UNITED STATES DEPARTMENT OF DEFENSE

+ + + + +

RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL

COMPARATIVE SYSTEMS SUBCOMMITTEE

+ + + + +

SENTENCING GUIDELINES

+ + + + +

TUESDAY
FEBRUARY 11, 2014

+ + + + +

The Subcommittee met in Conference Room 150 at One Liberty Center, 875 North Randolph Street, Arlington, Virginia, at 8:30 a.m., Stephen Henley, Acting Chairman, presiding.

PRESENT:
Colonel (Ret.) Stephen Henley, Acting Chairman
Harvey Bryant
Brigadier General (Ret.) John Cooke
Brigadier General (Ret.) Malinda Dunn
The Honorable Barbara Jones*
Colonel (Ret.) Larry Morris*
Colonel (Ret.) Dawn Scholz
Russell Strand

PRESENTERS:
Colonel (Ret.) Steve Andraschko, Army Clemency & Parole Board
Colonel John Baker, U.S. Marine Corps
Mark Bergstrom, Pennsylvania State Sentencing Commission
Bruce Brown, Air Force Clemency & Parole Board
L. Russell Burress, U.S. Sentencing Commission
Annette Burrhus-Clay, National Alliance to End Sexual Violence (NAESV)
Lieutenant Colonel Craig Burton, U.S. Air Force
Meredith Farrar-Owens, Virginia State Sentencing Commission
Molly Gill, Families Again Mandatory Minimums (FAMM)
Colonel (Ret.) Francis Gilligan, Office of Military Commission
Lieutenant Commander Stuart Kirkby, U.S. Navy
A.J. Kramer, Federal Public Defender, District of Columbia
Michael LoGrande, Air Force Review Boards Agency
Colonel Michael Mulligan, U.S. Army
Michael Nachmanoff, Federal Public Defender, Eastern District of Virginia
Jonathan Wroblewski, U.S. Department of Justice

STAFF:
Maria Fried, Designated Federal Official
Colonel Patricia Ham, Staff Director
Dillon Fishman
Lieutenant Colonel Kelly McGovern
Terri Saunders

* present by teleconference

TABLE OF CONTENTS

Comments from CSS, Acting CSS Chair 4

Overview of Military Sentencing, COL(R) Fran Gilligan 5

Clemency in the Military 70
- Convening Authority
- Services' Clemency & Parole Boards
- Services' Records Correction Boards

Federal Sentencing Guidelines, U.S. Sentencing Commission, Mr. L. Russell Burress 146

State Sentencing Guidelines, Virginia Criminal Sentencing Commission, Ms. Meredith Farrar-Owens; Pennsylvania Commission on Sentencing, Mr. Mark Bergstrom 239

FAMM, Ms. Molly Gill 343
NAESV, Ms. Annette Burrhus-Clay

Civilian Defense Counsel Perspectives On Sentencing Guidelines & Mandatory Minimums, Mr. A.J. Kramer, Mr. Michael Nachmanoff 392

DoD & Services: Comments Concerning Potential impact of changing current clemency opportunities, establishing sentencing guidelines or imposing mandatory minimums in sexual assault cases 478

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

2 8:28 a.m.

3 MS. FRIED: This Subcommittee

4 meeting is now open.

5 COL HENLEY: As the designated

6 acting chair, I have a few opening remarks.

7 First thank you, Colonel Ham, for nominating

8 me and Kelly seconding the nomination. I

9 really appreciate it.

10 The topic of today's Comparative

11 Systems Subcommittee meeting is on the

12 advisability of adopting mandatory minimum

13 sentences for military sexual assault offenses

14 and the collateral consequences of such a

15 change. It appears the terrific support staff

16 has put together an outstanding agenda with

17 what appears to be a number of great

18 presenters, the first of which is here today,

19 Colonel Fran Gilligan, a speaker who is known

20 to all of us. So I won't bore you with his

21 background, but Colonel Gilligan is going to

22 give us an overview of military sentencing.

1 Colonel Gilligan?
2 COL GILLIGAN: Thank you for
3 inviting me back. And we have a lot of
4 experience here as to the background military
5 sentencing. Sentencing, of course, is the
6 option is really with the accused as to
7 deciding to whether go judge alone or with
8 court members. Court members are given
9 instructions on sentencing. There is, except
10 in a couple of instances, there are no
11 mandatory sentences and no minimum sentences.
12 It's not been unheard of for an individual and
13 for - and this is true, I was involved with
14 a case -- raping three little girls, getting
15 a two grade reduction. So I think you have to
16 sort of keep that in mind.
17 I think you folks should consider
18 mandatory minimum sentences and discretionary
19 sentencing guidelines. I think I would not do
20 you a service though, I just want to touch a
21 little bit on death penalties because a lot of
22 people are concerned with that. I just want

1 to say for the record that for everybody's
2 information, our death penalty system in the
3 military is the most protective. There are
4 several examples of things that we do that are
5 not required by the Supreme Court. I mention
6 this because it's a reminder having seen
7 briefs going the opposite way.
8 Most recently, just in November of
9 this year, the Supreme Court affirmed a case
10 where the judge overrode an 8-4 recommendation
11 against the death penalty. There's no
12 requirement with the Supreme Court to have
13 proportionality review. That's required by
14 CAAF. There's no requirement for a weighing
15 of the mitigating aggravating factors. That's
16 not required by the Supreme Court. There's no
17 requirement to determine -- answer the
18 question of mitigating evidence in the case.
19 Those are just a few. There are several more
20 examples of that and I want to set those forth
21 on that.
22 And I think now with the number of

1 courts-martial being reduced substantially, I
2 think if you talk to members and maybe there
3 have been studies done on this, I think
4 members feel adrift when they go back for
5 sentencing and I think you folks could do
6 something on helping them, as I say, setting
7 forth minimum/maximum sentences in cases.
8 I'd be glad to respond to any
9 questions you have.
10 MR. BRYANT: You said you
11 recommended, you are recommending mandatory
12 minimums? If you were in a position to make
13 these changes, you would institute mandatory
14 minimums? Could you tell us why? I mean
15 what's your thought processes on that?
16 COL GILLIGAN: I am not sure what
17 I'd do, to be quite honest
18 MR. BRYANT: All right.
19 COL GILLIGAN: - on that whether
20 to have mandatory minimums, minimum maximums
21 on that. The other thing I would consider,
22 have all sentencing done by the judge on that.

1 I don't have a feel one way or the other,
2 Harvey, as to which way to go on that. I just
3 think this is a chance to re-look the system.
4 It's pretty clear me talking to court members
5 that they feel adrift when they're voting on
6 sentencing.
7 MR. BRYANT: So all the members
8 are told is what the maximum possible sentence
9 is?
10 COL GILLIGAN: Yes, and they're
11 told you can adjudge any sentence and they're
12 told what the maximum is in most cases. There
13 are a couple of mandatory sentencing when you
14 get to first degree murder.
15 COL HAM: At the recommendation of
16 the prosecutor though, right, Mr. Gilligan?
17 COL GILLIGAN: Pardon me?
18 COL HAM: The prosecutor
19 recommends an appropriate sentence?
20 COL GILLIGAN: Yes, the prosecutor
21 recommends an appropriate sentence.
22 BG DUNN: And the defense counsel

1 generally has counter to that.
2 COL GILLIGAN: Oh, sure,
3 absolutely.
4 BG DUNN: Put forth a number of
5 years.
6 COL HENLEY: Rather than remove
7 the members completely from a sentencing. I
8 agree, the military judge should actually
9 impose a sentence. What do you think about
10 having the court members give an advisory
11 sentence which the judge, as you pointed out,
12 could either accept or decline?
13 COL GILLIGAN: My feeling has been
14 now with the number of courts going down so
15 drastically and when I was trying cases as a
16 judge, I was trying 30 general courts-martial
17 a month. Now they don't try that in a year.
18 And that makes a difference because then you
19 have panels that would be seated for three
20 months at a time or a month at a time,
21 depending on what jurisdiction I was with on
22 that.

1 The other thing you find, too, I'm
2 sure those of you who have been judges before
3 have seen that, whether you have a panel for
4 sentencing or whether you have judge alone,
5 always dependent on what jurisdiction I was
6 going to, always dependent on that.
7 MR. BRYANT: Even in the civilian
8 system, there are very few states where the
9 jury does the sentencing. There's either
10 recommendations or like the federal system,
11 the judge does the sentencing. The jury just
12 determines guilt or innocence.
13 My question would be do you know
14 or have you done any research in the area of
15 whether or not when the judge is doing the
16 sentencing the number juries goes up, is
17 higher in those jurisdictions than when the
18 citizen or, in this case, the military panel
19 members are doing sentencing?
20 COL GILLIGAN: I have not done
21 that, but my intuition tells me if you have
22 the judge doing the sentencing, the number of

1 panel trials will go up. That's just my
2 intuition.
3 MR. BRYANT: That's mine also.
4 COL GILLIGAN: Yes.
5 MR. BRYANT: Because in Virginia,
6 the jury does sentencing and we're down to
7 just a little over one percent of all felony
8 cases are now juried because -- and it's also
9 bifurcated trial sentencing. So I was just
10 wondering if that was part of your thinking
11 and recommending that sentencing be done by
12 judge alone.
13 COL GILLIGAN: My feeling is
14 really anecdotal talking to members
15 afterwards, what are we doing on that?
16 Have you done studies of
17 sentencing as to offenses in that, what the
18 range has been and done it by jurisdiction?
19 MR. BRYANT: No.
20 COL GILLIGAN: Yes, I sort of
21 commend -- I wish I had done studies on it,
22 but I haven't.

1 COL HAM: Would you recommend
2 that, Mr. Gilligan, that there be a study of
3 military sentencing to determine if the
4 anecdotal wide ranges are true in fact?
5 COL GILLIGAN: I would do that. I
6 think you can do it now. I think this is all
7 pretty much computerized. I think the clerks
8 of the courts wouldn't be happy, but it would
9 be something they could do on that. I know
10 both the Navy, Air Force, and Army, I know
11 those clerks and I know they have the stats.
12 I don't know about the Coast Guard, what they
13 do on stats on things like that. I think it
14 would be fascinating to get that.
15 COL HAM: I will tell you also
16 anecdotally as chief of Defense Appellate
17 Division, there are a lot of lengthy sentences
18 that I don't recall seeing in prior years, 20
19 years and up for sexual assault and again, I
20 mean I don't know that anybody has ever done
21 a study.
22 MR. STRAND: A study would be

1 helpful because it would also tease out what
2 we get in the press sometimes and what we get
3 from other sources of information where they
4 lump sexual assault all into one thing which
5 could have a range of actions and accusations.
6 And I think a study might tease out if you do
7 like sentences as far as for rape, for
8 aggravated sexual assault. That would be
9 really helpful for us instead of just in this
10 wash of well, you've got 400 sexual assaults
11 and most of them never even saw the light of
12 day in a courtroom. Well, if you look at what
13 those sexual assaults are, that might help
14 explain some of that, may not. I don't know.
15 But if there's a study, it really should
16 include breaking down like offenses.
17 BG DUNN: Also I think the study
18 would have to separate panel sentences from
19 judge alone sentences to see if there's more
20 consistency with judge alone sentences versus
21 panel sentences.
22 COL HENLEY: I suspect you're

1 going to find the same problem with court
2 members not having the number of cases or the
3 case load declining with judges as well.
4 Judges aren't trying as many cases as they did
5 in years past as you pointed out. So just
6 have the military judge impose a sentence may
7 not be the answer. In fact, given
8 circumstance to the court members may be more
9 experienced if it's a new judge or a judge
10 unfamiliar with that type of case. I'm sorry,
11 Dawn, I didn't mean to interrupt.
12 COL SCHOLZ: That's okay. I think
13 we are going in the same direction in terms of
14 -- I think the point you were making about the
15 panel members not having a lot of experience
16 and they're sitting for like two or three
17 months. Well, in the Air Force it's even
18 worse. We don't really sit panels like you
19 all do in the Army where they sit for a time.
20 We have a new convening order every time and
21 new members every time and so they are less
22 experienced.

1 COL HENLEY: I think the Navy and
2 Marines are similar.
3 COL SCHOLZ: Yes.
4 COL HENLEY: They have a new panel
5 --
6 COL SCHOLZ: Every time.
7 COL HENLEY: - each time.
8 COL SCHOLZ: Right. So we're even
9 worse off in terms of experience and seeing
10 crimes, but I agree with you. I think your
11 point about judges having experience is an
12 issue in the Air Force. We have young,
13 inexperienced judges, too.
14 COL HENLEY: You are talking about
15 trying to find studies they used to run.
16 Dawn, maybe you can confirm this at the inter-
17 service judges seminar at Maxwell which I
18 think just met last week. One of the
19 highlights is the sentencing symposium where
20 before going to hand out fact patterns, pretty
21 specific, and the judge goes ahead and imposes
22 sentence and then they collect all the

1 information. And then once you're there, you
2 learn what you did as it relates to other
3 judges from other services in your own
4 service. So it's broken down by service and
5 type of offense.
6 But again there, you have a pretty
7 detailed description of what the offense is,
8 the extenuating and mitigating circumstances,
9 information about the accused. So just
10 focusing in on the particular offense I think
11 what you learn from the exercise is not wise.
12 You go in. You know it's a rape case, so I'll
13 impose 15 years and then you find you're
14 usually high or low after you learn the
15 specific circumstances of the offense. But
16 you're looking for information. That may be
17 a place that you could try to retrieve some
18 good information about services and how they
19 view certain offenses because it is
20 interesting. I think you go in there and it
21 confirms what you suspected. The Marines
22 typically are on the high end. Coast Guard on

1 the low end. The Army and Navy somewhere in
2 the middle.
3 BG DUNN: And these are judges who
4 have some experience.
5 COL HENLEY: Yes.
6 BG DUNN: This is not a training
7 course. It's a symposium.
8 COL HENLEY: Right.
9 BG DUNN: That might be
10 interesting if they'll share that, just share
11 the data with us generally.
12 MR. BRYANT: Since we are the
13 Comparative Systems Subcommittee and we're
14 comparing when we talk about whether the
15 members have experience in the civilian world
16 and in the federal court system, which is same
17 in a civilian world, those jurors rarely sit
18 for more than one case. They'll be sitting
19 for a term. I'm not the witness, but I'm
20 asking you if that's your understanding. So
21 as we do comparative systems, everything but
22 the military or including military, juries are

1 not experienced in what they're doing. They
2 come into a trial fresh. Would you agree with
3 that?
4 COL GILLIGAN: Civilians, yes.
5 How does the sentencing work in Virginia? How
6 do you do that?
7 MR. BRYANT: In a jury sentence,
8 once they find guilt, the guilt phase, then
9 there's a sentencing phase and the jury, they
10 can hear other evidence about the defendant's
11 prior record, that sort of thing. The
12 defendant can put on mitigating evidence. But
13 in terms of instructions, they are told the
14 minimum and maximum. And then, of course, the
15 prosecutor and the defense argue within that
16 range.
17 For rape in Virginia, it's not
18 less than five and up to life, along with a
19 fine of $2,500, something like that. But
20 anyway, the jury has no provision for
21 suspended sentence, probation or anything
22 else. It's penitentiary time, somewhere

1 between five and life, as a for instance.
2 Some of the other felonies,
3 there's obviously an option for jail time and
4 lower fines. And I think that's -- when we
5 were talking about comparative systems, I
6 think there's only four states in the nation
7 where the jury does the sentencing in that
8 sense. And I don't want to get way ahead of
9 the lady who's coming here from the Virginia
10 Sentencing Commission.
11 The other thing as a question, is
12 there some understanding of why the number of
13 panels have gone down in the military? What's
14 driving that? Do you know that?
15 BG DUNN: I think the number of
16 courts-martial is dropping.
17 MR. BRYANT: And why is that? I
18 mean have we had anybody tell us why they
19 think the number of courts-martial are
20 dropping?
21 COL SCHOLZ: Part of it is
22 downsizing, I mean the numbers

1 MR. BRYANT: Just because of the
2 shrinking --
3 BG DUNN: And the increasing
4 quality across the board in the services of
5 recruits. I mean during the days of the
6 draft, military justice was a huge machine,
7 but once they imposed the requirement for high
8 school degrees, et cetera, you've gotten --
9 BG COOKE: And the use of
10 administrative tools --
11 BG DUNN: Separations, yes.
12 BG COOKE: People early, before
13 they get in more serious trouble, identify
14 somebody who is --
15 COL HAM: In the early '90s, I'm
16 sorry, sir.
17 BG COOKE: Go ahead.
18 COL HAM: Before the early '90s,
19 it was not permitted to require judge alone
20 sentencing as part of a pre-trial agreement.
21 I think '92 or so our highest court ruled that
22 that was a permissible pre-trial agreement

1 term. So judge alone sentencing then went way
2 up.
3 If you look at -- and I'm sure
4 Colonel Henley and Mr. Gilligan have seen this
5 as well, if you look at the statistics for
6 courts-martial from the late '80s until now,
7 there was a huge drop from in the Army anyway,
8 2300 or so a year down to about 1200 a year
9 after the big drawdown, after the first Gulf
10 War in the early '90s. And it's never really
11 gotten -- it's up and down some, but it's
12 never really gone above 1600 or so since then.
13 Is that about correct sir?
14 BG DUNN: And I think Colonel
15 Cooke's remark about the administrative
16 discharge has had a big impact certainly in
17 the army.
18 COL HENLEY: The reason is, since
19 2001, the accused has had a number of -- a
20 significant number of deployments that I think
21 the commander takes into account in level at
22 disposition. That eventually will work its

1 way out, but I think the administrative side,
2 the administrative dispositions in lieu of
3 court-martial is if you have a soldier,
4 sailor, airman, or Marine with three, four,
5 five deployments, I know commanders take that
6 into account and level at disposition. So
7 that's part of it, too. Fewer courts-martial
8 to give credit for deployments.
9 BG COOKE: I was going to ask --
10 one of the arguments, it seems, for retention
11 of member sentencing is sort of expression of
12 the community particularly in offenses that
13 are unique to the military or have special
14 features because of the military. Would you
15 speak to that and if that's a reason for
16 keeping it, is there a way to -- or should
17 there be a way to bifurcate so-called purely
18 civilian crimes from other offenses, treat
19 them differently?
20 COL GILLIGAN: I have heard that
21 before, too, that it is a sense of the
22 community, but only from that panel. It's not

1 like they talk to the community or have any
2 idea, you hear that, that it is a sense of the
3 community, but only of that panel that comes
4 in.
5 BG COOKE: The obvious example is
6 the crime by somebody in a combat setting
7 where you've got people who have been in
8 combat on the panel as opposed to a judge who
9 most likely has been --
10 BG DUNN: Who flew in from
11 Germany.
12 (Laughter.)
13 COL GILLIGAN: But I think General
14 Cooke put his finger on it. On these
15 deployments nowadays, I've been involved even
16 now with a couple of the divisions and I know
17 those divisions on deployment with the
18 brigades allow those who don't want to deploy,
19 let us know. We're going to administratively
20 discharge you. That really cuts down on
21 issues on deployment when you do something
22 like that. I know two divisions have done

1 that, so. I was surprised to hear that.
2 MR. STRAND: One of the concerns I
3 have, Mr. Gilligan, is jury nullification and
4 whether that plays into your thinking on judge
5 alone or whatever. The concerns that I have
6 is I've seen sentences where they find guilty,
7 but it's a really low sentence because I think
8 they still put in some cases responsibilities
9 back on the victim or maybe it wasn't as
10 egregious as the crime shows, but technically
11 they committed the crime. And if you had
12 minimum sentencing, then the jury may or may
13 not find guilt and that's one of the concerns
14 that I have going in. And I might be ignorant
15 about that, but what are your thoughts on
16 potential jury nullification with minimum
17 sentencing if the panels are making these
18 decisions?
19 COL GILLIGAN: I guess you would
20 want to ask yourself it would be discretionary
21 with the judge whether you're going to allow
22 counsel to talk about, during the findings

1 portion of the trial, what the sentencing
2 would be. As I say, discretionary with the
3 judge, wouldn't be appealable on that. So it
4 would depend on the judge whether you're going
5 to get jury nullification. Certainly, it's
6 not relevant what the sentence is to do that
7 as part of the findings portion. But I think
8 it's --
9 BG COOKE: You do have the
10 potential situation, though, where because of
11 the two-thirds' requirement, you've got people
12 voting on a sentence. You may have one or two
13 who voted not guilty, think the accused is not
14 guilty and now they're part of the mix that's
15 determining the sentence.
16 COL GILLIGAN: We have found, to
17 just tag on that, is we've had a death penalty
18 case down in Texas where the members did not
19 realize to impose the death penalty you have
20 to withhold your voting. If you want the
21 death penalty you have to withhold. Because
22 we start with the lightest first and they did

1 not withhold thinking well, what they're
2 voting on is a subset of that therefore, and
3 they didn't get the death penalty because they
4 never reached the vote on it. It's an
5 interesting voting system that we have. It's
6 been with us for years.
7 MR. STRAND: I think it's a good
8 point. And I'm not talking about officially.
9 Say I'm on a panel, I may not say well, I
10 can't find for guilt because I don't want him
11 to go to prison for 20 years or whatever.
12 That may not come out in the discussion, but
13 it certainly impacts, I think, human decision
14 making. And I don't know if there's been any
15 research or studies on that. I don't know if
16 you're aware of any on what impact minimum
17 sentencing has on jury decisions in those
18 jurisdictions where juries make that decision
19 or even judge alone decisions.
20 COL GILLIGAN: You will see some
21 reported cases on people saying things like
22 that. They're reported because the question

1 is can you impeach their votes under 606(b),
2 so you do see some cases on that and it's a
3 question of impeachment of verdicts because of
4 statements. Boy, my daughter-in-law had the
5 same thing. Boy, she was convicted or she got
6 such a such a sentence of those statements
7 being made during deliberation on that. No,
8 I don't have any studies on that.
9 MR. FISHMAN: Sir, the Comparative
10 Systems Subcommittee has an article from the
11 Army Lawyer that talks about the possibility
12 of using advisory sentencing guidelines and
13 specifically whether it's advisable for the
14 jury members to sentence on everything except
15 confinement and a couple of different
16 variations on that. What would your thoughts
17 be on that based on your experience, so
18 advisory sentencing guidelines and then the
19 possibility of member sentencing on everything
20 except confinement?
21 COL GILLIGAN: I was just trying
22 to think out loud. I don't know why would you

1 want to except them out on the confinement
2 portion, too, on that if you're really back to
3 General Cooke's idea. If you want advisory
4 sentencing in a sense of the community and
5 have advisory vote, sentences from members, I
6 would do the whole ball of wax with them and
7 not sort that out on the confinement on that.
8 I think you've got to ask yourself
9 too, if you do that, are you overly
10 complicating what you're asking members to do
11 on that? Bear in mind the reason we have
12 single votes is to -- lots of people are in
13 combat. We had that during Gulf War I and II.
14 We don't want them deliberating in a tent for
15 two days on that. Most court members don't
16 deliberate, in my experience, beyond four or
17 five hours. That's the upper limit. They're
18 much quicker than that coming in.
19 LTC McGOVERN: So sir, when you
20 say the whole ball of wax, do you think that
21 the members are taking it into consideration
22 that if we're discharging them, we're only

1 going to give them a certain amount of
2 confinement time and considering the totality
3 of that in their sentence and that's why we
4 should keep it all together as one decision?
5 Because we do now have with the
6 new NDAA basically a mandatory minimum for the
7 dishonorable discharge, so that decision is
8 actually already made for them which I'm not
9 sure if we'll see if that impacts the
10 confinement time or the sentences that we see
11 in sexual assault cases, too.
12 COL GILLIGAN: I don't know.
13 BG COOKE: Do you have a sense of
14 the completeness or the thoroughness of the
15 information that goes before either the judge
16 or the members on sentencing? I kind of draw
17 the comparison with the federal system where
18 there's a lengthy investigation in the
19 defendant's background after the conviction.
20 A pre-sentence report is made and of course,
21 both parties then have the chance to comment
22 on it and present additional evidence if they

1 want. In the court-martial, the sentencing
2 occurs right after the verdict and the parties
3 may or may not have done a lot of preparation
4 for the sentencing. But I appreciate your
5 views on it.
6 What information does the judge or
7 the panel have and is it enough?
8 COL GILLIGAN: They do not get
9 what you would get in a pre-sentence report.
10 As you indicated, you get your verdict. In
11 most instances, the sentencing process will
12 proceed. If you have time that day, I mean it
13 could be after a ten-minute break that you
14 just proceed on. If you're near the end of
15 the day, then your sentencing is going to be
16 -- I don't know whether other judges
17 experience that, but I could count on a hand
18 having tried 400 cases where I allowed a
19 continuance to get more thorough information
20 on sentencing. It just didn't happen. As I
21 say, sentencing would just proceed depending
22 on the time of day where you were on it.

1 BG COOKE: And do you think the
2 information that you had in your 400 cases was
3 enough most of the time, all of the time? Or
4 is there other information that systematically
5 would be good to have, but we don't get
6 because of the way the system works.
7 COL GILLIGAN: I have a couple of
8 things. I'm not sure we want to take the time
9 to do pre-sentence reports. We would have a
10 lot more information if we did that. You've
11 just got to ask yourself with our system, I
12 think we always have to look at our system
13 that we have to use it in time of war. And
14 now we're going to be using it in time of war.
15 I see it in brigade settings, so you want to
16 ask yourself in brigade settings and time of
17 war will your proposals work in the Horn of
18 Africa? You can just see those scenarios
19 coming up on that.
20 MR. STRAND: One of the
21 differences that I see between where you have
22 a pre-sentence report is we already know who

1 that person is. We already have their record.
2 We know what they've committed and what they
3 haven't committed. We have a good handle on
4 that. We don't have to do a lot of extensive
5 research. We have their history. We have
6 their record, everything else.
7 COL GILLIGAN: This is the
8 military person?
9 MR. STRAND: Military.
10 COL GILLIGAN: Yes.
11 MR. STRAND: So I guess my basic
12 question, kind of following on General
13 Cooke's, is would it be detrimental or
14 beneficial if we went to pre-sentencing
15 reports or if we -- I'm kind of weighing on --
16 well, I don't know. Do you think it would
17 cause more harm if we did that as opposed to
18 what we currently have?
19 COL GILLIGAN: That's a good
20 question. It goes back to sort of response to
21 General Cooke's question, too, is because
22 we're sentencing service members and we have

1 -- they're in a command-oriented system,
2 usually the NCOs and the junior commanders
3 probably know more about these people and can
4 come in and talk about that than what you
5 could get in a civilian community after a
6 thorough investigation.
7 Our community is a pretty tight
8 community where the commander and the NCO will
9 know a lot about that individual, what their
10 social life is, probably involved in their
11 social life, probably have been to each
12 other's home for parties or watching Super
13 Bowl games or things like that. So I think
14 that's probably another reason that we're
15 going to be able to have the chain of command
16 come in and talk either positive or negative
17 about Gilligan and what he was like as a
18 private on that.
19 COL SCHOLZ: That is part of your
20 trial prep is to prepare your sentencing case
21 in advance, too. So I think generally I felt
22 like I was putting a lot of information in on

1 like a pre-sentencing report in trial. So I
2 never felt disadvantaged by that.
3 COL GILLIGAN: Yes.
4 BG DUNN: I would agree with
5 Colonel Scholz. The system is geared so that
6 both prosecutors and the defense counsel
7 understand at the beginning of the trial that
8 they have to be prepared to step in with that
9 sentencing phase in the afternoon or the next
10 morning. And generally, those discussions
11 about the defense bringing witnesses,
12 etcetera, have occurred before trial and have
13 been raised to the military judge before trial
14 if there are issues. It seems to me that the
15 system is geared up to do that sentencing
16 report, so to speak in the sentencing phase of
17 trial.
18 COL GILLIGAN: If you just make a
19 comparison to the civilian community, I think
20 you don't see that in civilian community where
21 a person is in a close-knit society where you
22 have individuals who know them on a personal

1 basis. I can just say that from experience.
2 My dad always regretted I never came back
3 home, but that was a reason not to go back
4 home. I wasn't sure I wanted that broad
5 spectrum of the whole community. I enjoyed
6 the camaraderie of a closed community and I
7 think you have that in the military. So you
8 have that same community coming in, in the
9 sentencing.
10 COL HENLEY: I think the
11 logistical difficulties that you do probation
12 or these pre-sentence reports, where would the
13 accused go? Would he go to a confined
14 facility for six months? And then you'd have
15 to return him to Fort Bragg for sentencing?
16 The command has moved on. The witnesses have
17 moved on. The judge may be reassigned.
18 Counsel --
19 BG DUNN: He doesn't get
20 confinement. He's just convicted.
21 COL HENLEY: Right. I think the
22 logistical difficulties is another reason.

1 BG DUNN: It also keeps the now
2 convict, but not yet sentenced in the military
3 getting paid.
4 COL HENLEY: Still drawing pay.
5 BG DUNN: Drawing pay, drawing
6 allowances, exactly and hasn't been sentenced
7 yet.
8 COL HENLEY: Can I follow up --
9 you were talking Colonel Gilligan, just to
10 follow up with Kelly on the sentence itself.
11 Do you have a view on whether there should be
12 a change in the types of punishment that can
13 be imposed at a court-martial or at various
14 level of court-martial, a special or general?
15 Maybe at a general, you limit it to just
16 confinement only and all other ancillary
17 punishments either the mandatory minimums or
18 they're done by regulation. Is that one of
19 the frustrations that you think the court
20 members have?
21 They have this laundry list of
22 potential punishments and they try to mix and

1 match without focusing on what most people
2 would think would be the important part of the
3 punishment which is confinement. Is that
4 something that maybe if not considered, you
5 think would be appropriate?
6 COL GILLIGAN: My feeling is that
7 I don't know whether you need to -- whether
8 you can't have the same variation as to the
9 separation versus the reduction in grade. I
10 think all those options -- I don't see a
11 reason to change that. I don't think we've
12 ever done a study of just doing -- going out
13 and randomly sampling a thousand court members
14 and ask them who have been involved in a case.
15 That would be sort of interesting to hear what
16 the comments are back on something like that.
17 It's probably way beyond time-wise to do
18 something like that.
19 COL HENLEY: The other frustrating
20 aspect of court member sentencing because I've
21 talked to court members, the judge knows what
22 each sentence or what each crime is worth and

1 when we instruct the members that the maximum
2 period of confinement is 150 years or 80
3 years, we know how we got to that number. And
4 although in almost every case the defense
5 counsel requests the opportunity to during
6 sentencing to inform the members that the
7 maximum punishment for AWOL is X, for
8 disobedience is Y, for aggravated sexual
9 assault is Z. So the court members at least
10 have an understanding of what's the maximum
11 period of confinement for the number of
12 offenses for which he's been convicted.
13 Do you have a view or do you have
14 a recommendation whether unitary sentencing
15 should be eliminated and I'm talking about
16 comparative systems. I think we don't have
17 the option of concurrent sentencing in the
18 military. It's all done -- is that something
19 maybe you'd consider recommending?
20 COL GILLIGAN: I would stay with
21 unitary sentencing. I'd just straighten out
22 the multiplicity issues that you have. That

1 would be the one thing that needs to be
2 clarified.
3 COL HENLEY: To allow the court
4 members to be informed as to what each
5 sentence or what the crime is worth?
6 COL GILLIGAN: No, I would do --
7 just give them a max, what the max, is. I
8 wouldn't change that on that.
9 MR. BRYANT: I am very interested
10 in that because that's contrary to the
11 civilian system in which they are told count
12 by count, if it's weapons charge, breaking and
13 entering, the assault. And the jury is told
14 what each individual crime, what the minimum
15 and maximum is. So you find them generally
16 maxing them out or a heavier sentence of what
17 they consider the more serious crime and a
18 lightening up as they go down in their
19 sentencing. So I'm curious about the unitary
20 -- 80 years or 150 in your example and good
21 luck to you. Figure that out. We're saying
22 to the panel in effect.

1 COL GILLIGAN: We just give them
2 what the maximum is on the confinement
3 together with the other options what they
4 might be in the case. I wouldn't change that
5 unless you had a reason to change it on that.
6 If you're going to stay with
7 member sentencing, it goes right back to the
8 question you have is do you want to have
9 member sentencing on that?
10 COL HENLEY: From the members'
11 perspective, I think it's fairness in
12 sentencing. At least they have the
13 information available to them to judge what
14 appears to be an appropriate sentence. I mean
15 that was under the subcategory of court member
16 frustration. When they learn afterwards what
17 each offense is worth, they are frustrated
18 that they were not given that information.
19 And I've had court members as part of the
20 court member questions, they ask questions
21 during the trial, what is each sentence worth?
22 And we're not allowed -- or what each crime is

1 worth? And we're not allowed to tell you
2 that. The maximum is X. You can adjudge a
3 sentence anywhere from zero to mandatory
4 minimum.
5 I'm just curious whether that's
6 part of the frustration and would advising
7 them of what each crime is worth help?
8 COL GILLIGAN: I never asked that.
9 The frustration I heard was when they found
10 out later on there were prior convictions or
11 other prior misconduct that was kept out, I
12 wanted to know that. We feel deceived on
13 something like that.
14 MR. BRYANT: In comparative
15 systems, a lot of jurisdictions outside of the
16 military have gone to the truth in sentencing
17 concept which is why the trials are
18 bifurcated. It used to be in a lot of
19 jurisdictions that a jury that determined
20 guilt or innocence was doing sentencing while
21 they were back there before they came out with
22 their verdict. And they didn't know, if the

1 defendant didn't testify, about prior
2 convictions and they certainly didn't know any
3 of the other background.
4 Now in the bifurcated system and
5 the quote truth in sentencing, there's an
6 opportunity for all that to be presented to
7 the jury including copies of the court orders
8 of prior convictions and what those sentences
9 were in the prior convictions.
10 COL HAM: All that will come in.
11 I think you're talking about stuff that would
12 not be allowed in under the rules of evidence.
13 COL GILLIGAN: Oh yes.
14 COL HAM: It's pretty rare you've
15 got prior convictions because the person
16 wouldn't be in the service.
17 BG DUNN: But if they do, it comes
18 out.
19 COL HAM: I have a question about
20 mandatory --
21 MR. BRYANT: I just wondered
22 because you said that one of the frustrations

1 that you heard was that they didn't know about
2 all these prior convictions or prior bad
3 conduct. I'm not sure what you had reference
4 to, but you said panel members were frustrated
5 that they didn't know the background of this
6 defendant. So what background did they not
7 know?
8 LTC McGOVERN: Is that in the
9 merits phase, sir, that they didn't know when
10 they were going to decide guilt?
11 COL GILLIGAN: It would normally
12 be in the merits phase where you kept out
13 maybe 404(b) evidence or something like that.
14 As a judge, I think you'd have to be very
15 concerned about admitting 404(b) evidence on
16 that. I was always a very cautious on
17 admitting something like that.
18 COL HAM: I have a question about
19 mandatory minimums and actually about
20 sentencing guidelines. One of the complaints
21 against mandatory minimums is that it
22 potentially hinders plea negotiations. In

1 other words, less likely to have guilty pleas
2 depending on what the mandatory minimum is.
3 And also that it places a lot of power in the
4 prosecutorial charging decision to drive all
5 other decisions. Can you comment on that?
6 And then the second question I
7 have is I think the idea behind sentencing
8 guidelines was to standardize sentencing. Is
9 there evidence as to whether or not that
10 actually has occurred, both with the federal
11 sentencing guidelines and state sentencing
12 guidelines? Are you aware of anything?
13 COL GILLIGAN: I would talk to
14 someone who has been involved with -- I think
15 you have someone coming in. I'd ask them on
16 what they know about what it shows on their
17 sentencing based on the guidelines. I don't
18 have any idea.
19 And the second question was?
20 COL HAM: The first question was
21 on the mandatory minimum, on whether --
22 COL GILLIGAN: How that will

1 affect the plea in the case? I have no idea
2 how it will work on that.
3 BG COOKE: Changing a little bit,
4 do you have an opinion on the president's
5 authority under existing -- under Article 36
6 and 56 to promulgate any kind of guidelines?
7 Or would he need additional authority?
8 COL GILLIGAN: As long as you are
9 within the maximum as it now stands, I think
10 you could do a minimum/maximum or a range as
11 part of the authority of the president to do
12 that. And I say that because we have the same
13 thing in the commission process and in the
14 commission process we've gone to with an
15 instruction to the members of mandatory
16 minimum/maximum on that thinking that that's
17 appropriate to do that. So we have done that
18 and the Secretary of Defense has the same
19 authority as the president does under Article
20 36.
21 BG COOKE: I'd like to circle back
22 around to one of the basic issues here is

1 whether members should continue to play a role
2 in sentencing at all. I don't want to put
3 words in your mouth. I think you're
4 suggesting that maybe we just ought to go to
5 a judge alone, judge only system. Is that
6 accurate?
7 COL GILLIGAN: No, it is accurate,
8 but I have to caution you. I just don't --
9 all these ideas on sentencing is hard, because
10 I don't have statistical evidence to support
11 what I'm saying. And so I feel your view on
12 all these questions you have, your view is as
13 good as mine.
14 I don't have any expertise in this
15 particular area. I just have anecdotal
16 information having been a judge or having been
17 a -- I don't remember back being a prosecutor,
18 and a defense counsel, that far back. I do
19 remember a couple of cases I had, but most of
20 the time it's being the SJA.
21 One thing we ought to say for --
22 let's see, we've got Harvey here, everybody

1 else is -- we've got -- that is, how our pre-
2 trial agreements work is entirely different
3 than the civilian system. You have an
4 agreement with a convening authority. And if
5 the judge or the members come back with a
6 lower sentence than agreed upon, you get the
7 lower sentence. It's a wonderful system we
8 have. And I know TDS chalks that up as a win
9 and they call it, can you beat the deal on
10 that. So I think it is important we have
11 that.
12 Harvey, you probably already knew
13 that.
14 MR. BRYANT: I didn't know that.
15 From a civilian prosecutor point of view, and
16 U.S. Attorney point of view, it's problematic.
17 I see it as two bites at the apple, but anyway
18 --
19 COL GILLIGAN: Yes.
20 MR. BRYANT: You know what you're
21 going to get on a worst-case basis and you
22 still go to trial. I think if we had that

1 deal in the civilian world, there would
2 definitely be more jury trials.
3 COL HAM: They don't have a trial
4 on guilt or innocence. It's sentencing.
5 COL GILLIGAN: Right.
6 COL HENLEY: The difficulty there
7 is, you're tied to the philosophy for the SJA
8 and the convening authority. They use the
9 pre-trial agreement as a floor to ceiling and
10 I've had both. You have a convening authority
11 who looks at that as a ceiling, that we're
12 just protecting you on the outlier sentence,
13 you're probably going to beat the deal and
14 that's -- but if it's floor, that's another
15 way to approach the case. So that's, I think
16 that's the frustrating part from the counsel
17 perspective. You don't really know what
18 you're dealing with when you're trying to
19 negotiate a pre-trial agreement.
20 COL HAM: Plus, the convening
21 authority is acting without the aggravation,
22 or the extenuation, or mitigation. He's

1 acting based on the bare facts of the case.
2 COL GILLIGAN: One thing I had is
3 we had to put a stop to it in the pre-trial --
4 we have a, say, an agreement for a bad conduct
5 discharge and a year's confinement. The
6 defense would come in and argue: give him ten
7 years of confinement, but the last thing to do
8 is to give him a discharge. You've got to ask
9 about that sort of argument in the case. We
10 put a prohibition in the pre-trial agreement
11 on that one. I thought that was really having
12 both sides of the best of both things.
13 COL HENLEY: Is there are you
14 aware of why the accused is able to have two
15 bites at the apple? Is it some historical
16 context? Is there a reason why we actually
17 have a sentencing proceeding with a pre-trial
18 agreement? What is the reason if there's no
19 --
20 BG COOKE: Basically, it's using
21 what power the convening authority has, and
22 has always had to reduce the sentence,

1 basically saying okay, I won't approve this,
2 or to approve a sentence or not, I won't
3 approve the sentence greater than X in return
4 for your -- I think it's related to the
5 convening authority's fundamental powers under
6 the code.
7 COL HENLEY: Right, but if the
8 parties have negotiated the agreement, similar
9 to what the civilian community does --
10 BG COOKE: The convening authority
11 can't bind the court-martial. That's the flip
12 side of it is that you still have to go to the
13 court, and get an adjudged sentence.
14 COL HENLEY: Right, but the
15 sentence would be the negotiated agreement.
16 That would be the sentencing proceeding. The
17 judge finds the terms --
18 BG COOKE: But there he is the
19 convening authority, binding the court-
20 martial, which is taboo. I mean that's, in
21 effect, command influence. He's telling the
22 court-martial, you've got to do this.

1 COL HENLEY: You're saying that
2 the code cannot be changed?
3 BG COOKE: No, the code could be
4 changed, but I think the reason we've got the
5 system we have now is because pre-trial
6 agreements developed using -- in the construct
7 of the authorities that the convening
8 authority and the court-martial have.
9 COL SCHOLZ: And the convening
10 authority is aware that it can be less than
11 what he's agreeing to. I mean that's part of
12 the deal is that prove nothing more than that.
13 So it seems -- they go in knowing that that's
14 part of it.
15 BG COOKE: The convening authority
16 couldn't tell the court you have to give X or
17 you can't give less than X under the code.
18 COL HENLEY: Right. And again,
19 I'm not saying it's good or bad, but you just
20 have the parties negotiate in good faith,
21 represented competently on both sides.
22 They've agreed based on whatever information

1 they have, this is an appropriate sentence.
2 You don't go to the convening
3 authority. You go to the judge, the judge,
4 based on public policy or whatever decision he
5 or she makes, accepts the deal and imposes the
6 sentence. And if you want to request the
7 convening authority -- I guess you can't do
8 that any more, right? Under certain sexual
9 offenses, you cannot grant clemency? Is that
10 one of the NDAA changes?
11 LTC McGOVERN: We'll hear about
12 that in the next hour, sir.
13 BG COOKE: You could construct a
14 system that way, but I think your question was
15 why do we have the one we do and I think it's
16 based on the powers that existed, as these
17 pre-trial agreements developed.
18 COL HENLEY: Is that still the
19 case today? I guess that's what the advantage
20 -- is there an advantage to having two bites
21 at the apple?
22 COL HAM: The convening authority

1 is going to have even less information now,
2 because if there is a 32, which as you know
3 is waived most of the time if there's going to
4 be a plea, there's going to be less
5 information potentially provided by the 32.
6 So the parties are acting with
7 less and less information to arrive at a deal
8 before the evidence is heard on -- again,
9 what's the aggravation? What's the
10 extenuation and mitigation?
11 COL HENLEY: Maybe Mr. Bryant can
12 speak to that. What information does the
13 state's attorney have in negotiating the
14 agreement? What information do you have?
15 Then, is that enough you think to make the
16 deal?
17 MR. BRYANT: Of course, you've got
18 the facts of the case, so you know how
19 aggravating it was, what was involved there.
20 You know the person's criminal history and
21 background. And frankly defense attorneys
22 come in, and during the course of the thing

1 say, he was an altar boy and his father is the
2 principal of the local high school and this is
3 an aberration in his whole life. And then
4 you're hearing from the other -- people who
5 knew him, the witnesses in the case, if it's
6 not a stranger sort of thing about no, that's
7 not true, he's been a dirt ball all his life.
8 So a lot of this is not -- it's
9 just part of the thought process that you go
10 into, in determining what you're going to
11 ultimately recommend. Much of it has to do
12 with the strength of the case. But you do
13 know a lot of about the defendant before you
14 start, before you make an offer.
15 And you don't know whether he's
16 married, he or she is married, has children,
17 all those sort of things you will know as part
18 of the investigation at the police department,
19 frankly.
20 BG DUNN: It is just going to be
21 sorted out in a negotiation forum, rather than
22 going before a fact finder. So it's -- you're

1 not going to get that second set of eyes and
2 that different perspective.
3 LTC McGOVERN: But if two parties
4 have agreed in the civilian system to that
5 agreement, as Colonel Henley was saying, you
6 go in and you have that agreement, it's either
7 accepted or rejected by the judge in whole, is
8 that correct?
9 MR. BRYANT: Correct.
10 LTC McGOVERN: So it's seen as an
11 agreement between those two parties and it's
12 not -- then the judge makes a whole separate
13 assessment, as in the military and then makes
14 his or her own decision and then you compare
15 the two.
16 MR. BRYANT: Ninety-nine percent
17 of the time the judge is going to accept the
18 prosecutor in the written plea agreement,
19 because the judge realizes I don't know all
20 the facts that went into this. It comes to
21 the judge fairly cold. Now if it's rape and
22 you're recommending ten days in jail, they're

1 probably going to say, I don't know what this
2 is about, but I'm not accepting it, to give an
3 extreme example.
4 In most of the jurisdictions, not
5 just in Virginia, there's more than one type
6 of plea agreement. There's one where if the
7 judge rejects it, then the defendant gets to
8 withdraw their plea and you start all over.
9 There's another where the
10 defendant goes in and knows -- the judge, this
11 is the plea agreement. You've already pled
12 guilty. The judge may or may not go along
13 with this, but you've still pled guilty and
14 can't withdraw your guilty plea. So then
15 you're into a judge sentencing situation. So
16 anyway, your question was: how much do you
17 know? And a fairly decent amount before you
18 start doing your plea negotiations before you
19 make your actual agreement.
20 MR. FISHMAN: Sir, while we still
21 have you here, just for a few more minutes,
22 kind of bridging off of some of these

1 questions to make sure that we get the things
2 we need for this report, could you highlight
3 some of what you see as the benefits of the
4 military sentencing process as it exists right
5 now? Just focusing on procedures.
6 COL GILLIGAN: I will. Let me
7 just go back to one thing about the -- that
8 General Cooke asked about the history of pre-
9 trial agreement. It's developed over time.
10 It started in the late '50s and then went
11 through the '60s and '70s. And I remember
12 when the Air Force prohibited pre-trial
13 agreements. So that was part of that
14 development process on that. And then you got
15 into the issue of conditional pleas, how they
16 worked, and then we had prohibitions on
17 conditional pleas, too, how those might work.
18 Give me your question again, Dillon?
19 MR. FISHMAN: It was probably
20 inartfully worded, but benefits and drawbacks
21 of the military sentencing process as it
22 exists right now, just kind of concentrating

1 on the procedures.
2 COL GILLIGAN: I think the
3 benefits, are if it's working, don't change
4 it. You've got ask yourself are people
5 satisfied with the system? Is it broken? Do
6 you need to fix it? And then the drawback
7 part, I think that I mentioned at the
8 beginning is, I think, we don't have guides
9 for members and truthfully we don't have the
10 -- the judges get their guides and their
11 guidelines from an experience factor and
12 that's from trying cases.
13 Once you've tried cases for a
14 period of time, the SJAs would know what that
15 range is, for that judge, for those offenses.
16 But bear in mind that's just worked out on an
17 experience factor, both with the judge and the
18 relationship between the judge and that
19 convening authority, or that jurisdiction
20 that's involved. I don't know whether that's
21 a pro or con.
22 I feel like coming in here today,

1 I would say, why do you want me? I mean I
2 feel as if we're putting Jello on the wall
3 here. I don't know what to do on this. I
4 just don't have strong feelings one way the
5 other on this. So I would think your
6 recommendations would be helpful, but maybe we
7 want more statistical studies done on this.
8 COL SCHOLZ: Well, do you think
9 it's broken?
10 COL GILLIGAN: No, I think it's
11 working. And the question I have, if you go
12 to mandatory max. or mandatory minimums, or
13 you do guidelines on that, I want to ask
14 myself, what's going to happen to the
15 administrative process on that. I mean, I
16 think, then if defense counsels are
17 dissatisfied or convening authorities are
18 dissatisfied, I think we're going to see more
19 administrative action being taken in a case
20 rather than court-martial action.
21 So I think that's something you've
22 got to ask yourself: if we do go to, say,

1 mandatory minimum/maximum or strong
2 recommendations on minimum/maximums, if I'm
3 over at trial defense service I'd say no, hey,
4 we're going to go administrative discharge, is
5 what we're going to be looking for.
6 So I think you've just got to -- I
7 don't have good pros and cons for you, Dillon.
8 As I say, it's difficult. I don't have any
9 studies on it.
10 MR. FISHMAN: You mentioned that
11 if it's working, obviously you're considering
12 that in light of ends of the system, or the
13 objectives of the system. Would you see those
14 principally as good order and discipline or
15 are there other ends, such as the public
16 perception of justice and fairness?
17 COL GILLIGAN: You want both of
18 those. I mean, this goes back to the
19 testimony of Professor Morgan before the
20 Congress in 1950. He had -- it's a little bit
21 of trivia, but he had his XO write out his
22 statement to the Congress as to establishing

1 the Uniform Code of Military Justice, and he
2 scratched it all out and he went right back to
3 what you said. He said, we want a system here
4 that ensures good order and discipline, but
5 also ensures rights for the defendant. And he
6 says, in this proposal I'm making to you
7 strikes the right balance. And you've got to
8 ask yourself, at that time it strikes the
9 right balance. We want charges forwarded
10 within a certain period of time. We want
11 immediate action taken.
12 Think of this. This is '49 and
13 '50. We want immediate action taken on these
14 charges. This was all in Article 1033 of the
15 code. We want rights warnings to be given.
16 This is again in '49 and '50. We want rights
17 warnings to be given. We want to have a right
18 to counsel at various trials. Think about
19 Gideon didn't come into play until '63. And
20 we want to make sure there's double jeopardy
21 protection, and that if you have a second at
22 trial, it can never exceed what you have in

1 the first trial.
2 I told that to a friend of mine
3 and he says what's balanced about that in '49
4 and '50? And so -- but his whole thing was
5 back to you, we want a balance. But you
6 could see how far he went when he proposed the
7 UCMJ which was adopted and went into effect in
8 1950.
9 MR. FISHMAN: There was an
10 Associated Press article the members have
11 received that came out just this weekend and
12 it had to do with numbers that were released,
13 based on a FOIA request, and primarily in
14 Japan. And it had to do with I believe it was
15 over the last approximately five years with
16 cases that came out -- was it eight, I'm
17 sorry.
18 And do you believe that, looking
19 at the public perception of justice, in other
20 words, not so much the right of the defendant,
21 but maybe rights of the victim, or the alleged
22 victim, that the sentencing system that exists

1 is adequately taking that into account, the
2 rights of the victim or the interests of the
3 victim?
4 COL GILLIGAN: I can go back to
5 the couple of examples I've given you. One is
6 a rape case where the individual was convicted
7 of the rape of three young children and got a
8 two grade reduction on that.
9 LTC McGOVERN: What year was that,
10 sir?
11 COL GILLIGAN: That happened -- I
12 was the prosecutor in the case, unfortunately.
13 Jim Yelton was the defense counsel. It
14 happened about 1967. And I've seen other
15 cases like that, I've been involved with,
16 where you see very lenient sentences come in
17 in a case. As a judge, as I said, it depends
18 on what jurisdiction I went to, on that, as to
19 what the sentences would be.
20 So I give that as an example.
21 That certainly is not a sentence that would be
22 understood by the community, so why we would

1 allow that kind of range of sentencing -- and
2 I've also seen the sentence, just a handful,
3 of no punishment. I don't think that's got to
4 be sufficient either, but that is an
5 instruction.
6 LTC McGOVERN: Life sentences for
7 rape as well?
8 COL GILLIGAN: Yes. So the answer
9 is --
10 LTC McGOVERN: You have seen life
11 sentences for rape? There are life sentences
12 for rape, too.
13 COL GILLIGAN: A life sentence for
14 rape? No, I've never seen that. Never seen
15 that as a sentence adjudged in a case.
16 COL HAM: Have you seen those,
17 Colonel Henley?
18 COL HENLEY: Yes. I think there
19 are fewer than lower sentences, but it's not
20 uncommon for the court members, or the judge
21 to impose a sentence more than the prosecutor
22 asked for.

1 MR. BRYANT: Since in both the
2 federal and the state systems they went to
3 sentencing guidelines, in an effort to have
4 more consistency. And I think the tenor of
5 this article was, there were very inconsistent
6 sentences in Japan, in the Marines and in the
7 Navy, and to some extent in the Army.
8 I understand what you're saying.
9 Nobody knows the answers to these, but my
10 question is don't you think that if we had
11 some sort of sentencing guidelines that
12 contained a middle range and an upper range
13 that we would then, we meaning the military,
14 would then have more consistent sentences
15 across the board, if judges were following
16 those guidelines?
17 COL GILLIGAN: You would have
18 consistent sentences, but I think what's going
19 to happen, Harvey, is you're going to see more
20 administrative discharges. But you're not
21 going to have the court at all.
22 LTC McGOVERN: Which I think went

1 to the heart of that article, too, it's
2 focused on the lack of prosecutions and the
3 prosecution rates, rather than just focusing
4 on the sentences that occurred in Japan.
5 MR. STRAND: The other concern I
6 have about articles like that, or anything is
7 who's creating the perception for what reason?
8 And is that perception accurate? The problem
9 I have with that particular article is that
10 it's a whole range of everything. We don't
11 know what the upper limits of the rape cases
12 are compared to the wrongful sexual contacts.
13 We have a period of years where things were
14 happening, long before we started doing
15 anything in the direction that we're going in
16 now. There's been policies put in place
17 during that period of time which appear to be
18 taking effect, which is changing the
19 landscape. So my concern in that, and I agree
20 with what you're saying, Mr. Gilligan, is that
21 we have to take a balance approach.
22 I think we need to do some actual

1 research on whether that perception is
2 accurate, or whether it's just for particular
3 purposes. And it certainly shapes public
4 opinion. But is public opinion accurate, and
5 should we make recommendations based on
6 inaccurate public opinion?
7 LTC McGOVERN: I agree with you
8 completely. I think there are a lot of
9 motives, and the argument to get out of Japan
10 has been made for a long time and this just
11 gave some more fuel to the fire possibly. But
12 they did have numbers, which can give us all
13 reason to think about it and possibly do
14 additional study.
15 BG DUNN: But they have no
16 information on basic issues like, who were the
17 victims and where were they, and were they
18 Japanese? Did they refuse to come in and
19 testify? You know, there are so many things
20 in that article that are not addressed.
21 BG COOKE: Colonel Gilligan has
22 raised the point several times about a need

1 for statistics. I think one of the things we
2 need to talk about pretty soon is what kind of
3 statistics should we, at least, start to get
4 or start looking at questions like the ones
5 we've been asked today. Until we've got some
6 sense of the range of punishments that are
7 being adjudged in these cases, various types
8 of cases, it's really hard to know where we're
9 going to go with all this. So we ought to
10 talk, at some point, about at least some set
11 of information that we'd like to ask for, that
12 we can at least start to look at this.
13 MR. STRAND: I could be wrong, but
14 I believe the last person we put to death in
15 the military was on a rape case.
16 BG COOKE: I think that's right.
17 MR. STRAND: A person who raped a
18 young girl, and I think that has to be part of
19 the conversation which is often overlooked.
20 COL HENLEY: We have unfortunately
21 reached our time limit with Colonel Gilligan.
22 On behalf of the committee, I'd like to thank

1 you for an interesting and informative
2 discussion. Look forward to seeing you again.
3 COL GILLIGAN: I am sorry I wasn't
4 more helpful for you on that. But I would say
5 on statistics, I would recommend to get some
6 students at Leavenworth to do something on
7 court members, as part of their project out
8 there, which would be one that could be done
9 fairly easily.
10 COL HENLEY: Or a grad course
11 thesis.
12 COL GILLIGAN: Or grad course.
13 I'm just thinking, you've got a thousand
14 potential people who have been members right
15 there. You could do a quick survey of them
16 and use your computers to digest that
17 information. I wish you all good luck on
18 this. Let me know what you're going to
19 recommend.
20 COL HENLEY: Thank you.
21 (Whereupon, the above-entitled
22 matter went off the record at 9:35 a.m. and

1 resumed at 9:43 a.m.)
2 LT. COLONEL McGOVERN: I think we
3 have all of our members back, and all our
4 presenters. First, I'd like to go ahead and
5 this is our hour to learn about the clemency
6 opportunities in the military. And We'll just
7 go down the line.
8 If everyone could quickly just
9 introduce yourself, and which agency you
10 represent. Then we'll start with Colonel
11 Burton to talk about clemency opportunities
12 for the convening authority in the military.
13 All right, do you want to start with your
14 introduction?
15 LT COL BURTON: Certainly. I am
16 Colonel Craig Burton. Very glad to speak with
17 you this morning. I thank you for the
18 opportunity to do so.
19 Just briefly about my experience.
20 Right now I am at JJM, which is the
21 Headquarters Military Justice Office for the
22 Air Force. Prior to that I spent five years

1 as a Staff Judge Advocate in two different
2 locations, Hill Air Force Base and Charleston
3 Air Force Base, where I had day-to-day
4 interaction with the convening authority on
5 clemency and other issues of course.
6 I spent six years as a trial
7 counsel assigned to, I would guess, ten full
8 fledged sexual assault cases during that
9 period. And I'm happy to answer any questions
10 that you have.
11 COLONEL HENLEY: Lieutenant
12 Commander Kirkby.
13 LCDR KIRKBY: Thank you, good
14 morning sir. Good morning, my name is
15 Lieutenant Commander Stuart Kirkby. I am
16 assigned at OJAG Corp 20, that's the military
17 justice division of the Office of the Judge
18 Advocate.
19 By way of background, I previously
20 served as defense counsel, as senior defense
21 counsel, a deputy regional SJA. A trial
22 counsel, a senior trial counsel. I am P

1 coded, that means I have a specialty in trial
2 advocacy. I have my LLM in trial advocacy
3 from Temple University.
4 So I'm currently doing policy. I
5 am a member the Navy's Military Justice career
6 track. Some of you may have heard about that.
7 And again, I think you for the opportunity to
8 come here and testify before you.
9 During my 12 years I've had the
10 opportunity to deal with convening
11 authorities, from requesting clemency for my
12 clients, to considering clemency. Requested
13 always as the regional command. And to
14 considering clemency, when people who I've put
15 in jail have requested it. So I've seen the
16 whole spectrum. I will be more than willing
17 to and more than grateful to answer you
18 questions. Thank you.
19 COLONEL HENLEY: Thank you
20 Commander, it's nice to have somebody from
21 Alabama.
22 LCDR KIRKBY: Thank you sir. I

1 think I know where that is.
2 COLONEL HENLEY: Colonel Retired
3 Brown, good to see you again.
4 MR. BROWN: Good to see you sir.
5 I had the pleasure of being one of your
6 students when I was on active duty.
7 My name is Bruce Brown. I'm the
8 Chairman of the Air Force Clemency and Parole
9 Board, and been the Chairman of the Airforce
10 Clemency and Parole Board for a little over
11 two years. Prior to retiring from the Air
12 Force in 2007, I was on active duty as a Judge
13 Advocate for 28 years.
14 During that time I served as a
15 trial counsel, a trial defense counsel, an
16 appellate defense counsel. A trial judge for
17 two tours. I was a base Staff Judge Advocate
18 twice and a Major Command Judge Advocate. And
19 I had the pleasure of concluding my activity
20 duty career as the Chief Judge of the Air
21 Force Court of Criminal Appeals. I look
22 forward to taking your questions this morning.

1 Thank you very much.
2 COLONEL HENLEY: Thank you
3 Colonel.
4 MR. LoGRANDE: I'm Mike LoGrande.
5 I'm the Deputy Director at the Air Force
6 Review Board's Agency and the Executive
7 Director of the Air Force Board for Correction
8 of Military Records.
9 My previous assignments actually
10 were in the same agency. I ran the DoD
11 Physical Disability Board of Review, which is
12 a Wounded Warrior Board, that was put in place
13 as a result of the 2008 NDAA which was the
14 Wounded Warrior legislation.
15 I have, in my previous
16 assignments, I flew a variety of different
17 airplanes. And when I was not flying I was on
18 the staff at the Pentagon on four separate
19 legislative affairs tours. So that's my
20 background.
21 Not much in terms of sexual
22 assault, but I have had multiple experiences

1 thus far in my tenure as the Executive
2 Director at the BCMR to see cases that have
3 come forward for consideration. And I'd be
4 happy to answer any questions.
5 COLONEL ANDRASCHKO: Good morning,
6 I'm Steve Andraschko. I'm the Chairman of the
7 Army's Clemency and Parole Board. I've been
8 in that position for about two and a half
9 years now. I got in there about the same time
10 as Bruce got over to the Air Force.
11 I spent just over 29 years on
12 active duty as an Army Military Policeman.
13 Tour as the Commander of the Fort Lewis
14 Regional Correctional Facility in the mid-
15 90s. Two tours at the DB Fort Leavenworth,
16 Kansas, second one as the Commandant from 2000
17 to 2002.
18 Last active duty assignment was as
19 a uniform member of the Army's Clemency and
20 Parole Board, 2004 to 2005. I became a
21 civilian after that, and was the initial
22 Deputy Director of the Army's Corrections

1 Command for four and a half years. I spent --
2 and I had the opportunity to get this job in
3 2011. And I welcome your questions.
4 LT. COLONEL McGOVERN: I thought
5 maybe we could start out by hearing about the
6 convening authority's clemency. How that
7 works, and what are the new changes with
8 Article 60 with the NDAA 14.
9 LT COL BURTON: Thank you, and I'm
10 prepared principally to talk about the
11 convening authority's clemency pre-NDAA, and
12 how it changed after the FY13 NDAA or CY13.
13 And prior to the most recent NDAA, a convening
14 authority's opportunities for clemency were
15 pretty well wide open.
16 And what I mean by that is: he or
17 she could dismiss charges. They could reverse
18 findings of guilt. They could reduce
19 sentences. The only thing they couldn't do
20 was increase sentences, or find them guilty
21 for something that they hadn't been found
22 guilty in the court martial. There's only one

1 exception to that, and that was the minimum
2 mandatory for murder.
3 Other than that, it was wide open.
4 And that was done through a process post-court
5 martial. The convening authority received any
6 submissions from the accused within ten days
7 after receiving the record of trial, and the
8 Staff Judge Advocate's recommendation. The
9 accused submits matters.
10 The convening authority must review all of
11 those matters, along with the Staff Judge
12 Advocate's recommendation. And at that time
13 takes action.
14 Post NDAA: the changes that have
15 been made since then. First of all, any
16 action that the convening authority, or any
17 clemency action that the convening authority
18 takes, either on the findings or the sentence,
19 must be put in writing and included in the
20 record of trial.
21 Second, in order for the Commander
22 to take any action on either the findings or

1 the sentence, first of all, the charge must
2 have an authorized confinement of at least two
3 years. Or, in court, the accused must have
4 received less than six months confinement. Or
5 -- and, excuse me, less than six months
6 confinement and no punitive discharge.
7 So if those don't apply, the
8 convening authority can not take any clemency
9 action on the offense. This also does not
10 apply to any offenses for rape or sexual
11 assault under Article 120, the child sex
12 offenses under 120(b) and forcible sodomy
13 under Article 125. Those are excluded, as
14 well, from the Commanders authority to take
15 any clemency action upon.
16 Yes ma'am?
17 GENERAL DUNN: Oh, I'm sorry. So
18 if the maximum sentence is two years or less,
19 the Commander can't touch that? Is that what
20 you're saying?
21 LCDR KIRKBY: Yes. More than two
22 years, the convening authority cannot take

1 action, right.
2 GENERAL DUNN: Okay. But can
3 touch forfeitures, can touch that sort of
4 thing?
5 LCDR KIRKBY: That's the open
6 question and that's the thing that's in my
7 experience in the past, most clemency granted
8 by convening authority has been in the form of
9 forfeiture protections. Something that goes
10 to the family.
11 If it wasn't in the pre-trial
12 agreement, something to protect the very
13 victims. Because in many of these cases, the
14 victim is a family member. We suddenly put
15 the person in jail and everything is gone
16 starting you know, right after this. 14 days
17 later these things kick in, so.
18 MR. STRAND: With the exception,
19 in some cases transitional compensation might
20 be done.
21 LCDR KIRKBY: Correct, but that's
22 done through a separate process. And again

1 you've still got to go through that process.
2 That was the probably 99 percent of clemency
3 that we saw, in my experience that I saw, was
4 you know what, I'm not going to take away the
5 pay from the family. The family still needs
6 this. Even if they weren't the victims of the
7 offense, why should they suffer from his or
8 her misdeeds?
9 COLONEL HAM: Can you take action
10 on findings, or findings and sentence under
11 this?
12 LT COL BURTON: Both. Both. And
13 it's different how it will be applied in
14 findings and sentence.
15 In findings the -- for example, if
16 the accused has a sexual assault under 120
17 conviction during that court martial, but also
18 a providing alcohol to a minor, which may
19 occur as well in the same offense, or in the
20 same case. The 120 offense could not be
21 dismissed. But the offense for providing
22 alcohol to a minor could be dismissed. So --

1 LCDR KIRKBY: I think that's a --
2 I think that's a problem with the new NDAA, is
3 that's not clear. Because we don't divide up
4 sentences. We don't say we're giving you 20
5 years for the rape, but we're giving you --
6 LT COL BURTON: Right. I'm
7 talking solely about findings at this point,
8 right.
9 LCDR KIRKBY: Oh.
10 LT COL BURTON: Sentencing,
11 absolutely that changes. Because just as the
12 Commander was saying, in the sentence we don't
13 give a sentence for the various convicted
14 charges, or specifications, but rather as a
15 whole.
16 So, in sentencing, you have to
17 look at it in the conglomerate. If the
18 sentence had less than six months or no
19 punitive discharge, yes, ostensibly, clemency
20 would apply as long as none of the offences
21 for which he was convicted had a possible
22 sentence of two years plus.

1 GENERAL COOKE: So in your
2 example, if the convening authority dismissed
3 the providing alcohol charge, but obviously
4 the sentence is way above this threshold,
5 there's no sentence relief. It just -- the
6 charge just goes up, is that correct?
7 LT COL BURTON: And that's the
8 difficulty. And we're not sure what would
9 happen in that case. But theoretically yes,
10 he would have to reduce it to some degree to
11 deal with that. But I'm not sure how that
12 would be done.
13 GENERAL COOKE: In theory, he
14 might reduce it by a couple of months, but the
15 way it seems to be interpreted, he couldn't do
16 anything. Is that correct?
17 LT COL BURTON: Right, and as
18 you're getting at, it may -- the rules may
19 play out, that the only possibility is to do
20 away with the sentence, and who knows what
21 with the remaining conviction. Because it is
22 impossible to parse out what part of the

1 sentence applied to which offense.
2 GENERAL DUNN: So really --
3 COLONEL HENLEY: Well if you had
4 concurrent sentences, would that track that
5 concern? If you're able to identify --
6 LCDR KIRKBY: That's one of the
7 things is you're -- if you go to -- we're
8 talking about two different things. If we go
9 to a military judge, and the military judge
10 can talk about those things, and work out
11 those numbers. But even now, our sentencing
12 instructions to members, to a jury, are
13 extensive.
14 You can sit there for 25, 30
15 minutes, just of the judge reading the
16 instructions. You're never going to get into,
17 well for this offense you must consider this,
18 and for this offense you must consider this.
19 I mean if we're looking at fundamental change,
20 we need to look at all the changes. Because
21 all of these things are so closely tied into
22 each other.

1 You know the second and third
2 order effect of everything we do, we're
3 talking about clemency now. What we weren't
4 considering originally was, well clemency is
5 the basis of our pre-trial agreements. It's
6 the basis of, you agree to this and I will
7 give you this under my powers of clemency.
8 GENERAL DUNN: So, now, if we have
9 a case with three co-accused, essentially
10 involved in the same course of action. And as
11 happens, you end up, perhaps, with two of them
12 with an eight year sentence and one of them
13 gets a 17 year sentence, for essentially the
14 same course of action because you're in a
15 different panel, or two went with judge alone,
16 one with a jury.
17 The convening authority, and it's
18 nothing to do with sexual assault, like I
19 said, it's a robbery case. The convening
20 authority has no authority now to reduce that
21 third sentence down to comparable with the
22 first two?

1 LCDR KIRKBY: With a letter from
2 the trial counsel, saying that there was
3 substantial participation, I think in the
4 federal system it's called a 5K letter, where
5 it's essentially the trial counsel says there
6 was substantial assistance given against
7 another party.
8 So it's not -- it's not as if you
9 came in and said you know what, I did it. I'm
10 sorry I robbed the store, it was me. That
11 person would actually have to provide
12 substantial assistance against another person.
13 That --
14 GENERAL DUNN: But one person
15 wouldn't have a 17 year sentence, if he had
16 done that. Because he would have a pre-trial
17 agreement in the military system, because we
18 had done that up front.
19 LT COL BURTON: Typically.
20 LCDR KIRKBY: We would hope so.
21 GENERAL DUNN: So that now falls
22 in the lap of the service appellate courts to

1 equalize that sentence if it's going to
2 happen. It's out of the hands of the
3 convening authority and it's in the hands of
4 the appellate courts now.
5 LCDR KIRKBY: Correct. And then
6 subject to CAAF and the Supreme Court. We
7 start walking through the process.
8 GENERAL COOKE: So if there's a
9 pre-trial agreement for 25 years, and the
10 court martial adjudges 26 years, can the
11 convening authority abide by the agreement or
12 not?
13 LCDR KIRKBY: In time, yes.
14 LT COL BURTON: Commander Kirkby
15 was saying there are two exceptions to that
16 rule. One of which is the substantial
17 assistance, and the other is pursuant to a
18 PTA. Which doesn't necessary apply, or
19 applies to a degree to the punitive
20 discharges, but absolutely to the period of
21 confinement.
22 LCDR KIRKBY: And then we get into

1 the mess of what about mandatory minimums, if
2 there's a punitive discharge, there's the
3 mandatory minimum, then you can only do
4 certain things, unless you have the letter
5 from the trial counsel. I mean this stuff is
6 literally so interwoven, even if you look at
7 the NDAA, it's so interwoven, it's going to
8 take time for the practitioners to wrap their
9 hands around this.
10 As defense counsel get hold of
11 this, are they going to be saying well, we
12 want a material term of the pre-trial
13 agreement, to say that you're going to give us
14 the substantial assistance letter? I don't
15 know. I mean, I don't know where the ethics
16 lie in that, I don't know. I mean that's
17 something that we'll have to go through the
18 process as we step through this, we're going
19 to have to see how the appellate courts view
20 that.
21 What if somewhere down the line
22 they say well, you said the guy was UA, but we

1 can't prove it. That was substantial
2 assistance. Well maybe it wasn't, maybe that
3 was, you know, mediocre assistance.
4 MR. BRYANT: Excuse me. Can
5 substantial assistance arise after the
6 conviction and be unrelated to the actual
7 conviction? Because, in the federal system it
8 can. Now that I'm convicted in the
9 penitentiary, I'm now willing to tell you
10 about the huge embezzlement that occurred at
11 the exchange, for instance.
12 LCDR KIRKBY: That's a great
13 question. And we used to do that with post-
14 trial agreements. I've written a number of
15 post-trial agreements where you provide
16 information against this person and we can
17 verify this information then, we will give you
18 post-trial relief under the old clemency
19 rules. Now --
20 MR. BRYANT: Now it's unknown? Is
21 that what you're saying?
22 LCDR KIRKBY: Yes. Until we start

1 working through the process. Because there
2 are so many -- every time you read the NDAA
3 you see a different spin on there. And the
4 spin unfortunately, right now, is read as a
5 lack of policy. Defense counsel when they sit
6 down and look at this, is going to see
7 something different.
8 COLONEL HENLEY: It seems to me
9 that parties have worked out an arrangement,
10 whatever the arrangement is. It may have
11 collateral consequences. Is it your position
12 that the victim, or the victim's advocate now
13 has standing to object to what agreement
14 you've worked out? And if so, how would that
15 process work?
16 I guess I'm asking okay, so there
17 are questions, but if the parties themselves,
18 the convening authority, the accused, and the
19 prosecutor have worked out an arrangement,
20 where would the objection come from and how
21 would that objection be made? In what form?
22 And how would it be processed?

1 LT COL BURTON: And you're saying
2 specifically objection from the victim,
3 correct?
4 COLONEL HENLEY: Well, I don't
5 know. Who do you expect would object to the
6 issues you've raised? That, say, well the
7 convening authority can't do this. They can't
8 give an extra two months or three years, or
9 disapprove this.
10 LCDR KIRKBY: The trouble is there
11 -- we'll I'm not saying the trouble is. But
12 there is an automatic review. So we don't
13 know if the courts are going to come back, and
14 say this is illegal. Go back for re-
15 sentencing.
16 COLONEL HENLEY: Right, but who
17 would raise that as an assignment of error?
18 Would the court do it on its own?
19 GENERAL DUNN: Well presumably if
20 the defendant gets -- if the accused gets
21 clemency, he is not likely to raise that on
22 appeal. So who is going to raise it on

1 appeal?
2 COLONEL HENLEY: Right, who raises
3 it and how would they do so? Should we hear
4 from everybody before we proceed, or what was
5 your ?
6 LT. COLONEL McGOVERN: Since it is
7 10:00 o'clock. Yes sir, if we could hear
8 again before getting into the details, the
9 general process. If you all could sum up
10 maybe half for, because we do have a few
11 civilian members who don't have the military
12 experience.
13 What does it look like for the
14 parties and how long does that process of
15 clemency take? And then we can roll into the
16 Clemency and Parole Boards to find out the
17 other avenues for an accused.
18 LT COL BURTON: It's a relatively
19 simple process. After the record of trial is
20 completed, the record of trial is served on
21 the accused, meaning given a copy to the
22 accused.

1 The accused at that point has the
2 opportunity within ten days, and extensions
3 are quite liberally granted, within ten days
4 to submit matters. And those are usually
5 written matters, but theoretically there also
6 can be an appearance before the convening
7 authority.
8 Once those matters are submitted,
9 then the Staff Judge Advocate takes the record
10 of trial along with those matters that were
11 submitted. Enumerates them on a document so
12 the convening authority knows exactly what he
13 or she is looking at.
14 Convening authority reviews
15 everything and then signs at the bottom that
16 yes, I reviewed each one of these items and at
17 that time usually has a discussion with the
18 Staff Judge Advocate on what he or she wants
19 to do with the sentence.
20 Nine times out of ten it's leave
21 it alone. Take final action. And at that
22 point it's -- the final action is drafted,

1 signed by the Commander or someone in his or
2 her stead and served upon the accused also.
3 LCDR KIRKBY: There's one
4 additional thing in the NDAA. Again this is
5 all intertwined. The victim now gets to put
6 matters into clemency as well.
7 So the convening authority has to
8 consider the matters submitted within ten days
9 of service on the victim of the Staff Judge
10 Advocate advice or the certified record of
11 trial. So that has to be considered as well.
12 GENERAL DUNN: What does the
13 victim get to see? The victim gets just the
14 record of trial, not the SJA advice or the
15 accused's clemency submissions.
16 LT COL BURTON: Correct.
17 GENERAL DUNN: Okay, just the
18 record of trial.
19 LT COL BURTON: But it has changed
20 somewhat because before the NDAA, they had an
21 opportunity, the victim, to submit matters
22 prior to the ROT, the record of trial, being

1 served on the accused.
2 GENERAL DUNN: Right.
3 LT COL BURTON: Now that has
4 changed and he or she, the victim is given the
5 ROT, the record of trial, along with the SJA
6 recommendation and is allowed to submit
7 matters after that. Has ten days to submit
8 matters after that, just like the accused
9 does.
10 GENERAL DUNN: Okay, so the victim
11 gets a copy of the SJA recommendation --
12 LT COL BURTON: Correct.
13 GENERAL DUNN: Prior to -- I mean
14 they get the same documentation that the
15 accused gets.
16 LT COL BURTON: Correct.
17 GENERAL DUNN: And have the same
18 -- well have an opportunity comment on it.
19 LT COL BURTON: Yes, ma'am.
20 LT. COLONEL McGOVERN: And then it
21 goes through the court appellate process,
22 correct?

1 LT COL BURTON: Correct.
2 LT. COLONEL McGOVERN: Because the
3 question by Congress is whether clemency
4 should be saved until after the appellate
5 process. But we can get in to that maybe
6 afterwards.
7 If we could hear from the Clemency
8 and Parole Boards how that process works.
9 MR. BROWN: Okay, I guess I'll
10 start. The Air Force Clemency and Parole
11 Board, we make clemency, parole, return to
12 duty, mandatory, supervised release, which is
13 a shorthand way of saying kind of a forced
14 parole. And transfer to the Federal Bureau of
15 Prisons decisions on behalf of the Secretary
16 of the Air Force.
17 That Board consists of myself as
18 the chairman, as well as an active duty Air
19 Force Colonel who is the Director of the Air
20 Force Personnel Counsel. A senior civilian
21 with the Air Force Judge Advocate General's
22 Corps. A senior civilian employee from the

1 Air Force Security Forces. And a senior
2 active duty Air Force Judge Advocate, usually
3 a Colonel or a Lieutenant Colonel who is also
4 assigned to the Air Force Personnel Counsel.
5 The Air Force Board meets twice a
6 month and we consider generally speaking, the
7 person who's asking for clemency has to have
8 a sentence of 12 months or greater before the
9 Air Force Clemency and Parole Board acts on
10 their cases. We can make exceptions to that,
11 but that is very unusual.
12 Normally they have a sentence of
13 12 months or more. And we do not act until
14 the convening authority approves the sentence.
15 So that's when we first get jurisdiction over
16 a case.
17 For matters of clemency, we
18 consider eligible inmates to adjust
19 significant disparities and approve sentences
20 to effect uniformity for similar offenses and
21 similar offenders as far as possible. And
22 otherwise modify, approve sentences consistent

1 with good order and discipline and in the best
2 interest of the Air Force society and the
3 inmate.
4 Yes, ma'am?
5 GENERAL DUNN: In terms of
6 considering sentences so that they are you
7 know, within the same range, are you looking
8 only at Air Force cases? Are you looking
9 across the board at all services cases at say,
10 I mean for your higher sentence cases, all the
11 sentences at Leavenworth?
12 MR. BROWN: We'd be primarily
13 looking at Air Force cases quite frankly.
14 Because I don't know that you know, a soldier
15 doing something and how it has an impact on
16 the mission in the Army could be considerable
17 different than an Airman does the same thing.
18 MR. STRAND: So do you actually
19 have data on the sentences that have gone
20 across the span of time that you look at?
21 MR. BROWN: What we -- given the
22 make up of our Board, all of those people have

1 a lot of military justice experience. So we
2 have an idea of what a "case" is worth. The
3 other thing that happens is, we get copies of
4 court martial orders that come in and so we
5 kind of get an idea of kind of what's the
6 going rate in the Air Force for a particular
7 offense.
8 I will say this, that our Board
9 particularly while the case is in appellate
10 review, is very reluctant, generally speaking,
11 to provide actual clemency to an individual
12 while the process -- while the case is going
13 through the appellate process.
14 Not that it wouldn't happen, but I
15 would say generally speaking, since I've been
16 there, and from what I understand
17 historically, the Board as an entity, does not
18 normally if it's going -- we grant clemency in
19 a very, very small percentage of cases. But
20 when that happens, generally speaking, it
21 certainly has gone through the Air Force Court
22 of Criminal Appeals and more than likely has

1 also gone through the Court of Appeals for the
2 Armed Forces.
3 MR. BRYANT: May I follow up on
4 that. A question that Mr. Strand had. Is
5 there an accessible data base for the Air
6 Force and for the other services of what
7 sentences have been in particular felony level
8 crimes?
9 GENERAL DUNN: By the specific
10 UCMJ charge is I think what we're looking for.
11 MR. BRYANT: Yes, thank you.
12 GENERAL DUNN: Is can we?
13 MR. BROWN: There is none in the
14 Air Force.
15 COLONEL ANDRASCHKO: There is not
16 one in the Army either. I can tell you that
17 once I took over this job, because I struggle
18 with that myself. For all the Army prisoners
19 that have sentences 20 years and over, I
20 created my own database. So I can refer to
21 them from -- the oldest case in the database
22 is like 1973 to current. And I can kind of

1 compare from different time periods what's
2 happened with them.
3 But otherwise there is no way to
4 do it. And I certainly have no visibility
5 over the other services cases at all. No,
6 since you asked that ma'am.
7 GENERAL DUNN: Okay. But you
8 created yours for only 20 years and more, not
9 everything.
10 COLONEL ANDRASCHKO: Anything
11 below 20, I mean there's just too many cases
12 ma'am, and it's --
13 MR. BRYANT: Would there be any
14 such statistics at, say, the division level or
15 a post level? I mean we're just -- earlier on
16 you -- apparently they already know the answer
17 to that. But that issue has come up earlier
18 this morning in some other matters. How we --
19 GENERAL DUNN: We were discussing
20 sentencing disparity. And we don't know if
21 there is actually huge sentence disparity. If
22 there is a problem or not, we don't know how

1 big the problem is.
2 COLONEL HAM: But don't the
3 appellate courts maintain databases of
4 sentences adjudged in every case in which
5 there's an arraignment?
6 COLONEL ANDRASCHKO: Yes you -- I
7 think I -- at least in the Army, I can't speak
8 for other services, a military judge, after
9 the trial is finished, submits a report to the
10 Army Court of Criminal Appeals to let them
11 know that there's a case out there. And a lot
12 of it has to do with post-trial processing and
13 to ensure that the record actually gets to the
14 court.
15 But one of the items that we
16 provide is the nature of the offense and
17 whether there was a conviction or not and the
18 sentence that was adjudged. So there is a
19 mechanism to try to retrieve information based
20 on offenses. From the Army I think it would
21 be from the Clerk of the Court's office.
22 If you want questions on sentences

1 for 120 or -- the problem is I don't think it
2 doesn't distinguish the types within the
3 category, it's just you know, it's just X
4 without any type of offense now.
5 It may have changed. They may
6 have given a specific code to different types
7 of offenses under the new 120. I'm not aware
8 if that's the case. I'd be surprised if they
9 have it.
10 MR. STRAND: From where you sit
11 and based on your experience, do you see a
12 great range of disparity in sentencing? Or do
13 you think it's --
14 MR. BROWN: No, I don't see a
15 great range. Every once in a while, for
16 example, you might get a case where you might
17 say the members gave that person a
18 dishonorable discharge, you know, for what you
19 would kind of think would normally be a bad
20 conduct discharge.
21 But no, generally speaking it's
22 not out of line. I mean typically.

1 GENERAL COOKE: Are you -- are you
2 seeing cases at the other end of the spectrum,
3 or are they -- they don't even get to you? In
4 other words if there's a -- what people would
5 consider to be an extremely lenient sentence.
6 MR. BROWN: Sir, occasionally you
7 get that. But again our Board generally
8 speaking does not consider a case unless the
9 person got at least a year.
10 GENERAL COOKE: Right, well that's
11 my --
12 MR. BROWN: But yes, we --
13 GENERAL COOKE: You have
14 visibility over that, then you have some idea.
15 MR. BROWN: There are occasionally
16 those cases that you will say the defense did
17 a good job on this case for this Airman, yes.
18 And then as I indicated earlier, we also get
19 copies of the court martial orders for cases
20 that are below the areas that -- below the
21 jurisdictional level that we have. And you
22 will see cases where you'll have a similar

1 reaction like wow, I'm surprised that person
2 didn't get a punitive discharge or more.
3 GENERAL COOKE: That's my
4 question. It's lower than your jurisdiction
5 then?
6 MR. BROWN: I mean that happens,
7 yes. That happens from time to time.
8 GENERAL COOKE: Okay.
9 LT. COLONEL McGOVERN: Colonel
10 Andraschko, I apologize, on your name.
11 MR. BROWN: No, you got it right.
12 LT. COLONEL McGOVERN: Can you
13 explain and if you know, are there differences
14 among the services, or how the Army processes
15 clemency and parole. I know you each have
16 your own set of regulations and are acting on
17 behalf of the Secretary of authority.
18 COLONEL ANDRASCHKO: There's a
19 Department of Defense instruction 132507 that
20 applies to all of us obviously. And lays down
21 the base rules. It was just republished last
22 year.

1 We each have our implementing
2 regulation. The Army's is AR15-130. The
3 process generally is the same. There's a
4 disposition board at each of the correctional
5 facilities that reviews the prisoner's
6 requests, okay.
7 And then that recommendation goes
8 to the Commander of the facility. The
9 Commander adds a recommendation and then that
10 packet flows up to each one of the service
11 boards.
12 The make up of our Board varies a
13 little bit. Five person boards, but we have
14 three colonels assigned to our organization in
15 addition to an attorney and a chairman,
16 myself, that consider that for clemency and
17 parole restoration.
18 One of the differences between the
19 service boards is the Army and the Navy
20 conduct personal appearance boards. We'll
21 allow a prisoner to request family members,
22 attorneys or friends to appear in front our

1 Board at their own expense in Arlington,
2 Virginia, if they want to do that.
3 Similarly victims have that
4 opportunity as well. Victims also have the
5 opportunity, this applies to all the boards,
6 to submit something in writing or a video or
7 a tape recording for consideration as well.
8 We encourage victims to
9 participate, particularly in sexual assault
10 cases. The participation rate is extremely
11 low, which is not surprising since I'm sure
12 they feel re-victimized when they have to face
13 people on that.
14 And our Board last year, we had
15 two sexual assault victims appear. One of
16 them was -- had been a 14 year old, she
17 appeared on behalf of the prisoner. And the
18 other it was an adult female who had been
19 raped. But those were the only two victims
20 that we had appear.
21 And even the written statements
22 from victims of sexual assaults, I don't have

1 specific numbers, but I'm going to guess is
2 probably ten percent or less.
3 COLONEL HENLEY: Do you pay their
4 way to the --
5 COLONEL ANDRASCHKO: No, sir. I
6 think that's one of the limiting factors is
7 they've got to pay their own way. In addition
8 to facing a bunch of strangers to talk about
9 this terrible thing that happened to them.
10 And so it's understandable why the
11 participation rate is low.
12 I did talk to the special victim's
13 counsel class and told that group of attorneys
14 to encourage their participation. Because the
15 panel -- I think the other services would
16 agree, their input carries a lot of weight
17 with the Clemency and Parole Board. And so we
18 want it, but I don't know how --
19 MR. STRAND: Do you see a
20 difference about whether they appear in person
21 or they send a video or --
22 COLONEL ANDRASCHKO: No, it's

1 powerful either way.
2 COLONEL SCHOLZ: I think it's
3 Skype them these days. You know you get on
4 Skype and that's all they have to do. It
5 costs them nothing.
6 LT. COLONEL McGOVERN: And sir,
7 could you address what you do and what the
8 ABCMR could do as far as Secretarial authority
9 and clemency as well and then Mr. --
10 COLONEL ANDRASCHKO: The ABCMR
11 doesn't do much. They will -- for the Army,
12 I assume the other services might can comment
13 on this. They won't do anything until all
14 other administrative options have been
15 exhausted.
16 So until the prisoner has served
17 to the end of their sentence. And they're
18 done, they are off of parole supervision,
19 they've completed their sentence, they won't
20 even address their case. And --
21 LT. COLONEL McGOVERN: But they
22 can apply for some sort of relief on the --

1 COLONEL ANDRASCHKO: Again,
2 particularly a discharge upgrade I guess, I
3 don't know.
4 LT. COLONEL McGOVERN: Right.
5 MR. LoGRANDE: That is essentially
6 the only way that we would hear a case from
7 someone in this situation. In other words it
8 would be a request to upgrade their discharge
9 and the request would come in based upon
10 clemency. And essentially each individual
11 panel, although different every time, we have
12 -- our panels are comprised of GS-15s and SES
13 in the executive branch of the government.
14 Executive part of the service, executive part
15 of the Air Force.
16 And each panel makes a
17 determination as to what the individual's
18 prior military experience was. What their
19 conduct was during that time. The nature of
20 the offense and their service, or
21 rehabilitation essentially. What they've done
22 with their life since having served the

1 sentence for the crime that they committed.
2 I don't have the exact numbers,
3 but I can tell you, I've only been the
4 executive director for the BCMR for about a
5 year, just over a year. And I have not seen
6 a single upgrade due to clemency. Ordinarily,
7 it is those cases where an exorbitant amount
8 of time has passed, where the length of time
9 and the punishment essentially has outweighed
10 what that discharge was, that we would
11 actually grant.
12 I have seen -- I actually used to
13 sit on the BCMR before becoming the Executive
14 Director. And I can only think of one case
15 that I sat on, and I probably sat on almost
16 2,000 cases during my time that we actually
17 upgraded.
18 And it was a situation where
19 somebody was -- had multiple minor infractions
20 throughout his military career. Happened to
21 have been an African-American male in the 50s
22 And the Board felt that it was

1 just -- the punishment that he paid for the
2 minor misconduct was excessive given the
3 amount of time that had passed and the fact
4 that he had provided documentation, via an FBI
5 report, substantiating that his record was
6 completely clean. He also came forward with
7 multiple letters of recommendation from
8 leaders within his community.
9 So when you substantiate it to
10 that extent, those are the grounds upon which
11 clemency would be granted. Not common though,
12 to be very honest with you.
13 It is the final level of
14 administrative appeal within the Air Force,
15 the Board of Correction, Military Records.
16 And it's the same across the services. And we
17 -- I mean I had a chance to talk to the Army
18 BCMR, the former Director, just this past week
19 about testifying here. And our processes are
20 essentially the same, so.
21 MR. STRAND: When you say
22 upgraded, are you saying providing some

1 clemency relief?
2 MR. LoGRANDE: Right. From either
3 a, essentially, a bad conduct discharge to a
4 general discharge. And to be frank with you
5 the vast majority of these people are coming
6 it, not --
7 It has nothing to do with anything
8 other than to either obtain a job, because
9 they're having trouble obtaining a job because
10 their DD-214 reflects a less than honorable
11 conduct. Or for an entitlement to VA
12 benefits, and we see that more frequently then
13 others.
14 MR. STRAND: And then the curious
15 question I have is when you talk about rehab,
16 especially when it comes to sex offenders, are
17 there any rehab programs currently in the
18 Department of Defense for sex offenders?
19 MR. LoGRANDE: Yes.
20 MR. BROWN: All the brigs have
21 treatment programs at the brigs for sex
22 offenders.

1 MR. STRAND: And so do they come
2 and testify or provide documents?
3 MR. BROWN: They provide documents
4 to each of the Boards that tells them how a
5 particular inmate is going. And on occasion
6 they will -- well, they typically, for
7 clemency matters, they don't normally provide
8 a recommendation.
9 If the inmate is asking for a
10 parole, they will make a recommendation one
11 way or the other, whether the inmate should,
12 they believe, get paroled. This gets a little
13 bit off topic in terms of clemency, but of
14 course of all of our Boards also make parole
15 determinations.
16 And so what the brigs say about
17 treatment that the prisoner has had and
18 whether they've completed the crime specific
19 treatment, you know is something that the
20 Boards consider strongly in deciding whether
21 they would let someone out on parole. And if
22 they're a sex offender, one of the conditions

1 of parole would be that they would have to
2 attend treatment while they're on parole.
3 MR. STRAND: And then that's
4 managed by the Federal Parole?
5 MR. BROWN: That's managed by the
6 U.S. Probation Office, yes.
7 MR. STRAND: U.S. Probation
8 Office, okay. And following their standards
9 for high risk, medium risk and low risk sex
10 offenders, is that correct?
11 COLONEL ANDRASCHKO: They have
12 their own. It varies from district to
13 district, but yes, sir, they do.
14 MR. STRAND: Okay.
15 MR. BROWN: And again, since it's
16 a little bit off topic, but for parole, the
17 prisoner won't actually -- doesn't actually
18 get paroled and released back into supervision
19 until the U.S. Probation Office approves their
20 parole.
21 MR. STRAND: Okay.
22 COLONEL ANDRASCHKO: The Navy and

1 Army both have pretty extensive treatment
2 programs. The DB creates a very detailed risk
3 assessment based on a variety of tests and
4 then they provide a treatment summary along
5 with that.
6 The Navy does something similar.
7 The Air Force sends their prisoners to the
8 Army and Navy facilities so their sex
9 offenders participate in those programs.
10 And the Army actually has two
11 tracks. One for the high risk offenders which
12 is about two years. And then a low risk
13 offender track which is about a year. The
14 Navy's is more a singular focus.
15 LT. COLONEL McGOVERN: Sir do you
16 follow generally the same, not necessary
17 policy, but trend where you don't usually
18 grant clemency while the appellate process is
19 still ongoing?
20 COLONEL ANDRASCHKO: I would say
21 that 99 percent of the time that is true. The
22 occasional case that clemency will be granted

1 on the front end, which I think is
2 appropriate, the DODI -- the recent DODI
3 really tightened up clemency eligibility,
4 particularly for sentences over ten years.
5 So that doesn't happen as early
6 and it certainly doesn't happen as frequently
7 as it used to. There is the occasionally case
8 where you see something that doesn't seem
9 right.
10 We approved one discharge upgrade
11 in the Army last year. A DD to a BCD. And it
12 was for a soldier who had been convicted of
13 stealing mail, okay. A non-violent offense,
14 relatively short sentence. It didn't seem
15 appropriate and the recommendation to my boss
16 was let's upgrade it to a BCD and we did.
17 It's the only one. Otherwise we
18 almost always wait. Bruce and I were talking
19 about that before we came in here. Most
20 clemency occurs many years after they've been
21 -- served time in prison, been on parole for
22 a number of years out in the community under

1 a U.S. Probation Officer. They're getting
2 old. They've done a lot of time and so they
3 get a minuscule amount of time chopped off
4 their sentence to acknowledge their good
5 behavior and try to keep them going that way
6 until they finish their sentence.
7 But that's about it. So yes, the
8 short answer to your question, we wait until
9 after the appeals.
10 COLONEL HAM: Okay, but sometimes
11 you don't. I mean you said very rarely, but
12 --
13 COLONEL ANDRASCHKO: Very rarely,
14 that's right.
15 COLONEL HAM: The appellate court
16 then is not informed. I mean the appellate
17 court doesn't know you've granted clemency,
18 correct? You don't -- there's no
19 notification. You're a separate --
20 COLONEL ANDRASCHKO: I have no
21 idea, but I can find out.
22 MR. BROWN: I'm not sure of that,

1 I mean I --
2 COLONEL HAM: I'm an Appellate
3 Judge and I didn't know.
4 MR. BROWN: You might not. I
5 don't remember actually seeing that. As Steve
6 indicates, the granting of clemency while the
7 person is in appellate review is rare, but it
8 happens. And you're correct.
9 I mean our track is separate from
10 the appellate court. So whether they get
11 notification of that, I don't know. I know
12 that if we do grant clemency under that
13 situation, our military justice division I
14 believe sends a notice to the convening
15 authority.
16 An Order is published that
17 indicates that as a result of our action,
18 Airman Jones is sentenced now, is as follows.
19 I don't know if the Air Force for example
20 would get a copy of that or not. That's not
21 something that we're responsible for. We just
22 make the order and then it's taken care of.

