

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

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34TH PUBLIC MEETING

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WEDNESDAY
MARCH 13, 2024

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The Committee met in the Blue & Silver Club at Falcon Stadium, 4900 Stadium Boulevard, Air Force Academy, Colorado, at 9:15 a.m., Hon. Karla N. Smith, Chair, presiding.

PRESENT

Hon. Karla N. Smith, Chair
MG (R) Marcia Anderson
Ms. Martha Bashford
Mr. William E. Cassara
Ms. Margaret Garvin
Ms. Suzanne Goldberg
Hon. Paul W. Grimm *
Mr. A.J. Kramer *
Ms. Jennifer Gentile Long
Ms. Jennifer O'Connor
BG (R) James W. Schwenk
Dr. Cassia Spohn
Ms. Meghan Tokash *

DAC-IPAD STAFF

Mr. Pete Yob, Executive Director
Mr. Dwight Sullivan, Designated Federal Officer
Ms. Theresa Gallagher, Attorney Advisor
Ms. Nalini Gupta, Attorney Advisor *
Mr. Michael D. Libretto, Attorney Advisor
Ms. Terri A. Saunders, Attorney Advisor
Ms. Kate Tagert, Attorney Advisor
Ms. Eleanor Magers Vuono, Attorney Advisor
Ms. Meghan Peters, Attorney Advisor
Ms. Jennifer Campbell, Chief of Staff
Mr. Michael Libretto, Attorney Advisor
Mr. Chuck Mason, Attorney Advisor *
Ms. Marguerite McKinney, Management and Program
Analyst
Ms. Amanda Hagy, Senior Paralegal
Ms. Stacy Boggess, Senior Paralegal
Ms. Stayce Rozell, Senior Paralegal
Ms. Alice Falk, Technical Writer-Editor *
Mr. Blake Morris, Paralegal *
Ms. Janelle McLaughlin-Ali, Paralegal *
Mr. Connor Wasik, Intern

* Present via video-teleconference

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

2 9:23 a.m.

3 MR. SULLIVAN: Good morning. Day 2's
4 public meeting is now open. Judge Smith, you
5 have the conn.

6 CHAIR SMITH: Thank you, Mr. Sullivan, and
7 good morning. I would like to welcome the
8 members of the DAC-IPAD and everyone in
9 attendance today to Day 2 of the 34th public
10 meeting of the Defense Advisory Committee on
11 Investigation, Prosecution, and Defense of Sexual
12 Assault in the Armed Forces, or DAC-IPAD.

13 The DAC-IPAD would like to, again,
14 thank the United States Air Force Academy for
15 hosting the DAC-IPAD's two-day public meeting.
16 It is a tremendous honor to have the opportunity
17 to hold the committee meeting at this beautiful
18 campus, and we recognize and appreciate the
19 Academy leadership and staff who have graciously
20 supported the DAC-IPAD's visit.

21 Today's meeting will be in-person,
22 with videoconference via Zoom also available for

1 members, presenters, and other attendees.

2 The DAC-IPAD was created by the
3 Secretary of Defense in 2016, in accordance with
4 the National Defense Authorization Act for fiscal
5 year 2015, as amended, for a 10-year term. Our
6 mandate is to advise the Secretary of Defense on
7 the investigation, prosecution, and defense of
8 allegations of sexual assault and other sexual
9 misconduct involving members of the Armed Forces.

10 I'd like to acknowledge, again, with
11 gratitude, the military justice experts from each
12 of the military services' criminal law divisions
13 who serve as the DAC-IPAD's dedicated service
14 representatives, and who have joined us for the
15 meeting today. Welcome and thank you.

16 We will begin today's meeting with
17 deliberations on a Article 34 letter, and then a
18 panel of civilian practitioners from the El Paso
19 County, Colorado, Public Defender's Office and
20 the District Attorney's Office Special Victims
21 Unit will provide their perspectives on issues of
22 interest to the DAC-IPAD.

1 After briefings from the DAC-IPAD
2 Policy, Case Review, and Special Project
3 Subcommittees, the Committee will receive public
4 comment from four individuals. Prior to
5 concluding the two-day meeting, the Committee
6 will deliberate once again on panel discussions
7 from yesterday, time permitting. Finally, the
8 DAC-IPAD director, Mr. Pete Yob, will wrap up the
9 meeting, before adjournment by the DFO.

10 I'll end with a couple of housekeeping
11 items. To those joining by video, I ask that you
12 please mute your device microphone when not
13 speaking. If any technical difficulties should
14 occur with the video, we will break for ten
15 minutes, move to a teleconference line, and send
16 the dial-in instructions by email.

17 Today's meeting is being recorded and
18 transcribed and the complete written transcript
19 will be posted on the DAC-IPAD website. Thank
20 you again to those in attendance today, and I
21 will now hand the meeting over to Mr. Pete Yob.
22 Thank you, Pete.

1 MR. YOB: Thank you, Chair Smith. As
2 Staff Director, I will note for the record that
3 we have quorum, with nine Committee members who
4 are physically present in the room today and
5 three Committee members who are joining us
6 virtually for this session, for a total of 12.

7 I will now turn it over to staff
8 members Ms. Vuono and Ms. Peters to discuss -- or
9 lead the discussion of the deliberation on the
10 Article 34 letter.

11 MS. VUONO: Thank you. This is
12 Eleanor Vuono. And if I could direct everyone's
13 attention to your meeting materials, at Tab Four,
14 sub-tab A is a draft letter that the DAC-IPAD
15 Special Projects Subcommittee has drafted for
16 deliberation and approval today. We've received
17 many helpful edits from the Committee members,
18 and I would like to just raise those for your
19 consideration and approval today, or deliberation
20 and discussion for additional ones.

21 Starting at the beginning of the
22 letter, the first sentence has been proposed to

1 be amended to say, as you can see in your red
2 line changes, that the DAC-IPAD believes the time
3 is right to amend Article 34 UCMJ to align the
4 statute with the most recent regulatory guidance
5 from the Department of Defense regarding uniform
6 prosecution standards.

7 In addition, at the end of that
8 paragraph a suggestion was made to note that
9 Congress did not adopt that recommendation that
10 was made back in 2020. That final sentence has
11 been proposed to now read, as a remedy, the DAC-
12 IPAD recommended Congress amend Article 34 UCMJ;
13 however, Congress did not act.

14 Then the letter goes on to explain the
15 additional changes that came out in the June 2023
16 report, with revised appendix. The red line
17 track changes are -- have been proposed as you
18 see them, with one additional change in that
19 second paragraph that bleeds over onto page two.
20 The word ever has been proposed to be removed
21 from the sentence that reads as a -- would read,
22 as a result, in October 2023 the Secretary of

1 Defense revised Appendix 2.1 creating the first
2 military prosecution standards on par with the
3 federal principles of prosecution contained in
4 the Justice Manual. So, there would no longer be
5 the word ever.

6 Then there were some edits of
7 questions raised about the language for the 2.3
8 referral standard that -- contained in Appendix
9 2.1 of the Manual, all of those are accurate, as
10 reflected in the manual and there's no proposal
11 to make any changes from what you see there.

12 Moving down to the paragraph that
13 follows the quote from the RCM 601(d)(2), the
14 suggestion was made that that explanation of
15 transformative change is confusing. And the
16 proposal is just to delete that entire first
17 sentence, so that the paragraph would now just
18 start with the second sentence. So, strike all
19 of the language, the effect of the change would
20 be -- that whole sentence would be gone, and the
21 paragraph would begin with the sentence, the DAC-
22 IPAD therefore recommends that -- and then,

1 strike the time is right, and just say, instead,
2 the DAC-IPAD therefore recommends that Congress
3 amend Article 34 to align the statutory language
4 with the new referral guidance that all judge
5 advocates are presently using as outlined in
6 Appendix 2.1 MCM -- and the rest of the sentence
7 continues.

8 So, that's another proposed change.
9 That would be a short, a much shorter paragraph,
10 it would just be a one-sentence paragraph at this
11 point, followed by the gratitude and appreciation
12 for -- to Congress for considering this. A minor
13 typo, we're going to correct the middle initial
14 of member William E. Cassara. And I believe all
15 the other changes would be as you see in front of
16 you.

17 Are there any concerns, questions,
18 comments, or changes that the Committee would
19 like to make to the letter, beyond what we just
20 discussed?

21 MR. KRAMER: I'm sorry, this is A.J.
22 Kramer.

1 MS. VUONO: Yes?

2 MR. KRAMER: Can I -- I apologize for
3 bring this up so late. Can I suggest that the
4 carry-over paragraph at the top of page two, at
5 the end of the sentence that says prosecution
6 standards on par with the federal principles of
7 prosecution contained in the Justice Manual -- I
8 think it would be good just to add in Department
9 of Justice Manual, just the words Department of.

10 MS. VUONO: Thank you. Adding that to
11 the letter for your consideration. And we'll
12 have an opportunity, after we take all questions
13 and comments, to then do a vote. But I've added
14 that additional comment so that the sentence
15 would now read at the end, on par with the
16 federal principles of prosecution contained in
17 the Department of Justice Manual. Yes?

18 MS. GOLDBERG: Thank you very much.
19 In the penultimate paragraph, on the section of
20 the sentence that says the effect of these
21 changes will be transformative, I'd like to
22 propose --

1 MS. VUONO: That's gone.

2 MS. GOLDBERG: What's that? I know
3 it's gone, the proposal was just to --

4 MS. VUONO: Take that out?

5 MS. GOLDBERG: Take it all out -- oh,
6 so -- and everybody was comfortable with taking -
7 - I'm sorry --

8 MS. VUONO: That's the proposal, yes.
9 So, that sentence would be -- the proposal is to
10 delete that because of the confusion with timing
11 of aligning statute with the changes that have
12 already been made.

13 MS. GOLDBERG: That is great and I'm
14 sorry that I didn't capture that when you said
15 it. I will still just, for what it's worth,
16 offer, if it remains important to any of the
17 members to have the transformative language in
18 there -- which it may not -- that we might say
19 that, you know, be more explicit about what is
20 transformative.

21 So, the effect of these changes will
22 be transformative by aligning the UCMJ -- excuse

1 me, the -- yeah, Article 34 to current policy,
2 and this, you know, colon, this will ensure that
3 trial counsel will screen, more carefully screen
4 cases consistent with current policy and ensure
5 that -- and assure servicemembers that judge
6 advocates -- etcetera. But if everybody is
7 comfortable with deleting the language entirely,
8 that will be clearer, and we can keep moving.

9 MS. VUONO: So, why don't we actually
10 open that up to the full Committee? The proposal
11 has been to just delete it; an alternative would
12 be to rewrite it. So, all in favor of simply
13 deleting that entire first sentence and having
14 the paragraph begin with, the DAC-IPAD therefore
15 recommends that Congress amend Article 34, please
16 raise your hand and say aye.

17 (Chorus of aye.)

18 MS. VUONO: All in favor of rewriting
19 the sentence along the lines of the proposal,
20 please raise your hand and say aye.

21 (No audible response.)

22 MS. GOLDBERG: I will let the record

1 reflect that I am not in favor of what I just
2 proposed and --

3 (Laughter.)

4 MS. GOLDBERG: And much prefer what
5 you have suggested.

6 MS. VUONO: It sounds like the
7 Committee is comfortable deleting that first
8 sentence, then? Yes?

9 (Off-microphone comment.)

10 MS. VUONO: Yes. Turning to our
11 members who are on Zoom, are there any who would
12 prefer to rewrite the sentence as opposed to just
13 deleting the sentence? If you would prefer to
14 rewrite the sentence, please speak up now and let
15 us know.

16 Hearing none, we will delete the
17 sentence.

18 MS. O'CONNOR: Can I make one other
19 recommendation? The first sentence of the letter
20 says, the DAC-IPAD believes the time is right to
21 amend. And, along the lines of, you know,
22 cutting it in the penultimate paragraph, we could

1 maybe change that to, the DAC-IPAD believes -- or
2 just, DAC-IPAD recommends that Congress amend --
3 rather than focus on the time is right. So, cut
4 the time is right --

5 (Off-microphone comment.)

6 MS. O'CONNOR: Exactly.

7 MS. VUONO: Yeah.

8 MS. O'CONNOR: So, just change the
9 first couple words to, the DAC-IPAD recommends
10 that Congress amend. Because that's the
11 proposal.

12 MS. VUONO: The proposal is now to
13 write -- the first sentence would read, the DAC-
14 IPAD recommends that Congress amend -- and the
15 rest would stay the same -- Article 34 to align
16 the statute with the most recent regulatory
17 guidance?

18 MS. O'CONNOR: Yes.

19 MS. VUONO: We have a question and a
20 comment from Meghan Tokash on Zoom.

21 MS. TOKASH: Thank you. I mean, I
22 think the, striking the time is right language is

1 not a hill to die on, I just want to defend the
2 language for my fellow Committee members as to
3 why it's in there. It seems implausible for
4 those operating in the field to be operating
5 under new guidance, and for the law to be
6 completely incongruous to what that operational
7 guidance is. So, that's why I included the time
8 is right language.

