UNITED STATES DEPARTMENT OF DEFENSE

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RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL

ROLE OF THE COMMANDER SUBCOMMITTEE

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CONFERENCE CALL

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MONDAY
APRIL 21, 2014

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The Subcommittee met telephonically at 2:00 p.m. Eastern Daylight Time, the Honorable Barbara Jones, Chair, presiding.

PRESENT
THE HONORABLE BARBARA JONES, Chair
THE HONORABLE ELIZABETH HOLTZMAN
GENERAL (RET.) CARTER HAM
MAJOR GENERAL (RET.) JOHN ALTENBURG
BRIGADIER GENERAL (SELECT) LISA TURNER
JOYE FROST

ALSO PRESENT
LIEUTENANT COLONEL CANDACE HUNSTIGER, Designated Federal Official
COLONEL PATRICIA HAM, RSP Staff Director
LIEUTENANT COLONEL KYLE GREEN, RSP Supervising Attorney

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

2 2:04 p.m.

3 LTCOL HUNSTIGER: Well, welcome,

4 everyone, to the Role of the Commander

5 Subcommittee meeting. The meeting is now

6 open.

7 Judge Jones?

8 CHAIR JONES: Thank you. We're

9 going to make an effort this afternoon to go

10 through the findings and recommendations for

11 Chapters 6, 7 -- or Sections 6, 7, and 8. And

12 I believe we can begin just with Section 6 in

13 the findings and recommendations section.

14 I think I have noted that there

15 are a couple of comments on the text itself,

16 but I would like to make an effort to see if

17 we generally agree on the findings and

18 recommendations first.

19 So we begin with our first

20 finding, which is that "the evidence does not

21 support a conclusion that removing authority

22 to convene courts-martial from senior

1 commanders will reduce the incidence of sexual
2 assault or increase reporting of sexual
3 assault in the armed forces."
4 I have no difficulty with that
5 finding. It is consistent with, I believe,
6 what our interim report was. Is there any
7 comment on that finding? All right.
8 MS. FROST: I'm just having a
9 problem finding the findings and
10 recommendations.
11 CHAIR JONES: Oh, I'm sorry. It's
12 on page 28.
13 MS. FROST: And it's the first
14 recommendation?
15 CHAIR JONES: It's Finding 1.
16 Well, actually, on page 28, in Section 6 -- I
17 don't know if I'm off here -- I think it
18 starts with findings.
19 MS. FROST: Okay. Fine. Thank
20 you. I've got it.
21 CHAIR JONES: The second finding is
22 that "the evidence does not indicate removing

1 authority to convene courts-martial from
2 senior commanders will improve the quality of
3 investigations and prosecutions or increase
4 the conviction rate in these cases." Any
5 comment with respect to that finding?
6 I might want to conform it to
7 "does not support a conclusion," just
8 stylistically, say "the evidence does not
9 support a conclusion that removing
10 authority..."
11 Kyle, maybe you can help me, or
12 maybe you don't know, but is there any kind of
13 finding or recommendation with respect to the
14 Comparative Committee, from them with respect
15 to this issue? Comparative Systems?
16 LTCOL GREEN: I'm not --
17 CHAIR JONES: Okay.
18 COL HAM: Ma'am, this is Colonel
19 Ham.
20 CHAIR JONES: Yes.
21 COL HAM: So there is not
22 currently -- excuse me, I'm chewing. There is

1 not currently a finding on the role of the
2 commander in the conviction rate. There is a
3 section on comparing civilian and prosecution
4 rates that basically goes through Dr. Stone's
5 testimony in December. She points out all of
6 the reasons that it is difficult to compare
7 civilian and military prosecution rates, and
8 suggests some ways to make the information
9 standardized throughout the services, and then
10 it would be comparable. But at this point in
11 time, it really isn't.
12 CHAIR JONES: So they're going to
13 have some sort of a finding there, and they
14 have to be alert to make sure that they are --
15 they are not duplicating it. We're not, I
16 guess, because we're making a statement about
17 the commander removing authority. But I guess
18 we need to check through on what they have to
19 say about quality of investigations,
20 prosecutions, and conviction rates.
21 Any other comments about Finding
22 2?

1 All right. Finding 3. "The
2 evidence does not support a conclusion that
3 removing such authority will increase
4 confidence among victims of sexual assault
5 about the fairness of the military justice
6 system or reduce their concerns about possible
7 reprisal for making reports of sexual
8 assault." Yes, Liz?
9 REP. HOLTZMAN: I mean, I'm not
10 necessarily opposed to the conclusions, but I
11 think we need to pay some attention in this
12 finding to the fact that there are some people
13 who think it will make a difference. So you
14 can say, "While there was testimony, or there
15 were statements to the effect that removing
16 authority will increase confidence among
17 victims," you know, the evidence didn't
18 support a conclusion that it would.
19 If it's just some kind of nod so
20 that we acknowledge the existence of some body
21 of information that is contrary to this,
22 otherwise people will say, "Well, did you just

1 ignore it? Did you just" -- I mean, that's
2 just my --
3 MS. FROST: Yes, that's right. I
4 strongly agree with that, because I don't
5 think that we've heard evidence -- I mean,
6 just because -- I mean, removing the authority
7 might well indeed increase confidence among
8 victims of sexual assault. And it might
9 reduce their concerns in the short term. I'm
10 very uncomfortable making that statement, not
11 the conclusion, but we're essentially saying
12 that we've surveyed enough victims that we can
13 say what they do or do not believe. I really
14 think we need to rewrite that.
15 CHAIR JONES: I agree. That one
16 stuck out for me as well. And, again, you
17 know, we did hear testimony, which is
18 evidence, that removing that authority would
19 increase confidence. I'm not saying how much
20 weight we gave it, and I don't -- but I think
21 we do have to be very careful with that
22 finding.

So we need to rewrite it. We had some language when we did our report out with respect to foreign military systems in which I think we used a little bit different phrasing about there was -- it was more along the lines of, you know, the evidence neither supported nor -- you know, did support or not support. So there is a way to rewrite this, because otherwise we are sort of ignoring what we did here.

So, Kyle, will you play with that for us?

LTCOL GREEN: Yes, ma'am. We'll look at that.

CHAIR JONES: Okay.

LTCOL GREEN: Yes, we'll look --

CHAIR JONES: I'm sorry. I'm having no trouble hearing the other callers, but I am having trouble hearing you, Kyle.

LTCOL GREEN: I would say yes, ma'am, we'll look to the Allies assessments and see what language we can pull from that.

1 CHAIR JONES: I think there is a
2 little more neutral language that -- where we
3 acknowledge that there is some evidence, just
4 not compelling or conclusive or whatever. And
5 we definitely have to take note of that, give
6 it more than a nod here.
7 Finding 4. "Arguments about the
8 advantage of prosecutors over commanders with
9 respect to convening authority are not
10 consistent with information from the civilian
11 sector."
12 MS. FROST: This is Joye. I have
13 a problem with the way this is written as
14 well. I mean, to begin with, it is so vague.
15 I mean, because we're so immersed in this, I
16 think I understand what is being said. But I
17 don't think the average, well-informed person
18 would understand what is -- I think we need to
19 say exactly what we mean here. Are commanders
20 more effective than prosecutors? I guess
21 that's what is being said.
22 And then I think we really have to

1 be careful here. When we say "consistent with
2 information from the civilian sector," well,
3 that's the problem. There's a lot of
4 information from the civilian sector, and
5 there are communities where prosecutors do a
6 pretty phenomenal job of prosecuting sexual
7 assaults but, overall, I don't know that you
8 could say that about civilian prosecutors.
9 This is -- I think we have to be a
10 little more nuanced about that, and, again, go
11 back to that language. If there is no
12 compelling evidence that the change that
13 military prosecutors need to be more effective
14 over commanders.
15 GEN HAM: Judge, this is Carter
16 Ham. I agree with Joye, and I think perhaps
17 being a little more specific in Finding 4, and
18 perhaps the language in Finding 3 might be
19 applicable. It just says that the evidence
20 does not support a conclusion that prosecutors
21 will achieve either more cases being referred
22 to trial or a higher conviction rate than

1 commanders have achieved.
2 REP. HOLTZMAN: Right. This is
3 Liz Holtzman. I agree.
4 MS. FROST: I like that a lot.
5 REP. HOLTZMAN: You might also add
6 something like, you know, "more willing to
7 take cases" or "more willing to prosecute."
8 I mean, I don't know how to capture that, but
9 there is also that concept, too, because, as
10 we know, the civilian side is a little bit
11 less -- more reluctant to take cases than the
12 military side. So I don't know. If there is
13 some gentle way of throwing that in, it would
14 be good.
15 (Simultaneous speaking.)
16 CHAIR JONES: I'm sorry. Joye?
17 MS. FROST: Again, I think we have
18 to be careful about saying -- making blanket
19 statements about the civilian sector and
20 comparing it to the military. At least that's
21 what I heard from the researcher. I mean,
22 basically, she started her presentation saying

1 there really is no way to compare.
2 And the data that she used, if I
3 recall, at the Austin hearing was old. It was
4 from the '90s. So I just think we have to be
5 careful there and be a little more nuanced
6 that there is no conclusive evidence that has
7 been presented that overall prosecutors in the
8 civilian sector are more or less effective
9 than prosecutors.
10 I mean, I will say, I have
11 struggled with this from day one -- the lack
12 of research. But particularly comparative
13 research is -- it's difficult to draw
14 conclusions sometimes.
15 CHAIR JONES: Well, I agree with
16 all of you, and I particularly like putting in
17 the more detailed language. What we're
18 talking about here is comparison of
19 prosecutors over commanders, I think as
20 convening authorities, in terms of achieving
21 more charges brought, more cases being tried.
22 And I think those are generally -- well, those

1 were General Ham's two examples.
2 But I agree we need to rewrite
3 that, and there isn't a lot of, well, evidence
4 that --
5 MS. FROST: Well, the one example
6 that I remember from the Austin hearing, I
7 believe there were actually some statistics
8 from the military where cases had been turned
9 over to civilian authorities for prosecution,
10 and the figures were pretty abysmal. Does
11 anybody recall those?
12 CHAIR JONES: Do you mean the
13 results in the civilian courts?
14 MS. FROST: Right.
15 CHAIR JONES: Or whether they even
16 dropped the charges?
17 MS. FROST: Right.
18 MG ALTENBURG: Altenburg here. I
19 recall that there were many cases where the
20 civilian authorities declined, and the
21 military picked it up and prosecuted. I don't
22 recall any where the military turned it over

1 to civilian and they went ahead and prosecuted
2 where the military did not.
3 MS. FROST: I would suggest that
4 we go back and look at those particular
5 statistics, because, I mean, that -- it might
6 be useful to integrate here. But it's -- you
7 know, "a troubling finding is," and then talk
8 about that.
9 REP. HOLTZMAN: And my --
10 CHAIR JONES: Go ahead, Liz.
11 REP. HOLTZMAN: My memory is the
12 same as General Altenburg's, and I do think
13 that either incorporating that information
14 directly, the evidence or the information that
15 we received, I think that that would be
16 important. I don't know whether it should be
17 a separate finding or in this, but I think it
18 does go to the question of whether one can
19 automatically assume that the grass is always
20 greener on the other side.
21 MS. FROST: And I'm wondering, why
22 do we -- why are Finding number 2 and number

1 4 separated? I think we could probably
2 combine those two.
3 REP. HOLTZMAN: This is Liz
4 Holtzman. I think it's a separate point,
5 because I think it's a larger point about --
6 MS. FROST: Civilians versus --
7 REP. HOLTZMAN: Yes.
8 MS. FROST: Okay. That's fine.
9 That's just -- that's fine.
10 COL HAM: Ma'am, this is Colonel
11 Ham. The --
12 MS. FROST: Yes, Colonel.
13 COL HAM: Whether you want point 4
14 to stay the way it is, I think it was drafted
15 to reflect the argument -- if you recall, it's
16 on page 26 of the assessment, that reflected
17 the White House Report findings on civilian
18 prosecutions.
19 And as to the other point of the
20 cases that the military tried that civilian
21 prosecutors declined, we do have that
22 information. It is in the Comparative Systems

1 Subcommittee assessment, and it is in this
2 report, too. It was something like 79 cases
3 from the Army with a 78-percent conviction
4 rate, and then the other Services had fewer
5 cases, but the conviction rates were there as
6 well.
7 MS. FROST: That's a good point,
8 if it's the White House. But I'm wondering,
9 what is the -- the particular studies I get
10 when we're now doing essentially third-hand
11 citations, the White House is citing two
12 studies? And I don't know how widely or how
13 broadly you could extrapolate those on a
14 national level.
15 Again, there are areas where
16 prosecutors do an amazing job of prosecuting
17 sexual assaults. Overall, probably not.
18 Maybe we could -- does the White House report
19 actually cite the studies?
20 LTCOL GREEN: Ms. Frost, this is
21 Kyle. The person -- the White House study
22 that we quoted in the assessments are not

1 quotes from other studies. Those are sort of
2 their conclusions based on those. But I think
3 what I'm hearing from you is I think what we
4 took was sort of the bottom-line conclusion,
5 and the White House study and what's in the
6 body of the assessment is actually a little
7 bit more fact-based. And so we can bring in
8 some of the facts from the White House study,
9 and I think make this a stronger finding that
10 really reflects the facts and not just the
11 bottom-line conclusion.
12 MS. FROST: Yes, okay. Well,
13 certainly, a number of -- it really needs to
14 be much more specific.
15 CHAIR JONES: Right. And when I
16 looked at it, I actually was thinking that it
17 was a little narrower. That it really was
18 comparing prosecutors making decisions about
19 what cases to bring and commanders making
20 those kinds of decisions in terms of, you
21 know, referral to trial. But it can -- it
22 could be the latter, and not necessarily

1 implicating, you know, conviction rates. But
2 I think all of these comments should help us
3 to rewrite 4.
4 Finding 5 -- well. None of the
5 military justice systems employed by our
6 Allies was changed or set up to deal with the
7 problem of sexual assault." This is
8 essentially a finding that we made in our
9 interim report to the Panel already. Is there
10 any -- are there any comments or changes that
11 anyone wants to make to Finding 5?
12 Okay. Finding 6. "It is not
13 clear whether removing" -- I'm sorry. Go
14 ahead, Liz.
15 REP. HOLTZMAN: I just want to
16 raise a question in the middle of that
17 finding, number 5, where it says that "the
18 evidence does not indicate the removal of the
19 commander" -- skipping -- "has affected the
20 reporting of sexual assaults." Do we want to
21 say more than that? Is it just -- is it
22 limited to the reporting of sexual assaults,

1 or is it the prosecution of sexual assaults,
2 or the incidence of sexual assaults? Is it
3 all -- I mean, do we want to make --
4 CHAIR JONES: Yes. You know what?
5 I need to go -- yes, I need to go back because
6 I have to refresh my recollection as to what
7 -- I think most of these countries had no
8 statistics in this area. So good point. And
9 unless you know off the top of your head, Kyle
10 --
11 LTCOL GREEN: Judge Jones, you're
12 right. There is not a whole lot of
13 information on incidence. We have some
14 anecdotal information that we added from a
15 British Parliamentarian talking about
16 incidence, but none of it is -- it is somewhat
17 anecdotal and not necessarily based on facts
18 or hard data. And the issue is, is that no
19 other countries track as closely as the U.S.
20 military.
21 CHAIR JONES: All right. Well, we
22 can take another run through that. That to me

1 looks potentially like what we said in our
2 interim. Doesn't mean it can't be fiddled
3 with and it isn't right.
4 I remember the point we always
5 make about the statistics that Israel did give
6 us, but I don't know that we need to put them
7 in here. We'll take a look, Liz.
8 All right. If everyone is okay,
9 then, with 5, with the understanding we'll go
10 back and take a look at the statistics.
11 Finding 6. "It is not clear what
12 impact removing convening authorities from
13 senior commanders would have on the military
14 justice process or what consequences would
15 result to organization, discipline, or
16 operational capability and effectiveness."
17 Well, it isn't clear to me. Is
18 that a finding everybody is willing to sign
19 off on? Any comments?
20 Okay. Finding 7. "Expanding the
21 role of military judges who are independent
22 from the chain of command may improve case

1 processing and enhance perceptions of the
2 fairness and independence of courts-martial
3 proceedings." Any comments on that one?
4 COL TURNER: This is Lisa Turner.
5 In Section 4, we had a recommendation that
6 overlaps with this to some extent. I know
7 they were working on the final language, but
8 it dealt with recommending the Secretary of
9 Defense direct the Military Justice Review
10 Group or Joint Service Committee evaluate the
11 feasibility and consequences of modifying the
12 quasi-judicial responsibilities of the
13 convening authority, including discovery,
14 court-martial panel selection, et cetera, and
15 that all addressed or primarily addressed
16 military judges.
17 So this finding is much more
18 significant I think instead of just
19 recommending that we suggest the Secretary of
20 Defense, as a recommendation, review this, but
21 saying in fact it may improve them. Well, it
22 may also harm them, and I think we heard some

1 testimony to that effect as well. You can
2 look at the OCMs and see that.
3 CHAIR JONES: Well, is that
4 something that we should not have in this
5 particular section and leave it to the other
6 section?
7 LTCOL GREEN: Judge Jones, this is
8 Kyle.
9 CHAIR JONES: Yes.
10 LTCOL GREEN: Colonel Turner is
11 spot on. We did do some work on the revised
12 recommendations on this line from Section 4.
13 So --
14 CHAIR JONES: Right.
15 LTCOL GREEN: This is a bit of a
16 -- I mean, obviously, there is a bit of a
17 discussion overlap just because some of this
18 point was also made in the section, but it may
19 have fit better within Section 4.
20 CHAIR JONES: My reaction to it is
21 that it does, and then I would definitely hold
22 it for Section 4. Any comments from anyone?

1 Okay. Then we will move on to
2 Finding 8. "Congress has recently enacted
3 significant reforms addressing sexual assault
4 in the military, and the DoD has implemented
5 numerous changes to policies and programs to
6 approve oversight and response. These reforms
7 and changes have not yet been fully evaluated
8 to assess their impact on sexual assault
9 reporting or prosecution."
10 Okay. I mean, I don't think
11 anybody disagrees with that. Is there -- are
12 we not talking about prevention here? We're
13 sticking to reporting or prosecution? I mean,
14 obviously, the reforms are broader than that.
15 LTCOL GREEN: And, Judge Jones,
16 again, this one overlaps. We walk through
17 this finding in Section 5, the legislation --
18 CHAIR JONES: Right.
19 LTCOL GREEN: -- again, so we have
20 some revised language in Section 5 that I
21 believe we broadened. I don't have the
22 revised language in front of me.

1 REP. HOLTZMAN: So are you
2 suggesting we --
3 CHAIR JONES: I'm sorry. I didn't
4 hear you.
5 REP. HOLTZMAN: This is Liz
6 Holtzman. Does it also address victims? That
7 doesn't belong here.
8 LTCOL GREEN: I will have to look
9 at it, ma'am. I'm not sure what it says in
10 terms of impact on victims, in terms of that
11 revised language.
12 CHAIR JONES: I think, well, we
13 definitely need to figure out whether this
14 should stay here, and what we've said in the
15 other sections.
16 LTCOL GREEN: And my
17 recommendation is --
18 CHAIR JONES: Pardon me?
19 LTCOL GREEN: My recommendation,
20 ma'am, is that we expand -- we can look at the
21 other recommendation. The other
22 recommendation being specific to legislation,

that's probably the most logical place for a finding on that topic. And so this may not belong here as much as it belongs there.

