

## UNITED STATES DEPARTMENT OF DEFENSE

+ + + + +

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

+ + + + +

## 13TH PUBLIC MEETING

+ + + + +

FRIDAY  
AUGUST 23, 2019

+ + + + +

The Committee met at DoubleTree By  
Hilton Crystal City, 300 Army Navy Drive,  
Arlington, Virginia, at 9:00 a.m., Ms. Martha  
Bashford, Chair, presiding.

## PRESENT:

Ms. Martha S. Bashford, Chair  
Hon. Leo I. Brisbois  
Ms. Kathleen Cannon  
Ms. Meg Garvin  
Hon. Paul W. Grimm\*  
Mr. A.J. Kramer  
Ms. Jennifer Gentile Long  
Sgt. James "Jim" Markey (Ret.)  
Dr. Jenifer Markowitz  
CMSAF Rodney J. McKinley, USAF (Ret.)  
BGen James R. Schwenk, USMC (Ret.)  
Dr. Cassia C. Spohn  
Ms. Meghan A. Tokash

**STAFF:**

Col. Steven Weir, USA, Staff Director  
Ms. Julie Carson, Deputy Staff Director  
Ms. Theresa Gallagher, Attorney-Advisor  
Ms. Nalini Gupta, Attorney-Advisor  
Ms. Amanda Hagy, Senior Paralegal  
Ms. Patricia Ham, Attorney-Advisor  
Mr. Glen Hines, Attorney-Advisor  
Ms. Marguerite McKinney, Analyst  
Mr. Chuck Mason, Attorney-Advisory  
Ms. Meghan Peters, Attorney-Advisor  
Ms. Stacy Powell, Attorney-Advisor  
Ms. Stayce Rozell, Senior Paralegal  
Ms. Terri Saunders, Attorney-Advisor  
Ms. Kate Tagert, Attorney-Advisor  
Mr. Dale Trexler, Chief of Staff  
Dr. William "Bill" Wells, Criminologist  
Mr. David Gruber, Alternate Designated Federal  
Officer (ADFO)

**ALSO PRESENT:**

Lieutenant Colonel Adam Kazin, U.S. Army, Policy  
Branch Chief, Criminal Law Division, Office  
of the Judge Advocate General  
Lieutenant James Kraemer, U.S. Navy, Head of the  
Sexual Assault Prevention and Response  
Policy Branch, Criminal Law Division, Office  
of the Judge Advocate General  
Major Paul Ervasti, U.S. Marine Corps, Judge  
Advocate, Military Justice Policy and  
Legislation Officer, Military Justice  
Branch, Judge Advocate Division  
Lieutenant Colonel Jane M. Male, U.S. Air Force,  
Deputy of the Military Justice Division, Air  
Force Legal Operations Agency  
Lieutenant Adam Miller, U.S. Coast Guard, Legal  
Intern, Office of Military Justice  
Colonel Patrick Pflaum, U.S. Army, Chief,  
Criminal Law Division

Captain Robert P. Monahan, Jr., U.S. Navy,  
Deputy Assistant Judge Advocate General  
(Criminal Law) and Director, Office of the  
Judge Advocate General's Criminal Law Policy  
Division

Lieutenant Colonel Adam M. King, U.S. Marine  
Corps, Military Justice Branch Head, U.S.  
Marine Corps Judge Advocate Division

Colonel Julie Pitvorec, U.S. Air Force, Chief,  
U.S. Air Force Government Trial and  
Appellate Counsel Division

Captain Vasilios Tasikas, U.S. Coast Guard,  
Chief, Office of Military Justice

Colonel Lance Hamilton, U.S. Army, Program  
Manager, Special Victims' Counsel Program

Captain Lisa B. Sullivan, U.S. Navy, Chief of  
Staff, Victims' Legal Counsel Program

Lieutenant Colonel William J. Schrantz, U.S.  
Marine Corps, Officer-in-Charge, Victims'  
Legal Counsel Organization, Judge Advocate  
Division, HQMC

Colonel Jennifer Clay, U.S. Air Force, Chief,  
Special Victims' Counsel Division

Ms. Christa A. Specht, U.S. Coast Guard, Chief,  
Office of Member Advocacy Division

Colonel Roseanne Bennett, U.S. Army, Chief,  
Trial Defense Service

Commander Stuart T. Kirkby, U.S. Navy, Director,  
Defense Counsel Assistance Program

Colonel Valerie Danyluk, U.S. Marine Corps,  
Chief Defense Counsel

Colonel Christopher Morgan, U.S. Air Force,  
Chief, Trial Defense Division, Air Force  
Legal Operations, Joint Base Andrews

Commander Shanell King, U.S. Coast Guard, Chief  
of Defense Services

Ms. Janet K. Mansfield, Chief, Programs Branch,  
Criminal Law Division, Office of the Judge  
Advocate General for the U.S. Army

\*Present by telephone

## CONTENTS

	Page
Welcome and Introductions. . . . .	6
Staff Director's Opening Remarks . . . . .	.10
DAC-IPAD Data Working Group Presentation of Conviction and Acquittal Rates and Overview of the Draft Department of Defense Report on Allegations of Collateral Misconduct Against Individuals Identified as the Victim of Sexual Assault in the Case Files of a Military Criminal Investigative Organization . . . . .	.15
Question and Answer Session. . . . .	.19
Panel 1: Perspectives of Services'. . . . . Military Justice Division Chiefs Regarding Conviction and Acquittal Rates, the Case Adjudication Process, and Victim Declination in the Military Justice Process	.29
Panel 2: Perspectives of Services'. . . . . Special Victims' Counsel/Victims' Legal Counsel Program Managers Regarding Conviction and Acquittal Rates, the Case Adjudication Process, and Victim Declination in the Military Justice Process	.65
Panel 3: Perspectives of Services'. . . . . Trial Defense Service Organization Chiefs Regarding Conviction and Acquittal Rates, the Case Adjudication Process, and Victim Declination in the Military Justice Process	241
Case Review Working Group Status Update. . . . .	328

TABLE OF CONTENTS (cont.)

Page

Data Working Group Presentation of 2018. . . . . 331  
Case Adjudication Data Report Plan

Committee Deliberations on: Department. . . . .360

of Defense Report on Allegations

of Collateral Misconduct Against

Individuals Identified as the

Victim of Sexual Assault in the Case

Files of a Military Criminal

Investigative Organization; Presenter

Testimony; Services' Written Responses

to DAC-IPAD Questions Regarding

Conviction and Acquittal Rates, the

Case Adjudication Process, and Victim

Declination; DAC-IPAD Future Planning

Public Comment . . . . . 384

Public Meeting Adjourned . . . . . 384

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

2 9:02 a.m.

3 CHAIR BASHFORD: Good morning. I  
4 would like to welcome the Members and everyone in  
5 attendance today at the 13th Public Meeting of  
6 the Defense Advisory Committee on Investigation,  
7 Prosecution, and Defense of Sexual Assault in the  
8 Armed Forces, the DAC-IPAD.

9 Of the 15 Committee Members, 11  
10 Members are present this morning and a twelfth  
11 Member, Judge Paul Grimm, will be joining us by  
12 telephone at ten o'clock this morning.

13 Two Members were not able to attend  
14 today, Major General Marcia Anderson, and Judge  
15 Reggie Walton.

16 The DAC-IPAD was created by the  
17 Secretary of Defense in 2016, in accordance with  
18 the National Defense Authorization Act for Fiscal  
19 Year 2015, as amended. Our mandate is to advise  
20 the Secretary of Defense on the investigation,  
21 prosecution, and defense of allegations of sexual  
22 assault and other sexual misconduct involving

1 Members of the Armed Forces.

2 Please note that today's meeting is  
3 being transcribed. A complete written transcript  
4 will be posted on the DAC-IPAD website.

5 Today's meeting will begin with the  
6 DAC-IPAD's Data Working Group presenting the  
7 Fiscal Year 2018 conviction and acquittal rates  
8 for sexual assault in the military based on its  
9 collection of case documents from all military  
10 sexual assault cases closed during the Fiscal  
11 Year.

12 Next, the Staff Director will provide  
13 an overview of the Draft Department of Defense  
14 Report on Allegations of Collateral Misconduct  
15 Against Individuals Identified as the Victim of  
16 Sexual Assault. This draft report was submitted  
17 to the DAC-IPAD for its input by the DoD General  
18 Counsel in fulfillment of Section 547 of the  
19 Fiscal National Defense Authorization Act for  
20 Fiscal Year 2019.

21 Following the overview of the report,  
22 Service representatives involved in the report

1 drafting and data collection will appear before  
2 the committee to answer questions about the data  
3 and the report methodology.

4           Following the collateral misconduct  
5 discussion, the committee will hear from three  
6 additional Panels: the Services Military Justice  
7 Division Chiefs, the Services Special Victims'  
8 Counsel Program Managers, and the Services Trial  
9 Defense Service Organization Chiefs. These  
10 panelists will each respond to questions from  
11 committee Members regarding their organization's  
12 written responses to questions the DAC-IPAD  
13 submitted in May on the topics of sexual assault  
14 conviction and acquittal rates, the case  
15 adjudication process, and the victim declination  
16 to participate in the Military Justice process.  
17 And I want to thank the people who responded  
18 because those were very, very substantive  
19 responses.

20           Following these Panel discussions, the  
21 committee will receive a status update from its  
22 Case Review Working Group and a presentation by



1 its Data Working Group regarding the Fiscal Year  
2 2018 Case Adjudication Data Report Plan.

3 For the final session of the meeting,  
4 the committee will deliberate on the DoD  
5 Collateral Misconduct Report and the Services'  
6 responses to its written questions.

7 Each public meeting of the DAC-IPAD  
8 includes a period of time for public comment. We  
9 have received no request for public comment for  
10 today's meeting.

11 During the meeting, if a member of the  
12 audience would like to make a public comment on  
13 an issue before the committee report, please  
14 direct your request to the DAC-IPAD Staff  
15 Director, Colonel Steven Weir. All public  
16 comments will be heard at the end of the meeting  
17 and at the discretion of the Chair.

18 Written public comments may be  
19 submitted at any time for committee  
20 consideration.

21 Before we do the Data Review, though,  
22 I want to thank everybody for being here today

1 and I think we'll start off with Colonel Weir.  
2 We're ready for your remarks.

3 COL. WEIR: Okay, thank you, ma'am.

4 As the Chair mentioned, this  
5 Collateral Misconduct Study was a result of the  
6 National Defense Authorization Act, Public Law  
7 115-232. And in that legislation, it set out the  
8 Secretary of Defense, acting through the DAC-  
9 IPAD, shall submit a report to the Congressional  
10 Defense Committees that includes the following  
11 information. And I am reading now from the  
12 legislation.

13 There are three requirements that this  
14 legislation put out. Number one, the number of  
15 instances in which a covered individual was  
16 accused of misconduct or crimes considered  
17 collateral to the investigation of a sexual  
18 assault committed against the individual.

19 So it's important to understand what  
20 a covered individual is. It's defined in this  
21 section. It means an individual who is  
22 identified as a victim of a sexual assault in the

1 case files of a military criminal investigative  
2 organization.

3 Number two, the number of instances in  
4 which an adverse action was taken against a  
5 covered individual who was accused of collateral  
6 misconduct or crimes as described in paragraph 1.

7 And number three, the third piece of  
8 information that was required was the percentage  
9 of investigations of sexual assaults that  
10 involved an accusation or adverse action against  
11 a covered individual as described in paragraphs 1  
12 and 2.

13 The Services were tasked with  
14 gathering the requested information and that  
15 information, in a draft report, was forwarded to  
16 the DAC-IPAD in a letter from DoD General  
17 Counsel, Mr. Paul Ney, on June 11, 2019. Mr. Ney  
18 provided the draft report to give the DAC-IPAD an  
19 opportunity to offer any additional information  
20 or analysis and provide that feedback to the  
21 Secretary of Defense.

22 Mr. Ney has requested that the DAC-

1 IPAD reply by September 15th. The report is due  
2 to Congress on September 30th.

3 The DAC-IPAD Staff reviewed the draft  
4 reports submitted by each of the Services, to  
5 include the Coast Guard.

6 The Staff requested a meeting with the  
7 Service representatives and the individuals who  
8 were responsible for compiling the information in  
9 the draft reports. This meeting was held on July  
10 9th in the DAC-IPAD conference room. The Staff  
11 requested this meeting so we could better  
12 understand the methodology behind the gathering  
13 of the information because it was clear that  
14 there were differences in methodology and  
15 definitions between the Services.

16 For example, the Army definition of  
17 accused is different from the Navy and Marine  
18 Corps definition. The Navy and Marine Corps only  
19 counted collateral misconduct committed by the  
20 victim if an inquiry into the collateral  
21 misconduct was actually initiated. We were told  
22 that meant a report of investigation was

1 initiated.

2 The Army defined accused as a victim  
3 who may have potentially committed a UCMJ  
4 violation.

5 The Air Force had a slightly different  
6 definition but the Air Force did not require a  
7 separate investigation into the misconduct.

8 The Army had a very low number of  
9 sexual assault investigations for the time period  
10 April 1, 2017 to March 31, 2019 involving an Army  
11 victim. Based upon the experience with the case  
12 reviews and the courts-martial database, we knew  
13 that something was off. During the meeting we  
14 discovered that the Army only counted penetrative  
15 sexual assault investigations; whereas, the other  
16 Services counted penetrative and contact.

17 After the meeting, the Navy, Marine  
18 Corps, and Air Force sent us corrected numbers,  
19 which changed the percentages in their original  
20 draft report. As the Staff reviewed the  
21 percentages, it became apparent that the  
22 percentages perhaps did not accurately reflect

1 those victims who had been punished as a  
2 percentage of those victims who committed  
3 collateral misconduct. Instead, the Services  
4 reported the number of victims receiving adverse  
5 action out of the total number of sexual assault  
6 investigations involving Servicemember victims  
7 from their respective Services.

8 And so as a result of the report and  
9 the different methodologies, we thought it was  
10 important that the DAC-IPAD Committee have an  
11 opportunity to review the Services' report, which  
12 we've sent to you for your review, and also have  
13 an opportunity to deliberate and discuss, which  
14 is going to occur near the end of this public  
15 session, in order to compile a letter back to the  
16 Secretary of Defense.

17 And pending any of your questions,  
18 that's all I have right now.

19 CHAIR BASHFORD: Anybody have any  
20 questions for Colonel Weir?

21 Then we'll turn to Mr. Mason for your  
22 remarks.

1 MR. MASON: Good morning, ma'am.

2 You don't have to strap in this  
3 morning because I'm not as excited as I was  
4 yesterday. So, we are only going to cover just  
5 the conviction and acquittal rates. It's a  
6 couple of slides.

7 This afternoon, I cannot promise we  
8 will not be excited again because we are going to  
9 do all the data.

10 But for conviction and acquittal  
11 rates, the first chart that we have up is the  
12 outcomes for penetrative offenses that were  
13 referred to courts-martial. And I apologize,  
14 there's just the one slide that is only on the  
15 left-hand side of the room.

16 But if you look at the top line,  
17 that's the FY2018, when somebody had a referred  
18 penetrative offense, in 28.2 percent of the time,  
19 they were convicted for a penetrative offense.  
20 But the other extreme is 37.3 percent of the  
21 time, they were acquitted of all charges. So if  
22 they had multiple charges against them with the

1 most serious offense being the penetrative  
2 offense, in 37.3 percent of the time, they were  
3 acquitted of everything. And that is an increase  
4 over FY17 when the overall acquittal rate for a  
5 penetrative referred was almost 31 percent.

6 When you look at that same class of  
7 cases, where it's a penetrative referred to trial  
8 and then handled -- adjudicated by a Military  
9 judge, the conviction rate for the penetrative  
10 offense goes to 33.3 percent, which was  
11 previously 28.2 for overall. And the acquittal  
12 rate, though, dropped to 17 percent. So you have  
13 a much lower acquittal rate when you're going  
14 before a Military judge and it's a penetrative  
15 offense.

16 Where it gets interesting is when you  
17 now look at -- when it's adjudicated by a Panel  
18 of Members, the conviction rate is 23.2 percent,  
19 which is slightly lower than the overall rate,  
20 but the acquittal rate is 59.4 percent. So  
21 looking at this statistic, it might be safe to  
22 say that if you have a penetrative case that is



1 preferred, you may want to have it adjudicated in  
2 front of Members because your chances for  
3 acquittal are much higher than if you go before a  
4 Military judge.

5 And if you look, we have the numbers  
6 for '18, '17, '16, and '15, the acquittal rate  
7 bounces back and forth. So there isn't a true  
8 trend that we can identify that it's going in one  
9 direction or the other, only to say that in the  
10 most recent year, the acquittal rate with Members  
11 is much higher than it was in the previous year.

12 And now we want to look at those same  
13 metrics when we're talking about a contact  
14 offense that was referred to trial. And you have  
15 a much smaller universe of cases but when you are  
16 looking at convicted of a contact offense as the  
17 most serious offense, it's almost 14.5 percent  
18 and then the acquittal rate is 20.9 percent. And  
19 just going back to when we were talking about  
20 penetrative, it was 28.2 percent for a convicted  
21 of a penetrative and the acquittal was 37.3. So  
22 you had a higher acquittal rate, overall, for

1 penetrative than you are realizing with the  
2 contact offenses.

3 If you have a contact case that is  
4 adjudicated in front of a judge, you are at 14,  
5 almost 15 percent for a conviction for the  
6 contact and only 6.5 percent for an acquittal.  
7 But you have a much larger 78.7 percent that are  
8 convicted of some other offense.

9 So the contact sexual assault was the  
10 most serious offense they were charged with, one  
11 or multiples, and then there were other offenses,  
12 maybe an Article 92 or an Article 112a, something  
13 along those lines. They were found guilty of  
14 those, rather than -- more likely to be found  
15 guilty of those offenses than the sex assault or  
16 be completely acquitted.

17 And then when you look at it for  
18 Military Members, the overall acquittal rate,  
19 again, is much higher when you're dealing with  
20 Members. So the Military judge was realizing 6.4  
21 percent overall acquittal rate for the contact.  
22 In front of Members, it was 46.7 percent

1 acquittal.

2           Interestingly though, the convicted  
3 for a contact offense with Members was almost 17  
4 percent and it was 15 percent with a judge. So  
5 the Members are finding them guilty of a contact  
6 offense more than the judge is but the judge is  
7 finding them guilty of something and the Members  
8 are more likely to acquit.

9           So we wanted to just give you an  
10 overview of what's happening with penetrative and  
11 contact, so that you have that in the back of  
12 your mind as you are hearing your professionals  
13 today and you can ask their opinion of if they  
14 see this as a trend. Do they see this as a  
15 problem? Is this how the system should work?

16           We are not drawing any conclusions  
17 that it's right or wrong. We are just giving you  
18 what we actually know from our statistics in the  
19 system of what is happening at the trial level.

20           Thank you, ma'am.

21           CHAIR BASHFORD: Thank you, Mr. Mason.  
22 I have a couple of questions.

1           On the contact offenses, where the  
2 Military judge was convicting a substantial  
3 number of non-sex offenses, would those charges,  
4 standing alone, have had to go to a general  
5 courts-martial?

6           MR. MASON: Without knowing the  
7 specific other offenses, I can't tell you. In  
8 our database we -- in order for a case to be in  
9 our database, it has to be either a penetrative  
10 or contact sexual assault but we also enter every  
11 other offense on the charge sheet.

12           So we could go through our database  
13 and look and say contact was the most serious  
14 sexual assault but was there an attempted murder  
15 or was there something else that was a rather  
16 extreme offense, a serious offense that would  
17 rise to the level of a general courts-martial.  
18 We could tell you that. I just don't have it off  
19 the top of my head.

20           CHAIR BASHFORD: But things such as  
21 underage drinking or fraternization, would those  
22 have gone to general courts-martial?

1 MR. MASON: Not necessarily.

2 CHAIR BASHFORD: And can you just go  
3 back to your very first slide for a moment?

4 MR. MASON: Yes, ma'am.

5 CHAIR BASHFORD: So if you take the  
6 full acquittal rate for Fiscal Year '18 and  
7 convicted of non-sexual offense, I just can't  
8 really see the numbers that well. What's the  
9 total percentage then?

10 MR. MASON: Your total -- if you do  
11 convicted of sexual assault, any penetrative or  
12 contact sexual assault, you are going to be at 28  
13 percent -- 29 percent. And then your acquittal  
14 --

15 CHAIR BASHFORD: Acquittal or  
16 conviction?

17 MR. MASON: -- it's going to be 70.  
18 Acquittal is about 70 percent.

19 CHAIR BASHFORD: Okay, so acquittal of  
20 any sexual assault --

21 MR. MASON: Yes.

22 CHAIR BASHFORD: -- even if you're

1 convicted of something else, is about a 70  
2 percent rate?

3 MR. MASON: Yes.

4 CHAIR BASHFORD: Thank you.

5 MR. MASON: Yes, ma'am.

6 Are there any other questions for Mr.  
7 Mason?

8 MS. LONG: I have a question.

9 Mr. Mason, thank you. I'm just  
10 curious if there is any similarity in the  
11 civilian context for a judge or jury outcomes on  
12 cases that you know of?

13 MR. MASON: I am not aware of it. We  
14 have talked and when Kate is up speaking later,  
15 she can probably tell you about other studies  
16 that she's looked at with respect to the  
17 investigations and going forward.

18 MS. LONG: Right.

19 MR. MASON: We could probably look at  
20 the Sentencing Commission and see what metrics  
21 they're tracking to see if something would  
22 address it but I don't know of anything that is a

1 direct correlation to what we have.

2 MS. LONG: Okay. And just to be  
3 clear, these -- this data tells you what's  
4 happening but it doesn't tell you why anything is  
5 happening.

6 MR. MASON: It does not.

7 MS. LONG: So that would involve  
8 further analysis.

9 MR. MASON: Absolutely. And we can  
10 tell you these are the results and if you want to  
11 see the record of trial for these cases, we have  
12 much of the documents. We don't have the  
13 complete transcript but we can pull out what the  
14 Article 32 hearing report was. We can look at  
15 what the SJA advised. We can say that the  
16 convening authority decided to go forward or not.  
17 And we can tell you the way our database, because  
18 it's severely antiquated at this point, we aren't  
19 able to follow every specific charge on a  
20 straight line. It puts them into blocks and we  
21 have to then look within each block and try to  
22 marry up the lines to figure out the results for

1 each of those.

2 MS. LONG: Okay.

3 MR. MASON: But that doesn't mean we  
4 can't do it. It's just labor-intensive.

5 MS. LONG: Okay. And just one more  
6 question. Sorry, Chair Bashford.

7 I just -- I just want to make sure I  
8 understand this. So but when I'm looking at the  
9 Fiscal Year, though, I see the 37.3 percent of  
10 all but the other pieces, they are convicted of  
11 something.

12 MR. MASON: They are convicted of  
13 something. And we will have in the report, when  
14 this chart is published, it will say that the  
15 most serious offense referred to the courts-  
16 martial was a penetrative offense. However, if  
17 they were found not guilty of the penetrative but  
18 found guilty of a contact offense or assault and  
19 battery, then the assault and battery would be in  
20 that blue column, the 30.3. So we're saying yes,  
21 there was a conviction. It just wasn't for the  
22 penetrative.



1 MS. LONG: Okay, thank you.

2 MR. MASON: Yes, ma'am.

3 CHAIR BASHFORD: And Mr. Mason, I just  
4 want to make sure I understand. In order for the  
5 DAC-IPAD to do the best work at grabbing the  
6 data, you need a better database -- consistent.  
7 Is that correct?

8 MR. MASON: We actually need a  
9 legitimate database. We are using a SharePoint  
10 website. SharePoint was developed as a way to  
11 share documents. Because we are a document-based  
12 system and we have to have a legal document that  
13 we can look at and pull the information from, we  
14 take those and enter them into fields so that we  
15 can aggregate what we have. But then to get an  
16 outcome, the only way you can do it is do an  
17 Excel spreadsheet and sort by columns and count  
18 them.

19 So it's not a database. If you ask  
20 anybody that works in databases, this is not.  
21 It's a workaround. It has served remarkably well  
22 for its purposes. The JPP started this with

1 limited funds, limited people. I mentioned it to  
2 you yesterday, because of one person, we have one  
3 individual, Stayce, who has entered all 4,000  
4 cases into our database. So she's read every one  
5 of those documents and then categorizes it and  
6 enters it.

7 But the only way we can do this going  
8 forward is with a legitimate database that you're  
9 able to track an offense, each individual offense  
10 as a unit, and then combine those units into the  
11 case, and then look at the cases out. We are  
12 unable to do that at this point.

13 CHAIR BASHFORD: And that would better  
14 serve the Members of this committee. Is that  
15 correct?

16 MR. MASON: It would better serve the  
17 Members of this committee and it would allow you  
18 to present the information to the Services, as  
19 customers, as well as to Congress, who has asked  
20 you to investigate this. It would allow you to  
21 actually do the job that you've been asked to do.

22 CHAIR BASHFORD: Thank you.

1 MR. MASON: Yes, ma'am.

2 SGT. MARKEY: Chair Bashford?

3 CHAIR BASHFORD: Yes.

4 SGT. MARKEY: Thank you so much for  
5 the information. I call you our Inspector Gadget  
6 with all the data. And we love it. You have to  
7 understand your information and be able to manage  
8 it.

9 Are you aware -- in the different  
10 branches of the Military, are you aware of any  
11 information management system or database that is  
12 able to track the information and report data, as  
13 you have presented to us today?

14 MR. MASON: There are systems within  
15 each Service that attempt to track courts-martial  
16 that are happening from beginning to end.  
17 However, and it's something I'll get into with  
18 the data report, we asked them to provide the  
19 cases to us so that we could add them to our  
20 database. We do not have the -- when a charge  
21 sheet is created, we don't have access to it at  
22 that point. We have to wait for them to provide

1 it to us. And the problem that we have run into  
2 is the number of cases that the Services report  
3 to us as being a valid case for the purposes of  
4 our study, the actual responsive rate is nowhere  
5 near what they think it should be.

6 So as an example, the Services gave us  
7 774 cases in this past year that they believe are  
8 a penetrative or contact sexual assault that was  
9 resolved in that Fiscal Year. Only 574 of those  
10 were actual cases that we could track. So 75  
11 percent of what they told us were actually the  
12 cases. The other ones that were reported were  
13 maybe a child sex assault that we don't track, or  
14 maybe it was a different Fiscal Year that just  
15 happened to surface in their system, or they  
16 duplicated and they told us the same name two or  
17 three times.

18 Unfortunately, this year we ran into  
19 an issue where we have a multitude of cases that  
20 they were reported as being cases but they have  
21 no documentation to back it up in their system.  
22 So we have a name but we don't have an actual

1 case. So we don't know that it's actually a case  
2 and we can't count it.

3 So the short answer is no. There is  
4 not a system that I am aware of that can do what  
5 we are trying to do.

6 CHAIR BASHFORD: Thank you, Mr. Mason.  
7 I think we're ready for the Panel -- Service  
8 Panel on collateral misconduct. And that would  
9 be Lieutenant Colonel Kazin, Lieutenant Kraemer,  
10 Major Ervasti, Lieutenant Colonel Male, and  
11 Lieutenant Miller.

12 Good morning and welcome. Thank you  
13 for being here to share your perspectives on the  
14 collateral misconduct and the results of your  
15 studies. I'm going to start it off with one  
16 question and we'll see what the other Members  
17 have.

18 Do you all agree that you should be  
19 using the same definitions for the same terms as  
20 you're reporting data out? Because of some of  
21 your different definitions, the Army's figures  
22 showed a ten percent adverse action in collateral

1 misconduct and the Marine Corps showed a 92  
2 percent adverse action, which seems absurd, until  
3 you realize you're talking apples and oranges.

4 So my question for each of you, and I  
5 guess we'll start with you, Lieutenant Miller,  
6 and go across: Do you think we should be using  
7 -- you should all be using the same definitions?

8 LT MILLER: Yes, ma'am, but I think  
9 this is just a function of the first time  
10 conducting this type of study.

11 CHAIR BASHFORD: And I noticed that  
12 Congress didn't actually give you very many  
13 definitions, I think, other than covered  
14 individual.

15 Lieutenant Male?

16 LT. COL. MALE: Yes, ma'am, uniform  
17 definitions would be useful.

18 MAJ. ERVASTI: Yes, ma'am, we agree it  
19 would provide a much more useful measure across  
20 the Services if there were uniform definitions.  
21 And our responses, for the Marine Corps anyway,  
22 would have likely been much different had the

1 term suspected of collateral misconduct been used  
2 instead of accused of collateral misconduct.

3 LT KRAEMER: I agree, as well, ma'am.

4 LTC KAZIN: Yes, ma'am, we generally  
5 agree that having universal definitions and there  
6 were attempts by Services to try to coordinate.  
7 This didn't actually come through like the Joint  
8 Services Committee but we basically got together  
9 and tried to hash out some of the distinctions of  
10 how the Services define things. But some of them  
11 are just cultural things of how the Service  
12 defines adverse information or adverse conduct  
13 and so there were some differences in those  
14 opinions. But we definitely made attempts to try  
15 to smooth out some of the differences, based on  
16 the lack of statutory guidance that was provided  
17 to us initially.

18 And so as I mentioned, it was the  
19 first time going through this iteration. We've  
20 definitely seen where the bumps are, and  
21 hopefully can smooth this process out, and clean  
22 up where there are distinctions and, also going

1 for the future, to get better data pulls.

2 MR. KRAMER: I'm sorry, Major, what  
3 would be the -- I'm sorry, I can't pronounce your  
4 last name. Is it Ervasti?

5 MAJ. ERVASTI: Yes, sir, Ervasti.

6 MR. KRAMER: What's the difference  
7 between suspected of collateral misconduct and  
8 accused of collateral misconduct? Sorry.

9 MAJ. ERVASTI: Yes, sir. So accused  
10 of collateral misconduct, normally we think of an  
11 accusation in the terms of a charge sheet or some  
12 sort of formal accusation, where somebody is  
13 being accused of something. Suspected would  
14 include things like where a witness statement or  
15 some other information came to the light of the  
16 commander, where they could have been accused of  
17 collateral misconduct but they weren't. And  
18 that's where those numbers were not reflected in  
19 the Marine Corps' or the Navy's responses.

20 MR. KRAMER: So they're treated  
21 differently now?

22 MAJ. ERVASTI: No, sir, they're not



1 treated differently. They're just not captured  
2 in the numbers.

3 I think across the Services it's  
4 important to point out that when we analyze the  
5 numbers, we're all talking about a very, very  
6 small percentage of cases that we're dealing with  
7 in the first place. So for the Marine Corps'  
8 numbers, for example, 826 victims that we looked  
9 at, ten of them received any sort of adverse  
10 action.

11 Now, there were probably a higher  
12 number included where there was some sort of  
13 underage drinking or some sort of offense where  
14 the command could have taken action but there was  
15 no formal inquiry, no formal action taken. So we  
16 define those as being not accused of collateral  
17 misconduct because there was no accusation made.

18 MR. KRAMER: Thank you.

19 MS. LONG: And this is sort of maybe  
20 going out a little bit towards the end but I know  
21 that we're looking at this data for one reason  
22 but do the Services find this data important for

1 you, your work handling sexual violence cases?  
2 Is it useful data to know if there are victims  
3 that are facing collateral -- consequences for  
4 collateral misconduct and what's happening to  
5 those cases, in terms of whether you feel you are  
6 improving justice, safety, or is this something  
7 that you just see as an exercise in people  
8 overseeing what you're doing?

9 LTC KAZIN: So from our point of view,  
10 it's useful in the sense, more of a policy sense,  
11 of when there are concerns about retaliation  
12 because retaliation is often linked to some sort  
13 of adverse action, of whether or not there is  
14 adverse action being taken against victims that  
15 might dissuade them from reporting.

16 And so separating social retaliation  
17 and social ostracism is one concept and looking  
18 at retaliation as in actual adverse act by the  
19 chain of command, knowing that overall the  
20 consistency amongst the Services of a very low  
21 percentage of actual adverse action helps us  
22 understand that yes, there are valid concerns

1 about retaliation but the reality of the overall  
2 percentages versus anecdotal stories tells a lot  
3 of those anecdotal stories are in the minority,  
4 in that one percent, and lets us focus more on  
5 what is probably the greater issue, which is  
6 social ostracism and how do we get after that to  
7 make that not a factor in victims coming forward  
8 to report.

9 CHAIR BASHFORD: Please go across and  
10 everybody answer.

11 LT KRAEMER: Absolutely, ma'am. I  
12 would agree with that as well. I think just  
13 having the data by itself is important. I'm sort  
14 of a proponent of that.

15 I also, as a victim advocate, too, I  
16 know it's important from that perspective because  
17 that's something that gets talked about as well,  
18 if you report sex assault, you know what kind of  
19 potential adverse consequences that might expose  
20 you to.

21 So I'm actually very glad that we took  
22 this time to get an answer on what the numbers

1 are on that.

2 MAJ. ERVASTI: Yes, I agree, as well,  
3 that it was very useful. And one trend that we  
4 hadn't been aware of before pulling these numbers  
5 is, at least in our case, is 70 percent of the  
6 victims who were -- received some sort of adverse  
7 action of collateral misconduct had had previous  
8 disciplinary action.

9 Say for example if a victim received  
10 an adverse counseling for underage drinking or  
11 some sort of offense, in 70 percent of the cases,  
12 there was a prior incident preceding the sexual  
13 assault. And that's important information for  
14 commanders because, from the commander's  
15 perspective, we can certainly see why it might be  
16 reasonable for them to feel like they need to  
17 take action but also understanding it from the  
18 victim's perspective as well. That certainly  
19 would be the toughest case for a victim to come  
20 forward and report having had previous adverse  
21 action in the past.

22 LT. COL. MALE: Yes, it's important

1 and we were glad to have the data. Certainly, we  
2 are all concerned and want to understand that  
3 there are circumstances that would dissuade a  
4 victim from coming forward because of the  
5 collateral circumstances.

6 LT MILLER: Yes, I think all the  
7 highlights have been discussed, at this point.  
8 The one thing I know it was valuable for the  
9 Coast Guard for was looking at a one-size-fits-  
10 all approach to collateral misconduct. But I  
11 think that was guided more by what was perceived  
12 instead of the actual numbers that we found  
13 because I think, as everyone here has stated,  
14 that the percentage of actual collateral  
15 misconduct is very low in comparison to what I  
16 think somebody who doesn't have access to these  
17 numbers would look at and say is happening  
18 because those are the cases that you do hear  
19 about the most.

20 So this gives actual data to drive  
21 policy decisions, as well as I think, as we've  
22 mentioned here, it reinforces the unit

1 commander's discretion and to address issues  
2 where you might have other good order and  
3 discipline issues that need to be addressed and  
4 really can only be addressed in a very specific,  
5 fact-specific scenario.

6 MS. GARVIN: Chair, thank you.

7 When you all were looking at what  
8 constituted collateral misconduct, was there a  
9 time frame that you were looking at in the data  
10 that you gave? Was it coincident with the  
11 alleged sexual assault? And then combining with  
12 that, because I assume for most of you the answer  
13 was yes, do you agree that you see sometimes  
14 conduct that comes downstream after a sexual  
15 assault that might be misconduct that could be  
16 causally related potentially to the sexual  
17 assault that would not be captured in these  
18 numbers but could result in adverse action --  
19 self-soothing behavior or self-medication later?

20 LT MILLER: Yes. It's a yes. So we  
21 often had to look at whether or not -- how it was  
22 captured in the investigation report initially

1 because that was our first pull. We went and got  
2 every case from the time period and identified  
3 that victim and pulled that -- and pulled that  
4 case.

5 In some of the cases we found, where  
6 the collateral misconduct was what was the  
7 impetus of the reporting. So we had an example  
8 of someone came up hot for cocaine and they were  
9 being processed for separation and adverse  
10 action, as is done under the Service regulations.  
11 And during that time period, during the  
12 administration of the adverse action is when the  
13 report came down.

14 So we considered that collateral  
15 because it was really very close in time and it  
16 could have been self-soothing or self-medicating  
17 to deal with the trauma. So that was captured in  
18 the overall numbers because we considered that to  
19 be collateral. That involves a little bit of  
20 judgment on our part because we could have just  
21 said well, it didn't happen until -- it didn't  
22 happen before, not after. So there's a little

1 bit of judgment there.

2 And in that particular case, the  
3 sexual assault was used as essentially mitigating  
4 evidence but they continued with the adverse  
5 action because it had occurred prior to the  
6 reporting. But the command used their discretion  
7 and said okay, we understand now that there was a  
8 sexual assault involved here and how that cocaine  
9 use might be related to that and they suspended  
10 all of the actions in it.

11 So at least the way the Army  
12 approached it was is that we looked at anything  
13 that was around that time period and then there  
14 was a specific -- you know we had each unit go  
15 through that case file and tell us hey, was this  
16 related to the misconduct or related to the  
17 sexual assault in any way, and we reported that  
18 back in our numbers.

19 LT KRAEMER: In the Navy, I mean all  
20 the collateral misconduct that we reported here  
21 was actually -- did have some direct coincidence  
22 with the sex assault. So it occurred, generally,



1 it was happening the same night, maybe just an  
2 hour, or during the assault. But that's not to  
3 say that we didn't also get, when we were  
4 collecting the data, we got some reports made  
5 from commands that didn't quite understand what  
6 we were asking for but they gave us reports of  
7 misconduct by the victim that happened afterwards  
8 that clearly had a connection to the sex assault.  
9 I mean you know the psychological trauma maybe  
10 led them to become engaged in substance abuse.

11 So we did actually -- we have that  
12 data but we didn't consider that to be collateral  
13 misconduct for the task here.

14 MAJ. ERVASTI: Yes, I agree as well.  
15 That would be incredibly useful data to have.  
16 And again, it wasn't included in the Marine  
17 Corps' numbers as well.

18 So we had a number of cases, for  
19 example, where we double checked what the command  
20 was sending us for numbers by pulling the records  
21 ourselves. In doing that, we would go through  
22 and see, for example, that the victim had been

1 NJP'd a month or two months after the report of  
2 sexual assault. So we would go back and say hey,  
3 double check this. Are you sure there was no  
4 punishment for collateral misconduct? And the  
5 command would come back usually saying yes, that  
6 was a totally separate incident. So, it was not  
7 collateral misconduct.

8 Now I do think having -- when we did  
9 go through all of those records, it was almost  
10 sad or heartbreaking to see the high percentage  
11 of cases where the person is being separated a  
12 year, six months after the report of sexual  
13 assault for something like a mental health  
14 condition or some sort of other underlying. So  
15 that is an issue that we did bring up and have  
16 addressed or at least decided that it warrants  
17 further study.

18 I do think that a study that looked at  
19 victims after they report a sexual assault, the  
20 percentages of them that six months, a year, two  
21 years down the road are separated or get out of  
22 the Service and what the reasons are that they

1 separate would be very useful and beneficial.

2 LT. COL. MALE: Thank you for asking  
3 the question, ma'am, because the temporal aspect  
4 is I think a key distinction between the  
5 definitions in the Services. The Air Force did  
6 something slightly different than the Navy in  
7 that we only included conduct that was happening  
8 at the time of the allegation that wasn't already  
9 known. Meaning, if it happened after, it was not  
10 included and then when we further reviewed our  
11 numbers, which were provided in supplemental --  
12 by supplemental report, we also excluded that  
13 misconduct that was already known.

14 Our initial numbers were any  
15 misconduct that was happening, roughly, in the  
16 same course of the investigation but we excluded  
17 that misconduct that was already known because  
18 our understanding was that this study was to  
19 figure out if there's information that would  
20 dissuade a victim from coming forward. If the  
21 misconduct was already known, presumably, it  
22 wouldn't dissuade a victim from coming forward.

1                   So for example, the Air Force had one  
2 victim who was already -- there was already a  
3 command-directed investigation for the  
4 misconduct. During the course of that  
5 investigation, a sexual assault was alleged, very  
6 similar to what the Army has described. But in  
7 that case, we excluded it because our  
8 understanding of the basis for the study was  
9 different.

10                   LT MILLER: Yes, ma'am, I think that  
11 this would be of value but the Coast Guard did  
12 something very similar or identical to what the  
13 Air Force did, in that you had to have the sexual  
14 assault first in time and then the misconduct  
15 came next, so that the convening authority had to  
16 have been aware of both the sexual assault  
17 allegations as well as the misconduct for us to  
18 count it in our numbers.

19                   We did not include anyone but the  
20 subsequent, what I would refer to as subsequent  
21 misconduct, did come up in certain cases.  
22 Similar I think was the substance abuse, where

1 you had somebody several years down the road,  
2 either drugs or alcohol, and that was being  
3 processed for discharge and, through that, it  
4 came to light that there was a previous sexual  
5 assault.

6 But I think, as well, it would be very  
7 difficult in certain situations to understand you  
8 know what subsequent misconduct would look like,  
9 whether that is just a decline in performance or  
10 somebody that does get Article 15 punishment down  
11 the road, where what the actual causal link is to  
12 the sexual assault. I think when you look at  
13 separations, that might be easier but if you have  
14 a high performer and then all of a sudden their  
15 performance declines for them but they're still  
16 an average performer, or even slightly below  
17 average, you wouldn't be able to necessarily  
18 capture that that was directly related to the  
19 sexual assault like you would if there is the  
20 substance abuse aspect or -- thank you.

21 DR. SPOHN: So one of the things that  
22 we discovered when we looked at the data is that

1 the Services had a very different approach to  
2 what was called false reports, with the Air Force  
3 counting false reports as part of their data on  
4 collateral misconduct and the other Services did  
5 not.

6 So the question is: How did you  
7 define a false report? Did it require  
8 recantation by the victim or what was the -- what  
9 were the criteria you would use to determine that  
10 a report was false? And how did you make the  
11 determination that a report was false?

12 And do you think it's appropriate to  
13 consider issues of false report in collateral  
14 misconduct data?

15 LT MILLER: The Coast Guard, looking  
16 at our numbers, there were two incidents of false  
17 reports. One was actually from a third party  
18 that witnessed the sex act that was then  
19 discovered to be consensual during the course of  
20 investigation. And then there was another one  
21 where an alleged victim alleged sexual assault  
22 and it was determined that it was not a sexual

1 assault. Both of those numbers were included in  
2 our numbers, however, there was no adverse action  
3 taken for the false report, one, obviously,  
4 because it was a third party that perceived  
5 something that wasn't actually happening and the  
6 other instance, there just was no action taken.  
7 But both of those numbers were included in our  
8 collateral misconduct.

9 LT. COL. MALE: So it's difficult to  
10 know. I think what would be useful for us to  
11 know is whether a false allegation should or  
12 should not be included. It's logical that if the  
13 basis of the sexual assault allegation is found  
14 to be false, it wouldn't be collateral  
15 misconduct. So a recommendation would be to  
16 exclude that but certainly, goes back to the  
17 initial questions that uniformity in definitions  
18 would be useful.

19 At the Headquarters level, we didn't  
20 make a determination or define false allegation.  
21 We looked to whether there were circumstances or  
22 an allegation that there was a false allegation.

1 For the Air Force, there were five of those  
2 cases. In two of the cases, there were adverse  
3 action given. So that would have been at the  
4 command and the local servicing legal office  
5 whether they would have made that determination.  
6 So we left it at that.

7 We had additional cases where there  
8 were other false official statements that were  
9 not related to false allegations. We categorized  
10 those differently but we didn't make an internal  
11 definition of false allegation simply if there  
12 was a false official statement related to the  
13 sexual assault happening at all.

14 We also didn't include a similar but  
15 different question where there was a cross-claim  
16 of sexual assault. Those were a challenge. We  
17 had ten of those cases where there's an  
18 allegation of sexual assault and then the  
19 victim's collateral misconduct was that no, you  
20 sexually assaulted me -- or the accused, rather,  
21 said no, you sexually assaulted me. So we had a  
22 cross-claim. We found it challenging to count



1 those. So we counted that as false official  
2 statement, not false allegation, whether it was a  
3 collateral -- I'm sorry -- we counted that as a  
4 sexual assault that was a cross-claim.

5 So we found those very challenging all  
6 relating to that question of false allegation.

7 MAJ. ERVASTI: And we did it the same  
8 way. So we did not attempt to get into the  
9 underlying merits of any one allegation.

10 We defined a false allegation as the  
11 command had taken action against that person, so  
12 either an NJP or a courts-martial for the false  
13 official statement.

14 We did have other cases. So there  
15 were five cases where a person was punished for  
16 making a false allegation and that was not  
17 included in the collateral misconduct report.

18 We did have other cases in the numbers  
19 that were included, where the timing and the  
20 nature of the way the incident was reported, led  
21 the commander to believe that taking action  
22 against that person was, nonetheless,

1 appropriate. For example, cases where say a  
2 person is pulled over for a DUI and then a month  
3 later at the NJP says you know I was driving  
4 intoxicated to flee a sexual assault that  
5 happened at an unknown location that I am not  
6 going to provide any statement to NCIS about.  
7 Cases like that, again, our position is we're not  
8 going to define that as false or true. We're not  
9 going to look at the merits of the allegation.  
10 We will support that victim in whatever way we  
11 can but the commander may, nonetheless, feel that  
12 it is appropriate to take disciplinary action  
13 against that person for the offense that was  
14 discovered by the command.

15 LT KRAEMER: So we looked -- we asked  
16 NCIS for data. So out of those total number of  
17 sex assault investigations that they handed us,  
18 they had a certain number of those where that  
19 investigation had sort of transitioned into an  
20 investigation for either perjury or false  
21 official statement against the victim. And then  
22 they had a case synopsis for each of those.

1           So then we took a look at a number --  
2     five, I believe, in total. We looked at those  
3     and determined sort of what exactly were they  
4     investigating. Does this look like a false  
5     allegation of sex assault or was it just a false  
6     official statement that happened during the  
7     investigation?

8           If it was they determined that the  
9     false official statement or the perjury was  
10    actually tied to the allegation itself, we  
11    considered that to be a false report of sex  
12    assault. And then we looked at the case outcome  
13    and actually reached back out to the commands and  
14    asked them what adverse action did you take in  
15    those cases. We didn't consider that to be  
16    collateral misconduct. We just decided to  
17    include that in the report as an additional data  
18    point.

19           LTC KAZIN: So when we put our  
20    guidance out to the field on how to define  
21    collateral misconduct, we actually cited to the  
22    DoDI, to DoDI 6495.02, because they've got a

1 definition that is broadly defined as a victim  
2 misconduct that might be in time, place, or  
3 circumstances associated with the victim's sexual  
4 assault incident.

5 And so false reporting is one of those  
6 concepts that is it a true/false report, as in  
7 someone is saying that it's not true, or is it  
8 something not sufficient evidence? And so those  
9 are two different things.

10 We identified eight cases out of the  
11 154, where there was someone that received  
12 misconduct that we identified as a false report.

13 Typically, in CID reports, when we  
14 close out a case, there is a distinction between  
15 when we're closing it for insufficient evidence,  
16 no probable cause, there is just not enough  
17 evidence versus a false report.

18 So I would go back -- I would have to  
19 go back and check those eight cases to see if  
20 that's how they were classified in the report  
21 themselves. But they were in the universe of  
22 cases that we had pulled for that time period

1 and, because some would consider an allegation of  
2 false reporting to be collateral to the victim  
3 coming forward and making an allegation, I think  
4 that trying to get at the intent of seeing our  
5 people who are reporting sexual assaults somehow  
6 being punished and they're saying let's not,  
7 getting to that kind of concept of how many of  
8 those cases are out there. How many victims are  
9 being accused of making a false report? It is a  
10 useful data point and it seems to be a very low  
11 number.

12 MS. GARVIN: Yes. She asked me if I  
13 could take over.

14 MR. KRAMER: Thank you, Chair.

15 I have a question. I'm curious and it  
16 might make a difference to the victims. How does  
17 collateral misconduct come to light? And I can  
18 think of three ways, there may be more: the  
19 victim self-reports it and says you should know  
20 that something happened or later on tells; or the  
21 investigators uncover it somehow on their own; or  
22 the accused makes an allegation or says something

1 about misconduct.

2 So I'm curious about how the  
3 misconduct comes to light, generally, or maybe  
4 it's just all different ways.

5 LTC KAZIN: So many different ways  
6 they come to light. And if you look at the  
7 highest percentage of the ones that we saw were  
8 like underage drinking. Well, that's going to  
9 come out to light very early in the  
10 investigation, particularly if it's an alcohol-  
11 facilitated sexual assault. You're going to know  
12 how old everyone is and you're going to know  
13 everyone was drinking. So it doesn't really  
14 require self-reporting.

15 Sometimes it comes to light during the  
16 disciplinary proceedings. So, someone is being  
17 disciplined for fraternization and, during that  
18 disciplinary proceeding, they find they make an  
19 allegation during it of sexual assault.

20 Sometimes it comes from third parties. It's just  
21 it can come -- which is why we threw a fairly  
22 broad net on the term accused.

1                   And I agree, maybe suspected might  
2                   have been better but the word accused has a very  
3                   specific meaning in the code but we all know that  
4                   accused in normal parlance just means that  
5                   basically someone is telling you that you did  
6                   something.

7                   So because of the broad ways in which  
8                   it can be reported, we tried to cast as broad a  
9                   net as possible.

10                   LT KRAEMER: I would agree with that.  
11                   We didn't really look at how the collateral  
12                   misconduct in each individual case came to light.  
13                   We sort of, just for every single sex assault  
14                   case, we contacted the command and just said hey,  
15                   was there a collateral misconduct in this case;  
16                   did you take adverse action? We didn't ask them  
17                   how they learned about it, was it through the  
18                   investigation, or some sort of independent  
19                   command action.

20                   MAJ. ERVASTI: And we approach it the  
21                   same way. So it could have come to light in a  
22                   number of different ways and we didn't break out

1 by and specify which way the command became aware  
2 of this collateral misconduct, other than to say,  
3 like we had discussed earlier, in about 70  
4 percent of the time, the allegation of the sexual  
5 assault preceded the collateral misconduct. So  
6 it's those other 30 percent of times where the  
7 commander is already aware or tracking some sort  
8 of issue with misconduct and then the sexual  
9 assault allegation was made after that. So  
10 that's really the only way that we broke out that  
11 distinction.

12 LT. COL. MALE: I have nothing to add  
13 as to how collateral misconduct comes to light.  
14 And only just to emphasize an earlier point that  
15 we only examined it in light of the temporal  
16 aspect. So, just taking out those things that  
17 were already known that came to light as a  
18 command-directed investigation.

19 LT MILLER: I don't have anything else  
20 to add. We didn't look or break out how that  
21 report of collateral misconduct came about.

22 CHAIR BASHFORD: Since the number of



1 people that actually receive adverse consequences  
2 seems to be quite low across the Services, that  
3 would mean that the bulk of people don't receive  
4 adverse consequences.

5 Are your Services tracking -- tracking  
6 that in some way? Because I would think somebody  
7 would then, if they are part of the whatever low  
8 percent that received an adverse consequence  
9 would say well, but this person also did underage  
10 drinking and they got a pass; this is somehow  
11 retaliation.

12 Let me start with you, Colonel Kazin.  
13 Do you track that?

14 LTC KAZIN: We don't track it.  
15 There's certainly guidance in our regulations  
16 that commanders need to be cognizant of taking  
17 action against the person who has alleged victim  
18 of sexual assault. I believe it's in Army  
19 Regulation 600-20 that often encourages to wait  
20 until after all the other proceedings are done  
21 with the sexual assault investigation and  
22 disposition of those proceedings before

1 considering whether to take action.

2 It's also, by DoD requirement, held up  
3 to the special courts-martial convening level.  
4 So we don't have company or even battalion  
5 commanders that are able to simply take action  
6 without going through some sort of higher review  
7 process.

8 So we haven't been tracking. A lot of  
9 times it doesn't happen because it's an exercise  
10 of prosecutorial judgment by what the commander,  
11 in association with what their judge advocate is  
12 saying. I see the larger issue here. In this  
13 particular case, I don't think any additional  
14 action is necessary. And that's where, again, we  
15 trust those special courts-martial level  
16 commanders to make that decision.

17 So we haven't been tracking it,  
18 outside of this right here, realizing that  
19 there's a very low percentage really of even  
20 those cases where there's an accusation. I mean  
21 of the 1200 cases that the Army identified,  
22 there's only 154 with the broadest net possible

1 identified as accused of collateral misconduct.  
2 If you spread that across the size of our force,  
3 the Army being as large as and as spread out as  
4 it is, that's a very, very low percentage of even  
5 an accusation of collateral misconduct.

6 So it's not something that we've  
7 tracked right now but it's something that we're  
8 aware of and that's why I think that the  
9 withholding policy makes a lot of sense.

10 LT KRAEMER: So I concur with all of  
11 that. First, it's not something that we track,  
12 whether -- at least not now, if there's  
13 collateral misconduct sort of in the fact pattern  
14 of a particular case and whether a commander  
15 decides not to take action. We don't currently  
16 track that.

17 As far as you know tracking where  
18 adverse action is taken, obviously, now that  
19 there's an ongoing requirement to record that, we  
20 will be tracking that. In the Navy, as well, it  
21 was a very low number of cases in which it even  
22 happened. So it's not a significant thing that

1 happens.

2 MAJ. ERVASTI: I agree with everything  
3 that was said earlier. And the only thing that  
4 I'll add is the very low number of cases that we  
5 see would not include the informal type actions  
6 that might be taken by a squad leader or some  
7 sort of other leader. Say for example,  
8 informally counseling somebody or canceling their  
9 weekend plans as a response to collateral  
10 misconduct.

11 So it may be the case that victims  
12 might have a different perspective on our numbers  
13 than are reported because they might feel like  
14 adverse action was taken against them for  
15 collateral misconduct but it was something that  
16 was at a lower level that was not documented  
17 anywhere.

18 LT. COL. MALE: I would echo what's  
19 already been said by the other Services and also  
20 add, though, that even though as a policy there's  
21 a very low incidence of collateral misconduct and  
22 we tend to defer that to the end, at least

1       anecdotally, it's fair to say that we hear that  
2       often victims want the collateral misconduct  
3       addressed so that that's not an issue at trial.

4               So that's better addressed to one of  
5       my colleagues in the trial division but that a  
6       victim would want, say underage drinking, go  
7       ahead and receive the punishment so that that's  
8       not an issue and doesn't cast any doubt on the  
9       accusation of sexual assault.

10              We don't formally track but, as a part  
11       of the 140a uniform standards, we are adding  
12       victim information into our case management  
13       system. And so obviously, going forward for  
14       purposes of this biennial report, we will track  
15       and also we will be adding into our system  
16       information about victims because, of course, all  
17       military justice systems are accused-based at  
18       this point and we're not tracking victim data but  
19       we are interested to know both -- we have victim  
20       information added officially and then any related  
21       cases in the case notes.

22              So that is something that we're doing

1 as a result of the 140a Initiative.

2 LT MILLER: I think everything has  
3 been hit. We are -- the Coast Guard is not  
4 tracking in any type of real time, other than for  
5 this report, collateral misconduct. And  
6 currently, there's no specific guidance to  
7 commanders. So I think that there is maybe some  
8 ambiguity about what discretion does exist for  
9 commanders to punish either for false reports or  
10 collateral misconduct when there is a sexual  
11 assault allegation.

12 MS. GARVIN: So going back to the very  
13 start with you, Lieutenant Colonel Kazin, you had  
14 said -- and thank you all for going down the  
15 line, even when you're kind of saying I echo. It  
16 really helps us understand. We don't assume one  
17 Service agrees. So thank you for that.

18 Lieutenant Colonel, right at the  
19 beginning, you had mentioned that you all had  
20 tried to come up, definitionally, with some  
21 common ground. And one thing that you noted was  
22 that there was some differences of opinion of

1 those and like some cultural differences. And  
2 then you said, for example, adverse. You gave  
3 that as the example of maybe cultural differences  
4 of definition.

5 And I just wondered if you could maybe  
6 tell us just a little bit more what you meant by  
7 that specific example.

8 LTC KAZIN: Sure. So almost everyone  
9 agrees that Article 15 is adverse, and that an  
10 administrative separation is adverse, or a  
11 courts-martial is adverse. But in terms of a  
12 reprimand --

13 UNIDENTIFIED SPEAKER: Microphone.

14 LTC KAZIN: I apologize.

15 So everyone agrees on certain  
16 definitions of adverse Article 15, courts-  
17 martial, administrative separation proceedings.  
18 But things like non-punitive letters of reprimand  
19 that are filed or not filed, so if you don't file  
20 it, it's not considered adverse under certain  
21 Army regulation definitions; it's the equivalent  
22 of a counseling statement. But a soldier on the

1 ground considers it to be adverse to them if they  
2 get a negative counseling statement or if they  
3 get a negative comment in an evaluation. And we  
4 consider negative formal evaluations to be  
5 adverse information in their personnel files.

6 So that's where there might be some  
7 differences because some things are handled at  
8 the lowest level. It's what we try to do. It's  
9 not adverse under any systems definition but it  
10 might be perceived as adverse action against a  
11 victim.

12 CHAIR BASHFORD: I think we're at our  
13 time. I want to thank you all for coming. And  
14 we're going to hold you, two years from now,  
15 you're going to use the same time frame for the  
16 same group of sexual offense, and you're going to  
17 use all the same definitions. Correct?

18 Okay, great. Thank you so much.

19 And we'll now move on to our next  
20 Panel. And I believe Judge Grimm has joined us  
21 on the line. Is that correct? Judge Grimm, are  
22 you on the line?



1           Okay, thank you for joining us this  
2 morning. We're going to be looking at the  
3 perspectives of Services' Military Justice  
4 Division Chiefs regarding conviction and  
5 acquittal rates, case adjudication process, and  
6 victim declination.

7           Thank you, Captain Tasikas, Colonel  
8 Pitvorec, Lieutenant Colonel King, Captain  
9 Monahan, and you've got a lot of light on that  
10 one, Colonel Pflaum. Thank you.

11           Meghan -- Ms. Peters.

12           MS. PETERS: Good morning. My name is  
13 Meghan Peters. For those of you who don't know  
14 me, I'm an attorney-advisor on the DAC-IPAD  
15 Staff. I'm just going to lead off with a  
16 question. The reference is the written responses  
17 we received from the Services in response to, I  
18 guess, a request for information that the  
19 committee sent previously. That's just for  
20 everyone's information.

21           And at the Chair's request, I will  
22 start off with the first question, which begins

1 for Article 32 preliminary hearings. Some  
2 Members of the committee have reviewed sexual  
3 assault case files indicating that the  
4 preliminary hearing lasted roughly 15 minutes  
5 because the Government called no witnesses. In  
6 those cases, trial counsel specifically provided  
7 the hearing officer with select documents from  
8 the investigative file for review.

9 Does the Article 32 Statute and its  
10 implementing rule, Rule for Courts-Martial 405,  
11 as currently drafted, provide an effective check  
12 against charges for which there is no probable  
13 cause?

14 CHAIR BASHFORD: Why don't we start  
15 with you, Colonel Pflaum?

16 COL PFLAUM: Sure. So I think it's  
17 safe to say that over the past several years, the  
18 procedural requirements of the Article 32 have  
19 diminished greatly. And one significant change  
20 is the statutory policy or the statutory change  
21 to eliminate the requirement for a victim to  
22 testify and as a result, in many cases, that's

1 the Government's most significant evidence.

2 And in those cases where a victim  
3 chooses not to testify, the Government is  
4 basically making its case based on the paper  
5 file.

6 And so I will say that those changes,  
7 over time, have reduced the procedural  
8 requirements of the Article 32 but I still think  
9 that it is a valuable check. First off, there is  
10 an experienced Judge Advocate looking at the case  
11 and at the evidence. There is also the  
12 opportunity for the defense to present evidence  
13 at the case. And I, as a former Staff Judge  
14 Advocate, have seen, even in those diminished  
15 proceedings, where an Article 32 officer will  
16 make notes or make findings that are relevant for  
17 me to consider and highlight to the convening  
18 authority when I am providing my advice on  
19 disposition.

20 So I think it has been -- was built  
21 into the system for a reason and I still think  
22 that reason exists currently.

1                   CAPT MONAHAN: And I would agree with  
2 Colonel Pflaum but I would emphasize two points.  
3 First, that the Article 32, in its current form,  
4 still features a neutral and detached preliminary  
5 hearing officer providing advice to the convening  
6 authority, the Staff Judge Advocate, making a  
7 determination or recommendation as to probable  
8 cause. That is still value added.

9                   And additionally under the current  
10 rules, R.C.M. 405(k) does give the defense, the  
11 victim, and the Government the opportunity to  
12 provide matters for the SJA, the convening  
13 authority, to consider that were not presented at  
14 the hearing itself. So there is an additional  
15 avenue in which information that is important to  
16 the determination of probable cause to be brought  
17 to the decision-maker who is the convening  
18 authority.

19                   LT. COL. KING: I agree the Article 32  
20 still performs a valid function. I think one  
21 thing that's not captured in the time lines that  
22 were mentioned, the 15-minute hearing, is that

1 these preliminary hearing officers are also  
2 taking hours of video interviews with victims,  
3 and other witnesses, or parties, and sometimes  
4 even including the accused, where there is an  
5 interrogation that's included.

6 So I think it's important when you put  
7 the 32 preliminary hearing report into context  
8 that it usually involves an interview with the  
9 victim, a detailed interview with the victim,  
10 that is usually an hour or two long that covers a  
11 number of issues. So that's just an important  
12 part that needs to be included in the analysis of  
13 the preliminary hearing.

14 COL. PITVOREC: I will probably sound  
15 like a broken record because I'm going to echo  
16 many of the sentiments.

17 I do think that Lieutenant Colonel  
18 King points out a really good point is that while  
19 the hearing itself seems somewhat abbreviated,  
20 that when you go back and look at the evidence  
21 that is being reviewed and the time spent doing  
22 that, sometimes you know victim interviews can be

1 four or five hours long, and they are reviewing  
2 every bit of those, and they are all videotaped  
3 now because the Military Criminal Investigation  
4 Offices are videotaping both victim and suspect  
5 interviews.

6 And so all of that stuff is being  
7 provided and it's being reviewed by that  
8 investigating officer. So while the content of  
9 the hearing or the actual hearing may be very  
10 abbreviated, I think that going through that  
11 thorough investigation would take -- could take  
12 hours and hours.

13 The other thing I would point out is  
14 that oftentimes, I know the other Services do  
15 this as well but, in the Air Force, particularly  
16 with sexual assault cases or penetrative sexual  
17 offense cases, we have sitting Military judges  
18 that will be the preliminary hearing officer. So  
19 not only are they neutral and detached, but they  
20 are very experienced Military judges who have  
21 been through the Military Judges Course, who  
22 understand the probable cause standard extremely

1 well, who are able to then make a recommendation  
2 to the Staff Judge Advocate that's well thought  
3 out and well-reasoned.

4 CAPT TASIKAS: I guess my view is that  
5 the Article 32 has transformed itself from what  
6 it originally had intended. And so in the  
7 earlier intent, I think the Article 32 was more  
8 of a tool for the defense.

9 Yes, the IO was there to look at all  
10 available facts and evidence and make an  
11 impartial determination but it was a discovery  
12 tool for the defense. And also the defense could  
13 put on a very, very deliberate defense,  
14 mitigation, and extenuating evidence as well.  
15 That transformed in 2014, as we all know, and now  
16 it's changed again a little bit in 2019.

17 So from that standpoint, the original  
18 purpose of Article 32 has changed. It's a  
19 probable cause hearing. For those purposes,  
20 alone, I think it's fine. Does it perfect the  
21 Government's case? I don't think that's the  
22 intent of the Article 32. It's put on as what is

1 necessary to get to PC.

2 Talking to some SJAs in the field,  
3 they are frustrated, as some of it is just a  
4 paper review and they do last as little as 15  
5 minutes, where they just hand in, literally, the  
6 record of investigation. So from that  
7 standpoint, I don't think it's very helpful.

8 As far as the Government is concerned,  
9 it gives some notice to the defense.

10 So while there may be some other  
11 features that the other Services had talked  
12 about, I don't want to not highlight that there  
13 is some level of a paper shuffle. And I don't  
14 know how much more informed the convening  
15 authority and SJA are because of it because they  
16 can read the ROI as well.

17 CHAIR BASHFORD: Is the entire  
18 investigative file turned in? Are portions of it  
19 turned in? Is there a summary of it given to the  
20 32 officer?

21 CAPT TASIKAS: So I just talked to an  
22 SJA yesterday about a particular case and it was



1 not adult sexual assault. It was child sexual  
2 assault. And the Government put in a limited  
3 amount of the ROI and, surprisingly enough, the  
4 defense wanted the entire ROI submitted.

5 So I would say it depends on the  
6 strategy and notion of the trial counsel itself.  
7 So I think it's case-by-case.

8 I'm speculating, and I don't like to  
9 speculate, I would assume that most of the time  
10 it's just the full ROI but I couldn't be certain  
11 for that.

12 COL. PITVOREC: For the Air Force I  
13 know that we try to focus on the actual evidence  
14 that's contained within the ROI. So we would  
15 point to more of like the videotapes that were  
16 done from the MCIO, as well as any statements  
17 that are contained by witnesses that are not  
18 present to testify.

19 But for us, the Office of Special  
20 Investigations, their thoughts and feelings, and  
21 the stuff that gets contained at the beginning of  
22 the ROI, that does not go before the

1 investigating officer because I don't believe  
2 that's relevant.

3 LT. COL. KING: A similar response for  
4 the Marine Corps. In some instances, you may  
5 have an entire ROI that's presented to the  
6 Article 32 officer by the Government. But in  
7 some instances, we may look at a complete cell  
8 phone extraction that includes every text message  
9 that the accused sent for a one-year period. We  
10 wouldn't provide that entire enclosure to the  
11 investigation. We would pull an excerpt from it.

12 CAPT MONAHAN: And again for the Navy,  
13 it's case-dependent, similar to what the other  
14 Services have stated.

15 LT. COL. KING: And similarly with the  
16 Army, the Government puts on the evidence that  
17 they believe is relevant and helpful to obtain  
18 the probable cause. And there could be other  
19 parts brought in by other parties, to echo what  
20 the other Services said, but again, the  
21 Government typically starts with those key  
22 relevant pieces of evidence.

1                   HON. BRISBOIS: So the Section  
2                   832(a)(2)(B), whether or not there is probable  
3                   cause to believe that the accused committed the  
4                   offense charged, that's the general provisions,  
5                   giving the authority to the investigating  
6                   officer. In some cases it's a Judge Advocate.  
7                   Sometimes it's not a Judge Advocate with Judge  
8                   Advocate advice. Sometimes it's a military judge  
9                   or a military magistrate.

10                   Regardless of the process, if there's  
11                   a finding that there is not probable cause, that  
12                   does not result in a dismissal without prejudice,  
13                   does it?

14                   COL PFLAUM: No, it does not. That's,  
15                   in essence, a recommendation that would then go  
16                   to the next level of convening authority,  
17                   whichever convening authority appointed that  
18                   investigation for their determination to the  
19                   point that it's not binding on.

20                   HON. BRISBOIS: So that's consistent  
21                   throughout the Services?

22                   COL. PITVOREC: That's correct.

1                   HON. BRISBOIS: So it's really not a  
2 true preliminary hearing in the sense of my  
3 court, my federal courts or even the state  
4 courts, who have omnibus hearings or preliminary  
5 hearings, where the if the Government fails to  
6 show a probable cause, according to the judicial  
7 officer, the neutral detached hearing officer,  
8 the case is dismissed without prejudice. It can  
9 be brought back and renewed if further  
10 investigation gives a new basis but that's the  
11 end of the case. Right?

12                   CAPT MONAHAN: So sir, in our system,  
13 that check is held at the Staff Judge Advocate  
14 level under Article 34 of the UCMJ. The Staff  
15 Judge Advocate of the convening authority would  
16 receive the preliminary hearing officer's report  
17 and if he or she determined there was no probable  
18 cause, that would be determinative.

19                   HON. BRISBOIS: Is that consistent  
20 throughout the Services?

21                   LT. COL. KING: That's correct, sir.

22                   COL. PITVOREC: That's correct for the

1 Air Force, absolutely.

2 CAPT TASIKAS: As well as the Coast  
3 Guard.

4 HON. BRISBOIS: And the Staff Judge  
5 Advocate, however, though, is in the role of the  
6 legal advisor to the convening authority. So the  
7 Staff Judge Advocate is not, in a true sense, a  
8 neutral detached, as a magistrate judge would be  
9 or as a military -- because the military judicial  
10 system is a stovepipe standalone system, which  
11 their decisions, and their recommendations, or  
12 rulings cannot be adversely impacted on their  
13 careers. Correct? There's the independence  
14 built into the system.

15 CAPT TASIKAS: I think, if I may, the  
16 original idea I think of Article 32 and Article  
17 34 was to ensure there weren't baseless charges  
18 that went to courts-martial. And then I'm  
19 talking again pre-2014. So taken together, those  
20 vehicles were to ensure, again, baseless charges  
21 or maybe like trivial charges that shouldn't see  
22 the inside of a general courts-martial anyways,

1 maybe a summary or NJP, those kind of protections  
2 were -- and so some of the features of the old  
3 Article 32 have carried over.

4 For example, the waiver still remains  
5 with the accused. So if the accused says I waive  
6 my right to an Article 32, of course that doesn't  
7 have to be accepted by the convening authority,  
8 but if they do that and then it's not required,  
9 then you don't have a PC determination under  
10 Article 32. It still resides with the convening  
11 authorities and the advice of the SJA.

12 The SJA's Article 34 advice is just to  
13 say hey, we have jurisdiction and there's  
14 probable cause; I believe these offenses were  
15 committed, and specification alleging the facts  
16 just to ensure the very basic aspects of a case  
17 go forward.

18 But the other features over  
19 conviction, or what form, and all those kinds of  
20 things, those are still reasonable determinations  
21 in the discretion of the convening authority with  
22 the advice of the SJA. It's just they're

1 different than the civilian context.

2 And so we tried to make an analysis to  
3 an analogize Article 32 with the civilian sector.  
4 I just think it's a different creature  
5 altogether, at least originally designed, and now  
6 it's kind of morphed into something else. And I  
7 don't think making a direct comparison is  
8 helpful.

9 COL. PITVOREC: I would agree, and I'd add  
10 a couple of points.

11 As a staff judge advocate I really  
12 tried very hard to evaluate the evidence that was  
13 presented at the Article 32 by the preliminary  
14 hearing officer. I tried to take a good fresh  
15 eyes look at what was going on.

16 As a staff judge advocate you are not,  
17 you are not personally involved in the court, so  
18 you are trying to pull yourself back and actually  
19 get a good perspective on not only what's going  
20 on in this particular case, but you should be  
21 reading into what's right for the good order and  
22 discipline of the unit that you are serving.

1           So, I think a staff judge advocate --  
2           and sometimes that goes awry. Sometimes people  
3           get too close -- but the goal is really for the  
4           staff judge advocate, as they're advising a  
5           neutral and detached convening authority, to sit  
6           down and try to remain neutral and detached as  
7           well.

8           The other part of that is I know for  
9           the Air Force, and I believe for the other  
10          services, it's always a judge advocate who does  
11          an Article 32. It's always a judge advocate  
12          that's a preliminary hearing officer. And we try  
13          really hard to make sure that they have the right  
14          training and the right experience before becoming  
15          a preliminary hearing officer. But that's not  
16          always possible, given time lines and what's  
17          going on.

18          The staff judge advocate is not  
19          limited to the four corners of the document that  
20          is presented by the preliminary hearing officer.  
21          As you previously mentioned, the defense counsel,  
22          the trial counsel, and the SVC, or VLC for the



1 other services, the victim's counsel can provide  
2 additional information to the staff judge  
3 advocate that's going to the convening authority.

4 So, while the neutral and detached  
5 preliminary hearing officer gets evidence and can  
6 make a recommendation, the staff judge advocate  
7 is not limited to only that information that goes  
8 to the convening authority, and determining  
9 whether or not there's probable cause.

10 LT. COL. KING: Sir, the Marine Corps  
11 agrees with the position that the 32 preliminary  
12 hearing officers probable cause determinations  
13 should not be a binding decision. And it's  
14 important to look at both in a historical context  
15 in the role of the commander and the role of the  
16 SJA in that process.

17 The commanding -- the convening  
18 authority shouldn't abdicate their role in the  
19 process to the preliminary hearing officer. The  
20 SJA does have essentially the veto power with  
21 that probable cause determination. And they are  
22 in a position to look at the entire evidence for

1 a particular case, and also give the commander an  
2 informed decision.

3 And that's really what this process is  
4 designed to do. The Article 32 process is to  
5 help give the commander an informed decision on  
6 the evidence, and then the SJA also assists with  
7 that informed decision process.

