

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

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PUBLIC MEETING

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WEDNESDAY
DECEMBER 4, 2024

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The Committee met at the E. Barrett
Prettyman U.S. Court House, 333 Constitution
Avenue, NW, Washington, D.C., at 1:00 p.m., James
Schwenk, Vice Chair, presiding.

PRESENT

BGen (R) James Schwenk, Vice Chair
Mgen (R) Marcia Anderson*
Ms. Martha Bashford
Mr. William E. Cassara
Mr. A. J. Kramer
Ms. Jennifer Gentile Long*
Ms. Suzanne Goldberg
Dr. Jennifer Markowitz
SGM Ralph Martinez
Hon. Jennifer O'Connor
Dr. Cassia Spohn
Ms. Meghan Tokash

ALSO PRESENT

Mr. Pete Yob, Executive Director
Ms. Meghan Peters, Deputy Director
Mr. David Gruber, Designated Federal Official
Mr. Lanny Acosta, Attorney Advisor*
Ms. Stacy Boggess, Senior Paralegal
Ms. Jennifer Campbell, Chief of Staff
Ms. Valerie Danyluk, Attorney Advisor
Ms. Alice Falk, Technical Editor
Ms. Rachel Ferguson, Attorney Advisor
Ms. Breyana Franklin, Communication Specialist*
Ms. Theresa Gallagher, Attorney Advisor
Ms. Nalini Gupta, Attorney Advisor
Ms. Amanda Hagy, Senior Paralegal
Ms. Marguerite McKinney, Management and Program Analyst
Mr. Blake Morris, Paralegal
Ms. Terri Saunders, Attorney Advisor
Ms. Rebekah Stuyvesant, Administrative Officer
Ms. Lauren Torczynski, Attorney Advisor

* Present via videoteleconference

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

2 (1:04 p.m.)

3 MR. GRUBER: Mr. Chair, we will open
4 the meeting.

5 VICE CHAIR SCHWENK: Thank you.
6 Meghan, why don't you do quorum notice.

7 MS. PETERS: Thank you, General
8 Schwenk. We have a quorum of members present.
9 We have Major General Anderson, Ms. Bashford, Mr.
10 Cassara, Mr. Kramer, Ms. Long, virtually,
11 Sergeant Major Martinez, Ms. O'Connor, Brigadier
12 General Schwenk, Dr. Spohn, and Ms. Tokash.

13 VICE CHAIR SCHWENK: Okay, very good.
14 Thank you, Mr. Gruber, for opening the meeting,
15 and good afternoon.

16 I would like to welcome the members of
17 the DAC-IPAD and everyone in attendance, to day
18 two of the 38th Public Meeting of the Defense
19 Advisory Committee on Investigation, Prosecution
20 and Defense of Sexual Assault in the Armed
21 Forces, or DAC-IPAD.

22 Today's meeting will be in person,

1 with videoconference via Zoom also available for
2 members, public comment, and other attendees.

3 The DAC-IPAD was created by the
4 Secretary of Defense in 2016, in accordance with
5 the National Defense Authorization Act for Fiscal
6 Year 2015, as amended, for a ten-year term.

7 Our mandate is to advise the Secretary
8 of Defense on the investigation, prosecution and
9 defense of allegations of sexual assault and
10 other sexual misconduct involving members of the
11 Armed Forces.

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

18 We will begin today's meeting with
19 deliberations on the feedback we've received
20 during the sixteen military installation site
21 visits we conducted during the past eight months.

22 The session will begin with a

1 presentation from Ms. Terri Gallagher, the lead
2 staff attorney for the site visit project.

3 Ms. Gallagher will give us an overview
4 of the visits we've completed and the many
5 individuals who took their time to share their
6 thoughts about the military justice system with
7 us.

8 After the presentation, Ms. Gallagher
9 and I will guide the Committee through a
10 discussion of the issues identified during the
11 site visits.

12 The purpose of this discussion is to
13 determine and prioritize the areas where we can
14 provide assessments and recommendations to
15 improve the investigation, prosecution and
16 defense of sexual assault in the Armed Forces.

17 I will note that the information and
18 the summaries of our visits that we may discuss
19 is just that -- what we heard. The information
20 and the summaries does not reflect the findings
21 of the DAC-IPAD.

22 After a break, the Committee will

1 receive public comment from four individuals.
2 Prior to concluding the two-day meeting, the Case
3 Review, Policy, and Special Projects
4 subcommittees will provide updates on their
5 projects.

6 Finally, Ms. Meghan Peters, the deputy
7 director, will wrap up the meeting, before
8 adjournment by the DFO. I'll end with a couple
9 of housekeeping items.

10 To those joining by video, I ask that
11 you please mute your device microphone when not
12 speaking.

13 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.

20 Thank you again to those in attendance
21 today. And I will now hand the meeting over to
22 Terri Gallagher.

1 But before I do, sixteen site visits,
2 Asia, throughout the United States, took the
3 combined efforts of all the members of our staff.
4 But the one person who pulled it all together and
5 made it happen was Terri.

6 And so, on behalf of all the members,
7 I'd like to thank everyone on the staff, and
8 Terri in particular, for making those visits so
9 productive. And with that, it's over to you.

10 MS. GALLAGHER: Thank you, sir. It's
11 really been a great privilege to be able to
12 facilitate these meetings. And the recipients
13 have been very impressed with the sessions.
14 We've had people even say, what should we do?
15 What are your recommendations? And we've had
16 junior-enlisted say, keep doing this.

17 They liked the small-group sessions,
18 they liked being able to provide input, even
19 though they came into it wondering, why the heck
20 am I here, and what can I provide? And so, it's
21 really been a tremendous information-gathering
22 tool for us.

1 The reason we're here today is because
2 we have completed all our site visits that began
3 in March. They ended November 7th, and we are
4 here now to review the issues that have been
5 raised during the site visits, and to determine
6 what action DAC-IPAD should take on those issues.

7 And I want to direct you to the
8 materials. And so, Tab 4 of your day-of-meeting
9 folders has a deliberation guide and it has some
10 draft slides. The slides are up here for easy
11 reference. Some of the slides we skipped over,
12 because based on some tremendously productive
13 subcommittee meetings this morning, we're going
14 to change the process of this deliberation theme
15 just a tiny bit.

16 But I do want to reiterate what
17 General Schwenk said. It has been an enormous
18 endeavor. And it's not just our staff.

19 The points of contact and people at
20 every single site visit did so much work to
21 facilitate our visits and were so welcoming, that
22 it was really an enormous undertaking by

1 everybody. And we couldn't have gotten better
2 support from the services. It was just
3 tremendous the way they facilitated our visits.

4 But we did visit sixteen separate
5 installations, and then we had some participants
6 come in from other close-by installations to the
7 ones that hosted.

8 We did conduct approximately 150
9 roundtable sessions, with an approximate total of
10 687 military participants. And so, we talked to
11 a lot of people.

12 And the sessions couldn't have gone
13 better. People were so amazingly forthcoming,
14 and we have endeavored to protect the privacy of
15 each and every participant by making sure that
16 you can't identify who our information came from
17 and attribute it to a specific installation.

18 So, that being said, we have a
19 separate material, which is the
20 fourteen-site-visit group report. It's a
21 separate document packet. It should be both
22 online and everyone has it here.

1 And what that is, is the summary of
2 the information received during the other 150
3 roundtable sessions. And it's organized by
4 participant and group.

5 And the fourteen different groups, for
6 those that don't have it in front of them, were
7 commanders -- victims counsel, trial counsel,
8 special trial counsel, military defense counsel,
9 military criminal investigation organizations,
10 the sexual assault response coordinators, victim
11 advocates, the sexual harassment and assault
12 response and prevention personnel, and the equal
13 opportunity representatives, the paralegals,
14 female junior-enlisted service members E-3
15 through E-5, male junior-enlisted service members
16 E-3 through E-5, senior-enlisted service members
17 E-6 through E-9, female cadets and midshipmen,
18 male cadets and midshipmen, and cadet midshipmen
19 supervisors. So, those are the fourteen group
20 reports contained in the one bound version.

21 And from that information, the staff
22 had kind of condensed it down into separate

1 topics that might be worthy of, or appropriate
2 for, DAC-IPAD further study, or reporting out
3 descriptively in our annual report that comes out
4 in March.

5 So, the process we're going to use
6 today, actually, we have the five overarching
7 topics go along with our IPAD, the investigation,
8 prosecution and defense, and then you have,
9 separately, the victims counsel and victim
10 liaison services, and the reporting and training,
11 which is -- you'll see the issues when we get to
12 them.

13 The way we're going to process it
14 today is, I am going to first turn it over to the
15 subcommittee chairs to identify the issues that
16 their subcommittee have kind of honed-in on as
17 their next studies that they'd like to do, and
18 will discuss each of those and have a vote as to
19 whether or not the subcommittee should be
20 assigned that topic.

21 And then, the topics and issues that
22 have not been addressed, we'll walk through all

1 of those. And what we're looking for there is,
2 what are we going to do with them?

3 We're either going to take it and put
4 in on, like, a waiting list, to determine that it
5 is appropriate for a study by the DAC-IPAD and
6 would like to reserve that as something we'd want
7 to study as soon as one of the original studies
8 is completed, we would move on to this waiting
9 list, the next in line, or whether it's something
10 that is not really appropriate and certainly not,
11 maybe at this time, for DAC-IPAD to study. And
12 we'll take that information and we'll describe it
13 in the annual report as information received
14 during our site visits.

15 And so, you're looking to say, okay,
16 should it be aligned for study, or should it be
17 described in the annual report? And of course,
18 the annual report would also include what we're
19 doing as far as the studies go.

20 With that being said, I'm turning it
21 over to the subcommittee chairs to kick it off.
22 General Schwenk, who wants to go first?

1 VICE CHAIR SCHWENK: Meghan, you want
2 to go?

3 MS. TOKASH: Sure. The Special
4 Projects Subcommittee was looking at a proposed
5 study of covered offenses deferred by the Office
6 of the Special Trial Counsel.

7 In particular, the issue that we're
8 honing in on is, are the cases that are coming to
9 the Offices of Special Trial Counsel being
10 appropriately deferred within the OSTC construct?

11 So, similar to the DAC-IPAD's 2017
12 case review project that we did with respect to
13 the reasonableness of the decision that at the
14 time commanders were making with respect to
15 preferral and referral, the subcommittee would
16 like to do a similar project. And it would be a
17 much more focused dataset, because we would be
18 looking at materials that the services would give
19 us well in advance of even a potential charging
20 decision. So, we wouldn't be reviewing things
21 like preferral and referral memoranda.

22 So, that was the proposal. The

1 background of this study is that during the
2 course of our site visits we found that some
3 commanders and staff judge advocates perceive the
4 process of deferral takes too long, causing a
5 negative effect on good order or discipline, and
6 specifically, commanders at site visits
7 complained that deferrals take too long, that
8 they can't then resolve minor misconduct, or what
9 they perceive as misconduct.

10 And the Special Trial Counsel also
11 complained that the deferral process was overly
12 complicated and administratively burdensome.

13 So, we want to look at that specific
14 process itself, the deferral. What is happening?
15 What decisions are being made? How are they
16 being made?

17 It's helpful that we have that Task
18 and Purpose article that was published about
19 three weeks ago, because it looks like the Army
20 at least is collecting very good data.

21 In the article itself, they give us
22 some very good public figures with respect to

1 data. And I believe they stated that of the
2 convictions for covered offenses, they have 29
3 convictions out of 32 cases, which is already an
4 interesting statistic, and I think a great
5 statistic.

6 So, this is the proposal. This is
7 what the Special Project Subcommittee talked
8 about. The research areas, would be rates of
9 deferral, the timeliness of deferral,
10 appropriateness, otherwise known as
11 reasonableness of deferrals, any duplication
12 efforts, and the timeliness of alternate
13 dispositions.

14 Mr. Kramer raised another data point
15 with respect to the number or rates of cases that
16 are being kicked back to the OSTC after they are
17 deferred.

18 So, this is our project that we would
19 like to work on. We put it to a vote and we
20 decided that this is an area of good future
21 study.

22 VICE CHAIR SCHWENK: Okay. Comments?

1 Questions? Thoughts?

2 MR. CASSARA: I'm thinking.

3 VICE CHAIR SCHWENK: We'll be here a
4 while.

5 MR. CASSARA: I know. I might want
6 to clear out the room for a little bit.

7 VICE CHAIR SCHWENK: So, these cases
8 that you're going to look at have been deferred.
9 So, they were sent back to the command. And so,
10 you're going to look at probably an
11 investigation?

12 MS. TOKASH: So, even more specific,
13 we were looking at the decision-making moment of
14 deferral. What is happening there, to the extent
15 that we can uncover that, and then look also at
16 rates of deferral.

17 And specifically, we're going to ask
18 the services whether we can have blank copies of
19 the transmittal forms that all of the OSTCs
20 talked about yesterday, to be able to see the
21 overarching reasons why cases are being deferred.

22 And from a data perspective, I'm

1 grateful that Dr. Spohn is on the subcommittee,
2 because that's why I asked the OSTC that question
3 -- would it be helpful to have a uniform deferral
4 sheet?

5 Because from a data collection
6 standpoint, that would be much more helpful for
7 metrics, for the Department of Defense.

8 But I would be interested in seeing
9 what the OSTCs told us are the reasons for having
10 different forms. And they may very well be good
11 reasons.

12 So, we need to do a little bit more
13 ground work before we would actually launch that.
14 Does that answer your question?

15 VICE CHAIR SCHWENK: Yeah. Well, I
16 was thinking about the reasonableness, thinking
17 back to that study we did in 2017 cases, where we
18 said, was the referral decision reasonable or
19 not, and came up with our numbers.

20 And then you mentioned -- I thought
21 you mentioned -- that one of the things you
22 wanted to do was look at the reasonableness of

1 deferral decisions.

2 MS. TOKASH: Yes.

3 VICE CHAIR SCHWENK: Okay. What would
4 you look at for that, I guess, in the
5 investigation, right?

6 MS. TOKASH: Yes.

7 VICE CHAIR SCHWENK: Yeah.

8 MS. TOKASH: Mm-hmm.

9 VICE CHAIR SCHWENK: Okay. And there
10 we go from that. All right.

11 MS. TOKASH: If one exists, you know.

12 VICE CHAIR SCHWENK: Right.

13 MS. TOKASH: Because there may be some
14 cases where a decision is being made in a much
15 more expeditious manner, where maybe perhaps the
16 investigation's not complete.

17 But that is one of the things that our
18 fearless staff attorney Warren is going to do
19 some preliminary inquiries with the OSTCs, just
20 to see, what would that look like in
21 DAC-IPAD-member hands? What would they be able
22 to give us that could help us facilitate such a

1 study?

2 VICE CHAIR SCHWENK: The deferrals
3 you're going to look at, does that include, the
4 case comes in, somebody from the OSTC office goes
5 and looks at what's there and says, not covered.
6 Not a covered offense. Are we going to look at
7 those also?

8 VICE CHAIR SCHWENK: I think we would
9 like to know that too.

10 MS. TOKASH: I think that would be a
11 helpful data point. And we also specifically
12 funneled it down to any cases that have come in
13 post-December 28th, 2023.

14 So, right now, if we all understood
15 correctly from what the OSTCs told us yesterday,
16 they're still processing through a lot of legacy
17 cases.

18 VICE CHAIR SCHWENK: Right.

19 MS. TOKASH: We're trying to push
20 those aside and look more forward-looking. And
21 again, if the Army is signaling correctly and the
22 very public task and purpose are the goal, it

1 looks like they are already tracking some of
2 these things. So, that's, I think, a good sign.

3 VICE CHAIR SCHWENK: Yeah. Okay.

4 Sounds reasonable to me. Yes.

5 MS. BOGGESS: Ms. Long, has a
6 question.

7 VICE CHAIR SCHWENK: Oh. Jen, we
8 can't see you but we love you. So, if you have a
9 question, go ahead and ask away.

10 MS. LONG: No problem. No problem.
11 I have a question -- just more of a comment again
12 of the subcommittee. Because I have heard the
13 reference of the conviction rate, to always
14 remember to please match it with the prosecution
15 rate so that it has some sort of meaning to it,
16 as in the numbers.

17 And I think the referral here,
18 actually, this is a really great time to look at
19 cases coming through and what's happening to them
20 across the way, so that the conviction rate alone
21 doesn't help you if you don't have that first
22 number.

1 MS. TOKASH: Yeah, thank you. Thank
2 you, Jennifer. We agree.

3 VICE CHAIR SCHWENK: Any others?
4 Bill?

5 MR. CASSARA: As we were listening to
6 the OSTCs yesterday, one of the things that I
7 took away from it was that some of these cases
8 are coming in and they're deciding in fifteen
9 minutes, this is either not a covered offense, or
10 this thing's never going to see the inside of a
11 courtroom. It's just not serious enough.

