DEFENSE ADVISORY COMMITTEE ON INVESTIGATION,
PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT
IN THE ARMED FORCES
(DAC-IPAD)

+ + + + +

32ND PUBLIC MEETING

+ + + + +

WEDNESDAY
DECEMBER 6, 2023

+ + + + +

The Committee met in the General
Gordon R. Sullivan Conference and Event Center,
located at 2425 Wilson Boulevard, Arlington,
Virginia, at 9:00 a.m., Hon. Karla Smith,
Committee Chair, presiding.

PRESENT
Hon. Karla Smith, Chair
MG(R) Marcia Anderson
Ms. Martha Bashford
Mr. William Cassara
Ms. Suzanne Goldberg
Hon. Paul Grimm
Mr. A.J. Kramer *
Ms. Jennifer Gentile Long *
Dr. Jenifer Markowitz
BGen(R) James Schwenk
Dr. Cassia Spohn
Ms. Meghan Tokash
Hon. Reggie Walton

ALSO PRESENT

Mr. Dwight Sullivan, Designated Federal Official
Mr. Pete Yob, Executive Director
Ms. Meghan Peters, Acting Deputy Director
Mr. Dale Trexler, Chief of Staff
Ms. Theresa Gallagher, Attorney Advisor
Ms. Nalini Gupta, Attorney Advisor
Ms. Michael Libretto, Attorney Advisor
Ms. Terri Saunders, Attorney Advisor
Ms. Kate Tagert, Attorney Advisor
Ms. Eleanor Magers Vuono, Attorney Advisor
Ms. Amanda Hagy, Senior Paralegal
Ms. Stayce Rozell, Senior Paralegal
Ms. Stacy Boggess, Senior Paralegal
Ms. Marguerite McKinney, Management & Program
        Analyst
Ms. Janelle Mclaughlin, Paralegal
Mr. Blake Morris, Paralegal
Dr. William Wells, Criminologist

*   Present via video teleconference

Neal R. Gross and Co., Inc.
Washington DC

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

2   8:50 a.m.

3   MR. SULLIVAN: Good morning, this is

4   the second day of the public meeting of the DAC-

5   IPAD is now open.

6   Chair Smith, you have the con.

7   CHAIR SMITH: Thank you, Mr. Sullivan,

8   and good morning everyone.

9   I would like to welcome the members of

10   the DAC-IPAD and everyone in attendance today, to

11   day two of the 32nd public meeting of the Defense

12   Advisory Committee on Investigation, Prosecution,

13   and Defense of Sexual Assault in the Armed

14   Forces, or DAC-IPAD.

15   Today's meeting will be in person with

16   video conference via Zoom also available, for

17   members, presenters, and other attendees.

18   The DAC-IPAD was created by the

19   Secretary of Defense in 2016 in accordance with

20   the National Defense Authorization Act, for

21   fiscal year 2015, as amended, for a 10-year term.

22   Our mandate is to advise the Secretary

1   of Defense on the investigation, prosecution, and

2   defense of allegations of sexual assault and

3   other sexual misconduct, involving members of the

4   armed forces.

5   I'd like to acknowledge again with

6   gratitude, the military justice experts from each

7   of the military services, criminal law divisions,

8   who serve as the DAC-IPAD's dedicated service

9   representatives, and who have joined us for the

10 meeting today. Welcome, and thank you.

11   We will begin today's meeting by first

12 hearing from the DAC-IPAD criminologist, who will

13 provide an update on the preliminary results of

14 the Panel Selection Study.

15   Next, the committee will receive a

16 briefing from the professional staff on the

17 current proposals for assessing the

18 implementation and performance of special trial

19 counsel, in all services.

20   After a break, the committee will

21 receive an update from the Special Projects

22 Subcommittee, and the Policy Subcommittee.

1   The committee has received multiple

2   requests to provide public comment at this

3   meeting and after the lunch break, we will hear

4   from five speakers who will each have five

5   minutes to discuss their experiences and

6   perspectives on sexual assault, and military

7   justice policy in the armed forces.

8   After the public comments conclude,

9   the DAC-IPAD director will wrap up the meeting

10   before adjournment by the DFO.

11   I'll end with a couple of housekeeping

12   items. To those joining by video, I ask that you

13   please mute your device microphone when not

14   speaking.

15   If any technical difficulties should

16   occur with the video, we will break for 10

17   minutes, move to a teleconference line and send

18   the dial-in instructions by email.

19   Today's meeting is being recorded and

20   transcribed, and the complete written transcript

21   will be posted on the DAC-IPAD website.

22   Thank you again to those in attendance

1   today, and I will now hand the meeting over to

2   Ms. Kate Tagert, to introduce our speaker for the

3   Panel Selection Study update and discussion.

4   Thank you, Kate.

5   Do you have something?

6   MR. YOB: Yes, Chair Smith, my

7   apologies. Just had two quick administrative

8   announcements.

9   One is that I inadvertently failed to

10   count for quorum yesterday, but I want to put on

11   the record that we did have quorum, as we

12   reflected in the votes that we had throughout the

13   meeting.

14   And that I will put on the record

15   today that we currently have quorum. We have

16   nine members in person, and I believe there's two

17   virtual members on at this moment.

18   So thank you for that.

19   The other administrative announcement

20   is just that we, a reminder that we're having a

21   working lunch today to discuss site visits.

22   We'll also discuss future meetings,

1   and some of the meeting dates and processes, and

2   any other administrative matters we'll cover

3   during that working lunch today, so thank you.

4   Thank you, Judge, and I'll turn it

5   over now to Kate and Dr. Wells.

6   MS. TAGERT: Okay, good morning.

7   Today the case review team is going to

8   be providing an in-depth overview of the Panel

9   Selection Study, that was first approved by the

10   DAC-IPAD earlier this year in January.

11   This presentation is going to cover

12   the original purposes of the study, and describe

13   what information we have been able to collect.

14   Finally, we will present how we

15   analyzed the data by using the Army's dataset as

16   an example.

17   We don't yet have all the services

18   complete, but we believe that any feedback that

19   you have today on the data, will help us complete

20   the other services in a more efficient manner, as

21   well as prepare for the report.

22   The staff's intent is to have a

1   standalone report for your review by early next

2   spring.

3   Before we get into the study, I just

4   want to remind everyone that the results that we

5   are looking at, are from contested courts-martial

6   that involve an Article 120, or Article 120 bravo

7   offense.

8   These cases were adjudicated in fiscal

9   year 2021 and 2022.

10   So this next slide shows you the

11   original purposes of the study, which was to

12   study the demographics of what military panels

13   look like, as well as other courtroom personnel

14   such as trial prosecutors, lead defense counsel,

15   as well as judges.

16   The good news is that we were able to

17   meet many of these objectives with some variance,

18   based on the source documents that we reviewed.

19   The subcommittee determined that by

20   reviewing the records of trial and convening

21   orders, we were able to collect the necessary

22   information of members that were detailed to

1 courts-martial, as well as those members that

2 were eventually impaneled.

3   We were able to work with the services

4 to determine and receive race, gender, and

5 ethnicity information on personnel, once we

6 provided them with the information recorded from

7 the case files.

8   Unfortunately for this study, we were

9 not able to capture the demographic information

10 of victims. And the reasons for that are two-

11 fold.

12   One, a lot of the victims in the

13 sexual assault cases that we reviewed were not

14 service members and therefore, the services do

15 not have any of their demographic information in

16 the case files.

17   Second, for the members that were

18 service members, a lot of times the source

19 documents only had their initials, and our

20 methodology was providing the names to the

21 services.

22   However, we were able to capture the

1   demographic information of the accused.

2   So there are two important reasons

3   that we decided to embark on the study. The

4   first is interestingly enough, there has never

5   been a study done on the demographic information

6   of military panel members, despite the many

7   conversations on the subject.

8   The results of this study provide the

9   public information on a process that historically

10   has not been transparent, and can inform the

11   public and the military when assessing

12   perceptions of what panel member demographics

13   actually are.

14   Secondly, the results will act as the

15   baseline going forward, to understand what impact

16   the changes to panel selection will have on the

17   demographic makeup of courts-martial.

18   As previously discussed in other

19   meetings as well as the Article 25 report that

20   you reviewed, United States v. Jeter was recently

21   decided, which found that convening authorities

22   can no longer take race into account for

1   inclusionary purposes going forward.

2   So the cases that we reviewed, as you

3   heard, the convening authorities that testified

4   said they did, indeed, take race into account

5   when selecting who they were going to detail to

6   courts-martial. But that practice is no longer

7   permitted.

8   So this will serve as a baseline to

9   see what changes, what impact Jeter has on the

10   demographics.

11   Likewise, the services soon will be

12   potentially undergoing a more robust

13   randomization system, when selecting panel

14   members. So we will also be able to see the

15   baseline between that going forward.

16   So before getting into the minutiae of

17   the results of the study, I did want to orientate

18   you to the panel selection process, and what

19   stages we are going to be focusing on today.

20   The data is focusing on the last three

21   blocks on this slide. We're talking about which

22   members the convening authority detailed to the

1   courts-martial; the bases for why particular

2   panel members were not selected; as well as the

3   personnel that were actually impaneled.

4   As you can see, the average number of

5   personnel detailed to a court-martial is 14

6   members, with the next largest number being 16

7   members.

8   So, we're not talking about a large

9   amount of people being detailed to any particular

10   court-martial. Generally speaking, a general

11   court-martial will have eight members once

12   impaneled.

13   The staff, by reviewing the

14   transcripts as well as listening to the audios,

15   was able to capture the bases of why a panel

16   member was not impaneled.

17   I did just want to briefly talk about

18   the military voir dire process, because we will

19   be discussing challenges for cause peremptories,

20   as well as the randomization process in the

21   results.

22   Detailed members once they come into

1 a courtroom, are considered assembled. Both the

2 prosecution and the defense have an opportunity

3 to challenge members.

4   Some of the challenges are just based

5 on statutory reasons. For example, members

6 should not be a lower rank than the accused.

7   The majority of challenges are based

8 on the accused's constitutional right to be tried

9 by an impartial jury.

10   There are two standards for addressing

11 challenges. The first is whether the member has

12 an actual bias, meaning that the member is so

13 inflexible that they could not yield to the

14 evidence, or the judge's instructions.

15   The second is whether or not there is

16 implied bias, an objective standard which asks

17 whether the system's appearance of fairness would

18 be questioned if the challenged member was

19 allowed to stay and hear the case.

20   Generally, these types of challenges

21 are typical to those in the civilian world.

22   What is unique about the military

1   system at least right now, is that currently,

2   military judges must grant, liberally grant

3   defense challenges for cause.

4   The reason being that the government

5   has as many peremptory challenges as they want,

6   because they're the ones that are detailing the

7   members to the panel in the first place.

8   So, additionally the defense and the

9   government only receive one peremptory strike in

10   the military court-martial.

11   So in a general court-martial, if

12   there is a surplus of more than eight members

13   remaining after challenges, a randomizer is going

14   to be applied to the remaining members.

15   So, everyone will be assigned a number

16   and then the government and the defense will be

17   given an opportunity to challenge on a

18   peremptory.

19   So, that is how panels are formed. If

20   after that peremptory challenge there's a surplus

21   of eight, those people will be randomized off the

22   panel.

1   Okay, so just so you understand where

2   we received the information the staff relied on

3   the following documents.

4   We would review the convening orders

5   and the transcripts; the list of members. We

6   would also rely on the transcripts to pull the

7   information of why a member was not impaneled.

8   Then the staff also reviewed the entry

9   of judgment, or results of trial, to determine

10   what forum was selected; the outcome of the case;

11   as well as information about the accused.

12   When we were assessing the feasibility

13   of this study, we did run into some problems.

14   The amount of information that is necessary to do

15   this study was sizeable.

16   Many of the thousands of documents we

17   reviewed were not easily searchable.

18   Secondly, the majority of cases we

19   reviewed were acquittals, meaning that they did

20   not have a transcript and the staff had to listen

21   to the audios to determine the reasons for why

22   particular members were not impaneled.

1   This table provides an overview of the

2   number of cases reviewed, and the data points

3   extracted from those files and audios.

4   We've reviewed 258 contested courts-

5   martial, and we've collected close to 48,000 data

6   points just to be able to determine the

7   demographics of a court-martial.

8   As an update, we have finalized the

9   Army, which is what you're going to be hearing

10   about today.

11   We continue to work with the other

12   service representatives to receive the race,

13   gender, and ethnicity for the others.

14   We hope to have again, the standalone

15   report to you by early next spring.

16   I'm going to pass the baton to Bill,

17   to discuss the analysis that we performed on the

18   data.

19   DR. WELLS: Good morning.

20   Want to walk you through the analysis

21   plan that we executed, before we start talking

22   about the results.

1   So, with the Army data, we have

2   information about 124 courts-martial. Within

3   those courts-martial, we have information about

4   individuals.

5   So, we took the approach with the

6   analysis, that we would look at the 124 cases in

7   terms of basic information about those cases.

8   Then in stage 2, which is part 2, we

9   took the individuals that were involved in each

10   of those 124 cases, and we aggregated them

11   together.

12   So, we pooled them together ignoring

13   which case they were involved in. And that's

14   going to give us some information about the 1,965

15   members that were detailed to those 124 courts-

16   martial.

17   Then in part 3, what we do is we take

18   those individuals, we put them back into the

19   particular case that they were involved in, and

20   we describe information about them at the case

21   level.

22   So, in part 3 what you're going to see

1   is information about each of those 124 cases in

2   terms of the individuals that were involved in

3   those particular cases.

4   So, these are the phases of the

5   analysis, and that's how we've broken down the

6   results.

7   So here's some of the results from

8   part 1. So, we obtained 72 cases from fiscal

9   year 2021, and 52 cases from fiscal year 2022,

10   and then we have the race and ethnicity of the

11   accused. Basic descriptive information about the

12   cases that we're dealing with.

13   I'll have a note about how we measured

14   race and ethnicity for the analysis here in just

15   a minute.

16   The vast majority of the accused were

17   men, and were enlisted personnel. And case

18   adjudication, 58.9 percent ended in acquittal;

19   and, 41.1 ended up as a guilty finding.

20   And then all officer panels were the

21   exception. 15.1 percent, or 15.3 percent of

22   those 124 cases.

1   The members detailed. So, this is

2   part 2 of the analysis. We ran into some

3   measurement complications when it came to

4   capturing the demographic information about the

5   members.

6   So we first obtained the cases for

7   FY22 and the demographic information for the

8   members, and we were under the impression that we

9   were going to be able to separate out the

10   measurement of race from ethnicity.

11   So we'd be able to capture a person's

12   race independent of their ethnicity, to get a

13   more detailed and accurate picture of these

14   demographics.

15   When we received the FY21 data from

16   the Army, we realized this was not going to be

17   possible.

18   The information they provided didn't

19   allow us for that separation. So, we had several

20   forms of communication with the Army to

21   understand how they were measuring race and

22   ethnicity with the FY21 and FY22 cases.

1   It's highly complicated, not highly

2   complicated but somewhat complicated. And the

3   Army is in transition in how they're measuring

4   demographic characteristics of their members.

5   So with that, we made the decision to

6   use their legacy systems, which does not separate

7   out race from ethnicity.

8   So when you see race and ethnicity

9   presented in the findings today, please know

10   that, that about a particular individual, we do

11   not know their race and their ethnicity. We just

12   know one or the other, and that's how we've

13   categorized people.

14   So, with the detailed members to these

15   124 cases, we have 1,965 members. And this is

16   the breakdown of their race and ethnic

17   categories.

18   White, non-Hispanic, 50.9 percent.

19   Black, non-Hispanic, 21.9. Hispanic, 13.5.

20   Asian or pacific Islander, 5.9. American Indian

21   or Alaskan Native, .8.

22   And then we have missing data for 136

1   individuals that their race and ethnicity was

2   unknown in the data, or that particular

3   individual could not be identified in the Army

4   data because of several potential factors that

5   Kate can talk about later, if we have questions

6   about that.

7   This provides you an understanding of

8   the demographic breakdown of the Army statistics

9   at large, from FY22.

10   463,083 active duty service members.

11   15.1 -- 15.7 percent are female; 84.3 are male.

12   And then this is the race and ethnicity breakdown

13   for the Army.

14   This is the race and ethnicity of

15   detailed members, broken down into two

16   categories. White, non-Hispanic service members;

17   and, service members belonging to a racial and

18   ethnic minority group.

19   When you delete out this unknown/other

20   category, you see that the detailed member

21   demographic breakdown matches the previous slide,

22   which is the Army demographics at large.

1   So with the detailed service members,

2   54.7 percent are White, non-Hispanic, and 45.3

3   are service members belonging to a minority

4   racial and ethnic group.

5   And then if you reflect back on the

6   previous slide, which I'll show you, the 53.6

7   percent if you ignore those unknown categories,

8   becomes 54 percent White and 46 percent minority

9   ethnic and racial group service members.

10   And those match the 54.7 and 45.3 that

11 we find in the detailed service members. So,

12 those numbers are in close alignment.

13   Army demographics in terms of those

14 two categories are presented here on the next

15 slide. And then we also show the representation

16 of men and women in the Army. 85.2 percent and

17 14.8 percent.

18   Continuing on with our impaneled

19 members, 48.9 percent of detailed personnel are

20 actually impaneled on a jury.

21   When we compare the breakdown of those

22 who are impaneled by their race and ethnic

1   category, we see that the percentages are nearly

2   identical.

3   48.7 percent of White, non-Hispanic

4   service members who were detailed, are actually

5   impaneled. 48.6 percent of minority service

6   members who are detailed, are actually impaneled.

7   So we don't see any difference here in

8   terms of the empanelment stage.

9   When we look at the excusal reasons,

10   again, we don't see differences across the

11   demographic categories here.

12   So, taking for example the challenges

13   for cause, 65.6 percent of White, non-Hispanic

14   service members are excused because of a

15   challenge for cause.

16   And that's nearly identical to the

17   breakdown for minority service members, 65.5

18   percent of minority service members are excused

19   because of a challenge for cause.

20   We also analyzed the gender of

21   detailed service members, so 75.2 percent of

22   detailed members are male; 20.2 percent are

1 female.

2   And this is very much in line with the

3 Army demographic data. However, the slight

4 difference is that men are underrepresented on

5 details, and females are slightly overrepresented

6 on details in the Army.

7   At the empanelment stage, 37.8 percent

8 of women are impaneled, and 51.6 percent of men

9 are impaneled.

10   And again, this is when you compare

11 this to the Army demographics, women are slightly

12 overrepresented when it comes to the empanelment

13 stage.

14   And, men are slightly under

15 represented in relation to their percentages in

16 the Army.

17   Yes, sir?

18   MR. CASSARA: Dr. Wells, I'm again

19 reminded of why I went to law school and not

20 math. What do you mean by overrepresented and

21 under represented?

22   DR. WELLS: Yes, great --

1   (Simultaneous speaking.)

2   MR. CASSARA: Does it get back to a

3   very, much more basic sum for my very basic non-

4   math brain?

5   DR. WELLS: No.

6   MR. CASSARA: Thank you.

7   DR. WELLS: Great question. If you go

8   back to slide 19, that's where we present the

9   information on the percentage of men and women in

10   the Army.

11   So at the bottom of slide 19, you see

12   that 19 percent of service members are female.

13   And then when you fast forward to

14   empanelment, and this will become clearer with

15   part 3 of the analysis, you see that women are

16   represented at a higher rate than that 19

17   percent.

18   But what this slide shows on 24, is

19   that among females, they are impaneled at a lower

20   rate than men. That's that 51.6 percent versus

21   the 37.8 percent.

22   When we look at --

1   (Simultaneous speaking.)

2   MS. GOLDBERG: Just since you opened

3   the door --

4   DR. WELLS: Yes.

5   MS. GOLDBERG: -- to the math

6   questions, is the layperson's understanding of

7   that when men are impaneled, they're like to be

8   selected, oh wait, sorry.

9   When men are in the pool they are

10   likely to be selected half the time. When women

11   are in the pool, they're likely to be selected

12   for impaneled somewhat over a third of the time.

13   Is that the way to understand that, or

14   is there something else?

15   DR. WELLS: When we look at the

16   empanelment percentages, which aren't presented

17   here on this particular slide.

18   Sixteen percent of people impaneled

19   are female in our data. Sixteen percent.

20   MS. GOLDBERG: Maybe I'll wait till we

21   get to that slide.

22   DR. WELLS: Okay.

1   MS. GOLDBERG: And I'll ask you the

2 same question.

3   DR. WELLS: Okay.

4   (Laughter.)

5   DR. WELLS: And I got that 16 percent

6 -- 150 divided by 913, if you're looking at this

7 slide. So all people impaneled, there are 913

8 people impaneled.

9   BGEN(R) SCHWENK: Yes, on that issue.

10 So, if the Army overall is 20 percent female, and

11 they impaneled 900+ people, 20 percent of that is

12 180.

13   DR. WELLS: Right.

14   BGEN(R) SCHWENK: So you would expect

15 females to be 180, but they're only 150.

16   DR. WELLS: And when we get to part 3,

17 General, then I'll show you where that

18 percentage, where I'm drawing that percentage

19 from.

20   So, I'm already looking --

21   (Simultaneous speaking.)

22   BGEN(R) SCHWENK: But is that right

1   though? We would just on this, if 20 percent of

2   900 is 180, so and we only ended up with 150?

3   DR. WELLS: Correct.

4   BGEN(R) SCHWENK: Okay, thank you.

5   MS. GOLDBERG: And sorry, maybe one

6   more just from slide 24, or I'm sorry, page 24.

7   I mean, it's just that I, just again try to put

8   this together for myself in layperson's terms.

9   Does this mean that in about, in just

10   over a third of panels, there is at least one

11   woman and about two-thirds there is not? Or is

12   that not right?

13   DR. WELLS: No, we can't draw that

14   conclusion from this.

15   MS. GOLDBERG: Okay.

16   DR. WELLS: Yes, and we'll get to that

17   in part 3.

18   MS. GOLDBERG: Okay.

19   DR. WELLS: Yes.

20   MS. GOLDBERG: I'll wait for part 3.

21   (Laughter.)

22   DR. WELLS: The next slide, which is

1 25, shows the reasons for excusal by gender. And

2 what we see here similar to race and ethnicity,

3 we don't see any particular reason for excusal

4 being used differently for male and female

5 service members.

6   So for instance, you would see that

7 17.8 percent of women who are not impaneled, are

8 excused for a peremptory challenge. Among men,

9 that's 17.3 percent.

10   So, very similar percentages in terms

11 of the reason for excusal.

12   The next analysis breaks things down

13 in a little bit more refined manner; a little bit

14 more detailed examination of these patterns where

15 we combine the race, ethnicity, and gender of the

16 service members to look at their representation

17 in the details, and the panels.

18   And the purpose here was to give the

19 committee a more detailed analysis of the

20 combination of race, ethnicity, and gender.

21   So slide 26 just presents information

22 about the percentages from each of these

1   different demographic categories, and their

2   representation on the details.

3   So you would read this as 42.7 percent

4   of the people detailed are White, non-Hispanic

5   men. 8.2 percent are White, non-Hispanic female,

6   and so on down the chart.

7   The next slide shows the rate at which

8   each of these demographic groups are impaneled.

9   And again, we see that empanelment rates are

10   higher among men than women, for both demographic

11   groups.

12   Minority female service members, their

13   empanelment rate is 43.3 percent. White, non-

14   Hispanic female members are impaneled at a rate

15   of 29 percent.

16   White, non-Hispanic men, 52.4.

17   Minority male service members, 50.5.

18   And then when we look at --

19   (Simultaneous speaking.)

20   MS. GOLDBERG: We're not at part 3 yet?

21   DR. WELLS: Not yet, not yet.

22   MS. GOLDBERG: Does this get to that

1   part of the question I was asking before about if

2   you take a group of women of color, they will be,

3   likely to be impaneled about 43 percent of the

4   time, or they will be impaneled based on this

5   data, 43 percent of the time, White women 29

6   percent of the time, and then men generally

7   speaking, about half the time?

8   DR. WELLS: When you combine all of the

9   members together, that's what this shows. Part 3

10   is going to take a look at the individual details

11   and panels and you'll see how that, that varies

12   across the panels.

13   CHAIR SMITH: So looking at White, non-

14   Hispanic females not impaneled 71 percent of the

15   time, is that suggesting that White women are

16   struck more, or White, non-Hispanic females are

17   struck at a higher rate? Or do we have to wait

18   for the next slide?

19   DR. WELLS: Correct, they are struck.

20   CHAIR SMITH: I did well in math.

21   (Laughter.)

22   DR. WELLS: Yes, that is correct.

1   The next slide does show the reasons

2   for excusal, broken down by the different

3   demographic categories.

4   So, each of, so this only looks at the

5   people who were excused because that's what we

6   know the reason for excusal for.

7   And you see that the different reasons

8   are used very similarly across the different

9   demographic categories here.

10   You can see that by the percentages

11   reading across the particular rows. So,

12   challenges for cause are used about 65.6 percent

13   for all of the different demographic categories

14   here.

15   Peremptory challenges are used at 20

16   percent, 20 percent, 15.7, 17.8, and 16.1.

17   MS. GOLDBERG: At the risk of going

18   down a road at which I have no business being, is

19   there anything significant to the fact that the

20   randomization excusal would happen at different

21   percentages for different groups, or is that

22   statistically insignificant given the numbers?

1   DR. WELLS: I've not compared those

2   within that particular category, that

3   randomization. But overall, the pattern is not

4   statistically different from a random finding

5   here.

6   But again, I have not looked at that

7   particular row of data to see if those are

8   statistically different.

9   MS. GOLDBERG: I was asking because in

10   not being a math person, randomization strikes me

11   as one that we would expect to see basically the

12   same percentage across all the groups.

13   So, it seems unusual that it's

14   somewhat different. But you know, to your point,

15   maybe it's not actually different in a

16   significant way.

17   CHAIR SMITH: So I'm trying to

18   understand. When I look at this slide, it

19   doesn't appear when you're looking at the White,

20   non-Hispanic females compared to the minority

21   female service members, the numbers with respect

22   to the challenges for cause, peremptory

1   challenge.

2   They're not that far off, so why are

3   we getting such a significantly different number

4   when we're looking at impaneled White, non-

5   Hispanic females?

6   DR. WELLS: Correct. Very good

7   question.

8   When you look at slide 28, which is on

9   the screen, this breakdown of the reasons is only

10   looking at the 115 White, non-Hispanic women who

11   were excused.

12   And then we just look at the

13   percentages there to see what reason is used.

14   Slide 27 includes both those

15   impaneled, and not impaneled. So we're taking

16   away the group that have been impaneled, and

17   we're just looking at those 115. And when we

18   look at those reasons, we see that they are used

19   similarly.

20   So, it's you can't draw conclusions

21   about why they're being excused at a higher rate

22   because when you look at the reasons, the

1   percentages are similar across the different

2   demographic categories.

3   So this, it's a puzzling question that

4   we require more data and a more in-depth

5   examination.

6   BGEN(R) SCHWENK: Kate, did you, over

7   here.

8   MS. TAGERT: Sorry, sorry, the sweater

9   was distracting me.

10   BGEN(R) SCHWENK: I know, you were

11   hoping against hope that it wasn't me.

12   When you were going through the audio

13   tapes or whatever to figure out about challenges,

14   and whether they were peremptories or challenge

15   for cause, did you happen to collect the reasons

16   for the challenge for cause?

