

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
 JUNE 22, 2022

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The Advisory Committee met in Salon III at The Ritz-Carlton, Pentagon City, located at 1250 S Hayes St, Arlington, Virginia, at 9:00 a.m. EDT, the Honorable Karla Smith, Chair, presiding.

PRESENT

Hon. Karla Smith, Chair
 Ms. Marcia Anderson*
 Ms. Martha Bashford*
 Mr. William E. Cassara*
 Ms. Meg Garvin*
 Hon. Suzanne Goldberg*
 Hon. Paul W. Grimm*
 Mr. A.J. Kramer*
 Ms. Jennifer Gentile Long*
 Sgt(R) James Markey*
 Dr. Jenifer Markowitz**
 Hon. Jennifer O'Connor
 BGen(R) James Schwenk
 Ms. Meghan Tokash
 Hon. Reggie Walton

ALSO PRESENT

Mr. Dwight Sullivan, Designated Federal Officer

DAC-IPAD Staff

Colonel Jeff A. Bovarnick, JAGC, U.S. Army,
Executive Director

Ms. Julie K. Carson, Deputy Director

Mr. Dale L. Trexler, Chief of Staff

Ms. Alice Falk, Technical Writer-Editor

Ms. Audrey B. Critchley, Attorney-Advisor

Ms. Theresa Gallagher, Attorney-Advisor

Ms. Nalini Gupta, Attorney-Advisor

Ms. Amanda Hagy, Senior Paralegal

Mr. Chuck Mason, Attorney-Advisor*

Ms. Marguerite McKinney, Management and Program
Analyst

Ms. Laurel Prucha Moran, Graphic Designer

Ms. Meghan Peters, Attorney-Advisor

Ms. Stacy Powell, Senior Paralegal

Ms. Stayce Rozell, Senior Paralegal

Ms. Terri Saunders, Attorney-Advisor

Ms. Kate Tagert, Attorney-Advisor

Ms. Eleanor Magers Vuono, Attorney-Advisor*

Dr. William Wells, Criminologist

Mr. Pete Yob, Attorney-Advisor

*Present via video teleconference

**Present during the afternoon session of
June 22, 2022

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Meeting Adjourned. 223

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

2 9:01 a.m.

3 MR. SULLIVAN: Good morning, I'm
4 Dwight Sullivan, the designated federal officer
5 of the Defense Advisory Committee on the
6 Investigation, Prosecution, and Defense of Sexual
7 Assault in the Armed Forces, colloquially known
8 as the DAC-IPAD.

9 This meeting is officially open.
10 Judge Smith, you have the com.

11 CHAIR SMITH: Are we sure? Thank you,
12 Mr. Sullivan and good morning, everyone.

13 I want to welcome the Members and all
14 attendees to the second day of the 23rd public
15 meeting of the Defense Advisory Committee on
16 investigation, prosecution, and defense of sexual
17 assault in the Armed Forces, or DAC-IPAD.

18 Today's meeting is being offered for
19 our Members and presenters both in person and by
20 video conference via Zoom. For those members
21 joining us by video, please mute when not
22 speaking.

1 If we have technical difficulties, we
2 will break for 15 minutes and move to a
3 teleconference line with instructions to rejoin
4 sent via email. The Secretary of Defense created
5 the DAC-IPAD in accordance with the National
6 Defense Authorization Act for Fiscal Year 2015.

7 The DAC-IPAD statutory purpose is to
8 advise the Secretary of Defense on the
9 investigation, prosecution, and defense of
10 allegations of sexual assault and other sexual
11 misconduct involving members of the Armed Forces.

12 I understand that representatives from
13 each of the military services criminal law
14 divisions who serve as the DAC-IPAD's service
15 specific experts and liaisons to the respective
16 legal organizations have joined us again today.

17 Welcome back. We will begin today
18 with a presentation from Colonel Elizabeth
19 Hernandez, United States Air Force, on the rule
20 for court-martial amendment process.

21 Next we are honored to welcome the
22 General Counsels for the Army, Navy, and Air

1 Force, along with the Judge Advocate General for
2 the Army, the Deputy Judge Advocate General for
3 the Navy, the Staff Judge Advocate to the
4 Commandant of the Marine Corps and the Judge
5 Advocate General and Deputy Judge Advocate
6 General for the Air Force.

7 After lunch, we will have a strategic
8 planning session and discussion and then end the
9 day with a brief recap of the last two days, a
10 preview of our September meeting and public
11 comment if any.