1 COLONEL SCHOLZ: They'd probably
2 get wind of it then.
3 MR. BROWN: Pardon me?
4 COLONEL SCHOLZ: In our case,
5 they'd probably get wind of it.
6 MR. BROWN: They probably do. But
7 I don't want to tell the Panel obviously that
8 they in every case do.
9 COLONEL SCHOLZ: Right, right.
10 COLONEL HAM: Actually it might be
11 inappropriate for the judges to know.
12 COLONEL SCHOLZ: It might be. It
13 might be.
14 COLONEL HAM: Because they're part
15 -- as you know part of their appellate review
16 is to determine the appropriateness of the
17 sentence. As a Judge then I prove as
18 approved.
19 COLONEL SCHOLZ: Right.
20 COLONEL HAM: So it probably would
21 be inappropriate to know.
22 COLONEL SCHOLZ: Because it's kind

1 of a collocation if things like get in our --
2 in our situation it might be that they're --
3 COLONEL ANDRASCHKO: If I might
4 make a comment sir. There was a question
5 earlier about sentence disparity. Even if you
6 see a sentence where somebody got 60 years or
7 80 years or life for a murder case, at least
8 in the Army Board, we're very reticent to
9 make any changes to that.
10 Because the facts in each case are
11 different and we don't have the value of
12 everything that that military judge or that
13 panel heard in the case. So we're very
14 reluctant to make changes to those.
15 Particularly while the appeal processes are
16 still underway.
17 Presumably, ACCA and CAAF have
18 access to all that stuff and can make a better
19 informed decision. So we seldom make a change
20 to a sentence length for that reason.
21 MR. BROWN: And that's consistent
22 with the Air Force Clemency and Parole Board's

1 approach to it as well.
2 MR. STRAND: In terms of sexual
3 assault, would it be common, uncommon or rare
4 from your experience, common, uncommon or rare
5 that sex offenders get clemency?
6 MR. BROWN: Rare.
7 MR. STRAND: Rare?
8 COLONEL ANDRASCHKO: Rare.
9 MR. STRAND: Okay.
10 COLONEL ANDRASCHKO: But it's rare
11 -- I proved some charts to the Panel. I mean
12 we give less than two percent, 13 cases out of
13 671 last year. So the odds of clemency are
14 very, very slim.
15 MR. BROWN: Clemency is rare in
16 the Air Force and even more rare when you're
17 talking about sex offenders.
18 COLONEL HENLEY: The number of
19 cases that you've reviewed, declined over the
20 last 10, 20 years?
21 COLONEL ANDRASCHKO: I've only
22 been doing this job for two and half years,

1 sir.
2 COLONEL HENLEY: Well yes, but
3 then you have, or are you aware whether your
4 workload has declined?
5 COLONEL ANDRASCHKO: I'd say it's
6 stayed pretty level for the Army sir.
7 COLONEL HENLEY: It has, okay. So
8 even if the court martial case load is
9 declined, your work has remained relatively
10 consistent, okay.
11 SM: Is there any number of years
12 that a person has to apply for relief? For
13 instance, usually for the ABCMR, on run of the
14 mill cases, three years from the time that you
15 knew that there was an error in justice, what
16 is it for clemency and parole?
17 COLONEL ANDRASCHKO: Again there
18 is three sets of charts I gave you, depending
19 on when they committed the offense, or the
20 recent change. So, as Mr. Brown talked about,
21 if they have a sentence over 12 months, then
22 they're going to fall into the eligibility

1 associated with the length of their sentence
2 and be reviewed.
3 Once they -- the bottom line is,
4 once they start getting reviewed, they get
5 reviewed annually until their sentence is
6 over, okay, for us, the vast majority of
7 cases.
8 MR. STRAND: And they can appear
9 every year?
10 COLONEL ANDRASCHKO: They can send
11 someone to appear on their behalf, yes, sir.
12 And we do have that happen. Just as we have
13 victim family members that on particularly
14 egregious cases, that appear every year. And
15 it seems pretty clear they're going to appear
16 until they're dead or no longer capable of
17 coming because they feel so strongly.
18 COLONEL HENLEY: Why -- why do we
19 have separate service Clemency and Parole
20 Boards? I guess that's a loaded question.
21 Have you considered consolidating under a DoD
22 umbrella?

1 COLONEL ANDRASCHKO: There was an
2 Air Force and -- an Army and Air Force
3 Clemency and Parole Board back in 1947 when
4 the National Security Act was established and
5 the Secretary of War went away and we moved on
6 from that. But in the -- I want to say kind
7 of mid- 70s sir, they split them out into two
8 separate ones. And I don't know exactly when
9 the Navy and Marine Corps' was established
10 quite honestly.
11 COLONEL HENLEY: But if your
12 processes are similar and I guess the results
13 appear similar, why do you still retain
14 separate Clemency and Parole Boards?
15 COLONEL ANDRASCHKO: I can offer a
16 conjecture, Secretarial authority. Each
17 Secretary wants to retain authority over their
18 service members. And I understand that. Even
19 the prisoners we transfer to the Federal
20 Bureau of Prisons, the Secretary of the Army,
21 Navy and Air Force retain authority them for
22 all clemency matters. The only thing that

1 transfers is the U.S. Parole Commission's
2 authority to put them out on supervision. We
3 retain clemency authority.
4 MR. LoGRANDE: Sir, if I could
5 just add. I ran the DoD -- first ever Board
6 at the DoD level, the Wounded Warrior Board.
7 And the Congress imposed that Board on DoD,
8 probably rightly so, because they perceived
9 that there were disparities across the
10 services.
11 When there's a perceived
12 disparity, it makes sense to have a standard.
13 But if there is no perceived disparity, I'm
14 not sure that it's warranted. Even in the DoD
15 Wounded Warrior Board, a recommendation, it
16 was only a recommendation back to the
17 respective service Secretary. It wasn't a
18 decision rendered at the DoD level.
19 So I think to back up what Steve's
20 saying regarding the Secretarial authority, we
21 respect that the Secretarial authority and the
22 establishment of that Board by referring back

1 to the Secretary. So when there are
2 disparities, I think it may be warranted. If
3 there aren't disparities, I'm not sure it's
4 necessary to be quite candid.
5 MR. STRAND: But we are entering
6 into a much more joint environment. So if a
7 sailor is accompanying an Army unit in
8 Afghanistan, and commits an offense, then the
9 Navy decides whether the impact on the Navy,
10 and what that impact is. And does it take the
11 Army into consideration, the impact on that
12 unit and that fighting force?
13 MR. LoGRANDE: He's still a Navy
14 member.
15 MR. STRAND: Right.
16 MR. LoGRANDE: He's still under
17 the Secretary's authority. And ultimately
18 that's the way I would respond to that. Is
19 that if we're going to have separate uniforms,
20 then we should respect the Secretarial
21 authority.
22 It doesn't mean that you're not

1 going to have joint units. It doesn't mean
2 that you're not going to have joint support
3 across the Board. But whoever is the
4 authority, if it's a Special Operations
5 Command for instance, it could be an Air Force
6 General, it could be a Navy Admiral, it could
7 be an Army General. And it doesn't matter.
8 Whoever that authority is within that chain,
9 makes the ultimate decisions.
10 MR. STRAND: I guess my thought
11 is, are we blurring the lines the more we go
12 joint, because we're probably continuing to go
13 down that road. Is that blurring the Boards,
14 you know as far as the impact? Or is there --
15 I guess maybe is it reducing the requirement
16 for having separate Boards potentially?
17 MR. LoGRANDE: I certainly can't
18 speak for everybody. But I will tell you
19 having run a DoD Board, I think there is a way
20 to establish a process by which it's fair to
21 all services.
22 There was a lot of resentment,

1 Maria can tell you, she sat in a lot of
2 meetings with me. And Kelly the same thing,
3 when we first went through that process, where
4 nobody liked us because we were changing
5 decisions that were rendered by all of the
6 services. And it was a perception that we
7 were not being fair to what their original
8 decisions were.
9 I respectfully disagreed. I think
10 we adjudicated to a standard across all the
11 services. But over time they understood that
12 the standard was an acceptable standard and
13 that we weren't trying to roll anybody under
14 bus. We were trying to just adjudicate to a
15 standard and establish a standard. And I
16 think we did that.
17 That Board -- again, it has
18 nothing to do with this, but that Board
19 actually to this day is still being levied --
20 additional responsibilities are being levied
21 on that Board. Most recently the mental
22 health reviews are levied on that same Board

1 because we adjudicated to a standard.
2 So an argument could be made that
3 you could have a DoD level Board. But even in
4 everyone of these situations, we'd defer back
5 to the respective service Secretary. So as
6 long as there are service Secretaries, I think
7 we should respect that authority.
8 LT. COLONEL McGOVERN: We have ten
9 minutes left with this panel, so I was
10 wondering if you wanted to ask any questions
11 back about the convening authority's clemency
12 power in light of the NDAA changes or what you
13 all see as the potential issues ahead.
14 Because we are charged with reviewing pending
15 and current legislation.
16 So this is an opportunity for us
17 to consider --
18 MR. STRAND: And also if you have
19 any thoughts on minimum sentencing along with
20 the way it's going.
21 LCDR KIRKBY: Well that's an
22 interesting point. A minimum sentence is

1 something I think we're going to talk about
2 this afternoon.
3 LT. COLONEL McGOVERN: Right.
4 LCDR KIRKBY: But just to get your
5 mind into things, the trouble with minimum
6 sentence is part of our system is that we have
7 members for sentencing. That affects how
8 they view things.
9 So if you're told well this person
10 did X, Y, and the government is going to
11 allege this person did X, Y and Z crime. And
12 if you find him guilty of that you have to put
13 him in jail for this number of years.
14 We try a lot of close cases. I
15 know this is something that Mr. Bryant is --
16 you know there's been debate back and forth.
17 But we try some close cases. Are we going to
18 have more acquittals because the members are
19 going to say, well he may have done it but you
20 know what I'm not sure he did it that much.
21 MR. STRAND: That's my question.
22 LCDR KIRKBY: Yes, but what of the

1 --
2 GENERAL DUNN: And you also have a
3 two-thirds or three quarters and you're facing
4 that.
5 LCDR KIRKBY: Correct. Yes, I
6 mean you can -- I mean the defense gets to
7 play a really clever game of numbers in our
8 system. You know, how many do you want on the
9 panel? How many do you want for a conviction?
10 How many do you want for a sentence?
11 As a defense counsel, my concern
12 with the numbers was, is this guy going to get
13 convicted? Do I think he's going to get
14 convicted? If he's going to get convicted and
15 he's going to get more than ten years, I need
16 a certain number of panel members, because I
17 want to mess up the government on their three
18 quarters. I want to get him less than ten
19 years. That would be a win to me.
20 So it's a very interesting --
21 MR. STRAND: It would really
22 impact conviction.

1 LCDR KIRKBY: Yes. Yes.
2 MR. STRAND: What impact would it
3 have on clemency and parole though as far as
4 minimum sentencing, if any?
5 LCDR KIRKBY: Well I mean I think
6 under Article 60 as it used to be, before the
7 NDAA, that would be, except for a few limited
8 exceptions, the convening authority could come
9 in and trump the minimum sentence.
10 LT. COLONEL McGOVERN: Is that how
11 it currently works with -- with rape? Or for
12 a premeditated murder?
13 COLONEL HENLEY: Yes. The
14 convening authority can approve a sentence
15 less than what was adjudged or you can have
16 less than in the pre-trial agreement.
17 LCDR KIRKBY: Yes. I've seen that
18 happen.
19 COLONEL HENLEY: I mean they --
20 LCDR KIRKBY: Where they come in
21 and they go lower than the mandatory minimum.
22 It doesn't happen very often because usually

1 that means they have gone to trial. They have
2 wasted -- or sorry, spent the government's
3 money. You know ultimately we've convicted
4 him of the charges and ultimately we got the
5 sentence we told the convening authority
6 that's what he's going to get and that's what
7 we're going to ask for.
8 So there's no incentive for
9 clemency at that stage. On the other side
10 it's are we going to get less convictions
11 because the members don't agree with. I mean
12 this is the same problem we've seen time and
13 time again, in voir dire, the defense stands
14 up -- and I did it as defense counsel. Stand
15 up and say if you convict him you understand
16 that he's going to be a sex offender. Are you
17 willing to do that?
18 That's mandatory minimum sentence.
19 It's a collateral issue that the members have
20 - our judge have ruled they have a right to
21 know that.
22 MR. BRYANT: That's interesting.

1 Because if the enabling regulation or
2 legislation that imposed the mandatory
3 minimums also said that that couldn't be
4 addressed to the panel members as at least in
5 several civilian jurisdictions that I'm
6 familiar with, the jury doesn't know what the
7 sentence is, or the mandatory minimums, or the
8 maximums until the sentencing phase.
9 So they go into it determining,
10 which I think is fair to both sides, guilt or
11 innocence, aside from what the sentence is
12 going to be.
13 LCDR KIRKBY: Except that we --
14 again as I talked about, the second or third
15 effect of what we're doing. So we need to now
16 start changing other RCMs. Because in our
17 system, you're entitled to a panel that has a
18 full flexibility on sentencing.
19 You can't stand up there and say
20 would you be able to consider the full range
21 of sentence available in this case, which is
22 for murder, no punishment at all, to the

1 maximum of life without parole. So now I get
2 up there and ask them the same question.
3 Would you be able to consider the full range
4 of sentences in this case? Life without
5 parole.
6 COLONEL HENLEY: Right, but the
7 follow there is the word consider, it means
8 you don't have to vote for that particular
9 punishment. Consider means that you actually
10 --
11 LCDR KIRKBY: Absolutely.
12 COLONEL HENLEY: And that's
13 usually an issue that's resolved by the trial
14 counsel actually explaining what consider
15 means.
16 GENERAL DUNN: Yes, but I think
17 what Lieutenant Colonel Kirkby is getting at
18 is that the defense counsel would now stand up
19 and say, which is 10 years to 25 years. And
20 the panel may say, 10 years for that. Yes
21 there may be members of the panel who would
22 not convict because they didn't think it was

1 worth 10 years.
2 MR. STRAND: Which I suspect would
3 also be published in the UCMJ.
4 GENERAL DUNN: Well of course it
5 would. The question is who we --
6 MR. STRAND: It's like we're
7 currently at so that they can find out that.
8 MR. BRYANT: Well my question,
9 suppose that that was no longer possible. I
10 mean you didn't get to do that. You could
11 say, take away the man's liberty for a long
12 time. All the sort of things.
13 And in a civilian voir dire you
14 ask them will you impose a sentence in
15 accordance with the Judge's instructions.
16 Because they're not going to hear that
17 sentence.
18 Or is there any panel member who
19 has religious, blah, blah, blah, that would
20 prevent you from sentencing another human
21 being to incarceration. That sort of thing, or
22 finding somebody guilty.

1 But they don't get into, if you
2 find this person guilty, it's life without
3 parole. And I just --
4 LCDR KIRKBY: But that's the same
5 argument that we've made back and forth and
6 the judges have accepted that a collateral
7 result of this conviction, the members should
8 know about that in coming to this. I'm not
9 saying I agree, I'm saying that's what --
10 MR. BRYANT: I'm just asking if
11 mandatory minimums were implemented, at the
12 same time that change was implemented, then
13 that would take away that problem, wouldn't
14 it?
15 LCDR KIRKBY: Well it may, but
16 then we've got to look at the second and third
17 order of effects of what that does. I mean
18 that's the problem is we go to change one
19 thing and it effects something else. We
20 change that to create this and then we've
21 affected something else.
22 COLONEL SCHOLZ: It seems to me

1 that we've got so many changes right now that
2 just happened.
3 LCDR KIRKBY: Yes.
4 COLONEL SCHOLZ: And we kind of
5 need to find out how that's all going to play
6 out.
7 LCDR KIRKBY: Yes, we need a
8 breather. We need to -- we need to sit back.
9 We need a deliberative process as we go
10 through this. And this Panel is great. It's
11 part of that deliberative process.
12 But I think with the end --
13 COLONEL SCHOLZ: It is hard to
14 know whether the third or fourth order effects
15 right now what's just change I think too.
16 LCDR KIRKBY: Absolutely, yes
17 ma'am.
18 COLONEL SCHOLZ: And we're being
19 asked to figure out whether or not, you know
20 to make a recommendation whether or not there
21 should be some mandatory minimums. And also
22 consider those collateral effects which in the

1 limited time we won't get to.
2 But so that's why we're asking
3 your opinion on sentencing and mandatory
4 minimums.
5 LT. COLONEL McGOVERN: And we'll
6 have more time from 16:30 to 17:30 this
7 afternoon, that's all we're going to do, is
8 spend this time talking about this.
9 COLONEL HAM: Well I can ask the
10 question on Article 60. If the authority to
11 -- the convening authority to cut a set -- to
12 commute, disapprove or whatever, any part of
13 a sentence, if the sentence is over six
14 months, well I think we need an examination of
15 when was clemency currently granted?
16 I'll tell you as an appellate
17 Judge and appellate practitioner, it was
18 mostly when there was unreasonable post-trial
19 delay, right. Or when there was a change in
20 the law that pretty clearly made an offense
21 not an offense. Fosler, inside baseball, I
22 know.

1 Changing the character of an
2 Article 134 offense. So there was legal error
3 in the conviction. That would be setting
4 aside an offense. And then the sentence would
5 be reassessed accordingly.
6 But -- so if clemency is granted
7 now, and again, we're talking like 30 days for
8 unreasonable post-trial delay. If the
9 convening authority can no longer do that,
10 there really is no relief for that is there?
11 Because once an appeal goes through and the
12 appellate court says oh, there's unreasonable
13 post-trial delay, we'll cut 30 days off the
14 sentence, the sentence is already served.
15 So what -- one thing this
16 legislation's has done is eliminated relief
17 for obvious legal errors, where the convening
18 authority could act before. And the question
19 is going to be can the appellate court remedy
20 that lack of relief? And I propose to you the
21 answer is no, because the sentence is already
22 served.

1 So second or third order effect is
2 why is there -- you're disagreeing?
3 COLONEL HENLEY: I think so. If
4 there is no -- I don't know that this could
5 happen, but if I was a defense counsel, if the
6 relief was through the convening authority,
7 which is no longer an avenue, I would suspect
8 we'll see quickly a writ to service court and
9 see grant some kind of clemency while I'm in
10 confinement.
11 If you're going for unreasonable
12 post-trial delay, I'd like 45 days. I don't
13 know if you'd accept that. You were an
14 appellate judge, you tell me would you accept
15 a writ from defense counsel if you can't get
16 relief from the convening authority?
17 COLONEL HAM: I don't know, that's
18 an open question that you have. An open
19 question.
20 GENERAL COOKE: What about the
21 case where the record of trial has been
22 authenticated, it's going to the convening

1 authority and the SJA looks at it and says
2 they forgot to do X. You know a fundamental
3 flaw in the case.
4 What authority does the convening
5 authority have now? Under this --
6 LCDR KIRKBY: Depending on the
7 sentence.
8 GENERAL COOKE: Yes, if it's more
9 than a two year sentence. But you know it's
10 clear that there was a legal error that needs
11 to be fixed. There should be a rehearing.
12 LT COL BURTON: Currently, he or
13 she can do that and remedy the situation. But
14 you're right, in six months, in June --
15 GENERAL COOKE: Under the Act.
16 LT COL BURTON: That will no
17 longer be available.
18 COLONEL HAM: So let's take that a
19 step further. It's a sex offense. Sex
20 offender registration. Once the mandatory
21 minimums take effect, there will be an
22 automatic appeal. But if there's no -- you

1 can have a sex offender registration, sex
2 offender registrable offense, and no appellate
3 review to the Courts of Criminal Appeals,
4 correct?
5 GENERAL COOKE: Say that again, I
6 just want to make sure I understand it.
7 COLONEL HAM: There's no -- you
8 know the jurisdictional minimum for appellate
9 review is a year or discharge. Once the
10 mandatory discharges take effect for rape and
11 sexual assault, Article -- certain offenses
12 within 120, those sex offenders who are
13 required to register will have an automatic
14 avenue to the appellate courts for review of
15 their case.
16 Right now they don't necessarily.
17 If their sentence is below that jurisdictional
18 hook to the appellate courts, they can be a
19 sex offender required to register, a
20 substantial collateral consequence, but have
21 no appellate review of their case. They'll
22 have a

1 GENERAL COOKE: But they'll still
2 have the TJAG, the 69s.
3 COLONEL HAM: Yes, but that's it.
4 LT COL BURTON: You're correct.
5 They can get a six month no BCD rape case
6 theoretically.
7 COLONEL HENLEY: And that's not
8 being real -- being full relief?
9 COLONEL HAM: I don't know, I'm
10 just -- it's an issue that's been raised, that
11 there's no appellate review.
12 GENERAL DUNN: But there are
13 register-able offenses that fell below that
14 threshold.
15 COLONEL HENLEY: Right, but I
16 think the 630 will be the last, aren't those
17 the criminal law sheets? What's the chances
18 of some form of relief through your appellate
19 review as to the criminal side? But you're
20 right, it's -- are we?
21 Are we -- follow up, Mr. Bryant do
22 you have

1 MR. BRYANT: Yes, thank you. In
2 terms of the panel being advised about the
3 sentencing, is it - do you think that now
4 that commanders, the convening authority are
5 limited between six months and two years, that
6 defense counsel are going to ask, and be
7 granted, "oh gee I want to tell the panel that
8 if their sentence is more than two years,
9 that's going to be it." Or is that already
10 happening.
11 LT. COL. BURTON: Yes and/or the
12 accused also has the right for an unsworn
13 statement in which he or she can pretty much
14 say anything they want to and that will be
15 certainly feed into that also.
16 MR. BRYANT: So the unsworn
17 statement to the panel who is going to do
18 sentencing could say, "and by the way, ladies
19 and gentlemen, if you give me more than two
20 years I have no chance of clemency to the
21 convening authority."
22 LT. COL. BURTON: Correct.

1 LCDR KIRKBY: And he gets to stand
2 up there and say I've been advised of the
3 consequences of sex offender registration.
4 Pretty much there are very few rules on what
5 they are allowed to say. Some judges shut
6 them down when they step over the threshold.
7 MR. BRYANT: But all that comes
8 after conviction, and before sentencing,
9 right?
10 LCDR KIRKBY: Yes.
11 MR. BRYANT: So they're into the
12 sentencing phase, they've already been
13 convicted at that point. Alright, thank you.
14 LTC McGOVERN: Thank you all very
15 much.
16 (Whereupon, the above-entitled
17 matter went off the record at 10:48 a.m. and
18 resumed at 10:57 a.m.)
19 COL HENLEY: The next presenter
20 from the U.S. Sentencing Commission, Rusty
21 Burress. Mr. Burress, good morning.
22 MR. BURRESS: Good morning, good

1 morning. I appreciate y'all having me here.
2 I hope I can give a little contribution to
3 your important undertaking here.
4 I work for the Sentencing
5 Commission, been there since it started back
6 in 1985. I was one of the first three staff
7 people at the Sentencing Commission. I had
8 been a U.S. Probation Officer in my home state
9 of South Carolina.
10 And the First Chair of the
11 Sentencing Commission, the Chairman, was a
12 U.S. District Judge at the time and later
13 would become Chief Judge of the Fourth Circuit
14 Court of Appeals, Billy Wilkins, and he took
15 me to Washington with him to be on the
16 training staff of the Sentencing Commission or
17 to be on the staff. There was just three of
18 us. So it was a brand new agency in 85.
19 So I've seen, you know, when you
20 begin trying to develop guidelines how that
21 works and I've seen the responses you get from
22 people that have to utilize guidelines.

1 And I know what the system looks
2 like that has to implement guidelines. So I'm
3 more than happy to talk to y'all about any or
4 all of those things.
5 I have a few things that if y'all
6 didn't have questions necessarily that I would
7 begin with, but I'm happy to do it any way
8 that suits you folks.
9 I do want to thank Colonel
10 McGovern for all of the help that she has
11 given. I came out here, we spent the whole
12 morning together and I've given her a lot of
13 information, more than we'll be able to cover
14 today and some materials as well.
15 And I want to thank Dillon in
16 particular because he's been my go-to guy and
17 I've gone to him quite a bit, by the way. In
18 fact, I think he now answers the phone and
19 says, "Hello, Rusty." So I appreciate all the
20 help everyone's given.
21 But yes, I mean if I could start
22 by telling you a little bit about the

1 Commission itself, how we got started, how we
2 did guidelines. If y'all are interested in
3 maybe that.
4 I actually have some scenarios
5 I've worked up using our guidelines for what
6 I think would be the type of cases you folks
7 may see just to see what our guidelines would
8 take into consideration and the defense and
9 that type.
10 I gave you some statistical
11 information just to give you an idea as to
12 what outcomes result in federal Court from
13 those.
14 So if you want me to just start a
15 little bit by telling you a little bit about
16 the Commission.
17 COL SCHOLZ: Can I ask you one
18 just one broad umbrella question to start
19 with? Would you recommend we even go there?
20 I mean has it been helpful? Is it useful? I
21 mean, what do you --
22 MR. BURRESS: You know the

1 Sentencing Commission, it depends on who
2 you're talking to, obviously, but in 2010, the
3 Sentencing Commission -- of course, you have
4 to understand the guidelines started out as
5 mandatory guidelines in 1987. They went into
6 effect as mandatory guidelines, meaning the
7 Judges had to use the guidelines and it was
8 very difficult to go outside those guidelines.
9 The vehicle for doing that was
10 called the departure and they were pretty
11 limited even at the start and Courts of
12 Appeals were making it pretty limited for a
13 Judge to go outside the guidelines.
14 And so it started mandatory and
15 had run from 1987 and nationally from 1989
16 because originally there were Constitutional
17 issues about whether you could even have
18 guidelines written by a Commission in the
19 judicial branch of government, whatnot.
20 So in 1989, the Supreme Court
21 said, these are Constitutional and they went
22 into effect across the country. For all

1 federal felonies and Class A misdemeanors,
2 meaning offenses carrying the penalty of one
3 year or more.
4 So currently, there are about
5 85,000 of those kinds of cases a year. So we
6 have about 85,000 cases being sentenced by use
7 of this guidelines manual here annually.
8 But then in 2005, the Supreme
9 Court, and it was a big turnaround, looked at
10 the guidelines and it was -- there was some
11 development with some other cases that led to
12 this Supreme Court decision called Booker in
13 2005 where the Supreme Court said, you know,
14 if these guidelines are mandatory and Judges
15 have difficulty going outside these guidelines
16 and the factors that are in the guidelines --
17 and I'll show you some of these factors -- the
18 factors are basically Judge-found.
19 In other words, the application of
20 the guidelines, the Judge makes the decision
21 as to whether something applies or not.
22 Then those guidelines, as they

1 increase by looking at these factors that are
2 Judge-found, it's tantamount to having an
3 increase in the statutory penalty. And you
4 cannot increase the statutory penalty unless
5 something is decided beyond a reasonable doubt
6 in perhaps by a jury trial, unless the
7 defendant's admitting to it.
8 So, the Supreme Court said, you
9 know, so you've got a problem with these
10 federal guidelines, certainly in the way
11 they're being applied. There's an
12 unconstitutional problem in the way they're
13 being applied.
14 So the Supreme Court and one of
15 the members of the current Supreme Court,
16 Judge Justice Stephen Breyer was one of our
17 initial Sentencing Commissioners. He was on
18 that very first Commission.
19 But the Supreme Court said,
20 they're unconstitutional as applied but the
21 remedy that looks like the best remedy until
22 Congress decides to do something different,

1 will be to make these guidelines advisory,
2 meaning Judges have to apply the guidelines
3 and have to apply them correctly. They have
4 to consider them, but having done that, then
5 a Judge can go outside the guidelines.
6 So that's been in effect since
7 2005. And Judges --
8 MR. STRAND: They probably would
9 cut down on the government's appeals because
10 another thing that the government could do was
11 appeal a prior -- the Booker could appeal if
12 the Judge departed downward. And the Judge
13 had to explain why he departed downward.
14 MR. BURRESS: Exactly, exactly.
15 Yes. And so Judges on the record have to
16 explain and still do, you know, why they're
17 giving the sentence that they're giving.
18 So but in 2005, everyone started
19 having more discretion, Judges did. In 2010,
20 the Sentencing Commission did a survey of
21 Judges asking how do you like this system that
22 we're currently under? Because Congress has

1 not yet to this day gone in to change how
2 they're now working.
3 The Supreme Court told the
4 Congress, they said the ball's in your court.
5 You can change it, but it's going to have to
6 be Constitutional whatever you decide to do.
7 But Congress hasn't done anything in that
8 regard.
9 So the Commission did a survey of
10 900-something federal Judges and surveys were
11 sent to district Judges, sentencing Judges.
12 I think 700 and something replied, so a very
13 good response.
14 And there was about 60 to 70
15 percent of all Judges said they liked the
16 system we currently have. So they like
17 guidelines that are advisory guidelines. They
18 have to do them. They have to apply them.
19 Everyone has sort of a similar starting point
20 but then the Judge has his or her discretion
21 to go above or go below those guidelines.
22 In terms of the mandatory

1 guidelines, I think there are about 20 percent
2 that said, yes, they'd like to return to
3 mandatory guidelines. But of course, this is
4 now from the perspective of Judges.
5 I'm not sure if you ask
6 prosecutors if they would give you that same
7 response, defense bar. You know, I think the
8 defense bar actually ended up being happy with
9 this current system.
10 So, yes, that's the system we have
11 and that's how people have reacted to it. If
12 you wanted to have guidelines, you know,
13 advisory guidelines seem to be the best
14 accepted by those that are having to impose
15 the sentence.
16 And the Commission has found with
17 the guidelines being advisory, the discretion
18 going back to the Judges much more than it had
19 been, that Judges are exercising that
20 discretion and they're going outside the
21 guidelines.
22 And typically in the federal

1 system, with this discretion they're going
2 below the guidelines. And I think in large
3 part that's because our guidelines are
4 actually pretty severe for most offenses.
5 I've never heard people complain that our
6 guidelines, except a few exceptions, are too
7 lenient for cases. More often than not,
8 people say that sentence is more than
9 sufficient for those cases that's before the
10 Court.
11 MS. STRAND: Currently, our
12 panels, our juries, are making the sentencing
13 decisions. What would be your opinion on
14 whether we were to apply standards like that
15 to a layperson who, you know -- because by
16 reading through the materials that were sent
17 to us ahead of time, it's like this is algebra
18 or worse.
19 And so what would be your opinion
20 if the guidelines were assigned to a panel or
21 lay people?
22 MR. BURRESS: That's a good

1 question. In fact, after the Blakely Supreme
2 Court decision that ultimately led to the
3 Booker Supreme Court decision that made our
4 guidelines advisory, the writing was on the --
5 the handwriting was on the wall.
6 So we knew about a year in advance
7 and we had working teams of the Commission and
8 I was on one of those teams -- looked at our
9 guidelines and said if these guidelines were
10 going to be mandatory under what the Supreme
11 Court would require that you have to have
12 beyond reasonable doubt standard, perhaps a
13 jury determination. What would these -- what
14 would this book look like?
15 And we went through this and
16 you've got to scratch this one, you've got to
17 scratch this one, and you've got to scratch
18 this one. Because to be able to apply these
19 guidelines and in the federal system, we're
20 very fortunate, my background, I was a U.S.
21 Probation Officer in my home state of South
22 Carolina and even before guidelines, U.S.

1 Probation Officers have always been the
2 sentencing expert in the federal Courts,
3 that's who the Judges relied upon.
4 And that was a known that that was
5 going to be the case under guideline
6 sentencing as well. And Judge Wilkins, one of
7 the reasons I was put on the staff, I was put
8 on detail originally. I was on detail for the
9 Commission for six years until I just went to
10 work for the Commission.
11 But he knew that U.S. Probation
12 Officers, unless they do it, that the system
13 wouldn't work. This complicated the system
14 that we had.
15 So U.S. Probation Officers had
16 been the key to the guidelines working in the
17 federal system and this is an expert body that
18 we have here, these U.S. Probation Officers.
19 They're pretty much, they have law enforcement
20 status because of the people they deal with
21 and they're pretty much on line say with the
22 Secret Service, FBI, others of that nature.

1 That's sort of their pay scale with what they
2 do.
3 They work for the Court. They
4 work in the Judiciary. They don't work for
5 the Executive Branch so they are the Judge's
6 person.
7 Some few Judges think it's ex
8 parte to talk to a Probation Officer without
9 the parties being there but most Judges say,
10 no, the Probation Officer works for me just
11 like I would talk to my law clerk, I'll talk
12 to my Probation Officer.
13 But the expert body of Probation
14 Officers to be able to bring this about has
15 been what's allowed this system to operate.
16 MR. STRAND: Which brings to
17 another point, we don't have that expert body
18 --
19 MR. BURRESS: Right.
20 MR. STRAND: -- in the military.
21 MR. BURRESS: What you would have
22 to do, you would have to have guidelines that

1 were simplified down as we have anticipated
2 that if we had gone to a system -- if the
3 Supreme Court had said guidelines have to be
4 submitted to the Court, beyond reasonable
5 doubt standard, we would, you know, you'd have
6 to simplify.
7 Now if we have time and end up
8 looking at say our rape guideline, that's a
9 pretty simple guideline from what y'all would
10 be dealing with. I don't know all of the
11 elements for your offense and our guidelines
12 often will look in terms of the
13 characteristics. We'll look at some of the
14 elements, but also, we'll look at things that
15 aren't elements of an offense.
16 But the things that we have in the
17 rape guideline aren't things nearly as
18 extraneous or esoteric or whatever as you
19 might have, say in a securities fraud case
20 where we have all kind of considerations
21 beyond what the elements of the offense and
22 conviction are.

1 These types of cases, the person-
2 on-person types of offenses, our guidelines
3 are pretty basic there. In like I say, our
4 robbery guideline, if we had changed all the
5 guidelines you probably could've had the jury
6 made a finding and say, okay, did the guy have
7 a weapon? Was there injury? Was there an
8 abduction? Did the guy carjack a car upon
9 leaving the bank? That -- those kind of
10 factors that our guidelines look at.
11 MR. BRYANT: Excuse me, Dillon.
12 Do you know of any States where the guidelines
13 are submitted to the jury?
14 MR. BURRESS: I don't know that.
15 MR. BRYANT: Okay.
16 MR. BURRESS: I know y'all have
17 some folks coming in that do know the state
18 systems, but I don't know that.
19 But it would have to be a simple
20 system.
21 But I will say that from what
22 little I do know of state guideline systems,

1 none of them are anywhere as near as
2 complicated as these. I mean they just --
3 people look at these that aren't in the
4 federal system and say oh my God, you know,
5 how do you do that?
6 And these guidelines are
7 complicated for a variety of reasons. One is
8 the Sentencing Commission, when they wrote
9 these guidelines didn't write on a blank
10 slate. The Congress gave a number of
11 directives to the Commission as to what the
12 guidelines had to do and continue to this day
13 to get involved with our guidelines and tell
14 the Sentencing Commission what has to be done
15 in the guidelines.
16 Some of the guidelines that are in
17 this book actually were written by the
18 Congress. Some that are in the book, the
19 Commission didn't like.
20 MR. STRAND: Well, we would assume
21 we would have that same assistance.
22 MR. BURRESS: It would not be

1 surprising, you know. And I don't know what
2 vehicle y'all would utilize if y'all had
3 guidelines. I don't know whether it could be
4 something that -- whether there be a
5 possibility of a sort of an internal
6 undertaking of a guideline system or whether
7 it would have to be something that was
8 legislatively allowed, you know, to occur.
9 MR. BRYANT: And how did the
10 Commission -- what was the background of how
11 you -- how it was determined what these
12 individual sentences --
13 I'm not talking about mitigation
14 and aggravation and acceptance of
15 responsibility and all those things --
16 MR. BURRESS: You know your
17 guidelines.
18 MR. BRYANT: I was a federal
19 prosecutor. In fact, Judge Clark was anxious
20 to be the very first Judge who declared the
21 guidelines unconstitutional and I think he
22 missed it by a few hours.

1 MR. BURRESS: He had to get in
2 line.
3 MR. BRYANT: In 1987. Anyway, no
4 I operated under those for 13 years and in the
5 Eastern District in Virginia, argued cases in
6 front of Judge Wilkins.
7 MR. BURRESS: Oh, okay.
8 MR. BRYANT: Anyway, so how did --
9 starting fresh, the military has no
10 guidelines. Some states have used historical
11 information from what their Judges do. So
12 they use a, you know, this is the ballpark
13 rate, this is the going rate in the State of
14 whatever. Tell us how the federal system --
15 MR. BURRESS: Yes. Well among the
16 directives to the Commission, the Commission
17 was told that the guidelines have to approach
18 the purposes of sentencing. They have to
19 include the purposes of sentencing as sort a
20 standard textbook purposes of sentencing,
21 punishment, deterrents, incapacitation,
22 rehabilitation. So how do you do that?

1 And initially, the Commission
2 started out and they were actually sort of
3 teams, like this team was working at like
4 maybe a just deserts model of sentencing. And
5 another team was looking at a punishment
6 assessment model.
7 And the Commission in trying to do
8 that found that both were quite unwieldy and
9 really didn't sort of accomplish all the
10 goals.
11 So what the Sentencing Commission
12 ended up doing, they said, well, we know that
13 federal Judges that have been sentencing all
14 of these years without any guidelines or any
15 other guidance basically, have probably been
16 incorporating those ideas into all their
17 sentences.
18 So the Commission looked at past
19 practice and based the original set of
20 guidelines on past practice, what the Judges
21 done on an average in the past.
22 And what factors in the past on an

1 average made a difference in the sentence?
2 For instance, in the past, some Judge may not
3 have given more time for a gun being in a
4 robbery but on the average, most Judges gave
5 say about a 25 percent greater sentence in a
6 robbery with a gun than one without a gun. So
7 our guidelines reflect about the 25 percent
8 increase for the gun, or at least did when
9 they first wrote those.
10 Now again, because of some of the
11 Congressional directives, the Commission had
12 to make some changes in the initial
13 guidelines. And among those, the Congress
14 told the Commission, they said, make sure that
15 white collar offenses that are of a serious
16 nature are typically given some type of more
17 serious sentence than has been occurring.
18 So the Commission undertook
19 writing guidelines and saw what past practice
20 was for white collar offenses, but said we
21 need to pump that up a little bit in order to
22 achieve maybe the sentences that just, say, a

1 property offender would get instead of the
2 white collar offense that a white collar
3 offender -- that a non-white collar offender
4 would get in a similar dollar type of property
5 offense. And so the Commission changed there.
6 And the other thing that the
7 Commission did at that time, which doesn't
8 affect you folks, but the Congress, while the
9 Commission was in the process of writing
10 guidelines, passed the Anti-Drug Abuse Act
11 that came out with all these mandatory
12 minimums for drug offenses.
13 And the Sentencing Commission said
14 we're writing guidelines but the Congress is
15 sitting over here and they've just said this
16 quantity of drugs ought to get you this amount
17 of time. So how are we going to write our
18 guidelines when they just have said this
19 quantity needs to get you this amount of time?
20 And the way the Congress did it,
21 they had like amounts of drugs that would get
22 you say a five year minimum and amounts of

1 drugs that would get you a ten year minimum.
2 So the Commission said, well if
3 this might get you five, this might get you
4 ten, and our, you know, directive is to make
5 sentences proportional, then somebody who has
6 a quantity that falls between five and ten
7 ought to be getting seven or eight or nine
8 under our guidelines. And somebody who's got
9 a whole bunch more ought to be getting 12 or
10 15 or 20 or 30 or even if there is no
11 mandatory minimum, somebody ought to be
12 getting four or three or two perhaps based on
13 quantity.
14 So our guidelines, right or wrong,
15 the policy decision was to follow on the lead
16 of Congress for those penalties.
17 BG COOKE: When you talk about the
18 past -- including the past practices, can you
19 talk about what data you actually used to
20 determine that?
21 MR. BURRESS: Yes, the Sentencing
22 Commission, in fact the Sentencing Commission

1 currently -- it didn't originally -- but for
2 some years now, we have about 100 people
3 working for the Sentencing Commission. And
4 the majority of those people are involved in
5 data collection and research. That's what the
6 majority of the people at the Commission are,
7 researchers and data collection.
8 And there are all these various
9 documents that are submitted to the Commission
10 for every federal sentencing and they input
11 that into the database and research it and
12 whatnot.
13 And so but what the Commission did
14 originally in writing the guidelines and the
15 research department was smaller at the time,
16 obviously, looked at 100,000 cases that had
17 been sentenced in the federal Courts prior to
18 the guidelines coming into play and looked at
19 10,000 of those in great detail. And that's
20 how they did -- they came up with that initial
21 database that they work from and continue to
22 do, you know.

1 Anything we make in terms of
2 changes to the guidelines, the Commission goes
3 in, does a data run, sometimes like they do
4 case pulls from all the data we have and goes
5 in and even looks in more in depth.
6 BG COOKE: Were they using pre-
7 sentence reports?
8 MS. BURRESS: Yes, they were, they
9 were using pre-sentence reports. And then in
10 the federal system, that's an excellent point
11 that General Cooke makes.
12 In the federal system, we have
13 pre-sentence reports. We've had those even
14 before guidelines came into play in the U.S.
15 Probation Officers write the pre-sentence
16 reports. You're familiar with these reports.
17 These reports are very lengthy
18 sometimes. I mean even before guidelines, the
19 reports I used to write, I've written 20-page,
20 single-spaced, pre-sentence reports, this is
21 your life, Mr. or Ms. Defendant.
22 And what happened when the

1 guidelines came into play, those reports had
2 an additional component put in and that is the
3 application of the guidelines, the facts of
4 the guidelines that are necessary for
5 application and the interpretation of the
6 guidelines to apply those.
7 And the way the federal system
8 works, and again to give you some idea as to
9 what the process is, when someone pleads
10 guilty or is found guilty in federal Court,
11 and currently about 96 or 97 percent of all
12 defendants plead guilty, we don't have trials.
13 The pre-sentence report's then ordered.
14 The U.S. Probation Officer does
15 that report. They're given a certain number
16 of days, usually you can give them 30, 60, 90
17 days to do the report. They will do that
18 report. Before the Judge ever sees that
19 report, the Probation Officer gives that
20 report to the prosecutor and to the defense
21 attorney and the defendant.
22 They get to look at that report

1 and see if they have any disagreements with
2 the facts in the report, or the application of
3 the guidelines, and they report back to the
4 Probation Officer any objections.
5 The Probation Officer will attempt
6 to resolve any of those objections as possible
7 or may think that he or she is correct in what
8 they've done and they don't change. But
9 anything that remains in dispute, the U.S.
10 Probation Officer does an Addendum to the pre-
11 sentence report and says, Judge, everybody's
12 happy with this report and the calculations
13 and everything else but here are the three
14 factors you'll have to decide at sentencing.
15 One, does this prior record for
16 this defendant -- does this guy get counted
17 for this prior record or not?
18 The quantity of drugs in this
19 case, the defense says it wasn't as great a
20 quantity, so they have an argument over the
21 quantity of drugs.
22 And the defendant's arguing over

1 whether he or she had a leadership role in
2 this drug trafficking activity.
3 Those are the three things you
4 have to decide. And the Judge will resolve
5 that sentencing hearing, preponderance of
6 evidence standards used for any of the
7 guideline application factors with a few
8 exceptions. The Judge will decide that, you
9 know, just and it's pretty discrete.
10 The Judge only gets that report at
11 the time that the parties have already weighed
12 in on what they have objections on.
13 So a Judge doesn't have to be an
14 expert per se in doing guidelines A-to-Z, they
15 just have to like, in any issue, like here's
16 the issue, Judge, you've got to resolve and
17 that's the way it works in our Courts.
18 MR. STRAND: So we would have to -
19 - if we established guidelines like this, with
20 some assumptions that we're going to get some
21 help writing them, that they probably won't be
22 as simple as many people would like, we would

1 have to build some infrastructure of expertise
2 to do pre-sentence investigations, pre-
3 sentence reports and things like that.
4 Because we currently don't have that other
5 than the prosecutors and --
6 COL SCHOLZ: We could probably use
7 the U.S. Sentencing Commission though to look
8 at our history and data and we might be able
9 to even -- we can contract out to you guys to
10 kind of do what you guys did in terms of past
11 practice looking at all our history of cases
12 and sentencing and come up with guidelines
13 that specifically apply to the military. But
14 you're right, it's --
15 BG COOKE: The implementation --
16 COL SCHOLZ: Yes --
17 BG COOKE: -- but the difficulty
18 is it would be much harder to find those
19 factors --
20 COL SCHOLZ: Yes.
21 BG COOKE: -- in our system
22 because there's not a simple document like a

1 simple -- relatively simple -- like a pre-
2 sentence report that lists things. So unless
3 it's in the charge itself, it's only going to
4 show up in a record of trial that some poor
5 sap would have to read through hundreds and
6 hundreds of --
7 COL SCHOLZ: Yes.
8 BG COOKE: -- these things --
9 MR. STRAND: And can we do this on
10 a ship or in combat?
11 MR. BRYANT: When you all looked
12 at the 100,000 cases, though, what -- since
13 the pre-sentence report didn't --
14 Probation Officers used to go in
15 and tell the federal Judge what their
16 recommendation was. That -- I guess that's
17 stopped now.
18 MR. BURRESS: They still give
19 recommendations, the recommendation is that by
20 federal rule is presumptively disclosed to the
21 parties. In practice, more Judges do not
22 disclose the recommendation is my belief but

1 there is a recommendation. However, Probation
2 Officers aren't supposed to sort of try to
3 slip in something in a recommendation that's
4 not in the body of the report itself.
5 MR. BRYANT: Thank you. But Mr.
6 Burress, my question is when the 100,000 cases
7 were being looked at -- I think you said
8 100,000 --
9 MR. BURRESS: It was.
10 MR. BRYANT: What was the
11 importance of a pre-sentence report that
12 didn't actually have the sentence? Was it the
13 sentence that the Judge has imposed a
14 particular crime, a more important thing?
15 MR. BURRESS: The Sentencing
16 Commission had the pre-sentence report and, of
17 course that typically had the judgment and
18 commitment order, you know, so they knew the
19 sentence. They also knew how much time people
20 did before release. So the Commission looked
21 at release dates that the U.S. Parole
22 Commission, because the Parole Commission was

1 deciding when people got released.
2 So they knew the amount of time
3 that was actually done as well. And that's
4 one thing that we -- the federal system -- it
5 was a big change when guidelines came along.
6 It wasn't just guidelines, sentencing came
7 into play.
8 When the guidelines went into
9 effect, the federal system changed from an
10 indeterminate sentencing system, meaning our
11 parole was ended at that point of the people
12 that committed their offenses before that
13 date.
14 And so when the federal system --
15 there is no parole. A Judge, in addition to
16 giving you the imprisonment can give a term of
17 what's called supervised release which is
18 supervision to follow the imprisonment.
19 But there is no parole and good
20 time even in the federal system is 15 percent
21 and is only for sentences of over one year.
22 Meaning if a Judge say gave a three year

1 sentence and then that's 54 days a year
2 roughly.
3 If the Judge gave a three year
4 sentence, then you do good behavior while
5 you're serving your first year, 54 days comes
6 off the back end of the sentence and do good
7 behavior the second year, 54 days comes off.
8 Do it the third year, you won't complete that
9 third year, obviously, but it will be prorated
10 and you get some good time on that third year
11 and then you're released.
12 And then you're released probably
13 to supervision, supervised release after
14 you're imprisoned.
15 MR. BRYANT: But don't you think
16 that a guideline system could be developed
17 without past pre-sentence reports if you knew
18 what the crime was and what the sentence
19 imposed was? If you were just trying to take
20 an average of what military Judges had done
21 over the years?
22 Or you could just set up and

1 arbitrarily say have a Commission that was
2 going to say or somebody say robbery's going
3 to carry low end, midpoint, and high end and
4 this is going to be it.
5 MR. BURRESS: Yes, yes, absolutely
6 you can do something along those lines. Or
7 could look at average sentences that are given
8 for those types of offenses say throughout the
9 states of what the federal system gives and
10 see what factors say these various
11 jurisdictions currently are using, what's the
12 federal using, what are the various states
13 using? Is factors to distinguish one from
14 another?
15 And you could decide, it depends
16 on the approach you had, whether it was just
17 going to be just purely advisory guidelines
18 and that the Judge him or herself, perhaps,
19 would make the final decision on those
20 factors. Or whether it's going to be
21 something submitted to the jury, again
22 probably simple factors.

1 But you know, you've got a rape,
2 and then you can have factors such as and
3 maybe in the military, was there a weapon
4 involved? Was there injury besides the injury
5 that's necessarily accompanying a rape? Did
6 you have say a position of trust in the
7 military?
8 Because we have a guideline that I
9 think would be applied for your cases
10 probably. The position of trust, when you
11 have say the drill instructor and the trainee,
12 that type of relationship.
13 And then we have something called
14 acceptance of responsibility that actually the
15 Judge him or herself probably would be in a
16 position to know whether to give that, you
17 know, if you had a system operating like that.
18 We also have a factor called
19 obstruction meaning was there obstructive
20 conduct that was done by the defendant during
21 the course of the investigation or prosecution
22 or sentencing.

1 But it could be, you know,
2 perhaps, and it depends on resources, is you
3 know, that it's much more of a here are these
4 factors, and they're not that complicated, you
5 know, and you can have maybe beyond reasonable
6 doubt standards submitted to the prying body
7 or the defendant admitting beyond reasonable
8 doubt standard that these things were part of
9 the offense.
10 MR. FISHMAN: Mr. Burress, is
11 there any data that the Commission has about
12 the public perception of justice or the
13 public's reaction to having the Commission
14 having the guidelines?
15 MR. BURRESS: Yes, and the
16 Commission over the years has done, you know,
17 surveys, you know, of ranking offense
18 seriousness and that type of thing. You know,
19 what should get the more severe sentence? A
20 rape or an armed robbery with injury? You
21 know, that type of thing. So we've had that
22 information.

1 As far as whether the public likes
2 guideline sentencing, I don't recall that
3 we've done any kind of just general public
4 survey as to, you know, how do you like the
5 guideline sentencing system in the federal
6 Courts?
7 MR. FISHMAN: But what about
8 fairness generally? Public perception of
9 fairness of the sentencing?
10 MR. BURRESS: Well, I don't know
11 that we have the public perception of our
12 guidelines in that regard other than ranking
13 of seriousness of the conduct and then see if
14 our guidelines seem to achieve that.
15 I know in that Judge's survey, we
16 asked Judges if they thought that our system
17 was a fair system and I think, again, 60 to 70
18 percent of those Judges that responded thought
19 that our system currently was a fair system
20 and achieved the purposes of sentencing and,
21 you know, it was more positive than negative.
22 MR. BRYANT: Wasn't it, Mr.

1 Burress, this is my memory anyway, I'm trying
2 to ask it as a question.
3 The guidelines came about because
4 there was some perception not only in Congress
5 but in the public that justice in the Arizona
6 federal Courts could be vastly different --
7 and I'm talking about sentencing, I'm not
8 talking about actual justice.
9 MR. BURRESS: Sure.
10 MR. BRYANT: I shouldn't have used
11 that word.
12 But sentencing in the District of
13 Arizona could be vastly different from the two
14 districts in say, well there's more than two
15 districts -- in New York. And so Judges in
16 those districts were handing out big time for
17 certain crimes but maybe in California not so
18 much.
19 And my question is, wasn't that
20 perception what Congress was trying to cure
21 with the guidelines?
22 MR. BURRESS: Yes, they called it

1 an unwarranted sentencing disparity. And in
2 fact, you know, there are concerns that that's
3 creeping back into the system, even under the
4 guideline system that we have now, this
5 advisory.
6 But it probably actually was
7 still, you know, there certainly were
8 distinctions and it's hard to say what's
9 disparity and what's unwarranted disparity.
10 The guidelines, our guidelines
11 really don't look much at like personal
12 characteristics, they essentially look at the
13 defendant's prior record but we don't look at
14 this like, was this a good family person? Was
15 this a good worker? Is this a good whatever?
16 Our guidelines don't factor that in.
17 And I think that really that's
18 where most Judges, even when guidelines first
19 came out and continue to say, you know the
20 guidelines, I'm looking at how serious this
21 offense was, perhaps and finally looking at
22 the guy's record, but y'all miss all this

1 other stuff that we think's important in
2 sentencing and that the statute actually
3 thinks is important in sentencing.
4 In fact, after the Supreme Court
5 decision, a piece of legislation that was part
6 of the Sentencing Reform Act that really was
7 just sort of lost over the years came front
8 and foremost and that's 3553(a) which recall
9 the purposes of sentencing.
10 And those factors really are the
11 things that Judges ultimately have to look at
12 in deciding whether they're giving a sentence
13 under the new system that's sufficient but not
14 greater than necessary to achieve the purposes
15 of sentencing.
16 And if it's appealed, and in the
17 federal system, we do provide for appeal,
18 although one of the parties has to take it up
19 on appeal, but you have appeal and a Court of
20 Appeals will review a sentence using that same
21 legislation to say whether what the Court
22 below did was reasonable or not.

1 It's reviewed for reasonableness,
2 a lot of deference given to a sentencing Judge
3 and as such, as you've mentioned, the
4 government doesn't appeal much because the
5 Court of Appeals --
6 Sometimes it's the Court of
7 Appeals opinion for them to say, we don't know
8 that any three of us on this panel would have
9 given that sentence. But, we can't say it was
10 unreasonable for the Judge to do what he or
11 she did, particularly if they explained it on
12 the record in some detail as to why they did
13 what they did.
14 COL HAM: You mentioned that the
15 guilty plea rate is 96 or 97 percent. Is that
16 different than before the guidelines? Was it
17 less of a guilty plea?
18 MR. BURRESS: You know, that's a
19 good question and something that surprised
20 everyone.
21 Everyone had anticipated when
22 guidelines were going into effect that we were

1 going to see an increase in the number of
2 trials. That actually, the opposite has
3 occurred. You know, every year, more and more
4 people have pled guilty in the federal system.
5 COL HAM: Well one of the examples
6 -- or the examples you give, and I'm not
7 practicing in the federal system -- I have
8 friends, both federal public defenders and
9 Assistant U.S. Attorneys -- and one of the
10 examples you give shows the increase in the
11 sentence that occurs when somebody exercises
12 their right to trial which is a complaint of
13 defense counsel.
14 MR. BURRESS: I understand. And
15 one of the things, and if we end up looking at
16 it, I'll point it out, but I can just tell you
17 that our guidelines have what's called
18 acceptance of responsibility. And it's a
19 reduction for, essentially and it's almost a
20 plea discount -- it isn't required that a
21 defendant necessarily plead guilty to get
22 this. It's rare that a defendant goes to

1 trial and does get acceptance.
2 In fact, the only time you pretty
3 much see that is almost like a bench trial
4 where a defendant says, you know, I just --
5 I'm not going to say I didn't do exactly what
6 you say I did, I just don't think the statute
7 applies to what I've done. I just don't think
8 that I can be charged under this federal
9 statute for having done this conduct.
10 Or I've got a Constitutional
11 argument over you trying to come in and try
12 me.
13 So in those instances where the
14 defense admitted to it, sometimes they get
15 that essential discount.
16 But the Commission even debated
17 early on and at the time, and again who knows
18 how it would be viewed nowadays, but even got
19 opinions that said having a plea discount is
20 not the same as punishing someone for going to
21 trial.
22 Now, you know --

1 COL HAM: I understand.
2 MR. BURRESS: But I will say, and
3 what, yes --
4 MR. BRYANT: What happens in
5 reality is it's very difficult -- if you're
6 going to go to trial and take the stand and
7 deny that you did this, then you come back at
8 sentencing and say wait, I accept
9 responsibility, I was just lying under oath to
10 --
11 So you can get acceptance of
12 responsibility by going to trial and not
13 testifying. That happens a fair amount of
14 time. Not all the time. It is difficult, but
15 if you take the stand and flat say, I didn't
16 do this, these people are lying, they're
17 crazy, Your Honor. You can't come back at
18 sentencing and ask for acceptance of
19 responsibility.
20 MR. BURRESS: Excellent point.
21 And in fact, that obstruction that I mentioned
22 and originally in the Fourth Circuit Court of

1 Appeals but across the country, if a defendant
2 goes to trial and testifies untruthfully, you
3 know, and it's to the extent of being
4 perjurious testimony, that is an obstruction
5 and it gives an increase.
6 Even in our guidelines, again,
7 looking at a lot of real offense
8 considerations, not necessarily elements, we
9 give that bump under the guidelines as a 25
10 percent bump up of what the sentence would
11 call for otherwise. And that's based on a
12 Judge-found preponderance situation.
13 Of course, Judges --
14 COL HAM: You're not tried for
15 perjury.
16 MR. BURRESS: You're not tried for
17 perjury or charged with perjury.
18 (Simultaneous talking.)
19 BG DUNN: And counsel cannot argue
20 in the Court. Can you, in the federal
21 courtroom, can you stand up and argue on
22 sentencing that, you know, you convicted him,

1 therefore, clearly he lied on the merits?
2 Because that's absolutely prohibited in the
3 military --
4 MR. BRYANT: I don't know that the
5 military has prohibited but it's really no
6 point in arguing to the Judge because he knows
7 he did not accept his testimony. He did not
8 accept his testimony.
9 MR. BURRESS: I will say that
10 Judges -- go in a room where there's been a
11 trial, you don't typically have to tell the
12 Judge whether that instruction should be given
13 or not, they typically have a strong feeling
14 as to whether --
15 COL HAM: The number of guilty
16 pleas has gone up since the sentencing
17 guidelines. One of the complaints I've heard
18 from federal public defenders is what they're
19 reduced to is "running the guidelines."
20 They sit down with their client
21 and they say, okay, here's what you're looking
22 at. If you plead guilty, it'll be this. If

1 you go to trial and lose, it'll be this. And
2 it was not a happy, happy complaint of the
3 defense. It was a very critical complaint.
4 What's your response to that?
5 MR. BURRESS: Yes, and I think
6 that's true. And I will say that in the
7 federal system, by and large my impression is,
8 this is just my impression, the prosecutor
9 probably isn't going to bring the case unless
10 he or she thinks he's going to get a
11 conviction.
12 So typically, if a defendant says,
13 no I'm going to exercise my right and go to
14 trial, I'm not going to plead out to this.
15 It's like we'll go to trial because we will
16 get a conviction. And once we get the
17 conviction, we're going to walk right back
18 into the courtroom for a sentencing, you know.
19 So you're going to be sentenced one way or the
20 other whether you plead guilty or we're going
21 to get a conviction. So that's somewhat the
22 reality.

1 The thing I think that is more --
2 or is much troubling is to say that reduction
3 for acceptance is that the prosecutors come
4 in, and again, and this has changed over the
5 years, although I think practice, you know,
6 cultures and different Courts have been
7 different even when the rules were different.
8 But it started out with the
9 Thornburgh memo -- when Attorney General
10 Thornburgh, it was prosecutors are supposed to
11 charge the most serious readily provable
12 charge they can charge. That was what every
13 U.S. Attorney was to do.
14 And so assuming they charged the
15 most serious charge then everyone was going to
16 be coming and getting convicted of that most
17 serious offense and the guidelines will be
18 applied. And what was anticipated was what
19 the benefit you'll get by pleading guilty is
20 going to be essentially a two, it's now a
21 three level reduction, about a 25, 36 percent
22 reduction over what you would have gotten had

1 you not pled guilty. And so that's going to
2 be the discount.
3 But the reality is that like --
4 and one of the reasons we've made some
5 amendments to the guidelines, it's like, okay,
6 money laundering.
7 This person was embezzling from a
8 bank. Well, they put money in an account.
9 Well, technically, they've money laundered.
10 Now the money laundering guideline used to
11 call for a very large sentence. The
12 embezzlement did not. So it's like, you want
13 to plead guilty to embezzlement, we'll let
14 you. If you don't, guess what, we're going to
15 charge you with embezzlement and money
16 laundering.
17 So it's that pressure that I've
18 heard of.
19 COL HAM: And that was the second
20 part of the conversation with the federal
21 public defenders, that they were running the
22 guidelines but it was all based on a

1 prosecutor's charging decisions so it -- the
2 game was over once the charge was brought and,
3 you know, this couple of people's view and
4 opinion, that I placed so much authority and
5 power in the hands of the prosecutor and then
6 there was really nothing left for the defense
7 to do.
8 Because of course, they were
9 dealing with people with prior records, most
10 in the --
11 MR. BURRESS: Right.
12 COL HAM: -- most of their
13 clients. And he just said it's a real short
14 conversation. The prosecutor charges, we run
15 the guidelines, we're done. That's it.
16 MR. BURRESS: Well, you know and
17 of course, I mean there is room for some
18 advocacy in the sentencing, obviously. But
19 and beyond that, now that the guidelines are
20 advisory, there's a whole lot of discussion
21 about, okay, these are correctly applied
22 guidelines. You know, we've finally gotten to

1 that point.
2 But here are the reasons we think
3 that what's called for by the guidelines is
4 more than is required for this given case.
5 And again, the standard is sufficient but not
6 greater than necessary to accomplish the
7 purposes of sentencing.
8 COL HENLEY: Rusty, the scenarios
9 that you've provided, do those come from
10 actual courts martial?
11 MR. BURRESS: They did not. I
12 just inquired what they might look like, some
13 cases --
14 COL HENLEY: I guess my question,
15 because one of the considerations would be in
16 reality, how would the sentencing guidelines
17 apply to how we sentence now?
18 Would it be possible if we gave
19 you scenarios from real cases where there was
20 an actual sentence from Judge or Court
21 members, to apply the sentencing guidelines to
22 that fact scenario and see if there's a

1 disparity in reality in sentencing or are we
2 sort of getting it right?
3 Have you been asked to do that or
4 is that -- I mean I'm not saying 100
5 scenarios, but can we give you -- pull out
6 records from each Service, maybe ask the
7 Services to give us five cases or ten cases,
8 members --
9 MR. BURRESS: And as you will look
10 at these guidelines and again, because of our
11 limited time and what I know y'all want to
12 talk about, obviously instead, but our
13 guidelines, you know, are for cases that come
14 through the federal system.
15 The cases that come through where
16 this book is used, 30-something percent are
17 immigration cases, 30-something percent are
18 drug cases, 15 percent, 10 to 15 are gun
19 cases. You've got economic offenses, mostly
20 fraud types of offenses and property offenses,
21 that are probably about 15 percent of the
22 cases.

1 And then you've got the child porn
2 and not so much production, more of the cases
3 are just possession and receipt or trafficking
4 in the images. That's about 2 percent of the
5 cases.
6 And then you've got about 10
7 percent of other. And in that 10 percent of
8 other, is where these offenses that y'all are
9 interested in fall.
10 And of the cases we have in the
11 statistics I gave you, last year, we had 121
12 cases, I think is the number, that came under
13 our rate guideline in federal Courts last year
14 and about 80 percent of those, 70 to 80
15 percent, were Native Americans. Because we
16 don't get that kind of case typically in
17 federal Court. It's a state Court type of
18 offense typically but because of the
19 jurisdiction that the federal government has
20 over Indian country, you know, we -- those
21 cases come into federal Court.
22 In fact, the Commission's having a

1 public hearing Friday themselves over VAWA,
2 the Violence Against Women's Act because so
3 many of those cases come from Native American,
4 you know, defendants and offenders that's been
5 expanded, some authority's been given to
6 tribal Courts. But some of those cases, you
7 know, wouldn't be the cases that typically
8 would come to a federal Court if they didn't
9 occur there.
10 I did look at some statistics that
11 we had and the Commission did a report to the
12 Congress, again, Congress is always telling
13 the Commission what to do.
14 And in 1995, the Commission had to
15 send a report to Congress on rape. They were
16 concerned particularly at that time at the
17 distinctions and sentences between when the
18 victim knew the perpetrator and did not know.
19 They were concerned that the sentences weren't
20 equal. And there was a distinction at that
21 time. I don't know, we haven't done the study
22 since then about that.

1 They were also concerned about the
2 disparity between what you get in federal
3 Court and what you get in state Court for rape
4 offenses. And in fact, we had a Native
5 American advisory group that in 2003 gave a
6 report to the Commission and they found that
7 typically, federal sentences were higher. In
8 fact, the earlier report, we found that for
9 time served, that a rape case in the federal
10 Court probably at that time, this is some
11 years back and our guidelines are actually
12 more severe now than they had been.
13 But you got about another year to
14 two years more that a state defendant was, I
15 think, getting somewhere around nine years and
16 the federal defendant was getting about 11 in
17 terms of time served. Because you have to
18 make the comparison on time served, not time
19 imposed because we don't let you out.
20 The states, I mean, they can give
21 you a nine year sentence and parole you at the
22 end of a year, two years or something. So,

1 you have to look at the time served.
2 COL HAM: It might be important
3 to have those two reports you just mentioned.
4 LTC McGOVERN: Actually we --
5 Rusty sent us a lot of material and it's all
6 up on the website.
7 COL HAM: Okay. Good.
8 MR. BURRESS: And in terms of the
9 guideline characteristics, I looked at the --
10 and you have it before you in these materials
11 you can look at at some point, but all these
12 various characteristics, I even went through
13 and put like italics and stuff.
14 Most of the characteristics deal
15 with children under 12, children under 16 that
16 I don't think are going to be your typical
17 cases. And I think you've got about -- under
18 our current guideline, I think the rape
19 guideline, you've got a base offense level
20 which is starting at a 30 on our sentencing
21 table which is pretty far down. For instance,
22 a robbery starts at a 20. We have this rape

1 starting at a 30. But yes, that factor, it's
2 a starting point.
3 You have the factor as to whether,
4 you know, you use forced violence or that type
5 of thing, you know, weapons and was there
6 injury. And I think that's pretty much what
7 our offense guideline covers that would affect
8 your cases.
9 Then we have what we call our
10 generic guidelines and one would be
11 obstruction, I think that might come into play
12 some. And then the acceptance of
13 responsibility, the plea discount. I think
14 that might come into play some.
15 And the other one that might come
16 into play, probably not much for your cases,
17 is restraint and again, that's been
18 interpreted by federal Courts, I mean, like
19 when you have multiple people raping a person,
20 when somebody's holding someone down, for
21 instance, that may get triggered.
22 But again, I don't think your kind

1 of cases, or from what I'm understanding, are
2 going to be the -- that's not your meat and
3 potato case.
4 MR. STRAND: There may also be
5 some other considerations like impact on unit
6 readiness or, you know, those types of things,
7 you know. If it's a Sergeant and a Private.
8 My biggest concern with the
9 sentencing guidelines and I just kind of want
10 to pick your brain on this, on the criminal
11 history category, we're already generally at
12 a disadvantage because we screen out people
13 that have a criminal history, we try anyway.
14 And then when people do commit crimes, we
15 generally, especially now we're going into an
16 era where we're drawing down again.
17 So that's not going to be a real
18 big factor which could be a real discriminater
19 as far as time because it's not going to be
20 going -- that's not going to be -- to us,
21 that's not a big weight. In fact, the
22 military discipline and everything else is a

1 much larger weight, so that might be a
2 distracter for us.
3 MR. BURRESS: In fact, even on the
4 scenarios that I did for today just for a
5 hypotheticals, I have them all in what we call
6 criminal history category one, you know, no
7 record.
8 I anticipated your typical case,
9 you're not probably going to have criminal
10 record. The federal cases are more likely
11 going to have the federal record.
12 MR. STRAND: Seems like a big
13 weighted factor. I mean when you're knocking
14 off 10, 20, 30 years on that category, that's
15 a huge weight.
16 MR. BURRESS: Yes. But again,
17 it's that repeat offender. You have a
18 question?
19 BG COOKE: Yes, I'm sorry. Well,
20 I think one of the things we're wrestling with
21 is, you know, the obvious complexity of the
22 federal guidelines and the administrative

1 infrastructure that exist to create them and
2 then to administer them and the feasibility of
3 that with the military.
4 And so we've sort of flirted with
5 the notion of simpler guidelines.
6 MR. BURRESS: Right.
7 BG COOKE: But simpler guidelines
8 suggests much broader guidelines. In other
9 words, you know, you granularized this so
10 that, you know, there's a fairly narrow range
11 for a given offense once you've factored in
12 all the well did he use a gun? Did he do this,
13 that and the other thing?
14 If we're looking at what, you
15 know, what someone perceives as the least
16 serious rape or some other crime all the way
17 up to most serious, you've got to make it
18 pretty broad. And I guess I'm wondering if we
19 took all that out in the federal system just
20 for rape, for example. What would the range
21 be, do you know off the top of your head?
22 MR. BURRESS: Well, the starting

1 point, you know, for our current rape
2 guideline, again with no aggravating factors,
3 if you're convicted of rape, it's going to be
4 a 30 with no prior records, 97 to 121. So
5 we're looking at roughly a starting point of
6 ten years.
7 Now your guy's probably going to
8 plead guilty, I assume your military
9 defendants plead guilty -- no they don't.
10 Okay.
11 In fact, I will say in terms of
12 statistics, the assault cases and rape
13 included, there's a higher trial rate for
14 those and particularly I would think for rape.
15 I think it's 80-something percent of
16 defendants maybe it is plead guilty,
17 70-something --
18 MR. STRAND: One of those factors
19 includes incapacitation. We bring a lot more
20 of those cases than most other jurisdictions
21 and so that's a huge factor why they don't
22 want to plead guilty because they think they

1 can --
2 MR. BURRESS: Yes, well and just
3 in the he said/she said nature of any of those
4 defenses, too, I would think would be a reason
5 for trial perhaps as well.
6 Plus, if you've got a large
7 sentence you're looking at, so roll the dice.
8 Am I looking at, you know, your starting point
9 here if it's level 30, it's 97 to 121, you
10 hope maybe you hit 97. If you pled guilty and
11 got three levels off which is a possibility
12 taking it to a 27, it'd be 70 months.
13 So it's like, okay, are you
14 looking at maybe you can get 97 if you want to
15 go to trial. You know, if you come in the
16 prosecutor will even be pushing for you to get
17 the 70 if you want to plead guilty. And you
18 decide whether you want to roll the dice or
19 not, you know, and go to trial.
20 BG COOKE: Well how high can it go
21 on the other end if you added in other
22 aggravators?

1 MR. BURRESS: Well, the factors
2 that we have and I think --
3 LTC McGOVERN: Can we go through
4 one of the scenarios just to sort of
5 illustrate this?
6 MR. BURRESS: If y'all want to
7 spend two seconds to look at a scenario or
8 would y'all rather talk about something else?
9 LTC McGOVERN: Let's talk about --
10 MR. FISHMAN: And Rusty, shouldn't
11 we have the caveat. You're talking about the
12 penetrative offense, we're not talking about
13 a contact offense.
14 MR. BURRESS: Right and I've even
15 given an example of a contact offense, too.
16 And we have 40-something of those contact
17 defenses.
18 Now I will tell you, you know
19 while we're talking about things people like
20 and don't like about the guidelines and you
21 raised some excellent points.
22 The Sentencing Commission starts

1 as an offense of conviction system based on
2 what you're convicted of, that dictates your
3 guidelines. So the guy who's convicted, say
4 in federal Court, of larceny, you apply the
5 larceny guideline, even if the facts say, wow
6 he went to a bank and wore a stocking mask and
7 used a gun and intimidated people and injured
8 people and hijacked people and dye packs going
9 off. You still apply the larceny guideline
10 because that's the offense of conviction.
11 But once you get to the guideline
12 for the offense of conviction, we have a lot
13 of real offense considerations. Like the guy
14 convicted just a bank robbery, not an armed
15 bank robbery. When you get to that robbery
16 guideline, we have a characteristic for a gun.
17 So the preponderance of evidence standard,
18 that guy's going to get a bump for a gun in
19 that robbery even though he wasn't convicted
20 for armed robbery.
21 We also had a number of our
22 guidelines set for what we call cross

1 references. In other words, you've got to go
2 to the guideline for the offense of conviction
3 but some of those guidelines for the offense
4 of conviction say under certain circumstances,
5 don't stay here, go elsewhere.
6 And one of those guidelines, and
7 it was changed since we wrote that 1995
8 report, we have a cross reference from our
9 sexual contact guidelines to the rape
10 guideline because in 1995, and we'd already
11 made the change at that time, but 20 percent
12 of the 97 rapes that came through federal
13 Courts that year, 20 percent of them, when
14 there was rape conduct, not confess --
15 conviction, but 97 cases of rape conduct, 20
16 percent of those cases were convicted of
17 sexual contact, not rape.
18 But our rape, our contact
19 guideline now has a cross reference. Judge,
20 the guy's convicted of this offense, he's
21 looking at a stat max for whatever that
22 offense is and the federal system's typically

1 probably no more than ten years, but if the
2 conduct involved was rape, go apply the rape
3 guideline.
4 Now the rape guideline's probably
5 going to call for more than ten years, but the
6 Sentencing Commission's position is if you've
7 got the guy with sexual contact, say the stat
8 max is ten, that means the Judge could give
9 anywhere from one day or no days up to ten
10 years of imprisonment.
11 What makes this the worst sexual
12 contact type of offense? And the Commission
13 says if you rape somebody, that's the worst
14 kind. So we send you to this guideline, you
15 can't give the sentence for rape, but you can
16 give up to the maximum for what the offense of
17 conviction was.
18 And that's, as the approach the
19 Commission's taken, many people do not like
20 that cross reference. The firearms
21 guidelines, even some of our Commissioners are
22 saying gee, the guy's convicted in federal

1 Court of felony possession of a gun, but we
2 have a cross reference that says but did you
3 use that gun? If you used it to rob a 7-11,
4 no federal jurisdiction over that 7-11
5 robbery.
6 Well, we're going to say apply the
7 robbery guideline because we think the guy
8 possessing the gun that's used it to rob
9 somebody, that he in terms of statutory
10 penalty of zero to ten years, this guy
11 probably ought to be getting up closer to ten
12 years than the guy who just had the gun.
13 So that's the way we work our
14 guidelines. Defense attorneys obviously do
15 not like that because it pushes them closer to
16 the stat max.
17 MR BRYANT: You could get that
18 7-11 robbery in federal Court if it was a
19 felony possession.
20 MR. BURRESS: Yes, we did --
21 (Simultaneous speaking.)
22 MR. BURRESS: It was a

1 preponderance of evidence standard.
2 BG DUNN: But the absolute crux of
3 your system is that a Judge is making all of
4 these decisions.
5 MR. BURRESS: Right, right, right.
6 And I will say that if you had a
7 guideline that was going to be one a jury
8 could decide, your type of offense narrowed
9 down to the limited types of characteristics
10 I've used, say in this scenario, could be
11 probably presented to a jury, I would think.
12 You know, there may be some technical aspects
13 of it but it's not as complicated as say our
14 insider trading guideline or something of that
15 nature.
16 COL HAM: You said most Judges now
17 that after the Supreme Court's ruling are
18 departing downward?
19 MR. BURRESS: They are.
20 COL HAM: What, is there -- that
21 might be too general a question -- by how
22 much? By what percentage? Because you've

1 given us guideline sentence ranges for your
2 scenarios --
3 MR. BURRESS: Right, right.
4 In fact, among the data, and I
5 just got this and the Commission actually
6 could do much more in depth research into some
7 of these areas but this is just what's
8 available without an in depth research done by
9 our Commission staff.
10 The rape guideline, let's see, I
11 have that here somewhere I thought, oh these
12 are the ones y'all gave me.
13 You know, the one that's
14 statistical in nature, y'all can look at it,
15 it's the one that has a lot more language on
16 the first page. The other one has just sort
17 of a cover page. This one just gets right
18 into the data.
19 But the sexual abuse guideline in
20 the federal Courts last year was applied 116
21 time. There were -- excuse me -- 121 cases.
22 Judges stayed within the guidelines about half

1 the time. Sixty-five of the 121 cases, Judges
2 stayed within the guidelines.
3 They went below the guidelines
4 most often, however, or about -- yes,
5 actually, about as often because of government
6 promotion.
7 In other words, in the federal
8 system, if you cooperate with the government
9 in the investigation and prosecution of
10 someone else, they can make a motion or if you
11 come in, say on a binding plea agreement, the
12 government's coming and saying we think this
13 is the right outcome.
14 So out of those 121 cases, Judges
15 stayed within the guidelines about half the
16 time, 65 times. There were 35 times, 36
17 times, that the Judge gave a lower sentence
18 because the government was promoting this
19 lower sentence and the Judge did that.
20 And then 37 times out of those 121
21 where the Judge says, you know, without the
22 government promoting this, I think that the

1 right sentence is lower than the guideline
2 range and so they did that.
3 Now the average length of
4 sentence, and again, I don't know what the
5 average was called for, but the median
6 sentence, meaning half were above, half were
7 below, was 135 months for that offense. So
8 that's a little over what, ten, that's about
9 11 years, I guess is the median sentence that
10 was given on all of those cases.
11 Now the Commission obviously could
12 do data runs and say well what was the
13 sentence of those that were sentenced within
14 the guidelines? What was the sentence of
15 those that were sentenced without?
16 Of course, then you might be
17 comparing apples and oranges because you have
18 to know well what were the characteristics of
19 the people that were sentenced within the
20 guidelines and what were the characteristics
21 of the people that were sentenced without.
22 So the researchers, you know, I

1 sort of get lost sometimes on what they have
2 to do to, you know, compare apples and apples
3 and oranges and oranges.
4 MR. STRAND: So if we did -- if we
5 got some research and showed that, you know,
6 across the board for rapes in the military,
7 you know, the sentences were probably the
8 same, you know, with the exception of a few on
9 this end and a few on this end, we're already
10 doing what this -- it seems like we're already
11 doing what this proposes to do.
12 MR. BURRESS: It may well be.
13 Right, right.
14 You know, if you find that there's
15 some consistency in your sentences --
16 Now again, if you weren't happy
17 with what those sentences are, you know, I
18 mean then you might say well we need
19 guidelines to get more or, you know, and we
20 haven't gotten to the discussion, our time's
21 limited --
22 MR. STRAND: We're probably not

1 going to get more because based on this, we're
2 actually getting less with the guidelines.
3 MR. BURRESS: Oh, y'all are giving
4 less than our guidelines?
5 MR. STRAND: Well no, from this,
6 37 percent went below the guidelines. So if
7 those people aren't happy with the length of
8 sentence and everything else, they might find
9 -- have a rude awakening when they wake up and
10 say, you know, ten years from now and say
11 well, yes, but this what we tried to do but
12 we're actually worse off than what we were
13 before, at least perception-wise.
14 COL SCHOLZ: Well you talked about
15 the unwarranted sentencing disparity creeping
16 back in despite the guidelines, what is that
17 all about?
18 MR. BURRESS: Well, you know, and
19 it's probably as much cultural as anything
20 because even when the guidelines were
21 mandatory, some districts were doing say more
22 departures than others were.

1 New York for instance, New York,
2 southern New York, eastern Manhattan,
3 Brooklyn, Connecticut, Massachusetts, some of
4 the West Coast federal districts, their
5 sentences are going lower than the guidelines
6 -- outside the guidelines -- going lower than
7 other districts.
8 In fact, when our chairperson,
9 Judge Patty Saracen, U.S. District Judge from
10 Boston, Chief Judge in Boston, appeared before
11 the Senate Judiciary Subcommittee on Crime
12 which oversees the Commission, she went in and
13 sat down and one of the first questions she
14 was asked, she said how come in Massachusetts
15 y'all go below the guidelines this amount of
16 times? And in Macon, Georgia, they go below
17 the guidelines this amount of times? Just
18 like five percent compared to 40 percent? You
19 know, what's going on?
20 And why do federal Judges like
21 child porn? The most frequent guideline
22 Judges are going below the guidelines on is

1 child porn. They're going --
2 The Commission just did a major
3 report that's on our website about child porn
4 sentences. Judges -- and it's not outliers,
5 it's across the board -- it's 50 percent of
6 the Judges don't stay within the guidelines
7 for the possession and receipt or trafficking
8 in child porn they think is too severe and
9 they're giving lesser sentences.
10 MR. BRYANT: They are pretty high.
11 (Simultaneous speaking.)
12 MR. BRYANT: I don't disagree with
13 them but I'm just saying child pornography and
14 the especially the production of child
15 pornography, those guidelines are right up
16 there with the drug guidelines.
17 MR. BURRESS: The production of
18 child porn, people don't have problems with
19 that. They say you're raping this child, you
20 know, they don't have trouble and we give long
21 sentences for that and the mandatory minimums.
22 And just a quick mention to

1 mandatory minimums, I know that's been some
2 thought from y'all. You know, it's
3 interesting, you know, the Congress decides
4 what has mandatory minimum and what doesn't.
5 For instance, most of these rape
6 type of offenses, unless a child's involved,
7 there's not a mandatory minimum. You know,
8 whereas drug trafficking, if you sell a
9 certain amount of drug, you're going to get a
10 minimum of five. So Congress sort of decides
11 what to do.
12 The Commission just did, in 2011 I
13 guess it was, maybe 12, that the mandatory
14 minimum report, I mean it was like a thesis
15 that's posted on our website -- all of those
16 are -- and the Commission weighed in on
17 mandatory minimums. They did an extensive
18 study and they found that they weren't being
19 applied evenly by prosecutors around the
20 system, that some Courts never charged
21 mandatory minimum offenses, some always
22 charged mandatory minimum offenses.

1 And the Commission, which for many
2 years, when the guidelines were mandatory, the
3 Commission was in opposition totally to
4 mandatory minimums. They said we don't need
5 them, we've got a mandatory guideline system.
6 I will say the Commission, and
7 there are seven Sentencing Commissioners
8 appointed by the President, confirmed by the
9 Senate, at least three are federal Judges, we
10 have five Judges right now, but the Commission
11 couldn't come to a consensus to be in total
12 opposition to mandatory minimums under
13 advisory guidelines.
14 Some thought that they might still
15 be a place for mandatory minimums if
16 guidelines are advisories so that there is
17 some minimum sentence. But the
18 recommendations they made to the Congress
19 included that, if you have a mandatory
20 minimum, first of all, make it a low mandatory
21 minimum. Don't give these ten year mandatory
22 minimums, these 20 year mandatory minimums.

1 And make them much more selective as to who
2 will fall under that because, you know, as it
3 is, they sweep in a lot of cases.
4 You know, a lot of defendants are
5 getting lumped together that look different.
6 There should be some distinction in their
7 sentences and mandatory minimums don't allow
8 for those distinctions.
9 BG COOKE: Is it also fair to say
10 that the mandatory minimums created problems
11 for setting guidelines because they --
12 Congress would set them basically in a vacuum
13 looking at that particular offense and perhaps
14 an egregious case and were mad and so they set
15 a minimum and that mandatory minimum didn't
16 relate to the mandatory minimum for something
17 else?
18 MR. BURRESS: Oh absolutely. In
19 fact, crack cocaine is sort of the poster
20 child for mandatory minimums, at least for the
21 federal system. And the Sentencing Commission
22 had took from 1995 to 2011 for the Sentencing

1 Commission having written four reports to the
2 Congress during that period of time, and
3 having our --
4 The one time we had amendments
5 ever rejected by the Congress, because when we
6 changed these guidelines, the amendments have
7 to go to the Congress, sit for a period of six
8 months. If they don't pass a law signed by
9 the President keeping these from going into
10 effect, they go into effect.
11 Crack cocaine, where the
12 Commission tried to equalize that powder after
13 having done a lot of studies, Congress
14 wouldn't have it. President Clinton wouldn't
15 have it. They signed legislation and kept
16 that from happening and, of course, many
17 inmates who had anticipated the Commission
18 then going in making it retroactive for some
19 reductions of sentences, we had disturbances
20 throughout the Federal Bureau of Prisons
21 because that didn't happen.
22 But finally this Fair Sentencing

1 Act, it still didn't equalize the two but it's
2 much more in parity I guess you could say than
3 it had been.
4 MR. BRYANT: And a couple of
5 points that Colonel Ham made in reference to
6 federal public defenders feeling like they're
7 just doing guidelines, the Thornburgh memo is
8 no longer in effect.
9 MR. BURRESS: It is not.
10 MR. BRYANT: Hasn't been in for
11 quite a while.
12 MR. BURRESS: Right.
13 MR. BRYANT: So the U.S.
14 Attorney's no longer --
15 MR. BURRESS: -- the Reno memo
16 when in fact the Holder --
17 MR. BRYANT: Janet Reno, yes.
18 MR. BURRESS: -- Holder isn't
19 even charging mandatory minimums, he's gone on
20 the record saying --
21 MR. BRYANT: Right.
22 MR. BURRESS: -- I won't charge

1 them in many cases.
2 MR. BRYANT: Okay, I'll just let
3 that go and not get into it.
4 But anyway, so that -- they no
5 longer have to charge the most serious
6 offenses without any approval.
7 MR. BURRESS: They do not.
8 MR. BRYANT: And it may not be
9 true for public defenders but in most crimes
10 that the U.S. Attorney's office is
11 investigating, the defendant has some inkling
12 that he's under investigation and may have
13 gotten his own attorney. I understand that's
14 not so with a lot of the people the public
15 defenders represent.
16 And that wouldn't apply to violent
17 gang -- nobody's tipping their hand on that,
18 that's all pretty close to the vest until the
19 indictment comes out.
20 But because of that process, I'm
21 trying to ask this as a question, the defense
22 attorneys are often with the Assistant United

1 States Attorney working something out
2 pre-indictment, do it by criminal information,
3 something like that.
4 MR. BURRESS: Right and that does
5 -- that continues to happen and that's sort of
6 the unseen distinction in guidelines. You
7 know, and when you say well in Macon, Georgia,
8 they stay within the guidelines. Well maybe
9 they're coming in and maybe charging them, you
10 know, it's been, you know, you don't know what
11 happened for that charge. And maybe everybody
12 was happy with that outcome. And in
13 Massachusetts, maybe they don't do it that way
14 and that's why you have the distinction.
15 So just to say some district's
16 going outside the guidelines more than
17 another, doesn't really talk about what the
18 culture is as to how they got to that
19 guideline calculation.
20 You know and of course one of the
21 things that early memos had said from the
22 Department of Justice, is they told the

1 prosecutors, it's like even when you're
2 stipulating the facts and stuff, they used to
3 call it don't swallow the gun, so the guy
4 who's convicted of the robbery with a gun and
5 he's got a gun and everybody saw the gun,
6 don't say he didn't have a gun.
7 You know, I mean if it's something
8 in dispute like, gee, did he have a gun? Some
9 thought they saw a bulge in his coat jacket or
10 something, you know, that may be disputable.
11 But don't swallow the gun when the video's
12 showing the guy pointing guns and he's
13 discharging it and shooting people or
14 whatever.
15 COL HENLEY: Any last questions
16 from the --
17 MR. BURRESS: Yes, like I say,
18 I've given you some scenarios basically and
19 these are just cases that I think may look
20 like the type you would have. You'll notice
21 that most of the characteristics did not
22 apply. I think I bolded the ones I thought

1 here's the ones that are going to apply.
2 The 30 is going to be your
3 starting point for your rape cases and then
4 there's going to be just a couple or three
5 characteristics that may apply.
6 As I went through and did these
7 few that you have here, like the outcomes look
8 like -- let me see, where's the one -- in the
9 first scenario, it had an outcome of a
10 guideline range of five years, almost six
11 years to seven years. That was one that two
12 enlisted people got together, woman passed
13 out, the guy had sex with the woman as she was
14 passed out. That was like a five to seven
15 year guideline called for sentencing in our
16 system.
17 COL HENLEY: That would be a
18 significant increase based on my experience as
19 a factor of two times at least.
20 MR. BRYANT: And it's below what
21 he says --
22 (Simultaneous speaking.)

1 MR. BRYANT: I cannot imagine a
2 jury convicting somebody of rape and not
3 getting ten as a minimum and it's usually a
4 lot more than that.
5 COL HAM: Well we just visited
6 Everett, Washington last week and there was
7 two count rape of a child case going to trial
8 this week and the prosecutor said if
9 convicted, the person would serve -- did they
10 say, two to -- three to four years max. And
11 the question was asked, why would it be so
12 low?
13 MR. BRYANT: Well are they a no
14 parole state or do they have --
15 COL HAM: I think they are a no
16 parole state.
17 MR. BRYANT: Yes, because before
18 we became no parole, you were eligible after
19 serving just a fourth of your sentence in
20 Virginia. So a jury can walk in and give you
21 20 years but you could be eligible for parole
22 in five and they didn't know that.

1 COL HAM: So she said -- the
2 prosecutor said three to -- what I'm trying to
3 recollect is if she said two to four or three
4 to four. And then the immediate question was
5 why would it be so low? This is rape of two
6 children? And her answer was well, they were
7 15, he's 21. The community doesn't have --
8 the community is not outraged or something by
9 this -- something like that. So it was really
10 low.
11 MR. BURRESS: In terms of your
12 question, that first scenario, I had the guy,
13 you know, in that sent of facts that I told
14 and the guidelines called for 70 to 87 months
15 is like six years to seven years.
16 In that same case, if the guy had
17 said no I didn't do it, it was consensual and
18 didn't get acceptance, the guidelines would
19 have called for 97 to 121 months, so that's
20 eight years as a minimum as opposed to just
21 about six. So this guy's lost about two years
22 or gained two years, however you want to call

1 it, because, you know, he didn't plead guilty,
2 he didn't get acceptance.
3 COL HAM: Don't we have in the
4 guilty plea system, everybody knows, I think
5 Mr. Bryant knows, too, I mean that's a long
6 colloquy. Somebody can't plead guilty to get
7 the good deal. They've got to --
8 MR. BURRESS: Yes, yes, and that's
9 true of the federal Court as well. I mean --
10 COL HAM: But it's a much smaller
11 colloquy.
12 MR. BURRESS: Okay.
13 COL HAM: I think. I watched
14 federal sentencing and is that correct,
15 Dillon? I mean --
16 MR. FISHMAN: It is.
17 COL HAM: There's a long back and
18 forth conversation where the person basically
19 has to convince the Judge he's guilty of all
20 the elements.
21 MR. BURRESS: Oh, okay. Got you.
22 MR. FISHMAN: The other thing I

1 want to ask, and the last point here, you had
2 mentioned this before in our other meeting,
3 but I think, when you talked about Judges,
4 generally, the liking of the guideline system,
5 was it that they have a uniform touchstone
6 where they begin?
7 In other words, there is that --
8 that is a factor they like?
9 MR. BURRESS: Yes, that, you know,
10 even when the guidelines were mandatory, you
11 know, initially Judges did not like these
12 mandatory guidelines because they'd always had
13 all the discretion.
14 But new Judges, and I've trained
15 new Judges since the courtesy of General Cooke
16 over here, I train all the new federal Judges
17 since 1987, and so I've trained every new
18 federal district judge since 1987.
19 New Judges, even when the
20 guidelines were mandatory, came in, the ones
21 that had not done criminal work -- now if
22 you'd been a federal Judge, for instance,

1 you'd say well I've done this stuff, I feel
2 confident. But if you had never done criminal
3 work or federal work or never had, you know,
4 you'd been real estate law and you were a
5 federal Judge.
6 You come in and you say, oh I'm so
7 glad because I didn't know what to give these
8 people. I've never done this kind of stuff.
9 So Judges had liked that.
10 Now they're advisory, they really
11 like it more than they did because like
12 everyone has, in theory, the same starting
13 point based on the same facts. Now they've
14 got the discretion to say, okay, but I know
15 all this other about this person, family,
16 whatnot and now I can stay within those
17 guidelines or go above or go below just as
18 long as it's on the record that I explain, you
19 know, what led me to give this final sentence.
20 COL HENLEY: I think you would
21 probably find something similar in the
22 military. I think there's some security for

1 new Judges, one to two, three years on the
2 bench that you can come up with a sentence and
3 look to a guideline and say, okay, I'm pretty
4 close. But I think the longer you're on the
5 bench, six, seven, eight, nine, ten years, you
6 probably had a sense of what you think a case
7 is worth and you're less inclined to look to
8 the guidelines for that ratification.
9 So and maybe that's similar to
10 what your practice or your experience is in
11 the federal system.
12 MR. BURRESS: And it may be, you
13 know. And of course, in the federal system,
14 you know, we're as diverse as the whole, you
15 know, United States. But it may be that your
16 military maybe the nature of the training or
17 something may give a little more consistency
18 than we get from federal Judges. I don't know
19 that.
20 I know some time back I did a
21 program in France for French Judges and I had
22 a scenario and asked them what sentences they

1 would give and whereas I'd been doing that
2 scenario here to different groups and would
3 get sentences from probation to 15 years on
4 that scenario.
5 Those French Judges who go to an
6 academy, you become a federal -- a Judge, not
7 federal Judge, French Judge, by going through
8 an academy. That's their college education.
9 They were pretty consistent without a
10 guideline system. I mean I guess their
11 education background, their point of reference
12 gave them a pretty consistent outcome. And we
13 just, you know, we don't get that as much
14 here.
15 COL SCHOLZ: Our Judges have the,
16 I think, if they can look back to historically
17 at what's gone on, I think they have the
18 opportunity to do that and talk with their
19 colleagues, too, I think, too.
20 But I mean I really think there's
21 probably ways to get a touchstone without
22 necessarily having guidelines. That's my

1 thoughts.
2 MR. BURRESS: And do keep in mind,
3 too, it depends on who's looking over your
4 shoulder, so to speak. I mean if you have
5 guidelines and they call for certain things,
6 and just like our guidelines, we see that, you
7 know, 60 percent of the time, 50 percent, the
8 Judges go below for child porn. They say, why
9 are y'all going below these guidelines?
10 So once you get guidelines, if
11 even with discretion that you go below, it's
12 like, well y'all went below. You know, why?
13 Why'd you do that? As opposed to saying well
14 maybe the guidelines are too high. You know,
15 no one ever says, oh if your guidelines need
16 adjusting because it looks like you're going
17 lower.
18 The Judge has decided the right
19 outcome is lower, shouldn't we maybe lower the
20 guidelines? You don't often hear that
21 argument being made.
22 MR. STRAND: You know, once you

1 throw that comment, why would the Judges like
2 child porn, there's no coming back from that
3 because that's now the public perception.
4 MR. BURRESS: Yes. I mean, you
5 know, when you get asked that question, it's
6 like what answer do you give? Right?
7 COL HAM: I have life tenure.
8 MR. BURRESS: That's a good
9 answer. That's a good answer.
10 Anything else folks? I know I've
11 taken up too much of your time, but --
12 LTC McGOVERN: Russ, you're
13 welcome to stay and join us for a chili lunch
14 if you have the time, but we are going to take
15 a break and come back at 12:30.
16 MR. BURRESS: Well, if y'all are
17 going to feed me, I'll let you feed me. But
18 I --
19 (Whereupon, the above-entitled
20 matter went off the record at 12:08 p.m. and
21 resumed at 12:38 p.m.)
22 COL HENLEY: All right. We're

1 back with the next presenters. For state
2 sentencing guidelines, we have Mr. Mark
3 Bergstrom from the Pennsylvania State
4 Sentencing Commission; Ms. Meredith
5 Farrar-Owens at Virginia State Sentencing
6 Commission. And do you have opening remarks,
7 or I guess we can proceed that way with Mr.
8 Bergstrom.
9 MR. BERGSTROM: Sure. I'm Mark
10 Bergstrom. I'm the Executive Director of the
11 Pennsylvania Commission on Sentencing. I have
12 provided a packet of information, some
13 overhead slides, and some attachments to that.
14 And at some point, I can go through that to
15 try to highlight some of the issues that I
16 think Dillon mentioned were of interest to
17 you. But I think we're here to just provide
18 any kind of insights or any kind of
19 information that would be helpful to your
20 effort.
21 And Meredith, I think, is going to
22 give a little bit of a context or background

1 on sentencing commissions generally. And then
2 we can talk a little bit about how each of our
3 commissions fit into that model.
4 MS. FARRAR-OWENS: So it's really
5 wonderful that Mark is here with us because it
6 gives, both our commissions are a little bit
7 different, have slightly different approaches.
8 So you'll get firsthand knowledge about the
9 differences in how we do our business.
10 As Mark mentioned, I'm going to
11 kick off with a little bit of an overview of
12 state sentencing guideline systems, Dillon
13 mentioned to me that this was something of
14 interest to you, before we start getting into
15 the details of Virginia. And I'll talk about
16 the details of the Virginia sentencing
17 guideline system.
18 I also have a packet handed out to
19 you. This is in the black folder. And if you
20 open it up, you'll see a lot of different
21 materials that I'm going to be touching on.
22 These slides themselves are on the right-hand

1 side, so I'll be going through this and then
2 referring to some of the other material that's
3 on the left-hand side as I go through.
4 So just to get kick started on the
5 overview of state sentencing guideline
6 systems, if you look on slide number two
7 you'll see a map of the United States with
8 yellow highlighted states where there is a
9 sentencing commission or a sentencing policy
10 council. Some states call them policy
11 councils. All told, it's 24 states, plus the
12 District of Columbia. And then, of course,
13 the federal system, which you all heard about
14 earlier today. Those are all highlighted in
15 yellow.
16 Some of them have been around,
17 like Pennsylvania, for quite some time. I
18 think Pennsylvania was founded in 1978,
19 created in 78. We might be the oldest
20 sentencing --
21 MR. BERGSTROM: I think Minnesota
22 was ahead of us.