CHAIR JONES: Well, I was actually waiting for the line that basically said, "and so until we have seen the results of this -- of these new initiatives, essentially, you know, we would not recommend -- that we would recommend, you know, waiting on any legislation to remove the authority from -- you know, convening authority from senior commanders." That's what I thought we were leading to in that one, but we have done that in the legislation section? Is that what you're saying, Kyle?

LTCOL GREEN: Yes, ma'am. At least -- not so much an assessment or any opinion of the Subcommittee, but there is a finding in that section that we walked through and everybody approved.

CHAIR JONES: And just remind me, what does that say?

1 LTCOL GREEN: Ma'am, it's
2 essentially the same language. I just -- I
3 don't have a copy of the revised version, but
4 we reworked this based on inputs --
5 CHAIR JONES: Gotcha.
6 LTCOL GREEN: -- at the meeting
7 last week.
8 CHAIR JONES: All right. Well,
9 then we just need to -- we obviously don't
10 need it twice, so we'll figure out where it
11 should go.
12 LTCOL GREEN: Okay, ma'am.
13 CHAIR JONES: Is that right, Kyle?
14 LTCOL GREEN: I think so.
15 CHAIR JONES: Okay. Now, we have
16 two recommendations. The first is, "The
17 authority vested in senior commanders to
18 convene courts-martial under the Uniform Code
19 of Military Justice for sexual assault
20 offenses should not be changed." Any comments
21 on that?
22 All right. And the second

1 recommendation is, "Although the Subcommittee
2 recommends against modification of convening
3 authority responsibilities for sexual assault
4 offenses, further study is appropriate to
5 fully assess what positive and negative
6 impacts would result from changing pre-trial
7 or trial responsibilities of commanders. In
8 particular, the Subcommittee believes
9 discovery, oversight, court-martial panel
10 member selection, search authorization, and
11 other magistrate duties, appointment and
12 funding of expert witnesses, and procurement
13 of witnesses, are responsibilities that are
14 currently assigned in whole or in part to
15 commanders that should be considered and fully
16 assessed."
17 LTCOL GREEN: And, Judge Jones --
18 CHAIR JONES: Colonel, can you --
19 LTCOL GREEN: This, again is --
20 CHAIR JONES: Colonel?
21 LTCOL GREEN: This is a repeat.
22 CHAIR JONES: Yes, that's what it

1 sounds like. Yes, right.
2 All right. So then we have to
3 decide where we want to put this?
4 LTCOL GREEN: Yes, ma'am.
5 CHAIR JONES: Okay. We can end up
6 with one recommendation here, if that's the
7 way we go.
8 Any other comments about this
9 section? There were only -- there were a
10 couple of comments on the text. I think one
11 or both. Well, we have staff comments, which
12 are fine, and then we have one from -- two
13 from Colonel Turner. And I think we -- I
14 mean, I generally agreed with those. One is
15 on page 11 where the suggestion is made that
16 we identify that only one former senior
17 military officer had served as a GCM CA. We
18 can do that.
19 And then the other was a
20 recommendation on page -- I've lost you,
21 Colonel.
22 LTCOL GREEN: Twenty-three, ma'am.

1 CHAIR JONES: Oh. On page --
2 well, there's one on page 9 where Colonel
3 Turner suggests we clarify we have heard no
4 testimony from any victim that complained of
5 an issue with the convening authority in the
6 case of their accused. Most complaints
7 weren't even about commanders but about NCOs.
8 We'll have to go back and take a closer look.
9 So, I mean, I would be happy to
10 take a closer look at that, or ask the staff
11 to. But I'm a little reluctant to put that in
12 there without doing that.
13 MS. FROST: This is Joye. And I
14 agree.
15 CHAIR JONES: "No testimony" is
16 very broad.
17 MS. FROST: And, actually, even
18 though -- again, based on my recall, victims
19 did complain about NCOs, but they also
20 complained about the response after they
21 reported. I don't think that's a good idea to
22 put that in there.

1 CHAIR JONES: Yes. I think I also
2 recall that at least there were general
3 comments about being disappointed with
4 commanders' response. So I wouldn't put that
5 one in there either.
6 I think those are the only two.
7 Can we move to Section 7? Yes, Liz, is that
8 you?
9 REP. HOLTZMAN: Yes. This is Liz.
10 It's me. Sorry. I don't know if -- I have a
11 couple of small wordsmithing -- I was just
12 going to send them to Kyle, but --
13 CHAIR JONES: Okay.
14 REP. HOLTZMAN: -- I don't know if
15 it belongs here or in the legislation, but I
16 generally feel -- my overall feeling is that
17 we do not, in my humble opinion, fully address
18 the, what I consider to be infirmities in the
19 Gillibrand proposal. And I don't know if it
20 belongs here or where it belongs, but I do
21 think we need -- and we have not really
22 addressed -- the vagueness with which it

1 addresses the whole question of the
2 alternative to the commander's convening
3 authority. That's a whole subject that I
4 think, you know, needs to be addressed, at
5 least in a sentence if not more.
6 And, secondly --
7 CHAIR JONES: We have evidence
8 about that. We have -- so there is certainly
9 something we could say.
10 REP. HOLTZMAN: Right. My only
11 question is, should it be said here? But, I
12 mean, I made a note with the draft as I was
13 reading it, because we talk a lot about the
14 proposal, but we don't talk, I think,
15 sufficiently about some of the problems with
16 the proposal and that's one of them.
17 The second thing is that you are
18 left with the impression, in terms of the
19 proposal, that she has never claimed -- let me
20 find my notes on that. Excuse me. She has
21 never claimed that the Allied militaries had
22 increases in reporting as a result of the

1 changes they made.
2 I think that was an early argument
3 that was made in favor of the legislation. I
4 could be wrong. I would definitely stand to
5 be corrected. But if that was an argument
6 that was made and withdrawn, I think that
7 history ought to be there, too.
8 CHAIR JONES: Well, that is my
9 recollection as well, and I think we have that
10 -- we have that information, and we can
11 doublecheck it, because I know that --
12 REP. HOLTZMAN: My only -- yes.
13 My only concern is that the report should
14 reflect not a broken, you know, some things
15 about the legislation here, and some things
16 about the legislation there. Maybe that's the
17 way, stylistically, you want to approach it.
18 But I just want to make sure, if we're doing
19 that, that we have the whole panoply of
20 argumentation, including how -- the genesis of
21 this proposal.
22 I mean, the original -- the

1 original, as I recall, argumentation in favor
2 of this bill was that it was going to increase
3 reporting, and of course that argument was
4 dropped. I think that, you know, some of that
5 should be in a discussion of the bill.
6 Just because she dropped it, or
7 someone dropped it, doesn't mean that that
8 shouldn't be part of an understanding of what
9 happened, because it might suggest, you know,
10 as it may seem to some people, outside
11 observers, that, you know, once you latch on
12 to an idea, all the rationales fall away. You
13 know, well, so you come up with other ones,
14 and then, is the argument still as strong?
15 So that's just my --
16 MG ALTENBURG: This is John
17 Altenburg. In fairness to Senator Gillibrand,
18 my recollection is a little bit different, and
19 my recollection is that she said we threw out
20 the Allied argument. Our Allies do it; why
21 shouldn't we? I don't specifically recall her
22 saying that theirs was better. It was just

1 the argument that they're our Allies and we
2 should do what they do. It was sort of the
3 rural community idea. Why should we be
4 separate from everybody else?
5 I don't recall her citing any
6 statistics that they were doing a better job.
7 It was just the -- it was that international
8 argument that our Allies do it; we should do
9 it, too, type of thing.
10 REP. HOLTZMAN: Well, my
11 recollection on that -- this is Liz Holtzman
12 again -- is that initially that was not the
13 case because I think they cited to Israel
14 where there was an increase. But actually
15 what turned out to be the case was that Israel
16 had -- the commander didn't have the convening
17 authority, since, I don't know, time
18 immemorial, like the 1950s --
19 CHAIR JONES: 1955.
20 REP. HOLTZMAN: I'm sorry. 1955.
21 CHAIR JONES: 1955.
22 REP. HOLTZMAN: So that the change

1 in reporting, which is relatively recent, has
2 nothing to do with the chain of -- with the
3 convening authority. So I do -- I mean, I
4 could stand corrected. I could be completely
5 wrong about it. But I do think that there is
6 a historical aspect as well as some other
7 deficiencies in the bill that should be
8 addressed.
9 Now, I don't know where they
10 should go. I'm not making that editorial
11 change now. But my own thought is that it
12 should be in one place probably or at least
13 all the arguments ought to be there.
14 LTCOL GREEN: And, Ms. Holtzman --
15 this is Kyle -- we have completely revised the
16 discussion of pending legislation in the
17 legislation section, and we have added
18 substantial detail. So as soon as we get
19 these initial drafts, we will have revised
20 text for you to review there. And I think,
21 based on our discussions last week, this is
22 exactly what we answered to.

1 REP. HOLTZMAN: Okay.
2 MG ALTENBURG: And I certainly
3 agree with Liz Holtzman that we ought to say
4 more about the legislative proposal, because
5 it does have so many flaws and vagueness. And
6 we ought to identify that. I definitely agree
7 with that.
8 CHAIR JONES: Right. And it's a
9 live piece of legislation that is going to be
10 argued about and voted on again presumably.
11 So it's something that we should talk about.
12 Anything else on 6?
13 (No response.)
14 Okay.
15 COL TURNER: This is Lisa Turner.
16 CHAIR JONES: I'm sorry.
17 COL TURNER: The staff comments on
18 page 27.
19 CHAIR JONES: Oh, I missed those.
20 Thank you, Colonel.
21 LTCOL GREEN: Ma'am, these are
22 some things that in the course of our

1 discussion, or in the course of your
2 deliberations, you covered. And I think -- I
3 think it would be fair, and I think this falls
4 right in line with what you all are talking
5 about in terms of the discussion about
6 supporting reasons for change that perhaps the
7 Subcommittee needs to just expand on in its
8 assessment.
9 And so these were two points that
10 we think are important. Obviously, the
11 impacts or the predictions about changing of
12 the convening authorities would have on
13 reporting and victim expectation, and then
14 also the issue of reprisal. And so I -- my
15 recommendation is that we add a short
16 paragraph on each talking about the
17 Subcommittee's determination on those.
18 CHAIR JONES: Okay. And then we
19 can -- you can point them out to us, and we'll
20 take a look at them again. We'll have that
21 opportunity.
22 Okay. Section 7. Okay. The

first finding is that, "although surveys may provide helpful insight into positive and negative climate factors within an organization, surveys alone do not provide a comprehensive assessment of the climate in an organization."

Any comment on that, or any disagreement?

(No response.)

All right. The second one is that "commanders must seek additional information beyond survey results to gain a clear picture of the climate in their organization."

Okay. Finding 3. "Evaluations conducted by independent organizations of institutional and installation command climate are essential to achieving credible, unbiased measurement of SAPRO initiatives, programs, and effectiveness."

Okay. Four. "Commanders are ultimately accountable for their unit's performance and climate, but unit climate

1 assessments must consider the effectiveness of
2 all leaders in the organization, including" --
3 and this was -- "including all subordinate
4 personnel exercising leadership or supervisory
5 authority."
6 Okay. I don't think there is any
7 disagreement about that.
8 MS. FROST: Judge, this is --
9 CHAIR JONES: Yes.
10 MS. FROST: I'm sorry to go back.
11 Just, you know, looking at Finding 3,
12 "evaluations conducted by independent
13 organizations." I'm not sure what we are
14 talking about. Independent from what? I
15 don't recall that in the text. Maybe I just
16 missed that.
17 CHAIR JONES: I guess I was
18 thinking organization, obviously, independent
19 of the Department of Defense, is what I was
20 thinking. But maybe that isn't the intent
21 there.
22 MS. FROST: This is Joye. That is

1 something that I had pushed, because quite
2 frankly that is the gold standard in
3 evaluation. And my concern is that to really
4 have credibility, both in -- I think with
5 victims and victims advocacy groups -- that
6 there does need to be some kind of arm's
7 length there.
8 And it is my understanding -- this
9 wasn't in the meeting, but didn't -- hasn't
10 SAPRO itself actually contracted with the RAND
11 Corporation to do some of its evaluation?
12 COL HAM: Yes, ma'am.
13 MS. FROST: Or that may --
14 CHAIR JONES: Yes, we did hear
15 about that.
16 COL HAM: This is Colonel Ham.
17 I'm sorry. We asked for more information, and
18 they gave us kind of a white paper on what
19 they are having RAND do. They are having RAND
20 develop and do the next Workplace and Gender
21 Relations Survey.
22 CHAIR JONES: Right.

1 MS. FROST: So I think that's a
2 step in the right direction. And, you know,
3 I think maybe we could temper that, because,
4 I mean, there are going to be things that
5 commanders do locally to evaluate. I mean,
6 it's -- the terminology here is pretty
7 generic, but maybe what we should do is say
8 that ultimately to achieve credible evidence
9 or credible findings that meet rigorous
10 evaluation and research standards that DoD
11 should consider more use of evaluations. You
12 know, kind of temper it somewhat, but that is
13 the gold standard. And if we want people to
14 believe this, then we've got to -- that's what
15 has to be done.
16 LTCOL GREEN: And, Ms. Frost, this
17 is Kyle. I guess my understanding is maybe
18 the question is independent organizations --
19 are we talking evaluations conducted by
20 organizations outside of DoD?
21 MS. FROST: That's my personal
22 opinion, yes.

1 LTCOL GREEN: And I guess, Colonel
2 Turner, would that satisfy --
3 MS. FROST: It's just like with
4 Department of Justice. We fund grantee
5 projects, and we want them to be evaluated.
6 We send money to the National Institute of
7 Justice, who is our research arm, but they
8 don't do the evaluation. They go out and get
9 an independent research organization to do the
10 evaluation, and I really think the military
11 should emulate that model more.
12 MG ALTENBURG: This is Altenburg.
13 I agree with you, Joye, on that.
14 COL TURNER: Colonel Turner here
15 again. I don't disagree with the idea of
16 having other organizations evaluate the
17 effectiveness of SAPRO programs. I think
18 that's healthy from a number of perspectives.
19 I guess I'm just trying to read this finding
20 and say, "How are the various ways it could be
21 interpreted?"
22 "Independent" to some people may

1 or may not include RAND or contracted
2 organizations. Based on the sentence
3 structure, it could be somebody completely
4 outside of DoD coming in to evaluate a
5 particular installation. It could be that
6 we're saying that instead of organizations
7 evaluate installation command climate. Is
8 that what we're saying? Independent
9 organization, non-DoD, should be evaluating
10 the installations' command climates? I don't
11 think that's what I heard the discussion as
12 saying.
13 MS. FROST: That's a good point,
14 because this is specifically about command
15 climate. But, again, I -- I wish -- I'm not
16 intimately familiar with the survey, but I
17 think the fact that DoD is contracting with
18 RAND, it's not -- I guess -- I don't see how
19 you could have the command climate survey
20 administered outside of -- by people in DoD.
21 But it -- certainly the
22 construction and how it is -- the sampling,

1 and so forth, the construct of it at least.
2 COL TURNER: So I think you are
3 moving it one level a little bit, Joye. What
4 we're saying is we need an independent,
5 unbiased organization to look at the way SAPRO
6 is doing its job as opposed to going in and
7 doing its own. I mean, part of their study
8 might be to do a survey. I don't know. But
9 is that sort of where this conversation is
10 going?
11 (Simultaneous speaking.)
12 MG ALTENBURG: This is Altenburg.
13 Personally, I just think it means that SAPRO
14 needs an outside audit, however that happens.
15 They need somebody looking at their process
16 and how they do it and look at how they're
17 doing it. That's my own view. There may be
18 more than that, but that's --
19 MS. FROST: Well, that's a little
20 different than I think what we're trying to
21 say, but, actually, I think both. And I don't
22 know, would the OIG, the DoD OIG, ever be

1 involved in assessing the performance of
2 SAPRO? Or doing an audit?
3 COL HAM: Ma'am, this is Colonel
4 Ham. If you remember the Defense Task Force
5 on Sexual Assault in the Military Services,
6 one of their recommendations was the
7 Department of Defense set up an independent
8 Sexual Assault Advisory Board, and that was
9 not specifically implemented, not an
10 independent, you know, Federal Advisory
11 commission like you are that would advise the
12 Secretary of Defense on sexual assault
13 matters. Is that more what you're talking
14 about, or --
15 MS. FROST: Well, I think -- I
16 don't think that's -- I'm sorry. Was it
17 General Altenburg that said that? An audit of
18 SAPRO? I don't think an advisory committee
19 would do that. An audit means just literally
20 looking -- you know, from soup to nuts,
21 looking at what they do, how they do it.
22 I do have some concerns about the

1 command climate survey and the way it is
2 constructed and the way that that information
3 is used.
4 REP. HOLTZMAN: This is Liz
5 Holtzman. I agree with Joye about this. I am
6 not sure that we need to call for a whole
7 investigation of everything that SAPRO does.
8 That may be a very good suggestion, General
9 Altenburg, but I think right now what you are
10 talking about, Joye, and what I agree with, is
11 that there needs to be an outside organization
12 or company that assesses the -- you know, the
13 quality of SAPRO's work on climate -- you
14 know, on -- whatever it is. Maybe the survey
15 is --
16 MS. FROST: That's a simpler way
17 to put it.
18 COL HAM: Ma'am, this is Colonel
19 Ham. The Government Accountability Office --
20 Congress has directed them a number of times
21 to look at different parts of SAPRO's program.
22 Would that be a specific --

1 REP. HOLTZMAN: I don't think so.
2 COL HAM: No?
3 REP. HOLTZMAN: This is Liz
4 Holtzman. I don't think so. I mean, I think
5 they are just looking at it sort of in a
6 broader way, but I don't know that they have
7 the background, the experts, in psychological
8 assessment and that kind of thing, which I
9 could be wrong, that -- you know, it's the
10 survey methodology, and whether the questions
11 are right, are they asking the right
12 questions, how are they arriving at the
13 questions, and so forth.
14 So I think -- I'm not sure that's
15 a study for GAO. GAO could tell you whether,
16 you know, people are -- you know, how many
17 surveys they are doing and whether they are
18 spending too much money on the surveys, and
19 that kind -- you know, are they using a good
20 --
21 MS. FROST: I agree.
22 REP. HOLTZMAN: -- pick the

1 company that they are doing the survey with.
2 But I don't think they could -- I'd be
3 hesitant -- I mean, it's possible that they
4 have that expertise, but I'd be hesitant about
5 picking them. I think it should be -- I have
6 no problem with letting DoD make the decision,
7 but it should be some agency outside of DoD
8 and outside of the government that is
9 assessing this.
10 MS. FROST: And they should be
11 research experts, and they should be
12 particularly expert at survey methodology.
13 The idea of doing this strictly -- isn't it
14 completely by email or online? Anyway, I just
15 have some concerns with how it is being used,
16 from the information that is being gathered,
17 and, you know, I think a top-to-bottom
18 assessment by an expert, independent, external
19 research organization would be in order.
20 Maybe the National Academy of Sciences. They
21 did something with the Bureau of Justice
22 Statistics with their National Crime

1 Victimization Survey. So maybe something
2 similar.
3 COL HAM: Ms. Frost, are you
4 talking -- this is Colonel Ham. Are you
5 talking about the whole Workplace and General
6 Relations Survey now? Or are you focusing on
7 Command Climate Survey?
8 MS. FROST: Well, actually, both.
9 Anytime you're doing surveys like this, and
10 putting so much weight on them, it makes me
11 really uncomfortable, if they themselves are
12 not being evaluated for -- are they really
13 getting the information that they think they
14 are -- that they want to get?
15 COL HAM: I can tell you
16 Comparative Systems has a whole section on the
17 -- on survey methodology, and did meet with
18 Dr. Sable from the Bureau of Justice
19 Statistics and Dr. Lynch again and Mr. Beck,
20 as well as gathered the National Academy of
21 Sciences study that you are talking about. So
22 they have quite a bit in their report on that.