9 But, again, it's not a hill to die on,
10 I just wanted to be able to explain that to the
11 Committee. Because I actually do believe the
12 time is right, now. Especially given Ms.
13 Goldberg's comments regarding, if everybody's
14 using this in the field then, you know, what is
15 the impact for this recommendation? And, really,
16 the overall impact is that, if you are a lawmaker
17 sitting on the hill you should want to make sure
18 that the law that you are -- that you are
19 responsible for in the legislative branch,
20 reflects what is actually happening in practice.
21 So, I will be quiet and go with the majority of
22 the Committee, but I agree.

1 MS. GOLDBERG: Thank you, Meghan.
2 It's Suzanne Goldberg. And I take your point, I
3 wonder if it is appropriate to flag the issue
4 that you have raised. So, the time is right is -
5 - sort of, you know, implies all of what you
6 said. You know, would it be appropriate for us
7 to say, you know, the DAC-IPAD is concerned that,
8 without this change, there may be confusion in
9 the field as a result of the UCMJ language not
10 tracking current policy. I mean, I'm sure
11 there's some better way to put that point, but --

12 (simultaneous speaking.)

13 MS. TOKASH: Yep, that sounds great.

14 MS. GARVIN: Yeah, I agree.

15 MS. O'CONNOR: I do, too.

16 MS. VUONO: So, it sounds like the
17 suggestion is to leave in place the sentence, the
18 DAC-IPAD believes that the time is right to amend
19 Article 34, to align the statute with the most
20 recent regulatory guidance regarding uniform
21 prosecution standards. Then to add an additional
22 sentence expressing the DAC-IPAD's concern that,

1 without this statutory change, there may be
2 confusion in the field because the statute is not
3 aligned with the practice?

4 MS. GOLDBERG: May I propose, on a
5 just a super-quick read, that that kind of
6 sentence go into the penultimate paragraph just
7 before the last sentence? Because we also have
8 a, therefore recommends that the time is right
9 sentence there.

10 MS. VUONO: We deleted that already.

11 MS. GOLDBERG: Oh, gosh, the whole
12 thing is deleted. So, I --

13 MS. VUONO: No. So, the way it reads
14 right now, the DAC-IPAD therefore recommends that
15 Congress amend Article 34. So, you could put it
16 here.

17 MS. GOLDBERG: I would still put it
18 there, because I think that -- I think for the
19 new sentence to make sense, Congress would have
20 to have the context of what is different -- what
21 are the differences between UCMJ current -- and
22 the current policy.

1 MS. VUONO: And is the -- so, again,
2 just to make sure everyone's tracking. The first
3 sentence of the letter will remain -- the DAC-
4 IPAD believes that the time is right -- and then,
5 when you go down to the penultimate paragraph, it
6 would read, the DAC-IPAD therefore recommends
7 that Congress amend Article 34 UCMJ to align the
8 statutory language with the new referral guidance
9 that all judge advocates are presently using --
10 the Committee -- a new sentence would be added to
11 say, the Committee is concerned that, without
12 this change, there would be confusion -- there
13 could be confusion in the field by practitioners.

14 CHAIR SMITH: So, can I say, I think
15 we should probably be using more strong -- can
16 you not hear me? I think we should be using more
17 strong language. I think we should be saying
18 something along the lines of, the DAC-IPAD
19 believes it is necessary to amend for the -- and
20 then go into the next sentence -- for the
21 following reason, rather than saying the time is
22 right. Because time is right implies to me -- it

1 is a little more, for lack of a better way of
2 saying it, loosey-goosey. But this is necessary
3 so that the people implementing the regs
4 understand the statute also requires this. So,
5 that's just my -- yeah.

6 MS. O'CONNOR: I agree with that. And
7 I think, maybe the thing to do is take that first
8 sentence -- say something like what Chair Smith
9 said, you know, it's important to do this because
10 otherwise there's confusion, or however we want
11 to work that --

12 CHAIR SMITH: Inconsistent -- you
13 know.

14 MS. O'CONNOR: And then do a hard
15 return so that your second paragraph starts four
16 years ago, and just kind of separate out the
17 concepts, you know, so the second paragraph would
18 have the background. But have the first sentence
19 or two alone say this is important to do because.

20 So, basically, it's a recommendation
21 to take what you're putting in the penultimate
22 paragraph and actually put it in the front, so

1 that the first sentence or two all by itself
2 says, the DAC-IPAD thinks it's necessary for
3 Congress to amend Article 34 to align with the
4 most recent regulatory guidance, blah, blah,
5 blah, because the inconsistency that exists right
6 now would cause confusion and, you know, blah,
7 blah, blah. Does that make sense?

8 GENERAL ANDERSON: I just want to
9 chime in and say I concur with that. And I'm
10 kind of mindful of the thing in the military we
11 call BLUF, bottom-line up front, because people
12 may not want to slog through the rest -- I
13 shouldn't say that -- slog through the rest of
14 the letter. But, if you hit them -- you know, I
15 think it's very, much more impactful to have that
16 explanation about confusion in that very first
17 paragraph. So, I concur.

18 MR. CASSARA: I just have a very quick
19 comment. It's not a suggestion at all, except
20 for I'm being -- the old Seinfeld episode about
21 yada, yada, yada is starting to ring through my
22 mind. So, I'm wondering if we can get the -- I'm

1 losing track of what we're considering putting
2 where, and I'm not smart enough to figure that
3 out, so.

4 MS. VUONO: I think what might work
5 is, if the staff takes all of these comments,
6 suggestions, and proposals, we draft up a new
7 letter, and we can do a vote on an email. Which
8 means, you will get the revised -- without all
9 this red line confusion, you'll see a clean
10 version, and you will have an opportunity to
11 thumbs up, thumbs down on an email.

12 MS. BASHFORD: I just think it's -- we
13 have to be a little bit clearer that what they're
14 doing in the field now with the guidelines is not
15 what the statute requires. I think just saying
16 aligns doesn't quite flesh that out enough, so if
17 you can just flesh that out a little bit more.

18 MS. GOLDBERG: Right. And just, maybe
19 we're all agreed, but in case we're not it
20 probably would be easier to discuss here. My
21 suggestion is that we say, you know, could cause
22 confusion, or something rather than would,

1 because we obviously don't want to presume
2 confusion. So, if colleagues are good with that,
3 that will at least eliminate one possible extra
4 round of emails. Hearing no objection, I think
5 people are good with --

6 PARTICIPANT: I concur with that.

7 MS. VUONO: All clear. We'll take a
8 vote now, that the DAC-IPAD votes to approve the
9 revised letter, as discussed on the record -- and
10 we'll have the transcript -- with the follow-on
11 actual language coming to you in an email to make
12 sure that it aligns with what you have just
13 proposed. But, at least, we'll have the vote
14 that everyone is in agreement with these changes
15 on the record, and then you'll have an
16 opportunity to see the final product and give it
17 your final approval.

18 So, with that, is there -- everyone
19 who is in agreement with the revised letter and
20 attached statutory language, please raise your
21 hand and say aye, including on Zoom.

22 (Chorus of aye.)

1 MS. VUONO: All those -- Zoom -- three
2 on Zoom are recorded with an eye. Any opposed,
3 please state your opposition.

4 (No audible response.)

5 MS. VUONO: None opposed. The letter
6 will be redrafted and sent to you in an email.
7 And thank you.

8 Now, just to close the loop, if you
9 turn to Tab B of Tab four, you will see the
10 revisions to the statutory language. That, also,
11 will be cleaned up and attached to the letter to
12 Congress. This essentially captures the proposed
13 revised prosecution standards to be incorporated
14 into Article 34.

15 So, all of those edits that you have
16 seen and had an opportunity to review, are there
17 any comments, concerns, questions, disagreements,
18 or additions?

19 MS. GOLDBERG: Thank you. I have a
20 comment, I'm not -- I'm still thinking about
21 this, wondering whether evidence will probably be
22 sufficient is the same in -- as probable cause in

1 the minds of others on this Committee?

2 PARTICIPANT: That's the language in
3 the statute.

4 MS. GOLDBERG: It is the language in
5 the statute.

6 (Off-microphone comment.)

7 MS. GOLDBERG: Yes, but the probably
8 be sufficient is the language in the --

9 MS. VUONO: Yeah, I think that the
10 language in the regulations --

11 MS. GOLDBERG: I thought that was --
12 oh, I'm sorry, I thought it was the red line
13 language.

14 MS. VUONO: In the DOJ regulation,
15 right, that they --

16 MS. GOLDBERG: Okay, yeah.

17 MS. VUONO: Yeah, so that's the reason
18 for that use.

19 MS. GOLDBERG: Thank you, withdraw the
20 sharing of my thinking on this.

21 (Laughter.)

22 MS. VUONO: Are there any comments or

1 questions from our Zoom members?

2 Hearing none, that language will be
3 included as seen in Tab B, that language would be
4 included with the letter to Congress. And that
5 is all we have, thank you.

6 MR. YOB: Chair Smith, I think that
7 concludes the deliberation topics for this
8 session. I'd recommend that we take a -- it's
9 9:47, I'd recommend that we take a break until
10 10:02, and then we'll have some speakers joining
11 us from El Paso County.

12 CHAIR SMITH: All right, do you want
13 to just break till 10:00? I think that works --

14 MR. YOB: I suppose.

15 (Laughter.)

16 CHAIR SMITH: Yeah. We appreciate you
17 giving us our extra two minutes, but I think
18 we're good.

19 (Laughter.)

20 MR. YOB: No comment.

21 (Laughter.)

22 (Whereupon, the above-entitled matter

1 went off the record at 9:47 a.m. and resumed at
2 10:00 a.m.)

3 CHAIR SMITH: Welcome back, we're
4 ready to get started. I'm going to kick it over
5 to Meghan Peters for our two panel members.

6 MS. PETERS: Thank you. Our panel for
7 today will be two attorneys who practice here in
8 Colorado Springs. They are prepared to offer
9 comparative perspectives on issues you discussed
10 with military practitioners yesterday, and to
11 share some of their experiences prosecuting and
12 defending servicemembers. So, it's my pleasure
13 to introduce to you Ms. Dina O'Riley.

14 She's a public defender here in
15 Colorado Springs, and has been working in the
16 area of criminal defense since 2004. The
17 Colorado Springs Public Defenders Office is the
18 largest public defender's office in the state of
19 Colorado. Ms. O'Riley has represented
20 servicemembers and former servicemembers in cases
21 involving serious violent offenses including
22 murder, sexual assault, domestic violence.

1 She is also a founding member of the
2 El Paso County Veterans Trauma Court. Mr. Kelson
3 Castain is here with us. He is a prosecutor, and
4 he joined the Fourth Judicial District Attorney's
5 Office in 2010. Since then, he's served in
6 various supervisory roles, and currently he
7 supervises the Special Victims Unit, with seven
8 attorneys on staff who handle felony sexual
9 assault, sexual exploitation of children, child
10 abuse, other crimes of abuse, and violent crimes,
11 and he also handles some unique post-conviction
12 claims.

13 So, we're grateful to you that you
14 have taken your time to provide this committee
15 with some valuable input, and at this time I will
16 turn it over to Chair Smith to begin the question
17 and answer session.

18 CHAIR SMITH: Good morning, thank you
19 for being here. I wonder if you could just start
20 by giving us a sense of the number of cases that
21 go through each of your offices, if you know. I
22 don't know if you necessarily know, but just

1 total case number, and then if you have an idea
2 of felony or sex offense cases that come through
3 your office, I think that would be helpful to the
4 members.

5 MR. CASTAIN: Well, thank you very
6 much for having us here. I didn't pull the exact
7 number of total cases that went through our
8 office. Generally the way that we do our
9 numbering locally is you have the start, the year
10 of the case filed, so it would be a 23 or a 24
11 now, a CR to designate that it's a criminal case
12 number, and then the number of the case.

13 I think last year we had that kind of
14 secondary number probably upwards of 3000, maybe
15 4000. I'm trying to think of an exact case
16 number that might be helpful for the committee,
17 but it's several thousand every year. I did pull
18 the statistics of how many special victims cases
19 we handled.

20 In 2023 we filed 274 cases in my unit.
21 About 149 of those involved sexual offenses. I
22 include in sexual offenses crimes against

1 children, incest, sexual exploitation, so that's
2 not just hands on offenses, but other ones that
3 may still fall into a sex offense category.

4 MS. O'RILEY: Good morning. So, in
5 the public defender's office, I'm sure most of
6 you are aware, but we represent individuals who -
7 - they fall below a certain income threshold. At
8 any given time, so I think Kelson is talking
9 about felony matters, we have misdemeanors,
10 traffic, all kinds of cases open up. At any
11 given time somewhere around 10000 cases are
12 active in our office.