17   MS. TAGERT: Sir, we did not.

18   BGEN(R) SCHWENK: Okay.

19   MS. TAGERT: And the reasons we didn't

20   was well, is we just didn't have the staff to do

21   that.

22   And the reasons are varying, and we

1   didn't really know how we would code that. And

2   we're -- at the time we felt like we wanted to get

3   the demographic information of panel members and

4   the research question wasn't at that point, why

5   particular people were being kicked off panels.

6   However, that could be a study that we

7   look into if we wanted to scope it.

8   BGEN(R) SCHWENK: And you're suggesting

9   somebody else lead that study?

10   MS. TAGERT: You make suggest, no, you

11   make decisions -- I make suggestions, you make

12   decisions, sir. The Peloton line.

13   BGEN(R) SCHWENK: That's how it is at

14   my house, too.

15   (Laughter.)

16   DR. WELLS: Okay, now we're going to

17   transition into talking about part 3.

18   So, just to refresh your memory. What

19   we did when we moved from part 2 of the analysis

20   to part 3, is we took the individuals that were

21   involved in that case, and we aggregated them

22   together back into the specific case with which

1 they were involved.

2   So our unit of analysis now in part 3,

3 is the case. So our sample is 124. So we're

4 describing these 124 cases in terms of the

5 details and the panel in these particular cases.

6   So you're going to hear me talk about

7 average percentages. So that means the

8 percentage of people on a particular panel, and

9 then the average of that percent.

10   So the first analysis of part 3 shows

11 the average percent of a panel that's comprised

12 of detailed members who are White, non-Hispanic.

13   So the percent, the average percent of

14 each case in which the detail was comprised of

15 White, non-Hispanic service members.

16   You see here that that's 55.6. So on

17 average, the typical detail is 55.6 percent

18 White, and 44.4 percent minority service member.

19 And that's the detail.

20   The next slide shows you what this

21 representation looks like for each of the 124

22 panels.

1   So what you see with each of these

2   tiny little bars is a panel. The blue percentage

3   represents the members of the detail who are

4   White, non-Hispanic, and the orange bar

5   represents the percent of that panel that is made

6   up of a minority service member.

7   So this shows the variation across

8   these particular details in terms of the

9   representation.

10   When you average this out, you get the

11   results from the previous slide. 55.6 percent on

12   average is White, non-Hispanic. 44.4 percent is

13   a minority service member.

14   The next slide shows, sorry, the

15   percent of the panel that is comprised of White,

16   non-Hispanic service members, and service members

17   belonging to a minority racial ethnic group.

18   The percentages here are extremely

19   close to those on the detail. 55.3 percent of

20   the panels on average, are White, non-Hispanic

21   service members, and 44.7 are on average,

22   minority service members.

1   MS. GOLDBERG: May I ask a question

2   just because of the, to which I would appreciate

3   a very high level answer?

4   DR. WELLS: Yes.

5   MS. GOLDBERG: The standard deviation

6   here strikes me as a larger number than I usually

7   see when I see standard deviations. And I never

8   quite understand what that is, although I've, you

9   know it's been explained to me many times.

10   But could you say something about

11   that, because it looks unusually high.

12   JUDGE GRIMM: Yes, I now understand

13   what Benjamin Franklin meant when he said that

14   there are three kinds of lies. Lies, damn lies,

15   and statistics.

16   We're trying to figure out whether

17   there's a problem here that needs to be

18   addressed, that is not explained just by the fact

19   that there are fewer numbers of people in

20   categories that we would want to see on juries,

21   to make sure there's fair representation.

22   That's kind of where we want to go

1 with all this, and it's kind of hard for us to

2 figure out where all these things come together

3 to help us decide whether or not we just don't

4 know, or what needs to be done to find out so

5 that we can make decisions.

6   DR. WELLS: Yes, correct.

7   So, let me start with standard

8 deviation and then we'll come back to the larger,

9 most important broad question, which is what's

10 going on here.

11   So the standard deviation, I won't

12 bore you with the details but it's a measure of

13 variation.

14   All it is, is a measure of how much

15 the panels in this sample differ from one

16 another. And, the next chart will show that

17 visually. It will give you an idea.

18   23.4 percent does seem large. And

19 when that's the case, a better measure of the

20 middle, the average, or the typical, is the

21 median.

22   And in this case, the median is 57

1 percent. So that's very close to that 55.3

2 percent.

3   So when they're so close like that,

4 and I don't have that presented on a slide, it's

5 more appropriate to present the mean, or the

6 average, because it takes into account all the

7 data. The median does not.

8   This next slide I think will help

9 illustrate that. So again, this shows every

10 panel in these 124 cases.

11   And that 24 percent standard deviation

12 comes from an analysis of each one of these

13 particular panels. And again, it shows the

14 variation that occurs.

15   The report that you have, provides you

16 with some more details about the different

17 panels, and how many of those are more than 50

18 percent White, non-Hispanic service members.

19   Those that are 100 percent White, non-

20 Hispanic service members on the panel, and so

21 forth.

22   But this provides you a visual

1   depiction of what that standard deviation

2   captures. And that is that there's variation,

3   and there's quite a bit of it.

4   We wanted to look at the

5   representation of minority and White service

6   members, broken down by the race and ethnicity of

7   the accused.

8   What this shows is that when the

9   accused is a minority service member, on average,

10   the typical panel is comprised of a greater

11   percentage of minority service members. 59.6

12   percent versus 51 percent.

13   MG(R) ANDERSON: Can you say that

14   again? That's not what I see -- Am I looking at

15   the wrong slide? A greater percentage of

16   minority service members is on those panels when

17   the accused is a minority?

18   DR. WELLS: Correct.

19   So what the slide shows is that when

20   the accused is a White, non-Hispanic service

21   member, 59.6 percent on average of that panel, is

22   White, non-Hispanic, yes.

1   And then when you switch over, it's 51

2   percent. So that percentage drops, which means

3   the percent of minority service members on the

4   panel increases.

5   MS. BASHFORD: Bill, can you just go

6   back to the blue and orange slide for a second?

7   DR. WELLS: Yes, ma'am.

8   MS. BASHFORD: And it's just because

9   the words from your report aren't up there, but

10   in slightly over half of the 124 cases, just over

11   half, more than half of the panel was White, non-

12   Hispanic.

13   And in 38 percent, more than half of

14   the panel was comprised of racial or ethnic

15   minorities.

16   So that's what that visual is showing?

17   DR. WELLS: Correct.

18   MS. BASHFORD: Okay.

19   DR. WELLS: Yes, yes. When you look to

20   the left of middle, that's when you see the

21   panels that are more than 50 percent minority

22   service member.

1   When you look to the right of the

2   middle of that chart, that's when a greater

3   representation of the panel is White, non-

4   Hispanic.

5   MS. BASHFORD: And just so it's clear,

6   the vertical lines are each individual case. So

7   you could look at case number 17, or case number

8   42, and track up and down minority, non-minority,

9   right?

10   DR. WELLS: Correct.

11   MS. BASHFORD: Okay, thank you.

12   DR. WELLS: Yes, absolutely.

13   MS. GOLDBERG: And, on the same slide

14 that Ms. Bashford was just asking about, does

15 this indicate that almost every panel had at

16 least one member that has been characterized as

17 minority?

18   DR. WELLS: No, no, that's not, that's

19 not accurate. If you look at the far right side

20 of that, those blue bars that go all the way to

21 the top? Those are panels comprised of 100

22 percent White, non-Hispanic service members.

1   MS. GOLDBERG: Then if I'm reading it

2   correctly, that's just, I mean it's not

3   insignificant but it's a, it's a relatively small

4   percentage of overall panels.

5   Is that correct?

6   DR. WELLS: That's correct. That is

7   correct.

8   CHAIR SMITH: Would it be fair to

9   assume that when we move to the right side of

10   that graphic, that those are the more, most

11   likely officer cases?

12   DR. WELLS: We'll get to that in the

13   next analysis. Yes, that was the next analysis

14   we wanted to perform.

15   CHAIR SMITH: Okay.

16   DR. WELLS: So now we're on to that

17   analysis. All-officer panel versus enlisted

18   panel.

19   So, all-officer panels have a larger

20   percentage of members who are White, non-Hispanic

21   than the enlisted panels.

22   So, on average an enlisted panel is

1   53.9 percent White, non-Hispanic service member.

2   All-officer panels on average, 63.1 percent

3   White, non-Hispanic.

4   So as you move from all-officer panels

5   to enlisted panels, you see a demographic shift.

6   Okay, the next set of analyses look at

7   gender. And this is going to get at hopefully

8   some of the questions you had earlier about the

9   representation of women on details, and panels.

10   So again, you see here on average, the

11   details in these 124 cases are 20.6 percent

12   female members, and 79.4 percent male members.

13   And if we reflect back on overall

14   representation of women in the Army, it's 15.7

15   percent. So 15.7 percent compared to the average

16   here, which is 20.6 percent.

17   Okay, so we see that on average, women

18   are overrepresented on the detail in relation to

19   their representation in the Army.

20   The next slide --

21   (Simultaneous speaking.)

22   MS. GOLDBERG: Just for --

1   DR. WELLS: Yes.

2   MS. GOLDBERG: -- my general

3   awareness. I know this is not the subject of

4   this study, but I wonder if somebody in the room

5   knows the answer.

6   15.7 percent strikes me as actually

7   smaller than I thought of the percentage of women

8   in the Army.

9   Other than the Marines where I

10   understand the percentage is even smaller, is that

11   comparable across the services?

12   MS. TAGERT: I, off the top of my head,

13   I couldn't tell you whether or not there are more

14   women in the Army. I think there probably are,

15   but I'm not, I don't know for sure.

16   MS. MANSFIELD: Air Force has the

17   highest percentage of women.

18   MS. TAGERT: Okay, Janet Mansfield has

19   said that the Air Force is the highest percentage

20   of females.

21   JUDGE GRIMM: Louder, please. We can't

22   hear.

1   MS. TAGERT: The Air Force has the

2   highest percentage of female representation.

3   JUDGE GRIMM: Thank you.

4   DR. WELLS: The next bar chart is just

5   like the previous one that you saw in terms of

6   the details. Each of the bars represent a case

7   in our particular sample, so 124 cases.

8   And you see that again, as you move

9   left to right, it shows the representation of

10   male service members growing.

11   And the orange bar shows the

12   percentage of women on each of these details.

13   And when you compute the average, it comes out to

14   be 20.6 percent female; 79.4 percent male.

15   Next slide shows a pattern that we saw

16   previously in part 2 of the analysis, which is

17   the decrease in the representation of women on

18   panels.

19   So on the details, 20.6 percent of

20   those service members detailed are women. On the

21   panels on average, it's 16.1 percent women. So

22   we see that, see that decline.

1   And General Schwenk, back to your

2   question about the representation. I misspoke

3   earlier.

4   In the Army, it's 15.7 percent women.

5   I was looking at the breakdown of officer and

6   enlisted personnel for women, when I referenced

7   the 19 percent.

8   15.7 percent is very consistent with

9   the 16.1 percent on the panel. So I apologize

10   for that.

11   Does that clarify?

12   BGEN(R) SCHWENK: Yes.

13   DR. WELLS: Sorry about that 19 percent

14   reference. It was incorrect.

15   But the pattern again just like in

16   part 2 shows that the representation of women on

17   details, is greater than the representation on

18   panels.

19   We don't see that change when we just

20   look at the racial and ethnic demographic

21   characteristics.

22   We don't see that decline from the

1   representation on details to panels, but we do

2   see that decline from details to panels among

3   women.

4   Next slide shows the bar charts for

5   the panels. So again just like before, each of

6   the 124 cases is represented here.

7   And as you move to the right, you see

8   the blue charts, or the blue lines, the bars that

9   go all the way to the top. And those cases, that

10 panel is made up of 100 percent men.

11   DR. SPOHN: And by comparison, there

12 are no panels made up of 100 percent women?

13   DR. WELLS: That's correct.

14   And you can see the highest

15 representation of women is in the very first case

16 listed on this particular chart.

17   Similar to the analysis of race and

18 ethnicity, we looked at the representation of men

19 on panels by the race and ethnic category of the

20 accused.

21   And we see that on average, when a

22 panel is on a case when the accused is White,

1 non-Hispanic, it's 80.6 percent men.

2   And very similar when the accused is

3 a minority service member, it's 78.6 percent

4 male.

5   Officer versus enlisted panels. We

6 see here that the representation of men on all-

7 officer panels, is lower compared to when it's an

8 enlisted panel.

9   In other words, the representation of

10 women on officer panels is higher than when it is

11 an enlisted panel.

12   MS. GOLDBERG: At some point, are we

13 going to get to your thoughts on why this may be

14 so, or is that just for us to draw conclusions

15 from the numbers?

16   It would be interesting to hear the

17 thoughts of the group that has studied this so

18 extensively.

19   MS. TAGERT: For the percentage

20 difference between women detailed versus

21 impaneled, I can tell you anecdotally and

22 probably Stacy can as well, a lot of the reasons

1   that women were challenged for cause were they

2   were either victims of sexual assault, or had

3   someone close to them that were also victims of

4   sexual assault.

5   As well as being long term either not

6   victim advocates, but --

7   MR. CASSARA: SARC representatives.

8   MS. TAGERT: SARC representatives. And

9   judges appeared to look at that position

10   differently across the services.

11   If someone had volunteered for that

12   position and had been doing it for a long time,

13   they were generally challenged for cause.

14   It appeared that judges seemed to be

15   drawing a line between people that were just kind

16   of tapped for it historically and said, you know,

17   this is just a job, I was told to do it.

18   But again, these are just kind of

19   observations we made when reviewing the case

20   transcripts.

21   CHAIR SMITH: Recognizing that men are

22   just as likely to have an experience with either

1   a significant other who has been sexually

2   assaulted, or you know, family member or whatever

3   the case may be.

4   Was that treated, I know it's

5   anecdotal, but was it treated any differently?

6   Were the questions asked of men you know, anyone,

7   I assume they were, but just the women were the

8   ones who ended up being struck versus the men?

9   MS. TAGERT: So for the cases that I

10   examined, there were, men were challenged for

11   cause if they had a close family member who was a

12   victim of sexual assault.

13   And many of them reported whether it

14   was their wives, or their children. So, yes.

15   MS. GOLDBERG: Just to pick up on Chair

16   Smith's point. That would mean that men reported

17   that relationship at lower numbers than women.

18   I know you're not offering us a data

19   report, but from your impression is that, that

20   men indicated less frequently than women that

21   they knew someone, or had someone close to them

22   who had been a victim of sexual assault?

1   MS. TAGERT: I couldn't make that

2   observation.

3   MS. GOLDBERG: Thanks.

4   And I also to be clear, I know you

5   have more of the report to go through. I wasn't

6   actually trying to derail the presentation of the

7   data, but I, this is an interesting and important

8   discussion so I hope we have more time for it.

9   Thank you.

10   JUDGE GRIMM: So as not to interrupt

11   the presentation, at some point I am just curious

12   about the inquiry that is done by the military

13   judge when there's a challenge for cause, to

14   determine what kinds of questions you might be

15   able to give us some guidance on, they asked

16   before they made the ruling on cause.

17   Because in the civilian sector, just

18   because someone said that they had had a close

19   family member who had had a sexual assault, or

20   had been a victim of some sort of assault, if

21   they, the follow up would be, would you be able

22   to put that aside and decide this case based only

1   on the evidence and the instructions that I give

2   you, and not let that interfere with your

3   deliberations.

4   And that would have a big impact on

5   whether the judge said cause, or not cause.

6   Now that might not prevent a

7   peremptory challenge, but there's only one

8   peremptory challenge that can be made.

9   So, not now, but at some point I'd be

10   grateful to hear what kind of observations you

11   had having heard the tapes, about the level of

12   follow up by a military judge when there's that

13   challenge for cause.

14   MS. TAGERT: Sure, and we could

15   certainly provide you some examples as well, so

16   you could see them yourselves.

17   But just also keep in mind that there

18   is the liberal grant for defense challenges as

19   well. So potentially, that rehabilitation is not

20   necessarily going to work all the time.

21   MG(R) ANDERSON: Hi, this is Marcia

22   Anderson.

1   Not to gum this up, I just, I attended

2   a court-martial and I'm trying to remember if any

3   of the inquiries were to, to the panel members,

4   were did they know anyone who was ever accused of

5   sexual assault, or had been convicted.

6   I didn't, I don't know if that's a

7   common question or not.

8   MS. TAGERT: That was a question that

9   was asked especially for people, officers in

10   command, as well as, I'm not sure if it's a

11   general question on the questionnaires.

12   But yes, that was something that we

13   saw addressed in voir dire.

14   MR. SULLIVAN: Allow me to make a

15   point. And this goes to Judge Grimm's point.

16   There's one important distinction between the

17   challenge for cause in a civilian setting, and

18   challenge for cause in the military setting.

19   And that is the fact that the military

20   member may also sentence. So, something of this

21   nature may be much more impactful in terms of a

22   judge thinking this person may be influenced by

1   this in terms of reaching a sentence.

2   So it's also important to note that

3   that's about change. So for offenses, for cases

4   in which all findings of guilty occur at, are for

5   offenses that occur after December 27, 2023.

6   And this is true of covered offenses

7   and non-covered offenses. For all UCMJ offenses,

8   you will no longer have member sentencing.

9   So it may be that some of these

10   rulings would have a different, the averages may

11   be different in a situation where the judge is

12   not also considering whether this person would be

13   able to sentence without the experience of being

14   in it.

15   JUDGE GRIMM: That's very helpful.

16   That's a good point. Thank you.

17   MS. BASHFORD: Just one quick follow up

18   on that having attended a couple of the

19   prosecutor training courses.

20   They are affirmatively being told, at

21   least the couple courses I went to, don't push on

22   the rehabilitation because it's going to be an

1   automatic flag on appeal.

2   There's no point going through this

3   and then having it overturned on appeal. So they

4   were told don't do the standard rehab we would

5   have done in civilian court.

6   JUDGE GRIMM: All right, thank you.

7   DR. WELLS: I promise you we're just

8   about done with the data, two more slides. The

9   last part of Part 3 is the analysis of race,

10 ethnicity, and gender together. So what we've

11 done is computed the average percent at which

12 each of these demographic groups is represented

13 on details and then the average percent at which

14 these demographic groups are represented on

15 panels. And if you look at the last two slides

16 in your handout, you'll see that the pattern is

17 very similar to what we saw with the analysis of

18 gender.

19   So on details, we see that on average,

20 for example, 11.9 percent of the detail is

21 comprised of racial and ethnic minority female

22 members, 11.9 percent. And when you look at

1   their representation on panels, it drops to 10.7

2   percent, which is on the next slide. So it moves

3   from 11.9 to 10.7. And then when you look at the

4   representation of white non-Hispanic females, it

5   declines from 8.7 to 5.4 percent.

6   So when we look at the racial and

7   ethnic and gender demographic categories

8   together, we see that that gender pattern holds

9   up for those particular racial and ethnic groups

10   as well. So this last slide shows the rate or

11   the average panel in terms of the representation

12   of these racial, ethnic, and gender groups

13   together.

14   We also wanted -- sorry.

15   (Simultaneous speaking)

16   PARTICIPANT: Sorry --

17   DR. WELLS: I just want to say we

18   realize that what we have here in our report and

19   the presentation is a lot of data. And it's not

20   necessarily complicated data, but it's

21   complicated data to summarize and present and

22   generate take-aways from. So, you know, just a

1   couple of the high-level observations that Kate,

2   Nalini, Stacy, and I have based on looking at

3   these patterns, we see that the details, in terms

4   of their representation of racial and ethnic

5   individuals, very much is similar to overall

6   Army; right? And you can see that by slides 18

7   and 19. If you look at slides 18 and 19, that's

8   where you can find that. There's not a

9   substantial difference there.

10   Empanelment, so as you move from the

11   detail to the panel, the rate of empanelment for

12   racial and ethnic minority service members is

13   nearly identical to the rate of empanelment for

14   white, non-Hispanic service members. So we think

15   these are important observations from these

16   analyses and from these data. And I'll turn it

17   over to Kate in case she has any other summary

18   comments that she wants to make.

19   MS. TAGERT: No. I think that's it

20   but, you know, we have time for questions and

21   discussion so.

22   MS. BASHFORD: Since, again, more than

1   half of these cases resulted in acquittals, have

2   we looked at the average composition of an

3   acquitting panel as opposed to a convicting

4   panel?

5   DR. WELLS: Great question. We

6   started to look at those data, and as we were

7   considering what to do and how to analyze those

8   and going down that road, I became a little

9   concerned because so many factors and so many

10   variables influence a guilty versus acquittal

11   outcomes. Simply looking at one variable might

12   not be very insightful, so we haven't gone down

13   that road.

14   CHAIR SMITH: Was there any

15   consideration -- I think one of the things that

16   we've heard repeatedly, and I don't know how we

17   necessarily address it, but one of the things

18   we've heard repeatedly during public comments is

19   minority officers having all-white panels. Are

20   you going to look at -- kind of like separately

21   break that down a little bit more just looking at

22   the officer cases or?

1   DR. WELLS: We have not broken that

2   particular -- we haven't broken down the analysis

3   to that fine of a level yet, but that's certainly

4   something that, with these data, we can do that.

5   We can look at racial and ethnic demographic

6   characteristics by enlisted versus officer

7   ranking.

8   MS. GOLDBERG: First of all, thank

9   you. I mean this is, you know, just like, you

10   know, just a mountain of work but in a range of

11   work that you're ability to distill it into this

12   base line that many of us have some capacity you

13   can understand, and it's really fantastic.

14   I just have a question for the moment

15   tied to your overall take-aways that you just

16   described, which I heard were the overall

17   detailed percentage generally tracks the -- with

18   respect to race or race/ethnicity, those

19   percentages and the overall empanelment

20   percentages just tracks percentages of the

21   population of the Army with respect to race and

22   ethnicity for men. You didn't draw a similar

1   take-way with respect to participation of women,

2   and I guess one question is why not.

3   And a second is something very

4   particular on slide 41 that may be related in

5   terms of the drop off, the slide 41 question --

6   page 41 question is, you know, we see that women

7   drop off by a percentage from detail to

8   empanelment. You've addressed some of the

9   reasons that you saw why that might be so. Is it

10   notable that the percentage of white women drops

11   off by 3.3 percent where women of color drops off

12   by 1.2 percent, or is that not notable given the

13   small numbers?

14   DR. WELLS: My opinion is that -- to

15   that last question is that is notable, and it's

16   very curious. And I think it's potentially worth

17   looking into.

18   To your first question about drawing

19   conclusions about gender -- and Kate and I talked

20   about this as well, and when I was originally

21   putting these slides together, we were very much

22   focused on race and ethnicity, because that was

1   sort of the charge in what we intended to look

2   at. But the findings when it does come to

3   gender, especially as it pertains to the change

4   from a representation on details to the

5   representation on panels is worth talking about

6   we felt. But again, in terms of a summary take-

7   away at this point, in terms of our observations,

8   we were so focused on race and ethnicity with the

9   purpose of this particular study, that's why we

10   remained focused on that.

11   MS. GOLDBERG: Thank you. So we

12   shouldn't draw anything from the fact that you

13   didn't lift up your gender findings for the --

14   your take-aways.

15   The other question I had with respect

16   to race is, you know, certainly we've heard

17   anecdotally, I would say sort of overwhelmingly

18   anecdotally, that service member upon service

19   member and from some of their -- the lawyers of

20   the accused that it is very typical to have an

21   all-white male panel deciding cases. Your data

22   seems to offer a different picture.

1   I'm struck by that, and I'm also

2   struck by the fact that, you know, we heard

3   repeatedly not just here but one reads about the

4   perception of unfairness or disparity, racial

5   disparities, particularly in panel selection.

6   Your data seems to tell another story, and I

7   wonder why you think the perception is so

8   persistent if the data suggests otherwise, and

9   does that raise any kind of questions about maybe

10   how the -- you know, either questions about the

11   data or questions about the perception or

12   something else?

13   MS. TAGERT: Well, first, this is only

14   Army data. So the Army is the largest service.

15   I don't know if that is maybe a factor. It's

16   just a larger pool of humans. I think that we

17   would have to see all of the services before we

18   could say, you know, the perceptions maybe are

19   incorrect. I don't know until we see the other

20   services. But I can't answer why the perception

21   is that, you know, that the panels are non-

22   minority and this data. I just -- I don't know.

1   JUDGE WALTON: Let me ask, were you

2   able to determine whether there was a difference

3   in the acquittal rate when the panel was

4   comprised of either minorities or females and

5   when it was not?

6   DR. WELLS: Again, we started to

7   explore that question, but we don't have findings

8   on that one. And again -- and it's an obvious

9   question to ask, I think, and it's an interesting

10   question to ask. My concern and why we haven't

11   gone forward right now -- and certainly, if the

12   committee is interested in that, we can analyze

13   those data and present the results -- my concern

14   was isolating or only looking at -- not isolating

15   but only looking at one variable, which is the

16   composition of panels and the acquittal/guilty

17   outcome, is problematic because we know that so

18   many other factors influence that particular

19   outcome.

20   CHAIR SMITH: I was thinking or just

21   -- sorry -- I was thinking of discussing here

22   with Bill, when you look at the -- who's being

1   charged, right, from the very beginning, maybe

2   one of your first slides, minorities are very

3   over-represented in terms of, you know, the

4   charging decisions. So perhaps that's also part

5   -- playing -- part at play here is that general

6   over-representation of -- well, I don't know if

7   it was over-representation but looking at what

8   are the charges, you know, the white, non-

9   Hispanic versus the minority for a theft

10   question, or what's happening as it goes down the

11   road and then other specific crimes, I don't

12   know.

13   MR. CASSARA: I can put on my defense

14   trial lawyer hat, which I wore for 30 years, and

15   I think I can answer some of Chair Smith's

16   questions. I can tell you that the majority of

17   my clients were African American males over the

18   course of 30 years. I can tell you that some of

19   them would say, "I want as many African Americans

20   on my panel as we can get." And some of them

21   would say, "I want as few African Americans on my

22   panel as we can get." In cases involving a

1 sexual assault, some of the defense bar says "I

2 want as many women on the panel as I can get."

3 Most of, I could say in my cases, it was the

4 opposite. We wanted as few women on the panel as

5 we could get. I just don't know -- I don't know

6 that there is a statistic. You know, again --

7 CHAIR SMITH: A perception.

8 MR. CASSARA: Yes. I don't do

9 numbers. I do real world, you know, empirical

10 data. And in terms of my empirical data and my

11 experience, I don't know that I can draw a

12 conclusion from any of those one way or the other

13 so.

14 DR. SPOHN: So not wanting to

15 complicate things even more, but I think what is

16 somewhat confusing is when you start talking

17 about the proportions on cases as opposed to the

18 proportions in the who are detailed and the

19 proportions who are impaneled overall. So when

20 you start looking at cases, then it becomes more

21 complicated. And I'm wondering if you're

22 thinking about taking this to the next level by

1   doing, you know, some sort of multi-variate

2   hierarchal models where you are controlled for

3   individuals nested within cases, and that way you

4   can -- I could tease out some of the nuances that

5   people are talking about here.

6   So is it race, ethnicity, or is it

7   gender that's driving these results? Is it the

8   racial and ethnic characteristic of the

9   defendant? Do you intend to go the next step and

10 try to tease out what's really driving the

11 difficulty?