8 I think the historical context is  
9 important because you look at the qualifications  
10 for the actual preliminary hearing officer. And  
11 in most circumstances, your staff judge advocate  
12 is going to be a more experienced judge advocate  
13 than the preliminary hearing officer. There are  
14 some instances where military judges have served  
15 as preliminary hearing officers, but that's not a  
16 requirement. And in that circumstance you may  
17 have a preliminary hearing officer that has less  
18 experience than the SJA, who is looking at the  
19 same evidence but is also using their experience  
20 to provide that commander with an informed  
21 decision.

22 CAPT MONAHAN: I echo that. But I

1 would also say there are checks in place that if  
2 either the convening authority of the staff judge  
3 advocate demonstrates less than official interest  
4 in the case, that individual can be disqualified  
5 from further participation in the case.

6 So, it is a complex system of checks  
7 and balances. And I would agree that although  
8 different, the federal civilian system and the  
9 military system are different, both have pathways  
10 to a binding determination of no probable cause  
11 there.

12 COL PFLAUM: And I will echo a lot of,  
13 a lot of the prior comments that my colleagues  
14 made in this. But the way, sir, I understood  
15 your question to start with that, that the staff  
16 judge advocate isn't somehow neutral and  
17 detached, they are, in essence, part of the  
18 prosecution. And it is true that the prosecution  
19 arm falls under supervision of the staff judge  
20 advocate.

21 But I think that the staff judge  
22 advocate is overall responsible for providing the

1 convening authority the advice on the military  
2 justice system. And they have an interest, and  
3 they have an obligation to advise that convening  
4 authority on those interests of discipline that  
5 might warrant prosecution, as well as justice and  
6 making sure that frivolous charges or baseless  
7 charges don't go to trial.

8 And so, I think the 32 informs that  
9 ultimate advice that that experienced staff judge  
10 advocate provides to that convening authority in  
11 making a decision to refer a case to trial.

12 And, again, the 34 advice, the advice  
13 under Article 34, 10 U.S.C. 834, is not just  
14 whether there's probable cause. That is, in  
15 essence, a low subjective standard of whether  
16 probable cause exists. The value and the key  
17 portion of the staff judge advocate's  
18 recommendation under Article 34 is the  
19 recommendation as to disposition. And so that's  
20 where the SJA is saying, yes, there's probable --  
21 I mean, if there's a find by the staff judge  
22 advocate that there's no probable cause, that's

1 binding on the convening authority; the case  
2 can't proceed forward.

3           However, it's the recommendation where  
4 the SJA is advising that convening authority  
5 based on that experience, based on the full  
6 review of the case file in terms of what's the  
7 right disposition, whether it's referral to a  
8 court martial, or taking some other action.

9           HON. BRISBOIS: Thank you.

10           CHAIR BASHFORD: We're going to be  
11 asking some questions in a little bit about  
12 whether the 32 officer's finding of no probable  
13 cause should be binding. But I noted that in  
14 your introductory remarks these 32 judges were  
15 the most experienced, highly trained, very  
16 experienced military, experienced, had the right  
17 training, neutral and experienced until we start  
18 talking about whether their recommendation should  
19 be binding. And then maybe not so much.

20           (Laughter.)

21           CHAIR BASHFORD: So, my question for  
22 you before we get to that is if a finding of no

1 probable cause isn't binding, and if it's really  
2 kind of a paper chase at this point, because I  
3 believe very few complainants actually elect to  
4 testify at the Article 32 these days, kind of  
5 what's the point? Like, why not just, then just  
6 go straight to the staff judge advocate?

7 If he's got access to more  
8 information, like, why are we even, why are we  
9 even bothering with having these very experienced  
10 people taken away from their other duties to look  
11 at hours and hours of video, and read through  
12 hundreds of pages of paper.

13 Let me start with you, Captain  
14 Tasikas.

15 CAPT TASIKAS: Well, it's a good  
16 question. And, again, I think I always like to  
17 go back again to why the Article 32 came into  
18 existence in the first place. And it was a check  
19 of sorts against the awesome plenary authority of  
20 the convening authority. Because it was not  
21 necessarily open, but open. The accused had a  
22 right to counsel, to cross-examine, to present

1 evidence, to even lay out a defense,  
2 constitutional defense, mitigation, and  
3 affirmative defenses.

4 And that was quite useful for the  
5 convening authority because if there was a case  
6 on the margins, they would want to have an  
7 Article 32 to flesh those out. And maybe a case  
8 would go away, if you will, because there wasn't  
9 a strong inclination.

10 Now, with a probable cause  
11 determination it's less helpful in that regard.  
12 However, I think it does give some level of  
13 protection to the accused again on those very  
14 basic tenets of what they're looking for, the  
15 scope of their current Article 32.

16 So, issues of, again, is a  
17 specification actually a crime, is there  
18 jurisdiction? You know, lately retirees have  
19 become an issue of whether or not those are  
20 jurisdictional issues. So there is just again a  
21 floor that they're looking at, just a very basic  
22 to ensure that a case going to the convening

1 authority has the very basic notions of  
2 jurisdictional and other substantive issues  
3 before they go forward with a crime.

4 I don't think it's there, again, to  
5 perfect a case for the government or for  
6 prosecution, it's just I think it's a very narrow  
7 protection, again, for the accused. So, in that  
8 regard it's helpful.

9 If we're thinking as being more broad  
10 or more expansive, then I would argue going back  
11 to the pre-2014 Article 32, which was very  
12 informative for both the defense and for the  
13 prosecution and convening authority.

14 COL. PITVOREC: So, I believe that the  
15 preliminary hearing officer does provide fresh  
16 eyes on a case. I think they can take a look at  
17 the form of the charges. They can recommend,  
18 particularly in penetrative sexual offenses, the  
19 greater offense, whether or not there's  
20 sufficient force, whether or not there's not  
21 force, whether it should be a lesser offense.

22 And I do believe that it still



1 provides the defense a forum to be able to  
2 provide evidence. I think that is the unique  
3 aspect of an Article 32 is that the defense has  
4 the ability to provide evidence to the  
5 preliminary hearing officer and, therefore,  
6 really directly to the convening authority to get  
7 whatever evidence that they deem is relevant and  
8 necessary in making a recommendation as to  
9 disposition of charges before the person who's  
10 actually making that recommendation.

11 So, I do believe that it still has a  
12 value to our system.

13 I will agree, however, that we've got  
14 a lot more information in a prior iteration of  
15 the Article 32. It was much more comprehensive.  
16 We had a better idea what disposition of charges,  
17 what the charges should look like, particularly  
18 in an era where the charges themselves have  
19 changed dramatically over the course of the last  
20 probably I think 12 or 13 years. We've had many,  
21 many changes to Article 120 over the course of  
22 that time frame.

1           And so, having someone with fresh eyes  
2 look at it and make sure that you are looking at  
3 the right charge time frame for that particular  
4 iteration of Article 120 is important to look at.

5           LT. COL. KING: I agree. It does  
6 still have an important procedural function. The  
7 fresh eyes description is a good one.

8           I think that in addition to the points  
9 already mentioned, you have the ability to  
10 conduct a detailed charging analysis of this  
11 process. And focusing back on the informed  
12 decision for the commander, and providing the  
13 commander with an informed decision, the Article  
14 32 also provides the staff judge advocate with a  
15 more informed decision. It provides a forum for  
16 the accused to present challenges to a particular  
17 charging theory, if there are charges.

18           So, the accused may not actually  
19 present a case, or testify, or call witnesses,  
20 but it does give the defense the opportunity to  
21 present challenges to the charges themselves.  
22 And it would enable the SJA to also have a more

1 informed decision.

2           There certainly can be some  
3 improvements, procedurally. In our written  
4 comments we mentioned that the ideal scenario  
5 would be to have a military judge serve as a  
6 preliminary hearing officer. We have not  
7 advocated for that military judge's  
8 recommendation to be binding.

9           But in certain cases in the Marine  
10 Corps where there is a complex charging theory,  
11 or if we're looking at some offenses that involve  
12 murder allegations or laws on complex  
13 allegations, we have brought in military judges  
14 to serve as the preliminary hearing officer. And  
15 in those instances we do feel that the commander  
16 and the staff judge advocate are provided with  
17 the most informed decision prior to referral.

18           CAPT MONAHAN: So, I believe that the  
19 system benefits in every case with Article 32,  
20 and that the defense and government can,  
21 depending on the facts of the case, derive a  
22 benefit from an Article 32 in its current

1 iteration.

2 With regard to the system, the current  
3 iteration of the Article 32 provides an  
4 opportunity for a qualified judge advocate to  
5 conduct a deep dive into the facts presented at  
6 the Article 32 preliminary hearing to include  
7 what is commonly submitted, several hours of  
8 investigative video, recorded interviews with  
9 alleged victims, witnesses, and sometimes the  
10 accused.

11 And that provides the preliminary  
12 hearing officer or PHO an opportunity to prepare  
13 a comprehensive charging analysis for the benefit  
14 of the staff judge advocate and the convening  
15 authority.

16 Now, if a case is particularly weak,  
17 whether or not the, whether or not the PHO's  
18 recommendation of, say, no probable cause is  
19 ultimately adopted by the convening authority,  
20 the defense can still gain a benefit from that  
21 comprehensive analysis because a well-written  
22 Article 32 PHO's report can oftentimes provide a

1 roadmap to an acquittal at a contested trial  
2 because it points out the flaws in the  
3 government's case, which a savvy defense counsel  
4 can use to his or her advantage.

5 But, in a particularly strong case I  
6 would argue that the government can use a well-  
7 written PHO report to its benefit because it can  
8 incentivize a guilty plea if a guilty plea is  
9 warranted under the facts, because the govern --  
10 the defense will see from a qualified, neutral  
11 and detached judge advocate laying out why the  
12 case is so strong against their client.

13 So, I do see that under, even under  
14 its current iteration the Article 32 does still  
15 provide benefits to all parties and, most  
16 importantly, to the system.

17 COL PFLAUM: So, I'm actually going to  
18 start by disagreeing with the marines on just one  
19 minor point, at my peril I believe.

20 (Laughter.)

21 COL PFLAUM: But just on the fact that  
22 whether you should have judges, a formal

1 requirement for judges on 32's if that rule was  
2 taken away from that statement. And I think that  
3 that is of value. And I've seen that in, for  
4 example, perhaps a capital case or something  
5 along those lines. But as a matter of practice,  
6 I disagree with that, mainly from a logistics  
7 experience, but also -- a logistics issue, but  
8 also I don't think it's necessary

9 I think that, at least in my  
10 experience, we had officers in the rank of major  
11 who were judge advocates performing a PHO role.  
12 And I think that they did a marvelous job, and  
13 exactly what the Article 32 and R.C.M. 405 were  
14 designed to get after. So, just on that point.

15 But I will agree with my colleagues  
16 that it is still of value and on a number of  
17 different levels. The first one is for me, as a  
18 staff judge advocate, I benefitted from a formal  
19 process by which the government presented its  
20 case, the defense had an opportunity to present  
21 its evidence. And that was given to me in a  
22 report that I could then utilize in advising the

1 convening authority.

2           It's way too early in the full  
3 prosecution process to be, to be required to be  
4 binding. There's a lot of work that can be done.  
5 Like Captain Monahan referred to in his  
6 statement, after the 32, the case isn't complete  
7 at that point.

8           And, sir, you made the point that at  
9 the 32, if it were binding it could be dismissed  
10 with prejudice and the government could come back  
11 and try again. But that in the military process  
12 we require us going all the way back to the  
13 preferral process in cases, which could add time  
14 and delay.

15           Whereas, as Captain Monahan referred  
16 to, the government and/or the defense can take  
17 that 32 and fix the issues in the case and fix  
18 their case as it proceeds forward, as long as  
19 there's probable cause and the recommendation is  
20 to, is to dispose of the case by general court  
21 martial.

22           So, I do believe there's value. There

1 was value to me in a formal process having a  
2 neutral and detached judge advocate look at both  
3 sides of the case, having the prosecutors bring  
4 their case to an outside party for evaluation,  
5 and getting that analysis by that officer.

6 DR. MARKOWITZ: So, some of you  
7 mentioned that while clearly there's value in  
8 this process, the process has changed. It's not  
9 what it used to be.

10 So, we've heard a couple suggestions  
11 about what you would like to see different. But  
12 from all of you, can you talk to us a little bit  
13 about recommendations to the 32 process that you  
14 would each like to see to make the process more  
15 meaningful?

16 And we can start with whomever.

17 COL PFLAUM: I can start. And I think  
18 that one, one issue might be to broaden the  
19 powers of the Article 32 officer to seek evidence  
20 that he believes, or he or she believes is  
21 missing in the case. I would start with that.

22 CAPT MONAHAN: And at the risk of



1 being unresponsive, I would say, I would remind  
2 the committee that we are living in a time of  
3 great change to the military justice system.  
4 Just January 1st we instituted the Military  
5 Justice Act of 2016, which is widely described as  
6 the most sweeping change in the past 50 years to  
7 the UCMJ.

8 So, I would be a voice of restraint as  
9 far as great change, further great change to our  
10 system to allow the years and recent decade or so  
11 of changes to our system to play out so that we  
12 can gather data before we make further  
13 significant changes to the system.

14 But, of course, you know, I would not  
15 be opposed to relatively minor changes at the  
16 margins. So, I guess I'm a voice of restraint  
17 for further great change.

18 BRIG. GEN. SCHWENK: So, our 25  
19 changes start going 20, we should --

20 CAPT MONAHAN: General, I respect the  
21 mission of the DAC-IPAD.

22 (Laughter.)

1                   CAPT MONAHAN:  But, in all  
2                   seriousness, sir, I would respectfully counsel  
3                   caution to further radical change to our system  
4                   because every, every change of significance has  
5                   second and third order effects that well-meaning  
6                   people may not anticipate.  And so that's all I'm  
7                   saying, sir.

8                   BRIG. GEN. SCHWENK:  Okay.  How about  
9                   the Army's recommendation to go back to the days  
10                  when the IO had the responsibility to go ferret  
11                  out whatever the IO -- or the PHO, excuse me, the  
12                  PHO had the legal authority to go ferret out  
13                  whatever evidence the PHO thought the PHO needed  
14                  in order to be able to write the report, instead  
15                  of today having to beg the trial counsel to  
16                  provide them the additional information?  That  
17                  doesn't seem like a very major change.

18                  CAPT MONAHAN:  I would tend to agree  
19                  with you, sir.

20                  BRIG. GEN. SCHWENK:  Okay.

21                  DR. MARKOWITZ:  And for the record, I  
22                  didn't find that to be non-responsive.

1 (Laughter.)

2 LT. COL. KING: At the risk of  
3 agitating Colonel Pflaum again.

4 (Laughter.)

5 LT. COL. KING: And I apologize, sir.  
6 So, the recommendation on the military judge is  
7 certainly one that would require some study and  
8 some analysis logistically to see if it would be  
9 possible. We're a smaller service and have fewer  
10 cases to work with. But, so that is one that I  
11 think could use some analysis if that would even  
12 be feasible.

13 But some of the things on the margin  
14 for the 32 that I think we could improve or  
15 continue to improve are the capabilities to  
16 conduct remote proceedings, improve technology in  
17 our courtrooms that we could typically have these  
18 Article 32's, to perhaps open up the ability to  
19 call witnesses remotely that may not want to  
20 travel for a 32. That's one area that I think  
21 that we can improve the process.

22 And, it has gotten much better to hold

1 these remote proceedings. But it also, I think,  
2 can be improved in certain circumstances.

3 COL. PITVOREC: So, again, I'm just  
4 echoing a lot of comments. But I would like to  
5 point out that the current process that we have  
6 is a floor, not a ceiling. And so, I think that  
7 I think it's incumbent upon the services to push  
8 down to their young trial counsel that are  
9 presenting evidence that it doesn't have to just  
10 barely meet the probable cause standard.

11 And that's one of the things that we  
12 are constantly training our young judge advocates  
13 is, again, it's a floor, that you are building  
14 your case for probable cause. The government in  
15 and of itself, we should be transparent. We  
16 should be pushing evidence out there.

17 And just because the victim in a case  
18 can elect not to testify doesn't mean that there  
19 isn't buckets of evidence that either  
20 corroborates or doesn't that version of events.  
21 And so, to the extent that -- I don't know that  
22 perhaps changes on the margin -- and I definitely

1 agree that broadening the powers to seek  
2 evidence, that there's a lot of stuff to include  
3 digital evidence that's out there that would be  
4 nice to be able to read -- but I do think that,  
5 as the services, that we really need to be  
6 pushing information down that says, look, just  
7 because you can barely meet the probable cause,  
8 or just because you have barely met the probable  
9 cause, doesn't mean that's what this hearing was  
10 intended to do.

11 And there's nothing wrong with adding  
12 more evidence and letting people consider more  
13 evidence in an Article 32 investigation. And we  
14 really should be beefing that up I think  
15 internally making those requirements. I don't  
16 know that we need changes to the UCMJ, but I do  
17 think that internally our services really should  
18 be pushing down information that says that you  
19 need to be doing better. You need to be adding  
20 more evidence.

21 Just because it's a floor doesn't mean  
22 that you just need to barely clear that. You

1 need to add what would be helpful to the  
2 convening authority to make that informed  
3 decision.

4 CAPT TASIKAS: I think it's a good  
5 question. I'll just add that I don't want to  
6 imply that people are lamenting about the current  
7 Article 32, I think it depends on where you sit,  
8 where you stand kind of adage. And so, if you  
9 are perhaps a trial counsel or an SJA, you find  
10 that very valuable.

11 But there was a policy determination  
12 a few years ago to change the Article 32 to take  
13 the equities of a victim in play and allow her to  
14 say into the system or see a case go to court  
15 martial because of the perceived notion of  
16 Article 32 as it was currently constituted, so,  
17 or back then anyway.

18 So, there's no perfect fix. I think  
19 what you do is, you know, there's pluses and  
20 minuses in every system, you just have to know  
21 what you're losing out by changing, and what  
22 you're gaining by what you're changing. So,

1 there's no perfect, I think, system.

2           You know, again, talking historically,  
3 when the military first brought in lawyers, I'm  
4 sure the convening authorities and commanding  
5 officers weren't happy with that. And a few  
6 years ago, when the SVCs were brought in, a lot  
7 of people weren't happy with that. But now  
8 they're part of the system and part of our  
9 culture of the military justice system and  
10 they're facilitating a policy objective, if you  
11 will.

12           So, I wouldn't suggest that we change  
13 Article 32 just for changing it for lawyers, for  
14 convening authorities.

15           I think, and then one last point, I  
16 think the -- you know, going back prior to 2014,  
17 convening authorities would take those tough  
18 cases to Article 32 to flesh them out so they  
19 don't go to court martial if they were  
20 particularly weak cases. So, now you're going,  
21 just going to see more cases go to court martial  
22 and maybe get a higher acquittal rate. That's

1 just the reality of how it is.

2 And so, if you're willing to live with  
3 that, then I think Article 32 is okay. If you  
4 want to have Article 32 as more robust so you  
5 don't have to go to court martial, then the old  
6 system was probably better.

7 But, I wouldn't say better, I would  
8 say it's different; right? And that's how I  
9 would look at it.

10 CHAIR BASHFORD: Ms. Peters, we're  
11 going to move on to Section 2. If people want to  
12 come back and we have time, we just have a lot to  
13 cover with this panel.

14 MS. PETERS: Yes. The next question  
15 concerns the referral process. The Air Force RFI  
16 response to the military justice division says  
17 that when a victim wants to participate in the  
18 court martial and the standard of probable cause  
19 is met, a case will typically be referred to  
20 court martial to allow the victim to have his or  
21 her day in court.

22 How does this approach incorporate the



1 non-binding disposition guidance factors such as  
2 whether the admissible evidence will likely be  
3 sufficient to obtain and sustain a conviction in  
4 a trial by court martial?

5 And I would request, I think this  
6 question is designed to have the Air Force  
7 respond and then have the other services weigh in  
8 on the weight they'd give to that factor, the  
9 ability to obtain and sustain a conviction at a  
10 referral.

11 COL. PITVOREC: Thank you. I know the  
12 Air Force is the outlier on this because we work  
13 at the probable cause standard, and the referral  
14 standard, and take into consideration the wants  
15 of the victim. And when we evaluate whether or  
16 not that probable cause standard has been met,  
17 and we have a cooperating victim we choose to go  
18 forward.

19 I know that is not necessarily --  
20 excuse me -- what every other service does. And  
21 I respect that they have the right to differ in  
22 their opinion.

1           What I would say to that is that we  
2           have a lot of cases that go forward and evidence  
3           is developed as we're going forward on that case.  
4           Evidence is accumulated. We are gathering  
5           information. And we are going out -- and, again,  
6           as I've mentioned before, that you should be  
7           corroborating every fact of consequence that you  
8           can that the victim asserts in her testimony.

9           And if you're doing that, you can get  
10          convictions in cases that you didn't previously  
11          think, that you didn't previously think were a  
12          slam dunk, or that -- or take into consideration  
13          that there was a probability or a high  
14          probability of a conviction. And so, if we are  
15          training our prosecutors to do their very best,  
16          and you have a credible, reliable victim that  
17          wants to participate, we feel strongly that the  
18          probable cause standard allows us to go forward  
19          in that case and give the victim the opportunity  
20          to say what they want to say in court before the  
21          military judge and members, and whoever else  
22          happens to be present.

1                   CHAIR BASHFORD: Go through and see  
2 what the rest of the services say.

3                   CAPT TASIKAS: So, I would like to  
4 think that our service is different. But I would  
5 suggest that probably the Air Force -- I mean the  
6 Coast Guard probably has a similar mindset with  
7 convening authorities. If you have a victim who  
8 is willing to participate in the military justice  
9 system and would like to see their case go to  
10 court martial, that is a huge, you know,  
11 ingredient in the convening authority's decision  
12 making process.

13                   And then the conviction, the  
14 likelihood of conviction is important, very  
15 important, significant, but probably not  
16 determinative.

17                   So, in that regard, I think it is a  
18 little problematic because convening authorities  
19 are not going to be second guessed if they send a  
20 case to court martial. They will be if they  
21 don't, especially if you have a willing  
22 participant in a court martial case.

1           So, there is a little bit of friction  
2           there that you cannot deny, you know, I think if  
3           you look at this objectively. And so those, you  
4           know, some outside observers may view that as  
5           problematic. Now, they get a fair trial and  
6           that's what, you know, they're entitled to, so in  
7           that regard it's a fair process. But there is  
8           certain factors in there that I think are maybe  
9           different in these type of cases than in others.

10           LT. COL. KING: I agree with the Coast  
11           Guard's perspective that the strength of the  
12           evidence is certainly a factor. It's an  
13           important factor. And I would say that the  
14           victim preference and the strength of the  
15           evidence in the sexual assault case are probably  
16           the two most difficult factors to weigh,  
17           considering the other Appendix 2.1 factors.

18           In a sexual assault case, kind of  
19           leaning towards moving forward to a court  
20           martial, such as the seriousness of an offense,  
21           leaning towards moving to a court martial.

22           And I also agree with Captain Tasikas

1 that in most cases, similar to the Air Force, in  
2 most cases where the victim wants to move forward  
3 and the evidence may not certainly result in a  
4 conviction, we're going to lean towards moving  
5 forward to a court martial. And a lot of that  
6 centers around the fact that determining the  
7 likelihood of a conviction is just so difficult  
8 at that stage of trial when you haven't seen  
9 sworn testimony at that point from any of the  
10 witnesses or the victim, and we're going to err  
11 on the side of moving forward in that  
12 circumstance.

13 Now, there are certainly some  
14 situations where you can look at the evidence and  
15 determine that it is very likely this is going to  
16 result in an acquittal. But, in sexual assault  
17 cases that situation is rare, it's very rare.  
18 So, we find ourselves in a similar position where  
19 we're going to move forward in most of those  
20 circumstances where we have a victim that wants  
21 to participate.

22 CAPT MONAHAN: So, I believe that the

1 likelihood of conviction, the likelihood that  
2 there's evidence supporting conviction, which is  
3 a factor in the Article 33 mandated non-binding  
4 guidelines is a very important consideration for  
5 convening authorities when they bring cases  
6 forward because, as a system of justice, we  
7 should take hard cases to trial, cases that may  
8 not -- that, you know, it's not clear if a  
9 conviction will be obtained or not, we should  
10 take those hard cases to trial.

11 But on the other hand, cases that,  
12 although meeting the probable cause standard,  
13 have a very low probability of success, I think  
14 that in the vast majority of cases it's not  
15 advisable to take those cases to trial. And, if  
16 we do take those cases to trial that have a very  
17 low probability of success, then I believe that  
18 if they inevitably result in acquittals, there's  
19 no gain for the system.

20 I believe the Navy's VLC program in  
21 their response has indicated that although all  
22 victims are different, their VLCs in the field,

1 what we call our SVCs in the field, have when  
2 queried said universally most victims feel a  
3 negative emotional effect after full acquittal,  
4 which is intuitively obvious. Right?

5 But then you look at the accused. And  
6 I believe our defense counsel assistance program  
7 representative might testify that many accused  
8 who are found not guilty of a sexual assault  
9 offense many times after that acquittal will  
10 leave the service because they feel that the  
11 service has turned their back on them through  
12 this ultimate process.

13 And then, from a systemic process,  
14 from a systemic standpoint I also believe that  
15 it's inadvisable to take cases with a very low  
16 probability of success to trial because those,  
17 that case may consume vital resources that might  
18 be otherwise dedicated to cases that have a  
19 stronger chance for success.

20 So that's, those are my thoughts on  
21 the matter.

22 COL PFLAUM: So, to start, first-off

1 from the Army's perspective I would not  
2 characterize it as a policy or an advised best  
3 practice in the Army that if there's probable  
4 cause and a victim wants to go forward that we go  
5 forward as a matter of course. Victim preference  
6 is, of course, a key consideration. It's listed  
7 in the non-binding disposition guidance. And it  
8 is a factor that weighs on SJAs in advisement to  
9 convening authorities as important to the  
10 convening authorities because there, in the  
11 interests of justice, the victim's views and  
12 desires matter and are important.

13 But that has to be considered in light  
14 of all of the other factors that others have  
15 articulated in determining whether to take a case  
16 to trial, of course the availability of  
17 admissible evidence to obtain and sustain a  
18 conviction. So that is -- it is there is no  
19 mathematical formula that I use or that I'm aware  
20 other SJAs use to say, you know, victim  
21 preference is, you know, 65 percent, et cetera.  
22 It's all provided in the package that's advised -



1 - brought to the convening authority to make a  
2 disposition decision on that case.

3 But that disposition, the decision to  
4 refer a case to trial is based on probable cause.  
5 And as we've articulated I think throughout,  
6 there is other evidence that's obtained. There  
7 are other investigative efforts that continue to  
8 take a case as that case is approaching trial.  
9 And one of those is input from the defense. And  
10 that's one factor that as this process is  
11 proceeding the defense does have a say in an  
12 adversarial process, and so they can choose to  
13 participate in Article 32 or they could not.  
14 But, certainly at trial they have evidence, they  
15 have a side of the story that comes out that  
16 affects, that affects conviction rates.

17 And so, as the referral decision,  
18 there is a need to consider all of the criteria  
19 in advising. But to just make a disposition  
20 decision solely -- well, to make a disposition  
21 decision there's a lot that can change after that  
22 initial disposition decision.

1                   And I would be loath to advise a  
2                   convening authority in a case where a victim  
3                   wants to participate and the evidence is  
4                   otherwise strong to not go forward because there  
5                   is also a risk of criticism. I think as easily  
6                   as there could be slides up there talking about  
7                   conviction rates, there could also be slides up  
8                   there talking about non-disposition rates to  
9                   where a command has elected to choose some  
10                  alternative disposition or to not try a case that  
11                  someone else thought was otherwise meritorious.

12                  COL. PITVOREC: I think we both want  
13                  to add something. I just wanted to add that I  
14                  think one of the things that we're seeing  
15                  routinely these days is that the Special Victims  
16                  Counsel and the Area Defense Counsel or the  
17                  defense counsel on the case begin talking and  
18                  discussing alternative dispositions that would  
19                  not otherwise happen if we weren't referring  
20                  cases to trial.

21                  So, I do think that we have a high  
22                  incidence of a discharge in lieu of court

1 martial. We have a high incidence of ideas of  
2 how the victims and the accused can both be  
3 satisfied with the process. But that only comes  
4 after referral. And I think that's an important  
5 factor.

6 I'm not saying the Air Force does it  
7 specifically to get to that, the idea is that  
8 we're going to trial, I think the reality is that  
9 there are alternate dispositions that are  
10 available that are sometimes used and utilized  
11 based upon that decision to go forward in the  
12 case.

13 CAPT TASIKAS: If I can add, the  
14 system is designed, again, for a military  
15 context. So why -- you know, we've talked about  
16 reasonable likelihood of conviction and a low  
17 probability of conviction. Those are easy calls.  
18 And there's ambiguity in between there. And we  
19 have a probable cause standard.

20 So, I would envision a convening  
21 authority under probable cause in a case of  
22 sexual assault to court martial because, for

1 example, you have a very senior officer or  
2 commanding officer who is having an affair with a  
3 married subordinate, for example, and then there  
4 might be some issues with favoritism or  
5 fraternization. And if the person wants to break  
6 it off there is a coercive nature, just because  
7 it is the rank differential.

8 So, you would send that case for a  
9 court martial with the sexual assault allegation  
10 because you still have fraternization, you still  
11 have adultery. And that's why you have the  
12 probable cause standard for sexual assault.

13 Now, you may not get the conviction  
14 for sexual assault because it's somewhere between  
15 low probability and reasonable likelihood. You  
16 just, you may. You know, there's always a  
17 possibility. But the point is, is that those  
18 type of cases are where I think a military  
19 justice context is different than the civilian  
20 context of sending sexual assault cases to a  
21 trial. Those are the type of cases that the  
22 system is designed to ensure convening officers

1 or convening authorities have that flexibility to  
2 showcase certain issues in their command culture  
3 in a case, even though maybe the Article 120 is  
4 not likely to get a conviction.

5 COL PFLAUM: And if I may piggyback on  
6 that a little bit. Again, the trial and the  
7 court martial system is the ultimate adversarial  
8 fact finding process that we can utilize to get  
9 after -- not get after, I think to look at these  
10 very close, very difficult, very serious cases  
11 and allow either a judge or a panel to look at a  
12 full range of evidence in an adversarial process  
13 to come to a finding of fact on a criminal  
14 offense.

15 CHAIR BASHFORD: We jumped ahead a  
16 little more than we had planned to. We're not  
17 letting you off the hook on Article 32 quite yet.  
18 But I think, Ms. Long, you had a question about  
19 this section.

20 MS. LONG: I did. But it was raised,  
21 so I'm going to ask a question. If you think  
22 it's beyond the scope, I can keep it.

1           Because it's been raised many times,  
2           this term reasonable likelihood of conviction,  
3           which I'm curious what the, what the definition  
4           is that you're using. Because what the research  
5           tells us, and the experience is that this is an  
6           area where speculation typically takes over  
7           analysis. And as you sort of rightly pointed out  
8           when you describe your practice here, that  
9           determining a strong or a weak case is, could be  
10          subjective and can be based on how experienced  
11          you are analyzing things.

12                   And I'm wondering objectively what is  
13          your test for determining that?

14                   CHAIR BASHFORD: Starting with Colonel  
15          Pflaum.

16                   COL PFLAUM: Yeah. I think you hit  
17          the nail on the head, ma'am. It is, it is  
18          inherently subjective. And it is based on our  
19          experience within the military justice system  
20          what we have seen in terms of how cases are  
21          presented, how evidence has been, has been  
22          received by the fact finder, what evidence can

1 get into trial. But, also, an evaluation of the  
2 case file. Is there -- in overall evaluation of  
3 the case, is there a readily available defense?  
4 Is there inconsistent statements made? Is there  
5 evidence in the trial that tends to negate guilt  
6 or that cuts against a story?

7 And so, again, the reasonable  
8 likelihood of conviction is in providing that  
9 advice, the staff judge advocate is looking at  
10 the entire case file, understanding the court  
11 martial process, the dynamics of the particular  
12 case. Because this applies in sexual assault, of  
13 course, but also in every case that we try, to  
14 make our best assessment. And it is that: it's  
15 an assessment.

16 I don't think that there can be  
17 necessarily a mathematical or scientific approach  
18 to it, but our best assessment of the likelihood  
19 of success at trial.

20 MS. LONG: And just in following up,  
21 because you're saying with your experience in the  
22 courtroom and your experience with your panels,

1 and that makes me think that it could be leading  
2 to self-fulfilling prophecies of we put these  
3 cases forward, our panels don't like them. And,  
4 therefore, when we're assessing reasonable  
5 likelihood of conviction perhaps this isn't a  
6 case that should go forward, rather than  
7 thinking, okay, looking at all of the available  
8 admissible evidence, looking at the elements of  
9 the case, should a reasonable, educated jury,  
10 panel, determine someone's guilt beyond a  
11 reasonable doubt, not will they based on our  
12 experience.

13 I don't think you meant that but I  
14 didn't -- I just wanted to make sure I understood  
15 what you meant.

16 COL PFLAUM: I understand. No, I  
17 think that, again, we are applying -- rather than  
18 this specific judge or this specific panel, we  
19 are applying. I'll say this, I have applied and  
20 I believe others apply a standard of sort of what  
21 a reasonable fact finder would -- how a  
22 reasonable fact finder would come out on this



1 case.

2 MS. LONG: Would come out or should  
3 come out?

4 COL PFLAUM: I think that's a good  
5 question. Let me think for just a moment, but.

6 (Laughter.)

7 MS. LONG: And you can think. I don't  
8 want to determine --

9 MS. LONG: Yeah. No, I mean I think  
10 that's a tough question, right, because now I'm  
11 substituting my judgment for the fact finder.  
12 But I think, I think should come out is fair.  
13 But, again, that's not my call.

14 And, also, at that stage in the trial  
15 I have not heard all of the evidence, so I think  
16 it would be precocious a bit to suggest that I  
17 know everything at this point, that I'm providing  
18 advice to say they were wrong, they came to the  
19 wrong conclusion should they come to a conclusion  
20 opposite of mine.

21 MS. LONG: Thank you.

22 CAPT MONAHAN: And I would agree that

1 it is at its core a subjective standard. So it's  
2 difficult to arrive at an objective standard.

3 But I, I would agree that a workable  
4 objective standard would be looking at the  
5 evidence, based on your experience, what should a  
6 reasonable finder of fact return a verdict of.  
7 And I think that would be a working, a workable  
8 approach to the issue.

9 LT. COL. KING: Ma'am, I think when we  
10 conduct our analysis and give recommendations to  
11 the staff judge advocate, or when the staff judge  
12 advocate gives the recommendation to the  
13 convening authority, really the standard should  
14 be factual and legal sufficiency to obtain and  
15 sustain a conviction.

16 And so, yes, we're going to rely on  
17 experience but we're also going to look at the  
18 appellate case law where appellate courts do have  
19 a factual sufficiency review that gives us the  
20 ability to look at what facts might have been  
21 reversed by the appellate court. And then, of  
22 course, the legal sufficiency.

1           So, when you're dealing with some of  
2           the Article 120 offenses that -- where the  
3           charging theory is incapacity, looking in detail  
4           at whether or not a certain legal standard has  
5           been met for incapacity based on the fact  
6           patterns you have, and this really surrounds a  
7           lot of, some of the incapable of consent due to  
8           impairment by intoxication and situations where  
9           you may have a blackout that's involved.

10           And going to the actual case law to  
11           review the factual and legal sufficiency would be  
12           a standard that we're, that we should be focusing  
13           on as well.

14           COL. PITVOREC: I'm probably glad that  
15           the Air Force now just, you know, answered the  
16           question originally the way that he answered.  
17           And so, the idea of reasonable likelihood, I mean  
18           obviously that is not what we use, and I'm not  
19           saying that we shouldn't. I'm just saying that  
20           we look at the case in a much more clear-cut  
21           fashion and try to remain objective about what  
22           the probable cause standard means and, again,

1 looking to, you know, the desires of the victim  
2 in wanting to go forward.

3 But we do assess the credibility of  
4 the victim when making that recommendation. If  
5 there is a victim that is wholly, you know,  
6 contradicted by all the other evidence of the  
7 case, I mean, we're not, we're not blind to that.  
8 We don't just blindly follow the victim wants to  
9 go forward. We do assess the credibility of the  
10 victim and whether or not the victim is supported  
11 or contradicted by other evidence in the case.

12 But I do appreciate that we have a  
13 much more clear-cut standard that may be not as -  
14 probably -- it's all subjective, but it's maybe  
15 not as falls to the subjectivity that, you know,  
16 reasonable likelihood of conviction is.

17 CAPT TASIKAS: I just think it's one  
18 of those things that if you're an experienced  
19 trial counsel, prosecutor, and you're kind of  
20 aware what you have. You know, I'm from Greek  
21 descent. My mom knows when the spanakopita is  
22 done because she's done it so many times, right,

1 and I don't. And I think when you see it from  
2 afar and see what you have, you can make those  
3 kind of -- to say subjective it's not just, you  
4 know, a layperson's perspective. They know the  
5 cases and are aware of what evidence they have to  
6 get to the reasonable doubt standard.

7 The variable is how people are going  
8 to hold up in court. Maybe you get an adverse  
9 ruling. Maybe the testimony of your key witness  
10 falls apart at the last second. Those things are  
11 a reality.

12 So if you're surprised, or from afar  
13 like where I am in policy in headquarters, I can  
14 almost kind of project the ones that are going to  
15 have an acquittal. There are some cases where  
16 I'm, like, that's a good case, that's going to  
17 get a conviction, and then something happens in  
18 the court and you're surprised by those.

19 And I think those are the reasonable  
20 likelihood that you think that the members should  
21 have come back with a conviction. For some  
22 reason they just didn't buy the argument the

1 government had. That happens. That's part of  
2 the system we have.

3 But to say that we don't tee up cases  
4 that we pretty much know we're not going to get a  
5 conviction, I think that happens in our system  
6 for sure. And I don't know, you know, that's  
7 just a policy call and a judgment call by the  
8 convening authority and allowed, the system  
9 allows for that, so.

10 MS. TOKASH: Many of you talked about  
11 other evidence that's presented to the staff  
12 judge advocate after the preliminary hearing. My  
13 question is, could you give some concrete  
14 examples of what type of evidence that might be  
15 and why prefer charges if you don't have that  
16 evidence prior to preferral?

17 CAPT TASIKAS: I'm going to defer to  
18 my colleagues. They might know a little bit more  
19 of that than I do from where I am in my  
20 experience.

21 COL PFLAUM: So, one example might be  
22 DFE. So, it might take a long to get DFE.

1 MS. TOKASH: And that's a digital  
2 forensic examiner?

3 COL PFLAUM: I'm sorry, digital  
4 forensic examination that might reveal evidence.  
5 There may be a discovery request that comes in at  
6 trial to tell the government to look in a  
7 particular place for evidence. And we look there  
8 and find some evidence, either inculpatory or  
9 exculpatory.

10 And another example that I just had  
11 and now I lost it. But anyway -- oh, witnesses  
12 that the defense may find that the government  
13 didn't have at the preferral stage.

14 So, as the defense starts to do their  
15 investigation they talk to witnesses that perhaps  
16 the government didn't find, didn't know about,  
17 didn't interview, and bring forward either sworn  
18 statements or eyewitness testimony that they  
19 didn't have at that time.

20 And so, I think that raises an  
21 important point. There are times where just  
22 because a case was preferred to trial does not

1 prevent an alternative disposition down the line  
2 should the case change in a significant way. And  
3 so, and actually I think this is raised -- and I  
4 can't remember where it's raised in the written  
5 products -- but the issue of delay in  
6 investigation to adjudication of a case. And one  
7 concern that I had as an SJA, and I still have in  
8 our system, for many of the reasons that Colonel  
9 Pitvorec raised, is if we wait till our case is  
10 perfect at preferral we -- it can be perhaps too  
11 long.

12           And by preferring, it triggers  
13 processes that help us determine the right answer  
14 on a particular case.

15           CAPT MONAHAN: And I agree. In the  
16 electronic age, electronic evidence is something  
17 that does take time to develop due to the demands  
18 on the forensic examiners. Additional witnesses  
19 may come to light as a result of that. And just  
20 the ebb and flow of the trial process or the  
21 pretrial process usually brings at least some  
22 amount of evidence to the fore that was not



1 present at the time of preferral from our  
2 perspective.

3 MS. TOKASH: And so, could that be a  
4 reason that if a PHO finds, determines what I  
5 consider a threshold constitutional issue of  
6 probable cause, if a PHO finds no probable cause  
7 could that possible be -- this additional  
8 evidence could be, the SJA could reverse that no-  
9 PC decision based on this additional evidence?

10 CAPT MONAHAN: Yes, certainly.

11 LT. COL. KING: In addition the  
12 digital evidence, I've also seen evidence of  
13 mental health of the accused to be something that  
14 is still a matter that's pending at the 32  
15 process. So, the R.C.M. 706 proceeding to  
16 examine the accused mental capacity at the time  
17 of trial where lack of mental responsibility  
18 could be something that's pending.

19 And I think one important note is that  
20 during the trial itself the defense does have the  
21 ability to raise an issue to reopen the Article  
22 32 process.

1 COL. PITVOREC: I think MJA, the  
2 Military Justice Act of 2016 actually changed the  
3 landscape a little bit. Prior to that, which  
4 just, obviously, we talked about earlier was  
5 implemented in January of this year, trial  
6 counsel does not have the ability to issue  
7 subpoenas until referral. And so, when you look  
8 at that landscape about how long it took before  
9 we could issue subpoenas in a case, that there  
10 were, there was so much information that you got  
11 but you only got it after the case was referred  
12 to trial.

13 And so, when we're talking about going  
14 out, especially with social media that requires a  
15 subpoena, so if you're looking at the victim's  
16 social media account, my children tell me that  
17 it's not Facebook, that it has to be Instagram  
18 because Facebook's for old people. So, I'm sorry  
19 if all of you have Facebook; we're all old.

20 But, you know, the Instagram account  
21 that's owned, you know, you have to reach out.  
22 We were limited to waiting until referral of the

1 case. So there's really no way to, quote-  
2 unquote, perfect a case prior to referral because  
3 you didn't have subpoena power.

4 And so, MJA 16 has changed that  
5 landscape but we don't know yet exactly what  
6 that's going to look like because all of those  
7 things have not yet been implemented. So, we're  
8 still waiting to see how that all plays out. But  
9 there's a lack of evidence that kind of comes in,  
10 that used to trickle in basically after referral.  
11 Obviously, when trying to make a probable cause  
12 determination that's not necessarily helpful.  
13 But knowing that it's out there, knowing that  
14 those -- you know, you can go out and see maybe  
15 not on Instagram but on Facebook, if you could  
16 see the post you could see what people are  
17 saying. It's just going back and getting, you  
18 know, that provider to provide that information.  
19 That's incredibly important.

20 MS. TOKASH: And so we, basically,  
21 have been reviewing cases -- at least the Case  
22 Review Working Group where we see this trend.

1 And, again, we don't know what it means, but  
2 we've seen a trend where the preliminary hearing  
3 officer finds no probable cause. The staff judge  
4 advocate says I disagree, there is probable  
5 cause. The CG refers to trial, and then it  
6 ultimately ends in an acquittal on the  
7 substantive offense of sex assault.

8 You know, so we're, I guess what we're  
9 really trying to find is the why behind there.  
10 And there's a lot of variables I'm sure.

11 CHAIR BASHFORD: If you could just --  
12 because a lot of you said one of the reasons you  
13 don't want the either highly qualified or not so  
14 qualified Article 32 judge finding of no probable  
15 cause be binding is because so much information  
16 comes in prior to referral. You've talked about  
17 information that comes in post-referral,  
18 developed at trial.

19 If you could just focus on that one  
20 chunk of time, what would, what would come in  
21 that would take a no probable cause to a probable  
22 cause non-binding likelihood of success at trial

1 referral decision?

2 I understand things can come in  
3 post-referral. Defense can come forward, I don't  
4 think there's anything stopping defense from  
5 coming forward pre-referral either. But could  
6 you just focus on that chunk of time in response  
7 to Ms. Tokash's question?

8 COL. PITVOREC: For the Air Force I  
9 think some of the things, like as I was saying  
10 before, the social media. So, if somebody goes  
11 to a social media page and does a print screen,  
12 that's not going to be provided to the  
13 preliminary hearing officer.

14 So, something that somebody may have  
15 posted on social media we may be able to look at  
16 it but that's not going to have the necessary  
17 parameters for the preliminary hearing officer to  
18 take a look at that and say, yes, that's  
19 something I can consider. It doesn't, it doesn't  
20 meet any of the standards.

21 But that's something that the staff  
22 judge advocate may be aware of. There are

1 different things throughout social media,  
2 different information, witnesses that were not  
3 available.

4           So, again, as we talked about before,  
5 we have a lot of -- we, I think all the services  
6 are still deploying at a high rate, and people  
7 are deploying and going overseas. To the extent  
8 that you cannot get them back or they didn't make  
9 a statement in the case that may have evidence,  
10 if they're willing to write a letter or provide  
11 evidence if the trial counsel is able to find  
12 them, or the defense counsel is able to find them  
13 and they're able to gather that evidence, they  
14 can provide that to the convening authority but  
15 that maybe not be something that would be  
16 considered by the preliminary hearing officer.

17           So, all of that kind of extrinsic  
18 evidence, if you will, can be gathered up and  
19 provided to the staff judge advocate and,  
20 therefore, to the convening authority in making  
21 that decision. But that may or may not be  
22 something that could be considered by the

1 preliminary hearing officer based on whatever the  
2 rules of evidence that apply to that preliminary  
3 hearing.

4 COL PFLAUM: Just one thing to offer  
5 is at least under the new rules the, oftentimes  
6 the 32 preliminary hearing officer doesn't have  
7 the full benefit of the victim's testimony  
8 because of their election not to participate in a  
9 preliminary hearing. And that is the trial  
10 counsel, the special victim's prosecutor  
11 assessment of the victim may weigh in the staff  
12 judge advocate's decision, and may sway their  
13 opinion on probable cause different from the  
14 Article 32 officer.

15 But I, actually, also too would be  
16 curious -- and I don't have the data in front of  
17 me -- to understand the number of cases, you  
18 know, how statistically significant the  
19 difference is in cases where the PHO found no  
20 probable cause to where they did find probable  
21 cause and then it still ended up as a result in  
22 acquittal. And that's because of the wide gulf

1 that differs between probable cause and beyond a  
2 reasonable doubt.

3 And so, even in a case where there is,  
4 you know, again, the 32 PHO's determination that  
5 there is not probable cause is a strong signal to  
6 everyone involved in the process that this case  
7 is a difficult case and there are issues with it  
8 that everyone needs to look for. But just  
9 because there is probable cause found, does not  
10 equate to a conviction at a criminal trial  
11 because of the beyond reasonable doubt standard.

12 So, I'm a little bit, I would be  
13 concerned about, you know, signing -- anyway, I  
14 would just be -- that needs further study, from  
15 my perspective.

16 MS. CANNON: I hail from state court  
17 criminal defense. And we have preliminary  
18 hearings that are binding and can be overruled  
19 with legal process by the prosecution.

20 The concern I have with some of the  
21 things that you're pointing out as problems of  
22 proof availability at the 32 is that, if it were



1 binding, wouldn't you be inclined to be ready and  
2 take the time if you need continuances, and be  
3 ready with that information? We have media. We  
4 have all kinds of things that you're talking  
5 about available at the prelim.

6 And if it was binding, that might,  
7 one, get you already, and; two, influence this  
8 number of cases that you're dealing with post-32  
9 where you're angst over it's close, it's weak,  
10 she should have a right or he should have a right  
11 to have his day in court or her day in court.

12 Meanwhile, there is a suspect that's  
13 having to deal with the consequences. And  
14 waiting for that trial when it could have gone at  
15 the 32 is something to balance.

16 So, the question I have is would a  
17 more binding effect at the 32 alleviate some of  
18 these concerns, as I've just described, and get  
19 rid of some of these weaker cases where you can  
20 turn to the victim and say, you know, we don't  
21 have anything more to provide to overrule that  
22 judge or that magistrate. Because if it's just

1 another set of eyes, that doesn't really help you  
2 make that decision, the decision is still in your  
3 lap.

4 So, your thoughts.

5 COL PFLAUM: I think that forcing the  
6 government to have its case in essence complete  
7 at the 32, I can't say that there is not value in  
8 that. Right? I mean, the obvious -- it appears  
9 to be common sense that the government should  
10 have its strongest case as early as possible.

11 I would be concerned about two things.  
12 And the first is, is the -- well, let me just, I  
13 think I'll say my concern is that that may be  
14 unnecessary delay in waiting until the -- it may  
15 cause unnecessary delay in waiting for that 32 to  
16 -- the case can continue to improve as it's  
17 working through the process. There is a value  
18 in, at least in the military justice system, of  
19 allowing a case to proceed versus waiting too  
20 long before an initial disposition decision.

21 CAPT MONAHAN: So, I certainly take  
22 your -- sorry.

1 MS. CANNON: I'm sorry.

2 CAPT MONAHAN: I'm sorry. I certainly  
3 take your point as far as it may, it may force  
4 the government's hand to have a better case to  
5 present prior to going to the 32. But I think if  
6 we were to go in that, go down that road it would  
7 negate the role in our system of the staff judge  
8 advocate who does currently possess the check,  
9 who holds, he or she holds the probable cause  
10 check in his or her hands.

11 And in our system, although we have,  
12 we do have qualified preliminary hearing officers  
13 serving in all of our cases, oftentimes they are  
14 not as experienced as the staff judge advocate.  
15 And so it might be more appropriate for the staff  
16 judge advocate to retain that role to serve as  
17 the probable cause check.

18 LT. COL. KING: Ma'am, I'll loop back  
19 around to answer your question. I'll loop back  
20 around to Ms. Tokash's question as well as to  
21 what additional evidence is a convening authority  
22 considering to sway them in that small window.

1                   And in my experience I haven't seen  
2 new evidence really being the thing that might  
3 sway a convening authority to move forward. It's  
4 contrary analysis, contrary analysis by the  
5 prosecution who is working with the SJA to  
6 provide that informed decision.

7                   So, I haven't seen many instances  
8 where there's evidence that's outstanding that  
9 comes in after the Article 32 that serves to sway  
10 the proceeding.

11                   And so that moves over to your  
12 question, ma'am, that really if it was a binding  
13 proceeding then that process would require the  
14 convening authority to abdicate that role of  
15 making the ultimate disposition decision. And it  
16 would also cut the SJAs' informed decision and  
17 informed advice out of the process.

18                   COL. PITVOREC: So, Ms. Cannon, you  
19 really have hit on probably every debate that we  
20 have had internally within our office probably  
21 for the last 5 years. Because this is a, it is a  
22 difficult decision.

1                   And we talk about binding versus  
2 non-binding, whether or not it should be a  
3 military judge, whether it should be just an  
4 experienced judge advocate that has, you know,  
5 lots of military justice experience, and trying  
6 to get to the heart of that.

7                   As many of you know, you put, you  
8 know, four lawyers in a room together you're  
9 going to have four different opinions. And so,  
10 but I think on something as important as probable  
11 cause, I mean, I would like to see cases that,  
12 that only meet the probable cause standard. I  
13 would like to see that disposition, or that the  
14 preliminary hearing officer's decision have more  
15 weight.

16                   What I would like, really like to see  
17 is that staff judge advocates then take into  
18 consideration and then try to figure out really  
19 what's out there. I think MJA 16 is just so new  
20 right now. And we're still relying on the old  
21 version where there was just so much information  
22 and so much evidence that you didn't get until

1 after referral. And so -- or that you were  
2 actively trying to get.

3 But our 120-day standard is real. It  
4 is not a joke. We see cases dismissed --

5 BGEN SCHWENK: The 120-day standard is  
6 the speedy trial standard?

7 COL. PITVOREC: Yes, sir. Yes, sir.  
8 My apologies.

9 We see cases all the time dismissed  
10 because you didn't meet the 120-day standard and  
11 then you have to start over from scratch, or the  
12 case goes away. Generally speaking, if you can  
13 show why the delay, but just pure like, oh, the  
14 government is still assembling its evidence,  
15 that's not sufficient.

16 So, so that the idea that they are  
17 trying to move the cases, and to get a  
18 preliminary hearing, to get an Article 32  
19 investigation you have to have preferred charges.  
20 And preferring charges is the trigger, unless the  
21 person is in pre-trial confinement. And  
22 sometimes they are. So, you're moving fast. And

1 you don't have the ability to delay beyond while  
2 you're waiting for a forensic examination of a  
3 cell phone, or for subpoenas to go out to various  
4 places that you haven't yet received.

5 So, there's lots of stuff that comes  
6 in that you're waiting for. But if you say we're  
7 not waiting for that, we can't, we can't wait to  
8 do a 32, we have to get moving because the  
9 military judge is checking. There's a tick,  
10 tick, tick on that clock. And if you're not  
11 showing what you're doing to further that case  
12 along, it is in all likelihood your case may go  
13 away. And it could be a no kidding win, it could  
14 be a no kidding win for the defense in a case  
15 that should have been a win for the government.

16 I do understand where you're coming  
17 from. I'm a three-time defense counsel. I  
18 understand that. You know, the Article 32  
19 process I think is a good one in trying to moot  
20 that out. But right now the way -- and I do  
21 think that it's a good way. The staff judge  
22 advocate who has the benefit of knowing what's

1 going on, who has maybe additional evidence says  
2 -- and again, just disagrees with the PHO, I  
3 think you have to give them that benefit.

4 And there really is no mechanism right  
5 now for then coming back in and saying, oh, well  
6 here's all this extra evidence, because by then  
7 the clock has ticked to a point where that case  
8 is going to go away because of speedy trial.

9 CAPT TASIKAS: I go back to my earlier  
10 comments about the original idea of an Article 32  
11 was to protect the accused from the plenary  
12 authority of the convening authority. And so,  
13 the idea of having an open forum with  
14 cross-examination, be able to provide evidence,  
15 to make sure there wasn't baseless charges that  
16 were going to go forward, or a valid defense that  
17 was going to go forward. And so, now we're in  
18 this moment where we're trying to push the  
19 Article 32 into something else that's more  
20 civilian-like, which is great.

21 And the question I have then is, you  
22 know, if we continue to make the military justice



1 system more civilian-like, then why do we need a  
2 military justice system? And so, again, if you  
3 gain something, you lose something.

4 Under our system, jurisdiction over  
5 the accused is status of their service, you know,  
6 active duty. So, the more time we have in our  
7 system, the more time we have somebody under our  
8 laws. So, I think already now we have a system  
9 that's taking a little bit too long under what it  
10 was originally envisioned. And the more process  
11 we have, the more likely these cases are going to  
12 take even longer. You have an accused who's been  
13 in the service for a long period of time. So, I  
14 would not want to have that.

15 And then the other idea, again, is  
16 while these systems operate wonderfully in  
17 peacetime in CONUS, we still have to envision a  
18 system that can operate in armed conflict in  
19 foreign venues. And so that is a very important  
20 facet of our system, that it's mobile, it's not  
21 just here in time of normalcy, if you will, so.

22 MS. TOKASH: I think it was

1 interesting hearing about kind of the abdication  
2 of the SJAs' responsibility if -- I don't like  
3 using the word binding or non-binding, I like  
4 looking at probable cause as a threshold -- it's  
5 a constitutional issue, right. I would hope we  
6 would all agree about that.

7           And so in a way it's inherently  
8 binding or it should be inherently binding  
9 because it's a basic constitutional issue. So, I  
10 don't think from a comparative standpoint that  
11 the 93 U.S. attorneys, you know, nationwide feel  
12 that every time a grand jury votes to bill or no-  
13 bill a case, their responsibility is being  
14 abdicated. And that decision is resting with, I  
15 mean, I have a pig farmer from Chautauqua County  
16 sitting on my Tuesday grand jury. And we vest  
17 the PC determination in him, and in the school  
18 teacher from Erie County, and in American  
19 citizens all across the country.

20           So, you know, why can't the military  
21 trust a judge advocate to make a determinative,  
22 binding threshold issue on probable cause at the

1 preliminary hearing?

2 And I, I would like to tip my hat to  
3 at least the Navy and the Marine Corps who  
4 acknowledged in their answers that, if it were  
5 binding, this would afford due process  
6 protections to the accused. And shouldn't we all  
7 be concerned about due process?

8 I mean, I think that that's really,  
9 you know, the heart of the issue when it comes to  
10 this. It's not about changing things or taking  
11 things away, it's really about making things  
12 better. Isn't that what we should all be working  
13 toward?

14 CAPT TASIKAS: I think the issue is  
15 then the present nature of the probable cause  
16 standard of Article 32 is when the PHO finds no  
17 probable cause for a specification, and now does  
18 that bar the convening authority from taking NJP  
19 action, administrative action?

20 That's very important. I think, like,  
21 to tie the hands of the convening authority from  
22 all other action, because the no probable cause,

1 whether it's a 120 or Article 92, is a lawful  
2 general order whether the person was absent from  
3 their duty, or sleeping on post. That's a very  
4 important factor.

5 So, maybe you can't get a conviction  
6 or court martial, but I sure want to have the  
7 ability to take that person to Article 15. In  
8 our system it's preponderance of -- Article 15 is  
9 preponderance. For other services it's  
10 reasonable doubt, I think. But that's a policy  
11 determination.

12 And, again, so I would be, I would be  
13 careful because having the Article 32 be a  
14 jurisdictional process in our system would be  
15 problematic. And then if there are defects in  
16 Article 32, those are issues that can be raised  
17 at appellate level, and then a case is  
18 overturned.

19 I just think that the nature of the  
20 Article 32 was not envisioned to be something  
21 like that. I agree with you that the -- you  
22 know, we all want due process. But this is

1 military due process, it's different than  
2 constitutional due process. And so there is,  
3 there is -- they go hand in hand but it's  
4 slightly different.

5 LT. COL. KING: And I would just  
6 offer, ma'am, that there is a judge advocate that  
7 is put in this process to determine whether or  
8 not probable cause is met. It's just, it's the  
9 staff judge advocate, not the preliminary hearing  
10 officer.

11 So, if the staff judge advocate says  
12 there's no probable cause then the commander  
13 cannot prefer the charge.

14 MS. TOKASH: Right. And I'm just  
15 point out if the preliminary hearing officer  
16 who's also a lawyer tethered to a bar, who is  
17 licensed by a bar, I mean why cannot, why can't  
18 that opinion be determinative, I'd like to use  
19 the word determinative of the constitutional  
20 issue of probable cause. That's really only what  
21 I'm getting at.

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

1 CHAIR BASHFORD: I have two final  
2 questions. And then I'm going to delay our break  
3 for 5 minutes if the staff has anything.

4 My two questions are, again, there's  
5 been talk about how things would abdicate the  
6 role of the commander in making the decision.  
7 But, realistically, if the staff judge advocate  
8 has said there is probable cause, how often does  
9 the commander feel comfortable in saying I'm not  
10 going to forward it, I'm not going to refer this  
11 to a general court martial because, if my  
12 understanding is correct, that has to go up to  
13 the Secretary?

14 Has that ever happened that you know  
15 of where the staff judge advocate has said, yes,  
16 PC, and the commander in exercising his role has  
17 said, but I'm not going to refer it? That's one  
18 question.

19 Then second is how often are members  
20 -- administratively discharged after an acquittal  
21 on a sexual assault charge?

22 Let's start with you. I realize

1 they're completely unrelated, but.

2 COL PFLAUM: And, candidly, I don't  
3 know if the Army has collected data on the  
4 Secretary of the Army review after a convening  
5 authority's decision to not refer after a staff  
6 judge advocate's advice to refer.

7 I, anecdotally, I believe that it is  
8 exceedingly rare because it is a check on that  
9 convening authority's exercise of his discretion  
10 to understand that that decision will be reviewed  
11 by a higher level. So, I do believe that it's  
12 exceedingly rare.

13 And to your second question, ma'am, if  
14 you could reiterate your second question?

15 CHAIR BASHFORD: After a full  
16 acquittal of a sexual assault charge, how common  
17 is it for the member to be administratively  
18 discharged from the service?

19 COL PFLAUM: So, and again based on  
20 Army regulations, if there is a full acquittal,  
21 absent other evidence or other misconduct, that  
22 would be a barrier to administrative separation

1 for that particular offense. So, that would be  
2 rare.

3 Would they be separate, might they be  
4 separated for other misconduct that they commit,  
5 or other bases, again I don't specifically have  
6 the data for that.

7 CAPT MONAHAN: And to answer the  
8 second question first, I believe we have similar  
9 policies in the Navy.

10 To the first question, I'm not aware  
11 of any case in which a, in which an SJA found  
12 probable cause and make a recommendation to go  
13 forward to trial, did a general court martial  
14 convening authority go to the Secretary of the  
15 Navy and request -- or not refer, thereby  
16 triggering a policy of having to go to the  
17 Secretary of the Navy.

18 LT. COL. KING: I'd agree that the  
19 first question it's very rare. I do know that it  
20 has occurred. But in the instance where I've  
21 seen it happen there was an additional victim  
22 preference that was provided after the Article 32



1 process, and after the actual probable cause  
2 finding was made prior to preferral. There was a  
3 small period of time in there.

4 And then for the administrative  
5 separation, I agree with Captain Monahan that the  
6 service regulations do prohibit acquittals moving  
7 forward for enlisted personnel. For officers,  
8 after an acquittal there can be a show-cause  
9 separation proceeding, but I have not seen that  
10 occur after an acquittal for a sexual assault.

11 COL. PITVOREC: Ma'am, to go to your  
12 first question, there's a -- the staff judge  
13 advocate's recommendation is not limited to just  
14 whether or not there's PC. That, it's PC and  
15 then a recommendation, a couple of other things,  
16 but a recommendation of whether or not to go  
17 forward.

18 In the Air Force we have not had a  
19 convening authority. We have had staff judge  
20 advocates say there is PC but I do not recommend  
21 that you go forward for the following reasons,  
22 and lay out the reasons. And then the convening

1 authority did not go forward.

2 We have not had the situation, to my  
3 knowledge, where they said, yes, PC, yes, go  
4 forward, and then the convening authority said,  
5 no, I'm not going forward. We have not had to go  
6 to the Secretary as of yet.

7 To your second question on  
8 administrative discharges, in the Air Force an  
9 acquittal or the underlying basis, the underlying  
10 facts that led rise to the acquittal cannot serve  
11 as the basis for an administrative discharge.  
12 However, again, like the other services, if there  
13 is other underlying misconduct, and I have seen  
14 subsequent misconduct then trigger an  
15 administrative discharge.

16 I would also -- and I guess this is  
17 not really the era for this because if there is,  
18 if there is a conviction of any sort of sexual  
19 offense it automatically requires a discharge  
20 from the court martial. But in a prior lifetime  
21 as a defense counsel we had, I did see  
22 convictions of a sexual offense that then did not

1 receive a discharge, but then that could not be  
2 used as a basis to trigger an under other than  
3 honorable conditions discharge. They were  
4 limited to getting a general discharge for that  
5 member.

6 CAPT TASIKAS: I have the same  
7 sentiments for both questions. I think the issue  
8 going back, though, about the policy of an  
9 acquittal goes back to the Article 32. And if  
10 you find no probable cause in an Article 32, that  
11 has triggering repercussions for administrative  
12 avenues. So, I would envision a system -- and I  
13 don't mean to go back -- but that if you find no  
14 probable cause in an Article 32 that's binding,  
15 that the commanding officer would be barred from  
16 taking other administrative actions.

17 And that's not a system I think we  
18 would want.

19 But as far as directed to your  
20 questions, ma'am. I echo the same things that my  
21 colleagues do.

22 CHAIR BASHFORD: And we have time for

1 one staff question.

2 MS. PETERS: I'm sure it's a short  
3 answer but.

4 (Laughter.)

5 MS. PETERS: In practice, how do staff  
6 judge advocate's convey information contained in  
7 the Article 32 report to a convening authority?

8 Does the SJA summarize the Article 32  
9 report orally, or does the convening authority  
10 get to read the Article 32 report?

11 And is there anything in the Manual or  
12 a service regulation that requires or dictates  
13 how the Article 32 information is conveyed to a  
14 convening authority?

15 COL PFLAUM: I'm going to start with  
16 that. So, the 32 report is in the file.

17 And I will say that in a case where  
18 there is a negative Article 32 officer finding,  
19 that's highlighted in my Article 40 -- or, I'm  
20 sorry, my Article 34 advice. So, it draws the  
21 convening authority's attention. And it is, it  
22 depends on the case and the convening authority

1 whether they read everything or whether I  
2 summarize that for the convening authority.

3 CAPT MONAHAN: And I would agree. In  
4 the Navy it's case by case. It depends on  
5 variables such as the command, the convening  
6 authority and the staff judge advocate how much  
7 the convening authority reads and how much is  
8 orally briefed to him or her.

9 LT. COL. KING: I would agree with my  
10 colleagues.

11 COL. PITVOREC: Well, that was short  
12 and sweet.

13 I think, generally speaking, in my  
14 experience, staff judge advocates provide both  
15 written advice and oral advice to the convening  
16 authorities. And in my experience in assisting  
17 three different convening authorities, they've  
18 read every word of that Article 32 investigation,  
19 the PHO's report, and had questions for me about  
20 it and why they're different, if there is a  
21 difference in the PHO's advice.

22 So, they are I think very, very

1 cognizant of what's going before them, very  
2 interested in making sure that they make the  
3 right decision for the right reasons. And I've  
4 seen them be very thorough.

5 I had one convening authority that had  
6 tabbed the 32 report so that we could go in and  
7 sit and talk about it, and had questions about  
8 different testimony back -- this was pre-2014 --  
9 but very aware of what's going on. And very  
10 interested to know why there is a difference.

11 CAPT TASIKAS: I would echo that.  
12 It's exactly true. I think it's a very dynamic  
13 process. In talking to the SJA's out in the  
14 field, the convening authorities are very detail-  
15 oriented. They read everything or near  
16 everything, and they have a lot of questions.  
17 This is definitely not just a routine oriented  
18 exercise.

19 So, I would just suggest that it is  
20 dynamic and a give-and-take, back and forth. And  
21 they have to feel comfortable with the decisions  
22 they're making.

1 CHAIR BASHFORD: Thank you all very  
2 much. I'm going to try to compress our break  
3 from 15 minutes to 10 minutes so that we can try  
4 to keep staying on track.

5 Thank you so much for coming.

6 (Whereupon, the above-entitled matter  
7 went off the record at 11:39 a.m. and resumed at  
8 11:53 a.m.)

9 CHAIR BASHFORD: Great, thank you very  
10 much for coming today. We're going to be talking  
11 about the perspectives of the services' special  
12 victims' counsel, victims' legal counsel program  
13 managers regarding conviction and acquittal  
14 rates, the case adjudication process, and the  
15 victim declination in the military justice  
16 process.

17 So, thank you, Ms. Specht. Specht,  
18 right? Colonel Clay, Lieutenant Colonel  
19 Schrantz, Captain Sullivan and Colonel Hamilton.

20 MS. SAUNDERS: So, I'm Terri Saunders,  
21 I'm one of the staff attorneys for the DAC-IPAD.  
22 To begin with, just as with the last one, we'll

1 begin by talking about the Article 32 process.

2 Some of the RFI responses, and they  
3 raise concerns that the judge advocates serving  
4 as preliminary hearing officers, lack extensive  
5 experience dealing specifically sexual assault  
6 cases.

7 Other responses indicated that due to  
8 the limited scope of Article 32, preliminary  
9 hearing officers do not have all of the  
10 information needed to make probable cause  
11 determination for their findings.

12 The overall assessment was that the  
13 staff judge advocate, who is more -- a lot more  
14 experienced, is in a better position to advise  
15 the convening authority on probable cause.

16 Should a judge advocate -- and I have sat in as a  
17 hearing officer or served in that role -- have  
18 significant litigation experience on sexual  
19 assault?

20 CHAIR BASHFORD: Colonel Hamilton.

21 COL. HAMILTON: Ma'am, the ideal  
22 answer would be, yes, you would want someone with



1 the requisite skill set to go ahead and serve as  
2 the preliminary hearing officer. But  
3 unfortunately, that's not always the ideal case  
4 as we're structured with personnel throughout the  
5 Army.

6           However, I do believe that the best  
7 person for the final determination is the staff  
8 judge advocate because of his or her experience  
9 and the fact that they had additional resources  
10 available to them, starting with the special  
11 victims prosecutor, the senior trial counsel, the  
12 trial counsel, to advise what may have or may not  
13 have been raised during the 32 process. And then  
14 make the requisite advice and provide the  
15 requisite 34 advise to the convening authority.

16           CAPT.SULLIVAN: Good morning, ma'am.  
17 Yes, absolutely. The preliminary hearing officer  
18 should have extensive litigation experience.

19           The Navy just recently stood up a  
20 reserve unit of preliminary hearing officers to  
21 assist in that capacity, where we have prior  
22 active duty judge advocates who, in their

1 civilian capacity, work in some experience --  
2 have extensive experience in litigation or maybe  
3 a U.S. Attorney's Office. It might be  
4 prosecution or defense.

5           However, unfortunately the numbers in  
6 that unit just don't meet the need of the numbers  
7 of preliminary hearing officers that we have. So  
8 in that capacity, the Navy, next up is to use our  
9 military justice career track folks who do have  
10 extensive litigation experience to sit in that  
11 capacity as the preliminary hearing officer.

12           However, again, based on the numbers,  
13 they're not always available, depending on the  
14 location. If it's a remote location or just  
15 given then other needs for prosecution or defense  
16 services, filling those roles with our limited  
17 number of military justice career track  
18 personnel.

19           LT. COL. SCHRANTZ: Yes, ma'am, we  
20 agree. In addition to being a fully trained and  
21 certified and sworn judge advocate to conduct the  
22 hearing, it would be very important to the SJA to

1 examine and identify a PHO that has the  
2 experience and expertise and knowledge to  
3 adequately assess the evidence at the hearing.

4 And the only one real key way to do  
5 that is the officers will know generally the  
6 background training and experience of potential  
7 PHOs that are out there. And the SJA would have  
8 the opportunity to assess whether or not that  
9 officer would be able to conduct a thorough and  
10 fair and well thought out hearing with a solid  
11 recommendation.

12 COL. CLAY: And I would echo what has  
13 already been stated. Ideally it would be someone  
14 with extensive military justice and criminal  
15 justice experience.

16 In the Air Force, we often use  
17 military judges, however, they are not always  
18 available. So a person with extensive knowledge  
19 of the system and criminal law would be ideal.

20 But again, sometimes just because of  
21 the numbers and availability, they're not always  
22 going to be able to have either a judge or

1 someone with extensive military justice  
2 experience.

3 MS. SPECHT: For the Coast Guard,  
4 definitely, in a perfect world, they have  
5 litigation experience, they would have military  
6 justice experience. Unfortunately, the Coast  
7 Guard being as small as it is, there is just less  
8 opportunities for them to get that military  
9 justice experience.

10 So, if there were to be some sort of  
11 requirement, I think it would make sense for the  
12 Coast Guard to -- it just couldn't pull from a  
13 bench of experienced personnel, to at least  
14 require some sort of training on sexual assault.  
15 So, they would be aware of the nuances in sexual  
16 assault cases.

17 CHAIR BASHFORD: We heard a lot about  
18 the change in the Article 32, so post-that  
19 change, 2014, have any of you had clients testify  
20 in a 32? Let me just start with you, Ms. Specht.

21 MS. SPECHT: Yes, the Coast Guard has  
22 definitely had clients who have wanted to and

1 have testified at Article 32 hearings. In those  
2 instances that I can think of right now, they've  
3 actually desired the opportunity to speak, or  
4 they've thought that their attorney has been  
5 anxious for them to have that experience first,  
6 because of various reasons related to what's been  
7 relayed to them.

8 COL. CLAY: Similar in the Air Force,  
9 we have had some clients who have testified.  
10 Often it's to add additional information that was  
11 not in their original statement to law  
12 enforcement, or it would be beneficial for them  
13 to have the experience of sitting on a stand and  
14 going through the process of testifying.

15 Although I will say it's probably not  
16 the norm, it's a few outlier cases. And the  
17 majority of our clients choose not to testify.

18 LT. COL. SCHRANTZ: I'm not able to  
19 answer that right now, ma'am, I'm not aware of  
20 that. I know that my deputy who works for me, he  
21 came to be the VLC -- the deputy VLC, at the  
22 headquarters, previously served as the RVLC in

1 Camp Lejeune, North Carolina. And his experience  
2 and information, to me, was that his clients did  
3 not testify.

4 CAPT. SULLIVAN: Yes, ma'am, for the  
5 Navy we have had clients who have testified after  
6 consultation with their victim legal counsel,  
7 with the trial counsel, for the same reasons  
8 articulated by the other panel members.

9 COL. HAMILTON: Ma'am, I'm not sure  
10 I'm qualified to answer that question. I've been  
11 the program manager for a little over a month.  
12 However, from the SJA perspective, which I have  
13 been in the past, most of the client victims have  
14 chosen not to participate in the Article 32. But  
15 there have been some cases where they do.