13 We represent a relatively low number
14 of military because many members of the military
15 do not qualify for our services. Generally, like
16 E1, E2, we will be able to get on their cases,
17 especially if they have dependents, that counts
18 towards their income deduction there. So, I
19 think with our office, we don't often get the
20 same number of military filings that are actually
21 out there.

22 However, a lot of times there are

1 exceptions to that, like if somebody is
2 incarcerated, they're automatically qualified.
3 So, military members who might have a hold from
4 whatever base, we will take their case. And that
5 happens a lot in the more serious, the homicides
6 and the sex assault cases where somebody -- I
7 think what I've experienced is the military sort
8 of wants to wait and see what happens with state
9 side cases.

10 And get a sense of whether or not
11 they're going to really go forward with courts-
12 martial. I've had a lot of situations where the
13 military has not necessarily filed, but I think
14 in some form put a hold on my client so that if
15 they do bond out on the state side, that then
16 they're going back to whatever base for
17 monitoring, and whatever restrictions the base
18 puts on them.

19 So, I think generally we take
20 incarcerated -- there are some situations where I
21 see quick termination from military status, and
22 then that puts them in the other boat, which is

1 unemployed. And so they can quickly fill out an
2 application, and then we take their cases. So,
3 those are kind of the areas that I have
4 overlapping contact.

5 If the chain of command is involved,
6 I will work with the chain of command to sort of
7 see what consequences -- there's sometimes where
8 we can protect their military status by working
9 some sort of global disposition. But then
10 there's other times where it's just not going to
11 work out based on the nature of the charges.

12 DR. SPOHN: I have a question for Mr.,
13 is it Castain?

14 MR. CASTAIN: Yes.

15 DR. SPOHN: What is your filing
16 standard, and do you know of the cases that are
17 referred to you for prosecution, and particularly
18 the sex offenses, what proportion of those are
19 declined for prosecution?

20 MR. CASTAIN: So, I'll start kind of
21 in reverse. I don't have actual statistics that
22 I can tell you of how many cases are submitted to

1 our office versus how many we file. The 274
2 include things like child abuse, or I don't
3 believe those include any juvenile cases, so
4 those would not involve servicemembers, but maybe
5 included in the thousands number I provided
6 earlier for total cases.

7 Generally what I would say is kind of
8 an anecdotal answer. We work very closely with
9 law enforcement agencies. Before they file a
10 case, they will generally ask us for input in
11 cases, not necessarily at the level of what kind
12 of investigation should we be doing, but if they
13 believe that they are close, or they have
14 questions about the investigation, we can provide
15 them with legal kind of assistance.

16 We may refer them to case law, or
17 suggest that here are issues we see with the
18 case, can you try to go work on those for us?
19 And so, I say that because based on that
20 relationship, I think we have a better percentage
21 that comes through, that is submitted to us and
22 then eventually filed.

1 But I think statistically and research
2 wise, it's pretty clear that there is a pretty
3 dramatic drop off between cases that are
4 reported, cases that are then investigated, cases
5 that are then -- have sufficient evidence to be
6 submitted to the DA's office, and then again
7 another drop off on the amount that are actually
8 filed.

9 To talk a little bit about our
10 process, it's a hard one to quantify, because
11 there are going to be exceptions to everything
12 that I say to you today. But in general we are
13 looking for evidence that convinces us that we
14 can prove a case beyond a reasonable doubt. I
15 know that many times the question is we have a
16 report, and then is that sufficient?

17 Generally what we ask law enforcement
18 to do is try to find information that
19 corroborates whatever is provided to us, either
20 by a victim, or by a witness, even in some
21 situations by a defendant, so that we can feel
22 confident when we file a case that we can meet

1 our ethical burdens, and that we can convince a
2 jury that this actually happened, and that it was
3 criminal.

4 So, if you have a specific question,
5 I'm happy to address specific answers, but it's
6 hard to answer that in a kind of concise or
7 quantified way.

8 DR. SPOHN: No, that's helpful, thank
9 you very much.

10 MR. CASTAIN: Sure.

11 CHAIR SMITH: Go ahead.

12 MS. BASHFORD: This is for Mr.
13 Castain. Have you prosecuted in cases of dual
14 jurisdiction, serving members of the military in
15 your unit?

16 MR. CASTAIN: Yes, unfortunately given
17 the kind of closeness of multiple different
18 military installations to the city of Colorado
19 Springs, we have a decent number of active
20 members who are then charged with crimes. My
21 unit still handles cases that involve people who
22 are active duty, or who are removed from duty

1 through whatever mechanism that may be, whether
2 it's retirement, or chaptering, or anything else.

3 MS. BASHFORD: And how do you decide
4 whether to defer to the military's prosecution
5 lane, or to do it in your jurisdiction?

6 MR. CASTAIN: Sure. Some of that, I
7 guess I have two answers for you. First is that
8 if the case appears jurisdictionally to fit
9 better with the military, then that decision is
10 made long before we would ever file a case. Most
11 of those conversations happen between the
12 investigating military agency and the
13 investigating civilian agency.

14 And I know we have very good
15 communication, and very good cooperation between
16 those agencies, so they kind of know which
17 direction it may be going before I ever know
18 about the case. In circumstances where a case is
19 submitted to me, and maybe I don't think I have
20 enough evidence to prove a civilian charge, but
21 maybe there is a UCMJ charge that would still
22 fit, or might fit better, then I have

1 communications with the officers who were
2 involved in prosecuting that case.

3 Again, regardless of which agency that
4 is, I'll reach out and talk to them. But those
5 kind of decisions really fall down to what
6 evidence do we have, and does the case fit better
7 in one jurisdiction versus another. I know in
8 some of the materials I was given, that one of
9 the questions I think people had been
10 considering, or the panel had been considering
11 was the impact of a victim's decision, or
12 victim's input into where a case may be
13 prosecuted.

14 Candidly, I've never had a case where
15 a victim came forward and said I want this to be
16 in the military system versus the civilian
17 system. So, I don't know that that would have a
18 dramatic impact. Within Colorado, we have the
19 victims' rights amendment to our constitution,
20 and the Victims' Rights Act that's kind of
21 codifying that amendment.

22 And so, we are required to consult

1 with victims about the charges that we have filed
2 to make sure they're informed, and that they have
3 input into how a case is handled. So, to that
4 degree, I would certainly want to know what a
5 victim's thoughts are. But that amendment and
6 that act do not force me to take specific actions
7 based on a victim's request.

8 So, I may disagree, and think the
9 state charges may have higher consequences that
10 may better fit with what that action was. Or
11 maybe the military system has a better chance of
12 finding accountability for those actions, and so
13 that may be a better route to take strategically.

14 MS. BASHFORD: Just one follow up to
15 that, given how mobile the military is in cases
16 where you have assumed jurisdiction, have you had
17 difficulty getting witnesses back who have been
18 transferred to other stations? And who foots the
19 bill for that?

20 MR. CASTAIN: Candidly, I don't know
21 who foots the bill. I know that for us, we work
22 with witnesses and victims who move all the time.

1 If people move within Colorado, that's certainly
2 easier, but we've had people who have moved to
3 other states, actually to other countries as
4 well. And depending on the type of case, we'll
5 either work to provide flights or lodging for
6 those witnesses or victims to come back to
7 testify at a trial or hearing if necessary.

8 We try to be judicious in how we use
9 our limited resources. So, there may be cases
10 where if the cost becomes prohibitive, we may not
11 be able to kind of foot that bill. To answer
12 your question specifically about servicemembers,
13 generally the hardest thing is if someone's
14 deployed, that makes it very difficult for us to
15 get them backed.

16 But if somebody is reassigned to a
17 different station domestically, we really haven't
18 had a lot of trouble with that. And thankfully
19 the relationships with the local judge advocate
20 units has really helped us with that, because
21 they can kind of talk to the other installations,
22 and help us to get those people and find out

1 where they are.

2 MS. GOLDBERG: Thank you both for
3 being here. One follow up question on your
4 exchange with Ms. Bashford, and then I'll shift
5 gears a little bit. Do you have any observations
6 you could share about when working with victims,
7 whether there has been a difference from your
8 perspective? Working with victims who are
9 military affiliated, either as a spouse or a
10 child, versus non-military affiliated?

11 Either in terms of working with
12 special victims counsel, or working with a victim
13 coordinator, or working with somebody who is
14 entirely not -- has no kind of support from the
15 military?

16 MR. CASTAIN: Sure. So, whenever we
17 have a case that gets -- well, I'll talk about
18 our special victims cases, because those I don't
19 want to say have a different kind of process, but
20 tend to get more attention for victim assistance
21 and victim contact. The law enforcement agencies
22 that we work with have their own victim advocates

1 who go out when a case is reported that would
2 involve our Victims' Rights Act that I spoke
3 about earlier.

4 All of our sexual assault cases, all
5 of the -- I think this is accurate, all of our
6 sexual offenses would fall into that category.
7 And so, law enforcement tries to get in touch
8 with the victim, and connect them with a victim
9 advocate when the investigation starts. My
10 understanding of the military side is that that
11 is also true.

12 And so, I think at a certain point, if
13 the decision is made that the case is going to go
14 through the civilian courts, there is kind of a
15 hand off that happens. And so then the military
16 advocates I think will kind of hand over
17 communication with the civilian advocates. My
18 office also has victim advocates who were
19 assigned just to the special victims unit, and
20 then are assigned to cases based on what
21 courtroom they go into.

22 So, we try very hard to have a hand

1 off then between the law enforcement advocates
2 and our offices' advocates once a case is filed.
3 I'm not going to say that's the smoothest thing,
4 because obviously there are times where that
5 doesn't work very well. But in general we try to
6 make sure that there's an advocate assigned to
7 that victim kind of through each step of the
8 process.

9 When we have cases submitted to us
10 that we eventually decide not to file, we try
11 then to have the victim advocates make contact
12 with the victim. We then explain to them why we
13 are not filing the case. And if the decision is
14 to transfer it back to the military, or to go
15 through some other route, we try to kind of work
16 in reverse then, and kind of put them back in
17 contact with somebody.

18 I don't know how successful that is as
19 a process, but that's aspirationally what we try
20 to do in each of those kind of pathways.

21 MS. GOLDBERG: Thank you, just one
22 quick follow up to that. If you know, when there

1 have been kind of interactions between the
2 military's version of victim advocates, and your
3 version of victim advocates, whether they find
4 that they work in similar ways, or whether there
5 are things the military might learn from how your
6 victim advocates work, or vice versa?

7 MR. CASTAIN: I don't know if I have
8 a good kind of anecdotal story for that. I know
9 our victim advocates always try to kind of learn
10 from each case, and try to find ways that they
11 can be better to help the victim when they are
12 going through the process. I don't have any
13 experience working in the military side, or the
14 military courts, so I can't tell you exactly how
15 that process may differ.

16 But I do think that having that kind
17 of connection, and having that kind of hand off
18 is helpful. I'm sorry, I struggle to answer your
19 question because I don't know that I know enough
20 to really give you a good answer.

21 MS. GOLDBERG: I guess a different way
22 to put the question would be have you heard

1 anything about the military's victim advocates
2 that would be useful for us to know? And could
3 broaden that out to have you heard anything about
4 the military's justice system from your view that
5 would be useful for this committee to know?

6 I know that's quite broad, but if you
7 have one or two things that jump to mind. And
8 then I know we have more specific questions that
9 I'm sure others will ask about digital devices
10 and things, but that ought to offer you that
11 larger question right now.

12 MR. CASTAIN: So, I can think of there
13 was a case that our office handled, I think three
14 or four years ago at this point. Where the case
15 involved an active duty servicemember as the
16 suspect, I believe the victim was civilian and
17 had no direct ties to the military. But the case
18 was investigated, it was handed to our office, we
19 reviewed it, we decided not to file charges.

20 After talking with the victim, we kind
21 of referred them to the detective, the detective
22 got in touch with, I believe it was Army CID, I

1 could be wrong on which branch it was. The CID
2 agents then spoke with the JAG officers, who
3 decided that they did want to pursue charges
4 through the military courts.

5 In speaking with -- I've heard this
6 victim come and talk at conferences that I've
7 been at, and I've talked to her myself, and from
8 her kind of description of that process, she was
9 very thankful to have kind of the military victim
10 advocates in contact with her. Her experience
11 was largely one of not really knowing what the
12 scheduling was, or not really knowing kind of
13 what was coming up.

14 She did speak very highly of the
15 advocates themselves, the attorneys, as well as
16 the victim advocates who were, when they talked
17 to her, were very communicative, and helped her
18 understand the process. But I think that
19 candidly, one of the biggest things that victims
20 struggle within the criminal justice, at least
21 civilly, is the gaps of time in between court
22 dates and not really knowing what's happening.