12 This meeting is being recorded and
13 transcribed and the complete written transcript
14 will be posted on the DAC-IPAD website at
15 www.dacipad.whs.mil.

16 If an attendee wants to make a public
17 comment, please submit your name to
18 WHS.pentagon.em.mbx.dacipad@mail.mil no later
19 than 2:00 p.m. Eastern.

20 Comments will be heard at my
21 discretion at the end of today's session.

22 To assist the court reporter in

1 identifying speakers, Committee Members should
2 signal if they have a question or wish to speak
3 by stating your name and wait to be acknowledged
4 before proceeding.

5 Thank you to everyone for attending
6 today. Colonel Bovarnick, over to you to start
7 the meeting, thank you.

8 COL BOVARNICK: Yes, ma'am, and I'll
9 hand it off to Colonel Hernandez. She is the
10 Chair of the Judge Service Committee on Military
11 Justice to start our presentation. Thank you.

12 COL HERNANDEZ: Thank you. Good
13 morning, Madam Chair, ladies and gentlemen, my
14 name is Colonel Beth Hernandez and I am the Chief
15 of Air Force Military Justice Law and Policy.

16 I also serve as the Chair of the Joint
17 Service Committee on Military Justice and it is
18 in that capacity that I have the pleasure to
19 speak with you today.

20 Thank you so much for inviting me, I
21 am truly honored to be here. I did want to take
22 a moment and grab a pro tip from Ms. Tokash and

1 let you know that I have slides today but I only
2 have 11, and one is a cover and one is a question
3 page. So, there's really only 9.

4 On behalf of the Joint Service
5 Committee on Military Justice, I would like to
6 discuss a few topics with you today.

7 I'll start with an overview of the
8 Joint Service Committee and then I'll discuss our
9 composition, our duties, our processes, and our
10 current activities.

11 The Joint Service Committee on
12 military justice, or the JSC, as we call it for
13 short is governed by Department of Defense
14 instruction 5500.17. We are an inter-service
15 Committee formed by the Department of Defense
16 General Counsel.

17 In that regard, we also report to the
18 Department of Defense General Counsel. Our main
19 objective as the JSC is to conduct an annual
20 review of the Manual for Courts-Martial.

21 As we do that, we prepare proposed
22 amendments to the manual and as appropriate, we

1 also prepare proposed amendments to the Uniform
2 Code of Military Justice for Congress to
3 consider.

4 The JSC also carries out other tasks
5 related to military justice as assigned by the
6 Department of Defense General Counsel to include
7 tasks or studies related to the administration of
8 military justice.

9 The Joint Service Committee is
10 composed of some incredible groups of folks. The
11 first group is the voting group. The voting
12 group consists of one person for each service
13 designated by his or her Judge Advocate General
14 or equivalent.

15 These folks are going to be your
16 military justice means. The Chair is a rotating
17 position and rotates every two years. Currently,
18 the Air Force serves as the Chair of the Joint
19 Service Committee.

20 As the name suggests, the voting group
21 is the group of individuals who will ultimately
22 vote on the proposals that come before the JSC.

1 There is also an Executive Secretary who is
2 furnished by the service who holds the Chair.

3 Accordingly, the Executive Secretary
4 is currently an Air Force Member and the
5 Executive Secretary is responsible for doing such
6 things as preparing and distributing the agenda,
7 receiving and tracking all proposals and
8 comments, and arranging for publication of the
9 proposed changes to the Manual for Courts-Martial
10 and request for public comment in the Federal
11 Register.

12 We also have a working group which
13 consists of one representative from each service.
14 The working group members are typically at your
15 03 to 05 level and they are responsible for
16 researching the various issues that come up.

17 They do an incredible job of digging
18 into the law and background for anything that we
19 may need and making sure the voting group has all
20 the information necessary to make informed
21 decisions.

22 The JSC also has certain delegated

1 non-voting advisors. This includes a designee
2 from the Court of Appeals for the Armed Forces, a
3 designee from the Chairman's Legal Office, and a
4 designee from the General Counsel's Office.

5 Together, these Committee Members all
6 work together to ensure we have a robust and
7 successful Joint Service Committee. This slide
8 is a visual representation of the voting group
9 members of the Joint Service Committee.

10 We're currently in a summer transition
11 period so some of the members are interim members
12 during this transition. For the Army, we have
13 Lieutenant Colonel Porter.