1 MS. FARRAR-OWENS: So you have a
2 great deal of institutional knowledge here
3 with the Pennsylvania Sentencing Commission.
4 The Virginia Sentencing Commission is not
5 quite as old, but we do have, I hope, be able
6 to provide a lot of information for you today.
7 So moving onto slide three and
8 talking about sentencing guideline systems,
9 not every state, even though they have a
10 sentencing commission or a sentencing policy
11 council, not every state actually has a system
12 of sentencing guidelines along with that. All
13 told, 20 states and the District of Columbia
14 actually have sentencing guidelines. There's
15 four commissions that don't have guidelines.
16 They have different purposes in their states,
17 but they don't have guidelines.
18 I just wanted to point out,
19 though, that sentencing commissions vary
20 greatly and sentencing guidelines vary greatly
21 in several different ways, particularly in
22 terms of their articulated purpose. Different

1 sentencing guidelines have different purposes,
2 and we'll talk about some of those different
3 purposes in a moment.
4 They also have, they differ based
5 on their method of development, and I'll touch
6 on that, as well. Of course, their structure
7 and their application. So all of these things
8 are different, so it's difficult to really
9 talk about sentencing guideline systems in one
10 short conversation because of all those
11 differences, but I hope to give you a pretty
12 good overview.
13 On slide four, this is a lot of
14 information packed onto this chart. But, in
15 essence, what I wanted to give you was a
16 flavor of the different articulated purpose or
17 objectives of sentencing guideline systems.
18 And you can see, by far, the most frequent one
19 that's cited or articulated is to reduce
20 sentencing disparity or increase consistency
21 in sentencing outcomes. By far, that is the
22 most common reason why these sentencing

1 guideline systems are established.
2 The next one after that is to
3 achieve proportionality in sentencing. In
4 other words, our offenders who have committed
5 more serious offenses and have more serious
6 criminal histories, are they, indeed, getting
7 longer punishment as a result of that? So is
8 there proportionality in sentencing as the
9 seriousness of the offense increases?
10 For nine sentencing guideline
11 systems, they have the explicit goal to
12 protect public safety, provide intermediate
13 sanctions, assist in controlling prison
14 populations. That's an interesting one for
15 some states where they may actually refine and
16 revise sentencing guidelines to help control
17 their prison population or a couple of states
18 that do do that.
19 Going on down the list, you can
20 see a variety of reasons. The bottom one on
21 the list there is to examine existing laws and
22 policies. Those are those four sentencing

1 commissions I told you about. They don't have
2 guidelines. They just are there to do
3 research and make recommendations for change
4 in their sentencing policies in their state.
5 MR. STRAND: I notice that none of
6 the reasons are to increase sentences.
7 MS. FARRAR-OWENS: Well, in a way,
8 there is. There are some states like Virginia
9 where there's a focus on violent and/or repeat
10 offenders. And that was one of Virginia's
11 priorities, stated priorities was to increase
12 the length of incarceration to be served by
13 violent or repeat offenders.
14 MR. BERGSTROM: When Pennsylvania
15 established its commission and its guidelines,
16 one of the purposes was to increase sentences,
17 particularly in Philadelphia. And in the
18 literature over the year, we've been
19 criticized because our sentences have gone up,
20 but we explained that that's what we intended
21 to do and were successful in doing that.
22 MR. STRAND: Okay. So it actually

1 did work?
2 MR. BERGSTROM: Well, that part
3 worked. Now we're trying to undo a little bit
4 of that, but that's a whole other discussion.
5 MS. FARRAR-OWENS: And it was
6 successful in Virginia, and I'll have some
7 notes on that in a few --
8 COL SCHOLZ: Is that because of
9 the reporting of crime?
10 MR. BERGSTROM: I'm not sure that
11 -- I'm trying to think if there's anything
12 about the reporting of crime. There's
13 certainly an impact, we've had an impact in
14 sort of the transparency of sentencing
15 information. We publish all the information
16 on sentencing, and that can be a driver,
17 actually, to promote different sentences. In
18 effect, it's almost like an alternative to a
19 appellate review where, instead of a court
20 reviewing something from a legal point of
21 view, you have the public reviewing what they
22 think the judge did or should have done. And

1 we have elected judges in Pennsylvania, so
2 release of that information is pretty
3 important.
4 So, you know, on the arrest side
5 or the reporting side of arrests, I'm not sure
6 that I've seen any research on that.
7 MS. FARRAR-OWENS: Not specific to
8 Virginia, no. So then moving on to slide
9 five, talking about the method of sentencing
10 guidelines development, again, the states are
11 all over the board on this. They differ in
12 terms of the oversight group. Who's leading
13 the charge? Is it a judicial branch agency,
14 like Virginia? Is it a legislative branch
15 agency or, for example, in the federal system,
16 Congress directing the U.S. Sentencing
17 Commission on what to do with their sentencing
18 guidelines? Some states have an executive
19 branch or a multi-branch committee that work
20 together to develop sentencing guidelines.
21 But they also differ in terms of
22 their nature. Are they descriptive of

1 historical sentencing practices, or are they
2 prescriptive? Are they set with an intent or
3 purpose to do something specific but are not
4 based on those historical sentencing
5 practices, or is it some combination? So
6 you'll see states with a variety of these
7 combinations.
8 Regarding sentencing guideline
9 structures on slide six, I've shown, and I
10 know it's very tiny, but, basically, two
11 examples here. There is the grid style, which
12 you see on the left. In essence, where the
13 current offense for which the offender has
14 been convicted is down on the vertical axis,
15 and his prior record score is on the
16 horizontal axis at the top, and where the row
17 and the column meet is the box that holds the
18 sentencing recommendation for that case. So
19 that's the grid style.
20 Some states don't use that grid
21 style, like Virginia. We use the worksheet or
22 list style, which you see on the right, which

1 is basically scoring a series of factors,
2 starting with primary offense, the nature of
3 the offense, including victim injury and the
4 like, prior record, and so on down the line.
5 So each factor gets scored separately in a
6 list style with the points then summed, and
7 you look up the sum of points, that total, on
8 a table to determine the sentencing
9 recommendations. So two different approaches,
10 generally, for sentencing guideline systems in
11 the states.
12 And finally, before I start
13 talking a little bit more about the guideline
14 systems, there's differences in terms of the
15 application rules, of course. In some states,
16 the preparation of the guidelines is
17 mandatory. In some states, it is not. It's
18 completely voluntary whether the judge wants
19 to have him or her presented with sentencing
20 guidelines recommendations.
21 Some states, the guidelines are
22 presumptive. In other words, the judges are

1 expected to go along within the recommended
2 sentencing range. In other states, compliance
3 or concurrence with the guidelines is
4 completely discretionary. Judges are free to
5 depart outside of the sentencing guidelines
6 range. And there are a variety of rules
7 relating to departures, which we'll talk about
8 in a few moments.
9 Differences of how the systems
10 incorporate or deal with mandatory minimum
11 penalties that are required by statutory
12 language, and whether or not how they deal
13 with appeals, guidelines-based appeals in
14 their systems. And that varies. Just to give
15 you an example, in Virginia, no error or
16 omission on the sentencing guidelines can be
17 the basis of an appeal. And some states are
18 like Virginia in that respect. There is not
19 appeal based on guidelines in Virginia.
20 So having made that sort of
21 context of how to think about state sentencing
22 guideline systems, I want to just cover

1 briefly a report that was put out a few years
2 ago by the National Center for State Courts.
3 They do a variety of research and do a lot of
4 great work in this area. And this is
5 something that is in your packet, and it looks
6 like this, the "State Sentencing Guideline
7 Systems Profile and Continuum." And I wanted
8 to talk about this because they have a very
9 interesting approach that they've used to
10 compare state sentencing guideline systems
11 that I thought you might find interesting.
12 So on slide nine, it lists the six
13 questions, the six factors that the National
14 Center for State Courts used to compare the
15 sentencing guideline systems, and you'll see
16 them listed there. Number one, is there an
17 enforceable rule related to the guidelines
18 use? In other words, are they discretionary
19 or presumptive? What's the expectation in
20 terms of the judge's compliance? Is the
21 completion of a worksheet or structured
22 scoring form required? That was another basis

1 on which they compared sentencing commissions.
2 Does the sentencing commission
3 regularly report on guidelines compliance?
4 And here I think they were looking for a
5 factor of how active this sentencing
6 commission is in terms of the oversight and
7 reporting related to the guidelines.
8 Next, are compelling and
9 substantial reasons required for departures,
10 or are there no restrictions at all on the
11 reasons why judges can depart from the
12 guidelines? Are written reasons required for
13 the departures, and is there appellate review
14 of defendant-based challenges related to
15 sentencing guidelines?
16 So these are six very interesting
17 factors that they looked at for 21 sentencing
18 guideline systems, that would be the 20 states
19 plus D.C. And how they scored these states is
20 shown on slide ten. Based, for each question,
21 if the answer was no, that state that got a
22 zero on that factor. If it was a weak yes

1 and, in some ways, that state incorporated
2 some of those elements, it was scored a one on
3 that factor. And if a state was very strongly
4 a yes for that factor, they were scored a two.
5 And you can see the scoring for all the states
6 and how they totaled, and the totals are on
7 the far right with North Carolina totaling the
8 highest with 12 and Wisconsin having the
9 lowest total points at one.
10 So then the National Center,
11 having done that, put together this continuum
12 that's shown on slide 11 where the lower
13 scores were considered to be the more
14 voluntary systems, the less restrictive
15 systems, fewer rules related to the sentencing
16 guidelines, all the way to the higher scores
17 which were considered more mandatory.
18 Everything about it was rigid or had certain
19 rules regarding all the aspects of the
20 sentencing guidelines that were considered for
21 this evaluation.
22 So having said that, I'm going to

1 highlight four states just to kind of give you
2 a flavor of where these states fell out. And,
3 of course, the first one I'm going to
4 highlight is North Carolina which scored as
5 the most mandatory of all the state sentencing
6 guideline systems. And it's interesting, too,
7 in this report. It's very helpful. They
8 provide other bits and pieces of information
9 about each of these sentencing guideline
10 systems, including when they were created,
11 their articulated objectives and purpose, and
12 whether or not they have a grid or worksheet
13 structure.
14 So there's other bits and pieces
15 of information in the report that I think that
16 you would find interesting. We're not going
17 to cover all of that today, but, certainly, at
18 your leisure, you might find some of that
19 information interesting.
20 North Carolina has a grid
21 structure. They have a felony grid with
22 eleven offense and seven prior record levels.

1 They have a separate grid for sex offenses
2 that's not part of their regular felony
3 offense grid, and they have eight offense
4 levels in their sex offender grid and seven
5 prior record levels. So it's a little bit
6 interesting tidbit there.
7 On all of the six questions that
8 we talked about, those comparative factors,
9 North Carolina scored a two. So everything is
10 very, has a lot of rules and regulations
11 regarding the guidelines.
12 Okay. So for Maryland, Maryland
13 scored a seven, so a little less mandatory but
14 still in that mandatory end of the continuum.
15 They also have a grid system, but they have
16 multiple grids. They have a person offense
17 grid, a drug offense grid, and a property
18 offense grid. So they basically break down
19 their offenses by those three types.
20 And in terms of Maryland, they do
21 require that worksheets be completed in every
22 case. They have a sentencing commission that

1 monitors, to some extent, monitors compliance
2 and issues reports. They only scored a one
3 regarding the activity of the sentencing
4 commission. They have a pretty strict
5 departure rationale. Judges must have a
6 substantial and compelling reason for
7 departing outside of the guidelines'
8 recommended range. And they do require a
9 written reason of departure, and that's in
10 statutory language.
11 So all told, those are the things
12 they scored points on, and they scored a
13 seven. So they do fall in the mandatory end
14 of the range but not by much. It's seven out
15 of twelve.
16 The next step down, I'm going to
17 briefly touch on Virginia and, of course, talk
18 in more detail in a few moments. Virginia
19 scored a six, so we are considered more, you
20 know, we're one below Maryland, but that threw
21 us into the more voluntary end of the range.
22 In Virginia, we do require that the worksheets

1 be completed in each case that's covered by
2 the sentencing guidelines. We have a very
3 active sentencing commission that does a lot
4 of reporting and oversight of the sentencing
5 guidelines process.
6 Virginia judges do not have any
7 restriction regarding their reasons for their
8 departure, so we scored a zero in that regard.
9 The judges are completely free to depart
10 outside of the guidelines range, for any
11 reason they think is important and relevant to
12 their case. But we do require, in Virginia,
13 those departure reasons to be written.
14 So if the judge sentences outside
15 of the range, there's no restriction of those
16 reasons, but he must articulate the reason, he
17 or she must articulate the reason all in the
18 sentencing guidelines form that is provided
19 back to the sentencing commission.
20 And then it does help us identify
21 areas where judges disagree with what our
22 sentencing guidelines are recommending and

1 where we might need to go in and do some
2 revisions. And we can better understand
3 judicial thinking in those areas, because
4 they've articulated those reasons why they
5 elected to sentence above or below the
6 sentencing guidelines range.
7 MR. BRYANT: Chairman, if I could
8 interrupt here for just a second, to point
9 out, because one of the things that we've been
10 wrestling with and considering is the burden
11 one of these systems may place on military
12 system. And the judge's reason for departure
13 can be two words or a sentence or a paragraph.
14 It may be something as simple as plea
15 agreement.
16 MS. FARRAR-OWENS: Absolutely.
17 MR. BRYANT: Okay. So it's not
18 some great big production that has to be done
19 in articulating why they depart.
20 MS. FARRAR-OWENS: Absolutely. As
21 Mr. Bryant noted, we have some judges that
22 prefer just to say, a jury recommended

1 sentence, or a plea agreement or something of
2 the like. And then we have some judges who
3 like to write a book. They fill up all the
4 lines, and then they start writing at the side
5 of the page. And right about now is where I
6 usually make my joke that, if you think
7 doctors' handwriting is bad, try to read a
8 judge's handwriting.
9 But, yes, so it's across the
10 board, and we don't impose any restrictions on
11 how much or how little someone can write as a
12 departure reason. But just to note, at the
13 very far end of the voluntary side of the
14 continuum, I highlighted Missouri here. They
15 scored a total of two points. Basically, the
16 only thing that they require in Missouri is
17 that the forms be completed. Other than that,
18 there's really no sentencing commission
19 reporting and oversight. There's no rules
20 regarding departures or anything of the like.
21 So, they just require the forms to be
22 completed, so it's at almost the completely

1 voluntary end of the range there for Missouri.
2 So I would be remiss, though, in
3 pointing out, though, it is difficult to
4 compare sentencing guidelines across the
5 states. One important reason is that the
6 story doesn't end there. Once the sentencing
7 has occurred and the offender enters, for
8 example, the state prison system, the amount
9 of time they actually serve may vary
10 considerably. Even though they may have had
11 the same sentence in one state and another,
12 they may serve very different periods of time
13 in prison.
14 COL HAM: Ma'am, of the states
15 that have not adopted a sentencing guideline
16 structure -- well, first of all, have there
17 been any states that adopted a sentencing
18 guideline structure and then abandoned it for
19 some reason? And what would those reasons be?
20 And for those who haven't adopted a sentencing
21 guideline structure, are their reasons
22 articulated? I mean, was it examined and then

1 rejected? What's kind of the lay of the land
2 on that?
3 MS. FARRAR-OWENS: And I think
4 Mark and I together can probably give some
5 good information on this. But, yes, there
6 have been several states, not several but a
7 few, where, at some point in time, they had
8 sentencing guidelines and perhaps an active
9 commission along with that. Over the years,
10 in some cases due to budget reasons, the
11 sentencing commission aspect of it was
12 defunded, but the guidelines are still in
13 place and are still used in their courts, but
14 there's no agency overseeing that process. So
15 that's happened in a couple of states. I
16 think Washington state, it virtually has done
17 that, Wisconsin, maybe even Ohio at this
18 point.
19 So it's occurred in a couple of
20 different states. I know, for example,
21 Michigan, they don't really have a sentencing
22 commission at all anymore, but the sentencing

1 guidelines are still in place, and they use a
2 university to do the analysis of the
3 sentencing guidelines. So it has occurred,
4 but you're talking about really approaching 30
5 years of history with sentencing guidelines
6 now in the United States. So --
7 MR. BERGSTROM: And then you have
8 a state like Massachusetts that has a
9 commission, the commission has been operating,
10 and they've been trying to adopt guidelines
11 for probably 20 years and have not quite made
12 it across the line. So there's a functioning
13 commission doing a lot of great work, but the
14 structure, the guidelines have not been
15 adopted.
16 So I think there's a couple of
17 reasons why states have gone back and forth,
18 or have not adopted guidelines. One is just
19 the sort of political dynamics of the state.
20 You might have a state that, you know, parties
21 change and sort of the view of the
22 administration, or the view of the general

1 assembly has changed, and they move in one
2 direction versus the other. And so it could
3 be that there might have been a lot of support
4 for the guidelines at one time, and that
5 support evaporated.
6 At least our experience in
7 Pennsylvania in the late 70s and early 80s,
8 when you start with nothing and you start
9 moving towards adopting guidelines, you're
10 removing someone's discretion, or adjusting it
11 in some way. And so, certainly, judges in
12 Pennsylvania were concerned at the time about
13 what kind of impact guidelines would have on
14 their discretion. And so that sometimes is
15 some push back that you have.
16 There are states, as Meredith
17 said, and I think this is more recent, states
18 that have seen guidelines as a mechanism for
19 managing prison populations and correctional
20 costs and things like that. So it might be a
21 positive in that way of trying to promote some
22 kind of public policy.

1 Meredith had mentioned that, in
2 developing guidelines, there is sort of two
3 different approaches. One is this descriptive
4 approach where you just, sort of, crunch all
5 the numbers, look at what judges are doing,
6 and then sort of superimpose a model and say,
7 well, this is what the trend looks like, so
8 we're going to adopt that, let everyone know
9 what that is. And that actually helps to
10 achieve more uniformity in sentencing, because
11 you're just telling judges what all the judges
12 are doing.
13 But the other approach is a much
14 more prescriptive approach where you say,
15 well, this is what we want to have happen and
16 here's what we're sort of superimposing on the
17 system, what we're trying to move the system
18 towards. And I think, especially that latter
19 approach, is probably an approach where you
20 might get some resistance because you're
21 changing behaviors, but it might also be used
22 to try to promote some kind of behavior, like

1 reducing reliance on prison populations or
2 increasing sentences for violent offenders or
3 other things like that.
4 MS. FARRAR-OWENS: So just picking
5 up on slide 16, it just mentions here that
6 there are quite a bit of differences in state
7 correctional systems. Some states continue to
8 have parole release as an option. Some states
9 have abolished parole, such as Virginia. The
10 amount of sentence credits the inmates can
11 earn for good behavior, or for participation
12 in programs while in prison, that varies
13 considerably.
14 Some states do have a minimum
15 percent of time served that's required. For
16 Virginia, that's a minimum of 85 percent.
17 States vary sometimes, and I've forgotten
18 Pennsylvania's, but some states it's 60
19 percent for nonviolent but 85 percent for
20 violent. So there may be different percent
21 rules for that minimum time served.
22 And then, finally, some states

1 have a geriatric release provision whereby an
2 older inmate could be released prior to
3 finishing or completing the end of a sentence,
4 due to old age or infirmity and the like. So,
5 as I said, even though you can look at the
6 sentencing guidelines, the end result in terms
7 of time served might not be the same,
8 depending on what state.
9 MR. STRAND: Are either one of you
10 aware of any other countries or other
11 militaries that have sentencing guidelines or
12 any research along those areas?
13 MR. BERGSTROM: There are, I just
14 took a trip this past winter to Germany and
15 the Netherlands to, sort of, look at
16 correctional systems as compared to four of
17 our states. And I'm not sure that they have
18 this sort of separate sentencing guideline
19 mechanism, but they probably link a lot of
20 these kind of structured sentencing practices
21 into their statutes, or into how they process
22 things. So I don't think what we're talking

1 about is sort of on the scale with what they
2 do, but having a separate commission, things
3 like that, maybe is a little bit different.
4 MS. FARRAR-OWENS: There are some
5 countries that have shown serious interest in
6 the prospect of developing sentencing
7 guidelines in some form. For example, believe
8 it or not, China had invited our Virginia
9 Sentencing Commission's former director over
10 there, twice, to talk about the development of
11 sentencing guidelines. I don't know how far
12 they've actually moved in that direction, but
13 that interest was there.
14 We had folks from South Korea come
15 and visit state sentencing commissions,
16 including Virginia's and Pennsylvania's.
17 England has sent a delegation over to talk
18 with us and several states about sentencing
19 guidelines. And, most recently, the Chief
20 Justice of Ethiopia came and visited the
21 States, and one of the stops was in Virginia
22 to talk about sentencing guidelines, and

1 improving consistency and fairness in
2 sentencing in his country.
3 So there's interest in other
4 countries that are there. The pace at which
5 they move along that road is difficult to say.
6
7 MR. BERGSTROM: Yes. And I think
8 if you look at the other countries that are
9 interested in this, there's sort of a
10 different focus, too, because, you know, our
11 focus is really on are you going to lock a
12 person up and, if so, for how long? And a lot
13 of other countries, incarceration isn't sort
14 of the be all and end all. But what you do
15 find is that they develop these commissions to
16 have this, sort of, collaborative kind of
17 discussion of policies and so forth. So
18 that's one of the reasons. And using the
19 information and the data to sort of support
20 those decisions, that's a helpful thing.
21 They do look at other things,
22 though, I mean, especially the Scandinavian

1 countries and into Germany. You have things
2 like day fines, where they much more focus on
3 economic sanctions, and how to structure that
4 in a way as an alternative to incarceration.
5 MS. FARRAR-OWENS: I'm going to
6 talk in a little bit more detail about
7 Virginia's sentencing guideline system, and
8 then specifically talking about the guidelines
9 for sexual assault offenses in Virginia. But
10 just to give a little bit of background, and
11 this is on slide 18, to talk about the
12 original impetus for sentencing guidelines in
13 Virginia really had a lot to do with
14 sentencing disparities that were documented in
15 the early 1980s.
16 And, in essence, similarly
17 situated offenders who, you know, have
18 committed similar offenses and have comparable
19 prior records, were not getting similar
20 sentencing outcomes. And the fear was that
21 could be initially related to race,
22 socioeconomic differences, gender, and the

1 like.
2 So there was an interest in
3 reducing those unwarranted disparities. So
4 our Chief Justice in Virginia formed a
5 committee to examine the issue. We had to
6 spend some years collecting some data because
7 there was really no good system of statewide
8 data. And, again, that broader study also
9 revealed sentencing disparities.
10 So our circuit court judges, in
11 their conference, voted to move forward with
12 the development of sentencing guidelines. So
13 it was pretty much a judge-motivated process
14 in Virginia, initially, to reduce sentencing
15 disparities. So that commission, the judicial
16 committee was appointed to develop a blueprint
17 then.
18 That committee came up with
19 several important elements that they found
20 they considered to be crucial to what would
21 become Virginia's sentencing guideline system.
22 In Virginia, that was: the judges wanted

1 voluntary compliance. They did not want a
2 mandatory compliance system. They wanted the
3 guidelines to be historically grounded in past
4 sentencing practices, so descriptive, and
5 we'll talk more about how that was done in
6 Virginia.
7 They wanted offense-specific
8 guidelines. So they were not so much
9 interested in here's all felony offenses on
10 this grid, or all property offenses on this
11 grid. They wanted something that was a little
12 more refined to specific offenses.
13 Virginia's judges didn't want to
14 go the way of the grid model. They wanted to
15 go the worksheet style, the list scoring
16 mechanism. That was a decision of their
17 group. And they --
18 MR. STRAND: Why didn't they like
19 the grid?
20 MS. FARRAR-OWENS: We did a lot of
21 analysis, and I'll tell you what for Virginia
22 was revealed. For example, there were

1 differences for even a given factor, let's say
2 a prior record factor. The weight that was
3 given to that in our model, sentencing models,
4 was different depending on which offense you
5 were talking about. If you're talking about
6 murder, the prior record variable really
7 probably isn't as important as the fact that
8 he's been convicted of murder, and the
9 recommendation for murder is really going to
10 be the driving factor for that recommendation
11 and for that sentencing outcome.
12 But for an offense like felony
13 larceny where, in most cases, offenders don't
14 go to prison their first time, or even their
15 second time, the prior record variables start
16 to come into play more so. And the judges we
17 found in our analysis would give those factors
18 more weight for a crime like felony larceny
19 than they would for murder.
20 And even, we also found
21 differences in the importance of these
22 variables in the type of decision being made.

1 So, for example, whether or not someone ended
2 up with a prison sentence, we could model that
3 and identify the factors that were important
4 in that decision for that offense. But those
5 factors might be weighted differently, or
6 might even be a different set of factors
7 entirely when it came to the judge's decision
8 to how long, once they decided someone was
9 going to go to prison, how long that sentence
10 was going to be. Then our analysis found that
11 judges may consider slightly different
12 factors, or weight those factors in their
13 minds a little bit differently when it came to
14 the sentence length decision.
15 So with a lot of these very subtle
16 differences presented to the judges in
17 Virginia, they really opted more towards that
18 worksheet model, because they felt it could be
19 more refined for what they were interested in
20 doing. But Virginia's judges were very much
21 interested in retaining discretion, and so
22 they wanted sentencing ranges to be broader

1 than other systems that were looked at, like
2 Minnesota's, and some states where the range
3 was actually very tight. So Virginia's judges
4 were ruffled about that, and wanted to have
5 wide ranges so they could retain some
6 discretion.
7 So after modeling historical
8 sentencing decisions and developing guidelines
9 based on that, the Virginia sentencing
10 guideline system was pilot tested in 1989 to
11 1991 and then implemented statewide in 1991.
12 So we now have over 20 years of experience,
13 not as long as Pennsylvania's, but we have
14 more than two decades of experience with our
15 sentencing guidelines.
16 LTC McGOVERN: Can I ask how did
17 you do the pilot program? Did you just do it
18 in one jurisdiction or --
19 MS. FARRAR-OWENS: We started with
20 four pilot sites, and we tried to do a good
21 regional representation of the state from
22 Northern Tidewater, Central, and Western, and

1 then also a combination of urban and rural
2 sites. And then, later on, we had a couple of
3 other circuits express some interest in
4 joining our pilot project, so we increased
5 from four to six, but to try to have that
6 diversity, to test it in different places.
7 LTC McGOVERN: And was that
8 valuable, I mean, to really develop it?
9 MS. FARRAR-OWENS: We found that
10 very helpful because we got different kinds of
11 feedback from the judges in our rural areas
12 than from the judges in our more urban areas.
13 So it was interesting. We could take all of
14 those perspectives into consideration before
15 going forward statewide.
16 MR. BERGSTROM: When you're doing
17 that kind of pilot testing, I think one of the
18 important things, and we had the same
19 experience, was, you know, making sure you're
20 doing both qualitative and quantitative work.
21 So when you're coming up with samples that,
22 you know, counties or jurisdictions that

1 you're involving and you get a real different
2 dynamic in some of the counties and how they
3 operate because of size or geography or other
4 things like that or just historical, you know,
5 that's just sort of how they operate, being
6 able to look at the data statewide and in
7 jurisdictions, but also talking to judges and
8 prosecutors and others in the system, and
9 trying to understand those qualitative aspects
10 is really an important part of it.
11 LTC McGOVERN: And then how do you
12 measure the success of a pilot program? Is it
13 that there was less disparity or was it judge
14 satisfaction, a combination of both?
15 MR. BERGSTROM: Well, I think you
16 have to, at the start, you have to determine
17 what it is that you want. Like I said, you
18 know, when we started our guidelines, we
19 wanted to increase sentences in Philadelphia,
20 so one of the outcome measures would be
21 whether that occurred. But there were other
22 more global kind of things, about fairness and

1 proportionality, and uniformity and things
2 like that, trying to reduce unwarranted
3 disparity. So you try to come up with, you
4 articulate those, and then you try to come up
5 with measures for those so that you can look
6 out.
7 The frustrating thing is you
8 usually have to look, you know, several years
9 later. And especially with more recent kind
10 of work where you're looking at outcomes like
11 recidivism, you need a long tail. So it's
12 tougher today than it was 30 years ago, I
13 guess.
14 MS. FARRAR-OWENS: Virginia's
15 pilot evaluation really hinged upon decreasing
16 unwarranted disparity, because that was the
17 primary articulated goal for Virginia
18 initially. And we were able to show that, in
19 those pilot sites, that that disparity did,
20 indeed, decrease. So with that information,
21 the judges then decided, elected to go forward
22 statewide with that.

1 I think I would be remiss without
2 talking about the importance for Virginia and
3 probably most states, the importance of data
4 and having information to analyze. Initially,
5 Virginia did not have that kind of equality
6 information about felony sentencing outcomes,
7 so that had to be put in place at the very
8 beginning in the 1980s. And you'll see this
9 on slide 20. Initially, the Department of
10 Corrections was preparing these pre-sentence
11 investigation reports, probably very similar
12 to what the federal system uses, that federal
13 probation officers prepare for the court in
14 those cases. A pre-sentence investigation
15 report, but it varied from locality to
16 locality. It wasn't standardized, it wasn't
17 automated. It was a pretty typed-up piece of
18 paper that the judge saw and then it went in
19 the court file.
20 So in the late 1980s, the
21 Department of Corrections, in cooperation with
22 the judicial committee, developed a way to

1 standardize and automate all of that
2 information to create a historical database,
3 which took a couple of years to get a
4 foundation with enough data to really go
5 forward with and, at that point, do some
6 analysis with. I bring that up because, you
7 know, we have found that really so critical to
8 the work that we do.
9 I did put a blank copy of one of
10 our pre-sentence investigation reports in the
11 folder, and I think what is really the beauty
12 of this report is there's a lot of checkboxes
13 and fill-in-the-blank, and that stuff is the
14 standardized automated information. But there
15 are also plenty of sections for narrative
16 information. So if there's specific things
17 that an individual judge likes to know about
18 the defendants before him or her, that can be
19 included in those narrative sections and
20 provide a lot of detail, as well, in addition
21 to supplementing the standardized and the
22 automated information, so the judge has that

1 and can read all of that information prior to
2 announcing the sentencing decision.
3 And then once that's automated, we
4 have, of course, a very rich database to use
5 for our sentence modeling. Slide 21 just
6 summarizes the things that are contained in
7 this report: describing the offenses; the
8 victim characteristics and the injury; the
9 relationship between the offender and the
10 victim; of course, prior record, both adult
11 convictions and juvenile adjudications; family
12 environment. Here is a narrative section for
13 family environment. The probation officer
14 will typically document if there's been a
15 history of, let's say, child abuse as the
16 defendant was raised and the like.
17 So a lot of that qualitative
18 information can be included in these narrative
19 sections. Educational background. Even
20 military service is included. Employment,
21 religious activities. Their substance use and
22 mental health history is completed as part of

1 this form, and, of course, if there's an
2 opportunity for a community option, community
3 plan and restitution. So all of that provides
4 a wealth of information, not only for the
5 judge at the time of sentencing, but also
6 later to do the quantitative analysis with
7 later on. And that proves to be really key
8 for us.
9 MR. STRAND: Who currently does
10 those investigations?
11 MS. FARRAR-OWENS: The probation
12 officer, the state probation officer.
13 MR. STRAND: And is that pretty
14 much their full-time job where they're
15 specially trained and --
16 MS. FARRAR-OWENS: In some
17 districts. The larger districts tend to have
18 what they call report writers. They
19 specialize -- and Virginia Beach might be one
20 of those areas where there are certain
21 individuals, two or three, on staff that
22 specialize in conducting these. It takes a

1 lot of legwork, a lot of research and looking
2 at the offender's past.
3 In other jurisdictions which are
4 smaller, typically all the probation officers
5 will be involved in doing this, to some
6 extent.
7 MR. STRAND: So in the military,
8 we don't have any probation officers. We
9 would have to build a new skill set and build
10 another specialized category of people to do
11 that. Would that be correct?
12 MR. BERGSTROM: Well, depending on
13 how you wanted to structure or frame this. I
14 mean, there's probably, I mean you'd probably
15 identify information that might be fairly
16 readily available that might get you to where
17 you want to go. But, yes, if you were going
18 to take this model, it would require someone
19 that's invested in doing that.
20 MR. BRYANT: Well, guidelines are
21 often prepared, maybe even more often
22 prepared, before the pre-sentence report, at

1 least in the Virginia system. And it's not
2 the probation officers or the probation
3 officer doing it, if there's a pre-sentence
4 report. But it's generally the defense
5 attorney and the prosecutor agreeing that
6 these are the applicable guidelines, and
7 that's submitted to the judge.
8 Then if there's a pre-sentence
9 report ordered for whatever reason, that comes
10 later. But because of your question, I just
11 wanted to point out that you don't have to
12 have a pre-sentence report to do the
13 guidelines.
14 MR. BERGSTROM: If I could just
15 pick up on Mr. Bryant's point, I think it's a
16 really good one, that, in any state that has
17 sentencing guidelines, one of the real
18 benefits of guidelines is the use of that
19 information in negotiated pleas.
20 I mean, we have a very high rate
21 of negotiated pleas, and we have guidelines,
22 but the parties are -- first, it gives

1 everyone sort of a common starting point for
2 sentencing recommendations, but it has both
3 parties trying to determine and agree to some
4 of those factors that are important for
5 sentencing. So I see guidelines, and almost
6 any kind of version of guidelines as a
7 critical part early in the process as part of
8 the negotiation of a case.
9 MS. FARRAR-OWENS: So we get the
10 positive feedback from defense attorneys who
11 say I like the guidelines because I can show
12 my client what the expectation is, here's the
13 starting point that we're looking at for what
14 you've been charged with, and so on. And
15 then, as Mark said, it's a tool in their plea
16 negotiations with the prosecutors.
17 And prosecutors, the same thing.
18 They have a starting point, and they can look
19 at the guidelines and get a sense of where to
20 go from there.
21 I'm going to move quickly, because
22 I want to be sure to leave Mark plenty of time

1 for his information on Pennsylvania. But
2 Virginia did move, in the early 1990s, in
3 addition to this original goal of reducing
4 disparity, sentencing reform became a
5 prominent issue in the early 1990s. We had a
6 gubernatorial campaign where the abolition of
7 parole was really one of the key issues for
8 Virginia, and that was really for two reasons.
9 There was interest in this
10 discussion of truth in sentencing, where an
11 offender has to serve all or nearly all of the
12 sentence ordered by the court. It became an
13 important topic of debate, to lay out truth in
14 sentencing, put forth truth in sentencing in
15 Virginia, because, at that time, with the
16 parole system, some offenders were serving as
17 little as 25 percent of the sentence ordered
18 by the judge.
19 And then this sense of
20 transparency, where the discussion that the
21 average person off the street ought to be able
22 to understand what a sentence means. So if

1 someone gets a ten-year sentence and they see
2 them out on the street, two years later in
3 their neighborhood, and they don't understand
4 because they heard the judge say ten years, so
5 how did that person get out in two? So it was
6 this feeling that the average person ought to
7 be able to understand. It shouldn't be this
8 complicated formula to figure out how long
9 someone was going to serve in prison. So
10 those were the driving issues.
11 With the election over and that
12 candidate having one the election, he created
13 a task force to review and come up with a plan
14 for sentencing reform. So one of the things,
15 of course, they looked at, I was part of the
16 technical staff, they looked at a ton of data,
17 a lot of information. But, of course, the
18 biggest thing for them was how little, what
19 fraction offenders were serving of the
20 court-imposed sentence. And you can see that
21 on slide 23 that the proportion of time served
22 versus the actual prison sentence in some

1 cases was quite small.
2 So the end result, after a lot of
3 groundwork in 1993 or 1994, was a special
4 session of the general assembly to adopt this
5 sentencing reform package that became
6 effective January 1st, 1995. So for any
7 felony committed on or after January 1st, 95,
8 parole has been abolished. There's this
9 minimum time served, the 85 percent, which a
10 lot of states adopted in the early 1990s.
11 There were some federal dollars attached to
12 states that moved towards that 85 percent.
13 But there was a very strong objective in
14 Virginia to target violent offenders for
15 longer terms of incarceration than they had
16 been serving under the old parole system.
17 At the same time, there was an
18 acknowledgment that if we lock up violent
19 offenders for longer, it's going to have an
20 impact on our prison population, and we need
21 to do something that's a little more cost
22 effective with the low-risk nonviolent felons

1 and explore ways to identify those low-risk
2 nonviolent felons, and divert them to some
3 alternative sanctions, if possible, to make
4 room in our prisons for the violent offenders
5 serving longer terms. So that was important.
6 Still maintaining the goal of
7 reducing sentencing disparities, and, at that
8 time, the sentencing commission was created to
9 oversee this process, this transition into
10 truth in sentencing, and the new sentencing
11 guidelines that would be compatible with this
12 system with no parole. So that was when we
13 formally came into being.
14 In essence, the guidelines, we had
15 to translate the guidelines from a system
16 where the judge would impose a sentence that
17 the parole board would shorten, in essence.
18 So where a judge might impose five years, the
19 offender might typically might, say, get out
20 in an average of one year. Transitioning from
21 that type of where the sentencing guidelines
22 would recommend five, but the offender would

1 serve one to something that reflected the new
2 system.
3 So the first step was converting
4 the sentencing guidelines based on sentencing
5 practices, converting those to the time that
6 was actually served. So that became the new
7 base. The time the offenders actually served
8 in prison became the new base. And then that
9 time, for violent offenders, was increased.
10 The general assembly laid out in the code a
11 framework for these enhancements, these
12 sentencing enhancements, that resulted in
13 longer recommendations for the violent
14 offenders, for the repeat offenders. So the
15 recommendations would be several times longer
16 than what they had been serving under the old
17 parole system, and that's shown on slide 25
18 where the system of midpoint enhancement.
19 So, for example, if your current
20 offense was violent, let's say your current
21 offense was a malicious wounding, right off
22 the bat your time served under the old parole

1 system was doubled, 100-percent increase, and
2 that became the new recommendation for
3 malicious wounding under the
4 truth-in-sentencing system.
5 It was further increased, if your
6 current offense was violent, but you also had
7 prior violent offenses in your past, like,
8 let's say you had a prior robbery in your
9 criminal history, so that would further
10 increase these enhancements. So in the end,
11 there could be upwards of a 500-percent
12 increase above the historical time served, if
13 you were a violent offender and had a violent
14 history, as well. So a lot longer sentences.
15 Those became the new sentencing guidelines
16 recommendations, a lot longer recommendations
17 for violent offenders.
18 We'll talk a little bit in a
19 couple of minutes about the impact. And then
20 I'm really going to stop.
21 So I mentioned, in Virginia,
22 compliance is voluntary. We have no appellate

1 review of guidelines departures. We do retain
2 jury sentencing in Virginia. However, juries
3 are not allowed to receive the sentencing
4 guidelines. Long story. But the judge, of
5 course, gets the guidelines and can take into
6 consideration. I think Virginia is one of
7 five states that still allows jury sentencing
8 in non-capital cases.
9 So in Virginia, in a felony case,
10 a jury will still recommend a sentence. The
11 judge can take that into consideration and
12 lower the jury sentence. They can't increase,
13 but they can lower the jury sentence. But
14 they can also take into consideration the
15 sentencing guidelines that are prepared, as
16 well. So those two things.
17 MR. BRYANT: Excuse me, Meredith.
18 Do you know if any of those five states, do
19 the juries get the guidelines, or do you know
20 of any state where the guidelines --
21 MS. FARRAR-OWENS: I'm not aware
22 of any. I'm not aware of any. And that seems

1 to be sort of the preference out of it, that
2 a jury sentence is the community sentiment.
3 It's the expression of the community on what
4 is the appropriate sentence for that offender.
5 And although in Virginia judges are allowed to
6 suspend time off from that jury recommendation
7 and go lower, they typically don't. They
8 typically will go along and impose whatever
9 the jury has recommended in those cases. But
10 jury sentencing was retained in Virginia.
11 COL SCHOLZ: Does the defendant
12 get the opportunity to choose whether he goes
13 before the jury for sentencing or the judge?
14 Is that an option for the defendant or --
15 MS. FARRAR-OWENS: Not at
16 sentencing. That's a decision that's made
17 up-front for the whole trial.
18 COL SCHOLZ: And who makes that
19 decision?
20 MS. FARRAR-OWENS: In Virginia, I
21 think either party, either the prosecutor or
22 the defendant.

1 MR. BRYANT: All three. The judge
2 can ask for a jury, which is rare, or the
3 prosecution or the defense asks for a jury.
4 But once you have the jury, the only way to
5 get out of jury sentencing is to go ahead and
6 plead guilty before they find you guilty. And
7 you can do that even while they're back there
8 deliberating. If you plead guilty before they
9 come back, of course, that's, you know, based
10 on what your defense counsel is telling you,
11 you know, I saw when they went back you're
12 going to get it, you better plead guilty now
13 and let the judge sentence you.
14 MS. FARRAR-OWENS: I'm going to
15 skip ahead and just talk a little bit about,
16 show you the sentencing guidelines worksheets
17 for sex offenses. And this really starts on
18 page 29, but the clean large copies are in
19 your packet. And I really, in Virginia, it's
20 kind of a unique system, and Mark has got a
21 different system in Pennsylvania. But just to
22 layout the framework of it, in general,

1 there's a section A that determines whether or
2 not the offender will be recommended for
3 prison. If he's not recommended for prison,
4 section B is completed to determine whether
5 it's probation or jail recommendation.
6 However, if he is recommended for prison on
7 section A, section C is completed to determine
8 the prison sentence length recommendation.
9 And on our section C, so if you
10 look, for example, another sexual assault on
11 section C, which is on the back of the other
12 sexual assault packet here, all of these
13 numbers that you see here on section C, those
14 means months. So this becomes the midpoint
15 recommendation in months for sentence length,
16 for prison sentence length. When you look at
17 the total, that's the midpoint in months, you
18 look up that total in our tables, which I've
19 also included, and it gives you the range, a
20 low and a high. So judges, and typically most
21 guideline states, I can't think of a state
22 that doesn't, provided a range, a low and a

1 high. We also provided the midpoint, and the
2 judge can sentence anywhere within that range
3 and be considered in compliance with the
4 sentencing guidelines.
5 I really wanted to touch a little
6 bit on risk assessment. Virginia has moved
7 very far along on this road of
8 empirically-based risk assessment based on
9 analysis and recidivism patterns in Virginia.
10 So our general assembly has asked us to
11 incorporate risk assessment for nonviolent
12 offenders to identify the low-risk ones for
13 alternative sanctions, but also for sex
14 offenders, to identify higher-risk offenders,
15 who maybe the judge needs to consider for
16 longer term of incarceration and prison for
17 that incapacitation effect, if he's a high
18 risk for recidivism, he or she is a high risk
19 for recidivism.
20 So based on a long and detailed
21 study that the sentencing commission did, we
22 were able to develop a risk assessment tool

1 based on Virginia felon sex offenders and
2 incorporate that into the sexual assault. And
3 we have two sets of guidelines that cover sex
4 offenses. We have sexual assault, and then we
5 have what we call our rape guidelines, which
6 cover the more serious, those with a life
7 maximum penalty. Those offenses are covered
8 on the rape worksheet, and that would include
9 rape, forcible sodomy, object sexual
10 penetration. Those big three are covered
11 separately. And then all the other sexual
12 assaults are in a different set.
13 But risk assessment now is
14 incorporated into, integrated into our
15 guidelines. And in Virginia, for sex
16 offenders, looking at the higher risk ones,
17 what that means is if they score high up on
18 our risk scale, the upper end of their
19 guidelines range is extended. So the judge
20 has a wider range to deal with. The low end
21 stays the same, but the higher end is
22 stretched out. So the judge has a wider range

1 to work with and still be considered in
2 compliance with the guidelines. So risk is
3 just another piece of information that the
4 judge takes into consideration or can if he
5 wants to, he or she wants to, take into
6 consideration for sentencing.
7 So having said all that, I just
8 want --
9 LTC McGOVERN: Has there been any
10 criticisms that it's just kind of fuzzy math
11 or that, I mean -- I would think, from the
12 defense perspective, that that would be
13 objectionable.
14 COL HAM: That you're getting
15 sentenced for crimes that haven't been
16 committed yet.
17 LTC McGOVERN: Something feels
18 kind of funny about that.
19 MS. FARRAR-OWENS: In Virginia,
20 those arguments have not gone very far in our
21 appeals process and our appeals court, and
22 appeals court has chosen not to hear those

1 types of arguments, largely because our
2 sentencing guidelines are discretionary.
3 They're voluntary. The judges don't have to
4 go along with these recommendations. It's
5 just lots of pieces of information that a
6 judge can take into consideration when
7 thinking about the sentencing for a particular
8 case.
9 I know Pennsylvania is also
10 working on a long-term risk assessment
11 project. So --
12 MR. BERGSTROM: We are. And some
13 of our judges mentioned Crystal Falls as part
14 of this process. But, yes, I think there's
15 concern, and there's certainly, I think, you
16 know, you can look at use of risk assessment
17 in either direction. As Virginia has done,
18 you can use it to try to identify people at
19 low risk of any re-offense and think about
20 that in terms of diversion, and think of it at
21 high risk of violent re-offense, and think of
22 that in terms of selective incapacitation.

1 But there have to be boundaries,
2 too. I mean, the boundaries we set are a
3 conviction offense establishes what the
4 maximum sentence can be, and you always have
5 to work within those boundaries. So
6 especially with advisory guidelines, you're
7 providing some additional information for the
8 court to consider, but you're not using that
9 information, especially the actuarial data, to
10 drive a sentence beyond what the maximum could
11 otherwise be. So it's just helping to inform
12 the judge's discretion.
13 MR. STRAND: What I've seen of
14 interest, in looking at the literature,
15 there's almost like a total separation of two
16 worlds. When you look at the research on
17 people in parole and probation, and when they
18 talk about recidivism and risk, and you look
19 at the psychological field and the psychiatric
20 field when they talk about the serial nature
21 of offenders, it's like two totally separate
22 worlds.

1 And one is competing, in some
2 ways, to reduce sentencing and, you know,
3 reduce impact on economics and everything
4 else, while the other one may or may not be
5 more realistic. I don't know. But it seems
6 like there's a real dichotomy when you look at
7 the research from both fields.
8 MS. FARRAR-OWENS: I think, from
9 Virginia's perspective, both of our risk
10 assessment tools that we developed were from
11 a perspective of who's going to be filling
12 this out and what information do they have
13 readily accessible, and what expertise do they
14 have to complete the form. Some of the more
15 psychological risk tools, certainly a
16 probation officer wouldn't have the expertise
17 in many cases to complete something like that,
18 like the psychopathy scale or, you know,
19 things like that.
20 So from our perspective, it was
21 what information, who's going to be filling it
22 out and what information do they have, and

1 let's analyze and let's study those things in
2 terms of looking at and assessing risk.
3 MR. STRAND: For the known data.
4 You don't know the unknown.
5 MS. FARRAR-OWENS: Correct.
6 MR. STRAND: But when they do
7 research on the unknown, like the average
8 offender, you know, goes to jail for one sex
9 offense, during treatment they admit to three
10 victims. After given polygraphs, they admit
11 to 175. But, yet, most of those people are
12 not in that study that are, maybe assessed at
13 low risk and, you know --
14 MS. FARRAR-OWENS: That was one of
15 the reasons, for our sex offender risk tool,
16 the commission opted for a measure of
17 recidivism that was based on re-arrests and
18 not re-conviction, because we looked at data
19 that, for sex offenses, there's just so much
20 fallout. If it's even reported, what they
21 eventually get convicted of may end up being
22 a non-sexual offense, so you would never know,

1 looking at the criminal history report or the
2 conviction report, that that was actually a
3 sexually-related offense. So our measure was
4 re-arrest, for example.
5 MR. STRAND: For any sex offense?
6 MS. FARRAR-OWENS: For any sex
7 offense, or person offense because we wanted
8 to, if someone was picked up for kidnaping,
9 that very well may be sexually related. So we
10 wanted to pick up things like kidnaping.
11 MR. STRAND: How about alcohol to
12 minors or drugs to minors?
13 MS. FARRAR-OWENS: We were only
14 looking at felonies.
15 MR. STRAND: Because that could be
16 another huge indicator --
17 MS. FARRAR-OWENS: Lead-in, right.
18 MR. BERGSTROM: I guess you always
19 have to keep in mind what your baseline is.
20 At least for our commission, which is only now
21 going at the risk assessment, our baseline is,
22 you know, what is a judge considering right

1 now at sentencing based on our guidelines?
2 And although we don't have a risk assessment
3 built into it, talk to judges, look at
4 information reported, and, you know, one of
5 the reasons for a departure above the
6 guidelines might be high risk of re-offense or
7 other things like that.
8 This is, you know, anecdotal, at
9 best, right? But what we're trying to do is,
10 you know, at least incrementally, improve on
11 that and say, look, if you're going to use
12 that as part of your decision making, what
13 we'll try to do is, based on the information
14 available that's valid, we'll try to come up
15 with some kind of actuarial information that
16 you can consider. But always keep in mind,
17 we're talking about this pool of offenders
18 having these characteristics, not necessarily
19 the person in front of you. And so you have
20 to apply sort of the clinical judgment.
21 And I think that's where, I always
22 think of our assessment that we're building is

1 more of a screening tool. You're trying to
2 identify outliers, and then you're also
3 encouraging the court to use limited resources
4 to figure out more about those cases that
5 you're scared about, or that you think you can
6 do something with. So I think, you know, if
7 they were presumptive guidelines, I don't
8 think I'd want to be incorporating risk into
9 it.
10 COL HAM: Do either of your states
11 have similar --
12 MR. BERGSTROM: We do on the
13 juvenile side. We don't on the adult side,
14 but we have a mental health procedures act
15 that could be used but it's --
16 COL HAM: For post, for post
17 incarceration?
18 MR. BERGSTROM: Yes.
19 MS. FARRAR-OWENS: We have civil
20 commitment for adults but not juveniles.
21 MR. BERGSTROM: Yes. So between
22 the two of us, we've got it covered.

1 MS. FARRAR-OWENS: Got it covered.
2 I want to talk about two slides and then --
3 MR. BERGSTROM: Oh, yes, please
4 do. Please do.
5 MS. FARRAR-OWENS: Dillon
6 mentioned some interest in what the impact has
7 been in Virginia, and we mentioned jury
8 sentencing a bit ago, so I just want to direct
9 your attention to slide 45 and what the impact
10 of truth in sentencing has been on the rate of
11 jury trials. We've seen dramatic reductions
12 in the number of defendants who were opting
13 for jury trials, because juries typically come
14 back with a much longer sentence and typically
15 above the guidelines, much more often than a
16 judge would hearing that same case.
17 So, for the most part, we've seen
18 those dramatic reductions. In the overall
19 statewide, only about one percent of our
20 felony conviction cases involve jury trials,
21 at this point. So it's really a small number.
22 We are in the 86-percent range in terms of

1 guilty pleas and then 8 to 10 percent-ish, you
2 know, 11 percent in terms of bench trials. So
3 really the overwhelming has been in guilty
4 pleas.
5 Then, of course, our system has
6 achieved the 85 percent that it was designed
7 to do. But I wanted to also show you slide
8 49. When I talked about those enhancements
9 for violent offenders, this slide looks at
10 offenders convicted of forcible rape and how
11 much time they had served under the old parole
12 system, which is in red, so ranging from an
13 average of 5.6 years, if they didn't have any
14 prior violent convictions. But even if they
15 did, they were being released after an average
16 of about 6.7 years under parole for the
17 offenders released during 1993, which is the
18 period we looked at.
19 Under truth in sentencing, with
20 these midpoint enhancements built into the
21 system, for violent offenders, you can see in
22 the yellow bars the types of time served that

1 are now showing, that we're now having in
2 Virginia's system. So for offenders convicted
3 of forcible rape now, the average, they're
4 getting a sentence, now we know, with a
5 minimum 85-percent time served. We know with
6 certainty how long they're going to serve.
7 They're going to serve about 10.6 years, on
8 average, now if they don't have any prior
9 violents. And it goes up considerably from
10 there if they have, like, for example, a prior
11 rape or a prior robbery or a prior murder or
12 something like that.
13 So Virginia's system has been
14 successful in achieving that, as you can see
15 here. And with that, I think I'm going to
16 stop. I talked way too long. I'm sorry.
17 MR. BERGSTROM: No, no, no, that's
18 great. I'm going to briefly talk through some
19 of the slides that I provided and then spend
20 the balance of the time sort of walking
21 through the handouts that might at least
22 describe how Pennsylvania operates.

1 The first slide just provides, I
2 guess, some context for Pennsylvania's
3 sentencing for sex offenders. And there was
4 a statewide effort a number of years ago to
5 develop what we call sex offender containment
6 model looking at sort of three different
7 areas, philosophy, strategy, and case
8 management. And I think there was a
9 recognition that sentencing and other
10 non-punitive things, like Megan's Law or Adam
11 Walsh Act, are components of a bigger picture
12 about how you enforce sex offenses and so
13 forth.
14 So we've done a lot of work on
15 that. All I'm going to focus on is sort of
16 the sentencing part of this, but I wanted to
17 make sure I mentioned that as sort of the
18 framework for what we do.
19 As Meredith mentioned, there are
20 sort of two categories of sentencing systems
21 in the United States, indeterminate and
22 determinant. Virginia has a determinate

1 system, and Pennsylvania has retained an
2 indeterminate system, meaning we have
3 discretionary parole.
4 So some of the key aspects of our
5 indeterminate system involve, first,
6 classification of offenses based on the
7 conviction offense. So once a person is
8 convicted of an offense, that establishes the
9 grade and the maximum penalty for that
10 offense. So everything that's done from that
11 point forward relative to sentencing has to be
12 within the boundary that's established based
13 on the conviction offense. If any of you are
14 familiar with Apprendi v. New Jersey and all
15 the line of cases since then, this would be in
16 compliance with that.
17 MR. STRAND: So if it was pled and
18 there was a conviction for something less than
19 rape but there was penetration and forcing
20 rape, can you consider that in the sentencing
21 at all?
22 MR. BERGSTROM: You can consider

1 in sentencing, but you cannot, whatever the
2 lesser conviction offense was, that would
3 establish the statutory maximum for that
4 sentencing.
5 MR. STRAND: But there are factors
6 --
7 MR. BERGSTROM: Yes, you could
8 consider factors, yes. And that actually gets
9 close to, if you're familiar with the most
10 recent, I guess, case in this line, which
11 would, I guess, be Alleyne v. United States,
12 which deals with mandatory minimum sentences,
13 the U.S. Supreme Court held that you have to
14 prove those sentencing factors at trial beyond
15 a reasonable doubt. So it basically lines
16 everything up, especially in sentencing
17 structures that are presumptive sentencing
18 structures that, you know, everything has to
19 be proven at trial.
20 I think there have been some
21 exceptions carved out, at least they are still
22 exceptions. We'll see if they hold. And I

1 think the two exceptions we think about are
2 sentencing guideline systems that are
3 voluntary or advisory, where the courts have
4 discretion to depart, and I would argue the
5 second type would be indeterminate sentencing
6 systems where you're making recommendations
7 about what the minimum term is, not what the
8 maximum term is. And even there, that's been
9 cut away a little bit because of Alleyne and
10 what they've said about mandatory minimums
11 requiring things.
12 But at least in Pennsylvania,
13 because we're indeterminate and our sentencing
14 guidelines link to the minimum sentence
15 recommendation, we believe and our Supreme
16 Court has held that the court may consider
17 factors that are not proven at trial but are
18 determined at sentencing to enhance the
19 sentence recommendation, as long as the
20 sentence doesn't exceed the max.
21 Pennsylvania also has mandatory
22 minimum sentences and we have quite a few of

1 them. But most mandatories that we have
2 require what's called prosecutorial notice.
3 So, for instance, if someone is convicted of
4 possession with intent to deliver five grams
5 of cocaine, absent a mandatory, the sentencing
6 guidelines provide a recommendation for the
7 court to consider.
8 But there is a drug trafficking
9 mandatory that's available to prosecutors. So
10 if a person has more than two grams of
11 cocaine, the DA may give notice after
12 conviction and before sentencing that he or
13 she wants the mandatory to apply, which would
14 establish, let's say, a one or two year
15 mandatory minimum. So if the DA gives notice,
16 the court is then required to impose the
17 mandatory. If the DA doesn't give notice,
18 there's no mandatory in play.
19 So most of our mandatories operate
20 in that way. They're notice mandatories,
21 which certainly gives prosecutors a tool. But
22 our general assembly, I think, when looking at

1 sentencing practices, were concerned about
2 some judges that might be outliers that might
3 sort of go off the reservation in terms of
4 giving very lenient sentences for cases the
5 general assembly thought were inappropriate.
6 And instead of imposing or invoking a
7 mandatory that are applied always and across
8 the board, they provided this mechanism, this
9 tool to prosecutors to keep judges in check.
10 Judges aren't fans of it, but that, you know,
11 I guess the argument is it's better to have
12 fewer mandatories. If you're going to have
13 mandatories, some discretion somewhere in the
14 system than no discretion at all.
15 COL HENLEY: Is that a common tool
16 used by the prosecutors?
17 MR. BERGSTROM: I think it's
18 common because it's a part of the mix. So
19 when I was talking about guidelines being
20 considered prior to sentencing, they're part
21 of the negotiating process, I think
22 mandatories are, as well. So I think there

1 is, I think there's some inflation across the
2 board of sentences for which there are
3 mandatories because the mandatory is available
4 and it becomes part of the equation.
5 But having said that, our study of
6 mandatories has found that there are a
7 minority of cases in which the mandatory is
8 actually imposed. So if there was, for
9 instance, for a second strike in Pennsylvania
10 under three strikes, a second strike is a ten
11 year mandatory minimum, but it's only if the
12 DA gives notice.
13 So what we found over time was the
14 average minimum sentence went up from about
15 five years as a minimum to about eight years
16 as a minimum. So there are still cases that
17 ten year mandatory minimums. There are cases
18 that get 20 to 40 years. But the average
19 sentence has increased because the mandatory
20 was available at ten years, but it's not used
21 in all cases. So it becomes part of the
22 process.

1 And I'd argue that sentencing
2 guidelines sort of do the same thing in a
3 softer way, especially if they're advisory.
4 They're a part of the mix. If the commission,
5 as a policy, is increasing sentence
6 recommendations based on prior convictions or
7 certain types of offenses, you will see a
8 movement in that direction in terms of
9 sentence length or disposition, using
10 incarceration versus probation, let's say.
11 And if the commission is pushing
12 in the other direction, you'll see that as
13 well. It's sort of softer. What we found is
14 one thing that can really influence that is
15 money. So one of the alternatives that we
16 incorporated in the 90s was sort of this
17 tradeoff for drug-dependent offenders of
18 treatment for rehabilitation, and we saw, when
19 the commission established that within our
20 guidelines, we did see some movement of cases
21 out of jails and prison into treatment
22 programs as alternatives to incarceration.

1 But we saw that really take off when the
2 Commonwealth was willing to put money into it,
3 to buy treatment beds and make them available
4 to the court so that the court wasn't just
5 trying to figure out, you know, how are we
6 going to pay for this bed or is there a bed
7 available.
8 COL HENLEY: Is that used by the
9 defense to negotiate a pleas up front? That if
10 I plead guilty, you won't file the notice --
11 MR. BERGSTROM: Oh, sure,
12 absolutely. Absolutely. Just as it is, I
13 mean, forget a mandatory. Just think about a
14 case where, you know, you arrest someone and
15 the DA is thinking I don't need another jury
16 trial, you know, I don't need another bench
17 trial, I just need a guilty plea because I
18 have, you know, plenty of work waiting for me.
19 And you find some middle ground that seems
20 appropriate, that it's fair and just, but also
21 it recognizes that there's a price to pay for
22 having a full trial.

1 And so you find what that middle
2 ground is, and I think the guidelines help to
3 provide that framework for those kinds of
4 negotiations. As Meredith said, everyone
5 knows sort of what the penalties would be if
6 this went to trial and if the judge gave a
7 standard sentence. We know what the mandatory
8 would be if the DA invokes it. So I think all
9 those are things in play.
10 COL HAM: Is there any kind of
11 rethinking of the mandatory minimums or the
12 length -- I'm looking at your slide. I mean,
13 the purpose of your sentencing guidelines is
14 retribution. This was the 90s. Lots of
15 money, boom time, now not so much. Geriatric
16 issues, I heard a talk by someone about the
17 problem of geriatric inmates, and it's
18 becoming a huge problem. Is there any kind of
19 backtracking that the longer sentence is
20 better?
21 MR. BERGSTROM: Well, there's
22 some. I mean, there's some. But at least in

1 Pennsylvania, we have not gotten on that
2 bandwagon in a big way. I mean, we look at
3 opportunities, I think. And, you know, we
4 have a pretty big correctional system. We
5 have 50,000 and some in state prison and
6 probably another 30 or 40 thousand in county
7 jail. So we certainly know how to lock people
8 up, and it costs a lot of money. And there
9 are efforts to try to look for those cases
10 that don't have to be locked up.
11 But Pennsylvania is, I guess, more
12 willing to just continue to pay the price.
13 And they see the cost, although annoying, as
14 a pretty low priority in terms of changing
15 policy for.
16 Having said that, there have been
17 efforts. We've had three rounds of reforms in
18 the last six years just trying to identify
19 those cases that you could safely divert or
20 that you could transfer over to treatment bed
21 from a jail bed or something like that.
22 So we've done some things, but I'd

1 say, you know, we're sort of working at the
2 edges. And there are some states where money
3 was the driver or overcrowding populations was
4 a driver, and they made big changes to their
5 policies. I just don't see us going there.
6 We're not going to do that.
7 COL HAM: For states that have
8 made those changes, has their crime rate
9 stayed the same? Has it gone up --
10 MR. BERGSTROM: Well, it depends.
11 And I think Virginia is a great model, and
12 that's why we have our commission, as a
13 mandate, to do a risk assessment at sentencing
14 because I think Virginia did exactly the right
15 thing in trying to better refine sentence
16 recommendations. You're trying to use risk as
17 a factor that you add to the mix that you can
18 say, you know, here's a bunch of people that
19 we are recommending for this array of options,
20 and what we're going to do is try to identify
21 within that mix some of those people that we
22 think are safe to keep in the community. So

1 you give the judge more information to help
2 make it a diversion decision where you're not
3 risking public safety. And I think that's
4 really good.
5 And I think, just as well on the
6 other end, what they've done with sex
7 offenders is to identify those cases that are
8 at high risk of a violent re-offense because
9 those are the people that drive policies.
10 Those are the people where, if something goes
11 on and the general assembly reacts to it, and
12 all of a sudden you have another mandatory or,
13 you know, these other kind of things that kick
14 in. And I think if we do a better job of
15 identifying those that we do have to
16 incapacitate or give very long sentences to,
17 I think that helps.
18 And I think Virginia's experience
19 has been you put those things in place, and it
20 not only helps to manage and reduce your
21 prison population, but your crime rate also
22 goes down or at least doesn't go up. And

1 that's an important balance that you need to
2 achieve.
3 So we love their model. I had a
4 lot of judges that were scared of it and maybe
5 still are. But we're working in that
6 direction because we think it's helpful to
7 provide more information to help to refine
8 sentencing decisions, and we think risk is one
9 of those things that we didn't do in the past
10 and that we are going to be doing in the
11 future.
12 Let me just throw in a couple of
13 other things because I know we're short on
14 time. But one thing is, in Pennsylvania,
15 because we're indeterminate, the court is
16 imposing a minimum term and a maximum term of
17 confinement. So for the minimum term, the
18 minimum term is determined based on the
19 sentencing guidelines and any mandatory
20 minimums that apply. And when the court sets
21 that minimum, in Pennsylvania the court has to
22 at least double that term for the maximum

1 sentence.
2 And if let's say someone gets a
3 five to ten year sentence, that person goes
4 off to the state prison. In Pennsylvania,
5 since, you know, since ever, the individual
6 must serve the minimum term before being
7 paroled. So if you get a five to ten year
8 sentence and you go to state prison, you
9 cannot be considered for parole until the
10 minimum has been served.
11 So a lot of the activities,
12 especially when there was repeal of parole in
13 a lot of states and there was an effort
14 towards truth in sentencing, achieving 85
15 percent of truth in sentencing, Pennsylvania
16 never sort of followed that model because we
17 always thought that the minimum was the
18 truthful sentence. It was the amount of time
19 we know the person is going to serve before
20 being released. You can tell a victim, you
21 can tell a prosecutor he could bank on that.
22 If you got a five to ten, you're going to be

1 in state prison for five years.
2 And in Pennsylvania parole,
3 there's no right to parole. You have a right
4 to a hearing, but you don't have a right to
5 parole.
6 So we've always thought of a
7 parole system as sort of bad time. Sort of
8 the opposite of good time off a determinate
9 system, it's sort of bad time. If you have
10 not complied with conditions, if you have been
11 a disciplinary problem, and other things like
12 that within the institution, then that's just
13 all the more reason not to release you. And
14 in fact, you have, as I said, no right to
15 parole, so you could max out on a five to ten.
16 You could do the entire ten years and then be
17 released without supervision.
18 One of the benefits of
19 discretionary parole release is to supervise
20 that transition, that reentry to the
21 community. So we do see benefit to that
22 process and, especially because our parole

1 board, which makes the decision on
2 discretionary release, also supervises those
3 cases. So they have staff, community-based
4 staff, parole agents that supervise those
5 cases.
6 You're not only making a decision
7 of release, but you're making a decision to
8 reintegrate the person. So we think, at least
9 in our system, that's a useful thing.
10 One of the concerns about, I
11 think, indeterminate systems is you have
12 policy people operating in different
13 directions. Judges are thinking one thing at
14 sentencing, parole boards are thinking a
15 different thing. So one of the tasks our
16 commission was given a number of years ago was
17 to coordinate this. So we were given a
18 mandate to establish parole guidelines, as
19 well as our sentencing guidelines, and to try
20 to better integrate this practice within an
21 indeterminate sentencing system.
22 We were also given this mandate to

1 consider risk assessment. Risk is used in a
2 big way on the parole end, but, certainly, at
3 least in Pennsylvania, not in a structured way
4 on the sentencing side. And so we have that
5 mandated, as well.
6 So let me just sort of cut to the
7 chase and talk about some of the forms that I
8 have and give you a couple of numbers that I
9 think Dillon had mentioned might be of
10 interest. One is this issue of pleas, you
11 know, what are the level of pleas. In
12 Pennsylvania, I looked at our 2012 data, and
13 I think our 2013 data is the same. Overall,
14 in Pennsylvania, 96 percent of cases were
15 guilty pleas, either negotiated or
16 non-negotiated guilty pleas. Two percent jury
17 trials, two percent bench trials. So we have
18 a very low trial rate.
19 But you can look at specific
20 circumstances and see when those trials are
21 demanded, and both the prosecution and defense
22 can demand a jury trial in Pennsylvania or a

1 bench trial. I think the areas where you see
2 those demands for trials is when there's
3 limits on discretion, so mandatories or
4 presumptiveness to the guideline in some way,
5 and also when the severity sort of, this is a
6 Joe Paterno term, gets out of whack with
7 proportionality, that the sentence being
8 mandated or recommended just doesn't fit the
9 circumstance. And I think those are the
10 circumstances where you tend to see jury
11 trials.
12 So, for instance, when you see a
13 violent offender and especially someone with
14 a criminal history where that person might be
15 subject to a 25-year mandatory minimum for a
16 second strike under Jessica's Law under a
17 second sex offense, you'll see those go to
18 trial all the time. I mean, what do you have
19 to lose, right? So if you don't have a
20 negotiated plea that makes sense, you go to
21 trial.
22 Our rape jury trials in 2012 is 29

1 percent. So, remember, 2 percent across the
2 board, and 29 percent for rape. So you can
3 see those are the kind of circumstances that
4 we see.
5 COL HAM: What's the conviction
6 rate of those 29 percent?
7 MR. BERGSTROM: Oh, you know, I
8 didn't look -- well, if we have them, it would
9 have been 100 percent because our starting
10 point is a conviction offense. So in our
11 data, everything is a conviction. But it's a
12 good question. I'm sure there's some
13 attrition and some lost cases, but I would bet
14 that the more common thing would be a
15 conviction to a lesser offense. I would think
16 that might be the case.
17 MR. STRAND: And, more probably
18 than not, to a non-sexual offense?
19 MR. BERGSTROM: Yes. I think that
20 if there's a negotiated plea it might be to a
21 non-sexual offense if they could get it. And
22 I think the thing that really leads to that is

1 Adam Walsh Act or Megan's Law where now,
2 especially under Adam Walsh, based on the
3 conviction offense, you have this collateral
4 consequence and it could be lifetime
5 registration, notifications, counseling, and
6 so forth. So I think those are factors that
7 can play into that and negotiation to some
8 other offense.
9 MR. STRAND: Those are unintended
10 consequences, like mandatory arrest in
11 domestic violence significantly reduced
12 reports because they didn't want them
13 arrested.
14 MR. BERGSTROM: That's exactly it.
15 That's exactly it. So if we turn to the
16 handout, I'll quickly go through this and then
17 close. First, the cover page is just that
18 statutory max provision. And as I said, if a
19 judge is going to incarcerate a person, a
20 judge giving a minimum term and a maximum, and
21 the minimum can't be more than half the max.
22 So we basically provide this as sort of a

1 structure.
2 So if you'd look at, for instance,
3 about fourth or fifth down, you see rape,
4 involuntary deviant sexual intercourse, which
5 is a type of rape in Pennsylvania. IDSI is
6 what we call it. Those have a statutory max
7 of life if the victim is less than 13 years of
8 age and there's serious bodily injury. In
9 other cases, no serious bodily injury, it
10 would be a 40-year max, which means the
11 longest minimum sentence the court could
12 impose is 20 years, a 20 to 40-year sentence.
13 So that would be an example of that. Rape
14 generally is a felony 1 offense, so it would
15 have a 20-year max and the longest minimum
16 sentence would be 10 years.
17 If you move to the next page,
18 Meredith had mentioned that there are grid
19 style systems of sentencing. Well, this is
20 the grid. So if you look on the left-hand
21 side, the 14-point scale is what we call the
22 offense gravity score. It's the ranking of

1 the conviction offense, not what was charged
2 but what the person was convicted of. And we
3 have some example offenses listed there. But
4 in Pennsylvania, every felony, every
5 misdemeanor falls under the sentencing
6 guidelines. So for each and every conviction
7 offense, a guideline recommendation is
8 prepared. And the starting point, the most
9 serious factor is what is the conviction
10 offense? And so the offense gravity score
11 would be a factor of 1 to 14, one of those
12 values.
13 Across the top, you'll see the
14 prior record score or criminal history. And
15 there's a calculation to get into one of those
16 eight categories, zero through five RFEL,
17 which is repeat felony 1 and felony 2
18 offender, and RVO, repeat violent offender.
19 But the bottom line is that, as Meredith said,
20 the combination of the current offense and the
21 criminal history puts you in one of those
22 cells that has a recommendation about what the

1 minimum term would be.
2 So if we take as an example, let's
3 say nine-zero. If you start at nine, you see
4 sexual exploitation of children. If there's
5 a zero prior record score, a first-time
6 offender, the minimum sentence recommendation
7 for the court is somewhere between 12 and 24
8 months. So one to two years is the minimum
9 term. The court would have to at least double
10 that for the maximum term.
11 But as you build up a criminal
12 history, as you have more offenses, you'll see
13 the sentence recommendation increases. It
14 goes out to 120, which is the longest minimum
15 sentence, 120 months, 10 years, longest
16 minimum sentence for most offenses at an
17 OGS-9.
18 So, for instance, if a person had
19 a prior rape, that rape carries, that prior
20 conviction, even as a juvenile adjudication,
21 carries four points in our prior record score.
22 So a person with a current offense of sexual

1 exploitation of children with a prior rape
2 offense would be in the nine-four category.
3 So the minimum sentence recommendation would
4 be between 36 and 48 months.
5 The commission, in addition to
6 these recommendations which are called the
7 standard range recommendations, sort of the
8 typical sentence for the typical offender,
9 also has aggravating and mitigating ranges.
10 If the judge articulates some kind of reason
11 for mitigating or aggravating, the adjoining
12 categories are 12 months longer or 12 months
13 shorter than that standard range.
14 If the judge goes totally outside
15 of that and gives a much longer sentence, 10
16 to 20, or puts the person on probation,
17 there's no mandatory, those would be
18 considered departures from the guidelines.
19 Departures are subject to appellate review.
20 Either party can appeal a guideline sentence.
21 In fact, a party can appeal a guideline
22 sentence even if the sentence is within the

1 guidelines. We have a pretty low appellate
2 review standard, manifest abuse of discretion.
3 So the court has a lot of
4 latitude. Our appellate courts defer to the
5 trial courts, but they will remand cases in
6 two or three instances. One instance is if
7 there's an error. Guidelines were calculated
8 incorrectly, you know, other kind of factors
9 were incorrectly considered, that kind of
10 error. We have an intermediate appellate
11 court, and that would be remanded for
12 correction and re-sentencing.
13 The other ones are discretionary
14 reviews. And if a judge sentences within the
15 guidelines but there's, you know, massive
16 discretion or abuse of discretion, the court
17 can remand that case and ask for re-sentencing
18 or more justification for that sentence. And
19 if the judge sentences outside of the
20 guidelines and there's, you know, lack of
21 discretion, inappropriate discretion, the
22 appellate courts can remand it back. But,

1 again, pretty weak appellate review, but we do
2 have appellate review. It's available.
3 As I mentioned earlier, I think
4 just as important, thought, in a state that
5 elects judges, ten-year terms, is that we
6 publish all the information. So courts are
7 required for every conviction offense to
8 submit information on the sentence to the
9 commission. We have a web-based application
10 that they use for this.
11 And we analyze the data, we
12 aggregate the data, we disseminate the
13 information. So you can come to the
14 commission, you can go to our website, and you
15 can obtain information on what sentences Judge
16 Smith imposed, sentences imposed on John
17 Smith, the defendant, looking at all judges in
18 a given county or given judicial district, all
19 judges statewide based on rape sentences. I
20 mean, you can slice and dice just about anyway
21 you want, but it's public data and it's made
22 available to the public. And as Meredith

1 said, it's used to build and to modify the
2 guidelines.
3 One of the key issues there is
4 making sure that this is manageable, this
5 information system. We receive about 150,000
6 sentences a year, so we had to have a system
7 that can operate across the Commonwealth and
8 can be used by all players and that's
9 reliable. So we built a web-based
10 application, a lot of error checks build into
11 it, a lot of pull-down menus, a lot of
12 pre-populated stuff to make sure that, you
13 know, you sort of cut to the chase, you get
14 the information you need and it's done.
15 We have a good relationship with
16 our administrative office, the courts. Our
17 commission is within the legislative branch,
18 so we have an interface with the courts that
19 a person starting to work on the guideline
20 form will enter the case information and will
21 import information on the offender and the
22 offense and populate our screens with it.

1 Then the court personnel will work through any
2 of the sentencing-specific or
3 guideline-specific issues, like the prior
4 record score, was there a deadly weapon
5 enhancement, things like that.
6 And then, once the sentence
7 recommendation is provided, they use this same
8 application to report the sentence the court
9 imposed. And, again, error checks there to
10 make sure it's a legal sentence. It will kick
11 it out if they're trying to give a longer
12 sentence than legally possible or using an
13 alternative that's not available for that
14 conviction offense and so forth. So all of
15 that is reported directly to us, and the
16 county also retains that information so they
17 can use it for their own purposes, planning,
18 and so forth.
19 So that gives you a sense of how
20 the guidelines operate.
21 COL HENLEY: Do you have any
22 questions? I think we're about running out of

1 time. Do you have any closing remarks?
2 MR. BERGSTROM: Sure, sure. I was
3 just going to say that behind that you'll see
4 details on the offense gravity scores where we
5 try to get into sub-categorization, try to get
6 into some details on how the offenses operate
7 and the Megan's Law. But the last page is
8 just some data that can be generated. This is
9 data from 2012 on sentences reported to the
10 commission, and you see some of the breakouts
11 but you also sentences imposed to state prison
12 or county jail or other kind of options and
13 the duration of the sentences imposed. So I
14 think those are available to you.
15 In closing, I think, if you are
16 considering anything like sentencing
17 guidelines, I think all of our experiences
18 have been that it has to be homegrown. So
19 these are great examples of things that may or
20 may not work in your system, but I think the
21 bottom line is you have to figure out what
22 you're trying to do with them and what's

1 manageable within your system.
2 And then if there's anything we
3 can do to help, if anything in this model
4 makes sense to you, feel free to ask for free
5 help because I think we all got to where we
6 are with handouts.
7 COL HENLEY: How much does that
8 help cost?
9 MR. BERGSTROM: Nothing.
10 MR. BRYANT: Speaking of cost
11 nothing, if this were to go somewhere and the
12 military was going to look into these
13 sentencing guidelines but doesn't have the
14 administrative -- do you think the National
15 Center for Courts would be some, an entity
16 that would be willing to help? I know there
17 was some informal talks with the U.S.
18 Sentencing Commission and they being willing
19 to help, but I haven't had any direct
20 experience with the National Center for
21 Courts, which is in Williamsburg, Virginia, by
22 the way.

1 So what do you think? Would they
2 be interested in assisting the military in
3 doing something like this?
4 MS. FARRAR-OWENS: I think that
5 they would want to seek some grant funding.
6 Usually, if they could find some grant funding
7 out there --
8 MR. BRYANT: Well, I see in their
9 purpose it's to help the state courts and
10 courts of the world.
11 MR. BERGSTROM: Yes, I think,
12 aside from that, there are certainly more
13 structured approaches, but I think, just like
14 today, I think you'll find this with all
15 sentencing commissions, if you're heading down
16 this path and you think there's something
17 viable in this approach or in any of our
18 approaches, I think you have a lot of people
19 that would be ready and willing and able to
20 help with that process. I think it starts
21 getting into money when you have to build an
22 application or something like that, but we

1 could at least provide experiences that might
2 shortcut some of the costs in that.
3 COL HAM: Is it a valid criticism
4 that what sentencing guidelines
5 philosophically do is really move discretion
6 from judges, who people are not happy with, to
7 prosecutors? Is that, what are your thoughts
8 on that?
9 MR. BERGSTROM: I think in
10 presumptive systems and in mandatory systems,
11 I think there's a pretty good argument for
12 that. I think in advisory systems there's
13 much less of an argument. I think --
14 COL HAM: Because the charging
15 decision is less important in that?
16 MR. BERGSTROM: That's right.
17 COL HAM: Okay, got it.
18 MR. BERGSTROM: That's right,
19 that's right. So I think, you know, you see
20 the outliers. You know, you see the cases
21 where there's really high penalties and less
22 discretion. And as in our state where the DA

1 has a tool, I think DAs use that tool very
2 well, but there are cases when they don't and
3 you see people going to jury trials or you see
4 judges being really frustrated where they
5 think justice was not done, that there was
6 some other play going on here. So I think it
7 generally works, but I think if there's a
8 shift of discretion that's it.
9 And, you know, I think guidelines
10 and mandatories are also the legislature
11 taking some discretion from the courts. So
12 it's not just down at the prosecutor level,
13 it's more institutional.
14 MR. BRYANT: Well, as generally,
15 these things have been generated, have they
16 not, as a result of a concern about judges in
17 the federal system and the state system.
18 That's where the unwarranted disparity came
19 from. It didn't come from the prosecutors.
20 MR. BERGSTROM: Right, right, yes.
21 MR. STRAND: Do you have victim
22 input on pleas and also minimum/maximum

1 sentences in lesser states?
2 MR. BERGSTROM: We have victim
3 impact statements. We have a victim bill of
4 rights. So victim impact statements, victims
5 have the right to give their, to testify at
6 sentencing and also at parole decision-making
7 stages.
8 MS. FARRAR-OWENS: And in
9 Virginia, that goes so far as to have a
10 victim's representative serve by law serving
11 on the sentencing commission. So we have a --
12 MR. BERGSTROM: Yes, an ex
13 officio, an ex officio member.
14 LTC McGOVERN: Thank you both so
15 much. We'll be contacting you with additional
16 questions, most likely.
17 (Whereupon, the foregoing matter
18 went off the record at 2:11 p.m.
19 and went back on the record at
20 2:17 p.m.)
21 COL. HENLEY: Okay. We'll proceed with
22 the next panel. We're fortunate to have

1 representatives from Families Against
2 Mandatory Minimums and the National Alliance
3 to End Sexual Violence, Ms. Gill and Ms.
4 Burrhus-Clay. Do you have opening statements?
5 If so, we'll hear from Ms. Clay. Ms. Gill?
6 MS. GILL: I think I'm just going
7 to go first to sort of lay the groundwork on
8 the issue.
9 COL. HENLEY: Certainly.
10 MS. GILL: Thank you so much for
11 letting me be here today to talk with you
12 about this important issue and I'm very
13 privileged. This is my first time at a panel
14 like this, so I will be learning as much from
15 you, I think, as hopefully you'll learn from
16 us.
17 I'm with the Government Affairs
18 Counsel with Families Against Mandatory
19 Minimums, FAMM. We're a nonpartisan, nonprofit
20 organization founded in 1991 by a woman named
21 Julie Stewart. And Julie's brother was doing
22 something very stupid. He was growing

1 marijuana in a garage and he got busted, and
2 went to court and was very surprised when he
3 went to court to learn that the judge had no
4 discretion over his sentence, that he was
5 going to receive a five-year mandatory minimum
6 prison term without parole despite the fact
7 that he was a first-time offender, that he did
8 not have a gun, that there was no violence in
9 the crime, and he was quite shocked. And the
10 judge said I really actually don't even want
11 to give you this sentence. I want to give you
12 less time than this sentence, but my hands are
13 tied. And Julie just thought that was
14 profoundly un-American that this judge with
15 all this education and experience who was
16 looking her brother in the eye could not give
17 him a personalized sentence, so she founded
18 our organization 23 years ago.
19 Since then we've been doing
20 advocacy at the federal and state level,
21 predominantly at the federal level, and we
22 continue to work with Congress to advance

1 reforms to mandatory minimum sentencing laws.
2 What we've seen is - we've had
3 mandatory minimums in the federal criminal
4 code really since the founding of the country.
5 We have seen them kind of formed in the same
6 sort of way every time. Our first mandatory
7 minimums were created in 1790 for piracy on
8 the high seas, something I'm sure the Navy
9 here is a little bit familiar with. And those
10 mandatory minimums were created in response to
11 a crisis going on at that time with the
12 Barbary Pirates.
13 In 1934, Congress decided that we
14 needed a 10-year mandatory minimum for fleeing
15 the scene of a robbery. That law was created
16 in the wake of Bonnie and Clyde's crime spree
17 going on across the country. So, we have seen
18 throughout over, and over, and over again this
19 sort of response that we call the crime du
20 jour effect. Whatever the high profile crime
21 of the moment is, Congress decides that the
22 best way to fix it is let's slap a long

1 mandatory minimum sentence on it, and that
2 will solve everything. People will stop
3 committing the crime, the crime will go away,
4 and we'll have been tough on crime.
5 And over time, of course, this
6 doesn't really work. There's really very
7 little evidence, if any, that shows
8 conclusively that mandatory minimums actually
9 deter crimes. There's very little evidence
10 that mandatory minimums actually make
11 punishment certain which is one of the main
12 arguments in favor of these sentences. And
13 mandatory minimums tend to be quite arbitrary
14 and produce really unjustifiable results and
15 unjust sentences.
16 So, I think that we're living in a
17 time where we're seeing a new crime du jour
18 coming to the front, and it is sexual assault.
19 And there is tremendous media attention on
20 this, Congressional scrutiny, and a lot of
21 people want sort of an end to this and a
22 solution to this. And it does need an answer,

1 and it does need a solution, but I believe
2 that that answer is not mandatory minimum
3 sentences.
4 Actually, for me it was quite
5 enjoyable looking through the Uniform Code of
6 Military Justice and realizing that you guys
7 don't have these sentences. How refreshing.
8 You guys actually allow your judges to be
9 judges. You allow them to use their
10 discretion, to have flexibility, to treat
11 every case individually, and to take into
12 account all those unexpected circumstances,
13 and to give a punishment that fits the crime
14 and the offender. And I guess today I'm here
15 to urge you to - first off, to praise you for
16 being unlike Congress and being very
17 reasonable, doing studies, collecting data,
18 hearing from experts, and really trying to
19 figure out what is the right solution to this
20 very serious problem, and these very serious
21 crimes, and not sort of just slapping long
22 sentences on it without doing some serious

1 hard thinking first.
2 And today I guess I encourage you
3 to continue to do that process, to continue to
4 listen to what victims are saying about these
5 laws, and not to change your Code. I guess if
6 I do have any recommendations it's to avoid
7 mandatory minimums and keep your discretionary
8 sentencing, or avoid mandatory minimums and
9 consider adopting a flexible advisory
10 guideline system which allows judges to
11 consider a lot of numerous factors, and does
12 give them some guidance and tell them what the
13 expected sentence is in a particular case. So,
14 I'll turn it over to Ms. Burrhus-Clay now.
15 MS. BURRHUS-CLAY: That last name
16 is a mouthful so we'll just go with Annette.
17 First of all, I am Annette
18 Burrhus-Clay. I'm the Vice President of the
19 National Alliance to End Sexual Violence, and
20 I'm also the Executive Director of the Texas
21 Association Against Sexual Assault. And one of
22 my trusted colleagues said Annette, you need

1 to write things down or you will not stay
2 within five minutes, so she had a strong
3 point. And then she added that what might also
4 save people from your sarcastic sense of humor
5 and your regional colloquialisms, so we're
6 going to go with that.
7 First of all, I want to make it
8 really clear, I'm not an expert on mandatory
9 minimums. I might be the only person in this
10 room that does not have a law degree, but what
11 I'm hoping that I can bring to the table is
12 over 30 years experience working with sexual
13 violence and also responding to survivors. I,
14 too, appreciate the steps that the military
15 has been taking to end sexual violence within
16 its ranks, and to improve the system that the
17 sexual assault survivors must maneuver in
18 search of healing and justice. I also agree
19 that it makes sense to explore what might work
20 in the civilian community and consider if
21 elements of it could appropriately work within
22 the military.

1 From my perspective, mandatory
2 minimum sentencing is not something worth
3 replicating because it doesn't really serve
4 victims, nor make the community safer. I think
5 the idea of minimum sentencing came from an
6 honorable place, a noble attempt to keep us
7 safer by putting dangerous perpetrators behind
8 bars for a long time, to send a strong message
9 to would-be offenders that we won't tolerate
10 this behavior, to make victims feel more
11 secure as they try to return to a semblance of
12 normalcy, but I don't believe that that's the
13 end result.
14 The major justification that I
15 could see as I was going through because it
16 didn't seem like things were working is okay,
17 mandatory minimums might make sense if it was
18 trying to mitigate a tendency for judges being
19 too lenient in sentencing sex offenders.
20 However, when I was going through and doing
21 research I could find nothing to support that,
22 and I've heard no significant anecdotal

1 evidence of that either.
2 Now, of course, every once in a
3 while we'll hear a story in the media where a
4 judge overrides a jury decision. And, again,
5 this would be in civilian court, dresses down
6 the victim, it relieves all responsibility of
7 the offender, but that's still relatively
8 rare. And I think that's why it makes the
9 news. If this was happening all the time, this
10 would not be newsworthy.
11 Mandatory minimums seem to just
12 transfer the discretion from judges to
13 prosecutors, and since they also make the
14 initial decision about what offense to charge,
15 I think that's problematic. I think
16 prosecutors can use the threat of very long
17 sentences to strong arm defendants into
18 pleading guilty to a lesser offense that may
19 not carry that minimum sentence.
20 Now, please note my intent is not
21 to cast aspersions on prosecutors, especially
22 since I think many of you in here have been

1 prosecutors in the past. I acknowledge it's an
2 incredibly difficult job, but over the years
3 I've not heard but maybe a handful of stories
4 from survivors who talk about a judge and
5 somehow reacting in a way that impacted their
6 case negatively, but I've heard dozens, and
7 dozens, and dozens of stories from folks, from
8 survivors who have been incredibly unhappy
9 about prosecutors pleading their cases down to
10 lesser offenses in order to avoid prison time
11 and not being on the registry, the sex
12 offender registry. So, that's the perspective
13 that I'm coming from.
14 As referenced at the U.S.
15 Sentencing Commission Report to Congress in
16 2011, shifting this discretion to prosecutor
17 also allows for less transparency for judges
18 because similarly situated defendants may end
19 up with very different plea offers based on
20 very arbitrary factors. The results in
21 magnifying inconsistencies in sentencing
22 rather than standardizing it. Mandatory

1 minimums deprive judges of their role in
2 individualizing and contextualizing
3 punishment.
4 I tried to explore the topic of
5 mandatory minimums, see if perhaps it was
6 effective in deterring offenders. I could find
7 no research to support that. Although, again,
8 admittedly this is not my area of expertise.
9 So, I will leave it up to others to discuss
10 the impact of mandatory minimums as a
11 deterrent on crime.
12 What I prefer to concentrate on is
13 whether mandatory minimums would make victims
14 more or less likely to report a sexual
15 assault, and my experience tells me that
16 victims will be less likely to report sexual
17 assault if we have mandatory minimums.
18 The vast majority of sexual
19 assaults involve individuals with some degree
20 of acquaintance, so we may be talking about
21 family members, we may be talking about former
22 or current intimates, friends, colleagues,

1 classmates, neighbors, I mean someone that you
2 have - that is familiar to you even if not
3 completely known to you. And I think sexual
4 assault in the military, with military
5 personnel falls along those same lines. So,
6 knowing the person that victimizes you
7 complicates almost every aspect of your case.
8 This panel is well aware of the
9 potential difficulties associated with
10 determining guilt or innocence in consent
11 cases. What I want to drive home is the
12 additional anguish that a victim feels in
13 reporting someone they know for violating them
14 sexually.
15 Intuitively, they know their words
16 and behaviors are more likely to be put under
17 a microscope, that they will be judged by
18 their peers and by the system for every action
19 and inaction. Furthermore, they will question
20 their own ability to assess the character of
21 others. They will agonize over every lapse of
22 judgment, replay every misstep both real and

1 imagined, the shame, the doubt, the guilt, the
2 confusion can immobilize them to the point of
3 reporting their victimization doesn't even
4 seem like a viable option for them.
5 Those who do feel empowered to
6 report the rape, they want to feel safe. They
7 want to be believed, they want to feel normal
8 again, and they want justice. Yet, for many
9 victims justice does not look like a lengthy
10 prison term for their assailant. In fact,
11 knowing their abuser may now face countless
12 years behind bars will be a disincentive for
13 many victims. They may well want to hold them
14 accountable for their actions, but not
15 completely change the trajectory of this
16 individual's life.
17 They are likely to be pressured by
18 their peers to reconsider reporting given the
19 severe and unyielding consequences of this
20 criminal action. I've heard it before, John's
21 a good soldier. He's a good friend, he's a
22 good family man. What he did was wrong, but

1 it's out of character for him. He was drunk.
2 You don't want to ruin his life. Those are the
3 kinds of comments that I've heard from
4 survivors. No victim should feel like speaking
5 up for themselves puts a nail in the coffin
6 for someone they may have known, may have
7 liked, may have respected, may have even
8 loved.
9 I'm hopeful this panel will
10 consider carefully both the intended goals and
11 the potential unintended consequences. From
12 the perspective of the sexual assault victim,
13 the system is broken. However, adopting
14 mandatory minimum sentencing is unlikely to
15 mend the Justice System.
16 The net result of this type of get
17 tough on crime, make everybody feel better
18 reform may very well be less reporting, fewer
19 prosecutions for sexual assault, and
20 ultimately a step backwards in justice for
21 survivors. Thank you.
22 COL. HAM: So, Ms. Clay, would you

1 be against - you know, Congress has
2 legislated mandatory minimum dishonorable
3 discharge or dismissal if one is an officer.
4 Would your mandatory minimum opposition extend
5 to those, as well?
6 MS. BURRHUS-CLAY: Well, I kind of
7 have two wishy-washy answers for that. I think
8 one of the advantages and the disadvantages of
9 being in this field for this long is that I
10 can probably think of a situation for every
11 law that might be put out there that this
12 would not work for.
13 To answer a question with a
14 question, I remember working with a woman who
15 was sexually assaulted by a person in the
16 military, her husband was also in the military
17 and he was deployed. It was a neighbor, and he
18 sexually assaulted her while her husband was
19 deployed. She was also very close friends with
20 his wife and his children.
21 In this situation she was actually
22 very concerned that he would automatically be

1 discharged because she was concerned about the
2 health benefits of his wife and his children
3 going away if he was discharged from the
4 military. So, you know, the answer to that is
5 I think there's always some exceptions to
6 that.
7 I personally am not as concerned
8 about somebody being discharged from the
9 military as I am concerned about the lengthy
10 prison sentencing.
11 MR. STRAND: One of the things that
12 we do well in the military is we take a
13 problem and we train it to death once we
14 identify the problem. One of my concerns with
15 mandatory minimums, and we've had some
16 discussion here today well, you know - well,
17 first of all, right now juries make that
18 decision. Well, they're part of it, you know,
19 so it's a mixture of judges if they want a
20 judge alone. But one of the concerns that I
21 have is will juries be made aware of the
22 minimum sentences or will the judges be made

1 - well, we do that very well I guarantee you
2 in our prevention training. If there's
3 mandatory minimums, everyone in the military
4 will know what the minimum sentence is and
5 what the maximum sentence is.
6 And my concern, and I just want to
7 see what your thoughts are, my concern is if
8 we're wholesale telling the entire force if
9 you get a conviction of sexual assault,
10 wrongful sexual contact the minimum is going
11 to be a year, the minimum is going to be
12 whatever it is, or rape, you know, the minimum
13 you're going to get is this. Will that even
14 aggravate reporting - reductions in reporting
15 even more than what you might have thought of
16 given that context?
17 MS. BURRHUS-CLAY: I believe it
18 will. Yes, sir.
19 MR. STRAND: Because we've already
20 had - between 2012 and 2013 a significant
21 increase in reports, 47 to 50 percent just in
22 one year. So, one of my concerns, I don't know

1 if you share it, is if we tinker with this too
2 much and we start to throw too much on there
3 we don't know why we have such a success in
4 reports. We can have ideas, but I don't want
5 to do anything that would reduce the glide
6 path that we're now on with the increase in
7 reports because that's obviously the thing.
8 And then you mentioned also that
9 most of the victims are acquaintances of
10 people that they like, they trust, they
11 respect, and sometimes even love, and
12 especially in the military then you have the
13 added perspective of they serve with, and they
14 served for. Do you think that would have an
15 added deterrence if you have a minimum
16 sentence given that cultural -
17 MS. BURRHUS-CLAY: I absolutely do.
18 I don't - I want folks to hesitate doing
19 anything that's going to make reporting even
20 less likely, especially if that ends up
21 looking like a victory. Look, sexual assault,
22 now reports of sexual assault have now gone

1 down. I actually think when you see reports of
2 sexual assault going up that actually could be
3 indicative of something going right, that
4 people feel more comfortable with the system
5 to be able to make those reports.
6 COL. HAM: We just got an update
7 from DoD SAPRO, actually, I think I got it
8 this morning. It's reporting last year, their
9 interim, you know, with all the caveats,
10 they're not completely final until they go to
11 Congress, it's up 60 percent, with a large
12 increase also in reports of sexual assaults
13 prior to service.
14 BG DUNN: Are you familiar with the
15 military's restricted reporting capability?
16 MS. BURRHUS-CLAY: Yes, ma'am.
17 BG DUNN: You know, we have as a
18 subcommittee and as an entire panel had a lot
19 of discussion about restricted reporting, and
20 the law enforcement and prosecution community,
21 of course, are interested in how many
22 restricted reports can you convert to

1 unrestricted reporting so we can get along
2 with holding people accountable? But some of
3 the things that you just shared with us about
4 victims really give me pause because I think
5 one of the things we really need to look at is
6 creating an environment for victims where they
7 can get what they need, whether that is -
8 what they get when they make a restricted
9 report, or whether it is, you know, those who
10 you say feel confident enough to pursue
11 prosecution and understand all the collateral
12 consequences of that to them. You know,
13 they're strong enough to perhaps take that on.
14 That's a long way of coming back
15 to you with your experience, asking you what
16 are some of the things you think that we in
17 the military should be looking at to make
18 victims comfortable, and to help victims
19 understand the system, and to help victims
20 understand the results of whatever action is
21 taken or not taken, perhaps.
22 MS. BURRHUS-CLAY: Well, I think

1 there's a couple of things. I think,
2 obviously, great policies are always good, but
3 how well do people implement those policies,
4 follow those policies. That's, to me, the true
5 test. And I think you're also right, you know,
6 you can't train away an issue that's going to
7 require some cultural shift. So, I mean, I
8 think people have to be made to believe that
9 the system works for them.
10 You know, one of the things I hear
11 folks talk about all the time is well, you
12 know, the dismal conviction rate in the
13 military, you know, 6 percent of them are
14 going to end up being court-martialed. And
15 that is a horrible conviction rate, but it's
16 3 percent in the civilian community, so I
17 don't think we necessarily have the answers
18 about how this needs to work. I mean, there's
19 all kinds of things that are going wrong.
20 I actually think that the
21 military, because it is more of a closed
22 institution and you have more power over the

1 individual's lives that you're working with
2 than you do in your average community, you
3 actually have an opportunity to be able to in
4 a microcosm I'm hoping do something that
5 actually can then be a lesson for the civilian
6 community.
7 And what I'm hopeful is that it's
8 not window dressing, that we really have folks
9 that are concerned about sexual assault in the
10 military, that there are real and tangible
11 consequences to this kind of behavior, that we
12 try to keep the victim involved to the point
13 that we know what they need to feel safe and
14 to move forward, and that kind of all these
15 kinds of things come into play at the same
16 time that we're thinking about what can we do
17 to prevent, that kind of primary prevention,
18 not this risk reduction stuff that we've
19 wasted so much time, you know, trying for
20 years and years, and holding that
21 responsibility on people to keep themselves
22 from being victimized, but to look at that.

