey, this is
7 Lieutenant Colonel McGovern. Can we add that
8 point at the bottom then of sub-bullet 3 as a --

9 VADM TRACEY: That's what I'm
10 recommending, yes.

11 LTC McGOVERN: Okay, thank you, ma'am.

12 CHAIR HOLTZMAN: Objection added to
13 the last bullet under Recommendation 8?

14 MR. STONE: Well, I hate to say this
15 but now I'm concerned because reading the last
16 sentence that's there now, it says, "DoD General
17 Counsel has referred this recommendation,"
18 meaning the RSP one, "to the Joint Service
19 Committee for review."

20 I feel like it should say "has
21 referred this narrower recommendation to Joint
22 Schedule Committee for review" if it is narrower.

1 Because in other words, that is not going to give
2 412 and 513 victims the right to immediate
3 review.

4 LTC McGOVERN: Actually, it will, sir,
5 because what the court does is they first say,
6 "Article 6b rights." Yes, there's the right to
7 be heard at proceedings. Then they look to MRE
8 412 and 513, which say, "A victim has a right to
9 be heard."

10 So, I think that there are parallels
11 that the rights enumerated in Article 6b aligned
12 with the Military Rules of Evidence. So, I don't
13 think we're expanding that much. But by now
14 saying for interlocutory review, violation of
15 victims' rights in general, you -- you could
16 capture more than just Article 6b.

17 Lt Col GREEN: I think it's more basic
18 than that, but I think, Mr. Stone, we could
19 modify just to say the Response Systems Panel
20 recommendation, and then add a clarifying
21 sentence at the end that just notes that the
22 JPP's expand -- or builds on.

1 VADM TRACEY: This is Admiral Tracey.
2 Because it is not 100 percent clear what the
3 difference would be in fact if they -- between
4 the two recommendations if they were -- if the
5 spirit of the recommendations was fully acted on.
6 So, built on -- I think that's a good point.

7 MR. TAYLOR: Tom Taylor. Another word
8 you could use is "clarifies." Because that's
9 what we're doing, is we're clarifying it for us
10 at least that this is a more expansive reading
11 than some others might take of this particular
12 provision.

13 MR. STONE: I like that. Solves some
14 of that confusion.

15 CHAIR HOLTZMAN: So, we're not going
16 to say, "Narrower." But we're going to say,
17 clarifies the recommendation of the -- "JPP's
18 recommendation clarifies the response to the
19 Panel recommendations"? Or, "The JPP's
20 recommendation clarifies the Response Systems."

21 MR. TAYLOR: Tom Taylor. I was
22 thinking of language along the lines of, "The JPP

1 recommends that to clarify the rights that are
2 included in this, it'd be helpful to" --
3 something like that. That's the idea.

4 CHAIR HOLTZMAN: Where would it be?

5 MR. TAYLOR: Well, I was looking at
6 the last sentence. A last sentence for the third
7 bullet under Recommendation 8.

8 CHAIR HOLTZMAN: All right. So, what
9 would the language be?

10 LTC MCGOVERN: Mr. Taylor, we have
11 language for you. "The JPP recommendation
12 clarifies the RSP recommendation to include all
13 victims' rights."

14 MR. TAYLOR: That's what I had said
15 the first time. That's what I was thinking at
16 least.

17 CHAIR HOLTZMAN: By including?

18 LTC MCGOVERN: By including all
19 violations of victims' rights. Not just those
20 under Article 6b.

21 CHAIR HOLTZMAN: That's fine. Are we
22 satisfied with that? Any objection to that

1 language?

2 JUDGE JONES: We're actually -- I
3 apologize for coming in late here. We're
4 actually expanding this CVRA, right? We're
5 talking about giving them interlocutory review
6 beyond even victims' rights that are infiltrated
7 during a trial?

8 MR. STONE: Yes, because some of the
9 412 decisions can be made before trial. So, in
10 fact, you want to make the interlocutory appeal
11 before you testify. You don't want to interfere
12 with an ongoing trial.

13 JUDGE JONES: Yes, well, I guess it's
14 trial court's decision. Doesn't have to be
15 during the trial. I don't know. How far back
16 are we going here? I thought the RSP resolution
17 was to make sure that as soon as an SVC got
18 assigned, or -- before that or as soon as there
19 was one there, regardless of where you were in
20 the process, whether there any kind of courts-
21 martial in the near future even, they have a
22 right to stand up for the victim and speak in

1 court.

2 I don't think that the RSP -- I could
3 be wrong, but I don't think the RSP ever got to
4 the mandamus provision of CVRA. Maybe we --- I
5 can't remember if we didn't think we had enough
6 information, or what.

7 All right, so, I just want to
8 understand this. We're saying that at any point,
9 there can be a mandamus petition to an appellate
10 court for any violation of a victim's rights
11 under 6b in the military?

12 MR. STONE: Right. The perfect
13 example would be if the Article 32 gets an
14 investigating officer who doesn't understand the
15 law. He says to the victim, who is watching it,
16 you have to take the stand right now, or, your
17 attorney has to leave this room right now.

18 I mean make some crazy ruling, and you
19 just want someone to review it and say, whoa.
20 You've been --- the law. You don't understand it
21 has changed. They have a right to sit here and
22 they can't be compelled to testify. That's at

1 the Article 32.

2 CHAIR HOLTZMAN: Barbara, just to
3 clarify, I do think that we, the RSP, adopted a
4 suggestion for not -- but for expedited review --
5 interlocutory review, of decisions such as Mr.
6 Stone was referring to. Am I wrong, Kelly or
7 Kyle?

8 LT. COL. GREEN: No, ma'am. We were
9 just talking about this. Before, prior to
10 referral of the case, there's no case. So, there
11 is no interlocutory review of a pretrial
12 decision. That would just be something that
13 would go to the convening authority.

14 So, it would require a case in order
15 for the issue to be ripe for interlocutory
16 review. So, the decisions you'd be talking about
17 here, just because of the nature of interlocutory
18 review, would all apply once there is a case.

19 CHAIR HOLTZMAN: So, what would you do
20 if there's a violation of the kind that Mr. Stone
21 has referred to?

22 LT COL. McGOVERN: You submit that to

1 the convening authority, ma'am. He's in charge
2 of appointing -- he or she is in charge of
3 appointing that preliminary hearing officer, and
4 so you appeal to the convening authority, saying
5 they did not exclude this MRE 412 evidence, or
6 they did not conduct the closed hearing. Then
7 the convening authority can take appropriate
8 action.

9 CHAIR HOLTZMAN: Let me just ask
10 another question. Suppose the hearing officer
11 says, oh, no. I want --- the victim must take
12 the stand and do -- and tell the whole story of
13 what happened in her whole sexual life. At that
14 point, in that proceeding, before there's --
15 before the victim has to take the stand, what's
16 the --- process at that point? Can they go to
17 the convening authority? Is there a right to go
18 to the convening authority during that hearing?

19 LT. COL. GREEN: Yes.

20 LT COL. McGOVERN: Yes, ma'am. Trial
21 counsel or SVC --

22 CHAIR HOLTZMAN: So that's done right

1 now? There's no kind of requirement for any
2 special rule on that?

3 LT. COL. GREEN: Right. There's no
4 parties to --

5 CHAIR HOLTZMAN: We're just talking
6 about trial.

7 LT. COL. GREEN: Correct. There's no
8 right in any case in a pretrial situation prior
9 to referral for anyone to seek interlocutory
10 review of issues.

11 MR. STONE: And that is the problem.
12 At the Naval Academy case, there were petitions
13 to the CAAF that what was going on at that time
14 in that Article 32 was improper, and the CAAF
15 didn't entertain any of them. So, the woman
16 spent 22 hours describing the kind of underwear
17 she wears and how she gives sex and has sexual
18 relationships.

19 CHAIR HOLTZMAN: That's on the
20 substance. We can't change the rulings of the
21 court. They had the -- they had the right to go
22 to that court.

1 MR. STONE: Well, what we're saying is
2 they should have the right to go to that court.

3 CHAIR HOLTZMAN: But that's not that
4 example. They did have the right to go to that
5 court.

6 MR. STONE: I mean you're giving them
7 counsel at that stage. Why aren't there
8 proceedings? The only thing that isn't decided
9 is who is the military judge yet. It's certainly
10 a just proceeding. It doesn't show up in the
11 civil part of the UCMJ.

12 CHAIR HOLTZMAN: I'm just trying to
13 understand what you're saying, Mr. Stone. That's
14 all I'm trying to get at. You gave the example
15 of the Naval Academy case. In the Naval Academy
16 case, as you described it, and I'm not really
17 familiar with the details, as you described it,
18 there was a right of interlocutory appeal. Am I
19 correct?

20 MR. STONE: No.

21 CHAIR HOLTZMAN: They didn't have the
22 right of interlocutory appeal?

1 MR. STONE: No. There was a convening
2 authority, but they didn't do a thing. They
3 weren't interested. They didn't think the victim
4 could go up to them either.

5 LT COL. McGOVERN: Mr. Stone --

6 MR. STONE: All the victim had left
7 was to try to go to --- first they tried to go to
8 the Navy-Marine Court of Appeals, which didn't
9 entertain that petition, and then they filed a
10 cert petition with the CAAF, who didn't entertain
11 it.

12 CHAIR HOLTZMAN: Okay, well --

13 LT COL. McGOVERN: Mr. Stone, if we
14 can take a step back. If a defendant or the
15 accused believes their rights are being violated,
16 for instance let's say they think it's all double
17 jeopardy; they have to submit matters to the
18 convening authority as well.

19 They can't go up to ACCA or CAAF until
20 charges have been actually referred, and there is
21 a judge. So, this process isn't a conspiracy
22 against victims of sexual assault. This is the

1 pretrial process until it changes that judges do
2 not become involved in a case until after it is
3 referred.

4 Until it is referred, the case belongs
5 to the convening authority.

6 MR. STONE: Unfortunately, that
7 example doesn't work. Double jeopardy is your
8 right not to be tried. You could be hauled into
9 a grand jury again. Just can't be tried again.

10 CHAIR HOLTZMAN: Let me just try to
11 say something at this point. I think that what
12 you're suggesting, Mr. Stone, is a deeper change
13 in how the military handles military justice
14 cases, which is not 100 percent within our
15 bailiwick.

16 But the RSP did make a recommendation
17 that military judges get involved at an earlier
18 stage. The minute that -- as I understand what
19 Kelly and Kyle have said, is that the minute
20 there is a judge there, you would have the
21 opportunity for interlocutory appeal if the judge
22 made an incorrect decision. Is that correct?

1 LT. COL. GREEN: Yes, ma'am. That is
2 accurate.

3 CHAIR HOLTZMAN: So, if the system
4 changes, that would happen, but absent that -- I
5 mean I -- we could if you wanted to. If the
6 Panel agrees we could endorse again the Response
7 Systems Panel's recommendation that judges get
8 involved at an earlier stage in the proceeding,
9 which would clarify or give an interlocutory
10 right of appeal.

11 Short of that, I think changing the
12 system -- I don't think we've heard enough
13 testimony about it, and I think I would be very
14 reluctant to support making a change of that kind
15 without a specific focus on that point. Not to
16 say that you're wrong in any case, but I think
17 it's a much bigger decision than we focused on.

18 MR. STONE: Well, then take a look at
19 the language that's actually there now. It says
20 that victims have legal standing to enforce their
21 Article 6b rights at any time in the proceedings,
22 including before, during and after trial.

1 Want to keep it that way? That's
2 fine. I think before trial is what we are
3 talking about.

4 LT. COL. GREEN: Mr. Stone, I'd just
5 point out again though all we're doing is
6 restating something the RSP said. This is not
7 making any commentary other than this is what the
8 RSP said.

9 JUDGE JONES: Also, it doesn't say
10 that we were recommending interlocutory appeals
11 in a situation where there was no ability to make
12 -- you know, to ask for mandamus because it
13 wasn't in a court yet. Maybe we've -- I don't
14 know. We need to refer to the responses to the
15 Panel.

16 MR. STONE: Well, maybe this is a
17 topic I'd like to hear at one of our future
18 meetings. Some speakers on just -- do you want
19 to have future testimony on the FBI --
20 participating in the FBI statistics. If you want
21 to tell me that's what we're going to do, that's
22 fine with me.

1 CHAIR HOLTZMAN: Well, I think we're
2 just describing -- bullet 3 describes what the
3 Response Systems Panel did. So, we want -- I
4 mean the question before us now is a suggestion
5 that we make an additional recommendation about
6 the right to an interlocutory appeal before
7 there's a judge appointed to the case.

8 I mean do -- does the -- I expressed
9 my views on that. Does the Panel feel they want
10 to make a suggestion about -- about the right to
11 appeal before there's a judge in the case?

12 JUDGE JONES: I don't.

13 VADM TRACEY: This is Pat Tracey. I do
14 not.

15 MR. TAYLOR: Tom Taylor. I agree.

16 CHAIR HOLTZMAN: I don't think we're
17 ready to go there. I agree with that as well.
18 So, I don't think we're ready to go at this
19 point. Not to say that would never be the case,
20 but at this point, I don't think we're there.
21 So, do we -- what do we want to do with bullet 3,
22 given that?

1 LT COL. GREEN: Ma'am, can I make two
2 suggestions?

3 CHAIR HOLTZMAN: Yes.

4 LT. COL. GREEN: Number 1, we can
5 modify it just to talk that the JPP builds on, or
6 clarifies the interlocutory rights mentioned
7 there; however, if there's concern that this may
8 create confusion about the pretrial aspect of the
9 RSP's recommendation, the bullet could just be
10 the lead in.

11 LT COL. McGOVERN: Well, and the
12 purpose of the bullet is just so that everybody
13 is aware DoD is working on things related to this
14 issue. So, when you revisit it again, they may
15 have -- if the MJRG recommends the judge become
16 involved earlier in the case, it -- right now, it
17 would be premature to recommend anything further
18 when you know DoD is currently in the process of
19 working out or studying the RSP's
20 recommendations.

21 JUDGE JONES: I think -- sorry.

22 CHAIR HOLTZMAN: Barbara, did you have

1 --

2 JUDGE JONES: I just think it's
3 confusing because there's a huge difference
4 between granting an expedited interlocutory
5 appeal, mandamus if you will, during the course
6 of a trial or a pretrial when you have a judge,
7 and making -- and referring to something the
8 Response Panel recommended, which really related
9 to, I thought more as we were discussing it,
10 people recognizing at an Article 32 or even
11 before that this new SVC actually could get up
12 and speak for the victim. They're really very
13 different.

14 CHAIR HOLTZMAN: Right.

15 JUDGE JONES: So, I think it's
16 confusing. That's all.

17 CHAIR HOLTZMAN: So, you think the
18 third bullet should be taken out?

19 JUDGE JONES: I don't see the purpose
20 of it. I do, I think it should just go.

21 MR. STONE: I'd like to take out the
22 second bullet as well.

1 CHAIR HOLTZMAN: Why? Could you
2 explain that?

3 MR. STONE: Yes. Because it is
4 misleading. The last sentence says, "The CVRA
5 does not expressly apply to crime victims for
6 cases prosecuted under the UCMJ." It does not --
7 it doesn't say it does not apply. It just says
8 it does not expressly apply.

9 It also does not expressly exclude
10 military cases for cases prosecuted under the
11 UCMJ.

12 CHAIR HOLTZMAN: Has it ever been
13 interpreted to apply?

14 MR. STONE: It has never been tested.

15 LT COL. McGOVERN: Actually, there's a
16 case that says the CVRA does not expressly apply.

17 MR. STONE: That is correct. It
18 doesn't -- its terms, but when you have somebody
19 who gets a 20-year sentence for a rape and goes
20 into a prison; it's a federal crime, which it is,
21 it's not at all clear --- the Supreme Court isn't
22 going to say that isn't that it does apply.

1 Therefore, I would just simply eliminate this
2 bullet because it can be -- I think it's
3 unwarranted.

4 JUDGE JONES: I think all we're trying
5 --- is because the victims' rights in the
6 military incorporated the CVRA, is to point out
7 that the CVRA has this mandated and expedited
8 review. So, why shouldn't we? I mean I think
9 that's the only point to bullet 2.

10 MR. STONE: It doesn't say that.

11 MR. TAYLOR: I read it as an example
12 of how we are lagging behind the CVRA when it
13 comes to this aspect of victims' rights.

14 CHAIR HOLTZMAN: Right. That's how I
15 read it too. I agree with Mr. Taylor.

16 MR. STONE: In the summary that
17 followed, I wanted that last sentence, which now
18 says, "The CVRA does not expressly apply to crime
19 victims," I wanted to add "or exclude crime
20 victims cases prosecuted under UCMJ." It's an
21 open subject.

22 JUDGE JONES: You want to say it's

1 unclear whether the CVRA expressly applies --

2 CHAIR HOLTZMAN: I don't think that's
3 a fair summary of it. It's -- if it were really
4 an open subject, this matter would be litigated.
5 Has it been litigated? Is everyone raising this
6 issue?

7 MR. STONE: They can't litigate it
8 because you can't get up in the military courts
9 of appeals on it.

10 LT COL. McGOVERN: With all due
11 respect, the FY15 NDAA, which said victims may
12 seek discretionary review per writ of mandamus
13 pertaining -- if they feel their rights have been
14 violated under MRE 412 and 513, Congress is even
15 specifically establishing the bounds of the
16 victims in the military when Congress also is the
17 one who put forth the CVRA.

18 So, Congress recognizes that the CVRA
19 does not expressly apply to military victims. I
20 think if we can go back and try to capture what
21 Judge Jones was saying, the point of the second
22 one is that since the CVRA does not expressly

1 apply, we should consider the fact that the CVRA
2 does allow expedited and mandatory discretionary
3 review.

4 MR. STONE: I'm going to have to --
5 unless you want to strike the last sentence if it
6 stands as it is, because that last sentence is
7 misleading.

8 I can tell you for a fact, and I say
9 as a fact because I was litigating as a private
10 attorney some military sex offense cases which I
11 have withdrawn from, I know from those cases that
12 claims were made that the CVRA rights do apply.
13 They weren't able -- the attorneys in those cases
14 were not able to get rulings from the military
15 judges who wanted to defer those -- that issue,
16 or wanted to say well, I don't have to reach it.

17 But those are real claims. That is
18 not a decided topic.

19 CHAIR HOLTZMAN: Well, maybe it's not
20 decided by the US Supreme Court, but I think we
21 should try to get past this point by trying to
22 get what Kelly was saying, which is to try to get

1 the point of this, which is the CVRA has
2 established -- the heading of this Recommendation
3 8 is about expedited interlocutory review.

4 What we're saying is that the CVRA
5 allows that, even though it has nothing to say.
6 Even though it has not expressly been applied to
7 crime victims cases at this time, we believe that
8 those rights, that procedure, should be adopted
9 here. Something like that. Those rights should
10 be adopted here.

11 MR. STONE: That's fine. I can accept
12 that formulation.

13 CHAIR HOLTZMAN: Does anybody object
14 to that? Does it resolve the problem? Kelly?

15 JUDGE JONES: No, it sounds fine to me.

16 LT COL. McGOVERN: That works, ma'am.

17 CHAIR HOLTZMAN: Okay. So, is that
18 amendment in -- I'm sorry, Recommendation 8 is
19 agreed to? Okay.

20 LT. COL. GREEN: And just to go back,
21 we are going to delete the third bullet under
22 that recommendation. Is that the Panel's

1 agreement?

2 CHAIR HOLTZMAN: I don't know. Well,
3 can I just say something about that? I mean that
4 is -- I think that that's just useful to anybody
5 reading this because it does say that DoD is
6 considering this question of enforcing Article 6b
7 rights. Maybe it's not clear enough. So, I
8 don't have any strong feelings about it. If
9 people want it out, I'm fine with that.

10 Do we want -- let's have a vote on
11 that. Do we want bullet 3 out? Those in favor
12 say aye.

13 (Chorus of ayes.)

14 CHAIR HOLTZMAN: How many am I
15 hearing? Barbara and who else?

16 MR. STONE: Yes, unless it's slightly
17 edited. As it stands, I'd want it out. If you
18 want to slightly modify it, I'd leave it in.

19 CHAIR HOLTZMAN: All right, and
20 anybody else? Mr. Taylor? Admiral Tracey? I
21 just asked for the ayes. I'll ask for nays. I'm
22 a nay. Anybody else? And we have two

1 abstentions. I guess the ayes have it, and it's
2 out. All right, let's go to 9.

3 On number 9, does anybody have any
4 objection, comment on 9?

5 MR. STONE: Yes, it's done then, both
6 in the recommendation and in the bullet, and
7 later in, all the other documents. We have to
8 stop saying, constitutional rights exception, and
9 say constitutional rights language. There is
10 always going to be a Constitution.

11 We can't write the Constitution out of
12 anything. What we can do is we can write the
13 constitutional -- constitutional rights language
14 out of something. So, it has to say, in the
15 recommendation --- the constitutional rights
16 language MRE 412.

17 Then in the bullet, it should say,
18 "...agree with DoD's rationale that the
19 constitutional rights language is not necessary
20 at the pretrial hearing." And take out "...if
21 there is a -- if there is not to be a
22 confrontation right." But there may be some

1 other right, the Brady due process right, under
2 the Constitution.

3 We had this discussion lots of times
4 when we met, but we have to make sure we get it
5 right in these documents.

6 LT COL. McGOVERN: Sir, this is
7 Colonel McGovern. If you look at MRE 412(b), it
8 says "exceptions." Then it lists the exceptions
9 as evidence, the exclusion of which would violate
10 the constitutional rights of the accused.

11 It is a specific exception. When
12 Congress recently in an FY15 eliminated the
13 constitutional right exception to MRE 513,
14 Congress uses that same language because they
15 recognize there's the rule of exclusion and a
16 list of exceptions.

17 So, we're not just asking them to
18 modify or amend language. We are asking them to
19 eliminate that as -- well, you all are asking
20 them to eliminate that as an exception at Article
21 32.

22 MR. STONE: I know this sounds really

1 odd because I don't act as a defense counsel in
2 military proceedings, but if I were, I would be
3 telling you neither you nor the Congress in that
4 language is eliminating the Constitution, not
5 without constitutional amendment.

6 CHAIR HOLTZMAN: I don't think that's
7 what the words say. It says, quote,
8 constitutional rights exception. That suggests
9 that we're not talking that there's an exception
10 for constitutional rights. The quote suggests a
11 shorthand description of what's happened with the
12 exception.

13 That's why I don't think that --
14 that's why I don't think it says that we're
15 taking out the rights of -- the Constitution. It
16 really does exactly what you say, which is refer
17 to the constitutional language. I think that's
18 the meaning of those quotation marks.

19 MR. STONE: The quotation marks in the
20 bullet? They're not in the bullet.

21 CHAIR HOLTZMAN: Okay, put them in the
22 bullet.

1 LT COL. McGOVERN: The Recommendation
2 9 again, sir, is referring to Article 32
3 hearings, where DoD -- okay, I just want to
4 clarify that everybody --

5 CHAIR HOLTZMAN: We don't need to
6 clarify. We're at the point where Mr. Stone is
7 accepting that there should be quotation marks
8 around "constitutional rights" in the bullet, and
9 then we are, I think, satisfying his concern
10 here.

11 LT COL. McGOVERN: Okay, thank you.

12 CHAIR HOLTZMAN: Now, with that
13 amendment, any objection to Recommendation 9?
14 Good. We're up to -- so, hearing none, we're up
15 to Recommendation 10. That's -- Recommendation 9
16 is approved. Recommendation 10, any objections?

17 MR. STONE: Yes. Sorry about that
18 again.

19 CHAIR HOLTZMAN: That's okay. You're on
20 the Panel.

21 MR. STONE: You look at the third line
22 of Recommendation 10, where we want to ensure

1 that mental health records are not sought or
2 released. We have, I think, failed to
3 articulate. I want to say that mental health
4 records are acknowledged, comma, sought, not
5 sought, comma, or released.

6 Because if the hospital says oh, yes,
7 we are. They're not even allowed under HIPAA to
8 say, oh, yes, we have those records. In other
9 words, they --- on the base, that yes, this woman
10 has mental health records.

11 So, the word acknowledged both here
12 and later, that word goes in front of each time
13 we say that they shouldn't be sought or released.
14 My drafts do that. They insert the word
15 "acknowledged."

16 I think that was certainly implicit
17 and maybe even explicit in some of my questions
18 when we had people in front of us. I think it
19 sort of got lost sight of when we wrote the
20 report because we forget that if the hospital --
21 hospital is not supposed to say who has got
22 mental health records until the judge orders it.

1 CHAIR HOLTZMAN: Any objection to that
2 suggestion?

3 LT. COL. GREEN: I guess my only
4 question -- this is Kyle -- is, I mean within the
5 parameters of the Panel's review of 513 is
6 whether that really is at play. I mean are you
7 looking more at a HIPAA issue, or a 513 issue,
8 sir? It seems like maybe we're leaving the scope
9 of 513.

10 I mean 513 has to do with specific
11 procedures for the release of that. It does not
12 speak to the knowledge of. I mean that's a
13 little bit broader concern than maybe that which
14 is encompassed in 513 issues.

15 MR. STONE: But we're going beyond 513
16 when we say that the investigator shouldn't be
17 going and getting the records' sealed envelope
18 and bringing them to the 513 hearing. No 513
19 ruling has been made then either.

20 JUDGE JONES: No. I think what you
21 mean is that --- or tell me if you mean that the
22 institution should not they even have them. Is

1 that what you're talking about?

2 MR. STONE: Yes. That's exactly what
3 I'm talking about.

4 JUDGE JONES: Okay, but I don't think
5 that works in this recommendation because we're
6 giving guidance to people who are going to go out
7 and look for them, and try to get them released.
8 They're not doing the acknowledging. That's my
9 only point.

10 You're talking about the hospitals not
11 acknowledging, or the doctor or whatever. I just
12 don't think it works here.

13 MR. STONE: We've got "medical
14 personnel" on line 2.

15 JUDGE JONES: Pardon me?

16 MR. STONE: Line 2, of Recommendation
17 10 says "medical personnel." That's why I put it
18 in there. They are the ones who shouldn't be
19 acknowledging it, absent an order.

20 LT. COL. GREEN: Well and I guess, sir,
21 my understanding and the way we tried to craft
22 this based on the Panel's review of it was that

1 guidance to the medical personnel as relevant to
2 the resolution of 513 issues. There may be a
3 whole host of additional guidance that medical
4 personnel receive in regards to compliance with
5 HIPAA --- the Panel hasn't reviewed any of that,
6 and so that's my -- "acknowledgment" may be
7 exactly the word within HIPAA. It is just a
8 matter of has the Panel really heard anything, or
9 have specific information regarding compliance
10 with HIPAA?

11 LT COL. McGOVERN: The only thing we
12 know regarding the procedures now is what we've
13 received in responses to RFIs.

14 There are procedures where
15 investigators go forward with the form. There
16 are responses, like Kyle said, that the medical
17 personnel are trained to say whether or not they
18 can release. But we haven't been able to provide
19 that information to you.

20 So, making a recommendation on
21 something which may already be a practice seems
22 beyond the scope of the information you've

1 received.

2 MR. STONE: You've got pages of stuff
3 in the report on HIPAA. You've quoted at least
4 three or four times. You've got footnotes on it.

5 LT COL. MCGOVERN: But we aren't sure
6 what the Services currently do, except for some
7 people in their testimony said, sometimes you can
8 get these records before trial. So, we're not
9 even quite sure how that's being done.

10 MR. STONE: All this says is that DoD
11 should issue uniform guidance to, among others,
12 medical personnel to ensure that medical records
13 are not acknowledged, sought or released until a
14 military judge --- orders their production.

15 LT. COL. GREEN: And Ms. Holtzman made
16 the recommendation to remove the words "and
17 sought." And just focus on the release in the
18 recommendation. So, I mean if the Panel would be
19 comfortable with that, it would just be adding
20 "mental health records are not acknowledged or
21 released from a medical treatment facility."

22 CHAIR HOLTZMAN: Can you -- well, I'm

1 not sure that I'm ready to proceed with the
2 "acknowledged" because I'm very troubled that,
3 number one, we don't have testimony on what the
4 practice is, and that number two, this may be
5 going beyond what we've heard with regards to --
6 well, we don't know what the practice is, and
7 two, is this going to somehow have unintended
8 consequences because we really haven't heard
9 about the issue of acknowledge?

10 I mean there are a lot of ways this
11 could be acknowledged. Doesn't say -- I mean I
12 thought we were focusing on the release of
13 records here to judges. That was the primary
14 focus of this. We weren't focusing on other
15 problems with health institutions. So, this
16 takes us beyond what our focus was.

17 Now, maybe the focus should've been
18 broader, but I feel a little uncomfortable, I
19 think as the staff does. I'm getting their
20 vibes.

21 We just don't know enough both in
22 terms of practice and procedure, and unintended

1 consequences of going beyond what our focus was,
2 which is just the release of the records.

3 MR. STONE: I guess my answer to that
4 is we're trying to provide a stop to the practice
5 where the investigators go to the military base
6 hospital, and they say give me all the mental
7 health records you got on Mr. X -- or Ms. X, who
8 was raped.

9 The answer is that they obviously are
10 making the claim, at that point, in getting the
11 records and bringing them to the hearing. What
12 we're saying in response to that is, I think, you
13 don't go there and do that without an order. And
14 you don't just make the claim, expecting whatever
15 they have they're going to acknowledge and give
16 you.

17 You're basically calling them and --
18 you don't have to have any knowledge. They go to
19 the hospital, and say give me the records. And
20 the hospital thinks they have to acknowledge it,
21 wrap it up, and give it to them --- oh, we have
22 pages and pages of this report.

1 That's not what the various Service
2 requirements do. If a commanding officer wants
3 them, that's a whole different kettle of fish,
4 but not in -- not for simply the course of a
5 prosecution.

6 CHAIR HOLTZMAN: But isn't -- that what
7 the language would suggest they should not be
8 doing, absent an order?

9 MR. STONE: Well, if we -- it's even
10 worse if we strike that "not sought or released."
11 That means they can go down there, seek them, ask
12 if they have them. We don't want them doing
13 that. That's what these young women -- that's
14 why they're telling us they're not going to the
15 social psychologist anymore. They're going to
16 the chaplain on base because they know his
17 records ---- nobody will say he spoke to them
18 about their rape.

19 JUDGE JONES: This is Barbara Jones.
20 I think I agree that we should ask for guidance
21 to investigators and military justice
22 practitioners to ensure that they don't seek.

1 Because I see your point about going to hospitals
2 to try to get them and asking for them.

3 Or are not sought or released, but I
4 still see -- and maybe then we say something
5 about separate medical personnel. And guidance,
6 if we want to give such guidance to military
7 medical personnel not to acknowledge. I actually
8 did not focus on medical personnel, but I think
9 there are two different thoughts there.

10 The medical personnel aren't running
11 around trying to get them, but they do frequently
12 acknowledge. Then you have to alert them to the
13 fact that they should just not acknowledge even
14 the presence of it. That to me is a little bit
15 different topic.

16 MR. STONE: In a civilian hospital, it
17 is a violation of law to do this. In the
18 military, what we heard time and time again was,
19 I'm a military officer. He's a military officer.
20 He tells me, the investigator says, it's in the
21 course of my military business. I don't know if
22 you got them, but let's have them.

1 They do it, and they turn them over.
2 They don't understand that that's a piece of the
3 process that has to await an Article 32 order.
4 So, that's why I think if we're looking at that
5 process, we should reform these as part of it.

6 JUDGE JONES: I think we've covered
7 not seeking or releasing. I'm just concerned
8 about what we're telling -- what are we saying to
9 military? I guess we're talking about military
10 personnel about acknowledging if you think that's
11 a point we have to make. Are we trying to say if
12 they come and seek, you must not even
13 acknowledge? I'm just trying to make this a
14 little clearer, because I think there's two
15 different things going on here.

16 MR. TAYLOR: Tom Taylor. I was
17 thinking the same thing as Judge Jones. Seems to
18 me that maybe we could move towards solving the
19 problem by deleting medical personnel from the
20 recommendation.

21 So, it would read, uniform guidance to
22 investigators and military justice practitioners

1 to ensure that health records are not sought or
2 released. Then maybe as a sub-bullet, if you
3 want to address something about we'll take a look
4 at whether the health policies make sense or
5 whatever. I think we need to separate those two
6 out, and just have the recommendation focus on
7 investigators and military justice practitioners
8 because that's the only thing we have any
9 testimony on.

10 JUDGE JONES: I thought medical
11 personnel were ones who do the releasing.

12 CHAIR HOLTZMAN: Correct. You can't
13 leave them out of this, Mr. Taylor, because then
14 you have no -- then all you're doing is focusing
15 on the requesters, and you're not focusing on the
16 deliverers. They need to have guidance too.

17 So, I mean I'm going to withdraw my
18 request that the language sought or not sought be
19 removed. But I think you have to have "medical
20 personnel" in there because the guidance is to go
21 to them about not releasing the documents.

22 My only concern is we focused on the

1 release of documents. I don't think we heard any
2 testimony about acknowledge, and I don't think we
3 had any testimony about the consequences of
4 having those changes. So that's my concern about
5 that.

6 MR. TAYLOR: I understand. I agree
7 with that concern.

8 LT. COL. GREEN: Mr. Stone, I reviewed
9 the report, and although you are right we do
10 mention HIPAA, there's -- and there is discussion
11 about that, but there's nothing in the report
12 about the methods of providing confidentiality of
13 records for the medical personnel.

14 The HIPAA references are merely to the
15 releasability of records.

16 LT COL. McGOVERN: One way to make
17 this work would be to say, "uniform guidance to
18 investigators and military justice practitioners
19 to ensure mental health records are not sought,"
20 and that medical personnel do not acknowledge the
21 identity of victims or release the records until
22 a military judge can divide up the people with

1 the actions that they actually take.

2 MR. STONE: I'm perfectly fine with
3 that, Kelly. I can accept that.

4 MR. TAYLOR: Tom Taylor. That's what
5 I was getting at. We need to separate out those
6 two different groups of people, and have a
7 different provision to address each one and what
8 their responsibility in the process is.

9 CHAIR HOLTZMAN: Yes, well, right.
10 But they have to be instructed not to release
11 them and the -- and the people who are the
12 investigators and the prosecutors should not be
13 trying to seek them, or have them released. So,
14 if you can reword that, I think that could solve
15 all the problems. That's what I'm hearing. Any
16 objection to the way this has been restated?
17 Okay, so I think we're finished with number 11.

18 MR. STONE: And I might add that that
19 language will help us in the summary and also in
20 the report because they make those same points.
21 And I'm okay with the way Kelly stated it for
22 those also.

1 CHAIR HOLTZMAN: Yes, good. Okay, now
2 we're up to Issue II; the issues to the
3 subcommittee. Any on Issue II --

4 LT COL. McGOVERN: Chair Holtzman?

5 CHAIR HOLTZMAN: Yes?

6 LT COL. McGOVERN: I apologize, but
7 for clarification before you move away from
8 recommendations, can I ask you to go back to
9 Recommendation 1, and the fourth bullet?