14 Some of you may remember her
15 predecessor, Colonel Adam Kazin, who was on the
16 Joint Service Committee for several years. He is
17 PCS'ing this summer so Colonel Porter is sitting
18 in until his replacement is identified.

19 Next is me from the Air Force. I also
20 serve as the Chair of the Joint Service
21 Committee. Next is Mr. Jameson who is filling in
22 for Captain Tasikas from the Coast Guard who

1 recently retired.

2 And so once his replacement is
3 identified, they will take over as the Coast
4 Guard voting group member. Next is Colonel
5 Woodard from the Marine Corps and then finally,
6 we have Captain Erin Rugh from the Navy.

7 And this rounds out your voting group
8 members of the Joint Service Committee. This
9 slide shows the working group members for each
10 service. It also shows the Executive Secretary,
11 Lieutenant Colonel Josh Nettinga, from the Air
12 Force.

13 This slide shows our non-voting
14 Advisors. You can see here that Mr. Sullivan is
15 the designee from the General Counsel's office,
16 Lieutenant Colonel Thomas is the representative
17 from the Chairman's Legal Office from the Joint
18 Chiefs of Staff.

19 And Mr. Price is the representative
20 from the Court of Appeals for the Armed Forces.
21 Together, the Joint Service Committee ensures the
22 Uniform Code of Military Justice and the Manual

1 for Courts-Martial reflect a comprehensive body
2 of military criminal law and procedure.

3 To accomplish this goal, we must
4 review the Manual for Courts-Martial annually and
5 as appropriate, we propose legislation, amending
6 the Uniform Code of Military Justice or other
7 amendments or supplementary materials to the
8 Manual for Courts-Martial.

9 Additionally, we carry out other
10 duties as assigned by the General Counsel's
11 Office. As I mentioned on the previous slide,
12 the Joint Service Committee considers proposed
13 changes to the Manual for Courts-Martial and its
14 supplementary materials.

15 This process begins when somebody,
16 whether inside or outside the Joint Service
17 Committee, recognizes something that needs to be
18 changed. We then ask the working group to
19 research the issue and draft any proposed
20 changes.

21 The working group then brings those
22 recommendations to the voting group where we

1 discuss the issue, make any necessary changes and
2 ultimately vote on the proposal.

3 These proposed changes are then routed
4 to the General Counsel and they're published in
5 the Federal Register. The proposed changes are
6 then open for public comment for a minimum of 60
7 days during which a public hearing is held.

8 By way of example, we went through
9 this process recently with proposed changes to
10 the Manual for Courts-Martial, which included a
11 change to the standard of proof for non-judicial
12 punishment under a change to Rules for Court-
13 Martial 703D.

14 As is our standard process, the
15 working group worked through these issues
16 initially and then it come to the voting group
17 where we discuss the proposals.

18 And once the voting group approved,
19 these proposals were published in the Federal
20 Register for a 60-day comment period, which began
21 October 18, 2021.

22 The Federal Register notice also

1 announced the time and location for the public
2 hearing, which was held November 10, 2021 at the
3 Court of Appeals for the Armed Forces. We took
4 public comments and all of the proposed changes
5 at the public hearing, as is our standard
6 practice.

7 Turning to the current activities of
8 the Joint Service Committee, we are currently
9 reviewing the entire Manual for Courts-Martial to
10 include the Rules for Courts-Martial and the
11 Military Rules of Evidence.

12 We are paying particular attention to
13 the rules because we want to make sure that our
14 updates are consistent with the military justice
15 reforms found in the Fiscal Year 2022 National
16 Defense Authorization Act.

17 As you're aware, there were several
18 changes made in the NDAA and we need to make sure
19 that the rules are written such that they will
20 affect the intent of Congress and not be in
21 conflict with any of those reforms.

22 We are currently working through all

1 of the changes and once we have finished the
2 proposed amendments, we'll be published in the
3 Federal Register and we will hold a public
4 hearing.

5 This will be an excellent opportunity
6 for members of the public to let us know their
7 thoughts and recommendations and propose any
8 changes they believe will help achieve the
9 military justice reforms required by the National
10 Defense Authorization Act.

11 Once we have all those public
12 comments, the Joint Service Committee will
13 adjudicate the comments and then we will transmit
14 those finalized amendments to the Office of
15 Management and Budget for interagency review.

16 At the end of the interagency review,
17 it goes back to OMB and then to the President's
18 office, where the Chief of Staff reviews it and
19 the Staff Secretary prepares it for a final
20 presidential decision.

