

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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THURSDAY
JUNE 27, 2024

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The Committee met via Videoconference
at 3:08 p.m. EDT, Hon. Karla Smith, Chair,
presiding.

PRESENT

Hon. Karla Smith, Chair
MG Marcia Anderson
Ms. Martha Bashford
Mr. William E. Cassara
Mr. A.J. Kramer
Ms. Margaret Garvin
Ms. Jennifer Gentile Long
SGM Ralph Martinez
Hon. Jennifer O'Connor
BGen James Schwenk
Sgt. Lisa Shepperd
Dr. Cassia Spohn
Ms. Meghan Tokash
Hon. Reggie B. Walton

ALSO PRESENT

Mr. Pete Yob, Executive Director
Ms. Meghan Peters, Deputy Director
Mr. William Sprance, Designated Federal Official
Ms. Jennifer Campbell, Chief of Staff
Ms. Stacy Boggess, Senior Paralegal
Ms. Alice Falk, Technical Writer-Editor
Ms. Breyana Franklin, Communication Specialist
Ms. Theresa Gallagher, Attorney Advisor
Ms. Nalini Gupta, Attorney Advisor
Ms. Mya Koffie, Intern
Ms. Janet K. Mansfield, Chief, Programs Branch,
Army Criminal Law Division
Ms. Marguerite McKinney, Management and Program
Analyst
Mr. Blake Morris, Paralegal
Ms. Stayce Rozell, Senior Paralegal
Ms. Abigail Sackett, Intern
Ms. Terri Saunders, Attorney Advisor
Ms. Kate Tagert, Attorney Advisor

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

2 3:08 p.m.

3 MR. SPRANCE: This is Bill Sprance.
4 I'm the DFO for this public meeting of the DAC-
5 IPAD. The meeting is now open.

6 Madam Chair, the floor is yours. I
7 apologize for the delay.

8 CHAIR SMITH: That's okay. Thank you,
9 Mr. Sprance and good afternoon, everyone. I
10 would like to welcome the Members of the DAC-IPAD
11 and everyone in attendance today to the 36th
12 public meeting of the Defense Advisory Committee
13 on Investigation, Prosecution, and Defense of
14 Sexual Assault in the Armed Forces or DAC-IPAD.

15 The DAC-IPAD was created by the
16 Secretary of Defense in 2016 in accordance with
17 the National Defense Authorization Act for fiscal
18 year 2015, as amended, for a ten-year term.

19 Our mandate is to advise the Secretary
20 of Defense on the investigation, prosecution, and
21 defense of allegations of sexual assault and
22 other sexual misconduct involving members of the

1 armed forces.

2 I'd like to begin by acknowledging,
3 with gratitude, the military justice experts from
4 each of the military services, criminal law
5 division, to generously serve as the DAC-IPAD's
6 service representatives and who has joined us for
7 the meeting today. Welcome and thank you.

8 To summarize our agenda for this one
9 hour virtual meeting, we will begin with the full
10 committee conducting deliberations on the draft
11 report, Exploring the Race, Ethnicity, and Gender
12 of Military Panels at Courts-Martial, and then
13 vote on adopting this report.

14 Next, the Committee will conduct
15 deliberations of the proposed draft letter to the
16 Department of Defense General Secretary on
17 staffing issues regarding the offices of special
18 trial counsel and trial defense services, and
19 then vote on adopting the letter.

20 Now, for a few housekeeping items.
21 For those joining by video via Zoom, which is
22 everyone, I ask that you please mute your

1 device's microphone when not speaking.

2 If any technical difficulties should
3 occur with the video, we will break for ten
4 minutes, move to a teleconference line, and send
5 the dial-in instructions by email.

6 Today's meeting is being recorded and
7 transcribed. And the complete written transcript
8 will be posted on the DAC-IPAD website.

9 Thank you all for being here today.
10 And I'll turn the meeting over to the DAC-IPAD
11 Deputy Director, Ms. Meghan Peters.

12 MS. PETERS: All right. Thank you,
13 Chair Smith. And thanks to our Committee Members
14 who could be here today and for all your work in
15 reviewing the draft report and letter that are
16 before you for discussion today.

17 I just want to note for the record, we
18 have a quorum of Members. With us today we have
19 Chair Smith, Major General Anderson, Ms.
20 Bashford, Mr. Cassara, Ms. Garvin, Ms. Long, Ms.
21 O'Connor, Brigadier General Schwenk, Dr. Spohn,
22 Ms. Tokash, and Sergeant Major Martinez.

1 And I'll jump on to add for the record
2 anybody that I've missed. Mr. Kramer, I see, has
3 joined us. So we do have a quorum.

4 And to start us off, I just want to
5 note that a few weeks ago you received or you
6 reviewed the data, the analysis, and the findings
7 and recommendations prepared by staff concerning
8 the demographics of military panel members in
9 sexual assault courts-martial.

10 So now, Ms. Kate Tagert and Nalini
11 Gupta, they've provided you with a draft report
12 for review. And I'm going to turn it over to
13 Nalini Gupta to walk you through your
14 deliberations today on that draft report.

15 Thanks. Over to you, Nalini.

16 MS. GUPTA: Thanks, Meghan.

17 CHAIR SMITH: Could I just add, sorry
18 Nalini, one second. Lisa Shepperd has joined as
19 well.

20 MS. PETERS: Thank you.

21 MS. GUPTA: Thanks everyone and good
22 afternoon. I just want to reiterate Meghan's

1 thank you for all of you who had a chance to look
2 over our 73 page report full of a lot of exciting
3 data.

4 And we're hoping that this will be the
5 last time we have to review it together. I want
6 to reiterate for the record the process we took
7 to get to this point.

8 The staff at the December 2023, public
9 meeting provided a briefing to the DAC-IPAD on
10 the panel selection data for the Army.

