

## UNITED STATES DEPARTMENT OF DEFENSE

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## JUDICIAL PROCEEDINGS PANEL

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## PUBLIC MEETING

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FRIDAY  
APRIL 10, 2015

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The Panel met in the U.S. District Court for the District of Columbia, 333 Constitution Avenue, N.W., Courtroom #20, 6th Floor, Washington, DC, at 8:30 a.m., Hon. Elizabeth Holtzman, Chair, presiding.

## PRESENT

Hon. Elizabeth Holtzman  
Victor Stone (by telephone)  
Tom Taylor  
VADM(R) Patricia Tracey

**WITNESSES**

MG Jeffrey Snow  
Nathan Galbreath, Ph.D.  
Lilia M. Cortina, Ph.D.  
Vicki Magley, Ph.D.  
Michael F. Noone, Jr., S.J.D.  
Patricia J. Harned, Ph.D.  
Matthew F. Soulier, M.D.  
Veronique N. Valliere, Psy.D.  
Monique Ferrell  
RADM Richard P. Snyder  
Col Scott S. Jensen  
Jay Aanrud  
Patrick Gookin  
Nilgun Tolek  
John K. Vallario  
Douglas Huff  
Jon Ruskin  
Julia Andrews

**STAFF:**

Lieutenant Colonel Kyle W. Green, U.S. Air  
Force - Staff Director  
Lieutenant Colonel Kelly L. McGovern, U.S.  
Army - Deputy Staff Director  
  
Bill Sprance - Alternate Designated Federal  
Official

C O N T E N T S

DELIBERATIONS ON VICTIM COMPENSATION AND RESTITUTION. . . . . 5

DoD SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE (SAPRO) REVIEW OF FINDINGS AND INITIATIVES REGARDING RETALIATION. . . . . 56

Major General Jeffrey Snow,  
Director, DoD SAPRO

Dr. Nathan Galbreath,  
Senior Executive Advisor, DoD SAPRO

WORKPLACE RETALIATION STUDIES & HUMAN RELATIONS DYNAMICS . . . . . 109

Dr. Lilia M. Cortina,  
Professor, University of Michigan

Dr. Vicki Magley,  
Professor, University of Connecticut

Prof. Michael F. Noone, Jr.  
Professor, Columbus School of Law,  
Catholic University

Dr. Patricia J. Harned,  
Chief Executive Officer,  
Ethics & Compliance Institute

THE IMPACT OF RETALIATION ON VICTIMS, WORK PRODUCTIVITY, UNIT COHESIVENESS & MISSION READINESS. . . . . 184

Dr. Matthew F. Soulier,  
University of California, Davis

Dr. Veronique N. Valliere,  
Valliere & Counseling Associates, Inc.

POLICIES, PRACTICES AND PREVENTION OF  
RETALIATION WITHIN THE MILITARY SERVICES . . . . 232

Ms. Monique Ferrell,  
Director, U.S. Army SHARP

Rear Admiral Richard P. Snyder,  
Director, Twenty-First Century  
Sailor Office

Colonel Scott S. Jensen,  
Branch Head, USMC, HQ, Marine  
Corps SAPR

Mr. Jay Aarund,  
Deputy Director, HQ, U.S. Air  
Force SAPR

DoD INSPECTOR GENERAL (IG) AND BOARDS  
FOR CORRECTION FOR MILITARY RECORDS(BCMR)  
RESPONSES TO REPORTS OF PROFESSIONAL  
RETALIATION AND REQUESTS FOR RELIEF. . . . . 306

Mr. Patrick Gookin,  
Director, DoD IG Hotline &  
Whistleblower Protection Ombudsman

Mr. Nilgun Tolek,  
Director, DoD IG Whistleblower  
Reprisal Investigations

Mr. John K. Vallario,  
Deputy Executive Director,  
Air Force BCMR

Mr. Douglas Huff,  
Legal Advisor, Army Review Boards Agency

Mr. Jon Ruskin,  
Board for Correction of Naval  
Records Counsel

Ms. Julia Andrews,  
Chair, Coast Guard BCMR

ADJOURNMENT. . . . . 357

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

(8:37 a.m.)

MR. SPRANCE: Good morning, everyone.

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

At this time I will turn the proceedings over to the Chairwoman, the Honorable Elizabeth Holtzman. Good morning, ma'am.

CHAIR HOLTZMAN: Thank you very much, Mr. Sprance. And good morning, members of the Panel and Members of the public and Staff of the JPP.

I'd like to welcome everyone to the April meeting of the Judicial Proceedings Panel. Three Members of the Panel are here in person today. Unfortunately Judge Jones and Mr. Stone could not join us in person.

But Mr. Stone has joined us by phone from Paris. Lucky him. For some of this morning's discussion if possible. I'm sorry -- has joined us by phone and hopefully will be with

1 us as much as possible on the phone during the  
2 meeting.

3 Today's meeting is being transcribed  
4 and also video recorded by Army Television. The  
5 meeting transcript and related video recording  
6 will be posted on the JPP's website.

7 I'm going to skip some of my prepared  
8 note remarks which I will insert into the record  
9 in full. Unless someone objects to that.

10 To start this morning, the Panel will  
11 begin deliberating on the topic of restitution  
12 and compensation for victims of sexual assault  
13 crimes. We dedicated our March meeting to this  
14 topic and today the Panel will discuss our  
15 perspectives on the information we've received.

16 I don't expect today's deliberation  
17 will conclude our assessment of compensation and  
18 restitution issues. But it will allow Panel  
19 Members to discuss our initial thoughts and views  
20 based on what we have heard so far.

21 Following our deliberation session we  
22 will turn our focus to the topic for today's

1 meeting as well as our next meeting in May, the  
2 prevention and response to retaliation and  
3 ostracism against victims of sexual assault  
4 crimes.

5 In this morning's session we are  
6 pleased to hear from the Director of the DoD  
7 Sexual Assault Prevention and Response Office and  
8 the Senior Executive Advisor for DoD SAPRO.  
9 Major General Snow and Dr. Galbreath will provide  
10 the Panel with an overview of DoD's findings  
11 regarding retaliation and the Department's  
12 initiatives to reduce and eliminate retaliation  
13 against sexual assault victims.

14 Next we will hear from a distinguished  
15 group of professors and organizational experts  
16 who have researched issues surrounding workplace  
17 retaliation.

18 This afternoon we will hear from  
19 senior representatives from the Sexual Assault  
20 Prevention and Response Offices of the Services  
21 who will provide the Panel with information on  
22 policies, practices and prevention of retaliation

1 within the military.

2 Then in our final session of the day,  
3 we'll hear from senior officials from the DoD  
4 Inspector General's Office and the Service Boards  
5 for Correction of Military Records to understand  
6 how military members may report instances of  
7 professional retaliation and request relief when  
8 their careers are affected by instances of  
9 retaliation.

10 Each public meeting of the Judicial  
11 Proceedings Panel includes time to receive  
12 comments and input from the public. The Panel  
13 has received no written comments or request of  
14 the public to appear at today's meetings.

15 All materials received by the Panel  
16 Members for today's meetings and previous  
17 meetings are available on the JPP's website at  
18 JPP.whs.mil.

19 Thank you very much for your  
20 attention. And I believe we're ready to begin  
21 our deliberations.

22 Mr. Stone, I don't believe you have

1 the benefit of this, but the Staff prepared a  
2 very good outline of the issues that we dealt  
3 with in our sessions on restitution and  
4 compensation.

5 So if -- but in order to be of some  
6 assistance to you, I'm going to read the issues  
7 and then we -- one by one. We will deliberate on  
8 them one by one and proceed.

9 Is that satisfactory to the Members  
10 here?

11 MR. TAYLOR: Yes.

12 CHAIR HOLTZMAN: And to you Mr. Stone?

13 MR. STONE: Yes, it's perfectly fine.

14 CHAIR HOLTZMAN: Good. I don't think  
15 there's any deliberation required on Issue Number  
16 One.

17 Let's go to Issue Number Two, which is  
18 whether the UCMJ should be amended to add  
19 restitution as an authorized punishment that may  
20 be adjudged at courts-martial. If so, should  
21 restitution be required or discretionary?

22 Well let's deal with part of that,

1       which is should the UCMJ be amended to add  
2       restitution as an authorized punishment that may  
3       be adjudged at courts-martial. Any Panel Members  
4       want to be heard on that? Mr. Stone?

5               MR. STONE: Well, if you're asking me  
6       first, I'll say yes. Yes, I certainly agree it  
7       ought to have mandatory restitution. In the  
8       federal courts, if in fact again, like in a  
9       federal court, dependent upon the victim coming  
10      forward and saying yes, I want restitution,  
11      here's what I want it for and here's some  
12      evidence that establishes it.

13              So it really makes it optional for the  
14      victim. Once they make their request the court  
15      has to -- if the court doesn't grant it, it would  
16      have to give a very good written reason.

17              CHAIR HOLTZMAN: So you -- so, make  
18      sure that I've heard you correctly. You believe  
19      that the UCMJ should be amended to add  
20      restitution as an authorized punishment?

21              MR. STONE: Yes. I don't know how  
22      that will impact on Article, is it 139? That

1 currently is called restitution. But does it --  
2 I don't know if that means you're amending that  
3 Article, or we're adding another one?

4 MR. TAYLOR: Yes. So, I also think  
5 that the UCMJ should be amended to add  
6 restitution. I think in general the powers of  
7 military judges have expanded over time, moving  
8 from the initial stages where their  
9 responsibilities were relatively limited and the  
10 former practices, to the point now where judges  
11 really end up exercising in the military judicial  
12 process powers that are more appropriate for  
13 judges to exercise. So for me this is just one  
14 more step in an evolution of military judges  
15 being able to do the same kinds of things that  
16 judges do in courts elsewhere.

17 So I'm in favor of it.

18 CHAIR HOLTZMAN: Admiral?

19 VADM(R) TRACEY: I think I agree with  
20 the previous Members. I think Mr. Stone is also  
21 suggesting that there's a structure already in  
22 place in federal court systems that that would be

1 mirrored in the modification provisions for  
2 victim input and the expectation that judges  
3 would comply with that victim input or explain  
4 why not.

5 I think that that makes sense as well.

6 CHAIR HOLTZMAN: Well, I have a  
7 contrary view to this because my sense from the  
8 hearings that we had was that the difference  
9 between the military system and the civilian  
10 system, is that basically what restitution would  
11 compensate for -- what restitution would  
12 compensate for, those items are already covered  
13 under various military programs.

14 Now I could be wrong here. But  
15 healthcare issues I believe are covered. And  
16 there are other methods to obtain property that's  
17 damaged.

18 And so in sexual assault cases, it's  
19 unclear to me and I asked the Staff for this,  
20 where are the gaps? What would restitution --  
21 how would restitution help victims in this system  
22 in any way that they need at this point?

1           And I was unable to get an answer. I  
2 didn't see any gaps. Now if there are gaps, I  
3 believe those should be addressed.

4           But in the civilian system we don't  
5 have comprehensive healthcare. And there may not  
6 be easy ways to obtain property that's been  
7 damaged or stolen in connection with a sexual  
8 assault.

9           So I think the systems are different.  
10 And while it sounds great to say, let's do what  
11 they do in the civilian system. The civilian  
12 system doesn't have the benefits that the  
13 military system has with regard to these areas.

14           Now, as I said, my statement is  
15 premised on the idea that basically the means for  
16 restitution are already covered by existing  
17 military programs. But if I'm incorrect there,  
18 then I agree with my colleagues that restitution  
19 is desirable.

20           VADM(R) TRACEY: So, at Tab 3 is a  
21 table, it's in this same volume that you're  
22 looking at.

1 CHAIR HOLTZMAN: On Tab 3 yes, okay.

2 VADM(R) TRACEY: And certainly much of  
3 the areas are covered for active duty victims.  
4 But there appeared to be certainly gaps for non-  
5 DoD victims.

6 CHAIR HOLTZMAN: Right. And my view  
7 about that, it's -- and I appreciate your  
8 pointing that out. My view about that is that  
9 instead of creating a whole new apparatus for  
10 dealing with restitution that we have to create a  
11 much simpler program of compensation.

12 That instead of relegating dependents,  
13 non-active duty military members to a patchwork  
14 of state systems, that there be created a federal  
15 compensation system easy to go -- to access. I  
16 don't mean federal, a military compensation  
17 system that would provide uniform benefits.

18 And could easily be monitored and  
19 would deal with the -- these people who have been  
20 left out. I definitely agree with you that  
21 they're not covered under the healthcare system  
22 and some of the other programs.

1                   So my suggestion, my view would be  
2                   instead of creating the problems that restitution  
3                   would have and maybe Kyle, you could spell them  
4                   out for us in terms kind of changing the present  
5                   military justice system. That it might be easier  
6                   to deal with this through developing a uniform  
7                   compensation system.

8                   So, Kyle may I ask you to address  
9                   that? What would creating a restitution  
10                  requirement do in terms of affecting the military  
11                  justice system?

12                  LT. COLONEL GREEN: Ma'am, I think one  
13                  of the issues that the Staff has seen, and I want  
14                  to make sure from the Panel. Because I believe  
15                  in even listening to the conversation that maybe  
16                  there is a crossover of the discussion from  
17                  restitution to compensation.

18                  Restitution deals with the provision  
19                  for the judge as a part of the sentencing process  
20                  to provide remuneration or whatever to the  
21                  victim. Whereas a compensation program is  
22                  outside of the judicial system.

1           And so, the analysis that the Staff  
2 has provided is broken down really according to  
3 those lines. The chart at Tab 3 that Admiral  
4 Tracey noted is simply a chart of all of the  
5 areas where a victim could potentially suffer a  
6 financial loss.

7           And then the means to compensate  
8 either may come through restitution through the  
9 court or an outside compensation system.

10           CHAIR HOLTZMAN: But also, if we take  
11 the paradigm or the models of federal or state  
12 court systems where restitution is granted,  
13 generally in those systems there's a gap between  
14 the trial and the sentence. Isn't that correct?

15           LT. COLONEL GREEN: Correct.

16           CHAIR HOLTZMAN: So there's time to  
17 get the information about what restitution is  
18 necessary and so forth. That doesn't exist -- am  
19 I correct that that's not the case in the  
20 military system?

21           LT. COLONEL GREEN: You're correct,  
22 ma'am. Our system goes directly from a finding

1 in a case and proceeds directly into the  
2 sentencing process. There is no delay.

3 And there is no process at this point  
4 for any analysis in terms of need or anything  
5 regarding the victim in that case.

6 CHAIR HOLTZMAN: So, well whatever --  
7 well, let me put it to you this -- just to follow  
8 on my line of inquiry. What problems or adverse  
9 impact would be created on the existing -- Or  
10 what ways in which you'd have to -- what are the  
11 ways in which you'd also have to change the  
12 existing sentencing system, military justice  
13 system to incorporate the restitution  
14 requirement? And could that be done just as  
15 easily or maybe more easily through a  
16 compensation system?

17 Or is that an unfair question?

18 LT. COLONEL GREEN: Well, no ma'am.  
19 It's not an unfair question. I think the system  
20 could be changed to allow restitution as an  
21 authorized form of punishment that could be  
22 imposed through the court-martial process.

1           I guess the question -- and there is  
2 an interplay there. You heard from witnesses who  
3 talked about, there are provisions that require  
4 automatic forfeitures if a certain level of  
5 sentence is required.

6           There are provisions that provide for  
7 deferral of forfeitures to the family of the  
8 accused upon the request of the accused in other  
9 situations. And so restitution would have to be  
10 interwoven with those provisions.

11           But it certainly could be added. And  
12 I think what you're speaking to is there's also  
13 provisions for compensation outside the judicial  
14 process that are available in the state and  
15 federal system.

16           MR. TAYLOR: So my thought on this to  
17 further flesh this out is that I think that if  
18 the Committee decided, if the Panel decided that  
19 we wanted to also recommend a different  
20 compensation system, a DoD Compensation Board for  
21 sexual assault victims, that wouldn't necessarily  
22 be inconsistent with giving the judge the

1 authority to order restitution.

2 And as to procedures, it strikes me  
3 that it may be simpler actually to change the  
4 rules or to use the rules that we're already  
5 operating within. That is to say, prior to a  
6 trial, if in fact the trial counsel asks the  
7 victim about expenses, that then can be  
8 information that is front loaded into the system.

9 So that while it wouldn't be relevant  
10 on the question of guilt or innocence, there  
11 would be some preparatory work done prior to the  
12 trial. So that even if there is a short delay,  
13 it wouldn't be a long one to figure out what else  
14 needed to be done on the sentencing phase of the  
15 trial.

16 So it seems to me that that's not an  
17 insurmountable issue.

18 CHAIR HOLTZMAN: Well, I'm not saying  
19 it's insurmountable. I'm just not familiar  
20 enough with how the existing military justice  
21 system would incorporate and respond to  
22 restitution.

1           And it seems to me also that the idea  
2 of restitution in these cases, just from hearing  
3 the testimony is that we're not talking about the  
4 most affluent of defendants here. And the  
5 likelihood that compensation is going to come  
6 from them as opposed to -- I mean, that someone  
7 is going to get -- that the restitution will be  
8 accomplished through their payments as opposed to  
9 a compensation system, is probably relatively  
10 remote.

11           But I don't have any major objections  
12 to a -- to a restitution system if one, it can't  
13 be accommodated by a compensation system and  
14 two, it's not going to throw the existing system  
15 out of whack too much.

16           That part -- and I'm not -- I don't  
17 feel comfortable enough with the answers to those  
18 questions. That's why I'm a little bit agnostic  
19 about the restitution point.

20           MR. TAYLOR: Well, that's, I think  
21 that's understandable. And I'm relying in part  
22 on testimony that we received from witnesses last

1 time who spoke to the importance of having some  
2 direct accountability from the perpetrator to the  
3 victim who was personally harmed.

4 That that -- according to the  
5 testimony we heard, allows victims to regain a  
6 sense of control that they wouldn't have  
7 otherwise. Another argument being that it would  
8 allow victims to spend whatever money they got as  
9 they chose as opposed to having to rely upon  
10 categories that they might receive in  
11 compensation elsewhere.

12 And finally, that restitution could be  
13 enforced in a variety of ways such as garnishing  
14 the accused's pay and so forth. And having the  
15 government pay the money by proxy and then get it  
16 back through the individual.

17 So, it seems to me that these are  
18 potential procedures out there to deal with this.  
19 And again, I'm not saying that I'm necessarily  
20 taking off the table the idea of the DoD  
21 Compensation Board.

22 But it just seems to me that this

1 would be another remedy. Another option that  
2 would be available.

3 VADM(R) TRACEY: And similarly, I  
4 don't see these as either/or. There is the  
5 psychic value if you will of restitution being  
6 something that is the responsibility of the  
7 accused and not the DoD or other government  
8 entities.

9 CHAIR HOLTZMAN: Sorry. Mr. Stone,  
10 did you have something you wanted to say?

11 MR. STONE: Yes, I did. I had a  
12 couple of responses to the discussion if I may?

13 The first is, there is a time gap in  
14 virtually in every federal and state system.  
15 There are many cases where people plead to the --  
16 and ask for immediate sentencing because the  
17 sentences were the plea bargains.

18 And until they plead guilty, the  
19 victim doesn't know necessarily that the plea is  
20 going to go through. So they don't know what  
21 count -- what reduced count the defendant is  
22 going to be found guilty of and therefore subject

1 to the restitution.

2 So virtually every state and the  
3 federal systems allow a period between sentencing  
4 for the victim if they wish to come back and  
5 submit a detailed restitution request that has  
6 some documentation like a doctor's bill that was  
7 not, or a hospital bill that was not paid.

8 Which could be an emergency center  
9 let's say that was not military sent, because the  
10 victim and the crime didn't occur on the military  
11 base. And that allows the judge thereafter to  
12 enter a restitution limit.

13 In Maryland, the period is 30 days.  
14 Federally, the period is 90 days. But it's very  
15 common that -- a guilty plea and there is a gap  
16 right around it.

17 The more important -- you have, is I  
18 don't want 138 -- we heard last time about  
19 situations with the victims when they were on the  
20 stand or cross-examined about compensation and it  
21 was argued indirectly that they shouldn't be --  
22 because they have received their compensation.

1 (A technical difficulty arose and was  
2 addressed.)

3 CHAIR HOLTZMAN: Okay, great. Sorry.

4 MR. STONE: Again, the first part was  
5 just to summarize the two sentences. There's a  
6 time gap even in the non-military systems because  
7 pleas with sentencing following immediately  
8 either because the defendant waives the pre-  
9 sentence report or because there's been an  
10 agreement on sentence. Happens all the time.

11 And the victim doesn't know until the  
12 moment of the plea that it's actually going to  
13 happen and exactly what the count will be.  
14 Because many pleas fall apart.

15 So virtually every state system and  
16 the federal system have a short period of time.  
17 In Maryland it's 30 days -- federally it's 90  
18 days -- during which time the victim is entitled  
19 to question to move the court toward their  
20 restitution request.

21 But they need that time to get  
22 together the bills that they might need just to

1 show this is what my restitution was.

2 And a typical bill might be that they  
3 went to a small community medical center near  
4 where the assault happened right after the  
5 assault, for example. And it's not a military  
6 facility and there was a bill and it was never  
7 paid by anybody.

8 So I don't think the time issue is one  
9 that can't be handled. It's handled everywhere  
10 else. My much more serious concern relates to  
11 the fact that I do not want victims only to be  
12 subject to having -- in order to get -- to be  
13 made -- to have to guess for "compensation" which  
14 includes many more things like for example,  
15 mental distress.

16 We heard last week that there was a  
17 case where on cross-examination the defense  
18 counsel brought out that the victim was seeking  
19 compensation, and the defense in effect was this  
20 whole thing is a lie. She's just doing it for  
21 compensation.

22 And in fact, the defendant was

1 acquitted. And the -- I can't remember the  
2 Service representative that gave us that example,  
3 but he felt that they had a very strong case.  
4 And yet it was unsuccessful because of that.

5 And that happens when a person is only  
6 left with a remedy of being paid by  
7 "compensation." And so we don't want it to look  
8 like there's a reward and that that's a  
9 motivation.

10 So I think it's important that both  
11 possibilities as just mentioned by Mr. Taylor as  
12 to where to get the money from, the military is  
13 in a unique position either to garnish the  
14 person's wages or if they're going to prison, the  
15 Bureau of Prisons, for example, has a financial  
16 responsibility program.

17 Virtually all prisoners get some kind  
18 of a job. And the prisons can take up to 25  
19 percent of whatever they earn.

20 (A technical difficulty arose and was  
21 addressed.)

22 LT. COLONEL McGOVERN: As to a time

1 gap, in federal proceedings -- because many times  
2 defendants waive pre-sentence reports when  
3 they're pleading guilty and even sometimes when  
4 they're not. States and the Federal Government  
5 have short periods of time, 30 days in Maryland  
6 and 90 in the Federal Government where a person  
7 can submit after sentencing their restitution  
8 requests.

9 And the United States versus  
10 DiFrancesco, a 1980 U.S. Supreme Court case said  
11 the sentence didn't become final for double  
12 jeopardy purposes until the rule that's governing  
13 the sentence makes it final. In other words, if  
14 you have no expectation of finality, there's not  
15 a double jeopardy problem.

16 So to the extent the UCMJ would say  
17 there's a short period of time, whatever that  
18 time period is during which -- after conviction,  
19 after sentence during which restitution requests  
20 could be submitted, there would not be a  
21 constitutional problem with that.

22 As to restitution versus compensation,

1 we heard last time from one of the witnesses how  
2 the fact that the victim was seeking compensation  
3 was used to cross-examine the victim and suggest  
4 that the victim was only in it for the money.  
5 And the case was unsuccessful.

6 I don't want victims to be relegated  
7 only to having to seek compensation, particularly  
8 in cases where they're interested in trying to  
9 get money for mental distress or items like that.  
10 And have them imply they're just in it for the  
11 money.

12 And which also weakens the case  
13 tremendously. Restitution is clearly something  
14 different. And the third thing about the ability  
15 of the defendants to pay, not only does the  
16 military have an easy way to deduct money if they  
17 remain during their appeal or whatever in some  
18 status where they're getting money.

19 But even if they're serving a  
20 sentence, at least the Bureau of Prisons and I  
21 don't know about the military's use of that, but  
22 I know some of the military prisoners go to the

1 federal prison system, have a financial  
2 responsibility program.

3 And if they get a job up, to 25  
4 percent of the income they earn, low as it is,  
5 may be deducted for things like restitution as  
6 well as things like if they owe child care or  
7 alimony or whatever. And that only comes into  
8 play until or unless the person might be awarded  
9 compensation later.

10 But again, I think these restitution  
11 requests may be rare, but I think we ought to  
12 have a meaningful restitution process. And part  
13 of the reason there's restitution federally,  
14 because there is no gap Federally.

15 There's no question you couldn't file  
16 a civil suit against your defendant if you really  
17 want to instead of restitution. But the fact is,  
18 nobody did it because most victims are -- it's  
19 sort of like throwing good money after bad.

20 They don't want the bad. They don't  
21 want to throw any more psychic energy into  
22 starting another whole litigative proceeding just

1 to become equal.

2 The point of restitution in criminal  
3 cases is so that it's easy on the victim when  
4 it's all done, walks away whole. And doesn't  
5 have to get involved in additional litigation.

6 And I feel that way about the military  
7 system as well. That it would be nice for the  
8 victim to know, after they finally have the  
9 courage to come forward, that if they have a  
10 restitution request, they're done with the  
11 system.

12 The judge can easily order it right  
13 there and then. Either at sentencing or shortly  
14 thereafter, during the period when he gets the  
15 request.

16 And if they want to be totally done,  
17 they can walk away and not have to mess with  
18 compensation or anything else. Thank you.

19 CHAIR HOLTZMAN: Thank you, Mr. Stone.  
20 Let me just ask the Staff some questions.  
21 Admiral Tracey, do you have something you want to  
22 say? Okay.

1 Mr. Stone, can you hear me?

2 MR. STONE: Yes.

3 CHAIR HOLTZMAN: Okay. Great. On the  
4 issue of recovery. I want to ask and try to  
5 respond to each of your points, which is very  
6 important.

7 With regard to recovering pay, Kelly  
8 or Kyle, could you answer this? Isn't it a fact  
9 that after six months the entire pay of the -- if  
10 the person is imprisoned or if the defendant is  
11 imprisoned that that's forfeited?

12 That there would be no pay available  
13 after that? That that goes to the -- am I wrong  
14 about that?

15 LT. COLONEL GREEN: Ma'am, forfeitures  
16 kick in at different levels depending on the  
17 court. Between a special court-martial and a  
18 general court-martial.

19 Let's assume for the sake of the  
20 discussion that it's at a general court-martial  
21 where the accused is subject to forfeiture of all  
22 pay and allowances. That can either be imposed

1 by the military judge or it can be automatic if  
2 the sentence is of a certain level.

3 If it's a -- six months of confinement  
4 is adjudged or if it's a certain level. So  
5 afterwards --

6 CHAIR HOLTZMAN: So after that -- so  
7 in other words after six months, if it's a -- if  
8 it's a sentence of six months or more, after six  
9 months the pay of the defendant is automatically  
10 taken by the military?

11 LT. COLONEL GREEN: No, ma'am. It's  
12 actually -- forfeiture is -- forfeitures that are  
13 adjusted at sentencing become effective 15 days  
14 after the sentence is announced.

15 LT. COLONEL McGOVERN: The defendant  
16 is forced --

17 CHAIR HOLTZMAN: Well that's what I  
18 understood, after six months. After six months  
19 that pay is no longer available for any other  
20 purpose except go directly to be used --

21 VADM(R) TRACEY: For sentences longer  
22 than six months.

1 CHAIR HOLTZMAN: Right. That's what  
2 I said. Right. After six months. That's what  
3 my question was. Okay.

4 LT. COLONEL McGOVERN: But the pay  
5 actually -- I think there might still be, subject  
6 to the -- Admiral Tracey is right, so if the  
7 judge sentences you to six months or more --

8 CHAIR HOLTZMAN: Right.

9 LT. COLONEL McGOVERN: And it's  
10 automatically all forfeiture of pay and  
11 allowances, which takes effect when you get to  
12 these factors and it's --

13 CHAIR HOLTZMAN: Oh, so you don't have  
14 the six months?

15 LT. COLONEL GREEN: That's correct.

16 LT. COLONEL McGOVERN: No, ma'am.

17 CHAIR HOLTZMAN: Oh, I see. I'm  
18 sorry. So it's immediate. It's 15 days.

19 LT. COLONEL McGOVERN: Depending on  
20 what the sentence is if it's automatic or  
21 adjudged.

22 CHAIR HOLTZMAN: Okay. But I presume

1 that what Kyle was saying on the restitution  
2 system, that that could be correct. Because that  
3 money is going to the military, is that right?

4 LT. COLONEL MCGOVERN: We currently  
5 already have fines to be imposed for pay, they --

6 Like I say, this pay is going to  
7 victim-based entities after the sentence.

8 LT. COLONEL GREEN: And you're right,  
9 ma'am. If restitution were added as an  
10 additional provision for sentencing, then the  
11 forfeiture provisions would have to be rectified  
12 with that.

13 There would have to be some  
14 modifications because the way forfeitures take  
15 effect, the way they're automatic at a certain  
16 point, obviously restitution would have to be  
17 factored into that so that you didn't have  
18 conflicts either of pay that's diverted to  
19 dependents of the accused. Or pay that's  
20 automatically forfeited if the goal is to provide  
21 an ensured restitution to the victim.

22 Those potential conflicts would have

1 to be rectified within the Articles.

2 CHAIR HOLTZMAN: Meaning, yes,  
3 resolved in some way. I want to go to the  
4 timeframe. But Mr. Stone's not on the phone?

5 LT. COLONEL McGOVERN: No, ma'am.

6 CHAIR HOLTZMAN: Do you mind waiting?

7 LT. COLONEL McGOVERN: He may try to  
8 call. But I would suggest we move forward.

9 CHAIR HOLTZMAN: Okay. On the  
10 timeframe -- oh, and by the way, doesn't the  
11 forfeiture money go -- am I wrong, to some  
12 retirement home?

13 LT. COLONEL GREEN: It does.

14 CHAIR HOLTZMAN: Okay. So in other  
15 words, there would have to be other sources of  
16 funding for --

17 LT. COLONEL GREEN: Right. And I --

18 CHAIR HOLTZMAN: The retirement home,  
19 they have to change those systems. I don't think  
20 that that sounds too difficult if the military  
21 decided or the government decided it wanted to do  
22 restitution.

1           The second issue is about the time  
2 frame. I guess what Mr. Stone was saying is that  
3 you can on the civil side, that the timing is  
4 relatively -- could be relatively short whenever  
5 it is in state courts or federal courts.

6           But the problem as I see it in the  
7 military system, is that the sentencing takes  
8 place immediately after the trial is -- after  
9 there's a conviction. It's not 30 days, it's not  
10 15 days, it's not five days. It's that day. Am  
11 I wrong?

12           LT. COLONEL GREEN: That's correct,  
13 ma'am.

14           CHAIR HOLTZMAN: Do we have a system  
15 whereby the judge would still be available  
16 afterwards to provide restitution?

17           LT. COLONEL GREEN: No, ma'am.  
18 Because we do not have standing courts within --  
19 under the UCMJ. Upon sentence -- the completion  
20 of sentencing the court is closed.

21           And so it --

22           LT. COLONEL McGOVERN: But in between

1 filing for sentencing, there technically could be  
2 a request for a delay at that time. The parties  
3 could figure out the bills and what would fall  
4 within the restitution request.

5 However, you then have an accused with  
6 a conviction who is returning to his unit. If  
7 not, it would be kind of too far from findings,  
8 unlike the civilian system where someone comes  
9 back to the court 30 to 90 days later, when the  
10 place they go back to is their unit.

11 Which is why it's so important for a  
12 sentencing to immediately follow the finding.  
13 When you finish a court-martial on the merits at  
14 10:00, you will be there the next morning or  
15 before lunch or after lunch. The defendant is  
16 technically still in the custody of the military.

17 LT. COLONEL GREEN: But I think it's  
18 important to note that military sentencing, both  
19 the trial and defense counsel prepare the  
20 sentencing case in advance of trial.

21 And so a modification of that that  
22 would require the trial counsel or whomever would

1 be responsible for providing information about  
2 the restitution needs of a victim, could be made  
3 as part of a pretrial expectation for whomever  
4 that is, to provide that information at  
5 sentencing.

6 I don't know, again, not being  
7 familiar enough with what the needs are for delay  
8 in terms of the federal system or if there's a  
9 specific requirement for that. But I can't  
10 foresee anything in terms of knowing about  
11 restitution needs from victims that couldn't be  
12 determined prior to trial as ours occur all on  
13 the same time.

14 LT. COLONEL McGOVERN: But according  
15 to the discovery rules and out of Colonel Jones'  
16 article which we received, they said all of that  
17 does occur, the sharing of that information prior  
18 to a court-martial at this time is common  
19 practice if that's going to be asked for.

20 That that occurs before so that you  
21 don't have to have a delay at sentencing. But,  
22 it is an issue.

1 CHAIR HOLTZMAN: Well, you say it is  
2 an issue, Kyle says it's not an issue. What is  
3 the answer? I mean, can this all be resolved  
4 pretrial? Pre-sentencing?

5 I mean, can the question of  
6 accumulative, all the information you need for  
7 restitution, can that be done prior to sentence?

8 LT. COLONEL MCGOVERN: Yes, ma'am.  
9 Major Sameit --

10 CHAIR HOLTZMAN: Without delaying the  
11 sentence?

12 LT. COLONEL MCGOVERN: It could be,  
13 yes, ma'am. Major Sameit responded -- or  
14 testified that if all of that is provided before,  
15 you are almost turning it into, as Mr. Stone  
16 pointed out, that it actually may provide  
17 information for the accused then to provide it in  
18 cross-examining questioning.

19 But in the Staff's opinion, we don't  
20 necessarily think that that would be relevant,  
21 whether it's compensation or request for  
22 restitution, those mental health or medical bills

1 shouldn't lead to someone questioning to impeach  
2 the victim or witness.

3           However, it is information that would  
4 have to be turned over prior to trial, prior to  
5 merits, so the accused would have that type of  
6 information.

7           I think the, revisiting Colonel Jones'  
8 article is very helpful because you can see the  
9 actual structural differences that may be  
10 required. Maybe we can revisit this issue with  
11 Judge Jones bringing her federal experience back  
12 and when Victor Stone is in person at the June  
13 meeting perhaps to discuss it further if you all  
14 wanted to maybe go on and talk about compensation  
15 systems as well today.

16           CHAIR HOLTZMAN: I don't know how you  
17 feel about it. I'm still uncomfortable because I  
18 want to make sure that whatever we're doing in  
19 terms of tampering with the existing system that  
20 it's not going to create unintended consequences.

21           VADM(R) TRACEY: Maybe if we  
22 formulated what our questions are, the revisit in

1 June would be maybe a little bit easier as well  
2 as more informative.

3 LT. COLONEL MCGOVERN: We can  
4 articulate structural payments that would be  
5 required as well.

6 CHAIR HOLTZMAN: Okay. Is that  
7 satisfactory to you? Okay, thanks.

8 I guess the -- so we'll postpone some  
9 small questions on Issue Two to the June meeting  
10 -- May meeting. May or June, whatever.

11 And we're up to Issue Three, which is  
12 whether Article 139 should be amended to include  
13 claims regarding injury which would authorize the  
14 commander to determine the dollar value of  
15 physical and mental injury and order the  
16 offender's pay to be directed to the victim.

17 Mr. Stone, are you on the phone? No.  
18 Oh yes, I hear you. Are you there? Good, can  
19 you hear me? Mr. Stone, can you hear me?

20 MR. STONE: Yes, I can.

21 CHAIR HOLTZMAN: Beautiful. Okay. So  
22 we're on Issue Three. Mr. Taylor?

1 MR. TAYLOR: Yes, I'll be willing to  
2 start. It would seem to me that based on the  
3 testimony we have, and also based on my own  
4 reading of Article 139, this is not a very good  
5 place to tweak the system. To authorize the  
6 commander to determine the dollar value of  
7 physical and mental injury.

8 Because this is an investigation and  
9 inquiry carried out at the local level that's  
10 really focused on property only, it seems that it  
11 would be an unfair burden and unreasonable to  
12 expect a commander, or the person that he or she  
13 appointed, to make this kind of assessment.

14 So it seems to me that to the extent  
15 we want to change it, Article -- change the  
16 system, Article 139 is not a very good place to  
17 start.

18 VADM(R) TRACEY: I agree with that.

19 CHAIR HOLTZMAN: I agree. Mr. Stone?  
20 Do you have a comment?

21 MR. STONE: I agree with that because  
22 I think maybe we just heard the reasons for --

1                   LT. COLONEL McGOVERN: Mr. Stone? Mr.  
2 Stone, can you wait one moment while we implement  
3 our procedure? Okay, is he there?

4                   MR. STONE: Yes. Okay. Restitution  
5 is supposed to be simple and clear and something  
6 which the military judge or even a commanding  
7 officer -- it's almost a ministerial task.

8 "Here's my bill. It didn't get compensated. Or  
9 here's the property I lost, I'd like an order."

10 And I totally agree, when you get to something  
11 like mental distress and then there's other  
12 judgmental factors involved, that's appropriate  
13 for a compensation system.

14                   And that's why you do need both.

15                   CHAIR HOLTZMAN: Okay. So we're in  
16 agreement on Issue Number Three that Article 139  
17 should not be amended.

18                   Okay. Issue Number Four, whether  
19 forfeited wages of incarcerated members of the  
20 armed forces should be directed to pay  
21 compensation to victims of military offenses.

22                   Admiral Tracey?

1 VADM(R) TRACEY: I think this is tied  
2 up with the first issue, is it not? Or is this -

3 -

4 CHAIR HOLTZMAN: This is compensation.

5 VADM(R) TRACEY: Attached to  
6 compensation?

7 CHAIR HOLTZMAN: This is compensation,  
8 not -- I don't know. Do you mean by this  
9 question, Lieutenant McGovern, that this is --  
10 are we talking about restitution, are we talking  
11 about compensation, or are we talking both?

12 LT. COLONEL GREEN: Ms. Holtzman, this  
13 is the question exactly posed by Congress in the  
14 statute. So, I do believe that the question  
15 itself does somewhat overlap because it does  
16 speak to forfeiture of wages.

17 So to some degree I think it  
18 encompasses both restitution and compensation.  
19 So my thought is, this does somewhat flow into  
20 Issue Number Two.

21 And then the bigger question is a  
22 compensation system outside of the court-martial

1 process.

2 CHAIR HOLTZMAN: So where do we deal  
3 with the compensation system outside? So this  
4 issue should be postponed until we deal with the  
5 restitution -- finalize the restitution question  
6 here?

7 LT. COLONEL GREEN: I think these  
8 Issues overlap pretty substantially.

9 CHAIR HOLTZMAN: Okay. Is that  
10 satisfactory to the Panel Members?

11 MR. TAYLOR: I agree. Yes.

12 CHAIR HOLTZMAN: Mr. Stone?  
13 Satisfactory to you?

14 MR. STONE: I would just like to say  
15 for the record that I absolutely believe that the  
16 victims claimed --

17 LT. COLONEL McGOVERN: Mr. Stone, I'm  
18 sorry. Mr. Stone, yes, if you could just say, I  
19 would like to speak, I will take a moment to plug  
20 you in.

21 Go ahead, sir.

22 MR. STONE: Thank you. I think

1 there's been, at least in my view, there's no  
2 question that an individual victim's claim to  
3 restitution or compensation should be satisfied  
4 before the -- before any money is forfeited to  
5 the government.

6 The forfeiting to the government is a  
7 punishment to the defendant. But before that  
8 punishment, we want to see that the victim is  
9 made whole.

10 So it seems to me, going along the  
11 lines that Ms. Holtzman said before, that I  
12 believe both restitution and compensation are  
13 paid before there's a forfeiture. But I'm  
14 willing to postpone the final decision on that if  
15 that's what you want to do.

16 But that's just my policy view.

17 CHAIR HOLTZMAN: Okay. Thank you, Mr.  
18 Stone. Now we're up to, I guess, Issue Number  
19 Ten, which is -- I had raised earlier.

20 Does the Panel wish to make any  
21 overall assessment as to the adequacy of  
22 compensation and restitution for victims of

1 military offenses or recommendations on expanding  
2 those systems?

3 Admiral Tracey?

4 VADM(R) TRACEY: I think the way that  
5 these issues are broken out is by the category of  
6 the victim right?

7 CHAIR HOLTZMAN: Right.

8 VADM(R) TRACEY: And it does appear  
9 that all victims who are not civilian victims of  
10 sexual assault are not well covered by the  
11 current system.

12 CHAIR HOLTZMAN: Do you have some  
13 suggestion about what we should do?

14 VADM(R) TRACEY: No, I don't.

15 CHAIR HOLTZMAN: Okay then.

16 MR. TAYLOR: So I -- it bothers me  
17 that we do have the gaps not only for dependent  
18 victims, but also for civilian victims who have  
19 no connection with the military.

20 I think that in the same sense that in  
21 some jurisdictions if you are an employer and one  
22 of your employees is up assaulting someone that's

1 within your care or custody, let's say in a hotel  
2 setting. There is some liability that normally  
3 goes with the employer's responsibility to  
4 oversee the activities of that individual.

5 There might be some argument along  
6 those lines or other lines that we do have an  
7 obligation that we're not completely fulfilling  
8 to the civilian victims who otherwise have no  
9 status with the military. And at the current --  
10 in the current system these folks have to rely  
11 upon the State Victims' Compensation Programs to  
12 the extent they can be made whole.

13 It seems to me that that's a gap that  
14 we ought to think about doing something about.

15 CHAIR HOLTZMAN: Mr. Stone?

16 MR. STONE: I totally --

17 CHAIR HOLTZMAN: Wait, wait. Sir.  
18 You have to wait. We'll plug you in.

19 MR. STONE: Thank you. I completely  
20 agree with the last comment. Thank you.

21 CHAIR HOLTZMAN: Okay. Thanks very  
22 much Mr. Stone for your brevity -- that's good --

1 of your comments.

2 Okay. My view, which I guess I  
3 announced earlier and I share completely with Mr.  
4 Taylor, is, I think the hearings have shown that  
5 there are big gaps in people who have been  
6 victimized by people -- by people in the  
7 military. And they are relegated to a patchwork  
8 of systems that are -- you know, there's no  
9 uniform standard. You have different reporting  
10 requirements to be eligible. It doesn't seem to  
11 me to be a fair system.

12 And then also, Colonel McGovern or  
13 Colonel Green, are there gaps with regard to  
14 active duty victims where they would be relegated  
15 in any case to a state compensation system?

16 LT. COLONEL GREEN: I think those gaps  
17 are less, ma'am, as the chart that the Staff  
18 built at Tab 3 indicates. There are examples of  
19 certain categories of potential losses that  
20 active duty members may suffer.

21 The other thing to remember is that  
22 active duty members remain eligible for benefits.

1 But at some -- if they go off active duty those  
2 benefits may stop.

3 CHAIR HOLTZMAN: Right.

4 LT. COLONEL GREEN: And so even active  
5 duty persons are not going to receive benefits  
6 forever.

7 CHAIR HOLTZMAN: Right. And we  
8 haven't even addressed the whole question of the  
9 handover to the VA system. Which at some point I  
10 think we even have to take a look at.

11 Well, from my point of view -- and let  
12 me just ask one other question in that regard.  
13 Does the military system in any way assist --  
14 does the federal government assist the state  
15 systems in -- or does the military assist the  
16 state systems or compensate them for the  
17 compensation resulting from --

18 LT. COLONEL GREEN: No, ma'am.

19 CHAIR HOLTZMAN: -- crimes committed  
20 by people in uniform?

21 LT. COLONEL GREEN: No, ma'am. What  
22 we heard from funding from the civilian -- or

1 from the Victim Compensation Funds from the  
2 states is that they do receive federal funding.  
3 And then they receive their own state funding.  
4 But there is no remuneration from the military.

5 CHAIR HOLTZMAN: Well, in any case, it  
6 seems to me that it would be wise for the  
7 military to set up its own compensation system as  
8 the states have. And maybe you could create a  
9 model in this respect that could help improve  
10 some of the state systems.

11 And that would be much more sensitive  
12 to the needs of victims in sexual assault cases.  
13 I mean, the idea that you have to report within  
14 72 hours to qualify for state compensation funds,  
15 when we know that sexual assault victims are so  
16 traumatized that may not report for many months  
17 and sometimes even years.

18 So I don't know how much money is  
19 involved here. But it does seem to me to -- it  
20 does seem to me to be really a major issue. And  
21 it would be the right thing to do. It would be  
22 fair -- you could have a fair system that was

1 uniform, its standards, and sensitive to the  
2 needs of victims.

3 I don't know how much money we'd be  
4 talking about. But it doesn't seem to me like an  
5 overly large amount of money. And it could be  
6 easily created and would solve some of these  
7 problems of these gaps, primarily for dependent  
8 victims and for civilians, both within the DoD  
9 and outside the DoD.

10 So that would be -- and I would hope  
11 it's something we could recommend.

12 LT. COLONEL McGOVERN: Is the system  
13 you're considering, ma'am, for Article 120-type  
14 offenses or for all assaults?

15 CHAIR HOLTZMAN: Well, since our  
16 jurisdiction is limited to sexual assault, I  
17 think the recommendation --

18 LT. COLONEL McGOVERN: This question  
19 actually gives you the potential to look at any  
20 offenses under the UCMJ, the way it was posed.

21 CHAIR HOLTZMAN: I'm not an  
22 imperialist as far as this is concerned. I'm

1 just very bad at focus.

2 LT. COLONEL McGOVERN: Okay.

3 MR. TAYLOR: I would just like to add  
4 that I endorse what Chairwoman Holtzman said. I  
5 think that this is something we ought to look at  
6 very seriously. And we ought to also take  
7 advantage of the best practices out there.

8 For example, the 72-hour rule really  
9 makes no sense for sexual assault victims.

10 Another requirement that I think makes very  
11 little or no sense is that you somehow have to  
12 cooperate with law enforcement and the following  
13 prosecutions and investigations.

14 We had evidence that that really does  
15 not encourage and incentivize victims to come  
16 forward. So there are statutes out there that  
17 will, in case of a forensic exam, that  
18 substitutes for the 72-hour report.

19 So I think there are things out there  
20 we can look at that would move us in the right  
21 direction.

22 CHAIR HOLTZMAN: Well, I guess the

1 question is, do we need to do more analysis to  
2 make a fuller recommendation? Kyle, do we need  
3 more information to make an appropriate  
4 recommendation to the Congress on this?

5 LT. COLONEL GREEN: Yes, ma'am.

6 That's what I would recommend. I would recommend  
7 we can look at military systems for compensation  
8 that do exist.

9 The Military and Personnel Claims Act  
10 provides compensation. It's a well-established  
11 program, both in terms of a funding source as  
12 well as the execution of that program.

13 So we can look at other military  
14 analogies as to how that might perhaps be  
15 structured. We can look external at other  
16 compensation mechanisms and look to state  
17 statutes, like Mr. Taylor mentioned, to provide  
18 you some models and some potential examples that  
19 might serve to provide the rules for the  
20 execution of that.

21 And then if there's anything else the  
22 Panel wishes to look at in terms of compensation

1 frameworks, we can certainly bring that to you.

2 CHAIR HOLTZMAN: Well, I would really  
3 appreciate, and I think the other Panel Members  
4 would as well, suggesting how we can flesh out  
5 the facts so that we can make a thoughtful  
6 recommendation in this respect.

7 Okay. I think we're finished with the  
8 first item of our agenda. I guess our next --

9 LT. COLONEL GREEN: Ms. Holtzman,  
10 would you like to -- I think our speakers are  
11 here. If we could just take a brief recess and  
12 we'll get everyone situated.

13 CHAIR HOLTZMAN: Sure. Let's take a  
14 five-minute break.

15 (Whereupon, the above-entitled matter  
16 went off the record at 9:32 a.m. and resumed at  
17 9:42 a.m.)

18 CHAIR HOLTZMAN: We have Major General  
19 Jeffrey Snow, Director of DoD SAPRO; and Dr.  
20 Nathan Galbreath, Senior Executive Advisor, DoD  
21 SAPRO.

22 You have been gluttons for punishment.

1 You've come before this Panel and its prior  
2 iteration a number of times, and you've been  
3 extremely helpful and we very much appreciate  
4 your willingness to share your expertise with us  
5 this morning. So you'll share with us the DoD's  
6 review of findings and initiatives regarding  
7 retaliation. Thank you very much. You may  
8 proceed.

9 MG SNOW: Well, good morning. Thank  
10 you, Chairwoman Holtzman, and Members of the  
11 Panel for inviting us here today. In addition to  
12 the Retaliation Overview we submitted to you in  
13 advance of today's hearing, I'd like to briefly  
14 discuss the Department's sexual assault  
15 prevention and response efforts, and, more  
16 specifically, the challenging issue of  
17 retaliation against victims who report their  
18 assault. And then, of course, respond to your  
19 questions.

20 As indicated by the RAND survey  
21 released last December, past year prevalence  
22 estimates of sexual assault indicate fewer

1 military men and women experienced this crime in  
2 2014 than in 2012. In addition, Fiscal Year 2013  
3 and 2014 marked record years of reporting of  
4 sexual assault for the Department. These and  
5 other top line results provided to the President  
6 indicate that the Department is making progress  
7 in its sexual assault prevention results.

8 However, we know this progress cannot be  
9 sustained until we fully address the challenge of  
10 retaliation associated with reporting of sexual  
11 assault.

12 I want to take this opportunity to  
13 clarify a few things for the purposes of our  
14 discussion. Retaliation is an umbrella term that  
15 can cover a wide range of behavior. However,  
16 there are two main forms of retaliation defined  
17 in law and in Department policy. First,  
18 professional retaliation or reprisal refers to a  
19 superior taking or threatening to take an adverse  
20 personnel action against a subordinate because he  
21 or she reported a criminal offense. These  
22 criminal offenses include taking adverse actions

1 in response to protected communications under 10  
2 U.S.C. 1034.

3 They can also apply to withholding a  
4 positive personnel action for the same reason.  
5 These are criminal offenses, and allegations of  
6 these actions are investigated by the DoD  
7 Inspector General or the Service inspector  
8 generals.

9 Department surveys in 2012 and 2014  
10 indicate that about a third of female respondents  
11 who experienced a sexual assault and made a  
12 report to a DoD authority received some form of  
13 professional retaliation associated with the  
14 report.

15 Second, social retaliation or  
16 ostracism involves maltreatment by peers,  
17 coworkers, and those in the chain of command.  
18 Behavior ranges from social exclusion to blaming  
19 and bullying in response to a report or intent to  
20 report. There is a bit more gray area associated  
21 with social retaliation because the intent of the  
22 behaviors must be to discourage reporting a

1 criminal offense or otherwise discourage the  
2 administration of justice.

3 On our 2012 and 2014 surveys, about  
4 half of the female respondents who indicated  
5 experiencing a sexual assault and made a report  
6 to DoD authority received some kind of social  
7 retaliation associated with their report. Given  
8 the social retaliation definition, it is unlikely  
9 that our survey respondents were always in a  
10 position to know the intent of the perceived  
11 retaliation.

12 Given the broad range of behaviors  
13 that could be perceived as social retaliation, it  
14 is fairly safe to assume that such reactions by  
15 others by someone who reports a sexual assault  
16 will not always rise to the level of a criminal  
17 act. However, these reactions can add to a  
18 victim's feelings of alienation. They can  
19 complicate their recovery. And they can  
20 influence their decision for continued  
21 participation in the military justice process.

22 As indicated in our report to the

1 President, our most recent data showed that a  
2 significant percentage of victims indicated they  
3 perceived some kind professional and social  
4 retaliation. And this percentage showed no  
5 appreciable change between 2012 and 2014, either  
6 in the overall percentage of female respondents  
7 indicating they perceived retaliation or the  
8 types of retaliation they perceived.

9 We knew this would be a challenge when  
10 we selected this area of focus as a metric for  
11 the report to the President. It is something  
12 we've always had our eye on.

13 Over the years, and through the voices  
14 of military survivors of sexual assault, we heard  
15 that many felt retaliated against for reporting.  
16 When the Secretary of Defense first called upon  
17 SAPRO in 2011 to inquire how we might advance  
18 progress in this area, our first action was to  
19 develop an initiative that would get after this.  
20 As a result, in December of 2011, Secretary of  
21 Defense Panetta directed the implementation of an  
22 expedited transfer option for victims. This was

1 not for victims who felt unsafe, but for victims  
2 who felt uncomfortable in their surroundings with  
3 the goal of helping them in their recovery.

4 Our anecdotal evidence indicates that  
5 retaliation concerns are often voiced as part of  
6 the reason for requesting a unit transfer, but  
7 evidence of retaliation is not a prerequisite for  
8 a move. We wanted victims to have an effective  
9 avenue to leave a negative environment.

10 Expedited transfers were later codified as part  
11 of the 2012 National Defense Authorization Act.

12 Shortly thereafter, in 2012, on the  
13 Department's own initiative, we added questions  
14 on retaliation to the Workplace and Gender  
15 Relations Survey so we could better quantify the  
16 problem. Concentrating on the safety and well-  
17 being of victims, we asked for their perceptions  
18 of retaliation following a report of sexual  
19 assault. As I've shared with you, the survey  
20 results conveyed the severity of the issue.  
21 Unfortunately, results for men were not  
22 reportable on either the 2012 or the 2014

1 surveys.

2 In the wake of these surveys, we put  
3 policies and initiatives in place to further  
4 protect victims. We've since established many  
5 avenues to help victims recover, address their  
6 safety, document the crime, and understand their  
7 legal options, many of which did not exist as  
8 recently as three years ago.

9 Key reforms included establishing  
10 policy and procedures to protect victims of  
11 sexual assault from coercion, retaliation and  
12 reprisal, in accordance with the Military  
13 Whistleblower Protection Act. We also  
14 implemented a statutory provision that mandates a  
15 general/flag officer's review in the event of an  
16 involuntary separation of a victim of sexual  
17 assault.

18 This NDAA provision originally  
19 required an allegation of retaliation as the  
20 basis for the review, but the Department went a  
21 step further. Our policy requires that all  
22 involuntary separations of sexual assault victims

1 who made an unrestrictive report be reviewed,  
2 which is much more inclusive than just  
3 considering those separations involving  
4 retaliation claims alone. And as of last year,  
5 each Service implemented regulations against  
6 retaliation and ostracism in which a violation  
7 can result in a criminal prosecution under  
8 Article 92 or Article 93 of the Uniform Code of  
9 Military Justice.

10 Right now, though, I can't emphasize  
11 enough how much we care about the personal  
12 experiences of sexual assault survivors and our  
13 commitment to giving them the resources they need  
14 to address the specific challenges they face. I  
15 know personally because I periodically meet with  
16 survivors to hear their experiences, both good  
17 and bad, with our SAPR program.

18 Still, sexual assault remains a vastly  
19 unreported crime and the fear of retaliation  
20 remains a major barrier to reporting. So we  
21 started to gain a much broader understanding of  
22 the scope of the problem with the data captured

1 in the report to the President.

2 We administrated multiple mechanisms,  
3 including the RAND Military Workforce Survey; the  
4 first of its kind, Survivor Experience; and the  
5 Department's Organizational Climate Surveys,  
6 known as DEOCS. The Report to the President  
7 assessed progress based on 12 metric areas that  
8 we recommended and the White House approved.

9 Overall, we were able to demonstrate progress in  
10 10 out of the 12 metrics. As I mentioned  
11 earlier, results show a significant decrease in  
12 the occurrences of the crime, and a sharp  
13 increase in reporting since 2012, a positive  
14 shift in the right direction and a step toward  
15 closing the gap between prevalence and reporting.

16 We estimate now that we receive a  
17 report from 1 in 4 victims, which is up from  
18 about 1 in 10 in 2012. Feedback from the  
19 Survivor Experience Survey also indicated  
20 overwhelming satisfaction in the services  
21 available to victims, with Special Victims'  
22 Counsel attorneys and Sexual Assault Response

1 Coordinators receiving high rankings.

2 Our intent, and I think this is really  
3 important, our intent when asking about  
4 retaliation on surveys has always been to better  
5 assess victim well-being and understand the  
6 stressors associated following a report of sexual  
7 assault, not to establish a rate that would align  
8 with actionable offenses. As a result, our  
9 survey responses should not be viewed as an  
10 indicator of actionable offenses under military  
11 law. Our intent in asking these questions is to  
12 better adjust support programs and tailor  
13 services and training to match victims' needs.

14 While we certainly believe a  
15 significant portion of the survey respondents  
16 perceived alienation by peers and reprisal from  
17 other parties, these perceptions are only one of  
18 the elements of proof required to prove  
19 professional and/or social retaliation. Other  
20 factors, such as the intent of the individual  
21 suspected of reprisal and the evidence of the  
22 behavior experienced by the victim, must be

1 investigated and evaluated before a criminal  
2 offense can be proved.

3 A standalone punitive article in the  
4 UCMJ may have some advantages. However, given  
5 the broad spectrum of behavior involved, there  
6 will always be a need for administrative and  
7 policy accountability options to properly address  
8 retaliation. We not only look to the voices of  
9 survivors, we also look to the military force to  
10 give us an indication if leadership was taking  
11 appropriate action to create an environment where  
12 victims would feel more comfortable making a  
13 report.

14 Overall, we found most military  
15 members gave the senior leadership good marks for  
16 their efforts to create a reporting-friendly  
17 environment. Data further supports this trend,  
18 with 73 percent of respondents to the Survivor  
19 Experience Survey indicating they would report  
20 the crime again based on their overall  
21 experience.

22 However, and I think this is an

1 important point, victims rated less highly their  
2 peer-to-peer relationships and relationships with  
3 those lower in the command chain than their unit  
4 commanders.

5 The bottom line is retaliation in any  
6 form is unacceptable and we will all benefit from  
7 additional information about this problem so we  
8 can take action to prevent it, correct it, and,  
9 where indicated by the evidence, take appropriate  
10 accountability action. RAND has provided some  
11 additional information to supplement what we  
12 reported to the President. We will include that  
13 in our Annual Report to Congress at the end of  
14 this month.

15 However, if we are really going to  
16 better understand the experiences of victims, we  
17 are going to have to refine our survey questions.  
18 We have reached out to the Services for other  
19 information that is responsive to some of the  
20 initiatives issued by the Secretary of Defense  
21 following the Report to the President. I  
22 outlined those in the information paper we

1 provided to you.

2 In addition, all Services are in the  
3 process of pulling data from their investigative  
4 organizations and other resources to get a better  
5 sense of actions working to address retaliation  
6 in reported cases. This forthcoming information  
7 will add to our understanding and ability to  
8 address this problem.

9 In addition, we are considering other  
10 initiatives that will not only allow us a better  
11 understanding of the retaliation experiences of  
12 survivors, but also allow us to check in on their  
13 well-being. While I'm not at liberty to discuss  
14 these initiatives today, we will share them with  
15 you after the release of this year's annual  
16 report, and that is scheduled to be released the  
17 30th of April.

18 In the meantime, my office and the  
19 Services are taking action to implement Secretary  
20 of Defense initiatives focused on retaliation.  
21 And I'll outline those for you.

22 One, establishing new procedures for

1 commanders to regularly assess and act on all  
2 reports of retaliation, in any form, from a  
3 victim, witness, or first responder. Secondly,  
4 leveraging commanders in their role as the Chair  
5 of our case management groups to use these  
6 sessions to ask about retaliation experience by  
7 not only victims, but also our first responders.  
8 Number three, enhancing training of our first  
9 line supervisors who work with our youngest  
10 troops, those at greatest risk for sexual  
11 assault, to teach them the skills needed to  
12 intervene early should they witness inappropriate  
13 or retaliatory behavior. And lastly, identify  
14 the mechanism available to commanders and create  
15 an action plan to address retaliation with their  
16 units.

17 We are also taking immediate steps to  
18 leverage the DoD Safe Helpline as a means to  
19 safely and securely report any incidents of  
20 retaliation following a report of sexual assault.  
21 These recent initiatives are strategic and  
22 significant, but achieving desired results will

1 take time and dedication. I can assure you we're  
2 up to the task.

3 As I mentioned earlier, sexual assault  
4 is a highly under-reported crime in the military.  
5 I know you know that. And we believe victim  
6 concerns of retaliation act as a major barrier to  
7 reporting. We owe victims a system where they  
8 are empowered to report and are not concerned  
9 about the consequences of doing so. It is our  
10 goal to give all victims options that respect  
11 their privacy, protect their rights, and promote  
12 healing. We'll continue to take steps to earn  
13 their confidence by providing them assistance  
14 throughout the military justice process, as well  
15 as the care and support to restore their lives  
16 and recover their contribution to mission  
17 readiness.

18 We also continue to educate our force  
19 at-large so that they can better recognize and  
20 appropriately intervene in a situation posing a  
21 risk for sexual assault, and understand how to  
22 support our professional response to victims when

1 this crime does occur. That is our duty to those  
2 who serve.

3 Ma'am and Panel Members, that  
4 concludes my opening statement, and myself and  
5 Dr. Galbreath look forward to your questions.

6 CHAIR HOLTZMAN: Thank you very much,  
7 General.

8 Mr. Taylor, do you have questions?

9 MR. TAYLOR: Yes. Thank you both for  
10 being here today and thank you for your important  
11 work.

12 General, I wonder if you have any idea  
13 whether anyone is monitoring the punishments or  
14 actions taken against those who are guilty of  
15 retaliation?

16 MG SNOW: I can tell you, sir, the  
17 answer is yes. There is a means to do that. We  
18 have initiated a data call to answer that  
19 specific question. So, as I mentioned, we know  
20 there are Articles that are available to punish  
21 those that are responsible for this particular  
22 crime.

1           So we did a snapshot and we started to  
2 collate those findings. We're just not prepared  
3 to share those. And this is a point I want to be  
4 clear about because I think you know we have been  
5 transparent to the Panel, and I want to continue  
6 to do that. It's just that right now the data  
7 call that you are referring to is something that  
8 we have started. Quite frankly, it's a snapshot.  
9 So, in other words, we know there are tools  
10 available to commanders, and we are interested  
11 ourselves to what extent are these being used.  
12 And so we solicited that data. We have received  
13 it and we are in the process of analyzing it.

14           The challenge is that I have not had  
15 a chance to brief the senior leadership in the  
16 Department on the results of that information.  
17 And that is something we hope to include in the  
18 report on the 30th, but, quite frankly, we're in  
19 this two weeks right now where I'm just not at  
20 liberty to share because I've not briefed the  
21 Secretary of Defense on the results.

22           Quite frankly, what I think it is

1 going to show us, and I guess I could allude to  
2 it, is that although there are tools available  
3 and I think we can look at ourselves and say from  
4 a program policy perspective, some of those tools  
5 are in place. I am not sure that they are fully  
6 being used, leveraged, to their full effect.  
7 And, in part, perhaps it's the size of our  
8 organization, so they may be in existence, but  
9 they may not be getting all the way down to the  
10 lowest levels of the organization. So that's  
11 something that we're sensitive about.

12 But the SecDef initiative where we  
13 have called upon the case management group, that  
14 existing forum, or we call it the Sexual Assault  
15 Review Board in the Army, but it serves the same  
16 purposes. I am comfortable sharing with you that  
17 it appears that the effort to get those forums to  
18 better look into this shows that they are doing  
19 it. They're asking questions and that is  
20 something that can then be followed up through  
21 either command channels or otherwise depending on  
22 the forum.

1           Dr. Galbreath, anything you want to  
2 highlight after that?

3           DR. GALBREATH: I think the one thing  
4 we've figured out in asking our data call  
5 question is, I don't know if there's any central  
6 repository in each of the Services for this  
7 information. A lot of the professional  
8 retaliation reprisal information is held on to by  
9 the DoD IG and the Service IGs, but the other,  
10 the social retaliation stuff, that is all over  
11 the place and it's hard to put your finger on it.

12           MR. TAYLOR: Well, just to be clear,  
13 I didn't mean to put you on the spot. I had no  
14 idea you had asked for that information. I was  
15 just trying to get an advance read on something  
16 that you had requested, but I'm very glad you're  
17 doing that, because my observation, for what it's  
18 worth, is that when I look at reports like the  
19 Inspector General's semi-annual report to  
20 Congress on retaliation and I read what  
21 retaliation was, and then when I read the  
22 outcome, that is the real impact on the person

1 who actually did the retaliating, sometimes it  
2 seems woefully inadequate.

3 Now, I know this is a question of  
4 command influence and sending the right signals,  
5 but I think it's also a leadership question of  
6 what people expect when someone is actually in a  
7 position when they're supposed to make the  
8 decision about what to do about another person  
9 who has retaliated. So that's why I'm very  
10 interested in what your data will show.

11 Following up on something you said,  
12 Dr. Galbreath, do you have any idea or any  
13 examples of whether anyone has been retaliated  
14 for social ostracism? Has any case like that  
15 come to your attention where someone has actually  
16 been named and accused of that?

17 DR. GALBREATH: The initial first pass  
18 of the data it looks like there are, but I don't  
19 have any other information other than that. As a  
20 matter of fact, we just got the information in  
21 yesterday, so we're doing the -- the first high  
22 pass, it looks like there are some instances of

1 social retaliation that have been reported, but I  
2 just don't have any kind of quantifiable data to  
3 give you.

4 MR. TAYLOR: Okay. So, one other  
5 question that's raised by the report that you  
6 briefed us on just a second ago, General Snow,  
7 has to do with involuntary separations for those  
8 who have made sexual assault reports and  
9 subsequently recommended for involuntary  
10 separation. And according to your report, you  
11 said that you updated instructions to request a  
12 general officer or a flag officer review of the  
13 circumstances of and grounds for the involuntary  
14 separation.

15 So, some questions, what kind of  
16 information do you have about whether this is  
17 actually being implemented and how is it working?

18 DR. GALBREATH: Well, I can tell you  
19 that it has been implemented. I don't have  
20 specifics in terms of -- you know, in other  
21 words, I know this is implemented by the  
22 Services, but I would recommend to you that that

1 really go to the questions -- that information  
2 has not been fed back up into our particular  
3 organization tracking that.

4 MR. TAYLOR: Don't you think that  
5 would be a good thing for you to know?

6 DR. GALBREATH: Perhaps so, sir.

7 MR. TAYLOR: Okay. Well, thank you  
8 very much.

9 CHAIR HOLTZMAN: Admiral Tracey.

10 VADM(R) TRACEY: In the case of both  
11 the case management review and this last  
12 provision for the flag officer review, how long  
13 have those policies been in place?

14 MG SNOW: Well, on the case management  
15 review, ma'am, the answer to that was when we did  
16 the report to the President, one of the things  
17 that we do when we report is we see where the  
18 evidence takes us. And in this particular case,  
19 the fact that we have not been able to  
20 demonstrate progress on retaliation caused us to  
21 really look at what more could we do. And so the  
22 thought process was, because we came at this from

1 different angles, on the case of the WGR that was  
2 administered by RAND this year, we had to ask the  
3 question in a similar fashion so that we could  
4 track trends. And that particular survey is  
5 generalizable.

6 As I indicated in my remarks, we also  
7 went at it from a survivor experience survey so  
8 that we could reach out to survivors, and that is  
9 something that is going to continue. And we also  
10 added questions to address this issue on the  
11 DEOCS. Because of that, we could tease out that  
12 it appears that social retaliation is a bigger  
13 issue than professional retaliation. And I want  
14 to be clear here. They're both not good, okay?  
15 But the percentage indicates that the social  
16 retaliation appears to be the larger of the two  
17 issues.

18 So, because of that, the Secretary, we  
19 recommended and the Secretary approved two  
20 initiatives. One was, because we have an  
21 existing forum to make sure that we are doing all  
22 of the right things to support a victim in this

1 process, we had these case management groups. We  
2 just added the requirement to specifically  
3 address retaliation, to pulse the system. And I  
4 would tell you, I think it's a good thing that we  
5 are doing that.

6 Now, they're not investigating. We  
7 don't want them to be responsible, but they can  
8 identify it and make sure that something is being  
9 done about it. So that's the first thing.

10 The second thing is -- and so that has  
11 only been in place since December. So, as we sit  
12 here, that's been in place about four months.  
13 And we ourselves were interested, hey, is this  
14 working as advertised? We started down that path  
15 because we knew we had the requirement in the  
16 annual report, but, quite frankly, because we  
17 wanted the information so quickly, and you are  
18 talking about a forum that's going on all across  
19 installations, all across the world, this was a  
20 heavy lift for each of the Services to comply  
21 with our requirement.

22 So it may be that we can confirm that

1 it's moving in the right direction, but I think  
2 it's going to form as the basis for a further  
3 data call for 2015. So, to answer your question,  
4 ma'am, that part has only been in place for four  
5 months.

6 The first question about the GO  
7 reviews has actually been in place -- is it '12?  
8 If I could confirm and get back to you on that.  
9 It's either '12 or '13, so that's been in place  
10 for some time.

11 DR. GALBREATH: One piece to add about  
12 the separations is that enlisted separations are  
13 done in a decentralized way in the Department.  
14 And so it's very difficult oftentimes to collect  
15 that data and to find out where this information  
16 is. But that being the case, I am conducting  
17 some research through our Defense Manpower Data  
18 Center and PERSEREC that, and with the Defense  
19 Sexual Assault Incident Database that we stood up  
20 in the last couple of years, I know all the folks  
21 who made unrestrictive reports. And so what I've  
22 tasked them to do is to actually go pull the

1 threads for all of those people to see where they  
2 are and to see what their status is, have they  
3 got out, were they separated, all that kind of  
4 stuff. That's ongoing. It is quite a lift. And  
5 every time I look into the box and look at those  
6 numbers, they of course change because time  
7 passes.

8 So I'm collecting regular snapshots of  
9 data and it's probably about a two or three-year  
10 process to kind of see exactly where folks are,  
11 but this is the first time we've been able to do  
12 this because of the database being available to  
13 us.

14 So, it's underway. We're going to  
15 find out. It's just not a quick process because  
16 of the decentralized nature of the separations  
17 that occur.

18 VADM(R) TRACEY: So, General, early  
19 days yet to be able to assess how effective the  
20 changes are. Thank you.

21 CHAIR HOLTZMAN: Just a couple of  
22 questions. General, you mentioned that you

1 didn't have statistics with respect to men who  
2 have been victims in sexual assault.

3 MG SNOW: Right.

4 CHAIR HOLTZMAN: And you said it was  
5 not reportable.

6 MG SNOW: That's right.

7 CHAIR HOLTZMAN: Could you explain  
8 that?

9 MG SNOW: Sure. Actually, I think I'd  
10 rather have the scientist explain. I could tell  
11 you in layman's -- I think this is a better  
12 question for Dr. Galbreath.

13 DR. GALBREATH: When we sample -- as  
14 a matter of fact, this last RAND survey that was  
15 just conducted, it was the largest survey of its  
16 kind in the history of the Department with  
17 regards to sexual assault. We had 170,000  
18 respondents. And over 550,000 were invited to  
19 take the survey. So we got a good number.

20 The challenge is, is only one percent  
21 of men indicated experiencing a sexual assault in  
22 the past year. And then when I take that bucket

1 and I look at, of the men who experienced a  
2 sexual assault and reported it and made an  
3 unrestricted report, that number shrinks even  
4 more. And that increases my margin of error,  
5 because we balance the surveys to be  
6 generalizable to the total force.

7 And as those numbers of people that  
8 we're describing gets smaller and smaller, so of  
9 the people who experienced a sexual assault, made  
10 an unrestrictive report, and experienced  
11 retaliation, I am now talking about maybe 50, 60  
12 men, perhaps, that were actually in the bucket.  
13 So the estimate that's generated has such wide  
14 margins of error that it's just not reliable to  
15 report the outcome.

16 CHAIR HOLTZMAN: Now that you mention  
17 those numbers, so one percent of men out of the -  
18 - what was the number --

19 DR. GALBREATH: Out of the 170,000  
20 respondents.

21 CHAIR HOLTZMAN: What percentage of  
22 women said that they had been victimized by

1 sexual assault?

2 DR. GALBREATH: RAND found that, using  
3 their measure, 4.9 percent experienced a sexual  
4 assault in the past year.

5 CHAIR HOLTZMAN: Is it your view that  
6 those numbers are understated?

7 DR. GALBREATH: No, actually, we took  
8 your advice from the Response Systems Panel and  
9 we had RAND redo our measures so that we could  
10 get greater granularity and align what was asked  
11 about on the survey with the UCMJ language. We  
12 did that and what we found is we think that  
13 there's very, very reliable results this time  
14 around. And everything that -- the 4.9 percent  
15 and the 1 percent, RAND has very high confidence  
16 that those respondents and the way that they  
17 asked the questions really do align with a UCMJ  
18 violation.

19 CHAIR HOLTZMAN: And they think -- my  
20 question maybe wasn't articulated properly. Does  
21 RAND believe, and do you believe, that really  
22 only one percent of men in the military actually

1 experience sexual assault, or is that one percent  
2 that said they did an understatement of the  
3 actual number?

4 DR. GALBREATH: I think it's accurate  
5 because we always do things to 95 percent  
6 confidence and so the actual number, so the  
7 actual percentage is 1 percent, but it could be  
8 as high as something or as low as something.

9 MG SNOW: Ma'am, if I could tell you,  
10 we know this is an underreported requirement.  
11 I'm not sure if this is where you're going, but I  
12 do think it's important, when RAND did the  
13 survey, they actually used two different  
14 instruments. One was similar to the way the  
15 questions were asked in the past so that they  
16 could trend. And a certain number of respondents  
17 got that survey. But then they asked them  
18 specifically, consistent with the Response System  
19 Panel, to devise a new questionnaire.

20 And just to reinforce Dr. Galbreath's  
21 point, when you look at the difference between  
22 the two, and we think this is powerful, there

1 were those that questioned the Defense Manpower  
2 Data Center and how they conducted a survey. But  
3 if you look at the difference between women and  
4 men, the way they responded to the two  
5 instruments, in the DMDC form it was 4.3 percent  
6 of women and in RAND's form it was 4.9 percent.

7 In the case of men, it was .9 percent  
8 for the old form and 1 percent for the new form.  
9 So, to us, that's remarkably powerful, the fact  
10 that they're coming at it from two different  
11 ways, but they were remarkably consistent.

12 DR. GALBREATH: And those differences  
13 between the responses using the prior DMDC form  
14 of the question of unwanted sexual contact and  
15 RAND's new form were not statistically different.  
16 So we think we got the right number.

17 CHAIR HOLTZMAN: Now, you also  
18 mentioned that data was all over the place with  
19 regard to retaliation.

20 DR. GALBREATH: As far as location  
21 goes.

22 CHAIR HOLTZMAN: Right. Are you

1 planning to centralize that?

2 DR. GALBREATH: That is something that  
3 is larger than our office.

4 CHAIR HOLTZMAN: Really?

5 DR. GALBREATH: Retaliation is  
6 something that belongs to the DoD IG for the most  
7 part.

8 CHAIR HOLTZMAN: I see.

9 DR. GALBREATH: And then for the  
10 social retaliation, that belongs to the Services,  
11 and so it's bigger than just SAPRO.

12 MG SNOW: If I can take that one step  
13 further, I do think we can play a role and we  
14 will be working with the Services. I mean, as  
15 you know, you're going to hear from them this  
16 afternoon, and each of the Services, SAPRO leads,  
17 each of the Service secretaries feel very  
18 strongly about this particular issue. So it's  
19 really just having us work together on this  
20 particular issue.

21 I'd like to make one other comment  
22 just about that, though. On the information

1 paper, as I looked at it, we tried to make it as  
2 accurate as possible, but I think it's a point  
3 worth reiterating for you, on the reprisal and  
4 professional retaliation, we said typically  
5 handled by the DoD. I actually -- it should have  
6 said exclusively handled by the DoD IG. And I  
7 would just ask you to make that correction.

8 The DoD IG is very clear, and I know  
9 you're going to hear from him this afternoon.  
10 They do not work for SAPRO. We work very closely  
11 together. They're at many of the meetings, but  
12 they don't work for me.

13 On the issue of the social  
14 retaliation, I think there will be an effort, but  
15 I don't want to get to look at this a bit  
16 differently and be able to articulate and answer  
17 the questions of the degree of specificity as to  
18 how many folks are we holding responsible for  
19 this particular crime. But we'll have to work  
20 very closely with the Services to figure out how  
21 we do that because it's just -- the social  
22 retaliation is much harder, and you know better

1 than I do the different ways in which it can be  
2 addressed within command channels. But to pull  
3 all that information together will cause the  
4 Department to do things in a way we have not  
5 typically done.