1 And certainly there are some things that are
2 really uncomfortable for folks, like the
3 obvious connection between alcohol and sexual
4 assault when you're talking about acquaintance
5 rape. And then, you know, you get your victim
6 services people in a tizzy when you even talk
7 about it because it sounds like it might be
8 victim blaming. But we have to be able to have
9 those uncomfortable conversations to
10 realistically be able to look at all the
11 factors.
12 I'm not so sure that the military
13 is significantly different than your average
14 college campus. You're dealing with very
15 similar age groups, very similar problems, and
16 certainly even the response, again the
17 policies and how, you know, whether this is
18 going to be looked at through criminal
19 channels or through administrative channels,
20 all those kinds of things come into play. And
21 I just think you need to pull as many folks
22 together as you can and figure out how we can

1 address this not in a vacuum.
2 BG COOKE: What you say about
3 victims being deterred from reporting with
4 concern about a mandatory minimum makes sense,
5 but even without a mandatory minimum, it
6 doesn't take a genius to know that if you say
7 that somebody raped me, that person is - and
8 they're convicted, they're likely to go away
9 for a long time. So, I guess the question is
10 how much does the mandatory minimum as opposed
11 to just the general hey, this - I don't want
12 to get this guy in deep trouble. Is there a
13 way to quantify that?
14 MS. BURRHUS-CLAY: I think the
15 analogy I would use is when we were talking
16 about - in fact, we passed it in Texas
17 despite, you know, all the work to keep this
18 from happening, but death sentencing for child
19 molesters. So, we put this on the table and we
20 were trying to convince our state legislature
21 that this is not a good idea. For one, it
22 doesn't leave an incentive to keep children

1 alive after you've molested them, not to
2 mention that most kids that are molested are
3 molested by family members. So, it's very
4 different that when a child reports a sexual
5 assault and it goes through the system and
6 somebody ends up putting grandpa in jail for
7 20 years. That is a very different outcome
8 than when going into it the family members
9 know when child says grandpa molested me, the
10 family is saying oh, my God, grandpa is
11 automatically - you know, he's up for the
12 death penalty. This is something we need to
13 take care of within our family. They may feel
14 like what grandpa did was horribly wrong, but
15 also feel like I can't have it proceed to this
16 level. And we didn't want children growing up
17 feeling responsible for that kind of
18 incredibly out of focus punishment, that
19 somehow now they're responsible for grandpa,
20 you know, getting the death penalty.
21 COL SCHOLZ: It passed in Texas?
22 MS. BURRHUS-CLAY: It did, and

1 thankfully the Supreme Court knocked it down.
2 MR. STRAND: But then along the
3 same analogy then I can see a conversation in
4 the military where right now you have two
5 peers are talking and one says to the other
6 hey, you know, so and so sexually assaulted
7 me. They might say well, you're going to get
8 - you know, they're going to be in trouble.
9 They might be court-martialed, they might go
10 to jail, but they're not saying well, they're
11 going to get at least 20 years.
12 MS. BURRHUS-CLAY: Exactly.
13 MR. STRAND: Or 30 years, and that
14 would change the conversation, wouldn't it?
15 MS. BURRHUS-CLAY: Exactly. That's
16 my point exactly, is that then the punishment
17 is falling - a judge is deciding what that
18 punishment is going to be. You're not going
19 into it knowing okay, I'm the one that put
20 this person away for 20 years as opposed to a
21 judge deciding that.
22 COL. HENLEY: Is your objection to

1 mandatory minimums at all, or mandatory
2 minimums you've experienced were too high, or
3 some categories of cases, to follow up with
4 what General Cooke said, I think if you are
5 convicted of an offense of a sexual nature,
6 penetration, likely you will go to jail.
7 MS. BURRHUS-CLAY: Right.
8 COL. HENLEY: So, a minimum of two,
9 three years doesn't seem unreasonable. Maybe
10 the 20 that you're referring to.
11 MS. BURRHUS-CLAY: Right.
12 COL. HENLEY: So, is it the concept
13 of mandatory minimums you oppose, or that the
14 mandatory minimums you address are just too
15 long.
16 MS. BURRHUS-CLAY: I don't
17 necessarily oppose sentencing guidelines, you
18 know, for there to be some kind of boundary
19 set about what's a reasonable consequence,
20 again, with judicial discretion.
21 I think, if you don't mind, I want
22 to read two sentences that I was reading in a

1 journal and I believe the article, you guys do
2 have available on line. It was a mandatory
3 minimums, it was in a journal, "Making Minimal
4 Difference, Ten Years of Sentence Sexual
5 Offenders in South Africa." And one of the
6 things - it was on page 13, and it had a
7 really strong impact on me. And it said,
8 "Before mandatory minimum legislation judges
9 would never have contemplated a life sentence
10 for rape. Now if a judge is to impose even a
11 relatively severe sentence of 20, 30, or 40
12 years, he is forced to provide justifications
13 for why this crime was not so bad, rather than
14 providing stern words from the bench."
15 And I think that's the
16 contradiction that we're setting up, is that
17 if you have a mandatory minimum sentence,
18 especially one that is really long, then a
19 judge is put in the position of trying to
20 figure out all the ways that this rape wasn't
21 as bad as somebody else's rape to get it down.
22 I think that just sends a really strange

1 message to survivors.
2 MR. STRAND: Isn't that a complex
3 issue with Article 120 and rape, rape could be
4 - the same rape statute that says forcible
5 rape could get a life sentence, that same
6 statute if there was a minimum sentence, say
7 10 years, that same one says if I stick my
8 thumb in somebody's mouth for the purpose of
9 humiliation or degradation that is rape. You
10 know, so there's just such a wide variety just
11 within that particular statute for minimum
12 sentence because it's so wide.
13 MS. GILL: I'm so glad you
14 mentioned that, and we see this all the time
15 in mandatory minimum cases. I mean, I'm
16 looking at Article 120, Subsection A here.
17 Rape is "using unlawful force against that
18 other person, using force causing or likely to
19 cause death, first rendering that person
20 unconscious." Typically, when people write
21 mandatory minimums they stick the punishment
22 at the bottom of this list of all the ways you

1 can commit the crime, so if there's a 10-year
2 mandatory minimum for this, is rendering
3 someone - a person unconscious before you
4 rape them as bad as using force causing or
5 likely to cause death or grievous bodily harm
6 to any person, is a rape worse because the
7 person was unconscious or because the person
8 was threatened? These become very - the
9 mandatory minimums tend to be so arbitrary in
10 the way that they're applied, and they're not
11 fine tuned to these specific circumstances.
12 I would also say that I think
13 there's a tendency to believe that we have to
14 have mandatory minimums because if we don't,
15 nobody will go to prison. And we know that
16 that's not true, we know that that's not true
17 in this area. People get very, very lengthy
18 sentences for these crimes with or without
19 mandatory minimums. There are no mandatory
20 minimums right now for rape under the federal
21 code, but the average prison sentence is still
22 17 years, so people are going to go to prison.

1 I think the difference is, getting
2 back to your question about how victims feel
3 about that, a victim may understand that
4 someone probably is going to go to jail, but
5 there is a difference between understanding
6 that and understanding that the person is
7 going to get a five-year mandatory minimum.
8 In fact, I think mandatory
9 minimums are actually quite disrespectful of
10 victims. I think they make assumptions about
11 victims that aren't necessarily true. I think
12 they tend to force victims and the entire
13 criminal justice community to have - to look
14 through justice in terms of one lens, justice
15 means incarceration. And victims have
16 different needs, victims want different
17 things. Different victims feel differently
18 about what happened to them, and what the true
19 measure of harm that they suffered is. And
20 mandatory minimums disregard all of that and
21 say the answer to your crime and your injury
22 is five years in prison. And I think as a

1 victim, that is a very disrespectful thing to
2 say to a victim.
3 MR. STRAND: Are there states that
4 have mandatory minimums for rape? I mean, do
5 you know of any that do?
6 MS. GILL: Yes, I was actually just
7 looking -
8 MR. STRAND: Because Virginia has
9 an awful lot of mandatory minimums, but not
10 for rape, not for robbery, not for malicious
11 wounding.
12 MS. GILL: I was just looking at
13 Texas' code. Texas has two-year mandatory
14 minimums for several kinds of rape. At the
15 federal level, like I said, there's no
16 mandatory minimum for rape.
17 MR. STRAND: Right.
18 MS. GILL: It varies from state to
19 state. I know Vermont has no mandatory
20 minimums for anything, but I would probably
21 bet that if you rape someone in Vermont you're
22 still going to do some jail time.

1 COL HENLEY: And don't you think
2 that when Mr. Strand or whoever it is is
3 educating the entire force about rape they've
4 got to probably tell them what the maximum is
5 so that they would walk out of the briefing
6 knowing what the maximum is. I think everybody
7 in the room would agree, I guess, I'll ask you
8 whether the threat of punishment for human
9 beings is a deterrent, whether it's a school
10 kid who's going to go to the principal's
11 office, or the rapist or the robber. If we
12 don't believe - do you accept that the
13 punishment is a deterrent at least for
14 rational, normal human beings?
15 MS. GILL: Well, you just hit the
16 nail on the head right there. Deterrence
17 presumes a rational actor, and in a lot of
18 particularly these kinds of cases people are
19 not acting rationally, they're acting in the
20 heat of passion, they're acting under the
21 influence of a substance or alcohol.
22 MR. STRAND: It really doesn't

1 matter to the actor whether the mandatory
2 minimum is a thousand years, or a thousand
3 seconds.
4 MS. GILL: Exactly, yes. They're
5 not thinking about that at the time that
6 they're committing these crimes.
7 MS. BURRHUS-CLAY: I think there's
8 also the reality, use Texas as an example
9 having a mandatory minimum for sexual assault,
10 we're not taking cases in Texas for teens and
11 adults that are raped by acquaintances. Those
12 cases do not go to trial. They don't make it
13 past - if you have a prosecutor that will
14 take the case, it won't make it past the Grand
15 Jury. Most of the time the prosecutor will -
16 if it's a strong enough case, and that's
17 already hard in consent defense, will plead it
18 down to a non-sexual offense, except - with
19 the exception of sexual abuse of children or
20 stranger rapes. We don't prosecute sexual
21 assaults in Texas.
22 COL. HAM: Is that because of the

1 mandatory minimums?
2 MS. BURRHUS-CLAY: No. No. I mean,
3 I'm just saying that's not where it's broken.
4 That's why mandatory minimums isn't making a
5 difference there. The system - we've got
6 issues well before that happens. It doesn't
7 get that far.
8 MR. BRYANT: Well, maybe that's why
9 they put the death penalty on there. And I
10 don't mean to be facetious here or maybe
11 tongue in cheek because everybody knows Texas
12 leads the world in death penalty. Apparently,
13 the prosecutors -
14 COL. HAM: Until 2007 death was an
15 authorized punishment for rape in the
16 military. It was the maximum punishment, so
17 when you sat down with your client and one of
18 the things you have to go over is maximum
19 punishment, you had to tell them death is the
20 maximum punishment, and watch their eyes pop
21 way open, even though it never happened. But
22 I don't know if that deterred anybody.

1 LTC McGOVERN: The Secretary of
2 Defense asked this panel to look at mandatory
3 minimums and the collateral effects that it
4 could have. Will it increase guilty pleas,
5 will it increase reporting? So, I appreciate
6 you going right to the heart of the matter and
7 addressing those, but one thing we're really
8 struggling with in the military is victim
9 confidence in the system. And one way that's
10 reflected is the increase in reporting. So, I
11 think one of the goals is that the victims of
12 sexual assault in the military don't feel like
13 you are that the system is so broken that our
14 prosecutors aren't even taking those cases;
15 that not only will the prosecutors take the
16 case, but you're going to get a result so that
17 should make - I believe the philosophy is
18 that victims will then have confidence in our
19 entire system, that it's being prosecuted and
20 these perpetrators are being held accountable
21 at least to some sort of minimum amount of
22 time. So, it's great that you are able to

1 address that exactly and, Ms. Gill, that
2 you're able to articulate that different
3 victims want different things. It may not be
4 confinement time that they want.
5 What is it that you have found for
6 sexual assault cases, what do the victims want
7 so that they can heal and feel that justice is
8 done?
9 MS. GILL: That's your answer.
10 (Laughter.)
11 MS. BURRHUS-CLAY: I think first
12 they want to be believed, they want to be -
13 and I know that sounds like such a small
14 thing, but I can tell you now, especially
15 working with adults who were sexually abused
16 as children or young adults, it's the response
17 they got when they spoke up that truly impacts
18 how well they do with the rest of their lives.
19 And I know that sounds dramatic, but I can't
20 tell you how many folks that I've worked with
21 over the years, just the response, whether it
22 was a parent, or a boss, or a best friend, or

1 whoever it was that they came out to and told
2 that they were sexually abused, the way that
3 person responded to them really impacted how
4 well that they were going to recover and be
5 able to move on with their lives.
6 So, I can't under - I don't think
7 I can say that strongly enough, that they want
8 to be believed. They want there to be some
9 remedy so that they are not continually put in
10 a position where they're still at risk for
11 further victimization. And, finally, I think
12 they want there to be some consequences for
13 the perpetrator. Now whether, again, that's a
14 lengthy prison sentence or that person ends up
15 moving, that person - you know, being moved
16 out of that unit, whether it means that
17 person, you know, loses rank, or pay, or
18 whether that means that person spends some
19 time in jail. I mean, I think that's going to
20 depend on the circumstances of that case and
21 that individual victim. So, I mean, I do
22 believe victims want there to be consequences

1 for an offender, but not necessarily, you
2 know, 10 years in prison.
3 LTC McGOVERN: And then they don't
4 want the guilt that it's their fault that they
5 got that sentence. Is that what you're saying?
6 MS. BURRHUS-CLAY: Absolutely. And
7 I don't - and I think that's one of the
8 bigger problems, is that so many of the
9 survivors - again, in the civilian community,
10 and we see it in the military, as well, they
11 feel like they're being victimized by the
12 system. They're looked at as a troublemaker,
13 they're looked at as someone with poor
14 leadership skills because they couldn't have
15 handled it.
16 I can remember that was a case I
17 worked with with a young woman who was a Navy
18 lieutenant and she was being severely sexually
19 harassed by one of her subordinates, and she
20 ends up getting basically, you know, called on
21 the carpet for her poor leadership skills,
22 that she couldn't handle the situation.

1 We want to have people who can
2 come forward with these things and not feel
3 like it's going to negatively impact their
4 career. I think that's important.
5 MS. GILL: In your question I kind
6 of heard sort of that you're asking how do you
7 make sure that there's a minimum punishment.
8 LTC McGOVERN: Well, not
9 necessarily a minimum punishment, that the
10 victims have confidence in the system. And I
11 think - I shouldn't say I think because I'm
12 a staff person, but the goal is victim
13 confidence in the system. And one way it's
14 being looked at is to prosecute our way out of
15 this problem and judge it by length of
16 sentences. So, that's where I - this
17 comparative analysis is coming from, is there
18 any evidence that that has increased reporting
19 or victim confidence. If there are mandatory
20 minimums for these offenses in the civilian
21 system, did it work there? Should it work
22 here? But no, I wouldn't say we're requiring

1 some sort of minimum. It's what can we do to
2 increase victim confidence?
3 MR. FISHMAN: And I guess to follow
4 up on that, as well, maybe another way to
5 articulate this is what do victims see as
6 justice in these cases?
7 MS. BURRHUS-CLAY: Well, that's
8 interesting because, again, the vast majority
9 of the people that I work with, survivors that
10 I work with never get a day in court. And
11 sometimes to them justice just means when the
12 law enforcement officer, the detective that
13 was assigned to their case was respectful and
14 kept them informed of the process, and was
15 honest, sometimes even brutally honest with
16 their chances of this moving forward, that
17 basically treated them with respect and, you
18 know, whether it's a sexual assault nurse
19 examiner or all the people that they came in
20 contact with didn't act like you were a liar,
21 that you were a troublemaker, that you were
22 somehow a flawed human being who brought this

1 on yourself. And sometimes that feels like
2 justice for a survivor who can't move forward,
3 that they could understand this ends up, you
4 know, there was a lack of witnesses, and a
5 lack of evidence, and this is not going to
6 move forward because it's going to look like
7 a he said/she said. They could get all that.
8 What they couldn't get is being put through
9 the ringer on the way to getting that decision
10 that nothing was going to happen. So, I mean,
11 I think justice may look very different, and
12 a responsive system doesn't treat victims that
13 way, like you're the problem.
14 COL. HAM: Ms. Clay, can I ask a
15 question about, I guess it's a related topic.
16 Your policy paper for NAESB is against the
17 Multidisciplinary Center approach. Can you
18 discuss that a little bit?
19 MS. BURRHUS-CLAY: The
20 Multidisciplinary -
21 COL. HAM: Combining prosecution,
22 reporting, investigation, and victim services

1 response in one office can result in conflicts
2 of interest. That seems to be the big thing,
3 I mean, in treating victims of sexual assault
4 or approaching, that's the wrong word,
5 treating, approaching victims of sexual
6 assault, yet your organization is not in favor
7 of it. Can you explain why?
8 MS. BURRHUS-CLAY: I think part of
9 it has to do, again, with objectivity and
10 having somebody who's an outsider from that
11 system, I hate to keep giving you analogies of
12 similar situations, but to me it's the same
13 difference as when you have a victim advocate
14 that is at a prosecutor's office or a law
15 enforcement officer, a law enforcement
16 department, and then they think that there's
17 no need to have a victim advocate from like a
18 nonprofit to come in because we have our own
19 people that can come in here.
20 To me, it's very different because
21 if you're - both real and maybe imagined. If
22 you have a situation where your victim

1 advocate is being paid for by the district
2 attorney's office, or the law enforcement
3 department, there is going to be a very real
4 perception with victims that anything I say is
5 going to be shared with the other players who
6 are here. This is who signs their pay checks,
7 this is who they answer to, that it seems
8 counterintuitive to them that there's some
9 objectivity there. So, having someone who's
10 coming from an outside department or agency
11 gives that feeling to victims that there's
12 going to be that kind of firewall there, that
13 not necessarily you're going to get one person
14 who's then going to share it with everyone
15 else. This is why it can't move forward.
16 So, I mean, I think that's part of
17 the issue, is that there's going to be that
18 perception with victims that this is not
19 something I can trust because everybody is
20 self-contained here, and everybody's answering
21 to someone. I mean, does that answer the
22 question?

1 BG DUNN: Would that be that - say
2 the victim was uncomfortable with the way the
3 investigator questioned her, that she might be
4 - might not share that with her victim
5 advocate -
6 MS. BURRHUS-CLAY: Right.
7 BG DUNN: - because she perceives
8 that they're -
9 MS. BURRHUS-CLAY: All working for
10 the same folks.
11 BG DUNN: They're in the same
12 office.
13 COL SCHOLZ: But you do support
14 taking out the command, the chain of command
15 out of the process. Right?
16 MS. BURRHUS-CLAY: The National
17 Alliance does support that.
18 COL SCHOLZ: In my experience,
19 there are some victims who like their
20 commander, trust their commander, and want -
21 would like that continued support of that -
22 the camaraderie of the unit in the military.

1 So, you know, this one idea that we just need
2 to change that doesn't necessarily support all
3 victims either from my standpoint.
4 MS. BURRHUS-CLAY: Right. And
5 that's why I said the National Alliance
6 supports that. I'm ambivalent on that.
7 COL SCHOLZ: Okay.
8 (Simultaneous speech.)
9 COL SCHOLZ: But it just seemed to
10 go against kind of what you were saying about
11 the -
12 MS. BURRHUS-CLAY: Well, and part
13 of that has been because I have worked in
14 service areas where we had large military
15 commands, and I've had very positive
16 experiences over the years of working with
17 base commanders and things like that, so I
18 think that's part of where my opinions get
19 framed.
20 MR. STRAND: That very system that
21 the victim needs to be believed from is
22 including that chain of command.

1 MS. BURRHUS-CLAY: Absolutely.
2 MR. STRAND: Including the peers,
3 and if you remove them out of that whole
4 process then that might inhibit their healing,
5 as well, in some cases.
6 MS. BURRHUS-CLAY: Yes.
7 BG DUNN: The issue, though, and
8 I'm really interested in what you said about
9 why you oppose consolidating a location for
10 victim services that includes counseling and
11 prosecution, and the victim advocate, et
12 cetera, because even in the military, if we
13 don't have some sort of consolidated center
14 you still just within the context of the
15 military, I mean, everybody ultimately is
16 working for whatever service they are in. And,
17 you know, I mean, although we can understand
18 and you can understand the differences in the
19 chain of command, a young victim may not see
20 that at all.
21 MS. BURRHUS-CLAY: Right.
22 BG DUNN: And I'm really very

1 deeply interested in how we can provide
2 victims a support system that gives them the
3 confidence to handle everything from a pat on
4 the butt in their PT formation to, you know,
5 the worst kind of sexual assault, you know,
6 sort of a safe place they can go and talk, and
7 get advice, and figure out what's going to
8 happen next.
9 So, how would you see something
10 like that maybe constructed in the military?
11 I mean, would it be civilian employees
12 handling some things some place on post? I
13 mean, how - have you thought about that?
14 MS. BURRHUS-CLAY: I think that is
15 probably a pretty good idea. I think, also,
16 the reality is you're going to have a number
17 of victims that are going to continue to try
18 to access civilian services just because -
19 BG DUNN: Right.
20 MS. BURRHUS-CLAY: You know,
21 there's always going to be the perception this
22 is a small base, a small post, people are

1 going to find out. I mean, the same way, you
2 know, for years, you know, military people who
3 had drinking problems are going to access AA
4 off base, not on base. I mean, it's just - so
5 I think that that's going to continue. But a
6 part of that is because of that perception
7 that this is a very small place and I need to
8 go there. And we see that in the civilian
9 community, somebody may go to a larger town
10 rather than their small town rape crisis
11 center because of the perception that it's
12 going to be more confidential.
13 COL. HENLEY: Unfortunately, we've
14 reached the end of this -
15 MS. BURRHUS-CLAY: Okay. I'm sorry.
16 COL. HENLEY: But you can certainly
17 follow-up with questions, if you don't mind.
18 MS. BURRHUS-CLAY: Okay,
19 absolutely.
20 COL. HENLEY: But on behalf of the
21 Committee, thank you very much.
22 MS. BURRHUS-CLAY: Thank you.

1 MS. GILL: Thank you.
2 LTC McGOVERN: Appreciate your
3 working on this.
4 COL. HENLEY: Five minutes, please,
5 and then we'll proceed with the next panel.
6 (Whereupon, the proceedings went
7 off the record at 3:03 p.m., and went back on
8 the record at 3:08 p.m.)
9 COL. HENLEY: We are back with our
10 next panel. We have civilian defense counsel
11 perspectives on sentencing guidelines and
12 mandatory minimums. Fortunate to have Mr.
13 Kramer and Mr. Nachmanoff.
14 MR. NACHMANOFF: Nachmanoff.
15 COL. HENLEY: Nachmanoff. Did
16 either of you have your prepared remarks
17 before proceeding to questions?
18 MR. KRAMER: I mean, I'll start if
19 you want. I don't have prepared, but I can -
20 that's never stopped me.
21 COL. HENLEY: Well, maybe
22 certainly, maybe your background and maybe -

1 MR. KRAMER: Yes, sure, surely.
2 COL. HENLEY: - what expertise
3 you bring to this subject.
4 MR. KRAMER: Surely. I have after
5 law school clerked for a judge for a year on
6 the 9th Circuit Court of Appeals, and then
7 went to the federal public defender's office
8 in San Francisco where I was an assistant for
9 7-1/2 years. Then I was the Chief Assistant
10 Federal Public Defender in Sacramento for
11 2-1/2 years, and then the Federal Public
12 Defender in D.C. since 1990, so I have 33,
13 almost 34 years of federal criminal
14 experience. I started when I was 14.
15 (Laughter.)
16 MR. KRAMER: So, I started before
17 the sentencing guidelines went into effect,
18 practiced, obviously, while they were
19 mandatory, and now while they're advisory so
20 I've run the gamut of the whole different
21 views of sentencing. And I have to say that
22 the purpose behind sentencing guidelines has

1 always been a good one, that there should be
2 some uniformity in sentencing for people
3 similarly situated from similar backgrounds,
4 and that it shouldn't depend on the vagaries
5 of the individual judge what the sentence
6 should be. And that is a laudable goal, and
7 certainly one with which I don't think anybody
8 could disagree. The problem comes in the
9 implementation of it, and the fact that there
10 are no two people who have committed the exact
11 same crime. And there are no two people who
12 come from the exact same background, so that
13 the individual characteristics of both the
14 crime and the offender don't fit well into a
15 system like that.
16 And what you have - what I saw in
17 the - before the sentencing guidelines,
18 federal sentencing guidelines came into effect
19 the judges, obviously, could sentence with a
20 statute from zero to 20 years, they could give
21 zero to 20 years. There were variations, but
22 there was a Parole Commission that pretty much

1 leveled out the variations in sentences by
2 granting parole, so there were some
3 disparities in sentencing but you really on an
4 every day basis, there were not many. You
5 heard about the big ones and those are the
6 ones that got the publicity, and I think were
7 the driving force behind the implementation of
8 the guidelines.
9 And then what happened, all the
10 power went to the prosecutors, especially when
11 the guidelines were mandatory. And when the
12 guidelines became mandatory because of all the
13 adjustments in both the background and the
14 offense, the characteristics of the offense,
15 all of a sudden the prosecutors had all the
16 power at that point. And they were - there
17 was no resulting uniformity of sentencing.
18 There was just as big a disparity across the
19 country, except it was the prosecutors now who
20 had the ability to manipulate that disparity.
21 And it was manipulated in almost every case,
22 I'm not going to say every, but in the vast

1 majority of cases.
2 There was manipulation to get
3 pleas. The system, 97 percent of federal cases
4 plead guilty. And then the Supreme Court
5 decided Booker, and the guidelines were
6 advisory, and the power is now split somewhat
7 in the sense that the judge has far more
8 discretion, but the prosecutor still has the
9 discretion - the prosecutor still has the
10 power to help establish what the advisory
11 guidelines are, which is a big step in the
12 sentencing process.
13 Now, if you layer the Sentencing
14 Commission, itself - now, mandatory minimums
15 are a whole different scheme. That's a
16 Congressional scheme, obviously. The biggest
17 critic of mandatory minimums, I think, since
18 their inception has been the Sentencing
19 Commission, the U.S. Sentencing Commission,
20 which has said that they skew the guidelines,
21 they result in unjust and unfair sentences,
22 they are cutting with - the expression

1 cutting with a meat cleaver where a scalpel is
2 the correct instrument, so that they have said
3 that the most unfair, and the greatest result
4 in disparity is attributable to the mandatory
5 minimums. And that if Congress would do away
6 with the mandatory minimums, they could
7 implement a better guideline system that was
8 not tagged to those mandatory minimums, and
9 that was not skewed by those mandatory
10 minimums. So, they have been the biggest
11 critic of all.
12 Now, Congress has some bills
13 pending before it, interestingly by both sides
14 of the political spectrum to do away with
15 mandatory minimums, both for the unfairness of
16 the mandatory minimums, and because of the
17 cost of implementing them.
18 The Federal Bureau of Prisons is
19 now I think at 160 or 180 percent of capacity,
20 largely the result of longer sentences from
21 both the guidelines and the mandatory
22 minimums. So, there's movement now to

1 reexamine the mandatory minimums, and the
2 discretionary part of the guidelines now
3 giving more power back to the judges. There
4 seems to be little movement right now to
5 reexamine that. People seem to be more
6 comfortable giving more discretion to the
7 judges, not the unfettered discretion they had
8 back in - so, I guess, that's my introductory
9 statement about guidelines, in general, but
10 especially overlaying them with mandatory
11 minimums which seems to defeat the purpose of
12 the guidelines.
13 MR. NACHMANOFF: Thank you. It's a
14 pleasure to be here. I'm Michael Nachmanoff.
15 I'm the Federal Public Defender in the Eastern
16 District of Virginia, and I have not been
17 practicing as long as A.J. Kramer, so I defer
18 to him on all matters.
19 I started my career in the Eastern
20 District of Virginia. I went to the University
21 of Virginia Law School and clerked for Judge
22 Leonie Brinkema who you all might be familiar

1 with for overseeing the Massaoui case, and our
2 office represented Mr. Massaoui in that case.
3 After clerking for her, I went into private
4 practice for a number of years, and then
5 joined the Office of the Federal Public
6 Defender when it opened, so I helped establish
7 that office 13 years ago with my law partner,
8 Frank Dunham, who was a great man and a mentor
9 to me who passed away eight years ago. So,
10 I've been with the office since it opened
11 first as the First Assistant, and then as the
12 Defender for the last eight years.
13 And this is a subject that is near
14 and dear to both of our hearts, because as
15 A.J. explained in the federal system, as in
16 the criminal justice system at the state and
17 local level, as well, the overwhelming
18 majority of our clients end up being
19 sentenced, so sentencing is at the heart and
20 soul of what we do.
21 We love going to trial. We do
22 represent people who have committed no crime

1 and are innocent. That happens perhaps more
2 frequently than we'd like to think, but the
3 reality is that the vast majority of cases are
4 resolved through some sort of a plea through
5 negotiation. That's not always a bad thing.
6 Sometimes for our clients that makes sense,
7 but there's no question that the structure of
8 the way the criminal justice system has
9 developed especially in the last 10 to 20
10 years has increased the number of -
11 COL. MORRIS: Hello. Larry Morris.
12 COL. HENLEY: Hi, Larry. We're in
13 the middle of the panel on civilian defense
14 counsel perspectives, and Mr. Nachmanoff is on
15 his introductory remarks.
16 COL. MORRIS: Okay, thanks.
17 MR. NACHMANOFF: So, the structure
18 of the criminal justice system, especially at
19 the federal level, has increased the number of
20 pleas and the pressure to settle cases. And
21 that certainly was, in part, a result of the
22 guidelines, especially when they were

1 mandatory, and also through the implementation
2 of mandatory minimums, all of which happened
3 around the same time. And, frankly, were very
4 much in conflict with each other, which is why
5 the Judicial Conference of the United States
6 has adamantly and consistently opposed
7 mandatory minimums as being inconsistent with
8 the concept of individualized justice, and
9 making sure that people are sentenced based on
10 who they are and the particular crime they
11 have committed, as opposed to artificially
12 having your hands tied to not be able to
13 consider a fuller range of punishment. And the
14 same criticism has been leveled at the
15 guidelines themselves. Of course, when they
16 were in their mandatory form they served the
17 same function, which was reducing the
18 discretion of judges.
19 And it's interesting to have A.J.
20 and to have me here because the history of
21 sentencing, the history of cases in the
22 Eastern District of Virginia compared to the

1 District of Columbia really points out one of
2 the greatest problems with systems that impose
3 a mandatory structure on judges, which is the
4 District of Columbia and the Eastern District
5 of Virginia, especially the Alexandria
6 division are separated by two miles, and the
7 resolution of cases that are arguably
8 similarly situated, the same charges,
9 oftentimes people with the same criminal
10 histories have often been resolved in
11 dramatically different ways. And that's a
12 reflection of many things, but what it's a
13 reflection of is that despite having a
14 national or federal system with the same rules
15 for sentencing, the same rules of evidence,
16 the local culture of courts, the local culture
17 of judges and prosecutors makes a big
18 difference in the way matters are resolved.
19 And that's the way it's always been, so I
20 certainly agree with A.J. that I think all of
21 us, regardless of our backgrounds, whether
22 it's military or civilian, whether it's

1 conservative or liberal, have a same
2 fundamental belief that if you break the law
3 you should be punished, not in some irrational
4 or arbitrary way, but in a way that promotes
5 some sort of consistency.
6 On the other hand, we also believe
7 firmly that we want to be treated as
8 individuals whether we've broken the law, or
9 whether we follow the law, and that when a
10 judge is prevented from imposing a sentence
11 that takes into account all of the different
12 factors, sentencing cannot be reduced to
13 numbers in an appropriate way. It is always
14 more of an art than a science because as much
15 as we can talk about two cases being similar,
16 there are always things that distinguish
17 cases, whether it's the act that was
18 committed, the harm to the victim, the
19 person's own personal background, whether
20 they've grown up with privilege or in a
21 deprived circumstance that may impact the way
22 a judge thinks that person should be punished,

1 whether they need to be incapacitated, for how
2 long, whether or not they have a chance at
3 rehabilitation or redemption. And, you know,
4 the essence of our criminal justice system is
5 to pass judgment on someone to take away their
6 liberty, but we want that done in a way that
7 provides dignity not just to that person, but
8 to all the people, the general public, the
9 victim, but also the person who's going to end
10 up on the receiving end of that. So, that's
11 why I think we can represent as people who
12 represent people who are on the, you know, the
13 receiving end of these rules that any system
14 that you adopt that really constrains judges
15 in a mechanistic way can lead to a lot of
16 unfairness.
17 BG COOKE: Can you just elaborate
18 on the power shift to the prosecutors affected
19 by the guidelines? How does that work?
20 MR. BRYANT: Let me - I'll answer
21 that. I never felt more omnipotent as when I
22 was a federal prosecutor starting in 87, they

1 gave us the guidelines. I was omnipotent, and
2 I just listened to you all to know that.
3 (Laughter.)
4 MR. NACHMANOFF: It's good to get
5 that endorsement from someone who's been on
6 the other side.
7 (Laughter.)
8 MR. KRAMER: I couldn't give a
9 better answer than that.
10 (Off the record comments.)
11 MR. BRYANT: And I've had cases
12 with Frank Dunham. He was a great guy, not
13 when he was public defender, but when he was
14 in private practice.
15 MR. KRAMER: I mean, let me - if
16 you take any offense in there has what's
17 called a base level, then it has adjustments
18 upward, adjustments downward, some of them go
19 on for pages and will have five, ten possible
20 adjustments upward, five, ten possible
21 adjustments downward. Then you get into minor
22 role, aggravating role, all these other

1 things, acceptance of responsibility, super
2 acceptance of responsibility, an extra point
3 here, an extra point there. Then the criminal
4 history points, and where they fall, and what
5 kind of offense, so you have so many
6 adjustments that can apply that can make a
7 huge difference in the sentence. I think it's
8 four points almost doubles the range of
9 sentences, so if you get a four point upward
10 adjustment the range has doubled. So, a
11 prosecutor insisting on say an upward
12 adjustment, and for the amount of loss has all
13 different levels, so there may be
14 disagreements, and the power - three points
15 for acceptance of responsibility, that's a big
16 - a large number in the scheme of things. So,
17 the agreements, the plea agreements that are
18 offered by agreeing either that the
19 prosecution is going to insist on certain
20 upward adjustments, or will forego upward
21 adjustments, will oppose certain downward
22 adjustments, or will agree to certain downward

1 adjustments make a huge difference in the
2 sentence, sentencing guidelines range that
3 people face, especially when it was mandatory.
4 And let me say, and Michael is
5 absolutely right, for whatever reason, D.C.
6 right now has the - since Booker has the
7 lowest rate of sentences within the guideline
8 range in the country, less than a third of the
9 sentences in D.C. are within the guidelines
10 range. And I think 99.9 percent of the
11 sentences outside the guidelines range are
12 below the guidelines range. There's maybe
13 1/10th of 1 percent of sentences above the
14 guidelines range, which is vastly different
15 than in the Eastern District of Virginia.
16 And if there's one thing we
17 discovered over the years, there was no
18 national uniformity of -- each individual
19 prosecutor's office had its own policies on
20 what adjustments to seek, what not to seek,
21 whether they would agree to departures, the
22 whole departure chapter, and whether they

1 would agree to them, whether they wanted
2 upward departures in a very, like Michael
3 said, two miles apart. It's a whole different
4 world of sentencing. So, that's the power the
5 prosecutors had.
6 They also, of course, could - you
7 can charge an offense that has a mandatory
8 minimum, or you can agree to a plea of an
9 offense without a mandatory minimum. That is
10 a huge bargaining chip.
11 Then, of course, the only way
12 outside a mandatory minimum originally was if
13 you cooperated with the prosecutors, so you
14 could agree to cooperate and the prosecutor
15 -- that was, again, a huge bargaining chip
16 for prosecutors, the ability to extract -
17 when I say extract, the ability to ask for
18 cooperation, not extract by force.
19 (Laughter.)
20 MR. KRAMER: Extract - but to get
21 cooperation was a huge bargaining chip for
22 sentences below mandatory minimums. Now

1 there's the safety valve which has somewhat
2 ameliorated that situation. There's a bill
3 pending in Congress to broaden the safety
4 valve as part of the - doing away with some
5 of the mandatory minimums. So even agreements
6 about what constitutes sufficient conduct for
7 safety valve varies vastly around the country.
8 The one thing I have discovered is
9 that there is absolutely no uniformity as far
10 as I can tell. Every district does the
11 sentencing guidelines differently, and every
12 district has its own policies of what
13 constitute - if you plead guilty in D.C.,
14 you're going to get acceptance of
15 responsibility with almost doing nothing else.
16 If you - other places you have to do much
17 more. To get the safety valve varies vastly
18 around the country, what you have to do.
19 Cooperation varies vastly around the country.
20 In many district for cooperation you either
21 get two points off, four points off, 20
22 percent off, 25 percent off. In D.C. for

1 cooperation many defendants go right down to
2 probation because the judges view cooperation
3 as such an important cog in the system that
4 there's no points or percentages. The
5 Government comes in, makes the motion and then
6 it's wide open, so that varies vastly around
7 the country. So, when I talk about the power,
8 the power to make concessions, ask for - or
9 the power to refuse to make concessions, or
10 the power to ask for various adjustments I
11 think is what I was talking about.
12 MR. NACHMANOFF: If I can give just
13 two examples briefly in comparing D.C. and
14 Eastern District of Virginia since it makes
15 sense here. When A.J. talks about sentences
16 outside the guidelines, since Booker judges
17 had greater discretion setting aside mandatory
18 minimums, and some judges in some districts,
19 they've exercised that discretion more boldly
20 than in others.
21 That's part of the equation, and
22 in the Eastern District of Virginia they're

1 much more likely to follow the guidelines even
2 though they're no longer mandatory than in the
3 District of Columbia. But a more significant
4 difference is that in the District of
5 Columbia, and I was looking very briefly at
6 some statistics here, the government joins in
7 the defense request for a below-guidelines
8 sentence almost 15 percent of the time. In the
9 Eastern District of Virginia it's 2 percent of
10 the time. So, of course, judges are far more
11 likely when the parties agree to impose a
12 lower sentence, a sentence below the
13 guidelines where they see that the government
14 is on board. So, both with cooperation, which
15 is a big reason to give a lower sentence where
16 the government is specifically endorsing a
17 lower sentence, and with other non-cooperation
18 related departures or variances, that accounts
19 for almost 45 percent of the out-of-guidelines
20 sentences, so when it appears that judges are
21 not - you know, they're not paying attention
22 to the book, in fact, they pay a lot of

1 attention to the book, but when the government
2 is jointly endorsing a reason to give a lower
3 sentence, they're willing to do it.
4 Why is it that the U.S. Attorney's
5 Office in the District of Columbia is much
6 more willing to do that? You know, it's a hard
7 question to answer, but it's the history, it's
8 the culture of that district, it's what the
9 judges expect.
10 In the Eastern District of
11 Virginia, you know, it really is a very
12 unusual circumstance where the government
13 comes in and affirmatively says judge, the
14 guidelines are too harsh. You have the power
15 and you should impose a lower sentence. We see
16 it more, you know, every day that goes by.
17 That's our job is to persuade prosecutors,
18 even tough ones, that there should be a reason
19 to make another argument, but that accounts
20 for a real difference even when there is an
21 overarching goal to try and be consistent.
22 The other example I would give is

1 with mandatory minimums, and it really -
2 this is where we see the shift of power to the
3 prosecutor. In the District of Columbia in
4 child pornography cases which are not uncommon
5 in the federal system, the prosecutor has the
6 power to charge either straight possession,
7 having a bunch of images on your computer, or
8 receipt. As a factual matter, every case now
9 could be charged as receipt. People aren't
10 creating it, you know, with the cartoons and
11 in brown paper bags. They're getting it over
12 the internet, so if you received it over the
13 internet, you can be charged with receipt
14 which carries a mandatory minimum of five
15 years.
16 In the Eastern District of
17 Virginia there is a policy which is really
18 adhered to very strictly. Whenever there's
19 child pornography, they're going to charge
20 receipt. They're going to prevent the judge
21 from having the capacity to take into
22 consideration whatever mitigating factors

1 there are, and oftentimes there are, including
2 military service, including mental health
3 issues, including a finding that this didn't
4 have anything to do with touching another
5 human being and, therefore, a sentence of
6 three years, or two years might be more
7 appropriate. That's a purely prosecutor-driven
8 decision, a policy decision.
9 MR. BRYANT: Michael, don't you
10 think it's fair, too, that - and has some
11 effect that the D.C. District handles a whole
12 range of crimes that the Eastern District
13 really doesn't get into, because they're doing
14 all the straight DUIs, they're doing the
15 residential burglaries, they're doing a hold
16 up at 7/11 in D.C. They're not doing that in
17 Alexandria for the most part. It's a different
18 kind of crime, and it's a different caseload.
19 MR. KRAMER: Can I just butt in for
20 one second.
21 (Laughter.)
22 MR. KRAMER: Actually, we don't do

1 that. There's a local court system, D.C.
2 Superior Court, and the D.C. Court of Appeals.
3 MR. BRYANT: But isn't that the
4 U.S. Attorney's, the responsibility for D.C.?
5 MR. KRAMER: The U.S. Attorney's
6 responsibility, yes. But the federal court is
7 -- handles exactly - essentially exactly the
8 same mix as - well not exactly, obviously,
9 but a very similar mix to Michael and every
10 other federal court in the country. And they
11 have a separate federal court unit in the U.S.
12 Attorney's Office, Superior Court, and there's
13 a local public defender for Superior Court
14 which is not connected with our office.
15 Superior Court has its own section in the U.S.
16 Attorney's Office where all those street
17 crimes are prosecuted. So, we don't do any of
18 those really in federal court.
19 MR. NACHMANOFF: And those are not
20 governed by the Federal Sentencing Guidelines,
21 Superior Court. Virginia State has its own
22 sentencing scheme. Yes, I don't think -

1 especially not with the example that I've
2 given of child pornography that the possession
3 of child pornography in Alexandria or in
4 Norfolk is meaningfully different than the
5 possession of child pornography in the
6 District of Columbia such that making the
7 choice to give the judge a fuller range of
8 punishment to consider is appropriate in one
9 location, but not in the other. It's just a
10 way of pointing out that that power resides in
11 the charging decision, not in ultimately the
12 judge deciding this is the kind of case, we're
13 sending this person to jail for a shorter
14 period of time, or maybe not even sending them
15 to jail at all.
16 MR. BRYANT: Do you think those
17 differentials existed even before the
18 guidelines?
19 MR. NACHMANOFF: No doubt.
20 MR. BRYANT: Yes.
21 MR. NACHMANOFF: No doubt.
22 MR. BRYANT: Okay.

1 MR. NACHMANOFF: So, the question
2 is whether or not this scheme that really was
3 a, you know - I agree with A.J., a very
4 well-intentioned scheme to try and promote -
5 I prefer to talk about consistency, the
6 uniformity, because uniformity suggests that
7 every case can be resolved the same way, and
8 we know that they can't be. The problem was
9 that the rules that were put in place to try
10 and minimize those differences really just
11 shifted the way those differences were
12 implemented. So, instead of judges making
13 different decisions because judges have
14 different personalities and different
15 backgrounds, it shifted to prosecutors who
16 also have, you know, different pressures, and
17 different priorities, and different
18 backgrounds.
19 And, you know, it's true even
20 within the Eastern District of Virginia the
21 way a case is resolved in Norfolk may well be
22 different than the way it's resolved in

1 Alexandria.
2 COL. HAM: So, you're saying that
3 I mean, if an outsider looks and sees how a
4 certain crime is treated maybe similar, but
5 what's really going on is different crimes are
6 charged. So, the same factual basis is
7 resulting in disparity; whereas, if you just
8 looked at it, and I don't know, for example,
9 receipt versus possession, you'd see around
10 the country receipt and possession are treated
11 - sentenced the same, but it's the charging
12 decision that makes the difference. Is that
13 what you're saying?
14 MR. NACHMANOFF: No. I think if I'm
15 understanding you, that I'm saying the other
16 way around, which is that in different parts
17 of the country you may see a lot of cases
18 resolved as receipt, and in other areas
19 they're resolved as possession. Factually, the
20 actions that are taken are exactly the same.
21 Ultimately, the results and how the people are
22 sentenced are radically different because the

1 charge precludes a judge from giving a
2 sentence below five years in those case where
3 the -
4 COL. HAM: That's what I meant. So,
5 it gives the illusion of consistency but it's
6 not.
7 MR. NACHMANOFF: Correct. I think
8 that's a fair way to -
9 MR. KRAMER: I was nodding my head
10 yes.
11 (Laughter.)
12 MR. STRAND: In your opening
13 comment you suggested the myth that you have
14 innocent people going to court now.
15 (Laughter.)
16 MR. STRAND: You brought up the
17 hypothesis -
18 MR. KRAMER: I don't think either
19 one of us said that.
20 MR. STRAND: But you brought up the
21 - you made mention that you have innocent
22 people that are going to court. What impact,

1 if any, does mandatory minimums have on what
2 your belief is that people will sometimes
3 plead, an innocent person will plead to avoid
4 the consequences of either a zealous or
5 over-zealous prosecution.
6 MR. NACHMANOFF: I think that's a
7 very fair question, and I think it's very -
8 it's hard to answer that in a specific
9 instance. There's no question that facing the
10 prospect of very severe punishments puts a lot
11 of pressure on individuals to compromise where
12 they might otherwise want to exercise their
13 Constitutional rights and force the government
14 to prove its case beyond a reasonable doubt,
15 and they decide that it's in their own
16 interest, and their family's interest to
17 essentially minimize their risk and try and
18 serve a shorter amount of time because they're
19 not willing to suffer the consequence, which
20 could be decades in prison.
21 Does that lead people who are
22 entirely innocent of crimes to plead guilty?

1 I'm sure the answer is yes. In my career of
2 many years, can I think of a time when I had
3 a client who had maintained his innocence and
4 insisted on doing something that I knew was
5 wrong? Of course not. Defense attorneys are
6 obliged as officers of the court, and any
7 sense of, you know, being good people to make
8 sure that innocent people don't plead guilty.
9 But, you know, the reality is that it's not
10 always a question of absolute factual
11 innocence or guilt. It may be an issue of
12 degree. We see this frequently with drug
13 crimes where, for example, the quantity of
14 drugs may determine the punishment and the
15 evidence the government has is historical
16 informant information. And if someone says I
17 bought drugs every day for three years and you
18 do the math, a person might be exposed to
19 going to jail for a very long time.
20 It's very difficult for us as
21 lawyers to say what the right quantity is.
22 Ultimately, it's going to be based on how

1 compelling the evidence is being presented.
2 There's usually not objective evidence of a
3 historical conspiracy, and so sometimes people
4 agree to a quantity that might be larger than
5 what they think they may have sold, or may, in
6 fact, have sold, but it's nonetheless a
7 compromise position that they take because
8 they think it's in their own best interest.
9 So, it's difficult to say how many people have
10 walked in and felt the pressure of these long
11 sentences to do something they categorically
12 absolutely did not do, but it certainly plays
13 a role in people not challenging certain facts
14 that could affect dramatically the quantum of
15 punishment that they face.
16 MR. STRAND: Well, for example,
17 going back to your receipt versus possession.
18 If I'm your client hypothetically and I know
19 I wasn't - maybe somebody else had access to
20 my computer but I didn't, you know, maybe a
21 son or something like that, and then you come
22 back to me and say well, you know, the

1 prosecutor is willing to go with - if you'll
2 plead to possession, they won't go with the
3 receipt, but if you don't plead possession
4 you're going to go receipt, and you're going
5 to go at minimum five years. I as a client may
6 not tell you well, yes, okay, I'm really
7 innocent but I'm going to go with the deal. Is
8 that what you're kind of saying?
9 MR. NACHMANOFF: You know, that
10 certainly is a hypothetical that I'm sure, you
11 know, could exist. In the Eastern District of
12 Virginia, and I won't speak for A.J., the Rule
13 11 colloquy, the plea colloquy, we don't have
14 Alfred pleas, we don't have people who admit
15 the facts, that the government can prove the
16 facts but deny that they themselves are
17 culpable. And that's a very common way of
18 resolving cases in state court, and it allows
19 the system to move forward but allows that
20 balance because of the sentencing guidelines,
21 because of the issue of three points for
22 acceptance of responsibility, and because of

1 the history of our court. The judges generally
2 want to hear a person under oath admit the
3 facts giving rise to the plea so, you know,
4 it's hard, I think, ultimately, unless a
5 person, you know, isn't truthful with their
6 own defense attorney to root out whether or
7 not someone's done that or not.
8 I think it goes back to the same
9 issues, though. I believe that a criminal
10 justice system functions best when there's
11 transparency. And part of transparency
12 involves airing the facts of a case in an open
13 courtroom. One of the problems with pleas is
14 all of the investigation, all of the process
15 by which evidence is collected doesn't end up
16 getting exposed. You don't have Motions to
17 Suppress, you don't have a jury see the
18 credibility of agents, or civilian witnesses.
19 And there's a benefit to society, and a
20 benefit to individual defendants, but when the
21 penalty for trying that is so great - and
22 this is one of, I think - again, I didn't

1 practice pre-guidelines, but it is one of the
2 benefits of having a system that has a greater
3 number of trials, is if a judge says I'm not
4 going to hold it against you that you, you
5 know, asked the government to prove its case.
6 You're going to get the same sentence either
7 way. It allows the system to be more
8 transparent, and it exposes when corners are
9 cut, which happens occasionally even in good
10 and fair systems, so I think when you have a
11 system where 97 percent of the people plead
12 guilty, and you have rules in place that
13 really suppress people's ability to go to
14 trial and punishes them for it, you have
15 collateral impacts as lawyers that I think we
16 should all be concerned about.
17 MR. KRAMER: Can I just say one
18 thing on the last two questions. Almost every
19 federal crime violates two, three, four, five
20 federal statutes. Many of them may have vastly
21 different base offense levels and adjustments,
22 so what you were asking, what is actually

1 resolved, the actual plea makes a huge
2 difference in the guideline rates. And as I
3 said, it could be charged with all those
4 offenses and then there's a plea to the one of
5 the less serious, or more serious, or it could
6 be charged just one of those in the
7 prosecutor's discretion, either more or less
8 serious. So, the charging decision makes a
9 huge difference, and the actual plea
10 resolution makes a huge difference.
11 COL. HAM: How common is it that
12 under that example the prosecutor says look,
13 there'll be one charge if you plead guilty,
14 and you get your acceptance of responsibility
15 which is the three points. However, if you
16 insist on going to trial there are going to be
17 five charges, and your potential exposure is
18 vastly increased.
19 MR. KRAMER: So, there's two
20 scenarios, pre-indictment which is - they
21 always tell us there's much more leeway to
22 resolve cases pre-indictment. And I would say

1 that's true in almost 100 percent of the cases
2 pre-indictment. Plead to this, we won't charge
3 any of the other things, and that will be the
4 end of it in a plea agreement when none of the
5 other offenses will be charged. So, close to
6 100 percent. Even post-indictment when there's
7 five offenses charged - and, again, this
8 varies greatly around the country, there will
9 often be a dismissal of most or all of the
10 other charges, and a plea to one. And,
11 obviously, the defendant is arguing for the
12 less serious. And it really depends, sometimes
13 they'll be more serious because some of the
14 other charges are more serious.
15 And then there's also the threat
16 many times pre-indictment that, you know, I
17 can charge a mandatory minimum if we go to
18 indictment, so by taking a plea even to
19 somewhat more serious offense, you're avoiding
20 the mandatory minimum. I would say that's
21 almost 100 percent in the pre-indictment
22 phase. We can resolve it now for this one

1 charge. If we have to indict, we're going to
2 indict on every provable charge that we think
3 we can prove. And even after indictment it's
4 an extremely part of the process.
5 COL. HAM: Do you consider that as
6 part of the - you said the - I can't
7 remember. I think you just used the word
8 penalty for -
9 (Simultaneous speech.)
10 COL. HAM: The Constitutional
11 rights, do you consider that part of the
12 penalty for exercising Constitutional rights,
13 facing a greater exposure, you just put that
14 under a different category of negotiations and
15 prosecutorial discretion?
16 MR. KRAMER: I do, but that's not a
17 view that's prevailed in any court, in any
18 federal court. I mean -
19 MR. NACHMANOFF: Certainly, it is
20 permissible. It's a permissible negotiating
21 technique to -
22 MR. KRAMER: Right. The Supreme

1 Court put a stamp of approval on that. I wish
2 I could remember the case where they - there
3 was the threat to file more serious charges 20
4 or 30 years ago, and they said that's okay,
5 that's part of the plea bargaining process.
6 And let's face it, our federal and state
7 systems operate, they would break down very
8 quickly if more than 3 or 4 percent of the
9 cases started going to trial. So, I mean, I
10 think everybody views it as just part of the
11 process, frankly.
12 COL SCHOLZ: Yes, we don't even
13 have sentencing guidelines. You know, we have
14 a high plea rate, too.
15 MR. KRAMER: There was one other
16 thing I should have mentioned. There's what's
17 now called an 11(c) plea. It's varied over the
18 years because of the Rules of Criminal
19 Procedure are amended, so that's a situation
20 where the parties can agree upon a sentence.
21 And that can either be outside or inside the
22 guideline rate. You can say - and this

1 happens a lot in kiddie porn cases in D.C. You
2 can say the guidelines could be 20 years, and
3 the prosecutor could agree we'll give him
4 seven years. And we'll agree upon a seven-year
5 sentence, and it has to have the judge's
6 approval. The judge has to approve it.
7 I can tell you the two huge
8 variations in that around the country. There's
9 huge variations in the districts that will
10 even do that. Some districts will not do it at
11 all, other prosecutor's offices will do it,
12 but they'll do it on a limited number of
13 cases, and other prosecutor's offices will do
14 it not routinely but in a greater number of
15 cases.
16 There's variation. Some judges
17 will refuse to take those. Other judges will
18 scrutinize them carefully, and sometimes
19 reject them, sometimes approve them, other
20 judges just routinely okay, if the parties
21 have agreed upon a disposition, it's an
22 adversary system. That's good enough for me.

1 I'm going to take, and I'll accept it, and you
2 get the seven-year sentence. And it doesn't
3 matter any more even what the guideline range
4 is. The judge can accept the plea to a C plea.
5 And that's used fairly often in D.C. I don't
6 know about the Eastern District.
7 MR. NACHMANOFF: Well, like all
8 things if it's used fairly commonly in D.C.,
9 one can assume that it's - it's rarely used
10 in the Eastern District of Virginia; although,
11 it is, on occasion. I would say it was never
12 used for many years, and I think in the
13 Eastern District of Virginia, at least, it's
14 a reflection that the judges don't like to be
15 told that this is what the parties have
16 agreed. They want to make an independent
17 decision that this is an appropriate sentence.
18 The way the rules work, that's
19 permissible. In other words, the - as A.J.
20 said, the parties can say we believe a
21 seven-year sentence is appropriate, and the
22 court can choose to accept it, or reject it.

1 Sometimes, and frankly more often
2 we will have a c(1)(C) plea which agrees to a
3 range. You won't argue for more than 12 years,
4 we won't argue for less than five years, so to
5 a certain extent it's a nice hybrid because
6 the parties have agreed this is a range of
7 acceptable punishment. The judge retains the
8 ability to decide where within that range they
9 think the sentence should fall, but it's
10 decided by the parties, it's not decided by,
11 you know, a mandatory guideline scheme. So, I
12 think it's right. You see this patchwork
13 around the country, and it depends on the
14 culture of the court how much they want to
15 leave it to the advocates to tell them what
16 they think the appropriate range is, and how
17 much they want to take an independent view to
18 decide I want to consider the full range of
19 punishment, which is the other half of the
20 coin on mandatory minimums. Judges resent it
21 because they don't want to be told I can't
22 consider a sentence below 10 years because

1 they may feel in their own independent
2 judgment eight years would be the right
3 sentence.
4 MR. STRAND: We've heard that the
5 vast majority of sentences both in the federal
6 and state systems that are outside of the
7 guidance are generally lower sentences.
8 Wouldn't that benefit the defense bar,
9 wouldn't that generally, I mean, kind of place
10 - maybe it's working better for the defense
11 than the prosecution. Just arbitrary -
12 MR. NACHMANOFF: Well, I guess I
13 would - I mean, I would say it reflects the
14 fact that there really is amongst the
15 judiciary a consensus that in many ways both
16 mandatory minimums and the guidelines have
17 increased punishment higher than it needs to
18 be to meet the purposes of sentencing. And
19 that's why when judges have greater freedom,
20 overwhelmingly they choose to sentence lower.
21 There is a small number of cases, 1 to 2
22 percent where judges with discretion think the

1 guidelines don't adequately capture for
2 whatever reason the necessity of punishment.
3 So, I guess I would take -
4 COL. HENLEY: You see that more of
5 a criticism of the guidelines than a benefit
6 of -
7 MR. NACHMANOFF: Correct, than a
8 benefit to the defense. I think one of the
9 criticisms that's been leveled fairly at the
10 guidelines for 25 years is that it really
11 acted as a one-way ratchet, and you see this,
12 this has been used by commentators often to
13 describe it. And it's not what was originally
14 envisioned.
15 It was envisioned originally that
16 the guidelines would be a dynamic process in
17 which some offenses would be adjusted based on
18 information coming from judges, and coming
19 from courtrooms to increase punishments in
20 some cases, and to lower them in others. And
21 the idea was that the Commission would be
22 sufficiently independent from political

1 influence that they wouldn't feel a constant
2 need to simply increase punishment.
3 What happened was it ended up
4 being a constant upward ratchet which is why
5 you have, when you do surveys of judges, many
6 judges who say especially in the realm of
7 child pornography, that the punishments called
8 for, the guidelines are radically higher than
9 they need to be to address the individual
10 needs of deterrence and punishment. And maybe
11 it's just the structural nature of
12 punishments. Very hard, I think, as a
13 political matter for people to say let's lower
14 punishments for fear of backlash.
15 COL. HENLEY: Do you see any
16 benefits for sentencing guidelines from either
17 perspective, defense or prosecution?
18 MR. KRAMER: I mean, it's - D.C.
19 itself, the local courts, they have sentencing
20 guidelines but they're a much broader range of
21 punishments, and there's far fewer
22 adjustments, so you - as I said at the

1 beginning, look, it's a very - of course,
2 there should be consistency in punishment, and
3 it's a very laudable goal, but in my mind
4 almost impossible to implement in any rational
5 way, or any fair way. I mean, there's the
6 famous quote by Justice Kennedy in the Coombe
7 case in the Supreme Court that punishment has
8 always been a study in human - that each
9 individual is treated as - each human being
10 is treated as an individual, and sometimes
11 there's facts that mitigate, and sometimes
12 facts that aggravate punishment. And I think
13 that's become quoted in most every sentencing
14 case nowadays.
15 The problem is the implementation,
16 so D.C., there's more sentences within the
17 guidelines range, but that's because the
18 guidelines range is so broad, so you sacrifice
19 - the federal sentencing guidelines have 40,
20 however many, 43 ranges. D.C. has, I want to
21 say six, I'm sure that number is not correct,
22 so you sacrifice - what you give for fine

1 tuning is you give up in taking account of
2 these other factors.
3 COL. HENLEY: So, you did practice
4 pre-guidelines.
5 MR. KRAMER: Yes.
6 COL. HENLEY: So, I'm sure you came
7 across scenarios where you represented or
8 colleagues represented individuals who were
9 fairly situated, went before different judges
10 and received disparate sentences. How do you
11 handle that situation?
12 MR. KRAMER: You know, I have to
13 -- two things. I don't think it's much
14 different then than it is now, because I can
15 go before two judges who have much different
16 philosophies with the same guideline range and
17 get a much different sentence for essentially
18 the same person. One judge who thinks that the
19 mitigating factors are such that I'm going to
20 give a sentence way below the guideline range,
21 and another judge who thinks there's no
22 mitigating - the exact same factors are not

1 mitigating at all and the sentence is within
2 the range.
3 As Michael said, there are almost
4 - I think it's 1 percent, there's almost no
5 sentences above the guideline range any more,
6 so - or ever, which I think goes back to your
7 question, too. If there were equal number of
8 sentences above and below the range, you might
9 think that somebody got it right, but there's
10 almost no sentences above the range, and
11 there's a large percentage below the range.
12 That has to tell you something that the judges
13 think that it's too high, and it's skewed by
14 the mandatory minimums. Don't get me wrong, I
15 don't blame it all on the Sentencing
16 Commission. But as Michael said, there's a
17 large percentage of sentences below the
18 guideline range that are agreed to by
19 prosecutors. They must also think that they're
20 too high, or that wouldn't be happening.
21 So, I don't view it really - if I
22 - the difference is that now because there's

1 all the good time is set by statute and
2 there's mandatory, so everybody serves the
3 same amount of their sentence, so if I go in
4 before one judge and get five years for
5 somebody on the same guideline range that the
6 judge gives 10 years to somebody else, they're
7 going to serve vastly different amounts of
8 time.
9 In the old days, if I got somebody
10 five years and somebody else 10 years, they
11 would actually serve the same amount of time
12 pretty much, three and a third for the
13 10-year, they would be out essentially the
14 same time the Parole Board evened things out.
15 So, if anything, it seems to me
16 the disparity has become greater now, and
17 there's even less explanation for it because
18 in the old days somebody said I think this
19 merits five years for whatever reason, and now
20 - and another judge would say I think it
21 merits seven years for whatever reason. Now
22 you have the judges looking at the same things

1 in the guidelines and saying I don't think
2 that was an aggravating role. In fact, I think
3 there was a mitigating role this person
4 played, so you not only don't get two points
5 up, you get three points down. And you have
6 the same judge in the same case saying I don't
7 think you were a mitigating role, a different
8 judge in the same circumstances, and I think
9 there was an aggravating role, so that person
10 gets the same - two different people, the
11 judge has - each judge has made a totally
12 different call about - and it's totally at
13 the discretion of the judges. I mean, there's
14 law behind it, but about whether to apply it,
15 so you - I think, frankly, the disparity in
16 some ways is worse in the sense of when you
17 give these - all these ranges and points, and
18 scores, and then two judges make a totally
19 different call about the same thing; whereas,
20 at least in the - before if somebody said
21 five and somebody said seven, you know, you
22 said you got a tough judge, but it's going to

1 even out in the end because of parole. So,
2 it's even somewhat more, it seems to me,
3 intellectually harder to explain why one judge
4 will do two points up and not give acceptance
5 of responsibility, and an almost identical
6 case, a different judge will give three points
7 for acceptance and two points down. That's
8 almost making the ranges double. So, I think
9 the same thing is there. We're trying to
10 explain why - it's a difficult thing to
11 explain, there's no question. And they know
12 well, wait a minute, so and so just got five
13 years for that, and he didn't get a mandatory
14 minimum. Why am I getting the - so, it's the
15 same process, frankly, I think.
16 MR. NACHMANOFF: You know, I think
17 - I certainly agree with A.J. that it's very
18 difficult to implement something that gives
19 judges guidance without constraining them in
20 ways that are unfair.
21 I think we actually are very
22 slowly, and maybe we won't get there, but

1 moving towards a greater degree of discretion
2 on the part of judges, which is where
3 sentencing should reside, and where the
4 Supreme Court has recognized it should be with
5 trying to find a way to have value, in a
6 sense, in Commission. I think what judges can
7 get the most out of is having a sense of what
8 other judges are doing. Right? So, sentencing
9 in a vacuum is a problem because you can have
10 judges coming to radically different decisions
11 just one courtroom away. But there are judges
12 who are making a great effort to try and
13 understand what their colleagues are doing.
14 The way the Sentencing Commission
15 right now exists, and the way it's sort of
16 functioning doesn't maximize the value that
17 they could provide. And I think maybe you
18 heard from the Virginia Sentencing Commission,
19 which really does provide much more of a
20 clearinghouse and certainly there are
21 distinguished panelists here that can speak to
22 it better than I can. It's been a long time

1 since I practiced in state court. There are
2 other issues with regard to sentencing at the
3 state level that are very complicated,
4 including jury sentencing and the pressure on
5 judges to disagree with a jury verdict, and
6 the political ramifications of that. And that
7 goes to the independence of the judiciary and
8 the best way to set it up. But the idea that
9 there could be an expert body that helps
10 collect information and provide dynamic
11 information, because people's view of
12 punishment does change. It should change over
13 time, what we think - you know, why we think
14 someone is culpable or not culpable is capable
15 of changing. And when Congress creates
16 statutes that have a wide range of punishment
17 that's in part because they recognize that you
18 can violate the law in lots of different ways.
19 And the idea that everyone should be treated
20 the same way simply because they violated the
21 same statute ignores the fact that there can
22 be lots of different factors in that

1 particular crime that should go to whether
2 someone gets a harsher penalty or a lower
3 penalty.
4 Ultimately, the question is how
5 much confidence do you have in the judiciary,
6 whether it's in the military system or in the
7 federal system. If you believe that judges
8 essentially, you know, have gotten to this
9 spot because they're going to be able to make
10 these decisions in an individualized way but
11 ultimately takes into account consistency and
12 what's happening elsewhere, well then you
13 should give them the greatest amount of
14 discretion to make sure that the least
15 culpable don't go to jail for too long, and
16 the people who are really dangerous do get
17 locked up.
18 Anything that constrains that
19 decision making or shifts it to someone else
20 really reflects a lack of confidence in
21 ultimately the people who are supposed to be
22 making the decision.

1 MR. KRAMER: You know, I can give
2 you a very concrete example and you may be
3 aware of it. There's been a big scandal about
4 background checks with the contractors over
5 here and the people who are actually supposed
6 to be doing the interviewing. They've been
7 prosecuted in D.C. primarily because their
8 reports go to OPM in D.C. for the background
9 checks. And they are essentially all doing the
10 same thing. They're saying that they contacted
11 people or interviewed people and they did not.
12 And they didn't do it - and they've all
13 committed the same crime in really the same
14 manner because they would talk to each other
15 and they would see that they could get away
16 with saying I interviewed so and so for a long
17 time. So, they all committed essentially the
18 same offense.
19 None of them - maybe one or two,
20 but none of them had any prior criminal
21 convictions, so they're all in essentially the
22 same position. Now, they've been filed in

1 D.C., a number of them, and you - every
2 sentencing memo lists them and it gets longer
3 each time. They're all charged with the same
4 crime, which is making a false statement to a
5 government agency.
6 So, it all has the same guidelines
7 calculations, and they did some fine tuning,
8 but they all essentially end up at the same
9 guideline range. But if you read one of those
10 sentencing memos, a number of them got
11 straight probation. A number of them got
12 probation with home detention for 60, 90, or
13 180 days. Some of them - one judge gave
14 everybody at least 90 days, because he thought
15 it deserved prison time, and he gave some
16 people six months in that.
17 The one person who went to trial
18 got two years in that case, so there's been a
19 huge - and some people have gotten as much as
20 nine months, so in the same crime, really the
21 same backgrounds. Now, look, some - there was
22 one guy who was very sympathetic, had an

1 extremely ill wife, and he can cared for her
2 for years and he got probation.
3 But really the same circumstances,
4 the same crime, the same background, the same
5 offender and the sentences varied from no jail
6 time at all to 90 days, to six months, to
7 home detention depending which judge you got.
8 They all viewed it completely differently with
9 the same guidelines calculations. So, that's
10 an example that actually is ongoing now
11 because there's still some of those
12 prosecutions going on.
13 And you have to tell the clients,
14 and you're explaining to them, look, we got
15 judge so and so, you're probably going to get
16 some jail time, or we got judge so and so, you
17 have a good shot at probation. Of course,
18 these are people, as I said, who have never
19 been in trouble in their lives before, so
20 that's a prime example, I think, of how -
21 that it just doesn't work in practice.
22 LTC McGOVERN: Do you have any

1 recommendations - our time is almost up, but
2 for a system where we don't have mandatory
3 minimums or sentencing guidelines, do you have
4 any recommendations for the military, for
5 instance, like the fact that the State of
6 Virginia had a body to collect information.
7 MR. NACHMANOFF: Yes, I think
8 that's really important. I mean, I think,
9 again, I don't - you know, I don't know your
10 mandate. All I've read is what's in the
11 newspaper. I mean, I think one of the problems
12 that we face, that any criminal justice system
13 face is that you've got, you know, an enormous
14 number of people, an enormous range of
15 conduct, and an enormous geographic area to
16 cover, and so whatever you do I think you want
17 to have flexibility, that the answer to the
18 problem about whether people have been treated
19 too leniently or whether there's
20 inconsistency, that it's - I would be
21 hesitant to try and fix it by creating a
22 mechanistic formula.

1 On the other hand, something that
2 has the ability to collect information and
3 share that information, so that people aren't
4 making decisions without an awareness of, you
5 know, what's happening elsewhere, and maybe
6 there should be principles. In the federal
7 system, one of the things that we've had since
8 2005 in the Booker decision is the sentencing
9 statute, which is - I recommend taking a look
10 at it. It's an odd statute, 3553(a), Title 18
11 U.S.C., 3553(a), prior to the Booker decision
12 nobody paid attention to that statute at all.
13 It had been on the books for ages.
14 It has now become a central
15 factor. The judges directed by Congress must
16 consult and consider, and it's not
17 mechanistic, it's not about numbers, it's
18 about the principles of sentencing. It's about
19 the need for incapacitation, the need for
20 deterrence, the need for rehabilitation, the
21 need for - to be considering unwarranted
22 disparities. It really uses good language to

1 talk about what we want judges to do in every
2 case.
3 You know, I guess the only thing I
4 would say is, in A.J.'s example, there are a
5 lot of people who committed a similar crime
6 and they got treated differently. I'm not sure
7 that that should be, necessarily, viewed
8 though as a failure of the system, because
9 that's the way life is. And this is a system
10 of human beings making moral judgments.
11 There's always going to be differences, and
12 because there are differences doesn't mean
13 that somebody was treated particularly
14 unfairly or incorrectly. So, as you try an
15 address this, I guess, I think information
16 transparency is important without
17 constraining, ultimately, the decision makers.
18 COL. HENLEY: Our rules of
19 court-martial do adopt the same five
20 sentencing principles that jurors at the court
21 members sentence, the accused, are instructed
22 that these are the following principles you

1 should incorporate, so we have something that
2 has been adopted by -
3 MR. NACHMANOFF: I think they tend
4 to work pretty well.
5 MR. KRAMER: I will just say really
6 quickly, and I thank you so much for this
7 opportunity, and it's been a pleasure, and I
8 really appreciate it. Sexual assault crimes
9 are extremely difficult crimes for the
10 guidelines, in my experience, because they're
11 terrible crimes in many instances, but there
12 is such a wide range of offender and such a
13 wide range of conduct in the sexual assault
14 crimes that I've handled over the years, from
15 obviously, sexual predators, to people who
16 have no prior criminal history or any
17 involvement in the system. And the conduct,
18 obviously, varies greatly, so it's one that's
19 really extremely difficult to cover the range
20 of conduct in any comprehensive fashion.
21 Just like the child porn cases
22 have huge variations from people who have one

1 picture to people who have - who have one
2 picture and they possess it, to people who
3 have hundreds or thousands of pictures and
4 distribute them to others, to people who
5 actually do the production. There is such a
6 wide range of offender and conduct that it's
7 - sexual assault and those types of crimes
8 just are terribly hard to - and as Michael
9 said, you have such a huge population, and
10 dispersion of people, it's extremely
11 difficult. I'm sorry not to be of more help.
12 COL. HENLEY: On behalf of the
13 Committee, I'd like to thank you both for a
14 very informative discussion.
15 MR. NACHMANOFF: Thank you.
16 MR. KRAMER: Thank you.
17 (Whereupon, the proceedings went
18 off the record at 4:05 p.m., and went back on
19 the record at 4:07 p.m.)
20 COL HENLEY: Our next panel, Mr.
21 Wroblewski from the Department of Justice will
22 give a different perspective, I think,

1 suspect, from our previous panel. Welcome.
2 MR. WROBLEWSKI: Than A.J. and Mr.
3 Nachmanoff? I don't know, maybe. So I've
4 just prepared a few little notes, and I can
5 talk for a few minutes, and I'm happy to
6 answer any questions that you have. So first
7 of all, let me thank you for inviting me to
8 participate on behalf of the Justice
9 Department. It's a genuine honor to be asked
10 to be here, and it's a pleasure to be here.
11 Let me just tell you just a little
12 bit about myself. I have been a prosecutor
13 and a defense lawyer. I started my career in
14 Northern California as an assistant public
15 defender in Alameda County, and represented
16 everybody. It's hard to believe, but right
17 out of school, I represented, you know,
18 participated on a team representing people who
19 were eventually convicted of murder, drug
20 trafficking, I mean the whole panoply of
21 crimes.
22 I've also been a federal

1 prosecutor. So I've practiced in both federal
2 court and state court. For the last 15 years
3 or so, I've run a small policy office in the
4 Criminal Division, the Office of Policy and
5 Legislation, and we do a whole lot of things
6 there.
7 I really lead a team of lawyers
8 and also policy analysts that try to develop
9 and analyze and respond to proposals from all
10 kinds of people relating to what should be a
11 federal crime, and what should be the
12 procedures by which crimes are investigated
13 and prosecuted, and then ultimately what
14 should be the rules, if any, around sentencing
15 people who are convicted of crime.
16 I'm very fortunate to represent
17 the Attorney General on the United States
18 Sentencing Commission, and on something called
19 the Advisory Committee on the Criminal Rules,
20 the ABA Criminal Justice Section and a variety
21 of other -- a variety of other commissions and
22 boards and things like that.

1 I've been working on federal
2 sentencing issues for 25 years, ever since I
3 started as a prosecutor, 25 years ago last
4 year. Let me sort of summarize where I think
5 we've been for the last 25 years or so.
6 Every administration, Republican
7 and Democrat, since the enactment of this
8 thing called the Sentencing Reform Act in
9 1984, has supported sentencing guidelines in
10 the federal criminal justice system, and has
11 supported mandatory minimums for certain
12 serious crimes. Every administration,
13 including the one that we have right now.
14 By the way, I'm a career person in
15 the Department, if you haven't figured that
16 out. I'm not a political appointee, even
17 though I do represent the Attorney General on
18 things. If constructed properly, and I'm
19 going to say that many, many times, if
20 constructed properly, we believe that both
21 sentencing guidelines and mandatory minimums
22 serve and further very important public safety

1 goals, and also serve very important justice
2 principles, including equal justice for all.
3 The basic gist of why we support
4 that is because the principle of similar
5 offenders who commit similar crimes being
6 treated in a similar way is generally again,
7 if constructed properly, furthered by having
8 sentencing guidelines and mandatory minimums.
9 They also serve other important
10 purposes, including deterring people who are
11 thinking about committing crimes, building
12 trust and confidence, again if constructed
13 properly, building trust and confidence in the
14 criminal justice system, providing
15 proportionality, so that the more severe the
16 crime that's committed, the more severe the
17 punishment. They also, again if constructed
18 properly, can help control the prison
19 population and other very limited criminal
20 justice resources.
21 So but of course, that's the rub,
22 is how do you construct them properly? And we

1 have had experiences, and we believe they
2 haven't always been constructed properly in
3 the federal criminal justice system, and
4 that's one of the many reasons why the
5 administration now, and frankly most
6 administrations before, have supported reform
7 of the current sentencing guidelines and
8 mandatory minimum structure.
9 They can obviously be too severe;
10 the guidelines can be too complicated, they
11 can be too precise; there can be too big of
12 a discount for pleading guilty or in
13 cooperating; and if they're poorly constructed
14 and if you have these kinds of problems,
15 sentencing guidelines and mandatory minimums
16 can create distortions, and I suspect my
17 colleagues before discussed with you those
18 distortions.
19 But they're real, and I'm not here
20 to say they don't exist. But if guidelines
21 and mandatory minimums are constructed
22 properly, if there isn't too big of a

1 discount, if the severity levels make some
2 sense, if the guidelines are not too
3 complicated, if they properly balance judicial
4 discretion with discretion from other players
5 in the system, we think they can really
6 further both public safety and justice.
7 So we've seen lots of distortions.
8 We're working to eliminate those distortions
9 and reform mandatory minimums. The Attorney
10 General has taken some steps already on his
11 own, in terms of direction to federal
12 prosecutors over the course of the last year,
13 and we're supporting legislation to make some
14 changes in federal law right now, around
15 mandatory minimums.
16 But all in all, we continue to
17 believe that the idea of guidelines and
18 mandatory minimums are good ones, that they
19 have a place, and that they can further very
20 important criminal justice, public safety and
21 justice goals. With that, I'm happy to answer
22 any questions and talk a little bit more in

1 detail about any of it, and thank you again
2 for having me here.
3 MR. STRAND: Good afternoon. We
4 heard from two victims groups this afternoon,
5 that basically said that minimum sentencing
6 probably doesn't increase reporting of sexual
7 assaults. It may decrease reporting of sexual
8 assaults, because, you know, they don't want
9 that person to go away to jail for that period
10 of time, or they don't want to take
11 responsibility, or they feel guilty for even
12 part of their actions, and things of that
13 sort.
14 Do you know if there's been any
15 studies done in reporting rates on various
16 types of crimes and minimum reports or minimum
17 standards, sentencing standards or mandatory
18 sentencing standards?
19 MR. WROBLEWSKI: I think there
20 have been those studies. I can't cite to
21 them, you know, off the top of my head. But
22 to me, always when I try to talk about these

1 kinds of issues, it seems to me it's always
2 very important to disaggregate.
3 Sexual assault, domestic violence
4 comes in all shapes and sizes. I'll never
5 forget that one of the reasons I'm in the
6 criminal justice field is because when I was
7 in college in North Carolina, I took a class
8 and we went on a ride-along, and the very
9 first call that was -- that we -- from the
10 ride-along that we responded to was a woman
11 who was being beaten by her husband.
12 He had a shotgun there. Of
13 course, the police officer, I'm from New York
14 City, the police officer from North Carolina
15 reminded me that everybody has a shotgun, so
16 that doesn't really tell you anything.
17 (Laughter.)
18 MR. WROBLEWSKI: And we ended up
19 leaving the scene without arresting him, even
20 though we believed he had beat her, and he
21 explained. Of course, I was puzzled, why did
22 he do that, and he explained why and he

1 explained. So it's tremendously complicated.
2 There are, you know, more minor assaults.
3 There are more serious assaults. There's
4 hospitalization, there's strangulation.
5 There's all kinds of things.
6 So I think, you know, trying to
7 lump it all together, as there should be a
8 mandatory minimum for all these crimes, I
9 don't think that's the right answer, and I
10 think that there have been studies on this.
11 There's been a lot of studies. It's not just
12 on mandatory sentencing, but mandatory
13 arrests, for example.
14 MR. STRAND: Right, on domestic
15 violence.
16 MR. WROBLEWSKI: Exactly. So you
17 know, mandatory arrests in domestic violence
18 cases, or whether, you know, you should --
19 yes, you should arrest, if the victim is
20 willing to go out and swear a warrant out. So
21 there's a lot of things, and I'm not
22 suggesting that because the administration,

1 and as I said, every administration that I
2 know of since 1984 supported mandatory
3 minimums, doesn't mean mandatory minimums for
4 every crime.
5 Mandatory minimums for very, very
6 serious crimes, and that would typically not
7 include even something called aggravated, what
8 most people would call aggravated assault,
9 assault with a weapon, assault with some
10 bodily injury. I think those actually are
11 pretty rare. They don't exist in the federal
12 system by and large.
13 MR. STRAND: Thank you.
14 COL HAM: One of the complaints
15 against sentencing guidelines is the -- is the
16 notion that it shifted discretion from judges
17 to prosecutors, and that that's not a good
18 thing. Now really there's still a wide
19 disparity. It's just at a different point,
20 and for different reasons. Can you respond to
21 that?
22 MR. WROBLEWSKI: Yeah. So if you

1 make the guidelines as the federal guidelines
2 are, I think these complaints -- again, if you
3 disaggregate them, we have 50 states. We have
4 a couple of dozen that have sentencing
5 guidelines. We obviously have the federal
6 system that has sentencing guidelines.
7 There are some sentencing
8 guideline systems that I think work very well,
9 that don't generate that this kind of
10 complaint about shifting power to prosecutors,
11 inappropriate power, because of course
12 prosecutors, by the very nature of their job,
13 have discretion that will have an impact on
14 the results, on whether somebody gets
15 prosecuted or doesn't get prosecuted, whether
16 they get prosecuted --
17 OPERATOR: Joining the meeting,
18 Barbara Jones.
19 MR. WROBLEWSKI: Whether they get
20 prosecuted for --
21 COL HENLEY: Excuse me. I'm
22 sorry. Good afternoon, Judge Jones. We're

1 hearing from Mr. Wroblewski from the
2 Department of Justice on effective sentencing
3 guidelines and mandatory minimums.
4 JUDGE JONES: Great. Sorry to
5 interrupt.
6 MR. WROBLEWSKI: So there's --
7 there are different kinds of sentencing
8 guidelines. There are different amounts of
9 discretion that some people would say are
10 appropriate for prosecutors and some that are
11 not. The federal sentencing guidelines, the
12 way they were developed, and the type of
13 granularity, the type of specificity of their
14 aggravating factors, is such that it's more --
15 it generates more of that criticism.
16 So there are many, many
17 aggravating factors, all of which have to be
18 proven by the prosecutor by a preponderance,
19 to trigger the penalty. So the way that the
20 federal system has been constructed, it often
21 does provide the prosecutor with the ability
22 to basically charge and have significant

1 influence over the sentence.
2 But I think again, there are ways
3 to construct it, and most state guideline
4 systems are constructed in a much simpler way,
5 where the guidelines are not manipulated by
6 the parties, and where they can have the
7 positive effects without having some of the
8 negative effects that you're talking about.
9 COL HENLEY: Does the federal code
10 have any mandatory minimums for sexual assault
11 cases?
12 MR. WROBLEWSKI: Yes. But they're
13 sporadic, they're sporadic. They mostly
14 involve children, child sex crimes.
15 COL HENLEY: Say adult, adult
16 offenses.
17 MR. WROBLEWSKI: By and large, no.
18 In fact if you -- but the Senate Judiciary
19 Committee, just two weeks ago, passed an
20 amendment to something called the Smarter
21 Sentencing Act, which is intended to reduce
22 mandatory minimums for drug offenses. They

1 actually passed a five-year mandatory minimum
2 for criminal sexual abuse. But if you look at
3 the criminal sexual abuse statute, which is
4 the primary statute in Title 18, dealing with
5 sexual assaults, no, it doesn't have a
6 mandatory minimum at the moment.
7 Child sex crimes have mandatory
8 minimums. Child pornography, certain child
9 pornography offenses have mandatory minimums.
10 But the part of Title 18 dealing with sexual
11 assault, by and large, does not.
12 LTC McGOVERN: This subcommittee
13 and the panel was charged to look at the
14 collateral effects of mandatory minimum
15 sentencing guidelines. What impact do you
16 think they have on guilty pleas, prosecution
17 rates and conviction rates?
18 MR. WROBLEWSKI: Okay. So all I
19 can --
20 LTC McGOVERN: Those were several
21 questions.
22 MR. WROBLEWSKI: Right. So I can

1 just tell you the numbers of where we've been
2 and where we are now. Before sentencing
3 guidelines, and admittedly, we're not
4 comparing apples to apples, necessarily. But
5 back in 1985, '6, '7, before the sentencing
6 guidelines went into effect, roughly fifteen
7 percent of all federal cases ended up in a
8 trial.
9 Now, that's two percent, somewhere
10 two, two and a half, three percent. It's
11 very, very small. Now the dockets have
12 changed. All of the sudden we're prosecuting
13 lots and lots of immigration offenders.
14 Almost all of them plead guilty.
15 So it's not exactly a fair
16 comparison. But over the course, if you look
17 at over the course of 20-some years that we've
18 had federal sentencing guidelines, the plea
19 rate has increased pretty dramatically, and I
20 think most people would recognize that it has.
21 Now some people say, the reason for that is
22 because there is much more certainty and

1 visibility by the prosecutor, by the
2 defendant, by the judge as to what the
3 sentence is going to be, and the discount is
4 very clear.
5 So some people would say it's not
6 a bad thing that that's happening; it may be
7 a good thing, as opposed to no one quite knows
8 what's going to happen if you're found guilty
9 or if you plead guilty. You don't know what
10 the discount's going to be, you don't know.
11 On the other hand, the discounts
12 are sometimes very, very large, and many
13 people will criticize that system of guilty
14 pleas, suggesting, and I'm not sure how much
15 this is actually the fact, but suggesting that
16 it's a deal no one can refuse. Even if you're
17 innocent, you can't refuse it. So there's
18 that kind of criticism that's out there. I'm
19 not sure how much validity there is to that,
20 but the discounts can be very, very large,
21 especially not just if you plead guilty, but
22 if you have some information that could assist

1 in the prosecution and investigation of other
2 person.
3 COL HAM: Do you think the
4 sentencing guidelines or, actually, mandatory
5 minimums was the question that the Secretary
6 of Defense asked the panel to look at, does it
7 have any impact on prosecution rates and
8 conviction rates?
9 I think the question comes from is
10 the fact that you have a mandatory minimum
11 been affecting your charging decisions so much
12 that you're prosecuting more cases. Or you're
13 prosecuting less sexual assault cases? Do you
14 see any correlation or any impact that
15 mandatory minimums would have?
16 MR. WROBLEWSKI: Well, I think if
17 you have a system, and I'm not saying this is
18 a good thing or a bad thing. There's some
19 music in the background, so that's what I
20 think she's hearing. I don't know where the
21 music is coming from.
22 FEMALE PARTICIPANT: We can hear

1 it too, through the phone, yeah.
2 JUDGE JONES: You've heard me and
3 we're all hearing music?
4 VOICES: Yes.
5 MR. WROBLEWSKI: Yes.
6 JUDGE JONES: I'm not sure what
7 was going on.
8 (Simultaneous speaking.)
9 MR. WROBLEWSKI: I mean there's no
10 question that there are more pleas in the
11 federal system, and I think it's fair to say
12 that more guilty pleas allows the finite
13 resources to go further, in terms of
14 prosecuting more cases.
15 You know, whether that's a good
16 policy decision or not, I'm not -- it's not
17 clear. But I think the mandatory minimums,
18 sentencing guidelines have led to more -- I
19 think the logic is that they have led, and the
20 numbers show that they have led, to more
21 guilty pleas, and therefore more prosecutions
22 with whatever finite amount of resources.