11 After that, a couple of weeks ago at
12 the June 2024, public meeting, the Committee
13 received another briefing on all of the panel
14 selection data for all of the services.

15 The Committee at that meeting also
16 deliberated on and voted on the report's 14
17 findings and four recommendations. And there
18 will be a transcript of those deliberations
19 posted on the DAC-IPAD's website when it is
20 final.

21 Part of the timeline that everyone
22 agreed upon, the Committee received the draft

1 report put together by the staff on Friday, June
2 14. And we received comments from the Members
3 and recirculated a draft incorporating that
4 feedback on Tuesday, June 25, I believe.

5 So I will ask that you follow along,
6 if possible, on that version that Meghan
7 circulated on Tuesday so we can go through the
8 feedback that we received.

9 I'm going to start today by going
10 through three revised findings and
11 recommendations. And then we will hold a vote on
12 those.

13 After that we will receive the
14 substantive -- we will review the substantive
15 feedback to the body of the report. And finally,
16 Chair Smith, I will ask you to hold a vote to
17 approve the report.

18 So if you could please turn to page
19 six of the report. And before I start on that
20 substantive feedback, I just want to note for the
21 record that all the non-substantive feedback we
22 discussed at the last June meeting was already

1 incorporated into this report.

2 And the biggest thing was that the
3 Committee asked that the staff make sure that
4 all, for all data findings, we include a bullet
5 for each service with the findings, as well as
6 the indication of the statistical significance
7 for the data.

8 So we have done that. We will not be
9 reviewing that today. But it is in the report
10 that you have in front of you.

11 So I'm going to start on Finding
12 Three, which is the finding on data limitations.
13 Ms. Bashford pointed out that we had, as our
14 finding, that we could, the DAC-IPAD concurred
15 with the GAO's finding on data limitations.

16 We as a staff made the revision to
17 suggest that we add an extra sentence before that
18 to say that the DAC-IPAD also faced data
19 limitations in updating data.

20 So the revised finding would read, the
21 DAC-IPAD faced challenges in obtaining
22 standardized and complete racial and ethnic data

1 from the services.

2 The DAC-IPAD concurs with the
3 Government Accountability Office's recent finding
4 that data limitations hinder the Department of
5 Defense's ability to understand potential racial
6 and ethnic disparities in the military justice
7 system.

8 So now we are, we have kind of a two-
9 part finding on data limitations. Would anyone
10 like to comment on that revision?

11 Okay. Hearing nothing, Chair Smith,
12 would you like to hold a vote on that revised
13 finding?

14 CHAIR SMITH: All right. I'm going to
15 actually say, is there anyone opposed to adopting
16 that revised finding?

17 All right. Hearing no nays, and I
18 don't see anyone, from what I can see, I don't
19 see any hands up. We'll go ahead and adopt that
20 change.

21 MS. GUPTA: Great. Thank you. Right
22 underneath that, we have recommendation two,

1 which is also on data collection. Dr. Markowitz
2 asked that we clarify that recommendation.

3 Let me back up. In that
4 recommendation we're reiterating a previous
5 recommendation from a 2020 report that the
6 Secretary of Defense direct the military
7 departments to record the race and ethnicity of
8 multiple players in the military justice system.

9 Dr. Markowitz asked that we clarify
10 that they do so using standardized categories.
11 So we have added that language in redline and for
12 recommendation two.

13 Chair Smith, well, before that, are
14 there any comments on that? And if not, Chair
15 Smith, could you please hold a vote on that
16 revision?

17 CHAIR SMITH: It doesn't seem anyone
18 has any comments. So is there anyone opposed to
19 adopting that clarification on Recommendation
20 Two?

21 Hearing no opposition, that will be
22 adopted as well.

1 MS. GUPTA: Okay. And for our final
2 recommendation, I ask you to turn to page nine
3 and look at Recommendation Three. You saw the
4 first part of this recommendation at the last
5 public meeting.

6 This is a recommendation that the
7 Department of Defense conduct another
8 comprehensive study within the next five years
9 using the same methodology as the DAC-IPAD study
10 so that they can understand the effects of any
11 changes to the demographics of panels and
12 details.

13 We added that second part of that
14 recommendation, the second sentence. Which says
15 that they, the Department of Defense should also,
16 in addition to using the same methodology as the
17 DAC-IPAD, they should conduct an additional study
18 where they do not aggregate every racial and
19 ethnic group into one category as we did for our
20 methodology.

21 This way, they can understand if
22 there's any potential underrepresentation of any

1 specific racial or ethnic minority groups.

2 Does anyone have any comments on that?

3 All right. Chair Smith?

4 CHAIR SMITH: All right. So is there
5 anyone who is opposed to adopting under Finding
6 Nine, that additional language in Recommendation
7 Three?

8 Hearing no opposition, that will be
9 adopted as well.

10 MS. GUPTA: Okay, great. Now, we're
11 going to turn to the body of the report. And I'm
12 just going to go over a couple of the substantive
13 edits that we received.

14 Anything not substantive, where we
15 just found it to be token language, we did
16 directly into the version that you received. So
17 I'll have you turn to your introduction, which
18 starts at page 12.

19 I just want to note for the record,
20 because there were a couple of questions on this,
21 in our introductory paragraph, we talk about a
22 public comment. And we identified the service

1 member as an African-American service member who
2 made the public comment.

3 There were some questions why we did
4 not use Black to identify him. And I just want
5 to note that that's how that service member self-
6 identified on the record when he gave it, which
7 is why we use that language.

8 On the next page, you'll see three
9 bullets where we have our research questions. We
10 made a slight tweak to these three research
11 questions.

12 Ms. Bashford asked that we specify
13 that the population of cases we were looking at
14 were sexual assault courts-martial.

15 So we added that to each of the three
16 bullets to make that clear. And we made a
17 corresponding change to our executive summary.