6 CHAIR HOLTZMAN: Well, I just think,  
7 from my own personal point of view, that you  
8 can't solve the problem completely until you know  
9 the nature of it, the extent of it, the breadth  
10 of it, the size of it. And you know that  
11 probably better than a lot of other people, so to  
12 the extent you can put an oar into this issue and  
13 try to make sure that we have a factual database  
14 from which policy can proceed, that would be  
15 really, I think, something important.

16 It occurred to me, on the question of  
17 policies, and you may not be the right people to  
18 ask this question of, but I know that there's  
19 been a lot of emphasis on bystander intervention  
20 with respect to sexual assault itself. Has there  
21 been any effort to get people to do bystander  
22 intervention on issues of retaliation?

1 DR. GALBREATH: That was the  
2 initiative that the Secretary directed after the  
3 Report to the President. We asked the Services  
4 to create training programs for their first-line  
5 supervisors so that they could better detect and  
6 step in when they saw that kind of behavior going  
7 on in the shops.

8 We have been, so far, I think, fairly  
9 good about treating this problem from the top  
10 down since about 2012. Lots of the leadership  
11 initiatives to get after this. But we have yet  
12 to see any kind of on the ground, where the  
13 rubber meets the road approach to get after this  
14 in the units.

15 And so that's why the Secretary  
16 directed that that kind of training be developed,  
17 because it's those E-4s, E-5s, that are in their  
18 first time role as managers, and to give them the  
19 tools to understand why this is a problem, not  
20 only sexual assault, sexual harassment, but also  
21 retaliation against the people that make a report  
22 is so important to good order and discipline in

1 the small shops that they run.

2 So, certainly, the commander cannot be  
3 everywhere at once. So we're increasing the  
4 number of eyes on this problem by getting after  
5 those first-line supervisors.

6 MG SNOW: If I could just follow that  
7 up, ma'am. That was, in fact, one of the  
8 metrics. As a matter of fact, the metric number  
9 3 was bystander intervention experience in the  
10 last 12 months. And our results indicated that's  
11 an encouraging trend because, based on the  
12 feedback we got, most Servicemembers intervene if  
13 they see a risky situation. And that percentage,  
14 we got a percentage of about 87 percent indicated  
15 that if they observed a situation, then they  
16 would take some action.

17 One of the challenges, though, with  
18 this particular crime is that only about -- we  
19 kind of want to look at that 87 percent and say,  
20 listen, that's a good thing that they indicated  
21 they would do something, but only about 4 percent  
22 actually see something in which they can take an

1 action. So, you know --

2 DR. GALBREATH: When they see it, they  
3 act. The challenge is getting more people to  
4 look out. But that question was focused  
5 specifically on sexual assault.

6 MG SNOW: Right, not retaliation.

7 DR. GALBREATH: Exactly. I would  
8 offer that there are a lot of social forces, I  
9 think, in a small unit, that we have to give  
10 people encouragement and the tools to act, to  
11 swim upstream, so to speak, and go after those.  
12 Because what we're asking people to do is, I  
13 think, considered rather uncool, is why are you  
14 going to speak up and be that way? But that's  
15 the part about being a supervisor. That's the  
16 part about increased leadership. You don't  
17 always do what's popular. You do what's right.  
18 And that's what we want to get after.

19 CHAIR HOLTZMAN: But bystander  
20 intervention is not only for supervisors.

21 DR. GALBREATH: That is correct.

22 CHAIR HOLTZMAN: That's for your

1 peers.

2 DR. GALBREATH: That is correct. And  
3 having peers be able to respond to that as well.  
4 I think we'll see a little bit different -- we  
5 can't put words in the Secretary's mouth, but we  
6 do believe that we'll have something to get after  
7 that in April.

8 MG SNOW: Ma'am, it's a point worth  
9 reinforcing. You know full well just how much  
10 has been legislated in the last three years as it  
11 pertains to sexual assault.

12 CHAIR HOLTZMAN: Right.

13 MG SNOW: And that's, of course, in  
14 addition to the Secretary of Defense initiatives.  
15 But something that Dr. Galbreath said and I --  
16 again, I can't put a specific number, but I can  
17 just tell you, we are a large organization and I  
18 think the Secretary's initiative in December to  
19 go after first-line supervisors from the bottom  
20 up so that we're coming at it from both ways is a  
21 really good thing. We're going to need that.

22 CHAIR HOLTZMAN: Just one final

1 question. You mentioned that, in the survivor  
2 survey, 10 out of the 12 metrics improved.

3 MG SNOW: Right.

4 CHAIR HOLTZMAN: And two didn't.

5 MG SNOW: Right.

6 CHAIR HOLTZMAN: Can I ask about the  
7 two?

8 DR. GALBREATH: In the Report to the  
9 President, 10 out of 12.

10 MG SNOW: Ma'am, I can answer that  
11 one. And, actually, I'm glad you asked it. The  
12 other one that we did not demonstrate improvement  
13 on was investigation length. So the length of  
14 investigation for the military criminal  
15 investigative organizations. In hindsight, that  
16 probably should have been a non-metric, and  
17 here's why. In an effort to be transparent and  
18 not cause folks to look at the Department  
19 differently, what we found is the investigation  
20 length actually increased from 2012.

21 But what we are finding, again, when  
22 you look at the increase in reports, and we've

1 had a 70 percent increase in reports from 2012 to  
2 2014. So we have folks that are coming forward.  
3 Again, about 8 percent of the folks that are  
4 coming forward in 2014, these were individuals  
5 that actually had been assaulted before they came  
6 into the military.

7 CHAIR HOLTZMAN: What percentage? Did  
8 you say 80?

9 MG SNOW: Eight percent.

10 CHAIR HOLTZMAN: Eight.

11 MG SNOW: Eight percent of that group.

12 And so, obviously, they're coming to get the  
13 support, because in many cases it's not going to  
14 result in our ability to go after the alleged  
15 offender.

16 In many cases, these are reports --  
17 and you even alluded to this previously. In some  
18 cases, they're coming forward years after the  
19 event. So you can imagine, for an organization  
20 for any criminal investigative organization, it's  
21 going to take them longer to do those.

22 And so, in hindsight, I wish we had

1 put it in the non-metrics, which were all those  
2 things associated with the Uniform Code of  
3 Military Justice, because there is a sensitivity  
4 because of undue command influence. And we are  
5 clear to say on those non-metrics, in terms of  
6 prosecution rates and stuff like that, they're  
7 all where the evidence takes us, as opposed to  
8 the other metrics, clearly, as in the case of  
9 retaliation, if we find out we've got an issue,  
10 then there are things that we can do. There  
11 aren't as many things that we can do on the non-  
12 metrics, if that makes sense.

13 CHAIR HOLTZMAN: Okay. I don't have  
14 any further questions.

15 Mr. Taylor, do you have some  
16 questions?

17 MR. TAYLOR: I do not.

18 VADM(R) TRACEY: Just one follow-up,  
19 General. You had indicated that with regard to  
20 the social retaliation, because of the way it's  
21 handled, that it's going to be difficult to get  
22 to measure that unless we changed how we've done

1 business. Are there some things that you could  
2 address there?

3 MG SNOW: Sure, I think I'll answer  
4 part of that and I'll ask Dr. Galbreath to weigh  
5 in. I think one of the things is, we asked the  
6 question in a similar way in 2014 that we did in  
7 2012 in order to trend.

8 The way we asked the questions, you  
9 know, in one case the word "professional" and  
10 "retaliation" was in the question and another was  
11 "social retaliation." But then there were other  
12 categories, too. And as we look at that, it may  
13 be that for those that are victims of this crime,  
14 the world is -- and you know this, the world is a  
15 darker place. It may be that somebody has taken  
16 action. Say they didn't invite them to a party.  
17 And in their mind they felt that was social  
18 retaliation.

19 Or another example may be that they  
20 were under age at the time of the incident and  
21 they received some type of administrative action  
22 because they were under age, but in their mind

1 they feel like that's social retaliation or  
2 professional retaliation. And we would argue  
3 that, consistent with the definition, it's really  
4 not.

5 So what I think you are going to see  
6 from the Department, and what we are going to  
7 propose, is enhancing the questions and perhaps  
8 not taking those titles so that we can make them  
9 behavioral based, and then we'll make the  
10 assessment, is it social or is it professional,  
11 very similar, I might add, to what RAND really  
12 did with the unwanted sexual contact measure.

13 Anything you want to add to that? I'm  
14 going to come back to the other part, ma'am.

15 DR. GALBREATH: We're being very  
16 sensitive to how this also impacts reporting as  
17 well. In addition to revising that measure, we  
18 also asked RAND to revise the number -- the  
19 reasons why people didn't feel comfortable making  
20 the report. I thought I'd just share that with  
21 you. This is from the RAND survey, the  
22 additional analyses that they're going to be

1 putting out here at the end of the month for us.

2 What they did is they gave victims --  
3 they gave people a number of different reasons  
4 for why they wouldn't make a report of sexual  
5 assault, if they chose not to. And then they  
6 asked them -- you could check all of the above,  
7 but then they asked them at the end of that which  
8 of these was your main reason?

9 And so when they lumped these  
10 together, what they found is that of those with a  
11 past year sexual assault who didn't report, the  
12 main reason for not reporting their assault,  
13 number one, was they minimized the assault. They  
14 didn't think it was serious enough to report or  
15 they felt they were partially to blame and that  
16 was about 24 percent, so about a quarter of the  
17 folks.

18 About 17 percent wanted to forget  
19 about it and just move on. But number three,  
20 they had retaliation fears, fears that it might  
21 hurt their career. The offender, supervisor, or  
22 their peers might retaliate and that was about 15

1 percent. So it's on their minds. And we know  
2 that we're not going to make any -- we're going  
3 to have these kinds of increases in reporting  
4 like we've seen in the past couple of years  
5 unless we get after this. Nobody should have to  
6 worry about after they make a report of sexual  
7 assault that they're going to either experience  
8 some kind of ostracism or they're not going to  
9 get -- be able to proceed on in their career. So  
10 this is very much on our minds.

11 MG SNOW: And the other thing I wanted  
12 to -- it really kind of goes back to Mr. Taylor's  
13 -- my response to Mr. Taylor's questions. This  
14 particular data call, we did it because we're  
15 interested. We do want to know to what extent  
16 are leaders using the tools available to them to  
17 address retaliation. We can look at ourselves  
18 from a program or policy and say well, there are  
19 tools available, but again, if they're not  
20 getting down and they're not being utilized, then  
21 we want to call attention to that.

22 So on the data call, I think it was a

1 good first step. But quite frankly, I'm not sure  
2 -- we're fond of the term of garbage in, garbage  
3 out. And I can just tell you right now, and  
4 you'll have an opportunity to ask the Services  
5 this afternoon, we pushed them very hard and it  
6 was really difficult for them to pull this thing  
7 together for the end report.

8 I am not sure to what extent we're  
9 going to be able to generalize those findings  
10 today because it's really a snapshot in time.  
11 What I think it's really going to do for us is  
12 it's going to serve as -- it's going to be very  
13 informative for what will be a more substantive  
14 data call which will then become part of the FY15  
15 report.

16 The one thing about us and I know  
17 we've got our critics, but I don't think there's  
18 anybody more critical about our efforts than us.  
19 And so we're going to do a deliberate after  
20 action review as to was this successful or not or  
21 what do we need to do? And again, we can't get  
22 in front of leadership, but given the interest in

1 this particular item, I suspect we will have  
2 something a little bit more concrete in order to  
3 collate this information so when you ask me a  
4 question, General, how many folks in the  
5 Department of Defense have been held responsible  
6 for either professional -- which obviously that  
7 would come from the IG -- but social, we should  
8 have that. And right now, we just don't.

9 VADM(R) TRACEY: I think I'm asking  
10 maybe the same question that Mr. Taylor was  
11 asking. What are the barriers to just setting a  
12 standard rather than a data call, a standard for  
13 incidents with these attributes that's centrally  
14 reported, that the disposition of those are  
15 centrally reported?

16 MG SNOW: You know, ma'am, probably I  
17 suspect that could be done. I don't know that  
18 that again falls within our responsibilities to  
19 do that.

20 MR. TAYLOR: Could I just follow up  
21 for a moment on that? So it seems to me that  
22 this is a really great effort that you've got

1 under way and I think that one of the benefits of  
2 your effort will be transparency. Because I  
3 think what people want to know is we have good  
4 policies in place. We know they've been  
5 implemented, but are they working?

6 And the only real way you can tell  
7 whether they're working or not is to see what the  
8 fruits are. So it seems to me that for you to  
9 get the data to share it with the other Services,  
10 to share it with the Congress, share it with the  
11 public, this panel, of course, produce it as a  
12 element of transparency that heightens leaders'  
13 awareness, if they're behind the power code, if  
14 they look and say wow, look what this Service has  
15 done. Why aren't we doing better? There is  
16 something good that comes from that.

17 So I really applaud what you're doing.  
18 I think it's a really important effort.

19 DR. GALBREATH: Thank you, sir. If I  
20 might add, I agree with you one hundred percent.  
21 It's just something that we need to have all eyes  
22 on. We need to make sure that people know what

1 we're doing about it.

2           The one thing I am concerned about  
3 though is that sometimes in our efforts to make  
4 sure that people are held appropriately  
5 accountable, we rely on the justice process and  
6 that is a high bar. And as General Snow said in  
7 his opening statement, we really strongly believe  
8 that administrative and policy actions and things  
9 that we can do under those umbrellas are going to  
10 be very important because not every single  
11 instance of alleged retaliation is going to hit  
12 the high bar that's required for a judicial  
13 action. But we do need to be able to have those  
14 administrative actions. We need to be able to  
15 have commanders be able to address it through  
16 policy changes within their units, set better  
17 climates, those kinds of things.

18           So as you go forward on this, and as  
19 you consider how best to recommend to us what we  
20 should do, please keep that in mind that we have  
21 to not only address the things that are  
22 actionable under the law, but also those things

1 that may not rise to criminal proof.

2 CHAIR HOLTZMAN: Let me just follow up  
3 on that in your answer. Okay, so you're  
4 collecting information now about the instances  
5 where there's been prosecution or punishment and  
6 what's happened in the judicial system. Well,  
7 what about the administrative system? What do  
8 you do to collect those numbers?

9 MG SNOW: Those are included, ma'am.

10 DR. GALBREATH: We asked for those,  
11 too.

12 CHAIR HOLTZMAN: Okay, so that's part  
13 of your request?

14 MG SNOW: Absolutely.

15 CHAIR HOLTZMAN: So if there's been  
16 administrative sanction or some other kind of  
17 activity like that that's going to be captured.  
18 But what about those that don't involve a  
19 punishment under the military justice system?  
20 How do you categorize the sanction? How do you  
21 categorize -- how do you capture that  
22 information? Are you developing ways of doing

1 that? It's not easy, right?

2 DR. GALBREATH: That's the hardest  
3 piece because after a commander-directed inquiry  
4 or in the Army a 15-6 investigation or a JAGMAN  
5 investigation in the Marine Corps or the Navy,  
6 there might not be a recommended criminal  
7 punishment, but there might be subsequent  
8 remedial measures recommended to get after that.

9 To my knowledge, there's no central  
10 storage location for those or no central  
11 reporting locations for what happens after that.  
12 The only reason that we would have a record of  
13 the Article 15 action or non-judicial punishment  
14 is that theoretically it's supposed to be filed  
15 somewhere. But maybe, maybe not.

16 But these other outcomes as far as  
17 report of action taken or any subsequent remedial  
18 measures, I am not aware of any place where a  
19 commander has to be able to report back on that.  
20 So that's even harder to get your hands on to  
21 understand what's going on.

22 CHAIR HOLTZMAN: Are you thinking

1 about how you're going to address that issue?

2 MG SNOW: Yes, ma'am. I really think  
3 that we have taken the first step of what I  
4 believe is going to be a number of steps. And I  
5 -- I mean I believe there are many within the  
6 Department who are going exactly down the road  
7 that you are going down on this issue. Given the  
8 sensitivity and the desire to have answers, we  
9 want those answers, too. And I think the  
10 leadership will move in that direction. It's  
11 just going to be an iterative process.

12 I think step one was what we did in  
13 the wake of the Report to the President. I think  
14 step two will be what actions the Secretary takes  
15 in the wake of the annual report due at the end  
16 of April, but particularly because this is one of  
17 the two areas we couldn't demonstrate progress  
18 on, I assure you, this is going to be -- there's  
19 going to be a laser focus on this particular  
20 issue, until we feel that we have taken the  
21 appropriate steps so that retaliation is not the  
22 issue that it currently is within the Department.

1 CHAIR HOLTZMAN: Are there any further  
2 questions?

3 MR. TAYLOR: No thank you.

4 CHAIR HOLTZMAN: Thank you very much,  
5 General Snow, Doctor, appreciate your presence  
6 and your help. And your good and important work.

7 MG SNOW: Thank you very much, ma'am.

8 CHAIR HOLTZMAN: Should we take a  
9 five-minute break?

10 LTCOL GREEN: Yes, ma'am. We're on  
11 break.

12 (Whereupon, the above-entitled matter  
13 went off the record at 10:35 a.m. and resumed at  
14 10:49 a.m.)

15 CHAIR HOLTZMAN: Thank you very much.  
16 We're ready to hear from our next panel on  
17 Workplace Retaliation Studies and Human Relations  
18 Dynamics.

19 Our presenters are Professor Lilia M.  
20 Cortina of the University of Michigan; Professor  
21 Vicki Magley from the University of Connecticut;  
22 Professor Michael F. Noone, Columbus Law School,

1 Catholic University; and Dr. Patricia Harned,  
2 Chief Executive Officer, the Ethics and  
3 Compliance Initiative.

4 I think we'll start with Professor  
5 Cortina. Welcome.

6 DR. CORTINA: Thank you. So Madam  
7 Chair, members of the panel, good morning. I'm  
8 Lilia Cortina, as you just heard, Professor of  
9 Psychology and Women's Studies at the University  
10 of Michigan. And it's a privilege to speak to  
11 you here today.

12 Since 1994, I have specialized in the  
13 study of workplace harassment and incivility,  
14 published widely in peer reviewed scientific  
15 articles, journals, excuse me. Most of my  
16 research is based on large-scale surveys of both  
17 civilian and military populations. In addition,  
18 I teach courses at Michigan on the psychology of  
19 women, on gender and organizations, and on anti-  
20 social work behavior.

21 So prior to joining the Michigan  
22 faculty, I was a fellow in the Department of

1 Defense Research Consortium where I analyzed  
2 sexual harassment survey data collected by the  
3 DMDC.

4 Some of my research addresses  
5 retaliation against victims who speak out about  
6 sexual harassment and that's where I'll be  
7 focusing today. And this work was done in  
8 collaboration with my colleague, Dr. Vicki Magley  
9 who will speak after me. And I'll be presenting  
10 findings on the incidents and impact of  
11 retaliation and Dr. Magley will focus more on  
12 fear of retaliation. And note that we're both  
13 psychologists, not attorneys.

14 There are legal regulations  
15 surrounding a lot of what we study such as sexual  
16 harassment and retaliation, but in our remarks  
17 here today, we'll be using those terms in the  
18 psychological or the behavioral sense, not their  
19 legal sense.

20 So I brought slides here today to  
21 summarize key findings from a study that Dr.  
22 Magley and I conducted in our work for the Social

1 Science Team for the Eighth Circuit Gender  
2 Fairness Task Force. So I believe you received a  
3 copy of that article in your reading here today,  
4 so I'm not going to go through the findings in  
5 detail, but I'll highlight some key results.

6 So in this study, we surveyed all  
7 employees excluding judges, of the Eighth Circuit  
8 Federal Court system. So this is an organization  
9 that is similar to many others in the public  
10 sector in the sense that it's large, it's  
11 hierarchical and it's both vertically and  
12 horizontally sex segregated. And it also spans  
13 multiple sites across multiple states. So the  
14 great majority of this particular workforce is  
15 female, is white, is college educated. And you  
16 can see here that they worked in a range of  
17 occupations from secretaries and budget analysts  
18 to attorneys and unit heads.

19 So we achieved a 71 percent response  
20 rate in the survey and because we had invited all  
21 employees to participate, that means that these  
22 findings represent 71 percent of this entire

1 workforce.

2           So the employees completed a range of  
3 measures in their surveys including assessments  
4 of whether they had experienced different forms  
5 of workplace victimization, specifically, whether  
6 they had experienced general incivility, gender  
7 harassment, unwanted sexual attention, or sexual  
8 coercion on the job. So for employees who  
9 indicated any experience of any of these kinds of  
10 victimization, we asked follow up questions about  
11 whether they had vocally resisted, reported, or  
12 protested that victimization. So this is what we  
13 refer to when we talk about different "voice"  
14 strategies.

15           And here we focus on three different  
16 kinds of voice. One is whistleblowing, so  
17 reporting a situation or filing a formal  
18 complaint. A second is confronting of the  
19 perpetrator. And a third is seeking social  
20 support, either through colleagues or friends.  
21 They're reaching out for advice about the  
22 situation.

1           So notice that -- let me move on to  
2           the next slide. So we assessed their engagement  
3           of these different kinds of voice strategies and  
4           then we assessed whether or not different sorts  
5           of retaliation followed. So recall that our  
6           focus was on retaliation as a psychological or  
7           behavioral experience, not a legal violation.

8           So with that in mind, our study  
9           defined retaliation as an adverse action taken  
10          against an employee because that employee opposed  
11          inappropriate, unethical, or unlawful conduct  
12          committed by others in the organization. So the  
13          adverse action can be either professional or  
14          social as the panel before us discussed. And it  
15          can occur before, during, or after reporting of  
16          the inappropriate conduct.

17          Well, in this next slide, you can see  
18          the specific behaviors that we focused on in our  
19          measurement of retaliation. So the professional  
20          retaliation behaviors included adverse work-  
21          related actions and these are actions that are  
22          often tangible, formal, and documented in

1 employment records. The professional retaliation  
2 has the purpose or effect of negatively altering  
3 aspects of the victim's job and it typically  
4 originates from superiors who have the power to  
5 make those kinds of alterations.

6 But we also assess experiences of  
7 social retaliation behaviors, for example, being  
8 shunned, blamed, gossiped about, treated like a  
9 troublemaker. And these are behaviors that often  
10 go undocumented, but they can have the purpose or  
11 effect of eroding the victim's interpersonal  
12 relationships on the job. Professional  
13 retaliation can come from individuals in any part  
14 and any level of the organization, so peers,  
15 superiors, or subordinates.

16 So our third question in the study was  
17 simply how prevalent are these retaliation  
18 experiences in the context of victimization and  
19 for whom?

20 So this next slide shows that within  
21 our sample, 834 employees had endured some kind  
22 of retaliation on the job, so either harassment

1 -- yes?

2 CHAIR HOLTZMAN: That's out of 11,067  
3 who responded to the survey?

4 DR. CORTINA: Yes, ma'am.

5 CHAIR HOLTZMAN: Thank you.

6 DR. CORTINA: So they had experienced  
7 either some form of general incivility, gender  
8 harassment or sexual harassment represented here  
9 in the gold. So of these victims, 223 had voiced  
10 or they had spoken out about their mistreatment  
11 in some way, so you see them here in pink. Among  
12 the vocal victims, so within the pink subset, 66  
13 percent reported that social retaliation  
14 followed. Here, they're in green. And within  
15 that 66 percent, over half also encountered  
16 professional retaliation in addition. So in  
17 other words, retaliatory actions always involved  
18 some kind of social reprisal, some kind of  
19 threats or blame.

20 Now which victims tended to experience  
21 the social retaliation? The next chart is going  
22 to focus on the victims in the green group here.

1 So these are the employees who had encountered  
2 some --

3 CHAIR HOLTZMAN: We can't see that.

4 DR. CORTINA: You don't have it where  
5 you're sitting?

6 CHAIR HOLTZMAN: We have the black and  
7 white slides.

8 DR. CORTINA: So you can't see the  
9 colors at all.

10 CHAIR HOLTZMAN: We can't see the  
11 colors.

12 DR. CORTINA: My apologies. I'll  
13 refer to where they are in the graph if you have  
14 the printout in black and white.

15 CHAIR HOLTZMAN: Okay.

16 DR. CORTINA: So this graph might be  
17 harder to see if you don't have the color, but  
18 these are the employees who responded to their  
19 victimization prior to be retaliated against  
20 socially. So you can see in the larger segment  
21 on the left that's labeled 50.80 percent, that's  
22 slightly over half of these social retaliation

1 victims that used all three voice strategies. So  
2 they had confronted their perpetrators, sought  
3 support from colleagues, and blown the whistle on  
4 the situation.

5 But the group I'd like to draw your  
6 attention to is the segment in the upper right.  
7 So you can see there that over 18 percent of  
8 social retaliation victims have either confronted  
9 or sought support, but they had not blown the  
10 whistle. So in other words, they had not filed a  
11 complaint or spoken to a supervisor in any kind  
12 of formal way or anything like that. And keep  
13 that in mind as I migrate to the next slide.

14 So these are the victims who had faced  
15 either social -- sorry, social and professional  
16 retaliation, combined retaliation. And you see a  
17 somewhat similar pattern such that again in the  
18 upper right, you see about 17 percent of the  
19 retaliation victims had not blown the whistle in  
20 any way. They had not reported. They had not  
21 filed grievances. And I emphasize this because  
22 oftentimes our discussions of retaliation and

1 retaliation prevalence focus only on the post-  
2 reporting period and findings like this suggest,  
3 that retaliation can happen before a report ever  
4 gets filed and could prevent a report from ever  
5 being filed.

6 So beyond voiced behaviors, what are  
7 some other factors that can affect retaliation  
8 risk? One of those is power disparity between  
9 the victim and the perpetrator. So on this slide  
10 you see the findings for social retaliation on  
11 the left and professional retaliation on the  
12 right. And we find that victims endured more  
13 retaliation when they had spoken out about  
14 powerful perpetrators, so meaning that  
15 perpetrators who have the ability to affect  
16 aspects of the victim's job, such as their pay  
17 raises, their promotion opportunities, their  
18 performance evaluations and so on. So this is  
19 upheld across the board, but it was especially  
20 pronounced for the victims holding lower status  
21 jobs. So in other words, the secretaries, the  
22 mail room clerks, the administrative support

1 staff. And those employees are represented in  
2 the dashed lines in the graphs. So in other  
3 words, the least powerful victims are  
4 encountering the most retaliation.

5 So power disparity --

6 CHAIR HOLTZMAN: Excuse me, can I just  
7 clarify that?

8 DR. CORTINA: Sure.

9 CHAIR HOLTZMAN: They encounter the  
10 most retaliation when they report or voice, to  
11 use your word, against higher status --

12 DR. CORTINA: Correct.

13 CHAIR HOLTZMAN: -- perpetrators.

14 DR. CORTINA: Correct. And in terms  
15 of additional risk factors, my colleague, Dr.  
16 Magley, will talk about organizational culture  
17 risk factors.

18 So our final question was how these  
19 experiences of retaliation might relate to victim  
20 well-being? So we basically found that the more  
21 the victims are retaliated against for speaking  
22 out, the more they report heightened stress on

1 the job, more symptoms of anxiety and depression,  
2 and thoughts and intentions of quitting their job  
3 and the lower their job satisfaction becomes.

4 So a published article addresses these  
5 outcomes and more. For this presentation today,  
6 I graphed them in a way that's perhaps a little  
7 more acceptable than what's in the article. But  
8 please note that these are based on the same  
9 findings, same data.

10 So in this next graph, you can see the  
11 average job stress levels reported by the  
12 employees. So the ones who had not been  
13 victimized in any way, so they had not been faced  
14 with harassment or incivility or anything like  
15 that are presented in the white bars, so on the  
16 far left. These are the non-victims, if you  
17 will. So you can see the job stress levels are  
18 significantly higher among vocal victims, the  
19 ones who had spoken out, but not faced any  
20 retaliation. In this graph, they're in the pink.

21 Job stress further increased among  
22 victims who had encountered some form of social

1 retaliation after speaking out. So those are the  
2 employees in green. And job stress is equally  
3 high in the dark blue group. These are the  
4 employees who had encountered professional  
5 retaliation in addition to social. So this means  
6 that social reprisals alone are just as harmful,  
7 equally harmful in terms of increased job stress,  
8 just as harmful as social combined with  
9 professional reprisal.

10 In terms of psychological distress, we  
11 found significantly more symptoms of anxiety and  
12 depression reported by all victim groups compared  
13 to the non-victims. Again, the non-victims are  
14 in white.

15 This slide shows findings for three  
16 facets of job satisfaction, having to do with  
17 coworkers, supervisors, and work in general. So  
18 victims facing retaliation, in other words, the  
19 ones in the green and the blue bars are reporting  
20 significantly lower satisfaction across all three  
21 dimensions compared to the non-retaliated victims  
22 in pink. So combined retaliation was especially

1       damaging in this case to supervisor satisfaction  
2       and to work satisfaction. You could see that the  
3       blue bar is significantly different,  
4       significantly lower than the green bars.

5               So just to very briefly summarize  
6       these, turnover intentions. So these are  
7       referring again to employees' thoughts and  
8       intentions of quitting. So we found  
9       significantly higher turnover intent among  
10       employees who had been victimized and retaliated  
11       against. And again, social retaliation alone was  
12       enough to show an impact, but combined  
13       retaliation of both types was even worse.

14               Now to briefly summarize what are  
15       perhaps the most critical findings. When  
16       personnel speak out about workplace  
17       victimization, especially from a superior, more  
18       often than not retaliation follows in this  
19       workforce. So informal social retaliation is  
20       approximately twice as common as formal,  
21       professional retaliation so this sort of  
22       reiterates the point made by the earlier panel.

1       Retaliation can arise even in the absence of  
2       formal reporting, so even before a complaint is  
3       filed or even if a complaint is never filed, a  
4       victim can be retaliated against for protesting  
5       or resisting the treatment and whether the social  
6       or professional retaliation shows measurable,  
7       significant relationships with victim well-being.

8                 Let me just conclude very briefly by  
9       acknowledging that these findings come from a  
10       study of a civilian population. Based on my  
11       experience analyzing data from both civilian and  
12       military personnel, I would expect the patterns  
13       like these, in general, many of them would  
14       generalize to a military employment context.

15                And with that, I will turn things over  
16       to my colleague who will speak more specifically  
17       about that context.

18                CHAIR HOLTZMAN: Thank you very much,  
19       Professor Cortina.

20                Professor Magley, happy to hear from  
21       you.

22                DR. MAGLEY: Thank you for getting the

1 slides up. Thank you, Madam Chair and Panel  
2 members. I am truly honored to be here this  
3 morning to share with you some of my thoughts  
4 about issues surrounding retaliation. As a bit  
5 of background, I've been studying workplace  
6 mistreatment, sexual harassment, and incivility  
7 for over 20 years. As a professor of psychology,  
8 particularly in social and organizational  
9 psychology, I take a social science perspective  
10 on these issues. I've been studying these issues  
11 for the duration of my academic career, beginning  
12 as a DMDC Consortium Fellow working on the  
13 construction analysis of the 1995 Workplace and  
14 Gender Relation Survey.

15 Additionally, I've participated in  
16 expert witness teams providing social framework  
17 analysis, class action sexual harassment  
18 litigation, and finally, as an instructor at the  
19 University of Connecticut, I teach graduate level  
20 seminars on organizational stress, multivariate  
21 analysis of survey data, as well as undergraduate  
22 courses on industrial organization psychology and

1 the psychology of women.

2 I'll be largely focusing my comments  
3 on fear of retaliation as we've heard  
4 considerable amount already about retaliation.  
5 As a social scientist, my opinions are  
6 empirically grounded in data, particularly the  
7 2002 WGR, Workplace and Gender Relation Survey  
8 data. I've used this data set, even though it's  
9 old because one, it has a better assessment of  
10 retaliation than more recent versions of the  
11 survey; and two, the public released version of  
12 the data to which I have access as a researcher  
13 include the retaliation data.

14 The military should be applauded for  
15 the continued dedication to routinely assessing  
16 sexual mistreatment of their personnel. I  
17 presume members of the immediate audience are  
18 well aware of the nature of the WGR survey, but  
19 for those who are not, this data set included  
20 usable surveys from 19,960 active duty military  
21 personnel with approximately equal numbers of  
22 surveys from men and women in the data set, this

1 number was drawn based on an over sampling of  
2 women and minorities. And the questions that  
3 I've analyzed to present today largely come from  
4 the sections of the survey where participants  
5 were asked, following assessment of their  
6 harassment and assault experiences, about their  
7 reporting and subsequently about both fear of and  
8 actual retaliation.

9           Based on my analysis, I have three  
10 opinions that I would like to share today. My  
11 first opinion is that as devastating as  
12 retaliation is to target psychological health and  
13 work well-being, fear of retaliation adds  
14 equally, if not more, to the devastation. To be  
15 clear, although Dr. Cortina has already carefully  
16 outlined retaliation, assessment of fear of  
17 retaliation includes questions that are outlined  
18 on the slide here, that you thought your  
19 coworkers would be angry if you reported, and so  
20 forth.

21           Fear of retaliation is important to  
22 examine because as mentioned earlier today, it

1 can thwart whistleblowing. My opinion is based  
2 on hierarchical regression analyses in which I  
3 considered how much influence the group of  
4 questions assessing mistreatment frequency,  
5 whistleblowing frequency, both social and  
6 professional retaliation experiences, and then  
7 fear of retaliation had on questions, other  
8 questions, assessing military personnel's  
9 psychological health and work well-being, all of  
10 which are now understood as components of  
11 readiness.

12           And additionally, I would highlight  
13 that the National Institute of Occupational  
14 Safety and Health also now study this latter  
15 cluster of constructs, psychological health and  
16 work well-being as central to total worker  
17 health.

18           The next few slides graphically  
19 display the standardized beta weights from these  
20 regressions that I ran. Standardized beta  
21 weights allow for the examination of which  
22 predictors have a greater effect on the outcome

1 variables.

2 So what you're going to see is a  
3 building of bars that go horizontally across the  
4 slides here. And I portrayed these betas  
5 graphically really to quickly show my point. So  
6 although mistreatment frequency, this first set  
7 of bars; whistleblowing, much smaller, but adding  
8 to the bars; and then both social and  
9 professional retaliation meaningfully contribute  
10 to these readiness outcomes.

11 I'll let you catch up if you're  
12 flipping through slides.

13 Fear of retaliation adds equally, if  
14 not more, to these effects. So why do I spend  
15 time on this? To demonstrate that retaliation  
16 may well be problematic, but so is fear. Please  
17 keep in mind when you're thinking about the  
18 issues around retaliation that no policy or  
19 procedure can directly affect a person's fear.

20 However, my second opinion is that  
21 organizational climate does have a significant  
22 impact on both retaliation and fear of

1 retaliation. What is organizational climate?  
2 It's employees' perceptions of routines, such as  
3 organizational events, practices and procedures,  
4 as well as rewards, rewarded, supported, and  
5 expected behaviors, a common intervention  
6 advocated to prevent and correct sexual  
7 harassment. Aside from proper policies and  
8 procedures, is the development and maintenance of  
9 a climate that's intolerant to sexual harassment.

10 I considered aspects of climate as  
11 predictors of both retaliation and feared  
12 retaliation, alongside aspects of the severity of  
13 victims' situations as well as aspects of power  
14 dynamics that are associated with the situation.

15 Although not graphically displayed,  
16 here are the regression beta weights. Same kind  
17 of analysis. Here are the regression beta  
18 weights, the actual numbers for the effects of  
19 aspects associated with the severity of the  
20 situation on both retaliation and fear.

21 Again, the beta weight indicates the  
22 relative importance of the effect and I've

1       starred significant predictors. For the sake of  
2       time, I don't want to go into detail on the  
3       meaning of each effect. Please simply notice  
4       here the size of the effects as I build here in  
5       comparison with the organizational factors.

6               The next set of factors are effects  
7       that are associated with power dynamics,  
8       potentially associated with victims' experiences  
9       and by and large they were generally very small  
10      or non-significant. Not surprisingly,  
11      perpetrator power more strongly affects fear of  
12      retaliation. Again, generally, please just  
13      notice the size of the effects. They're very  
14      small.

15              And lastly, here are a number of  
16      organizational factors that might be expected to  
17      be associated with both retaliation and fear of  
18      retaliation. In this data set and with this  
19      collection of predictors, job gender context,  
20      which is essentially the proportion of women that  
21      a participant is working with and the sex of the  
22      supervisor, as well as perceptions of policy

1 implementation and perceived training efficacy  
2 where the training is focused on sexual  
3 harassment issues, were not associated with  
4 either retaliation or fear of retaliation.

5           However, as participants perceived  
6 their unit's tolerance of harassment, in other  
7 words, climate, the increase -- both retaliation  
8 and fear increased, the second to bottom line of  
9 numbers in the slide. Proactive retaliation  
10 leadership was associated with decreased  
11 retaliation and fear.

12           Now these last two significant  
13 predictors are not terribly surprising in all  
14 honesty. However, it is important to point out  
15 two things about climate, both of which these are  
16 both aspects of climate. First, climate  
17 perception arises from observations of  
18 supervisors and coworkers at the unit level.  
19 It's what the personnel see on a daily basis. As  
20 such, I believe that efforts to study and change  
21 climate should be made at the corresponding unit  
22 level, rather than assuming that broad-brush

1 change is appropriate.

2 Second, it's important to highlight  
3 that climate changes very slowly. Although these  
4 results suggest that climate change efforts or  
5 where that real change might happen in terms of  
6 trying to effect retaliation and fear of  
7 retaliation, don't expect this to happen terribly  
8 quickly unfortunately.

9 The third opinion is not empirically  
10 derived, but rather it's a critique of the WGR  
11 data. Limited measurement and mostly access to  
12 the DMDC Workplace and Gender Relations data are  
13 seriously impeding continued research discovery  
14 on retaliation and fear of retaliation for  
15 reporting sexual mistreatment in the military.

16 I analyzed and presented 2002 data  
17 today for you because that data set again, one,  
18 has the best measurement of retaliation in recent  
19 data collections; and two, were actually released  
20 for analysis in the public released versions of  
21 the WGR data to which again, as a researcher, I  
22 have access to.

1           As I mentioned earlier, the military  
2           should be applauded for the continued dedication  
3           to routinely assessing sexual mistreatment of  
4           their personnel. You do not see this kind of  
5           data collection effort in any other organization.  
6           There simply are no other data like this. I  
7           would encourage survey designers to revert back  
8           to the 2002 behavioral assessments of retaliation  
9           given that it likely provides better estimates.  
10          Most importantly though, I highlight that when  
11          access to this data is limited, the value of the  
12          data is not being realized for the military.

13                 Additionally, I would emphasize that  
14          if climate is truly to be studied with this data,  
15          the unit ID will have to be released.

16                 CHAIR HOLTZMAN: Thank you very much,  
17          Professor Magley.

18                 DR. MAGLEY: I actually have one more  
19          little slide, if you don't mind.

20                 CHAIR HOLTZMAN: Sorry.

21                 DR. MAGLEY: That's okay. In  
22          conclusion, I have three recommendations:

1 continue working toward establishing a climate  
2 intolerant of sexual mistreatment. While I do  
3 not have time to elaborate, I would add that I  
4 would encourage such efforts to emphasize  
5 positive behavioral expectations. Second,  
6 advocate for the release of WGR data to assist in  
7 the study of retaliation and fear of retaliation  
8 at the unit level rather than assuming military-  
9 wide effects. And finally, remember that  
10 organization climate changes very slowly. Thank  
11 you.

12 CHAIR HOLTZMAN: Thank you very much.  
13 I appreciate the testimony. We'll next hear from  
14 Professor Michael F. Noone, Professor Noone.

15 DR. NOONE: Good morning. I must  
16 start by telling you that I'm at two  
17 disadvantages. First of all, my hearing aids  
18 just died. And the second one I can recover  
19 from. It looks like I'm the only non-doctorate  
20 at the table. That's wrong. I got my SJD at  
21 George Washington University, my LLM and my JD at  
22 Georgetown. So that corrects two things.

1           But I must ask you, I've asked Dr.  
2 Harned, who I just introduced myself to, to tell  
3 me if I don't understand a question to repeat it.

4           Now you may know I'm the only lawyer  
5 on this panel which again is a disadvantage, I  
6 suppose. And I came here, was invited here I  
7 think because I wrote an article a number of  
8 years ago called "Chimera or Jackalope?  
9 Department of Defense Efforts to Apply Civilian  
10 Sexual Harassment Criteria to the Military." And  
11 the point of that article, and I believe it's  
12 been distributed to you, but you have received so  
13 much material you may not have had a chance to  
14 read it, the point of the article was that there  
15 is an obvious tendency to apply civilian criteria  
16 for sexual harassment to that specialized  
17 military community. I don't argue against that  
18 fact, but I point out in my article that one has  
19 to be very careful. What other community is on  
20 duty 24 hours a day, what other community is  
21 deployed in quite the same way that the American  
22 military is, and the roles and functions of men

1 and women in the military don't often have  
2 civilian parallels. That was simply the point of  
3 my article and I suppose the reason why it was  
4 published 17 years ago, why I was invited here.

5 But my experience since then working  
6 with a man that some of you may know, he's dead  
7 now, Charles Moskos who is the premiere American  
8 social scientist concerned with the military.

9 And Charlie and I went to a number of conferences  
10 together and one of the things that Charlie  
11 emphasized, and I think it's so important and  
12 your Panel hasn't had the opportunity today to  
13 hear that, that we are talking about a special  
14 military community, the sexual harassment --  
15 Admiral Tracey, you can speak to this. We're  
16 talking about sexual harassment not just in the  
17 office, but what about the post bowling alley?  
18 What about off post? How do we translate those  
19 civilian-accepted criteria to apply to the  
20 military community?

21 And I think that's an important part  
22 of the equation. And the other important part of

1 the equation is how you and how the military  
2 defines sexual harassment. I think the  
3 characteristic is uninvited and unwanted sexual  
4 talk and behavior. Well, how does that translate  
5 in a military environment?

6 I haven't heard any questions of you  
7 asking witnesses about it, perhaps because you  
8 haven't had any military witnesses. But it seems  
9 to me that now in the Navy, for example, as women  
10 are going aboard submarines, a tiny community. I  
11 know a few submariners, very proud of what they  
12 do and very -- kind of like SEALs, very  
13 knowledgeable. How are women going to be  
14 accepted there and to what extent is this just  
15 competitiveness and how much of it is some sort  
16 of sexual prejudice? Those are the points that I  
17 really wanted to make today and I thought that I  
18 would wait to ask you, be asked by you for  
19 questions.

20 But the last thing I wanted to point  
21 out that as a former law professor, torts  
22 professor, your questions asked earlier to the

1 witness about restitution. Restitution, in the  
2 law professor's mind, means compensation that was  
3 owed to the person suing because they were  
4 unjustly enriched which is not the same as torts  
5 damages. Torts damages, we talk about  
6 compensation for the injury suffered. When you  
7 talk about restitution, I think you're really  
8 talking about damages and I leave it up to the  
9 lawyers and maybe it's not important to go into  
10 this point. But it seems to me that when we're  
11 talking about paying restitution to a woman who  
12 has been a victim of some sexual assault, we're  
13 not talking about restitution. We're talking  
14 about compensating her for the damages.

15 So that's all I had and I'll wait to  
16 be asked your questions.

17 CHAIR HOLTZMAN: Our next witness is  
18 Dr. Patricia Harned. Dr. Harned, welcome.

19 DR. HARNED: Good morning. Thank you  
20 very much for the opportunity to be here today.  
21 I also have a couple of slides, so if I could ask  
22 my colleagues to pass the clicker.

1 CHAIR HOLTZMAN: Before you start,  
2 could I ask the staff to pull that a little bit  
3 closer to us on the panel. I can't really see  
4 from here.

5 DR. HARNED: Have you been provided  
6 copies of the slides as well?

7 CHAIR HOLTZMAN: I know, but when  
8 you're referring to them --

9 DR. HARNED: Terrific.

10 LTCOL GREEN: Panel members, you also  
11 have these at Tab 3 of your binders.

12 CHAIR HOLTZMAN: Okay. I didn't know  
13 where to find them. Thank you. You can turn it  
14 so that the audience can see it, too, if you  
15 don't mind. Great. Perfect. You can turn it a  
16 little bit more. Great. Thank you.

17 DR. HARNED: Thank you again for the  
18 opportunity to speak with you this morning. My  
19 name is Patricia Harned and I'm the Chief  
20 Executive Officer of the Ethics and Compliance  
21 Initiative or the ECI. We're a nonprofit  
22 organization consisting of a research

1 organization and association and also an entity  
2 that provides certification for ethics and  
3 compliance practitioners. The mission of the ECI  
4 is to identify, amplify, and certify the  
5 practices that result in the highest level of  
6 integrity and organizations. We do that by  
7 conducting research on the practices that improve  
8 conduct within work places, and then by  
9 connecting those findings with practitioners and  
10 partners who are dedicated to advancing integrity  
11 in their own organizations.

12 My task today is to share some  
13 insights about retaliation that comes from a body  
14 of research known as the National Business Ethics  
15 Survey or NBES. It's a longitudinal cross  
16 sectional study that's a representation of the  
17 U.S. workforce and business. It's been fielded  
18 eight times since 1994. It's a highly reliable  
19 study. In 2013, we had 6,420 respondents and the  
20 margin of error was plus or minus 1.2 percent at  
21 the 97 percent confidence level. Many, many  
22 private sector organizations and also government

1 agencies and nonprofits refer to this research  
2 for a lot of corporations. This has become the  
3 U.S. benchmark on workplace ethics. You can  
4 refer to these statistics to just gauge how  
5 they're doing within their own organizations.  
6 And we also field those questions within single  
7 organizations to help business leaders understand  
8 how they're doing with their own organizational  
9 cultures and ethics issues.

10 I want to offer three insights that I  
11 think are worthy of your attention this morning.  
12 First, as you've heard from some of my co-  
13 panelists and earlier this morning, retaliation  
14 is a significant problem, but not only because of  
15 its prevalence, but also because of the nature of  
16 the incidents that employees tell us that they  
17 experience.

18 Second, there's a toxic consequence of  
19 retaliation that extends far beyond the victim.  
20 It's the erosion of organizational culture.

21 And finally, I want to offer evidence  
22 that retaliation can be substantially reduced. I

1 also would like to share some best practices that  
2 we've seen starting to emerge in the private  
3 sector that would likely be effective in the  
4 military.

5 So to begin, to give you a little bit  
6 of context from the study, in 2013 when we  
7 fielded the update to the National Business  
8 Ethics Survey, 41 percent of all U.S. employees  
9 said that they had personally observed at least  
10 one incident that they thought constituted either  
11 a violation of law or their organization's code  
12 of conduct. And we asked a wide variety of  
13 questions that misconduct constituted abuse of  
14 intimidating workplace behavior. It constituted  
15 environmental violations, financial fraud. We  
16 gave a fairly extensive laundry list.

17 We don't ask questions about did you  
18 experience sexual assault in the workplace?  
19 However, the leading type of misconduct that  
20 people observed is abuse of intimidating  
21 workplace behavior that creates a hostile  
22 environment. About 18 percent of employees tell

1 us that and that's a fairly consistent finding  
2 across the years. Also, sexual harassment, 7  
3 percent of employees told us that they had  
4 personally observed that taking place around  
5 them.

6 Nearly two thirds of that 41 percent  
7 who observed some type of misconduct said that  
8 they reported what they witnessed to someone in  
9 management or used appropriate channels. And one  
10 out of every five of those people who reported  
11 said they experienced retaliation for having done  
12 so. That's one out of every five.

13 What's alarming about that --

14 CHAIR HOLTZMAN: Before you go on,  
15 what percentage reported, of the 41 percent who  
16 --

17 DR. HARNED: Fifty-six percent.

18 CHAIR HOLTZMAN: Thank you.

19 DR. HARNED: And of that group, so  
20 this was of the 41 percent, 56 percent reported,  
21 21 percent of those experienced retaliation.

22 What's also alarming about that number

1 is what retaliation actually looked like. You  
2 have already heard a little bit about this this  
3 morning from some of the other panelists, but the  
4 majority of incidents that employees told us they  
5 experienced as retaliation could be considered  
6 social or softer types of retribution. So I'd  
7 like to draw your attention to a slide and I know  
8 it's very tiny on the screen, from the 2013  
9 update to the NBES. It shows the percentage of  
10 employees who had said that they personally  
11 experienced different types of retaliation for  
12 reporting wrong doing.

13           And on this slide, at the very top, it  
14 shows that of the 21 percent who experienced  
15 retaliation overall, nearly 60 percent, 70  
16 percent, excuse me, said that they were ignored  
17 or treated differently by their supervisor.  
18 Nearly 60 percent felt that they were  
19 intentionally ignored or treated differently by  
20 their colleagues or peers. When we asked them  
21 follow-up questions about what that looked like,  
22 this involved being excluded from teams, being

1 ignored in social settings, being ostracized in  
2 informal situations involving their coworkers and  
3 peers. This compares to 29 percent of people who  
4 said that their hours were cut or 21 percent who  
5 said that they were demoted in more overt  
6 personnel-related acts or professional acts of  
7 retribution.

8 All these numbers are troubling, but  
9 for many leaders, the prevalence of social  
10 retaliation is particularly frustrating. And  
11 when we released a report showing this data, a  
12 number of business leaders pushed back around the  
13 incident, the prevalence of social retaliation,  
14 asking questions like as management, how can we  
15 even prove these incidents took place? How can  
16 you prove the intent that the social  
17 ostracization was related to someone coming  
18 forward to report? And if you could prove it, is  
19 it even the responsibility of management to step  
20 into the social interactions of their employees?

21 Well, from a researcher's perspective,  
22 and I realize this is not speaking to the legal

1 issues and regulatory issues, the truth is it  
2 doesn't really matter whether or not you can  
3 prove that an incident of social retaliation  
4 actually occurred. Employees beliefs about the  
5 incident and more importantly their beliefs about  
6 what the organization will do in response and how  
7 the organization views it, has a long-lasting and  
8 far-reaching impact.

9           So I'd like to advance one further  
10 slide. In our studies, we've asked a lot of  
11 questions of people about the factors that  
12 influenced their decisions to report. So we  
13 asked if you observed misconduct, did you report  
14 it? If so, where did you go? Did you experience  
15 retaliation? But if you opted not to report,  
16 what were the factors that drove your decision?  
17 We also asked that if they did report. And their  
18 answers are striking.

19           When employees believed that they can  
20 personally make a difference by coming forward to  
21 report something that they've observed, their  
22 willingness to actually carry out that act, to

1       come forward and report, increases by 32 percent.  
2       But even more importantly, consistently across  
3       the history of this study, the leading reasons  
4       that people opt not to come forward to report  
5       wrongdoing are also the same reasons that they  
6       opt to actually come forward. Reporting  
7       increases by 40 percent if an employee feels he  
8       or she will be supported by someone in the  
9       organization when they come forward. Nine out of  
10      ten employees who come forward to report say that  
11      they knew their employer would respond and they  
12      also knew that they would be protected if they  
13      came forward.

14               The people who don't report say the  
15      opposite. They didn't trust that their  
16      organization would respond. They had reason to  
17      think that their company wouldn't protect them  
18      from retribution. And the important part about  
19      that is not that employees had evidence that  
20      their company would respond. In fact, most of  
21      these organizations have very extensive  
22      whistleblower programs. They receive reports and

1 they respond to 100 percent of them. It's not  
2 whether or not the company actually responded.  
3 It's what the employee believed about what would  
4 happen if they had something to come forward.  
5 That has a dangerous effect on organizational  
6 cultures.

7 Employees who are afraid to come  
8 forward to report, will tell their peers not to  
9 report as well. That begins to erode trust. It  
10 impacts employee engagement and it begins to  
11 change people's perceptions about how important  
12 ethical conduct is within an organizational  
13 culture.

14 Our research has shown that when an  
15 employee believes that the company doesn't prize  
16 ethical conduct when they won't report people  
17 -- they won't protect people coming forward,  
18 misconduct increases by as much as 50 percent and  
19 reporting drops by as much as 48 percent.

20 In fact, some of the research coming  
21 out of the private sector, or around  
22 whistleblowing and retaliation, is starting to

1 say that retaliation is actually a leading  
2 indicator of the health and well-being of an  
3 organizational culture going forward. When you  
4 have high levels of retaliation, it's not long  
5 before you start to have an erosion of culture  
6 and an erosion of trust within the organization.

7 I do want to offer some good news and  
8 that is that there are some things that we have  
9 seen that organizations can do to reduce  
10 retaliation significantly. The first step is for  
11 an organization to implement what we call an  
12 ethics and compliance program. In the private  
13 sector, that involves several things, first of  
14 which, it involves establishing and communicating  
15 a clear set of standards and values to guide  
16 decisions and conduct.

17 Among other things, it involves  
18 training employees on the values of the  
19 organization and also importantly, talking with  
20 them about the process of reporting what happens,  
21 how the company will respond and actions that  
22 have been taken in the past against people who

1 have retaliated against whistleblowers. It also  
2 involves providing a means to report  
3 confidentially or anonymously and offering  
4 sources of support among other elements.

5           And as you can see in this slide, we  
6 asked employees about six different types of  
7 resources that companies that have implemented  
8 good ethics and compliance programs would have  
9 done and employees would be aware of them. And  
10 what this is showing is that the more an employee  
11 was aware of the acts of an organization to  
12 establish an ethics and compliance program, the  
13 more they knew about the resources available, the  
14 less likely they were to experience retaliation  
15 if they came forward to report.

16           And by far, the most important thing  
17 that an organization can do comes from the  
18 actions of leadership. The percentage of  
19 employees who report misconduct climbs 38 percent  
20 in organizations where leaders engage in what we  
21 call ethics-related actions. They are  
22 trustworthy. They set a good example. They hold

1 others accountable. Employees perceive that  
2 their leaders are committed to engaging in  
3 certain ethics-related behaviors. The difference  
4 in retaliation is also dramatic. When leaders  
5 display these ethics-related actions, retaliation  
6 is reduced by as much as 53 percent.

7           You can actually literally map an  
8 organization by conducting a survey of employees,  
9 asking about their perceptions of their immediate  
10 supervisor and their senior leader, the ethics-  
11 related actions, and you can show that where a  
12 leader displays these ethics-related actions,  
13 misconduct is low, retaliation is low. And in  
14 the instance where employees don't engage in  
15 those actions consistently, misconduct rises and  
16 retaliation rises as well.

17           Finally, I just want to offer a couple  
18 of thoughts about some of the practices that are  
19 happening in the private sector to address this  
20 problem of retaliation. It's prevalent there as  
21 well. First, is to implement performance goals  
22 for senior leaders and supervisors based on

1 ethics-related actions. It's not just an effort  
2 to give a speech and say we all need to care  
3 about ethics. We all need to talk about ethics.  
4 It's actually having performance goals with  
5 regular reviews and incentives and disciplinary  
6 actions and resources for leaders to consistently  
7 talk about and hold people accountable to the  
8 ethics of the organization.

9 A second practice is to not only  
10 receive reports from employees about misconduct,  
11 to talk with them when they first come forward  
12 about retaliation, but to essentially keep an eye  
13 on the people that are reporting wrong doing over  
14 time. Companies are beginning to establish  
15 formal programs where they monitor people who  
16 come forward. They talk with them periodically.  
17 They look to see about how their performance  
18 reviews are going and if necessary, if an  
19 employee believes that retaliation is happening,  
20 they're moving them to different locations. The  
21 most important realization that's happening  
22 around retaliation is that first of all, most

1 employees, if they reported and then they  
2 experienced retaliation, they're really not going  
3 to come forward and tell you they've experienced  
4 retaliation. It didn't work well the first time.  
5 They're not going to come back for more. So you  
6 have to keep monitoring their context and keeping  
7 an eye on them. And so a lot of organizations  
8 are doing that.

9 And then finally, I just want to say  
10 one more thing about metrics for retaliation  
11 because I know around surveys and retaliation I  
12 know that's something that's been considered  
13 previously. It's important to ask people if  
14 they've experienced retaliation, how many  
15 instances they've experienced, because very often  
16 people who experience it don't come forward until  
17 it's happened multiple times and that's an  
18 important factor in understanding the context of  
19 it.

20 Another question to ask is where did  
21 they report in the first place? Most people  
22 don't use the formal channels for reporting.

1 They go to a supervisor or a peer and that's  
2 where retaliation happens as a result.

3 And then finally, asking questions  
4 about the severity of the problem, the severity  
5 of the retaliation would also be very helpful, I  
6 think, in understanding all that's happening.

7 So with all that said, I just want to  
8 leave you again with the thought that these are  
9 very significant problems, but they are problems  
10 that we're starting to see can be addressed,  
11 especially when there's a firm commitment by  
12 leadership to providing resources and a sound  
13 example. So thank you again for the opportunity  
14 and I welcome your questions.

15 CHAIR HOLTZMAN: Thank you very much,  
16 Professor.

17 Mr. Taylor?

18 MR. TAYLOR: Well, first of all,  
19 thanks to each panel member for coming here and  
20 sharing your opinions, your views, and your  
21 research with us here today.

22 Professor Magley, you mentioned that

1 your research was based largely on this survey  
2 done in 2002. What changes, if any, would you  
3 anticipate based on the dated nature of the data  
4 that you were using?

5 DR. MAGLEY: You mean using more  
6 current data?

7 MR. TAYLOR: Yes, what would you  
8 expect to find? Just intuitively, what would you  
9 expect to find if you had today's data?

10 DR. MAGLEY: I think that the  
11 relationships would be the same. When you look  
12 at relationships across data sets, they're very,  
13 very similar and in fact, what I was going to  
14 present was more based off of a couple of  
15 conference presentations that I've given using  
16 various data sets. And one of the surprising  
17 things to me is that in tweaking the previous  
18 PowerPoint from the conference presentation to  
19 what I used today, I didn't have to change the  
20 numbers too much. Those were from 1995, DMDC  
21 data and then also other -- within other  
22 organizational data sets that I've used. So I

1 really anticipate that the effects would be very,  
2 very similar.

3 MR. TAYLOR: So having taught a lot  
4 myself, I know that's always a happy  
5 circumstance, to make a few tweaks instead of a  
6 lot.

7 You mentioned in one of your  
8 recommendations that you would advocate for the  
9 release of WGR data. Is there an impediment to  
10 your receiving that kind of data or what's the  
11 problem there that you've identified?

12 DR. MAGLEY: So at this point, the WGR  
13 data are -- I don't know how to say it, really,  
14 exactly, but categorized as some of the questions  
15 in the survey are considered confidential and  
16 others are part of a released data set. And  
17 recently, for example, in the 2010 data set, all  
18 of the retaliation questions were classified as  
19 confidential and were not released as part of the  
20 public release data set.

21 I'm not certain what happened in the  
22 2006 version. I tend to only focus on the active

1 duty version of the WGR data personally, but I'm  
2 not certain what happened in 2006 and at this  
3 point none of the WGR data are accessible. It's  
4 completely inaccessible to sort of social science  
5 research.

6 MR. TAYLOR: Do you know whether  
7 anyone has made a Freedom of Information Act  
8 request for the data?

9 DR. MAGLEY: I've not made an FOIA and  
10 I know -- we have not done that, but we have  
11 talked with many, many, many people in trying to  
12 gain access to this data. Personally, I view  
13 this as a real problem in terms of trying to  
14 utilize this data to the best of their effect.

15 MR. TAYLOR: Well, in the work that  
16 you were able to do, did you have a way of  
17 measuring whether the fear of retaliation is  
18 greater for workers lower on the status in the  
19 workplace than on the higher ups?

20 DR. MAGLEY: So, hm. I did analyze  
21 that. I don't actually have a copy of my very  
22 own slides in front of me. Is it possible to go

1 back to my -- bless you.

2 So it would be the next slide down.

3 That's fine. We're going to blast through things  
4 here quickly.

5 So looking at target -- the  
6 occupational status. That's that line that you  
7 want to look at. So there was no effect of  
8 target occupational status on retaliation. There  
9 was a slight positive effect on feared  
10 retaliation meaning that higher targets, targets  
11 in higher organizational groups actually feared  
12 retaliation more. It's a small effect just to be  
13 clear though.

14 MR. TAYLOR: Okay. Is there research  
15 that you have done to support the best ways to  
16 change the climate at the lower unit levels where  
17 perhaps social and professional retaliation are  
18 most likely to occur?

19 DR. MAGLEY: So I wish that I were  
20 more of an intervention person, but I'm not. The  
21 research that I have done on any kind of  
22 intervention has been focused more on incivility

1 in the workplace. And to be very frank, part of  
2 the reason that I shifted some of my research  
3 program to incivility in the workplace, is  
4 because organizations no longer allow access to  
5 study sexual harassment. It's too scary for  
6 them, so they won't let you in.

7 So I shifted to incivility which isn't  
8 illegal and you can actually still study an  
9 organization. Most recently, over the past five  
10 years, I've been doing an intervention with a  
11 correctional healthcare organization. And the  
12 intervention has been around civility as opposed  
13 to incivility. And this was part of what I was  
14 getting at with my comment, the recommendation  
15 about focusing on positive behavioral  
16 expectations. I made a choice to -- in these  
17 workshops that I was engaging with this  
18 organization that instead of doing an incivility  
19 training, I very much wanted to focus on  
20 civility, to try to reward positive behaviors  
21 rather than sanction negative behaviors. So  
22 instead of don't do this, no more, no, no, no,

1 just say hey, what can we do that's positive and  
2 encouraging to help build community in our small  
3 units, within our work groups?

4 At this point, I'm still evaluating  
5 that intervention. Again, I'm not really an  
6 intervention person. I happen to be working with  
7 this organization. They were facing pretty  
8 serious incivility issues and so it came about,  
9 but honestly, I'm not an intervention person, but  
10 I do feel like the positive focus has made a big  
11 difference for that organization. But that's one  
12 organization, I'm not sure how generalizable I  
13 would be willing to say that is.

14 MR. TAYLOR: Well, thank you. I think  
15 that's one reason we have Dr. Harned here,  
16 because I think that you can comment on that and  
17 one of the things that I was listening -- or  
18 hearing you say is the importance of trust. And  
19 I know that in a lot of modern literature about  
20 the most important elements of leadership, trust  
21 seems to rule in the minds of many people. And  
22 I'm not putting words in your mouth, but it

1       seemed to me that there is a very important  
2       element of building trust that when a report is  
3       made that as you said, the procedures will be  
4       followed that you'll be protected and so forth  
5       and so on.

6                 So the question is, if I'm correct in  
7       making this assumption that trust is central to  
8       success, what kind of suggestions do you have  
9       about how leaders build that kind of trust  
10      beyond, going beyond the training and the  
11      policies and so forth?

12                DR. HARNED: Thank you for the  
13      question. One of the assumptions that many  
14      leaders make is that they -- because they are  
15      personally committed to demonstrating their  
16      commitment to ethics, because they are personally  
17      committed to trying to build trust among their  
18      employees, they just assume that everybody who  
19      works for them knows that and trusts them. And  
20      so there was a wonderful study about ten years  
21      ago that interviewed senior leaders about their  
22      own commitment to ethics and about 100 percent of

1       them said of course, I'm an ethical leader. Then  
2       they went and interviewed just their direct  
3       reports and the majority of their employees said  
4       that either their leader was neutral on the  
5       subject or altogether unethical.

6               So it really wasn't a measure of your  
7       own personal commitment. It was a measure of how  
8       consistently and overtly are you communicating  
9       the commitment that you personally have.

10              One of the hardest things I think that  
11       we've seen organizations try to tackle is putting  
12       in place all of the systems and the programs to  
13       communicate that you are firmly committed to  
14       encouraging, reporting, and protecting people who  
15       come forward. The reality is most employees  
16       don't use those systems. So it then becomes a  
17       matter of communication by individual leaders,  
18       very clear, very consistent, constant  
19       communication about the fact that these systems  
20       are there for a reason.

21              The other piece, there are really two  
22       things that systematically organizations can do.

1 One is a communications campaign around those big  
2 issues that employees ask themselves. Your  
3 report makes a difference. We will support you.  
4 We will protect you. Action will be taken if  
5 harm comes to you. But the other thing is  
6 actually publishing statistics on a regular basis  
7 that are washed of particulars to protect the  
8 identities of folks involved, but the more people  
9 know that the company or the organization  
10 responds to every report, the more they see that  
11 action actually does happen. When retaliation  
12 happens or wrong doing occurs, that helps to  
13 build that trust as well.

14 MR. TAYLOR: Thank you.

15 CHAIR HOLTZMAN: Admiral Tracey.

16 VADM(R) TRACEY: You had a chance to  
17 look at effects on preventing retaliation. I  
18 think you commented on the transparency that's a  
19 piece of building trust on the part of a  
20 reporter. How about how severe does the reaction  
21 have to be for it to have preventative impact on  
22 a potential retaliator?

1 DR. HARNED: It's hard to gauge  
2 whether or not a program has been successful in  
3 preventing except by saying over time what we  
4 have seen and we are seeing fewer people telling  
5 us that retaliation is taking place. But one of  
6 the things that we have seen that really makes a  
7 very big difference is people's perceptions about  
8 the culture in general, does it really matter  
9 that we have values? Do people actually  
10 implement those values in daily decisions? Those  
11 are the kinds of things that seem to play into  
12 whether or not people are experiencing or  
13 observing wrong doing in the first place or  
14 experiencing retaliation for having done so.

15 It's a very difficult, as some of my  
16 colleagues have pointed out, it's a difficult  
17 metric to get at because you're asking for  
18 people's perceptions about what has happened to  
19 them. And it's always difficult to know was that  
20 situation preventable. But culture and  
21 leadership, perceptions of those two things seem  
22 to really be the biggest things that drive how

1 prevalent those problems are.

2 VADM(R) TRACEY: You had a slide that  
3 talked about six measures. It was your graph.

4 DR. HARNED: Yes, yes.

5 VADM(R) TRACEY: And you talked about  
6 three. Are there three others?

7 DR. HARNED: Sure. Does your company  
8 or organization have a written code of conduct or  
9 standards to guide conduct? Are you trained on  
10 those standards? Is there a system in place for  
11 you to report anonymously or confidentially? Are  
12 you provided resources where you can go to answer  
13 questions if you have them about whether you've  
14 seen something that's wrong? And also, is there  
15 a system in place to discipline people who  
16 violate the standards of the organization?

17 Those were the six. They're based on  
18 sort of the de facto standard for an ethics and  
19 compliance program has become the sentencing  
20 guidelines for organizations, Chapter 8 of the  
21 sentencing guidelines. There are seven elements  
22 that are outlined there. These are the six that

1 we figured if you asked the U.S. workforce does  
2 your company do these things. They would tend to  
3 know.

4 VADM(R) TRACEY: How about an opinion  
5 on Dr. Magley's intervention around the positive,  
6 rather than the civility training viz the  
7 incivility prevention training, any point of view  
8 on that?

9 DR. HARNED: I'm sorry, could you  
10 really quickly recap for me?

11 DR. MAGLEY: So this organization  
12 approached me and they had all kinds of  
13 incivility issues. We did some survey work to  
14 try to understand the nature and extent of their  
15 problems. In the process of working with them,  
16 and in the process of thinking about what could  
17 an intervention look like, I made a decision to  
18 focus on positive experiences rather than saying  
19 no, no, no don't be naughty, instead, how can we  
20 be kind and how can we be respectful and this  
21 kind of thing to one another.

22 A few other things that I really

1 focused on with that intervention is really  
2 emphasizing the importance of community and also  
3 that the intervention was very much grounded  
4 empirically in their own data, rather than some  
5 random data from some random organization. And I  
6 personally trained the trainers for that  
7 intervention. And just a very brief kind of  
8 observation while I was training them is that the  
9 moment of expressing or showing these trainers,  
10 who had self-selected for the job, so they were  
11 already engaged in this idea, right? The moment  
12 when I showed them the negative impact of  
13 workplace incivility on their own people was the  
14 moment when they all sat up. They all took  
15 notice and then we were together for the rest of  
16 the training. That's when I got their attention.  
17 But it was localized. It was positive, very much  
18 community focused, the whole language in the  
19 training was very much community focused.

20 DR. HARNED: So my first comment is  
21 that's a very wise approach. I think it is the  
22 case that the National Business Ethics survey is

1 a really wonderful tool for looking at trends,  
2 but it doesn't really hit home within an  
3 organization until you field the survey within  
4 their own entity and show them data that says  
5 here are the issues, but also here are the  
6 actions that you can undertake that demonstrably  
7 change the way things are done.

8 But the other -- to your point about  
9 civility, I think it's very easy for an  
10 organization to point out all the things that you  
11 shouldn't do. It's easier to create a rule than  
12 it is to give guidance about how you should  
13 conduct yourself and what are the ways we intend  
14 to treat each other.

15 And so in that sense, that's where a  
16 lot of really great programs are focusing on all  
17 the things that are overstepping the boundaries,  
18 but when it comes to the gray areas, we're not  
19 doing enough to help people understand what it  
20 looks like to actually uphold the standards of  
21 our organization. So civility being the example,  
22 focusing on how we want to treat each other

1 because we're a community, because we're  
2 connected to each other really is a very  
3 effective way of helping people to navigate those  
4 tough ethical decisions.

5 CHAIR HOLTZMAN: Thanks very much.

6 Professor Cortina, when was this study done that  
7 you presented to us?

8 DR. CORTINA: The data was collected  
9 in 1997.

10 CHAIR HOLTZMAN: And is the Eighth  
11 Circuit aware of the study?

12 DR. CORTINA: Oh, yes, yes.

13 CHAIR HOLTZMAN: What did they do  
14 about it?

15 DR. CORTINA: That is a great  
16 question. All the results of the study were  
17 published in an issue of the, I think it's the  
18 Creighton Law Review and we have presented to the  
19 Task Force. The Task Force presented it --

20 CHAIR HOLTZMAN: Which Task Force?

21 DR. CORTINA: Sorry, the Eighth  
22 Circuit Gender Fairness Task Force. It was a

1 task force of attorneys and judges that were  
2 looking at gender issues in the courts.

3 CHAIR HOLTZMAN: You presented to the  
4 Task Force and?

5 DR. CORTINA: Excuse me?

6 CHAIR HOLTZMAN: You presented to the  
7 Task Force, I'm sorry for interrupting.

8 DR. CORTINA: Correct, so we were both  
9 part of a social science team conducting the  
10 survey and conducting the analyses for the  
11 benefit of the Task Force.

12 My general sense of what happened  
13 after the Task Force report was complete and  
14 released in that law review is that nothing  
15 probably happened, other than it was released and  
16 so to raise awareness.

17 CHAIR HOLTZMAN: Interesting. Did any  
18 other federal circuit get in touch with you?

19 DR. CORTINA: No. In the 1990s --

20 CHAIR HOLTZMAN: Did the Department  
21 get in touch with you?

22 DR. CORTINA: No, no. In the 1990s,

1 there were a number of federal circuits  
2 conducting these kinds of self-studies around  
3 gender and gender bias and this was one of the  
4 last ones. They were mandated by Congress and  
5 then they were halted at one point and defunded  
6 and this is one of the last ones that squeaked  
7 through before the whole gender bias in the  
8 courts kind of movement, if you will.

9 CHAIR HOLTZMAN: Fizzled out?

10 DR. CORTINA: Yes.

11 CHAIR HOLTZMAN: Problem over?

12 DR. CORTINA: Apparently.

13 CHAIR HOLTZMAN: No comment needed on  
14 that one. But you think the data and what you  
15 found is still valid today?

16 DR. CORTINA: Yes, and I thought about  
17 that as I was preparing to present here today.  
18 The data at this point is almost 20 years old.

19 CHAIR HOLTZMAN: Right.

20 DR. CORTINA: And of these findings,  
21 but I still expect them today and similar to Dr.  
22 Magley's comments, I would expect all of those

1 relationships, for example, to victims' well-  
2 being, those would certainly hold today. What  
3 might change is the specific prevalence rates of  
4 sexual harassment or the prevalence of specific  
5 types of retaliation.

6 CHAIR HOLTZMAN: Do you think it's  
7 gone down?

8 DR. CORTINA: I would not necessarily  
9 assume that. I don't know for that particular  
10 organization what they've done, but I'm not sure  
11 I would go there. I would expect that, in  
12 general, social retaliation is still more  
13 prevalent than professional retaliation.

14 CHAIR HOLTZMAN: So you're thinking  
15 basically the basic facts that you found are not  
16 likely to change.

17 DR. CORTINA: Correct.

18 CHAIR HOLTZMAN: Correct. And those  
19 are applicable, not just to the Eighth Circuit?

20 DR. CORTINA: Correct.

21 CHAIR HOLTZMAN: And to the other  
22 Federal Circuits, but to organizations that are

1 similar to that.

2 DR. CORTINA: Exactly.

3 CHAIR HOLTZMAN: Have you done any  
4 work on intervention approaches? Is that the  
5 terminology?

6 DR. CORTINA: That is the terminology.

7 CHAIR HOLTZMAN: I'm not a sociologist  
8 or a psychologist.

9 DR. CORTINA: I too am not a  
10 specialist in intervention, so I can't really  
11 speak to interventions in any detail.

12 CHAIR HOLTZMAN: But -- okay, thank  
13 you.

14 Doctor, I just want to ask you about  
15 -- you said that you could almost tell the  
16 problem of ethics in a company by measuring the  
17 incidence of retaliation. You're nodding your  
18 head, too, Dr. Magley.

19 DR. MAGLEY: I think that's really an  
20 interesting finding or an interesting comment to  
21 gauge the health of an organization by  
22 retaliation.

1                   CHAIR HOLTZMAN: What does that say  
2 about the military then?

3                   DR. HARNED: It's not the only metric,  
4 so -- but in looking at over time in doing these  
5 studies, we've really started to rely on five or  
6 six metrics and we've started to do much more  
7 analysis to say of all these metrics, one is  
8 observed misconduct, the extent to which you've  
9 seen something going wrong. One is do you feel  
10 pressured to compromise standards in order to do  
11 your job. Another is reporting and retaliation  
12 and perceptions of leadership.

13                   And in looking at which are the ones  
14 that tend to be most important and when you start  
15 to see shifts, what then happens over time.  
16 There have been companies, particularly defense  
17 contracting organizations, where we've been  
18 regularly conducting these surveys since 2005 and  
19 now we're in a position to start to say what's  
20 happening in those organizations and what is  
21 driving change.

22                   And retaliation is -- and our

1 organization is not the only one that has started  
2 to say retaliation is almost a leading indicator.  
3 So if you estimate that roughly 20 percent of  
4 people, somewhere in that range are saying I came  
5 forward to report an experience of retaliation,  
6 if that number rises, you can say that down the  
7 road a few years, that organization will start to  
8 experience some significant culture shifts and  
9 likely more misconduct and likely less reporting.

10 But that said, one other thing that I  
11 would especially say in terms of the military and  
12 all the activity around sexual harassment and  
13 sexual assault, in particular, we also know that  
14 reporting and retaliation go hand in hand. So  
15 the more you have people report, the more you  
16 have people likely saying they've experienced  
17 retaliation and as soon as you implement a new  
18 program and put a lot of resources into it, and  
19 communicate about it and train people and really  
20 emphasize that issue, the more you start to have  
21 people reporting that problem because they're  
22 more aware of it.

1           So my answer is that had this program  
2           been in place for a number of years, the amount  
3           of retaliation happening right now I would say  
4           should be very, very troubling, because it is an  
5           indicator of problems down the road. But because  
6           this program is new, because there has been such  
7           emphasis that's gone into it, we can't say yet  
8           whether it's really the impact of people being  
9           more aware of the problem, more willing to come  
10          forward, more willing and then experiencing more  
11          retaliation for having done so.

12           CHAIR HOLTZMAN: To continue your line  
13          of comment, the military spent an enormous amount  
14          of effort and attention on the issue of  
15          reporting.

16           DR. HARNED: Yes.

17           CHAIR HOLTZMAN: Huge. And you're  
18          saying that it's critical because the reporting  
19          is going to -- and that's also the result of what  
20          you found, Dr. Magley and Dr. Cortina, that the  
21          reporting is going to generate retaliation.

22           DR. HARNED: Yes.

1           CHAIR HOLTZMAN: So if you don't deal  
2 with the retaliation ultimately you're going to  
3 get those reporting numbers back down to where  
4 they shouldn't be. So it behooves the military  
5 now, it seems to me, the logical consequence of  
6 your testimony, is that it's vital to the  
7 military to focus in a very serious way on the  
8 issue of retaliation. Is that correct?