1 As I say, whether that's a good
2 thing or a bad thing, I think, is debatable.
3 You know, whether the fact that we have very,
4 very few cases that go to trial, whether
5 that's a good thing or a bad thing, you know,
6 like I said, is subject to debate.
7 COL HAM: Is there a particular
8 type of case that is more likely to go to
9 trial in the federal system than others?
10 MR. WROBLEWSKI: Yes, there are.
11 I don't have all the statistics, but you know
12 the folks from the Sentencing Commission, or
13 we through them, can find that. The Sentencing
14 Commission is, the U.S. Sentencing Commission
15 is a tremendous resource, in terms of their
16 own data.
17 They break down for all different
18 types of crime types, you know, what is the
19 plea rate -- so yes, and I don't want to go
20 off the top of my head. I don't know it off
21 the top of my head. But yes, there are
22 different plea rates. Sometimes, it is cases

1 where there is a mandatory minimum, and
2 there's no ability -- no one's going to drop
3 that mandatory minimum, because it's -- and
4 therefore there's no discount for pleading
5 guilty. So the defendant has no incentive for
6 pleading guilty.
7 On the other hand, the Commission
8 has done research, and they're about to change
9 the sentencing guidelines for drug offenses,
10 and there was some concern raised that if they
11 lower the guideline penalties just a little
12 bit, they're eliminating the discount.
13 Their study has shown that when
14 they've done that in the past, it hasn't
15 changed the plea rate. So the short answer
16 is: I would check the Sentencing Commission's
17 data, and I'm happy to help walk you all
18 through that at the appropriate time. I
19 don't have the numbers off the top of my head.
20 COL HAM: One thing we've heard
21 from some folks in the military is that sex
22 offender registration, registrable offenses

1 are more likely to go to trial, because that's
2 the penalty that a VA defendant doesn't want,
3 doesn't want. They won't plead to that. I
4 don't know if it holds true for the federal
5 system.
6 MR. WROBLEWSKI: I'm not sure
7 that's borne out by the federal numbers. But
8 I would recommend checking that. I'm happy to
9 check it myself, but for example, the federal
10 docket is an odd system. It's very unusual.
11 It's 30-some percent immigration cases, 25
12 percent drug cases, you know, five to seven
13 percent child pornography cases, 15 to 20
14 percent fraud cases.
15 It's very unusual compared to most
16 state systems. But the sex offenses and the
17 child pornography offenses, to my knowledge,
18 do not have a significantly higher. They may
19 have a slightly higher trial rate than the
20 others, but I don't think it's significant.
21 COL HENLEY: What are some of the
22 major reforms that the administration

1 currently or the Department of Justice
2 currently endorses in the sentencing
3 guidelines, the minimum sentencing?
4 MR. WROBLEWSKI: So we have -- we
5 write a report to the Sentencing Commission
6 every year. We're required to. I write that,
7 and it's a public document. You're welcome to
8 look at the last few that we've written. But
9 we have asked the Commission, number one, to
10 take a serious review of the structure of the
11 sentencing guidelines.
12 We think for a variety of reasons,
13 including some of the distortion reasons that
14 I mentioned, but for other reasons as well,
15 which I'll mention in a second, we think they
16 should look at the entire structure and
17 seriously consider simplifying the structure
18 of the federal sentencing guidelines, and have
19 the federal sentencing guidelines look much
20 more like a state guideline system, where
21 there are many, many fewer aggravating and
22 mitigating factors that are outside the scope

1 of the charge. And there's a little bit more
2 discretion, frankly, for the trial judge.
3 One of the reason we're asking
4 them to do that is because about seven or
5 eight years ago, the Supreme Court changed the
6 entire legal framework surrounding the federal
7 sentencing guidelines. It can often be
8 described as, just, they changed it from
9 mandatory to advisory.
10 But if you look at it a little bit
11 deeper, it actually ends up changing the whole
12 legal framework, and we think the guidelines
13 need to be updated. So we've told -- we've
14 asked the Commission to do that. They have
15 begun that. That's a many year process, but
16 they're going to be discussing it amongst
17 themselves. The second big thing that we've
18 asked them to do is to do --
19 (Telephonic interruption.)
20 MR. WROBLEWSKI: We've asked them
21 to do a review of drug sentencing, have -- the
22 drug sentencing policy drives our prison

1 population. Half of the Federal Bureau of
2 Prisons, half of our prisoners are there for
3 drug offenses. The sentences are very severe.
4 They're more severe than most of the other
5 offenses that we prosecute. They're more
6 severe than almost every state offense, state
7 drug trafficking crime.
8 So we've asked them, both the
9 Commission to make changes, and we're working
10 with Congress. This is this thing called the
11 Smarter Sentencing Act, which the Attorney
12 General has endorsed publicly. There's a
13 video on our website if you want to listen to
14 him endorse it, and there's some progress
15 being done there.
16 So those are the two big things
17 that we've asked them to do. We've also asked
18 them to focus on, more on the rehabilitative
19 side, what is being done. There's a lot of
20 experimentation being done out around the
21 country, in federal courts around the country,
22 and we really want that to be studied, because

1 our experiences, as these kinds of experiments
2 go on, both on reentry and sentencing, we find
3 that some institutions do them well and some
4 institutions do them poorly.
5 That's been happening around the
6 country with sentencing reform over the last
7 five to eight years. It's been going on in a
8 lot of states. Some states have done them
9 well, some states poorly. So those are the
10 things we've asked them to look at.
11 MR. STRAND: Is there a state you
12 consider as a model for guidelines? I'm
13 sorry.
14 (Simultaneous speaking.)
15 COL HENLEY: If you want to answer
16 that, that's fine. We've reached the end of
17 our time, and we need to get to the next
18 panel. I want to thank you very much, Mr.
19 Wroblewski, for testifying here this
20 afternoon.
21 MR. WROBLEWSKI: My pleasure. If
22 you have other questions, you know, feel free

1 to send them to me at my email address, and
2 I'm happy to try to help in any way.
3 COL HENLEY: Thank you, sir.
4 MR. WROBLEWSKI: My pleasure.
5 Take care.
6 (Whereupon, the proceedings went
7 off the record at 4:31 p.m. and resumed at
8 4:37 p.m.)
9 COL HENLEY: We saved the best
10 panel for last. It's perspectives from each
11 of the services, except the Coast Guard, on
12 the impact that mandatory minimums and
13 sentencing guidelines might have on sexual
14 assault cases.
15 I don't know if you've planned on
16 it. Do each of you have opening remarks, and
17 then open it up for questions? You have no
18 views? Colonel Baker?
19 COL BAKER: Actually, I can help.
20 I'll offer you my views. We don't have a lot
21 of experience with mandatory minimum cases,
22 but I have some experience with this, both as

1 a prosecutor and as a defense counsel, with
2 murder cases, where we do have mandatory
3 minimums. I guess as background, I've served
4 as Chief Defense Counsel of the Marine Corps;
5 I've served as a staff judge advocate; I've
6 been a military judge; and I've prosecuted a
7 number of cases.
8 And the mandatory -- and about six
9 or eight months ago, I testified in front of
10 the Defense Legal Policy Board, advocating
11 against mandatory minimums in murder cases.
12 Because I feel like they change the complexion
13 of the case.
14 They drive the charging decisions;
15 when you have a murder case, it's a big deal
16 whether you go for the pre-med, have the added
17 element of premeditation. As a prosecutor,
18 that makes a big difference, because that
19 drives your negotiating power.
20 It also eliminates a lot of
21 discretion for all the parties in the process.
22 I also think that there's a danger with

1 mandatory minimums, of changing the role of
2 the members, because we don't do many murder
3 cases. But in our murder cases, frequently we
4 have factually inconsistent or legally
5 inconsistent results. As an example, I did a
6 case in California where the accused was
7 convicted of conspiracy to commit murder,
8 conspiracy to commit a number of offenses,
9 some of which contained a premeditation
10 element.
11 But he was found guilty only of
12 unpremeditated murder, because the members
13 knew, as they're instructed before -- during
14 the voir dire, that the mandatory minimum was
15 life. So I think that -- I think that
16 mandatory minimums take away a lot of the
17 discretion that I think is healthy in our
18 system.
19 COL HAM: Do you know what the
20 DLPB's recommendation was with regard to
21 mandatory minimums?
22 COL BAKER: To take them or to

1 take the mandatory minimum away from -- or to
2 take the mandatory minimum out of the murder
3 calculus, and I agreed with that
4 recommendation.
5 COL HENLEY: Colonel Burton.
6 LT COL BURTON: We have a couple
7 of concerns. As Colonel Baker was saying, it
8 would affect, in our estimation, commanders'
9 initial disposition of certain cases, or at
10 least potentially affected commanders'
11 disposition.
12 In other words, if mandatory
13 minimums were put into place, a commander may
14 think this offense, though it be criminal, may
15 not be five years' worth criminal, or ten
16 years' worth criminal, and therefore we're
17 going to find a creative alternate
18 disposition, be it through Article 15, or a
19 discharge or something other than court
20 martial, which would lead to a conviction, a
21 mandatory minimum and a sex offense registry,
22 for example, and may be driven to deal with it

1 in that manner.
2 Speaking also about sentencing
3 guidelines, one of the main concerns there is
4 that with the guidelines, as in the federal
5 system, right now yes, we have a bifurcated
6 system. But you go right from the findings to
7 the sentencing in the same day or the next
8 day. The concern is that that would no longer
9 be applicable, in order to have the guidelines
10 complied with, someone to come up with the
11 sentencing package if you will, and the
12 concern being twofold there.
13 First of all, the fact that the
14 judge, at least in the Air Force, most of them
15 are traveling judges. They have regions that
16 they travel to the different bases in. If the
17 Court were delayed for a period, that would
18 necessitate an additional trip. Which isn't
19 a huge deal, but the secondary concern is that
20 the jury members, who right now in many of the
21 cases do the sentencing, may not be available,
22 if the court is delayed for that sentencing

1 package to be accomplished.
2 In other words, there are
3 deployment and other aspects that come into
4 play. It's difficult enough to have them
5 available for those three to five days in the
6 court to begin with. Which may lead them to
7 the necessity to take a panel out of the
8 system, at least for sentencing, and leave to
9 judges alone to do that. So I guess, what I'm
10 saying is, there are secondary and tertiary
11 effects from both sentencing guidelines and
12 mandatory minimums.
13 COL HENLEY: Colonel Kirby, or
14 Commander Kirby?
15 LCDR KIRKBY: Thank you. We have
16 similar concerns. I mean this is something
17 that the JSC has looked at a couple of times
18 in the past, and yet we're still with the
19 system that we've had for -- since the MCM has
20 been around.
21 Those concerns are, you know, the
22 mandatory minimum, what's the effect? As we

1 said earlier, what's the effect on the
2 members? A lot of our cases are close cases.
3 They're not cases -- they're not the federal
4 cases. You can't compare the military court-
5 martial of a service member to a federal
6 process.
7 I know a lot of people see that
8 and says well, you're in a federal system.
9 The rules are similar, the numbers are similar
10 in the books, and therefore we should have the
11 same system. But we don't. In a number of
12 ways we don't. We don't -- look at the
13 general purpose of what we do. Good order and
14 discipline. That's not the same as the
15 federal system. The underlying thing here is
16 we need something that serves good order and
17 discipline.
18 That's something that is
19 expedient. That's something that happens
20 quickly. That's not something that the
21 probation department goes out, and by the way,
22 we don't have a probation department. We

1 can't put the VCNR or something like that, and
2 give them another job and say hey, why don't
3 you come up with a sentencing package? Why
4 don't you go out and interview the spouse?
5 Why don't you go and interview the parents?
6 You see a federal sentencing
7 package, it's a colossal work that goes into
8 this whole thing. Another thing we don't have
9 with sentencing guidelines is you don't get
10 many repeat offenders. I know there's a big
11 push saying we get a lot of people who are
12 repeat offenders, repeat offenders, repeat
13 offenders.
14 I'm sorry. From my perspective,
15 I've never seen that. I've seen -- in 12
16 years of doing this, I've seen one repeat
17 offender, and he was found not guilty in the
18 first case. So we wouldn't be moving anywhere
19 down the spectrum of, you know, his
20 sentencing, his criminality. We would be
21 straight up, line one, because we don't keep
22 people around. We fire them. I mean it just

1 happens. Sexual offenses, serious offenses,
2 we don't keep people around, especially today.
3 So we do have some concerns. We
4 think there's a -- it's a dynamic shift to
5 look in that area. But it's also something,
6 as I said earlier, if we're going to change
7 one thing, we need to look at everything else
8 that that touches on. This is a cog in a
9 wheel. This is a cog in a machine. If we
10 take out that cog, what else stops working?
11 What else changes? Is it the members? Do we
12 go away from member sentencing?
13 Well, that has its own problems.
14 At some stage, we have to let things work. We
15 have to see what happens when we tweak things,
16 because we can't just, you know, pull a gasket
17 off and say "well now make the machine work."
18 It just doesn't work that way.
19 The Courts of Appeals are going to
20 come back and say no, the CAAF is going to
21 come back and say no. The Supreme Court is
22 going to come back and say you know, where did

1 you go with your due process analysis?
2 So we do have some concerns about
3 those dynamic shifts, and I think, if we're
4 going to go that way, it's something that
5 needs to be studied. We need to do the
6 analysis, and we need to go back and have
7 considered thought of the entire process.
8 Not well, you know, let's change
9 something for this, you know, let's tweak the
10 gas. Let's put water in there and see if it
11 works. It doesn't work that way. So we do
12 have concerns about these things.
13 COL HENLEY: Colonel Mulligan.
14 COL MULLIGAN: In my experience,
15 the Army has a very robust sentencing process.
16 There are things that should be studied. But
17 in my experience, and in preparing to come
18 before the Board, I don't think the Army has
19 the disparate sentences that led to federal
20 mandatory minimums.
21 We have individualized fact-based
22 sentences, and they should be individualized.

1 They should not be cookie-cutter
2 one-size-fits-all. One thing that we never
3 must lose sight of is: the people that appear
4 in front of the bar, as the accused, came from
5 society. That is someone's son or daughter,
6 and they will be returned to society.
7 Unfortunately, for them they find themselves
8 passing through a venue they never intended to
9 be.
10 I would go out on a limb and say
11 90 percent of those people are criminally
12 stupid, and then there are ten percent who are
13 actually violent offenders, that any criminal
14 justice system would find themselves in the
15 same place.
16 Very few repeat offenders, a
17 robust sentencing process. You reduce that
18 robust sentencing process to a sham if you
19 start imposing mandatory minimums. We've
20 already chipped away at the commanders'
21 ability, with changing Article 60, to allow
22 for clemency in that process, and we're now

1 going to leave it to the appellate process.
2 I really don't see mandatory
3 minimums fixing something that I'm familiar
4 with. If a -- well, I think the Army and the
5 other services would welcome a study. There
6 are tweaks to our sentencing process. The
7 idea that's foreign to many, that you can have
8 a pretrial agreement, and then, colloquially,
9 beat the deal.
10 The convening authority could
11 agree to a time. You go in front of the judge
12 or you go in front of a panel and you get a
13 lesser sentence and you get the benefit of the
14 doubt. I think that's foreign to many people,
15 and I don't understand why a prosecutor would
16 ever think that's right.
17 So those are things we can learn.
18 Should we remove completely that ability?
19 When you agree to a pretrial agreement, should
20 that be the number? Should the military judge
21 be informed that that's the number? Is there
22 a reason to continue with the "beat the deal"?

1 I also think the timing, having
2 practiced two years civilly in Tulsa,
3 Oklahoma, and then come on active duty. You
4 know, in Tulsa, you are found guilty, the jury
5 makes a recommendation, and you do a
6 pre-sentence investigation.
7 I just in preparing to come here,
8 I thought I would look at a noted case in
9 Virginia. I thought this was something Mr.
10 Bryant and I could agree on. But the Hughley
11 murder. Hughley was sentenced to 26 years
12 more than six months ago, for the murder of
13 Ms. Love, he is only now going to sentencing.
14 That timeline for us, the
15 efficiency of the military justice process,
16 cannot stand that time. What do we do with a
17 soldier for five months? Do we return him to
18 confinement? Do we return him to the unit?
19 In lesser cases, where he doesn't get a
20 significant amount of time, he may be
21 released. He may be out before the
22 pre-sentence investigation comes back.

1 Now resources, I'm sure, are not
2 something that people want to hear about. But
3 we are not built, we are not resourced to
4 engage in a parole system, to do the
5 pre-sentence investigation. We're not built
6 for that. Could we be forced to do it? We
7 certainly could be forced to do a lot of
8 things. But I don't think that's where we
9 want to go.
10 Everything I've read, and again
11 I'm a -- most of my colleagues don't believe
12 I ever was a defense counsel, although I'll go
13 on the record now that I actually was for one
14 year, a defense counsel, so I have had clients
15 that I had to stand next to when sentence was
16 imposed.
17 Mandatory minimums, I don't see
18 that as necessary in the military. Sentencing
19 guidelines, I'd be willing to study it. But
20 listen, the work I see on sentencing
21 guidelines is judges don't like them.
22 Now, I know that this panel has

1 heard, over the course of the day, much more
2 articulate experts in the area of sentencing
3 guidelines. But I'm not sure sentencing
4 guidelines are necessary either.
5 Clemency, really, I think is where
6 this panel could do great work, given the fact
7 that they're removing Article 60 and limiting
8 in what the commander can do. Where are the
9 clemency opportunities now for an accused?
10 We're chipping away.
11 You know, the manual for court-
12 martial was rewritten in '84 because it was
13 considered draconian and over-reaching. So we
14 swung the other way, and as a prosecutor, that
15 was okay. That was okay. But now we're
16 swinging the other way. Now we're swinging
17 back to, instead of a bifurcated system, we're
18 going to have a mandatory minimum and the
19 sentencing is going to end at findings.
20 And I do believe all soldiers,
21 like all people, were not created equal, that
22 those who have done honorable service for an

1 extended period of time should be rewarded.
2 That's the difference between a private going
3 to court-martial and a staff sergeant. The
4 private just hasn't had the benefit of
5 extended time in the profession of arms, to
6 generate some sort of clemency, where the
7 staff sergeant hopefully has.
8 So I hope I've communicated --
9 these are my personal views. The Army has not
10 done a study on sentencing. We haven't done
11 a study even in disparate sentencing among
12 judge findings and sentencing versus panels.
13 Do we have a disparity between similar
14 offenses with a judge and a panel? I think
15 there's different flavors of what would need
16 to be studied before we could ever get to
17 mandatory minimums.
18 I know at least I've appeared
19 before Judge Henley on several cases. I've
20 worked for General Dunn and know that she's
21 taken clemency in cases. And as a staff judge
22 advocate, I recommended clemency because I

1 believe if you don't recommend clemency, you
2 are not exercising the process. Clemency is
3 in the manual for a reason, and you should
4 exercise the process.
5 Now I will tell you, just one
6 quick anecdote and then I'll be quiet. But as
7 a staff judge advocate during the war, in '05
8 to '07, I had my general give clemency. I had
9 non-violent offenders who stole computers as
10 they were leaving Iraq from a Connex. The
11 total crime spree lasted 45 minutes before
12 they were discovered. I had a staff sergeant,
13 a sergeant and a specialist. Served 15 months
14 in combat, and in 45 minutes undid their
15 careers. They were all court-martialed, they
16 all pled guilty, they all went to jail, and
17 because of the post-trial delay, they all went
18 back to their units.
19 So they walked around in their
20 units as E-1s, with their families in Germany.
21 If you remember in '06-'07, we were paying
22 bonuses for people to come in the Army.

1 Luckily for those soldiers, they were bonus
2 babies. We were paying $40,000-60,000 to get
3 someone in off the street to do those jobs.
4 My commander was a wise man who
5 noticed they were bonus babies, and in their
6 clemency, having been coached by very good
7 defense counsel, they wrote the following
8 line: I will do anything to rehab my career,
9 to include going back to theater. And all
10 three of them went back to theater, and he
11 then set aside their court-martial
12 convictions.
13 That message to the soldiers they
14 served with sent a stronger message than
15 anything they'll ever read in the paper,
16 because what they saw was a crime committed,
17 people held accountable, punishment, clemency,
18 rehabilitation and return to service.
19 If we could do that in every
20 criminal case, we would be successful. But we
21 can't. But I think that should be the goal,
22 and I think imposing mandatory minimums and

1 removing opportunities for clemency from
2 commanders will undermine our system. Thank
3 you for your time.
4 COL HENLEY: We've heard from
5 several speakers that victims might be
6 hesitant to come forward with complaints of
7 sexual assault because of the concern that --
8 whether it's mandatory minimums or the
9 sentence that's eventually imposed would have
10 on that accused.
11 In your experience as prosecutors,
12 is that borne out, that when you interview
13 victims and they're informed possible outcomes
14 in a court-martial, that they're less hesitant
15 to go forward, and if so, do you have
16 recommendations as to --
17 I mean, I assume mandatory
18 minimums would not help in that regard. But
19 I'm personally not aware of any anecdotal
20 evidence. I'm curious. In your experience,
21 does that happen as was addressed by some of
22 our prior speakers?

1 COL BAKER: I'm not sure this
2 directly answers your question. I'll try. I
3 think that one thing that I know, both
4 statistically and more anecdotally, is since
5 we've had the advent of the sexual assault
6 registration requirement, that our sexual
7 assault cases have been increasingly
8 contested.
9 So we've had more and more cases
10 contest, and when you put more contested cases
11 into the process, there's going to be more
12 acquittals. It's statistical. So one thing,
13 if you tell an accused that you're going to go
14 to jail for a certain period of time, no
15 matter what; when you get out of jail, you're
16 going to have to register; your commander
17 can't give you any clemency. Then, the
18 incentive for them is to say, let's go to
19 court.
20 So if you want to deny a victim
21 justice, let's contest more cases. If we --
22 but when talking with victims, I think that

1 they care -- they certainly care about the
2 accused being held accountable.
3 I think the number of -- going
4 through the process of holding them
5 accountable, in my experience, has been much
6 more important than telling them, you know, if
7 we go through this, at the end of the day
8 you're going to get two years. They seem to
9 be less concerned about a number and more
10 concerned about having justice served.
11 BG DUNN: What we heard from a
12 couple of these witnesses is that -- that, you
13 know, there are many reasons that victims are
14 reluctant to come forward, from the shame and
15 the embarrassment to the fact that, you know,
16 this is their best friend's husband that did
17 this to them, and while they want him held
18 accountable, they don't necessarily want him
19 in jail for five years, because that has an
20 impact on their best friend and her children.
21 So these particular witnesses who
22 work with sexual assault victims seem to think

1 that mandatory minimums could be detrimental,
2 in some cases.
3 LTC McGOVERN: My impression also,
4 ma'am, was that they did want to see them held
5 accountable like you said, sir, but they
6 thought if it's a mandatory minimum, then it's
7 going to be the victim's fault that he got
8 five years.
9 If it's a panel or a judge
10 deciding within their discretion, it takes the
11 guilt, the burden, the responsibility off the
12 victim. She came forward, did what she had to
13 do, but she's not directly responsible for the
14 exact sentence.
15 BG DUNN: I think it's the example
16 of sending grandpa to jail or sending daddy to
17 jail for, you know -- I mean, that's different
18 than what we're talking about here with adult
19 sexual assault, but --
20 LCDR KIRKBY: I've had victims who
21 have said, when we're talking to them in an
22 interview, and saying, you know, what do you

1 want out of this process, and they're saying
2 well, you know, I want to see him held
3 accountable.
4 Non-lawyers, they say I want to
5 see him -- well, what does that mean? Shall
6 we start fleshing this out? What do you want?
7 Do you want five years in jail? When I go in
8 front of the members, do you want me to ask
9 for 20 years or five years?
10 They say, what do you mean jail,
11 you know, and it's -- we've had that reaction
12 from some of the victims, and it's, I just
13 want him held accountable. I want him to
14 acknowledge that he did this. But you know,
15 he doesn't need to go to jail, no. Okay. But
16 where do we stand then? This is the criminal
17 process. A lot of people are like oh, you
18 know, I hadn't thought of that. That wasn't
19 my anticipation.
20 We get into it with them. They
21 want the acknowledgment of being a victim,
22 rightly so, but this is such a personal thing

1 to them. They just want -- they want it to
2 happen. They want the -- if he comes in,
3 pleads guilty, she never has to testify,
4 great. It's over and done with. He's
5 accepted responsibility and we're going to
6 move on, and jail is a secondary thing.
7 Some of them say, you know, some
8 of the more senior victims say well, I'd like
9 to see his career over, because he'll do this
10 to somebody else, and that's okay, great. We
11 know where we're starting from here. I know
12 where to offer. I know where to start
13 talking. But some of them, it's surprising
14 that jail and confinement is not what they're
15 seeking.
16 COL HAM: One of the other
17 complaints of the victim advocate organization
18 was that having a mandatory minimum treats
19 every victim the same.
20 Do you agree with that, that
21 there's a variation in -- maybe it's a
22 variation of what you're saying, of what a

1 victim wants out of it.
2 MALE PARTICIPANT: In cases where
3 five years minimum --
4 LCDR KIRKBY: No, I had never made
5 that calculation. I don't think I've ever had
6 anybody express that to me. Now that being,
7 I've never had to sit down and say, a
8 mandatory minimum for this offense is as
9 follows.
10 But I will sit down and say, you
11 know, because defense is going to ask you.
12 Because if we get to sentencing, defense wants
13 to know what your reaction is. You need to
14 know what the maximum sentence is, and some
15 people are like whoa, you're blaming me for
16 the maximum sentence.
17 It's like no, but if I don't do my
18 job, then defense is going to do my job for
19 me, and that's much worse. So I just think
20 mandatory minimums are something that I think
21 is going to scare some people away from this
22 process.

1 MR. STRAND: Colonel Baker, you
2 brought up a really interesting point that I'm
3 really struggling with. Since the addition of
4 the, you know, mandatory registration and
5 everything else, the plea bargains have gone
6 down and the contested trials have gone up.
7 Where we heard from some of the
8 folks from the other side, from the federal
9 side, said well, before mandatory minimum
10 sentences and sentencing guidelines, we were
11 taking about 15 percent of these cases to
12 court. Now we're taking about two percent to
13 court. So they see that as a success for that
14 system.
15 However, I think there's some
16 significant differences in military that they
17 don't have. One is we're 100 percent
18 employed. What are they going to do in the
19 meantime, you know? They're working for an
20 organization that's looking at their long-term
21 thing. They're fighting for their lives,
22 their career and everything else.

1 But I also think there's some
2 cultural things within the military that may
3 make them contest more. So if you could
4 address that.
5 COL BAKER: I spent the last five
6 years, until six months ago, supervising
7 defense counsel and defending cases. And in
8 those five years, there has definitely -- the
9 culture of the Marine -- the culture of Marine
10 military justice has moved from -- it's even
11 before then, when I think about when I was a
12 young captain to where I am now -- we've moved
13 from a plea culture, where we all -- all cases
14 were pled and you needed a reason to contest.
15 Now it's become a contested culture, where you
16 need a reason to take a deal.
17 A big part of that is sitting down
18 with somebody and explaining to them that
19 these are kind of, and this is what's going to
20 happen in court. You might win, you might
21 not. But when we lose, every day,
22 particularly you go to the state of Texas,

1 you're always -- every time you go look for a
2 house, your picture's going to be on the
3 Internet.
4 Then you have a couple of those
5 clients where you can call up, in your
6 interview with one of your clients, trying to
7 talk to them about what are we going to do,
8 you know, you get on the Google and you pull
9 up one of your former clients' information.
10 I mean it is a powerful incentive
11 to fight for -- to fight. They'd much -- I
12 have a number of clients that would rather
13 take a deal with more jail time than to have
14 to register.
15 LTC McGOVERN: Isn't that an
16 argument for a mandatory minimum sentence?
17 COL BAKER: You know, I don't know
18 what it is.
19 LTC McGOVERN: If there's
20 mandatory minimums, then people will plead to
21 avoid the minimum.
22 COL BAKER: But if the minimum's

1 tied with -- really, it's mostly tied to the
2 offense, the registration offense. But the --
3 I think that -- I think that when, in our
4 culture, when you sit down and you look at the
5 calculus for what's the incentive for an
6 accused. Do you take a deal or not take a
7 deal?
8 Everything that you throw on
9 there, that makes it so that it's -- that
10 makes the consequences of losing -- I'm not
11 articulating this well. When you weigh it, if
12 they're going to fight and lose, and they know
13 that they're going to -- and you're charged
14 with a certain offense that's going to make
15 you go, you know, serve two years or five
16 years or whatever, you're going to fight to
17 not getting convicted of that offense.
18 So I think it's going to drive --
19 I think it's going to drive us to contest even
20 more cases than we are.
21 COL HAM: That's what the
22 Washington state folks said. Mandatory

1 minimum was instituted, I can't recall the
2 amount, but the pleas went down, exactly that.
3 If I'm going to get that anyway, I might as
4 well fight it.
5 COL BAKER: But the federal
6 experience, I believe, is different.
7 MR. STRAND: Well, they have a
8 bonus on --
9 LTC McGOVERN: They don't do
10 sexual assault cases.
11 FEMALE PARTICIPANT: Right. They
12 don't do sexual assault cases.
13 MR. STRAND: And plus, they're not
14 as contested. But they also have a bonus. If
15 you plead guilty, you know, you're going to
16 get this much time off your sentence or --
17 MR. BRYANT: Off your guidelines.
18 MR. STRAND: Pardon?
19 MR. BRYANT: Off your guidelines.
20 You have to have the guidelines to get the
21 bonus.
22 MR. STRAND: Oh, that's right.

1 But again, you're right. I think most of them
2 are not sexual assaults, and most of them are
3 not alcohol-facilitated and, you know,
4 isolated crimes and things like that that are,
5 you know, ripe for contested courts.
6 COL HENLEY: And sex offender
7 registration is not a negotiable aspect of a
8 pretrial agreement, correct? I mean, there's
9 no --
10 FEMALE PARTICIPANT: The offense,
11 yes. The offense is though, that's the thing.
12 The offense is.
13 COL HENLEY: Correct. But if
14 registration comes from conviction of an
15 offender-related offense, it would seem that
16 an accused would be concerned about the amount
17 of time in confinement.
18 That appears to be -- and it may
19 have changed, but it was my experience 19, 20,
20 21 year-old males don't think in terms of
21 what's going to happen to me long-term. It's
22 short-term, and that appears to be a change,

1 based on --
2 COL BAKER: Some of it's -- some
3 of it, I think, is kind of how you explain the
4 process to them, I mean because they don't
5 think. That's why they, you know, they always
6 want to take the --
7 (Simultaneous speaking.)
8 COL MULLIGAN: That's why they're
9 on trial.
10 COL BAKER: Right.
11 COL MULLIGAN: That's the
12 criminally stupid aspect of --
13 COL BAKER: And that's why there
14 are people who are willing to take the OTH
15 without thinking about it, because you know,
16 it gets me out of the Marine Corps. But
17 you've got to talk to them about the long-term
18 ramifications.
19 COL HENLEY: But you can speak to
20 this. How often is a trial counsel able to
21 bargain a sex offender offense down --
22 COL BAKER: Almost never. I mean,

1 if it's a real -- this is going to sound
2 terrible. If it's a real sex offense. I
3 mean, there are some that are charged poorly,
4 that would be a registrable offense. There's
5 a little wiggle room there, but I don't know
6 if --
7 I mean, the SJAs and the convening
8 authorities want that. I mean, if it's a sex
9 offense, they want them registered.
10 COL HENLEY: Right. So do you
11 even track that data that you are negotiating
12 a sex offender offense down? Are you required
13 to report that at all? I would be surprised
14 if --
15 LCDR KIRKBY: Yes, but we know it
16 happens. We know that the touching offenses
17 plead down to assault consummated, right. He
18 did, in that he, you know, touched her breast.
19 It's not exactly the same, all the
20 same things, but it's now -- it's now assault
21 consummated, which is non-registrable.
22 COL BAKER: And we also, in all of

1 our plea agreements, it's a standard part of
2 the trial gouge, and it's also a standard part
3 of all the -- certainly of all the things I
4 made my defense counsel say. You always tell
5 the accused, you know, we think that you're
6 not going to have to register, but we don't
7 know.
8 It's state law. You know, every
9 state's different. State law is going to
10 change. But it is -- it's a big factor for
11 them, you know. So I think in my experience,
12 it's driven more cases to contest, and I think
13 that we have cases that -- when it's a close
14 call and the accused know that they did it,
15 and he may take a deal, this is the thing that
16 tips him over the edge, to say no, I'm not
17 going to go, and I think mandatory minimums
18 are going to be the same concern.
19 MR. STRAND: Do you think the
20 dishonorable discharge requirement on the
21 Fiscal Year 14 NDAA is going to do the same
22 thing?

1 COL BAKER: Yes. I think that was
2 a mistake.
3 MR. STRAND: Okay.
4 COL HAM: And what you're saying
5 is borne out by the site visits to the Navy,
6 the Army, the Air Force, that sex offender
7 registration drives contested cases. Exactly
8 what you're saying. They tell a 19 year-old
9 that for the rest of your life, you're going
10 to have to do this, and that's it.
11 COL HENLEY: Those that do --
12 those that do contest, what's the outcome?
13 COL BAKER: I used to have -- I
14 used to know these numbers really well, when
15 I --
16 COL HENLEY: Was it a good
17 decision?
18 COL BAKER: It was mostly yes, but
19 it's a good decision out in town too. Those
20 are hard cases. When I was a prosecutor,
21 those are hard cases to win, and we -- with
22 the old new 120, it was a much easier offense

1 to defend against, too.
2 (Simultaneous speaking.)
3 MR. BRYANT: That's really across
4 the board though, isn't it? I mean, civilians
5 are not rushing up to line up to get on the
6 sex offender registry. We're not just talking
7 about military people who don't want to be on
8 there.
9 So let me ask -- may I ask this?
10 In terms of sentencing guidelines and
11 pre-sentence reports. No one that we've heard
12 from said the two are married at the hip. You
13 don't have to have both. So would that make
14 any difference in your opinion, as to the
15 variability of sentencing guidelines?
16 And the fact is we heard earlier
17 today, generally the sentencing guidelines are
18 calculated by the prosecutor and the defense,
19 well before the guilty plea of the trial. So
20 they generally have an idea of what it's going
21 to be.
22 In fact, sometimes they know

1 exactly what it's going to be at the time the
2 person pleads guilty or goes to trial. It's
3 already been calculated, not dependent on a
4 pre-sentence report or probation officers or
5 any of that administrative paraphernalia that
6 doesn't exist in the military at this time.
7 COL SCHOLZ: See, I don't think
8 they need that, because they can -- they know,
9 the trial counsel and defense, what's the
10 going rate for these things, and they are
11 negotiating with each other as it's happening.
12 MR. BRYANT: They know what the
13 going -- well, I'm just talking about the
14 concept, though, of sentencing guidelines.
15 They know what the going rate is perhaps with
16 this particular judge or panel or on this base
17 or on this post or this division.
18 COL SCHOLZ: Right, right.
19 MR. BRYANT: But not necessarily
20 globally, and sentencing guidelines are
21 constructed, when I say globally, in this case
22 would be military-wide.

1 BG DUNN: Which brings up an
2 excellent point, is do we have a problem in
3 the military? Do we even know? Do we have
4 the data? Have any of you seen data that says
5 in the Army generally, you know, larceny of
6 $3,500 will get you this, whereas in the
7 Marine Corps it will get you an extra two
8 years? Do we have that data? Do any of you
9 know?
10 LT COL BURTON: No, ma'am.
11 BG DUNN: Do we have the ability
12 to collect that data? That's something of
13 great interest to us up here.
14 LT COL BURTON: I think the
15 problem also is what we were talking about
16 this morning, is that at least in the Air
17 Force's data system, we could pull out sex
18 offense cases and how much -- what the
19 sentence was for each of those sex offense
20 cases.
21 It would be impossible, however,
22 at this point to pull out, he was convicted of

1 three of this type of offense plus, you know,
2 providing alcohol to a minor and an offense of
3 touching and an assault and a kidnapping that
4 also led to this sentence.
5 BG DUNN: But why would it be
6 impossible to pull that data, since you've got
7 the court-martial records and, you know, we
8 sat here this morning and listened to two
9 states and somebody from the Federal
10 Sentencing Commission, as well as somebody
11 from the Department of Justice, talking about,
12 you know, 85,000 or 100,000 cases a year.
13 Whereas all of you combined -- and
14 the Coast Guard who isn't here, that's one
15 probably per year, maybe two --
16 MALE PARTICIPANT: In a good year.
17 BG DUNN: In a good year. So all
18 of you combined add up to -- I don't know.
19 What is the number. But it can't be more than
20 3,000 cases a year, all the services, all the
21 court-martial, all the felony level courts
22 martial, all the GCMs, let's say.

1 COL MULLIGAN: The Army did
2 somewhere around 900 last year.
3 BG DUNN: Okay. So probably
4 around 3,000.
5 COL BAKER: I tried. We have a
6 database system and we created -- we didn't
7 want the government's database system, so we
8 created our own defense database, because we
9 wanted -- this was exactly -- we wanted to
10 figure out what a case was worth, and you can
11 -- and you can come up with metrics that say
12 if it's a 120 and 112-Alpha, you can sort it
13 by judge.
14 But the problem is that it doesn't
15 give you factual information about the case,
16 and --
17 BG DUNN: Other than what's in the
18 charge.
19 COL BAKER: Other than what's in
20 the charge, and I'm going to forget to say
21 this, so I'm going to say this now. The thing
22 that -- when I was judge, the thing that I

1 liked most about every trial was the last
2 thing I told the jury in sentencing, is that
3 they have to pick a sentence that's -- and I'm
4 going to paraphrase this -- that's going to
5 preserve good order and discipline in the
6 military, that's going to meet the needs of
7 this accused, and it's going to benefit the
8 welfare of society or something like that.
9 The cookie-cutter system that
10 Colonel Mulligan talked about being afraid of
11 is what I'm afraid of. Colonel Ham asked
12 about, you know, does this -- almost it was
13 like does this sentence, does this sentence
14 fit the victim. We need to make sure that the
15 sentence fits this particular accused, and we
16 have a very small system, and we draw people
17 from all walks of life that do all sorts of
18 good things and bad things.
19 I think that what allows us to
20 really preserve good order and discipline and
21 return good people to the society or whatever
22 is that individualized aspect of developing a

1 sentence, that we entrust a panel of members,
2 normally, to impose. So I'd like you not to
3 take that away.
4 COL HENLEY: Is that something
5 that you think court members enjoy?
6 COL BAKER: No, they hate it.
7 COL HENLEY: And enjoy is not the
8 right word.
9 COL BAKER: No they --
10 COL HENLEY: Or would they rather
11 not have that requirement and put it back --
12 AUTOMATED VOICE: Joining the
13 meeting. Barbara Jones.
14 (Background noise.)
15 COL BAKER: They -- when I say the
16 court members hate it, because it's the
17 hardest part of the trial. But they like the
18 responsibility.
19 When I was at SJA, I advised my
20 commanders to take more cases to panels
21 because I thought that that was a great
22 education process for the panel members, and

1 the hardest part's figuring out what the
2 sentence is.
3 And that's the lesson that they
4 take back and help preserve good order and
5 discipline, by talking about it in the ward
6 room or at an officer's call or at the O Club
7 or whatever. This is what -- when you do
8 something wrong, this is how we hold you
9 accountable, and if you do -- I agree.
10 Somebody said if you do some good things, you
11 shouldn't -- that helps in developing an
12 appropriate sentence.
13 MR. BRYANT: What if -- just
14 hypothetically, for all the services, and this
15 was brought up earlier by somebody today -- by
16 Dillon, frankly, not by me. If only four
17 states out of 50 have jury sentencing and the
18 federal system doesn't have jury sentencing,
19 what would be the effect if all sentencing was
20 by the military judge?
21 COL BAKER: That's an interesting
22 --

1 MR. BRYANT: If we had sentencing
2 guidelines, we wouldn't have to worry about
3 okay, the panel has spun all out of, you know,
4 out here before we have a sentencing hearing,
5 and what's going to happen to the defendant in
6 the meantime, between that and sentencing.
7 So just, I'm just curious about
8 the -- I'm not necessarily advocating it
9 either way, but it's an idea to think about.
10 What if we left sentencing -- now there's
11 still, you could still have a panel for guilt
12 or innocence, but sentencing's going to be by
13 the judge?
14 COL BAKER: I think that in my
15 view, you're taking away an important aspect
16 of the process, an important part of the -- a
17 court-martial is a mechanism that a unit uses
18 to instill good order and discipline.
19 MR. BRYANT: Excuse me, Colonel,
20 but good order and discipline is a concern in
21 the civilian world too. I mean, we call it
22 public safety and a deterrent from crime, but

1 it's really the same thing. But go ahead.
2 COL BAKER: This is completely
3 anecdotal. I don't have the facts to base, to
4 back this up. Our juries give lower sentences
5 than judges, and I think that our juries give
6 lower sentences than judges because they're
7 not -- because they are -- they take more of
8 an individualized consideration of this
9 particular case and the impact that this
10 particular case on this accused and also on
11 the victim.
12 So I think that we would look --
13 that we would -- taking the judge out of it
14 makes it more cookie-cutterish. A good friend
15 of mine wrote his JAG school paper on this
16 topic, and if you want, I can get you the cite
17 to it, that talks about judge sentencing.
18 You know, he advocated taking --
19 making the judges do all the sentencing. I
20 just think that it takes a very unique aspect
21 of our system out, and really I guess my
22 question would be, for what?

1 MR. BRYANT: Well, we heard
2 earlier -- I don't, you know, we had discussed
3 this. But we heard earlier that part of the
4 problem that was being passed back to folks in
5 the military was that the panel members were
6 confused by the sentencing. They didn't
7 understand it. They didn't really know what
8 to do about sentencing, and it would eliminate
9 that.
10 It might lead to -- I'm just
11 talking out loud myself -- to more
12 consistency, maybe more efficiency, and again,
13 if it's working -- it's the way that 46 or 45
14 states and the federal government rely on the
15 judge to impose sentence. Maybe it's working,
16 maybe it's not.
17 We also heard, just so you'll
18 know, today from others that generally in the
19 civilian world, the jury sentences higher than
20 the judges. Once these states have gone to
21 the truth in sentencing aspects of the various
22 statutes of what -- about what the jury gets

1 to know, then their jury numbers go down to
2 like 1.1 percent.
3 Federally, in the two states that
4 we heard here today. It's just interesting
5 that military panel members would be lighter
6 than the judge. I find that interesting.
7 COL BAKER: That's based on my own
8 experience.
9 MR. BRYANT: No, it may be true,
10 yes. That's why it be great to have some
11 statistics.
12 (Simultaneous speaking.)
13 BG DUNN: I mean that kind of
14 takes us back to -- I mean, we -- not that the
15 ECR mission is driven by data, because
16 clearly, the way the military justice system
17 is constructed, the participation of panels
18 and the need for the system to remain
19 deployable, et cetera, is, you know, pleasing
20 to any recommendations we make.
21 But is there even an issue? Is
22 there sentencing disparity in the military so

1 significant as to require anything? Other
2 than perhaps a study of -- or maybe that
3 should be what the panel should direct. Maybe
4 we should direct a study to see if --
5 MR. STRAND: Outside the editorial
6 guys of the last article from Associated
7 Press.
8 COL BAKER: But you know what?
9 That's a good point, because what the
10 Associated Press doesn't know is that in a
11 case that went to a summary court-martial, it
12 was done with the victim's approval, that the
13 case was never going to be -- it was never
14 going to be provable, and the other case where
15 the guy got six years, the government - I
16 mean, they were just -- there's two completely
17 different cases that were I think handled,
18 both handled appropriately.
19 BG DUNN: On the fact and the
20 individuals involved in those cases.
21 LCDR KIRKBY: You've also got to
22 remember that the cases that go to members are

1 the cases that the defense thinks they have a
2 good case. That's a good sales pitch in your
3 sentencing argument. The cases that go to the
4 judge are the slam dunks for the government.
5 So you can't say -- if we look at
6 the statistics, you're going to say well, the
7 judge gave this sentence in this case. Well
8 that's where there's no doubt about guilt,
9 because he came in and we go through the
10 extensive colloquy of sentencing that we have
11 in the military.
12 In the Navy it's -- you can go --
13 it's sometimes quicker to plead not guilty,
14 and go in quick. Judge, I'm not guilty. I'll
15 go in there. Just get this thing over and
16 done with. I'm not going to put on a defense.
17 The government puts on its case, and it's done
18 quicker.
19 I mean, I've heard people say I'll
20 give, you know, as a judge, I would give --
21 I'd give a bonus if they didn't sign a PTA
22 because the PTA takes longer to go through,

1 you know. I know the Army's version is two
2 pages. Ours, I think, is 27 now. It's
3 getting outlandish because we go through
4 everything. Are you sure you want to plead
5 guilty? Are you really sure you want to plead
6 guilty? If I said I didn't want you to plead
7 guilty, what would you do?
8 MR. STRAND: Well, in the rape
9 cases, you've got a letter of reprimand.
10 There's also probably some pretty compelling
11 reasons why.
12 (Simultaneous speaking.)
13 COL MULLIGAN: I wanted to address
14 Mr. Bryant's point, and that is it has not
15 been my experience that there was -- there was
16 the outliers. So I'm going to discount the
17 outliers.
18 But it has not been my experience
19 that there were extremely disparate sentences
20 with military juries versus what the judges
21 would have imposed.
22 Again, fact-based. In every case,

1 you're going to have different accused
2 background, emotional and psychological and
3 financial effects to the victims and things
4 like that. The difference in practice from
5 what I was used to in Oklahoma and what I was
6 used to on a military jury is the level of
7 education.
8 One thing military juries are not
9 adverse to doing is making decisions. Most
10 civilians don't even want -- at least in my
11 experience, and I defer to yours; it's been 25
12 years since I stood up and represented the
13 state of Oklahoma. Most of them don't want to
14 be there, and it's how many excuses can I have
15 that I don't even have to sit and make a
16 decision, let alone to stick around for
17 sentencing and be responsible for what
18 happens.
19 Military commanders, by the time
20 you are a captain commanding a company, you
21 are making decisions that materially alter an
22 accused's life.

1 MR. BRYANT: That's very fortunate
2 because your educational level and your
3 professional decision-makers, you're never
4 going to get a panel like that in the civilian
5 world.
6 COL MULLIGAN: I'm sure you
7 probably keep in your practice military
8 officers on your juries for that reason, that
9 they can provide some leadership in your
10 juries. So my jury experience has been, I
11 haven't won them all. But my experience in
12 sentencing has been, over 25 years, fairly
13 positive.
14 My experience with judges is
15 judges are people, and there are certain
16 judges you know going in. Same as in my
17 experience as a civilian. Certain judges are
18 heavier on people crimes, they're heavy on
19 drug offenses. They may be lighter on
20 alcohol-related offenses. We're all victims
21 of our own experience.
22 So I'm not -- I don't think we

1 have a disparate range that would require us
2 to eliminate panel sentencing. But then I
3 come to General Dunn's position, and that is
4 I think we would welcome the study. It would
5 be interesting to see, and then you would
6 subdivide the group.
7 You would subdivide it between
8 pre-trial agreement in judge-alone cases, and
9 what was the delta between what the convening
10 authority thought that case was worth and what
11 the judge thought it was worth, because I know
12 that altered some of my recommendations as a
13 staff judge advocate.
14 I'm not going to walk into the CG
15 and say sir, I think this is a five year case.
16 The judge, in his entire career, has never
17 given five years for a case like this, but I
18 think we should stick at five years. I'm
19 probably going to come down.
20 At the same time, I think we
21 should look at the panel reactions. Are we
22 getting sentences that defy reality out of our

1 panels. Is there something that we are so far
2 off course that we need to remove from panels
3 the right to sentence. I'm not sure we do,
4 but I think we would welcome that study. I
5 think it would be very informative.
6 LTC McGOVERN: Sir, I think the
7 thing we definitely learned today is --
8 AUTOMATED OPERATOR: Joining the
9 meeting. Barbara Jones.
10 LTC McGOVERN: -- a recommendation
11 will be to conduct a further study, to
12 actually identify whether there's a problem in
13 sentencing in the military, but Congress and
14 the Secretary of Defense have asked this panel
15 to look at sentencing guidelines and mandatory
16 minimums, I believe, from a lens of the
17 victim. And not necessarily that there is a
18 problem in our sentencing disparity, but
19 there's a problem in victim confidence.
20 So would there be more victim
21 confidence if they knew -- would they come
22 forward more if they knew this person will be

1 held accountable and have to be discharged,
2 have to go to jail for two years? Would there
3 be more victim confidence if it was judge
4 sentencing rather than a bunch of people who
5 may side with the accused?
6 So I think that is another way
7 that it would be helpful in the last couple of
8 minutes we have. What do you think the victim
9 impact would be of sentencing guidelines or
10 mandatory minimums? Will it increase
11 reporting? Will it increase victim
12 confidence, or if it's going to increase
13 contested cases, will it have the reverse
14 effect?
15 LT COL BURTON: If I can, I did
16 have personal experience with this in the last
17 five years as an SJA speaking personally with
18 victims, who are concerned with just that,
19 saying I saw the results of the trial that you
20 had three months ago, and he got one month of
21 confinement or two months' confinement, or
22 whatever the case may have been.

1 Even though, in our minds, the
2 result of that case may have been fair for
3 that accused and for that victim, it still has
4 the perception of inequity for victims.
5 Yes, it concerns them, because
6 they would state, I don't want that to happen
7 in my case. I don't want to go through the
8 hell of testifying, and then walk out of there
9 seeming -- it seeming to me that the members
10 didn't care about my side of the case.
11 MR. BRYANT: Because the sentence
12 was what they perceived as too light.
13 LT COL BURTON: Correct sir.
14 BG DUNN: But you can't promise
15 them a sentence, though?
16 LTC McGOVERN: But if there's a
17 mandatory minimum --
18 LT COL BURTON: Absolutely not.
19 (Simultaneous speaking.)
20 BG DUNN: But you can explain the
21 system to them.
22 LT COL BURTON: Yes, ma'am, but it

1 does influence their decision to participate
2 or not.
3 BG DUNN: So you think if they
4 knew that it was five years, that that --
5 LT COL BURTON: If they had that
6 guarantee, it may in some situations.
7 MALE PARTICIPANT: Some situations
8 might be negative.
9 MALE PARTICIPANT: Yes, correct.
10 LCDR KIRKBY: Exactly. I think
11 you're going to have exactly the same number
12 say are going to go forward, because I know
13 when he gets convicted, because they're
14 guaranteed -- in their own minds, they're
15 thinking this is going to happen. You're
16 going to get the same number saying well, I
17 don't -- five years, that's excessive.
18 I think we're going to end up --
19 if we did a study and we could somehow wave a
20 magic wand, we would see that we'd made no
21 gains in this field. This is not a benefit or
22 a detriment. It puts us back to neutral.

1 COL BAKER: The other thing I
2 think we need -- that we need to think about
3 that's different now is all these victims now
4 have counsel, that the victims' legal counsel
5 are there to help them -- they now have
6 somebody to help them through the process. I
7 mean, to me, I see that as a game-changer that
8 can explain a little bit of the disparity, can
9 manage expectations, but can also bolster and
10 advocate on behalf of the victim.
11 I don't -- you know, I don't know
12 if -- they certainly tell me that deterrence
13 doesn't really work, you know, that that -- if
14 someone knows that you're going to be punished
15 a certain amount, it's going to stop somebody
16 in the heat of the moment of doing something.
17 I don't know if we want to have
18 the victim have their expectations set by what
19 the mandatory minimum is, but to -- there are
20 some people that that makes them less likely
21 to participate.
22 They really think that we should

1 let the victim legal counsel organizations,
2 let's see what impact that they have, because
3 they really have changed the game, and they
4 have provided the victims an outlet that they
5 just did not have before.
6 COL HENLEY: I think we have time
7 for one more question.
8 COL HAM: I have a question,
9 following up on Colonel Mulligan's discussion
10 of clemency. Now that Article 60 is so
11 radically changed, do you have any suggestions
12 or thoughts on should there be some
13 compensation somewhere else in the system, and
14 if so, what would that look like or not?
15 COL MULLIGAN: I guess repealing
16 60 is not an issue.
17 COL HAM: Well, if that's the
18 Service position.
19 COL MULLIGAN: I think there
20 should be some other avenue. I'm not sure and
21 I can't articulate today exactly what that
22 should look like. That was a significant

1 change in our practice. I think it's going to
2 take some study to figure out how it's going
3 to work.
4 The 60, as written now, means that
5 all murder cases are now going to trial
6 because the CG can't take a term of years on
7 a premeditated murder case. Because if you
8 could look to 60, it's a little broader than
9 they wrote it. So if you charge 118-1,
10 premeditated murder, carries a mandatory
11 minimum life, you can no longer take a
12 pretrial agreement.
13 LTC McGOVERN: So what if they had
14 clemency as in the civilian system, since
15 we're comparative systems, where it's more
16 like the governor, and could grant clemency
17 after the appellate process? Is there any way
18 that could work?
19 COL MULLIGAN: Well, that's a long
20 way away, given our speed through the
21 appellate process.
22 COL BAKER: In our system, we have

1 the clemency and parole process that just
2 doesn't really work. I mean, they get -- the
3 percentage is ridiculous at how often that
4 somebody's granted clemency through that
5 process.
6 But part of the reason why I think
7 is because the competing authorities had,
8 until now, the ability to do it. I think that
9 we should look at, I don't know if it's --
10 somehow readjusting the clemency process that
11 occurs through the VCNRs -- not the VCNRs, but
12 the clemency and --
13 MALE PARTICIPANT: Clemency and
14 parole board.
15 COL BAKER: Yes.
16 MALE PARTICIPANT: I think it's
17 two percent.
18 COL BAKER: Right, and I'm not
19 sure.
20 MALE PARTICIPANT: Like over here,
21 they told us it was very --
22 (Simultaneous speaking.)

1 BG DUNN: And, and they do not
2 accept, in one or two instances in the recall
3 of any of them, ever intervene while the case
4 is still in the appellate process.
5 COL BAKER: Right.
6 BG DUNN: You know, they sat there
7 and said we'll have gray hair that we're
8 talking to --
9 LCDR KIRKBY: Ma'am, to answer
10 your question, I think -- I think as we said
11 earlier, I think we need time to see how this
12 process works under Article 60. I think it's
13 so new and so radical. We need time to see it
14 work through the system before we start saying
15 hey, we want this change, we want to change
16 this.
17 Well, we've had so many changes
18 right now. We've got to see what the Court of
19 Appeals does. We've got to see how this --
20 we've got to see a few cases go through this
21 process.
22 COL HAM: Many of the cases won't

1 get there, because there won't -- there's no
2 appeal. So there's the Article 69 appeal, but
3 --
4 LCDR KIRKBY: Well, I think that's
5 -- I mean, that's probably something that
6 we're going to have to exercise and take a
7 look at. I mean, that's a scary thing,
8 because what happens with cases who don't get
9 there, who probably should have some clemency?
10 So I think we do need time.
11 COL HENLEY: We need to wrap up.
12 I'm sorry, I apologize, but places to go,
13 people to see. But I appreciate panel
14 members' instructive comments, and we can ask
15 if we can return to you if we have additional
16 questions. Otherwise, thank you very much.
17 (Chorus of thank yous.)
18 (Whereupon, at 5:33 p.m., the
19 meeting was adjourned.)
20
21
22

A

$2,500 18:19
$3,500 515:6
$40,000-60,000 495:2
A-to-Z 173:14
A.J 2:12 3:14 398:17 399:15 401:19 402:20 410:15 417:3 423:12 431:19 441:17 450:4 453:2
a.m 1:12 4:2 69:22 70:1 146:17,18
AA 391:3
ABA 454:20
abandoned 260:18
ABCMR 108:8,10 122:13
abduction 161:8
aberration 54:3
abide 86:11
ability 354:20 395:20 408:16,17 425:13 432:8 449:2 464:21 472:2 488:21 489:18 515:11 538:8
able 33:15 49:14 83:5 134:20 135:3 148:13 157:18 159:14 174:8 242:5 276:6 277:18 285:21 286:7 295:22 339:19 361:5 364:3 365:8,10 378:22 379:2 380:5 401:12 444:9 509:20
abolished 265:9 287:8
abolition 285:6
above-entitled 69:21 146:16 238:19
absent 312:5
absolute 213:2 421:10
absolutely 9:3 81:11 86:20 135:11 138:16 179:5 191:2 223:18 258:16,20 316:12,12 360:17 381:6 389:1 391:19 407:5 409:9 422:12 533:18
abuse 167:10 214:19 280:15 333:2,16 376:19 466:2,3
abused 379:15 380:2
abuser 355:11
academy 236:6,8
ACCA 120:17
accept 9:12 55:17 141:13,14 189:8 191:7,8 375:12 431:1,4,22 539:2
acceptable 128:12 432:7
acceptance 163:14 180:14 187:18 188:1 189:11,18 193:3 202:12 231:18 232:2 406:1,2,15 409:14 423:22 426:14 441:4,7
accepted 55:7 137:6 155:14 501:5
accepting 56:2
accepts 52:5
access 120:18 390:18 391:3 422:19
accessible 99:5 300:13
accompanying 126:7 180:5
accomplish 165:9 196:6
accomplished 483:1
account 21:21 22:6 63:1 194:8 347:12 403:11 437:1 444:11
accountable 355:14 362:2 378:20 495:17 498:2,5,18 499:5 500:3,13 520:9 532:1
accounts 411:18 412:19
accurate 46:6,7 66:8 67:2,4
accusations 13:5
accused 5:6 16:9 21:19 25:13 35:13 49:14 77:6,9 78:3 80:16 89:18 90:20 91:17,21,22 92:1 93:2 94:1,8,15 145:12 450:21 480:6 488:4 492:9 496:10 497:13 498:2 506:6 508:16 511:5,14 518:7,15 522:10 528:1 532:5 533:3
accused's 93:15 528:22
achieve 166:22 182:14 185:14 244:3 264:10 321:2
achieved 182:20 306:6
achieving 307:14 322:14
acknowledge 117:4 352:1 500:14
acknowledgment 287:18 500:21
acquaintance 353:20 365:4
acquaintances 360:9 376:11
acquittals 130:18 497:12
act 96:13 124:4 140:18 142:15 167:10 185:6 199:2 225:1 304:14 308:11 328:1 383:20 403:17 455:8 465:21 476:11
acted 434:11
acting 1:12,14 3:2 4:6 48:21 49:1 53:6 104:16 375:19,19,20
action 59:19,20 61:11,13 77:13,16 77:17,22 78:9,15 79:1 80:9 84:10 84:14 92:21,22 118:17 354:18 355:20 362:20
actions 13:5 355:14 418:20 459:12
active 73:6,12 75:12,18 95:18 96:2 252:5 257:3 261:8 490:3
activities 280:21 322:11
activity 73:19 173:2 256:3
actor 375:17 376:1
acts 96:9
actual 56:19 66:22 88:6 98:11 183:8 196:10,20 286:22 426:1,9
actuarial 299:9 303:15
Adam 308:10 328:1,2
adamantly 401:6
add 125:5 319:17 516:18
added 207:21 349:3 360:13,15 479:16
Addendum 172:10
addition 105:15 107:7 177:15 279:20 285:3 332:5 503:3
additional 29:22 45:7 67:14 93:4 128:20 171:2 299:7 342:15 354:12 482:18 540:15
address 108:7,20 366:1 369:14 379:1 435:9 450:15 478:1 504:4 527:13
addressed 67:20 134:4 496:21
addressing 378:7
adds 105:9
adequately 63:1 434:1
adhered 413:18
adjoining 332:11
adjourned 540:19
adjudge 8:11 41:2
adjudged 50:13 64:15 68:7 101:4 101:18 132:15
adjudges 86:10
adjudicate 128:14
adjudicated 128:10 129:1
adjudication 331:20
adjudications 280:11
adjust 96:18
adjusted 434:17
adjusting 237:16 263:10
adjustment 406:10

406:12
adjustments 395:13 405:17,18 405:20,21 406:6 406:20,21,22 407:1,20 410:10 425:21 435:22
administer 205:2
administration 262:22 455:6,12 457:5 461:22 462:1 473:22
administrations 457:6
administrative 20:10 21:15 22:1 22:2 59:15,19 60:4 65:20 108:14 111:14 204:22 335:16 338:14 365:19 514:5
administratively 23:19
Admiral 127:6
admit 301:9,10 423:14 424:2
admitted 188:14
admittedly 353:8 467:3
admitting 43:15,17 152:7 181:7
adopt 262:10 264:8 287:4 404:14 450:19
adopted 62:7 260:15,17,20 262:15,18 287:10 451:2
adopting 4:12 263:9 348:9 356:13
adrift 7:4 8:5
adult 1:3 106:18 280:10 304:13 465:15,15 499:18
adults 304:20 376:11 379:15,16
advance 33:21 157:6 344:22
advantage 52:19 52:20
advantages 357:8
advent 497:5
adversary 430:22
adverse 528:9
advice 93:10,14 390:7
advisability 4:12
advisable 27:13
advised 145:2 146:2 519:19
advising 41:6
advisories 222:16
advisory 9:10 27:12,18 28:3,5 153:1 154:17 155:13,17 157:4 179:17 184:5 195:20 200:5 222:13 234:10 299:6 311:3 315:3 340:12 348:9 393:19 396:6,10 454:19 475:9
advocacy 72:2,2 195:18 344:20
advocate 71:1,18 73:13,17,18 89:12 92:9,18 93:10 95:21 96:2 385:13 385:17 386:1 387:5 389:11 479:5 493:22 494:7 501:17 530:13 535:10
Advocate's 77:8,12
advocated 522:18
advocates 432:15
advocating 479:10 521:8
affairs 74:19 343:17
affect 45:1 167:8 202:7 422:14 481:8
affirmatively 412:13
affirmed 6:9
Afghanistan 126:8
afraid 518:10,11
Africa 31:18 370:5
African-American 110:21
afternoon 34:9 130:2 139:7 459:3 459:4 463:22 477:20
age 266:4 329:8 365:15
agency 2:13 70:9 74:6,10 147:18 247:13,15 261:14 386:10 446:5
agenda 4:16
agents 324:4 424:18
ages 449:13
aggravate 359:14 436:12
aggravated 13:8 38:8 462:7,8
aggravating 6:15 53:19 206:2 332:9 332:11 405:22 440:2,9 464:14,17 474:21
aggravation 48:21 53:9 163:14
aggravators 207:22
aggregate 334:12
ago 251:2 277:12 305:8 308:4 324:16 344:18 399:7,9 429:4 455:3 465:19 475:5 479:9 490:12 504:6 532:20
agonize 354:21
agree 9:8 15:10 18:2 34:4 66:19 67:7 84:6 107:16 133:11 137:9 284:3 349:18 375:7 402:20 406:22 407:21 408:1,8,14 411:11 417:3 422:4 429:20 430:3,4 441:17 489:11,19 490:10 501:20 520:9
agreed 47:6 51:22 55:4 430:21 431:16 432:6 438:18 481:3
agreeing 51:11 283:5 406:18
agreement 20:20 20:22 47:4 48:9 48:19 49:4,10,18 50:8,15 53:14 55:5,6,11,18 56:6 56:11,19 57:9 79:12 85:17 86:9 86:11 87:13 89:13 132:16 215:11 258:15 259:1 427:4 489:8,19 508:8 530:8 537:12
agreements 47:2 51:6 52:17 57:13 84:5 88:14,15 406:17,17 409:5 511:1
agrees 432:2
ahead 15:21 19:8 20:17 70:4 129:13 156:17 241:22 293:5,15 522:1
Air 2:4,7,13 12:10 14:17 15:12 57:12 70:22 71:2,3 73:8 73:11,20 74:5,7 75:10 95:10,16,18 95:19,21 96:1,2,4 96:5,9 97:2,8,13 98:6,21 99:5,14 109:15 111:14 115:7 118:19 120:22 121:16 124:2,2,21 127:5 482:14 512:6 515:16
Airforce 73:9
airing 424:12
airman 22:4 97:17 103:17 118:18
airplanes 74:17
Alabama 72:21
Alameda 453:15
alcohol 80:18,22 82:3 302:11 365:3 375:21 516:2
alcohol-facilitated 508:3
alcohol-related 529:20
Alexandria 402:5 414:17 416:3 418:1
Alfred 423:14
algebra 156:17
alive 367:1
allege 130:11
alleged 62:21
Alleyne 310:11 311:9
Alliance 2:6 343:2 348:19 387:17 388:5
allow 23:18 24:21 39:3 64:1 105:21 223:7 347:8,9 488:21
allowances 36:6
allowed 30:18 40:22 41:1 42:12 94:6 146:5 159:15 163:8 291:3 292:5
allows 291:7 348:10 352:17 423:18,19 425:7 470:12 518:19

Alright 146:13
altar 54:1
alter 528:21
altered 530:12
alternate 481:17
alternative 246:18 269:4 288:3 295:13 336:13
alternatives 315:15 315:22
ambivalent 388:6
ameliorated 409:2
amended 429:19
amendment 465:20
amendments 194:5 224:4,6
American 199:3 200:5
Americans 198:15
amount 29:1 56:17 110:7 111:3 117:3 167:16,19 177:2 189:13 219:15,17 221:9 260:8 265:10 322:18 378:21 406:12 420:18 439:3,11 444:13 470:22 490:20 507:2 508:16 535:15
amounts 167:21,22 439:7 464:8
analogies 385:11
analogy 366:15 368:3
analysis 262:2 271:21 272:17 273:10 279:6 281:6 295:9 382:17 487:1,6
analysts 454:8
analyze 278:4 301:1 334:11 454:9
ancillary 36:16
and/or 145:11 245:9
Andraschko 2:1 75:5,6 99:15 100:10 101:6 104:10,18 107:5 107:22 108:10 109:1 114:11,22 115:20 117:13,20 120:3 121:8,10,21 122:5,17 123:10 124:1,15
anecdotal 11:14 12:4 46:15 303:8 350:22 496:19 522:3
anecdotally 12:16 497:4
anecdote 494:6
anguish 354:12
Annette 2:6 3:12 348:16,17,22
announcing 280:2
annoying 318:13
annually 123:5 151:7
answer 6:17 14:7 64:8 71:9 72:17 75:4 100:16 117:8 140:21 231:6 238:6,9,9 252:21 346:22 347:2 357:13 358:4 373:21 379:9 386:7,21 404:20 405:9 412:7 420:8 421:1 448:17 453:6 458:21 461:9 472:15 477:15 539:9
answering 386:20
answers 65:9 148:18 357:7 363:17 497:2
Anti-Drug 167:10
anticipated 160:1 186:21 193:18 204:8 224:17
anticipation 500:19
anxious 163:19
anybody 12:20 19:18 128:13 377:22 394:7 502:6
anymore 261:22
anyway 18:20 21:7 47:17 56:16 164:3 164:8 183:1 203:13 226:4 334:20 507:3
apart 408:3
apologize 104:10 540:12
apparently 100:16 377:12
appeal 90:22 91:1 111:14 120:15 140:11 142:22 153:11,11 185:17 185:19,19 186:4 250:17,19 332:20 332:21 540:2,2
appealable 25:3
appealed 185:16
appeals 73:21 98:22 99:1 101:10 117:9 143:3 147:14 150:12 153:9 185:20 186:5,7 190:1 250:13,13 297:21 297:21,22 393:6 415:2 486:19 539:19
appear 66:17 105:22 106:15,20 107:20 123:8,11 123:14,15 124:13 488:3
appearance 92:6 105:20
appeared 106:17 219:10 493:18
appears 4:15,17 40:14 411:20 508:18,22
appellate 12:16 73:16 85:22 86:4 87:19 94:21 95:4 98:9,13 101:3 115:18 117:15,16 118:2,7,10 119:15 139:16,17 140:12 140:19 141:14 143:2,8,14,18,21 144:11,18 246:19 252:13 290:22 332:19 333:1,4,10 333:22 334:1,2 489:1 537:17,21 539:4
apple 47:17 49:15 52:21
apples 216:17 217:2,2 467:4,4
applicable 283:6 482:9
application 151:19 171:3,5 172:2 173:7 243:7 249:15 334:9 335:10 336:8 339:22
applied 80:13 83:1 152:11,13,20 180:9 193:18 195:21 214:20 221:19 313:7 372:10
applies 86:19 104:20 106:5 151:21 188:7
apply 78:7,10 81:20 86:18 108:22 122:12 153:2,3 154:18 156:14 157:18 171:6 174:13 196:17,21 209:4,9 211:2 212:6 226:16 228:22 229:1,5 303:20 312:13 321:20 406:6 440:14
appointed 222:8 270:16
appointee 455:16
appreciate 4:9 30:4 147:1 148:19 349:14 378:5 392:2 451:8 540:13
Apprendi 309:14
approach 48:15 66:21 121:1 164:17 179:16 211:18 251:9 264:4,13,14,19,19 339:17 384:17
approaches 240:7 249:9 264:3 339:13,18
approaching 262:4 385:4,5
appropriate 8:19 8:21 37:5 40:14 45:17 52:1 116:2 116:15 292:4 316:20 403:13 414:7 416:8 431:17,21 432:16 464:10 472:18 520:12
appropriately 349:21 525:18
appropriateness 119:16
approval 226:6 429:1 430:6 525:12
approve 50:1,2,3 96:19,22 132:14 430:6,19
approved 116:10 119:18
approves 96:14 114:19
approximately 62:15
AR15-130 105:2

arbitrarily 179:1
arbitrary 346:13 352:20 372:9 403:4 433:11
area 10:14 46:15 251:4 353:8 372:17 448:15 486:5 492:2
areas 103:20 214:7 257:21 258:3 266:12 275:11,12 281:20 308:7 326:1 388:14 418:18
arguably 402:7
argue 18:15 49:6 190:19,21 311:4 315:1 432:3,4
argued 164:5
arguing 172:22 191:6 427:11
argument 49:9 67:9 129:2 137:5 172:20 188:11 237:21 313:11 340:11,13 412:19 505:16 526:3
arguments 22:10 297:20 298:1 346:12
Arizona 183:5,13
Arlington 1:12 106:1
arm 351:17
armed 99:2 181:20 209:14,20
arms 493:5
army 2:1,14 12:10 14:19 17:1 21:7 21:17 27:11 65:7 75:12 97:16 99:16 99:18 101:7,10,20 104:14 105:19 108:11 111:17 115:1,8,10 116:11 120:8 122:6 124:2 124:20 126:7,11 127:7 487:15,18 489:4 493:9 494:22 512:6 515:5 517:1
Army's 75:7,19,22 105:2 527:1
arraignment 101:5
arrangement 89:9 89:10,19
array 319:19
arrest 247:4 316:14 328:10 461:19
arrested 328:13
arresting 460:19
arrests 247:5 461:13,17
arrive 53:7
art 403:14
article 27:10 45:5 45:19 61:14 62:10 65:5 66:1,9 67:20 76:8 78:11,13 132:6 139:10 140:2 143:11 370:1 371:3,16 481:18 488:21 492:7 525:6 536:10 539:12 540:2
articles 66:6
articulate 257:16 257:17 277:4 379:2 383:5 492:2 536:21
articulated 242:22 243:16,19 254:11 258:4 260:22 277:17
articulates 332:10
articulating 258:19 506:11
artificially 401:11
aside 134:11 140:4 339:12 410:17 495:11
asked 41:8 57:8 64:22 68:5 100:6 138:19 182:16 197:3 219:14 230:11 235:22 238:5 295:10 378:2 425:5 453:9 469:6 474:9 475:14,18,20 476:8,17,17 477:10 518:11 531:14
asking 17:20 28:10 89:16 96:7 113:9 137:10 139:2 153:21 362:15 382:6 425:22 475:3
asks 293:3
aspect 37:20 261:11 354:7 508:7 509:12 518:22 521:15 522:20
aspects 213:12 253:19 276:9 309:4 483:3 523:21
aspersions 351:21
assailant 355:10
assault 1:3 3:19 4:13 12:19 13:4,8 29:11 38:9 39:13 71:8 74:22 78:11 80:16 84:18 106:9 106:15 121:3 143:11 206:12 269:9 294:10,12 296:2,4 346:18 348:21 349:17 353:15,17 354:4 356:12,19 359:9 360:21,22 361:2 364:9 365:4 367:5 376:9 378:12 379:6 383:18 385:3,6 390:5 451:8,13 452:7 460:3 462:8,9,9 465:10 466:11 469:13 478:14 496:7 497:5,7 498:22 499:19 507:10,12 510:17 510:20 516:3
assaulted 357:15 357:18 368:6
assaults 13:10,13 106:22 296:12 353:19 361:12 376:21 459:7,8 461:2,3 466:5 508:2
assembly 263:1 287:4 289:10 295:10 312:22 313:5 320:11
assess 354:20
assessed 301:12
assessing 301:2
assessment 55:13 115:3 165:6 295:6 295:8,11,22 296:13 298:10,16 300:10 302:21 303:2,22 319:13 325:1
assigned 71:7,16 96:4 105:14 156:20 383:13
assignment 75:18 90:17
assignments 74:9 74:16
assist 244:13 468:22
assistance 85:6,12 86:17 87:14 88:2 88:3,5 162:21
assistant 187:9 226:22 393:8,9 399:11 453:14
assisting 339:2
associated 62:10 123:1 354:9 525:6 525:10
Association 348:21
assume 108:12 162:20 206:8 431:9 496:17
assuming 193:14
assumptions 173:20 373:10
attached 287:11
attachments 239:13
attempt 172:5 350:6
attend 114:2
attention 305:9 346:19 411:21 412:1 449:12
attorney 47:16 53:13 105:15 171:21 193:9,13 226:13 227:1 283:5 424:6 454:17 455:17 458:9 476:11
attorney's 225:14 226:10 386:2 412:4 415:4,5,12 415:16
attorneys 53:21 105:22 107:13 187:9 212:14 226:22 284:10 421:5
attributable 397:4
attrition 327:13
authenticated 141:22
authorities 51:7 59:17 72:11 510:8 538:7
authority 3:5 45:5 45:7,11,19 47:4 48:8,10,21 49:21 50:10,19 51:8,10 51:15 52:3,7,22 58:19 70:12 71:4 77:5,10,16,17 78:8,14,22 79:8

82:2 84:17,20,20 86:3,11 89:18 90:7 92:7,12,14 93:7 96:14 104:17 108:8 118:15 124:16,17,21 125:2,3,20,21 126:17,21 127:4,8 129:7 132:8,14 133:5 139:10,11 140:9,18 141:6,16 142:1,4,5 145:4 145:21 195:4 489:10 530:10
authority's 50:5 76:6,11,14 129:11 199:5
authorized 78:2 377:15
automate 279:1
automated 278:17 279:14,22 280:3 519:12 531:8
automatic 90:12 142:22 143:13
automatically 357:22 367:11
available 40:13 134:21 142:17 214:8 282:16 303:14 312:9 314:3,20 316:3,7 334:2,22 336:13 337:14 370:2 482:21 483:5
avenue 141:7 143:14 536:20
avenues 91:17
average 165:21 166:1,4 178:20 179:7 216:3,5 285:21 286:6 288:20 301:7 306:13,15 307:3,8 314:14,18 364:2 365:13 372:21
avoid 348:6,8 352:10 420:3 505:21
avoiding 427:19
awakening 218:9
aware 26:16 44:12 49:14 51:10 102:7 122:3 266:10 291:21,22 354:8 358:21 445:3 496:19
awareness 449:4
awful 374:9
AWOL 38:7
axis 248:14,16

B

B 294:4
babies 495:2,5
back 5:3 7:4 24:9 28:2 32:20 35:2,3 37:16 40:7 41:21 45:21 46:17,18 47:5 57:7 60:18 61:2 62:5 63:4 70:3 90:13,14 114:18 124:3 125:16,19,22 129:4,11 130:16 137:5 138:8 147:5 155:18 172:3 178:6 184:3 189:7 189:17 192:17 200:11 218:16 232:17 235:20 236:16 238:2,15 239:1 257:19 262:17 263:15 293:7,9,11 294:11 305:14 333:22 342:19 362:14 373:2 392:7,9 398:3,8 422:17,22 424:8 438:6 452:18 467:5 486:20,21,22 487:6 490:22 492:17 494:18 495:9,10 519:11 520:4 522:4 523:4 524:14 534:22
background 4:21 5:4 29:19 42:3 43:5,6 53:21 71:19 74:20 157:20 163:10 236:11 239:22 269:10 280:19 392:22 394:12 395:13 403:19 445:4,8 447:4 469:19 479:3 519:14 528:2
backgrounds 394:3 402:21 417:15,18 446:21
backlash 435:14
backtracking 317:19
backwards 356:20
bad 43:2 49:4 51:19 102:19 112:3 259:7 323:7 323:9 370:13,21 372:4 400:5 468:6 469:18 471:2,5 518:18
bags 413:11
Baker 2:2 478:18 478:19 480:22 481:7 497:1 503:1 504:5 505:17,22 507:5 509:2,10,13 509:22 510:22 512:1,13,18 517:5 517:19 519:6,9,15 520:21 521:14 522:2 524:7 525:8 535:1 537:22 538:15,18 539:5
balance 61:7,9 62:5 66:21 307:20 321:1 423:20 458:3
balanced 62:3
ball 28:6,20 54:7
ball's 154:4
ballpark 164:12
bandwagon 318:2
bank 161:9 194:8 209:6,14,15 322:21
bar 155:7,8 433:8 488:4
Barbara 1:17 463:18 519:13 531:9
Barbary 345:12
bare 49:1
bargain 509:21
bargaining 408:10 408:15,21 429:5
bargains 503:5
bars 306:22 350:8 355:12
base 71:2,3 73:17 99:5 104:21 201:19 289:7,8 388:17 390:22 391:4,4 405:17 425:21 514:16 522:3
baseball 139:21
based 27:17 44:17 49:1 51:22 52:4 52:16 62:13 67:5 101:19 102:11 109:9 115:3 165:19 168:12 190:11 194:22 209:1 218:1 229:18 234:13 243:4 248:4 250:19 252:20 274:9 289:4 293:9 295:8,20 296:1 301:17 303:1,13 309:6,12 315:6 321:18 328:2 334:19 352:19 401:9 421:22 434:17 509:1 524:7
baseline 302:19,21
bases 482:16
basic 32:11 45:22 67:16 161:3 456:3
basically 29:6 49:20 50:1 151:18 165:15 223:12 228:18 232:18 248:10 249:1 255:18 259:15 310:15 328:22 381:20 383:17 459:5 464:22
basis 35:1 47:21 84:5,6 250:17 251:22 395:4 418:6
bat 289:22
BCD 116:11,16 144:5
BCMR 75:2 110:4 110:13 111:18
Beach 281:19
bear 28:11 58:16
beat 47:9 48:13 460:20 489:9,22
beaten 460:11
beauty 279:11
becoming 110:13 317:18
bed 316:6,6 318:20 318:21
beds 316:3
beginning 34:7 58:8 278:8 436:1
begun 475:15
behalf 68:22 95:15 104:17 106:17 123:11 391:20 452:12 453:8 535:10
behavior 117:5 178:4,7 264:22 265:11 350:10 364:11
behaviors 264:21

354:16
beings 375:9,14 450:10
belief 175:22 403:2 420:2
believe 62:14,18 68:14 113:12 118:14 267:7 311:15 347:1 350:12 359:17 363:8 370:1 372:13 375:12 378:17 380:22 403:6 424:9 431:20 444:7 453:16 455:20 457:1 458:17 491:11 492:20 494:1 507:6 531:16
believed 355:7 379:12 380:8 388:21 460:20
below-guidelines 411:7
bench 188:3 235:2 235:5 306:2 316:16 325:17 326:1 370:14
beneficial 32:14
benefit 193:19 323:21 424:19,20 433:8 434:5,8 489:13 493:4 518:7 534:21
benefits 57:3,20 58:3 112:12 283:18 323:18 358:2 425:2 435:16
Bergstrom 2:3 3:11 239:3,8,9,10 241:21 245:14 246:2,10 262:7 266:13 268:7 275:16 276:15 282:12 283:14 298:12 302:18 304:12,18,21 305:3 307:17 309:22 310:7 313:17 316:11 317:21 319:10 327:7,19 328:14 337:2 338:9 339:11 340:9,16 340:18 341:20 342:2,12
best 49:12 97:1 152:21 155:13 303:9 345:22 379:22 422:8 424:10 443:8 478:9 498:16,20
bet 327:13 374:21
better 120:18 258:2 293:12 313:11 317:20 319:15 320:14 324:20 356:17 397:7 405:9 433:10 442:22
beyond 28:16 37:17 152:5 157:12 160:4,21 181:5,7 195:19 299:10 310:14 420:14
BG 8:22 9:4 13:17 17:3,6,9 19:15 20:3,9,11,12,17 21:14 22:9 23:5 23:10 25:9 29:13 31:1 34:4 35:19 36:1,5 42:17 45:3 45:21 49:20 50:10 50:18 51:3,15 52:13 54:20 67:15 67:21 68:16 168:17 170:6 174:15,17,21 175:8 190:19 204:19 205:7 207:20 213:2 223:9 361:14,17 366:2 387:1,7,11 389:7,22 390:19 404:17 498:11 499:15 515:1,11 516:5,17 517:3,17 524:13 525:19 533:14,20 534:3 539:1,6
bifurcate 22:17
bifurcated 11:9 41:18 42:4 482:5 492:17
big 21:9,16 101:1 151:9 177:5 183:16 203:18,21 204:12 258:18 296:10 318:2,4 319:4 325:2 385:2 395:5,18 396:11 402:17 406:15 411:15 445:3 457:11,22 475:17 476:16 479:15,18 485:10 504:17 511:10
bigger 308:11 381:8
biggest 203:8 286:18 396:16 397:10
bill 342:3 409:2
bills 397:12
Billy 147:14
bind 50:11
binding 50:19 215:11
bit 5:21 45:3 60:20 105:13 113:13 114:16 148:17,22 149:15,15 166:21 239:22 240:2,6,11 246:3 249:13 255:5 265:6 267:3 269:6,10 273:13 290:18 293:15 295:6 305:8 311:9 345:9 384:18 453:12 458:22 472:12 475:1,10 535:8
bites 47:17 49:15 52:20
bits 254:8,14
black 240:19
blah 136:19,19,19
Blakely 157:1
blame 438:15
blaming 365:8 502:15
blank 162:9 279:9
blueprint 270:16
blurring 127:11,13
board 2:2,4 20:4 65:15 73:9,10 74:7,11,12 75:7 75:20 95:11,17 96:5,9 97:9,22 98:8,17 103:7 105:4,12 106:1,14 107:17 110:22 111:15 120:8 124:3 125:5,6,7 125:15,22 127:3 127:19 128:17,18 128:21,22 129:3 217:6 220:5 247:11 259:10 288:17 313:8 314:2 324:1 327:2 411:14 439:14 479:10 487:18 513:4 538:14
Board's 74:6 120:22
boards 2:13 3:5,6 91:16 95:8 105:11 105:13,19,20 106:5 113:4,14,20 123:20 124:14 127:13,16 324:14 454:22
bodily 329:8,9 372:5 462:10
body 158:17 159:13,17 176:4 181:6 443:9 448:6
bolded 228:22
boldly 410:19
bolster 535:9
Bonnie 345:16
bonus 495:1,5 507:8,14,21 526:21
bonuses 494:22
book 157:14 162:17,18 197:16 259:3 411:22 412:1
Booker 151:12 153:11 157:3 396:5 407:6 410:16 449:8,11
books 449:13 484:10
boom 317:15
bore 4:20
borne 473:7 496:12 512:5
boss 116:15 379:22
Boston 219:10,10
bottom 92:15 123:3 244:20 330:19 337:21 371:22
bought 421:17
boundaries 299:1,2 299:5
boundary 309:12 369:18
Bowl 33:13
box 248:17
boy 27:4,5 54:1
Bragg 35:15
brain 203:10
branch 109:13 150:19 159:5 247:13,14,19 335:17
brand 147:18
break 30:13 238:15 255:18 403:2

429:7 471:17
breaking 13:16 39:12
breakouts 337:10
breast 510:18
breather 138:8
Breyer 152:16
bridging 56:22
briefing 375:5
briefly 70:19 251:1 256:17 307:18 410:13 411:5
briefs 6:7
brigade 31:15,16
brigades 23:18
Brigadier 1:16,16
brigs 112:20,21 113:16
bring 159:14 192:9 206:19 279:6 349:11 393:3
bringing 34:11
brings 159:16 515:1
Brinkema 398:22
broad 35:4 149:18 205:18 436:18
broaden 409:3
broader 205:8 270:8 273:22 435:20 537:8
broken 16:4 58:5 59:9 356:13 377:3 378:13 403:8
Brooklyn 219:3
brother 343:21 344:16
brought 195:2 383:22 419:16,20 503:2 520:15
brown 2:4 73:3,4,7 95:9 97:12,21 99:13 102:14 103:6,12,15 104:6 104:11 112:20 113:3 114:5,15 117:22 118:4 119:3,6 120:21 121:6,15 122:20 413:11
Bruce 2:4 73:7 75:10 116:18
brutally 383:15
Bryant 1:15 7:10 7:18 8:7 10:7 11:3,5,19 17:12 18:7 19:17 20:1 39:9 41:14 42:21 47:14,20 53:11,17 55:9,16 65:1 88:4 88:20 99:3,11 100:13 130:15 133:22 136:8 137:10 144:21 145:1,16 146:7,11 161:11,15 163:9 163:18 164:3,8 175:11 176:5,10 178:15 182:22 183:10 189:4 191:4 212:17 220:10,12 225:4 225:10,13,17,21 226:2,8 229:20 230:1,13,17 232:5 258:7,17,21 282:20 291:17 293:1 338:10 339:8 341:14 377:8 404:20 405:11 414:9 415:3 416:16,20 416:22 490:10 507:17,19 513:3 514:12,19 520:13 521:1,19 523:1 524:9 529:1 533:11
Bryant's 283:15 527:14
budget 261:10
build 174:1 282:9,9 331:11 335:1,10 339:21
building 303:22 456:11,13
built 303:3 306:20 335:9 491:3,5
bulge 228:9
bump 190:9,10 209:18
bunch 107:8 168:9 319:18 413:7 532:4
burden 258:10 499:11
Bureau 95:14 124:20 224:20 397:18 476:1
burglaries 414:15
Burress 2:5 3:8 146:21,21,22 149:22 153:14 156:22 159:19,21 161:14,16 162:22 163:16 164:1,7,15 168:21 170:8 175:18 176:6,9,15 179:5 181:10,15 182:10 183:1,9,22 186:18 187:14 189:2,20 190:16 191:9 192:5 195:11,16 196:11 197:9 201:8 204:3 204:16 205:6,22 207:2 208:1,6,14 212:20,22 213:5 213:19 214:3 217:12 218:3,18 220:17 223:18 225:9,12,15,18,22 226:7 227:4 228:17 231:11 232:8,12,21 233:9 235:12 237:2 238:4,8,16
Burrhus-Clay 2:6 3:12 343:4 348:14 348:15,18 357:6 359:17 360:17 361:16 362:22 366:14 367:22 368:12,15 369:7 369:11,16 376:7 377:2 379:11 381:6 383:7 384:19 385:8 387:6,9,16 388:4 388:12 389:1,6,21 390:14,20 391:15 391:18,22
Burton 2:7 70:11 70:15,16 76:9 80:12 81:6,10 82:7,17 85:19 86:14 90:1 91:18 93:16,19 94:3,12 94:16,19 95:1 142:12,16 144:4 145:11,22 481:5,6 515:10,14 532:15 533:13,18,22 534:5
bus 128:14
business 240:9
busted 344:1
butt 390:4 414:19
buy 316:3

C

C 294:7,9,11,13 431:4
c(1)(C) 432:2
CAAF 6:14 86:6 120:17 486:20
calculated 333:7 513:18 514:3
calculation 227:19 330:15 502:5
calculations 172:12 446:7 447:9
calculus 481:3 506:5
California 183:17 453:14 480:6
call 47:9 190:11 194:11 202:9 204:5 209:22 211:5 228:3 231:22 237:5 241:10 281:18 296:5 308:5 329:6 329:21 345:19 440:12,19 460:9 462:8 505:5 511:14 520:6 521:21
called 85:4 150:10 151:12 177:17 180:13,18 183:22 187:17 196:3 216:5 229:15 231:14,19 312:2 332:6 381:20 405:17 429:17 435:7 454:18 455:8 462:7 465:20 476:10
camaraderie 35:6 387:22
campaign 285:6
campus 365:14
candid 126:4
candidate 286:12
capability 361:15
capable 123:16 443:14
capacity 397:19 413:21
captain 504:12 528:20
capture 434:1
car 161:8
care 118:22 367:13 478:5 498:1,1 533:10
cared 447:1
career 72:5 73:20 110:20 382:4 398:19 421:1 453:13 455:14 495:8 501:9 503:22 530:16
careers 494:15

carefully 356:10 430:18
carjack 161:8
Carolina 147:9 157:22 253:7 254:4,20 255:9 460:7,14
carpet 381:21
carries 107:16 331:19,21 413:14 537:10
carry 179:3 351:19
carrying 151:2
cartoons 413:10
carved 310:21
case 5:14 6:9,18 10:18 14:3,10 16:12 17:18 25:18 33:20 37:14 38:4 40:4 45:1 48:15 49:1,9 52:19 53:18 54:5,12 59:19 63:6,12,17 64:15 68:15 80:20 82:9 84:9,19 96:16 98:2,9,12 99:21 101:4,11 102:8,16 103:8,17 108:20 109:6 110:14 115:22 116:7 119:4,8 120:7,10,13 122:8 134:21 135:4 141:21 142:3 143:15,21 144:5 158:5 160:19 170:4 172:19 192:9 196:4 198:16 200:9 203:3 204:8 223:14 230:7 231:16 235:6 248:18 255:22 257:1,12 284:8 291:9 298:8 305:16 308:7 310:10 316:14 327:16 333:17 335:20 347:11 348:13 352:6 354:7 376:14,16 378:16 380:20 381:16 383:13 395:21 399:1,2 413:8 416:12 417:7,21 419:2 420:14 424:12 425:5 429:2 436:7 436:14 440:6 441:6 446:18 450:2 471:8 479:13,15 480:6 485:18 490:8 495:20 514:21 517:10,15 522:9 522:10 525:11,13 525:14 526:2,7,17 527:22 530:10,15 530:17 532:22 533:2,7,10 537:7 539:3
caseload 414:18
cases 3:20 7:7 8:12 9:15 11:8 14:2,4 24:8 26:21 27:2 29:11 30:18 31:2 46:19 58:12,13 62:16 63:15 66:11 68:7,8 71:8 75:2 79:13,19 96:10 97:8,9,10,13 98:19 100:5,11 103:2,16,19,22 106:10 110:7,16 121:12,19 122:14 123:7,14 130:14 130:17 149:6 151:5,6,11 156:7 156:9 161:1 164:5 169:16 174:11 175:12 176:6 180:9 196:13,19 197:7,7,13,15,17 197:18,19,22 198:2,5,10,12,21 199:3,6,7 201:17 202:8,16 203:1 204:10 206:12,20 210:15,16 214:21 215:1,14 216:10 223:3 226:1 228:19 229:3 261:10 272:13 278:14 287:1 291:8 292:9 300:17 304:4 305:20 309:15 313:4 314:7,16,17 314:21 315:20 318:9,19 320:7 324:3,5 325:14 327:13 329:9 333:5 340:20 341:2 352:9 354:11 369:3 371:15 375:18 376:10,12 378:14 379:6 383:6 389:5 396:1,3 400:3,20 401:21 402:7 403:15,17 405:11 413:4 418:17 423:18 426:22 427:1 429:9 430:1 430:13,15 433:21 434:20 451:21 461:18 465:11 467:7 469:12,13 470:14 471:4,22 473:11,12,13,14 478:14,21 479:2,7 479:11 480:3,3 481:9 482:21 484:2,2,3,4 490:19 493:19,21 497:7,9,10,21 499:2 502:2 503:11 504:7,13 506:20 507:10,12 511:12,13 512:7 512:20,21 515:18 515:20 516:12,20 519:20 525:17,20 525:22 526:1,3 527:9 530:8 532:13 537:5 539:20,22 540:8
cast 351:21
categorically 422:11
categories 308:20 330:16 332:12 369:3
category 102:3 203:11 204:6,14 282:10 332:2 428:14
cause 32:17 371:19 372:5
causing 371:18 372:4
caution 46:8
cautious 43:16
caveat 208:11
caveats 361:9
ceiling 48:9,11
cells 330:22
center 1:11 251:2 251:14 253:10 338:15,20 384:17 389:13 391:11
central 274:22 449:14
certain 16:19 29:1 52:8 61:10 87:4 131:16 143:11 171:15 183:17 210:4 221:9 237:5 253:18 281:20 315:7 346:11 406:19,21,22 418:4 422:13 432:5 455:11 466:8 481:9 497:14 506:14 529:15,17 535:15
certainly 21:16 25:5 26:13 42:2 63:21 67:3 70:15 98:21 100:4 116:6 127:17 145:15 152:10 184:7 246:13 254:17 263:11 298:15 300:15 312:21 318:7 325:2 339:12 343:9 365:1,16 391:16 392:22 394:7 400:21 402:20 422:12 423:10 428:19 441:17 442:20 491:7 498:1 511:3 535:12
certainty 307:6 467:22
certified 93:10
cetera 20:8 389:12 524:19
CG 530:14 537:6
chain 33:15 127:8 387:14 388:22 389:19
chair 3:2 4:6 147:10
chairman 1:12,15 73:8,9 75:6 95:18 105:15 147:11 258:7
chairperson 219:8
chalks 47:8
challenges 252:14
challenging 422:13
chance 8:3 29:21 111:17 145:20 404:2
chances 144:17 383:16
change 4:15 36:12 37:11 39:8 40:4,5 58:3 83:19 120:19 122:20 137:12,18 137:20 138:15 139:19 154:1,5

172:8 177:5 210:11 245:3 262:21 348:5 355:15 368:14 388:2 443:12,12 472:8 479:12 486:6 487:8 508:22 511:10 537:1 539:15,15
changed 51:2,4 76:12 93:19 94:4 102:5 161:4 167:5 177:9 193:4 210:7 224:6 263:1 467:12 472:15 475:5,8 508:19 536:3,11
changes 7:13 52:10 76:7 77:14 81:11 83:20 120:9,14 129:12 138:1 166:12 170:2 319:4,8 458:14 476:9 486:11 539:17
changing 3:16 45:3 66:18 128:4 134:16 140:1 264:21 318:14 443:15 475:11 480:1 488:21
channels 365:19,19
chapter 407:22
character 140:1 354:20 356:1
characteristic 209:16
characteristics 160:13 184:12 201:9,12,14 213:9 216:18,20 228:21 229:5 280:8 303:18 394:13 395:14
charge 39:12 78:1 82:3,6 99:10 175:3 193:11,12 193:12,15 194:15 195:2 225:22 226:5 227:11 247:13 351:14 408:7 413:6,19 419:1 426:13 427:2,17 428:1,2 464:22 475:1 517:18,20 537:9
charged 129:14 188:8 190:17 193:14 221:20,22 284:14 330:1 413:9,13 418:6 426:3,6 427:5,7 446:3 466:13 506:13 510:3
charges 61:9,14 76:17 81:14 133:4 195:14 402:8 426:17 427:10,14 429:3
charging 44:4 195:1 225:19 227:9 340:14 416:11 418:11 426:8 469:11 479:14
Charleston 71:2
chart 243:14
charts 121:11 122:18
chase 325:7 335:13
check 313:9 472:16 473:9
checkboxes 279:12
checking 473:8
checks 335:10 336:9 386:6 445:4 445:9
cheek 377:11
chief 12:16 73:20 147:13 219:10 267:19 270:4 393:9 479:4
child 78:11 198:1 219:21 220:1,3,8 220:13,14,18,19 223:20 230:7 237:8 238:2 280:15 366:18 367:4,9 413:4,19 416:2,3,5 435:7 451:21 465:14 466:7,8,8 473:13 473:17
child's 221:6
children 54:16 63:7 201:15,15 231:6 331:4 332:1 357:20 358:2 366:22 367:16 376:19 379:16 465:14 498:20
chili 238:13
China 267:8
chip 408:10,15,21
chipped 488:20
chipping 492:10
choice 416:7
choose 292:12 431:22 433:20
chopped 117:3
Chorus 540:17
chosen 297:22
circle 45:21
circuit 147:13 189:22 270:10 393:6
circuits 275:3
circumstance 14:8 326:9 403:21 412:12
circumstances 16:8 16:15 210:4 325:20 326:10 327:3 347:12 372:11 380:20 440:8 447:3
cite 459:20 522:16
cited 243:19
citizen 10:18
City 460:14
civil 304:19
civilian 3:13 10:7 17:15,17 22:18 33:5 34:19,20 39:11 47:3,15 48:1 50:9 55:4 75:21 91:11 95:20 95:22 134:5 136:13 349:20 351:5 363:16 364:5 381:9 382:20 390:11,18 391:8 392:10 400:13 402:22 424:18 521:21 523:19 529:4,17 537:14
civilians 18:4 513:4 528:10
civilly 490:2
clarified 39:2
Clark 163:19
class 107:13 151:1 460:7
classification 309:6
classmates 354:1
Clay 343:5 356:22 384:14
clean 111:6 293:18
clear 8:4 81:3 123:15 142:10 349:8 468:4 470:17
clearinghouse 442:20
clearly 139:20 191:1 524:16
cleaver 397:1
clemency 2:2,4 3:4 3:5,17 52:9 70:5 70:11 71:5 72:11 72:12,14 73:8,10 75:7,19 76:6,11 76:14 77:17 78:8 78:15 79:7 80:2 81:19 84:3,4,7 88:18 90:21 91:15 91:16 93:6,15 95:3,7,10,11 96:7 96:9,17 98:11,18 104:15 105:16 107:17 108:9 109:10 110:6 111:11 112:1 113:7,13 115:18 115:22 116:3,20 117:17 118:6,12 120:22 121:5,13 121:15 122:16 123:19 124:3,14 124:22 125:3 129:11 132:3 133:9 139:15 140:6 141:9 145:20 488:22 492:5,9 493:6,21 493:22 494:1,2,8 495:6,17 496:1 497:17 536:10 537:14,16 538:1,4 538:10,12,13 540:9
clerk 101:21 159:11
clerked 393:5 398:21
clerking 399:3
clerks 12:7,11
clever 131:7
client 191:20 284:12 377:17 421:3 422:18 423:5
clients 72:12 195:13 399:18 400:6 447:13 491:14 505:5,6,9 505:12
clinical 303:20
Clinton 224:14
close 130:14,17 226:18 235:4 310:9 328:17 357:19 427:5 484:2 511:13

close-knit 34:21
closed 35:6 363:21
closely 83:21
closer 212:11,15
closing 337:1,15
Club 520:6
Clyde's 345:16
co-accused 84:9
coached 495:6
Coast 12:12 16:22 219:4 478:11 516:14
coat 228:9
cocaine 223:19 224:11 312:5,11
code 50:6 51:2,3,17 61:1,15 102:6 289:10 345:4 347:5 348:5 372:21 374:13 465:9
coded 72:1
coffin 356:5
cog 410:3 486:8,9 486:10
coin 432:20
COL 4:5 5:2 7:16 7:19 8:10,15,17 8:18,20 9:2,6,13 10:20 11:4,13,20 12:1,5,15 13:22 14:12 15:1,3,4,6,7 15:8,14 17:5,8 18:4 19:21 20:15 20:18 21:18 22:20 23:13 24:19 25:16 26:20 27:21 29:12 30:8 31:7 32:7,10 32:19 33:19 34:3 34:18 35:10,21 36:4,8 37:6,19 38:20 39:3,6 40:1 40:10 41:8 42:10 42:13,14,19 43:11 43:18 44:13,20,22 45:8 46:7 47:19 48:3,5,6,20 49:2 49:13 50:7,14 51:1,9,18 52:18 52:22 53:11 57:6 58:2 59:8,10 60:17 63:4,11 64:8,13,16,18 65:17 68:20 69:3 69:10,12,20 70:15 76:9 80:12 81:6 81:10 82:7,17 85:19 86:14 90:1 91:18 93:16,19 94:3,12,16,19 95:1 142:12,16 144:4 145:11,22 146:19 149:17 174:6,16,20 175:7 186:14 187:5 189:1 190:14 191:15 194:19 195:12 196:8,14 201:2,7 213:16,20 218:14 228:15 229:17 230:5,15 231:1 232:3,10,13 232:17 234:20 236:15 238:7,22 246:8 260:14 292:11,18 297:14 304:10,16 313:15 316:8 317:10 319:7 327:5 336:21 338:7 340:3,14,17 342:21 343:9 356:22 361:6 367:21 368:22 369:8,12 375:1 376:22 377:14 384:14,21 387:13 387:18 388:7,9 391:13,16,20 392:4,9,15,21 393:2 400:11,12 400:16 418:2 419:4 426:11 428:5,10 429:12 434:4 435:15 437:3,6 450:18 452:12,20 462:14 463:21 465:9,15 469:3 471:7 472:20 473:21 477:15 478:3,9,19 480:19,22 481:5,6 483:13 487:13,14 496:4 497:1 501:16 504:5 505:17,22 506:21 507:5 508:6,13 509:2,8,10,11,13 509:19,22 510:10 510:22 512:1,4,11 512:13,16,18 514:7,18 515:10 515:14 517:1,5,19 519:4,6,7,9,10,15 520:21 521:14 522:2 524:7 525:8 527:13 529:6 532:15 533:13,18 533:22 534:5 535:1 536:6,8,15 536:17,19 537:19 537:22 538:15,18 539:5,22 540:11
COL(R) 3:3
cold 55:21
collaborative 268:16
collar 166:15,20 167:2,2,3
collateral 4:14 89:11 133:19 137:6 138:22 143:20 328:3 362:11 378:3 425:15 466:14
colleagues 236:19 348:22 353:22 437:8 442:13 457:17 491:11
collect 15:22 443:10 448:6 449:2 515:12
collected 424:15
collecting 270:6 347:17
collection 169:5,7
college 236:8 365:14 460:7
collocation 120:1
colloquialisms 349:5
colloquially 489:8
colloquy 232:6,11 423:13,13 526:10
Colonel 1:14,17,18 2:1,2,7,10,14,18 2:19 4:7,19,21 5:1 21:4,14 34:5 36:9 55:5 64:17 67:21 68:21 70:2,10,16 71:11 72:19 73:2 73:2 74:2,3 75:5 76:4 80:9 83:3 89:8 90:4,16 91:2 91:6 94:20 95:2 95:19 96:3,3 99:15 100:10 101:2,6 104:9,9 104:12,18 107:3,5 107:22 108:2,6,10 108:21 109:1,4 114:11,22 115:15 115:20 117:10,13 117:15,20 118:2 119:1,4,9,10,12 119:14,19,20,22 120:3 121:8,10,18 121:21 122:2,5,7 122:17 123:10,18 124:1,11,15 129:8 130:3 132:10,13 132:19 135:6,12 135:17 137:22 138:4,13,18 139:5 139:9 141:3,17 142:18 143:7 144:3,7,9,15 148:9 225:5 478:18 481:5,7 483:13 487:13 503:1 518:10,11 521:19 536:9
colonels 105:14
colossal 485:7
Columbia 2:12 241:12 242:13 402:1,4 411:3,5 412:5 413:3 416:6
column 248:17
combat 23:6,8 28:13 175:10 494:14
combination 248:5 275:1 276:14 330:20
combinations 248:7
combined 516:13 516:18
Combining 384:21
come 18:2 26:12 33:4,16 42:10 47:5 49:6 53:22 61:19 63:16 67:18 72:8 75:3 89:20 90:13 98:4 100:17 109:9 113:1 132:8 132:20 174:12 188:11 189:7,17 193:3 196:9 197:13,15 198:21 199:3,8 202:11,14 202:15 207:15 215:11 219:14 222:11 234:6 235:2 238:15 267:14 272:16 277:3,4 286:13 293:9 303:14 305:13 334:13 341:19 364:15 365:20 382:2 385:18,19 394:12 422:21 482:10 483:3 485:3