18 Okay. Right underneath those three
19 bullets, I just want to note that we added a
20 paragraph in the versions that you received.
21 There was a lot of conversation and deliberations
22 at the last June meeting on some of the

1 considerations that are, and the limitations, for
2 this report.

3 So we added this language so everyone
4 reading it could kind of understand the left and
5 right boundaries of the report.

6 A couple of these considerations are
7 that we relied on the data received from the
8 services and that we have to exclude the service
9 members from our analysis whose race and
10 ethnicity we did not know.

11 We also did not look at victim race
12 and ethnicity, because a lot of victims are
13 civilians and we did not have access to that
14 information.

15 And we note that for future studies,
16 this information is really important, because, as
17 the research shows, the dyad, their racial, the
18 accused victim racial dyad is an important
19 analysis that will need to be studied in the
20 future analysis.

21 And then finally, we make the
22 additional caveat that we had to aggregate, as we

1 discussed in our methodology, we had to aggregate
2 all racial and ethnic minorities into one group,
3 called minority race and/or Hispanic.

4 And as a result, we could not, in this
5 report, under -- we could not analyze potential
6 underrepresentation of specific racial or ethnic
7 groups.

8 We have to look at it as a whole. So
9 those were all added to reflect the Committee's
10 deliberations.

11 Any comments or questions on the
12 introduction? Otherwise, I'll move to, I think I
13 only have two or three more comments, and then we
14 can hold a vote.

15 Okay, great. I'll go next to page 45.
16 This is just additional information we added to
17 the individual results on race and ethnicity.

18 In a round of edits, the staff had
19 accidentally omitted the comparison between the
20 average percentage of racial and ethnic groups on
21 details and panels and the comparison between
22 that and the representation of minorities in the

1 services.

2 So we made sure that we added that
3 back in for all of our individual results for all
4 of the services. So I have a comment where the
5 Army's information is. But it was made
6 everywhere, just for everyone's situational
7 awareness.

8 And hearing no questions on that, I
9 will go to our final edit, which is on page 56.
10 This is in the section that talks about
11 perceptions of diversity, after we talk about the
12 racial and ethnic makeup of panels and details.

13 And Dr. Markowitz asked that we
14 clarify this section a little bit. And what it's
15 getting at is, the DAC-IPAD has heard a lot of
16 servicemembers come forward saying that their
17 perception are that panels are not diverse.

18 And our data did indicate that three
19 of the four services do, in fact, have quite
20 representative panels and details.

21 So this paragraph that you see in
22 redline, is trying to reconcile why that may be.

1 And we try to make, per Dr. Markowitz's
2 suggestion, we try to make two points in this
3 paragraph.

4 The first is, again, we know -- our
5 analysis looked at the minority groups in
6 aggregate. So we do not know if there is
7 potential underrepresentation of a specific
8 group.

9 And so we don't know if an accused may
10 feel that they are not being represented on a
11 panel or detail because their specific ethnicity
12 or race is not represented on their detail or
13 panel.

14 Second, we also did not in the study,
15 measure perceptions of diversity. That would be
16 a separate study. And this one is really about
17 the actual demographic representation.

18 So we make those two points in that
19 paragraph to describe where there might be a
20 disconnect between what we heard and what we're
21 seeing in the final results.

22 Are there any questions or comments on

1 the body of the report? Yes, Mr. Cassara?

2 MR. CASSARA: Sorry, old guy here. So
3 my only comment, and I don't know if we care or
4 if want to do anything about it, is I've noticed
5 that we use the terms panel and juries both.

6 And I was just curious whether the
7 staff thought it might be better to be consistent
8 throughout the report, using one term. If you
9 don't, then I don't.

10 I don't have any heartburn either way.
11 I just wanted to point that out. But I noticed
12 that in that paragraph and a couple of others,
13 they're called juries. Otherwise, other places
14 they're called panels.

15 So I will just leave it at that.

16 MS. GUPTA: Unless there's any
17 comments, I can just say, we as the staff will go
18 through it after this meeting, and we can make
19 sure that we use it consistently.

20 And if there's a reason that we don't
21 use that consistently, we'll then explain it.

22 I do not see any other comments unless

1 I am missing anything. So, Chair Smith, if you
2 can please go ahead and hold a vote to approve
3 this report.

4 CHAIR SMITH: Okay. Let's do what
5 we've done before. And that is, if there's
6 anyone who is opposed to adopting the report, say
7 so.

8 All right. Having not heard from
9 anyone, the full Committee is adopting the
10 report.

11 MS. GUPTA: Okay. Thank you very
12 much. And I'll turn it back over to Meghan then.

13 CHAIR SMITH: Thank you. Great job.

14 MS. PETERS: All right. Thanks
15 Nalini. Thank you, Chair Smith. The next item
16 on our Agenda is consideration of a Special
17 Project Subcommittee letter proposed for the DoD
18 General Counsel.

19 Just for reference, you received a
20 copy of that letter drafted by the Subcommittee
21 via email on June 25. So it's an attachment to
22 that email.

1 Please go ahead and pull up that
2 version if you have it. There is also a version
3 posted to our website for reference.

4 And I just want to give a little bit
5 of background before turning it over to Ms.
6 Tokash, who was the Chair of this Special Project
7 Subcommittee.

8 We can recall, the DoD General Counsel
9 had tasked this body with an ongoing assessment
10 of the implementation of the Offices of Special
11 Trial Counsel. And then that task was delegated
12 to the Special Project Subcommittee.

13 The Special Project Subcommittee and
14 its members have been participating in ongoing
15 site visits. And we're reflecting on some
16 general themes from those ongoing site visits.

17 And have now met twice, on June 11 and
18 24 to deliberate on a method to convey initial
19 concerns and feedback to the General Counsel as a
20 result of those site visits with a specific focus
21 on the Offices of Special Trial Counsel and Trial
22 Defense Services.