1 And so, from hearing her talk, that
2 was one of the big benefits of having military
3 advocates, was somebody she could call and find
4 out just what's happening with the case.

5 MS. O'RILEY: I don't have a lot to
6 add there, because obviously our roles are so
7 different, so I couldn't really speak on the
8 differences between the advocacy on the victim's
9 side.

10 MS. GOLDBERG: I also invite you, if
11 you'd like to offer broader observations.

12 MS. O'RILEY: I think to just kind of
13 go back a little bit, as far as my experience,
14 I've had one single case, it was a homicide where
15 it was charged state side and on the military
16 side, it's the one and only time that I've seen
17 the military take the case away from us.

18 Generally it's just always -- my
19 experience is it stays state side, and it stays
20 either open on the military side as well, until
21 we go to trial, and then see what the results
22 are. And then I kind of queried my office about

1 what's the status these days about what's
2 happening with dual prosecutions.

3 And the experience right now is that
4 -- and we're talking about more serious cases,
5 sex assaults, and higher level felony cases, that
6 the military is waiting to see what happens. The
7 case progresses in state, goes to trial.

8 Generally if there's not a conviction, if there's
9 an acquittal, then the military is dismissing at
10 that time. So, that's really the experience that
11 most people in my office have been dealing with.

12 And so that can trigger interplay
13 between my office and the chain of command, which
14 is releases, and things like that for my client
15 to get any relevant records, treatment, medical,
16 anything like that. But I know that's a little
17 different than the waiver and the privilege that
18 you guys are talking about.

19 But that's, for instance in a child
20 abuse case, my client might be prosecuted state
21 side, I'm able to get a waiver of any medical
22 records because they're the parent, and generally

1 it takes a while to get -- I don't know how
2 quickly it flows on the military side from -- if
3 you are military, to get those into the military
4 hands of people.

5 But it takes a pretty long time for me
6 to get records out of any military installation
7 for clients. Well, hopefully it's not the VA,
8 once it goes into that, it's like a dark hole of
9 could be a year, unless you have connections.
10 But the other sort of -- at least like three
11 months I would say, yeah.

12 CHAIR SMITH: So, real quick, can I
13 ask you, because you both kind of separately
14 touched on it, what has your experience been
15 dealing with military commanders, military
16 counsel, military investigators, just however you
17 would describe it?

18 MS. O'RILEY: They're very polite.
19 Generally they -- I would say the biggest issue I
20 have is there sometimes seems to be new bodies,
21 because I can have a case for a year or two,
22 longer, and a lot of times I'll be dealing with a

1 couple different JAG lawyers. And so, it's not
2 as consistent as far as who I'm dealing with.

3 But every time I do deal with
4 somebody, they seem to have the same goal in
5 mind, to be able to give me access to
6 information. I can go on and they'll -- I've had
7 a homicide, a long time ago, where a client was
8 at Fort Carson, active duty, a couple
9 deployments, picked up a murder charge after
10 second deployment.

11 And we interviewed basically everyone
12 who served with him to find out it was a mental
13 health case. So, to find out all the background.
14 And we would go, and they would sit us in a room,
15 and we could get access to all the servicemembers
16 who had information. So, it was a really helpful
17 process. It was just giving us the ability to
18 investigate was really helpful in that case.

19 MR. CASTAIN: I would just second
20 that. I mean, every time that I've reached out to
21 any of the judge advocates about specific cases,
22 or specific defendants, they've always been very

1 kind, very polite, and have been very quick to
2 kind of help me or get me information. I know
3 that on the kind of investigative side, it's been
4 very similar.

5 And I know there have been some
6 changes recently about kind of how those offices
7 are structured, with getting more civilians
8 involved, and having kind of more long term
9 assignments, and that's been very helpful for us,
10 so that we have points of contact, and know who
11 to reach out to if we have questions.

12 I want to make sure I get her title
13 correct, but I think it's Major Altimas, she's
14 been over to our office a couple times, since
15 that -- I think it's Office of Special Counsel,
16 since that's been stood up. She and I email each
17 other, I'd say monthly if not every other week.

18 So, I really appreciate that level of
19 interaction, and it certainly helps us when we
20 need to get records, or when we run into issues
21 of where is a witness, or where is a defendant,
22 and how do we kind of get information about them.

1 GENERAL ANDERSON: I have a follow up
2 question. With regard to investigators, CID, and
3 I forget what it is for the Air Force, OSI, the
4 Air Force. What, if you know, is the
5 communication like with your investigators, like
6 how timely are any reports if you need them? And
7 also without throwing anybody under the bus, do
8 you have any suggestions or comments regarding
9 how the reports are prepared?

10 MR. CASTAIN: Well, I will say timely
11 wise, generally when I've had contact with a CID
12 agent or an OSI agent, they're telling me that
13 they have an investigation that they want to run
14 by me. So, I'm kind of further down the road
15 than they would be in reaching out to the
16 Colorado Springs Police Department, or the
17 sheriff's office, or somebody along those lines.

18 From talking to the law enforcement
19 side of things, those detectives have largely
20 echoed what I have said. That when there are
21 cross jurisdictional issues, then the military
22 has been reaching out to them to either ask for

1 assistance, or to kind of pass of cases, or to
2 say, hey, look, we want to take this case.

3 I know we had -- I don't know what the
4 status of it is, but I know we had a situation
5 where we had a child abuse case that initiated
6 investigation in the civilian realm locally, and
7 through the investigation we determined that
8 there were multiple locations where this may have
9 occurred.

10 The suspect was active duty, and so
11 the conversation then was do we kind of work with
12 CID who may be able to, candidly, more
13 effectively investigate across multiple
14 jurisdictions? And where the prosecution of that
15 case may be more, not easier, but more efficient
16 given that we would have instances or actions
17 that take place in multiple locations as well.

18 So, I can say anecdotally in that
19 situation, there was very good communication, I'm
20 sure that there are instances where stuff falls
21 through the cracks, but that happens with the
22 civilian side too. So, I don't want to imply

1 that that's a specifically military problem.

2 MS. BASHFORD: Ms. O'Riley, if you had
3 a choice, which I know you don't, but would you
4 prefer to defend in military setting or in the
5 civil setting? And again, your clients don't
6 have the choice either, but do you think your
7 clients would prefer to be prosecuted in the
8 military system or in the civil?

9 MS. O'RILEY: I think the only
10 perspective that I have on that is my
11 understanding in talking to military members of
12 JAG, and we've had a couple of lawyers in my
13 office who went the military route after leaving
14 our office, is that they wear a lot of hats, so
15 they might prosecute, they might defend.
16 Personally, I would not want to be switching
17 hats.

18 I feel very committed to my role, and
19 my advocacy for my clients. So, I think that
20 that would be difficult for me to do. I feel
21 like being asked to switch is a complete change
22 of mind set that I personally wouldn't be able to

1 do. So, I feel more civilian sided as far as
2 where I would fit better.

3 MS. BASHFORD: If your clients had the
4 choice, do you think they would prefer to be
5 prosecuted in the military system by court-
6 martial, or in the civilian system?

7 MS. O'RILEY: That's a really
8 interesting question, because my understanding is
9 that it's other servicemembers who are your jury.
10 And I don't know how big your jury pools are and
11 how many people you pull. Typically on the state
12 side, on a very serious case, like a sex assault
13 or a homicide, we pull around at least 60 jurors,
14 so we have the opportunity to really dig in with
15 questionnaires of those jurors, as well as a
16 pretty long dialogue with them.

17 And so, I think from our perspective,
18 we do capture a pretty big audience that we can
19 hopefully get a member of our client's
20 background, peer, sort of dynamics that might be
21 relatively diverse. And I don't know from the
22 military side if that is as diverse. But I think

1 my clients might say that they feel more
2 comfortable in the military environment because
3 it's their world, and they know the rules better
4 on the civilian side.

5 Like we have issues of what do they
6 wear during trial on the civilian side, are they
7 wearing their dress military, or are they dressed
8 as civilians? And I've had to litigate that, and
9 it's not allowed, or there's different
10 perspectives that they may not be as comfortable
11 with on the state side.

12 MS. BASHFORD: Which do you prefer
13 that they dress, in uniform or civies?

14 MS. O'RILEY: I really leave it up to
15 them. I know there's kind of two perspectives,
16 some people in the military might be offended
17 that they're wearing that in court, or using it
18 to get an upper hand with other servicemembers in
19 the community, I've definitely seen jurors say
20 that.

21 But I also leave it to my client,
22 because I know they have a deep connection, and

1 pride in what they do. And so, if that is
2 something they decide they want to do, then I am
3 going to let them do that.

4 CHAIR SMITH: Ms. Tokash?

5 MS. TOKASH: Thank you for taking my
6 question, I had a question for the gentleman.
7 You described a really good example of a military
8 and civilian interaction on a case with a
9 civilian victim. I'm kind of interested if you
10 know. Do you know what the outcome of the
11 military case was after it was taken by Army CID?
12 Thank you.

13 MR. CASTAIN: Sure, so my
14 understanding, and unfortunately I don't know all
15 of the charges that were brought on the military
16 side, so apologies if I get that wrong. But my
17 understanding is that they did a court-martial,
18 the defendant had been found not guilty on some
19 of the charges, and I don't recall if there had
20 been no decision on others, or if it was a pure
21 not guilty.

22 But what drew my attention was that

1 they did a second court-martial under, I guess a
2 different theory of prosecution, and he was then
3 convicted at that point. And, admittedly, this
4 is me learning about this through the victims,
5 and I will say that, historically, victims don't
6 understand all the complexities, so please don't
7 assume that this is all canonical and I've looked
8 up everything about that case.

9 But my understanding from her is that
10 because of the way the first trial ended, they
11 were able to move forward with a second court-
12 martial, she was very on board with that, and
13 very, kind of wanted to see that happen, and
14 that's why it proceeded in the way it did.

15 MR. CASSARA: Ma'am, just a quick
16 question on your veteran's courts, can you tell
17 me how they operate, and what the alternative
18 dispositions are that are available for current
19 or former servicemembers?

20 MS. O'RILEY: Sure. So, Colorado was
21 -- started, I think about 12 years ago, we were
22 the first state to take all felony cases. There

1 was another jurisdiction at the time in Buffalo,
2 New York that started with misdemeanors, we
3 expanded that. We now have right around 100
4 active cases in veterans trauma court, and they
5 range from DUIs all the way to domestic violence,
6 assaults.

7 But there is kind of a bar as far as
8 the level of violence that they will take into
9 the court. They won't take stalking cases, they
10 won't take sex assaults, and things like that.
11 So, sort of that the goal is to capture the
12 menacings before they turn into assaults and
13 things like that.

14 We developed an agreement with the
15 jail to have a button when somebody is booked in
16 that identifies somebody as military. And so, we
17 track the military, we have a daily report of
18 military. And then from there it's up to anybody
19 who wants to refer someone into vet court to,
20 whether that's their public defender or their
21 private lawyer, or the person themselves being
22 interested, they get sort of screened through the

1 process.

2 The goal of the court is to limit
3 incarceration, so that was the number one, try
4 and get down incarceration, and then sort of
5 secondary is really trying to allow for some
6 future productivity in the community, ideally not
7 having a felony conviction. So, there's a lot of
8 deferred sentences to felonies in the court.

9 And so, it's a really cool process to
10 watch, there's a graduation on Thursday if
11 anybody wants -- you guys are probably busy, but
12 we've got graduates where they speak and talk
13 about you see a different person from beginning
14 to end. In the court itself there is a VA
15 representative who, they're the VJO who can type
16 in where can we put this person in Wyoming
17 tomorrow in a PTSD clinic so that we can
18 stabilize them.

19 So, that's the connection that I'm
20 talking about as far as really tapping into the
21 lots of resources that are out there. So, it's
22 been a really successful program, we have a very

1 low recidivism rate. There's a peer aspect of
2 it, navigators are a part of it. And so, it's a
3 really impressive thing to watch, the way it
4 changes people's lives.

5 CHAIR SMITH: So, for both of you,
6 what is your office's approach to obtaining
7 relevant information on a victim's digital
8 device, phone, computer?

9 MR. CASTAIN: So, normally our
10 interactions with a victim are going to be after
11 a case has been investigated. To the extent that
12 law enforcement is working with victims, and
13 talking to them about gathering information,
14 generally we try to go through kind of the
15 consent approach. If they have digital evidence
16 on -- social media tends to be one of the bigger
17 ones.

18 The first step is identifying that
19 social media, putting in a preservation order so
20 that we can get it later. If the victim can
21 provide us consent forms, great. Otherwise we
22 can do warrants for -- I will say most of the

1 social media companies want warrants instead of
2 just consents. Things like phone records, again,
3 if the victim can contact their provider, and get
4 information for us, that's great.