1 MS. FROST: So maybe this is not
2 the right place. Well, I don't know, though.
3 This is command survey, so -- climate survey,
4 so --
5 COL HAM: You know, if we're
6 talking about command climate surveys, I don't
7 know that that would necessarily, you know,
8 intersect with what Comparative Systems is
9 doing. If we narrow Finding 3 to, you know,
10 getting an independent or non-government
11 research -- research group to evaluate and
12 make it narrow, which seems to be what this --
13 these findings are about, the surveys, and the
14 initiatives, programs and effectiveness, that
15 is pretty broad.
16 MS. FROST: I agree. This would
17 also tie into our concern about the
18 legislation that would suggest doing a climate
19 survey every time there is an incidence of
20 sexual assault. So we could even talk about
21 the timing and -- you know, and even
22 alternative -- perhaps this assessment could

1 include alternative or complementary ways of
2 assessing command climates that isn't totally
3 dependent on this survey.
4 COL HAM: That's an excellent
5 suggestion.
6 CHAIR JONES: Well, I agree. So
7 are we going to narrow Finding 3 along the
8 lines of our discussion?
9 MS. FROST: I think so based on
10 what Colonel Ham just told us about the larger
11 discussion.
12 CHAIR JONES: Right. Larger
13 picture. Okay.
14 Now, if we go to Finding 4, we
15 have the statement that "commanders are
16 ultimately accountable for their unit's
17 performance and climate, but unit climate
18 assessments must consider the effectiveness of
19 all leaders in the organization, including all
20 subordinate personnel exercising leadership or
21 supervisory authority." And I don't think
22 there is any disagreement with that.

1 The next finding says, "Most
2 issues and concerns expressed by victims are
3 with lower level leaders, not senior
4 commanders or convening authorities" --
5 MS. FROST: This is Joye. Same
6 concerns as before.
7 CHAIR JONES: Yes.
8 MS. FROST: If we're basing this
9 on anecdotal reports by some victims, I have
10 great concerns. If this is -- and I apologize
11 because I have not read Section 7. If this is
12 in fact based on survey results or something
13 systematic, that's different. But if we
14 cannot say that systematically we know that
15 victims' concerns are primarily with lower-
16 level leaders, it just -- it just concerns me,
17 because the reports that make it to the media
18 are not about lower-level leaders. And it
19 makes us sound tone deaf, I'm afraid, if we
20 put it written like this.
21 CHAIR JONES: Right. I mean, I
22 think "most" is a big problem, and we can --

1 we should --
2 LTCOL GREEN: Can I suggest --
3 CHAIR JONES: Yes, go ahead, Kyle.
4 LTCOL GREEN: This is Kyle.
5 Professor Corn provided some good alternate
6 language that I think really gets at the heart
7 of this issue. I mean, because -- and I don't
8 think it would be unreasonable to -- I think
9 most of the concerns have focused on
10 subordinate, and they do tend to focus on
11 improper response by lower-level leaders and
12 then discussions. I mean, that was a point
13 that the Subcommittee heard many times.
14 But I think the point of that is
15 really his second paragraph, to make sure that
16 the analysis and the -- and that focuses as
17 well on lower-level leaders and not just
18 commanders.
19 CHAIR JONES: Yes. And the second
20 part talks about how low-level leaders will
21 have the most contact with sexual assault
22 victims.

1 MS. FROST: But are we basing --
2 REP. HOLTZMAN: May I --
3 MS. FROST: -- this comment --
4 CHAIR JONES: Yes, Liz, what's
5 your question?
6 REP. HOLTZMAN: I must be dealing
7 with a different document. I have a document
8 that I'm working off, which is draft 2 April
9 '14. Is that not the correct draft?
10 CHAIR JONES: Yes. Same document.
11 That's what I'm looking at.
12 REP. HOLTZMAN: Okay. And the
13 finding -- all right. So you're on Finding
14 Number 5.
15 CHAIR JONES: Right.
16 REP. HOLTZMAN: "Most issues and
17 concerns..." Okay. Well, I just wanted to
18 say that I share Joye's concern. I mean, I do
19 -- I mean, unless you are willing to say it
20 more explicitly that many of the concerns
21 heard by the Subcommittee, if you want to put
22 it that way, were with the lower-level

1 leaders, and there has been no systematic
2 analysis of victims to determine where their
3 exact source of dissatisfaction is. I'm not
4 saying you should put that in, but that would
5 be more accurate, I think, than what we have
6 here, because this kind of --
7 CHAIR JONES: Yes. No, I strongly
8 agree with that.
9 MS. FROST: I think maybe part of
10 the point of the finding -- correct me if I'm
11 wrong, Kyle -- is to get to the point that
12 saying we need to remove convening authority
13 from -- general court-martial convening
14 authority isn't really getting necessarily to
15 the root of the issue that the victims have,
16 because they complain about a variety of
17 things -- you know, peer reprisal, NCO
18 reprisal, lower-level reprisal. And we didn't
19 hear evidence that a general court-martial
20 convening authority was the problem.
21 REP. HOLTZMAN: Yes. I think if
22 we -- we really need to flesh that one out,

1 because I'm afraid it will be misread as
2 they're dismissing victims' concerns with
3 senior commanders. I mean, I don't disagree
4 with it, but unless there has been a
5 scientific survey of sexual assault victims in
6 the military that -- I just -- based on the
7 selective nature of victims that appeared, I
8 just think we have to be, again, much more
9 nuanced with this, but -- and still make our
10 point.
11 COL HAM: Ma'am, it's Colonel Ham.
12 Does everybody agree with -- it sounds like
13 some people might not have the version that
14 has Professor Corn's suggested comments, but
15 his comment, again, is as regards command
16 climate surveys, that because low-level
17 leaders will inevitably have the most contact
18 with sexual assault victims in their units,
19 unit climate assessments and response measures
20 must be sufficiently comprehensive to include
21 leaders and supervisors at all levels. Do
22 people agree or disagree with that point?

1 Focus on what the command climate assessment
2 should assess.
3 CHAIR JONES: I agree with that.
4 MS. FROST: I agree with that,
5 but, again, I get really uncomfortable with
6 some of the vague terminology. What does a
7 "lower-level leader" mean?
8 LTCOL GREEN: I think those who
9 are not convening authorities.
10 MS. FROST: Well, then I'm not
11 sure that I really agree with that, because
12 sitting there listening to victims, there were
13 a lot of complaints about commanders not
14 supporting them or not doing the right thing,
15 even though it may have been NCOs.
16 And I don't -- you know, unless
17 you can point us to some systematic assessment
18 of what victims have or have not said, I just
19 get real uncomfortable when we start putting
20 words in what victims think based on the few
21 victims that have appeared before the
22 Subcommittee and the larger Panel.

1 Again, I don't disagree. I just
2 think we need to -- we just need to be careful
3 with that.
4 CHAIR JONES: I hadn't even
5 focused on it, but lower-level leaders, I
6 think we do need to make that more detailed.
7 MG ALTENBURG: A suggested
8 starting point would be to say below the O-5
9 level of leaders. That would be the battalion
10 commander, the squadron commander, and most of
11 the Services. And it seems that almost all of
12 the evidence, if not all of the evidence,
13 involved criticism of people at the E-5, E-6,
14 E-7, E-8, O-3, O-4 level, all below the
15 battalion or squadron level. It was where
16 their next level and even two or three levels
17 above them leaders were, is my recollection.
18 CHAIR JONES: Well, maybe we could
19 say --
20 MG ALTENBURG: I would just say --
21 the other thing I was going to say is that the
22 O-5 level is the first level of convening

1 authority. That's the summary court-martial
2 convening authority level of responsibility.
3 Everybody below that level is not any kind of
4 a convening authority, let alone someone who
5 could send them to even a lower-level trial.
6 But they are leaders, and they are people that
7 are responsible, quite frankly, for a lot of
8 the problem that we have. But that's where
9 the leaders are that are affecting the victims
10 the most.
11 LTCOL GREEN: And, sir, specific
12 to the climate survey requirements among the
13 Services, those begin at the company commander
14 level. There are requirements that company
15 commanders do climate assessments, climate
16 surveys, and so I think the point of this
17 question is even -- is exactly what you said,
18 is to delve even below the junior-level
19 commanders down into the non-commissioned
20 officer leadership and the subordinate
21 officers within the organization.
22 MS. FROST: This is Joye. I still

1 think whenever we lump all victims together
2 and we say "Victim concerns tend to focus on
3 perceived response to sexual assault reporting
4 by lower-level leaders," we have now made a
5 huge conclusion about victims in general in
6 the military. And I am still uncomfortable
7 with that.
8 I think we need some -- to say,
9 "Some victim concerns are many victims'
10 concerns," so that we don't give the
11 perception that we are saying this is what all
12 victims are focused on. And, again, because
13 this is so discordant with what we're getting
14 in the media.
15 MG ALTENBURG: Well, first of all,
16 we can use some nuanced language so that it's
17 not exclusively lower-level. And, secondly,
18 does anyone recall any victim saying anything
19 about somebody at the O-5 level or above?
20 Because I don't.
21 REP. HOLTZMAN: This is Liz
22 Holtzman. I mean, I don't know, but it

1 doesn't matter, I think, whether we heard --
2 after all, how many witnesses -- how many
3 victims did we hear? 15? 10? 20? I mean,
4 out of thousands. So I don't know that that
5 is representative, and I would be -- I share
6 Joye's concern about suggesting on the basis
7 of what we heard what most victims feel. I
8 think that that's, you know, opening us up to
9 criticism. It is -- you know, it's an
10 extrapolation without it being based on
11 evidence. We can talk about what we heard;
12 that is certainly true. But I don't know that
13 we can then go from there to saying that this
14 is in fact -- you know, that we have
15 identified the --
16 MS. FROST: That it reflects the
17 experience of all victims in the military,
18 because I don't think that it -- that it does.
19 And so I'm just saying, I think it's --
20 CHAIR JONES: The finding in 5 is
21 way too sweeping. It should obviously be
22 something which is true, and basically say,

1 "Look, we have also heard from many" -- I
2 think may work -- "victims." And I don't know
3 how exactly to talk about lower-level leader,
4 but then it -- we can say, "Because these
5 leaders will have the most contact, it is
6 important to, you know, make sure that they
7 are surveyed in these climate surveys."
8 I like what, you know, Geoff is
9 saying in the second part of his comment, but
10 I completely agree we can't say, you know,
11 "Most issues and concerns from victims are
12 with lower-level leaders." So I think we need
13 to rewrite that.
14 And I -- you know, I think you are
15 all right, but we -- no one said, "Yes, the
16 convening authority, you know, harmed me or
17 wasn't attentive to me." But there has to --
18 I don't think that's really the point of what
19 we're trying to say in this section. Or, if
20 it is, we have to -- we have to try to say it
21 differently if we can.
22 I mean, most people, I think there

1 was testimony, don't even know who or what a
2 convening authority is. But that's not -- I
3 don't see that as a finding that we would --
4 or a point that we need to press right here.
5 MS. FROST: I just think it -- I
6 think it's really important that we remember
7 that the media has a tendency to cut
8 statements out of reports like this and out of
9 --
10 CHAIR JONES: Yes.
11 MS. FROST: So we have to look at
12 everything and be aware that, you know, as
13 written, they would say, "Ah, they're
14 whitewashing the role." You know, they're
15 saying senior commanders are not part of the
16 problem; they are blaming it on lower-level
17 leaders.
18 CHAIR JONES: Right. So when we
19 get to 6, it says, "Commanders at all levels
20 must be attuned to the critical role played by
21 NCOs and subordinate leaders and supervisors;
22 must set expectations, establish appropriate

1 organizational climate, and ensure unit
2 leaders are appropriately trained to
3 effectively perform their roles in sexual
4 assault prevention and response."
5 And I guess in the text we have a
6 sufficient description of who non-commissioned
7 officers are, and people will know, having
8 read the text, what we mean by "subordinate
9 leaders and supervisors." I guess that's a
10 bit of a question. I haven't reread this
11 recently.
12 Kyle?
13 LTCOL GREEN: Judge Jones, I think
14 NCOs obviously -- and we have defined that,
15 but I think we are talking just about
16 subordinate leaders and supervisors within the
17 organization. So --
18 CHAIR JONES: Meaning what? The
19 entire Service?
20 LTCOL GREEN: No, ma'am. Within
21 -- so a commander's organization.
22 CHAIR JONES: The unit, the

company?

LTCOL GREEN: Yes. Whatever the organization is.

COL HAM: So if it's the company, he should be concerned, or she, with all his or her subordinate leaders. If it's the battalion, he or she should be concerned with all of his subordinate leaders, which would include the company, and so on, up the line.

CHAIR JONES: I see. So commanders at all levels, meaning battalion, company, what have you. Is that it?

COL HAM: Yes, ma'am.

CHAIR JONES: Okay. Finding 7, unless there is any more commentary on 6. "The dramatic increase in large volume of surveys last year creates risk of survey fatigue. Personnel who are tasked repeatedly to complete surveys for their immediate unit and its parent commands may become less inclined to participate or provide thoughtful input." And I think that's -- we've heard plenty of

1 evidence about that.
2 And that's the last finding there.
3 Before we go to the recommendations, any
4 further comment?
5 COL HAM: I've deleted two
6 surveys.
7 CHAIR JONES: Okay.
8 COL HAM: This is Colonel Ham.
9 CHAIR JONES: You've what? You've
10 completed two?
11 COL HAM: I deleted. I deleted
12 two surveys this week.
13 CHAIR JONES: Oh, deleted.
14 COL HAM: I deleted them. We get
15 surveyed every time we have --
16 CHAIR JONES: Well, then, you're
17 -- that's further evidence for Finding Number
18 7.
19 All right. Recommendation 1, "DoD
20 and the Services must identify and utilize
21 additional means to assess and measure
22 organizational culture and culture change for

1 sexual assault prevention and response."
2 REP. HOLTZMAN: This is Liz
3 Holtzman. Do we want to say "organizational
4 culture" or "organizational climate"? I mean,
5 should we be using the same terms?
6 CHAIR JONES: I think "climate"
7 makes more sense there.
8 REP. HOLTZMAN: I don't care what
9 you use, but whatever we -- whatever we're
10 saying in the findings, we should repeat in
11 the recommendation and in the text, so --
12 CHAIR JONES: Right.
13 REP. HOLTZMAN: And the other
14 point I want to make -- and this is a larger
15 point -- but do we know that there are other
16 effective measures aside from surveys to test
17 climate? I mean, are we talking about focus
18 groups? Are we talking about interviews?
19 Joye, you're an expert on that. So there are
20 alternatives to this -- the surveys? I just
21 want to make sure.
22 MS. FROST: Yes. Sure. And there

1 could be other kinds of indicators. And I am
2 no expert, believe me. I love my friends in
3 BJS and NIJ. But, yes, there could be
4 in-person interviews. There could be all
5 kinds of things that you might do.
6 CHAIR JONES: Yes. I mean, we
7 heard evidence about alternatives to surveys,
8 or at least enhancements, some complementary
9 things to do. But we ought to talk about --
10 put that in there.
11 REP. HOLTZMAN: Is somebody going
12 to criticize that? Because do we know whether
13 the surveys are inadequate? I mean, does this
14 reflect our feeling that the surveys are
15 inadequate, or do they just reflect a feeling
16 that we need to know more, even if the surveys
17 tell us -- I mean, why are we saying this?
18 LTCOL GREEN: Because, Ms.
19 Holtzman, I think if you look at Finding 1:
20 "Although surveys may provide helpful insight
21 into positive and negative factors, surveys do
22 not provide a comprehensive assessment." So

1 this is tied to Recommendation 1.
2 REP. HOLTZMAN: Oh, okay. All
3 right.
4 LTCOL GREEN: And we can -- in the
5 final report, we can group these. I mean, I
6 think you bring up a point just in terms of
7 findings and recommendations that build on
8 each other. So we'll look at that and try and
9 group them.
10 CHAIR JONES: Okay. Two. "In
11 addition to personnel surveys, DoD, the
12 Services, and commanders should identify other
13 resources for feedback on SAPRO programs and
14 local command climate." I guess that's -- I'm
15 trying to figure out what 1 and 2 -- what the
16 relationship is here between 1 and 2.
17 LTCOL GREEN: Well, Judge Jones, 1
18 is really targeted more at the institutional
19 level, and 2 is more targeted at the local
20 unit level.
21 CHAIR JONES: Oh, okay. Feedback
22 on the SAPRO programs from the local unit

level? I see. All right.

Three. "Action plans developed by commanders following a climate survey should outline what steps the command will take," et cetera, "and commanders should be accountable for developing a plan for monitoring the organization's SAPRO climate outside of periodic surveys."

And then we have Professor Corn. Well, we could -- he suggests that that -- "The commanders should be accountable for developing a plan for monitoring the organization's SAPRO climate outside of periodic surveys" should be a standalone recommendation. We can take that into consideration.

REP. HOLTZMAN: This is Liz Holtzman. I have a question about this, because this refers to text, page 5, and it suggests to me that these action plans have already been undertaken or these plans have been done in the various Services. Am I

right? And so what do we know about them? Do we know anything? Do they do what they are supposed to do? Am I wrong that these plans --

CHAIR JONES: I think we've heard that they --

LTCOL GREEN: The different Services have different responsibilities. All of the Services require the command climate surveys to be forwarded to the superior commander for review. The Army requires that to be briefed to the higher commander, along with an action plan, and those -- what exactly that constitutes in terms of the action plan is not, at least by Service-level guidance, well established.

So, and it is not universal. Each of the Services has different expectations for the climate survey and what will accompany that.