16 CHAIR BASHFORD: We saw -- I don't  
17 know if you were here for that, I mean, there are  
18 pretty high acquittal rates. Either complete  
19 acquittal rates or acquittal rates on all the  
20 sexual assaults. And we certainly read from the  
21 victim representative perspective, how  
22 devastating that is. Whether they feel they

1 weren't believed or they went through this whole  
2 process for nothing.

3           Given that, do you think there should  
4 be a higher threshold other than probable cause?  
5 There's the non-binding guidance, but to push a  
6 case and to refer it to court-martial? Colonel  
7 Hamilton?

8           COL. HAMILTON: No, ma'am, I do not  
9 believe there should be a higher threshold.  
10 Victims do not like full acquittals, obviously.  
11 However, the process, I believe, has significant  
12 protections built in. It's not only about the  
13 conviction, it's about making sure the process  
14 worked fairly, inevitably, for both the victim  
15 and the accused, in that regard.

16           But the -- focusing on the victim and  
17 their opportunity to participate with full  
18 understanding of the potential consequences of a  
19 full acquittal I believe is best for the victim,  
20 in my experience. What I'm learning in the  
21 process is their ability to know that they have  
22 been validated and heard through the process as

1 significant for their healing. And that is  
2 something that we need to protect.

3 CAPT. SULLIVAN: Yes, ma'am, I don't  
4 think there should be a higher bar, however, I  
5 think one of the other questions that we were  
6 asked regarding the victims' expectations, given  
7 the entire process and understanding at each  
8 point in the process and the effects. And  
9 although victims are emotionally devastated, some  
10 of them are happy to have gone through the  
11 process and to have seen it and to have  
12 experienced that. That they feel like their  
13 voice was heard ultimately by the trier of fact.  
14 And others do not.

15 As you articulated at the end, they  
16 feel like the system was not fair and that they  
17 did not get a fair shake at it. But I don't  
18 think that changing the standard would fix that.

19 LT. COL. SCHRANTZ: I agree, ma'am.  
20 I don't think changing the standard would be  
21 beneficial. But continuing to allow the victim  
22 to participate and be educated and informed



1 through the process is what's most important.

2 COL. CLAY: And I would also agree  
3 that changing the standard would not be in the  
4 best interest.

5 Our clients often express that while  
6 they are disappointed or devastated, depending on  
7 the acquittal, often the way that they perceive  
8 how they've been treated throughout the entire  
9 process in their interactions with investigators  
10 and trial counsel, defense counsel, and other  
11 individuals involved in the process, that has a  
12 great influence in how they perceive whether or  
13 not they were treated fairly and given an  
14 opportunity to present to a finder of fact, that  
15 -- what happened to them. And then have it go  
16 through the process.

17 MS. SPECHT: I just reiterate exactly  
18 what everybody has said. I think there is value  
19 to victims to go through the process itself.  
20 There's points throughout the process. They have  
21 an opportunity to participate.

22 So, the idea that by making the

1       probable -- making a higher determination of  
2       probable cause would somehow alleviate the  
3       despair or the negative feelings with an  
4       acquittal, it's not really the right way to look  
5       at it. In the sense that they have an SVC or a  
6       VLC that's helping them the entire time sort of  
7       manage expectations and talk about success, aside  
8       from the ultimate conviction. And if they're  
9       working -- if SVC and trial counsel are working  
10      together, you can really help the victim  
11      understand that what the panel says is not  
12      definitive. Right? The value in going through  
13      this, what the panel says isn't necessarily what  
14      the victim actually experienced.

15                   CSMAF MCKINLEY: I'll go. Thank you  
16      for your service.

17                   After the acquittal, the victim -- how  
18      do you see the victim being able to adapt, go  
19      back to the unit, get back into the mission of  
20      that unit, and how many of them do you see that  
21      just throw their hands up and say, I'm out of  
22      here, I'm gone?

1 MS. SPECHT: Sir, it really sort of  
2 piggybacks on what I just said. I really feel  
3 like the quality of the response will lead to the  
4 recovery. So, if there was an engaged trial  
5 counsel, if there was a supportive command, if  
6 the victim felt all the way through that he or  
7 she was allowed to participate in meaningful  
8 ways, then I think the recovery process is much  
9 easier for them, regardless of what the panel  
10 might say.

11 No doubt again that there's  
12 disappointment there. But I don't see, across  
13 the board, victims throwing up their hands and  
14 saying, I'm leaving the service as a result of  
15 this.

16 COL. CLAY: Yes, and I would echo  
17 that. It's very individual. It's going to be up  
18 to that individual and how he or she perceives  
19 how they were supported and what's going on in  
20 their life, where they are in the recovery  
21 process.

22 So, it's very, very individual, very,

1 very specific. And in fact, even when there is a  
2 conviction, that healing process is not complete,  
3 they're still going through that. So an  
4 acquittal or a conviction is not necessarily  
5 closure for that individual.

6 As far as how many clients did we see  
7 choosing to separate, I don't have that data  
8 available.

9 LT. COL. SCHRANTZ: I agree, sir. And  
10 it's not just the importance of the expectation  
11 management and the care and advocacy for your  
12 client through the process, but it's also  
13 important to remember that that Marine is coming  
14 in the unit and that Marine is going to have,  
15 probably for an extensive period of time, then  
16 suffering through the process procedurally.

17 And so, as that unit is there  
18 supporting that victim through the process, that  
19 includes whatever the result of the trial may be.  
20 But where it really is going to be important,  
21 regardless of the outcome is the post-trial.  
22 Obviously with the impact that a full acquittal

1 can have, you're going to have to have some  
2 leadership, some commanders, some NCOs take care  
3 of that Marine and ensure that Marine's well-  
4 being.

5 And similarly, the culmination of a  
6 long process, even if it was a successful  
7 conviction, is going to come with some  
8 significant emotional challenges in and of  
9 itself. The concluding this process that's been  
10 dominating a large aspect of their life for so  
11 long, it's important to remember that, in either  
12 case, acquittal or conviction, that Marine is --  
13 and service member, is going to need some  
14 significant help and support afterwards.

15 As for the numbers of how many choose  
16 to separate, I don't have those numbers, sir.

17 CAPT. SULLIVAN: And we likewise do  
18 not have the numbers on -- I don't have the  
19 numbers on how many choose to separate or how  
20 many choose to remain. And some do choose to  
21 leave. And as others have stated, it's important  
22 for even those folks who do choose to leave, as

1 they're making that decision, that we provide  
2 them with the right resources in order to help  
3 them make that decision, make sure that they're  
4 cared for.

5           Afterwards, whether it be under the  
6 disability evaluation system or other resources  
7 available to those Servicemembers who do choose  
8 to leave and make that decision, with the help of  
9 the resources that we have.

10           COL. HAMILTON: I concur with what my  
11 colleagues have said. And I think the benefit to  
12 the way we're structured right now is the fact  
13 that there's an opportunity for some who choose  
14 to leave will go ahead and leave. Others will  
15 ask for a permanent change of station to get a  
16 fresh start somewhere else following it.

17 Throughout the process or early in the process  
18 some have automatically requested an expedited  
19 transfer to be in a location that is divorced and  
20 separate from the horrors of where the incident  
21 occurred and the accused at that point.

22           So, those options are available to the

1 victims. And the other benefit is, that when  
2 they move someplace else, we've improved the  
3 process so that we've provided for very good warm  
4 hand-offs so that the physical, emotional well-  
5 being of the victims are taken care of at the new  
6 installation.

7 CHAIR BASHFORD: I know you said none  
8 of you had those numbers, but do you know if your  
9 services are tracking, and not just after court-  
10 martial, after filing a complaint, because a lot  
11 of the cases don't even go to referral, do you  
12 know if your services are tracking filing a  
13 complaint and fairly shortly after the resolution  
14 of the complaint, leaving the service? Ms.  
15 Specht?

16 MS. SPECHT: I don't believe so. I  
17 just got a head shake from my Captain.

18 (Laughter.)

19 COL. CLAY: I am unaware of tracking  
20 that information.

21 LT. COL. SCHRANTZ: I'm just not sure,  
22 ma'am, but I definitely can take that back and

1 research it for you.

2 CAPT. SULLIVAN: And, ma'am, I was  
3 informed that we do not track that.

4 COL. HAMILTON: Likewise, like Ms.  
5 Specht, I looked around to my support --

6 (Laughter.)

7 COL. HAMILTON: -- and got the same  
8 head shake. We are not tracking those statistics  
9 right now, ma'am.

10 CHAIR BASHFORD: Sure.

11 BRIG. GEN. SCHWENK: To go back to  
12 Article 32's for a minute. What difference would  
13 it make to your clients if there was no Article  
14 32 at all? And whatever you would offer to a --  
15 in a case if you had something to offer to a 32  
16 PHO, instead you offered it to the SJA, would it  
17 make any difference to your clients?

18 MS. SPECHT: Conceivably. I think  
19 sometimes because SJAs are in the same area as  
20 the victims, there is -- even though the SVC will  
21 try to explain the process of, and the roles of  
22 the military justice practitioners, I can



1 envision, I don't know this for sure, I can  
2 envision a victim embracing a PHO because they  
3 believe them to be the neutral, unattached,  
4 individual who is looking at all of the evidence  
5 by someone who's sort of a friend of the command,  
6 so to speak.

7 COL. CLAY: I think there is some  
8 value in the Article 32 in that the victim is  
9 able to attend and watch the proceedings.

10 BRIG. GEN. SCHWENK: All 15 minutes of  
11 it?

12 COL. CLAY: Yes. If there are  
13 evidentiary issues that come up, such as perhaps  
14 MRE 412 issues regarding past sexual history, the  
15 SVC is able to advocate on behalf of their  
16 client's privacy rights at that Article 32. And  
17 then have that PHO look at that issue and make an  
18 appropriate determination based upon the law and  
19 facts of that particular case.

20 And that they get a copy of the  
21 reporting at the end as well. So I think there  
22 is value to the victim to see that process in

1 work.

2 LT. COL. SCHRANTZ: Yes, sir, I agree.  
3 I think there's value as the line VLCs are  
4 sitting and working and explaining the process to  
5 the victim. The feedback from the field has  
6 been, the trust in the system, the thoroughness,  
7 despite the conversation earlier about it being a  
8 15 minute paper drill, it is an additional step  
9 in the process where you can convey to your  
10 client that an independent officer with legal  
11 training is going to take a good close look at  
12 the evidence and make a recommendation and write  
13 a report.

14 With that said, I think some of the  
15 answers that we provided to some of the other  
16 questions highlight the importance to the client  
17 and some frustrations that can exist with delay,  
18 just to the overall system. And so, I think if  
19 there was a way, if there was a system in place  
20 that could help expedite the 32 process, or in  
21 your example, just to get rid of it all together,  
22 of course that would potentially shrink the

1 process. And that would be something that would  
2 be appealing to a victim, potentially.

3 CAPT. SULLIVAN: Yes, sir. And I do  
4 see value in it to the victim as far as requiring  
5 that faith in the process as far as checks and  
6 balances, that there is an analysis of the facts  
7 of the hearing of the -- or after the hearing.  
8 And there's another entity looking at the  
9 charges.

10 Because sometimes the trial counsel  
11 may not have presented to the victim all of the  
12 information. And so then, getting that  
13 transcript and getting the tape on having that  
14 information helps them see the process as it's  
15 proceeding forward.

16 COL. HAMILTON: Sorry, I absolutely  
17 think there's value to it. I think it's the  
18 first step toward healing for the victim.

19 Now, going through the process or  
20 getting the information, reading it,  
21 understanding what's going out there and the  
22 finding of the preliminary hearing officer is

1 sort of an acknowledgment that something happened  
2 even though it's a lower threshold of just  
3 probable cause. Something happened. I think  
4 that's crucial to victims and their healing.

5 CHAIR BASHFORD: So, one of you had  
6 mentioned, and I just want to follow-up on that,  
7 there's some frustration with the length of the  
8 process. If there was a way of expediting the  
9 length of the investigation, the process.

10 Do you have any suggestions to how  
11 this process could be expedited without  
12 sacrificing fact gathering? I'm going to start  
13 with you, Colonel Hamilton.

14 COL. HAMILTON: I don't have a clear  
15 answer for you, ma'am, on a way to expedite it.  
16 Because I think if we attempt to expedite too  
17 quickly we will rush things to the point where we  
18 may not ensure justice is served. Either for the  
19 victim or the accused.

20 So I think we -- the process, while it  
21 has its flaws, is working. And I'm seeing the  
22 mere fact that more victims are willing to come

1 forward and request SVC and engage in the process  
2 is significant from where remembering that the  
3 SVC program is, it hasn't even reached its five  
4 year anniversary for the Army. I mean, six year  
5 anniversary. We're in our fifth year now. The  
6 numbers and the increase that, of how many people  
7 are requesting SVC shows that the process is  
8 becoming more familiar and victims are more  
9 willing to engage in the process.

10 So, as far as a way to expedite it, I  
11 don't have an answer for your specifically, other  
12 than I know it's working for victims.

13 CAPT. SULLIVAN: And, ma'am, before I  
14 answer that question I'd like to go back to the  
15 last answer as well.

16 I think the Article 32 is also good  
17 for the victims in the case where there is no  
18 probable cause finding because, again, they're  
19 able to see that. The hearing, the analysis and  
20 the input. So I don't want it to be thought that  
21 we're only looking toward prosecution of the  
22 accused for the benefits of the victim's healing.

1 I think it also does help with the  
2 victims understanding of a no probable cause  
3 finding if there is a full -- the full Article 32  
4 hearing in the sense that we have it now.

5 As far as speeding the process, I  
6 don't have any suggestions for that. I think our  
7 military justice folks have talked about that and  
8 suggestions on ways to change the system, once  
9 again, to expedite the process.

10 But I know we've all been working very  
11 hard at certain steps in the procedure to really  
12 get down those processing times as far as the  
13 trial counsel -- working on their prosecutorial  
14 merits memo, getting all those time frames  
15 shortened. But overall, Article 32, I don't have  
16 any good suggestions for you.

17 LT. COL. SCHRANTZ: Yes, ma'am, and I  
18 was the one that mentioned it but unfortunately  
19 don't have any recommendations --

20 (Laughter.)

21 LT. COL. SCHRANTZ: -- to fix it. But  
22 I mentioned it not -- just to be clear, not as a

1 critique of the military justice practitioners or  
2 the commanders who were carefully considering  
3 these cases, in which our investigating offices  
4 are diligently and thoroughly investigating them.  
5 It's very important that they do it. And  
6 expediting it just for the sake of expediting it  
7 would not be prudent for anybody's interest.

8 But I think for the VLCs, the reason  
9 why I brought it up as an issue of length of time  
10 and concern is, where the VLCs can be of great  
11 value is to really thoroughly and proactively  
12 communicate with their clients frequently, daily.  
13 Weekly at least, sometimes daily.

14 Just to keep them informed so that  
15 their clients know that the process is moving  
16 forward, even though nothing is happening in the  
17 courtroom or no statements are being provided  
18 that despite the length of time, that the process  
19 is moving in the right direction.

20 And the feedback from the field is, if  
21 the victim's legal counsel do that with their  
22 clients and keep them informed and keep in touch

1 with them, that they're satisfied and feel happy  
2 about the fact that they know that someone is  
3 still marshaling their case from beginning to  
4 end.

5 COL. CLAY: Similar to my colleagues,  
6 I don't have any specific comments from an SVC  
7 perspective. I know our military justice folks  
8 are working on ways to improve timelines. I know  
9 one initiative within our judiciary is to get our  
10 circuit trial counsel. Those are more  
11 experienced prosecutors, our special victims  
12 qualified prosecutors involved in the cases at  
13 base level early in the process to hopefully get  
14 better quality investigations earlier in the  
15 process to reduce those timelines of having to go  
16 back and look at other things that may have been  
17 missed during the initial look.

18 There are other things that they are  
19 working on to improve those timelines, while  
20 still getting quality investigation that looks at  
21 all the facts, to ensure fairness to everyone  
22 involved in the allegations.



1 MS. SPECHT: I can speak only for the  
2 Coast Guard, and it's sort of like what the Air  
3 Force was talking about. As I mentioned, the  
4 Coast Guard doesn't have a lot of experienced  
5 trial counsel. We don't have special victim's  
6 prosecutors, but what the Coast Guard is trying  
7 to do is build experience at two separate  
8 locations. But what has happened, sort of as a  
9 result to that, is that the investigation happens  
10 at the district level and then it's handed over  
11 to the people who are actually going to try the  
12 case.

13 So there's just not this ability to  
14 really integrate with the investigators. Really  
15 discuss what needs to be happening based on the  
16 people who are actually going to be prosecuting  
17 the case. So, I wish there was more overlap in  
18 the Coast Guard between investigators and trial  
19 counsel.

20 I also think that the way that the  
21 Coast Guard defines restricted reports, they put  
22 themselves in a bind because we have a lot of

1 third-party reports then, so you have a very  
2 uninterested, unwilling, victim having to go  
3 through the process. And if there was a way just  
4 to shut those down in the beginning, then  
5 resources could go towards those who are really  
6 integrated and interested in moving forward.

7 MS. GARVIN: Thank you, Chair. So,  
8 we've heard a lot this morning about if the PHO  
9 does no PC finding, right, so we come out and a  
10 hearing officer says no PC but the SJA can still  
11 find probable cause. What is the advocacy of  
12 VLCs and SVCs in that window of time?

13 If the PHO says no PC but the SJA has  
14 not found yet, what is a VLC, SVCs role?

15 CHAIR BASHFORD: Its awful that the  
16 Coast Guard and the Army --

17 (Simultaneous speaking.)

18 COL. HAMILTON: The role of the SVC,  
19 for the Army, during that time would be just  
20 communicating their clients interest and where,  
21 from their perspective, what their client is  
22 looking for through their trial counsel and the

1 prosecution team, who are the advisors to the SJA  
2 before he or she goes in and meets with the  
3 convening authority.

4 So, the SVC role is to communicate the  
5 client's wishes and desires through the  
6 prosecution team.

7 CAPT. SULLIVAN: And that is the role,  
8 to continue advocating on behalf of the victim  
9 and providing that information that the victim,  
10 victim's counsel, may have felt it was not fully  
11 vetted during the Article 32 or not brought up  
12 during the Article 32, communicating that  
13 information for the convening authority's  
14 benefit.

15 LT. COL. SCHRANTZ: Yes, ma'am. And  
16 for the convening authority's benefit it is the  
17 important point that VLC is going to continue to  
18 represent, advocate, communicate with, explain  
19 the process to the client.

20 And importantly, whether the PHO's  
21 determination was that there was probable cause  
22 or that it doesn't reach probable cause. It

1 assures, and the victim is assured that the  
2 convening authority is going to know right up  
3 until the SJA goes in and advises.

4 If the VLC is properly communicating  
5 with the government and properly communicating in  
6 the timely manner, the victim's wishes, the  
7 victim will know that the convening authority is  
8 considering their input right up until his final  
9 decision -- or, her final decision.

10 COL. CLAY: It's the same process in  
11 the Air Force, I don't really have much to add.

12 MS. SPECHT: Same with the Coast Guard  
13 as well.

14 MS. TOKASH: Have any of you been  
15 privy to what's been explained as this post-  
16 preliminary hearing, additional evidence session  
17 with the staff judge advocate?

18 If you have been in your role as a  
19 special victim counsel or victim's legal counsel,  
20 what are you telling the SJA and why could that  
21 not have been presented to the preliminary  
22 hearing officer?

1                   LT. COL. SCHRANTZ: Ma'am, I've not  
2                   been privy to that or discussed that with any of  
3                   the -- our VLCs.

4                   I think similar to what I've mentioned  
5                   in my previous answer is, because the victim  
6                   can't be compelled to testify at a 32 or provide  
7                   a statement, it could be just a situation to  
8                   where with proper communication the VLC is  
9                   communicating with the SJA, right up until that  
10                  moment the SJA goes into the convening authority.

11                  MS. TOKASH: Doesn't that seem like  
12                  you're trying get through the backdoor that which  
13                  you're not able to get through the front, by  
14                  having some type of ex parte communication with  
15                  the staff judge advocate?

16                  LT. COL. SCHRANTZ: Well, the victim  
17                  has the ability to testify in a 32 if they  
18                  elected to.

19                  MS. TOKASH: Right. Assuming they  
20                  don't --

21                  LT. COL. SCHRANTZ: Yes.

22                  MS. TOKASH: -- they still can have an

1 audience with the SJA, correct?

2 LT. COL. SCHRANTZ: Well, the SJA is  
3 going to understand -- the victim's preference is  
4 a big part of this process. For all of us  
5 through the process is properly understanding at  
6 all times what the victim's preference is.

7 And so, as an SJA, I would certainly  
8 want to know and verify at any given time, not  
9 necessarily by audience with the victim. In my  
10 role as a SJA I did not do that, but I would  
11 certainly make sure that prior to going in to  
12 meet with my commander that I was up to speed and  
13 could properly communicate to the commander what  
14 the current victim preference feeling was.

15 CAPT. SULLIVAN: And, ma'am, I believe  
16 under the new rules, under 405(k), that defense  
17 has the opportunity to present additional  
18 information as well. So, it's pinned to that.

19 And I haven't been privy to any of the  
20 conversations, and I don't know that the victim's  
21 legal counsel have taken that opportunity under  
22 the new availability of that, but I think more

1 defense has the ability to provide additional  
2 information after the Article 32.

3 COL. HAMILTON: Ma'am, from the SVC  
4 side of the house I have no experience regarding  
5 it, but from the SJA side I've never met with the  
6 victims.

7 The SVC, often represented by counsel,  
8 would communicate through their trial team, trial  
9 team would, you know, brief me on where, what the  
10 victim is looking for, what the SVC is looking  
11 for, the concerns they have or whatever other  
12 evidence or information. But I also want to be  
13 clear that I haven't had a case where there was  
14 no PC finding, no activity from the preliminary  
15 hearing officer that we switched going to the  
16 convening authority. However, the information,  
17 the communication comes through their trial team.  
18 And the SVC to the SJA.

19 And while there would be an  
20 opportunity, if the victim wanted to come and see  
21 the SJA, I don't know of many cases, or if any, I  
22 have never experienced any, where the victim

1 wants to come in and meet with the SJA. And if  
2 they did so, they would do so through the SVC.  
3 And there would be something rather significant  
4 that is virtually, you know, it would be novel.

5 COL. CLAY: Again, similar to my  
6 colleagues, I don't have any personal knowledge  
7 of these post-discussions with SJAs or others, as  
8 an SVC.

9 In my prior role as an SJA, I can tell  
10 you that I did get written matters through the  
11 trial counsel and the SVC, regarding the victim's  
12 preference on disposition, which would then be  
13 provided to the convening authority for his or  
14 her consideration.

15 MS. SPECHT: And just similarly, I've  
16 never known of a victim or an SVC to provide  
17 evidence that was not included as part of the ROI  
18 during the 32, it's really just victim  
19 preference, and that was afforded to the victims  
20 by Congress. So it's just them providing, again,  
21 saying I'm ready to move forward, I would like to  
22 move forward. It's not anything different than



1 what had already been provided, it's what's going  
2 to the convening authority already.

3 MS. TOKASH: Thanks.

4 MS. CANNON: Is the victim advised if  
5 a 32 officer -- hearing officer, finds no  
6 probable cause, and if so, what, if anything,  
7 additional occurs to try and influence the SJA,  
8 if at all, in overcoming that lack of probable  
9 cause?

10 COL. HAMILTON: Ma'am, if the SVC and  
11 the VLC are doing their job the victim would know  
12 exactly the process and what the finding was.  
13 And that is, first and foremost in our charter in  
14 our mission to keep the victim informed of things  
15 going through the process.

16 As far as what would then -- what  
17 strategy, I cannot speak to that because I have  
18 no experience as far as what they would attempt  
19 to do to change the planning of a preliminary  
20 hearing officer or to influence the SJA, before  
21 going to the convening authority.

22 CAPT. SULLIVAN: And I think, as far

1 as the recommendation of probable cause, I think  
2 I'm not directly aware of it, but I would imagine  
3 that they would -- if there was any issue with  
4 the actual hearing, any problem with the 32,  
5 anything that was left out, then identify that to  
6 the trial counsel. And we do -- the VLC do  
7 inform the victim of the recommendation and the  
8 decision by the convening authority.

9 LT. COL. SCHRANTZ: Yes, ma'am, the  
10 victim would know the results and continue to  
11 communicate and work with the victim's legal  
12 counsel.

13 In terms of what next, I think just  
14 close and proper work with the trial counsel, and  
15 perhaps some additional information that may have  
16 not been presented or conveyed properly or  
17 communicated up to that point. You can do that  
18 by communicating with the trial counsel as  
19 they're preparing documents like case analysis  
20 memos, prosecution merit memos, that they're  
21 going to present.

22 COL. CLAY: Again, yes, the victims

1 would be informed of the PHO and SJAs  
2 recommendation. The only time that I have seen  
3 anything after that point would be if the SVC  
4 perceived, there were some legal error in the  
5 proceedings, and they might bring that forward  
6 for the consideration of both the SJA and the  
7 convening authority. But again, that's pretty  
8 rare that they would see that kind of error and  
9 then bring it to the attention of the appropriate  
10 individuals.

11 MS. SPECHT: Not really anything  
12 different to add, just similar to whatever has  
13 been gone on before. What the SJA is really  
14 concerned about is, is the victim still willing  
15 to move forward and what are the victim's  
16 desires.

17 COL. HAMILTON: Ma'am, if I could add  
18 to Colonel Clay and Captain Sullivan had  
19 mentioned. What we try to do is we try to get  
20 our SVC to have already been -- have already  
21 participated as a trial counsel or defense  
22 counsel or somewhere in the justice process

1 before becoming SVC.

2 So, if for instance, the SVC were in  
3 -- sitting in on a 32 and there was something  
4 that was wrong or missed by the prosecution team  
5 or the trial counsel, whose responsible for  
6 trying the case, and then the SVC, merely to  
7 ensure that his or her client's wishes were being  
8 -- or, wishes were being pursued or their rights  
9 being protected, would communicate that to the  
10 trial team. And then the trial team would then  
11 hopefully, if doing their job, which they are,  
12 take it to the SJA, which would then be contrary  
13 to, I guess the finding of the 32 officer.

14 CHAIR BASHFORD: Dr. Spohn?

15 DR. SPOHN: So, one of the findings of  
16 research on sexual assault case processing in the  
17 civilian context is that the victims willingness  
18 to cooperate in an investigation and prosecution  
19 of the case is one of the strongest predictors of  
20 whether the police will make an arrest, whether  
21 the prosecutor will file charges, and whether the  
22 case will result in a conviction.

1                   And our case review, we've been  
2 reviewing cases that have been reported to all of  
3 the services, and we discovered that there's a  
4 very high rate of victim declination in these  
5 cases. And that it occurs at various stages in  
6 the process.

7                   And many of you have just now  
8 mentioned the importance of the victim's  
9 preferences or the victim's willingness to move  
10 forward with the case. So, in your experience,  
11 what are the reasons that motivate victims to  
12 decline to cooperate after having made an  
13 allegation of sexual assault?

14                   LT. COL. SCHRANTZ: Ma'am, the  
15 feedback from the field seems to indicate just a  
16 strong desire to put the issue behind them and  
17 move on with their lives and with their careers,  
18 while still acknowledging that something terrible  
19 happened. They do just a personal decision that  
20 they make on their own that they just want to  
21 move on. And it could be influenced by their  
22 close-knit team that they're a part of that's

1 supporting them through the process.

2           They do have -- whether or not it  
3 remains in the military justice realm or not, I  
4 think we have done a tremendous job in the  
5 military providing additional resources for  
6 victims of these types of crimes to recover and  
7 succeed with or without the military justice  
8 process.

9           It is important to some, but some  
10 individuals have just chosen to take the benefit  
11 of the resources that are available outside the  
12 military justice system and move on with their  
13 lives as quickly as they can.

14           COL. CLAY: And I would echo that.  
15 It's an individual decision. And the reasons are  
16 pretty much individual that -- in the person, and  
17 that a desire to move on and heal and get to a  
18 better place in their journey after experiencing  
19 a trauma. And also, we often see a desire to  
20 protect their own privacy through that healing  
21 process as well, as common issues. Although  
22 there are many different reasons and they're as

1 individual as the people involved.

2 MS. SPECHT: I'm going to mention  
3 again, just, I see a lot of times with the Coast  
4 Guard, because of the way that we define  
5 restricted reporting, so a lot of individuals are  
6 telling friends, and they never intended it to go  
7 to investigation, it gets reported and then  
8 they're sort of pushed forward. And so that's  
9 why they decline to prosecute.

10 CAPT. SULLIVAN: And the reasons for  
11 the Navy victims are similar. Every victim is  
12 unique, every case is unique, every case is  
13 different, and they have different motivations  
14 and different reasons for wanting to decline and  
15 move on. And as far as the resources, providing  
16 them with the resources, that they need to do  
17 that as very important for the services to do.  
18 So the restricted reporting is very helpful in  
19 that they're able to do that, to have those  
20 resources available to them without the need to  
21 report if they don't desire to participate in the  
22 process.

1 COL. HAMILTON: Yes, I think we  
2 covered just about everything that everyone has  
3 said. I think victims go through their own cost  
4 benefit analysis of pursuing and continuing on  
5 and what pain that would bring to re-live it or  
6 just move on, put it behind them. PCS to a new  
7 location, permanent change to a station or a new  
8 location, or expedited transfer, and heal in  
9 their own way. So it's too hard to know for sure  
10 all the different reasons.

11 CHAIR BASHFORD: Okay. I heard  
12 mention from the Coast Guard of third-party  
13 reports plus, because of the way you structured  
14 the inadvertent disclosures, but we've seen  
15 inadvertent disclosures in other services as  
16 well. They don't realize they're saying  
17 something to somebody who then has a duty to  
18 report.

19 In our third annual report issued last  
20 year, we advocated allowing, sort of, a clawback  
21 to change an unrestricted report back to a  
22 restricted report when that was not the intent of



1 the person, as to make such a report, or with a  
2 third-party reports.

3 Are you in favor of that sort of  
4 clawback provision and would you be in favor of a  
5 third-party report, where the victim says, I  
6 don't want anything to do with this, being able  
7 to shut down the investigation rather than the  
8 full talking to all the friends, the co-workers,  
9 the supervisors, people in the barracks, et  
10 cetera?

11 COL. CLAY: We've kind of done that in  
12 the Air Force already. By policy, the Office of  
13 Special Investigations, if they have no other  
14 leads beyond what a victim can provide to them,  
15 they will shut down the investigation.

16 So, we have given that option to  
17 victims within the Air Force.

18 As far as shutting down an  
19 investigation that is because of a victim's  
20 preference, I think that's generally a good idea.  
21 However, there may be those cases in which it's a  
22 multiple victim case, in which it should be

1 investigated anyway because of the other  
2 individuals involved with a particular case.

3 CHAIR BASHFORD: I'm just going to  
4 follow-up quickly on that because OSI wouldn't  
5 know there's no other leads, other than the  
6 victim, until they did a full blown  
7 investigation, correct?

8 Until they talked to everybody and  
9 they were able to say, there's no other way of  
10 getting evidence.

11 COL. CLAY: Unless there's third-party  
12 complaints or another victim came forward.

13 LT. COL. SCHRANTZ: Ma'am, I support  
14 that ability to clawback and while also retaining  
15 some of the ability for the commander to act and  
16 respond as needed. Obviously you'll always want  
17 to continue to provide the resources needed for  
18 the victim.

19 Continue to allow the expedited  
20 transfer ability and just try to get that victim  
21 in a position to recover, adhere to what their  
22 preferences are, but allow that victim to recover

1 from the assault.

2 CHAIR BASHFORD: And what about the  
3 ability to shut down a third-party complaint  
4 where the victim says, either I don't want to do  
5 anything or nothing happened?

6 LT. COL. SCHRANTZ: The inadvertent  
7 disclosure that then the third-party --

8 CHAIR BASHFORD: Some third-party  
9 calls in and says, I know this person was  
10 sexually assaulted and the victim either says,  
11 no, it wasn't or I just don't want to talk about  
12 it?

13 LT. COL. SCHRANTZ: I'd support the  
14 victim, ma'am.

15 CAPT SULLIVAN: Yes, ma'am. And I  
16 would support in the same manner.

17 The one issue that you identified  
18 though is, a difficult question is, how do you  
19 know if there are other victims, until you  
20 investigate. So at what point do you stop that  
21 investigation.

22 But I think, given the limited

1 resources that we have and given the interests of  
2 the accused, that, unless there is really good  
3 information as far as going down to a full  
4 complaint, if the victim does not want to  
5 participate and does not want to, any action on  
6 the third-party complaint, we should provide them  
7 with the resources and not pursue that.

8 COL HAMILTON: Ma'am, from my SJA side  
9 I'm torn. I believe that failing to pursue to  
10 remove a cancer or a problem within the  
11 organization will have a negative impact on good  
12 order and discipline.

13 So, being able to just shut it down  
14 based on the victim poses a problem. And I was  
15 just split. Let me go back to this in a second.

16 But from, now we're in the SVC side of  
17 the house, the one thing I loathe is to have to  
18 re-victimize the victim already. And empowering  
19 the victim to, with the expedited transfer and  
20 being able to shut down the investigation does  
21 help with that person's healing.

22 However, when you look at it in the

1 sense that, which was the note I received, some  
2 type of recruiter malfeasance or basic training  
3 malfeasance and then the victim says, I don't  
4 want to participate when you're talking about a  
5 drill instructor or a recruiter who may have the  
6 tendency to repeat.

7 And then by not going forward to  
8 ensure good order and discipline is there, we  
9 have put others in harm's way. And so it's, I  
10 think it's a double-edged sword and I don't know  
11 that I have a very clear answer for you.

12 I don't like re-victimizing victims,  
13 but I also want to remove problem individuals  
14 from the formation because that is what degrades  
15 good order and discipline and effects all of us.

16 MS. SPECHT: I would agree with  
17 Colonel Hamilton. I think the command has, needs  
18 to have the ability if there is some pervasive  
19 issue that is happening within their command.  
20 Again, Coast Guard being very small, it can  
21 really deteriorate the ability of the unit to get  
22 the mission done.

1           So, I really like the Air Force's sort  
2 of methodology there in that it's only if, sort  
3 of, there was this one time, one person said  
4 something and then OSI sort of brings them in and  
5 says, do you want to move forward and they say,  
6 no I don't, but then OSI has the obligation if  
7 additional evidence comes forward.

8           Or if the command provides additional  
9 evidence, where I assume it mostly comes from.  
10 That they would still move forward with the  
11 investigation.

12           Again, I would just like the way that  
13 everybody else does restricted reports, to be for  
14 the Coast Guard. That would be a success for me.

15           MS. GARVIN: So, I think it was you,  
16 Colonel Clay, but forgive me if I'm wrong, but  
17 had mentioned, so I'm going back to 32 for a  
18 second, you had mentioned, I think, that during  
19 the 32 both the victim can be there but also the  
20 SVC or VLC can be there. And if a victim's  
21 rights issue comes up, most likely a 412 or a  
22 513, but maybe a different Article 6b right could

1 present in that moment. But the SVC, VLC  
2 participates.

3 So, a two-part question. What does  
4 that actually look like and do you think that the  
5 SVCs and VLCs have sufficient standing to protect  
6 rights that might arise or violations of rights  
7 that might arise in a 32, both in the moment and  
8 then any possible appellate moment out of that?

9 COL. CLAY: Generally, the way it  
10 looks, is if an issue arises during the hearing,  
11 the SVC will stand up, be recognized and then  
12 have an opportunity to object or make an oral  
13 argument.

14 In some cases, this is the ideal  
15 situation. Trial counsel has talked to the SVC  
16 prior to the hearing, so those issues have been  
17 resolved before they walk in.

18 Sometimes, as we all know, things  
19 don't go according to plan and the SVC has to  
20 stand up and object to make their argument as to  
21 why a particular issue is affecting their  
22 client's rights and their ability to argue on

1       behalf their client, to protect their client's  
2       rights.

3                       That's typically the way it looks. At  
4       trial, obviously, that's going to be a little bit  
5       more formal with written motions and everything  
6       else. But at the 32 hearing it's usually oral  
7       argument.

8                       And I'm sorry, what was the second  
9       part of your question?

10                      MS. GARVIN: Just whether it was  
11       sufficient standing that they have right now to  
12       protect the rights in a 32.

13                      COL. CLAY: As a 32, yes. We believe  
14       that it is sufficient.

15                      And that we haven't really had any  
16       issues that have risen to the point where we have  
17       to actually file an appeal through that avenue.  
18       So we haven't actually tried to do that or exceed  
19       what happens to the courts if that type of issue  
20       has risen.

21                      MS. GARVIN: Do you have concerns, if  
22       you had a case, that you would be well received



1 at the appellate court or do you think you could  
2 move forward?

3 COL. CLAY: I think we could move  
4 forward --

5 MS. GARVIN: Okay.

6 COL. CLAY: -- if we had the right  
7 case, with the right facts and aligned with what  
8 the law says.

9 MS. GARVIN: Okay. I'd like to hear  
10 from others too about this.

11 LT. COL. SCHRANTZ: Similar for us,  
12 ma'am. I don't have anything to add to that.

13 CAPT SULLIVAN: Ma'am, the process is  
14 the same.

15 COL HAMILTON: I'm tracking the  
16 process to be the same for us. I think the  
17 standing piece is a larger issue the closer you  
18 move to trial and the control being more in the  
19 judge's as far as whether or not, how, just  
20 speaking to some of the Military judges, the  
21 judge's course, and the role of the SVC is not,  
22 you know, under case law and statute, the actual

1 party in interest there for the SVC to stand and  
2 make an objection from behind the bar. So that  
3 is an issue that's still being resolved.

4 And through case law or statutory  
5 change then maybe there would be more of an  
6 opportunity for SVC to object and interject at  
7 trial. But as far as a 32, I think we're okay  
8 right now.

9 MS. SPECHT: Very similar in the Coast  
10 Guard. I think practically speaking, some of it  
11 is dependent on the experience level of the PHO  
12 as to how comfortable they feel with the SVC  
13 standing up and making argument extemporaneously.  
14 It may come after the fact and potentially  
15 appended to the PHO's report.

16 MS. GARVIN: Thank you.

17 MR. MARKEY: Well, thank you for being  
18 here, thank you for your service, taking time out  
19 of your day to really give us some great  
20 information to help this, can we kind of look,  
21 are there areas and gaps that we can improve the  
22 process. Kind of along the same vein of victim

1 participation, Article 32.

2 We heard about collateral misconduct.

3 And I guess I was looking for some clarity on  
4 when that comes up it usually, probably I would  
5 assume comes up in the investigative process  
6 initially, so I'm wondering, what is your  
7 experience with how that's managed, what does  
8 that look like and is that considered a factor,  
9 or have you seen that considered as a factor for  
10 victims who don't want to move forward or don't  
11 want to participate?

12 And I know there's a lot of things  
13 wrapped up in there, but basically I'm looking to  
14 see some clarity about the collateral misconduct  
15 and how is that, what does that look like, you  
16 know, is it a formal identification of an  
17 investigation, is it running up the chain of  
18 command that we're going to have to report this  
19 and what impact does that have on your clients?

20 LT. COL. SCHRANTZ: Sir, thank you.

21 And in the case of where a line VLC will meet  
22 with and consult with and have the initial

1 meeting with the victim, if information is  
2 presented that there could be collateral  
3 misconduct, that VLC will arrange for  
4 representation from the defense counsel there in  
5 the region locally.

6 And the communication and interaction  
7 for the line VLCs that are out there representing  
8 their clients doesn't exist just between them and  
9 the government and the trial counsel, but with  
10 the defense bar as well.

11 And so, in the case where there would  
12 be a potential exposure for that individual, it's  
13 not for the victim's legal counsel to represent  
14 and advise on potential collateral misconduct,  
15 it's going to be for that victim's defense  
16 counsel if one is ultimately made available.

17 MR. MARKEY: Sure.

18 CAPT SULLIVAN: To answer, the process  
19 is similar in the Navy. And as far as your  
20 question regarding how that's dealt with, it  
21 really depends on the victim on the collateral  
22 misconduct and the duty.

1                   Sometimes the convening authorities,  
2                   as you heard earlier, will dispose of it prior to  
3                   the court-martial. Some will hold it until after  
4                   the court-martial.

5                   Some victim's prefer to have it  
6                   adjudicated prior if they're going to captain's  
7                   mast or if they're going to begin some type of  
8                   formal reprimand, have it taken care of ahead of  
9                   the time that they're going to testify. The  
10                  potential to be cross examined on it. It's just  
11                  really dependent on the victim and the misconduct  
12                  that's involved.

13                  And the same thing with the factor as  
14                  far as whether it's determined for whether they  
15                  move forward or not. It depends on the victim,  
16                  the type of, kind of misconduct.

17                  Their, just their, I guess their job,  
18                  right, because they're looking at the job. If  
19                  they have this misconduct that's adjudicated  
20                  that's their future in the Military.

21                  But again, we do have them consult  
22                  with defense counsel on those issues if there is

1 anything under the military justice misconduct  
2 system that they're going to be facing charges  
3 for.

4 COL HAMILTON: Similarly, TDS, Trial  
5 Defense Services, will take in for the collateral  
6 misconduct. And the SVC will refer the client  
7 over to trial defense services.

8 But the protections that I think  
9 you're alluding to also are built in, in the  
10 sense that if the offense was something along the  
11 line of underage drinking but there was a serious  
12 aggravated sexual assault in addition to the  
13 underage drinking, we'll deal with the collateral  
14 misconduct so that the strength for the victim,  
15 if he or she chooses to go forward, will then be  
16 able to say yes, that was dealt with.

17 So, at the time of trial, during the  
18 cross examination, you know, oh, you're only here  
19 because you were involved in some other offense  
20 and you're not getting prosecuted or charged with  
21 that. Now, I've already made, received my  
22 reprimand or my Article 15 for the under aged

1 drinking, but what happened to me is even more  
2 egregious and that provides some of the  
3 protections in there.

4 But yes, we do separate the special  
5 victim's counsel advice to when there's  
6 collateral misconduct and send them over to trial  
7 defense services.

8 MR. MARKEY: And I'll just interrupt  
9 real quick, is that automatic?

10 As soon as there is information that's  
11 received of collateral misconduct, they're  
12 automatically giving that information to TDS for  
13 them to manage that?

14 COL HAMILTON: Well, I mean, that  
15 would be, depending on how, once we, the special  
16 victim's counsel gets information about  
17 collateral misconduct or the victim starts  
18 raising other collateral misconduct to the  
19 special victim's counsel, the victim's counsel  
20 are trained, go through the training so that they  
21 understand, when you hear information of another  
22 UCMJ, uniform code of military justice violation

1 or something else that the victim may have done,  
2 you say, okay, it is best for you to seek trial  
3 defense services in the event the chain of  
4 command choose to come after you or to prosecute  
5 or move to some other adverse administrative  
6 action for the victim because of the collateral  
7 misconduct.

8 So it's up to the SVC to then look at  
9 that. From the SJA side, if we hear of the  
10 collateral misconduct then we're going to look to  
11 the chain of command and say, what are you  
12 recommending for this person who, although a  
13 victim, also engaged in some other type of  
14 violation. Did I answer your question, sir?

15 MR. MARKEY: What kind of impact does  
16 SVC have in your relationship with your client?

17 COL HAMILTON: I think if the SVC is  
18 doing his or her job, I don't think it impacts  
19 it. It's like, hey, I need to protect you. I'm  
20 going to protect the, what your result of the  
21 sexual assault, but hey, now to look at added  
22 protection for you, let's go over and meet with



1 trial defense services because they're going to  
2 discuss things with you that are outside of my  
3 scope of representation for the sexual assault.

4 COL. CLAY: And very similar in the  
5 Air Force. Often it comes up during the  
6 investigation, but it could be, come from other  
7 sources, including the victim in their protected  
8 conversation with their SVC.

9 If the SVC becomes aware of collateral  
10 misconduct, they will talk to their client. And  
11 with the client's consent, make a referral to the  
12 area defense counsel so they can be represented  
13 for those matters by defense counsel.

14 MS. SPECHT: Similar in the Coast  
15 Guard to the Air Force. It's more of a  
16 conversation with the client and the SVC because  
17 generally, when we're talking about collateral  
18 misconduct in the Coast Guard, at least it's  
19 going to be underage drinking.

20 So it's a fairly low-level offense and  
21 it's going to come out because everybody was at  
22 the party, everybody saw everybody drinking. So

1 it's not something that necessarily needs to be  
2 referred to the defense counsel at that stage.

3           However, if it's something more  
4 serious, if it's something that we think is  
5 potentially a court-martial offense, they're  
6 definitely going to be referring over to our  
7 defense counsel. We have a --

8           MR. MARKEY: It sounds like it's a  
9 low-level offense you may not.

10           MS. SPECHT: I mean, that would be  
11 with the client's consent if they saw --

12           MR. MARKEY: Is there any guidance on  
13 that?

14           MS. SPECHT: No, it's within our  
15 instruction itself.

16           CAPT SULLIVAN: And it's with the  
17 client's consent because to seek advice of  
18 defense counsel, that is the client's decision  
19 whether they wanted to seek the advice of defense  
20 counsel. We can't force them to speak with  
21 defense counsel.

22           CHAIR BASHFORD: Apart from collateral

1 misconduct, have you personally seen or have you,  
2 just more broadly seen, any instances of  
3 retaliation in the chain of command against  
4 somebody or, I supposed what a client perceived  
5 as retaliation, apart from social consequences  
6 which I don't think people can really control all  
7 that well, but have you seen retaliation?

8 MS. SPECHT: I'm wracking my brain  
9 because I would say we see retaliation  
10 frequently. Or not frequently, what the victim  
11 perceives as retaliation.

12 And I think it's difficult because  
13 they're in a situation where they don't feel  
14 super connected with a command, so everything  
15 feels like retaliation. Like anything that might  
16 have been just normal in the normal course of  
17 business.

18 But I would say, yes, we've seen  
19 retaliation in the sense that if they don't have  
20 a supportive command, I'll use the cadet at the  
21 academy, maybe they don't get to go on their  
22 first, second, third order of where they wanted

1 to go over the summer, they may feel like that's  
2 retaliation in and of itself.

3 I'm trying to think, we had one very,  
4 very formal retaliation claim and that ended up  
5 getting investigated by CGIS and was  
6 substantiated and was acted upon by the command  
7 at that time.

8 COL. CLAY: Similar, as far as  
9 official chain of command, professional  
10 retaliation is extremely rare. In fact, nothing  
11 is coming to mind as an example, but I'm sure it  
12 has come up, I'm just not aware of it. But it is  
13 extremely rare to have actual professional  
14 retaliation through the chain of command.

15 LT. COL. SCHRANTZ: I'm not aware of  
16 any at this time, ma'am.

17 CAPT SULLIVAN: My answer is similar  
18 to the Air Force, where it's very rare to see the  
19 senior level professional retaliation. Sometimes  
20 what we've seen is members of the command think  
21 they're doing something good for the victim that  
22 then the victim perceives as retaliation.

1           Changing a work schedule or something  
2           that really isn't necessary from the victim's  
3           perspective and the victim thinks that that's  
4           retaliation or punishment whereas the command was  
5           trying to do something to help without  
6           communicating effectively. So we always  
7           encourage our VLCs and our victims talk with the  
8           VLCs and work with the command on that as far as  
9           working out those issues.

10           Sometimes in the mid-level senior  
11           enlisted arena, again, not to the level of  
12           retaliation but sometimes with the idea that  
13           they're protecting the victim or their assisting  
14           the victim, they do certain things that may be  
15           perceived as retaliation. And then with  
16           communication and education, our VLC have been  
17           able to resolve those issues.

18           COL HAMILTON: Very similar to what  
19           Captain Sullivan is saying, I've not been a party  
20           to or experienced any professional retaliation  
21           but the perceived retaliation usually gets dealt  
22           with, with a phone call or two. And once you

1 hear that information, you talk to the chain of  
2 command or send the trial team back to make sure  
3 that it's taken care of.

4 And I've yet to hear anything further  
5 from it.

6 MS. LONG: Hi, thank you for being  
7 here. I wanted to go back to the Article 32 and  
8 the usefulness of it.

9 And thinking about some of the  
10 comments this morning and your very unique  
11 position, I'm wondering if you think that,  
12 understanding it's been changed, that it is  
13 stronger when the victim testifies and that it's  
14 useful for preparing the victim for trial when  
15 victim testimony is involved in that process?

16 And Colonel Hamilton, I guess I would  
17 start with you.

18 COL HAMILTON: Ma'am, I must  
19 apologize, could you rephrase the question --

20 MS. LONG: Sure. Whether at the  
21 Article 32, having a victim testify, I know it's  
22 their choice, but having that testimony, does it

1 make the Article 32 hearing stronger, the  
2 evidence that goes in stronger, and is it useful  
3 for the victim to get experience testifying?

4 From your perspectives now as an SVC  
5 and others.

6 COL HAMILTON: Ma'am, from the SJA  
7 perspective, I'll answer that first, I would  
8 prefer more information. We're learning more  
9 about the SVC program and victims and the trauma  
10 they go through. I think we're doing the best  
11 thing by leaving it up to the victim to go  
12 forward.

13 The experience of, yes, everyone wants  
14 a little bit more experience, but it's one thing  
15 when you're putting your personal trauma out  
16 there for that experience. I don't know that you  
17 learn from having said it multiple times at the  
18 32 or through the investigation and then the 32  
19 and then at trial and subject to cross  
20 examination.

21 I'm not sure that's beneficial. So  
22 what we train and we teach is, leave it up to the

1 victim, discuss the process. The SVC needs to  
2 discuss the process with the victim and let it be  
3 the victim's decision at that point so long as  
4 they fully understand and appreciate what the  
5 process is about, and if the SVC are doing their  
6 job, the victims, I believe, are making informed  
7 decisions on that.

8 CAPT SULLIVAN: And I have the same  
9 concern regarding the, having the victim tell the  
10 story again, yet again and again.

11 And the parameters of the 32  
12 previously where we had the instances where the  
13 victims were on the stands for days. And I think  
14 procedures and processes would need to be changed  
15 to ensure that there are protections of the  
16 victim during that process.

17 Again, I was chief of defense for a  
18 while and so from that perspective, from the  
19 accused, definitely like to have that opportunity  
20 to talk to the victim prior to the court-martial,  
21 as well as the trial counsel. You can get an  
22 idea of how the victim is going to react or hold



1 up on the stand.

2 But I don't think testing the victim  
3 in that capacity is really useful for the  
4 purposes of the ultimate trier of fact at a  
5 court-martial. And the dangers and just  
6 everything that's involved with re-victimizing  
7 the client.

8 Re-victimizing the victim in that  
9 setting with the, what we've seen in the past, I  
10 do not think it's a good idea.

11 LT. COL. SCHRANTZ: Agree, ma'am. I  
12 would like to continue to allow it to be what the  
13 victim would prefer to do.

14 One, as part of our training a few  
15 weeks ago, one instance that really stuck with me  
16 from hearing from an actual victim of a case that  
17 was successfully prosecuted, she flat out said  
18 that the actual act of testifying at the trial  
19 was worse, felt worst to her and that the anxiety  
20 and pain and suffering of having to retell it was  
21 worse than the assault. And it just stuck with  
22 me for hearing her.

1           So having that type of action imposed  
2 again on them to add in Article 32, I would not  
3 want to see that in terms of victims.

4           As far as getting them ready, I think  
5 the victim's legal counsel and the trial counsel,  
6 you can only do the best that they can in  
7 preparing that victim to testify through  
8 preparation and assurances and education and just  
9 trying as best they can to support that victim  
10 through the process so that they are as ready as  
11 they can possibly be during such a difficult  
12 event, as testifying is.

13           COL. CLAY: And to really kind of echo  
14 what was already said, it should be a victim's  
15 choice and a case-by-case basis. They will have  
16 an opportunity to have the advice of their SVC or  
17 VLC, an opportunity to consult with trial counsel  
18 ahead of time.

19           So the victim, in consultation with  
20 their SVC, is in the best position to make a  
21 decision whether they should or should not  
22 testify at an Article 32.

1                   And, again, depending on the victim  
2                   and the nature of the alleged assault, it may be  
3                   more emotionally damaging to them to testify  
4                   twice versus just at the trial itself.

5                   MS. SPECHT: Just pretty much the same  
6                   as what everybody else has said. It's going to  
7                   be a conversation between the SVC and the client.  
8                   And it will depend on the specifics of the case.

9                   MS. TOKASH: So --

10                  MS. GARVIN: Oh, I'm sorry, I didn't  
11                  see you Meg.

12                  So, we've talked a little bit about  
13                  collateral misconduct. And then, I don't know if  
14                  everyone was here this morning when we had the  
15                  panel talking about it, but one of the things  
16                  that we discussed was the definitional  
17                  differences in the reports that came from each of  
18                  the services as they were trying to collect the  
19                  data. And as we were unpacking that a little bit  
20                  we talked a little bit about the definitional  
21                  differences in adverse action.

22                  And so, I'm just curious what your

1 opinions, if you have them, it might be something  
2 you need to think about, about if we're going to  
3 try and help folks come up with definitions in  
4 order to respond to those types of queries, and  
5 maybe even encourage Congress to be a little more  
6 specific when they give certain things.

7           Would you all from the SVC, VLC  
8 perspective, have a recommended definition of  
9 adverse action that a survivor might suffer in  
10 response to collateral misconduct?

11           And because what we were talking about  
12 this morning is formal adverse action and  
13 informal adverse action. I'm seeing lots of  
14 furrowed brows --

15           (Laughter.)

16           MS. GARVIN: -- which probably means  
17 that either my question was inarticulate or  
18 you'll be graceful and say you need time to think  
19 about it.

20           LT. COL. SCHRANTZ: Ma'am, an  
21 excellent question and --

22           (Laughter.)

1                   LT. COL. SCHRANTZ:  -- I was here this  
2 morning and --

3                   BRIG. GEN. SCHWENK:  You weren't  
4 paying attention.

5                   (Laughter.)

6                   LT. COL. SCHRANTZ:  Sir, I was, I  
7 promise.  But it is something, ma'am, honestly  
8 that I'd like to think a little bit more about.  
9 Thank you.

10                  CAPT SULLIVAN:  Yes, ma'am, the same,  
11 to think about it.  Because it could be very  
12 broad so we would need time to think about it.

13                  BRIG. GEN. SCHWENK:  Let me help a  
14 little bit.  So, this morning, it seemed like  
15 there was a general consensus, a court-martial is  
16 adverse.

17                  (Laughter.)

18                  MS. GARVIN:  Correct.

19                  BRIG. GEN. SCHWENK:  And NJP is  
20 adverse and an administrative discharge is  
21 adverse.  And so then, you get to other measures  
22 that could be labeled non-punitive measures.

1 MS. GARVIN: Yes.

2 BRIG. GEN. SCHWENK: So, I'm going to  
3 give you a letter.

4 MS. GARVIN: Right.

5 BRIG. GEN. SCHWENK: Okay. If I'm  
6 going to give you a letter and send you a copy  
7 for your official file, that might look awfully  
8 adverse.

9 If I'm going to give you a fitness  
10 report or whatever you call it, and in it I'm  
11 going to be less than glowing, I haven't said  
12 anything bad but I just haven't glowed very much  
13 like we normally lie and, oh, I mean embellish,  
14 some people might perceive that as adverse,  
15 others might not.

16 If I'm going to give you a letter and  
17 stick it in my drawer, because it's a non-  
18 punitive letter and it's more a corrective  
19 measure, maybe you don't consider that adverse.  
20 Although, as a recipient of two of those, I  
21 considered them adverse at the time.

22 (Laughter.)

1                   BRIG. GEN. SCHWENK: So, I think we're  
2 really looking at the low end of things. At the  
3 top end of things probably pretty easy but we're  
4 getting towards the low end of any thoughts you  
5 have on that. Right?

6                   COL HAMILTON: Yes. So, that's  
7 exactly where I jump to looking at the reprimand  
8 --

9                   BRIG. GEN. SCHWENK: Well, then you're  
10 screwed up. If you're at my level, we've got  
11 problems.

12                  COL HAMILTON: I'm sorry, sir. The  
13 reprimand, whether it be an official file, a  
14 local file, which is basically in the drawer as  
15 far as where adverse and for, especially for the  
16 victim as a form of the collateral misconduct.

17                  But what I'm hesitant to do, which I  
18 would ask for more time to really look at is  
19 having something directed put out regarding that.  
20 I'm always fearful of when you take that option  
21 away from commanders to figure out what is best  
22 for good order and discipline within the unit at

1 that time. And also considering the victim and  
2 the trauma that he or she has already endured,  
3 what is the best way to ensure and enforce good  
4 order discipline across the formation as to what  
5 degree.

6 Because, some would say that if you're  
7 junior enough in rank even an Article 15 may be  
8 survivable as a, because it's non-judicial  
9 punishment. However, like you said, sir, it's  
10 adverse. An official reprimand is adverse.

11 In a drawer, it's a reprimand so it  
12 adverse, but it may be able to survive so that he  
13 or she may have a successful career thereafter.

14 CAPT SULLIVAN: And, sir, I'm thinking  
15 of even other things like deeper into the weeds  
16 as far as possible, if you're up for a certain  
17 school and because you were found guilty of  
18 drinking under, underage drinking, you lose that  
19 school so that then affects your whole career  
20 path.

21 Or not extra Military instruction as  
22 much, but the other thing I'm thinking is deeper



1 into the weeds as far as losing some opportunity  
2 that you may have had to progress on your career  
3 path because of that collateral misconduct.

4 BRIG. GEN. SCHWENK: Thrown out of the  
5 special whatever program --

6 CAPT SULLIVAN: Yes, sir.

7 BRIG. GEN. SCHWENK: -- that you have.

8 CAPT SULLIVAN: Yes, sir. Or even  
9 being set back for a couple of months or so, so  
10 that you're not on the same track now as your  
11 peers.

12 BRIG. GEN. SCHWENK: So like what  
13 happens to the accused?

14 CAPT SULLIVAN: Absolutely, sir.

15 BRIG. GEN. SCHWENK: -- record.

16 CAPT SULLIVAN: Absolutely, sir.

17 LT. COL. SCHRANTZ: That's right, sir.

18 And so, like Captain Sullivan mentioned,  
19 regardless of the outcome of the military justice  
20 proceedings there is the potential of certain  
21 hang-up and delay and awkwardness that a Service  
22 Member's record will look like.

1           Even with no adverse material in it at  
2 all formally. If someone on a promotion board or  
3 a school board is looking at that individual's  
4 record, there may be consequences because the  
5 board member doesn't have the benefit of knowing  
6 what happened but it just looks odd. It's the  
7 odd career progression. And it could just  
8 potentially be due to delay.

9           It could also be that that individual  
10 victim felt that in addition to an expedited  
11 transfer just to avoid this local geographic area  
12 that they were in a particular MOS or field of  
13 practice that really required them to get out of  
14 that field. It's too small.

15           Everyone knows so they do a lateral  
16 move into an additional MOS. Well then you get  
17 into the situation to where, as career advisors  
18 would recommend is, you know, how would you get  
19 that victim with a new MOS into a position to get  
20 MOS job credibility in a completely new and  
21 different job.

22           And so, those are the type of

1 challenging adverse actions that aren't adverse  
2 in terms of formal written counselings that's in  
3 someone's record, but in terms of a victim's  
4 career progression and overall standing over a 20  
5 year career, it could be a one to two year blip  
6 that looks very odd that could have negative  
7 impacts on them.

8 Just something that until this morning  
9 hadn't thought about much, sir.

10 MS. TOKASH: In the responses by SVCs  
11 and VLCs to the request for information for this  
12 particular speaker group, there was an indication  
13 that even though the reaction of victims vary  
14 case-by-case, many of them expressed devastation  
15 at an acquittal.

16 So, my question is, do you think,  
17 based on the very high acquittal rate in the  
18 Military that we're seeing as a group through the  
19 case review working group and the actual raw data  
20 that we're seeing from analyzing cases in the  
21 field, do you think given the very high acquittal  
22 rate in the Military coupled with the

1 devastation, the feelings of devastation from the  
2 victim, that there should be a higher standard  
3 for referral of cases to trial?

4 If so, what do you think that should  
5 be?

6 BRIG. GEN. SCHWENK: We almost had  
7 somebody down here, but if you had just waited  
8 you could have gone last.

9 (Laughter.)

10 BRIG. GEN. SCHWENK: But too late, the  
11 red light is on.

12 COL HAMILTON: Sir, like you said,  
13 we're similar in some ways.

14 (Laughter.)

15 COL HAMILTON: Ma'am, I do not think  
16 it should be a higher standard. I obviously feel  
17 for, empathize with victims who feel devastated.  
18 And who wouldn't?

19 However, I think the process there, I  
20 think some victims, although devastated, at least  
21 feel through the process, if the SVC was doing  
22 their job, the chain of command and everyone, the

1 resources, the treatment to care was there for  
2 the victim, at least I think there is some  
3 healing in the fact that they, their story was  
4 heard, their trauma was heard.

5 And while it may not have reached to  
6 the level of beyond a reasonable doubt for a  
7 conviction, there was some empathy through the  
8 process for the victims. So while they're  
9 disappointed with the result, I think that they  
10 have taken a giant step toward healing by having  
11 had the opportunity to tell their story.

12 And I think if we just look at  
13 conviction rates for these victims as a means of  
14 success or making it more of a challenge to get  
15 them to the opportunity to have that healing, I  
16 think we're missing the boat on the trauma that  
17 these victims experience through the sexual  
18 assault.

19 CAPT SULLIVAN: And, ma'am, I'm  
20 thinking back to, I read through the responses  
21 from our military justice folks and as far as the  
22 acquittal rate really is difficult to judge on

1 because every case is different and the reason  
2 for the acquittal is different.

3 And these cases are tough. I mean,  
4 these many times are two people in a room,  
5 something happens and there are different reports  
6 of what happened. So I think it would be very,  
7 changing the standard I don't know would fix  
8 that.

9 And I don't think that basing the  
10 decision on the acquittal rate would just really  
11 help the system. But again, I defer to the,  
12 think back to the answers that I read to this  
13 question from our military justice folks, I would  
14 defer to them.

15 MS. TOKASH: Because in theory,  
16 changing the standard to prove beyond a  
17 reasonable doubt at referral, could kill a lot of  
18 cases right there.

19 CAPT SULLIVAN: Yes.

20 MS. TOKASH: True?

21 CAPT SULLIVAN: It could, yes.

22 MS. TOKASH: It could, right.

1                   CAPT SULLIVAN: Yes.

2                   LT. COL. SCHRANTZ: That's right,  
3                   ma'am, it could. And you would, although it  
4                   might not be to the same level, and I agree  
5                   Colonel Hamilton's feedback up to this point, or  
6                   comments to this point, but you raise the  
7                   standard, you use the term kill it would sort of  
8                   expedite the devastation from the victim at that  
9                   point rather than having them wait till the trial  
10                  after, saw all the factors were considered by the  
11                  Article 32 officer at the same standard and then  
12                  the SJA and the trial counsel and then the  
13                  convening authority made that determination of  
14                  which sustaining the conviction is one of the  
15                  factors to consider.

16                  And so, I think if you made it a  
17                  higher standard and it precluded it from moving  
18                  forward at all, much of the benefit that our  
19                  field VLCs have communicated to us about willing  
20                  participants who want to go forward, who have the  
21                  opportunity with their VLC to work through the  
22                  case, that would be gone at that point.

1 COL. CLAY: And I would agree that  
2 there is a value from the victim's perspective of  
3 going through the process, having an opportunity  
4 to tell the juror or the judge what they  
5 experienced.

6 It does come back to managing  
7 expectations of the client. And as you all know,  
8 oftentimes it's not a result that our client  
9 wants at the end of the day, but I do believe  
10 there is a value to that victim to publicly state  
11 that I was wronged and have that made known.

12 MS. SPECHT: Just to expound on what  
13 everybody else has said, and what I was saying to  
14 the Chair earlier, there is value in the process  
15 itself to victims.

16 I don't think that, I think they want  
17 to have it heard by a panel member. And if the  
18 SVC is working well, especially with the TC, they  
19 will be aware of the potential problem, you know,  
20 consequences of moving forward.

21 CHAIR BASHFORD: Staff? All right,  
22 then thank you so much for coming. And we'll



1 adjourn for lunch and come back at 2 o'clock. If  
2 anybody is going out, out to the courtyard.

3 (Whereupon, the above-entitled matter  
4 went off the record at 1:18 p.m. and resumed at  
5 2:03 p.m.)

6 CHAIR BASHFORD: We're continuing this  
7 afternoon with Panel 3, so we're going to get the  
8 Perspectives of Services' Trial Defense Service  
9 Organization Chiefs Regarding Conviction and  
10 Acquittal Rates, the Case Adjudication Process,  
11 and Victim Declination.

12 I suspect we might hear something  
13 slightly different than we've heard this morning.  
14 But, Staff, can you tee this up please?

15 MS. SAUNDERS: This is, based on the  
16 response to the RFIs we've been putting together,  
17 and I'm going to read the first one. It's  
18 referred to as the referral process.

19 The defense RFI responses indicate the  
20 victim preference may play an outside role  
21 whether or not a sexual assault case is referred  
22 to trial. What consideration or weight should be

1 given to the convening authority given the  
2 victim's wishes regarding the disposition of the  
3 sexual assault case?

4 CHAIR BASHFORD: Colonel Bennett,  
5 could you start us off?

6 (Laughter.)

7 COL BENNETT: So, obviously the voice  
8 of the victim is something that should be  
9 considered, but when we give too much weight to  
10 it, when the wishes or the desires of a victim  
11 are going to overwhelm what the evidence should  
12 support, if you have a no PC but, hey, the victim  
13 wants to go and the SJA is looking at what the  
14 victim wants and deciding, no, there really is  
15 PC, I think that's problematic.

16 If you have PC but you're looking at  
17 it and saying, you know, the chances of a  
18 conviction are either slim or, you know what, the  
19 evidence really doesn't even support a conviction  
20 but still the thought that we should go forward  
21 because a victim wants their day in court,  
22 absolutely raises the rights of a victim above

1 and beyond that of the rights of the accused.

2 And at the end of the day, there is  
3 one person who potentially is facing confinement,  
4 loss of liberty. And that's the accused in the  
5 case.

6 So while there's a place to understand  
7 what the victim wants, there should be some  
8 consideration. At the end of the day, the  
9 evidence and the analysis by whether it's the  
10 PHO, this morning they said the SJA is the right  
11 person, the analysis of the evidence, in and of  
12 itself, should actually carry the day not the  
13 request or the wishes of the victim.

14 CDR KIRKBY: Thank you. I would  
15 agree. I believe the standard we should use is,  
16 can we obtain and sustain the conviction at  
17 court-martial.

18 If we, cannot based upon the evidence,  
19 then there should be no, nothing else should make  
20 us go forward. The desire of a victim to have  
21 their, quote, day in court, should be a  
22 consideration.

1                   But really I believe it should be a  
2                   consideration if they don't want to participate.  
3                   Then no matter what the other evidence, then  
4                   maybe the commander needs to take that into mind  
5                   and say, without the participation of a victim,  
6                   under policy, we don't go forward because if a  
7                   victim doesn't want to participate, we're not  
8                   going to force them to come in and testify and go  
9                   through that process.

10                   But to say, well, they want their day  
11                   in court therefore regardless of the evidence,  
12                   the state of the evidence, the best interest of  
13                   the PHO, the best judgment of the PHO, the best  
14                   judgement of everybody else, the legal process to  
15                   say, we should go forward anyway I think is the  
16                   wrong decision.

17                   So, I think it has some weight, but it  
18                   shouldn't overcome the obtain to same standard  
19                   that we should be using.

20                   CDR KING: I agree with my colleagues.  
21                   What really matters is whether or not the victim  
22                   is willing to participate. And past that point

1 the evidence and the rest of the military justice  
2 process should lead on the charging decision and  
3 whether we go forward after a 32.

4 So, again, I think it's, we really  
5 have to pay attention to whether or not the  
6 victim is willing to participate, because without  
7 the victim it's going to be very hard to get a  
8 conviction without lots of independent evidence.

9 But after that question is answered  
10 then I think that we need to rely on the rest of  
11 the process.

12 COL. MORGAN: Good afternoon again.  
13 I agree with my colleagues. I believe that the  
14 desire of the victim should be fully and fairly  
15 considered but should not necessarily override  
16 legal standards.

17 The PHO's determination of probable  
18 cause, the Article 33 guidance as to the  
19 likelihood of conviction. And I would also just  
20 like to take a moment to discuss the fairly  
21 profound impact that a Military member goes  
22 facing a type sexual assault allegation.

1           There's the stress associated with a  
2 fairly lengthy process. I believe the last  
3 number I had for the average general  
4 court-martial for 120 offense was something like  
5 508 days.

6           During this time frame --

7           BGEN SCHWENK: From what to what?

8           COL. MORGAN: I believe from the  
9 beginning of the investigation until --

10          BGEN SCHWENK: Yes, from the  
11 allegation to the --

12          COL. MORGAN: Yes.

13          BGEN SCHWENK: -- until the MCIO  
14 till a final decision at the court-martial?

15          COL. MORGAN: Yes, sir. During this  
16 time period, frequently, not always, but  
17 typically, the member is removed from their  
18 normal duties. Oftentimes has their security  
19 clearance pulled, may have access to certain  
20 areas restricted, be subject to a protective or  
21 restraining order further limiting their access.  
22          They're placed on a control roster,

1 they can't test, they can't PCS. Or, sometimes  
2 they're actually transferred to another  
3 installation during the pending trial.

4 We've seen that even if they're  
5 acquitted at that point they're typically eager  
6 to administratively separate, which parallels  
7 oftentimes what we see when there is a conviction  
8 with respect to the victim. They're both eager  
9 and frustrated with the process to separate.

10 (Off microphone comment.)

11 COL. DANYLUK: -- about the victim's  
12 desires to go to a consideration, to the  
13 convening authority about whether or not perhaps  
14 they desire the Military to be involved at all or  
15 if it's possible that the civilians take it if  
16 there's a civilian jurisdiction.

17 And then as it is to the weight, it's  
18 really, I agree with all my colleagues, about  
19 whether or not they are going to be a willing  
20 participant in the process.

21 I'm sure the prosecutors would all  
22 agree that having a willing victim that wants to

1 participate makes their job a little bit easier  
2 as they go through the process.

3 And we haven't always respected the  
4 rights or the voice of the victim in that  
5 decision making. We've, in my Marine Corps  
6 career, ordered sexual assault victims to  
7 testify. We don't do that anymore I'm happy to  
8 say.

9 But I am aware of how important it is  
10 that people feel heard in the process. And so, I  
11 think having the voice in the process, having  
12 their desires made known to the convening  
13 authority whether or not at the end of the day  
14 they follow that choice that's being advocated  
15 for, is the convening authority's decision.

16 MR. KRAMER: Thank you. I have a  
17 question that by the time I get through may have  
18 eight or ten parts to it --

19 (Laughter.)

20 MR. KRAMER: -- but I hope you can  
21 keep track.

22 So, we heard --



1 (Laughter.)

2 MR. KRAMER: I'm just winding up here.  
3 We've heard testimony about how, that if there is  
4 a recommendation of probable cause that's  
5 essentially never overturned or extremely rare.

6 But what I don't know is if there is  
7 statistics or at least anecdotal -- of how often,  
8 how often is a finding of no probable cause at  
9 the Article 32.

10 And then the second step is, how often  
11 that's overturned if there's statistics about  
12 that or anecdotal information about that.

13 And then the second part of that  
14 question is, if it's overturned is it done, we've  
15 heard about a process where additional evidence  
16 can be submitted and we also heard, I think that  
17 defense counsel can do that also.

18 So I'm curious again how often that  
19 the SJA recommends overturning it just on the  
20 basis of the evidence, disagreement with the  
21 Article 32 with the PHO based on just  
22 disagreement or based on new evidence, how often

1 it occurs that there's new evidence and they  
2 disagree with the finding of no probable cause?

3 And how often, and the bigger question  
4 I guess is, how often is defense counsel, do you  
5 participant in this procedure to funnel  
6 information to the SJA after the Article 32  
7 proceeding?

8 COL. DANYLUK: I think the Marine  
9 Corps is a little different just based on the  
10 responses that I, I was saying that the Marine  
11 Corps, I think, is a little bit different based  
12 on the responses provided from all the services  
13 in that we see a higher degree of cases maybe  
14 that don't go to court because of the  
15 prosecutorial merits memo recommends to the SJA  
16 that they not go forward on a case.

17 Or if at the Article 32 hearing the  
18 PHO recommends that it not go forward. Whether  
19 or not they find that there's no, they say  
20 there's no probable cause or if they say there is  
21 probable cause but there is like zero chance of  
22 success on the merits at a court-martial.

1           Some cases are successfully then  
2 dismissed. And I think that that's reflected  
3 probably by the conviction rates.

4           Based on just my conversations with my  
5 colleagues, are higher in the Marine Corps. So I  
6 think they're taking less of the very weakest  
7 cases to trial.