10 CHAIR HOLTZMAN: The fourth bullet?

11 LT COL. McGOVERN: I have a version
12 with -- changes and then a version that says --

13 CHAIR HOLTZMAN: The fourth bullet of
14 what?

15 LT COL. McGOVERN: Recommendation 1.

16 CHAIR HOLTZMAN: Okay, sorry. Wait, I
17 have to get there. Bullet 1, 2, 3, 4.

18 LT COL. McGOVERN: Yes, ma'am. So, my
19 understanding was that you all would like the
20 word "guidance" added at the end of the sentence.

21 CHAIR HOLTZMAN: Right.

22 LT COL. McGOVERN: But if you take a

1 step back and look at it in a clean copy, then
2 all you're saying that you want to do is review
3 the implementation guidance. I don't think that
4 was the intent.

5 CHAIR HOLTZMAN: Oh, I see. You may be
6 right.

7 MR. STONE: You just have to say,
8 "that implementation or its guidance."

9 VADM TRACEY: Actually, I think ---
10 This is Pat Tracey. I think if you modify that
11 last part to say, "This panel cannot assess that
12 implementation," I think that is what we're
13 actually saying.

14 MR. STONE: That's better. I really
15 like that.

16 CHAIR HOLTZMAN: Okay.

17 LT COL. MCGOVERN: Thank you.

18 CHAIR HOLTZMAN: Any objection to
19 that? Hearing none, that is approved. Okay so,
20 we're up to -- thanks, Kelly for raising that.
21 Now, we're up to Point II, issues that the JPP
22 Recommends Should be Directed to Subcommittee.

1 Do we have any comments? Let's take -- let's
2 take little "I" first. Any issues on little "I"?
3 There are 11 noted.

4 LT. COL. GREEN: The only change here
5 is Mr. Taylor's recommendation on Issue 7 to
6 rephrase that, noting that -- just rephrasing
7 that the issue is referred to the subcommittee.

8 JUDGE JONES: Which phrase is it? I'm
9 looking at two different --- how should Issue 7
10 now read? This is Barbara Jones.

11 LT. COL. GREEN: The issue as proposed
12 reads, "How should fear be defined to acknowledge
13 both subjective and objective factors?"

14 JUDGE JONES: Okay, thanks.

15 CHAIR HOLTZMAN: Are there any
16 objections then to issue little "I", issues 1
17 through 11? Okay, if not, that's approved.
18 Let's go to two little "I's". Now, we have
19 issues 12 through 17. Any suggestions or changes
20 here?

21 MR. STONE: Yes, Vic Stone. Dealing
22 with Issue 17. Again, this is something that

1 will come up also in the summary and the draft.
2 My recollection, my notes, and I think the
3 testimony was that we weren't just worried when
4 Article 120 isn't charged, and Articles 92 and 93
5 are charged.

6 I thought we were also concerned when
7 the defendant is allowed to plead under Article
8 134. I thought I also had down 138. In other
9 words, they reduced this down to something that's
10 -- and you can correct me if I've got my numbers
11 wrong, Kelly, but I thought those were sort of
12 catchalls that they use sometimes when they're
13 giving -- let's say the woman was raped; doesn't
14 want to testify, and they're dropping it down to
15 something much smaller.

16 Then the issue was, does it wind up on
17 the sex offender registration? So, I thought we
18 might have to add, after Article 92 and 93, just
19 for completeness' sake on 134 and 138.

20 LT COL. McGOVERN: And actually the two
21 Articles there would be 133, conduct unbecoming
22 for officers, and then 134, which is a general

1 article. So, those would be the catchall
2 provisions that I think you're referring to.

3 MR. STONE: Okay.

4 CHAIR HOLTZMAN: I think, though, I
5 mean just raising this conduct unbecoming; every
6 single violation of that would trigger a sex
7 offender registration? I don't think we heard
8 any testimony about that.

9 MR. STONE: No. Only ones that -- in
10 other words, we're making an option for the
11 judges. In other words, that's why we're going
12 to refer this issue to them. In other words,
13 that could trigger, that may trigger.

14 CHAIR HOLTZMAN: Okay, should -- I
15 see. Well, then you need to have "coercive
16 sexual relationships."

17 MR. TAYLOR: That's what I was
18 thinking because otherwise, it becomes way too
19 broad. I do think you're right though; that we
20 do need to add those others because it could be
21 that someone would be charged under one article
22 and plead to a different article. But if the

1 underlying Offense is a coercive sexual
2 relationship, I think what it said was it should
3 be added to the list.

4 CHAIR HOLTZMAN: Right.

5 LT. COL. GREEN: Actually, Mr. Stone,
6 in looking at it, I think what you're talking
7 about is 128, which is the general assault
8 article. So, a sexual assault is reduced to an
9 assault and could be charged under 128. So, I
10 think now just us kind of going through this,
11 we'd be talking about Articles 128 and 134 and
12 adding those.

13 MR. STONE: But what happened to 133?

14 LT. COL. GREEN: Well conduct
15 unbecoming. We can add it too. I mean it's --

16 MR. STONE: This is just the broad
17 scope we're giving to that subcommittee. They
18 can look and see if it has been used, but I'll
19 bet you at times in a plea bargain anything
20 happens.

21 LT. COL. GREEN: Right.

22 CHAIR HOLTZMAN: Yes, but let me just

1 add this. This is maybe -- I know we're just
2 making a recommendation, but that may be opening
3 up the kitchen sink because frankly, if there is
4 very little evidence, sometimes you want a
5 disposition of a case.

6 I mean having been a prosecutor, I'm
7 sure Barbara would recognize this. Sometimes to
8 have some disposition of the case, either the
9 witness decides not to cooperate or whatever, you
10 may have to go to a very low crime or you don't
11 have the evidence.

12 You may have to go to a very low
13 crime, and you won't get a plea if you trigger
14 sex offender registration. So, I mean -- right.
15 I don't know how you -- whether -- whether --

16 MR. STONE: I'll give you the
17 hypothetical. Remember, this came up when they
18 were talking about using various devices. Now,
19 it happens we now have the stethoscope being
20 included by one court, but let's say it's another
21 device like that that isn't included. I don't
22 know, the forceps during a woman's examination

1 that are misused. And they ultimately have to do
2 the conduct unbecoming charge.

3 If it could be -- result in sex
4 offender registration, and the person doesn't
5 want to and doesn't plead, fine. Then you go to
6 trial. That's what you're supposed to do. You
7 don't take a plea with an inappropriate
8 consequence --

9 CHAIR HOLTZMAN: I see. Okay, well,
10 that's not how it works in real life. But
11 anyway, --- it's Brooklyn, what can I say? It's
12 only a small, little area. I'm concerned about -
13 - Barbara, were you going to say something?

14 JUDGE JONES: Yes. I mean look, it is
15 only a recommendation. So, it's fine. But at
16 the end of the day, I don't know how judges are
17 going to start assessing an additional sex
18 offender registry penalty unless they have a
19 record. On a plea bargain, you're not going to
20 have a record, or you're just never -- but that's
21 not even a practicality measure. It's a
22 recommendation.

1 LT COL. McGOVERN: And these are just
2 topics for the subcommittee to consider. So,
3 they can dig into SORNA and those practicalities,
4 ma'am, and report back to you.

5 JUDGE JONES: Exactly.

6 LT COL. McGOVERN: These are just
7 items for them to consider.

8 CHAIR HOLTZMAN: All I'm saying is you
9 may be opening a hornet's nest here. That's my
10 concern. I would not be in favor of adding
11 conduct or whatever it's called. Conduct
12 unbecoming an officer. I think that's too broad
13 in general, and if there's a plea on that score,
14 there's probably some good reasons for it. But
15 that's just my view about it. I am not
16 necessarily --

17 MR. STONE: I thought it was an
18 assessment they said they had to do in all these
19 when they use an object?

20 CHAIR HOLTZMAN: I don't remember that
21 testimony. If that's the case, then I'm not
22 exonerating this behavior. I'm just saying it

1 may. Anyway, let's just take a vote on this.

2 Does any -- how do people feel about Mr. Stone's
3 amendment? Are they in favor of it as Kelly and
4 Kyle explained it? Or, are they opposed to it?

5 In favor, say aye.

6 JUDGE JONES: Aye.

7 VADM TRACEY: Aye. This is Pat Tracey.

8 CHAIR HOLTZMAN: Opposed? Aye.

9 JUDGE JONES: You're talking about ---
10 adding conduct unbecoming? Is that the question?

11 LT COL. McGOVERN: We're just trying
12 to figure out which articles you want the
13 subcommittee to consider as they review this
14 issue.

15 CHAIR HOLTZMAN: Well, Mr. Stone asked
16 for all the articles, and I was just going to
17 have a vote.

18 MR. STONE: All the alternatives that
19 get charged when they decide to look at a lesser
20 included for the 120 and take a plea.

21 JUDGE JONES: I don't even know what
22 that -- I guess at the end of the day, the

1 subcommittee only reports to us. We do what we
2 want, so --

3 CHAIR HOLTZMAN: Okay.

4 LT. COL. GREEN: That is correct,
5 ma'am.

6 CHAIR HOLTZMAN: All right. So those
7 in favor of Mr. Stone's recommendation, which is
8 to include Articles -- what are they, Kyle?

9 LT. COL. GREEN: The articles are 128,
10 133 and 134.

11 CHAIR HOLTZMAN: Okay, say aye.

12 (Chorus of ayes.)

13 CHAIR HOLTZMAN: Opposed? No. Ayes
14 have it. Okay, so, we're -- the ayes have it.
15 We are up to Issue III, issues requiring no
16 further study and no action. Any comment or
17 statement about that?

18 Okay, so we finished with the
19 recommendations.

20 MR. STONE: I just had a typographical
21 thing on that. I'd like to --

22 CHAIR HOLTZMAN: Can you please, so we

1 can get through all those, let's reserve -- I
2 thought we had agreed at the beginning to reserve
3 typos to just an email to Kyle and the staff?

4 MR. STONE: Okay, that's fine. I'll
5 just fix that. It's editorial. It's not a
6 typographical mistake. It's just editorial and
7 it's here and it's throughout. We get these very
8 long sentences with the semicolon in the middle.
9 It should be a period where the semicolon is and
10 begin a new sentence afterwards.

11 Then it does the same thing throughout
12 this whole thing. We've used "JPP" whenever it
13 says "Panel." You need to do a global search,
14 and replace and put in JPP.

15 CHAIR HOLTZMAN: Anybody object to
16 that?

17 LT. COL. GREEN: I would just -- just
18 to clarify, when we make all the edits, Alice
19 Falk is sitting here with us. So, we have our
20 crack editor staff that will standardize and do a
21 last scrub on this as well before next week.

22 CHAIR HOLTZMAN: Great. So now, we

1 are on the executive summary.

2 LT. COL. GREEN: And ma'am I would just
3 point out obviously the staff's job will be to
4 take the summary and Panel recommendations as
5 approved by the Panel, and to make sure that the
6 language reflected in the summary is also
7 reflected in the executive summary.

8 So, we will do that so the Panel
9 doesn't need to go through wording on those
10 specific issues in any of the other documents.

11 CHAIR HOLTZMAN: Okay, are we up to
12 the executive summary? Should we take a five-
13 minute break here? What do people want to do?

14 MR. TAYLOR: I'd like a five-minute
15 break, please.

16 CHAIR HOLTZMAN: Okay. Let's do that.
17 We'll hold on and come back. Okay, thanks.

18 (Whereupon, the above-entitled matter
19 went off the record at 10:52 a.m. and resumed at
20 10:58 a.m.)

21 LT COL McGOVERN: I hate to always be
22 the one to go back to issues, ma'am, but going

1 through the report, I saw that Mr. Stone in his
2 comments in the report, had actually asked to
3 eliminate the subcommittee to consider an issue,
4 so I thought maybe we should talk about that now
5 since we are going through what the subcommittee
6 tasks are going to be. Is that okay?

7 Mr. Stone, you had recommended on page
8 16 and 17 of the report to eliminate -- if you
9 look on just the list of issues on the
10 recommendations sheet, the issue number 11,
11 should the offensive, indecent act -- whether the
12 offensive, indecent act should be added to the
13 UCMJ as an enumerated offense.

14 And I just didn't know if you wanted
15 to discuss your -- oh, are you saying delete the
16 whole list or just delete the recommendation?

17 LT COL GREEN: Mr. Stone, if I --

18 LT COL MCGOVERN: I am sorry, I
19 misunderstood.

20 LT COL GREEN: -- I think what you're
21 saying is just you didn't want to include this in
22 the report, the summary of those. You were not

1 speaking specifically to individual taskings to
2 the subcommittee.

3 MR. STONE: That's exactly right. I
4 thought it was an option in the long report just
5 to say we referred a bunch of issues.

6 LT COL GREEN: Okay.

7 LT COL McGOVERN: Okay.

8 LT COL GREEN: That's not an issue
9 now. We can move to the executive summary.

10 LT COL McGOVERN: Sorry.

11 CHAIR HOLTZMAN: So now we're up to
12 the executive summary.

13 MR. STONE: Actually, I just, for your
14 information, I didn't want to delete it
15 everywhere, it's just that you had gone through
16 them in the Panel's report before that one-by-
17 one, and so that was just a duplication that was
18 in the report.

19 LT COL McGOVERN: Okay.

20 LT COL GREEN: Okay, so we'll deal
21 with that once we get to the report.

22 CHAIR HOLTZMAN: I'm just trying to

1 find the document. I just got out of it now
2 because -- is the document from you, Kelly, the
3 one that has all -- yeah, here we go, okay.

4 The February -- we're now on the
5 executive summary.

6 LT COL GREEN: Right, and there were
7 three notes for -- that I think we know the Panel
8 needs to discuss unless there are other issues
9 the Panel wants to raise in terms of this
10 document, and again, we will make any of the
11 edits and final language from the summary Panel
12 recommendations, we will edit this to reflect
13 that, so I know these will -- a lot of these
14 duplicate. Mr. Stone, I know you added them to
15 both places, and I appreciate that, so we will go
16 through and update all that.

17 CHAIR HOLTZMAN: What pages do we have
18 -- how should we go through this? We have changes
19 -- the changes I see in my document are in red.
20 Is that correct, or do I have the correct
21 document from you?

22 MR. STONE: I've got them in blue, but

1 I think that just depends on the machine.

2 CHAIR HOLTZMAN: No, I may be looking
3 at the wrong document. I want to make sure I am
4 on the right document, if you excuse me for this.

5 But which is the document that you
6 sent to me that has the latest -- ?

7 LT COL MCGOVERN: Ms. Holtzman, I sent
8 the email that Kyle sent out last night. Mr.
9 Stone made some changes this morning in blue,
10 which I think he is looking at.

11 CHAIR HOLTZMAN: Okay, so last night
12 you sent out -- and what was the title of that?

13 LT COL MCGOVERN: And that's what I
14 sent to you again today.

15 CHAIR HOLTZMAN: Oh, okay. But I have
16 them in red.

17 LT COL MCGOVERN: Yes ma'am.

18 CHAIR HOLTZMAN: Okay, that's how they
19 should be.

20 MR. STONE: What's the name of it? Is
21 it 28 January '15, Member Comments?

22 LT COL GREEN: That's correct, yes

1 sir.

2 CHAIR HOLTZMAN: Oh, that's not what I
3 have. I have -- wait a minute.

4 LT COL McGOVERN: 26th January.

5 CHAIR HOLTZMAN: I have Draft 28
6 January '15 Member Comments.doc, okay, great.
7 Okay. I just want to make sure we're on the
8 right document. So how should we proceed through
9 this? Are we going to go by page-by-page, or
10 what?

11 LT COL GREEN: That's what I would
12 recommend, ma'am, is we just -- and I mean you
13 just, maybe go -- again, there are some comments
14 later on, but maybe just page-by-page if there
15 are issues people want to raise.

16 CHAIR HOLTZMAN: All right. So we are
17 on page -- excuse me for taking so much time
18 here. Okay, so we're on page -- everyone is on
19 -- so we don't have any comments on page 1?

20 MR. STONE: I do, this is Vic Stone.
21 I tried to get them out, but it didn't get out.
22 So why don't I tell you?

1 On page 1, I don't think I have
2 anything that's a policy issue until we get to
3 the bottom of the page. Under the first bold
4 heading, Responsibilities of the Judicial
5 Proceedings Panel, in the second paragraph on the
6 next to the last line, I just struck the words
7 "that are foundational." It says "by examining
8 key issues in military judicial proceedings,"
9 that's enough.

10 And then on each bullet I struck the
11 first two words of each bullet because the topics
12 are the effectiveness, not the assessment of the
13 effectiveness, et cetera, et cetera -- or the
14 analysis of it. So I just struck the first two
15 words, and that's all I had in the first big
16 heading, Responsibilities of the Judicial
17 Proceedings Panel.

18 LT COL GREEN: Mr. Stone, just -- and
19 like we did with other non-substantive edits, I
20 mean, the staff will look -- will go through all
21 those and will make any non-substantive edits, so
22 just in the interest of expediency, I mean --

1 MR. STONE: Fine with me. I don't
2 know if Ms. Holtzman is going to tell me if she
3 wants me to just mention them as we go through or
4 not.

5 CHAIR HOLTZMAN: I think that's good.
6 I mean, I agree with those, and I think we should
7 agree with them. Let's see how we can -- how far
8 we get doing that.

9 Do we have any other changes to page
10 1? Anybody else -- did anybody disagree with Mr.
11 Stone's suggestions? Okay --

12 JUDGE JONES: No.

13 CHAIR HOLTZMAN: No? Page two, how
14 about --

15 MR. STONE: We get to the bottom,
16 which is Article 120 of the Uniform Code of
17 Military Justice, and there, my changes are I
18 think -- let me just say I want a more moderate
19 tone and language.

20 So for example, at the end of line 4,
21 it says "The JPP noted with concern that the
22 President -- ." I want to strike the words "with

1 concern." We noted what the President did. We
2 don't -- I can't say, you know, I don't want to
3 say "with concern." It sounds like I am dumping
4 on the President.

5 And similarly, I changed the language
6 a little bit down five lines up from the bottom
7 to make it clear that, let's see, "military
8 justice practitioners," instead of "cannot
9 effectively" blah blah blah blah blah, and "lack
10 information critical for" this, that and the
11 other thing, I put "military practitioners" --
12 let's see, "Such guidance is essential for
13 military justice practitioners to effectively
14 investigate sexual assault cases, and they have
15 not yet been provided this guidance which is
16 critical to their ability to fully understand and
17 effectively implement the revisions of Article
18 120." I sort of absolve them if they haven't
19 gotten the guidance that much.

20 And then on the very last line, I
21 struck the word where it said "these unexplained
22 delays," I just put "these delays" --

1 CHAIR HOLTZMAN: Right.

2 MR. STONE: -- again, and the sentence
3 continues on the top of the next page, "created
4 unacceptable vulnerabilities," well, you know,
5 for practitioners. I don't know if we created
6 unacceptable vulnerabilities for practitioners.
7 I changed that to read "created serious obstacles
8 for practitioners," and dah dah dah dah dah.

9 So it's mostly toning down who we're
10 blaming here.

11 CHAIR HOLTZMAN: Any objection to Mr.
12 Stone's suggestions?

13 Okay, hearing none, so we accept them.
14 What's next?

15 MR. STONE: Okay.

16 CHAIR HOLTZMAN: Two?

17 MR. STONE: Okay, I am going to skip,
18 unless somebody has something before it, and say
19 in the middle of the second page, where again it
20 talks about Article 92 and 93, I don't think any
21 summary, we need, necessarily to mention the
22 other Articles like we just discussed. I think

1 we could say "or other Articles" after Article
2 93, just so that we leave it open so they're not
3 surprised later if we decide to add other
4 offenses that are appropriate to trigger sex
5 offender registration.

6 JUDGE JONES: Sounds fine to me.

7 CHAIR HOLTZMAN: Yes. Okay, any other
8 -- any objection?

9 That's fine. Any other suggestions on
10 page 2?

11 Okay, page 3.

12 MR. STONE: Okay. On page 3, on the -
13 - I have it as the second line, let me see if I
14 have that, let me look at this thing, let's see,
15 it's the second line, where we're talking about
16 prosecutors -- let's see, to get to page 3 and
17 see if it's -- yeah, on the second line, where it
18 talks about "without fear of retribution or
19 retaliation," I have modified that a bit based on
20 the testimony we got here and in the report to
21 say "without fear of damage to their career
22 advancement, retribution or retaliation," because

1 sometimes their fear of damage to their career
2 advantage may be subjective, it may not be
3 objective retribution, but it's still a factor.

4 And so that's -- that's as important
5 as anything else. We want to get good volunteers
6 to be SVCs. We don't want them even thinking
7 that they have to -- you know, that they have to
8 worry, and we don't want to just accuse the
9 services of saying they're not going to do a good
10 job in avoiding retribution or retaliation.

11 CHAIR HOLTZMAN: Okay.

12 MR. STONE: Because it --

13 CHAIR HOLTZMAN: Does anybody object
14 to this change?

15 Okay. Agreed to.

16 MR. STONE: Okay, now I am down in the
17 middle of page 3, and where there's a sentence
18 that says "Victim clients are not well-served by
19 inexperienced SVCs who might unintentionally
20 worsen" -- let me see, that may be, let's see, is
21 that one that you got?

22 CHAIR HOLTZMAN: Yeah, it's -- right,

1 it's the third full paragraph, the third line.

2 MR. STONE: Yeah. One, two, three,
3 right, the third full paragraph. You talked
4 about it might worsen the client's legal
5 position, and the program will succeed only if
6 they're not viewed as helping the system and the
7 support may wane. I rewrote that a little bit so
8 it says "The military justice system is not well-
9 served by inexperienced SVCs who might
10 unintentionally worsen their client's legal
11 position or cause unnecessary delays." New
12 sentence, "SVC programs will succeed only with
13 the support of leaders and others in the military
14 services."

15 CHAIR HOLTZMAN: Okay, any objection?

16 MR. STONE: I doubt this about waning
17 support.

18 CHAIR HOLTZMAN: Okay. Any objection
19 to that suggested change? Okay, no one --

20 JUDGE JONES: No.

21 CHAIR HOLTZMAN: -- objects to that,
22 too. All right. What is the next one? Admiral

1 --

2 MR. STONE: On the bottom of page 3,
3 the last paragraph where it says "The JPP is
4 concerned about a lapsed standardized
5 evaluation," et cetera, I modified the tone. I
6 toned it down a little bit because it talks about
7 DoD in there, and I thought that, you know,
8 saying they must take responsibility -- let me
9 read you what I changed it to say.

10 I will read the whole paragraph
11 quickly. "The JPP is concerned about a lack of
12 standardized assessment -- "

13 CHAIR HOLTZMAN: Oh, please don't read
14 the whole paragraph, Mr. Stone. We've got a real
15 lack of time, so just pick up where you are.

16 MR. STONE: Okay, just do this one,
17 all right.

18 "DoD needs to oversee the
19 establishment of program performance measures and
20 evaluations. In addition to sharing best
21 practices," blah blah blah --

22 CHAIR HOLTZMAN: Okay. And anybody

1 have any objections to that?

2 Okay, no objections, approved.

3 Okay, so any more? I see Colonel ---
4 sorry, Admiral Tracey has a suggestion.

5 VADM(R) TRACEY: In the
6 recommendations that we just made, we did edit
7 out "effectiveness" and just --

8 CHAIR HOLTZMAN: Okay.

9 VADM(R) TRACEY: -- "and use of
10 expedited transfer programs," we make that change
11 here, I'm good.

12 CHAIR HOLTZMAN: Okay, all right.

13 LT COL GREEN: Yes ma'am, and we'll
14 reflect it as we did in the summary
15 recommendations.

16 CHAIR HOLTZMAN: Okay. So now we are
17 going on to page 4. Does anybody have -- sorry?
18 What?

19 LT COL GREEN: I am sorry, ma'am,
20 just, we had an audio problem here.

21 CHAIR HOLTZMAN: Oh, okay.

22 LT COL GREEN: We're good.

1 CHAIR HOLTZMAN: All right. We are on
2 to page 4. Any objections to page 4?

3 MR. STONE: Yes --

4 CHAIR HOLTZMAN: Go ahead.

5 MR. STONE: This is Vic Stone. Right
6 after the paragraph says "Rights and Needs of
7 Sexual Assault Victims through the Judicial
8 Process" --

9 CHAIR HOLTZMAN: Will you just give
10 the number of the paragraph?

11 MR. STONE: I guess it's the second
12 full paragraph. That begins "The Crime Victims'
13 Rights Act," and once again, we're talking about
14 --

15 CHAIR HOLTZMAN: 4?

16 MR. STONE: My page --

17 CHAIR HOLTZMAN: Oh yeah, okay, sorry,
18 I got it. I got where it is. Okay, sorry. Go
19 ahead.

20 MR. STONE: That second sentence,
21 again, the same problem we had before. I am not
22 sure if we can finesse it the way we did before

1 --

2 CHAIR HOLTZMAN: Okay.

3 MR. STONE: -- in other words, I was
4 saying --

5 CHAIR HOLTZMAN: Right, I remember, we
6 don't have to repeat, we don't have to repeat.
7 Let's see if they can finesse it, and if you're
8 okay with that --

9 MR. STONE: If they finesse it, I am
10 fine.

11 Okay. Let's see --

12 CHAIR HOLTZMAN: Anybody else --

13 MR. STONE: -- also, finesse, I guess,
14 on the bottom of that page, where at the very
15 bottom -- let me get to the bottom of the page,
16 where it says -- oh this is where, these are your
17 comments now, other people's comments, issues.

18 CHAIR HOLTZMAN: Right.

19 VADM(R) TRACEY: I think my first
20 comment here is going to be fixed as a result of
21 a resolution that we made on the recommendation.

22 The second one is just an edit for --

1 I did think it was important that we suggest that
2 there be some expeditious movement to get the
3 practice and procedures out and uniform.

4 CHAIR HOLTZMAN: Oh, so you wanted to
5 add the word "expeditious"?

6 VADM(R) TRACEY: Yes.

7 CHAIR HOLTZMAN: Is there any
8 objection to that?

9 Hearing none, then it's approved.

10 LT COL GREEN: There's an additional
11 phrase there, ma'am, and we'll add that.

12 CHAIR HOLTZMAN: What's the phrase?

13 LT COL GREEN: Oh, I'm sorry, it's a
14 replacement of the language.

15 CHAIR HOLTZMAN: Oh, okay, so it's in
16 the bubble. Does anybody have any objection to
17 that bubble or the language of the bubble?

18 MR. TAYLOR: Tom Taylor, I thought it
19 was a good suggestion.

20 CHAIR HOLTZMAN: Good. Agreed to.
21 Okay.

22 So we're moving along, we're on the

1 next page. Any -- let me see what page, page 5.

2 Any suggestions to page 5?

3 MR. STONE: Yes. On the last line of
4 the first paragraph, this hearkens back to what
5 we said before, but I changed it, instead of
6 saying -- where it says "of any alleged violation
7 of the rights set forth in Article 6b," I changed
8 it to say "to rectify the alleged violation of
9 the military victim's rights."

10 Again, because 6b doesn't cover --

11 CHAIR HOLTZMAN: Right.

12 MR. STONE: -- some of that other
13 stuff.

14 CHAIR HOLTZMAN: Are we okay with
15 that? Any objection? Kyle?

16 LT COL GREEN: Ma'am, we'll look at
17 the language. This, again, you re-worded the
18 recommendation. We'll reflect that.

19 Our only concern is "military victim,"
20 that is limiting in ways that I am not sure is
21 the intent --

22 MR. STONE: Oh, okay. You could take

1 out the word "military," that's okay.

2 CHAIR HOLTZMAN: All right, so you'll
3 conform the language to what we agreed to before.

4 LT COL GREEN: Yes ma'am, we will.

5 CHAIR HOLTZMAN: Well, the one thing I
6 wanted to add, I don't see my notes included
7 here, but I wanted to add in the paragraph
8 starting under the Victims' Privacy Issues, in
9 bold, I guess it's the second or third full
10 paragraph -- second full paragraph -- it says
11 that, basically, the last sentence implies that
12 the Military Rules of Evidence are intended to
13 prevent the unwarranted introduction of evidence
14 and unreasonably intrudes into the privacy of
15 sexual assault victims, but I think that it's not
16 only privacy, but it's irrelevant evidence, and
17 is irrelevant.

18 MR. STONE: That's -- and actually, I
19 marked the same thing, and I struck the language
20 that said "improving the safeguards for the
21 privacy of sexual assault victims" and changed it
22 with "improving the proper application of MRE

1 412," because that is what a 412 hearing is for.
2 We just want the proper application.

3 CHAIR HOLTZMAN: I don't know. Is
4 that satisfactory to the other members of the
5 Panel, Mr. Stone's change? Any objection to it?

6 I don't object either.

7 Okay. I make a similar change to the
8 end of the second paragraph, the next paragraph,
9 which is -- the very last sentence, it's the
10 paragraph starting "One major area of concern."
11 It's the very last sentence, where we say that
12 these changes are "positive steps towards
13 improving safeguards for the privacy of sexual
14 assault victims," and I want to say "and to the
15 introduction of irrelevant and inflammatory
16 evidence." But maybe it's not necessary, I am
17 just making a suggestion.

18 LT COL GREEN: Well, and I guess,
19 ma'am, Mr. Stone's recommendation is just "the
20 proper application of MRE 412" and whether that
21 would -- that would cover it.

22 JUDGE JONES: I would worry about

1 saying "inflammatory and irrelevant" because
2 basically, at an Article 32, without the
3 constitutional issue, you could -- you would --
4 it sounds like the point is to preclude areas
5 that might well be admissible when the top court
6 looks at it, and, you know, does the balancing
7 tests.

8 So I mean, I think relevant evidence
9 may well get excluded at an Article 32, and since
10 there is no right to confrontation or anything
11 else, we can let that go by, but I think that it
12 may not be the case in the -- it may not be
13 because the evidence is irrelevant or
14 inflammatory. That's my only point.

15 CHAIR HOLTZMAN: Okay, I'll withdraw
16 it.

17 Let's see. Are there any other
18 suggestions on page -- what page are we on, 5?
19 Five.

20 I just -- in the last paragraph about
21 513, before the last sentence, I thought maybe
22 there should be an additional point, which is not

1 just that the JPP recommends additional
2 safeguards, but I thought we should refer to the
3 testimony that we heard by saying "After having
4 heard evidence that mental health records are
5 routinely delivered to the court in 513 hearings
6 before the hearing -- before a judge has ruled --
7 before a judge -- without a judicial order," so
8 that the recommendation is related to something
9 that we've heard.

10 And maybe I don't have the right
11 language here, but that's what the point I wanted
12 to put in there is.

13 MR. STONE: Fine by me.

14 MR. TAYLOR: I agree.

15 VADM(R) TRACEY: I like it.

16 CHAIR HOLTZMAN: And --

17 VADM(R) TRACEY: But if we make that
18 change, you'll need to just re-duplicate it with
19 the paragraph that follows, which says some of
20 the same things.

21 CHAIR HOLTZMAN: Oh, okay.

22 VADM(R) TRACEY: Not as specifically

1 as you suggest, and I agree with the specificity.
2 This is Pat Tracey.

3 CHAIR HOLTZMAN: Okay. I am fine with
4 that. Is everybody fine with that, if there is
5 duplicative language in the next paragraph taken
6 out?

7 MR. STONE: I am in that next
8 paragraph, and that's where we --

9 CHAIR HOLTZMAN: Where are we, on page
10 6? Are we in page 6 now?

11 MR. STONE: Yes, we're on page 6.

12 CHAIR HOLTZMAN: Okay.

13 MR. STONE: That paragraph --

14 CHAIR HOLTZMAN: Anything else on page
15 5? Okay, we're on page 6 now. Okay --

16 MR. STONE: On that top paragraph,
17 again, we have that thing with sort of released,
18 and again, I would have liked to stick in
19 "acknowledged," but I'll go with -- let Kelly
20 figure out how to get it in there. Basically,
21 the identical words that we dealt with before.

22 JUDGE JONES: Right, and it has to be

1 conformed to the --

2 LT COL GREEN: Yes sir, we'll make
3 these both reflect exactly how we reached in the
4 summary.

5 CHAIR HOLTZMAN: I just had one small
6 change. Wait. Did we take this out? I don't
7 know.

8 Anything else on page 6?

9 MR. STONE: It's real small -- let's
10 see.

11 LT COL GREEN: Ms. Holtzman, you had
12 made the comment on these about whether you
13 thought this section was necessary in general.

14 CHAIR HOLTZMAN: Yes.

15 LT COL GREEN: And you'd made the
16 recommendation as to whether it should be
17 deleted?

18 CHAIR HOLTZMAN: Well --

19 JUDGE JONES: Which paragraph are we
20 talking about?

21 LT COL GREEN: The recent -- sorry the
22 Recent and Pending Legislation and Policy

1 section, the two paragraphs that describe --

2 JUDGE JONES: Yes.

3 LT COL GREEN: -- changes.

4 CHAIR HOLTZMAN: Well, it's probably a
5 good -- I mean, I have rethought about thinking
6 about it here, and I am okay with having it in
7 there because it basically indicates that we're
8 aware that things are changing and we are going
9 to be on top of it, so I don't have any problem
10 with that now.

11 All right. Anything else on page 6?
12 Any other comments, suggestions?

13 MR. STONE: Just that on the third
14 line, I guess it's the end of the second line, in
15 Overall Policy Implementation, I've done this in
16 a bunch of places, I took out the word
17 "confusing" and put in "complex landscape"
18 instead of "confusing landscape." I mean, I
19 think they figure it out, but it's so complex,
20 it's hard to handle.

21 I guess I think we look a little more
22 -- I just think "complex" is the right word and

1 that we should consistently use that instead of
2 "confusing." "Confusing" sounds like we can't
3 figure it out.

4 VADM(R) TRACEY: I agree.

5 JUDGE JONES: But we heard from the
6 witnesses that they are having trouble figuring
7 it out.

8 CHAIR HOLTZMAN: Right.

9 JUDGE JONES: Not us having trouble
10 figuring it out, it's them.

11 CHAIR HOLTZMAN: Correct. That's my
12 understanding too, and I didn't take it -- I
13 didn't take it personally that it was a confusing
14 landscape, that we couldn't figure it out, I
15 just, you know -- because we say for victims and
16 practitioners, so it doesn't apply to us.

17 MR. STONE: That's true, but I've been
18 -- I am one of the practitioners. I haven't
19 found it confusing, just very complex.

20 CHAIR HOLTZMAN: No, you're one, and
21 that's anecdotal, but others have said it is,
22 that's all.

1 MR. STONE: I'll go with whatever you
2 want.

3 CHAIR HOLTZMAN: How do people feel?

4 MR. TAYLOR: I like "confusing," Tom
5 Taylor.

6 CHAIR HOLTZMAN: Okay, and Admiral
7 Tracey, I take it you like "confusing." Barbara,
8 you like "complex," and Mr. --

9 JUDGE JONES: Well you know, generally
10 speaking, I have liked Mr. Stone's changes
11 throughout where we are not making it sound like
12 things are so bad that we have no justice system
13 and malpractice abounds, or if so -- I mean, I
14 don't care if it says "confusing," but I do like
15 your idea of not painting such a bleak picture
16 and making it sound like, you know, people are
17 literally unable to do their jobs at this point.
18 That's all.