12   DR. WELLS: That's a great question,

13 Dr. Spohn, and the structure of these data would

14 lend themselves very nicely to that kind of

15 analysis. And I think we could potentially

16 explore that. I think where we're limited is

17 data about the case itself within which these

18 details and panels are nested.

19   So for instance, one of the things we

20 would want to examine is the demographic

21 characteristics of the victim, and we simply

22 don't have those. So we have case level

1 information that's pretty basic information about

2 the accused and the judge basically at this

3 point. So we hadn't thought realistically about

4 performing that kind of analysis.

5 MG(R) ANDERSON: When I was looking at

6 the slides on gender composition of details and

7 panels, and I looked at the panels that -- and

8 details that had a large percentage of females,

9 it just occurred to me that that might represent

10 the mission of that particular installation where

11 the case was brought. So on an installation

12 that's heavy on support people, you know,

13 communications, intel, logistics, medical -- yes,

14 may have a higher percent of females than you

15 will at an installation that focuses on combat.

16 So I don't know -- we were talking about

17 randomization -- whether that's something we need

18 to factor into our recommendations or findings or

19 just, you know, passing on that as a possible way

20 where we need to employ randomization, even if it

21 means detailing people from other installations

22 so that you have a better panel selection.

1   DR. WELLS: I'll let Kate respond in

2   terms of the availability of data about -- that

3   is correct, that's accurate. And that's why it

4   is we have to use some caution in comparing the

5   percentages we're finding on these specific

6   panels to representation in the Army at large,

7   because of the point that you raised. Kate, do

8   you want to talk about the availability of data

9   from specific installations?

10   MS. TAGERT: Yes. We -- you know,

11   when we first were doing the project, we were

12   thinking well, we really want to get down to the

13   granular level and look at the demographics at

14   the installation where these courts-martial were

15   held, but the data is not readily available for

16   us. And it's also kind of like we would have to

17   have a, you know, time freeze of that particular

18   moment in time. So, you know, those -- we want

19   to get to that level, but I don't know if the

20   juice is worth the squeeze when we're just trying

21   to, you know, give some information as to what

22   panels are looking like. But we can certainly

1   discuss that going forward if we wanted to kind

2   of continue down this road.

3   I think one of the issues with this

4   data is obviously that the system has now

5   changed, and it's going to change even more with

6   the randomization. So we're now looking at old

7   data, and we won't know what's happening on the

8   granular level going forward with the changes

9   that are going to be in effect, that are now in

10   effect.

11   CHAIR SMITH: So I know Ms. Long is

12   online and she has a question, but one thing I

13   wanted to talk about to the committee, and I was

14   talking to Pete about it, is maybe really where

15   we need to go is maybe a recommendation that they

16   -- that the armed forces, armed services maintain

17   this data, the victim data, the panel data,

18   etcetera, etcetera so that a clear look can be --

19   we can have a clear look at exactly who's being

20   impaneled, what's happening, charging, etcetera.

21   But Ms. Long?

22   MS. LONG: Hi. Thank you, Chair,

1   and thank for the presentation. I just -- I had

2   a comment on if -- I know this is a goal we were

3   looking at here but if we're going out and

4   looking at here but if we're going out and

5   looking at outcomes based on gender or race and

6   multi-variables, I would just make sure that we

7   are capturing other characteristics about the

8   case itself so that we're not drawing conclusions

9   based on demographics that might be looking at

10   different kinds of cases. And I think this goes

11   to what you talked about, the different

12   variables. I think that would give us an

13   accurate picture of whether or not the

14   demographics impact the outcome, if it does at

15   all. If we could look at different spots and I

16   understand that's very involved and for later.

17   But I just -- I wanted to raise that if you take

18   this deeper.

19   BGEN(R) SCHWENK: Thank you. One

20   thought on the issue of the perception that we

21   heard in testimony about all-white panels and the

22   data that says they're not -- they're rare that

1   you have an impaneled all-white panel. And it

2   goes back to your problem with the Army on their

3   data that they provided you. So Hispanic is a

4   significant number. There are white Hispanics.

5   There are black Hispanics. There are Asian

6   Hispanics. And so if a white Hispanic is one of

7   the people that we capture in our data as a

8   minority, and you didn't look like a minority to

9   the accused who then comes and tell us, "I had an

10   all-white panel," and our data says, really,

11   well, the Army, because they mask, as you guys

12   pointed out, ethnicity and race together, that's

13   a problem with the data that you had that you

14   then used. And it might explain, to some extent,

15   why we ended up where we ended up.

16   DR. WELLS: I think that's a correct

17   observation.

18   DR. SPOHN: So one of the criticisms

19   lodged against the use of preemptory challenges

20   in the criminal non-military system is that

21   they're typically used to excuse racial

22   minorities and there's quite a bit of research

1   showing in various jurisdictions that there is

2   over -- minorities are over-represented in the

3   percentage of individuals on a panel who are

4   excused using a preemptory challenge, but it's

5   particularly by the prosecutor as opposed to the

6   defense attorney, at least in the civilian world.

7   I'm wondering if your data does not

8   show this? They don't show that preemptories are

9   more likely to be used against non-whites. Can

10   you break it down by who made the preemptory

11   challenge, whether it was the prosecutor or the

12   defense attorney? And also, do you think that

13   these results might differ from results in the

14   civilian world, because the number of

15   preemptories are so circumscribed. There's only

16   one for each side whereas in the civilian world,

17   there might be six or eight or ten depending on -

18   -

19   MS. BASHFORD: Twenty --

20   DR. SPOHN: -- depending upon the

21   severity of the charge?

22   MS. TAGERT: Yeah. So for this

1   particular study, you would not break down the

2   challenges by prosecution versus defense. And as

3   far as -- yeah, we didn't capture that so we

4   would have to go back through the cases.

5   DR. WELLS: I think that is an

6   extremely interesting observation about the

7   difference between what we know in research in

8   the civilian world and this, yes.

9   JUDGE WALTON: The question I had was

10   were you able to assess in reference to the

11   victims and the alleged -- and the accused

12   whether they were individuals who knew each other

13   or did not, because I would suspect that that

14   would have in impact on the high acquittal rate

15   that you have in the military as compared to what

16   you have in the civilian world? And I would

17   suggest that probably if you were looking at a

18   college campus, you would have the same

19   demographic; and, therefore, you have some of the

20   same results where you probably have a acquittal

21   rate -- because I think it's more difficult to

22   get a conviction in a situation where the

1   individuals know each other as compared to when

2   they don't.

3   MS. TAGERT: So for this particular

4   study, we did not look at the relationship

5   between the accused and the victim, but in the

6   case review study, we did. And I would say the

7   majority of cases, they knew each other or were

8   colleagues or were married. So it was -- we had

9   maybe one or two cases where it was a stranger

10 situation.

11   MS. BASHFORD: It's pretty common in

12 the civilian world that acquaintance covers a lot

13 of different relationships between long-term

14 relationships and very short-term relationships.

15 But as I recall -- and Jen might have more up-to-

16 date data -- about 80 percent of reported cases

17 were between -- the parties knew each other to

18 one degree or another.

19   MS. GOLDBERG: Two somewhat related

20 questions here. You know, I was struck by the

21 data showing that cases involving an accused

22 person designated as minority, there's a higher

1   percentage of minority individuals on the panel,

2   selected into those panels than others. And I'm

3   asking you, I guess, not to speculate -- but I

4   wonder if in light of the recent Jeter ruling

5   whether that is no longer going to be the case

6   and whether there's been a sort of incline -- you

7   know, sort of a willingness, as was allowed, to

8   take race into consideration in ways that we will

9   see disappear or at least reduced going forward.

10 So that's one data question.

11   And the other question, back on the

12 presumption issue, is I think there has been

13 research on the perception issue, or it's been at

14 least documented in surveys, right, the -- you

15 know, the perception by women in the armed forces

16 probably, particularly people of color. I mean I

17 don't have the data in front of me, but I wonder

18 if you're familiar with that research on

19 perception. And maybe it's been shared with us

20 in the past, but I think it would be useful for

21 us to be reminded of that, if we haven't seen it

22 recently as a committee as we try to make sense

1 of what to do with this data.

2   MS. TAGERT: Yes. We can certainly

3 look at the research perceptions regarding

4 military panels, but I don't think we came across

5 a ton of it. But of course, the IRC report, the

6 perception is just a loss of trust in the system

7 overall, which may bleed into every single issue

8 that may, you know, when we're talking about fair

9 trials for a system. So trust has been concluded

10 as a problem that is broken in the military

11 system. But as far as particular to the race,

12 gender, and ethnicity of military panels, I don't

13 know how much research is out there as far as

14 perception is concerned.

15   DR. WELLS: To just make a point about

16 your first question, too, is you know, we have

17 data and statistics and then we also heard today

18 that there is a process involving decision-making

19 and nuances and how we generate these end

20 results. And I think it's really important to

21 look at both of those things.

22   Your question about the post Jeter

1 decision, so one thing to keep in mind is back to

2 our measurement problem, separating out race from

3 ethnicity. If the Army is going through a

4 transition where they are changing the way that

5 they capture demographic information about

6 people, examining these data post Jeter is going

7 to present a measurement problem, because we have

8 to measure the demographic characteristics of

9 people on details and service members on panels

10 pre and post the same way; otherwise, we can't

11 draw any conclusions about the effect that Jeter

12 has.

13 So I think it's important for the

14 committee to understand that that's going to be a

15 complicated factor for any future data collection

16 to look at how these panels, and how these

17 details might look different post Jeter. I think

18 it's a very important question to ask when we get

19 around to that point or if the committee wants to

20 get around to the point of answering that, that

21 is a measurement issue to please keep in mind.

22 MS. BASHFORD: Dr. Wells, when you did

1   the data analysis from the case review project,

2   you found there, as you did here, that lots of

3   over-represented as -- lots of minorities over-

4   represented as the accused in sexual assault

5   cases. But at least in the case review project,

6   you also found that they were acquitted at higher

7   rates as well. Did you get to that portion of

8   this just to -- for a comparison?

9   DR. WELLS: We did not. Yeah. We

10   haven't gone down that road, but you're familiar

11   with the data. We could certainly start to

12   unpack that if that's something that the

13   committee is interested in looking at. We were -

14   - I'm not sure if the right word is "scrambling,"

15   but we were working pretty diligently when the

16   FY22 data came in and we knew this meeting was

17   going to occur to get these analyses right, so we

18   were focused on the core analysis.

19   CHAIR SMITH: Ms. Long has another

20   question.

21   MS. LONG: Sorry. Thank you, Chair.

22   One thing just in terms of maybe guiding the

1   perception. I know yesterday when we were going

2   over this in our subcommittee, I was reminded --

3   and Kate and Bill or others that -- correct me if

4   I'm wrong -- that the typical number of panel

5   members for a general court-martial is eight. So

6   I mean I think when we're thinking of perception,

7   sometimes percentages that appear on a 12-person

8   jury, even that may see -- may produce that

9   there's four women. When we're down to eight,

10 then maybe you're seeing two women or minority

11 representation two versus four, like when we're

12 talking about 20 percent or 30 percent, and that

13 might be something that -- and my take-away was

14 that that might really influence perception

15 because the true numbers could be very low, and

16 that's not always captured when we're looking at

17 data or different tables. So I don't know if

18 that's wrong. Please let me -- you know, please

19 correct me.

20   DR. WELLS: No. I think that's an

21 interesting observation about how people perceive

22 representation on juries or panels of different

1   sizes. I think that's an interesting empirical

2   question.

3   MS. GOLDBERG: Actually, my question

4   dovetails with yours, Jen, which is since panels

5   do not need to be unanimous to reach their

6   conclusion, when I look at the red and blue

7   charts where you might have -- you know, you may

8   have a significant number of panels that have one

9   or two individuals or a person of color and maybe

10   one who's a woman? The accused also knows going

11   in that that person, you know, in a system where

12   that requires only three-quarters of panel

13   members to agree, the -- that they affect -- you

14   know, knowing that the panel may not be unanimous

15   may also have something to do with perceptions of

16   fairness.

17   DR. WELLS: No. That --

18   MS. GOLDBERG: I'm putting a question

19   mark --

20   DR. WELLS: Yeah.

21   MS. GOLDBERG: -- at the end to make

22   you think.

1   DR. WELLS: No. And again, I think

2   that goes back to understanding the processes

3   that trial and defense counsel use when they make

4   their decisions in that selection process.

5   MS. BASHFORD: I just want to say that

6   the understatement of the day so far goes to Kate

7   Tagert who referred to this project as somewhat

8   substantial. Truly, the amount of work everybody

9   on this team has done has been outstanding. And

10   as I said yesterday, the idea that you had to

11   listen to audio tapes, I mean that's a

12   possibility of -- since the numbers are really

13   not that big over the two-year period, another

14   possibility for a recommendation would be that in

15   sexual assault -- contested sexual assault

16   courts-martial, that the voir dire conversation

17   be recorded for all cases, not just convictions -

18   - be transcribed I mean.

19   MR. YOB: Hi. I just wanted to make

20   a point that I appreciate Eleanor coming up and

21   doing this for me. The chart that we did

22   yesterday that we talked about implementation of

1   prior DAC-IPAD recommendations, if you note that

2   on page 21, it refers back to the December 2020

3   DAC-IPAD report on racial and ethnic disparities,

4   Recommendation 36 noted that -- from this panel -

5   - the recommendation to the Secretary of Defense

6   direct that military departments to record and

7   track the race, ethnicity, sex, gender, age, and

8   grade of victims and the accused for every

9   investigation initiated by military law

10   enforcement.

11   And recommendation 37 was similar; the

12   Secretary of Defense direct the military

13   departments to record beginning in fiscal year

14   2022 the race and ethnicity of military police

15   and criminal investigators, trial counsel,

16   defense counsel, victim's counsel, staff judge

17   advocates, special and general convening

18   authorities, preliminary hearing officers,

19   military court-martial panelists, military

20   magistrates, and military trial and appellate

21   court judges involved in every case investigated.

22   So those two recommendations have been

1   made. They're reported as incomplete

2   implementation and no action taken at this time.

3   But that was a prior recommendation from the

4   panel I just wanted to point out for you all.

5   CHAIR SMITH: So how do we, as a

6   committee, kind of renew our request or

7   recommendation that that occur?

8   MR. YOB: I think in the report that's

9   coming out of this data that's being worked on, I

10   think that could be referenced back to -- if it

11   reinforces, you know, additional argument and

12   impetus for implementing those prior

13   recommendations or re-emphasizing those in this

14   report that should be coming. Do you want to

15   speak on that, Kate?

16   MS. TAGERT: I think the question of

17   whether or not the services are required to track

18   this information is different from the study that

19   we conducted, which was reviewed in source

20   documents. As we know, we can ask the services

21   for data. It doesn't necessarily mean that the

22   data is going to be good or reliable, so I think

1   it's a -- I think there are two different issues,

2   and we -- you know, the ability to get the

3   victims' race, ethnicity, and gender would have

4   been us requesting from the services to provide

5   us, which would have been different than our

6   methodology of tracking information ourselves.

7   But yes, are the services supposed to be tracking

8   this? Yes. Can we request it? Yes. Would we

9   be able to do an analysis of this? Probably not

10   because we're looking at realtime cases but yeah.

11   DR. MARKOWITZ: Is there a specific

12   request that we can help with, for us to make, as

13   an add-on to this report?

14   MS. TAGERT: I suppose the committee

15   could ask the services -- I guess -- we received

16   the gender, race, ethnicity of all parties except

17   the victim. I'm not sure if we ask the services

18   for every victim in these cases whether or not we

19   will get either accurate or they will have the

20   data, but we can request it.

21   MS. GOLDBERG: Since you have done so

22   much work listening to all of the tapes and

1 really coming to an understanding of the reasons,

2 were there particular reasons that a person might

3 have been excused for cause? I wonder if there

4 is a way the committee could benefit from all of

5 the work you've done in that area by either with

6 a writeup of some of what you just described to

7 us indicating the, you know, the particular focus

8 and the breakdown that you saw when people were

9 more likely to be excused for cause, if they had

10 volunteered for SHARP (phonetic) as opposed to

11 being cast in for a brief period of time?

12 I know you weren't setting up to do

13 that research. Again, I don't know how hard it

14 would be to go back, so I'm not asking you to

15 scale another mountain here with that. But your

16 description just now aligned with a lot of what I

17 heard impressionistically, and I think having the

18 benefit of looking at so many cases, it would be

19 useful to leverage the knowledge you have, if

20 that's possible.

21 MS. TAGERT: From a Social Science

22 perspective, I would be very cautious about us

1   doing that, because for cases -- or some cases

2   that we didn't have to look into the audio

3   because I could rip off the transcript, who was

4   detailed and then who sat. So I would -- that's

5   a different study, I think, and if you wanted to

6   look at those reasons, I would want to set it up

7   with Dr. Wells to be reflective of all the cases.

8   And again, some of the staff members did

9   different services so, you know, not everyone

10   looked into the Air Force, not everyone looked

11   into the -- so I don't know. I would be cautious

12   about that. I think it's a different study,

13   because the study was focusing on the

14   demographics and not necessarily the reasons as

15   to why particular people were getting kicked off.

16   MS. GOLDBERG: Thank you.

17   BGEN(R) SCHWENK: One thought going

18   back to the discussion of the recommendations we

19   made in the past on collection of demographics,

20   maybe -- you know, this is old data. That

21   recommendation was based on old data.

22   Maybe we should consider putting an

1 RFI out now to the services and asking them what

2 data are you now collecting or planning to

3 collect regarding demographics of our enlisted

4 individuals and then also asking them the

5 ethnicity, racial issue of are they collecting

6 race according to these categories and

7 separately, the Hispanic ethnicity or what are

8 they doing?

9   Then we have within a couple of months

10 while they're finishing up with the other

11 services, we'd have that input and we'd know

12 where things are today.

13   MG(R) ANDERSON: That's why you're

14 called General.

15   (Laughter.)

16   BGEN(R) SCHWENK: I'm called a lot of

17 other things at home.

18   (Laughter.)

19   MR. YOB: Thank you, General Schwenk.

20 We'll follow-up on that.

21   BGEN(R) SCHWENK: Certainly.

22   CHAIR SMITH: Anymore questions? No.

1   Thank you so much. It's clear -- I mean echoing

2   what everyone's already said -- that this was

3   just a tremendous undertaking. We know that

4   you're continuing to do it but really fabulous

5   and interesting data that you presented.

6   DR. WELLS: Thanks for your patience

7   as we work through all of the statistical papers.

8   I appreciate your patience on that.

9   MR. YOB: Okay. I also want to thank

10   the panel.

11   (Applause.)

12   MR. YOB: A lot of hard work and a lot

13   of good analysis. So we're going to move into

14   the discussion or presentation from Ms. Nalini

15   Gupta on Performance Metrics for the Offices of

16   Special Trial Counsel that are being developed.

17   Just, while getting set up, I just want to remind

18   everybody we -- I think we're doing a pretty good

19   job, but when you're speaking, please not only

20   turn on your mic but sort of lean into your mic a

21   little bit so we make sure we capture what you're

22   saying, especially for the folks that are online

1   listening to us, so thank you.

2   CHAIR SMITH: All right. Ms. Gupta.

3   MS. GUPTA: Thank you. The slides are

4   going up but in the meantime, please refer to Tab

5   5 of your materials where the slides have been

6   printed for you.

7   So good morning, panel members. Today

8   I'll be briefing you on performance measures that

9   have been developed by the Department of Defense

10   to assess the effects of the creation of the

11   Offices of Special Trial Counsel.

12   I want to clarify that I am sitting in

13   front of you not as a DAC-IPAD Staff Attorney but

14   instead as an attorney for the Defense Legal

15   Services Agency, or DLSA. The DLSA staff created

16   this plan at the direction of the General Counsel

17   and not in support of any of the panels or

18   committees that we work with.

19   Okay. On slide 2, I have the

20   background and methodology for this plan. The

21   Fiscal Year 22 National Defense Authorization Act

22   required that the SECDEF publish a plan, due to

1   Congress in December of 2022, addressing the

2   manner in which -- and I'm going to read the

3   language from the statute -- "the Department of

4   Defense will analyze the effects of the changes

5   in law and policy with respect to the disposition

6   of offenses over which a special trial counsel at

7   any time exercises authority."

8   So that language you may find somewhat

9   convoluted, as I did, but I do want to emphasize

10   one point, which is we interpreted or understood

11   this language to be asking us to develop

12   performance measures that were not just focused

13   on the performance of the OSTC. Instead this was

14   asking us to assess the effects of the changes in

15   the law, the effects of the creation of the OSTC.

16   And we understood that to be much broader than

17   just OSTC performance. The creation of the OSTC

18   affects victim experience. The creation of the

19   OSTC affects defense -- the defense bar and the

20   defense-covered offenses. So we saw ourselves as

21   being tasked to set up holistic and comprehensive

22   measures. And that's what -- that's the plan

1   that you're going to be briefed on.

2   In developing our performance

3   measures, we -- the staff conducted research on

4   best practices from the civilian sector and

5   interviewed nonprofits and research organizations

6   that have been involved in developing performance

7   measures for the civilian sector and civilian

8   judicial systems. And these organizations have

9   done some cutting edge work looking beyond sort

10   of traditional metrics such as conviction rates

11   or sentences, and the staff had developed --

12   learned some measures that also look at

13   experience, the processing of cases, things of

14   that sort.

15   And so we drew -- a lot of our

16   research was influenced by the work that these

17   organizations have done. I have some of the

18   names of those organizations on the slide;

19   Prosecutorial Performance Indicators Project was

20   one. That was an organization out of Florida

21   State University. The Justice Management was

22   another. I had the pleasure of speaking with Ms.

1   Long in her capacity as CEO of AEquitas as well.

2   We also talked to the Department of Justice to

3   determine what type of work they were doing to

4   assess the work of the U.S. Attorneys Offices.

5   We spoke with a Department of Defense Sexual

6   Assault Prevention and Response Office or SAPRO.

7   And of course, we spoke with the services

8   themselves to see what other work -- what work

9   they've already done in the sector to assess the

10 performance of their JAGs.

11   So on slide 3, I'm going to speak to

12 the relevance of this plan for the DAC-IPAD. So

13 the plan that I am about to brief on was

14 submitted by the Office of General Counsel to

15 Congress in December of 2022. And that plan

16 required that the Joint Service Committee set up

17 a subcommittee to review this plan and comment on

18 the performance metrics and provide input to the

19 General Counsel. So that information is

20 predecisional. We have not -- we do not know

21 what the final plan that the General Counsel will

22 submit after she receives the comments will look

1   like.   That's why I think this plan is relevant

2   to the DAC-IPAD.

3   The DAC-IPAD may choose from one of

4   its future projects to use its expertise to weigh

5   in on what performance metrics for the Offices of

6   Special Trial Counsel as well as the effects of

7   the Special Trial Counsel they would like to see.

8   They may want to add or delete or modify the

9   metrics that they are about to see.

10   Alternatively, another place that the DAC-IPAD

11   may want to use its expertise is actually collect

12   data on some of these performance metrics and

13   publish that data so that we can see trends over

14   the next few years.

15   Okay.   On my next slide, I have the

16   categories of performance measures and collected

17   data.   So we ended up developing seven categories

18   of performance measures.   And across these seven

19   categories, we have a total of 38 performance

20   measures.   So I want to start by just giving you

21   an overview of what these categories of

22   performance measures are and then in future

1 slides, I will talk about each of them in more

2 detail. So you will see and as listed on the

3 slide, seven categories are due process

4 protections; alleged victim experience;

5 accountability; timeliness and resource

6 prioritization; competence and capacity;

7 communication; and demographics.

8 On the next slide labeled

9 "considerations," I just want to -- before I get

10 into the specifics of the performance measures, I

11 want to highlight three considerations and

12 limitations of the plan you're about to hear.

13 First, through conversations with our

14 criminologist, Dr. Wells, who you just heard

15 from, we determined that at least three years of

16 performance measures and data would be required

17 for any sort of meaningful trend analysis.

18 Because a lot of this data required

19 has not previously been collected by the

20 services, it will be difficult to make any sort

21 of comparisons between the pre OSTC world and the

22 OSTC world, which brings me to the second bullet

1   which is the success of this plan is contingent

2   on robust and uniform data collection by the

3   services. In order to make any comparisons

4   across services, they need to use consistent data

5   fields and consistent definitions.

6   And my last point, and it's -- I do

7   want to emphasize this because this, in

8   conversations, I realize that this was somewhat

9   of a concern among many people. And I want to

10 say these performance measures are only a first-

11 level analysis. They can tell you what a trend

12 is, but they cannot tell you why a trend is

13 happening. And to understand the why, you have

14 to do more sophisticated analyses. You have to

15 do case reviews or perhaps multi-variate data

16 analyses. Nonetheless, these performance

17 measures are helpful because they allow you to

18 identify trends and anomalies and understand

19 where you may need to do more study.

20   All right. I am on -- for those of

21 you following along, I am on slide 7 entitled,

22 "Due Process Protections." Oh, there we are.

1 All right. Okay. So due process -- and now that

2 the slides are up, if you would like, after the

3 slide presentation in Tab 5, the actual plan is

4 included. So you can also follow along with that

5 if you prefer. And you'll see that for each of

6 the performance measures that are going to be

7 listed on the next slides, there is the actual

8 way of calculating the performance measures so

9 the data required, as well as the how to

10 calculate the percentage, as well as the specific

11 rationale for why this performance measure was

12 included. I didn't include all that information

13 in the slide just because it's too much

14 information, but that is all in the plan itself.

15 Okay. So the first category, as

16 mentioned, are due process protections. These

17 are measures intended to assess the protection of

18 the rights of the accused. As you see, we have

19 three performance measures in this category.

20 These performance measures, I think, go to the

21 point that the performance measures are holistic

22 and broad and not -- are not just assessing the

1   performance of prosecutors but assessing the

2   performance of other players such as defense

3   counsel and the judiciary.

4   The idea behind these three measures

5   is that tracking things like case dismissals or

6   appellate reversals or prosecutorial misconduct,

7   ineffective assistance of counsel, or judicial

8   error will allow the services to identify the

9   need for targeted trainings or amended policies

10   for the STCs, defense counsel, and military

11   judges. And in particular, the trends for

12   prosecutorial error and IAC may be of particular

13   interest, because the legislation that created

14   the OSTC, the NDAA, required that STCs and

15   defense counsel handling covered defenses are

16   experienced and highly qualified, highly skilled.

17   So these measures might be somewhat telling or

18   somewhat interesting.

19   The second category of performance

20   measures are alleged victim experience measures.

21   These are defined as measures intended to assess

22   the participation and experience of victims

1 throughout the military justice process as well

2 as adherence to their rights. And in front of

3 you, you'll see that we have six measures in this

4 category.

5 These measures were informed by a

6 number of things including adherence to victims'

7 rights under Article 6B which is the equivalent

8 of the Crime Victims Rights Act for the military

9 as well as 10 U.S.C. 1044(e), which is the

10 provision of the Code that provides for an SVC

11 for all eligible victims. These were also

12 informed by DAC-IPAD and other committees'

13 observations about victims' preferences or

14 victims' experience.

15 For -- and let me give you a couple

16 examples. You may remember from DAC-IPAD study

17 on SVCs that victims are better served by longer

18 -- in general, better served by longer

19 relationships with fewer counsel. So under 2.4,

20 we wanted to measure the number of counsel a

21 victim typically goes through for the duration of

22 their case.