1 So I am prepared to kind of walk you
2 through the letter. And I just want to offer Ms.
3 Tokash an opportunity to comment and to introduce
4 this a little bit more.

5 MS. TOKASH: Thank you so much, Ms.
6 Peters. I want to specifically thank Deputy
7 Director Meghan Peters for helping shepherd the
8 letter through the Special Projects Subcommittee
9 and for her leadership on this issue.

10 Thank you so much, Meghan. I know we
11 had a short time between our public meetings and
12 today.

13 So in a few moments, I will turn it
14 back over to her. But I just did want to orient
15 the rest of you, as my colleagues, to this
16 particular letter for the full vote today.

17 So importantly, I think the issues
18 raised in the letter stem from the non-
19 attribution feedback from military justice
20 stakeholders at 11 military installations DAC-
21 IPAD visited so far in the year 2024.

22 The letter also provides important

1 context. First, that this is only initial
2 feedback. And then second, that the DAC-IPAD has
3 not yet had time to study the issues in-depth to
4 make recommendations at this time.

5 It also importantly flags that we are
6 hearing good things from the field, which, of
7 course, we are. The military justice system is a
8 great system and we want to be able to highlight
9 those good things that we are hearing from
10 practitioners in the field.

11 And we let the General Counsel know
12 that we will detail those good things that we
13 have been hearing in a written report.

14 The only other thing that I want to
15 highlight, and I thank Ms. Peters for getting me
16 a version of the transcript from our June 11
17 Special Project Subcommittee meeting that in
18 addition to the site visits, the Special Project
19 Subcommittee did hear from two important
20 witnesses at our Special Project Subcommittee
21 hearing.

22 The first was Independent Review

1 Commission Director, Lynn Rosenthal. And she
2 stated that the Commission recommended a military
3 prosecution office rooted in independence and
4 capacity building.

5 That the IRC proposed a more
6 professionalized system ideally lead by a
7 Presidentially appointed Senate confirmed
8 position to restore the trust, by combining the
9 best of civilian expertise with deep knowledge of
10 the military justice system.

11 We also heard from Representative
12 Jackie Spier's now retired Chief of Staff, Josh
13 Connolly. Josh Connolly worked on the
14 legislation that was passed by Congress
15 establishing the Office of the Special Trial
16 Counsel.

17 And he let the Subcommittee know of
18 some concerns that he had regarding troubling
19 reports that unqualified counsel had been used in
20 the OSTC process. He told the Committee that the
21 system is supposed to effectively process a case,
22 not simply decide whether or not to pursue it.

1 And he reiterated that it is essential
2 that the practitioners be well-trained experts
3 outside the chain of command.

4 So I encourage all the Committee
5 Members to read the abbreviated transcript for
6 additional context for the site visit and the
7 feedback that we are hearing. And especially as
8 we prepare for the remaining five site visits.

9 So with that background, the letter we
10 will vote on today serves as two important
11 purposes. One, it raises important issues that
12 should be addressed forthwith.

13 And two, it meets the General
14 Counsel's, the Department of Defense's General
15 Counsel's preference that she stated during our
16 closed administrative session on June 12.

17 And as Meghan, excuse me, Ms. Peters
18 highlighted in her May 10, 2022 memo to the DAC-
19 IPAD, she tasked us with keeping her advised of
20 policy development, workforce structure, and
21 implementation practices, best practices for the
22 Military Department's Offices of the Special

1 Trial Counsel.

2 And that is precisely what this letter
3 does. In fact, it does a little more than that.
4 It addresses issues across both the defense and
5 prosecution bar and also highlights the victim's
6 counsel and military criminal investigation
7 offices as well.

8 So we want to thank Ms. Peters for her
9 leadership and her commitment to the staff of the
10 military justice system and the new independent
11 Offices of the Special Trial Counsel.

12 With that, I pass the baton back to
13 Ms. Peters and let her take the baton.

14 MS. PETERS: All right. Thank you,
15 Ms. Tokash. As we go along, please, we will
16 welcome your comments and feedback.

17 I think the big picture issues here
18 are understanding and discussing the contents of
19 the letter, and then holding a vote on whether to
20 adopt it and send it forth.

21 So I'm going to go paragraph by
22 paragraph here. And again, please we'll, the

1 floor is open for questions at any time.

2 And I'll ask you to speak up. You can
3 raise your hands and/or speak up just to make
4 sure that do hear you in real time.

5 Okay. On paragraph one, the letter
6 opens with the purpose. And that is flagging
7 preliminary concerns about the establishment of
8 the Offices of Special Trial Counsel and the
9 corresponding issues with the Trial Defense
10 Services.

11 And so that is the opening of the
12 letter and the purpose statement. And I just
13 want to offer, does anyone have any questions,
14 comments, or suggestions on the first paragraph
15 of the letter?

16 MR. SCHWENK: Yeah. This is Jim
17 Schwenk. If, I mean, we have to come to a
18 conclusion about whether we're going to be
19 responding about OSTC and then the defense bar or
20 whether we're also going to launch off and talk
21 about victims' counsel and the MCIOs.

22 The first paragraphs lead you to

1 believe that we're going to talk about OSTC and
2 defense counsel. But the next paragraph adds, as
3 Meghan said, the MCIOs and victim's counsel.

4 I don't know which way we want to go.
5 But the two paragraphs ought to be consistent it
6 seems to me.

7 MS. PETERS: All right. Thank you for
8 that, General Schwenk. I hear that we could add
9 a sentence at the end of the opening paragraph to
10 clarify that there are issues identified with
11 regard to those stakeholders as well.

12 We mention them in the second
13 paragraph. And we can allude to that in the
14 first paragraph as well.

15 Is that -- that's what's under
16 consideration. Any comment on that suggestion?

17 All right. Hearing none, we will, the
18 staff is going to add a sentence to the end to
19 mention those stakeholders, and that there are
20 preliminary concerns that affect those offices as
21 well.

