

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

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SPECIAL PROJECTS SUBCOMMITTEE

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TUESDAY  
JUNE 11, 2024

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The Subcommittee met in the Hamilton Boardroom at  
Convene Hamilton Square, located at 600 14th Street NW,  
Washington, DC, at 10:30 a.m., Meghan Tokash, Subcommittee  
Chair, presiding.

MEMBERS PRESENT

Ms. Meghan Tokash, Chair  
Mr. A.J. Kramer  
Dr. Jenifer Markowitz  
Dr. Cassia Spohn  
Judge Reggie Walton

PRESENTERS

Ms. Lynn Rosenthal, former Chair of the Independent Review  
Commission on Sexual Assault in the Military  
Mr. Josh Connolly, former Chief of Staff for Rep. Jackie  
Speier, Senior Vice President of Protect Our Defenders

DAC-IPAD STAFF

Mr. David Gruber, Designated Federal Official  
Ms. Meghan Peters, Acting Deputy Director  
Ms. Stayce Rozell, Senior Paralegal  
Ms. Gina M. Acevedo, Attorney-Advisor  
Ms. Theresa Gallagher, Attorney-Advisor  
Ms. Eleanor Magers Vuono, Attorney-Advisor, MJRP  
Ms. Mya Koffie, Student Intern

\* Present via video teleconference

The Subcommittee met in closed session to receive two presentations and discuss various matters.

### **Welcome**

Meghan Tokash, Subcommittee Chair, welcomed those in attendance to the meeting. She noted the absence of Judge Grimm. She thanked the staff for their work, and acknowledged the increased workload as several members of staff are facing demands from both DAC-IPAD and MJRP.

Members discussed their concerns over reports that in some locations the Office of the Special Trial Counsel has been using noncertified private counsel to cover cases due to high workload. It was suggested that a letter be drafted to flag this issue to the General Counsel, in the hopes of preventing this from becoming an established practice by default. One member noted that it would be important to keep the issue narrowly targeted as a detailing and certification issue. A broad complaint of staffing concerns risked being overlooked or resulting in inaction, as every agency and project complains of staffing concerns.

Chair Tokash then provided an overview of the two speakers invited to present before the subcommittee. Lynn Rosenthal was the Chair of the Independent Review Commission on Sexual Assault in the Military (IRC), whose Recommendation 1.1 led to the creation of the Office of the Special Victim Prosecutor, which Congress subsequently renamed the Office of the Special Trial Counsel (OSTC). Josh Connolly was the Chief of Staff for Congresswoman Jackie Speier, and had a large role in the creation and development of the legislation that established OSTC. Members were reminded not to call out specific comments or details from site visits, since the report had not yet been released.

### **Presentation by Lynn Rosenthal**

Ms. Rosenthal thanked the subcommittee for inviting her to talk about the IRC process and findings. She expressed appreciation for her 12 excellent commission members, noting that they were open-minded and neutral, able to deeply consider the issues without being already bound to a preferred course of action.

Two key findings informed the IRC Recommendation. The Commission found that there was a lack of trust or a broken trust in military leadership's ability to handle sexual harassment and assault issues. Commanders often lacked the time, interest, and expertise to be engaged in these cases; JAGs were generalists dealing with a wide range of matters, not experts in complicated legal decisions relating to sexual assault and harassment.

The Commission spoke to hundreds of military and civilian justice experts, junior enlisted, survivors, and advocates, many of whom felt military leadership to be complicit. Though this may sometimes have been a matter of evil intent, it was more often a lack of understanding, capacity, or interest. Those interviewed felt leadership neglected its roles and responsibilities and complained of a pervasive toleration of demeaning climates. Leadership was often perceived to have a conflict of interest. The Commission felt that TJAGs were entrenched in the system and unable to fairly lead it, and that the new system needed to be independent from their structure.

Because of this, the Commission recommended independence and capacity building. They proposed a more professionalized system, ideally led by a Presidentially Appointed, Senate-Confirmed position, to restore trust by combining the best of civilian expertise with a deep knowledge of the military justice system. Congress responded by creating the OSTC.

### **Presentation by Josh Connolly**

Mr. Connolly introduced himself as the former Legislative Director and Chief of Staff for Congresswoman Jackie Speier, former Chairwoman of the Military Personnel Subcommittee. He subsequently became the Senior Vice President and Policy Director of Protect Our Defenders, through which he engages with Capitol Hill and the press to create reforms to end sexual violence and prejudice in the military.

He noted that those in Congress concerned with these issues came to many of the same conclusions that the IRC report presented. There was a perception that the scales of justice were tipped unfairly. Many survivors reported a lack of faith in the system, and talked of dealing with inexperienced and overburdened prosecutors. There were also reports of commanders moving forward with all sexual assault cases, regardless of the facts or merit of the case, in order to avoid the appearance of being soft on sexual assault. Victims may opt not to participate in the system if they do not expect to receive justice and fear being revictimized. It was necessary to reform the system to be as impartial as possible, to assure both survivors and those accused of misconduct that justice will be provided for all. To this end, it is essential for justice that prosecutors of sexual assault and harassment cases have expertise, experience, and training in this area.

The 2022 National Defense Authorization Act was the culmination of this reform. Informed by the IRC's work, it took authority for sexual assault and harassment cases out of the chain of command, transferring it to OSTC, and required practitioners to have special qualifications and expertise. Mr. Connolly expressed awareness of troubling reports that unqualified counsel have been used in OSTC processes. The system is supposed to effectively process a case, not simply decide whether or not to pursue it. He reiterated that it is essential that the practitioners be well-trained experts outside of the chain of command.