1   2.5 was influenced by an IRC

2   observation that prosecutors are rarely allowing

3   opportunities for victims to confer on their

4   cases. So we wanted to measure the percent of

5   victims that are offered the opportunity to

6   confer with the SVCs about their initial

7   disposition of a decision.

8   I'm going to flag one additional issue

9   under 2.6. We wanted to measure victim

10   satisfaction but at the time, we didn't feel that

11   we had the resources to or the time to develop

12   the correct measurements for that. So we

13   included 2.6 as a sort of placeholder and asked

14   the services to think about how they can develop

15   processes and measures for victim satisfaction.

16   The third category of performance

17   measures and collected data are accountability

18   measures. And these are defined as measures

19   intended to assess the accountability of the

20   accused with regard to substantiated allegations.

21   And you'll see that we have six performance

22   measures in this category.

1   These performance measures in the

2   category look more like some of the traditional

3   metrics that have been used to assess

4   prosecutorial success such as conviction rates or

5   confinement terms. You'll see under 3.4 and 3.5

6   that there are two different measurements of

7   conviction rates. The first goes to assessing

8   conviction rates only for the covered offense

9   that was referred. And the idea is that we want

10   to know, for example, for sexual assault cases,

11   how often that there is actually a conviction on

12   the sexual assault instead of a lesser included

13   offense or a known related offense.

14   3.5, on the other hand, goes to

15   assessing the total conviction rate for the --

16   for any OSTC case. So those are case convictions

17   in which -- those would include cases in which

18   there was a conviction that was obtained for a

19   known and related offense but not necessarily the

20   covered offense such as the sexual assault.

21   I also want to highlight the

22   importance of prosecution rate. That was

1   included under 3.9. As you may remember from the

2   DAC-IPAD's case review report, many military

3   investigations do not result in preferral of

4   charges. So we included prosecution rate because

5   we saw it as important in understanding the

6   attrition of cases as they go through the system

7   as well as providing context to the conviction

8   rate.

9   One other one I want to draw your

10 attention to is 3.2, which are the deferral rate

11 in cases resulting in alternative decisions. We

12 thought it was important to get a more holistic

13 understanding of how service members may be held

14 accountable, so we included this performance

15 measure to assess the percent of cases that are

16 being deferred to commanders when STC choose not

17 to exercise authority as executive leadership as

18 the percent of those different cases that result

19 in some sort of alternative disposition such as

20 non-judicial punishment or administrative action.

21   The next category is timeliness and

22 resource prioritization. This is defined as

1   measures intended to assess the efficiency and

2   timeliness of case processing and the appropriate

3   prioritization of OSTC resources. The timeliness

4   measures are meant to help assess where there may

5   be delays in the investigation or the processing

6   of cases. As you all know, these -- because

7   these delays cause detrimental effects to both

8   victims and the accused.

9   We specifically included under 4.2 a

10   metric to determine how long it takes before an

11   STC is notified of a case that may involve a

12   covered offense and then how long an STC takes to

13   determine whether the case does, in fact, involve

14   a covered offense. The idea behind the measure

15   is that it would allow the services to understand

16   whether STC's involvement earlier in the

17   investigative process is either slowing down the

18   investigation or expediting the investigative

19   process.

20   The metrics for resource

21   prioritization, which are under 4.6, 4.7, and

22   4.8, were informed by metrics in the civilian

1   sector that are used to determine if cases that

2   are unlikely to result in a conviction at trial

3   are being identified early in the process. So

4   those metrics included the ability to identify

5   dismissible cases prior to preferral under 4.6

6   instead of cases that are referred after a no

7   probable cause finding in an Article 32 and then

8   finally, the percent of the conviction rate for

9   cases referred after a no probable cause finding

10   at an Article 32.

11   Okay. On slide 10, I have competence

12   and capacity of STC measures. These are measures

13   intended to assess the experience levels and

14   capacity of STCs. And there are only three

15   measures in this category; STC caseload, STC

16   experience levels, and STC training.

17   The legislation that created the OSTC

18   required that the services provide an optimum

19   number of caseloads -- I'm sorry -- optimum

20   caseloads for STCs. So the first metric is meant

21   to assess the percentage of STCs that actually

22   have caseloads that fall within that optimum

1   range. Similarly, the STC experience level

2   performance measure and the training performance

3   measure are meant to determine if STCs are

4   meeting target experience levels before they're

5   being detailed and if they're completing training

6   prior to -- the required training prior to being

7   detailed.

8   Two more categories. The second to

9   last category is that of communication. These

10   are measures intended to assess communication

11   between STCs and commanders in the military

12   justice process, and there are two measures in

13   this category. And the idea behind these two

14   measures is that they will help assess how well

15   STCs are communicating with commanders now that

16   there are additional players in the military

17   justice system.

18   So under the NDAA, commanders above

19   the accused and the victim have the opportunity

20   to provide input to STCs on case disposition. So

21   that is what we would want to measure under the

22   first measure on this slide. In addition, we

1   would want to measure how smoothly information is

2   being communicated from STCs to commanders when

3   they defer cases so we can understand if

4   information is being lost in the process. So

5   that is the intent behind measure 6.2.

6   And my final category for performance

7   measures and collected data is demographics. And

8   these are measures intended to capture

9   demographic factors of the accused at various

10   stages in the military justice process. We have

11   ten performance measures in this category,

12   although on the slide you'll only see five just

13   because I grouped accused and victim in the same

14   category just for the clarity of the

15   presentation.

16   These measurements adopt the

17   methodology of The Sentencing Project which is an

18   organization that was brought to our attention by

19   Dr. Spohn during conversations with her. The

20   performance measures are meant to identify the

21   representation of the victim and the accused of

22   certain demographic groups at specific stages at

1   the military justice process. And they compare

2   it to the representation of that same demographic

3   group at the previous stage of the process.

4   That's a little complicated, so I'm

5   going to offer an example. So an example would

6   be that we would determine that percent of

7   accused that would belong to a minority racial

8   group at referral and compare that percent to the

9   percent of accused that belong to the same racial

10   group at preferral, which is the previous stage.

11   And through this analysis, we would be able to

12   identify if the racial group is

13   disproportionately represented at referral as

14   compared to preferral.

15   I said this before. But particularly

16   for this, I want to emphasis this is, again, just

17   the first level analysis to identify any

18   disparities. It would require further study once

19   you identify potential disparities to see if

20   there is, in fact, one.

21   And you would have to control for

22   variables such as crime rates or reporting rates

1   when you're doing additional study. But this

2   would help identify where there may be an issue

3   warranting further study. So those were the --

4   that was the plan.

5   Again, it was submitted to the

6   Department of Defense in -- it was submitted by

7   the Department of Defense to Congress in December

8   of 2022 and is undergoing commentary from the

9   Joint Service Committee who are going to provide

10   additional feedback to the General Counsel. For

11   my final slide, I just want to identify that this

12   is not the only requirement. Section 547 of the

13   NDAA is not the only requirement in place to

14   analyze the effects of the creation of the OSTC.

15   There's, in fact, another requirement

16   in the FY23 NDAA, and that's the information in

17   front of you. And I only bring this up to show

18   you that there continues to be a lot of interest

19   in assessing this new system and what the effects

20   are on the overall military justice process.

21   That's my presentation. I welcome any questions.

22   MG(R) ANDERSON: Hi, this is Marcia

1   Anderson. I looked in your appendix at C9. And

2   under 5.1, the STC case load, the different

3   services, and their projections for what they

4   consider the optimum case load. Do you know if

5   the services did any kind of any comparison with

6   the civilian workload for similarly situated

7   counsel?

8   MS. GUPTA: I did not know that. I do

9   not know if the service reps have any information

10   on that. Otherwise, I cannot answer that

11   question. Unfortunately, I don't have any

12   information on that.

13   DR. SPOHN: Are the services

14   themselves going to be collecting and analyzing

15   this data? Or will it be housed somewhere else,

16   for example, DAC-IPAD?

17   MS. GUPTA: That's a really good

18   question. I was thinking about this as I was

19   preparing for the presentation. The statutory

20   requirement was that DOD develop a plan to

21   collect data and assess the -- or a plan to

22   assess the facts.

1   It does not specify who is going to be

2   in charge of collecting data or releasing that

3   data. So it is an open question, I think, how

4   this information -- if this information will, in

5   fact, be collected. And if so, how it will be

6   released to entities outside of the Department.

7   That's why I think there is room if

8   the DAC-IPAD is interested in taking on some of

9   this data collection and analysis. There is room

10 since we don't know what this is going to look

11 like moving forward. And we know that the

12 services had quite a bit of limitations in

13 collecting data and have not traditionally

14 collected a lot of the data that's required for

15 these performance measures.

16   CHAIR SMITH: So this might be a silly

17 question. So this is the plan for doing it.

18   MS. GUPTA: Yes.

19   CHAIR SMITH: But there's no plan for

20 actual implementation. Is that correct? You

21 said three years of data. But are they saying,

22 okay, we've got our plan and that's that? Or --

1   MS. GUPTA: In my personal opinion, I

2   think that is potentially the problem that this

3   might not be realized because the requirement by

4   the NDAA was to develop a plan. But it doesn't

5   specify who is going to ultimately collect this

6   data.

7   CHAIR SMITH: Right, okay. Thank you.

8   MR. CASSARA: And that sounds --

9   (Simultaneous speaking.)

10   CHAIR SMITH: Right, so --

11   MR. CASSARA: -- develop a plan.

12   CHAIR SMITH: -- questions on what we

13   could do as a Committee to help move along the

14   implementation?

15   MS. GUPTA: Sure. Well, I think

16   there's obviously always room to make

17   recommendations that the services should collect

18   data in support of this plan or whatever version

19   of this plan that the Committee may want to weigh

20   in on. So the Committee may identify things that

21   they don't like in this plan or that they wanted

22   added to this plan. So there's always that. But

1   I do think that this might be a role for the DAC-

2   IPAD is actually identifying some of these

3   measures that you think are of particular

4   interest and then doing your own analysis so that

5   you feel confident in the results and the data

6   that's being collected.

7   DR. SPOHN: But the NDAA from fiscal

8   year 2022 says develop a plan addressing the

9   manner in which the DOD will analyze the effects

10   of the changes in law and policy. So it seems to

11   suggest that the plan is not just a plan as to

12   how they will do it but that they will analyze.

13   I mean, am I reading that incorrectly? It says

14   they will analyze.

15   MS. GUPTA: Okay. That's a more

16   optimistic view. And I think that's welcome.

17   And I welcome it because obviously I would hope

18   that I didn't develop a plan kind of as a

19   conceptual exercise and for no other reason.

20   I think there's obvious limitations as

21   you know with services data collection. And this

22   plan is called Plan C because it was -- the

1   Section 547 requirement had three parts. The

2   first two parts were plans for a data management

3   system and tracking pretrial information.

4   So if those are realized, our DLSA

5   staff, so Eleanor Vuono and Terry Gallagher,

6   worked in those parts of the plan. And if those

7   plans are realized, that will make it easier in

8   our opinion for this plan to be executed because

9   we recommended the data fields be collected

10   consistently across the services to support

11   things like these performance measures. Again, I

12   just don't know. I can't comment on if and how

13   those will be realized.

14   CHAIR SMITH: Ms. Long has a question.

15   MS. LONG: Thank you. And thank you,

16   Nalini and others, for putting this together.

17   This is obviously near and dear to our heart.

18   And I wanted to offer some context as maybe a way

19   of also looking at these performance measures for

20   the way that in the civilian world we envision

21   them because we were very much inspired by the

22   work of Dr. Spohn and others who were looking at

1   the reasons -- potential reasons or impacts of

2   certain case variables on the outcome of a case,

3   case characteristics.

4   And our idea was that while the

5   research is very important, and it is. It really

6   guides us. So often as practitioners, we'll read

7   about research years after it's done and then try

8   to implement it.

9   And it's always the question of is it

10   applicable to your jurisdiction. So these

11   performance measures while I understand the NDAA

12   is saying they should be used to assess, unlike

13   other assessments, for us, we really see this as

14   a process of ensuring that we're managing and

15   really achieving our outcomes in real time. So I

16   feel like for the OSTC and other offices that are

17   looking at this, the idea is to look at the

18   measures and develop plans internally so that you

19   are looking at your practice and you're

20   responding real time to trends by trying to

21   uncover them and figure out if there is a problem

22   with the practice or a positive of the practice

1   that you have to reinforce, if there's an area of

2   training that you need, there's an area of

3   recruitment.

4   They really shouldn't be seen as yet

5   another outside -- well, they may be used here as

6   that. But I'm hoping that they're not just seen

7   as another outside entity or people reviewing the

8   office but away from the office to manage and

9   mentor their staff. And if the certain outcomes

10   that they think are positive that they're

11   practicing towards turn out to be not really

12   meeting the objectives that they want, then it's

13   a time to go back internally and figure out what

14   needs to be different than what is being done.

15   And I say that because I feel like so

16   often and I feel like we've heard this in the

17   length of the DAC-IPAD when people come and

18   testify, it feels like practitioners are always

19   feeling like -- and we do have to assess them,

20   that they're constantly just providing data to

21   see if they're doing well by some measure or how

22   they're doing when, in fact, we really should be

1 helping them understand the clarity, what their

2 goals are, and helping them to achieve it. So

3 that's just some of the context that I wanted to

4 put out there. I hope that this can bring in

5 this particular case and some specific things

6 just some language. And I understand this is

7 defense and prosecution.

8   But really it's, like, fingernails on

9 the chalkboard when I see alleged victim. I came

10 up in Philadelphia and we say "complaining

11 witness". A lot of people may not like that.

12   But I feel like it would be nice to

13 find another language besides alleged victim

14 because that doesn't seem like the balance we're

15 trying to achieve. So I'm hoping we can do that.

16 And then finally just somewhere on the case

17 outcomes, one thing we did do with jurisdictions

18 in the civilian world was trying to work with

19 them to determine case complexity is what we

20 called it. Basically so that when you're looking

21 at the outcome of a case, of a conviction, or

22 whether preceded, that you're looking at like

1   cases.

2   You're comparing apples with apples as

3   much as you can so that you're not weighing the

4   outcome where, let's say, a victim is not

5   participating the same as you would weigh one

6   where a victim was participating or had different

7   kinds of evidence. So I'm sorry. Thank you for

8   letting me have the floor. I talked too much.

9   This stuff excites me, so thank you for

10 presenting on it.

11   MS. GOLDBERG: This is Suzanne

12 Goldberg. I appreciate all that you just said

13 and agree with, I think, virtually everything. I

14 also want to say thank you for the excellent

15 presentation and outline here.

16   I have just two observations about two

17 of the areas of work for what it's worth. And

18 having taught civil procedure for a very long

19 time and beginning that course of due process,

20 it's hard not to say something about due process.

21 So I'll start there which is that I think these

22 measures are obviously important ones.

1   My sense is they will capture very

2   high level data. And they probably won't capture

3   that much because when we think about the number

4   of cases in which -- I taught on the civil

5   procedure side. But still when we think about

6   the number of cases in which an ineffective

7   assistance of counsel claim is sort of granted,

8   or motion is granted.

9   It's pretty infrequent and

10   prosecutorial error likewise. And most error

11   tends to be deemed harmless. I wonder if,

12   assuming this is implemented at some point, it

13   would be useful to dig in a little bit to motion

14   practice and understand the kind of types of

15   arguments that are frequently being made and the

16   bases for those arguments to pick up on Jen's

17   point just now.

18   That is the kind of information that

19   I think will be quite -- has the potential to be

20   quite educational for OSTC as it thinks through

21   how it's handling cases and meeting its due

22   process obligations. On alleged victim

1 experience point, I don't know if this is

2 encompassed in the SVC assignment timeline

3 subpoint or the continuity subpoint. But I

4 thought it might not be there, so I want to just

5 note that one of the issues that I've heard about

6 is how quickly a victim or a complaining witness

7 is able to meet with somebody who's the person

8 who's going to be their SVC.

9   And how frequently those meetings take

10 place or the amount of time those meetings last.

11 And I think it's obviously very difficult to look

12 at the data and draw conclusions because each

13 case is different. But that also seems like a

14 very important kind of qualitative piece of

15 information when we think about how to assess

16 victim experience.

17   MS. GUPTA: Thank you for both of

18 those points, and I appreciate the due process

19 point. On the victim experience, 2.3 was meant

20 to get at how fast victim's counsel are being

21 assigned to a victim who requires -- eligible

22 victims who request one. There's a statutory

1 requirement that in the absence of exigent

2 circumstances, they should be able to get an SVC

3 within 72 hours. But we did not measure -- and

4 it's a good point -- that frequency question was

5 not included in that.

6   MS. GOLDBERG: And just to add one

7 additional facet to that, I think it's frequency.

8 I also think it's -- there could be a lag between

9 assignment and initial meeting. So that would be

10 a data point possibly. Thank you so much.

11   MR. CASSARA: Ma'am, I just have a

12 couple of quick observations. And Jennifer and I

13 look at -- we come from completely different

14 worlds in terms of how we view these. But we

15 agree more than we disagree, I think, on a lot of

16 these things.

17   As you're looking at due process

18 protections, actually, Suzanne, I think -- I

19 don't have any statistical analysis from the rate

20 of reversal compared to the civilian world. But

21 as an appellate lawyer, while I don't win

22 anywhere near as much I would like to, I think

1   that the rate might be higher than it is in the

2   civilian world. And that can be attributed to,

3   of course, my great lawyering.

4   Or it could be attributed to errors

5   that occur at the trial level that might not

6   occur as frequently in the civilian world. I

7   don't have any way of knowing without measuring.

8   But I was wondering on the due process

9   protections if there would be a consideration

10   because the military on an appellate status has -

11   - the courts are given what's called a (audio

12   interference) de novo review. That's the term.

13   It's changed a little bit in terms of

14   the standard. But we still have a factual

15   sufficiency review and a robust legal sufficiency

16   review. And as I'm looking at the three

17   categories in which cases may be successfully

18   appealed, I'm thinking that a fourth one could be

19   factual or legal sufficiency.

20   I think that would account for more

21   than some. And then my other question as it

22   relates to 2.6 to Jennifer's point and in her

1   area of expertise. Really not a question, more

2   of an observation of how do we measure victim

3   satisfaction.

4   Kind of like talking to a divorce

5   lawyer and say, well, are your clients satisfied?

6   Well, half the people you come into contact with

7   are satisfied and half think you're the worst

8   person in the world. Am I satisfied when I go to

9   the dentist? Well, my tooth is fixed, but I

10   hated going to the dentist. What metric are we

11   using to gauge victim satisfaction?

12   MS. GUPTA: Ms. Long, did you want to

13   speak to that first, or I'm happy to address my

14   thoughts on it.

15   MS. LONG: Oh, you should go first and

16   then I'll chime in whenever. This is your show.

17   MS. GUPTA: Thanks for the first

18   point. And I do think there's a number of things

19   including what you mentioned that could be added

20   to the due process protections. That's why I

21   think there's a great role for the DAC-IPAD in

22   this plan.

1   On the victim satisfaction, I had the

2   same question which is why I punted it to the

3   services. I felt that -- I spoke with a number

4   of SVCs to assess and civilian sector

5   organizations. And they just presented to me a

6   number of the challenges that they have in

7   assessing victim satisfaction.

8   When do you measure it? Do you

9   measure it right after the findings where if

10   there's an acquittal, obviously the feelings are

11   going to be a lot different? Do you measure it

12   sometime in the process?

13   How do you reach victims? Do you send

14   a text message? Just all the process questions,

15   I did not feel -- I felt that that was a much

16   more complicated question which is why we had a

17   placeholder because I think there's a lot of room

18   for a lot of work. But all of your points are

19   valid concerns that I heard across the board

20   about the complexities of measuring victim

21   satisfaction, when to do it, how to do it, et

22   cetera.

1   DR. MARKOWITZ: So --

2   (Simultaneous speaking.)

3   DR. MARKOWITZ: So go ahead, Jen.

4   MS. LONG: I was just going to say I

5   know that there are some civilian jurisdictions

6   that have attempted to do this. I agree. We had

7   the same concerns of how is this measured by

8   something outside, like, the outcome of a case

9   that might be outside of anybody's control.

10   But I think we were trying to focus on

11   the objectives that seemed fair and reasonable

12   like -- or that were prioritized like a victim's

13   safety. In some cases, intimidation or threats

14   is there. Did the victim receive that? How was

15   that responded to?

16   The victim's ability to be -- or the

17   communication levels were things they claimed

18   were they notified of different parts of the

19   process and, again, the timeliness of that

20   notification. In terms of, again, the things

21   that are more subjective, were things helpful?

22   Was information helpful?

1   Some of those might need a narrative

2   response. And then a large jurisdiction that

3   might be unwieldy in the military. It may not be

4   just because the number of cases in each service

5   a year may not be that much.

6   And again, it's prospective to get

7   better. So if there's a narrative about why

8   something wasn't helpful or what someone wanted

9   to hear, that might be something that we could

10   use to improve the experience. But it was trying

11   to capture those type of things, communication.

12   And so for the services, they may identify some

13   of those objective things where someone feels

14   heard and respected, even if the outcome is not

15   what they would want it to be.

16   DR. MARKOWITZ: Thanks. So I may have

17   missed this. Apologies if I did. Related to the

18   alleged victim experience 2.1, restricted

19   reports, is this a purely quantitative measure?

20   Or are we talking about getting information about

21   sort of the how and the why they occurred in this

22   measure, whether it was purposeful, how long it

1   took for it to become unrestricted from when it

2   was initially restricted, anything like that?

3   MS. GUPTA: This is a purely first

4   level analysis quantitative measure. And the

5   idea being that if you see an anomaly or a trend,

6   you could do -- or if you just had time and

7   resources, you could do exactly the type of

8   analyses that you're asking.

9   DR. MARKOWITZ: Thank you.

10   MS. GOLDBERG: This is Suzanne

11   Goldberg. Just going back to the exchange that

12   Bill and you and Jen were just having, I wanted

13   to offer an insight from the civil procedure side

14   of the world again which is there's actually

15   pretty substantial data that even when people

16   lose a civil case, they will report satisfaction

17   with the process if they feel they were treated

18   fairly. I haven't looked for that data on the

19   criminal side.

20   I think it gets to some of the points

21   that Jen was raising about how will people feel

22   heard by measures of communication and by the way

1   they were treated in the process. And I do think

2   although I'm not a social scientist, there are

3   ways of asking the questions, like, even though

4   you lost or whatever, you did not receive the

5   outcome that you had hoped for in this case. Do

6   you feel that you had a meaningful opportunity to

7   be heard that gets at the kind of core concepts

8   of due process as far as the participant's

9   experiences go?

10   DR. SPOHN: Let me just add to

11   Suzanne's comments that there is a large amount

12   of literature on procedural justice which is, I

13   think, what you're referring to. And the

14   preeminent person is Tom Tyler. And he's written

15   books and many, many articles about procedural

16   justice versus substantive justice.

17   And there are scales that you can use

18   to measure. A lot of the work is done in

19   policing. But there is some work also with

20   victims of crime and their treatment by the court

21   system. So I think you don't have to reinvent

22   the wheel on this because there's a lot of

1 validated scales on how to measure procedural

2 justice.

3 And I also wanted to reiterate what --

4 or just affirm what Jennifer said about

5 researcher-practitioner partnerships as opposed

6 to researchers coming in and asking for data and

7 then just providing statistical analyses. The

8 MacArthur Foundation has funded for several years

9 now a justice and fairness and prosecution

10 project. And it's run out of Florida

11 International University. Have you talked to

12 Besiki?

13 MS. GUPTA: Yeah, they were another

14 organization that I spoke with. And I think I

15 know exactly what you're about to say.

16 DR. SPOHN: Yeah, so Besiki

17 Kutateladze has done a lot of work with I think

18 four or five prosecutors' offices in Florida.

19 And they're now expanding to some other

20 jurisdictions. And they're very much focused on

21 how prosecutors' offices themselves can measure

22 and use the data to improve their operations.

1   MS. GUPTA: Thank you for that point.

2   In my research for this project speaking to that

3   organization as well as a couple of others, I saw

4   that they're working with the prosecutors'

5   offices in developed dashboards to show the data

6   for the community to understand what's happening

7   in that office as well as, of course, with the

8   prosecutors and offices themselves to understand

9   the data. So I think that was very remarkable

10   and definitely something that there's a lot of

11   room for that type of transparency in the

12   military.

13   CHAIR SMITH: Ms. Tokash?

14   MS. TOKASH: This is Meghan Tokash.

15   I think the services OSTCs have laid a good

16   groundwork for many of the alleged victim

17   experience metrics. We, of course, as the DAC-

18   IPAD were given their business rules.

19   And I would note for the record that

20   every service's business rules has at least some

21   form of a victim engagement plan. And I think

22   that would be particularly helpful in a resource

1   that could probably be tapped into to see how

2   those victim engagement plans are being deployed

3   and how they are being captured in terms of data.

4   I'll also note this is probably a really good

5   opportunity too for the military as they're

6   building out these offices to consider things

7   like uniform guidelines for victim and witness

8   assistance.

9   The Department of Justice learned a

10   very difficult lesson borne out of prosecutorial

11   violations of the Crime Victims Rights' Act in

12   the Epstein case in the Southern District of

13   Florida. So now there are more stringent

14   sanctions even within the AG's policy for federal

15   prosecutors who violate the CVRA. So those may

16   be some other thoughts in terms of being able to

17   capture that alleged victim experience in a

18   quantitative fashion. Thank you.

19   MS. GUPTA: Thank you.

20   JUDGE WALTON: In reference to the due

21   process metrics that you're going to apply, a

22   necessity, for example, whether effective

1   assistance of counsel was provided. The reality

2   is that since we don't have to determine whether

3   it was both ineffective or poor representation

4   and prejudice, just this week, I dismissed a

5   challenge of ineffective assistance based upon

6   lack of prejudice which in many cases is really

7   not telling you whether quality representation

8   was, in fact, provided. And the same is true in

9   reference to prosecutorial error.

10   Many times, you may believe that there

11   was inappropriate conduct engaged by the

12   prosecutor. But you're not going to reverse the

13   conviction because you conclude that the evidence

14   was overwhelming. Therefore, there was no

15   prejudice resulting from the prosecutorial

16   misconduct. So in many cases, you're not going

17   to have an assessment from the court as to

18   whether there was, in fact, poor representation.

19   It's only going to be an affirmance based upon

20   lack of prejudice.

21   CHAIR SMITH: Any other questions? I

22   think it's time for us to break. So if there are

1   no more questions.

2   MR. CASSARA: Not another question.

3   That was fantastic. Thank you so very much.

4   MS. GUPTA: Thank you. I appreciate

5   your time.

6   CHAIR SMITH: All right. So we're

7   going to break until 11:35. Thank you, again,

8   Ms. Gupta.

9   (Whereupon, the above-entitled matter

10   went off the record at 11:17 a.m. and resumed at

11   11:35 a.m.)

12   CHAIR SMITH: Okay, everyone, I think

13   we can get started here. And we're going to

14   start with the Special Projects Subcommittee, Ms.

15   Tokash.

16   MS. TOKASH: Good morning. This is

17   Meghan Tokash, I'm the chair of the Special

18   Projects Subcommittee, and I want to recognize

19   Eleanor Vuono and Meghan Peters, who are the two

20   attorney advisors who advise us on almost

21   everything as it pertains to the subject matters

22   that we as a subcommittee have looked into and

1   investigated.