CHAIR JONES: So the action plan -- so it sounds like the Army does require

1 action plans. The other Services may not. Is
2 that what you're saying? Or do not? But they
3 exist in the Army. Right, Kyle?
4 LTCOL GREEN: Yes, that's right,
5 ma'am.
6 CHAIR JONES: So, but we're not
7 recommending that we -- are we recommending
8 that they think about doing it Service -- I
9 mean, in all the Services, for instance? What
10 we are doing is saying what we think an action
11 plan should have in it I guess. It should
12 outline what steps the command will take to
13 validate or expand upon survey information.
14 I don't -- I honestly don't know
15 what the Army's action plans look like now.
16 And if we have seen them, I -- you know, I'm
17 sorry, I don't recall.
18 REP. HOLTZMAN: This is Liz
19 Holtzman. I'm just quoting on page 4. It
20 says, "In September 2013, the Marine Corps
21 implemented a policy requiring commanders to
22 develop an action plan that addresses concerns

1 identified in the DEOCS report." So that is
2 different from an action plan dealing with the
3 SAPRO survey.
4 MS. FROST: But I thought this was
5 a survey. They're talking about climate
6 survey here in this recommendation.
7 REP. HOLTZMAN: Well, I'm trying
8 to understand what kind of action plans exist
9 out there and whether -- and what we know
10 about them and whether we should be -- you
11 know, if we know anything about them, should
12 we be saying more than that, that they should
13 be developed? That's all. It seems to me, in
14 some cases they may already be -- they may
15 already have been developed. That's all.
16 Maybe it's out of my ignorance about this, but
17 --
18 LTCOL GREEN: They don't have a
19 lot of details.
20 CHAIR JONES: So with the -- maybe
21 General Ham and General Altenburg and Colonel
22 Turner could assist here. Is the correct --

a more specific recommendation that the Secretaries of the Military Departments direct action plans, since apparently the Army is the only one -- I'm sorry.

LTCOL GREEN: Each of the Services has a plan, just not necessarily an action plan.

CHAIR JONES: Okay.

LTCOL GREEN: By that wording. And I don't even know -- that wording is used in some of the specific Service requirements, but it's not further defined.

CHAIR JONES: But do they exist? Everybody is required -- I think we need to go back and just see what we know about action plans, and then we'll have a better idea what, if anything, we want to say here.

That will be easy to check through, and then we can have a better discussion of it.

Recommendation 4. "Secretary of Defense should direct periodic and regular

1 evaluations of DoD SAPRO programs and
2 performance, to be conducted by independent
3 organizations which would serve to validate or
4 disprove DoD's own internal assessments and
5 would provide useful feedback to the
6 Department and enhance public confidence in
7 SAPRO programs and initiatives."
8 All right. Well, those are
9 recommendation -- that's far broader than 3,
10 or maybe that's meant to be a reaction to --
11 or the result of our Finding 3.
12 LTCOL GREEN: Yes, Judge Jones.
13 That was our thought.
14 MS. FROST: Okay. But I thought
15 with -- I am either very confused -- the
16 findings --
17 CHAIR JONES: No, I'm with you.
18 MS. FROST: But Finding 3 was
19 going to -- we were going to keep that narrow,
20 and that is -- that is assessing installation.
21 Well, yes, that's at the installation level.
22 So --

1 LTCOL GREEN: Actually, Ms. Frost,
2 it's both. Finding 3 reflects both
3 institutional and installation level. So
4 MS. FROST: Okay. I thought we
5 had -- okay.
6 LTCOL GREEN: Well, as it reads
7 now, ma'am. I'm not -- I --
8 MS. FROST: I thought we had
9 talked about -- okay. I'm sorry. I think I
10 am confused. I need to go back and read that
11 again.
12 CHAIR JONES: Well, I mean, 3 --
13 we just have to decide if we're talking about
14 something as broad as the recommendation in 4.
15 I just got confused because I wasn't sure
16 whether we were simply evaluating how survey
17 -- command climate surveys may have been done,
18 or whether they have been, you know, reliable
19 and good tools.
20 And then, all of a sudden we're
21 talking about something far broader, unbiased
22 measurements or SAPRO initiatives, programs

1 and effectiveness. Maybe we just need to
2 decide, do we want -- and I think General
3 Altenburg said it -- an audit of SAPRO. Are
4 we talking about focusing on something as
5 broad as in Recommendation 4? Or did we have
6 a more modest goal in mind?
7 MS. FROST: Well, I think auditing
8 SAPRO is a different issue than having an
9 assessment of programs, practices, and so
10 forth, at the installation level. I mean,
11 essentially, if you're putting all your eggs
12 in one basket and saying that the command
13 climate is going to tell you where -- that all
14 of these programs and all of these new reforms
15 and all of these practices that local
16 commanders do that are innovative that nobody
17 has assessed before, the Command Climate
18 Survey is the be all/end all. And that is
19 just not -- that's not possible.
20 So I do think that there should be
21 some kind of way to -- I mean, even when
22 you're doing command climate surveys is --

1 obviously, you're not going to be able to
2 formally evaluate most installations. But you
3 could certainly do a few of them and say, "As
4 the command climate positive results are going
5 up, you can actually tie it to these
6 particular programs and initiatives." And are
7 you seeing similar results across Services?
8 I just think there is such an
9 opportunity here, and I'm afraid at the end of
10 three years or so the military could be in a
11 situation where, yes, we're having more
12 reports of sexual assault, and we're having
13 more convictions, but we really don't know
14 why.
15 CHAIR JONES: Well, I mean, I like
16 Recommendation 4 as it reads. Are we all --
17 is that essentially what you're talking about,
18 Joye?
19 MS. FROST: Yes. I --
20 CHAIR JONES: Periodic -- yes. I
21 mean, it sounds -- I like 4, Recommendation 4.
22 I'm just -- and maybe I'm just confusing

1 things by wandering back to the third finding.
2 We don't have to deal with that right now.
3 Does anyone disagree with
4 Recommendation 4?
5 (No response.)
6 Okay. Five says, "Assessment of
7 command climate must accurately assess and
8 evaluate effectiveness of subordinate
9 organizational leaders and supervisors, in
10 addition to commanders." I don't know.
11 Haven't we said that? Or maybe we haven't.
12 But I thought we were talking about --
13 LTCOL GREEN: Ma'am, this is
14 another one where the finding up above says
15 it, but this is the actual recommendation.
16 And what we -- what the staff needs to do on
17 all of these recommendations is actually put
18 in who is responsible for the recommendation
19 and who does the Subcommittee believe should
20 be directed to implement that recommendation.
21 CHAIR JONES: I see. Okay.
22 LTCOL GREEN: So, I mean,

1 essentially, I think most of these will line
2 up fairly intuitively. But if the
3 Subcommittee members believe that that
4 ultimately should be something that happens,
5 that's what we really need to assess in terms
6 of this.
7 CHAIR JONES: Okay. Six reads,
8 "DoD and the services must be alert to the
9 risk of survey fatigue and should monitor and
10 assess what impact increased survey
11 requirements have on survey response and
12 survey results."
13 Okay. And last, Recommendation 7,
14 we basically recommend that Congress not adopt
15 Section 3(d) of the Victims Protection Act of
16 2014. That requires climate assessments for
17 the commands of the accused and the victim
18 following an incident involving a covered
19 sexual offense.
20 And we go on to say,
21 "Organizational climate may not be a
22 contributing factor in every alleged crime of

1 sexual assault, and climate survey results may
2 be biased immediately following a sexual
3 assault allegation, which may create confusing
4 or misleading information that does not
5 reflect long-term perspectives or climate."
6 Is that --
7 MS. FROST: Also, this may -- I'm
8 sorry. Go ahead.
9 CHAIR JONES: Go ahead, Joye. No,
10 no, go ahead.
11 MS. FROST: It could possibly be
12 irrelevant, but I'm -- if the staff could
13 answer this question, it says, "What
14 specifically does the legislation say when
15 they say 'a covered sexual offense'"?
16 So, for example, if someone is off
17 the military installation and they are
18 sexually assaulted by a civilian, but they
19 report the sexual assault through the military
20 chain of command, would that -- under the
21 pending legislation, would that invoke the
22 Command Climate Survey?

1 LTCOL GREEN: I don't have my
2 Section 5 in front of me, and I don't have a
3 copy of the Act. I can't recall the specific
4 trigger, but it's broad.
5 MS. FROST: Well, yes, that would
6 be my concern. So you could have -- it would
7 be helpful maybe to know that, if you all
8 could go back and --
9 LTCOL GREEN: This was all
10 discussed in Section 5 of your report. Again,
11 this is a repeat finding. Obviously, it's got
12 specific implications for the climate survey.
13 This is the first draft of this that we did.
14 My personal thought is that it's covered in
15 the legislation and we rework the language
16 specific to this based on discussions last
17 week.
18 COL TURNER: This is Colonel
19 Turner. Covered offenses under that act
20 include rape and sexual assault under Article
21 120, forcible sodomy under 125, or an attempt
22 to commit any of the above offenses.

1 MS. FROST: So it's very broad.
2 Okay.
3 REP. HOLTZMAN: This is Liz
4 Holtzman. I have a different reaction to
5 this. I mean, I agree that a climate survey
6 isn't appropriate, but it may be appropriate
7 to have some other kind of inquiry into after
8 the sexual assault takes place. For example,
9 let's assume it takes place on the base. Was
10 there sufficient lighting in the area? Was
11 there some other problem that needs to be
12 addressed? Was there something else that went
13 wrong that could have been addressed?
14 I think just to let, I mean, I
15 think the impulse behind this is probably --
16 and it may not be a bad idea. I'm not sure I
17 agree -- I don't agree with requiring a
18 survey. But I don't know how else to phrase
19 it, but I'm not sure I would disagree with
20 having some response to a sexual assault by
21 the commander in the sense of review,
22 analysis, or something. But I defer to the

1 people who have been commanders and who know
2 about that and what your reaction is. But
3 just to sort of say, no, we're not going to do
4 anything if there's an incident, I think we
5 can learn from some of these incidents and
6 possibly improve response to the problem.
7 MS. FROST: Well, we talked about
8 this last week, and we talked about doing
9 something to send information and did not do
10 so, so if people are interested. But this
11 whole idea of sentinel events, you know, we've
12 done it with child fatality reviews. We're
13 now beginning to do it with elder abuse,
14 fatality reviews. Obviously, these are not
15 necessarily fatalities, but you go back and
16 look at what, you know, you gather the various
17 practitioners to assess what may have
18 contributed or what wasn't there that might
19 have prevented a key event, a sentinel event,
20 like a sexual assault.
21 CHAIR JONES: Well, maybe we ought
22 to take a look at that.

1 COL HAM: Is General Ham still on
2 the line?
3 GEN HAM: I am, Patty.
4 COL HAM: Sir, is there anything
5 you can say about the normal -- I don't know
6 what you'd call it -- hot-wash-after-action
7 review or formal administrative investigation
8 that would occur after events? I'm not --
9 GEN HAM: Yes, I was thinking
10 about that. But I think it's so localized
11 that it's very difficult to make a broad
12 generalization about what happens. You know,
13 I know some local commanders within Justice
14 have said, as most have suggested, in that
15 very thorough kind of after-action review, if
16 you will, they look at not just the criminal
17 aspects of an allegation but the broader
18 aspects: you know, the lighting, the fencing,
19 the security, the locks on all the doors, and
20 all those kinds of things. But I don't think
21 that's universal.
22 The closest I can come to, Patty,

1 and I don't think we heard any testimony with
2 regard to this, is something akin to what at
3 least the Army was doing for a number of years
4 in the follow-up to a suicide, which was a
5 very specific and regulated reporting process.
6 But I don't think that there's any such
7 standardization for allegations of sexual
8 assault.
9 REP. HOLTZMAN: Thank you,
10 General. This is Liz Holtzman again. Maybe
11 one of the things we should be thinking about
12 is whether, as part of a recommendation, we
13 could suggest that there be, I don't know
14 whether you want to call it standardized but
15 some sort of -- let the military come up
16 itself with some either protocols or
17 recommendations for review after there's been
18 one of these incidents because maybe there is,
19 you know, whether it's the locks on the door
20 or the lighting or whether it's more
21 information or confusion or something else
22 that should be given out, I mean, that wasn't

1 done. Maybe there's some way that the
2 military could be looking at this.
3 It reminds me, and I mentioned
4 this to Colonel Turner a while ago and the
5 Chair and I have discussed this in the past,
6 but the idea in New York City of CompStat
7 where commanders, police precinct captains,
8 you know, when there's an increase in crime,
9 they have to begin to account for it because
10 they're held responsible for it. So they take
11 a kind of closer look and they figure out new
12 strategies.
13 I guess what I'm trying to achieve
14 is something that doesn't just say, okay,
15 we're not going to take a survey, forget about
16 it, but something that would be proactive. In
17 the future, you want to learn from what's
18 happened if you can. I don't know exactly
19 why. I certainly would not prescribe what
20 should be done, but some people who are
21 smarter or more knowledgeable than I could do
22 that.

1 COL TURNER: Colonel Turner.
2 GEN HAM: Yes, this is General
3 Ham. I agree with what Liz is saying. I'm
4 not sure it fits in this section with regard
5 to survey. It may be more appropriate in the
6 section that deals with the role, the
7 commander's actions. But I'd be supportive of
8 a recommendation that recommended that the
9 Secretary or the Service Secretaries establish
10 some kind of more comprehensive after-action
11 review or investigation upon allegation of a
12 sexual assault.
13 CHAIR JONES: Yes, I agree because
14 I think what we're really missing here is a
15 sort of a more tailored tool. We just heard
16 about how surveys, everybody is tired of
17 taking them, and we're not sure what value it
18 would have in this circumstance. So I think
19 we can roll along with this.
20 And, again, I'm not sure where it
21 belongs. Maybe it does belong in the
22 legislation.

1 And, actually, just as an aside,
2 in this recommendation, I think the last
3 sentence is actually more of a finding than a
4 recommendation. But that's minor.
5 Is everybody content then with
6 those, with our discussions with respect to
7 these recommendations? Can we go on to
8 Section 8?
9 All right. Hearing no objection,
10 Section 8--
11 REP. HOLTZMAN: Is Kyle going to
12 draft something in connection with --
13 CHAIR JONES: Yes.
14 REP. HOLTZMAN: Okay, great.
15 Thanks.
16 CHAIR JONES: I think so.
17 Speaking for you, Kyle.
18 LTCOL GREEN: I'm taking notes
19 furiously, ma'am. We'll get it done.
20 CHAIR JONES: I know. I know you
21 will.
22 MS. FROST: I sent you a link on

1 the NIJ sentinel event initiative, which is
2 exactly what people were talking about. It's
3 an after-action review when something bad
4 happens in the system. That might be helpful.
5 BG(SELECT) COL TURNER: Just for
6 the record, Colonel Turner here. We do have
7 something similar, although there's some legal
8 issues associated with it, for site safety
9 investigations associated with fatalities in
10 particular or Class A mishaps. And as General
11 Ham said, the Air Force also does the suicide
12 review. They also have command-based reviews
13 for other fatalities.
14 REP. HOLTZMAN: This wouldn't be
15 something brand new in the military. It would
16 be just in a different context.
17 COL HAM: We have to do a tailored
18 recommendation because the commander would
19 have to stay in the non-criminal investigative
20 lane, which I'm sure, you know, Kyle will be
21 able to draft that. They're not permitted to
22 investigate the criminal part of it anymore,

1 so we'll draft it so it's clear. When I say
2 "we," I mean Kyle.
3 LTCOL GREEN: Or Doug.
4 CHAIR JONES: Okay. All right.
5 We have 16 minutes. Section 8. And this
6 relates to commander accountability. There
7 were several suggestions as to text by Colonel
8 Turner. As we did before, let's turn to the
9 findings first.
10 The first finding. "Although
11 statutory provisions require assessment of a
12 commander's success or failure in responding
13 to incidents of sexual assault, there are no
14 provisions that mandate assessment or
15 evaluation of a commander's success or failure
16 in sexual assault prevention." Any problems
17 with that? Okay.
18 Finding 2, "All Services have
19 policies and methods for evaluating commanders
20 on their ability to foster a positive command
21 climate, but definitions of evaluations
22 mechanisms vary across the Services." I think

1 we know that to be true.
2 Finding 3, "Mandated reporting of
3 command climate surveys to the next higher
4 level of command has the potential to improve
5 command visibility of climate issues of
6 subordinate commanders. Meaningful review by
7 senior commanders increases opportunities for
8 early intervention and can improve command
9 response to survey feedback. However,
10 commanders and leaders must recognize that
11 surveys may or may not reflect long-term
12 trends and they provide only one measure of a
13 unit's actual command climate and the
14 commander's contribution to that climate."
15 All right. Recommendation number
16 1, "DoD and the Services should consider
17 opportunities and methods for effectively
18 factoring accountability metrics into a
19 commander's performance assessment, including
20 climate survey results in discipline trends,
21 sexual assault statistics, and equal
22 opportunity data. Results-based assessment

1 provides both positive and negative
2 reinforcement and highlights the importance of
3 a healthy command climate." I honestly do not
4 recall -- well, is there any disagreement with
5 respect to that? I'm going to have to go back
6 and just look at the basic, the text on this,
7 our testimony, or the evidence. It seems like
8 a fine recommendation.
9 Now, do we have more findings?
10 Oh, I see. Recommendation 1 is in the middle
11 between finding 3 and finding 4.
12 All right. Finding 4,
13 "Subordinate leaders in a unit play a
14 significant role in the success or failure of
15 SAPRO efforts and accountability should extend
16 beyond commanders to junior officers, NCOs,
17 and civilian supervisors. SAPRO program
18 effectiveness will be limited without the full
19 investment of subordinate leaders. Service
20 policies on expectations for subordinate
21 accountability vary."
22 We sort of discussed this before

1 and have seen it in line with what we're
2 talking about in terms of lower-level
3 commanders, leaders. Any objections to
4 finding 4?
5 All right. Finding 5, "If
6 performance evaluation assessment increases
7 attention to and support of SAPRO programs,
8 differences in assessment requirements may
9 result in uneven support and attention among
10 subordinate leaders and personnel. Section 3
11 of the Victims Protection Act of 2014 would
12 extend evaluation requirements to all service
13 members." All right.
14 MS. FROST: This is Joye. I have
15 a question. It says, "Differences in
16 assessment requirements." Do we mean
17 differences in assessment requirements among
18 the Services? Because I seem to remember we
19 had one Subcommittee hearing and, if I
20 remember correctly, the Army has a rather
21 detailed OER, whereas the Air Force has
22 something that's like two pages and that's it,

1 or am I --

2 LTCOL GREEN: That's correct. And

3 the Navy's requirement is that all Service

4 personnel will be assessed based on their

5 contribution to command climate, whereas the

6 other Services have implemented requirements

7 only for commanders or leaders. It does vary

8 across the Services. That's what we're trying

9 to reflect here.

10 MS. FROST: Okay. You might put

11 in "among the Services."

12 CHAIR JONES: Okay. Finding 6,

13 "Regional training provided to senior

14 commanders through resident and on-site

15 courses vary significantly among the Services.

16 For example, the Army and Navy provide

17 mandatory resident courses on legal issues and

18 training to senior commanders, while the Air

19 Force has no equivalent training requirements

20 or course and provides only limited legal

21 training as part of its command training and

22 orientation."