19 CHAIR HOLTZMAN: Okay, so you're in
20 favor of "complex," and Mr. Stone is in favor of
21 "complex," and I am in favor of "confusing," so I
22 think it's 3-2.

1 JUDGE JONES: You win, Liz.

2 CHAIR HOLTZMAN: Well, I think it's
3 Admiral Tracey's point.

4 Okay. Up to Conclusions. Do we have
5 anything else on this page?

6 Okay. Do we have anything on page 7?

7 MR. STONE: Oh, I'm --

8 CHAIR HOLTZMAN: Okay, Mr. Stone.

9 MR. STONE: I am on the last paragraph
10 of the report. I don't like to say that sexual
11 assault "remains a clear threat to our military's
12 effectiveness and the well-being" -- I didn't
13 think that quite made the point that we were
14 getting, and so I changed it to read, "remains a
15 clear threat to our military's cohesiveness,
16 morale, and the well-being of men and women."

17 CHAIR HOLTZMAN: What page are you on?

18 MR. STONE: Last page, last paragraph,
19 top line.

20 LT COL McGOVERN: Mr. Stone, would you
21 be okay if we add "cohesive" and "morale" but
22 also keep "effectiveness"? Many military senior

1 leaders --

2 MR. STONE: That's okay, that's okay.

3 LT COL McGOVERN: All right.

4 CHAIR HOLTZMAN: Can I just -- I had a
5 suggestion, I am sorry, on page 6, I don't mean
6 to go back.

7 But in the last paragraph, the middle
8 line, where it says "other organizations," we
9 receive information not only from organizations
10 but from individuals outside the military, and I
11 think that should be acknowledged.

12 LT COL GREEN: Yes ma'am, we can make
13 that addition.

14 CHAIR HOLTZMAN: Yeah, and so it
15 wouldn't necessarily be from these entities. So
16 you'd have to change the next paragraph, the
17 wording there.

18 Okay. I don't have any other changes,
19 so are we finished with the executive summary?

20 MR. STONE: I've got the last
21 sentence. I didn't think it was enough to say
22 what's said there, and I wanted to change the

1 last three lines to say, and here's how I would
2 have it read, "The JPP is committed to providing
3 timely analysis and recommendations that will
4 benefit the administrative processing of these
5 cases, sexual assault victims, the related
6 military judicial proceedings, and all of DoD."

7 CHAIR HOLTZMAN: All of DoD?

8 MR. STONE: Yeah, every one of the
9 services will be better off for it. Do you want
10 to say "and all the military Services"? That's
11 fine too.

12 JUDGE JONES: I like it the way it's
13 drafted.

14 CHAIR HOLTZMAN: I think that -- yeah,
15 I agree with that.

16 VADM(R) TRACEY: Me too.

17 CHAIR HOLTZMAN: Mr. Taylor?

18 MR. TAYLOR: Yeah, I like it the way
19 it is.

20 CHAIR HOLTZMAN: Sorry, Mr. Stone.

21 MR. STONE: Okay. I'm outvoted again.

22 CHAIR HOLTZMAN: So here we are, so

1 any other comments, thoughts, or suggestions on
2 this draft, on the executive summary?

3 Okay, we're done with it. Excellent.
4 Hearing no objections, it's approved.

5 Now we're up to the report. Okay.
6 Are we going to go through that page-by-page too?
7 Is that -- Kyle, Kelly?

8 LT COL GREEN: I am sorry, ma'am, I
9 was --

10 CHAIR HOLTZMAN: Are we going to go
11 through the report page-by-page? Is that our
12 procedure?

13 LT COL GREEN: I think we need to,
14 similarly to how you just did the --

15 CHAIR HOLTZMAN: Oh, okay.

16 LT COL GREEN: -- summary, and again,
17 a lot of these were non-substantive comments that
18 are just for reading's sake, and the staff can
19 work those for you at the Panel's discretion.

20 CHAIR HOLTZMAN: Okay. Let me just
21 pull this up on my screen.

22 LT COL GREEN: But we -- we've

1 identified 94 comments that we thought the Panel
2 at least needed to look at. Most are pretty
3 straightforward. I don't think that -- and
4 anywhere where the staff provided any
5 clarification, we've added that in the comment
6 bubbles.

7 CHAIR HOLTZMAN: Okay. So on page 1 -
8 - on page 2, do we have any comments? Any --

9 LT COL GREEN: The table of contents
10 just reflects the current list of appendices, and
11 those are with our graphics person right now to
12 start the layout process for those.

13 CHAIR HOLTZMAN: Okay. So here we go
14 to the report. We're on page, I guess, 3 of the
15 report. Any issues on page 3? Comments? MT1?
16 Who is MT?

17 MR. STONE: Meghan, is that Meghan,
18 MT?

19 LT COL McGOVERN: Meghan entered these
20 in for us, combining --

21 CHAIR HOLTZMAN: Oh.

22 LT COL McGOVERN: -- but you'll see

1 your initials. For instance, this was proposed
2 by Victor Stone, VS, and Ms. Holtzman, you'll be
3 EH.

4 CHAIR HOLTZMAN: Oh, I see. So what
5 are we deleting here? Oh, the first --

6 MR. STONE: The opening sentence
7 didn't seem to be necessary. I tried to delete
8 stuff that just wasn't necessary and made the
9 report longer. Didn't affect the content any,
10 but was just restating the obvious. I go right
11 to "First, the JPP," in other words, what we did.

12 And I don't like this "foundational in
13 military," I don't know what "foundational"
14 means.

15 CHAIR HOLTZMAN: Okay, well then
16 instead of "First" -- I don't think it's a very
17 good idea to start something with the word
18 "First" -- we can just say "The JPP began its
19 work by reviewing the punitive" --

20 MR. STONE: Fine.

21 CHAIR HOLTZMAN: -- "the punitive
22 articles in the U.S. ---" is that okay with

1 everybody?

2 MR. STONE: Sure.

3 CHAIR HOLTZMAN: All right. So what
4 other comments -- do we have any other comments
5 on 3?

6 Do we have any comments on 4?

7 Three is approved, having heard no
8 negative comments.

9 Under (d), delete, we have a delete
10 recommendation.

11 MR. STONE: Yes, and I moved to delete
12 it only because it just is restating exactly what
13 we just said.

14 CHAIR HOLTZMAN: Staff, do you have
15 any comment on this comment?

16 LT COL GREEN: No ma'am, this is just
17 an explanation of some of the changes.
18 Obviously, capturing all the legislation and
19 policy -- this is just to provide some examples,
20 certainly not a comprehensive list, so I -- no
21 issues if this is deleted.

22 CHAIR HOLTZMAN: Anyone have any

1 objection to deleting it?

2 (No audible response.)

3 CHAIR HOLTZMAN: Somebody thinks it's
4 helpful?

5 LT COL McGOVERN: I think so.

6 CHAIR HOLTZMAN: Okay, well then make
7 the point. Who is that?

8 LT COL McGOVERN: I am sorry, ma'am, I
9 take it back.

10 CHAIR HOLTZMAN: No no no no, don't
11 take it back. We need your comments. That's
12 fine. Why do you think it's helpful?

13 LT COL McGOVERN: Because it shows
14 that the JPP is aware of the specific things that
15 are just now changing in the Article 32 and the
16 mandatory minimums. I think it adds credibility
17 to the JPP, ma'am.

18 CHAIR HOLTZMAN: Well, it's pretty
19 hard to argue with that.

20 LT COL McGOVERN: And we no longer are
21 having an Appendix G listing all of the
22 legislation because it got to be a monster, so

1 that next sentence will have to be deleted.

2 MR. STONE: Okay, that changes my view
3 then. I thought they could -- I was leaving in
4 that Appendix G. But if you're deleting the
5 Appendix G, I don't care if you leave in the
6 sentence.

7 CHAIR HOLTZMAN: Okay. Is that okay
8 with everybody?

9 JUDGE JONES: Yes.

10 VADM(R) TRACEY: Yes.

11 CHAIR HOLTZMAN: All right, so we're
12 leaving it in, and we're taking out Appendix G.

13 Okay. We are up to the next page,
14 which is page 5. Any questions or comments on 5?

15 Hearing none, it's approved.

16 Six? I am not seeing any changes
17 here, so 6 is approved unless anyone objects.

18 Okay. Page 7, we have comments, I
19 see, at the beginning.

20 MR. STONE: They are my comments
21 again. I am taking out stuff that we didn't
22 cover or the -- you know, the history of stuff

1 that was done in 2005 that it just doesn't affect
2 what we're doing today.

3 Now, I mean, it's a history, but it's
4 not a history -- I don't think we covered some of
5 this stuff.

6 VADM(R) TRACEY: This is Pat Tracey.
7 I don't have any problem with the first edit, but
8 for the second one, I do think it is relevant to
9 capture the fact that the JSC recommended against
10 changes to Article 120.

11 CHAIR HOLTZMAN: Where would you take
12 -- oh, yeah. Okay, so the first -- let's do this
13 orderly, because I wasn't following where you
14 were, Admiral.

15 So the first -- does anyone have an
16 objection to the first deletion on page, whatever
17 page we're on, 6, 7?

18 LT COL GREEN: Seven, ma'am.

19 CHAIR HOLTZMAN: Okay. Any objection
20 to that? I don't hear any, so that's approved.

21 The second objection -- suggestion by
22 Mr. Stone was to eliminate the language about a

1 subcommittee to the JSC, and Admiral Tracey
2 objects to that deletion. Any other comment
3 about that?

4 MR. TAYLOR: Tom Taylor. I agree with
5 Admiral Tracey on this because we have to
6 remember that this report very likely will be
7 read by people who know almost nothing about the
8 background and history of it, so it seems to me
9 like it's very helpful context.

10 CHAIR HOLTZMAN: Judge Jones?

11 JUDGE JONES: Yes, I agree with that.

12 CHAIR HOLTZMAN: Okay. I agree too,
13 so --

14 MR. STONE: Fine, leave it in.

15 CHAIR HOLTZMAN: Okay. Now, I see
16 that there are comments about the next two
17 paragraphs. Are those to be deleted too? Is
18 that a suggestion for deletion? I am trying to
19 --

20 LT COL GREEN: Yes, ma'am. That's the
21 whole section, so I think what the Panel is
22 saying is that they want to keep that in, so

1 we'll just keep that.

2 MR. STONE: Right.

3 CHAIR HOLTZMAN: I thought it was just
4 for the --

5 MR. STONE: Oh, no, it's all the --

6 CHAIR HOLTZMAN: Oh, I see --

7 MR. STONE: It's all the pre-2007 --

8 CHAIR HOLTZMAN: Okay.

9 MR. STONE: -- version information,
10 that's what it is.

11 CHAIR HOLTZMAN: Okay. Does anybody -
12 - I didn't understand that that was the case, but
13 does anybody want to change his or her opinion
14 based on the fact that we're talking about
15 keeping in the first two paragraphs, the two
16 paragraphs starting with one, "The JSC
17 subcommittee," and the second paragraph, "In July
18 2005"? Anybody else want to make any comment
19 about that? Are you in favor of keeping them in,
20 or -- are we in favor of keeping them in or of
21 taking them out?

22 I take it, Admiral Tracey, your

1 suggestion was to keep both of those paragraphs
2 in.

3 VADM(R) TRACEY: Yes ma'am.

4 CHAIR HOLTZMAN: Okay. So anybody
5 disagree with that?

6 Okay, so they are kept in.

7 MR. STONE: I am willing to be
8 outvoted. I don't think that what happened
9 before 2007 has any effect on what we're doing
10 today, but I am willing to be outvoted.

11 CHAIR HOLTZMAN: Okay. Thank you.
12 All right.

13 Now we have -- are we finished with
14 page 7?

15 Okay. We are up to page 8. Any
16 suggestions on page 8? I see that there's a
17 suggestion, Mr. Stone, you have --

18 MR. STONE: I don't think we have to
19 keep pointing out, and I think it's sort of
20 insulting, that almost a year after the
21 implementation date, nothing happened or
22 whatever.

1 I think we just have to say when it
2 happened. "On May 15th, the President issued
3 Executive Order so-and-so." I mean, they know
4 that it was slow implementation, and I don't want
5 to rub their nose in it. I don't see how that
6 helps us.

7 LT COL McGOVERN: Sir, I believe the
8 point is that a lot of the confusion currently
9 surrounding Article 120 is because they haven't
10 issued the guidance on how to implement Article
11 120.

12 MR. STONE: And we say that a lot of
13 times.

14 CHAIR HOLTZMAN: Well, we say it in
15 the --

16 LT COL McGOVERN: I am okay with
17 deleting that there, that's fine.

18 CHAIR HOLTZMAN: I'm sorry?

19 LT COL McGOVERN: Just the paragraphs
20 below, I think, are necessary.

21 MR. STONE: Well, you'll see, further
22 down that page, again, that I would -- that's now

1 standing alone, the last two paragraphs on that
2 page, which talk, again, about the delay and the
3 delay.

4 I don't see why talking about the
5 delay here, in the history part, and not in what
6 we're recommending because of confusion, does
7 anything but make it look like we're pointing the
8 finger at people. That's all.

9 LT COL MCGOVERN: It's in the title of
10 the paragraph.

11 CHAIR HOLTZMAN: I'm sorry, I didn't
12 hear the question. What was the question?

13 VADM(R) TRACEY: This is Pat Tracey.
14 I'm trying to support the fact that the fact of
15 delay is impacting the effectiveness, likely. It
16 is certainly impacting our ability to effect
17 effectiveness, and it is in light of that delay
18 that we're a little reluctant to suggest even
19 more changes.

20 CHAIR HOLTZMAN: Anybody else have a
21 comment to that?

22 Well, I'll say that I -- Mr. Stone, I

1 mean, I am not concerned about -- about ruffling
2 any feathers here because of delay. I agree with
3 Admiral Tracey that we heard, and probably the
4 biggest complaint we heard, or one of the biggest
5 complaints, is this delay, and I think that it's
6 important -- when you say the people know, this
7 is also a public document. The public doesn't
8 necessarily know this, and this is the report
9 which is giving the basis for our
10 recommendations, so I think that the treatment of
11 this is appropriate here --

12 MR. STONE: All right.

13 CHAIR HOLTZMAN: -- a long treatment.

14 MR. STONE: You previously struck, and
15 I agreed with you, the identical language that
16 begins at the beginning of the last paragraph of
17 page 8. You struck it from the other items we
18 already reviewed, and I agreed.

19 It starts by saying, "Witnesses
20 appearing before the JPP provided little solid
21 insight about why implementation guidance to the
22 2012 amendment to Article 120 still remains

1 pending. In explaining the extensive inter-
2 agency review process that is required to
3 evaluate and approve proposed guidance, they
4 described an extensive and opaque bureaucracy
5 with little or no accountability."

6 I think that goes way too far.

7 CHAIR HOLTZMAN: Oh, okay --

8 MR. STONE: So I am --

9 CHAIR HOLTZMAN: -- I am not disputing
10 that, I'm --

11 MR. STONE: -- told us that there was,
12 that something was pending here, something was
13 pending here, it was rewritten, it needed more
14 approvals. It's a big military, and I think this
15 wraps them on the knuckles unfairly.

16 LT COL GREEN: And Mr. Stone, the
17 revisions that you made in the summary of
18 recommendations, we will incorporate here to make
19 sure that the language is parallel to that.

20 CHAIR HOLTZMAN: Right.

21 VADM(R) TRACEY: I am good with toning
22 it down. I just think that eliminating it is

1 going to be misleading.

2 MR. STONE: All right, as long as it's
3 toned down, and also the thing about
4 "unacceptable vulnerabilities," whatever that
5 means.

6 CHAIR HOLTZMAN: Right, we -- I would
7 say, to avoid any further issues like this, that
8 where we've made changes in the summary or in the
9 recommendations that require changes in the
10 report, that the report will be accommodated or
11 aligned with the changes we've already made. Is
12 that correct, Kyle and Kelly?

13 LT COL GREEN: Yes ma'am, that's
14 accurate.

15 CHAIR HOLTZMAN: Okay, so we don't
16 have to worry about that, but you might want to
17 continue to point that out --

18 MR. STONE: Right, I just have to --

19 CHAIR HOLTZMAN: -- agree that --

20 MR. STONE: -- in advance that I
21 reviewed this before we did those --

22 CHAIR HOLTZMAN: Right.

1 MR. STONE: -- so that's why some of
2 my deletions, you've accommodated.

3 CHAIR HOLTZMAN: Yeah, no problem.
4 Okay. So it's going to stay, but it's going to
5 be toned down, a la what we did before, in
6 accordance with what we already agreed to.

7 Okay, so we're up to page 9.
8 Everybody with me? We're on page 9. Okay. Any
9 suggestions on page 9?

10 I had one suggestion. I don't know if
11 it's been fixed up. Okay. Well, okay, so page
12 9, any -- so we don't have any issues on page 9?
13 I guess we can go to page 10.

14 MR. STONE: I have a question, and
15 it's on the next-to-last line of page 9, but also
16 on 10. Do we want to name individual people
17 other than by footnote?

18 Many times, when I've written things,
19 I try to avoid naming them. So on the next-to-
20 last line of 9, we name the professor. We don't
21 say "according to a professor at New York
22 University Law School," "according to a professor

1 of law" and then footnote it, and the same thing,
2 as soon as we get on 10, we say, "As the Judge
3 Advocate General of the Navy, Vice Admiral
4 Nanette M. DeRenzi," I mean, do we in this report
5 want to actually name names, or do we just want
6 to have titles?

7 CHAIR HOLTZMAN: I don't know, is
8 there a stylistic rule about this? I mean, is
9 there any reason we can't name names?

10 MR. STONE: Tell me how you feel about
11 it.

12 CHAIR HOLTZMAN: I don't know. Kyle,
13 do you have any -- is there some precedent about
14 not including names?

15 LT COL GREEN: I think the general
16 approach that we used in the drafting was to try
17 to use representative and not specific names.
18 Where there were specific comments from experts
19 or particular leaders that we thought might be
20 helpful, then we used specific names.

21 But -- and for example, and you hit
22 it, Mr. Stone, the Navy Judge Advocate General,

1 the professor who obviously worked this project
2 for the ALI, the Congresswoman, we cited them by
3 name. Others, where we heard from military
4 defense counsel, some of those types of things,
5 we did not attribute those directly, although
6 they are referenced in the footnotes.

7 CHAIR HOLTZMAN: Does anybody --

8 JUDGE JONES: I'd like them to be
9 mentioned.

10 CHAIR HOLTZMAN: You'd like them to be
11 mentioned.

12 JUDGE JONES: Yeah, I mean I think
13 every -- Schulhofer is a leader, obviously, Vice
14 Admiral DeRenzi is a leader. I think it's
15 appropriate in those categories to mention the
16 name -- not everybody's, as Kyle said, but
17 certainly the two of them. People know who
18 Schulhofer is and what he means in terms of the
19 rape law.

20 That's all. I don't think this is a
21 big issue, but that's my opinion.

22 CHAIR HOLTZMAN: Anybody else have an

1 opinion about this?

2 MR. TAYLOR: Tom Taylor. I agree,
3 because I think it adds some credibility to the
4 report just to say that this person said this, if
5 that's a person with name recognition.

6 CHAIR HOLTZMAN: So you agree with
7 Barbara Jones?

8 MR. TAYLOR: I do.

9 CHAIR HOLTZMAN: I just wanted to make
10 sure you were agreeing with -- okay. Admiral, do
11 you have a point on this?

12 VADM(R) TRACEY: I agree with Ms.
13 Jones.

14 CHAIR HOLTZMAN: Okay.

15 MR. STONE: And I'm fine with it too.
16 I wanted to hear what the Admiral said. If you
17 guys are fine, I'm fine.

18 CHAIR HOLTZMAN: Okay, good. So that
19 stays in, the names stay in.

20 Any other changes to page 9 -- we're
21 on 10 now.

22 Okay, no other changes on page 10.

1 All right, page 11.

2 LT COL GREEN: And Ms. Holtzman, you
3 raised a question that we weren't really sure
4 what the issue was in terms of the application of
5 the defense's mistake of fact. Is there any
6 issue about this? I wasn't -- we weren't --
7 didn't have any recommendations for you based on
8 your comment.

9 CHAIR HOLTZMAN: Well, I guess my
10 question was is there an issue about whether the
11 defense applies to rape and sexual assault
12 offenses?

13 LT COL McGOVERN: Yes ma'am, the
14 defense counsel --

15 CHAIR HOLTZMAN: Okay.

16 LT COL McGOVERN: -- raised that as an
17 issue.

18 CHAIR HOLTZMAN: All right, fine,
19 okay. That's my only -- it just was a question.

20 Okay. Any other points on page 11?

21 Hearing none, let's go to -- 11 is
22 approved. 12.

1 LT COL GREEN: And this is a point in
2 the report that talks about confusing use of this
3 definition and how it affects training of Service
4 members. This was the specific point of the
5 discussion that the Panel was hearing about from
6 witnesses at this point.

7 The executive summary, I noted that
8 the executive summary speaks more broadly and
9 provides that, so it's a matter of whether the
10 Panel believes that we need to add something in
11 the body that reflects a little bit broader
12 concern, or whether providing the statement in
13 the executive summary with this in the context of
14 the Panel's report is sufficient.

15 LT COL McGOVERN: And ma'am, I think
16 it goes specifically to the incapacity issue
17 because there's probably RSP testimony where
18 people have been trained if you have one beer,
19 then you can't consent, you're incapable of
20 consenting, and that's the specific issue that
21 training needs to be addressed to soldiers and
22 Service members.

1 CHAIR HOLTZMAN: Well that's one thing
2 that we heard, but my concern was that we -- that
3 --- I don't know; I could be wrong --- that all
4 that the recruits were being trained about what
5 rape law is by having -- by having to study
6 Article 120, which is, you know, pretty difficult
7 for an experienced practitioner, much less
8 someone who is not a lawyer, much less someone
9 who is 18 or 19.

10 So that was my concern, and that's the
11 -- I wasn't only focused on the one beer issue, I
12 was focused on what is "consent"? Does that
13 mean, you know, is it the freely -- whatever the
14 language is, the freely given consent, or is it,
15 you know, just not saying no, or -- so I thought
16 it was -- that's why I thought it was important
17 to have a clear understanding of the definition,
18 particularly because if the statutory language is
19 going to be used to train Soldiers, it ought to
20 be clear.

21 LT COL MCGOVERN: Yes ma'am.

22 CHAIR HOLTZMAN: So that was my only

1 point, not just narrow, but if people don't
2 agree, then it's fine with me too.

3 VADM(R) TRACEY: It seemed to me, this
4 is Pat Tracey, it seemed to me that these two
5 definitions, which is what this recommendation is
6 about, incapacity and consent, are the two
7 elements of training that are the most relevant
8 to every Soldier, and so --

9 LT COL MCGOVERN: And then there will
10 be the abuse of authority, trainer/trainee, I
11 think it probably comes up again.

12 We potentially, I mean, if you go back
13 to page 8, under section (b), we have a little
14 intro paragraph that Congress has substantially
15 revised, and the JPP's descriptions. We could
16 try to work something in there that there's this
17 overall concern with all these changes that
18 Service members are properly being trained from
19 the lowest level. Would that satisfy your
20 concern, Rep. Holtzman?

21 CHAIR HOLTZMAN: Not really. I mean,
22 it's not that there are so many changes, it's

1 just that the statute the way it is is not clear.
2 To me, it's not a clear statute, and it's one
3 thing for people to be sitting around a table
4 figuring out for the purposes of a trial, but if
5 you're educating new recruits on what the
6 standard of behavior is and you're reading them
7 Article 120, I don't know that I'd understand
8 fully what I was supposed to do.

9 VADM(R) TRACEY: So I don't think that
10 people actually read them Article 120. I thought
11 the witness that was testifying said that she
12 based her training on the Article 120 content,
13 and so the lack of these definitions was
14 affecting how she was able to train the young men
15 and women around the things that affect their
16 behavior --

17 CHAIR HOLTZMAN: Okay.

18 VADM(R) TRACEY: -- I don't think they
19 actually trained on the Article.

20 CHAIR HOLTZMAN: Okay, well that's a
21 relief. But the point is still -- I accept your
22 -- I am still concerned in that respect, I mean,

1 I think your statement about how these issues
2 could affect the lack of clarity, can affect the
3 training, and people's understanding of what
4 behavior is expected can be very important.

5 VADM(R) TRACEY: So I think that what
6 you were suggesting is that this was too narrowly
7 applied --

8 CHAIR HOLTZMAN: Correct.

9 VADM(R) TRACEY: -- because this is
10 the only place that it appears in the document,
11 and my -- I would tend to agree with that. Is
12 there a fix such as the staff is suggesting that
13 would make that more --

14 CHAIR HOLTZMAN: Well I don't -- you
15 can put a word, you know, if you have better
16 suggestions, I am perfectly willing to let you
17 figure out where it belongs.

18 LT COL McGOVERN: On page 23 to 24,
19 you all do an overall analysis and
20 recommendation, and that's after discussing the
21 trainer/trainee issues as well, so that might be
22 a good place to include it.

1 CHAIR HOLTZMAN: Kelly, I am perfectly
2 willing to let you figure out where this goes.

3 LT COL McGOVERN: I'll defer to Kyle.

4 LT COL GREEN: Okay, again --

5 CHAIR HOLTZMAN: I mean, both of you,
6 I am perfectly willing to rely on both of you to
7 figure --

8 LT COL GREEN: Yes ma'am, and we have
9 specific language from the executive summary. We
10 will conform that to just include that in the
11 body there.

12 CHAIR HOLTZMAN: Okay. Anybody object
13 to this?

14 Okay, so we're going forward on that.

15 So we still are on page 12. Any other
16 comments or suggestions on page 12?

17 Okay. Page -- so page 12 is approved.
18 Page 13. Any suggestions or comments on page 13?

19 None? I don't hear any objections, so
20 page 13 is approved.

21 Page 14. Do we have any issues on
22 page 14? Any objections to page 14?

1 Well, page 14 is approved.

2 Page 15. Any objections to page 15?

3 Page 15 is approved.

4 If I am going too fast for anybody,
5 you know, you can just stop me and we can go
6 back.

7 Any objections on page 16?

8 Page 16 is approved.

9 Any objections on page 17? I see we
10 have a big -- Mr. Taylor has -- this is
11 conformed, this will be conformed, we've already
12 gone over this, right, and we're going to be
13 conforming to what we've already done?

14 LT COL GREEN: Ma'am, comment 13 has
15 been resolved based on your earlier discussion,
16 so 14 and 15 are issues for you to consider.

17 CHAIR HOLTZMAN: Wait, what's 14?

18 LT COL GREEN: Fourteen is Mr. Stone's
19 recommendation to delete the summary of the
20 Panel's recommendations for the subcommittee to
21 consider. This is just a restatement of the 11
22 issues that are addressed within the report --

1 CHAIR HOLTZMAN: Oh, I see, the
2 comments are numbered. I am sorry. So we're
3 looking at comment 14, delete all of 13.

4 LT COL GREEN: Correct.

5 CHAIR HOLTZMAN: Okay.

6 LT COL McGOVERN: We included that
7 when Admiral Tracey had asked that we list out
8 the issues for the subcommittee. And --

9 CHAIR HOLTZMAN: So, how do people
10 feel? Do they want this out? I mean, do they
11 agree with this? Is there any objection to Mr.
12 Stone's deletion here?

13 LT COL McGOVERN: Also, parallel to
14 what you do on page 21 after you discuss coercive
15 relationships, you had also listed them out
16 there, so --

17 CHAIR HOLTZMAN: Oh, so you're
18 suggesting we should list in only one place.

19 LT COL McGOVERN: No ma'am, no ma'am,
20 I am saying to be parallel, that's how you listed
21 the other issues for the subcommittee for
22 coercive relationships as well.

1 CHAIR HOLTZMAN: I am not following.
2 We have 11 items here. Mr. Stone wants them all
3 deleted.

4 MR. STONE: Only because we go through
5 them one-by-one, and the same thing the next
6 time. We go through stuff one-by-one. I didn't
7 think there was a need to restate them again, but
8 if any of us on the Panel wants that, that is
9 fine with me. This was just -- looked like
10 unnecessary verbiage, but if you think it's
11 helpful to somebody, fine, let's restate them.

12 CHAIR HOLTZMAN: Have we stated these
13 before?

14 LT COL GREEN: Not in the group,
15 ma'am. This is the only place they're listed as
16 a group. It's just, what Mr. Stone is pointing
17 out is they are all talked about one-by-one
18 throughout the report.

19 CHAIR HOLTZMAN: Oh, okay, well.

20 VADM(R) TRACEY: And I thought what we
21 were seeing, this is Pat Tracey, I thought what
22 we were seeing in the way that staff constructed

1 the document is there was an easy way for someone
2 reading the document to see where the
3 recommendations that come in the recommendations
4 list came from in the report, so there was a
5 match between the language that we used in the
6 report and the language we used in the
7 recommendations summary.

8 I am agnostic on whether we need to
9 list them here or not. I thought there was some
10 bureaucratic neatness about the way the staff had
11 done it.

12 CHAIR HOLTZMAN: Oh. If we don't have
13 them listed out, this is my view, if we don't
14 have them listed out anywhere, I think it is
15 handy because then we can say look at the list on
16 page whatever it is. We shouldn't be -- we don't
17 have to do it more than once.

18 MR. TAYLOR: Tom Taylor. I think this
19 is a nice way to have it all in one place.
20 Somebody can look at one list and say okay,
21 here's what we've got to do.

22 CHAIR HOLTZMAN: Okay. Any other

1 thoughts on this? Judge Jones, do you have a
2 view?

3 JUDGE JONES: No, I think we should
4 leave it in. I agree with the last speakers.

5 CHAIR HOLTZMAN: Okay. Mr. Stone, you
6 are probably going to be outvoted. We won't --

7 MR. STONE: No, I don't care. I said
8 I don't feel strongly, I just thought that was
9 excess stuff, but if people think it's of value,
10 leave it in. Go right to the next comment, 15.

11 CHAIR HOLTZMAN: Right, so we're now
12 on page -- sorry, I lost the page --

13 MR. STONE: Fifteen.

14 CHAIR HOLTZMAN: Fifteen.

15 CHAIR HOLTZMAN: Do we have any
16 comments --

17 MR. STONE: Eighteen.

18 CHAIR HOLTZMAN: -- on --

19 MR. STONE: Eighteen, page 18, comment
20 15.

21 CHAIR HOLTZMAN: Page 18, well, wait a
22 minute.

1 LT COL GREEN: It's page 17 on the
2 draft, the version we're looking at, sir, but
3 it's comment 15 that Ms. Holtzman, you wanted to
4 add just some language at the end of the
5 sentence.

6 JUDGE JONES: I'm sorry, Kyle, where
7 are we?

8 LT COL GREEN: Comment 15, ma'am, it's
9 on page 17 --

10 CHAIR HOLTZMAN: Comment 15.

11 LT COL GREEN: Right.

12 CHAIR HOLTZMAN: What did I want to
13 add, "and determine whether the importance of
14 stability outweighs" -- okay.

15 I just thought it would make it clear
16 to the subcommittee what its charge was, which
17 was not just to review, make recommendations
18 about the article, but to weigh, you know, these
19 competing suggestions. I mean, I think there are
20 a lot of people who understand that the statute
21 is not the world's greatest statute, and if you
22 could start from scratch, you would never write

1 it this way, but there are competing concerns,
2 such as the issue of stability, that should be
3 taken into account.

4 So that was the only point here, but,
5 I mean, if we think that's redundant and we've
6 said it before, I don't object to its going out.

7 VADM(R) TRACEY: This is Pat Tracey,
8 again, and in the spirit of having all in one
9 place what it is we're asking the committee to
10 look at, I would agree with adding this phrase.

11 JUDGE JONES: Me too.

12 MR. TAYLOR: Tom Taylor, I think it's
13 a helpful addition.

14 MR. STONE: Okay, fine with me, let's
15 move on.

16 CHAIR HOLTZMAN: Okay. Page -- so we
17 have no other objections on page 17, it's
18 approved.

19 We're up to page 18.

20 LT COL GREEN: This is a comment from
21 Mr. Stone, just language at the end, and the
22 staff had crafted this based on something Ms.

1 Holtzman had asked for previously, so it's a
2 matter of whether, what we think --

3 CHAIR HOLTZMAN: "Furnished," I don't
4 know what the language means, "furnished with
5 punitive provisions for disobedience"?

6 JUDGE JONES: Could you just tell me
7 what paragraph it is?

8 CHAIR HOLTZMAN: I'm sorry. Do you
9 see the bubbles on the right? Do you have that
10 on your --

11 JUDGE JONES: No.

12 CHAIR HOLTZMAN: Oh, okay. Well, it's
13 in the middle of page -- are we, this is page 18?
14 It says, "current practices for charging coercive
15 relationships in the military," it is right
16 before that, the last sentence before that.

17 JUDGE JONES: Oh, okay, got it.

18 CHAIR HOLTZMAN: All right. I don't
19 understand the additional language, actually. I
20 hope I didn't write it.

21 (Laughter.)

22 CHAIR HOLTZMAN: I don't even

1 understand the point here.

2 MR. STONE: Me neither, so that's why
3 I want to see it struck, but maybe Kyle was
4 trying to get to something that he wants to just
5 orally tell us that he put a different way.

6 LT COL GREEN: No sir, it's just a
7 matter of noting that these are punitive natures,
8 but, I mean, the strict prohibition within the
9 sentence, it's just a matter of whether that
10 covers it or whether -- again, no strong feelings
11 either way.

12 CHAIR HOLTZMAN: Is it -- but it's not
13 criminalizing, I see. All right, well --

14 LT COL GREEN: And that is the nature
15 of it, the punitive provisions do criminalize it,
16 strictly prohibit --

17 LT COL McGOVERN: I think we can just
18 say, "each military Service has punitive
19 regulations," and then --

20 LT COL GREEN: Okay.

21 CHAIR HOLTZMAN: Or what about just
22 saying "strictly prohibits," "strictly prohibit

1 and criminalize sexual relationships," add
2 "criminalize," that makes it clear, and then you
3 don't need this "furnishes punitive."

4 LT COL GREEN: Okay.

5 CHAIR HOLTZMAN: All right. Any
6 objection to that? Okay, then we're finished
7 with it -- Mr. Taylor.

8 MR. TAYLOR: No, no objection.

9 CHAIR HOLTZMAN: Okay. So we approve
10 18. We are up to 19. Any suggestions on 19?

11 LT COL McGOVERN: Ma'am, for the title
12 before B, and the other stuff you all went over,
13 you clarified that it was coercive sexual
14 relationships. Do you want us to add that in the
15 title to B?