486:20,21,22 487:17 490:3,7 494:22 496:6 498:14 517:11 530:3,19 531:21
comes 23:3 42:17 55:20 112:16 146:7 178:5,7 226:19 283:9 394:8 410:5 412:13 460:4 469:9 490:22 501:2 508:14
comfortable 361:4 362:18 398:6
coming 19:9 28:18 31:19 35:8 44:15 58:22 112:5 123:17 137:8 161:17 169:18 193:16 215:12 227:9 238:2 275:21 346:18 352:13 362:14 382:17 386:10 434:18,18 442:10 469:21
command 33:15 35:16 50:21 72:13 73:18 76:1 127:5 387:14,14 388:22 389:19
command-orient... 33:1
Commandant 75:16
commander 2:11 21:21 33:8 71:12 71:15 72:20 75:13 77:21 78:19 81:12 86:14 93:1 105:8 105:9 387:20,20 481:13 483:14 492:8 495:4 497:16
commanders 22:5 33:2 78:14 145:4 388:17 481:8,10 488:20 496:2 519:20 528:19
commanding 528:20
commands 388:15
commend 11:21
comment 29:21 44:5 94:18 108:12 120:4 238:1 419:13
commentators 434:12
comments 3:2,16 37:16 356:3 405:10 540:14
commission 2:3,5,8 2:10 3:8,10,10 19:10 45:13,14 146:20 147:5,7,11 147:16 149:1,16 150:1,3,18 152:18 153:20 154:9 155:16 157:7 158:9,10 162:8,11 162:14,19 163:10 164:16,16 165:1,7 165:11,18 166:11 166:14,18 167:5,7 167:9,13 168:2,22 168:22 169:3,6,9 169:13 170:2 174:7 176:16,20 176:22,22 179:1 181:11,13,16 188:16 199:11,13 199:14 200:6 208:22 211:12 214:5,9 216:11 219:12 220:2 221:12,16 222:1,3 222:6,10 223:21 224:1,12,17 239:4 239:6,11 241:9 242:3,4,10 245:15 247:17 252:2,6 255:22 256:4 257:3,19 259:18 261:9,11,22 262:9 262:9,13 267:2 270:15 288:8 295:21 301:16 302:20 315:4,11 315:19 319:12 324:16 332:5 334:9,14 335:17 337:10 338:18 342:11 352:15 394:22 396:14,19 396:19 434:21 438:16 442:6,14 442:18 454:18 471:12,14,14 472:7 474:5,9 475:14 476:9 516:10
Commission's 125:1 198:22 211:6,19 267:9 472:16
Commissioners 152:17 211:21 222:7
commissions 240:1 240:3,6 242:15,19 245:1 252:1 267:15 268:15 339:15 454:21
commit 203:14 372:1 456:5 480:7 480:8
commitment 176:18 304:20
commits 126:8
committed 24:11 32:2,3 110:1 122:19 177:12 244:4 269:18 287:7 297:16 394:10 399:22 401:11 403:18 445:13,17 450:5 456:16 495:16
committee 68:22 247:19 270:5,16 270:18 278:22 391:21 452:13 454:19 465:19
committing 346:3 376:6 456:11
common 111:11 121:3,4 243:22 284:1 313:15,18 327:14 423:17 426:11
commonly 431:8
Commonwealth 316:2 335:7
communicated 493:8
community 22:12 22:22 23:1,3 28:4 33:5,7,8 34:19,20 35:5,6,8 50:9 63:22 111:8 116:22 231:7,8 281:2,2 292:2,3 319:22 323:21 349:20 350:4 361:20 363:16 364:2,6 373:13 381:9 391:9
community-based 324:3
commute 139:12
company 528:20
comparable 84:21 269:18
comparative 1:4 4:10 17:13,21 19:5 27:9 38:16 41:14 255:8 382:17 537:15
compare 55:14 100:1 217:2 251:10,14 260:4 484:4
compared 66:12 219:18 252:1 266:16 401:22 473:15
comparing 17:14 216:17 410:13 467:4
comparison 29:17 34:19 200:18 467:16
compatible 288:11
compelling 252:8 256:6 422:1 527:10
compensation 79:19 536:13
competently 51:21
competing 300:1 538:7
complain 156:5
complaint 187:12 192:2,3 463:10
complaints 43:20 191:17 462:14 463:2 496:6 501:17
complete 178:8 300:14,17
completed 91:20 108:19 113:18 255:21 257:1 259:17,22 280:22 294:4,7
completely 9:7 67:8 111:6 249:18 250:4 257:9 259:22 354:3 355:15 361:10 447:8 489:18 522:2 525:16
completeness 29:14
completing 266:3
completion 251:21
complex 371:2
complexion 479:12
complexity 204:21
compliance 250:2 251:20 252:3 256:1 271:1,2 290:22 295:3 297:2 309:16

complicated 158:13 162:2,7 181:4 213:13 286:8 443:3 457:10 458:3 461:1
complicates 354:7
complicating 28:10
complied 323:10 482:10
component 171:2
components 308:11
comprehensive 451:20
comprised 109:12
compromise 420:11 422:7
computer 413:7 422:20
computerized 12:7
computers 69:16 494:9
con 58:21
concentrate 353:12
concentrating 57:22
concept 41:17 369:12 401:8 514:14
concern 66:5,19 83:5 131:11 203:8 298:15 341:16 359:6,7 366:4 472:10 482:8,12 482:19 496:7 511:18 521:20
concerned 5:22 43:15 199:16,19 200:1 263:12 313:1 357:22 358:1,7,9 364:9 425:16 498:9,10 508:16 532:18
Concerning 3:16
concerns 24:2,5,13 184:2 324:10 358:14,20 359:22 481:7 482:3 483:16,21 486:3 487:2,12 533:5
concessions 410:8 410:9
concluding 73:19
conclusively 346:8
concrete 445:2
concurrence 250:3
concurrent 38:17 83:4
conditional 57:15 57:17
conditions 113:22 323:10
conduct 43:3 49:4 102:20 105:20 109:19 112:3,11 180:20 182:13 188:9 210:14,15 211:2 409:6 448:15 451:13,17 451:20 452:6 531:11
conducting 281:22
conference 1:11 270:11 401:5
confess 210:14
confidence 378:9 378:18 382:10,13 382:19 383:2 390:3 444:5,20 456:12,13 531:19 531:21 532:3,12
confident 234:2 362:10
confidential 391:12
confined 35:13
confinement 27:15 27:20 28:1,7 29:2 29:10 35:20 36:16 37:3 38:2,11 40:2 49:5,7 78:2,4,6 86:21 141:10 321:17 379:4 490:18 501:14 508:17 532:21,21
confirm 15:16
confirmed 222:8
confirms 16:21
conflict 401:4
conflicts 385:1
confused 523:6
confusion 355:2
conglomerate 81:17
Congress 60:20,22 95:3 125:7 152:22 153:22 154:4,7 162:10,18 166:13 167:8,14,20 168:16 183:4,20 199:12,12,15 221:3,10 222:18 223:12 224:2,5,7 224:13 247:16 344:22 345:13,21 347:16 352:15 357:1 361:11 397:5,12 409:3 443:15 449:15 476:10 531:13
Congressional 166:11 346:20 396:16
conjecture 124:16
connected 415:14
Connecticut 219:3
connection 365:3
Connex 494:10
cons 60:7
consensual 231:17
consensus 222:11 433:15
consent 354:10 376:17
consequence 143:20 328:4 369:19 420:19
consequences 4:14 89:11 146:3 328:10 355:19 356:11 362:12 364:11 380:12,22 420:4 506:10
conservative 403:1
consider 5:17 7:21 38:19 39:17 83:17 83:18 93:8 96:6 96:18 103:5,8 105:16 113:20 129:17 134:20 135:3,7,9,14 138:22 153:4 273:11 295:15 299:8 303:16 309:20,22 310:8 311:16 312:7 325:1 348:9,11 349:20 356:10 401:13 416:8 428:5,11 432:18 432:22 449:16 474:17 477:12
considerable 97:16
considerably 260:10 265:13 307:9
consideration 28:21 75:3 106:7 126:11 149:8 275:14 291:6,11 291:14 297:4,6 298:6 413:22 522:8
considerations 160:20 190:8 196:15 203:5 209:13
considered 37:4 93:11 123:21 253:13,17,20 256:19 270:20 295:3 297:1 313:20 322:9 332:18 333:9 487:7 492:13
considering 29:2 60:11 72:12,14 84:4 97:6 258:10 302:22 337:16 449:21
consistency 13:20 65:4 217:15 235:17 243:20 268:1 403:5 417:5 419:5 436:2 444:11 523:12
consistent 65:14,18 96:22 120:21 122:10 236:9,12 412:21
consistently 401:6
consists 95:17
consolidated 389:13
consolidating 123:21 389:9
conspiracy 422:3 480:7,8
constant 435:1,4
constitute 409:13
constitutes 409:6
Constitutional 150:16,21 154:6 188:10 420:13 428:10,12
constraining 441:19 450:17
constrains 404:14 444:18
construct 51:6 52:13 456:22 465:3
constructed 390:10 455:18,20 456:7 456:12,17 457:2 457:13,21 464:20 465:4 514:21 524:17
consult 449:16
consummated 510:17,21
contact 208:13,15 208:16 210:9,17 210:18 211:7,12 359:10 383:20
contacted 445:10

contacting 342:15
contacts 66:12
contained 65:12 280:6 480:9
containment 308:5
contemplated 370:9
CONTENTS 3:1
contest 497:10,21 504:3,14 506:19 511:12 512:12
contested 497:8,10 503:6 504:15 507:14 508:5 512:7 532:13
context 49:16 239:22 250:21 308:2 359:16 389:14
contextualizing 353:2
continually 380:9
continuance 30:19
continue 46:1 162:12 169:21 184:19 265:7 318:12 344:22 348:3,3 390:17 391:5 458:16 489:22
continued 387:21
continues 227:5
continuing 127:12
continuum 251:7 253:11 255:14 259:14
contract 174:9
contractors 445:4
contradiction 370:16
contrary 39:10
contribution 147:2
control 244:16 456:18
controlling 244:13
convening 3:5 14:20 47:4 48:8 48:10,20 49:21 50:5,10,19 51:7,9 51:15 52:2,7,22 58:19 59:17 70:12 71:4 72:10 76:6 76:11,13 77:5,10 77:16,17 78:8,22 79:8 82:2 84:17 84:19 86:3,11 89:18 90:7 92:6 92:12,14 93:7 96:14 118:14 129:11 132:8,14 133:5 139:11 140:9,17 141:6,16 141:22 142:4 145:4,21 489:10 510:7 530:9
conversation 68:19 194:20 195:14 232:18 243:10 368:3,14
conversations 365:9
convert 361:22
converting 289:3,5
convict 36:2 133:15 135:22
convicted 27:5 35:20 38:12 63:6 81:13,21 88:8 116:12 131:13,14 131:14 133:3 146:13 190:22 193:16 206:3 209:2,3,14,19 210:16,20 211:22 228:4 230:9 248:14 272:8 301:21 306:10 307:2 309:8 312:3 330:2 366:8 369:5 453:19 454:15 480:7 506:17 515:22 534:13
convicting 230:2
conviction 29:19 80:17 82:21 88:6 88:7 101:17 131:9 131:22 137:7 140:3 146:8 160:22 192:11,16 192:17,21 209:1 209:10,12 210:2,4 210:15 211:17 299:3 302:2 305:20 309:7,13 309:18 310:2 312:12 327:5,10 327:11,15 328:3 330:1,6,9 331:20 334:7 336:14 359:9 363:12,15 466:17 469:8 481:20 508:14
convictions 41:10 42:2,8,9,15 43:2 133:10 280:11 306:14 315:6 445:21 495:12
convince 232:19 366:20
Cooke 1:16 20:9,12 20:17 22:9 23:5 23:14 25:9 29:13 31:1 45:3,21 49:20 50:10,18 51:3,15 52:13 57:8 67:21 68:16 82:1,13 86:8 103:1,10,13 104:3 104:8 141:20 142:8,15 143:5 144:1 168:17 170:6,11 174:15 174:17,21 175:8 204:19 205:7 207:20 223:9 233:15 366:2 369:4 404:17
Cooke's 21:15 28:3 32:13,21
cookie-cutter 488:1 518:9
cookie-cutterish 522:14
Coombe 436:6
cooperate 215:8 408:14
cooperated 408:13
cooperating 457:13
cooperation 278:21 408:18,21 409:19 409:20 410:1,2 411:14
coordinate 324:17
copies 42:7 98:3 103:19 293:18
copy 91:21 94:11 118:20 279:9
corners 425:8
Corp 71:16
Corps 2:2 95:22 124:9 479:4 509:16 515:7
correct 21:13 55:8 55:9 79:21 82:6 82:16 86:5 90:3 93:16 94:12,16,22 95:1 114:10 117:18 118:8 131:5 143:4 144:4 145:22 172:7 232:14 282:11 301:5 397:2 419:7 434:7 436:21 508:8,13 533:13 534:9
correction 3:6 74:7 111:15 333:12
correctional 75:14 105:4 263:19 265:7 266:16 318:4
Corrections 75:22 278:10,21
correctly 153:3 195:21
correlation 469:14
cost 287:21 318:13 338:8,10 397:17
costs 108:5 263:20 318:8 340:2
could've 161:5
council 241:10 242:11
councils 241:11
counsel 3:13 8:22 24:22 34:6 35:18 38:5 46:18 48:16 61:18 63:13 71:7 71:20,21,22,22 73:15,15,16 85:2 85:5 87:5,10 89:5 95:20 96:4 107:13 131:11 133:14 135:14,18 141:5 141:15 145:6 187:13 190:19 293:10 343:18 392:10 400:14 479:1,4 491:12,14 495:7 504:7 509:20 511:4 514:9 535:4,4 536:1
counseling 328:5 389:10
counsels 59:16
count 30:17 39:11 39:12 230:7
counted 172:16
counter 9:1
counterintuitive 386:8
counties 275:22 276:2
countless 355:11
countries 266:10 267:5 268:4,8,13 269:1
country 150:22 190:1 198:20 268:2 345:4,17 395:19 407:8 409:7,18,19 410:7 415:10 418:10,17 427:8 430:8

432:13 476:21,21 477:6
county 318:6 334:18 336:16 337:12 453:15
couple 5:10 8:13 23:16 27:15 31:7 46:19 63:5 82:14 195:3 225:4 229:4 244:17 261:15,19 262:16 275:2 279:3 290:19 321:12 325:8 363:1 463:4 481:6 483:17 498:12 505:4 532:7
course 5:5 17:7 18:14 29:20 53:17 53:22 69:10,12 71:5 84:10,14 113:14 136:4 150:3 155:3 176:17 180:21 190:13 195:8,17 216:16 224:16 227:20 235:13 241:12 243:6 249:15 254:3 256:17 280:4,10 281:1 286:15,17 291:5 293:9 306:5 346:5 351:2 361:21 401:15 408:6,11 411:10 421:5 436:1 447:17 456:21 458:12 460:13,21 463:11 467:16,17 492:1 531:2
court 5:8,8 6:5,9,12 6:16 8:4 9:10 14:1,8 17:16 20:21 28:15 36:19 37:13,20,21 38:9 39:3 40:15,19,20 42:7 50:13,19 51:16 64:20 65:21 69:7 73:21 76:22 78:3 80:17 86:6 86:10 90:18 94:21 98:4,21 99:1 101:10,14 103:19 117:15,17 118:10 122:8 140:12,19 141:8 147:14 149:12 150:20 151:9,12,13 152:8 152:14,15,19 154:3,4 156:10 157:2,3,11 159:3 160:3,4 171:10 185:4,19,21 186:5 186:6 189:22 190:20 196:20 198:17,17,21 199:8 200:3,3,10 209:4 212:1,18 232:9 246:19 270:10 278:13,19 285:12 297:21,22 299:8 304:3 310:13 311:16,16 312:7,16 316:4,4 321:15,20,21 329:11 331:7,9 333:3,11,16 336:1 336:8 344:2,3 351:5 368:1 383:10 393:6 396:4 415:1,2,2,6 415:10,11,12,13 415:15,18,21 419:14,22 421:6 423:18 424:1 428:17,18 429:1 431:22 432:14 436:7 442:4 443:1 450:20 454:2,2 475:5 481:19 482:17,22 483:6 484:4 486:21 492:11 497:19 503:12,13 504:20 519:5,16 539:18
Court's 101:21 213:17
court-imposed 286:20
court-martial 22:3 30:1 36:13,14 50:11,22 51:8 59:20 450:19 493:3 495:11 496:14 516:7,21 521:17 525:11
court-martialed 363:14 368:9 494:15
courtesy 233:15
courtroom 13:12 190:21 192:18 424:13 442:11
courtrooms 434:19
courts 9:14 12:8 85:22 86:4 87:19 90:13 101:3 143:3 143:14,18 150:11 158:2 169:17 173:17 182:6 183:6 193:6 196:10 198:13 199:6 202:18 210:13 214:20 221:20 251:2,14 261:13 311:3 333:4,5,22 334:6 335:16,18 338:15 338:21 339:9,10 341:11 402:16 435:19 476:21 486:19 508:5 516:21
courts-martial 7:1 9:16 19:16,19 21:6 22:7
cover 148:13 214:17 250:22 254:17 296:3,6 328:17 448:16 451:19
covered 257:1 296:7,10 304:22 305:1
covers 202:7
crack 223:19 224:11
Craig 2:7 70:16
crazy 189:17
create 137:20 205:1 279:2 457:16
created 99:20 100:8 223:10 241:19 254:10 286:12 288:8 345:7,10,15 492:21 517:6,8
creates 115:2 443:15
creating 66:7 362:6 413:10 448:21
creative 481:17
credibility 424:18
credit 22:8
credits 265:10
creeping 184:3 218:15
crime 23:6 24:10 24:11 37:22 39:5 39:14,17 40:22 41:7 110:1 113:18 130:11 176:14 178:18 205:16 219:11 246:9,12 272:18 319:8 320:21 344:9 345:16,19,20 346:3,3,4,17 347:13 353:11 356:17 370:13 372:1 373:21 394:11,14 399:22 401:10 414:18 418:4 425:19 444:1 445:13 446:4,20 447:4 450:5 454:11,15 456:16 462:4 471:18 476:7 494:11 495:16 521:22
crimes 1:3 15:10 22:18 99:8 183:17 203:14 226:9 297:15 346:9 347:21 372:18 376:6 414:12 415:17 418:5 420:22 421:13 451:8,9,11,14 452:7 453:21 454:12 455:12 456:5,11 459:16 461:8 462:6 465:14 466:7 508:4 529:18
criminal 3:9 53:20 73:21 98:22 101:10 143:3 144:17,19 203:10 203:13 204:6,9 227:2 233:21 234:2 244:6 290:9 302:1 326:14 330:14,21 331:11 345:3 355:20 365:18 373:13 393:13 399:16 400:8,18 402:9 404:4 406:3 424:9 429:18 445:20 448:12 451:16 454:4,19,20 455:10 456:14,19 457:3 458:20 460:6 466:2,3 481:14,15,16 488:13 495:20 500:16
criminality 485:20
criminally 488:11 509:12
crisis 345:11 391:10
critic 396:17

397:11
critical 192:3 279:7 284:7
criticism 340:3 401:14 434:5 464:15 468:18
criticisms 297:10 434:9
criticize 468:13
criticized 245:19
cross 209:22 210:8 210:19 211:20 212:2
crucial 270:20
crunch 264:4
crux 213:2
Crystal 298:13
CSS 3:2,2
culpable 423:17 443:14,14 444:15
cultural 218:19 360:16 363:7 504:2
culture 227:18 402:16,16 412:8 432:14 504:9,9,13 504:15 506:4
cultures 193:6
cure 183:20
curious 39:19 41:5 112:14 496:20 521:7
current 3:16 99:22 129:15 152:15 155:9 201:18 206:1 248:13 289:19,20 290:6 330:20 331:22 353:22 457:7
currently 32:18 72:4 112:17 132:11 136:7 139:15 142:12 151:4 153:22 154:16 156:11 169:1 171:11 174:4 179:11 182:19 281:9 474:1,2
cut 139:11 140:13 153:9 311:9 325:6 335:13 425:9
cuts 23:20
cutting 396:22 397:1
CY13 76:12

D

D.C 252:19 393:12 407:5,9 409:13,22 410:13 414:11,16 415:1,2,4 430:1 431:5,8 435:18 436:16,20 445:7,8 446:1
DA 312:11,15,17 314:12 316:15 317:8 340:22
dad 35:2
daddy 499:16
danger 479:22
dangerous 350:7 444:16
DAs 341:1
data 17:11 97:19 99:5 168:19 169:5 169:7 170:3,4 174:8 181:11 214:4,18 216:12 268:19 270:6,8 276:6 278:3 279:4 286:16 299:9 301:3,18 325:12 325:13 327:11 334:11,12,21 337:8,9 347:17 471:16 472:17 510:11 515:4,4,8 515:12,17 516:6 524:15
database 99:20,21 169:11,21 279:2 280:4 517:6,7,8
databases 101:3
date 177:13
dates 176:21
daughter 488:5
daughter-in-law 27:4
Dawn 1:18 14:11 15:16
day 13:12 30:12,15 30:22 128:19 154:1 162:12 211:9 269:2 383:10 395:4 412:16 421:17 482:7,8 492:1 498:7 504:21
day-to-day 71:3
days 20:5 28:15 55:22 77:6 79:16 92:2,3 93:8 94:7 108:3 140:7,13 141:12 171:16,17 178:1,5,7 211:9 439:9,18 446:13 446:14 447:6 483:5
DB 75:15 115:2
DD 116:11
DD-214 112:10
dead 123:16
deadly 336:4
deal 47:9 48:1,13 51:12 52:5 53:7 53:16 72:10 82:11 158:20 201:14 232:7 242:2 250:10,12 296:20 423:7 468:16 479:15 481:22 482:19 489:9,22 504:16 505:13 506:6,7 511:15
dealing 48:18 160:10 195:9 365:14 466:4,10
deals 310:12
dear 399:14
death 5:21 6:2,11 25:17,19,21 26:3 68:14 358:13 366:18 367:12,20 371:19 372:5 377:9,12,14,19
debatable 471:2
debate 130:16 285:13 471:6
debated 188:16
decades 274:14 420:20
deceived 41:12
decent 56:17
decide 43:10 154:6 172:14 173:4,8 179:15 207:18 213:8 420:15 432:8,18
decided 152:5 237:18 273:8 277:21 345:13 396:5 432:10,10
decides 126:9 152:22 221:3,10 345:21
deciding 5:7 113:20 177:1 185:12 368:17,21 416:12 499:10
decision 26:13,18 29:4,7 44:4 52:4 55:14 120:19 125:18 151:12,20 157:2,3 168:15 179:19 185:5 271:16 272:22 273:4,7,14 280:2 292:16,19 303:12 320:2 324:1,6,7 340:15 351:4,14 358:18 384:9 414:8,8 416:11 418:12 426:8 431:17 444:19,22 449:8,11 450:17 470:16 512:17,19 528:16 534:1
decision-makers 529:3
decision-making 342:6
decisions 24:18 26:17,19 44:5 95:15 127:9 128:5 128:8 156:13 195:1 213:4 268:20 274:8 321:8 417:13 442:10 444:10 449:4 469:11 479:14 528:9,21
declared 163:20
decline 9:12
declined 121:19 122:4,9
declining 14:3
decrease 277:20 459:7
decreasing 277:15
deep 366:12
deeper 475:11
deeply 390:1
defeat 398:11
defend 513:1
defendant 18:12 42:1 43:6 54:13 56:7,10 61:5 62:20 90:20 170:21 171:21 172:16 180:20 181:7 187:21,22 188:4 190:1 192:12 200:14,16 226:11 280:16 292:11,14,22 334:17 427:11 468:2 472:5 473:2 521:5
defendant's 18:10 29:19 152:7 172:22 184:13
defendant-based 252:14
defendants 171:12

199:4 206:9,16 223:4 279:18 305:12 351:17 352:18 410:1 424:20
defender 2:12,14 393:10,12 398:15 399:6,12 405:13 415:13 453:15
defender's 393:7
defenders 187:8 191:18 194:21 225:6 226:9,15
defending 504:7
defense 1:1 3:13 8:22 12:16 18:15 34:6,11 38:4 45:18 46:18 49:6 53:21 59:16 60:3 63:13 71:20,20 73:15,16 87:10 89:5 103:16 104:19 112:18 131:6,11 133:13 133:14 135:18 141:5,15 145:6 149:8 155:7,8 171:20 172:19 187:13 188:14 192:3 195:6 212:14 226:21 283:4 284:10 293:3,10 297:12 316:9 325:21 376:17 378:2 392:10 400:13 411:7 421:5 424:6 433:8,10 434:8 435:17 453:13 469:6 479:1,4,10 491:12,14 495:7 502:11,12,18 504:7 511:4 513:18 514:9 517:8 526:1,16 531:14
defenses 207:4 208:17
defer 129:4 333:4 398:17 528:11
deference 186:2
definitely 48:2 504:8 531:7
defunded 261:12
defy 530:22
degradation 371:9
degree 8:14 82:10 86:19 349:10 353:19 421:12 442:1
degrees 20:8
delay 139:19 140:8 140:13 141:12 494:17
delayed 482:17,22
delegation 267:17
deliberate 28:16
deliberating 28:14 293:8
deliberation 27:7
deliberative 138:9 138:11
deliver 312:4
delta 530:9
demand 325:22
demanded 325:21
demands 326:2
Democrat 455:7
deny 189:7 423:16 497:20
depart 250:5 252:11 257:9 258:19 311:4
departed 153:12,13
departing 213:18 256:7
department 1:1 2:15 54:18 104:19 112:18 169:15 227:22 278:9,21 385:16 386:3,10 452:21 453:9 455:15 464:2 474:1 484:21,22 516:11
departure 150:10 256:5,9 257:8,13 258:12 259:12 303:5 407:22
departures 218:22 250:7 252:9,13 259:20 291:1 332:18,19 407:21 408:2 411:18
depend 25:4 380:20 394:4
dependent 10:5,6 514:3
depending 9:21 30:21 44:2 122:18 142:6 266:8 272:4 282:12 447:7
depends 63:17 150:1 179:15 181:2 237:3 319:10 427:12 432:13
deploy 23:18
deployable 524:19
deployed 357:17,19
deployment 23:17 23:21 483:3
deployments 21:20 22:5,8 23:15
deprive 353:1
deprived 403:21
depth 170:5 214:6 214:8
deputy 71:21 74:5 75:22
describe 307:22 434:13
described 475:8
describing 280:7
description 16:7
descriptive 247:22 264:3 271:4
deserts 165:4
deserved 446:15
designated 2:17 4:5
designed 306:6
despite 218:16 344:6 366:17 402:13
detail 158:8,8 169:19 186:12 256:18 269:6 279:20 459:1
detailed 16:7 115:2 295:20
details 91:8 240:15 240:16 337:4,6
detective 383:12
detention 446:12 447:7
deter 346:9
determinant 308:22
determinate 308:22 323:8
determination 109:17 157:13
determinations 113:15
determine 6:17 12:3 119:16 168:20 249:8 276:16 284:3 294:4,7 421:14
determined 41:19 163:11 311:18 321:18
determines 10:12 294:1
determining 25:15 54:10 134:9 354:10
deterred 366:3 377:22
deterrence 360:15 375:16 435:10 449:20 535:12
deterrent 353:11 375:9,13 521:22
deterrents 164:21
deterring 353:6 456:10
detriment 534:22
detrimental 32:13 499:1
develop 147:20 247:20 268:15 270:16 275:8 295:22 308:5 454:8
developed 51:6 52:17 57:9 178:16 278:22 300:10 400:9 464:12
developing 264:2 267:6 274:8 518:22 520:11
development 57:14 151:11 243:5 247:10 267:10 270:12
deviant 329:4
dice 207:7,18 334:20
dichotomy 300:6
dictates 209:2
differ 243:4 247:11 247:21
difference 9:18 107:20 166:1 370:4 373:1,5 377:5 385:13 402:18 406:7 407:1 411:4 412:20 418:12 426:2,9,10 438:22 479:18 493:2 513:14 528:4
differences 31:21 104:13 105:18 240:9 243:11 249:14 250:9 265:6 269:22 272:1,21 273:16 389:18 417:10,11 450:11,12 503:16
different 27:15 47:2 55:2 71:1 74:16 80:13 83:8 84:15 89:3,7

97:17 100:1 102:6 109:11 120:11 152:22 183:6,13 186:16 193:6,7,7 223:5 236:2 240:7 240:7,20 242:16 242:21,22 243:1,2 243:8,16 246:17 249:9 260:12 261:20 264:3 265:20 267:3 268:10 272:4 273:6,11 275:6,10 276:1 293:21 296:12 308:6 324:12,15 352:19 365:13 367:4,7 373:16,16,17 379:2,3 384:11 385:20 393:20 396:15 402:11 403:11 406:13 407:14 408:3 414:17,18 416:4 417:13,14,14,16 417:17,17,22 418:5,16,22 425:21 428:14 437:9,14,15,17 439:7 440:7,10,12 440:19 441:6 442:10 443:18,22 452:22 462:19,20 464:7,8 471:17,22 482:16 493:15 499:17 507:6 511:9 525:17 528:1 535:3
differentials 416:17
differently 22:19 273:5,13 373:17 409:11 447:8 450:6
difficult 60:8 150:8 189:5,14 243:8 260:3 268:5 352:2 421:20 422:9 441:10,18 451:9 451:19 452:11 483:4
difficulties 35:11 35:22 354:9
difficulty 48:6 82:8 151:15 174:17
digest 69:16
dignity 404:7
Dillon 2:18 57:18 60:7 148:15 161:11 232:15 239:16 240:12 305:5 325:9 520:16
dire 133:13 136:13 480:14
direct 305:8 338:19 525:3,4
directed 449:15
directing 247:16
direction 14:13 66:15 263:2 267:12 298:17 315:8,12 321:6 458:11
directions 324:13
directive 168:4
directives 162:11 164:16 166:11
directly 336:15 497:2 499:13
director 2:18 74:5 74:7 75:2,22 95:19 110:4,14 111:18 239:10 267:9 348:20
dirt 54:7
Disability 74:11
disadvantage 203:12
disadvantaged 34:2
disadvantages 357:8
disaggregate 460:2 463:3
disagree 220:12 257:21 394:8 443:5
disagreed 128:9
disagreeing 141:2
disagreements 172:1 406:14
disapprove 90:9 139:12
discharge 21:16 23:20 29:7 49:5,8 60:4 78:6 81:19 87:2 102:18,20 104:2 109:2,8 110:10 112:3,4 116:10 143:9 357:3 481:19 511:20
discharged 358:1,3 358:8 532:1
discharges 65:20 86:20 143:10
discharging 28:22 228:13
disciplinary 323:11
discipline 60:14 61:4 97:1 203:22 484:14,17 518:5 518:20 520:5 521:18,20
disclose 175:22
disclosed 175:20
discount 187:20 188:15,19 194:2 202:13 457:12 458:1 468:3 472:4 472:12 527:16
discount's 468:10
discounts 468:11 468:20
discovered 407:17 409:8 494:12
discrete 173:9
discretion 153:19 154:20 155:17,20 156:1 233:13 234:14 237:11 263:10,14 273:21 274:6 299:12 311:4 313:13,14 326:3 333:2,16,16 333:21,21 340:5 340:22 341:8,11 344:4 347:10 351:12 352:16 369:20 396:8,9 398:6,7 401:18 410:17,19 426:7 428:15 433:22 440:13 442:1 444:14 458:4,4 462:16 463:13 464:9 475:2 479:21 480:17 499:10
discretionary 5:18 24:20 25:2 250:4 251:18 298:2 309:3 323:19 324:2 333:13 348:7 398:2
discriminater 203:18
discuss 353:9 384:18
discussed 457:17 523:2
discussing 100:19 475:16
discussion 26:12 69:2 92:17 195:20 217:20 246:4 268:17 285:10,20 358:16 361:19 452:14 536:9
discussions 34:10
dishonorable 29:7 102:18 357:2 511:20
disincentive 355:12
dismal 363:12
dismiss 76:17
dismissal 357:3 427:9
dismissed 80:21,22 82:2
disobedience 38:8
disparate 437:10 487:19 493:11 527:19 530:1
disparities 96:19 125:9 126:2,3 269:14 270:3,9,15 288:7 395:3 449:22
disparity 100:20,21 102:12 120:5 125:12,13 184:1,9 184:9 197:1 200:2 218:15 243:20 276:13 277:3,16 277:19 285:4 341:18 395:18,20 397:4 418:7 439:16 440:15 462:19 493:13 524:22 531:18 535:8
dispersion 452:10
disposition 21:22 22:6 105:4 315:9 430:21 481:9,11 481:18
dispositions 22:2
disputable 228:10
dispute 172:9 228:8
disregard 373:20
disrespectful 373:9 374:1
dissatisfied 59:17 59:18
disseminate 334:12
distinction 199:20 223:6 227:6,14
distinctions 184:8 199:17 223:8
distinguish 102:2 179:13 403:16
distinguished

442:21
distortion 474:13
distortions 457:16 457:18 458:7,8
distracter 204:2
distribute 452:4
district 2:12,15 114:12,13 147:12 154:11 164:5 183:12 219:9 233:18 241:12 242:13 334:18 386:1 398:16,20 401:22 402:1,4,4 407:15 409:10,12 409:20 410:14,22 411:3,4,9 412:5,8 412:10 413:3,16 414:11,12 416:6 417:20 423:11 431:6,10,13
district's 227:15
districts 183:14,15 183:16 218:21 219:4,7 281:17,17 410:18 430:9,10
disturbances 224:19
diverse 235:14
diversion 298:20 320:2
diversity 275:6
divert 288:2 318:19
divide 81:3
division 12:17 71:17 100:14 118:13 402:6 454:4 514:17
divisions 23:16,17 23:22
DLPB's 480:20
docket 473:10
dockets 467:11
doctors 259:7
document 92:11 174:22 280:14 474:7
documentation 94:14 111:4
documented 269:14
documents 113:2,3 169:9
DoD 3:16 74:10 123:21 125:5,6,7 125:14,18 127:19 129:3 361:7
DODI 116:2,2
doing 10:15,19,22 11:15 18:1 37:12 41:20 56:18 66:14 72:4 97:15 121:22 134:15 150:9 165:12 173:14 217:10,11 218:21 225:7 236:1 245:21 262:13 264:5,12 273:20 275:16,20 282:5 282:19 283:3 321:10 339:3 343:21 344:19 347:17,22 350:20 360:18 409:4,15 414:13,14,15,16 421:4 442:8,13 445:6,9 485:16 528:9 535:16
dollar 167:4
dollars 287:11
domestic 328:11 460:3 461:14,17
double 61:20 321:22 331:9 441:8
doubled 290:1 406:10
doubles 406:8
doubt 152:5 157:12 160:5 181:6,8 310:15 355:1 416:19,21 420:14 489:14 526:8
downsizing 19:22
downward 153:12 153:13 213:18 405:18,21 406:21 406:22
dozen 463:4
dozens 352:6,7,7
draconian 492:13
draft 20:6
drafted 92:22
dramatic 305:11 305:18 379:19
dramatically 402:11 422:14 467:19
drastically 9:15
draw 29:16 518:16
drawback 58:6
drawbacks 57:20
drawdown 21:9
drawing 36:4,5,5 203:16
dresses 351:5
dressing 364:8
drill 180:11
drinking 391:3
drive 44:4 299:10 320:9 354:11 479:14 506:18,19
driven 481:22 511:12 524:15
driver 246:16 319:3,4
drives 475:22 479:19 512:7
driving 19:14 272:10 286:10 395:7
drop 21:7 472:2
dropping 19:16,20
drug 167:12 173:2 197:18 220:16 221:8,9 255:17 312:8 421:12 453:19 465:22 472:9 473:12 475:21,22 476:3,7 529:19
drug-dependent 315:17
drugs 167:16,21 168:1 172:18,21 302:12 421:14,17
drunk 356:1
du 345:19 346:17
due 110:6 261:10 266:4 487:1
DUIs 414:14
Dunham 399:8 405:12
dunks 526:4
Dunn 1:16 8:22 9:4 13:17 17:3,6,9 19:15 20:3,11 21:14 23:10 34:4 35:19 36:1,5 42:17 54:20 67:15 78:17 79:2 83:2 84:8 85:14,21 90:19 93:12,17 94:2,10,13,17 97:5 99:9,12 100:7,19 131:2 135:16 136:4 144:12 190:19 213:2 361:14,17 387:1,7,11 389:7 389:22 390:19 493:20 498:11 499:15 515:1,11 516:5,17 517:3,17 524:13 525:19 533:14,20 534:3 539:1,6
Dunn's 530:3
duration 337:13
duty 73:6,12,20 75:12,18 95:12,18 96:2 490:3
dye 209:8
dynamic 276:2 434:16 443:10 486:4 487:3
dynamics 262:19

E

E-1s 494:20
earlier 100:15,17 103:18 120:5 200:8 241:14 334:3 484:1 486:6 513:16 520:15 523:2,3 539:11
early 20:12,15,18 21:10 116:5 188:17 227:21 263:7 269:15 284:7 285:2,5 287:10
earn 265:11
easier 512:22
easily 69:9
eastern 2:15 164:5 219:2 398:15,19 401:22 402:4 407:15 410:14,22 411:9 412:10 413:16 414:12 417:20 423:11 431:6,10,13
economic 197:19 269:3
economics 300:3
ECR 524:15
edge 511:16
edges 319:2
editorial 525:5
educating 375:3
education 236:8,11 344:15 519:22 528:7
educational 280:19 529:2
effect 39:22 50:21 62:7 66:18 84:2 96:20 134:15 141:1 142:21 143:10 150:6,22 153:6 177:9 186:22 224:10,10 225:8 246:18 295:17 345:20

393:17 394:18 414:11 467:6 483:22 484:1 520:19 532:14
effective 287:6,22 353:6 464:2
effects 137:17,19 138:14,22 378:3 465:7,8 466:14 483:11 528:3
efficiency 490:15 523:12
effort 65:3 239:20 308:4 322:13 442:12
efforts 318:9,17
egregious 24:10 123:14 223:14
eight 62:16 84:12 168:7 231:20 235:5 255:3 314:15 330:16 399:9,12 433:2 475:5 477:7 479:9
either 9:12 10:9 29:15 33:16 36:17 55:6 64:4 77:18 77:22 99:16 108:1 112:2,8 266:9 292:21,21 298:17 304:10 325:15 332:20 351:1 388:3 392:16 406:18 409:20 413:6 419:18 420:4 425:6 426:7 429:21 435:16 492:4 521:9
elaborate 404:17
elected 247:1 258:5 277:21
election 286:11,12
elects 334:5
element 479:17 480:10
elements 160:11,14 160:15,21 190:8 232:20 253:2 270:19 349:21
eleven 254:22
eligibility 116:3 122:22
eligible 96:18 230:18,21
eliminate 458:8 523:8 530:2
eliminated 38:15 140:16
eliminates 479:20
eliminating 472:12
else's 370:21
email 478:1
embarrassment 498:15
embezzlement 88:10 194:12,13 194:15
embezzling 194:7
emotional 528:2
empirically-based 295:8
employed 503:18
employee 95:22
employees 390:11
Employment 280:20
empowered 355:5
enabling 134:1
enactment 455:7
encourage 106:8 107:14 348:2
encouraging 304:3
ended 155:8 165:12 177:11 273:1 435:3 460:18 467:7
endorse 476:14
endorsed 476:12
endorsement 405:5
endorses 474:2
endorsing 411:16 412:2
ends 60:12,15 360:20 367:6 380:14 381:20 384:3 475:11
enforce 308:12
enforceable 251:17
enforcement 158:19 361:20 383:12 385:15,15 386:2
engage 491:4
England 267:17
enhance 311:18
enhancement 289:18 336:5
enhancements 289:11,12 290:10 306:8,20
enjoy 519:5,7
enjoyable 347:5
enjoyed 35:5
enlisted 229:12
enormous 448:13 448:14,15
ensure 101:13
ensures 61:4,5
enter 335:20
entering 39:13 126:5
enters 260:7
entire 323:16 359:8 361:18 373:12 375:3 378:19 474:16 475:6 487:7 530:16
entirely 47:2 273:7 420:22
entitled 134:17
entitlement 112:11
entity 98:17 338:15
entrust 519:1
Enumerates 92:11
environment 126:6 280:12,13 362:6
envisioned 434:14 434:15
equal 199:20 438:7 456:2 492:21
equality 278:5
equalize 86:1 224:12 225:1
equation 314:4 410:21
era 203:16
error 90:17 122:15 140:2 142:10 250:15 333:7,10 335:10 336:9
errors 140:17
esoteric 160:18
especially 112:16 203:15 220:14 264:18 268:22 277:9 299:6,9 310:16 315:3 322:12 323:22 326:13 328:2 351:21 360:12,20 370:18 379:14 395:10 398:10 400:9,18,22 402:5 407:3 416:1 435:6 468:21 486:2
essence 243:15 248:12 269:16 288:14,17 404:4
essential 188:15
essentially 84:9,13 85:5 109:5,10,21 110:9 111:20 112:3 184:12 187:19 193:20 415:7 420:17 437:17 439:13 444:8 445:9,17,21 446:8
establish 127:20 128:15 310:3 312:14 324:18 396:10 399:6
established 124:4,9 173:19 244:1 245:15 309:12 315:19
establishes 299:3 309:8
establishing 3:17 60:22
establishment 125:22
estate 234:4
estimation 481:8
et 20:8 389:11 524:19
etcetera 34:12
ethics 87:15
Ethiopia 267:20
evaluation 253:21 277:15
evaporated 263:5
evened 439:14
evenly 221:19
eventually 21:22 301:21 453:19 496:9
Everett 230:6
everybody 46:22 91:4 127:18 227:11 228:5 232:4 356:17 375:6 377:11 386:19 389:15 429:10 439:2 446:14 453:16 460:15
everybody's 6:1 172:11 386:20
everyone's 148:20
evidence 6:18 18:10,12 29:22 42:12 43:13,15 44:9 46:10 53:8 173:6 209:17 213:1 346:7,9 351:1 382:18 384:5 402:15 421:15 422:1,2 424:15 496:20
ex 159:7 342:12,13
exact 110:2 394:10 394:12 437:22 499:14
exactly 36:6 92:12

124:8 153:14,14 188:5 319:14 328:14,15 368:12 368:15,16 376:4 379:1 415:7,7,8 418:20 461:16 467:15 507:2 510:19 512:7 514:1 517:9 534:10,11 536:21
examination 139:14
examine 244:21 270:5
examined 260:22
examiner 383:19
example 23:5 39:20 56:3 63:20 80:15 82:2 102:16 118:19 205:20 208:15 247:15 250:15 260:8 261:20 267:7 271:22 273:1 289:19 294:10 302:4 307:10 329:13 330:3 331:2 376:8 412:22 416:1 418:8 421:13 422:16 426:12 445:2 447:10,20 450:4 461:13 473:9 480:5 481:22 499:15
examples 6:4,20 63:5 187:5,6,10 248:11 337:19 410:13
exceed 61:22 311:20
excellent 170:10 189:20 208:21 515:2
exception 77:1 79:18 217:8 376:19
exceptions 86:15 96:10 132:8 156:6 173:8 310:21,22 311:1 358:5
excessive 111:2 534:17
exchange 88:11
excluded 78:13
excuse 78:5 88:4 161:11 214:21 291:17 463:21 521:19
excuses 528:14
executive 74:6 75:1 109:13,14,14 110:4,13 159:5 239:10 247:18 348:20
exercise 16:11 192:13 420:12 494:4 540:6
exercised 410:19
exercises 187:11
exercising 155:19 428:12 494:2
exhausted 108:15
exist 205:1 423:11 457:20 462:11 514:6
existed 52:16 416:17
existing 45:5 244:21
exists 57:4,22 62:22 442:15
exorbitant 110:7
expanded 199:5
expect 90:5 412:9
expectation 251:19 284:12
expectations 535:9 535:18
expected 250:1 348:13
expedient 484:19
expense 106:1
experience 5:4 14:15 15:9,11 17:4,15 27:17 28:16 30:17 35:1 58:11,17 70:19 79:7 80:3 91:12 98:1 102:11 109:18 121:4 229:18 235:10 263:6 274:12,14 275:19 320:18 338:20 344:15 349:12 353:15 362:15 387:18 393:14 451:10 478:21,22 487:14 487:17 496:11,20 498:5 507:6 508:19 511:11 524:8 527:15,18 528:11 529:10,11 529:14,17,21 532:16
experienced 14:9 14:22 18:1 369:2
experiences 74:22 337:17 340:1 388:16 457:1 477:1
experimentation 476:20
experiments 477:1
expert 158:2,17 159:13,17 173:14 349:8 443:9
expertise 46:14 174:1 300:13,16 353:8 393:2
experts 347:18 492:2
explain 13:14 104:13 153:13,16 234:18 385:7 441:3,10,11 509:3 533:20 535:8
explained 186:11 245:20 399:15 460:21,22 461:1
explaining 135:14 447:14 504:18
explanation 439:17
explicit 244:11
exploitation 331:4 332:1
explore 288:1 349:19 353:4
exposed 421:18 424:16
exposes 425:8
exposure 426:17 428:13
express 275:3 502:6
expression 22:11 292:3 396:22
extend 357:4
extended 296:19 493:1,5
extensions 92:2
extensive 32:4 83:13 115:1 221:17 526:10
extent 65:7 111:10 190:3 256:1 282:6 432:5
extenuating 16:8
extenuation 48:22 53:10
extra 90:8 406:2,3 515:7
extract 408:16,17 408:18,20
extraneous 160:18
extreme 56:3
extremely 103:5 106:10 428:4 447:1 451:9,19 452:10 527:19
eye 344:16
eyes 55:1 377:20

F

face 106:12 355:11 407:3 422:15 429:6 448:12,13
facetious 377:10
facilities 105:5 115:8
facility 35:14 75:14 105:8
facing 107:8 131:3 420:9 428:13
fact 12:4 14:7 15:20 54:22 111:3 148:18 157:1 163:19 168:22 184:2 185:4 188:2 189:21 196:22 198:22 200:4,8 203:21 204:3 206:11 214:4 219:8 223:19 225:16 272:7 323:14 332:21 344:6 355:10 366:16 373:8 394:9 411:22 422:6 433:14 440:2 443:21 448:5 465:18 468:15 469:10 471:3 482:13 492:6 498:15 513:16,22 525:19
fact-based 487:21 527:22
factor 58:11,17 180:18 184:16 202:1,3 203:18 204:13 206:21 229:19 233:8 249:5 252:5,22 253:3,4 272:1,2 272:10 319:17 330:9,11 449:15 511:10
factored 205:11
factors 6:15 107:6 151:16,17,18 152:1 161:10 165:22 172:14 173:7 174:19

179:10,13,20,22 180:2 181:4 185:10 206:2,18 208:1 249:1 251:13 252:17 255:8 272:17 273:3,5,6,12,12 284:4 310:5,8,14 311:17 328:6 333:8 348:11 352:20 365:11 403:12 413:22 437:2,19,22 443:22 464:14,17 474:22
facts 49:1 53:18 55:20 120:10 171:3 172:2 209:5 228:2 231:13 234:13 422:13 423:15,16 424:3 424:12 436:11,12 522:3
factual 413:8 418:6 421:10 517:15
factually 418:19 480:4
failure 450:8
fair 127:20 128:7 134:10 182:17,19 189:13 223:9 224:22 316:20 414:10 419:8 420:7 425:10 436:5 467:15 470:11 533:2
fairly 55:21 56:17 69:9 205:10 282:15 431:5,8 434:9 437:9 529:12
fairness 40:11 60:16 182:8,9 268:1 276:22
faith 51:20
fall 122:22 198:9 223:2 256:13 406:4 432:9
falling 368:17
fallout 301:20
falls 85:21 168:6 298:13 330:5 354:5
false 446:4
familiar 134:6 170:16 309:14 310:9 345:9 354:2 361:14 398:22 489:3
families 2:9 343:1 343:18 494:20
family 79:10,14 80:5,5 105:21 123:13 184:14 234:15 280:11,13 353:21 355:22 367:3,8,10,13
family's 420:16
FAMM 2:9 3:12 343:19
famous 436:6
fans 313:10
far 13:7 46:18 62:6 75:1 96:21 108:8 127:14 132:3 182:1 201:21 203:19 243:18,21 253:7 259:13 267:11 295:7 297:20 342:9 377:7 396:7 409:9 411:10 435:21 531:1
Farrar-Owens 2:8 3:10 239:5 240:4 242:1 245:7 246:5 247:7 258:16,20 261:3 265:4 267:4 269:5 271:20 274:19 275:9 277:14 281:11,16 284:9 291:21 292:15,20 293:14 297:19 300:8 301:5,14 302:6,13 302:17 304:19 305:1,5 339:4 342:8
fascinating 12:14
fashion 451:20
father 54:1
fault 381:4 499:7
favor 346:12 385:6
FBI 111:4 158:22
fear 269:20 435:14
feasibility 205:2
features 22:14
FEBRUARY 1:9
federal 2:12,14,17 3:7 10:10 17:16 29:17 44:10 65:2 85:4 88:7 95:14 114:4 124:19 149:12 151:1 152:10 154:10 155:22 157:19 158:2,17 162:4 163:18 164:14 165:13 169:10,17 170:10,12 171:7 171:10 175:15,20 177:4,9,14,20 179:9,12 182:5 183:6 185:17 187:4,7,8 188:8 190:20 191:18 192:7 194:20 197:14 198:13,17 198:19,21 199:8 200:2,7,9,16 202:18 204:10,11 204:22 205:19 209:4 210:12,22 211:22 212:4,18 214:20 215:7 219:4,20 222:9 223:21 224:20 225:6 232:9,14 233:16,18,22 234:3,5 235:11,13 235:18 236:6,7 241:13 247:15 278:12,12 287:11 341:17 344:20,21 345:3 372:20 374:15 393:7,10 393:11,13 394:18 396:3 397:18 398:15 399:5,15 400:19 402:14 404:22 413:5 415:6,10,11,18,20 425:19,20 428:18 429:6 433:5 436:19 444:7 449:6 453:22 454:1,11 455:1,10 457:3 458:11,14 462:11 463:1,5 464:11,20 465:9 467:7,18 470:11 471:9 473:4,7,9 474:18,19 475:6 476:1,21 482:4 484:3,5,8,15 485:6 487:19 503:8 507:5 516:9 520:18 523:14
Federally 524:3
feed 145:15 238:17 238:17
feedback 275:11 284:10
feel 7:4 8:1,5 41:12 46:11 58:22 59:2 106:12 123:17 234:1 338:4 350:10 355:5,6,7 356:4,17 361:4 362:10 364:13 367:13,15 373:2 373:17 378:12 379:7 381:11 382:2 433:1 435:1 459:11 477:22 479:12
feeling 9:13 11:13 37:6 191:13 225:6 286:6 367:17 386:11
feelings 59:4
feels 297:17 354:12 384:1
fell 144:13 254:2
felon 296:1
felonies 19:2 151:1 302:14
felons 287:22 288:2
felony 11:7 99:7 212:1,19 254:21 255:2 271:9 272:12,18 278:6 287:7 291:9 305:20 329:14 330:4,17,17 516:21
felt 33:21 34:2 110:22 273:18 404:21 422:10
female 106:18 469:22 507:11 508:10
fewer 22:7 64:19 253:15 313:12 356:18 435:21 474:21
field 299:19,20 357:9 460:6 534:21
fields 300:7
fifteen 467:6
fifth 329:3
fight 505:11,11 506:12,16 507:4
fighting 126:12 503:21
figure 39:21 138:19 286:8 304:4 316:5 337:21 347:19 365:22 370:20 390:7 517:10 537:2
figured 455:15
figuring 520:1
file 278:19 316:10

429:3
filed 445:22
fill 259:3
fill-in-the-blank 279:13
filling 300:11,21
final 92:21,22 111:13 179:19 234:19 361:10
finally 184:21 195:22 224:22 249:12 265:22 380:11
financial 528:3
find 10:1 14:1 15:15 16:13 18:8 24:6,13 26:10 39:15 76:20 91:16 117:21 130:12 136:7 137:2 138:5 174:18 217:14 218:8 234:21 251:11 254:16,18 268:15 293:6 316:19 317:1 339:6,14 350:21 353:6 391:1 442:5 471:13 477:2 481:17 488:7,14 524:6
finder 54:22
finding 136:22 161:6 414:3
findings 24:22 25:7 76:18 77:18,22 80:10,10,14,15 81:7 482:6 492:19 493:12
finds 50:17
fine 18:19 372:11 436:22 446:7 477:16
fines 19:4 269:2
finger 23:14
finish 117:6
finished 101:9
finishing 266:3
finite 470:12,22
fire 67:11 485:22
firearms 211:20
firewall 386:12
firmly 403:7
first 4:7,18 8:14 21:9 25:22 44:20 62:1 70:4 77:15 78:1 84:22 96:15 125:5 128:3 147:6 147:10 152:18 163:20 166:9 178:5 184:18 214:16 219:13 222:20 229:9 231:12 254:3 260:16 272:14 283:22 289:3 308:1 309:5 328:17 343:7,13 345:6 347:15 348:1,17 349:7 358:17 371:19 379:11 399:11,11 453:6 460:9 482:13 485:18
first-time 331:5 344:7
firsthand 240:8
Fiscal 511:21
Fishman 2:18 27:9 56:20 57:19 60:10 62:9 181:10 182:7 208:10 232:16,22 383:3
fit 240:3 326:8 394:14 518:14
fits 347:13 518:15
five 18:18 19:1 22:5 28:17 62:15 70:22 105:13 167:22 168:3,6 197:7 219:18 221:10 222:10 229:10,14 230:22 247:9 288:18,22 291:7 291:18 312:4 314:15 322:3,7,22 323:1,15 330:16 349:2 373:22 392:4 405:19,20 413:14 419:2 423:5 425:19 426:17 427:7 432:4 439:4,10,19 440:21 441:12 450:19 473:12 477:7 481:15 483:5 490:17 498:19 499:8 500:7,9 502:3 504:5,8 506:15 530:15,17,18 532:17 534:4,17
five-year 344:5 373:7 466:1
fix 58:6 345:22 448:21
fixed 142:11
fixing 489:3
flat 189:15
flavor 243:16 254:2
flavors 493:15
flaw 142:3
flawed 383:22
fledged 71:8
fleeing 345:14
fleshing 500:6
flew 23:10 74:16
flexibility 134:18 347:10 448:17
flexible 348:9
flip 50:11
flirted 205:4
floor 48:9,14
flows 105:10
flying 74:17
focus 115:14 245:9 268:10,11 269:2 308:15 367:18 476:18
focused 66:2
focusing 16:10 37:1 57:5 66:3
FOIA 62:13
folder 240:19 279:11
folks 5:17 7:5 148:8 149:6 161:17 167:8 238:10 267:14 352:7 360:18 363:11 364:8 365:2,21 379:20 387:10 471:12 472:21 503:8 506:22 523:4
follow 36:8,10 99:3 115:16 135:7 144:21 168:15 177:18 363:4 369:3 383:3 403:9 411:1
follow-up 391:17
followed 322:16
following 32:12 65:15 114:8 450:22 495:7 536:9
follows 118:18 502:9
force 2:4,7,13 12:10 14:17 15:12 57:12 70:22 71:2 71:3 73:8,12,21 74:5,7 75:10 95:10,16,19,20,21 96:1,2,4,5,9 97:2 97:8,13 98:6,21 99:6,14 109:15 111:14 115:7 118:19 120:22 121:16 124:2,2,21 126:12 127:5 286:13 359:8 371:17,18 372:4 373:12 375:3 395:7 408:18 420:13 482:14 512:6
Force's 515:17
forced 95:13 202:4 370:12 491:6,7
Forces 96:1 99:2
forcible 78:12 296:9 306:10 307:3 371:4
forcing 309:19
forego 406:20
foregoing 342:17
foreign 489:7,14
foremost 185:8
forfeiture 79:9
forfeitures 79:3
forget 316:13 460:5 517:20
forgot 142:2
forgotten 265:17
form 79:8 89:21 144:18 251:22 257:18 267:7 281:1 300:14 335:20 401:16
formally 288:13
formation 390:4
formed 270:4 345:5
former 111:18 267:9 353:21 505:9
forms 259:17,21 325:7
formula 286:8 448:22
Fort 35:15 75:13 75:15
forth 6:20 7:7 9:4 130:16 137:5 232:18 262:17 268:17 285:14 308:13 328:6 336:14,18
fortunate 157:20 342:22 392:12 454:16 529:1
forum 54:21
forward 69:2 73:22 75:3 111:6 270:11

275:15 277:21 279:5 309:11 364:14 382:2 383:16 384:2,6 386:15 423:19 496:6,15 498:14 499:12 531:22 534:12
forwarded 61:9
Fosler 139:21
found 25:16 41:9 76:21 155:16 165:8 171:10 200:6,8 221:18 270:19 272:17,20 273:10 275:9 279:7 314:6,13 315:13 379:5 468:8 480:11 485:17 490:4
foundation 279:4
founded 241:18 343:20 344:17
founding 345:4
four 19:6 22:4 28:16 74:18 76:1 168:12 224:1 230:10 231:3,4 242:15 243:13 244:22 254:1 266:16 274:20 275:5 331:21 406:8,9 409:21 425:19 520:16
fourth 138:14 147:13 189:22 230:19 329:3
fraction 286:19
frame 282:13
framed 388:19
framework 289:11 293:22 308:18 317:3 475:6,12
Fran 3:3 4:19
France 235:21
Francis 2:10
Francisco 393:8
frank 112:4 399:8 405:12
frankly 53:21 54:19 97:13 401:3 429:11 432:1 440:15 441:15 457:5 475:2 520:16
fraud 160:19 197:20 473:14
free 250:4 257:9 338:4,4 477:22
freedom 433:19
French 235:21 236:5,7
frequent 219:21 243:18
frequently 112:12 116:6 400:2 421:12 480:3
fresh 18:2 164:9
Friday 199:1
Fried 2:17 4:3
friend 62:2 355:21 379:22 498:20 522:14
friend's 498:16
friends 105:22 187:8 353:22 357:19
front 85:18 105:22 116:1 164:6 185:7 303:19 316:9 346:18 479:9 488:4 489:11,12 500:8
frustrated 40:17 43:4 341:4
frustrating 37:19 48:16 277:7
frustration 40:16 41:6,9
frustrations 36:19 42:22
fuel 67:11
full 71:7 134:18,20 135:3 144:8 316:22 432:18
full-time 281:14
fuller 401:13 416:7
function 401:17
functioning 262:12 442:16
functions 424:10
fundamental 50:5 83:19 142:2 403:2
funding 339:5,6
funny 297:18
further 142:19 290:5,9 380:11 455:22 458:6,19 470:13 531:11
furthered 456:7
Furthermore 354:19
future 321:11
fuzzy 297:10
FY13 76:12

G

gained 231:22
gains 534:21
game 131:7 195:2 536:3
game-changer 535:7
games 33:13
gamut 393:20
gang 226:17
garage 344:1
gas 487:10
gasket 486:16
GCMs 516:22
geared 34:5,15
gee 145:7 211:22 228:8
gender 269:22
general 1:16,16 9:16 23:13 28:3 32:12,21 36:14,15 57:8 78:17 79:2 82:1,13 83:2 84:8 85:14,21 86:8 90:19 91:9 93:12 93:17 94:2,10,13 94:17 97:5 99:9 99:12 100:7,19 103:1,10,13 104:3 104:8 112:4 127:6 127:7 131:2 135:16 136:4 141:20 142:8,15 143:5 144:1,12 170:11 182:3 193:9 213:21 233:15 262:22 287:4 289:10 293:22 295:10 312:22 313:5 320:11 366:11 369:4 398:9 404:8 454:17 455:17 458:10 476:12 484:13 493:20 494:8 530:3
General's 95:21
generally 9:1 17:11 33:21 34:10 39:15 96:6 98:10,15,20 102:21 103:7 105:3 115:16 182:8 203:11,15 233:4 240:1 249:10 283:4 329:14 341:7,14 424:1 433:7,9 456:6 513:17,20 515:5 523:18
generate 463:9 493:6
generated 337:8 341:15
generates 464:15
generic 202:10
genius 366:6
gentlemen 145:19
genuine 453:9
geographic 448:15
geography 276:3
Georgia 219:16 227:7
geriatric 266:1 317:15,17
Germany 23:11 266:14 269:1 494:20
getting 5:14 36:3 82:18 91:8 117:1 123:4 135:17 168:7,9,12 193:16 197:2 200:15,16 212:11 218:2 223:5 230:3 240:14 244:6 269:19 297:14 307:4 339:21 367:20 373:1 381:20 384:9 413:11 424:16 441:14 506:17 527:3 530:22
Gideon 61:19
Gill 2:9 3:12 343:3 343:5,6,10 371:13 374:6,12,18 375:15 376:4 379:1,9 382:5 392:1
Gilligan 2:10 3:3 4:19,21 5:1,2 7:16 7:19 8:10,16,17 8:20 9:2,13 10:20 11:4,13,20 12:2,5 18:4 21:4 22:20 23:13 24:3,19 25:16 26:20 27:21 29:12 30:8 31:7 32:7,10,19 33:17 34:3,18 36:9 37:6 38:20 39:6 40:1 41:8 42:13 43:11 44:13,22 45:8 46:7 47:19 48:5 49:2 57:6 58:2 59:10 60:17 63:4 63:11 64:8,13 65:17 66:20 67:21 68:21 69:3,12

girl 68:18
girls 5:14
gist 456:3
give 4:22 9:10 22:8 29:1 39:7 40:1 49:6,8 51:16,17 56:2 57:18 63:20 67:12 81:13 84:7 87:13 88:17 90:8 121:12 145:19 147:2 149:11 155:6 171:8,16 175:18 177:16 180:16 187:6,10 190:9 197:5,7 200:20 211:8,15 211:16 220:20 222:21 230:20 234:7,19 235:17 236:1 238:6 239:22 243:11,15 250:14 254:1 261:4 269:10 272:17 312:11,17 320:1,16 325:8 336:11 342:5 344:11,11,16 347:13 348:12 362:4 394:20 405:8 410:12 411:15 412:2,22 416:7 430:3 436:22 437:1,20 440:17 441:4,6 444:13 445:1 452:22 485:2 494:8 497:17 517:15 522:4,5 526:20,20,21
given 5:8 14:7 40:18 61:15,17 63:5 85:6 91:21 94:4 97:21 102:6 111:2 148:11,12 148:20 166:3,16 171:15 179:7 186:2,9 191:12 196:4 199:5 205:11 208:15 214:1 216:10 228:18 272:1,3 301:10 324:16,17 324:22 334:18,18 355:18 359:16 360:16 416:2 492:6 530:17 537:20
gives 171:19 179:9 190:5 240:6 283:22 294:19 312:15,21 314:12 332:15 336:19 386:11 390:2 419:5 439:6 441:18
giving 81:4,5 153:17,17 177:16 185:12 218:3 220:9 313:4 328:20 385:11 398:3,6 419:1 424:3
glad 7:8 70:16 234:7 371:13
glide 360:5
global 276:22
globally 514:20,21
go 5:7 7:4 8:2 11:1 16:12,20 20:17 26:11 35:3,13,13 39:18 46:4 47:22 50:12 51:13 52:2 52:3 54:9 55:6 56:12 57:7 59:11 59:22 60:4 63:4 68:9 70:4,7 80:1 83:7,8 87:17 90:14 127:11,12 132:21 134:9 137:18 138:9 149:19 150:8,13 153:5 154:21,21 175:14 189:6 191:10 192:1,13 192:15 207:15,19 207:20 208:3 210:1,5 211:2 219:15,16 224:7 224:10 226:3 234:17,17 236:5 237:8,11 239:14 241:3 250:1 258:1 271:14,15 272:14 273:9 277:21 279:4 282:17 284:20 292:7,8 293:5 298:4 313:3 320:22 322:8 326:17,20 328:16 334:14 338:11 343:7 346:3 348:16 349:6 361:10 366:8 368:9 369:6 372:15,22 373:4 375:10 376:12 377:18 388:10 390:6 391:8,9 405:18 410:1 423:1,2,4,5,7 425:13 427:17 437:15 439:3 444:1,15 445:8 459:9 461:20 470:13 471:4,8,19 473:1 477:2 479:16 482:6 485:4,5 486:12 487:1,4,6 488:10 489:11,12 491:9 491:12 496:15 497:13,18 498:7 500:7,15 504:22 505:1 506:15 511:17 522:1 524:1 525:22 526:3,9,12,14,15 526:22 527:3 532:2 533:7 534:12 539:20 540:12
go-to 148:16
goal 244:11 277:17 285:3 288:6 382:12 394:6 412:21 436:3 495:21
goals 165:10 356:10 378:11 456:1 458:21
God 162:4 367:10
goes 10:16 15:21 29:15 32:20 40:7 56:10 60:18 79:9 82:6 94:21 105:7 140:11 170:2,4 187:22 190:2 292:12 301:8 307:9 320:10,22 322:3 331:14 332:14 342:9 367:5 412:16 424:8 438:6 443:7 484:21 485:7 514:2
going 4:21 6:7 9:14 10:6 14:1,13 15:20 22:9 23:19 24:14,21 25:4 29:1 30:15 31:14 33:15 37:12 40:6 43:10 47:21 48:13 53:1,3,4 54:10,20 54:22 55:1,17 56:1 59:14,18 60:4,5 65:18,19 65:21 66:15 68:9 69:18 80:4 83:16 86:1 87:7,11,13 87:18 89:6 90:13 90:22 98:6,12,18 107:1 113:5 117:5 122:22 123:15 126:19 127:1,2 129:20 130:1,10 130:17,19 131:12 131:13,14,15 133:6,7,10,16 134:12 136:16 138:5 139:7 140:19 141:11,22 145:6,9,17 151:15 154:5 155:18,20 156:1 157:10 158:5 164:13 167:17 173:20 175:3 179:2,2,4 179:17,20 186:22 187:1 188:5,20 189:6,12 192:9,10 192:13,14,17,19 192:20 193:15,20 194:1,14 201:16 203:2,15,17,19,20 203:20 204:9,11 206:3,7 209:8,18 211:5 212:6 213:7 218:1 219:5,6,19 219:22 220:1 221:9 224:9,18 227:16 229:1,2,4 230:7 236:7 237:9 237:16 238:14,17 239:21 240:10,21 241:1 244:19 253:22 254:3,16 256:16 264:8 268:11 269:5 272:9 273:9,10 275:15 282:17 284:21 286:9 287:19 290:20 293:12,14 300:11 300:21 302:21 303:11 307:6,7,15 307:18 308:15 313:12 316:6 319:5,6,20 321:10 322:19,22 328:19 337:3 338:12 341:3,6 343:6 344:5 345:11,17 349:6 350:15,20 358:3 359:10,11 359:13 360:19

361:2,3 363:6,14 363:19 365:18 367:8 368:7,8,11 368:18,18 372:22 373:4,7 374:22 375:10 378:6,16 380:4,19 382:3 384:5,6,10 386:3 386:5,12,13,14,17 390:7,16,17,21 391:1,3,5,12 395:22 399:21 404:9 406:19 409:14 413:19,20 418:5 419:14,22 421:19,22 422:17 423:4,4,7 425:4,6 426:16,16 428:1 429:9 431:1 437:19 439:7 440:22 444:9 447:12,15 450:11 455:19 468:3,8,10 470:7 472:2 475:16 477:7 481:17 486:6,19 486:20,22 487:4 489:1 490:13 492:18,19 493:2 495:9 497:11,13 497:16 498:3,8 499:7 501:5 502:11,18,21 503:18 504:19 505:2,7 506:12,13 506:14,16,18,19 507:3,15 508:21 510:1 511:6,9,17 511:18,21 512:9 513:20 514:1,10 514:13,15 517:20 517:21 518:4,4,6 518:7 521:5,12 525:13,14 526:6 526:16 527:16 528:1 529:4,16 530:14,19 532:12 534:11,12,15,16 534:18 535:14,15 537:1,2,5 540:6
good 16:18 26:7 31:5 32:3,19 39:20 46:13 51:19 51:20 60:7,14 61:4 69:17 71:13 71:14 73:3,4 75:5 97:1 103:17 117:4 146:21,22,22 154:13 156:22 177:19 178:4,6,10 184:14,15,15 186:19 201:7 232:7 238:8,9 243:12 261:5 265:11 270:7 274:20 283:16 320:4 323:8 327:12 335:15 340:11 355:21,21 355:22 363:2 366:21 390:15 394:1 405:4 421:7 425:9 430:22 439:1 447:17 449:22 458:18 459:3 462:17 463:22 468:7 469:18 470:15 471:1,5 484:13,16 495:6 512:16,19 516:16,17 518:5 518:18,20,21 520:4,10 521:18 521:20 522:14 525:9 526:2,2
Google 505:8
gotten 20:8 21:11 193:22 195:22 217:20 226:13 318:1 444:8 446:19
gouge 511:2
governed 415:20
government 109:13 130:10 131:17 150:19 153:10 186:4 198:19 215:5,8,18,22 343:17 410:5 411:6,13,16 412:1 412:12 420:13 421:15 423:15 425:5 446:5 523:14 525:15 526:4,17
government's 133:2 153:9 215:12 517:7
governor 537:16
grad 69:10,12
grade 5:15 37:9 63:8 309:9
grams 312:4,10
Grand 376:14
grandpa 367:6,9,10 367:14,19 499:16
grant 52:9 98:18 110:11 115:18 118:12 141:9 339:5,6 537:16
granted 79:7 92:3 111:11 115:22 117:17 139:15 140:6 145:7 538:4
granting 118:6 395:2
granularity 464:13
granularized 205:9
grateful 72:17
gravity 329:22 330:10 337:4
gray 539:7
great 4:17 88:12 102:12,15 138:10 169:19 172:19 242:2 251:4 258:18 262:13 307:18 319:11 337:19 363:2 378:22 399:8 405:12 424:21 442:12 464:4 492:6 501:4,10 515:13 519:21 524:10
greater 50:3 96:8 166:5 185:14 196:6 410:17 425:2 428:13 430:14 433:19 439:16 442:1
greatest 397:3 402:2 444:13
greatly 242:20,20 427:8 451:18
grid 248:11,19,20 254:12,20,21 255:1,3,4,15,17 255:17,18 271:10 271:11,14,19 329:18,20
grids 255:16
grievous 372:5
ground 316:19 317:2
grounded 271:3
grounds 111:10
groundwork 287:3 343:7
group 107:13 200:5 247:12 271:17 530:6
groups 236:2 365:15 459:4
growing 343:22 367:16
grown 403:20
GS-15s 109:12
guarantee 359:1 534:6
guaranteed 534:14
Guard 12:12 16:22 478:11 516:14
gubernatorial 285:6
guess 24:19 32:11 52:7,19 71:7 89:16 95:9 107:1 109:2 123:20 124:12 127:10,15 175:16 194:14 196:14 205:18 216:9 221:13 225:2 236:10 239:7 277:13 302:18 308:2 310:10,11 313:11 318:11 347:14 348:2,5 366:9 375:7 383:3 384:15 398:8 433:12 434:3 450:3,15 479:3 483:9 522:21 536:15
guidance 165:15 348:12 433:7 441:19
guideline 158:5 160:8,9,17 161:4 161:22 163:6 173:7 178:16 180:8 182:2,5 184:4 194:10 198:13 201:9,18 201:19 202:7 206:2 209:5,9,11 209:16 210:2,10 210:19 211:3,14 212:7 213:7,14 214:1,10,19 216:1 219:21 222:5 227:19 229:10,15 233:4 235:3 236:10 240:12,17 241:5 242:8 243:9 243:17 244:1,10 248:8 249:10,13 250:22 251:6,10 251:15 252:18 254:6,9 260:15,18 260:21 266:18 269:7 270:21 274:10 294:21 311:2 326:4 330:7

332:20,21 335:19 348:10 397:7 407:7 426:2 429:22 431:3 432:11 437:16,20 438:5,18 439:5 446:9 463:8 465:3 472:11 474:20
guideline's 211:4
guideline-specific 336:3
guidelines 1:6 3:7,9 3:14,18 5:19 27:12,18 43:20 44:8,11,12,17 45:6 58:11 59:13 65:3,11,16 147:20 147:22 148:2 149:2,5,7 150:4,5 150:6,7,8,13,18 151:7,10,14,15,16 151:20,22 152:10 153:1,2,5 154:17 154:17,21 155:1,3 155:12,13,17,21 156:2,3,6,20 157:4,9,9,19,22 158:16 159:22 160:3,11 161:2,5 161:10,12 162:6,9 162:12,13,15,16 163:3,17,21 164:10,17 165:14 165:20 166:7,13 166:19 167:10,14 167:18 168:8,14 169:14,18 170:2 170:14,18 171:1,3 171:4,6 172:3 173:14,19 174:12 177:5,6,8 179:17 181:14 182:12,14 183:3,21 184:10 184:10,16,18,20 186:16,22 187:17 190:6,9 191:17,19 193:17 194:5,22 195:15,19,22 196:3,16,21 197:10,13 200:11 202:10 203:9 204:22 205:5,7,8 208:20 209:3,22 210:3,6,9 211:21 212:14 214:22 215:2,3,15 216:14 216:20 217:19 218:2,4,6,16,20 219:5,6,15,17,22 220:6,15,16 222:2 222:13,16 223:11 224:6 225:7 227:6 227:8,16 231:14 231:18 233:10,12 233:20 234:17 235:8 236:22 237:5,6,9,10,14 237:15,20 239:2 242:12,14,15,17 242:20 243:1 244:16 245:2,15 247:10,18,20 249:16,20,21 250:3,5,16,19 251:17 252:3,7,12 252:15 253:16,20 255:11 256:7 257:2,5,10,18,22 258:6 260:4 261:8 261:12 262:1,3,5 262:10,14,18 263:4,9,13,18 264:2 266:6,11 267:7,11,19,22 269:8,12 270:12 271:3,8 274:8,15 276:18 282:20 283:6,13,17,18,21 284:5,6,11,19 288:11,14,15,21 289:4 290:15 291:1,4,5,15,19 291:20 293:16 295:4 296:3,5,15 296:19 297:2 298:2 299:6 303:1 303:6 304:7 305:15 311:14 312:6 313:19 315:2,20 317:2,13 321:19 324:18,19 330:6 332:18 333:1,7,15,20 335:2 336:20 337:17 338:13 340:4 341:9 369:17 392:11 393:17,22 394:17 394:18 395:8,11 395:12 396:5,11 396:20 397:21 398:2,9,12 400:22 401:15 404:19 405:1 407:2,9,11 407:12,14 409:11 410:16 411:1,13 412:14 415:20 416:18 423:20 429:13 430:2 433:16 434:1,5,10 434:16 435:8,16 435:20 436:17,18 436:19 440:1 446:6 447:9 448:3 451:10 455:9,21 456:8 457:7,10,15 457:20 458:2,17 462:15 463:1,1,5 463:6 464:3,8,11 465:5 466:15 467:3,6,18 469:4 470:18 472:9 474:3,11,18,19 475:7,12 477:12 478:13 482:3,4,9 483:11 485:9 491:19,21 492:3,4 503:10 507:17,19 507:20 513:10,15 513:17 514:14,20 521:2 531:15 532:9
guidelines-based 250:13
guides 58:8,10
guilt 10:12 18:8,8 24:13 26:10 41:20 43:10 48:4 76:18 134:10 354:10 355:1 381:4 421:11 499:11 521:11 526:8
guilty 24:6 25:13 25:14 44:1 56:12 56:13,14 76:20,22 130:12 136:22 137:2 171:10,10 171:12 186:15,17 187:4,21 191:15 191:22 192:20 193:19 194:1,13 206:8,9,16,22 207:10,17 232:1,4 232:6,19 293:6,6 293:8,12 306:1,3 316:10,17 325:15 325:16 351:18 378:4 396:4 409:13 420:22 421:8 425:12 426:13 457:12 459:11 466:16 467:14 468:8,9,13 468:21 470:12,21 472:5,6 480:11 485:17 490:4 494:16 501:3 507:15 513:19 514:2 526:13,14 527:5,6,7
Gulf 21:9 28:13
gun 166:3,6,6,8 197:18 205:12 209:7,16,18 212:1 212:3,8,12 228:3 228:4,5,5,6,8,11 344:8
guns 228:12
guy 87:22 131:12 148:16 161:6,8 172:16 209:3,13 211:7 212:7,10,12 228:3,12 229:13 231:12,16 366:12 405:12 446:22 525:15
guy's 184:22 206:7 209:18 210:20 211:22 231:21
guys 174:9,10 347:6,8 370:1 525:6

H

hair 539:7
half 75:8 76:1 91:10 121:22 214:22 215:15 216:6,6 328:21 432:19 467:10 476:1,2
Ham 2:18 4:7 8:15 8:18 12:1,15 20:15,18 42:10,14 42:19 43:18 44:20 48:3,20 52:22 64:16 80:9 101:2 117:10,15 118:2 119:10,14,20 139:9 141:17 142:18 143:7 144:3,9 186:14 187:5 189:1 190:14 191:15 194:19 195:12 201:2,7 213:16,20 225:5 230:5,15 231:1 232:3,10,13 232:17 238:7 260:14 297:14 304:10,16 317:10 319:7 327:5 340:3 340:14,17 356:22 361:6 376:22 377:14 384:14,21

418:2 419:4 426:11 428:5,10 462:14 469:3 471:7 472:20 480:19 501:16 506:21 512:4 518:11 536:8,17 539:22
hand 15:20 30:17 226:17 403:6 449:1 468:11 472:7
handed 240:18
handful 64:2 352:3
handing 183:16
handle 32:3 381:22 390:3 437:11
handled 381:15 451:14 525:17,18
handles 414:11 415:7
handling 390:12
handout 328:16
handouts 307:21 338:6
hands 86:2,3 87:9 195:5 344:12 401:12
handwriting 157:5 259:7,8
happen 30:20 59:14 65:19 82:9 86:2 98:14 116:5 116:6 123:12 132:18,22 141:5 224:21 227:5 264:15 384:10 390:8 468:8 496:21 501:2 504:20 508:21 521:5 533:6 534:15
happened 63:11,14 100:2 107:9 110:20 138:2 170:22 227:11 261:15 373:18 377:21 395:9 401:2 435:3
happening 66:14 145:10 224:16 351:9 366:18 438:20 444:12 449:5 468:6 477:5 514:11
happens 84:11 98:3 98:20 104:6,7 118:8 189:4,13 377:6 400:1 425:9 430:1 484:19 486:1,15 510:16 528:18 540:8
happy 12:8 71:9 75:4 148:3,7 155:8 172:12 192:2,2 217:16 218:7 227:12 340:6 453:5 458:21 472:17 473:8 478:2
harassed 381:19
hard 46:9 68:8 138:13 184:8 348:1 376:17 412:6 420:8 424:4 435:12 452:8 453:16 512:20,21
harder 174:18 441:3
hardest 519:17 520:1
harm 32:17 372:5 373:19 403:18
harsh 412:14
harsher 444:2
Harvey 1:15 8:2 46:22 47:12 65:19
hate 385:11 519:6 519:16
he'll 501:9
head 205:21 375:16 419:9 459:21 471:20,21 472:19
heading 339:15
Headquarters 70:21
heal 379:7
healing 349:18 389:4
health 128:22 280:22 304:14 358:2 414:2
healthy 480:17
hear 18:10 23:2 24:1 37:15 52:11 91:3,7 95:7 109:6 136:16 237:20 297:22 343:5 351:3 363:10 424:2 469:22 491:2
heard 22:20 41:9 43:1 53:8 72:6 120:13 156:5 191:17 194:18 241:13 286:4 317:16 350:22 352:3,6 355:20 356:3 382:6 395:5 433:4 442:18 459:4 470:2 472:20 492:1 496:4 498:11 503:7 513:11,16 523:1,3,17 524:4 526:19
hearing 54:4 76:5 173:5 199:1 305:16 323:4 347:18 464:1 469:20 470:3 521:4
heart 66:1 378:6 399:19
hearts 399:14
heat 375:20 535:16
heavier 39:16 529:18
heavy 529:18
held 310:13 311:16 378:20 495:17 498:2,17 499:4 500:2,13 532:1
hell 533:8
Hello 148:19 400:11
help 13:13 41:7 148:10,20 173:21 244:16 257:20 317:2 320:1 321:7 338:3,5,8,16,19 339:9,20 362:18 362:19 396:10 452:11 456:18 472:17 478:2,19 496:18 520:4 535:5,6
helped 399:6
helpful 13:1,9 59:6 69:4 149:20 239:19 254:7 268:20 275:10 321:6 532:7
helping 7:6 299:11
helps 264:9 320:17 320:20 443:9 520:11
Henley 1:12,14 4:5 9:6 13:22 15:1,4,7 15:14 17:5,8 21:4 21:18 35:10,21 36:4,8 37:19 39:3 40:10 48:6 49:13 50:7,14 51:1,18 52:18 53:11 55:5 64:17,18 68:20 69:10,20 71:11 72:19 73:2 74:2 83:3 89:8 90:4,16 91:2 107:3 121:18 122:2,7 123:18 124:11 132:13,19 135:6,12 141:3 144:7,15 146:19 196:8,14 228:15 229:17 234:20 238:22 313:15 316:8 336:21 338:7 342:21 343:9 368:22 369:8,12 375:1 391:13,16,20 392:4,9,15,21 393:2 400:12 434:4 435:15 437:3,6 450:18 452:12,20 463:21 465:9,15 473:21 477:15 478:3,9 481:5 483:13 487:13 493:19 496:4 508:6,13 509:19 510:10 512:11,16 519:4,7 519:10 536:6 540:11
hesitant 448:21 496:6,14
hesitate 360:18
hey 60:3 366:11 368:6 485:2 539:15
Hi 400:12
high 16:14,22 20:7 54:2 114:9 115:11 179:3 207:20 220:10 237:14 283:20 294:20 295:1,17,18 296:17 298:21 303:6 320:8 340:21 345:8,20 369:2 429:14 438:13,20
higher 10:17 97:10 200:7 206:13 253:16 296:16,21 433:17 435:8 473:18,19 523:19
higher-risk 295:14
highest 20:21 253:8
highlight 57:2 239:15 254:1,4
highlighted 241:8 241:14 259:14

highlights 15:19
hijacked 209:8
Hill 71:2
hinders 43:22
hinged 277:15
hip 513:12
historical 49:15 164:10 248:1,4 274:7 276:4 279:2 290:12 421:15 422:3
historically 98:17 236:16 271:3
histories 244:6 402:10
history 32:5 53:20 57:8 174:8,11 203:11,13 204:6 262:5 280:15,22 290:9,14 302:1 326:14 330:14,21 331:12 401:20,21 406:4 412:7 424:1 451:16
hit 207:10 375:15
hold 87:10 310:22 355:13 414:15 425:4 520:8
Holder 225:16,18
holding 202:20 362:2 364:20 498:4
holds 248:17 473:4
home 33:12 35:3,4 147:8 157:21 354:11 446:12 447:7
homegrown 337:18
honest 7:17 111:12 383:15,15
honestly 124:10
honor 189:17 453:9
honorable 1:17 112:10 350:6 492:22
hook 143:18
hope 85:20 147:2 207:10 242:5 243:11 493:8
hopeful 356:9 364:7
hopefully 343:15 493:7
hoping 349:11 364:4
horizontal 248:16
Horn 31:17
horrible 363:15
horribly 367:14
hospitalization 461:4
hour 52:12 70:5
hours 28:17 163:22
house 505:2
huge 20:6 21:7 88:10 100:21 204:15 206:21 302:16 317:18 406:7 407:1 408:10,15,21 426:1,9,10 430:7 430:9 446:19 451:22 452:9 482:19
Hughley 490:10,11
human 26:13 136:20 375:8,14 383:22 414:5 436:8,9 450:10
humiliation 371:9
humor 349:4
hundreds 175:5,6 452:3
husband 357:16,18 460:11 498:16
hybrid 432:5
hypothesis 419:17
hypothetical 423:10
hypothetically 422:18 520:14
hypotheticals 204:5

I

idea 23:2 28:3 44:7 44:18 45:1 98:2,5 103:14 117:21 149:11 171:8 350:5 366:21 388:1 390:15 434:21 443:8,19 458:17 489:7 513:20 521:9
ideas 46:9 165:16 360:4
identical 441:5
identify 20:13 83:5 257:20 273:3 282:15 288:1 295:12,14 298:18 304:2 318:18 319:20 320:7 358:14 531:12
identifying 320:15
IDSI 329:5
ignorant 24:14
ignores 443:21
II 28:13
ill 447:1
illegal 90:14
illusion 419:5
illustrate 208:5
images 198:4 413:7
imagine 230:1
imagined 355:1 385:21
immediate 61:11 61:13 231:4
immigration 197:17 467:13 473:11
immobilize 355:2
impact 3:16 21:16 26:16 97:15 126:9 126:10,11 127:14 131:22 132:2 203:5 246:13,13 263:13 287:20 290:19 300:3 305:6,9 342:3,4 353:10 370:7 382:3 403:21 419:22 463:13 466:15 469:7,14 478:12 498:20 522:9 532:9 536:2
impacted 352:5 380:3
impacts 26:13 29:9 379:17 425:15
impeach 27:1
impeachment 27:3
impetus 269:12
implement 148:2 363:3 397:7 436:4 441:18
implementation 174:15 394:9 395:7 401:1 436:15
implemented 137:11,12 274:11 417:12
implementing 105:1 397:17
import 335:21
importance 176:11 272:21 278:2,3
important 37:2 47:10 147:3 176:14 185:1,3 201:2 247:3 257:11 260:5 270:19 272:7 273:3 275:18 276:10 284:4 285:13 288:5 321:1 334:4 340:15 343:12 382:4 410:3 448:8 450:16 455:22 456:1,9 458:20 460:2 498:6 521:15,16
impose 9:9 14:6 16:13 25:19 64:21 136:14 155:14 259:10 288:16,18 292:8 312:16 329:12 370:10 402:2 411:11 412:15 519:2 523:15
imposed 20:7 36:13 125:7 134:2 176:13 178:19 200:19 314:8 334:16,16 336:9 337:11,13 491:16 496:9 527:21
imposes 15:21 52:5
imposing 3:18 313:6 321:16 403:10 488:19 495:22
impossible 82:22 436:4 515:21 516:6
impression 192:7,8 499:3
imprisoned 178:14
imprisonment 177:16,18 211:10
improve 303:10 349:16
improving 268:1
inaccurate 67:6
inaction 354:19
inappropriate 119:11,21 313:5 333:21 463:11
inartfully 57:20
incapacitate 320:16
incapacitated 404:1
incapacitation 164:21 206:19 295:17 298:22 449:19
incarcerate 328:19
incarceration 136:21 245:12 268:13 269:4

287:15 295:16 304:17 315:10,22 373:15
incentive 133:8 366:22 472:5 497:18 505:10 506:5
inception 396:18
inclined 235:7
include 13:16 164:19 296:8 462:7 495:9
included 77:19 206:13 222:19 279:19 280:18,20 294:19
includes 206:19 389:10
including 17:22 42:7 168:18 249:3 254:10 267:16 388:22 389:2 414:1,2,3 443:4 455:13 456:2,10 474:13
inconsistencies 352:21
inconsistency 448:20
inconsistent 65:5 401:7 480:4,5
incorporate 250:10 295:11 296:2 451:1
incorporated 253:1 296:14 315:16
incorporating 165:16 304:8
incorrectly 333:8,9 450:14
increase 76:20 152:1,3,4 166:8 187:1,10 190:5 229:18 243:20 245:6,11,16 276:19 290:1,10 290:12 291:12 359:21 360:6 361:12 378:4,5,10 383:2 434:19 435:2 459:6 532:10,11,12
increased 275:4 289:9 290:5 314:19 382:18 400:10,19 426:18 433:17 467:19
increases 244:9 331:13
increasing 20:3 265:2 315:5
increasingly 497:7
incredibly 352:2,8 367:18
incrementally 303:10
independence 443:7
independent 431:16 432:17 433:1 434:22
indeterminate 177:10 308:21 309:2,5 311:5,13 321:15 324:11,21
Indian 198:20
indicated 30:10 103:18
indicates 118:6,17
indicative 361:3
indicator 302:16
indict 428:1,2
indictment 226:19 427:18 428:3
individual 5:12 33:9 39:14 63:6 98:11 109:10 163:12 279:17 322:5 380:21 394:5,13 407:18 424:20 435:9 436:9,10
individual's 109:17 355:16 364:1
individualized 401:8 444:10 487:21,22 518:22 522:8
individualizing 353:2
individually 347:11
individuals 34:22 281:21 353:19 403:8 420:11 437:8 525:20
inequity 533:4
inexperienced 15:13
infirmity 266:4
inflation 314:1
influence 50:21 315:14 375:21 435:1 465:1 534:1
inform 38:6 299:11
informal 338:17
informant 421:16
information 6:2 13:3 16:1,9,16,18 29:15 30:6,19 31:2,4,10 33:22 40:13,18 46:16 51:22 53:1,5,7,12 53:14 67:16 68:11 69:17 88:16,17 101:19 148:13 149:11 164:11 181:22 227:2 239:12,19 242:6 243:14 246:15,15 247:2 254:8,15,19 261:5 268:19 277:20 278:4,6 279:2,14,16,22 280:1,18 281:4 282:15 283:19 285:1 286:17 297:3 298:5 299:7 299:9 300:12,21 300:22 303:4,13 303:15 320:1 321:7 334:6,8,13 334:15 335:5,14 335:20,21 336:16 421:16 434:18 443:10,11 448:6 449:2,3 450:15 468:22 505:9 517:15
informative 69:1 452:14 531:5
informed 39:4 117:16 120:19 383:14 489:21 496:13
infractions 110:19
infrastructure 174:1 205:1
inhibit 389:4
initial 75:21 152:17 166:12 169:20 351:14 481:9
initially 165:1 233:11 269:21 270:14 277:18 278:4,9
injured 209:7
injury 161:7 180:4 180:4 181:20 202:6 249:3 280:8 329:8,9 373:21 462:10
inkling 226:11
inmate 97:3 113:5 113:9,11 266:2
inmates 96:18 224:17 265:10 317:17
innocence 10:12 41:20 48:4 134:11 354:10 421:3,11 521:12
innocent 400:1 419:14,21 420:3 420:22 421:8 423:7 468:17
input 107:16 169:10 341:22
inquired 196:12
inside 139:21 429:21
insider 213:14
insights 239:18
insist 406:19 426:16
insisted 421:4
insisting 406:11
instance 19:1 88:11 122:13 127:5 166:2 201:21 202:21 219:1 221:5 233:22 312:3 314:9 326:12 329:2 331:18 333:6 420:9 448:5
instances 5:10 30:11 188:13 333:6 451:11 539:2
instill 521:18
institute 7:13
instituted 507:1
institution 323:12 363:22
institutional 242:2 341:13
institutions 477:3,4
instruct 38:1
instructed 450:21 480:13
instruction 45:15 64:5 104:19 191:12
instructions 5:9 18:13 83:12,16 136:15
instructive 540:14
instructor 180:11
instrument 397:2
integrate 324:20
integrated 296:14
intellectually 441:3
intended 245:20 356:10 465:21 488:8

intent 248:2 312:4 351:20
inter 15:16
interaction 71:4
intercourse 329:4
interest 97:2 239:16 240:14 267:5,13 268:3 270:2 275:3 285:9 299:14 305:6 325:10 385:2 420:16,16 422:8 515:13
interested 39:9 149:2 198:9 268:9 271:9 273:19,21 339:2 361:21 389:8 390:1
interesting 16:20 17:10 26:5 37:15 69:1 129:22 131:20 133:22 221:3 244:14 251:9,11 252:16 254:6,16,19 255:6 275:13 383:8 401:19 503:2 520:21 524:4,6 530:5
interestingly 397:13
interests 63:2
interface 335:18
interim 361:9
intermediate 244:12 333:10
internal 163:5
internet 413:12,13 505:3
interpretation 171:5
interpreted 82:15 202:18
interrupt 14:11 258:8 464:5
interruption 475:19
intertwined 93:5
intervene 539:3
interview 485:4,5 496:12 499:22 505:6
interviewed 445:11 445:16
interviewing 445:6
interwoven 87:6,7
intimates 353:22
intimidated 209:7
introduce 70:9
introduction 70:14
introductory 398:8 400:15
intuition 10:21 11:2
Intuitively 354:15
invested 282:19
investigated 454:12
investigating 226:11
investigation 29:18 33:6 54:18 180:21 215:9 226:12 278:11,14 279:10 384:22 424:14 469:1 490:6,22 491:5
investigations 174:2 281:10
investigator 387:3
invited 267:8
inviting 5:3 453:7
invokes 317:8
invoking 313:6
involuntary 329:4
involve 305:20 309:5 353:19 465:14
involved 5:13 23:15 33:10 37:14 44:14 53:19 58:20 63:15 84:10 162:13 169:4 180:4 211:2 221:6 282:5 364:12 525:20
involvement 451:17
involves 424:12
involving 276:1
Iraq 494:10
irrational 403:3
isolated 508:4
issue 15:12 57:15 100:17 133:19 135:13 144:10 173:15,16 270:5 285:5 325:10 343:8,12 363:6 371:3 386:17 389:7 421:11 423:21 524:21 536:16
issues 23:21 34:14 38:22 45:22 67:16 71:5 90:6 129:13 150:17 239:15 256:2 285:7 286:10 317:16 335:3 336:3 377:6 414:3 424:9 443:2 455:2 460:1
it'd 207:12
it'll 191:22 192:1
italics 201:13
items 92:16 101:15

