



THE DEFENSE ADVISORY COMMITTEE ON
INVESTIGATION, PROSECUTION, AND DEFENSE OF
SEXUAL ASSAULT IN THE ARMED FORCES

June 28, 2024

The Honorable Caroline Krass
General Counsel
United States Department of Defense
Pentagon
Washington, DC 20301

Dear Ms. Krass:

On the six-month anniversary of the rollout of the Office of the Special Trial Counsel (“OSTC”), this Committee writes to flag a few preliminary concerns regarding the operation of those offices as well as their counterpart Trial Defense Services (“TDS”)—the offices which, respectively, prosecute and defend sexual assault and related cases.

For context, this year DAC-IPAD members have visited 11 military installations (Navy, Marine Corps, Army, and Air Force) to conduct non-attribution site visits in the field. Although we have not yet had the opportunity to study the information received in depth, overall, military justice stakeholders are reporting that the OSTC, TDS, Victims’ Counsel, and Military Criminal Investigation Organizations have not been resourced or staffed appropriately to function at optimal levels. And while the DAC-IPAD has 5 more installation site visits this year, waiting to raise these concerns could have a negative impact on the successful restructuring of the military justice system in light of the creation of the OSTCs, and on the Service members depending on restored trust in the military justice system.

Preliminary feedback from DAC-IPAD site visits thus far indicates problems with the lack of human resources and the allocation of experienced counsel. For example, some STCs suggested that while they could benefit from additional attorneys, additional support staff – paralegals, victim liaisons, investigators, administrative and data entry personnel – might reduce the number of additional attorneys needed. The need for additional support staff was echoed by the other military justice practitioners. In turn, some TDS practitioners reported serious workforce resourcing issues and disparity in both experience and rank compared to their OSTC counterparts. If these are systemic problems, they raise concerns about the ability to recruit and retain experienced military justice personnel, the independence of the OSTC, the equity of experience across both prosecution and defense bars, and the staffing of military litigation offices writ large.

To assess whether these preliminary concerns from the field are systemic problems, the DOD could conduct a quantitative assessment of how OSTC and TDS offices are being staffed. The findings could be shared with the DAC-IPAD to include in the site visit report we expect to issue in March 2025. While the DAC-IPAD intends to make recommendations on addressing these issues after appropriate review, attention to these resourcing and attorney assignment issues should not be delayed. This may be particularly important given that sexual harassment will become an additional OSTC offense on January 1, 2025, which could cause additional stress to office staffing.

Not reviewed or approved by the DAC-IPAD

Finally, we want to emphasize that we are also hearing positive feedback from the site visit participants which will be further detailed in our future discussions and reports. The members of the DAC-IPAD would like to express our sincere gratitude and appreciation for the opportunity to make use of our collective experience and expertise in this field to advise you and the Secretary of Defense on how to improve the military's response to sexual misconduct within its ranks. We will continue to keep you apprised of these and other issues.

CC: The Honorable Lloyd J. Austin III
The Honorable Carlos del Toro
The Honorable Frank Kendall III
The Honorable Christine E. Wormuth

Respectfully submitted,

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