9           DR. HARNED: Yes. And I would also  
10 add to that that it's vital, now that the program  
11 is in place, essentially, all the structures, the  
12 systems, the mechanisms, the follow up or the  
13 majority of it is without commenting on. I don't  
14 have full knowledge of all that's been done.  
15 It's in part a need to focus on retaliation,  
16 particularly social retaliation. But it's also,  
17 there's a very clear -- just from what we know  
18 from the research, focusing on leadership is also  
19 vital. And it's not just, how do you become a  
20 leader? It's how do you lead and set a tone for  
21 ethical conduct for concern and support for  
22 employees, modeling ethical conduct, but also

1 providing support, creating the environment where  
2 people will feel that they can come forward and  
3 be protected for having done so.

4 And I know that the military, above  
5 most other organizations, does a tremendous job  
6 in training leaders. I just wonder if because  
7 the numbers are the way they are, perhaps there's  
8 something to look at there in terms of we need to  
9 message around retaliation, but we also need to  
10 equip leaders in the informal settings to be able  
11 to respond and model conduct appropriately.

12 CHAIR HOLTZMAN: Right. I don't know  
13 if you heard the earlier testimony, but with  
14 regard to --from General Snow, but what we heard  
15 was that they're just beginning to get the data  
16 on this, so the focus -- I'm not blaming them  
17 because you can't do everything all at once, I  
18 understand that and sexual assault in the  
19 military is a huge problem, but I do think that  
20 getting the data is critical to this.

21 DR. HARNED: Absolutely.

22 CHAIR HOLTZMAN: And they need to

1 develop structures to get the data on an informal  
2 basis and -- I mean where it's happening  
3 informally and socially and also where it's being  
4 punished. But I also think in terms of what you  
5 said which is the other thing that has to be done  
6 here is to publicize the instances, and that goes  
7 to the question that Mr. Taylor raised, publicize  
8 the incidents of punishment of those people who  
9 have engaged in retaliation.

10 DR. HARNED: Yes. Yes. In the  
11 private sector, the equivalent is considering  
12 adding to the code of conduct, retaliation as an  
13 act of misconduct, that the organization  
14 considers it to be a violation of their  
15 standards. So it's doing that, it's publicizing  
16 the number of reports received, how many actions  
17 were taken based on how many investigations were  
18 taken based on those reports. Usually, it's 100  
19 percent and then what are the actions taken as a  
20 result of that.

21 CHAIR HOLTZMAN: You're saying -- I  
22 don't mean to put words in your mouth, but are

1 you saying that as important as reporting the  
2 fact that the reporting rate is going up, you  
3 need to be releasing data at the same time about  
4 the punishment of retaliation?

5 DR. HARNED: Yes.

6 CHAIR HOLTZMAN: And they need to go  
7 hand -- are you saying they need to go hand in  
8 hand?

9 DR. HARNED: Absolutely.

10 CHAIR HOLTZMAN: Other members of the  
11 panel, do you disagree or do you have any  
12 comments about that?

13 DR. MAGLEY: I think that it makes  
14 sense. It makes sense to me.

15 DR. CORTINA: I agree completely.

16 DR. HARNED: In some organizations,  
17 the publishing of monthly statistics or quarterly  
18 statistics around receipts of reports and  
19 investigations and activities, it's like reading  
20 the crime report in the newspaper. Everybody  
21 reads it, in part, because it's fascinating, but  
22 people really want to know that the company or

1 the organization cares. They're putting  
2 resources into that response. It goes a very  
3 long way in helping people understand that this  
4 is not just a paper program, that there's really  
5 a great deal of emphasis that's put into it.

6 DR. MAGLEY: The only cautionary piece  
7 that I might add to that is just considering what  
8 retaliation, like the nature of retaliation, that  
9 particularly the professional retaliation in  
10 which the first panel was commenting on earlier  
11 this morning, that bar is so high that the  
12 reporting of what happens is a tricky issue. It  
13 isn't really cut and dry. It's not terribly  
14 straightforward. So I think in terms of -- at  
15 least reporting kind of the number of complaints  
16 that were received and the number of  
17 investigations and those pieces are clear that  
18 that has to be accompanying the number of  
19 complaints that were received.

20 The greater caution is in reporting  
21 the number of retaliations that were --  
22 retaliation cases that were acted on. Because of

1 that high bar, it might not look right. So it  
2 might not help the culture. There needs to be a  
3 lot of thought given to how, like the nature of  
4 that report and the nature of what you're really  
5 talking about in terms of professional and social  
6 retaliation. That would be the only add in that  
7 I would put.

8 CHAIR HOLTZMAN: I think that's a very  
9 useful addition.

10 DR. CORTINA: I would also add that,  
11 in general, perceptions among employees or  
12 personnel of how complainants are treated, should  
13 they come forward. So how people are treated  
14 after reporting. We know from years of research  
15 on sexual harassment that that is one of the  
16 largest risk factors or predictors of whether or  
17 not sexual harassment happens. So if sexual  
18 harassment is perceived as conduct that will be  
19 taken seriously and then if reported, the reports  
20 will be taken seriously and the organization will  
21 do something about it, then employees are less  
22 likely to harass each other.

1           So this perception of retaliation or  
2           perceived retaliation risk affects not only  
3           likelihood to report, but also likelihood to  
4           engage in the misconduct.

5           CHAIR HOLTZMAN: Thank you. Admiral  
6           Tracey, any other questions? I don't have any  
7           other questions. I want to thank all the members  
8           of the panel very much for your contribution to  
9           us. Thank you.

10           (Whereupon, the above-entitled matter  
11           went off the record at 12:05 p.m. and resumed at  
12           1:03 p.m.)

13           CHAIR HOLTZMAN: Good afternoon,  
14           everyone. Welcome back to the afternoon session  
15           of the Judicial Proceedings Panel.

16           We have the great pleasure this  
17           afternoon to have a session on the impact of  
18           retaliation on victims, work productivity, unit  
19           cohesiveness, and mission readiness. And we have  
20           the great pleasure of hearing from Dr. Matthew F.  
21           Soulie. Did I pronounce it correctly?

22           DR. SOULIE: Great.

1 CHAIR HOLTZMAN: Thank you.

2 DR. SOULIER: Perfect.

3 CHAIR HOLTZMAN: University of  
4 California, Davis. And Dr. Veronique N.  
5 Valliere, Valliere & Counseling Associates, Inc.  
6 I think we're into a French mode today. We  
7 started with Paris, and here we are.

8 Okay. Thanks very much. I guess  
9 we'll start with Dr. Soulier, sir.

10 DR. SOULIER: Okay. Good afternoon.  
11 Thank you for having us today. I think we're  
12 each going to start out with a brief statement,  
13 and then we'll take some questions.

14 CHAIR HOLTZMAN: Thank you.

15 DR. SOULIER: I appreciate this  
16 opportunity to be with you to talk about the  
17 issue of retaliation. I think before I start  
18 I'll just give you a little context. I am a  
19 professor of psychiatry at University of  
20 California, Davis. I am trained as an adult and  
21 child psychiatrist, and I have a special interest  
22 in both victims and perpetrators of trauma.

1 I have consulted or testified in over  
2 40 courts-martial as an expert witness in the  
3 last seven years, and most of these matters have  
4 involved sexual crimes against both children and  
5 adults. I am an outsider, but I have had the  
6 advantage of simultaneously comparing the  
7 prosecution of crimes of this nature in both the  
8 civilian and military courts.

9 I have witnessed the significant  
10 augmented attention to military sexual assault,  
11 including the birth of programs such as the  
12 special victims counsel and special victim  
13 prosecutors, all of which have been very helpful.

14 As a military expert witness, I  
15 typically receive a digital case file. I review  
16 those materials and consult with either the  
17 defense or the government about the strengths or  
18 weaknesses of their case. For either side, the  
19 obvious focus is either the offender or the  
20 perpetrator.

21 My experience in particular in working  
22 with and watching civilian and military defense

1 teams is that their best defense is usually to  
2 undermine the victim's credibility. And I find  
3 no fault, obviously, in an aggressive defense,  
4 and the accused is definitely entitled to such,  
5 and ultimately that system will lead to the best  
6 truth.

7 But in such situations this defense  
8 often accentuates every idiosyncrasy, every  
9 perceived oddity of the victim. Defense teams  
10 obviously want the spotlight to shine brightly on  
11 the victim. However, such strategy only  
12 continues what the victim has typically  
13 experienced since she reported the crime. Blame,  
14 isolation, shame, fault-finding, and rejection  
15 are all symptoms of retaliation that may follow  
16 an allegation of sexual assault.

17 I want to talk to you about how  
18 retaliation plays out specifically within the  
19 judicial proceedings of the military.  
20 Retaliation is alive and well, not just after  
21 they report the crime, but also during the actual  
22 proceedings themselves. Let me explain that a

1 little bit.

2 Now, I know that the issue of  
3 retaliation definitely begins long before a court  
4 proceeding, but I began really at the end because  
5 that's usually where my perspective begins, but  
6 also my personal experience has been that the  
7 courtroom too often highlights and brings to an  
8 apex crime victim ostracization. Courts are open  
9 to the public, obviously, and I usually sit  
10 behind a team for whom I consult.

11 The most typical scenario for the  
12 courtroom is to have a very strong showing for  
13 the accused from his fellow Soldiers. Now, the  
14 military judge always does a great job,  
15 obviously, of maintaining proper decorum, dignity  
16 of the proceedings, but supporters very  
17 explicitly sit behind the accused, often showing  
18 very explicit non-verbal signs of support. And  
19 the victim usually has very few, if any, people  
20 who sit on the side of the government.

21 She commonly has a few family members  
22 or new friends, friendships that have developed

1 after the allegation of the sexual assault, who  
2 sometimes sit in the courtroom, but more often  
3 stay out and provide encouragement to the victim.  
4 And in my experience, these new friends tend to  
5 be civilians, not military.

6 Sometimes there is limited socializing  
7 that goes on between the accused and his  
8 supporters between the proceedings. They smile,  
9 they talk. It's hard to ignore the quiet  
10 conversations that begin with "I heard that."  
11 It's not unusual to hear side conversations in  
12 the hallway that blame the victim, that support  
13 rape myths.

14 I have witnessed some cases in which  
15 there are an unusual or almost exclusive number  
16 of female supporters for the accused who stay  
17 from the beginning to the end. The rules of  
18 evidence often only serve to confirm to  
19 supporters that such offenders outside of their  
20 alleged offense are stainless, as their prior  
21 faults or mishaps are never openly revealed,  
22 while victims are often not afforded such

1 pristine luxury.

2 From an outsider's perspective, it can  
3 feel absurd, for instance, to hear "good Soldier"  
4 evidence that touts an accomplishment while a  
5 victim is left to explain a divorce that happened  
6 three years prior.

7 I have witnessed Soldier supporters  
8 weep openly when the accused is found guilty,  
9 even while the victim may have reentered the  
10 courtroom for the final determination of guilt or  
11 innocence. I have never witnessed a wide,  
12 explicit support from Soldiers after a finding of  
13 guilt towards the victim. It is actually a very  
14 lonely experience.

15 The victim often steps into the  
16 hallway or office of the government prosecution  
17 to offer a hug, but I have never witnessed a big  
18 group hug for the actual victim. I have never  
19 witnessed something of a form of "we knew it all  
20 along" towards the victim. And maybe that comes  
21 later, maybe that comes more subtly, but too  
22 often my impression is that I watch these victims

1 usually drive off with a civilian family member  
2 and I wonder what their opinion of the  
3 proceedings actually was. They look tired,  
4 obviously.

5 It has been quite a journey for them.  
6 I have often heard them recount of their  
7 rejection, their loss of friendships, the  
8 challenge of not feeling believed before the  
9 proceedings. I have often watched Soldiers still  
10 insist among themselves that the accused must be  
11 innocent despite a finding of guilt. Sometimes  
12 the level of denial or influence of the accused  
13 can appear startling.

14 We try to tell victims before they go  
15 through an investigation of their allegations  
16 that the end result ultimately doesn't matter.  
17 We try to emphasize that what matters is that  
18 they came forward. They reported the truth, and  
19 they know it happened, regardless of the outcome.

20 We educate them about the rules and  
21 the difficulties of these prosecutions, and  
22 sometimes they look assured and sometimes they

1 stare blankly. After working with victims in  
2 both civilian and military arenas, the military  
3 experience is obviously extremely unique. For a  
4 victim of military sexual assault, those peers  
5 are literally your peers. You dress the same,  
6 you should share the same values, the same  
7 ideals. You share the same mission.

8 Your courtroom is on the grounds of  
9 your actual workplace. You have to go back to  
10 that workplace the following day. You may see  
11 and recognize the peers that you saw in your  
12 courtroom the following day.

13 So where do things go so far off the  
14 tracks that there isn't some kind of group hug or  
15 some kind of group acceptance of that victim  
16 following a trial among her fellow Soldiers?  
17 Where are her supporters in the courtroom? The  
18 level of ostracism and rejection is alive and  
19 transparent during the judicial proceedings to an  
20 observer like myself.

21 I have often asked myself, if the  
22 degree of alienation among Soldiers is so obvious

1 in a courtroom, what must it actually be like for  
2 a victim Soldier in the months or years following  
3 an allegation to the point of trial?

4 So what happens following an  
5 allegation of sexual assault? It is true that it  
6 represents a serious disruption to the group  
7 dynamics of the military community. Disclosure  
8 of sexual assault has the potential to lead to  
9 ostracism of victims. Retaliation negatively  
10 impacts work productivity, cohesiveness, and  
11 mission readiness. Retaliation towards victims  
12 can cause depression, anxiety, suicidal thoughts.  
13 It can lead to them needing severe treatment,  
14 such as psychiatric hospitalization or more  
15 intensive therapies. I am yet to meet a victim  
16 of sexual assault who reports that she is looking  
17 forward to her future military career.

18 Now, all of these things ultimately  
19 can lead to the reinforcement of this idea that  
20 there is something wrong with the victim, and I  
21 have seen extreme examples. I have seen extreme  
22 examples such as an Air Force Airman who was

1       jailed, prosecuted, and sentenced for drug use  
2       and misconduct prior to testifying as a sexual  
3       assault victim in a court-martial that led to a  
4       guilty finding.

5               More common examples, of course,  
6       include losses of friendship, alienation, and  
7       especially in this era of technology there is  
8       innumerable ways in which you could reject and  
9       alienate another person. The affected  
10       individuals cope through these experiences by  
11       trying to make meaning out of them.

12              A disclosure of sexual assault can be  
13       bewildering as others don't know offenders in  
14       that light. We know that offenders can be very  
15       good Soldiers, very good family members and  
16       friends. Offenders can be charming, smart, kind,  
17       and intelligent. Nobody wants to necessarily  
18       recognize or believe that the person they thought  
19       they knew has a very different side perhaps to  
20       them and is capable of such a violent crime.

21              We don't know each other's secrets,  
22       but somehow we still assume that we know each

1 other. We don't need to know facts because we  
2 rely on and trust better the prior experience  
3 that we have had with another person. It is  
4 easier to cling to the good than to maybe  
5 recognize that someone has a darker or more  
6 sadistic tendency to them.

7           Since the days on a playground, we  
8 have never really given out rewards to each other  
9 for telling on someone. Aligning with a bully  
10 has its benefits, while standing with the victim  
11 takes courage. There is a potential for a herd  
12 mentality to develop that swarms around and  
13 protects that bully. You might also risk getting  
14 ostracized yourself if you stand up and try to  
15 defend those who are perceived to be more  
16 powerless or helpless. After all, there is  
17 usually plenty to rationalize. Wasn't she drunk?  
18 Wasn't she flirtatious? Can he really be that  
19 bad of a person?

20           I'm not going to attempt to continue  
21 to belabor the psychological underpinnings. But  
22 needless to say, such rationalizations and

1 attempts at coping with painful experiences lead  
2 to dramatic effects following an allegation of  
3 sexual assault. People will judge.

4 Relationships will change. But the military is  
5 unique because of its rank structure and the fact  
6 that you live near those with whom you work.

7           It is my experience that it can be  
8 extremely hurtful for a victim when they feel  
9 that, for instance, the command is standing up  
10 for the perpetrator. Everyone is watching each  
11 other closely, learning from these experiences.  
12 Imagine a future victim who has watched the  
13 retaliation or negative community reaction to a  
14 prior victim. It would seem likely that present  
15 retaliation is going to negatively influence  
16 future allegations of sexual assault. It would  
17 also seem likely that retaliation is going to  
18 negatively influence a victim's ability to reach  
19 the finish line of testifying against her  
20 offender.

21           In regards to solutions, I think we  
22 heard a lot of good -- a lot of very good

1 solutions in the panel preceding us. I think  
2 this data has clearly highlighted that we still  
3 have a lot more to discover about retaliation.  
4 There is still a lot more data that in fact needs  
5 to be gathered, so that we can better understand  
6 how this is impacting victims. Where are the  
7 best places to necessarily intervene?

8 I believe that education regarding  
9 sexual crimes in the military has been extensive  
10 and effective, and perhaps the next level of  
11 education will concern the effects of  
12 retaliation. I would definitely recommend that  
13 the issue of retaliation become part of upcoming  
14 training and education programs.

15 Further, leadership, as they talked  
16 about earlier, can have a significant positive  
17 effect and to be on guard for retaliation.  
18 Rather than simply accepting that retaliation is  
19 a natural consequence of a sexual assault  
20 allegation, leadership can support victims and  
21 inquire about the presence of retaliation, and  
22 proactively give victims outlets to report such

1 retaliation. Senior command may not necessarily  
2 be the best outlets to report retaliation as it  
3 is possible that victims may even perceive  
4 command to be part of the retaliation.

5 While leadership may not be able to  
6 control the Facebook behavior of Soldiers, they  
7 can sensitively consider the more subtle effects  
8 of sexual assault on their group dynamics and  
9 cohesiveness. Given how palpable retaliation  
10 feels in the courtroom, I would venture that it  
11 is not going to take very much investigation to  
12 find very obvious signs of retaliation prior.

13 Perhaps just simply starting with the  
14 simple fact that retaliation is more likely than  
15 not following an alleged sexual assault,  
16 leadership can begin to consider it at an earlier  
17 stage. Leadership needs to be convinced that it  
18 is in everyone's best interest to limit  
19 retaliation.

20 And with that, I commend you for  
21 considering this, and I appreciate the  
22 opportunity to speak to you, and I'll turn it to

1 Dr. Valliere.

2 CHAIR HOLTZMAN: Thank you very much,  
3 Dr. Soulier.

4 Our next presenter is Dr. Veronique  
5 Valliere. Dr. Valliere.

6 DR. VALLIERE: There is a French  
7 theme, and you do so well with it. Thank you.

8 CHAIR HOLTZMAN: I've had a lot of  
9 practice today.

10 DR. VALLIERE: Thank you for having us  
11 here. I'm a clinical and forensic psychologist,  
12 and I have been part of well over 50 courts-  
13 martial in a consultant or expert witness role.  
14 I want to talk a little bit -- what I do is I  
15 treat both victims and offenders, and so my focus  
16 today is to introduce what I hope will be a  
17 little bit of a paradigm shift to understand  
18 retaliation.

19 And one of the things -- one of my  
20 jobs in a courts-martial is to help the  
21 prosecution stop defending the victim and start  
22 exposing the offender. And so I want to put that

1 forward today, because retaliation is a reality.  
2 I think we have heard that it exists more times  
3 than not, and it is generally viewed as a post  
4 report or post assault behavior. But what I want  
5 to propose is us to understand retaliation as a  
6 pre-offense behavior and part of the assault  
7 itself.

8 How I have learned this is working  
9 with offenders. What I have learned from them is  
10 not only do they prepare the victim to be a  
11 recipient of abuse, especially if they have  
12 ongoing contact with that victim, but they  
13 prepare the audience or the culture or the  
14 community to disbelieve. And they promote things  
15 that help the community tolerate and facilitate  
16 abuse, not only the assault of the victim, but  
17 the continued abuse of the victim.

18 While I read my statement, I am going  
19 to interject some quotes or some situations. So  
20 the first one I will -- just an example is an  
21 offender I had, he said, "I was talking with  
22 Scott, see, and I was telling him how Julie don't

1 seem to love me anymore. Like, I wasn't getting  
2 the attention. I was missing her attention."

3 Well, this man subsequently or had  
4 been raping his four-year-old daughter. But when  
5 he disclosed, he was perceived in the light that  
6 he had -- you know, he was lonely and misguided.

7 Offenders begin their offending long  
8 before the actual assault occurs. Along with  
9 indoctrinating the victim to blame him or  
10 herself, offenders prepare the audience to  
11 disregard the mistreatment of the victim,  
12 overvalue the offender, which we -- Dr. Soulier  
13 spoke about, and to deny that abuse could have  
14 ever happened.

15 Another offender told me, "I told the  
16 cops. In fact, I even called the cops on myself.  
17 I told them what a problem she was, how she  
18 wanted her dad back. I called the cops on myself  
19 about 50 times. When she finally told, it was  
20 after I raped her and grounded her. The cop came  
21 out, patted me on the back and said, You won't  
22 believe what she just accused you of -- molesting

1 her. Boy, I see what you put up with here.'"

2 He continued to assault, in the face  
3 of the police intervention, this child for  
4 another year before someone else believed her.

5 In the military environment, this is  
6 especially critical to understand. Similar to a  
7 familial situation of abuse, the offender has  
8 access to those in the environment of the victim,  
9 his or her commander, friends, support system,  
10 colleagues. It is completely different from the  
11 experience of a victim assaulted by a stranger.  
12 In the military, a victim assaulted by a fellow  
13 Servicemember not only deals with the reality of  
14 the rape but the publicity of it.

15 When you are raped by a stranger, you  
16 don't have to deal with that in day-to-day life.  
17 She deals with the rape and the impact on her  
18 community and also the ongoing influence of the  
19 offender on her life outside of that specific  
20 assault.

21 Another victim told me, "I sat there  
22 alone in the courthouse listening to all those

1 people lined up to say what a great guy he was.  
2 I overheard them calling me a slut, saying they  
3 couldn't believe I thought we were friends. It  
4 went on for days during the trial."

5 It is much easier for people to take  
6 sides when they "know the offender." People rely  
7 on their own judgments about who is like that or  
8 not like that, especially in intimate violence.  
9 They use their own experiences with the offender  
10 to judge the victim's credibility or to judge if  
11 the offender is not that type of guy, and if the  
12 victim is either lying or did something to  
13 deserve the abuse.

14 The victim's behavior is judged  
15 hindsight through the lens of disbelief. There  
16 is always, always hindsight in analyzing the  
17 victim's behavior, as if she knew what was going  
18 to happen at the end of that day, as opposed to  
19 understanding that the person who knew what was  
20 going to happen at the end of that was the  
21 offender. And so the victim's choices are  
22 dissected and judged and analyzed instead of the

1 offender's choices.

2 Her future behavior is analyzed for  
3 proof of her motive to lie, her credibility, her  
4 vindictiveness, any emotional problems or  
5 deceptiveness she might have, proof of her bad  
6 character, and so the audience is faced with  
7 believing that the person they like is a bad  
8 person capable of frightening behavior and  
9 unpredictable behavior, or a more acceptable  
10 truth, which is that the victim is lying,  
11 attention-seeking, vindictive, which is much more  
12 acceptable, especially in a culture steeped with  
13 sexism and victim blaming and rape myths. We  
14 still have those things going on.

15 A victim -- this is a paraphrased  
16 disclosure of a victim to me. "You know, I knew  
17 what happened there at the unit's hospital. The  
18 girl that got raped, they all made fun of her.  
19 They mocked her. They talked about her being a  
20 bitch and a liar. I swore I would never report  
21 if I got raped. I work there. I would never go  
22 there putting out my business. Then I got raped

1 by a fellow medic, my co-worker, someone I worked  
2 with every day. He was a good medic. Everyone  
3 liked him. There is no way I would report there.  
4 I didn't report there. I tried to get help  
5 outside. I had to work with him day after day.  
6 Then I could never work there again."

7           Victims are acutely aware of their  
8 environment before any assault occurs. They hear  
9 the attitudes, beliefs, and victim blaming. They  
10 see the perceived value of the offender, whose  
11 friends he has, how the command sees him, whose  
12 ear he has, how many buddies he has around. And  
13 what is important to understand is offenders prep  
14 the battlefield, so to speak, before they assault  
15 a victim. They will go around talking about --  
16 if it's a domestic violence offense, they will  
17 talk about how crazy their wife is, or that she  
18 might be cheating on him, or how this other  
19 victim is really into him, or what a barracks  
20 slut she is.

21           So the battlefield is already primed  
22 when this offender chooses and offends their

1 victims. So then what happens is when the  
2 allegation comes out everybody bemoans the poor  
3 guy who had this. He either invokes sympathy and  
4 the unit will say, "Oh, here we go again.  
5 Another woman just crying rape to get what she  
6 wants." Or they bemoan how politically sensitive  
7 the climate is, or how much pressure we have to  
8 pay attention to these victims.

9 So the unit jokes about the -- I have  
10 heard these jokes about the command has to  
11 prosecute everything because of the media. So  
12 this already preexists the assault, and the  
13 offender exploits that.

14 The culture of retaliation against  
15 victims exists prior to any report only to become  
16 focused on a particular victim when an outcry  
17 occurs. Another victim writes, he got letters of  
18 support how people did not believe he did it.  
19 "These people were my peers. I had to encounter  
20 them. They were all in my same position, too. I  
21 went to meetings, trainings. I didn't know if  
22 they had written letters for him. Hardly anyone

1 reached out to me or asked me how I was. They  
2 said it was awkward. I kind of understood how  
3 they couldn't believe he would assault me, but  
4 what I couldn't understand is why they would  
5 believe I would lie."

6 So not only do the victims experience  
7 a choosing of the offender over her, but the  
8 automatic assumption that they are of bad  
9 character and not worthy of siding with.

10 Women can turn against each other  
11 fairly readily. The perception of power and  
12 acceptance still lies with men as an issue that  
13 is magnified in the male-dominated military.  
14 Most women fear being labeled as "one of those,"  
15 even more than being assaulted, fearing men will  
16 tiptoe around her, label her, ostracize her, or  
17 fail to recognize her as a peer.

18 One victim I worked with, when she ran  
19 to the lieutenant colonel next door barefoot in  
20 the middle of the night to escape her battering,  
21 the lieutenant colonel went next door to talk to  
22 the husband who was also later convicted of

1       raping and battering her. He told the offender  
2       to keep it in the family, redirected the MPs away  
3       from the situation, and told him he needed to  
4       deal with his wife because she was an issue and  
5       had upset her children -- his children.

6                So that is even more complicated  
7       because when the lieutenant colonel confronted  
8       the offender, the offender told -- made up a  
9       story that the wife that he had beaten had  
10      accused him of having an affair with the  
11      colonel's wife. So already drew a wedge  
12      immediately between the colonel and this woman  
13      who needed her -- his help.

14               Imagine a culture when you have been  
15      victimized, when the burden of silence,  
16      reporting, surviving, and how the responsibility  
17      of the consequences lies with you. Not only were  
18      you assaulted, but now because you told you are  
19      the one who caused the problem. If you had dealt  
20      with it or talked to him about it or gotten some  
21      help, or just forgotten about it, you wouldn't  
22      have ruined his life or his family.

1           And if people can't believe he would  
2 do something like that, then everyone feels  
3 vulnerable to attack or false allegations,  
4 because the offender is usually ahead of the  
5 spin, portraying themselves as a target or  
6 misunderstood or a mistake of fact or consent or  
7 a victim of the military's zealous attempt to  
8 make sex illegal, which I have also heard.

9           In this case I was in, the perp went  
10 to his command to report the Children and Family  
11 Services investigation and allegations, painting  
12 it as a fabricated allegation of the disturbed  
13 and vindictive wife, before the command had heard  
14 of the report. His self-report was considered a  
15 sign of his earnestness and honesty.

16           However, when he verbally abused the  
17 female officer who told him about the  
18 investigation to stay away from his wife,  
19 intimidating her and making racial innuendos,  
20 this was written off as his natural reaction to  
21 false allegations. This person, too, was  
22 convicted of multiple counts of rape later.

1                   Finally, in order to address any  
2                   retaliation, we are asking the victim to once  
3                   again report, to tell again, do the exact same  
4                   thing that brought harm. The primary mitigator  
5                   and trauma in sexual assault is social support  
6                   and being believed. No matter how heinous the  
7                   sexual assault is, if the person has appropriate  
8                   social support, and if they are believed by the  
9                   people they care about, their chance of  
10                  developing PTSD drops dramatically. This is the  
11                  one consistent finding we know in development of  
12                  trauma.

13                  And so to get retaliated against not  
14                  only has a tremendous traumatic effect on the  
15                  victim, but in the unit that victim's functioning  
16                  and that perpetrator's functioning gets totally  
17                  corrupted. Each time retaliation occurs, the  
18                  future victims get the message. To expect  
19                  cohesion and mission readiness in a unit full of  
20                  combatants and enemies within is simply  
21                  ridiculous.

22                  Retaliation is the final culmination

1 of the offender's efforts to be successful. The  
2 shaming, shunning, or patronizing protection of  
3 an individual, instead of the systemic stance of  
4 no tolerance for maltreatment, facilitates sexual  
5 assault, inhibits the disclosure, and ensures the  
6 destructive process of retaliation.

7 So what do we do? Retaliation is a  
8 complicated issue. To impose a black and white  
9 solution, like just a law or a command is in or a  
10 command is out, it really sort of replicates that  
11 dichotomous idea we have that things are black  
12 and white or somebody is good or bad.

13 So I would recommend that those kind  
14 of dramatic impositions would give the illusion  
15 of an effective response without addressing the  
16 problem.

17 When I was thinking about this, I  
18 really realized that retaliation is akin to  
19 bullying, and we have a huge amount of anti-  
20 bullying measures out there that work. And they  
21 are not about telling people you have to be  
22 friends with everyone. Some of the -- when

1 retaliation comes up, you know, there is eye-  
2 rolling about, you know, we can't tell people who  
3 to friend on Facebook. And that's not it. Anti-  
4 bullying doesn't tell you who to be friends with,  
5 but how not to be friends respectfully,  
6 regardless of your beliefs. So I would send  
7 somebody to look at some of those.

8 My other suggestions are create an  
9 environment that embraces a stance of no  
10 tolerance for maltreatment. And I use the word  
11 "maltreatment" because I think, in general, an  
12 attitude that people need to be treated decently  
13 will address "don't beat your wife, don't  
14 sexually assault people, don't retaliate." It  
15 has to be a stance of maltreatment that responds  
16 to all types of maltreatment.

17 One thing that came to me while I was  
18 sitting here that isn't in my comments is we need  
19 to hold the offender accountable. When that  
20 person is reported on, we need to tell that  
21 person, "Hey, if your friends and your family  
22 starts harassing this victim, you are going to

1 answer for that."

2 In the civilian world, sometimes  
3 people are charged with intimidation of a witness  
4 by third party. So we need to think about the  
5 offender puts a lot of effort into energizing the  
6 community to retaliate. They have the same power  
7 to quell that retaliation if we hold them  
8 accountable for part of it.

9 We need to educate and train about not  
10 only what sexual assault and retaliation is, but  
11 how offenders work, how they use social processes  
12 to their favor. We need to maybe create an  
13 outside, anonymous, and confidential reporting  
14 system, so that reporters aren't re-punished.

15 And perhaps families or friends of  
16 people getting retaliated against who may be  
17 outside the military have a way to file a  
18 complaint or make something heard. And then  
19 those commanders that are doing a great job can  
20 be rewarded for that, but those who have units  
21 that continue to get reports of retaliation maybe  
22 could be looked at individually instead of a

1 whitewash or a broad-based intervention that  
2 treats everybody the same.

3           Some people are doing a great job at  
4 not tolerating this, and I've seen that in  
5 different courts-martial where things will be cut  
6 off right when it starts.

7           When an intervention is proposed, the  
8 victim needs to have a dialogue with whoever is  
9 going to impose that, so that that's not  
10 perceived as retaliation. If somebody wants to  
11 change a job, talk to the victim first, because  
12 otherwise it could be perceived as retaliation,  
13 even if there are good intentions.

14           Consequencing those who retaliate and  
15 holding bystanders accountable is another thing.  
16 And, finally, remind commanders it's not their  
17 job to believe or not believe reports of assault.  
18 They are not to take sides. That is the court's  
19 job. Their job is to provide leadership and care  
20 to all their Servicemembers. And we go over and  
21 above protecting the rights of the offender. He  
22 can't go into pretrial confinement. He can't get

1 his weapons taken away. He can't be penalized by  
2 his command for allegations that aren't proven  
3 yet. But the punishment for the victim starts  
4 immediately. So we have to help commanders  
5 understand their role is not to choose sides, and  
6 that will trickle down.

7 So, thank you for letting me talk  
8 about that.

9 CHAIR HOLTZMAN: Thank you very much.  
10 Admiral Tracey.

11 VADM(R) TRACEY: You made a comment  
12 about command is in or command is out. Could you  
13 just -- I didn't track with that.

14 DR. VALLIERE: Well, my understanding  
15 from a civilian point of view is that there is a  
16 big push, in sexual assault discharging decisions  
17 or in influential decisions, that an outside body  
18 takes --

19 VADM(R) TRACEY: Take it outside of  
20 the chain of command.

21 DR. VALLIERE: Right.

22 VADM(R) TRACEY: I'm sorry. I just

1 didn't catch --

2 DR. VALLIERE: So I don't think that's  
3 a necessary step.

4 VADM(R) TRACEY: Okay. Do you have  
5 some specifics around bullying/anti-bullying  
6 remedies that you think might be effective here?

7 DR. VALLIERE: Well, I think there are  
8 many effective things that have happen in  
9 communities of children where they don't tell  
10 you, for instance, if you don't like somebody,  
11 you don't necessarily have to play with them but  
12 you can't make fun of them. And there are  
13 stances of no tolerance, and there is a very  
14 predominant value, say, in a school where they're  
15 saying, "We're not going to tolerate this kind of  
16 behavior, and you need to be part of that  
17 mission, because we're not going to tolerate it."

18 And the kids -- I work with a lot of  
19 littler kids that are coming through some of  
20 these, and they are just like, you know, "I don't  
21 like that person, but there is no reason to call  
22 them fat." So they are taught about respectful

1 conflict, respectful disagreement, and I think  
2 that there are some principles we can grow up to  
3 apply.

4 And some of what has been talked about  
5 today in terms of the ethics codes, you know, we,  
6 as grownups, we have ethics codes, we have anti-  
7 bullying and things, those codes we adhere to  
8 that don't necessarily result in criminal  
9 sanctions. But, for us, they are called ethics  
10 codes of conduct in our profession. And if we  
11 violate those codes, we can get peer sanctions,  
12 we can get fined, we can get a lot of things.

13 And I would say that being a  
14 Servicemember is a profession as well, and so,  
15 going along with the other panel's suggestion to  
16 apply -- we already have those systems out there  
17 that work for ethical conduct, and maybe even the  
18 rater's forms can talk about, like do you adhere  
19 to not maltreating your fellow Soldiers, in some  
20 of their performance ratings things.

21 So I think there are things out there  
22 that we can just incorporate with the system that

1 exists to address this really important problem.

2 VADM(R) TRACEY: Thank you.

3 CHAIR HOLTZMAN: Mr. Taylor.

4 MR. TAYLOR: Well, thanks to both of  
5 you for being here this afternoon and sharing  
6 your views with us, and specifically thanks for  
7 the support you have given to the military  
8 courts-martial system through your intervention  
9 and your help on both sides of the aisle.

10 Dr. Soulier, your description of what  
11 happens in the courtroom obviously was very  
12 poignant and based on cumulative experiences that  
13 you've had. Given the nature of the adversarial  
14 process, what suggestions do you have about how  
15 to make the environment somehow not quite so  
16 intimidating and quite so lonesome for this  
17 victim who comes from a background where there is  
18 not much support?

19 DR. SOULIER: Yeah. I've thought a  
20 lot about that, because, again, I can't think of  
21 an experience in a court-martial that isn't  
22 illustrative of what I described. It's a public

1 hearing, obviously. You can't bar people from  
2 coming. I think the thing that sticks out to me  
3 when I go there is it starts to feel very much an  
4 us-versus-them, I think, for the victim.

5 The victim liaison is very often  
6 dressed in civilian clothes. She has some  
7 civilian friends. But there is really just --  
8 outside of the government prosecution, it doesn't  
9 really feel like there is anybody really there in  
10 uniform that is supporting them. And I don't  
11 know how you order that, how you make that  
12 happen. There is nothing wrong with supporting  
13 the accused. I'm not saying, you know, that that  
14 should be barred in itself.

15 But it is so striking -- I don't know  
16 what the -- honestly, I don't know, because the  
17 courtroom is kind of the nature -- it is what it  
18 is, but I just wish, in particular, it didn't  
19 feel like the victim had almost left the  
20 military. Even though they are still in uniform,  
21 you get the feeling when you're in the courtroom  
22 like they're really not a part of the military

1       any more, because there is just no Service people  
2       behind them. You don't see anybody dressed in  
3       uniform.

4                   So I don't know if just even having  
5       someone assigned, just the appearance I think of  
6       someone in uniform would make a big difference,  
7       someone that looks like a Soldier that is in  
8       support of that person. I don't know.

9                   MR. TAYLOR: Well, as a mental health  
10      professional familiar with the dynamics, would  
11      you think it would be appropriate for someone  
12      like you to spend some significant amount of time  
13      with the victim prior to trial preparing the  
14      victim for the dynamics? So at least when this  
15      feeling of loneliness sets in, it's something  
16      that you've mentally prepared yourself for?

17                  DR. SOULIER: I have seen, personally,  
18      I think that there's been a pretty significant  
19      transformation in the way that these cases are  
20      carried out, conducted, prosecuted. I think, in  
21      particular, the SVPs are extremely adept at  
22      caring for, anticipating what is to come, being

1 very sensitive to the victim. I think that has  
2 been an extremely helpful program.

3 But I would agree also, if you are  
4 going to, you know, pay an expert, fly them in,  
5 go through all that effort, I would totally  
6 support trying to get the most out of them, and  
7 the most out of them is to definitely bring them  
8 in the day prior, have them work with, talk to  
9 the victim.

10 You know, we have sat through 40, 50  
11 of these. I mean, it is pretty apparent in our  
12 minds what is going to come. And, yes, I think a  
13 conversation, getting to know the victim, is  
14 always extremely helpful. And it helps us, you  
15 know, better consult to the team for whom we are  
16 working also.

17 MR. TAYLOR: So then I guess the book-  
18 end question to that is, after the event itself,  
19 is there a period of time during which it is  
20 particularly helpful for the victim to have  
21 access to someone like you to talk about what  
22 happened and share experiences and try to move

1 beyond to the next step?

2 DR. SOULIER: Well, I think prior and  
3 after, right. I mean, obviously, we are not  
4 going to stick around, but I think that it's  
5 extremely -- for someone who has been  
6 traumatized, every time they retell this, every  
7 time they kind of reopen this can of worms, so to  
8 speak, it is extremely activating.

9 And there can be very debilitating  
10 effects that happen following a trial for which,  
11 yes, a victim should be warned. And they should  
12 anticipate they are going to need some further  
13 support. They are going to need someone to look  
14 after them and to not ignore that and to pretend  
15 like they have to act like it's okay because the  
16 trial is over now, life has to go on.

17 MR. TAYLOR: Is there a rule of thumb  
18 that you have about how long that treatment might  
19 be necessary for people that you have dealt with  
20 in the past?

21 DR. SOULIER: Well, the rule of thumb  
22 is really your ability to function. So you

1 measure how you are doing by your ability to be  
2 employed, by having your social relationships, to  
3 be able to function. You should be in treatment  
4 or you should be getting care for yourself until  
5 you have returned to that baseline function that  
6 you think you are capable of doing. For some  
7 people that is fairly quick. For others it may  
8 take months. For a few it is going to take a  
9 whole lifetime. But it is going to take  
10 probably, on average, some months.

11 MR. TAYLOR: Would you think it would  
12 be within the scope of what a mental health  
13 professional would provide to also help to equip  
14 the victim with coping mechanisms for the  
15 ostracism that might follow after a trial?

16 DR. SOULIER: Yes. And even before  
17 the trial, definitely. That could be a very apt  
18 topic in a therapy session.

19 MR. TAYLOR: Okay.

20 DR. SOULIER: Yes.

21 MR. TAYLOR: Thank you.

22 CHAIR HOLTZMAN: Thanks to the two of

1 you for coming and sharing with us your insights  
2 into this. Of course, they are very disturbing  
3 and very troubling, but I think the important  
4 message that you are giving us is just a  
5 follow-on to what we heard before, which is that  
6 the retaliation starts right away. And even if  
7 it's not overt, retaliation in the sense that  
8 perhaps some of the people who are there for the  
9 accuser, friends of the accused, and care for the  
10 accused, and legitimately don't believe it and  
11 just want to be there for their buddy or their  
12 friend. But it's a form of -- but it's very  
13 hurtful, from what you're saying, to the victim.  
14 And the victim feels very isolated and alone.

15 I just have a few questions here.

16 Have you heard, in the course of your work, of  
17 other kinds of retaliation when you are dealing  
18 with -- for example, you're representing the  
19 trial counsel. Does the victim talk about other  
20 retaliations that have taken place? Are you  
21 aware, in the same way, of other kinds of  
22 retaliation that seems to be systematic the way

1 this does in the courtroom?

2 DR. SOULIER: Do you mean retaliations  
3 that don't concern particularly the victim but  
4 may concern other players in the system or --

5 CHAIR HOLTZMAN: Well, concern the  
6 victim, but don't take place in the courtroom.

7 DR. SOULIER: Oh, certainly. Right.  
8 That's what I focused my testimony --

9 CHAIR HOLTZMAN: What are some of the  
10 best examples that you have? I mean, do you just  
11 find something that's systematic? Or are these  
12 random, or are they typical? Can you describe  
13 that?

14 DR. SOULIER: Right. I focused more  
15 on the judicial proceedings themselves, but she  
16 would even argue, you know, prior the allegation,  
17 post-allegation, during all of that time, you  
18 know, the most common examples are, you know, the  
19 isolation.

20 Like I said, most typically, they have  
21 to kind of start over, to some degree. They have  
22 to form new friendships. Very often they have

1 got to step out of the Army community or the  
2 military community in some way and go make new  
3 civilian friendships.

4 So the social factor is critical. And  
5 it is also a professional factor, like we talked  
6 about earlier today, how it influences and  
7 affects their ability to just do their job, to  
8 maintain concentration, to feel respected, to  
9 feel like they are still part of the team and the  
10 mission themselves.

11 I cited, you know, one extreme  
12 example. There are extreme examples out there  
13 where, you know, victims explicitly don't feel  
14 believed by a commanding officer in some way, or  
15 that has been communicated to them very directly.

16 I cited the one example where she was  
17 disciplined specifically for some substance use  
18 and some other conduct issues, and from her  
19 perception it felt out of character, it felt as a  
20 direct result of the allegation, the disruption  
21 that she had created to their organization.  
22 That's a more extreme example.

1                   But I would say, again, the message  
2                   from today is retaliation is more common than  
3                   not. It is going to happen, and you've got to be  
4                   on the lookout for it.

5                   CHAIR HOLTZMAN: Now, I can't remember  
6                   -- I think it was you, Dr. Valliere, who  
7                   mentioned that we have statistics on PTSD and its  
8                   relationship to emotional support from friends.  
9                   Was that you?

10                  DR. VALLIERE: Right.

11                  CHAIR HOLTZMAN: Can you give me the  
12                  statistics or the --

13                  DR. VALLIERE: I don't know all of the  
14                  statistics. I do know that social support is  
15                  probably the number one factor in mitigating the  
16                  presence and persistence, the development and  
17                  persistence of PTSD trauma. And that goes both  
18                  for children and adults.

19                  CHAIR HOLTZMAN: Is there research on  
20                  that that you are citing, or is that --

21                  DR. VALLIERE: Yes.

22                  CHAIR HOLTZMAN: Maybe you could

1 provide it when you have a chance to --

2 DR. VALLIERE: Oh, certainly.

3 CHAIR HOLTZMAN: -- to the committee.

4 You said that -- just one second. What you said  
5 is so troubling. I'm just really trying to  
6 figure out how we develop solutions. I guess  
7 that's the most important thing. And I  
8 appreciate your suggestion about looking at the  
9 bullying practices and seeing whether those can  
10 be utilized to protect the victim.

11 What about the transfer, the right of  
12 the victim to get transferred out of the unit?  
13 How does that work in terms of dealing with  
14 retaliation? Can you speak to that at all? Is  
15 that an effective system or not effective or --

16 DR. VALLIERE: I think that's a  
17 particular place where dialogue with the victim  
18 has to occur, because if it's imposed it feels  
19 like, well, they're getting rid of me. Because I  
20 have had that. But if it's not, it feels like  
21 retaliation because she has to go back to the  
22 same work or supervisor who assaulted her.

1           I don't think it's very hard to sit  
2 down with a victim and say, you know, "What do  
3 you need?" And some want to not be moved because  
4 maybe there is some retaliation going on, but her  
5 only three good friends who support her are  
6 there, or she trusts her NCO to protect her from  
7 some, and some want to get out of dodge as far as  
8 possible.

9           So I think a conversation about  
10 transfer needs to happen. And then, if the unit  
11 cohesion is disrupted enough, then it may have to  
12 be made whether or not the victim likes it or  
13 not. But at least if her wishes were taken into  
14 account, and the reasons for the decision,  
15 whatever it may be, are explained, information --  
16 and I think Dr. Soulier would agree with me. The  
17 more information a victim has about the process,  
18 about the anticipation, how the decisions are  
19 made, what the ramifications of these decisions  
20 would be, even if they don't like the decision,  
21 to be included in the information feels very  
22 supportive at all times.

1           So I think that's important. But,  
2 second, what's important is not only to transfer  
3 the victim, but there has been more than a  
4 handful of cases where the victim has been  
5 transferred and her perpetrator gets transferred  
6 to the same place like three months later. And  
7 now the new command, you know, has no idea what's  
8 going on. He starts his stuff again, trashing  
9 her and saying all the trouble she caused at the  
10 last fort or whatever.

11           So the transfer issue needs to be  
12 looked at pretty proactively and in two parts,  
13 because transferring someone else and then  
14 shipping the same problem right to the same  
15 place, that feels like retaliation at worst, or  
16 just general disregard and insensitivity at best  
17 when that happens.

18           CHAIR HOLTZMAN: Do you have any other  
19 questions?

20           VADM(R) TRACEY: Just one last  
21 question for Dr. Soulier. What opportunities  
22 have you had, if any, to describe what you

1 described to us to court-martial convening  
2 authorities, other line commanders, people who  
3 own the responsibility for setting up the  
4 conditions that would make retaliation less  
5 likely?

6 DR. SOULIER: I have not.

7 VADM(R) TRACEY: It might be kind of  
8 interesting to do that. Once you're a commander,  
9 you actually don't get to be in the courtroom.

10 DR. SOULIER: You're right.

11 CHAIR HOLTZMAN: Well, we have no  
12 further questions. But if anything occurs to you  
13 about suggested remedies and recommendations, we  
14 would of course welcome receiving them from you.  
15 And thank you very, very much again for your  
16 testimony.

17 DR. SOULIER: Thank you.

18 DR. VALLIERE: Thank you.

19 CHAIR HOLTZMAN: We'll take a five-  
20 minute break.

21 (Whereupon, the above-entitled matter  
22 went off the record at 1:50 p.m. and resumed at

1 2:15 p.m.)

2 CHAIR HOLTZMAN: Welcome back,  
3 everybody.

4 We are now on the next panel of very  
5 distinguished presenters on Policies, Practices,  
6 and Prevention of Retaliation Within the Military  
7 Services. Our presenters are Ms. Monique  
8 Ferrell, Director, U.S. Army, SHARP; Colonel  
9 Scott S. Jensen, Branch Head, U.S. Marine Corps,  
10 Headquarters, Marine Corps SAPR; Mr. Jay Aanrud -  
11 - did I --

12 MR. AANRUD: That's close enough,  
13 ma'am.

14 CHAIR HOLTZMAN: Well, close enough is  
15 not right when it comes to a name.

16 MR. AANRUD: Aanrud.

17 CHAIR HOLTZMAN: Oh, Aanrud. Okay.

18 MR. AANRUD: Thank you.

19 CHAIR HOLTZMAN: When we get away from  
20 French --

21 (Laughter.)

22 CHAIR HOLTZMAN: -- I'm in big

1 trouble. Okay. Deputy Director, Headquarters,  
2 U.S. Air Force SAPR. Rear Admiral Richard P.  
3 Snyder, Director, Twenty-First Century Sailor  
4 Office.

5 Welcome to all of you, and we'll start  
6 with Ms. Monique Ferrell.

7 MS. FERRELL: Good afternoon.

8 CHAIR HOLTZMAN: Good afternoon, and  
9 thank you so much, all of you, for coming and  
10 sharing your expertise with us.

11 MS. FERRELL: Good afternoon. Thank  
12 you, Chairwoman Holtzman, and Members of the  
13 Panel for inviting me here today to discuss the  
14 critical issue of retaliation. I am Monique  
15 Ferrell, and I'm the Director of the Army's  
16 Sexual Harassment Assault Response and  
17 Prevention, known as SHARP, Program Office.

18 I have been in the job for a little  
19 less than two months, and I am honored to have  
20 been selected by senior Army leadership to lead  
21 the program that both the Secretary of the Army  
22 and the Chief of Staff of the Army has identified

1 as a top priority.

2 As important as my professional life  
3 is to me, I feel compelled to share with you a  
4 little about my personal life. I am proud to say  
5 that I'm an Army wife of 31 years, and I'm also  
6 an Army mom to an E5 sergeant in our great Army.  
7 I'm extremely proud of and protective of my two  
8 Soldiers, so these issues of sexual harassment,  
9 sexual assault, retaliation, and all of the  
10 related discussion points are very personal to  
11 me.

12 As an Army wife and Army mom, I am  
13 just like other members of the American public.  
14 I have entrusted my family members to the great  
15 institution we know as the U.S. Army, and expect  
16 that whether they are serving at home station or  
17 deployed to some outpost in a foreign country,  
18 they can trust their fellow Servicemembers to  
19 treat them with dignity and respect, not violate  
20 them in any way, and if they observe someone  
21 attempting to violate them, that observer will  
22 intervene and protect them.

1           I shared this personal bit of  
2 information with you because I believe it will  
3 give you some insight into the nexus between my  
4 personal life and my professional life and how  
5 this fuels my interest in Army programs that are  
6 focused on taking care of and protecting  
7 Soldiers.

8           Although I have been the SHARP  
9 Director for a short time, I bring a level of  
10 passion and commitment that I believe is  
11 essential to enhancing the SHARP program. It is  
12 easy for me to come to work every day because I  
13 know that Army leaders are committed to the  
14 prevention of sexual assault and retaliation.

15           The Army, like the other Services, has  
16 seen a promising trend. Recent survey data  
17 indicates that the Army's prevalence of sexual  
18 assault has decreased while simultaneously  
19 reporting has increased over the past two years.  
20 We believe this is a sign of growing trust and  
21 confidence in our response and accountability  
22 systems.

1           We recognize that continuing to  
2           eliminate retaliation -- real or perceived --  
3           against victims, witnesses, bystanders, and first  
4           responders, is key to building upon other  
5           successes, and ultimately achieving the change in  
6           culture we seek. Retaliation threatens  
7           survivors, deters bystanders, and divides units,  
8           and in the process destroys the trust that is the  
9           foundation of our readiness.

10           We know that retaliation is real, that  
11           it impedes reporting, and that it is most  
12           prevalent at the peer and immediate supervisor  
13           level. The Army continues to address the issue  
14           of retaliation proactively, including adopting  
15           policies for expedited transfers for victims, the  
16           implementation of the special victim counsel  
17           program, greater protections of victim privacy,  
18           and prevention and training initiatives that seek  
19           to educate all Servicemembers on the unique  
20           aspects of this crime and the devastating effects  
21           on victims.

22           The Department of the Army Inspector

1 General, DAIG, complaint process and Sexual  
2 Assault Review Boards -- we call them our SARBs -  
3 - are tools we use to receive complaints and  
4 respond to allegations of retaliation. The DAIG  
5 executes a complaint system for retaliation and  
6 reprisal in accordance with the Military  
7 Whistleblower Protection Act.

8 Further, our first responders serve as  
9 key advisors to command teams and victims  
10 reporting alleged retaliation to assist in  
11 prevention efforts and ensure all are informed of  
12 rights, policies, and procedures related to this  
13 issue. These first responders include our Sexual  
14 Assault Response Coordinators, our SARCs, victim  
15 advocates, we call them VAs, special victim  
16 prosecutors, and SVCs.

17 Our analysis of the most recent survey  
18 data shows us that we have made some in-roads.  
19 There were promising results from command climate  
20 surveys, indicating that over 90 percent of  
21 Soldiers across the Army believe that their chain  
22 of command took sexual assault seriously,

1 encouraged reporting, and would take appropriate  
2 action on reports, but we do believe that we must  
3 do better.

4 The Chief of Staff and the Secretary  
5 of the Army have identified understanding,  
6 defining, addressing, and preventing retaliation  
7 as critical to our readiness as an Army. First,  
8 we must work to understand retaliation in our  
9 formations. As Major General Snow told you this  
10 morning, retaliation is an umbrella term that  
11 encompasses a wide range of conduct, professional  
12 and social.

13 The Army, like the other Services,  
14 will rely on feedback from multiple sources to  
15 include commanders and non-commissioned officers  
16 that care for their Soldiers and are working to  
17 enhance trust. We will also use data from the  
18 RAND Military Workplace Study and the Survivor  
19 Experience Survey to gauge the prevalence of  
20 perceived retaliation, the source of perceived  
21 retaliation, and the types of retaliation  
22 perceived by victims.

1           Data from command climate surveys and  
2 focus group research from our Army Research  
3 Institute will provide further understanding of  
4 perceptions of command support and of  
5 consequences for reporting sexual assault across  
6 the Army.

7           This data provides useful information  
8 but has inherent limitations and cannot replace  
9 the value of speaking with survivors directly  
10 about their experiences. To truly understand the  
11 nuances and effects of retaliation, we must  
12 listen to those victims and engage in open-ended  
13 conversations about retaliation.

14           To this end, we have expanded our  
15 capabilities to obtain firsthand input on how we  
16 can reduce retaliation. The Chief of Staff of  
17 the Army established a Victims' Advisory Panel to  
18 meet with survivors and first responders twice  
19 annually in an intensive and wide-ranging small  
20 group discussion.

21           Additionally, the Chief of Staff  
22 brought a panel of survivors to the SHARP summit

1 we hosted in February to discuss their individual  
2 experiences with retaliation with an audience of  
3 all of the Army's two-star and above command  
4 teams. These invaluable conversations happening  
5 across the Army, as commanders meet personally  
6 with victims and with first responders, such as  
7 SVC and BAs.

8 In 2014, the Army began a pilot  
9 program to establish 14 SHARP resource centers.  
10 These centers host SHARP first responders from  
11 prevention, advocacy, legal, law enforcement,  
12 investigation, medical, and chaplaincy services.  
13 These centers were established to enhance multi-  
14 disciplinary collaboration and serve as a one-  
15 stop shop for commanders, victims, and SHARP  
16 personnel.

17 Second, the Army has worked to define  
18 "retaliation." The Secretary of the Army issued  
19 a punitive directive in 2014 that prohibits  
20 retaliation, ostracism, and acts of maltreatment.  
21 Acts of professional retaliation violate both  
22 existing Articles of the Uniform Code of Military

1 Justice, including maltreatment and obstruction  
2 of justice, and punitive provisions of Army  
3 regulations that prohibit hazing and bullying.  
4 Social retaliation is more complex and must  
5 primarily be addressed through prevention,  
6 training, and command authority that demands and  
7 reinforces a culture of dignity and respect.

8 We fully expect that our emphasis on  
9 a command authority, having the conversation,  
10 will help us address social retaliation. On 31  
11 March 2015, the Sergeant Major of the Army  
12 launched a "Not in My Squad, Not in Our Army, We  
13 are Trusted Professionals" campaign. This  
14 initiative addresses the gap the Army has  
15 identified in the knowledge, experience, and  
16 actions in first-line leaders in regards to the  
17 Army profession.

18 The campaign, in a grass-roots  
19 approach, is meant to reinforce a climate of  
20 dignity and respect founded on good order and  
21 discipline. This effort highlights the critical  
22 role of our non-commissioned officer corps in

1 leading and sustaining a values-based  
2 organization where every Soldier can fulfill  
3 their full potential in an environment of dignity  
4 and respect founded on trust.

5 Third, the Army has put in place  
6 procedures to ensure appropriate accountability  
7 for those who retaliate. In 2015, the Secretary  
8 of the Army directed that all allegations of  
9 retaliation against victims, bystanders, and  
10 first responders be investigated by either law  
11 enforcement or at the O-5 command level, and that  
12 all investigations be monitored by the senior  
13 installation commander, program lead at the  
14 monthly Sexual Assault Review Board meetings.

15 These procedures ensure transparency  
16 for victims and visibility for senior leaders.  
17 In addition, my office is developing a set of  
18 metrics to be implemented at our SHARP resource  
19 centers. These metrics will provide data on  
20 allegations of retaliation that can be used to  
21 inform future policy and training enhancements.

22 Fourth, the Army has moved toward

1 improving training. The curriculum of the legal  
2 training for commanders and command sergeants  
3 major, the pre-command course taught at Fort  
4 Leavenworth to all incoming brigade commanders,  
5 and local installation pre-command courses for  
6 incoming company commanders and first sergeants,  
7 have been revised to directly address the issue  
8 of retaliation.

9           Additionally, the Judge Advocate  
10 General provided a block of instruction at the  
11 SHARP summit on the complexities of retaliation,  
12 the available tools for addressing retaliation,  
13 and the procedures set forth in the new Secretary  
14 of the Army Directives. On a larger scale, the  
15 Army is revising its officer and enlisted  
16 training curriculum by defining "retaliation,"  
17 providing instruction on recognizing signs of  
18 possible retaliation, and incorporating scenarios  
19 into supervisor training.

20           Recently developed Army ELITE training  
21 provides interactive, avatar-based training to  
22 assist junior leaders in developing their

1 mentoring and counseling skills focused on  
2 Soldiers in crisis. Current research efforts are  
3 focused on developing the new ELITE-Like SHARP  
4 training application that will support training  
5 of Army command teams on the roles and  
6 responsibilities of the command team in  
7 implementing the Army SHARP program in  
8 organizations.

9           Finally, the Army is developing  
10 training to enhance the capabilities of SARCs and  
11 VAs in preventing and responding to retaliation  
12 allegations. This training will be incorporated  
13 in all initial and annual refresher certification  
14 training.

15           Throughout all of these efforts, the  
16 Army recognizes several core elements are  
17 essential to reinforce a culture of dignity and  
18 respect. We must enable commanders at the lowest  
19 level, empower victims and bystanders to come  
20 forward, and provide victims with a voice.

21           I look forward to answering your  
22 questions.

1                   CHAIR HOLTZMAN: Thank you very much,  
2 Ms. Ferrell.

3                   We will now hear from Colonel Jensen.  
4 Colonel, thank you very much.

5                   COL JENSEN: I'd like to take -- thank  
6 the panel for the opportunity to discuss victim  
7 retaliation prevention and response in the Marine  
8 Corps. My goal today is to provide an overview  
9 of our policies and practices and to stress our  
10 absolute commitment to addressing all of the  
11 negative experiences reported by victims, to  
12 include professional or social retaliation.

13                   The Marine Corps takes allegations and  
14 acts of retaliation seriously. We recognize the  
15 detrimental impact retaliation has on our victims  
16 and on our unit readiness. In order to protect  
17 our nation's interest anywhere in the world in a  
18 moment's notice, we must remain faithful to our  
19 fellow Marines. Retaliatory behavior negatively  
20 impacts unit cohesion and detracts from our  
21 combat readiness, and it has no place in our  
22 corps.

1           To address retaliation, the Marine  
2 Corps empowers subordinate leaders by providing  
3 them with resources in the form of policy,  
4 training, and guidance. While Marines of all  
5 ranks are responsible for preventing retaliation,  
6 our small unit leaders are ultimately the center  
7 of gravity.

8           In our service-wide campaign to  
9 address retaliation, we will continue to provide  
10 unit leaders with the tools needed to accomplish  
11 their mission. The Marine Corps has long  
12 acknowledged retaliation is a destructive  
13 behavior. In 2006 and in 2010, retaliation was  
14 incorporated or modified in our Marine Corps  
15 orders, as well as related guidance that  
16 addressed misconduct, criminal behavior, and  
17 inappropriate social media usage. We continue to  
18 release new and revised policy that specifically  
19 speaks to retaliation.

20           Commanders are expected to foster an  
21 environment that encourages reporting of sexual  
22 assault without the fear of reprisal. Recent

1 survey data shows commanders have been successful  
2 in this regard, with 87 percent of Marines  
3 surveyed indicating that their unit provided a  
4 safe environment against sexual assault. Data  
5 also shows that our efforts are working to both  
6 prevent this crime and increase confidence in our  
7 response system.

8           Approximately 1,000 fewer Marines were  
9 victims of unwanted sexual assault in FY14  
10 compared to FY12. That represents a decrease of  
11 approximately 30 percent. In the same two-year  
12 timeframe, reports of sexual assault increased by  
13 94 percent. This means that fewer Marines are  
14 being assaulted and that more Marines are  
15 comfortable coming forward.

16           The Marine Corps is taking immediate  
17 and long-term steps to further address  
18 retaliation. We recognize that retaliation does  
19 not just occur in the context of one issue such  
20 as sexual assault, and, therefore, it requires a  
21 multi-disciplinary approach.

22           Our comprehensive approach consists of

1 six focus areas that I'd like to go over briefly  
2 with you now. First, and this is an area we are  
3 seeing and having the most immediate impact, is  
4 communications outreach, with the goal of meeting  
5 all ranks and ages of Marines wherever they may  
6 be -- on duty, on liberty, or online.

7 Our diverse communication strategy  
8 ensures that we reach as wide an audience as  
9 possible by leveraging print publications,  
10 infographics, and other public service  
11 announcements, and personal face-to-face  
12 interactions.

13 For example, we have integrated the  
14 topic of retaliation into our face-to-face fleet  
15 engagements, where I and other team members  
16 travel to installations across the Corps to talk  
17 to Marines about our SAPR initiatives.  
18 Additionally, retaliation-themed service  
19 announcements have been prepared for Marine Corps  
20 social media, where we have been able to reach  
21 upwards of 400,000 people with a single post on  
22 our social media outlets.

1           Second, we are infusing retaliation  
2 prevention and response measures into all of our  
3 training efforts, capitalizing on our established  
4 SAPR training continuum that educates our Marines  
5 according to their specific grades and  
6 responsibilities.

7           All SAPR training for leaders is being  
8 expanded to integrate recent retaliation policy  
9 changes and will outline additional strategies  
10 for prevention and response as they become more -  
11 - we ask them to become more sensitive to their  
12 interaction with the victims in their commands.

13           Finally, we are also providing our  
14 SAPR professionals -- our sexual assault response  
15 coordinators and civilian and uniformed victim  
16 advocates -- with critical training to expand  
17 their knowledge in the ability to respond to  
18 retaliation.

19           A comprehensive look at prevention and  
20 response protocols is our third area of focus.  
21 The Marine Corps version of the sexual assault  
22 incident response oversight report, which is

1 designed for commanders to complete within eight  
2 days of an unrestricted report of sexual assault,  
3 is being broadened beyond the DoD requirements to  
4 include fields that will ensure commanders  
5 discuss retaliation with victims, informing them  
6 of their rights and all available resources.

7 In addition, the checklist used by  
8 SARPs and victim advocates during their monthly  
9 check-ins with victims is being revised to  
10 include questions about retaliation.

11 Fourth, in order to increase our  
12 understanding of the situation on the ground, we  
13 are developing research projects that will delve  
14 into retaliation, identifying the questions  
15 needed to truly and completely define the issue  
16 in future iterations of surveys given to the  
17 Services, such as the specific types of  
18 retaliatory behavior that people are experiencing  
19 in our ranks.

20 Our fifth area of focus involves  
21 continued collaboration with the Inspector  
22 General's Office and the Judge Advocate General

1 Division to clarify and refine policy and  
2 procedures. We are also working with local judge  
3 advocates who are aware of the legal issues  
4 surrounding retaliation and can assist commanders  
5 accordingly. Legal training courses have been  
6 and will continue to be updated to address types  
7 of retaliation and strategies for responding.

8 Our sixth and final area of focus is  
9 preventing online retaliation and cyberbullying,  
10 which creates hostile command climates and  
11 presents a barrier to reporting. The Marine  
12 Corps has existing social media guidance and  
13 directives that enable commanders to take action  
14 against Marines who engage in online retaliation.  
15 But we are working to develop additional and more  
16 effective tools for leadership to identify and  
17 address what is going on online within their  
18 units.

19 Through these six areas of focus, our  
20 goal is to effectively raise awareness of this  
21 issue, provide the tools for commanders and all  
22 Marines to identify and correct any instances of

1 retaliation no matter where it occurs, and to  
2 prevent retaliation from occurring in the first  
3 place.

4 Leadership is critical to our fight  
5 against sexual assault and retaliation. Our SAPR  
6 campaign plan was built around the central role  
7 of the commander, and the principle, the decisive  
8 and engaged leadership is our greatest weapon in  
9 the battle.

10 Commanders have always been  
11 responsible for looking after the safety and  
12 well-being of their Marines; this includes  
13 effectively addressing and ultimately preventing  
14 retaliation.

15 I thank you again for the opportunity  
16 to meet with you today and look forward to your  
17 questions.

18 CHAIR HOLTZMAN: Thank you very much,  
19 Colonel.

20 We will next hear from Rear Admiral  
21 Richard P. Snyder. Admiral, welcome.

22 RADM SNYDER: Thank you, and good

1 afternoon, Madam Chairman Holtzman, members of  
2 the Panel. I, too, appreciate the opportunity to  
3 talk with you this afternoon about the Navy's  
4 sexual assault prevention and response efforts,  
5 and particularly the issue of retaliation against  
6 victims of sexual assault.

7 The Navy is making progress in our  
8 sexual assault prevention and response efforts,  
9 but more can and will be done. We recently  
10 learned from the RAND Military Workplace Gender  
11 Relations Survey that about 62 percent of DoD  
12 women experienced -- reported experiencing  
13 negative actions after a sexual assault. These  
14 reported actions included professional or social  
15 retaliation, administrative actions they did not  
16 want, and/or punishments for any infractions or  
17 violations as a result of their sexual assault.

18 While these actions as described above  
19 could be retaliation, they could also be non-  
20 retaliatory, negative professional, social, or  
21 administrative actions, or being held  
22 appropriately accountable for misconduct. That

1 said, anything that discourages victims from  
2 reporting a sexual assault or creates a barrier  
3 to reporting is a concern.

4 It's contrary to our core values.  
5 When victims don't come forward, we can't give  
6 them the help they need, and we can't hold  
7 offenders appropriately accountable. Whether  
8 it's victims experiencing retaliation or  
9 experiencing other negative consequences of  
10 reporting, we must address the issue, so we can  
11 eliminate, better mitigate, and properly respond  
12 to these actions.

13 The Navy has three main lines of  
14 effort to address this problem -- understanding  
15 and education, communication, and response.  
16 Awareness and understanding of the problem is  
17 critical. Elements of retaliation are described  
18 in the 2014 SECNAV Instruction on Whistleblower  
19 Protection as taking or threatening to take an  
20 adverse personnel action, or withholding or  
21 threatening to withhold a favorable personnel  
22 action, with respect to a member of the Armed

1 Forces, because the member reported a criminal  
2 offense.

3 It includes ostracism and acts of  
4 maltreatment committed by peers of a member, or  
5 by other persons when it is done with the intent  
6 to discourage reporting of a criminal offense or  
7 interfere with the judicial process.

8 The RAND survey indicated a high  
9 percentage of sexual assault victims experiencing  
10 retaliation or some other negative action, yet  
11 results from the Department of Defense climate  
12 surveys used by all Navy commands indicate that  
13 Sailors have a strong trust and confidence in the  
14 command climate, the leadership, and that  
15 retaliation would not occur within their unit.  
16 To better understand this disparity between the  
17 perception and the experience of those who report  
18 a sexual assault, several initiatives are  
19 underway.

20 We have asked Fleet units and others  
21 about reports of retaliation from sexual assault  
22 victims. Our sexual assault case management

1 groups, or SACMGs, were direct to ask about  
2 retaliation against victims, witnesses,  
3 bystanders and first responders. This  
4 information will help us better understand the  
5 problem, so we can refine our efforts to address  
6 and respond to it.

7 We will continue to use the survivor  
8 experience survey and begin using the upcoming  
9 military justice experience survey to get  
10 additional information on the experiences of  
11 victims, to include retaliation and other  
12 negative consequences of their assault. The  
13 SACMGs will continue their monthly assessment of  
14 victim and first responder retaliation, notifying  
15 commands as appropriate so action can be taken.

16 Formal communication to the Fleet on  
17 the issues of retaliation included feedback on  
18 DoD's December report on sexual assault to the  
19 President, including the issue of retaliation,  
20 and an information campaign to better increase  
21 awareness and understanding of retaliation.

22 The Navy has taken steps to mitigate

1 retaliation through revised training, updated  
2 instructions and policy, toolkits for commanders,  
3 and media campaigns to raise awareness. Navy's  
4 revised -- Navy revised the annual SAPR training.

5 Senior leader Fleet engagements and  
6 media outreach are all focusing more on  
7 retaliation. All first-line supervisor training  
8 and command training are being enhanced with  
9 modules on how to prevent, recognize, and respond  
10 to retaliation when it occurs.

11 We are also working with DoD SAPR to  
12 develop follow-on survey questions to better  
13 identify the actions or events that are reported  
14 as retaliation. These responses will allow us to  
15 better understand the problem and focus our  
16 efforts to address it. As we learn more, we will  
17 continue to provide relevant information through  
18 a number of media sources and direct  
19 communications with Sailors in the Fleet.

20 Of note, April is Sexual Assault  
21 Awareness and Prevention Month, and awareness and  
22 training on retaliation is a part of many

1 activities and events taking place throughout the  
2 Fleet.

3 Recourses to respond to retaliation  
4 are described in the Secretary of the Navy  
5 Whistleblower Protection Instruction. It defines  
6 "retaliation" and provides commanders and victims  
7 with a clear path to reporting and responding to  
8 both reprisal and retaliation. It makes it a  
9 violation of the UCMJ to commit reprisal or  
10 retaliation.

11 Actions for responses to other  
12 perceived negative consequences are not as clear,  
13 and we are working across the Department of  
14 Defense and with our Navy Judge Advocates and  
15 Inspector General to better understand what means  
16 are legally available.

17 Having additional unnecessary negative  
18 actions occur to victims of sexual assault or any  
19 traumatic event is wrong. They need our support,  
20 not our exclusion. This effort to better  
21 understand, recognize, and respond appropriately  
22 to negative actions, subsequent to a sexual

1 assault -- including retaliation -- is very  
2 important. I believe it is also very important  
3 to broaden this effort to reprisal, retaliation,  
4 and other negative actions for victims of any  
5 traumatic event, not just those of sexual  
6 assault.

7 They hurt the victims, they discourage  
8 the reporting of other crimes, and they reduce  
9 Navy's readiness. It is an important effort for  
10 our Sailors and our Navy.

11 Thank you again for the opportunity to  
12 speak with you this afternoon; I look forward to  
13 addressing any questions.

14 CHAIR HOLTZMAN: Thank you very much,  
15 Admiral.

16 Our next presenter will be Mr. Jay  
17 Aanrud. Sir?

18 MR. AANRUD: Good afternoon,  
19 Representative Holtzman and distinguished Panel  
20 members. As expressed by my colleagues, I  
21 appreciate the chance to share some of USAF's --  
22 the U.S. Air Force's triumphs and some trials, as

1 we continue our legacy of facing difficult  
2 challenges head on.

3 The cornerstone of our Service's  
4 effort in combating sexual assault is focused on  
5 ensuring every Airmen lives and works in a  
6 healthy environment where he or she is treated  
7 with dignity and respect. Sexual assault is  
8 inconsistent with our core values -- integrity  
9 first, service before self, and excellence in all  
10 we do.

11 Sexual assaults in the Air Force  
12 degrade the very nature of mission  
13 accomplishment, impacting our readiness to  
14 protect and defend freedom at home and abroad.  
15 There is no place in an environment which  
16 espouses dignity and respect for the degradation  
17 of individuals through acts of sexual harassment  
18 or assault. And there is no place for  
19 professional or social retaliation against those  
20 victims, first responders, or colleagues.

21 We, as well as the other Services, are  
22 making progress, and we are gaining ground in the

1 fight. Over the past three years, prevalence  
2 decreased 25 percent and reporting increased 61  
3 percent. In FY14, approximately one in 2.4  
4 Airmen who experienced unwanted sexual contact  
5 reported it, as opposed to one in 5.4 Airmen in  
6 FY12. These downward trends, while positive,  
7 need to be accelerated.

8 Air Force leaders of all levels are  
9 personally engaged in exploring and executing new  
10 frontiers and breaking down barriers to solve  
11 this complex and sensitive issue. The results of  
12 our defense equal opportunity management  
13 institute organizational climate surveys, or  
14 DEOCs, shed positive light on our command  
15 climate, much like you have heard from the other  
16 Services.

17 Highlights in this area include  
18 overwhelming confidence that our Airmen's chain  
19 of command takes sexual assault reports  
20 seriously, that they take steps to protect the  
21 safety of individuals making a report, that they  
22 support those individuals and would take

1 corrective action to address the factors that may  
2 have led to the sexual assault.

3 As important to the stated confidence  
4 in the chain of command, there were literally no  
5 Airmen who reported that their chain of command  
6 would not at all be likely to take a report  
7 seriously. Taken in aggregate with other  
8 responses within the survey, the DEOCs results  
9 reinforced that our Airmen believe, respect, and  
10 trust our prominent factors in their command  
11 climate.

12 At the same time, one of the many  
13 challenges in our prevention and response efforts  
14 is that of victim retaliation. For instance,  
15 survivor experience survey data administered  
16 exclusively to Air Force victims of sexual  
17 assault, asked about the extent of either  
18 professional or social retaliation. More than  
19 half of the female Airmen who reported a sexual  
20 assault experienced some form of retaliation.

21 Approximately a third of female Airmen  
22 reported professional retaliation, or more than

1 half perceived social retaliation. So  
2 retaliation is present in the Air Force, and it  
3 is also a complex problem to categorize or  
4 identify within the context of a sexual assault.

5 Large margins of error driven by small  
6 sample size often inhibit conclusive analysis,  
7 but it does inform the problem identification.

8 In addition, the actual definitions for  
9 retaliation are broad in scope and potentially  
10 open for misinterpretation. For example,  
11 depending on one's perspective, investigation  
12 that would find underage drinking or drug usage,  
13 and subsequently result in collateral punishment,  
14 may be perceived within surveys or within focus  
15 group answers as retaliation in general.

16 In another instance, the commander or  
17 supervisor may make workplace decisions regarding  
18 locations or shifts for accommodating a victim's  
19 medical, legal, or other schedule requirements.

20 And while well intended, this administrative  
21 action may be perceived or reported as  
22 retaliation when in fact such action is, like I

1 mentioned, well intended for the Airmen, the  
2 unit, or the mission or task at hand.

3 So these two examples are simply  
4 offered to highlight that while our surveys on  
5 retaliation have improved with more precise  
6 definitions and bounding to gather more accurate  
7 and actionable data, we still need to improve our  
8 continuing efforts to properly identify the  
9 problem, categorize and counter it.

10 The perception of the Force related to  
11 sexual assault and sexual harassment are also  
12 captured in the DEOCs. The responses from the  
13 DEOCs indicate that about two-thirds of the  
14 Force-perceived unit members in general are not  
15 at all likely to respond in a retaliatory way.  
16 But nearly one-half of the respondents perceive  
17 that the alleged offender or their associates  
18 would have some level of likelihood to retaliate  
19 against a victim.

20 The bottom line is: retaliation is  
21 occurring. Social retaliation appears to be more  
22 prevalent than professional retaliation, and

1 their perceptions of the problem different  
2 between victims and the Force in general.

3 The Air Force believes that  
4 retaliation in any form is unacceptable, and we  
5 are addressing it in several ways. Our Air Force  
6 Instruction on the sexual assault prevention and  
7 response program has been recently rewritten and  
8 expanded to incorporate and codify numerous  
9 provisions of law in the span of 2010 to 2014.

10 As our policy keystone, this document  
11 establishes commander/supervisor roles and  
12 requirements during the program execution. In  
13 particular, commanders are tasked to protect  
14 sexual assault victims, witnesses, bystanders who  
15 intervene, responders, or other parties to an  
16 incident from coercion, ostracism, maltreatment,  
17 discrimination, reprisal, and retaliation.