8           The idea that the SJA is providing to  
9 the convening authority all this additional  
10 information that's not presented at the 32 is a  
11 little perplexing to me. We would like the PHO's  
12 recommendation, if there is no probable cause for  
13 that to be binding.

14           We feel like the government should  
15 present their evidence. I don't understand why  
16 they would be hiding that from anybody. And I  
17 don't know why they would be funneling it through  
18 the SJA to then overturn the PHO's recommendation  
19 that there is no probable cause.

20           I don't think any of us opposed the  
21 ability for the government to go back for another  
22 hearing, subsequent if there was a finding of no

1 probable cause. But I think we all agree that it  
2 should be binding.

3 CHAIR BASHFORD: Go ahead.

4 CDR KIRKBY: I don't think we have  
5 statistics to answer Parts 1, 2 and 4.

6 (Laughter.)

7 MR. KRAMER: I don't even remember  
8 what those were.

9 CDR KIRKBY: But I think by analogy,  
10 we do have some cases where we find, where the  
11 PHO finds no probable cause. And those cases are  
12 not continued, those are killed at that stage.

13 We also have cases where we know that  
14 the PHO has recommended no, who has found no  
15 probable cause, those cases have gone forward.  
16 And we've challenged that finding through motions  
17 saying, hey, wait a second, there is no probable  
18 cause, how did we even get to the court.

19 Judges have, based upon the  
20 recommendation nature of the 32, simply not  
21 allowed those motions to succeed.

22 How many have been overturned, again,

1 I don't know. The concept of the defense putting  
2 in evidence to try and convince the convening  
3 authority of a position, the SJA has now weighed  
4 in on.

5 I can't think of a case where the  
6 defense would ever want to play that game.  
7 Unless there is such overwhelming evidence that  
8 was clearly prohibited at the 32.

9 Now, there are rules that prohibit  
10 what we can do. There is certain things that the  
11 convening authority should know and the  
12 complaining witness should know that defense  
13 knows about. So we put that stuff forward.

14 But usually, that's not a good  
15 strategic decision to go and put, play all your  
16 cards and say, well look, we know you've got this  
17 and we know your SJA is disagreeing with us, but  
18 what about all this stuff.

19 Now, we'll hold that back and we'll go  
20 to trial and that may contribute to the acquittal  
21 rate where we obviously look at a different  
22 standard.

1           The binding nature of this I agree.  
2           And I'm trying to think of a Military reason why  
3           the 32 is not binding, and I simply cannot come  
4           up with one as I've thought about this process  
5           over the last few years.

6           To your question earlier on, should  
7           there be a difference in our systems between the  
8           federal system, I don't think so. I can't think  
9           of a Military reason.

10           And that should be the standard we're  
11           looking at. Is there a Military reason.  
12           Difference in members, conviction, you know,  
13           two-thirds or three-quarters versus a unanimous  
14           verdict. That may be a Military thing.

15           Twelve versus eight versus four. That  
16           may be a Military thing. There's arguments for  
17           those.

18           But to not have this binding at this  
19           stage where we simple have one person. And I  
20           heard a lot of arguments during the other panel  
21           saying, well, some of the PHOs are not well  
22           trained.

1                   The government gets to pick the  
2                   PHO. (Laughter.)

3                   CDR KIRKBY: That's not a great  
4 argument for them. We pick somebody who doesn't  
5 like the standard.

6                   If this is the floor, the government  
7 should be required to reach the floor. Or they  
8 should be able to go back down, start again. And  
9 maybe explain to their bosses how you didn't  
10 reach it.

11                   I know in the U.S. Attorney's Office,  
12 if they don't find a, if they get a no true bill,  
13 they have to go and explain how this happened.

14                   MS. TOKASH: We did hear this morning  
15 though that there may be a difference between  
16 Military due process and constitutional due  
17 process.

18                   CDR KIRKBY: Yes.

19                   MS. TOKASH: So, there's that.

20                   (Laughter.)

21                   CDR KIRKBY: That was a fairly scary  
22 answer. I think due process. And now of course

1 due process is, how much due process do we want  
2 to give people. Military, maybe just a little  
3 bit.

4 But the standard we've set is probable  
5 cause. Let's at least hold them to that and say,  
6 hey, if you think you can go forward to trial.  
7 This isn't a game. There's no gamesmanship here.

8 So, that should answer Part 3, 7 and  
9 9.

10 (Laughter.)

11 CDR KING: Just so I can jump in, I'm  
12 going to take a step back and explain why the  
13 Coast Guard has decided to move themselves for  
14 this panel.

15 (Laughter.)

16 CDR KING: So, for defense counsel, we  
17 have a memorandum of agreement with the Navy and  
18 the Navy handles most of our defense matters.  
19 So, for a lot of these questions we will be  
20 echoing what the Navy says because they have  
21 better first-hand knowledge.

22 But in this situation, there is a



1 couple of pieces that I think are slightly  
2 different for the Coast Guard. Especially when  
3 it comes to whether or not it should be binding.

4 I think we agree with that, but I can  
5 also understand, from the government's  
6 perspective, why there are times that they may go  
7 against the probable cause ruling because the  
8 Coast Guard's military justice bench is not as  
9 deep.

10 So we may have to assign a PHO who  
11 doesn't have the experience necessary to actually  
12 give a thorough determination. And so, with  
13 further information or further discussion, they  
14 may decide that even though they found that it  
15 wasn't probable cause maybe there was enough to  
16 go forward.

17 As far as, are there statistics out  
18 there as far as how many times the Coast Guard  
19 does a different finding than what the PHO found,  
20 I don't have statistics, but I know that it  
21 happens. There are times that we will say there  
22 is no probable cause.

1           But the SJA will recommend that they  
2 go forward. And again, I think that has  
3 something to do, a little bit to do with just --  
4 how we're still growing when it comes to military  
5 justice. Yes, thank you.

6           COL BENNETT: So, again, no stats, no  
7 numbers but there are absolutely times where a  
8 PHO has said no PC and the SJA has changed it,  
9 said PC and gone forward to the court-martial.  
10 Overwhelmingly they end up in acquittal.  
11 Eighteen plus months later in many cases.

12           Does the defense counsel have an  
13 opportunity? There is that right, but I am going  
14 to go with Commander Kirkby and why would we.  
15 Very unique specific cases do we afford.

16           Right now we have a capital case and  
17 I know my lead counsel has afforded himself that  
18 opportunity to present directly to the convening  
19 authority, not just the SJA. But it's a very  
20 unique case. A very different case.

21           In most cases, the thought that  
22 defense is going to get a full hearing, that you

1 have that neutral detached that will look at the  
2 defense evidence and take it into consideration  
3 and make a different determination that can be,  
4 you'll have the ability to sway.

5 I don't think we have a lot of  
6 confidence in that so we're going to hold it.  
7 We're going to wait until trial rather than that  
8 information being given to the government and the  
9 government find a way then to counter that while  
10 we'll hold our cards.

11 It kind of goes to why we don't avail  
12 ourselves with the Article 32. Without the  
13 binding recommendation of a PHO, there is little  
14 or no reason defense would ever put a case on.

15 Now, in the past it hasn't been  
16 binding and defense would pick those cases and we  
17 would try it at the 32, but we had a little bit  
18 more faith that all of that evidence would be  
19 taken into consideration and we could win a case  
20 at the 32.

21 There is not the sense within the  
22 defense bar, at least in the Army, that we can

1 win a case at the 32. It is an absolute paper  
2 case without that binding recommendation. It's  
3 just not worth it.

4 Going to whether it should be binding  
5 or not, the arguments of the government this  
6 morning is a little bit disingenuous. They pick  
7 the time to prefer the charges.

8 If you look at from the time an  
9 investigation starts to when we actually prefer  
10 charges in the Military, it is a substantial  
11 length of time. Yes, the preferral of charges  
12 triggers a 120 day clock.

13 Other than the pretrial confinement  
14 will also do it, I understand that piece. But  
15 they control everything about that 32. They  
16 control when it's preferred, they control the  
17 investigators, they control the amount of  
18 resources that are provided to the case, they  
19 have more paralegal support in order to be ready  
20 and prepared.

21 So at the preferral of charges, it  
22 doesn't have to be perfected, I get it. I've

1       been an SJA, but they should be ready to go to  
2       court in a very quick time.

3               What if defense comes in and demands  
4       a speedy trial, when you have those cases the  
5       government unbearably says, oh no, no, not quite  
6       ready. Then why did you trigger a court-martial.

7               And all of that entails for a soldier,  
8       an airman, a sailor, a Coast, whatever.

9               (Laughter.)

10              COL BENNETT: Why are you, as the  
11       government, with that incredible prosecutorial  
12       power, triggering something when you're not  
13       ready. And we keep forgetting the accused. We  
14       keep forgetting what they, and our length of time  
15       is 500. Sometimes it's longer.

16              We are talking about life altering  
17       events for what, when you can look at it, the  
18       experienced counsel, the ones who have it look at  
19       the fact pattern and say, that's going to be an  
20       acquittal. And yet we have to go through an 18  
21       to 24 month process to get that result.

22              Meanwhile, the accused, the family,

1 the victims, everyone else is going along in this  
2 process simply to go through the process for what  
3 we know the end result is going to be. I think  
4 it's problematic.

5 COL. MORGAN: Thank you, ma'am. We,  
6 to my knowledge, we do not retain these statics  
7 as well. The trial defense division does not.  
8 If those statistics were maintained it would be  
9 by the military justice policy division, JM.

10 Anecdotally, we do see cases more  
11 frequently than not where the PHO recommends, or  
12 determines rather, that there's no probable cause  
13 and yet, the government proceeds despite that  
14 recommendation.

15 I do concur with everything my  
16 colleagues have said. I would add that the  
17 process whereby an SJA can present all of this  
18 unexamined evidence ex parte to the convening  
19 authority, does seem somewhat peculiar.

20 And it doesn't require that this be  
21 memorialized anywhere. At least the Air Force,  
22 pursuant to its administration military justice

1 instruction, AFI-51201, simply has a template  
2 that answers in a conclusory fashion the four  
3 questions.

4 There is probable cause, there is  
5 jurisdiction, there is a basis to go forward.  
6 I've gotten the fourth one.

7 CHAIR BASHFORD: The charges are in  
8 the appropriate form.

9 COL. MORGAN: The charges are in the  
10 appropriate form. Thank you.

11 (Laughter.)

12 COL. MORGAN: Thank you. But again,  
13 these are highly complex, difficult decisions.  
14 And it seems a little strange that none of this  
15 has memorialized anywhere.

16 Convening authorities are highly  
17 intelligent individuals. They read everything.  
18 And why this somehow wouldn't be captured  
19 somewhere, for the purposes of transparency and  
20 to make a better-informed decision, is a little  
21 unusual.

22 With respect to whether the PHOs

1 determination should be binding, again, I concur  
2 with my colleagues, yes. What I would add is  
3 that it would be binding but without prejudice.

4 So there would be a mechanism whereby  
5 the government could reopen or re-prefer charges  
6 and hold a new 32 if in fact there is new  
7 evidence. Or arguably, even if the PHO committed  
8 some legal error, applied the wrong standard,  
9 perhaps there could be an appeal to a Military  
10 judge or take it to the next higher level  
11 convening authority, which would leave it in  
12 command channels as to make a determination  
13 whether charges should in fact be re-preferred.

14 But a PHO's determination of probable  
15 cause should be a condition precedent for  
16 referral of charges.

17 CHAIR BASHFORD: I have a question for  
18 you. Several of you have said that although you  
19 have the option, at least on paper to bring  
20 evidence to the SJA before the commander's  
21 decision, you don't, you'd rather hold it. In my  
22 practice I call that the Perry Mason option.



1                   And I regularly encourage defense  
2 attorneys, both pre and post arrest to, if you  
3 think we have it wrong please come in and tell  
4 us, don't wait 18 months down the road and do an  
5 ah-ha you got it wrong. If we have it wrong, we  
6 have it wrong, we can deal with this up front.

7                   So is it that you don't believe you're  
8 going to get a fair, if you bring in this  
9 evidence that you believe shows they have it  
10 wrong, do you think it's not going to get a fair  
11 hearing?

12                   COL BENNETT: I think it may be a  
13 difference of what type of evidence. Is it truly  
14 exculpatory.

15                   It's like, nope, here is a text  
16 message that says, after the fact that, yes, it  
17 was all consensual, right? I mean, that's a  
18 little bit of a difference. You would then bring  
19 it over to the trial counsel, to the SJA, have  
20 that taken in and hopefully be dispositive of the  
21 case.

22                   But I think there's other types of

1 evidence that maybe you're going to hold the  
2 inconsistent statements, some of the character  
3 evidence that you're going to kind of withhold  
4 that a little bit. You're not going to bring it,  
5 again, it depends on the weight of the evidence  
6 and that you think it's going to be given.

7           So the truly exculpatory, I would  
8 encourage my counsel, give it over so we can end  
9 this system. But the ones where is doesn't quite  
10 get us completely on the side of, it just didn't  
11 happen to, it makes it more questionable, whether  
12 you're going to conviction.

13           Then I don't know that there's value  
14 of giving that over to the government earlier in  
15 the process versus waiting.

16           CDR KIRKBY: No, I would agree. I  
17 think there is, in every case the counsel on the  
18 case has to decide, is this dispositive, is this  
19 the text message that clears my client or is  
20 something that the government is going to be  
21 surprised by it at trial and if they got it  
22 beforehand they can remedy it, they can come up

1 with something different.

2 A lot of our cases we do, if we have  
3 the evidence, if our investigators, we have DLSS,  
4 defense investigators, if they come up with  
5 information that is exculpatory, we will put that  
6 forward at any stage of, we don't really care if  
7 it's 32, post-32, the day before trial, whatever,  
8 we will try and get that in. Because, obviously,  
9 the best outcome for our clients is, don't go to  
10 trial.

11 Acquittal is not as good as don't go  
12 to trial if you're innocent. It's not worth the  
13 risk.

14 So, I think in those cases we would  
15 absolutely go forward. But a lot of the times,  
16 as the Colonel said, it's evidence that calls  
17 into question the accused, the complaining  
18 witness' behavior.

19 Her history, her reaction afterwards.  
20 There may be messages that the government is not  
21 aware of that call into question the entire story  
22 that they're giving.

1                   If we don't think it's going to be  
2                   dispositive, we're not going to turn it over,  
3                   we're going to wait and do that in cross  
4                   examination.

5                   CDR KING: I would agree with what my  
6                   colleagues have said. And I don't think that I  
7                   have anything additional to add as to why we  
8                   wouldn't other than its strategy. Like it's  
9                   trial strategy.

10                  And if we can't walk in knowing that  
11                  it's going to make the case go away, then we have  
12                  to decide when is the best time to bring that  
13                  forward and when would we have the best results.

14                  COL. MORGAN: So, I agree with the  
15                  question. The premise of the question in theory.  
16                  If we were in a position to present evidence  
17                  which would paint the case in an entirely  
18                  different light and perhaps cause the government  
19                  to rethink its prosecution.

20                  Our general default position would be  
21                  to do so, but you heard from the Air Force this  
22                  morning that the likelihood of a conviction does

1 not factor into their analysis.

2 So, at least for our service there is  
3 very little point in presenting this evidence.  
4 If the government is going to go forward  
5 regardless, it merely gives the government an  
6 opportunity to perfect its case.

7 COL. DANYLUK: As I mentioned, I think  
8 the Marines handle it a little bit differently.  
9 We're more likely to participate in the 32 and  
10 not waive it. And we do participate in the  
11 post-32 document submission.

12 We have realized some degree of  
13 success. Maybe we're naive in that. But I think  
14 as a group we have determined that winning the  
15 case at a dismissal is obviously, as we've all  
16 said, better than winning it at the court-martial  
17 process, if we can do that.

18 And so far, we have faith that that  
19 system is working with some degree of success.

20 MS. CANNON: Speaking of the 32, I'd  
21 like to understand better what it looks like,  
22 because we're hearing that it's just a bunch of

1 paper, 15 minutes. And now that there may be a  
2 different experience across the different  
3 services.

4 So, I'm wondering, what occurs at a 32  
5 now, what would make it better?

6 I get the sense unanimously binding  
7 decisions would make it better. So, assuming  
8 short of that, or in addition to that, what else  
9 would make it better and what's happening over in  
10 the Marine Corps that might be different than the  
11 experiences over here.

12 So, if we could hear all the  
13 experiences of what's going on in the 32  
14 hearings, what would you like to see that's  
15 different that we haven't discussed as binding?

16 CDR KIRKBY: I think what we're seeing  
17 is many times, especially in sexual assault  
18 cases. Now, sexual assault cases are unique and  
19 I know this panel is here to discuss sexual  
20 assault cases, but changes we make to the Article  
21 32 effect every case not just these.

22 We recently had a case where the

1 Article 32 was two and a half days. It was not a  
2 sexual assault case. In the sexual assault case  
3 it's usually a paper case.

4 I think if we wanted to make a change  
5 we say that can't happen. You can't simply come  
6 in and put down a bunch of papers and say, here's  
7 your 15 minutes. It takes eight minutes to read  
8 the script, it takes, you know, to read the  
9 rights and to go through everything that's going  
10 on.

11 So really, what are we talking about?  
12 The government presents exhibits 1 through 27.  
13 Thank you for your consideration, we think this  
14 should go forward to a general court martial.

15 That's next to useless. In fact, that  
16 may be on the same parallel as useless.

17 What we'd like to see, put the  
18 witnesses on the stand. Put some. If you still  
19 want to maintain that the victim has a right not  
20 to testify, and if that's Congress' position,  
21 there are some problems with that but let's just  
22 say that is it, put the NCIS agents on, put other

1 people on to say, this is really what happened.

2 Rather than simply here is a report of  
3 investigation, just put the agent on the stand.  
4 The government should have to produce a living  
5 person to allow some kind of cross examination.  
6 To allow some kind cross examination, to allow  
7 some kind of involvement by the defense.

8 Rather than simply saying, defense, so  
9 you can put anybody you want on but we're not  
10 going to give you anybody to put on. Which  
11 essentially means, you can put the accused on if  
12 you really want to.

13 And no defense counsel in their right  
14 mind is going to do that. So, I think if we were  
15 looking at a change, that would be one.

16 The other thing I think we probably,  
17 as we go through this process and we see the  
18 equivalent rates and we see everything else  
19 that's playing into this, we need to consider  
20 whether the complaining witness not testifying is  
21 a good idea.

22 In many cases, we used to do it in the



1 old system, we would have the complaining witness  
2 come in, they would testify and you would turn to  
3 your client and say, that went really badly for  
4 us. That was terrible.

5 We need a deal. We need to never make  
6 that happen again. If she gets up there up or he  
7 gets up there and testifies, you are going down.  
8 So let's make a deal.

9 So I think what we've given up is that  
10 demonstration to the defense, this is how strong  
11 the government's case is.

12 MS. CANNON: Well, and just to  
13 interrupt for a moment, in the private sector  
14 there is, at least where I come from in  
15 California, there is Prop 1, whatever, 114. And  
16 they come in through testimony of investigators.

17 CDR KIRKBY: Yes.

18 MS. CANNON: Not bring in the victims.  
19 But there is still prelims. There is still  
20 hearings. And is that what, that is also what  
21 you're talking about?

22 CDR KIRKBY: I do. And I think,

1 earlier I mentioned, is there a Military  
2 necessity to the reason we have a 32 as not being  
3 binding.

4 I think there are lots of things that  
5 we can take from state court proceedings and  
6 federal proceedings that we can box into what we  
7 term the Article 32 process without going through  
8 these additional steps.

9 Because really in the Military process  
10 there is a reason not to keep doing all these  
11 other steps. But if we could have the same  
12 foundational issues resolve at this Article 32, I  
13 think that's beneficial for everybody,

14 Looking at the black and white on the  
15 paper you may say, oh, well, we don't want this  
16 thing to happen. We don't want an investigation  
17 is what Congress has said.

18 But at some stage everybody does an  
19 investigation. Every state, every federal entity  
20 does an investigation. We've simply obliterated  
21 that and now our conviction rates have tanked.

22 MS. CANNON: Okay. Can I hear from

1 the other services.

2 CDR KING: I think I agree with  
3 everything that the Navy said because they do our  
4 cases.

5 (Laughter.)

6 CDR KING: But one of the things that  
7 I think would help the Coast Guard specifically  
8 is, to work on a system to increase, or to get  
9 PHOs qualified.

10 Whether that's some type of training  
11 before they're allowed to be a PHO or you have to  
12 have a certain amount of experience. Because  
13 that's part of the investigation.

14 So they're going to ask the informed  
15 questions and they're going to help draw out some  
16 of the information. And if they don't have the  
17 background knowledge to ask those right  
18 questions, then it's, I think, worse than just a  
19 paper case. So, that's the additional piece for  
20 the Coast Guard.

21 CHAIR BASHFORD: Okay.

22 COL. MORGAN: We're largely seeing the

1 same thing in the Air Force that Commander Kirkby  
2 described. We're largely seeing perfunctory  
3 Article 32s where select pieces of the report of  
4 investigation are offered for the 32 PHO, along  
5 with perhaps video recordings. And no live  
6 witnesses are called.

7 So, to answer your question, the  
8 calling of live witnesses would certainly be  
9 beneficial to the truth finding process.

10 Expanded powers of the preliminary hearing  
11 officer to direct that the government actually  
12 produce evidence and perhaps empower the PHO to  
13 issue some sort of sanctions if the government  
14 fails to comply.

15 The binding determination of course.  
16 And I would echo the comments with respect to  
17 some sort of robust training, perhaps  
18 certification process for preliminary hearing  
19 officers. That's what I would add.

20 I'm not sure that our actual 32  
21 process is any different than the other services.  
22 It's mostly paper. They don't call live

1 witnesses.

2 I think the outcomes, it sounds like  
3 the outcomes are just sometimes different in the  
4 Marine Corps.

5 We would like to have live witnesses  
6 too and we would like to have better trained  
7 PHOs. If that's what's holding the SJAs back  
8 from relying more on the PHOs then we feel like,  
9 then maybe they should be better trained or have  
10 different qualifications. Maybe they should be  
11 magistrates or judges.

12 But other than that, I don't think the  
13 actual execution of it is any different for us.

14 COL BENNETT: Your question was, what  
15 other than making it a binding recommendation,  
16 and I hesitate because I think really if you make  
17 it binding, a lot of the changes that we would  
18 advocate for would happen because the government  
19 would have to put thought, care and preparation  
20 into the 32.

21 They're not going to sit there and  
22 put, unless it's an incredibly strong, here is

1 the victim's statement, here is the accused  
2 confession, right? Oh, by the way, those  
3 generally don't go with 32.

4 But everything we're talking about,  
5 right, if I was the government trial counsel and  
6 this is going to be, this was going to make or  
7 break my case, I'm going to either go forward or  
8 not, I'm going to put the live witnesses on. I'm  
9 going to assess my case.

10 I'm going to make sure that I am  
11 providing that PHO with all the information. And  
12 if that PHO says I have this question and I need  
13 this, this and this, the government is going to  
14 get it to them.

15 So, a lot of the changes that are made  
16 I think would almost be taken care of by making  
17 it binding, enforcing the government to resource  
18 the article 32 the way it should be so they can't  
19 say, well, the PHOs aren't all that experienced.

20 Well, give us your experienced  
21 individuals to your PHOs then. Train them.

22 You know, probable cause, we had the

1 conversation that's law school 101. That's your  
2 first year of law school, you get what probable  
3 cause is.

4 So to say, typically for sexual  
5 assaults for the Army, our PHOs are majors. So  
6 to say a major judge advocate in the Army cannot  
7 make a probable cause determination, which would  
8 be binding, that's kind of questionable.

9 But if we make it binding, the  
10 government then has all of the reasons to do what  
11 we're saying to make it more of a true  
12 preliminary hearing and really put in that  
13 constitutional protection for the accused.

14 CHAIR BASHFORD: Given the increased  
15 number of waivers of the 32 that we are seeing,  
16 and if it were to stay in its current posture of  
17 a lack of a PC not being binding and no live  
18 witnesses, it seems like the Marine Corps at  
19 least thinks there still is some utility to it.  
20 What about the rest of the services?

21 CDR KIRKBY: I would say there's still  
22 some utility to it. We still would like to see

1 what the government is going to present.

2 It gives us another opportunity to  
3 file a motion with the court. And hopefully one  
4 day the court listens and says, we agree, this  
5 was misleading, they didn't put in the entire ROI  
6 even though it was a 200 page paper case that  
7 they put in, they did not put in this exculpatory  
8 things that the convening authority should have,  
9 should have done.

10 So, I think there is still utility in  
11 it, I just, I think it's the exception rather  
12 than the rule. If the rule is there should be a  
13 hearing that has some benefit across the board,  
14 then I think we need to change it. We need to  
15 modify it. I'm not sure how much we need to  
16 change it.

17 I echo Captain Monahan's comments from  
18 earlier. We've had a lot of changes over the  
19 last ten years. I would be reticent to suggest  
20 we need wholesale change.

21 But there are some certain  
22 modifications that would benefit the system,



1 benefit the victims, the accused and the system  
2 as a whole.

3 MS. TOKASH: I'm curious about your  
4 motions that you talked about before, Commander  
5 Kirkby.

6 So, in a case where there was a no  
7 probable cause determination made by the  
8 preliminary hearing officer yet the staff judge  
9 advocate recommends to the CG to refer and the CG  
10 does so, now you're sitting at defense counsel  
11 table representing a service member accused of a  
12 crime, in a general court-martial. And you filed  
13 a motion to dismiss with the Military judge.

14 Is your dismissal motion based on the  
15 threshold constitutional issue that is that  
16 probable cause has already been determined and  
17 the SJA and convening authority are summarily  
18 ignoring that constitutional issue, and might  
19 that be one of the differences that was alluded  
20 to between Military due process and  
21 constitutional due process?

22 CDR KIRKBY: I hate to agree that

1 there is a difference. I think due process is  
2 due process. We still have some constitutional  
3 rights.

4 But I think that's -- because of the  
5 language used in the statute for the Article 32,  
6 it is a recommendation. It is not binding.  
7 Therefore, we lose the motion fairly, almost  
8 every time.

9 We win on the fringes of some other  
10 misconduct or other happenings by the government.  
11 But generally speaking, we lose the motion based  
12 upon our argument that the PHO, the neutral and  
13 impartial person hearing this determined there  
14 was no probable cause and the judges say, that's  
15 great, your absolutely right, move on. Because  
16 it's just not binding.

17 MS. TOKASH: And if you think it were  
18 binding, then maybe the military judges might  
19 view the issue differently and rule on your  
20 motions differently?

21 CDR KIRKBY: Oh, I believe so. I  
22 think, but I think also the SJAs and the

1 convening authorities would understand more. And  
2 I think this goes back to the whole argument that  
3 Colonel Bennett was making.

4 If you make this binding, I think  
5 everybody's game is upped. I think everybody  
6 steps up.

7 A lot of the issues we're talking  
8 about, that we need to improve this and we need  
9 to do this.

10 I think all of those have to follow  
11 suit in order to meet that threshold, in order to  
12 avoid the risk of, no, we're going to do this  
13 again if you think you've got more evidence.

14 MS. TOKASH: And do you think that  
15 making that binding would have an impact on, what  
16 I think Judge Grimm might have characterized it  
17 before as the abysmal conviction rate that the  
18 military has currently?

19 CDR KIRKBY: I think fewer cases would  
20 go forward. I think therefore if the good cases,  
21 government version of the good case is one, I  
22 think the conviction rate goes up, right?

1           The acquittal rate goes down because  
2           the terrible cases for the government are simply  
3           not being prosecuted, they are dying an  
4           appropriate death out in 32. There's no PC and  
5           we're not going forward.

6           MS. TOKASH: Can I hear from the other  
7           services please?

8           COL BENNETT: I would agree that it  
9           would have an impact of being able, one, as an  
10          SJA, having served as an SJA twice now, if I had  
11          that no PC, I would not go forward.

12          But if it's a binding decision, it  
13          really takes some pressure from the victim of we  
14          can't go forward. You refused to testify, your  
15          statement had inconsistencies.

16          That ability then to fairly easily  
17          dispose of cases based on the binding  
18          recommendation of a 32 officer would be crucial  
19          in order to get rid of the really bad cases.

20          Even on the ones where it says, hey,  
21          you have PC but recommendation, disposition not  
22          going forward, that wouldn't be binding.

1       However, once you invite the 32 with the  
2       authority in the PC, say this is a binding  
3       recommendation, this is someone who we trust to  
4       make this very basic, that even would allow me to  
5       go back to an SVC saying, we're not going  
6       forward, this is where it's going to end up.

7                You're providing more information to  
8       the SJA, to the convening authority to help them  
9       make proper disposition of the really hard cases  
10      rather than saying, we're going to take all these  
11      cases to trial regardless and we'll let the court  
12      figure it out.

13              And then we'll also go back, if it's  
14      a binding, then from a defense point of view do  
15      we offer more information. Do we go to a little  
16      bit more of a trust, that if we bring out all  
17      these prior inconsistent statements of the victim  
18      at the 32 and they really look at what that case  
19      is about versus just what the victim statement  
20      says, then maybe defense brings more information  
21      sooner in the process and we can now get rid of  
22      this case and then look at using all of our

1 resources at the other cases that are going to go  
2 forward.

3 COL. MORGAN: So we have had defense  
4 counsel motion the court to dismiss the charges.  
5 Looking at the historical and legislative history  
6 behind Articles 32 and Article 34, that Article  
7 32 was principally designed to function as a  
8 protection against baseless charges, that Article  
9 34 is an additional protection that's designed  
10 to, again, screen out merit-less cases, even  
11 despite a probable cause determination.

12 And then the other piece is based on  
13 the statutory construction of Article 32 itself.  
14 It actually uses the term determination.

15 So the PHO makes a probable cause  
16 determination whereas in other places in the  
17 statute it uses the term recommendation, and that  
18 utilization of the term determination actually is  
19 a legal term of art. Which requires that it be  
20 honored as a final, the finality, given finality  
21 to the action.

22 And we have had no luck with this

1 motion.

2 COL. DANYLUK: I would just add that  
3 if we're not going to get there where it's  
4 binding, we would like to know why the SJA is  
5 finding that there's probable cause when a PHO  
6 has already determined that there's not probable  
7 cause.

8 So we think that that is something  
9 that should be part of the Article 34 advice  
10 letter when they are finding probable cause when  
11 there's been a determination about probable  
12 cause.

13 MS. TOKASH: Well, your colleagues in  
14 the military justice division chiefs panel  
15 referenced that one of the factors might be this  
16 additional evidence. And I'm not talking about  
17 the additional evidence that's noted in the  
18 R.C.M. 405.

19 It sounds like they're talking about  
20 even further additional evidence that's almost  
21 like ex parte with the, I mean, that's what I was  
22 left, the impression I was left with that it's

1 this ex parte presentation of evidence to the  
2 convening authority without defense counsel there  
3 to overwhelm the prior no PC determination made  
4 by the PHO.

5 Do you have any comment on that and  
6 would you recommend maybe adding a rule for  
7 court-martial between the preliminary hearing  
8 rule and 405 and Rule 406 pretrial advice that  
9 talks about this mysterious additional evidence  
10 procedure that we've heard about today?

11 COL. DANYLUK: So, Colonel King, I  
12 think, disavowed this finding of new evidence in  
13 the interim. I think that you had asked him  
14 about.

15 But instead, the SJA was providing,  
16 not new information to the government, but  
17 information that wasn't contained in the, maybe  
18 presented at the 32. I mean, I guess I don't  
19 really know exactly what it is because we don't  
20 get a copy of it and we don't know what they've  
21 told them.

22 So if it's part of this prosecutorial



1 merits memo system or something like that, that's  
2 not provided to us so I'm not sure.

3 CHAIR BASHFORD: I think that I have  
4 a question on -- we've seen several reports from  
5 the 32 officer that says, sort of the equivalent  
6 of, well, there is probable cause but there is  
7 serious credibility issues. On the other hand,  
8 that's not for me to determine, that's for the  
9 court-martial.

10 Obviously, it's hard to make  
11 determinations on credibility based on papers,  
12 but sometimes it's not. Do you think that the  
13 32, to the limited extent they're able to, do you  
14 think credibility should be a consideration or  
15 should that be something referred downstream to a  
16 court-martial?

17 COL BENNETT: I think it should  
18 absolutely be part of a 32 determination.  
19 Especially when you look at the sexual assault  
20 and when you look at those classic he said, she  
21 said, which is so many of our cases, it comes  
22 down to the credibility. And to have a 32

1 officer being able to look and make that  
2 determination.

3 We do it for 15-6 investigating  
4 officers. One of the things we want them to do  
5 is a credibility of the witnesses that they've  
6 interviewed.

7 And if there's a change --

8 CHAIR BASHFORD: I'm sorry, what's a  
9 15-6?

10 COL BENNETT: I'm sorry, that's our  
11 administrative investigation. So non-criminal  
12 typically.

13 But we require that if there's a  
14 difference between two witnesses, that the IO  
15 really take a look at those two statements and  
16 come up with a determination where he thinks is  
17 truth or where is the credibility issues between  
18 those witnesses.

19 So to have an Article 32, we're at the  
20 probable cause determination, not, to be able to  
21 just defer credibility down to the court-martial,  
22 we are, again, missing an opportunity to

1 foreclose proceedings.

2           And the time between a 32 and a trial,  
3 I don't know the average time. But it can go up  
4 to 12, 18 months from a 32 actually getting into  
5 a court-martial and not being able to have a  
6 truly neutral detached party look at the  
7 credibility issues when they're evident.

8           When there's inconsistent statements  
9 within the victims primary, we're not even  
10 talking any consistent statements outside of the  
11 primary statement but within the statement itself  
12 and yet we're not having credibility  
13 determinations by all the PHOs.

14           I don't know how you can get to a  
15 probable cause without thinking about the  
16 credibility of those witnesses and those  
17 statements.

18           CDR KIRKBY: Ma'am, that's a very  
19 interesting question because I think if we made  
20 it binding, if we said, if we said you have to  
21 make a credibility determination and we didn't  
22 change anything else, so that was the only in a

1 vacuum thing we changed, my fear would be the  
2 government would simply be able to put in  
3 statements that were from NCIS or CGIS or  
4 whatever, investigative service that had none of  
5 that information in there. So they would simply  
6 be able to avoid the credibility issue.

7 The onus would then fall to the  
8 defense to say, wait, there are these other  
9 inconsistent things which would essentially mean  
10 we would be forced to show our hand.

11 And I don't know that the consequence  
12 of that is what we would want to see. That's an  
13 interesting question I think we need to think  
14 further on how we would specifically do it and  
15 what the governments, you know, what's the fourth  
16 order of effect of what that change would do  
17 without any other changes.

18 CDR KING: I think one of the  
19 difficult things with the question is, is to  
20 create a blanket rule. Credibility issues are  
21 not all created equally.

22 So, if it's a clear situation where we

1 have a piece of evidence that says one thing and  
2 another that says exactly the opposite, well  
3 maybe they can make a determination and present  
4 that to the convening authority so that they can  
5 make a final determination.

6 But some of the other credibility  
7 issues, it's not as easy to say, absolutely, this  
8 person doesn't have credibility or absolutely  
9 they do. So, I would probably resist the urge to  
10 give a blanket rule but to work in some kind of  
11 guidance so that the PHO is thinking about it and  
12 presenting evidence that would help the convening  
13 authority see what happened during that hearing.

14 Because they were the eyes and the  
15 ears. So help make sure that you are detailing  
16 it in such a way that when the convening  
17 authority is making a decision, they have all of  
18 the evidence and all of the information so that  
19 in the end it's the best decision for the  
20 military justice process.

21 And I think sometimes we lose sight of  
22 the military justice process and we really are

1 trying to figure out how to serve justice, right?  
2 And sometimes justice is not a conviction. We do  
3 the best that we can.

4 And the convening authority needs the  
5 information so that they can do the best they can  
6 to make the best decision for the service as a  
7 whole.

8 COL. MORGAN: So, credibility in these  
9 situations is often times the central issue where  
10 alcohol is involved and there is the absence of  
11 physical evidence, sometimes there is a prior  
12 relationship between the accused and the victim.

13 Collateral misconduct, as we know  
14 often times comes into play, which may provide  
15 the motive. And so, these things are often times  
16 critical to a determination.

17 So, I would certainly empower the PHO  
18 to consider these factors in making a  
19 recommendation.

20 But to Colonel Bennett's point, our IG  
21 investigations as well, often times perform a  
22 credibility determination when there is

1 conflicting testimony. So we have case law, we  
2 have guidance, we have a panel instruction for  
3 determining credibility.

4 So, I would also second the  
5 recommendation that perhaps this be formalized  
6 and actually included as factors that the PHO is  
7 to consider.

8 CDR KING: Agreed. I think it should  
9 be a factor the PHO can consider. I'm not sure  
10 it should be mandated that he consider it.  
11 Because, as you mentioned, maybe it's impossible  
12 for them to determine.

13 My only concern is that it might have  
14 the unintended consequence of now they are often  
15 times putting in the video interviews of the  
16 alleged victims and it could be then that they  
17 stop putting the videos in. And so then the SJA  
18 and the convening authority have less information  
19 than they're having now if the PHO is making a  
20 credibility determination based on a video tape.

21 CHAIR BASHFORD: I don't actually know  
22 if this is a question as much as an observation,

1 but you have -- obviously, it's an adversarial  
2 process, but we see and hear from the prosecutors  
3 that if they write down their advice to the  
4 convening authority and then have to give that  
5 over, that's like a roadmap of possible  
6 weaknesses to their case.

7 In my experience, defense attorneys  
8 know very well the weaknesses of my case. You on  
9 the other hand are saying if we show our cards,  
10 that's a roadmap to the prosecutors to fix the  
11 weaknesses of their case.

12 I know the weaknesses of my case, I  
13 don't need defense attorneys usually to tell me  
14 about something unless there's really something  
15 outlying there.

16 And I guess this is why this is more  
17 of an observation. Despite it being an  
18 adversarial process, it would be nice if people  
19 came to it more in an atmosphere of trust. That  
20 you don't think the prosecution is hiding the  
21 information or the parts of the interviews that  
22 make the witnesses subject to, you know, raised



1 eyebrows and the, so I guess that's really more  
2 of an observation.

3 If that were a goal, that would be  
4 where I would like to see everybody get to.  
5 Despite recognizing it as an adversarial process.  
6 So, I don't actually have a question.

7 MS. LONG: I have a -- maybe this is  
8 also an observation/question. Because I have  
9 heard over and over again, and as a prosecutor  
10 doing these cases, it's something I've probably  
11 heard for over 20 years, credibility, it's all  
12 about victim credibility, alcohol matters.

13 Prior relationship, collateral  
14 misconduct, inconsistent statements. All of the  
15 things that exist in sexual violence cases.

16 You've all been trial counsel you  
17 know, as well as anyone else. And so, if you are  
18 trying to make credibility, so, I'm going to  
19 take, at this point knowing you're sitting in the  
20 defense seat, I understand that you're not going  
21 to acquiesce to a lot of these things.

22 And there certainly is a difference

1 between a material or an immaterial  
2 inconsistency, but to have then a credibility  
3 assessment made based on those things when we  
4 know that this is what offenders can exploit, it  
5 seems a little early in the system with total and  
6 complete information of the 32.

7 But it does make me wonder perhaps,  
8 and I also think it's too early to draw any  
9 conclusions about conviction rates, besides the  
10 fact that it's somewhat misleading when you say  
11 there's a 20 percent conviction rate when you're  
12 just looking at the lead charge and you're not  
13 understanding what's happening.

14 I also wonder if maybe this is why the  
15 military judges are giving a better conviction  
16 rate on the bench trials, depending on wherever  
17 we look versus the panel. Because there's more  
18 of an understanding.

19 And so, I guess what I would just  
20 caution against is that knowing how complex these  
21 cases are and knowing how, for decades these  
22 cases, there are --- and we never want to see an

1 innocent person being dragged through them, I  
2 mean, I think we're all on the same page, but  
3 there are guilty people that their cases will not  
4 progress because of all the barriers.

5 Finding an area where we're protecting  
6 defendants' rights but remembering fairness to  
7 the accused is due the accuser also.

8 And really trying to keep the balance,  
9 to plagiarize a justice. But to keep the balance  
10 true when we're trying to figure out a system  
11 that does both of those things.

12 That certainly allows for defendant or  
13 an accused not to have their life derailed  
14 inappropriately, but not to try and make pretend  
15 right now that a conviction or an acquittal rate  
16 is a representation of innocent people being  
17 brought to the system when we know that there is  
18 so much misunderstanding and gaps in the  
19 practice.

20 So, that was more of an observation I  
21 think.

22 MR. KRAMER: So, I have an observation

1 but a question too.

2 (Laughter.)

3 MR. KRAMER: I share Chair Bashford's  
4 wish that there would be more trust in the  
5 system, but believe me, the civilian system has  
6 plenty of mistrust in it as well, so, it would be  
7 nice for all systems to have more trust.

8 But my question is, now I want to move  
9 way beyond the Article 32. And Jennifer, Ms.  
10 Long talked about it.

11 We saw what I would call striking  
12 difference in conviction and acquittal rights  
13 between a judge trial and a member's trial. And  
14 I don't think we have the stats to show whether  
15 why it went to the judge trial.

16 Was there some very prejudicial fact  
17 that they didn't want the members to know, was  
18 there a racial component, was there -- so, the  
19 question is, finally, why would, given those  
20 numbers, why would defense counsel ever agree to  
21 a judge trial?

22 And is it similar to the civilian

1 world where a judge can kick the case before it  
2 ever gets to the members?

3 In other words, in the civilian world  
4 a judge can grant a judgement of acquittal and  
5 the jury will never get the case. Is there a  
6 procedure for that in the military, if so, or  
7 even if not, why would, given the numbers we saw,  
8 why are defense, why would a defendant or the  
9 accused agree to a judge trial?

10 COL DANYLUK: I'm glad you asked the  
11 question, I've been waiting all day to speak to  
12 this.

13 (Laughter.)

14 COL DANYLUK: And I have been a judge  
15 a couple times, but I'm here as a defense  
16 counsel. But what I didn't hear in the stats was  
17 a distinction between a contested case and a  
18 guilty plea case.

19 All of the guilty plea cases are going  
20 judge alone. So when you see a higher conviction  
21 rate, especially in those middle cases where it's  
22 not the contact but it's some other assault type

1 of allegation and charge that is a conviction, I  
2 suspect if they broke those statistics down more  
3 you would find that the higher rate is not  
4 necessarily because they went judge alone, it's  
5 because it's a guilty plea and so they had to go  
6 judge alone.

7 CDR KIRKBY: And so, we do have the  
8 equivalent of a, it's called 917 motion in the  
9 military. Basically the judge, if he finds a  
10 lack of evidence by the government on a specific  
11 element, can kick the case before it ever gets to  
12 all the charge. Can kick the entire case, but  
13 usually the charge, before it ever gets to the  
14 member. So we do have the equivalent.

15 COL BENNETT: I would also, I was  
16 curious on, they just gave me the numbers. Quite  
17 honestly, from our perspective, whether our  
18 counsel are recommending to their client to go  
19 judge alone or to the panel is very jurisdiction  
20 specific. It's specific on who are your judges,  
21 who are your panels, what's the composition of  
22 the panels, what have the panels done in the

1 past.

2 So there are so many different  
3 variables. One, it would be interesting to take  
4 out the actual guilty plea.

5 We have any number of acquittals from  
6 our military judges. And I have a number of  
7 jurisdictions that pretty much we don't do panel  
8 cases and we are very, still very successful at  
9 either getting an acquittal or getting the  
10 sentence that we think is appropriate from the  
11 military judge.

12 So, again, very specific to the facts,  
13 very specific to the jurisdiction, very specific  
14 to who the military judge is.

15 COL. MORGAN: And it's generally a  
16 requirement. At least in the Air Force, that a  
17 term in the plea agreement include that the  
18 member go before a military judge alone. With  
19 respect to a guilty plea.

20 I would just echo the comments that,  
21 right, our litigators are expected to know their  
22 installations, know the local conditions and to

1 know their military judges. But additionally,  
2 there very well may be an instance where a  
3 defense may turn on a particular point of law  
4 that may be better received by the military judge  
5 than the members.

6 CDR KING: For the Coast Guard cases,  
7 there's a little bit of trust, or an issue of  
8 trust for us, I think without panels as well, but  
9 we've had some cases recently where the advice  
10 that went out to the convening authority to pick  
11 their panels was less than transparent and  
12 probably less than legal, if I should say.

13 (Laughter.)

14 CDR KING: So then there is that trust  
15 factor too. So are we getting a fair panel if we  
16 select a panel or should we just go with the  
17 judge that we already know.

18 CHAIR BASHFORD: It's been suggested  
19 in several of the answers to the RFIs that an  
20 acquittal is a demonstration of a process that is  
21 fair and just and that acquittals aid in the  
22 maintenance of good order and discipline.



1                   At the levels we're seeing here, do  
2 you agree with those statements or disagree?

3                   COL. DANYLUK: It seems to be an  
4 unfair burden on an accused person to prove that  
5 the system works just by putting them through the  
6 process. Does that make sense?

7                   Like, if we all know that it's going  
8 to be an acquittal at the end of the day, but we  
9 feel like we need to send it to the members just  
10 to show that the system works, that seems to not  
11 really be justice to me.

12                  COL. MORGAN: I --

13                  COL BENNETT: I, oh, I'm sorry. A  
14 certain level of acquittals, right? I mean,  
15 because if you had a hundred percent conviction  
16 rate, then we're absolutely going to question the  
17 fairness of our system.

18                  So a certain level of acquittals I  
19 think does. It really shows the system works,  
20 you're getting that chance, at the court-martial,  
21 to put on the full case. And the panel or the  
22 judges, the final trier of fact, are really

1 looking at the evidence.

2 But when you're looking at the  
3 acquittal rates and the sexual assaults going  
4 over 50 percent, I think we really then have to  
5 say, what is the process. You know, as an SJA I  
6 looked really hard at -- what I told my counsel  
7 is I don't really care about the end state, I  
8 care about the process, how did we get there.

9 So, if I had ten cases and nine  
10 acquittals, I need to be looking at, what is  
11 wrong in the process, how we are not evaluating  
12 these cases, did we just luck out and we just  
13 really had nine really hard cases that had a go?

14 I kind of think we're missing some  
15 steps to really look, analyze. I think one of  
16 the panel members earlier this morning said,  
17 speculation is taking over analysis. When we  
18 don't know what we have.

19 You know, we had the government up  
20 here this morning saying, well, we're not ready  
21 at the 32, we shouldn't be bound by the evidence  
22 we're able to present because we're continuing to

1 investigate. Well, how did you prefer charges?

2 You're having your commanders, you  
3 were signing charges and saying, these, the  
4 evidence support the charges. How are we getting  
5 there if you don't know what's out there.

6 So, it is problematic where we're  
7 sitting. But if we're accepting this over 50  
8 percent acquittal rate of, well, that's just the  
9 system and it really shows the system works,  
10 we're missing an opportunity to go back and look  
11 at our process and look at individuals who are in  
12 charge of it saying, where did we miss, how can  
13 we get better, how can we keep this 18 to 24  
14 month process of this accused not to happen.

15 So, some acquittals, right, we've  
16 always had them. But the level of acquittals  
17 we're having.

18 And the other thing, I think it has  
19 the opposite effect on good order and discipline.  
20 So if you have that commander who has had the  
21 soldier in his command for 24 months and they've  
22 gone through this process and it ends in an

1 acquittal or you have soldiers sitting in the  
2 court-martial saying, it should end in an  
3 acquittal, I can't believe this happened, we're  
4 losing faith. We're losing faith.

5           If you have an acquittal rate of 59.4  
6 percent by panel members, how do those panel  
7 members take a look at the cases the government  
8 are presenting and acquittal after acquittal,  
9 we're not taking the right cases so why should we  
10 trust the system? How does that truly support  
11 good order and discipline in the military.

12           So some yes. I think the numbers that  
13 we have, we need to be doing a really hard look  
14 at what we're doing, what our processes are and  
15 why we, why we are where we are at.

16           COL. MORGAN: So, Colonel Bennett made  
17 a number of my points, but --

18           (Laughter.)

19           COL. MORGAN: -- thank you. But I  
20 think it's a confluence of events looking at the  
21 entire system, beginning with investigations that  
22 are oftentimes incomplete.

1           We heard that sometimes charges are  
2 preferred, they go to the 32 without the  
3 evidence, hoping that at some point before trial  
4 the evidence will materialize and often times it  
5 doesn't.

6           This is followed by an often times  
7 perfunctory, Article 32, with a determination  
8 that there is no probable cause which is then  
9 disregarded by the convening authority resulting  
10 in a foreseeable acquittal, which then has the  
11 effect, I think, of hardening some of the members  
12 to the process.

13           CDR KIRKBY: I think in addition,  
14 we've got to look at, I mean, other, other  
15 victims looking at the process saying, well, that  
16 case happened, the government said it had a good  
17 case, it moved forward through all of these  
18 steps.

19           As a victim, if I were saying I have  
20 a good case, this actually has really happened to  
21 me, but why would I go through that process  
22 because if it's a good case and they lost 58.2

1 percent of the last time, why would I go through  
2 this.

3 And so, I think good order and  
4 discipline has a number of different issues. The  
5 accused themselves, I don't think they see this  
6 as good order and discipline.

7 It is very difficult to convince  
8 somebody, hey, you're facing 20 plus years in  
9 jail, but don't worry, it's good order and  
10 discipline. That's a difficult sell for a  
11 defense counsel.

12 For a victim, future victim saying,  
13 oh, don't worry, the government has lost 50 to 80  
14 percent of the last cases, but yours is a really  
15 strong case, don't worry, I don't see how that is  
16 beneficial to that victim in the future.

17 So, I think there is an effect of the  
18 acquittal rate. I think it's detrimental, the  
19 good order and discipline across the board.

20 CDR KING: And I hope I don't sound  
21 cynical, but our court-martials are usually not  
22 happening where the offenses are. So, folks

1 aren't following it.

2 So, you will hear that something  
3 happened to a member and then that member has  
4 disappeared. If you follow back in a year or two  
5 when the process is over, they have no idea what  
6 happened.

7 They don't know if they got  
8 discharged, they went to a court-martial, were  
9 found guilty. And if the crew aren't following  
10 the results, I can't image it's having any impact  
11 on good order and discipline.

12 MR. KRAMER: So, is there a sense in  
13 the high acquittal rate you talked about, is  
14 there a sense that, because of the times or  
15 whatever, maybe the publicity going on, that  
16 there's pressure, and I don't mean improper  
17 pressure, but there's pressure to proceed with  
18 the cases that maybe ten years ago would not have  
19 proceeded?

20 Does it seem like there's more, I  
21 don't know if pressure is, you know what I'm  
22 trying to say, I think, that cases may be now

1 because of the publicity or proceeding that may  
2 not have in the past?

3 CDR KIRKBY: Sure. And, sir, somebody  
4 said earlier in a sidebar, no convening authority  
5 has ever been removed for referring a case to  
6 court-martial.

7 I mean, is there a pressure? Is there  
8 improper command, I don't know, unlawful command  
9 influence, that's not what we're talking about.

10 MR. KRAMER: Right.

11 CDR KIRKBY: There is a pressure from  
12 above. The existence of this panel is a  
13 pressure. Everybody who knows about the review  
14 by Congress, by all the changes, suggested to the  
15 military justice process, the changes over the  
16 last ten years.

17 Yes, there's a pressure, there has to  
18 be. I mean, if, it's naive to think there's not.

19 To what extent does that go forward,  
20 I don't know. I'm sure there's some science,  
21 there's some algorithm out there that would tell  
22 us exactly what the answer is, but there has to



1 be. I mean, there is that pressure, it exists.

2 COL BENNETT: And going back to Ms.  
3 Long's comment about the years that we really  
4 haven't given the victims a voice, right, and now  
5 we're more of a voice for the victims.

6 A real concern, I think the military  
7 system is generally considered with the SVC  
8 program and where we put victims in the process  
9 to be ahead of most of our civilian counterparts.  
10 But then you also have the #metoo movement.

11 All of the other movements that are  
12 out there, that pressure of, no, we have to  
13 provide these, the due process and the rights to  
14 the victim in order -- to some extent, it's  
15 almost we have to make up for our past, but we're  
16 doing it at the expense of a Soldier or a Service  
17 Member in order to make sure that that victim has  
18 all of the rights that, and is heard. Fully  
19 heard.

20 This morning they talked about the,  
21 having their day in court. Even a couple of the  
22 panel members this morning said, even if they

1 don't think it's going forward, if the victim  
2 wants to, we're going to go forward.

3 And that's problematic. And I think  
4 that goes to the pressure, right?

5 It's not necessarily a new command  
6 influence, but it's societal pressure. It's all  
7 around us and we can ignore the elephant in the  
8 room, but that is absolutely driving some of the  
9 decisions.

10 And it goes back to, maybe some of the  
11 trust or maybe the lack of trust. How can the  
12 defense bar overcome some of those societal  
13 pressures?

14 And we'll leave it at societal versus  
15 systematic within the military justice system.  
16 Victims are our priority. Victims have to be  
17 heard.

18 And again, some of it is simply, we  
19 haven't, your comment earlier, ma'am is we  
20 haven't given them that voice, we haven't  
21 listened to them for 20 years. You're right.

22 I cannot deny that it crossed our

1 jurisdiction. Not just in the military  
2 jurisdiction, across our jurisdictions, sexual  
3 assault, domestic violence has gotten short  
4 thrift in our justice systems.

5 But I think we always have to be  
6 careful of raising the rights of the alleged  
7 victims. And when you had the SVCs up here and  
8 talking about the acquittals, there was an  
9 absolute guarantee they were all victims. Right?

10 Maybe not every acquittal is the  
11 acquittal of an innocent man, but there are  
12 acquittals out there, when you're looking at it,  
13 looking at all the facts, I can look at it and  
14 say, he didn't do it or that wasn't a crime.

15 So, yes, there is absolute pressure,  
16 yes, that is driving our system. And we can  
17 ignore it or we can try to continue to balance  
18 what is right for the victims, what is right for  
19 society in order to take care of the sexual  
20 assaults and domestic violence.

21 Let's not go back 20 years. We need  
22 to take the hard cases. But we're not just

1 taking the hard cases, we're taking the  
2 unwinnable cases. And we're doing it at the cost  
3 and the expense of the accused, their families.

4 And in some cases, the military  
5 itself, because we're taking really good soldiers  
6 out of our formation. So there's a lot of  
7 different issues that are at play, but there is  
8 pressure and it's driving our system.

9 CHAIR BASHFORD: Did we hear from  
10 everybody on that?

11 COL. MORGAN: No, ma'am. So, years  
12 ago you may recall we had an issue with sexual  
13 assault at BMT, at Lackland Air Force Base.  
14 There were commanders that years after they had  
15 PCS'd, years after they had left their squadron  
16 commander positions, were then subjected to  
17 adverse actions.

18 I believe some letters of reprimand  
19 and promotions withheld for the manner in which  
20 they dealt with the sexual assault atmosphere  
21 within their squadrons.

22 So, I believe that eventually perhaps

1 some collateral relief was granted, these  
2 commanders. But this is not unknown within the  
3 Air Force and this definitely has an impact on  
4 the way commanders will view whether they should  
5 take a care forward.

6 As Commander Kirkby mentioned, it's  
7 much easier to weather an acquittal as a  
8 commander than it is the scrutiny of not  
9 referring a case.

10 COL DANYLUK: I think our experience,  
11 as I have spoken all day, is a little bit  
12 different. I think that, and I don't want to  
13 speak for the prosecutors, but they seem to be  
14 trying to provide, I don't want to call it top  
15 cover, but a very detailed analysis that gives  
16 the convening authority the support that they  
17 might feel that they need if they do decide to  
18 not refer a case.

19 We still take weak cases to court, we  
20 still get lots of acquittals. But I think we are  
21 just a little bit more successful in providing  
22 the convening authority the support that they

1 need. Both through the prosecution and the  
2 prosecutorial merit memos, the PHO report and  
3 also the SJA's advice.

4 CHAIR BASHFORD: I saw questions over  
5 here.

6 HON. BRISBOIS: So, just to follow-up  
7 on this a little bit. By way of comparators, in  
8 non-Article 120 cases, you've been front line  
9 trial defense lawyers, you've been chiefs of  
10 justice for an SJA, you've been SJAs, you're now  
11 back in trial defenders.

12 When you go through the Article 32  
13 process as it exists now, get a non-probable  
14 cause determination/recommendation, depending on  
15 your point of view I guess, do you anecdotally  
16 see the same sort of response and pressures to  
17 take non-probable cases to trial like as you do  
18 in the 120 area?

19 CDR KIRKBY: Sir, I don't. I think  
20 there is, I think in the non-120 arena the  
21 pressure isn't there. I think if the convening  
22 authority doesn't have to report up to his boss

1 or his bosses' boss or the secretary of the Navy,  
2 there is less pressure on it they say.

3 The juice just isn't worth the  
4 squeeze. At the end of the day, in this single  
5 spec drug case, it's just not worth it to go  
6 forward, we've got other remedies here.

7 I think there are lots of binding  
8 effects once we get to a general court-martial,  
9 it's difficult to back out of it. So there is  
10 people that are reticent to do that.

11 Once their case is going forward and  
12 once we go through the 32, I don't think in a 120  
13 case there is the same desire to find another  
14 resolution. Especially from the accused.

15 I mean, it's difficult to say, I'm  
16 going to plead guilty to a 120 case. The  
17 long-term effects of that, which have questions.

18 So, from both sides there is a  
19 different aspect of the pressure that comes in.  
20 In a fraud case, it depends on the money amount.

21 If you're taking money from the  
22 government, if it's \$1,000, maybe we can find a

1 way to end somebody's career and get the \$1,000  
2 back. Difficult to do that with a victim centric  
3 concept like 120. So, there is a difference,  
4 sir.

5 HON. BRISBOIS: Well, what you've been  
6 describing though is a difference where there is  
7 probable cause and the ability to negotiate a  
8 resolution different than court-martial.

9 My question was, one way to get a  
10 handle on whether there is pressure, properly or  
11 improperly, but political pressure, as to making  
12 decisions is, what is the behavior like in other  
13 areas under the punitive articles.

14 When in the non-probable cause area,  
15 do you see if there's no probable cause in a  
16 robbery or an assault of a fight nature, not  
17 sexual nature, do they refer them, overrule the  
18 non-probable cause determination and refer them  
19 to the court-martial anyway or do they generally  
20 say that sounds good and we'll go on for --

21 CDR KIRKBY: Well, I think there's two  
22 issues. One, the pressure I think comes in in a



1 much greater -- that would suggest it's only, the  
2 pressure is only on the Article 32. I think  
3 getting to the Article 32 there is pressure.

4 So, in the simple assault case, we may  
5 not get to a 32. Or a drug case, we may never  
6 get there.

7 So we don't even need to make that.  
8 People can say, hey, these are the results, we  
9 have other avenues that we're very happy to take.  
10 We can administratively discharge people for  
11 drugs, we can do all those things.

12 So, if there is an Article 32 finding  
13 of probable cause --

14 COL DANYLUK: Finding them.

15 CDR KIRKBY: No probable --

16 HON. BRISBOIS: No probable cause.

17 CDR KIRKBY: -- cause. I think, I  
18 can't think of cases where there is no probable  
19 cause in a non-sexual assault case. It's kind of  
20 unique to the 120 charge because it's so  
21 subjective.

22 HON. BRISBOIS: So it sounds like that

1 lack of creative resolution then, all the tools  
2 to resolve at the lowest level misconduct just do  
3 not apply in Article 120. They will find their  
4 way to, once the charges are preferred, they will  
5 find their way to an Article 32 hearing and then  
6 regardless of the recommendation, likely end up  
7 in courts-martial.

8 CDR KIRKBY: Sir, I have no statistics  
9 on that, but my anecdotal experience is, that's  
10 exactly what happens is, people are reticent to  
11 take an alleged rape case to a non-judicial  
12 punishment.

13 COL BENNETT: I would just say, one  
14 other area we're starting to see more pressure  
15 and that's the domestic violence. So, that would  
16 be a caveat but otherwise if you have a case for  
17 going forward, if you don't think you're going to  
18 make PC, you're not taking it to the 32.

19 And you can dispose of that case,  
20 whether it's alternate disposition or we're just  
21 not going to go forward. But I would just caveat  
22 as, I think we're seeing a little bit more in the

1 domestic violence arena and a little bit more  
2 pressure there going forward without the victim  
3 cooperation, things like that, would be the only  
4 other area that I see. Not the same level of  
5 pressure, but more pressure.

6 CHAIR BASHFORD: We're pretty much out  
7 of time but I did see a hand over --

8 DR. MARKOWITZ: If we have time,  
9 great, if not, that's fine.

10 CHAIR BASHFORD: We have time for your  
11 question.

12 DR. MARKOWITZ: Sorry, as brief as  
13 possible. I know both the Air Force and the  
14 Marine Corps mentioned the issue of sexual  
15 assault training as being one aspect of their  
16 concern related to the conviction rates. I don't  
17 know if the other services share that concern.

18 We see the whole concept of one drink  
19 means you cannot consent often dealt with at voir  
20 dire. For all of the members of this panel, do  
21 you feel like voir dire is the best place to  
22 address that issue, is there another way that you

1 all would prefer to be able to deal with it and  
2 what would that be? Or does voir dire take care  
3 of it, in your estimation?

4 CDR KIRKBY: I think as a final  
5 result, voir dire is the appropriate place to  
6 take care of it. But I think the training needs  
7 to be correct.

8 And Navy has done a fairly good job of  
9 dispelling the concept that one drink means you  
10 can't consent. I mean, logically that's  
11 irrational.

12 But we've done a good job of getting  
13 away from that training. But training as a  
14 whole, I mean, it's good in one respect. The  
15 saturation of sexual assault training puts  
16 everybody on the defense, on the defense side in  
17 the panel.

18 They're just saturated with this. Oh  
19 my God, another sexual assault issue. But the  
20 training has to be correct. So I think first up,  
21 the training needs to be correct. Second up, if  
22 we need to get there, then voir dire is the place

1 to fix it.

2 DR. MARKOWITZ: And, sir, does the  
3 defense have a look at the training? Are you  
4 getting the opportunity to look at training or --

5 CDR KIRKBY: Actually, Code 20. So,  
6 Captain Monahan's team looks at the training from  
7 a neutral perspective and says, this is good or  
8 bad. I don't, sorry, I just got in the seat on  
9 Monday, so I haven't had a look at training  
10 recently.

11 BRIG. GEN. SCHWENK: And you're  
12 leaving today?

13 (Laughter.)

14 CDR KIRKBY: My boss is at the back,  
15 so maybe, sir.

16 (Laughter.)

17 COL BENNETT: I'll say just real  
18 quick, one of the things that we do, we don't get  
19 to look at the overall training, but quite  
20 honestly I'm not really concerned that the  
21 training from the headquarters is the translation  
22 at the local level.

1 CDR KIRKBY: Right.

2 COL BENNETT: That is problematic.  
3 So, many of our counsel and our senior defense  
4 counsel will actually make sure that they attend  
5 the training. Even if that's sending a paralegal  
6 over, so we know actually what is being said in  
7 that jurisdiction, in that training.

8 And there have been times when we've  
9 been able to go back and said, no, they stated  
10 this, that's not correct and that's going to lead  
11 to problems. And then it's also been absolute  
12 fodder for us at voir dire.

13 So, there is some proactive nature of  
14 us actually going and see what the training is.  
15 At the local level. It's not at the higher  
16 headquarters level that I'm most concerned.

17 CDR KING: My training piece I think  
18 would be with the convening authorities and the  
19 SJAs and CGIS. Because they're the ones that's  
20 going to drill down and make sure that as their  
21 investigating and deciding which ones to bring  
22 forward as cases, if they understand the

1 questions to ask the victims, then the end  
2 product works.

3 So, whether or not one of our young  
4 folks feel like that, hey, I had one drink so now  
5 I can't, well, hopefully that makes them a little  
6 safer. But it's, how does it translate when we  
7 get ready to bring forth a charge.

8 COL. MORGAN: Our division is not  
9 consulted on the substance of the training. But  
10 I agree that the training is, it has some utility  
11 perhaps as using social standards, but it does  
12 not, to my knowledge, include appropriate legal  
13 standards.

14 COL. DANYLUK: The way it trickles  
15 down, sometimes even when the accused is  
16 interviewed, because of the training he received,  
17 one and done type training, he will be confessing  
18 to a rape allegation because his understanding of  
19 SAPR training was that, well, she had something  
20 to drink, I shouldn't have touched her. So  
21 that's somewhat problematic.

22 And then also I've seen records of

1 trial where the trial counsel is saying, she was  
2 too drunk to sign a recruiting contract so she is  
3 too drunk to consent to have sex, and making  
4 those kind of analogies which then the judge has  
5 to then try to undo.

6 DR. MARKOWITZ: Okay, thank you.

7 COL. DANYLUK: Thank you.

8 CHAIR BASHFORD: Thank you all very  
9 much for appearing as a lively discussion. Thank  
10 you so much.

11 I don't know how much, do people need  
12 break? Okay.

13 (Whereupon, the above-entitled matter  
14 went off the record at 3:27 p.m. and resumed at  
15 3:30 p.m.)

16 CHAIR BASHFORD: Ms. Tagert, Ms.  
17 Gallagher, take it away.

18 MS. TAGERT: Good afternoon. The  
19 purpose for us being here this afternoon is just  
20 to give a very brief and quick update on the case  
21 review progress to the DAC-IPAD and the public.  
22 We have now completed the review of the 2,000



1       investigative case files including the  
2       preliminary hearing reports that were available  
3       for cases where 32 was held. And we have begun  
4       the inputting process of the information that was  
5       gleaned from those investigations.

6               We have completed the analysis of the  
7       Air Force data, and we will continue to work on  
8       the other services to have the data produced so  
9       that we can answer the questions that were raised  
10      here today about probable cause and whether or  
11      not there was an acquittal or further appellate  
12      overturn.

13             And we hope to have the data completed  
14      for you by late spring and then for analysis.  
15      And then if you vote to go on site visits later  
16      today, potentially we'll be drafting questions  
17      for those site visits to answer any of the  
18      questions that the data has raised for your  
19      review.

20             Pending any questions, that is the  
21      update from the case review today.

22             CHAIR BASHFORD: Thank you. Well put.

1 Before we start our next which is the data  
2 working group presentation, is there anybody --  
3 it's been proposed that members of the DAC-IPAD  
4 do site visits. Is there anybody who is opposed  
5 to that general idea? Seeing no opposition, then  
6 we can go ahead and start planning for those.

7 It's also been proposed at an earlier  
8 meeting that we form an Article 32 working group.  
9 I think we already voted in favor of that. So I  
10 know Judge Grimm who couldn't be here was  
11 interested in that. If other people are  
12 interested, please let Colonel Weir or Ms. Carson  
13 know that they're interested in participating in  
14 that group.

15 MS. CARSON: By Monday, please,  
16 because we'll just start with --

17 CHAIR BASHFORD: Great.

18 MS. CARSON: -- contacting you.

19 CHAIR BASHFORD: Mr. Mason, Dr. Wells,  
20 the floor is yours.

21 MR. MASON: When they get the  
22 presentation up, we'll move on to that. But I

1 did want to just clarify. The question was  
2 raised whether we are actually looking at the  
3 conviction acquittal rates for contested cases  
4 versus those that were just preferred and  
5 referred.

6 We have, and they are in the appendix.  
7 We've done it for the past three years. We have  
8 data for 15 through 18 breaking it out. Those  
9 slides for the report, we've had them actually in  
10 the data report body itself. And they're going  
11 to go back in.

12 So we will have them. I apologize.  
13 We did a little different by this time around  
14 saying that we wanted to look at the referred so  
15 that you were looking at the big picture. But  
16 just off the top, I can tell you that with a  
17 military judge on a contested trial, so they did  
18 not plead guilty to the sex offense, convicted of  
19 a non-sex offense or acquitted of all charges  
20 with 77.6 percent of the time. And the actual  
21 flat out acquittal rate was 21.6. And that's  
22 very similar to what we were seeing when the plea

1 deals are included as well.

2 The presentation is just spinning, so  
3 we will continue on. I can tell you about the  
4 data without having to show you a pretty chart.  
5 One thing that we've been discussing is the rate  
6 of cases, how they have fallen year over year.

7 In FY15, we received 780 cases that  
8 were added to the database. This most recent  
9 year, we have 574 cases. So that is a rather  
10 steep decline over the past four years. And that  
11 is for penetrative and contact sexual assault  
12 that were preferred. So 574 cases in the  
13 database.

14 We talked this morning about the fact  
15 of how many cases we're actually receiving when  
16 we do the RFI and what they tell us they believe  
17 are the cases. And 75 percent of the cases that  
18 they have given to us for this past year were  
19 valid. The other 25 percent were because they  
20 were the wrong fiscal year or it was a child sex  
21 case or there was some other reason of why we  
22 could not add it to our database.

1           So the takeaway from that is that we  
2           rely on the services that tell us which cases  
3           exist. And the information that we're getting  
4           from them is not 100 percent accurate.

5           BRIG. GEN. SCHWENK: So the 574 --  
6           pardon me for interrupting, but I'm interrupting.  
7           So the 574 is the 75 percent or is it 75 percent  
8           of 574?

9           MR. MASON: It's 75 percent of 774.  
10          And so the actual cases that are in our database  
11          for this year is 574.

12          BRIG. GEN. SCHWENK: So those are the  
13          valid cases?

14          MR. MASON: Yes sir.

15          CMSAF MCKINLEY: So the 774, we don't  
16          know exactly how many of those are real cases?

17          MR. MASON: Well, I can tell you. I  
18          mean, we track, and I have a tracking sheet for  
19          each service when they give us the RFI. I can  
20          tell you down to the line whether it was a child  
21          case, if it was a duplicate case, if it was the  
22          wrong fiscal year. Or we have 90 percent of the

1 documents but we can't get enough to get it into  
2 the database.

3 I can tell you down to the line and  
4 number how it breaks out. There is -- with  
5 respect to one service, there were quite a few  
6 that there was just no documents to support. So  
7 we don't know what happened, how that name got on  
8 the list. But we didn't see that with the other  
9 services.

10 CMSAF MCKINLEY: With that significant  
11 drop from last year to this year, there'll be two  
12 questions. Number one, do we have less sexual  
13 assaults in the military? And number two, or are  
14 there less victims coming forward?

15 MR. MASON: And unfortunately what the  
16 data is going to tell you is how many cases were  
17 seen go through the system. It doesn't tell us  
18 if there's less happening, if there are less  
19 victims, if there are victims that are not coming  
20 forward. It doesn't tell us any of that.

21 One of the conclusions that we can  
22 draw, though, is that the distribution of

1 penetrative versus contact offenses has remained  
2 consistent over the past three years. So even  
3 though the number of cases are falling, your  
4 distribution is the same.

5 So we can reasonable say, and Dr.  
6 Wells can correct me if I'm wrong, that we're not  
7 focusing our attention just on penetrative cases  
8 because contact cases are still 25 percent of  
9 what's going forward. Or we're not just focusing  
10 on contact because penetrative is still 75  
11 percent. So you can see that there is a decline,  
12 but your distribution hasn't changed.

13 And again, I apologize. For the two  
14 of you, the presentation is behind you. What  
15 this slide tells you is that the percentage of  
16 cases within our database for each service. So  
17 if you look at the fourth column or the second  
18 from the left, FY 2018, you can see that that the  
19 Army had 40.4 percent of the cases in our  
20 database for FY18.

21 The column next to that tells you that  
22 their percentage of the active duty force is

1 actually 35 percent. So the Army's cases in our  
2 database are an over-representation when compared  
3 to what their service is. You can look by  
4 looking across the years. You can see how the  
5 different services bounce back and forth.

6 The Coast Guard is fairly consistent.  
7 We generally see the same basic number of cases.  
8 And just as an aside, last year in FY18, the  
9 Coast Guard had 15 cases. So it is a much  
10 smaller sample that we're working with.

11 So we discussed this yesterday a bit,  
12 but the charts have changed this year from what  
13 we did in the past. We changed the way that we  
14 represent it. You look top to bottom. So FY  
15 2018 will be on the top of our tables. And we've  
16 included raw numbers as well as percentages so  
17 that depending on how you visually receive  
18 things, you can get the answers you're looking  
19 for.

20 So for sex of the accused in FY 2018,  
21 males were 99.7 percent of the accused, 0.3  
22 percent were female which works out to there are



1 two females accused of sexual assault in the  
2 services that had a preferred penetrative or  
3 contact offense last year. And that number has  
4 varied always right in that same category. So  
5 you're always looking at 99 percent are male and  
6 less than one percent are female.