5 We tend to do warrants for those just
6 so we have all the foundational information if it
7 goes to trial. If a victim has a cell phone, and
8 has text messages, or photos, or videos on those,
9 we try to talk to them again about providing us
10 consent to download that material from their
11 phone.

12 Usually if a victim is resistant to
13 that idea, we try to take kind of a trauma
14 informed approach to that. It may be too early
15 in the process for them to feel comfortable with
16 the investigators and the process to be willing
17 to give us consent, and so, we'll try again
18 later.

19 If it's something that's essential we
20 may talk to them more about why we need this,
21 find ways that maybe we can limit what is
22 provided to us. So, instead of doing a full

1 forensic dump of their phone, maybe they can
2 email us photos or videos, or show us the text
3 messages, and we can take pictures of them.

4 So, we try to kind of find a way to
5 make them feel comfortable with what it is we are
6 taking. I'm trying to think of a situation where
7 we forced a victim to give us that information,
8 and I'm kind of struggling to think of one of
9 those. Generally once a case is filed, we kind
10 of flip, and are far more protective of what the
11 victim has, what information they have, and
12 trying to maintain some of that privacy.

13 I know talking about, for instance,
14 mental health records is one of those areas where
15 we try very hard to protect their privacy so they
16 don't have to give us that.

17 CHAIR SMITH: Do you have open file
18 discovery so that defense gets all of it, or?

19 MR. CASTAIN: So, the term open file
20 might imply something that's not the way it works
21 here. So, our discovery system, we have Rule 16
22 of the Rules of Criminal Procedure that say what

1 it is we are mandated to give to the defense.
2 And that includes all reports, all information
3 that would be tied to a witness statement, to an
4 expert, to any kind of forensic examination
5 that's conducted as part of the case.

6 Our Rules of Professional Conduct 3.8
7 includes a requirement that we as attorneys are
8 ethically bound to give over information that is
9 not just relevant to the case, but could impact a
10 defendant's decision to either engage in plea
11 negotiations, or decide to go to trial, as well
12 as then are Brady obligations as well to turn
13 over exculpatory material.

14 So, while I don't want to say we have
15 an open file system, we do give -- my general
16 approach is if I have information about a case,
17 I'm going to turn it over. If there's limited
18 work product exceptions to that, then that would
19 be true. But generally we give everything we
20 have to the defense.

21 GENERAL SCHWENK: How about to
22 victims, do you give anything to represented

1 victims or unrepresented victims?

2 MR. CASTAIN: So, the Victims' Rights
3 Act guarantees victims the right to have access
4 to the initial report. That's not well defined
5 in the law, but the general idea is if they need
6 to make insurance claims, or if they need to take
7 actions that require a police report, like a
8 restraining order for instance, then they're
9 entitled to have a copy of that regardless of the
10 status of the case.

11 Our office allows victims to request
12 discovery kind of at any point. I can't say
13 there's a consistent application of when that
14 information may be released. But generally we
15 try to talk to victims about why they need the
16 information, and what impact releasing full
17 discovery to them might have on a case if it went
18 to trial.

19 We have had some victim attorneys that
20 enter on a case, those are pretty rare, where
21 maybe they're looking at a civil lawsuit, and
22 they need information so that they can file

1 something without losing the statute of
2 limitations. Again, in those situations,
3 generally what they need is basic information,
4 and the probable cause affidavit generally has
5 that.

6 That's in most cases, a public
7 document. And so, there are limitations that we
8 try to work with people on so that we are not
9 undercutting a victim's ability to get something
10 that they need, or to pursue a legal right that
11 they might have, while also maintaining the
12 integrity of our cases.

13 GENERAL SCHWENK: Ms. O'Riley, do you
14 have any -- does your office have concerns with
15 giving copies of the police investigation, or
16 report, or whatever, other things to victims?

17 MS. O'RILEY: Yeah, I think generally
18 we would not share any case related material --

19 GENERAL SCHWENK: No, I mean with the
20 government, does that cause problems on your
21 side?

22 MS. O'RILEY: I think it opens up a

1 lot of issues that we would be litigating,
2 because Colorado, the status of our mental health
3 waiver for victims for privileged information is
4 that if the government or the victim in some form
5 waive that privilege, whether it's implied or
6 expressly waived, which might be them getting
7 access to things that are in the case file, we
8 would probably be litigating that.

9 So, I think that from my perspective,
10 if that was the practice, it would probably open
11 a lot of doors for me to say now they have
12 information that changes their perspective, their
13 motive, their ability to be tainted in cross
14 examination, and things like that. So, if that
15 were to be like an open back and forth, I think
16 it would create more issues for the prosecution
17 than it would necessarily be helpful for the
18 victim.

19 MR. CASTAIN: And if I can follow up
20 on just one piece of that, that doesn't mean that
21 we don't tell victims what's happening in the
22 case. We certainly want to share with them, if

1 they have concerns, what's happening. But I
2 don't want to give them a police report that they
3 are then reading and memorizing before they come
4 in and testify.

5 We will routinely meet with witnesses
6 before they testify at trial, and sometimes at
7 other hearings. We may show them their police
8 report and say can you read through this, are
9 there any differences, has your memory changed,
10 are there clarifications that you want to make?
11 And then we document those interactions in
12 reports, and submit those to defense.

13 But the biggest concern is I just
14 don't want to open up a victim to you're saying
15 there's a change, and you're saying this now that
16 you've read somebody else's statement, and
17 incorporating that into what you remember instead
18 of just what is your memory of this event.

19 GENERAL SCHWENK: Go ahead, Meg.

20 MS. GARVIN: So, one quick question,
21 and then a larger question for both of you,
22 really. The quick question is has Rocky Mountain

1 Victim Law Center, which is the nonprofit here in
2 Colorado that does victims' rights litigation in
3 criminal cases, have they appeared in your
4 courts?

5 Because they're not civil lawyers,
6 they would just be doing the victims' rights
7 provisions. Have they appeared and represented
8 victims? Or is that -- they're based in Denver,
9 and they only have I think four or five lawyers,
10 so I'm not sure if they'd have the reach or not.

11 MS. O'RILEY: Not in any of my cases.
12 The only lawyers I've seen are secondary civil
13 lawyers who want to keep track of the case.

14 MS. GARVIN: And part of why I was
15 asking that is it goes back to the question of
16 where folks might be comfortable in a criminal
17 case. And the question was asked about an
18 accused, and in the military system, victims are
19 afforded a no cost attorney to help them with
20 their rights. And on the civilian side, you have
21 one nonprofit representing the whole state.

22 So, there's an interesting difference

1 there, but my next question is going back to the
2 cell phone instance, and you talked about that
3 you would try and get consent, and potentially
4 limited consent for portions of it. And I'm
5 curious about two things, for both of you,
6 really, which is, one, is your technology
7 sufficient that it can be a limited dump?

8 Besides the time constraint, we know
9 the time constraint, but if I say only dump this,
10 such that law enforcement doesn't have more, or
11 is law enforcement getting more, but the consent
12 is limited, and have you had to litigate limited
13 consent when law enforcement has more than what
14 was consented to?

15 MR. CASTAIN: So, when I say limited
16 consent, I was trying to provide examples of
17 circumstances where a victim might be willing to
18 give us pieces of information from their phone.
19 We've had situations where they would email us
20 photos, or they would show us the text messages,
21 and allow us to take pictures of them, so we can
22 capture the information, but don't have the

1 digital copy of it.

2 No, our technology is not sufficient
3 that we can plug in a phone and download just a
4 piece of what is on it. And that's been
5 problematic both for suspect downloads, as well
6 as victim downloads. But I think for the suspect
7 side of it, we've worked out a system that limits
8 who has access to the material that would be
9 outside of the scope of a warrant. But we
10 wouldn't be able to do that on, for instance like
11 a consent kind of search.

12 MS. GARVIN: So, may I follow up on
13 that? Because there's a case pending in Florida
14 actually on this very issue, the victim said
15 yeah, I want to support what you're doing law
16 enforcement, and consented to a download, and
17 thought they could consent to a limited consent
18 of a download, but law enforcement ended up
19 having it because the technology didn't allow for
20 it.

21 That issue -- are victims being told
22 that once a dump happens law enforcement has it

1 all, and it might be Brady material, and you
2 might have it, has that issue presented?

3 MR. CASTAIN: So, I haven't litigated
4 the circumstance you're describing in Florida.
5 Generally in the -- so, most of our victim
6 interactions with law enforcement are recorded,
7 either in body cam, or in part of like an
8 interview room setting. So, from the
9 interactions that I've watched, by and large the
10 explanation is I would like to get the
11 information from your phone.

12 The process for that is for me to
13 download your phone. I understand there might be
14 other information that you are uncomfortable
15 with, or that you might not want us to see. I'm
16 not looking at that, I'm interested in this
17 particular material. But they are also very up
18 front with victims that once we download this we
19 are going to provide it to the defense.

20 We have worked in some circumstances
21 where maybe there's sensitive material on a
22 phone. For instance, people have a lot of naked

1 photos of themselves on cell phones, and that's
2 always a concern, when maybe we're turning that
3 over to a complete stranger, or to a domestic
4 violence perpetrator. And so, we try to find
5 ways that we can put in place, for instance
6 protective orders.

7 So that the attorneys for the defense
8 can see it, but maybe they can't share that with
9 the defendant themselves. Those have been very
10 limited in nature, and so I don't know that we've
11 ever really litigated a protection order in that
12 sense, because I think for Sixth Amendment
13 purposes we've provided it to the defense, who
14 then has full access to it.

15 So, I don't know that there's a
16 constitutional deprivation when the defendant
17 themselves cannot see it.

18 MS. O'RILEY: Yeah, I would agree.
19 The only time I've seen a real limited disclosure
20 is like in a child pornography case, where we
21 would go then to the police department, view the
22 evidence, and if it is something that we believe

1 we need to challenge, then we can request an in
2 camera hearing to have it released directly to
3 us, and protection orders in place, and that kind
4 of thing.

5 MR. CASTAIN: And I apologize, my
6 answer is purely based on adult kind of cases.
7 When there's child sexual material that's handled
8 completely differently, yeah.

9 MS. PETERS: Ms. O'Riley, I just
10 wanted to go back to your experience with the
11 collection of digital evidence from victim's cell
12 phone, what you're seeing in the information you
13 receive in discovery, and then separately, the
14 separate scenario of how is digital evidence
15 collected from the accused phone, and what are
16 you seeing, can you put those two next to each
17 other? The handling of evidence from a victim's
18 phone, and a defendant's phone?

19 MS. O'RILEY: Yeah, I think that's
20 kind of where we see some big differences in
21 what's out there. Because the victim will often
22 times, like Kelson said, take their snapshots and

1 provide that, or allow law enforcement to take
2 their images, and it's obviously very filtered
3 down from the big picture. And then when we
4 actually will get the search warrant records.

5 So our client's entire cell, their
6 entire phone, everything on it. I'm actually
7 litigating this week, it's super broad, and it's
8 way beyond what this should have been, what the
9 search should have looked like. So, then we kind
10 of -- obviously it cuts both ways. It could be a
11 lot more bad stuff, or it could be there's a lot
12 of things that the victim's hiding that is going
13 towards a different side of the story.

14 So, it gets interesting, definitely,
15 when you compare those two versions. And my
16 experience is that law enforcement is very
17 careful with what they collect, because they
18 don't want that, the bad stuff, the full story
19 necessarily to be out there, that makes it a lot
20 more complicated for them.

21 So, it does get interesting once you
22 really -- I mean Snapchat is one thing, because

1 that half the time disappears, and you don't have
2 all of that story. But when you have the rest of
3 the cell phone, and all of the pieces, and what's
4 deleted in between the text messages, then you
5 start to put together more pieces of the puzzle.

6 MS. PETERS: Thank you.

7 CHAIR SMITH: All right, thank you
8 very much.

9 MR. CASTAIN: Thank you for having us.

10 CHAIR SMITH: Are we going to move
11 into the subcommittee updates?

12 MR. YOB: Chair Smith? If I could
13 have just a moment, I'd just like to note for the
14 record that we still retain nine members who have
15 been through this session in person. I note that
16 Ms. Tokash, committee member, is still with us
17 online. I don't believe that Mr. Kramer, or
18 Judge Grimm are on still, can we check that for
19 me please?

20 Okay, so we now have one, as opposed
21 to three, virtual members who are with us, for a
22 total of ten members who are present for the last

1 session. And I would suggest maybe could we take
2 a short break of five minutes or so to just get
3 ready for the next session? Thank you.

4 CHAIR SMITH: All right.

5 (Whereupon, the above-entitled matter
6 went off the record at 11:01 a.m. and resumed at
7 11:05 a.m.)