18 The case management group is the venue  
19 for deliberate, planned review. It requires  
20 retaliation complaint discussion and a victim's  
21 commander's plan to immediately address the  
22 retaliation. In a report of coercion,

1 retaliation, ostracism, maltreatment, or reprisal  
2 remains on the agenda for status of updates until  
3 the victim's case has reached final disposition  
4 or has been appropriately addressed according to  
5 the installation Inspector General and the CMG  
6 Chair.

7 This forum ensures review and  
8 accountability -- two key components -- and in  
9 the future will inform data contracting efforts  
10 potentially to evaluate our intercession efforts.  
11 While our policy establishes a position of  
12 retaliation and prohibits such negative behavior,  
13 we also require training, educate and inform  
14 victims, first-line supervisors, commanders, and  
15 our Airmen at large.

16 This training begins at a session,  
17 throughout basic training and specialty training,  
18 at the installation level for first-term airmen,  
19 throughout all of our officer and enlisted  
20 professional military education and squadron  
21 group and wing commander training.

22 Our annual training includes program

1 reviews, standards expectations, and small group  
2 module training vignettes. One module, for  
3 instance, labeled Empathy Matters, is a group  
4 discussion intended to assist wing and squadron  
5 commanders, first sergeants, and supervisors with  
6 addressing forms of retaliation.

7 It educates airmen about the positive  
8 effects victim empathy has in promoting respect,  
9 healthy work environments, and reducing potential  
10 for retaliation.

11 This modular training scenario and  
12 others provide flexible, catered opportunities to  
13 commanders in educating their airmen on this  
14 crime in general and on both policy and intent to  
15 counter retaliation specifically.

16 The Air Force recognizes that  
17 retaliation exists and is detrimental to victim  
18 care, good order and discipline, and mission  
19 accomplishment. Both established policy and  
20 training efforts are provided to leaders at every  
21 level of supervision to combat this negative  
22 consequence and reduce its prevalence, eventually

1 eliminating such behavior altogether.

2 Recognition, policy, and training are  
3 our primary tools provided to our leaders and  
4 commanders, are a critical component in the Air  
5 Force of prevention and response efforts, and  
6 they will be updated, reviewed, tracked, and  
7 enforced accordingly to continue such positive  
8 progress.

9 Thank you very much.

10 CHAIR HOLTZMAN: Thank you.

11 Mr. Taylor.

12 MR. TAYLOR: Well, let me start by  
13 thanking each of you for your many years of  
14 public service, service to the military. I  
15 certainly appreciate the testimony to the  
16 strength of the Army family. Thank you very much  
17 for your family's service as well.

18 I would like for each of you to answer  
19 this question just in turn. We'll start with the  
20 Army and just go down the panel. What do your  
21 records show about the office or the person to  
22 whom retaliation complaints are most often made?

1 Who normally gets the first report? Do you have  
2 evidence or records of that?

3 MS. FERRELL: I don't know that we  
4 have specific records that we have quantified  
5 exactly who would be the person most often to  
6 receive claims of retaliation. So I don't know  
7 that we have captured statistics on that.

8 MR. TAYLOR: Okay. Does anyone have  
9 an answer to that, or an intuitive feel for how  
10 this works?

11 RADM SNYDER: I guess I would offer no  
12 evidence but an intuitive feel that as we look  
13 through the instruction, the two elements here,  
14 reprisal and retaliation, are IG business. And  
15 so certainly our Inspector Generals, as they come  
16 through the process, keep track of the complaints  
17 made to the IG.

18 The issues of ostracism and  
19 maltreatment are really commander's business or  
20 legal business through our major criminal  
21 investigation offices or our commanders. Those  
22 would be more difficult I think to sense broadly

1 because, you know, they are all handled in  
2 different manners depending on the accusation and  
3 the findings. But intuitively, I mean, those are  
4 sort of the two areas that I kind of look at  
5 these complaints in, either the  
6 reprisal/retaliation IG piece or the  
7 ostracism/maltreatment command piece.

8 MR. TAYLOR: Would anyone like to add  
9 to that?

10 COL JENSEN: Sir, if I could take a  
11 shot at that as well. From the informal side, we  
12 are seeing, particularly as we shine more light  
13 on this topic, that the reports -- and maybe not  
14 precisely what you're asking -- towards what  
15 you're asking, are going to the sexual assault  
16 response coordinators, the victim advocates, or  
17 the victim legal counsels, the new establishment.  
18 That's oftentimes I think where we first are  
19 going to get an indicator, because they are  
20 trusted agents with those victims.

21 And then the advice they get from any  
22 one of those entities will help steer them

1 towards if there is an informal need, or we are  
2 also finding in many cases that they are  
3 dispelling a perception that in fact there wasn't  
4 a case of retaliation.

5 Just last week we had two examples of  
6 two young ladies who thought they were being  
7 retaliated against. When they conveyed that to  
8 their SARC, and they looked into it, those that  
9 they thought were retaliating against them  
10 weren't even aware that they had reported a  
11 crime. But because they were low level leaders,  
12 they were questioning their absence at work.

13 And so it was those questions that  
14 were leading -- so by resolving that conflict,  
15 the retaliation was eliminated from the table,  
16 and better accommodations could be made for the  
17 victims. It was a misunderstanding. That will  
18 never be recorded in any formal record of a  
19 potential retaliation or a resolution to it, but  
20 we are seeing it more and more at that level,  
21 particularly as we shine more light on it.

22 MR. TAYLOR: Thank you, Colonel

1 Jensen.

2 Do you want to add anything to that,  
3 Mr. Aanrud?

4 MR. AANRUD: I'd like to piggyback one  
5 piece on that, and that is -- I'm assuming it  
6 would be the same thing, that the SARC would  
7 guide that individual to the Inspector General  
8 for that discussion piece, the same way that a  
9 commander in those cases may guide them to the  
10 Inspector General. And it would be the Inspector  
11 General's role to solve that potentially as much  
12 as the SARCs doing it themselves.

13 So they are the professionals trained  
14 to make that determination. I doubt that that  
15 determination would be made at the SARC level.  
16 They don't -- they wouldn't have the opportunity  
17 to prevent somebody from going forward to report  
18 retaliation to the Inspector General.

19 MR. TAYLOR: And that is really what  
20 I'm getting to, because what I'm wondering is  
21 whether each service has a particular methodology  
22 by which, once the complaint is made, you then

1 accompany the person to the IG, send the person  
2 to the IG, conduct some sort of preliminary  
3 investigation as you described, Colonel Jensen,  
4 that satisfies the victim that in fact he or she  
5 has not been the subject of retaliation.

6 So could each of you comment on how  
7 you see your Service playing this out over a  
8 period of time, and the extent to which your  
9 office monitors or tracks this information? In  
10 other words, once it goes into the IG's channel,  
11 are you hands off, or do you continue to monitor  
12 the situation to see what actually happens at the  
13 end of the day? If each Service could just  
14 answer that.

15 MS. FERRELL: Sure. I expect that the  
16 first touch point would be our SHARP  
17 professionals, because those are the individuals  
18 that our victims feel comfortable speaking to.  
19 Sometimes they feel comfortable speaking to  
20 someone within the command, so -- in their chain  
21 of command. And so they would go and report that  
22 they are feeling that they are being retaliated

1       against.

2                   As has been previously said, it could  
3       be resolved in the command chain, but, if not,  
4       what I think is really going to be successful  
5       within the Army is the fact that we have these 14  
6       resource centers where we have combined all of  
7       our services. And a SHARP professional, such as  
8       a SARC or the victim advocate, if they believe  
9       it's a situation of retaliation, they can then  
10      direct the victim to the IG, who would capture  
11      and then proceed with the investigative side of  
12      things.

13                   In regards, sir, to your question as  
14      to whether my office tracks this information, we  
15      have not done so in the past.

16                   RADM SNYDER: Yes, sir. You know,  
17      your question points to the importance of the  
18      education and awareness piece of this, and the --  
19      and we do it and we will continue to do it, of  
20      notifying and informing and educating the folks  
21      that could be that first touch point, whether  
22      it's one of the resources available specifically

1 to a sexual assault victim, or the command  
2 leadership team, that they understand that when  
3 that allegation is made they've got to take  
4 action, and that action is typically going to be  
5 refer it to the Inspector General, who can then  
6 do an initial investigation to determine whether  
7 this heads down the reprisal/retaliation path or  
8 whether this down the ostracism/maltreatment  
9 path.

10 And, like Army, you know, the IG runs  
11 their process. We don't necessarily follow up,  
12 but clearly the results of those investigations  
13 are important to us.

14 MR. TAYLOR: Colonel Jensen?

15 COL JENSEN: Sir, I think at the OSD  
16 level they have helped us out with that, too, by  
17 defining the requirement that was mentioned in  
18 one of the other member's statements, that the  
19 monthly case management groups will now ask and  
20 monitor any retaliatory accusations that are made  
21 on behalf of a victim, and that the guidance then  
22 will be that that case will be tracked by the

1 chair of that case management group until  
2 conclusion of -- adequate conclusion has been  
3 addressed, whether that's in a command level,  
4 depending on the type of accusation, or whether  
5 it's at the IG level.

6 So the oversight becomes the case  
7 management group chair by OSD policy, for that  
8 occurrence. And I believe that applies to all  
9 four Services. And we, at this point, do not  
10 monitor the IG activities. But, as the Admiral  
11 said, the outcomes would certainly be of  
12 importance to us as well.

13 MR. AANRUD: Sir, I was the commander  
14 up in Alaska, and oftentimes stood in place of  
15 the wing commander there, as the installation  
16 commander. And regularly the Inspector General  
17 would report to me the status, or at least the  
18 number of complaints that -- so retaliation, if  
19 there is such a form of -- or a box to put in  
20 general retaliation, that kind of dispute or that  
21 kind of investigation, I would know of it, and  
22 then I would know of it when it was closed or how

1 it was resolved. And that was -- whether it was  
2 a sexual assault retaliation or any other kind of  
3 formal professional retaliation.

4 So there is a -- the feedback loop for  
5 that when it does go in the Inspector General's  
6 system that is tracked and regularly briefed up  
7 to the installation commander, which we consider  
8 the same words you heard, centers of gravity, in  
9 this effort.

10 One of the problems, though, that  
11 we're running into is trying to do the math, and  
12 part of that is that victims, they have the --  
13 they had 51 percent of the vote. When they are  
14 deciding how much of the resources to use, how  
15 much are they going to utilize the SVCs, the SAPR  
16 VAs, the SARCs, to help them truly walk through  
17 this process, to report retaliation, to get the  
18 representation they need to help stop retaliation  
19 that is to them perhaps perceived, but to them it  
20 is also very real.

21 So there is a problem with that,  
22 because if they choose not to use those

1 resources, even though the Services have all put  
2 them forward, that's their choice. And they may  
3 report this retaliation that is very real to them  
4 in the survey data, like we described, through  
5 our chains, but may very willingly, for their own  
6 personal reasons, not use the resources we would  
7 have set up to walk them directly to get the help  
8 they need to stop that behavior.

9 MR. TAYLOR: Thank you. So just to  
10 close the loop on this round of questioning, I  
11 know that some Services do publish for Command-  
12 wide consumption, for Service-wide consumption,  
13 the results of courts-martial. Does any Service  
14 publish any results of these retaliation  
15 complaints in terms of being founded, unfounded,  
16 outcomes? Does anyone do that?

17 RADM SNYDER: No, sir.

18 MS. FERRELL: I don't believe that we  
19 do in the Army, sir.

20 MR. TAYLOR: Would you see an  
21 advantage to doing that in terms of having some  
22 better transparency to build trust among the

1 people, that if they make a complaint it will  
2 probably be dealt with appropriately? Or do you  
3 see it as not helpful?

4 RADM SNYDER: I would offer, if we do  
5 it in a very clearly defined manner. In other  
6 words, we are specific about what the -- what was  
7 accused and what was found, then I could see some  
8 value in making sure people are aware that we  
9 take those actions seriously.

10 MR. TAYLOR: Well, and I would expect  
11 that perhaps it would be appropriately  
12 anonymized, just like these IG reports, the semi-  
13 annual IG reports that the DoD IG makes on the  
14 issue of retaliation, that that would then be at  
15 least one indication to people in the system that  
16 if they do make a complaint, and if there is  
17 retaliation, something will happen.

18 RADM SNYDER: And I guess I would  
19 just, if I could, add, I mean, of course, you  
20 know, as a violation of the UCMJ, if founded, and  
21 could very well go to a court-martial, which the  
22 Navy does publish the results from, so it would

1 not -- clearly, if there is an accusation that is  
2 taken to court-martial, and a finding is made,  
3 that will be published.

4 MR. TAYLOR: Right. But just to be  
5 clear on this point, what the DoD IG reports is  
6 not those people receiving, for example, a memo  
7 of concern of counseling or reprimand or some  
8 other action regarding the retaliation that they  
9 inflicted upon someone else. So that was what I  
10 was getting at.

11 Thank you all very much.

12 CHAIR HOLTZMAN: Admiral Tracey.

13 VADM(R) TRACEY: Thank you. I think  
14 each of you spoke about -- I think, Army, you  
15 talked about tools for addressing retaliation. I  
16 think the Marine Corps talked about strategies  
17 for responding to retaliation. I think Navy and  
18 Air Force talked about responses to retaliation.

19 Could, again, each of you sort of talk  
20 a little bit about what those are specifically,  
21 in particular with regard to your ability to help  
22 people address social retaliation.

1 MS. FERRELL: Good afternoon, ma'am.  
2 One of the things in the Army and from a  
3 terminology perspective, "Not in My Squad," we  
4 are calling it, campaign by the Sergeant Major of  
5 the Army, although it's new as far as a campaign,  
6 it really gets back to the fact that in the Army  
7 that first line level of leadership, that squad  
8 leader, is the one that is responsible for  
9 creating a culture of trust, dignity, and respect  
10 in the unit.

11 And we believe that this really is  
12 going to be the key to help us get after  
13 particularly the social retaliation. We have  
14 done a lot of things in terms of issuing  
15 directives, policies, and top-down approach. And  
16 we believe this grass-roots approach from the  
17 bottom up will help us address that, in that  
18 first of all we are going to make sure that those  
19 squad leaders understand how we define  
20 "retaliation," how do they go about recognizing  
21 retaliation, their responsibility to intervene if  
22 they see it, and what they can do to help correct

1 that and report it when that is necessary.

2 We are going to start -- in June, the  
3 Sergeant Major of the Army is pulling about 40  
4 squad leaders from across all commands, all  
5 components of the Army, reserve components as  
6 well as active components, and they are being  
7 very deliberate about the selection of these  
8 squad leaders. These are proven squad leaders  
9 when you look across their units, their area of  
10 responsibility, that they have success in a  
11 culture of trust, dignity, and respect.

12 And we are going to pull them in and  
13 talk to them about what is it that you do, how is  
14 it that you ensure that you have that climate,  
15 and how can we share those best practices. And  
16 get them to own this and develop a way ahead that  
17 we can share across the Forces. So we really  
18 believe this is a powerful concept, and we are  
19 very excited about it.

20 RADM SNYDER: Yes, ma'am. You know,  
21 the interesting thing is that we -- in our Navy  
22 instructions, social retaliation is not defined.

1 The elements that would contribute to what social  
2 retaliation is.

3 So it's a term that we use often, that  
4 is used often, that I think when that is said we  
5 have to make sure we are educated enough to ask  
6 the next question, which is, are we talking about  
7 retaliation which is the professional either  
8 withholding of something positive or imposing  
9 something negative as a result of reporting the  
10 crime, or the ostracism/maltreatment, which is --  
11 in some cases ostracism is what people think of  
12 as social retaliation. But, again, it's very  
13 specific, so ostracism is the ostracizing,  
14 because they reported a crime with the intent of  
15 discouraging the reporting or interfering with  
16 justice.

17 So that's why -- again, back to the  
18 education effort here, as we talk about this and  
19 better understand what is going on, to understand  
20 there is a legal side of this and that is the  
21 retaliation, that is reprisal, that is ostracism,  
22 and that is maltreatment with those intent.

1           Those I think fit into pretty well-  
2 defined response processes, as you asked, because  
3 it is a potential violation of the UCMJ, and it  
4 goes through the IG for investigation and then  
5 referred appropriately, or it goes to the  
6 commander for investigation, depending on if it's  
7 ostracism or maltreatment.

8           So that part I think we understand the  
9 response to. The other piece of this, which is  
10 the -- I would call it the social negative  
11 consequences of being a victim of sexual assault  
12 and reporting that, that is where we broaden the  
13 scope and start talking about treating each other  
14 with dignity and respect, realize that, you know,  
15 what you do around a victim of sexual assault may  
16 be perceived as retaliation or ostracism. And in  
17 fact you have no idea it's perceived that way.

18           I equate it a little bit to perhaps a  
19 shipmate who has lost a loved one, a traumatic  
20 event, and some folks are just not comfortable  
21 having a conversation with someone who has been  
22 in those circumstances so they avoid them. That

1 from the person in that case who has lost a loved  
2 one, that is negative. I mean, that is not a  
3 good thing.

4 Same with a victim of sexual assault.  
5 I mean, their shipmates, some of them may just be  
6 uncomfortable and avoid them. And so this goes  
7 back to, you know, the idea of embracing those  
8 victims. Yes, it may be difficult, but what you  
9 do may be perceived negatively.

10 To the other side, we have to educate  
11 victims as well that, as was alluded to earlier,  
12 what is happening to you that you may perceive as  
13 retaliation. It is bad, and we want to stop it.  
14 But it may not in fact be actually retaliation,  
15 but let's talk about what it is, and try to help  
16 you get through that, help your shipmates  
17 understand what they are doing and put those two  
18 pieces together.

19 So that part of the response, to what  
20 would not fall in the legal definitions of  
21 retaliation, reprisal, ostracism, or  
22 maltreatment, is a broader effort, and it's not

1 just sexual assault. It's for any victims to  
2 understand what is being done and what is being  
3 perceived.

4 COL JENSEN: We have similar answers.  
5 On one element, I would say as we cast more light  
6 on this, the formal side of reporting and who you  
7 report to and how you handle when it's introduced  
8 to you, that you have someone saying, "I have  
9 been retaliated against," making sure that we  
10 have defined the tools to the commanders, to  
11 those local people that get that report into the  
12 right lane, and the right action is taken.

13 And I don't think we have had that  
14 right. It is very -- depending on the type of  
15 report and who is making it, it can go into  
16 multiple lanes. And we haven't done a good job  
17 in the past of defining that to the decision-  
18 maker at the point of impact, to help get that  
19 victim their right recourse. So that's kind of  
20 the formal side.

21 But as the Admiral points out, the  
22 harder part is addressing human dignity. How do

1 we interact with each other, sensitizing our  
2 young people to understanding the consequences of  
3 their actions around other people? That is where  
4 we are targeting in our leadership areas with --  
5 we are actually leveraging some of the research  
6 that -- new to it now, but with some of the  
7 people who have been on your panel here the rest  
8 of the day, to help them understand the  
9 repercussions of those personal interactions.

10 That is a hard task to get to, to get  
11 young people to understand the impacts of what  
12 they are doing and how that affects those around  
13 them and helping them understand that they are  
14 forming perceptions that they need to be  
15 sensitive to as it relates to anyone else,  
16 whether it's a victim or just someone else who is  
17 down and out or anything like that. That's where  
18 we're targeting our tools.

19 We find in many cases we just aren't  
20 making known where these issues are. So by  
21 asking in the CMGs we are able to start getting  
22 stories that we can hand the leaders and say,

1 "When you talk to your victims, are you aware of  
2 how it is being communicated?" And we are trying  
3 to standardize that in all of our training to get  
4 that word out to all of those different elements  
5 of leaders, from the very senior ones down to our  
6 sergeants and our corporals, our NCOs.

7 MR. AANRUD: The term "grass roots"  
8 was used earlier to describe, you know, some of  
9 the efforts that we have. And I would describe  
10 one of our primary efforts is to educate at the  
11 grass-roots level, the first-line supervisor  
12 level. I mentioned the importance of empathy.

13 It is a really positive trait to  
14 discuss, and we in the Air Force describe it with  
15 our master resiliency classes when we are talking  
16 about making our Airmen more resilient within  
17 themselves. But this empathy concept is one of  
18 our training -- small training modules that we  
19 have just gotten out there to address this and on  
20 this social -- this concept of social  
21 retaliation.

22 But I'd like to bring up a process

1       which I think, ma'am, may -- if I heard you  
2       correctly, what are we doing about it. And we  
3       have been doing it for a while, and that is our  
4       expedited transfer process. That is a direct  
5       process that allows a victim, who in their  
6       perception is being retaliated against, to  
7       request that transfer.

8                 And I have worked those on the other  
9       end of the spectrum as well, helped them to  
10      provide that victim the tool to remove themselves  
11      from that perceived or real retaliation, social  
12      in particular, and, for lack of a better term,  
13      start over or start with a new scenario and start  
14      the healing process in another place.

15                That I think has proven to be an  
16      effective tool for this complex problem, and it  
17      has been utilized across the Services.

18                VADM(R) TRACEY: Thank you. Some of  
19      you -- probably none of you are old enough to  
20      remember that when we began our anti-drug  
21      activities it was an enlisted problem and that's  
22      how we treated it. I'm hearing that we are doing

1 some really great things at the first-line  
2 supervisor level in the enlisted ranks. Is there  
3 an equivalent program for young officers?

4 MR. AANRUD: In the Air Force there  
5 is. And like I said, at every level of PME in  
6 particular, so, first of all, in the accessions  
7 for all three of our commissioning sources, that  
8 is a requirement for training prior to  
9 commissioning, and then in our -- every level of  
10 our beginning, mid, and senior level professional  
11 education we address this.

12 And we teach them not only how to  
13 address at their level but what they can expect  
14 to address at the next level of commander  
15 supervision.

16 COL JENSEN: Ma'am, over the last two  
17 years, we have been heavily focused, as I'm sure  
18 you're aware, on commanders. And I think one of  
19 the side effects of that was perhaps that we  
20 neglected some of the younger enlisted first-line  
21 leaders. So it's not that -- to ignore the  
22 officers. We've spent quite a bit of time

1 addressing at the command climate levels, and as  
2 we review back we question if we've given the  
3 right tools at the same time to those first-line  
4 leaders.

5           How is it that we can have an 87 to a  
6 90 percent confidence on a survey that my  
7 commander will do the right thing, but still have  
8 such high levels of barriers and concerns over  
9 retaliation. Those numbers don't seem to line  
10 up. And as -- you know, for the Marine Corps, we  
11 did a very effective job of training our NCOs in  
12 a program that has been recognized. But as we  
13 look back on it, one of the things we didn't  
14 include in that training for them was, how do  
15 you, as a leader, have a discussion on a very  
16 difficult topic with your near-peer lance  
17 corporals and corporals?

18           And we felt like we owe them that type  
19 of training on how to be a leader and an  
20 instructor, not just an intervener and a personal  
21 "don't do this" type of thing. So we have --  
22 that's why we have shifted our attention in some

1 of those areas, because we felt like we had been  
2 short in that. So --

3 VADM(R) TRACEY: I think sometimes  
4 that second and first lieutenants are --

5 COL JENSEN: Same --

6 VADM(R) TRACEY: -- enough that they  
7 don't have the same challenge?

8 COL JENSEN: Same concerns. We give  
9 the same training to the same -- we look at them  
10 as almost co-equal in their development and  
11 education. Yeah.

12 RADM SNYDER: Yes, ma'am. From the  
13 top down. So the Vice Chief of Naval Operations  
14 at our Navy Flight Officer or SES Symposium this  
15 morning talked to us about retaliation, and so  
16 from the top on down, the command leadership  
17 course, our senior enlisted academy, and then on  
18 down through department head, division officer  
19 courses, and then down into the petty officer  
20 training as well. So across the board. Yes,  
21 ma'am.

22 MS. FERRELL: And, similarly, at the

1 Chief of Staff level, for the last several years  
2 he has held summits with the two-, three-, and  
3 four-star commanders, and it has filtered down as  
4 well as revamping all of our educational programs  
5 to include this particular topic, and now we are  
6 really trying to get at the grass-roots effort,  
7 to bring it from the bottom up.

8 VADM(R) TRACEY: Thank you.

9 CHAIR HOLTZMAN: Thank you. I guess  
10 I have some questions, and also I'm a little  
11 puzzled. I'd like to get an idea of the  
12 timeframe that it takes to deal with these --  
13 with a complaint that goes to the IG. I mean,  
14 how -- this is a bureaucratic issue because it's  
15 a potential violation of the UCMJ and also  
16 generally retaliation, professional retaliation,  
17 ostracism I guess, too, are handled by the IGs.  
18 A complaint is made; let's forget for the moment  
19 where it's made. It goes to the IG. How long  
20 does it take for it to come back or to be  
21 resolved?

22 Suppose the IG says, "It's not

1 retaliation. It's really social retaliation" or  
2 it's something else. How long does that process  
3 take? Does anybody have an answer?

4 MS. FERRELL: Ma'am, I can't answer  
5 that question. I'll have to take that back and  
6 get a response to you.

7 CHAIR HOLTZMAN: Okay. Because what  
8 I'm concerned about is I'm assuming, and maybe  
9 it's completely wrong, that it takes at least a  
10 few months. What happens to the victim who is  
11 complaining about the retaliation during that  
12 time? I guess you're not the people to ask, but  
13 that's what worries me about a bifurcated  
14 process. That's really where I'm going.

15 You have a victim. He or she doesn't  
16 really care what pigeonhole you are going to put  
17 this in. She wants or he wants a resolution to  
18 the problem. So I'm a little bit concerned about  
19 how we deal with the complainant right away.  
20 Okay. So that's one issue I have.

21 Secondly, what -- I know that when the  
22 military started really focusing on the issue of

1 sexual assault, they developed a whole series of  
2 ways of reporting, anonymous reporting,  
3 restricted reporting, you could report to your  
4 chaplain, you could report to your commander, you  
5 could report to the SARC, a whole variety of  
6 people.

7 Is it as clear where you can report  
8 retaliation? Just a question. Or do we need to  
9 have more clarity in that? Anybody want to  
10 answer?

11 COL JENSEN: I think we do need to  
12 have more clarity, and we're working on that. As  
13 I said earlier, it is particularly down at the  
14 deck plate levels where the leadership is making  
15 sure they are aware of those processes.

16 CHAIR HOLTZMAN: I don't mean in any  
17 of these questions to be critical. I think the  
18 military has undertaken an enormous task and has  
19 made many, many important strides. But the job  
20 isn't finished yet, and so I'm just trying to --

21 COL JENSEN: Yes, ma'am. It's a fair  
22 question.

1           CHAIR HOLTZMAN:  -- identify some of  
2           the areas of concern, at least to me.  So does  
3           anybody agree or disagree that it would be useful  
4           to have more defined reporting options or to  
5           clarify the reporting options for retaliation?  I  
6           mean, I guess that is also a question for the  
7           IGs, but I'm asking it to you.

8           RADM SNYDER:  I would agree, ma'am,  
9           that part of our education effort here is to  
10          reinforce what is available and make it more  
11          clear, and if there is unclarity, make it better.

12          If I could just -- two things come to  
13          mind on the, what do we do during that time  
14          and --

15          CHAIR HOLTZMAN:  Okay.

16          RADM SNYDER:  -- as was mentioned, the  
17          expedited transfer is certainly one tool that we  
18          have to move the victim somewhere else, so at  
19          least where the alleged reprisal/retaliation is  
20          occurring is not there.  I also think the victim  
21          legal counsel, special victim counsel, we call  
22          them VLCs in the Navy, is another advocate tool

1 for the victim to help them right from the  
2 beginning to understand what is going on and  
3 advocate for them certainly in the legal process,  
4 but they could serve a role in the IG process as  
5 well.

6 COL JENSEN: And, ma'am, when that  
7 report goes in, that doesn't eliminate, as long  
8 as the victim asks for it, support from their  
9 SARCs, victim advocates, so it's not that that  
10 victim doesn't have access to support from the  
11 minute that report is made to make accommodations  
12 at work -- again, assuming that, as was pointed  
13 out, the victim has 51 percent a vote of who  
14 knows about the case.

15 But it is not -- that victim is not  
16 sitting on an island waiting for the IG to come  
17 back with a response. They have access to  
18 support from day one.

19 CHAIR HOLTZMAN: Right. I think the  
20 other issue, and this is something that Mr.  
21 Taylor raised earlier in this -- earlier today,  
22 and it's a really important point and I think it

1 has been raised a little bit here in this panel,  
2 which is having better data about what the  
3 problem really is, the nature of the problem, the  
4 extent of the problem, and really what you're  
5 doing about it.

6 So I know you mentioned, Colonel  
7 Jensen, that you weren't keeping track of that  
8 incident in which two victims complained about  
9 retaliation and it was resolved. That seems to  
10 me like a very good outcome, seems to have been  
11 properly handled and a good outcome.

12 But it would be great if you could  
13 keep track of these things, so that after six  
14 months or after a year you could say, you know,  
15 we had 100 complaints, turned out 25 of them were  
16 misunderstandings, we resolved them right away,  
17 and 10 of them we went -- sent to the IG, and  
18 nine got convicted and still in prison for life,  
19 or something -- I don't know --

20 COL JENSEN: Ma'am, I may have  
21 misspoken.

22 CHAIR HOLTZMAN: But, you know, don't

1 you think that it would be a really good idea to  
2 have some kind of -- some way of keeping track of  
3 the data, what is happening here? Because I  
4 think one of the earlier panels, the reason I --  
5 it's just something that occurred to me today,  
6 from hearing the earlier -- one of the earlier  
7 panels, talking about how important it is, in  
8 terms of fighting retaliation, to show people  
9 that when you have retaliation that's taken  
10 really seriously in their results.

11 So I just throw this out to you.

12 COL JENSEN: And, ma'am, what I meant  
13 is that wouldn't necessarily go into a formal IG  
14 report.

15 CHAIR HOLTZMAN: Yeah. Right. I'm  
16 not being -- I was not being critical. I just  
17 want to know, how are you capturing this in terms  
18 of data?

19 COL JENSEN: I believe it will be done  
20 through the case management groups, as defined  
21 new -- recently in policy, that we will begin to  
22 track that through --

1           CHAIR HOLTZMAN: And that's for you.  
2 Is that going to be true for all of the Services?

3           MS. FERRELL: The same thing, ma'am,  
4 in the Army. The Secretary of the Army issued a  
5 directive. And beginning in March -- he signed  
6 the directive I believe it was in January, and so  
7 March was the first month that at our SARBs, and  
8 they call it case management groups, the specific  
9 questions about retaliation are asked. And we're  
10 capturing information and documenting the outcome  
11 there. Yes, ma'am.

12           And also, the other avenue that -- in  
13 the Army that we're using is, as I shared in my  
14 opening remarks about our resource centers, where  
15 we are pulling together or collocating our  
16 resources. The Chief of Staff of the Army has  
17 directed that we capture information on  
18 retaliation at those locations. So we envision  
19 being able to use these -- both points to help  
20 inform us on how we need to adjust policy or  
21 procedures.

22           CHAIR HOLTZMAN: Good. Do the other

1 Services want to respond on the data?

2 MR. AANRUD: Yes, ma'am. There is --  
3 the case you just described with -- it was  
4 reported to the IG. The IG resolves it, and it's  
5 resolved, you know, out of the IG channels. That  
6 is still tracked, and we would be able to reach  
7 back to the IG, for instance, and find that.

8 One other point is -- you had asked,  
9 ma'am, about the timing requirement, how long  
10 does a case take. And like almost everything in  
11 the military, there are metrics involved and  
12 timing goals that are involved for the time that  
13 an investigator has to resolve that. One of the  
14 important pieces that we have established in  
15 policy is that it's -- it's stated commanders  
16 will protect victims against cases of reprisal,  
17 retaliation, ostracism, and so forth.

18 We have left that open, and I think  
19 what we are describing is we could probably  
20 tighten that up a bit potentially to give them  
21 the "how" to protect, or the suggestions on that.  
22 And we try to do that in our training piece.

1 Here is examples of what we mean by that.

2 But we do have the opportunity to,  
3 when a retaliation charge is made, it doesn't  
4 preclude a commander from doing something to  
5 continue to do their duty in accordance with  
6 policy, as this investigation is continuing.

7 CHAIR HOLTZMAN: But my question right  
8 now is about the data, what data you are  
9 capturing on how you are dealing with  
10 retaliation, so that you can evaluate your own  
11 success, or lack thereof, and have some  
12 milestones and make some progress.

13 So that's what I was asking. Do you  
14 have a way of capturing the data? And I gather  
15 that this is happening in the Marine Corps and in  
16 the Army. Is this happening --

17 MR. AANRUD: Same thing in the Air  
18 Force with the CMGs. And I apologize. I was  
19 trying to get back to another piece of --

20 CHAIR HOLTZMAN: You passed me.

21 MR. AANRUD: Sorry about that. But  
22 the CMG is also -- you know, we are charged with

1 tracking there, but we were also tracking in the  
2 IG channels, for instance, because some cases may  
3 be required to be over there.

4 RADM SNYDER: Yes, ma'am. Our sexual  
5 assault case management groups are asking that  
6 question as well.

7 CHAIR HOLTZMAN: Okay. Great. And  
8 one other question. Several of you mentioned  
9 about the transfer program. I have two questions  
10 about that. One is, after the person has been  
11 transferred, the victim, victim of the sexual  
12 assault and the victim of the retaliation has to  
13 be transferred, who follows up with the victim to  
14 make sure that he or she is comfortable in the  
15 new situation, that things are working out?

16 RADM SNYDER: And that's an important  
17 role of the -- in our case the sexual assault  
18 case management group. That does not go away.  
19 And then, depending on -- so for us in the Navy  
20 those are centered at the bases, at the naval  
21 stations.

22 So if that victim goes through another

1 command at that same base, nothing changes  
2 essentially, other than they have a new commander  
3 who may or may not know about the case, depending  
4 on what the victim's desires are.

5 If the victim transfers out of the  
6 area, then the -- either the sexual assault case  
7 management group where she left -- he or she left  
8 from would keep the case, or the group to which  
9 they transfer would keep the case. And so --

10 CHAIR HOLTZMAN: And somebody follows  
11 up to make sure that it's working out at --

12 RADM SNYDER: Yes, ma'am.

13 CHAIR HOLTZMAN: -- the new location.

14 RADM SNYDER: Soft handoff, as we call  
15 it, where there is a contact made prior to that  
16 transfer.

17 MR. AANRUD: Primarily the victim  
18 advocates would be probably the first liaison for  
19 that.

20 CHAIR HOLTZMAN: Okay. And I take it  
21 that there are also training programs. I know we  
22 talked about the officers and the non-

1 commissioned officers and the higher ranking and  
2 the medium ranking. But what about the people  
3 with no ranks? What are we doing about the  
4 recruits, the enlisted people? What kind of  
5 training are they getting on retaliation? Have  
6 you beefed up those programs, or --

7 RADM SNYDER: You know, we do an  
8 annual general military training for everyone,  
9 from E-1 to O-10.

10 CHAIR HOLTZMAN: Right.

11 RADM SNYDER: And we have revamped  
12 that to include elements of retaliation in there  
13 as well.

14 MS. FERRELL: Same in the Army, ma'am.

15 CHAIR HOLTZMAN: Thank you.

16 COL JENSEN: Same with the Marine  
17 Corps.

18 CHAIR HOLTZMAN: Mr. Taylor, do you  
19 have any other questions?

20 MR. TAYLOR: No, thank you.

21 CHAIR HOLTZMAN: Admiral Tracey?

22 VADM(R) TRACEY: No.

1           CHAIR HOLTZMAN: Thank you very much.  
2 We have no further questions, and we really  
3 appreciate your help this afternoon and your  
4 presentations. Thank you.

5           We'll take a five-minute break if  
6 that's okay. Thank you.

7           (Whereupon, the above-entitled matter  
8 went off the record at 3:26 p.m. and resumed at  
9 3:34 p.m.)

10          CHAIR HOLTZMAN: Ladies and gentlemen,  
11 I think we're going to start. There are a couple  
12 of presenters who are not in the room at this  
13 time but - oh, they are in the room. Sorry.

14          Okay. This is a session on DoD  
15 Inspector General and Board of Corrections and  
16 Military Records, BCMR, responses to reports of  
17 professional retaliation and request for relief.

18          Thank you very much, ladies and  
19 gentlemen, for coming here and sharing your  
20 experience and insights with us.

21          Our presenters will be Mr. Patrick  
22 Gookin, Director DoD IG Hotline and Whistleblower

1 Protection Ombudsman; Ms. Nilgun Tolek, Director  
2 DoD IG Whistleblower Reprisal Investigations;  
3 Mr. John K. Vallario, Deputy Executive Director  
4 Air Force BCMR; Mr. Douglas Huff, Legal Advisor  
5 Army Review Boards Agency; Mr. Jon Ruskin, Board  
6 for Corrections and Naval Records Counsel; Ms.  
7 Julia Andrews, Chair, Coast Guard BCMR.

8 Again, welcome. We'll start with Mr.  
9 Patrick Gookin.

10 MR. GOOKIN: Good afternoon, ma'am.

11 CHAIR HOLTZMAN: Oh, sorry. My vision  
12 isn't as good as it should be. Thank you. You  
13 may proceed.

14 MR. GOOKIN: Good afternoon. I'm the  
15 Director of the DD Hotline. Reprisal complaints  
16 come in through the DoD hotline and if they are  
17 some sort of professional reprisal based on  
18 sexual assault reporting or any other type of  
19 reporting, I refer them to the Whistleblower  
20 Reprisal Investigations Director.

21 If they're ostracism - social  
22 ostracism or things along that line - I refer

1       them to our hotline coordinator within the branch  
2       of Service of where the matter has occurred and  
3       we oversight any investigative activity they do.

4               They send us back a hotline completion  
5       report and we marry it up with the complaint and  
6       look to see if it was investigated adequately and  
7       if any substantiated findings were made, if the  
8       corrective action was appropriate.

9               If it is not, we send back a  
10       memorandum of deficiency to the Service Hotline  
11       Coordinator to send back down to the person  
12       responsible for investigating them to have it  
13       redone.

14               There are times when we consult  
15       subject matter experts on it like SAPRO to get  
16       letter of the law language and put it back in our  
17       memorandum of deficiency and send it back down  
18       stream to the responsible person to investigate  
19       it. That's generally the process of what we do.

20               CHAIR HOLTZMAN: I'm sorry. I just  
21       wanted to clarify. If it's a professional  
22       retaliation you refer it to whom?

1                   MR. GOOKIN: Nilgun Tolek, the  
2 Director of Whistleblower Reprisal  
3 Investigations, and she would review it and  
4 determine whether or not it meets the criteria to  
5 be investigated under the Statutes and if not  
6 she'd send it back to me and I would send it  
7 downstream to the Inspector Ggeneral's Office of  
8 the Army, Navy, Air Force to wherever it  
9 belonged.

10                   CHAIR HOLTZMAN: Is that your  
11 statement for us? Okay. Wonderful. Ms. Tolek?

12                   MS. TOLEK: Good afternoon. So I'm  
13 responsible for the Whistleblower Reprisal  
14 Investigations within the DoD IG and the largest  
15 part of those investigations are under the  
16 Military Whistleblower Protection Statute.

17                   And as Mr. Gookin was saying, when we  
18 receive a complaint of retaliation or reprisal,  
19 this is the strictly the professional retaliation  
20 under 10 USC 1034. That's the Military  
21 Whistleblower Reprisal Act.

22                   My investigators review it to

1 determine whether or not it's - we have  
2 jurisdiction over it and so on and if we do then  
3 they immediately try to contact the complainant.

4 So on the basis of a clarification  
5 interview with the complainant and their written  
6 complaint as is, we determine if there's a prima  
7 facie allegation, which is to say there was a  
8 protected communication preceding some sort of  
9 threatened, withheld or taken personnel action  
10 and then if there is a plausible inference of  
11 knowledge and causation there we call that good  
12 to go for an investigation.

13 The investigation proceeds with  
14 interviews of the - on the record interview with  
15 the complainant, the witnesses - relevant  
16 witnesses, responsible management officials and  
17 so on and we gather documents.

18 We aim to be done in 180 days because  
19 the statute requires that if we are not done in  
20 180 days we have to notify the complainant and  
21 the Secretary of Defense and - just those two -  
22 of why we're not done yet and an approximate time

1 we will be done.

2 Not even approximate - when we expect  
3 to be done and so we try to get them done in 180  
4 days. I've heard that you've been talking about  
5 how long they take during the course of today so  
6 I wanted to get that right out there.

7 We have not yet attained an average of  
8 180 days but we're working toward it. And then  
9 once the report is written it undergoes various  
10 levels of management review and then a legal  
11 review and then it's issued, and a copy of the  
12 report goes to the complainant - a redacted copy  
13 of the report. Upon closure we send that.

14 As far as how the handling of sexual  
15 assault-related complaints differs in any way  
16 from the others, there is no difference. They're  
17 all - I mean, reporting a sexual assault or other  
18 sexual misconduct is one of many protected -  
19 types of protected communications under that  
20 Statute.

21 So it isn't distinguished by virtue of  
22 what it's reporting. The one thing is that in

1 the last couple of years or at least a year when  
2 we receive other complaints through the hotline  
3 or via the service IGs I forgot to say that, as  
4 an aside - I need to back up.

5 Service IGs also receive complaints  
6 under that statute so they're supposed to let us  
7 know within ten days of receipt that they have it  
8 and we review the notification, which includes a  
9 copy of the complaint, and normally we set those  
10 aside and wait for the Service to complete the  
11 investigation and then we oversight the  
12 investigation.

13 But in the case of sexual assault-  
14 related reprisal, we will generally take the  
15 complaint. We have sort of the right of first  
16 refusal on those and we would let the Service  
17 know that we would like to investigate and we do  
18 it at Headquarters.

19 So I think that's the process as much  
20 as you need to know to ask questions. I know you  
21 wanted numbers. Do you want me to just go there  
22 or would you like to ask me a specific question?

1           In terms of tracking how many  
2           complaints that we've received in the past that  
3           are related to sexual assault, we don't have a  
4           particular marker in our case tracking system for  
5           that.

6           We have - we have been intending to  
7           create one but we haven't been able to make any  
8           changes to our system for the last year, year and  
9           a half, actually.

10           So short of that, what we do is word  
11           searches within the case descriptions and based  
12           on those word searches I can tell you that in  
13           fiscal year 2012 we received, I would say, six  
14           complaints in which the protected communication  
15           included reporting a sexual assault. In fiscal  
16           year '13 we received ten and in fiscal year '14,  
17           nine.

18           CHAIR HOLTZMAN: Thank you.

19           MS. TOLEK: So it's not - and that's  
20           nine out of approximately 760. So it's not a  
21           high number.

22           CHAIR HOLTZMAN: Thank you. Mr.

1 Vallario?

2 MR. VALLARIO: Good afternoon. I  
3 speak on behalf of my colleagues in expressing my  
4 appreciation for having us here today to talk to  
5 you about the - about how the BCMR strives to be  
6 the premier venue for equity, justice, due  
7 process and fairness in the important work that  
8 we do on behalf of our respective Secretaries and  
9 determining if the applicants are the victims of  
10 error or injustice. So thank you for having us.

11 In the next - over the next few  
12 minutes I just want to talk to you - give you an  
13 overview of the BCMR.

14 Your staff has asked that I give a  
15 general vanilla overview of the BCMRs as they  
16 apply to all the Services and then we end up with  
17 each of us talking about what's different about  
18 our respective Services.

19 I'll talk to you about our statutory  
20 authority. The limits of that authority as it's  
21 executed within the BCMRs; talk to you about the  
22 standards of evidence implied; of course, talk to

1 you about our unique responsibilities when it  
2 comes to reprisal victims and what the board's  
3 authorities are with respect to them; briefly  
4 describe for you the application process and then  
5 I'm going to turn it over to my colleagues after  
6 I go through the Air Force-specific issues that  
7 you might want to know about including statistics  
8 regarding reprisal and sexual assault.

9 First of all, the First Amendment  
10 guarantees a right of a citizen to petition its  
11 government. This is, in effect, the use of  
12 private bills of relief by Congress.

13 The BCMRs, however, were born after  
14 the Second World War when Congress was inundated  
15 with private bills of relief of veterans  
16 attempting to get corrections done to their  
17 records.

18 So with the Legislative Reorganization  
19 Act of 1946, private bills of relief for  
20 Servicemembers were prohibited and then the BCMRs  
21 were born.

22 Our governing Statute is Title 10

1 United States Code Section 1552, which  
2 essentially says the Secretary of the Military  
3 Department, acting through boards of civilians,  
4 may correct the records of military - may correct  
5 the military records when necessary to correct an  
6 error or injustice.

7 Now, those two underlying terms are  
8 very important because the BCMRs cannot act  
9 unless there is an error or injustice detected in  
10 the record.

11 The BCMR's authority is very broad.  
12 It's pretty broad and sweeping but it is  
13 generally limited to the authority that the  
14 Secretary of the Military Department has. The  
15 BCMRs are the highest level of administrative  
16 appeal in our respective Departments.

17 We are not investigative bodies and  
18 the importance of being the highest level of  
19 administrative appeal is that applicants should,  
20 before coming to the BCMR for relief, exhaust  
21 lower levels of administrative appeal.

22 If they haven't, they're not

1 prohibited from coming to the BCMR. However, if  
2 the BCMR makes a final decision on an issue  
3 without the applicant pursuing those remedies,  
4 those remedies can be closed to an applicant.  
5 The board of civilian - at least in the Air  
6 Force, the BCMRs are board of civilians.

7 They're impaneled as panels of three  
8 with a panel chair overseeing the proceeding.  
9 The professional staff that each of us have are  
10 responsible for collecting and analyzing the  
11 information pertaining to an applicant's request  
12 and presenting that information to the board and  
13 distilling - in an analyzed and distilled fashion  
14 so that they can make a reasoned determination on  
15 the case.

16 Hearings before the BCMR are at the  
17 sole discretion of the BCMR and they're typically  
18 granted when the board determines that the  
19 applicant's presence with or without counsel will  
20 materially add to their understanding of a case.

21 Standards of evidence, the BCMR  
22 operates at the outset with the presumption of

1 regularity and that is the presumption that  
2 government officials acted in good faith based on  
3 the information provided in accordance with the  
4 governing laws and policies in effect at the time  
5 regarding an applicant's issue.

6 The applicant bears the burden of  
7 presenting evidence of an error in justice and  
8 this is codified in our respective departmental  
9 instructions.

10 Evidence must be sufficient to show  
11 that it is more likely than not that an error in  
12 justice has occurred, and I have this comment  
13 here.

14 A scintilla of evidence is not our  
15 standard of evidence but it's just important to  
16 note that the applicant must bring some evidence  
17 to the table with which the board can rely on in  
18 making its determination if that person is the  
19 victim of an error in justice.

20 The BCMR has some unique  
21 responsibilities when it comes to reprisal and I  
22 told you on the last slide that the BCMR is an

1 administrative body and that we're not an  
2 investigative body.

3           However, when it comes to reprisal we  
4 have certain obligations under Title 10 United  
5 States Code Section 1034. When considering  
6 reprisal cases, the BCMRs may review reports by  
7 the Inspector General. They may request that the  
8 Inspector General conduct further investigation  
9 of reprisal allegations. They may receive oral  
10 arguments and hold hearings and cross examine  
11 witnesses.

12           And finally, one of the more unique  
13 responsibilities that we do have is if we make  
14 these findings - the board makes a substantiated  
15 finding of reprisal, it may recommend to the  
16 Secretary of the Department that disciplinary be  
17 taken - disciplinary action be taken against the  
18 perpetrators of the reprisal.

19           Just a couple information points about  
20 the application process. The Boards for  
21 Correctional Records cannot take an action or  
22 consider a person's case unless that individual

1 person comes and applies to the board for relief.  
2 An applicant must make their application within  
3 three years, in accordance with our governing  
4 Statute. However, the board may, in the interest  
5 of justice, excuse an applicant's failure to  
6 timely file.

7 Nonviable applications are returned to  
8 an applicant with an explanation, and nonviable  
9 applications means that they either haven't  
10 signed the form or they're asking the board for  
11 something that's outside of its authority, or the  
12 request for the correction that they want made to  
13 the record is just unclear and not discernable.

14 Some requests are resolved  
15 administratively by the Air Force functional  
16 offices of primary responsibility without even  
17 being referred to the board. Applicants may seek  
18 reconsideration of the board's decision. They  
19 must present new and/or relevant evidence that  
20 was not available at the time of the original  
21 submission. AFBCMR or BCMR decisions may be also  
22 appealed to the court.

1           We are faced and confronted with the  
2 full gamut of types of relief requested, but the  
3 list here kind of just shows you we don't have  
4 any one issue that serves as a majority. But  
5 these are some of our most frequent requested  
6 issues. Upgrades of discharges is certainly one  
7 we get a lot of, and with some -- victims of  
8 sexual assault have already come to us requesting  
9 upgrades of their discharges.

10           A similar law to Section 547 of the  
11 National Defense Act of 15 that was passed  
12 regarding PTSD claimants requires us to similarly  
13 consider upgrades of discharges. We get many  
14 requests for disability upgrades. Some of them  
15 are tied to victims of sexual assault who have  
16 gotten rating determinations from the VA.

17           We get a lot of requests for folks to  
18 have their records corrected to show that they  
19 served in Vietnam, because they can get benefits  
20 from the Veterans Administration as well. We get  
21 many requests that are also career related:  
22 promotion reconsideration, removal of fitness

1 reports from records that may be -- or from their  
2 records that may be adverse, evaluation reports,  
3 date of rank adjustments, a removal of non-  
4 judicial punishment actions, and the last one I  
5 have here is court-martial sentences on the basis  
6 of clemency.

7 And but the boards are limited to  
8 taking action on the characterization of service,  
9 and we are unable to touch a court-martial  
10 record, but only on the basis a clemency may  
11 upgrade a bad conduct discharge if the applicant  
12 has brought forth evidence that their good deeds  
13 since leaving the Services overcome their  
14 misconduct.

15 There are a variety of typical bases  
16 for correction -- genuine error as evidenced by  
17 what's been brought forth by the applicant.  
18 Changing standards is an interesting and unique  
19 basis. The repeal of "Don't Ask, Don't Tell" is  
20 a changing standards basis for correcting the  
21 record of folks that have come to us before the  
22 repeal of "Don't Ask, Don't Tell."

1           Their discharge prior to the repeal of  
2 "Don't Ask, Don't Tell" has not been shown to be  
3 erroneous. It was effected in accordance with  
4 the policy in effect at the time but the repeal  
5 provides a basis under changing standards to  
6 upgrade those discharges. Failure of counsel is  
7 another frequent one we get, where an applicant  
8 demonstrates that they would have made different  
9 choices if they'd have been correctly advised.

10           Regulatory violations -- again,  
11 clemency is an issue we use almost exclusively  
12 with discharge upgrades and any circumstance that  
13 creates an injustice. So before I roll into my  
14 Air Force specific aspect of this, I'd ask if you  
15 have any questions about what I've told you thus  
16 far.

17           CHAIR HOLTZMAN: We're going to  
18 reserve questions until later, if you don't mind.  
19 So are you ready to finish your testimony or --

20           MR. VALLARIO: Oh, I'm finished. Yes,  
21 ma'am.

22           CHAIR HOLTZMAN: Okay. Our next

1 presenter is Mr. Douglas Huff. Thank you, Mr.  
2 Huff.

3 MR. VALLARIO: I had Air Force-  
4 specific material. I'm sorry.

5 CHAIR HOLTZMAN: Oh, I'm sorry.

6 MR. VALLARIO: Yes, my fault. So  
7 we've been asked to talk to you also about the  
8 membership of the boards, and what the membership  
9 requirements are, whether secretarial review of  
10 certain cases is required, what our interactions  
11 with the DoD and Service Inspector Generals are,  
12 overview of our processing timeliness, and what  
13 staffs are assigned to do this important work.

14 The Air Force Board for Correction of  
15 Military Records is comprised of about 90  
16 individuals from the Secretary's staff in the  
17 grades of GS-15, or Senior Executive Service.  
18 They come from all walks of life in terms of  
19 specialty. They don't all come from personnel.

20 They come from the legal, financial,  
21 logistics, whatever community you might imagine.  
22 They are appointed by nomination from members --

1 current members of the BCMR and we, again,  
2 impanel boards in panels of three, with a panel  
3 chair, that oversees the proceedings. We conduct  
4 about 12 of these panels a month. They're  
5 usually done on Tuesday, Wednesday or Thursday  
6 and in each of these sessions we do approximately  
7 -- we have then deliberate approximately 30  
8 cases.

9 We -- again, I talked to you a little  
10 bit about how a hearing can be granted. We had  
11 one such hearing in fiscal year '14 and it was a  
12 reprisal case. Secretarial review is not very --  
13 not very frequent as the Secretary's authority is  
14 delegated to my boss, the Director of the Air  
15 Force Review Board's agency. The Air Force  
16 Review Board's agency is comprised of about ten  
17 statutory boards, one of them being the BCMR.

18 So we very rarely will tee up a case  
19 to the Secretary of the Air Force, unless it is a  
20 high interest case, which means it's a case that  
21 could garner significant congressional or media  
22 interest; if it's a high-level decoration,

1 meaning it's a Silver Star medal or higher; or if  
2 it falls -- if it happens to be a reprisal case  
3 where there is a recommendation for disciplinary  
4 action, and in the past six years we have done  
5 one of those.

6 Our interactions with the Service, IGs  
7 we interact at the DoD IG level as appropriate.  
8 We are advised and notified when a finding of  
9 substantiated reprisal is made within the Air  
10 Force. We are notified of those. That serves to  
11 just put us on notice that we may receive an  
12 application from that person.

13 That doesn't mean we get an  
14 application for every one of those because, as  
15 the IG would tell you, if there's a finding of  
16 reprisal the correction may be made at the local  
17 level and not require the intervention of the  
18 board for correction of records. We also interact  
19 with other investigative bodies. If an applicant  
20 comes to us and their problem or issue is the  
21 subject of a commander investigative -- a  
22 commander-directed investigation, we'll obtain

1 those reports as well and share them with the  
2 board.

3 We've been asked to talk to you too  
4 about how Servicemembers are educated about the  
5 BCMR process. Our governing directives are on  
6 public publishing websites. They're also on our  
7 own website. But I think the most business that  
8 we get from folks is when folks are advised of  
9 either their command element, their servicing  
10 personnel function, or the IG, that they need to  
11 go to the BCMR to get relief because relief is  
12 not obtainable anywhere else.

13 The board -- our board staff, we have  
14 a staff of 20 folks and our jobs are, again, to  
15 collect and analyze this information for some  
16 pretty complicated issues, and present that  
17 information in that case to the board so they can  
18 make a reasoned and knowing decision.

19 Our interaction with the applicants is  
20 somewhat limited. When they submit their request  
21 they will get an acknowledgment notification, and  
22 then in that notification they'll be told what

1 they can expect to come as their case is  
2 adjudicated. When we do go and get advisory  
3 opinions from the appropriate Air Force offices  
4 of primarily responsibility we will render those  
5 advisory opinions on the applicant, because the  
6 rules of ex parte require us to share anything  
7 with the applicant that the board does see.

8 And, of course, at the end, when the  
9 decision is made, the applicant is notified and  
10 they are provided a copy of the record of  
11 proceedings that contains the board's -- the  
12 rationale for the board's decision. As a matter  
13 of information, many applicants are represented  
14 by legal counsel, or veterans advocates. But the  
15 vast majority are not.

16 Again, the staff is about 20  
17 personnel. We've laid in a surge of five  
18 examiners to deal with a long-term and lingering  
19 backlog that we've had due to a variety of  
20 circumstances that have been outside of our  
21 control. The furloughs and the government  
22 shutdown of a couple of years ago caused us to

1 fall behind, and have to deal with these  
2 backlogs.

3 I was asked too to speak to Section  
4 547 of the NDAA for '15, and whether or not we're  
5 complying with that, and the board substantially  
6 already complies with the confidentiality clauses  
7 in Section 547. Section 547 does also talk about  
8 how the Secretary will instruct boards about what  
9 they will consider in request for discharge  
10 upgrades, in terms of the substantiated sexual  
11 assault.

12 We haven't been charged with that  
13 guidance yet but I will tell you that the board  
14 already does that. When it comes to discharge  
15 cases or when it comes to -- or when it comes to  
16 sex assault victims who are requesting disability  
17 rating increases, we obtain advisory opinions  
18 from medical professionals about the effects of  
19 the sexual assault and we share that with the  
20 board and, of course, with the applicant for  
21 their consideration.

22 Some of our statistics for fiscal year

1 '14. In fiscal year '14, we received 5,622  
2 cases. However, because our average processing  
3 time is about 336 days, 1,453 of these cases are  
4 still being processed. This leaves 4,169 cases  
5 that we received in fiscal year '14 that have  
6 been decided. Of those that are closed, 38.5  
7 percent, or 1,605 cases, result in relief being  
8 granted before the cases were even referred to  
9 the board for correction of record.

10 This relief is granted  
11 administratively by the Air Force Offices of  
12 Primary Responsibility in the review of the case  
13 before it comes to us. Five hundred and twenty-  
14 seven of these cases, or 12.6 percent, were  
15 administratively closed and 257 others, or 6.1  
16 percent, were returned as nonviable applications.

17 Applications that are administratively  
18 closed are because the applicant has asked that  
19 they be closed so they can gather additional  
20 evidence, and for a variety of other reasons.  
21 The remaining 1,780, or 42.6 percent, were  
22 referred to the board. Of those, 394, or 22.1

1 percent, were granted by the board. 128, or an  
2 additional 7.1 percent, were granted partial  
3 relief by the board. So, a total of  
4 approximately 30 percent are granted by the  
5 board.

6 And the remaining 1,258, or 70  
7 percent, that are received by the board were  
8 denied. Of the total cases closed, 51 percent  
9 were resolved in favor of the applicant, either  
10 through administrative means or through action of  
11 the board. About 40 percent -- more than 40  
12 percent of our applicants are currently serving  
13 members of the regular Guard or Reserve  
14 components of the Air Force.

15 As far as whistleblower reprisal cases  
16 received in 2014, we've received and adjudicated  
17 five such cases. As far as the notifications we  
18 received from the IG in 2014, we were notified of  
19 seven of those cases, and a check of our case  
20 management system this morning revealed that only  
21 one of them has resulted in an applicant coming  
22 to the BCMR.

1           In my reading of the notifications  
2           that I got for the other seven, it's because that  
3           the situation could be resolved at the local  
4           level. The number of applicants reviewed in FY  
5           '14 that involved sexual assault is information  
6           that we don't currently collect. Our case  
7           management and tracking system is about to be  
8           replaced.

9           There's a moratorium on changes. We  
10          have a request -- a priority request to get our  
11          legacy system changed so we can track this and we  
12          anticipate that we'll be able to report data on  
13          fiscal year '15 and later. And that concludes my  
14          comments.

15          CHAIR HOLTZMAN: Thank you very much.  
16          Mr. Huff, I think we're up to you.

17          MR. HUFF: Good afternoon, honorable  
18          members of the panel. My name is Douglas Huff.  
19          I am a staff attorney at the Army Review Board's  
20          Agency. The Army Review Board's Agency is  
21          composed of multiple administrative boards that  
22          is led by Ms. Francine Blackmon, the Deputy

1 Assistant Secretary of the Army. Part of my  
2 duties is to provide support to the Army Board  
3 for the Correction of Military Records. I'm not  
4 directly involved in the management or operation  
5 of the ABCMR.

6 The information I am presenting was  
7 compiled by numerous ARBA personnel, and thank  
8 you for the opportunity to speak here today. I  
9 particularly look forward to any concerns you may  
10 have -- apologies. I look forward to any concerns  
11 you may have, and I'd like to report those back  
12 today.

13 The ABCMR has 44 staff positions.  
14 Currently, 43 individuals are assigned to the  
15 ABCMR. We got a new deputy director, came on  
16 board on Monday, 6 April, and we get a new  
17 director on the 20th of April. There are  
18 approximately 120 ABCMR board members. These  
19 individuals are Department of the Army civilian  
20 employees. They have to be assigned to  
21 Headquarters Department of the Army and work in  
22 the capital region.

1           They are appointed by the Secretary of  
2 the Army. Their grades are GS-13 through Senior  
3 Executive Service. They serve on a rotating  
4 basis. The ABCMR meets twice per week in panels  
5 of three. The regulation governing the ABCMR is  
6 Army Regulation 15-185, and that's available  
7 online on our publishing website.

8           Relevant to today's discussion,  
9 according to the regulation decisions are final.  
10 When the board denies an application, except for  
11 the actions on reprisals investigated under 10  
12 USC 1034, or if it unanimously grants an  
13 application after a favorable recommendation in  
14 an advisory opinion.

15           The ABCMR will forward the decisional  
16 documents to the Secretary of the Army for final  
17 decisions to any case which the facts involve  
18 reprisals under the Military Whistleblower  
19 Protection Act, confirmed by the DoD Inspector  
20 General and, again, under 10 USC 1034, DoD  
21 Directive 7050.6.

22           Ms. Blackmon has been delegated

1 authority to finalize these decisions. However,  
2 she does communicate with the assistant secretary  
3 and the delegation provides that if there's a  
4 case of interest or of concern, that she's to  
5 elevate that case. As my colleagues said, the  
6 ABCMR begins its consideration of each case with  
7 a presumption of administrative regularity. The  
8 applicant has the burden of proving an error in  
9 justice by the preponderance of the evidence.

10 Live hearings are infrequent, but  
11 there is one upcoming. The regulation provides  
12 that one of the issues for the board to be -- to  
13 decide is whether a hearing should be held.  
14 Board members can recommend a hearing be held.  
15 The director of ABCMR can also grant a hearing  
16 when justice requires and, again, Ms. Blackmon  
17 can also direct a hearing.

18 Most applicants are not represented by  
19 counsel. Typical cases involve awards,  
20 separation, promotions, retirements,  
21 disabilities, evaluations, pay, survivor  
22 benefits, home of record, title inclemency and

1 reprimands. Applicants' status: 74 percent are  
2 out of the Service with no military status. Six  
3 percent of the applicants are regular Army on  
4 active duty. Six percent are Reserve components,  
5 that could be Reserve or Guard.

6 Twelve percent are retirees and 2  
7 percent are other categories, an example a former  
8 spouse may be seeking survivor benefits. Case  
9 management division is separate from the - from  
10 the board. They function as a receiving unit for  
11 all incoming cases to ARBA. ARBA does receive  
12 notices from the Army IG when a whistleblower  
13 case has been investigated and closed.

14 The CMD director receives the  
15 documents that were provided to the Soldier. In  
16 substantiated cases the director opens a party in  
17 our case management tracking system and assigns a  
18 flag.

19 The flag directs the technician who  
20 receives the case to contact the CMD director at  
21 the individual files and application with ARBA.  
22 The GAO documents provided ahead of time

1 indicated that system worked really well as far  
2 as capturing these cases, and while the  
3 terminology in the GAO report was different than  
4 what I understand, I believe it's the same system  
5 that was used then.

6 In substantiated cases, the Army IG  
7 assists the Soldier in completing the DD149. We  
8 received four notifications of substantiated  
9 whistleblower claims in 2014. None of these were  
10 sex-related offenses. ARBA reviewed two  
11 substantiated whistleblower cases in 2014 and  
12 both applicants received relief. Again, these  
13 were not sex-related offenses. If an applicant  
14 indicates there is an IG or criminal  
15 investigative agency report, CMD will request  
16 that report when we receive the application.

17 The ABCMR reviewed 9,127 cases in 2014  
18 with a 41 percent grant rate. That doesn't count  
19 the administrative grants. The typical reason  
20 applications are denied is the alleged error in  
21 justice is not adequately supported by the  
22 evidence. An applicant can request

1 reconsideration within one year of ABCMR's  
2 original decision if the ABCMR has not already a  
3 reconsideration.

4 The applicant application should  
5 contain new facts or arguments that was not in  
6 the record at the time of ABCMR's prior  
7 consideration. Interaction between the board and  
8 applicant is not common. An analyst could  
9 contact the applicant to request clarification on  
10 relief requested, to share ex parte information,  
11 or to make the applicant aware of unintended  
12 consequences of any relief they request.

13 For formal hearings, there is much  
14 greater contact that would include all the  
15 administrative issues with scheduling witness  
16 lists and things like that. As stated above, the  
17 ABCMR has authorized authorizations for 44 staff  
18 personnel. The ABCMR staff is able to meet the  
19 congressional mandate of deciding 90 percent of  
20 all cases within ten months, and all cases within  
21 18 months.

22 The average time for receipt of

1 application to resolution was 228 days in fiscal  
2 year 2014. Following issue of the decision, Army  
3 and DoD agencies must make the directed  
4 corrections with a suspense of 120 days. I spoke  
5 with our promulgation unit. They actually track  
6 this. They will suspense these things out to the  
7 various agencies and then they will track it.

8 Sexual assault-specific issues were  
9 not tracked until January of 2015. Our tracking  
10 system now contains a special identifier so that  
11 sexual assault-related cases can be tracked. We  
12 have had five cases since January 2015. All  
13 identified as victims. Sexual assault-related  
14 cases receive review by Ms. Blackmon. They also  
15 have a higher priority rating, which expedites  
16 their processing.

17 Whistleblower issues have been a  
18 special project since 2012 and they also receive  
19 a higher priority. We do not track the  
20 involvement of special victims counsels in the  
21 BCMR practice. Per discussion with the SVC  
22 chief, the SVCs receive training in the ABCMR

1 processes. SVCs will not identify to us as an  
2 SVC. They would identify to us as a legal  
3 assistance attorney as the SVC program is part of  
4 the legal assistance program.

5 Assisting Soldiers with correction of  
6 records is mandatory for legal assistance  
7 attorneys per Army Regulation 27-3.

8 Servicemembers are educated about the ABCMR  
9 through numerous avenues. ARBA has a website that  
10 explains the process. We have an applicant's  
11 guide. Our legal staff provides one- or two-hour  
12 training blocks at the Army JAG school for the  
13 legal assistants course, the military justice  
14 managers course, administrative law for  
15 installations course, the graduate course.

16 In Texas, one of our attorneys  
17 provides instruction to the Office of the Staff  
18 Judge Advocate at Fort Sam Houston. The medical  
19 community -- Office of Special Counsel -- those  
20 are the attorneys and paralegals who help the  
21 soldiers in the IDES process, the Integrated  
22 Disabilities System. He also instructs the IMCOM

1 survivor outreach course, which trains attorneys  
2 who assist survivors of deceased Soldiers. We  
3 also teach some courses here in the military  
4 district of Washington. That concludes my  
5 presentation. Again, I --

6 CHAIR HOLTZMAN: Thank you.

7 MR. HUFF: - look forward to your  
8 concerns.

9 CHAIR HOLTZMAN: Thank you very much.  
10 Mr. Ruskin -- Mr. Jon Ruskin, you're next. I  
11 look forward to hearing from you.

12 MR. RUSKIN: Good afternoon. I'm  
13 honored to be able to appear before this  
14 distinguished panel. One of the things -- our  
15 practice is very similar to what we've heard for  
16 the Army and the Air Force. Probably the most  
17 outstanding thing that makes our practice unique  
18 is that we deal with cases from two Services  
19 rather than just one, the Navy and the Marine  
20 Corps.

21 Of course, the Navy is a much larger  
22 Service. But the Marine Corps does have a

1       surprisingly large number of cases, particularly  
2       performance evaluation cases. We have about  
3       15,000 cases a year total, about half of which go  
4       before the board. The others are not considered  
5       for reasons that you've heard before.

6                 And the percentage of relief is 7  
7       percent. That includes partial and full relief.  
8       One of the reasons that that may be as low as it  
9       is, is that one of the things that's different  
10      about our practice is that the Marine Corps  
11      actually has a board called the Performance  
12      Evaluation Review Board. It operates at  
13      Headquarters Marine Corps. It's a panel of  
14      Marine Corps officers who are allowed to hear all  
15      Marine Corps fitness report cases before we do.

16                The Marines are required to submit  
17      their fitness report cases there first and they  
18      have power -- that board has power to grant those  
19      requests and so we only see the ones that they  
20      denied. So that may, at least partly, explain  
21      why our relief rates is not higher than it is.  
22      But we currently do not have the capability of

1 electronically tracking either sexual assault or  
2 whistleblower cases although, we are manually  
3 attempting to keep track of how many sexual  
4 assault cases we're getting.

5 We're in the process of making it  
6 possibly to electronically track both categories.  
7 We hope to be able to do the sexual assault cases  
8 within about a month and the whistleblower cases  
9 within about three months. We rarely get cases -  
10 - well, first, we get a number of cases from  
11 perpetrators -- alleged perpetrators of sexual  
12 assault who are discharged and seeking  
13 corrections to their records.

14 They virtually never get relief. We  
15 have not seen very many cases from victims of  
16 sexual assault. But I personally know of at  
17 least one where the Marine Corps enlisted woman  
18 had filed a request to have restricted reporting  
19 and her command administratively bungled the  
20 situation, and treated her as if she had asked  
21 for unrestricted reporting.

22 She filed an IG complaint about that

1 mistake -- that bungling -- and it was found  
2 without merit, and after that she got a poor  
3 performance evaluation. So she came to us,  
4 actually, she submitted a petition to the Marine  
5 Corps PERB for trying to get relief on that  
6 performance evaluation. They denied relief,  
7 recommended that we deny also.

8 After the board looked at this case,  
9 they felt like she had made a good case of  
10 reprisal and under our rules if the Marine -- if  
11 Service recommends denying and the board wants to  
12 grant, that's a case that has to go to the  
13 Secretary of the Navy's office for a decision.  
14 That case did go there, and the Secretary of the  
15 Navy ruled that we were correct and relief was  
16 warranted. So the applicant did get relief in  
17 that case.

18 At this point, we have not seen  
19 involvement by special victims counsel in our  
20 cases. We do get reports from the Navy IG and  
21 the Inspector General of the Marine Corps of  
22 reprisal investigations that they've done. Our

1 staff is ten case examiners and five records  
2 personnel. We are currently completing about  
3 58.8 percent of our cases within ten months and  
4 the remaining cases are between ten to 18 months.  
5 The statute, 10 USC 1557, requires that we do 90  
6 percent within ten months.

7 We're not meeting that currently but  
8 we've just recently been granted permission to  
9 hire four new people - case workers. So we're  
10 hoping that injection of new blood will allow us  
11 to do a better job of complying with that time  
12 standard.

13 CHAIR HOLTZMAN: Thank you very much,  
14 sir. We're now ready to hear from Ms. Julia  
15 Andrews. Ms. Andrews, thank you.

16 MS. ANDREWS: Thank you for your  
17 interest. The Coast Guard BCMR is part of the  
18 Office of the General Counsel of the Department  
19 of Homeland Security. We operate with a  
20 permanent staff of three, which is augmented as  
21 needed with attorneys on detail. Although  
22 comparatively small, our staff is sufficient to

1 handle the caseload, and the board has not issued  
2 a decision beyond the ten-month deadline under 14  
3 USC 425 in several years.

4 In FY 2014, we received 236  
5 applications and we closed 178 cases. Seventy-  
6 four of those were closed administratively after  
7 the Coast Guard voluntarily made the correction.  
8 The board issued a decision for the other 104  
9 cases and the average processing time for the  
10 board's decisions was 250 days. While processing  
11 the cases, the BCMR staff communicates with  
12 potential, current and past applicants several  
13 times a day by phone and email to ask and answer  
14 questions.

15 If an application is incomplete, we  
16 call or email them, asking them for the missing  
17 information. Last year, 59 percent of our  
18 applicants were veterans and 41 percent were  
19 current Servicemembers. They learn about the  
20 board from military publications, from the BCMR  
21 webpage, from our rules, which are published in  
22 the Code of Federal Regulations, and from the

1 DVA, and word of mouth.

2 The staff sends a copy of every  
3 application to the Coast Guard, inviting an  
4 advisory opinion. The advisory opinions are  
5 normally prepared by two or three personnel  
6 officers and a JAG attorney. A copy of the  
7 advisory opinion is then sent to the applicant,  
8 who has 30 days to submit a written response and  
9 may request an extension.

10 As part of the general counsel's  
11 office, all Coast Guard BCMR members are  
12 attorneys. Approximately 35 attorneys from  
13 throughout the department have volunteered and  
14 been appointed to serve. The board members serve  
15 on two or three panels per year, at their  
16 convenience. They may resign at any time and  
17 there are no term limits.

18 The chair convenes a board panel twice  
19 a month and each panel reviews just five to ten  
20 cases. The board members receive draft decisions  
21 prepared by the staff and access to the case  
22 documents a few days before the meeting so they

1 arrive ready to deliberate and decide the cases.  
2 The board decides the cases on a preponderance of  
3 the evidence standard. The vast majority of the  
4 board's decisions constitute final agency action.

5 A unanimous board decision is final in  
6 all discharge cases and all cases concerning  
7 reenlistment codes, medals and awards, bonuses  
8 and the survivor benefit plan. In other types of  
9 cases, the board's decision is also final, unless  
10 there is a split decision or unless the board  
11 votes to grant substantially more relief than  
12 that recommended by the Coast Guard.

13 Last year, 67 percent of all BCMR  
14 applicants received full, partial or alternative  
15 relief either directly from the Coast Guard or  
16 through a decision of the board, and 43 percent  
17 of the board's decisions granted relief. Over  
18 the past decade, the board has handled at most  
19 one or two applications per year from victims of  
20 sexual assault or alleged assailants. The staff  
21 is not aware of any involvement by special  
22 victims counsel to date. Last year, the board

1 decided one sexual misconduct case, which was  
2 filed by an alleged assailant, and relief was  
3 denied.

4 The board has not handled a  
5 whistleblower case from the Office of the  
6 Inspector General in several years, although we  
7 have met with personnel from the inspector  
8 general's office to ensure that they are aware of  
9 the BCMR as an avenue of redress.

10 Because of the small size of the BCMR staff and  
11 the small number of Coast Guard personnel who  
12 prepare the advisory opinions, access to BCMR  
13 case files is very limited and on a need to know  
14 basis.

15 Pursuant to Section 547 of the 1015  
16 NDAA, redacted decisions in sexual assault cases  
17 will no longer be uploaded to the online FOIA  
18 reading room.

19 The Coast Guard BCMR is a comparatively small  
20 operation, but before every decision is issued  
21 the application has been reviewed and evidence  
22 weighed by at least five attorneys, sometimes as

1 many as six or seven, including the three board  
2 members. This level of investment reflects the  
3 department's very strong commitment to ensuring  
4 that our Servicemembers and veterans are treated  
5 correctly and fairly. Thank you.

6 CHAIR HOLTZMAN: Thank you very much.  
7 Thanks to all the panel members. Admiral Tracey?

8 VADM(R) TRACEY: Thank you very much.  
9 A federal civilian victim of sexual assault who  
10 has a whistleblower complaint would come through  
11 the DoD IOG, right?

12 MS. TOLEK: Yes, an appropriate --  
13 they could either come to us, or their primary  
14 jurisdiction is with the Office of Special  
15 Counsel. But we do do some of those complaints.

16 VADM(R) TRACEY: Okay. So, if they  
17 have a founded retaliation complaint, how do  
18 their records get corrected?

19 MS. TOLEK: Federal employees -- or,  
20 it would -- it would depend on the jurisdiction  
21 that they went through. So, OSC or the Merit  
22 Systems Protection Board would order whatever

1 corrective measures were required and if it came  
2 through our system we -- our report -- every  
3 single one of our reports makes a recommendation  
4 in substantiated cases for whatever would make  
5 the complainant whole, and then a more general  
6 recommendation that appropriate action be taken  
7 against the responsible management officials. So  
8 that would go to the head of the agency, and the  
9 decision would be made there.

10 VADM(R) TRACEY: Okay. Thank you.

11 CHAIR HOLTZMAN: Mr. Taylor.

12 MR. TAYLOR: Yes, thanks to each of  
13 you for not only your service but also your  
14 testimony here today. Mr. Gookin, I was curious  
15 about your comment that if the action came back  
16 to you after investigation and you had determined  
17 that maybe the action taken was not appropriate  
18 that you would then send it back for correction  
19 of whatever deficiency, would you say more about  
20 that?

21 Are you talking about situations in  
22 which you don't think the Service took an

1 appropriate action and therefore you're sending  
2 it back to the Service? Or are you talking about  
3 something internally within the DoD IG staffing  
4 process?