22 Any other comments on the opening

1 paragraph and the purpose statement?

2 All right. Hearing no further
3 comments on the first paragraph, I'm going to
4 move on to the second paragraph.

5 And the topic here is the basis for
6 the preliminary concerns. And that is the issues
7 emerging from the site visits.

8 And we want to -- and the fact that
9 these issues are emerging, but they were
10 important to flag. And so it touches on all of
11 the stakeholders affected by the concerns that
12 are now resonating with our Committee Members
13 going on these site visits.

14 Are there any questions or concerns
15 about paragraph two and the issues raised there?

16 MR. SCHWENK: Yeah. This is Jim
17 Schwenk again. So I think we need to look at
18 that second sentence.

19 Although we have not yet had the
20 opportunity to study the information received in-
21 depth, overall, military justice stakeholders are
22 reporting that -- you know, and that might lead

1 me, if I were not knowledgeable about the results
2 of our site visits, to conclude that everywhere
3 we're hearing that they're short staffed.

4 When we know that sometimes OSTC
5 people have said, we're not short staffed. We
6 have what we need to get the job done.

7 So I think somewhere in there we need
8 to say something like, we've heard widespread,
9 though not universal, or something. Or, some
10 people have said, some limiting factor that
11 indicates it's not everywhere we went that we
12 heard there was this problem.

13 So we don't overstate what we're
14 saying.

15 MS. O'CONNOR: I just want --

16 (Simultaneous speaking.)

17 MS. PETERS: And is that with respect
18 to a particular person or stakeholder -- I'm
19 sorry, and then I'll turn it over.

20 Yeah, Ms. O'Connor, go ahead.

21 MS. O'CONNOR: Well, I was just going
22 to say, I agree with Jim's point. And I am not

1 sure we want to say this yet.

2 Because, some of what I remember
3 hearing was that they couldn't really tell yet,
4 because things were just getting started. And it
5 makes me wonder if it's premature for us to sort
6 of make a blanket statement like this.

7 That's just a reaction that I had.

8 CHAIR SMITH: In its entirety? Or,
9 just with respect to this, the way this sentence
10 is phrased?

11 MS. O'CONNOR: I think I'm talking to
12 the substantive point. And it's a -- and I
13 haven't been at all the visits.

14 So it might be that my impression of
15 that, it's skewed. And I'm very open to
16 everybody else's take on it.

17 But I do remember hearing people say
18 that it was too early to tell, because they were
19 kind of just getting started. And, you know, the
20 caseloads haven't been, you know, kind of just
21 settled yet.

22 And so I just wonder if we're getting

1 a little bit ahead of ourselves.

2 MR. SCHWENK: Yeah. This is Jim
3 Schwenk. I think I agree with the point. But
4 some places we were at, I believe, the term was,
5 we're drowning in cases.

6 You know, that's a pretty significant
7 statement from the people at that place. Other
8 places, they said they were good to go with their
9 staffing.

10 And other places said, exactly what
11 Jen just said, it's too early to tell. We need
12 more time.

13 So that's why I thought a modifier
14 would help. Either that or explain that we have
15 heard all three different versions, you know, one
16 way or the other.

17 But I think, as written, it just seems
18 too broad. It could be misinterpreted too
19 broadly compared to what we actually heard.

20 MS. O'CONNOR: Yeah, I think --

21 (Simultaneous speaking.)

22 MR. KRAMER: This is AJ --

1 MS. O'CONNOR: I think we can make the
2 point we have heard all three things. That would
3 certainly be fine.

4 MR. KRAMER: This is AJ Kramer. I
5 wonder if we could just substitute the word some
6 for overall, and have it read, although we have
7 not yet had the opportunity, we seek to study the
8 information received in-depth, some military
9 justice stakeholders.

10 MR. SCHWENK: That would be fine.

11 (Simultaneous speaking.)

12 MR. KRAMER: We certainly heard it at,
13 I certainly heard it at a number of places.

14 MR. CASSARA: As have I. And that was
15 actually my same suggestion. I don't think it's
16 too early.

17 I don't want to wait until the problem
18 gets worse to flag it, at least. And I, you
19 know, but I think it's fine to say, either
20 overall, some military justice stakeholders are
21 reporting.

22 Or something along those lines, you

1 know. And I think that's an appropriate caveat.

2 MR. KRAMER: Sorry, Bill. I was just
3 talking maybe just substitute the word, take out
4 the word overall and put --

5 MR. CASSARA: Yeah. That's fine.

6 MR. KRAMER: Substitute it.

7 MR. CASSARA: Yeah. I think we're
8 saying the same thing. That's -- I'm fine with
9 that.

10 CHAIR SMITH: I agree with that. I
11 think we have heard, obviously, I have not gone
12 to all the site visits.

13 But there -- at least one of them,
14 there were complaints, a lot of complaints about
15 being understaffed in a variety of different
16 ways.

17 So, but I understand what General
18 Schwenk is saying. I think using the word some,
19 would rectify that kind of concern regarding it
20 being a blanket statement.

21 I think Ms. Garvin had something to
22 add.

1 MS. GARVIN: Yes. Thank you, Chair.
2 I concur with either changing it to some or
3 listing the three things we've heard.

4 I did have a question. And it's both
5 a substantive question and then an intent
6 question, I guess.

7 And that is, this paragraph, even if
8 we change it to some, is saying that everyone in
9 the mix is understaffed. And that it makes
10 sense.

11 I certainly know I've heard that, or
12 it could be that we heard it from some. But I
13 also believe that we've heard that there's
14 comparative under-staffing, which I think is a
15 different statement. Meaning that OSTC and
16 Defense maybe differently staffed and resourced.

17 And it seems like we're not saying
18 that and maybe that's because that's premature.
19 So that's my substantive question.