2   The subcommittee met for an hour

3   yesterday morning on December 5 from 10:30 until

4   11:30. During that time, we reviewed the very

5   helpful chart that was prepared by Eleanor and

6   Meghan with respect to the DAC-IPAD

7   recommendations and implementation status.

8   So we've reviewed that chart, and we

9   also then turned our attention to future studies.

10   We were given a couple of options, as well as the

11   room for discussion to talk about and think about

12   areas of focus. And three came to mind.

13   The first was public access to court-

14   martial filings and records. So the problem

15   being -- when Congress enacted 140(a), it

16   directed the Department of Defense to facilitate

17   public access to docket information, filings, and

18   records, taking into consideration restrictions

19   appropriate to judicial proceedings and military

20   records.

21   Then in January of this year, the

22   Department issued policy guidance to allow the

1   services to withhold court-martial filings and

2   records until 45 days after certification of the

3   record of trial. In addition, the services need

4   not release court-martial records if there is an

5   acquittal on all charges.

6   So the proposal would be that while

7   the DAC-IPAD could study this issue and recommend

8   changes to Congress, the Military Justice Review

9   Panel is also reviewing the same question.

10   So we discussed as a subcommittee

11   whether the DAC-IPAD wants to focus on different

12   topics, and we arrived at the decision that we

13   actually do want to study this topic because we

14   heard from various stakeholders as a full

15   committee that access to information has been

16   very difficult. So that is one of our first

17   areas of study that we want to look into.

18   The second is a, what I believe to be

19   a very quick area that we need not actually

20   study. I think it's actually time for a decision

21   on this.

22   This is should the DAC-IPAD recommend

1 again, because the DAC-IPAD in fact did in

2 October of 2020 recommend that Congress amend

3 Article 34, UMCJ, to reflect that uniform

4 referral standard, that the services state in

5 their business rules.

6   So that is the evidence to obtain and

7 sustain a conviction criteria. The reason why I

8 bring this up now and say that this could be

9 something that could be completed in a letter to

10 Congress versus a report is because all of

11 services have indicated in their business rules

12 that they will in fact be using that standard for

13 referral.

14   Typically and comparatively, the

15 Department of Justice does not have its -- have

16 that standard embedded in statute. So as a

17 subcommittee, we first shied away from going back

18 towards that recommendation.

19   However, it just doesn't quite sit

20 quite right that there is a statutory referral

21 standard of probable cause when all of the

22 services have indicated in their OSTC business

1 rules that they will be using a higher elevated

2 standard.

3   So that in my opinion could be a

4 quick, a quick hit project that could be done.

5 Obviously this would not make this year's

6 legislative cycle. It would be for next year's

7 legislative cycle.

8   And then the final thing that we

9 discussed, perhaps putting a pin in yesterday,

10 but based on the robust discussion from this

11 morning after Ms. Gupta's fantastic presentation

12 with respect to criteria for judging the

13 performance of the OSTC, I think that the time is

14 right for the subcommittee to actually study this

15 area.

16   So the option would be to study

17 performance measures for assessing the

18 disposition of covered defenses as it pertains to

19 the OSTC.

20   I'm going to turn to my attorney

21 advisor colleagues to make sure they're keeping

22 me honest here and that I did not say anything

1 wrong or inartful. Thank you.

2   MS. PETERS: All right, thank you, Ms.

3 Tokash.

4   An additional topic the subcommittee

5 discussed involved a study of judicial rulings

6 and motions practice in sex assault courts-

7 martial. An important question is are the judges

8 following and applying the military rules of

9 evidence in the pretrial and trial phases of the

10 case.

11   As a staff, we noted that we have

12 collected cases completed in fiscal years 21 and

13   22, and we have a lot of courts-martial records

14 that can inform this kind of a study. And we are

15 grateful that in all of these projects, there are

16 a combination of shorter term and longer term

17 goals associated.

18   So the staff can as a next step

19 develop a research proposal with a plan to move

20 forward and then bring that back to the full

21 committee for everyone's awareness of our need

22 for future planning.

1   And the staff is grateful for the

2   sessions we've had yesterday and today that

3   provided incredible feedback on how to shape the

4   studies, and the types of areas of focus you want

5   to bring to these broader topics. And, the way

6   you want to have an impact and the way to

7   energize and leverage the expertise of this

8   committee in areas that are going to be helpful

9   along the lines of these four topic areas.

10   So again, we have a lot of work to do.

11   I know the subcommittee is ready to do it and

12   take on some new projects. And as we develop the

13   research plan, refine our research questions,

14   we'll bring that continually back to the

15   subcommittee and the full committee to refine

16   them and move forward with your great feedback

17   and input.

18   MS. MAGERS VUONO: That's it.

19   CHAIR SMITH: All right, so I think

20   what we're going to do is vote on the four

21   projects that Ms. Tokash mentioned and that

22   Eleanor and Meghan mentioned.

1   And if no one's opposed, we'll just

2   vote all together for all four, unless someone

3   wants to talk about any one of the projects that

4   they're interested in. Okay.

5   So all those in -- well, anyone

6   opposed to assigning those four projects to the

7   Special Projects Committee? Hearing no

8   opposition, I think that then we are in

9   agreement.

10   MR. YOB: Yes, and I can record that

11   as a 12-0 vote in favor of moving forward on all

12   four of the recommendations from the

13   subcommittee.

14   MS. PETERS: Thank you.

15   MS. MAGERS VUONO: Thank you.

16   JUDGE GRIMM: Nothing substantive, I

17   just want to express my thanks not only to

18   Eleanor and Meghan, who are extraordinarily

19   productive and amazing in what they bring to us.

20   But our chair, Ms. Tokash, has had a

21   good year. And she has -- she is a terrific

22   person at undertaking organizing and getting us

1   to do things that have proven to be successful.

2   So I want to make sure that the record shows that

3   she is every bit as deserving of credit as our

4   wonderful staff.

5   (Applause.)

6   CHAIR SMITH: All right.

7   BGEN(R) SCHWENK: Okay, it's up to us.

8   So the Policy Subcommittee. And unlike the

9   Special Projects Subcommittee, where the staff

10   attorneys and the paralegal allowed the chair to

11   talk about things, I'm not allowed in my

12   subcommittee. And I can't understand why they

13   feel that way.

14   But anyway, so we're looking forward

15   to the future, having gotten approval for our

16   report yesterday. And Terri will tell you what

17   we've come up with as our preferred path.

18   MS. SAUNDERS: Thank you, General

19   Schwenk.

20   Before I get to the Policy

21   Subcommittee update, I want to take just a moment

22   to clarify something from yesterday to the extent

1   that there was any confusion. And that involves

2   the vote on recommendation 54 for the

3   randomization of panel -- of the panel studies

4   review.

5   Recommendation 54, in part, would have

6   the convening authority retaining the authority

7   to detail the members once they have been

8   randomly selected. So in essence, ordering those

9   members to appear at the appointed time and

10   place.

11   I wanted to -- I wanted to compare

12   that with recommendation 57, which you all voted

13   on at the last meeting, which would have the

14   convening authority or having the authority to

15   excuse members from panel duty or make

16   availability determinations. And then

17   recommendation 58 would follow onto that, which

18   would require that there be some transparent

19   method of documenting that.

20   So recommendation 54, which you voted

21   on yesterday on detailing, there is little

22   discretion in that, that the convening authority

1   would be telling those people who had already

2   been selected to appear for the court-martial.

3   Whereas recommendation 57 on

4   availability determinations and excusals, there

5   is discretion for that convening authority to

6   determine -- to determine whether members should

7   be excused or whether they're -- whether they are

8   available in the first place to sit on the court-

9   martial.

10   So I did want to clarify that and make

11   a note. I know several people yesterday voted

12   against recommendation 54, and I wanted to offer

13   them the opportunity, if they chose, to either,

14   to change their vote.

15   Ms. Tokash.

16   MS. TOKASH: This is Meghan Tokash.

17   So the concern that I stated on the record

18   yesterday involved the appearance of objectivity

19   as it pertains to the availability and excusal

20   determination as it pertains to the convening

21   authority and the selection of court-martial

22   panel members.

1   So my original vote yesterday on

2   recommendation 54 was a nay vote because -- it

3   has been now clarified. And I think it was a

4   little bit complicated by the fact that it was

5   talking about removal of certain language. It

6   was almost like a compound recommendation.

7   So I just changed my vote to a yay for

8   54, but my vote for recommendation 57 is still a

9   nay.

10   MS. SAUNDERS: Thank you. And Judge

11   Walton, did you -- you had voted nay yesterday on

12   recommendation 54. Do you wish to keep your vote

13   on that or change a vote?

14   JUDGE WALTON: I'll change it.

15   MS. SAUNDERS: Oh, to a yay?

16   JUDGE WALTON: Yes.

17   MS. SAUNDERS: Okay. And I don't know

18   if Mr. Kramer is still with us.

19   MR. KRAMER: Yes, I am.

20   MS. SAUNDERS: Okay, Mr. Kramer, I

21   don't know if you were, hopefully you were able

22   to follow all of that.

1   MR. KRAMER: Yes.

2   MS. SAUNDERS: Okay.

3   MR. KRAMER: And I'll do the same as

4   Ms. Tokash and Judge Walton.

5   MS. SAUNDERS: Okay. So then the --

6   that brings up the next question regarding

7   recommendation 57, in which there is discretion

8   in excusal or availability determinations.

9   I believe in the previous meeting you

10   both had voted yay or yes to -- for passing that

11   recommendation. Do you wish to change your vote

12   on that recommendation? In other words, do you

13   believe that the convening authority should

14   retain discretion to make availability

15   determinations or to excuse members from court-

16   martial panel duty?

17   JUDGE WALTON: Yes, I think the

18   convening authority should have that discretion.

19   MS. SAUNDERS: And sir, that is

20   consistent with your vote at the last meeting.

21   And Ms. Tokash, you had voted nay at the last

22   meeting on that.

1   MS. TOKASH: Correct, and I'm still

2   continuing to vote that way.

3   MS. SAUNDERS: Okay.

4   MR. KRAMER: Yes.

5   MS. SAUNDERS: Yes, you are voting?

6   MR. KRAMER: The same as I did, yes.

7   MS. SAUNDERS: Okay, so you had voted

8   yes for that recommendation and you want to --

9   you want to keep that vote.

10   MR. KRAMER: Right.

11   MS. SAUNDERS: Okay.

12   MR. KRAMER: Yes.

13   MS. SAUNDERS: Okay, well hopefully I

14   think we've clarified that. Is there anyone else

15   who has a question or comment on those two

16   recommendations? Okay, we can move past that

17   then.

18   So now I'll provide the Policy

19   Subcommittee update. So the Policy Subcommittee

20   met yesterday for about an hour and we, you know,

21   we're, as you all know, we've just closed out the

22   Article 25 random panel selection study. And so

1   the purpose of the meeting was really to decide

2   what was the subcommittee going to do next.

3   The subcommittee looked, you know,

4   discussed a number of issues and decided on two

5   primary issues that they want to study in the

6   coming year. The first one is Military Rule of

7   Evidence 513, which is the psychotherapist

8   patient privilege.

9   There are several issues surrounding

10   that rule of evidence. Primarily they're looking

11   at a concern that has -- that has concerned

12   practitioners recently, which is the 2022

13   decision by the Court of Appeals from the -- for

14   the Armed Forces decision U.S. v. Mellette, which

15   essentially said that the plain reading of the

16   rule covers only communications between the

17   patient and therapist but does not cover the

18   diagnosis and treatment of the patient.

19   So the Joint Service Committee I know

20   has looked at this. They have recently put

21   forward a proposed recommendation to change the

22   rule, but it does not change it to provide -- to

1   extend the privilege to diagnosis and treatment.

2   It's, you know, essentially a more minor

3   recommendation.

4   So the subcommittee would like to look

5   at that issue. And also there are other issues

6   surrounding MRE 513. I think the subcommittee

7   would like to take a more holistic look at that.

8   So that is one issue.

9   The other issue is Article 6(b)

10   victims' rights. You know, particularly looking

11   at the comparative -- comparing the standard of

12   review for when a victim seeks relief at the

13   appellate level with that in the Federal Crime

14   Victims' Rights Act, understanding that there

15   are, you know, differences between the two

16   statutes.

17   So looking at the differences there,

18   determining whether there should be changes in

19   the standard of review. And you know, we think

20   there may be other issues within Article 6(b)

21   that the subcommittee will want to look at as

22   well as we dig into that. So we're still in the

1   process of developing that plan.

2   One additional issue which is not

3   necessarily a review per se that the subcommittee

4   wants to take up but it is -- they want to have a

5   meeting in which they hear from military

6   investigators and military prosecutors on what is

7   the state of how they were handling digital

8   evidence, for example, as compared with civilian

9   communities.

10   You know, an example would be in the

11   military in, you know, in -- the committee has

12   looked at this issue previously, or actually the

13   predecessor committee, of you know, if a victim

14   has digital evidence, how that is obtained. Is

15   it obtained through a subpoena versus, you know,

16   being voluntarily offered by the victim, which is

17   what has previously been the case often in the

18   military.

19   So I think they just wanted to have

20   those two groups come in for a subcommittee

21   meeting, just to see if that is changed. You

22   know, what is the current state of how those

1   groups are handling that type of evidence.

2   So that -- have I forgotten anything,

3   General Schwenk?

4   BGEN(R) SCHWENK: No, but you did

5   remind me on why you told me to stay quiet.

6   You'd have to understand the law a little bit to

7   explain things, which leaves me out. So no,

8   you're good.

9   CHAIR SMITH: I think with the digital

10   evidence, didn't we also say we wanted defense

11   counsel, right? Did you say that?

12   MS. SAUNDERS: Oh, I didn't say

13   defense counsel, but absolutely, we could write

14   that in.

15   CHAIR SMITH: I think they already

16   discussed that.

17   MS. SAUNDERS: Okay. So based on

18   that, we'd like to take a vote on the direction

19   of the Policy Subcommittee, those three issues.

20   So I think the easiest thing is anyone opposed to

21   the Policy Subcommittee looking at those items?

22   Hearing no opposition -- did you have

1   a comment? No? Yeah, sure.

2   MS. GOLDBERG: Thank you so much for

3   describing our work. And just noting for the

4   record that we also discussed looking at

5   restorative engagement and justice practices and

6   have interest in exploring those in more depth

7   down the road.

8   And I'm noting this here only because

9   this issue has come up a number of times and it

10   has been difficult for very good reasons to get

11   this squarely on our and your research agenda.

12   So we agreed to at least start to take some steps

13   towards an eventual established project in that

14   area.

15   CHAIR SMITH: Right, I think we said

16   we were going to wait until March on the

17   restorative justice issue or engagement and see

18   where things are at that point.

19   All right, so anyone opposed to those

20   three topics, and then down the road I think

21   we'll discuss when we get closer to March, the

22   restorative engagement? Hearing no opposition.

1   MR. YOB: I'll note for the record

2   that it's all in favor of proceeding on those

3   points that were raised.

4   CHAIR SMITH: Thank you.

5   MS. SAUNDERS: Thank you all.

6   CHAIR SMITH: Are we going to break

7   for lunch?

8   MR. YOB: So we're moving into the

9   lunch hour. We're going to have a working lunch.

10   My recommendation is we take about ten minutes.

11   Let's say we come back at 1:10 to start the

12   working lunch. That'll give you a chance to go -

13   - 12:10, my mistake.

14   And we'll begin at 12:10 with the

15   working lunch in this room, which will be in the

16   administrative session, so we'd ask the public to

17   please wait outside during that session.

18   When we conclude the working lunch,

19   we'll move in -- we'll take a short break, and

20   then we'll move into the public comment period.

21   And then after that, we'll do a wrap-up of, in a

22   final session.

1   (Whereupon, the above-entitled matter

2   went off the record at 11:56 a.m. and resumed at

3   1:03 p.m.)

4   MR. YOB: Okay. Again, my name is Pete

5   Yob. I'm the Staff Director for the DAC-IPAD.

6   We are going into our public comment

7   session. We welcome members of the public to

8   come in and give comments that will help inform

9   the Committee. We ask them to focus on comments

10   that will help inform the policy decisionmaking,

11   and they understand that we're not an

12   investigative body who can investigate specific

13   matters they bring. But to the extent that they

14   are germane to informing our work, we ask them to

15   do that.

16   These are the comments, and the

17   matters submitted are from the individuals who

18   come to speak. They don't necessarily reflect

19   endorsement of the DAC-IPAD or agreement with

20   what they're saying. Those are individual

21   comments, but we're really happy to have people

22   come in and help inform us of different issues.

1   So, with that, I will introduce our first

2   speaker. This is Mr. Jerry Clifft who's going to

3   speak with us, and he's going to share some

4   information about his case, I believe.

5   MR. CLIFFT: Good afternoon.

6   My name is Jerry Clifft, formerly GM3

7   in the United States Coast Guard.

8   In 2016, I was convicted at a general

9   court-martial of sexually assaulting my wife.

10   And I'd like you to consider the following

11   statements:

12   "I was tired of him asking for sex.

13   So, I said, `Just take me.' I wanted him to

14   think I was into it. I took initiative. I

15   switched positions. I told him I loved him twice

16   and once after. I was hoping he'd be willing to

17   reconcile after asking for a divorce. I never

18   said, `No' or `Stop.'"

19   When asked by defense counsel if she

20   considered herself an active participant, she

21   said yes. But she felt as though she was

22   assaulted.

1   Not only did she admit to making all

2   those statements on the stand, those versions --

3   I'm sorry -- those statements were the final

4   version of events she chose to give to the

5   members of the jury.

6   Not to mention her numerous pretrial

7   statements were a rapidly moving target in which

8   she claimed to have been assaulted repeatedly on

9   different days and at different times.

10   And even in the face of these wild

11   inconsistencies and a final version that could,

12   no doubt, be considered consensual, I was

13   convicted and handed a four-year sentence.

14   So, that's the bar? That's the

15   prosecutorial burden met? Beyond reasonable

16   doubt, and worthy of a lifetime of sex offender

17   registration, that had merit to indict me, let

18   alone convict me -- to destroy the one thing a

19   person can take to the grave, their reputation

20   and their name.

21   What reasonable jury would run with

22   that evidence and convict? Our great military

1   justice system allowed themselves to be used by

2   an embittered individual and grow her divorce and

3   custody case, allowed her to teach me a lesson

4   for trying to leave. And she was rewarded

5   handsomely for it.

6   My pay and insurance for three years

7   and numerous other tangible benefits, all

8   outlined in the U.S. Code, her entitlements as a

9   victim, and it was only after she was well-

10   informed of these benefits that her sexual

11   assault allegation followed.

12   The CCA affirmed on appeal; yet,

13   called it a concededly close case. That sounds

14   like a cowardly misstep by the military justice

15   system. And the CAAF denied review without

16   explanation.

17   My appeals were finalized in 2018, and

18   I filed a Fourth Circuit habeas petition in 2019,

19   and it was also denied.

20   I asked you before, what reasonable

21   jury would look at the evidence and vote guilty?

22   Well, perhaps they did so because they were no

1   longer capable of being reasonable.

2   In February of 2023, I was contacted

3   by a member of my jury shortly after their

4   retirement, and they told me of an event that

5   occurred outside of the record of trial.

6   Immediately after my ex-wife's direct

7   testimony, a recess was called, and she was

8   placed in a room that shared a thin, false wall

9   with the jury. That certainly would not have

10   been our first choice. Trial counsel is,

11   typically, in charge of the courtroom layout.

12   She proceeded to wail, cry, and carry

13   on for approximately 15 minutes, according to the

14   juror -- all while her victim advocate told her

15   things like how great she did, and that she did

16   her part, and that it would all be over soon.

17   The juror said it was as if she was in

18   the same room with them and every member of the

19   jury looked eager for it to be over with. One

20   even made the comment, "Anyone else

21   uncomfortable?"

22   The juror made sure the bailiff was

1 informed, asked him to tell the judge that they

2 were moving rooms, as a result. And the jury did

3 so because they felt the situation was

4 prejudicial.

5   It took seven years for this

6 information to make its way to me.

7   The implications in this scenario are

8 many, and all of them are the antithesis of due

9 process.

10   Surely the bailiff told somebody. Who

11 did the bailiff report to and work with and

12 interact with almost exclusively during the

13 entire court-martial process? Trial counsel.

14   A Petition for a Writ of Coram Nobis

15 is on its way, and a thorough debate hearing

16 will, hopefully, follow.

17   And while I cannot fathom a version of

18 events in which the investigating court or the

19 appellate court could actually find that that

20 incident did not constitute a violation of my

21 right to an impartial jury and require immediate

22 correction, it would not surprise me if they did.

1   If the authority receiving that petition has any

2   integrity, they will recommend corrective action

3   in my favor.

4   Before I end, these are my children.

5   That's my daughter Charlotte, and she's eight. I

6   have a great relationship with her and her

7   mother, despite no longer being together.

8   Elijah and Aidan are two and five in

9   these pictures. I saw them eight years ago.

10   This was not enough to take that from me.

11   I'm waiting for somebody to stand up

12   and help me make it right. And I've asked a lot

13   of rhetorical questions and that was not one of

14   them.

15   MR. YOB: Thank you, Mr. Clifft.

16   I'll now introduce Mr. Travis Clark,

17   who is going to discuss his case with you.

18   LTC(R) CLARK: How many more innocent

19   service members like him have to be victimized by

20   the corrupt UCMJ process before balance of the

21   scales of justice and restore honor to a broken

22   system? And how much longer will falsely accused

1   and wrongly convicted have to wait until their

2   cases are reviewed and reversed?

3   My name is Lieutenant Colonel Randall

4   Clark, retired. I served 34 years in the Army,

5   both as an enlisted soldier and as an officer.

6   I have seen the great side of the

7   Army, but I've also seen the dark side of the

8   Army, and everything in between.

9   I have been a panel member for two

10   court-martials and served as the board president

11   for 15 separation boards.

12   I have personally recruited more than

13   431 members - people for some form of military

14   service, and based on what I've seen in the last

15   two years, I wish I could do every contract that

16   I've talk to.

17   My son, former Second Lieutenant

18   Dalton Clark, U.S. Army, was falsely accused of

19   domestic violence by his ex-wife and wrongly

20   convicted by the U.S. Army.

21   Many would ask why I'm speaking at the

22   panel that focuses on sexual assault. And it's

1 because my son's accuser also threatened me, to

2 accuse me of sexual assault. And the same

3 justice tactics used in sexual assault

4 investigations would have been used on me.

5 My son's accuser falsely accused him

6 after he filed for divorce and challenged her

7 custody of his daughter. She had extramarital

8 affairs with a man and abandoned their daughter

9 of three months for 40 days in North Carolina

10 prior to his filing, while he was stationed in

11 Korea and her stateside. She took his property

12 to move in with another man two states away,

13 including his truck.

14 She left two dogs for over 40 days in

15 a basement, where the police had to be called on

16 her when it was discovered that she was barely

17 feeding the dogs and had neglected them so much

18 that it would have been better if she had just

19 let them go. Their collars had grown into their

20 necks.

21 When I called to check on my

22 granddaughter and attempted to collect my son's

1   property, she threatened to falsely accuse me of

2   sexual assault. And over the last decade of my

3   career, I know exactly what would have happened,

4   even without evidence.

5   I have seen men jailed with no

6   evidence. I have seen them jailed because of a

7   policy that accusers cannot consent after one

8   alcoholic beverage. I'll say it again, after one

9   alcoholic beverage. They can drive legally, but

10   they can't consent to sex.

11   I have seen others barely survive

12   these cases, and then, have their careers

13   destroyed or be processed out via non-judicial

14   punishment and separation boards, even after they

15   were found not guilty at trial.

16   I have seen and known others who took

17   their own lives because they could not live under

18   the shadow of being a sex offender, and many of

19   them had no more than a parking ticket or a

20   speeding ticket in their entire life, including

21   my son -- an Eagle Scout, an honor student, and a

22   wrestler for the University of Minnesota.

1   The military was their life and they

2   were betrayed in a way as if they were the lower

3   than slime.

4   I have even talked my son out of

5   committing suicide.

6   In the most ironic twist you will hear

7   today, my son's accuser falsely accused the man

8   she was having an affair with, too. While she

9   was screaming and hollering on a 911 call, that

10 "This man is beating me," he, a police officer,

11 was video-recording everything.

12   He was arrested, put inside a police

13 car. The policeman reviewed the video and

14 released him, but they refused to charge her with

15 filing a false police report. They simply asked

16 her to leave.

17   Equal rights should mean equal

18 justice. This evidence was denied in court.

19   She also claimed that the previous

20 fiance prior to Dalton had physically abused her,

21 and her mother stated that this was not true.

22 So, the civilian police again refused to go after

1   her former fiance based on zero evidence.

2   In Dalton's case, despite the fact

3   that nine witnesses testified that she had

4   physically abused my son, and all he had done was

5   restrain her, he was convicted.

6   In one incident where my daughter was

7   a witness in the back of a truck, she struck

8   Dalton while he was driving down an interstate

9   pulling a boat at 80 miles an hour and almost

10   caused an accident. I almost lost of my children

11   that day.

12   And I want you to truly ask

13   yourselves, who is the victim here? Because the

14   military wants to appear to be fair to the

15   accused.

16   This was Dalton's military-appointed

17   attorney's very first case, while the

18   prosecution's were seasoned attorneys. Imagine

19   multiple adults competing against a five-year-old

20   child. The panel or the jury of his peers

21   consisted of mainly senior officers, and the

22   prosecutor even waved at two panel members that

1   she personally knew. I observed this myself.

2   We asked for a change of venue for the

3   trial, but it was denied. We asked for a witness

4   to be subpoenaed -- also denied.

5   Dalton's accuser was even recorded as

6   asking him to say, "Just say that I hit you and

7   I'll drop the charges." Why would she ask such a

8   thing if there were any evidence?

9   I took an oath to defend the

10   Constitution against all enemies, foreign and

11   domestic. When the enemies of the great country

12   have more legal rights than its heroes, that

13   process is an enemy of all that is good in this

14   country.

15   My plan is to reach out and speak at

16   every high school/college that I am able to and

17   share with the American people what has happened.

18   I do it right now at the airports when I wear my

19   hat as a veteran.

20   The influencers who are pushing people

21   to join the military do not understand what is

22   happening with the UCMJ processes.

1   I'm asking you to review and reverse

2   these cases now. Balance the scales of justice

3   for those who can't speak to you today.

4   And there's a lot of people out there

5   right now that don't have the money to come here

6   and talk, but they would. There's a lot of

7   people out there that don't know this process

8   happens; they would be here.

9   I sat with people with my son visiting

10   him, family members, that every person I talked

11   to was the same thing; it seemed like the

12   prosecution was stacked against the defense in

13   every case I talked, every one of them.

14   I'm an educated man just like you guys

15   are. There's no way in any world that you stack

16   the deck in a trial. There's no way. You need

17   to look at this and you need to reverse these

18   processes and balance the scales.

19   Thank you.

20   MR. YOB: Thank you, Mr. Clark.

21   Mr. Arvis Owens will now make a

22   comment.

1   MR. OWENS: Thank you.

2   First and foremost, one of my

3   collateral duties was as a data analyst. So, I

4   wanted to mention the data a little bit.

5   It's that the data, you look at the

6   population of the data, and someone can give you

7   a sliver. So, you either get inconclusive

8   evidence or it supports whatever they want. So,

9   I'll leave you with that.

10   So, two years after my conviction, a

11   neighbor came up to me while I was raking leaves

12   in the yard and hugged me. He's a retired

13   military officer and he says to me that, "They

14   know you didn't do it."