J

jacket 228:9
JAG 522:15
jail 19:3 55:22 72:15 79:15 130:13 294:5 301:8 318:7,21 337:12 367:6 368:10 369:6 373:4 374:22 380:19 416:13,15 421:19 444:15 447:5,16 459:9 494:16 497:14,15 498:19 499:16,17 500:7,10,15 501:6 501:14 505:13 532:2
jails 315:21
Janet 225:17
January 287:6,7
Japan 62:14 65:6 66:4 67:9
Japanese 67:18
Jello 59:2
jeopardy 61:20
Jersey 309:14
Jessica's 326:16
Jim 63:13
JJM 70:20
job 76:2 99:17 103:17 112:8,9 121:22 281:14 320:14 352:2 412:17 463:12 485:2 502:18,18
jobs 495:3
Joe 326:6
John 1:16 2:2 334:16
John's 355:20
join 238:13
joined 399:5
joining 275:4 463:17 519:12 531:8
joins 411:6
joint 126:6 127:1,2 127:12
jointly 412:2
joke 259:6
Jonathan 2:15
Jones 1:17 118:18 463:18,22 464:4 470:2,6 519:13 531:9
jour 345:20 346:17
journal 370:1,3
JSC 483:17
judge 5:7 6:10 7:22 9:8,11,16 10:4,11 10:15,22 11:12 13:19,20 14:6,9,9 15:21 20:19 21:1 23:8 24:4,21 25:3 25:4 26:19 29:15 30:6 34:13 35:17 37:21 40:13 43:14 46:5,5,16 47:5 50:17 52:3,3 55:7 55:12,17,19,21 56:7,10,12,15 58:15,17,18 63:17 64:20 71:1,17 73:12,16,17,18,20 77:8,11 83:9,9,15 84:15 92:9,18 93:9 95:21 96:2 101:8 118:3 119:17 120:12 133:20 139:17 141:14 147:12,13 150:13 151:20 152:16 153:5,12 153:12 154:20 158:6 163:19,20 164:6 166:2 171:18 172:11 173:4,8,10,13,16 175:15 176:13 177:15,22 178:3 179:18 180:15 186:2,10 191:6,12 196:20 210:19 211:8 213:3 215:17,19,21 219:9,9,10 232:19 233:18,22 234:5 236:6,7,7 237:18 246:22 249:18 257:14 276:13 278:18 279:17,22 281:5 283:7 285:18 286:4 288:16,18 291:4 291:11 292:13 293:1,13 295:2,15 296:19,22 297:4 298:6 302:22

305:16 317:6 320:1 328:19,20 332:10,14 333:14 333:19 334:15 344:3,10,14 351:4 352:4 358:20 368:17,21 370:10 370:19 382:15 393:5 394:5 396:7 398:21 403:10,22 412:13 413:20 416:7,12 419:1 425:3 430:6 431:4 432:7 437:18,21 439:4,6,20 440:6 440:8,11,11,22 441:3,6 446:13 447:7,15,16 463:22 464:4 468:2 470:2,6 475:2 479:5,6 482:14 489:11,20 493:12,14,19,21 494:7 499:9 514:16 517:13,22 520:20 521:13 522:13,17 523:15 524:6 526:4,7,14 526:20 530:11,13 530:16 532:3
judge's 136:15 159:5 182:15 251:20 258:12 259:8 273:7 299:12 430:5
judge-alone 530:8
Judge-found 151:18 152:2 190:12
judge-motivated 270:13
judged 354:17
judges 10:2 14:3,4 15:11,13,17 16:3 17:3 30:16 58:10 65:15 119:11 137:6 146:5 150:7 151:14 153:2,7,15 153:19,21 154:10 154:11,11,15 155:4,18,19 158:3 159:7,9 164:11 165:13,20 166:4 175:21 178:20 182:16,18 183:15 184:18 185:11 190:13 191:10 213:16 214:22 215:1,14 219:20 219:22 220:4,6 222:9,10 233:3,11 233:14,15,16,19 234:9 235:1,18,21 236:5,15 237:8 238:1 247:1 249:22 250:4 252:11 256:5 257:6,9,21 258:21 259:2 263:11 264:5,11,11 270:10,22 271:13 272:16 273:11,16 273:20 274:3 275:11,12 276:7 277:21 292:5 294:20 298:3,13 303:3 313:2,9,10 321:4 324:13 334:5,17,19 340:6 341:4,16 347:8,9 348:10 350:18 351:12 352:17 353:1 358:19,22 370:8 394:19 398:3,7 401:18 402:3,17 404:14 410:2,16,18 411:10,20 412:9 417:12,13 424:1 430:16,17,20 431:14 432:20 433:19,22 434:18 435:5,6 437:9,15 438:12 439:22 440:13,18 441:19 442:2,6,8,10,11 443:5 444:7 449:15 450:1 462:16 482:15 483:9 491:21 522:5,6,19 523:20 527:20 529:14,15 529:16,17
judgment 176:17 303:20 354:22 404:5 433:2
judgments 450:10
judicial 150:19 247:13 258:3 270:15 278:22 334:18 369:20 401:5 458:3
judiciary 159:4 219:11 433:15 443:7 444:5 465:18
Julie 343:21 344:13
Julie's 343:21
June 142:14
junior 33:2
juried 11:8
juries 10:16 17:22 26:18 156:12 291:2,19 305:13 358:17,21 522:4,5 527:20 528:8 529:8,10
jurisdiction 9:21 10:5 11:18 58:19 63:18 96:15 104:4 198:19 212:4 274:18
jurisdictional 103:21 143:8,17
jurisdictions 10:17 26:18 41:15,19 56:4 134:5 179:11 206:20 275:22 276:7 282:3
jurors 17:17 450:20
jury 10:9,11 11:6 18:7,9,20 19:7 24:3,12,16 25:5 26:17 27:14 39:13 41:19 42:7 48:2 83:12 84:16 134:6 152:6 157:13 161:5,13 179:21 213:7,11 230:2,20 258:22 291:2,7,10 291:12,13 292:2,6 292:9,10,13 293:2 293:3,4,5 305:7 305:11,13,20 316:15 325:16,22 326:10,22 341:3 351:4 376:15 424:17 443:4,5 482:20 490:4 518:2 520:17,18 523:19,22 524:1 528:6 529:10
justice 2:16 20:6 60:16 61:1 62:19 70:21 71:17 72:5 98:1 118:13 122:15 152:16 181:12 183:5,8 227:22 267:20 270:4 341:5 347:6 349:18 355:8,9 356:15,20 373:13 373:14,14 379:7 383:6,11 384:2,11 399:16 400:8,18 401:8 404:4 424:10 436:6 448:12 452:21 453:8 454:20 455:10 456:1,2,14 456:20 457:3 458:6,20,21 460:6 464:2 474:1 488:14 490:15 497:21 498:10 504:10 516:11 524:16
justification 333:18 350:14
justifications 370:12
juvenile 280:11 304:13 331:20
juveniles 304:20

K

Kansas 75:16
keep 5:16 29:4 117:5 237:2 302:19 303:16 313:9 319:22 348:7 350:6 364:12,21 366:17 366:22 385:11 485:21 486:2 529:7
keeping 22:16 224:9
keeps 36:1
Kelly 2:19 4:8 36:10 128:2
Kennedy 436:6
kept 41:11 43:12 224:15 383:14
key 158:16 281:7 285:7 309:4 335:3
kick 79:17 240:11 241:4 320:13 336:10
kid 375:10
kiddie 430:1
kidnaping 302:8,10
kidnapping 516:3
kids 367:2
kind 29:16 32:12 32:15 45:6 56:22 57:22 64:1 68:2 95:13 98:5,5 99:22 102:19 119:22 124:6 138:4 141:9 160:20 161:9 174:10 182:3 198:16 202:22

203:9 211:14 234:8 239:18,18 254:1 261:1 263:13,22 264:22 266:20 268:16 275:17 276:22 277:9 278:5 284:6 293:20 297:10,18 303:15 317:10,18 320:13 327:3 332:10 333:8,9 337:12 345:5 357:6 364:11,14 364:17 367:17 369:18 382:5 386:12 388:10 390:5 406:5 414:18 416:12 423:8 433:9 463:9 468:18 504:19 509:3 524:13
kinds 151:5 275:10 317:3 356:3 363:19 364:15 365:20 374:14 375:18 454:10 457:14 460:1 461:5 464:7 477:1
Kirby 483:13,14
Kirkby 2:11 71:12 71:13,15 72:22 78:21 79:5,21 81:1,9 83:6 85:1 85:20 86:5,13,14 86:22 88:12,22 90:10 93:3 129:21 130:4,22 131:5 132:1,5,17,20 134:13 135:11,17 137:4,15 138:3,7 138:16 142:6 146:1,10 483:15 499:20 502:4 510:15 525:21 534:10 539:9 540:4
knew 47:12 54:5 122:15 157:6 158:11 176:18,19 177:2 178:17 199:18 421:4 480:13 531:21,22 534:4
knocked 368:1
knocking 204:13
know 10:13 12:9,10 12:11,12,20 13:14 16:12 19:14 22:5 23:16,19,22 26:14 26:15 27:22 29:12 30:16 31:22 32:2 32:16 33:3,9 34:22 37:7 38:3 41:12,22 42:2 43:1,5,7,9 44:16 47:8,14,20 48:17 53:2,18,20 54:13 54:15,17 55:19 56:1,17 58:14,20 59:3 66:11 67:19 68:8 69:18 73:1 79:16 80:4 84:1 85:9 87:15,15,16 88:3 90:5,13 97:7 97:14,14 100:16 100:20,22 101:11 102:3,18 104:13 104:15 107:18 108:3 109:3 113:19 117:17 118:3,11,11,19 119:11,15,21 124:8 127:14 130:15,16,20 131:8 133:3,21 134:6 137:8 138:14,19 139:22 141:4,13,17 142:2 142:9 143:8 144:9 147:19 148:1 149:22 151:13 152:9 153:16 155:7,12 156:15 160:5,10 161:12 161:14,16,17,18 161:22 162:4 163:1,1,3,8,16 164:12 165:12 168:4 169:22 173:9 176:18 180:1,16,17 181:1 181:3,5,16,17,18 181:21 182:4,10 182:15,21 184:2,7 184:19 186:7,18 187:3 188:4,22 190:3,22 191:4 192:18 193:5 195:3,16,22 197:11,13 198:20 199:4,7,18,21 202:4,5 203:6,7 204:6,21 205:9,10 205:15,21 206:1 207:8,15,19 208:18 213:12 214:13 215:21 216:4,18,22 217:2 217:5,7,8,14,17 217:19 218:10,18 219:19 220:20 221:1,2,3,7 223:2 223:4 227:7,10,10 227:10,20 228:7 228:10 230:22 231:13 232:1 233:9,11 234:3,7 234:14,19 235:13 235:14,15,18,20 236:13 237:7,12 237:14,22 238:5 238:10 247:4 248:10 256:20 261:20 262:20 264:8 267:11 268:10 269:17 275:19,22 276:4 276:18 277:8 279:7,17 291:18 291:19 293:9,11 298:9,16 300:2,5 300:18 301:4,8,13 301:22 302:22 303:4,8,10 304:6 306:2 307:4,5 310:18 313:10 316:5,14,16,18 317:7 318:3,7 319:1,18 320:13 321:13 322:5,19 325:11 327:7 333:8,15,20 335:13 338:16 340:19,20 341:9 354:13,15 357:1 358:4,16,18 359:4 359:12,22 360:3 361:9,17 362:9,12 363:5,10,12,13 364:13,19 365:5 365:17 366:6,17 367:9,11,20 368:6 368:8 369:18 371:10 372:15,16 374:5,19 377:22 379:13,19 380:15 380:17 381:2,20 383:18 384:4 388:1 389:17 390:4,5,20 391:2 391:2 404:3,12 405:2 411:21 412:6,11,16 413:10 417:3,8,16 417:19 418:8 421:7,9 422:18,20 422:22 423:9,11 424:3,5 425:5 427:16 429:13 431:6 432:11 437:12 440:21 441:11,16 443:13 444:8 445:1 448:9 448:9,13 449:5 450:3 453:3,17 459:8,14,21 461:2 461:6,17,18 462:2 468:9,10 469:20 470:15 471:3,5,11 471:18,20 473:4 473:12 477:22 478:15 480:19 483:21 484:7 485:10,19 486:16 486:22 487:8,9 490:4 491:22 492:11 493:18,20 497:3 498:6,13,15 499:17,22 500:2 500:11,14,18 501:7,11,11,12 502:11,13,14 503:4,19 505:8,17 505:17 506:12,15 507:15 508:3,5 509:5,15 510:5,15 510:16,18 511:5,7 511:8,11,14 512:14 513:22 514:8,12,15 515:3 515:5,9 516:1,7 516:12,18 518:12 521:3 522:18 523:2,7,18 524:1 524:19 525:8,10 526:20 527:1,1 529:16 530:11 534:12 535:11,11 535:13,17 538:9 539:6
knowing 51:13 354:6 355:11 368:19 375:6
knowledge 240:8 242:2 473:17
known 4:19 158:4 301:3 354:3 356:6
knows 37:21 56:10 65:9 82:20 92:12 188:17 191:6 232:4,5 317:5 377:11 468:7 535:14
Korea 267:14
Kramer 2:12 3:14

392:13,18 393:1,4 393:16 398:17 405:8,15 408:20 414:19,22 415:5 419:9,18 425:17 426:19 428:16,22 429:15 435:18 437:5,12 445:1 451:5 452:16

L

L 2:5 3:8
lack 66:2 89:5 140:20 333:20 384:4,5 444:20
ladies 145:18
lady 19:9
laid 289:10
land 261:1
landscape 66:19
language 214:15 250:12 256:10 449:22
lap 85:22
lapse 354:21
larceny 209:4,5,9 272:13,18 515:5
large 156:2 192:7 194:11 207:6 293:18 361:11 388:14 406:16 438:11,17 462:12 465:17 466:11 468:12,20
largely 298:1 397:20
larger 204:1 281:17 391:9 422:4
Larry 1:17 400:11 400:12
lasted 494:11
late 21:6 57:10 263:7 278:20
latitude 333:4
laudable 394:6 436:3
Laughter 23:12 379:10 393:15 405:3,7 408:19 414:21 419:11,15 460:17
laundered 194:9
laundering 194:6 194:10,16
laundry 36:21
law 139:20 144:17 158:19 159:11 224:8 234:4 308:10 326:16 328:1 337:7 342:10 345:15 349:10 357:11 361:20 383:12 385:14,15 386:2 393:5 398:21 399:7 403:2,8,9 440:14 443:18 458:14 511:8,9
laws 244:21 345:1 348:5
lawyer 27:11 453:13
lawyers 421:21 425:15 454:7
lay 156:21 261:1 285:13 343:7
layer 396:13
layout 293:22
layperson 156:15
lays 104:20
LCDR 71:13 72:22 78:21 79:5,21 81:1,9 83:6 85:1 85:20 86:5,13,22 88:12,22 90:10 93:3 129:21 130:4 130:22 131:5 132:1,5,17,20 134:13 135:11 137:4,15 138:3,7 138:16 142:6 146:1,10 483:15 499:20 502:4 510:15 525:21 534:10 539:9 540:4
lead 168:15 404:15 420:21 454:7 481:20 483:6 523:10
Lead-in 302:17
leaders 111:8
leadership 173:1 381:14,21 529:9
leading 247:12
leads 327:22 377:12
learn 16:2,11,14 40:16 70:5 343:15 344:3 489:17
learned 531:7
learning 343:14
leave 92:20 284:22 353:9 366:22 432:15 483:8 489:1
Leavenworth 69:6 75:15 97:11
leaving 161:9 460:19 494:10
led 151:11 157:2 234:19 470:18,19 470:20 487:19 516:4
leeway 426:21
left 129:9 195:6 248:12 521:10
left-hand 241:3 329:20
legal 140:2,17 142:10 246:20 336:10 475:6,12 479:10 535:4 536:1
legally 336:12 480:4
legislated 357:2
legislation 74:14 129:15 134:2 185:5,21 224:15 370:8 454:5 458:13
legislation's 140:16
legislative 74:19 247:14 335:17
legislatively 163:8
legislature 341:10 366:20
legwork 282:1
leisure 254:18
length 110:8 120:20 123:1 216:3 218:7 245:12 273:14 294:8,15,16 315:9 317:12 382:15
lengthy 12:17 29:18 170:17 355:9 358:9 372:17 380:14
lenient 63:16 103:5 156:7 313:4 350:19
leniently 448:19
lens 373:14 531:16
Leonie 398:22
lesser 220:9 310:2 327:15 342:1 351:18 352:10 489:13 490:19
lesson 364:5 520:3
let's 46:22 116:16 142:18 208:9 214:10 272:1 280:15 289:20 290:8 301:1,1 312:14 315:10 322:2 331:2 345:22 429:6 435:13 487:8,9,10 497:18,21 516:22 536:2
letter 85:1,4 87:4 87:14 527:9
letters 111:7
letting 343:11
level 21:21 22:6 36:14 99:7 100:14 100:15 103:21 111:13 122:6 125:6,18 129:3 193:21 201:19 207:9 325:11 341:12 344:20,21 367:16 374:15 399:17 400:19 405:17 443:3 516:21 528:6 529:2
leveled 395:1 401:14 434:9
levels 207:11 254:22 255:4,5 406:13 425:21 458:1
levied 128:19,20,22
Lewis 75:13
liar 383:20
liberal 403:1
liberally 92:3
liberty 1:11 136:11 404:6
lie 87:16
lied 191:1
lieu 22:2
lieutenant 2:7,11 2:19 71:11,15 96:3 135:17 381:18
life 18:18 19:1 33:10,11 54:3,7 64:6,10,11,13 109:22 120:7 135:1,4 137:2 170:21 238:7 296:6 329:7 355:16 356:2 370:9 371:5 450:9 480:15 512:9 518:17 528:22 537:11
lifetime 328:4
light 13:11 60:12 129:12 533:12

lightening 39:18
lighter 524:5 529:19
lightest 25:22
liked 128:4 154:15 234:9 356:7 518:1
likes 182:1 279:17
liking 233:4
limb 488:10
limit 28:17 36:15 68:21
limited 132:7 139:1 145:5 150:11,12 197:11 213:9 217:21 304:3 430:12 456:19
limiting 107:6 492:7
limits 66:11 326:3
line 70:7 87:21 102:22 123:3 158:21 164:2 249:4 262:12 309:15 310:10 330:19 337:21 370:2 485:21 495:8 513:5
lines 127:11 179:6 259:4 310:15 354:5
link 266:19 311:14
list 36:21 244:19,21 248:22 249:6 271:15 371:22
listed 251:16 330:3
listen 348:4 476:13 491:20
listened 405:2 516:8
lists 175:2 251:12 446:2
literally 87:6
literature 245:18 299:14
little 5:14,21 11:7 45:3 60:20 73:10 105:13 113:12 114:16 147:2 148:22 149:15,15 161:22 166:21 216:8 235:17 239:22 240:2,6,11 246:3 249:13 255:5,13 259:11 267:3 269:6,10 271:11 273:13 285:17 286:18 287:21 290:18 293:15 295:5 311:9 345:9 346:7 346:9 384:18 398:4 453:4,11 458:22 472:11 475:1,10 510:5 535:8 537:8
lives 364:1 379:18 380:5 447:19 503:21
living 346:16
LLM 72:2
load 14:3 122:8
loaded 123:20
local 54:2 399:17 402:16,16 415:1 415:13 435:19
locality 278:15,16
location 389:9 416:9
locations 71:2
lock 268:11 287:18 318:7
locked 318:10 444:17
logic 470:19
logistical 35:11,22
LoGrande 2:13 74:4,4 109:5 112:2,19 125:4 126:13,16 127:17
long 45:8 66:14 67:10 81:20 91:14 129:6 136:11 220:20 232:5,17 234:18 268:12 273:8,9 274:13 277:11 286:8 291:4 295:20 307:6,16 311:19 320:16 345:22 347:21 350:8 351:16 357:9 362:14 366:9 369:15 370:18 398:17 404:2 421:19 422:10 442:22 444:15 445:16 537:19
long-term 298:10 503:20 508:21 509:17
longer 123:16 136:9 140:9 141:7 142:17 225:8,14 226:5 235:4 244:7 287:15,19 288:5 289:13,15 290:14 290:16 295:16 305:14 317:19 332:12,15 336:11 397:20 411:2 446:2 482:8 526:22 537:11
longest 329:11,15 331:14,15
look 13:12 21:3,5 31:12 68:12 69:2 73:21 81:17 83:20 87:6 89:6 91:13 97:20 137:16 157:14 160:12,13 160:14 161:10 162:3 171:22 174:7 179:7 184:11,12,13 185:11 196:12 197:9 199:10 201:1,11 208:7 214:14 223:5 228:19 229:7 235:3,7 236:16 241:6 249:7 264:5 266:5,15 268:8,21 276:6 277:5,8 284:18 294:10,16 294:18 298:16 299:16,18 300:6 303:3,11 318:2,9 325:19 327:8 329:2,20 338:12 355:9 360:21 362:5 364:22 365:10 373:13 378:2 384:6,11 426:12 436:1 446:21 447:14 449:9 466:2,13 467:16 469:6 474:8,16,19 475:10 477:10 484:12 486:5,7 490:8 505:1 506:4 522:12 526:5 530:21 531:15 536:14,22 537:8 538:9 540:7
looked 151:9 157:8 165:18 169:16,18 175:11 176:7,20 201:9 252:17 274:1 286:15,16 301:18 306:18 325:12 365:18 381:12,13 382:14 418:8 483:17
looking 16:16 60:5 62:18 68:4 83:19 92:13 97:7,8,13 99:10 152:1 160:8 165:5 174:11 184:20,21 187:15 190:7 191:21 205:14 206:5 207:7,8,14 210:21 223:13 237:3 252:4 277:10 282:1 284:13 296:16 299:14 301:2 302:1,14 308:6 312:22 317:12 334:17 344:16 347:5 360:21 362:17 371:16 374:7,12 411:5 439:22 503:20
looks 48:11 142:1 148:1 152:21 170:5 237:16 251:5 264:7 306:9 418:3
lose 192:1 326:19 488:3 504:21 506:12
loses 380:17
losing 506:10
loss 406:12
lost 185:7 217:1 231:21 327:13
lot 5:3,21 12:17 14:15 30:3 31:10 32:4 33:9,22 41:15,18 44:3 54:8,13 67:8 98:1 101:11 107:16 117:2 127:22 128:1 130:14 148:12 186:2 190:7 195:20 201:5 206:19 209:12 214:15 223:3,4 224:13 226:14 230:4 240:20 242:6 243:13 251:3 255:10 257:3 262:13 263:3 266:19 268:12 269:13 271:20 273:15 279:12,20 280:17 282:1,1 286:17 287:2,10 290:14,16 308:14 318:8 321:4 322:11,13 333:3 335:10,11,11

339:18 346:20 348:11 361:18 374:9 375:17 404:15 411:22 418:17 420:10 430:1 450:5 454:5 461:11,21 476:19 477:8 478:20 479:20 480:16 484:2,7 485:11 491:7 500:17
lots 28:12 298:5 317:14 443:18,22 458:7 467:13,13
loud 27:22 523:11
love 321:3 360:11 399:21 490:13
loved 356:8
low 16:14 17:1 24:7 106:11 107:11 114:9 115:12 179:3 222:20 230:12 231:5,10 294:20,22 296:20 298:19 301:13 318:14 325:18 333:1
low-risk 287:22 288:1 295:12
lower 19:4 47:6,7 64:19 104:4 132:21 215:17,19 216:1 219:5,6 237:17,19,19 253:12 291:12,13 292:7 411:12,15 411:17 412:2,15 433:7,20 434:20 435:13 444:2 472:11 522:4,6
lowest 253:9 407:7
LT 70:2,15 76:4,9 80:12 81:6,10 82:7,17 85:19 86:14 90:1 91:6 91:18 93:16,19 94:3,12,16,19,20 95:1,2 104:9,12 108:6,21 109:4 115:15 129:8 130:3 132:10 139:5 142:12,16 144:4 145:11,22 481:6 515:10,14 532:15 533:13,18 533:22 534:5
LTC 28:19 43:8 52:11 55:3,10 63:9 64:6,10 65:22 67:7 146:14 201:4 208:3,9 238:12 274:16 275:7 276:11 297:9,17 342:14 378:1 381:3 382:8 392:2 447:22 466:12,20 499:3 505:15,19 507:9 531:6,10 533:16 537:13
luck 39:21 69:17
Luckily 495:1
lump 13:4 461:7
lumped 223:5
lunch 238:13
lying 189:9,16

M

ma'am 78:16 94:19 97:4 100:6,12 138:17 260:14 361:16 499:4 515:10 533:22 539:9
machine 20:6 486:9,17
Macon 219:16 227:7
mad 223:14
magic 534:20
magnifying 352:21
mail 116:13
main 346:11 482:3
maintain 101:3
maintained 421:3
maintaining 288:6
major 73:18 220:2 350:14 473:22
majority 112:5 123:6 169:4,6 353:18 383:8 396:1 399:18 400:3 433:5
makers 450:17
making 14:14 24:17 26:14 61:6 150:12 156:12 213:3 224:18 275:19 303:12 311:6 324:6,7 335:4 370:3 377:4 401:9 416:6 417:12 441:8 442:12 444:19,22 446:4 449:4 450:10 522:19 528:9,21
male 110:21 502:2 516:16 534:7,9 538:13,16,20
males 508:20
malicious 289:21 290:3 374:10
Malinda 1:16
man 355:22 399:8 495:4
man's 136:11
manage 320:20 535:9
manageable 335:4 338:1
managed 114:4,5
management 308:8
managing 263:19
mandate 319:13 324:18,22 448:10
mandated 325:5 326:8
mandatories 312:1 312:19,20 313:12 313:13,22 314:3,6 326:3 341:10
mandatory 2:9 3:14,19 4:12 5:11 5:18 7:11,13,20 8:13 29:6 36:17 41:3 42:20 43:19 43:21 44:2,21 45:15 59:12,12 60:1 77:2 87:1,3 95:12 132:21 133:18 134:2,7 137:11 138:21 139:3 142:20 143:10 150:5,6,14 151:14 154:22 155:3 157:10 167:11 168:11 218:21 220:21 221:1,4,7,13,17 221:21,22 222:2,4 222:5,12,15,19,20 222:21,22 223:7 223:10,15,16,20 225:19 233:10,12 233:20 249:17 250:10 253:17 254:5 255:13,14 256:13 271:2 310:12 311:10,21 312:5,9,13,15,17 312:18 313:7 314:3,7,11,17,19 316:13 317:7,11 320:12 321:19 326:15 328:10 332:17 340:10 343:2,18 344:5 345:1,3,6,10,14 346:1,8,10,13 347:2 348:7,8 349:8 350:1,17 351:11 352:22 353:5,10,13,17 356:14 357:2,4 358:15 359:3 366:4,5,10 369:1 369:1,13,14 370:2 370:8,17 371:15 371:21 372:2,9,14 372:19,19 373:7,8 373:20 374:4,9,13 374:16,19 376:1,9 377:1,4 378:2 382:19 392:12 393:19 395:11,12 396:14,17 397:4,6 397:8,9,15,16,21 398:1,10 401:1,2 401:7,16 402:3 407:3 408:7,9,12 408:22 409:5 410:17 411:2 413:1,14 420:1 427:17,20 432:11 432:20 433:16 438:14 439:2 441:13 448:2 455:11,21 456:8 457:8,15,21 458:9 458:15,18 459:17 461:8,12,12,17 462:2,3,5 464:3 465:10,22 466:1,6 466:7,9,14 469:4 469:10,15 470:17 472:1,3 475:9 478:12,21 479:2,8 479:11 480:1,14 480:16,21 481:1,2 481:12,21 483:12 483:22 487:20 488:19 489:2 491:17 492:18 493:17 495:22 496:8,17 499:1,6 501:18 502:8,20 503:4,9 505:16,20 506:22 511:17 531:15 532:10 533:17 535:19 537:10
maneuver 349:17
Manhattan 219:2
manifest 333:2

manipulate 395:20
manipulated 395:21 465:5
manipulation 396:2
manner 445:14 482:1
manual 151:7 492:11 494:3
map 241:7
Maria 2:17 128:1
marijuana 344:1
Marine 2:2 22:4 124:9 479:4 504:9 504:9 509:16 515:7
Marines 15:2 16:21 65:6
Mark 2:3 3:11 239:2,9 240:5,10 261:4 284:15,22 293:20
married 54:16,16 513:12
martial 50:20 76:22 77:5 80:17 86:10 98:4 103:19 122:8 196:10 481:20 484:5 492:12 516:22
Maryland 255:12 255:12,20 256:20
mask 209:6
Massachusetts 219:3,14 227:13 262:8
Massaoui 399:1,2
massive 333:15
match 37:1
material 87:12 201:5 241:2
materially 528:21
materials 148:14 156:16 201:10 240:21
math 297:10 421:18
matter 69:22 127:7 146:17 238:20 342:17 376:1 378:6 413:8 431:3 435:13 497:15
matters 77:9,11 92:4,5,8,10 93:6,8 93:21 94:7,8 96:17 100:18 113:7 124:22 398:18 402:18
max 39:7,7 59:12 210:21 211:8 212:16 230:10 311:20 323:15 328:18,21 329:6 329:10,15
maximize 442:16
maximum 8:8,12 18:14 38:1,7,10 39:15 40:2 41:2 45:9 78:18 135:1 211:16 296:7 299:4,10 309:9 310:3 311:8 321:16,22 328:20 331:10 359:5 375:4,6 377:16,18 377:20 502:14,16
maximums 7:20 134:8
maxing 39:16
Maxwell 15:17
McGovern 2:19 28:19 43:8 52:11 55:3,10 63:9 64:6 64:10 65:22 67:7 70:2 76:4 91:6 94:20 95:2 104:9 104:12 108:6,21 109:4 115:15 129:8 130:3 132:10 139:5 146:14 148:10 201:4 208:3,9 238:12 274:16 275:7 276:11 297:9,17 342:14 378:1 381:3 382:8 392:2 447:22 466:12,20 499:3 505:15,19 507:9 531:6,10 533:16 537:13
MCM 483:19
mean 7:14 12:20 14:11 19:18,22 20:5 30:12 40:14 50:20 51:11 59:1 59:15 60:18 76:16 83:19 87:5,15,16 94:13 97:10 100:11,15 102:22 104:6 111:17 117:11,16 118:1,9 121:11 126:22 127:1 131:6,6 132:5,19 133:11 136:10 137:17 148:21 149:20,21 162:2 170:18 195:17 197:4 200:20 202:18 204:13 217:18 221:14 228:7 232:5,9,15 236:10 236:20 237:4 238:4 260:22 268:22 275:8 282:14,14 283:20 297:11 299:2 316:13 317:12,22 318:2 326:18 334:20 354:1 363:7,18 371:15 374:4 377:2,10 380:19,21 384:10 385:3 386:16,21 389:15,17 390:11 390:13 391:1,4 392:18 405:15 418:3 428:18 429:9 433:9,13 435:18 436:5 440:13 448:8,11 450:12 453:20 462:3 470:9 483:16 485:22 496:17 499:17 500:5,10 505:10 508:8 509:4,22 510:3,7,8 513:4 521:21 524:13,14 525:16 526:19 535:7 538:2 540:5 540:7
meaning 65:13 91:21 150:6 151:2 153:2 177:10,22 180:19 216:6 309:2
meaningfully 416:4
means 72:1 133:1 135:7,9,15 211:8 285:22 294:14 296:17 329:10 373:15 380:16,18 383:11 537:4
meant 419:4
measure 276:12 301:16 302:3 373:19
measures 276:20 277:5
meat 203:2 397:1
mechanism 101:19 263:18 266:19 271:16 313:8 521:17
mechanistic 404:15 448:22 449:17
media 346:19 351:3
median 216:5,9
mediocre 88:3
medium 114:9
meet 248:17 433:18 518:6
meeting 4:4,11 233:2 463:17 519:13 531:9 540:19
meetings 128:2
meets 96:5
Megan's 308:10 328:1 337:7
member 22:11 27:19 37:20 40:7 40:9,15,20 72:5 75:19 79:14 126:14 136:18 342:13 484:5 486:12
members 5:8,8 7:2 7:4 8:4,7 9:7,10 10:19 11:14 14:2 14:8,15,21 17:15 25:18 27:14 28:5 28:10,15,21 29:16 32:22 36:20 37:13 37:21 38:1,6,9 39:4 40:10,19 43:4 45:15 46:1 47:5 58:9 62:10 64:20 69:7,14 70:3 83:12 91:11 102:17 105:21 123:13 124:18 130:7,18 131:16 133:11,19 134:4 135:21 137:7 152:15 196:21 197:8 353:21 367:3,8 450:21 480:2,12 482:20 484:2 486:11 500:8 519:1,5,16 519:22 523:5 524:5 525:22 533:9 540:14
memo 193:9 225:7 225:15 446:2
memory 183:1
memos 227:21 446:10
mend 356:15
mental 128:21 280:22 304:14

414:2
mention 6:5 220:22 367:2 419:21 474:15
mentioned 58:7 60:10 186:3,14 189:21 201:3 233:2 239:16 240:10,13 264:1 290:21 298:13 305:6,7 308:17,19 325:9 329:18 334:3 360:8 371:14 429:16 474:14
mentions 265:5
mentor 399:8
menus 335:11
Meredith 2:8 3:10 239:4,21 263:16 264:1 291:17 308:19 317:4 329:18 330:19 334:22
merits 43:9,12 191:1 439:19,21
mess 87:1 131:17
message 350:8 371:1 495:13,14
met 1:11 15:18
method 243:5 247:9
metrics 517:11
Michael 2:13,14,14 3:15 398:14 407:4 408:2 414:9 415:9 438:3,16 452:8
Michigan 261:21
microcosm 364:4
microscope 354:17
mid 75:14 124:7
middle 17:2 65:12 316:19 317:1 400:13
midpoint 179:3 289:18 294:14,17 295:1 306:20
Mike 74:4
miles 402:6 408:3
militaries 266:11
military 2:10 3:3,4 4:13,22 5:4 6:3 9:8 10:18 12:3 14:6 17:22,22 19:13 20:6 22:13 22:14 32:8,9 34:13 35:7 36:2 38:18 41:16 55:13 57:4,21 61:1 65:13 68:15 70:6 70:12,21 71:16 72:5 74:8 75:12 83:9,9 85:17 91:11 98:1 101:8 109:18 110:20 111:15 118:13 120:12 159:20 164:9 174:13 178:20 180:3,7 191:3,5 203:22 205:3 206:8 217:6 234:22 235:16 258:11 280:20 282:7 338:12 339:2 347:6 349:14,22 354:4,4 357:16,16 358:4,9 358:12 359:3 360:12 362:17 363:13,21 364:10 365:12 368:4 377:16 378:8,12 381:10 387:22 388:14 389:12,15 390:10 391:2 402:22 414:2 444:6 448:4 472:21 479:6 484:4 489:20 490:15 491:18 503:16 504:2,10 513:7 514:6 515:3 518:6 520:20 523:5 524:5,16,22 526:11 527:20 528:6,8,19 529:7 531:13
military's 361:15
military-wide 514:22
mill 122:14
mind 5:16 28:11 58:16 130:5 237:2 302:19 303:16 369:21 391:17 436:3
minds 273:13 533:1 534:14
mine 11:3 46:13 62:2 522:15
Minimal 370:3
minimize 417:10 420:17
minimum 4:12 5:11,18 7:20 18:14 24:12,16 26:16 29:6 39:14 41:4 44:2,21 77:1 87:3 129:19,22 130:5 132:4,9,21 133:18 143:8 167:22 168:1,11 221:4,7,10,14,21 221:22 222:17,20 222:21 223:15,15 223:16 230:3 231:20 250:10 265:14,16,21 287:9 307:5 310:12 311:7,14 311:22 312:15 314:11,14,15,16 321:16,17,18,21 322:6,10,17 326:15 328:20,21 329:11,15 331:1,6 331:8,14,16 332:3 344:5 345:1,14 346:1 347:2 350:2 350:5 351:19 356:14 357:2,4 358:22 359:4,10 359:11,12 360:15 366:4,5,10 369:8 370:8,17 371:6,11 371:15 372:2 373:7 374:16 376:2,9 378:21 382:7,9 383:1 408:8,9,12 413:14 423:5 427:17,20 441:14 457:8 459:5,16,16 461:8 466:1,6,14 469:10 472:1,3 474:3 478:21 480:14 481:1,2,21 483:22 492:18 499:6 501:18 502:3,8 503:9 505:16,21 507:1 533:17 535:19 537:11
minimum's 505:22
minimum/maxi... 7:7 45:10,16 60:1 341:22
minimum/maxi... 60:2
minimums 2:9 3:14 3:19 7:12,14,20 36:17 43:19,21 59:12 87:1 134:3 134:7 137:11 138:21 139:4 142:21 167:12 220:21 221:1,17 222:4,12,15,22,22 223:7,10,20 225:19 311:10 314:17 317:11 321:20 343:2,19 345:3,7,10 346:8 346:10,13 348:7,8 349:9 350:17 351:11 353:1,5,10 353:13,17 358:15 359:3 369:1,2,13 369:14 370:3 371:21 372:9,14 372:19,20 373:9 373:20 374:4,9,14 374:20 377:1,4 378:3 382:20 392:12 396:14,17 397:5,6,8,10,15 397:16,22 398:1 398:11 401:2,7 408:22 409:5 410:18 413:1 420:1 432:20 433:16 438:14 448:3 455:11,21 456:8 457:15,21 458:9,15,18 462:3 462:3,5 464:3 465:10,22 466:8,9 469:5,15 470:17 478:12 479:3,11 480:1,16,21 481:13 483:12 487:20 488:19 489:3 491:17 493:17 495:22 496:8,18 499:1 502:20 505:20 511:17 531:16 532:10
Minnesota 241:21
Minnesota's 274:2
minor 80:18,22 110:19 111:2 405:21 461:2 516:2
minority 314:7
minors 302:12,12
minuscule 117:3
minute 441:12
minutes 56:21 83:15 129:9 290:19 349:2 392:4 453:5 494:11,14 532:8
misconduct 41:11 111:2
misdeeds 80:8

misdemeanor 330:5
misdemeanors 151:1
missed 163:22
mission 97:16 524:15
Missouri 259:14,16 260:1
misstep 354:22
mistake 512:2
mitigate 350:18 436:11
mitigating 6:15,18 16:8 18:12 332:9 332:11 413:22 437:19,22 438:1 440:3,7 474:22
mitigation 48:22 53:10 163:13
mix 25:14 36:22 313:18 315:4 319:17,21 415:8,9
mixture 358:19
model 165:4,6 240:3 264:6 271:14 272:3 273:2,18 282:18 308:6 319:11 321:3 322:16 338:3 477:12
modeling 274:7 280:5
models 272:3
modify 96:22 335:1
molested 367:1,2,3 367:9
molesters 366:19
Molly 2:9 3:12
moment 243:3 345:21 466:6 535:16
moments 250:8 256:18
money 133:3 194:6 194:8,9,10,15 315:15 316:2 317:15 318:8 319:2 339:21
monitors 256:1,1
month 9:17,20 96:6 144:5 532:20
months 9:20 14:17 35:14 78:4,5 81:18 82:14 90:8 96:8,13 122:21 139:14 142:14 145:5 207:12 216:7 224:8 231:14,19 294:14 294:15,17 331:8 331:15 332:4,12 332:12 446:16,20 447:6 479:9 490:12,17 494:13 504:6 532:20,21
moral 450:10
Morgan 60:19
morning 34:10 70:17 71:14,14 73:22 75:5 100:18 146:21,22 147:1 148:12 361:8 515:16 516:8
Morris 1:17 400:11 400:11,16
motion 215:10 410:5
Motions 424:16
motives 67:9
mouth 46:3 371:8
mouthful 348:16
move 263:1 264:17 268:5 270:11 284:21 285:2 329:17 340:5 364:14 380:5 384:2,6 386:15 423:19 501:6
moved 35:16,17 124:5 267:12 287:12 295:6 380:15 504:10,12
movement 315:8 315:20 397:22 398:4
moving 242:7 247:8 263:9 380:15 383:16 442:1 485:18
Mulligan 2:14 487:13,14 509:8 509:11 517:1 518:10 527:13 529:6 536:15,19 537:19
Mulligan's 536:9
multi-branch 247:19
Multidisciplinary 384:17,20
multiple 74:22 110:19 111:7 202:19 255:16
multiplicity 38:22
murder 8:14 77:2 120:7 132:12 134:22 272:6,8,9 272:19 307:11 453:19 479:2,11 479:15 480:2,3,7 480:12 481:2 490:11,12 537:5,7 537:10
music 469:19,21 470:3
myth 419:13

N

Nachmanoff 2:14 3:15 392:13,14,14 392:15 398:13,14 400:14,17 405:4 410:12 415:19 416:19,21 417:1 418:14 419:7 420:6 423:9 428:19 431:7 433:12 434:7 441:16 448:7 451:3 452:15 453:3
NAESB 384:16
NAESV 2:6 3:12
nail 356:5 375:16
name 71:14 73:7 104:10 348:15
named 343:20
narrative 279:15 279:19 280:12,18
narrow 205:10
narrowed 213:8
nation 19:6
national 2:6 124:4 251:2,13 253:10 338:14,20 343:2 348:19 387:16 388:5 402:14 407:18
nationally 150:15
Native 198:15 199:3 200:4
nature 101:16 109:19 158:22 166:16 207:3 213:15 214:14 235:16 247:22 249:2 299:20 369:5 435:11 463:12
Navy 2:11 12:10 15:1 17:1 65:7 105:19 114:22 115:6,8 124:9,21 126:9,9,13 127:6 345:8 381:17 512:5 526:12
Navy's 72:5 115:14
NCO 33:8
NCOs 33:2
NDAA 29:6 52:10 74:13 76:8,12,13 77:14 81:2 87:7 89:2 93:4,20 129:12 132:7 511:21
near 30:14 162:1 399:13
nearly 160:17 285:11
necessarily 143:16 148:6 180:5 187:21 190:8 236:22 303:18 363:17 369:17 373:11 381:1 382:9 386:13 388:2 450:7 467:4 498:18 514:19 521:8 531:17
necessary 86:18 115:16 126:4 171:4 185:14 196:6 491:18 492:4
necessitate 482:18
necessity 434:2 483:7
need 37:7 45:7 57:2 58:6 66:22 67:22 68:2 83:20 131:15 134:15 138:5,7,8 138:8,9 139:14 166:21 217:18 222:4 237:15 258:1 277:11 287:20 316:15,16 316:17 321:1 335:14 346:22 347:1 348:22 362:5,7 364:13 365:21 367:12 385:17 388:1 391:7 404:1 435:2 435:9 449:19,19 449:20,21 475:13 477:17 484:16 486:7 487:5,6 493:15 500:15 502:13 504:16 514:8 518:14 524:18 531:2 535:2,2 539:11,13 540:10,11
needed 345:14

504:14
needs 39:1 80:5 142:10 167:19 295:15 363:18 373:16 388:21 433:17 435:10 487:5 518:6
negative 33:16 182:21 465:8 534:8
negatively 352:6 382:3
negotiable 508:7
negotiate 48:19 51:20 316:9
negotiated 50:8,15 283:19,21 325:15 326:20 327:20
negotiating 53:13 313:21 428:20 479:19 510:11 514:11
negotiation 54:21 284:8 328:7 400:5
negotiations 43:22 56:18 284:16 317:4 428:14
neighbor 357:17
neighborhood 286:3
neighbors 354:1
net 356:16
Netherlands 266:15
neutral 534:22
never 13:11 21:10 21:12 26:4 34:2 35:2 41:8 61:22 64:14,14 83:16 156:5 221:20 234:2,3,8 301:22 322:16 370:9 377:21 383:10 392:20 404:21 431:11 447:18 460:4 485:15 488:2,8 501:3 502:4,7 509:22 525:13,13 529:3 530:16
new 14:9,20,21 15:4 29:6 76:7 81:2 102:7 147:18 183:15 185:13 219:1,1,2 233:14 233:15,16,17,19 235:1 282:9 288:10 289:1,6,8 290:2,15 309:14 346:17 460:13 512:22 539:13
news 351:9
newspaper 448:11
newsworthy 351:10
nice 72:20 432:5
nine 92:20 168:7 200:15,21 235:5 244:10 251:12 331:3 446:20
nine-four 332:2
nine-zero 331:3
Ninety-nine 55:16
noble 350:6
nobody's 226:17
nodding 419:9
noise 519:14
nominating 4:7
nomination 4:8
non-capital 291:8
non-cooperation 411:17
Non-lawyers 500:4
non-negotiated 325:16
non-punitive 308:10
non-registrable 510:21
non-sexual 301:22 327:18,21 376:18
non-violent 116:13 494:9
non-white 167:3
nonpartisan 343:19
nonprofit 343:19 385:18
nonviolent 265:19 287:22 288:2 295:11
Norfolk 416:4 417:21
normal 355:7 375:14
normalcy 350:12
normally 43:11 96:12 98:18 102:19 113:7 519:2
North 1:11 253:7 254:4,20 255:9 460:7,14
Northern 274:22 453:14
note 259:12 351:20
noted 258:21 490:8
notes 246:7 453:4
notice 118:14 228:20 245:5 312:2,11,15,17,20 314:12 316:10
noticed 495:5
notification 117:19 118:11
notifications 328:5
notion 205:5 462:16
November 6:8
nowadays 23:15 188:18 436:14
nullification 24:3 24:16 25:5
number 4:17 6:22 9:4,14 10:16,22 14:2 19:12,15,19 21:19,20 38:3,11 88:14 116:22 121:18 122:11 130:13 131:16 162:10 171:15 187:1 191:15 198:12 209:21 241:6 251:16 305:12,21 308:4 324:16 390:16 399:4 400:10,19 406:16 425:3 430:12,14 433:21 436:21 438:7 446:1,10,11 448:14 474:9 479:7 480:8 484:11 489:20,21 498:3,9 505:12 516:19 534:11,16
numbers 19:22 62:12 67:12 83:11 107:1 110:2 131:7 131:12 264:5 294:13 325:8 403:13 449:17 467:1 470:20 472:19 473:7 484:9 512:14 524:1
numerous 348:11
nurse 383:18

O

O 520:6
o'clock 91:7
oath 189:9 424:2
object 89:13 90:5 296:9
objection 89:20,21 90:2 368:22
objectionable 297:13
objections 172:4,6 173:12
objective 287:13 422:2
objectives 60:13 243:17 254:11
objectivity 385:9 386:9
obliged 421:6
obstruction 180:19 189:21 190:4 202:11
obstructive 180:19
obtain 112:8 334:15
obtaining 112:9
obvious 23:5 140:17 204:21 365:3
obviously 19:3 60:11 82:3 104:20 119:7 150:2 169:16 178:9 195:18 197:12 212:14 216:11 360:7 363:2 393:18 394:19 396:16 415:8 427:11 451:15,18 457:9 463:5
occasion 113:5 431:11
occasional 115:22
occasionally 103:6 103:15 116:7 425:9
occur 80:19 163:8 199:9
occurred 34:12 44:10 66:4 88:10 187:3 260:7 261:19 262:3 276:21
occurring 166:17
occurs 30:2 116:20 187:11 538:11
odd 449:10 473:10
odds 121:13
offences 81:20
offender 113:22 115:13 133:16 142:20 143:1,2,19 146:3 167:1,3,3 204:17 248:13 255:4 260:7 280:9 285:11 288:19,22

290:13 292:4 294:2 301:8,15 308:5 326:13 330:18,18 331:6 332:8 335:21 344:7 347:14 351:7 352:12 381:1 394:14 447:5 451:12 452:6 472:22 485:17 508:6 509:21 510:12 512:6 513:6
offender's 282:2
offender-related 508:15
offenders 96:21 112:16,18,22 114:10 115:9,11 121:5,17 143:12 199:4 244:4 245:10,13 265:2 269:17 272:13 285:16 286:19 287:14,19 288:4 289:7,9,14,14 290:17 295:12,14 295:14 296:1,16 299:21 303:17 306:9,10,17,21 307:2 308:3 315:17 320:7 350:9,19 353:6 370:5 456:5 467:13 485:10,12 485:12,13 488:13 488:16 494:9
offense 16:5,7,10 16:15 40:17 78:9 80:7,19,20,21 83:1,17,18 98:7 101:16 102:4 109:20 116:13 122:19 126:8 139:20,21 140:2,4 142:19 143:2 160:11,15,21 167:2,5 181:9,17 184:21 190:7 193:17 198:18 201:19 202:7 205:11 208:12,13 208:15 209:1,10 209:12,13 210:2,3 210:20,22 211:12 211:16 213:8 216:7 223:13 244:9 248:13 249:2,3 254:22 255:3,3,16,17,18 272:4,12 273:4 289:20,21 290:6 299:3 301:9,22 302:3,5,7,7 309:7 309:8,10,13 310:2 326:17 327:10,15 327:18,21 328:3,8 329:14,22 330:1,7 330:10,10,20 331:22 332:2 334:7 335:22 336:14 337:4 351:14,18 369:5 376:18 395:14,14 405:16 406:5 408:7,9 425:21 427:19 445:18 476:6 481:14,21 502:8 506:2,2,14 506:17 508:10,11 508:12,15 509:21 510:2,4,9,12 512:22 515:18,19 516:1,2
offense-specific 271:7
offenses 4:13 11:17 13:16 16:19 22:12 22:18 38:12 52:9 58:15 78:10,12 96:20 101:20 102:7 143:11 144:13 151:2 156:4 161:2 166:15,20 167:12 177:12 179:8 197:19,20,20 198:8 200:4 221:6 221:21,22 226:6 244:5 255:1,19 269:9,18 271:9,10 271:12 280:7 290:7 293:17 296:4,7 301:19 308:12 309:6 315:7 330:3 331:12,16 337:6 352:10 382:20 426:4 427:5,7 434:17 465:16,22 466:9 472:9,22 473:16,17 476:3,5 480:8 486:1,1 493:14 510:16 529:19,20
offer 54:14 124:15 478:20 501:12
offered 406:18
offers 352:19
office 2:10 70:21 71:17 101:21 114:6,8,19 226:10 335:16 375:11 385:1,14 386:2 387:12 393:7 399:2,5,7,10 407:19 412:5 415:12,14,16 454:3,4
officer 117:1 147:8 157:21 159:8,10 159:12 171:14,19 172:4,5,10 280:13 281:12,12 283:3 300:16 357:3 383:12 385:15 460:13,14
officer's 520:6
officers 158:1,12 158:15,18 159:14 170:15 175:14 176:2 278:13 282:4,8 283:2 421:6 514:4 529:8
offices 430:11,13
Official 2:17
officially 26:8
officio 342:13,13
oftentimes 402:9 414:1
OGS-9 331:17
oh 9:2 42:13 78:17 81:9 140:12 145:7 162:4 164:7 214:11 218:3 223:18 232:21 234:6 237:15 305:3 316:11 327:7 367:10 500:17 507:22
Ohio 261:17
OJAG 71:16
okay 14:12 50:1 79:2 89:16 93:17 94:10 95:9 100:7 104:8 105:6 114:8 114:14,21 116:13 117:10 121:9 122:7,10 123:6 161:6,15 164:7 191:21 194:5 195:21 201:7 206:10 207:13 226:2 232:12,21 234:14 235:3 245:22 255:12 258:17 340:17 342:21 350:16 368:19 388:7 391:15,18 400:16 416:22 423:6 429:4 430:20 466:18 492:15,15 500:15 501:10 512:3 517:3 521:3
Oklahoma 490:3 528:5,13
old 88:18 106:16 117:2 242:5 266:4 287:16 289:16,22 306:11 439:9,18 512:22
older 266:2
oldest 99:21 241:19
omission 250:16
omnipotent 404:21 405:1
on-person 161:2
once 16:1 18:8 20:7 58:13 92:8 99:17 102:15 123:3,4 140:11 142:20 143:9 192:16 195:2 205:11 209:11 237:10,22 260:6 273:8 280:3 293:4 309:7 336:6 351:2 358:13 523:20
one's 472:2
one-size-fits-all 488:2
one-way 434:11
ones 68:4 124:8 214:12 228:22 229:1 233:20 295:12 296:16 333:13 395:5,6 412:18 458:18
ongoing 115:19 447:10
open 4:4 76:15 77:3 79:5 141:18,18 240:20 377:21 410:6 424:12 478:17
opened 399:6,10
opening 4:6 239:6 343:4 419:12 478:16
operate 159:15 276:3,5 312:19 335:7 336:20 337:6 429:7
operated 164:4

operates 307:22
operating 180:17 262:9 324:12
Operations 127:4
OPERATOR 463:17 531:8
opinion 45:4 67:4,4 67:6 139:3 156:13 156:19 186:7 195:4 513:14
opinions 188:19 388:18
OPM 445:8
opportunities 3:17 70:6,11 76:14 318:3 492:9 496:1
opportunity 38:5 42:6 70:18 72:7 72:10 76:2 92:2 93:21 94:18 106:4 106:5 129:16 236:18 281:2 292:12 364:3 451:7
oppose 369:13,17 389:9 406:21
opposed 23:8 32:17 231:20 237:13 366:10 368:20 401:6,11 468:7
opposite 6:7 187:2 323:8
opposition 222:3 222:12 357:4
opted 273:17 301:16
opting 305:12
option 5:6 19:3 38:17 265:8 281:2 292:14 355:4
options 37:10 40:3 108:14 319:19 337:12
oranges 216:17 217:3,3
order 14:20 60:14 61:4 77:21 84:2 97:1 118:16,22 137:17 138:14 141:1 166:21 176:18 352:10 482:9 484:13,16 518:5,20 520:4 521:18,20
ordered 171:13 283:9 285:12,17
orders 42:7 98:4 103:19
Ordinarily 110:6
organization 105:14 343:20 344:18 385:6 501:17 503:20
organizations 536:1
original 128:7 165:19 269:12 285:3
originally 84:4 150:16 158:8 169:1,14 189:22 408:12 434:13,15
ostensibly 81:19
OTH 509:14
other's 33:12
ought 46:4,21 68:9 167:16 168:7,9,11 212:11 285:21 286:6
out-of-guidelines 411:19
outcome 215:13 227:12 229:9 236:12 237:19 272:11 276:20 367:7 512:12
outcomes 149:12 229:7 243:21 269:20 277:10 278:6 496:13
outlandish 527:3
outlet 536:4
outlier 48:12
outliers 220:4 304:2 313:2 340:20 527:16,17
outraged 231:8
outside 41:15 150:8 150:13 151:15 153:5 155:20 219:6 227:16 250:5 256:7 257:10,14 332:14 333:19 386:10 407:11 408:12 410:16 429:21 433:6 474:22 525:5
outsider 385:10 418:3
outstanding 4:16
outweighed 110:9
over-reaching 492:13
over-zealous 420:5
overall 305:18 325:13
overarching 412:21
overcrowding 319:3
overhead 239:13
overlaying 398:10
overlooked 68:19
overly 28:9
overrides 351:4
overrode 6:10
oversee 288:9
overseeing 261:14 399:1
oversees 219:12
oversight 247:12 252:6 257:4 259:19
overview 3:3 4:22 240:11 241:5 243:12
overwhelming 306:3 399:17
overwhelmingly 433:20

P

P 71:22
P-R-O-C-E-E-D-... 4:1
p.m 238:20,21 342:18,20 392:7,8 452:18,19 478:7,8 540:18
pace 268:4
package 287:5 482:11 483:1 485:3,7
packed 243:14
packet 105:10 239:12 240:18 251:5 293:19 294:12
packs 209:8
page 214:16,17 259:5 293:18 328:17 329:17 337:7 370:6
pages 405:19 527:2
paid 36:3 111:1 386:1 449:12
panel 1:3 10:3,18 11:1 13:18,21 14:15 15:4 22:22 23:3,8 26:9 30:7 39:22 43:4 84:15 107:15 109:11,16 119:7 120:13 121:11 129:9 131:9,16 134:4,17 135:20,21 136:18 138:10 145:2,7,17 156:20 186:8 342:22 343:13 354:8 356:9 361:18 378:2 392:5,10 400:13 452:20 453:1 466:13 469:6 477:18 478:10 483:7 489:12 491:22 492:6 493:14 499:9 514:16 519:1,22 521:3,11 523:5 524:5 525:3 529:4 530:2,21 531:14 540:13
panelists 442:21
panels 9:19 14:18 19:13 24:17 109:12 156:12 493:12 519:20 524:17 531:1,2
panoply 453:20
paper 278:18 384:16 413:11 495:15 522:15
paragraph 258:13
paraphernalia 514:5
paraphrase 518:4
Pardon 8:17 119:3 507:18
parent 379:22
parents 485:5
parity 225:2
parole 2:2,4 3:5 73:8,10 75:7,20 91:16 95:8,10,11 95:14 96:9 104:15 105:17 107:17 108:18 113:10,14 113:21 114:1,2,4 114:16,20 116:21 120:22 122:16 123:19 124:3,14 125:1 132:3 135:1 135:5 137:3 176:21,22 177:11 177:15,19 200:21 230:14,16,18,21 265:8,9 285:7,16 287:8,16 288:12 288:17 289:17,22 299:17 306:11,16 309:3 322:9,12 323:2,3,5,7,15,19 323:22 324:4,14 324:18 325:2

342:6 344:6 394:22 395:2 439:14 441:1 491:4 538:1,14
paroled 113:12 114:18 322:7
parse 82:22
part 11:10 19:21 20:20 22:7 25:7 25:14 33:19 37:2 40:19 41:6 45:11 48:16 51:11,14 54:9,17 57:13 58:7 68:18 69:7 82:22 109:14,14 119:14,15 130:6 138:11 139:12 156:3 181:8 185:5 194:20 246:2 255:2 276:10 280:22 284:7,7 286:15 298:13 303:12 305:17 308:16 313:18,20 314:4,21 315:4 358:18 385:8 386:16 388:12,18 391:6 398:2 400:21 409:4 410:21 414:17 424:11 428:4,6,11 429:5,10 442:2 443:17 459:12 466:10 504:17 511:1,2 519:17 521:16 523:3 538:6
part's 520:1
parte 159:8
PARTICIPANT 469:22 502:2 507:11 508:10 516:16 534:7,9 538:13,16,20
participate 106:9 115:9 453:8 534:1 535:21
participated 453:18
participation 85:3 106:10 107:11,14 265:11 524:17
particular 16:10 46:15 66:9 67:2 98:6 99:7 113:5 135:8 148:16 176:14 223:13 298:7 348:13 371:11 401:10 444:1 471:7 498:21 514:16 518:15 522:9,10
particularly 22:12 98:9 106:9 109:2 116:4 120:15 123:13 186:11 199:16 206:14 242:21 245:17 375:18 450:13 504:22
parties 29:21 30:2 33:12 50:8 51:20 53:6 55:3,11 89:9 89:17 91:14 159:9 173:11 175:21 185:18 262:20 283:22 284:3 411:11 429:20 430:20 431:15,20 432:6,10 465:6 479:21
partner 399:7
parts 418:16
party 85:7 292:21 332:20,21
pass 224:8 404:5
passed 110:8 111:3 167:10 229:12,14 366:16 367:21 399:9 465:19 466:1 523:4
passing 488:8
passion 375:20
pat 390:3
patchwork 432:12
Paterno 326:6
path 339:16 360:6
Patricia 2:18
patterns 15:20 295:9
Patty 219:9
pause 362:4
pay 36:4,5 80:5 107:3,7 159:1 316:6,21 318:12 380:17 386:6 411:22
paying 411:21 494:21 495:2
peers 354:18 355:18 368:5 389:2
penalties 5:21 168:16 250:11 317:5 340:21 472:11
penalty 6:2,11 25:17,19,21 26:3 151:2 152:3,4 212:10 296:7 309:9 367:12,20 377:9,12 424:21 428:8,12 444:2,3 464:19 473:2
pending 129:14 397:13 409:3
penetration 296:10 309:19 369:6
penetrative 208:12
penitentiary 18:22 88:9
Pennsylvania 2:3 3:10 239:3,11 241:17,18 242:3 245:14 247:1 263:7,12 285:1 293:21 298:9 307:22 309:1 311:12,21 314:9 318:1,11 321:14 321:21 322:4,15 323:2 325:3,12,14 325:22 329:5 330:4
Pennsylvania's 265:18 267:16 274:13 308:2
Pentagon 74:18
people 5:22 20:12 23:7 25:11 26:21 28:12 33:3 37:1 54:4 58:4 69:14 72:14 97:22 103:4 106:13 112:5 147:7,22 155:11 156:5,8,21 158:20 162:3 169:2,4,6 173:22 176:19 177:1,11 187:4 189:16 195:9 202:19 203:12,14 208:19 209:7,8,8 211:19 216:19,21 218:7 220:18 226:14 228:13 229:12 234:8 282:10 298:18 299:17 301:11 318:7 319:18,21 320:9,10 324:12 339:18 340:6 341:3 346:2,21 349:4 360:10 361:4 362:2 363:3 363:8 364:21 365:6 371:20 372:17,22 375:18 382:1 383:9,19 385:19 390:22 391:2 394:2,10,11 398:5 399:22 401:9 402:9 404:8 404:11,12 407:3 413:9 418:21 419:14,22 420:2 420:21 421:7,8 422:3,9,13 423:14 425:11 435:13 440:10 444:16,21 445:5,11,11 446:16,19 447:18 448:14,18 449:3 450:5 451:15,22 452:1,2,4,10 453:18 454:10,15 456:10 462:8 464:9 467:20,21 468:5,13 484:7 485:11,22 486:2 488:3,11 489:14 491:2 492:21 494:22 495:17 500:17 502:15,21 505:20 509:14 513:7 518:16,21 526:19 529:15,18 532:4 535:20 540:13
people's 195:3 425:13 443:11
perceived 125:8,11 125:13 533:12
perceives 205:15 387:7
percent 11:7 55:16 80:2 107:2 115:21 121:12 154:15 155:1 166:5,7 171:11 177:20 182:18 186:15 190:10 193:21 197:16,17,18,21 198:4,7,7,14,15 206:15 210:11,13 210:16 218:6 219:18,18 220:5 237:7,7 265:15,16 265:19,19,20 285:17 287:9,12 305:19 306:2,6 322:15 325:14,16 325:17 327:1,1,2 327:6,9 359:21 361:11 363:13,16 396:3 397:19

407:10,13 409:22 409:22 411:8,9,19 425:11 427:1,6,21 429:8 433:22 438:4 467:7,9,10 473:11,12,13,14 488:11,12 503:11 503:12,17 524:2 538:17
percent-ish 306:1
percentage 98:19 213:22 438:11,17 538:3
percentages 410:4
perception 60:16 62:19 66:7,8 67:1 128:6 181:12 182:8,11 183:4,20 238:3 386:4,18 390:21 391:6,11 533:4
perception-wise 218:13
period 38:2,11 58:14 61:10 66:13 66:17 71:9 86:20 224:2,7 306:18 416:14 459:9 482:17 493:1 497:14
periods 100:1 260:12
perjurious 190:4
perjury 190:15,17 190:17
permissible 20:22 428:20,20 431:19
permitted 20:19
perpetrator 199:18 380:13
perpetrators 350:7 378:20
person 32:1,8 34:21 42:15 68:14 68:17 79:15 85:11 85:12,14 88:16 96:7 102:17 103:9 104:1 105:13 107:20 118:7 122:12 130:9,11 137:2 159:6 161:1 184:14 194:7 202:19 230:9 232:18 234:15 255:16 268:12 285:21 286:5,6 302:7 303:19 309:7 312:10 322:3,19 324:8 326:14 328:19 330:2 331:18,22 332:16 335:19 349:9 354:6 357:15 366:7 368:20 371:18,19 372:3,6,7,7 373:6 380:3,14,15,17,18 382:12 386:13 403:22 404:7,9 416:13 420:3 421:18 424:2,5 437:18 440:3,9 446:17 455:14 459:9 469:2 514:2 531:22
person's 53:20 403:19
personal 34:22 105:20 184:11 403:19 493:9 500:22 532:16
personalities 417:14
personalized 344:17
personally 358:7 496:19 532:17
personnel 95:20 96:4 336:1 354:5
perspective 40:11 48:17 55:2 155:4 297:12 300:9,11 300:20 350:1 352:12 356:12 360:13 435:17 452:22 485:14
perspectives 3:13 275:14 392:11 400:14 478:10
persuade 412:17
phase 18:8,9 34:9 34:16 43:9,12 134:8 146:12 427:22
Philadelphia 245:17 276:19
philosophically 340:5
philosophies 437:16
philosophy 48:7 308:7 378:17
phone 148:18 470:1
Physical 74:11
pick 203:10 283:15 302:10 518:3
picked 302:8
picking 265:4
picture 308:11 452:1,2
picture's 505:2
pictures 452:3
piece 185:5 278:17 297:3
pieces 254:8,14 298:5
pilot 274:10,17,20 275:4,17 276:12 277:15,19
piracy 345:7
Pirates 345:12
pitch 526:2
place 16:17 66:16 74:12 222:15 258:11 261:13 262:1 278:7 320:19 350:6 390:6,12 391:7 417:9 425:12 433:9 458:19 481:13 488:15
placed 195:4
places 44:3 275:6 409:16 540:12
plan 281:3 286:13
planned 478:15
planning 336:17
play 46:1 61:19 82:19 131:7 138:5 169:18 170:14 171:1 177:7 202:11,14,16 272:16 312:18 317:9 328:7 341:6 364:15 365:20 483:4
played 440:4
players 335:8 386:5 458:4
plays 24:4 422:12
plea 43:22 45:1 53:4 55:18 56:6,8 56:11,14,18 186:15,17 187:20 188:19 202:13 215:11 232:4 258:14 259:1 284:15 316:17 326:20 327:20 352:19 400:4 406:17 408:8 423:13 424:3 426:1,4,9 427:4 427:10,18 429:5 429:14,17 431:4,4 432:2 467:18 471:19,22 472:15 503:5 504:13 511:1 513:19
plead 171:12 187:21 191:22 192:14,20 194:13 206:8,9,16,22 207:17 232:1,6 293:6,8,12 316:10 376:17 396:4 409:13 420:3,3,22 421:8 423:2,3 425:11 426:13 427:2 467:14 468:9,21 473:3 505:20 507:15 510:17 526:13 527:4,5,6
pleading 193:19 351:18 352:9 457:12 472:4,6
pleads 171:9 501:3 514:2
pleas 44:1 57:15,17 191:16 283:19,21 306:1,4 316:9 325:10,11,15,16 341:22 378:4 396:3 400:20 423:14 424:13 466:16 468:14 470:10,12,21 507:2
please 305:3,4 351:20 392:4
pleasing 524:19
pleasure 73:5,19 398:14 451:7 453:10 477:21 478:4
pled 56:11,13 187:4 194:1 207:10 309:17 494:16 504:14
plenty 279:15 284:22 316:18
plus 48:20 81:22 207:6 241:11 252:19 507:13 516:1
point 14:14 15:11 26:8 47:15,16 67:22 68:10 81:7 92:1,22 129:22 146:13 154:19 159:17 170:10 177:11 187:16 189:20 191:6

196:1 201:11 202:2 206:1,5 207:8 229:3 233:1 234:13 236:11 239:14 242:18 246:20 258:8 261:7,18 279:5 283:11,15 284:1 284:13,18 305:21 309:11 327:10 330:8 349:3 355:2 364:12 368:16 395:16 406:2,3,9 462:19 503:2 515:2,22 525:9 527:14
pointed 9:11 14:5
pointing 228:12 260:3 416:10
points 208:21 225:5 249:6,7 253:9 256:12 259:15 331:21 402:1 406:4,8,14 409:21,21 410:4 423:21 426:15 440:4,5,17 441:4 441:6,7
police 54:18 460:13 460:14
Policeman 75:12
policies 66:16 244:22 245:4 268:17 319:5 320:9 363:2,3,4 365:17 407:19 409:12
policy 52:4 72:4 89:5 115:17 168:15 241:9,10 242:10 263:22 315:5 318:15 324:12 384:16 413:17 414:8 454:3,4,8 470:16 475:22 479:10
political 262:19 397:14 434:22 435:13 443:6 455:16
polygraphs 301:10
pool 303:17
poor 175:4 381:13 381:21
poorly 457:13 477:4,9 510:3
pop 377:20
populate 335:22
population 244:17 287:20 320:21 452:9 456:19 476:1
populations 244:14 263:19 265:1 319:3
porn 198:1 219:21 220:1,3,8,18 237:8 238:2 430:1 451:21
pornography 220:13,15 413:4 413:19 416:2,3,5 435:7 466:8,9 473:13,17
portion 25:1,7 28:2
position 7:12 75:8 89:11 180:6,10,16 211:6 370:19 380:10 422:7 445:22 530:3 536:18
positive 33:16 182:21 263:21 284:10 388:15 465:7 529:13
possess 452:2
possessing 212:8
possession 198:3 212:1,19 220:7 312:4 413:6 416:2 416:5 418:9,10,19 422:17 423:2,3
possibility 27:11,19 82:19 163:5 207:11
possible 8:8 81:21 96:21 136:9 172:6 196:18 288:3 336:12 405:19,20 496:13
possibly 67:11,13
post 77:14 88:13 100:15 304:16,16 390:12,22 514:17
post-court 77:4
post-indictment 427:6
post-trial 88:15,18 101:12 139:18 140:8,13 141:12 494:17
posted 221:15
poster 223:19
potato 203:3
potential 3:16 24:16 25:10 36:22 69:14 129:13 354:9 356:11 426:17
potentially 43:22 53:5 127:16 481:10
powder 224:12
power 44:3 49:21 129:12 195:5 363:22 395:10,16 396:6,10 398:3 404:18 406:14 408:4 410:7,8,9 410:10 412:14 413:2,6 416:10 463:10,11 479:19
powerful 108:1 505:10
powers 50:5 52:16 84:7
practice 165:19,20 166:19 174:11 175:21 193:5 235:10 324:20 399:4 405:14 425:1 437:3 447:21 528:4 529:7 537:1
practiced 393:18 443:1 454:1 490:2
practices 168:18 248:1,5 266:20 271:4 289:5 313:1
practicing 187:7 398:17
practitioner 139:17
practitioners 87:8
praise 347:15
pre 47:1 57:8 170:6 172:10 174:2 175:1
pre-guidelines 425:1 437:4
pre-indictment 227:2 426:20,22 427:2,16,21
pre-med 479:16
pre-NDAA 76:11
pre-populated 335:12
pre-sentence 29:20 30:9 31:9,22 35:12 170:9,13,15 170:20 171:13 174:2 175:13 176:11,16 178:17 278:10,14 279:10 282:22 283:3,8,12 490:6,22 491:5 513:11 514:4
pre-sentencing 32:14 34:1
pre-trial 20:20,22 48:9,19 49:3,10 49:17 51:5 52:17 57:12 79:11 84:5 85:16 86:9 87:12 132:16 530:8
precise 457:11
precludes 419:1
predators 451:15
predominantly 344:21
prefer 258:22 353:12 417:5
preference 292:1
premeditated 132:12 537:7,10
premeditation 479:17 480:9
prep 33:20
preparation 30:3 249:16
prepare 33:20 278:13
prepared 34:8 76:10 282:21,22 291:15 330:8 392:16,19 453:4
preparing 278:10 487:17 490:7
preponderance 173:5 190:12 209:17 213:1 464:18
prescriptive 248:2 264:14
present 1:14 2:22 29:22
presented 42:6 213:11 249:19 273:16 422:1
presenter 146:19
presenters 2:1 4:18 70:4 239:1
preserve 518:5,20 520:4
president 45:11,19 222:8 224:9,14 348:18
president's 45:4
presiding 1:13
press 13:2 62:10 525:7,10
pressure 194:17 400:20 420:11 422:10 443:4
pressured 355:17
pressures 417:16

presumably 90:19 120:17
presumes 375:17
presumptive 249:22 251:19 304:7 310:17 340:10
presumptively 175:20
presumptiveness 326:4
pretrial 489:8,19 508:8 537:12
pretty 8:4 12:7 15:20 16:6 33:7 42:14 68:2 76:15 115:1 122:6 123:15 139:20 145:13 146:4 150:10,12 156:4 158:19,21 160:9 161:3 173:9 188:2 201:21 202:6 205:18 220:10 226:18 235:3 236:9,12 243:11 247:2 256:4 270:13 278:17 281:13 318:4,14 333:1 334:1 340:11 390:15 394:22 439:12 451:4 462:11 467:19 527:10
prevailed 428:17
prevent 136:20 364:17 413:20
prevented 403:10
prevention 359:2 364:17
previous 74:9,15 453:1
previously 71:19
price 316:21 318:12
primarily 62:13 97:12 445:7
primary 249:2 277:17 364:17 466:4
prime 447:20
principal 54:2
principal's 375:10
principally 60:14 76:10
principle 456:4
principles 449:6,18 450:20,22 456:2
prior 12:18 18:11 41:10,11 42:1,8,9 42:15 43:2,2 70:22 73:11 76:13 93:22 94:13 109:18 153:11 169:17 172:15,17 184:13 195:9 206:4 248:15 249:4 254:22 255:5 266:2 269:19 272:2,6,15 280:1,10 290:7,8 306:14 307:8,10 307:11,11 313:20 315:6 330:14 331:5,19,19,21 332:1 336:3 361:13 445:20 449:11 451:16 496:22
priorities 245:11 245:11 417:17
priority 318:14
prison 26:11 116:21 244:13,17 260:8,13 263:19 265:1,12 272:14 273:2,9 286:9,22 287:20 289:8 294:3,3,6,8,16 295:16 315:21 318:5 320:21 322:4,8 323:1 337:11 344:6 352:10 355:10 358:10 372:15,21 372:22 373:22 380:14 381:2 420:20 446:15 456:18 475:22
prisoner 105:21 106:17 108:16 113:17 114:17
prisoner's 105:5
prisoners 99:18 115:7 124:19 476:2
prisons 95:15 124:20 224:20 288:4 397:18 476:2
private 33:18 203:7 399:3 405:14 493:2,4
privilege 403:20
privileged 343:13
pro 58:21
probably 33:3,10 33:11,14 37:17 47:12 48:13 56:1 57:19 80:2 107:2 110:15 119:1,5,6 119:20 125:8 127:12 153:8 161:5 165:15 173:21 174:6 178:12 179:22 180:10,15 184:6 192:9 197:21 200:10 202:16 204:9 206:7 211:1 211:4 212:11 213:11 217:7,22 218:19 234:21 235:6 236:21 261:4 262:11 264:19 266:19 272:7 278:3,11 282:14,14 318:6 327:17 357:10 373:4 374:20 375:4 390:15 447:15 459:6 516:15 517:3 527:10 529:7 530:19 540:5,9
probation 18:21 35:11 114:6,7,19 117:1 147:8 157:21 158:1,11 158:15,18 159:8 159:10,12,13 170:15 171:14,19 172:4,5,10 175:14 176:1 236:3 278:13 280:13 281:11,12 282:4,8 283:2,2 294:5 299:17 300:16 315:10 332:16 410:2 446:11,12 447:2,17 484:21 484:22 514:4
problem 14:1 66:8 81:2 100:22 101:1 102:1 133:12 137:13,18 152:9 152:12 317:17,18 323:11 347:20 358:13,14 382:15 384:13 394:8 417:8 436:15 442:9 448:18 515:2,15 517:14 523:4 531:12,18 531:19
problematic 47:16 351:15
problems 220:18 223:10 365:15 381:8 391:3 402:2 424:13 448:11 457:14 486:13
Procedure 429:19
procedures 57:5 58:1 304:14 454:12
proceed 30:12,14 30:21 91:4 239:7 342:21 367:15 392:5
proceeding 49:17 50:16 392:17
proceedings 392:6 452:17 478:6
process 30:11 45:13,14 54:9 57:4,14,21 59:15 77:4 79:22 80:1 86:7 87:18 89:1 89:15 91:9,14,19 94:21 95:5,8 98:12,13 105:3 115:18 127:20 128:3 138:9,11 167:9 171:9 226:20 257:5 261:14 266:21 270:13 284:7 288:9 297:21 298:14 313:21 314:22 323:22 339:20 348:3 383:14 387:15 389:4 396:12 424:14 428:4 429:5,11 434:16 441:15 475:15 479:21 484:6 487:1,7,15 488:17 488:18,22 489:1,6 490:15 494:2,4 497:11 498:4 500:1,17 502:22 509:4 519:22 521:16 535:6 537:17,21 538:1,5 538:10 539:4,12 539:21
processed 89:22
processes 7:15 104:14 111:19 120:15 124:12
processing 101:12
produce 346:14
production 198:2

220:14,17 258:18 452:5
profession 493:5
professional 529:3
Professor 60:19
profile 251:7 345:20
profoundly 344:14
program 235:21 274:17 276:12
programs 112:17 112:21 115:2,9 265:12 315:22
progress 476:14
prohibited 57:12 191:2,5
prohibition 49:10
prohibitions 57:16
project 69:7 275:4 298:11
prominent 285:5
promise 533:14
promote 246:17 263:21 264:22 417:4
promotes 403:4
promoting 215:18 215:22
promotion 215:6
promulgate 45:6
properly 455:18,20 456:7,13,18,22 457:2,22 458:3
property 167:1,4 197:20 255:17 271:10
proportion 286:21
proportional 168:5
proportionality 6:13 244:3,8 277:1 326:7 456:15
proposal 61:6
proposals 31:17 454:9
propose 140:20
proposed 62:6
proposes 217:11
prorated 178:9
pros 60:7
prosecute 376:20 382:14 476:5
prosecuted 378:19 415:17 445:7 454:13 463:15,15 463:16,20 479:6
prosecuting 467:12 469:12,13 470:14
prosecution 66:3 180:21 215:9 293:3 325:21 361:20 362:11 384:21 389:11 406:19 420:5 433:11 435:17 466:16 469:1,7
prosecutions 66:2 356:19 447:12 470:21
prosecutor 8:16,18 8:20 18:15 46:17 47:15 55:18 63:12 64:21 89:19 163:19 171:20 192:8 195:5,14 207:16 230:8 231:2 283:5 292:21 322:21 341:12 352:16 376:13,15 396:8,9 404:22 406:11 408:14 413:3,5 423:1 426:12 430:3 453:12 454:1 455:3 464:18,21 468:1 479:1,17 489:15 492:14 512:20 513:18
prosecutor's 195:1 385:14 407:19 426:7 430:11,13
prosecutor-driven 414:7
prosecutorial 44:4 312:2 428:15
prosecutors 34:6 155:6 174:5 193:3 193:10 221:19 228:1 276:8 284:16,17 312:9 312:21 313:9,16 340:7 341:19 351:13,16,21 352:1,9 377:13 378:14,15 395:10 395:15,19 402:17 404:18 408:5,13 408:16 412:17 417:15 438:19 458:12 462:17 463:10,12 464:10 496:11
prospect 267:6 420:10
protect 79:12 244:12
protecting 48:12
protection 61:21
protections 79:9
protective 6:3
provable 193:11 428:2 525:14
prove 51:12 88:1 119:17 310:14 420:14 423:15 425:5 428:3
proved 121:11
proven 310:19 311:17 464:18
proves 281:7
provide 85:11 88:15 98:11 101:16 113:2,3,7 115:4 185:17 239:17 242:6 244:12 254:8 279:20 312:6 317:3 321:7 328:22 340:1 370:12 390:1 442:17,19 443:10 464:21 529:9
provided 53:5 111:4 196:9 239:12 257:18 294:22 295:1 307:19 313:8 336:7 536:4
provides 281:3 308:1 404:7
providing 80:18,21 82:3 111:22 299:7 370:14 456:14 516:2
provision 18:20 266:1 328:18
prying 181:6
psychiatric 299:19
psychological 299:19 300:15 528:2
psychopathy 300:18
PT 390:4
PTA 86:18 526:21 526:22
public 2:12,14 52:4 60:15 62:19 67:3 67:4,6 181:12 182:1,3,8,11 183:5 187:8 191:18 194:21 199:1 225:6 226:9 226:14 238:3 244:12 246:21 263:22 320:3 334:21,22 393:7 393:10,11 398:15 399:5 404:8 405:13 415:13 453:14 455:22 458:6,20 474:7 521:22
public's 181:13
publicity 395:6
publicly 476:12
publish 246:15 334:6
published 118:16 136:3
pull 197:5 365:21 486:16 505:8 515:17,22 516:6
pull-down 335:11
pulls 170:4
pump 166:21
punished 403:3,22 535:14
punishes 425:14
punishing 188:20
punishment 36:12 37:3 38:7 64:3 110:9 111:1 134:22 135:9 164:21 165:5 244:7 346:11 347:13 353:3 367:18 368:16,18 371:21 375:8,13 377:15,16,19,20 382:7,9 401:13 416:8 421:14 422:15 432:7,19 433:17 434:2 435:2,10 436:2,7 436:12 443:12,16 456:17 495:17
punishments 36:17 36:22 68:6 420:10 434:19 435:7,12 435:14,21
punitive 78:6 81:19 86:19 87:2 104:2
purely 22:17 179:17 414:7
purpose 242:22 243:16 248:3 254:11 317:13 339:9 371:8 393:22 398:11 484:13
purposes 67:3 164:18,19,20 182:20 185:9,14

196:7 242:16 243:1,3 245:16 336:17 433:18 456:10
pursuant 86:17
pursue 362:10
push 263:15 485:11
pushes 212:15
pushing 207:16 315:11
put 4:16 9:4 18:12 23:14 24:8 46:2 49:3,10 66:16 68:14 72:14 74:12 77:19 79:14 93:5 125:2 130:12 158:7,7 171:2 194:8 201:13 251:1 253:11 278:7 279:9 285:14 316:2 320:19 354:16 357:11 366:19 368:19 370:19 377:9 380:9 384:8 417:9 428:13 429:1 481:13 485:1 487:10 497:10 519:11 526:16
puts 330:21 332:16 356:5 420:10 526:17 534:22
putting 33:22 59:2 350:7 367:6
puzzled 460:21

Q

qualitative 275:20 276:9 280:17
quality 20:4
quantify 366:13
quantitative 275:20 281:6
quantity 167:16,19 168:6,13 172:18 172:20,21 421:13 421:21 422:4
quantum 422:14
quarters 131:3,18
question 6:18 10:13 19:11 26:22 27:3 32:12,20,21 40:8 42:19 43:18 44:6,19,20 52:14 56:16 57:18 59:11 65:10 79:6 88:13 95:3 99:4 104:4 112:15 117:8 120:4 123:20 130:21 135:2 136:5,8 139:10 140:18 141:18,19 149:18 157:1 176:6 183:2,19 186:19 196:14 204:18 213:21 226:21 230:11 231:4,12 238:5 252:20 283:10 327:12 354:19 357:13,14 366:9 373:2 382:5 384:15 386:22 400:7 412:7 417:1 420:7,9 421:10 438:7 441:11 444:4 469:5,9 470:10 497:2 522:22 536:7,8 539:10
questioned 387:3
questions 7:9 40:20 40:20 46:12 57:1 68:4 71:9 72:18 73:22 75:4 76:3 89:17 101:22 129:10 148:6 219:13 228:15 251:13 255:7 336:22 342:16 391:17 392:17 425:18 453:6 458:22 466:21 477:22 478:17 540:16
quick 69:15 220:22 494:6 526:14
quicker 28:18 526:13,18
quickly 70:8 141:8 284:21 328:16 429:8 451:6 484:20
quiet 494:6
quite 7:17 92:3 97:13 124:10 126:4 148:17 165:8 225:11 241:17 242:5 262:11 265:6 287:1 311:22 344:9 346:13 347:4 373:9 468:7
quote 42:5 436:6
quoted 436:13

R

race 269:21
radical 539:13
radically 418:22 435:8 442:10 536:11
raise 90:17,21,22
raised 34:13 67:22 90:6 144:10 208:21 280:16 472:10
raises 91:2
ramifications 443:6 509:18
ran 74:10 125:5
Randolph 1:12
randomly 37:13
range 11:18 13:5 18:16 45:10 58:15 64:1 65:12,12 66:10 68:6 97:7 102:12,15 134:20 135:3 205:10,20 216:2 229:10 250:2,6 256:8,14 256:21 257:10,15 258:6 260:1 274:2 294:19,22 295:2 296:19,20,22 305:22 332:7,13 401:13 406:8,10 407:2,8,10,11,12 407:14 414:12 416:7 431:3 432:3 432:6,8,16,18 435:20 436:17,18 437:16,20 438:2,5 438:8,10,11,18 439:5 443:16 446:9 448:14 451:12,13,19 452:6 530:1
ranges 12:4 214:1 273:22 274:5 332:9 436:20 440:17 441:8
ranging 306:12
rank 380:17
ranking 181:17 182:12 329:22
ranks 349:16
rape 13:7 16:12 18:17 55:21 63:6 63:7 64:7,11,12 64:14 66:11 68:15 78:10 81:5 132:11 143:10 144:5 160:8,17 180:1,5 181:20 199:15 200:3,9 201:18,22 205:16,20 206:1,3 206:12,14 210:9 210:14,15,17,18 211:2,2,4,13,15 214:10 221:5 229:3 230:2,7 231:5 296:5,8,9 306:10 307:3,11 309:19,20 326:22 327:2 329:3,5,13 331:19,19 332:1 334:19 355:6 359:12 365:5 370:10,20,21 371:3,3,4,5,9,17 372:4,6,20 374:4 374:10,14,16,21 375:3 377:15 391:10 527:8
raped 68:17 106:19 366:7 376:11
rapes 210:12 217:6 376:20
raping 5:14 202:19 220:19
rapist 375:11
rare 42:14 118:7 121:3,4,6,7,8,10 121:15,16 187:22 293:2 351:8 462:11
rarely 17:17 117:11,13 431:9
ratchet 434:11 435:4
rate 98:6 106:10 107:11 164:13,13 186:15 198:13 206:13 283:20 305:10 319:8 320:21 325:18 327:6 363:12,15 407:7 429:14,22 467:19 471:19 472:15 473:19 514:10,15
rates 66:3 426:2 459:15 466:17,17 469:7,8 471:22
ratification 235:8
rational 375:14,17 436:4
rationale 256:5
rationally 375:19
RCMs 134:16
re-arrest 302:4
re-arrests 301:17
re-conviction

301:18
re-look 8:3
re-offense 298:19 298:21 303:6 320:8
re-sentencing 333:12,17
re-victimized 106:12
reached 26:4 68:21 391:14 477:16
reacted 155:11
reacting 352:5
reaction 104:1 181:13 500:11 502:13
reactions 530:21
reacts 320:11
read 89:2,4 175:5 259:7 280:1 369:22 446:9 448:10 491:10 495:15
readily 193:11 282:16 300:13
readiness 203:6
reading 83:15 156:16 369:22
readjusting 538:10
ready 339:19
real 144:8 190:7 195:13 196:19 203:17,18 209:13 234:4 276:1 283:17 300:6 354:22 364:10 385:21 386:3 412:20 457:19 510:1,2
realistic 300:5
realistically 365:10
reality 189:5 192:22 194:3 196:16 197:1 376:8 390:16 400:3 421:9 530:22
realize 25:19
realizes 55:19
realizing 347:6
really 4:9 5:6 11:14 13:9,15 14:18 21:10,12 23:20 24:7 28:2 48:17 49:11 68:8 83:2 116:3 131:7,21 140:10 165:9 184:11,17 185:6 185:10 191:5 195:6 227:17 231:9 234:10 236:20 240:4 243:8 259:18 261:21 262:4 268:11 269:13 270:7 272:6,9 273:17 275:8 276:10 277:15 279:4,7,11 281:7 283:16 285:7,8 290:20 293:17,19 295:5 305:21 306:3 315:14 316:1 320:4 327:22 340:5,21 341:4 344:10 345:4 346:6,6,14 347:18 349:8 350:3 362:4,5 364:8 365:2 370:7 370:18,22 375:22 378:7 380:3 389:8 389:22 395:3 402:1 404:14 412:11 413:1,17 414:13 415:18 417:2,10 418:5 423:6 425:13 427:12 433:14 434:10 438:21 442:19 444:16,20 445:13 446:20 447:3 448:8 449:22 451:5,8,19 454:7 458:5 460:16 462:18 476:22 489:2 492:5 503:2,3 506:1 512:14 513:3 518:20 522:1,21 523:7 527:5 535:13,22 536:3 538:2
realm 435:6
reason 21:18 22:15 28:11 33:14 35:3 35:22 37:11 40:5 49:16,18 51:4 66:7 67:13 120:20 207:4 243:22 256:6,9 257:11,16 257:17 258:12 259:12 260:5,19 283:9 323:13 332:10 407:5 411:15 412:2,18 434:2 439:19,21 467:21 475:3 489:22 494:3 504:14,16 529:8 538:6
reasonable 152:5 157:12 160:4 181:5,7 185:22 310:15 347:17 369:19 420:14
reasonableness 186:1
reasons 158:7 162:7 194:4 196:2 244:20 245:6 252:9,11,12 257:7 257:13,16 258:4 260:19,21 261:10 262:17 268:18 285:8 301:15 303:5 457:4 460:5 462:20 474:12,13 474:14 498:13 527:11
reassessed 140:5
reassigned 35:17
recall 12:18 182:2 185:8 507:1 539:2
receipt 198:3 220:7 413:8,9,13,20 418:9,10,18 422:17 423:3,4
receive 291:3 335:5 344:5
received 62:11 77:5 78:4 413:12 437:10
receiving 77:7 404:10,13
recidivism 277:11 295:9,18,19 299:18 301:17
recognition 308:9
recognize 443:17 467:20
recognized 442:4
recognizes 316:21
recollect 231:3
recommend 12:1 54:11 69:5,19 149:19 288:22 291:10 449:9 473:8 494:1
recommendation 6:10 8:15 38:14 77:8,12 94:6,11 105:7,9 111:7 113:8,10 116:15 125:15,16 138:20 175:16,19,22 176:1,3 248:18 272:9,10 290:2 292:6 294:5,8,15 311:15,19 312:6 330:7,22 331:6,13 332:3 336:7 480:20 481:4 490:5 531:10
recommendations 10:10 59:6 60:2 67:5 175:19 222:18 245:3 249:9,20 284:2 289:13,15 290:16 290:16 298:4 311:6 315:6 319:16 332:6,7 348:6 448:1,4 496:16 524:20 530:12
recommended 7:11 250:1 256:8 258:22 292:9 294:2,3,6 326:8 493:22
recommending 7:11 11:11 38:19 55:22 257:22 319:19
recommends 8:19 8:21
reconsider 355:18
record 6:1 18:11 32:1,6 69:22 77:7 77:20 91:19,20 92:9 93:10,14,18 93:22 94:5 101:13 111:5 141:21 146:17 153:15 172:15,17 175:4 184:13,22 186:12 204:7,10,11 225:20 234:18 238:20 248:15 249:4 254:22 255:5 272:2,6,15 280:10 330:14 331:5,21 336:4 342:18,19 392:7,8 405:10 452:18,19 478:7 491:13
recording 106:7
records 3:6 74:8 111:15 195:9 197:6 206:4 269:19 516:7
recover 380:4
recruits 20:5
red 306:12

redemption 404:3
reduce 49:22 76:18 82:10,14 84:20 243:19 270:14 277:2 300:2,3 320:20 360:5 465:21 488:17
reduced 7:1 191:19 328:11 403:12
reducing 127:15 265:1 270:3 285:3 288:7 401:17
reduction 5:15 37:9 63:8 187:19 193:2,21,22 364:18
reductions 224:19 305:11,18 359:14
reentry 323:20 477:2
reexamine 398:1,5
refer 99:20
reference 43:3 210:8,19 211:20 212:2 225:5 236:11
referenced 352:14
references 210:1
referring 125:22 241:2 369:10
refine 244:15 319:15 321:7
refined 271:12 273:19
reflect 166:7
reflected 289:1 378:10
reflection 402:12 402:13 431:14
reflects 112:10 433:13 444:20
reform 185:6 285:4 286:14 287:5 356:18 455:8 457:6 458:9 477:6
reforms 318:17 345:1 473:22
refreshing 347:7
refuse 67:18 410:9 430:17 468:16,17
regard 154:8 182:12 257:8 443:2 480:20 496:18
regarding 125:20 248:8 253:19 255:11 256:3 257:7 259:20
regardless 402:21
regional 71:21 72:13 75:14 274:21 349:5
regions 482:15
register 143:13,19 497:16 505:14 511:6
register-able 144:13
registered 510:9
registrable 143:2 472:22 510:4
registration 142:20 143:1 146:3 328:5 472:22 497:6 503:4 506:2 508:7 508:14 512:7
registry 352:11,12 481:21 513:6
regretted 35:2
regular 255:2
regularly 252:3
regulation 36:18 105:2 134:1
regulations 104:16 255:10
rehab 112:15,17 495:8
rehabilitation 109:21 164:22 315:18 404:3 449:20 495:18
rehabilitative 476:18
rehearing 142:11
reintegrate 324:8
reject 430:19 431:22
rejected 55:7 224:5 261:1
rejects 56:7
relate 223:16
related 50:4 251:17 252:7,14 253:15 269:21 302:9 384:15 411:18
relates 16:2
relating 250:7 454:10
relationship 58:18 180:12 280:9 335:15
relative 309:11
relatively 91:18 116:14 122:9 175:1 351:7 370:11
release 95:12 176:20,21 177:17 178:13 247:2 265:8 266:1 323:13,19 324:2,7
released 62:12 114:18 177:1 178:11,12 266:2 306:15,17 322:20 323:17 490:21
relevant 25:6 257:11
reliable 335:9
reliance 265:1
relied 158:3
relief 82:5 88:18 108:22 112:1 122:12 140:10,16 140:20 141:6,16 144:8,18
relieves 351:6
religious 136:19 280:21
reluctant 98:10 120:14 498:14
rely 523:14
remain 524:18
remained 122:9
remaining 82:21
remains 172:9
remand 333:5,17 333:22
remanded 333:11
remark 21:15
remarks 4:6 239:6 337:1 392:16 400:15 478:16
remedy 140:19 142:13 152:21,21 380:9
remember 46:17 46:19 57:11 118:5 327:1 357:14 381:16 428:7 429:2 494:21 525:22
reminded 460:15
reminder 6:6
remiss 260:2 278:1
remove 9:6 389:3 489:18 531:2
removing 263:10 492:7 496:1
rendered 125:18 128:5
rendering 371:19 372:2
Reno 225:15,17
repeal 322:12
repealing 536:15
repeat 204:17 245:9,13 289:14 330:17,18 485:10 485:12,12,12,16 488:16
replay 354:22
replicating 350:3
replied 154:12
report 29:20 30:9 31:22 34:1,16 57:2 101:9 111:5 171:15,17,18,19 171:20,22 172:2,3 172:11,12 173:10 175:2,13 176:4,11 176:16 199:11,15 200:6,8 210:8 220:3 221:14 251:1 252:3 254:7 254:15 278:15 279:12 280:7 281:18 282:22 283:4,9,12 302:1 302:2 336:8 352:15 353:14,16 355:6 362:9 474:5 510:13 514:4
report's 171:13
reported 26:21,22 301:20 303:4 336:15 337:9
reporting 246:9,12 247:5 252:7 257:4 259:19 354:13 355:3,18 356:18 359:14,14 360:19 361:8,15,19 362:1 366:3 378:5,10 382:18 384:22 459:6,7,15 532:11
reports 31:9 32:15 35:12 170:7,9,13 170:16,16,17,19 170:20 171:1 174:3 178:17 201:3 224:1 256:2 278:11 279:10 328:12 359:21 360:4,7,22 361:1 361:5,12,22 367:4 445:8 459:16 513:11
represent 70:10 226:15 399:22 404:11,12 454:16 455:17
representation 274:21
representative