12 Whereas, other ones obviously are a
13 much deeper dive on the part of the deciding --
14 the referral authority.

15 I think my question, mainly, is how do
16 we differentiate, in a statistical analysis, a
17 case that just comes in and somebody says, well,
18 either this is a terrible case, or, this is not a
19 covered offense, or, no, I'm not going to convene
20 a court-martial for some extremely, quote, minor,
21 unquote, offense, as opposed to, we've got four
22 lawyers working on a decision authority, a

1 referral disposition opinion, on a really
2 complicated case?

3 MS. TOKASH: I think that's a great
4 question, because I think we are going to see a
5 mix of cases where there's that quick decision,
6 especially if it's, say, a case that comes in and
7 it's a fact case. I think it's going to be a
8 very easy deferral decision that's not in the
9 OSTC jurisdiction.

10 But I don't think that that's what
11 we're getting after. I think what we're getting
12 after is when it is in their purview.

13 And maybe I misunderstood your
14 question, General Schwenk. So, I'm sorry. We're
15 not interested in the decision of whether it
16 makes covered versus non-covered. Right? I
17 think that is less interesting, to say the least,
18 for this study.

19 And then, what we do want to see
20 though is, for the cases that they do say, this
21 is a covered offense, when, once the dig into it
22 a little bit more, and I think what we'll see is

1 there will be a little bit more of a
2 clear-throated investigation.

3 But I also, I don't want to put you on
4 the spot, Cassia, but could you maybe flush out
5 some of those issues that Bill was talking about?

6 DR. SPOHN: Yeah. So, I mean, one of
7 the things we can measure is the timeliness of
8 the deferral decision from, depending on what we
9 determine to be the exception of the case. I
10 mean, it might be when they receive the case in
11 the OSTC.

12 But we can collect data on sort of the
13 seriousness of the allegations. And we would
14 expect that those cases would take longer to
15 resolve, in terms of a deferral or not.

16 It might be a case with, you know,
17 multiple victims, for example, and that kind of a
18 case we would expect to take longer.

19 MR. CASSARA: Yeah, because I think my
20 question is, you get 20 cases come in -- these
21 are rounder numbers. I'm terrible at math. I'm
22 even below in that ten. I can do multiples of

1 ten very easily.

2 Eight of them are -- again, using the
3 nomenclature, relatively minor, not GCM, not
4 court-martial-level offenses -- and those
5 decisions take fifteen, twenty minutes.

6 And then two come in and they're deep
7 dives, really complicated cases. If you're
8 looking for those ten to be, like, if they're
9 trying to come up with a metric or an uniform
10 amount of time as to how long they're taking, I
11 just don't know how much that helps, because
12 eight of them may take fifteen minutes each and
13 two of them may take weeks and weeks.

14 DR. SPOHN: So, I think we can get an
15 average time. And then you can calculate the
16 standard deviation, which would tell you how far
17 from the average the typical case is. And that
18 will give you some estimate for the range of time
19 that the cases take.

20 MR. CASSARA: And I've used things
21 like standard deviation.

22 DR. SPOHN: A.J. just turned to me and

1 said, this is why we have Cassia.

2 MR. CASSARA: This is why I have a law
3 degree and not an engineering or a statistical
4 degree.

5 VICE CHAIR SHWENK: The other thing
6 I've seen on a few things, is they have a range.
7 So, the zero days to 15 days, 15 to 30. And you
8 put the numbers in there --

9 (Simultaneous speaking.)

10 DR. SPOHN: You can think of it in
11 those kind of terms as well.

12 VICE CHAIR SHWENK: -- and then you
13 can do your averages and standard dev -- but you
14 can also see the ones that took forever.

15 DR. SPOHN: And then you can try to
16 figure out, well, why did those cases take so
17 long?

18 VICE CHAIR SHWENK: Right.

19 SGM MARTINEZ: As far as some of the
20 why, is looking at -- I personally can run --
21 myself in South Korea, I'm looking at a good
22 location. Does location have a play in that as

1 well?

2 Because we have these rotation
3 brigades that comes in and they're only there for
4 nine months, and if anything happens harsh
5 towards the soldiers, there for one year, and
6 they're there and they're gone, command is there
7 for nine months and gone, same thing in Poland,
8 those rotation brigades, you know, did that have
9 a factor in the timeliness as well?

10 MR. KRAMER: And also at some point,
11 the victim may decide they don't want to
12 cooperate any longer. And that could be right at
13 the beginning, or it could be three months down
14 the line.

15 MR. CASSARA: I think what I'm hearing
16 is, I think we can get useful data. I have great
17 confidence in Cassia's ability to crunch numbers,
18 as opposed to mine, which is, why I balance the
19 checkbook, but so. Okay.

20 MR. KRAMER: And Bill, it depends also
21 how much we get of the reasoning for the
22 deferral.

1 MR. CASSARA: That's a good point.

2 MR. KRAMER: Yeah. We're unclear how
3 much we'll get.

4 MR. CASSARA: Which is why the
5 standard form would've been helpful.

6 MR. KRAMER: Yeah.

7 MS. TOKASH: And that's the only
8 reason why I queried that. And I believe the
9 services when they say there are reasons. It
10 would just be interesting to see what they are.

11 It's just a little bit unfortunate
12 that they are different in terms of capturing
13 data.

14 VICE CHAIR SCHWENK: On the other
15 hand, DoD's got forms that are DoD forms, that
16 the services initially said, well, we want this,
17 and we want that.

18 And then they get in a working group
19 and they work it out. And, you know, there's
20 three things my service is never going to use,
21 but the other services want them on there. So,
22 they're there. And now you have a standard form

1 that can be used.

2 MS. TOKASH: So, I think that will be
3 something else too, if we're able to get just
4 these blank forms. I think it would be something
5 interesting to see. Because I think that will
6 help measure --

7 MS. BASHFORD: But if you're trying to
8 just say, is the deferral a reasonable decision,
9 you don't really need to know what box they
10 checked. Because you're looking at the folder
11 and saying, should this case have gone forward,
12 or is kicking it back reasonable? Right?

13 MS. TOKASH: That's right, Martha.
14 Because in the 2017 study, we were reading
15 through the investigative file. So, I think this
16 is going to be largely dependent on the quality
17 of the investigative file. Just like the 2017
18 project.

19 And I do understand though, what
20 you're saying about those quicker deferral
21 decisions. How vast is the investigative file?
22 I think it's going to be something that we will

1 just have to see, and as Lauren's going to get an
2 initial temperature reading with OSTCs, to see
3 what this reading would look like.

4 VICE CHAIR SCHWENK: Any other
5 comments? Questions? Jen, anything from you?
6 Jen Long?

7 MS. LONG: No. Thank you. No. Thank
8 you.

9 VICE CHAIR SCHWENK: Okay. How about
10 a vote? Anybody opposed to the Special Project
11 Subcommittee taking on the issue of deferral, as
12 they've explained it? Please raise your hand.
13 Or, Jen, do something, that we acknowledge you.

14 Okay, it's approved. So, you have
15 deferral. Did you guys talk about a follow-on
16 one, or just the one?

17 MS. TOKASH: Just the one.

18 VICE CHAIR SCHWENK: Okay.

19 MS. TOKASH: Yeah, that was our focus.

20 VICE CHAIR SCHWENK: Okay.

21 MS. BASHFORD: And so, the Case Review
22 Committee actually follows beautifully on

1 Meghan's proposal, because we wanted to look at
2 the administrative separation boards that often
3 take place after the deferral.

4 It seems to be a lot of the work of
5 trial counsel now. The defense counsel are very
6 much involved in that. We heard that victims are
7 not notified in a timely manner that these are
8 happening, or notified that they can appear.
9 Victims' legal counsel are often not notified.

10 It seems very different on how much
11 participation or input a victim has in these
12 administrative separation boards.

13 I'd also want to see if somehow
14 they're almost being the equivalent of a plea
15 bargain. We'll defer and go back to it. So, we
16 thought it brought in a lot of different
17 stakeholders.

18 VICE CHAIR SCHWENK: Okay, comments
19 from anybody? Questions?

20 DR. SPOHN: Would you be looking at
21 the outcomes of the administrative separation
22 boards, or more the process that they're

1 following? Or both.

2 MS. BASHFORD: I think both. Mostly
3 concerned in the process. But it's good to see
4 this happening. We hear a mix of things that
5 have post-deferral and the accused is treated
6 more harshly by the admin boards, and I've heard
7 the exact opposite of the admin boards, because
8 they can take into a lot more prior foot-soldier
9 stuff that are dealt with much more leniently.

10 So, it'd be interesting to see what's
11 actually true.

12 VICE CHAIR SCHWENK: There's a policy,
13 I believe, now of mandatory processing for
14 administrative separation. Would you look at
15 that also?

16 MS. BASHFORD: Of course.

17 VICE CHAIR SCHWENK: Okay. Any other
18 questions or comments? Okay, how about a vote?
19 Anybody opposed to the Case Review Subcommittee
20 looking at the broad admin board process, because
21 it uses so many military justice assets?

22 Anybody opposed? No? Okay, you're

1 approved. Do you want to go on to a second one?

2 MS. BASHFORD: That was all we had for
3 now.

4 VICE CHAIR SCHWENK: Okay. Okay, on
5 Policy Subcommittee, we'd like to be different.
6 And so, we wanted to grab one of the big numbers
7 -- investigations -- and then meet as a
8 subcommittee in the future and decide, or to see
9 what information is available, and then decide
10 which issues to take first, second, third, and on
11 down the line.

12 Resourcing. I got access to evidence
13 and particular cell phones. The discretion when
14 to close a case, or I suppose we should say, lack
15 of discretion on closing a case, the quality of
16 the investigation, the trial preparation, or a
17 lack thereof, for investigators testifying in
18 courts-martial, and the training that they
19 receive.

20 So, we thought we'd look at
21 investigations writ large, work with MCIOs, and
22 see where that takes us.

1 I suppose that will also run us into
2 the sexual harassment, who's investigating sexual
3 harassment.

4 And so, we may have a subcategory of
5 that. Because the second issue we'd like is
6 sexual assaults and sexual harassment, and
7 whether it still makes sense to have two separate
8 systems administratively, to manage those
9 programs, or whether they should be combined.

10 And so, that's the second issue that we'd like to
11 have.

12 Open for questions. No questions or
13 comments? Okay, how about a vote. All those in
14 favor -- oh, no. Anybody opposed to having Terri
15 Gallagher do all this work on investigations for
16 the Policy Subcommittee, please raise your hand.

17 Everybody likes you, Terri. You've
18 got it. All yours.

19 Okay. Now, we need to move on to
20 other issues.

21 MS. GALLAGHER: Yes. And so, because
22 the entire kind of block topic for investigations

1 has been kind of shifted to the Policy
2 Subcommittee, where they'll kind of look at that
3 and develop some research plans and march forward
4 on that, we'll go straight into the prosecution.

5 And if you'll look at not just the
6 slide, but your Tab 4 deliberation guide, the
7 third page, the prosecution there, some of the
8 things -- and always correct me, Ms. Tokash, if
9 this is something you're including within your
10 study, or whether it's still open for bidding --
11 we heard a lot at the site visit about deficiency
12 -- really, more the insufficiency -- of discovery
13 responses and a lot of late discovery, and how it
14 affected the cases.

15 That is an issue that I don't believe
16 has been kind of subsumed within any of the
17 studies we just talked about, and so the question
18 is, does that go on our kind of waiting list of
19 next topics to explore when we have an opening in
20 resources, or is that something that we should
21 just be describing in the annual report? Any
22 thoughts on that?

1 MR. CASSARA: Terri, I'm not sure I'm
2 understanding. In fact, I'm sure I'm not.

3 (Simultaneous speaking.)

4 MS. GALLAGHER: I guess what we're
5 trying to do is figure out whether to just
6 describe in the report that the participants felt
7 that there were issues with insufficient
8 discovery being provided, and just kind of leave
9 it at that, or is it something that might be
10 appropriate for the DAC-IPAD to do some review
11 analysis and kind of weigh in on whether there
12 are issues with discovery and whether the process
13 can be improved.

14 VICE CHAIR SCHWENK: Yeah, we didn't
15 want to lose the issues. So, we figured if we
16 have two bins for the remaining issues -- one bin
17 is, we say in the annual report in March, these
18 are the issues that came up that we don't have
19 time to get to; and then we have the other bin
20 that says, these issues came up and although
21 they're not the ones we're going to start on, we
22 think they're of sufficient merit that we intend

1 to get to them whenever we have the bandwidth to
2 get to them --

3 MR. KRAMER: So, I wonder if it might
4 be a little early -- it's only a year into the
5 OSTC and they have a lot of legacy cases and
6 they're now starting on their own cases, or
7 whatever it's called original jurisdiction,
8 whatever it's called.

9 So, it may be that second bin, Jim, we
10 probably should take another look at it a little
11 later and see where it is at that point if it's
12 still in the shoe, or does the OSTC now kind of
13 solve this problem, or made it not the problem
14 that it was? I don't know if that makes sense or
15 not.

16 MS. GALLAGHER: No, it certainly does.
17 All in favor of putting this issue, just
18 describing the information received in the annual
19 report and kind of waiting to see whether it
20 surfaces again as an issue we should take a look
21 at.

22 VICE CHAIR SCHWENK: Yeah, we could

1 say in the annual report, perhaps, that the
2 Special Project Subcommittee has responsibility
3 for oversight of OSTC issues.

4 MR. KRAMER: I don't know if we want
5 to go that far.

6 VICE CHAIR SCHWENK: Yeah. Well, I
7 believe that was the vote. You got it, like it
8 or not.

9 And that as it becomes more mature and
10 develops its processes and procedures, they'll be
11 looking into one or more issues regarding that.

12 That at least lets the reader know
13 that we haven't stopped looking at OSTC issues
14 and we will continue to do so.

15 MS. TOKASH: I think that's fair,
16 especially for the OSTCs. When they told us that
17 they are still developing their SOPs, I would
18 imagine that they would be refining their
19 discovery policies that would direct their
20 counsel what and when -- what needs to be
21 released and when.

22 VICE CHAIR SCHWENK: Yeah, that's a

1 good point. So, maybe we can write that in the
2 report. Cassia?

3 DR. SPOHN: Terri, could you say a
4 little bit about the role of non-certified
5 attorneys?

6 MS. GALLAGHER: Yeah. Okay.

7 (Simultaneous speaking.)

8 MS. GALLAGHER: I'll go through the
9 issues one-by-one.

10 So, number four, when I say the role
11 of non-certified attorneys in the processing,
12 we've heard a lot about how trial counsel are
13 being used by the Army and Air Force to work on
14 covered offenses.

15 DR. SPOHN: Oh, okay.

16 MS. GALLAGHER: From the beginning,
17 some of the Navy or Marine Corps may be either
18 assigning non-certified counsel to the STC
19 offices to do work on the cases, and I think at
20 least one of the STCs mentioned that it's really
21 still a very big work in process of how they are
22 kind of using the resources and setting up the

1 systems to train the next generation, and such.
2 I think that's what that goes to.

3 VICE CHAIR SCHWENK: So, certified
4 here doesn't mean certified under Article 27, to
5 --

6 (Simultaneous speaking.)

7 MS. GALLAGHER: No. It's certified as
8 --

9 VICE CHAIR SCHWENK: It's certified as
10 a special trial counsel.

11 MS. GALLAGHER: -- a special trial
12 counsel. Yes, yes.

13 MS. TOKASH: So, for example, I sat in
14 a session in one of the site visits. Not naming
15 that specifically, the location.

16 VICE CHAIR SCHWENK: Very good.

17 MS. TOKASH: But the special trial
18 counsel said that they and their colleague were
19 completely swamped with cases. And so, a
20 non-certified special trial counsel ended up
21 trying the covered offense at court-martial and
22 it ended in acquittal.

1 But that's an interesting data point
2 for me, I think. But I don't know if we
3 understand how big, a, if it's a problem, and how
4 big that problem is.

5 So, I'm curious about this. But it
6 might just be the prosecutor in me.

7 VICE CHAIR SCHWENK: Well then, I'm
8 going to go back to A.J.'s point. Give it
9 another year.

10 MS. TOKASH: Right.

11 VICE CHAIR SCHWENK: And after two
12 years, things ought to settle down.

13 MS. TOKASH: And there's an important
14 mentorship and learning in court. We want the
15 next crop of special trial counsel. But I don't
16 think we necessarily want them alone trying a
17 covered offense.