5 MR. GOOKIN: Within the Service, sir.  
6 If I sent it downstream to Army, Navy, Air Force,  
7 Marines or a defense activity, DLA perhaps, and  
8 they send back a hotline completion report and  
9 it's inadequate, by DoD Instruction 7050.01, I  
10 have the authority to send back a memorandum of  
11 deficiency and have them correct it.

12 MR. TAYLOR: Is part of that standard  
13 that you're applying whether or not the action  
14 they took against someone who actually conducted  
15 retaliation was, let's say, too minor, that they  
16 didn't take it seriously, they counseled when  
17 they should have issued a letter of reprimand, in  
18 your opinion?

19 MR. GOOKIN: I'm concerned of both,  
20 that the victim was made whole, and whether or  
21 not the repriser was -- action was taken against  
22 them.

1 MR. TAYLOR: Is that a fairly frequent  
2 occurrence that Services don't do what you think  
3 they should have done in dealing with these  
4 retaliation complaints, in terms of appropriately  
5 counseling or dealing with the person who is  
6 bound to have retaliated?

7 MR. GOOKIN: It's rare.

8 MR. TAYLOR: Okay. Ms. Tolek, you  
9 mentioned that for the last three years, just  
10 based on a word search, you had six, ten and nine  
11 cases that fell within the kinds of interest that  
12 we have. Can you tell us the outcome of any of  
13 these cases, or can you provide that for the  
14 record if you can't tell us today?

15 MS. TOLEK: I can tell you that five  
16 of those total 25 remain under investigation.  
17 They're still open. Among the others, total four  
18 went to full investigation and none were  
19 substantiated, and 15 were dismissed without full  
20 investigation for a variety of reasons.

21 MR. TAYLOR: Okay. So for all of the  
22 members who testified about your respective

1 Boards for Correction of Military Records, let me  
2 just ask a general question, then we'll just go  
3 down the line and let each of you respond, if you  
4 don't mind. What are the typical requests that  
5 you have seen so far that sexual assault victims  
6 of retaliation are making? What kinds of record  
7 requests are they typically asking for?

8 MR. VALLARIO: The most common variety  
9 I've seen are those that have been discharged and  
10 have a subsequent finding by the Veterans  
11 Administration that they have PTSD, or a major  
12 depressive disorder related to the sexual  
13 assault. They come back to our board to request  
14 to request that their administrative discharge be  
15 changed to a disability discharge, or that if  
16 they did get a disability discharge that their  
17 rating be increased.

18 MR. TAYLOR: Okay. Mr. Huff?

19 MR. HUFF: Sir, that would -- I would  
20 concur that, most likely, that's what we would  
21 see also, someone who has been discharged and  
22 then wants to change to their discharge, or maybe

1 a disability issue also.

2 MR. TAYLOR: Mr. Ruskin?

3 MR. RUSKIN: The basic response to  
4 your question is that we just haven't seen very  
5 many applications from victims of sexual assault  
6 at all. But to the extent that we've seen them,  
7 we had the one that I told you about where the  
8 person was successful. It's a little unusual  
9 because it's not based on an allegation of  
10 reprisal for complaining about the assault. It's  
11 a reprisal for complaining about administrative  
12 bungling.

13 But I think there have been some cases  
14 -- I don't deal with the disability cases  
15 personally, so I can't vouch for this, but I  
16 believe there may have been some cases of the  
17 kind the other gentleman outlined, about their  
18 physically disability handling.

19 MR. TAYLOR: Ms. Andrews?

20 MS. ANDREWS: We get so few it's very  
21 hard to generalize. But I would agree they often  
22 are requesting physical disability discharge for

1 PTSD.

2 MR. TAYLOR: And it may be too early  
3 in the process for any of you to have any  
4 evidence about this question or not, but have any  
5 of you had occasion to waive the three-year time  
6 limit in dealing with one of these cases yet  
7 involving retaliation by -- against a sexual  
8 assault victim?

9 MR. VALLARIO: I can't recall offhand.  
10 Those that I've seen in the recent past haven't  
11 exceeded the statutory or the statute of  
12 limitations. So I can't say.

13 MR. TAYLOR: Does anyone have any  
14 experience with this? Does anyone wish to  
15 venture an opinion about whether it would likely  
16 be the view of the board that the three-year time  
17 limit would be waived or would not be waived?

18 MR. VALLARIO: Well, for our practice  
19 a decision not to waive time limits is typically  
20 predicated on their being no evidence of an error  
21 in justice. So when the board deliberates a  
22 timeliness standard the first thing they do

1 determine is whether or not there's merit to the  
2 case.

3 There are very, very, very few where  
4 there's merit where timeliness is not waived, and  
5 it's because the purported error happened so long  
6 ago that it's impossible for us to make that  
7 person whole and this is never a course -- I've  
8 never seen this in a sexual assault case. But  
9 that's how time limits is weighed at the table  
10 where I work.

11 MR. TAYLOR: Anyone else like to  
12 comment on that?

13 MR. HUFF: Sir, the Army also evaluates  
14 the cases and if there's merit the practice would  
15 normally be to waive.

16 MR. VALLARIO: It's the same -- similar  
17 to the Air Force.

18 MR. RUSKIN: And the Navy is the same  
19 as well.

20 MS. ANDREWS: Same.

21 CHAIR HOLTZMAN: Thank you. No  
22 questions? Thank you very, very much for your

1 testimony. We appreciate the help you've given  
2 us. Good evening, ladies and gentlemen. That  
3 brings our hearing to a close.

4 MR. SPRANCE: For the record, the  
5 meeting is officially closed. Thank you for  
6 coming.

7 (Whereupon, the above-entitled matter  
8 concluded at 4:29 p.m.)

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20  
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22

**A**

- a.m** 1:12 5:2 55:16,17  
108:13,14
- Aanrud** 2:7 231:10,12  
231:16,16,17,18  
258:17,18 271:3,4  
275:13 287:7 289:4  
300:2 301:17,21  
303:17
- Aarund** 4:7
- ABCMR** 332:5,13,15,18  
333:4,5,15 334:6,15  
336:17 337:2,17,18  
338:22 339:8
- ABCMR's** 337:1,6
- ability** 28:14 68:7 95:14  
118:15 195:18 221:22  
222:1 225:7 248:17  
279:21
- able** 11:15 64:9 77:19  
81:11,19 88:16 93:3  
100:9 101:9 104:13  
104:14,15 106:19  
157:16 178:10 197:5  
222:3 247:20 286:21  
299:19 300:6 312:7  
331:12 337:18 340:13  
342:7
- aboard** 137:10
- above-entitled** 55:15  
108:12 183:10 230:21  
305:7 357:7
- abroad** 259:14
- absence** 123:1 270:12
- absolute** 244:10
- absolutely** 45:15  
105:14 178:21 180:9
- absurd** 189:3
- abuse** 142:13,20  
199:11,16,17 200:13  
201:7 202:13
- abused** 208:16
- academic** 124:11
- academy** 291:17
- accelerated** 260:7
- accentuates** 186:8
- acceptable** 120:7 203:9  
203:12
- acceptance** 191:15  
206:12
- accepted** 137:14
- accepting** 196:18
- access** 14:15 125:12  
132:11,22 133:11  
157:12 159:4 201:8  
220:21 296:10,17  
346:21 348:12
- accessible** 157:3
- accessions** 289:6
- accommodated** 20:13
- accommodating**  
262:18
- accommodations**  
270:16 296:11
- accompany** 272:1
- accompanying** 181:18
- accomplish** 245:10
- accomplished** 20:8
- accomplishment** 189:4  
259:13 266:19
- account** 228:14
- accountability** 21:2  
66:7 67:10 234:21  
241:6 265:8
- accountable** 104:5  
151:1 152:7 211:19  
212:8 213:15 252:22  
253:7
- accumulative** 39:6
- accurate** 85:4 88:2  
263:6
- accusation** 269:2 275:4  
279:1
- accusations** 274:20
- accused** 18:8,8 22:7  
31:21 34:19 37:5  
39:17 40:5 75:16  
186:4 187:13,17  
188:7,16 189:8  
190:10,12 200:22  
207:10 218:13 223:9  
223:10 278:7
- accused's** 21:14
- accuser** 223:9
- achieved** 111:19
- achieving** 69:22 235:5
- acknowledged** 245:12
- acknowledging** 123:9
- acknowledgment**  
326:21
- acquitted** 26:1
- act** 54:9 59:17 61:11  
62:13 69:1 70:6 92:3  
92:10 146:22 157:7  
179:13 221:15 236:7  
308:21 314:19 315:8  
320:11 333:19
- acted** 181:22 317:2
- acting** 315:3
- action** 57:20 58:4 60:18  
66:11 67:8,10 68:19  
69:15 91:16 92:1  
97:16,21 101:20  
104:13 106:13,17  
113:9,13 124:17  
163:4,11 237:2  
250:13 253:20,22  
254:10 255:15 261:1  
262:21,22 274:4,4  
279:8 285:12 307:8  
309:9 318:17,21  
321:8 325:4 330:10  
347:4 350:6,15,17  
351:1,13,21
- actionable** 65:8,10  
104:22 263:7
- actions** 57:22 58:6 68:5  
71:14 104:8,14  
107:14 113:21,21  
115:17 149:21 150:18  
150:21 151:5,11,12  
151:15 152:1,6 168:6  
179:16,19 240:16  
252:13,14,15,18,21  
253:12 256:13 257:11  
257:18,22 258:4  
278:9 286:3 321:4  
333:11
- activating** 221:8
- active** 14:3 49:14,20,22  
50:1,4 125:20 156:22  
281:6 335:4
- activities** 48:4 180:19  
257:1 275:10 288:21
- activity** 105:17 175:12  
307:3 351:7
- acts** 145:6,6 150:11  
239:20,21 244:14  
254:3 259:17
- actual** 40:9 85:3,6,7  
126:8 129:18 186:21  
189:18 191:9 200:8  
262:8
- acutely** 204:7
- add** 9:18 10:1,19 11:5  
53:3 59:17 68:7 80:11  
98:11,13 103:20  
134:3 177:10 181:7  
182:6,10 269:8 271:2  
278:19 316:20
- added** 18:11 34:9 61:13  
78:10 79:2
- adding** 11:3 128:7  
179:12
- addition** 56:11 57:2  
68:2,9 93:14 98:17  
109:17 115:16 121:5  
182:9 241:17 249:7  
262:8
- additional** 30:5 34:10  
67:7,11 98:22 119:15  
248:9 250:15 255:10  
257:17 329:19 330:2
- additionally** 124:15  
127:12 133:13 238:21  
242:9 247:18
- address** 15:8 57:9 62:5  
63:14 66:7 68:5,8  
69:15 78:10 79:3 97:2  
100:17 104:15,21  
107:1 151:19 209:1  
211:13 217:1 235:13  
240:10 242:7 245:1,9  
246:17 250:6,17  
253:10,14 255:5  
256:16 261:1 264:21  
279:22 280:17 287:19  
289:11,13,14
- addressed** 13:3 24:2  
26:21 50:8 89:2  
154:10 240:5 245:16  
265:4 275:3
- addresses** 110:4 120:4  
240:14
- addressing** 210:15  
237:6 242:12 244:10  
251:13 258:13 264:5  
266:6 279:15 285:22  
290:1
- adds** 126:13 128:13
- adept** 219:21
- adequacy** 46:21
- adequate** 275:2
- adequately** 307:6  
336:21
- adhere** 216:7,18
- ADJOURNMENT** 4:22
- adjudged** 9:20 10:3  
32:4 33:21
- adjudicated** 327:2  
330:16
- adjust** 65:12 299:20
- adjusted** 32:13
- adjustments** 321:3
- administered** 78:2  
261:15
- administrated** 64:2
- administration** 59:2  
320:20 353:11
- administrative** 66:6  
97:21 104:8,14 105:7  
105:16 118:22 252:15  
252:21 262:20 315:15  
315:19,21 318:1  
330:10 331:21 334:7  
336:19 337:15 339:14  
353:14 354:11
- administratively**  
319:15 329:11,15,17  
342:19 345:6
- Admiral** 4:3 11:18 16:3  
30:21 33:6 43:22 47:3  
77:9 136:15 163:15  
183:5 214:10 232:2  
251:20,21 258:15

275:10 279:12 285:21  
304:21 349:7  
**adopting** 235:14  
**adult** 184:20  
**adults** 185:5 226:18  
**advance** 37:20 56:13  
60:17 74:15 146:9  
**advancing** 140:10  
**advantage** 53:7 185:6  
277:21  
**advantages** 66:4  
**adversarial** 217:13  
**adverse** 17:8 57:19,22  
113:9,13,20 253:20  
321:2  
**advertised** 79:14  
**advice** 84:8 112:21  
269:21  
**advised** 322:9 325:8  
326:8  
**Advisor** 3:8 4:18 7:8  
55:20 306:4  
**advisors** 236:9  
**advisory** 238:17 327:2  
327:5 328:17 333:14  
346:4,4,7 348:12  
**advocacy** 239:11  
**advocate** 134:6 156:8  
242:9 249:22 273:8  
295:22 296:3 339:18  
**advocated** 129:6  
**advocates** 236:15  
248:16 249:8 250:3  
257:14 269:16 296:9  
303:18 327:14  
**AFBCMR** 319:21  
**affair** 207:10  
**affect** 118:7,15 128:19  
**affluent** 20:4  
**afforded** 188:22  
**afraid** 148:7  
**afternoon** 7:18 87:16  
88:9 101:5 183:13,14  
183:17 184:10 217:5  
232:7,8,11 252:1,3  
258:12,18 280:1  
305:3 306:10,14  
308:12 313:2 331:17  
340:12  
**age** 97:20,22  
**agencies** 141:1 338:3,7  
**agency** 4:18 306:5  
324:15,16 331:20,20  
336:15 347:4 350:8  
**agenda** 55:8 265:2  
**agents** 269:20  
**ages** 247:5  
**aggregate** 261:7  
**aggressive** 186:3

**agnostic** 20:18  
**ago** 62:8 76:6 135:8  
136:4 161:21 327:22  
356:6  
**agree** 10:6 11:19 13:18  
14:20 42:18,19,21  
43:10 45:11 48:20  
103:20 180:15 220:3  
228:16 295:3,8  
354:21  
**agreement** 24:10 43:16  
**ahead** 45:21 208:4  
281:16 335:22  
**aids** 134:17  
**aim** 309:18  
**Air** 2:12 4:8,16 192:22  
232:2 258:22 259:11  
260:8 261:16 262:2  
264:3,5 266:16 267:4  
279:18 287:14 289:4  
301:17 306:4 308:8  
314:6 316:5 319:15  
322:14 323:3,14  
324:14,15,19 325:9  
327:3 329:11 330:14  
340:16 351:6 356:17  
**Airman** 192:22  
**airmen** 259:5 260:4,5  
261:5,9,19,21 263:1  
265:15,18 266:7,13  
287:16  
**Airmen's** 260:18  
**aisle** 217:9  
**akin** 210:18  
**alarming** 143:13,22  
**Alaska** 275:14  
**alienate** 193:9  
**alienation** 59:18 65:16  
191:22 193:6  
**align** 65:7 84:10,17  
**Aligning** 194:9  
**alimony** 29:7  
**alive** 186:20 191:18  
**allegation** 62:19 186:16  
188:1 192:3,5 195:2  
196:20 205:2 208:12  
224:16 225:20 274:3  
309:7 354:9  
**allegations** 58:5 190:15  
195:16 208:3,11,21  
214:2 236:4 241:8,20  
243:12 244:13 318:9  
**alleged** 95:14 104:11  
188:20 197:15 236:10  
263:17 295:19 336:20  
342:11 347:20 348:2  
**alley** 136:17  
**allow** 6:18 17:20 21:8  
23:3 68:10,12 127:21

159:4 256:14 344:10  
**allowances** 31:22 33:11  
**allowed** 341:14  
**allows** 21:5 23:11 288:5  
**allude** 73:1  
**alluded** 95:17 284:11  
**alongside** 129:12  
**alterations** 114:5  
**altering** 114:2  
**Alternate** 2:15  
**alternative** 347:14  
**altogether** 162:5 267:1  
**amended** 9:18 10:1,19  
11:5 41:12 43:17  
**amending** 11:2  
**Amendment** 314:9  
**American** 135:21 136:7  
233:13  
**amount** 52:5 125:4  
176:2,13 210:19  
219:12  
**amplify** 140:4  
**analogies** 54:14  
**analyses** 98:22 127:2  
170:10  
**analysis** 16:1 17:4 54:1  
124:13,17,21 126:9  
129:17 132:20 174:7  
236:17 262:6  
**analyst** 337:8  
**analysts** 111:17  
**analyze** 157:20 326:15  
**analyzed** 110:1 126:3  
132:16 202:22 203:2  
316:13  
**analyzing** 72:13 123:11  
202:16 316:10  
**and/or** 65:19 252:16  
319:19  
**Andrews** 2:10 4:21  
306:7 344:15,15,16  
354:19,20 356:20  
**anecdotal** 61:4  
**angles** 78:1  
**angry** 126:19  
**announced** 32:14 49:3  
**announcements**  
247:11,19  
**annual** 67:13 68:15  
79:16 107:15 243:13  
256:4 265:22 278:13  
304:8  
**annually** 238:19  
**anonymized** 278:12  
**anonymous** 212:13  
294:2  
**anonymously** 150:3  
165:11  
**answer** 13:1 31:8 39:3

71:17,18 77:15 80:3  
88:16 94:10 97:3  
105:3 165:12 176:1  
212:1 267:18 268:9  
272:14 293:3,4  
294:10 345:13  
**answering** 243:21  
**answers** 20:17 107:8,9  
146:18 262:15 285:4  
**anti** 109:19 210:19  
211:3 216:6  
**anti-drug** 288:20  
**anticipate** 155:3 156:1  
221:12 331:12  
**anticipating** 219:22  
**anticipation** 228:18  
**anxiety** 120:1 121:11  
192:12  
**anybody** 25:7 101:18  
218:9 219:2 293:3  
294:9 295:3  
**anymore** 200:1 219:1  
**apart** 24:14  
**apex** 187:8  
**apologies** 116:12  
332:10  
**apologize** 301:18  
**apparatus** 14:9  
**apparent** 220:11  
**Apparently** 171:12  
**appeal** 28:17 315:16,19  
315:21  
**appealed** 319:22  
**appear** 8:14 47:8  
190:13 340:13  
**appearance** 219:5  
**appeared** 14:4  
**appears** 73:17 78:12,16  
263:21  
**applaud** 103:17  
**applauded** 125:14  
133:2  
**applicable** 172:19  
**applicant** 316:3,4 317:6  
317:16 319:2,8  
321:11,17 322:7  
325:19 327:5,7,9  
328:20 329:18 330:9  
330:21 334:8 336:13  
336:22 337:4,8,9,11  
343:16 346:7  
**applicant's** 316:11,19  
317:5 319:5 339:10  
**applicants** 313:9  
315:19 319:17 326:19  
327:13 330:12 331:4  
334:18 335:1,3  
336:12 345:12,18  
347:14

- application** 243:4 314:4  
318:20 319:2 325:12  
325:14 333:10,13  
335:21 336:16 337:4  
338:1 345:15 346:3  
348:21
- applications** 319:7,9  
329:16,17 336:20  
345:5 347:19 354:5
- applies** 275:8 319:1
- apply** 58:3 135:9,15  
136:19 216:3,16  
313:16
- applying** 351:13
- appointed** 42:13 323:22  
333:1 346:14
- appreciable** 60:5
- appreciate** 14:7 55:3  
56:3 108:5 134:13  
184:15 197:21 227:8  
252:2 258:21 267:15  
305:3 357:1
- appreciation** 313:4
- approach** 90:13 167:21  
240:19 246:21,22  
280:15,16
- approached** 166:12
- approaches** 173:4
- appropriate** 11:12  
43:12 54:3 66:11 67:9  
107:21 132:1 143:9  
209:7 219:11 237:1  
241:6 255:15 307:8  
325:7 327:3 349:12  
350:6,17 351:1
- appropriately** 70:20  
104:4 178:11 252:22  
253:7 257:21 265:4  
278:2,11 283:5 352:4
- approved** 64:8 78:19
- approximate** 309:22  
310:2
- approximately** 122:20  
125:21 246:8,11  
260:3 261:21 312:20  
324:6,7 330:4 332:18  
346:12
- April** 1:7 5:15 68:17  
93:7 107:16 256:20  
332:16,17
- apt** 222:17
- ARBA** 332:7 335:11,11  
335:21 336:10 339:9
- area** 58:20 60:10,18  
247:2 248:20 249:20  
250:8 260:17 281:9  
303:6
- areas** 13:13 14:3 16:5  
64:7 107:17 168:18
- 247:1 250:19 269:4  
286:4 291:1 295:2
- arenas** 191:2
- argue** 98:2 135:17  
224:16
- argued** 23:21
- argument** 21:7 48:5
- arguments** 318:10  
337:5
- arises** 131:17
- armed** 43:20 253:22
- Army** 2:14 4:2,18 6:4  
73:15 106:4 225:1  
231:8 232:20,21,22  
233:5,6,6,12,12,15  
234:5,13,15 235:13  
235:22 236:21 237:5  
237:7,13 238:2,6,17  
239:5,8,17,18 240:2  
240:11,12,14,17  
241:5,8,22 242:14,15  
242:20 243:5,7,9,16  
267:16,20 273:5  
274:10 277:19 279:14  
280:2,5,6 281:3,5  
299:4,4,13,16 301:16  
304:14 306:5 308:8  
331:19,20 332:1,2,19  
332:21 333:2,6,16  
335:3,12 336:6 338:2  
339:7,12 340:16  
351:6 356:13
- Army's** 232:15 234:17  
239:3
- arose** 24:1 26:20
- arrive** 347:1
- article** 10:22 11:3 38:16  
40:8 41:12 42:4,15,16  
43:16 52:13 63:8,8  
66:3 106:13 111:3  
120:4,7 135:7,11,14  
135:18 136:3
- articles** 35:1 71:20  
109:15 239:22
- articulate** 41:4 88:16
- articulated** 84:20
- aside** 129:7 311:4,10
- asked** 12:19 38:19  
61:17 74:14 84:10,17  
85:15,17 90:3 94:11  
97:5,8 98:18 99:6,7  
105:10 112:10 126:5  
135:1 137:18,22  
138:16 142:12 144:20  
146:10,13,17 150:6  
166:1 191:21 206:1  
254:20 261:17 283:2  
299:9 300:8 313:14  
323:7 326:3 328:3
- 329:18 342:20
- asking** 10:5 65:3,11  
73:19 74:4 92:12  
102:9,11 137:7  
145:14 151:9 154:3  
164:17 209:2 269:14  
269:15 286:21 295:7  
301:13 302:5 319:10  
345:16 353:7
- asks** 19:6 296:8
- aspect** 322:14
- aspects** 114:3 118:16  
129:10,12,13,19  
131:16 235:20
- assailant** 348:2
- assailants** 347:20
- assault** 3:3 6:12 7:3,7  
7:13,19 12:18 13:8  
18:21 25:4,5 47:10  
51:12,15 52:16 53:9  
56:14,18,22 57:4,7,11  
58:11 59:5,15 60:14  
61:19 62:11,17,22  
63:12,18 64:22 65:7  
69:11,20 70:3,21  
73:14 76:8 80:19 82:2  
82:17,21 83:2,9 84:1  
84:4 85:1 89:20 90:20  
92:5 93:11 99:5,11,12  
99:13 100:7 126:6  
138:12 142:18 175:13  
178:18 185:10 186:16  
188:1 191:4 192:5,8  
192:16 193:3,12  
195:3,16 196:19  
197:8,15 199:4,6,16  
200:8 201:2,20 204:8  
204:14 205:12 206:3  
209:5,7 210:5 211:14  
212:10 213:17 214:16  
232:16 233:9 234:14  
234:18 236:2,14,22  
238:5 241:14 245:22  
246:4,9,12,20 248:14  
248:21 249:2 251:5  
252:4,6,8,13,17 253:2  
254:9,18,21,22  
255:12,18 256:20  
257:18 258:1,6 259:4  
259:7,18 260:19  
261:2,17,20 262:4  
263:11 264:6,14  
269:15 274:1 276:2  
283:11,15 284:4  
285:1 294:1 302:5,12  
302:17 303:6 306:18  
310:17 311:13 312:3  
312:15 314:8 320:8  
320:15 328:11,16,19
- 331:5 342:1,4,7,12,16  
347:20 348:16 349:9  
353:5,13 354:5,10  
355:8 356:8
- assault-related** 310:15  
338:11,13
- assault-specific** 338:8
- assaulted** 95:5 201:11  
201:12 206:15 207:18  
227:22 246:14
- assaulting** 47:22
- assaulting** 52:14 259:11
- assess** 65:5 69:1 81:19  
114:6
- assessed** 64:7 113:2,4
- assessing** 125:15  
127:4,8 133:3
- assessment** 6:17 42:13  
46:21 98:10 125:9  
126:5,16 255:13
- assessments** 112:3  
133:8
- assigned** 219:5 323:13  
332:14,20
- assigns** 335:17
- assist** 50:13,14,15  
134:6 236:10 242:22  
250:4 266:4 340:2
- assistance** 9:6 70:13  
339:3,4,6
- assistant** 332:1 334:2
- assistants** 339:13
- Assisting** 339:5
- assists** 336:7
- associated** 57:10 58:13  
58:20 59:7 65:6 96:2  
129:14,19 130:7,8,17  
131:3,10
- associates** 3:21 184:5  
263:17
- association** 140:1
- assume** 31:19 59:14  
161:18 172:9 193:22
- assuming** 131:22 134:8  
271:5 293:8 296:12
- assumption** 161:7  
206:8
- assumptions** 161:13
- assure** 70:1 107:18
- assured** 190:22
- at-large** 70:19
- Attached** 44:5
- attack** 208:3
- attained** 310:7
- attempt** 194:20 208:7
- attempting** 233:21  
314:16 342:3
- attempts** 195:1
- attention** 8:20 75:15

100:21 112:7 117:6  
141:11 144:7 167:16  
176:14 185:10 200:2  
200:2 205:8 290:22  
**attention-seeking**  
203:11  
**attitude** 211:12  
**attitudes** 204:9  
**attorney** 331:19 339:3  
346:6  
**attorneys** 64:22 110:13  
111:18 170:1 339:7  
339:16,20 340:1  
344:21 346:12,12  
348:22  
**attributes** 102:13  
**audience** 125:17  
139:14 199:13 200:10  
203:6 239:2 247:8  
**augmented** 185:10  
344:20  
**authorities** 230:2 314:3  
**authority** 19:1 58:12  
59:6 240:6,9 313:20  
313:20 315:11,13  
319:11 324:13 334:1  
351:10  
**Authorization** 61:11  
**authorizations** 337:17  
**authorize** 41:13 42:5  
**authorized** 9:19 10:2,20  
17:21 337:17  
**automatic** 18:4 32:1  
33:20 34:15 206:8  
**automatically** 32:9  
33:10 34:20  
**available** 8:17 18:14  
22:2 31:12 32:19  
36:15 64:21 69:14  
71:20 72:10 73:2  
81:12 100:16,19  
150:13 242:12 249:6  
257:16 273:22 295:10  
319:20 333:6  
**avatar-based** 242:21  
**avenue** 1:11 61:9  
299:12 348:9  
**avenues** 62:5 339:9  
**average** 120:11 222:10  
310:7 329:2 337:22  
345:9  
**avoid** 283:22 284:6  
**awarded** 29:8  
**awards** 334:19 347:7  
**aware** 106:18 125:18  
150:9,11 169:11  
175:22 176:9 204:7  
223:21 250:3 270:10  
278:8 287:1 289:18

294:15 337:11 347:21  
348:8  
**awareness** 103:13  
170:16 250:20 253:16  
255:21 256:3,21,21  
273:18  
**awkward** 206:2

---

**B**


---

**back** 21:16 23:4 37:9,10  
40:11 77:2 80:8 98:14  
100:12 106:19 133:7  
145:12 153:5 158:1  
177:3 183:14 191:9  
200:18,21 227:21  
231:2 280:6 282:17  
284:7 290:2,13  
292:20 293:5 296:17  
300:7 301:19 307:4,9  
307:11,16,17 308:6  
311:4 332:11 350:15  
350:18 351:2,8,10  
353:13  
**background** 124:5  
217:17  
**backlog** 327:19  
**backlogs** 328:2  
**bad** 29:19,20 53:1  
63:17 194:19 203:5,7  
206:8 210:12 284:13  
321:11  
**balance** 83:5  
**bar** 104:6,12 122:3  
181:11 182:1 218:1  
**barefoot** 206:19  
**bargains** 22:17  
**barracks** 204:19  
**barred** 218:14  
**barrier** 63:20 70:6  
250:11 253:2  
**barriers** 102:11 260:10  
290:8  
**bars** 120:15 121:19  
122:4 128:3,7,8  
**BAs** 239:7  
**base** 23:11 303:1  
**based** 6:20 42:2,3 64:7  
66:20 91:11 98:9  
109:16 120:8 123:10  
126:1,9 127:1 151:22  
155:1,3,14 165:17  
179:17,18 217:12  
306:17 312:11 317:2  
352:10 354:9  
**baseline** 222:5  
**bases** 302:20 321:15  
**basic** 172:15 265:17  
354:3

**basically** 12:10 13:15  
119:20 172:15  
**basis** 62:20 80:2 131:19  
163:6 179:2 309:4  
321:5,10,19,20 322:5  
333:4 348:14  
**battering** 206:20 207:1  
**battle** 251:9  
**battlefield** 204:14,21  
**BCMR** 4:16,21 305:16  
306:4,7 313:5,13  
315:20 316:1,2,16,17  
316:21 317:20,22  
319:21 324:1,17  
326:5,11 330:22  
338:21 344:17 345:11  
345:20 346:11 347:13  
348:9,10,12,19  
**BCMR's** 315:11  
**BCMRs** 313:15,21  
314:13,20 315:8,15  
316:6 318:6  
**bears** 317:6  
**beat** 211:13  
**beaten** 207:9  
**Beautiful** 41:21  
**beefed** 304:6  
**began** 187:4 239:8  
288:20  
**beginning** 124:11  
152:14 178:15 188:17  
289:10 296:2 299:5  
**begins** 148:9,10 187:3  
187:5 265:16 334:6  
**behalf** 274:21 313:3,8  
**behavior** 57:15 58:18  
65:22 66:5 69:13 90:6  
109:20 137:4 142:14  
142:21 197:6 199:4,6  
202:14,17 203:2,8,9  
215:16 244:19 245:13  
245:16 249:18 265:12  
267:1 277:8  
**behavioral** 98:9 110:18  
113:7 133:8 134:5  
159:15  
**behaviors** 58:22 59:12  
113:18,20 114:7,9  
118:6 129:5 151:3  
159:20,21  
**behooves** 177:4  
**belabor** 194:21  
**beliefs** 146:4,5 204:9  
211:6  
**believe** 8:20,22 10:18  
12:15 13:3 15:14  
44:14 45:15 46:12  
65:14 70:5 84:21,21  
93:6 104:7 107:4,5

111:2 131:20 135:11  
193:18 196:8 200:22  
202:3 205:18 206:3,5  
208:1 213:17,17  
223:10 234:2,10,20  
236:21 237:2 258:2  
261:9 273:8 275:8  
277:18 280:11,16  
281:18 298:19 299:6  
336:4 354:16  
**believed** 146:19 148:3  
190:8 201:4 209:6,8  
225:14  
**believes** 148:15 152:19  
264:3  
**believing** 203:7  
**belonged** 308:9  
**belongs** 87:6,10  
**bemoan** 205:6  
**bemoans** 205:2  
**benchmark** 141:3  
**benefit** 9:1 67:6 170:11  
347:8  
**benefits** 13:12 14:17  
49:22 50:2,5 103:1  
194:10 320:19 334:22  
335:8  
**best** 53:7 104:19  
132:18 142:1 157:14  
158:15 186:1,5 196:7  
197:2,18 224:10  
229:16 281:15  
**beta** 127:19,20 129:16  
129:17,21  
**betas** 128:4  
**better** 61:15 65:4,12  
67:16 68:4,10 70:19  
73:18 82:11 88:22  
89:11 90:5 103:15  
104:16 125:9 133:9  
194:2 196:5 220:15  
237:3 253:11 254:16  
255:4,20 256:12,15  
257:15,20 270:16  
277:22 282:19 288:12  
295:11 297:2 344:11  
**bewildering** 193:13  
**beyond** 118:6 141:19  
161:10,10 221:1  
249:3 345:2  
**bias** 171:3,7  
**bifurcated** 293:13  
**big** 49:5 160:10 163:1  
164:7 189:17 214:16  
219:6 231:22  
**bigger** 44:21 78:12  
87:11  
**biggest** 164:22  
**bill** 2:15 5:4 23:6,7 25:2

25:6 43:8  
**bills** 24:22 37:3 39:22  
 314:12,15,19  
**binders** 139:11  
**birth** 185:11  
**bit** 20:18 41:1 58:20  
 88:15 93:4 102:2  
 124:4 139:2,16 142:5  
 144:2 187:1 198:14  
 198:17 234:1 279:20  
 283:18 289:22 293:18  
 297:1 300:20 324:10  
**bitch** 203:20  
**black** 116:6,14 210:8,11  
**Blackmon** 331:22  
 333:22 334:16 338:14  
**blame** 99:15 115:19  
 186:13 188:12 200:9  
**blamed** 114:8  
**blaming** 58:18 178:16  
 203:13 204:9  
**blankly** 191:1  
**blast** 158:3  
**bless** 158:1  
**block** 242:10  
**blocks** 339:12  
**blood** 344:10  
**blown** 117:3,9,19  
**blue** 121:3,19 122:3  
**board** 4:19 18:20 21:21  
 73:15 118:19 241:14  
 291:20 305:15 306:5  
 316:5,6,12,18 317:17  
 318:14 319:1,4,10,17  
 323:14 325:18 326:2  
 326:13,13,17 327:7  
 328:5,13,20 329:9,22  
 330:1,3,5,7,11 332:2  
 332:16,18 333:10  
 334:12,14 335:10  
 337:7 341:4,11,12,18  
 343:8,11 345:1,8,20  
 346:14,18,20 347:2,5  
 347:10,16,18,22  
 348:4 349:1,22  
 353:13 355:16,21  
**board's** 314:2 319:18  
 324:15,16 327:11,12  
 331:19,20 345:10  
 347:4,9,17  
**boards** 4:9,18 8:4 236:2  
 306:5 315:3 318:20  
 321:7 323:8 324:2,17  
 328:8 331:21 353:1  
**bodies** 315:17 325:19  
**body** 140:13 214:17  
 318:1,2  
**bonuses** 347:7  
**book** 220:17

**born** 314:13,21  
**boss** 324:14  
**bothers** 47:16  
**bottom** 67:5 93:19  
 131:8 263:20 280:17  
 292:7  
**bound** 352:6  
**boundaries** 168:17  
**bounding** 263:6  
**bowling** 136:17  
**box** 81:5 275:19  
**Boy** 201:1  
**branch** 4:6 231:9 307:1  
**breadth** 89:9  
**break** 55:14 108:9,11  
 230:20 305:5  
**breaking** 260:10  
**brevity** 48:22  
**brief** 55:11 72:15 167:7  
 184:12  
**briefed** 72:20 76:6  
 276:6  
**briefly** 56:13 122:5,14  
 123:8 247:1 314:3  
**brigade** 242:4  
**brightly** 186:10  
**bring** 55:1 220:7 234:9  
 287:22 292:7 317:16  
**bringing** 40:11  
**brings** 187:7 357:3  
**broad** 59:12 66:5 262:9  
 315:11,12  
**broad-based** 213:1  
**broad-brush** 131:22  
**broaden** 258:3 283:12  
**broadened** 249:3  
**broadener** 63:21 284:22  
**broadly** 268:22  
**broken** 16:2 47:5  
**brought** 25:18 110:20  
 209:4 238:22 321:12  
 321:17  
**bucket** 82:22 83:12  
**buddies** 204:12  
**buddy** 223:11  
**budget** 111:17  
**build** 130:4 160:2 161:9  
 161:17 163:13 277:22  
**building** 128:3 161:2  
 163:19 235:4  
**built** 49:18 251:6  
**bully** 194:9,13  
**bullying** 58:19 210:19  
 210:20 211:4 216:7  
 227:9 240:3  
**bullying/anti-bullying**  
 215:5  
**bungled** 342:19  
**bungling** 343:1 354:12

**burden** 42:11 207:15  
 317:6 334:8  
**Bureau** 26:15 28:20  
**bureaucratic** 292:14  
**business** 97:1 140:14  
 140:17 141:7 142:7  
 145:12 167:22 203:22  
 268:14,19,20 326:7  
**bystander** 89:19,21  
 91:9 92:19  
**bystanders** 213:15  
 235:3,7 241:9 243:19  
 255:3 264:14

---

**C**


---

**C** 3:1  
**California** 3:20 184:4  
 184:20  
**call** 35:8 71:18 72:7  
 73:14 74:4 80:3  
 100:14,21,22 101:14  
 102:12 149:11 150:21  
 215:21 236:2,15  
 283:10 295:21 299:8  
 303:14 309:11 345:16  
**called** 11:1 60:16 73:13  
 135:8 200:16,18  
 216:9 341:11  
**calling** 202:2 280:4  
**campaign** 163:1 240:13  
 240:18 245:8 251:6  
 255:20 280:4,5  
**campaigns** 256:3  
**capabilities** 238:15  
 243:10  
**capability** 341:22  
**capable** 193:20 203:8  
 222:6  
**capital** 332:22  
**capitalizing** 248:3  
**capture** 105:21 273:10  
 299:17  
**captured** 63:22 105:17  
 263:12 268:7  
**capturing** 298:17  
 299:10 301:9,14  
 336:2  
**care** 29:6 48:1 63:11  
 70:15 152:2 209:9  
 213:19 222:4 223:9  
 234:6 237:16 266:18  
 293:16  
**career** 99:21 100:9  
 124:11 192:17 320:21  
**careers** 8:8  
**careful** 135:19  
**carefully** 126:15  
**cares** 181:1

**caring** 219:22  
**carried** 42:9 219:20  
**carry** 146:22  
**case** 16:19 17:1,5 25:17  
 26:3 27:10 28:5,12  
 37:20 49:15 51:5  
 53:17 69:5 73:13  
 75:14 77:10,11,14,18  
 78:1 79:1 80:16 86:7  
 96:8 97:9 122:1  
 167:22 185:15,18  
 208:9 254:22 264:18  
 265:3 270:4 274:19  
 274:22 275:1,6 284:1  
 296:14 298:20 299:8  
 300:3,10 302:5,17,18  
 303:3,6,8,9 311:13  
 312:4,11 316:15,20  
 318:22 324:12,18,20  
 324:20 325:2 326:17  
 327:1 329:12 330:19  
 331:6 333:17 334:4,5  
 334:6 335:8,13,17,20  
 343:8,9,12,14,17  
 344:1,9 346:21 348:1  
 348:5,13 356:2,8  
**caseload** 345:1  
**cases** 12:18 20:2 22:15  
 28:8 30:3 51:12 68:6  
 95:13,16,18 181:22  
 188:14 219:19 229:4  
 270:2 271:9 282:11  
 286:19 300:16 302:2  
 318:6 323:10 324:8  
 328:15 329:2,3,4,7,8  
 329:14 330:8,15,17  
 330:19 334:19 335:11  
 335:16 336:2,6,11,17  
 337:20,20 338:11,12  
 338:14 340:18 341:1  
 341:2,3,15,17 342:2,4  
 342:7,8,9,10,15  
 343:20 344:3,4 345:5  
 345:9,11 346:20  
 347:1,2,6,6,9 348:16  
 350:4 352:11,13  
 354:13,14,16 355:6  
 356:14  
**cast** 285:5  
**catch** 128:11 215:1  
**categories** 21:10 49:19  
 97:12 335:7 342:6  
**categorize** 105:20,21  
 262:3 263:9  
**categorized** 156:14  
**category** 47:5  
**catered** 266:12  
**Catholic** 3:14 109:1  
**causation** 309:11

- cause** 89:3 94:18  
192:12  
**caused** 77:20 207:19  
229:9 327:22  
**caution** 181:20  
**cautionary** 181:6  
**center** 23:8 25:3 80:18  
86:2 245:6  
**centered** 302:20  
**centers** 239:9,10,13  
241:19 273:6 276:8  
299:14  
**central** 74:5 106:9,10  
127:16 161:7 251:6  
**centralize** 87:1  
**centrally** 102:13,15  
**Century** 4:4 232:3  
**certain** 18:4 32:2,4  
34:15 49:19 85:16  
151:3 156:21 157:2  
318:4 323:10  
**certainly** 10:6 14:2,4  
18:11 55:1 65:14 91:2  
172:2 224:7 227:2  
267:15 268:15 275:11  
295:17 296:3 320:6  
**certification** 140:2  
243:13  
**certify** 140:4  
**chain** 58:17 67:3  
214:20 236:21 260:18  
261:4,5 272:20 273:3  
**chains** 277:5  
**chair** 1:12 4:21 5:10  
9:12,14 10:17 11:18  
12:6 14:1,6 16:10,16  
17:6 19:18 22:9 24:3  
30:19 31:3 32:6,17  
33:1,8,13,17,22 35:2  
35:6,9,14,18 36:14  
39:1,10 40:16 41:6,21  
42:19 43:15 44:4,7  
45:2,9,12 46:17 47:7  
47:12,15 48:15,17,21  
50:3,7,19 51:5 52:15  
52:21 53:22 55:2,13  
55:18 69:4 71:6 77:9  
81:21 82:4,7 83:16,21  
84:5,19 86:17,22 87:4  
87:8 89:6 92:19,22  
93:12,22 94:4,6 95:7  
95:10 96:13 105:2,12  
105:15 106:22 108:1  
108:4,8,15 109:7  
115:2,5 116:3,6,10,15  
119:6,9,13 123:18  
124:1 133:16,20  
134:12 138:17 139:1  
139:7,12 143:14,18  
154:15 163:15 169:5  
169:10,13,20 170:3,6  
170:17,20 171:9,11  
171:13,19 172:6,14  
172:18,21 173:3,7,12  
174:1 176:12,17  
177:1 178:12,22  
179:21 180:6,10  
182:8 183:5,13 184:1  
184:3,14 198:2,8  
214:9 217:3 222:22  
224:5,9 226:5,11,19  
226:22 227:3 229:18  
230:11,19 231:2,14  
231:17,19,22 232:8  
244:1 251:18 258:14  
265:6 267:10 275:1,7  
279:12 292:9 293:7  
294:16 295:1,15  
296:19 297:22 298:15  
299:1,22 301:7,20  
302:7 303:10,13,20  
304:10,15,18,21  
305:1,10 306:7,11  
307:20 308:10 312:18  
312:22 316:8 322:17  
322:22 323:5 324:3  
331:15 340:6,9  
344:13 346:18 349:6  
350:11 356:21  
**Chairman** 252:1  
**Chairwoman** 5:8 53:4  
56:10 232:12  
**challenge** 57:9 60:9  
72:14 82:20 92:3  
190:8 291:7  
**challenges** 63:14 91:17  
259:2 261:13  
**challenging** 56:16  
**chance** 72:15 135:13  
163:16 209:9 227:1  
258:21  
**change** 17:11 19:3  
35:19 42:15,15 60:5  
81:6 131:20 132:1,4,5  
148:11 155:19 158:16  
168:7 172:3,16  
174:21 195:4 213:11  
235:5 353:22  
**changed** 17:20 96:22  
331:11 353:15  
**changes** 81:20 104:16  
132:3 134:10 155:2  
248:9 303:1 312:8  
331:9  
**changing** 15:4 321:18  
321:20 322:5  
**channel** 272:10  
**channels** 73:21 89:2  
143:9 153:22 300:5  
302:2  
**chaplain** 294:4  
**chaplaincy** 239:12  
**Chapter** 165:20  
**character** 203:6 206:9  
225:19  
**characteristic** 137:3  
**characterization** 321:8  
**charge** 301:3  
**charged** 212:3 301:22  
328:12  
**Charles** 136:7  
**Charlie** 136:9,10  
**charming** 193:16  
**chart** 16:3,4 49:17  
115:21  
**cheating** 204:18  
**check** 68:12 99:6  
330:19  
**check-ins** 249:9  
**checklist** 249:7  
**chief** 3:16 109:2 139:19  
232:22 237:4 238:16  
238:21 291:13 292:1  
299:16 338:22  
**child** 29:6 184:21 201:3  
**children** 185:4 207:5,5  
208:10 215:9 226:18  
**Chimera** 135:8  
**choice** 159:16 277:2  
**choices** 202:21 203:1  
322:9  
**choose** 214:5 276:22  
**chooses** 204:22  
**choosing** 206:7  
**chose** 21:9 99:5  
**circuit** 111:1,7 169:11  
169:22 170:18 172:19  
**circuits** 171:1 172:22  
**circumstance** 156:5  
322:12  
**circumstances** 76:13  
283:22 327:20  
**cited** 225:11,16  
**citing** 226:20  
**citizen** 314:10  
**civil** 29:16 36:3  
**civilian** 12:9 13:4,11,11  
37:8 47:9,18 48:8  
50:22 109:17 123:10  
123:11 135:9,15  
136:2 185:8,22 190:1  
191:2 212:2 214:15  
218:6,7 225:3 248:15  
316:5 332:19 349:9  
**civilian-accepted**  
136:19  
**civilians** 52:8 188:5  
315:3 316:6  
**civility** 159:12,20 166:6  
168:9,21  
**claim** 46:2  
**claimants** 320:12  
**claimed** 45:16  
**claims** 41:13 54:9 63:4  
268:6 336:9  
**clarification** 309:4  
337:9  
**clarify** 57:13 119:7  
250:1 295:5 307:21  
**clarity** 294:9,12  
**class** 124:17  
**classes** 287:15  
**classified** 156:18  
**clauses** 328:6  
**clear** 43:5 72:4 74:12  
78:14 88:8 96:5  
126:15 149:15 158:13  
162:18 177:17 181:17  
257:7,12 279:5 294:7  
295:11  
**clearly** 28:13 96:8 196:2  
274:12 278:5 279:1  
**clemency** 321:6,10  
322:11  
**clerks** 118:22  
**clicker** 138:22  
**climate** 64:5 128:21  
129:1,9,10 131:7,15  
131:16,16,21 132:3,4  
133:14 134:1,10  
158:16 205:7 236:19  
238:1 240:19 254:11  
254:14 260:13,15  
261:11 281:14 290:1  
**climates** 104:17 250:10  
**climbs** 150:19  
**cling** 194:4  
**clinical** 198:11  
**close** 231:12,14 277:10  
357:3  
**closed** 36:20 275:22  
316:4 329:6,15,18,19  
330:8 335:13 345:5,6  
357:5  
**closely** 88:10,20 195:11  
**closer** 139:3  
**closing** 64:15  
**closure** 310:13  
**clothes** 218:6  
**cluster** 127:15  
**CMD** 335:14,20 336:15  
**CMG** 265:5 301:22  
**CMGs** 286:21 301:18  
**co-equal** 291:10  
**co-worker** 204:1  
**Coast** 4:21 306:7

344:17 345:7 346:3  
 346:11 347:12,15  
 348:11,19  
**code** 63:8 96:2 103:13  
 142:11 165:8 179:12  
 239:22 315:1 318:5  
 345:22  
**codes** 216:5,6,7,10,11  
 347:7  
**codified** 61:10 317:8  
**codify** 264:8  
**coercion** 62:11 112:8  
 264:16,22  
**cohesion** 209:19  
 228:11 244:20  
**cohesiveness** 3:18  
 183:19 192:10 197:9  
**Col** 2:7 244:5 269:10  
 274:15 285:4 289:16  
 291:5,8 294:11,21  
 296:6 297:20 298:12  
 298:19 304:16  
**collaboration** 110:8  
 239:14 249:21  
**collate** 72:2 102:3  
**collateral** 262:13  
**colleague** 110:8 119:15  
 123:16  
**colleagues** 13:18  
 112:20 117:3 138:22  
 144:20 164:16 201:10  
 258:20 259:20 313:3  
 314:5 334:5  
**collect** 80:14 105:8  
 326:15 331:6  
**collected** 110:2 169:8  
**collecting** 81:8 105:4  
 316:10  
**collection** 130:19 133:5  
**collections** 132:19  
**college** 111:15  
**collocating** 299:15  
**colonel** 2:12,13 4:5  
 15:12 16:15,21 17:18  
 26:22 31:15 32:11,15  
 33:4,9,15,16,19 34:4  
 34:8 35:5,7,13,17  
 36:12,17,22 37:17  
 38:14,15 39:8,12 40:7  
 41:3 43:1 44:12 45:7  
 45:17 49:12,13,16  
 50:4,18,21 52:12,18  
 53:2 54:5 55:9 206:19  
 206:21 207:7,12  
 231:8 244:3,4 251:19  
 270:22 272:3 274:14  
 297:6  
**colonel's** 207:11  
**color** 116:17

**colors** 116:9,11  
**Columbia** 1:11  
**Columbus** 3:14 108:22  
**combat** 244:21 266:21  
**combatants** 209:20  
**combating** 259:4  
**combined** 117:16 121:8  
 121:22 122:12 273:6  
**come** 16:8 20:5 23:4  
 30:9 53:15 56:1 75:15  
 98:14 102:7 114:13  
 123:9 126:3 147:1,4,6  
 147:9,10 148:4,7  
 152:11,16 153:3,5,16  
 162:15 176:9 178:2  
 182:13 219:22 220:12  
 234:12 243:19 253:5  
 268:15 292:20 295:12  
 296:16 306:16 320:8  
 321:21 323:18,19,20  
 327:1 349:10,13  
 353:13  
**comes** 29:7 37:8  
 103:16 140:13 150:17  
 163:5 168:18 189:20  
 189:21 205:2 211:1  
 217:17 231:15 314:2  
 317:21 318:3 319:1  
 325:20 328:14,15,15  
 329:13  
**comfortable** 20:17  
 66:12 73:16 98:19  
 246:15 272:18,19  
 283:20 302:14  
**coming** 10:9 86:10  
 93:20 95:2,4,12,18  
 145:17 146:20 148:17  
 148:20 154:19 215:19  
 218:2 223:1 232:9  
 246:15 305:19 315:20  
 316:1 330:21 357:6  
**command** 58:17 67:3  
 73:21 75:4 89:2 96:4  
 195:9 197:1,4 204:11  
 205:10 208:10,13  
 210:9,10 214:2,12,12  
 214:20 229:7 236:9  
 236:19,22 238:1,4  
 239:3 240:6,9 241:11  
 242:2 243:5,6 250:10  
 254:14 256:8 260:14  
 260:19 261:4,5,10  
 269:7 272:20,21  
 273:3 274:1 275:3  
 277:11 290:1 291:16  
 303:1 326:9 342:19  
**commander** 41:14 42:6  
 42:12 91:2 106:19  
 201:9 230:8 241:13

251:7 262:16 265:21  
 271:9 275:13,15,16  
 276:7 283:6 289:14  
 290:7 294:4 301:4  
 303:2 325:21  
**commander's** 264:21  
 268:19  
**commander-directed**  
 106:3 325:22  
**commander/supervi...**  
 264:11  
**commanders** 67:4 69:1  
 69:4,14 72:10 104:15  
 212:19 213:16 214:4  
 230:2 237:15 239:5  
 239:15 242:2,4,6  
 243:18 245:20 246:1  
 249:1,4 250:4,13,21  
 251:10 256:2 257:6  
 264:13 265:14 266:5  
 266:13 267:4 268:21  
 285:10 289:18 292:3  
 300:15  
**commanding** 43:6  
 225:14  
**commands** 248:12  
 254:12 255:15 281:4  
**commend** 197:20  
**comment** 42:20 48:20  
 87:21 159:14 160:16  
 167:20 171:13 173:20  
 176:13 214:11 272:6  
 317:12 350:15 356:12  
**commented** 163:18  
**commenting** 177:13  
 181:10  
**comments** 8:12,13 49:1  
 125:2 171:22 180:12  
 211:18 331:14  
**commissioned** 304:1  
**commissioning** 289:7  
 289:9  
**commit** 257:9  
**commitment** 63:13  
 154:11 161:16,22  
 162:7,9 234:10  
 244:10 349:3  
**committed** 50:19  
 113:12 151:2 161:15  
 161:17 162:13 234:13  
 254:4  
**committee** 18:18 227:3  
**common** 23:15 38:18  
 122:20 129:5 193:5  
 224:18 226:2 337:8  
 353:8  
**commonly** 187:21  
**communicate** 162:13  
 175:19 334:2

**communicated** 225:15  
 287:2  
**communicates** 345:11  
**communicating** 149:14  
 162:8  
**communication** 162:17  
 162:19 247:7 253:15  
 255:16 309:8 312:14  
**communications** 58:1  
 163:1 247:4 256:19  
 310:19  
**communications** 215:9  
**community** 25:3 135:17  
 135:19,20 136:14,20  
 137:10 160:2 167:2  
 167:18,19 169:1  
 192:7 195:13 199:14  
 199:15 201:18 212:6  
 225:1,2 323:21  
 339:19  
**companies** 150:7  
 152:14 174:16  
**company** 147:17,20  
 148:2,15 149:21  
 163:9 165:7 166:2  
 173:16 180:22 242:6  
**comparatively** 344:22  
 348:19  
**compared** 121:12,21  
 246:10  
**compares** 145:3  
**comparing** 185:6  
**comparison** 130:5  
**compelled** 233:3  
**compensate** 12:11,12  
 16:7 50:16  
**compensated** 43:8  
**compensating** 138:14  
**compensation** 3:2 6:12  
 6:17 9:4 14:11,15,16  
 15:7,17,21 16:9 17:16  
 18:13,20,20 20:5,9,13  
 21:11,21 23:20,22  
 25:13,19,21 26:7  
 27:22 28:2,7 29:9  
 30:18 39:21 40:14  
 43:13,21 44:4,6,7,11  
 44:18,22 45:3 46:3,12  
 46:22 48:11 49:15  
 50:17 51:1,7,14 54:7  
 54:10,16,22 138:2,6  
**competitiveness**  
 137:15  
**compiled** 332:7  
**complainant** 293:19  
 309:3,5,15,20 310:12  
 350:5  
**complainants** 182:12  
**complained** 297:8

- complaining** 293:11  
354:10,11
- complaint** 112:18  
117:11 123:2,3  
212:18 236:1,5  
264:20 271:22 278:1  
278:16 292:13,18  
307:5 308:18 309:6  
311:9,15 342:22  
349:10,17
- complaints** 181:15,19  
236:3 267:22 268:16  
269:5 275:18 277:15  
297:15 306:15 310:15  
311:2,5 312:2,14  
349:15 352:4
- complete** 170:13 249:1  
311:10
- completed** 112:2
- completely** 48:7,19  
49:3 89:8 157:4  
180:15 201:10 249:15  
293:9
- completing** 336:7 344:2
- completion** 36:19 307:4  
351:8
- complex** 240:4 260:11  
262:3 288:16
- complexities** 242:11
- compliance** 3:16 109:3  
139:20 140:3 149:12  
150:8,12 165:19
- complicate** 59:19
- complicated** 207:6  
210:8 326:16
- complies** 328:6
- comply** 12:3 79:20
- complying** 328:5  
344:11
- component** 267:4
- components** 127:10  
265:8 281:5,5,6  
330:14 335:4
- composed** 331:21
- comprehensive** 13:5  
246:22 248:19
- comprised** 323:15  
324:16
- compromise** 174:10
- Concentrating** 61:16
- concentration** 225:8
- concept** 281:18 287:17  
287:20
- concern** 25:10 177:21  
196:11 224:3,4,5  
253:3 279:7 295:2  
334:4
- concerned** 52:22 70:8  
104:2 136:8 293:8,18  
351:19
- concerning** 347:6
- concerns** 61:5 70:6  
290:8 291:8 332:9,10  
340:8
- conclude** 6:17 123:8
- concluded** 357:8
- concludes** 71:4 331:13  
340:4
- conclusion** 133:22  
275:2,2
- conclusive** 262:6
- concrete** 102:2
- concur** 353:20
- conditions** 230:4
- conduct** 113:11,16  
140:8 142:12 148:12  
148:16 149:16 165:8  
165:9 168:13 177:21  
177:22 178:11 179:12  
182:18 216:10,17  
225:18 237:11 272:2  
318:8 321:11 324:3
- conducted** 82:15 86:2  
110:22 219:20 351:14
- conducting** 80:16  
140:7 151:8 170:9,10  
171:2 174:18
- conference** 155:15,18
- conferences** 136:9
- confidence** 70:13 84:15  
85:6 140:21 234:21  
246:6 254:13 260:18  
261:3 290:6
- confidential** 156:15,19  
212:13
- confidentiality** 328:6
- confidentially** 150:3  
165:11
- confinement** 32:3  
213:22
- confirm** 79:22 80:8  
188:18
- confirmed** 333:19
- conflict** 216:1 270:14
- conflicts** 34:18,22
- confronted** 117:2,8  
207:7 320:1
- confronting** 112:18
- Congress** 44:13 54:4  
67:13 74:20 103:10  
171:4 314:12,14
- congressional** 324:21  
337:19
- connected** 169:2
- Connecticut** 3:12  
108:21 124:19
- connecting** 140:9
- connection** 13:7 47:19  
208:6
- consent** 208:6
- consequence** 141:18  
177:5 196:19 266:22
- consequences** 40:20  
70:9 207:17 238:5  
253:9 255:12 257:12  
283:11 286:2 337:12
- Consequenting** 213:14
- consider** 104:19 197:7  
197:16 276:7 318:22  
320:13 328:9
- considerable** 125:4
- consideration** 328:21  
334:6 337:7
- considered** 92:13 127:3  
129:10 144:5 153:12  
156:15 208:14 341:4
- considering** 52:13 63:3  
68:9 179:11 181:7  
197:21 318:5
- considers** 179:14
- consistent** 85:18 86:11  
98:3 143:1 162:18  
209:11
- consistently** 147:2  
151:15 152:6 162:8
- consisting** 139:22
- consists** 246:22
- Consortium** 110:1  
124:12
- constant** 162:18
- constitute** 347:4
- constituted** 142:10,13  
142:14
- Constitution** 1:11
- constitutional** 27:21
- construction** 124:13
- constructs** 127:15
- consult** 185:16 187:10  
220:15 307:14
- consultant** 198:13
- consulted** 185:1
- consumption** 277:12  
277:12
- contact** 86:14 98:12  
199:12 260:4 303:15  
309:3 335:20 337:9  
337:14
- contain** 337:5
- contains** 327:11 338:10
- context** 114:18 123:14  
123:17 130:19 142:6  
153:6,18 184:18  
246:19 262:4
- continue** 70:12,18 72:5  
78:9 134:1 176:12  
194:20 212:21 245:9  
245:17 250:6 255:7  
255:13 256:17 259:1  
267:7 272:11 273:19  
301:5
- continued** 59:20 125:15  
132:13 133:2 199:17  
201:2 249:21
- continues** 186:12  
235:13
- continuing** 235:1 263:8  
301:6
- continuum** 248:4
- contracting** 174:17  
265:9
- contrary** 12:7 253:4
- contribute** 128:9 282:1
- contribution** 70:16  
183:8
- control** 21:6 197:6  
327:21
- convenes** 346:18
- convenience** 346:16
- convening** 230:1
- conversation** 15:15  
220:13 228:9 240:9  
283:21
- conversations** 188:10  
188:11 238:13 239:4
- conveyed** 61:20 270:7
- convicted** 206:22  
208:22 297:18
- conviction** 27:18 36:9  
37:6
- convinced** 197:17
- cooperate** 53:12
- coordinator** 307:1,11
- coordinators** 65:1  
236:14 248:15 269:16
- cop** 200:20
- cope** 193:10
- copies** 139:6
- coping** 195:1 222:14
- cops** 200:16,16,18
- copy** 111:3 157:21  
310:11,12 311:9  
327:10 346:2,6
- core** 243:16 253:4  
259:8
- cornerstone** 259:3
- corporals** 287:6 290:17  
290:17
- corporations** 141:2
- corps** 4:6 106:5 231:9  
231:10 240:22 244:8  
244:13,22 245:2,11  
245:14 246:16 247:16  
247:19 248:21 250:12  
279:16 290:10 301:15  
304:17 340:20,22  
341:10,13,14,15  
342:17 343:5,21

**correct** 16:14,15,19,21  
33:15 34:2 36:12 67:8  
92:21 93:2 119:12,14  
129:6 161:6 170:8  
172:17,18,20 177:8  
250:22 280:22 315:4  
315:4,5 343:15  
351:11  
**corrected** 320:18  
349:18  
**correcting** 321:20  
**correction** 4:10,19 8:5  
88:7 319:12 321:16  
323:14 325:16,18  
329:9 332:3 339:5  
345:7 350:18 353:1  
**correctional** 159:11  
318:21  
**corrections** 305:15  
306:6 314:16 338:4  
342:13  
**corrective** 261:1 307:8  
350:1  
**correctly** 10:18 183:21  
288:2 322:9 349:5  
**corrects** 134:22  
**corresponding** 131:21  
**corrupted** 209:17  
**Cortina** 2:3 3:10 108:20  
109:5,6,8 115:4,6  
116:4,8,12,16 119:8  
119:12,14 123:19  
126:15 169:6,8,12,15  
169:21 170:5,8,19,22  
171:10,12,16,20  
172:8,17,20 173:2,6,9  
176:20 180:15 182:10  
**counsel** 4:20 19:6  
25:18 37:19,22 64:22  
185:12 223:19 235:16  
295:21,21 306:6  
316:19 322:6 327:14  
334:19 339:19 343:19  
344:18 347:22 349:15  
**counsel's** 346:10  
**counseled** 351:16  
**counseling** 3:21 184:5  
243:1 279:7 352:5  
**counsels** 269:17  
338:20  
**count** 22:21,21 24:13  
336:18  
**counter** 263:9 266:15  
**country** 233:17  
**counts** 208:22  
**couple** 22:12 80:20  
81:21 100:4 138:21  
151:17 155:14 305:11  
311:1 318:19 327:22

**courage** 30:9 194:11  
**course** 56:18 81:6  
93:13 103:11 162:1  
193:5 223:2,16  
230:14 242:3 278:19  
291:17 310:5 313:22  
327:8 328:20 339:13  
339:14,15,15 340:1  
340:21 356:7  
**courses** 109:18 124:22  
242:5 250:5 291:19  
340:3  
**court** 1:11 10:9,14,15  
11:22 16:9,12 24:19  
27:10 31:17 36:20  
37:9 111:8 187:3  
319:22  
**court's** 213:18  
**court-martial** 17:22  
31:17,18,20 37:13  
38:18 44:22 193:3  
217:21 230:1 278:21  
279:2 321:5,9  
**courthouse** 201:22  
**courtroom** 1:11 187:7  
187:12 188:2 189:10  
191:8,12,17 192:1  
197:10 217:11 218:17  
218:21 224:1,6 230:9  
**courts** 10:8 11:16 36:5  
36:5,18 170:2 171:8  
185:8 187:8 198:12  
**courts-martial** 9:20  
10:3 185:2 198:20  
213:5 217:8 277:13  
**cover** 57:15  
**covered** 12:12,15 13:16  
14:3,21 47:10  
**coworkers** 58:17  
121:17 126:19 131:18  
145:2  
**crazy** 204:17  
**create** 14:10 40:20 51:8  
66:11,16 69:14 90:4  
168:11 211:8 212:12  
312:7  
**created** 14:14 17:9 52:6  
225:21  
**creates** 142:21 250:10  
253:2 322:13  
**creating** 14:9 15:2,9  
178:1 280:9  
**credibility** 186:2 202:10  
203:3  
**Creighton** 169:18  
**crime** 23:10 57:1 62:6  
63:19 64:12 66:20  
70:4 71:1,22 88:19  
91:18 97:13 180:20

186:13,21 187:8  
193:20 235:20 246:6  
266:14 270:11 282:10  
282:14  
**crimes** 6:13 7:4 50:19  
185:4,7 196:9 258:8  
**criminal** 30:2 57:21,22  
58:5 59:1,16 63:7  
66:1 94:14 95:20  
105:1 106:6 216:8  
245:16 254:1,6  
268:20 336:14  
**crisis** 243:2  
**criteria** 135:10,15  
136:19 308:4  
**critical** 101:18 122:15  
176:18 178:20 201:6  
225:4 232:14 237:7  
240:21 248:16 251:4  
253:17 267:4 294:17  
298:16  
**critics** 101:17  
**critique** 132:10  
**cross** 140:15 318:10  
**cross-examination**  
25:17  
**cross-examine** 28:3  
**cross-examined** 23:20  
**cross-examining** 39:18  
**crossover** 15:16  
**crying** 205:5  
**culmination** 209:22  
**culture** 119:16 141:20  
148:13 149:3,5 164:8  
164:20 175:8 182:2  
199:13 203:12 205:14  
207:14 235:6 240:7  
243:17 280:9 281:11  
**cultures** 141:9 148:6  
**cumulative** 217:12  
**curious** 350:14  
**current** 47:11 48:9,10  
155:6 243:2 324:1  
345:12,19  
**currently** 11:1 34:4  
107:22 330:12 331:6  
332:14 341:22 344:2  
344:7  
**curriculum** 242:1,16  
**custody** 37:16 48:1  
**cut** 145:4 181:13 213:5  
**cyberbullying** 250:9

---

**D**


---

**dad** 200:18  
**DAIG** 236:1,4  
**daily** 131:19 164:10  
**damaged** 12:17 13:7

**damages** 138:5,5,8,14  
**damaging** 122:1  
**dangerous** 148:5  
**dark** 121:3  
**darker** 97:15 194:5  
**dashed** 119:2  
**data** 60:1 63:22 66:17  
68:3 71:18 72:6,12  
74:4 75:10,18 76:2  
80:3,15,17 81:9 86:2  
86:18 100:14,22  
101:14 102:12 103:9  
110:2 120:9 123:11  
124:21 125:6,8,8,12  
125:13,19,22 130:18  
132:11,12,16,17,19  
132:21 133:5,6,11,12  
133:14 134:6 145:11  
155:3,6,9,12,16,21,22  
156:9,10,13,16,17,20  
157:1,3,8,12,14 167:4  
167:5 168:4 169:8  
171:14,18 178:15,20  
179:1 180:3 196:2,4  
234:16 236:18 237:17  
238:1,7 241:19 246:1  
246:4 261:15 263:7  
265:9 277:4 297:2  
298:3,18 300:1 301:8  
301:8,14 331:12  
**database** 80:19 81:12  
89:13  
**date** 321:3 347:22  
**dated** 155:3  
**daughter** 200:4  
**Davis** 3:20 184:4,20  
**day** 8:2 36:10 135:20  
191:10,12 202:18  
204:2,5,5 220:8  
234:12 272:13 286:8  
296:18 345:13  
**day-to-day** 201:16  
**days** 23:13,14 24:17,18  
27:5 32:13 33:18 36:9  
36:10,10 37:9 81:19  
194:7 202:4 249:2  
309:18,20 310:4,8  
311:7 329:3 338:1,4  
345:10 346:8,22  
**DC** 1:12  
**DD** 306:15  
**DD149** 336:7  
**de** 165:18  
**dead** 136:6  
**deadline** 345:2  
**deal** 9:22 14:19 15:6  
21:18 45:2,4 177:1  
181:5 201:16 207:4  
292:12 293:19 327:18

328:1 340:18 354:14  
**dealing** 14:10 223:17  
 227:13 301:9 352:3,5  
 355:6  
**deals** 15:18 201:13,17  
**dealt** 9:2 207:19 221:19  
 278:2  
**debilitating** 221:9  
**decade** 347:18  
**deceased** 340:2  
**December** 56:21 60:20  
 79:11 93:18 255:18  
**decently** 211:12  
**decentralized** 80:13  
 81:16  
**deceptiveness** 203:5  
**decide** 334:13 347:1  
**decided** 18:18,18 35:21  
 35:21 329:6 348:1  
**decides** 347:2  
**deciding** 276:14 337:19  
**decision** 46:14 59:20  
 75:8 146:16 166:17  
 228:14,20 285:17  
 316:2 319:18 326:18  
 327:9,12 337:2 338:2  
 343:13 345:2,8 347:5  
 347:9,10,16 348:20  
 350:9 355:19  
**decisional** 333:15  
**decisions** 146:12  
 149:16 164:10 169:4  
 214:16,17 228:18,19  
 262:17 319:21 333:9  
 333:17 334:1 345:10  
 346:20 347:4,17  
 348:16  
**decisive** 251:7  
**deck** 294:14  
**decoration** 324:22  
**decorum** 187:15  
**decrease** 64:11 246:10  
**decreased** 131:10  
 234:18 260:2  
**dedicated** 6:13 140:10  
**dedication** 70:1 125:15  
 133:2  
**deduct** 28:16  
**deducted** 29:5  
**deeds** 321:12  
**defend** 194:15 259:14  
**defendant** 22:21 24:8  
 25:22 29:16 31:10  
 32:9,15 37:15 46:7  
**defendants** 20:4 27:2  
 28:15  
**defending** 198:21  
**defense** 1:1 25:17,19  
 37:19 60:16,21 61:11

67:20 68:20 72:21  
 80:17,18 86:1 93:14  
 102:5 110:1 135:9  
 174:16 185:17,22  
 186:1,3,7,9 254:11  
 257:14 260:12 309:21  
 320:11 351:7  
**deferral** 18:7  
**deficiency** 307:10,17  
 350:19 351:11  
**define** 239:17 249:15  
 280:19  
**defined** 57:16 113:9  
 278:5 281:22 283:2  
 285:10 295:4 298:20  
**defines** 137:2 257:5  
**defining** 237:6 242:16  
 274:17 285:17  
**definitely** 14:20 186:4  
 187:3 196:12 220:7  
 222:17  
**definition** 59:8 98:3  
**definitions** 262:8 263:6  
 284:20  
**defunded** 171:5  
**degradation** 259:16  
**degrade** 259:12  
**degree** 44:17 88:17  
 191:22 224:21  
**delay** 17:2 19:12 37:2  
 38:7,21  
**delaying** 39:10  
**delegated** 324:14  
 333:22  
**delegation** 334:3  
**deliberate** 9:7 101:19  
 264:19 281:7 324:7  
 347:1  
**deliberates** 355:21  
**deliberating** 6:11  
**deliberation** 6:16,21  
 9:15  
**deliberations** 3:2 8:21  
**delve** 249:13  
**delves** 240:6  
**demonstrably** 168:6  
**demonstrate** 64:9  
 77:20 94:12 107:17  
 128:15  
**demonstrates** 322:8  
**demonstrating** 161:15  
**demoted** 145:5  
**denial** 190:12  
**denied** 330:8 336:20  
 341:20 343:6 348:3  
**denies** 333:10  
**deny** 200:13 343:7  
**denying** 343:11  
**DEOCs** 64:6 78:11

260:14 261:8 263:12  
 263:13  
**department** 1:1 57:4,6  
 57:17 58:9 62:20  
 72:16 80:13 82:16  
 89:4 94:18 98:6 102:5  
 107:6,22 109:22  
 135:9 170:20 235:22  
 254:11 257:13 291:18  
 315:3,14 318:16  
 332:19,21 344:18  
 346:13  
**department's** 7:11  
 56:14 61:13 64:5  
 349:3  
**departmental** 317:8  
**Departments** 315:16  
**depend** 349:20  
**dependent** 10:9 47:17  
 52:7  
**dependents** 14:12  
 34:19  
**depending** 31:16 33:19  
 73:21 262:11 269:2  
 275:4 283:6 285:14  
 302:19 303:3  
**deployed** 135:21  
 233:17  
**depression** 120:1  
 121:12 192:12  
**depressive** 353:12  
**deputy** 2:14 4:8,16  
 232:1 306:3 331:22  
 332:15  
**derived** 132:10  
**describe** 224:12 229:22  
 287:8,9,14 314:4  
**described** 217:22 230:1  
 252:18 253:17 257:4  
 272:3 277:4 300:3  
**describing** 83:8 300:19  
**description** 217:10  
**descriptions** 312:11  
**deserve** 202:13  
**Designated** 2:15 5:4  
**designed** 249:1  
**designers** 133:7  
**desirable** 13:19  
**desire** 107:8  
**desired** 69:22  
**desires** 303:4  
**despite** 190:11  
**destroys** 235:8  
**destructive** 210:6  
 245:12  
**detail** 111:5 130:2  
 173:11 344:21  
**detailed** 23:5  
**detect** 90:5

**detected** 315:9  
**determination** 189:10  
 271:14,15 316:14  
 317:18  
**determinations** 320:16  
**determine** 41:14 42:6  
 274:6 308:4 309:1,6  
 356:1  
**determined** 38:12  
 350:16  
**determines** 316:18  
**determining** 313:9  
**deters** 235:7  
**detracts** 244:20  
**detrimental** 244:15  
 266:17  
**devastating** 126:11  
 235:20  
**devastation** 126:14  
**develop** 60:19 179:1  
 194:12 227:6 250:15  
 256:12 281:16  
**developed** 90:16  
 187:22 242:20 294:1  
**developing** 15:6 105:22  
 209:10 241:17 242:22  
 243:3,9 249:13  
**development** 129:8  
 209:11 226:16 291:10  
**devise** 85:19  
**dialogue** 213:8 227:17  
**dichotomous** 210:11  
**died** 134:18  
**difference** 12:8 85:21  
 86:3 146:20 151:3  
 160:11 163:3 164:7  
 219:6 310:16  
**differences** 40:9 86:12  
**different** 13:9 18:19  
 28:14 31:16 49:9 78:1  
 85:13 86:10,15 89:1  
 93:4 99:3 112:4,13,15  
 113:3,4 122:3 144:11  
 150:6 152:20 193:19  
 201:10 213:5 264:1  
 269:2 287:4 313:17  
 322:8 336:3 341:9  
**differently** 88:16 94:19  
 144:17,19  
**differs** 310:15  
**difficult** 35:20 80:14  
 96:21 101:6 164:15  
 164:16,19 259:1  
 268:22 284:8 290:16  
**difficulties** 190:21  
**difficulty** 24:1 26:20  
**DiFrancesco** 27:10  
**digital** 185:15  
**dignity** 187:15 233:19

240:7,20 241:3  
 243:17 259:7,16  
 280:9 281:11 283:14  
 285:22  
**dimensions** 121:21  
**direct** 21:2 162:2  
 225:20 255:1 256:18  
 273:10 288:4 334:17  
**directed** 41:16 43:20  
 60:21 90:2,16 241:8  
 299:17 338:3  
**direction** 53:21 64:14  
 80:1 107:10  
**directive** 239:19 299:5  
 299:6 333:21  
**directives** 242:14  
 250:13 280:15 326:5  
**directly** 16:22 17:1  
 32:20 128:19 225:15  
 238:9 242:7 277:7  
 332:4 347:15  
**director** 2:13,14 3:6 4:2  
 4:4,8,12,14,16 7:6  
 55:19 231:8 232:1,3  
 232:15 234:9 305:22  
 306:1,3,15,20 308:2  
 324:14 332:15,17  
 334:15 335:14,16,20  
**directs** 335:19  
**disabilities** 334:21  
 339:22  
**disability** 320:14  
 328:16 353:15,16  
 354:1,14,18,22  
**disadvantage** 135:5  
**disadvantages** 134:17  
**disagree** 180:11 295:3  
**disagreement** 216:1  
**disbelief** 202:15  
**disbelieve** 199:14  
**discernable** 319:13  
**discharge** 321:11 322:1  
 322:12 328:9,14  
 347:6 353:14,15,16  
 353:22 354:22  
**discharged** 342:12  
 353:9,21  
**discharges** 320:6,9,13  
 322:6  
**discharging** 214:16  
**disciplinary** 152:5  
 239:14 318:16,17  
 325:3  
**discipline** 90:22 165:15  
 240:21 266:18  
**disciplined** 225:17  
**disclosed** 200:5  
**disclosure** 192:7  
 193:12 203:16 210:5