15   I asked him who "they" is, and he put

16   his head down. He, then, admits to me that he

17   had to produce outcomes at trial because all not

18   guilty verdicts in sexual assault cases were

19   reviewed by Congress.

20   I have had neighbors report that I was

21   giving out Halloween candy and I had no right to

22   have a school bus stop near my home. I have been

1   cursed at, spit on, and treated in ways that I

2   never imagined possible in this country.

3   I have been denied jobs because

4   companies worry about liability insurance claims

5   if I were accused again. If I use my military

6   experience on an application, it draws questions.

7   If I don't include it, I am being deceptive.

8   A friend shared with me that companies

9   will hire those who have killed, but not those

10 convicted of sexual assault, even if your case is

11 overturned.

12   There is a member of our group who

13 earned a law degree, and even though the sex

14 assault portion of his case was overturned,

15 female partners and associates forced him out of

16 a law firm. He tried to open up his own office,

17 and the overturned allegation still followed him

18 via reviews. He drives for a ride-sharing

19 company. Imagine if all of you with law degrees

20 only could drive for a ride-sharing company.

21   The military will title you and place

22 you in the National Crime Information Center when

1 you're accused of a crime and leave you in that

2 system even if your case is overturned. They

3 will add a "not guilty" at the end of your

4 charges, but it will still show up in background

5 checks. And there is no DoD process to remove

6 you.

7 I am told that the listing will exist

8 for 40 years. You can't adopt children or join

9 law enforcement agencies or sponsor a spouse for

10 citizenship, and endure other host of

11 restrictions. You're international travel and

12 employment options are limited.

13 Most Americans don't know that the

14 military will title you, even if you are

15 discharged via a non-judicial administrative

16 process.

17 The military has the CATCH program,

18 where an accuser may make a restricted report

19 against someone and they never find out about it.

20 It will be kept on file for 10 years.

21 In my case, we found medical evidence

22 via private investigator and we weren't allowed

1 to use it. Yet, they violated my HIPAA rights,

2 and there was no evidence there in my file.

3   A civilian accuser may testify in a

4 military court, but the military has no

5 jurisdiction to charge and prosecute them for

6 perjury.

7   In military prison, they ask the

8 accused to sign confessions or they will not pay

9 for classes that they consider treatment, and you

10 will decrease your chances of being paroled. Why

11 ask for a confession after you have convicted

12 someone? They don't mention that you can pay for

13 those classes yourself, but, even if you do, they

14 will deny you credit for them and not grant you

15 parole.

16   A military accuser is forgiven for

17 collateral misconduct, but, even if someone's

18 case is overturned, they are subject to

19 administrative boards, discharge, downgrades,

20 denied promotions, and experience extremely slow

21 restoration of benefits.

22   I know that you do not have the

1   authority now, but what I am asking you today is

2   to ask for the authority to take confidential

3   testimony. You can share their evidence and

4   testimony and protect their names.

5   What if I told you we have a former

6   service member who saw hundreds of sex assault

7   wrongful convictions at one military base in one

8   year, and was fired when she came forward lodging

9   a protest? She was ranked No. 1 of 40 people in

10   her category.

11   She heard three women at a command

12   conspire to falsely accuse a man to get a new

13   duty station, but nothing was done when she

14   reported it.

15   Or a Veterans Administration

16   representative who will tell you about a private

17   agreement with the Services not to investigate

18   false sex assault allegations. When the VA

19   system flags them -- they usually get 70 to 100

20   percent -- they will downgrade them and ask for

21   additional information. And then, if they submit

22   fraudulent information, they'll go after them for

1   that, but not false allegations.

2   We have a member of the invisible war

3   willing to talk about false allegations

4   privately.

5   We have someone who worked for one of

6   the largest military-centric victims' rights

7   groups, and hear her talk about public and

8   private social media groups where they coach

9   accusers how to win their military sex assault

10   cases with zero evidence.

11   You can hear from a senior officer

12   from a Service that puts officers' names in a

13   black book if they do not comply with the justice

14   expectations in cases and other things.

15   A former officer wrote sex assault

16   policy while in the military and left in disgust

17   when they were violating it.

18   Hear from retired officers being rated

19   on their officer evaluation reports based on how

20   they handled sex assault cases.

21   We have former investigators from

22   every Service -- NCIS, OSI, CID. I don't have

1   the Coast Guard, but we're working on it. But

2   all of them are scared of reprisals.

3   We have retired JAGs and law

4   professors who have looked at this and are

5   willing to come forward privately.

6   Please help us make that happen.

7   Thank you.

8   MR. YOB: Thank you, Mr. Owens.

9   We have Ms. Barbara Snow who will make

10   a public comment.

11   MS. SNOW: Your Honor, all Committee

12   Members, I want to thank you for the opportunity

13   to speak to you in person today.

14   I do so as perhaps a less likely voice

15   in your oversight efforts -- efforts, however,

16   that require a broad net to capture the many

17   threads and, fundamentally, the root causes of

18   sexual assault and related offenses in the U.S.

19   military, and efforts that go to our national

20   security.

21   I was trained as a criminal defense

22   attorney to zealously advocate for my defendant

1   clients. The little bit of training I received

2   from Brigadier General Wells, the individual who

3   was just relieved as the Army's Lead Special

4   Trial Counsel, when he was the Great Plains

5   Regional Defense Counsel, was how to engage in,

6   quote-unquote, "death by a thousand cuts."

7   After being on the receiving end of

8   Brigadier General Wells' "death by a thousand

9   cuts" approach, and interpersonal interactions

10   with him, in trying to obtain redress in a

11   severely flawed IG system, I have a deep

12   understanding of how the military victimizes, and

13   then, how it re-victimizes.

14   To be clear, and as we've heard from

15   others today already, the criminally accused in

16   the military justice system have not been immune

17   from victimization in the system, either.

18   I have provided a detailed chronology

19   of my interactions with Brigadier General Wells

20   to the Army IG's office. Among the many documents

21   I provided is the cataloging of trauma I

22   sustained because of emotional and psychological

1 abuse.

2 Despite some very personal information

3 in the investigation, I recommend its contents be

4 used to train military justice practitioners on

5 how this type of abuse -- emotional,

6 psychological, and spiritual -- can be initiated

7 within and occur among military ranks, even in

8 places and with people you would not readily

9 suspect.

10 I would be less than helpful coming

11 here today to ask, through your Committee, and

12 any authorized recommendations and actions its

13 members can make and take, that the DoD and all

14 other stakeholders hold a mirror up to the

15 military justice system without being willing to

16 myself show places where that mirror could be

17 held for better understanding and rectification

18 of very serious issues.

19 I know how hard your Committee has

20 worked, and is working, to identify the number of

21 other places requiring acknowledgment for

22 improvement.

1   It is much more often the case that I

2   am a conduit for messages to be conveyed. It has

3   been a highly, highly educational position to be

4   part of the message -- one that screams, however

5   calmly, that we are still a long way off from

6   parity, where the privileged are not

7   automatically believed and those reporting on the

8   outside of privilege do not have to prove their

9   case, to include their veracity and their

10   stability.

11   For a reporting party to have to do

12   any of those things is contrary to the purpose of

13   what are supposed to be independent and competent

14   investigations -- not to mention trying to do one

15   or more of those things is incredibly difficult

16   when you are in a trauma response triggered by

17   misconduct endured by the investigatory process

18   itself.

19   I, respectfully, implore this

20   Committee and other policymakers and

21   stakeholders, especially in light of Brigadier

22   General Warren Wells' removal from his position,

1   and the reasons for it, to ensure that the

2   remaining current Lead Special Trial Counsel are

3   properly vetted; to ensure they have the

4   requisite character and experience to lead their

5   respective offices. It is a foolish errand to

6   remove one and assume that there isn't a larger

7   issue that needs to be addressed with others.

8   Respectfully, the U.S. military should

9   fully understand this in the face of continuing

10   sexual assaults and other related offenses, the

11   myriad of other kinds of abuses, suicide rates

12   that remain unabated, and an overall culture that

13   is not inviting to recruits.

14   I also implore this Committee and

15   other policymakers and stakeholders within their

16   authority to explore and implement reliable

17   training measures and metrics to ensure all of

18   the current and future Lead Special Trial Counsel

19   and all other Office of Special Trial Counsel

20   personnel are sufficiently knowledgeable and

21   skilled to comfortably execute their duties in

22   what is really, really the sacred place of

1 special victim work.

2   The papers submitted in advance of my

3 comments speak to specific vetting and training

4 recommendations.

5   I do want to emphasize the need for

6 subordinate input on the selection of any Lead

7 Special Trial Counsel, and I would be remiss if I

8 did not also emphatically recommend the need for

9 psychological testing of service members,

10 particularly as they progress through the ranks

11 and are placed in positions where their first

12 priority should be on the well-being of those

13 they lead.

14   I also request this Committee

15 investigate how deep the attitudes and conduct

16 are reported to the Army IG regarding Brigadier

17 General Wells goes, both with him and throughout

18 the U.S. military.

19   In a society that likes to separate

20 things into artificial categories, emotional and

21 psychological abuse is but an integral part of

22 many special victim cases.

1   Sexual assault and related offense

2   numbers are barometers of the health of any

3   democracy. The safe and full participation of

4   both men and women in all areas of society, to

5   include in the military, is critical to the

6   security of our Nation.

7   It is time that everyone who dons its

8   uniforms understands this. Men can lead women,

9   and women can lead men. They can serve right next

10   to each other as two brothers and sisters in

11   arms.

12   Democracy abhors complacency. So,

13   please continue to fight against any complacency

14   as you continue to honor your oversight mandate.

15   I, with Ms. Peterson and Mr. Sweezy

16   (phonetic), stand by to provide whatever

17   assistance your Committee and the larger DoD

18   needs in the special victims space and in all

19   areas impacting that space.

20   Thank you for your time, and God bless

21   our Nation.

22   And I actually have, Your Honor, if

1   it's okay, I have brought some books for whoever

2   would like to take them. They are the books that

3   I used in the research with my coauthors.

4   MR. YOB: And I had indicated, if you

5   would like to leave those for us, and any

6   Committee member who would like to take one of

7   the books that's being left, that's perfectly

8   acceptable. And there will be left the copies --

9   MS. SNOW: Thank you.

10   MR. YOB: -- for informational

11   purposes.

12   CHAIR SMITH: Thank you, Ms. Snow. I

13   appreciate you did this.

14   MR. YOB: And that concludes our

15   public speakers. We did have a fifth speaker who

16   had indicated interest, but, relatively recently,

17   the person stopped communicating with us. We

18   weren't sure whether that person would appear

19   today. So, we left a spot. But I do not believe

20   that she has shown up. So, we will have only

21   four speakers today.

22   So, that concludes the speakers. We

1   have no more speakers.

2   I suggest that we take a five-minute

3   break, and then, we come in to do concluding

4   comments and a wrap-up of the meeting.

5   MS. TOKASH: Mr. Yob, this is Meghan

6   Tokash, for the record.

7   Madam Chair, I would just like to put

8   on the record a potential topic for the Special

9   Projects Subcommittee would be to look into the

10   transparency of the vetting and selection of Lead

11   Special Trial Counsel. I would just like to put

12   a pin in that for potential future study.

13   MR. YOB: As the Staff Director, we'll

14   note your suggestion and we'll take that up at a

15   later time, but we note it in the record.

16   Thank you, Ms. Tokash.

17   Madam Chair --

18   MR. KRAMER: Can I add something, too?

19   I'm sorry.

20   MR. YOB: Yes.

21   MR. KRAMER: We've talked before about

22   whether you want to call it, conviction

1   integrity, or something similar to that of the

2   Innocence Project in civilian courts. And I

3   wonder if we can put a pin in that one, too.

4   MS. BASHFORD: The Case Review

5   Subcommittee is taking that under advisement or

6   looking into that.

7   MR. YOB: Thank you.

8   That's exactly what I was going to

9   say, Ms. Bashford, is that's already in the

10   works, and we'll continue to look into that issue

11   and proceed forward with it.

12   But thanks, Mr. Kramer, for that.

13   MR. KRAMER: Sorry, I guess I missed

14   that. Thank you.

15   MR. YOB: Sir, great comment, though.

16   Thank you.

17   Any other comments?

18   (No response.)

19   CHAIR SMITH: So, we're going to take

20   a five-minute break?

21   MR. YOB: Yes, Chair Smith, I would

22   recommend that.

1   CHAIR SMITH: Okay. Until 1:40.

2   MR. YOB: Thank you.

3   CHAIR SMITH: All right. Thank you.

4   (Whereupon, the above-entitled matter

5   went off the record at 1:35 p.m. and resumed at

6   1:47 p.m.)

7   MR. YOB: So, as a wrap-up, I can only

8   describe this as a substantial meeting that we've

9   had today, a very positive meeting.

10   We accomplished quite a bit. We

11   approved two report contents, and more to follow

12   on that as we finalize those two reports. That

13   should be forthcoming by the end of the year.

14   We had informative presentations on

15   our ongoing Panel Selection Study with Dr. Wells

16   and Kate Tagert. So, we thank you for that.

17   Also, Nalini Gupta on the performance

18   metrics, which was a very well-presented overview

19   of the process and engaged in a lot of debate on

20   that, or a lot of discussion, I would say. So,

21   well done.

22   We also approved a way forward on our

1 subcommittee activities, which we won't go into

2 detail because we've just covered them today.

3 But those subcommittees will move forward on the

4 approved projects.

5 And we've also got some suggestions

6 for some other projects, which they'll develop

7 and come back to the Committee on, to propose as

8 additional work that they can do.

9 We discussed site visits, and we are

10 prepared to and we will form a project group with

11 our staff to move forward on those ideas for site

12 visits, and also, to talk about our future

13 meetings and how we're going to conduct our

14 future meetings. And we'll get back to everybody

15 on that.

16 Finally, I want to thank our public

17 commenters who took the time to come in today and

18 share information with us.

19 I also want to, as a final note, just

20 -- well, along the lines of public comment, I

21 just want to put on the record that we're happy

22 to have members of the public come; we're happy

1 to have members of the press come.

2   A member of the press had asked me if

3 filming was allowed and I said no. Because if we

4 started to have filming, it could be disruptive.

5 If we allowed somebody to film, we would have to

6 allow everybody to film, and only with

7 preapproval, with specific news networks, and

8 well in advance will we allow filming.

9   I did note that it appeared that

10 somebody who I told specifically not to film was

11 filming. That is not allowed. If that person

12 returns, we'll have the discussion with them

13 about whether they will be allowed to have

14 filming materials, et cetera, in the room, since

15 they didn't comply with the specific request.

16 But I'll put that on the record, that that was a

17 violation that I noted.

18   With that said, though, on a positive

19 note, I want to again thank the staff who put in

20 a tremendous amount of work on this.

21   I want to, specifically, thank Dale

22 Trexler, Amanda, Stacy, Stacye, Blake, and

1 Janelle now. I hope we're not leaving anybody

2 out.

3   But because of them -- these materials

4 don't produce themselves; your travel doesn't do

5 itself. They put in a ton of work in getting the

6 location, the contract. So, thanks to them for

7 doing that.

8   Along those lines, I want to thank the

9 entire staff; Marguerite for doing a lot of the

10 public commenters, and also, producing a lot of

11 the materials that have gone in today; the staff

12 attorneys, who, obviously, take a lot of time to

13 do the great work that supports your work.

14   So, everybody, it was just a really

15 tremendous joint effort.

16   And finally, I again want to thank

17 Meghan for stepping up and taking on the role of

18 the deputy. Without her, none of this would have

19 come together so well.

20   So, thanks to everybody. I think the

21 whole staff deserves a round of applause for

22 today.

1   (Applause.)

2   Thanks to the Service reps for being

3   here. We try to work well with you. We try to

4   be super responsive to anything that you need,

5   and it's reciprocal, I know. So, welcome, and we

6   look forward to continue working with you.

7   And with that said, I'm going to open

8   it up to any other comments. And then, if not,

9   we will conclude the meeting.

10   (No response.)

11   MR. SULLIVAN: The public meeting of

12 the DAC-IPAD is closed.

13   (Whereupon, the above-entitled matter

14 went off the record at 1:51 p.m.)

15

16

17

18

19

20

21

22

bore 41:12
borne 133:10
bottom 26:11
Boulevard 1:10
brain 26:4
bravo 9:6
break 5:20 6:3,16 62:21
    76:10 77:1 134:22
    135:7 154:6,19 183:3
    184:20
breakdown 21:16 22:8
    22:12,21 23:21 24:17
    35:9 50:5 89:8
breaks 30:12
brief 89:11 96:13
briefed 95:1
briefing 5:16 93:8
briefly 13:17
Brigadier 176:2,8,19
    178:21 180:16
bring 111:17 119:4
    138:8 140:20 141:5
    141:14 142:19 155:13
brings 98:22 147:6
broad 41:9 100:22
    175:16
broader 94:16 141:5
broken 19:5 22:15 33:2
    43:6 63:1,2 80:10
    161:21
brothers 181:10
brought 71:11 109:18
    182:1
building 133:6
bullet 98:22
burden 157:15
bus 169:22
business 33:18 132:18
    132:20 138:5,11,22

C

C 115:22
C9 112:1
CAAF 158:15
calculate 100:10
calculating 100:8
call 165:9 183:22
called 91:14,16 115:22
    119:20 124:11 158:13
    159:7 163:15,21
calmly 178:5
campus 77:18
candy 169:21
capable 159:1
capacity 63:12 96:1
    98:6 107:12,14
capture 10:9,22 13:15
    20:11 75:7 77:3 81:5

92:21 109:8 121:1,2
    128:11 133:17 175:16
captured 83:16 133:3
captures 43:2
capturing 20:4 74:7
car 165:13
career 164:3
careers 164:12
Carolina 163:9
carry 159:12
case 8:7 10:6,16 14:19
    16:10 18:13,19,20
    19:17 37:21,22 38:3
    38:14 41:19,22 45:6,7
    45:7 49:6 51:15,22
    53:19 54:3 55:22
    61:17 70:17,22 71:11
    74:8 78:6 79:5 82:1,5
    86:21 99:15 101:5
    102:22 104:16,16
    105:2 106:2,11,13
    108:20 112:2,4 117:2
    117:2,3 119:5,16,19
    119:21 122:13 127:8
    129:16 130:5 133:12
    140:10 151:17 156:4
    158:3,13 161:17
    166:2,17 168:13
    170:10,14 171:2,21
    172:18 178:1,9 184:4
caseload 107:15
caseloads 107:19,20
    107:22
cases 9:8 10:13 12:2
    16:18 17:2 18:6,7,10
    19:1,3,8,9,12,22 20:6
    20:22 21:15 38:4,5
    42:10 44:10 46:11
    47:11 49:7 51:6,9
    54:9 58:3 62:1,22
    65:21 68:22 69:3,17
    69:20 70:3 74:10 77:4
    78:7,9,16,21 82:5
    85:17 88:10,18 89:18
    90:1,1,7 95:13 103:4
    104:10,17 105:6,11
    105:15,18 106:6
    107:1,5,6,9 109:3
    120:1 121:4,6,21
    124:17 127:13 128:4
    134:6,16 140:12
    162:2 164:12 168:2
    169:18 174:10,14,20
    180:22
Cassara 1:14 25:18
    26:2,6 53:7 68:13
    69:8 114:8,11 123:11
    135:2

Cassia 1:18
cast 89:11
cataloging 176:21
CATCH 171:17
categories 21:17 22:16
    23:7,14 24:11 31:1
    33:3,9,13 36:2 40:20
    60:7 91:6 97:16,17,19
    97:21 98:3 108:8
    124:17 180:20
categorized 21:13
category 22:20 24:1
    34:2 51:19 100:15,19
    101:19 102:4 103:16
    103:22 104:2 105:21
    107:15 108:9,13
    109:6,11,14 173:10
cause 13:19 15:3 24:13
    24:15,19 33:12 34:22
    36:15,16 53:1,13
    54:11 55:13,16 56:5,5
    56:13 57:17,18 89:3,9
    106:7 107:7,9 138:21
caused 166:10
causes 175:17
caution 72:4
cautious 89:22 90:11
CCA 158:12
Center 1:9 170:22
CEO 96:1
certain 109:22 117:2
    118:9 146:5
certainly 56:15 63:3
    65:16 67:11 72:22
    80:2 82:11 91:21
    159:9
certification 137:2
cetera 126:22 187:14
chair 1:11,13 4:6,7 7:6
    32:13,20 34:17 46:8
    46:15 53:21 54:15
    62:14 67:20 68:15
    69:7 73:11,22 82:19
    82:21 87:5 91:22 93:2
    113:16,19 114:7,10
    114:12 116:14 132:13
    134:21 135:6,12,17
    141:19 142:20 143:6
    143:10 152:9,15
    153:15 154:4,6
    182:12 183:7,17
    184:19,21 185:1,3
chalkboard 119:9
challenge 14:3 15:17
    15:20 24:15,19 30:8
    35:1 36:14,16 55:13
    56:7,8,13 57:17,18
    76:4,11 134:5

challenged 14:18 53:1
    53:13 54:10 163:6
challenges 13:19 14:4
    14:7,11,20 15:3,5,13
    24:12 33:12,15 34:22
    36:13 56:18 75:19
    77:2 126:6
chance 154:12
chances 172:10
change 50:19 58:3 65:3
    73:5 145:14 146:13
    146:14 147:11 149:21
    149:22 167:2
changed 73:5 124:13
    146:7 151:21
changes 11:16 12:9
    73:8 94:4,14 115:10
    137:8 150:18
changing 81:4
character 179:4
characteristic 70:8
characteristics 21:4
    50:21 63:6 70:21 74:7
    81:8 117:3
characterized 45:16
charge 65:1 76:21
    113:2 159:11 165:14
    172:5
charged 68:1
charges 68:8 105:4
    137:5 167:7 171:4
charging 68:4 73:20
Charlotte 161:5
chart 31:6 41:16 45:2
    49:4 51:16 85:21
    136:5,8
charts 51:4,8 84:7
check 163:21
checks 171:5
Chief 2:3
child 166:20
children 54:14 161:4
    166:10 171:8
chime 125:16
choice 159:10
choose 97:3 105:16
chose 145:13 157:4
chronology 176:18
CID 174:22
Circuit 158:18
circumscribed 76:15
circumstances 123:2
citizenship 171:10
civil 120:18 121:4
    129:13,16
civilian 14:21 55:17
    57:17 59:5 76:6,14,16
    77:8,16 78:12 95:4,7

172:20
dentist 125:9,10
deny 172:14
Department 93:9 94:3
96:2,5 111:6,7 113:6
133:9 136:16,22
138:15
departments 86:6,13
depending 76:17,20
depiction 43:1
deployed 133:2
depth 153:6
deputy 2:3 188:18
derail 55:6
describe 8:12 18:20
185:8
described 63:16 89:6
describing 38:4 153:3
description 89:16
descriptive 19:11
deserves 188:21
deserving 143:3
designated 2:2 78:22
despite 11:6 161:7
166:2 177:2
destroy 157:18
destroyed 164:13
detail 12:5 38:14,17,19
39:3,19 47:18 59:20
61:11 64:7 98:2 144:7
186:2
detailed 9:22 12:22
13:5,9,22 18:15 20:1
20:13 21:14 22:15,20
23:1,11,19 24:4,6,21
24:22 30:14,19 31:4
38:12 49:20 52:20
63:17 69:18 90:4
108:5,7 176:18
detailing 15:6 71:21
144:21
details 25:5,6 30:17
31:2 32:10 38:5 39:8
41:12 42:16 47:9,11
49:6,12,19 50:17 51:1
51:2 59:13,19 61:3
65:4 70:18 71:6,8
81:9,17
determination 145:20
determinations 144:16
145:4 147:8,15
determine 10:4 16:9,21
17:6 55:14 67:2 96:3
106:10,13 107:1
108:3 110:6 119:19
134:2 145:6,6
determined 9:19 98:15
determining 150:18

detrimental 106:7
develop 94:11 103:11
103:14 112:20 114:4
114:11 115:8,18
117:18 140:19 141:12
186:6
developed 92:16 93:9
95:11 132:5
developing 95:2,6
97:17 151:1
deviation 40:5 41:8,11
42:11 43:1
deviations 40:7
device 6:13
DFO 6:10
diagnosis 149:18 150:1
dial-in 6:18
differ 41:15 76:13
difference 24:7 25:4
52:20 61:9 67:2 77:7
differences 24:10
150:15,17
different 31:1 33:2,7,8
33:13,20,21 34:4,8,14
34:15 35:3 36:1 42:16
58:10,11 65:22 74:10
74:11,15 78:13 81:17
83:17,22 87:18 88:1,5
90:5,9,12 104:6
105:18 112:2 118:14
120:6 122:13 123:13
126:11 127:18 137:11
155:22 157:9,9
differentially 30:4
differently 53:10 54:5
difficult 77:21 98:20
122:11 133:10 137:16
153:10 178:15
difficulties 6:15
difficulty 70:11
dig 121:13 150:22
digital 151:7,14 152:9
diligently 82:15
dire 13:18 57:13 85:16
direct 86:6,12 159:6
directed 136:16
direction 93:16 152:18
director 2:2,3 6:9 155:5
183:13
disagree 123:15
disappear 79:9
discharge 172:19
discharged 171:15
discovered 163:16
discretion 144:22 145:5
147:7,14,18
discuss 6:5 7:21,22
17:17 73:1 153:21

161:17
discussed 11:18
137:10 139:9 140:5
149:4 152:16 153:4
186:9
discussing 13:19 67:21
discussion 7:3 55:8
61:21 90:18 92:14
136:11 139:10 185:20
187:12
disgust 174:16
dismissals 101:5
dismissed 134:4
dismissible 107:5
disparities 66:5 86:3
110:18,19
disparity 66:4
disposition 94:5 103:7
105:19 108:20 139:18
disproportionately
110:13
disruptive 187:4
distill 63:11
distinction 57:16
distracting 36:9
District 133:12
divided 28:6
divisions 5:7
divorce 125:4 156:17
158:2 163:6
DLSA 93:15,15 116:4
docket 136:17
documented 79:14
documenting 144:19
documents 9:18 10:19
16:3,16 87:20 176:20
DoD 112:20 115:9
171:5 177:13 181:17
dogs 163:14,17
doing 53:12 70:1 72:11
85:21 90:1 91:8 92:18
96:3 111:1 113:17
115:4 118:21,22
188:7,9
domestic 162:19
167:11
dons 181:7
door 27:3
doubt 157:12,16
dovetails 84:4
downgrade 173:20
downgrades 172:19
Dr 1:17,18 2:10 8:5
17:19 25:18,22 26:5,7
27:4,15,22 28:3,5,13
28:16 29:3,13,16,19
29:22 31:21 32:8,19
32:22 34:1 35:6 37:16

40:4 41:6 43:18 44:7
44:17,19 45:10,12,18
46:6,12,16 48:1 49:4
50:13 51:11,13 59:7
60:17 62:5 63:1 64:14
67:6 69:14 70:12,13
72:1 75:16,18 76:20
77:5 80:15 81:22 82:9
83:20 84:17,20 85:1
88:11 90:7 92:6 98:14
109:19 112:13 115:7
116:22 127:1,3
128:16 129:9 130:10
131:16 185:15
draw 29:13 35:20 52:14
63:22 65:12 69:11
81:11 105:9 122:12
drawing 28:18 53:15
64:18 74:8
draws 170:6
drew 95:15
drive 164:9 170:20
drives 170:18
driving 70:7,10 166:8
drop 64:5,7 167:7
drops 44:2 60:1 64:10
64:11
due 93:22 98:3 99:22
100:1,16 120:19,20
121:21 122:18 123:17
124:8 125:20 130:8
133:20 160:8
duration 102:21
duties 169:3 179:21
duty 22:10 144:15
147:16 173:13
Dwight 2:2