18 So, yeah, I think maybe putting it in
19 the second category, Jim, that you mentioned, but
20 we're aware of this.

21 VICE CHAIR SCHWENK: You're going to
22 get to it.

1 MS. TOKASH: But we just don't have
2 enough to wrap our arms around right now.

3 VICE CHAIR SCHWENK: Okay.

4 MS. TOKASH: Would be my suggestion.

5 VICE CHAIR SCHWENK: Anybody opposed
6 to putting it in the second bin? The role of
7 non-certified attorneys? Nope? Okay, second
8 bin.

9 MS. GALLAGHER: Yeah. And we
10 certainly saw a very big progression from our
11 first site visit through the last one on how the
12 different resources were being used in the cases.

13 So, it's certainly fair to say it's a
14 continuing process, and I think that's what the
15 STC said.

16 All right. So, discovery will go into
17 the annual report. Role of non-certified
18 attorneys will go in the annual report. I
19 believe, General Schwenk, that you said the
20 insufficient preparation of the MCIOs for the
21 testimony would fall into the investigations --

22 VICE CHAIR SCHWENK: Right.

1 MS. GALLAGHER: -- category. So,
2 we've got that. In essence, the sufficiency of
3 the disciplinary actions is going to the Case
4 Review Subcommittee, and it looks like they're
5 scoping it as a focus on those administrative
6 separation boards. So, that one's taken care of.

7 If we can turn to Defense. So, lack
8 of parity with the OSTCs. Is that something that
9 is best described in the annual report while they
10 kind of continue to churn, or is that something
11 that is on a waiting list really for the DAC-IPAD
12 to really do more research into?

13 MR. CASSARA: I would like to look --
14 I mean, I'll even become a member of a
15 subcommittee. I mean, this is a matter that -- I
16 was struck yesterday by the distinction between
17 what we were hearing from the heads of the
18 Defense Bar, and what we heard on site visits
19 from the practitioners of the Defense Bar, in
20 terms of the lack of parity with the OSTC.

21 One can chalk that up to, the view is
22 always rosier from up high, or, the view always

1 stinks when you're the one who's down at the
2 bottom.

3 But there may be other things to it.
4 I would like to look into that issue further.
5 And when I say, I, I mean we as a Committee -- I
6 don't care. But I think it is something.

7 There's got to be an easy way to
8 crunch numbers, as to how much experience the
9 relative sides are coming to in a contested
10 court-martial.

11 And I look at the trial dockets of the
12 services pretty regularly, because I don't have a
13 life so. And you look at them and you see the
14 Government bar is usually a lieutenant-colonel, a
15 major and a couple of captains, and the Defense
16 Bar is usually a couple of captains.

17 I'd like to know if that's just my
18 jaundice perception of the world, or -- I think
19 that is something we need to look into.

20 VICE CHAIR SCHWENK: Anybody else have
21 a comment? So, do you think we should assign
22 that now to a subcommittee, or put it into the

1 second bin?

2 MR. CASSARA: To quote, as you younger
3 folks, I don't think we have the bandwidth for
4 that.

5 VICE CHAIR SCHWENK: Yeah, okay.
6 Yeah, I mean, that was pretty cool. Yeah, I was
7 impressed by that.

8 MR. CASSARA: I had to Google what it
9 meant, but I was impressed by it.

10 MS. GALLAGHER: Okay. All right, any
11 objections to putting that kind of in the bin of
12 the issues appropriate for DAC-IPAD study, when
13 time permits?

14 No objections. So, that's how we'll
15 process that one.

16 So, the next entry is, we heard really
17 from all types of different groups, that as soon
18 as an allegation is made, the service member,
19 they're flagged, their just in limbo until such
20 time as the whole thing is resolved.

21 And then we also heard that the
22 allegations, especially with the sexual assault

1 and sexual contact, is mandatory reporting to the
2 MCIOs.

3 And so, we heard that a report would
4 come in to, like, an MP station, or somebody
5 would say the word, sexual assault, to a
6 commander or something. And everybody just says,
7 stop. I don't want to hear anymore.

8 Or it could be a third party report.
9 And they say, stop, and they send it straight to
10 the MCIOs, and the MCIOs have to open a case.
11 And then they might have a delayed victim
12 interview.

13 And so, by the time they get actually
14 some facts on the case, a service member could
15 have been kind of flagged for a month, and then
16 they may look at the facts and say, well, this
17 isn't even a crime, let alone a sexual assault or
18 a sexual contact crime.

19 And so, the question is, is that
20 something that should be studied by the DAC-IPAD,
21 by somebody else, to kind of see is there a way
22 that some of those harmful career effects can be

1 delayed until an allegation has been moved maybe
2 further to correct, or maybe it'll cause things
3 to speed up in certain cases, to get at least
4 enough facts to start analyzing something.

5 MG ANDERSON: I didn't think it to be
6 something that we should look at, because when
7 someone's flagged, they don't go to schools, they
8 get delayed going to schools, which then delays
9 promotion opportunities. And if that goes on for
10 a period of time, then they're really out of sync
11 with their peers.

12 And if the determination is that there
13 was nothing here, now they're really behind.
14 They're behind.

15 So, I think taking a look at that, or
16 at least raising it to a level of consciousness,
17 is important.

18 MS. TOKASH: And we're talking
19 specifically about investigations. Correct,
20 Terri? With the MCIO making a determination?

21 MS. GALLAGHER: Well, I think that
22 that would be part of the study. What should the

1 trigger be? Because right now it sounds like
2 that it could be just based on the allegation.
3 The mere allegation, regardless of the level of
4 facts and such, that these are imposed.

5 But as we try to study what is
6 actually going on, and is there something that
7 can be delayed, or does military readiness
8 require it, and justice require it?

9 And so, I think that would all just be
10 part of the study, kind of to take a look and
11 say, the system that has been -- it's been in
12 place for a long time, but we hear that the
13 system keeps evolving and changing. And now,
14 allegations have to go straight to the MCIOs, and
15 maybe without facts. And so, maybe a time to
16 look at it.

17 MS. TOKASH: It seems a little bit of
18 a hybrid. Because I know the MCIOs are making a
19 determination, but also we heard yesterday that
20 the OSTCs, one of the boxes they check on the
21 transmittal sheet is, no probable cause.

22 So, I just wonder, that's why I'm

1 asking about it. I just wonder if there's a
2 little bit of cross-pollination between the
3 investigation and between what we're doing to
4 focus everything --

5 (Simultaneous speaking.)

6 MS. BASHFORD: I think back to our case
7 study. I mean, it's getting old now. But 80
8 percent of the cases that were investigated
9 didn't result in any charges whatsoever. And
10 those were not particularly fast decisions.

11 So then 80 percent of the people
12 subject to the investigation were put on hold for
13 all this time.

14 And remember, there's a probable cause
15 to take -- I mean, there were weird probable
16 causes.

17 MS. TOKASH: Right, right.

18 MS. BASHFORD: But that's just a lot
19 of --

20 MS. TOKASH: Well, the large
21 concentration of people

22 (Simultaneous speaking.)

1 MS. GALLAGHER: Right, because you
2 also have the ones that, you know, are like
3 unfounded. As you look at the facts it's not a
4 crime and, you know, that person then -- You
5 can't give them back that time and status in the
6 service and so what do you do first, right.

7 So you've got the ones that are really
8 unfounded, they are not a crime, and then you
9 have the ones where there is no probable cause
10 and then you have the ones that there is
11 insufficient evidence to prosecute.

12 So you've got a spectrum and it's like
13 what's the appropriate point.

14 VICE CHAIR SCHWENK: Yeah. And as to
15 the binning I vote that it would go in the second
16 bin, the ones that we're going to get to.

17 MS. GALLAGHER: Yeah.

18 VICE CHAIR SCHWENK: And I do think
19 it's crosscutting, you know. It affects OSTCs
20 because they make probable cause determinations.
21 It affects MCIOs, they are doing the
22 investigation, and I believe now they are doing

1 the probable cause determinations for
2 fingerprinting.

3 It affects Defense, obviously, since
4 it's the accused we're talking about. So I think
5 it's a standalone issue and it ought to be on our
6 second bin issue.

7 MS. GALLAGHER: Well the second bin
8 would be report. The first bin is study.

9 VICE CHAIR SCHWENK: Oh, okay.

10 MS. GALLAGHER: So --

11 VICE CHAIR SCHWENK: The first bin.

12 MS. GALLAGHER: At least the way I am
13 recording it.

14 VICE CHAIR SCHWENK: Well you're the
15 one that's writing it.

16 (Laughter.)

17 MS. GALLAGHER: Okay.

18 MS. BASHFORD: The only thing I can
19 think of similar in the civil world, I mean there
20 is really no consequence to being investigated
21 other than, I believe, investment banks.

22 If there is an announcement that an

1 attorney general is investigating them as soon as
2 the announcement is made they are barred from
3 trading and that's why it gets so many huge
4 settlements to ward off that announcement, you
5 know, well, yes, we'll pay you \$10 billion as a,
6 you know, no contest fine.

7 MS. GALLAGHER: Yeah, right.

8 MS. BASHFORD: But I can't think of
9 anything else in the civil world where --

10 MS. GALLAGHER: And I will say that
11 this particular issue, the imposing of, you know,
12 pulling security clearances and flagging and
13 stuff, was raised as an issue by the DAC-IPAD in
14 the March, the Case Review Subcommittee in the
15 March 2020 report.

16 So it's not a new issue, but based on
17 what we heard at the site visits it's really, you
18 know, everyone agrees it's as soon as the
19 allegation you can't recover and --

20 (Simultaneous speaking.)

21 VICE CHAIR SCHWENK: Yeah, it's time
22 to --

1 (Simultaneous speaking.)

2 MS. GALLAGHER: -- to maybe look at
3 it.

4 MS. TOKASH: And that's MCIO driven,
5 correct, that flagging or is that command driven?

6 MS. GALLAGHER: Well --

7 VICE CHAIR SCHWENK: No, it's command.

8 MS. GALLAGHER: -- it's command, it's
9 command driven and policy, yeah.

10 MS. TOKASH: And what's the -- do we
11 know the rationale?

12 VICE CHAIR SCHWENK: As soon as they
13 get it -- well, yeah, they're --

14 MS. GALLAGHER: So they don't ETS,
15 yeah.

16 MR. GRUBER: I know the rationale is
17 counsel or the Chief of Naval Personnel is so
18 that you don't make irreparable career decisions
19 on someone facing that type of allegation, for
20 example, someone who has that allegation and then
21 detailing them to be the executive officer of a
22 ship or that of a recruit battalion.

1 It's those types of decisions that
2 they are trying to avoid and that's why you flag
3 the record and also so, what almost happened when
4 I was in the chair, you don't have someone facing
5 an Article 32 for that type of offense, you know,
6 be promoted while the Article 32 is occurring so
7 you can delay those actions, delays and
8 windfalls.

9 That's the purpose behind it and
10 that's why I said it --

11 (Simultaneous speaking.)

12 MS. TOKASH: Which sounds like a good
13 purpose, they probably just didn't contemplate
14 the length of the timing --

15 MS. GALLAGHER: Right.

16 MS. TOKASH: -- to decide.

17 MS. GALLAGHER: Right. And there is
18 so many different --

19 VICE CHAIR SCHWENK: Yeah.

20 MS. GALLAGHER: -- equations that we
21 could fit into that, but, you know, that's why it
22 would be a study.

1 VICE CHAIR SCHWENK: Yes.

2 MS. GALLAGHER: All right. So that's
3 been --

4 DR. SPOHN: Terry?

5 MS. GALLAGHER: Yeah?

6 DR. SPOHN: Just a question, are you
7 defining servicemember broadly to include victims
8 as well as the accused, because we have the same
9 testimony --

10 (Simultaneous speaking.)

11 MS. GALLAGHER: Yeah. We have heard
12 that, yeah.

13 DR. SPOHN: -- about the impact on the
14 victim's career.

15 VICE CHAIR SCHWENK: Yeah. I think
16 this one is more on the accused.

17 DR. SPOHN: On the accused, okay.

18 MS. GALLAGHER: Yeah, and I mean
19 because they are not --

20 VICE CHAIR SCHWENK: Because that's
21 what the flag --

22 (Simultaneous speaking.)

1 MS. GALLAGHER: -- a flag. Those are
2 consequences I suppose of the different --

3 DR. SPOHN: Of reporting.

4 MS. GALLAGHER: -- actions and as you
5 look as those different issues you would also
6 look at the effect.

7 DR. SPOHN: That's more the issue of
8 retaliation.

9 MS. GALLAGHER: Right. Right.

10 SGM MARTINEZ: I've got the same
11 point. I mean if the victim is placed and that
12 they are out of their job, you know, out of the
13 situation of some of the times, just to remove
14 them from that command or place them at a
15 different organization would this impact them as
16 well?

17 MS. GALLAGHER: Yeah. I will
18 certainly make sure that that is included in the
19 report and the write-up and it's just a matter of
20 where that would fit because that would -- You
21 know, there is many areas as well that that would
22 fit in and could potentially be looked at.

1 So certainly as we write through that
2 issue into the report and the plan we'll note the
3 victim aspect of it as well, because we certainly
4 heard quite a bit about the victim being kind of
5 not marked but having effects from a report or an
6 allegation.

7 Okay. So any objections to that being
8 a study on the waiting list?

9 (No audible response.)

10 MS. GALLAGHER: Objections? No
11 objections, all right. So we'll categorize that
12 as a study.

13 So the next one under Defense is the
14 assistance to servicemembers after no probable
15 cause finding or an acquittal to correct the law
16 enforcement or personnel records.

17 There has been congressional action
18 affording servicemembers the right to petition to
19 get their service records corrected if, you know,
20 there is a titling decision made and subsequently
21 there is no probable cause or, you know, to
22 correct those records, but there is no provision

1 for them to get assistance in correcting those
2 records.

3 It's not currently one of the defense
4 counsel duties. It's not currently, I don't
5 think, one of the legal assistant counsel's
6 duties to do that.

7 Is this something that we would just
8 want to note in an annual report or kind of mark
9 for a study? I mean, when I say mark for, you
10 know, put in the annual report, it's always
11 something that we could suggest somebody take a
12 look at other than us.

13 MR. CASSARA: I can tell you that in
14 my private practice I am doing a ton of these
15 cases.

16 MS. GALLAGHER: Yeah.

17 MR. CASSARA: But they are not unique
18 to sexual assault allegations.

19 MS. GALLAGHER: Mm-hmm.

20 MR. CASSARA: In fact, you know, in my
21 anecdotal cross section of my clientele it's
22 probably more often than not something besides a

1 sexual assault allegation, a drug charge, a theft
2 charge, that somebody was titled for, they are
3 now out of the military and they are applying for
4 a law enforcement job and there is a titling
5 decision or, you know, a PC determination made
6 that they committed a larceny and they are trying
7 to get that removed.

8 So I am not sure, I don't think it's
9 specific enough to sexual assault that it's going
10 to, you know -- I'd love to see somebody take a
11 look at it. I'm not sure that we are the
12 appropriate avenue, yeah.

13 (Simultaneous speaking.)

14 MS. GALLAGHER: Any other
15 comments/discussion on that?

16 (No audible response.)

17 MS. GALLAGHER: Okay. With that,
18 anyone opposed to including that just
19 descriptively in the report?

20 (No audible response.)

21 MS. GALLAGHER: No objections, so
22 that's where it will be binned, for the report.

1 On to victim counsel and victim/witness liaison.

2 We heard a lot of information about
3 the victim counsel ability to facilitate timely
4 victim interviews with law enforcement and we
5 heard different kind of versions of it in that we
6 may have a victim counsel availability, they are
7 just not available, you know, there's not enough
8 of them, you know, there is a virtual issue
9 versus the in-person issue, but you also heard
10 from some of the victim counsel that, you know,
11 sometimes their victim isn't really ready to run
12 over to law enforcement and make a statement.

13 So that's something that would have to
14 kind of be looked at to see is this an issue, do
15 we need more victim counsel, or is it just part
16 of the process.

17 MS. BASHFORD: Well the effect would
18 be it would delay the investigation if there is
19 not a timely interview. So it would seem to me
20 that that would go under our Vice Chair's --

21 (Simultaneous speaking.)

22 MS. GALLAGHER: Okay, so that's

1 something then that would go under the
2 investigations for the policy. All right, I'll
3 resurface that.

4 VICE CHAIR SCHWENK: Thanks, Martha.

5 MS. BASHFORD: You're quite welcome.

6 MS. PETERS: Terry?

7 MS. GALLAGHER: Yes? Oh, I'm sorry.

8 MS. PETERS: Excuse me. It's Megan
9 Peters for the record. I received -- Just a note
10 for our folks joining over Zoom, including
11 members of the public, it's become harder to
12 hear.