16 CHAIR HOLTZMAN: Yes, we've already
17 decided that, Kelly, that you are going to do
18 that.

19 LT COL McGOVERN: Okay, we'll do that.

20 CHAIR HOLTZMAN: That you're going to
21 conform the report to what we decide in the
22 recommendations and in the summary, that you and

1 Kyle, we trusted you to do that. In fact, we
2 have great confidence that you can do that.

3 Let's see. So, no objection to page
4 19. Okay, we're up to page 20. Any objections
5 to page 20?

6 I see that there's a comment that Mr.
7 Stone has to that.

8 MR. STONE: Our page numbers might be
9 different, because I don't see the comment, or
10 the other comments for that number.

11 CHAIR HOLTZMAN: It's on page 20. You
12 see where it says "strict liability for
13 trainer/trainee offenses?" It's point 3.

14 LT COL GREEN: The comment number is
15 17, you recommended deleting the end of the
16 sentence and just saying "which many trainees do
17 not know whether they can or how to avoid,
18 forestall, or refuse advances by their more
19 senior instructors."

20 MR. STONE: Right, now I found it.
21 For some reason on this draft, I don't know why,
22 my machine made it page 22, so I have to go by

1 comment number. Right.

2 I think the environment is enough. In
3 other words, once you start describing what
4 particular thing they can and can't do in a
5 coercive environment, it's not always advances,
6 sometimes it's the fear of advances or the
7 thought that they're going to be under the thumb
8 of the person -- I mean, it's just like, this is
9 a slightly broader topic, and I was afraid that
10 that particularized it too much.

11 VADM(R) TRACEY: I'm okay with this,
12 Mr. Stone. This is Pat Tracey.

13 CHAIR HOLTZMAN: You are okay with
14 what? The existing language, or you wanted to
15 have Mr. Stone's --

16 VADM(R) TRACEY: No, with the change
17 that Mr. Stone is asking for.

18 CHAIR HOLTZMAN: Any other objection
19 to that, Mr. Stone's change?

20 LT COL GREEN: The only thing we need
21 to look at is what Ms. Speier said in her
22 testimony, because we're summarizing it here, so

1 I just want to make sure we're not changing the
2 tone or nature of what she described to you.

3 CHAIR HOLTZMAN: Okay, so let me just
4 ask you, is the present language what she said,
5 the one that Mr. Stone wants to delete?

6 LT COL MCGOVERN: Yes, ma'am.

7 LT COL GREEN: Yes, ma'am.

8 MR. STONE: It's not in quotes.

9 CHAIR HOLTZMAN: Okay, Mr. Stone, I
10 know, but it's a summary of what she -- it's a
11 paraphrase of what she said.

12 So, Mr. Stone, can we resolve it this
13 way, that if she did not say what you're
14 suggesting, that we leave it the way it is
15 because it is a paraphrase of what she said?

16 MR. STONE: Sure, if she didn't make
17 the broader point and only made the narrow point,
18 sure. I thought she made the broad point.

19 CHAIR HOLTZMAN: Okay, now with regard
20 to the language of the broader point, I just
21 wanted to point out that whether -- I mean, the
22 language doesn't quite parse, because trainees

1 don't know whether or how to -- whether they can
2 -- okay, I guess it works, I guess it does work.
3 Okay.

4 I'm okay with that if it's an accurate
5 paraphrase. I'm okay, Mr. Stone, with your
6 suggestion if it's an accurate paraphrase of what
7 she said.

8 LT COL GREEN: We'll just verify with
9 her statement.

10 CHAIR HOLTZMAN: Okay, right. Okay.
11 Any other objection to that? I mean, so we all
12 approve page 20, subject to the staff determining
13 which one of these versions to use based on what
14 Rep. Speier said.

15 Okay, we're up to page 21. Any
16 objection or comment on 21?

17 LT COL GREEN: And again, ma'am, we'll
18 conform the list. Your comment, I think, is
19 resolved by us conforming the list to your
20 summary of recommendations. So comment 18 will
21 be resolved.

22 CHAIR HOLTZMAN: Okay, so then we

1 don't have 18. Okay. Comment 19. Oh, page 21,
2 so are we basically okay on page 21? I guess we
3 still have the last item on page 21? Also --

4 VADM(R) TRACEY: Didn't we resolve
5 this in the earlier --

6 CHAIR HOLTZMAN: Did we resolve this?
7 That's what I am trying to ask. Because my
8 comment is should this be delegated, which is a
9 pretty big question.

10 LT COL GREEN: Yes, ma'am --

11 CHAIR HOLTZMAN: Did we --

12 LT COL GREEN: Go ahead.

13 CHAIR HOLTZMAN: We agreed to delegate
14 this issue about triggering sex offender
15 registration, correct?

16 LT COL GREEN: Yes, ma'am.

17 LT COL McGOVERN: Yes, I thought so.

18 CHAIR HOLTZMAN: Okay, so then I
19 withdraw my question.

20 Okay, so what page are we on now?

21 Page -- sorry --

22 LT COL GREEN: Twenty-three, ma'am.

1 CHAIR HOLTZMAN: Okay, so we have no
2 other objections on page 22.

3 So, page 23, any objections or
4 comments on page 23?

5 We have, Mr. Stone, you were taking
6 the --

7 MR. STONE: I just think that at this
8 point is just a recommendation, all the analysis
9 we did in the whole long stuff leading up to
10 this, so I don't understand why this is called
11 analysis. It should just be the recommendation,
12 and I don't understand why we're just repeating
13 everything we just said before.

14 I would make this a very short, as you
15 see, I left in like a one sentence, one sentence
16 of it that's a recommendation: "The JPP
17 subcommittee should consider the issues discussed
18 in the report and evaluate the potential
19 consequences of changes in amendments." I don't
20 see why we're restating it again.

21 LT COL MCGOVERN: Actually, though, I
22 mean, I think a lot of the blue in the discussion

1 above is kicking it to the subcommittee, so it's
2 kind of helpful to have one conclusory paragraph
3 saying what your overall analysis of 120 is, as
4 well as your recommendation that it go to the
5 subcommittee. And, again, that's where we could
6 add in that Service members need to be trained,
7 this needs to be clarified for training purposes
8 as well.

9 LT COL GREEN: And Mr. Stone, this is
10 the only place -- this does not repeat -- some of
11 this does not repeat. The discussion about
12 stability in the system, this is the only place
13 that has any analysis from the Panel on that.

14 MR. TAYLOR: Tom Taylor. I agree with
15 that, and I think it dovetails with the Chair's
16 suggestion earlier to expand that other part to
17 include the important considerations about
18 whether it's better to leave it alone now or
19 whether it's better to go ahead and start
20 changing it.

21 CHAIR HOLTZMAN: Well, where does that
22 take you, Mr. Taylor? Are you in favor of the

1 deletion, or are you not?

2 MR. TAYLOR: I am not in favor of the
3 deletion. I think we should keep it.

4 CHAIR HOLTZMAN: Okay. How do we --
5 let's take a vote on this.

6 MR. STONE: I don't feel strongly. If
7 people want to leave it in, even one person, it's
8 okay with me.

9 CHAIR HOLTZMAN: Okay. So you're
10 removing, withdrawing your suggested change?

11 MR. STONE: Sure. It's not a strong
12 suggestion.

13 CHAIR HOLTZMAN: Okay, so without
14 objection, then, we have page 24 approved --
15 yeah, all of 24 approved. We're up to 25. Any
16 comments on 25?

17 JUDGE JONES: Could you just tell me
18 what's on the top of 25 --

19 CHAIR HOLTZMAN: Sorry, Barbara, yeah.
20 It has the charts at the beginning, the page with
21 the charts. It is called Special Victims'
22 Counsel Programs.

1 JUDGE JONES: Okay, that's my 24.

2 Okay. Gotcha.

3 CHAIR HOLTZMAN: I think, yeah, you
4 might be one page behind us, or -- okay. So any
5 objection to page 24?

6 (No response.)

7 CHAIR HOLTZMAN: Okay, hearing none,
8 it's approved.

9 Page 25? Any objection to -- well, I
10 guess 25 we just approved.

11 Any objection to page 26?

12 (No response.)

13 CHAIR HOLTZMAN: Hearing no objection,
14 26 is approved. Twenty-seven?

15 (No response.)

16 CHAIR HOLTZMAN: Hearing no objection,
17 27 is approved.

18 Twenty-eight? Do we have any
19 objection -- we have one comment here from Mr.
20 Stone to delete the paragraph starting
21 "Prosecution and defense counsel told the JPP."

22 Do you want to explain your

1 suggestion, Mr. Stone? This is 28, it's your
2 comment --

3 MR. STONE: I don't think we need to
4 lay out these things, that specific ineffective
5 assistance to victims has happened. I just think
6 it's enough to say stuff without that. I think
7 that says stuff that, you know -- this is
8 hypothetical. I don't think we had somebody say
9 this to us.

10 LT COL McGOVERN: I believe
11 prosecutors and defense counsel raised the issue,
12 sir, the stakeholders section.

13 MR. STONE: And I thought it was
14 hypothetical when they did it. We didn't hear of
15 a single case where somebody put the victim in a
16 worse position because of the delay.

17 CHAIR HOLTZMAN: Oh, I thought we did,
18 where they had raised issues, or failed to raise
19 issues -- I can't remember now -- that were -- I
20 think that we were told that there was an
21 instance where that happened, or at least, more
22 than one.

1 MR. STONE: Footnote it, that's fine
2 with me.

3 CHAIR HOLTZMAN: If you can footnote
4 it in the text, do we have backup in the text,
5 Kelly and Kyle? If we can put a footnote there,
6 I guess Mr. Stone is okay --

7 LT COL McGOVERN: I believe we have,
8 if you go above, like to footnote 217/218, what
9 we tried to do, in black, is provide all the
10 citations to the testimony you received, and then
11 do the analysis and recommendation in blue. So
12 here you're acknowledging that prosecutors and
13 defense counsel told you this in -- oh, in 219
14 and 220 also, are the better cites.

15 CHAIR HOLTZMAN: Kelly, can you
16 footnote this paragraph that Mr. Stone wants
17 deleted? Is it possible?

18 LT COL McGOVERN: Yes, ma'am.

19 CHAIR HOLTZMAN: Okay, so that's all
20 we need to do.

21 LT COL McGOVERN: Generally, we were
22 trying not to footnote the analysis and

1 recommendations because it was footnoted above,
2 but --

3 CHAIR HOLTZMAN: Oh, I see.

4 LT COL McGOVERN: These are what your
5 actual analysis and conclusions are --

6 MR. STONE: And then statements of
7 fact don't go in here, then just stick with your
8 recommendations.

9 I mean, I didn't hear a special
10 victims' counsel tell me that they didn't serve a
11 victim well. Yeah, these are prosecutors and
12 defense counsel who may be finding the special
13 victims' counsel to be in their way a little bit.
14 Okay, you've said it before. I just don't think
15 it needs to be repeated.

16 LT COL McGOVERN: And I guess, sir,
17 the reason for -- it's not repeated here, this is
18 the analysis. For DoD and the Hill, they see the
19 different views that were presented to you, and
20 then from your discussion last week, we took what
21 you all said and put it into the blue.

22 MR. STONE: Okay, let me go to the

1 substance of it for a minute. Victims benefit by
2 special victims' counsel who help them, okay?
3 And sometimes they make strategic decisions which
4 for prosecutors and defense counsel may well look
5 like they've unintentionally put their client in
6 a worse position legally.

7 I think, frankly, that that's not
8 correct. I actually think even if there's a
9 delay and it has certain consequences, typically,
10 the special victims' counsel has spoken to the
11 victim about it, and the victim is balancing
12 various considerations and made that choice, so I
13 don't think that the reason that we want
14 experienced special victims' counsel is only
15 because they might unintentionally put the client
16 in a worse position because of delay. It's
17 because they need to counsel victims.

18 So I put a positive spin on the
19 reason, not just a sort of a negative one.

20 VADM(R) TRACEY: This is Pat Tracey.
21 Didn't we edit the last sentence in the
22 recommendations that we reviewed to address

1 exactly Mr. Stone's concern? Didn't we modify
2 that rather than helping the victim, such an SVC
3 could unintentionally put the client in a worse
4 position? Didn't we make a response to that?

5 LT COL MCGOVERN: -- this doesn't go
6 to delay --

7 LT COL GREEN: Yes, ma'am, we did.

8 LT COL MCGOVERN: Yes, ma'am, and this
9 doesn't go to delay at all, sir, it's just --

10 VADM(R) TRACEY: I understand, but
11 can't we just adopt the language that we put into
12 the recommendation for this last sentence here
13 and address Mr. Stone's concern?

14 CHAIR HOLTZMAN: You mean the sentence
15 saying "Rather than helping the victim, such an
16 SVC could" --

17 VADM(R) TRACEY: Right.

18 CHAIR HOLTZMAN: If we've had other
19 language, I don't have any problem with using
20 prior language, but it seems to me that the whole
21 point of this, it doesn't matter -- I mean, the
22 whole point of this is that we're saying there

1 should be experienced counsel, so it seems like
2 this is a tempest in a teapot.

3 We're not saying that they're doing --
4 you know, we're not saying get rid of Special
5 Victims' Counsel, we're just saying there should
6 be more training and they should have had more
7 experience.

8 VADM(R) TRACEY: Would Mr. Stone be
9 satisfied if we just deleted the last sentence in
10 the part that he has asked to delete, if we
11 deleted that "Rather than helping the victim,
12 such an SVC," yada yada, could we leave -- could
13 we end with simply "won't have the experience to
14 make the right calls at the right time"?

15 MR. STONE: I'd rather -- yes, if it
16 says "make the best calls at the right time."

17 VADM(R) TRACEY: I'm good with that,
18 this is Pat Tracey.

19 CHAIR HOLTZMAN: Yeah, that's fine
20 with me too. And are we eliminating the last
21 sentence in that paragraph?

22 MR. STONE: Yes.

1 CHAIR HOLTZMAN: Any objection to
2 that?

3 LT COL McGOVERN: You all are
4 eliminating the "Rather than helping the victim"
5 sentence but keeping "While military justice
6 experience is desirable," is that correct?

7 CHAIR HOLTZMAN: Yes.

8 LT COL McGOVERN: Okay.

9 JUDGE JONES: That's good.

10 CHAIR HOLTZMAN: Now we are -- okay.
11 So any other comments on page 28?

12 (No response.)

13 CHAIR HOLTZMAN: Hearing none, that's
14 approved.

15 Page 29?

16 VADM(R) TRACEY: This is Pat Tracey, I
17 believe the sentence that's highlighted on the
18 first comment was fixed in the review of the --

19 CHAIR HOLTZMAN: I agree, I think so.

20 LT COL GREEN: Yes, ma'am.

21 CHAIR HOLTZMAN: All right, so the
22 first comments are resolved, and let's see if we

1 have any other comments on page 29. We have
2 none. Any objection to approving 29?

3 (No response.)

4 CHAIR HOLTZMAN: I don't hear any,
5 approved.

6 Page 30. Okay. In the middle of the
7 page -- okay. I don't -- well, I think the
8 sentence should be there, so I don't --

9 LT COL McGOVERN: That sounds good,
10 ma'am.

11 CHAIR HOLTZMAN: Okay, so I withdraw
12 my objection. Okay. Any other comment on page
13 30?

14 (No response.)

15 CHAIR HOLTZMAN: Hearing no objection,
16 30 is approved.

17 Thirty-one. Mr. Stone has a
18 recommendation for deleting about, what is it,
19 five words in the first line. Is there any
20 objection to that?

21 LT COL GREEN: Mr. Stone, this is
22 easy. The staff has no concerns about this one,

1 and just saying that it's part of the Navy Legal
2 Service Command is fine.

3 CHAIR HOLTZMAN: Okay. So Mr. Stone's
4 objection is resolved, you accept it. Kyle?

5 LT COL GREEN: Ma'am, I don't think
6 that it causes any issues, so this --

7 CHAIR HOLTZMAN: Okay.

8 LT COL GREEN: -- deletion, if the
9 Panel is good with that --

10 CHAIR HOLTZMAN: Okay, does anyone
11 object to that change by Mr. Stone? Okay. I
12 don't hear any objections, so it's accepted.

13 We have another comment towards the
14 bottom of that page, comment number 30, where
15 there's an insertion at the bottom of the
16 paragraph that starts, "unlike the other
17 Services, the Army did not establish a special
18 stovepipe chain" Mr. Stone wants to insert
19 additional language.

20 MR. STONE: I want to add the examples
21 of the personnel matters because I think when you
22 get to it right here, it seems vague unless you

1 know the personnel matters we're talking about
2 which is the underage drinking, curfew
3 violations, and people sort of understand what
4 we're talking about.

5 VADM(R) TRACEY: This is Pat Tracey --

6 CHAIR HOLTZMAN: Is that -- I'm sorry,
7 what?

8 VADM(R) TRACEY: I'm good with that
9 objection.

10 LT COL McGOVERN: Actually, that's not
11 accurate. Actually --

12 MR. STONE: Okay --

13 LT COL McGOVERN: Sorry, the Army
14 Legal Assistance attorneys, they can help their
15 clients respond to letters of reprimand or other
16 adverse administrative actions that are taken
17 against them, whereas the other Services, in
18 Legal Assistance, it's purely just wills and
19 those types of things.

20 So here we're not talking about curfew
21 violations and things like that, so I'm not sure
22 that the insertion would actually be accurate.

1 MR. STONE: Okay, what adverse
2 personnel matters that are referred to designated
3 defense counsel are you talking about? That's
4 why I highlighted that, because I didn't know
5 which ones you were talking about. What are you
6 talking about?

7 (Pause.)

8 LT COL McGOVERN: Okay --

9 LT COL GREEN: We're having an
10 internal service discussion here, and I think,
11 actually, Mr. Stone, your comment captures two
12 examples of things that in the Air Force system
13 would be referred to a defense counsel and would
14 not be resolved in Legal Assistance, so I think
15 we can look at those and just make sure that
16 we've provided representative examples just for
17 clarification.

18 MR. STONE: That's fine, just so we
19 know -- the reader knows what kind of personnel
20 matters you're talking about.

21 CHAIR HOLTZMAN: Any objection to
22 having the staff work that out?

1 Okay, hearing none, we're up to page -
2 - and any other objection to page 31? We're up
3 to page 32. Okay, page 32, we have a number of
4 comments in the -- on the middle -- on the
5 paragraph starting "Whether the SVC is placed
6 within the convening authority's chain of
7 command."

8 Okay, my question is, are we concerned
9 about undue pressure or any pressure and
10 influence?

11 MR. TAYLOR: You're absolutely right,
12 we're concerned about any pressure and influence.

13 LT COL MCGOVERN: I think it comes
14 from the usual term "undue command influence,"
15 which is --

16 CHAIR HOLTZMAN: Oh, I see. Okay,
17 okay. So is that, well maybe you want to use
18 that language, undue command influence?

19 LT COL MCGOVERN: And it's actually
20 unlawful, is the -- from pressure or unlawful
21 command --

22 CHAIR HOLTZMAN: Oh, so it's called

1 undue pressure and unlawful command influence?

2 LT COL MCGOVERN: Yes, ma'am.

3 CHAIR HOLTZMAN: Could we use that
4 instead?

5 MR. STONE: I object to using that.

6 Let me explain why: for the same reason my
7 comments here, which were accepted before, which
8 is, it's not just the objective standards of that
9 undue command influence, which is retaliation or
10 retribution, it's the appearance, even just a
11 sort of social hostility, that these SVCs think
12 this is going to damage their real potential, or
13 promotion potential, and that's going to, you
14 know, be a problem.

15 So that's why I think it's any
16 pressure. They have to know they do their jobs
17 just like the defense counsel do and just like
18 the prosecutors do, and just simply there's not
19 going to be pressure on them.

20 CHAIR HOLTZMAN: All right. So maybe
21 a solution here is -- I don't know that we heard,
22 I think most SVCs said that this was a good spot,

1 not a bad one, but suppose we took out everything
2 after the words "utmost importance," just say
3 that "the JPP believes an SVC's ability to
4 represent clients' interests free from command
5 influence of utmost importance. SVCs must be
6 allowed to advocate candidly and forthrightly,"
7 et cetera, et cetera, et cetera.

8 And then your language about fear of
9 retribution/retaliation, we would conform that to
10 what we did before.

11 MR. STONE: That's good. And I might
12 add, I don't know if it's footnoted, but we
13 definitely did hear from one person who said, an
14 SVC, she was worried that, you know, she heard
15 that this was going to, you know, and feared this
16 was going to ruin her career potential. There's
17 definitely something to footnote if we need to do
18 it.

19 CHAIR HOLTZMAN: Can we footnote that,
20 and is there any objection to my suggestion?

21 JUDGE JONES: No.

22 CHAIR HOLTZMAN: Okay, so hearing

1 none, we're finished with -- let's see, wait a
2 minute, I just lost where I was. Excuse me.

3 MR. STONE: So you've got another
4 "undue" right under that. What are you doing
5 with that one?

6 CHAIR HOLTZMAN: What are we going to
7 do with that one?

8 MR. STONE: You have "undue command
9 pressure" right under that statement, that is, in
10 other words, you highlighted it twice.

11 CHAIR HOLTZMAN: Oh, well, I don't --
12 I mean, I leave it up to the staff to figure out
13 what to do with the second one, if that's okay
14 with everybody.

15 LT COL GREEN: I think we can just
16 change that to say they're in place to protect
17 SVCs when their client's interest runs contrary,
18 and just leave out that concept.

19 CHAIR HOLTZMAN: Okay. So are we up
20 to -- Victim Eligibility Requirements on the
21 bottom of page 32. So any other comments about
22 32? Okay -- go ahead.

1 VADM(R) TRACEY: Is there a
2 recommendation to delete language in the last
3 little paragraph there on page 32?

4 MR. STONE: Yes.

5 VADM(R) TRACEY: This is Pat Tracey, I
6 disagree with that recommendation.

7 CHAIR HOLTZMAN: Yeah, so Mr. Stone,
8 you want to take out that language?

9 MR. STONE: I didn't think that we're
10 in the recommendation section yet. In other
11 words, when we have recommendations, typically,
12 that's at the end of each chapter. We lay out
13 stuff in the middle. I don't understand why
14 we're making recommendations yet. We have
15 recommendations down below.

16 LT COL McGOVERN: Actually, sir,
17 because it's such a long section, anything in
18 blue, we went ahead and inserted your
19 recommendations pertaining to that issue. Then
20 you get onto victim eligibility, discuss that,
21 and there's a short recommendation after that, so
22 --

1 MR. STONE: I get that. But all I'm
2 saying is when this gets printed, it's not going
3 to be blue, and people are reading a whole long
4 section, and if they looked at the index or
5 they're going to come to recommendations later,
6 they think that this is the exposition of the
7 recommendation here.

8 I just found it myself confusing
9 because some of your sections don't have the
10 recommendation right after them, some do, and
11 then it's recapitulated later.

12 That's the only point that I was
13 making before, too, that we seem to be -- there's
14 an awful lot of repetition. If you want to leave
15 it in, it's okay with me. I've made my point.

16 LT COL GREEN: And we can actually --
17 one of the thoughts had been to leave the Panel's
18 analysis that's blue, to have that in a bit of a
19 different color or something that would
20 distinguish that so that you could see in going
21 through the report the specific points of Panel
22 analysis so it wouldn't be just lumped in with

1 everything else.

2 LT COL McGOVERN: And so much --

3 MR. TAYLOR: May I just make some kind
4 of suggestion that you either put it in italics
5 or you have some sort of sub-heading to address
6 Mr. Stone's point that they need to know when the
7 transition occurs from when you've stopped
8 talking about the subject and you're moving into
9 the analysis.

10 LT COL GREEN: Yes sir.

11 CHAIR HOLTZMAN: Right. I mean, I
12 think he makes a good point, but I don't know Mr.
13 Stone, at this point, that we could go through
14 the whole report and pull out all the little
15 points at which it's analysis and you know --

16 MR. STONE: I am fine with --

17 CHAIR HOLTZMAN: I am not disagreeing
18 with you. I mean, in general, this should not
19 have happened, but --

20 MR. STONE: I am fine with Mr.
21 Taylor's suggestion that where the staff realizes
22 they've slipped into the recommendation, then

1 maybe they stick it in italics.

2 MR. TAYLOR: I think it's just
3 everything in blue.

4 LT COL GREEN: Yes sir, that's right.

5 JUDGE JONES: I like blue.

6 CHAIR HOLTZMAN: Okay.

7 MR. STONE: It's okay with me.

8 CHAIR HOLTZMAN: Any objection to the
9 suggestion by Mr. Taylor?

10 (No response.)

11 CHAIR HOLTZMAN: If not, it's approved,
12 and page 32 is approved.

13 Okay, we're up to page 33. Do you
14 have -- do you want to explain your position, Mr.
15 Stone?

16 MR. STONE: I think this is the same
17 stuff we --

18 CHAIR HOLTZMAN: We decided this
19 already?

20 MR. STONE: -- talked about before,
21 although I have the numbers wrong here. I saw
22 that we went through it before as we came to it

1 in the actual report, that it's 128 and 134.

2 So, I mean, it just -- you know,
3 that's all. I just want to, you know --

4 LT COL GREEN: Yes sir, we'll conform.

5 MR. STONE: Yes, it's not just on the
6 one statute, it's those others, too.

7 CHAIR HOLTZMAN: Okay. So with that
8 comment, we've approved 33.

9 Page 34. Mr. Stone has an additional
10 comment on page 34. Staff, do you have any
11 objection to that?

12 MR. STONE: Well, again, that's the
13 same one we had before. If they'll just put in,
14 again, in ellipses or something, what the
15 misconduct is that we're talking about there so
16 that the reader sees it. It makes it much more
17 understandable for a reader if they know what,
18 exactly what we're talking about, because here
19 it's underage drinking, but maybe I'm wrong.

20 CHAIR HOLTZMAN: Does anybody have any
21 objection to that? Okay, so the staff will make
22 the correction.

1 LT COL MCGOVERN: I think --

2 CHAIR HOLTZMAN: Page 34 -- sorry.

3 LT COL MCGOVERN: Ma'am, the list that
4 Mr. Stone is providing is for all the minor
5 misconduct, which there are less -- I mean, no
6 one is quite sure whether or not they can do it,
7 but, I mean, those are -- we can provide those as
8 examples, but we had listed matters involving any
9 possible misconduct because if it comes to being
10 drugs, or if it, you know -- no one knows where
11 that line is, so --

12 CHAIR HOLTZMAN: Oh, okay.

13 LT COL MCGOVERN: -- clearer providing
14 examples.

15 MR. STONE: Fine, then drop a footnote
16 that says this runs, this misconduct runs the
17 gamut, apparently, or it seems, we haven't
18 decided what the limits are, but it certainly
19 includes blah blah blah blah blah.

20 LT COL MCGOVERN: Okay.

21 MR. STONE: You've got to tell people
22 what it is we're talking about.

1 CHAIR HOLTZMAN: All right, on page
2 34, with that change, approved.

3 Page 35. I guess my concern here is
4 on the word "full." I just think "its
5 assessment" is sufficient, but it's a quibble, so
6 I don't feel very strongly about it.

7 LT COL McGOVERN: Would "final" be
8 better?

9 MR. STONE: Well, we may go back to
10 something.

11 CHAIR HOLTZMAN: Right. So maybe just
12 "its assessments."

13 MR. STONE: That sounds good to me.
14 I'd pull out the word "full."

15 JUDGE JONES: I agree.

16 CHAIR HOLTZMAN: Okay. I don't know
17 why I circled this portion in the sentence, so I
18 can't -- so let's just withdraw that comment.

19 And do we need to put -- and my other
20 question was should we put this in the footnote,
21 about the, this is the only one the DoD -- I
22 withdraw that comment. I am fine with whatever

1 you have here. I am okay with it. It's fine.

2 So we have Mr. Stone's comment on 41

3 on --

4 MR. STONE: I just think it's
5 redundant given the sentence before it. I don't
6 think we need it there.

7 CHAIR HOLTZMAN: Right. Anybody
8 disagree?

9 (No response.)

10 CHAIR HOLTZMAN: Anyone disagree with
11 Mr. Stone's suggestion of removing that last
12 sentence?

13 (No response.)

14 CHAIR HOLTZMAN: If not, it's agreed
15 to be removed, and we -- do we have any other
16 comments on page 35?

17 (No response.)

18 CHAIR HOLTZMAN: If not, 35 is
19 approved.

20 Page 36. Is 36 -- any comments on 36?

21 (No response.)

22 CHAIR HOLTZMAN: 36 is approved. Any

1 comments, any objection to page 37?

2 (No response.)

3 CHAIR HOLTZMAN: 37 is approved.

4 Page 38. Do we hear any comments on
5 page 38?

6 (No response.)

7 CHAIR HOLTZMAN: 38 is approved. Page
8 39? I don't see any comments -- yeah, we have
9 one comment from me. Okay.

10 And this is just a quibble comment. I
11 mean, we always refer to it as SVC Programs, but
12 I thought it was just a Program? It's up to you
13 how you feel.

14 LT COL GREEN: And the distinction,
15 the way we've used it throughout the report,
16 ma'am, is that when we talk about the SVC Program
17 or the military Services' SVC Programs.

18 CHAIR HOLTZMAN: I see, okay, that's
19 fine. I am okay with -- I am okay with it. I
20 withdraw it, it's too minor to consider that.

21 Okay. So we have no -- so page 39 is
22 approved.

1 Okay, page 40?

2 (No response.)

3 CHAIR HOLTZMAN: No comments on page
4 40. Forty is approved.

5 Page 41? Okay.

6 LT COL GREEN: Ms. Holtzman, you had
7 asked about the reporting numbers that are not
8 indicated for the Marines and the Coast Guard,
9 and, again, these were taken straightaway from
10 the report to the President, and those two
11 Services simply didn't provide this data.

12 CHAIR HOLTZMAN: Do we indicate
13 anywhere that the data wasn't provided to the
14 President, or do we need to say anything about
15 that? I mean, I don't know.

16 LT COL GREEN: I mean, we can add a
17 source line to the table that will provide that
18 the top line comes from the President's report
19 and then the other lines come from the JPP's
20 analysis.

21 CHAIR HOLTZMAN: Okay. I don't know
22 whether we even need that. Maybe it's fine.

1 I withdraw my comment. I'll just --
2 okay. We have another comment on --

3 LT COL McGOVERN: Alice likes your
4 comment, ma'am.

5 CHAIR HOLTZMAN: I'm sorry?

6 LT COL McGOVERN: Alice likes your
7 comment.

8 CHAIR HOLTZMAN: All right, fine, so
9 then you can use it, I guess, unless anyone
10 objects.

11 (No response.)

12 CHAIR HOLTZMAN: Okay, if there's no
13 objection, the staff can use my comment. Okay.

14 Mr. Stone wants to recommend an edit
15 on page 41, next to last sentence -- next to last
16 line of the next to last paragraph. Anyone
17 object to adding the words "only if it's a
18 significant 1 percent decline"?

19 (No response.)

20 CHAIR HOLTZMAN: Okay, so without
21 objection, it's added, and without objection,
22 page 41 is approved.

1 Okay. Page 42.

2 MR. STONE: Comment 45 is mine. I
3 wanted to add a sentence. And the sentence I was
4 going to add I was writing because I wanted to be
5 sure I understood what everything we had just
6 said meant, and what it meant to me was basically
7 this sentence that says "These differences in
8 reported rates highlight the difficulty that
9 results when the Services utilize different
10 measurement tools."

11 That's why I wrote it, because I was
12 trying to say, what is our bigger point? And I
13 hope that is what it is, but correct me if I'm
14 wrong.

15 JUDGE JONES: Could you just tell me
16 what section you're in? Not what page.

17 CHAIR HOLTZMAN: Okay, we're in the
18 section -- let me see if I can --

19 MR. STONE: D. Victim Dropout Rates.
20 Footnote, right after footnote 407.

21 CHAIR HOLTZMAN: So we could be near
22 either 40 -- I forget whether you went ahead or

1 behind, so we're either at page 40 or page 42.

2 JUDGE JONES: Okay. But we're in
3 Victim Dropout, and what paragraph?

4 MR. STONE: The one that ends with
5 footnote 407.

6 JUDGE JONES: Okay.

7 MR. STONE: Right there I was going to
8 add my sentence, "These differences in reported
9 rates highlight the difficulty that results when
10 the Services utilize different measurement
11 tools."

12 CHAIR HOLTZMAN: But I don't think
13 that's -- Mr. Stone, with all respect, I don't
14 think that that's what the point is of this.

15 MR. STONE: Okay. Somebody tell me
16 what the point was, then, of all these different
17 numbers.

18 CHAIR HOLTZMAN: Okay. Kyle, do you
19 want to do that? I mean, I think the point is
20 that, as it says, the Air Force dropout rate --
21 the Air Force, in other words, didn't properly or
22 fully -- no, not properly, didn't fully massage

1 its numbers and has failed to note that its
2 dropout rate has declined more than its own
3 reports indicate. So it has a substantial
4 dropout rate -- a decline in the dropout rate --
5 dropout rate is people leaving the military,
6 leaving the Air Force, is that correct, Kyle?

7 MR. STONE: No, the dropout rate is
8 drop in cases, I think.

9 CHAIR HOLTZMAN: No, no, no. I don't
10 think so.

11 Kyle, can you respond to this, or
12 Kelly?

13 LT COL MCGOVERN: Yes, ma'am. The
14 problem is in -- we have numbers, the 96 victims
15 who declined to participate was from an article
16 requesting 2011 numbers, and then we have a
17 different source where they're now citing a very
18 -- the 1 percent difference.

19 So they haven't specifically compared
20 their dropout rates. We just noted from
21 different sources, if you pull their information.
22 If we take their actual data, then we know --

1 CHAIR HOLTZMAN: What does the dropout
2 rate refer to? Is that people leaving the
3 military?

4 LT COL McGOVERN: No, ma'am. It's
5 people who start out with an investigation but
6 then decline to go through with prosecution of
7 the case.

8 CHAIR HOLTZMAN: Okay.

9 LT COL McGOVERN: So I think the best
10 way to clean it up is just for us to glean the
11 information we can from their data rather than
12 trying to note that -- note that they're not
13 tracking this --

14 CHAIR HOLTZMAN: Right, I think --
15 right.

16 Mr. Stone, I think that's the point.
17 I mean, I didn't know what dropout rate meant, so
18 I think it's really important, Kelly, that you
19 indicate what the dropout rate means. But I
20 think what --

21 MR. STONE: She does, it's in the
22 paragraph before it.

1 CHAIR HOLTZMAN: It is? Okay, well, I
2 don't remember from that --

3 MR. STONE: But what she just said to
4 me I think proves my point, that these
5 differences show they're all using different
6 tools, or you could say, different measurement
7 parameters or something.

8 CHAIR HOLTZMAN: Right, but I think
9 the other point that she's making, which is the
10 critical point here -- I mean, there are two
11 points coming out of this.

12 One point is that, yeah, they're all
13 using different numbers, but the second point is
14 that they haven't really looked at their own
15 numbers, and their own numbers show a very
16 significant, I would call it, advance or
17 progress.