21 From there, the JSC process begins
22 anew. Ladies and gentlemen, I welcome any

1 questions you may have.

2 CHAIR SMITH: Any questions from
3 anyone online? No.

4 MEMBER SCHWENK: One of the
5 recommendations from the Independent Review
6 Commission was not directed at Department of
7 Defense but was directed at the White House. And
8 it was expedited processing of changes in
9 military justice.

10 So, my question is has the JSC had any
11 communication with how things might happen over
12 at OMB once you -- I guess you have a proposal
13 pending right now, or did that get signed? The
14 ones that you had the public hearing with, in
15 November.

16 COL HERNANDEZ: We did have the public
17 hearing in November and so from there it goes to
18 OMB for the interagency review and finalization.

19 MEMBER SCHWENK: And it's been signed?

20 COL HERNANDEZ: We have some pending,
21 we did have one recently signed in January, which
22 was the one that created sexual harassment as an

1 enumerated offense under Article 134 of the
2 Uniform Code of Military Justice.

3 So, I don't know if that was a result
4 of the direction to the White House to expedite
5 processing of these executive orders but we did
6 see that one come out in January.

7 MEMBER SCHWENK: But the one that you
8 sent over after the November public hearing has
9 not been signed yet?

10 COL HERNANDEZ: No, sir.

11 MEMBER SCHWENK: The recommendations
12 have done very well. How many full-time people
13 support the JSC?

14 COL HERNANDEZ: We are all in support
15 of --

16 (Audio interference.)

17 All of the voting group members for
18 the most part are service chiefs of military
19 justice, law, and policy, or equivalent of that
20 department. And so then we are appointed to the
21 Joint Service Committee to also work JSC duties.

22 Our working group members come from

1 similar organizations, the Air Force's working
2 group also comes from the Military Justice Law
3 and Policy Division. And so they are also in
4 support in a part-time capacity.

5 MEMBER SCHWENK: Is the Executive
6 Secretary full time or is that part-time also?

7 COL HERNANDEZ: It is more towards
8 full time, sir, I would say probably 90 percent
9 of the Executive Secretary 's duties have been
10 strictly with the Joint Service Committee and
11 maybe 10 percent in the Military Justice Law and
12 Policy Division.

13 MEMBER SCHWENK: Do you have a list of
14 pending issues you'd like to get to someday if
15 you ever had the time on the JSC?

16 COL HERNANDEZ: I think currently
17 we're just working through the Manual for Courts-
18 Martial to effect the NDAA changes and so that's
19 on the horizon now as our biggest task in front
20 of us.

21 Certainly, I'm sure the General
22 Counsel's office probably has more things they

1 would like for us to do once we have finished
2 with this. But I'm not aware of what those are.

3 MEMBER SCHWENK: There used to be a
4 list I think that they had over there that I
5 remember, where it's like 22 things that someday
6 we'd like to get to.

7 And the purpose of all my questions is
8 here we have military justice system, unique in
9 many respects from many other criminal justice
10 systems, serving 1.3, 1.4, whatever the number is
11 going to be, active duty members around the
12 world.

13 And it's a brain trust that puts
14 together proposed changes to the UCMJ or the
15 manual or whatever, it's composed of part-time
16 people. So, I've only been saying this for 30
17 years and nothing has worked so far.

18 So, I have the microphone so I'll say
19 it again. It seems to me it might be a good
20 investment to consider a few full-time people to
21 process things. That's enough on that.

22 So, do you have a timeline? One of

1 the things that we've been tasked on this DAC-
2 IPAD is to monitor how things are done with the
3 new special trial counsel program. So, we're
4 thinking there may be some manual changes or
5 something that address that.

6 And we would like to be aware of when
7 we could expect to see the -- knowing that you're
8 not going to tell us what's in it, but knowing
9 when we could see the result that's going to go
10 out for public comment and what the public
11 comment period would be so we can arrange our
12 schedules to ensure that we schedule a meeting to
13 read it and discuss it among ourselves and see
14 whether we have something we'd like to offer as a
15 comment.

16 MR. SULLIVAN: I'm sorry, that
17 question implicates pre-decisional materials.
18 So, for example, there are a number of steps that
19 have to precede the proposed changes going out
20 for public notice and comment.

21 So, the JSC will provide a
22 recommendation and that recommendation will then

1 go to OGC. The General Counsel has the approval
2 authority to forward those for publication in the
3 Federal Register.