13 If everyone could speak louder. The
14 microphones are in the ceiling and it's hard to
15 pick up what's being said in the room. Thank
16 you.

17 MS. GALLAGHER: Okay. Okay, and the
18 next one we might have a lot of suggestions. We
19 heard that the Air Force victim's counsel do
20 provide consultation for sexual harassment
21 victims and the other Services do not.

22 Sometimes they get sexual harassment

1 victims that come in because there is a sexual,
2 they think it's a sexual assault or a sexual
3 contact and then but in talking to them they find
4 it to be sexual harassment.

5 I think they have said often they
6 continue to offer services once they already
7 start, but, you know, if someone just says, hey,
8 I want to come talk to you about sexual
9 harassment, it's not within their purview, their
10 job description, to do that.

11 So the question is is that something
12 that we want to take a look at to see whether the
13 other Services should be providing some form of
14 consultation with the victim counsel for sexual
15 harassment or not.

16 I think that some of the feedback we
17 received from the victim's counsel that do see
18 the sexual harassment is that they think it is
19 worthwhile conversations and it has not, at least
20 as of now, overtaxed their capacity.

21 Any discussion on where to put that
22 issue?

1 (No audible response.)

2 MS. GALLAGHER: So maybe it's a --
3 well, there's two things that can happen with
4 that. It could be roped into kind of the
5 reporting systems study of the sexual assault and
6 sexual harassment being two separate systems.

7 That could be something that is looked
8 at at the time that kind of, we have an opening
9 to look at that, or it could be just described in
10 the report.

11 MS. BASHFORD: Is that going to change
12 when it becomes a covered offense in January?

13 MS. GALLAGHER: There is no indication
14 that it's going to change, at least as I said, a
15 study has not been done on it. I don't have that
16 information.

17 We received no insight from the site
18 visits that it is going to occur.

19 VICE CHAIR SCHWENK: And I would
20 prefer to let it stand by mentioning it in the
21 report and then seeing what happens with sexual
22 harassment in the next year or so and maybe

1 they'll all decide, the Services will decide, for
2 some section of sexual harassment like those that
3 are covered are determined to be covered offenses
4 you get a counsel.

5 MS. GALLAGHER: Mm-hmm.

6 VICE CHAIR SCHWENK: Victims get a
7 counsel. So I think it's too early to get
8 involved in a sense.

9 MS. GALLAGHER: Okay. Now the third
10 one, victim counsel standing in the discharge
11 boards, is that falling under --

12 MS. BASHFORD: Yeah.

13 MS. GALLAGHER: You have a Case Review
14 Subcommittee on that one. We have also heard
15 that the victim/witness liaison services are not
16 aligned with the needs of the different
17 organizations, because there is a lot, there is
18 victim advocates, there is victim/witness
19 liaisons at the SJA level, there is
20 victim/witness liaisons at the special trial
21 counsel level.

22 They use them different ways. Some

1 have the STC offices have them internal. Some of
2 them have them, you know, are perfectly happy
3 using the SJA assets, you know.

4 Is there any interest in the DAC-IPAD
5 studying kind of streamlining I guess maybe
6 victim liaison services or is that something we
7 should write up the concerns and information in
8 the annual report and wait for the STC offices to
9 keep developing and working through it?

10 MS. BASHFORD: Mm-hmm.

11 MS. GALLAGHER: All right. Any
12 objections to putting that into the report and
13 kind of waiting for things to work out in the STC
14 development?

15 (No audible response.)

16 MS. GALLAGHER: No objections. That
17 will go into the report. Then, finally -- Oh,
18 we're not even close yet.

19 (Laughter.)

20 MS. GALLAGHER: So reporting and
21 training, now I need to clarify on this. When it
22 says, the perception of lack of accountability

1 for false reporting, when I say, false reporting,
2 what it -- that's a phrase that was used very
3 frequently in the round tables, but the study,
4 the issues, kind of would really be it's the
5 servicemember's kind of understanding of the
6 reporting and what the law is.

7 So it's whether or not there is even
8 false reporting in the sense that if they are
9 being trained that there is, you know, like you
10 had a drink you can't consent, and then somebody
11 goes and reports a sexual assault because they
12 had a drink and they were trained you can't
13 consent.

14 That's not a false report. They are
15 reporting exactly what they were told to report.
16 So there is a disconnect perhaps between really
17 the understanding of what a sexual assault or a
18 sexual harassment is and whether to report.

19 So it's kind of -- that would be more
20 of the focus is kind of what is the
21 servicemember's understanding of the UCMJ
22 definitions for sexual assault and sexual

1 harassment and the significance of the outcomes,
2 you know, if something is deferred and no action
3 is taken or it's sent to an admin board, what
4 does that mean, does it mean it was a false
5 report or, you know, kind of looking at that as
6 an explanation.

7 So that's what that kind of issue
8 means, not that we're going to look into, you
9 know, false report or no false report. It's more
10 understanding kind of where that perception is
11 coming from and is there a way to correct. Yes?

12 MS. BASHFORD: That seemed to be more
13 prevalent in the junior enlisted groups and so
14 that may simply just be -- I mean some of the
15 junior enlisted were really, really junior. I
16 mean, you know, they haven't gone to their first
17 command yet.

18 MS. GALLAGHER: Yeah.

19 MS. BASHFORD: So that just may be a
20 product of having been there.

21 MS. GALLAGHER: Mm-hmm. We did hear
22 that though from other groups. We did hear it

1 from senior enlisted, we heard it from some of
2 the MCIOs, we heard it from some of the other
3 reporters.

4 So it's there, but there is a lot of
5 kind of unraveling that would need to be done and
6 because there is such a big disconnect between
7 people's understanding of the legal definition of
8 sexual assault or sexual harassment versus their
9 training, which is more at a moral standard
10 sometimes, for kind of leadership purposes, this
11 is wrong, don't do it, versus this is a criminal
12 offense.

13 So is that something we should
14 describe in the report?

15 VICE CHAIR SCHWENK: Yes.

16 MS. BASHFORD: Mm-hmm.

17 MS. GALLAGHER: Yes, okay. Or not
18 describe in the report and just kind of leave it
19 to our notes? This is a second option.

20 VICE CHAIR SCHWENK: I mean we need to
21 report that we were told that we can add that it
22 be listed.

1 MS. GALLAGHER: Right.

2 VICE CHAIR SCHWENK: It was apparent
3 that there was a misunderstanding of what a false
4 report really was and the perception widely was
5 if there wasn't a conviction then it must have
6 been a false report, you know, which is what I
7 heard from --

8 (Simultaneous speaking.)

9 MS. GALLAGHER: Yeah, mm-hmm.

10 VICE CHAIR SCHWENK: No, go ahead,
11 Ralph.

12 SGM MARTINEZ: I was going to say it
13 makes sense because I mean I returned two years
14 ago and we get these annual trainings every year
15 and it's done by not a -- It's somehow a
16 collateral duty.

17 This is their job for them, a
18 particular organization at that discovered time.
19 Some are trained, they understand it, and some of
20 them came and spoke with us.

21 But the legal portion of it is not
22 even touched in any of the training. To have a

1 board just come up and just have, you know, a two
2 second, or one slide during the course that's
3 incorporated into the training then it makes
4 sense, you know.

5 Then they would have an understanding
6 of what is, you know, as far as a false report or
7 not a false report.

8 MR. KRAMER: One thing I heard from
9 the site visits was that training was all over
10 the place.

11 SGM MARTINEZ: It is.

12 MR. KRAMER: Some of it is perfunctory
13 and they're just putting some slides up, like you
14 said. Some of it they are very cognizant of and
15 they have them, they give them a training when
16 they first come in and they give them refreshers
17 much more frequently, others get it once a year.

18 It's all in how important they tend to
19 say it is. It's all over the board, too, so --

20 MS. GALLAGHER: Right. And that's
21 something that has been flagged under the
22 proposed topics and issues for inclusion in the

1 annual report.

2 Number 7 is just training and we would
3 be describing the types of things that were
4 raised.

5 MR. KRAMER: Got you.

6 MR. KRAMER: And some of them said
7 they did elaborate or that in scenarios and what
8 that would mean and others said they never did
9 anything like that.

10 MS. GALLAGHER: Yeah. So it sounds
11 like that is something under reporting and
12 training, Number 1, the perception of lack of
13 accountability for the, you know, perceived false
14 reporting would be discussed under training or
15 along with training, right, at this point.

16 Then the Number 2, effectiveness and
17 efficiency of operating the separate systems
18 rather than simplifying the sexual assault and
19 sexual harassment processes into one, would be,
20 has already been picked up as a secondary by the
21 Policy Subcommittee. So that's --

22 VICE CHAIR SCHWENK: Okay. Does

1 anybody need to take a break? We have been going
2 for an hour and 15 minutes.

3 MS. BASHFORD: We have a break at
4 3:30.

5 VICE CHAIR SCHWENK: I know, but
6 that's another hour and 15 minutes.

7 (Laughter.)

8 MS. TOKASH: If I could --

9 VICE CHAIR SCHWENK: See, I can do
10 that. Pardon me?

11 MS. TOKASH: I would like a super
12 quick break if that's okay.

13 VICE CHAIR SCHWENK: Okay.

14 MS. TOKASH: Thank you.

15 VICE CHAIR SCHWENK: Everybody, five
16 or ten minutes and as soon as we can come back
17 we'll get going.

18 MS. TOKASH: Thank you.

19 (Whereupon, the above-entitled matter
20 went off the record at 2:16 p.m. and resumed at
21 2:23 p.m.)

22 VICE CHAIR SCHWENK: Okay, let's get

1 started again. Terry, why don't we do that list
2 as --

3 MS. GALLAGHER: Yes.

4 (Simultaneous speaking.)

5 VICE CHAIR SCHWENK: Why don't we do
6 this list as the default position is we go in the
7 report with an explanation and that's it.

8 MS. GALLAGHER: Okay.

9 VICE CHAIR SCHWENK: And then ask
10 people if they see any they want to put in your
11 Bin 1 that's the one that we're going to --

12 MS. GALLAGHER: Right, the study.

13 VICE CHAIR SCHWENK: Our standby list.

14 MS. GALLAGHER: Yeah.

15 VICE CHAIR SCHWENK: If they notice
16 that, we'll discuss that. Is that okay?

17 MS. GALLAGHER: That is excellent.

18 VICE CHAIR SCHWENK: Okay. Thank you.

19 MS. GALLAGHER: So that being said,
20 those ten topics that's on Page 4 of the
21 Deliberation Guide in slightly more detail and
22 the proposal from General Schwenk is to include

1 these in the annual report descriptively unless
2 somebody thinks that it should be pulled out to
3 be a study on the standby list or taken off
4 altogether and not, you know, described
5 separately.

6 VICE CHAIR SCHWENK: Yeah. You know,
7 if we start with the default position that they
8 are all going to be in the report and we're going
9 to describe them but they're not going on the
10 standby list, if you see one you think should be
11 on the standby list let us know and then we'll
12 discuss it. Meghan.

13 MS. TOKASH: I have one for the
14 standby list because it came up in our
15 subcommittee meeting this morning based on what
16 we heard from the OSTCs yesterday.

17 I think it's just something we may
18 want to monitor. So the statute makes the OSTC
19 independent and there is an option, option, for
20 commander input.

21 But what we heard from the OSTCs
22 yesterday is that they are all, the commander

1 input is now baked into the process. It's almost
2 like part of the checklist.

3 I think Dr. Spohn you made a good
4 observation, like that that's actually not
5 statutorily mandated. If it's becoming part of
6 the process is it really just still not a
7 command-driven system, but there is still a lot
8 of command influence in the system.

9 I don't know, but I think that it's
10 something to maybe put on the list to see how
11 that is playing out.

12 VICE CHAIR SCHWENK: It's at least a
13 potential perception issue.

14 MS. TOKASH: Right. Right.

15 VICE CHAIR SCHWENK: I don't see how
16 you could make a decision without asking the
17 command what they think in the military because
18 they know so much that you don't know about
19 what's going on.

20 MS. TOKASH: And they did all say, the
21 OSTC at least said it was helpful in terms of,
22 you know, the individual servicemember, right.

1 VICE CHAIR SCHWENK: Mm-hmm.

2 MS. TOKASH: Like asking a sergeant
3 major or what not.

4 VICE CHAIR SCHWENK: Right.

5 MS. TOKASH: I do disagree though. I
6 think an independent prosecutor can still make a
7 decision. I think in the military construct is
8 it helpful to get that input, probably, but I
9 just wonder, and because we talked about this in
10 subcommittee today, if that is something that we
11 should just add to the list to monitor.

12 VICE CHAIR SCHWENK: Well why don't we
13 put it on our standby list.

14 MS. TOKASH: Okay, great.

15 VICE CHAIR SCHWENK: And then when we
16 finish the ones we have, whichever subcommittee
17 comes up first we can look at the standby list
18 and pull one off and if it's this one then,
19 great, we're off and running.

20 DR. SPOHN: And related to that is the
21 degree to which the advice from the commander is
22 viewed as non-binding as opposed to binding. I

1 mean if they are seeing it as binding then we're
2 back to the old system in many ways.

3 I know the statute says it's
4 non-binding, but we all know that implementation
5 does not necessarily follow --

6 VICE CHAIR SCHWENK: Okay. So anybody
7 object to putting that on our standby list,
8 whichever bin that is?

9 MS. GOLDBERG: I don't object at all.
10 I just want to be sure I understand the issue
11 that you have identified, which is, and I
12 apologize that I couldn't be here for the first
13 part of this discussion, but the issue being the
14 influence of a commander on OSTC decision whether
15 to take a case forward or something else, because
16 I heard other things yesterday but I wasn't sure
17 I heard that, so I just want to be sure I'm
18 clear.

19 MS. TOKASH: So when the OSTC is at
20 the point of decision as to whether defer a case
21 or to keep the case. From what it sounded like
22 yesterday the OSTC are --

1 MS. GOLDBERG: Checking in.

2 MS. TOKASH: -- going to command and
3 saying this is what we're going to do, what do
4 you think.

5 MS. GOLDBERG: Oh, okay. I didn't
6 track that in the comments, but I probably just
7 missed it while I was juggling things.

8 MS. TOKASH: Oh, yeah, no, no, no.

9 MS. GOLDBERG: So that's obviously
10 really -- I agree that this -- If that's what
11 they were saying, that is very important.

12 MS. TOKASH: Right.

13 MS. GOLDBERG: Because that does
14 change the process fundamentally.

15 MS. TOKASH: Yeah, absolutely.

16 MS. GOLDBERG: My concern and the
17 question I had asked was about something
18 separate, right, the deferral point.

19 MS. TOKASH: Understood.

20 MS. GOLDBERG: But you're at a
21 pre-decisional point. You are raising the issue,
22 a pre-decisional issue, which I want to put my

1 hand up for the importance of that.

2 MS. TOKASH: Right. And maybe what's
3 happening is the command is saying, well, we
4 think whatever you think is best, and that's
5 what's happening, or maybe they say, no, we think
6 you should keep this case and it should be a
7 felony prosecution under the OSTC, and then the
8 OSTC sees that as binding, like even though the
9 statute says it should be non-binding, right.

10 MS. GOLDBERG: Yeah, right.

11 MS. TOKASH: Like how -- It's still
12 too early on, but is that getting kind of baked
13 into the process, and I think it would touch on
14 the independence of the office.

15 MS. GOLDBERG: Got you.

16 MS. GALLAGHER: And I don't think it
17 was very clear, I mean we also heard this a lot
18 at the site visits, more along the lines of the
19 time it took to get the command input.

20 I don't know that it was very clear
21 whether they were getting -- I think that, you
22 know, my take was that they were getting the

1 command input before making a decision whether to
2 defer or prefer, kind of like the victim's input.

3 So it wouldn't be we're going to
4 defer, what do you think, and it's a what's your
5 input, what should we do with this, and that
6 there was, you know, that the timing required to
7 track down the victim's commander and the
8 accused's commander and to meet personally with
9 the victim was slowing down the timing for
10 deferral.

11 They couldn't make a deferral or
12 prosecute, or get a decision without first
13 getting that input. So that's kind of where it
14 came up in the site visits, but --

15 DR. SPOHN: And that's even more
16 troubling.

17 MS. GALLAGHER: So, all right, that
18 will go then -- If there are no objections that
19 will go on our standby study list.

20 (No audible response.)

21 MS. GALLAGHER: All right.

22 VICE CHAIR SCHWENK: Any other issues

1 that you're seeing on this list or that you can
2 think of that was raised at a site visit you were
3 on that you think we should put on our standby
4 list?