342:10
representatives 343:1
represented 51:21 399:2 437:7,8 453:15,17 528:12
representing 453:18
reprimand 527:9
Republican 455:6
republished 104:21
request 52:6 62:13 105:21 109:8,9 411:7
requested 72:12,15
requesting 72:11
requests 38:5 105:6
require 20:19 157:11 255:21 256:8,22 257:12 259:16,21 282:18 312:2 363:7 525:1 530:1
required 6:5,13,16 143:13,19 187:20 196:4 250:11 251:22 252:9,12 265:15 312:16 334:7 474:6 510:12
requirement 6:12 6:14,17 20:7 25:11 127:15 497:6 511:20 519:11
requiring 311:11 382:22
research 10:14 26:15 32:5 67:1 169:5,11,15 214:6 214:8 217:5 245:3 247:6 251:3 266:12 282:1 299:16 300:7 301:7 350:21 353:7 472:8
researchers 169:7 216:22
resent 432:20
resentment 127:22
reservation 313:3
reside 442:3
residential 414:15
resides 416:10
resistance 264:20
resolution 402:7 426:10
resolve 172:6 173:4 173:16 426:22 427:22
resolved 135:13 400:4 402:10,18 417:7,21,22 418:18,19 426:1
resolving 423:18
resource 471:15
resourced 491:3
resources 181:2 304:3 456:20 470:13,22 491:1
respect 125:21 126:20 129:7 250:18 360:11 383:17
respected 356:7
respectful 383:13
respectfully 128:9
respective 125:17 129:5
respond 7:8 126:18 454:9 462:20
responded 182:18 380:3 460:10
responding 349:13
response 1:3 32:20 154:13 155:7 192:4 345:10,19 365:16 379:16,21 385:1
responses 147:21
responsibilities 24:8 128:20
responsibility 163:15 180:14 187:18 189:9,12 189:19 202:13 351:6 364:21 406:1,2,15 409:15 415:4,6 423:22 426:14 441:5 459:11 499:11 501:5 519:18
responsible 118:21 367:17,19 499:13 528:17
responsive 384:12
rest 379:18 512:9
restitution 281:3
restoration 105:17
restraint 202:17
restricted 361:15 361:19,22 362:8
restriction 257:7 257:15
restrictions 252:10 259:10
restrictive 253:14
result 74:13 118:17 137:7 149:12 244:7 266:6 287:2 341:16 350:13 356:16 378:16 385:1 396:21 397:3,20 400:21 533:2
resulted 289:12
resulting 395:17 418:7
results 124:12 346:14 352:20 362:20 418:21 463:14 480:5 532:19
resumed 70:1 146:18 238:21 478:7
Ret 1:14,16,16,17 1:18 2:1,10
retain 124:13,17,21 125:3 274:5 291:1
retained 292:10 309:1
retaining 273:21
retains 336:16 432:7
retention 22:10
rethinking 317:11
reticent 120:8
Retired 73:2
retiring 73:11
retribution 317:14
retrieve 16:17 101:19
retroactive 224:18
return 35:15 50:3 95:11 155:2 350:11 490:17,18 495:18 518:21 540:15
returned 488:6
revealed 270:9 271:22
reverse 76:17 532:13
review 2:13 6:13 74:6,11 77:10 90:12 98:10 118:7 119:15 143:3,9,14 143:21 144:11,19 185:20 246:19 252:13 286:13 291:1 332:19 333:2 334:1,2 474:10 475:21
reviewed 92:16 121:19 123:2,4,5 186:1
reviewing 129:14 246:20,21
reviews 92:14 105:5 128:22 333:14
revise 244:16
revisions 258:2
rewarded 493:1
rewritten 492:12
RFEL 330:16
rich 280:4
ride-along 460:8 460:10
ridiculous 538:3
right 7:18 8:16 15:8 17:8 30:2 35:21 40:7 48:5 50:7,14 51:18 52:8 57:4,22 61:2 61:7,9,17 62:20 68:16 69:14 70:13 70:20 79:1,16 81:6,8 82:17 89:4 90:16 91:2 94:2 103:10 104:11 109:4 112:2 116:9 117:14 119:9,9,19 126:15 130:3 133:20 135:6 138:1,15 139:19 142:14 143:16 144:15,20 145:12 146:9 159:19 168:14 174:14 187:12 192:13,17 195:11 197:2 205:6 208:14 213:5,5,5 214:3,3 214:17 215:13 216:1 217:13,13 220:15 222:10 225:12,21 227:4 237:18 238:6,22 248:22 253:7 259:5 289:21 302:17,22 303:9 319:14 323:3,3,4 323:14 326:19 340:16,18,19 341:20,20 342:5 347:19 358:17 361:3 363:5 368:4 369:7,11 372:20 374:17 375:16 378:6 387:6,15 388:4 389:21 390:19 398:4 407:5,6 410:1

432:12 433:2 438:9 442:8,15 453:16 455:13 458:14 461:9,14 466:22 482:5,6,20 489:16 507:11,22 508:1 509:10 510:10,17 514:18 514:18 519:8 531:3 538:18 539:5,18
right-hand 240:22
rightly 125:8 500:22
rights 61:5,15,16 62:21 63:2 342:4 420:13 428:11,12
rigid 253:18
ringer 384:9
ripe 508:5
rise 424:3
risk 114:9,9,9 115:2,11,12 295:6 295:8,11,18,18,22 296:13,16,18 297:2 298:10,16 298:19,21 299:18 300:9,15 301:2,13 301:15 302:21 303:2,6 304:8 319:13,16 320:8 321:8 325:1,1 364:18 380:10 420:17
risking 320:3
road 127:13 268:5 295:7
rob 212:3,8
robbed 85:10
robber 375:11
robbery 84:19 161:4 166:4,6 181:20 201:22 209:14,15,15,19 209:20 212:5,7,18 228:4 290:8 307:11 345:15 374:10
robbery's 179:2
robust 487:15 488:17,18
role 46:1 173:1 353:1 405:22,22 422:13 440:2,3,7 440:9 480:1
roll 91:15 128:13 207:7,18
room 1:11 191:10 195:17 288:4 349:10 375:7 510:5 520:6
root 424:6
ROT 93:22 94:5
roughly 178:2 206:5 467:6
rounds 318:17
routinely 430:14 430:20
row 248:16
rub 456:21
rude 218:9
ruffled 274:4
ruin 356:2
rule 86:16 175:20 251:17 423:12
ruled 20:21 133:20
rules 42:12 82:18 88:19 104:21 146:4 193:7 249:15 250:6 253:15,19 255:10 259:19 265:21 402:14,15 404:13 417:9 425:12 429:18 431:18 450:18 454:14,19 484:9
ruling 213:17
run 15:15 122:13 127:19 150:15 170:3 195:14 393:20 454:3
running 191:19 194:21 336:22
runs 216:12
rural 275:1,11
rushing 513:5
Russ 238:12
Russell 1:18 2:5 3:8
Rusty 146:20 148:19 196:8 201:5 208:10
RVO 330:18

S

s 450:4
Sacramento 393:10
sacrifice 436:18,22
safe 319:22 355:6 364:13 390:6
safely 318:19
safer 350:4,7
safety 244:12 320:3 409:1,3,7,17 455:22 458:6,20 521:22
said/she 207:3 384:7
sailor 22:4 126:7
sales 526:2
samples 275:21
sampling 37:13
San 393:8
sanctions 244:13 269:3 288:3 295:13
sap 175:5
SAPRO 361:7
Saracen 219:9
sarcastic 349:4
sat 110:15,15 128:1 219:13 377:17 516:8 539:6
satisfaction 276:14
satisfied 58:5
Saunders 2:19
save 349:4
saved 95:4 478:9
saw 13:11 80:3,3 166:19 228:5,9 278:18 293:11 315:18 316:1 394:16 495:16 532:19
saying 26:21 39:21 46:11 50:1 51:1 51:19 55:5 65:8 66:20 78:20 81:12 85:2 86:15 87:11 88:21 90:1,11 95:13 111:22 125:20 137:9,9 197:4 211:22 215:12 220:13 225:20 237:13 348:4 367:10 368:10 377:3 381:5 388:10 418:2,13,15 423:8 440:1,6 445:10,16 469:17 481:7 483:10 485:11 499:22 500:1 501:22 512:4,8 532:19 534:16 539:14
says 61:6 62:3 85:5 140:12 142:1 148:19 172:11,19 188:4 192:12 211:13 212:2 215:21 229:21 237:15 367:9 368:5 371:4,7 412:13 421:16 425:3 426:12 484:8 515:4
scale 159:1 267:1 296:18 300:18 329:21
scalpel 397:1
scandal 445:3
Scandinavian 268:22
scare 502:21
scared 304:5 321:4
scary 540:7
scenario 196:22 208:7 213:10 229:9 231:12 235:22 236:2,4
scenarios 31:18 149:4 196:8,19 197:5 204:4 208:4 214:2 228:18 426:20 437:7
scene 345:15 460:19
scheme 396:15,16 406:16 415:22 417:2,4 432:11
Scholz 1:18 14:12 15:3,6,8 19:21 33:19 34:5 51:9 59:8 108:2 119:1 119:4,9,12,19,22 137:22 138:4,13 138:18 149:17 174:6,16,20 175:7 218:14 236:15 246:8 292:11,18 367:21 387:13,18 388:7,9 429:12 514:7,18
school 20:8 54:2 375:9 393:5 398:21 453:17 522:15
science 403:14
scope 474:22
score 248:15 296:17 329:22 330:10,14 331:5 331:21 336:4
scored 249:5 252:19 253:2,4 254:4 255:9,13 256:2,12,12,19 257:8 259:15
scores 253:13,16 337:4 440:18
scoring 249:1 251:22 253:5 271:15
scratch 157:16,17

157:17
scratched 61:2
screen 203:12
screening 304:1
screens 335:22
scrutinize 430:18
scrutiny 346:20
se 173:14
search 349:18
seas 345:8
seated 9:19
second 44:6,19 55:1 61:21 75:16 77:21 84:1 134:14 137:16 141:1 178:7 194:19 258:8 272:15 311:5 314:9,10 326:16,17 414:20 474:15 475:17
secondary 482:19 483:10 501:6
seconding 4:8
seconds 208:7 376:3
Secret 158:22
Secretarial 108:8 124:16 125:20,21 126:20
Secretaries 129:6
Secretary 45:18 95:15 104:17 124:5,17,20 125:17 126:1 129:5 378:1 469:5 531:14
Secretary's 126:17
section 280:12 294:1,4,7,7,9,11 294:13 415:15 454:20
sections 279:15,19 280:19
secure 350:11
securities 160:19
security 96:1 124:4 234:22
see 13:19 26:20 27:2 29:9,10 31:15,18,21 34:20 37:10 46:22 47:17 57:3 59:18 60:13 62:6 63:16 65:19 73:3,4 75:2 87:19 89:3,6 93:13 102:11,14 103:22 107:19 112:12 116:8 120:6 129:13 141:8,9 149:7,7 172:1 179:10 182:13 187:1 188:3 196:22 214:10 229:8 237:6 240:20 241:7 243:18 244:20 248:6,12,22 251:15 253:5 278:8 284:5 286:1 286:20 294:13 306:21 307:14 310:22 315:7,12 315:20 318:13 319:5 323:21 325:20 326:1,10 326:12,17 327:3,4 329:3 330:13 331:3,12 337:3,10 339:8 340:19,20 341:3,3 350:15 353:5 359:7 361:1 368:3 371:14 381:10 383:5 389:19 390:9 391:8 411:13 412:15 413:2 418:9,17 421:12 424:17 432:12 434:4,11 435:15 445:15 469:14 484:7 485:6 486:15 487:10 489:2 491:17,20 499:4 500:2,5 501:9 503:13 514:7 525:4 530:5 534:20 535:7 536:2 539:11,13 539:18,19,20 540:13
seeing 12:18 15:9 69:2 103:2 118:5 346:17
seek 339:5 407:20 407:20
seeking 501:15
seen 6:6 10:3 21:4 24:6 55:10 63:14 64:2,10,14,14,16 72:15 110:5,12 132:17 133:12 147:19,21 247:6 263:18 299:13 305:11,17 345:2,5 345:17 458:7 485:15,15,16 515:4
sees 171:18 418:3
seldom 120:19
selective 223:1 298:22
self-contained 386:20
sell 221:8
semblance 350:11
seminar 15:17
Senate 219:11 222:9 465:18
send 107:21 123:10 199:15 211:14 350:8 478:1
sending 416:13,14 499:16,16
sends 115:7 118:14 370:22
senior 71:20,22 95:20,22 96:1 501:8
sense 19:8 22:21 23:2 28:4 29:13 68:6 125:12 235:6 284:19 285:19 326:20 336:19 338:4 349:4,19 350:17 366:4 396:7 400:6 410:15 421:7 440:16 442:6,7 458:2
sent 154:11 156:16 201:5 231:13 267:17 495:14
sentence 8:8,11,19 8:21 9:9,11 14:6 15:22 18:7,21 24:7 25:6,12,15 27:6,14 29:3 36:10 37:22 39:5 39:16 40:14,21 41:3 47:6,7 48:12 49:22 50:2,3,13 50:15 52:1,6 63:21 64:2,13,15 64:21 77:18 78:1 78:18 80:10,14 81:12,13,18,22 82:4,5,20 83:1 84:12,13,21 85:15 86:1 92:19 96:8 96:12,14 97:10 100:21 101:18 103:5 108:17,19 110:1 116:14 117:4,6 119:17 120:5,6,20 122:21 123:1,5 129:22 130:6 131:10 132:9,14 133:5,18 134:7,11,21 136:14,17 139:13 139:13 140:4,14 140:14,21 142:7,9 143:17 145:8 153:17 155:15 156:8 166:1,5,17 170:7 172:11 174:3 175:2 176:12,13,19 178:1,4,6,18 181:19 185:12,20 186:9 187:11 190:10 194:11 196:17,20 200:21 207:7 211:15 214:1 215:17,19 216:1,4,6,9,13,14 218:8 222:17 230:19 234:19 235:2 258:5,13 259:1 260:11 265:10 266:3 273:2,9,14 280:5 285:12,17,22 286:1,20,22 288:16 291:10,12 291:13 292:2,4 293:13 294:8,15 294:16 295:2 299:4,10 305:14 307:4 311:14,19 311:20 314:14,19 315:5,9 317:7,19 319:15 322:1,3,8 322:18 326:7 329:11,12,16 331:6,13,15,16 332:3,8,15,20,22 332:22 333:18 334:8 336:6,8,10 336:12 344:4,11 344:12,17 346:1 348:13 351:19 359:4,5 360:16 370:4,9,11,17 371:5,6,12 372:21 380:14 381:5 394:5,19 403:10 406:7 407:2 411:8 411:12,12,15,17 412:3,15 414:5 419:2 425:6 429:20 430:5 431:2,17,21 432:9 432:22 433:3,20 437:17,20 438:1

439:3 450:21 465:1 468:3 489:13 491:15 496:9 499:14 502:14,16 505:16 507:16 515:19 516:4 518:3,13,13 518:15 519:1 520:2,12 523:15 526:7 531:3 533:11,15
sentenced 36:2,6 118:18 151:6 169:17 192:19 216:13,15,19,21 297:15 399:19 401:9 418:11,22 490:11
sentences 4:13 5:11 5:11,18 7:7 12:17 13:7,18,19,20,21 24:6 28:5 29:10 42:8 63:16,19 64:6,11,11,19 65:6,14,18 66:4 76:19,20 81:4 83:4 96:19,22 97:6,11,19 99:7 99:19 101:4,22 116:4 135:4 163:12 165:17 166:22 168:5 177:21 179:7 199:17,19 200:7 217:7,15,17 219:5 220:4,9,21 223:7 224:19 235:22 236:3 245:6,16,19 246:17 257:14 265:2 276:19 290:14 310:12 311:22 313:4 314:2 320:16 333:14,19 334:15 334:16,19 335:6 337:9,11,13 342:1 346:12,15 347:3,7 347:22 351:17 358:22 369:22 372:18 382:16 395:1 396:21 397:20 406:9 407:7,9,11,13 408:22 410:15 411:20 422:11 433:5,7 436:16 437:10 438:5,8,10 438:17 447:5 476:3 487:19,22 503:10 522:4,6 523:19 527:19 530:22
sentencing 1:6 2:3 2:5,8 3:3,7,7,9,9 3:11,14,18 4:22 5:5,5,9,19 7:5,22 8:6,13 9:7 10:4,9 10:11,16,19,22 11:6,9,11,17 12:3 15:19 18:5,9 19:7 19:10 20:20 21:1 22:11 24:12,17 25:1 26:17 27:12 27:18,19 28:4 29:16 30:1,4,11 30:15,20,21 32:22 33:20 34:9,15,16 35:9,15 37:20 38:6,14,17,21 39:19 40:7,9,12 41:16,20 42:5 43:20 44:7,8,11 44:11,17 46:2,9 48:4 49:17 50:16 56:15 57:4,21 62:22 64:1 65:3 65:11 81:10,16 83:11 90:15 100:20 102:12 129:19 130:7 132:4 134:8,18 136:20 139:3 145:3,18 146:8,12 146:20 147:4,7,11 147:16 150:1,3 152:17 153:20 154:11 156:12 158:2,6 162:8,14 164:18,19,20 165:4,11,13 167:13 168:21,22 169:3,10 172:14 173:5 174:7,12 176:15 177:6,10 180:22 182:2,5,9 182:20 183:7,12 184:1 185:2,3,6,9 185:15 186:2 189:8,18 190:22 191:16 192:18 195:18 196:7,16 196:21 197:1 201:20 203:9 208:22 211:6 218:15 222:7 223:21,22 224:22 229:15 232:14 239:2,4,5,11 240:1,12,16 241:5 241:9,9,20 242:3 242:4,8,10,10,12 242:14,19,20 243:1,9,17,20,21 243:22 244:3,8,10 244:16,22 245:4 246:14,16 247:9 247:16,17,20 248:1,4,8,18 249:8,10,19 250:2 250:5,16,21 251:6 251:10,15 252:1,2 252:5,15,17 253:15,20 254:5,9 255:22 256:3 257:2,3,4,18,19 257:22 258:6 259:18 260:4,6,15 260:17,20 261:8 261:11,21,22 262:3,5 264:10 266:6,11,18,20 267:6,9,11,15,18 267:22 268:2 269:7,12,14,20 270:9,12,14,21 271:4 272:3,11 273:22 274:8,9,15 278:6 280:2 281:5 283:17 284:2,5 285:4,10,14,14 286:14 287:5 288:7,8,10,10,21 289:4,4,12 290:15 291:2,3,7,15 292:10,13,16 293:5,16 295:4,21 297:6 298:2,7 300:2 303:1 305:8 305:10 306:19 308:3,9,16,20 309:11,20 310:1,4 310:14,16,17 311:2,5,13,18 312:5,12 313:1,20 315:1 317:13 319:13 321:8,19 322:14,15 324:14 324:19,21 325:4 329:19 330:5 337:16 338:13,18 339:15 340:4 342:6,11 345:1 348:8 350:2,5,19 352:15,21 356:14 358:10 366:18 369:17 392:11 393:17,21,22 394:2,17,18 395:3 395:17 396:12,13 396:18,19 399:19 401:21 402:15 403:12 407:2 408:4 409:11 415:20,22 423:20 429:13 433:18 435:16,19 436:13 436:19 438:15 442:3,8,14,18 443:2,4 446:2,10 448:3 449:8,18 450:20 454:14,18 455:2,8,9,21 456:8 457:7,15 459:5,17,18 461:12 462:15 463:4,6,7 464:2,7 464:11 465:21 466:15 467:2,5,18 469:4 470:18 471:12,13,14 472:9,16 474:2,3 474:5,11,18,19 475:7,21,22 476:11 477:2,6 478:13 482:2,7,11 482:21,22 483:8 483:11 485:3,6,9 485:20 486:12 487:15 488:17,18 489:6 490:13 491:18,20 492:2,3 492:19 493:10,11 493:12 502:12 503:10 513:10,15 513:17 514:14,20 516:10 518:2 520:17,18,19 521:1,4,6,10 522:17,19 523:6,8 523:21 524:22 526:3,10 528:17 529:12 530:2 531:13,15,18 532:4,9
sentencing's 521:12
sentencing-specific 336:2
sentiment 292:2
separate 13:18 55:12 74:18 79:22 117:19 118:9 123:19 124:8,14 126:19 127:16 255:1 266:18

267:2 299:21 415:11
separated 402:6
separately 249:5 296:11
separation 37:9 299:15
Separations 20:11
sergeant 203:7 493:3,7 494:12,13
serial 299:20
series 249:1
serious 20:13 39:17 166:15,17 184:20 193:11,15,17 205:16,17 226:5 244:5,5 267:5 296:6 329:8,9 330:9 347:20,20 347:22 426:5,5,8 427:12,13,14,19 429:3 455:12 461:3 462:6 474:10 486:1
seriously 474:17
seriousness 181:18 182:13 244:9
serve 230:9 260:9 260:12 285:11 286:9 289:1 307:6 307:7 322:6,19 342:10 350:3 360:13 420:18 439:7,11 455:22 456:1,9 506:15
served 71:20 73:14 91:20 93:2 94:1 108:16 109:22 116:21 140:14,22 200:9,17,18 201:1 245:12 265:15,21 266:7 286:21 287:9 289:6,7,22 290:12 306:11,22 307:5 322:10 360:14 401:16 479:3,5 494:13 495:14 498:10
serves 439:2 484:16
service 5:20 15:17 16:4,4 32:22 42:16 60:3 85:22 93:9 105:10,19 109:14,20 123:19 124:18 125:17 129:5,6 141:8 158:22 197:6 280:20 361:13 388:14 389:16 414:2 484:5 492:22 495:18 536:18
services 3:5,6,16 16:3,18 20:4 97:9 99:6 100:5 101:8 104:14 107:15 108:12 111:16 125:10 127:21 128:6,11 197:7 365:6 384:22 389:10 390:18 478:11 489:5 516:20 520:14
serving 178:5 230:19 285:16 286:19 287:16 288:5 289:16 342:10
SES 109:12
session 287:4
set 6:20 55:1 68:10 104:16 139:11 165:19 178:22 209:22 223:12,14 248:2 273:6 282:9 296:12 299:2 369:19 439:1 443:8 495:11 535:18
sets 122:18 296:3 321:20
setting 7:6 23:6 140:3 223:11 370:16 410:17
settings 31:15,16
settle 400:20
seven 168:7 222:7 229:11,14 231:15 235:5 254:22 255:4,13 256:13 256:14 430:4 439:21 440:21 473:12 475:4
seven-year 430:4 431:2,21
severe 156:4 181:19 200:12 220:8 355:19 370:11 420:10 456:15,16 457:9 476:3,4,6
severely 381:18
severity 326:5 458:1
sex 78:11 112:16,18 112:21 113:22 114:9 115:8 121:5 121:17 133:16 142:19,19 143:1,1 143:12,19 146:3 229:13 255:1,4 293:17 295:13 296:1,3,15 301:8 301:15,19 302:5,6 308:3,5,12 320:6 326:17 350:19 352:11 465:14 466:7 472:21 473:16 481:21 508:6 509:21 510:2,8,12 512:6 513:6 515:17,19
sexual 1:3 2:6 3:19 4:13 12:19 13:4,8 13:10,13 29:11 38:8 52:8 66:12 71:8 74:21 78:10 80:16 84:18 106:9 106:15,22 121:2 143:11 210:9,17 211:7,11 214:19 269:9 294:10,12 296:2,4,9,11 329:4 331:4,22 343:3 346:18 348:19,21 349:12 349:15,17 353:14 353:16,18 354:3 356:12,19 359:9 359:10 360:21,22 361:2,12 364:9 365:3 367:4 369:5 370:4 376:9,19,20 378:12 379:6 383:18 385:3,5 390:5 451:8,13,15 452:7 459:6,7 460:3 465:10 466:2,3,5,10 469:13 478:13 486:1 496:7 497:5 497:6 498:22 499:19 507:10,12 508:2
sexually 302:9 354:14 357:15,18 368:6 379:15 380:2 381:18
sexually-related 302:3
sham 488:18
shame 355:1 498:14
shapes 67:3 460:4
share 17:10,10 360:1 386:14 387:4 449:3
shared 362:3 386:5
sheets 144:17
shift 341:8 363:7 404:18 413:2 486:4
shifted 417:11,15 462:16
shifting 352:16 463:10
shifts 444:19 487:3
ship 175:10
shocked 344:9
shooting 228:13
short 116:14 117:8 195:13 243:10 321:13 472:15
short-term 508:22
shortcut 340:2
shorten 288:17
shorter 332:13 416:13 420:18
shorthand 95:13
shot 447:17
shotgun 460:12,15
shoulder 237:4
show 151:17 175:4 277:18 284:11 293:16 306:7 470:20
showed 217:5
showing 228:12 307:1
shown 248:9 252:20 253:12 267:5 289:17 472:13
shows 24:10 44:16 187:10 346:7
shrinking 20:2
shut 146:5
side 22:1 50:12 133:9 144:19 241:1,3 247:4,5 259:4,13 304:13 304:13 325:4 329:21 405:6 476:19 503:8,9 532:5 533:10
sides 49:12 51:21 134:10 397:13
sight 488:3
sign 526:21
signed 93:1 224:8 224:15
significant 21:20 96:19 229:18 350:22 359:20

411:3 464:22 473:20 490:20 503:16 525:1 536:22
significantly 328:11 365:13 473:18
signs 92:15 386:6
similar 15:2 50:8 96:20,21 103:22 115:6 124:12,13 154:19 167:4 234:21 235:9 269:18,19 278:11 304:11 365:15,15 385:12 394:3 403:15 415:9 418:4 450:5 456:4 456:5,6 483:16 484:9,9 493:13
similarly 106:3 269:16 352:18 394:3 402:8
simple 91:19 160:9 161:19 173:22 174:22 175:1,1 179:22 258:14
simpler 205:5,7 465:4
simplified 160:1
simplify 160:6
simplifying 474:17
simply 435:2 443:20
Simultaneous 190:18 212:21 220:11 229:22 388:8 428:9 470:8 477:14 509:7 513:2 524:12 527:12 533:19 538:22
single 28:12 110:6
single-spaced 170:20
singular 115:14
sir 20:16 21:13 27:9 28:19 43:9 52:12 56:20 63:10 71:14 72:22 73:4 91:7 103:6 107:5 108:6 114:13 115:15 120:4 122:1,6 123:11 124:7 125:4 359:18 478:3 499:5 530:15 531:6 533:13
sit 14:18,19 17:17 83:14 89:5 102:10 110:13 138:8 191:20 224:7 502:7,10 506:4 528:15
site 512:5
sites 274:20 275:2 277:19
sitting 14:16 17:18 167:15 504:17
situated 269:17 352:18 394:3 402:8 437:9
situation 25:10 56:15 109:7 110:18 118:13 120:2 142:13 190:12 357:10,21 381:22 385:22 409:2 429:19 437:11
situations 129:4 385:12 534:6,7
six 35:14 71:6 78:4 78:5 81:18 139:13 142:14 144:5 145:5 158:9 224:7 229:10 231:15,21 235:5 248:9 251:12,13 252:16 255:7 256:19 275:5 318:18 436:21 446:16 447:6 479:8 490:12 504:6 525:15
Sixty-five 215:1
size 276:3
sizes 460:4
SJA 46:20 48:7 71:21 93:14 94:5 94:11 142:1 519:19 532:17
SJAs 58:14 510:7
skew 396:20
skewed 397:9 438:13
skill 282:9
skills 381:14,21
skip 293:15
Skype 108:3,4
slam 526:4
slap 345:22
slapping 347:21
slate 162:10
slice 334:20
slide 241:6 242:7 243:13 247:8 248:9 251:12 252:20 253:12 265:5 269:11 278:9 280:5 286:21 289:17 305:9 306:7,9 308:1 317:12
slides 239:13 240:22 305:2 307:19
slightly 240:7 273:11 473:19
slim 121:14
slip 176:3
slowly 441:22
SM 122:11
small 98:19 287:1 305:21 379:13 390:22,22 391:7 391:10 433:21 454:3 467:11 518:16
smaller 169:15 232:10 282:4
Smarter 465:20 476:11
Smith 334:16,17
so-called 22:17
social 33:10,11
society 34:21 97:2 424:19 488:5,6 518:8,21
socioeconomic 269:22
sodomy 78:12 296:9
softer 315:3,13
sold 422:5,6
soldier 22:3 97:14 116:12 355:21 490:17
soldiers 492:20 495:1,13
solely 81:7
solution 346:22 347:1,19
solve 346:2
somebody 20:14 23:6 72:20 110:19 120:6 136:22 168:5,8,11 179:2 187:11 211:13 212:9 230:2 232:6 358:8 366:7 367:6 370:21 385:10 391:9 422:19 438:9 439:5,6,9 439:10,18 440:20 440:21 450:13 463:14 501:10 504:18 516:9,10 520:10,15 535:6 535:15
somebody's 202:20 371:8 538:4
someone's 263:10 424:7 488:5
somewhat 93:20 192:21 396:6 409:1 427:19 441:2
son 422:21 488:5
soon 68:2
sorry 14:10 20:16 62:17 69:3 78:17 85:10 133:2 204:19 307:16 391:15 452:11 463:22 464:4 477:13 485:14 540:12
sort 5:16 11:20 18:11 22:11 28:7 32:20 37:15 49:9 54:6,17 65:11 79:3 108:22 136:12,21 154:19 159:1 163:5 164:19 165:2,9 176:2 185:7 197:2 205:4 208:4 214:16 217:1 221:10 223:19 227:5 246:14 250:20 262:19,21 264:2,4,6,16 266:15,18 267:1 268:9,13,16,19 276:5 284:1 292:1 303:20 307:20 308:6,15,17,20 313:3 315:2,13,16 317:5 319:1 322:16 323:7,7,9 325:6 326:5 328:22 332:7 335:13 343:7 345:6,19 346:21 347:21 378:21 382:6 383:1 389:13 390:6 400:4 403:5 442:15 455:4 459:13 493:6 517:12
sorted 54:21
sorts 518:17
soul 399:20

sound 510:1
sounds 365:7 379:13,19
sources 13:3
South 147:9 157:21 267:14 370:5
southern 219:2
span 97:20
speak 22:15 34:16 53:12 70:16 101:7 127:18 237:4 423:12 442:21 509:19
speaker 4:19
speakers 496:5,22
speaking 96:6 98:10,15,20 102:21 103:8 212:21 220:11 229:22 338:10 356:4 470:8 477:14 482:2 509:7 513:2 524:12 527:12 532:17 533:19 538:22
special 22:13 36:14 107:12 127:4 287:3
specialist 494:13
specialize 281:19 281:22
specialized 282:10
specially 281:15
specialty 72:1
specific 15:21 16:15 99:9 102:6 107:1 113:18 247:7 248:3 271:12 279:16 325:19 372:11 420:8
specifically 27:13 90:2 174:13 269:8 411:16
specifications 81:14
specificity 464:13
spectrum 35:5 72:16 103:2 397:14 485:19
speech 388:8 428:9
speed 537:20
spend 139:8 208:7 270:6 307:19
spends 380:18
spent 70:22 71:6 75:11 76:1 133:2 148:11 504:5
spin 89:3,4
split 124:7 396:6
spoke 379:17
sporadic 465:13,13
spot 444:9
spouse 485:4
spree 345:16 494:11
spun 521:3
staff 2:17,18 4:15 71:1 73:17 74:18 77:8,11 92:9,18 93:9 147:6,16,17 158:7 214:9 281:21 286:16 324:3,4 382:12 479:5 493:3,7,21 494:7,12 530:13
stage 133:9 486:14
stages 342:7
stamp 429:1
stand 133:14 134:19 135:18 146:1 189:6,15 190:21 490:16 491:15 500:16
standard 125:12 128:10,12,12,15 128:15 129:1 157:12 160:5 164:20 181:8 196:5 209:17 213:1 317:7 332:7 332:13 333:2 511:1,2
standardize 44:8 279:1
standardized 278:16 279:14,21
standardizing 352:22
standards 114:8 156:14 173:6 181:6 459:17,17 459:18
standing 89:13
standpoint 388:3
stands 45:9 133:13
start 25:22 54:14 56:8,18 68:3,4,12 70:10,13 76:5 86:7 88:22 95:10 123:4 134:16 148:21 149:14,18 150:11 240:14 249:12 259:4 263:8,8 272:15 276:16 331:3 360:2 392:18 488:19 500:6 501:12 539:14
started 57:10 66:14 147:5 149:1 150:4 150:14 153:18 165:2 193:8 241:4 274:19 276:18 393:14,16 398:19 429:9 453:13 455:3
starting 79:16 154:19 164:9 201:20 202:1,2 205:22 206:5 207:8 229:3 234:12 249:2 284:1,13,18 327:9 330:8 335:19 404:22 501:11
starts 201:22 208:22 293:17 339:20
stat 210:21 211:7 212:16
state 2:3,8 3:9 44:11 65:2 147:8 157:21 161:17,22 164:13 198:17 200:3,14 230:14 230:16 239:1,3,5 240:12 241:5 242:9,11 245:4 250:21 251:2,6,10 251:14 252:21 253:1,3 254:5 260:8,11 261:16 262:8,19,20 265:6 266:8 267:15 274:21 281:12 283:16 291:20 294:21 318:5 322:4,8 323:1 334:4 337:11 339:9 340:22 341:17 344:20 366:20 374:18,19 399:16 415:21 423:18 429:6 433:6 443:1,3 448:5 454:2 465:3 473:16 474:20 476:6,6 477:11 504:22 506:22 511:8,9 528:13 533:6
state's 53:13 511:9
stated 245:11
statement 60:22 145:13,17 398:9 446:4
statements 27:4,6 106:21 342:3,4 343:4
states 1:1 10:8 19:6 161:12 164:10 179:9,12 200:20 227:1 235:15 241:7,8,10,11 242:13,16 244:15 244:17 245:8 247:10,18 248:6 248:20 249:11,15 249:17,21 250:2 250:17 252:18,19 253:5 254:1,2 260:5,14,17 261:6 261:15,20 262:6 262:17 263:16,17 265:7,8,14,17,18 265:22 266:17 267:18,21 274:2 278:3 287:10,12 291:7,18 294:21 304:10 308:21 310:11 319:2,7 322:13 342:1 374:3 401:5 454:17 463:3 477:8,8,9 516:9 520:17 523:14,20 524:3
statewide 270:7 274:11 275:15 276:6 277:22 305:19 308:4 334:19
statistical 46:10 59:7 149:10 214:14 497:12
statistically 497:4
statistics 21:5 68:1 68:3 69:5 100:14 198:11 199:10 206:12 411:6 471:11 524:11 526:6
stats 12:11,13
status 158:20
statute 185:2 188:6 188:9 371:4,6,11 394:20 439:1 443:21 449:9,10 449:12 466:3,4
statutes 266:21 425:20 443:16 523:22
statutory 152:3,4

212:9 250:11 256:10 310:3 328:18 329:6
stay 38:20 40:6 210:5 220:6 227:8 234:16 238:13 349:1
stayed 122:6 214:22 215:2,15 319:9
stays 296:21
stead 93:2
stealing 116:13
step 34:8 87:18 142:19 146:6 256:16 289:3 356:20 396:11
Stephen 1:12,14 152:16
steps 349:14 458:10
stern 370:14
Steve 2:1 75:6 118:5
Steve's 125:19
Stewart 343:21
stick 371:7,21 528:16 530:18
stipulating 228:2
stocking 209:6
stole 494:9
stood 528:12
stop 49:3 290:20 307:16 346:2 535:15
stopped 175:17 392:20
stops 267:21 486:10
store 85:10
stories 352:3,7
story 260:6 291:4 351:3
straight 413:6 414:14 446:11 485:21
straighten 38:21
Strand 1:18 12:22 24:2 26:7 31:20 32:9,11 66:5 68:13,17 79:18 97:18 99:4 102:10 107:19 111:21 112:14 113:1 114:3,7,14,21 121:2,7,9 123:8 126:5,15 127:10 129:18 130:21 131:21 132:2 136:2,6 153:8 156:11 159:16,20 162:20 173:18 175:9 203:4 204:12 206:18 217:4,22 218:5 237:22 245:5,22 266:9 271:18 281:9,13 282:7 299:13 301:3,6 302:5,11,15 309:17 310:5 327:17 328:9 341:21 358:11 359:19 368:2,13 371:2 374:3,8,17 375:2,22 388:20 389:2 419:12,16 419:20 422:16 433:4 459:3 461:14 462:13 477:11 503:1 507:7,13,18,22 511:19 512:3 525:5 527:8
strange 370:22
stranger 54:6 376:20
strangers 107:8
strangulation 461:4
strategy 308:7
street 1:12 285:21 286:2 415:16 495:3
strength 54:12
stretched 296:22
strict 256:4
strictly 413:18
strike 314:9,10 326:16
strikes 61:7,8 314:10
strong 59:4 60:1 191:13 287:13 349:2 350:8 351:17 362:13 370:7 376:16
stronger 495:14
strongly 113:20 123:17 253:3 380:7
structural 435:11
structure 243:6 254:13,21 260:16 260:18,21 262:14 269:3 282:13 329:1 400:7,17 402:3 457:8 474:10,16,17
structured 251:21 266:20 325:3 339:13
structures 248:9 310:17,18
struggle 99:17
struggling 378:8 503:3
Stuart 2:11 71:15
students 69:6 73:6
studied 476:22 487:5,16 493:16
studies 7:3 11:16 11:21 15:15 26:15 27:8 59:7 60:9 224:13 347:17 459:15,20 461:10 461:11
study 12:2,21,22 13:6,15,17 37:12 67:14 199:21 221:18 270:8 295:21 301:1,12 314:5 436:8 472:13 489:5 491:19 493:10,11 525:2,4 530:4 531:4,11 534:19 537:2
stuff 42:11 87:5 120:18 185:1 201:13 228:2 234:1,8 279:13 335:12 364:18
stupid 343:22 488:12 509:12
style 248:11,19,21 248:22 249:6 271:15 329:19
sub-categorization 337:5
subcategory 40:15
subcommittee 1:4 1:11 4:3,11 17:13 27:10 219:11 361:18 466:12
subdivide 530:6,7
subject 86:6 326:15 332:19 393:3 399:13 471:6
submissions 77:6 93:15
submit 92:4 93:21 94:6,7 106:6 334:8
submits 77:9 101:9
submitted 92:8,11 93:8 160:4 161:13 169:9 179:21 181:6 283:7
subordinates 381:19
Subsection 371:16
subset 26:2
substance 280:21 375:21
substantial 85:3,6 85:12 86:16 87:14 88:1,5 143:20 252:9 256:6
substantially 7:1
substantiate 111:9
substantiating 111:5
subtle 273:15
success 276:12 360:3 503:13
successful 245:21 246:6 307:14 495:20
sudden 320:12 395:15 467:12
suddenly 79:14
suffer 80:7 420:19
suffered 373:19
sufficient 64:4 156:9 185:13 196:5 409:6
sufficiently 434:22
suggested 419:13
suggesting 46:4 461:22 468:14,15
suggestions 536:11
suggests 205:8 417:6
suits 148:8
sum 91:9 249:7
summarize 455:4
summarizes 280:6
summary 115:4 525:11
summed 249:6
super 33:12 406:1
superimpose 264:6
superimposing 264:16
Superior 415:2,12 415:13,15,21
supervise 323:19 324:4
supervised 95:12 177:17 178:13
supervises 324:2
supervising 504:6
supervision 108:18 114:18 125:2

177:18 178:13 323:17
supplementing 279:21
support 4:15 46:10 127:2 263:3,5 268:19 350:21 353:7 387:13,17 387:21 388:2 390:2 456:3
supported 455:9,11 457:6 462:2
supporting 458:13
supports 388:6
suppose 136:9
supposed 176:2 193:10 444:21 445:5
suppress 424:17 425:13
Supreme 6:5,9,12 6:16 86:6 150:20 151:8,12,13 152:8 152:14,15,19 154:3 157:1,3,10 160:3 185:4 213:17 310:13 311:15 368:1 396:4 428:22 436:7 442:4 475:5 486:21
sure 7:16 9:2 10:2 21:3 29:9 31:8 35:4 43:3 57:1 61:20 82:8,11 106:11 117:22 125:14 126:3 130:20 143:6 155:5 166:14 183:9 239:9 246:10 247:5 266:17 275:19 284:22 308:17 316:11 327:12 335:4,12 336:10 337:2,2 345:8 365:12 382:7 393:1 401:9 421:1 421:8 423:10 436:21 437:6 444:14 450:6 468:14,19 470:6 473:6 491:1 492:3 497:1 518:14 527:4,5 529:6 531:3 536:20 538:19
surely 393:1,4
surprised 24:1 102:8 104:1 186:19 344:2 510:13
surprising 106:11 163:1 501:13
surrounding 475:6
survey 69:15 153:20 154:9 182:4,15
surveys 154:10 181:17 435:5
survivor 384:2
survivors 349:13 349:17 352:4,8 356:4,21 371:1 381:9 383:9
suspect 13:22 136:2 141:7 453:1 457:16
suspected 16:21
suspend 292:6
suspended 18:21
swallow 228:3,11
swear 461:20
sweep 223:3
swinging 492:16,16
swung 492:14
sympathetic 446:22
symposium 15:19 17:7
system 6:2 8:3 10:8 10:10 17:16 26:5 29:17 31:6,11,12 33:1 34:5,15 39:11 42:4 46:5 47:3,7 51:5 52:14 55:4 58:5 60:12 60:13 61:3 62:22 85:4,17 88:7 130:6 131:8 134:17 148:1 153:21 154:16 155:9,10 156:1 157:19 158:12,13 158:17 159:15 160:2 161:20 162:4 163:6 164:14 170:10,12 171:7 174:21 177:4,9,10,14,20 178:16 179:9 180:17 182:5,16 182:17,19,19 184:3,4 185:13,17 187:4,7 192:7 197:14 205:19 209:1 213:3 215:8 221:20 222:5 223:21 229:16 232:4 233:4 235:11,13 236:10 240:17 241:13 242:11 247:15 255:15 258:12 260:8 264:17,17 269:7 270:7,21 271:2 274:10 276:8 278:12 283:1 285:16 287:16 288:12,15 289:2,17,18 290:1 290:4 293:20,21 306:5,12,21 307:2 307:13 309:1,2,5 313:14 318:4 323:7,9 324:9,21 335:5,6 337:20 338:1 341:17,17 348:10 349:16 354:18 356:13,15 361:4 362:19 363:9 367:5 377:5 378:9,13,19 381:12 382:10,13 382:21 384:12 385:11 388:20 390:2 394:15 396:3 397:7 399:15,16 400:8 400:18 402:14 404:4,13 410:3 413:5 415:1 423:19 424:10 425:2,7,11 430:22 444:6,7 448:2,12 449:7 450:8,9 451:17 455:10 456:14 457:3 458:5 462:12 463:6 464:20 468:13 469:17 470:11 471:9 473:5,10 474:20 480:18 482:5,6 483:8,19 484:8,11 484:15 488:14 491:4 492:17 496:2 503:14 515:17 517:6,7 518:9,16 520:18 522:21 524:16,18 533:21 536:13 537:14,22 539:14
system's 210:22
systematically 31:4
systems 1:3,4 4:11 17:13,21 19:5 27:10 38:16 41:15 65:2 161:18,22 240:12 241:6 242:8 243:9,17 244:1,11 249:10 249:14 250:9,14 250:22 251:7,10 251:15 252:18 253:14,15 254:6 254:10 258:11 265:7 266:16 274:1 308:20 311:2,6 324:11 329:19 340:10,10 340:12 402:2 425:10 429:7 433:6 463:8 465:4 473:16 537:15

T

table 3:1 201:21 249:8 349:11 366:19
tables 294:18
taboo 50:20
tag 25:17
tagged 397:8
tail 277:11
take 22:5 31:8 66:21 77:22 78:8 78:14,22 80:4,9 87:8 91:15 92:21 126:10 136:11 137:13 142:18,21 143:10 149:8 178:19 185:18 189:6,15 238:14 275:13 282:18 291:5,11,14 297:5 298:6 316:1 331:2 347:11 358:12 362:13 366:6 367:13 376:14 378:15 404:5 405:16 413:21 422:7 430:17 431:1 432:17 434:3 459:10 474:10 478:5 480:16,22 481:1,2 483:7 486:10 504:16 505:13 506:6,6 509:6,14 511:15 519:3,20 520:4 522:7 537:2 537:6,11 540:6
taken 59:19 61:11 61:13 118:22

211:19 238:11 362:21,21 418:20 458:10 493:21
takes 21:21 77:13 77:18 92:9 281:22 297:4 403:11 444:11 499:10 522:20 524:14 526:22
talk 7:2 17:14 23:1 24:22 33:4,16 44:13 68:2,10 70:11 76:10 83:10 107:8,12 111:17 112:15 130:1 148:3 159:8,11,11 168:17,19 197:12 208:8,9 227:17 236:18 240:2,15 243:2,9 250:7 251:8 256:17 267:10,17,22 269:6,11 271:5 290:18 293:15 299:18,20 303:3 305:2 307:18 317:16 325:7 343:11 352:4 363:11 365:6 390:6 403:15 410:7 417:5 445:14 450:1 453:5 458:22 459:22 505:7 509:17
talked 37:21 122:20 134:14 218:14 233:3 255:8 306:8 307:16 518:10
talking 8:4 11:14 15:14 19:5 26:8 36:9 38:15 42:11 81:7 83:8 84:3 116:18 121:17 139:8 140:7 150:2 163:13 183:7,8 190:18 208:11,12 208:19 242:8 247:9 249:13 262:4 266:22 269:8 272:5,5 276:7 278:2 303:17 313:19 353:20,21 365:4 366:15 368:5 410:11 465:8 497:22 499:18,21 501:13 513:6 514:13 515:15 516:11 520:5 523:11 539:8
talks 27:11 338:17 410:15 522:17
tangible 364:10
tantamount 152:2
tape 106:7
target 287:14
task 286:13
tasks 324:15
TDS 47:8
team 165:3,5 453:18 454:7
teams 157:7,8 165:3
tease 13:1,6
technical 213:12 286:16
technically 24:10 194:9
technique 428:21
teens 376:10
teleconference 2:22
Telephonic 475:19
tell 7:14 12:15 19:18 41:1 51:16 88:9 99:16 110:3 119:7 127:18 128:1 139:16 141:14 145:7 162:13 164:14 175:15 187:16 191:11 208:18 271:21 322:20,21 348:12 375:4 377:19 379:14,20 409:10 423:6 426:21 430:7 432:15 438:12 447:13 453:11 460:16 467:1 494:5 497:13 511:4 512:8 535:12
telling 50:21 148:22 149:15 199:12 264:11 293:10 359:8 498:6
tells 10:21 113:4 353:15
Temple 72:3
ten 49:6 55:22 71:7 77:6 92:2,3,20 93:8 94:7 107:2 116:4 129:8 131:15,18 168:1,4 168:6 197:7 206:6 211:1,5,8,9 212:10,11 216:8 218:10 222:21 230:3 235:5 252:20 286:4 314:10,17,20 322:3,7,22 323:15 323:16 370:4 405:19,20 481:15 488:12
ten-minute 30:13
ten-year 286:1 334:5
tend 281:17 326:10 346:13 372:9 373:12 451:3
tendency 350:18 372:13
tenor 65:4
tent 28:14
tenure 75:1 238:7
term 17:19 21:1 87:12 177:16 295:16 311:7,8 321:16,16,17,18 321:22 322:6 326:6 328:20 331:1,9,10 344:6 355:10 537:6
terms 14:13 15:9 18:13 50:17 74:21 97:5 113:13 121:2 145:2 154:22 160:12 170:1 174:10 200:17 201:8 206:11 212:9 231:11 242:22 247:12,21 249:14 251:20 252:6 255:20 266:6 287:15 288:5 298:20,22 301:2 305:22 306:2 313:3 315:8 318:14 334:5 373:14 458:11 470:13 471:15 508:20 513:10
Terri 2:19
terrible 107:9 451:11 510:2
terribly 452:8
terrific 4:15
tertiary 483:10
test 275:6 363:5
tested 274:10
testified 479:9
testifies 190:2
testify 42:1 67:19 72:8 113:2 342:5 501:3
testifying 111:19 189:13 477:19 533:8
testimony 60:19 190:4 191:7,8
testing 275:17
tests 115:3
Texas 25:18 348:20 366:16 367:21 374:13,13 376:8 376:10,21 377:11 504:22
textbook 164:20
thank 4:7 5:2 68:22 69:20 70:17 71:13 72:18,19,22 74:1 74:2 76:9 99:11 145:1 146:13,14 148:9,15 176:5 342:14 343:10 356:21 391:21,22 392:1 398:13 451:6 452:13,15 452:16 453:7 459:1 462:13 477:18 478:3 483:15 496:2 540:16,17
thankfully 368:1
thanks 400:16
theater 495:9,10
theoretically 82:9 92:5 144:6
theory 82:13 234:12
thesis 69:11 221:14
they'd 119:1,5 155:2 233:12 505:11
thing 7:21 10:1 13:4 18:11 19:11 27:5 39:1 45:13 46:21 49:2,7 53:22 54:6 57:7 62:4 76:19 79:4,6 93:4 97:17 98:3 107:9 124:22 128:2 136:21 137:19 140:15 153:10 167:6 176:14 177:4 181:18,21 193:1 202:5 205:13 232:22 259:16 268:20 277:7 284:17 286:18

315:2,14 319:15
321:14 324:9,13
324:15 327:14,22
360:7 374:1 378:7
379:14 385:2
400:5 407:16
409:8 425:18
429:16 440:19
441:9,10 445:10
450:3 455:8
462:18 468:6,7
469:18,18 471:2,2
471:5,5 472:20
475:17 476:10
484:15 485:8,8
486:7 488:2 497:3
497:12 500:22
501:6 503:21
508:11 511:15,22
517:21,22 518:2
522:1 526:15
528:8 531:7 535:1
540:7
things 6:4 12:13
26:21 31:8 33:13
49:12 54:17 57:1
66:13 67:19 68:1
79:17 83:7,8,10
83:21 87:4 120:1
130:5,8 136:12
148:4,5 160:14,16
160:17 163:15
173:3 174:3 175:2
175:8 181:8
185:11 187:15
203:6 204:20
208:19 227:21
237:5 243:7
256:11 258:9
263:20 265:3
266:22 267:2
268:21 269:1
275:18 276:4,22
277:1 279:16
280:6 286:14
291:16 300:19
301:1 302:10
303:7 308:10
311:11 317:9
318:22 320:13,19
321:9,13 323:11
336:5 337:19
341:15 349:1
350:16 358:11
362:3,5,16 363:1
363:10,19 364:15
365:1,20 370:6
373:17 377:18
379:3 382:2
388:17 390:12
402:12 403:16
406:1,16 427:3
431:8 437:13
439:14,22 449:7
454:5,22 455:18
459:12 461:5,21
476:16 477:10
486:14,15 487:12
487:16 489:17
491:8 504:2 508:4
510:20 511:3
514:10 518:18,18
520:10 528:3
think 5:15,17,19
6:22 7:2,3,5 8:3
9:9 12:6,6,7,13
13:6,17 14:12,14
15:1,10,18 16:10
16:20 19:4,6,15
19:19 20:21 21:14
21:20 22:1 23:13
24:7 25:7,13 26:7
26:13 27:22 28:8
28:20 31:1,12
32:16 33:13,21
34:19 35:7,10,21
36:19 37:2,5,10
37:11 38:16 40:11
42:11 43:14 44:7
44:14 45:9 46:3
47:10,22 48:15
50:4 51:4 52:14
52:15 53:15 58:2
58:7,8 59:5,8,10
59:16,18,21 60:6
61:12,18 64:3,18
65:4,10,18,22
66:22 67:8,13
68:1,16,18 70:2
72:7 73:1 81:1,2
85:3 99:10 101:7
101:20 102:1,13
102:19 107:6,15
108:2 110:14
116:1 125:19
126:2 127:19
128:9,16 129:6
130:1 131:13
132:5 134:10
135:16,22 138:12
138:15 139:14
141:3 144:16
145:3 148:18
149:6 154:12
155:1,7 156:2
159:7 163:21
172:7 176:7
178:15 180:9
182:17 184:17
188:6,7 192:5
193:1,5 196:2
198:12 200:15
201:16,17,18
202:6,11,13,22
204:20 206:14,15
206:22 207:4
208:2 212:7
213:11 215:12,22
220:8 228:19,22
230:15 232:4,13
233:3 234:20,22
235:4,6 236:16,17
236:19,20 239:16
239:17,21 241:18
241:21 246:11,22
250:21 252:4
254:15 257:11
259:6 261:3,16
262:16 263:17
264:18 266:22
268:7 275:17
276:15 278:1
279:11 283:15
291:6 292:21
294:21 297:11
298:14,15,19,20
298:21 300:8
303:21,22 304:5,6
304:8 307:15
308:8 310:20
311:1,1 312:22
313:17,21,22
314:1 316:13
317:2,8 318:3
319:11,14,22
320:3,5,14,17,18
321:6,8 324:8,11
325:9,13 326:1,9
327:15,19,22
328:6 334:3
336:22 337:14,15
337:17,20 338:5
338:14 339:1,4,11
339:13,14,16,18
339:20 340:9,11
340:12,13,19
341:1,5,6,7,9
343:6,15 346:16
350:4 351:8,15,15
351:22 354:3
357:7,10 358:5
360:14 361:1,7
362:4,16,22 363:1
363:5,8,17,20
365:21 366:14
369:4,21 370:15
370:22 372:12
373:1,8,10,11,22
375:1,6 376:7
378:11 379:11
380:6,11,19 381:7
382:4,11,11
384:11 385:8,16
386:16 388:18
390:14,15 391:5
394:7 395:6
396:17 397:19
400:2 402:20
404:11 406:7
407:10 410:11
414:10 415:22
416:16 418:14
419:7,18 420:6,7
421:2 422:5,8
424:4,8,22 425:10
425:15 428:2,7
429:10 431:12
432:9,12,16
433:22 434:8
435:12 436:12
437:13 438:4,6,9
438:13,19 439:18
439:20 440:1,2,7
440:8,15 441:8,15
441:16,21 442:6
442:17 443:13,13
447:20 448:7,8,11
448:16 450:15
451:3 452:22
455:4 458:5
459:19 461:6,9,10
462:10 463:2,8
465:2 466:16
467:20 469:3,9,16
469:20 470:11,17
470:19 471:2
473:20 474:12,15
475:12 479:22
480:15,15,17
481:14 486:4
487:3,18 489:4,14
489:16 490:1
491:8 492:5
493:14 495:21,22
497:3,22 498:3,22
499:15 502:5,19
502:20 503:15
504:1,11 506:3,3
506:18,19 508:1
508:20 509:3,5
511:5,11,12,17,19
512:1 514:7
515:14 518:19
519:5 521:9,14
522:5,12,20

525:17 527:2 529:22 530:4,15 530:18,20 531:4,5 531:6 532:6,8 534:3,10,18 535:2 535:2,22 536:6,19 537:1 538:6,8,16 539:10,10,11,12 540:4,10
think's 185:1
thinking 11:10 24:4 26:1 45:16 69:13 258:3 298:7 316:15 324:13,14 348:1 364:16 376:5 456:11 509:15 534:15
thinks 185:3 192:10 403:22 437:18,21 526:1
third 84:1,21 134:14 137:16 138:14 141:1 178:8,9,10 407:8 439:12
Thornburgh 193:9 193:10 225:7
thorough 30:19 33:6
thoroughness 29:14
thought 7:15 49:11 54:9 76:4 127:10 182:16,18 214:11 221:2 222:14 228:9,22 251:11 313:5 322:17 323:6 334:4 344:13 359:15 390:13 446:14 487:7 490:8,9 499:6 500:18 519:21 530:10,11
thoughts 24:15 27:16 129:19 237:1 340:7 359:7 536:12
thousand 37:13 69:13 318:6 376:2 376:2
thousands 452:3
threat 351:16 375:8 427:15 429:3
threatened 372:8
three 5:14 9:19 14:16 22:4 63:7 84:9 90:8 105:14 122:14,18 131:3 131:17 147:6,17 168:12 172:13 173:3 177:22 178:3 186:8 193:21 207:11 222:9 229:4 230:10 231:2,3 235:1 242:7 255:19 281:21 293:1 296:10 301:9 308:6 314:10 318:17 333:6 369:9 406:14 414:6 421:17 423:21 425:19 426:15 439:12 440:5 441:6 467:10 483:5 495:10 516:1 532:20
threshold 82:4 144:14 146:6
threw 256:20
throw 238:1 321:12 360:2 506:8
thumb 371:8
tidbit 255:6
Tidewater 274:22
tied 48:7 83:21 344:13 401:12 506:1,1
tight 33:7 274:3
tightened 116:3
time 9:20,20 14:19 14:20,21 15:6,7 18:22 19:3 29:2 29:10 30:12,22 31:3,3,8,13,14,16 46:20 53:3 55:17 57:9 58:14 61:8 61:10 66:17 67:10 68:21 73:14 75:9 77:12 86:13 87:8 89:2 92:17 97:20 100:1 104:7,7 109:11,19 110:8,8 110:16 111:3 115:21 116:21 117:2,3 122:14 128:11 133:12,13 136:12 137:12 139:1,6,8 147:12 156:17 160:7 166:3 167:7,17,19 169:15 173:11 176:19 177:2,20 178:10 183:16 188:2,17 189:14 189:14 197:11 199:16,21 200:9 200:10,17,18,18 201:1 203:19 210:11 214:21 215:1,16 224:2,4 235:20 237:7 238:11,14 241:17 260:9,12 261:7 263:4,12 265:15 265:21 266:7 272:14,15 281:5 284:22 285:15 286:21 287:9,17 288:8 289:5,7,9 289:22 290:12 292:6 306:11,22 307:5,20 314:13 317:15 321:14 322:18 323:7,8,9 326:18 337:1 343:13 344:12 345:6,11 346:5,17 350:8 351:9 352:10 363:11 364:16,19 366:9 371:14 374:22 376:5,15 378:22 379:4 380:19 401:3 411:8,10 416:14 420:18 421:2,19 439:1,8 439:11,14 442:22 443:13 445:17 446:3,15 447:6,16 448:1 459:10 472:18 477:17 489:11 490:16,20 493:1,5 496:3 497:14 505:1,13 507:16 508:17 514:1,6 528:19 530:20 536:6 539:11,13 540:10
time's 217:20
time-wise 37:17
timeline 490:14
times 67:22 92:20 215:16,16,17,20 219:16,17 229:19 289:15 427:16 455:19 483:17
timing 490:1
tinker 360:1
tiny 248:10
tipping 226:17
tips 511:16
Title 449:10 466:4 466:10
tizzy 365:6
TJAG 144:2
today 4:18 52:19 58:22 68:5 148:14 204:4 241:14 242:6 254:17 277:12 339:14 343:11 347:14 348:2 358:16 486:2 513:17 520:15 523:18 524:4 531:7 536:21
today's 4:10
told 8:8,11,12 18:13 39:11,13 62:2 107:13 130:9 133:5 154:3 164:17 166:14 227:22 231:13 241:11 242:13 245:1 256:11 380:1 431:15 432:21 475:13 518:2 538:21
tolerate 350:9
ton 286:16
tongue 377:11
tool 284:15 295:22 301:15 304:1 312:21 313:9,15 341:1,1
tools 20:10 300:10 300:15
top 205:21 248:16 330:13 459:21 471:20,21 472:19
topic 4:10 113:13 114:16 285:13 353:4 384:15 522:16
total 222:11 249:7 253:9 259:15 294:17,18 299:15 494:11
totaled 253:6
totaling 253:7
totality 29:2
totally 222:3 299:21 332:14 440:11,12,18
totals 253:6
touch 5:20 78:19 79:3,3 243:5 256:17 295:5
touched 510:18
touches 486:8
touching 240:21 414:4 510:16

516:3
touchstone 233:5 236:21
tough 346:4 356:17 412:18 440:22
tougher 277:12
Tour 75:13
tours 73:17 74:19 75:15
town 391:9,10 512:19
track 72:6 83:4 115:13 118:9 510:11
tracks 115:11
tradeoff 315:17
trading 213:14
trafficking 173:2 198:3 220:7 221:8 312:8 453:20 476:7
train 233:16 358:13 363:6
trained 233:14,17 281:15
trainee 180:11
training 17:6 147:16 235:16 359:2
trajectory 355:15
transfer 95:14 124:19 318:20 351:12
transfers 125:1
transition 288:9 323:20
transitional 79:19
Transitioning 288:20
translate 288:15
transparency 246:14 285:20 352:17 424:11,11 450:16
transparent 425:8
travel 482:16
traveling 482:15
treat 22:18 347:10 384:12
treated 383:17 403:7 418:4,10 436:9,10 443:19 448:18 450:6,13 456:6
treating 385:3,5
treatment 112:21 113:17,19 114:2 115:1,4 301:9 315:18,21 316:3 318:20
treats 501:18
tremendous 346:19 471:15
tremendously 461:1
trend 115:17 264:7
trial 11:9 18:2 25:1 33:20 34:1,7,12 34:13,17 40:21 47:2,22 48:3 57:9 60:3 61:22 62:1 71:6,21,22 72:1,2 73:15,15,16 77:7 77:20 85:2,5 87:5 88:14 91:19,20 92:10 93:11,14,18 93:22 94:5 101:9 133:1 135:13 141:21 152:6 175:4 187:12 188:1,3,21 189:6 189:12 190:2 191:11 192:1,14 192:15 206:13 207:5,15,19 230:7 292:17 310:14,19 311:17 316:16,17 316:22 317:6 325:18,22 326:1 326:18,21 333:5 376:12 399:21 425:14 426:16 429:9 446:17 467:8 471:4,9 473:1,19 475:2 509:9,20 511:2 513:19 514:2,9 518:1 519:17 532:19 537:5
trials 11:1 41:17 48:2 61:18 171:12 187:2 305:11,13 305:20 306:2 325:17,17,20 326:2,11,22 341:3 425:3 503:6
tribal 199:6
tried 30:18 58:13 190:14,16 218:11 224:12 274:20 353:4 517:5
trigger 464:19
triggered 202:21
trip 266:14 482:18
trivia 60:21
trouble 20:13 90:10,11 112:9 130:5 220:20 366:12 368:8 447:19
troublemaker 381:12 383:21
troubling 193:2
true 5:13 12:4 54:7 115:21 192:6 226:9 232:9 363:4 372:16,16 373:11 373:18 417:19 427:1 473:4 524:9
truly 379:17
trump 132:9
trust 180:6,10 360:10 386:19 387:20 456:12,13
trusted 348:22
truth 41:16 42:5 285:10,13,14 288:10 305:10 306:19 322:14,15 523:21
truth-in-sentenci... 290:4
truthful 322:18 424:5
truthfully 58:9
try 9:17 16:17 36:22 101:19 117:5 130:14,17 176:2 188:11 203:13 239:15 259:7 264:22 275:5 277:3,4 298:18 303:13,14 318:9 319:20 324:19 337:5,5 350:11 364:12 390:17 412:21 417:4,9 420:17 442:12 448:21 450:14 454:8 459:22 478:2 497:2
trying 9:15,16 14:4 15:15 27:21 48:18 58:12 128:13,14 147:20 165:7 178:19 183:1,20 188:11 226:21 231:2 246:3,11 262:10 263:21 264:17 276:9 277:2 284:3 303:9 304:1 316:5 318:18 319:15,16 336:11 337:22 347:18 350:18 364:19 366:20 370:19 424:21 441:9 442:5 461:6 505:6
TUESDAY 1:8
Tulsa 490:2,4
tuned 372:11
tuning 437:1 446:7
turn 328:15 348:14
turnaround 151:9
tweak 486:15 487:9
tweaks 489:6
twelve 256:15
twice 73:18 96:5 267:10
two 5:15 14:16 23:22 25:12 28:15 47:17 49:14 52:20 55:3,11,15 63:8 71:1 73:11,17 75:8,15 78:2,18 78:21 81:22 83:8 84:11,15,22 86:15 90:8 106:15,19 115:10,12 121:12 121:22 124:7 142:9 145:5,8,19 168:12 183:13,14 193:20 200:14,22 201:3 208:7 225:1 229:11,19 230:7 230:10 231:3,5,21 231:22 235:1 241:6 248:10 249:9 253:4 255:9 258:13 259:15 264:2 274:14 281:21 285:8 286:2,5 291:16 296:3 299:15,21 304:22 305:2 308:20 311:1 312:10,14 325:16 325:17 331:8 333:6 357:7 368:4 369:8,22 394:10 394:11 402:6 403:15 408:3 409:21 410:13 414:6 425:18,19 426:19 430:7 437:13,15 440:4 440:10,18 441:4,7 445:19 446:18 459:4 465:19 467:9,10,10 476:16 490:2 498:8 503:12 506:15 513:12

515:7 516:8,15 524:3 525:16 527:1 532:2,21 538:17 539:2
two-thirds 25:11 131:3
two-year 374:13
twofold 482:12
type 14:10 16:5 56:5 102:4 149:6 149:9 166:16 167:4 180:12 181:18,21 198:17 202:4 211:12 213:8 221:6 228:20 272:22 288:21 311:5 329:5 356:16 464:12,13 471:8 516:1
typed-up 278:17
types 36:12 68:7 102:2,6 161:1,2 179:8 197:20 203:6 213:9 255:19 298:1 306:22 315:7 452:7 459:16 471:18,18
typical 201:16 204:8 332:8,8
typically 16:22 85:19 102:22 113:6 155:22 166:16 176:17 191:11,13 192:12 198:16,18 199:7 200:7 210:22 280:14 282:4 288:19 292:7,8 294:20 305:13,14 371:20 462:6

U

U.S 2:2,5,7,11,14 2:15 3:7 47:16 114:6,7,19 117:1 125:1 146:20 147:8,12 157:20 157:22 158:11,15 158:18 170:14 171:14 172:9 174:7 176:21 187:9 193:13 219:9 225:13 226:10 247:16 310:13 338:17 352:14 396:19 412:4 415:4,5,11 415:15 471:14
U.S.C 449:11
UA 87:22
UCMJ 62:7 99:10 136:3
ultimate 127:9
ultimately 54:11 126:17 133:3,4 157:2 185:11 356:20 389:15 416:11 418:21 421:22 424:4 444:4,11,21 450:17 454:13
umbrella 123:22 149:18
un-American 344:14
uncomfortable 365:2,9 387:2
uncommon 64:20 121:3,4 413:4
unconscious 371:20 372:3,7
unconstitutional 152:12,20 163:21
underlying 484:15
undermine 496:2
understand 34:7 65:8 98:16 124:18 133:15 143:6 150:4 187:14 189:1 226:13 258:2 276:9 285:22 286:3,7 362:11,19,20 373:3 384:3 389:17,18 442:13 489:15 523:7
understandable 107:10
understanding 17:20 19:12 38:10 203:1 373:5,6 418:15
understood 63:22 128:11
undertaking 147:3 163:6
undertook 166:18
underway 120:16
undid 494:14
undo 246:3
unexpected 347:12
unfair 396:21 397:3 441:20
unfairly 450:14
unfairness 397:15 404:16
unfamiliar 14:10
unfettered 398:7
unfortunately 63:12 68:20 89:4 391:13 488:7
unhappy 352:8
unheard 5:12
uniform 61:1 75:19 233:5 347:5
uniformity 96:20 264:10 277:1 394:2 395:17 407:18 409:9 417:6,6
uniforms 126:19
unintended 328:9 356:11
unique 22:13 293:20 522:20
unit 126:7,12 203:5 380:16 387:22 415:11 490:18 521:17
unitary 38:14,21 39:19
United 1:1 226:22 235:15 241:7 262:6 308:21 310:11 401:5 454:17
units 127:1 494:18 494:20
university 72:3 262:2 398:20
unjust 346:15 396:21
unjustifiable 346:14
unknown 88:20 301:4,7
unlawful 371:17
unpremeditated 480:12
unreasonable 139:18 140:8,12 141:11 186:10 369:9
unrelated 88:6
unrestricted 362:1
unseen 227:6
unsworn 145:12,16
untruthfully 190:2
unusual 96:11 412:12 473:10,15
unwarranted 184:1 184:9 218:15 270:3 277:2,16 341:18 449:21
unwieldy 165:8
unyielding 355:19
up-front 292:17
update 361:6
updated 475:13
upgrade 109:2,8 110:6 116:10,16
upgraded 110:17 111:22
upper 28:17 65:12 66:11 296:18
upward 405:18,20 406:9,11,20,20 408:2 435:4
upwards 290:11
urban 275:1,12
urge 347:15
use 20:9 31:13 48:8 69:16 150:7 151:6 164:12 174:6 202:4 205:12 212:3 248:20,21 251:18 262:1 280:4,21 283:18 298:16,18 303:11 304:3 319:16 334:10 336:7,17 341:1 347:9 351:16 366:15 376:8
useful 149:20 324:9
uses 278:12 449:22 521:17
usually 16:14 33:2 92:4,17 96:2 115:17 122:13 132:22 135:13 171:16 230:3 259:6 277:8 339:6 422:2
utilize 147:22 163:2

V

v 309:14 310:11
VA 112:11 473:2
vacuum 223:12 366:1 442:9
vagaries 394:4
valid 303:14 340:3
validity 468:19
valuable 275:8
value 120:11 442:5 442:16
values 330:12
valve 409:1,4,7,17
variability 513:15
variable 272:6
variables 272:15

272:22
variances 411:18
variation 37:8 430:16 501:21,22
variations 27:16 394:21 395:1 430:8,9 451:22
varied 278:15 429:17 447:5
varies 105:12 114:12 250:14 265:12 374:18 409:7,17,19 410:6 427:8 451:18
variety 74:16 115:3 162:7 244:20 248:6 250:6 251:3 371:10 454:20,21 474:12
various 36:13 61:18 68:7 81:13 169:8 179:10,12 201:12 410:10 459:15 523:21
vary 242:19,20 260:9 265:17
vast 112:5 123:6 353:18 383:8 395:22 400:3 433:5
vastly 183:6,13 407:14 409:7,17 409:19 410:6 425:20 426:18 439:7
VAWA 199:1
VCNR 485:1
VCNRs 538:11,11
vehicle 150:9 163:2
venue 488:8
verdict 30:2,10 41:22 443:5
verdicts 27:3
verify 88:17
Vermont 374:19,21
version 284:6 527:1
versus 13:20 37:9 263:2 286:22 315:10 418:9 422:17 493:12 527:20
vertical 248:14
vest 226:18
viable 339:17 355:4
Vice 348:18
victim 24:9 62:21 62:22 63:2,3 79:14 89:12 90:2 93:5,9,13,13,21 94:4,10 123:13 199:18 249:3 280:8,10 322:20 329:7 341:21 342:2,3,4 351:6 354:12 356:4,12 364:12 365:5,8 373:3 374:1,2 378:8 380:21 382:12,19 383:2 384:22 385:13,17 385:22 387:2,4 388:21 389:10,11 389:19 403:18 404:9 461:19 497:20 499:12 500:21 501:17,19 502:1 518:14 522:11 531:17,19 531:20 532:3,8,11 533:3 535:10,18 536:1
victim's 89:12 107:12 342:10 499:7 525:12
victimization 355:3 380:11
victimized 364:22 381:11
victimizes 354:6
victims 67:17 79:13 80:6 106:3,4,8,15 106:19,22 301:10 342:4 348:4 350:4 350:10 353:13,16 355:9,13 360:9 362:4,6,18,18,19 366:3 373:2,10,11 373:12,15,16,17 378:11,18 379:3,6 380:22 382:10 383:5 384:12 385:3,5 386:4,11 386:18 387:19 388:3 390:2,17 459:4 496:5,13 497:22 498:13,22 499:20 500:12 501:8 528:3 529:20 532:18 533:4 535:3,4 536:4
victory 360:21
video 106:6 107:21 476:13
video's 228:11
view 16:19 36:11 38:13 46:11,12 47:15,16 87:19 130:8 195:3 246:21 262:21,22 410:2 428:17 432:17 438:21 443:11 521:15
viewed 188:18 447:8 450:7
views 30:5 393:21 429:10 478:18,20 493:9
violate 443:18
violated 443:20
violates 425:19
violating 354:13
violence 2:6 199:2 202:4 328:11 343:3 344:8 348:19 349:13,15 460:3 461:15,17
violent 226:16 245:9,13 265:2,20 287:14,18 288:4 289:9,13,20 290:6 290:7,13,13,17 298:21 306:9,14 306:21 320:8 326:13 330:18 488:13
violents 307:9
Virginia 1:12 2:8 2:15 3:9 11:5 18:5,17 19:9 56:5 106:2 164:5 230:20 239:5 240:15,16 242:4 245:8 246:6 247:8 247:14 248:21 250:15,18,19 256:17,18,22 257:6,12 265:9,16 267:8,21 269:9,13 270:4,14,22 271:6 271:21 273:17 274:9 277:17 278:2,5 281:19 283:1 285:2,8,15 287:14 290:21 291:2,6,9 292:5 292:10,20 293:19 295:6,9 296:1,15 297:19 298:17 305:7 308:22 319:11,14 338:21 342:9 374:8 398:16,20,21 401:22 402:5 407:15 410:14,22 411:9 412:11 413:17 415:21 417:20 423:12 431:10,13 442:18 448:6 490:9
Virginia's 245:10 267:16 269:7 270:21 271:13 273:20 274:3 277:14 300:9 307:2,13 320:18
virtually 261:16
visibility 100:4 103:14 468:1
visit 267:15
visited 230:5 267:20
visits 512:5
VOICE 519:12
VOICES 470:4
voir 133:13 136:13 480:14
voluntary 249:18 253:14 256:21 259:13 260:1 271:1 290:22 298:3 311:3
vote 26:4 28:5 135:8
voted 25:13 270:11
votes 27:1 28:12
voting 8:5 25:12,20 26:2,5

W

wait 116:18 117:8 189:8 441:12
waiting 316:18
waived 53:3
wake 218:9 345:16
walk 192:17 230:20 375:5 472:17 530:14 533:8
walked 422:10 494:19
walking 86:7 307:20
walks 518:17
wall 59:2 157:5
Walsh 308:11 328:1,2
wand 534:20
want 5:20,22 6:20 19:8 23:18 24:20 25:20 26:10 28:1 28:3,14 30:1 31:8 31:15 40:8 46:2 52:6 59:1,7,13 60:17 61:3,9,10

61:13,15,16,17,20 62:5 70:13 87:12 101:22 106:2 107:18 119:7 124:6 131:8,9,10 131:17,18 143:6 145:7,14 148:9,15 149:14 194:12 197:11 203:9 206:22 207:14,17 207:18 208:6 231:22 233:1 250:22 264:15 271:1,13 276:17 282:17 284:22 297:8 304:8 305:2 305:8 328:12 334:21 339:5 344:10,11 346:21 349:7 354:11 355:6,7,7,8,13 356:2 358:19 359:6 360:4,18 366:11 367:16 369:21 373:16 379:3,4,6,12,12 380:7,8,12,22 381:4 382:1 387:20 392:19 403:7 404:6 420:12 424:2 431:16 432:14,17 432:18,21 436:20 448:16 450:1 459:8,10 471:19 473:2,3 476:13,22 477:15,18 491:2,9 497:20 498:17,18 499:4 500:1,2,4,6 500:7,8,13,13,21 501:1,1,2 509:6 510:8,9 513:7 517:7 522:16 527:4,5,6 528:10 528:13 533:6,7 535:17 539:15,15
wanted 35:4 41:12 129:10 155:12 242:18 243:15 251:7 270:22 271:2,7,11,14 273:22 274:4 276:19 282:13 283:11 295:5 302:7,10 306:7 308:16 408:1 517:9,9 527:13
wants 92:18 124:17 249:18 297:5,5 312:13 502:1,12
war 21:10 28:13 31:13,14,17 124:5 494:7
ward 520:5
warnings 61:15,17
warrant 461:20
warranted 125:14 126:2
Warrior 74:12,14 125:6,15
wash 13:10
Washington 147:15 230:6 261:16 506:22
wasn't 24:9 35:4 69:3 79:11 88:2 125:17 172:19 177:6 182:22 183:19 209:19 278:16,16 316:4 370:20 422:19 500:18
wasted 133:2 364:19
watch 377:20
watched 232:13
watching 33:12
water 487:10
wave 534:19
wax 28:6,20
way 6:7 8:1,2 19:8 21:1 22:1,16,17 31:6 37:17 48:15 52:14 59:4 71:19 82:4,15 95:13 100:3 107:4,7 108:1 109:6 113:11 117:5 126:18 127:19 129:20 145:18 148:7,17 152:10 152:12 167:20 171:7 173:17 192:19 205:16 212:13 227:13 239:7 245:7 253:16 263:11,21 269:4 271:14 278:22 293:4 307:16 312:20 315:3 318:2 325:2 325:3 326:4 338:22 345:6,22 352:5 362:14 366:13 372:10 377:21 378:9 380:2 382:13,14 383:4 384:9,13 387:2 391:1 400:8 402:18,19 403:4,4 403:13,21 404:6 404:15 408:11 416:10 417:7,11 417:21,22 418:16 419:8 423:17 425:7 431:18 436:5,5 437:20 442:5,14,15 443:8 443:20 444:10 450:9 455:14 456:6 464:12,19 465:4 478:2 484:21 486:18 487:4,11 492:14 492:16 521:9 523:13 524:16 532:6 537:17,20
ways 236:21 242:21 253:1 288:1 300:2 370:20 371:22 402:11 433:15 440:16 441:20 443:18 465:2 484:12
we'll 29:9 52:11 70:6,10 87:17 90:11 105:20 139:5 140:13 141:8 148:13 160:13,14 192:15 194:13 243:2 250:7 271:5 290:18 303:13,14 310:22 342:15,21 343:5 346:4 348:16 351:3 392:5 430:3,4 539:7
we're 11:6 15:8 17:13 23:19 28:22 28:22 31:14 32:22 33:14 39:21 40:22 41:1 48:11 59:2 59:18 60:4,5 66:15 68:8 81:4,5 82:8 83:7,19 84:2 87:18 99:10 100:15 118:21 120:8,13 126:19 127:12 130:1 133:7 134:15 136:6 138:18 139:2,7 140:7 153:22 157:19 167:14 173:20 192:17,20 194:14 195:15 203:11,15 203:16 204:20 205:14 206:5 208:12,19 212:6 217:9,10,22 218:1 218:12 235:14 238:22 239:17 246:3 254:16 256:20 264:8,16 264:17 266:22 284:13 303:9,17 303:22 307:1 311:13 319:1,6,20 321:5,13,15 336:22 342:22 343:19 346:16,17 349:5 359:8 360:6 364:16 370:16 376:10 378:7 382:22 400:12 416:12 428:1 441:9 458:8,13 463:22 467:3,12 470:3 474:6 475:3 476:9 481:16 483:18 486:6 487:3 488:22 491:5 492:10,15 492:16,17 499:18 499:21 501:5,11 503:12,17 513:6 529:20 534:18 537:15 539:7 540:6
we've 25:17 37:11 45:14 46:22 47:1 51:4 68:5,5 133:3 133:12 137:5,16 137:20 138:1 170:13 181:21 182:3 194:4 195:22 205:4 222:5 245:18 246:13 258:9 304:22 305:11,17 308:14 318:17,22 323:6 344:19 345:2,2 358:15 359:19 364:18 377:5 391:13 403:8 433:4 449:7 455:5 458:7 467:1 467:17 472:20 474:8 475:13,13 475:17,20 476:8 476:17,17 477:10 477:16 483:19 488:19 496:4 497:5,9 500:11

504:12 513:11 539:17,18,19,20
weak 252:22 334:1
wealth 281:4
weapon 161:7 180:3 336:4 462:9
weapons 39:12 202:5
web-based 334:9 335:9
website 201:6 220:3 221:15 334:14 476:13
week 15:18 111:18 230:6,8
weekend 62:11
weeks 465:19
weigh 506:11
weighed 173:11 221:16
weighing 6:14 32:15
weight 107:16 203:21 204:1,15 272:2,18 273:12
weighted 204:13 273:5
welcome 76:3 238:13 453:1 474:7 489:5 530:4 531:4
welfare 518:8
well-intentioned 417:4
went 21:1 32:14 55:20 57:10 61:2 62:6,7 63:18 65:2 65:22 69:22 84:15 124:5 128:3 146:17 150:5,21 157:15 158:9 177:8 201:12 209:6 215:3 218:6 219:12 229:6 237:12 238:20 278:18 293:11 314:14 317:6 342:18,19 344:2,3 392:6,7 393:7,17 395:10 398:20 399:3 437:9 446:17 452:17,18 460:8 467:6 478:6 494:16,17 495:10 507:2 525:11
weren't 80:6 84:3 128:13 199:19 217:16 221:18
West 219:4
Western 274:22
whack 326:6
whatnot 150:19 169:12 234:16
wheel 486:9
white 166:15,20 167:2,2
whoa 502:15
wholesale 359:8
Why'd 237:13
wide 12:4 76:15 77:3 274:5 371:10 371:12 410:6 443:16 451:12,13 452:6 462:18
wider 296:20,22
wife 357:20 358:2 447:1
wiggle 510:5
Wilkins 147:14 158:6 164:6
Williamsburg 338:21
willing 72:16 88:9 133:17 316:2 318:12 338:16,18 339:19 412:3,6 420:19 423:1 461:20 491:19 509:14
win 47:8 131:19 504:20 512:21
wind 119:2,5
window 364:8
winter 266:14
Wisconsin 253:8 261:17
wise 16:11 495:4
wish 11:21 69:17 429:1
wishy-washy 357:7
withdraw 56:8,14
withhold 25:20,21 26:1
witness 17:19
witnesses 34:11 35:16 54:5 384:4 424:18 498:12,21
woman 229:12,13 343:20 357:14 381:17 460:10
Women's 199:2
won 529:11
wondered 42:21
wonderful 47:7 240:5
wondering 11:10 129:10 205:18
word 135:7 183:11 385:4 428:7 519:8
worded 57:20
words 44:1 46:3 62:20 103:4 109:7 151:19 205:9 210:1 215:7 233:7 244:4 249:22 251:18 258:13 354:15 370:14 431:19 481:12 483:2
wore 209:6
work 18:5 21:22 31:17 45:2 47:2 57:17 83:10 89:15 122:9 147:4 158:10,13 159:3,4 159:4 169:21 212:13 233:21 234:3,3 246:1 247:19 251:4 262:13 275:20 277:10 279:8 297:1 299:5 308:14 316:18 335:19 336:1 337:20 344:22 346:6 349:19,21 357:12 363:18 366:17 382:21,21 383:9,10 404:19 431:18 447:21 451:4 463:8 485:7 486:14,17,18 487:11 491:20 492:6 498:22 535:13 537:3,18 538:2 539:14
worked 57:16 58:16 89:9,14,19 149:5 246:3 379:20 381:17 388:13 493:20
worker 184:15
working 58:3 59:11 60:11 89:1 154:2 157:7 158:16 165:3 169:3 227:1 298:10 319:1 321:5 349:12 350:16 357:14 364:1 379:15 387:9 388:16 389:16 392:3 433:10 455:1 458:8 476:9 486:10 503:19 523:13,15
workload 122:4
works 31:6 76:7 95:8 132:11 147:21 159:10 171:8 173:17 341:7 363:9 487:11 539:12
worksheet 248:21 251:21 254:12 271:15 273:18 296:8
worksheets 255:21 256:22 293:16
world 17:15,17 48:1 339:10 377:12 408:4 521:21 523:19 529:5
worlds 299:16,22
worry 521:2
worse 14:18 15:9 156:18 218:12 372:6 440:16 502:19
worst 211:11,13 390:5
worst-case 47:21
worth 37:22 39:5 40:17,21 41:1,7 98:2 136:1 235:7 350:2 481:15,16 517:10 530:10,11
would-be 350:9
wouldn't 12:8 25:3 39:8 40:4 42:16 85:15 98:14 137:13 158:13 199:7 224:14,14 226:16 300:16 368:14 382:22 433:8,9 435:1 438:20 485:18 521:2
Wounded 74:12,14 125:6,15
wounding 289:21 290:3 374:11
wow 104:1 209:5
wrap 87:8 540:11
wrestling 204:20 258:10
writ 141:8,15
write 60:21 162:9 167:17 170:15,19 259:3,11 349:1 371:20 474:5,6
writers 281:18
writing 77:19 106:6 157:4

166:19 167:9,14 169:14 173:21 259:4
written 55:18 88:14 92:5 106:21 150:18 162:17 170:19 224:1 252:12 256:9 257:13 474:8 537:4
Wroblewski 2:15 452:21 453:2 459:19 460:18 461:16 462:22 463:19 464:1,6 465:12,17 466:18 466:22 469:16 470:5,9 471:10 473:6 474:4 475:20 477:19,21 478:4
wrong 68:13 168:14 355:22 363:19 367:14 385:4 421:5 438:14 520:8
wrongful 66:12 359:10
wrote 162:8 166:9 210:7 495:7 522:15 537:9

X

X 38:7 41:2 50:3 51:16,17 102:3 130:10,11 142:2
XO 60:21

Y

Y 38:8 130:10,11
y'all 147:1 148:3,5 149:2 160:9 161:16 163:2,2 184:22 197:11 198:8 208:6,8 214:12,14 218:3 219:15 221:2 237:9,12 238:16
yeah 462:22 470:1
year 6:9 9:17 21:8 21:8 63:9 84:12 84:13 85:15 103:9 104:22 106:14,16 110:5,5 115:13 116:11 121:13 123:9,14 142:9 143:9 151:3,5 157:6 167:22 168:1 177:21,22 178:1,3,5,7,8,9,10 187:3 198:11,13 200:13,21,22 210:13 214:20 222:21,22 229:15 245:18 288:20 312:14 314:11,17 322:3,7 335:6 359:11,22 361:8 393:5 455:4 458:12 474:6 475:15 491:14 511:21 516:12,15 516:16,17,20 517:2 530:15
year's 49:5
year-old 508:20 512:8
years 9:5 12:18,19 14:5 16:13 26:6 26:11 38:2,3 39:20 49:7 62:15 66:13 70:22 71:6 72:9 73:11,13 75:9,11 76:1 78:3 78:18,22 81:5,22 86:9,10 90:8 99:19 100:8 115:12 116:4,20 116:22 120:6,7 121:20,22 122:11 122:14 130:13 131:15,19 135:19 135:19,20 136:1 145:5,8,20 158:9 164:4 165:14 169:2 178:21 181:16 185:7 193:5 200:11,14 200:15,22 204:14 206:6 211:1,5,10 212:10,12 216:9 218:10 222:2 229:10,11,11 230:10,21 231:15 231:15,20,21,22 235:1,5 236:3 251:1 261:9 262:5 262:11 270:6 274:12 277:8,12 279:3 286:2,4 288:18 306:13,16 307:7 308:4 314:15,15,18,20 318:18 323:1,16 324:16 329:7,12 329:16 331:8,15 344:18 349:12 352:2 355:12 364:20,20 367:7 368:11,13,20 369:9 370:4,12 371:7 372:22 373:22 376:2 379:21 381:2 388:16 391:2 393:9,11,13 394:20,21 399:4,7 399:9,12 400:10 407:17 413:15 414:6,6 419:2 421:2,17 423:5 429:4,18 430:2,4 431:12 432:3,4,22 433:2 434:10 439:4,6,10,10,19 439:21 441:13 446:18 447:2 451:14 454:2 455:2,3,5 467:17 475:5 477:7 481:15,16 485:16 490:2,11 498:8,19 499:8 500:7,9,9 502:3 504:6,8 506:15,16 515:8 525:15 528:12 529:12 530:17,18 532:2,17 534:4,17 537:6
yellow 241:8,15 306:22
Yelton 63:13
York 183:15 219:1 219:1,2 460:13
young 15:12 63:7 68:18 379:16 381:17 389:19 504:12
yous 540:17

Z

Z 38:9 130:11
zealous 420:4
zero 41:3 212:10 252:22 257:8 330:16 331:5 394:20,21

0

05 494:7
06 494:21
07 494:8,21

1

1 329:14 330:11,17 407:13 433:21 438:4
1.1 524:2
1/10th 407:13
10 121:20 135:19 135:20 136:1 197:18 198:6,7 204:14 306:1 329:16 331:15 332:15 371:7 381:2 400:9 432:22 439:6,10
10-year 345:14 372:1 439:13
10,000 169:19
10.6 307:7
10:00 91:7
10:48 146:17
10:57 146:18
100 169:2 197:4 327:9 427:1,6,21 503:17
100-percent 290:1
100,000 169:16 175:12 176:6,8 516:12
1033 61:14
11 1:9 200:16 216:9 253:12 306:2 423:13
11(c) 429:17
112-Alpha 517:12
116 214:20
118-1 537:9
12 72:9 96:8,13 122:21 168:9 201:15 221:13 253:8 331:7 332:12,12 432:3 485:15
12:08 238:20
12:30 238:15
12:38 238:21
120 78:11 80:16,20 102:1,7 143:12 331:14,15 371:3 371:16 512:22 517:12
120(b) 78:12
1200 21:8
121 198:11 206:4 207:9 214:21 215:1,14,20 231:19
125 78:13
13 121:12 164:4 329:7 370:6 399:7
132507 104:19
134 140:2
135 216:7

14 76:8 79:16 106:16 330:11 393:14 511:21
14-point 329:21
146 3:7
15 16:13 168:10 177:20 197:18,18 197:21 231:7 236:3 411:8 454:2 473:13 481:18 494:13 503:11
150 1:11 38:2 39:20
150,000 335:5
16 201:15 265:5
16:30 139:6
160 397:19
1600 21:12
17 84:13 85:15 372:22
17:30 139:6
175 301:11
1790 345:7
18 269:11 449:10 466:4,10
180 397:19 446:13
19 508:19 512:8
1934 345:13
1947 124:3
1950 60:20 62:8
1967 63:14
1973 99:22
1978 241:18
1980s 269:15 278:8 278:20
1984 455:9 462:2
1985 147:6 467:5
1987 150:5,15 164:3 233:17,18
1989 150:15,20 274:10
1990 393:12
1990s 285:2,5 287:10
1991 274:11,11 343:20
1993 287:3 306:17
1994 287:3
1995 199:14 210:7 210:10 223:22 287:6
1st 287:6,7

2

2 198:4 327:1 330:17 411:9 433:21
2-1/2 393:11
2,000 110:16
2:11 342:18
2:17 342:20
20 12:18 26:11 71:16 81:4 99:19 100:8,11 121:20 155:1 168:10 201:22 204:14 210:11,13,15 222:22 230:21 242:13 252:18 262:11 274:12 278:9 314:18 329:12,12 332:16 367:7 368:11,20 369:10 370:11 394:20,21 400:9 409:21 429:3 430:2 473:13 500:9 508:19
20-page 170:19
20-some 467:17
20-year 329:15
2000 75:16
2001 21:19
2002 75:17
2003 200:5
2004 75:20
2005 75:20 151:8 151:13 153:7,18 449:8
2007 73:12 377:14
2008 74:13
2010 150:2 153:19
2011 76:3 221:12 223:22 352:16
2012 325:12 326:22 337:9 359:20
2013 325:13 359:20
2014 1:9
21 231:7 252:17 280:5 508:20
23 286:21 344:18
2300 21:8
239 3:9
24 241:11 331:7
25 83:14 86:9 135:19 166:5,7 190:9 193:21 285:17 289:17 409:22 434:10 455:2,3,5 473:11 528:11 529:12
25-year 326:15
26 86:10 490:11
27 207:12 527:2
28 73:13
29 75:11 293:18 326:22 327:2,6

3

3 363:16 429:8
3,000 516:20 517:4
3:03 392:7
3:08 392:8
30 9:16 83:14 140:7 140:13 168:10 171:16 201:20 202:1 204:14 206:4 207:9 229:2 262:4 277:12 318:6 349:12 368:13 370:11 429:4
30-some 473:11
30-something 197:16,17
32 53:2,5
33 393:12
34 393:13
343 3:12
35 215:16
3553(a) 185:8 449:10,11
36 45:5,20 193:21 215:16 332:4
37 215:20 218:6
392 3:13

4

4 3:2 429:8
4:05 452:18
4:07 452:19
4:31 478:7
4:37 478:8
40 219:18 314:18 318:6 370:11 436:19
40-something 208:16
40-year 329:10,12
400 13:10 30:18 31:2
404(b) 43:13,15
43 436:20
45 141:12 305:9 411:19 494:11,14 523:13
46 523:13
47 359:21
478 3:16
48 332:4
49 61:12,16 62:3 306:8

5

5 3:3
5.6 306:13
5:33 540:18
50 61:13,16 62:4 220:5 237:7 359:21 463:3 520:17
50,000 318:5
500-percent 290:11
50s 57:10 110:21
54 178:1,5,7
56 45:6
5K 85:4

6

6 363:13 467:5
6.7 306:16
60 76:8 120:6 132:6 139:10 154:14 171:16 182:17 237:7 265:18 361:11 446:12 488:21 492:7 536:10,16 537:4,8 539:12
606(b) 27:1
60s 57:11
63 61:19
630 144:16
65 215:16
671 121:13
69 540:2
69s 144:2

7

7 467:5
7-1/2 393:9
7-11 212:3,4,18
7/11 414:16
70 3:4 154:14 182:17 198:14 207:12,17 231:14
70-something 206:17
700 154:12
70s 57:11 124:7 263:7
78 241:19

8

8 306:1
8-4 6:10
8:28 4:2
8:30 1:12
80 38:2 39:20 120:7 198:14,14
80-something 206:15
80s 21:6 263:7
84 492:12
85 147:18 265:16 265:19 287:9,12

306:6 322:14
85-percent 307:5
85,000 151:5,6 516:12
86-percent 305:22
87 231:14 404:22
875 1:11

9

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Response Systems to Adult Sexual Assault Crimes Panel Meeting

Before: US DOD

Date: 02-11-14

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