18 LT COL MCGOVERN: Right.

19 CHAIR HOLTZMAN: I mean, they've had a
20 -- right. So they're not even really looking at
21 their own numbers. That's what I take out from
22 this.

1 Yes, all the numbers are wacko, but if
2 they looked at their -- I mean, they are all
3 inconsistent or they use different sources -- but
4 if they looked at their own data the way we're
5 looking at their data, they'd see that the
6 dropout rate before SVC Program was 29 percent,
7 and now it's 19 percent, so that's, you know,
8 that's like a third. It's a huge drop -- it's a
9 huge change.

10 LT COL MCGOVERN: I think we can
11 emphasize that point, ma'am, and then just add
12 that the Services need to look at the actual --
13 at the data, or propose that they look at the
14 data this way, because the numbers that they've
15 published in different sources don't reflect
16 these data that we've received.

17 CHAIR HOLTZMAN: Right, well, right.
18 And so I think there are two points: one is that
19 the data should -- they need to be using similar
20 metrics or whatever, but they also need to be
21 analyzing their own data.

22 I had suggested that this point --

1 because I thought it was a very important point,
2 that there actually is more progress than the SVC
3 Program shows than the Air Force even knows --
4 that this be put in our summary. Was it put in
5 the summary, executive summary?

6 MR. STONE: No, it isn't, but we can't
7 rely on this because they're not. There may be
8 hidden problems --

9 CHAIR HOLTZMAN: Wait a minute. No, a
10 number is a number. We certainly can rely on it.
11 If they haven't looked at their own numbers and
12 drawn the obvious conclusion from their own
13 numbers -- in other words, they have a number 1
14 and they have a number 2 and they don't -- and
15 they have a number 1 and a number 1 and they
16 don't add it up to 2, and we add it up to 2, of
17 course we can do that. I don't think there's any
18 reason that we can't.

19 That's the whole point about this, and
20 I think it should be in the summary because it
21 shows a progress in the SVC program that they
22 haven't even bothered -- I wouldn't say bothered,

1 but they haven't noted.

2 VADM(R) TRACEY: This is Pat Tracey.
3 Isn't one of the issues that we don't actually
4 know the validity of these numbers?

5 MR. STONE: Yes.

6 LT COL McGOVERN: No, ma'am, you see,
7 we asked for the actual data that's reflected in
8 Table 3.5, and the Services provided us their
9 numbers, and that's how we represent those
10 percentages. So they did go back and look for us
11 how many people -- how many victims were there
12 during the investigation, Article 32, post-
13 referral, so we have those hard-set numbers of
14 who are represented by an SVC.

15 CHAIR HOLTZMAN: All right, so in
16 other words, Admiral, these numbers make the Air
17 Force look really good. It's great. Those are
18 great numbers, but they never pulled them out,
19 which is astonishing to me. And that's why I
20 think it should be in the summary, because I
21 think this is an important thing that the staff
22 has discovered.

1 It's using their own numbers. Of
2 course, I mean, if it were our own numbers, this
3 would be a different story. But our analysis, I
4 mean, we could say that our analysis shows that
5 there's -- you know, that there's this important
6 development that the SVC Program has had, or
7 important impact that it's had.

8 MR. STONE: But it contrasts with them
9 giving us numbers that say they only had a 1
10 percent --

11 CHAIR HOLTZMAN: Correct.

12 MR. STONE: So doesn't this support
13 the big conclusion we made in our summary that
14 until we start getting good and complete
15 participation, it's really hard for us to do an
16 adequate job of evaluating what's going on here.

17 LT COL MCGOVERN: Well, and to
18 clarify, they didn't give us the percentage
19 showing the 1 percent difference. We pulled that
20 information from articles that they have
21 published, not that they'd provided directly to
22 the JPP.

1 MR. STONE: And you can't say by the
2 Air Force's calculation there's been only a 1
3 percent decline? You wrote, "by the Air Force's
4 calculations." Now you're telling me it's your
5 calculations.

6 LT COL MCGOVERN: No sir, by two
7 different publications that the Air Force has put
8 out in two different years -- a different office
9 necessarily than the JAG office could have been
10 putting that information out. General Harding,
11 when he first came up with the SVC Programs, the
12 one who quoted 96 people have declined to follow
13 through with a court-martial, then a few years
14 later, in a totally separate report, they publish
15 a dropout rate that's very similar. So I think
16 we can, to decrease the confusion, just note that
17 other sources are citing percentages that aren't
18 relying on the data that we have been given,
19 which show great progress.

20 MR. STONE: Again, then that depends
21 on a baseline you had before you looked at --

22 VADM(R) TRACEY: Pat Tracey, I think

1 it's premature to be drawing conclusions given
2 the confusion there is about what kind of data is
3 being collected and who is collecting it. Yeah,
4 I just -- I am not sure why we feel compelled to
5 draw a conclusion about the Air Force's data at
6 this point.

7 LT COL GREEN: And we haven't done any
8 comparative analysis like that, ma'am, to
9 understand that. I mean, the number -- you're
10 right, the number that we got is -- I mean, it
11 is, it's numbers counsel-by-counsel, so I'm
12 fairly confident that those dropout rates, I
13 mean, assuming that each counsel correctly
14 reported their results they're getting with their
15 clients, is very accurate, and how the Services
16 have come up with those rates is not clear.

17 MR. STONE: I don't mean to be funny
18 now, but I'll tell you that in my own office, I
19 can't count on the numbers I get from attorneys
20 who give me their own case data, because they
21 don't sit here and keep track, and they're going
22 back and trying to remember.

1 I mean, until we get some good,
2 computer-verified data, I don't think going back
3 to the original attorneys and asking them to
4 remember how many dropped out and didn't drop --
5 some of them are going to estimate.

6 CHAIR HOLTZMAN: Well, we don't know
7 how they got these numbers, but we did get these
8 numbers. We asked them for the numbers, the
9 dropout numbers, and they provided us. Those
10 numbers are substantially better than other
11 numbers -- well, first of all, those numbers look
12 good. Air Force hasn't used those numbers in
13 evaluating its program, so that raises a
14 question.

15 And I guess the second point is, you
16 know, how good are the numbers? Then why are
17 they giving them to us? But I just --

18 JUDGE JONES: I'm sorry, isn't our
19 main point about all of this in the first
20 paragraph under E on page 42?

21 CHAIR HOLTZMAN: Where's E on 42? All
22 right, I'm looking for it.

1 JUDGE JONES: The paragraph below the
2 table.

3 CHAIR HOLTZMAN: Sorry.

4 (Pause)

5 MR. STONE: Totally on board with
6 that.

7 CHAIR HOLTZMAN: Yeah, I mean, there's
8 nothing -- that's certainly correct, but I think
9 this is an important example and should be
10 referred to.

11 JUDGE JONES: Isn't that what the last
12 sentence above the table says?

13 CHAIR HOLTZMAN: "Panel will continue
14 to monitor dropout rates?" Is that what you're
15 referring to now?

16 JUDGE JONES: Oh, I was looking at
17 "the JPP believes that dropout rate trends may
18 reflect victims' trust in and satisfaction with
19 the military justice system and will continue to
20 monitor." I'm just reluctant --

21 CHAIR HOLTZMAN: Oh, "However, the JPP
22 believes that dropout," I see. Well, I mean, why

1 would we want to bury this number? Why would we
2 want to bury this chart and this information?

3 JUDGE JONES: I don't think we're
4 burying it. I think we're not overusing it,
5 though.

6 MR. STONE: If we have the other data
7 that said from one source that we come out with a
8 1 percent dropout rate, and the other one we come
9 out with something big, that would be different.
10 We've got conflicting data.

11 LT COL MCGOVERN: Can I make a
12 recommendation? For the paragraph -- first
13 paragraph under D, "Victim Dropout Rate," you say
14 "The Air Force reported that in the year before
15 the program, 96 decline, the goal is to reduce
16 victim fatigue. By the Air Force's calculation,
17 there's only been a 1 percent decline."

18 That was in a response to our request
19 for information when we asked for actual
20 percentages, so we could, after the reference to
21 footnote 406, say, "However, it is not known how
22 the Air Force is calculating their victim dropout

1 rate." Then using the actual data the Services
2 provided to the JPP, and explaining, by our
3 calculations, there's a 29 percent to 19 percent.

4 So I think we can --

5 CHAIR HOLTZMAN: Not as a footnote,
6 not as a foot -- you want to present it in a
7 footnote?

8 LT COL McGOVERN: No, ma'am, I want to
9 explain that in the body that --

10 CHAIR HOLTZMAN: In the text, okay.

11 LT COL McGOVERN: Adding a sentence at
12 the end of the first paragraph noting that we do
13 not know how they are calculating the percentage.
14 But if you look at how we calculate the actual
15 numbers that they gave us, we can explain that
16 there was a 29 percent dropout rate to now a 19
17 percent of those who are represented by SVCs.

18 CHAIR HOLTZMAN: Right.

19 MR. STONE: I'd like to see this in
20 the footnote. I think that's a great idea.

21 CHAIR HOLTZMAN: I don't like it in a
22 footnote.

1 LT COL McGOVERN: Rep. Holtzman wants
2 to add it to the --

3 CHAIR HOLTZMAN: I think it's an
4 important enough example so it belongs in the
5 text, if we -- this is a report about what we
6 found. One of the things we found is -- let's
7 say, okay, now we have conflicting numbers from
8 the Air Force. In a prior report, they reported
9 -- I mean, as Kelly said, they reported a 1
10 percent dropout rate. They reported more
11 recently some different numbers. We have a
12 dropout fall from 29 percent to 19 -- whatever
13 the number is, to 21 percent, which is a very
14 substantial drop-off. Which is correct? And --

15 MR. STONE: We don't know which is --

16 CHAIR HOLTZMAN: Correct.

17 MR. STONE: We don't know which is
18 correct.

19 CHAIR HOLTZMAN: That's my question.
20 That's what I am saying, which is correct? And
21 part of the problem here is that we don't, you
22 know, we need to have accurate numbers.

1 VADM(R) TRACEY: So do we agree that
2 Kelly will make the edits to the first paragraph
3 under D, Victim Dropout Rates, that reflect those
4 discrepancies, and will extract a shorter version
5 of that and put it into the executive summary as
6 additional ammunition around our assertion that
7 there should be standard metrics and they should
8 be being analyzed?

9 CHAIR HOLTZMAN: That sounds
10 excellent, Admiral.

11 MR. STONE: That's fine with me.

12 CHAIR HOLTZMAN: Yeah. Is there any
13 objection to that? Kelly, do you have any
14 problem?

15 LT COL McGOVERN: No, I think it's
16 brilliant. Thank you, ma'am.

17 CHAIR HOLTZMAN: So where are we?
18 We're on -- any other comments on page 42? On
19 page 42, we have one at the bottom, but can we
20 spell out -- oh, yeah, I just wanted the SES -- I
21 am not great on initials, so I didn't know what
22 SES was. I apologize that I didn't. So I

1 thought it should be spelled out.

2 LT COL GREEN: Can do, ma'am.

3 CHAIR HOLTZMAN: Any objection to
4 that?

5 (No response.)

6 CHAIR HOLTZMAN: Okay, with no
7 objection, we're up to page 43. I don't see any
8 comments on 43. Any objections to page 43?

9 (No response.)

10 CHAIR HOLTZMAN: Okay. Barbara, are
11 you with us? I mean, am I going too fast for
12 you, or do I need to slow in some way so you can
13 follow?

14 JUDGE JONES: No, but it would help if
15 you just gave me a heading, not just --

16 CHAIR HOLTZMAN: Fine, so, okay, so on
17 42, that's the page that starts, it has "Victims
18 Who Are SVC Clients" in the middle of it, a
19 heading, or "Other Feedback from Stakeholders in
20 the Military Justice System," we just are
21 finishing that page, which is page 43.

22 JUDGE JONES: Okay.

1 CHAIR HOLTZMAN: Okay, we have no
2 objection.

3 We're on to page 44, which near the
4 top, has "Special Victims' Counsel: Overall
5 Assessment."

6 JUDGE JONES: Yeah, but I need a
7 section, not a sentence heading. Are you in
8 "Access to Information" or are you in "SVC Career
9 Impact"?

10 LT COL GREEN: B(i), B little "I."

11 JUDGE JONES: Got it, B(i), okay.

12 CHAIR HOLTZMAN: It says "Overall
13 Assessment."

14 JUDGE JONES: Right, got it.

15 CHAIR HOLTZMAN: Okay. So this is on
16 page -- wait a minute, 44. We have two comments
17 here on this page. Mr. Stone wants to add some
18 language at the end of the first sentence.

19 MR. STONE: Right. I don't think that
20 it was access to information, solely, that was
21 the problem. It was information, unsealed
22 reports, some pleadings, it's a lot of stuff.

1 VADM(R) TRACEY: What paragraph are
2 you in? This is Overall Assessment?

3 MR. STONE: This is little 2.

4 CHAIR HOLTZMAN: Little 2, it says
5 "Access to information" --

6 VADM(R) TRACEY: Oh, okay.

7 CHAIR HOLTZMAN: I think that that's
8 helpful, that suggestion. Staff, do you have any
9 problem with that?

10 LT COL GREEN: No, ma'am.

11 CHAIR HOLTZMAN: Anybody else have any
12 objection?

13 (No response.)

14 CHAIR HOLTZMAN: Okay, so we're going
15 to accept that. And the second comment is --

16 MR. STONE: The second comment is the
17 next paragraph, right after. It's talking about
18 the need for procedural rules, and I want that to
19 say, give, again, examples of what rules we were
20 talking about, such as where to stand or sit,
21 what proceedings they are entitled to be notified
22 about and attend, and how they may be recognized

1 and heard.

2 In other words, I want the procedural
3 rules -- nobody knows what that means. I want
4 there to be good examples.

5 CHAIR HOLTZMAN: Does the staff have
6 any objection to that? Anybody else have any
7 objection?

8 (No response.)

9 CHAIR HOLTZMAN: Okay, 44 is accepted.

10 Page 45. Okay, Barbara, I am sorry, I
11 didn't give you a heading on page 45. We're at
12 something called little 3, "SVC Career Impact and
13 Retaliation."

14 JUDGE JONES: Got it.

15 CHAIR HOLTZMAN: Okay.

16 JUDGE JONES: Thanks.

17 CHAIR HOLTZMAN: All right. I'm sorry
18 not to have done that before. Okay, 45, we have
19 no comments. Any objection to 45?

20 (No response.)

21 CHAIR HOLTZMAN: Okay. 45 is
22 approved.

1 46? I am sorry, on the top of this
2 page, we have "Military Criminal Investigators,"
3 little D.

4 JUDGE JONES: Got it.

5 CHAIR HOLTZMAN: Okay. No comments on
6 46. Any objection to 46?

7 (No response.)

8 CHAIR HOLTZMAN: 46 is approved, not
9 hearing any objection.

10 Page 47, let's see what I can find for
11 you for 47. "Defense Counsel," little F.

12 JUDGE JONES: Yeah, I got it.

13 CHAIR HOLTZMAN: Three paragraphs
14 before little F, starting with "As a result."

15 JUDGE JONES: Right, got it.

16 CHAIR HOLTZMAN: I don't think I am
17 seeing any comments on this page, so any
18 objection to page 47?

19 (No response.)

20 CHAIR HOLTZMAN: Hearing none, 47 is
21 approved.

22 Page 48. This page, Barbara just --

1 JUDGE JONES: You know what, I am in
2 sync now. I am exactly two page numbers behind.
3 I am good.

4 CHAIR HOLTZMAN: Okay. "A Navy
5 defense counsel," that paragraph, Mr. Stone, you
6 have deletions and some suggestions.

7 MR. STONE: Yes. I don't think any of
8 that stuff added anything here. I think that
9 those are all side issues, that basically what he
10 was saying was that they don't get the same
11 investigative administrative support, and so I
12 wasn't sure, since this is an RSP recommendation,
13 why we were quoting, again, and just making the
14 report longer -- why we weren't summarizing.

15 CHAIR HOLTZMAN: Well, my view about
16 that is that it shows the contrast. It's not
17 just that he wants -- or she, wants to have
18 access to this, but that the government does have
19 access to these things, and that's the
20 difference. I don't know, I think the point that
21 you want to take out should be there, is my own
22 personal view, but how do the other members of

1 the Panel feel?

2 VADM(R) TRACEY: I think it's helpful
3 in this report to be complete. So pertaining to
4 the original language, it would be good to
5 recognize that there are RSP recommendations
6 around this issue. This is Pat Tracey.

7 CHAIR HOLTZMAN: Mr. Taylor, do you
8 have any thoughts?

9 MR. TAYLOR: I agree with Admiral
10 Tracey.

11 JUDGE JONES: So do I.

12 MR. STONE: I have no problem leaving
13 it in. Go to the next one.

14 CHAIR HOLTZMAN: Okay, all right. No
15 other comments on page 48. Any objections to 48?
16 48 is approved, hearing no objections.

17 49. Let me see if there are any
18 comments on 49. There are no comments on 49.
19 Any objections to 49? Hearing none, 49 is
20 approved.

21 Page 50. Barbara, you still with us?

22 JUDGE JONES: Yes, I am in -- I am now

1 good.

2 CHAIR HOLTZMAN: Okay. On page 50 --

3 MR. STONE: I am not, I'd like the
4 titles. Are we on IV now, "Rights and Needs of
5 Sexual Assault Victims" --

6 CHAIR HOLTZMAN: Oh my God, I don't
7 know --

8 LT COL McGOVERN: Yes sir, yes sir.

9 CHAIR HOLTZMAN: Yes, is that where we
10 are? Great, thank you, I have to --

11 MR. STONE: Okay, what letter are you
12 on, (A), (B)? I don't see anything for a while
13 here.

14 CHAIR HOLTZMAN: Yes, I don't either,
15 so I'm -- you have to help me, I'm in numbers
16 here.

17 "Victims' Rights under the UCMJ,"
18 that's on page -- (A) is on page 49, which we've
19 just approved. We're on 50, which starts as
20 number 8, the right to be treated with fairness.

21 The right to be treated with fairness.
22 Mr. Stone, are you with us?

1 MR. STONE: Yes, I just went to the
2 comment number if that's where you're going next,
3 but all right.

4 CHAIR HOLTZMAN: I don't see any
5 comments on this page. I don't see any comments
6 on page 50. Do we have any objections to page
7 50?

8 Okay. Page 51. Page 51 will have in
9 it, number 1, "Regulations and Policies Regarding
10 Victim Access to Information." And there's a
11 paragraph before that.

12 VADM(R) TRACEY: This is Pat Tracey.
13 I have a question on the second paragraph in that
14 section.

15 CHAIR HOLTZMAN: The second paragraph,
16 "To meet" -- is it the paragraph starting, "To
17 meet," or is it --

18 VADM(R) TRACEY: The first paragraph
19 is, "To meet." The second paragraph is, "In the
20 Air Force, following recent Air Force" --

21 CHAIR HOLTZMAN: Okay, fine, good,
22 right.

1 VADM(R) TRACEY: Okay, the sentence --
2 the edits that were made there, I'm not sure they
3 -- I think they make the statement incorrect.
4 "Depending on what an SVC seeks and why, records
5 may or may not be released and/or protected by
6 Air Force employees under the Privacy" -- I have
7 no idea what that says, now that it's been
8 edited.

9 MR. STONE: Yes, there's a period
10 where there should be a comma after the word
11 "exception."

12 I think they were editing this last
13 night and they must have done it fast, because
14 also, on the second line, it's screwed up. It
15 should say, "under the Privacy Act, to obtain
16 some case documents," and "some" got put in the
17 wrong place. It ought to be --

18 CHAIR HOLTZMAN: Okay. So why doesn't
19 the staff review this paragraph to make whatever
20 corrections are needed to make it make sense and
21 to correct the point that -- both points that
22 were raised.

1 Is that okay, Admiral Tracey?

2 VADM(R) TRACEY: Yes, absolutely.

3 CHAIR HOLTZMAN: Okay.

4 VADM(R) TRACEY: And similarly in the
5 paragraph below, "The Army issued its policy" --

6 CHAIR HOLTZMAN: Right.

7 VADM(R) TRACEY: I thought their
8 policy for -- their policy for disclosing
9 information is limited to selected excerpts, and
10 I just think the wording is in the wrong place --

11 CHAIR HOLTZMAN: Right.

12 VADM(R) TRACEY: -- again, if the
13 staff could just review that, I think --

14 CHAIR HOLTZMAN: Right.

15 VADM(R) TRACEY: -- they put it in the
16 wrong order.

17 CHAIR HOLTZMAN: So basically,
18 something like, "The Army issued its policy,
19 which allows disclosure of only selected excerpts
20 of information to crime victims." Something like
21 that.

22 MR. STONE: Good.

1 CHAIR HOLTZMAN: Okay. All right. So
2 with those correct, with that injunction to the
3 staff, page 51 is approved.

4 Page 52. Let's see, where -- which
5 is, Victims' -- number 2, "Victims' Notice and
6 Access to Case Information in Practice." Where
7 we have two paragraphs before that, Barbara, just
8 to make sure --

9 JUDGE JONES: Yes, I am with you.
10 Yes.

11 CHAIR HOLTZMAN: Okay. We have a
12 comment from --

13 MR. STONE: Me.

14 CHAIR HOLTZMAN: -- Mr. Stone to
15 delete -- page 52, delete number 2, the
16 "Notwithstanding" paragraph, the last sentence.

17 MR. STONE: The last sentence, yes,
18 because I don't think that was representative. I
19 thought it was meant as a throwaway, and I think
20 that it's crazy.

21 I don't think that represents
22 anything. Some who say they don't think it would

1 be good for them? I don't know -- if you want to
2 explain that, that's one thing, but you'd have to
3 write after that what he means by good is that
4 there are times when counsel needs to get certain
5 things under a protective order so as not to
6 taint the client.

7 I mean, putting it in like this sounds
8 like -- I think it just makes the VLC sound
9 foolish. It's either -- you either need much
10 more to explain it, and I don't think it's
11 representative as it stands.

12 CHAIR HOLTZMAN: Staff, do you have
13 any objection to removing, deleting that
14 sentence?

15 LT COL McGOVERN: No.

16 CHAIR HOLTZMAN: Anybody have any
17 objection to removing that sentence?

18 Okay. I hear no objections, so the
19 sentence will be removed. Do we have any
20 objection to page 52? Hearing no objection, 52
21 is accepted. Am I missing something? Okay.

22 53. There's no comments on 53. Any

1 objections to 53? If not, 53 is accepted.

2 Barbara, are you still with us?

3 VADM(R) TRACEY: I am sorry, this is
4 Pat Tracey. We are going to align the "as well
5 as the public" statement at the top of 53, we're
6 going to align that with what we've already said,
7 right?

8 CHAIR HOLTZMAN: On the top of 53,
9 "Testimony" -- which statement on the top of 53?

10 VADM(R) TRACEY: Okay, I am -- my page
11 numbers are a little off from yours.

12 "Requirements should be further extended to also
13 provide to victims as well as the public." We're
14 making those universal changes, right?

15 CHAIR HOLTZMAN: You mean the changes
16 in red?

17 VADM(R) TRACEY: Yes.

18 CHAIR HOLTZMAN: Are those going to be
19 added?

20 VADM(R) TRACEY: No, actually, what I
21 am asking is we made a modification to this topic
22 around speaking about whether the records need to

1 be available to the public. We made that
2 modification, and I am expecting that that is
3 going to be consistently made throughout the
4 report as well as in the recommendations and
5 executive summary.

6 LT COL GREEN: Yes ma'am, and my
7 concern here, again, this is from a witness. So
8 before we make any of the recommended track
9 changes, we need to verify what the witness's
10 statement was.

11 VADM(R) TRACEY: Very good, thank you.

12 CHAIR HOLTZMAN: Okay. All right.
13 Now, any other changes to page 53? If not, 53 is
14 approved.

15 VADM(R) TRACEY: I am sorry, on page
16 53, still under Background, Victims' Rights to be
17 Reasonably Heard. Under Background -- I think
18 this is just an edit that will be caught, but
19 under the second paragraph that's been edited, is
20 "statutorily express," right, --

21 CHAIR HOLTZMAN: Right.

22 VADM(R) TRACEY: -- a victim's --

1 grammar that needs to be corrected, is that
2 right?

3 CHAIR HOLTZMAN: Right.

4 VADM(R) TRACEY: Not some legal jargon
5 that I don't understand?

6 MR. STONE: Actually, it is legal
7 jargon. In other words, this goes to the fact
8 that there is no decision that says the CVRA, the
9 federal statute, does not apply to military --
10 that's not expressed. The reason this is
11 "statutorily express" is we're saying the 6b, you
12 could write, the Article 6b list of victims'
13 rights.

14 VADM(R) TRACEY: Then I would
15 recommend it be not deferred to -- not go to
16 legal jargon, let's -- can we put that in
17 language that a non-lawyer would actually know
18 what our intention is?

19 CHAIR HOLTZMAN: Yes, I never heard of
20 something called "statutorily express." It's not
21 English, actually, so I would prefer that we
22 write in English here. So yes, if we can find

1 some non-jargon way of saying what you want to
2 say here, Kelly and Kyle, please do so.

3 LT COL McGOVERN: And just so
4 everybody understands, these -- all of these red
5 edits, or track changes are up for your
6 discussion. We have not tried to make any value
7 judgments on anything, they're just to reflect
8 changes we received.

9 So I think those were suggestions by
10 Mr. Stone, and you all are recommending that we
11 just adjust his changes to that paragraph, is
12 that right?

13 CHAIR HOLTZMAN: Yes. You need to
14 review all these suggested changes -- I haven't
15 done that because I just got them -- to make sure
16 that they're grammatically correct, and we should
17 --

18 LT COL McGOVERN: Yes ma'am, and we
19 will --

20 LT COL GREEN: The staff is going to
21 do that. We -- we're going through all of this
22 to --

1 LT COL McGOVERN: I just wanted to
2 clarify with you all that these aren't approved
3 by Alice.

4 CHAIR HOLTZMAN: All right.

5 MR. STONE: Well, Alice isn't the one
6 signing the report.

7 LT COL McGOVERN: No, no, yes sir, but
8 I mean, as far as --

9 MR. STONE: I want to see a final
10 draft before I am going to send you a signature.

11 LT COL McGOVERN: Yes sir, yes sir.
12 Now, I mean, for grammar purposes, I was just
13 saying, we'll be sure that Alice takes a close
14 look for us to make sure we're using non-legal
15 terms.

16 MR. STONE: Well Alice is also not a
17 lawyer. I need one of the lawyers who --

18 CHAIR HOLTZMAN: No, you don't need a
19 lawyer --

20 MR. STONE: -- understand what I'm
21 saying.

22 CHAIR HOLTZMAN: -- because this is

1 not English, "statutorily express."

2 MR. STONE: Actually, it is.

3 CHAIR HOLTZMAN: Well, it might be,
4 but it's not -- I mean, it's not English that's
5 easily understood.

6 VADM(R) TRACEY: We want the report to
7 be understood by more than attorneys.

8 CHAIR HOLTZMAN: Right.

9 MR. STONE: Fine.

10 CHAIR HOLTZMAN: So at best it's
11 jargon, but I've actually never heard the phrase.

12 But anyway, I think she has to go
13 through it, Alice and the staff, to make sure
14 that these very suggestions meet the standard of
15 clarity and grammar.

16 MR. STONE: Fine.

17 CHAIR HOLTZMAN: And jargon. Okay.
18 So with that in mind, do we have any other
19 comments on 53? 53 is approved.

20 Page 54, there are no comments on the
21 side, so do we have any other comments on 54? So
22 without objection, 54 is approved.

1 Page 55? I don't see any comments on
2 the side, so without objection, 55 is approved.

3 Can I just interrupt myself at this
4 point? Kyle, how are we going to approve these,
5 the red changes that have been made, that are
6 showing here? Because we're not taking every one
7 of them up. How are we going to approve them?

8 LT COL GREEN: Well, the plan is,
9 ma'am, we've treated those as non-substantive
10 changes --

11 CHAIR HOLTZMAN: Okay, fine.

12 LT COL GREEN: -- just wording
13 recommendation, and so the staff will revise --

14 CHAIR HOLTZMAN: Okay.

15 LT COL GREEN: -- and then we'll just,
16 I mean, obviously, we'll send out the report to
17 everybody --

18 CHAIR HOLTZMAN: Okay.

19 LT COL GREEN: -- but, I mean, I'm
20 concerned, just in terms of our timeline on this.
21 We're -- we'll do the best we can to try to
22 incorporate and work with our editor.

1 CHAIR HOLTZMAN: Okay, great. Now
2 we're up to page -- what page are we on? 56. I
3 see that there are some comments on the side --

4 MR. STONE: Have you gotten to capital
5 D yet, "Victims' Mechanisms for Enforcing
6 Rights"?

7 CHAIR HOLTZMAN: Let me just see where
8 we are. I am on E, we're past D.

9 MR. STONE: Well, in -- let's see, a
10 paragraph and a line before that, I'd just point
11 out, please make sure that there's a -- the word
12 next to where it says, and "be hard." It's
13 supposed to be "heard" in open court proceedings.
14 That will really throw somebody, in the next to
15 last line of the next to last paragraph --

16 CHAIR HOLTZMAN: Yes, could you save
17 the typos for afterwards and send it to them in
18 an email, or -- ?

19 MR. STONE: All right. It's just that
20 I don't have page numbers. Go ahead.

21 CHAIR HOLTZMAN: Well, whatever they
22 are, they don't need the page numbers, you just

1 send it to them.

2 Okay. We are on page -- we are on E,
3 which is I think page -- I don't know what number
4 we're on.

5 JUDGE JONES: I got it.

6 CHAIR HOLTZMAN: JPP analysis, my
7 comment is, "What does this mean?? Delays in
8 implementing -- am I talking about --

9 VADM(R) TRACEY: With the staff
10 recommendation, this is the concern?

11 CHAIR HOLTZMAN: Well, anyway, I think
12 we -- what do you propose, delays in developing
13 guidance to implement, yes, okay.

14 I guess I had always had trouble with
15 the term just "implementing," because
16 implementing means applying or carrying out, and
17 what we were talking about is actually words,
18 guidance for -- so I think that'll solve that
19 problem.

20 I also haven't looked at this
21 paragraph, but should we try to tone this down if
22 it's -- in accordance with what we've done

1 elsewhere? I don't know if it's not toned down.

2 LT COL GREEN: Well, again --

3 CHAIR HOLTZMAN: Maybe using the word
4 executive -- maybe using the word executive, as
5 it was originally there, is better than
6 "Presidential." I don't know. I am agnostic
7 about it.

8 LT COL GREEN: Right, and just in
9 terms of the use of the word "Presidential," I am
10 not sure the White House is the issue in terms of
11 any of this. I think it's all pre-White House,
12 but I mean --

13 CHAIR HOLTZMAN: Okay, so let's just
14 say "executive." If "executive" is more
15 accurate, then I am for that.

16 Okay. I don't know whether my
17 question is appropriate, although -- is my
18 question accurate?

19 LT COL GREEN: Which question, ma'am?

20 CHAIR HOLTZMAN: Comment 54. Is it
21 relevant?

22 JUDGE JONES: Could you state it for

1 me?

2 LT COL GREEN: It's the -- the
3 question is -- the statement is: that SVCs
4 receive pleadings on 412 and 513 issues. "These
5 pleadings alone do not provide victims and their
6 counsel sufficient information to understand the
7 full context of the case."

8 LT COL McGOVERN: I think your
9 modification, instead of "often" to say "may
10 not," is appropriate, ma'am.

11 CHAIR HOLTZMAN: Okay.

12 MR. STONE: Typically, what happens is
13 you get a pleading, and there's an attachment,
14 and the military judge won't give you the
15 attachment. So you don't know -- you know, it
16 says something is going on, but if you don't see
17 the attachment --

18 CHAIR HOLTZMAN: Right.

19 MR. STONE: ---- that's where it
20 happens.

21 CHAIR HOLTZMAN: Okay, so fine. If
22 the staff agrees to "may not," I am happy with

1 that, and I don't know if everybody else is in
2 accord with that, but --

3 MR. STONE: I am fine with it.

4 CHAIR HOLTZMAN: Okay.

5 MR. TAYLOR: Sounds good to me.

6 CHAIR HOLTZMAN: Any objection to it?

7 JUDGE JONES: It's fine.

8 CHAIR HOLTZMAN: Okay, all right. I
9 forget the next one, 55? My comment, I don't --
10 and what is 56? That's, do not fit trial
11 practice? That can't be -- oh, I see.

12 Let me just see what -- if we align
13 this with what we had in the summary or the
14 recommendations, would that solve these problems
15 in this section?

16 MR. STONE: I think so.

17 CHAIR HOLTZMAN: Oh yes, we have the
18 mechanisms in there and stuff.

19 LT COL MCGOVERN: Going back to your
20 question mark for a comment -- okay, never mind.

21 CHAIR HOLTZMAN: Okay. I am going to
22 withdraw whatever I have over here because I

1 can't even figure it out now. Okay, sorry.

2 Let's go to -- do we have any objections to page
3 56?

4 Okay, so 56 is approved. 57? We have
5 one comment. Okay, I guess what happened here is
6 it wasn't clear to me, which is also recently
7 codified -- then what?

8 Oh, do we want to -- when we say --
9 okay. Recommended that the -- the response --
10 okay. So in other words, the Congress accepted
11 the Panel's response -- the Systems Panel
12 recommendation.

13 LT COL MCGOVERN: Yes, ma'am.

14 CHAIR HOLTZMAN: Is that what happened
15 here?

16 LT COL MCGOVERN: Yes, ma'am. So the
17 FY15 NDAA requires that they be heard through
18 counsel.

19 CHAIR HOLTZMAN: Well can we just say
20 -- oh, an appropriate -- clarify this principle
21 --

22 LT COL MCGOVERN: They didn't

1 attribute it to adopting the RSP, but
2 essentially, that's what happened. You all
3 recommended it and then it came out in FY15 NDAA.

4 CHAIR HOLTZMAN: Can we just say,
5 which were accepted and codified in the --
6 accepted by Congress and codified in the FY --

7 VADM(R) TRACEY: I think that they're
8 saying that Congress was not acting on the RSP.

9 LT COL McGOVERN: We don't know the
10 legislative history that they specifically --

11 CHAIR HOLTZMAN: I see, oh okay, fine,
12 okay. But then what does the "which" refer to?

13 MR. STONE: The right of the victims
14 to be heard through counsel.

15 CHAIR HOLTZMAN: No, this is the
16 sentence. It's the sentence that says, "The
17 Response Systems Panel recommended MCM revisions
18 and appropriate regulations to clarify this
19 principle which was also," -- what does the
20 "which" refer to? The principle?

21 MR. STONE: So which right, which
22 victim's right --

1 CHAIR HOLTZMAN: There is no word
2 right in that sentence.

3 VADM(R) TRACEY: No, but that's what
4 they're referring to. So if we insert it, would
5 that be satisfactory?

6 CHAIR HOLTZMAN: So it would say what?
7 Which --

8 VADM(R) TRACEY: "Which right was also
9 recently codified in the FY15 NDAA."

10 LT COL McGOVERN: I think we should
11 delete the reference to the RSP and just note
12 that the FY15 NDAA has established that victims
13 are to be heard through counsel.