5 MS. GOLDBERG: I have a question also
6 if that's okay, VG Schwenk.

7 VICE CHAIR SCHWENK: You can call me
8 Vice.

9 (Laughter.)

10 MS. GOLDBERG: Vice Schwenk. Which
11 may have been addressed in the first part of this
12 session, which is on Number 5, sexual harassment
13 handling, did we talk about further study of
14 that?

15 MS. GALLAGHER: Yeah.

16 MS. GOLDBERG: Okay.

17 MS. GALLAGHER: We changed the process
18 and the subcommittee chairs identified the issues
19 that they would like to study and General Schwenk
20 on your behalf requested investigations and the
21 secondary, the --

22 MS. GOLDBERG: Okay.

1 MS. GALLAGHER: -- systems of sexual
2 assault and sexual harassment. So that has kind
3 of been absorbed.

4 MS. GOLDBERG: And then my second is
5 -- Thank you. My second is about Number 7,
6 training, but it's probably a question about just
7 the entire list.

8 I am thinking that each of these would
9 have some significant elaboration because we
10 learned a lot.

11 MS. GALLAGHER: Yes.

12 MS. GOLDBERG: And in particular for
13 training, you know, I think of at least three
14 headlines in that area, small group, interactive,
15 and conveyed with seriousness as opposed to check
16 the box.

17 We heard a lot of concern I think in
18 a number of places and not just from junior
19 enlisted that this is, you know, getting it done
20 without having a meaningful impact.

21 MS. GALLAGHER: Yeah.

22 MS. GOLDBERG: I know there's a lot

1 more to be said about each of those and one of
2 the helpful resources is the PowerPoint that
3 Megan and I used when we spoke to the Prevention
4 Committee that lists many issues on training.

5 MS. GALLAGHER: Right.

6 MS. GOLDBERG: All credit for the
7 PowerPoint goes to Megan.

8 MS. GALLAGHER: Yeah. And I'll grab
9 that, you know, in drafting the report. Also,
10 the Tab 4 version of the Discussion Guide has a
11 little more detail in what that training would
12 be.

13 MS. GOLDBERG: Yeah.

14 MS. GALLAGHER: But yes, I am tracking
15 all of those as how we would be describing the
16 training issues that were conveyed to us.

17 The other thing that happened before
18 you returned is that in discussing that
19 perception that there is false reporting going
20 on, that is something that will be described in
21 that training session as well.

22 MS. GOLDBERG: Perfect. Thank you.

1 MS. GALLAGHER: Yes.

2 VICE CHAIR SCHWENK: Any other issues
3 that want to go on -- What's on our standby list
4 right now, Terry?

5 MS. GALLAGHER: We have under defense
6 the lack of parity with the OSTC is on the
7 standby list. The impact on the servicemember's
8 career upon allegation and whether perhaps the
9 impact should be delayed is on the standby list.

10 VICE CHAIR SCHWENK: Is insufficient
11 discovery on there, yes?

12 MS. GALLAGHER: Insufficient discovery
13 is going into the report.

14 VICE CHAIR SCHWENK: Just in the
15 report?

16 MS. GALLAGHER: Yes.

17 VICE CHAIR SCHWENK: Okay.

18 MS. GALLAGHER: And then, of course,
19 all the --

20 VICE CHAIR SCHWENK: And now we have
21 a third one?

22 MS. GALLAGHER: Yeah. And then we

1 have the ten on the back as well as -- I'm sorry,
2 that's report.

3 VICE CHAIR SCHWENK: Yeah. And don't
4 we have command input to OSTC?

5 MS. GALLAGHER: And the OSTC
6 independence.

7 VICE CHAIR SCHWENK: Right.

8 MS. GALLAGHER: So --

9 VICE CHAIR SCHWENK: So there is
10 three?

11 MS. GALLAGHER: OSTC independence,
12 parity, defense parity, and servicemember --

13 VICE CHAIR SCHWENK: Flagging the
14 accused, okay.

15 MS. GALLAGHER: -- careers.

16 VICE CHAIR SCHWENK: I did not suspect
17 flagging somebody.

18 MS. GALLAGHER: Yeah, that is all I am
19 tracking.

20 VICE CHAIR SCHWENK: Okay.

21 MS. GALLAGHER: So we have three.

22 VICE CHAIR SCHWENK: All right.

1 MS. GALLAGHER: Three rather huge,
2 large issues on standby after we address our
3 rather huge, large issues the subcommittees have
4 requested.

5 VICE CHAIR SCHWENK: Okay. Anything
6 else? Going -- yes, Suzanne?

7 MS. GOLDBERG: Again, apologies for
8 having missed the first hour. Are we pursuing
9 anything with respect to victim's counsel either
10 in the current or the standby, because if not I
11 do think that's quite important.

12 We have, you know, consistently and
13 persistently heard issues related to questions of
14 standing, questions of access to inconsistency
15 and access to information and certainly
16 inadequacy of resources.

17 MS. GALLAGHER: Yeah. That is
18 something that like on the Deliberation Guide
19 under the victim counsel and victim liaison
20 section there is a victim counsel availability to
21 facilitate timely victim interviews and that was
22 kind of moved into the investigations category

1 that Policy Subcommittee is going to be looking
2 at.

3 So Policy Subcommittee will be
4 determining the scope and the research plan for
5 the topic of investigations, and so that would be
6 something being considered by the Policy
7 Subcommittee as to whether or not to include it
8 in the study.

9 MS. GOLDBERG: And really it's about
10 the aspect of disparity I think we put on the
11 deck, right, disparities --

12 (Simultaneous speaking.)

13 MS. GALLAGHER: Yes, the disparity is
14 a study.

15 MS. GOLDBERG: Yeah, okay. I would
16 just add to the deck, which I don't want to weigh
17 down too heavily, that the other points here
18 related to victim's counsel services for sexual
19 harassment at least seem to be an important
20 question. Maybe that it's keeping up with the
21 sexual harassment --

22 MS. GALLAGHER: Yeah, the standing

1 issue has been supped into the Case Review
2 Subcommittee study of administrative separation
3 boards.

4 MS. GOLDBERG: Oh, okay.

5 MS. GALLAGHER: But the victim counsel
6 services for sexual harassment, after the
7 discussion on that, was determined to describe it
8 in the report and let the whole sexual harassment
9 process kind of develop.

10 MS. GOLDBERG: Understood, yeah. And
11 that I think the issue of the lack of alignment
12 may be something that we can include as an
13 observation, Point 4 there, maybe something that
14 we can if it's not on the list of to be
15 described.

16 MS. GALLAGHER: It had -- It is --

17 MS. GOLDBERG: It is, okay.

18 MS. GALLAGHER: Yeah. As we went
19 through these each of the main topics and their
20 issues were either assigned to a subcommittee --

21 MS. GOLDBERG: Okay.

22 MS. GALLAGHER: -- or determined to be

1 either a wait list study or to be addressed in
2 the report.

3 MS. GOLDBERG: Got it.

4 MS. GALLAGHER: So the victim liaison
5 services would be described in the report, the
6 issues raised there.

7 VICE CHAIR SCHWENK: Yeah. The
8 problem there was the OSTC people keep saying,
9 and everybody keeps telling us, they are still
10 getting their systems up.

11 MS. GALLAGHER: Right.

12 VICE CHAIR SCHWENK: So somebody said
13 two years and that's it and, you know, so at this
14 time next year we'll be looking at new lists.

15 MS. GOLDBERG: Oh dear.

16 MR. CASSARA: We nominated you to do
17 it.

18 (Laughter.)

19 VICE CHAIR SCHWENK: That's right.

20 MS. GALLAGHER: And -- well, Mr.
21 Cassara volunteered to be his own subcommittee.

22 MR. CASSARA: That's right. That's

1 right.

2 VICE CHAIR SCHWENK: That's right.

3 MR. CASSARA: On the defense counsel
4 issues, yeah.

5 PARTICIPANT: He's always got a
6 quorum.

7 (Laughter.)

8 VICE CHAIR SCHWENK: There you go.

9 MR. CASSARA: Scheduling will be hard.

10 VICE CHAIR SCHWENK: Okay.

11 MS. GALLAGHER: Is there anything else
12 regarding that?

13 (No audible response.)

14 MS. GALLAGHER: Well as valuable and
15 efficient as those subcommittee meetings were
16 this was actually just as valuable and efficient,
17 so I appreciate your input and the staff will be
18 busy kind of getting that annual report kind of
19 prepared and doing up the research proposals for
20 the subcommittees on this and the next meeting,
21 virtual, we'll, you know, as the draft report
22 comes out you'll have a chance to provide your

1 input on there.

2 MS. GOLDBERG: I'm sorry, I thought of
3 one other issue, and I apologize for bringing it
4 up at this point. I don't know that it's neatly
5 anywhere, but I want to mention it because I hope
6 that whenever a subcommittee is addressing an
7 issue where this comes in it would be useful to
8 consider.

9 I had raised a concern about the
10 characterization of false reporting as an issue
11 on its own for the reasons that I think, Terry,
12 you were addressing when I walked into the room.

13 MS. GALLAGHER: Okay.

14 MS. GOLDBERG: But a couple of points,
15 one was that I do not think that could be sort of
16 studied accurately without broader context
17 related to information about the parties, about
18 how people are trained, but also about who knows
19 the parties, and it did seem to me that one thing
20 we heard a lot about was concerns about the
21 consequences both for those who report and those
22 who are accused and those may wind up on

1 different tracks of study, but I think they also
2 both occur in the environment in which people are
3 working together closely.

4 I remember one point that, one
5 observation that senior enlisted's made in one
6 session that if they were the unit that was about
7 to receive somebody who moved, whether it was an
8 accused or a victim, more commonly, they knew
9 ahead of any official report why that person was
10 coming and everybody knew.

11 The environmental factors that relate
12 to retaliation are commonly described against
13 victims, less commonly but also sometimes
14 described related to accused, seems to be a
15 significant issue on the back end regardless of
16 legal rights.

17 MS. GALLAGHER: Mm-hmm.

18 MS. GOLDBERG: I'm not sure that we
19 are exactly the right committee to contend with
20 this, but I do think it's, you know, the
21 environment in which people who are either making
22 reports or being accused is a very difficult one

1 that requires serious consideration in terms of
2 how commands are being trained to limit
3 retaliation to manage the grapevine and related
4 issues.

5 So I mention that here for everybody's
6 consideration when we are thinking about the
7 range of issues that we are taking on.

8 MS. GALLAGHER: Well we did
9 specifically put on the waiting of list of next
10 issues the timing of causing harmful effects on
11 an accused, whether it's at allegation or whether
12 maybe that should be, you know, negative
13 consequences career wise, but maybe it should be
14 moved down the line until there is a different
15 point.

16 It was raised as an issue, all of the
17 harmful effects on the victim's career as well,
18 you know, so maybe that needs really to be
19 revisited as to whether that is something that --
20 Off the top of my head I am not really figuring
21 out kind of what our research proposal would be
22 on that or what's the appropriate place for

1 further review and investigation of that would
2 be.

3 You know, if anyone wants to propose
4 that that be put on our study list versus, you
5 know, just described in the report we can
6 certainly do that.

7 I think they are two separate -- They
8 are two separate issues and two completely
9 different things, so I don't think it would be
10 merged into one study, I think there would be two
11 separate ones.

12 MS. GOLDBERG: I think I agree that
13 there are technical issues related to
14 consequences for someone who is accused and in a
15 process that are discreet and warrant study.

16 There is a bigger picture question
17 about the environment that surrounds anybody who
18 is engaged in these processes that I think has a
19 significant impact on servicemember trust in the
20 process and willingness to report.

21 I sat in enough rooms with enough
22 people who when asked if you or a friend

1 experienced a sexual assault would you report or
2 would you advise a friend to report or have you
3 experienced sexual harassment or assault.

4 In the rooms with the women every
5 single hand consistently went up that they had
6 experienced sexual harassment or assault. I'm
7 not saying that they all did, I'm just saying
8 that those were the rooms that I was in and most
9 of them said they wouldn't report it or they
10 hadn't reported it. I was in fewer rooms with
11 men, so I can't -- Just the way it fell out for
12 my assignment, so I can't say there.

13 My point is I do think it is a
14 separate issue and one that certainly is adjacent
15 to our work and concerns our work and impacts our
16 work in terms of the environment that surrounds
17 anybody who is in the process, including data
18 collection around who voluntarily leaves service
19 when not being sort of discharged involuntarily
20 after they are engaged either as a victim or an
21 accused, because our sense just anecdotally is
22 that the numbers are high and I think that is a

1 serious issue that warrants consideration.

2 I don't -- I think the other issues I
3 think -- I'm not trying to displace other issues,
4 I'm just raising it here for consideration by
5 colleagues.

6 MS. TOKASH: I agree that the
7 retaliation or retribution is an adjacent issue
8 and I think it's within our mandate or our
9 mission, you know, as a --

10 (Simultaneous speaking.)

11 MS. GALLAGHER: Yeah, it's the
12 reporting of, you know --

13 MS. TOKASH: Yeah.

14 MS. GALLAGHER: It certainly affects
15 the reporting systems and such.

16 MS. TOKASH: Right. And it is true,
17 I have sat in many of those rooms as well and,
18 you know, was kind of surprised at all of the
19 hands raised by women.

20 In all of the sessions that I sat in
21 everybody reported or disclosed, you know, that
22 they had experienced some type of harassment or

1 assault.

2 DR. SPOHN: The other thing that
3 didn't come up yesterday with regard to mental
4 health issues is that the session that I was in
5 with some of the young female, I guess they were,
6 what would you call them, cadets?

7 MS. GALLAGHER: Yes. Mm-hmm.

8 DR. SPOHN: Okay. They talked about
9 their unwillingness to get mental health
10 treatment because the minute that they did it
11 would be known all over the installation or in
12 that particular pocket of the installation that
13 so and so is getting mental health therapy,
14 treatment, whatever, and that that was a real
15 deterrent to them to seeking that kind of care.

16 I don't know where that falls, if
17 anywhere.

18 MS. GALLAGHER: We have heard that in
19 similar circumstances with regards to ships, the
20 way they are set up where you've got the
21 resources right there in the middle of the ship
22 and there is the doctor's office, there's the

1 psychiatrist's office, and everybody sees you go
2 in, and so it is, you know --

3 DR. SPOHN: Yeah.

4 MS. GALLAGHER: -- an impediment to
5 seeking treatment. So I think we're also talking
6 --

7 DR. SPOHN: I think suggesting that
8 this needs to be a special study or --

9 MS. GALLAGHER: Yeah, right.

10 DR. SPOHN: But that it's just
11 something I think we need to --

12 (Simultaneous speaking.)

13 MS. GALLAGHER: Yeah, we'll describe
14 that with regards to the mental health aspect.

15 DR. SPOHN: Yeah.

16 MS. GALLAGHER: So I am hearing two
17 things with regards to the victim. We did hear
18 that, you know, upon a report both kind of the
19 victim and the accused are kind of marked and,
20 you know, people want to stay away from really
21 both of them to some extent.

22 So there is the career effects, which

1 is kind of what we were more targeting with the
2 accused on allegation, and then there is the
3 retaliation, the ostracism aspect of it.

4 DR. SPOHN: Ostracism, yeah.

5 MS. GALLAGHER: You know, in large
6 part with the victim reporting and the stigma,
7 but also, you know, we heard there was a stigma
8 as well of being accused.

9 So the question is, you know, does
10 that go on the study list or the described list,
11 the victim fear of retaliation and reporting
12 considerations versus the victim career -- Well,
13 those are really all kind of tied together with
14 the victim.

15 MS. BASHFORD: When did we look at
16 retaliation? We had people come in and testify
17 --

18 MS. GALLAGHER: The J --

19 PARTICIPANT: JPP.

20 MS. BASHFORD: No, we did it. We did
21 it.

22 MS. TOKASH: It sounds familiar,

1 Martha, but I can't --

2 MR. KRAMER: No.

3 MS. TOKASH: It's been awhile.

4 MS. BASHFORD: Yeah, but we had people
5 come in and testify. I don't think we issued --
6 I don't know if this was a letter we sent back to
7 DoD, but it seems to me it was a request from
8 them.

9 We definitely had -- We have
10 definitely took a lot of testimony on it.

11 MR. KRAMER: From victims, yeah.

12 MS. BASHFORD: About victim
13 retaliation and --

14 MR. KRAMER: But from -- I mean we had
15 some victims come in at one point, yeah.

16 MS. BASHFORD: We had some victims.
17 We've had commanders say, you know --

18 MR. KRAMER: Yeah.

19 MS. BASHFORD: -- sometimes things are
20 perceived as retaliation when we give them time
21 off but then they miss a test, you know, and it's
22 done to help -- You know, it was --

1 MS. TOKASH: Yeah.

2 MS. BASHFORD: We took testimony,
3 absolutely.

4 MS. TOKASH: That's right.

5 MR. KRAMER: Yeah. Yeah.

6 (Simultaneous speaking.)