E

eager 159:19
Eagle 164:21
earlier 8:10 47:8 50:3
106:16
early 9:1 17:15 107:3
earned 170:13
easier 116:7
easiest 152:20
easily 16:17
echoing 92:1
edge 95:9
educated 168:14
educational 121:20
178:3
effect 73:9,10 81:11
effective 133:22
effects 93:10 94:4,14
94:15 97:6 106:7
111:14,19 115:9

female 22:11 25:1
26:12 27:19 28:10
30:4 31:5,12,14 34:21
47:12 49:2,14 59:21
170:15
females 25:5 26:19
28:15 32:14,16 34:20
35:5 48:20 60:4 67:4
71:8,14
fewer 40:19 102:19
fiance 165:20 166:1
fields 99:5 116:9
fifth 182:15
fight 181:13
figure 36:13 40:16 41:2
117:21 118:13
file 171:20 172:2
filed 158:18 163:6
files 10:7,16 17:3
filing 163:10 165:15
filings 136:14,17 137:1
film 187:5,6,10
filming 187:3,4,8,11,14
final 96:21 109:6
111:11 139:8 154:22
157:3,11 186:19
finalize 185:12
finalized 17:8 158:17
finally 8:14 107:8
119:16 186:16 188:16
find 23:11 41:4 61:8
94:8 119:13 160:19
171:19
finding 19:19 34:4 72:5
107:7,9
findings 21:9 58:4 65:2
65:13 67:7 71:18
126:9
fine 63:3
fingernails 119:8
finishing 91:10
fired 173:8
firm 170:16
first 5:11 8:9 11:4 14:11
15:7 20:6 38:10 51:15
63:8 64:18 66:13 68:2
72:11 80:16 98:13
100:15 104:7 107:20
108:22 110:17 116:2
125:13,15,17 129:3
136:13 137:16 138:17
145:8 149:6 156:1
159:10 166:17 169:2
180:11
first- 99:10
fiscal 4:21 9:8 19:8,9
86:13 93:21 115:7
140:12

five 6:4,4 109:12 131:18
161:8
five-minute 183:2
184:20
five-year-old 166:19
fixed 125:9
flag 59:1 103:8
flags 173:19
flawed 176:11
floor 120:8
Florida 95:20 131:10,18
133:13
focus 89:7 127:10
136:12 137:11 141:4
155:9
focused 64:22 65:8,10
82:18 94:12 131:20
focuses 71:15 162:22
focusing 12:19,20
90:13
fold 10:11
folks 92:22
follow 55:21 56:12
58:17 100:4 144:17
146:22 160:16 185:11
follow-up 91:20
followed 158:11 170:17
following 16:3 99:21
140:8 156:10
foolish 179:5
Force 48:16,19 49:1
90:10
forced 170:15
forces 1:2 4:14 5:4 6:7
73:16 79:15 149:14
foreign 167:10
foremost 169:2
forgiven 172:16
forgotten 152:2
form 132:21 162:13
186:10
formed 15:19
former 162:17 166:1
173:5 174:15,21
formerly 156:6
forms 20:20
forth 42:21
forthcoming 185:13
forum 16:10
forward 11:15 12:1,15
26:13 67:11 73:1,8
79:9 113:11 140:20
141:16 142:11 143:14
149:21 173:8 175:5
184:11 185:22 186:3
186:11 189:6
found 11:21 82:2,6
164:15 171:21

Foundation 131:8
four 83:9,11 131:18
141:9,20 142:2,6,12
182:21
four-year 157:13
fourth 124:18 158:18
Franklin 40:13
fraudulent 173:22
freeze 72:17
frequency 123:4,7
frequently 54:20
121:15 122:9 124:6
friend 170:8
front 79:17 93:13 102:2
111:17
full 137:14 140:20
141:15 181:3
fully 179:9
fundamentally 175:17
funded 131:8
further 110:18 111:3
future 7:22 81:15 97:4
97:22 136:9 140:22
143:15 179:18 183:12
186:12,14
FY21 20:15,22
FY22 20:7,22 22:9
82:16
FY23 111:16

G
Gallagher 2:4 116:5
gauge 125:11
gender 10:4 17:13
24:20 30:1,15,20 47:7
59:10,18 60:7,8,12
64:19 65:3,13 70:7
71:6 74:5 80:12 86:7
88:3,16
general 1:9 13:10 15:11
28:17 48:2 50:1 57:11
68:5 83:5 86:17 91:14
91:19 93:16 96:14,19
96:21 102:18 111:10
143:18 152:3 156:8
176:2,8,19 178:22
180:17
generally 13:10 14:20
32:6 53:13 63:17
generate 60:22 80:19
Gentile 1:16
germane 155:14
getting 12:16 35:3
90:15 92:17 128:20
142:22 188:5
give 18:14 30:18 41:17
55:15 56:1 72:21
74:12 102:15 154:12

155:8 157:4 169:6
given 15:17 33:22
64:12 124:11 132:18
136:10
giving 97:20 169:21
GM3 156:6
go 26:7 40:22 44:5
45:20 51:9 55:5 70:9
73:15 77:4 89:14
100:20 105:6 118:13
125:8,15 127:3 130:9
154:12 163:19 165:22
173:22 175:19 186:1
goal 74:2
goals 119:2 140:17
God 181:20
goes 57:15 68:10 74:10
75:2 85:2,6 102:21
104:7,14 180:17
going 8:7,11 11:15 12:1
12:5,15,19 15:13 17:9
17:16 18:14,22 20:9
20:16 32:10 33:17
36:12 37:16 38:6
41:10 47:7 52:13
56:20 58:22 59:2 62:8
62:20 73:1,5,8,9 74:3
74:4 79:5,9 81:3,6,14
82:17 83:1 84:10
87:22 90:17 92:13
93:4 94:2 95:1 96:11
100:6 103:8 110:5
111:9 112:14 113:1
113:10 114:5 122:8
125:10 126:11 127:4
129:11 133:21 134:12
134:16,19 135:7,13
138:17 139:20 141:8
141:20 149:2 153:16
154:6,9 155:6 156:2,3
161:17 184:8,19
186:13 189:7
Goldberg 1:15 27:2,5
27:20 28:1 29:5,15,18
29:20 31:20,22 33:17
34:9 40:1,5 45:13
46:1 47:22 48:2 52:12
54:15 55:3 63:8 65:11
78:19 84:3,18,21
88:21 90:16 120:11
120:12 123:6 129:10
129:11 153:2
good 4:3,8 8:6 9:16
17:19 35:6 58:16
87:22 92:13,18 93:7
112:17 123:4 132:15
133:4 135:16 142:21
152:8 153:10 156:5

inappropriate 134:11
inartful 140:1
incident 160:20 166:6
incline 79:6
include 100:12 104:17
  170:7 178:9 181:5
included 100:4,12
  103:13 104:12 105:1
  105:4,14 106:9 107:4
  123:5
includes 35:14
including 102:6 125:19
  163:13 164:20
inclusionary 12:1
incomplete 87:1
inconclusive 169:7
inconsistencies 157:11
incorrect 50:14 66:19
incorrectly 115:13
increases 44:4
incredible 141:3
incredibly 178:15
independent 20:12
  178:13
Indian 21:20
indicate 45:15
indicated 54:20 138:11
  138:22 182:4,16
indicating 89:7
Indicators 95:19
indict 157:17
individual 21:10 22:3
  32:10 45:6 155:20
  158:2 176:2
individuals 18:4,9,18
  19:2 22:1 37:20 61:5
  70:3 76:3 77:12 78:1
  79:1 84:9 91:4 155:17
ineffective 101:7 121:6
  134:3,5
inflexible 14:13
influence 62:10 67:18
  83:14
influenced 57:22 95:16
  103:1
influencers 167:20
inform 11:10 140:14
  155:8,10,22
information 8:13 9:22
  10:5,6,9,15 11:1,5,9
  16:2,7,11,14 18:2,3,7
  18:14,20 19:1,11 20:4
  20:7,18 26:9 30:21
  37:3 71:1,1 72:21
  81:5 87:18 88:6 96:19
  100:12,14 109:1,4
  111:16 112:9,12
  113:4,4 116:3 121:18

122:15 127:22 128:20
  136:17 137:15 156:4
  160:6 170:22 173:21
  173:22 177:2 186:18
informational 182:10
informative 185:14
informed 102:5,12
  106:22 158:10 160:1
informing 155:14
infrequent 121:9
initial 103:6 123:9
initially 129:2
initials 10:19
initiated 86:9 177:6
initiative 156:14
Innocence 184:2
innocent 161:18
input 91:11 96:18
  108:20 141:17 180:6
inquiries 57:3
inquiry 55:12
inside 165:12
insight 129:13
insightful 62:12
insignificant 33:22 46:3
inspired 116:21
installation 71:10,11,15
  72:14
installations 71:21 72:9
instance 30:6 70:19
instructions 6:18 14:14
  56:1
insurance 158:6 170:4
integral 180:21
integrity 161:2 184:1
intel 71:13
intend 70:9
intended 65:1 100:17
  101:21 103:19 106:1
  107:13 108:10 109:8
intent 8:22 109:5
interact 160:12
interactions 176:9,19
interest 101:13 111:18
  115:4 153:6 182:16
interested 67:12 82:13
  113:8 142:4
interesting 52:16 55:7
  67:9 77:6 83:21 84:1
  92:5 101:18
interestingly 11:4
interfere 56:2
interference 124:12
internally 117:18
  118:13
international 131:11
  171:11
interpersonal 176:9

interpreted 94:10
interrupt 55:10
interstate 166:8
interviewed 95:5
intimidation 127:13
introduce 7:2 156:1
  161:16
investigate 155:12
  173:17 180:15
investigated 86:21
  136:1
investigating 160:18
investigation 1:1 4:12
  5:1 86:9 106:5,18
  177:3
investigations 105:3
  163:4 178:14
investigative 106:17,18
  155:12
investigator 171:22
investigators 86:15
  151:6 174:21
investigatory 178:17
invisible 174:2
inviting 179:13
involve 9:6 106:11,13
involved 18:9,13,19
  19:2 37:21 38:1 74:16
  86:21 95:6 140:5
  145:18
involvement 106:16
involves 144:1
involving 5:3 68:22
  78:21 80:18
IPAD 4:5 115:2 132:18
IRC 80:5 103:1
ironic 165:6
Islander 21:20
isolating 67:14,14
issue 28:9 74:20 79:12
  79:13 80:7 81:21 91:5
  103:8 111:2 137:7
  150:5,8,9 151:2,12
  153:9,17 179:7
  184:10
issued 136:22
issues 73:3 88:1 122:5
  149:4,5,9 150:5,20
  152:19 155:22 177:18
items 6:12 152:21

___ J ___

JAGs 96:10 175:3
jailed 164:5,6
James 1:17
Janelle 2:9 188:1
Janet 48:18
January 8:10 136:21

Jen 78:15 84:4 127:3
  129:12,21
Jen's 121:16
Jenifer 1:17
Jennifer 1:16 123:12
  131:4
Jennifer's 124:22
Jerry 156:2,6
Jeter 11:20 12:9 79:4
  80:22 81:6,11,17
job 53:17 92:19
jobs 170:3
join 167:21 171:8
joined 5:9
joining 6:12
joint 96:16 111:9
  149:19 188:15
judge 8:4 40:12 48:21
  49:3 55:10,13 56:5,12
  57:15,22 58:11,15
  59:6 67:1 71:2 77:9
  86:16 133:20 142:16
  146:10,14,16 147:4
  147:17 160:1
judge's 14:14
judges 9:15 15:2 53:9
  53:14 86:21 101:11
  140:7
judging 139:12
judgment 16:9
judicial 95:8 101:7
  136:19 140:5
judiciary 101:3
juice 72:20
juries 40:20 83:22
jurisdiction 117:10
  128:2 172:5
jurisdictions 76:1
  119:17 127:5 131:20
juror 159:14,17,22
jury 14:9 23:20 83:8
  157:5,21 158:21
  159:3,9,19 160:2,21
  166:20
justice 5:6 6:7 95:21
  96:2 102:1 108:12,17
  109:10 110:1 111:20
  130:12,16,16 131:2,9
  133:9 137:8 138:15
  153:5,17 158:1,14
  161:21 163:3 165:18
  168:2 174:13 176:16
  177:4,15

___ K ___

Karla 1:10,13
Kate 2:6 7:2,4 8:5 22:5
  36:6 61:1,17 64:19

72:1,7 83:3 85:6
87:15 185:16
keep 56:17 81:1,21
146:12 148:9
keeping 139:21
kept 171:20
kicked 37:5 90:15
killed 170:9
kind 40:22 41:1 53:15
53:18 56:10 62:20
66:9 70:14 71:4 72:16
73:1 87:6 112:5
115:18 121:14,18
122:14 125:4 130:7
140:14
kinds 40:14 55:14
74:10 120:7 179:11
knew 54:21 77:12 78:7
78:17 82:16 167:1
know 21:9,11,12 33:6
34:14 36:10 37:1 40:9
41:4 48:3,15 53:16
54:2,4,6,18 55:4 57:4
57:6 60:22 61:20
62:16 63:9,10 64:6
65:16 66:2,10,15,18
66:19,21,22 67:17
68:3,6,8,12 69:5,5,6,9
69:11 70:1 71:12,16
71:19 72:10,17,18,19
72:21 73:7,11 74:2
77:7 78:1,20 79:7,15
80:8,13,16 83:1,17,18
84:7,11,14 87:11,20
88:2 89:7,12,13 90:9
90:11,20 91:11 92:3
96:20 104:10 106:6
112:4,8,9 113:10,11
115:21 116:12 122:1
127:5 131:15 141:11
145:11 146:17,21
148:20,21 149:3,19
150:2,10,15,19
151:10,11,13,15,22
164:3 168:7 169:14
171:13 172:22 177:19
189:5
knowing 84:14 124:7
knowledge 89:19
knowledgeable 179:20
known 104:13,19
164:16
knows 48:5 84:10
Korea 163:11
Kramer 1:16 146:18,19
146:20 147:1,3 148:4
148:6,10,12 183:18
183:21 184:12,13

Kutateladze 131:17

———————————
L
———————————
labeled 98:8
lack 134:6,20
lag 123:8
laid 132:15
language 94:3,8,11
119:6,13 146:5
large 13:8 22:9,22
41:18 71:8 72:6 128:2
130:11
larger 40:6 41:8 46:19
66:16 179:6 181:17
largest 13:6 66:14
174:6
Laughter 28:4 29:21
32:21 37:15 91:15,18
law 5:7 25:19 86:9 94:5
94:15 115:10 152:6
170:13,16,19 171:9
175:3
lawyer 68:14 123:21
125:5
lawyering 124:3
lawyers 65:19
layout 159:11
layperson's 27:6 29:8
lead 9:14 37:9 176:3
179:2,4,18 180:6,13
181:8,9 183:10
leadership 105:17
lean 92:20
learned 95:12 133:9
leave 158:4 165:16
169:9 171:1 182:5
leaves 152:7 169:11
leaving 188:1
left 44:20 49:9 163:14
174:16 182:7,8,19
legacy 21:6
legal 93:14 124:15,19
167:12
legally 164:9
legislation 101:13
107:17
legislative 139:6,7
lend 70:14
length 118:17
lesser 104:12
lesson 133:10 158:3
let's 120:4 154:11
letter 138:9
letting 120:8
level 18:21 40:3 56:11
63:3 69:22 70:22
72:13,19 73:8 99:11
108:1 110:17 121:2

124:5 129:4 150:13
levels 107:13,16 108:4
127:17
leverage 89:19 141:7
liability 170:4
liberal 56:18
liberally 15:2
Libretto 2:5
lies 40:14,14,14
Lieutenant 162:3,17
life 164:20 165:1
lifetime 157:16
lift 65:13
light 79:4 178:21
likes 180:19
likewise 12:11 121:10
limitations 98:12
113:12 115:20
limited 70:16 171:12
line 6:17 25:2 37:12
53:15 63:12
lines 45:6 51:8 141:9
186:20 188:8
list 16:5
listed 51:16 98:2 100:7
listen 16:20 85:11
listening 13:14 88:22
93:1
listing 171:7
literature 130:12
little 30:13,13 39:2 62:8
62:21 92:21 110:4
121:13 124:13 144:21
146:4 152:6 169:4
176:1
live 164:17
lives 164:17
load 112:2,4
located 1:10
location 188:6
lodged 75:19
lodging 173:8
logistics 71:13
long 1:16 53:5,12 73:11
73:21,22 82:19,21
96:1 106:10,12
116:14,15 120:18
125:12,15 127:4
128:22 178:5
long-term 78:13
longer 11:22 12:6 58:8
79:5 102:17,18
140:16 159:1 161:7
161:22
look 9:13 18:6 24:9
26:22 27:15 30:16
31:18 32:10 34:18
35:8,12,18,22 37:7

43:4 44:19 45:1,7,19
47:6 50:20 53:9 59:15
59:22 60:3,6 61:7
62:6,20 63:5 65:1
67:22 72:13 73:18,19
74:15 75:8 78:4 80:3
80:21 81:16,17 84:6
90:2,6 95:12 96:22
104:2 113:10 117:17
122:11 123:13 137:17
150:4,7,21 158:21
168:17 169:5 183:9
184:10 189:6
looked 34:6 51:18 62:2
71:7 90:10,10 112:1
129:18 135:22 149:3
149:20 151:12 159:19
175:4
looking 9:5 28:6,20
32:13 34:19 35:4,10
35:17 43:14 50:5 61:2
62:11,21 64:17 67:14
67:15 68:7 69:20 71:5
72:22 73:6 74:3,4,5,9
77:17 82:13 83:16
88:10 89:18 95:9
116:19,22 117:17,19
119:20,22 123:17
124:16 143:14 149:10
150:10,17 152:21
153:4 184:6
looks 33:4 38:21 40:11
lose 129:16
loss 80:6
lost 109:4 130:4 166:10
lot 10:12,18 52:22
60:19 78:12 89:16
91:16 92:12,12 95:15
98:18 111:18 113:14
119:11 123:15 126:11
126:17,18 130:18,22
131:17 132:10 140:13
141:10 161:12 168:4
168:6 185:19,20
188:9,10,12
lots 82:2,3
Louder 48:21
loved 156:15
low 83:15
lower 14:6 26:19 52:7
54:17 165:2
LTC(R) 161:18
lunch 6:3 7:21 8:3
154:7,9,9,12,15,18

———————————
M
———————————
ma'am 44:7 123:11
MacArthur 131:8

161:1
phases 19:4 140:9
Philadelphia 119:10
phonetic 89:10 181:16
physically 165:20 166:4
pick 54:15 121:16
picture 20:13 65:22
  74:13
pictures 161:9
piece 122:14
pin 139:9 183:12 184:3
place 15:7 97:10 111:13
  122:10 144:10 145:8
  170:21 179:22
placed 159:8 180:11
placeholder 103:13
  126:17
places 177:8,16,21
plain 149:15
Plains 176:4
plan 17:21 93:16,20,22
  94:22 96:12,13,15,17
  96:21 97:1 98:12 99:1
  100:3,14 111:4
  112:20,21 113:17,19
  113:22 114:4,11,18
  114:19,21,22 115:8
  115:11,11,18,22,22
  116:6,8 125:22
  132:21 140:19 141:13
  151:1 167:15
planning 91:2 140:22
plans 116:2,7 117:18
  133:2
play 68:5
players 101:2 108:16
playing 68:5
please 6:13 21:9 48:21
  81:21 83:18,18 92:19
  93:4 154:17 175:6
  181:13
pleasure 95:22
point 34:14 37:4 52:12
  54:16 55:11 56:9
  57:15,15 58:16 59:2
  65:7 71:3 72:7 80:15
  81:19,20 85:20 87:4
  94:10 99:6 100:21
  121:12,17 122:1,19
  123:4,10 124:22
  125:18 132:1 153:18
pointed 75:12
points 17:2,6 122:18
  126:18 129:20 154:3
police 86:14 163:15
  165:10,12,15,22
policeman 165:13
policies 101:9

policing 130:19
policy 5:22 6:7 94:5
  115:10 133:14 136:22
  143:8,20 148:18,19
  152:19,21 155:10
  164:7 174:16
policymakers 178:20
  179:15
pool 27:9,11 66:16
pooled 18:12
poor 134:3,18
population 63:21 169:6
portion 82:7 170:14
position 53:9,12 178:3
  178:22
positions 156:15
  180:11
positive 117:22 118:10
  185:9 187:18
possibility 85:12,14
possible 20:17 71:19
  89:20 170:2
possibly 123:10
post 80:22 81:6,10,17
posted 6:21
potential 22:4 110:19
  117:1 121:19 183:8
  183:12
potentially 12:12 56:19
  64:16 70:15 114:2
practice 12:6 117:19,22
  117:22 121:14 140:6
practices 95:4 153:5
practicing 118:11
practitioners 117:6
  118:18 149:12 177:4
pre 81:10 98:21
preapproval 187:7
preceded 119:22
predecessor 151:13
predecisional 96:20
preeminent 130:14
preemptories 76:8,15
preemptory 75:19 76:4
  76:10
prefer 100:5
preferences 102:13
preferral 105:3 107:5
  110:10,14
preferred 143:17
prejudice 134:4,6,15,20
prejudicial 160:4
preliminary 5:13 86:18
prepare 8:21
prepared 136:5 186:10
preparing 112:19
present 1:12 2:1,12
  8:14 26:8 42:5 60:21

67:13 81:7
presentation 8:11 55:6
  55:11 60:19 74:1
  92:14 100:3 109:15
  111:21 112:19 120:15
  139:11
presentations 185:14
presented 21:9 23:14
  27:16 42:4 92:5 126:5
presenters 4:17
presenting 120:10
presents 30:21
president 162:10
presiding 1:11
press 187:1,2
presumption 79:12
pretrial 116:3 140:9
  157:6
pretty 71:1 78:11 82:15
  92:18 121:9 129:15
prevent 56:6
Prevention 96:6
previous 22:21 23:6
  39:11 49:5 110:3,10
  147:9 165:19
previously 11:18 49:16
  98:19 151:12,17
Primarily 149:10
primary 149:5
printed 93:6
prior 86:1 87:3,12 107:5
  108:6,6 163:10
  165:20
prioritization 98:6
  105:22 106:3,21
prioritized 127:12
priority 180:12
prison 172:7
private 171:22 173:16
  174:8
privately 174:4 175:5
privilege 149:8 150:1
  178:8
privileged 178:6
probable 107:7,9
  138:21
probably 48:14 52:22
  77:17,20 79:16 88:9
  121:2 133:1,4
problem 40:17 75:2,13
  80:10 81:2,7 114:2
  117:21 136:14
problematic 67:17
problems 16:13
procedural 130:12,15
  131:1
procedure 120:18
  121:5 129:13

proceed 184:11
proceeded 159:12
proceeding 154:2
proceedings 136:19
process 11:9 12:18
  13:18,20 80:18 85:4
  98:3 99:22 100:1,16
  102:1 106:17,19
  107:3 108:12 109:4
  109:10 110:1,3
  111:20 117:14 120:19
  120:20 121:22 122:18
  123:17 124:8 125:20
  126:12,14 127:19
  129:17 130:1,8
  133:21 151:1 160:9
  160:13 161:20 167:13
  168:7 171:5,16
  178:17 185:19
processed 164:13
processes 8:1 85:2
  103:15 167:22 168:18
processing 95:13 106:2
  106:5
produce 83:8 169:17
  188:4
producing 188:10
productive 142:19
professional 5:16
professors 175:4
program 2:8 171:17
progress 180:10
project 72:11 82:1,5
  85:7 95:19 109:17
  131:10 132:2 139:4
  153:13 184:2 186:10
projections 112:3
projects 5:21 97:4
  135:14,18 140:15
  141:12,21 142:3,6,7
  143:9 183:9 186:4,6
promise 59:7
promotions 172:20
properly 179:3
property 163:11 164:1
proportions 69:17,18
  69:19
proposal 137:6 140:19
proposals 5:17
propose 186:7
proposed 149:21
prosecute 172:5
prosecution 1:1 4:12
  5:1 14:2 77:2 104:22
  105:4 119:7 131:9
  168:12
prosecution's 166:18
prosecutor 58:19 76:5

76:11 134:12 166:22
prosecutorial 95:19
101:6,12 104:4
121:10 133:10 134:9
134:15 157:15
prosecutors 9:14 101:1
103:2 132:8 133:15
151:6
prosecutors' 131:18,21
132:4
prospective 128:6
protect 173:4
protection 100:17
protections 98:4 99:22
100:16 123:18 124:9
125:20
protest 173:9
prove 178:8
proven 143:1
provide 5:13 6:2 11:8
56:15 88:4 96:18
107:18 108:20 111:9
148:18 149:22 181:16
provided 10:5 20:18
75:3 134:1,8 141:3
176:18,21
provides 17:1 22:7
42:15,22 102:10
providing 8:8 10:20
105:7 118:20 131:7
provision 102:10
psychological 176:22
177:6 180:9,21
psychotherapist 149:7
public 1:4 4:4,11 6:2,8
11:9,11 62:18 136:13
136:17 154:16,20
155:6,7 174:7 175:10
182:15 186:16,20,22
188:10 189:11
publish 93:22 97:13
pull 16:6
pulling 166:9
punishment 105:20
164:14
punted 126:2
purely 128:19 129:3
purpose 30:18 65:9
149:1 178:12
purposeful 128:22
purposes 8:12 9:11
12:1 182:11
push 58:21
pushing 167:20
put 7:10,14 18:18 29:7
55:22 68:13 119:4
149:20 165:12 169:15
183:7,11 184:3

186:21 187:16,19
188:5
puts 174:12
putting 64:21 84:18
90:22 116:16 139:9
puzzling 36:3

Q
qualified 101:16
qualitative 122:14
quality 134:7
quantitative 128:19
129:4 133:18
question 26:7 28:2 32:1
35:7 36:3 37:4 40:1
41:9 50:2 57:7,8,11
62:5 63:14 64:2,5,6
64:15,18 65:15 67:7,9
67:10 68:10 70:12
73:12 77:9 79:10,11
80:16,22 81:18 82:20
84:2,3,18 87:16
112:11,18 113:3,17
116:14 117:9 123:4
124:21 125:1 126:2
126:16 135:2 137:9
140:7 147:6 148:15
questioned 14:18
questionnaires 57:11
questions 22:5 27:6
47:8 54:6 55:14 61:20
66:9,10,11 68:16
78:20 91:22 111:21
114:12 126:14 130:3
134:21 135:1 141:13
161:13 170:6
quick 7:7 58:17 123:12
137:19 139:4,4
quickly 122:6
quiet 152:5
quite 40:8 43:3 75:22
113:12 121:19,20
138:19,20 185:10
quorum 7:10,11,15
quote-unquote 176:6