7 So this chart here represents what the  
8 pay grade of the accused was for each case where  
9 it was preferred in FY18. In the chart -- or I'm  
10 sorry. In the report, you will see that this  
11 chart has been replicated four times, one for  
12 each fiscal year from '15 to now. And why it's  
13 an interesting chart this year compared to the  
14 others is previously the peak for the enlisted  
15 would've been an E-4 and the peak for officers  
16 would've been the O-3 pay grade.

17 But in FY18 -- and we don't know why  
18 this has happened. But in both instances, it  
19 shifted to the left. So the peak this year you  
20 have is E-3 for enlisted and O-2 for officers.  
21 It's something that as the data working group we  
22 will look at when we do the FY19 data and see if

1 this is a new trend that maybe we're getting.

2 That might've been something with  
3 training. We have younger people, though, that  
4 are getting in more trouble. Whatever the issue  
5 might be, it will be a data point that we can try  
6 to track down going forward. But again, we can't  
7 tell you right now why that is the case.

8 CHAIR BASHFORD: And just so I'm  
9 clear, the E-3, E-4 as a proportion of the  
10 service are very high?

11 MR. MASON: Yes, E-3, E-4, E-5 are  
12 roughly 80 percent of the service for the  
13 enlisted. So you're going to see that peak  
14 should be in that area. However this year, it's  
15 just shifting to the left.

16 CMSAF MCKINLEY: Would it be good in  
17 the future possibly to go with what the chair  
18 said is when you have the number, you can  
19 correlate below it what percentage of the force  
20 it is.

21 MR. MASON: And we can absolutely do  
22 that now.

1 CMSAF MCKINLEY: That would be real  
2 easy? It'd be very --

3 MR. MASON: In the text of the report  
4 underneath this, it does have a breakout  
5 explaining the 80 percent component. But it  
6 would not be a problem to add in additional  
7 detail.

8 So the next slide is a representation  
9 of the sex of the victims of the cases that we  
10 have documented. Nine percent of the victims  
11 were male and 91 percent were female. This  
12 number has again been very close over the past  
13 few years. There isn't a massive variation in  
14 the number.

15 HON. BRISBOIS: With the number of  
16 total cases is --

17 MR. MASON: It's 574.

18 HON. BRISBOIS: And the number of  
19 victims for fiscal year. That means cases with  
20 multiple victims.

21 MR. MASON: Yes sir. We categorize  
22 and I took out of the presentation for today but

1 it's actually in the report. We do know how many  
2 cases were one victim, how many cases were two  
3 victims, and how many cases were three or more as  
4 a percentage.

5 And in the last fiscal year, I think  
6 the highest victim count that we have in a case  
7 is 13 or 15 victims. And they were -- it was a  
8 male with all female victims.

9 Stayce just provided to me. So in  
10 fiscal year '18, 4 percent of the cases has three  
11 or more victims, 10 percent of the cases had two  
12 victims, and 86 percent had one victim. But that  
13 will be in the actual published report.

14 So the next slide is status of the  
15 victim. This is something we've always been  
16 tracking but we didn't put it into a graphical  
17 representation. And I'm not sure why I hadn't  
18 done it in the past, so I wanted to include it  
19 this year to show that 60.5 percent -- 61 percent  
20 in FY 18 were all military victims, 36 percent  
21 were all civilian, and 3 and a half percent were  
22 military and civilian.

1           And if you look at the previous years,  
2           and again this is another issue or instance of  
3           that, the number of cases are falling. But that  
4           percentage is staying fairly consistent that 61  
5           percent are all military. So you see you would  
6           think again that there might be a shift someplace  
7           but it's not happening. We're seeing the number  
8           across the same way.

9           And then victim relationship to  
10          accused, why this is interesting and why it's  
11          important is we've talked about with the fact  
12          that in the past we used SAPRO, their report as a  
13          basis for getting information. And then we  
14          realized that SAPRO is not reporting all of the  
15          cases because they have a different mandate.

16          Well, in this case when you look,  
17          there are 82 cases in FY18 that were spouse or  
18          intimate partner. That means those cases would  
19          not make it into the SAPRO report because that  
20          would fall under FAP. So our project is unique  
21          in that we talk about all the sexual assaults  
22          that we know of.

1                   This is something I've mentioned  
2 already. The penetrative versus contact  
3 distribution, 75 percent of the cases last year  
4 were penetrative, 25 percent were contact. And  
5 that is the same percentage for '18, '17, and  
6 '16. So again, cases dropping, percentages  
7 staying the same.

8                   Chair, you brought up Article 32  
9 hearings earlier today. Once again, you can see  
10 the number of 32 hearings that were held was 373  
11 last year compared to 422 the year before. The  
12 number where they were waived, 104 last year  
13 versus 117 the year before. But when you look at  
14 the percentages, it's 78 percent and 21 percent  
15 or 22 percent.

16                   So once again, they're declining. But  
17 what are the chances that they're declining at  
18 the same exact percentages?

19                   MS. LONG: Can you remind me when were  
20 the changes to the 32?

21                   MR. MASON: 2015, and you can see --

22                   MS. LONG: Okay.

1 MR. MASON: -- where, 2015. It then  
2 jumps to '16 and the numbers skew. That's when  
3 we started tracking. And this is a new version  
4 of an older chart dealing with conviction rate to  
5 give you an idea that when a 32 was waived, what  
6 was the ultimate conviction rate? If they were  
7 found guilty of something, what were we looking  
8 at?

9 And in the last year, 32 percent,  
10 almost 33 percent were found guilty of a non-SA  
11 offense. A contact offense was only in four  
12 cases which was 3.8 percent. And then they were  
13 found guilty of a penetrative offense 32 times  
14 which is 30.8 percent.

15 So it just gives you an idea of how  
16 the distribution is, where they're getting  
17 convicted of something, what is it. And this  
18 again is only after they waive the 32. So they  
19 decided it wasn't worth going to a 32 for  
20 whatever reason and these are the conviction  
21 rates you're seeing.

22 BRIG. GEN. SCHWENK: These are all

1 contested?

2 MR. MASON: Some. It's possible  
3 they're contested.

4 BRIG. GEN. SCHWENK: So we don't know  
5 whether these are pleas or contested cases?

6 MR. MASON: Right. We're looking at  
7 the fact that the 32 was waived and then there  
8 was an ultimate conviction for a non-SA offense.  
9 We can tell you. It's just not a way that we've  
10 looked at the numbers. We were looking at just  
11 what is there a conviction.

12 BRIG. GEN. SCHWENK: That's fine. I  
13 just wondered.

14 MR. MASON: Yes sir. So this chart  
15 will tell you how are cases being resolved. So a  
16 case -- a penetrative offense is preferred and  
17 ultimately resolved at court martial. So we have  
18 removed alternative dispositions from this chart.  
19 We've removed the dismissals. It's going to  
20 trial at some level.

21 And we ran into this issue with the  
22 report last year, and that's why I'm drawing your



1 attention to it now. By law, we should not be  
2 seeing a penetrative offense being resolved at a  
3 summary court martial. And on this chart, you'll  
4 see that there are two cases where that is  
5 allegedly or possibly the case.

6 In reality, what has happened in those  
7 two cases is that charges were preferred for a  
8 penetrative offense. What was ultimately  
9 resolved at a summary was not a penetrative  
10 offense. It might've been an assault and  
11 battery. It could've been anything.

12 The penetrative offense fell off and  
13 it was not resolved at the summary. But they had  
14 preferred the charge. Now in order to avoid any  
15 miscommunication, any problems, misinterpretation  
16 in the future, we've included an appendix to the  
17 report that specifically lays out these cases and  
18 tells you these were the charges that were  
19 preferred. This is what the SJA advice to the  
20 convening authority was.

21 This is what the pretrial agreement  
22 was that tells you what happened to the charges

1 or what deal they were making. And then it tells  
2 you what was referred, the pleas, and the  
3 findings. So we have done that for all these  
4 special and summary cases that were penetrative  
5 so that if somebody wants to see what's going on,  
6 they can look and see. And it shows that the  
7 services are not resolving these cases at a  
8 summary in violation of the law.

9 BRIG. GEN. SCHWENK: I guess my  
10 problem is the heading. I would read that  
11 penetrative offenses resolved at court martial.  
12 So I would think that there were two penetrative  
13 offenses that were resolved at a summary court  
14 martial.

15 So I would recommend that we just  
16 think about if they weren't penetrative when they  
17 got resolved at the summary court martial because  
18 the penetrative offenses were dismissed and it  
19 was something else that ended up at the summary  
20 court. Maybe they shouldn't be on the chart. I  
21 don't know.

22 MR. MASON: And sir, we had that

1 conversation. We've tried to go back and forth  
2 and we changed the language. And it changed  
3 actually in the report last year. And we haven't  
4 found the right way to word it. And I will go  
5 back and revisit it. It might be the penetrative  
6 offense initially preferred and then charges  
7 resolved.

8 I'll find a new way. And when you get  
9 the report in a couple weeks for review, I'll  
10 draw your attention to where I put it and you can  
11 tell me if it works.

12 BRIG. GEN. SCHWENK: Thank you.

13 MR. MASON: Absolutely. And that will  
14 be the case on the next chart as well, sir, where  
15 it says contact offenses resolved at court  
16 martial. Because here you have a case where the  
17 charge ultimately was a contact offense. And  
18 then whether the contact went forward or not,  
19 this is how the case ultimately was resolved.  
20 And I will figure out the wording for there as  
21 well, sir.

22 That is the snapshot view of the data.

1 As I said, I want to clarify the earlier point.  
2 The appendix to the report is going to be roughly  
3 100 pages, 100-plus pages. And it's every data  
4 point you could want and interpretation of it.  
5 So we provide that to the services so that they  
6 can see all the information that's out there and  
7 how we got from A to B.

8 That is the basis of the next part  
9 which is all the data point which we then give to  
10 Dr. Wells who does the multi-variate. And he's  
11 got a few slides now to explain the multi-variate  
12 results for FY18.

13 MS. GARVIN: Mr. Mason and Dr. Wells,  
14 sorry. Before you transition, I believe you have  
15 showed this before and I'm sorry for forgetting.  
16 Is one of the data points whether the victim had  
17 an SVC or VLC? Is that in the data?

18 MR. MASON: We can tell if they are on  
19 record at some point. If we have some sort of a  
20 document saying that victim's counsel was  
21 involved, we will notate it. And that's just by  
22 looking at the record of trial.

1                   When Stayce goes and takes the record  
2                   apart, if she comes across that, we scan it and  
3                   add it. But that isn't -- we're not saying that  
4                   we're 100 percent confident on that. But we do  
5                   have it as a data point that's in our --

6                   MS. GARVIN: So it could be part of an  
7                   analysis to see what happened to a case when they  
8                   did or did not --

9                   MR. MASON: Yes.

10                  MS. GARVIN: -- have one.

11                  MS. ROZELL: Fortunately, the new  
12                  format for the Air Force is really great at  
13                  outlining the SVC portion of whether or not they  
14                  have an SVC available to them or not.

15                  MS. GARVIN: Thank you.

16                  MS. LONG: I have a question. Just I  
17                  don't know if it was before or not. Of the 574  
18                  cases, do we have data comparing that with all of  
19                  the reports for penetrative or all of the reports  
20                  that came in that year?

21                  MR. MASON: No, we don't. With the  
22                  case review, they've been looking at the

1 investigations for FY17. We can take their  
2 numbers for FY17 and look at them compared to our  
3 numbers of cases that were resolved in FY17. The  
4 problem is they are saying a case that it was  
5 closed -- the investigation was closed in '17.  
6 And we're looking at a court martial. So we can  
7 try to put those together, but we don't have --

8 MS. LONG: I didn't mean that.

9 MR. MASON: Oh, I'm sorry.

10 MS. LONG: I meant reports across this  
11 -- across this service, do we know, let's say,  
12 that there were -- I'm making up a number --  
13 2,000 reports and then 574 cases? Or do we not -  
14 - are we not able to do that?

15 MR. MASON: We can try to give an idea  
16 based on the SAPRO report. But again because  
17 they don't report FAP, we can't pull that across.  
18 So we have to say that we can give you statistics  
19 based on what we say in a court martial.

20 MS. LONG: The cases. Okay. Thank  
21 you.

22 DR. WELLS: So the multi-variate

1 results that we have to summarize today are very  
2 similar to the models that we estimated with the  
3 FY16 and '17 data. And it's similar to the  
4 models that Dr. Spohn estimated with the FY15  
5 data.

6 So we built models to understand the  
7 relationship between case characteristics and a  
8 set of outcomes in that case. So we looked at  
9 dismissals, acquittals, conviction on a  
10 penetrative offense, any conviction. And then we  
11 looked at sanctioning outcomes given that there  
12 was some convictions.

13 So we looked at punitive separation,  
14 confinement length, and then a combined  
15 sentencing severity scale that combined both of  
16 those sanctions together. So what I have for you  
17 today is a summary of some of the key results  
18 from those multi-variate models.

19 To cut to the chase, a lot of the  
20 results we see here in the FY18 data are very,  
21 very similar to what we observed in the '16 and  
22 '17 data. So nothing new jumps out here.

1           We see that four predictor variables  
2           are important across several of these models. So  
3           service branch, number of charges that were filed  
4           in the case, the conviction offense, and then we  
5           see two victim variables that jumped out as being  
6           important.

7           So the first thing I note, acquittals  
8           have been a part of the discussion of the  
9           committee. And we don't find any differences in  
10          these multi-variate models between the service  
11          branches in terms of the likelihood of an  
12          acquittal compared to any other outcome in the  
13          case. So no differences between the service  
14          branches.

15          In the FY16 data, we did see that the  
16          Air Force differed from the Marines. And in the  
17          FY17 data, we saw that the Air Force differed  
18          from the Army. But those were the only  
19          differences that have emerged over the past three  
20          years with acquittals.

21          The likelihood of being convicted on  
22          a penetrative offense was a little bit higher in



1 the Army and the Marines when we compared them to  
2 the Air Force and we saw the same thing or  
3 similar patterns in '16 and '17.

4 And then in terms of the likelihood of  
5 being convicted on any charge, it was greater --  
6 it was highest in the Army, the Marines, and the  
7 Navy. And this was statistically different from  
8 the rate in the Air Force and in the Coast Guard.  
9 So we see that.

10 And then last with regard to a  
11 sanction, the chances of a punitive separation,  
12 they were highest in the Army and in the Air  
13 Force when we compared those two service branches  
14 to the Navy.

15 The second predictor variable is the  
16 number of charges. And we see here that the  
17 likelihood of any conviction and conviction on a  
18 penetrative offense goes up as the number of  
19 charges increases. And then the chances of an  
20 acquittal or a dismissal are reduced as the  
21 number of charges increase. So an inverse  
22 relationship there.

1 CHAIR BASHFORD: And just to clarify  
2 again, the number of charges doesn't mean number  
3 of sexual assault charges. It means number of  
4 charges for anything. Is that correct?

5 DR. WELLS: That's correct.

6 CHAIR BASHFORD: So adultery, false  
7 statement, leaving the base, something like that?

8 DR. WELLS: Correct. And we see that  
9 in the data. We didn't separate out those  
10 qualitative -- the qualitative nature of all  
11 those different charges. It's just a summary  
12 count.

13 And then last as the number of charges  
14 increase, we see an increased chance of a more  
15 severe sanction being levied given that there was  
16 some conviction in the case.

17 Next, conviction offense. The highest  
18 chances of a confinement sentence stemmed from  
19 convictions on a penetrative sexual assault  
20 conviction. And there's no difference in the  
21 chances of a confinement between contact offenses  
22 and non-sexual assault offense convictions.

1                   Punitive separation chances were  
2                   greatest for penetrative and contact offenses  
3                   than for non-sex assault convictions. And then  
4                   the sentencing severity scale that we created is  
5                   related to the type of conviction offense. So  
6                   it's highest for penetrative, next for contact  
7                   offenses, and then lowest for non-sexual assault  
8                   offenses. And all three of those were  
9                   statistically significant in terms of their  
10                  differences.

11                  Last, we see a couple of victim  
12                  characteristics, and these also were observed in  
13                  our '16 and '17 data. So the likelihood of case  
14                  dismissal was higher when the parties involved  
15                  were intimate or intimate partners, either  
16                  current or former. And the chances of punitive  
17                  separation were lower in cases that involved  
18                  victims who were military Servicemembers compared  
19                  to those other categories.

20                  MR. KRAMER: Sorry. The first one,  
21                  dismissal at what stage?

22                  DR. WELLS: Post-preferral. And then

1 the chances of punitive separation were lower in  
2 cases that only involved victims who were  
3 military Servicemembers as opposed to civilians  
4 and cases with a combination of military and  
5 civilian victims. So those are the multi-variate  
6 results for the FY18 data.

7 CHAIR BASHFORD: Thank you.

8 DR. WELLS: You're welcome.

9 MS. LONG: I have a question. I'm  
10 sorry. When you said that there's no  
11 statistically significant difference between  
12 military services and acquittals. So before when  
13 we heard the Marines saying that they have a  
14 different level of screening that's harsher, but  
15 their acquittal rate is the same as the other  
16 services.

17 DR. WELLS: That's correct.

18 MS. LONG: And the second --

19 CHAIR BASHFORD: But their conviction  
20 rate was higher, I believe, right? Marines  
21 conviction rate was --

22 DR. WELLS: Yes, that's correct.

1 MS. LONG: So how does that happen?  
2 Can you describe that?

3 DR. WELLS: Yeah, so --

4 MS. LONG: Because that might be my  
5 next -- okay.

6 DR. WELLS: Yeah, exactly. So when we  
7 make these comparisons, we are lumping together a  
8 whole variety of outcomes together into one  
9 category and comparing it to a single other  
10 category.

11 So for instance, the acquittal  
12 comparison is the likelihood of an acquittal  
13 compared to everything else. Dismissal,  
14 conviction on a penetrative offense, conviction  
15 on a contact offense, and conviction on a non-  
16 sexual assault. So we're combining things  
17 together. Now when we go to the conviction on  
18 the penetrative offense, it's that category  
19 versus everything else.

20 MS. LONG: Okay. So --

21 DR. WELLS: So that might explain kind  
22 of how they don't always line up.

1 MS. LONG: Okay. And this is somewhat  
2 related which is then when you talk about the  
3 conviction rates being higher, likelihood is  
4 higher when you have greater charges, are we able  
5 to know which service? Is there a difference in  
6 how many charges are happening across the  
7 services?

8 DR. WELLS: Right. What we do in that  
9 sort of model is we control for the service  
10 branch. So it's parsing out the effect of the  
11 service branch on that outcome and then isolating  
12 the number of charges. So it's just the number  
13 of charges.

14 We could do that analysis where we  
15 compare the number of charges across the service  
16 branches and then see how that may have  
17 differential impacts. I don't know the numbers  
18 off the top of my head to know if we would have  
19 enough different kinds of combinations to do any  
20 meaningful analyses. But if you're interested,  
21 that's something we could do.

22 MR. MASON: And ma'am, I would just

1 add that in the appendix for last year's report  
2 which these numbers have been updated because we  
3 received more cases for FY17 in this data pool.  
4 But for penetrative, the accused charge for the  
5 penetrative offense in the Marine Corps, they  
6 were acquitted of all charges 18.2 percent of the  
7 time. But then convicted of a non-sex offense  
8 was 43.2 percent, and the other services were at  
9 21.5, 23.3, and 9.

10 So they were not -- they're convicted  
11 of a penetrative, convicted of a contact was  
12 slightly lower than the other services. But they  
13 were much higher on the non-sex offense they  
14 found guilty of. So they have a higher guilt  
15 rate in that sense or a conviction rate. But yet  
16 the acquittal rate is a little bit lower. And  
17 that could be looked at, and we have that for  
18 '15, '16, '17 as well.

19 CMSAF MCKINLEY: Do you know what the  
20 female population in the Marines is?

21 MR. MASON: I do not, sir, but I could  
22 find out. Absolutely.

1 CMSAF MCKINLEY: The comparison, I  
2 think, in the Air Force, 20 percent of the Air  
3 Force population is female. And I would guess  
4 Marines probably well under 10 percent.

5 MR. MASON: And it's a great point.  
6 These are the types of things we can -- because  
7 we have the data, we can show what we have in our  
8 database. But then we can also go back to DoD,  
9 get the official numbers, and include it in the  
10 appendix. But I will get an answer for you.

11 CMSAF MCKINLEY: What do you think,  
12 General? Do you think that's about right?

13 BRIG. GEN. SCHWENK: I don't know.

14 MR. MASON: Unless you have any other  
15 questions, that's all we have for data for you.

16 CHAIR BASHFORD: Thank you very much,  
17 and keep up the good work with a better system.  
18 We're now scheduled for deliberations on the  
19 collateral misconduct report. Colonel Weir, are  
20 you going to lead that?

21 COL. WEIR: What I recommend is that  
22 based upon the guidance we get here today that we



1 draft a draft letter back to the Secretary of  
2 Defense and pointing out some of the problems  
3 that we saw today in the report.

4 And I would recommend that based upon  
5 the draft reports -- and I keep saying they're  
6 draft reports to us so they're not finalized. So  
7 we have an opportunity -- the committee has the  
8 opportunity to have input into the Secretary of  
9 Defense on how those final reports perhaps are  
10 done and before they're sent over to the armed  
11 services committees.

12 So one of my recommendations, and you  
13 all discuss whether that makes sense to define  
14 some of these terms in a way that across the  
15 services will get more consistent information.  
16 And that way in the future when the DAC-IPAD is  
17 requested to review and analyze the reports,  
18 we'll have consistent information across the  
19 services.

20 One of the areas -- and you just heard  
21 from Dr. Wells and Chuck -- is you can make  
22 comparisons between services that more likely you

1 get acquitted here in the Army on this or the  
2 Marines. But you have to be coming from the same  
3 basic information.

4 And right now, we can't tell if you're  
5 more likely to be -- if you've committed  
6 collateral misconduct, are you more likely to be  
7 punished in the Navy, the Marine Corps, the Army?  
8 Because the numbers are different. They didn't  
9 use the same thing.

10 So one of the areas I think you all  
11 need to discuss and deliberate on right off the  
12 bat is what you would like to do with the false  
13 reporting information that you receive because  
14 that seemed to be an area that was a topic of  
15 conversation. And I think part of this  
16 deliberation on how we kind of draft the report,  
17 we need to cover that area so we know from a  
18 staff where you all stand on that.

19 CHAIR BASHFORD: It seemed to me that  
20 they were struggling with that, with the  
21 definition of it, with how they came up, with  
22 cross complaints. I think it would be much

1 easier if they simply -- if we recommend that  
2 they eliminate that category from any analysis of  
3 collateral misconduct.

4 If it's a truly false report, the  
5 misconduct isn't collateral. It is the  
6 misconduct. And it was impossible to tell. Some  
7 people left it out. Some people put it in. I  
8 think it would be much easier if they all left it  
9 out if that's --

10 DR. MARKOWITZ: I would like to say  
11 that I agree that it's not collateral misconduct.  
12 I do want to make sure that it doesn't appear  
13 that this committee is somehow hiding the idea  
14 that there may be false reports by having it  
15 taken out.

16 I think we need to address the fact  
17 that they were brought up. It doesn't appear to  
18 be a collateral misconduct. Because of that, it  
19 wasn't -- I think we need to acknowledge the  
20 existence of that category in some way, shape, or  
21 form and not just pretend we never got that  
22 information so that it doesn't look like we just

1 pretended we never --

2 COL. WEIR: Would it be beneficial to  
3 get to where you want to be is that the  
4 definition of collateral misconduct lays out what  
5 they mean by collateral misconduct? Because I  
6 think I don't know if we would be hiding the fact  
7 that there was a -- and we're not really sure as  
8 a committee because we don't have the statement  
9 made by the people whether or not it was actually  
10 false.

11 DR. MARKOWITZ: Correct. I mean, I  
12 think there are a number of issues related to how  
13 people were defining it. Who exactly was being -  
14 - where the false allegation was actually  
15 falling. Was it the subject as part of a cross  
16 complaint? Was it the victim coming forward? I  
17 think there were a number of issues related to  
18 the false allegation component. So I think there  
19 are a number of reasons not to necessarily  
20 include it.

21 My only caution in all of this is I  
22 don't want it to seem as though we are just

1 running away from the notion that false  
2 allegations may exist at all. And so I would  
3 prefer to not just pretend like it never existed  
4 whatsoever, if that make sense.

5 And it's possible I'm being completely  
6 inartful here after a long day. So if I'm not  
7 making sense, I'm happy to --

8 BRIG. GEN. SCHWENK: I agree with Jen,  
9 but I think that maybe your concern -- Jen's  
10 concern is satisfied by the fact that we're  
11 expressly going to address false reporting as a  
12 category in our letter which is a public letter  
13 and everybody can read it. So it'll be clear  
14 we're not --

15 DR. MARKOWITZ: Yes.

16 BRIG. GEN. SCHWENK: -- sweeping it  
17 under the rug. We're saying, there's  
18 inconsistencies in all these areas. One area  
19 will say false reporting. Here's the  
20 inconsistency. Here's our recommendation.

21 Now my approach to the false reporting  
22 is as I understand it -- and I'm usually wrong.

1 But as I understand it, collateral misconduct  
2 concerns stemmed years and years ago from the  
3 deterrent effect on reporting sexual assaults.

4 COL. WEIR: Yes sir.

5 BRIG. GEN. SCHWENK: Because if I say  
6 I got sexually assaulted, I'm going to get  
7 hammered for collateral misconduct. If that's  
8 true, all the definitions should be focused on  
9 identifying that kind of collateral misconduct  
10 and clearly filing a false report is not one of  
11 those things.

12 COL. WEIR: Yes sir.

13 BRIG. GEN. SCHWENK: And so it's not  
14 collateral misconduct. So I think maybe we can  
15 solve that by --

16 DR. MARKOWITZ: Yeah.

17 HON. BRISBOIS: So the basic problem  
18 from the morning's opening panel is the  
19 inconsistency of definitions. And the area where  
20 they had the greatest inconsistency was in this  
21 false reporting.

22 So since that's the tone and tenor of

1 the likely proposed response, that should be  
2 extra highlight that Congress, the committees  
3 should not rely on that data at all because they  
4 were completely -- I think the point was made,  
5 was it the initial victim reporting or was it a  
6 cross claim by the initial suspect?

7 I mean, we don't -- there's absolutely  
8 zero consistency. And so that's the sort of most  
9 egregious example of the lack of uniform  
10 definitions.

11 COL. WEIR: Yes sir, I agree. Even  
12 after listening to the panel, I still don't  
13 really have a firm grasp on what they meant by a  
14 false report.

15 DR. MARKOWITZ: And I think that's  
16 part of the problem here is that I don't know  
17 that we ever got a firm definition of what false  
18 report actually is defined as in any given  
19 service which is potentially another topic  
20 altogether. Well, I'll just leave it at that.

21 MS. LONG: But I think something  
22 significant happened, and I don't want to

1 misstate which service that was. But one of them  
2 counts somebody who sees something that they  
3 perceive as an assault. So it wasn't what we  
4 would normally think of as a false allegation.  
5 And that, because of how loaded this word is,  
6 that definitely needs to be taken out of that.

7 COL. WEIR: As I recall --

8 MS. LONG: It may be an incorrect  
9 report.

10 COL. WEIR: -- it was a third-party  
11 report that the witness saw what he or she  
12 perceived to be a sexual assault and reported it.  
13 And then when the alleged victim was questioned  
14 about that assault, and we don't know whether it  
15 was a he or a she, the victim said, no, I wasn't  
16 assaulted. That was consensual. They counted  
17 that report by the witness as a false report.

18 Now I think a way to handle this would  
19 be to come up with -- for us as a staff when we  
20 were talking about collateral misconduct and the  
21 case review working group, and some of you have  
22 sat on that, have a pretty good idea what



1 collateral misconduct is which is some conduct  
2 that results or was just prior to or after or  
3 during the sexual assault.

4           So for example, underage drinking.  
5 The victim is underage drinking and then there's  
6 a sexual assault, and that's collateral to that  
7 misconduct. Or there's a fraternization, the  
8 disparity in ranks between the two individuals.  
9 Adultery is another one. The violation of an  
10 Article 92 where the victim didn't sign the  
11 suspect into the barracks and therefore she's  
12 guilty of a barracks violation.

13           Those were the kinds of offenses. If  
14 they were smoking marijuana right before they had  
15 sex, I guess. The sexual assault occurred. That  
16 could be considered collateral misconduct because  
17 it occurred a time very close to the incident.

18           I don't know how many weeks went by  
19 before the subject in these false official  
20 statement cases made that allegation. So I think  
21 what we could do is draft the definition of  
22 collateral misconduct. Point out in the letter

1 to the SECDEF about the false swearing cases that  
2 were received, and make a recommendation that  
3 those not be included in a report to Congress  
4 because the services themselves have not defined  
5 and it opens up to more questions than they have  
6 answers to.

7 And we can draft it. And obviously  
8 when it gets out to you all, you can track change  
9 and comment on it. But I think you're absolutely  
10 right. I think it needs to be addressed and it  
11 needs to be addressed in a way that we know it's  
12 there.

13 As the DAC-IPAD committee, you know  
14 it's there. But you also don't think it should  
15 be included in the collateral misconduct because  
16 it doesn't meet what the definition that you all  
17 will eventually approve. I think we can handle  
18 it that way to alleviate any concerns.

19 CHAIR BASHFORD: So although I'm not  
20 sure they're the decision makers, they certainly  
21 all agree that they are going to, the next  
22 report, pull the same types of cases, whether

1 it'd be only penetrative or penetrative and  
2 sexual abuse, the years of cases and have the  
3 same definition.

4 So I think we could really help by  
5 suggesting whether they pull just penetrative or  
6 penetrative and sexual contact. I think the  
7 latter. And if we could provide to them  
8 suggested definitions of the terms that they then  
9 all use.

10 COL. WEIR: And it's up to you, but --  
11 I don't want to misstate what you said, ma'am.  
12 But you think it should be penetrative and  
13 contact offenses, they count all of those?

14 CHAIR BASHFORD: If you're looking at  
15 collateral consequences, I think you should look  
16 at the big universe of what does reporting  
17 something mean to me.

18 COL. WEIR: Sure, and I agree. So  
19 what we can do is put together the recommendation  
20 that these should be the definitions that the  
21 services follow across the board. And one is  
22 collateral misconduct.

1                   Now another question is some of the  
2 services used a closed case. Some used open and  
3 closed cases. And I think that's another  
4 definition. You can only -- this is up for  
5 debate. You can only count those collateral  
6 misconduct cases where the case has been closed  
7 or action has been taken on the collateral  
8 misconduct.

9                   There needs to be some uniformity  
10 across the services. And as it was, each counted  
11 their misconduct a different way. I believe it  
12 was the Air Force that didn't count anything that  
13 wasn't a completed case. But that's just  
14 something for your consideration.

15                  CHAIR BASHFORD: It gets complicated,  
16 I think, because as we heard, some victims want  
17 the collateral consequences adjudicated close in  
18 time to the report and some want to wait till  
19 after the termination of the case.

20                  So what we don't want to do is have  
21 something where the collateral consequence comes  
22 way after determination of a case and we don't

1 see it because it wasn't pulled. Because then  
2 you would just lose it forever. I don't know how  
3 you would attach it to anything. I don't know  
4 what the solution is.

5 MS. MANSFIELD: Yeah, can I just speak  
6 for a minute? So as somebody who had to take a  
7 part of this, the first pool of cases in order to  
8 identify the victims that we were going to look  
9 at is we had to define which subject cases.  
10 Because everything is going to be by subject in  
11 investigative files.

12 So FY17 closed. Law enforcement  
13 investigations was kind of the starting point.  
14 And then you identified all the victims in those  
15 offenses. And then you went out to the field to  
16 say, for these victims, what happened? So I  
17 think the first place we have to be consistent is  
18 the initial pull of what cases where we're even  
19 identifying the pool of victims.

20 CHAIR BASHFORD: And I think everybody  
21 agreed that they would be consistent in what they  
22 pulled. But we can give guidance on that too.

1 COL. WEIR: The legislation in my mind  
2 is pretty clear on what the services were  
3 required to report. And I think that when the  
4 committee -- when you all looked at the draft  
5 report, it all looks like one percent, one  
6 percent, one percent.

7 But when you actually compare what the  
8 legislation required which was the number of  
9 victims who committed collateral misconduct. And  
10 then of those victims, the number who received  
11 adverse punishment for that collateral  
12 misconduct. And then third, what was that  
13 percentage?

14 And clearly, there wasn't specific  
15 guidance from Congress on the specificity of  
16 that. But when we looked at those numbers, it  
17 changed from one percent to the various -- and  
18 you saw in the draft, the various percentages. I  
19 think the Marine Corps was the highest at 90  
20 percent. If a victim committed collateral  
21 misconduct, she was punished 90 percent of the  
22 time.

1                   MR. KRAMER: What's it mean, committed  
2 collateral misconduct?

3                   COL. WEIR: Well --

4                   MR. KRAMER: There's some  
5 adjudication? Because somebody said the -- I  
6 forget the exact words. I asked a question and  
7 he said --

8                   COL. WEIR: Right, and I'm glad you  
9 brought that up, sir, because that's another  
10 definition, accused. Us in the military justice  
11 system have a specific word for accused. That  
12 means a charge sheet has been preferred, and  
13 there's charges that that individual has  
14 committed. An officer has signed off on that  
15 charge sheet, and that starts the process.

16                   So suspect, suspected of committing  
17 collateral misconduct. The Army's, potentially.  
18 I don't know what -- it's either evidence in the  
19 case file that she admitted that I was underage  
20 and I was drinking. That's not potential. I  
21 mean, she's admitted it. She's suspected of it  
22 because she's admitted it. So I think we can do

1 a better job of the definition of accused because  
2 that means --

3 MR. KRAMER: Or committed, I guess, is  
4 the -- yeah.

5 COL. WEIR: Yeah, I mean, we can  
6 wordsmith, the suspect may have committed this  
7 collateral misconduct. But accused to me was  
8 confusing because I'm thinking if you've accused  
9 some way there's an investigation, there's a  
10 charge sheet, and it's going down that path to  
11 some end result.

12 And the other issue, I think, that we  
13 can help them out is you could -- I mean, me not  
14 making general is an adverse -- I mean, you can  
15 say adverse to anything. But really what adverse  
16 is general court martial, non-judicial  
17 punishment, administrative separation for the  
18 misconduct.

19 A letter of reprimand whether it goes  
20 in your file or not. I mean, I drafted too many  
21 to count which says, you have embarrassed the  
22 United States Army, this, blah, blah, blah.



1 You're hereby reprimanded. Now if it gets filed  
2 in the local file, it's still adverse. It stays  
3 in that file for a period of time till you leave  
4 the command. A non-punitive letter is still a  
5 reprimand.

6 Now because I didn't get to go to a  
7 school eight months from now that I -- I mean,  
8 you can pull the string on this and everything  
9 can become adverse to me if I don't think I got  
10 what I should get.

11 So I would recommend that we define  
12 adverse to those things I mentioned. Now  
13 depending upon what service you're in, a non-  
14 punitive letter, a letter of reprimand. We give  
15 adverse counseling statements. You have failed  
16 to do this. You were underage drinking. You're  
17 told not -- don't do it again. If you do it  
18 again, there's going to be adverse consequences  
19 to you.

20 That's not a good counseling  
21 statements. You get good -- hey, Steve, you did  
22 a great job digging this foxhole. Keep up the

1 good work. That's a different kind of counseling  
2 statement than, you screwed up. Don't screw up  
3 again.

4 Because they use those counseling  
5 statements to build a packet for the  
6 administrative separation. And so you pull out  
7 the ten bad counseling statements. You throw out  
8 a packet for misconduct and off you go. The  
9 person is out of the military.

10 So I think we can help them narrow  
11 their definition. And I don't believe in my  
12 experience with being purple that there's a lot  
13 of difference between what an adverse action is  
14 across the services. So we can help them help  
15 themselves to make it clear what the adverse  
16 action is.

17 And I'd recommend that we request that  
18 the services specifically say of the ten victims  
19 who receive adverse punishment, this is what it  
20 was, two Article 15s for adultery or letters of  
21 reprimand, and spell it out.

22 I don't know if we need to get into

1 the punishment, what they received. But a field  
2 grade Article 15 for underage drinking. A  
3 company grade Article 15 for violation of a  
4 barracks policy.

5 But we want to fully inform those  
6 people who have requested that this committee  
7 look at this and analyze it and make  
8 recommendations back to the armed services  
9 committee. And that's not a heavy lift for the  
10 services because there's really few numbers.

11 And if they can't readily pull those  
12 numbers from their systems, then maybe that's a  
13 recommendation that we have a centralized system  
14 where we can pull information.

15 CHAIR BASHFORD: Document based.

16 COL. WEIR: Yeah, document based. But  
17 I think that would be important for people to  
18 know what the punishment was. So it may help  
19 inform. You don't know what -- they may think  
20 they all received court martials, they all got  
21 administrative separations. If some of that  
22 happened, well, that's fine. But it needs to be

1 documented. Do you all have any questions of --

2 BRIG. GEN. SCHWENK: I think we ought  
3 to, right up front, address the 140a issues  
4 because that's the overriding issue. And we  
5 right up front ought to say, this highlights what  
6 we were concerned about in our memorandum to the  
7 Secretary of Defense on whatever date, copy  
8 attached. And if that gets taken care of, we  
9 will not have these kinds of inconsistencies in  
10 the future. Meanwhile, let us help you with your  
11 immediate tasking.

12 The other thing when you're working on  
13 it, Congress asked for certain things. And it's  
14 sort of unusual for DoD to give more than they  
15 ask for. But sometimes we do. And they don't  
16 ask for much. They ask for numbers.

17 So when we start providing more, the  
18 numbers, especially if the DAC-IPAD is going to  
19 ask the services to go spend more time and effort  
20 beyond what Congress asked for, we need to be  
21 real careful if that's really what we want to do.

22 COL. WEIR: Yes sir. They've provided

1 us the adverse action information. But basically  
2 the draft report from the services contain more  
3 information than -- I mean, they didn't ask for  
4 the total number of sexual assault investigations  
5 during this time period. They only asked for the  
6 number of victims in this time period that  
7 committed collateral misconduct.

8 So we can -- you all can deliberate  
9 over how much or how little information that  
10 should go over back to the Secretary of Defense.

11 CHAIR BASHFORD: I'm a great believer  
12 that more information is more information. And  
13 if it's susceptible to misinterpretation that  
14 somebody has to choose between reporting a sexual  
15 assault with the understanding they're going to  
16 be kicked out of the service. And really what it  
17 is, is a letter of reprimand.

18 I think Congress should understand  
19 that there's a whole variety of adverse things  
20 that happen. And most of them seem to be fairly  
21 on the lower end.

22 BRIG. GEN. SCHWENK: If they already

1 have the information provided, which they do in  
2 their reports, that's fine. But if we're asking  
3 them, I thought you were talking about asking to  
4 go back out and look for more stuff.

5 COL. WEIR: I think the good news  
6 story for the services' perspective which we'll  
7 highlight is the percentage of victims who aren't  
8 committing any collateral misconduct. And that  
9 kind of got lost in the shuffle in the draft  
10 report from the services. But that should be  
11 something.

12 I want to say it's in the 90 percent  
13 that that's a good news story that we don't have  
14 a lot of victims. Because that clouds the whole  
15 prosecution investigation issue. But if you  
16 don't have that issue involved in the  
17 overwhelming majority of cases, that's good news  
18 that we ought to make sure that is projected out  
19 to the armed services committees through the  
20 Secretary of Defense.

21 CHAIR BASHFORD: So Colonel, do you  
22 need this committee to approve the path forward

1 of definitions, what to pull, asking about and  
2 recommending that they include what the adverse  
3 consequence was?

4 COL. WEIR: And then once -- if that's  
5 the way you'd like to go and you vote on that,  
6 then what we'll do is put together a draft letter  
7 and then provide that to you all. And then on  
8 the 12th of September, we will have a public  
9 meeting telephonically.

10 Prior to that, obviously, you'll all  
11 be sent the draft that you can -- you cannot  
12 discuss it amongst yourselves. But you can send  
13 it back to our office and we can compile it. And  
14 then on the 12th, we will have all the changes  
15 that you've recommended. And then we'll  
16 deliberate at that point and vote on the final  
17 product.

18 CHAIR BASHFORD: Does anybody --

19 HON. BRISBOIS: That's the way  
20 forward.

21 CHAIR BASHFORD: I second that.  
22 Anybody opposed? Seeing no opposition.

1 COL. WEIR: Okay. Thank you very  
2 much. And I think --

3 CHAIR BASHFORD: Mr. Gruber?

4 MR. GRUBER: Madam Chair, I'm unaware  
5 of anybody requesting to appear before the panel.  
6 The Federal Register notice did notify the public  
7 of their opportunity to do so. Colonel, are you  
8 aware of anyone?

9 COL. WEIR: No.

10 MR. GRUBER: With that, ma'am, unless  
11 you have other matters, it would appear you can  
12 conclude the meeting at your discretion.

13 CHAIR BASHFORD: This meeting is now  
14 concluded. Thank you.

15 (Whereupon, the above-entitled matter  
16 went off the record at 4:28 p.m.)

17  
18  
19  
20  
21  
22



A			
<b>A.J</b> 1:18	<b>accusation</b> 11:10 32:11 32:12 33:17 58:20 59:5 61:9	353:20 356:15 357:11 357:12 359:16	<b>adding</b> 61:11,15 101:11 101:19 288:6
<b>a.m</b> 1:12 6:2 159:7,8	<b>accused</b> 10:16 11:5 12:17 13:2 31:2 32:8 32:9,13,16 33:16 48:20 53:9,22 54:22 55:2,4 59:1 69:4 74:9 75:3 78:5,5 86:21 87:13 88:7 90:16,18 92:10 111:5,7 115:2 129:13,16 144:11 145:5,12 147:6 167:15 174:21 180:19 181:22 204:2 224:19 233:13 243:1,4 261:13,22 267:17 272:11 278:1 279:13 281:1,11 294:12 299:7,13 301:9 305:4 307:14 310:5 316:3 319:14 327:15 336:20 336:21 337:1,8 341:10 359:4 375:10 375:11 376:1,7,8	<b>acquittals</b> 110:18 153:6 167:10 303:5 304:21 305:14,18 306:10 307:15,16 315:8,12 317:20 351:9 352:7 352:20 356:12	<b>addition</b> 90:8 129:11 162:20 214:12 234:10 270:8 309:13
<b>abdicate</b> 81:18 140:14 150:5	<b>accused-based</b> 61:17	<b>acted</b> 220:6	<b>additional</b> 8:6 11:19 48:7 51:17 58:13 68:14 81:2 98:16 128:18 129:7,9 139:21 144:1 152:21 161:9 165:10 178:8 188:16 190:17 191:1 193:7 194:15 198:5 206:7,8 234:16 249:15 251:9 268:7 274:8 275:19 286:9 287:16,17,20 288:9 339:6
<b>abdicated</b> 146:14	<b>accuser</b> 299:7	<b>acting</b> 10:8	<b>address</b> 22:22 38:1 323:22 363:16 365:11 380:3
<b>abdication</b> 146:1	<b>acknowledge</b> 363:19	<b>action</b> 11:4,10 14:5 29:22 30:2 33:10,14 33:15 34:13,14,21 36:7,8,17,21 38:18 39:10,12 40:5 47:2,6 48:3 49:11,21 50:12 51:14 55:16,19 57:17 58:1,5,14 59:15,18 60:14 64:10 85:8 147:19,19,22 204:5 216:6 226:1 227:21 228:9,12,13 286:21 372:7 378:13,16 381:1	<b>addressed</b> 38:3,4 42:16 61:3,4 370:10,11
<b>ability</b> 89:4 90:9 99:18 105:9 122:20 129:21 130:6 143:1 148:7 167:21 185:13 189:17 191:1 202:14,15,20 203:3 205:18,21 207:22 251:21 259:4 284:16 320:7	<b>acknowledged</b> 147:4	<b>actions</b> 40:10 60:5 155:16 235:1 316:17	<b>adequately</b> 163:3
<b>able</b> 6:13 23:19 26:9 27:7,12 45:17 58:5 71:1 89:1 98:14 101:4 133:15 134:11,12,13 144:14 163:9,22 165:18 170:18 177:9 177:15 181:19 189:13 199:19 201:6 202:9 204:13,20 214:16 221:17 232:12 255:8 284:9 289:13 290:1 290:20 291:5 292:2,6 306:22 324:1 326:9 350:14 358:4	<b>acknowledging</b> 197:18	<b>active</b> 145:6 161:22 335:22	<b>ADFO</b> 2:10
<b>above-entitled</b> 159:6 241:3 328:13 384:15	<b>acknowledgment</b> 180:1	<b>actively</b> 142:2	<b>adhere</b> 202:21
<b>absence</b> 294:10	<b>acquiesce</b> 297:21	<b>actual</b> 28:4,10,22 34:18 34:21 37:12,14,20 45:11 70:9 73:13 82:10 123:10 153:1 194:4 209:22 220:13 225:16,18 235:19 276:20 277:13 303:4 331:20 333:10 340:13	<b>adjourn</b> 241:1
<b>absent</b> 148:2 151:21	<b>acquit</b> 19:8	<b>adage</b> 102:8	<b>Adjoined</b> 5:22
<b>absolute</b> 260:1 315:9 315:15 326:11	<b>acquittal</b> 4:5,11,15,19 5:14 7:7 8:14 15:5,10 16:4,11,13,20 17:3,6 17:10,18,21,22 18:6 18:18,21 19:1 21:6,13 21:15,18,19 65:5 93:1 103:22 109:16 111:3 111:9 125:15 132:6 135:22 150:20 151:16 151:20 153:8,10 154:9,10 155:9 159:13 166:18,19,19 167:19 169:7 170:4 170:17 172:4,22 173:12 235:15,17,21 237:22 238:2,10 241:10 253:20 258:10 261:20 267:11 284:1 299:15 300:12 301:4 303:9 304:20 305:8 306:3 307:8 308:1,3,5 308:8,8 309:10 310:18 311:13 315:10 315:11 317:7 329:11 331:3,21 352:12	<b>Adam</b> 2:13,20 3:3	<b>adjudicated</b> 16:8,17 17:1 18:4 213:6,19 372:17
<b>absolutely</b> 23:9 35:11 77:1 161:17 179:16 233:14,16 242:22 258:7 267:15 282:15 289:18 293:7,8 305:16 314:8 338:21 347:13 359:22 367:7 370:9	<b>acquittal</b> 4:5,11,15,19 5:14 7:7 8:14 15:5,10 16:4,11,13,20 17:3,6 17:10,18,21,22 18:6 18:18,21 19:1 21:6,13 21:15,18,19 65:5 93:1 103:22 109:16 111:3 111:9 125:15 132:6 135:22 150:20 151:16 151:20 153:8,10 154:9,10 155:9 159:13 166:18,19,19 167:19 169:7 170:4 170:17 172:4,22 173:12 235:15,17,21 237:22 238:2,10 241:10 253:20 258:10 261:20 267:11 284:1 299:15 300:12 301:4 303:9 304:20 305:8 306:3 307:8 308:1,3,5 308:8,8 309:10 310:18 311:13 315:10 315:11 317:7 329:11 331:3,21 352:12	<b>adapt</b> 170:18	<b>adjudication</b> 4:12,15,19 5:3,15 8:15 9:2 65:5 128:6 159:14 241:10 375:5
<b>absurd</b> 30:2	<b>add</b> 27:19 56:12,20 60:4,20 79:9 95:13 102:1,5 114:13,13 115:13 165:10 188:11 195:12,17 209:12 226:2 262:16 264:2 268:7 276:19 287:2 332:22 339:6 349:3 359:1	<b>add</b> 27:19 56:12,20 60:4,20 79:9 95:13 102:1,5 114:13,13 115:13 165:10 188:11 195:12,17 209:12 226:2 262:16 264:2 268:7 276:19 287:2 332:22 339:6 349:3 359:1	<b>administration</b> 39:12 262:22
<b>abuse</b> 41:10 44:22 45:20 371:2	<b>add</b> 27:19 56:12,20 60:4,20 79:9 95:13 102:1,5 114:13,13 115:13 165:10 188:11 195:12,17 209:12 226:2 262:16 264:2 268:7 276:19 287:2 332:22 339:6 349:3 359:1	<b>add</b> 27:19 56:12,20 60:4,20 79:9 95:13 102:1,5 114:13,13 115:13 165:10 188:11 195:12,17 209:12 226:2 262:16 264:2 268:7 276:19 287:2 332:22 339:6 349:3 359:1	<b>administrative</b> 63:10 63:17 147:19 151:22 153:4 154:8,11,15 155:11,16 216:5 229:20 290:11 376:17 378:6 379:21
<b>abysmal</b> 283:17	<b>added</b> 61:20 68:8 216:21 332:8	<b>added</b> 61:20 68:8 216:21 332:8	<b>administratively</b> 150:20 151:17 247:6 321:10
<b>academy</b> 219:21			<b>admissible</b> 105:2 112:17 120:8
<b>accepted</b> 78:7			<b>admitted</b> 375:19,21,22
<b>accepting</b> 307:7			<b>adopted</b> 92:19
<b>access</b> 27:21 37:16 86:7 246:19,21			<b>adult</b> 73:1
<b>account</b> 130:16,20			<b>adultery</b> 116:11 354:6 369:9 378:20
<b>accumulated</b> 106:4			<b>advantage</b> 93:4
<b>accurate</b> 333:4			<b>adversarial</b> 113:12 117:7,12 296:1,18 297:5
<b>accurately</b> 13:22			

- adverse** 11:4,10 14:4  
29:22 30:2 31:12,12  
33:9 34:13,14,18,21  
35:19 36:6,10,20  
38:18 39:9,12 40:4  
47:2 48:2 51:14 55:16  
57:1,4,8 59:18 60:14  
63:2,9,10,11,16,20  
64:1,5,9,10 125:8  
216:5 227:21 228:9  
228:12,13 229:16,20  
229:21 230:8,14,19  
230:21 231:15 232:10  
232:10,12 234:1  
235:1,1 316:17  
374:11 376:14,15,15  
377:2,9,12,15,18  
378:13,15,19 381:1  
381:19 383:2
- adversely** 77:12
- advice** 67:18 68:5 75:8  
78:11,12,22 84:1,9,12  
84:12 119:9 121:18  
140:17 151:6 156:20  
157:15,15,21 161:14  
215:5 218:17,19  
226:16 287:9 288:8  
296:3 304:9 318:3  
345:19
- advisable** 110:15
- advise** 6:19 84:3 114:1  
160:14 161:12,15  
212:14
- advised** 23:15 112:2,22  
193:4
- advisement** 112:8
- advises** 188:3
- advising** 80:4 85:4  
94:22 113:19
- advisor** 77:6
- advisors** 187:1 234:17
- Advisory** 1:3 6:6
- advocacy** 3:13 172:11  
186:11
- advocate** 2:14,16,17,18  
3:1,2,4,10,20 35:15  
58:11 67:10,14 68:6  
71:2 75:6,7,8 76:13  
76:15 77:5,7 79:11,16  
80:1,4,10,11,18 81:3  
81:6 82:11,12 83:3,16  
83:20,22 84:10,22  
86:6 90:14 91:16 92:4  
92:14 93:11 94:18  
96:2 119:9 122:11,12  
126:12 132:4 133:22  
134:19 139:8,14,16  
141:4 143:22 146:21  
149:6,9,11 150:7,15  
157:6 160:13,16  
161:8 162:21 177:15  
187:18 188:17 189:15  
277:18 279:6 281:9
- advocate's** 84:17  
135:12 151:6 153:13  
156:6
- advocated** 91:7 200:20  
248:14
- advocates** 94:11  
100:12 141:17 153:20  
157:14 160:3 161:22
- advocating** 187:8
- afar** 125:2,12
- affair** 116:2
- affirmative** 87:3
- afford** 147:5 258:15
- afforded** 192:19 258:17
- AFI-51201** 263:1
- afternoon** 15:7 241:7  
245:12 328:18,19
- age** 128:16
- aged** 214:22
- Agency** 2:19
- agent** 272:3
- agents** 271:22
- aggravated** 214:12
- aggregate** 25:15
- agitating** 99:3
- ago** 102:12 103:6  
225:15 311:18 316:12  
366:2
- agree** 29:18 30:18 31:3  
31:5 35:12 36:2 38:13  
41:14 55:1,10 60:2  
68:1,19 79:9 83:7  
89:13 90:5 94:15  
98:18 101:1 108:10  
108:22 121:22 122:3  
128:15 146:6 148:21  
152:18 153:5 157:3,9  
162:20 168:19 169:2  
172:9 178:2 205:16  
225:11 239:4 240:1  
243:15 244:20 245:13  
247:18,22 252:1  
254:1 257:4 266:16  
268:5,14 275:2 280:4  
281:22 284:8 300:20  
301:9 305:2 327:10  
363:11 365:8 367:11  
370:21 371:18
- agreed** 295:8 373:21
- agreement** 256:17  
303:17 345:21
- agrees** 62:17 63:9,15  
81:11
- ah-ha** 265:5
- ahead** 61:7 117:15  
161:1 174:14 213:8  
226:18 252:3 313:9  
330:6
- aid** 304:21
- Air** 2:18,19 3:5,5,11,16  
3:17 13:5,6,18 43:5  
44:1,13 46:2 48:1  
70:15 73:12 77:1 80:9  
104:15 105:6,12  
107:5 109:1 115:6  
123:15 133:8 153:18  
154:8 163:16 165:8  
185:2 188:11 201:12  
201:17 206:1 217:5  
217:15 220:18 262:21  
268:21 276:1 303:16  
316:13 317:3 323:13  
329:7 349:12 352:16  
352:17 353:2,8,12  
360:2,2 372:12
- airman** 261:8
- alcohol** 45:2 294:10  
297:12
- alcohol-** 54:10
- algorithm** 312:21
- aligned** 209:7
- allegation** 43:8 47:11  
47:13,20,22,22 48:11  
48:18 49:2,6,9,10,16  
50:9 51:5,10 53:1,3  
53:22 54:19 56:4,9  
62:11 116:9 197:13  
245:22 246:11 302:1  
327:18 364:14,18  
368:4 369:20
- allegations** 4:6 5:6 6:21  
7:14 44:17 48:9 91:12  
91:13 184:22 365:2
- alleged** 38:11 44:5  
46:21,21 57:17 92:9  
227:2 295:16 315:6  
322:11 368:13
- allegedly** 345:5
- alleging** 78:15
- alleviate** 137:17 170:2  
370:18
- allow** 26:17,20 97:10  
102:13 104:20 117:11  
168:21 202:19,22  
225:12 272:5,6,6  
285:4
- allowed** 126:8 171:7  
252:21 275:11
- allowing** 138:19 200:20
- allows** 106:18 126:9  
299:12
- alluded** 281:19
- alluding** 214:9
- altering** 261:16
- alternate** 2:10 115:9  
322:20
- alternative** 114:10,18  
128:1 344:18
- altogether** 79:5 367:20
- Amanda** 2:4
- ambiguity** 62:8 115:18
- amended** 6:19
- American** 146:18
- amount** 73:3 128:22  
260:17 275:12 319:20
- analogies** 328:4
- analogize** 79:3
- analogy** 252:9
- analyses** 358:20
- analysis** 11:20 23:8  
69:12 79:2 90:10  
92:13,21 96:5 99:8,11  
118:7 122:10 140:4,4  
179:6 181:19 194:19  
200:4 243:9,11 269:1  
306:17 317:15 329:6  
329:14 349:7 358:14  
363:2
- Analyst** 2:5
- analyze** 33:4 306:15  
361:17 379:7
- analyzing** 118:11  
235:20
- and/or** 95:16
- Anderson** 6:14
- Andrews** 3:17
- anecdotal** 35:2,3 249:7  
249:12 322:9
- anecdotally** 61:1 151:7  
262:10 318:15
- angst** 137:9
- anniversary** 181:4,5
- annual** 200:19
- answer** 4:9 8:2 29:3  
35:10,22 38:12  
128:13 139:19 152:7  
156:3 160:22 165:19  
166:10 180:15 181:11  
181:14,15 189:5  
205:11 212:18 216:14  
220:17 223:7 252:5  
255:22 256:8 276:7  
312:22 329:9,17  
360:10
- answered** 123:15,16  
245:9
- answers** 147:4 178:15  
238:12 263:2 304:19  
336:18 370:6

- anticipate** 98:6  
**antiquated** 23:18  
**anxiety** 225:19  
**anxious** 165:5  
**anybody** 14:19 25:20  
 241:2 251:16 272:9  
 272:10 330:2,4  
 383:18,22 384:5  
**anybody's** 183:7  
**anymore** 248:7  
**anyway** 30:21 102:17  
 127:11 136:13 202:1  
 244:15 320:19  
**anyways** 77:22  
**apart** 125:10 218:22  
 219:5 349:2  
**apologies** 142:8  
**apologize** 15:13 63:14  
 99:5 222:19 331:12  
 335:13  
**apparent** 13:21  
**appeal** 208:17 264:9  
**appealing** 179:2  
**appear** 8:1 363:12,17  
 384:5,11  
**appearing** 328:9  
**appears** 138:8  
**appellate** 3:6 122:18,18  
 122:21 148:17 207:8  
 209:1 329:11  
**appended** 210:15  
**appendix** 108:17 331:6  
 345:16 348:2 359:1  
 360:10  
**apples** 30:3  
**applied** 120:19 264:8  
**applies** 119:12  
**apply** 120:20 135:2  
 322:3  
**applying** 120:17,19  
**appointed** 75:17  
**appreciate** 124:12  
 224:4  
**approach** 37:10 46:1  
 55:20 104:22 119:17  
 122:8 365:21  
**approached** 40:12  
**approaching** 113:8  
**appropriate** 46:12 50:1  
 50:12 139:15 177:18  
 195:9 263:8,10 284:4  
 303:10 324:5 327:12  
**approve** 370:17 382:22  
**April** 13:10  
**area** 99:20 114:16  
 118:6 176:19 217:12  
 234:11 299:5 318:18  
 320:14 322:14 323:4  
 338:14 362:14,17  
 365:18 366:19  
**areas** 210:21 246:20  
 320:13 361:20 362:10  
 365:18  
**arena** 221:11 318:20  
 323:1  
**arguably** 264:7  
**argue** 88:10 93:6  
 207:22  
**argument** 125:22  
 207:13,20 208:7  
 210:13 255:4 282:12  
 283:2  
**arguments** 254:16,20  
 260:5  
**arises** 207:10  
**Arlington** 1:12  
**arm** 83:19  
**armed** 1:4 6:8 7:1  
 145:18 361:10 379:8  
 382:19  
**Army** 1:12 2:13,21 3:7  
 3:13,20 12:16 13:2,8  
 13:10,14 40:11 44:6  
 57:18 58:21 59:3  
 63:21 74:16 112:3  
 151:3,4,20 161:5  
 181:4 186:16,19  
 259:22 279:5,6  
 335:19 352:18 353:1  
 353:6,12 362:1,7  
 376:22  
**Army's** 29:21 98:9  
 112:1 336:1 375:17  
**arrange** 212:3  
**arrest** 196:20 265:2  
**arrive** 122:2  
**art** 286:19  
**articles** 286:6 320:13  
**articulated** 112:15  
 113:5 166:8 168:15  
**aside** 170:7 336:8  
**asked** 26:19,21 27:18  
 50:15 51:14 53:12  
 168:6 288:13 301:10  
 375:6 380:13,20  
 381:5  
**asking** 41:6 43:2 85:11  
 382:2,3 383:1  
**aspect** 43:3 45:20  
 56:16 89:3 173:10  
 319:19 323:15  
**aspects** 78:16  
**assaulted** 48:20,21  
 203:10 366:6 368:16  
**assaults** 11:9 53:5  
 166:20 279:5 306:3  
 315:20 334:13 341:21  
 366:3  
**assembling** 142:14  
**asserts** 106:8  
**assess** 124:3,9 163:3,8  
 278:9  
**assessing** 120:4  
**assessment** 119:14,15  
 119:18 135:11 160:12  
 298:3  
**assign** 257:10  
**assist** 161:21  
**assistance** 3:15 111:6  
**Assistant** 3:1  
**assisting** 157:16  
 221:13  
**assists** 82:6  
**associated** 52:3 246:1  
**association** 58:11  
**assume** 38:12 62:16  
 73:9 206:9 211:5  
**assuming** 189:19 270:7  
**assurances** 226:8  
**assured** 188:1  
**assures** 188:1  
**atmosphere** 296:19  
 316:20  
**attach** 373:3  
**attached** 380:8  
**attempt** 27:15 49:8  
 180:16 193:18  
**attempted** 20:14  
**attempts** 31:6,14  
**attend** 6:13 177:9 326:4  
**attendance** 6:5  
**attention** 156:21 195:9  
 229:4 245:5 335:7  
 345:1 347:10  
**attorney** 165:4  
**Attorney's** 162:3  
 255:11  
**attorney-advisor** 2:3,3  
 2:4,5,6,7,8,8 65:14  
**Attorney-Advisory** 2:6  
**attorneys** 146:11  
 159:21 265:2 296:7  
 296:13  
**audience** 9:12 190:1,9  
**AUGUST** 1:8  
**authorities** 78:11 103:4  
 103:14,17 107:7,18  
 110:5 112:9,10 117:1  
 157:16,17 158:14  
 213:1 263:16 283:1  
 326:18  
**authority's** 107:11  
 151:5,9 156:21  
 187:13,16 248:15  
**Authorization** 6:18 7:19  
 10:6  
**automatic** 215:9  
**automatically** 154:19  
 174:18 215:12  
**avail** 259:11  
**availability** 112:16  
 136:22 163:21 190:22  
**available** 71:10 115:10  
 119:3 120:7 134:3  
 137:5 161:10 162:13  
 163:18 172:8 174:7  
 174:22 198:11 199:20  
 212:16 329:2 349:14  
**avenue** 68:15 208:17  
**avenues** 155:12 321:9  
**average** 45:16,17 246:3  
 291:3  
**avoid** 234:11 283:12  
 292:6 345:14  
**aware** 22:13 27:9,10  
 29:4 36:4 44:16 56:1  
 56:7 59:8 112:19  
 124:20 125:5 133:22  
 152:10 158:9 164:15  
 165:19 194:2 217:9  
 220:12,15 240:19  
 248:9 267:21 384:8  
**awesome** 86:19  
**awful** 186:15  
**awfully** 230:7  
**awkwardness** 233:21  
**awry** 80:2
- 
- B**
- 
- B** 3:8 348:7  
**back** 14:15 17:7,19  
 19:11 21:3 28:21  
 40:18 42:2,5 47:16  
 51:13 52:18,19 62:12  
 69:20 76:9 79:18  
 86:17 88:10 90:11  
 95:10,12 98:9 102:17  
 103:16 104:12 111:11  
 125:21 131:17 134:8  
 139:18,19 144:5,9  
 155:8,9,13 158:8,20  
 170:19,19 175:22  
 176:11 181:14 184:16  
 200:21 204:15 206:17  
 222:2,7 233:9 237:20  
 238:12 240:6 241:1  
 251:21 253:19 255:8  
 256:12 277:7 283:2  
 285:5,13 307:10  
 311:4 313:2 314:10  
 315:21 318:11 319:9  
 320:2 325:14 326:9

331:11 336:5 347:1,5  
 360:8 361:1 379:8  
 381:10 382:4 383:13  
**backdoor** 189:12  
**background** 163:6  
 275:17  
**bad** 230:12 284:19  
 325:8 378:7  
**badly** 273:3  
**balance** 137:15 299:8,9  
 315:17  
**balances** 83:7 179:6  
**bar** 147:18 149:16,17  
 168:4 210:2 212:10  
 259:22 314:12  
**barely** 100:10 101:7,8  
 101:22  
**barracks** 201:9 369:11  
 369:12 379:4  
**barred** 155:15  
**barrier** 151:22  
**barriers** 299:4  
**base** 3:17 184:13  
 316:13 354:7  
**based** 7:8 13:11 31:15  
 67:4 85:5,5 113:4  
 115:11 118:10,18  
 120:11 122:5 123:5  
 129:9 135:1 151:19  
 162:12 177:18 185:15  
 204:14 235:17 241:15  
 243:18 249:21,22  
 250:9,11 251:4  
 252:19 281:14 282:11  
 284:17 286:12 289:11  
 295:20 298:3 350:16  
 350:19 360:22 361:4  
 379:15,16  
**baseless** 77:17,20 84:6  
 144:15 286:8  
**bases** 152:5  
**Bashford** 1:13,15 6:3  
 14:19 19:21 20:20  
 21:2,5,15,19,22 22:4  
 24:6 25:3 26:13,22  
 27:2,3 29:6 30:11  
 35:9 56:22 64:12  
 66:14 72:17 85:10,21  
 104:10 107:1 117:15  
 118:14 132:11 150:1  
 151:15 155:22 159:1  
 159:9 160:20 164:17  
 166:16 175:7 176:10  
 180:5 186:15 196:14  
 200:11 202:3 203:2,8  
 218:22 240:21 241:6  
 242:4 252:3 263:7  
 264:17 275:21 279:14

289:3 290:8 295:21  
 304:18 316:9 318:4  
 323:6,10 328:8,16  
 329:22 330:17,19  
 338:8 354:1,6 356:7  
 356:19 360:16 362:19  
 370:19 371:14 372:15  
 373:20 379:15 381:11  
 382:21 383:18,21  
 384:3,13  
**Bashford's** 300:3  
**basic** 78:16 87:14,21  
 88:1 146:9 205:2  
 285:4 336:7 362:3  
 366:17  
**basically** 31:8 55:5 67:4  
 131:10,20 211:13  
 231:14 302:9 381:1  
**basing** 238:9  
**basis** 44:8 47:13 76:10  
 154:9,11 155:2  
 226:15 249:20 263:5  
 341:13 348:8  
**bat** 362:12  
**battalion** 58:4  
**battery** 24:19,19 345:11  
**becoming** 80:14 181:8  
 196:1  
**beefing** 101:14  
**beg** 98:15  
**beginning** 27:16 62:19  
 73:21 184:3 186:4  
 246:9 308:21  
**begins** 65:22  
**begun** 329:3  
**behalf** 177:15 187:8  
 208:1  
**behavior** 38:19 267:18  
 320:12  
**believe** 28:7 49:21 51:2  
 57:18 64:20 74:1,17  
 75:3 78:14 80:9 86:3  
 88:14,22 89:11 91:18  
 93:19 95:22 109:22  
 110:17,20 111:6,14  
 120:20 151:7,11  
 152:8 161:6 167:9,11  
 167:19 175:16 177:3  
 190:15 204:9 208:13  
 224:6 240:9 243:15  
 244:1 245:13 246:2,8  
 265:7,9 282:21 300:5  
 308:3 316:18,22  
 332:16 348:14 356:20  
 372:11 378:11  
**believed** 167:1  
**believer** 381:11  
**believes** 96:20,20

**bench** 164:13 257:8  
 298:16  
**beneficial** 43:1 165:12  
 168:21 223:21 274:13  
 276:9 310:16 364:2  
**benefit** 91:22 92:13,20  
 93:7 135:7 143:22  
 144:3 174:11 175:1  
 187:14,16 198:10  
 200:4 234:5 239:18  
 280:13,22 281:1  
**benefits** 91:19 93:15  
 181:22  
**benefitted** 94:18  
**Bennett** 3:13 242:4,7  
 258:6 261:10 265:12  
 277:14 283:3 284:8  
 289:17 290:10 302:15  
 305:13 308:16 313:2  
 322:13 325:17 326:2  
**Bennett's** 294:20  
**best** 25:5 106:15 112:2  
 119:14,18 161:6  
 167:19 169:4 216:2  
 223:10 226:6,9,20  
 231:21 232:3 244:12  
 244:13,13 267:9  
 268:12,13 293:19  
 294:3,5,6 323:21  
**better** 12:11 25:6 26:13  
 26:16 32:1 55:2 61:4  
 89:16 99:22 101:19  
 104:6,7 139:4 147:12  
 160:14 184:14 198:18  
 256:21 269:16,21  
 270:5,7,9 277:6,9  
 298:15 304:4 307:13  
 360:17 376:1  
**better-informed** 263:20  
**beyond** 117:22 120:10  
 136:1,11 143:1  
 201:14 237:6 238:16  
 243:1 300:9 380:20  
**BGen** 1:20 142:5 246:7  
**biennial** 61:14  
**big** 190:4 331:15  
 371:16  
**bigger** 250:3  
**bill** 2:9 146:12,13  
 255:12  
**bind** 185:22  
**binding** 75:19 81:13  
 83:10 85:1,13,19 86:1  
 91:8 95:4,9 132:15  
 136:18 137:1,6,17  
 140:12 141:1 146:3,8  
 146:8,22 147:5  
 155:14 251:13 252:2

254:1,3,18 257:3  
 259:13,16 260:2,4  
 264:1,3 270:6,15  
 274:3 276:15 277:15  
 277:17 278:17 279:8  
 279:9,17 282:6,16,18  
 283:4,15 284:12,17  
 284:22 285:2,14  
 287:4 291:20 319:7  
**bit** 33:20 39:19 40:1  
 63:6 70:2 71:16 85:11  
 96:12 108:1 117:6  
 121:16 126:18 130:3  
 136:12 145:9 208:4  
 223:14 227:12,19,20  
 229:8,14 248:1  
 250:11 256:3 258:3  
 259:17 260:6 265:18  
 266:4 269:8 285:16  
 304:7 317:11,21  
 318:7 322:22 323:1  
 336:11 352:22 359:16  
**black** 274:14  
**blackout** 123:9  
**blah** 376:22,22,22  
**blanket** 292:20 293:10  
**blind** 124:7  
**blindly** 124:8  
**blip** 235:5  
**block** 23:21  
**blocks** 23:20  
**blown** 202:6  
**blue** 24:20  
**BMT** 316:13  
**board** 171:13 234:2,3,5  
 280:13 310:19 371:21  
**boat** 237:16  
**body** 331:10  
**boss** 318:22 319:1  
 325:14  
**bosses** 255:9  
**bosses'** 319:1  
**bothering** 86:9  
**bottom** 336:14  
**bounce** 336:5  
**bounces** 17:7  
**bound** 306:21  
**box** 274:6  
**brain** 219:8  
**branch** 2:13,15,18 3:4  
 3:19 352:3 358:10,11  
**branches** 27:10 352:11  
 352:14 353:13 358:16  
**break** 55:22 56:20  
 116:5 150:2 159:2  
 278:7 328:12  
**breaking** 331:8  
**breakout** 339:4