1 Any objections on that? All
2 right.
3 COL TURNER: This is Colonel
4 Turner. That might be a little bit strongly
5 worded for the Air Force. They actually send
6 a group of wing commanders down to a
7 university and resident courses and then
8 there's, say, a two-hour block on legal
9 issues. So there is, depending on how you
10 define mandatory residence training, there is
11 some of that, so maybe we can just wordsmith
12 this a little bit.
13 CHAIR JONES: Maybe you would send
14 us some suggested language? We are pretty
15 stark about the Air Force there. All right.
16 Recommendation 2, "The Secretaries of the
17 Military Departments should ensure that
18 assessment of commander performance in sexual
19 assault prevention and response incorporates
20 more than results from command climate
21 surveys. Commanders should be measured
22 according to clearly assigned and established

1 standards for SAPRO leadership and
2 performance." Okay.
3 And then Recommendation 3 is, "To
4 hold commanders accountable, DoD, SAPRO, and
5 Secretaries of the Military Departments must
6 ensure that SAPRO programs and initiatives are
7 clearly defined and established objective
8 standards, when possible. The Navy's
9 accountability effort, which provides specific
10 direction and command-tailored direction on
11 SAPRO and other command climate initiatives,
12 offers an encouraging model for ensuring
13 compliance and fostering program success.
14 Detailed standards and expectations provide
15 commanders clear guidance on supporting SAPRO
16 programs."
17 All right. Well, Colonel, you
18 have a recommendation here. "We should
19 consider recommending a DoD review of policies
20 associated with the Privacy Act and SA matters
21 to include releasing information on commanders
22 who fail in this area. Independent and DoD

1 studies have concluded that commanders need to
2 be more actively and deliberately transparent
3 about military justice cases in order to deter
4 service members from crime." Okay. And you
5 volunteered to hunt those down.
6 Maybe before we go to that
7 recommendation, any problems with the previous
8 ones that were in the text already,
9 recommendations 2 and 3? All right.
10 Colonel Turner, do you want to
11 speak to your recommendation?
12 COL TURNER: Sure, ma'am. SA
13 stands for sexual assault matters in that
14 context. Sorry about the abbreviation there.
15 We talked about it briefly at one of the
16 meetings, I think, there in D.C. about
17 transparency and how the different Services
18 implement the Privacy Act considerations at
19 different levels, so we mostly want to ask DoD
20 to review that and perhaps consider
21 standardizing it more.
22 CHAIR JONES: Okay.

1 GEN HAM: This is Carter Ham.
2 Lisa, I'm sorry. Could you give an example?
3 COL TURNER: Yes, sir. So, for
4 example, there was a news article just this
5 morning on a Navy captain who was in charge of
6 the Blue Angels who was relieved of command.
7 So that's an O-6, and having been relieved of
8 command for a particular variety of issues.
9 The Air Force very, very rarely identifies,
10 certainly by name, an O-5 who's been relieved.
11 We will GOs. And so there's that gray area of
12 differences.
13 GEN HAM: Okay, thanks. Yes, that
14 helps a lot because I think the general
15 practice across DoD is that general and flag
16 officers kind of lose their right to privacy
17 if disciplinary matters are taken, but I see
18 the point with regard to below the flag rank.
19 CHAIR JONES: And I recall the
20 discussion that we had about this. I guess we
21 ought to -- I'm just not sure whether or not
22 it fits in with Methods for Ensuring Commander

1 Accountability. I don't disagree with the
2 sentiment, but maybe we should think about
3 that and consider whether we want to put that
4 in here. Any views on that?
5 COL TURNER: I totally understand
6 if this is not the appropriate place for that
7 so.
8 CHAIR JONES: It may be. I just
9 have to give it some thought. It certainly,
10 the notion that your behavior will become
11 public is not only transparency but it would
12 also have an impact, I guess, a deterrent
13 impact and it's a way to do accountability,
14 clearly.
15 MS FROST: I have a question. At
16 what point is this information being released?
17 BG(SELECT) TURNER: It depends on
18 the individual case and the Service. So, for
19 example, sometimes it is immediately upon
20 someone being relieved of command, even though
21 an investigation is still ongoing. Sometimes
22 it is at the point of charges. It's a case-

1 by-case analysis and weighing of the interests
2 involved in the Privacy Act.
3 MS. FROST: Okay. Thank you.
4 CHAIR JONES: Well, I'm just not
5 sure whether it belongs here. So having said
6 that, I guess we can take a closer look and
7 figure out if it fits in somewhere else. If
8 people think it does belong here, I'm happy to
9 hear that comment. I'm just not sure. Or if
10 everyone has had it after two hours, it's
11 3:57, we could also adjourn at this point.
12 Colonel Ham, were you about to say
13 something?
14 COL HAM: No, ma'am, I'm right
15 here. I was turning to Kyle to ask if he
16 wanted to put out what's next for the
17 Subcommittee.
18 LTCOL GREEN: Ms. Frost, did you
19 have something?
20 MS. FROST: Yes, I just wanted to
21 say isn't this something that maybe the
22 Comparative Systems could look at?

1 LTCOL GREEN: I don't think they
2 will because, I mean, anything -- once they
3 reach a commander-based issue, they'll tend to
4 defer to this Subcommittee.
5 MS. FROST: Oh, okay, okay.
6 LTCOL GREEN: I mean, in terms of
7 the --
8 MS. FROST: I'll be honest. I
9 don't think I understand enough about what's
10 happening. And, again, I come with a bias
11 from the civilian system where the name of the
12 victim is protected but not the offender or
13 the alleged offender necessarily.
14 CHAIR JONES: Okay. Kyle, do you
15 want to tell us the dates for our next get-
16 together?
17 LTCOL GREEN: Yes, ma'am. We will
18 feverishly put together the revisions based on
19 your comments and edits. We're going to try
20 to do that and do everything we can to have
21 you a revised version of the entire report by
22 tomorrow. We really would appreciate any

1 feedback --

2 CHAIR JONES: Tomorrow?

3 LTCOL GREEN: -- in advance.

4 That's right, ma'am. We've got -- Sections 1

5 through 5 are done, so we need to do 6, 7 and

6 8, and then we will get you the revisions of

7 these last three sections. We're pretty much

8 up to speed, so, as soon as we get that, we

9 will turn that to you and get it to you and

10 ask for any thoughts or comments that you

11 might have.

12 And then the next, our

13 deliberations session is on Friday. It's from

14 2:30 to 4:30. And the hope is that we can

15 wrap up and get as much of it done.

16 Obviously, this is your report, so we'll take

17 what time you need. But we're very cognizant

18 of trying to complete the report and get it to

19 the Panel members so that they have time to

20 digest it before the meetings on the 5th and

21 6th.

22 CHAIR JONES: All right. And we

1 have, you've already, I saw, assessed
2 everybody's availability for Friday.
3 LTCOL GREEN: Right. And I
4 understand it's not -- I think we may end up
5 with seven out of the nine members, ma'am.
6 And Admiral Houck may or may not, so we'll
7 see. And, Ms. Frost, I'm really sorry about
8 that. It's definitely a top priority this
9 week.
10 MS. FROST: Maybe I gave you the
11 wrong time because I can actually make it on
12 Friday.
13 LTCOL GREEN: Oh, good. Okay.
14 Well, good. We may be in better shape then.
15 MS. FROST: Yes, I can make it on
16 Friday.
17 BG (SELECT) Turner: I can't make it
18 because I've got a training.
19 LTCOL GREEN: Oh, that's right.
20 Yes, ma'am. Nancy told me about that. I'd
21 forgotten about that.
22 CHAIR JONES: Okay. So I guess

meeting then, we're done, and we'll be together again on Friday.

LTCOL GREEN: And if any of you had some ideas on some of the rewording on things that you can provide me, I'd much appreciate it and then just feedback on the drafts.

Candy, I guess it's yours then.

LTCOL HUNSTIGER: Sure, okay, great. Well, thanks for joining us today, and the Role of the Commander Subcommittee meeting is now closed.

(Whereupon, the foregoing matter was concluded at 4:02 p.m.)

A

abbreviation 98:14
ability 91:20
able 78:1 90:21
abuse 84:13
abysmal 13:10
Academy 48:20 49:20
accompany 71:19
account 87:9
accountability 46:19 91:6 92:18 93:15,21 97:9 100:1,13
accountable 38:21 51:16 70:5,11 97:4
accurate 55:5
accurately 79:7
accused 29:6 80:17
achieve 10:21 41:8 87:13
achieved 11:1
achieving 12:20 38:17
acknowledge 6:20 9:3
act 80:15 82:3,19 94:11 97:20 98:18 101:2
action 70:2,20 71:13,14,21 72:1 72:10,15,22 73:2 73:8 74:3,6,15
actions 88:7
actively 98:2
actual 79:15 92:13
add 11:5 37:15
added 19:14 35:17
addition 69:11 79:10
additional 38:11 66:21
address 24:6 30:17
addressed 21:15,15 30:22 31:4 35:8 83:12,13
addresses 31:1 72:22
addressing 23:3
adjourn 101:11
administered 43:20
administrative 85:7
Admiral 104:6
adopt 80:14
ADULT 1:3
advance 103:3
advantage 9:8
advise 45:11
advisory 45:8,10 45:18
advocacy 40:5
afraid 52:19 56:1 78:9
after-action 85:15 88:10 90:3
afternoon 2:9
agency 48:7
ago 87:4
agree 2:17 7:4,15 10:16 11:3 12:15 13:2 29:14 36:3,6 42:13 46:5,10 47:21 50:16 51:6 55:8 56:12,22 57:3,4,11 62:10 83:5,17,17 88:3 88:13
agreed 28:14
Ah 63:13
ahead 14:1,10 18:14 53:3 81:8,9 81:10
Air 90:11 94:21 95:18 96:5,15 99:9
akin 86:2
alert 5:14 80:8
all/end 77:18
allegation 81:3 85:17 88:11
allegations 86:7
alleged 80:22 102:13
Allied 31:21 33:20
Allies 8:21 18:6 33:20 34:1,8
Altenburg 1:17 13:18,18 33:16,17 36:2 42:12,12 44:12,12 45:17 46:9 58:7,20 60:15 73:21 77:3
Altenburg's 14:12
alternate 53:5
alternative 31:2 50:22 51:1
alternatives 67:20 68:7
amazing 16:16
analysis 53:16 55:2 83:22 101:1
anecdotal 19:14,17 52:9
Angels 99:6
answer 81:13
answered 35:22
anybody 13:11 23:11
anymore 90:22
Anytime 49:9
Anyway 48:14
apologize 52:10
apparently 74:3
appeared 56:7 57:21
applicable 10:19
appointment 27:11
appreciate 102:22 105:6
approach 32:17
appropriate 27:4 63:22 83:6,6 88:5 100:6
appropriately 64:2
approve 23:6
approved 25:20
April 1:9 54:8
area 19:8 83:10 97:22 99:11
areas 16:15
argued 36:10
argument 15:15 32:2,5 33:3,14,20 34:1,8
argumentation 32:20 33:1
arguments 9:7 35:13
arm 42:7
arm's 40:6
armed 3:3
Army 16:3 71:11 71:22 72:3 74:3 86:3 94:20 95:16
Army's 72:15
arriving 47:12
article 82:20 99:4
aside 67:16 89:1
asked 40:17
asking 47:11
aspect 35:6
aspects 85:17,18
assault 1:3 3:2,3 6:4,8 7:8 18:7 23:3,8 26:19 27:3 45:5,8,12 50:20 53:21 56:5,18 60:3 64:4 67:1 78:12 81:1,3,19 82:20 83:8,20 84:20 86:8 88:12 91:13,16 92:21 96:19 98:13
assaulted 81:18
assaults 10:7 16:17 18:20,22 19:1,2
assess 23:8 27:5 57:2 66:21 79:7 80:5,10 84:17
assessed 27:16 77:17 95:4 104:1
assesses 46:12
assessing 45:1 48:9 51:2 75:20
assessment 15:16 16:1 17:6 25:17 37:8 38:5 47:8 48:18 50:22 57:1 57:17 68:22 77:9 79:6 91:11,14 92:19,22 94:6,8 94:16,17 96:18
assessments 8:21 16:22 39:1 51:18 56:19 59:15 75:4 80:16
assigned 27:14 96:22
assist 73:22
associated 90:8,9 97:20
assume 14:19 83:9
attempt 82:21
attention 6:11 94:7 94:9
attentive 62:17
Attorney 1:22
attuned 63:20
audit 44:14 45:2,17 45:19 77:3
auditing 77:7
Austin 12:3 13:6
authorities 12:20 13:9,20 20:12 37:12 52:4 57:9
authority 2:21 4:1 4:10 5:17 6:3,16 7:6,18 9:9 21:13 25:10,11 26:17 27:3 29:5 31:3 34:17 35:3 39:5 51:21 55:12,14,20 59:1,2,4 62:16 63:2
authorization 27:10
automatically 14:19

availability 104:2
average 9:17
aware 63:12

B

back 10:11 14:4 19:5 20:10 29:8 39:10 74:15 76:10 79:1 82:8 84:15 93:5
background 47:7
bad 83:16 90:3
Barbara 1:13,15
base 83:9
based 17:2 19:17 26:4 29:18 35:21 43:2 51:9 52:12 56:6 57:20 61:10 82:16 95:4 102:18
basic 93:6
basically 5:4 11:22 25:5 61:22 80:14
basing 52:8 54:1
basis 61:6
basket 77:12
battalion 58:9,15 65:7,11
Beck 49:19
beginning 84:13
behavior 100:10
believe 2:12 3:5 7:13 13:7 23:21 41:14 68:2 79:19 80:3
believes 27:8
belong 24:7 25:3 88:21 101:8
belongs 25:3 30:15 30:20,20 88:21 101:5
better 22:19 33:22 34:6 74:16,19 104:14
beyond 38:12 93:16
BG 104:17
BG(SELECT) 90:5 100:17
bias 102:10
biased 81:2
big 52:22
bill 33:2,5 35:7
bit 8:4 11:10 17:7 22:15,16 33:18 44:3 49:22 64:10 96:4,12
BJS 68:3
blaming 63:16
blanket 11:18
block 96:8
Blue 99:6
Board 45:8
body 6:20 17:6
bottom-line 17:4 17:11
brand 90:15
briefed 71:12
briefly 98:15
BRIGADIER 1:17
bring 17:7,19 69:6
British 19:15
broad 29:16 50:15 76:14 77:5 82:4 83:1 85:11
broadened 23:21
broader 23:14 47:6 75:9 76:21 85:17
broadly 16:13
broken 32:14
brought 12:21
build 69:7
Bureau 48:21 49:18
by-case 101:1

C

CA 28:17
call 1:6 46:6 85:6 86:14
callers 8:18
CANDACE 1:20
Candy 105:8
capability 20:16
captain 99:5
captains 87:7
capture 11:8
care 67:8
careful 7:21 10:1 11:18 12:5 58:2
Carter 1:16 10:15 99:1
case 20:22 29:6 34:13,15 100:18 100:22
cases 4:4 10:21 11:7,11 12:21 13:8,19 15:20 16:2,5 17:19 73:14 98:3
certainly 17:13 31:8 36:2 43:21 61:12 78:3 87:19 99:10 100:9
cetera 21:14 70:5
chain 20:22 35:2 81:20
Chair 1:13,15 2:8 3:11,15,21 4:17 4:20 5:12 7:15 8:15,17 9:1 11:16 12:15 13:12,15 14:10 17:15 19:4 19:21 22:3,9,14 22:20 23:18 24:3 24:12,18 25:4,21 26:5,8,13,15 27:18,20,22 28:5 29:1,15 30:1,13 31:7 32:8 34:19 34:21 36:8,16,19 37:18 39:9,17 40:14,22 51:6,12 52:7,21 53:3,19 54:4,10,15 55:7 57:3 58:4,18 61:20 63:10,18 64:18,22 65:10,14 66:7,9,13,16 67:6 67:12 68:6 69:10 69:21 71:5,21 72:6 73:20 74:8 74:13 75:17 76:12 78:15,20 79:21 80:7 81:9 84:21 87:5 88:13 89:13 89:16,20 91:4 95:12 96:13 98:22 99:19 100:8 101:4 102:14 103:2,22 104:22
change 10:12 34:22 35:11 37:6 66:22
changed 18:6 26:20
changes 18:10 23:5 23:7 32:1
changing 27:6 37:11
Chapters 2:11
charge 99:5
charges 12:21 13:16 100:22
check 5:18 74:18
chewing 4:22
child 84:12
circumstance 88:18
citations 16:11
cite 16:19
cited 34:13
citing 16:11 34:5
City 87:6
civilian 5:3,7 9:10 10:2,4,8 11:10,19 12:8 13:9,13,20 14:1 15:17,20 81:18 93:17 102:11
Civilians 15:6
claimed 31:19,21
clarify 29:3
Class 90:10
clear 18:13 20:11 20:17 38:12 91:1 97:15
clearly 96:22 97:7 100:14
climate 38:3,5,13 38:16,22,22 43:7 43:15,19 46:1,13 49:7 50:3,6,18 51:17,17 56:16,19 57:1 59:12,15,15 62:7 64:1 67:4,6 67:17 69:14 70:3 70:7,13 71:9,19 73:5 76:17 77:13 77:17,22 78:4 79:7 80:16,21 81:1,5,22 82:12 83:5 91:21 92:3,5 92:13,14,20 93:3 95:5 96:20 97:11
climates 43:10 51:2
closed 105:12
closely 19:19
closer 29:8,10 87:11 101:6
closest 85:22
Code 26:18
cognizant 103:17
COL 4:18,21 15:10 15:13 21:4 36:15 36:17 40:12,16 42:14 44:2 45:3 46:18 47:2 49:3 49:15 50:5 51:4 56:11 65:4,13 66:5,8,11,14 82:18 85:1,4 88:1 90:5,17 96:3 98:12 99:3 100:5 101:14 104:17
Colonel 1:20,21,21 4:18 15:10,12 22:10 27:18,20 28:13,21 29:2 36:20 40:16 42:1 42:14 45:3 46:18 49:4 51:10 56:11 66:8 73:21 82:18 87:4 88:1 90:6 91:7 96:3 97:17