7 MS. GALLAGHER: -- we can look back
8 into that.

9 VICE CHAIR SCHWENK: What if we put
10 the adverse effects on victims of making a report
11 on our standby list and then run it next to the
12 one on the accused and then ask, make a
13 recommendation that the Department of Defense
14 gather information on the career effects of being
15 either a victim or an accused or a suspect in a
16 sexual assault, whatever kind of case, so that we
17 -- If they are not gathering that -- Because they
18 have been talking about gathering that data for a
19 long time and I don't know, maybe they got it, in
20 which case great, they do, and when we get to
21 that issue we can pull it.

22 But if they haven't at least we would

1 be able to cite a recommendation to start
2 gathering the data so that you could find out how
3 many re-enlisted, how many didn't -- you know,
4 the career effects, how many got promoted and how
5 many didn't, and have some numbers to go with the
6 anecdotal stuff.

7 Because, you know, the commands are
8 powerful but they're not that powerful and when
9 it comes to people choosing sides in a sexual
10 assault case you can't stop it from happening, it
11 happens.

12 The unfortunate result is the adverse
13 effects on the people who are, the victim and the
14 accused who are still there, but we can gather
15 data and I don't have a problem asking for data.

16 MS. GALLAGHER: Well, I mean I am
17 unaware of anyone tracking this data and, you
18 know, because you are asking for -- I mean, we
19 can't even get data on what exactly the command
20 is doing as a disposition for these offenses in
21 any kind of good system and to ask them not only
22 what did you do with this guy or girl and did

1 they stay in service or get out of -- I think I
2 am not certain how we would in the report request
3 specific, that they, you know, we'd have to be
4 pretty specific about what we request I think.

5 MS. BASHFORD: Also, a number of years
6 ago, and I remember somebody saying, the one
7 thing the military does really, really well is
8 retention data. And they know the retention
9 rates and they know, you know, this probably goes
10 back to 2018, 2019, it was a long time ago.

11 MS. GALLAGHER: Okay. What I think
12 would be beneficial is if the staff takes a look
13 at what we've done in the past with regards to
14 this and kind of tries to figure out, you know,
15 what -- because there's certainly the ability,
16 and as one of the options with regards to this is
17 to describe the information we received in the
18 report and without doing any further study, you
19 know, make findings or recommendations.

20 And so, you know, we can describe it
21 in the report and come up with a recommendation
22 that, you know, that this specific data be

1 tracked or -- and also, leave it on our study
2 list.

3 MS. GOLDBERG: I like the idea of
4 requesting the data. They may not do it, but I
5 think that it is important.

6 And I think, certainly, the academies
7 could track this. There are not load cases and
8 they -- I mean, we had some of this discussion.
9 And I think if you're -- I think that's a much,
10 much smaller cohort.

11 But I think even in this case, if it
12 wasn't sort of service wide, there is a way to
13 sample and pick up the information.

14 There is also a way, I would think, to
15 -- I don't know, how they keep their records.

16 I think it is a good question to ask.
17 And I think if they're not currently maintaining
18 records in a way that lets them pull this then, I
19 think, as, Jim, as you suggested, then this lays
20 the groundwork for making whatever adjustments
21 are needed.

22 VICE CHAIR SCHWENK: We've heard from

1 public comments, I was accused, nothing happened,
2 and my career was wrecked.

3 We heard that a number of times and,
4 on the other hand, we know from -- we've had
5 panels of victims in the past that have come in
6 here and said, my life was never the same after I
7 made that report.

8 So, how has it affected? Because if
9 there are things we can do to ameliorate the
10 effects, then we ought to be making
11 recommendations to do them.

12 But first, you've got to start with
13 the data I think.

14 DR. SPOHN: Well I think you have to
15 back up one step and define what you mean by
16 retaliation or retribution.

17 (Simultaneous speaking.)

18 DR. SPOHN: Because it could be a lot
19 -- it could be a whole --

20 VICE CHAIR SCHWENK: That's why I was
21 looking more at retention. You know, did they
22 re-enlist or not? When did the officer separate,

1 you know, after the thing?

2 And there could be lots of reasons,
3 but at least it gives you some numbers to start
4 with as opposed to was there retaliation or was
5 there a horrible climate in the command that
6 would have driven any rational person out of the
7 service?

8 DR. SPOHN: Much, much harder to
9 measure, isn't it? Yeah.

10 VICE CHAIR SCHWENK: Yes, those are
11 more -- and that's why I was trying to go for --

12 MS. GOLDBERG: I think if we can
13 compare the rates of no re-enlistment or early
14 departure for the cohort that has been accused or
15 a victim, as compared to those who haven't, I
16 think it would tell us something about their
17 views about the impacts --

18 VICE CHAIR SCHWENK: At least there's
19 numbers you can --

20 MS. GOLDBERG: -- and then we can --
21 that, you know, together with other kind of
22 engagement or retaliation or whatever.

1 It might be at least a path toward
2 addressing the issue.

3 But I think actually spotlighting the
4 disparity if there is one with data would be an
5 important first step.

6 DR. SPOHN: And I seem to have a
7 recollection that Congress held a hearing on
8 retaliation.

9 VICE CHAIR SCHWENK: Yes, yes.

10 MS. GALLAGHER: Well, there's a
11 requirement to report --

12 VICE CHAIR SCHWENK: And they inquired
13 about that data for --

14 MS. GALLAGHER: Right.

15 VICE CHAIR SCHWENK: -- literally
16 years. So, they may have, I don't know.

17 MS. GOLDBERG: Maybe a useful point to
18 observe as we make our own request.

19 MS. GALLAGHER: There is a
20 congressional requirement to collect data on
21 retaliation for sexual assault and it's reported
22 out. But the accuracy of the data is very

1 questionable and I haven't researched how
2 they're, you know, translating that.

3 So, I hear what you're saying. Let me
4 go back and see what we've said in the past and,
5 you know, take these concerns and kind of figure
6 out what the recommendation would be.

7 I'm sort of thinking that the
8 recommendation would be to collect this specific
9 data on these specific accused and victims and
10 then, in a year or so, when it comes up on our
11 study list, the data would potentially be there
12 as opposed to requesting that data right now.

13 Because, frankly, we don't have the
14 bandwidth to do anything with it in light of the
15 other studies we've got going.

16 And if the services aren't currently
17 collecting it in the manner that we can use it,
18 it would be good to say, we would like this data,
19 please collect it and give a year or so for them
20 to do so. But what are your thoughts on
21 requesting it right now versus requesting they
22 start --

1 MR. KRAMER: Requesting what data?

2 MS. GALLAGHER: It sounds -- you know,
3 the accused and victims, were they retained in
4 service, you know, I mean, what was their next
5 enlistment or career point? Did they stay on?
6 Did they take an early departure?

7 MR. KRAMER: And what's it going to
8 tell us? I mean -- it's just common sense to me
9 if you're either a victim or an accused, the
10 chances of you remaining in the service are less
11 likely for lots of reasons.

12 And if it's -- if it turns out that
13 the rates are the same, I don't understand what
14 it's going to tell us.

15 VICE CHAIR SCHWENK: If it's the same,
16 it tells us that whatever adverse effect they
17 were suffering hasn't resulted in lower retention
18 rates.

19 MR. KRAMER: And if it is a lower
20 retention rate, what does that tell us? That's
21 what I don't understand. There could be a
22 million different reasons.

1 VICE CHAIR SCHWENK: But there could
2 be and that tells us if we want to take the
3 issue, this is a point you could drill down on or
4 try to drill down on.

5 MR. KRAMER: I just see so many
6 reasons why somebody, either a victim or an
7 accused, would have a -- if it's the same
8 retention rate, then there's no issue at all.

9 VICE CHAIR SCHWENK: Right.

10 MR. KRAMER: And if it's a lower
11 retention rate, it could be just I was accused of
12 something I didn't do. I was a victim of an
13 assault in an organization. Word got around. I
14 just felt -- I mean, there's so many -- I don't
15 know how we would ever distill that down into
16 anything useful.

17 MS. GOLDBERG: I don't think the data
18 is there to provide an answer to those
19 qualitative questions about why someone left.
20 Without the data, we actually don't know. We've
21 heard a lot.

22 I think it is true that it is likely

1 there are disparities. I think it would actually
2 be useful to know are the disparities the same or
3 different for victims and -- than for accused?

4 I think that might tell us a thing
5 about how we would -- the further questions we
6 might want to ask. I think we could ask those
7 questions without ever gathering the data, but I
8 think that there is value in this area of knowing
9 something about whether, you know, how much --
10 how big a deal is this?

11 It sounded like a pretty big deal.
12 And if -- and I think it relates potentially to
13 issues related to trusting the system and the
14 experience people have in the system.

15 The system is never going to be
16 perfect. We all know that. People will leave
17 presumably at higher rates. But I think what we
18 don't know is how high and I think this gives us
19 a jumping off point for asking some of the other
20 questions which we could ask without it, but I
21 think it will be better informed if we ask with.

22 MR. KRAMER: Yes, I guess my problem

1 is, that's true of any organization, I think.

2 MS. GOLDBERG: But I --

3 MR. KRAMER: You've got people in the
4 organization who are accused of something or are
5 the victim of something are far more likely, I
6 think, to leave than the person who's not.

7 MS. GOLDBERG: Is there another
8 example?

9 MR. KRAMER: Yes.

10 MS. GOLDBERG: Just to see that? I'm
11 not suggesting we should collect this data, but I
12 think if we looked at -- I mean, it's hard to
13 think of another sort of area of victimization,
14 but I'm sure we could come up with it.

15 But do people -- are People who are
16 accused of X or Y offenses leaving at the same
17 rate? Is there a difference when it comes to sex
18 offenses?

19 And I think there -- if we had a
20 little bit more time, I think we could come up
21 with some comparables.

22 I'm going to turn to Dr. Spohn.

1 DR. SPOHN: So, there was a 2021
2 report done by the Rand Corporation on
3 retaliation against military sexual assault
4 victims. So, that's fairly recent.

5 MS. BASHFORD: Yes, I can't find the
6 search option on our DAC-IPAD website. I was
7 just trying to see if I could search for
8 retaliation and I can't find one.

9 SGM MARTINEZ: This also -- I'm sorry.
10 This also affects recruitment as well. So, I
11 mean, there is recruitment issues, especially
12 with the Army in the past, you know, couple of
13 years.

14 You know, so word of mouth, you know,
15 if I get out, I'm going to go back home. And you
16 have a friend who wants to come in. I wouldn't
17 go to the Army. I wouldn't go there or Navy or
18 Marines or whatever it may be.

19 So, it does, you know, that
20 information does affect recruiting as well.

21 VICE CHAIR SCHWENK: What about this
22 as a compromise? Is do what Terri was saying,

1 let her do some research and gather some data and
2 then, in March, the Policy subcommittee, since we
3 seem to be the driving force on the site visit
4 thing, we'll come back at our update and tell you
5 where we are and show you some language of a
6 recommendation. And then we can all discuss it
7 and take a vote.

8 DR. SPOHN: You have time to do that,
9 Terri?

10 VICE CHAIR SCHWENK: No, well, she can
11 start on weekends, her weekends are free.

12 (Laughter.)

13 MS. GALLAGHER: No, I'm identifying
14 their grants making you return and start it
15 Monday.

16 (Laughter.)

17 MS. GALLAGHER: I mean, yeah, I think
18 we really do need to look at it because we're
19 talking about a lot of different things.

20 I mean, there's the retaliation
21 specific issues which, in and of itself, is a
22 very big study. And then there's the retention.

1 I mean, I will tell you that I would
2 not even know where to begin asking them to
3 provide us information on every victim that
4 alleged sexual assault, what happened to them
5 after that.

6 And the same for the -- same for every
7 accused. They would have go in the -- it would
8 have to have them by name and they'd have to go
9 track it and it still wouldn't tell us why they
10 left. Because we hear, you know, a lot of people
11 don't even report it, but then they leave because
12 of --

13 MS. GOLDBERG: I think we're talking
14 about people who are involved -- I agree, we're
15 not going to find that out. And we had a very
16 specific conversation -- meaning, I think about
17 what -- this was in the prevention meeting, a
18 discussion they were having about whether service
19 members should be asked in exit interviews about
20 whether they've had any sort of experienced any
21 sexual misconduct they wanted to report.

22 And that was -- that's a whole other

1 set of issues. I think there are ways to
2 formulate this question that I'd be happy to
3 discuss with you afterwards.

4 MS. GALLAGHER: Yeah.

5 MS. GOLDBERG: I do -- but I think
6 it's quite particular to people who have been
7 engaged with the formal process as either a
8 victim or accused and they're sort of -- their
9 re-enlistment or retention rates relative to
10 their counterparts who have not.

11 DR. SPOHN: So, this study resulted
12 from -- and the 2016 NDAA in which there was a
13 directive to create a comprehensive strategy to
14 prevent retaliation. And so, it looks like Rand
15 got a grant from the Department of Defense to do
16 this.

17 And I can't access the whole report,
18 but it appears that it -- there's a survey of
19 those who said they reported sexual assault and
20 then, were they retaliated against in any way.

21 MS. GALLAGHER: Yes, and that's a
22 narrow set. And certainly, it's within our realm

1 to put in, you know, here are some -- here's
2 information that we were provided.

3 And we can certainly recommend Rand or
4 IG or, you know, there's a lot of different
5 entities that we could recommend they launch a
6 study into the retention, you know, to have
7 somebody, you know, outside look at these
8 numbers.

9 Because this is not something that
10 would be kept within JAG channels. It's not
11 something that would be kept in investigation
12 channels.

13 And you are talking about -- we're
14 talking personnel records. No command would have
15 that information. It would be individual
16 personnel records or --

17 VICE CHAIR SCHWENK: No, it would have
18 to be a study that the service undertook at the
19 service headquarters --

20 MS. GALLAGHER: Yes.

21 VICE CHAIR SCHWENK: -- personnel
22 level.

1 MS. GALLAGHER: Okay.

2 VICE CHAIR SCHWENK: And they've been
3 talking about doing it for a long time and I'm
4 just recommending that we ask them if they did it
5 and if so, we'd like to see the results.

6 (Simultaneous speaking.)

7 MS. GALLAGHER: And if not, to please

8 --

9 (Simultaneous speaking.)

10 VICE CHAIR SCHWENK: And if not, do
11 it. But I --

12 MS. GALLAGHER: Okay, that I can
13 understand.

14 VICE CHAIR SCHWENK: -- you do your
15 background --

16 MS. GALLAGHER: I can understand that.

17 VICE CHAIR SCHWENK: Yes, you do your
18 background and then, we'll have a meeting and
19 come up with something to try to pass everybody
20 on when we get back in March.

21 MS. GALLAGHER: Yes, that's -- yes, I
22 understand that clearly.

1 VICE CHAIR SCHWENK: So, Meghan, we
2 need 30 minutes. Is Meghan there?

3 MS. GALLAGHER: In March.

4 MS. PETERS: At the --

5 VICE CHAIR SCHWENK: Thirty minutes in
6 March, yes, to talk about this.

7 Thanks. Okay, anything other -- any
8 other issues?

9 (NO AUDIBLE RESPONSE)

10 VICE CHAIR SCHWENK: Okay, then, why
11 don't we move right along to updates from the
12 subcommittees?

13 MS. TOKASH: Okay. This is Meghan
14 Tokash, with the Special Projects Subcommittee
15 update.

16 We met this morning, December 4th, as
17 a full subcommittee to discuss our next project
18 which the full committee approved. And that is a
19 study of the deferral rates of the OSTC. So,
20 that is what we will be focusing on next.

21 I will be working closely with Lauren
22 in the next couple of months to get feedback from

1 the LSTCs about what a case study could look like
2 and also to get, hopefully, blank copies of those
3 transmittal sheets so we can start working
4 through the problem set.

5 VICE CHAIR SCHWENK: Do you have
6 anything you're pending, that you're working on
7 right now in your subcommittee?

8 MS. TOKASH: We do not.

9 VICE CHAIR SCHWENK: Okay.

10 Any questions from anybody?

11 VICE CHAIR SCHWENK: Martha?

12 MS. BASHFORD: Well, we took on the
13 post deferral today -- the post deferral admin
14 process. And we have -- I'll switch it over to
15 Nalini.