- breaks** 334:4  
**brief** 191:9 323:12  
 328:20  
**briefed** 157:8  
**BRIG** 97:18 98:8,20  
 176:11 177:10 229:3  
 229:13,19 230:2,5  
 231:1,9 233:4,7,12,15  
 236:6,10 246:10,13  
 325:11 333:5,12  
 343:22 344:4,12  
 346:9 347:12 360:13  
 365:8,16 366:5,13  
 380:2 381:22  
**bring** 42:15 96:3 110:5  
 127:17 195:5,9 200:5  
 264:19 265:8,18  
 266:4 268:12 273:18  
 285:16 326:21 327:7  
**brings** 128:21 206:4  
 285:20  
**Brisbois** 1:16 75:1,20  
 76:1,19 77:4 85:9  
 318:6 320:5 321:16  
 321:22 339:15,18  
 366:17 383:19  
**broad** 54:22 55:7,8 88:9  
 229:12  
**broaden** 96:18  
**broadening** 101:1  
**broadest** 58:22  
**broadly** 52:1 219:2  
**broke** 56:10 302:2  
**broken** 69:15  
**brought** 68:16 74:19  
 76:9 91:13 103:3,6  
 113:1 183:9 187:11  
 299:17 342:8 363:17  
 375:9  
**brows** 228:14  
**buckets** 100:19  
**build** 185:7 378:5  
**building** 100:13  
**built** 67:20 77:14  
 167:12 214:9 351:6  
**bulk** 57:3  
**bumps** 31:20  
**bunch** 269:22 271:6  
**burden** 305:4  
**business** 219:17  
**buy** 125:22
- 
- C**
- 
- C** 1:21  
**cadet** 219:20  
**California** 273:15  
**call** 27:5 90:19 99:19  
 111:1 121:13 126:7,7  
 221:22 230:10 264:22  
 267:21 276:22 300:11  
 317:14  
**called** 46:2 66:5 276:6  
 302:8  
**calling** 276:8  
**calls** 115:17 203:9  
 267:16  
**Camp** 166:1  
**canceling** 60:8  
**cancer** 204:10  
**candidly** 151:2  
**Cannon** 1:16 136:16  
 139:1 140:18 193:4  
 269:20 273:12,18  
 274:22  
**capabilities** 99:15  
**capacity** 129:16 161:21  
 162:1,8,11 225:3  
**capital** 94:4 258:16  
**CAPT** 68:1 71:4 72:21  
 74:12 76:12 77:2,15  
 82:22 86:15 91:18  
 96:22 97:20 98:1,18  
 102:4 107:3 109:22  
 115:13 121:22 124:17  
 126:17 128:15 129:10  
 138:21 139:2 144:9  
 147:14 152:7 155:6  
 157:3 158:11 166:4  
 168:3 173:17 176:2  
 179:3 181:13 187:7  
 190:15 193:22 199:10  
 203:15 209:13 212:18  
 218:16 220:17 224:8  
 229:10 232:14 233:6  
 233:8,14,16 237:19  
 238:19,21 239:1  
**CAPT.SULLIVAN**  
 161:16  
**Captain** 3:1,6,8 65:7,8  
 86:13 95:5,15 108:22  
 153:5 159:19 175:17  
 195:18 221:19 233:18  
 280:17 325:6  
**captain's** 213:6  
**capture** 45:18  
**captured** 33:1 38:17,22  
 39:17 68:21 263:18  
**cards** 253:16 259:10  
 296:9  
**care** 172:11 173:2  
 175:5 213:8 222:3  
 237:1 267:6 277:19  
 278:16 306:7,8  
 315:19 317:5 324:2,6  
 380:8  
**cared** 174:4  
**career** 162:9,17 232:13  
 232:19 233:2 234:7  
 234:17 235:4,5 248:6  
 320:1  
**careers** 77:13 197:17  
**careful** 148:13 315:6  
 380:21  
**carefully** 183:2  
**Carolina** 166:1  
**carried** 78:3  
**carry** 243:12  
**Carson** 2:2 330:12,15  
 330:18  
**case-by-case** 73:7  
 226:15 235:14  
**case-dependent** 74:13  
**Cassia** 1:21  
**cast** 55:8 61:8  
**categories** 355:19  
**categorize** 339:21  
**categorized** 48:9  
**categorizes** 26:5  
**category** 337:4 357:9  
 357:10,18 363:2,20  
 365:12  
**causal** 45:11  
**causally** 38:16  
**caution** 98:3 298:20  
 364:21  
**caveat** 322:16,21  
**CDR** 243:14 244:20  
 252:4,9 255:3,18,21  
 256:11,16 266:16  
 268:5 270:16 273:17  
 273:22 275:2,6  
 279:21 281:22 282:21  
 283:19 291:18 292:18  
 295:8 302:7 304:6,14  
 309:13 310:20 312:3  
 312:11 318:19 320:21  
 321:15,17 322:8  
 324:4 325:5,14 326:1  
 326:17  
**ceiling** 100:6  
**cell** 74:7 143:3  
**centers** 109:6  
**central** 294:9  
**centralized** 379:13  
**centric** 320:2  
**certain** 44:21 45:7  
 50:18 63:15,20 73:10  
 91:9 100:2 108:8  
 117:2 123:4 182:11  
 221:14 228:6 232:16  
 233:20 246:19 253:10  
 275:12 280:21 305:14  
 305:18 380:13  
**certainly** 36:15,18 37:1  
 47:16 57:15 91:2 99:7  
 108:12 109:3,13  
 113:14 129:10 138:21  
 139:2 166:20 190:7  
 190:11 276:8 294:17  
 297:22 299:12 370:20  
**certification** 276:18  
**certified** 162:21  
**cetera** 112:21 201:10  
**CG** 132:5 281:9,9  
**CGIS** 220:5 292:3  
 326:19  
**chain** 34:19 211:17  
 216:3,11 219:3 220:9  
 220:14 222:1 236:22  
**chair** 1:13,15 6:3 9:17  
 10:4 14:19 19:21  
 20:20 21:2,5,15,19,22  
 22:4 24:6 25:3 26:13  
 26:22 27:2,3 29:6  
 30:11 35:9 38:6 53:14  
 56:22 64:12 66:14  
 72:17 85:10,21  
 104:10 107:1 117:15  
 118:14 132:11 150:1  
 151:15 155:22 159:1  
 159:9 160:20 164:17  
 166:16 175:7 176:10  
 180:5 186:7,15  
 196:14 200:11 202:3  
 203:2,8 218:22  
 240:14,21 241:6  
 242:4 252:3 263:7  
 264:17 275:21 279:14  
 289:3 290:8 295:21  
 300:3 304:18 316:9  
 318:4 323:6,10 328:8  
 328:16 329:22 330:17  
 330:19 338:8,17  
 342:8 354:1,6 356:7  
 356:19 360:16 362:19  
 370:19 371:14 372:15  
 373:20 379:15 381:11  
 382:21 383:18,21  
 384:3,4,13  
**Chair's** 65:21  
**challenge** 48:16 237:14  
**challenged** 252:16  
**challenges** 90:16,21  
 173:8  
**challenging** 48:22 49:5  
 235:1  
**chance** 111:19 250:21  
 305:20 354:14  
**chances** 17:2 242:17  
 342:17 353:11,19  
 354:18,21 355:1,16  
 356:1

**change** 66:19,20 97:3,6  
97:9,9,17 98:3,4,17  
102:12 103:12 113:21  
128:2 164:18,19  
174:15 182:8 193:19  
200:7,21 210:5 271:4  
272:15 280:14,16,20  
290:7 291:22 292:16  
370:8  
**changed** 13:19 71:16  
71:18 89:19 96:8  
130:2 131:4 222:12  
224:14 258:8 292:1  
335:12 336:12,13  
347:2,2 374:17  
**changes** 67:6 89:21  
97:11,13,15,19  
100:22 101:16 270:20  
277:17 278:15 280:18  
292:17 312:14,15  
342:20 383:14  
**changing** 102:21,22  
103:13 147:10 168:18  
168:20 169:3 221:1  
238:7,16  
**channels** 264:12  
**character** 266:2  
**characteristics** 351:7  
355:12  
**characterize** 112:2  
**characterized** 283:16  
**charge** 20:11 23:19  
27:20 32:11 90:3  
149:13 150:21 151:16  
298:12 302:1,12,13  
307:12 321:20 327:7  
345:14 347:17 353:5  
359:4 375:12,15  
376:10  
**charged** 18:10 75:4  
214:20  
**charges** 15:21,22 20:3  
66:12 77:17,20,21  
84:6,7 88:17 89:9,16  
89:17,18 90:17,21  
126:15 142:19,20  
144:15 179:9 196:21  
214:2 260:7,10,11,21  
263:7,9 264:5,13,16  
286:4,8 307:1,3,4  
309:1 322:4 331:19  
345:7,18,22 347:6  
352:3 353:16,19,21  
354:2,3,4,11,13 358:4  
358:6,12,13,15 359:6  
375:13  
**charging** 90:10,17  
91:10 92:13 123:3

245:2  
**chart** 15:11 24:14 332:4  
337:7,9,11,13 343:4  
344:14,18 345:3  
346:20 347:14  
**charter** 193:13  
**charts** 336:12  
**chase** 86:2 351:19  
**Chautauqua** 146:15  
**check** 42:3 52:19 66:11  
67:9 76:13 86:18  
139:8,10,17 151:8  
**checked** 41:19  
**checking** 143:9  
**checks** 83:1,6 179:5  
**chief** 2:9,13,21 3:5,7,8  
3:11,12,13,16,17,18  
3:19 224:17  
**chiefs** 4:11,18 8:7,9  
65:4 241:9 287:14  
318:9  
**child** 28:13 73:1 332:20  
333:20  
**children** 130:16  
**choice** 222:22 226:15  
248:14  
**choose** 105:17 113:12  
114:9 165:17 173:15  
173:19,20,20,22  
174:7,13 216:4  
381:14  
**chooses** 67:3 214:15  
**choosing** 172:7  
**chosen** 166:14 198:10  
**Christa** 3:12  
**Christopher** 3:16  
**Chuck** 2:6 361:21  
**chunk** 132:20 133:6  
**CID** 52:13  
**circuit** 184:10  
**circumstance** 82:16  
109:12  
**circumstances** 37:3,5  
47:21 52:3 82:11  
100:2 109:20  
**cited** 51:21  
**citizens** 146:19  
**City** 1:12  
**civilian** 22:11 79:1,3  
83:8 116:19 162:1  
196:17 247:16 300:5  
300:22 301:3 313:9  
340:21,22 356:5  
**civilian-like** 144:20  
145:1  
**civilians** 247:15 356:3  
**claim** 220:4 367:6  
**clarify** 331:1 348:1

354:1  
**clarity** 211:3,14  
**class** 16:6  
**classic** 289:20  
**classified** 52:20  
**clawback** 200:20 201:4  
202:14  
**Clay** 3:11 159:18  
163:12 165:8 169:2  
171:16 175:19 177:7  
177:12 184:5 188:10  
192:5 194:22 195:18  
198:14 201:11 202:11  
206:16 207:9 208:13  
209:3,6 217:4 220:8  
226:13 240:1  
**clean** 31:21  
**clear** 12:13 23:3 101:22  
110:8 180:14 182:22  
191:13 205:11 292:22  
338:9 365:13 374:2  
378:15  
**clear-cut** 123:20 124:13  
**clearance** 246:19  
**clearly** 41:8 96:7 253:8  
366:10 374:14  
**clears** 266:19  
**client** 93:12 166:13  
172:12 178:10,16  
186:21 187:19 208:1  
214:6 216:16 217:10  
217:16 219:4 225:7  
227:7 240:7,8 266:19  
273:3 302:18  
**client's** 177:16 187:5  
196:7 207:22 208:1  
217:11 218:11,17,18  
**clients** 164:19,22 165:9  
165:17 166:2,5 169:5  
172:6 176:13,17  
183:12,15,22 186:20  
211:19 212:8 267:9  
**clock** 143:10 144:7  
260:12  
**close** 39:15 52:14 80:3  
117:10 137:9 178:11  
194:14 339:12 369:17  
372:17  
**close-knit** 197:22  
**closed** 7:10 350:5,5  
372:2,3,6 373:12  
**closer** 209:17  
**closing** 52:15  
**closure** 172:5  
**clouds** 382:14  
**CMSAF** 1:20 333:15  
334:10 338:16 339:1  
359:19 360:1,11

**co-workers** 201:8  
**Coast** 2:20 3:6,12,18  
12:5 37:9 44:11 46:15  
62:3 77:2 107:6  
108:10 164:3,6,12,21  
185:2,4,6,18,21  
186:16 188:12 199:3  
200:12 205:20 206:14  
210:9 217:14,18  
256:13 257:2,8,18  
261:8 275:7,20 304:6  
336:6,9 353:8  
**cocaine** 39:8 40:8  
**code** 55:3 215:22 325:5  
**coercive** 116:6  
**cognizant** 57:16 158:1  
**coincidence** 40:21  
**coincident** 38:10  
**colleagues** 61:5 83:13  
94:15 126:18 155:21  
157:10 174:11 184:5  
192:6 244:20 245:13  
247:18 251:5 262:16  
264:2 268:6 287:13  
**collect** 227:18  
**collected** 151:3  
**collecting** 41:4  
**collection** 7:9 8:1  
**Colonel** 2:13,18,21 3:3  
3:5,7,9,11,13,15,16  
9:15 10:1 14:20 29:9  
29:10 57:12 62:13,18  
65:7,8,10 66:15 68:2  
69:17 99:3 118:14  
128:8 159:18,18,19  
160:20 167:6 180:13  
195:18 205:17 206:16  
222:16 239:5 242:4  
267:16 283:3 288:11  
294:20 308:16 330:12  
360:19 382:21 384:7  
**column** 24:20 335:17  
335:21  
**columns** 25:17  
**combination** 356:4  
**combinations** 358:19  
**combine** 26:10  
**combined** 351:14,15  
**combining** 38:11  
357:16  
**come** 31:7 36:19 42:5  
44:21 53:17 54:6,9,21  
55:21 62:20 95:10  
104:12 117:13 120:22  
121:2,3,12,19 125:21  
128:19 132:20 133:2  
133:3 173:7 177:13  
180:22 186:9 191:20

192:1 210:14 216:4  
 217:6,21 220:12  
 228:3 240:6 241:1  
 244:8 254:3 265:3  
 266:22 267:4 271:5  
 273:2,14,16 290:16  
 368:19  
**comes** 38:14 54:3,15  
 54:20 56:13 113:15  
 115:3 127:5 131:9  
 132:16,17 140:9  
 143:5 147:9 191:17  
 206:7,9,21 211:4,5  
 217:5 257:3 258:4  
 261:3 289:21 294:14  
 319:19 320:22 349:2  
 372:21  
**comfortable** 150:9  
 158:21 210:12  
**coming** 35:7 37:4 43:20  
 43:22 53:3 64:13  
 133:5 143:16 144:5  
 159:5,10 172:13  
 220:11 240:22 334:14  
 334:19 362:2 364:16  
**command** 33:14 34:19  
 40:6 41:19 42:5 48:4  
 49:11 50:14 55:14,19  
 56:1 114:9 117:2  
 157:5 171:5 177:5  
 205:17,19 206:8  
 211:18 216:4,11  
 219:3,14,20 220:6,9  
 220:14,20 221:4,8  
 222:2 236:22 264:12  
 307:21 312:8,8 314:5  
 377:4  
**command-directed**  
 44:3 56:18  
**commander** 3:14,18  
 32:16 49:21 50:11  
 56:7 58:10 59:14  
 81:15 82:1,5,20 90:12  
 90:13 91:15 149:12  
 150:6,9,16 190:12,13  
 202:15 244:4 258:14  
 276:1 281:4 307:20  
 316:16 317:6,8  
**commander's** 36:14  
 38:1 264:20  
**commanders** 36:14  
 57:16 58:5,16 62:7,9  
 173:2 183:2 231:21  
 307:2 316:14 317:2,4  
**commanding** 81:17  
 103:4 116:2 155:15  
**commands** 41:5 51:13  
**comment** 5:19 9:8,9,12

64:3 247:10 288:5  
 313:3 314:19 370:9  
**comments** 9:16,18  
 83:13 91:4 100:4  
 144:10 184:6 222:10  
 239:6 276:16 280:17  
 303:20  
**Commission** 22:20  
**commit** 152:4  
**committed** 10:18 12:19  
 13:3 14:2 75:3 78:15  
 264:7 362:5 374:9,20  
 375:1,14 376:3,6  
 381:7  
**committee** 1:3,11 5:5  
 6:6,9 8:2,5,11,21 9:4  
 9:13,19 14:10 26:14  
 26:17 31:8 65:19 66:2  
 97:2 352:9 361:7  
 363:13 364:8 370:13  
 374:4 379:6,9 382:22  
**committees** 10:10  
 361:11 367:2 382:19  
**committing** 375:16  
 382:8  
**common** 62:21 138:9  
 151:16 198:21  
**commonly** 92:7  
**communicate** 183:12  
 187:4,18 190:13  
 191:8 194:11 196:9  
**communicated** 194:17  
 239:19  
**communicating** 186:20  
 187:12 188:4,5 189:9  
 194:18 221:6  
**communication** 189:8  
 189:14 191:17 212:6  
 221:16  
**company** 58:4 379:3  
**comparative** 146:10  
**comparators** 318:7  
**compare** 358:15 374:7  
**compared** 336:2 337:13  
 342:11 350:2 352:12  
 353:1,13 355:18  
 357:13  
**comparing** 349:18  
 357:9  
**comparison** 37:15 79:7  
 357:12 360:1  
**comparisons** 357:7  
 361:22  
**compelled** 189:6  
**compile** 14:15 383:13  
**compiling** 12:8  
**complainants** 86:3  
**complaining** 253:12

267:17 272:20 273:1  
**complaint** 175:10,13,14  
 203:3 204:4,6 364:16  
**complaints** 202:12  
 362:22  
**complete** 7:3 23:13  
 74:7 95:6 138:6  
 166:18 172:2 298:6  
**completed** 328:22  
 329:6,13 372:13  
**completely** 18:16 151:1  
 234:20 266:10 365:5  
 367:4  
**complex** 83:6 91:10,12  
 263:13 298:20  
**complicated** 372:15  
**comply** 276:14  
**component** 300:18  
 339:5 364:18  
**composition** 302:21  
**comprehensive** 89:15  
 92:13,21  
**compress** 159:2  
**Conceivably** 176:18  
**concept** 34:17 53:7  
 253:1 320:3 323:18  
 324:9  
**concepts** 52:6  
**concern** 128:7 136:20  
 138:13 183:10 224:9  
 295:13 313:6 323:16  
 323:17 365:9,10  
**concerned** 37:2 72:8  
 136:13 138:11 147:7  
 195:14 325:20 326:16  
 380:6  
**concerns** 34:11,22  
 104:15 137:18 160:3  
 191:11 208:21 366:2  
 370:18  
**conclude** 384:12  
**concluded** 384:14  
**concluding** 173:9  
**conclusion** 121:19,19  
**conclusions** 19:16  
 298:9 334:21  
**conclusory** 263:2  
**concrete** 126:13  
**concur** 59:10 174:10  
 262:15 264:1  
**condition** 42:14 264:15  
**conditions** 155:3  
 303:22  
**conduct** 31:12 38:14  
 43:7 90:10 92:5 99:16  
 122:10 162:21 163:9  
 369:1  
**conducting** 30:10

**conference** 12:10  
**confessing** 327:17  
**confession** 278:2  
**confidence** 259:6  
**confident** 349:4  
**confinement** 142:21  
 243:3 260:13 351:14  
 354:18,21  
**conflict** 145:18  
**conflicting** 295:1  
**confluence** 308:20  
**confusing** 376:8  
**Congress** 12:2 26:19  
 30:12 192:20 228:5  
 274:17 312:14 367:2  
 370:3 374:15 380:13  
 380:20 381:18  
**Congress'** 271:20  
**Congressional** 10:9  
**connected** 219:14  
**connection** 41:8  
**consensual** 46:19  
 265:17 368:16  
**consensus** 229:15  
**consent** 123:7 217:11  
 218:11,17 323:19  
 324:10 328:3  
**consequence** 57:8  
 106:7 292:11 295:14  
 372:21 383:3  
**consequences** 34:3  
 35:19 57:1,4 137:13  
 167:18 219:5 234:4  
 240:20 371:15 372:17  
 377:18  
**consider** 41:12 46:13  
 51:15 53:1 64:4 67:17  
 68:13 101:12 113:18  
 129:5 133:19 230:19  
 239:15 272:19 294:18  
 295:7,9,10  
**consideration** 9:20  
 105:14 106:12 110:4  
 112:6 141:18 192:14  
 195:6 241:22 243:8  
 243:22 244:2 247:12  
 259:2,19 271:13  
 289:14 372:14  
**considered** 10:16 39:14  
 39:18 51:11 63:20  
 112:13 134:16,22  
 211:8,9 230:21  
 239:10 242:9 245:15  
 313:7 369:16  
**considering** 58:1  
 108:17 139:22 183:2  
 188:8 232:1  
**considers** 64:1

- consistency** 34:20  
367:8
- consistent** 25:6 75:20  
76:19 291:10 335:2  
336:6 341:4 361:15  
361:18 373:17,21
- constantly** 100:12
- constituted** 38:8  
102:16
- constitutional** 87:2  
129:5 146:5,9 149:2  
149:19 255:16 279:13  
281:15,18,21 282:2
- construction** 286:13
- consult** 211:22 213:21  
226:17
- consultation** 166:6  
226:19
- consulted** 327:9
- consume** 111:17
- cont** 5:1
- contact** 13:16 17:13,16  
18:2,3,6,9,21 19:3,5  
19:11 20:1,10,13  
21:12 24:18 28:8  
301:22 332:11 335:1  
335:8,10 337:3 342:2  
342:4 343:11 347:15  
347:17,18 354:21  
355:2,6 357:15  
359:11 371:6,13
- contacted** 55:14
- contacting** 330:18
- contain** 381:2
- contained** 73:14,17,21  
156:6 288:17
- content** 70:8
- CONTENTS** 4:1 5:1
- contested** 93:1 301:17  
331:3,17 344:1,3,5
- context** 22:11 69:7 79:1  
81:14 82:8 115:15  
116:19,20 196:17
- continuances** 137:2
- continue** 99:15 113:7  
138:16 144:22 187:8  
187:17 194:10 202:17  
202:19 225:12 315:17  
329:7 332:3
- continued** 40:4 252:12
- continuing** 168:21  
200:4 241:6 306:22
- contract** 328:2
- contradicted** 124:6,11
- contrary** 140:4,4  
196:12
- contribute** 253:20
- control** 209:18 219:6  
246:22 260:15,16,16  
260:17 358:9
- CONUS** 145:17
- conversation** 178:7  
217:8,16 227:7 279:1  
347:1 362:15
- conversations** 190:20  
251:4
- convey** 156:6 178:9
- conveyed** 156:13  
194:16
- convicted** 15:19 17:16  
17:20 18:8 19:2 21:7  
21:11 22:1 24:10,12  
331:18 343:17 352:21  
353:5 359:7,10,11
- convicting** 20:2
- convictions** 106:10  
154:22 351:12 354:19  
354:22 355:3
- convince** 253:2 310:7
- cooperate** 196:18  
197:12
- cooperating** 105:17
- cooperation** 323:3
- coordinate** 31:6
- copy** 177:20 230:6  
288:20 380:7
- core** 122:1
- corners** 80:19
- Corps** 2:16 3:4,4,10,15  
12:18,18 13:18 30:1  
30:21 74:4 81:10  
91:10 147:3 248:5  
250:9,11 251:5  
270:10 277:4 279:18  
323:14 359:5 362:7  
374:19
- Corps'** 32:19 33:7 41:17
- correct** 25:7 26:15  
64:17,21 75:22 76:21  
76:22 77:13 150:12  
190:1 202:7 229:18  
324:7,20,21 326:10  
335:6 354:4,5,8  
356:17,22 364:11
- corrected** 13:18
- corrective** 230:18
- correlate** 338:19
- correlation** 23:1
- corroborates** 100:20
- corroborating** 106:7
- cost** 200:3 316:2
- could've** 345:11
- Counsel/Victims'** 4:14
- counseling** 36:10 60:8  
63:22 64:2 377:15,20  
378:1,4,7
- counselings** 235:2
- count** 25:17 29:2 44:18  
48:22 340:6 354:12  
371:13 372:5,12  
376:21
- counted** 12:19 13:14,16  
49:1,3 368:16 372:10
- counter** 259:9
- counterparts** 313:9
- counting** 46:3
- country** 146:19
- counts** 368:2
- County** 146:15,18
- couple** 15:6 19:22  
79:10 96:10 153:15  
233:9 257:1 301:15  
313:21 347:9 355:11
- coupled** 235:22
- course** 43:16 44:4  
46:19 61:16 70:21  
78:6 89:19,21 97:14  
112:5,6,16 119:13  
122:22 178:22 209:21  
219:16 255:22 276:15
- court** 76:3 79:17 85:8  
95:20 102:14 103:19  
103:21 104:5,18,20  
104:21 105:4 106:20  
107:10,20,22 108:19  
108:21 109:5 114:22  
115:22 116:9 117:7  
119:10 122:21 125:8  
125:18 136:16 137:11  
137:11 148:6 150:11  
152:13 154:20 209:1  
242:21 243:21 244:11  
250:14 252:18 261:2  
271:14 274:5 280:3,4  
285:11 286:4 313:21  
317:19 344:17 345:3  
346:11,13,17,20  
347:15 350:6,19  
376:16 379:20
- court-** 175:9
- court-martial** 167:6  
213:3,4 218:5 224:20  
225:5 229:15 243:17  
246:4,14 250:22  
258:9 261:6 269:16  
281:12 288:7 289:9  
289:16 290:21 291:5  
305:20 308:2 311:8  
312:6 319:8 320:8,19
- court-martials** 310:21
- courtroom** 119:22  
183:17
- courtrooms** 99:17
- courts** 76:3,4 122:18  
208:19
- courts-** 24:15 63:16
- courts-martial** 13:12  
15:13 20:5,17,22  
27:15 49:12 58:3,15  
63:11 66:10 77:18,22  
322:7
- courtyard** 241:2
- cover** 15:4 104:13  
317:15 362:17
- covered** 10:15,20 11:5  
11:11 30:13 200:2
- covers** 69:10
- create** 292:20
- created** 6:16 27:21  
292:21 355:4
- creative** 322:1
- creature** 79:4
- credibility** 124:3,9  
234:20 289:7,11,14  
289:22 290:5,17,21  
291:7,12,16,21 292:6  
292:20 293:6,8 294:8  
294:22 295:3,20  
297:11,12,18 298:2
- credible** 106:16
- crew** 311:9
- crime** 87:17 88:3  
281:12 315:14
- crimes** 10:16 11:6  
198:6
- criminal** 2:13,15,21 3:2  
3:2,19 4:8 5:10 11:1  
70:3 117:13 136:10  
136:17 163:14,19
- Criminologist** 2:9
- criteria** 46:9 113:18
- critical** 294:16
- criticism** 114:5
- critique** 183:1
- cross** 213:10 214:18  
223:19 268:3 272:5,6  
362:22 364:15 367:6
- cross-claim** 48:15,22  
49:4
- cross-examination**  
144:14
- cross-examine** 86:22
- crossed** 314:22
- crucial** 180:4 284:18
- Crystal** 1:12
- CSMAF** 170:15
- culmination** 173:5
- cultural** 31:11 63:1,3
- culture** 103:9 117:2
- curious** 22:10 53:15  
54:2 118:3 135:16  
227:22 249:18 281:3



302:16  
**current** 68:3,9 87:15  
 91:22 92:2 93:14  
 100:5 102:6 190:14  
 279:16 355:16  
**currently** 59:15 62:6  
 66:11 67:22 102:16  
 139:8 283:18  
**customers** 26:19  
**cut** 140:16 351:19  
**cuts** 119:6  
**cynical** 310:21

## D

**DAC-** 10:8 11:22  
**DAC-IPAD** 1:4 4:5 5:13  
 5:16 6:8,16 7:4,17  
 8:12 9:7,14 11:16,18  
 12:3,10 14:10 25:5  
 65:14 97:21 159:21  
 328:21 330:3 361:16  
 370:13 380:18  
**DAC-IPAD's** 7:6  
**daily** 183:12,13  
**Dale** 2:9  
**damaging** 227:3  
**dangers** 225:5  
**Danyluk** 3:15 247:11  
 250:8 269:7 287:2  
 288:11 301:10,14  
 305:3 317:10 321:14  
 327:14 328:7  
**data** 4:5 5:2,3 7:6 8:1,2  
 9:1,2,21 15:9 23:3  
 25:6 27:6,12,18 29:20  
 32:1 33:21,22 34:2  
 35:13 37:1,20 38:9  
 41:4,12,15 45:22 46:3  
 46:14 50:16 51:17  
 53:10 61:18 97:12  
 135:16 151:3 152:6  
 172:7 227:19 235:19  
 329:7,8,13,18 330:1  
 331:8,10 332:4  
 334:16 337:21,22  
 338:5 347:22 348:3,9  
 348:16,17 349:5,18  
 351:3,5,20,22 352:15  
 352:17 354:9 355:13  
 356:6 359:3 360:7,15  
 367:3  
**database** 13:12 20:8,9  
 20:12 23:17 25:6,9,19  
 26:4,8 27:11,20 332:8  
 332:13,22 333:10  
 334:2 335:16,20  
 336:2 360:8  
**databases** 25:20

**date** 380:7  
**David** 2:10  
**day** 104:21 137:11,11  
 210:19 240:9 242:21  
 243:2,8,12,21 244:10  
 248:13 260:12 267:7  
 280:4 301:11 305:8  
 313:21 317:11 319:4  
 365:6  
**days** 86:4 98:9 114:15  
 224:13 246:5 271:1  
**deal** 39:17 137:13  
 214:13 265:6 273:5,8  
 324:1 346:1  
**dealing** 18:19 33:6  
 123:1 137:8 160:5  
 343:4  
**deals** 332:1  
**dealt** 212:20 214:16  
 221:21 316:20 323:19  
**death** 284:4  
**debate** 140:19 372:5  
**decade** 97:10  
**decades** 298:21  
**decide** 257:14 266:18  
 268:12 317:17  
**decided** 23:16 42:16  
 51:16 256:13 343:19  
**decides** 59:15  
**deciding** 242:14 326:21  
**decision** 58:16 81:13  
 82:2,5,7,21 84:11  
 90:12,13,15 91:1,17  
 102:3 107:11 113:2,3  
 113:17,20,21,22  
 115:11 129:9 133:1  
 134:21 135:12 138:2  
 138:2,20 140:6,15,16  
 140:22 141:14 146:14  
 150:6 151:5,10 158:3  
 174:1,3,8 188:9,9  
 194:8 197:19 198:15  
 218:18 224:3 226:21  
 238:10 244:16 245:2  
 246:14 248:5,15  
 253:15 263:20 264:21  
 284:12 293:17,19  
 294:6 370:20  
**decision-maker** 68:17  
**decisions** 37:21 77:11  
 158:21 224:7 263:13  
 270:7 314:9 320:12  
**declination** 4:12,16,20  
 5:16 8:15 65:6 159:15  
 197:4 241:11  
**decline** 45:9 197:12  
 199:9,14 332:10  
 335:11

**declines** 45:15  
**declining** 342:16,17  
**dedicated** 111:18  
**deem** 89:7  
**deep** 92:5 257:9  
**deeper** 232:15,22  
**default** 268:20  
**defects** 148:15  
**defendant** 299:12 301:8  
**defendants'** 299:6  
**defenders** 318:11  
**defenses** 87:3  
**defer** 60:22 126:17  
 238:11,14 290:21  
**define** 31:10 33:16 46:7  
 47:20 50:8 51:20  
 199:4 361:13 373:9  
 377:11  
**defined** 10:20 13:2  
 49:10 52:1 367:18  
 370:4  
**defines** 31:12 185:21  
**defining** 364:13  
**definitely** 31:14,20  
 100:22 158:17 164:4  
 164:22 175:22 218:6  
 224:19 317:3 368:6  
**definition** 12:16,18 13:6  
 48:11 52:1 63:4 64:9  
 118:3 228:8 362:21  
 364:4 367:17 369:21  
 370:16 371:3 372:4  
 375:10 376:1 378:11  
**definitional** 227:16,20  
**definitionally** 62:20  
**definitions** 12:15 29:19  
 29:21 30:7,13,17,20  
 31:5 43:5 47:17 63:16  
 63:21 64:17 228:3  
 366:8,19 367:10  
 371:8,20 383:1  
**definitive** 170:12  
**degrades** 205:14  
**degree** 232:5 250:13  
 269:12,19  
**delay** 95:14 128:5  
 138:14,15 142:13  
 143:1 150:2 178:17  
 233:21 234:8  
**deliberate** 9:4 14:13  
 71:13 362:11 381:8  
 383:16  
**deliberation** 362:16  
**deliberations** 5:5  
 360:18  
**demands** 128:17 261:3  
**demonstrates** 83:3  
**demonstration** 273:10

304:20  
**deny** 108:2 314:22  
**Department** 1:1 4:6 5:5  
 7:13  
**depend** 227:8  
**dependent** 210:11  
 213:11  
**depending** 91:21  
 162:13 169:6 215:15  
 227:1 298:16 318:14  
 336:17 377:13  
**depends** 73:5 102:7  
 156:22 157:4 212:21  
 213:15 266:5 319:20  
**deploying** 134:6,7  
**deputy** 2:2,19 3:1  
 165:20,21  
**derailed** 299:13  
**derive** 91:21  
**descent** 124:21  
**describe** 118:8 357:2  
**described** 11:6,11 44:6  
 97:5 137:18 276:2  
**describing** 320:6  
**description** 90:7  
**Designated** 2:10  
**designed** 79:5 82:4  
 94:14 105:6 115:14  
 116:22 286:7,9  
**desire** 197:16 198:17  
 198:19 199:21 243:20  
 245:14 247:14 319:13  
**desired** 165:3  
**desires** 112:12 124:1  
 187:5 195:16 242:10  
 247:12 248:12  
**despair** 170:3  
**despite** 178:7 183:18  
 262:13 286:11 296:17  
 297:5  
**detached** 68:4 70:19  
 76:7 77:8 80:5,6 81:4  
 83:17 93:11 96:2  
 259:1 291:6  
**detail** 123:3 339:7  
**detail-** 158:14  
**detailed** 69:9 90:10  
 317:15  
**detailing** 293:15  
**deteriorate** 205:21  
**determination** 46:11  
 47:20 48:5 68:7,16  
 71:11 75:18 78:9  
 81:21 83:10 87:11  
 102:11 131:12 136:4  
 146:17 148:11 160:11  
 161:7 170:1 177:18  
 187:21 239:13 245:17

- 257:12 259:3 264:1  
264:12,14 276:15  
279:7 281:7 286:11  
286:14,16,18 287:11  
288:3 289:18 290:2  
290:16,20 291:21  
293:3,5 294:16,22  
295:20 309:7 320:18  
372:22  
**determination/recom...**  
318:14  
**determinations** 78:20  
81:12 289:11 291:13  
**determinative** 76:18  
107:16 146:21 149:18  
149:19  
**determine** 46:9 109:15  
120:10 121:8 128:13  
149:7 289:8 295:12  
**determined** 46:22 51:3  
51:8 76:17 213:14  
269:14 281:16 282:13  
287:6  
**determines** 129:4  
262:12  
**determining** 81:8 109:6  
112:15 118:9,13  
295:3  
**deterrent** 366:3  
**detrimental** 310:18  
**devastated** 168:9 169:6  
236:17,20  
**devastating** 166:22  
**devastation** 235:14  
236:1,1 239:8  
**develop** 128:17  
**developed** 25:10 106:3  
132:18  
**DFE** 126:22,22  
**dictates** 156:12  
**differ** 105:21  
**differed** 352:16,17  
**difference** 32:6 53:16  
135:19 157:21 158:10  
176:12,17 254:7,12  
255:15 265:13,18  
282:1 290:14 297:22  
300:12 320:3,6  
354:20 356:11 358:5  
378:13  
**differences** 12:14 31:13  
31:15 62:22 63:1,3  
64:7 227:17,21  
281:19 352:9,13,19  
355:10  
**different** 12:17 13:5  
14:9 27:9 28:14 29:21  
30:22 43:6 44:9 46:1  
48:15 52:9 54:4,5  
55:22 60:12 79:1,4  
83:8,9 94:17 96:11  
104:8 107:4 108:9  
110:22 116:19 134:1  
134:2 135:13 141:9  
149:1,4 157:17,20  
158:8 192:22 195:12  
198:22 199:13,13,14  
200:10 206:22 234:21  
238:1,2,5 241:13  
250:9,11 253:21  
257:2,19 258:20  
259:3 267:1 268:18  
270:2,2,10,15 276:21  
277:3,10,13 303:2  
310:4 316:7 317:12  
319:19 320:8 331:13  
336:5 341:15 353:7  
354:11 356:14 358:19  
362:8 372:11 378:1  
**differential** 116:7  
358:17  
**differently** 32:21 33:1  
48:10 269:8 282:19  
282:20  
**differs** 136:1  
**difficult** 45:7 47:9  
108:16 109:7 117:10  
122:2 136:7 140:22  
203:18 219:12 226:11  
237:22 263:13 292:19  
310:7,10 319:9,15  
320:2  
**digging** 377:22  
**digital** 101:3 127:1,3  
129:12  
**diligently** 183:4  
**diminished** 66:19 67:14  
**dire** 323:20,21 324:2,5  
324:22 326:12  
**direct** 9:14 23:1 40:21  
79:7 276:11  
**directed** 155:19 231:19  
**direction** 17:9 183:19  
**directly** 45:18 89:6  
194:2 258:18  
**Director** 2:2,2 3:2,14  
7:12 9:15  
**Director's** 4:4  
**disability** 174:6  
**disagree** 94:6 132:4  
250:2 305:2  
**disagreeing** 93:18  
253:17  
**disagreement** 249:20  
249:22  
**disagrees** 144:2  
**disappeared** 311:4  
**disappointed** 169:6  
237:9  
**disappointment** 171:12  
**disavowed** 288:12  
**discharge** 45:3 114:22  
154:11,15,19 155:1,3  
155:4 229:20 321:10  
**discharged** 150:20  
151:18 311:8  
**discharges** 154:8  
**disciplinary** 36:8 50:12  
54:16,18  
**discipline** 38:3 79:22  
84:4 204:12 205:8,15  
231:22 232:4 304:22  
307:19 308:11 310:4  
310:6,10,19 311:11  
**disciplined** 54:17  
**disclosure** 203:7  
**disclosures** 200:14,15  
**discovered** 13:14 45:22  
46:19 50:14 197:3  
**discovery** 71:11 127:5  
**discretion** 9:17 38:1  
40:6 62:8 78:21 151:9  
384:12  
**discuss** 14:13 185:15  
217:2 224:1,2 245:20  
270:19 361:13 362:11  
383:12  
**discussed** 37:7 56:3  
189:2 227:16 270:15  
336:11  
**discussing** 114:18  
332:5  
**discussion** 8:5 257:13  
328:9 352:8  
**discussions** 8:20  
**disingenuous** 260:6  
**dismiss** 281:13 286:4  
**dismissal** 75:12 269:15  
281:14 353:20 355:14  
355:21 357:13  
**dismissals** 344:19  
351:9  
**dismissed** 76:8 95:9  
142:4,9 251:2 346:18  
**disparity** 369:8  
**dispelling** 324:9  
**dispose** 95:20 213:2  
284:17 322:19  
**disposition** 57:22 67:19  
84:19 85:7 89:9,16  
105:1 112:7 113:2,3  
113:19,20,22 114:10  
128:1 138:20 140:15  
141:13 192:12 242:2  
284:21 285:9 322:20  
**dispositions** 114:18  
115:9 344:18  
**dispositive** 265:20  
266:18 268:2  
**disqualified** 83:4  
**disregarded** 309:9  
**dissuade** 34:15 37:3  
43:20,22  
**distinction** 43:4 52:14  
56:11 301:17  
**distinctions** 31:9,22  
**distribution** 334:22  
335:4,12 342:3  
343:16  
**district** 185:10  
**dive** 92:5  
**division** 2:13,15,18,19  
2:21 3:3,4,6,11,12,13  
3:17,19 4:11 8:7 61:5  
65:4 104:16 262:7,9  
287:14 327:8  
**divorced** 174:19  
**DLSS** 267:3  
**document** 25:12 80:19  
269:11 348:20 379:15  
379:16  
**document-based** 25:11  
**documentation** 28:21  
**documented** 60:16  
339:10 380:1  
**documents** 7:9 23:12  
25:11 26:5 66:7  
194:19 334:1,6  
**DoD** 7:17 9:4 11:16  
58:2 360:8 380:14  
**DoDI** 51:22,22  
**doing** 34:8 41:21 61:22  
69:21 101:19 106:9  
143:11 193:11 196:11  
216:18 220:21 223:10  
224:5 236:21 274:10  
297:10 308:13,14  
313:16 316:2  
**domestic** 315:3,20  
322:15 323:1  
**dominating** 173:10  
**double** 41:19 42:3  
**double-edged** 205:10  
**DoubleTree** 1:11  
**doubt** 61:8 120:11  
125:6 136:2,11  
148:10 171:11 237:6  
238:17  
**downstream** 38:14  
289:15  
**Dr** 1:19,21 2:9 45:21  
96:6 98:21 196:14,15

323:8,12 325:2 328:6  
 330:19 335:5 348:10  
 348:13 350:22 351:4  
 354:5,8 355:22 356:8  
 356:17,22 357:3,6,21  
 358:8 361:21 363:10  
 364:11 365:15 366:16  
 367:15  
**draft** 4:6 7:13,16 11:15  
 11:18 12:3,9 13:20  
 361:1,1,5,6 362:16  
 369:21 370:7 374:4  
 374:18 381:2 382:9  
 383:6,11  
**drafted** 66:11 376:20  
**drafting** 8:1 329:16  
**dragged** 299:1  
**dramatically** 89:19  
**draw** 275:15 298:8  
 334:22 347:10  
**drawer** 230:17 231:14  
 232:11  
**drawing** 19:16 344:22  
**draws** 156:20  
**drill** 178:8 205:5 326:20  
**drink** 323:18 324:9  
 327:4,20  
**drinking** 20:21 33:13  
 36:10 54:8,13 57:10  
 61:6 214:11,13 215:1  
 217:19,22 232:18,18  
 369:4,5 375:20  
 377:16 379:2  
**drive** 1:12 37:20  
**driving** 50:3 314:8  
 315:16 316:8  
**drop** 334:11  
**dropped** 16:12  
**dropping** 342:6  
**drug** 319:5 321:5  
**drugs** 45:2 321:11  
**drunk** 328:2,3  
**due** 12:1 123:7 128:17  
 147:5,7 148:22 149:1  
 149:2 160:7 234:8  
 255:16,16,22 256:1,1  
 281:20,21 282:1,2  
 299:7 313:13  
**DUI** 50:2  
**dunk** 106:12  
**duplicate** 333:21  
**duplicated** 28:16  
**duties** 86:10 246:18  
**duty** 145:6 148:3  
 161:22 200:17 212:22  
 335:22  
**dying** 284:3  
**dynamic** 158:12,20

**dynamics** 119:11

## E

**E-3** 337:20 338:9,11  
**E-4** 337:15 338:9,11  
**E-5** 338:11  
**eager** 247:5,8  
**earlier** 56:3,14 60:3  
 71:7 130:4 144:9  
 178:7 184:14 213:2  
 240:14 254:6 266:14  
 274:1 280:18 306:16  
 312:4 314:19 330:7  
 342:9 348:1  
**early** 54:9 95:2 138:10  
 174:17 184:13 298:5  
 298:8  
**ears** 293:15  
**easier** 45:13 171:9  
 248:1 317:7 363:1,8  
**easily** 114:5 284:16  
**easy** 115:17 231:3  
 293:7 339:2  
**ebb** 128:20  
**echo** 60:18 62:15 69:15  
 74:19 82:22 83:12  
 155:20 158:11 163:12  
 171:16 198:14 226:13  
 276:16 280:17 303:20  
**echoing** 100:4 256:20  
**educated** 120:9 168:22  
**education** 221:16 226:8  
**effect** 111:3 137:17  
 270:21 292:16 307:19  
 309:11 310:17 358:10  
 366:3  
**effective** 66:11  
**effectively** 221:6  
**effects** 98:5 168:8  
 205:15 319:8,17  
**effort** 380:19  
**efforts** 113:7  
**egregious** 215:2 367:9  
**eight** 52:10,19 248:18  
 254:15 271:7 377:7  
**Eighteen** 258:11  
**either** 20:9 45:2 49:12  
 50:20 62:9 83:2  
 100:19 117:11 127:8  
 127:17 132:13 133:5  
 163:22 166:18 173:11  
 180:18 203:4,10  
 228:17 242:18 278:7  
 303:9 355:15 375:18  
**elect** 86:3 100:18  
**elected** 114:9 189:18  
**election** 135:8  
**electronic** 128:16,16

**element** 302:11  
**elements** 120:8  
**elephant** 314:7  
**eliminate** 66:21 363:2  
**embarrassed** 376:21  
**embellish** 230:13  
**embracing** 177:2  
**emerged** 352:19  
**emotional** 111:3 173:8  
 175:4  
**emotionally** 168:9  
 227:3  
**empathize** 236:17  
**empathy** 237:7  
**emphasize** 56:14 68:2  
**empower** 276:12  
 294:17  
**empowering** 204:18  
**enable** 90:22  
**enclosure** 74:10  
**encourage** 221:7 228:5  
 265:1 266:8  
**encourages** 57:19  
**ended** 135:21 220:4  
 346:19  
**ends** 132:6 307:22  
**endured** 232:2  
**enforce** 232:3  
**enforcement** 165:12  
 373:12  
**enforcing** 278:17  
**engage** 181:1,9  
**engaged** 41:10 171:4  
 216:13  
**enlisted** 153:7 221:11  
 337:14,20 338:13  
**ensure** 77:17,20 78:16  
 87:22 116:22 173:3  
 180:18 184:21 196:7  
 205:8 224:15 232:3  
**entails** 261:7  
**enter** 20:10 25:14  
**entered** 26:3  
**enters** 26:6  
**entire** 72:17 73:4 74:5  
 74:10 81:22 119:10  
 168:7 169:8 170:6  
 267:21 280:5 302:12  
 308:21  
**entirely** 268:17  
**entitled** 108:6  
**entity** 179:8 274:19  
**envision** 115:20 145:17  
 155:12 177:1,2  
**envisioned** 145:10  
 148:20  
**equally** 292:21  
**equate** 136:10

**equities** 102:13  
**equivalent** 63:21  
 272:18 289:5 302:8  
 302:14  
**era** 89:18 154:17  
**Erie** 146:18  
**err** 109:10  
**error** 195:4,8 264:8  
**Ervasti** 2:16 29:10  
 30:18 32:4,5,5,9,22  
 36:2 41:14 49:7 55:20  
 60:2  
**especially** 107:21  
 130:14 231:15 240:18  
 257:2 270:17 289:19  
 301:21 319:14 380:18  
**essence** 75:15 83:17  
 84:15 138:6  
**essentially** 40:3 81:20  
 249:5 272:11 292:9  
**estimated** 351:2,4  
**estimation** 324:3  
**et** 112:21 201:9  
**evaluate** 79:12 105:15  
**evaluating** 306:11  
**evaluation** 64:3 96:4  
 119:1,2 174:6  
**evaluations** 64:4  
**event** 216:3 226:12  
**events** 100:20 261:17  
 308:20  
**eventually** 316:22  
 370:17  
**everybody** 9:22 35:10  
 169:18 202:8 206:13  
 217:21,22,22 227:6  
 240:13 244:14 274:13  
 274:18 283:5 297:4  
 312:13 316:10 324:16  
 365:13 373:20  
**everybody's** 283:5  
**everyone's** 65:20  
**evident** 291:7  
**evidentiary** 177:13  
**ex** 189:14 262:18  
 287:21 288:1  
**exact** 342:18 375:6  
**exactly** 51:3 94:13  
 131:5 158:12 169:17  
 193:12 231:7 288:19  
 293:2 312:22 322:10  
 333:16 357:6 364:13  
**examination** 127:4  
 143:2 214:18 223:20  
 268:4 272:5,6  
**examine** 129:16 163:1  
**examined** 56:15 213:10  
**examiner** 127:2

**examiners** 128:18  
**example** 12:16 28:6  
 33:8 36:9 39:7 41:19  
 41:22 44:1 50:1 60:7  
 63:2,3,7 78:4 94:4  
 116:1,3 126:21  
 127:10 178:21 220:11  
 367:9 369:4  
**examples** 126:14  
**exceed** 208:18  
**exceedingly** 151:8,12  
**Excel** 25:17  
**excellent** 228:21  
**exception** 280:11  
**excerpt** 74:11  
**excited** 15:3,8  
**exclude** 47:16  
**excluded** 43:12,16 44:7  
**exculpatory** 127:9  
 265:14 266:7 267:5  
 280:7  
**excuse** 98:11 105:20  
**execution** 277:13  
**exercise** 34:7 58:9  
 151:9 158:18  
**exercising** 150:16  
**exhibits** 271:12  
**exist** 62:8 178:17 212:8  
 297:15 333:3 365:2  
**existed** 365:3  
**existence** 86:18 312:12  
 363:20  
**exists** 67:22 84:16  
 313:1 318:13  
**Expanded** 276:10  
**expansive** 88:10  
**expectation** 172:10  
**expectations** 168:6  
 170:7 240:7  
**expected** 303:21  
**expedite** 178:20 180:15  
 180:16 181:10 182:9  
 239:8  
**expedited** 174:18  
 180:11 200:8 202:19  
 204:19 234:10  
**expediting** 180:8 183:6  
 183:6  
**expense** 313:16 316:3  
**experience** 13:11 80:14  
 82:18,19 85:5 94:7,10  
 118:5,19 119:21,22  
 120:12 122:5,17  
 126:20 140:1 141:5  
 157:14,16 160:5,18  
 161:8,18 162:1,2,10  
 163:2,6,15 164:2,5,6  
 164:9 165:5,13 166:1

167:20 185:7 191:4  
 193:18 197:10 210:11  
 211:7 223:3,13,14,16  
 237:17 257:11 270:2  
 275:12 296:7 317:10  
 322:9 378:12  
**experienced** 67:10  
 70:20 82:12 84:9  
 85:15,16,16,17 86:9  
 118:10 124:18 139:14  
 141:4 160:14 164:13  
 168:12 170:14 184:11  
 185:4 191:22 221:20  
 240:5 261:18 278:19  
 278:20  
**experiences** 270:11,13  
**experiencing** 198:18  
**expertise** 163:2  
**explain** 176:21 187:18  
 255:9,13 256:12  
 348:11 357:21  
**explained** 188:15  
**explaining** 178:4 339:5  
**exploit** 298:4  
**expose** 35:19  
**exposure** 212:12  
**expound** 240:12  
**express** 169:5  
**expressed** 235:14  
**expressly** 365:11  
**extemporaneously**  
 210:13  
**extensive** 160:4 161:18  
 162:2,10 163:14,18  
 164:1 172:15  
**extent** 100:21 134:7  
 289:13 312:19 313:14  
**extenuating** 71:14  
**extra** 144:6 232:21  
 367:2  
**extraction** 74:8  
**extreme** 15:20 20:16  
**extremely** 70:22 220:10  
 220:13 249:5  
**extrinsic** 134:17  
**eyebrows** 297:1  
**eyes** 79:15 88:16 90:1,7  
 138:1 293:14  
**eyewitness** 127:18

---

**F**


---

**Facebook** 130:17,19  
 131:15  
**Facebook's** 130:18  
**facet** 145:20  
**facilitated** 54:11  
**facilitating** 103:10  
**facing** 34:3 214:2 243:3

245:22 310:8  
**fact** 59:13 93:21 106:7  
 109:6 117:8,13  
 118:22 120:21,22  
 121:11 122:6 123:5  
 161:9 168:13 169:14  
 172:1 174:12 180:12  
 180:22 184:2 210:14  
 220:10 225:4 237:3  
 261:19 264:6,13  
 265:16 271:15 298:10  
 300:16 305:22 332:14  
 341:11 344:7 363:16  
 364:6 365:10  
**fact-specific** 38:5  
**factor** 35:7 105:8  
 108:12,13 110:3  
 112:8 113:10 115:5  
 148:4 211:8,9 213:13  
 269:1 295:9 304:15  
**factors** 105:1 108:8,16  
 108:17 112:14 239:10  
 239:15 287:15 294:18  
 295:6  
**facts** 71:10 78:15 91:21  
 92:5 93:9 122:20  
 154:10 177:19 179:6  
 184:21 209:7 303:12  
 315:13  
**factual** 122:14,19  
 123:11  
**failed** 377:15  
**failing** 204:9  
**fails** 76:5 276:14  
**fair** 61:1 108:5,7 121:12  
 163:10 168:16,17  
 265:8,10 304:15,21  
**fairly** 54:21 167:14  
 169:13 175:13 217:20  
 245:14,20 246:2  
 255:21 282:7 284:16  
 324:8 336:6 341:4  
 381:20  
**fairness** 184:21 299:6  
 305:17  
**faith** 179:5 259:18  
 269:18 308:4,4  
**fall** 292:7 341:20  
**fallen** 332:6  
**falling** 335:3 341:3  
 364:15  
**falls** 83:19 124:15  
 125:10  
**false** 46:2,3,7,10,11,13  
 46:16 47:3,11,14,20  
 47:22 48:8,9,11,12  
 49:1,2,6,10,12,16  
 50:8,20 51:4,5,9,11

52:5,12,17 53:2,9  
 62:9 354:6 362:12  
 363:4,14 364:10,14  
 364:18 365:1,11,19  
 365:21 366:10,21  
 367:14,17 368:4,17  
 369:19 370:1  
**familiar** 181:8  
**families** 316:3  
**family** 261:22  
**FAP** 341:20 350:17  
**far** 59:17 72:8 97:9  
 139:3 155:19 172:6  
 179:4,5 181:10 182:5  
 182:12 193:16,18,22  
 199:15 201:18 204:3  
 209:19 210:7 212:19  
 213:14 220:8 221:8  
 226:4 231:15 232:16  
 233:1 237:21 257:17  
 257:18 269:18  
**farmer** 146:15  
**fashion** 123:21 263:2  
**fast** 142:22  
**favor** 201:3,4 330:9  
**favoritism** 116:4  
**fear** 292:1  
**fearful** 231:20  
**feasible** 99:12  
**features** 68:4 72:11  
 78:2,18  
**federal** 2:10 76:3 83:8  
 254:8 274:6,19 384:6  
**feedback** 11:20 178:5  
 183:20 197:15 239:5  
**feel** 34:5 36:16 50:11  
 60:13 91:15 106:17  
 111:2,10 146:11  
 150:9 158:21 166:22  
 168:12,16 171:2  
 184:1 210:12 219:13  
 220:1 236:16,17,21  
 248:10 251:14 277:8  
 305:9 317:17 323:21  
 327:4  
**feeling** 190:14  
**feelings** 73:20 170:3  
 236:1  
**feels** 219:15  
**fell** 345:12  
**felt** 171:6 187:10  
 225:19 234:10  
**female** 336:22 337:6  
 339:11 340:8 359:20  
 360:3  
**females** 337:1  
**ferret** 98:10,12  
**fewer** 99:9 283:19

- field** 51:20 72:2 110:22  
111:1 158:14 178:5  
183:20 197:15 234:12  
234:14 235:21 239:19  
373:15 379:1
- fields** 25:14
- fifth** 181:5
- fight** 320:16
- figure** 23:22 43:19  
141:18 231:21 285:12  
294:1 299:10 347:20
- figures** 29:21
- file** 40:15 63:19 66:8  
67:5 72:18 85:6 119:2  
119:10 156:16 196:21  
208:17 230:7 231:13  
231:14 280:3 375:19  
376:20 377:2,3
- filed** 63:19,19 281:12  
352:3 377:1
- files** 4:8 5:10 11:1 64:5  
66:3 329:1 373:11
- filing** 175:10,12 366:10
- filling** 162:16
- final** 9:3 150:1 161:7  
188:8,9 246:14  
286:20 293:5 305:22  
324:4 361:9 383:16
- finality** 286:20
- finalized** 361:6
- finally** 300:19
- find** 33:22 54:18 84:21  
98:22 102:9 109:18  
127:8,12,16 132:9  
134:11,12 135:20  
155:10,13 186:11  
250:19 252:10 255:12  
259:9 302:3 319:13  
319:22 322:3,5 347:8  
352:9 359:22
- finder** 118:22 120:21,22  
121:11 122:6 169:14
- finding** 19:5,7 75:11  
85:12,22 117:8,13  
132:14 153:2 156:18  
179:22 181:18 182:3  
186:9 191:14 193:12  
196:13 249:8 250:2  
251:22 252:16 257:19  
276:9 287:5,10  
288:12 299:5 321:12  
321:14
- findings** 67:16 160:11  
196:15 346:3
- finds** 129:4,6 132:3  
147:16 193:5 252:11  
302:9
- fine** 71:20 323:9 344:12  
379:22 382:2
- firm** 367:13,17
- first** 15:11 21:3 30:9  
31:19 33:7 39:1 44:14  
59:11 65:22 67:9 68:3  
86:18 94:17 103:3  
138:12 152:8,10,19  
153:12 165:5 179:18  
193:13 219:22 223:7  
241:17 279:2 324:20  
352:7 355:20 373:7  
373:17
- first-hand** 256:21
- first-off** 111:22
- fiscal** 6:18 7:7,10,19,20  
9:1 21:6 24:9 28:9,14  
332:20 333:22 337:12  
339:19 340:5,10
- fitness** 230:9
- five** 48:1 49:15 51:2  
70:1 181:3
- fix** 95:17,17 102:18  
168:18 182:21 238:7  
296:10 325:1
- flat** 225:17 331:21
- flaws** 93:2 180:21
- flee** 50:4
- flesh** 87:7 103:18
- flexibility** 117:1
- floor** 87:21 100:6,13  
101:21 255:6,7  
330:20
- flow** 128:20
- FO** 255:1 276:4
- focus** 35:4 73:13  
132:19 133:6
- focused** 366:8
- focusing** 90:11 123:12  
167:16 335:7,9
- fodder** 326:12
- folks** 162:9 173:22  
182:7 184:7 228:3  
237:21 238:13 310:22  
327:4
- follow** 23:19 124:8  
248:14 283:10 311:4  
371:21
- follow-up** 180:6 202:4  
318:6
- followed** 309:6
- following** 7:21 8:4,20  
10:10 119:20 153:21  
174:16 311:1,9
- force** 2:18,19 3:5,5,11  
3:16,17 13:5,6,18  
43:5 44:1,13 46:2  
48:1 59:2 70:15 73:12  
77:1 80:9 88:20,21  
104:15 105:6,12  
107:5 109:1 115:6  
123:15 133:8 139:3  
153:18 154:8 163:16  
165:8 185:3 188:11  
201:12,17 217:5,15  
218:20 220:18 244:8  
262:21 268:21 276:1  
303:16 316:13 317:3  
323:13 329:7 335:22  
338:19 349:12 352:16  
352:17 353:2,8,13  
360:2,3 372:12
- Force's** 206:1
- forced** 292:10
- Forces** 1:4 6:8 7:1
- forcing** 138:5
- fore** 128:22
- foreclose** 291:1
- foreign** 145:19
- foremost** 193:13
- forensic** 127:2,4 128:18  
143:2
- foreseeable** 309:10
- forever** 373:2
- forget** 375:6
- forgetting** 261:13,14  
348:15
- forgive** 206:16
- form** 68:3 78:19 88:17  
231:16 263:8,10  
330:8 363:21
- formal** 32:12 33:15,15  
64:4 93:22 94:18 96:1  
208:5 211:16 213:8  
220:4 228:12 235:2
- formalized** 295:5
- formally** 61:10 234:2
- format** 349:12
- formation** 205:14 232:4  
316:6
- former** 67:13 355:16
- formula** 112:19
- forth** 17:7 158:20 327:7  
336:5 347:1
- Fortunately** 349:11
- forum** 89:1 90:15  
144:13
- forwarded** 11:15
- found** 18:13,14 24:17  
24:18 37:12 39:5  
47:13 48:22 49:5  
111:8 135:19 136:9  
152:11 186:14 232:17  
252:14 257:14,19  
311:9 343:7,10,13  
347:4 359:14
- foundational** 274:12
- four** 70:1 80:19 141:8,9  
254:15 263:2 332:10  
337:11 343:11 352:1
- fourth** 263:6 292:15  
335:17
- foxhole** 377:22
- frame** 38:9 64:15 89:22  
90:3 246:6
- frames** 182:14
- fraternization** 20:21  
54:17 116:5,10 369:7
- fraud** 319:20
- frequently** 183:12  
219:10,10 246:16  
262:11
- fresh** 79:14 88:15 90:1  
90:7 174:16
- friction** 108:1
- FRIDAY** 1:8
- friend** 177:5
- friends** 199:6 201:8
- fringes** 282:9
- frivolous** 84:6
- front** 17:2 18:4,22  
135:16 189:13 265:6  
318:8 380:3,5
- frustrated** 72:3 247:9
- frustration** 180:7
- frustrations** 178:17
- fulfillment** 7:18
- full** 21:6 73:10 85:5  
95:2 111:3 117:12  
135:7 151:15,20  
167:10,17,19 172:22  
182:3,3 201:8 202:6  
204:3 258:22 305:21
- fully** 162:20 187:10  
224:4 245:14 313:18  
379:5
- function** 30:9 68:20  
90:6 286:7
- funds** 26:1
- funnel** 250:5
- funneling** 251:17
- furrowed** 228:14
- further** 23:8 42:17  
43:10 76:9 83:5 97:9  
97:12,17 98:3 136:14  
143:11 222:4 246:21  
257:13,13 287:20  
292:14 329:11
- future** 5:16 32:1 213:20  
310:12,16 338:17  
345:16 361:16 380:10
- FY** 335:18 336:14,20  
340:20
- FY15** 332:7 351:4
- FY16** 351:3 352:15

**FY17** 16:4 350:1,2,3  
352:17 359:3 373:12  
**FY18** 335:20 336:8  
337:9,17 341:17  
348:12 351:20 356:6  
**FY19** 337:22  
**FY2018** 15:17

---

**G**


---

**Gadget** 27:5  
**gain** 92:20 110:19  
145:3  
**gaining** 102:22  
**Gallagher** 2:3 328:17  
**game** 253:6 256:7  
283:5  
**gamesmanship** 256:7  
**gaps** 210:21 299:18  
**Garvin** 1:17 38:6 53:12  
62:12 186:7 206:15  
208:10,21 209:5,9  
210:16 227:10 228:16  
229:18 230:1,4  
348:13 349:6,10,15  
**gather** 97:12 134:13  
**gathered** 134:18  
**gathering** 11:14 12:12  
106:4 180:12  
**GEN** 97:18 98:8,20  
176:11 177:10 229:3  
229:13,19 230:2,5  
231:1,9 233:4,7,12,15  
236:6,10 246:10,13  
325:11 333:5,12  
343:22 344:4,12  
346:9 347:12 360:13  
365:8,16 366:5,13  
380:2 381:22  
**general** 2:14,16 3:1,20  
6:14 7:17 11:16 20:4  
20:17,22 75:4 77:22  
95:20 97:20 148:2  
150:11 152:13 155:4  
229:15 246:3 268:20  
271:14 281:12 319:8  
330:5 360:12 376:14  
376:16  
**General's** 3:2  
**generally** 31:4 40:22  
54:3 142:12 157:13  
163:5 201:20 207:9  
217:17 278:3 282:11  
303:15 313:7 320:19  
336:7  
**Gentile** 1:18  
**geographic** 234:11  
**getting** 53:7 96:5  
131:17 149:21 155:4

179:12,13,20 182:14  
184:20 202:10 214:20  
220:5 226:4 231:4  
291:4 303:9,9 304:15  
305:20 307:4 321:3  
324:12 325:4 333:3  
338:1,4 341:13  
343:16  
**giant** 237:10  
**give** 11:18 19:9 30:12  
68:10 82:1,5 87:12  
90:20 105:8 106:19  
122:10 126:13 144:3  
210:19 228:6 230:3,6  
230:9,16 242:9 256:2  
257:12 266:8 272:10  
278:20 293:10 296:4  
328:20 333:19 343:5  
348:9 350:15,18  
373:22 377:14 380:14  
**give-and-take** 158:20  
**given** 48:3 72:19 80:16  
94:21 162:15 167:3  
168:6 169:13 190:8  
201:16 203:22 204:1  
235:21 242:1,1 259:8  
266:6 273:9 279:14  
286:20 300:19 301:7  
313:4 314:20 332:18  
351:11 354:15 367:18  
**gives** 37:20 72:9 76:10  
122:12,19 269:5  
280:2 317:15 343:15  
**giving** 19:17 75:5  
215:12 266:14 267:22  
298:15  
**glad** 35:21 37:1 123:14  
301:10 375:8  
**gleaned** 329:5  
**Glen** 2:5  
**glowed** 230:12  
**glowing** 230:11  
**goal** 80:3 297:3  
**God** 324:19  
**gotten** 99:22 263:6  
315:3  
**govern** 93:9  
**government** 3:5 66:5  
67:3 68:11 72:8 73:2  
74:6,16,21 76:5 88:5  
91:20 93:6 94:19  
95:10,16 100:14  
126:1 127:6,12,16  
138:6,9 142:14  
143:15 188:5 212:9  
251:14,21 255:1,6  
259:8,9 260:5 261:5  
261:11 262:13 264:5

266:14,20 267:20  
268:18 269:4,5  
271:12 272:4 276:11  
276:13 277:18 278:5  
278:13,17 279:10  
280:1 282:10 283:21  
284:2 288:16 292:2  
302:10 306:19 308:7  
309:16 310:13 319:22  
**government's** 67:1  
71:21 93:3 139:4  
257:5 273:11  
**governments** 292:15  
**grabbing** 25:5  
**graceful** 228:18  
**grade** 337:8,16 379:2,3  
**grand** 146:12,16  
**grant** 301:4  
**granted** 317:1  
**graphical** 340:16  
**grasp** 367:13  
**greater** 35:5 88:19  
321:1 353:5 358:4  
**greatest** 355:2 366:20  
**greatly** 66:19  
**Greek** 124:20  
**Grimm** 1:17 6:11 64:20  
64:21 283:16 330:10  
**ground** 62:21 64:1  
**group** 4:5,22 5:2 7:6  
8:22 9:1 64:16 131:22  
235:12,18,19 269:14  
330:2,8,14 337:21  
368:21  
**growing** 258:4  
**Gruber** 2:10 384:3,4,10  
**guarantee** 315:9  
**Guard** 2:20 3:6,12,18  
12:5 37:9 44:11 46:15  
62:3 77:3 107:6 164:3  
164:7,12,21 185:2,4,6  
185:18,21 186:16  
188:12 199:4 200:12  
205:20 206:14 210:10  
217:15,18 256:13  
257:2,18 275:7,20  
304:6 336:6,9 353:8  
**Guard's** 108:11 257:8  
**guess** 30:5 65:18 71:4  
97:16 132:8 154:16  
196:13 211:3 213:17  
222:16 250:4 288:18  
296:16 297:1 298:19  
318:15 346:9 360:3  
369:15 376:3  
**guessed** 107:19  
**guidance** 31:16 51:20  
57:15 62:6 105:1

112:7 167:5 218:12  
245:18 293:11 295:2  
360:22 373:22 374:15  
**guided** 37:11  
**guidelines** 110:4  
**guilt** 119:5 120:10  
359:14  
**guilty** 18:13,15 19:5,7  
24:17,18 93:8,8 111:8  
232:17 299:3 301:18  
301:19 302:5 303:4  
303:19 311:9 319:16  
331:18 343:7,10,13  
359:14 369:12  
**gulf** 135:22  
**Gupta** 2:3

---

**H**


---

**Hagy** 2:4  
**hail** 136:16  
**half** 271:1 340:21  
**Ham** 2:4  
**Hamilton** 3:7 159:19  
160:20,21 166:9  
167:7,8 174:10 176:4  
176:7 179:16 180:13  
180:14 186:18 191:3  
193:10 195:17 200:1  
204:8 205:17 209:15  
214:4 215:14 216:17  
221:18 222:16,18  
223:6 231:6,12  
236:12,15  
**Hamilton's** 239:5  
**hammered** 366:7  
**hand** 72:5 110:11 139:4  
149:3,3 289:7 292:10  
296:9 323:7  
**hand-offs** 175:4  
**handed** 50:17 185:10  
**handle** 269:8 320:10  
368:18 370:17  
**handled** 16:8 64:7  
**handles** 256:18  
**handling** 34:1  
**hands** 139:10 147:21  
170:21 171:13  
**hang-up** 233:21  
**happen** 39:21,22 58:9  
114:19 152:21 266:11  
271:5 273:6 274:16  
277:18 307:14 357:1  
381:20  
**happened** 28:15 41:7  
43:9 50:5 51:6 53:20  
59:22 150:14 169:15  
180:1,3 185:8 197:19  
203:5 215:1 234:6

238:6 255:13 272:1  
 293:13 308:3 309:16  
 309:20 311:3,6 334:7  
 337:18 345:6,22  
 349:7 367:22 373:16  
 379:22  
**happening** 19:10,19  
 23:4,5 27:16 34:4  
 37:17 41:1 43:7,15  
 47:5 48:13 183:16  
 185:15 205:19 270:9  
 298:13 310:22 334:18  
 341:7 358:6  
**happenings** 282:10  
**happens** 60:1 106:22  
 125:17 126:1,5 185:9  
 208:19 233:13 238:5  
 257:21 322:10  
**happy** 103:5,7 168:10  
 184:1 248:7 321:9  
 365:7  
**hard** 79:12 80:13 110:7  
 110:10 182:11 200:9  
 245:7 285:9 289:10  
 306:6,13 308:13  
 315:22 316:1  
**hardening** 309:11  
**harm's** 205:9  
**harsher** 356:14  
**hash** 31:9  
**hat** 147:2  
**hate** 281:22  
**head** 2:14 3:4 20:19  
 118:17 175:17 176:8  
 358:18  
**heading** 346:10  
**headquarters** 47:19  
 125:13 165:22 325:21  
 326:16  
**heal** 198:17 200:8  
**healing** 168:1 172:2  
 179:18 180:4 181:22  
 198:20 204:21 237:3  
 237:10,15  
**health** 42:13 129:13  
**hear** 8:5 37:18 61:1  
 209:9 215:21 216:9  
 222:1,4 241:12  
 255:14 270:12 274:22  
 284:6 296:2 301:16  
 311:2 316:9  
**heard** 9:16 96:10  
 121:15 164:17 167:22  
 168:13 186:8 200:11  
 211:2 213:2 237:4,4  
 240:17 241:13 248:10  
 248:22 249:3,15,16  
 254:20 268:21 288:10

297:9,11 309:1  
 313:18,19 314:17  
 356:13 361:20 372:16  
**hearing** 19:12 23:14  
 66:4,7 68:5,14,22  
 69:1,7,13,19 70:9,9  
 70:18 71:19 76:2,7,16  
 79:14 80:12,15,20  
 81:5,12,19 82:10,13  
 82:15,17 88:15 89:5  
 91:6,14 92:6,12 101:9  
 126:12 132:2 133:13  
 133:17 134:16 135:1  
 135:3,6,9 139:12  
 141:14 142:18 146:1  
 147:1 149:9,15 160:4  
 160:9,17 161:2,17,20  
 162:7,11,22 163:3,10  
 179:7,7,22 181:19  
 182:4 186:10 188:16  
 188:22 191:15 193:5  
 193:20 194:4 207:10  
 207:16 208:6 223:1  
 225:16,22 250:17  
 251:22 258:22 265:11  
 269:22 276:10,18  
 279:12 280:13 281:8  
 282:13 288:7 293:13  
 322:5 329:2  
**hearings** 66:1 76:4,5  
 136:18 165:1 270:14  
 273:20 342:9,10  
**heart** 141:6 147:9  
**heartbreaking** 42:10  
**heavy** 379:9  
**held** 12:9 58:2 76:13  
 329:3 342:10  
**help** 82:5 128:13 138:1  
 170:10 173:14 174:2  
 174:8 178:20 182:1  
 204:21 210:20 221:5  
 228:3 229:13 238:11  
 275:7,15 285:8  
 293:12,15 371:4  
 376:13 378:10,14,14  
 379:18 380:10  
**helpful** 72:7 74:17 79:8  
 87:11 88:8 102:1  
 131:12 199:18  
**helping** 170:6  
**helps** 34:21 62:16  
 179:14  
**hesitant** 231:17  
**hesitate** 277:16  
**hey** 40:15 42:2 55:14  
 78:13 216:19,21  
 242:12 252:17 256:6  
 284:20 310:8 321:8

327:4 377:21  
**Hi** 222:6  
**hiding** 251:16 296:20  
 363:13 364:6  
**high** 42:10 45:14  
 106:13 114:21 115:1  
 134:6 166:18 197:4  
 235:17,21 311:13  
 338:10  
**higher** 17:3,11,22 18:19  
 33:11 58:6 103:22  
 151:11 167:4,9 168:4  
 170:1 236:2,16  
 239:17 250:13 251:5  
 264:10 301:20 302:3  
 326:15 352:22 355:14  
 356:20 358:3,4  
 359:13,14  
**highest** 54:7 340:6  
 353:6,12 354:17  
 355:6 374:19  
**highlight** 67:17 72:12  
 178:16 367:2 382:7  
**highlighted** 156:19  
**highlights** 37:7 380:5  
**highly** 85:15 132:13  
 263:13,16  
**Hilton** 1:12  
**Hines** 2:5  
**historical** 81:14 82:8  
 286:5  
**historically** 103:2  
**history** 177:14 267:19  
 286:5  
**hit** 62:3 118:16 140:19  
**hold** 64:14 99:22 125:8  
 213:3 224:22 253:19  
 256:5 259:6,10 264:6  
 264:21 266:1  
**holding** 277:7  
**holds** 139:9,9  
**Hon** 1:16,17 75:1,20  
 76:1,19 77:4 85:9  
 318:6 320:5 321:16  
 321:22 339:15,18  
 366:17 383:19  
**honestly** 229:7 302:17  
 325:20  
**honorable** 155:3  
**honored** 286:20  
**hook** 117:17  
**hope** 146:5 248:20  
 310:20 329:13  
**hopefully** 31:21 184:13  
 196:11 265:20 280:3  
 327:5  
**hoping** 309:3  
**horrors** 174:20

**hot** 39:8  
**hour** 41:2 69:10  
**hours** 69:2 70:1,12,12  
 86:11,11 92:7  
**house** 191:4 204:17  
**HQMC** 3:11  
**huge** 107:10  
**hundred** 305:15  
**hundreds** 86:12