98:10 101:12
combine 15:2
come 33:13 85:22 86:15 102:10
coming 43:4
command 20:22 38:16 43:7,10,14 43:19 46:1 49:7 50:3,6 51:2 56:15 57:1 69:14 70:4 71:9 72:12 76:17 77:12,17,22 78:4 79:7 81:20,22 91:20 92:3,4,5,8 92:13 93:3 95:5 95:21 96:20 97:11 99:6,8 100:20
command-based 90:12
command-tailored 97:10
commander 1:4 2:4 5:2,17 18:19 34:16 58:10,10 59:13 71:11,12 83:21 90:18 91:6 96:18 99:22 105:11
commander's 31:2 64:21 88:7 91:12 91:15 92:14,19
commander-based 102:3
commanders 3:1 4:2 9:8,19 10:14 11:1 12:19 17:19 20:13 25:12 26:17 27:7,15 29:7 30:4 38:11,20 41:5 51:15 52:4 53:18 56:3 57:13 59:15 59:19 63:15,19 65:11 69:12 70:3 70:5,11 72:21 77:16 79:10 84:1 85:13 87:7 91:19 92:6,7,10 93:16 94:3 95:7,14,18 96:6,21 97:4,15 97:21 98:1
commands 65:20 80:17
comment 3:7 4:5 38:7 54:3 56:15 62:9 66:4 101:9
commentary 65:15
comments 2:15 5:21 18:2,10 20:19 21:3 22:22 26:20 28:8,10,11 30:3 36:17 56:14 102:19 103:10
commission 45:11
commit 82:22
committee 4:14 21:10 45:18
communities 10:5
community 34:3
company 46:12 48:1 59:13,14 65:1,4,9,12
comparable 5:10
comparative 4:14 4:15 12:12 15:22 49:16 50:8 101:22
compare 5:6 12:1
comparing 5:3 11:20 17:18
comparison 12:18
compelling 9:4 10:12
complain 29:19 55:16
complained 29:4 29:20
complaints 29:6 57:13
complementary 51:1 68:8
complete 65:19 103:18
completed 66:10
completely 35:4,15 43:3 48:14 62:10
compliance 97:13
comprehensive 38:5 56:20 68:22 88:10
CompStat 87:6
concept 11:9
concern 32:13 40:3 50:17 54:18 61:6 82:6
concerned 65:5,7
concerns 6:6 7:9 45:22 48:15 52:2 52:6,10,15,16 53:9 54:17,20 56:2 60:2,9,10 62:11 72:22
concluded 98:1 105:14
conclusion 2:21 4:7 4:9 6:2,18 7:11 10:20 17:4,11 60:5
conclusions 6:10 12:14 17:2
conclusive 9:4 12:6
conducted 38:15 39:12 41:19 75:2
CONFERENCE 1:6
confidence 6:4,16 7:7,19 75:6
conform 4:6
confused 75:15 76:10,15
confusing 78:22 81:3
confusion 86:21
Congress 23:2 46:20 80:14
connection 89:12
consequences 20:14 21:11
consider 30:18 39:1 41:11 51:18 92:16 97:19 98:20 100:3
consideration 70:16
considerations 98:18
considered 27:15
consistent 3:5 9:10 10:1
constitutes 71:14
construct 44:1
constructed 46:2
construction 43:22
contact 53:21 56:17 62:5
content 89:5
context 90:16 98:14
contracted 40:10 43:1
contracting 43:17
contrary 6:21
contributed 84:18
contributing 80:22
contribution 92:14 95:5
convene 2:22 4:1 26:18
convening 9:9 12:20 20:12 21:13 25:11 27:2 29:5 31:2 34:16 35:3 37:12 52:4 55:12 55:13,20 57:9 58:22 59:2,4 62:16 63:2
conversation 44:9
conviction 4:4 5:2 5:20 10:22 16:3,5 18:1
convictions 78:13
copy 26:3 82:3
Corn 53:5 70:9
Corn's 56:14
Corporation 40:11
Corps 72:20
correct 54:9 55:10 73:22 95:2
corrected 32:5 35:4
correctly 94:20
countries 19:7,19
couple 2:15 28:10 30:11
course 33:3 36:22 37:1 95:20
courses 95:15,17 96:7
court-martial 21:14 27:9 55:13 55:19 59:1
courts 13:13
courts-martial 2:22 4:1 21:2 26:18
covered 37:2 80:18 81:15 82:14,19
create 81:3
creates 65:17
credibility 40:4
credible 38:17 41:8 41:9
crime 48:22 80:22 87:8 98:4
CRIMES 1:3
criminal 85:16 90:22
critical 63:20
criticism 58:13 61:9
criticize 68:12
culture 66:22,22 67:4
currently 4:22 5:1 27:14
cut 63:7

D

D.C 98:16
data 12:2 19:18 92:22
dates 102:15
day 12:11
Daylight 1:12
deaf 52:19
deal 18:6 79:2

dealing 54:6 73:2
deals 88:6
dealt 21:8
December 5:5
decide 28:3 76:13 77:2
decision 48:6
decisions 17:18,20
declined 13:20 15:21
Defense 1:1 21:9,20 39:19 45:4,7,12 74:22
defer 83:22 102:4
deficiencies 35:7
define 96:10
defined 64:14 74:12 97:7
definitely 9:5 22:21 24:13 32:4 36:6 104:8
definitions 91:21
deleted 66:5,11,11 66:13,14
deliberately 98:2
deliberations 37:2 103:13
delve 59:18
DEOCS 73:1
Department 1:1 39:19 42:4 45:7 75:6
departments 74:2 96:17 97:5
dependent 51:3
depending 96:9
depends 100:17
description 64:6
Designated 1:20
detail 35:18
detailed 12:17 58:6 94:21 97:14
details 73:19
deter 98:3
determination 37:17
determine 55:2
deterrent 100:12
develop 40:20 72:22
developed 70:2 73:13,15
developing 70:6,12
difference 6:13
differences 94:8,15 94:17 99:12
different 8:4 33:18 44:20 46:21 52:13 54:7 71:7,8,18 73:2 77:8 83:4 90:16 98:17,19
differently 62:21
difficult 5:6 12:13 85:11
difficulty 3:4
digest 103:20
direct 21:9 74:2,22
directed 46:20 79:20
direction 41:2 97:10,10
directly 14:14
Director 1:21
disagree 42:15 56:3 56:22 58:1 79:3 83:19 100:1
disagreement 38:8 39:7 51:22 93:4
disagrees 23:11
disappointed 30:3
disciplinary 99:17
discipline 20:15 92:20
discordant 60:13
discovery 21:13 27:9
discussed 82:10 87:5 93:22
discussion 22:17 33:5 35:16 37:1,5 43:11 51:8,11 74:20 99:20
discussions 35:21 53:12 82:16 89:6
dismissing 56:2
disprove 75:4
dissatisfaction 55:3
document 54:7,7 54:10
DoD 23:4 41:10,20 43:4,17,20 44:22 48:6,7 66:19 69:11 75:1 80:8 92:16 97:4,19,22 98:19 99:15
DoD's 75:4
doing 16:10 29:12 32:18 34:6 44:6,7 44:17 45:2 47:17 48:1,13 49:9 50:9 50:18 57:14 72:8 72:10 77:22 84:8 86:3
door 86:19
doors 85:19
doublecheck 32:11
Doug 91:3
Dr 5:4 49:18,19
draft 31:12 54:8,9 82:13 89:12 90:21 91:1
drafted 15:14
drafts 35:19 105:7
dramatic 65:16
draw 12:13
dropped 13:16 33:4 33:6,7
duplicating 5:15
duties 27:11

E

E-5 58:13
E-6 58:13
E-7 58:14
E-8 58:14
early 32:2 92:8
Eastern 1:12
easy 74:18
editorial 35:10
edits 102:19
effect 6:15 22:1
effective 9:20 10:13 12:8 67:16
effectively 64:3 92:17
effectiveness 20:16 38:19 39:1 42:17 50:14 51:18 77:1 79:8 93:18
effort 2:9,16 97:9
efforts 93:15
eggs 77:11
either 10:21 14:13 30:5 75:15 86:16
elder 84:13
ELIZABETH 1:16
email 48:14
employed 18:5
emulate 42:11
enacted 23:2
encouraging 97:12
enhance 21:1 75:6
enhancements 68:8
ensure 64:1 96:17 97:6
ensuring 97:12 99:22
entire 64:19 102:21
equal 92:21
equivalent 95:19
essential 38:17
essentially 7:11 16:10 18:8 25:7 26:2 77:11 78:17 80:1
establish 63:22 88:9
established 71:16 96:22 97:7
et 21:14 70:4
evaluate 21:10 41:5 42:16 43:4,7 50:11 78:2 79:8
evaluated 23:7 42:5 49:12
evaluating 43:9 76:16 91:19
evaluation 40:3,11 41:10 42:8,10 91:15 94:6,12
evaluations 38:14 39:12 41:11,19 75:1 91:21
event 84:19,19 90:1
events 84:11 85:8
everybody 20:18 25:20 34:4 56:12 59:3 74:14 88:16 89:5
everybody's 104:2
evidence 2:20 3:22 4:8 6:2,17 7:5,18 8:6 9:3 10:12,19 12:6 13:3 14:14 18:18 31:7 41:8 55:19 58:12,12 61:11 66:1,17 68:7 93:7
exact 55:3
exactly 9:19 35:22 59:17 62:3 71:13 87:18 90:2
example 13:5 81:16 83:8 95:16 99:2,4 100:19
examples 13:1
excellent 51:4
exclusively 60:17
excuse 4:22 31:20
exercising 39:4 51:20
exist 72:3 73:8 74:13
existence 6:20
expand 24:20 37:7 72:13
Expanding 20:20
expectation 37:13
expectations 63:22 71:18 93:20 97:14

experience 61:17
expert 27:12 48:12 48:18 67:19 68:2
expertise 48:4
experts 47:7 48:11
explicitly 54:20
expressed 52:2
extend 93:15 94:12
extent 21:6
external 48:18
extrapolate 16:13
extrapolation 61:10

F

fact 6:12 21:21 43:17 52:12 61:14
fact-based 17:7
factor 80:22
factoring 92:18
factors 38:3 68:21
facts 17:8,10 19:17
fail 97:22
failure 91:12,15 93:14
fair 37:3
fairly 80:2
fairness 6:5 21:2 33:17
fall 33:12
falls 37:3
familiar 43:16
far 75:9 76:21
fatalities 84:15 90:9,13
fatality 84:12,14
fatigue 65:17 80:9
favor 32:3 33:1
feasibility 21:11
Federal 1:20 45:10
feedback 69:13,21 75:5 92:9 103:1 105:6
feel 30:16 61:7
feeling 30:16 68:14 68:15
fencing 85:18
feverishly 102:18
fewer 16:4
fiddled 20:2
figure 24:13 26:10 69:15 87:11 101:7
figures 13:10
final 21:7 69:5
find 31:20
finding 2:20 3:5,7,9 3:15,21 4:5,13 5:1 5:13,21 6:1,12 7:22 9:7 10:17,18 14:7,17,22 17:9 18:4,8,11,12,17 20:11,18,20 21:17 23:2,17 25:2,19 38:1,14 39:11 42:19 50:9 51:7 51:14 52:1 54:13 54:13 55:10 61:20 63:3 65:14 66:2 66:17 68:19 75:11 75:18 76:2 79:1 79:14 82:11 89:3 91:10,18 92:2 93:11,11,12 94:4 94:5 95:12
findings 2:10,13,17 3:9,18 15:17 41:9 50:13 67:10 69:7 75:16 91:9 93:9
fine 3:19 15:8,9 28:12 93:8
first 2:18,19 3:13 26:16 38:1 58:22 60:15 82:13 91:9 91:10
fit 22:19
fits 88:4 99:22 101:7
Five 79:6
flag 99:15,18
flaws 36:5
flesh 55:22
focus 53:10 57:1 60:2 67:17
focused 53:9 58:5 60:12
focuses 53:16
focusing 49:6 77:4
follow-up 86:4
following 70:3 80:18 81:2
Force 45:4 90:11 94:21 95:19 96:5 96:15 99:9
forces 3:3
forcible 82:21
foregoing 105:13
foreign 8:3
forget 87:15
forgotten 104:21
formal 85:7
formally 78:2
former 28:16
forth 44:1 47:13 77:10
forwarded 71:10
foster 91:20
fostering 97:13
Four 38:20
frankly 40:2 59:7
Friday 103:13 104:2,12,16 105:2
friends 68:2
front 23:22 82:2
Frost 1:18 3:8,13 3:19 7:3 9:12 11:4,17 13:5,14 13:17 14:3,21 15:6,8,12 16:7,20 17:12 29:13,17 39:8,10,22 40:13 41:1,16,21 42:3 43:13 44:19 45:15 46:16 47:21 48:10 49:3,8 50:1,16 51:9 52:5,8 54:1,3 55:9 57:4,10 59:22 61:16 63:5 63:11 67:22 73:4 75:14,18 76:1,4,8 77:7 78:19 81:7 81:11 82:5 83:1 84:7 89:22 94:14 95:10 100:15 101:3,18,20 102:5 102:8 104:7,10,15
full 93:18
fully 23:7 27:5,15 30:17
fund 42:4
funding 27:12
furiously 89:19
further 27:4 66:4 66:17 74:12
future 87:17

G

gain 38:12
GAO 47:15,15
gather 84:16
gathered 48:16 49:20
GCM 28:17
GEN 10:15 85:3,9 88:2 99:1,13
Gender 40:20
general 1:16,17,17 13:1 14:12 30:2 45:17 46:8 49:5 55:13,19 60:5 73:21,21 77:2 85:1 86:10 88:2 90:10 99:14,15
generalization 85:12
generally 2:17 12:22 28:14 30:16
generic 41:7
genesis 32:20
gentle 11:13
Geoff 62:8
getting 49:13 50:10 55:14 60:13
Gillibrand 30:19 33:17
give 9:5 20:5 60:10 99:2 100:9
given 86:22
go 2:9 10:10 14:4 14:10,18 18:13 19:5,5 20:9 26:11 28:7 29:8 35:10 39:10 42:8 51:14 53:3 61:13 66:3 74:14 76:10 80:20 81:8,9,10 82:8 84:15 89:7 93:5 98:6
goal 77:6
goes 5:4
going 2:9 5:12 30:12 33:2 36:9 41:4 44:6,10 51:7 58:21 68:11 75:19 75:19 77:13 78:1 78:4 84:3 87:15 89:11 93:5 102:19
gold 40:2 41:13
good 11:14 16:7 19:8 29:21 43:13 46:8 47:19 53:5 76:19 104:13,14
GOs 99:11
Gotcha 26:5
government 46:19 48:8
grantee 42:4
grass 14:19
gray 99:11
great 52:10 89:14 105:10
GREEN 1:21 4:16 8:13,16,20 16:20 19:11 22:7,10,15 23:15,19 24:8,16 24:19 25:16 26:1 26:6,12,14 27:17 27:19,21 28:4,22 35:14 36:21 41:16 42:1 53:2,4 57:8 59:11 64:13,20

65:2 68:18 69:4 69:17 71:7 72:4 73:18 74:5,9 75:12 76:1,6 79:13,22 82:1,9 89:18 91:3 95:2 101:18 102:1,6,17 103:3 104:3,13,19 105:3
greener 14:20
group 21:10 50:11 69:5,9 96:6
groups 40:5 67:18
guess 5:16,17 9:20 39:17 41:17 42:1 42:19 43:18 64:5 64:9 69:14 72:11 87:13 99:20 100:12 101:6 104:22 105:8
guidance 71:15 97:15

H

Ham 1:16,21 4:18 4:19,21 10:15,16 15:10,11,13 40:12 40:16,16 45:3,4 46:18,19 47:2 49:3,4,15 50:5 51:4,10 56:11,11 65:4,13 66:5,8,8 66:11,14 73:21 85:1,1,3,4,9 88:2 88:3 90:11,17 99:1,1,13 101:12 101:14
Ham's 13:1
happened 33:9 87:18
happening 102:10
happens 44:14 80:4 85:12 90:4
happy 29:9 101:8
hard 19:18
harm 21:22
harmed 62:16
haveseen 94:1
head 19:9
healthy 42:18 93:3
hear 7:17 24:4 40:14 55:19 61:3 101:9
heard 7:5 11:21 21:22 29:3 43:11 53:13 54:21 61:1 61:7,11 62:1 65:22 68:7 71:5 86:1 88:15
hearing 8:18,19 12:3 13:6 17:3 89:9 94:19
heart 53:6
held 87:10
help 4:11 18:2
helpful 38:2 68:20 82:7 90:4
helps 99:14
hesitant 48:3,4
higher 10:22 71:12 92:3
highlights 93:2
historical 35:6
history 32:7
hold 22:21 97:4
Holtzman 1:16 6:9 11:2,3,5 14:9,11 15:3,4,7 18:15 24:1,5,6 30:9,14 31:10 32:12 34:10 34:11,20,22 35:14 36:1,3 46:4,5 47:1 47:3,4,22 54:2,6 54:12,16 55:21 60:21,22 67:2,3,8 67:13 68:11,19 69:2 70:17,18 72:18,19 73:7 83:3,4 86:9,10 89:11,14 90:14
honest 102:8
honestly 72:14 93:3
Honorable 1:13,15 1:16
hope 103:14
hot-wash-after-a... 85:6
Houck 104:6
hours 101:10
House 15:17 16:8 16:11,18,21 17:5 17:8
huge 60:5
humble 30:17
HUNSTIGER 1:20 2:3 105:9
hunt 98:5

I

idea 29:21 33:12 34:3 42:15 48:13 74:16 83:16 84:11 87:6
ideas 105:4
identified 61:15 73:1
identifies 99:9
identify 28:16 36:6 66:20 69:12
ignorance 73:16
ignore 7:1
ignoring 8:9
immediate 65:19
immediately 81:2 100:19
immemorial 34:18
immersed 9:15
impact 20:12 23:8 24:10 80:10 100:12,13
impacts 27:6 37:11
implement 79:20 98:18
implemented 23:4 45:9 72:21 95:6
implicating 18:1
implications 82:12
importance 93:2
important 14:16 37:10 62:6 63:6
impression 31:18
improper 53:11
improve 4:2 20:22 21:21 84:6 92:4,8
impulse 83:15
in-person 68:4
inadequate 68:13 68:15
incidence 3:1 19:2 19:13,16 50:19
incident 80:18 84:4
incidents 84:5 86:18 91:13
inclined 65:20
include 43:1 51:1 56:20 65:9 82:20 97:21
including 21:13 32:20 39:2,3 51:19 92:19
incorporates 96:19
incorporating 14:13
increase 3:2 4:3 6:3 6:16 7:7,19 33:2 34:14 65:16 87:8
increased 80:10
increases 31:22 92:7 94:6
independence 21:2
independent 20:21 38:15 39:12,14,18 41:18 42:9,22 43:8 44:4 45:7,10 48:18 50:10 75:2 97:22
indicate 3:22 18:18
indicators 68:1
individual 100:18
inevitably 56:17
infirmities 30:18
information 5:8 6:21 9:10 10:2,4 14:13,14 15:22 19:13,14 32:10 38:11 40:17 46:2 48:16 49:13 72:13 81:4 84:9 86:21 97:21 100:16
initial 35:19
initially 34:12
initiative 90:1
initiatives 25:7 38:18 50:14 75:7 76:22 78:6 97:6 97:11
innovative 77:16
input 65:21
inputs 26:4
inquiry 83:7
insight 38:2 68:20
installation 38:16 43:5,7 75:20,21 76:3 77:10 81:17
installations 43:10 78:2
instance 72:9
Institute 42:6
institutional 38:16 69:18 76:3
integrate 14:6
intent 39:20
interest 101:1
interested 84:10
interim 3:6 18:9 20:2
internal 75:4
international 34:7
interpreted 42:21
intersect 50:8
intervention 92:8
interviews 67:18 68:4
intimately 43:16
intuitively 80:2
investigate 90:22
investigation 46:7 85:7 88:11 100:21
investigations 4:3 5:19 90:9

investigative 90:19
investment 93:19
invoke 81:21
involved 45:1 58:13 101:2
involving 80:18
irrelevant 81:12
Israel 20:5 34:13 34:15
issue 4:15 19:18 29:5 37:14 53:7 55:15 77:8 102:3
issues 52:2 54:16 62:11 90:8 92:5 95:17 96:9 99:8