8 MS. PETERS: All right. Chair Smith,
9 subject to any comments, I can get this session
10 started for you. Okay, so first just an
11 administrative note, we have nine members
12 present, there are no more members present via
13 Zoom. And what we're going to do in this session
14 is to take about the next 20 minutes or so to
15 give you time to discuss information you received
16 during the --

17 MS. TOKASH: Sorry, Meghan Peters,
18 this is Meghan Tokash. I'm Zooming in, just for
19 quorum, I know you have a quorum, thank you.

20 MS. PETERS: Meghan, thank you for
21 joining us. I will invite you to participate
22 early and often in the next 20 minutes, thank you

1 for making yourself available. So, yesterday
2 during the public meeting, the public meeting
3 sessions are what we want to focus on, which are
4 separate and distinct from the site visits, which
5 remain outside of the public meeting parameters.

6 So, at the public meeting yesterday
7 you heard from special victims counsel, senior
8 defense counsel, and special trial counsel. And
9 their commentary was all focused around several
10 topics and specific projects, and other areas of
11 interest to all of you. And so, I just thought
12 we would open it up by asking you all if you had
13 anything that struck you, or specific issues that
14 you're really interested in based on what you
15 heard, or anything you'd like to more know about.

16 Basically what struck you from what
17 you heard yesterday about the testimony globally,
18 or maybe specific to a topic, or a panel session
19 itself. So, what really struck you yesterday?
20 Please feel free to comment.

21 MR. CASSARA: So, we're speaking about
22 the morning? Well, we're not speaking about our

1 time with the cadets, and all of that?

2 MS. PETERS: Correct, this is just the
3 public meeting session with special victims
4 counsel, defense counsel, and special trial
5 counsel.

6 MR. CASSARA: Got it. Struck and
7 concerned about the lack of parity between the
8 OSTC and defense counsel. Obviously I have a
9 bias in this area, but when I hear of a
10 servicemember walking into a courtroom with two
11 captains, and on the other table is an O-4, O-5,
12 and a captain or two, that's concerning to me.

13 And the reality, perception being
14 reality sometimes, I think that that's a matter
15 that we need to look into and discuss.

16 MS. PETERS: Okay, and that's relevant
17 to the development and establishment of the OSTC,
18 which we're already undertaking, and
19 understanding the comparative effects on the
20 defense bar. Ms. Goldberg?

21 MS. GOLDBERG: Just picking up on
22 Bill's point, and appreciate the point about

1 perception being reality, I thought we also heard
2 from the last panel a different perspective on
3 the disparity, and the significance of the
4 disparity. So, if we pursue this, I think it
5 would be important to keep that perspective in
6 mind as well.

7 I wanted also to toss out something
8 from the -- can we include the lunchtime
9 conversations, or should we limit this to the
10 panel discussions?

11 MS. PETERS: Solely to the public
12 sessions, not during lunch.

13 MS. GOLDBERG: Okay. Just another
14 issue that I noted, but it's not clear to me how
15 much of an issue it is, so I'm still reflecting
16 on it, which is this question whether mental
17 health treatment prior to an incident winds up
18 being -- a victim's mental health treatment prior
19 to an incident winds up having the effect of
20 significantly reducing the likelihood of
21 conviction for a sexual assault or related
22 misconduct.

1 When a victim has had treatment not
2 for psychosis, but for things like depression or
3 anxiety, for which many people are treated, and
4 for which many people take medication. The panel
5 of prosecutors, the OSTC panel made it sound like
6 maybe this isn't as much of an issue as I started
7 to wonder if it was. But I'm reflecting on
8 whether it might be a significant issue in light
9 of some of that conversation.

10 I'm happy to elaborate, but I think we
11 went through it yesterday, so wanted to note
12 that. And just to put it very plainly, if it
13 were the case that anybody who has taken Prozac
14 or some other antidepressant, and has been
15 drinking on the night of an incident would be
16 found not capable of offering reliable sort of
17 recollections of events, that would strike me as
18 concerning. But again, not clear it's an issue.

19 CHAIR SMITH: Add in the potential
20 chilling effect that if it becomes this idea that
21 victims' mental health records are fair game, not
22 to say that that's reality, but if this kind of

1 becomes the belief, then you have to worry about
2 the chilling effect with respect to reporting,
3 with respect to cooperation, et cetera.

4 So, I would also address some of the
5 comments made by the victims counsel with respect
6 to maybe some kind of consideration for the
7 committee around recommending an Article 6(b)
8 amendment about making it more specific in adding
9 noticeable hearings and receipt of pre-trial
10 motions for counsel.

11 Because it seems pretty outrageous
12 that victims counsel seems to have to rely on the
13 government trial counsel or defense counsel to
14 notify them -- really what the defense counsel,
15 but to notify them of what's taking place. And
16 then the other piece being a desire for victims
17 counsel to be able to be present in the
18 administrative board hearings.

19 And I haven't really given it a
20 tremendous amount of thought. But just kind of
21 putting it out there, that that's something that
22 we should probably be discussing also.

1 MS. PETERS: That might be a good
2 issue to keep on our radar to explore. Okay, Ms.
3 Garvin?

4 MS. GARVIN: I'm actually going to
5 cede to Meghan who is remote just to make sure we
6 get Ms. Tokash.

7 MS. TOKASH: Thanks, Meg, that's
8 really nice of you. Just three potential areas
9 of future study I think from yesterday's session.
10 One is with respect to discovery. I found it
11 concerning that there was some testimony that you
12 could get to the eve of trial, and I know that
13 this also happens in civilian practice too, but
14 it's really not as well tolerated as it sounds
15 like the military experience.

16 But that you could get to the eve of
17 trial, and then all of a sudden have to call off
18 the whole court-martial because discovery has not
19 been provided. So, I think that that's one area
20 of concern, especially in victim based cases,
21 it's super disruptive to the victims and their
22 expectations of when things would go to trial,

1 and also the accused, right?

2 Who has been prepared to go to trial
3 on a certain date. So, discovery for one, the
4 second would be the lack of availability of a
5 public docket. I think that that rang true with
6 the special victims counsel, but I also think
7 that it's important for the public to have
8 access, so that everybody can understand what is
9 going on as it is happening in real time.

10 And then I did have a third point that
11 I cannot remember right now, but if I do, I will
12 certainly chime in. But I think discovery and
13 the public docket are really critical areas of
14 study for our committee. Thanks.

15 MS. GARVIN: So, this is Meg Garvin,
16 I would echo what's already been said. And I
17 would add an issue, we heard a bit of diversity
18 around Mellette's impact on practice, but one
19 consistent -- I don't know what's happening, I
20 think I'm causing that -- my computer is near it.
21 I'm sorry everyone.

22 One consistent thing I think we heard,

1 and maybe we want to look at is that the
2 discovery requests, defense are now including it
3 in their standard discovery request for Mellette
4 information, which I think seems like good
5 practice if I'm a defense counsel. I would like
6 to see a standard defense request at the front,
7 and how they're phrasing it there, but then where
8 is the specificity coming into the practice?

9 Because there is still a specificity
10 requirement, and we heard that the litigation has
11 now turned to 701, 703, and so I'd like to just
12 know a little bit more about what that litigation
13 is looking like for us to understand the impact
14 of Mellette. I feel like we started to hear
15 where it's moving towards, and what's happening,
16 but I don't feel like we got a complete
17 understanding exactly what's happening in order
18 to think about is Mellette a problem that needs
19 to be fixed, or is it just being evolved right
20 now.

21 MS. PETERS: So, some more information
22 you would like about practice, and maybe it's

1 service specific in what it looks like, and this
2 is the second note about development of
3 discovery, and judicial rulings in discovery.

4 MS. GARVIN: Can I add one little
5 micro note too? I think we heard very clearly,
6 the Coast Guard has, it has been determined -- I
7 think this is in the record -- they do not have
8 standing as victim counsel at the initial
9 discovery moment, which is different than the
10 other branches. I believe that was what was in
11 the testimony.

12 I'd like confirmation of that, and
13 then clarity of the impact of that on kind of the
14 privacy rights of victims if things are happening
15 in that space. It was a unique moment to a
16 branch.

17 MS. PETERS: Okay, we'll take all of
18 that information back from yesterday, and look at
19 it, and get the specifics. Ms. O'Connor?

20 MS. O'CONNOR: Yeah, I also was struck
21 by the issues associated with not having uniform
22 online docketing, so I think that's something to

1 talk about. And I also was struck by the
2 discussion of the fact that some of our
3 presenters talked about the judges that they were
4 dealing with treating Mellette information
5 differently than others.

6 Some of them turning over information
7 more broad than just the three types of
8 questions, and others being quite firm that all
9 they were -- the defense counsel being quite
10 emphatic that they were only getting the three
11 bits of information. I think whatever the answer
12 is to that, because I thought the inconsistency
13 was interesting, but I don't know that we need to
14 get to the bottom of it.

15 It seems like a consistent practice
16 with some guidance, however that might take
17 place, would be useful for judges, for litigants,
18 for everybody about what's fair game. What
19 should be redacted, what should be not redacted,
20 what should be turned over, what should not be,
21 et cetera, would be a useful thing for us to
22 explore.

1 MS. TOKASH: All right, thank you. We
2 heard almost two issues out of the 513 umbrella,
3 the scope, and then the procedures for when
4 different types of information arrive around a
5 mental health records request.

6 MS. SAUNDERS: Heard things like taint
7 teams, and sometimes the military judge, so maybe
8 ironing out some of those procedures.

9 MS. O'CONNOR: Yeah, that all makes
10 sense.

11 GENERAL ANDERSON: I just want to
12 support, as someone who worked in the federal
13 courts, with a very robust electronic case filing
14 system, the importance of this from an efficiency
15 standpoint for the paralegals and the attorneys,
16 having someone have to email motions and other
17 notices to interested parties is a waste of their
18 time. They could be doing things -- we know we
19 have staffing shortages.

20 I see this as a way to alleviate some
21 of that strain on the system. Not only that, but
22 you know, service is going to be affected through

1 ECF, and I think it really hampers the role of
2 the special victims counsel in their requirement,
3 and responsibility, and obligation to advise
4 their clients what's going on in the case, and
5 educate and inform them.

6 If they're not having access to
7 documents because some other counsel is acting as
8 a gatekeeper, and has prevented them from even
9 knowing that a motion for whatever this topic is,
10 is being filed. So, just want to put the plug in
11 there.

12 MS. GOLDBERG: This point follows on
13 this piece of the discussion. It struck me that
14 the relationship between the prosecutors, trial
15 counsel, and victims counsel is at least seems to
16 be much improved under the new system, more
17 systematic, and more sort of connected up, or at
18 least transparency between OSTC and victims
19 counsel.

20 We also heard that there is a
21 substantial number of victims who don't have
22 access to victims counsel because they're not

1 military affiliated. The issue of open records
2 partly also enables those individuals to have
3 better access. But I think there's a significant
4 question about whether there is more -- whether
5 the branches should be thinking about doing more,
6 or something different to engage with victims who
7 don't have SVC or comparable military provided
8 representation.

9 Sounds like an issue of -- an issue
10 that may affect prosecutions, it certainly sounds
11 like it takes up a lot of time from the OSTC
12 staff, but also has all of the sort of parity
13 effects you might imagine on the differences
14 between prosecutions involving an affiliated and
15 non-affiliated victim.

16 MS. PETERS: All right, does anyone
17 have a comment on that, or on a different note?

18 GENERAL ANDERSON: A different note.

19 MS. PETERS: Go ahead.

20 GENERAL ANDERSON: I may not recall on
21 this correctly, but I thought that the Air Force
22 OSTC counsel indicated that half of the victims

1 are civilians. So, since they're not in the
2 military, getting access to military records is a
3 challenge that adds a lot of hurdles, and results
4 in significant delays. And I can't help but
5 think that there is perhaps some way, I think
6 this is just a suggestion that DOD explore, or we
7 consider exploring the possibility of executing
8 MOAs with large hospital systems.

9 I mean, obviously you can't capture
10 everything, but some way to find a way to bridge
11 that, so that they're not trying to do that on
12 EJIS, and find themselves with barriers to
13 getting information.

14 MS. PETERS: All right, we've noted
15 that suggestion, and we have just a few minutes
16 more. We have to conclude at about 11:25 to allow
17 time for our public commenters to come up at
18 11:30. Go ahead, Ms. Bashford.

19 MS. BASHFORD: I would be interested
20 in finding out whether release of public health
21 information of a victim affects declination or
22 participation rates once the victim knows that.

1 And also to what extent if any, if that
2 information comes out during a court-martial,
3 does it really affect the verdict, or is it
4 really pretty much a nothing burger?

5 MS. PETERS: Okay, Chair Smith?

6 MS. GARVIN: Can I just put one? I
7 would be curious, I think it's in line with our
8 513, but when I posed a question, one of the
9 defense counsel, and I forget which service,
10 shared kind of how they might counsel someone to
11 access mental health, and it was a referral to
12 confidential or off base. And it's brought maybe
13 -- it's not a 513, maybe it's for the future, and
14 it might tie to mental health in general.