---

**I**

---

**idea** 77:16 89:16 115:7  
 123:17 142:16 144:10  
 144:13 145:15 169:22  
 201:20 221:12 224:22  
 225:10 251:8 272:21  
 311:5 330:5 343:5,15  
 350:15 363:13 368:22  
**ideal** 91:4 160:21 161:3  
 163:19 207:14  
**Ideally** 163:13  
**ideas** 115:1  
**identical** 44:12  
**identification** 211:16  
**identified** 4:7 5:8 7:15  
 10:22 39:2 52:10,12  
 58:21 59:1 203:17  
 373:14  
**identify** 17:8 163:1  
 194:5 373:8  
**identifying** 366:9  
 373:19  
**IG** 294:20  
**ignore** 314:7 315:17  
**ignoring** 281:18  
**image** 311:10  
**imagine** 194:2  
**immaterial** 298:1  
**immediate** 380:11  
**impact** 172:22 204:11  
 211:19 216:15 245:21  
 283:15 284:9 311:10  
 317:3  
**impacted** 77:12  
**impacts** 216:18 235:7  
 358:17  
**impairment** 123:8  
**impartial** 71:11 282:13  
**impetus** 39:7  
**implemented** 130:5  
 131:7  
**implementing** 66:10  
**imply** 102:6  
**importance** 172:10  
 178:16 197:8  
**important** 10:19 14:10  
 33:4,22 35:13,16  
 36:13,22 68:15 69:6

- 69:11 81:14 82:9 90:4  
90:6 107:14,15  
108:13 110:4 112:9  
112:12 115:4 127:21  
129:19 131:19 141:10  
145:19 147:20 148:4  
162:22 169:1 172:13  
172:20 173:11,21  
183:5 187:17 198:9  
199:17 248:9 341:11  
352:2,6 379:17  
**importantly** 93:16  
187:20  
**imposed** 226:1  
**impossible** 295:11  
363:6  
**impression** 287:22  
**improper** 311:16 312:8  
**improperly** 320:11  
**improve** 99:14,15,16,21  
138:16 184:8,19  
210:21 283:8  
**improved** 100:2 175:2  
**improvements** 91:3  
**improving** 34:6  
**inadvertent** 200:14,15  
203:6  
**inadvisable** 111:15  
**inappropriately** 299:14  
**inartful** 365:6  
**inarticulate** 228:17  
**incapable** 123:7  
**incapacity** 123:3,5  
**incentivize** 93:8  
**incidence** 60:21 114:22  
115:1  
**incident** 36:12 42:6  
49:20 52:4 174:20  
369:17  
**incidents** 46:16  
**inclination** 87:9  
**inclined** 137:1  
**include** 12:5 32:14  
44:19 48:14 51:17  
60:5 92:6 101:2  
303:17 327:12 340:18  
360:9 364:20 383:2  
**included** 33:12 41:16  
43:7,10 47:1,7,12  
49:17,19 69:5,12  
192:17 295:6 332:1  
336:16 345:16 370:3  
370:15  
**includes** 9:8 10:10 74:8  
172:19  
**including** 69:4 217:7  
329:1  
**incomplete** 308:22
- inconsistencies** 284:15  
365:18 380:9  
**inconsistency** 298:2  
365:20 366:19,20  
**inconsistent** 119:4  
266:2 285:17 291:8  
292:9 297:14  
**incorporate** 104:22  
**incorrect** 368:8  
**increase** 16:3 181:6  
275:8 353:21 354:14  
**increased** 279:14  
354:14  
**increases** 353:19  
**incredible** 261:11  
**incredibly** 41:15 131:19  
277:22  
**inculpatory** 127:8  
**incumbent** 100:7  
**independence** 77:13  
**independent** 55:18  
178:10 245:8  
**indicate** 197:15 241:19  
**indicated** 110:21 160:7  
**indicating** 66:3  
**indication** 235:12  
**individual** 10:15,18,20  
10:21 11:5,11 26:3,9  
30:14 55:12 83:4  
171:17,18,22 172:5  
177:4 198:15,16  
199:1 212:12 234:9  
375:13  
**individual's** 234:3  
**individuals** 4:7 5:8 7:15  
12:7 169:11 195:10  
198:10 199:5 202:2  
205:13 263:17 278:21  
307:11 369:8  
**inevitably** 110:18  
167:14  
**influence** 137:7 169:12  
193:7,20 312:9 314:6  
**influenced** 197:21  
**inform** 194:7 379:5,19  
**informal** 60:5 228:13  
**informally** 60:8  
**information** 10:11 11:8  
11:14,15,19 12:8,13  
25:13 26:18 27:5,7,11  
27:12 31:12 32:15  
36:13 43:19 61:12,16  
61:20 64:5 65:18,20  
68:15 81:2,7 86:8  
89:14 98:16 101:6,18  
106:5 130:10 131:18  
132:15,17 134:2  
137:3 141:21 156:6
- 156:13 160:10 165:10  
166:2 175:20 179:12  
179:14,20 187:9,13  
190:18 191:2,12,16  
194:15 204:3 210:20  
212:1 215:10,12,16  
215:21 222:1 223:8  
235:11 249:12 250:6  
251:10 257:13 259:8  
267:5 275:16 278:11  
285:7,15,20 288:16  
288:17 292:5 293:18  
294:5 295:18 296:21  
298:6 329:4 333:3  
341:13 348:6 361:15  
361:18 362:3,13  
363:22 379:14 381:1  
381:3,9,12,12 382:1  
**informative** 88:12  
**informed** 72:14 82:2,5  
82:7,20 90:11,13,15  
91:1,17 102:2 140:6  
140:16,17 168:22  
176:3 183:14,22  
193:14 195:1 224:6  
275:14  
**informs** 84:8  
**ingredient** 107:11  
**inherently** 118:18 146:7  
146:8  
**initial** 43:14 47:17  
113:22 138:20 184:17  
211:22 367:5,6  
373:18  
**initially** 31:17 38:22  
211:6 347:6  
**initiated** 12:21 13:1  
**initiative** 62:1 184:9  
**innocent** 267:12 299:1  
299:16 315:11  
**input** 7:17 113:9 181:20  
188:8 361:8  
**inputting** 329:4  
**inquiry** 12:20 33:15  
**inside** 77:22  
**Inspector** 27:5  
**Instagram** 130:17,20  
131:15  
**installation** 175:6 247:3  
**installations** 303:22  
**instance** 47:6 152:20  
196:2 225:15 304:2  
341:2 357:11  
**instances** 10:15 11:3  
74:4,7 82:14 91:15  
140:7 165:2 219:2  
224:12 337:18  
**instituted** 97:4
- instruction** 218:15  
232:21 263:1 295:2  
**instructor** 205:5  
**insufficient** 52:15  
**integrate** 185:14  
**integrated** 186:6  
**intelligent** 263:17  
**intended** 71:6 101:10  
199:6  
**intent** 53:4 71:7,22  
200:22  
**interaction** 212:6  
**interactions** 169:9  
**interest** 83:3 84:2 169:4  
183:7 186:20 210:1  
244:12  
**interested** 61:19 158:2  
158:10 186:6 330:11  
330:12,13 358:20  
**interesting** 16:16 146:1  
291:19 292:13 303:3  
337:13 341:10  
**Interestingly** 19:2  
**interests** 84:4 112:11  
204:1  
**interim** 288:13  
**interject** 210:6  
**Intern** 2:20  
**internal** 48:10  
**internally** 101:15,17  
140:20  
**interpretation** 348:4  
**interrogation** 69:5  
**interrupt** 215:8 273:13  
**interrupting** 333:6,6  
**interview** 69:8,9 127:17  
**interviewed** 290:6  
327:16  
**interviews** 69:2,22 70:5  
92:8 295:15 296:21  
**intimate** 341:18 355:15  
355:15  
**intoxicated** 50:4  
**intoxication** 123:8  
**Introductions** 4:3  
**introductory** 85:14  
**intuitively** 111:4  
**inverse** 353:21  
**investigate** 26:20  
203:20 307:1  
**investigated** 202:1  
220:5  
**investigating** 51:4 70:8  
74:1 75:5 183:3,4  
290:3 326:21  
**investigation** 1:3 6:6,20  
10:17 12:22 13:7  
38:22 43:16 44:3,5



46:20 50:19,20 51:7  
 54:10 55:18 56:18  
 57:21 70:3,11 72:6  
 74:11 75:18 76:10  
 101:13 127:15 128:6  
 142:19 157:18 180:9  
 184:20 185:9 196:18  
 199:7 201:7,15,19  
 202:7 203:21 204:20  
 206:11 211:17 217:6  
 223:18 246:9 260:9  
 272:3 274:16,19,20  
 275:13 276:4 290:11  
 350:5 376:9 382:15  
**investigations** 11:9  
 13:9,15 14:6 22:17  
 50:17 73:20 184:14  
 201:13 294:21 308:21  
 329:5 350:1 373:13  
 381:4  
**investigative** 4:8 5:11  
 11:1 66:8 72:18 92:8  
 113:7 211:5 292:4  
 329:1 373:11  
**investigators** 53:21  
 169:9 185:14,18  
 260:17 267:3,4  
 273:16  
**invite** 285:1  
**involve** 23:7 91:11  
**involved** 7:22 11:10  
 40:8 79:17 123:9  
 136:6 169:11 184:12  
 184:22 199:1 202:2  
 213:12 214:19 222:15  
 225:6 247:14 294:10  
 348:21 355:14,17  
 356:2 382:16  
**involvement** 272:7  
**involves** 39:19 69:8  
**involving** 6:22 13:10  
 14:6  
**IO** 71:9 98:10,11 290:14  
**IPAD** 10:9 12:1  
**irrational** 324:11  
**isolating** 358:11  
**issue** 9:13 28:19 35:5  
 42:15 56:8 58:12 61:3  
 61:8 87:19 94:7 96:18  
 122:8 128:5 129:5,21  
 130:6,9 146:5,9,22  
 147:9,14 149:20  
 155:7 177:17 183:9  
 194:3 197:16 203:17  
 205:19 206:21 207:10  
 207:21 208:19 209:17  
 210:3 276:13 281:15  
 281:18 282:19 292:6

294:9 304:7 316:12  
 323:14,22 324:19  
 338:4 341:2 344:21  
 376:12 380:4 382:15  
 382:16  
**issued** 200:19  
**issues** 38:1,3 46:13  
 69:11 87:16,20 88:2  
 95:17 116:4 117:2  
 136:7 148:16 177:13  
 177:14 198:21 207:16  
 208:16 213:22 221:9  
 221:17 274:12 283:7  
 289:7 290:17 291:7  
 292:20 293:7 310:4  
 316:7 320:22 364:12  
 364:17 380:3  
**it'd** 339:2 371:1  
**it'll** 365:13  
**iteration** 31:19 89:14  
 90:4 92:1,3 93:14

---

**J**


---

**J** 1:20 3:9  
**jail** 310:9  
**James** 1:19,20 2:14  
**Jane** 2:18  
**Janet** 3:19  
**January** 97:4 130:5  
**Jen** 365:8  
**Jen's** 365:9  
**Jenifer** 1:19  
**Jennifer** 1:18 3:11  
 300:9  
**Jim** 1:19  
**JM** 262:9  
**job** 26:21 94:12 193:11  
 196:11 198:4 213:17  
 213:18 216:18 224:6  
 234:20,21 236:22  
 248:1 324:8,12 376:1  
 377:22  
**joined** 64:20  
**joining** 6:11 65:1  
**Joint** 3:17 31:7  
**joke** 142:4  
**journey** 198:18  
**JPP** 25:22  
**Jr** 3:1  
**judge's** 91:7 209:19,21  
**judgement** 244:14  
 301:4  
**judges** 70:17,20,21  
 82:14 85:14 91:13  
 93:22 94:1 163:17  
 209:20 252:19 277:11  
 282:14,18 298:15  
 302:20 303:6 304:1

305:22  
**judgment** 39:20 40:1  
 58:10 121:11 126:7  
 244:13  
**judicial** 76:6 77:9  
**judiciary** 184:9  
**juice** 319:3  
**Julie** 2:2 3:5  
**July** 12:9  
**jump** 231:7 256:11  
**jumped** 117:15 352:5  
**jumps** 343:2 351:22  
**June** 11:17  
**junior** 232:7  
**jurisdiction** 78:13  
 87:18 145:4 247:16  
 263:5 302:19 303:13  
 315:1,2 326:7  
**jurisdictional** 87:20  
 88:2 148:14  
**jurisdictions** 303:7  
 315:2  
**juror** 240:4  
**jury** 22:11 120:9 146:12  
 146:16 301:5  
**justice** 2:17,17,19,20  
 3:4,7 4:11,12,16,20  
 8:6,16 34:6 61:17  
 65:3 84:2,5 97:3,5  
 103:9 104:16 107:8  
 110:6 112:11 116:19  
 118:19 130:2 138:18  
 141:5 144:22 145:2  
 159:15 162:9,17  
 163:14,15 164:1,6,9  
 176:22 180:18 182:7  
 183:1 184:7 195:22  
 198:3,7,12 214:1  
 215:22 233:19 237:21  
 238:13 245:1 257:8  
 258:5 262:9,22  
 287:14 293:20,22  
 294:1,2 299:9 305:11  
 312:15 314:15 315:4  
 318:10 375:10

---

**K**


---

**K** 3:19  
**Kate** 2:8 22:14  
**Kathleen** 1:16  
**Kazin** 2:13 29:9 31:4  
 34:9 51:19 54:5 57:12  
 57:14 62:13 63:8,14  
**keep** 117:22 159:4  
 183:14,22,22 193:14  
 248:21 261:13,14  
 274:10 299:8,9  
 307:13 360:17 361:5

377:22  
**key** 43:4 74:21 84:16  
 112:6 125:9 163:4  
 351:17  
**kick** 301:1 302:11,12  
**kicked** 381:16  
**kidding** 143:13,14  
**kill** 238:17 239:7  
**killed** 252:12  
**kinds** 78:19 137:4  
 358:19 369:13 380:9  
**King** 3:3,18 65:8 68:19  
 69:18 74:3,15 76:21  
 81:10 90:5 99:2,5  
 108:10 122:9 129:11  
 139:18 149:5,22  
 152:18 157:9 244:20  
 256:11,16 268:5  
 275:2,6 288:11  
 292:18 295:8 304:6  
 304:14 310:20 326:17  
**Kirkby** 3:14 243:14  
 252:4,9 255:3,18,21  
 258:14 266:16 270:16  
 273:17,22 276:1  
 279:21 281:5,22  
 282:21 283:19 291:18  
 302:7 309:13 312:3  
 312:11 317:6 318:19  
 320:21 321:15,17  
 322:8 324:4 325:5,14  
 326:1  
**knew** 13:12  
**knowing** 20:6 34:19  
 131:13,13 143:22  
 234:5 268:10 297:19  
 298:20,21  
**knowledge** 154:3 163:2  
 163:18 192:6 256:21  
 262:6 275:17 327:12  
**known** 43:9,13,17,21  
 56:17 192:16 240:11  
 248:12  
**knows** 124:21 234:15  
 253:13 312:13  
**Kraemer** 2:14 29:9 31:3  
 35:11 40:19 50:15  
 55:10 59:10  
**Kramer** 1:18 32:2,6,20  
 33:18 53:14 248:16  
 248:20 249:2 252:7  
 299:22 300:3 311:12  
 312:10 355:20 375:1  
 375:4 376:3

---

**L**


---

**labeled** 229:22  
**labor-intensive** 24:4

**lack** 31:16 129:17 131:9  
 160:4 193:8 279:17  
 302:10 314:11 322:1  
 367:9  
**Lackland** 316:13  
**lamenting** 102:6  
**Lance** 3:7  
**landscape** 130:3,8  
 131:5  
**language** 282:5 347:2  
**lap** 138:3  
**large** 59:3 173:10  
**largely** 275:22 276:2  
**larger** 18:7 58:12  
 209:17  
**lasted** 66:4  
**late** 236:10 329:14  
**lately** 87:18  
**lateral** 234:15  
**Laughter** 85:20 93:20  
 97:22 99:1,4 121:6  
 156:4 175:18 176:6  
 182:20 228:15,22  
 229:5,17 230:22  
 236:9,14 242:6  
 248:19 249:1 252:6  
 255:2,20 256:10,15  
 261:9 263:11 275:5  
 300:2 301:13 304:13  
 308:18 325:13,16  
**law** 2:13,15,21 3:2,2,19  
 10:6 122:18 123:10  
 163:19 165:11 177:18  
 209:8,22 210:4 279:1  
 279:2 295:1 304:3  
 345:1 346:8 373:12  
**lawful** 148:1  
**laws** 91:12 145:8  
**lawyer** 149:16  
**lawyers** 103:3,13 141:8  
 318:9  
**lay** 87:1 153:22  
**laying** 93:11  
**layperson's** 125:4  
**lays** 345:17 364:4  
**lead** 65:15 171:3 245:2  
 258:17 298:12 326:10  
 360:20  
**leader** 60:6,7  
**leadership** 173:2  
**leading** 120:1  
**leads** 201:14 202:5  
**lean** 109:4  
**leaning** 108:19,21  
**learn** 223:17  
**learned** 55:17  
**learning** 167:20 223:8  
**leave** 111:10 173:21,22

174:8,14,14 223:22  
 264:11 314:14 367:20  
 377:3  
**leaving** 171:14 175:14  
 223:11 325:12 354:7  
**led** 41:10 49:20 154:10  
**left** 48:6 194:5 287:22  
 287:22 316:15 335:18  
 337:19 338:15 363:7  
 363:8  
**left-hand** 15:15  
**legal** 2:19,20 3:9,10,17  
 4:14 25:12 48:4 77:6  
 98:12 122:14,22  
 123:4,11 136:19  
 159:12 166:6 178:10  
 183:21 188:19 190:21  
 194:11 195:4 212:13  
 226:5 244:14 245:16  
 264:8 286:19 304:12  
 327:12  
**legislation** 2:17 10:7,12  
 10:14 374:1,8  
**legislative** 286:5  
**legitimate** 25:9 26:8  
**Lejeune** 166:1  
**length** 180:7,9 183:9,18  
 260:11 261:14 351:14  
**lengthy** 246:2  
**Leo** 1:16  
**lesser** 88:21  
**let's** 53:6 150:22 216:22  
 256:5 271:21 273:8  
 315:21 350:11  
**letter** 11:16 14:15  
 134:10 230:3,6,16,18  
 287:10 361:1 365:12  
 365:12 369:22 376:19  
 377:4,14,14 381:17  
 383:6  
**letters** 63:18 316:18  
 378:20  
**letting** 101:12 117:17  
**level** 19:19 20:17 47:19  
 58:3,15 60:16 64:8  
 72:13 75:16 76:14  
 87:12 148:17 151:11  
 184:13 185:10 210:11  
 220:19 221:11 231:10  
 237:6 239:4 264:10  
 305:14,18 307:16  
 322:2 323:4 325:22  
 326:15,16 344:20  
 356:14  
**levels** 94:17 305:1  
**levied** 354:15  
**liberty** 243:4  
**licensed** 149:17

**lie** 230:13  
**lieu** 114:22  
**Lieutenant** 2:13,14,18  
 2:20 3:3,9 29:9,9,10  
 29:11 30:5,15 62:13  
 62:18 65:8 69:17  
 159:18  
**life** 171:20 173:10  
 261:16 299:13  
**lifetime** 154:20  
**lift** 379:9  
**light** 32:15 45:4 53:17  
 54:3,6,9,15 55:12,21  
 56:13,15,17 65:9  
 112:13 128:19 236:11  
 268:18  
**likelihood** 107:14 109:7  
 110:1,1 115:16  
 116:15 118:2 119:8  
 119:18 120:5 123:17  
 124:16 125:20 132:22  
 143:12 245:19 268:22  
 352:11,21 353:4,17  
 355:13 357:12 358:3  
**likewise** 173:17 176:4  
**limited** 26:1,1 73:2  
 80:19 81:7 130:22  
 153:13 155:4 160:8  
 162:16 203:22 289:13  
**limiting** 246:21  
**line** 15:16 23:20 62:15  
 64:21,22 128:1 178:3  
 211:21 212:7 214:11  
 318:8 333:20 334:3  
 357:22  
**lines** 18:13 23:22 68:21  
 80:16 94:5  
**link** 45:11  
**linked** 34:12  
**Lisa** 3:8  
**list** 334:8  
**listed** 112:6  
**listened** 314:21  
**listening** 367:12  
**listens** 280:4  
**literally** 72:5  
**litigation** 160:18 161:18  
 162:2,10 164:5  
**litigators** 303:21  
**little** 33:20 39:19,22  
 63:6 71:16 72:4 85:11  
 96:12 107:18 108:1  
 117:6,16 126:18  
 130:3 136:12 145:9  
 166:11 208:4 223:14  
 227:12,19,20 228:5  
 229:8,14 248:1 250:9  
 250:11 251:11 256:2

258:3 259:13,17  
 260:6 263:14,20  
 265:18 266:4 269:3,8  
 285:15 298:5 304:7  
 317:11,21 318:7  
 322:22 323:1 327:5  
 331:13 352:22 359:16  
 381:9  
**live** 104:2 276:5,8,22  
 277:5 278:8 279:17  
**lively** 328:9  
**lives** 197:17 198:13  
**living** 97:2 272:4  
**loaded** 368:5  
**loath** 114:1  
**loathe** 204:17  
**local** 48:4 231:14  
 234:11 303:22 325:22  
 326:15 377:2  
**locally** 212:5  
**location** 50:5 162:14,14  
 174:19 200:7,8  
**locations** 185:8  
**logical** 47:12  
**logically** 324:10  
**logistically** 99:8  
**logistics** 94:6,7  
**long** 1:18 22:8,18 23:2  
 23:7 24:2,5 25:1  
 33:19 69:10 70:1  
 95:18 117:18,20  
 119:20 121:2,7,9,21  
 126:22 128:11 130:8  
 138:20 145:9,13  
 173:6,11 222:6,20  
 224:3 297:7 300:10  
 342:19,22 349:16  
 350:8,10,20 356:9,18  
 357:1,4,20 358:1  
 365:6 367:21 368:8  
**Long's** 313:3  
**long-term** 319:17  
**longer** 145:12 261:15  
**looked** 22:16 33:8  
 40:12 42:18 45:22  
 47:21 50:15 51:2,12  
 176:5 306:6 344:10  
 351:8,11,13 359:17  
 374:4,16  
**looking** 16:21 17:16  
 24:8 33:21 34:17 37:9  
 38:7,9 46:15 65:2  
 67:10 82:18 87:14,21  
 90:2 91:11 119:9  
 120:7,8 122:4 123:3  
 124:1 130:15 146:4  
 177:4 179:8 181:21  
 186:22 191:10,10

211:3,13 213:18  
 231:2,7 234:3 242:13  
 242:16 254:11 272:15  
 274:14 286:5 298:12  
 306:1,2,10 308:20  
 309:15 315:12,13  
 331:2,15 336:4,18  
 337:5 343:7 344:6,10  
 348:22 349:22 350:6  
 371:14  
**looks** 184:20 207:10  
 208:3 234:6 235:6  
 269:21 325:6 374:5  
**loop** 139:18,19  
**lose** 145:3 232:18 282:7  
 282:11 293:21 373:2  
**losing** 102:21 233:1  
 308:4,4  
**loss** 243:4  
**lost** 127:11 309:22  
 310:13 382:9  
**lot** 35:2 58:8 59:9 65:9  
 83:12,13 89:14 95:4  
 100:4 101:2 103:6  
 104:12 106:2 109:5  
 113:21 123:7 132:10  
 132:12 134:5 158:16  
 160:13 164:17 175:10  
 185:4,22 186:8 199:3  
 199:5 211:12 238:17  
 254:20 256:19 259:5  
 267:2,15 277:17  
 278:15 280:18 283:7  
 297:21 316:6 351:19  
 378:12 382:14  
**lots** 141:5 143:5 228:13  
 245:8 274:4 317:20  
 319:7  
**love** 27:6  
**low** 13:8 34:20 37:15  
 53:10 57:2,7 58:19  
 59:4,21 60:4,21 84:15  
 110:13,17 111:15  
 115:16 116:15 231:2  
 231:4  
**low-level** 217:20 218:9  
**lower** 16:13,19 60:16  
 180:2 355:17 356:1  
 359:12,16 381:21  
**lowest** 64:8 322:2 355:7  
**LT** 30:8,16 31:3 35:11  
 36:22 37:6 38:20  
 40:19 43:2 44:10  
 46:15 47:9 50:15  
 55:10 56:12,19 59:10  
 60:18 62:2 68:19 74:3  
 74:15 76:21 81:10  
 90:5 99:2,5 108:10

122:9 129:11 139:18  
 149:5,22 152:18  
 157:9 162:19 165:18  
 168:19 172:9 175:21  
 178:2 182:17,21  
 187:15 189:1,16,21  
 190:2 194:9 197:14  
 202:13 203:6,13  
 209:11 211:20 220:15  
 225:11 228:20 229:1  
 229:6 233:17 239:2  
**LTC** 31:4 34:9 51:19  
 54:5 57:14 63:8,14  
**luck** 286:22 306:12  
**lumping** 357:7  
**lunch** 241:1

## M

**M** 2:18 3:3  
**ma'am** 10:3 15:1 19:20  
 21:4 22:5 25:2 27:1  
 30:8,16,18 31:3,4  
 35:11 43:3 44:10  
 118:17 122:9 139:18  
 140:12 149:6,22  
 151:13 153:11 155:20  
 160:21 161:16 162:19  
 165:19 166:4,9 167:8  
 168:3,19 175:22  
 176:2,9 180:15  
 181:13 182:17 187:15  
 189:1 190:15 191:3  
 193:10 194:9 195:17  
 197:14 202:13 203:14  
 203:15 204:8 209:12  
 209:13 220:16 222:18  
 223:6 225:11 228:20  
 229:7,10 236:15  
 237:19 239:3 262:5  
 291:18 314:19 316:11  
 358:22 371:11 384:10  
**Madam** 384:4  
**magistrate** 75:9 77:8  
 137:22  
**magistrates** 277:11  
**maintain** 271:19  
**maintained** 262:8  
**maintenance** 304:22  
**MAJ** 30:18 32:5,9,22  
 36:2 41:14 49:7 55:20  
 60:2  
**major** 2:16 6:14 29:10  
 32:2 94:10 98:17  
 279:6  
**majority** 110:14 165:17  
 382:17  
**majors** 279:5  
**makers** 370:20

**making** 49:16 53:3,9  
 67:4 68:6 79:7 84:6  
 84:11 89:8,10 101:15  
 107:12 124:4 134:20  
 140:15 147:11 150:6  
 158:2,22 167:13  
 169:22 170:1 174:1  
 210:13 224:6 237:14  
 248:5 277:15 278:16  
 283:3,15 293:17  
 294:18 295:19 320:11  
 328:3 346:1 350:12  
 365:7 376:14  
**male** 2:18 29:10 30:15  
 30:16 36:22 43:2 47:9  
 56:12 60:18 337:5  
 339:11 340:8  
**males** 336:21  
**malfeasance** 205:2,3  
**man** 315:11  
**manage** 27:7 170:7  
 215:13  
**managed** 211:7  
**management** 27:11  
 61:12 172:11  
**manager** 3:8 166:11  
**managers** 4:14 8:8  
 159:13  
**managing** 240:6  
**mandate** 6:19 341:15  
**mandated** 110:3 295:10  
**manner** 188:6 203:16  
 316:19  
**Mansfield** 3:19 373:5  
**Manual** 156:11  
**March** 13:10  
**Marcia** 6:14  
**margin** 99:13 100:22  
**margins** 87:6 97:16  
**Marguerite** 2:5  
**marijuana** 369:14  
**Marine** 2:16 3:3,4,10,15  
 12:17,18 13:17 30:1  
 30:21 32:19 33:7  
 41:16 74:4 81:10 91:9  
 147:3 172:13,14  
 173:3,12 248:5 250:8  
 250:10 251:5 270:10  
 277:4 279:18 323:14  
 359:5 362:7 374:19  
**Marine's** 173:3  
**marines** 93:18 269:8  
 352:16 353:1,6  
 356:13,20 359:20  
 360:4 362:2  
**Markey** 1:19 27:2,4  
 210:17 212:17 215:8  
 216:15 218:8,12

**Markowitz** 1:19 96:6  
 98:21 323:8,12 325:2  
 328:6 363:10 364:11  
 365:15 366:16 367:15  
**married** 116:3  
**marry** 23:22  
**marshaling** 184:3  
**Martha** 1:12,15  
**martial** 24:16 63:17  
 85:8 95:21 102:15  
 103:19,21 104:5,18  
 104:20 105:4 107:10  
 107:20,22 108:20,21  
 109:5 115:1,22 116:9  
 117:7 119:11 148:6  
 150:11 152:13 154:20  
 175:10 271:14 344:17  
 345:3 346:11,14,17  
 347:16 350:6,19  
 376:16  
**martials** 379:20  
**marvelous** 94:12  
**Mason** 2:6 14:21 15:1  
 19:21 20:6 21:1,4,10  
 21:17,21 22:3,5,7,9  
 22:13,19 23:6,9 24:3  
 24:12 25:2,3,8 26:16  
 27:1,14 29:6 264:22  
 330:19,21 333:9,14  
 333:17 334:15 338:11  
 338:21 339:3,17,21  
 342:21 343:1 344:2,6  
 344:14 346:22 347:13  
 348:13,18 349:9,21  
 350:9,15 358:22  
 359:21 360:5,14  
**massive** 339:13  
**mast** 213:7  
**material** 234:1 298:1  
**materialize** 309:4  
**mathematical** 112:19  
 119:17  
**matter** 94:5 111:21  
 112:5,12 129:14  
 159:6 241:3 244:3  
 328:13 384:15  
**matters** 68:12 192:10  
 217:13 244:21 256:18  
 297:12 384:11  
**MCIO** 73:16 246:13  
**McKinley** 1:20 170:15  
 333:15 334:10 338:16  
 339:1 359:19 360:1  
 360:11  
**McKinney** 2:5  
**mean** 24:3 40:19 41:9  
 57:3 58:20 84:21  
 100:18 101:9,21

107:5 121:9 123:17  
 124:7 138:8 141:11  
 146:15 147:8 149:17  
 155:13 166:17 181:4  
 215:14 218:10 230:13  
 238:3 265:17 287:21  
 288:18 292:9 299:2  
 305:14 309:14 311:16  
 312:7,18 313:1  
 319:15 324:10,14  
 333:18 350:8 354:2  
 364:5,11 367:7  
 371:17 375:1,21  
 376:5,13,14,20 377:7  
 381:3  
**meaning** 43:9 55:3  
**meaningful** 96:15 171:7  
 358:20  
**means** 10:21 55:4  
 123:22 132:1 228:16  
 237:13 272:11 323:19  
 324:9 339:19 341:18  
 354:3 375:12 376:2  
**meant** 12:22 63:6  
 120:13,15 350:10  
 367:13  
**measure** 30:19 230:19  
**measures** 229:21,22  
**mechanism** 144:4  
 264:4  
**media** 130:14,16  
 133:10,11,15 134:1  
 137:3  
**meet** 100:10 101:7  
 133:20 141:12 142:10  
 162:6 190:12 192:1  
 211:21 216:22 283:11  
 370:16  
**meeting** 1:6 5:22 6:5  
 7:2,5 9:3,7,10,11,16  
 12:6,9,11 13:13,17  
 110:12 212:1 330:8  
 383:9 384:12,13  
**meets** 187:2  
**Meg** 1:17 227:11  
**Meghan** 1:21 2:6 65:11  
 65:13  
**member** 3:13 6:11 9:11  
 151:17 155:5 173:13  
 234:5 240:17 245:21  
 246:17 281:11 302:14  
 303:18 311:3,3  
 313:17  
**member's** 233:22  
 300:13  
**members** 6:4,9,10,13  
 7:1 8:11 16:18 17:2  
 17:10 18:18,20,22

19:3,5,7 26:14,17  
 29:16 66:2 106:21  
 125:20 150:19 166:8  
 220:20 254:12 300:17  
 301:2 304:5 305:9  
 306:16 308:6,7  
 309:11 313:22 323:20  
 330:3  
**memo** 182:14 250:15  
 289:1  
**memorandum** 256:17  
 380:6  
**memorialized** 262:21  
 263:15  
**memos** 194:20,20  
 318:2  
**mental** 42:13 129:13,16  
 129:17  
**mention** 199:2 200:12  
**mentioned** 10:4 26:1  
 31:18 37:22 62:19  
 68:22 80:21 90:9 91:4  
 96:7 106:6 180:6  
 182:18,22 185:3  
 189:4 195:19 197:8  
 206:17,18 233:18  
 269:7 274:1 295:11  
 317:6 323:14 342:1  
 377:12  
**mere** 180:22  
**merely** 196:6 269:5  
**merit** 194:20 318:2  
**merit-less** 286:10  
**meritorious** 114:11  
**merits** 49:9 50:9 182:14  
 250:15,22 289:1  
**message** 74:8 265:16  
 266:19  
**messages** 267:20  
**met** 1:11 101:8 104:19  
 105:16 123:5 149:8  
 191:5  
**methodologies** 14:9  
**methodology** 8:3 12:12  
 12:14 206:2  
**metoo** 313:10  
**metrics** 17:13 22:20  
**microphone** 63:13  
 247:10  
**mid-level** 221:10  
**middle** 301:21  
**might've** 338:2 345:10  
**Miller** 2:20 29:11 30:5,8  
 37:6 38:20 44:10  
 46:15 56:19 62:2  
**mind** 19:12 220:11  
 244:4 272:14 374:1  
**mindset** 107:6

**mine** 121:20  
**minor** 93:19 97:15  
**minority** 35:3  
**minuses** 102:20  
**minute** 176:12 178:8  
 373:6  
**minutes** 66:4 72:5  
 150:3 159:3,3 177:10  
 270:1 271:7,7  
**miscommunication**  
 345:15  
**misinterpretation**  
 345:15 381:13  
**misleading** 280:5  
 298:10  
**missed** 184:17 196:4  
**missing** 96:21 237:16  
 290:22 306:14 307:10  
**mission** 97:21 170:19  
 193:14 205:22  
**misstate** 368:1 371:11  
**mistrust** 300:6  
**misunderstanding**  
 299:18  
**mitigating** 40:3  
**mitigation** 71:14 87:2  
**MJA** 130:1 131:4  
 141:19  
**mobile** 145:20  
**model** 358:9  
**models** 351:2,4,6,18  
 352:2,10  
**modifications** 280:22  
**modify** 280:15  
**mom** 124:21  
**moment** 21:3 121:5  
 144:18 189:10 207:1  
 207:7,8 245:20  
 273:13  
**Monahan** 3:1 65:9 68:1  
 74:12 76:12 82:22  
 91:18 95:5,15 96:22  
 97:20 98:1,18 109:22  
 121:22 128:15 129:10  
 138:21 139:2 152:7  
 153:5 157:3  
**Monahan's** 280:17  
 325:6  
**Monday** 325:9 330:15  
**money** 319:20,21  
**month** 42:1 50:2 166:11  
 261:21 307:14  
**months** 42:1,12,20  
 233:9 258:11 265:4  
 291:4 307:21 377:7  
**moot** 143:19  
**Morgan** 3:16 245:12  
 246:8,12,15 262:5

263:9,12 268:14  
 275:22 286:3 294:8  
 303:15 305:12 308:16  
 308:19 316:11 327:8  
**morning** 6:3,10,12 15:1  
 15:3 29:12 65:2,12  
 161:16 186:8 222:10  
 227:14 228:12 229:2  
 229:14 235:8 241:13  
 243:10 255:14 260:6  
 268:22 306:16,20  
 313:20,22 332:14  
**morning's** 366:18  
**morphed** 79:6  
**MOS** 234:12,16,19,20  
**motion** 280:3 281:13,14  
 282:7,11 286:4 287:1  
 302:8  
**motions** 208:5 252:16  
 252:21 281:4 282:20  
**motivate** 197:11  
**motivations** 199:13  
**motive** 294:15  
**move** 64:19 104:11  
 109:2,19 140:3  
 142:17 175:2 192:21  
 192:22 195:15 197:9  
 197:17,21 198:12,17  
 199:15 200:6 206:5  
 206:10 209:2,3,18  
 211:10 213:15 216:5  
 234:16 256:13 282:15  
 300:8 330:22  
**moved** 309:17  
**movement** 313:10  
**movements** 313:11  
**moves** 140:11  
**moving** 108:19,21  
 109:4,11 142:22  
 143:8 153:6 183:15  
 183:19 186:6 239:17  
 240:20  
**MRE** 177:14  
**multi-variate** 348:10,11  
 350:22 351:18 352:10  
 356:5  
**multiple** 15:22 201:22  
 223:17 339:20  
**multiples** 18:11  
**multitude** 28:19  
**murder** 20:14 91:12  
**mysterious** 288:9

---

**N**

---

**nail** 118:17  
**naive** 269:13 312:18  
**Nalini** 2:3  
**name** 28:16,22 32:4

65:12 334:7  
**narrow** 88:6 378:10  
**National** 6:18 7:19 10:6  
**nationwide** 146:11  
**nature** 49:20 116:6  
 147:15 148:19 227:2  
 252:20 254:1 320:16  
 320:17 326:13 354:10  
**Navy** 1:12 2:14 3:1,8,14  
 12:17,18 13:17 40:19  
 43:6 59:20 74:12  
 147:3 152:9,15,17  
 157:4 161:19 162:8  
 166:5 199:11 212:19  
 256:17,18,20 275:3  
 319:1 324:8 353:7,14  
 362:7  
**Navy's** 32:19 110:20  
**NCIS** 50:6,16 271:22  
 292:3  
**NCOs** 173:2  
**near** 14:14 28:5 158:15  
**necessarily** 21:1 45:17  
 86:21 105:19 119:17  
 131:12 170:13 172:4  
 190:9 218:1 245:15  
 302:4 314:5 364:19  
**necessary** 58:14 72:1  
 89:8 94:8 133:16  
 221:2 257:11  
**necessity** 274:2  
**need** 25:6,8 36:16 38:3  
 57:16 101:5,16,19,19  
 101:22 102:1 113:18  
 137:2 145:1 162:6  
 168:2 173:13 199:16  
 199:20 216:19 224:14  
 228:2,18 229:12  
 245:10 272:19 273:5  
 273:5 278:12 280:14  
 280:14,15,20 283:8,8  
 292:13 296:13 305:9  
 306:10 308:13 315:21  
 317:17 318:1 321:7  
 324:22 328:11 362:11  
 362:17 363:16,19  
 378:22 380:20 382:22  
**needed** 98:13 160:10  
 202:16,17  
**needs** 69:12 136:8,14  
 162:15 185:15 205:17  
 218:1 224:1 244:4  
 294:4 324:6,21 368:6  
 370:10,11 372:9  
 379:22  
**negate** 119:5 139:7  
**negative** 64:2,3,4 111:3  
 156:18 170:3 204:11

235:6  
**negotiate** 320:7  
**net** 54:22 55:9 58:22  
**neutral** 68:4 70:19 76:7  
 77:8 80:5,6 81:4  
 83:16 85:17 93:10  
 96:2 177:3 259:1  
 282:12 291:6 325:7  
**never** 191:5,22 192:16  
 199:6 249:5 273:5  
 298:22 301:5 321:5  
 363:21 364:1 365:3  
**new** 76:10 135:5 140:2  
 141:19 175:5 190:16  
 190:22 200:6,7  
 234:19,20 249:22  
 250:1 264:6,6 288:12  
 288:16 314:5 338:1  
 343:3 347:8 349:11  
 351:22  
**news** 382:5,13,17  
**Ney** 11:17,17,22  
**nice** 101:4 296:18 300:7  
**night** 41:1  
**nine** 306:9,13 339:10  
**NJP** 49:12 50:3 78:1  
 147:18 229:19  
**NJP'd** 42:1  
**no-** 129:8 146:12  
**non-** 230:17 357:15  
 377:13  
**non-120** 318:20  
**non-Article** 318:8  
**non-binding** 105:1  
 110:3 112:7 132:22  
 141:2 146:3 167:5  
**non-criminal** 290:11  
**non-disposition** 114:8  
**non-judicial** 232:8  
 322:11 376:16  
**non-probable** 318:13  
 318:17 320:14,18  
**non-punitive** 63:18  
 229:22 377:4  
**non-responsive** 98:22  
**non-SA** 343:10 344:8  
**non-sex** 20:3 331:19  
 355:3 359:7,13  
**non-sexual** 21:7 321:19  
 354:22 355:7  
**nope** 265:15  
**norm** 165:16  
**normal** 55:4 219:16,16  
 246:18  
**normalcy** 145:21  
**normally** 32:10 230:13  
 368:4  
**North** 166:1

**notate** 348:21  
**note** 7:2 129:19 205:1  
 352:7  
**noted** 62:21 85:13  
 287:17  
**notes** 61:21 67:16  
**notice** 72:9 384:6  
**noticed** 30:11  
**notify** 384:6  
**notion** 73:6 102:15  
 365:1  
**notions** 88:1  
**novel** 192:4  
**nuances** 164:15  
**number** 10:14,14 11:3,3  
 11:7 13:8 14:4,5 20:3  
 28:2 33:12 41:18  
 50:16,18 51:1 53:11  
 55:22 56:22 59:21  
 60:4 69:11 94:16  
 135:17 137:8 162:17  
 246:3 279:15 303:5,6  
 308:17 310:4 334:4  
 334:12,13 335:3  
 336:7 337:3 338:18  
 339:12,14,15,18  
 341:3,7 342:10,12  
 350:12 352:3 353:16  
 353:18,21 354:2,2,3  
 354:13 358:12,12,15  
 364:12,17,19 374:8  
 374:10 381:4,6  
**numbers** 13:18 17:5  
 21:8 32:18 33:2,5,8  
 35:22 36:4 37:12,17  
 38:18 39:18 40:18  
 41:17,20 43:11,14  
 44:18 46:16 47:1,2,7  
 49:18 60:12 162:5,6  
 162:12 163:21 173:15  
 173:16,18,19 175:8  
 181:6 258:7 300:20  
 301:7 302:16 308:12  
 336:16 343:2 344:10  
 350:2,3 358:17 359:2  
 360:9 362:8 374:16  
 379:10,12 380:16,18

---

**O**


---

**o'clock** 6:12 241:1  
**O-2** 337:20  
**O-3** 337:16  
**object** 207:12,20 210:6  
**objection** 210:2  
**objective** 103:10 122:2  
 122:4 123:21  
**objectively** 108:3  
 118:12  
**obligation** 84:3 206:6  
**obliterated** 274:20  
**observation** 295:22  
 296:17 297:2 299:20  
 299:22  
**observation/question**  
 297:8  
**observed** 351:21  
 355:12  
**observers** 108:4  
**obtain** 74:17 105:3,9  
 112:17 122:14 243:16  
 244:18  
**obtained** 110:9 113:6  
**obvious** 111:4 138:8  
**obviously** 47:3 59:18  
 61:13 123:18 130:4  
 131:11 167:10 172:22  
 202:16 208:4 236:16  
 242:7 253:21 267:8  
 269:15 289:10 296:1  
 370:7 383:10  
**occur** 14:14 153:10  
**occurred** 40:5,22  
 152:20 174:21 369:15  
 369:17  
**occurs** 193:7 197:5  
 250:1 270:4  
**odd** 234:6,7 235:6  
**offenders** 298:4  
**offense** 15:18,19 16:1,2  
 16:10,15 17:14,16,17  
 18:8,10 19:3,6 20:11  
 20:16,16 21:7 24:15  
 24:16,18 26:9,9 33:13  
 36:11 50:13 64:16  
 70:17 75:4 88:19,21  
 108:20 111:9 117:14  
 132:7 152:1 154:19  
 154:22 214:10,19  
 217:20 218:5,9 246:4  
 331:18,19 337:3  
 343:11,11,13 344:8  
 344:16 345:2,8,10,12  
 347:6,17 351:10  
 352:4,22 353:18  
 354:17,22 355:5  
 357:14,15,18 359:5,7  
 359:13  
**offenses** 15:12 18:2,11  
 18:15 20:1,3,7 78:14  
 88:18 91:11 123:2  
 310:22 335:1 346:11  
 346:13,18 347:15  
 354:21 355:2,7,8  
 369:13 371:13 373:15  
**offer** 11:19 135:4 149:6  
 176:14,15 285:15

**offered** 176:16 276:4  
**office** 2:13,15,20 3:2,7  
 3:13,19 48:4 73:19  
 140:20 162:3 201:12  
 255:11 383:13  
**officer** 2:10,17 66:7  
 67:15 68:5 70:8,18  
 72:20 74:1,6 75:6  
 76:7,7 79:14 80:12,15  
 80:20 81:5,19 82:10  
 82:13,17 88:15 89:5  
 91:6,14 92:12 96:5,19  
 116:1,2 132:3 133:13  
 133:17 134:16 135:1  
 135:6,14 149:10,15  
 155:15 156:18 160:17  
 161:2,17 162:11  
 163:9 178:10 179:22  
 186:10 188:22 191:15  
 193:5,5,20 196:13  
 239:11 276:11 281:8  
 284:18 289:5 290:1  
 375:14  
**officer's** 76:16 85:12  
 141:14  
**Officer-in-Charge** 3:10  
**officers** 69:1 81:12  
 82:15 94:10 103:5  
 116:22 139:12 153:7  
 160:4,9 161:20 162:7  
 163:5 276:19 290:4  
 337:15,20  
**offices** 70:4 183:3  
**official** 48:8,12 49:1,13  
 50:21 51:6,9 83:3  
 220:9 230:7 231:13  
 232:10 360:9 369:19  
**officially** 61:20  
**oftentimes** 70:14 92:22  
 135:5 139:13 240:8  
 246:18 247:7 308:22  
**old** 54:12 78:2 104:5  
 130:18,19 141:20  
 273:1  
**older** 343:4  
**omnibus** 76:4  
**once** 182:8 215:15  
 221:22 285:1 319:8  
 319:11,12 322:4  
 342:9,16 383:4  
**one-size-fits-** 37:9  
**one-year** 74:9  
**ones** 28:12 54:7 125:14  
 261:18 266:9 284:20  
 326:19,21  
**ongoing** 59:19  
**onus** 292:7  
**open** 86:21,21 99:18

144:13 372:2  
**opening** 4:4 366:18  
**opens** 370:5  
**operate** 145:16,18  
**Operations** 2:19 3:17  
**opinion** 19:13 62:22  
 105:22 135:13 149:18  
**opinions** 31:14 141:9  
 228:1  
**opportunities** 164:8  
**opportunity** 11:19  
 14:11,13 67:12 68:11  
 90:20 92:4,12 94:20  
 106:19 163:8 165:3  
 167:17 169:14,21  
 174:13 190:17,21  
 191:20 207:12 210:6  
 224:19 226:16,17  
 233:1 237:11,15  
 239:21 240:3 258:13  
 258:18 269:6 280:2  
 290:22 307:10 325:4  
 361:7,8 384:7  
**opposed** 97:15 251:20  
 330:4 356:3 383:22  
**opposite** 121:20 293:2  
 307:19  
**opposition** 330:5  
 383:22  
**option** 201:16 231:20  
 264:19,22  
**options** 174:22  
**oral** 157:15 207:12  
 208:6  
**orally** 156:9 157:8  
**oranges** 30:3  
**order** 14:15 20:8 25:4  
 38:2 79:21 98:5,14  
 148:2 174:2 204:12  
 205:8,15 219:22  
 228:4 231:22 232:4  
 246:21 260:19 283:11  
 283:11 284:19 292:16  
 304:22 307:19 308:11  
 310:3,6,9,19 311:11  
 313:14,17 315:19  
 345:14 373:7  
**ordered** 248:6  
**organization** 3:10 4:8  
 4:18 5:11 8:9 11:2  
 204:11 241:9  
**organization's** 8:11  
**oriented** 158:15,17  
**original** 13:19 71:17  
 77:16 144:10 165:11  
**originally** 71:6 79:5  
 123:16 145:10  
**OSI** 202:4 206:4,6

**ostracism** 34:17 35:6  
**ought** 380:2,5 382:18  
**outcome** 25:16 51:12  
 172:21 233:19 267:9  
 352:12 358:11  
**outcomes** 15:12 22:11  
 277:2,3 351:8,11  
 357:8  
**outlier** 105:12 165:16  
**outlining** 349:13  
**outlying** 296:15  
**outside** 58:18 96:4  
 108:4 198:11 217:2  
 241:20 291:10  
**outstanding** 140:8  
**over-representation**  
 336:2  
**overall** 16:4,11,19  
 17:22 18:18,21 34:19  
 35:1 39:18 83:22  
 119:2 160:12 178:18  
 182:15 235:4 325:19  
**overcome** 244:18  
 314:12  
**overcoming** 193:8  
**overlap** 185:17  
**override** 245:15  
**overriding** 380:4  
**overrule** 137:21 320:17  
**overruled** 136:18  
**overseas** 134:7  
**overseeing** 34:8  
**overturn** 251:18 329:12  
**overturned** 148:18  
 249:5,11,14 252:22  
**overturning** 249:19  
**overview** 4:6 7:13,21  
 19:10  
**overwhelm** 242:11  
 288:3  
**overwhelming** 253:7  
 382:17  
**Overwhelmingly**  
 258:10  
**owned** 130:21

---

**P**

---

**P** 3:1  
**P-R-O-C-E-E-D-I-N-G-S**  
 6:1  
**p.m** 241:4,5 328:14,15  
 384:16  
**package** 112:22  
**packet** 378:5,8  
**page** 4:2 5:1 133:11  
 280:6 299:2  
**pages** 86:12 348:3,3  
**pain** 200:5 225:20

**paint** 268:17  
**panel** 4:10,13,18 8:20  
 16:17 29:7,8 64:20  
 104:13 117:11 120:10  
 120:18 166:8 170:11  
 170:13 171:9 227:15  
 240:17 241:7 254:20  
 256:14 270:19 287:14  
 295:2 298:17 302:19  
 303:7 304:15,16  
 305:21 306:16 308:6  
 308:6 312:12 313:22  
 323:20 324:17 366:18  
 367:12 384:5  
**panelists** 8:10  
**panels** 8:6 119:22  
 120:3 302:21,22,22  
 304:8,11  
**paper** 67:4 72:4,13 86:2  
 86:12 178:8 260:1  
 264:19 270:1 271:3  
 274:15 275:19 276:22  
 280:6  
**papers** 271:6 289:11  
**paragraph** 11:6  
**paragraphs** 11:11  
**paralegal** 2:4,7 260:19  
 326:5  
**parallel** 271:16  
**parallels** 247:6  
**parameters** 133:17  
 224:11  
**pardon** 333:6  
**parlance** 55:4  
**arsing** 358:10  
**part** 39:20 46:3 57:7  
 61:10 69:12 80:8  
 83:17 103:8,8 126:1  
 190:4 192:17 197:22  
 208:9 225:14 249:13  
 256:8 275:13 287:9  
 288:22 289:18 348:8  
 349:6 352:8 362:15  
 364:15 367:16 373:7  
**parte** 189:14 262:18  
 287:21 288:1  
**participant** 107:22  
 247:20 250:5  
**participants** 239:20  
**participate** 8:16 104:17  
 106:17 107:8 109:21  
 113:13 114:3 135:8  
 166:14 167:17 168:22  
 169:21 171:7 199:21  
 204:5 205:4 211:11  
 244:2,7,22 245:6  
 248:1 269:9,10  
**participated** 195:21

**participates** 207:2  
**participating** 330:13  
**participation** 83:5  
 211:1 244:5  
**particular** 40:2 58:13  
 59:14 72:22 79:20  
 82:1 90:3,16 119:11  
 127:7 128:14 152:1  
 177:19 202:2 207:21  
 234:12 235:12 304:3  
**particularly** 54:10  
 70:15 88:18 89:17  
 92:16 93:5 103:20  
**parties** 54:20 69:3  
 74:19 93:15 355:14  
**partner** 341:18  
**partners** 355:15  
**parts** 74:19 248:18  
 252:5 296:21  
**party** 46:17 47:4 96:4  
 210:1 217:22 221:19  
 291:6  
**pass** 57:10  
**path** 232:20 233:3  
 376:10 382:22  
**pathways** 83:9  
**Patricia** 2:4  
**Patrick** 2:21  
**pattern** 59:13 261:19  
**patterns** 123:6 353:3  
**Paul** 1:17 2:16 6:11  
 11:17  
**pay** 245:5 337:8,16  
**paying** 229:4  
**PC** 72:1 78:9 129:9  
 146:17 150:16 153:14  
 153:14,20 154:3  
 186:9,10,13 191:14  
 242:12,15,16 258:8,9  
 279:17 284:4,11,21  
 285:2 288:3 322:18  
**PCS** 200:6 247:1  
**PCS'd** 316:15  
**peacetime** 145:17  
**peak** 337:14,15,19  
 338:13  
**peculiar** 262:19  
**peers** 233:11  
**pending** 14:17 129:14  
 129:18 247:3 329:20  
**penetrative** 13:14,16  
 15:12,18,19 16:1,5,7  
 16:9,14,22 17:20,21  
 18:1 19:10 20:9 21:11  
 24:16,17,22 28:8  
 70:16 88:18 332:11  
 335:1,7,10 337:2  
 342:2,4 343:13

344:16 345:2,8,9,12  
 346:4,11,12,16,18  
 347:5 349:19 351:10  
 352:22 353:18 354:19  
 355:2,6 357:14,18  
 359:4,5,11 371:1,1,5  
 371:6,12  
**people** 8:17 26:1 34:7  
 53:5 57:1,3 80:2  
 86:10 98:6 101:12  
 102:6 103:7 104:11  
 125:7 130:18 131:16  
 134:6 181:6 185:11  
 185:16 199:1 201:9  
 219:6 230:14 238:4  
 248:10 256:2 272:1  
 296:18 299:3,16  
 319:10 321:8,10  
 322:10 328:11 330:11  
 338:3 363:7,7 364:9  
 364:13 379:6,17  
**perceive** 169:7,12  
 230:14 368:3  
**perceived** 37:11 47:4  
 64:10 102:15 195:4  
 219:4 221:15,21  
 368:12  
**perceives** 171:18  
 219:11 220:22  
**percent** 15:18,20 16:2,5  
 16:10,12,18,20 17:17  
 17:18,20 18:5,6,7,21  
 18:22 19:4,4 21:13,13  
 21:18 22:2 24:9 28:11  
 29:22 30:2 35:4 36:5  
 36:11 56:4,6 57:8  
 112:21 298:11 305:15  
 306:4 307:8 308:6  
 310:1,14 331:20  
 332:17,19 333:4,7,9  
 333:22 335:8,11,19  
 336:1,21,22 337:5,6  
 338:12 339:5,10,11  
 340:10,11,12,19,19  
 340:20,21 341:5  
 342:3,4,14,14,15  
 343:9,10,12,14 349:4  
 359:6,8 360:2,4 374:5  
 374:6,6,17,20,21  
 382:12  
**percentage** 11:8 14:2  
 21:9 33:6 34:21 37:14  
 42:10 54:7 58:19 59:4  
 335:15,22 338:19  
 340:4 341:4 342:5  
 374:13 382:7  
**percentages** 13:19,21  
 13:22 35:2 42:20

336:16 342:6,14,18  
 374:18  
**perfect** 71:20 88:5  
 102:18 103:1 128:10  
 131:2 164:4 269:6  
**perfected** 260:22  
**perform** 294:21  
**performance** 45:9,15  
**performer** 45:14,16  
**performing** 94:11  
**performs** 68:20  
**perfunctory** 276:2  
 309:7  
**peril** 93:19  
**period** 9:8 13:9 39:2,11  
 40:13 52:22 74:9  
 145:13 153:3 172:15  
 246:16 377:3 381:5,6  
**perjury** 50:20 51:9  
**permanent** 174:15  
 200:7  
**perplexing** 251:11  
**Perry** 264:22  
**person** 26:2 42:11  
 49:11,15,22 50:2,13  
 57:9,17 89:9 116:5  
 142:21 148:2,7 161:7  
 163:18 198:16 201:1  
 203:9 206:3 216:12  
 243:3,11 254:19  
 272:5 282:13 293:8  
 299:1 305:4 378:9  
**person's** 204:21  
**personal** 192:6 197:19  
 223:15  
**personally** 79:17 219:1  
**personnel** 64:5 153:7  
 161:4 162:18 164:13  
**perspective** 35:16  
 36:15,18 60:12 79:19  
 108:11 112:1 125:4  
 129:2 136:15 166:12  
 166:21 184:7 186:21  
 221:3 223:7 224:18  
 228:8 240:2 257:6  
 302:17 325:7 382:6  
**perspectives** 4:10,13  
 4:18 29:13 65:3  
 159:11 223:4 241:8  
**pervasive** 205:18  
**Peters** 2:6 65:11,12,13  
 104:10,14 156:2,5  
**Pflaum** 2:21 65:10  
 66:15,16 68:2 75:14  
 83:12 93:17,21 96:17  
 99:3 111:22 117:5  
 118:15,16 120:16  
 121:4 126:21 127:3

135:4 138:5 151:2,19  
 156:15  
**PHO** 92:12 93:7 94:11  
 98:11,12,13,13 129:4  
 129:6 135:19 144:2  
 147:16 163:1 176:16  
 177:2,17 186:8,13  
 195:1 210:11 243:10  
 244:13,13 249:21  
 250:18 252:11,14  
 257:10,19 258:8  
 259:13 262:11 264:7  
 275:11 276:12 278:11  
 278:12 282:12 286:15  
 287:5 288:4 293:11  
 294:17 295:6,9,19  
 318:2  
**PHO's** 92:17,22 136:4  
 157:19,21 187:20  
 210:15 245:17 251:11  
 251:18 264:14  
**phone** 74:8 143:3  
 221:22  
**PHOs** 163:7 254:21  
 263:22 275:9 277:7,8  
 278:19,21 279:5  
 291:13  
**physical** 175:4 294:11  
**pick** 255:1,4 259:16  
 260:6 304:10  
**picture** 331:15  
**piece** 11:7 209:17  
 260:14 275:19 286:12  
 293:1 326:17  
**pieces** 24:10 74:22  
 257:1 276:3  
**pig** 146:15  
**piggyback** 117:5  
**piggybacks** 171:2  
**pinned** 190:18  
**Pitvorec** 3:5 65:8 69:14  
 73:12 75:22 76:22  
 79:9 88:14 100:3  
 105:11 114:12 123:14  
 128:9 130:1 133:8  
 140:18 142:7 153:11  
 157:11  
**place** 33:7 52:2 83:1  
 86:18 127:7 178:19  
 198:18 243:6 323:21  
 324:5,22 373:17  
**placed** 246:22  
**places** 143:4 286:16  
**plagiarize** 299:9  
**plan** 5:3 9:2 207:19  
**planned** 117:16  
**planning** 5:16 193:19  
 330:6

**plans** 60:9  
**play** 97:11 102:13  
 241:20 253:6,15  
 294:14 316:7  
**playing** 272:19  
**plays** 131:8  
**plea** 93:8,8 301:18,19  
 302:5 303:4,17,19  
 331:22  
**plead** 319:16 331:18  
**pleas** 344:5 346:2  
**please** 7:2 9:13 35:9  
 241:14 265:3 284:7  
 330:12,15  
**plenary** 86:19 144:11  
**plenty** 300:6  
**plus** 200:13 258:11  
 310:8  
**pluses** 102:19  
**point** 23:18 26:12 27:22  
 33:4 34:9 37:7 51:18  
 53:10 56:14 61:18  
 69:18 70:13 73:15  
 75:19 86:2,5 93:19  
 94:14 95:7,8 100:5  
 103:15 109:9 116:17  
 121:17 127:21 139:3  
 144:7 149:15 168:8  
 174:21 180:17 187:17  
 194:17 195:3 203:20  
 208:16 224:3 239:5,6  
 239:9,22 244:22  
 247:5 269:3 285:14  
 294:20 297:19 304:3  
 309:3 318:15 338:5  
 348:1,4,9,19 349:5  
 360:5 367:4 369:22  
 373:13 383:16  
**pointed** 118:7  
**pointing** 136:21 361:2  
**points** 68:2 69:18 79:10  
 90:8 93:2 169:20  
 308:17 348:16  
**police** 196:20  
**policies** 152:9  
**policy** 2:13,15,17 3:2  
 34:10 37:21 59:9  
 60:20 66:20 102:11  
 103:10 112:2 125:13  
 126:7 148:10 152:16  
 155:8 201:12 244:6  
 262:9 379:4  
**political** 320:11  
**pool** 359:3 373:7,19  
**population** 359:20  
 360:3  
**portion** 84:17 349:13  
**portions** 72:18

**poses** 204:14  
**position** 50:7 81:11,22  
 109:18 160:14 202:21  
 222:11 226:20 234:19  
 253:3 268:16,20  
 271:20  
**positions** 316:16  
**possess** 139:8  
**possibility** 116:17  
**possible** 55:9 58:22  
 80:16 99:9 129:7  
 138:10 207:8 232:16  
 247:15 296:5 323:13  
 344:2 365:5  
**possibly** 226:11 338:17  
 345:5  
**post** 131:16 148:3  
 265:2  
**post-** 188:15  
**post-32** 137:8 267:7  
 269:11  
**post-discussions**  
 192:7  
**Post-referral** 355:22  
**post-referral** 132:17  
 133:3  
**post-that** 164:18  
**post-trial** 172:21  
**posted** 7:4 133:15  
**posture** 279:16  
**potential** 35:19 163:6  
 167:18 212:12,14  
 213:10 233:20 240:19  
 375:20  
**potentially** 13:3 38:16  
 178:22 179:2 210:14  
 218:5 234:8 243:3  
 329:16 367:19 375:17  
**Powell** 2:7  
**power** 81:20 131:3  
 261:12  
**powers** 96:19 101:1  
 276:10  
**practically** 210:10  
**practice** 94:5 112:3  
 118:8 156:5 234:13  
 264:22 299:19  
**practitioners** 176:22  
 183:1  
**pre** 265:2  
**pre-2014** 77:19 88:11  
 158:8  
**pre-referral** 133:5  
**pre-trial** 142:21  
**preceded** 56:5  
**precedent** 264:15  
**preceding** 36:12  
**precluded** 239:17

**precocious** 121:16  
**predictor** 352:1 353:15  
**predictors** 196:19  
**prefer** 126:15 149:13  
 213:5 223:8 225:13  
 260:7,9 307:1 324:1  
 365:3  
**preference** 108:14  
 112:5,21 152:22  
 190:3,6,14 192:12,19  
 201:20 241:20  
**preferences** 197:9  
 202:22  
**preferral** 95:13 126:16  
 127:13 128:10 129:1  
 153:2 260:11,21  
**preferred** 17:1 127:22  
 142:19 260:16 309:2  
 322:4 331:4 332:12  
 337:2,9 344:16 345:7  
 345:14,19 347:6  
 375:12  
**preferring** 128:12  
 142:20  
**prejudice** 75:12 76:8  
 95:10 264:3  
**prejudicial** 300:16  
**prelim** 137:5  
**preliminary** 66:1,4 68:4  
 69:1,7,13 70:18 76:2  
 76:4,16 79:13 80:12  
 80:15,20 81:5,11,19  
 82:10,13,15,17 88:15  
 89:5 91:6,14 92:6,11  
 126:12 132:2 133:13  
 133:17 134:16 135:1  
 135:2,6,9 136:17  
 139:12 141:14 142:18  
 147:1 149:9,15 160:4  
 160:8 161:2,17,20  
 162:7,11 179:22  
 188:16,21 191:14  
 193:19 276:10,18  
 279:12 281:8 288:7  
 329:2  
**prelims** 273:19  
**premise** 268:15  
**preparation** 226:8  
 277:19  
**prepare** 92:12  
**prepared** 260:20  
**preparing** 194:19  
 222:14 226:7  
**preponderance** 148:8,9  
**present** 1:14 2:12 3:21  
 6:10 26:18 67:12  
 73:18 86:22 90:16,19  
 90:21 94:20 106:22

129:1 139:5 147:15  
 169:14 190:17 194:21  
 207:1 251:15 258:18  
 262:17 268:16 280:1  
 293:3 306:22  
**presentation** 4:5 5:2  
 8:22 288:1 330:2,22  
 332:2 335:14 339:22  
**presented** 27:13 68:13  
 74:5 79:13 80:20 92:5  
 94:19 118:21 126:11  
 179:11 188:21 194:16  
 212:2 251:10 288:18  
**Presenter** 5:11  
**presenting** 7:6 100:9  
 269:3 293:12 308:8  
**presents** 271:12  
**presiding** 1:13  
**pressure** 284:13 311:16  
 311:17,17,21 312:7  
 312:11,13,17 313:1  
 313:12 314:4,6  
 315:15 316:8 318:21  
 319:2,19 320:10,11  
 320:22 321:2,3  
 322:14 323:2,5,5  
**pressures** 314:13  
 318:16  
**presumably** 43:21  
**pretend** 299:14 363:21  
 365:3  
**pretended** 364:1  
**pretrial** 128:21 260:13  
 288:8 345:21  
**pretty** 126:4 166:18  
 195:7 198:16 227:5  
 231:3 303:7 323:6  
 332:4 368:22 374:2  
**prevent** 128:1  
**Prevention** 2:15  
**previous** 17:11 36:7,20  
 45:4 189:5 341:1  
**previously** 16:11 65:19  
 80:21 106:10,11  
 165:22 224:12 337:14  
**primary** 291:9,11  
**principally** 286:7  
**print** 133:11  
**prior** 36:12 40:5 83:13  
 89:14 91:17 103:16  
 126:16 130:3 131:2  
 132:16 139:5 153:2  
 154:20 161:21 190:11  
 192:9 207:16 213:2,6  
 224:20 285:17 288:3  
 294:11 297:13 369:2  
 383:10  
**priority** 314:16



**privacy** 177:16 198:20  
**private** 273:13  
**privy** 188:15 189:2  
 190:19  
**proactive** 326:13  
**proactively** 183:11  
**probability** 106:13,14  
 110:13,17 111:16  
 115:17 116:15  
**probably** 22:15,19  
 33:11 35:5 69:14  
 89:20 104:6 107:5,6  
 107:15 108:15 123:14  
 124:14 140:19,20  
 165:15 172:15 211:4  
 228:16 231:3 251:3  
 272:16 293:9 297:10  
 304:12 360:4  
**problem** 19:15 28:1  
 194:4 204:10,14  
 205:13 240:19 339:6  
 346:10 350:4 366:17  
 367:16  
**problematic** 107:18  
 108:5 148:15 242:15  
 262:4 307:6 314:3  
 326:2 327:21  
**problems** 136:21  
 231:11 271:21 326:11  
 345:15 361:2  
**procedural** 66:18 67:7  
 90:6  
**procedurally** 91:3  
 172:16  
**procedure** 182:11  
 250:5 288:10 301:6  
**procedures** 224:14  
**proceed** 85:2 138:19  
 311:17  
**proceeded** 311:19  
**proceeding** 54:18  
 113:11 129:15 140:10  
 140:13 153:9 179:15  
 250:7 312:1  
**proceedings** 54:16  
 57:20,22 63:17 67:15  
 99:16 100:1 177:9  
 195:5 233:20 274:5,6  
 291:1  
**proceeds** 95:18 262:13  
**processed** 39:9 45:3  
**processes** 128:13  
 224:14 308:14  
**processing** 182:12  
 196:16  
**produce** 272:4 276:12  
**produced** 329:8  
**product** 327:2 383:17

**products** 128:5  
**professional** 220:9,13  
 220:19 221:20  
**professionals** 19:12  
**profound** 245:21  
**program** 3:7,8,9,15  
 4:14 8:8 110:20 111:6  
 159:12 166:11 181:3  
 223:9 233:5 313:8  
**Programs** 3:19  
**progress** 233:2 299:4  
 328:21  
**progression** 234:7  
 235:4  
**prohibit** 153:6 253:9  
**prohibited** 253:8  
**project** 125:14 341:20  
**projected** 382:18  
**promise** 15:7 229:7  
**promotion** 234:2  
**promotions** 316:19  
**pronounce** 32:3  
**proof** 136:22  
**Prop** 273:15  
**proper** 189:8 194:14  
 285:9  
**properly** 188:4,5 190:5  
 190:13 194:16 320:10  
**prophecies** 120:2  
**proponent** 35:14  
**proportion** 338:9  
**proposed** 330:3,7  
 367:1  
**prosecute** 199:9 216:4  
**prosecuted** 214:20  
 225:17 284:3  
**prosecuting** 185:16  
**prosecution** 1:3 6:7,21  
 83:18,18 84:5 88:6,13  
 95:3 136:19 140:5  
 162:4,15 181:21  
 187:1,6 194:20 196:4  
 196:18 268:19 296:20  
 318:1 382:15  
**prosecutor** 124:19  
 135:10 161:11 196:21  
 297:9  
**prosecutorial** 58:10  
 182:13 250:15 261:11  
 288:22 318:2  
**prosecutors** 96:3  
 106:15 184:11,12  
 185:6 247:21 296:2  
 296:10 317:13  
**protect** 144:11 168:2  
 198:20 207:5 208:1  
 208:12 216:19,20  
**protected** 196:9 217:7

**protecting** 221:13  
 299:5  
**protection** 87:13 88:7  
 216:22 279:13 286:8  
 286:9  
**protections** 78:1 147:6  
 167:12 214:8 215:3  
 224:15  
**protective** 246:20  
**prove** 238:16 305:4  
**provide** 7:12 11:20  
 27:18,22 30:19 50:6  
 66:11 68:12 74:10  
 81:1 82:20 88:15 89:2  
 89:4 92:22 93:15  
 98:16 131:18 134:10  
 134:14 137:21 140:6  
 144:14 157:14 161:14  
 174:1 189:6 191:1  
 192:16 201:14 202:17  
 204:6 294:14 313:13  
 317:14 348:5 371:7  
 383:7  
**provided** 11:18 31:16  
 43:11 66:6 70:7 91:16  
 112:22 133:12 134:19  
 152:22 175:3 178:15  
 183:17 192:13 193:1  
 250:12 260:18 289:2  
 340:9 380:22 382:1  
**provider** 131:18  
**provides** 84:10 89:1  
 90:14,15 92:3,11  
 206:8 215:2  
**providing** 67:18 68:5  
 83:22 90:12 119:8  
 121:17 187:9 192:20  
 198:5 199:15 251:8  
 278:11 285:7 288:15  
 317:21 380:17  
**provision** 201:4  
**provisions** 75:4  
**prudent** 183:7  
**psychological** 41:9  
**public** 1:6 5:19,22 6:5  
 9:7,8,9,12,15,18 10:6  
 14:14 328:21 365:12  
 383:8 384:6  
**publicity** 311:15 312:1  
**publicly** 240:10  
**published** 24:14 340:13  
**pull** 23:13 25:13 39:1  
 74:11 79:18 164:12  
 350:17 370:22 371:5  
 373:18 377:8 378:6  
 379:11,14 383:1  
**pulled** 39:3,3 50:2  
 52:22 246:19 373:1

373:22  
**pulling** 36:4 41:20  
**pulls** 32:1  
**punish** 62:9  
**punished** 14:1 49:15  
 53:6 362:7 374:21  
**punishment** 42:4 45:10  
 61:7 221:4 232:9  
 322:12 374:11 376:17  
 378:19 379:1,18  
**punitive** 230:18 320:13  
 351:13 353:11 355:1  
 355:16 356:1 377:14  
**pure** 142:13  
**purple** 378:12  
**purpose** 71:18 328:19  
**purposes** 25:22 28:3  
 61:14 71:19 225:4  
 263:19  
**pursuant** 262:22  
**pursue** 204:7,9  
**pursued** 196:8  
**pursuing** 200:4  
**push** 100:7 144:18  
 167:5  
**pushed** 199:8  
**pushing** 100:16 101:6  
 101:18  
**put** 10:14 51:19 69:6  
 71:13,22 73:2 120:2  
 141:7 149:7 185:21  
 197:16 200:6 205:9  
 231:19 253:13,15  
 259:14 267:5 271:6  
 271:17,18,22,22  
 272:3,9,10,11 277:19  
 277:22 278:8 279:12  
 280:5,7,7 292:2  
 305:21 313:8 329:22  
 340:16 347:10 350:7  
 363:7 371:19 383:6  
**puts** 23:20 74:16  
 324:15  
**putting** 223:15 241:16  
 253:1 295:15,17  
 305:5

---

**Q**


---

**qualifications** 82:9  
 277:10  
**qualified** 92:4 93:10  
 132:13,14 139:12  
 166:10 184:12 275:9  
**qualitative** 354:10,10  
**quality** 171:3 184:14,20  
**queried** 111:2  
**queries** 228:4  
**question** 4:9 22:8 24:6