20 And my intent question is, or maybe
21 it's more like impact question, is I feel like
22 the statement that people are under-resourced is

1 consistently and persistently said.

2 And is not very impactful, because
3 offices in the military generally are, as well
4 as, you know, in the civilian side.

5 So I guess I'm just trying to figure
6 out how impactful it will be for the DAC-IPAD too
7 just simply make a generalized statement that all
8 justice offices, or seemingly, or at least,
9 report by some to be under-staffed?

10 CHAIR SMITH: And I think, correct me
11 if I'm wrong, Ms. Tokash, I think the idea is to
12 bring it to their attention immediately or as
13 soon as possible.

14 Whether it has an impact in this
15 moment, who knows. I mean, I think you could
16 say, military government otherwise we're always
17 under-staffed.

18 But down the road, when we have all
19 the information, we'll be able to, hopefully,
20 collect it and give as much as possible, more
21 significant. Give more significant statements
22 about what that looks like, what that means.

1 MS. TOKASH: Yes. I think that's
2 right, Chair Smith. You know, again, I know when
3 the General Counsel spoke to us it was a closed
4 session, and also, you know, we were all able to
5 hear, you know, the people, that she meets with.

6 And so it's, you know, perhaps the
7 most important piece of information to convey to
8 her, is that we are hearing things in the field
9 that the people that she meets with might not be
10 hearing.

11 And, you know, she could at least have
12 this as a touch point for her conversation with
13 them to say, are your people overworked, or is
14 the caseload, you know, too burdensome?

15 Which ties, I know Ms. Peters will get
16 -- Ms. Peters will get there, but to the very end
17 about the quantitative assessment. Which sounds
18 like a big deal.

19 But it's really just asking, how many
20 people are in each of these offices, Special
21 Victim Counsel? You know, how many military
22 criminal investigators are there?

1 How many OSTC personnel are there?
2 And are there enough in comparison to the case
3 workload?

4 MS. GARVIN: Thank you. I appreciate
5 the thoughtfulness of getting it to someone
6 sooner rather than later.

7 I just wanted to raise it for
8 consideration. But it makes sense to go forward
9 with it.

10 And it also makes sense that we are
11 not making it comparative, because we don't have
12 sufficient data on that yet or across offices.
13 Okay.

14 MR. SCHWENK: Maybe we should think --
15 this is Jim Schwenk again. Maybe we should think
16 about moving the some from, what AJ suggested,
17 where it's overall, and put it in front of the
18 list of offices.

19 So our reporting that some OSTC, TDS,
20 Victim's Counsel, and MCIOs have not been
21 resourced or staffed appropriately to function
22 at optimal levels.

1 Because that's, I mean, it was some
2 military justice stakeholders. AJ's completely
3 correct about that.

4 But this most recent point, that it's
5 not every OSTC or TDS office, it's some of them.
6 Which goes directly to Meghan's thought that
7 maybe this would, and if they're not already
8 doing it, would drive a study of caseload that
9 they're trying to get to and what the actual
10 caseload is for the people in these offices.

11 MS. PETERS: All right. General
12 Schwenk, we see your proposed edit and a friendly
13 amendment to this.

14 And this paragraph connects those,
15 that feedback with its importance in terms of the
16 timing for the issuance of the letter. That we
17 are flagging this in light of the creation and
18 the moment we are in, with the creation of the
19 OSTCs.

20 And that it is a pivotal moment to
21 restore trust and pursue that aim for the
22 military justice system. So that's the close of

1 paragraph two.

2 Is there any more discussion on
3 paragraph two? I think we are tracking the
4 suggestions and we will read that back.

5 We'll read back through these, I
6 think, once we conclude the paragraph by
7 paragraph, to get everyone familiar and
8 comfortable with the letter.

9 Is there anything else on that
10 paragraph? The basis for the concerns?

11 All right. And before we move to
12 paragraph three, we really appreciate the
13 thoughtful discussion around site visits and the
14 ability to preserve the anonymity of the
15 participants in keeping this a high level
16 discussion of issues, has been effective. And we
17 thank you for that effort in this discussion.

18 So paragraph three identifies the
19 preliminary feedback from the site visits that is
20 the basis of the concern and then connects it to
21 the potential systemic effects that may result if
22 these concerns indeed exist and persist

1 systemically.

2 And those concerns, I just want to
3 highlight, because of their importance, and I
4 think they are the impetus for this document, is
5 it bears upon potentially the ability to recruit
6 and retain experienced military justice
7 personnel, the independence of the OSTC, the
8 equity of experience across both the prosecution
9 and defense bars, and the staffing of military
10 litigation offices writ large.

11 So that's really a summation of
12 paragraph three. I wanted to introduce it and
13 invite any comments or questions.

14 MR. CASSARA: Okay. I'm going to
15 admit my ignorance. What do the last two words
16 mean?

17 MS. PETERS: I think it's across the
18 board.

19 MR. CASSARA: Oh. Okay.

20 MS. PETERS: It can be an indication
21 of --

22 (Simultaneous speaking.)

1 MR. CASSARA: I've never heard that
2 question and those terms. But, you know, Meghan,
3 both Meghans are much smarter than I am.

4 So if they put it there, then I know
5 that there's a reason for it. So, okay.

6 MS. PETERS: And I stand by to be
7 corrected. That was my application. But thank
8 you, Mr. Cassara.

9 Any other questions, discussions?

10 All right. Hearing none, I'm going to
11 move onto paragraph four. This is the
12 introduction to how to address the concerns
13 potentially.

14 To determine if these, are in fact,
15 systemic issues. And that proposal centers on
16 DoD conducting a quantitative assessment of how
17 the Offices of Special Trial Counsel and TDS
18 offices, in particular, are being staffed.