### **Q&A with Presenters**

A member presented concerns that short length of tenure may prevent development of the expertise necessary to effectively prosecute or defend cases. Ms. Rosenthal confirmed that experience is critical, and noted that Recommendation 1.4 encourages professionalized career billets for military justice practitioners. Prosecutors and investigators need time to develop expertise and a path to promotion is necessary in order to retain them. The IRC sought to combine the best of the civilian system with a deep knowledge of military justice, and the Commission considered many possible models of reform before finalizing the Recommendation.

A member commented that the issues reported in site visits did not seem to be the result of intentional subversion efforts, but a lack of needed positions and funding. A member raised the concern that in some locations, JAGs and other military defense counsel were handling sexual misconduct cases as their first assignments. Ms. Rosenthal reiterated that adequate staffing, expertise, and funding were key concerns

for the IRC. Recommendation 1.7e calls on the Secretary of Defense to direct the services to establish funding appropriate for defense counsel to control their own access to litigation resources.

A member asked why Congress did not provide more funding. Mr. Connolly explained that the bill was the result of negotiations towards what was possible rather than ideal, but confirmed that adequate funding is essential and the spirit of the law is undermined when military counsel lacks support. Ms. Rosenthal commented that the military can be the best at handling these cases if it develops, funds, and staffs this system appropriately.

A member asked why both specialization and independence were critical in the IRC's Recommendation. Ms. Rosenthal explained that independence is necessary to restore trust that the system is accomplishing justice. She expressed that Command has an important role in fostering a better climate and culture of values, but that the system must be outside of that authority in order for Command to accomplish those goals. Command needs to take care of their people, which cannot be done if they must also be weighing credibility and deciding which cases can go forward. Mr. Connolly agreed with this assessment.

A member expressed that staffing and funding concerns were growing in anticipation of an influx of new cases when sexual harassment is added to OSTC responsibilities in addition to sexual assault. Ms. Rosenthal stated that there is an absolute connection between toleration of harassment and incidence of assault, and in the long term this will create a better culture and allow the military to deal with issues before they escalate. Mr. Connolly was skeptical that the increase in caseload will be overly large.

A member expressed concern that Command can still unjustly influence case outcomes. Ms. Rosenthal held that Command can express their views, but the Special Trial Counsel is not bound by them. She felt it would be necessary to look for findings in that area to demonstrate if this continues to be an issue. Mr. Connolly did not see a foothold in the new structure for Command to exploit to tip the scales of justice. He stated that the most important job of Command is to maintain a climate that minimizes the risk of sexual misconduct.

A member asked the presenters how they would respond if they heard, hypothetically, that regular, noncertified trial counsel were shouldering the majority of OSTC workload. Ms. Rosenthal confirmed that it would not be true to the Recommendation. Mr. Connolly held that this would run contrary to the spirit and letter of the law. He stated that there is a window of time for reform in response to the new legislation, but if the reform is not carried out competently, the opportunity for trust will be lost.

A member suggested that many people on site visits had never heard of OSTC, and suggested there was an opportunity for informative training. Another member noted hearing frustration not just about staffing, but also about critiques of the system being leveled before it is fully implemented. The member asked how to distinguish growing pains from natural, built-in weaknesses that need to be corrected before becoming systemic problems. Ms. Rosenthal noted that the government rarely allows a system to develop before making changes, and suggested that the reforms be given time to become established. She clarified that this was not intended to prevent Congress from providing the necessary funding.

Mr. Connolly proposed auditing the identity and experience of people performing various functions within the OSTC system, which could provide valuable data at a reasonable cost. Members agreed that quantitative data is needed in addition to the perceptions provided by site visits. Another member emphasized that the feedback from the field holds that the structural change is correct, but that resources are an issue, and the rate of acquittals is high, suggesting that cases which should not have gone forward are being prosecuted.

A member asked if hiring civilians to fill OSTC positions was contemplated legislatively. Mr. Connolly confirmed that it was considered, since the internal pipeline in the services has not been sufficient, but the idea did not survive to the final bill.

A member asked how the next generation of counsel ought to be trained, and if trial counsel could talk to the victim, Command, and the investigators to get to know the case. Ms. Rosenthal explained that the IRC envisioned a structure of Assistant Special Victim Prosecutors under a Special Victim Prosecutor, who would be under the Director, a Senior Executive Service Career Leader, who would be under a Presidentially Appointed, Senate-Confirmed position in the Office of the Secretary of Defense. The Commission sought to use the supervision structure to build expertise and create a well-trained corps. Mr. Connolly noted that some criticized the legislation as overly prescriptive in seeking to lay out the structure and requirements for training, but emphasized that funding will be essential to build out this capacity.

Ms. Rosenthal urged the Subcommittee, as they approach their important work, to have faith.

### **Final Thoughts**

The Subcommittee was introduced to Mya Koffie, a student intern, and Eleanor Magers Vuono, formerly a DAC-IPAD attorney-advisor, but now leader of MJRP's UCMJ review.

A member suggested communicating with the General Counsel about the issues the Subcommittee has heard in site visits, and proposed a quantitative audit. The General Counsel may wish to take action to ensure that the Pentagon's proposal for the next NDAA addresses OSTC concerns. A member suggested presenting a simplified set of concerns to DAC-IPAD to confirm if service secretaries have heard similar concerns. The DAC-IPAD was set to expire in February 2026, which leaves limited time and personnel capacity to implement an audit. The Subcommittee could wait for further site visits to be completed before making a decision in December, but this would be a tight timetable. MJRP, JSC, or RAND may also be candidates to implement an audit.

The Chair asked for input from members about sending a letter to General Counsel. Members expressed their support for the idea; one member emphasized that the letter should focus on OSTC issues. A letter will be drafted and revised before the Subcommittee takes a vote to raise it to the DAC-IPAD. All communications will take place through appropriate staff channels.

The meeting adjourned at 11:32 a.m.