14 CHAIR HOLTZMAN: Well why not refer to
15 a Response Systems Panel recommendation?

16 LT COL McGOVERN: And then we can
17 footnote it.

18 CHAIR HOLTZMAN: Oh I see, put that in
19 a footnote. Oh okay, that's fine with me. I'm
20 okay with that.

21 Are people okay with that?

22 LT COL McGOVERN: Yes.

1 LT COL GREEN: Yes.

2 JUDGE JONES: Fine.

3 CHAIR HOLTZMAN: Goes into a -- okay,
4 fine, it goes into a footnote. All right.

5 Now we have, further down, I'm ----
6 again, which requirement -- where are we here?
7 In the last sentence of the paragraph starting,
8 "The rights of a victim to be heard." "To the
9 extent permitted" -- okay, "this requirement can
10 be implemented in accordance with" -- I guess
11 that's what I'm talking about.

12 This requirement, which requirement?
13 Staff suggests what?

14 LT COL GREEN: This -- I think we
15 recommended just changing this to the end of that
16 sentence. It just seems confusing to link it
17 into the FY15 NDAA, and I think we're -- we're
18 sort of, rather than looking at the procedural
19 aspect, focus on the fact of what was actually
20 then created.

21 LT COL McGOVERN: Basically the FY15 -
22 -

1 CHAIR HOLTZMAN: I think the problem
2 is that you have a requirement, and the term, the
3 requirement, is not this requirement. It doesn't
4 go back to anything. So it has to be explained,
5 what we're talking about. That's all.

6 LT COL GREEN: Okay.

7 CHAIR HOLTZMAN: It's just the grammar
8 of it or the --

9 MR. STONE: The requirement is the --
10 to get the --

11 LT COL McGOVERN: That the victims
12 will continue to receive SVC support, even after
13 they are no longer -- after their case --

14 CHAIR HOLTZMAN: I see.

15 LT COL McGOVERN: -- is terminated.
16 So we lose that, I think, again by referring back
17 to the RSP recommendation, if we can --

18 CHAIR HOLTZMAN: You just restructure
19 the sentence to make it clear. You have Alice
20 over there. Let her restructure it so that, this
21 requirement, just becomes cleared because -- you
22 know, you have four lines before, this

1 requirement. That's all.

2 MR. STONE: I thought the requirement
3 was the necessary regulations and revisions. So
4 yes, I guess then it's confusing.

5 CHAIR HOLTZMAN: Right.

6 LT COL McGOVERN: For the last
7 sentence --

8 CHAIR HOLTZMAN: Well, you can do it -
9 - you can do it, actually, you just say, the
10 Panel recommends, or JPP recommends that this
11 requirement be implemented by the DoD, whatever
12 it is. So if you put, this requirement, up near
13 the front of that sentence, I think it's clear
14 what it refers to.

15 LT COL McGOVERN: Okay. So the last
16 sentence goes a little bit against the usual tone
17 that the RSP did in their report, and I wasn't
18 sure -- or we're not sure that that would be --
19 DoD OGC knows that you guys are here to make
20 recommendations to them.

21 So Mr. Stone, is that language you
22 added?

1 MR. STONE: I wrote that language.
2 The point of that language, and I'm happy to
3 discuss it, is if the problem with getting things
4 done is that it's the OGC is swamped with writing
5 the necessary regulations and revisions, here or
6 in other places, assuming somebody says our group
7 can permit it. We've got experts on staff, you
8 guys, we're going to have a subcommittee, we'll
9 help them. We'll tell them what we mean.

10 We'll try and help them write a
11 regulation, so that -- in other words, to the
12 extent we have expertise, we're happy to offer it
13 to the OGC if they need it to write their
14 regulations and revisions, they want to know what
15 the hell we mean.

16 JUDGE JONES: I recommend deleting the
17 statement.

18 CHAIR HOLTZMAN: What?

19 JUDGE JONES: I recommended deleting
20 this statement.

21 CHAIR HOLTZMAN: I do, too. We are
22 supposed to be an independent body. I don't know

1 that this is, you know, something that's
2 appropriate for us to do.

3 MR. STONE: That's fine. I threw that
4 out there for discussion.

5 CHAIR HOLTZMAN: Yes, okay. Anybody
6 else have a comment on that?

7 MR. TAYLOR: Tom Taylor. I think that
8 is a staff function that we really shouldn't be
9 tinkering with.

10 CHAIR HOLTZMAN: All right, okay. Now
11 we have a second -- we have a second comment, "in
12 a timely fashion." What are we getting at here?
13 I don't know what this refers to.

14 Oh, okay. I just wanted -- I just
15 thought it could be -- I just thought the
16 language was very verbose in the prior sentence,
17 prior paragraph, but I'm not ready to -- I mean,
18 forget about it. I withdraw my comment.

19 Do we have any other comments on this
20 page? Page 57, which is --

21 JUDGE JONES: Can I just -- I don't
22 know if this last sentence is still in there or

1 not, but does it still say: This Panel
2 "recommends that the Secretary consider
3 establishing procedures for victims to seek
4 mandatory expedited interlocutory review in the
5 Service courts"?

6 Oh, I see, we're just -- in the
7 courts, okay.

8 CHAIR HOLTZMAN: All right.

9 JUDGE JONES: "Of any alleged
10 violation." Okay. Well, if you can't get into
11 the court, you can't get into the court. Okay,
12 got it.

13 CHAIR HOLTZMAN: All right, so without
14 any -- any objections, 57 is approved.

15 MR. STONE: Except that that last line
16 is why we're still on it. I thought we'd change
17 that to, the "violation of victims' rights,"
18 rather than "rights set forth in Article 6b."
19 That should conform with what we did in the
20 summary.

21 LT COL GREEN: Yes, that's correct,
22 sir. We'll change this.

1 CHAIR HOLTZMAN: Okay, so we're on
2 page 58.

3 MR. TAYLOR: Madam Chair, before we
4 start this section, we've been going about two
5 and a half hours --

6 CHAIR HOLTZMAN: Okay.

7 MR. TAYLOR: -- and we've got 20 some
8 pages to go, so I suggest we take a short break.

9 CHAIR HOLTZMAN: Yes, I mean, I have a
10 problem because I made plans to leave this
11 afternoon, and I -- so I guess, can we take,
12 what, 20 minutes? Would that be sufficient, or
13 do you want more time than that? What do we
14 want?

15 MR. TAYLOR: Well, it can actually be
16 less than that, but I just thought we ought to
17 take a little break here before we --

18 CHAIR HOLTZMAN: I think that's a good
19 idea.

20 MR. TAYLOR: -- do the next 20 pages.

21 MR. STONE: How long a break do you
22 want?

1 MR. TAYLOR: Well I'm fine with ten
2 minutes.

3 MR. STONE: Good with me, ten minutes
4 is good.

5 JUDGE JONES: Fine.

6 CHAIR HOLTZMAN: All right, so let's
7 do ten minutes. Okay, thank you.

8 (Whereupon, the above-entitled matter
9 went off the record at 1:30 p.m. and resumed at
10 1:43 p.m.)

11 CHAIR HOLTZMAN: Okay. Are there any
12 -- I don't see any comments on this. So anybody
13 have objections to page 58? Hearing none, we
14 approve 58.

15 59, is that your --

16 LT COL McGOVERN: Ma'am, towards the
17 bottom of the first paragraph, Mr. Stone proposed
18 some language that would say that we require an
19 in camera review and inspect ex parte. That's
20 not what MRE 412 does.

21 MRE 412, our first draft says,
22 "replaces the Federal Rule's in camera review

1 with a closed hearing in which the victim is
2 afforded a reasonable opportunity."

3 Are you okay with that, Mr. Stone?

4 The additional language you proposed does not
5 accurately reflect MRE 412.

6 MR. STONE: Well then you have --
7 through the practice, reflects the practice, is
8 what it does.

9 In other words --

10 LT COL McGOVERN: We haven't received
11 any --

12 MR. STONE: -- "in camera review," the
13 judge doesn't just turn the documents over, the
14 person whose documents they are gets a chance to
15 see them and to say, whoa judge, you missed a
16 page here, or you made a mistake. Are you really
17 saying this? This is not consistent with what
18 you're saying. You're turning over -- let's say,
19 two episodes here and you're only telling me one.

20 He gets a chance to see them ex parte
21 with his counsel, briefly, before the judge does
22 it. That's the point, they're still privileged

1 until they're distributed.

2 CHAIR HOLTZMAN: Oh, and I only
3 thought he meant documents, either.

4 LT COL McGOVERN: Well, sir, I think
5 you may be confusing it with our -- MRE 513 does
6 require, or does provide for an in camera review,
7 but it -- in the military, they have a closed
8 hearing. There's no mention of an in camera
9 review in MRE 412.

10 CHAIR HOLTZMAN: Okay. So let's take
11 out the "in camera review." I am just trying to
12 -- what are you trying to do, Kelly? What do you
13 want to do here? What is your suggestion?

14 LT COL McGOVERN: My suggestion is to
15 maintain the original language, where we're just
16 pointing out the slight difference from the
17 Federal Rule, where they do an in camera review.
18 Instead, in the military, they have a closed
19 hearing where a victim is provided an opportunity
20 to be heard.

21 CHAIR HOLTZMAN: Okay, so the original
22 language says, and an in -- and what? An in

1 camera review? An in camera review, a closed
2 hearing which is -- oh, you don't have -- so "in
3 camera review" is out?

4 LT COL McGOVERN: Yes, so we --

5 CHAIR HOLTZMAN: So --

6 LT COL McGOVERN: The language should
7 be, "and replaces the Federal Rule's in camera
8 review with a closed hearing."

9 CHAIR HOLTZMAN: Okay, "in which the
10 victim" --

11 LT COL McGOVERN: "...is afforded a
12 reasonable opportunity."

13 CHAIR HOLTZMAN: Okay, fine. Well, if
14 that's what the military practice is, Mr. Stone,
15 do you withdraw your proposal?

16 MR. STONE: Yes, go ahead, I'll
17 withdraw it.

18 CHAIR HOLTZMAN: Great. Anything else
19 on page 59? Any other objection to 59? Any
20 objection to 59? So 59 is approved with the
21 exception of what Kelly brought out.

22 Page 60. Are you with us, or do you

1 want me to tell you --

2 JUDGE JONES: No, no, I am with you, I
3 am in sync now, two pages --

4 CHAIR HOLTZMAN: Oh, 60, I don't see
5 any comments. Any objections to page 60?

6 JUDGE JONES: No.

7 CHAIR HOLTZMAN: Okay. Page 61, I am
8 not seeing any comments. Do we have any
9 objections to page 61? I don't hear any. 61 is
10 approved.

11 62. We have one comment here from Mr.
12 Stone, which is to delete the paragraph just
13 before point 3, "Use of MRE 412 Evidence." So
14 the paragraph before that, Mr. Stone wants to
15 delete. Do you want to explain, sir?

16 MR. STONE: Yes. I don't know why
17 we're saying it. We're going to do it. Why are
18 we saying it?

19 You know, it's something we're going
20 to do. I mean, it's sort of like -- I don't get
21 why that's in there, what this adds to anything.

22 CHAIR HOLTZMAN: Staff?

1 LT COL GREEN: I think this is just
2 because the Panel has provided analysis of the
3 Rule, and it just sort of -- it was an attempt to
4 provide a so what to the previous sentence and
5 note that all these significant changes, that the
6 Panel is going to have to consider that before it
7 can really make any analysis on things.

8 CHAIR HOLTZMAN: So we -- I am sorry,
9 Barbara?

10 JUDGE JONES: No, I was going to say,
11 I was going to defend it because this is a
12 situation where there are going to be a series of
13 reports, so I think it's fine.

14 CHAIR HOLTZMAN: Mr. Taylor?

15 MR. TAYLOR: I think it's fine.

16 CHAIR HOLTZMAN: Okay, I don't have
17 any objection, but I do --

18 MR. STONE: But my only -- then my
19 only concern is I want to take out the word
20 "foundational," but maybe it's already out. Then
21 it just should say, "helpful background."

22 CHAIR HOLTZMAN: Yes, I agree with

1 your suggestion on "foundational." I don't know
2 -- I think that that can come out.

3 Any objection to taking out
4 "foundational"?

5 JUDGE JONES: No.

6 CHAIR HOLTZMAN: Right, okay. So any
7 -- no other comments on 62. Without objection 62
8 is approved -- is admitted.

9 Okay. 63. We have one comment. You
10 recommended additional language at the end of the
11 paragraph starting, "In a written statement."
12 Barbara, are you with us?

13 JUDGE JONES: I am with you.

14 CHAIR HOLTZMAN: Do you have the
15 language that Mr. Stone --

16 JUDGE JONES: No, I need that read to
17 me.

18 CHAIR HOLTZMAN: Okay -- oh, go ahead,
19 Mr. Stone, why don't you read it?

20 MR. STONE: Okay. This is my comment
21 61, I believe.

22 Right after they talk about that

1 412 (3) "should be amended to clarify that the
2 victim's privacy is a legitimate government
3 interest that promotes good order and discipline
4 in the Armed Services, interest" Services, I
5 don't know why it says "interest" on -- I think
6 the word interest doesn't belong there.

7 Under "the established Supreme Court
8 precedent," I wrote, "This comports with the
9 holdings of many Supreme Court cases which
10 establish that military courts may operate under
11 somewhat different rules than civilian courts
12 when military considerations warrant."

13 I am trying to explain why 412 is
14 doing things a little differently than in the
15 civilian setting because remember, they said
16 before that in the military setting, everybody
17 knows everybody. It's a small community. So
18 therefore, it's a little different. That's the
19 military consideration, and if you recall, I
20 asked early on that I wanted a list of Supreme
21 Court cases which show that Supreme Court
22 holdings, even constitutional ones, don't apply

1 directly but have been slightly clarified when
2 they apply to military courts in military
3 settings, and this is the same basic situation.

4 They actually got that list, it was
5 one of the attachments that was given to us.

6 CHAIR HOLTZMAN: My problem with your
7 suggestion -- I have no problem with the
8 statement that Supreme Court cases establish that
9 military courts may operate under some different
10 rules, but "this comports" suggests that the
11 statement that a victim's privacy is a legitimate
12 government interest comports with Supreme Court
13 holdings, and that's not accurate because I'm not
14 sure the Supreme Court holdings have anything to
15 do with whether it's a legitimate government
16 interest.

17 MR. STONE: Okay, so you want to just
18 start it with: "The holdings"? Start the
19 sentence there, take out, "this comports"?

20 JUDGE JONES: I don't -- no, I'm sorry
21 go ahead.

22 CHAIR HOLTZMAN: I'm not sure that

1 that solves it. I mean, I'd just say, Under
2 Supreme Court rulings, we can say, the military
3 may establish different rules -- but we know that
4 they can establish their own rules. So I don't
5 understand the point of it.

6 MRE 412 doesn't have to follow the
7 federal MRE -- Federal Rule 412.

8 MR. STONE: But they started out by
9 saying that it was designed to do that. That's
10 what this says in the paragraphs above it. So I
11 was just trying to explain why, if it was
12 designed to follow it, why it's being interpreted
13 slightly differently.

14 If you want to leave it out, you can,
15 but, you know, I --

16 CHAIR HOLTZMAN: I'm not sure --

17 MR. STONE: -- I think it --

18 CHAIR HOLTZMAN: The language --

19 MR. STONE: -- earlier stuff.

20 MR. TAYLOR: Tom Taylor. The reason I
21 would leave it out is because two weeks ago, when
22 we discussed this same issue, I think there was

1 enough confusion and disagreement about whether
2 we really want to endorse this idea, and this
3 language seems to imply that we're endorsing this
4 idea.

5 CHAIR HOLTZMAN: Correct.

6 MR. STONE: Okay, if that's the
7 problem, I'll withdraw it.

8 CHAIR HOLTZMAN: Okay. So that
9 comment is withdrawn. Any other objection to
10 page 63? Any objection to 63? Hearing none, 63
11 is approved.

12 Page 64. Let's see, we have Mr. Stone
13 has made an addition, recommended addition, just
14 before ---- Barbara, to be sure we're in the same
15 place. Just before point 4, Analysis and
16 Recommendations --

17 JUDGE JONES: Got it, yes.

18 CHAIR HOLTZMAN: A new paragraph. Do
19 you want to read it, Mr. Stone?

20 MR. STONE: Yes. I put in something
21 that said, "Although MRE 412 applies to Article
22 32 hearings, IOs have used different procedures

1 when applying the Rule. For instance, some IOs
2 closed MRE 412 hearings, whereas others did not.
3 IOs may not be military judges, and it's not
4 clear whether IOs will have the background or
5 expertise to make these difficult evidentiary
6 decisions."

7 LT COL McGOVERN: Mr. Stone, the way
8 the report is currently broken out, we're now in
9 section 3 talking about 412 at court-martial.
10 That proposal applies to section 2, starting on
11 page 60, which is, "Use of MRE 412 at Article 32
12 Hearings."

13 MR. STONE: Want to move it to there?

14 CHAIR HOLTZMAN: Well what happened to
15 IO -- can an IO be a judge?

16 LT COL GREEN: Yes, not required, but
17 can be.

18 MR. STONE: But he also could be a
19 lawyer who spends his entire career writing wills
20 for other Soldiers.

21 CHAIR HOLTZMAN: Right. Well, it's --
22 in my view, though, this -- I don't know yet

1 whether I agree with it inserted, but if you do
2 insert it, you might want to add, "It's not clear
3 whether IOs who are not military judges --

4 MR. STONE: That's fine.

5 CHAIR HOLTZMAN: -- will have the
6 background or expertise to make these difficult
7 decisions."

8 MR. STONE: But the vast majority are
9 not military judges.

10 JUDGE JONES: Just one quick question.
11 I thought there was legislation that all the IOs
12 had to be JAGs, going forward.

13 MR. STONE: Yes.

14 JUDGE JONES: Am I wrong?

15 MR. STONE: Doesn't make them military
16 judges. JAGs just mean that they're lawyers in
17 the military.

18 JUDGE JONES: Do you want military
19 judges?

20 CHAIR HOLTZMAN: Well, we haven't said
21 whether we -- what is this point 4, Mr. Stone?
22 Is this -- I mean, since it's here, where does it

1 -- I mean, do you want to think about where you
2 want to put it and why?

3 MR. STONE: Well, they're telling me
4 that it needs to be just above and not below 3.

5 LT COL McGOVERN: And I --

6 CHAIR HOLTZMAN: At the end of --

7 LT COL McGOVERN: I think it would be
8 inserted, ma'am, on page 60. Right before we
9 say, "On June 13, the President issued EO."

10 CHAIR HOLTZMAN: Let me just get to
11 page 60, please.

12 Okay, on page 60, right before --
13 right before where?

14 LT COL McGOVERN: Actually, I'm sorry,
15 since it includes some analysis, it would be on
16 62.

17 LT COL GREEN: Right before number 3,
18 there's two blue paragraphs that provided JPP's
19 analysis on Article 32 and 412, and so it could
20 be inserted there if -- maybe as the first
21 statement.

22 CHAIR HOLTZMAN: It could be, or maybe

1 it could be in between point -- the two
2 paragraphs.

3 MR. STONE: I think in between would
4 look good.

5 LT COL GREEN: Right.

6 CHAIR HOLTZMAN: Is there any
7 objection to doing this? Staff, do you have any
8 objection to this?

9 LT COL McGOVERN: No ma'am. I think
10 it's an issue that we do address, but there were
11 -- procedures were inconsistently applied in the
12 past, and that's why they've come up with this
13 new legislation.

14 CHAIR HOLTZMAN: Now we also heard
15 about IOs not having background and experience.

16 LT COL McGOVERN: Yes, ma'am.

17 LT COL GREEN: Correct.

18 CHAIR HOLTZMAN: All right, so does it
19 -- so you don't have any objection. Does anyone
20 else have any objection to including it?

21 JUDGE JONES: No.

22 CHAIR HOLTZMAN: Okay. Mr. Taylor?

1 MR. TAYLOR: No.

2 CHAIR HOLTZMAN: Okay. So it's
3 included where we said it was going to be.

4 Now we have -- do we have additional
5 comments on this page? Do you want to take out
6 the words "analysis and recommendations" in point
7 4, JPP Recommendations?

8 MR. STONE: This just goes back to
9 what I said last time, that I thought we were
10 just doing recommendations and that the analysis
11 was all above. And so I was just trying to say,
12 okay, these are the recommendations, and I
13 thought we'd settled all of these things above.

14 If you want to repeat them, it's up to
15 you. To me, it seemed redundant, but it makes it
16 a little longer. If you want to do it, that's
17 okay. I don't feel strongly if you want to
18 repeat the stuff.

19 CHAIR HOLTZMAN: How does the staff
20 feel about this?

21 LT COL GREEN: A lot of this does
22 repeat other material or at least the statements

1 that were made in the section we just talked
2 about. As a matter of fact, the addition Mr.
3 Stone made I think comes from this. So if you
4 want to streamline it, we can put it in the one
5 place and just leave it there.

6 CHAIR HOLTZMAN: I am talking about
7 the paragraph -- there are two paragraphs, he's
8 got two paragraphs he wants to delete. The
9 paragraph starting, "Numerous" -- Barbara, are
10 you with me?

11 JUDGE JONES: Yes, I'm with you.

12 CHAIR HOLTZMAN: "Numerous," and the
13 paragraph starting, "Although." Is there
14 anything in these two paragraphs that has not
15 been said before?

16 MR. STONE: In which case I'm not
17 objecting if they want to consolidate it and move
18 it up to the analysis parts. I don't -- that's
19 fine, if there's something they think was not
20 said.

21 But anything that was said, I just
22 can't see putting it back here again at the end.

1 LT COL MCGOVERN: We'll take a look at
2 it. Again, it was to present all the basic facts
3 and then pull out for your analysis which of
4 those facts you're weighing heavily, but we'll
5 take a look at streamlining it.

6 CHAIR HOLTZMAN: Okay, but just make
7 sure that we don't eliminate something that has
8 not been said, in these two paragraphs, okay?

9 LT COL GREEN: Correct ma'am.

10 LT COL MCGOVERN: Yes ma'am.

11 CHAIR HOLTZMAN: Is everyone okay with
12 that?

13 JUDGE JONES: Yes.

14 CHAIR HOLTZMAN: Any objections?

15 JUDGE JONES: Yes, yes, no.

16 CHAIR HOLTZMAN: All right. Further
17 on 64, Mr. Stone wants to delete -- wait, me.
18 You need to -- to understand, is that so? Oh,
19 yes.

20 I'd like to -- I think it would be a
21 good idea to have the statutory, the quote from
22 the statute somewhere that people can see it in

1 the text. That's all I am saying. Do you mind
2 quoting that, or do you think that's too
3 problematic, or what?

4 Particularly since when they have
5 footnotes on the bottom of the page, I think it
6 might be a good idea to include the text of that
7 constitutional rights exception here.

8 LT COL GREEN: I'm -- I think there's
9 a -- this is discussed in the -- in part 2, and
10 the language is provided there, so that was my
11 only --

12 CHAIR HOLTZMAN: Okay, well if we've
13 already done that, I have no problem.

14 LT COL GREEN: Okay.

15 MR. STONE: We could just say, see
16 page, and refer back to that page.

17 CHAIR HOLTZMAN: And I also have
18 another comment. "One JPP member made the more
19 fundamental observation that a constitutionally-
20 required exception is meaningless because the
21 Constitution doesn't apply to Article 32
22 proceedings." But the Constitution always

1 applies to Article 32 proceedings, so I don't
2 understand this point.

3 MR. STONE: Isn't it the confrontation
4 clause of the Constitution doesn't apply to
5 Article 32 hearings, is what I think they mean?

6 CHAIR HOLTZMAN: Okay. Well if that's
7 so --

8 MR. STONE: They should say that.

9 CHAIR HOLTZMAN: -- well, can you
10 amend that?

11 LT COL MCGOVERN: Yes, ma'am.

12 CHAIR HOLTZMAN: Okay. Is that okay
13 with everyone? Anyone object to that?

14 MR. TAYLOR: No objection.

15 CHAIR HOLTZMAN: Okay.

16 JUDGE JONES: No.

17 CHAIR HOLTZMAN: Without any
18 objection, we've approved 64.

19 Page 65. I just suggest in the middle
20 of that, in the paragraph, "According to MRE 412"
21 ---- is everyone with me?

22 JUDGE JONES: Yes.

1 CHAIR HOLTZMAN: The line below that,
2 where it says, "the exception." Should we talk -
3 --- I just thought it should be clearer and say,
4 "The constitutionally required exception." With
5 quotes around it.

6 LT COL McGOVERN: Actually, ma'am,
7 that's referring that the Rule -- there's three
8 possible exceptions. So no matter what exception
9 they're raising, you have to first determine that
10 it's relevant to support whatever exception
11 you're going to assert.

12 CHAIR HOLTZMAN: Why don't we say
13 that? "It's relevant to support the exception
14 that is being raised."

15 LT COL McGOVERN: Okay.

16 CHAIR HOLTZMAN: Then it would be
17 clear, because it sounds like it's, the
18 exception, which one are we talking about?

19 Okay. Mr. Stone -- is that okay with
20 everybody?

21 MR. TAYLOR: Yes.

22 JUDGE JONES: Yes.

1 CHAIR HOLTZMAN: Okay. And then the
2 end of that paragraph, Mr. Stone wants to
3 eliminate the last sentence.

4 MR. STONE: It didn't seem to fit
5 there because then we go on, we're still talking
6 about MRE 412. I didn't -- I didn't understand
7 why that was there, exactly. I don't know if
8 that's in the wrong place or not necessary, but
9 it sort of broke up the flow being there.

10 LT COL MCGOVERN: Well sir, there's --
11 there was different steps. The first step being
12 the relevancy requirement, and Ryan Guilds --
13 Guilds, I can't say his name, I'm sorry ---- had
14 said that you need to have this relevancy
15 requirement, and then he went on and proposed
16 these other different things.

17 So just pertaining to the relevancy
18 exception, according to the deliberations last
19 time, you all had said we need more information
20 to see if that relevancy threshold needs to be
21 clarified if it's being followed or not.

22 MR. STONE: I don't know. I thought,

1 and this goes to the next comment that I had down
2 below -- and actually, it even goes to what
3 you've got right above there, that first they
4 have to make the relevancy determination. That's
5 in the same paragraph. That's the beginning of
6 the second sentence.

7 LT COL McGOVERN: Right, so first they
8 have to make the relevancy, then they do a 412
9 balancing, then the 403 balancing. And when you
10 guys discussed relevancy last time, you said,
11 well, we need more information before we're going
12 to say it needs to be restructured to further
13 define that relevancy requirement.

14 You all just made a specific statement
15 about that, so then we get into balancing tests.
16 If you don't want to make that specific --

17 CHAIR HOLTZMAN: Okay, so maybe the
18 problem here is that the members agreed that JPP
19 needs more information before making a
20 recommendation on whether and how the relevancy
21 determination needs to be restructured, because
22 --

1 LT COL MCGOVERN: Okay.

2 CHAIR HOLTZMAN: -- this is too broad.

3 Is that what you're getting at, Mr. Stone?

4 MR. STONE: I think so, and even more
5 specific than that, but yes. Your sentence makes
6 more sense to me.

7 LT COL MCGOVERN: Okay.

8 MR. STONE: I mean, I don't think it's
9 whether, it's about how the Navy -- the, you
10 know, the breadth of the relevancy determination
11 or something. Or, like you said, how the
12 relevancy determination --

13 CHAIR HOLTZMAN: It needs more
14 information on the issue of the relevancy
15 determination. Maybe that's it.

16 JUDGE JONES: Can I just also suggest
17 that we've already, I guess, agreed with what I
18 think has already come out about guidance for
19 Article 32s. Which is that, fine, they shouldn't
20 have to consider the, except when
21 constitutionally required.

22 But we haven't -- I think it's still

1 an open question of whether and what we would
2 suggest or recommend with respect to 412 itself,
3 which would be in the context of the trial
4 process.

5 CHAIR HOLTZMAN: Right, you're right,
6 you're right. Do you want to say something about
7 that?

8 JUDGE JONES: Well, it might make -- I
9 guess it might make more sense here. Kyle,
10 Kelly, do you see what I am saying, that --

11 LT COL MCGOVERN: That's why we broke
12 it up into addressing 412 at Article 32 versus
13 412 at trial, and the Joint Services Committee's
14 recommendation is only to eliminate the
15 constitutionally required exception at the
16 Article 32. So if we haven't made that clear in
17 your analysis, we can try to bring that out more,
18 but that's definitely a distinction --

19 JUDGE JONES: Yes, I know I wasn't at
20 the deliberations, but when I read them, I got
21 the impression that we wanted more information
22 before we would make any recommendation about 412

1 at trial, so maybe we could just state that more
2 explicitly?

3 CHAIR HOLTZMAN: Oh, I see.

4 LT COL McGOVERN: Okay.

5 CHAIR HOLTZMAN: So in that sentence,
6 right? "Members agree that JPP needs more
7 information before making a recommendation on how
8 the relevancy matter is to be determined at
9 trial." Something like that.

10 JUDGE JONES: Yes.

11 CHAIR HOLTZMAN: Right? Okay.

12 JUDGE JONES: That would be great.

13 CHAIR HOLTZMAN: Okay. Now, we have
14 another change. Mr. Stone recommends addition --
15 recommends addition. What's the addition? "The
16 JPP endorses these changes"?

17 MR. STONE: Yes, in other words ----
18 and maybe this is some of that same confusion
19 carrying over, because I thought we didn't need
20 the language because we all agreed that they're
21 going to have to act constitutionally --

22 CHAIR HOLTZMAN: Correct.

1 MR. STONE: -- to balance the two
2 interests that we talk about right in the
3 beginning of that sentence. The privacy interest
4 versus the defendant's interest.

5 CHAIR HOLTZMAN: Well, but there's an
6 issue --

7 JUDGE JONES: I'm not --

8 CHAIR HOLTZMAN: -- interest, too, so
9 I'm not sure that we're going to get agreement on
10 that.

11 So what language are you trying ----
12 "The JPP endorses these changes"?

13 MR. STONE: Yes.

14 CHAIR HOLTZMAN: Oh, I don't think
15 we're there.

16 MR. STONE: Oh, we're not there yet?
17 Okay, where are we?

18 CHAIR HOLTZMAN: No, no, I think we
19 decided at our meeting -- maybe I'm wrong, Kelly
20 and Kyle, please correct me. I thought we
21 decided at our meeting we weren't going to make a
22 recommendation on this point, that the privacy

1 was a legitimate interest.

2 LT COL McGOVERN: That's right.
3 That's why we have the last two sentences there,
4 ma'am, is what you all concluded at your
5 deliberations.

6 CHAIR HOLTZMAN: Right, okay. So I
7 think, Mr. Stone, we've already decided and
8 rejected your suggestion on adding the language.
9 Which is, "The JPP endorses these changes."
10 Maybe not the constitutionally redundant
11 language, but the --

12 LT COL McGOVERN: And then, the next
13 paragraph addresses that it may be redundant.

14 CHAIR HOLTZMAN: Where is that?

15 LT COL McGOVERN: That's --

16 LT COL GREEN: In the last paragraph
17 of the analysis. It says, "The JPP recognizes
18 that the constitutionally required language may
19 be redundant because a judge must always decide."

20 CHAIR HOLTZMAN: Oh, I see. Right.

21 LT COL GREEN: So --

22 CHAIR HOLTZMAN: You wanted to remove

1 that language, is that -- I am trying to
2 understand what this suggestion --

3 MR. STONE: I guess I thought -- I
4 guess I thought I was moving it up to where it
5 made more sense, but if you like it down here,
6 then I guess we can leave it here.

7 I somehow thought it made more sense
8 up there, where we had just finished talking
9 about victims' privacy interests in that
10 paragraph where I put the other sentence. I
11 basically was --

12 CHAIR HOLTZMAN: Right.

13 MR. STONE: -- substituting a sentence
14 -- moving this up to there, maybe rewriting it a
15 little. But you liked it better the way it was,
16 you know, we can keep it the way it was.

17 CHAIR HOLTZMAN: Okay. I think that
18 the deletion of the end of the first paragraph
19 would be a problem because I think it does
20 accurately reflect where the committee was,
21 unless I'm wrong.

22 "It is not clear to the JPP." I think

1 that that's an accurate reflection. Am I right,
2 Kyle and Kelly, that that's an accurate
3 reflection of what we decided at the last
4 meeting?

5 LT COL GREEN: Based on your
6 deliberations, that's correct.

7 CHAIR HOLTZMAN: Okay, so I think
8 there would be a problem about removing that, Mr.
9 Stone. I don't know why you wanted to remove it.

10 MR. STONE: I guess I don't like that
11 formulation, that it's not clear. "It's not year
12 clear"? Or, "The JPP has not yet decided
13 whether" -- that would be better.

14 CHAIR HOLTZMAN: Okay, that sounds --

15 MR. STONE: I mean, this makes it
16 sound like we heard it and we're stumped. I
17 mean, no, we haven't gotten to that point.

18 CHAIR HOLTZMAN: Okay. That's okay
19 with me. I mean, I don't know how the rest of
20 you feel. Staff, how do you feel about that?

21 LT COL GREEN: We can make that
22 change. That's just an intro language, ma'am, so

1 that's -- no concerns.

2 CHAIR HOLTZMAN: Okay.

3 JUDGE JONES: I didn't mind that at
4 all, that we haven't yet decided.

5 CHAIR HOLTZMAN: Right, okay. And, in
6 some -- in the second paragraph that he wants to
7 delete, Mr. Stone, you want to delete, I mean --

8 MR. STONE: Well no, then I think we
9 have to leave in the, in some paragraph, if
10 you're not going to put it -- no, because then
11 that does flow from the other.

12 CHAIR HOLTZMAN: Okay.

13 MR. STONE: But that's okay.

14 CHAIR HOLTZMAN: All right. So we're
15 going to make the change that you suggested
16 about, it's not clear. That's a very good
17 suggestion, and we'll take out your addition.

18 And that's it. Otherwise, section 65
19 is approved. Is that correct?

20 MR. STONE: Yes.

21 CHAIR HOLTZMAN: I mean page 65.

22 Okay, page 66. Okay, we discussed the

1 first issue on page -- this is the, Barbara, just
2 to make sure, this is "Psychotherapist-Patient
3 Privilege."

4 JUDGE JONES: Got it, yes.

5 CHAIR HOLTZMAN: Okay. I don't see
6 any comments on the side, so page 66, unless
7 anyone has got an objection, is approved. I
8 don't hear any objections. It's approved.

9 Page 67. I don't see any comments on
10 this. Does anyone have any comments or
11 objections? I don't hear any, so 67 is approved.

12 Okay, 68. Okay, Mr. Stone. Just
13 before, Barbara, so you know where we are, we are
14 in number 2 --

15 JUDGE JONES: I've got it, yes.

16 CHAIR HOLTZMAN: Okay, so Mr. Stone
17 wants -- what do you want? To delete the last
18 paragraph before number 2, which starts, "In
19 addition." Do you see where we are, Barbara?