J

job 10:6 16:16 34:6 44:6
John 1:17 33:16
joining 105:10
Joint 21:10
Jones 1:13,15 2:7,8 3:11,15,21 4:17 4:20 5:12 7:15 8:15,17 9:1 11:16 12:15 13:12,15 14:10 17:15 19:4 19:11,21 22:3,7,9 22:14,20 23:15,18 24:3,12,18 25:4 25:21 26:5,8,13 26:15 27:17,18,20 27:22 28:5 29:1 29:15 30:1,13 31:7 32:8 34:19 34:21 36:8,16,19 37:18 39:9,17 40:14,22 51:6,12 52:7,21 53:3,19 54:4,10,15 55:7 57:3 58:4,18 61:20 63:10,18 64:13,18,22 65:10 65:14 66:7,9,13 66:16 67:6,12 68:6 69:10,17,21 71:5,21 72:6 73:20 74:8,13 75:12,17 76:12 78:15,20 79:21 80:7 81:9 84:21 88:13 89:13,16,20 91:4 95:12 96:13 98:22 99:19 100:8 101:4 102:14 103:2,22 104:22
Joye 1:18 9:12 10:16 11:16 29:13 39:22 42:13 44:3 46:5,10 52:5 59:22 67:19 78:18 81:9 94:14
Joye's 54:18 61:6
Judge 2:7 10:15 19:11 22:7 23:15 27:17 39:8 64:13 69:17 75:12
judges 20:21 21:16
junior 93:16
junior-level 59:18
justice 6:5 18:5 20:14 21:9 26:19 42:4,7 48:21 49:18 85:13 98:3

K

keep 75:19
key 84:19
kind 4:12 6:19 40:6 40:18 41:12 47:8 47:19 55:6 59:3 73:8 77:21 83:7 85:15 87:11 88:10 99:16
kinds 17:20 68:1,5 85:20
know 3:17 4:12 6:17 7:17 8:6,7 10:7 11:6,8,10,12 14:7,16 16:12 17:21 18:1 19:4,9 20:6 21:6 25:8,9 25:11 30:10,14,19 31:4 32:11,14 33:4,9,11,13 34:17 35:9 39:11 41:2,12 44:8,22 45:10,20 46:12,14 47:6,9,16,16,19 48:17 50:2,5,7,7,9 50:21 52:14 55:17 57:16 60:22 61:4 61:8,9,12,14 62:2 62:6,8,10,14,16 63:1,12,14 64:7 67:15 68:12,16 71:1,2 72:14,16 73:9,11,11 74:10 74:15 76:18 78:13 79:10 82:7 83:18 84:1,11,16 85:5 85:12,13,18 86:13 86:19 87:8,18 89:20,20 90:20 92:1
knowledgeable 87:21
Kyle 1:21 4:11 8:11 8:19 16:21 19:9 22:8 25:15 26:13 30:12 35:15 41:17 53:3,4 55:11 64:12 72:3 89:11 89:17 90:20 91:2 101:15 102:14

L

lack 12:11
lane 90:20
language 8:2,22 9:2 10:11,18 12:17 21:7 23:20,22 24:11 26:2 53:6 60:16 82:15 96:14
large 65:16
larger 15:5 51:10 51:12 57:22 67:14
latch 33:11
leader 57:7 62:3
leaders 39:2 51:19 52:3,16,18 53:11 53:17,20 55:1 56:17,21 58:5,9 58:17 59:6,9 60:4 62:5,12 63:17,21 64:2,9,16 65:6,8 79:9 92:10 93:13 93:19 94:3,10 95:7
leadership 39:4 51:20 59:20 97:1
leading 25:13
learn 84:5 87:17
leave 22:5
left 31:18
legal 90:7 95:17,20 96:8
legislation 23:17 24:22 25:10,14 30:15 32:3,15,16 35:16,17 36:9 50:18 81:14,21 82:15 88:22
legislative 36:4
length 40:7
let's 83:9 91:8
letting 48:6
level 16:14 44:3 52:3,16 58:9,14 58:15,16,22,22 59:2,3,14 60:19 69:19,20 70:1 75:21 76:3 77:10 92:4
levels 56:21 58:16 63:19 65:11 98:19
LIEUTENANT 1:20,21
lighting 83:10 85:18 86:20
limited 18:22 93:18 95:20
line 22:12 25:5 37:4 65:9 80:1 85:2 94:1
lines 8:6 51:8
link 89:22
Lisa 1:17 21:4 36:15 99:2
listening 57:12
literally 45:19
little 8:4 9:2 10:10 10:17 11:10 12:5 17:6,17 29:11 33:18 44:3,19 96:4,12
live 36:9
Liz 6:8 11:3 14:10 15:3 18:14 20:7 24:5 30:7,9 34:11 36:3 46:4 47:3 54:4 60:21 67:2 70:17 72:18 83:3 86:10 88:3
local 69:14,19,22 77:15 85:13
localized 85:10
locally 41:5
locks 85:19 86:19
logical 25:1
long-term 81:5 92:11
look 8:14,16,21 14:4 20:7,10 22:2 24:8,20 29:8,10 37:20 44:5,16 46:21 62:1 63:11 68:19 69:8 72:15 84:16,22 85:16 87:11 93:6 101:6 101:22
looked 17:16
looking 39:11 44:15 45:20,21 47:5 54:11 87:2
looks 20:1
lose 99:16
lost 28:20
lot 10:3 11:4 13:3

19:12 31:13 57:13 59:7 73:19 99:14
love 68:2
low-level 53:20 56:16
lower 52:3,15
lower-level 52:18 53:11,17 54:22 55:18 57:7 58:5 59:5 60:4,17 62:3 62:12 63:16 94:2
LTCOL 2:3 4:16 8:13,16,20 16:20 19:11 22:7,10,15 23:15,19 24:8,16 24:19 25:16 26:1 26:6,12,14 27:17 27:19,21 28:4,22 35:14 36:21 41:16 42:1 53:2,4 57:8 59:11 64:13,20 65:2 68:18 69:4 69:17 71:7 72:4 73:18 74:5,9 75:12 76:1,6 79:13,22 82:1,9 89:18 91:3 95:2 101:18 102:1,6,17 103:3 104:3,13,19 105:3,9
lump 60:1
Lynch 49:19

M

ma'am 4:18 8:13 8:21 15:10 24:9 24:20 25:16 26:1 26:12 28:4,22 36:21 40:12 45:3 46:18 56:11 64:20 65:13 72:5 76:7 79:13 89:19 98:12 101:14 102:17 103:4 104:5,20
magistrate 27:11
MAJOR 1:17
making 5:16 6:7 7:10 11:18 17:18 17:19 35:10
mandate 91:14
Mandated 92:2
mandatory 95:17 96:10
Marine 72:20
matter 61:1 105:13
matters 45:13 97:20 98:13 99:17
mean 6:9 7:1,5,6 9:14,15,19 11:8 11:21 12:10 13:12 14:5 19:3 20:2 22:16 23:10,13 28:14 29:9 31:12 32:22 33:7 35:3 41:4,5 44:7 47:4 48:3 52:21 53:7 53:12 54:18,19 56:3 57:7 60:22 61:3 62:22 64:8 67:4,17 68:6,13 68:17 69:5 72:9 76:12 77:10,21 78:15,21 79:22 83:5,14 86:22 91:2 94:16 102:2 102:6
meaning 64:18 65:11
Meaningful 92:6
means 44:13 45:19 66:21
meant 75:10
measure 66:21 92:12
measured 96:21
measurement 38:18
measurements 76:22
measures 56:19 67:16
mechanisms 91:22
media 52:17 60:14 63:7
meet 41:9 49:17
meeting 2:5,5 26:6 40:9 105:1,11
meetings 98:16 103:20
member 27:10
members 80:3 94:13 98:4 103:19 104:5
memory 14:11
mentioned 87:3
met 1:12
methodology 47:10 48:12 49:17
methods 91:19 92:17 99:22
metrics 92:18
MG 13:18 33:16 36:2 42:12 44:12 58:7,20 60:15
middle 18:16 93:10
military 5:7 6:5 8:3 10:13 11:12,20 13:8,21,22 14:2 15:20 18:5 19:20 20:13,21 21:9,16 23:4 26:19 28:17 31:21 42:10 45:5 56:6 60:6 61:17 74:2 78:10 81:17 81:19 86:15 87:2 90:15 96:17 97:5 98:3
mind 77:6
minor 89:4
minutes 91:5
mishaps 90:10
misleading 81:4
misread 56:1
missed 36:19 39:16
missing 88:14
model 42:11 97:12
modest 77:6
modification 27:2
modifying 21:11
MONDAY 1:8
money 42:6 47:18
monitor 80:9
monitoring 70:6,12
morning 99:5
move 23:1 30:7
moving 44:3

N

name 99:10 102:11
Nancy 104:20
narrow 50:9,12 51:7 75:19
narrower 17:17
national 16:14 42:6 48:20,22 49:20
nature 56:7
Navy 95:16 99:5
Navy's 95:3 97:8
NCO 55:17
NCOs 29:7,19 57:15 63:21 64:14 93:16
necessarily 6:10 17:22 19:17 50:7 55:14 74:6 84:15 102:13
need 5:18 6:11 7:14 8:1 9:18 10:13 13:2 19:5,5 20:6 24:13 26:9,10 30:21 40:6 44:4 44:15 46:6 55:12 55:22 58:2,2,6 60:8 62:12 63:4 68:16 74:14 76:10 77:1 80:5 98:1 103:5,17
needs 17:13 31:4 37:7 44:14 46:11 79:16 83:11
negative 27:5 38:3 68:21 93:1
neither 8:6
neutral 9:2
never 31:19,21
new 25:7 77:14 87:6,11 90:15
news 99:4
NIJ 68:3 90:1
nine 104:5
nod 6:19 9:6
non-commissioned 59:19 64:6
non-criminal 90:19
non-DoD 43:9
non-government 50:10
normal 85:5
note 9:5 31:12
noted 2:14
notes 31:20 89:18
notion 100:10
nuanced 10:10 12:5 56:9 60:16
number 14:22,22 17:13 18:17 42:18 46:20 54:14 66:17 86:3 92:15
numerous 23:5
nuts 45:20

O

O-3 58:14
O-4 58:14
O-5 58:8,22 60:19 99:10
O-6 99:7
objection 89:9
objections 94:3 96:1
objective 97:7
observers 33:11
obviously 22:16 23:14 26:9 37:10 39:18 61:21 64:14 78:1 82:11 84:14 103:16
occur 85:8
OCMs 22:2
OER 94:21

offender 102:12,13
offense 80:19 81:15
offenses 26:20 27:4 82:19,22
offers 97:12
Office 46:19
officer 28:17 59:20
officers 59:21 64:7 93:16 99:16
Official 1:20
Oh 3:11 29:1 36:19 66:13 69:2,21 93:10 102:5 104:13,19
OIG 44:22,22
okay 3:19 4:17 8:15 15:8 17:12 18:12 20:8,20 23:1,10 26:12,15 28:5 30:13 36:1,14 37:18,22,22 38:14 38:20 39:6 51:13 54:12,17 65:14 66:7 69:2,10,21 74:8 75:14 76:4,5 76:9 79:6,21 80:7 80:13 83:2 87:14 89:14 91:4,17 95:10,12 97:2 98:4,22 99:13 101:3 102:5,5,14 104:13,22 105:9
old 12:3
on-site 95:14
once 33:11 102:2
ones 33:13 98:8
ongoing 100:21
online 48:14
open 2:6
opening 61:8
operational 20:16
opinion 25:18 30:17 41:22
opportunities 92:7 92:17
opportunity 37:21 78:9 92:22
opposed 6:10 44:6
order 48:19 98:3
organization 20:15 38:4,6,13 39:2,18 42:9 43:9 44:5 46:11 48:19 51:19 59:21 64:17,21 65:3
organization's 70:7 70:13
organizational 64:1 66:22 67:3,4 79:9 80:21
organizations 38:15 39:13 41:18 41:20 42:16 43:2 43:6 75:3
orientation 95:22
original 32:22 33:1
ought 32:7 35:13 36:3,6 68:9 84:21 99:21
outline 70:4 72:12
outside 33:10 41:20 43:4,20 44:14 46:11 48:7,8 70:7 70:13
overall 10:7 12:7 16:17 30:16
overlap 22:17
overlaps 21:6 23:16
oversight 23:6 27:9

P

P-R-O-C-E-E-D-... 2:1
p.m 1:12 2:2 105:14
page 3:12,16 15:16 28:15,20 29:1,2 36:18 70:19 72:19
pages 94:22
panel 1:3 18:9 21:14 27:9 57:22 103:19
panoply 32:19
paper 40:18
paragraph 37:16 53:15
Pardon 24:18
parent 65:20
Parliamentarian 19:15
part 27:14 33:8 44:7 53:20 55:9 62:9 63:15 86:12 90:22 95:21
participate 65:21
particular 14:4 16:9 22:5 27:8 43:5 78:6 90:10 99:8
particularly 12:12 12:16 48:12
parts 46:21
PATRICIA 1:21
Patty 85:3,22
pay 6:11
peer 55:17
pending 35:16 81:21
people 6:12,22 33:10 41:13 42:22 43:20 47:16 56:13 56:22 58:13 59:6 62:22 64:7 84:1 84:10 87:20 90:2 101:8
perceived 60:3
perception 60:11
perceptions 21:1
perform 64:3
performance 38:22 45:1 51:17 75:2 92:19 94:6 96:18 97:2
periodic 70:8,14 74:22 78:20
permitted 90:21
person 9:17 16:21
personal 41:21 82:14
Personally 44:13
personnel 39:4 51:20 65:18 69:11 94:10 95:4
perspectives 42:18 81:5
phenomenal 10:6
phrase 83:18
phrasing 8:5
pick 47:22
picked 13:21
picking 48:5
picture 38:12 51:13
piece 36:9
place 25:1 35:12 50:2 83:8,9 100:6
plan 70:6,12 71:13 71:14,21 72:11,22 73:2 74:6,7
plans 70:2,20,21 71:3 72:1,15 73:8 74:3,16
play 8:11 93:13
played 63:20
plenty 65:22
point 5:10 15:4,5 15:13,19 16:7 19:8 20:4 22:18 37:19 43:13 53:12 53:14 55:10,11 56:10,22 57:17 58:8 59:16 62:18 63:4 67:14,15 69:6 99:18 100:16 100:22 101:11
points 5:5 37:9
police 87:7
policies 23:5 91:19 93:20 97:19
policy 72:21
positive 27:5 38:2 68:21 78:4 91:20 93:1
possible 6:6 48:3 77:19 97:8
possibly 81:11 84:6
potential 92:4
potentially 20:1
practice 99:15
practices 77:9,15
practitioners 84:17
pre-trial 27:6
precinct 87:7
predictions 37:11
prescribe 87:19
PRESENT 1:15,19
presentation 11:22
presented 12:7
presiding 1:13
press 63:4
presumably 36:10
pretty 10:6 13:10 41:6 50:15 96:14 103:7
prevented 84:19
prevention 23:12 64:4 67:1 91:16 96:19
previous 98:7
primarily 21:15 52:15
priority 104:8
privacy 97:20 98:18 99:16 101:2
proactive 87:16
probably 15:1 16:17 25:1 35:12 83:15
problem 3:9 9:13 10:3 18:7 48:6 52:22 55:20 59:8 63:16 83:11 84:6
problems 31:15 91:16 98:7
proceedings 21:3
process 20:14 44:15 86:5
processing 21:1
procurement 27:12
Professor 53:5 56:14 70:9

program 46:21 93:17 97:13
programs 23:5 38:18 42:17 50:14 69:13,22 75:1,7 76:22 77:9,14 78:6 94:7 97:6,16
projects 42:5
proposal 30:19 31:14,16,19 32:21 36:4
prosecute 11:7
prosecuted 13:21 14:1
prosecuting 10:6 16:16
prosecution 5:3,7 13:9 19:1 23:9,13
prosecutions 4:3 5:20 15:18
prosecutors 9:8,20 10:5,8,13,20 12:7 12:9,19 15:21 16:16 17:18
protected 102:12
Protection 80:15 94:11
protocols 86:16
provide 38:2,4 65:21 68:20,22 75:5 92:12 95:16 97:14 105:5
provided 53:5 95:13
provides 93:1 95:20 97:9
provisions 91:11,14
psychological 47:7
public 75:6 100:11
pull 8:22
pushed 40:1
put 20:6 28:3 29:11 29:22 30:4 46:17 52:20 54:21 55:4 68:10 79:17 95:10 100:3 101:16 102:18
putting 12:16 49:10 57:19 77:11

Q

quality 4:2 5:19 46:13
quasi-judicial 21:12
question 14:18 18:16 31:1,11 41:18 54:5 59:17 64:10 70:18 81:13 94:15 100:15
questions 47:10,12 47:13
quite 40:1 49:22 59:7
quoted 16:22
quotes 17:1
quoting 72:19

R

raise 18:16
RAND 40:10,19,19 43:1,18
rank 99:18
rape 82:20
rarely 99:9
rate 4:4 5:2 10:22 16:4
rates 5:4,7,20 16:5 18:1
rationales 33:12
reach 102:3
reaction 22:20 75:10 83:4 84:2
read 42:19 52:11 64:8 76:10
reading 31:13
reads 76:6 78:16 80:7
real 57:19
really 5:11 7:13 9:22 12:1 17:10 17:13,17 30:21 40:3 42:10 49:11 49:12 53:6,15 55:14,22 57:5,11 62:18 63:6 69:18 78:13 80:5 88:14 102:22 104:7
reasons 5:6 37:6
recall 12:3 13:11 13:19,22 15:15 29:18 30:2 33:1 33:21 34:5 39:15 60:18 72:17 82:3 93:4 99:19
received 14:15
recognize 92:10
recollection 19:6 32:9 33:18,19 34:11 58:17
recommend 25:8,9 80:14
recommendation 3:14 4:13 21:5,20 24:17,19,21,22 27:1 28:6,20 37:15 66:19 67:11 69:1 70:15 73:6 74:1,21 75:9 76:14 77:5 78:16 78:21 79:4,15,18 79:20 80:13 86:12 88:8 89:2,4 90:18 92:15 93:8,10 96:16 97:3,18 98:7,11
recommendations 2:10,13,18 3:10 22:12 26:16 45:6 66:3 69:7 79:17 86:17 89:7 98:9
recommended 88:8
recommending 21:8,19 72:7,7 97:19
recommends 27:2
record 90:6
reduce 3:1 6:6 7:9
referral 17:21
referred 10:21
refers 70:19
reflect 15:15 32:14 68:14,15 81:5 92:11 95:9
reflected 15:16
reflects 17:10 61:16 76:2
reforms 23:3,6,14 77:14
refresh 19:6
regard 86:2 88:4 99:18
regards 56:15
Regional 95:13
regular 74:22
regulated 86:5
reinforcement 93:2
relates 91:6
Relations 40:21 49:6
relationship 69:16
relatively 35:1
released 100:16
releasing 97:21
reliable 76:18
relieved 99:6,7,10 100:20
reluctant 11:11 29:11
remember 13:6 20:4 45:4 63:6 94:18,20
remind 25:21
reminds 87:3
removal 18:18
remove 25:10 55:12
removing 2:21 3:22 4:9 5:17 6:3,15 7:6,18 18:13 20:12
REP 6:9 11:2,5 14:9,11 15:3,7 18:15 24:1,5 30:9 30:14 31:10 32:12 34:10,20,22 36:1 46:4 47:1,3,22 54:2,6,12,16 55:21 60:21 67:2 67:8,13 68:11 69:2 70:17 72:18 73:7 83:3 86:9 89:11,14 90:14
repeat 27:21 67:10 82:11
repeatedly 65:18
report 3:6 8:2 15:17 16:2,18 18:9 32:13 49:22 69:5 73:1 81:19 82:10 102:21 103:16,18
reported 29:21
reporting 3:2 18:20 18:22 23:9,13 31:22 33:3 35:1 37:13 60:3 86:5 92:2
reports 6:7 52:9,17 63:8 78:12
representative 61:5
reprisal 6:7 37:14 55:17,18,18
require 71:9,22 91:11
required 74:14
requirement 95:3
requirements 59:12,14 74:11 80:11 94:8,12,16 94:17 95:6,19
requires 71:11 80:16
requiring 72:21 83:17
reread 64:10
research 12:12,13 41:10 42:7,9 48:11,19 50:11,11
researcher 11:21
residence 96:10

resident 95:14,17 96:7
resources 69:13
respect 4:5,13,14 8:3 9:9 89:6 93:5
responding 91:12
response 1:3 23:6 29:20 30:4 36:13 38:9 53:11 56:19 60:3 64:4 67:1 79:5 80:11 83:20 84:6 92:9 96:19
responsibilities 21:12 27:3,7,13 71:8
responsibility 59:2
responsible 59:7 79:18 87:10
result 20:15 27:6 31:22 75:11 94:9
results 13:13 25:6 38:12 52:12 78:4 78:7 80:12 81:1 92:20 96:20
Results-based 92:22
RET 1:16,17
review 21:9,20 35:20 71:11 83:21 85:7,15 86:17 88:11 90:3,12 92:6 97:19 98:20
reviews 84:12,14 90:12
revised 22:11 23:20 23:22 24:11 26:3 35:15,19 102:21
revisions 102:18 103:6
rewording 105:4
rework 82:15
reworked 26:4
rewrite 7:14 8:1,8 13:2 18:3 62:13
right 3:7 6:1 7:3 11:2 13:14,17 17:15 19:12,21 20:3,8 22:14 23:18 26:8,13,22 28:1,2 31:10 36:8 37:4 38:10 40:22 41:2 46:9 47:11 47:11 50:2 51:12 52:21 54:13,15 57:14 62:15 63:4 63:18 66:19 67:12 69:3 70:1 71:1 72:3,4 75:8 79:2 89:9 91:4 92:15 93:12 94:5,13 96:2,15 97:17 98:9 99:16 101:14 103:4,22 104:3,19
rigorous 41:9
risk 65:17 80:9
role 1:4 2:4 5:1 20:21 63:14,20 88:6 93:14 105:11
roles 64:3
roll 88:19
root 55:15
RSP 1:21,21
run 19:22
rural 34:3