29:16 30:4 43:3 46:6	128:3,4,9 148:16	<b>ready</b> 10:2 29:7 137:1,3	95:19 98:9 99:6
48:15 49:6 53:15	161:13 296:22 329:9	192:21 226:4,10	122:12 124:4 152:12
65:16,22 83:15 85:21	329:18 331:2	260:19 261:1,6,13	153:13,15,16 163:11
86:16 102:5 104:14	<b>raises</b> 127:20 242:22	306:20 327:7	178:12 194:1,7 195:2
105:6 117:18,21	<b>raising</b> 215:18 315:6	<b>real</b> 62:4 142:3 163:4	249:4 251:12,18
121:5,10 123:16	<b>ran</b> 28:18 344:21	215:9 313:6 325:17	252:20 259:13 260:2
126:13 133:7 137:16	<b>range</b> 117:12	333:16 339:1 380:21	262:14 277:15 282:6
139:19,20 140:12	<b>rank</b> 94:10 116:7 232:7	<b>realistically</b> 150:7	284:18,21 285:3
144:21 150:18 151:13	<b>ranks</b> 369:8	<b>reality</b> 35:1 104:1 115:8	286:17 294:19 295:5
151:14 152:8,10,19	<b>rape</b> 322:11 327:18	125:11 345:6	322:6 365:20 370:2
153:12 154:7 156:1	<b>rare</b> 109:17,17 151:8,12	<b>realize</b> 30:3 150:22	371:19 379:13
166:10 181:14 203:18	152:2,19 195:8	200:16	<b>recommendations</b>
207:3 208:9 212:20	220:10,13,18 249:5	<b>realized</b> 269:12 341:14	77:11 96:13 122:10
216:14 222:19 228:17	<b>rate</b> 16:4,9,12,13,18,19	<b>realizing</b> 18:1,20 58:18	182:19 361:12 379:8
228:21 235:16 238:13	16:20 17:6,10,18,22	<b>realm</b> 198:3	<b>recommended</b> 228:8
245:9 248:17 249:14	18:18,21 21:6 22:2	<b>reason</b> 33:21 67:21,22	252:14 383:15
250:3 254:6 264:17	28:4 103:22 134:6	125:22 129:4 183:8	<b>recommending</b> 216:12
267:17,21 268:15,15	197:4 235:17,22	238:1 254:2,9,11	302:18 383:2
276:7 277:14 278:12	237:22 238:10 253:21	259:14 274:2,10	<b>recommends</b> 249:19
289:4 291:19 292:13	283:17,22 284:1	332:21 343:20	250:15,18 262:11
292:19 295:22 297:6	298:11,16 299:15	<b>reasonable</b> 36:16 78:20	281:9
300:1,8,19 301:11	301:21 302:3 305:16	115:16 116:15 118:2	<b>record</b> 23:11 59:19
305:16 320:9 323:11	307:8 308:5 310:18	119:7 120:4,9,11,21	69:15 72:6 98:21
331:1 349:16 356:9	311:13 331:21 332:5	120:22 122:6 123:17	159:7 233:15,22
372:1 375:6	343:4,6 353:8 356:15	124:16 125:6,19	234:4 235:3 241:4
<b>questionable</b> 266:11	356:20,21 359:15,15	136:2,11 148:10	328:14 348:19,22
279:8	359:16	237:6 238:17 335:5	349:1 384:16
<b>questioned</b> 368:13	<b>rates</b> 4:5,11,15,19 5:14	<b>reasons</b> 42:22 128:8	<b>recorded</b> 92:8
<b>questions</b> 5:13 8:2,10	7:7 8:14 15:5,11 65:5	132:12 153:21,22	<b>recordings</b> 276:5
8:12 9:6 14:17,20	113:16 114:7,8	158:3 165:6 166:7	<b>records</b> 41:20 42:9
19:22 22:6 47:17	159:14 166:18,19,19	197:11 198:15,22	327:22
85:11 150:2,4 155:7	237:13 241:10 251:3	199:10,14 200:10	<b>recover</b> 198:6 202:21
155:20 157:19 158:7	272:18 274:21 298:9	279:10 364:19	202:22
158:16 168:5 178:16	306:3 323:16 331:3	<b>recall</b> 316:12 368:7	<b>recovery</b> 171:4,8,20
256:19 263:3 275:15	343:21 358:3	<b>recantation</b> 46:8	<b>recruiter</b> 205:2,5
275:18 318:4 319:17	<b>raw</b> 235:19 336:16	<b>receive</b> 8:21 57:1,3	<b>recruiting</b> 328:2
327:1 329:9,16,18,20	<b>re-live</b> 200:5	61:7 76:16 155:1	<b>red</b> 236:11
334:12 360:15 370:5	<b>re-prefer</b> 264:5	336:17 362:13 378:19	<b>reduce</b> 184:15
380:1	<b>re-preferred</b> 264:13	<b>received</b> 9:9 33:9 36:6	<b>reduced</b> 67:7 353:20
<b>quick</b> 215:9 261:2	<b>re-victimize</b> 204:18	36:9 52:11 57:8 65:17	<b>refer</b> 44:20 84:11 113:4
325:18 328:20	<b>re-victimizing</b> 205:12	118:22 143:4 205:1	150:10,17 151:5,6
<b>quickly</b> 180:17 198:13	225:6,8	208:22 214:21 215:11	152:15 167:6 214:6
202:4	<b>reach</b> 130:21 187:22	304:4 327:16 332:7	281:9 317:18 320:17
<b>quite</b> 41:5 57:2 87:4	255:7,10	359:3 370:2 374:10	320:18
117:17 261:5 266:9	<b>reached</b> 51:13 181:3	379:1,20	<b>reference</b> 65:16
302:16 325:19 334:5	237:5	<b>receiving</b> 14:4 332:15	<b>referenced</b> 287:15
<b>quote</b> 243:21	<b>react</b> 224:22	<b>recipient</b> 230:20	<b>referral</b> 85:7 91:17
<b>quote-</b> 131:1	<b>reaction</b> 235:13 267:19	<b>recognized</b> 207:11	104:15 105:10,13
	<b>read</b> 26:4 72:16 86:11	<b>recognizing</b> 297:5	113:17 115:4 130:7
	101:4 156:10 157:1	<b>recommend</b> 88:17	130:22 131:2,10
	157:18 158:15 166:20	153:20 234:18 258:1	132:16 133:1 142:1
<b>R</b> 1:20	237:20 238:12 241:17	288:6 346:15 360:21	175:11 217:11 236:3
<b>R.C.M</b> 68:10 94:13	263:17 271:7,8	361:4 363:1 377:11	238:17 241:18 264:16
129:15 287:18	346:10 365:13	378:17	<b>referred</b> 15:13,17 16:5
<b>racial</b> 300:18	<b>readily</b> 119:3 379:11	<b>recommendation</b> 47:15	16:7 17:14 24:15 95:5
<b>radical</b> 98:3	<b>reading</b> 10:11 79:21	68:7 71:1 75:15 81:6	95:15 104:19 130:11
<b>raise</b> 129:21 160:3	179:20	84:18,19 85:3,18 89:8	218:2 241:18,21
239:6	<b>reads</b> 157:7	89:10 91:8 92:18	289:15 331:5,14
<b>raised</b> 117:20 118:1			

346:2  
**referring** 114:19 218:6  
 312:5 317:9  
**refers** 132:5  
**reflect** 13:22  
**reflected** 32:18 251:2  
**refused** 284:14  
**regard** 87:11 88:8 92:2  
 107:17 108:7 167:15  
 353:10  
**regarding** 4:11,15,19  
 5:13 8:11 9:1 65:4  
 159:13 168:6 177:14  
 191:4 192:11 212:20  
 224:9 231:19 241:9  
 242:2  
**regardless** 75:10 171:9  
 172:21 233:19 244:11  
 269:5 285:11 322:6  
**Reggie** 6:15  
**region** 212:5  
**Register** 384:6  
**regularly** 265:1  
**regulation** 57:19 63:21  
 156:12  
**regulations** 39:10  
 57:15 151:20 153:6  
**reinforces** 37:22  
**reiterate** 151:14 169:17  
**related** 38:16 40:9,16  
 40:16 45:18 48:9,12  
 61:20 165:6 323:16  
 355:5 358:2 364:12  
 364:17  
**relating** 49:6  
**relationship** 216:16  
 294:12 297:13 341:9  
 351:7 353:22  
**relatively** 97:15  
**relayed** 165:7  
**relevant** 67:16 74:2,17  
 74:22 89:7  
**reliable** 106:16  
**relief** 317:1  
**rely** 122:16 245:10  
 333:2 367:3  
**relying** 141:20 277:8  
**remain** 80:6 123:21  
 173:20  
**remained** 335:1  
**remains** 78:4 198:3  
**remarkably** 25:21  
**remarks** 4:4 10:2 14:22  
 85:14  
**remedies** 319:6  
**remedy** 266:22  
**remember** 128:4  
 172:13 173:11 252:7

**remembering** 181:2  
 299:6  
**remind** 97:1 342:19  
**remote** 99:16 100:1  
 162:14  
**remotely** 99:19  
**remove** 204:10 205:13  
**removed** 246:17 312:5  
 344:18,19  
**renewed** 76:9  
**reopen** 129:21 264:5  
**repeat** 205:6  
**repercussions** 155:11  
**rephrase** 222:19  
**replicated** 337:11  
**reply** 12:1  
**reported** 14:4 28:12,20  
 40:17,20 49:20 55:8  
 60:13 197:2 199:7  
 368:12  
**reporting** 29:20 34:15  
 39:7 40:6 52:5 53:2,5  
 177:21 199:5,18  
 341:14 362:13 365:11  
 365:19,21 366:3,21  
 367:5 371:16 381:14  
**reports** 12:4,9 41:4,6  
 46:2,3,17 52:13 62:9  
 185:21 186:1 200:13  
 201:2 206:13 227:17  
 238:5 289:4 329:2  
 349:19,19 350:10,13  
 361:5,6,9,17 363:14  
 382:2  
**represent** 187:18  
 212:13 336:14  
**representation** 212:4  
 217:3 299:16 339:8  
 340:17  
**representative** 111:7  
 166:21  
**representatives** 7:22  
 12:7  
**represented** 191:7  
 217:12  
**representing** 212:7  
 281:11  
**represents** 337:7  
**reprimand** 63:12,18  
 213:8 214:22 231:7  
 231:13 232:10,11  
 316:18 376:19 377:5  
 377:14 378:21 381:17  
**reprimanded** 377:1  
**request** 9:9,14 65:18,21  
 105:5 127:5 152:15  
 181:1 235:11 243:13  
 378:17

**requested** 11:14,22  
 12:6,11 174:18  
 361:17 379:6  
**requesting** 181:7 384:5  
**require** 13:6 46:7 54:14  
 95:12 99:7 140:13  
 164:14 262:20 290:13  
**required** 11:8 78:8 95:3  
 234:13 255:7 374:3,8  
**requirement** 58:2 59:19  
 66:21 82:16 94:1  
 164:11 303:16  
**requirements** 10:13  
 66:18 67:8 101:15  
**requires** 130:14 154:19  
 156:12 286:19  
**requiring** 179:4  
**requisite** 161:1,14,15  
**research** 118:4 176:1  
 196:16  
**reserve** 161:20  
**resides** 78:10  
**resist** 293:9  
**resolution** 175:13  
 319:14 320:8 322:1  
**resolve** 221:17 274:12  
 322:2  
**resolved** 28:9 207:17  
 210:3 344:15,17  
 345:2,9,13 346:11,13  
 346:17 347:7,15,19  
 350:3  
**resolving** 346:7  
**resource** 278:17  
**resources** 111:17 161:9  
 174:2,6,9 186:5 198:5  
 198:11 199:15,16,20  
 202:17 204:1,7 237:1  
 260:18 286:1  
**respect** 22:16 97:20  
 105:21 247:8 263:22  
 276:16 303:19 324:14  
 334:5  
**respected** 248:3  
**respectfully** 98:2  
**respective** 14:7  
**respond** 8:10 105:7  
 202:16 228:4  
**responded** 8:17  
**response** 2:15 60:9  
 65:17 74:3 104:16  
 110:21 133:6 171:3  
 228:10 241:16 318:16  
 367:1  
**responses** 5:12 8:12,19  
 9:6 30:21 32:19 65:16  
 160:2,7 235:10  
 237:20 241:19 250:10

250:12  
**responsibility** 98:10  
 129:17 146:2,13  
**responsible** 12:8 83:22  
 196:5  
**responsive** 28:4  
**rest** 107:2 245:1,10  
 279:20  
**resting** 146:14  
**restraining** 246:21  
**restraint** 97:8,16  
**restricted** 185:21 199:5  
 199:18 200:22 206:13  
 246:20  
**result** 10:5 14:8 38:18  
 62:1 66:22 75:12  
 109:3,16 110:18  
 128:19 135:21 171:14  
 172:19 185:9 196:22  
 216:20 237:9 240:8  
 261:21 262:3 324:5  
 376:11  
**resulting** 309:9  
**results** 23:10,22 29:14  
 194:10 268:13 311:10  
 321:8 348:12 351:1  
 351:17,20 356:6  
 369:2  
**resumed** 159:7 241:4  
 328:14  
**Ret** 1:19,20,20  
**retain** 139:16 262:6  
**retaining** 202:14  
**retaliation** 34:11,12,16  
 34:18 35:1 57:11  
 219:3,5,7,9,11,15,19  
 220:2,4,10,14,19,22  
 221:4,12,15,20,21  
**retell** 225:20  
**rethink** 268:19  
**reticent** 280:19 319:10  
 322:10  
**retires** 87:18  
**return** 122:6  
**reveal** 127:4  
**reverse** 129:8  
**reversed** 122:21  
**review** 4:22 8:22 9:21  
 14:11,12 58:6 66:8  
 72:4 85:6 122:19  
 123:11 131:22 151:4  
 197:1 235:19 312:13  
 328:21,22 329:19,21  
 347:9 349:22 361:17  
 368:21  
**reviewed** 12:3 13:20  
 43:10 66:2 69:21 70:7  
 151:10

**reviewing** 70:1 131:21  
 197:2  
**reviews** 13:12  
**revisit** 347:5  
**RFI** 104:15 160:2  
 241:19 332:16 333:19  
**RFIs** 241:16 304:19  
**rid** 137:19 178:21  
 284:19 285:21  
**rightly** 118:7  
**rights** 177:16 196:8  
 206:21 207:6,6,22  
 208:2,12 242:22  
 243:1 248:4 271:9  
 282:3 299:6 300:12  
 313:13,18 315:6  
**rise** 20:17 154:10  
**risen** 208:16,20  
**risk** 96:22 99:2 114:5  
 267:13 283:12  
**road** 42:21 45:1,11  
 139:6 265:4  
**roadmap** 93:1 296:5,10  
**robbery** 320:16  
**Robert** 3:1  
**robust** 104:4 276:17  
**Rodney** 1:20  
**ROI** 72:16 73:3,4,10,14  
 73:22 74:5 192:17  
 280:5  
**role** 77:5 81:15,15,18  
 94:11 139:7,16  
 140:14 150:6,16  
 160:17 186:14,18  
 187:4,7 188:18  
 190:10 192:9 209:21  
 241:20  
**roles** 162:16 176:21  
**room** 12:10 15:15 141:8  
 238:4 314:8  
**Roseanne** 3:13  
**roster** 246:22  
**roughly** 43:15 66:4  
 338:12 348:2  
**routine** 158:17  
**routinely** 114:15  
**Rozell** 2:7 349:11  
**rug** 365:17  
**rule** 66:10,10 94:1  
 280:12,12 282:19  
 288:6,8,8 292:20  
 293:10  
**rules** 68:10 135:2,5  
 190:16 253:9  
**ruling** 125:9 257:7  
**rulings** 77:12  
**run** 28:1  
**running** 211:17 365:1

**rush** 180:17  
**RVLC** 165:22

---

**S**

---

**S** 1:15  
**sacrificing** 180:12  
**sad** 42:10  
**safe** 16:21 66:17  
**safer** 327:6  
**safety** 34:6  
**sailor** 261:8  
**sake** 183:6  
**sample** 336:10  
**sanction** 353:11 354:15  
**sanctioning** 351:11  
**sanctions** 276:13  
 351:16  
**SAPR** 327:19  
**SAPRO** 341:12,14,19  
 350:16  
**sat** 160:16 368:22  
**satisfied** 115:3 184:1  
 365:10  
**saturated** 324:18  
**saturation** 324:15  
**Saunders** 2:8 159:20  
 159:20 241:15  
**savvy** 93:3  
**saw** 54:7 166:16 217:22  
 218:11 239:10 300:11  
 301:7 318:4 352:17  
 353:2 361:3 368:11  
 374:18  
**saying** 24:20 42:5 52:7  
 53:6 58:12 62:15  
 84:20 98:7 115:6  
 119:21 123:19,19  
 131:17 133:9 144:5  
 150:9 171:14 192:21  
 200:16 221:19 240:13  
 242:17 250:10 252:17  
 254:21 272:8 279:11  
 285:5,10 296:9  
 306:20 307:3,12  
 308:2 309:15,19  
 310:12 328:1 331:14  
 348:20 349:3 350:4  
 356:13 361:5 365:17  
**says** 50:3 53:19,22 78:5  
 101:6,18 104:16  
 132:4 144:1 149:11  
 170:11,13 186:10,13  
 201:5 203:4,9,10  
 205:3 206:5 209:8  
 256:20 261:5 265:16  
 278:12 280:4 284:20  
 285:20 289:5 293:1,2  
 325:7 347:15 376:21

**scale** 351:15 355:4  
**scan** 349:2  
**scary** 255:21  
**scenario** 38:5 91:4  
**schedule** 221:1  
**scheduled** 360:18  
**school** 146:17 232:17  
 232:19 234:3 279:1,2  
 377:7  
**Schrantz** 3:9 159:19  
 162:19 165:18 168:19  
 172:9 175:21 178:2  
 182:17,21 187:15  
 189:1,16,21 190:2  
 194:9 197:14 202:13  
 203:6,13 209:11  
 211:20 220:15 225:11  
 228:20 229:1,6  
 233:17 239:2  
**Schwenk** 1:20 97:18  
 98:8,20 142:5 176:11  
 177:10 229:3,13,19  
 230:2,5 231:1,9 233:4  
 233:7,12,15 236:6,10  
 246:7,10,13 325:11  
 333:5,12 343:22  
 344:4,12 346:9  
 347:12 360:13 365:8  
 365:16 366:5,13  
 380:2 381:22  
**science** 312:20  
**scientific** 119:17  
**scope** 87:15 117:22  
 160:8 217:3  
**scratch** 142:11  
**screen** 133:11 286:10  
**screening** 356:14  
**screw** 378:2  
**screwed** 231:10 378:2  
**script** 271:8  
**scrutiny** 317:8  
**seat** 297:20 325:8  
**SECDEF** 370:1  
**second** 98:5 107:19  
 125:10 150:19 151:13  
 151:14 152:8 154:7  
 204:15 206:18 208:8  
 219:22 249:10,13  
 252:17 295:4 324:21  
 335:17 353:15 356:18  
 383:21  
**secretary** 6:17,20 10:8  
 11:21 14:16 150:13  
 151:4 152:14,17  
 154:6 319:1 361:1,8  
 380:7 381:10 382:20  
**section** 7:18 10:21 75:1  
 104:11 117:19

**sector** 79:3 273:13  
**security** 246:18  
**seeing** 53:4 114:14  
 180:21 228:13 235:18  
 235:20 270:16 275:22  
 276:2 279:15 305:1  
 322:22 330:5 331:22  
 341:7 343:21 345:2  
 383:22  
**seek** 96:19 101:1 216:2  
 218:17,19  
**seen** 31:20 67:14 94:3  
 109:8 118:20 129:12  
 132:2 140:1,7 152:21  
 153:9 154:13 158:4  
 168:11 195:2 200:14  
 211:9 219:1,2,7,18  
 220:20 225:9 247:4  
 289:4 327:22 334:17  
**sees** 368:2  
**select** 66:7 276:3  
 304:16  
**self-fulfilling** 120:2  
**self-medicating** 39:16  
**self-medication** 38:19  
**self-reporting** 54:14  
**self-reports** 53:19  
**self-soothing** 38:19  
 39:16  
**sell** 310:10  
**send** 107:19 116:8  
 215:6 222:2 230:6  
 305:9 383:12  
**sending** 41:20 116:20  
 326:5  
**senior** 2:4,7 116:1  
 161:11 220:19 221:10  
 326:3  
**sense** 34:10,10 59:9  
 76:2 77:7 138:9  
 164:11 170:5 182:4  
 205:1 214:10 219:19  
 259:21 270:6 305:6  
 311:12,14 359:15  
 361:13 365:4,7  
**sent** 13:18 14:12 65:19  
 74:9 361:10 383:11  
**sentence** 303:10  
 354:18  
**sentencing** 22:20  
 351:15 355:4  
**sentiments** 69:16 155:7  
**separate** 13:7 42:6 43:1  
 152:3 172:7 173:16  
 173:19 174:20 185:7  
 215:4 247:6,9 354:9  
**separated** 42:11,21  
 152:4

- separating** 34:16  
**separation** 39:9 63:10  
 63:17 151:22 153:5,9  
 351:13 353:11 355:1  
 355:17 356:1 376:17  
 378:6  
**separations** 45:13  
 379:21  
**September** 12:1,2  
 383:8  
**serious** 16:1 17:17  
 18:10 20:13,16 24:15  
 117:10 214:11 218:4  
 289:7  
**seriousness** 98:2  
 108:20  
**serve** 26:14,16 91:5,14  
 139:16 154:10 161:1  
 294:1  
**served** 25:21 82:14  
 160:17 165:22 180:18  
 284:10  
**serves** 140:9  
**service** 3:14 4:18 7:22  
 8:9 12:7 27:15 29:7  
 31:11 39:10 42:22  
 62:17 99:9 105:20  
 107:4 111:10,11  
 145:5,13 151:18  
 153:6 156:12 170:16  
 171:14 173:13 175:14  
 210:18 233:21 241:8  
 269:2 281:11 292:4  
 294:6 313:16 333:19  
 334:5 335:16 336:3  
 338:10,12 350:11  
 352:3,10,13 353:13  
 358:5,9,11,15 367:19  
 368:1 377:13 381:16  
**Servicemember** 14:6  
**Servicemembers** 174:7  
 355:18 356:3  
**services** 3:18 8:6,7,8  
 11:13 12:4,15 13:16  
 14:3,7 26:18 28:2,6  
 30:20 31:6,8,10 33:3  
 33:22 34:20 43:5 46:1  
 46:4 57:2,5 60:19  
 65:17 70:14 72:11  
 74:14,20 75:21 76:20  
 80:10 81:1 100:7  
 101:5,17 105:7 107:2  
 134:5 148:9 154:12  
 162:16 175:9,12  
 197:3 199:17 200:15  
 214:5,7 215:7 216:3  
 217:1 227:18 250:12  
 270:3 275:1 276:21  
 279:20 284:7 323:17  
 329:8 333:2 334:9  
 336:5 337:2 346:7  
 348:5 356:12,16  
 358:7 359:8,12  
 361:11,15,19,22  
 370:4 371:21 372:2  
 372:10 374:2 378:14  
 378:18 379:8,10  
 380:19 381:2 382:10  
 382:19  
**services'** 4:10,13,18  
 5:12 9:5 14:11 65:3  
 159:11 241:8 382:6  
**servicing** 48:4  
**serving** 79:22 139:13  
 160:3  
**session** 4:9 9:3 14:15  
 188:16  
**set** 10:7 138:1 161:1  
 233:9 256:4 351:8  
**setting** 225:9  
**severe** 354:15  
**severely** 23:18  
**severity** 351:15 355:4  
**sex** 18:15 28:13 35:18  
 40:22 41:8 46:18  
 50:17 51:5,11 55:13  
 132:7 328:3 331:18  
 332:20 336:20 339:9  
 369:15  
**sexually** 48:20,21  
 203:10 366:6  
**Sgt** 1:19 27:2,4  
**shake** 168:17 175:17  
 176:8  
**Shanell** 3:18  
**shape** 363:20  
**share** 25:11 29:13  
 300:3 323:17  
**SharePoint** 25:9,10  
**sheet** 20:11 27:21  
 32:11 333:18 375:12  
 375:15 376:10  
**shift** 341:6  
**shifted** 337:19  
**shifting** 338:15  
**short** 29:3 156:2 157:11  
 270:8 315:3  
**shortened** 182:15  
**shortly** 175:13  
**show** 76:6 142:13  
 292:10 296:9 300:14  
 305:10 332:4 340:19  
 360:7  
**show-cause** 153:8  
**showcase** 117:2  
**showed** 29:22 30:1  
 348:15  
**showing** 143:11  
**shows** 181:7 265:9  
 305:19 307:9 346:6  
**shrink** 178:22  
**shuffle** 72:13 382:9  
**shut** 186:4 201:7,15  
 203:3 204:13,20  
**shutting** 201:18  
**side** 15:15 109:11  
 113:15 191:4,5 204:8  
 204:16 216:9 266:10  
 324:16  
**sidebar** 312:4  
**sides** 96:3 319:18  
**sight** 293:21  
**sign** 328:2 369:10  
**signal** 136:5  
**signed** 375:14  
**significance** 98:4  
**significant** 59:22 66:19  
 67:1 97:13 107:15  
 128:2 135:18 160:18  
 167:11 168:1 173:8  
 173:14 181:2 192:3  
 334:10 355:9 356:11  
 367:22  
**signing** 136:13 307:3  
**similar** 44:6,12,22  
 48:14 74:3,13 107:6  
 109:1,18 152:8 165:8  
 184:5 189:4 192:5  
 195:12 199:11 209:11  
 210:9 212:19 217:4  
 217:14 220:8,17  
 221:18 236:13 300:22  
 331:22 351:2,3,21  
 353:3  
**similarity** 22:10  
**similarly** 74:15 173:5  
 192:15 214:4  
**simple** 254:19 321:4  
**simply** 48:11 58:5  
 252:20 254:3 262:2  
 263:1 271:5 272:2,8  
 274:20 284:2 292:2,5  
 314:18 363:1  
**Simultaneous** 186:17  
**single** 55:13 319:4  
 357:9  
**sir** 32:5,9,22 76:12,21  
 81:10 83:14 95:8 98:2  
 98:7,19 99:5 142:7,7  
 171:1 172:9 173:16  
 178:2 179:3 211:20  
 216:14 229:6 231:12  
 232:9,14 233:6,8,14  
 233:16,17 235:9  
 236:12 246:15 312:3  
 318:19 320:4 322:8  
 325:2,15 333:14  
 339:21 344:14 346:22  
 347:14,21 359:21  
 366:4,12 367:11  
 375:9 380:22  
**sit** 80:5 102:7 158:7  
 162:10 277:21  
**site** 329:15,17 330:4  
**sitting** 70:17 146:16  
 165:13 178:4 196:3  
 281:10 297:19 307:7  
 308:1  
**situation** 109:17 154:2  
 189:7 207:15 219:13  
 234:17 256:22 292:22  
**situations** 45:7 109:14  
 123:8 294:9  
**six** 42:12,20 181:4  
**size** 59:2  
**SJA** 23:15 68:12 72:15  
 72:22 78:11,22 81:16  
 81:20 82:6,18 84:20  
 85:4 90:22 102:9  
 128:7 129:8 140:5  
 152:11 156:8 162:22  
 163:7 166:12 176:16  
 186:10,13 187:1  
 188:3,20 189:9,10  
 190:1,2,7,10 191:5,18  
 191:21 192:1,9 193:7  
 193:20 195:6,13  
 196:12 204:8 216:9  
 223:6 239:12 242:13  
 243:10 249:19 250:6  
 250:15 251:8,18  
 253:3,17 258:1,8,19  
 261:1 262:17 264:20  
 265:19 281:17 284:10  
 284:10 285:8 287:4  
 288:15 295:17 306:5  
 318:10 345:19  
**SJA's** 78:12 158:13  
 318:3  
**SJAs** 72:2 112:8,20  
 176:19 192:7 195:1  
 277:7 282:22 318:10  
 326:19  
**SJAs'** 140:16 146:2  
**skew** 343:2  
**skill** 161:1  
**slam** 106:12  
**sleeping** 148:3  
**slide** 15:14 21:3 335:15  
 339:8 340:14  
**slides** 15:6 114:6,7  
 331:9 348:11

**slightly** 13:5 16:19 43:6  
 45:16 149:4 241:13  
 257:1 359:12  
**slim** 242:18  
**small** 33:6 139:22 153:3  
 164:7 205:20 234:14  
**smaller** 17:15 99:9  
 336:10  
**smoking** 369:14  
**smooth** 31:15,21  
**snapshot** 347:22  
**social** 34:16,17 35:6  
 130:14,16 133:10,11  
 133:15 134:1 219:5  
 327:11  
**societal** 314:6,12,14  
**society** 315:19  
**soldier** 63:22 261:7  
 307:21 313:16  
**soldiers** 308:1 316:5  
**solely** 113:20  
**solid** 163:10  
**solution** 373:4  
**solve** 366:15  
**somebody** 15:17 32:12  
 37:16 45:1,10 57:6  
 60:8 133:10,14 145:7  
 200:17 219:4 236:7  
 255:4 310:8 312:3  
 346:5 368:2 373:6  
 375:5 381:14  
**somebody's** 320:1  
**someone's** 120:10  
 235:3  
**someplace** 175:2 341:6  
**somewhat** 69:19  
 262:19 298:10 327:21  
 358:1  
**soon** 215:10  
**sooner** 285:21  
**sorry** 24:6 32:2,3,8 49:3  
 127:3 130:18 138:22  
 139:1,2 156:20  
 179:16 208:8 227:10  
 231:12 290:8,10  
 305:13 323:12 325:8  
 337:10 348:14,15  
 350:9 355:20 356:10  
**sort** 25:17 32:12 33:9  
 33:12,13,19 34:12  
 35:13 36:6,11 42:14  
 50:19 51:3 55:13,18  
 56:7 58:6 59:13 60:7  
 118:7 120:20 154:18  
 164:10,14 170:6  
 171:1 177:5 180:1  
 185:2,8 199:8 200:20  
 201:3 206:1,2,4 239:7

276:13,17 289:5  
 318:16 348:19 358:9  
 367:8 380:14  
**sorts** 86:19  
**sound** 69:14 310:20  
**sounds** 218:8 277:2  
 287:19 320:20 321:22  
**sources** 217:7  
**spanakopita** 124:21  
**speak** 165:3 177:6  
 185:1 193:17 218:20  
 301:11 317:13 373:5  
**speaker** 63:13 235:12  
**speaking** 22:14 142:12  
 157:13 186:17 209:20  
 210:10 269:20 282:11  
**spec** 319:5  
**Specht** 3:12 159:17,17  
 164:3,20,21 169:17  
 171:1 175:15,16  
 176:5,18 185:1  
 188:12 192:15 195:11  
 199:2 205:16 210:9  
 217:14 218:10,14  
 219:8 227:5 240:12  
**special** 3:8,12 4:14 8:7  
 58:3,15 73:19 114:15  
 135:10 159:11 161:10  
 184:11 185:5 188:19  
 201:13 215:4,15,19  
 233:5 346:4  
**specific** 20:7 23:19  
 38:4 40:14 55:3 62:6  
 63:7 120:18,18 172:1  
 184:6 228:6 258:15  
 302:10,20,20 303:12  
 303:13,13 374:14  
 375:11  
**specifically** 66:6 115:7  
 152:5 160:5 181:11  
 275:7 292:14 345:17  
 378:18  
**specification** 78:15  
 87:17 147:17  
**specificity** 374:15  
**specifics** 227:8  
**specify** 56:1  
**speculate** 73:9  
**speculating** 73:8  
**speculation** 118:6  
 306:17  
**speed** 190:12  
**speeding** 182:5  
**speedy** 142:6 144:8  
 261:4  
**spell** 378:21  
**spend** 380:19  
**spent** 69:21

**spinning** 332:2  
**split** 204:15  
**Spohn** 1:21 45:21  
 196:14,15 351:4  
**spoken** 317:11  
**spouse** 341:17  
**spread** 59:2,3  
**spreadsheet** 25:17  
**spring** 329:14  
**squad** 60:6  
**squadron** 316:15  
**squadrons** 316:21  
**squeeze** 319:4  
**Stacy** 2:7  
**staff** 2:1,2,2,9 3:9 4:4  
 7:12 9:14 12:3,6,10  
 13:20 65:15 67:13  
 68:6 71:2 76:13,14  
 77:4,7 79:11,16 80:1  
 80:4,18 81:2,6 82:11  
 83:2,15,19,21 84:9,17  
 84:21 86:6 90:14  
 91:16 92:14 94:18  
 119:9 122:11,11  
 126:11 132:3 133:21  
 134:19 135:11 139:7  
 139:14,15 141:17  
 143:21 149:9,11  
 150:3,7,15 151:5  
 153:12,19 156:1,5  
 157:6,14 159:21  
 160:13 161:7 188:17  
 189:15 240:21 241:14  
 281:8 362:18 368:19  
**stage** 109:8 121:14  
 127:13 218:2 252:12  
 254:19 267:6 274:18  
 355:21  
**stages** 197:5  
**stand** 102:8 165:13  
 207:11,20 210:1  
 225:1 271:18 272:3  
 362:18  
**standalone** 77:10  
**standard** 70:22 84:15  
 100:10 104:18 105:13  
 105:14,16 106:18  
 110:12 115:19 116:12  
 120:20 122:1,2,4,13  
 123:4,12,22 124:13  
 125:6 136:11 141:12  
 142:3,5,6,10 147:16  
 168:18,20 169:3  
 236:2,16 238:7,16  
 239:7,11,17 243:15  
 244:18 253:22 254:10  
 255:5 256:4 264:8  
**standards** 61:11 133:20

245:16 327:11,13  
**standing** 20:4 207:5  
 208:11 209:17 210:13  
 235:4  
**standpoint** 71:17 72:7  
 111:14 146:10  
**stands** 224:13  
**start** 10:1 29:15 30:5  
 57:12 62:13 65:22  
 66:14 83:15 85:17  
 86:13 93:18 96:16,17  
 96:21 97:19 111:22  
 142:11 150:22 156:15  
 164:20 174:16 180:12  
 222:17 242:5 255:8  
 330:1,6,16 380:17  
**started** 25:22 343:3  
**starting** 118:14 161:10  
 322:14 373:13  
**starts** 74:21 127:14  
 215:17 260:9 375:15  
**state** 76:3 136:16  
 240:10 244:12 274:5  
 274:19 306:7  
**stated** 37:13 74:14  
 163:13 173:21 326:9  
**statement** 32:14 48:12  
 49:2,13 50:6,21 51:6  
 51:9 63:22 64:2 94:2  
 95:6 134:9 165:11  
 189:7 278:1 284:15  
 285:19 291:11,11  
 354:7 364:8 369:20  
 378:2  
**statements** 48:8 73:16  
 119:4 127:18 183:17  
 266:2 285:17 290:15  
 291:8,10,17 292:3  
 297:14 305:2 377:15  
 377:21 378:5,7  
**States** 1:1 376:22  
**statics** 262:6  
**station** 174:15 200:7  
**statistic** 176:21  
**statistically** 135:18  
 353:7 355:9 356:11  
**statistics** 19:18 176:8  
 249:7,11 252:5  
 257:17,20 262:8  
 302:2 322:8 350:18  
**stats** 258:6 300:14  
 301:16  
**status** 4:22 8:21 145:5  
 340:14  
**statute** 66:9 209:22  
 282:5 286:17  
**statutory** 31:16 66:20  
 66:20 210:4 286:13

**stay** 279:16  
**Stayce** 2:7 26:3 340:9  
 349:1  
**staying** 159:4 341:4  
 342:7  
**stays** 377:2  
**steep** 332:10  
**stemmed** 354:18 366:2  
**step** 178:8 179:18  
 237:10 249:10 256:12  
**steps** 182:11 274:8,11  
 283:6 306:15 309:18  
**Steve** 377:21  
**Steven** 2:2 9:15  
**stick** 230:17  
**stood** 161:19  
**stop** 203:20 295:17  
**stopping** 133:4  
**stories** 35:2,3  
**story** 113:15 119:6  
 224:10 237:3,11  
 267:21 382:6,13  
**stovepipe** 77:10  
**straight** 23:20 86:6  
**strange** 263:14  
**strap** 15:2  
**strategic** 253:15  
**strategy** 73:6 193:17  
 268:8,9  
**strength** 108:11,14  
 214:14  
**stress** 246:1  
**striking** 300:11  
**string** 377:8  
**strong** 87:9 93:5,12  
 114:4 118:9 136:5  
 197:16 273:10 277:22  
 310:15  
**stronger** 111:19 222:13  
 223:1,2  
**strongest** 138:10  
 196:19  
**suggest** 106:17  
**structured** 161:4  
 174:12 200:13  
**struggling** 362:20  
**Stuart** 3:14  
**stuck** 225:15,21  
**studies** 22:15 29:15  
**study** 10:5 28:4 30:10  
 42:17,18 43:18 44:8  
 99:7 136:14  
**stuff** 70:6 73:21 101:2  
 143:5 253:13,18  
 382:4  
**subject** 223:19 246:20  
 296:22 364:15 369:19  
 373:9,10

**subjected** 316:16  
**subjective** 84:15  
 118:10,18 122:1  
 124:14 125:3 321:21  
**subjectivity** 124:15  
**submission** 269:11  
**submit** 10:9  
**submitted** 7:16 8:13  
 9:19 12:4 73:4 92:7  
 249:16  
**subordinate** 116:3  
**subpoena** 130:15 131:3  
**subpoenas** 130:7,9  
 143:3  
**subsequent** 44:20,20  
 45:8 154:14 251:22  
**substance** 41:10 44:22  
 45:20 327:9  
**substantial** 20:2 260:10  
**substantiated** 220:6  
**substantive** 8:18 88:2  
 132:7  
**substituting** 121:11  
**succeed** 198:7 252:21  
**success** 110:13,17  
 111:16,19 119:19  
 132:22 170:7 206:14  
 237:14 250:22 269:13  
 269:19  
**successful** 173:6  
 232:13 303:8 317:21  
**successfully** 225:17  
 251:1  
**sudden** 45:14  
**suffer** 228:9  
**suffering** 172:16  
 225:20  
**sufficiency** 122:14,19  
 122:22 123:11  
**sufficient** 52:8 88:20  
 105:3 142:15 207:5  
 208:11,14  
**suggest** 103:12 107:5  
 121:16 158:19 280:19  
 321:1  
**suggested** 304:18  
 312:14 371:8  
**suggesting** 371:5  
**suggestions** 96:10  
 180:10 182:6,8,16  
**suit** 283:11  
**Sullivan** 3:8 159:19  
 166:4 168:3 173:17  
 176:2 179:3 181:13  
 187:7 190:15 193:22  
 195:18 199:10 203:15  
 209:13 212:18 218:16  
 220:17 221:19 224:8

229:10 232:14 233:6  
 233:8,14,16,18  
 237:19 238:19,21  
 239:1  
**summarily** 281:17  
**summarize** 156:8 157:2  
 351:1  
**summary** 72:19 78:1  
 345:3,9,13 346:4,8,13  
 346:17,19 351:17  
 354:11  
**summer** 220:1  
**super** 219:14  
**supervision** 83:19  
**supervisors** 201:9  
**supplemental** 43:11,12  
**support** 50:10 173:14  
 176:5 202:13 203:13  
 203:16 226:9 242:12  
 242:19 260:19 307:4  
 308:10 317:16,22  
 334:6  
**supported** 124:10  
 171:19  
**supporting** 110:2  
 172:18 198:1  
**supportive** 171:5  
 219:20  
**supposed** 219:4  
**surface** 28:15  
**surprised** 125:12,18  
 266:21  
**surprisingly** 73:3  
**surrounds** 123:6  
**survivable** 232:8  
**survive** 232:12  
**survivor** 228:9  
**susceptible** 381:13  
**suspect** 70:4 137:12  
 241:12 302:2 367:6  
 369:11 375:16 376:6  
**suspected** 31:1 32:7,13  
 55:1 375:16,21  
**suspended** 40:9  
**sustain** 105:3,9 112:17  
 122:15 243:16  
**sustaining** 239:14  
**SVC** 80:22 170:5,9  
 176:20 177:15 181:1  
 181:3,7 184:6 186:18  
 187:4 191:3,7,10,18  
 192:2,8,11,16 193:10  
 195:3,20 196:1,2,6  
 204:16 206:20 207:1  
 207:11,15,19 209:21  
 210:1,6,12 214:6  
 216:8,16,17 217:8,9  
 217:16 223:4,9 224:1

224:5 226:16,20  
 227:7 228:7 236:21  
 240:18 285:5 313:7  
 348:17 349:13,14  
**SVCs** 103:6 111:1  
 186:12,14 207:5  
 235:10 315:7  
**sway** 135:12 139:22  
 140:3,9 259:4  
**swearing** 370:1  
**sweeping** 97:6 365:16  
**sweet** 157:12  
**switched** 191:15  
**sword** 205:10  
**sworn** 109:9 127:17  
 162:21  
**synopsis** 50:22  
**system** 19:15,19 25:12  
 27:11 28:15,21 29:4  
 61:13,15 67:21 76:12  
 77:10,10,14 83:6,8,9  
 84:2 89:12 91:19 92:2  
 93:16 97:3,10,11,13  
 98:3 102:14,20 103:1  
 103:8,9 104:6 107:9  
 110:6,19 115:14  
 116:22 117:7 118:19  
 126:2,5,8 128:8  
 138:18 139:7,11  
 145:1,2,4,7,8,18,20  
 148:8,14 155:12,17  
 163:19 168:16 174:6  
 178:6,18,19 182:8  
 198:12 214:2 238:11  
 254:8 266:9 269:19  
 273:1 275:8 280:22  
 281:1 289:1 298:5  
 299:10,17 300:5,5  
 305:5,10,17,19 307:9  
 307:9 308:10,21  
 313:7 314:15 315:16  
 316:8 334:17 360:17  
 375:11 379:13  
**systematic** 314:15  
**systemic** 111:13,14  
**systems** 27:14 61:17  
 64:9 145:16 254:7  
 300:7 315:4 379:12

---

**T**

---

**T** 3:14  
**tabbed** 158:6  
**table** 5:1 281:11  
**tables** 336:15  
**Tagert** 2:8 328:16,18  
**takeaway** 333:1  
**taken** 11:4 33:14,15  
 34:14 47:3,6 49:11

- 59:18 60:6,14 77:19  
86:10 94:2 175:5  
190:21 213:8 222:3  
237:10 259:19 265:20  
278:16 363:15 368:6  
372:7 380:8  
**takes** 118:6 271:7,8  
284:13 349:1  
**talk** 96:12 127:15 141:1  
150:5 158:7 170:7  
203:11 217:10 221:7  
222:1 224:20 341:21  
358:2  
**talked** 22:14 35:17  
72:11,21 115:15  
126:10 130:4 132:16  
134:4 182:7 202:8  
207:15 227:12,20  
281:4 300:10 311:13  
313:20 332:14 341:11  
**talking** 17:13,19 30:3  
33:5 72:2 77:19 85:18  
103:2 114:6,8,17  
130:13 137:4 158:13  
159:10 160:1 185:3  
201:8 205:4 217:17  
227:15 228:11 261:16  
271:11 273:21 278:4  
283:7 287:16,19  
291:10 312:9 315:8  
368:20 382:3  
**talks** 288:9  
**tanked** 274:21  
**tape** 179:13 295:20  
**Tasikas** 3:6 65:7 71:4  
72:21 77:2,15 86:14  
86:15 102:4 107:3  
108:22 115:13 124:17  
126:17 144:9 147:14  
155:6 158:11  
**task** 41:13  
**tasked** 11:13  
**tasking** 380:11  
**TC** 240:18  
**TDS** 214:4 215:12  
**teach** 223:22  
**teacher** 146:18  
**team** 187:1,6 191:8,9  
191:17 196:4,10,10  
197:22 222:2 325:6  
**technology** 99:16  
**tee** 126:3 241:14  
**telephone** 3:21 6:12  
**telephonically** 383:9  
**tell** 20:7,18 22:15 23:4  
23:10,17 40:15 63:6  
127:6 130:16 192:9  
224:9 237:11 240:4  
265:3 296:13 312:21  
331:16 332:3,16  
333:2,17,20 334:3,16  
334:17,20 338:7  
344:9,15 347:11  
348:18 362:4 363:6  
**telling** 55:5 188:20  
199:6  
**tells** 23:3 35:2 53:20  
118:5 335:15,21  
345:18,22 346:1  
**template** 263:1  
**temporal** 43:3 56:15  
**ten** 6:12 29:22 33:9  
48:17 248:18 280:19  
306:9 311:18 312:16  
378:7,18  
**tend** 60:22 98:18  
**tendency** 205:6  
**tends** 119:5  
**tenets** 87:14  
**tenor** 366:22  
**term** 31:1 54:22 118:2  
239:7 274:7 286:14  
286:17,18,19 303:17  
**termination** 372:19  
**terms** 29:19 32:11 34:5  
63:11 85:6 118:20  
194:13 226:3 235:2,3  
352:11 353:4 355:9  
361:14 371:8  
**Terri** 2:8 159:20  
**terrible** 197:18 273:4  
284:2  
**test** 118:13 247:1  
**testified** 165:1,9 166:5  
**testifies** 222:13 273:7  
**testify** 66:22 67:3 73:18  
86:4 90:19 100:18  
111:7 164:19 165:17  
166:3 189:6,17 213:9  
222:21 226:7,22  
227:3 244:8 248:7  
271:20 273:2 284:14  
**testifying** 165:14 223:3  
225:18 226:12 272:20  
**testimony** 5:12 106:8  
109:9 125:9 127:18  
135:7 158:8 222:15  
222:22 249:3 273:16  
295:1  
**testing** 225:2  
**tethered** 149:16  
**text** 74:8 265:15 266:19  
339:3  
**thank** 8:17 9:22 10:3  
19:20,21 22:4,9 25:1  
26:22 27:4 29:6,12  
33:18 38:6 43:2 45:20  
53:14 62:14,17 64:13  
64:18 65:1,7,10 85:9  
105:11 121:21 159:1  
159:5,9,17 170:15  
186:7 210:16,17,18  
211:20 222:6 229:9  
240:22 243:14 248:16  
258:5 262:5 263:10  
263:12 271:13 308:19  
328:6,7,8,9 329:22  
347:12 349:15 350:20  
356:7 360:16 384:1  
384:14  
**Thanks** 193:3  
**theory** 90:17 91:10  
123:3 238:15 268:15  
**Theresa** 2:3  
**they'd** 105:8  
**things** 20:20 31:10,11  
32:14 45:21 52:9  
56:16 63:18 64:7  
78:20 99:13 100:11  
114:14 118:11 124:18  
125:10 131:7 133:2,9  
134:1 136:21 137:4  
138:11 147:10,11,11  
150:5 153:15 155:20  
180:17 184:16,18  
193:14 207:18 211:12  
217:2 221:14 227:15  
228:6 231:2,3 232:15  
253:10 274:4 275:6  
280:8 290:4 292:9,19  
294:15 297:15,21  
298:3 299:11 321:11  
323:3 325:18 336:18  
357:16 360:6 366:11  
377:12 380:13 381:19  
**thinks** 221:3 279:19  
290:16  
**third** 11:7 46:17 47:4  
54:20 98:5 200:19  
219:22 374:12  
**third-party** 186:1  
200:12 201:2,5  
202:11 203:3,7,8  
204:6 368:10  
**thorough** 70:11 158:4  
163:9 257:12  
**thoroughly** 183:4,11  
**thoroughness** 178:6  
**thought** 14:9 71:2  
98:13 114:11 163:10  
165:4 181:20 235:9  
242:20 254:4 258:21  
277:19 382:3  
**thoughts** 73:20 111:20  
138:4 231:4  
**three** 8:5 10:13 11:7  
28:17 53:18 157:17  
331:7 335:2 340:3,10  
352:19 355:8  
**three-quarters** 254:13  
**three-time** 143:17  
**threshold** 129:5 146:4  
146:22 167:4,9 180:2  
281:15 283:11  
**threw** 54:21  
**thrift** 315:4  
**throw** 170:21 378:7  
**throwing** 171:13  
**Thrown** 233:4  
**tick** 143:9,10,10  
**ticked** 144:7  
**tie** 147:21  
**tied** 51:10  
**till** 128:9 239:9 246:14  
372:18 377:3  
**timelines** 184:8,15,19  
**timely** 188:6  
**times** 28:17 56:6 58:9  
111:9 118:1 124:22  
127:21 182:12 190:6  
199:3 223:17 238:4  
257:6 18,21 258:7  
267:15 270:17 294:9  
294:14,15,21 295:15  
301:15 309:4,6  
311:14 326:8 337:11  
343:13  
**timing** 49:19  
**tip** 147:2  
**today** 6:5,14 9:22 19:13  
27:13 98:15 159:10  
288:10 325:12 329:10  
329:16,21 339:22  
342:9 351:1,17  
360:22 361:3  
**today's** 7:2,5 9:10  
**Tokash** 1:21 126:10  
127:1 129:3 131:20  
145:22 149:14 188:14  
189:11,19,22 193:3  
227:9 235:10 238:15  
238:20,22 255:14,19  
281:3 282:17 283:14  
284:6 287:13  
**Tokash's** 133:7 139:20  
**told** 12:21 28:11,16  
288:21 306:6 377:17  
**tone** 366:22  
**tool** 71:8,12  
**tools** 322:1  
**top** 15:16 20:19 231:3  
317:14 331:16 336:14



336:15 358:18  
**topic** 362:14 367:19  
**topics** 8:13  
**torn** 204:9  
**total** 14:5 21:9,10 50:16  
 51:2 298:5 339:16  
 381:4  
**totally** 42:6  
**touch** 183:22  
**touched** 327:20  
**tough** 103:17 121:10  
 238:3  
**toughest** 36:19  
**track** 26:9 27:12,15  
 28:10,13 57:13,14  
 59:11,16 61:10,14  
 159:4 162:9,17 176:3  
 233:10 248:21 333:18  
 338:6 370:8  
**tracked** 59:7  
**tracking** 22:21 56:7  
 57:5,5 58:8,17 59:17  
 59:20 61:18 62:4  
 175:9,12,19 176:8  
 209:15 333:18 340:16  
 343:3  
**train** 223:22 278:21  
**trained** 85:15 162:20  
 215:20 254:22 277:6  
 277:9  
**training** 80:14 85:17  
 100:12 106:15 163:6  
 164:14 178:11 205:2  
 215:20 225:14 275:10  
 276:17 323:15 324:6  
 324:13,13,15,20,21  
 325:3,4,6,9,19,21  
 326:5,7,14,17 327:9  
 327:10,16,17,19  
 338:3  
**transcribed** 7:3  
**transcript** 7:3 23:13  
 179:13  
**transfer** 174:19 200:8  
 202:20 204:19 234:11  
**transferred** 247:2  
**transformed** 71:5,15  
**transition** 348:14  
**transitioned** 50:19  
**translate** 327:6  
**translation** 325:21  
**transparency** 263:19  
**transparent** 100:15  
 304:11  
**trauma** 39:17 41:9  
 198:19 223:9,15  
 232:2 237:4,16  
**travel** 99:20

**treated** 32:20 33:1  
 169:8,13  
**treatment** 237:1  
**tremendous** 198:4  
**trend** 17:8 19:14 36:3  
 131:22 132:2 338:1  
**Trexler** 2:9  
**trials** 298:16  
**trickle** 131:10  
**trickles** 327:14  
**tried** 31:9 55:8 62:20  
 79:2,12,14 208:18  
 347:1  
**trier** 168:13 225:4  
 305:22  
**trigger** 142:20 154:14  
 155:2 261:6  
**triggering** 152:16  
 155:11 261:12  
**triggers** 128:12 260:12  
**trivial** 77:21  
**trouble** 338:4  
**true** 17:7 50:8 52:7 76:2  
 77:7 83:18 158:12  
 238:20 255:12 279:11  
 299:10 366:8  
**true/false** 52:6  
**truly** 265:13 266:7  
 291:6 308:10 363:4  
**trust** 58:15 146:21  
 178:6 285:3,16  
 296:19 300:4,7 304:7  
 304:8,14 308:10  
 314:11,11  
**truth** 276:9 290:17  
**try** 23:21 31:6,14 64:8  
 73:13 80:6,12 95:11  
 114:10 119:13 123:21  
 141:18 159:2,3  
 176:21 185:11 193:7  
 195:19,19 202:20  
 228:3 253:2 259:17  
 267:8 299:14 315:17  
 328:5 338:5 350:7,15  
**trying** 29:5 53:4 79:18  
 131:11 132:9 141:5  
 142:2,17 143:19  
 144:18 185:6 189:12  
 196:6 220:3 221:5  
 226:9 227:18 254:2  
 294:1 297:18 299:8  
 299:10 311:22 317:14  
**Tuesday** 146:16  
**turn** 14:21 137:20 268:2  
 273:2 304:3  
**turned** 72:18,19 111:11  
**twelfth** 6:10  
**Twelve** 254:15

**twice** 227:4 284:10  
**two** 6:13 11:3 28:16  
 42:1,20 46:16 48:2  
 52:9 64:14 68:2 69:10  
 108:16 137:7 138:11  
 150:1,4 185:7 221:22  
 230:20 235:5 238:4  
 271:1 290:14,15  
 311:4 320:21 334:11  
 334:13 335:13 337:1  
 340:2,11 345:4,7  
 346:12 352:5 353:13  
 369:8 378:20  
**two-part** 207:3  
**two-thirds** 254:13  
**type** 30:10 60:5 62:4  
 108:9 116:18,21  
 126:14 189:14 205:2  
 208:19 213:7,16  
 216:13 226:1 234:22  
 245:22 265:13 275:10  
 301:22 327:17 355:5  
**types** 198:6 228:4  
 265:22 360:6 370:22  
**typically** 52:13 74:21  
 99:17 104:19 118:6  
 208:3 246:17 247:5  
 279:4 290:12

## U

**U.S** 2:13,14,16,18,20,21  
 3:1,3,4,5,5,6,7,8,9,11  
 3:12,13,14,15,16,18  
 3:20 146:11 162:3  
 255:11  
**U.S.C** 84:13  
**UCMJ** 13:3 76:14 97:7  
 101:16 215:22  
**ultimate** 84:9 111:12  
 117:7 140:15 170:8  
 225:4 343:6 344:8  
**ultimately** 92:19 132:6  
 168:13 212:16 344:17  
 345:8 347:17,19  
**unable** 26:12  
**unanimous** 254:13  
**unanimously** 270:6  
**unattached** 177:3  
**unaware** 175:19 384:4  
**unbearably** 261:5  
**uncover** 53:21  
**underage** 20:21 33:13  
 36:10 54:8 57:9 61:6  
 214:11,13 217:19  
 232:18 369:4,5  
 375:19 377:16 379:2  
**underlying** 42:14 49:9  
 154:9,9,13  
**underneath** 339:4  
**understand** 10:19  
 12:12 24:8 25:4 27:7  
 34:22 37:2 40:7 41:5  
 45:7 62:16 70:22  
 120:16 133:2 135:17  
 143:16,18 151:10  
 170:11 190:3 215:21  
 224:4 243:6 251:15  
 257:5 260:14 269:21  
 283:1 297:20 326:22  
 351:6 365:22 366:1  
 381:18  
**unstanding** 36:17  
 43:18 44:8 119:10  
 150:12 167:18 168:7  
 179:21 182:2 190:5  
 222:12 298:13,18  
 327:18 381:15  
**understood** 83:14  
 120:14  
**undo** 328:5  
**unexamined** 262:18  
**unfair** 305:4  
**unfortunately** 28:18  
 161:3 162:5 164:6  
 182:18 334:15  
**UNIDENTIFIED** 63:13  
**uniform** 30:16,20 61:11  
 215:22 367:9  
**uniformity** 47:17 372:9  
**unintended** 295:14  
**uninterested** 186:2  
**unique** 89:2 199:12,12  
 222:10 258:15,20  
 270:18 321:20 341:20  
**unit** 26:10 37:22 40:14  
 79:22 161:20 162:6  
 170:19,20 172:14,17  
 205:21 231:22  
**United** 1:1 376:22  
**units** 26:10  
**universal** 31:5  
**universally** 111:2  
**universe** 17:15 52:21  
 371:16  
**unknown** 50:5 317:2  
**unlawful** 312:8  
**unnecessary** 138:14,15  
**unpacking** 227:19  
**unquote** 131:2  
**unrelated** 151:1  
**unresponsive** 97:1  
**unrestricted** 200:21  
**unusual** 263:21 380:14  
**unwilling** 186:2  
**unwinnable** 316:2  
**update** 4:22 8:21

328:20 329:21  
**updated** 359:2  
**upped** 283:5  
**urge** 293:9  
**USA** 2:2  
**USAF** 1:20  
**use** 40:9 46:9 64:15,17  
 93:4,6 99:11 112:19  
 112:20 123:18 149:18  
 162:8 163:16 219:20  
 239:7 243:15 362:9  
 371:9 378:4  
**useful** 30:17,19 34:2,10  
 36:3 41:15 43:1 47:10  
 47:18 53:10 87:4  
 222:14 223:2 225:3  
**usefulness** 222:8  
**useless** 271:15,16  
**uses** 286:14,17  
**USMC** 1:20  
**usually** 42:5 69:8,10  
 128:21 208:6 211:4  
 221:21 253:14 271:3  
 296:13 302:13 310:21  
 365:22  
**utility** 279:19,22 280:10  
 327:10  
**utilization** 286:18  
**utilize** 94:22 117:8  
**utilized** 115:10

---

**V**


---

**vacuum** 292:1  
**Valerie** 3:15  
**valid** 28:3 34:22 68:20  
 144:16 332:19 333:13  
**validated** 167:22  
**valuable** 37:8 67:9  
 102:10  
**value** 44:11 68:8 84:16  
 89:12 94:3,16 95:22  
 96:1,7 138:7,17  
 169:18 170:12 177:8  
 177:22 178:3 179:4  
 179:17 183:11 240:2  
 240:10,14 266:13  
**variable** 125:7 353:15  
**variables** 132:10 157:5  
 303:3 352:1,5  
**variation** 339:13  
**varied** 337:4  
**variety** 357:8 381:19  
**various** 143:3 165:6  
 197:5 374:17,18  
**vary** 235:13  
**Vasilios** 3:6  
**vast** 110:14  
**vehicles** 77:20

**vein** 210:22  
**venues** 145:19  
**verdict** 122:6 254:14  
**verify** 190:8  
**version** 100:20 141:21  
 283:21 343:3  
**versus** 35:2 52:17  
 138:19 141:1 227:4  
 254:13,15,15 266:15  
 285:19 298:17 314:14  
 331:4 335:1 342:2,13  
 357:19  
**vest** 146:16  
**veto** 81:20  
**vetted** 187:11  
**victim's** 36:18 48:19  
 52:3 81:1 112:11  
 130:15 135:7,10  
 181:22 183:21 185:5  
 187:10 188:6,19  
 190:3,6,20 192:11  
 194:11 195:15 197:8  
 197:9 201:19 206:20  
 212:13,15 213:5  
 215:5,16,19,19 221:2  
 224:3 226:5,14 235:3  
 240:2 242:2 247:11  
 278:1 348:20  
**victims'** 3:8,9,10,12  
 4:14 8:7 159:12,12  
 168:6  
**video** 69:2 86:11 92:8  
 276:5 295:15,20  
**videos** 295:17  
**videotaped** 70:2  
**videotapes** 73:15  
**videotaping** 70:4  
**view** 34:9 71:4 108:4  
 282:19 285:14 317:4  
 318:15 347:22  
**views** 112:11  
**violation** 13:4 215:22  
 216:14 346:8 369:9  
 369:12 379:3  
**violations** 207:6  
**violence** 34:1 297:15  
 315:3,20 322:15  
 323:1  
**Virginia** 1:12  
**virtually** 192:4  
**visits** 329:15,17 330:4  
**visually** 336:17  
**vital** 111:17  
**VLC** 80:22 110:20  
 165:21,21 170:6  
 186:14 187:17 188:4  
 189:8 193:11 194:6  
 206:20 207:1 211:21

212:3 221:16 226:17  
 228:7 239:21 348:17  
**VLCs** 110:22 178:3  
 183:8,10 186:12  
 189:3 207:5 212:7  
 221:7,8 235:11  
 239:19  
**voice** 97:8,16 168:13  
 242:7 248:4,11 313:4  
 313:5 314:20  
**voir** 323:19,21 324:2,5  
 324:22 326:12  
**vote** 329:15 383:5,16  
**voted** 330:9  
**votes** 146:12

---

**W**


---

**W** 1:17  
**wait** 27:22 57:19 128:9  
 143:7 239:9 252:17  
 259:7 265:4 268:3  
 292:8 372:18  
**waited** 236:7  
**waiting** 130:22 131:8  
 137:14 138:14,15,19  
 143:2,6,7 266:15  
 301:11  
**waive** 78:5 269:10  
 343:18  
**waived** 342:12 343:5  
 344:7  
**waiver** 78:4  
**waivers** 279:15  
**walk** 207:17 268:10  
**Walton** 6:15  
**wanted** 19:9 73:4  
 114:13 120:14 164:22  
 191:20 218:19 219:22  
 222:7 271:4 331:14  
 340:18  
**wanting** 124:2 199:14  
**wants** 104:17 105:14  
 106:17 109:2,20  
 112:4 114:3 116:5  
 124:8 192:1 223:13  
 240:9 242:13,14,21  
 243:7 247:22 314:2  
 346:5  
**warm** 175:3  
**warrant** 84:5  
**warranted** 93:9  
**warrants** 42:16  
**wasn't** 24:21 41:16 43:8  
 47:5 87:8 144:15  
 203:11 257:15 288:17  
 315:14 343:19 363:19  
 368:3,15 372:13  
 373:1 374:14

**watch** 177:9  
**way** 23:17 25:10,16  
 26:7 40:11,17 49:8,20  
 50:10 55:21 56:1,10  
 57:6 83:14 95:2,12  
 123:16 128:2 131:1  
 143:20,21 146:7  
 163:4 169:7 170:4  
 171:6 174:12 178:19  
 180:8,15 181:10  
 185:20 186:3 199:4  
 200:9,13 202:9 205:9  
 206:12 207:9 208:3  
 232:3 259:9 278:2,18  
 293:16 300:9 317:4  
 318:7 320:1,9 322:4,5  
 323:22 327:14 336:13  
 341:8 344:9 347:4,8  
 361:14,16 363:20  
 368:18 370:11,18  
 372:11,22 376:9  
 383:5,19  
**ways** 53:18 54:4,5 55:7  
 55:22 171:8 182:8  
 184:8 236:13  
**weak** 92:16 103:20  
 118:9 137:9 317:19  
**weaker** 137:19  
**weakest** 251:6  
**weaknesses** 296:6,8,11  
 296:12  
**weather** 317:7  
**website** 7:4 25:10  
**weeds** 232:15 233:1  
**weekend** 60:9  
**Weekly** 183:13  
**weeks** 225:15 347:9  
 369:18  
**weigh** 105:7 108:16  
 135:11  
**weighed** 253:3  
**weights** 112:8  
**weight** 105:8 141:15  
 241:22 242:9 244:17  
 247:17 266:5  
**Weir** 2:2 9:15 10:1,3  
 14:20 330:12 360:19  
 360:21 364:2 366:4  
 366:12 367:11 368:7  
 368:10 371:10,18  
 374:1 375:3,8 376:5  
 379:16 380:22 382:5  
 383:4 384:1,9  
**welcome** 4:3 6:4 29:12  
 356:8  
**well-** 93:6 173:3 175:4  
**well-meaning** 98:5  
**well-reasoned** 71:3

**well-written** 92:21  
**Wells** 2:9 330:19 335:6  
 348:10,13 350:22  
 354:5,8 355:22 356:8  
 356:17,22 357:3,6,21  
 358:8 361:21  
**went** 39:1 77:18 159:7  
 167:1 241:4 273:3  
 300:15 302:4 304:10  
 311:8 328:14 347:18  
 369:18 373:15 384:16  
**weren't** 32:17 77:17  
 103:5,7 114:19 167:1  
 229:3 346:16  
**whatsoever** 365:4  
**whichever** 75:17  
**white** 274:14  
**wholesale** 280:20  
**wholly** 124:5  
**wide** 135:22  
**widely** 97:5  
**William** 2:9 3:9  
**willing** 104:2 107:8,21  
 134:10 180:22 181:9  
 195:14 239:19 244:22  
 245:6 247:19,22  
**willingness** 196:17  
 197:9  
**win** 143:13,14,15  
 259:19 260:1 282:9  
**winding** 249:2  
**window** 139:22 186:12  
**winning** 269:14,16  
**wish** 185:17 300:4  
**wishes** 187:5 188:6  
 196:7,8 242:2,10  
 243:13  
**withheld** 316:19  
**withhold** 266:3  
**withholding** 59:9  
**witness** 32:14 125:9  
 253:12 272:20 273:1  
 368:11,17  
**witness'** 267:18  
**witnessed** 46:18  
**witnesses** 66:5 69:3  
 73:17 90:19 92:9  
 99:19 109:10 127:11  
 127:15 128:18 134:2  
 271:18 276:6,8 277:1  
 277:5 278:8 279:18  
 290:5,14,18 291:16  
 296:22  
**wonder** 298:7,14  
**wondered** 63:5 344:13  
**wonderfully** 145:16  
**wondering** 118:12  
 211:6 222:11 270:4

**word** 55:2 146:3 149:19  
 157:18 347:4 368:5  
 375:11  
**wording** 347:20  
**words** 301:3 375:6  
**wordsmith** 376:6  
**work** 19:15 25:5 34:1  
 95:4 99:10 105:12  
 162:1 178:1 194:11  
 194:14 221:1,8  
 239:21 275:8 293:10  
 329:7 360:17 378:1  
**workable** 122:3,7  
**workaround** 25:21  
**worked** 167:14  
**working** 4:5,22 5:2 7:6  
 8:22 9:1 122:7 131:22  
 138:17 140:5 147:12  
 170:9,9 178:4 180:21  
 181:12 182:10,13  
 184:8,19 221:9  
 235:19 240:18 269:19  
 330:2,8 336:10  
 337:21 368:21 380:12  
**works** 25:20 165:20  
 305:5,10,19 307:9  
 327:2 336:22 347:11  
**world** 164:4 301:1,3  
**worry** 310:9,13,15  
**worse** 225:19,21  
 275:18  
**worst** 225:19  
**worth** 260:3 267:12  
 319:3,5 343:19  
**would've** 337:15,16  
**wouldn't** 43:22 45:17  
 47:14 74:10 103:12  
 104:7 137:1 202:4  
 236:18 263:18 268:8  
 284:22  
**wracking** 219:8  
**wrapped** 211:13  
**write** 98:14 134:10  
 178:12 296:3  
**written** 5:12 7:3 8:12  
 9:6,18 65:16 91:3  
 93:7 128:4 157:15  
 192:10 208:5 235:2  
**wrong** 19:17 101:11  
 121:18,19 196:4  
 206:16 244:16 264:8  
 265:3,5,5,6,10 306:11  
 332:20 333:22 335:6  
 365:22  
**wronged** 240:11

---

**X**


---



---

**Y**


---

**year** 6:19 7:7,11,20 9:1  
 17:10,11 21:6 24:9  
 28:7,9,14,18 42:12,20  
 130:5 181:4,4,5  
 200:20 235:5,5 279:2  
 311:4 332:6,6,9,18,20  
 333:11,22 334:11,11  
 336:8,12 337:3,12,13  
 337:19 338:14 339:19  
 340:5,10,19 342:3,11  
 342:11,12,13 343:9  
 344:22 347:3 349:20  
**year's** 359:1  
**years** 42:21 45:1 64:14  
 66:17 89:20 97:6,10  
 102:12 103:6 140:21  
 254:5 280:19 297:11  
 310:8 311:18 312:16  
 313:3 314:21 315:21  
 316:11,14,15 331:7  
 332:10 335:2 336:4  
 339:13 341:1 352:20  
 366:2,2 371:2  
**yesterday** 15:4 26:2  
 72:22 336:11  
**young** 100:8,12 327:3  
**younger** 338:3

---

**Z**


---

**zero** 250:21 367:8

---

**0**


---

**0.3** 336:21

---

**1**


---

**1,000** 319:22 320:1  
**1:18** 241:4  
**10** 4:4 84:13 159:3  
 340:11 360:4  
**100** 333:4 348:3 349:4  
**100-plus** 348:3  
**101** 279:1  
**104** 342:12  
**11** 6:9 11:17  
**11:39** 159:7  
**11:53** 159:8  
**112a** 18:12  
**114** 273:15  
**115-232** 10:7  
**117** 342:13  
**12** 89:20 291:4  
**120** 89:21 90:4 117:3  
 123:2 148:1 246:4  
 260:12 318:8,18  
 319:12,16 320:3  
 321:20 322:3

**120-day** 142:3,5,10  
**1200** 58:21  
**12th** 383:8,14  
**13** 89:20 340:7  
**13th** 1:6 6:5  
**14** 18:4  
**14.5** 17:17  
**140a** 61:11 62:1 380:3  
**15** 4:8 6:9 17:6 18:5  
 19:4 45:10 63:9,16  
 66:4 72:4 148:7,8  
 159:3 177:10 178:8  
 214:22 232:7 270:1  
 271:7 331:8 336:9  
 337:12 340:7 359:18  
 379:2,3  
**15-6** 290:3,9  
**15-minute** 68:22  
**154** 52:11 58:22  
**15s** 378:20  
**15th** 12:1  
**16** 17:6 131:4 141:19  
 342:6 343:2 351:21  
 353:3 355:13 359:18  
**17** 16:12 17:6 19:3  
 342:5 350:5 351:3,22  
 353:3 355:13 359:18  
**18** 17:6 21:6 261:20  
 265:4 291:4 307:13  
 331:8 340:10,20  
 342:5  
**18.2** 359:6  
**19** 4:9  
**1st** 97:4

---

**2**


---

**2** 4:13 11:12 104:11  
 241:1 252:5  
**2,000** 328:22 350:13  
**2.1** 108:17  
**2:03** 241:5  
**20** 97:19 235:4 297:11  
 298:11 310:8 314:21  
 315:21 325:5 360:2  
**20.9** 17:18  
**200** 280:6  
**2014** 71:15 103:16  
 164:19  
**2015** 6:19 342:21 343:1  
**2016** 6:17 97:5 130:2  
**2017** 13:10  
**2018** 5:2 7:7 9:2 335:18  
 336:15,20  
**2019** 1:8 7:20 11:17  
 13:10 71:16  
**21** 342:14  
**21.5** 359:9  
**21.6** 331:21

**22** 342:15  
**23** 1:8  
**23.2** 16:18  
**23.3** 359:9  
**24** 261:21 307:13,21  
**241** 4:18  
**25** 97:18 332:19 335:8  
 342:4  
**27** 271:12  
**28** 21:12  
**28.2** 15:18 16:11 17:20  
**29** 4:10 21:13

---

**3**


---

**3** 4:18 241:7 256:8  
 340:21  
**3.8** 343:12  
**3:27** 328:14  
**3:30** 328:15  
**30** 56:6  
**30.3** 24:20  
**30.8** 343:14  
**300** 1:12  
**30th** 12:2  
**31** 13:10 16:5  
**32's** 94:1 99:18 176:12  
**328** 4:22  
**32s** 276:3  
**33** 110:3 245:18 343:10  
**33.3** 16:10  
**331** 5:2  
**34** 76:14 77:17 78:12  
 84:12,13,18 156:20  
 161:15 286:6,9 287:9  
**35** 336:1  
**36** 340:20  
**360** 5:5  
**37.3** 15:20 16:2 17:21  
 24:9  
**373** 342:10  
**384** 5:19,22

---

**4**


---

**4** 252:5 340:10  
**4,000** 26:3  
**4:28** 384:16  
**40** 156:19  
**40.4** 335:19  
**405** 66:10 94:13 287:18  
 288:8  
**405(k)** 68:10 190:16  
**406** 288:8  
**412** 177:14 206:21  
**422** 342:11  
**43.2** 359:8  
**46.7** 18:22

---

**5**


---

**5** 140:21 150:3  
**50** 97:6 306:4 307:7  
 310:13  
**500** 261:15  
**508** 246:5  
**513** 206:22  
**547** 7:18  
**574** 28:9 332:9,12 333:5  
 333:7,8,11 339:17  
 349:17 350:13  
**58.2** 309:22  
**59.4** 16:20 308:5

---

**6**


---

**6** 4:3  
**6.4** 18:20  
**6.5** 18:6  
**60.5** 340:19  
**600-20** 57:19  
**61** 340:19 341:4  
**6495.02** 51:22  
**65** 4:13 112:21  
**6b** 206:22

---

**7**


---

**7** 256:8  
**70** 21:17,18 22:1 36:5  
 36:11 56:3  
**706** 129:15  
**75** 28:10 332:17 333:7,7  
 333:9 335:10 342:3  
**77.6** 331:20  
**774** 28:7 333:9,15  
**78** 342:14  
**78.7** 18:7  
**780** 332:7

---

**8**


---

**80** 310:13 338:12 339:5  
**82** 341:17  
**826** 33:8  
**832(a)(2)(B)** 75:2  
**834** 84:13  
**86** 340:12

---

**9**


---

**9** 256:9 359:9  
**9:00** 1:12  
**9:02** 6:2  
**90** 333:22 374:19,21  
 382:12  
**91** 339:11  
**917** 302:8  
**92** 18:12 30:1 148:1  
 369:10  
**93** 146:11  
**99** 337:5  
**99.7** 336:21

**9th** 12:10

C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: DAC-IPAD Public Meeting

Before: US DOD

Date: 08-23-19

Place: Arlington, VA

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

  
-----  
Court Reporter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701