**discourage** 58:22 59:1  
 254:6 258:7  
**discourages** 253:1  
**discouraging** 282:15  
**discover** 196:3  
**discovery** 38:15 132:13  
**discretion** 316:17  
**discretionary** 9:21  
**discrimination** 264:17  
**discuss** 6:14,19 40:13  
 56:14 68:13 232:13  
 239:1 244:6 249:5  
 287:14  
**discussed** 113:14  
**discussion** 5:21 15:16  
 22:12 31:20 57:14  
 233:10 238:20 264:20  
 266:4 271:8 290:15  
 333:8 338:21  
**discussions** 117:22  
**dismissed** 352:19  
**disorder** 353:12  
**disparity** 118:8 119:5  
 254:16  
**dispelling** 270:3  
**display** 127:19 151:5  
**displayed** 129:15  
**displays** 151:12  
**disposition** 102:14  
 265:3  
**dispute** 275:20  
**disregard** 200:11  
 229:16  
**disrupted** 228:11  
**disruption** 192:6  
 225:20  
**dissected** 202:22  
**distilled** 316:13  
**distilling** 316:13  
**distinguished** 7:14  
 231:5 258:19 310:21  
 340:14  
**distress** 25:15 28:9  
 43:11 121:10  
**distributed** 135:12  
**district** 1:10,11 340:4  
**disturbed** 208:12  
**disturbing** 223:2  
**diverse** 247:7  
**diverted** 34:18  
**divides** 235:7  
**division** 250:1 291:18  
 335:9  
**divorce** 189:5  
**DLA** 351:7  
**DMDC** 86:5,13 110:3  
 124:12 132:12 155:20  
**Doctor** 108:5 173:14  
**doctor's** 23:6

**document** 62:6 264:10  
**documentation** 23:6  
**documented** 113:22  
**documenting** 299:10  
**documents** 309:17  
 333:16 335:15,22  
 346:22  
**DoD** 3:3,6,8 4:9,12,14  
 7:6,8 8:3 14:5 18:20  
 21:20 22:7 52:8,9  
 55:19,20 58:6,12 59:6  
 69:18 74:9 87:6 88:5  
 88:6,8 249:3 252:11  
 256:11 278:13 279:5  
 305:14,22 306:2,16  
 308:14 323:11 325:7  
 333:19,20 338:3  
 349:11 351:3,9  
**DoD's** 7:10 56:5 255:18  
**dodge** 228:7  
**doing** 25:20 40:18  
 48:14 70:9 73:18  
 74:17 75:21 78:21  
 79:5 103:15,17 104:1  
 105:22 141:5,8  
 144:12 152:13 153:8  
 159:10,18 163:12  
 164:13 168:19 174:4  
 179:15 212:19 213:3  
 222:1,6 271:12  
 277:21 284:17 286:12  
 288:2,3,22 297:5  
 301:4 304:3  
**dollar** 41:14 42:6  
**domestic** 204:16  
**door** 206:19,21  
**double** 27:11,15  
**doubt** 271:14  
**Douglas** 2:9 4:17 306:4  
 323:1 331:18  
**downstream** 308:7  
 351:6  
**downward** 260:6  
**Dr** 3:7,10,12,15,19,21  
 7:9 55:19 71:5 74:1,3  
 75:12,17 76:18 77:6  
 80:11 82:12,13 83:19  
 84:2,7 85:4,20 86:12  
 86:20 87:2,5,9 90:1  
 92:2,7,21 93:2,15  
 94:8 97:4 98:15  
 103:19 105:10 106:2  
 109:1,6 110:8,11,21  
 115:4,6 116:4,8,12,16  
 119:8,12,14,15  
 123:22 126:15 133:18  
 133:21 134:15 135:1  
 138:18,18,19 139:5,9  
 139:17 143:17,19

155:5,10 156:12  
 157:9,20 158:19  
 160:15 161:12 164:1  
 165:4,7 166:5,9,11  
 167:20 169:8,12,15  
 169:21 170:5,8,19,22  
 171:10,12,16,20,21  
 172:8,17,20 173:2,6,9  
 173:18,19 174:3  
 176:16,20,20,22  
 177:9 178:21 179:10  
 180:5,9,13,15,16  
 181:6 182:10 183:20  
 183:22 184:2,4,9,10  
 184:15 198:1,3,4,5,6  
 198:10 200:12 214:14  
 214:21 215:2,7  
 217:10,19 219:17  
 221:2,21 222:16,20  
 224:2,7,14 226:6,10  
 226:13,21 227:2,16  
 228:16 229:21 230:6  
 230:10,17,18  
**draft** 346:20  
**dramatic** 151:4 195:2  
 210:14  
**dramatically** 209:10  
**draw** 117:5 144:7  
**drawn** 126:1  
**dress** 191:5  
**dressed** 218:6 219:2  
**drew** 207:11  
**drinking** 262:12  
**drive** 164:22 190:1  
**driven** 262:5  
**driving** 174:21  
**drops** 148:19 209:10  
**drove** 146:16  
**drug** 193:1 262:12  
**drunk** 194:17  
**dry** 181:13  
**due** 107:15 313:6  
 327:19  
**duration** 124:11  
**duties** 332:2  
**duty** 14:3,13 49:14,20  
 49:22 50:1,5 71:1  
 125:20 135:20 157:1  
 247:6 301:5 335:4  
**DVA** 346:1  
**dynamics** 3:9 108:18  
 129:14 130:7 192:7  
 197:8 219:10,14

---

**E**


---

**E** 3:1  
**E-1** 304:9  
**E-4s** 90:17

- E-5s** 90:17  
**E5** 233:6  
**ear** 204:12  
**earlier** 46:19 49:3 64:11  
70:3 122:22 126:22  
133:1 137:22 141:13  
178:13 181:10 196:16  
197:16 225:6 284:11  
287:8 294:13 296:21  
296:21 298:4,6,6  
**early** 69:12 81:18 355:2  
**earn** 26:19 29:4 70:12  
**earnestness** 208:15  
**easier** 15:5 41:1 168:11  
194:4 202:5  
**easily** 14:18 17:15,15  
30:12 52:6  
**easy** 13:6 14:15 28:16  
30:3 106:1 168:9  
234:12  
**ECI** 139:21 140:3  
**educate** 70:18 190:20  
212:9 235:19 265:13  
284:10 287:10  
**educated** 111:15 282:5  
326:4 339:8  
**educates** 248:4 266:7  
**educating** 266:13  
273:20  
**education** 196:8,11,14  
253:15 265:20 273:18  
282:18 289:11 291:11  
295:9  
**educational** 292:4  
**effect** 25:19 33:11  
34:15 73:6 114:2,11  
127:22 129:22 130:3  
132:6 148:5 157:14  
158:7,9,12 196:17  
209:14 314:11 317:4  
322:4  
**effected** 322:3  
**effective** 32:13 61:8  
81:19 142:3 169:3  
196:10 210:15 215:6  
215:8 227:15,15  
250:16 288:16 290:11  
**effectively** 250:20  
251:13  
**effects** 128:14 129:18  
130:4,6,13 134:9  
156:1 163:17 195:2  
196:11 197:7 221:10  
235:20 238:11 266:8  
289:19 328:18  
**efficacy** 131:1  
**effort** 73:17 88:14 89:21  
94:17 102:22 103:2  
103:18 133:5 152:1  
176:14 212:5 220:5  
240:21 253:14 257:20  
258:3,9 259:4 276:9  
282:18 284:22 292:6  
295:9  
**efforts** 56:15 66:16  
101:18 104:3 131:20  
132:4 134:4 135:9  
210:1 236:11 243:2  
243:15 246:5 248:3  
252:4,8 255:5 256:16  
261:13 263:8 265:9  
265:10 266:20 267:5  
287:9,10  
**eight** 95:9,10,11 140:18  
249:1  
**Eighth** 111:1,7 169:10  
169:21 172:19  
**either** 16:8 24:8 26:13  
30:13 31:22 34:18  
60:5 61:22 73:21 80:9  
100:7 102:6 112:20  
113:13 114:22 115:7  
117:8,15 131:4  
142:10 162:4 185:16  
185:18,19 202:12  
205:3 241:10 261:17  
269:5 282:7 303:6  
319:9 326:9 330:9  
342:1 347:15 349:13  
**either/or** 22:4  
**elaborate** 134:3  
**electronically** 342:1,6  
**element** 103:12 161:2  
285:5 326:9  
**elements** 65:18 150:4  
160:20 165:21 243:16  
253:17 268:13 282:1  
287:4 304:12  
**elevate** 334:5  
**eligible** 49:10,22  
**eliminate** 7:12 235:2  
253:11 296:7  
**eliminated** 270:15  
**eliminating** 267:1  
**ELITE** 242:20  
**ELITE-Like** 243:3  
**Elizabeth** 1:12,14 5:9  
**email** 345:13,16  
**embraces** 211:9  
**embracing** 284:7  
**emerge** 142:2  
**emergency** 23:8  
**emotional** 203:4 226:8  
**empathy** 266:3,8  
287:12,17  
**emphasis** 89:19 176:7  
181:5 240:8  
**emphasize** 63:10  
117:21 133:13 134:4  
175:20 190:17  
**emphasized** 136:11  
**emphasizing** 167:2  
**empirically** 125:6 132:9  
167:4  
**employed** 222:2  
**employee** 113:10,10  
147:7 148:3,10,15  
150:10 152:19  
**employees** 47:22 111:7  
111:21 112:2,8  
114:21 116:1,18  
119:1 120:12 121:2,4  
122:7,10 129:2  
141:16 142:8,22  
143:3 144:4,10  
145:20 146:4,19  
147:10,19 148:7  
149:18 150:6,9,19  
151:1,8,14 152:10  
153:1 161:18 162:3  
162:15 163:2 177:22  
182:11,21 332:20  
349:19  
**employer** 47:21 147:11  
**employer's** 48:3  
**employment** 114:1  
123:14  
**empower** 243:19  
**empowered** 70:8  
**empowers** 245:2  
**enable** 243:18 250:13  
**encompasses** 44:18  
237:11  
**encounter** 119:9  
205:19  
**encountered** 115:15  
116:1 120:22 121:4  
**encountering** 119:4  
**encourage** 53:15 133:7  
134:4  
**encouraged** 237:1  
**encouragement** 92:10  
188:3  
**encourages** 245:21  
**encouraging** 91:11  
160:2 162:14  
**endorse** 53:4  
**endured** 114:21 118:12  
**enemies** 209:20  
**energizing** 212:5  
**energy** 29:21  
**enforced** 21:13 267:7  
**enforcement** 53:12  
239:11 241:11  
**engage** 150:20 151:14  
183:4 238:12 250:14  
**engaged** 167:11 179:9  
251:8 260:9  
**engagement** 113:2  
148:10  
**engagements** 247:15  
256:5  
**engaging** 151:2 159:17  
**enhance** 237:17 239:13  
243:10  
**enhanced** 256:8  
**enhancements** 241:21  
**enhancing** 69:8 98:7  
234:11  
**enlisted** 80:12 242:15  
265:19 288:21 289:2  
289:20 291:17 304:4  
342:17  
**enormous** 176:13  
294:18  
**enriched** 138:4  
**ensure** 236:11 241:6,15  
249:4 281:14 348:8  
**ensured** 34:21  
**ensures** 210:5 247:8  
265:7  
**ensuring** 259:5 349:3  
**enter** 23:12  
**entire** 31:9 111:22  
**entities** 22:8 34:7  
269:22  
**entitled** 24:18 186:4  
**entity** 140:1 168:4  
**entrusted** 233:14  
**environment** 61:9  
66:11,17 137:5  
142:22 178:1 201:5,8  
204:8 211:9 217:15  
241:3 245:21 246:4  
259:6,15  
**environmental** 142:15  
**environments** 266:9  
**envision** 299:18  
**equal** 30:1 125:21  
260:12  
**equally** 121:2,7 126:14  
128:13  
**equate** 283:18  
**equation** 136:22 137:1  
**equip** 178:10 222:13  
**equity** 313:6  
**equivalent** 179:11  
289:3  
**era** 193:7  
**erode** 148:9  
**eroding** 114:11  
**erosion** 141:20 149:5,6  
**erroneous** 322:3  
**error** 83:4,14 140:20  
262:5 313:10 315:6,9  
317:7,11,19 321:16

334:8 336:20 355:20  
356:5  
**escape** 206:20  
**especially** 118:19  
121:22 122:17 154:11  
175:11 193:7 199:11  
201:6 202:8 203:12  
**espouses** 259:16  
**essential** 234:11  
243:17  
**essentially** 130:20  
152:12 177:11 303:2  
315:2  
**establish** 65:7 150:12  
152:14 239:9  
**established** 62:4  
238:17 239:13 248:3  
266:19 300:14  
**establishes** 10:12  
264:11 265:11  
**establishing** 62:9 68:22  
134:1 149:14  
**establishment** 269:17  
**estimate** 64:16 83:13  
175:3  
**estimates** 56:22 133:9  
**ethical** 148:12,16 162:1  
169:4 177:21,22  
216:17  
**ethics** 3:16 109:2  
139:20 140:2,14  
141:3,9 142:8 149:12  
150:8,12 151:10  
152:3,3,8 161:16,22  
165:18 167:22 173:16  
216:5,6,9  
**ethics-related** 150:21  
151:3,5,12 152:1  
**evaluate** 265:10 301:10  
**evaluated** 66:1  
**evaluates** 356:13  
**evaluating** 160:4  
**evaluation** 321:2 341:2  
341:12 343:3,6  
**evaluations** 118:18  
334:21  
**evening** 357:2  
**event** 62:15 95:19  
220:18 257:19 258:5  
283:20  
**events** 129:3 256:13  
257:1  
**eventually** 266:22  
**everybody** 161:18  
180:20 205:2 213:2  
231:3  
**everyone's** 197:18  
**evidence** 10:12 53:14  
61:4,7 65:21 67:9

77:18 96:7 141:21  
147:19 188:18 189:4  
268:2,12 313:22  
316:21 317:7,10,14  
317:15,16 319:19  
321:12 329:20 334:9  
336:22 347:3 348:21  
355:4,20  
**evidenced** 321:16  
**evolution** 11:14  
**ex** 327:6 337:10  
**exact** 209:3  
**exactly** 24:13 44:13  
81:10 92:7 107:6  
156:14 173:2 268:5  
**exam** 53:17  
**examination** 127:21  
**examine** 126:22 318:10  
**examiners** 327:18  
344:1  
**example** 25:5,14 26:2  
26:15 53:8 97:19  
114:7 137:9 150:22  
154:13 156:17 168:21  
172:1 199:20 223:18  
225:12,16,22 247:13  
262:10 279:6 335:7  
**examples** 49:18 54:18  
75:13 192:21,22  
193:5 224:10,18  
225:12 263:3 270:5  
301:1  
**exceeded** 355:11  
**excellence** 259:9  
**excited** 281:19  
**excluded** 144:22  
**excluding** 111:7  
**exclusion** 58:18 257:20  
**exclusive** 188:15  
**exclusively** 88:6 261:16  
322:11  
**excuse** 109:15 119:6  
144:16 170:5 319:5  
**executed** 313:21  
**executes** 236:5  
**executing** 260:9  
**execution** 54:12,20  
264:12  
**Executive** 3:8,16 4:16  
7:8 55:20 109:2  
139:20 306:3 323:17  
333:3  
**exercise** 11:13  
**exercising** 11:11  
**exhaust** 315:20  
**exist** 16:18 54:8 62:7  
**existence** 73:8  
**existing** 13:16 17:9,12  
19:20 20:14 40:19

73:14 78:21 239:22  
250:12  
**exists** 199:2 205:15  
217:1 266:17  
**expand** 248:16  
**expanded** 11:7 238:14  
248:8 264:8  
**expanding** 47:1  
**expect** 6:16 42:12 75:6  
123:12 132:7 155:8,9  
171:21,22 172:11  
209:18 233:15 240:8  
272:15 278:10 289:13  
310:2 327:1  
**expectation** 12:2 27:14  
38:3  
**expectations** 134:5  
159:16 266:1  
**expected** 129:5 130:16  
245:20  
**expedited** 60:22 61:10  
235:15 288:4 295:17  
**expedites** 338:15  
**expenses** 19:7  
**experience** 40:11 64:4  
64:19 66:19,21 69:6  
78:7 85:1 91:9 100:7  
112:9 113:7 115:20  
123:11 136:5 141:17  
142:18 146:14 150:14  
153:16 175:5,8  
185:21 187:6 188:4  
189:14 191:3 194:2  
195:7 201:11 206:6  
217:21 237:19 240:15  
254:17 255:8,9  
261:15 305:20 355:14  
**experienced** 57:1 58:11  
65:22 83:1,9,10 84:3  
112:4,6 115:6 143:11  
143:21 144:5,11,14  
153:2,3,14,15 175:16  
186:13 252:12 260:4  
261:20  
**experiences** 63:12,16  
67:16 68:11 114:6,18  
119:19 126:6 127:6  
130:8 166:18 193:10  
195:1,11 202:9  
217:12 220:22 238:10  
239:2 244:11 255:10  
**experiencing** 59:5  
82:21 164:12,14  
176:10 249:18 252:12  
253:8,9 254:9  
**expert** 124:16 185:2,14  
198:13 220:4  
**expertise** 56:4 232:10  
**experts** 7:15 307:15

**explain** 12:3 82:7,10  
186:22 189:5 341:20  
**explained** 228:15  
**explains** 339:10  
**explanation** 319:8  
**explicit** 187:18 189:12  
**explicitly** 187:17 225:13  
**exploits** 205:13  
**exploring** 260:9  
**exposing** 198:22  
**expressed** 258:20  
**expressing** 167:9 313:3  
**extends** 141:19  
**extension** 346:9  
**extensive** 142:16  
147:21 196:9  
**extent** 27:16 42:14  
48:12 72:11 89:9,12  
100:15 101:8 137:14  
166:14 174:8 261:17  
272:8 297:4 354:6  
**external** 54:15  
**extreme** 192:21,21  
225:11,12,22  
**extremely** 56:3 191:3  
195:8 219:21 220:2  
220:14 221:5,8 233:7  
**eye** 60:12 152:12 153:7  
211:1  
**eyes** 91:4 103:21

---

**F**


---

**F** 2:4,5 3:13,19 108:22  
134:14 183:20  
**fabricated** 208:12  
**face** 63:14 201:2  
**face-to-face** 247:11,14  
**Facebook** 197:6 211:3  
**faced** 117:14 120:13,19  
203:6 320:1  
**facets** 121:16  
**facie** 309:7  
**facilitate** 199:15  
**facilitates** 210:4  
**facility** 25:6  
**facing** 121:18 160:7  
259:1  
**fact** 10:8 19:6 25:11,22  
28:2 29:17 31:8 75:20  
77:19 82:14 86:9 91:7  
91:8 135:18 147:20  
148:20 155:13 162:19  
180:2 195:5 196:4  
197:14 200:16 208:6  
262:22 270:3 272:4  
273:5 280:6 283:17  
284:14  
**facto** 165:18

- factor** 153:18 225:4,5  
226:15  
**factored** 34:17  
**factors** 33:12 43:12  
65:20 118:7 119:15  
119:17 130:5,6,16  
146:11,16 182:16  
261:1,10  
**facts** 55:5 172:15 194:1  
333:17 337:5  
**factual** 89:13  
**faculty** 109:22  
**fail** 206:17  
**failure** 319:5 322:6  
**fair** 49:11 51:22,22  
294:21  
**fairly** 59:14 90:8 142:16  
143:1 206:11 222:7  
349:5 352:1  
**fairness** 111:2 169:22  
313:7  
**faith** 317:2  
**faithful** 244:18  
**fall** 24:14 37:3 284:20  
328:1  
**falls** 102:18 325:2  
**false** 208:3,21  
**familial** 201:7  
**familiar** 19:19 38:7  
219:10  
**families** 212:15  
**family** 18:7 187:21  
190:1 193:15 207:2  
207:22 208:10 211:21  
233:14 267:16  
**family's** 267:17  
**far** 6:20 37:7 52:22  
86:20 90:8 106:16  
120:16 141:19 150:16  
191:13 228:7 280:5  
310:14 322:16 330:15  
330:17 336:1 353:5  
**far-reaching** 146:8  
**fascinating** 180:21  
**fashion** 78:3 316:13  
**fat** 215:22  
**fault** 186:3 323:6  
**fault-finding** 186:14  
**faults** 188:21  
**favor** 11:17 212:12  
330:9  
**favorable** 253:21  
333:13  
**fear** 63:19 110:12 125:3  
126:7,13,16,21 127:7  
128:13,16,19,22  
129:20 130:11,17  
131:4,8,11 132:6,14  
134:7 157:17 206:14  
245:22  
**feared** 129:11 158:9,11  
**fearing** 206:15  
**fears** 99:20,20  
**February** 239:1  
**fed** 77:2  
**federal** 2:15 5:4 10:8,9  
11:22 14:14,16 16:11  
18:15 22:14 23:3  
24:16 27:1,4,6 29:1  
36:5 38:8 40:11 50:14  
51:2 111:8 170:18  
171:1 172:22 345:22  
349:9,19  
**federally** 23:14 24:17  
29:13,14  
**feedback** 64:18 91:12  
237:14 255:17 276:4  
**feel** 20:17 30:6 40:17  
66:12 87:17 98:1,19  
107:20 160:10 174:9  
178:2 189:3 195:8  
218:3,9,19 225:8,9,13  
233:3 268:9,12  
272:18,19  
**feeling** 190:8 218:21  
219:15 272:22  
**feelings** 59:18  
**feels** 147:7 197:10  
208:2 223:14 227:18  
227:20 228:21 229:15  
**fell** 352:11  
**fellow** 109:22 124:12  
187:13 191:16 201:12  
204:1 216:19 233:18  
244:19  
**felt** 26:3 60:15 61:1,2  
97:17 99:15 144:18  
225:19,19 290:18  
291:1 343:9  
**female** 58:10 59:4 60:6  
111:15 188:16 208:17  
261:19,21  
**Ferrell** 2:6 4:2 231:8  
232:6,7,11,15 244:2  
268:3 272:15 277:18  
280:1 291:22 293:4  
299:3 304:14  
**fewer** 56:22 164:4  
246:8,13  
**field** 141:6 168:3  
**fielded** 140:17 142:7  
**fields** 249:4  
**fifth** 249:20  
**Fifty-six** 143:17  
**fight** 251:4 260:1  
**fighting** 298:8  
**figure** 19:13 37:3 88:20  
227:6  
**figured** 74:4 166:1  
**file** 29:15 185:15 212:17  
319:6  
**filed** 106:14 117:10,21  
118:4,5 123:3,3  
342:18,22 348:2  
**files** 335:21 348:13  
**filing** 37:1 112:17  
**filtered** 292:3  
**final** 8:2 27:11,13 46:14  
93:22 119:18 189:10  
209:22 250:8 265:3  
316:2 333:9,16 347:4  
347:5,9  
**finality** 27:14  
**finalize** 45:5 334:1  
**finally** 21:12 30:8  
124:18 134:9 141:21  
151:17 153:9 154:3  
200:19 209:1 213:16  
243:9 248:13 318:12  
**financial** 16:6 26:15  
29:1 142:15 323:20  
**find** 80:15 81:15 96:9  
118:12 139:13 155:8  
155:9 186:2 197:12  
224:11 262:12 286:19  
300:7  
**finding** 16:22 37:12  
94:21 143:1 173:20  
189:12 190:11 193:4  
209:11 270:2 279:2  
318:15 325:8,15  
353:10  
**findings** 3:4 7:10 37:7  
56:6 72:2 101:9  
110:10,21 111:4,22  
118:2,10 120:9  
121:15 122:15 123:9  
140:9 171:20 269:3  
307:7 318:14  
**fine** 9:13 158:3  
**fined** 216:12  
**fines** 34:5  
**finger** 74:11  
**finish** 37:13 195:19  
322:19  
**finished** 55:7 294:20  
322:20  
**firm** 154:11  
**firmly** 162:13  
**first** 10:6 22:13 24:4  
44:2 55:8 57:17 60:16  
60:18 64:4 69:3,7,8  
75:17,21 79:9 80:6  
81:11 90:18 101:1  
107:3 126:11 128:6  
131:16 134:17 141:12  
149:10,13 151:21  
152:11,22 153:4,21  
154:18 164:13 167:20  
181:10 199:20 213:11  
235:3 236:8,13 237:7  
238:18 239:6,10  
241:10 242:6 247:2  
251:2 255:3,14 259:9  
259:20 266:5 268:1  
269:18 272:16 273:21  
280:7,18 289:6 291:4  
299:7 303:18 311:15  
314:9,9 341:17  
342:10 355:22  
**first-line** 90:4 91:5  
93:19 240:16 256:7  
265:14 287:11 289:1  
289:20 290:3  
**first-term** 265:18  
**firsthand** 238:15  
**fiscal** 57:2 312:13,15,16  
324:11 328:22 329:1  
329:5 331:13 338:1  
**fit** 283:1  
**fitness** 320:22 341:15  
341:17  
**five** 36:10 143:10,12  
159:9 174:5 230:19  
327:17 329:13 330:17  
338:12 344:1 346:19  
348:22 352:15  
**five-minute** 55:14 108:9  
305:5  
**Fizzled** 171:9  
**flag** 76:12 77:12 335:18  
335:19  
**fleet** 247:14 254:20  
255:16 256:5,19  
257:2  
**flesh** 18:17 55:4  
**flexible** 266:12  
**Flight** 291:14  
**flipping** 128:12  
**flirtatious** 194:18  
**Floor** 1:12  
**flow** 44:19  
**fly** 220:4  
**focus** 6:22 53:1 60:10  
107:19 110:11 112:15  
113:6 115:22 118:1  
156:22 159:19 160:10  
166:18 177:7,15  
178:16 185:19 198:15  
238:2 247:1 248:20  
249:20 250:8,19  
256:15 262:14  
**focused** 42:10 68:20  
92:4 113:18 131:2  
158:22 167:1,18,19  
205:16 224:8,14

234:6 243:1,3 259:4  
289:17  
**focusing** 110:7 125:2  
159:15 168:16,22  
177:18 256:6 293:22  
**FOIA** 157:9 348:17  
**folks** 48:10 80:20 81:10  
88:18 94:18 95:2,3  
99:17 102:4 163:8  
273:20 283:20 320:17  
321:21 326:8,14  
**follow** 17:7 37:12 91:6  
102:20 105:2 112:10  
177:12 186:15 222:15  
274:11  
**follow-on** 223:5 256:12  
**follow-up** 96:18 144:21  
**followed** 73:20 113:5  
115:14 161:4  
**following** 6:21 24:7  
53:12 61:18 65:6  
67:21 69:20 75:11  
126:5 191:10,12,16  
192:2,4 195:2 197:15  
221:10 338:2  
**follows** 122:18 302:13  
303:10  
**fond** 101:2  
**force** 2:13 4:8,16 66:9  
70:18 83:6 111:2  
169:19,19,20,22  
170:1,4,7,11,13  
192:22 232:2 259:11  
260:8 261:16 262:2  
263:10 264:2,3,5  
266:16 267:5 279:18  
287:14 289:4 301:18  
306:4 308:8 316:6  
319:15 322:14 323:3  
323:14 324:15,15,19  
325:10 327:3 329:11  
330:14 340:16 351:6  
356:17  
**Force's** 258:22  
**Force-perceived**  
263:14  
**Force-specific** 314:6  
**forced** 32:16  
**forces** 43:20 92:8 254:1  
281:17  
**foreign** 233:17  
**forensic** 53:17 198:11  
**foresee** 38:10  
**forever** 50:6  
**forfeited** 31:11 34:20  
43:19 46:4  
**forfeiting** 46:6  
**forfeiture** 31:21 32:12  
33:10 34:11 35:11

44:16 46:13  
**forfeitures** 18:4,7 31:15  
32:12 34:14  
**forget** 99:18 292:18  
**forgot** 311:3  
**forgotten** 207:21  
**form** 17:21 58:12 67:6  
69:2 80:2 86:5,6,8,8  
86:13,15 115:7  
120:22 189:19 223:12  
224:22 245:3 261:20  
264:4 275:19 319:10  
**formal** 112:17 113:22  
117:12 122:20 123:2  
152:15 153:22 255:16  
270:18 276:3 285:6  
285:20 298:13 337:13  
**formations** 237:9  
**former** 11:10 137:21  
335:7  
**forming** 286:14  
**forms** 57:16 112:4  
216:18 266:6  
**formulated** 40:22  
**fort** 229:10 242:3  
339:18  
**forth** 16:18 21:14  
126:20 161:4,11  
242:13 300:17 321:12  
321:17  
**forthcoming** 68:6  
**forum** 73:14,22 78:21  
79:18 265:7  
**forums** 73:17  
**forward** 10:10 30:9 35:8  
53:16 71:5 95:2,4,18  
104:18 145:18 146:20  
147:1,4,6,9,10,13  
148:4,8,17 149:3  
150:15 152:11,16  
153:3,16 162:15  
175:5 176:10 178:2  
182:13 190:18 192:17  
199:1 243:20,21  
246:15 251:16 253:5  
258:12 271:17 277:2  
332:9,10 333:15  
340:7,11  
**foster** 245:20  
**found** 22:22 66:14 84:2  
84:12 94:19 99:10  
119:20 121:11 122:8  
171:15 172:15 176:20  
189:8 278:7 343:1  
**foundation** 235:9  
**founded** 240:20 241:4  
277:15 278:20 349:17  
**four** 43:18 79:12 80:4  
275:9 336:8 344:9

345:6 352:17  
**four-star** 292:3  
**four-year-old** 200:4  
**Fourth** 241:22 249:11  
**frame** 36:2  
**framework** 124:16  
**frameworks** 55:1  
**Francine** 331:22  
**frank** 159:1  
**frankly** 72:8,18,22  
79:16 101:1  
**fraud** 142:15  
**freedom** 157:7 259:14  
**French** 184:6 198:6  
231:20  
**frequency** 127:4,5  
128:6  
**frequent** 320:5 322:7  
324:13 352:1  
**FRIDAY** 1:7  
**friend** 211:3 223:12  
**friends** 112:20 187:22  
188:4 193:16 201:9  
202:3 204:11 210:22  
211:4,5,21 212:15  
218:7 223:9 226:8  
228:5  
**friendship** 193:6  
**friendships** 187:22  
190:7 224:22 225:3  
**frightening** 203:8  
**front** 19:8 101:22  
157:22  
**frontiers** 260:10  
**fruits** 103:8  
**frustrating** 145:10  
**fuels** 234:5  
**fulfill** 241:2  
**fulfilling** 48:7  
**full** 6:9 73:6 93:9  
177:14 209:19 241:3  
320:2 341:7 347:14  
352:18,19  
**fuller** 54:2  
**fully** 57:9 73:5 240:8  
**fun** 203:18 215:12  
**function** 221:22 222:3,5  
326:10 335:10  
**functional** 319:15  
**functioning** 209:15,16  
**functions** 135:22  
**funding** 35:16 50:22  
51:2,3 54:11  
**funds** 51:1,14  
**furloughs** 327:21  
**further** 18:17 40:13  
62:3,21 66:17 80:2  
87:13 96:14 108:1  
120:21 146:9 196:15

221:12 230:12 236:8  
238:3 246:17 305:2  
318:8  
**future** 192:17 195:12,16  
203:2 209:18 241:21  
249:16 265:9  
**FY** 331:4 345:4  
**FY12** 246:10 260:6  
**FY14** 246:9 260:3  
**FY15** 101:14

---

**G**


---

**gain** 63:21 157:12  
**gaining** 259:22  
**Galbreath** 2:2 3:7 7:9  
55:20 71:5 74:1,3  
75:12,17 76:18 77:6  
80:11 82:12,13 83:19  
84:2,7 85:4 86:12,20  
87:2,5,9 90:1 92:2,7  
92:21 93:2,15 94:8  
97:4 98:15 103:19  
105:10 106:2  
**Galbreath's** 85:20  
**gamut** 320:2  
**GAO** 335:22 336:3  
**gap** 16:13 22:13 23:15  
24:6 27:1 29:14 48:13  
64:15 240:14  
**gaps** 12:20 13:2,2 14:4  
47:17 49:5,13,16 52:7  
**garbage** 101:2,2  
**garner** 324:21  
**garnish** 26:13  
**garnishing** 21:13  
**gather** 263:6 301:14  
309:17 329:19  
**gathered** 196:5  
**gauge** 141:4 164:1  
173:21 237:19  
**gender** 61:14 109:19  
111:1 112:6 115:7  
124:14 125:7 130:19  
132:12 169:22 170:2  
171:3,3,7 252:10  
**general** 3:6 4:9 7:9 11:6  
31:18,20 55:18 58:7  
71:7,12 76:6,12 81:18  
81:22 96:19 102:4  
104:6 108:5 112:6  
115:7 121:17 123:13  
164:8 170:12 172:12  
178:14 182:11 211:11  
229:16 236:1 237:9  
242:10 249:22 257:15  
262:15 263:14 264:2  
265:5 266:14 271:7  
271:10,18 274:5  
275:16,20 304:8

305:15 313:15 318:7  
 318:8 333:20 343:21  
 344:18 346:10 348:6  
 350:5 353:2  
**general's** 8:4 74:19  
 249:22 271:11 276:5  
 348:8  
**general/flag** 62:15  
**generalizable** 78:5 83:6  
 160:12  
**generalize** 101:9  
 123:14 354:21  
**generally** 16:13 130:9  
 130:12 199:3 292:16  
 307:19 311:14 315:13  
**generals** 58:8 268:15  
 323:11  
**generate** 176:21  
**generated** 83:13  
**gentleman** 354:17  
**gentlemen** 305:10,19  
 357:2  
**genuine** 321:16  
**George** 134:21  
**Georgetown** 134:22  
**getting** 28:18 73:9 91:4  
 92:3 100:20 123:22  
 159:14 178:20 194:13  
 200:1 212:16 220:13  
 222:4 227:19 271:20  
 279:10 286:21 304:5  
 342:4  
**Ggeneral's** 308:7  
**girl** 203:18  
**give** 10:16 66:10 70:10  
 76:3 90:18 92:9 142:5  
 152:2 168:12 184:18  
 196:22 210:14 226:11  
 234:3 253:5 291:8  
 300:20 313:12,14  
**given** 59:7,12 66:4  
 101:22 107:7 133:9  
 155:15 182:3 194:8  
 197:9 217:7,13  
 249:16 290:2 357:1  
**gives** 52:19  
**giving** 18:22 63:13  
 223:4  
**glad** 74:16 94:11  
**gluttons** 55:22  
**go** 9:17 14:15 22:20  
 28:22 32:20 35:3,11  
 37:10 40:14 45:21  
 50:1 77:1 80:6,22  
 92:11 93:19 95:14  
 104:18 111:4 114:10  
 128:3 130:2 138:9  
 143:14 146:14 154:1  
 157:22 165:12 172:11

175:14 180:6,7  
 190:14 191:9,13  
 203:21 204:15 205:4  
 213:20,22 218:3  
 220:5 221:16 225:2  
 227:21 247:1 267:20  
 272:21 276:5 278:21  
 280:20 285:15 298:13  
 302:18 309:12 311:21  
 314:6 326:11 327:2  
 341:3 343:12,14  
 350:8 353:2  
**goal** 34:20 61:3 70:10  
 244:8 247:4 250:20  
**goals** 151:21 152:4  
 300:12  
**goes** 16:22 31:13 48:3  
 86:21 100:12 179:6  
 181:2 188:7 226:17  
 272:10 283:4,5 284:6  
 292:13,19 296:7  
 302:22 310:12  
**going** 6:7 9:6 20:5,7,14  
 22:20,22 24:12 26:14  
 34:3,6 38:19 40:20  
 46:10 50:5 67:15,17  
 73:1 78:9 79:18 80:2  
 81:14 85:11 87:15  
 88:9 90:6 92:14 93:21  
 95:13,21 96:21 98:5,6  
 98:14,22 100:2,2,7,8  
 101:9,11,12,12,19  
 104:9,11 105:17  
 106:21 107:1,4,6,7,11  
 107:18,19 111:4  
 115:21 128:2 137:10  
 137:13 149:3 152:18  
 153:2,5 155:13 158:3  
 161:10 174:9 176:19  
 176:21 177:2 180:2  
 184:12 194:20 195:15  
 195:17 197:11 199:18  
 202:17,20 203:14  
 211:22 213:9 215:15  
 215:17 216:15 220:4  
 220:12 221:4,12,13  
 222:8,9 226:3 228:4  
 229:8 250:17 269:15  
 269:19 271:17 273:4  
 274:4 276:15 280:12  
 280:18 281:2,12  
 282:19 293:14,16  
 296:2 299:2 305:11  
 314:5 322:17  
**gold** 115:9  
**good** 5:3,9,11 9:2,14  
 10:16 29:19 41:18  
 42:4,16 48:22 56:9  
 63:16 66:15 77:5

78:14 79:4 82:19 90:9  
 90:22 91:20 93:21  
 101:1 103:3,16 108:6  
 109:7 134:15 138:19  
 149:7 150:8,22  
 183:13 184:10 189:3  
 193:15,15 194:4  
 195:22,22 204:2  
 210:12 213:13 228:5  
 232:7,8,11 240:20  
 251:22 258:18 266:18  
 280:1 284:3 285:16  
 297:10,11 298:1  
 299:22 306:10,12,14  
 308:12 309:11 313:2  
 317:2 321:12 331:17  
 340:12 343:9 357:2  
**Gookin** 2:8 4:11 305:22  
 306:9,10,14 308:1,17  
 350:14 351:5,19  
 352:7  
**gossiped** 114:8  
**gotten** 207:20 287:19  
 320:16  
**governing** 27:12  
 314:22 317:4 319:3  
 326:5 333:5  
**government** 21:15 22:7  
 27:4,6 35:21 46:5,6  
 50:14 140:22 185:17  
 187:20 189:16 218:8  
 314:11 317:2 327:21  
**grades** 248:5 323:17  
 333:2  
**graduate** 124:19 339:15  
**grant** 10:15 334:15  
 336:18 341:18 343:12  
 347:11  
**granted** 16:12 316:18  
 324:10 329:8,10  
 330:1,2,4 344:8  
 347:17  
**grants** 333:12 336:19  
**granularity** 84:10  
**graph** 116:13,16 120:10  
 120:20 165:3  
**graphed** 120:6  
**graphically** 127:18  
 128:5 129:15  
**graphs** 119:2  
**grass** 287:7  
**grass-roots** 240:18  
 280:16 287:11 292:6  
**gravity** 245:7 276:8  
**gray** 58:20 168:18  
**great** 13:10 24:3 31:3  
 102:22 111:14 139:15  
 139:16 168:16 169:15  
 181:5 183:16,20,22

187:14 202:1 212:19  
 213:3 233:6,14 289:1  
 297:12 302:7  
**greater** 84:10 127:22  
 157:18 181:20 235:17  
 337:14  
**greatest** 69:10 251:8  
**green** 2:12 15:12 16:15  
 16:21 17:18 31:15  
 32:11 33:15 34:8  
 35:13,17 36:12,17  
 37:17 44:12 45:7  
 49:13,16 50:4,18,21  
 54:5 55:9 108:10  
 115:14,22 121:2,19  
 122:4 139:10  
**grievances** 117:21  
**ground** 90:12 249:12  
 259:22  
**grounded** 125:6 167:3  
 200:20  
**grounds** 76:13 191:8  
**group** 7:15 73:13 95:11  
 115:22 117:5 121:3  
 127:3 143:19 189:18  
 191:14,15 192:6  
 197:8 238:2,20  
 262:15 264:18 265:21  
 266:1,3 275:1,7  
 302:18 303:7,8  
**groups** 69:5 79:1  
 121:12 158:11 160:3  
 255:1 274:19 298:20  
 299:8 302:5  
**grow** 216:2  
**growing** 234:20  
**grownups** 216:6  
**GS-13** 333:2  
**GS-15** 323:17  
**guarantees** 314:10  
**guard** 4:21 196:17  
 306:7 330:13 335:5  
 344:17 345:7 346:3  
 346:11 347:12,15  
 348:11,19  
**guess** 18:1 25:13 36:2  
 41:8 46:18 49:2 53:22  
 55:8 73:1 184:8  
 220:17 227:6 268:11  
 278:18 292:9,17  
 293:12 295:6  
**guidance** 168:12 245:4  
 245:15 250:12 274:21  
 328:13  
**guide** 149:15 165:9  
 271:7,9 339:11  
**guidelines** 165:20,21  
**guilt** 19:10 189:10,13  
 190:11

**guilty** 22:18,22 23:15  
27:3 71:14 189:8  
193:4  
**guy** 202:1,11 205:3

---

**H**

---

**half** 59:4 115:15 116:22  
261:19 262:1 312:9  
341:3  
**hallway** 188:12 189:16  
**halted** 171:5  
**hand** 175:14,14 180:7,7  
180:8 263:2 286:22  
**handful** 229:4  
**handle** 285:7 345:1  
**handled** 25:9,9 88:5,6  
96:21 269:1 292:17  
297:11 347:18 348:4  
**handling** 310:14 354:18  
**handoff** 303:14  
**handover** 50:9  
**hands** 106:20 272:11  
**happen** 24:13 118:3  
132:5,7 148:4 160:6  
163:11 202:18,20  
215:8 218:12 221:10  
226:3 228:10 278:17  
**happened** 25:4 105:6  
153:17 156:21 157:2  
164:18 170:12,15  
189:5 190:19 200:14  
203:17 220:22 356:5  
**happening** 151:19  
152:19,21 154:6  
174:20 176:3 179:2  
239:4 284:12 298:3  
301:15,16  
**happens** 24:10 26:5  
106:11 149:20 154:2  
163:12 174:15 181:12  
182:17 192:4 205:1  
217:11 229:17 272:12  
293:10 325:2  
**happy** 123:20 156:4  
**harass** 182:22  
**harassing** 211:22  
**harassment** 90:20  
109:13 110:2,6,16  
112:7 114:22 115:8,8  
120:14 124:6,17  
126:6 129:7,9 131:3,6  
135:10,16 136:14,16  
137:2 143:2 159:5  
172:4 175:12 182:15  
182:17,18 232:16  
233:8 259:17 263:11  
**hard** 74:11 101:5 164:1  
188:9 228:1 286:10  
354:21

**harder** 88:22 106:20  
116:17 285:22  
**hardest** 106:2 162:10  
**harm** 163:5 209:4  
**harmd** 21:3  
**harmful** 121:6,7,8  
**Harned** 2:4 3:15 109:1  
135:2 138:18,18,19  
139:5,9,17,19 143:17  
143:19 160:15 161:12  
164:1 165:4,7 166:9  
167:20 174:3 176:16  
176:22 177:9 178:21  
179:10 180:5,9,16  
**hazing** 240:3  
**head** 4:6 173:18 231:9  
259:2 291:18 350:8  
**Headquarters** 231:10  
232:1 311:18 332:21  
341:13  
**heads** 111:18 274:7  
**healing** 70:12 288:14  
**health** 39:22 126:12  
127:9,14,15,17 149:2  
173:21 219:9 222:12  
**healthcare** 12:15 13:5  
14:21 159:11  
**healthy** 259:6 266:9  
**hear** 7:6,14,18 8:3 31:1  
41:18,19,19 63:16  
87:15 88:9 108:16  
123:20 134:13 136:13  
188:11 189:3 204:8  
244:3 251:20 341:14  
344:14  
**heard** 6:20 10:4,18 18:2  
21:5 23:18 25:16 28:1  
42:22 50:22 60:14  
109:8 125:3 137:6  
141:12 144:2 178:13  
178:14 188:10 190:6  
195:22 199:2 205:10  
208:8,13 212:18  
223:5,16 260:15  
276:8 288:1 310:4  
340:15 341:5  
**hearing** 20:2 56:13  
134:17 160:18 183:20  
218:1 288:22 298:6  
324:10,11 334:13,14  
334:15,17 340:11  
357:3  
**hearings** 12:8 49:4  
316:16 318:10 334:10  
337:13  
**heavily** 289:17  
**heavy** 79:20  
**heightened** 119:22  
**heightens** 103:12

**heinous** 209:6  
**held** 74:8 102:5 104:4  
252:21 292:2 334:13  
334:14  
**help** 12:21 51:9 62:5  
108:6 141:7 160:2  
168:19 182:2 198:20  
199:15 204:4 207:13  
207:21 214:4 217:9  
222:13 240:10 253:6  
255:4 269:22 276:16  
276:18 277:7 279:21  
280:12,17,22 284:15  
284:16 285:18 286:8  
296:1 299:19 305:3  
339:20 357:1  
**helped** 274:16 288:9  
**helpful** 40:8 56:3 154:5  
185:13 220:2,14,20  
278:3  
**helping** 61:3 169:3  
181:3 286:13  
**helpless** 194:16  
**Helpline** 69:18  
**helps** 163:12 220:14  
**herd** 194:11  
**hey** 79:13 160:1 211:21  
**hierarchical** 111:11  
127:2  
**high** 65:1 75:21 84:15  
85:8 104:6,12 121:3  
149:4 181:11 182:1  
254:8 290:8 312:21  
324:20  
**high-level** 324:22  
**higher** 119:11 120:18  
122:9 157:19 158:10  
158:11 304:1 325:1  
338:15,19 341:21  
**highest** 140:5 315:15  
315:18  
**highlight** 74:2 111:5  
127:12 132:2 133:10  
263:4  
**highlighted** 196:2  
**highlights** 187:7 240:21  
260:17  
**highly** 67:1 70:4 140:18  
**hindsight** 94:15 95:22  
202:15,16  
**hire** 344:9  
**history** 82:16 147:3  
**hit** 104:11 168:2  
**hm** 157:20  
**hold** 150:22 152:7  
172:2 211:19 212:7  
253:6 318:10  
**holding** 88:18 118:20  
213:15

**Holtzman** 1:12,14 5:9  
5:10 9:12,14 10:17  
11:18 12:6 14:1,6  
16:10,16 17:6 19:18  
22:9 24:3 30:19 31:3  
32:6,17 33:1,8,13,17  
33:22 35:2,6,9,14,18  
36:14 39:1,10 40:16  
41:6,21 42:19 43:15  
44:4,7,12 45:2,9,12  
46:11,17 47:7,12,15  
48:15,17,21 50:3,7,19  
51:5 52:15,21 53:4,22  
55:2,9,13,18 56:10  
71:6 77:9 81:21 82:4  
82:7 83:16,21 84:5,19  
86:17,22 87:4,8 89:6  
92:19,22 93:12,22  
94:4,6 95:7,10 96:13  
105:2,12,15 106:22  
108:1,4,8,15 115:2,5  
116:3,6,10,15 119:6,9  
119:13 123:18 133:16  
133:20 134:12 138:17  
139:1,7,12 143:14,18  
154:15 163:15 169:5  
169:10,13,20 170:3,6  
170:17,20 171:9,11  
171:13,19 172:6,14  
172:18,21 173:3,7,12  
174:1 176:12,17  
177:1 178:12,22  
179:21 180:6,10  
182:8 183:5,13 184:1  
184:3,14 198:2,8  
214:9 217:3 222:22  
224:5,9 226:5,11,19  
226:22 227:3 229:18  
230:11,19 231:2,14  
231:17,19,22 232:8  
232:12 244:1 251:18  
252:1 258:14,19  
267:10 279:12 292:9  
293:7 294:16 295:1  
295:15 296:19 297:22  
298:15 299:1,22  
301:7,20 302:7  
303:10,13,20 304:10  
304:15,18,21 305:1  
305:10 306:11 307:20  
308:10 312:18,22  
322:17,22 323:5  
331:15 340:6,9  
344:13 349:6 350:11  
356:21  
**home** 35:12,18 168:2  
233:16 259:14 334:22  
**Homeland** 344:19  
**Hon** 1:12,14

**honestly** 160:9 218:16  
**honesty** 131:14 208:15  
**honorable** 5:8 331:17  
**honored** 124:2 232:19  
 340:13  
**hope** 52:10 72:17  
 198:16 342:7  
**hopefully** 5:22  
**hoping** 344:10  
**horizontally** 111:12  
 128:3  
**hospital** 23:7 203:17  
**hospitalization** 192:14  
**host** 239:10  
**hosted** 239:1  
**hostile** 142:21 250:10  
**hotel** 48:1  
**hotline** 4:12 305:22  
 306:15,16 307:1,4,10  
 311:2 351:8  
**hours** 51:14 135:20  
 145:4  
**House** 64:8  
**Houston** 339:18  
**HQ** 4:6,8  
**Huff** 2:9 4:17 306:4  
 323:1,2 331:16,17,18  
 340:7 353:18,19  
 356:13  
**hug** 189:17,18 191:14  
**huge** 176:17 178:19  
 210:19  
**human** 3:9 108:17  
 285:22  
**hundred** 103:20 329:13  
**hurt** 99:21 258:7  
**hurtful** 195:8 223:13  
**husband** 206:22

## I

**ID** 133:15  
**idea** 13:15 20:1 21:20  
 51:13 71:12 74:14  
 75:12 167:11 192:19  
 210:11 229:7 283:17  
 284:7 292:11 298:1  
**ideals** 191:7  
**identification** 262:7  
**identified** 156:11  
 232:22 237:5 240:15  
 338:13  
**identifier** 338:10  
**identify** 69:13 79:8  
 140:4 250:16,22  
 256:13 262:4 263:8  
 295:1 339:1,2  
**identifying** 249:14  
**identities** 163:8

**IDES** 339:21  
**idiosyncrasy** 186:8  
**IG** 4:9,12,14 74:9 87:6  
 88:6,8 102:7 268:14  
 268:17 269:6 272:1,2  
 273:10 274:10 275:5  
 275:10 278:12,13,13  
 279:5 283:4 292:13  
 292:19,22 296:4,16  
 297:17 298:13 300:4  
 300:4,5,7 302:2  
 305:22 306:2 308:14  
 325:7,15 326:10  
 330:18 335:12 336:6  
 336:14 342:22 343:20  
 351:3  
**IG's** 272:10  
**ignore** 188:9 221:14  
 289:21  
**ignored** 144:16,19  
 145:1  
**IGs** 74:9 292:17 295:7  
 311:3,5 325:6  
**illegal** 159:8 208:8  
**illusion** 210:14  
**illustrative** 217:22  
**imagine** 95:19 195:12  
 207:14 323:21  
**IMCOM** 339:22  
**immediate** 22:16 33:18  
 69:17 125:17 151:9  
 235:12 246:16 247:3  
**immediately** 24:7 36:8  
 37:12 207:12 214:4  
 264:21 309:3  
**impact** 3:17 10:22 17:9  
 74:22 110:10 122:12  
 128:22 146:8 163:21  
 167:12 176:8 183:17  
 201:17 244:15 247:3  
 285:18  
**impacting** 196:6 259:13  
**impacts** 98:16 148:10  
 192:10 244:20 286:11  
**impanel** 324:2  
**impaneled** 316:7  
**impeach** 40:1  
**impedes** 235:11  
**impediment** 156:9  
**impeding** 132:13  
**imperialist** 52:22  
**implement** 43:2 68:19  
 149:11 151:21 164:10  
 175:17  
**implementation** 60:21  
 131:1 235:16  
**implemented** 62:14  
 63:5 76:17,19,21  
 103:5 150:7 241:18

**implementing** 243:7  
**implied** 313:22  
**imply** 28:10  
**importance** 21:1  
 129:22 160:18 167:2  
 273:17 275:12 287:12  
 315:18  
**important** 23:17 26:10  
 31:6 37:11,18 65:3  
 67:1 71:10 85:12  
 89:15 90:22 103:18  
 104:10 108:6 126:21  
 131:14 132:2 136:11  
 136:21,22 138:9  
 147:18 148:11 150:16  
 152:21 153:13,18  
 160:20 161:1 174:14  
 180:1 204:13 217:1  
 223:3 227:7 229:1,2  
 233:2 258:2,2,9 261:3  
 274:13 294:19 296:22  
 298:7 300:14 302:16  
 313:7 315:8 317:15  
 323:13  
**importantly** 133:10  
 146:5 147:2 149:19  
**impose** 210:8 213:9  
**imposed** 17:22 31:22  
 34:5 227:18  
**imposing** 282:8  
**impositions** 210:14  
**impossible** 356:6  
**impression** 189:22  
**imprisoned** 31:10,11  
**improve** 51:9 140:7  
 263:7  
**improved** 94:2 263:5  
**improvement** 94:12  
**improving** 242:1  
**in-roads** 236:18  
**inaccessible** 157:4  
**inadequate** 75:2 351:9  
**inappropriate** 69:12  
 113:11,16 245:17  
**incarcerated** 43:19  
**incentives** 152:5  
**incentivize** 53:15  
**incidence** 173:17  
**incident** 80:19 97:20  
 142:10 145:13 146:3  
 146:5 248:22 264:16  
 297:8  
**incidents** 69:19 102:13  
 110:10 141:16 144:4  
 145:15 179:8  
**incivility** 109:13 112:6  
 115:7 120:14 124:6  
 158:22 159:3,7,13,18  
 160:8 166:7,13

167:13  
**inclemency** 334:22  
**include** 41:12 57:22  
 67:12 72:17 125:13  
 193:6 236:13 237:15  
 244:12 249:4,10  
 255:11 260:17 290:14  
 292:5 304:12 337:14  
**included** 62:9 105:9  
 113:20 125:19 228:21  
 252:14 255:17 312:15  
**includes** 8:11 25:14  
 126:17 251:12 254:3  
 265:22 311:8 341:7  
**including** 64:3 112:3  
 185:11 235:14 240:1  
 255:19 258:1 314:7  
 349:1  
**inclusive** 63:2  
**income** 29:4  
**incoming** 242:4,6  
 335:11  
**incomplete** 345:15  
**inconsistent** 18:22  
 259:8  
**incorporate** 17:13  
 19:21 216:22 264:8  
**incorporated** 243:12  
 245:14  
**incorporating** 242:18  
**incorrect** 13:17  
**increase** 64:13 94:22  
 95:1 131:7 246:6  
 249:11 255:20  
**increased** 92:16 94:20  
 120:21 121:7 131:8  
 234:19 246:12 260:2  
 353:17  
**increases** 83:4 100:3  
 147:1,7 148:18  
 328:17  
**increasing** 91:3  
**indicate** 56:22 57:6  
 58:10 254:12 263:13  
**indicated** 56:20 59:4,22  
 60:2 64:19 67:9 78:6  
 82:21 91:10,14,20  
 96:19 112:9 254:8  
 336:1  
**indicates** 49:18 61:4  
 78:15 129:21 234:17  
 336:14  
**indicating** 60:7 66:19  
 236:20 246:3  
**indication** 66:10 278:15  
**indicator** 65:10 149:2  
 175:2 176:5 269:19  
**indirectly** 23:21  
**individual** 21:16 46:2

48:4 65:20 162:17  
210:3 239:1 271:7  
318:22 335:21  
**individually** 212:22  
**individuals** 95:4 114:13  
193:10 259:17 260:21  
260:22 272:17 323:16  
332:14,19  
**indoctrinating** 200:9  
**industrial** 124:22  
**inference** 309:10  
**inflicted** 279:9  
**influence** 59:20 75:4  
96:4 127:3 190:12  
195:15,18 201:18  
**influenced** 146:12  
**influences** 225:6  
**influential** 214:17  
**infographics** 247:10  
**inform** 241:21 262:7  
265:9,13 299:20  
**informal** 122:19 145:2  
178:10 179:1 269:11  
270:1  
**informally** 179:3  
**information** 6:15 7:21  
16:17 19:8 38:1,4,17  
39:6,17 40:3,6 54:3  
67:7,11,19,22 68:6  
72:16 74:7,8,14 75:19  
75:20 76:16 77:1  
79:17 80:15 87:22  
89:3 102:3 105:4,22  
157:7 228:15,17,21  
234:2 238:7 255:4,10  
255:20 256:17 272:9  
273:14 299:10,17  
316:11,12 317:3  
318:19 326:15,17  
327:13 331:5 332:6  
337:10 345:17  
**informative** 41:2  
101:13  
**informed** 236:11  
**informing** 249:5 273:20  
**infractions** 252:16  
**infrequent** 334:10  
**infusing** 248:1  
**inherent** 238:8  
**inhibit** 262:6  
**inhibits** 210:5  
**initial** 6:19 11:8 75:17  
243:13 274:6  
**initiated** 71:18  
**initiative** 60:19 61:13  
73:12 90:2 93:18  
109:3 139:21 240:14  
**initiatives** 3:4 7:12 56:6  
62:3 67:20 68:10,14

68:20 69:21 78:20  
90:11 93:14 235:18  
247:17 254:18  
**injection** 344:10  
**injury** 41:13,15 42:7  
138:6  
**injustice** 313:10 315:6  
315:9 322:13  
**innocence** 19:10  
189:11  
**innocent** 190:11  
**innuendos** 208:19  
**innumerable** 193:8  
**input** 8:12 12:2,3  
238:15  
**inquire** 60:17 196:21  
**inquiry** 17:8 42:9 106:3  
**insensitivity** 229:16  
**insert** 6:8  
**insight** 234:3  
**insights** 140:13 141:10  
223:1 305:20  
**insist** 190:10  
**inspector** 4:9 8:4 58:7,7  
74:19 235:22 249:21  
257:15 265:5 268:15  
271:7,10,10,18 274:5  
275:16 276:5 305:15  
308:7 318:7,8 323:11  
333:19 343:21 348:6  
348:7  
**installation** 241:13  
242:5 265:5,18  
275:15 276:7  
**installations** 79:19  
247:16 339:15  
**instance** 104:11 151:14  
189:3 195:9 215:10  
261:14 262:16 266:3  
300:7 302:2  
**instances** 8:6,8 75:22  
105:4 153:15 179:6  
250:22  
**institute** 3:16 127:13  
238:3 260:13  
**institution** 233:15  
**instruct** 328:8  
**instruction** 242:10,17  
253:18 257:5 264:6  
268:13 339:17 351:9  
**instructions** 76:11  
256:2 281:22 317:9  
**instructor** 124:18  
290:20  
**instructs** 339:22  
**instruments** 85:14 86:5  
**insurmountable** 19:17  
19:19  
**integrate** 248:8

**integrated** 247:13  
339:21  
**integrity** 140:6,10 259:8  
**intelligent** 193:17  
**intend** 168:13  
**intended** 262:20 263:1  
266:4  
**intending** 312:6  
**intensive** 192:15  
238:19  
**intent** 58:19,21 59:10  
65:2,3,11,20 122:9  
145:16 254:5 266:14  
282:14,22  
**intentionally** 144:19  
**intentions** 120:2 122:6  
122:8 213:13  
**interact** 286:1 325:7,18  
**interaction** 248:12  
326:19 337:7  
**interactions** 145:20  
247:12 286:9 323:10  
325:6  
**interactive** 242:21  
**intercession** 265:10  
**interest** 101:22 184:21  
197:18 234:5 244:17  
319:4 324:20,22  
334:4 344:17 352:11  
**interested** 28:8 72:10  
75:10 79:13 100:15  
**interesting** 170:17  
173:20,20 230:8  
281:21 321:18  
**interfere** 254:7  
**interfering** 282:15  
**interject** 199:19  
**internally** 351:3  
**interpersonal** 114:11  
**interplay** 18:2  
**interrupting** 170:7  
**intervene** 69:12 70:20  
91:12 196:7 233:22  
264:15 280:21  
**intervener** 290:20  
**intervention** 89:19,22  
91:9 92:20 129:5  
158:20,22 159:10,12  
160:5,6,9 166:5,17  
167:1,3,7 173:4,10  
201:3 213:1,7 217:8  
325:17  
**interventions** 173:11  
**interview** 309:5,14  
**interviewed** 161:21  
162:2  
**interviews** 309:14  
**interwoven** 18:10  
**intimate** 202:8

**intimidating** 142:14,20  
208:19 217:16  
**intimidation** 212:3  
**intolerant** 129:9 134:2  
**introduce** 198:16  
**introduced** 135:2 285:7  
**intuitive** 268:9,12  
**intuitively** 155:8 269:3  
**inundated** 314:14  
**invaluable** 239:4  
**investigate** 307:18  
311:17  
**investigated** 58:6 66:1  
241:10 307:6 308:5  
333:11 335:13  
**investigating** 79:6  
307:12  
**investigation** 42:8  
94:13,14,19 106:4,5  
190:15 197:11 208:11  
208:18 239:12 262:11  
268:21 272:3 274:6  
275:21 283:4,6 301:6  
309:12,13 311:11,12  
318:8 325:22 350:16  
352:16,18,20  
**investigations** 4:14  
53:13 179:17 180:19  
181:17 241:12 274:12  
306:2,20 308:3,14,15  
343:22  
**investigative** 68:3  
94:15 95:20 273:11  
307:3 315:17 318:2  
325:19,21 336:15  
**investigator** 300:13  
**investigators** 308:22  
**investment** 349:2  
**invite** 97:16  
**invited** 82:18 111:20  
135:6 136:4  
**inviting** 56:11 232:13  
346:3  
**invokes** 205:3  
**involuntary** 62:16,22  
76:7,9,13  
**involve** 105:18 333:17  
334:19  
**involved** 30:5 43:12  
51:19 66:5 115:17  
144:22 163:8 185:4  
300:11,12 331:5  
332:4  
**involvement** 338:20  
343:19 347:21  
**involves** 58:16 149:13  
149:14,17 150:2  
249:20  
**involving** 63:3 145:2

355:7  
**IOG** 349:11  
**island** 296:16  
**isolated** 223:14  
**isolation** 186:14 224:19  
**issue** 9:15,17 19:17  
 25:8 31:4 36:1 38:22  
 39:2,2 40:10 41:9,11  
 41:22 43:16,18 44:2  
 44:20 45:4 46:18  
 51:20 56:16 61:20  
 78:10,13 87:18,20  
 88:13 89:12 96:9  
 107:1,7,20,22 169:17  
 175:20 176:14 177:8  
 181:12 184:17 187:2  
 196:13 206:12 207:4  
 210:8 229:11 232:14  
 235:13 236:13 242:7  
 246:19 249:15 250:21  
 252:5 253:10 255:19  
 260:11 278:14 292:14  
 293:20,22 296:20  
 316:2 317:5 320:4  
 322:11 325:20 338:2  
 354:1  
**issued** 67:20 239:18  
 299:4 310:11 345:1,8  
 348:20 351:17  
**issues** 6:18 7:16 9:2,6  
 12:15 15:13 45:8 47:5  
 78:17 89:22 124:4,10  
 124:10 128:18 131:3  
 141:9 146:1,1 160:8  
 163:2 166:13 168:5  
 170:2 225:18 233:8  
 250:3 255:17 268:18  
 286:20 314:6 320:6  
 326:16 334:12 337:15  
 338:8,17  
**issuing** 280:14  
**item** 55:8 102:1  
**items** 12:12 28:9  
**iteration** 56:2  
**iterations** 249:16  
**iterative** 107:11

---

**J**


---

**J** 2:4 3:15  
**Jackalope** 135:8  
**JAG** 339:12 346:6  
**JAGMAN** 106:4  
**jailed** 193:1  
**January** 299:6 338:9,12  
**Jay** 2:7 4:7 231:10  
 258:16  
**JD** 134:21  
**Jeffrey** 2:2 3:6 55:19

**Jensen** 2:7 4:5 231:9  
 244:3,5 269:10 271:1  
 272:3 274:14,15  
 285:4 289:16 291:5,8  
 294:11,21 296:6  
 297:7,20 298:12,19  
 304:16  
**jeopardy** 27:12,15  
**job** 26:18 29:3 112:8  
 114:3,12,22 118:16  
 120:1,2,3,11,17,21  
 121:2,7,16 130:19  
 167:10 174:11 178:5  
 187:14 212:19 213:3  
 213:11,17,19,19  
 225:7 232:18 285:16  
 290:11 294:19 344:11  
**jobs** 118:21 198:20  
 326:14  
**John** 2:9 4:15 306:3  
**join** 5:18  
**joined** 5:19,22  
**joining** 109:21  
**jokes** 205:9,10  
**Jon** 2:10 4:19 306:5  
 340:10  
**Jones** 5:17 38:15 40:7  
 40:11  
**journals** 109:15  
**journey** 190:5  
**JPP** 5:13  
**JPP's** 6:6 8:17  
**JPP.whs.mil** 8:18  
**Jr** 2:4 3:13  
**judge** 5:17 15:19 18:22  
 23:11 30:12 32:1 33:7  
 36:15 40:11 43:6  
 187:14 195:3 202:10  
 202:10 242:9 249:22  
 250:2 257:14 339:18  
**judged** 202:14,22  
**judges** 11:7,10,13,14  
 11:16 12:2 111:7  
 170:1  
**judgmental** 43:12  
**judgments** 202:7  
**judicial** 1:3 5:5,15 8:10  
 11:11 15:22 18:13  
 104:12 105:6 183:15  
 186:19 191:19 224:15  
 254:7 321:4  
**Julia** 2:10 4:21 306:7  
 344:14  
**Julie** 199:22  
**June** 40:12 41:1,9,10  
 281:2  
**junior** 242:22  
**jurisdiction** 52:16  
 309:2 349:14,20

**jurisdictions** 47:21  
**justice** 15:5,11 17:12  
 19:20 59:2,21 63:9  
 70:14 96:3 104:5  
 105:19 240:1,2 255:9  
 282:16 313:6 317:7  
 317:12,19 319:5  
 334:9,16 336:21  
 339:13 355:21

---

**K**


---

**K** 2:9 4:15 306:3  
**keep** 104:20 117:12  
 128:17 152:12 153:6  
 207:2 268:16 297:13  
 303:8,9 342:3  
**keeping** 153:6 297:7  
 298:2  
**Kelly** 2:13 31:7  
**key** 62:9 110:21 111:5  
 235:4 236:9 265:8  
 280:12  
**keystone** 264:10  
**kick** 31:16  
**kids** 215:18,19  
**kind** 15:4 26:17 37:7  
 42:13 59:6 60:3 64:4  
 76:2,15 81:3,10 82:16  
 90:6,12,16 91:19  
 100:8,12 105:16  
 114:21 115:18,18  
 117:11 129:16 133:4  
 137:12 156:10 158:21  
 161:8,9 166:20,21  
 167:7 171:8 181:15  
 191:14,15 193:16  
 206:2 210:13 215:15  
 218:17 221:7 224:21  
 230:7 269:4 275:20  
 275:21 276:2 285:19  
 298:2 304:4 320:3  
 354:17  
**kinds** 11:15 100:3  
 104:17 112:9,16  
 113:3 114:5 164:11  
 166:12 171:2 223:17  
 223:21 352:11 353:6  
**knew** 60:9 79:15 147:11  
 147:12 150:13 189:19  
 193:19 202:17,19  
 203:16  
**know** 10:21 11:2 22:19  
 22:20 24:11 28:21,22  
 30:8 38:6 40:16 44:8  
 49:8 51:15,18 52:3  
 57:8 59:10 63:15 70:5  
 70:5 71:19 72:4,9  
 74:5 75:3 76:20,21  
 77:5 80:20 85:10  
 87:15 88:8,22 89:8,10  
 89:18 92:1 93:9 97:9  
 97:14 100:1,15  
 101:16 102:16,17  
 103:3,4,22 135:4  
 136:6 137:11 139:7  
 139:12 144:7 153:11  
 153:12 156:4,13  
 157:6,10 160:19  
 163:9 164:19 166:3  
 172:9 175:13 177:17  
 178:4,12 180:22  
 182:14 187:2 190:19  
 193:13,14,21,22  
 194:1 200:6 202:6  
 203:16 205:21 209:11  
 211:1,2 215:20 216:5  
 218:11,13,15,16  
 219:4,8 220:4,10,13  
 220:15 224:16,18,18  
 225:11,13 226:13,14  
 228:2 229:7 233:15  
 234:13 235:10 268:3  
 268:6 269:1 273:16  
 274:10 275:21,22  
 277:11 278:20 281:20  
 283:14 284:7 287:8  
 290:10 293:21 297:6  
 297:14,19,22 298:17  
 300:5 301:22 303:3  
 303:21 304:7 311:7  
 311:17,20,20 314:7  
 342:16 348:13  
**knowing** 38:10 326:18  
**knowledge** 106:9  
 177:14 240:15 248:17  
 309:11  
**knowledgeable** 137:13  
**known** 64:6 140:14  
 232:17 286:20  
**knows** 161:19 296:14  
**Kyle** 2:12 15:3,8 31:8  
 34:1 39:2 54:2

---

**L**


---

**L** 2:13  
**label** 206:16  
**labeled** 116:21 206:14  
 266:3  
**lack** 288:12 301:11  
**ladies** 270:6 305:10,18  
 357:2  
**laid** 327:17  
**lance** 290:16  
**lane** 285:12  
**lanes** 285:16  
**language** 84:11 167:18  
 307:16

**large** 52:5 93:17 111:10  
130:9 262:5 265:15  
341:1  
**large-scale** 109:16  
**largely** 125:2 126:3  
155:1  
**larger** 78:16 87:3  
116:20 242:14 340:21  
**largest** 82:15 182:16  
308:14  
**legacy** 107:19  
**lastly** 69:13 130:15  
**Laughter** 231:21  
**launched** 240:12  
**laundry** 142:16  
**law** 3:14 53:12 57:17  
65:11 104:22 108:22  
137:21 138:2 142:11  
169:18 170:14 210:9  
239:11 241:10 264:9  
307:16 320:10 339:14  
**laws** 317:4  
**lawyer** 135:4  
**lawyers** 138:9  
**layman's** 82:11  
**lead** 40:1 177:20 186:5  
192:8,13,19 195:1  
232:20 241:13  
**leader** 151:10,12 162:1  
162:4 177:20 256:5  
280:8 290:15,19  
**leaders** 100:16 103:12  
141:7 145:9,12  
150:20 151:2,4,22  
152:6 161:9,14,21  
162:17 178:6,10  
234:13 240:16 241:16  
242:22 245:2,6,10  
248:7 260:8 266:20  
267:3 270:11 280:19  
281:4,8,8 286:22  
287:5 289:21 290:4  
**leadership** 66:10,15  
72:15 75:5 90:10  
92:16 101:22 107:10  
131:10 150:18 154:12  
160:20 164:21 174:12  
177:18 196:15,20  
197:5,16,17 213:19  
232:20 250:16 251:4  
251:8 254:14 274:2  
280:7 286:4 291:16  
294:14  
**leading** 142:19 147:3  
149:1 175:2 241:1  
270:14  
**leads** 87:16  
**learn** 256:16 345:19  
**learned** 199:8,9 252:10

**learning** 195:11  
**leave** 61:9 138:8 154:8  
**Leavenworth** 242:4  
**leaves** 329:4  
**leaving** 321:13  
**led** 193:3 261:2 331:22  
**left** 14:20 26:6 116:21  
118:11 120:16 189:5  
218:19 300:18 303:7  
303:7  
**legacy** 259:1 331:11  
**legal** 4:18 62:7 110:14  
110:19 113:7 145:22  
239:11 242:1 250:3,5  
262:19 268:20 269:17  
282:20 284:20 295:21  
296:3 306:4 310:10  
323:20 327:14 339:2  
339:4,6,11,13  
**legally** 257:16  
**legislated** 93:10  
**Legislative** 314:18  
**legitimately** 223:10  
**length** 94:13,13,20  
**lens** 202:15  
**let's** 9:17,22 13:10 23:9  
31:19 48:1 55:13  
284:15 292:18 351:15  
**letter** 307:16 351:17  
**letters** 205:17,22  
**letting** 214:7  
**level** 18:4 32:2,4 42:9  
59:16 114:14 124:19  
131:18,22 134:8  
140:5,21 190:12  
191:18 196:10 234:9  
235:13 241:11 243:19  
263:18 265:18 266:21  
270:11,20 271:15  
274:16 275:3,5 280:7  
287:11,12 289:2,5,9  
289:10,13,14 292:1  
315:15,18 325:7,17  
331:4 349:2  
**levels** 31:16 73:10  
120:11,17 149:4  
158:16 260:8 290:1,8  
294:14 310:10 315:21  
**leverage** 69:18  
**leveraged** 73:6  
**leveraging** 69:4 247:9  
286:5  
**liability** 48:2  
**liaise** 303:18  
**liaison** 218:5  
**liar** 203:20  
**liberty** 68:13 72:20  
247:6  
**lie** 25:20 203:3 206:5

**lies** 206:12 207:17  
**lieutenant** 2:12,13 44:9  
206:19,21 207:7  
**lieutenants** 291:4  
**life** 201:16,19 207:22  
221:16 233:2,4 234:4  
234:4 297:18 323:18  
**lifetime** 222:9  
**lift** 79:20 81:4  
**light** 193:14 200:5  
260:14 269:12 270:21  
285:5  
**liked** 204:3  
**likelihood** 20:5 183:3,3  
263:18  
**likes** 228:12  
**Lilia** 2:3 3:10 108:19  
109:8  
**limit** 23:12 197:18  
355:6,17  
**limitations** 238:8  
355:12  
**limited** 11:9 52:16  
132:11 133:11 188:6  
315:13 321:7 326:20  
348:13  
**limits** 313:20 346:17  
355:19 356:9  
**line** 17:8 57:5 67:5 69:9  
131:8 158:6 176:12  
195:19 230:2 263:20  
280:7 290:9 306:22  
353:3  
**lined** 202:1  
**lines** 16:3 46:11 48:6,6  
119:2 253:13  
**lingering** 327:18  
**list** 142:16 320:3  
**listen** 91:20 238:12  
**listening** 15:15 160:17  
201:22  
**lists** 337:16  
**literally** 151:7 191:5  
261:4  
**literature** 160:19  
**litigation** 30:5 124:18  
**litigative** 29:22  
**little** 20:18 41:1 53:11  
93:4 102:2 120:6  
133:19 139:2,16  
142:5 144:2 184:18  
187:1 198:14,17  
232:18 233:4 279:20  
283:18 292:10 293:18  
297:1 324:9 354:8  
**littler** 215:19  
**live** 195:6 334:10  
**lives** 70:15 259:5  
**LLM** 134:21

**loaded** 19:8  
**local** 42:9 242:5 250:2  
285:11 325:16 331:3  
**localized** 167:17  
**location** 86:20 106:10  
303:13  
**locations** 106:11  
152:20 262:18 299:18  
**logical** 177:5  
**logistics** 323:21  
**loneliness** 219:15  
**lonely** 189:14 200:6  
**lonesome** 217:16  
**long** 19:13 77:12 149:4  
181:3 187:3 200:7  
221:18 245:11 292:19  
293:2 296:7 300:9  
310:5 356:5  
**long-lasting** 146:7  
**long-term** 246:17  
327:18  
**longer** 32:19,21 95:21  
159:4 348:17  
**longitudinal** 140:15  
**look** 26:7 50:10 52:19  
53:5,20 54:7,13,15,16  
54:22 66:8,9 71:5  
73:3,18 74:18 77:21  
81:5,5 83:1 85:21  
86:3 88:15 91:19 92:4  
94:18,22 97:12  
100:17 103:14,14  
152:17 155:11 158:7  
163:17 166:17 178:8  
182:1 190:3,22 211:7  
221:13 243:21 248:19  
251:16 258:12 268:12  
269:4 281:9 290:13  
291:9 307:6 332:9,10  
340:7,11  
**looked** 88:1 144:1,21  
212:22 229:12 270:8  
343:8  
**looking** 13:22 158:5  
168:1 170:2 174:4,13  
192:16 227:8 251:11  
**lookout** 226:4  
**looks** 75:18,22 134:19  
168:20 219:7  
**loop** 276:4 277:10  
**loss** 16:6 190:7  
**losses** 49:19 193:6  
**lost** 43:9 283:19 284:1  
**lot** 74:7 89:11,19 92:8  
110:15 141:2 146:10  
153:7 156:3,6 160:19  
168:16 175:18 182:3  
195:22,22 196:3,4  
198:8 212:5 215:18

216:12 217:20 280:14  
320:7,17  
**Lots** 90:10  
**love** 200:1  
**loved** 283:19 284:1  
**low** 29:4 85:8 151:13,13  
270:11 341:8  
**lower** 67:3 118:20  
120:3 121:20 122:4  
157:18 158:16 315:21  
**lowest** 73:10 243:18  
**LT** 15:12 16:15,21  
17:18 26:22 31:15  
32:11,15 33:4,9,15,16  
33:19 34:4,8 35:5,7  
35:13,17 36:12,17,22  
37:17 38:14 39:8,12  
41:3 43:1 44:12 45:7  
45:17 49:16 50:4,18  
50:21 52:12,18 53:2  
54:5 55:9  
**LTCOL** 108:10 139:10  
**Lucky** 5:20  
**lumped** 99:9  
**lunch** 37:15,15  
**luxury** 189:1  
**lying** 202:12 203:10

---

**M**

---

**M** 2:3 3:10 108:19  
**M.D** 2:5  
**ma'am** 5:9 15:12 16:22  
17:18 31:15 32:11  
33:16 34:9 35:5 36:13  
36:17 39:8,13 49:17  
50:18,21 52:13 54:5  
71:3 77:15 80:4 85:9  
91:7 93:8 94:10 98:14  
102:16 105:9 107:2  
108:7,10 115:4  
231:13 280:1 281:20  
288:1 289:16 291:12  
291:21 293:4 294:21  
295:8 296:6 297:20  
298:12 299:3,11  
300:2,9 302:4 303:12  
304:14 306:10 322:21  
**Madam** 109:6 124:1  
252:1  
**Magley** 2:3 3:12 108:21  
110:8,11,22 119:16  
123:20,22 133:17,18  
133:21 154:22 155:5  
155:10 156:12 157:9  
157:20 158:19 166:11  
173:18,19 176:20  
180:13 181:6  
**Magley's** 166:5 171:22