15 But if the mental health issue in the
16 military criminal justice is resulting in hey,
17 it's scary to go to service provided mental
18 health, go somewhere else to make sure you have
19 privacy, I think that impacts our military. So,
20 it might not be a 513 issue, but it certainly is
21 a sexual violence issue, we've heard it, and I
22 just wanted to note that it might be something

1 down the road to look at.

2 MS. PETERS: We really appreciate the
3 commentary, because I think we're seeing where
4 the different issues we've identified intersect,
5 and we're seeing ways to flesh out these issues
6 in a more productive and effective way based on
7 what resonates with you. So, thank you for that,
8 we'll continue that, and we're going to focus on
9 the areas of information where you need maybe a
10 little bit more specifics, or granular detail.

11 And issues that we can sort of
12 validate after we review the record. So, thank
13 you for that today, and Chair Smith, I'll turn it
14 over to you.

15 CHAIR SMITH: Are we ready to get
16 started with the public comment, or are we
17 waiting the five minutes? All right, and then
18 we'll get started at 11:30. Thank you.

19 (Whereupon, the above-entitled matter
20 went off the record at 11:25 a.m. and resumed at
21 11:30 a.m.)

22 CHAIR SMITH: All right, we are ready

1 to get started with public comments. Mr. Yob?

2 MR. YOB: Thank you, Chair Smith. I'm
3 going to note for the record that we have eight
4 committee members in the room in person, and I
5 don't believe we have any committee members who
6 are virtual at this moment with us. We do have -
7 -

8 MS. TOKASH: I'm still virtual, sorry.

9 MR. YOB: Sorry, Meghan, I didn't see
10 you. We have eight committee members in person,
11 we have one virtual member, thanks, Meghan. So,
12 a total of nine committee members are on. This
13 is the public comment period, we have four
14 persons who would like to make public comment
15 today. Three of them will be virtual, so we'll
16 see if the technology cooperates with us on that.

17 One person is in person. I'll note
18 that we welcome public comments, that ideally we
19 like those comments that -- we appreciate those
20 comments that will concern public policy issues
21 that are related to sexual assault in the
22 military justice system, and how that is

1 investigated, prosecuted, and defended. We ask
2 that the speakers don't exceed five minutes per
3 comment.

4 And I will give them, at the five
5 minute mark, an indication that they have hit
6 five minutes, and we'll let them conclude their
7 remarks at that point. All comments that are
8 made are the views of the persons making the
9 comments, and don't reflect the views of the DAC-
10 IPAD, or any of its members, per se.

11 All comments are transcribed, and
12 preserved in DAC-IPAD records, and are included
13 in the DAC-IPAD website. So, with that being
14 said, I'm going to see if our first virtual
15 public commenter is here. That is Eric Burris,
16 or it may be an attorney who is assisting him,
17 Beth Payton-O'Brien, are either Eric or Beth
18 Payton-O'Brien available?

19 MR. BURRIS: This is Eric Burris, can
20 you hear me?

21 MR. YOB: I can hear you, Eric, okay.
22 My name is Mr. Yob, if you're ready I will turn

1 it over to you for a five minute public comment.

2 MR. BURRIS: I am, and thank you very
3 much for the assistance in making this happen.

4 MR. YOB: You're welcome.

5 MR. BURRIS: Members of the committee,
6 Air Force Academy attendees, and any interested
7 in the truth who may be listening today, no
8 justice system can be perfect. That is what one
9 of my appellate attorneys told me when I was
10 informed that CAF would not hear my case again,
11 despite ACA's failure to reconsider my case
12 consistent with their ruling.

13 No system can be perfect. This effect
14 didn't console me after losing my career, my
15 family, my future, and my daughters. All else
16 pales in comparison to the loss of my daughters,
17 and after nine years in prison I assure that you
18 that my blood still boils thinking about all
19 those who took them from me.

20 My case is proof that the Uniform Code
21 of Military Justice can be easily manipulated to
22 achieve specific desired results. It is evidence

1 that politics and hysteria have so infected the
2 Armed Forces that the military will break faith
3 with servicemembers.

4 Today I'm not going to rehash my
5 entire case; ample documents have been provided,
6 or are readily available to you all. In the
7 short time given to me, I'm going to discuss
8 Articles 32 and 25, recently considered by your
9 committee, and how they played into destroying
10 me, a multiple-deployment combat veteran and an
11 innocent man. My Article 32 cleared me. Read
12 it. A female JAG colonel, after a hearing that
13 lasted more than three 12-hour days, ultimately
14 concluded that my accuser, my ex-wife, fabricated
15 or wholly lied about every allegation, and was
16 seeking to gain an advantage in family law court
17 where we were fighting for custody of our
18 children.

19 She recommended against a court-
20 martial. This same woman would later attend my
21 court-martial, offering to testify that my
22 accuser was, and I quote, a fucking liar. She

1 was not alone in that conclusion. The Article
2 15-6 IO who considered the first accusations also
3 concluded that my accuser was lying and offered
4 his support to me directly.

5 Both Texas and North Carolina Child
6 Protective Service offices investigated matters
7 underlying some of the future charges, and
8 unfounded all that they considered. My character
9 for truthfulness, my integrity have never been
10 impeached; not once was I caught in a lie. Yet,
11 in spite of the truth, my case was referred to
12 court-martial. Why is that?

13 We all know the sexual assault
14 hysteria, the fear of the loss of promotions, the
15 desire to appear politicians, fear of bad press,
16 and in my case specifically, a need for a W in
17 the wake of the failed prosecution of Brigadier
18 General Sinclair, a case, by the way, involving
19 prosecutorial misconduct, and conducted by the
20 same office responsible for my prosecution.

21 Why did I go to court-martial?
22 Because the Article 32 was only advisory, not

1 binding, permitting a cowardly general to act as
2 he did.

3 Command influence is all-pervasive in
4 military life. The selection of panels is no
5 different under Article 25. Just as the 32 needs
6 to be binding, so too does Article 25 need to be
7 gutted and replaced by a randomized selection
8 process beyond the reaches and control of flag
9 officers.

10 I know this process well. Again,
11 consider my case, a court-martial. I appeared
12 before a panel hand-selected by the same man who
13 sent my case to court-martial, against all
14 recommendations to the contrary. The original
15 ranking member of the panel, a female colonel and
16 nurse, was challenged by the prosecution because
17 she felt some rape accusations were probably
18 false.

19 I was then left with a colonel both
20 rated and senior-rated by the convening
21 authority. In what courtroom outside of the
22 Armed Forces with a juror with such a close

1 proximity to the charging authority, as well as
2 such an obvious conflict, be allowed to remain?
3 The answer is none.

4 Look at the recommendations offered to
5 your committee by the military's JAG offices, as
6 well as the subordinates. The subordinates have
7 been parroting the opinions of the chiefs. Give
8 me example where I'm wrong. Just look at the
9 arguments submitted against the inclusion of
10 enlisted servicemembers on officer panels.
11 Perfect examples of the influence command
12 authority and rank have in uniform.

13 Even were you to make the Article 32
14 binding and remove commanders from the panel
15 selection practice, you would still be applying
16 more Band-Aids to a sucking chest wound. And I
17 just want to give all those who may be unfamiliar
18 a few examples of my cause for despair and lack
19 of hope that you all will effect meaningful
20 changes.

21 It took 20 years for the military to
22 replace line officers with actual judges in our

1 courtrooms. For nearly 40 years, defense and
2 prosecution attorneys worked under the same judge
3 advocates. In the Solorio case, the Supreme
4 Court abandoned stare decisis and ruled that no
5 military nexus was needed for courts-martial of
6 military personnel.

7 Since then, inexperienced military
8 lawyers have jumped on more and more cases deemed
9 unworthy of prosecution by more confident and
10 experienced civilian attorneys. Look at the
11 military schizophrenia over Article 120 alone
12 since 2008, and the purpose for your committee's
13 existence. And consider the institutional
14 resistance to your own committee's work and
15 recommendations made since at least the 2017
16 Judicial Proceedings Panel report.

17 And please consider previous
18 presenters, such as Schenk, Schlueter, and my old
19 constitutional law professor, Rosen, men I
20 actually respect, who are very intelligent;
21 unfortunately, they're also oblivious to the
22 modern military. And they have stated that they

1 support the system that exists simply because it
2 is. I'm not the first to be betrayed by my
3 country, nor to be denied justice because of
4 gender, or race, social hysteria, or politics. I
5 am Alfred Dreyfus, and I am not alone. Despite
6 my anger and pain, no doubt that you can hear in
7 my voice right now, I acknowledge that no justice
8 system can be perfect, certainly not one shaped
9 and twisted by human hands.

10 However, if you all embrace this
11 reality, it will become justification for further
12 inaction, apathy, and injustice. I ask you to
13 review my case, and those of all men who have
14 maintained their innocence, and give the concept
15 of a conviction integrity unit, something you've
16 considered, teeth.

17 And I would implore you to revisit the
18 history of military law, in treatises such as
19 Joseph Lieber's To Save a Country, and recommend
20 substantive changes to the UCMJ consistent with
21 that which is morally and ethically right, fully
22 just for all, and does not betray the men who

1 defend what is most important, our Constitution.

2 Until --

3 MR. YOB: Mr. Burris, I'm going to
4 have to ask you to just wrap up and conclude,
5 please, for a few seconds, sir.

6 MR. BURRIS: Yes, thank you. If you
7 do not consider our men in uniform, if you do not
8 consider our Constitution, you are going to be
9 betraying the best traditions of American justice
10 in favor of its worst. Please end this madness.
11 This issue must be looked at from both sides, and
12 I'm not confident it is, whatsoever. Thank you
13 for your time.

14 MR. YOB: Thank you. We appreciate
15 you providing the comment. We'll now transition
16 to Daniel Wilson. Are you online with us? Mr.
17 Wilson?

18 Okay, we'll make one more time around.
19 David Montalvo?

20 MR. MONTALVO: Yes, sir, I'm here.

21 MR. YOB: Okay, we'd ask you to please
22 go ahead and begin your five minute comment for

1 us.

2 MR. MONTALVO: Okay, thank you all for
3 having me. My name is David Montalvo III, and I
4 was an active duty Marine. One night in our
5 barracks, my friend, another Marine, brought over
6 his girlfriend, and one of her female friends.
7 The ladies brought alcohol, and all interactions
8 were positive.

9 At one point in the evening, both of
10 the ladies departed, as one of the ladies had
11 other commitment. At approximately 3:00 a.m.,
12 both ladies returned to the barracks. The
13 girlfriend went to see her boyfriend, and her
14 friend came to see me, but I was passed out drunk
15 in my bed. My Marine friend let the girl into my
16 room.

17 My accuser initiated oral sex with me
18 while I was sleeping and passed out drunk. So,
19 yes, she sexually assaulted me, because I was
20 unconscious and could not consent. But the
21 military can't charge civilians, even if they lie
22 in court. Upon waking, I continued to have

1 sexual relations with my accuser multiple times.

2 We went to sleep, and I overslept and
3 missed formation the next day. A Marine from my
4 unit came inside my barracks room, and noticed
5 both me and my accuser sleeping. We both got up,
6 and got dressed, and told each other to have a
7 good day. My accuser and her best friend took
8 naps and went to work without incident.

9 Later that day, I was informed that I
10 was being accused of sexual assault. I passed
11 three polygraphs, lie detector tests, but was
12 later told it was inadmissible in court. Why
13 would the investigators suggest I take the test
14 if they couldn't use it? I was told by my
15 defense attorney that if I had failed, then they
16 would have used it against me.

17 I am Mexican American, and my accuser
18 is White. I was very surprised to see that my
19 panel consisted of eight White males. The
20 military recently acknowledged that racial bias
21 is prevalent in the military, with the Marines
22 being amongst the worst. If just one member of

1 the jury has these biases, you can imagine its
2 influence on the others.

3 I was accused of forcible oral,
4 vaginal, and anal sex, and was found guilty of
5 the vaginal and anal charges, and sentenced to
6 nine years in prison, and a dishonorable
7 discharge. So, the oral sex that started when I
8 was sleeping was deemed consensual, but none of
9 the sex while we were both awake.

10 The military collected both of our
11 phones, but delayed turning over critical
12 evidence until right before my court-martial, and
13 so my attorney could not use it. He asked for
14 more time, and it also was denied. In one of her
15 messages, my accuser asked her friend not to
16 testify and mess this up for her.

17 How could your friend testify and mess
18 this up for you if you are telling the truth? On
19 appeal I was awarded a new trial, but instead of
20 a new trial, the Marine Corps ordered two DuBay
21 hearings, and which upheld the verdict. Both my
22 Marine friend and his girlfriend were willing to

1 testify in my defense.