4 Of course, we have a former DoD
5 General Counsel with us today who has performed
6 that very duty.

7 So, it's not within the JSC's purview
8 to determine when it will go out for public
9 notice and comment because there are those
10 intervening steps and the gate with which it goes
11 through those processes right now is pre-
12 decisional.

13 As Colonel Hernandez mentioned, once
14 it goes out for public notice and comment or it's
15 been published in the Federal Register, there
16 will be a 60-day public notice and comment
17 period, is the standard.

18 It's always possible that a given
19 proposed change will be different but the
20 standard is 60 days and there will be a public
21 meeting that will occur within that 60-day
22 period.

1 But in terms of when that 60-day
2 period will open, right now that's pre-
3 decisional.

4 MEMBER SCHWENK: Okay, thank you.
5 That's all I have for the moment, thank you.

6 COL HERNANDEZ: Thank you.

7 MEMBER BASHFORD: It's Martha
8 Bashford. Colonel Hernandez, I have a question
9 for you and Dwight, feel free to jump in if it's
10 improper. If you could change one thing in the
11 manual, what would you change?

12 MEMBER SULLIVAN: As long as that's
13 Colonel Hernandez's personal opinion, go for it.

14 COL HERNANDEZ: This is my personal
15 opinion and it is not representative of the Air
16 Force or the Joint Service Committee but I would
17 like to change the gendered language in the
18 Manual for Courts-Martial to remove it.

19 MEMBER SCHWENK: Didn't Congress just
20 kill gentleman?

21 COL HERNANDEZ: Yes, sir, they did in
22 the text of the statute so the --

1 MEMBER SCHWENK: Manual still has it.
2 Add it to the next change.

3 COL HERNANDEZ: Yes, sir, I'll add it
4 to the list.

5 MEMBER TOKASH: This is Megan Tokash.
6 Good morning, thank you so much, Colonel
7 Hernandez for coming. I thought your
8 presentation was excellent, for the public as
9 well to get an understanding of what the JSC
10 does.

11 So, thank you.

12 My question is how can we as a Federal
13 Advisory Committee help you, that is the JSC,
14 understanding that the JSC is very insular, the
15 DoD is very insular, but present company
16 excluded, there's a great brain trust here and I
17 think perhaps the JSC could receive some valuable
18 input from some of the members here.

19 So, what does that look like so that
20 we can best help the changes, especially with
21 respect to the OSTC?

22 COL HERNANDEZ: Of course, we would

1 definitely welcome any feedback that you would
2 like give us. There's a couple different ways
3 that we could do that.

4 Certainly on when something is
5 published in the Federal Register for public
6 comment, those public comments can come in in
7 writing. Or if you wanted to attend the public
8 hearing as well, that's a great place where
9 everybody can hear the comments.

10 And then we take all of those back and
11 we adjudicate them. That's a great way for us to
12 learn where you guys are coming from and what
13 changes you think we missed the mark on or if you
14 proposed something else.

15 There's also on our website, our
16 public website, the opportunity to send an email
17 to the Executive Secretary.

18 There's a template form on there and
19 this is where we get feedback just from anybody
20 who wants to give it if they wanted propose a
21 change they could use the template that's on the
22 website and submit that to the Executive

1 Secretary.

2 Those are a couple of ways.

3 MEMBER TOKASH: I'm going to confess
4 I don't read the Federal Register, maybe I
5 should. Is there a way that there's some other
6 form of notice? Is it posted on the website?

7 COL HERNANDEZ: It would be on the
8 public website as well. I similarly had to go
9 print the Federal Register because I wanted to
10 see what it looked like because it's been since
11 law school. So, I'm right there with you.

12 CHAIR SMITH: Any other questions for
13 Colonel Hernandez? Thank you very much for
14 joining us this morning.

15 COL HERNANDEZ: Thank you, ladies and
16 gentlemen.

17 COL BOVARNICK: Ma'am, I was going to
18 say we'll be on break until 10:00 a.m. and at
19 that time we'll start the 90-minute panel of the
20 Office of Special Trial Counsel.

21 We have the General Counsel for the
22 Military Department who is coming in as well as

1 Judge Advocates General for the Services and the
2 SJA to the Commandant of the Marine Corps.

3 We'll reconvene at 10:00 a.m.

4 (Whereupon, the above-entitled matter
5 went off the record at 9:24 a.m. and resumed at
6 9:58 a.m.)