**magnified** 206:13  
**mail** 118:22  
**main** 57:16 99:8,12  
253:13  
**maintain** 225:8  
**maintaining** 187:15  
**maintenance** 129:8  
**major** 3:6 7:9 20:11  
39:9,13 51:20 55:18  
63:20 70:6 237:9  
240:11 242:3 268:20  
280:4 281:3 353:11  
**majority** 111:14 144:4  
162:3 177:13 320:4  
327:15 347:3  
**maker** 285:18  
**making** 57:6 66:12  
98:19 161:7 208:19  
252:7 259:22 260:21  
278:8 285:9,15  
286:20 287:16 294:14  
317:18 342:5 353:6  
**male-dominated**  
206:13  
**maltreating** 216:19  
**maltreatment** 58:16  
210:4 211:10,11,15  
211:16 239:20 240:1  
254:4 264:16 265:1  
268:19 282:22 283:7  
284:22  
**man** 136:6 200:3  
**management** 69:5  
73:13 77:11,14 79:1  
143:9 145:14,19  
254:22 260:12 264:18  
274:19 275:1,7  
298:20 299:8 302:5  
302:18 303:7 309:16  
310:10 330:20 331:7  
332:4 335:9,17 350:7  
**managers** 90:18 339:14  
**mandate** 337:19  
**mandated** 171:4  
**mandates** 62:14  
**mandatory** 10:7 339:6  
**manner** 278:5  
**manners** 269:2  
**Manpower** 80:17 86:1  
**manually** 342:2  
**map** 151:7  
**March** 6:13 240:11  
299:5,7  
**margin** 83:4 140:20  
**margins** 83:14 262:5  
**Marine** 4:6 106:5 231:9  
231:10 244:7,13  
245:1,11,14 246:16  
247:19 248:21 250:11

279:16 290:10 301:15  
304:16 340:19,22  
341:10,13,14,15  
342:17 343:4,10,21  
**Marines** 244:19 245:4  
246:2,8,13,14 247:5  
247:17 248:4 250:14  
250:22 251:12 341:16  
351:7  
**marked** 57:3  
**marker** 312:4  
**marks** 66:15  
**marry** 307:5  
**martial** 198:13  
**Maryland** 23:13 24:17  
27:5  
**master** 287:15  
**match** 65:13  
**material** 135:13 323:4  
**materially** 316:20  
**materials** 8:15 185:16  
**math** 276:11  
**matter** 55:15 75:20  
82:14 91:8 108:12  
146:2 162:17 164:8  
183:10 190:16 209:6  
230:21 251:1 305:7  
307:2,15 327:12  
357:7  
**matters** 185:3 190:17  
266:3  
**Matthew** 2:5 3:19  
183:20  
**McGovern** 2:13 26:22  
32:15 33:4,9,16,19  
34:4 35:5,7 36:22  
38:14 39:8,12 41:3  
43:1 44:9 45:17 49:12  
52:12,18 53:2  
**mean** 14:16 20:6 39:3,5  
44:8 51:13 74:13  
87:14 107:5 155:5  
179:2,22 220:11  
221:3 224:2,10 269:3  
278:19 284:2,5  
292:13 294:16 295:6  
301:1 310:17 325:13  
**meaning** 35:2 118:14  
130:3 158:10 193:11  
325:1  
**meaningful** 29:12  
**meaningfully** 128:9  
**means** 11:2 13:15 16:7  
69:18 71:17 111:21  
121:5 138:2 150:2  
246:13 257:15 319:9  
324:20 330:10  
**meant** 240:19 298:12  
**measurable** 123:6

**measure** 84:3 96:22  
98:12,17 162:6,7  
222:1  
**measurement** 113:19  
132:11,18  
**measures** 84:9 106:8  
106:18 112:3 165:3  
210:20 248:2 350:1  
**measuring** 157:17  
173:16  
**mechanism** 69:14  
**mechanisms** 54:16  
64:2 177:12 222:14  
**medal** 325:1  
**medals** 347:7  
**media** 205:11 245:17  
247:20,22 250:12  
256:3,6,18 324:21  
**medic** 204:1,2  
**medical** 25:3 39:22  
239:12 262:19 328:18  
339:18  
**medium** 304:2  
**meet** 63:15 192:15  
238:18 239:5 251:16  
337:18  
**meeting** 1:5 5:5,15 6:2  
6:3,5,13 7:1,1 8:10  
40:13 41:9,10 247:4  
344:7 346:22 357:5  
**meetings** 8:14,16,17  
88:11 205:21 241:14  
**meets** 90:13 308:4  
333:4  
**member** 154:19 190:1  
253:22 254:1,4  
**member's** 274:18  
**members** 5:11,12,16  
6:19 8:6,16 9:9 10:3  
11:20 14:13 43:19  
45:10 49:20,22 55:3  
56:10 66:15 71:3  
109:7 124:2 125:17  
139:10 180:10 183:7  
187:21 193:15 232:12  
233:13,14 247:15  
252:1 258:20 263:14  
323:22 324:1 330:13  
331:18 332:18 334:14  
346:11,14,20 349:2,7  
352:22  
**membership** 323:8,8  
**memo** 279:6  
**memorandum** 307:10  
307:17 351:10  
**men** 57:1 61:21 82:1,21  
83:1,12,17 84:22 86:4  
86:7 125:22 135:22  
206:12,15

**mental** 25:15 28:9  
39:22 41:15 42:7  
43:11 219:9 222:12  
**mentality** 194:12  
**mentally** 219:16  
**mention** 83:16  
**mentioned** 26:11 54:17  
64:10 70:3 71:19  
81:22 86:18 94:1  
126:22 133:1 154:22  
156:7 226:7 263:1  
274:17 287:12 295:16  
297:6 302:8 352:9  
**mentoring** 243:1  
**merit** 343:2 349:21  
356:1,4,14  
**merits** 37:13 40:5  
**mess** 30:17  
**message** 178:9 209:18  
223:4 226:1  
**met** 1:10 348:7  
**methodology** 271:21  
**methods** 12:16  
**metric** 60:10 64:7 91:8  
164:17 174:3  
**metrics** 64:10 91:8 94:2  
96:8,12 153:10 174:6  
174:7 241:18,19  
300:11  
**MG** 2:2 56:9 71:16  
77:14 82:3,6,9 85:9  
87:12 91:6 92:6 93:8  
93:13 94:3,5,10 95:9  
95:11 97:3 100:11  
102:16 105:9,14  
107:2 108:7  
**Michael** 2:4 3:13 108:22  
134:14  
**Michigan** 3:11 108:20  
109:10,18,21  
**mid** 289:10  
**middle** 206:20  
**migrate** 117:13  
**milestones** 301:12  
**military** 4:1,10 8:1,5,6  
11:7,11,14 12:9,13  
13:13,17 14:13,16  
15:5,10 16:20 17:12  
19:20 23:9,10 25:5  
26:12 28:16,22 30:6  
32:1,10 34:3 35:20  
36:7 37:16,18 43:6,21  
47:1,19 48:9 49:7  
50:13,15 51:4,7 54:7  
54:9,13 57:1 59:21  
60:14 62:12 63:9 64:3  
65:10 66:9,14 70:4,14  
84:22 94:14 95:6 96:3  
105:19 109:17 123:12

123:14 125:14,20  
127:8 132:15 133:1  
133:12 134:8 135:10  
135:17,22 136:1,8,14  
136:20 137:1,5,8  
142:4 174:2 175:11  
176:13 177:4,7 178:4  
178:19 185:8,10,14  
185:22 186:19 187:14  
188:5 191:2,2,4 192:7  
192:17 195:4 196:9  
201:5,12 206:13  
212:17 217:7 218:20  
218:22 225:2 231:6  
236:6 237:18 239:22  
252:10 255:9 265:20  
267:14 293:22 294:18  
300:11 304:8 305:16  
308:16,20 315:2,4,5  
315:14 323:15 332:3  
333:18 335:2 339:13  
340:3 345:20 353:1  
**military's** 28:21 208:7  
**mind** 35:6 97:17,22  
104:20 113:8 117:13  
128:17 133:19 138:2  
139:15 295:13 322:18  
353:4  
**minds** 100:1,10 160:21  
220:12  
**minimized** 99:13  
**ministerial** 43:7  
**minor** 351:15  
**minorities** 126:2  
**minus** 140:20  
**minute** 230:20 296:11  
**minutes** 313:12  
**mirrored** 12:1  
**misconduct** 142:13,19  
143:7 146:13 148:18  
150:19 151:13,15  
152:10 174:8 175:9  
179:13 183:4 193:2  
245:16 252:22 310:18  
321:14 348:1  
**misguided** 200:6  
**mishaps** 188:21  
**misinterpretation**  
262:10  
**missing** 200:2 345:16  
**mission** 3:18 70:16  
140:3 183:19 191:7  
192:11 209:19 215:17  
225:10 245:11 259:12  
263:2 266:18  
**misspoken** 297:21  
**mistake** 208:6 343:1  
**mistreatment** 115:10  
124:6 125:16 127:4

128:6 132:15 133:3  
134:2 200:11  
**misunderstanding**  
270:17  
**misunderstandings**  
297:16  
**misunderstood** 208:6  
**mitigate** 253:11 255:22  
**mitigating** 226:15  
**mitigator** 209:4  
**mocked** 203:19  
**mode** 184:6  
**model** 51:9 178:11  
**modeling** 177:22  
**models** 16:11 54:18  
**modern** 160:19  
**modification** 12:1  
37:21  
**modifications** 34:14  
**modified** 245:14  
**modular** 266:11  
**module** 266:2,2  
**modules** 256:9 287:18  
**mom** 233:6,12  
**moment** 24:12 43:2  
45:19 102:21 167:9  
167:11,14 292:18  
**moment's** 244:18  
**Monday** 332:16  
**money** 21:8,15 26:12  
28:4,9,11,16,18 29:19  
34:3 35:11 46:4 51:18  
52:3,5  
**Monique** 2:6 4:2 231:7  
232:6,14  
**monitor** 152:15 272:11  
274:20 275:10  
**monitored** 14:18  
241:12  
**monitoring** 71:13 153:6  
**monitors** 272:9  
**month** 67:14 99:1  
256:21 299:7 324:4  
342:8 346:19  
**monthly** 180:17 241:14  
249:8 255:13 274:19  
**months** 31:9 32:3,7,8,9  
32:18,18,22 33:2,7,14  
51:16 79:12 80:5  
91:10 192:2 222:8,10  
229:6 232:19 293:10  
297:14 337:20,21  
342:9 344:3,4,6  
**moratorium** 331:9  
**morning** 5:3,9,11 6:10  
37:14 56:5,9 109:7  
124:3 134:15 138:19  
139:18 141:11,13

144:3 181:11 237:10  
291:15 330:20  
**morning's** 5:21 7:5  
**Moskos** 136:7  
**motivation** 26:9  
**motive** 203:3  
**mouth** 93:5 160:22  
179:22 346:1  
**move** 24:19 35:8 53:20  
61:8 99:19 107:10  
113:1 220:22 295:18  
**moved** 228:3 241:22  
**movement** 171:8  
**moving** 11:7 80:1  
152:20  
**MPs** 207:2  
**multi** 239:13  
**multi-disciplinary**  
246:21  
**multiple** 64:2 111:13,13  
153:17 208:22 237:14  
285:16 331:21  
**multivariate** 124:20  
**myths** 188:13 203:13

---

**N**


---

**N** 2:5 3:1,1,21 184:4  
**N.W** 1:11  
**name** 139:19 231:15  
331:18  
**named** 75:16  
**Nathan** 2:2 3:7 55:20  
**nation's** 244:17  
**National** 61:11 127:13  
140:14 142:7 167:22  
320:11  
**natural** 196:19 208:20  
**nature** 81:16 89:9  
125:18 141:15 155:3  
166:14 181:8 182:3,4  
185:7 217:13 218:17  
259:12 297:3  
**naughty** 166:19  
**naval** 4:19 291:13  
302:20 306:6  
**navigate** 169:3  
**Navy** 106:5 137:9 252:7  
253:13 254:12 255:22  
256:4 257:4,14  
258:10 278:22 279:17  
281:21 291:14 295:22  
302:19 308:8 340:19  
340:21 343:15,20  
351:6 356:18  
**Navy's** 252:3 256:3  
258:9 343:13  
**NBES** 140:15 144:9  
**NCO** 228:6

**NCOs** 287:6 290:11  
**NDAA** 62:18 328:4  
 348:16  
**near** 25:3 195:6  
**near-peer** 290:16  
**nearly** 143:6 144:15,18  
 263:16  
**necessarily** 18:21  
 21:19 22:19 39:20  
 172:8 193:17 196:7  
 197:1 215:11 216:8  
 274:11 298:13  
**necessary** 16:18  
 152:18 215:3 221:19  
 281:1 315:5  
**need** 12:22 17:4 24:21  
 24:22 39:6 43:14 54:1  
 54:2 63:13 66:6 93:21  
 101:21 103:21,22  
 104:13,14 152:2,3  
 177:15 178:8,9,22  
 180:3,6,7 194:1  
 211:12,18,20 212:4,9  
 212:12 215:16 221:12  
 221:13 228:3 253:6  
 257:19 260:7 263:7  
 270:1 276:18 277:8  
 286:14 294:8,11  
 299:20 311:4,20  
 326:10 348:13  
**needed** 19:14 69:11  
 171:13 207:3,13  
 245:10 249:15 344:21  
**needing** 192:13  
**needless** 194:22  
**needs** 38:2,7,11 51:12  
 52:2 65:13 182:2  
 196:4 197:17 213:8  
 228:10 229:11  
**negative** 61:9 159:21  
 167:12 195:13 244:11  
 252:13,20 253:9  
 254:10 255:12 257:12  
 257:17,22 258:4  
 265:12 266:21 282:9  
 283:10 284:2  
**negatively** 114:2 192:9  
 195:15,18 244:19  
 284:9  
**neglected** 289:20  
**neutral** 162:4  
**never** 25:6 123:3  
 188:21 189:11,17,18  
 194:8 203:20,21  
 204:6 270:18 342:14  
 356:7,8  
**new** 14:9 68:22 85:19  
 86:8,15 175:17 176:6  
 187:22 188:4 224:22

225:2 229:7 242:13  
 243:3 245:18 260:9  
 269:17 280:5 286:6  
 288:13 298:21 302:15  
 303:2,13 319:19  
 332:15,16 337:5  
 344:9,10  
**news** 149:7  
**newspaper** 180:20  
**nexus** 234:3  
**nice** 30:7  
**night** 206:20  
**Nilgun** 2:8 4:13 306:1  
 308:1  
**nine** 147:9 297:18  
 312:17,20 352:10  
**nodding** 173:17  
**nomination** 323:22  
**non** 14:4 96:11 252:19  
 303:22 321:3  
**non-active** 14:13  
**non-commissioned**  
 237:15 240:22  
**non-doctorate** 134:19  
**non-judicial** 106:13  
**non-metric** 94:16  
**non-metrics** 96:1,5  
**non-military** 24:6  
**non-retaliated** 121:21  
**non-significant** 130:10  
**non-verbal** 187:18  
**non-victims** 120:16  
 121:13,13  
**nonprofit** 139:21  
**nonprofits** 141:1  
**nonviable** 319:7,8  
 329:16  
**normally** 48:2 268:1  
 311:9 346:5 356:15  
**note** 6:8 37:18 110:12  
 120:8 256:20 317:16  
**noted** 16:4  
**notice** 113:1 130:3,13  
 167:15 244:18 325:11  
**notices** 335:12  
**notification** 311:8  
 326:21,22  
**notifications** 330:17  
 331:1 336:8  
**notified** 325:8,10 327:9  
 330:18  
**notify** 309:20  
**notifying** 255:14 273:20  
**nuances** 238:11  
**number** 9:15,17 43:16  
 43:18 44:20 46:18  
 56:2 69:8 82:19 83:3  
 83:18 85:3,6,16 86:16  
 91:4,8 93:16 98:18

99:3,13,19 107:4  
 126:1 130:15 135:7  
 136:9 143:22 145:12  
 171:1 175:6 176:2  
 179:16 181:15,16,18  
 181:21 188:15 226:15  
 256:18 275:18 312:21  
 331:4 341:1 342:10  
 348:11  
**numbers** 81:6 83:7,17  
 84:6 105:8 125:21  
 129:18 131:9 145:8  
 155:20 177:3 178:7  
 290:9 311:21  
**numerous** 264:8 332:7  
 339:9

---

**O**


---

**O** 3:1  
**O-10** 304:9  
**O-5** 241:11  
**oar** 89:12  
**objections** 20:11  
**objects** 6:9  
**obligation** 48:7  
**obligations** 318:4  
**observation** 74:17  
 167:8  
**observations** 131:17  
**observe** 233:20  
**observed** 91:15 142:9  
 142:20 143:4,7  
 146:13,21 174:8  
**observer** 191:20 233:21  
**observing** 164:13  
**obstruction** 240:1  
**obtain** 12:16 13:6  
 238:15 325:22 328:17  
**obtainable** 326:12  
**obvious** 135:15 185:19  
 191:22 197:12  
**obviously** 34:16 95:12  
 102:6 186:3,10 187:9  
 187:15 190:4 191:3  
 217:11 218:1 221:3  
**occasion** 355:5  
**occupational** 127:13  
 158:6,8  
**occupations** 111:17  
**occur** 23:10 38:12,17  
 71:1 81:17 113:15  
 158:18 227:18 246:19  
 254:15 257:18  
**occurred** 89:16 146:4  
 298:5 307:2 317:12  
**occurrence** 275:8  
 352:2  
**occurrences** 64:12

**occurring** 251:2 263:21  
 295:20  
**occurs** 38:20 163:12  
 200:8 204:8 205:17  
 209:17 230:12 251:1  
 256:10  
**oddity** 186:9  
**offender** 95:15 99:21  
 185:19 195:20 198:22  
 199:21 200:12,15  
 201:7,19 202:6,9,11  
 202:21 204:10,22  
 205:13 206:7 207:1,8  
 207:8 208:4 211:19  
 212:5 213:21 263:17  
**offender's** 41:16 203:1  
 210:1  
**offenders** 188:19  
 193:13,14,16 198:15  
 199:9 200:7,10  
 204:13 212:11 253:7  
**offending** 200:7  
**offends** 204:22  
**offense** 57:21 59:1 66:2  
 188:20 204:16 254:2  
 254:6  
**offenses** 43:21 47:1  
 52:14,20 57:22 58:5  
 65:8,10 336:10,13  
**offer** 92:8 141:10,21  
 149:7 151:17 189:17  
 268:11 278:4  
**offered** 263:4  
**offering** 150:3  
**offhand** 355:9  
**office** 3:4 4:4 7:7 8:4  
 68:18 87:3 136:17  
 189:16 232:4,17  
 241:17 249:22 267:21  
 272:9 273:14 308:7  
 339:17,19 343:13  
 344:18 346:11 348:5  
 348:8 349:14  
**officer** 3:16 43:7 76:12  
 76:12 77:12 109:2  
 139:20 208:17 225:14  
 240:22 242:15 265:19  
 291:14,18,19  
**officer's** 62:15  
**officers** 237:15 289:3  
 289:22 303:22 304:1  
 341:14 346:6  
**offices** 7:20 268:21  
 319:16 327:3 329:11  
**Official** 2:16 5:5  
**officially** 357:5  
**officials** 8:3 309:16  
 317:2 350:7  
**oftentimes** 80:14

117:22 269:18 275:14  
**oh** 33:13,17 35:10  
 41:18 169:12 205:4  
 224:7 227:2 231:17  
 305:13 306:11 322:20  
 323:5  
**okay** 14:1 24:3 30:22  
 31:3 33:3,22 35:9,14  
 41:6,7,21 43:3,4,15  
 43:18 45:9 46:17  
 47:15 48:21 49:2 53:2  
 55:7 76:4 77:7 78:14  
 96:13 105:3,12  
 116:15 133:21 139:12  
 158:14 173:12 184:8  
 184:10 215:4 221:15  
 222:19 231:17 232:1  
 268:8 293:7,20  
 295:15 302:7 303:20  
 305:6,14 308:11  
 322:22 349:16 350:10  
 352:8,21 353:18  
**old** 86:8 125:9 171:18  
 288:19  
**Ombudsman** 4:12  
 306:1  
**once** 10:14 91:3 178:17  
 209:2 230:8 271:22  
 272:10 310:9  
**one's** 262:11  
**one-half** 263:16  
**ones** 120:12,19 121:19  
 171:4,6 174:13 287:5  
 341:19  
**ongoing** 81:4 199:12  
 201:18  
**online** 247:6 250:9,14  
 250:17 333:7 348:17  
**open** 5:6 187:8 262:10  
 300:18 352:17  
**open-ended** 238:12  
**opening** 71:4 104:7  
 299:14  
**openly** 188:21 189:8  
**opens** 335:16  
**operate** 344:19  
**operates** 316:22 341:12  
**operating** 19:5  
**operation** 332:4 348:20  
**Operations** 291:13  
**opinion** 39:19 126:11  
 127:1 128:20 132:9  
 166:4 190:2 333:14  
 346:4,7 351:18  
 355:15  
**opinions** 125:5 126:10  
 154:20 327:3,5  
 328:17 346:4 348:12  
**opportunities** 118:17

229:21 266:12  
**opportunity** 57:12  
 101:4 136:12 138:20  
 139:18 154:13 184:16  
 197:22 244:6 251:15  
 252:2 258:11 260:12  
 271:16 301:2 332:8  
**opposed** 20:6,8 21:9  
 96:7 113:10 159:12  
 202:18 260:5  
**opposite** 147:15  
**opt** 147:4,6  
**opted** 146:15  
**option** 22:1 60:22  
**optional** 10:13  
**options** 62:7 66:7 70:10  
 295:4,5  
**oral** 318:9  
**order** 9:5 19:1 25:12  
 30:12 41:15 43:9  
 90:22 97:7 102:2  
 174:10 209:1 218:11  
 240:20 244:16 249:11  
 266:18 349:22  
**orders** 245:15  
**organization** 73:8,10  
 77:3 93:17 95:19,20  
 111:8 113:12 114:14  
 124:22 133:5 134:10  
 139:22 140:1 146:6,7  
 147:9,16 149:6,11,19  
 150:11,17 151:8  
 152:8 159:9,11,18  
 160:7,11,12 163:9  
 165:8,16 166:11  
 167:5 168:3,10,21  
 172:10 173:21 175:1  
 175:7 179:13 181:1  
 182:20 225:21 241:2  
**organization's** 142:11  
**organizational** 7:15  
 64:5 119:16 124:8,20  
 128:21 129:1,3 130:5  
 130:16 141:8,20  
 148:5,12 149:3  
 155:22 158:11 260:13  
**organizations** 68:4  
 94:15 109:19 140:6  
 140:11,22 141:5,7  
 147:21 149:9 150:20  
 153:7 159:4 162:11  
 162:22 165:20 172:22  
 174:17,20 178:5  
 180:16 243:8  
**original** 319:20 337:2  
**originally** 62:18  
**originates** 114:4  
**OSC** 349:21  
**OSD** 274:15 275:7

**ostracism** 7:3 58:16  
 63:6 75:14 100:8  
 191:18 192:9 222:15  
 239:20 254:3 264:16  
 265:1 268:18 282:11  
 282:13,21 283:7,16  
 284:21 292:17 300:17  
 306:21,22  
**ostracism/maltreatm...**  
 269:7 274:8 282:10  
**ostracization** 145:17  
 187:8  
**ostracize** 206:16  
**ostracized** 145:1  
 194:14  
**ostracizing** 282:13  
**other's** 193:21  
**ought** 10:7 29:11 48:14  
 53:5,6  
**outcome** 74:22 83:15  
 127:22 190:19 297:10  
 297:11 299:10 352:12  
**outcomes** 106:16 120:5  
 128:10 275:11 277:16  
**outcry** 205:16  
**outlets** 196:22 197:2  
 247:22  
**outline** 9:2 68:21 248:9  
**outlined** 67:22 126:16  
 126:17 165:22 354:17  
**outpost** 233:17  
**outreach** 247:4 256:6  
 340:1  
**outset** 316:22  
**outside** 15:22 16:9  
 18:13 44:22 45:3 52:9  
 188:19 201:19 204:5  
 212:13,17 214:17,19  
 218:8 319:11 327:20  
**outsider** 185:5  
**outsider's** 189:2  
**outstanding** 340:17  
**overall** 46:21 60:6 64:9  
 66:14,20 144:15  
**overcome** 321:13  
**overheard** 202:2  
**overlap** 44:15 45:8  
**overly** 52:5  
**oversee** 48:4  
**overseeing** 316:8  
**oversees** 324:3  
**oversight** 248:22 275:6  
 307:3 311:11  
**overstepping** 168:17  
**overt** 145:5 223:7  
**overtly** 162:8  
**overvalue** 200:12  
**overview** 7:10 56:12  
 244:8 313:13,15

323:12  
**overwhelming** 64:20  
 260:18  
**owe** 29:6 70:7 290:18  
**owed** 138:3

---

**P**

---

**P** 2:6 4:3 232:2 251:21  
**P-R-O-C-E-E-D-I-N-G-S**  
 5:1  
**p.m** 183:11,12 230:22  
 231:1 305:8,9 357:8  
**paid** 23:7 25:7 26:6  
 46:13  
**painful** 195:1  
**painting** 208:11  
**palpable** 197:9  
**panel** 1:3,10 5:6,12,15  
 5:16 6:10,14,18 7:10  
 7:21 8:11,12,15 10:3  
 15:14 18:18 45:10  
 46:20 54:22 55:3 56:1  
 56:11 71:3 72:5 84:8  
 85:19 103:11 108:16  
 109:7 113:14 122:22  
 124:1 135:5 136:12  
 139:3,10 154:19  
 180:11 181:10 183:8  
 183:15 196:1 231:4  
 232:13 238:17,22  
 244:6 252:2 258:19  
 267:20 286:7 297:1  
 316:8 324:2 331:18  
 340:14 341:13 346:18  
 346:19 349:7  
**panel's** 216:15  
**panelists** 141:13 144:3  
**panels** 298:4,7 316:7  
 324:2,4 333:4 346:15  
**Panetta** 60:21  
**paper** 67:22 88:1 181:4  
**paradigm** 16:11 198:17  
**paralegals** 339:20  
**parallels** 136:2  
**paraphrased** 203:15  
**Paris** 5:20 184:7  
**part** 9:22 15:19 20:16  
 20:21 24:4 29:12 38:3  
 61:5,10 73:7 80:4  
 87:7 92:15,16 97:4  
 98:14 101:14 105:12  
 114:13 136:21,22  
 147:18 156:16,19  
 159:1,13 163:19  
 170:9 177:15 180:21  
 196:13 197:4 198:12  
 199:6 212:8 215:16  
 218:22 225:9 256:22  
 276:12 283:8 284:19

285:22 295:9 308:15  
332:1 339:3 344:17  
346:10 351:12  
**parte** 327:6 337:10  
**partial** 330:2 341:7  
347:14  
**partially** 99:15  
**participant** 130:21  
**participants** 126:4  
131:5  
**participate** 111:21  
**participated** 124:15  
**participation** 59:21  
**particular** 71:21 77:2  
77:18 78:4 87:18,20  
88:19 91:18 100:14  
102:1 107:19 111:14  
172:9 175:13 185:21  
205:16 218:18 219:21  
227:17 264:13 271:21  
279:21 288:12 289:6  
292:5 312:4  
**particularly** 28:7 107:16  
124:8 125:6 145:10  
174:16 177:16 181:9  
220:20 224:3 252:5  
269:12 270:21 280:13  
294:13 332:9 341:1  
**particulars** 163:7  
**parties** 37:2 65:17  
264:15  
**partly** 341:20  
**partners** 140:10  
**parts** 229:12  
**party** 97:16 212:4  
335:16  
**pass** 75:17,22 138:22  
**passed** 301:20 320:11  
**passes** 81:7  
**passion** 234:10  
**patchwork** 14:13 49:7  
**path** 79:14 257:7 274:7  
274:9  
**Patricia** 1:15 2:4 3:15  
109:1 138:18 139:19  
**Patrick** 2:8 4:11 305:21  
306:9  
**patronizing** 210:2  
**patted** 200:21  
**pattern** 117:17  
**patterns** 123:12  
**pay** 21:14,15 28:15 31:7  
31:9,12,22 32:9,19  
33:4,10 34:5,6,18,19  
41:16 43:20 118:16  
205:8 220:4 334:21  
**paying** 138:11  
**payments** 20:8 41:4  
**peer** 109:14 154:1

206:17 216:11 235:12  
**peer-to-peer** 67:2  
**peers** 58:16 65:16 93:1  
93:3 99:22 114:14  
144:20 145:3 148:8  
191:4,5,11 205:19  
254:4  
**penalized** 214:1  
**people** 14:19 22:15  
49:5,6,6 50:20 75:6  
81:1 83:7,9 89:11,17  
89:21 90:21 92:3,10  
92:12 98:19 99:3  
103:3,22 104:4  
142:20 143:10 145:3  
146:11 147:4,14  
148:16,17 149:22  
152:7,13,15 153:13  
153:16,21 157:11  
160:21 162:14 163:8  
164:4,9,12 165:15  
167:13 168:19 169:3  
175:4,15,16,19,21  
176:8 178:2 179:8  
180:22 181:3 182:13  
187:19 195:3 202:1,5  
202:6 205:18,19  
208:1 209:9 210:21  
211:2,12,14 212:3,16  
213:3 218:1 219:1  
221:19 222:7 223:8  
230:2 247:21 249:18  
278:1,8,15 279:6,22  
282:11 285:11 286:2  
286:3,7,11 293:12  
294:6 298:8 304:2,4  
344:9  
**people's** 148:11 164:7  
164:18  
**PERB** 343:5  
**perceive** 151:1 197:3  
263:16 284:12  
**perceived** 59:10,13  
60:3,7,8 65:16 131:1  
131:5 182:18 183:2  
186:9 194:15 200:5  
204:10 213:10,12  
235:2 237:20,20,22  
257:12 262:1,14,21  
276:19 283:16,17  
284:9 285:3 288:11  
**percent** 26:19 29:4  
66:18 82:20 83:17  
84:3,14,15,22 85:1,5  
85:7 86:5,6,7,8 91:14  
91:19,21 95:1,3,9,11  
99:16,18 100:1  
103:20 111:19,22  
115:13,15 116:21

117:7,18 140:20,21  
142:8,22 143:3,6,15  
143:17,20,20,21  
144:14,15,16,18  
145:3,4 147:1,7 148:1  
148:18,19 150:19  
151:6 161:22 175:3  
179:19 236:20 246:2  
246:11,13 252:11  
260:2,3 276:13 290:6  
296:13 329:7,14,16  
329:21 330:1,2,4,7,8  
330:11,12 335:1,3,4,6  
335:7 336:18 337:19  
341:7 344:3,6 345:17  
345:18 347:13,16  
**percentage** 60:2,4,6  
78:15 83:21 85:7  
91:13,14 95:7 143:15  
144:9 150:18 254:9  
341:6  
**perception** 131:17  
183:1 206:11 225:19  
254:17 263:10 270:3  
288:6  
**perceptions** 61:17  
65:17 129:2 130:22  
148:11 151:9 164:7  
164:18,21 174:12  
182:11 238:4 264:1  
286:14  
**Perfect** 139:15 184:2  
**perfectly** 9:13  
**performance** 118:18  
151:21 152:4,17  
216:20 341:2,11  
343:3,6  
**period** 23:3,13,14 24:16  
27:17,18 30:14 118:2  
220:19 272:8  
**periodically** 63:15  
152:16  
**periods** 27:5  
**permanent** 344:20  
**permission** 344:8  
**perp** 208:9  
**perpetrator** 21:2 112:19  
118:9 130:11 185:20  
195:10 229:5  
**perpetrator's** 209:16  
**perpetrators** 117:2  
118:14,15 119:13  
184:22 318:18 342:11  
342:11  
**PERSEREC** 80:18  
**persistence** 226:16,17  
**person** 5:16,18 26:5  
27:6 29:8 31:10 40:12  
42:12 74:22 75:8

138:3 158:20 160:6,9  
193:9,18 194:3,19  
202:19 203:7,8  
208:21 209:7 211:20  
211:21 215:21 219:8  
267:21 268:5 272:1,1  
284:1 302:10 307:11  
307:18 317:18 319:1  
325:12 352:5 354:8  
356:7  
**person's** 26:14 128:19  
318:22  
**personal** 63:11 89:7  
162:7 187:6 233:4,10  
234:1,4 247:11 277:6  
286:9 290:20  
**personally** 21:3 63:15  
142:9 143:4 144:10  
146:20 157:1,12  
161:15,16 162:9  
167:6 219:17 239:5  
260:9 342:16 354:15  
**personnel** 54:9 57:20  
58:4 122:16 123:12  
125:16,21 131:19  
133:4 182:12 239:16  
253:20,21 309:9  
323:19 326:10 327:17  
332:7 337:18 344:2  
346:5 348:7,11  
**personnel's** 127:8  
**personnel-related**  
145:6  
**persons** 50:5 254:5  
**perspective** 73:4 124:9  
145:21 187:5 189:2  
262:11 280:3  
**perspectives** 6:15  
**pertaining** 316:11  
**pertains** 93:11  
**petition** 314:10 343:4  
**petty** 291:19  
**Ph.D** 2:2,3,3,4  
**phase** 19:14  
**phone** 5:19,22 6:1 35:4  
41:17 345:13  
**physical** 41:15 42:7  
354:22  
**physically** 354:18  
**piece** 80:11 106:3  
162:21 163:19 181:6  
269:6,7 271:5,8  
273:18 283:9 300:22  
301:19  
**pieces** 181:17 284:18  
300:14  
**pigeonhole** 293:16  
**piggyback** 271:4  
**pilot** 239:8

**pink** 115:11,12 120:20  
121:22  
**place** 11:22 36:8 37:10  
42:5,16 62:3 73:5  
74:11 77:13 79:11,12  
80:4,7,9 86:18 97:15  
103:4 106:18 143:4  
145:15 153:21 162:12  
164:5,13 165:10,15  
176:2 177:11 223:20  
224:6 227:17 229:6  
229:15 241:5 244:21  
251:3 257:1 259:15  
259:18 275:14 288:14  
**places** 140:8 196:7  
**plan** 69:15 251:6  
264:21 347:8  
**planned** 264:19  
**planning** 87:1  
**plate** 294:14  
**plausible** 309:10  
**play** 29:8 87:13 164:11  
215:11  
**players** 224:4  
**playground** 194:7  
**playing** 272:7  
**plays** 186:18  
**plea** 22:17,19 23:15  
24:12  
**plead** 22:15,18  
**pleading** 27:3  
**pleas** 24:7,14  
**please** 104:20 120:8  
128:16 130:3,12  
**pleased** 7:6  
**pleasure** 183:16,20  
**plenty** 194:17  
**plug** 45:19 48:18  
**plus** 140:20  
**PME** 289:5  
**poignant** 217:12  
**point** 11:10 12:22 17:3  
20:19 30:2 34:16 50:9  
50:11 67:1 72:3 85:21  
88:2 89:7 93:8 122:22  
128:5 131:14 135:11  
135:14,18 136:2  
137:20 138:10 156:12  
157:3 160:4 166:7  
168:8,10 171:5,18  
192:3 214:15 272:16  
273:21 275:9 279:5  
285:18 296:22 300:8  
343:18  
**pointed** 39:16 164:16  
296:12  
**pointing** 14:8  
**points** 31:5 137:16  
233:10 273:17 285:21

299:19 318:19  
**police** 201:3  
**policies** 4:1 7:22 62:3  
77:13 89:17 103:4  
129:7 161:11 231:5  
235:15 236:12 244:9  
280:15 317:4  
**policy** 46:16 57:17  
62:10,21 66:7 73:4  
89:14 100:18 104:8  
104:16 128:18 130:22  
241:21 245:3,18  
248:8 250:1 256:2  
264:10 265:11 266:14  
266:19 267:2 275:7  
298:21 299:20 300:15  
301:6 322:4  
**politically** 205:6  
**poor** 205:2 343:2  
**popular** 92:17  
**population** 123:10  
**populations** 109:17  
**portion** 65:15  
**portrayed** 128:4  
**portraying** 208:5  
**posed** 44:13 52:20  
**posing** 70:20  
**position** 26:13 59:10  
75:7 174:19 205:20  
265:11  
**positions** 332:13  
**positive** 58:4 64:13  
134:5 158:9 159:15  
159:20 160:1,10  
166:5,18 167:17  
196:16 260:6,14  
266:7 267:7 282:8  
287:13  
**possibilities** 26:11  
**possible** 5:21 6:1 88:2  
157:22 197:3 228:8  
242:18 247:9  
**possibly** 342:6  
**post** 118:1 136:17,18  
199:3,4 247:21  
**post-allegation** 224:17  
**posted** 6:6  
**postpone** 41:8 46:14  
**postponed** 45:4  
**potential** 21:18 34:22  
49:19 52:19 54:18  
163:22 192:8 194:11  
241:3 266:9 270:19  
283:3 292:15 345:12  
**potentially** 16:5 130:8  
262:9 265:10 271:11  
300:20  
**power** 103:13 114:4  
118:8 119:5 129:13

130:7,11 206:11  
212:6 341:18,18  
**powerful** 85:22 86:9  
118:14 119:3 281:18  
**powerless** 194:16  
**PowerPoint** 155:18  
**powers** 11:6,12  
**practice** 38:19 152:9  
198:9 338:21 340:15  
340:17 341:10 355:18  
356:14  
**practices** 4:1 7:22  
11:10 53:7 129:3  
140:5,7 142:1 151:18  
227:9 231:5 244:9  
281:15  
**practitioners** 140:3,9  
**pre** 24:8  
**pre-command** 242:3,5  
**pre-offense** 199:6  
**pre-sentence** 27:2  
**Pre-sentencing** 39:4  
**preceding** 196:1 309:8  
**precise** 263:5  
**precisely** 269:14  
**preclude** 301:4  
**predicated** 355:20  
**predictors** 127:22  
129:11 130:1,19  
131:13 182:16  
**predominant** 215:14  
**preexists** 205:12  
**prejudice** 137:16  
**preliminary** 272:2  
**premier** 313:6  
**premiere** 136:7  
**premisses** 13:15  
**prep** 204:13  
**preparatory** 19:11  
**prepare** 37:19 199:10  
199:13 200:10 348:12  
**prepared** 6:7 9:1 72:2  
219:16 247:19 346:5  
346:21  
**preparing** 171:17  
219:13  
**preponderance** 334:9  
347:2  
**prerequisite** 61:7  
**presence** 108:5 196:21  
226:16 316:19  
**present** 1:13 15:4 126:3  
155:14 171:17 195:14  
262:2 319:19 326:16  
**presentation** 120:5  
155:18 340:5  
**presentations** 155:15  
305:4  
**presented** 120:15

132:16 169:7,18,19  
170:3,6  
**presenter** 198:4 258:16  
323:1  
**presenters** 108:19  
231:5,7 305:12,21  
**presenting** 110:9  
316:12 317:7 332:6  
**presents** 250:11  
**President** 57:5 60:1,11  
64:1,6 67:12,21 77:16  
90:3 94:9 107:13  
255:19  
**presiding** 1:12  
**pressure** 205:7  
**pressured** 174:10  
**presume** 33:22 125:17  
**presumption** 316:22  
317:1 334:7  
**pretend** 221:14  
**pretrial** 38:3 39:4  
213:22  
**pretty** 45:8 160:7  
219:18 220:11 229:12  
283:1 315:12 326:16  
**prevalence** 56:21 64:15  
118:1 141:15 145:9  
145:13 172:3,4  
234:17 237:19 260:1  
266:22  
**prevalent** 114:17  
151:20 165:1 172:13  
235:12 263:22  
**prevent** 67:8 118:4  
129:6 246:6 251:2  
256:9 271:17  
**preventable** 164:20  
**preventative** 163:21  
**preventing** 163:17  
164:3 237:6 243:11  
245:5 250:9 251:13  
**prevention** 3:3 4:1 7:2  
7:7,20,22 56:15 57:7  
166:7 231:6 232:17  
234:14 235:18 236:11  
239:11 240:5 244:7  
248:2,10,19 252:4,8  
256:21 261:13 264:6  
267:5  
**previous** 8:16 11:20  
155:17  
**previously** 95:17  
153:13 273:2  
**prima** 309:6  
**primarily** 52:7 240:5  
303:17 327:4  
**primary** 209:4 267:3  
287:10 319:16 329:12  
349:13

**primed** 204:21  
**principle** 251:7  
**principles** 216:2  
**print** 247:9  
**printout** 116:14  
**prior** 19:5,11 38:12,17  
 39:7 40:4,4 56:1  
 86:13 109:21 116:19  
 188:20 189:6 193:2  
 194:2 195:14 197:12  
 205:15 219:13 220:8  
 221:2 224:16 289:8  
 303:15 322:1 337:6  
**priority** 233:1 331:10  
 338:15,19  
**prison** 26:14 29:1  
 297:18  
**prisoners** 26:17 28:22  
**prisons** 26:15,18 28:20  
**pristine** 189:1  
**privacy** 70:11 235:17  
**private** 140:22 142:2  
 148:21 149:12 151:19  
 179:11 314:12,15,19  
**privilege** 109:10  
**prize** 148:15  
**Proactive** 131:9  
**proactively** 196:22  
 229:12 235:14  
**probably** 20:9 81:9  
 89:11 94:16 102:16  
 170:15 222:10 226:15  
 278:2 288:19 300:19  
 303:18 340:16  
**problem** 27:15,21 36:6  
 61:16 63:22 67:7 68:8  
 89:8 90:9,19 91:4  
 141:14 151:20 154:4  
 156:11 157:13 171:11  
 173:16 175:21 176:9  
 178:19 200:17 207:19  
 210:16 217:1 229:14  
 253:14,16 255:5  
 256:15 262:3,7 263:9  
 264:1 276:21 288:16  
 288:21 293:18 297:3  
 297:3,4 325:20  
**problematic** 128:16  
**problems** 15:2 17:8  
 52:7 154:9,9 165:1  
 166:15 176:5 203:4  
 276:10  
**procedure** 43:3 128:19  
**procedures** 19:2 21:18  
 62:10 68:22 129:3,8  
 161:3 236:12 241:6  
 241:15 242:13 250:2  
 299:21  
**proceed** 9:8 56:8 89:14

100:9 273:11 306:13  
**proceeding** 29:22  
 187:4 316:8  
**proceedings** 1:3 5:6,8  
 5:15 8:11 27:1 183:15  
 186:19,22 187:16  
 188:8 190:3,9 191:19  
 224:15 324:3 327:11  
**proceeds** 17:1 309:13  
**process** 11:12 15:19  
 17:2,3,22 18:14 29:12  
 45:1 59:21 68:3 70:14  
 72:13 77:22 79:1  
 81:10,15 104:5  
 107:11 149:20 166:15  
 166:16 210:6 217:14  
 228:17 235:8 236:1  
 254:7 268:16 274:11  
 276:17 287:22 288:4  
 288:5,14 293:2,14  
 296:3,4 307:19  
 311:19 313:7 314:4  
 318:20 326:5 339:10  
 339:21 342:5 351:4  
 355:3  
**processed** 329:4  
**processes** 212:11  
 283:2 294:15 339:1  
**processing** 323:12  
 329:2 338:16 345:9  
 345:10  
**produce** 103:11  
**productivity** 3:18  
 183:18 192:10  
**Prof** 3:13  
**profession** 216:10,14  
 240:17  
**professional** 4:10 8:7  
 57:18 58:13 60:3  
 65:19 70:22 74:7  
 78:13 88:4 97:9 98:2  
 98:10 102:6 113:13  
 113:19 114:1,12  
 115:16 117:15 118:11  
 121:4,9 122:21 123:6  
 127:6 128:9 145:6  
 158:17 172:13 181:9  
 182:5 219:10 222:13  
 225:5 233:2 234:4  
 237:11 239:21 244:12  
 252:14,20 259:19  
 261:18,22 263:22  
 265:20 273:7 276:3  
 282:7 289:10 292:16  
 305:17 306:17 307:21  
 308:19 316:9  
**professionals** 240:13  
 248:14 271:13 272:17  
 328:18

**professor** 3:11,12,14  
 108:19,20,22 109:4,8  
 123:19,20 124:7  
 133:17 134:14,14  
 137:21,22 154:16,22  
 169:6 184:19  
**professor's** 138:2  
**professors** 7:15  
**program** 14:11 15:21  
 26:16 29:2 54:11,12  
 63:17 73:4 100:18  
 149:12 150:12 159:3  
 164:2 165:19 175:18  
 176:1,6 177:10 181:4  
 220:2 232:17,21  
 234:11 235:17 239:9  
 241:13 243:7 264:7  
 264:12 265:22 289:3  
 290:12 302:9 339:3,4  
**programs** 12:13 13:17  
 14:22 48:11 65:12  
 90:4 147:22 150:8  
 152:15 162:12 168:16  
 185:11 196:14 234:5  
 292:4 303:21 304:6  
**progress** 57:6,8 60:18  
 64:7,9 77:20 107:17  
 252:7 259:22 267:8  
 301:12  
**prohibit** 240:3  
**prohibited** 314:20  
 316:1  
**prohibits** 239:19  
 265:12  
**project** 338:18  
**projects** 249:13  
**prominent** 261:10  
**promising** 234:16  
 236:19  
**promote** 70:11 199:14  
**promoting** 266:8  
**promotion** 118:17  
 320:22  
**promotions** 334:20  
**promulgation** 338:5  
**pronounce** 183:21  
**pronounced** 118:20  
**proof** 65:18 105:1 203:3  
 203:5  
**proper** 129:7 187:15  
**properly** 66:7 84:20  
 253:11 263:8 297:11  
**property** 12:16 13:6  
 42:10 43:9  
**proportion** 130:20  
**propose** 98:7 199:5  
**proposed** 213:7  
**prosecute** 205:11  
**prosecuted** 193:1

219:20  
**prosecution** 63:7 96:6  
 105:5 185:7 189:16  
 198:21 218:8  
**prosecutions** 53:13  
 190:21  
**prosecutors** 185:13  
 236:16  
**protect** 62:4,10 70:11  
 147:17 148:17 163:4  
 163:7 227:10 228:6  
 233:22 244:16 259:14  
 260:20 264:13 300:16  
 300:21  
**protected** 58:1 147:12  
 161:4 178:3 309:8  
 310:18,19 312:14  
**protecting** 162:14  
 213:21 234:6  
**protection** 4:12 62:13  
 210:2 236:7 253:19  
 257:5 306:1 308:16  
 333:19 349:22  
**protections** 235:17  
**protective** 233:7  
**protects** 194:13  
**protested** 112:12  
**protesting** 123:4  
**protocols** 248:20  
**proud** 137:11 233:4,7  
**prove** 65:18 145:15,16  
 145:18 146:3  
**proved** 66:2  
**proven** 214:2 281:8  
 288:15  
**provide** 7:9,21 14:17  
 15:20 18:6 34:20  
 36:16 38:4 39:16,17  
 54:17,19 188:3  
 213:19 222:13 227:1  
 238:3 241:19 243:20  
 244:8 245:9 250:21  
 256:17 266:12 288:10  
 332:2 352:13  
**provided** 16:2 39:14  
 57:5 67:10 68:1 139:5  
 165:12 242:10 246:3  
 266:20 267:3 317:3  
 327:10 335:15,22  
**provides** 54:10 133:9  
 140:2 238:7 242:21  
 257:6 322:5 334:3,11  
 339:11,17  
**providing** 38:1 70:13  
 124:16 150:2 154:12  
 178:1 242:17 245:2  
 248:13  
**proving** 334:8  
**provision** 15:18 34:10

62:14,18 77:12  
**provisions** 12:1 18:3,6  
 18:10,13 34:11 240:2  
 264:9  
**proxy** 21:15  
**Psy.D** 2:5  
**psychiatric** 192:14  
**psychiatrist** 184:21  
**psychiatry** 184:19  
**psychic** 22:5 29:21  
**psychological** 110:18  
 113:6 121:10 126:12  
 127:9,15 194:21  
**psychologist** 173:8  
 198:11  
**psychologists** 110:13  
**psychology** 109:9,18  
 124:7,9,22 125:1  
**PTSD** 209:10 226:7,17  
 320:12 353:11 355:1  
**public** 1:5 5:12 8:10,12  
 8:14 103:11 111:9  
 125:11 132:20 156:20  
 187:9 217:22 233:13  
 247:10 267:14 326:6  
**publications** 247:9  
 345:20  
**publicity** 201:14  
**publicize** 179:6,7  
**publicizing** 179:15  
**publish** 277:11,14  
 278:22  
**published** 109:14 120:4  
 136:4 169:17 279:3  
 345:21  
**publishing** 163:6  
 180:17 326:6 333:7  
**pull** 80:22 89:2 101:6  
 139:2 281:12  
**pulling** 68:3 281:3  
 299:15  
**pulse** 79:3  
**punish** 71:20  
**punished** 179:4  
**punishment** 9:19 10:2  
 10:20 17:21 46:7,8  
 55:22 105:5,19 106:7  
 106:13 179:8 180:4  
 214:3 262:13 321:4  
**punishments** 71:13  
 252:16  
**punitive** 66:3 239:19  
 240:2  
**purported** 356:5  
**purpose** 32:20 114:2,10  
**purposes** 27:12 57:13  
 73:16  
**Pursuant** 348:15  
**pursuing** 316:3

**push** 214:16  
**pushed** 101:5 145:12  
**put** 17:7 62:2 74:11,13  
 89:12 93:5,16 96:1  
 175:18 179:22 181:5  
 182:7 198:22 201:1  
 241:5 275:19 277:1  
 284:17 293:16 307:16  
 325:11  
**puts** 212:5  
**putting** 99:1 160:22  
 162:11 181:1 203:22  
**puzzled** 292:11

---

**Q**


---

**qualify** 51:14  
**quantifiable** 76:2  
**quantified** 268:4  
**quantify** 61:15  
**quarter** 99:16  
**quarterly** 180:17  
**quell** 212:7  
**question** 17:17,19 18:1  
 19:10 24:19 29:15  
 33:3 39:5 44:9,13,14  
 44:21 45:5 46:2 50:8  
 50:12 52:18 54:1  
 71:19 74:5 75:3,5  
 76:5 78:3 80:3,6  
 82:12 84:20 86:14  
 89:16,18 92:4 94:1  
 97:6,10 102:4,10  
 114:16 119:18 135:3  
 153:20 161:6,13  
 169:16 179:7 220:18  
 229:21 267:19 273:13  
 273:17 282:6 290:2  
 293:5 294:8,22 295:6  
 301:7 302:6,8 311:22  
 353:2 354:4 355:4  
**questioned** 86:1  
**questioning** 39:18 40:1  
 270:12 277:10  
**questionnaire** 85:19  
**questions** 20:18 30:20  
 40:22 41:9 56:19  
 61:13 65:11 67:17  
 71:5,8 73:19 76:15  
 77:1 78:10 81:22  
 84:17 85:15 88:17  
 96:14,16 97:8 98:7  
 100:13 108:2 112:10  
 126:2,17 127:4,7,8  
 137:6,19,22 138:16  
 141:6 142:13,17  
 144:21 145:14 146:11  
 154:3,14 156:14,18  
 165:13 183:6,7  
 184:13 223:15 229:19

230:12 243:22 249:10  
 249:14 251:17 256:12  
 258:13 270:13 292:10  
 294:17 299:9 302:9  
 304:19 305:2 311:20  
 322:15,18 345:14  
 356:22  
**quick** 81:15 222:7  
**quickly** 79:17 128:5  
 132:8 158:4 166:10  
**quiet** 188:9  
**quite** 72:8,18,22 79:16  
 81:4 101:1 135:21  
 190:5 217:15,16  
 289:22  
**quitting** 120:2 122:8  
**quotes** 199:19

---

**R**


---

**racial** 208:19  
**RADM** 2:6 251:22  
 268:11 273:16 277:17  
 278:4,18 281:20  
 291:12 295:8,16  
 302:4,16 303:12,14  
 304:7,11  
**raise** 170:16 250:20  
 256:3  
**raised** 46:19 76:5 179:7  
 296:21 297:1  
**raises** 118:17  
**ramifications** 228:19  
**ran** 127:20 206:18  
**RAND** 56:20 64:3 67:10  
 78:2 82:14 84:2,9,15  
 84:21 85:12 98:11,18  
 98:21 237:18 252:10  
 254:8  
**RAND's** 86:6,15  
**random** 167:5,5 224:12  
**range** 57:15 59:12  
 111:16 112:2 175:4  
 237:11  
**ranges** 58:18  
**rank** 195:5 321:3  
**ranking** 304:1,2  
**rankings** 65:1  
**ranks** 245:5 247:5  
 249:19 289:2 304:3  
**rape** 188:13 201:14,17  
 203:13 205:5 208:22  
**raped** 200:20 201:15  
 203:18,21,22  
**raping** 200:4 207:1  
**rare** 29:11 352:7  
**rarely** 324:18 342:9  
**rate** 65:7 111:20 180:2  
 336:18

**rated** 67:1  
**rater's** 216:18  
**rates** 96:6 172:3 341:21  
**rating** 320:16 328:17  
 338:15 353:17  
**ratings** 216:20  
**rationale** 327:12  
**rationalizations** 194:22  
**rationalize** 194:17  
**re-punished** 212:14  
**reach** 78:8 195:18  
 247:8,20 300:6  
**reached** 67:18 206:1  
 265:3  
**reaching** 112:21  
**reaction** 163:20 195:13  
 208:20  
**reactions** 59:14,17  
**read** 9:6 74:15,20,21  
 135:14 199:18  
**readily** 206:11  
**readiness** 3:18 70:17  
 127:11 128:10 183:19  
 192:11 209:19 235:9  
 237:7 244:16,21  
 258:9 259:13  
**reading** 42:4 111:3  
 180:19 331:1 348:18  
**reads** 180:21  
**ready** 8:20 108:16  
 322:19 344:14 347:1  
**real** 74:22 103:6 132:5  
 157:13 235:2,10  
 276:20 277:3 288:11  
**reality** 162:15 199:1  
 201:13  
**realization** 152:21  
**realize** 145:22 283:14  
**realized** 133:12 210:18  
**really** 10:13 11:11 16:2  
 29:16 42:10 51:20  
 53:8,14 55:2 65:2  
 67:15 77:1,21 84:17  
 84:21 87:4,19 89:15  
 93:21 98:3,11 100:12  
 101:6,10,11 102:22  
 103:17,18 104:7  
 107:2 128:5 137:17  
 138:7 139:3 146:2  
 153:2 156:1,13 160:5  
 162:6,21 164:6,8,22  
 166:10,22 167:1  
 168:1,2,16 169:2  
 173:10,19 174:5  
 175:19 176:8 180:22  
 181:4,13 182:4 187:4  
 194:8,18 204:19  
 210:10,18 217:1  
 218:7,9,9,22 221:22

- 227:5 268:19 271:19  
273:4 280:6,11  
281:17 287:13 289:1  
292:6 293:1,14,16,22  
296:22 297:3,4 298:1  
298:10 305:2 336:1  
**Rear** 4:3 232:2 251:20  
**reason** 10:16 29:13  
58:4 61:6 99:8,12  
106:12 136:3 147:16  
159:2 160:15 162:20  
215:21 298:4 336:19  
**reasoned** 316:14  
326:18  
**reasons** 42:22 98:19  
99:3 147:3,5 228:14  
277:6 329:20 341:5,8  
352:20  
**recall** 113:5 355:9  
**recap** 166:10  
**receipt** 311:7 337:22  
**receipts** 180:18  
**receive** 8:11 21:10 50:5  
51:2,3 64:16 147:22  
152:10 185:15 236:3  
268:6 308:18 311:2,5  
318:9 325:11 335:11  
336:16 338:14,18,22  
346:20  
**received** 6:15 8:13,15  
20:22 23:22 38:16  
58:12 59:6 72:12  
97:21 111:2 135:12  
179:16 181:16,19  
312:2,13,16 329:1,5  
330:7,16,16,18 336:8  
336:12 345:4 347:14  
**receives** 335:14,20  
**receiving** 65:1 156:10  
230:14 279:6 335:10  
**recess** 55:11  
**recipient** 199:11  
**Recognition** 267:2  
**recognize** 70:19 191:11  
193:18 194:5 206:17  
235:1 244:14 246:18  
256:9 257:21  
**recognized** 290:12  
**recognizes** 243:16  
266:16  
**recognizing** 242:17  
280:20  
**recommend** 18:19  
52:11 54:6,6 76:22  
104:19 196:12 210:13  
318:15 334:14  
**recommendation** 52:17  
54:2,4 55:6 159:14  
325:3 333:13 350:3,6
- recommendations** 47:1  
133:22 156:8 230:13  
**recommended** 64:8  
76:9 78:19 106:6,8  
343:7 347:12  
**recommends** 343:11  
**reconsideration** 319:18  
320:22 337:1,3  
**record** 6:8 45:15 55:16  
57:3 106:12 108:13  
183:11 230:22 270:18  
305:8 309:14 315:10  
319:13 321:10,21  
327:10 329:9 334:22  
337:6 352:14 353:6  
357:4  
**recorded** 6:4 270:18  
**recording** 6:5  
**records** 4:20 8:5 114:1  
267:21 268:2,4  
305:16 306:6 314:17  
315:4,5 318:21  
320:18 321:1,2  
323:15 325:18 332:3  
339:6 342:13 344:1  
349:18 353:1  
**RECORDS(BCMR)** 4:10  
**recount** 190:6  
**recourse** 285:19  
**Recourses** 257:3  
**recover** 62:5 70:16  
134:18  
**recovering** 31:7  
**recovery** 31:4 59:19  
61:3  
**recruits** 304:4  
**rectified** 34:11 35:1  
**redacted** 310:12 348:16  
**redirected** 207:2  
**redo** 84:9  
**redone** 307:13  
**redress** 348:9  
**reduce** 7:12 149:9  
238:16 258:8 266:22  
**reduced** 22:21 141:22  
151:6  
**reducing** 266:9  
**reenlistment** 347:7  
**reentered** 189:9  
**refer** 112:13 116:13  
141:1,4 274:5 306:19  
306:22 307:22  
**referred** 283:5 319:17  
329:8,22  
**referring** 72:7 122:7  
139:8  
**refers** 57:18  
**refine** 67:17 250:1  
255:5
- reflects** 349:2  
**reforms** 62:9  
**refresher** 243:13  
**refusal** 311:16  
**regain** 21:5  
**regard** 13:13 31:7 49:13  
50:12 86:19 96:19  
178:14 246:2 279:21  
**regarding** 3:4 7:11 17:5  
41:13 56:6 196:8  
262:17 279:8 314:8  
317:5 320:12  
**regardless** 190:19  
211:6  
**regards** 82:17 195:21  
240:16 273:13  
**region** 332:22  
**regression** 127:2  
129:16,17  
**regressions** 127:20  
**regular** 81:8 152:5  
163:6 330:13 335:3  
**regularity** 317:1 334:7  
**regularly** 69:1 174:18  
275:16 276:6  
**regulation** 333:5,6,9  
334:11 339:7  
**regulations** 63:5  
110:14 240:3 345:22  
**regulatory** 146:1  
322:10  
**reinforce** 85:20 240:19  
243:17 295:10  
**reinforced** 261:9  
**reinforcement** 192:19  
**reinforces** 240:7  
**reinforcing** 93:9  
**reiterates** 122:22  
**reiterating** 88:3  
**reject** 193:8  
**rejection** 186:14 190:7  
191:18  
**relate** 119:19  
**related** 6:5 113:21  
145:17 151:11 233:10  
236:12 245:15 263:10  
311:14 312:3 320:21  
353:12  
**relates** 25:10 286:15  
**Relation** 124:14 125:7  
**Relations** 3:9 61:15  
108:17 132:12 252:11  
**relationship** 226:8  
**relationships** 67:2,2  
114:12 123:7 155:11  
155:12 172:1 195:4  
222:2  
**relative** 129:22  
**relatively** 11:9 20:9
- 36:4,4  
**release** 68:15 134:6  
156:9,20 245:18  
**released** 56:21 68:16  
125:11 132:19,20  
133:15 145:11 156:16  
156:19 170:14,15  
**releasing** 180:3  
**relegated** 28:6 49:7,14  
**relegating** 14:12  
**relevant** 19:9 39:20  
256:17 309:15 319:19  
333:8  
**reliable** 83:14 84:13  
140:18  
**relief** 4:11 8:7 305:17  
314:12,15,19 315:20  
319:1 320:2 326:11  
326:11 329:7,10  
330:3 336:12 337:10  
337:12 341:6,7,21  
342:14 343:5,6,15,16  
347:11,15,17 348:2  
**rely** 21:9 48:10 104:5  
174:5 194:2 202:6  
237:14 317:17  
**relying** 20:21  
**remain** 28:17 49:22  
244:18 352:16  
**remaining** 329:21 330:6  
344:4  
**remains** 63:18,20 265:2  
**remarkably** 86:9,11  
**remarks** 6:8 78:6  
110:16 299:14  
**remedial** 106:8,17  
**remedies** 215:6 230:13  
316:3,4  
**remedy** 22:1 26:6  
**remember** 26:1 49:21  
134:9 226:5 288:20  
**remind** 213:16  
**remote** 20:10  
**removal** 320:22 321:3  
**remove** 288:10  
**remuneration** 15:20  
51:4  
**render** 327:4  
**reopen** 221:7  
**Reorganization** 314:18  
**repeat** 321:19,22 322:1  
322:4  
**repeat** 135:3  
**repercussions** 286:9  
**replace** 238:8  
**replaced** 331:8  
**replicates** 210:10  
**report** 8:6 24:9 51:13  
51:16 53:18 56:17

- 58:12,14,19,20 59:5,7  
59:22 60:11 61:18  
63:1 64:1,6,17 65:6  
66:13,19 67:13,21  
68:16 69:19,20 70:8  
72:18 74:19 76:5,10  
77:16,17 79:16 83:3  
83:10,15 90:3,21 94:8  
98:20 99:4,11,14  
100:6 101:7,15  
106:17,19 107:13,15  
118:3,4 119:10,22  
145:11,18 146:12,13  
146:15,17,21 147:1,4  
147:10,14 148:8,9,16  
150:2,15,19 153:21  
161:2 163:3,10  
165:11 170:13 175:5  
175:15 180:20 182:4  
183:3 186:21 196:22  
197:2 199:4 203:20  
204:3,4 205:15  
208:10,14 209:3  
248:22 249:2 254:17  
255:18 260:21 261:6  
264:22 268:1 271:17  
272:21 275:17 276:17  
277:3 281:1 285:7,11  
285:15 294:3,4,5,7  
296:7,11 298:14  
307:5 310:9,12,13  
331:12 332:11 336:3  
336:15,16 341:15,17  
350:2 351:8  
**reportable** 61:22 82:5  
**reported** 57:21 67:12  
68:6 76:1 83:2 102:14  
102:15 112:11 115:13  
117:20 120:11 121:12  
126:19 143:8,10,15  
143:20 153:1 182:19  
186:13 190:18 211:20  
244:11 252:12,14  
254:1 256:13 260:5  
261:5,19,22 262:21  
270:10 282:14 300:4  
**reporter** 163:20  
**reporters** 212:14  
**reporting** 49:9 57:3,10  
58:22 60:15 63:20  
64:13,15 70:7 98:16  
99:12 100:3 106:11  
112:17 113:15 118:2  
121:19 123:2 126:7  
132:15 144:12 147:6  
148:19 149:20 152:13  
153:22 162:14 174:11  
175:9,14,21 176:15  
176:18,21 177:3  
180:1,2 181:12,15,20  
182:14 207:16 212:13  
234:19 235:11 236:10  
237:1 238:5 245:21  
250:11 253:2,3,10  
254:6 257:7 258:8  
260:2 282:9,15  
283:12 285:6 294:2,2  
294:3 295:4,5 306:18  
306:19 310:17,22  
312:15 342:18,21  
**reporting-friendly**  
66:16  
**reports** 4:10 27:2 59:15  
69:2 74:18 76:8 80:21  
94:22 95:1,16 147:22  
152:10 162:3 179:16  
179:18 180:18 182:19  
192:16 212:21 213:17  
237:2 246:12 254:21  
260:19 269:13 278:12  
278:13 279:5 305:16  
318:6 321:1,2 326:1  
343:20 350:3  
**repository** 74:6  
**represent** 111:22  
**representation** 140:16  
276:18  
**representative** 26:2  
258:19  
**representatives** 7:19  
**represented** 115:8  
119:1 327:13 334:18  
**representing** 223:18  
**represents** 192:6  
246:10  
**reprimand** 279:7  
351:17  
**reprimands** 335:1  
**reprisal** 4:14 57:18  
62:12 65:16,21 74:8  
88:3 115:18 121:9  
236:6 245:22 257:8,9  
258:3 264:17 265:1  
268:14 282:21 284:21  
300:16 306:2,15,17  
306:20 308:2,13,18  
308:21 311:14 314:2  
314:8 317:21 318:3,6  
318:9,15,18 324:12  
325:2,9,16 330:15  
343:10,22 354:10,11  
**reprisal/retaliation**  
269:6 274:7 295:19  
**reprisals** 121:6 333:11  
333:18  
**repriser** 351:21  
**request** 8:7,13 10:14  
18:8 23:5 24:20 30:10  
30:15 37:2,4 39:21  
76:11 105:13 157:8  
288:7 305:17 316:11  
318:7 319:12 326:20  
328:9 331:10,10  
336:15,22 337:9,12  
342:18 346:9 353:13  
353:14  
**requested** 74:16 320:2  
320:5 337:10  
**requesting** 61:6 320:8  
328:16 354:22  
**requests** 4:11 27:8,19  
29:11 319:14 320:14  
320:17,21 341:19  
353:4,7  
**require** 18:3 37:22  
265:13 325:17 327:6  
**required** 9:15,21 18:5  
40:10 41:5 62:19  
65:18 104:12 302:3  
323:10 341:16 350:1  
**requirement** 15:10  
17:14 38:9 53:10 79:2  
79:15,21 85:10  
274:17 289:8 300:9  
**requirements** 49:10  
249:3 262:19 264:12  
323:9  
**requires** 62:21 246:20  
264:19 309:19 320:12  
334:16 344:5  
**research** 80:17 109:16  
110:1,4 132:13  
139:22 140:7,14  
141:1 148:14,20  
154:21 155:1 157:5  
158:14,21 159:2  
177:18 182:14 226:19  
238:2,2 243:2 249:13  
286:5  
**researched** 7:16  
**researcher** 125:12  
132:21  
**researcher's** 145:21  
**reserve** 281:5 322:18  
330:13 335:4,5  
**resign** 346:16  
**resiliency** 287:15  
**resilient** 287:16  
**resisted** 112:11  
**resisting** 123:5  
**resolution** 270:19  
293:17 338:1  
**resolve** 300:13  
**resolved** 35:3 39:3  
273:3 276:1 292:21  
297:9,16 300:5  
319:14 330:9 331:3  
**resolves** 300:4  
**resolving** 270:14  
**resource** 239:9 241:18  
273:6 299:14  
**resources** 63:13 68:4  
150:7,13 152:6  
154:12 165:12 175:18  
181:2 245:3 249:6  
273:22 276:14 277:1  
277:6 299:16  
**respect** 51:9 55:6 70:10  
82:1 89:20 233:19  
240:7,20 241:4  
243:18 253:22 259:7  
259:16 261:9 266:8  
280:9 281:11 283:14  
314:3  
**respected** 225:8  
**respectful** 166:20  
215:22 216:1  
**respectfully** 211:5  
**respective** 313:8,18  
315:16 317:8 352:22  
**respond** 19:21 31:5  
56:18 93:3 147:11,16  
147:20 148:1 149:21  
178:11 236:4 248:17  
253:11 255:6 256:9  
257:3,21 263:15  
300:1 353:3  
**responded** 39:13 86:4  
115:3 116:18 148:2  
**respondents** 58:10  
59:4,9 60:6 65:15  
66:18 82:18 83:20  
84:16 85:16 140:19  
263:16  
**responder** 69:3 255:14  
**responders** 69:7 235:4  
236:8,13 238:18  
239:6,10 241:10  
255:3 259:20 264:15  
**responding** 243:11  
250:7 257:7 279:17  
**responds** 163:10  
211:15  
**response** 3:4 7:2,7,20  
56:15 58:1,19 64:22  
70:22 84:8 85:18  
100:13 111:19 146:6  
181:2 210:15 232:16  
234:21 236:14 244:7  
246:7 248:2,10,14,20  
248:22 252:4,8  
253:15 261:13 264:7  
267:5 269:16 283:2,9  
284:19 293:6 296:17  
346:8 354:3  
**responses** 4:10 22:12

65:9 86:13 256:14  
 257:11 261:8 263:12  
 279:18 305:16  
**responsibilities** 11:9  
 102:18 243:6 248:6  
 314:1 317:21 318:13  
**responsibility** 22:6  
 26:16 29:2 48:3  
 145:19 207:16 230:3  
 280:21 281:10 319:16  
 327:4 329:12  
**responsible** 38:1 71:21  
 79:7 88:18 102:5  
 245:5 251:11 280:8  
 307:12,18 308:13  
 309:16 316:10 350:7  
**responsive** 67:19  
**rest** 167:15 286:7  
**restitution** 3:2 6:11,18  
 9:3,19,21 10:2,7,10  
 10:20 11:1,6 12:10,11  
 12:20,21 13:16,18  
 14:10 15:2,9,17,18  
 16:8,12,17 17:13,20  
 18:9 19:1,22 20:2,7  
 20:12,19 21:12 22:5  
 23:1,5,12 24:20 25:1  
 27:7,19,22 28:13 29:5  
 29:10,12,13,17 30:2  
 30:10 34:1,9,16,21  
 35:22 36:16 37:4 38:2  
 38:11 39:7,22 43:4  
 44:10,18 45:5,5 46:3  
 46:12,22 138:1,1,7,11  
 138:13  
**restore** 70:15  
**restricted** 294:3 342:18  
**result** 60:20 63:7 65:8  
 95:14 140:5 154:2  
 176:19 179:20 190:16  
 216:8 225:20 252:17  
 262:13 282:9 329:7  
**resulted** 330:21  
**resulting** 50:17  
**results** 57:5,7 61:20,21  
 64:11 69:22 72:16,21  
 84:13 91:10 111:5  
 132:4 169:16 236:19  
 254:11 260:11 261:8  
 274:12 277:13,14  
 278:22 298:10  
**resumed** 55:16 108:13  
 183:11 230:22 305:8  
**retaliate** 99:22 211:14  
 212:6 213:14 241:7  
 263:18  
**retaliated** 60:15 75:9,13  
 116:19 119:21 122:10  
 123:4 150:1 209:13

212:16 270:7 272:22  
 285:9 288:6 352:6  
**retaliating** 75:1 270:9  
**retaliation** 3:5,9,17 4:1  
 4:11 7:2,11,12,17,22  
 8:7,9 56:7,12,17  
 57:10,14,16,18 58:13  
 58:15,21 59:7,8,11,13  
 60:4,7,8 61:5,7,14,18  
 62:11,19 63:4,6,19  
 65:4,19 66:8 67:5  
 68:5,11,20 69:2,6,15  
 69:20 70:6 71:15 74:8  
 74:10,20,21 76:1  
 77:20 78:12,13,16  
 79:3 83:11 86:19 87:5  
 87:10 88:4,14,22  
 89:22 90:21 92:6 96:9  
 96:20 97:10,11,18  
 98:1,2 99:20 100:17  
 104:11 107:21 108:17  
 110:5,11,12,16 113:5  
 113:6,9,19,20 114:1,7  
 114:13,17,22 115:13  
 115:16,21 116:22  
 117:8,16,16,19,22  
 118:1,3,7,10,11,13  
 119:4,10,19 120:20  
 121:1,5,18,22 122:11  
 122:13,18,19,21  
 123:1,6 124:4 125:3,4  
 125:10,13 126:8,12  
 126:13,16,17,21  
 127:6,7 128:9,13,15  
 128:18,22 129:1,11  
 129:12,20 130:12,17  
 130:18 131:4,4,7,9,11  
 132:6,7,14,14,18  
 133:8 134:7,7 140:13  
 141:13,19,22 143:11  
 143:21 144:1,5,11,15  
 145:10,13 146:3,15  
 148:22 149:1,4,10  
 150:14 151:4,5,13,16  
 151:20 152:12,19,22  
 153:2,4,10,11,14  
 154:2,5 156:18  
 157:17 158:8,10,12  
 158:17 163:11,17  
 164:5,14 172:5,12,13  
 173:17,22 174:11,22  
 175:2,5,14,17 176:3  
 176:11,21 177:2,8,15  
 177:16 178:9 179:9  
 179:12 180:4 181:8,8  
 181:9,22 182:6 183:1  
 183:2,18 184:17  
 186:15,18,20 187:3  
 192:9,11 195:13,15

195:17 196:3,12,13  
 196:17,18,21 197:1,2  
 197:4,9,12,14,19  
 198:18 199:1,5  
 205:14 209:2,17,22  
 210:6,7,18 211:1  
 212:7,10,21 213:10  
 213:12 223:6,7,17,22  
 226:2 227:14,21  
 228:4 229:15 230:4  
 231:6 232:14 233:9  
 234:14 235:2,6,10,14  
 236:4,5,10 237:6,8,10  
 237:20,21,21 238:11  
 238:13,16 239:2,18  
 239:20,21 240:4,10  
 241:9,20 242:8,11,12  
 242:16,18 243:11  
 244:7,12,14,15 245:1  
 245:5,9,12,13,19  
 246:18,18 247:14  
 248:1,8,18 249:5,10  
 249:14 250:4,7,9,14  
 251:1,2,5,14 252:5,15  
 252:19 253:8,17  
 254:10,15,21 255:2  
 255:11,14,17,19,21  
 256:1,7,10,14,22  
 257:3,6,8,10 258:1,3  
 259:19 261:14,18,20  
 261:22 262:1,2,9,15  
 262:22 263:5,20,21  
 263:22 264:4,17,20  
 264:22 265:1,12  
 266:6,10,15,17  
 267:22 268:6,14  
 270:4,15,19 271:18  
 272:5 273:9 275:18  
 275:20 276:2,3,17,18  
 277:3,14 278:14,17  
 279:8,15,17,18,22  
 280:13,20,21 281:22  
 282:2,7,12,21 283:16  
 284:13,14,21 287:21  
 288:11 290:9 291:15  
 292:16,16 293:1,1,11  
 294:8 295:5 297:9  
 298:8,9 299:9,18  
 300:17 301:3,10  
 302:12 304:5,12  
 305:17 307:22 308:18  
 308:19 349:17 351:15  
 352:4 353:6 355:7  
**retaliation-themed**  
 247:18  
**retaliations** 181:21  
 223:20 224:2  
**retaliator** 163:22  
**retaliatory** 69:13 115:17

244:19 249:18 252:20  
 263:15 274:20  
**retell** 221:6  
**retirees** 335:6  
**retirement** 35:12,18  
**retirements** 334:20  
**retribution** 144:6 145:7  
 147:18  
**returned** 222:5 319:7  
 329:16  
**returning** 37:6  
**revamped** 304:11  
**revamping** 292:4  
**revealed** 188:21 330:20  
**revert** 133:7  
**review** 3:4 4:18 56:6  
 62:15,20 73:15 76:12  
 77:11,12,15 101:20  
 169:18 170:14 185:15  
 236:2 241:14 264:19  
 265:7 290:2 306:5  
 308:3,22 310:10,11  
 311:8 318:6 323:9  
 324:12,15,16 329:12  
 331:19,20 338:14  
 341:12  
**reviewed** 63:1 109:14  
 267:6 331:4 336:10  
 336:17 348:21  
**reviews** 80:7 152:5,18  
 266:1 346:19  
**revise** 98:18  
**revised** 242:7 245:18  
 249:9 256:1,4,4  
**revising** 98:17 242:15  
**revisit** 40:10,22  
**revisiting** 40:7  
**reward** 26:8 159:20  
**rewarded** 129:4 212:20  
**rewards** 129:4 194:8  
**rewritten** 264:7  
**Richard** 2:6 4:3 232:2  
 251:21  
**rid** 227:19  
**ridiculous** 209:21  
**right** 14:6 23:16 25:4  
 30:12 33:1,2,6,8 34:3  
 34:8 35:17 47:6,7  
 50:3,7 51:21 53:20  
 63:10 64:14 72:6,19  
 75:4 78:22 80:1 82:3  
 82:6 86:16,22 89:17  
 92:6,17 93:12 94:3,5  
 101:3 102:8 106:1  
 117:6,18 118:12  
 167:11 171:19 176:3  
 178:12 182:1 213:6  
 214:21 221:3 223:6  
 224:7,14 226:10