16 MS. GUPTA: Good afternoon, we have
17 three pending projects in addition to the one
18 that we approved -- the committee approved today.

19 The first is, we have just a clean up
20 project. We did not -- we were not able to
21 include the Air Force FY '22 data in our July
22 report that went out on the demographics of panel

1 members.

2 So, we will include that in the annual
3 report. It is -- our criminologist, Dr. Wells,
4 is finalizing that study and then, we will have
5 that information available for the committee
6 shortly.

7 We continue to work on the conviction
8 integrity unit. Of course, you heard from three
9 presenters yesterday. And we will plan for a
10 panel in March with additional speakers from
11 different conviction integrity units across the
12 country.

13 I will be working with Professor
14 Goldstein who presented to you in June to
15 identify some of the best places to request
16 presenters from.

17 And our third project is being led by
18 Valerie Danyluk. It is to look into the support
19 systems for service members accused of crimes who
20 are under investigation who may be at elevated
21 risk for suicide.

22 We will also likely have a panel in

1 March on that topic. And we have already
2 identified someone from the DoD Suicide
3 Prevention Office who is interested in speaking
4 to you about current initiatives underway.

5 And we will likely, on that project,
6 the Department of Defense did request that we
7 have an update or that we have a report to them
8 by June as we discussed in September.

9 And Ms. Goldberg, I think as you
10 rightly pointed out, we're unlikely to have a
11 legislative proposal come out of that project.
12 And that was the reason they identified that June
13 deadline.

14 So, we are going to prepare a letter
15 to them where we request addition time on that
16 study given the other work that the committee and
17 subcommittee are undertaking.

18 I think I covered that.

19 MS. BASHFORD: No, the biannual
20 report?

21 MS. GUPTA: Oh, the -- we also have --
22 that's correct -- we have a tasker that was

1 identified when we released the appellate project
2 review -- appellate review project a couple years
3 ago.

4 We're going to be looking at factual
5 sufficiency and we will be including our analysis
6 of the new factual sufficiency standard as part
7 of that conviction integrity unit project report.

8 So, yes, I don't think we will be
9 taking on any other projects. I'm hopeful of
10 that.

11 VICE CHAIR SCHWENK: You just signed
12 up for another one.

13 MS. GUPTA: But --

14 MS. BASHFORD: Do we have any other
15 recurring reports, the things that have every
16 other year deadlines? It seems to me there was
17 one more.

18 VICE CHAIR SCHWENK: There is one
19 collateral misconduct --

20 MS. GUPTA: But that's not in our --

21 (Simultaneous speaking.)

22 VICE CHAIR SCHWENK: But as a

1 DAC-IPAD.

2 MS. BASHFORD: Do we have another one?

3 MS. GUPTA: There's a proposal on the
4 NDAA for the National Guard study, but that's not
5 --

6 MS. PETERS: On the biannual
7 collateral misconduct report, I think before we
8 launch on that, there's so many policy updates
9 that change the scope and the rule on that
10 because of the relationship to commanders and the
11 decision on how to --

12 MS. BASHFORD: Okay.

13 So, that's the other one that's
14 outstanding? The --

15 MS. PETERS: It's outstanding, but may
16 not really happen --

17 MS. BASHFORD: Okay.

18 MS. PETERS: -- as we get down in the
19 weeds on what was asked and what's still
20 possible.

21 VICE CHAIR SCHWENK: Yes, on the --
22 thanks, Nalini.

1 On the National Guard study, it may
2 well be that Policy subcommittee should take it,
3 although I will probably retire from the Policy
4 subcommittee because I know something about the
5 Guard and Major General Anderson and Marsha knows
6 a lot about the Guard.

7 And it's unclear to me how we would
8 ever do the study, but we can at least get
9 started and try until we come up with it.

10 So, anyway, that -- just keep that in
11 mind in case it does come out in the legislation.

12 As far as the Policy subcommittee
13 update, we managed to get the vote on the
14 Enforcement of Crime Victim Rights Act report
15 yesterday.

16 And so, now, we're down to the 513
17 report.

18 And currently, just as a heads up,
19 we're going to try to have it -- we have it in
20 draft. It has two recommendations.

21 The two recommendations won't surprise
22 you if you listened to the two doctors that were

1 here yesterday.

2 One is, expand enforcement to include
3 reports that have within them a diagnosis and
4 treatment.

5 And the other one was, expand the
6 coverage of 513 to include not just
7 psychotherapists as currently defined, but also
8 other doctors and medical personnel who are
9 providing diagnosis and treatment for mental
10 health issues so that the coverage is more
11 complete instead of narrow.

12 So, anyway, those are the two
13 recommendations that have come out of the
14 subcommittee.

15 We have a draft report. We're going
16 to hope to give it to you either in February or
17 in March for the March meeting or in February, if
18 the rumor hits that we're going to a zero base,
19 you know, study and stop work on this date.

20 We'll try to get it done before that
21 date to you and do a virtual meeting and make the
22 edits and get a vote.

1 So, that's what we have and I regret
2 that we don't have six other studies like the
3 Case Review subcommittee does, but we just can't
4 handle it.

5 (Laughter.)

6 DR. SPOHN: So, Jim, based on what you
7 just said, is the March meeting in jeopardy?

8 VICE CHAIR SCHWENK: No one knows.

9 DR. SPOHN: No one knows?

10 VICE CHAIR SCHWENK: I mean, you know,
11 if there is no -- if it's business as usual, then
12 it's business as usual.

13 If they do a zero based review because
14 the last guys did it, then it depends when they
15 do it.

16 So, when they pull the trigger, we'll
17 see.

18 Okay, why don't we take a break? I
19 think we're supposed to do public comments at
20 3:45.

21 Oh, wait -- well, I don't know.

22 Meghan, how do we want to do public

1 comments?

2 MS. PETERS: Well, we have folks
3 online at a specific time. We can check and see
4 if they're here.

5 There's three virtual public comments
6 and one in person.

7 VICE CHAIR SCHWENK: Okay.

8 MS. PETERS: So, we would appreciate
9 the break in place to make sure that that's
10 possible.

11 VICE CHAIR SCHWENK: Okay.

12 (Whereupon, the above-entitled matter
13 went off the record at 3:17 p.m. and resumed at
14 3:37 p.m.)

15 VICE CHAIR SCHWENK: Meghan, over to
16 you.

17 MS. PETERS: All right, welcome back,
18 everybody.

19 We are going to start the public
20 comment session for this meeting.

21 We have four speakers today, three
22 virtual and one in person.

1 But just a few notes before we begin.

2 First, the committee does not address
3 specific court-martial cases. We'll report on
4 them specifically, but to the extent that any
5 court cases are brought up and they inform policy
6 recommendations, they will be considered.

7 And that's our general approach to all
8 matters brought up in public comment.

9 All public comments will be
10 transcribed and they'll be published on the
11 DAC-IPAD website.

12 Speakers are notified in advance that
13 they will have five minutes to provide their
14 comment and we will limit them to five minutes in
15 order to provide time for others.

16 And I'm going to remind the public
17 commenters that they have hit their time limit
18 and ask them to conclude at about the five minute
19 mark.

20 So, I think that's our notes, and with
21 that --

22 VICE CHAIR SCHWENK: Yeah, let me just

1 say that, in the last two days, there have been
2 several times where we've made in our discussions
3 made comments about a public comment we heard in
4 the past.

5 So, there -- they are very valuable
6 and I look forward -- I'm sure we all look
7 forward to hearing from the four presenters
8 today.

9 MS. PETERS: All right, thank you,
10 General Schwenk.

11 I'm going to turn it over to Ms. Alana
12 Richards.

13 MS. RICHARDS: Hi, my name is Alana
14 Richards.

15 I come before you -- sorry.

16 Hi, my name is Alana Richards.

17 I come before you with the urgent
18 criminal case of my husband, Javon Richards.

19 The case began when Javon asked his
20 ex-wife for a divorce.

21 She begged him to stay, warning him he
22 would regret leaving. And shortly after, accused

1 him of domestic violence and attempted sexual
2 assault.

3 Unbeknownst to us, she also contacted
4 one of his ex-girlfriend's in Germany, revealing
5 a startling detail which I will address later.

6 His defense attorney warned him that
7 it would be his word against his ex-wife and
8 ex-girlfriends.

9 And the military heavily relies on
10 propensity of evidence to secure convictions.

11 Despite his evidence of innocence, the
12 prosecutor at the trial pressured him into a plea
13 deal, offering three years in exchange for
14 avoiding a 75-year sentence.

15 Fearing a wrongful conviction, he
16 reluctantly took the deal.

17 I want to ask this carefully, who
18 offers a man a three-year sentence when he's
19 facing 75 years with charges?

20 We first got to trial, his chain of
21 command imposed severe restrictions. Keeping him
22 on post for nearly a year.

1 They confiscated his car keys,
2 escorted him to locations, and delayed important
3 paperwork such as the ex-wife's E-block process
4 and RBAH.

5 He was subjected to unnecessary
6 check-ins, unfounded extra duties, and limited
7 civic rights.

8 Despite no conviction, he was forced
9 to attend a six-month domestic violence course.

10 During this time, Javon was fully
11 ostracized and made to feel guilty for his trial
12 as if the outcome had already been decided.

13 Javon has faced severe mistreatment
14 while incarcerated.

15 At the Sembach facility in Germany, he
16 was denied urgent medical care and nearly died
17 from a blood clot before his trial.

18 At Fort Leavenworth his health
19 continued to deteriorate due to an undiagnosed
20 life threatening blood condition, untreated
21 diabetes, sleep apnea, vision, and hearing loss
22 and other serious medical issues.

1 Despite repeated requests, the prison
2 had failed to provide proper care.

3 When he demanded medical attention, he
4 was charged with staff harassment.

5 His religious rights have also been
6 violated. He has been forced to do things that
7 contradict his medical needs and religious
8 beliefs.

9 Additionally, he was falsely accused
10 of sexual harassment of a guard, but the charges
11 were dropped due to no evidence.

12 He faces constant threats and bullying
13 from inmates while he works in the prison's
14 barbershop which has been a sought after job in
15 the prison and in his college classes.

16 Javon has filed multiple complaints
17 with the Inspector General at both prison
18 facilities about the lack of proper medical care
19 and other mistreatment he has endured.

20 I have also made several complaints to
21 government officials and agencies.

22 Despite these efforts, no meaningful

1 action has been taken to address the violations
2 of his rights or resolve these issues.

3 Additionally, the Commanding General
4 has denied Javon the chance to serve his sentence
5 outside of military prison as well as his request
6 for reconsideration of forfeitures.

7 To make matters worse, Javon's
8 ex-wife, the key accuser, sent him a letter while
9 he was in prison at Fort Leavenworth.

10 In this letter, she admitted to
11 committing perjury and of collaborating with the
12 other accusers who falsely accused Javon.

13 She further revealed that her motives
14 were financially driven and that she had been
15 coerced by the prosecution into participating in
16 the trial.

17 In her letter, she also confessed to
18 manipulating key witnesses to strengthen the
19 false narrative against him and to deliberately
20 withholding crucial evidence that could have
21 exonerated him.

22 This letter serves as a clear

1 admission of wrongdoing and is critical evidence
2 of the ongoing appeal.

3 We have provided the original copy of
4 this letter back to our civilian legal counsel,
5 but we still retained copies for our records.

6 Adding to this miscarriage of justice,
7 Javon's trial was overseen by Judge Hines who is
8 now under investigation for reasons disturbingly
9 similar to what happened to my husband's case.

10 This casts serious doubt on the
11 fairness and integrity of the proceeding and
12 further underscores the urgent need for a
13 thorough review of this trial and conviction.

14 One of the most urgent issues we face
15 is the release of his record of trial which
16 should have been made available to him within
17 three months of trial. It has now been nearly a
18 year, his trial was in February 2023 and this
19 delay is preventing him for applying for parole
20 and pursuing a fair review of his case.

21 His continued confinement under these
22 conditions is not only a violation of his rights,

1 but severely damaging his physical and emotional
2 well-being.

3 As a disabled full-time college
4 student, I am doing everything I can to support
5 him with little to no help, covering expensive
6 legal fees, juggling multiple jobs, and trying to
7 keep our family together.

8 But this financial and emotional toll
9 this has taken on me is overwhelming.

10 This is a picture of me and Javon at
11 his trial in February 2023.

12 Thank you for the opportunity to speak
13 with you. I truly hope that you can help with
14 the injustice of this case, work toward to
15 rectifying this injustice, and to provide
16 proactive steps to prevent similar instances from
17 occurring in the future.

18 Thank you.

19 VICE CHAIR SCHWENK: Thank you very
20 much. We appreciate your comments.

21 MS. PETERS: All right, our next
22 public speaker is Mr. Kendrick Woolsey.

1 MR. WOOLSEY: Hello, my name is
2 Kendrick Woolsey.

3 Thank you for allowing me to speak at
4 this panel.

5 I was stationed in Fort Bragg, North
6 Carolina and I was in 2508 PIR, Parachute
7 Infantry Regiment.

8 After my deployment to Afghanistan, I
9 spent a lot of time trying to understand
10 everything I went through.

11 The following summer after my
12 deployment, I went to a lake party with other
13 military members.

14 One of my buddies brought a girl into
15 this party that caught my eye. At the time, she
16 was 23 and her friend said that she was a former
17 bartender.

18 We talked a lot throughout the night
19 and just after just meeting.

20 As the night progressed, she was off
21 doing her own thing as was I.

22 At a later point in the night, she and

1 I talked about and decided to go skinny dipping
2 and were making out at the lake.

3 Multiple people saw us and said they
4 thought we were hitting it off.

5 I asked her if she wanted to do more
6 and she said yes.

7 We made our way to the wood barn.
8 Everyone was doing their own thing and we didn't
9 think anyone would notice us.

10 We proceeded to have sex on the
11 ground.

12 Then, after a bit of time, we moved to
13 the bed of a truck where she was on top of me.

14 The woman involved was also in the
15 military and during the trial, never said that I
16 sexually assaulted her or raped her.

17 She just said she doesn't remember
18 what happened. She didn't even make an official
19 complaint about me or that night.

20 When questioned, she said she had one
21 beer and three sips of whiskey.

22 One of the guys there came by and

1 started videotaping us having sex on the ground.
2 It was only a small portion of a lengthy sexual
3 encounter.

4 The man who took the video lost his
5 phone and another serviceman, not at the party,
6 found the phone and said that if he wasn't paid
7 \$150, he would turn the phone over to CID.

8 CID investigated the video and, again,
9 the woman claimed that she didn't remember what
10 happened.

11 The toxicology report showed that
12 there were no drugs in her system and by her own
13 account, she wasn't intoxicated and I was still
14 sent to be court-martialed.

15 The Judge didn't have anyone to verify
16 the people in the video. He said the video could
17 not be admitted without someone verifying the
18 parties in the video.

19 He then proceeded to take it back to
20 his private chambers and watched it.

21 After that, he admitted it into
22 evidence.

1 Multiple people testified that saw her
2 and I walking to the bed of a truck and sleeping
3 inside of it after our sexual encounter on the
4 ground.

5 One person said they noticed us
6 spooning.

7 So, I had a sexual encounter that's
8 determined by two small snippets of video not
9 even a minute long.

10 The woman was not intoxicated, has no
11 drugs in her system, and never makes a complaint
12 of sexual assault.

13 A random person finds the phone and
14 turns it in and it becomes sexual assault and I
15 was sentenced to nine years in prison for one
16 charge of sexual assault.

17 I now must register every three months
18 for the rest of my life being deemed a sexually
19 violent predator because of the way my charges
20 read, even though everything that happened that
21 night was consensual for both parties involved.

22 There were multiple people who

1 testified for our playful interactions, both
2 before and after the sexual encounter.

3 Her own friend testified that she was
4 happy and normal after the party.

5 My defense requested to have the
6 original prosecution toxicology report appear at
7 my trial.

8 Not only was the expert not allowed to
9 testify, but I couldn't even use his report as
10 evidence in my defense.

11 Imagine this happening to you or
12 someone you love.

13 Everyone wants to protect the victim,
14 what happens when a man is a victim of a biased
15 system?

16 I never had any prior charges. I've
17 always been a person that tries to help and do
18 what's right.

19 My pregnant wife and three-year-old
20 son will, unfortunately, have to deal with
21 similar bad things that come with being a sexual
22 predator and I hate that for them.

1 I would like for you to please allow
2 my case to be re-evaluated and overturned.

3 I do not believe I had a fair trial
4 and will never receive one under the regulations
5 of the United States military.

6 Thank you.

7 VICE CHAIR SCHWENK: Thank you very
8 much.

9 MS. PETERS: All right, our next
10 public comment is Lieutenant -- oh, I'm sorry,
11 First Lieutenant Courtney Easterling.