7 COL BOVARNICK: Okay, welcome back
8 everyone, we're going to start this session.

9 And, I'd like to introduce our guests
10 that are here in present, and then virtually. We
11 have the General Counsel for the Department of
12 the Navy, Honorable John Coffey.

13 We have Vice Admiral Crandall, the
14 TJAG for the Navy.

15 SJA to the Commandant, Major General
16 David Bligh.

17 General Counsel for the Air Force,
18 Honorable Pete Beshar.

19 We have Lieutenant General Plummer,
20 the TJAG for the Air Force.

21 And, the Deputy JAG for the Air Force,
22 Major General Rebecca Vernon.

1 And, online we have the Department of
2 the Army, Honorable Carrie Ricci, they're up in
3 the, should be up in the top left. Actually, I
4 think it switched.

5 And, Lieutenant General Stuart Risch,
6 the Judge Advocate General of the Army.

7 So, they're the fourth over at the
8 top, for those that are looking at our Hollywood
9 Squares up there.

10 Judge Smith, I'll hand it back over to
11 you.

12 CHAIR SMITH: Thank you.

13 Welcome, and thank you for appearing
14 before the committee this morning. We appreciate
15 your time and willingness, to discuss your
16 Offices of Special Trial Counsel with us.

17 We understand that you are in the
18 early phases of development, and do not have all
19 the answers at this stage.

20 I also hope this will be a continuing
21 dialogue as your respective offices develop, but
22 I know this discussion today will be very helpful

1 for the committee, to get an initial
2 understanding of your plans.

3 If you could please introduce
4 yourselves, and provide any introductory remarks,
5 we will then open it up for questions.

6 We'll start with you, Mr. Coffey.

7 MR. COFFEY: Madam Chair, distinguished
8 members of the committee, committee staff, and
9 fellow panel members, Vice Admiral Crandall,
10 Major General Bligh and I are quite pleased to
11 have the opportunity to be with you today.

12 Together we will share with you the
13 Department of the Navy's progress, on
14 implementing the requirements of the Fiscal Year
15 2022 National Defense Authorization Act, as they
16 relate to the Office of Special Trial Counsel.

17 As a threshold matter, I want to
18 convey the following on behalf of Navy Secretary
19 Carlos Del Toro, and the senior civilian and
20 military leadership of the Navy and Marine Corps.

21 We are firmly committed to eradicating
22 the scourge of sexual misconduct from our ranks.

1 To that end, we view the successful
2 implementation of an independent, specialized and
3 expert Office of Special Trial Counsel, as
4 essential.

5 Admiral Crandall and General Bligh
6 will address how the Navy and Marine Corps have
7 approached this task with urgency, commitment,
8 and eyes open to the importance of the task.

9 Before turning the microphone over to
10 my colleagues, I want to provide some context for
11 the OSTC discussion at the Department of the
12 Navy.

13 Shortly after the Fiscal Year 22 NDAA
14 became law, Secretary Del Toro established within
15 the Navy Department, a panel called the
16 Implementation Advisory Panel, or IAP, to advise
17 him on how best to implement the recommendations
18 of the Independent Review Committee --
19 Commission, excuse me, and the provisions in the
20 22 NDAA relating to sexual assault prevention,
21 response, and accountability.

22 The IAP is comprised of

1 representatives of all the key Navy Department
2 offices required to make fully informed
3 recommendations to SECNAV.

4 Including the Navy's Judge Advocate
5 General, Admiral Crandall, the Staff Judge
6 Advocate to the Commandant General Bligh, myself
7 as the Chief Legal Officer of the Department.

8 Our Acting Assistant Secretary for
9 Manpower and Reserve Affairs, who chairs the IAP,
10 the Director of the Naval Criminal Intelligence
11 Service, our Comptroller, our SAPRO, and other
12 senior leaders of the Navy Department.

13 The IAP meets biweekly. Secretary Del
14 Toro is routinely updated on IAP highlights, at
15 his senior, weekly senior leadership meetings.

16 And, I share my thoughts on our
17 progress and challenges, as Chief Legal Advisor,
18 in my weekly one-on-one meetings with the
19 Secretary.

20 And, in doing so, I draw on my own
21 personal experience as a former federal
22 prosecutor, and criminal defense attorney.

1 Relatedly, Admiral Crandall, General
2 Bligh, NCIS Director Lopez and I, meet in person
3 weekly, and the work of the IAP and the OSTC, is
4 a major focus of those meetings.