R
R 1:9
race 10:4 11:22 12:4
17:12 19:10,14 20:10
20:12,21 21:7,8,11,16
22:1,12,14 23:22 30:2
30:15,20 43:6 51:17
51:19 59:9 63:18,21
64:22 65:8,16 70:6
74:5 75:12 79:8 80:11
81:2 86:7,14 88:3,16
91:6

race/ethnicity 63:18
racial 22:17 23:4,9
39:17 44:14 50:20
59:21 60:6,9,12 61:4
61:12 63:5 66:4 70:8
75:21 86:3 91:5 110:7
110:9,12
raise 66:9 74:17
raised 72:7 154:3
raising 129:21
raking 169:11
ran 20:2
Randall 162:3
random 34:4 148:22
randomization 12:13
13:20 33:20 34:3,10
71:17,20 73:6 144:3
randomized 15:21
randomizer 15:13
randomly 144:8
range 63:10 108:1
rank 14:6
ranked 173:9
ranking 63:7
ranks 177:7 180:10
rapidly 157:7
rare 74:22
rarely 103:2
rate 26:16,20 31:7,13
31:14 32:17 35:21
60:10 61:11,13 67:3
77:14,21 104:15,22
105:4,8,10 107:8
123:19 124:1
rated 174:18
rates 31:9 82:7 95:10
104:4,7,8 110:22,22
179:11
rationale 100:11
re-emphasizing 87:13
re-victimizes 176:13
reach 84:5 126:13
167:15
reaching 58:1
read 31:3 94:2 117:6
readily 72:15 177:8
reading 33:11 46:1
115:13 149:15
reads 66:3
ready 141:11
real 69:9 117:15,20
realistically 71:3
reality 134:1
realize 60:18 99:8
realized 20:16 114:3
116:4,7,13
really 37:1 63:13 70:10
72:12 73:14 75:10

80:20 83:14 85:12
89:1 92:4 112:17
117:5,13,15 118:4,11
118:22 119:8 125:1
133:4 134:6 149:1
155:21 179:22,22
188:14
realtime 88:10
reason 15:4 30:3,11
33:6 35:13 115:19
138:7
reasonable 127:11
157:15,21 158:20
159:1
reasons 10:10 11:2
14:5 16:21 24:9 30:1
33:1,7 35:9,18,22
36:15,19,22 52:22
64:9 89:1,2 90:6,14
117:1,1 153:10 179:1
recall 78:15
receive 5:15,21 10:4
15:9 17:12 127:14
130:4
received 6:1 16:2 20:15
88:15 176:1
receives 96:22
receiving 161:1 176:7
recess 159:7
reciprocal 189:5
recognize 135:18
Recognizing 53:21
recommend 137:7,22
138:2 161:2 177:3
180:8 184:22
recommendation 73:15
85:14 86:4,5,11 87:3
87:7 90:21 138:18
144:2,5,12,17,20
145:3,12 146:2,6,8,12
147:7,11,12 148:8
149:21 150:3 154:10
recommendations
71:18 86:1,22 87:13
90:18 114:17 136:7
142:12 148:16 177:12
180:4
recommended 116:9
reconcile 156:17
record 7:11,14 86:6,13
132:19 135:10 137:3
142:10 143:2 145:17
153:4 154:1 155:2
159:5 183:6,8,15
185:5 186:21 187:16
189:14
recorded 6:19 10:6
85:17 167:5

records 9:20 136:14,18 136:20 137:2,4 140:13
recruited 162:12
recruitment 118:3
recruits 179:13
rectification 177:17
red 84:6
redress 176:10
reduced 79:9
refer 93:4
reference 50:14 77:10 133:20 134:9
referenced 50:6 87:10
referral 110:8,13 138:4 138:13,20
referred 85:7 104:9 107:6,9
referring 130:13
refers 86:2
refine 141:13,15
refined 30:13
reflect 23:5 47:13 138:3 155:18
reflected 7:12
reflective 90:7
refresh 37:18
refused 165:14,22
regard 103:20
regarding 80:3 91:3 147:6 180:16
Reggie 1:19
Regional 176:5
registration 157:17
rehab 59:4
rehabilitation 56:19 58:22
reinforce 118:1
reinforces 87:11
reinvent 130:21
reiterate 131:3
related 64:4 78:19 104:13,19 128:17 175:18 179:10 181:1
relates 124:22
relation 25:15 47:18
relationship 54:17 78:4 161:6
relationships 78:13,14 78:14 102:19
relatively 46:3 182:16
release 137:4
released 113:6 165:14
releasing 113:2
relevance 96:12
relevant 97:1
reliable 87:22 179:16
relied 16:2

relief 150:12
relieved 176:3
rely 16:6
remain 179:12
remained 65:10
remaining 15:13,14 179:2
remarkable 132:9
remember 57:2 102:16 105:1
remind 9:4 92:17 152:5
reminded 25:19 79:21 83:2
reminder 7:20
remiss 180:7
removal 146:5 178:22
remove 171:5 179:6
renew 87:6
repeatedly 62:16,18 66:3 157:8
report 8:21 9:1 11:19 17:15 42:15 44:9 54:19 55:5 60:18 80:5 86:3 87:8,14 88:13 105:2 129:16 138:10 143:16 160:11 165:15 169:20 171:18 185:11
reported 54:13,16 78:16 87:1 173:14 180:16
reporting 110:22 178:7 178:11
reports 128:19 174:19 185:12
represent 49:6 71:9
representation 23:15 30:16 31:2 38:21 39:9 40:21 43:5 45:3 47:9 47:14,19 49:2,9,17 50:2,16,17 51:1,15,18 52:6,9 60:1,4,11 61:4 65:4,5 72:6 83:11,22 109:21 110:2 134:3,7 134:18
representative 173:16
representatives 5:9 17:12 53:7,8
represented 25:15,21 26:16 51:6 59:12,14 82:4 110:13
represents 39:3,5
reprisals 175:2
reps 112:9 189:2
reputation 157:19
request 87:6 88:8,12,20 122:22 180:14 187:15
requesting 88:4
requests 6:2

require 36:4 110:18 144:18 160:21 175:16
required 87:17 93:22 96:16 98:16,18 100:9 101:14 107:18 108:6 113:14
requirement 111:12,13 111:15 112:20 114:3 116:1 123:1
requires 84:12 122:21
requiring 177:21
requisite 179:4
research 37:4 75:22 77:7 79:13,18 80:3,13 89:13 95:3,5,16 117:5 117:7 132:2 140:19 141:13,13 153:11 182:3
researcher-practition... 131:5
researchers 131:6
resource 98:5 105:22 106:20 132:22
resources 103:11 106:3 129:7
respect 34:21 63:18,21 64:1 65:15 94:5 136:6 139:12
respected 128:14
respectfully 178:19 179:8
respective 179:5
respond 72:1
responded 127:15
responding 117:20
response 96:6 128:2 178:16 184:18 189:10
responsive 189:4
restoration 172:21
restorative 153:5,17,22
restore 161:21
restrain 166:5
restricted 128:18 129:2 171:18
restrictions 136:18 171:11
result 105:3,18 107:2 160:2
resulted 62:1
resulting 105:11 134:15
results 5:13 9:4 11:8,14 12:17 13:21 16:9 17:22 19:6,7 39:11 67:13 70:7 76:13,13 77:20 80:20 115:5
resumed 135:10 155:2 185:5
retain 147:14

retaining 144:6
retired 162:4 169:12 174:18 175:3
retirement 159:4
returns 187:12
reversal 123:20
reversals 101:6
reverse 134:12 168:1 168:17
reversed 162:2
review 8:7 9:1 16:4 78:6 82:1,5 96:17 105:2 124:12,15,16 137:8 144:4 150:12,19 151:3 158:15 168:1 184:4
reviewed 9:18 10:13 11:20 12:2 16:8,17,19 17:2,4 87:19 136:4,8 162:2 165:13 169:19
reviewing 9:20 13:13 53:19 118:7 137:9
reviews 99:15 170:18
rewarded 158:4
RFI 91:1
rhetorical 161:13
ride-sharing 170:18,20
right 14:8 15:1 28:13,22 29:12 45:1,9,19 46:9 49:9 51:7 59:6 61:6 67:11 68:1 79:14 82:14,17 93:2 99:20 100:1 114:7,10 126:9 135:6 138:20 139:14 140:2 141:19 143:6 148:10 152:11 153:15 153:19 160:21 161:12 167:18 168:5 169:21 181:9 185:3
rights 100:18 102:2,7,8 150:10,14 165:17 167:12 172:1 174:6
Rights' 133:11
rip 90:3
risk 33:17
road 33:18 62:8,13 68:11 73:2 82:10 153:7,20
robust 12:12 99:2 124:15 139:10
role 115:1 125:21 188:17
room 48:4 113:7,9 114:16 126:17 132:11 136:11 154:15 159:8 159:18 187:14
rooms 160:2
root 175:17

round 188:21
row 34:7
rows 33:11
Rozell 2:7
rule 149:6,10,16,22
rules 132:18,20 138:5
  138:11 139:1 140:8
ruling 55:16 79:4
rulings 58:10 140:5
run 16:13 131:10
  157:21

_____
S

sacred 179:22
safe 181:3
safety 127:13
sample 38:3 41:15 49:7
sanctions 133:14
SAPRO 96:6
SARC 53:7,8
sat 90:4 168:9
satisfaction 103:10,15
  125:3,11 126:1,7,21
  129:16
satisfied 125:5,7,8
Saunders 2:5 143:18
  146:10,15,17,20
  147:2,5,19 148:3,5,7
  148:11,13 152:12,17
  154:5
saw 49:5,15 57:13
  59:17 64:9 89:8 94:20
  105:5 132:3 161:9
  173:6
saying 92:22 113:21
  117:12 155:20
says 69:1 74:22 75:10
  115:8,13 169:13
scale 89:15
scales 130:17 131:1
  161:21 168:2,18
scared 175:2
scenario 160:7
school 25:19 169:22
school/college 167:16
Schwenk 1:17 28:9,14
  28:22 29:4 36:6,10,18
  37:8,13 50:1,12 74:19
  90:17 91:16,19,21
  143:7,19 152:3,4
Science 89:21
scientist 130:2
scope 37:7
Scout 164:21
scrambling 82:14
screaming 165:9
screams 178:4
screen 35:9

se 151:3
searchable 16:17
seasoned 166:18
SECDEF 93:22
second 4:4 10:17 14:15
  44:6 64:3 98:22
  101:19 108:8 137:18
  162:17
Secondly 11:14 16:18
Secretary 4:19,22 86:5
  86:12
Section 111:12 116:1
sector 55:17 95:4,7
  96:9 107:1 126:4
security 175:20 181:6
see 12:9,14 13:4 18:22
  21:8 22:20 24:1,7,10
  26:11,15 30:2,3,6
  31:9 32:11 33:7,10
  34:7,11 35:13,18
  38:16 39:1 40:7,7,20
  43:14 44:20 47:5,10
  47:17 49:8,22,22
  50:19,22 51:2,7,14,21
  52:6 56:16 59:16,19
  60:8 61:3,6 64:6
  66:17,19 79:9 83:8
  96:8 97:7,9,13 98:2
  100:5,18 102:3
  103:21 104:5 109:12
  110:19 117:13 118:21
  119:9 129:5 133:1
  151:21 153:17
seeing 83:10
seeks 150:12
seen 79:21 118:4,6
  162:6,7,14 164:5,6,11
  164:16
selected 13:2 16:10
  27:8,10,11 79:2 144:8
  145:2
selecting 12:5,13
selection 5:14 7:3 8:9
  11:16 12:18 66:5
  71:22 85:4 145:21
  148:22 180:6 183:10
  185:15
send 6:17 126:13
senior 2:7,7,8 166:21
  174:11
sense 79:22 121:1
sentence 57:20 58:1,13
  157:13
sentences 95:11
sentencing 58:8 109:17
separate 20:9 21:6
  180:19
separately 62:20 91:7

separating 81:2
separation 20:19
  162:11 164:14
serious 177:18
serve 5:8 12:8 181:9
served 102:17,18 162:4
  162:10
service 5:8 10:14,18
  17:12 22:10,16,17
  23:1,3,9,11 24:4,5,14
  24:17,18,21 26:12
  30:5,16 31:12,17
  34:21 38:15,18 39:6
  39:13,16,16,21,22
  42:18,20 43:5,9,11,16
  43:20 44:3,22 45:22
  47:1 49:10,20 52:3
  61:12,14 65:18,18
  66:14 81:9 96:16
  105:13 111:9 112:9
  128:4 149:19 161:19
  162:14 173:6 174:12
  174:22 180:9 189:2
service's 132:20
services 5:7,19 8:17,20
  10:3,14,21 12:11
  48:11 53:10 66:17,20
  73:16 87:17,20 88:4,7
  88:15,17 90:9 91:1,11
  93:15 96:7 98:20 99:3
  99:4 101:8 103:14
  106:15 107:18 112:3
  112:5,13 113:12
  114:17 115:21 116:10
  126:3 128:12 132:15
  137:1,3 138:4,11,22
  173:17
session 154:16,17,22
  155:7
sessions 141:2
set 47:6 90:6 92:17
  94:21 96:16
setting 57:17,18 89:12
seven 97:17,18 98:3
  160:5
severely 176:11
severity 76:21
sex 86:7 140:6 156:12
  157:16 164:10,18
  170:13 173:6,18
  174:9,15,20
sexual 1:1 4:13 5:2,3
  6:6 10:13 53:2,4
  54:12,22 55:19 57:5
  69:1 82:4 85:15,15
  96:5 104:10,12,20
  158:10 162:22 163:2
  163:3 164:2 169:18

  170:10 175:18 179:10
  181:1
sexually 54:1 156:9
shadow 164:18
shape 141:3
share 156:3 167:17
  173:3 186:18
shared 79:19 159:8
  170:8
SHARP 89:10
shied 138:17
shift 47:5
short 154:19
short-term 78:14
shorter 140:16
shortly 159:3
show 23:6,15 28:17
  33:1 41:16 76:8,8
  111:17 125:16 132:5
  171:4 177:16
showing 44:16 76:1
  78:21
shown 182:20
shows 9:10 26:18 30:1
  31:7 32:9 38:10,20
  39:7,14 42:9,13 43:8
  43:19 49:9,11,15
  50:16 51:4 60:10
  143:2
side 45:19 46:9 76:16
  121:5 129:13,19
  162:6,7
sign 172:8
significant 33:19 34:16
  54:1 75:4 84:8
significantly 35:3
silly 113:16
similar 30:2,10 36:1
  51:17 52:2 59:17 61:5
  63:22 86:11 184:1
similarly 33:8 35:19
  108:1 112:6
simply 62:11 70:21
  165:15
Simultaneous 26:1
  27:1 28:21 31:19
  47:21 60:15 114:9
  127:2
single 80:7
sir 25:17 36:17 37:12
  147:19 184:15
sisters 181:10
sit 138:19 145:8
site 7:21 186:9,11
sitting 93:12
situated 112:6
situation 58:11 77:22
  78:10 160:3

111:6 155:17 180:2
subordinate 180:6
subpoena 151:15
subpoenaed 167:4
subpoint 122:3,3
substantial 61:9 85:8
128:15 185:8
substantiated 103:20
substantive 130:16
142:16
success 99:1 104:4
successful 143:1
successfully 124:17
sufficiency 124:15,15
124:19
sufficiently 179:20
suggest 37:10 77:17
115:11 183:2
suggesting 32:15 37:8
suggestion 183:14
suggestions 37:11
186:5
suggests 66:8
suicide 165:5 179:11
Sullivan 1:9 2:2 4:3,7
57:14 189:11
sum 26:3
summarize 60:21
summary 61:17 65:6
super 189:4
support 71:12 93:17
114:18 116:10
supports 169:8 188:13
suppose 88:14
supposed 88:7 178:13
sure 40:21 48:15 56:14
57:10 74:6 82:14
88:17 92:21 114:15
139:21 143:2 153:1
159:22 182:18
Surely 160:10
surplus 15:12,20
surprise 160:22
surrounding 149:9
150:6
surveys 79:14
survive 164:11
suspect 77:13 177:9
sustain 138:7
sustained 176:22
Suzanne 1:15 120:11
123:18 129:10
Suzanne's 130:11
SVC 102:10 122:2,8
123:2
SVCs 102:17 103:6
126:4
sweater 36:8

Sweezy 181:15
switch 44:1
switched 156:15
system 12:13 15:1 73:4
75:20 80:6,9,11 84:11
105:6 108:17 111:19
116:3 130:21 158:1
158:15 161:22 171:2
173:19 176:11,16,17
177:15
system's 14:17
systems 21:6 95:8

T

Tab 93:4 100:3
table 17:1
tables 83:17
tactics 163:3
Tagert 2:6 7:2 8:6 36:8
36:17,19 37:10 48:12
48:18 49:1 52:19 53:8
54:9 55:1 56:14 57:8
61:19 66:13 72:10
76:22 78:3 80:2 85:7
87:16 88:14 89:21
185:16
take 11:22 12:4 18:17
32:2,10 74:17 79:8
122:9 141:12 143:21
150:7 151:4 152:18
153:12 154:10,19
156:13 157:19 161:10
173:2 177:13 182:2,6
183:2,14 184:19
188:12
take- 65:6
take-away 83:13
take-aways 60:22 63:15
65:14
take-way 64:1
taken 87:2
takes 42:6 106:10,12
talk 13:17 22:5 38:6
72:8 73:13 98:1
136:11 142:3 143:11
162:16 168:6 174:3,7
186:12
talked 64:19 74:11
85:22 96:2 120:8
131:11 165:4 168:10
168:13 183:21
talking 12:21 13:8
17:21 37:17 65:5
69:16 70:5 71:16
73:14 80:8 83:12
125:4 128:20 146:5
tangible 158:7
tapes 36:13 56:11

85:11 88:22
tapped 53:16 133:1
target 108:4 157:7
targeted 101:9
tasked 94:21
taught 120:18 121:4
teach 158:3
team 8:7 85:9
tease 70:4,10
technical 6:15
teleconference 2:12
6:17
tell 48:13 52:21 66:6
68:16,18 75:9 99:11
99:12 143:16 160:1
173:16
telling 101:17 134:7
145:1
ten 76:17 109:11
154:10
tends 121:11
term 4:21 53:5 124:12
140:16,16
terms 18:7 19:2 23:13
24:8 29:8 30:10 38:4
39:8 49:5 57:21 58:1
60:11 61:3 64:5 65:6
65:7 68:3 69:10 72:2
82:22 104:5 123:14
124:13 127:20 133:3
133:16
Terri 2:5 143:16
terrific 142:21
Terry 116:5
testified 12:3 166:3
testify 118:18 172:3
testimony 74:21 159:7
173:3,4
testing 180:9
text 126:14
thank 4:7 5:10 6:22 7:4
7:18 8:3,4 26:6 29:4
45:11 49:3 55:9 58:16
59:6 63:8 65:11 73:22
74:1,19 82:21 90:16
91:19 92:1,9 93:1,3
114:7 116:15,15
120:7,9,14 122:17
123:10 129:9 132:1
133:18,19 135:3,4,7
140:1,2 142:14,15
143:18 146:10 153:2
154:4,5 161:15
168:19,20 169:1
175:7,8,12 181:20
182:9,12 183:16
184:7,14,16 185:2,3
185:16 186:16 187:19

187:21 188:8,16
thanks 55:3 92:6
125:17 128:16 142:17
184:12 188:6,20
189:2
theft 68:9
therapist 149:17
Theresa 2:4
thin 159:8
thing 73:12 81:1 82:22
119:17 139:8 152:20
157:18 167:8 168:11
things 30:12 41:2 62:15
62:17 69:15 70:19
80:21 91:12,17 95:13
101:5 102:6 114:20
116:11 119:5 123:16
125:18 127:17,20,21
128:11,13 133:6
143:1,11 152:7
153:18 159:15 174:14
178:12,15 180:20
think 42:8 48:14 61:14
61:19 62:15 64:16
66:7,16 67:9 68:15
69:15 70:15,16 73:3
74:10,12 75:16 76:12
77:5,21 79:12,20 80:4
80:20 81:13,17 83:6
83:20 84:1,22 85:1
87:8,10,16,22 88:1
89:17 90:5,12 92:18
97:1 100:20 103:14
113:3,7 114:2,15
115:1,3,16,20 118:10
120:13,21 121:3,5,19
122:11,15 123:7,8,15
123:18,22 124:20
125:7,18,21 126:17
127:10 129:20 130:1
130:13,21 131:14,17
132:9,15,21 134:22
135:12 136:11 137:20
139:13 141:19 142:8
146:3 147:17 148:14
150:6,19 151:19
152:9,15,20 153:15
153:20 156:14 188:20
thinking 57:22 67:20,21
69:22 72:12 83:6
112:18 124:18
thinks 121:20
third 27:12 29:10
103:16
thorough 160:15
thought 48:7 71:3
74:20 90:17 105:12
122:4

varying 36:22
vast 19:16
venue 167:2
veracity 178:9
verdicts 169:18
version 114:18 157:4
  157:11 160:17
versions 157:2
versus 26:20 43:12
  46:17 52:5,20 54:8
  62:10 63:6 68:9 77:2
  83:11 130:16 138:10
  151:15
vertical 45:6
veteran 167:19
Veterans 173:15
vetted 179:3
vetting 180:3 183:10
victim 53:6 54:12,22
  55:20 70:21 73:17
  78:5 88:17,18 94:18
  98:4 101:20 102:21
  103:9,15 108:19
  109:13,21 119:9,13
  120:4,6 121:22 122:6
  122:16,19,21 125:2
  125:11 126:1,7,20
  127:14 128:18 132:16
  132:21 133:2,7,17
  150:12 151:13,16
  158:9 159:14 166:13
  180:1,22
victim's 86:16 122:20
  127:12,16
victimization 176:17
victimized 161:19
victimizes 176:12
victims 10:10,12 53:2,3
  77:11 86:8 101:22
  102:8,11,17 103:3,5
  106:8 122:22 126:13
  130:20 133:11 181:18
victims' 88:3 102:6,13
  102:14 150:10,14
  174:6
video 2:12 4:16 6:12,16
  165:13
video-recording 165:11
view 115:16 123:14
violate 133:15
violated 172:1
violating 174:17
violation 160:20 187:17
violations 133:11
violence 162:19
Virginia 1:10
virtual 7:17
virtually 120:13

visiting 168:9
visits 7:21 186:9,12
visual 42:22 44:16
visually 41:17
voice 175:14
voir 13:18 57:13 85:16
voluntarily 151:16
volunteered 53:11
  89:10
vote 141:20 142:2,11
  144:2 145:14 146:1,2
  146:7,8,12,13 147:11
  147:20 148:2,9
  152:18 158:21
voted 144:12,20 145:11
  146:11 147:10,21
  148:7
votes 7:12
voting 148:5
Vuono 2:6 116:5 135:19
  141:18 142:15

_____

W

wail 159:12
wait 27:8,20 29:20
  32:17 153:16 154:17
  162:1
waiting 161:11
walk 17:20
wall 159:8
Walton 1:19 67:1 77:9
  133:20 146:11,14,16
  147:4,17
want 7:10 9:4 12:17
  13:17 15:5 17:20
  40:20,22 60:17 68:19
  68:21 69:2 70:20 72:8
  72:12,18 85:5 87:14
  90:6 92:9,17 93:12
  94:9 97:8,11,20 98:9
  98:11 99:7,9 104:9,21
  105:9 108:21 109:1
  110:16 111:11 114:19
  118:12 120:14 122:4
  125:12 128:15 135:18
  137:13,17 141:4,6
  142:17 143:2,21
  145:10 148:8,9 149:5
  150:21 151:4 166:12
  169:8 175:12 180:5
  183:22 186:16,19,21
  187:19,21 188:8,16
wanted 37:2,7 43:4
  46:14 60:14 69:4 73:1
  73:13 74:17 85:19
  87:4 90:5 102:20
  103:4,9 114:21
  116:18 119:3 128:8

129:12 131:3 144:11
  144:11 145:12 151:19
  152:10 156:13 169:4
wanting 69:14
wants 61:18 81:19
  137:11 142:3 151:4
  166:14
war 174:2
warranting 111:3
Warren 178:22
wasn't 36:11 37:4 55:5
  128:8
waved 166:22
way 27:13 34:16 45:20
  51:9 69:12 70:3 71:19
  81:4,10 89:4 100:8
  116:18,20 124:7
  129:22 141:5,6
  143:13 148:2 160:6
  160:15 165:2 168:15
  168:16 178:5 185:22
ways 79:8 130:3 170:1
we'll 7:22 8:2 29:16
  41:8 46:12 91:20
  117:6 141:14 142:1
  153:21 154:14,19,19
  154:20,21 183:13,14
  184:10 186:14 187:12
we're 7:20 12:21 13:8
  19:12 31:20 35:4,15
  35:17 37:2,16 38:3
  40:16 46:16 59:7
  70:16 72:5,20 73:6
  74:3,4,8 80:8 83:6,9
  83:11,16 88:10 92:13
  92:18 117:14 119:14
  135:6,13 141:20
  143:14 148:21 150:22
  154:8,9 155:11,21
  175:1 184:19 186:13
  186:21,22 188:1
we've 17:4,5 19:5 21:12
  59:10 62:16,18 65:16
  113:22 118:16 136:8
  141:2 143:17 148:14
  148:21 176:14 183:21
  185:8 186:2,5
wear 167:18
website 6:21
WEDNESDAY 1:6
week 134:4
weigh 97:4 114:19
  120:5
weighing 120:3
welcome 4:9 5:10
  111:21 115:16,17
  155:7 189:5
well- 158:9

well-being 180:12
well-presented 185:18
Wells 2:10 8:5 17:19
  25:18,22 26:5,7 27:4
  27:15,22 28:3,5,13,16
  29:3,13,16,19,22
  31:21 32:8,19,22 34:1
  35:6 37:16 40:4 41:6
  43:18 44:7,17,19
  45:10,12,18 46:6,12
  46:16 48:1 49:4 50:13
  51:13 59:7 60:17 62:5
  63:1 64:14 67:6 70:12
  72:1 75:16 77:5 80:15
  81:22 82:9 83:20
  84:17,20 85:1 90:7
  92:6 98:14 176:2,19
  180:17 185:15
Wells' 176:8 178:22
went 25:19 58:21
  135:10 155:2 185:5
  189:14
weren't 89:12 171:22
  182:18
wheel 130:22
white 21:18 22:16 23:2
  23:8 24:3,13 31:4,5
  31:13,16 32:5,13,15
  32:16 34:19 35:4,10
  38:12,15,18 39:4,12
  39:15,20 42:18,19
  43:5,20,22 44:11 45:3
  45:22 46:20 47:1,3
  51:22 60:4 61:14
  64:10 68:8 75:4,6
wife 156:9
wild 157:10
William 1:14 2:10
willing 156:16 174:3
  175:5 177:15
willingness 79:7
Wilson 1:10
win 123:21 174:9
wish 146:12 147:11
  162:15
withhold 137:1
witness 119:10 122:6
  133:7 166:7 167:3
witnesses 166:3
wives 54:14
woman 29:11 84:10
women 23:16 25:8,11
  26:9,15 27:10 30:7
  31:10 32:2,5,15 35:10
  47:9,14,17 48:7,14,17
  49:12,17,20,21 50:4,6
  50:16 51:3,12,15
  52:10,20 53:1 54:7,17

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: 32nd Public Meeting

Before: DAC-IPAD

Date: 12-06-23

Place: Arlington, Virginia

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate complete record of the
proceedings.

_____
Court Reporter