2 But my attorney said that there was
3 zero chance of me being found guilty based on
4 evidence. I tried to argue ineffective
5 assistance of counsel, and the appellate court
6 rejected my appeal. Every state and U.S.
7 territory is represented by a conviction
8 integrity unit, or an innocence project. None
9 will represent the military.

10 I am on the sex offender registry,
11 which means I'm restricted where I can work,
12 where I can live, and how active I can be in my
13 kid's lives. There was political pressure to get
14 convictions in the military, but where is the
15 pressure to fix the lives of the many men that
16 were destroyed? The Marine Corps motto is semper
17 fidelis, which means always faithful. I am still
18 waiting on the actions of that, that will make
19 the model true.

20 MR. YOB: Thank you, Mr. Montalvo.

21 MR. MONTALVO: Yes, sir.

22 MR. YOB: We appreciate you giving

1 comments. I'm going to go back to, is Daniel
2 Wilson online?

3 MR. WILSON: I am, can you hear me
4 now?

5 MR. YOB: Yes, we can hear you, are
6 you prepared to provide us a public comment?

7 MR. WILSON: I am.

8 MR. YOB: Okay, please begin, and
9 we'll ask you to limit that to five minutes
10 please.

11 MR. WILSON: Yes, sir. Members of
12 DAC-IPAD, I am retired Colonel Daniel Hunter
13 Wilson United States Marine. My case is a
14 textbook example of how the preoccupation with
15 eliminating sexual assaults in the military has
16 led to wrongful prosecutions of cases that have
17 destroyed the careers of many military members,
18 mine included.

19 Barely a week after I was notified
20 that I was being considered for promotion to
21 brigadier general, I was falsely accused by the
22 wife of a fellow Marine of inappropriately

1 touching one of their three daughters at a dinner
2 party hosted on base at my house. Her daughter
3 repeatedly denied that I had touched her
4 inappropriately, and I sat right next to the
5 child's father and a guest through the entire
6 evening, neither of which witnessed any
7 inappropriate behavior on my part.

8 NCIS charged me with raping the child,
9 and when the DNA evidence came back, the only DNA
10 discovered on the girl's underwear was her own
11 father's. NCIS ignored this inconvenient fact,
12 and a second investigation was launched to
13 uncover any other dirt from throughout my entire
14 career. A third investigation was layered on top
15 of the other two to ensure full scrutiny of my
16 entire career.

17 Prior to my court-martial, I was
18 facing 27 charges, everything from multiple rape
19 charges to sending a prank email. A second
20 woman, in an act of revenge against my wife, made
21 a false claim that I had raped her, and I was
22 remanded to pre-trial confinement for eight

1 months. None of the three investigations turned
2 up a shred of evidence to substantiate the
3 original charge.

4 The sexual assault medical exam was
5 squeaky clean. The DNA evidence revealed that
6 there were 3.2 trillion more likely male suspects
7 than I. No pornography of any kind was ever
8 recovered from my electronic media, computers,
9 phones, or other devices, and certainly no child
10 pornography.

11 At my court-martial I was found not
12 guilty of all six charges from the individual who
13 had accused me of rape. I was found not guilty
14 of nine of ten charges from my original accuser,
15 who claimed I had touched her daughter
16 inappropriately. However, the jury found me
17 guilty of a sexual assault charge very similar to
18 two that they had found me not guilty of.

19 They then gave me a sentence of one
20 fifth of the maximum sentence. This signaled to
21 me that they found me guilty to protect their own
22 careers, and the institution of the Marine Corps

1 from getting a black eye. The light sentence was
2 to ease their own guilty consciences for shooting
3 one of their Marines in the back, and leaving him
4 to bleed out on the legal battlefield.

5 Nearly two years later the Navy's
6 appellate court exonerated me in an extremely
7 rare decision to set aside my sexual assault
8 conviction with prejudice for factual and legal
9 insufficiency. However, it took my lawyers
10 another 109 days to get me released from the
11 brig, and only after I was forced to sign a dirty
12 deal with my convening authority.

13 Under duress, I did sign, and was
14 released after 1,009 days of wrongful
15 confinement. Although the Marine Corps restored
16 most of my pay for my time in prison, most of
17 that went to covering my legal expenses. My
18 convening authority then weaponized the
19 retirement process, asking the secretary of the
20 Navy that I be paid in retirement as a Lieutenant
21 Colonel, instead of as a full bird Colonel, which
22 amounts to a \$2,500 per month fine for the rest

1 of my life.

2 This after the convening authority had
3 promised me in writing no punishment, and
4 annotated as such in a supplemental court-martial
5 order. I was also given an other than honorable
6 characterization of my 39 years of honorable
7 service. I do have a few thoughts on how to put
8 justice back into the military justice system in
9 light of my seven years and various billets as a
10 convening authority as myself, coupled with my
11 time in prison on the other side of the street.

12 Accountability, there is no
13 accountability for wrongful prosecutions, and
14 thus no incentives not to prosecute cases. There
15 is no accountability for accusers who make false
16 allegations. I am proposing a federal law with
17 stiff penalties, which will be the only way to
18 effectively deter future false allegations. My
19 convening authority even contacted both of my
20 discredited accusers to solicit emotional letters
21 to bolster their ask of the secretary of the Navy
22 to have me punished administratively.

1 Separation, I believe that a special
2 division needs to be created under the Department
3 of Justice called the Division of Military
4 Justice, handling all court-martial cases with no
5 connection whatsoever to the Department of
6 Defense. Jury, it needs to be a jury of your
7 peers, not senior members.

8 Every military member needs to be in
9 the jury pool with random selection by computer.
10 If Lance Corporal Benotz (phonetic) is selected
11 to sit on a jury at Fort Liberty, then he's sent
12 TAD for said period. A jury needs to be a full
13 12 members, and must reach a unanimous agreement,
14 all 12 for a conviction, not just 75 percent of
15 the members.

16 I must stop here due to time
17 constraints. Thank you for hearing me out.
18 Semper fidelis.

19 MR. YOB: Thank you for appearing and
20 providing the public comment. That concludes the
21 virtual public commenters. We do have one person
22 in person making a public comment. That's

1 Samantha Schroeder. I'd ask Ms. Schroeder, if
2 she feels comfortable to do it from the
3 microphone, to have her come up.

4 MS. SCHROEDER: Hello, thanks for
5 having me. My name is Samantha Schroeder, and I
6 am here speaking on behalf of my brother, Chief
7 Warrant Officer-3, promotable, Richard Lee
8 Livingston. I would like to spend the next five
9 minutes illustrating our servicemen are
10 experiencing when accused of a crime in the
11 United States military.

12 If we could, everyone think of a male
13 in their life. Let's pretend that that male and
14 I are married. He's a CW3, and I'm a West Point
15 grad working up the ranks. I just had an affair
16 with another servicemember in Iraq, and you,
17 you're a male, file for divorce. He gains
18 primary custody of our children, he has evidence
19 of my affair, and is going to go to my command.

20 The day after I find this out, I tell
21 my command that he raped and beat me three years
22 ago. The local sheriff investigated this, and

1 declined charges due to lack of evidence. Within
2 the confines of the military justice system, he
3 is now going to have to defend himself because he
4 is definitely being charged.

5 He has to prove himself innocent under
6 the UCMJ, as opposed to being proven guilty,
7 because I am immediately seen as a victim, not as
8 a claimant. His only defense is his word, he
9 will have photographic evidence and emails,
10 videos proving that we were in a consensual
11 relationship, but the judge is not going to allow
12 any of this in the court because you can't victim
13 shame.

14 This is going to be supported by an
15 RCM. I will be allowed to change my story every
16 single time he counters my statements. In my
17 brother's case, it was four. These are all going
18 to be recorded in CID interviews, and they will
19 not be allowed to be shown in trial. His jury is
20 going to be selected by the convening authority.

21 The convening authority is going to
22 stack the jury to include my battalion

1 commander's wife, as well as multiple other West
2 Point graduates, please remember that's where I
3 graduated from. My character witness will lie on
4 the stand, saying that he only knows me from
5 work, despite being your best friend.

6 And I'm going to marry him three years
7 after your conviction. I will use all of my
8 accommodations and medals to support my level of
9 professionalism and trustworthiness. He however
10 cannot use any of his, because in the 2012 NDAA
11 it says that you cannot say you're a good soldier
12 if you're accused of rape.

13 That means that like my brother, he
14 won't be able to bring up any of your Air Medals
15 of Valor, combat accolades, or multiple reviews
16 that said promote below the zone and ahead of
17 peers. You can't talk about the fact that there
18 was never an evaluation that was not a top block
19 OER, and that you even support the SHARP and EO
20 program even during his investigation.

21 All of the accusations occur at a
22 private residence, but he's going to get charged

1 with these being done to a commissioned officer,
2 as this increases culpability. I'm going to
3 testify that you hit me after I punched you, and
4 you're going to be found guilty of assault and
5 battery. I'm going to testify that I pulled a
6 loaded gun on you during an oral argument, and
7 you are going to be found guilty of assault for
8 disarming me.

9 The Army Court of Appeals is going to
10 overturn this charge saying that you in fact
11 acted in self-defense, but I will not be charged
12 with assault with a deadly weapon. I'm going to
13 sign your name to a \$16,000 insurance check, and
14 then cash it. I'm going to turn -- only give
15 half back when his parents decide to question who
16 signed the check.

17 When this is turned into command, no
18 one is going to charge me with felony theft or
19 forgery because I gave you half back. So,
20 allegedly in the military you're allowed to rob a
21 bank, if you turn half of it back in, you won't
22 get in trouble. I will say that he raped and

1 beat me on a Saturday. I'm going to send him an
2 email saying I love you on Monday, and a naked
3 picture of myself on Friday.

4 None of this is going to be allowed in
5 the trial. You will not be given the civil right
6 to a unanimous jury despite the Ramos versus
7 Louisiana, which was decided April 20th of 2020
8 by the U.S. Supreme Court. He is going to be
9 found guilty of three specifications not even
10 brought up in trial.

11 They are going to sentence him to 17
12 years in prison. Now, in the civilian world he
13 would never have even been charged, as there was
14 no evidence. Even if he was charged, there would
15 have been a unanimous jury. If he was found
16 guilty, he'd have been given probation, not 17
17 years.

18 Over the last five years, my brother
19 has lost time with his children and his family.
20 He has lost his career and reputation. All of
21 this because his now ex-wife didn't want her
22 affair to come to light. Her command found her

1 life and career to be more important than my
2 brother's. I am asking for the representatives
3 that we vote for to hear us. I am asking we
4 protect our servicemen just as much as we protect
5 our servicewomen.

6 I ask his accusers to be charged for
7 the lies and crimes they admitted to under oath,
8 and a unanimous jury to be a right that the UCMJ
9 requires. As our soldiers are still citizens of
10 the United States. We need an independent
11 conviction integrity unit, and it cannot be led
12 by the military. We have to do better, otherwise
13 it is not safe for our sons and brothers to join
14 the military.

15 What if this happened to that male you
16 were just thinking of? Thank you for your time.

17 MR. YOB: Thank you, Ms. Schroeder,
18 for coming and sharing your comment. That
19 concludes the public comment portion of this
20 meeting. That concludes the meeting business.
21 If you're prepared, I'll summarize a few
22 thoughts, they're quite brief, and if you have

1 any other comments we can go to those. Otherwise
2 we can proceed to adjournment at that point.

3 So, a few comments. I just want to
4 note that in conjunction with this public meeting
5 that we're holding off-site, we were able to
6 conduct some site visits. I think we were able
7 to validate the benefits of those site visits,
8 but we'll continue to look at that, and see if
9 they are worthwhile, and it's something that the
10 committee would like to continue doing.

11 In the meeting itself, we received
12 significant information from practitioners who
13 work in the field, which was a benefit of us
14 having this meeting out in an off-site location.
15 We were able to hear from local civilian criminal
16 law practitioners, who interact with military
17 members frequently, so there were many benefits
18 from holding this meeting here in this location.

19 And we're happy that you could do it,
20 and we're happy that we could support you in
21 doing that. The only other comment I have is
22 just to note that the next meeting that we have

1 is scheduled for, that will be in person, public
2 meeting would be June 11th and 12th. That will
3 be in the national capital region, we will be
4 coordinating with you in the near future on
5 topics, agenda, what we're going to do at that
6 meeting.

7 In the interim, I think we will have
8 probably some interaction with you on some of the
9 issues that we discussed today that we need to
10 move forward with and finalize. So, that's the
11 extent of my comments, and I'm going to return it
12 to the chair, and anybody else's comments who
13 would like to.

14 CHAIR SMITH: All right, I think that
15 concludes everything if no one has anything they
16 want to add. Thank you again to staff for
17 organizing this, and we'll see you on June 11th.

18 MR. SULLIVAN: This public meeting is
19 closed.

20 (Whereupon, the above-entitled matter
21 went off the record at 11:58 a.m.)
22

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