20 JUDGE JONES: I've got Privacy
21 Protection as number 2.

22 CHAIR HOLTZMAN: Yes, but for the

1 paragraph right before that: "In addition,
2 Section 537."

3 JUDGE JONES: Oh, I see it, I've got
4 it, yes.

5 CHAIR HOLTZMAN: Okay, so he wants to
6 take that out. Mr. Stone, do you want to
7 explain?

8 LT COL McGOVERN: Mr. Stone, the
9 purpose of those paragraphs is to say that you
10 all heard a lot of testimony which raised issues
11 which still could be relevant, but you have to
12 wait -- even though FY13 has changed MRE 513 so
13 much. So we were just trying to say that these
14 issues remain relevant and Section 537 of the
15 FY15 NDAA only addressed part of the issue.

16 MR. STONE: So --

17 CHAIR HOLTZMAN: You think it's still
18 -- in those two sections, to --

19 MR. STONE: There's a huge amount it
20 seems to me that we're going to have to wait at
21 least until we get back from the subcommittee
22 about what's left after the Fiscal Year '15 NDAA

1 change, right, Section 537?

2 And it looked to me like a lot of the
3 stuff from here down that I recommended coming
4 out was written before we came back to you and we
5 said, hey, you've got to recognize that we're
6 going to have to wait and see what the
7 subcommittee says about all of the new stuff.
8 And it looked like stuff got added but nothing --
9 not enough got taken out.

10 So you'll see there's big parts here
11 where I think we're just saying stuff that we
12 don't have to say, this is reserved, that's
13 reserved, we make it, because we haven't made
14 recommendations. This whole thing is saying
15 we're waiting to see what we think it means and
16 what the subcommittee means.

17 So it seems to me a lot of this stuff,
18 I just didn't understand why it was in there. It
19 looked like it was old analysis, this and a lot
20 of the stuff that followed, and it looked to me
21 like it was -- I don't know, there are people who
22 are going to read it and say why are they

1 pontificating on this stuff? They haven't
2 figured out, and the subcommittee hasn't figured
3 out, the new statutory obligations yet?

4 That's where I was coming from.

5 LT COL MCGOVERN: Well sir, I think
6 the purpose -- one of the purposes of the report
7 is to reflect that you all are considering -- or
8 what you have heard. And so that's what this
9 section provides, is that you've heard these
10 issues, and even if there is a new statute, these
11 issues could remain relevant for your
12 consideration.

13 I mean, otherwise, we would just
14 delete -- why even address 513 at all?

15 MR. STONE: Well, that -- actually,
16 that's my point. I have to give a report and say
17 we heard about all kinds of outdated stuff? It
18 sounds a little crazy.

19 We do say it, but I don't think we
20 have to say it --

21 LT COL MCGOVERN: Like I'm saying,
22 it's not outdated. These issues -- we don't know

1 whether the statute is going to resolve these
2 issues or not, so here are the issues with 513
3 right now, from the testimony you all heard.

4 LT COL GREEN: And the current law
5 still remains as it was before the statute. The
6 statute takes effect in June of '15, so it is --
7 it will be outdated. It's not as of today, but
8 -- and obviously, practices and applications, you
9 know, it's how much the Panel wants to preserve
10 of that in terms of what you heard.

11 MR. STONE: I mean, if you go above
12 that like two paragraphs, I mean you guys said
13 correctly "The JPP recognizes that the Fiscal
14 Year '15 NDAA modifications to MRE 513 will
15 change procedures and common practices for
16 accessing and introducing mental health records
17 and communications in judicial proceedings,
18 particularly," and so forth, blah blah blah.

19 I mean, we said all that. I guess I
20 don't understand why now we're going to go back
21 and regurgitate to them the procedures and common
22 practices that we heard about that are going to

1 be changed.

2 I mean, we are on page 63. We said a
3 lot. Why are we -- just to make a record that we
4 heard certain things?

5 JUDGE JONES: Well, I think the tack
6 that the staff took in this report was to report
7 what we've done in the last six months, whether
8 we've reached a recommendation or not, and at
9 this point, I think we should just leave it.

10 MR. STONE: Okay. I don't feel
11 strongly, I just thought it didn't need to be
12 there.

13 CHAIR HOLTZMAN: Okay. I agree. Mr.
14 Taylor, your view?

15 MR. TAYLOR: Well, it seems to me that
16 part of what we're doing here is just creating a
17 record of what we have done and where we are in
18 the process, and I think this is helpful
19 information to do that.

20 CHAIR HOLTZMAN: Right. I agree with
21 that, so it will stay in, and Mr. Stone, you have
22 another comment, which is for the next paragraph.

1 Do we have the same view about that?

2 Yeah, I think the same. Barbara, does
3 your point apply to the second paragraph as well,
4 "In addition, Section 537"?

5 MR. STONE: Yeah, right, exactly.

6 JUDGE JONES: Yeah.

7 MR. STONE: If you want to leave it
8 in, okay, leave it in, let's move on.

9 CHAIR HOLTZMAN: Okay, so without any
10 -- wait, we have one more comment. Mr. Stone,
11 near the bottom of the page on point A,
12 Disclosure to Commanders for Non-Law Enforcement
13 Fitness -- I don't know what this, I can't even
14 read the changes.

15 MR. STONE: The change says, "for non-
16 law enforcement fitness for duty purposes." In
17 other words, I am trying to explain that their
18 introduction of (a) talks about commanders'
19 purposes, not law enforcement, (a). Later,
20 they're going to get to (b), but in other words,
21 it's -- you're wondering why it's there. You
22 need to know, okay, here we're talking about non-

1 law enforcement purposes.

2 LT COL MCGOVERN: With all due
3 respect, sir, in the military, we don't say non-
4 law enforcement fitness for duty purposes, and we
5 haven't in the report yet addressed a law
6 enforcement exception, so I think just stating
7 that there is a disclosure for fitness for duty
8 purposes so that you know whether or not someone
9 is able to carry a weapon, drive a vehicle -- I
10 don't think the additional language "non-law
11 enforcement" is very -- we could drop a footnote
12 for you, if that would make you happy.

13 MR. STONE: Actually, you could just
14 restate the title. You don't have to use my
15 title. I just wanted something that makes it
16 clear, we have -- okay, you know, before we get
17 to the law enforcement purposes, this is the
18 chain of command purpose, which makes a lot of
19 sense, somehow, to say that. Because we've been
20 reading about sexual assault and law enforcement
21 throughout the whole thing, and for a minute
22 here, we're taking a break and we're saying okay,

1 maybe it should say "background" --

2 CHAIR HOLTZMAN: All right, well maybe

3 --

4 MR. STONE: -- "disclosure to
5 commanders for fitness for duty purposes." In
6 other words, this is not directly on point. This
7 is giving us a parallel view --

8 CHAIR HOLTZMAN: Yeah, let's --

9 MR. STONE: -- of who else could see
10 the stuff and when.

11 CHAIR HOLTZMAN: What about the
12 solution -- what about saying, "disclosure to
13 commanders for fitness for duty (non-law
14 enforcement) purposes"? Would that solve the
15 problem?

16 MR. STONE: Yes.

17 CHAIR HOLTZMAN: Would that solve your
18 problem, Kelly?

19 JUDGE JONES: Well, I mean, doesn't
20 fitness for duty mean something, and it excludes
21 law enforcement?

22 MR. STONE: It does, and --

1 LT COL McGOVERN: In the paragraph
2 right before, ending with footnote 675, you
3 explain that unless there's these specific
4 circumstances related to fitness for the ability
5 for military service of the patient makes
6 disclosure necessary, so I think we kind of set
7 it up to go right to this disclosure for fitness
8 for duty purposes, and there's a separate
9 disclosure for law enforcement.

10 CHAIR HOLTZMAN: Okay, so you think
11 we've said that someplace. Okay.

12 MR. STONE: I'm fine, Elizabeth, with
13 your -- the way you want to do it, it makes me
14 perfectly happy.

15 CHAIR HOLTZMAN: Right, but if they're
16 not fine with it, that's another point. They may
17 not be fine with that.

18 LT COL McGOVERN: We --

19 CHAIR HOLTZMAN: So it would say,
20 Kelly, just listen to me, and if you don't like
21 it, then I am going to support you on that
22 because I don't really think -- I mean, if you

1 think it's clear enough, it's fine with me, but
2 it would say, "disclosure to commanders for
3 fitness for duty purposes (non-law enforcement),"
4 is that correct? Or something like that. Would
5 that be a problem?

6 JUDGE JONES: Yes, my only problem
7 with it is I don't think -- but I could be
8 completely wrong -- I don't think fitness for
9 duty purposes is ever for law enforcement
10 personnel --

11 CHAIR HOLTZMAN: Okay.

12 JUDGE JONES: -- they're two
13 different, I think they're exclusive.

14 CHAIR HOLTZMAN: Okay, so you think
15 it's clear enough. Okay. I am okay. I was just
16 trying to see if that would work.

17 Okay. I am okay with it the way it
18 is. Mr. Taylor, how do you feel about it?

19 MR. TAYLOR: I thought it was clear as
20 it was, to me.

21 CHAIR HOLTZMAN: Okay, fine. So that
22 will not be changed.

1 MR. STONE: Overrule me, okay.

2 CHAIR HOLTZMAN: Thanks. The
3 exception, you want to take -- so without -- do
4 we have any other exceptions or any objections to
5 page 68?

6 (No audible response.)

7 CHAIR HOLTZMAN: 68 is approved.

8 Now, page 69, we have a comment, I
9 assume this is from Mr. Taylor also, at the
10 beginning of page 69, which is Barbara for you
11 just above the paragraph starting, "Specific
12 Regulations Implemented by the Military
13 Services." The sentence right before that
14 paragraph. It says, "This exception is not
15 relevant to sexual assault victims involved in
16 military trials."

17 JUDGE JONES: Okay, it's under
18 "Disclosure to Commanders"?

19 CHAIR HOLTZMAN: It is under -- yeah,
20 right, it's the end of the first paragraph,
21 "Disclosure to Commanders."

22 JUDGE JONES: Okay. And what are we

1 doing? What are we recommending?

2 CHAIR HOLTZMAN: He'd like to take out
3 the last sentence, Mr. Stone.

4 MR. STONE: No, I'm putting it in.

5 CHAIR HOLTZMAN: Oh, you're putting it
6 in.

7 MR. STONE: I am putting it in there,
8 and in the next sentence, too.

9 In other words, especially now that
10 you've taken out of the title, I just have to
11 flag for people that these are not relevant to
12 the military trials because I think people are
13 reading it --

14 CHAIR HOLTZMAN: Yeah, you may be
15 right.

16 MR. STONE: -- and they're left
17 wondering.

18 LT COL McGOVERN: But, sir, the way --

19 MR. STONE: I know this is second
20 nature to you, Kelly, because you live with this,
21 but it's not second nature to the rest of us.

22 LT COL McGOVERN: I am just trying to

1 help clarify it, sir, because the way it's
2 currently written, it makes -- when I first read
3 your edit, I thought you meant well then
4 commanders should never get sexual assault
5 victims' mental health records when some sexual
6 assault victims may be suicidal, and so it may be
7 very relevant for a commander to know their
8 mental state.

9 MR. STONE: Okay. If you want to
10 change it to say something you like, like "This
11 exception is not relevant to discovery requests
12 by the participants involved in military trials,"
13 something like that --

14 LT COL MCGOVERN: Sure.

15 MR. STONE: -- it's fine. In other
16 words, you can fine tune it for me, because I
17 want them to know what you just said to me; I
18 just don't want them to be confused. And
19 frankly, I had to go back and read this stuff
20 twice.

21 LT COL MCGOVERN: Okay.

22 LT COL GREEN: We -- that makes sense,

1 sir. We'll re-work that.

2 CHAIR HOLTZMAN: Is everybody in
3 accord with that? We'll leave it to the staff to
4 try to figure out appropriate language.

5 JUDGE JONES: Yes.

6 CHAIR HOLTZMAN: Sorry?

7 JUDGE JONES: Yes.

8 CHAIR HOLTZMAN: Okay. Okay, we're up
9 to the next point. I am trying to move this
10 along if we can.

11 Here we have a comment, "This
12 exception does not apply to military trials." I
13 mean, do we need this at every point now, Mr.
14 Stone?

15 MR. STONE: I think so because now
16 we're in law enforcement purposes. I mean, we
17 have to highlight, again, this is stuff that
18 again, it in fact specifically says in the
19 sentence, "not intended to be used against the
20 victim." Well then how come they're getting it?
21 Well this is for a different purpose.

22 So all the different purposes, but

1 once you're into law enforcement purposes, this
2 is when you're investigating a defendant and you
3 think that in a law enforcement purpose, let's
4 say, "God, is this guy a crazy who is going to
5 leak nuclear secrets," and you want to find out
6 if he's got psychological problems.

7 I mean, this also doesn't apply to the
8 -- and again, it can say, to the sexual assault
9 duration at issue here.

10 Now it's even closer. It is law
11 enforcement, but it's not the one we're dealing
12 with yet.

13 LT COL GREEN: Right, and we can just
14 -- I mean, I think we can make this point, for
15 all three of these additions, we can just find
16 the language that makes it clear we're not
17 talking about discovery for military trials
18 purposes and drop that in.

19 MR. STONE: Fine with me. I don't
20 need specific words as long as you get what I'm
21 saying.

22 CHAIR HOLTZMAN: All right, so the

1 staff is okay with this?

2 LT COL GREEN: Yes ma'am.

3 CHAIR HOLTZMAN: Okay. So do we have
4 any other objection to 69?

5 (No audible response.)

6 CHAIR HOLTZMAN: If not, it's
7 approved. Mr. Taylor, did you have something to
8 say? Okay.

9 MR. TAYLOR: No ma'am.

10 CHAIR HOLTZMAN: All right. Page 70,
11 Mr. Stone, recommend addition on the beginning of
12 page 70. Barbara, for you, this would be just
13 before point 3, "Disclosure of Mental Health
14 Records."

15 MR. STONE: Okay, and I would add a
16 sentence that says of course, they're talking
17 about the fact that if the record is in -- a
18 person can ask whether or not their protected
19 health information has been disclosed without
20 their authorization for any of the reasons above,
21 and then it says, you know, "Such an accounting
22 would include disclosures to law enforcement

1 officials," for example, to see if they were
2 crazy enough to do something dangerous.

3 But then it says, "however" -- the
4 particular paragraph -- "permits military
5 criminal investigators to request in writing that
6 such notice be temporarily suspended if
7 disclosure would likely impede," and I put in
8 here, "an ongoing criminal investigation of an
9 as-yet charged crime or defendant."

10 And then I added the sentence, "Of
11 course, any such access to this evidence used at
12 a military trial will likely become quickly
13 apparent, and any mental health record
14 disclosures not properly made would be punishable
15 under these Military Rules and HIPAA."

16 In other words, just because they can
17 temporarily suspend it, the disclosure, doesn't
18 mean it's not going to ultimately come out, and
19 therefore it could be improper.

20 And I think when you read the stuff
21 above, it almost sounds like we're saying oh,
22 guys, there is a way you can hide this, and it's

1 not going to come out if it was done improperly.
2 So I just thought there needed to be some kind of
3 a marker here that just let everybody know, by
4 the way, we think those procedures are good even
5 though there's a temporary suspension of notice
6 that can be done, because sooner or later, people
7 are going to find out. So you do have to follow
8 those rules.

9 CHAIR HOLTZMAN: Well, first of all,
10 I'm not sure that --

11 MR. STONE: Plus I wouldn't mention
12 the temporary suspension at all if you want to
13 drop this sentence.

14 CHAIR HOLTZMAN: Yeah. I just want to
15 go back to the end of your -- the first sentence
16 where you're making a change, where it says,
17 "ongoing criminal investigation of an as-yet
18 uncharged crime or defendant." Why does it have
19 to be an uncharged?

20 MR. STONE: Because if it's charged --

21 CHAIR HOLTZMAN: They'd still be
22 investigating.

1 MR. STONE: No, not once a crime is
2 charged.

3 LT COL GREEN: No, but again, Mr.
4 Stone, we pulled the language straight out of the
5 paragraph, C.13.1.2.1, so I just want to be
6 careful that we don't go beyond what the guidance
7 provides.

8 MR. STONE: Okay, that's fine if you
9 want to go back to that language, but somehow,
10 you'll have to point out that that doesn't mean
11 it isn't ultimately going to be -- you know, you
12 could say at some point, of course, it will be
13 disclosed, and therefore all these regulations
14 need to be, you know, are routinely followed.
15 Something like that --

16 CHAIR HOLTZMAN: I'm not really
17 following the point. I mean, what are these
18 things going to be? Suppose the information is
19 given to a -- and not used for whatever reason,
20 so, it's completely not used by the prosecution
21 or investigators or whatever.

22 MR. STONE: But the sentence above

1 says the person can ask the hospital, "Did they
2 get my stuff?"

3 CHAIR HOLTZMAN: Okay.

4 MR. STONE: And the hospital has to
5 answer them except in situations where they get a
6 temporary suspension, like you're afraid he's
7 going to take off, they want to get him arrested
8 first before they're going to answer that
9 question.

10 You know, this is confusing and it's a
11 hypothetical, and the point is, it seemed to take
12 us so far off the beaten path that I was actually
13 lost, so I tried to figure out what it was
14 saying.

15 LT COL GREEN: And I -- this goes back
16 to, the Panel has asked a number of times
17 throughout hearings about when mental health
18 records are obtained, is the victim required to
19 be notified? And so this is simply to clarify,
20 and I guess this is back to, if that was a
21 question for the Panel, is that a question that
22 the Panel wants to have answered in its report as

1 to what the requirements are to notify the victim
2 that your mental health records have been
3 obtained, and in this context, this is how it's
4 -- this is what the rule is when it's a law
5 enforcement reason.

6 CHAIR HOLTZMAN: Well, if we're
7 setting forth the rule, that's one thing, but if
8 we're just speculating here, that's another
9 thing, and I don't really understand the point.
10 I am really --

11 MR. STONE: Okay. If this doesn't
12 help people figure out what they're talking
13 about, I'll withdraw the sentence. I don't need
14 it. It's not crucial.

15 CHAIR HOLTZMAN: Okay. But save it in
16 reserve, Mr. Stone, for when we look at 513 in
17 the future, as we will.

18 Okay. So then we have -- where are
19 we? On page -- we were just on page 69, so 69 is
20 approved.

21 70, let's see if there are any other
22 comments on 70. There are no -- there seem to be

1 no other comments on 70. Anybody have any
2 objection to 70?

3 (No audible response.)

4 CHAIR HOLTZMAN: 70 is approved,
5 hearing no comments.

6 71. Mr. Stone, I guess you want to
7 delete paragraph 2 on that page. It starts,
8 Barbara, "According to the Services, EO 13669."

9 JUDGE JONES: I found it, okay. I am
10 sorry, what's the --

11 CHAIR HOLTZMAN: It was after the
12 word, in line 2 of this paragraph, "According to
13 the Services," in line 2, everything after the
14 comma, so "because it is essentially maintained
15 that the privilege applied at pre-trial
16 investigations."

17 MR. STONE: I was completely confused
18 by that phrase. I don't know what "essentially
19 maintained" means. If you want to say what it
20 means, that's fine, but I think it's just enough
21 to say it has little effect, and then we go on,
22 and they keep saying it had no effect.

1 Okay, well "essentially maintained,"
2 just -- I don't know what that means.

3 LT COL McGOVERN: And sir, I think it
4 was intended to mean that the EO just restated
5 that 513 applies at Article 32s, but then the Air
6 Force went on to say well, it hasn't actually had
7 a significant impact because 513 issues are not
8 often raised at Article 32 hearings, but we can
9 re-word it to state, "because it maintains that
10 the privilege applies at pre-trial
11 investigations."

12 CHAIR HOLTZMAN: Well, the "it" is
13 very confusing there, because which "it" -- "it"
14 is referring to what? Article 32 hearings?
15 That's the --

16 LT COL McGOVERN: No, MRE 513, the
17 privilege applies at pre-trial hearing --
18 investigations.

19 MR. STONE: I thought it was referring
20 to the EO.

21 MR. TAYLOR: That's what I thought.

22 CHAIR HOLTZMAN: Yeah, right. So

1 that's the problem. We have an "it" that we
2 don't know what the -- what its reference -- what
3 it's referring to.

4 Okay, so can you rewrite that in some
5 way that it's clear?

6 LT COL GREEN: We sure can.

7 MR. STONE: And try not to use the
8 word "maintained" --

9 CHAIR HOLTZMAN: Yeah, right.

10 MR. STONE: -- because it says, you
11 know, stuff like that.

12 LT COL McGOVERN: Okay.

13 MR. STONE: All right, that's better.
14 Then we'll know what we're talking about.

15 CHAIR HOLTZMAN: Okay, Mr. Stone has
16 another suggestion of a deletion at the end of
17 that paragraph that we've just been discussing,
18 there's a sentence starting, "The Marine Corps
19 similarly indicated that EO 13669 has had little
20 impact on its Article 32 hearings where
21 investigating officers always Decided whether an
22 exception has been satisfied only after," I mean,

1 why do you want to remove that, and what does the
2 staff have to say about this?

3 MR. STONE: I want to remove it,
4 again, because the same thing, if it has had
5 little impact, again, I don't understand what
6 they're saying about the little impact, and if it
7 hasn't had -- if something hasn't had impact, why
8 are we describing something that is this
9 confusing that I can't figure out what they're
10 saying? If it hasn't had impact, okay.

11 CHAIR HOLTZMAN: Yeah, it's a very
12 dense sentence. Maybe you can have -- maybe you
13 can explain it better and in clearer language,
14 you know, don't try to compress everything.

15 MR. STONE: I mean, I don't understand
16 what "always" in quotation marks means, I mean, I
17 guess I just thought it was clearer for us not to
18 get into that if it's had little impact. Okay,
19 it has had little impact. Then we move on.

20 LT COL McGOVERN: And I guess we just
21 heard the reason why is because usually 513
22 issues don't come up until trial. So we can try

1 to make that clearer.

2 MR. STONE: You could just say that.

3 LT COL McGOVERN: Right.

4 MR. STONE: Because 513 issues do not
5 come up until trial, that seems fine.

6 LT COL McGOVERN: Okay.

7 CHAIR HOLTZMAN: I am sorry, I missed
8 that, somebody came into my office.

9 MR. STONE: She has got a much simpler
10 substitution which is fine with me.

11 CHAIR HOLTZMAN: Oh, okay.

12 LT COL McGOVERN: They've had little
13 impact because 513 issues don't usually come up
14 until trial.

15 CHAIR HOLTZMAN: Fine, okay, good.

16 LT COL McGOVERN: Is the testimony
17 that you all received.

18 CHAIR HOLTZMAN: Excellent, that makes
19 it very clear. Okay.

20 Any objection --

21 LT COL McGOVERN: Marine -- we'll just
22 say to the Marines over here.

1 CHAIR HOLTZMAN: Okay. And I think we
2 have one --

3 LT COL McGOVERN: I actually had a
4 question about Mr. Stone's addition from the
5 paragraph above.

6 MR. STONE: Okay.

7 LT COL McGOVERN: I understand that
8 you're trying to make sure that the investigating
9 officers should not have the ability to disclose
10 the identity, or that the victim has mental
11 health records at all, or the records themselves,
12 but I don't know that we have proof of that
13 distinction as that being past confusion.

14 CHAIR HOLTZMAN: We don't have proof
15 of the distinction as being what?

16 LT COL McGOVERN: That they can't give
17 over that the victim has received mental help,
18 and they cannot -- they cannot order the records
19 themselves. All we have are -- is testimony that
20 there was confusion that they didn't know they
21 had the power to order mental health records.

22 CHAIR HOLTZMAN: Okay, so then, if we

1 don't have testimony, then we can't use that
2 suggested language.

3 LT COL GREEN: Again, this is just
4 we're going to be limited by what the Services
5 said --

6 LT COL McGOVERN: Yeah.

7 CHAIR HOLTZMAN: Right, so I don't
8 think there's any dispute about that, right, Mr.
9 Stone? I mean, if we don't have any testimony to
10 that effect, we can't say that.

11 MR. STONE: We have a lot of testimony
12 about how the records were being released without
13 orders of courts.

14 CHAIR HOLTZMAN: Right.

15 LT COL McGOVERN: That's a separate
16 section. This is saying where IOs knew they had
17 the power to order disclosure of records. That's
18 --

19 MR. STONE: I think this is going back
20 to the medical personnel that we hashed out
21 before, and here, you have used the words that
22 you got from the defense counsel that what

1 they're doing is they want to ascertain whether a
2 victim has received counseling.

3 Well, that, ascertaining it, that
4 determination, whether a person has received
5 counsel, is itself stigmatizing and privileged.
6 That's a fact.

7 LT COL McGOVERN: Well, and so --

8 MR. STONE: You would say, you Kelly -

9 -

10 CHAIR HOLTZMAN: She's not --

11 MR. STONE: -- the mental health
12 record.

13 CHAIR HOLTZMAN: She is --

14 MR. STONE: -- and I spread that
15 around.

16 CHAIR HOLTZMAN: Mr. Stone, that's not
17 the dispute. What she's saying --

18 MR. STONE: Oh.

19 CHAIR HOLTZMAN: -- is that that's
20 not, we don't have evidence of that specific
21 point here, not of that point that you're saying
22 about acknowledgment, but that we don't have

1 evidence to back up the statement you want to
2 make here. Is that correct, Kelly?

3 LT COL McGOVERN: Right, and the
4 sentence before is where I was actually asking to
5 omit his additions, but I think when we're saying
6 what defense counsel said, they certainly aren't
7 going to be saying that it's stigmatizing and
8 also privileged.

9 I mean, that's a value judgment, which
10 if the JPP is going to say it, I think it would
11 be a separate sentence.

12 MR. STONE: Make it a separate
13 sentence.

14 CHAIR HOLTZMAN: Wait a minute. I am
15 not following you.

16 LT COL GREEN: Mr. Stone, this is a
17 summary of what the JPP received as to how this
18 process works.

19 LT COL McGOVERN: This is in black.

20 LT COL GREEN: And so, it's -- they're
21 not intended to be a value judgment. They're
22 just intending to be a recording of what you were

1 told about this by the Services.

2 MR. STONE: And I am trying to point
3 out, you made it sound, the way you wrote this
4 sentence, like the defense counsel weren't asking
5 for anything. They're asking for a tremendous
6 amount. They're asking to undermine the entire
7 privilege. You don't even catch that in here.

8 All privilege is undermined if they
9 can find out, without any need at all, that you
10 have a mental health record.

11 LT COL MCGOVERN: And sir, if you want
12 to address that, we should do it in a paragraph
13 below, which is the analysis in blue.

14 MR. STONE: You want to address it
15 that way, that's fine with me. I'll let you take
16 a stab at it there.

17 LT COL MCGOVERN: But I mean, we
18 haven't had the entire -- does the whole Panel
19 agree that that's your position?

20 LT COL GREEN: And that's the thing,
21 sir, we're trying to capture the summary of your
22 deliberations. That was not a -- I mean, that

1 was not a point the Panel discussed on the 16th.

2 MR. STONE: A whole bunch of times,
3 from the outset when we had the various -- when
4 we finally got some investigators and special
5 victims' counsel to tell you that these guys were
6 going to the hospital, asking for records without
7 knowing what was there, getting them, and
8 bringing them wholesale, that this was the
9 practice.

10 What the defense counsel is telling
11 you here is they're fine with -- as long as they
12 can find out. Well, that disclosure, the
13 disclosure of the existence as well as the
14 records are both, and this goes back to HIPAA,
15 you -- a doctor cannot tell you, a psychiatrist
16 can't give you his list of clients. Neither can
17 the doctors in the military hospitals.

18 This is a crucial issue.

19 CHAIR HOLTZMAN: And I don't see --

20 MR. STONE: I can't --

21 CHAIR HOLTZMAN: -- testimony on -- I
22 am not disagreeing that it's crucial, and maybe,

1 since the Panel hasn't opined on it, you can put
2 that in your separate views if you want to write
3 views on it, but I don't think the Panel
4 discussed that, and I don't actually recall
5 testimony on the point that you've raised, which
6 is an important point.

7 I am not disagreeing with you about
8 it, that the disclosure of the fact of the
9 records is a very important disclosure and could
10 be very harmful to the victim. I am not
11 disagreeing with that point, I am just saying we
12 didn't -- we didn't really deliberate on that
13 point, and I'm not sure we heard specific
14 testimony on that point.

15 I am not disagreeing with you about
16 the importance of it, or -- in any way, shape, or
17 form. I am just trying to figure out what we
18 heard, what we've decided, what we can rule on,
19 and what should be in this report on that
20 subject, not to say that it's not totally valid
21 in some other context.

22 LT COL McGOVERN: Mr. Stone, this part

1 is, again, just addressing part of the procedure
2 of 513. One proposal could be, on page 76 in the
3 complete analysis and recommendations, if the
4 Panel agrees, we could add a sentence that says,
5 "The disclosure of the existence of the records
6 and the release of the records themselves has
7 potential to pierce the privilege," the MRE 513.
8 We can add a general statement there as to what
9 the danger is that you want to emphasize.

10 MR. STONE: You want to try and move
11 it there, why don't you try and move that thought
12 there, and I'll keep an open mind and see if it's
13 there, if you can get it in there.

14 I don't -- as with a lot of these
15 things, I don't care exactly where you put them
16 as long as I think that they're covered.

17 CHAIR HOLTZMAN: I am withdrawing my
18 suggested change number 80. Okay.

19 Based on what Mr. Stone has said and
20 the agreement of staff, that issue will be, that
21 was raised, will be treated at a later point, and
22 the Panel will look at it. That's all; there's

1 nothing else we can say.

2 MR. STONE: Are you --

3 CHAIR HOLTZMAN: Unless we want to
4 disagree with doing anything about it now and
5 just leaving the original staff language of the
6 report.

7 MR. STONE: Are we --

8 CHAIR HOLTZMAN: How do the rest of
9 you feel about that? Mr. Taylor?

10 MR. TAYLOR: You know, I agree with
11 both Mr. Stone and you that this issue is a very
12 important one, that is to say that the release of
13 the information or even the acknowledgment of the
14 information itself, either of these is a severe
15 invasion of privacy.

16 But I don't believe that we've had the
17 evidence provided to us yet that enables us to
18 evaluate sort of what we're going to do with that
19 thought.

20 CHAIR HOLTZMAN: And whether that
21 actually happens, I mean, and where it happens,
22 in what course of the proceeding, where does the

1 problem arise? How does it arise?

2 MR. TAYLOR: Right.

3 CHAIR HOLTZMAN: That's my sense, Mr.
4 Stone, not that it's not a really critical point.
5 It's very critical.

6 MR. STONE: Well, let's see whether
7 Kelly can put that in like the recommendation
8 that we're hoping, for future action. Is that
9 where she's putting it, or will put it?

10 LT COL McGOVERN: Somewhere on page
11 76.

12 MR. STONE: Okay.

13 CHAIR HOLTZMAN: All right.

14 MR. STONE: That will work for me.
15 You can call it as part of what we're calling
16 for.

17 LT COL McGOVERN: And I will try to
18 couch it in terms that Mr. Taylor expressed, that
19 these are a potential invasion of privacy, but we
20 need more information.

21 CHAIR HOLTZMAN: Okay. I wouldn't say
22 a potential, I could say -- I would underline and

1 say "serious" somewhere in there, because it's
2 not just -- it's a very serious invasion of
3 privacy.

4 LT COL McGOVERN: Okay.

5 CHAIR HOLTZMAN: Okay, so we're
6 finished now with section 71. Barbara, I haven't
7 heard from you. Do you have something you want
8 to add to this?

9 JUDGE JONES: No, I think it's a
10 serious issue. I agree that we need more
11 information. I don't recall us learning a lot
12 about it or spending much time on it, if any. So
13 I am happy with where we came out.

14 CHAIR HOLTZMAN: Okay, great.

15 So we're up to page 72. Do we have
16 any comments? I am looking for comments on 72.
17 We have a comment, deletion of 513 -- Mr. Stone
18 wants to delete that. Barbara, just to show you
19 where we are, we're at the -- I don't know how to
20 find this. There's a paragraph that starts
21 "Without question, the modifications to MRE 513,"
22 do you see that?

1 JUDGE JONES: No. Tell me, is it (b),
2 (c) --

3 CHAIR HOLTZMAN: Oh, it's -- you see a
4 list (a), (b), (c), (d)?

5 JUDGE JONES: Yes.

6 CHAIR HOLTZMAN: Below that, it says,
7 "Without question, the modifications to MRE 513"?

8 JUDGE JONES: Oh yes --

9 CHAIR HOLTZMAN: Okay, we're in that
10 paragraph.

11 JUDGE JONES: I got it.

12 CHAIR HOLTZMAN: Okay. We're in the
13 next-to-last line of -- we're in the line
14 stating, "The modification incorporation
15 requirements and procedural standards that are
16 similar to those described in U.S. v. Klemick to
17 ensure that in camera review is necessary." Now,
18 what's the comment here?

19 MR. STONE: The comment is I would
20 strike that, and the reason I would strike it is
21 the modification doesn't, I don't think, cite
22 Klemick. Klemick can be read a couple of

1 different ways, and it doesn't even say this is
2 Klemick, it says "similar to those." It just
3 doesn't add anything. I don't think it's
4 actually supported by anything we ever heard.
5 It's a legal conclusion. It just doesn't belong
6 in there. It's not necessary.

7 It may be true, but it's not something
8 we ever heard.

9 LT COL MCGOVERN: Well, sir, and
10 again, this is analysis, and basically, going
11 back to law school, we state the case, then the
12 NDAA has the same language that the court had
13 used, and so you're just noting that the FY15
14 change looks a whole lot like Klemick did.

15 MR. STONE: But when lawyers get up to
16 argue about it, there are going to be distinct --
17 some, probably defense counsel, may be trying to
18 distinguish Klemick, others may be trying to rely
19 on it, but we don't have a decision that says,
20 FY13 as changed by the fiscal year NDAA, is meant
21 to be Klemick. At least, I don't think we have
22 that anywhere.

1 CHAIR HOLTZMAN: Do we have, I mean,
2 does it incorporate actually all the requirements
3 in the procedural standards, or does it
4 incorporate some? Can we say something like that
5 that would make it a little bit more acceptable?

6 What's the -- I mean, how does the
7 NDAA compare with Klemick?

8 LT COL McGOVERN: Right. The -- in
9 the middle of the page, you have the 1, 2, 3, as
10 the holding, or the standard, the test imposed by
11 Klemick, and then (a), (b), (c), (d), is the FY15
12 NDAA language, which pretty much mirrors, except
13 now the NDAA added that they must -- the defense
14 must demonstrate by a preponderance of the
15 evidence.

16 CHAIR HOLTZMAN: Okay, so in other
17 words, it incorporates all the standards of
18 Klemick and adds in an additional one?

19 LT COL GREEN: That's correct.

20 CHAIR HOLTZMAN: Then do you want to
21 say that, or do you want to put that in a
22 footnote, or how do you want to deal with it?