19 And just to note, the Subcommittee had
20 considered using an audit or an assessment here.
21 But I think assessment gives the audience here
22 enough flexibility to address this issue, while

1 not committing to an audit process that may be
2 onerous or time-intensive.

3 Because, we do want, and as you'll see
4 in the paragraph, we do ask for the feedback on
5 that quantitative assessment to incorporate into
6 our own future reports.

7 So that's the gist of this paragraph.
8 I see Ms. Tokash, go ahead.

9 Do you have your --

10 MS. TOKASH: Meghan just a --

11 MS. PETERS: Yes, I saw your hand
12 raised, maybe.

13 MS. TOKASH: Yes. That's okay. I
14 just wanted to orient the rest of the Committee
15 to the fact that this idea actually generated
16 from Dr. Spohn, which I think was very helpful,
17 especially given her, you know, incredible
18 expertise in this area.

19 And I think that there would be a good
20 link to getting that feedback from the services
21 to be able to incorporate in the report. We can
22 balance what quantitative information data they

1 are giving us, with all of the comprehensive
2 feedback that we will be able to assess and cull
3 through at the completion of the site visits.

4 So I just wanted to note that. Excuse
5 the interruption.

6 MS. GARVIN: This is Meg Garvin. I am
7 curious, you know, the opening paragraph we've
8 now made clear that it's all of the justice
9 branches, second paragraph, all the justice
10 branches.

11 And here, we're only saying that there
12 should be a quantitative analysis of two of the
13 offices but not Victim's Counsel or the
14 investigative.

15 And so ultimately I think we want
16 those. I just don't know if there was an
17 intention that I'm not aware of, of why they
18 wouldn't be included in this preliminary
19 communication?

20 MS. TOKASH: That's a really great
21 catch. And I think that they should be included
22 in that sentence.

1 I will tell you, originally this
2 letter focused on the OSTC. Then it brought in
3 the OSTC and Trial Defense Bar.

4 And then we had another Special
5 Project Subcommittee Member who works in the
6 field beyond the military justice field, beyond,
7 you know, her duties as a DAC-IPAD Member, and
8 wanted to include the concerns about, you know,
9 the criminal investigators and the Special
10 Victim's Counsel, which I think are very good to
11 include as well.

12 So my suggestion, again, great catch
13 Meg, would be to add those two organizations to
14 that sentence.

15 MS. PETERS: All right. We've
16 definitely noted that here. And that this also -
17 - while it extends to those other practitioners,
18 I think it's implied from the content of
19 paragraph three that that extends to the support
20 staff personnel, not just the attorney
21 practitioners.

22 All right. I'm looking to see if

1 there's any other comments or questions on
2 paragraph four, addressing the concerns to see if
3 they are, in fact, systemic issues.

4 MR. KRAMER: Sorry. This is AJ
5 Kramer. I think there were two minor edits to go
6 into this paragraph.

7 MS. PETERS: Yes. We have -- yes, the
8 technical edits, can I just highlight them for
9 the record?

10 MR. KRAMER: I'm sorry. I didn't know
11 if you would just, yeah. That would be great.
12 Thank you.

13 MS. PETERS: Yes. So the technical
14 edits noted by our Subcommittee Members that I
15 think staff have made, and if you're looking at
16 the version on the web, there it is, because
17 we're sort of continually looking to edit and
18 clean this.

19 But that is, paragraph four, at the
20 end of line three, I'm sorry, yeah, at the end of
21 line three, when we refer to the site visit
22 report issued in conjunction with your annual

1 report in March 2025, that's an expected
2 statutory requirement where we describe the
3 activities of the previous year.

4 So the staff and the Members thought
5 that was a good marker to put down. A time --
6 one opportunity to discuss the results of the
7 site visits.

8 But the suggestion from Mr. Kramer was
9 that the site visit report is one that we expect
10 to issue in March 2025, because we still have a
11 lot of deliberations and discussions to do about
12 what to do with the site visit information and
13 what studies may come out.

14 So that was that suggested edit. Did
15 I get that correct, Mr. Kramer?

16 MR. KRAMER: Yes. Sorry, yes.

17 MS. PETERS: The other important edit,
18 I think, at the very bottom, is that the, I think
19 in your version it says this may be particularly
20 helpful given that sexual harassment will become
21 an additional OSTC offense.

22 And the suggestion is to change it to

1 this maybe particularly important given that
2 sexual harassment will become an additional OSTC
3 offense.

4 And I think the other edits, if they
5 are clarifying and provide better phrasing, I
6 think we are tracking those, Mr. Kramer. I don't
7 have all of those in front of me at this moment
8 on the version that the Members have.

9 MR. KRAMER: Thank you for that.
10 Great. Thank you.

11 MS. PETERS: Yes. Absolutely. Are
12 there any -- is there any other discussion on, or
13 questions on paragraph four?

14 All right. Hearing none. And I just
15 -- and before we move on, I do want to note that
16 in paragraphs -- in paragraph four, we are going
17 to ensure that the first sentence recommending a
18 quantitative assessment, will extend to the other
19 military justice branches and stakeholders, like
20 the MCIOs, referenced in the previous paragraphs.

21 Okay. Moving onto paragraph five,
22 that's on page two of your document. And this is

1 where the Committee wants to note that, you know,
2 it has received a lot of positive feedback on the
3 site visits as well.

4 And that those will be the subject,
5 that those issues will be the subject of our
6 future reports, in addition to the issues
7 highlighted in this letter.

8 Obviously, you have a plan for some
9 robust discussions in September and December to
10 really sort through the issues and the support
11 for each one, and the direction to go with each
12 of those.

13 So noting that these, this feedback is
14 not only preliminary, but subject to the DAC-
15 IPAD's future review and reports, it was an
16 important point to emphasize and to close with a
17 positive note on the site visit experience.