227:11 229:14 230:10  
231:15 279:4 285:12  
285:12,14,19 290:3,7  
293:19 296:1,19  
297:16 298:15 301:7  
304:10 310:6 311:15  
314:10 349:11  
**rights** 70:11 213:21  
236:12 249:6  
**rise** 59:16 105:1  
**rises** 151:15,16 175:6  
**risk** 69:10 70:21 118:8  
119:15,17 182:16  
183:2 194:13  
**risky** 91:13  
**road** 90:13 107:6 175:7  
176:5  
**role** 69:4 87:13 90:18  
198:13 214:5 240:22  
251:6 271:11 296:4  
302:17  
**roles** 135:22 243:5  
264:11  
**roll** 322:13  
**rolling** 211:2  
**room** 118:22 305:12,13  
348:18  
**roots** 287:7  
**rotating** 333:3  
**roughly** 175:3  
**round** 277:10  
**routinely** 125:15 133:3  
**routines** 129:2  
**rubber** 90:13  
**ruined** 207:22  
**rule** 27:12 53:8 160:21  
168:11 221:17,21  
**ruled** 343:15  
**rules** 19:4,4 38:15  
54:19 188:17 190:20  
327:6 343:10 345:21  
**run** 91:1  
**running** 276:11  
**runs** 274:10  
**Ruskin** 2:10 4:19 306:5  
340:10,10,12 354:2,3  
356:18

---

**S**


---

**S** 2:7 3:1 4:5 231:9  
**S.J.D** 2:4  
**SACMGs** 255:1,13  
**sadistic** 194:6  
**safe** 59:14 69:18 246:4  
**safely** 69:19  
**safety** 61:16 62:6  
127:14 251:11 260:21  
**Sailor** 4:4 232:3

**Sailors** 254:13 256:19  
258:10  
**sake** 31:19 130:1  
**Sam** 339:18  
**Sameit** 39:9,13  
**sample** 82:13 114:21  
262:6  
**sampling** 126:1  
**sanction** 105:16,20  
159:21  
**sanctions** 216:9,11  
**SAPR** 4:6,8 63:17  
231:10 232:2 247:17  
248:4,7,14 251:5  
256:4,11 276:15  
**SAPRO** 3:4,6,8 7:8  
55:19,21 60:17 87:11  
87:16 88:10 307:15  
**SARBs** 236:2 299:7  
**SARC** 270:8 271:6,15  
273:8 294:5  
**SARCs** 236:14 243:10  
271:12 276:16 296:9  
**SARPs** 249:8  
**sat** 167:14 201:21  
220:10  
**satisfaction** 64:20  
120:3 121:16,20  
122:1,2  
**satisfactory** 9:9 41:7  
45:10,13  
**satisfied** 46:3  
**satisfies** 272:4  
**saw** 90:6 191:11  
**saying** 10:10 19:18  
21:19 34:1 36:2 164:3  
166:18 175:4,16  
176:18 179:21 180:1  
180:7 202:2 215:15  
218:13 223:13 229:9  
285:8 308:17  
**says** 39:2 168:4 292:22  
315:2  
**scale** 242:14  
**scary** 159:5  
**scenario** 187:11 266:11  
288:13  
**scenarios** 242:18  
**schedule** 262:19  
**scheduled** 68:16  
**scheduling** 337:15  
**school** 3:14 108:22  
215:14 339:12  
**science** 111:1 124:9  
157:4 170:9  
**scientific** 109:14  
**scientist** 82:10 125:5  
136:8  
**scintilla** 317:14

**scope** 63:22 222:12  
262:9 283:13  
**Scott** 2:7 4:5 199:22  
231:9  
**screen** 144:8  
**SEALs** 137:12  
**search** 352:10  
**searches** 312:11,12  
**SecDef** 73:12  
**SECNAV** 253:18  
**second** 36:1 58:15 76:6  
79:10 112:18 128:20  
131:8 132:2 134:5,18  
141:18 152:9 227:4  
229:2 239:17 248:1  
291:4 314:14  
**Secondly** 69:3 293:21  
**secretarial** 323:9  
324:12  
**secretaries** 87:17  
111:17 118:21 313:8  
**secretary** 60:16,20  
67:20 68:19 72:21  
78:18,19 90:2,15  
93:14 107:14 232:21  
237:4 239:18 241:7  
242:13 257:4 299:4  
309:21 315:2,14  
318:16 324:19 328:8  
332:1 333:1,16 334:2  
343:13,14  
**Secretary's** 93:5,18  
323:16 324:13  
**secrets** 193:21  
**Section** 315:1 318:5  
320:10 328:3,7,7  
348:15  
**sectional** 140:16  
**sections** 126:4  
**sector** 111:10 140:22  
142:3 148:21 149:13  
151:19 179:11  
**securely** 69:19  
**Security** 344:19  
**see** 13:2 22:4 33:17  
36:6 40:8 46:8 77:17  
81:1,2,10 87:8 90:12  
91:13,22 92:2 93:4  
98:5 103:7 111:16  
113:17 115:11 116:3  
116:8,10,17,20 117:7  
117:16,18 118:10  
120:10,17 122:2  
128:2 131:19 133:4  
139:3,14 150:5  
152:17 154:10 163:10  
174:15 191:10 199:22  
201:1 204:10 219:2  
272:7,12 277:20

278:3,7 280:22 307:6  
327:7 341:19 353:21  
**seeing** 164:4 227:9  
247:3 269:12 270:20  
**seek** 28:7 235:6,18  
319:17  
**seeking** 25:18 28:2  
112:19 335:8 342:12  
**seen** 15:13 100:4 142:2  
149:9 162:11 164:4,6  
165:14 174:9 192:21  
192:21 213:4 219:17  
234:16 342:15 343:18  
353:5,9 354:4,6  
355:10 356:8  
**sees** 204:11  
**segment** 116:20 117:6  
**segregated** 111:12  
**selected** 60:10 232:20  
**selection** 281:7  
**self** 259:9  
**self-report** 208:14  
**self-selected** 167:10  
**self-studies** 171:2  
**semi** 278:12  
**semi-annual** 74:19  
**seminars** 124:20  
**send** 211:6 272:1 307:4  
307:9,11,17 308:6,6  
310:13 350:18 351:8  
351:10  
**sending** 75:4 351:1  
**sends** 346:2  
**senior** 3:8 7:8,19 8:3  
55:20 66:15 72:15  
151:10,22 161:21  
197:1 232:20 241:12  
241:16 256:5 287:5  
289:10 291:17 323:17  
333:2  
**sense** 12:5,7 21:6 47:20  
53:9,11 68:5 96:12  
110:18,19 111:10  
168:15 170:12 180:14  
180:14 223:7 268:22  
**sensitive** 51:11 52:1  
73:11 98:16 205:6  
220:1 248:11 260:11  
286:15  
**sensitively** 197:7  
**sensitivity** 96:3 107:8  
**sensitizing** 286:1  
**sent** 23:9 297:17 346:7  
351:6  
**sentence** 16:14 18:5  
24:9,10 27:11,13,19  
28:20 32:2,8,14 33:20  
34:7 36:19 39:7,11  
**sentenced** 193:1

- sentences** 22:17 24:5  
 32:21 33:7 321:5  
**sentencing** 15:19 17:2  
 17:12 19:14 22:16  
 23:3 24:7 27:7 30:13  
 32:13 34:10 36:7,20  
 37:1,12,18,20 38:5,21  
 165:19,21  
**separate** 335:9  
**separated** 81:3  
**separation** 62:16 76:10  
 76:14 334:20  
**separations** 62:22 63:3  
 76:7 80:12,12 81:16  
**sergeant** 233:6 240:11  
 280:4 281:3  
**sergeants** 242:2,6  
 266:5 287:6  
**series** 294:1  
**serious** 25:10 99:14  
 160:8 177:7 192:6  
**seriously** 53:6 132:13  
 182:19,20 236:22  
 244:14 260:20 261:7  
 278:9 298:10 351:16  
**serve** 54:19 71:2  
 101:12 188:18 236:8  
 239:14 296:4 333:3  
 346:14,14  
**served** 320:19  
**serves** 73:15 320:4  
 325:10  
**service** 8:4 26:2 58:7  
 63:5 74:9 87:17  
 103:14 219:1 247:10  
 247:18 259:9 267:14  
 267:14,17 271:21  
 272:7,13 277:13  
 307:2,10 311:3,5,10  
 311:16 321:8 323:11  
 323:17 325:6 333:3  
 335:2 340:22 343:11  
 350:13,22 351:2,5  
**Service's** 259:3  
**service-wide** 245:8  
 277:12  
**Servicemember** 201:13  
 216:14  
**Servicemembers** 91:12  
 213:20 233:18 235:19  
 314:20 326:4 339:8  
 345:19 349:4  
**services** 4:1 7:20 64:20  
 65:13 67:18 68:2,19  
 74:6 76:22 79:20  
 87:10,14,16 88:20  
 90:3 101:4 103:9  
 208:11 231:7 234:15  
 237:13 239:12 249:17  
 259:21 260:16 273:7  
 275:9 277:1,11  
 288:17 299:2 300:1  
 313:16,18 321:13  
 340:18 352:2  
**servicing** 326:9  
**servicing** 28:19 233:16  
 330:12  
**SES** 291:14  
**session** 6:21 7:5 8:2  
 183:14,17 222:18  
 265:16 305:14  
**sessions** 9:3 69:6  
 324:6  
**set** 51:7 104:16 125:8  
 125:19,22 128:6  
 130:6,18 132:17  
 149:15 150:22 156:16  
 156:17,20 177:20  
 241:17 242:13 277:7  
 311:9  
**sets** 155:12,16,22  
 219:15  
**setting** 48:2 102:11  
 230:3  
**settings** 145:1 178:10  
**seven** 165:21 185:3  
 329:14 330:19 331:2  
 349:1  
**Seventy** 345:5  
**severe** 163:20 192:13  
**severity** 61:20 129:12  
 129:19 154:4,4  
**sex** 111:12 130:21  
 208:8 328:16  
**sex-related** 336:10,13  
**sexism** 203:13  
**sexual** 3:3 6:12 7:3,7,13  
 7:19 12:18 13:7 18:21  
 47:10 51:12,15 52:16  
 53:9 56:14,22 57:4,7  
 57:10 58:11 59:5,15  
 60:14 61:18 62:11,16  
 62:22 63:12,18 64:22  
 65:6 69:10,20 70:3,21  
 73:14 76:8 80:19 82:2  
 82:17,21 83:2,9 84:1  
 84:3 85:1 86:14 89:20  
 90:20,20 92:5 93:11  
 98:12 99:4,11 100:6  
 110:2,6,15 112:7,7  
 115:8 124:6,17  
 125:16 129:6,9 131:2  
 132:15 133:3 134:2  
 135:10,16 136:14,16  
 137:2,3,16 138:12  
 142:18 143:2 159:5  
 172:4 175:12,13  
 178:18 182:15,17,17  
 185:4,10 186:16  
 188:1 191:4 192:5,8  
 192:16 193:2,12  
 195:3,16 196:9,19  
 197:8,15 209:5,7  
 210:4 212:10 214:16  
 232:16 233:8,9  
 234:14,17 236:1,13  
 236:22 238:5 241:14  
 245:21 246:4,9,12,20  
 248:14,21 249:2  
 251:5 252:4,6,8,13,17  
 253:2 254:9,18,21,22  
 255:18 256:20 257:18  
 257:22 258:5 259:4,7  
 259:11,17 260:4,19  
 261:2,16,19 262:4  
 263:11,11 264:6,14  
 269:15 274:1 276:2  
 283:11,15 284:4  
 285:1 294:1 302:4,11  
 302:17 303:6 306:18  
 310:14,17,18 311:13  
 312:3,15 314:8 320:8  
 320:15 328:10,19  
 331:5 338:8,11,13  
 342:1,3,7,11,16  
 347:20 348:1,16  
 349:9 353:5,12 354:5  
 355:7 356:8  
**sexually** 211:14  
**shame** 186:14  
**shaming** 210:2  
**share** 49:3 56:4,5 68:14  
 72:3,20 98:20 103:9  
 103:10,10 124:3  
 126:10 140:12 142:1  
 191:6,7 220:22 233:3  
 258:21 281:15,17  
 326:1 327:6 328:19  
 337:10  
**shared** 61:19 234:1  
 299:13  
**sharing** 38:17 73:16  
 154:20 217:5 223:1  
 232:10 305:19  
**sharp** 4:2 64:12 231:8  
 232:17 234:8,11  
 238:22 239:9,10,15  
 241:18 242:11 243:3  
 243:7 272:16 273:7  
**she'd** 308:6  
**shed** 260:14  
**shift** 64:14 198:17  
**shifted** 159:2,7 290:22  
**shifts** 174:15 175:8  
 262:18  
**shine** 186:10 269:12  
 270:21  
**shipmate** 283:19  
**shipmates** 284:5,16  
**shipping** 229:14  
**shop** 239:15  
**shops** 90:7 91:1  
**short** 19:12 24:16 27:5  
 27:17 36:4 234:9  
 291:2 312:10  
**shortly** 30:13 61:12  
**shot** 269:11  
**show** 25:1 64:11 73:1  
 75:10 122:12 128:5  
 151:11 168:4 267:21  
 298:8 317:10 320:18  
**showed** 60:1,4 167:12  
**showing** 145:11 150:10  
 167:9 187:12,17  
**shown** 49:4 148:14  
 322:2  
**shows** 73:18 114:20  
 121:15 123:6 144:9  
 144:14 236:18 246:1  
 246:5 320:3  
**shrinks** 83:3  
**shunned** 114:8  
**shunning** 210:2  
**shutdown** 327:22  
**side** 36:3 185:18 187:20  
 188:11 193:19 269:11  
 273:11 282:20 284:10  
 285:6,20 289:19  
**sides** 202:6 213:18  
 214:5 217:9  
**siding** 206:9  
**sign** 208:15 234:20  
**signals** 75:4  
**signed** 299:5 319:10  
**significant** 60:2 64:11  
 65:15 69:22 123:7  
 128:21 130:1 131:12  
 141:14 154:9 175:8  
 185:9 196:16 219:12  
 219:18 324:21  
**significantly** 120:18  
 121:11,20 122:3,4,9  
 149:10  
**signs** 187:18 197:12  
 242:17  
**silence** 207:15  
**Silver** 325:1  
**similar** 78:3 85:14 97:6  
 98:11 111:9 117:17  
 155:13 156:2 171:21  
 173:1 201:6 285:4  
 320:10 340:15 356:16  
**similarly** 22:3 291:22  
 320:12  
**simple** 43:5 197:14  
**simpler** 14:11 19:3

**simply** 16:4 114:17  
130:3 133:6 136:2  
196:18 197:13 209:20  
263:3  
**simultaneously** 185:6  
234:18  
**single** 104:10 141:6  
247:21 350:3  
**sir** 45:21 48:17 71:16  
77:6 103:19 184:9  
258:17 269:10 273:13  
273:16 274:15 275:13  
277:17,19 344:14  
351:5 353:19 356:13  
**sit** 79:11 187:9,17,20  
188:2 228:1  
**sites** 111:13  
**sitting** 116:5 211:18  
296:16  
**situated** 55:12  
**situation** 70:20 91:13  
91:15 112:17,22  
117:4 129:14,20  
164:20 201:7 207:3  
249:12 272:12 273:9  
302:15 331:3 342:20  
**situations** 18:9 23:19  
129:13 145:2 186:7  
199:19 350:21  
**six** 31:9 32:3,7,8,8,18  
32:18,22 33:2,7,14  
150:6 165:3,17,22  
174:6 247:1 250:19  
297:13 312:13 325:4  
335:2,4 349:1 352:10  
**sixth** 250:8  
**size** 73:7 89:10 130:4  
130:13 262:6 348:10  
**SJD** 134:20  
**skills** 69:11 243:1  
**skip** 6:7  
**slide** 113:2,17 114:20  
117:13 118:9 121:15  
126:18 131:9 133:19  
144:7,13 146:10  
150:5 158:2 165:2  
317:22  
**slides** 110:20 116:7  
124:1 127:18 128:4  
128:12 138:21 139:6  
157:22  
**slight** 158:9  
**slightly** 116:22  
**slowly** 132:3 134:10  
**slut** 202:2 204:20  
**small** 25:3 41:9 91:1  
92:9 130:9,14 158:12  
160:2 238:19 245:6  
262:5 266:1 287:18

344:22 348:10,11,19  
**smaller** 83:8,8 128:7  
**smart** 193:16  
**smile** 188:8  
**snapshot** 72:1,8 101:10  
**snapshots** 81:8  
**Snow** 2:2 3:6 7:9 55:19  
56:9 71:16 76:6 77:14  
82:3,6,9 85:9 87:12  
91:6 92:6 93:8,13  
94:3,5,10 95:9,11  
97:3 100:11 102:16  
104:6 105:9,14 107:2  
108:5,7 178:14 237:9  
**Snyder** 2:6 4:3 232:3  
251:21,22 268:11  
273:16 277:17 278:4  
278:18 281:20 291:12  
295:8,16 302:4,16  
303:12,14 304:7,11  
**social** 58:15,18,21 59:6  
59:8,13 60:3 65:19  
74:10 75:14 76:1  
78:12,15 87:10 88:13  
88:21 92:8 96:20  
97:11,17 98:1,10  
102:7 109:20 110:22  
112:19 113:14 114:7  
115:13,18,21 116:22  
117:8,15,15 118:10  
120:22 121:5,6,8  
122:11,19 123:5  
124:8,9,16 125:5  
127:5 128:8 136:8  
144:6 145:1,9,13,16  
145:20 146:3 157:4  
158:17 170:9 172:12  
177:16 182:5 209:5,8  
212:11 222:2 225:4  
226:14 237:12 240:4  
240:10 244:12 245:17  
247:20,22 250:12  
252:14,20 259:19  
261:18 262:1 263:21  
279:22 280:13 281:22  
282:1,12 283:10  
287:20,20 288:11  
293:1 306:21  
**socializing** 188:6  
**socially** 116:20 179:3  
**sociologist** 173:7  
**Soft** 303:14  
**softer** 144:6  
**Soldier** 189:3,7 192:2  
219:7 241:2 335:15  
336:7  
**soldiers** 187:13 189:12  
190:9 191:16,22  
193:15 197:6 216:19

233:8 234:7 236:21  
237:16 243:2 339:5  
339:21 340:2  
**sole** 316:17  
**solicited** 72:12  
**solution** 210:9  
**solutions** 195:21 196:1  
227:6  
**solve** 52:6 89:8 260:10  
271:11  
**somebody** 97:15  
210:12 211:7 213:10  
215:10 271:17 303:10  
**somewhat** 44:15,19  
117:17 326:20  
**soon** 175:17  
**sorry** 5:21 22:9 24:3  
33:18 45:18 117:15  
133:20 166:9 169:21  
170:7 214:22 301:21  
305:13 306:11 307:20  
323:4,5  
**sort** 29:19 122:21  
137:15 157:4 165:18  
210:10 269:4 272:2  
279:19 306:17 309:8  
311:15  
**sorts** 113:4  
**sought** 117:2,9  
**Soulier** 2:5 3:19 183:21  
183:22 184:2,9,10,15  
198:3 200:12 217:10  
217:19 219:17 221:2  
221:21 222:16,20  
224:2,7,14 228:16  
229:21 230:6,10,17  
**sound** 154:12  
**sounds** 13:10 35:20  
**source** 54:11 237:20  
**sources** 35:15 150:4  
237:14 256:18 289:7  
**span** 264:9  
**spans** 111:12  
**speak** 44:16 45:19  
92:11,14 109:10  
110:5,9 122:16  
123:16 136:15 139:18  
173:11 197:22 204:14  
221:8 227:14 258:12  
313:3 328:3 332:8  
**speakers** 55:10  
**speaking** 18:12 119:21  
121:1 145:22 238:9  
272:18,19  
**speaks** 245:19  
**special** 31:17 64:21  
136:13 184:21 185:12  
185:12 235:16 236:15  
295:21 338:10,18,20

339:19 343:19 347:21  
349:14  
**specialist** 173:10  
**specialized** 109:12  
135:16  
**specialty** 265:17 323:19  
**specific** 38:9 63:14  
71:19 93:16 113:18  
172:3,4 201:19 248:5  
249:17 268:4 278:6  
282:13 299:8 311:22  
322:14 323:4  
**specifically** 56:16 79:2  
85:18 92:5 112:5  
123:16 186:18 217:6  
225:17 245:18 266:15  
273:22 279:20  
**specificity** 88:17  
**specifics** 76:20 215:5  
**spectrum** 66:5 288:9  
**speech** 152:2  
**spell** 15:3  
**spend** 21:8 128:14  
219:12  
**spent** 176:13 289:22  
**spin** 208:5  
**split** 347:10  
**spoke** 21:1 200:13  
279:14 338:4  
**spoken** 115:10 117:11  
118:13 120:19  
**spot** 74:13  
**spotlight** 186:10  
**spouse** 335:8  
**Sprance** 2:15 5:3,4,11  
357:4  
**squad** 240:12 280:3,7  
280:19 281:4,8,8  
**squadron** 265:20 266:4  
**squeaked** 171:6  
**staff** 2:12,13,14 5:12  
9:1 12:19 15:13 16:1  
30:20 49:17 119:1  
139:2 232:22 237:4  
238:16,21 292:1  
299:16 313:14 316:9  
323:16 326:13,14  
327:16 331:19 332:13  
337:17,18 339:11,17  
344:1,20,22 345:11  
346:2,21 347:20  
348:10  
**Staff's** 39:19  
**staffing** 351:3  
**staffs** 323:13  
**stage** 197:17  
**stages** 11:8  
**stainless** 188:20  
**stance** 210:3 211:9,15

- stances** 215:13  
**stand** 23:20 194:14  
**standalone** 66:3  
**standard** 49:9 102:12  
102:12 165:18 317:15  
344:12 347:3 351:12  
355:22  
**standardize** 287:3  
**standardized** 127:19,20  
**standards** 52:1 149:15  
165:9,10,16 168:20  
174:10 179:15 266:1  
313:22 316:21 321:18  
321:20 322:5  
**standing** 36:18 194:10  
195:9  
**Star** 325:1  
**stare** 191:1  
**starred** 130:1  
**start** 6:10 42:2,17 109:4  
134:16 139:1 149:5  
174:14,19 175:7,20  
184:9,12,17 198:21  
224:21 232:5 267:12  
267:19 281:2 283:13  
286:21 288:13,13,13  
305:11 306:8  
**started** 63:21 72:1,8  
79:14 174:5,6 175:1  
184:7 293:22  
**starting** 29:22 142:2  
148:22 154:10 197:13  
**startling** 190:13  
**starts** 211:22 213:6  
214:3 218:3 223:6  
229:8  
**state** 14:14 16:11 18:14  
22:14 23:2 24:15 36:5  
48:11 49:15 50:14,16  
51:3,10,14 54:16  
**stated** 261:3 300:15  
337:16  
**statement** 13:14 71:4  
104:7 184:12 199:18  
308:11  
**statements** 274:18  
**states** 1:1 27:4,9 51:2,8  
111:13 315:1 318:5  
**station** 233:16  
**stations** 302:21  
**statistically** 86:15  
**statistics** 82:1 141:4  
163:6 180:17,18  
226:7,12,14 268:7  
314:7 328:22  
**status** 28:18 48:9 81:2  
118:20 119:11 157:18  
158:6,8 265:2 275:17  
335:1,2
- statute** 44:14 308:16  
309:19 310:20 311:6  
314:22 319:4 344:5  
355:11  
**statutes** 53:16 54:17  
308:5  
**statutory** 62:14 313:19  
324:17 355:11  
**stay** 188:3,16 208:18  
**steeped** 203:12  
**steer** 269:22  
**step** 11:14 62:21 64:14  
87:12 90:6 101:1  
107:3,12,14 145:19  
149:10 215:3 221:1  
225:1  
**steps** 69:17 70:12  
107:4,21 189:15  
246:17 255:22 260:20  
**stick** 221:4  
**sticks** 218:2  
**stolen** 13:7  
**Stone** 1:14 5:17,19 8:22  
9:12,13 10:4,5,21  
11:20 22:9,11 24:4  
30:19 31:1,2 36:2  
39:15 40:12 41:17,19  
41:20 42:19,21 43:1,2  
43:4 45:12,14,17,18  
45:22 46:18 48:15,16  
48:19,22  
**Stone's** 35:4  
**stood** 80:19 275:14  
**stop** 50:2 198:21  
239:15 276:18 277:8  
284:13  
**storage** 106:10  
**stories** 286:22  
**story** 207:9  
**straightforward** 181:14  
**stranger** 201:11,15  
**strategic** 69:21  
**strategies** 112:14 113:3  
117:1 248:9 250:7  
279:16  
**strategy** 186:11 247:7  
**stream** 307:18  
**strength** 267:16  
**strengths** 185:17  
**stress** 119:22 120:11  
120:17,21 121:2,7  
124:20 244:9  
**stressors** 65:6  
**strictly** 308:19  
**strides** 294:19  
**strikes** 19:2  
**striking** 146:18 218:15  
**strives** 313:5  
**strong** 26:3 187:12
- 254:13 349:3  
**strongly** 87:18 104:7  
130:11  
**structural** 40:9 41:4  
**structure** 11:21 195:5  
**structured** 54:15  
**structures** 177:11  
179:1  
**studied** 133:14  
**studies** 3:9 108:17  
109:9 146:10 174:5  
**study** 109:13 110:15,21  
111:6 113:8 114:16  
123:10 127:14 131:20  
134:7 140:16,19  
142:6 147:3 159:5,8  
161:20 169:6,11,16  
237:18  
**studying** 124:5,10  
**stuff** 74:10 81:4 96:6  
229:8  
**subject** 22:22 25:12  
31:21 33:5 162:5  
272:5 307:15 325:21  
**submariners** 137:11  
**submarines** 137:10  
**submission** 319:21  
**submit** 23:5 27:7  
326:20 341:16 346:8  
**submitted** 27:20 56:12  
343:4  
**subordinate** 57:20  
245:2  
**subordinates** 114:15  
**subsequent** 106:7,17  
257:22 353:10  
**subsequently** 76:9  
126:7 200:3 262:13  
**subset** 115:12  
**substance** 225:17  
**substantially** 45:8  
141:22 328:5 347:11  
**substantiated** 307:7  
318:14 325:9 328:10  
335:16 336:6,8,11  
350:4 352:19  
**substantive** 101:13  
**substitutes** 53:18  
**subtle** 197:7  
**subtly** 189:21  
**success** 161:8 281:10  
301:11  
**successes** 235:5  
**successful** 101:20  
164:2 210:1 246:1  
273:4 354:8  
**suffer** 16:5 49:20  
**suffered** 138:6  
**sufficient** 317:10
- 344:22  
**suggest** 28:3 35:8  
118:2 132:4  
**suggested** 230:13  
**suggesting** 11:21 55:4  
**suggestion** 15:1 47:13  
216:15 227:8  
**suggestions** 161:8  
211:8 217:14 300:21  
**suicidal** 192:12  
**suing** 138:3  
**suit** 29:16  
**summarize** 24:5 110:21  
122:5,14  
**summit** 238:22 242:11  
**summits** 292:2  
**superior** 57:19 122:17  
**superiors** 114:4,15  
**supervision** 266:21  
289:15  
**supervisor** 92:15 99:21  
117:11 122:1 130:22  
144:17 151:10 154:1  
227:22 235:12 242:19  
256:7 262:17 287:11  
289:2  
**supervisors** 69:9 90:5  
91:5 92:20 93:19  
121:17 131:18 151:22  
265:14 266:5  
**supplement** 67:11  
**support** 65:12 70:15,22  
78:22 95:13 112:20  
117:3,9 118:22 150:4  
158:15 163:3 177:21  
178:1 187:18 188:12  
189:12 196:20 201:9  
205:18 209:5,8 217:7  
217:18 219:8 220:6  
221:13 226:8,14  
228:5 238:4 243:4  
257:19 260:22 296:8  
296:10,18 332:2  
**supported** 129:4 147:8  
336:21  
**supporters** 187:16  
188:8,16,19 189:7  
191:17  
**supporting** 218:10,12  
**supportive** 228:22  
**supports** 66:17  
**suppose** 135:6 136:3  
292:22  
**supposed** 43:5 75:7  
106:14 311:6  
**Supreme** 27:10  
**sure** 10:18 15:14 40:18  
55:13 73:5 78:21 79:8  
82:9 85:11 89:13 97:3

101:1,8 103:22 104:4  
 119:8 160:12 165:7  
 172:10 272:15 278:8  
 280:18 282:5 285:9  
 289:17 294:15 302:14  
 303:11  
**surge** 327:17  
**surprising** 131:13  
 155:16  
**surprisingly** 130:10  
 341:1  
**surrounding** 7:16  
 110:15 124:4 250:4  
**surroundings** 61:2  
**survey** 56:20 59:9  
 61:15,19 64:3,19 65:9  
 65:15 66:19 67:17  
 78:4,7 82:14,15,19  
 84:11 85:13,17 86:2  
 94:2 98:21 110:2  
 111:20 115:3 124:14  
 124:21 125:7,11,18  
 126:4 133:7 140:15  
 142:8 151:8 155:1  
 156:15 166:13 167:22  
 168:3 170:10 234:16  
 236:17 237:19 246:1  
 252:11 254:8 255:8,9  
 256:12 261:8,15  
 277:4 290:6  
**surveyed** 111:6 246:3  
**surveys** 58:9 59:3 62:1  
 62:2 64:5 65:4 83:5  
 109:16 112:3 125:20  
 125:22 153:11 174:18  
 236:20 238:1 249:16  
 254:12 260:13 262:14  
 263:4  
**surviving** 207:16  
**survivor** 64:4,19 66:18  
 78:7 94:1 237:18  
 255:7 261:15 334:21  
 335:8 340:1 347:8  
**survivors** 60:14 63:12  
 63:16 66:9 68:12 78:8  
 235:7 238:9,18,22  
 340:2  
**suspect** 102:1,17  
**suspected** 65:21  
**suspense** 338:4,6  
**sustained** 57:9  
**sustaining** 241:1  
**SVC** 239:7 338:21 339:2  
 339:3  
**SVCs** 236:16 276:15  
 338:22 339:1  
**SVPs** 219:21  
**swarms** 194:12  
**sweeping** 315:12

**swim** 92:11  
**swore** 203:20  
**sympathy** 205:3  
**Symposium** 291:14  
**symptoms** 120:1  
 121:11 186:15  
**system** 12:9,10,21 13:4  
 13:11,12,13 14:15,17  
 14:21 15:5,7,11,22  
 16:9,20,22 17:12,13  
 17:16,19 18:15,20  
 19:8,21 20:9,12,13,14  
 22:14 24:15,16 29:1  
 30:7,11 34:2 36:7,14  
 37:8 38:8 40:19 42:5  
 42:16 43:13 44:22  
 45:3 47:11 48:10  
 49:11,15 50:9,13 51:7  
 51:22 52:12 70:7 79:3  
 85:18 105:6,7,19  
 111:8 165:10,15  
 186:5 201:9 212:14  
 216:22 217:8 224:4  
 227:15 236:5 246:7  
 276:6 278:15 312:4,8  
 330:20 331:7,11  
 335:17 336:1,4  
 338:10 339:22 350:2  
**systematic** 223:22  
 224:11  
**systematically** 162:22  
**systemic** 210:3  
**systems** 11:22 13:9  
 14:14 16:12,13 23:3  
 24:6 35:19 40:15 47:2  
 49:8 50:15,16 51:10  
 54:7 84:8 162:12,16  
 162:19 177:12 216:16  
 234:22 349:22

---

**T**

---

**T** 3:1,1  
**Tab** 13:20 14:1 16:3  
 49:18 139:11  
**table** 13:21 21:20  
 134:20 270:15 317:17  
 356:9  
**tackle** 162:11  
**tailor** 65:12  
**take** 16:10 26:18 34:14  
 45:19 50:10 53:6  
 55:11,13 57:12,19  
 67:8,9 70:1,12 82:19  
 82:22 87:12 91:16,22  
 95:21 108:8 124:9  
 184:13 197:11 202:5  
 213:18 214:19 222:8  
 222:8,9 224:6 230:19  
 237:1 244:5 250:13

253:19 260:20,22  
 261:6 269:10 274:3  
 278:9 292:20 293:3,5  
 300:10 303:20 305:5  
 310:5 311:14 318:21  
 351:16  
**taken** 32:10 71:14  
 97:15 106:17 107:3  
 107:20 113:9 149:22  
 163:4 179:17,18,19  
 182:19,20 214:1  
 223:20 228:13 255:15  
 255:22 261:7 279:2  
 285:12 298:9 309:9  
 318:17,17 350:6,17  
 351:21  
**takes** 33:11 36:7 77:18  
 96:7 107:14 194:11  
 214:18 244:13 260:19  
 292:12 293:9  
**talk** 40:14 112:13  
 119:16 137:4 138:5,7  
 152:3,7,11,16 184:16  
 186:17 188:9 198:14  
 204:17 206:21 213:11  
 214:7 216:18 220:8  
 220:21 223:19 247:16  
 252:3 279:19 281:13  
 282:18 284:15 287:1  
 313:4,12,19,21,22  
 323:7 326:3 328:7  
**talked** 18:3 157:11  
 165:3,5 196:15  
 203:19 207:20 216:4  
 225:5 279:15,16,18  
 291:15 303:22 324:9  
**talking** 20:3 44:10,10  
 44:11 52:4 79:18  
 83:11 136:13,16  
 138:8,11,13,13  
 149:19 182:5 199:21  
 204:15 282:6 283:13  
 287:15 298:7 310:4  
 313:17 350:21 351:2  
**tampering** 40:19  
**tangible** 113:22  
**target** 126:12 158:5,8  
 208:5  
**targeting** 286:4,18  
**targets** 158:10,10  
**task** 43:7 70:2 111:2  
 140:12 169:19,19,20  
 169:22 170:1,4,7,11  
 170:13 263:2 286:10  
 294:18  
**tasked** 80:22 264:13  
**taught** 156:3 215:22  
 242:3  
**Taylor** 1:15 9:11 11:4

18:16 20:20 26:11  
 41:22 42:1 45:11  
 47:16 49:4 53:3 54:17  
 71:8,9 74:12 76:4  
 77:4,7 96:15,17  
 102:10,20 108:3  
 154:17,18 155:7  
 156:3 157:6,15  
 158:14 160:14 163:14  
 179:7 217:3,4 219:9  
 220:17 221:17 222:11  
 222:19,21 267:11,12  
 268:8 269:8 270:22  
 271:19 274:14 277:9  
 277:20 278:10 279:4  
 296:21 304:18,20  
 350:11,12 351:12  
 352:1,8,21 353:18  
 354:2,19 355:2,13  
 356:11  
**Taylor's** 100:12,13  
**teach** 69:11 109:18  
 124:19 289:12 340:3  
**team** 111:1 170:9  
 187:10 220:15 225:9  
 243:6 247:15 274:2  
**teams** 124:16 144:22  
 186:1,9 236:9 239:4  
 243:5  
**tease** 78:11  
**technical** 24:1 26:20  
**technically** 37:1,16  
**technician** 335:19  
**technology** 193:7  
**tee** 324:18  
**telephone** 1:14  
**Telephone** 6:4  
**tell** 71:16 76:18 79:4  
 82:10 85:9 93:17  
 101:3 103:6 135:2  
 141:16 142:22 148:8  
 153:3 173:15 190:14  
 209:3 211:2,4,20  
 215:9 312:12 321:19  
 321:22 322:2 325:15  
 328:13 352:12,14,15  
**telling** 134:16 164:4  
 194:9 199:22 210:21  
**ten** 46:19 147:10  
 161:20 311:7 312:16  
 324:16 337:20 344:1  
 344:3,4,6 346:19  
 352:10  
**ten-month** 345:2  
**tend** 156:22 166:2  
 174:14 188:4  
**tended** 115:20  
**tendency** 135:15 194:6  
**term** 57:14 101:2

237:10 282:3 287:7  
288:12 346:17  
**terminology** 173:5,6  
280:3 336:3  
**terms** 15:4,10 17:4 38:8  
38:10 40:19 54:11,22  
76:20 96:5 110:17  
119:14 121:7,10  
132:5 157:13 175:11  
178:8 179:4 181:14  
182:5 216:5 227:13  
277:15,21 280:14  
298:8,17 312:1 315:7  
323:18 328:10 352:4  
**terribly** 131:13 132:7  
181:13  
**Terrific** 139:9  
**testified** 39:14 185:1  
352:22  
**testifying** 193:2 195:19  
**testimony** 20:3,22 21:5  
42:3 134:13 177:6  
178:13 224:8 230:16  
267:15 322:19 350:14  
357:1  
**Texas** 339:16  
**thank** 5:10 8:19 30:18  
30:19 45:22 46:17  
48:19,20 56:7,9 71:6  
71:9,10 77:7 81:20  
103:19 108:3,4,7,15  
109:6 115:5 123:18  
123:22 124:1 133:16  
134:10,12 138:19  
139:13,16,17 143:18  
154:13,15 160:14  
161:12 163:14 173:12  
183:5,7,9 184:1,11,14  
198:2,7,10 214:7,9  
217:2 222:21 230:15  
230:17,18 231:18  
232:9,11 244:1,4,5  
251:15,18,22 258:11  
258:14 267:9,10,16  
270:22 277:9 279:11  
279:13 288:18 292:8  
292:9 304:15,20  
305:1,4,6,18 306:12  
312:18,22 313:10  
323:1 331:15 332:7  
340:6,9 344:13,15,16  
349:5,6,8 350:10  
356:21,22 357:5  
**thanking** 267:13  
**thanks** 41:7 48:21  
154:19 169:5 184:8  
217:4,6 222:22 349:7  
350:12  
**theme** 198:7

**theoretically** 106:14  
**therapies** 192:15  
**therapy** 222:18  
**thereof** 301:11  
**they'd** 322:9  
**thing** 25:20 28:14 49:21  
51:21 74:3 77:5 79:4  
79:9,10 91:20 93:21  
100:11 101:6,16  
104:2 137:20 150:16  
153:10 163:5 166:21  
175:10 179:5 209:4  
211:17 213:15 218:2  
227:7 271:6 281:21  
284:3 290:7,21 299:3  
301:17 310:22 340:17  
355:22  
**things** 11:15 25:14 29:5  
29:6 53:19 57:13  
77:16 78:22 85:5 89:4  
96:2,10,11 97:1,5  
104:8,17,21,22  
123:15 131:15 134:22  
136:10 149:8,13,17  
155:17 158:3 160:17  
162:10,22 164:6,11  
164:21,22 166:2,22  
168:7,10,17 191:13  
192:18 198:19 199:14  
203:14 210:11 213:5  
215:8 216:7,12,20,21  
273:12 280:2,14  
289:1 290:13 295:12  
297:13 302:15 306:22  
337:16 338:6 340:14  
341:9  
**think** 9:14 11:4,6,19,20  
12:5 13:9 15:12 17:19  
18:12,17 20:20 25:8  
26:10 29:10,11 33:5  
35:19 37:17 39:20  
40:7 42:22 44:1,17  
45:7,22 47:4,20 48:14  
49:4,16 50:10 52:17  
53:5,10,19 55:3,7,10  
65:2 66:22 72:4,22  
73:3 74:3 75:5 77:4  
79:4 80:1 82:9,11  
84:12,19 85:4,12,22  
86:16 87:13 88:2,14  
89:6,15 90:8 92:9,13  
93:4,18 97:3,5 98:5  
99:14 100:22 101:11  
101:17 102:9 103:1,3  
103:18 107:2,9,12,13  
109:4 135:7 136:11  
136:21 137:2 138:7  
141:11 147:17 154:6  
155:10 160:14,16

162:10 163:18 167:21  
168:9 169:17 171:14  
172:6 173:19 178:19  
179:4 180:13 181:14  
182:8 184:6,11,17  
195:21 196:1 199:2  
211:11 212:4 215:2,6  
215:7 216:1,21  
217:20 218:2,4 219:5  
219:11,18,20 220:1  
220:12 221:2,4 222:6  
222:11 223:3 226:6  
227:16 228:1,9,16  
229:1 268:22 269:18  
273:4 274:15 279:13  
279:14,16,17 282:4  
282:11 283:1,8  
285:13 288:1,15  
289:18 291:3 294:11  
294:17 295:20 296:19  
296:22 298:1,4  
300:18 305:11 311:19  
326:7 331:16 350:22  
352:2 354:13  
**thinking** 106:22 128:17  
166:16 172:14 210:17  
**third** 28:14 58:10  
112:19 114:16 132:9  
212:4 241:5 248:20  
261:21  
**thirds** 143:6  
**thought** 18:16 44:19  
77:22 98:20 126:18  
137:17 142:10 154:8  
171:16 182:3 193:18  
202:3 217:19 270:6,9  
**thoughtful** 55:5  
**thoughts** 6:19 120:2  
122:7 124:3 151:18  
192:12  
**threads** 81:1  
**threatened** 309:9  
**threatening** 57:19  
253:19,21  
**threatens** 235:6  
**threats** 115:19  
**three** 5:16 41:11,22  
43:16 62:8 69:8 93:10  
99:19 112:15 117:1  
121:15,20 126:9  
133:22 141:10 165:6  
165:6 189:6 228:5  
229:6 253:13 260:1  
289:7 292:2 316:7  
319:3 324:2 333:5  
342:9 344:20 346:5  
346:15 349:1 352:9  
**three-year** 81:9 355:5  
355:16

**throw** 20:14 29:21  
298:11  
**throwing** 29:19  
**thumb** 221:17,21  
**Thursday** 324:5  
**thwart** 127:1  
**tied** 44:1 320:15  
**tighten** 300:20  
**time** 5:7 8:11 11:7  
16:16 21:1 22:13  
23:18 24:6,10,16,18  
24:21 25:8 26:22 27:5  
27:17,18 28:1 36:1  
37:2 38:13,18 70:1  
80:10 81:5,6,11 84:13  
90:18 97:20 101:10  
128:15 130:2 134:3  
152:14 153:4 164:3  
174:4,15 180:3  
209:17 219:12 220:19  
221:6,7 224:17 234:9  
261:12 272:8 289:22  
290:3 293:12 295:13  
300:12 305:13 309:22  
317:4 319:20 322:4  
329:3 335:22 337:6  
337:22 344:11 345:9  
346:16 355:5,16,19  
356:9  
**timeframe** 35:4,10  
246:12 292:12  
**timeliness** 323:12  
355:22 356:4  
**timely** 319:6  
**times** 27:1 56:2 140:18  
153:17 199:2 200:19  
228:22 307:14 345:13  
**timing** 36:3 300:9,12  
**tiny** 137:10 144:8  
**tiptoe** 206:16  
**tired** 190:3  
**title** 314:22 318:4  
334:22  
**titles** 98:8  
**today** 5:17 6:14 40:15  
56:11 68:14 71:10  
101:10 109:11 110:7  
110:17,20 111:3  
120:5 126:3,10,22  
132:17 136:12 137:17  
138:20 140:12 154:21  
155:19 171:15,17,21  
172:2 184:6,11 198:9  
198:16 199:1 216:5  
225:6 226:2 232:13  
244:8 251:16 296:21  
298:5 310:5 313:4  
332:8,12 350:14  
352:14

- today's** 6:3,16,22 8:14  
8:16 56:13 155:9  
333:8
- told** 143:3 144:4 200:15  
200:15,17,19 201:21  
207:1,3,8,18 208:17  
237:9 317:22 322:15  
326:22 354:7
- Tolek** 2:8 4:13 306:1  
308:1,11,12 312:19  
349:12,19 352:8,15
- tolerance** 131:6 210:4  
211:10 215:13
- tolerate** 199:15 215:15  
215:17
- tolerating** 213:4
- Tom** 1:15
- tone** 177:20
- tool** 168:1 288:10,16  
295:17,22
- toolkits** 256:2
- tools** 72:9 73:2,4 90:19  
92:10 100:16,19  
236:3 242:12 245:10  
250:16,21 267:3  
279:15 285:10 286:18  
290:3
- top** 57:5 90:9 144:13  
233:1 291:13,16
- top-down** 280:15
- topic** 6:11,14,22 222:18  
247:14 269:13 290:16  
292:5
- torts** 137:21 138:4,5
- total** 83:6 127:16 330:3  
330:8 341:3 352:16  
352:17
- totally** 30:16 43:10  
48:16 209:16 220:5
- touch** 170:18,21 272:16  
273:21 321:9
- tough** 169:4
- touts** 189:4
- toxic** 141:18
- Tracey** 1:15 11:19  
13:20 14:2 16:4 22:3  
30:21 32:21 33:6  
40:21 42:18 43:22  
44:1,5 47:3,4,8,14  
77:9,10 81:18 96:18  
102:9 136:15 163:15  
163:16 165:2,5 166:4  
183:6 214:10,11,19  
214:22 215:4 217:2  
229:20 230:7 279:12  
279:13 288:18 291:3  
291:6 292:8 304:21  
304:22 349:7,8,16  
350:10
- track** 78:4 214:13  
268:16 297:7,13  
298:2,22 331:11  
338:5,7,19 342:3,6
- tracked** 267:6 274:22  
276:6 300:6 338:9,11
- tracking** 77:3 302:1,1  
312:1,4 331:7 335:17  
338:9 342:1
- tracks** 191:14 272:9  
273:14
- train** 175:19 212:9
- trained** 165:9 167:6  
184:20 271:13
- trainers** 167:6,9
- training** 65:13 69:8 90:4  
90:16 131:1,2 149:18  
159:19 161:10 166:6  
166:7 167:8,16,19  
178:6 196:14 235:18  
240:6 241:21 242:1,2  
242:16,19,20,21  
243:4,4,10,12,14  
245:4 248:3,4,7,16  
250:5 256:1,4,7,8,22  
265:13,16,17,17,21  
265:22 266:2,11,20  
267:2 287:3,18,18  
289:8 290:11,14,19  
291:9,20 300:22  
303:21 304:5,8  
338:22 339:12
- trainings** 205:21
- trains** 340:1
- trait** 287:13
- transcribed** 6:3
- transcript** 6:5
- transfer** 60:22 61:6  
227:11 228:10 229:2  
229:11 288:4,7  
295:17 302:9 303:9  
303:16
- transferred** 227:12  
229:5,5 302:11,13
- transferring** 229:13
- transfers** 61:10 235:15  
303:5
- transformation** 219:19
- translate** 136:18 137:4
- transparency** 103:2,12  
163:18 241:15 277:22
- transparent** 72:5 94:17  
191:19
- trashing** 229:8
- trauma** 184:22 209:5,12  
226:17
- traumatic** 209:14  
257:19 258:5 283:19
- traumatized** 51:16  
221:6
- travel** 247:16
- treat** 168:14,22 198:15  
233:19
- treated** 114:8 144:17,19  
182:12,13 211:12  
259:6 288:22 342:20  
349:4
- treating** 90:9 283:13
- treatment** 123:5 192:13  
221:18 222:3
- treats** 213:2
- tremendous** 178:5  
209:14
- tremendously** 28:13
- trend** 66:17 85:16 91:11  
97:7 234:16
- trends** 78:4 168:1 260:6
- trial** 16:14 19:6,6,12,15  
36:8 37:19,20,22  
38:12 40:4 191:16  
192:3 202:4 219:13  
221:10,16 222:15,17  
223:19
- trials** 258:22
- trickle** 214:6
- tricky** 181:12
- tried** 88:1 204:4
- triumphs** 258:22
- troops** 69:10
- trouble** 229:9 232:1
- troublemaker** 114:9
- troubling** 145:8 176:4  
223:3 227:5
- true** 192:5 299:2
- truly** 124:2 133:14  
238:10 249:15 276:16
- trust** 147:15 148:9  
149:6 160:18,20  
161:2,7,9,17 163:13  
163:19 194:2 233:18  
234:20 235:8 237:17  
241:4 254:13 261:10  
277:22 280:9 281:11
- trusted** 240:13 269:20
- trusts** 161:19 228:6
- trustworthy** 150:22
- truth** 146:1 186:6  
190:18 203:10
- try** 31:4 35:7 89:13  
159:20 162:11 166:14  
190:14,17 194:14  
220:22 284:15 300:22  
309:3 310:3
- trying** 28:8 74:15 132:6  
157:11,13 161:17  
193:11 220:6 227:5  
276:11 287:2 292:6  
294:20 301:19 343:5
- Tuesday** 324:5
- turn** 5:7 6:22 123:15  
139:13,15 197:22  
206:10 267:19 314:5
- turned** 40:4 297:15
- turning** 39:15
- turnover** 122:6,9
- tweak** 42:5
- tweaking** 155:17
- tweaks** 156:5
- Twelve** 335:6
- Twenty** 329:13
- Twenty-First** 4:4 232:3
- twice** 122:20 238:18  
333:4 346:18
- two** 9:17 20:14 24:5  
41:9 44:20 57:16  
72:19 78:16,19 81:9  
85:13,22 86:4,10 94:4  
94:7 107:14,17  
125:11 131:12,15  
132:19 134:16,22  
143:6 162:21 164:21  
222:22 229:12 232:19  
233:7 234:19 263:3  
265:8 268:13 269:4  
270:5,6 284:17  
289:16 292:2 295:12  
297:8 302:9 309:21  
315:7 336:10 340:18  
346:5,15 347:19
- two-hour** 339:11
- two-star** 239:3
- two-thirds** 263:13
- two-year** 246:11
- type** 40:5 97:21 142:19  
143:7 202:11 275:4  
285:14 290:18,21  
306:18
- types** 60:8 122:13 144:6  
144:11 150:6 172:5  
211:16 237:21 249:17  
250:6 310:19 320:2  
347:8
- typical** 25:2 187:11  
224:12 321:15 334:19  
336:19 353:4
- typically** 88:4 89:5  
114:3 185:15 186:12  
224:20 274:4 316:17  
353:7 355:19
- 
- U**
- 
- U.S** 1:10 2:12,13 4:2,8  
27:10 140:17 141:3  
142:8 166:1 231:8,9  
232:2 233:15 258:22
- U.S.C** 58:2

**UCMJ** 9:18 10:1,19 11:5  
27:16 36:19 52:20  
66:4 84:11,17 257:9  
278:20 283:3 292:15  
**ultimately** 177:2 186:5  
190:16 192:18 235:5  
245:6 251:13  
**umbrella** 57:14 237:10  
**umbrellas** 104:9  
**unable** 13:1 321:9  
**unacceptable** 67:6  
264:4  
**unanimous** 347:5  
**unanimously** 333:12  
**unclarity** 295:11  
**unclear** 12:19 319:13  
**uncomfortable** 40:17  
61:2 284:6  
**uncool** 92:13  
**under-reported** 70:4  
**underage** 262:12  
**undergoes** 310:9  
**undergraduate** 124:21  
**underlying** 315:7  
**undermine** 186:2  
**underpinnings** 194:21  
**underreported** 85:10  
**understand** 8:5 62:6  
65:5 67:16 70:21  
90:19 106:21 135:3  
141:7 166:14 168:19  
178:18 181:3 196:5  
198:17 199:5 201:6  
204:13 206:4 214:5  
237:8 238:10 254:16  
255:4 256:15 257:15  
257:21 274:2 280:19  
282:19,19 283:8  
284:17 285:2 286:8  
286:11,13 296:2  
336:4  
**understandable** 20:21  
**understanding** 63:21  
68:7,11 153:18 154:6  
202:19 214:14 237:5  
238:3 249:12 253:14  
253:16 255:21 286:2  
316:20  
**understated** 84:6  
**understatement** 85:2  
**understood** 32:18  
127:10 206:2  
**undertake** 168:6  
**undertaken** 294:18  
**underway** 81:14 254:19  
**undocumented** 114:10  
**undue** 96:4  
**unethical** 113:11 162:5  
**unfair** 17:17,19 42:11

**unfortunately** 5:17  
61:21 132:8  
**unfounded** 277:15  
**uniform** 14:17 15:6  
49:9 50:20 52:1 63:8  
96:2 218:10,20 219:3  
219:6 239:22  
**uniformed** 248:15  
**unintended** 40:20  
337:11  
**uninvited** 137:3  
**unique** 26:13 191:3  
195:5 235:19 314:1  
317:20 318:12 321:18  
340:17  
**unit** 3:18 37:6,10 61:6  
67:3 92:9 111:18  
131:18,21 133:15  
134:8 158:16 183:18  
205:4,9 209:15,19  
227:12 228:10 244:16  
244:20 245:6,10  
246:3 254:15 263:2  
263:14 280:10 335:10  
338:5  
**unit's** 131:6 203:17  
**United** 1:1 27:9 315:1  
318:4  
**units** 69:16 90:14  
104:16 160:3 212:20  
235:7 250:18 254:20  
281:9  
**University** 3:11,12,14  
3:20 108:20,21 109:1  
109:9 124:19 134:21  
184:3,19  
**unjustly** 138:4  
**unlawful** 113:11  
**unnecessary** 257:17  
**unpredictable** 203:9  
**unreasonable** 42:11  
**unreported** 63:19  
**unrestricted** 83:3 249:2  
342:21  
**unrestrictive** 63:1  
80:21 83:10  
**unsafe** 61:1  
**unsuccessful** 26:4 28:5  
**unusual** 188:11,15  
354:8  
**unwanted** 86:14 98:12  
112:7 137:3 246:9  
260:4  
**upcoming** 196:13 255:8  
334:11  
**update** 142:7 144:9  
**updated** 76:11 250:6  
256:1 267:6  
**updates** 265:2

**upgrade** 321:11 322:6  
**upgrades** 320:6,9,13,14  
322:12 328:10  
**upheld** 118:19  
**uphold** 168:20  
**uploaded** 348:17  
**upper** 117:6,18  
**ups** 157:19  
**upset** 207:5  
**upstream** 92:11  
**upwards** 247:21  
**us-versus-them** 218:4  
**usable** 125:20  
**USAF's** 258:21  
**usage** 245:17 262:12  
**USC** 308:20 333:12,20  
344:5 345:3  
**use** 19:4 28:21 69:5  
119:11 153:22 162:16  
193:1 202:9 211:10  
212:11 225:17 236:3  
237:17 255:7 276:14  
276:22 277:6 282:3  
299:19 314:11 322:11  
**useful** 182:9 238:7  
295:3  
**USMC** 4:6  
**usually** 179:18 186:1  
187:5,9,19 190:1  
194:17 208:4 324:5  
**utilize** 157:14 276:15  
**utilized** 100:20 227:10  
288:17

---

**V**


---

**VA** 50:9 320:16  
**VADM(R)** 1:15 11:19  
13:20 14:2 22:3 32:21  
40:21 42:18 44:1,5  
47:4,8,14 77:10 81:18  
96:18 102:9 163:16  
165:2,5 166:4 214:11  
214:19,22 215:4  
217:2 229:20 230:7  
279:13 288:18 291:3  
291:6 292:8 304:22  
349:8,16 350:10  
**valid** 171:15  
**Vallario** 2:9 4:15 306:3  
313:1,2 322:20 323:3  
323:6 353:8 355:9,18  
356:16  
**Valliere** 2:5 3:21,21  
184:5,5 198:1,5,5,6  
198:10 214:14,21  
215:2,7 226:6,10,13  
226:21 227:2,16  
230:18  
**value** 22:5 41:14 42:6  
133:11 204:10 215:14  
238:9 278:8  
**values** 149:15,18 164:9  
164:10 191:6 253:4  
259:8  
**values-based** 241:1  
**vanilla** 313:15  
**variables** 128:1  
**variety** 21:13 142:12  
294:5 321:15 327:19  
329:20 352:20 353:8  
**various** 12:13 155:16  
310:9 338:7  
**VAs** 236:15 243:11  
276:16  
**vast** 327:15 347:3  
**vastly** 63:18  
**venture** 197:10 355:15  
**venue** 264:18 313:6  
**verbally** 208:16  
**Veronique** 2:5 3:21  
184:4 198:4  
**version** 125:11 156:22  
157:1 248:21  
**versions** 125:10 132:20  
**versus** 27:9,22  
**vertically** 111:11  
**veterans** 314:15 320:20  
327:14 345:18 349:4  
353:10  
**Vice** 291:13  
**Vicki** 2:3 3:12 108:21  
110:8  
**victim** 3:2 10:9,14 12:2  
12:3 15:21 16:5 17:5  
19:7 21:3 22:19 23:4  
23:10 24:11,18 25:18  
28:2,3,4 30:3,8 34:21  
38:2 40:2 41:16 46:8  
47:6 51:1 62:16 65:5  
65:22 69:3 70:5 78:22  
118:9 119:19 121:12  
123:4,7 138:12  
141:19 185:12 186:9  
186:11,12 187:8,19  
188:3,12 189:5,9,13  
189:15,18,20 191:4  
191:15 192:2,15,20  
193:3 194:10 195:8  
195:12,14 198:21  
199:10,12,16,17  
200:9,11 201:8,11,12  
201:21 202:12 203:10  
203:13,15,16 204:9  
204:15,19 205:16,17  
206:18 208:7 209:2  
209:15 211:22 213:8  
213:11 214:3 217:17

218:4,5,19 219:13,14  
 220:1,9,13,20 221:11  
 222:14 223:13,14,19  
 224:3,6 227:10,12,17  
 228:2,12,17 229:3,4  
 235:16,17 236:14,15  
 244:6 248:15 249:8  
 255:14 261:14 263:19  
 266:8,17 269:16,17  
 272:4 273:8,10 274:1  
 274:21 283:11,15  
 284:4 285:19 286:16  
 288:5,10 293:10,15  
 295:18,20,21 296:1,8  
 296:9,10,13,15  
 302:11,11,12,13,22  
 303:5,17 317:19  
 349:9 351:20 355:8  
**victim's** 46:2 59:18  
 114:3,11 118:16  
 186:2 195:18 202:10  
 202:14,17,21 209:15  
 262:18 264:20 265:3  
 303:4  
**victim-based** 34:7  
**victimization** 112:5,10  
 112:12 114:18 116:19  
 122:17  
**victimized** 49:6 83:22  
 120:13 122:10 207:15  
**victims** 3:17 6:12 7:3  
 7:13 12:21 14:3,5  
 18:21 21:5,8 23:19  
 25:11 28:6 29:18  
 38:11 43:21 45:16  
 46:22 47:9,9,18,18  
 48:8,11 49:14 51:12  
 51:15 52:2,8 53:9,15  
 56:17 60:2,22 61:1,1  
 61:8,17 62:4,5,10,22  
 64:17,21,21 65:13  
 66:12 67:1,16 69:7  
 70:7,10,22 82:2 97:13  
 99:2 110:5 115:9,12  
 115:20,22 117:1,8,14  
 117:19 118:12,20  
 119:3,21 120:18,22  
 121:18,21 129:13  
 130:8 172:1 183:18  
 184:22 185:12 188:22  
 189:22 190:14 191:1  
 192:9,11 196:6,20,22  
 197:3 198:15 204:7  
 205:1,8,15 206:6  
 209:18 225:13 235:3  
 235:15,21 236:9  
 237:22 238:12,17  
 239:6,15 241:9,16  
 243:19,20 244:11,15

246:9 248:12 249:5,9  
 252:6 253:1,5,8 254:9  
 254:22 255:2,11  
 257:6,18 258:4,7  
 259:20 261:16 264:2  
 264:14 265:14 269:20  
 270:17 272:18 276:12  
 284:8,11 285:1 287:1  
 297:8 300:16 313:9  
 314:2 320:7,15  
 328:16 338:13,20  
 342:15 343:19 347:19  
 347:22 353:5 354:5  
**Victor** 1:14 40:12  
**video** 6:4,5  
**Vietnam** 320:19  
**view** 12:7 14:6,8 15:1  
 46:1,16 49:2 50:11  
 84:5 89:7 157:12  
 166:7 214:15 355:16  
**viewed** 65:9 199:3  
**views** 6:19 146:7  
 154:20 217:6  
**vignettes** 266:2  
**vindictive** 203:11  
 208:13  
**vindictiveness** 203:4  
**violate** 165:16 216:11  
 233:19,21 239:21  
**violation** 63:6 84:18  
 113:7 142:11 179:14  
 257:9 278:20 283:3  
 292:15  
**violations** 142:15  
 252:17 322:10  
**violence** 202:8 204:16  
**violent** 193:20  
**virtually** 22:14 23:2  
 24:15 26:17 342:14  
**virtue** 310:21  
**visibility** 241:16  
**vision** 306:11  
**vital** 177:6,10,19  
**viz** 166:6  
**VLCs** 295:22  
**vocal** 115:12 120:18  
**vocally** 112:11  
**voice** 112:13,16 113:3  
 117:1 119:10 243:20  
**voiced** 61:5 115:9  
 118:6  
**voices** 60:13 66:8  
**volume** 13:21  
**voluntarily** 345:7  
**volunteered** 346:13  
**vote** 276:13 296:13  
**votes** 347:11  
**vouch** 354:15  
**vulnerable** 208:3

---

**W**


---

**W** 2:12  
**wages** 26:14 43:19  
 44:16  
**wait** 43:2 48:17,17,18  
 137:18 138:15 311:10  
**waiting** 35:6 296:16  
**waive** 27:2 355:5,19  
 356:15  
**waived** 355:17,17 356:4  
**waives** 24:8  
**wake** 62:2 107:13,15  
**walk** 30:17 276:16  
 277:7  
**walks** 30:4 323:18  
**want** 10:4,10,11 15:13  
 23:18 25:11 26:7 28:6  
 29:17,20,21 30:16,21  
 31:4 35:3 40:18 42:15  
 46:8,15 57:12 72:3,5  
 74:1 78:13 79:7 88:15  
 91:19 92:18 98:13  
 100:15,21 103:3  
 107:9 130:2 141:10  
 141:21 149:7 151:17  
 153:9 154:7 158:7  
 168:22 173:14 180:22  
 183:7 186:10,17  
 198:14,22 199:4  
 223:11 228:3,7  
 252:16 271:2 284:13  
 294:9 298:17 300:1  
 311:21 313:12 314:7  
 319:12  
**wanted** 18:19 22:10  
 35:21 40:14 61:8  
 79:17 99:18 100:11  
 137:17,20 159:19  
 200:18 307:21 310:6  
 311:21  
**wants** 193:17 205:6  
 213:10 293:17,17  
 343:11 353:22  
**War** 314:14  
**warned** 221:11  
**warranted** 343:16  
**washed** 163:7  
**Washington** 1:12  
 134:21 340:4  
**wasn't** 84:20 162:6  
 194:17,18 200:1  
 270:3  
**watch** 189:22  
**watched** 190:9 195:12  
**watching** 185:22  
 195:10  
**way** 12:22 28:16 30:6  
 34:14,15 35:3,10 47:4

50:13 52:20 73:9  
 80:13 84:16 85:14  
 86:4 89:4 92:14 96:20  
 97:6,8 103:1,6 115:11  
 117:12,20 120:6,13  
 135:21 157:16 168:7  
 169:3 177:7 178:7  
 181:3 204:3 212:17  
 219:19 223:21,22  
 225:2,14 233:20  
 263:15 271:8 281:16  
 283:17 298:2 301:14  
 310:15  
**ways** 13:6 17:10,11  
 21:13 86:11 89:1  
 93:20 105:22 158:15  
 168:13 193:8 264:5  
 294:2  
**we'll** 8:3 41:8 48:18  
 55:12 70:12 88:19  
 93:4,6 98:9 109:4  
 110:17 134:13 184:9  
 184:13 230:19 232:5  
 267:19 305:5 306:8  
 325:22 331:12 353:2  
**we're** 8:20 11:3 19:4  
 20:3 40:18 41:11,22  
 43:15 46:18 48:7 55:7  
 70:1 72:2,18 73:11  
 75:21 81:14 83:8 91:3  
 92:12 93:20,21 98:15  
 100:2,2,14 101:2,8,19  
 104:1 108:10,16  
 110:12 136:15 138:10  
 138:12,13 139:21  
 154:10 158:3 168:18  
 169:1,1 174:19 184:6  
 184:11 215:15,17  
 276:11 286:18 294:12  
 299:9,13 305:11  
 309:22 310:8 318:1  
 322:17 328:4 331:16  
 342:4,5 344:7,9,14  
**we've** 6:15 60:12 62:4  
 74:4 81:11 94:22 96:9  
 96:22 100:4 101:17  
 125:3 142:2 146:10  
 162:11 174:5,6,17  
 289:22 290:2 312:2  
 323:7 326:3 327:17  
 327:19 330:16 340:15  
 344:8 354:6  
**weakens** 28:12  
**weaknesses** 185:18  
**weapon** 251:8  
**weapons** 214:1  
**webpage** 345:21  
**website** 6:6 8:17 326:7  
 333:7 339:9

**websites** 326:6  
**wedge** 207:11  
**Wednesday** 324:5  
**week** 25:16 270:5 333:4  
**weeks** 72:19  
**weep** 189:8  
**weigh** 97:4  
**weighed** 348:22 356:9  
**weight** 129:21  
**weights** 127:19,21  
 129:16,18  
**welcome** 5:14 109:5  
 138:18 154:14 183:14  
 230:14 231:2 232:5  
 251:21 306:8  
**well-being** 65:5 68:13  
 119:20 123:7 126:13  
 127:9,16 149:2  
 251:12  
**well-established** 54:10  
**went** 25:3 55:16 62:20  
 78:7 108:13 136:9  
 162:2 183:11 202:4  
 205:21 206:21 208:9  
 230:22 297:17 305:8  
 349:21 352:18  
**weren't** 270:10 297:7  
**WGR** 78:1 125:7,18  
 132:10,21 134:6  
 156:9,12 157:1,3  
**whack** 20:15  
**whistle** 117:3,10,19  
**whistleblower** 4:12,14  
 62:13 147:22 236:7  
 253:18 257:5 305:22  
 306:2,19 308:2,13,16  
 308:21 330:15 333:18  
 335:12 336:9,11  
 338:17 342:2,8 348:5  
 349:10  
**whistleblowers** 150:1  
**whistleblowing** 112:16  
 127:1,5 128:7 148:22  
**white** 64:8 111:15 116:7  
 116:14 120:15 121:14  
 210:8,12  
**whitewash** 213:1  
**wide** 57:15 83:13 134:9  
 142:12 189:11 237:11  
 247:8 277:12  
**wide-ranging** 238:19  
**widely** 109:14  
**wife** 204:17 207:4,9,11  
 208:13,18 211:13  
 233:5,12  
**willing** 42:1 46:14  
 160:13 176:9,10  
**willingly** 277:5  
**willingness** 56:4

146:22  
**wing** 265:21 266:4  
 275:15  
**wise** 51:6 167:21  
**wish** 23:4 46:20 95:22  
 158:19 218:18 355:14  
**wishes** 54:22 228:13  
**withheld** 309:9  
**withhold** 253:21  
**withholding** 58:3  
 253:20 282:8  
**witness** 40:2 69:3,12  
 124:16 138:1,17  
 185:2,14 198:13  
 212:3 337:15  
**witnessed** 143:8 185:9  
 188:14 189:7,11,17  
 189:19  
**witnesses** 2:1 18:2  
 20:22 28:1 137:7,8  
 235:3 255:2 264:14  
 309:15,16 318:11  
**woefully** 75:2  
**woman** 138:11 205:5  
 207:12 342:17  
**women** 57:1 83:22 86:3  
 86:6 109:19 125:1,22  
 126:2 130:20 136:1  
 137:9,13 206:10,14  
 252:12  
**Women's** 109:9  
**wonder** 71:12 178:6  
 190:2  
**wonderful** 161:20 168:1  
 308:11  
**wondering** 271:20  
**word** 97:9 119:11  
 211:10 287:4 312:10  
 312:12 346:1 352:10  
**words** 27:13 32:7 35:15  
 72:9 76:21 93:5  
 115:17 117:10 118:21  
 119:3 121:18 131:7  
 160:22 179:22 272:10  
 276:8 278:6  
**work** 3:18 19:11 69:9  
 71:11 87:19 88:10,10  
 88:12,19 108:6  
 109:20 110:7,22  
 113:20 121:17 122:2  
 126:13 127:9,16  
 140:8 153:4 157:15  
 160:3 166:13 173:4  
 183:18 192:10 195:6  
 203:21 204:5,6  
 210:20 212:11 215:18  
 216:17 220:8 223:16  
 227:13,22 234:12  
 237:8 266:9 270:12

296:12 313:7 323:13  
 332:21 356:10  
**worked** 111:16 204:1  
 206:18 239:17 288:8  
 336:1  
**worker** 127:16  
**workers** 157:18 344:9  
**workforce** 64:3 111:14  
 112:1 122:19 140:17  
 166:1  
**working** 68:5 76:17  
 79:14 87:14 103:5,7  
 124:12 130:21 134:1  
 136:5 160:6 166:15  
 185:21 191:1 199:8  
 220:16 237:16 246:5  
 250:2,15 256:11  
 257:13 294:12 302:15  
 303:11 310:8  
**workplace** 3:9 7:16  
 61:14 108:17 109:13  
 112:5 122:16 124:5  
 124:13 125:7 132:12  
 141:3 142:14,18,21  
 157:19 159:1,3  
 167:13 191:9,10  
 237:18 252:10 262:17  
**works** 161:19 259:5  
 268:10  
**workshops** 159:17  
**world** 79:19 97:14,14  
 212:2 244:17 314:14  
**worms** 221:7  
**worries** 293:13  
**worry** 100:6  
**worse** 122:13  
**worst** 229:15  
**worth** 74:18 88:3 93:8  
**worthy** 141:11 206:9  
**wouldn't** 18:21 19:9,13  
 21:6 99:4 147:17  
 207:21 271:16 298:13  
**wow** 103:14  
**writes** 205:17  
**written** 8:13 10:16  
 165:8 205:22 208:20  
 309:5 310:9 346:8  
**wrong** 12:14 31:13  
 35:11 36:11 134:20  
 144:12 152:13 163:12  
 164:13 165:14 174:9  
 192:20 218:12 257:19  
 293:9  
**wrongdoing** 147:5  
**wrote** 135:7

---

**X**


---



---

**Y**


---

**Yeah** 217:19 291:11  
 298:15  
**year** 56:21 57:2 63:4  
 78:2 82:22 84:4 99:11  
 201:4 297:14 311:1  
 312:8,8,13,16,16  
 324:11 328:22 329:1  
 329:5 331:13 337:1  
 338:2 341:3 345:17  
 346:15 347:13,19,22  
**year's** 68:15  
**years** 51:17 57:3 60:13  
 62:8 80:20 93:10  
 95:18 100:4 124:7  
 135:8 136:4 143:2  
 159:10 161:20 171:18  
 175:7 176:2 182:14  
 185:3 189:6 192:2  
 233:5 234:19 260:1  
 267:13 289:17 292:1  
 311:1 319:3 325:4  
 327:22 345:3 348:6  
 352:9  
**yesterday** 75:21  
**young** 270:6 286:2,11  
 289:3  
**younger** 289:20  
**youngest** 69:9

---

**Z**


---

**zealous** 208:7

---

**0**


---



---

**1**


---

1 64:17,18 84:15 85:7  
 86:8  
**1,000** 246:8  
**1,258** 330:6  
**1,453** 329:3  
**1,605** 329:7  
**1,780** 329:21  
**1.2** 140:20  
**1:03** 183:12  
**1:50** 230:22  
**10** 1:7 58:1 64:10,18  
 94:2,9 297:17 308:20  
 314:22 318:4 333:11  
 333:20 344:5  
**10:00** 37:14  
**10:35** 108:13  
**10:49** 108:14  
**100** 148:1 161:22  
 179:18 297:15  
**1015** 348:15  
**1034** 58:2 308:20 318:5  
 333:12,20

**104** 345:8  
**109** 3:9  
**11,067** 115:2  
**12** 64:7,10 80:7,9 91:10  
 94:2,9 324:4  
**12.6** 329:14  
**12:05** 183:11  
**120** 332:18 338:4  
**120-type** 52:13  
**128** 330:1  
**13** 80:9 312:16  
**138** 23:18  
**139** 10:22 41:12 42:4,16  
 43:16  
**14** 239:9 273:5 312:16  
 324:11 329:1,1,5  
 331:5 345:2  
**15** 32:13 33:18 36:10  
 99:22 106:13 320:11  
 328:4 331:13 352:19  
**15-185** 333:6  
**15-6** 106:4  
**15,000** 341:3  
**1552** 315:1  
**1557** 344:5  
**17** 99:18 117:18 136:4  
**170,000** 82:17 83:19  
**178** 345:5  
**18** 117:7 142:22 337:21  
 344:4  
**180** 309:18,20 310:3,8  
**184** 3:18  
**19,960** 125:20  
**1946** 314:19  
**1980** 27:10  
**1990s** 170:19,22  
**1994** 109:12 140:18  
**1995** 124:13 155:20  
**1997** 169:9  


---

**2**  


---

**2** 335:6  
**2.4** 260:3  
**2:15** 231:1  
**20** 1:11 124:7 171:18  
 175:3 326:14 327:16  
**2002** 125:7 132:16  
 133:8 155:2  
**2005** 174:18  
**2006** 156:22 157:2  
 245:13  
**2010** 156:17 245:13  
 264:9  
**2011** 60:17,20  
**2012** 57:2 58:9 59:3  
 60:5 61:11,12,22  
 64:13,18 90:10 94:20  
 95:1 97:7 312:13  
 338:18

**2013** 57:2 140:19 142:6  
 144:8  
**2014** 57:2,3 58:9 59:3  
 60:5 61:22 95:2,4  
 97:6 239:8,19 253:18  
 264:9 330:16,18  
 336:9,11,17 338:2  
 345:4  
**2015** 1:7 80:3 240:11  
 241:7 338:9,12  
**20th** 332:17  
**21** 143:21 144:14 145:4  
**22.1** 329:22  
**223** 115:9  
**228** 338:1  
**232** 4:1  
**236** 345:4  
**24** 99:16 135:20  
**25** 26:18 29:3 260:2  
 297:15 352:16  
**250** 345:10  
**257** 329:15  
**27-3** 339:7  
**29** 145:3  


---

**3**  


---

**3** 13:20 14:1 16:3 49:18  
 91:9 139:11  
**3:26** 305:8  
**3:34** 305:9  
**30** 23:13 24:17 27:5  
 36:9 37:9 246:11  
 324:7 330:4 346:8  
**306** 4:11  
**30th** 68:17 72:18  
**31** 233:5 240:10  
**32** 147:1  
**333** 1:11  
**336** 329:3  
**35** 346:12  
**357** 4:22  
**38** 150:19  
**38.5** 329:6  
**394** 329:22  


---

**4**  


---

**4** 64:17 91:21  
**4,169** 329:4  
**4.3** 86:5  
**4.9** 84:3,14 86:6  
**4:29** 357:8  
**40** 147:7 185:2 220:10  
 281:3 330:11,11  
**400,000** 247:21  
**41** 142:8 143:6,15,20  
 336:18 345:18  
**42.6** 329:21  
**425** 345:3

**43** 332:14 347:16  
**44** 332:13 337:17  
**48** 148:19  


---

**5**  


---

**5** 3:2  
**5,622** 329:1  
**5.4** 260:5  
**50** 83:11 148:18 198:12  
 200:19 220:10  
**50.80** 116:21  
**51** 276:13 296:13 330:8  
**53** 151:6  
**547** 320:10 328:4,7,7  
 348:15  
**550,000** 82:18  
**56** 3:5 143:20  
**58.8** 344:3  
**59** 345:17  


---

**6**  


---

**6** 332:16  
**6,420** 140:19  
**6.1** 329:15  
**60** 83:11 144:15,18  
**61** 260:2  
**62** 252:11  
**66** 115:12,15  
**67** 347:13  
**6th** 1:11  


---

**7**  


---

**7** 143:2 341:6  
**7.1** 330:2  
**70** 95:1 144:15 330:6  
**7050.01** 351:9  
**7050.6** 333:21  
**71** 111:19,22  
**72** 51:14  
**72-hour** 53:8,18  
**73** 66:18  
**74** 335:1  
**760** 312:20  


---

**8**  


---

**8** 95:3 165:20  
**8:30** 1:12  
**8:37** 5:2  
**80** 95:8  
**834** 114:21  
**87** 91:14,19 246:2 290:5  


---

**9**  


---

**9** 86:7  
**9,127** 336:17  
**9:32** 55:16  
**9:42** 55:17  
**90** 23:14 24:17 27:6

37:9 236:20 290:6  
 323:15 337:19 344:5  
**92** 63:8  
**93** 63:8  
**94** 246:13  
**95** 85:5  
**97** 140:21

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