5 The issue that brings us here today,
6 the OSTC, is a critical priority for the
7 Department of the Navy.

8 Indeed, while the IAP identified 73
9 discrete recommendations from the IRC and the
10 Fiscal Year 22 NDAA, that required Navy
11 Department action, the IAP devoted many of its
12 early sessions to tackling the OSTC.

13 Much about our deliberations and
14 recommendations to SECNAV remain pre-decisional,
15 but we are pleased to be able to describe our
16 process and progress, regarding establishment of
17 the OSTC for both the Navy and Marine Corps.

18 I am pleased to confirm that we are on
19 track for the Navy and Marine Corps, to achieve
20 full operational capability of their respective
21 OSTCs before the December 27, 2023, deadline set
22 by Secretary of Defense Austin.

1 One additional point to add on my own
2 part. For me, this is not just another
3 assignment from my Secretary; it is also
4 personal.

5 When I served as commanding officer of
6 Reserve P-3 Orion Squadron in the 1990s, I
7 witnessed firsthand, how destructive sexual
8 misconduct that had occurred years earlier, still
9 was to the victims, and to the unit cohesion so
10 critical to readiness, and ultimately mission
11 success.

12 It was a profound disappointment to
13 see upon my return to the Department many years
14 later, that the scourge of sexual misconduct
15 remains a serious issue within the Services.
16 This is not acceptable.

17 As Secretary Del Toro observed when he
18 established the IAP, quote, in addition to
19 damaging victims' lives, these offenses pose a
20 threat to the readiness and cohesion of our Armed
21 Forces, and undermine the trust between
22 commanders, and their subordinates.

1 As Navy GC, I have devoted, and will
2 continue to devote, all of my energy, experience,
3 and determination to do my part to help eradicate
4 these destructive behaviors from our Department.

5 In that endeavor, I am fortunate to
6 serve alongside Admiral Crandall and General
7 Bligh, two committed leaders who share that goal,
8 and who have brought all of their considerable
9 energy, experience, and determination, to this
10 very critical mission.

11 With that, I'll yield to Vice Admiral
12 Crandall.

13 VADM CRANDALL: Thank you, Mr. Coffey.

14 Madam Chair Smith, and distinguished
15 members, thank you for the opportunity to present
16 regarding our significant work towards successful
17 implementation of the Department of the Navy's
18 Offices of Special Trial Counsel.

19 As Mr. Coffey explained, the Navy and
20 Marine Corps have been hard at work, preparing
21 for full functionality of the Offices of Special
22 Trial Counsel by December 2023.

1 This has been a team effort. Navy and
2 Marine Corps colleagues have worked closely
3 together, to develop a successful framework for
4 implementation.

5 Although pursuant to statute, there
6 will be separate Navy and Marine Corps Offices of
7 Special Trial Counsel, Major General Bligh and I
8 will share with you many of the same deliberative
9 planning efforts, guiding principles, and
10 accomplishments.

11 Successful implementation of these
12 significant military justice system reforms, is
13 my number one priority as a judge advocate
14 general. Because it's critical to rebuilding
15 trust in the system.

16 As I share with the members of our
17 Navy JAG Corps community when I speak with them,
18 this is a no-fail mission.

19 The Secretary of the Navy, the Chief
20 of Naval Operations, the Commandant of the Marine
21 Corps, they are looking to all of us to get this
22 done right for the Department.

1 To assist in our implementation
2 efforts, the Department of the Navy developed a
3 4-phase approach to full OSTC operational
4 capability.

5 Phase 1 was the planning phase, begun
6 in September of 2021, and completed in March of
7 2022.

8 Phase 2 is the building phase, which
9 includes a mix of additional planning, and
10 incremental execution, and will conclude after
11 the arrival of all special trial counsel at their
12 duty stations, before September of 2023.

13 Phase 3 is the execution phase, during
14 which the Offices of Special Trial Counsel, will
15 begin field testing processes and procedures, in
16 advance of full capability in December of 2023.

17 Finally, Phase 4 is the assessment
18 phase, an ongoing and continuous effort, to
19 measure and assess the implementation and mission
20 accomplishment of military justice reforms.

21 Phase 1 planning began in September
22 with the establishment of the Department's

1 Strategic and Operational Planning teams.

2 Comprised of subject matter experts
3 from across the Navy and Marine Corps uniform
4 legal communities, with support from Naval War
5 College strategic planners, representatives from
6 the Navy General Counsel's office, and the U.S.
7 Coast Guard.