12 MS. EASTERLING: Hello, good
13 afternoon.

14 As both a victim advocate and survivor
15 in the Marine Corps, I provide this testimony to
16 highlight systemic failures that undermine the
17 Secretary of the Navy's [unknown] and give any
18 respect to commanding accountability.

19 I'm here reporting from the start,
20 having working as a victim advocate, I already
21 understand the culture of gossip, ostracism, and
22 retaliation within commands.

1 I know how my own leadership dismissed
2 victims, trivialized their trauma, and destroyed
3 their careers.

4 I lived with the fear of what my
5 command would do to me, but I also lived in fear
6 of my abuser of the stalking, blackmail,
7 beatings, rapes, and death threats he inflicted
8 on me.

9 I only reported him because I thought
10 my attacker was going to kill me. Even then I
11 was met with disciplinary action at every turn.

12 On September 9th, 2022, I made an
13 unrestricted report to a Major and a Sergeant
14 Major within 2nd MAW.

15 Following the unrestricted report, I
16 met a family advocacy.

17 The Major then failed to notify NCIS
18 on September 18th, 2022 and filing another
19 unrestricted report as required.

20 The Major's response that I received
21 was, I appreciate you being a victim and
22 subsequent gossip about my case demonstrated the

1 command's immediate bias.

2 Their false assurances about my
3 attacker would remain in jail made me vulnerable
4 to further assault.

5 The command's manipulation of my
6 expedited transfer request demonstrates
7 calculated retaliation.

8 My attacker is released from jail,
9 heightens my safety concerns as I requested
10 transfer from Cherry Point.

11 Following approval, I checked into
12 Wounded Warrior Battalion East.

13 However, at leaves end, I was ordered
14 back to Cherry Point and placed on -- in a
15 particular squadron.

16 The Major General had me on suicide
17 watch, confined to an office without freedom to
18 leave.

19 The command then permanently assigned
20 me to another squadron where Lieutenant Colonel
21 mockingly dismissed my knowledge of my permanent
22 change of assignment orders while attempting to

1 send me back to Cherry Point, the very location I
2 had been approved to leave for my safety.

3 The progression of violence and
4 command retaliation escalated severely.

5 When my attacker violated the MPO just
6 five hours after issuance, I reported it
7 immediately. This forced entry into my home
8 leading to another sexual assault and subsequent
9 physical assault and attempted sexual assault
10 left me with a traumatic brain injury.

11 From September 2022 to April of 2024,
12 I have endured multiple emergency room visits
13 documenting my migraines, fainting episodes,
14 vision disturbances, dizziness and vomiting, and
15 a lot more.

16 The commander in appearance with my
17 medical care became systemic under my Major from
18 May through July 2022 and cancelled and changed
19 my appointments at the base medical, interfered
20 with my treatment at Intrepid Spirit, he lied to
21 my providers about being separated in July of
22 2023. He blocked access to my mental health

1 care.

2 He compromised my medical privacy and
3 created an environment of fear while seeking
4 treatment.

5 Despite my attacker's civilian
6 conviction and confession, the Major General at
7 2nd MAW repeatedly ignored the conviction
8 evidence, dismissed documented confessions, used
9 unproven misconduct allegations against me,
10 failed to acknowledge ongoing stalking reports,
11 and enabled systemic protection of a convicted
12 predator.

13 There is corruption at the board
14 process that was taken to that was ordered by a
15 male 2nd MAW Commanding General and the male 2nd
16 MEF Lieutenant General.

17 They prosecuted me for fraternization
18 and for violating military protective order
19 protecting him on an all male board, all male
20 prosecutors, male legal advisor, and male SJA.

21 They ordered verbatim transcription
22 but permitted omission of crucial and my only

1 defendant witness testimony and argument.

2 They allowed recharacterization
3 documented assault as fraternization.

4 They ignored critical context
5 beginning in March 2022.

6 They enabled the command's false
7 narrative despite civilian conviction.

8 They permitted misleading government
9 recounting of events.

10 And they failed to ensure proper
11 investigations were conducted at all levels.

12 The command's pattern of punishing me
13 for reporting attacks created a dangerous setting
14 for violence.

15 Each time police arrested my attacker,
16 the command accused me of misconduct.

17 When he broke into my apartment in
18 January 2024 destroying everything I owned, I
19 could not file a police report because fear of
20 retaliation prevented me from pressing charges.

21 My command's practice of bringing
22 supplemental misconduct reports for these actions

1 forcing me to endure further abuse and silence.

2 Each time I reported it to the police,
3 despite my civilian protection order, I was met
4 with resistance because I was the subject of an
5 MPO.

6 This is exactly why I didn't report
7 sooner.

8 My command didn't fail at stopping to
9 protect me, they actively retaliated.

10 They waited until I after accepted my
11 career designation hoping they were finally
12 taking my report seriously before they fined me
13 with an intent to impose NJP.

14 When I appealed to the NJP, they
15 issued the Page 11 instead.

16 I wrote a rebuttal to it and they
17 escalated to issuing a report of misconduct.

18 The investigative office sprung the
19 report of misconduct was out of lies and
20 omission.

21 The investigating officer falsely
22 claimed that I had declined the right to

1 participate and from ever being contacted.

2 They ignored his civil conviction and
3 his confession and I received a supplemental
4 misconduct report following his assault on me
5 last summer.

6 They framed me, the victim, as the
7 problem.

8 I was then later approved for medical
9 retirement with a retirement date of late May to
10 early June 2024.

11 My experience is not unique. It is
12 indicative of larger system failure and
13 leadership accountability, one that prioritizes
14 protecting commands over protecting Marines.

15 Commands wield administrative actions
16 as weapons of retaliation, manipulative
17 investigations, and undermine victims' medical
18 recovery, creating an environment where reporting
19 --

20 MS. PETERS: Excuse me, First
21 Lieutenant Easterling, would you please conclude
22 your remarks?

1 MS. EASTERLING: Yes, ma'am.

2 MS. PETERS: Thank you so much.

3 MS. EASTERLING: Yes, ma'am.

4 MS. PETERS: Would you please move to
5 conclude.

6 Thank you.

7 MS. EASTERLING: That's it, I'll stop.

8 MS. PETERS: Were there any questions?

9 VICE CHAIR SCHWENK: Thank you very
10 much.

11 MS. PETERS: All right, our last
12 public speaker is Mr. Jeremy Zier who is here in
13 person.

14 VICE CHAIR SCHWENK: Good afternoon,
15 thank you.

16 MR. ZIER: Good afternoon, thank you.
17 Thank you for having me.

18 All right, good afternoon,
19 distinguished panel members.

20 Thank you for allowing me the
21 opportunity to address you today for your -- and
22 for your dedication to ensure fairness and equity

1 and integrity in our military justice system.

2 In December of 2019, I was honored to
3 be selected for promotion to Chief Master
4 Sergeant, the pinnacle of my career.

5 Just two weeks later, my life would
6 unravel when a third-party came forward with
7 allegations claiming that, in front of five other
8 people, I had inappropriately touched them nearly
9 five years earlier at a Turkish spa.

10 This third-party wasn't present during
11 the alleged event. And the person she claimed
12 was touched never came forward to file a
13 complaint.

14 In fact, none of the allegations came
15 directly from supposed complainers. All
16 originated from the angry third-party and were
17 used to build a manufactured propensity case.

18 By June of 2020, media page from
19 anonymous sources exacerbated the situation.

20 And my leadership began stripping me
21 of my duties and prioritizing external backlash
22 over ensuring my due process.

1 To be clear, I did not touch anyone
2 inappropriately.

3 The investigation itself revealed
4 inconsistent stories, the alleged victim
5 initially claimed I touched her leg, but later
6 on, changed to me grazing her genitals.

7 She also claimed others saw the
8 touching, but that was false as five witnesses
9 present all testified that they didn't see or
10 hear anything that would lead them to believe
11 that inappropriate touching had occurred.

12 To add more context, she continued to
13 babysit my daughter at my home, even after the
14 alleged events which speaks volumes to the kind
15 of unusualness of these allegations.

16 Despite the lack of evidence, in
17 August of 2020, I faced a special court-martial.

18 I was convicted of abusive sexual
19 contact and received a one rank demotion and no
20 punitive discharge.

21 Following the trial, an unnamed
22 government official was on the news saying, based

1 on the evidence they had, they did they most they
2 could with this, acknowledging there was no
3 physical evidence and no witnesses to corroborate
4 the allegation.

5 Another troubling aspect was the
6 composition of the panel. The group consisted of
7 five women and three women. And three men and
8 one man were ultimately selected.

9 Now while I can't prove the Air Force
10 intended this structure, the panel did ensure a
11 conviction of disproportionate gender
12 representation raises questions.

13 Frustrated with the entire process, I
14 sought to retire immediately but retirement
15 request was confidently never routed for
16 approval.

17 Instead, I was forced into a discharge
18 board.

19 The hurried nature of the proceedings
20 forced me to fire my military attorney and my
21 legal advisor later determined my due process
22 rights had been violated.

1 My immediate command testified that
2 social media and news coverage played a role in
3 their decision making.

4 Despite these violations, the
5 discharge board found in my favor and moved to
6 retain me.

7 Yet, my request to retire was further
8 delayed as the Air Force sought to circumvent
9 regulations and find unprofessional ways to
10 remove me.

11 After sitting at home for over 18
12 months without duties, the Secretary of the Air
13 Force finally accepted my retirement, but
14 punitively took another strike, effectively
15 imposing a harsher punishment than the court-
16 martial deemed appropriate.

17 The Secretary of the Air Force issued
18 a press release detailing his decision and
19 explained that he was convinced of my guilt.

20 It was immediately circulated across
21 national publications and social media while by
22 Article 66 appeal was still pending before the

1 Air Force Court of Criminal Appeals.

2 The Secretary doubled down and the
3 Undersecretary of the Air Force on social media
4 posted on my case.

5 The national media also covered these
6 posts.

7 The Undersecretary publically stated
8 that I should not remain in the Air Force.

9 Both the Secretary and the
10 Undersecretary had the authority and the peers of
11 the judges, giving the public statements by
12 senior leaders at every step and the ad hoc
13 handling of my case, how can anyone believe the
14 Air Force Judge Advocate General or Air Force
15 Court of Criminal Appeals Judges could be
16 impartial?

17 If this isn't unlawful command
18 influence, then what is?

19 Since the trial, I was forced to
20 register as a sex offender and was barred from
21 entering the base.

22 Though I was ultimately removed from

1 the registry, the emotional toll is irreversible.
2 I missed significant family experiences,
3 including my children's school events and I
4 received violent threats at my home.

5 The cumulative scars from this ordeal
6 caused more PTSD than all the years I spent on
7 the ground as a combat photographer in the Middle
8 East.

9 Now what I hope happens in the future?
10 The verdict of the Article 66 placed during my
11 court-martial was unfair and sent my appeal
12 through TJAG to a Three-Star General.

13 When the TJAG denied me of relief, the
14 system then expected 05 and 06 Judges to reverse
15 the decision to overrule him.

16 That highlights just how flawed the
17 process was.

18 This panel recognizes those issues and
19 recommended changes. Not every service member
20 who receives a full Article 66 review, however,
21 for cases like mine, the panel should consider a
22 look back period allowing me to apply for a

1 review.

2 Even though my punishment was only a
3 one strike reduction, the consequence of a court-
4 martial conviction are lifelong.

5 Service members like me deserve the
6 same chance of challenging our convictions that
7 every service member today gets. It's only fair.

8 And then, they must increase
9 transparency of procedural protections for
10 accused service members, especially high profile
11 cases where media attention and command influence
12 can distort fairness.

13 Most importantly, an independent
14 third-party is crucial for review of convictions
15 and preventing unwarranted prosecutions in the
16 first place.

17 Serious offenses should be referred to
18 court-martial only after review by a body,
19 ideally civilian and function like a grand jury.
20 This step would help restore confidence in
21 military justice.

22 And I'll wrap here.

1 Thank you for allowing me to share my
2 story. I've remained quiet for years, but I
3 won't anymore because I've been disappointed by
4 the lack of independent review of my case for a
5 UCI.

6 I stand ready to assist in any way
7 that I can to help prevent this from happening to
8 others from the same injustices that I dealt with
9 in a broken system.

10 Thank you so much for your time.

11 VICE CHAIR SCHWENK: Thank you very
12 much.

13 MS. TOKASH: I have a question.

14 VICE CHAIR SCHWENK: Yes?

15 MS. TOKASH: Is that okay?

16 VICE CHAIR SCHWENK: Yes.

17 MR. ZIER: Sure.

18 MS. TOKASH: Thank you so much.

19 I'm curious about you said that the
20 sex offender registry was overturned.

21 Could you help us understand how that
22 happened and did -- were they interested in any

1 of your military records? What were they looking
2 for?

3 MR. ZIER: So, the sex offender
4 registry was just a mandatory requirement that
5 the military established.

6 I was placed on that. And then, once
7 Texas where I live at reviewed it, the case file
8 and the actual details of the offense, they
9 determined that it's not a registerable offense
10 and removed me at some point.

11 But that was about two and a half
12 years.

13 MS. TOKASH: Okay, thanks. So, if I
14 understand what you're saying is that you -- by
15 operation of your conviction in the military, the
16 military flagged you for sex offender
17 registration and then, the state where you call
18 home made their own independent review and --

19 MR. ZIER: Yes, ma'am, that's correct.

20 MS. TOKASH: Okay, thank you very
21 much.

22 MR. ZIER: You're welcome.

1 VICE CHAIR SCHWENK: Thank you, again.

2 MS. PETERS: If you all are ready, the
3 last remaining item on the agenda for today is
4 our meeting wrap up.

5 We had a space for deliberations, but
6 I think you concluded your deliberations already
7 this afternoon.

8 So, I just want to go through some of
9 the things to come following this meeting, things
10 we owe you and things we're working on as a
11 staff.

12 The first order of business will be to
13 publish the DAC-IPAD report on Enforcement of
14 Victims' Rights by the end of this month or early
15 January at the very latest.

16 We're going to provide you with
17 information from the Defense Health Agency that
18 is pending in a written RFI response to this
19 committee.

20 So, you'll receive that from us soon.

21 You'll hear back on updates from the
22 FY '25 NDAA and updates on amendments to the

1 Manual for Courts-Martial.

2 We had, after the, I think, very
3 robust discussions and deliberations on your site
4 visit information, we certainly have plenty of
5 dues to work on and happily so. So, we're going
6 to move out with that and start shaping the
7 annual report.

8 You'll be hearing from us soon on --
9 to request your availability for a virtual public
10 meeting again on February 25th or 26th.

11 If that doesn't work, we can certainly
12 find an alternate date.

13 But at that point, we hope to have in
14 front of you a completed draft annual report in
15 advance of that meeting so that you can
16 deliberate on that time.

17 And also, that space in February
18 allows if there's any pending subcommittee
19 projects that need the full committee's
20 consideration, we hope to provide within a two
21 hour window time for both the annual report and
22 any other topics that need consideration.

1 All right, I think those are the
2 highlights for us.

3 Is there anything else or any
4 questions?

5 MS. BASHFORD: What was the March
6 dates?

7 MS. PETERS: March 11th and 12th, 2025
8 for the public meeting.

9 MR. KRAMER: Can I, as usual, thank
10 the staff for an incredible job, especially the
11 site visit report that was done in an incredibly
12 short period of time with a huge amount of
13 information and thank you to all the staff and to
14 the people who are leading us. We will miss you.

15 MS. GOLDBERG: Hear, hear.

16 VICE CHAIR SCHWENK: And I would like
17 to close the meeting by saying that you all get a
18 benefit from this because the next meeting, Carla
19 will be back.

20 (Laughter.)

21 VICE CHAIR SCHWENK: And I'm not Mr.
22 Vice anymore.

1 (Laughter.)

2 MS. GOLDBERG: We do need to thank Mr.
3 Vice --

4 VICE CHAIR SCHWENK: For staying awake
5 for two days? Thank you.

6 MS. GOLDBERG: For beautifully
7 coordinating the meeting from the Vice Chair
8 seat.

9 MS. PETERS: All right, nothing
10 further, we can turn to our DFO.

11 MR. GRUBER: Mr. Vice Chair, ready to
12 close?

13 VICE CHAIR SCHWENK: Yes, I am.

14 MR. GRUBER: The meeting is closed.
15 Thank you, everybody.

16 (Whereupon, the above-entitled matter
17 went off the record at 4:04 p.m.)
18
19
20
21
22

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In the matter of: Public Meeting

Before: DAC IPAD

Date: 12-04-24

Place: Washington, DC

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Court Reporter

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