S

SA 97:20 98:12
Sable 49:18
safety 90:8
sampling 43:22
SAPRO 38:18 40:10 42:17 44:5 44:13 45:2,18 46:7 69:13,22 70:7,13 73:3 75:1 75:7 76:22 77:3,8 93:15,17 94:7 97:1,4,6,11,15
SAPRO's 46:13,21
satisfy 42:2
saw 104:1
saying 7:11,19 11:18,22 21:21 25:15 33:22 43:6 43:8,12 44:4 55:4 55:12 60:11,18 61:13,19 62:9 63:15 67:10 68:17 72:2,10 73:12 77:12 88:3
says 10:19 18:17 24:9 52:1 63:19 72:20 79:6,14 81:13 94:15
Sciences 48:20 49:21
scientific 56:5
search 27:10
second 3:21 26:22 31:17 38:10 53:15 53:19 62:9
secondly 31:6 60:17
secretaries 74:2 88:9 96:16 97:5
Secretary 21:8,19 45:12 74:21 88:9
section 2:12,13 3:16 5:3 21:5 22:5,6,12,18,19 22:22 23:17,20 25:14,19 28:9 30:7 35:17 37:22 49:16 52:11 62:19 80:15 82:2,10 88:4,6 89:8,10 91:5 94:10
sections 2:11 24:15 103:4,7
sector 9:11 10:2,4 11:19 12:8
security 85:19
see 2:16 8:22 22:2 43:18 63:3 65:10 70:1 74:15 79:21 93:10 99:17 104:7
seeing 78:7
seek 38:11
seen 25:6 72:16
SELECT 1:17
selection 21:14 27:10
selective 56:7
Senator 33:17
send 30:12 42:6 59:5 84:9 96:5,13
senior 2:22 4:2 20:13 25:11 26:17 28:16 52:3 56:3 63:15 92:7 95:13 95:18
sense 67:7 83:21
sent 89:22
sentence 31:5 43:2 89:3
sentiment 100:2
sentinel 84:11,19 90:1
separate 14:17 15:4 34:4
separated 15:1
September 72:20
serve 75:3
served 28:17
service 21:10 64:19 72:8 74:11 88:9 93:19 94:12 95:3 98:4 100:18
Service-level 71:15
services 5:9 16:4 45:5 58:11 59:13 66:20 69:12 70:22 71:8,9,18 72:1,9 74:5 78:7 80:8 91:18,22 92:16 94:18 95:6,8,11 95:15 98:17
session 103:13
set 18:6 45:7 63:22
seven 104:5
sexual 1:3 3:1,2 6:4 6:7 7:8 10:6 16:17 18:7,20,22 19:1,2 23:3,8 26:19 27:3 45:5,8 45:12 50:20 53:21 56:5,18 60:3 64:3 67:1 78:12 80:19 81:1,2,15,19 82:20 83:8,20 84:20 86:7 88:12 91:13,16 92:21 96:18 98:13
sexually 81:18
shape 104:14
share 54:18 61:5
short 7:9 37:15
side 11:10,12 14:20
sign 20:18
significant 21:18 23:3 93:14
significantly 95:15
similar 49:2 78:7 90:7
simpler 46:16
simply 76:16
Simultaneous 11:15 44:11
sir 59:11 85:4 99:3
site 90:8
sitting 57:12
situation 78:11
Six 80:7
skipping 18:19
small 30:11
smarter 87:21
sodomy 82:21
somebody 43:3 44:15 60:19 68:11
somewhat 19:16 41:12
soon 35:18 103:8
sorry 3:11 8:17 11:16 18:13 24:3 30:10 34:20 36:16 39:10 40:17 45:16 72:17 74:4 76:9 81:8 98:14 99:2 104:7
sort 5:13 8:9 17:1,4

34:2 44:9 47:5 84:3 86:15 88:15 93:22
sound 52:19
sounds 28:1 56:12 71:22 78:21
soup 45:20
source 55:3
speak 98:11
speaking 11:15 44:11 89:17
specific 10:17 17:14 24:22 46:22 59:11 74:1,11 82:3,12,16 86:5 97:9
specifically 33:21 43:14 45:9 81:14
speed 103:8
spending 47:18
spot 22:11
squadron 58:10,15
staff 1:21 28:11 29:10 36:17 79:16 81:12
stand 32:4 35:4
standalone 70:14
standard 40:2 41:13
standardization 86:7
standardized 5:9 86:14
standardizing 98:21
standards 41:10 97:1,8,14
stands 98:13
stark 96:15
start 57:19
started 11:22
starting 58:8
starts 3:18
statement 5:16 7:10 51:15
statements 6:15 11:19 63:8
STATES 1:1
statistics 13:7 14:5 19:8 20:5,10 34:6 48:22 49:19 92:21
statutory 91:11
stay 15:14 24:14 90:19
step 41:2
steps 70:4 72:12
sticking 23:13
Stone's 5:4
strategies 87:12
strictly 48:13
strong 33:14
stronger 17:9
strongly 7:4 55:7 96:4
structure 43:3
struggled 12:11
stuck 7:16
studies 16:9,12,19 17:1 98:1
study 16:21 17:5,8 27:4 44:7 47:15 49:21
stylistically 4:8 32:17
Subcommittee 1:4 1:12 2:5 16:1 25:18 27:1,8 37:7 53:13 54:21 57:22 79:19 80:3 94:19 101:17 102:4 105:11
Subcommittee's 37:17
subject 31:3
subordinate 39:3 51:20 53:10 59:20 63:21 64:8,16 65:6,8 79:8 92:6 93:13,19,20 94:10
substantial 35:18
success 91:12,15 93:14 97:13
sudden 76:20
sufficient 64:6 83:10
sufficiently 31:15 56:20
suggest 14:3 21:19 33:9 50:18 53:2 86:13
suggested 56:14 58:7 85:14 96:14
suggesting 24:2 61:6
suggestion 28:15 46:8 51:5
suggestions 91:7
suggests 5:8 29:3 70:10,20
suicide 86:4 90:11
summary 59:1
superior 71:10
Supervising 1:22
supervisors 56:21 63:21 64:9,16 79:9 93:17
supervisory 39:4 51:21
support 2:21 4:7,9 6:2,18 8:7,8 10:20 94:7,9
supported 8:7
supporting 37:6 57:14 97:15
supportive 88:7
supposed 71:3
sure 5:14 24:9 32:18 39:13 46:6 47:14 53:15 57:11 62:6 67:21,22 76:15 83:16,19 88:4,17,20 90:20 98:12 99:21 101:5 101:9 105:9
survey 38:12 40:21 43:16,19 44:8 46:1,14 47:10 48:1,12 49:1,6,7 49:17 50:3,3,19 51:3 52:12 56:5 59:12 65:17 70:3 71:19 72:13 73:3 73:5,6 76:16 77:18 80:9,10,11 80:12 81:1,22 82:12 83:5,18 87:15 88:5 92:9 92:20
surveyed 7:12 62:7 66:15
surveys 38:1,4 47:17,18 49:9 50:6,13 56:16 59:16 62:7 65:16 65:19 66:6,12 67:16,20 68:7,13 68:14,16,20,21 69:11 70:8,14 71:10 76:17 77:22 88:16 92:3,11 96:21
sweeping 61:21
system 6:6 90:4 102:11
systematic 52:13 55:1 57:17
systematically 52:14
systems 1:3 4:15 8:3 15:22 18:5 49:16 50:8 101:22

T

tailored 88:15 90:17
take 9:5 11:7,11 19:22 20:7,10 29:8,10 37:20 70:4,15 72:12 84:22 87:10,15 101:6 103:16
taken 99:17
takes 83:8,9
talk 14:7 31:13,14 36:11 50:20 61:11 62:3 68:9
talked 76:9 84:7,8 98:15
talking 12:18 19:15 23:12 37:4,16 39:14 41:19 45:13 46:10 49:4,5,21 50:6 64:15 67:17 67:18 73:5 76:13 76:21 77:4 78:17 79:12 90:2 94:2
talks 53:20
targeted 69:18,19
Task 45:4
tasked 65:18
telephonically 1:12
tell 47:15 49:15 68:17 77:13 102:15
temper 41:3,12
tend 53:10 60:2 102:3
tendency 63:7
term 7:9
terminology 41:6 57:6
terms 12:20 17:20 24:10,10 31:18 37:5 67:5 69:6 71:14 80:5 94:2 102:6
test 67:16
testimony 5:5 6:14 7:17 22:1 29:4,15 63:1 86:1 93:7
text 2:15 28:10 35:20 39:15 64:5 64:8 67:11 70:19 91:7 93:6 98:8
Thank 2:8 3:19 36:20 86:9 101:3
thanks 89:15 99:13 105:10
theirs 33:22
thing 31:17 34:9

47:8 57:14 58:21
things 32:14,15 36:22 41:4 55:17 68:5,9 79:1 85:20 86:11 105:5
think 2:14 3:17 6:11,13 7:5,14,20 8:4 9:1,16,17,18 9:22 10:9,16 11:17 12:4,19,22 14:12,15,17 15:1 15:4,5,14 17:2,3,9 18:2 19:7 21:18 21:22 23:10 24:12 26:14 28:10,13 29:21 30:1,6,21 31:4,14 32:2,6,9 33:4 34:13 35:5 35:20 37:2,3,3,10 39:6 40:4 41:1,3 42:10,17 43:11,17 44:2,13,20,21 45:15,16,18 46:9 47:1,4,4,14 48:2,5 48:17 49:13 51:9 51:21 52:22 53:6 53:8,8,14 55:5,9 55:21 56:8 57:8 57:20 58:2,6 59:16 60:1,8 61:1 61:8,18,19 62:2 62:12,14,18,22 63:5,6 64:13,15 65:22 67:6 68:19 69:6 71:5 72:8,10 74:14 76:9 77:2,7 77:20 78:8 80:1 83:14,15 84:4 85:10,20 86:1,6 88:14,18 89:2,16 91:22 98:16 99:14 100:2 101:8 102:1 102:9 104:4
thinking 17:16 39:18,20 85:9 86:11
third 79:1
third-hand 16:10
thorough 85:15
thought 25:12 35:11 73:4 75:13 75:14 76:4,8 79:12 82:14 100:9
thoughtful 65:21
thoughts 103:10
thousands 61:4
three 58:16 70:2 78:10 103:7
threw 33:19
throwing 11:13
tie 50:17 78:5
tied 69:1
time 1:13 5:11 34:17 50:19 66:15 103:17,19 104:11
times 46:20 53:13
timing 50:21
tired 88:16
today 105:10
told 51:10 104:20
tomorrow 102:22 103:2
tone 52:19
tool 88:15
tools 76:19
top 19:9 104:8
top-to-bottom 48:17
topic 25:2
totally 51:2 100:5
track 19:19
trained 64:2
training 95:13,18 95:19,21,21 96:10 104:18
transparency 98:17 100:11
transparent 98:2
trends 92:12,20
trial 10:22 17:21 27:7 59:5
tried 12:21 15:20
trigger 82:4
trouble 8:18,19
troubling 14:7
true 61:12,22 92:1
try 62:20 69:8 102:19
trying 42:19 44:20 62:19 69:15 73:7 87:13 95:8 103:18
turn 91:8 103:9
turned 13:8,22 34:15
Turner 1:17 21:4,4 22:10 28:13 29:3 36:15,15,17 42:2 42:14,14 44:2 73:22 82:18,19 87:4 88:1,1 90:5,6 91:8 96:3,4 98:10 98:12 99:3 100:5 100:17 104:17
turning 101:15
Twenty-three 28:22
twice 26:10
two 13:1 15:2 16:11 26:16 28:12 30:6 37:9 58:16 66:5 66:10,12 69:10 94:22 101:10
two-hour 96:8
type 34:9

U

U.S 19:19
ultimately 38:21 41:8 51:16 80:4
unbiased 38:17 44:5 76:21
uncomfortable 7:10 49:11 57:5 57:19 60:6
understand 9:16,18 73:8 100:5 102:9 104:4
understanding 20:9 33:8 40:8 41:17
undertaken 70:21
uneven 94:9
Uniform 26:18
unit 38:22 51:17 56:19 64:1,22 65:19 69:20,22 93:13
unit's 38:21 51:16 92:13
UNITED 1:1
units 56:18
universal 71:17 85:21
university 96:7
unreasonable 53:8
use 41:11 60:16 67:9
useful 14:6 75:5
utilize 66:20

V

vague 9:14 57:6
vagueness 30:22 36:5
validate 72:13 75:3
value 88:17
variety 55:16 99:8
various 42:20 70:22 84:16
vary 91:22 93:21 95:7,15
version 26:3 56:13 102:21
versus 15:6
vested 26:17
victim 29:4 37:13 60:2,9,18 80:17 102:12
Victimization 49:1
victims 6:4,17 7:8 7:12 24:6,10 29:18 40:5,5 52:2 52:9,15 53:22 55:2,15 56:2,5,7 56:18 57:12,18,20 57:21 59:9 60:1,5 60:9,12 61:3,7,17 62:2,11 80:15 94:11
view 44:17
views 100:4
visibility 92:5
volume 65:16
volunteered 98:5
voted 36:10

W

waiting 25:5,9
walk 23:16
walked 25:19
wandering 79:1
want 4:6 15:13 18:15,20 19:3 28:3 32:17,18 41:13 42:5 49:14 54:21 67:3,14,21 74:17 77:2 86:14 87:17 98:10,19 100:3 102:15
wanted 54:17 101:16,20
wants 18:11
wasn't 40:9 62:17 76:15 84:18 86:22
way 8:8 9:13 11:13 12:1 15:14 28:7 32:17 44:5 46:1,2 46:16 47:6 54:22 61:21 77:21 87:1 100:13
ways 5:8 42:20 51:1
we'll 8:13,16,21 20:7,9 26:10 29:8 37:19,20 69:8 74:16 89:19 91:1 103:16 104:6 105:1
we're 2:8 5:15,16 7:11 9:15 12:17

16:10 23:12 32:18 43:6,8 44:4,20 50:5 52:8 60:13 62:19 67:9 72:6 76:13,20 78:11,12 84:3,12 87:15 88:14,17 94:1 95:8 102:19 103:7 103:17 105:1
we've 7:5,12 24:14 41:14 65:22 71:5 84:11 103:4
week 26:7 35:21 66:12 82:17 84:8 104:9
weighing 101:1
weight 7:20 49:10
welcome 2:3
well-informed 9:17
went 14:1 83:12
weren't 29:7
white 15:17 16:8,11 16:18,21 17:5,8 40:18
whitewashing 63:14
widely 16:12
willing 11:6,7 20:18 54:19
wing 96:6
wish 43:15
withdrawn 32:6
witnesses 27:12,13 61:2
wondering 14:21 16:8
worded 96:5
wording 74:9,10
words 57:20
wordsmith 96:11
wordsmithing 30:11
work 22:11 46:13 62:2
working 21:7 54:8
Workplace 40:20
49:5
wouldn't 30:4 90:14
wrap 103:15
written 9:13 52:20 63:13
wrong 32:4 35:5 47:9 55:11 71:3 83:13 104:11

X

Y

year 65:17
years 78:10 86:3
York 87:6

Z

0

1

1 3:15 66:19 68:19 69:1,15,16,17 92:16 93:10 103:4
10 61:3
11 28:15
120 82:21
125 82:21
14 54:9
15 61:3
16 91:5
1950s 34:18
1955 34:19,20,21

2

2 5:22 14:22 54:8 69:15,16,19 91:18 96:16 98:9
2:00 1:12
2:04 2:2
2:30 103:14
20 61:3
2013 72:20
2014 1:9 80:16 94:11
21 1:9
26 15:16
27 36:18
28 3:12,16

3

3 6:1 10:18 38:14 39:11 50:9 51:7 75:9,11,18 76:2 76:12 92:2 93:11 94:10 97:3 98:9
3(d) 80:15
3:57 101:11

4

4 9:7 10:17 15:1,13 18:3 21:5 22:12 22:19,22 51:14 72:19 74:21 76:14 77:5 78:16,21,21 79:4 93:11,12 94:4
4:02 105:14
4:30 103:14

5

5 18:4,11,17 20:9 23:17,20 54:14 61:20 70:19 82:2 82:10 94:5 103:5
5th 103:20

6

6 2:11,11,12 3:16 18:12 20:11 36:12 63:19 65:15 95:12 103:5
6th 103:21

7

7 2:11,11 20:20 30:7 37:22 52:11 65:14 66:18 80:13 103:5
78-percent 16:3
79 16:2

8

8 2:11 23:2 89:8,10 91:5 103:6

9

9 29:2
90s 12:4