18 So that's the gist of paragraph five.
19 Are there any comments or questions?

20 All right. I don't see any other
21 questions or comments. I'm sorry, Mr. Cassara, I
22 almost missed you.

1 Go ahead, sir.

2 MR. CASSARA: No, that's okay. It's
3 a very minor issue. Somewhere in the DAC-IPAD
4 world is a template with my middle initial as S.
5 And it seems to show up on everything. That --
6 it's E, as in Edward.

7 MS. PETERS: Yes. We have caught that
8 in the interim. Thank you.

9 MR. CASSARA: Okay.

10 MS. PETERS: It will not appear again,
11 hopefully. Thank you.

12 And Sergeant Major Martinez has caught
13 us there too. So we will make those edits. And
14 thank you for your help in pointing those out.

15 Okay. At this time, I think we have
16 concluded the discussion and the review of the
17 letter. I think that this is really subject to
18 your motion and discussion.

19 If there's a motion to, on the table
20 to adopt or approve the letter, subject to the, I
21 guess, it would have -- it does need a couple of
22 the edits, and I can go through those now.

1 And I think I'm going to ask Chair
2 Smith, would you like me to kind of read through
3 your feedback on the letter?

4 It's not going to be verbatim. But
5 the -- I think it's pretty simple what needs to
6 be added. Should I do that at this time?

7 And then you all can discuss.

8 CHAIR SMITH: Yes.

9 MS. PETERS: Okay. I'm going to go
10 ahead through. So back to the first paragraph,
11 we reviewed that. And it discussed flagging
12 preliminary concerns.

13 I think we're going to need to add the
14 other stakeholders to this paragraph as well, for
15 consistency.

16 And that, when I say other
17 stakeholders, that is, the other entities
18 mentioned in paragraph two, like the victim's
19 counsel organizations.

20 Yeah, Victims' -- yeah, service
21 victim's counsel organizations and then the
22 military criminal investigation organizations are

1 going to be mentioned throughout the paragraphs
2 where there is a comment or a recommendation.

3 It's going to apply to all of those
4 groups throughout. So that's going to apply to
5 paragraph one.

6 Paragraph two, there is a friendly
7 amendment in line three and four, to delete
8 overall military justice stakeholders. Delete
9 the word overall.

10 And instead on line four, add the word
11 some immediately before OSTC, TDS, Victim's
12 Counsel, and military criminal investigation
13 organizations.

14 Paragraph three, is where we do list
15 all of the stakeholders. And I am not, I don't
16 believe there's any, there were not any
17 additional substantive edits on the record here
18 to paragraph three.

19 Am I missing anything there? I don't
20 think so.

21 Okay. Hearing no comments, I'll move
22 onto paragraph four. Again, in the second line,

1 when we talk about the quantitative assessment,
2 we're going to include the other military justice
3 stakeholders in the recommendation to assess
4 their staffing and support staff personnel.

5 And finally, paragraph five -- and
6 paragraph four and five, again, I think we had
7 received some technical edits from some Members.

8 And we have those and we will make
9 those technical corrections that are not
10 substantive. And, but then nonetheless are good
11 improvements.

12 The staff has noted those and we'll
13 make those and send those out to you all with
14 those reflected. And then paragraph five, no
15 changes.

16 Subject to any other questions or
17 comments, Chair Smith, I think at this time there
18 may be again, a motion or a discussion on the
19 motion regarding the adoption and sending of this
20 letter, subject to the provisions I just sort of
21 read through on the record.

22 Is there anything else to discuss or,

1 again, are you ready to take a vote or to discuss
2 the vote itself?

3 CHAIR SMITH: We might be ready to
4 take a vote, I think, based on those corrections
5 that Ms. Peters just went through. You'll send a
6 draft beforehand?

7 Or, are we going to vote everyone
8 accept those changes and we vote for the draft?

9 MS. PETERS: I think the vote is to
10 accept the changes that I read through. And then
11 what to do with the letter, the draft.

12 CHAIR SMITH: Okay.

13 MS. PETERS: But that's two separate
14 votes.

15 CHAIR SMITH: All right. Sounds good.
16 All right. So let's, first, does anyone oppose
17 accepting the changes that Ms. Peters just
18 detailed?

19 Hearing no opposition, we'll accept
20 those changes.

21 So let's vote on the letter itself.
22 Anyone opposed to sending this letter with those

1 changes to the General Counsel?

2 Hearing no objection, once the changes
3 are made, the letter will be sent around, right,
4 Ms. Peters?

5 MS. PETERS: Yes. Absolutely. I'll
6 send it out for your final review and before
7 publishing.

8 CHAIR SMITH: Okay. Perfect.

9 MS. PETERS: All right. Thank you,
10 Chair Smith. If there's any other business from
11 the Members or staff, I don't have anything
12 further.

13 Again, thank you all for the good
14 discussion and for everyone coming ready to go
15 today and address these very important issues and
16 all the work product.

17 CHAIR SMITH: Thank you.

18 MR. CASSARA: I just want add very
19 quickly. That is a fantastic letter you and
20 Meghan did. A yeoperson's work. I don't know if
21 that's a word.

22 But you all did wonderful work, and I

1 greatly appreciate it. It made it much easier
2 for us.

3 CHAIR SMITH: I think it's in the
4 dictionary next to writ large.

5 MR. CASSARA: Yes. There you go.
6 There you go. Touche. Thank you, ma'am.

7 MS. PETERS: All right. Thank you,
8 sir.

9 CHAIR SMITH: Are we ready to close
10 the meeting?

11 MS. PETERS: I think so. Mr. Sprance,
12 are -- I think we're done here as far as our
13 Committee business and the issues from the staff.

14 MR. SPRANCE: Okay. Thank you,
15 Meghan. And thank you, Judge. The meeting is
16 now closed.

17 CHAIR SMITH: Thank you.

18 (Whereupon, the above-entitled matter
19 went off the record at 4:01 p.m.)
20
21
22

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