1 LT COL GREEN: Right. I think the
2 paragraph right above there says that it
3 incorporates the standards and addresses the
4 requirements, so --

5 LT COL MCGOVERN: An additional
6 requirement --

7 LT COL GREEN: -- we can delete that
8 sentence from the analysis. I don't think it
9 really changes anything.

10 CHAIR HOLTZMAN: Okay. Any objection
11 from any member of the Panel?

12 (No audible response.)

13 CHAIR HOLTZMAN: If not, we are going
14 to approve 72 with that sentence eliminated.

15 Page 73. I am assuming that we have
16 some -- I see a big comment, which is where? Are
17 you proposing -- I mean, I don't see the bottom
18 of this comment, so this is a very heavy-duty --

19 MR. STONE: Scroll down.

20 CHAIR HOLTZMAN: I am --

21 MR. STONE: This is me saying all of
22 this --

1 CHAIR HOLTZMAN: He wants to -- right,
2 Mr. Stone wants to eliminate -- here are the
3 sections, wait, I lost them, there are so many.
4 What page are we on now?

5 JUDGE JONES: Are we in (d) there, "In
6 Camera Inspections"?

7 MR. STONE: We'd eliminate all of (d)
8 and all of (e), they don't -- they're not
9 relevant after the Fiscal Year '15 NDAA changes.
10 We're talking about old stuff, and since we've
11 already said how they're going to do, and we've
12 talked about the new changes, I don't know why
13 we're going back to rehash confusing old stuff.
14 It's not even on the --

15 CHAIR HOLTZMAN: Wait, what page are
16 we on? What page are we on? 75? 74? 75 and
17 74, is that it? No, where are we?

18 MR. STONE: (D) and (e), whatever page
19 that's on.

20 LT COL GREEN: There are comments
21 within both of those --

22 CHAIR HOLTZMAN: What page are we on,

1 please? Help me --

2 LT COL MCGOVERN: 73, ma'am.

3 LT COL GREEN: 73 and 74.

4 CHAIR HOLTZMAN: Okay, so -- well, and
5 actually 72. Do you want to -- is that right?

6 72, you want to omit -- no, it's more, it's page,

7 yeah, it's (d), which is on page 72, In Camera

8 Inspection of Mental Health Records, you want to

9 eliminate that, and you want to eliminate (e),

10 Production or Admission of Mental Health Records.

11 And the ground is that this is all redundant.

12 MR. STONE: It's been bypassed. It's

13 all old.

14 CHAIR HOLTZMAN: Okay, old.

15 MR. STONE: We're going to have to

16 rewrite it later.

17 LT COL GREEN: And Mr. Stone, the --

18 you are right that it does describe what the

19 Panel heard about pre-FY15 procedures. The end

20 of both of those sections provides a paragraph

21 that says what the changes in the FY procedure

22 will do to the procedures.

1 I mean, again, just from the
2 perspective you all expressed before in terms of
3 establishing the record of what you heard, you
4 know, this is really -- and it is significant
5 testimony that you heard in both of these areas.

6 CHAIR HOLTZMAN: So what you're
7 saying, Kyle, is the reason it's in there is
8 because this reflects the testimony and the work
9 of the committee? Is that correct? The Panel.

10 LT COL MCGOVERN: Yes.

11 LT COL GREEN: Yes, and it also shows
12 the evolution because there is some description
13 --

14 CHAIR HOLTZMAN: Okay.

15 LT COL GREEN: -- in both of those of
16 what the process, what the procedures will be
17 under the FY15 standard.

18 CHAIR HOLTZMAN: Okay, so how does the
19 Panel feel? Do you want to, you know, how do you
20 feel about eliminating these sections?

21 JUDGE JONES: I would leave them in.
22 It would help to explain what the changes are,

1 and were, you know, related to. It's fine. It's
2 good background.

3 CHAIR HOLTZMAN: Mr. Taylor, how do
4 you feel about this?

5 MR. TAYLOR: Well, in addition to the
6 Judge's statement, I think it's helpful because
7 the people who actually have the job of
8 implementing these rules need to have as much
9 background as possible as to the kind of problems
10 that people have encountered in the past so
11 they'll come up with some better solutions, so I
12 would leave them in as well.

13 CHAIR HOLTZMAN: Okay. I agree with
14 Judge Jones and Mr. Taylor, so these will stay,
15 and so that's -- this means that -- do we have
16 any other changes to 73?

17 (No audible response.)

18 CHAIR HOLTZMAN: If not, 73 is
19 accepted, and do we have any other changes to
20 page 74? Let me just look at that because part
21 of 74 is -- I want to see how much of 74 is
22 covered by this.

1 Oh, okay, well, so 74, up to the
2 middle of the page where it says, "Other Issues
3 Related to 513," I guess we've approved.

4 Now we're up to "Other Issues Related
5 to 513," and here we have another comment from
6 Mr. Stone at the bottom. We're in (a), Barbara,
7 to make sure you're following us,
8 "Constitutionally Required Exception to MRE 513."

9 JUDGE JONES: I am there, I am there,
10 thank you.

11 CHAIR HOLTZMAN: You there? The
12 second paragraph, starting at "A civilian
13 expert."

14 JUDGE JONES: Right.

15 CHAIR HOLTZMAN: Okay, the end of that
16 paragraph, Mr. Stone wants to delete the part
17 saying -- after the lines 1, 2, 3 from the
18 bottom, and the fourth line --

19 MR. STONE: It begins "Such as."

20 CHAIR HOLTZMAN: Right.

21 MR. STONE: The reason I want to
22 delete where it begins "Such as" is because those

1 are absolutely incorrect "Such ases." Now
2 whether they came out incorrect from the
3 witnesses or whether this is stuff that just
4 says, "Practitioners told" that the staff put
5 together, that's not correct.

6 Brady is not evidence of bias or prior
7 inconsistent statements affecting credibility.
8 It's too confusing. Just stop with "Brady-type
9 evidence that's favorable to the defense,"
10 period. We don't have to then give examples that
11 aren't right.

12 CHAIR HOLTZMAN: Well, Brady-type
13 evidence is always favorable to the defense.
14 It's supposed to be.

15 MR. STONE: Yeah, right, okay, well
16 you could stop with "believes Brady-type" --

17 CHAIR HOLTZMAN: Brady-type evidence,
18 period.

19 MR. STONE: Right.

20 JUDGE JONES: Yes.

21 CHAIR HOLTZMAN: Is everyone in
22 accordance with that? Staff, do you have an

1 objection?

2 LT COL MCGOVERN: Yes ma'am. We're
3 going back and we're adding in a lot of specific
4 examples of collateral misconduct and other
5 victim things. This is important to capture what
6 the defense counsel cited as things that are --
7 when the exception arises in litigation. This is
8 Colonel Baker's testimony.

9 CHAIR HOLTZMAN: Well why don't we
10 just say, instead of -- yeah, but he may have
11 said something that's incorrect, so maybe what we
12 can say, something like when the defense believes
13 Brady-type evidence is involved, or evidence of
14 bias, or prior inconsistent statements, so maybe
15 instead of --

16 MR. STONE: Now then you're going to
17 have to go into more. Then you're going to have
18 to go prior inconsistent statements are not what
19 they were seeing as part of the constitutionally-
20 required exception. That's credibility. That
21 has nothing to do with the Constitution.

22 CHAIR HOLTZMAN: Well maybe it's --

1 JUDGE JONES: Well --

2 CHAIR HOLTZMAN: -- tried to get those
3 statements in.

4 JUDGE JONES: If we're just reporting
5 what someone said, I think we're okay. You could
6 make an argument that evidence that -- oh, no,
7 I'm sorry, I thought it said "the defendant."
8 Never mind.

9 I don't think we should sit here
10 parsing whether it's -- all these examples are
11 Brady or not. What are we trying to say here?
12 What's the point?

13 MR. STONE: I don't even know why we
14 need the sentence before that, the one that
15 begins, "Practitioners." The point is in the
16 first sentence.

17 CHAIR HOLTZMAN: Well, but the -- I am
18 not sure I agree with that because they told us
19 that litigation arises over this constitutional
20 exception.

21 MR. STONE: Well first of all, we
22 shouldn't say "practitioners," we ought to be

1 saying "defense counsel."

2 LT COL GREEN: Well, Colonel Baker is
3 a military judge, so he is not a defense counsel.

4 LT COL McGOVERN: And he is citing the
5 types of issues that have come before him
6 regarding 513 --

7 CHAIR HOLTZMAN: Right.

8 LT COL McGOVERN: -- which is when we
9 can't get the records, it's helpful to know what
10 those issues are when other people are asserting
11 to the Panel that this should be an absolute
12 privilege, here he is saying well these are when
13 the exception is being raised as an example.

14 MR. TAYLOR: Tom Taylor. If the
15 objection is that these categories are not
16 covered by Brady, then why couldn't we just say,
17 "believes that there is evidence that is
18 favorable to the defense, such as" --

19 CHAIR HOLTZMAN: Right.

20 MR. TAYLOR: -- and keep a list there.

21 CHAIR HOLTZMAN: Right.

22 LT COL McGOVERN: That's great, sir.

1 MR. STONE: That sounds a lot better,
2 actually.

3 CHAIR HOLTZMAN: Do you want to add at
4 the end of that list, "or Brady material"?

5 MR. STONE: I don't want to add it
6 because I don't think that's what they're talking
7 about, if those are the examples you used.

8 And again, you know, that is --

9 CHAIR HOLTZMAN: Okay, well I don't
10 remember. I am just -- I guess the staff can go
11 back and take a look and see actually what they
12 mentioned.

13 LT COL MCGOVERN: Yes ma'am.

14 LT COL GREEN: We'll conform that and
15 just include -- and make sure that it's no
16 connection between those.

17 CHAIR HOLTZMAN: Yes. Okay, so that
18 solves that problem.

19 So without any further objection, 74
20 is approved. I'll just --

21 MR. STONE: I took out -- oh.

22 CHAIR HOLTZMAN: Wait, wait, so --

1 MR. STONE: Do you have the next
2 sentence? Is that on your 74 or 75?

3 LT COL GREEN: Comment 84.

4 CHAIR HOLTZMAN: What?

5 MR. STONE: It says, "Case law
6 provides little guidance on this exception," but
7 then we go into the cases, so I don't understand
8 why we had that, to say, "Case law provides
9 little guidance on this exception," and you
10 described the cases, so I would just say "The few
11 Service appellate courts to address the issue,"
12 blah blah blah. It sounds like we're saying two
13 different things there.

14 CHAIR HOLTZMAN: Staff, what's your
15 comment about that?

16 LT COL GREEN: There's probably more
17 detail in the footnote where it says that the
18 Court of Appeals for the Armed Forces has only
19 discussed the issue once, and only in a
20 procedural context, so --

21 MR. STONE: Well put the footnote on
22 the end of the paragraph, merge it into 745, 744

1 and 745 or whatever if you want, but you can't
2 say case law provides little guidance, but there
3 is a case on point. I mean, it's just -- that
4 doesn't look right.

5 LT COL GREEN: Right, yes. Part of
6 the issue is that the Service appellate courts
7 only apply to each of the specific Services, so
8 if the Navy Court is the only one who said
9 anything about it, then the Air Force has no
10 guidance other than -- other than dicta.

11 CHAIR HOLTZMAN: Okay, but still --

12 MR. STONE: But you can start the next
13 sentence by saying, instead of the few Service
14 appellate courts, which is plural, you could say
15 the only Service court -- appellate court to
16 address this is the Navy Court that said blah
17 blah blah. That's all.

18 CHAIR HOLTZMAN: Right.

19 LT COL McGOVERN: Okay, we can address
20 that.

21 CHAIR HOLTZMAN: Anybody object to
22 that? Staff, are you okay with that?

1 LT COL MCGOVERN: Yes ma'am.

2 LT COL GREEN: Yes ma'am.

3 CHAIR HOLTZMAN: Okay. So now we have
4 another suggestion, I guess, I am trying to find
5 it, on page -- what page are we on, 75?

6 LT COL GREEN: Yes ma'am, the
7 paragraphs that begin, "Before passage of the
8 FY15 NDAA."

9 CHAIR HOLTZMAN: You want to delete --
10 Mr. Stone wants to delete the whole --

11 MR. STONE: Rest of that, right down
12 to B.

13 CHAIR HOLTZMAN: You want to --

14 MR. STONE: This is a whole --

15 CHAIR HOLTZMAN: -- delete --

16 MR. STONE: -- this is a whole --

17 CHAIR HOLTZMAN: Page 74 --

18 MR. STONE: -- argument --

19 CHAIR HOLTZMAN: -- I just want to
20 make sure, yeah.

21 MR. STONE: This is a whole argument
22 now that is moot.

1 CHAIR HOLTZMAN: Well, there's -- what
2 about the last paragraph? "While the NDAA does
3 eliminate the constitutionally-required
4 exception, it's possible that issues may continue
5 to arise if the courts follow the series of fact
6 that MRE privileges, by implication, must yield
7 to constitutional requirements."

8 MR. STONE: If you want to leave that
9 paragraph, that's fine. That's fine. That one
10 is fine.

11 LT COL GREEN: And I think some of the
12 -- some of the argument that the Panel heard was
13 along those lines, that because -- like the MRE
14 privileges must yield to constitutional
15 requirements, again, it's more just a matter of
16 clarification on what the Panel heard regarding
17 constitutional issues and the constitutional
18 exception.

19 CHAIR HOLTZMAN: Now what has the MRE
20 done about 513? Has it taken out the
21 constitutionally-required exception for both pre-
22 trial and trial?

1 LT COL MCGOVERN: Yes ma'am.

2 LT COL GREEN: Yes ma'am. The
3 constitutionally-required exception has been
4 removed from 513, or it will be as of June -- I
5 mean, the implementation date is June '15.

6 CHAIR HOLTZMAN: Right, but that still
7 doesn't mean that courts might not decide that
8 there's a constitutional exception.

9 LT COL MCGOVERN: Right.

10 CHAIR HOLTZMAN: Or constitutional
11 requirements.

12 LT COL MCGOVERN: Yes ma'am, and
13 that's why that last sentence is there.

14 LT COL GREEN: But the issue, and I
15 think that first paragraph really lays it out,
16 some say that it's different and unnecessary,
17 others say that there has to be a
18 constitutionally-required -- and then you heard
19 from civilian experts who talked about different
20 privileges in different states, and those have
21 never been overturned -- those that do not have a
22 constitutionally-required exception, and those

1 have never been overturned on constitutional
2 grounds.

3 LT COL McGOVERN: I do think that the
4 "in contrast" paragraph can be deleted. Mr.
5 Stone is right. That doesn't apply now that
6 Congress has removed the constitutional
7 exception. It doesn't really matter what the
8 senior defense counsel thought about it.

9 CHAIR HOLTZMAN: So you still want to
10 keep, though, the first paragraph, the staff?

11 LT COL McGOVERN: Yes ma'am.

12 LT COL GREEN: I think that represents
13 some important details about the constitutional
14 discussion about generally psychotherapist
15 issues.

16 CHAIR HOLTZMAN: Well, let's -- I
17 mean, let's take a vote on it.

18 MR. STONE: What if you just keep half
19 of it, the last half? Starting with "two
20 witnesses," is that what you want? And "Supreme
21 Court case law," I mean, let's at least talk
22 about --

1 CHAIR HOLTZMAN: Can I just -- I mean,
2 I'm sorry, but you know, time is of the essence
3 as far as I'm concerned, and if you're talking
4 about two sentences to be in or out, I think we'd
5 just as soon vote on it, whether the whole
6 paragraph is out or not, and let's just get it
7 over with please.

8 So I would just ask if anybody
9 supports Mr. -- I mean, who supports Mr. Stone in
10 asking for the deletion of this paragraph before
11 "The passage of the FY '15 NDAA"?

12 (No audible response.)

13 CHAIR HOLTZMAN: Okay, well, you're
14 outvoted on this one.

15 MR. STONE: I am, go ahead.

16 CHAIR HOLTZMAN: Let's --

17 MR. STONE: Keep going, that's fine.

18 CHAIR HOLTZMAN: Okay. So aside from
19 that, we're finished -- any other objection to
20 page 75? Is that where we are? Yeah, 75.

21 (No audible response.)

22 CHAIR HOLTZMAN: Okay, next page is

1 76. Okay. Mr. Stone has an addition on the --
2 okay, Barbara, just to locate us, we're on page
3 -- number 5, "JPP" --

4 JUDGE JONES: Oh, I'm there.

5 CHAIR HOLTZMAN: "Analysis and
6 Recommendations," okay.

7 In the first paragraph, Mr. Stone
8 wants to eliminate the last line and half of the
9 prior line, starting with "but these new rules
10 and procedures."

11 MR. STONE: No, I want to add that.

12 CHAIR HOLTZMAN: I am sorry, you want
13 to add it, okay.

14 MR. STONE: I wrote --

15 CHAIR HOLTZMAN: I am sorry, it's hard
16 to tell from this whether these are added or
17 subtracted, so I apologize. Please forgive me.
18 What are we -- staff, do you have any objection
19 to that addition?

20 JUDGE JONES: What's the addition?

21 CHAIR HOLTZMAN: Do you want to read
22 it, Mr. Stone --

1 MR. STONE: Sure.

2 CHAIR HOLTZMAN: -- please?

3 MR. STONE: It had said, "The Panel
4 agreed that expanding MRE 513 privileges and
5 eliminating the constitutionally-required
6 exception are positive steps towards protecting a
7 victim's privacy interests," and I added, "but
8 these new rules and procedures are not yet
9 enforceable if misapplied in any mandatory victim
10 appellate remedy."

11 Pointing out, we've got a new change,
12 but we still don't have an appellate remedy, so
13 if a judge wants to ignore it, it isn't going to
14 help.

15 CHAIR HOLTZMAN: Well --

16 JUDGE JONES: I don't -- why wouldn't
17 you have an appellate remedy?

18 CHAIR HOLTZMAN: An interlocutory
19 appellate remedy, isn't that what you're talking
20 about?

21 JUDGE JONES: Oh, that's true --

22 MR. STONE: I wrote "mandatory." All

1 we can do is file a writ and pray that they want
2 to --

3 CHAIR HOLTZMAN: You're talking about
4 mandatory, aren't you? I mean, interlocutory --

5 MR. STONE: I say any mandatory victim
6 appellate --

7 CHAIR HOLTZMAN: Okay.

8 MR. STONE: Right, mandatory.

9 JUDGE JONES: So we're back to talking
10 about victims' rights here?

11 CHAIR HOLTZMAN: In essence, yes.

12 MR. STONE: We're talking about how
13 the procedure, how the substantive change is
14 good. We now have a procedure that vindicates
15 it.

16 JUDGE JONES: I don't have an opinion
17 on that. I am not sure I've thought about that.

18 CHAIR HOLTZMAN: How does the staff
19 feel?

20 LT COL GREEN: I think the staff is
21 very confused by this. I don't think we
22 understand the -- I mean, I think the point of

1 the first sentence in what the Panel said was
2 that generally, you thought that the FY15 NDAA
3 created a positive move, and so in terms of the
4 forecasted outcome of this, I mean, that seems --
5 you all didn't discuss that, so --

6 LT COL MCGOVERN: And I just think
7 it's mixing the issues, sir, Mr. Stone. We went
8 through and I think pretty thoroughly addressed
9 the changes with the discretionary versus
10 mandatory writ of mandamus and the access to
11 information and the procedures, so to reiterate
12 it here is just confusing the issues.

13 MR. STONE: The reason I put it here
14 is because here we're talking, it's almost like
15 we're celebrating that as of -- you say, as of
16 June 2015, look at the new stuff we got that
17 helps clarify things, but I'm pointing out they
18 didn't make the new substantive procedures
19 enforceable by anybody anyway, by special
20 victims' counsel or even prosecutors.

21 It's not enforceable. They changed
22 the standard, but that's only going to have

1 meaning -- a right only has meaning if you can
2 enforce it --

3 LT COL McGOVERN: Right --

4 MR. STONE: -- and that's the point
5 I'm making.

6 LT COL McGOVERN: So Congress decided
7 in FY15 that if a -- a victim may petition the
8 court to raise what they perceive as a violation
9 of 412 or 513, and we discussed that in another
10 part of the report, so --

11 MR. STONE: Well then, maybe you want
12 to put there that that's -- but they did not give
13 a mandatory right. I mean, that's a permissive
14 right, you could always have filed that.

15 LT COL McGOVERN: Right, and well, and
16 that's, I think, to be interpreted by the courts
17 whether it's mandatory or discretionary and how
18 much it's modeled after the CVRA, but it's not
19 the issue here. This section, I think we were
20 trying to keep it pretty clean by saying these
21 are analyses and recommendations on 513.

22 MR. STONE: Well, I think that's --

1 that's part of 513, that we got enforceability
2 language that's unclear that came with it.

3 CHAIR HOLTZMAN: Mr. Taylor, do you
4 have any wisdom on the subject?

5 MR. TAYLOR: Well, now, I wouldn't
6 consider what I'm about to say wisdom, but it
7 does seem that we've already addressed this issue
8 earlier when we talked about this whole issue of
9 the circumstances under which you can use the
10 interlocutory appeal process in order to
11 vindicate any of these rights, so it doesn't seem
12 to me to be necessary here.

13 CHAIR HOLTZMAN: Well, that's kind of
14 my feeling about it although I think it's -- it,
15 you know, the fact that we have this new right
16 kind of just adds to the importance of the
17 interlocutory appeal, but I don't know that we
18 need to say it here if the staff feels it's
19 confusing and we've already addressed the issue
20 of those rights, of the appeals, so I'm going to
21 side with Mr. Taylor about this.

22 Barbara, where are you on this?

1 JUDGE JONES: No, I agree, I don't
2 think we should go into it here.

3 CHAIR HOLTZMAN: Okay. Okay, let's go
4 on to the next comment, which is from me on page
5 -- which goes to attorney or military judge.
6 Which attorney are we talking about? Is this a
7 military attorney? I mean, who is this that
8 we're talking about?

9 It's -- I'm sorry, it's in the next
10 paragraph, the next-to-last line, where it says
11 "Some presenters expressed concern that mental
12 health records were too easily located and
13 obtained by criminal investigators who would then
14 turn them over to prosecutors without
15 authorization or appropriate legal oversight by
16 an attorney or military judge." You mean an
17 investigative officer, isn't that right?

18 LT COL GREEN: No.

19 LT COL McGOVERN: No ma'am.

20 LT COL GREEN: This is the normal
21 investigations process. This is outside --

22 CHAIR HOLTZMAN: Well what attorney

1 are you talking about?

2 LT COL GREEN: The legal advisor to
3 the medical treatment facility.

4 CHAIR HOLTZMAN: Oh. I -- is that
5 what you're talking about?

6 LT COL McGOVERN: Right.

7 CHAIR HOLTZMAN: I see.

8 LT COL McGOVERN: Proper legal
9 oversight of medical personnel --

10 LT COL GREEN: Medical law personnel.

11 MR. STONE: Well why don't you put in
12 what you just told us, by the --

13 CHAIR HOLTZMAN: Yeah, why did I just
14 say that at all? I didn't know who you were
15 talking about. I thought it was an IO or
16 something because you're talking about a military
17 judge, so that's what I thought.

18 LT COL McGOVERN: There's usually a
19 JAG assigned to a military treatment facility, so
20 for -- you would hope that they are training or
21 providing oversight to the release of those
22 records.

1 CHAIR HOLTZMAN: Okay. So maybe, can
2 you just make that clear what attorney we're
3 talking about there?

4 LT COL GREEN: We will.

5 LT COL McGOVERN: Yes ma'am.

6 CHAIR HOLTZMAN: Okay. What other
7 question do we have here, or comment? Is this a
8 recommendation that we're making? Why did I say
9 that? This is recommendation --

10 LT COL GREEN: Ma'am, we've had -- it
11 is. This is a recommendation, it's
12 Recommendation 10, so --

13 CHAIR HOLTZMAN: Okay, so fine. Then
14 I withdraw my comment.

15 Let's see, are there any other
16 comments here? Mr. Stone has a comment --

17 MR. STONE: There's some --

18 CHAIR HOLTZMAN: -- recommended
19 addition.

20 MR. STONE: Okay, but did they see the
21 mistyping that they've got to fix in the
22 paragraph under your all's --

1 LT COL MCGOVERN: Yes sir, yes.

2 MR. STONE: Okay.

3 CHAIR HOLTZMAN: All right, so at the
4 end, Barbara, just to locate you, we are -- where
5 are we?

6 MR. STONE: Last paragraph of the --

7 CHAIR HOLTZMAN: Yes, but she doesn't
8 have the page. "JPP announced," number five.
9 Last paragraph, line one, two, three, four, five,
10 paragraph five.

11 JUDGE JONES: Right.

12 CHAIR HOLTZMAN: In the middle of the
13 paragraph, it says "Therefore." Are you adding
14 or detracting -- subtracting?

15 MR. STONE: I'm adding. You'd see it
16 crossed --

17 CHAIR HOLTZMAN: Okay, okay.

18 MR. STONE: -- out if I was taking
19 out.

20 CHAIR HOLTZMAN: Okay, fine. So you
21 want to read for Barbara what you're adding,
22 please?

1 MR. STONE: The line before talks
2 about the fact -- let's see. You've got to read
3 it in context, so the line before, it says
4 "Changes to MRE 513 in the Fiscal Year NDAA will
5 require military judges to follow clear standards
6 at initial hearings and permit judges to conduct
7 in camera reviews of records only after the party
8 has met its burden at the initial hearing and an
9 examination of the information is necessary to
10 rule on the production or admissibility of
11 protecting records or communications."

12 I added, "Therefore, the victim of a
13 criminal offense must be furnished ex parte
14 before their release any records which a military
15 decision-maker proposes to release so that the
16 victim can be meaningfully heard as to the
17 propriety of the proposed release, extent, and
18 any necessary pre-release protective orders."

19 LT COL McGOVERN: Sir, is that your
20 recommendation? Because that's not mandated.

21 MR. STONE: These -- okay, that's my
22 recommendation. If it's not being done that way,

1 that judge is going to be mandamus tomorrow.
2 He can't make a decision or turn it over and not
3 show it to the person first and his attorney.
4 That's the whole point of having an attorney
5 there who says, as we had this discussion before,
6 excuse me, Judge, you just turned over ten pages
7 that don't relate to what you said you were
8 turning over, you made a mistake.

9 It doesn't get turned over, and that's
10 the first time the victim sees what gets turned
11 over, gets to look in every state of the Union
12 and federally. It may only be five minutes. He
13 gets to look at it if he has an objection to
14 make. Otherwise, his lawyer is of no value
15 whatsoever.

16 LT COL MCGOVERN: I understand, but
17 there is no current requirement that that happen,
18 and you didn't receive any testimony as to
19 whether that does or does not happen, so --

20 CHAIR HOLTZMAN: Maybe this is
21 something that we need to take up on the
22 implementation of 513, how it's working.

1 JUDGE JONES: Yes, I mean I don't
2 disagree with you, Mr. Stone. It doesn't do the
3 victim any good not to know what they're talking
4 about at a hearing.

5 LT COL MCGOVERN: According to the
6 Rule, the patient must be afforded a reasonable
7 opportunity to attend the hearing and be heard at
8 the patient's own expense unless they've been
9 subpoenaed or ordered, so to make this a
10 requirement I think would require further study
11 because you're not always sure that the victim
12 will even be at the hearing.

13 MR. STONE: Of course, but if he's
14 there, how is he going to be heard on the records
15 --

16 LT COL MCGOVERN: No, I hear what
17 you're saying, I just don't --

18 MR. STONE: -- if he hasn't gotten the
19 key to what the judge thinks is relevant to be
20 turned over?

21 JUDGE JONES: I just don't think we
22 need to put that in now. I think we ought to

1 look at this, and then I think obviously, if the
2 person is there, they have to have been given the
3 records or they can't meaningfully represent
4 themselves. But I'll even put it in now.

5 CHAIR HOLTZMAN: Mr. Taylor?

6 MR. TAYLOR: It seems to me that this
7 is an excellent idea in terms of how to implement
8 this, but it's not really where we are right now.

9 CHAIR HOLTZMAN: I agree. Okay.

10 The last sentence in that paragraph, I
11 think you're taking out -- okay, so wait a
12 minute.

13 MR. STONE: I was taking out --

14 CHAIR HOLTZMAN: Yeah, page --

15 MR. STONE: -- and the whole
16 discussion about Klemick again, which reappears
17 here and says it's similar. It's the same thing
18 we just dealt with.

19 CHAIR HOLTZMAN: Oh, okay. I am -- I
20 was confused about what was being taken out.
21 Okay, so we didn't agree to the addition. Now we
22 have a subtraction which is Mr. Stone wants to

1 take out the language in that paragraph starting
2 with "The modification incorporates
3 requirements," do you see where that is, Barbara?

4 JUDGE JONES: I'm sorry, I'm totally
5 confused.

6 CHAIR HOLTZMAN: Okay. We have a
7 paragraph, "The JPP also considered
8 modifications," we just visited --

9 JUDGE JONES: Yes, I got it, right.

10 CHAIR HOLTZMAN: Okay. At the end of
11 that paragraph, there's a sentence that starts
12 right after the footnote 758, "The modification
13 incorporates requirements and procedural
14 standards," do you see that?

15 JUDGE JONES: Yeah I got it, similar
16 to Klemick.

17 CHAIR HOLTZMAN: Okay, right. Mr.
18 Stone wants to take that out. Staff, do you want
19 to respond to that please?

20 LT COL GREEN: I think we deleted that
21 before, so we can just -- it's the same thing
22 here, ma'am.

1 CHAIR HOLTZMAN: Okay.

2 LT COL McGOVERN: I mean, these
3 sentences that -- along with the next sentence
4 that we're requesting to delete, then, it's
5 listing here that the JPP considered these
6 modifications all to reach the conclusion that
7 you're going to look at all those and see how the
8 military judges addresses them, so that's why it
9 seems like a rehashing, but it's --

10 CHAIR HOLTZMAN: I see.

11 LT COL McGOVERN: -- acknowledging in
12 one place what all you're considering.

13 MR. STONE: And I was taking all of
14 that out except the very last sentence because
15 they know that this is an open topic that we're
16 remanding to a subcommittee and we're going to
17 look at again, so we don't have to tell them why
18 or how we're going to look at it again. We
19 already told them this is going to the
20 subcommittee before it comes back to us.

21 CHAIR HOLTZMAN: Yeah, I think it is
22 redundant.

1 LT COL MCGOVERN: I don't know if
2 we've ever -- if you mentioned before or how it
3 consists with analysis that the FY15 NDAA's
4 removal of the constitutionally-required
5 exception may reduce the victim's concerns
6 because it narrows the grounds when the records
7 may be requested for use at trial. I -- I think
8 that --

9 CHAIR HOLTZMAN: Oh, I see.

10 MR. STONE: I don't mind that sentence.

11 LT COL MCGOVERN: Okay, we can keep
12 that one.

13 LT COL GREEN: But that -- Ms.
14 Holtzman, you had a comment about that in terms
15 of that it suggests a need for extra-
16 constitutional scrutiny, which is not true?

17 JUDGE JONES: I think that's a tricky
18 sentence, so I'd take it out.

19 CHAIR HOLTZMAN: I don't know, yeah --

20 JUDGE JONES: For instance --

21 CHAIR HOLTZMAN: -- I'm not sure I
22 agree with the comment I made there. But I --

1 Barbara, you want the second sentence out too,
2 about the in camera review?

3 JUDGE JONES: Oh, you mean one of the
4 narrowing concerns?

5 CHAIR HOLTZMAN: Right.

6 LT COL McGOVERN: What if we just said
7 "In addition, the FY15 NDAA removes the
8 constitutionally-required exception," period, and
9 that you all are going to look at all of those
10 changes?

11 CHAIR HOLTZMAN: That's fine.

12 JUDGE JONES: That's fine with me.

13 CHAIR HOLTZMAN: That's fine with me.

14 MR. STONE: Great.

15 CHAIR HOLTZMAN: Okay. So with those
16 -- so 76 is, as we've agreed to -- do we have any
17 other comments or objections to 76?

18 (No audible response.)

19 CHAIR HOLTZMAN: If not, we've approved
20 it subject to our agreement, and 77, also,
21 subject to the -- what we've just agreed on.

22 Okay, so that just leaves footnotes,

1 right? Are we going through footnotes?

2 LT COL GREEN: We don't have any --

3 MR. STONE: I wasn't going through
4 footnotes.

5 CHAIR HOLTZMAN: Okay, fine, great.

6 All right. So then we're all finished.

7 So you'll send us a draft as soon as
8 you can, and then we have to get it back to you,
9 when, tomorrow, Sunday?

10 LT COL GREEN: It's a matter, ma'am,
11 if we want it to go to the -- if we want Alice to
12 review for editing purposes in advance, she's
13 going to need some time to do that, in which case
14 we can get it to you on Monday.

15 CHAIR HOLTZMAN: And then we have to
16 get it to you when?

17 LT COL GREEN: Well, we need -- we
18 need approval, really, the same day.

19 CHAIR HOLTZMAN: Okay. Can we do
20 that? So we just have -- it has to be approved
21 on Monday. Okay.

22 LT COL GREEN: And --

1 CHAIR HOLTZMAN: And if we don't get
2 the -- if we don't get our changes in to you,
3 then that's it.

4 LT COL GREEN: Right.

5 CHAIR HOLTZMAN: Tough.

6 LT COL GREEN: And ma'am, the -- I
7 sent you all -- I emailed you a copy of the
8 transmittal letter, and if you could --

9 CHAIR HOLTZMAN: I can't stay for
10 this, Kyle, I'm going to have to hang up. Okay,
11 thanks everybody, I really appreciate your
12 patience with me and your good humor about all
13 this, and your participation, most of all, and
14 your good comments.

15 MR. STONE: Thank you.

16 CHAIR HOLTZMAN: I'm going to have to
17 go. Bye-bye.

18 LT COL GREEN: If you could send me
19 your signatures on those once -- we need to
20 incorporate those into the document, so we'll
21 just need good quality scans if you need to FedEx
22 something to us in advance. But obviously, we

1 won't use any of that until we know everybody has
2 approved, so we'll make sure that happens.

3 So anything else --

4 JUDGE JONES: Do you need --

5 LT COL GREEN: -- before we close?

6 Ma'am?

7 JUDGE JONES: Do you need -- you're
8 there, right, Kyle -- the signature?

9 LT COL GREEN: Yes. Yes ma'am.

10 JUDGE JONES: Okay, very good. Thanks
11 for all the work you've done. It's great.

12 LT COL GREEN: Yes ma'am.

13 MR. TAYLOR: Good job to the staff.
14 Everybody did a great job. Thank you very much.

15 LT COL GREEN: Thank you, sir. Thanks.

16 MR. STONE: Ditto, great.

17 LT COL GREEN: Thanks Mr. Stone. And
18 Bill Sprance will close the meeting.

19 MR. SPRANCE: The meeting is now
20 closed. Have a good weekend.

21 (Whereupon, the above-entitled matter
22 went off the record at 3:24 p.m.)

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