8 Planning included the development of
9 potential organizational structures, for the
10 OSTC, which were measured against guiding
11 principles derived from the National Defense
12 Authorization Act, and the Secretary of the
13 Navy's guidance of February 7, 2022.

14 These guiding principles included
15 ensuring that the Offices of Special Trial
16 Counsel and their personnel, were, one,
17 independent both in appearance and in fact.

18 Meaning, Special Trial Counsel would
19 execute their responsibilities free from unlawful
20 interference, and the offices would operate under
21 clear commanding control from the Secretary to
22 the Special Trial Counsel lead, and on to

1 subordinate Special Trial Counsel, through an
2 independent rating chain.

3 Two, specialized, that is solely
4 focused on the successful review and prosecution
5 of allegations of covered offenses, as required
6 by the statute.

7 And, three, expert that is possessed
8 of the capacity and expertise necessary to
9 effectively perform the duties assigned to the
10 office by reason of education, training,
11 experience, and temperament for duty.

12 The Navy office structure approved by
13 the Secretary of the Navy, and the Chief of Naval
14 Operations, and briefed to the professional staff
15 members of the House and Senate Armed Services
16 Committees, establishes a lean headquarters in
17 Washington, D.C., that supervises litigators
18 located across the globe.

19 In addition to the special Trial
20 Counsel lead, an O-7 or above flag officer with
21 significant military justice experience, regional
22 offices will be led by senior O-6 litigators at

1 two main locations.

2 One in Norfolk, and the other in San
3 Diego, supervising approximately 10 offices
4 located in fleet concentration areas.

5 The OSTC will be supported by the
6 Navy's military justice litigation career track,
7 which since its inception in 2007, has resulted
8 in our senior prosecutors and defense counsel,
9 having an average of six years more litigation
10 experience, than previously held.

11 To realize this construct, the Navy
12 projects it will require growth of approximately
13 40 military and civilian personnel, as well as
14 the funding necessary for facilities, equipment,
15 training, and other requirements.

16 Now I'd like to yield to Major General
17 Bligh, who will discuss the Marine Corps' OSTC
18 development and structure.

19 MAJ. GEN. BLIGH: Thank you, Mr.
20 Coffey.

21 Vice Admiral Crandall, Madam Chair
22 Smith, and distinguished members of the

1 committee, thank you for the opportunity to
2 testify today regarding our detailed planning
3 efforts to establish the Marine Corps' Office of
4 Special Trial Counsel.

5 Central to our planning efforts, has
6 been focusing on developing a constitutionally
7 sound system, that further professionalizes the
8 investigation and prosecution of covered
9 offenses, but also reinforces our commitment to
10 respecting and protecting the rights of the
11 accused, and victims.

12 The Marine Corps' Office of Special
13 Trial Counsel, like the Navy's, is a regional
14 model led by a lean headquarters element located
15 in the National Capitol Region.

16 In two weeks on July 7, the General
17 Officer Selection Board will meet, to
18 competitively select and recommend the nomination
19 of an O-6 judge advocate with significant
20 military justice experience, and for promotion to
21 brigadier general and leadership of the Marine
22 Corps' Office of Special Trial Counsel.

1 The regional offices will be located
2 at Camp Lejeune, North Carolina; Camp Pendleton,
3 California; Okinawa, Japan; and, at Marine Corps
4 Base Quantico, Virginia, and will be led by
5 senior experienced litigators.

6 Successful implementation of not only
7 the Marine Corps' Office of Special Trial
8 Counsel, but all military justice related reforms
9 enacted by the FY 22 National Defense
10 Authorization Act, and those contained in the
11 Secretary of Defense's approved Independent
12 Review Commission recommendations, will require
13 additional resources both in manpower, and
14 logistical support.

15 The Secretary of the Navy, the Chief
16 of Naval Operations, and the Commandant of the
17 Marine Corps, fully understand this need and
18 support the allocation of additional resources,
19 to ensure successful military justice reform
20 implementation.

21 The Navy and Marine Corps are
22 committed to ensuring that our Office of Special

1 Trial Counsel are independent, both in
2 appearance, and in fact.

3 Special Trial Counsel will not only
4 have statutory duties granted to them in the FY
5 22 NDAA, but also those duties specifically
6 prescribed to them by the Secretary of the Navy.

7 By reporting directly to the
8 Secretary, the lead Special Trial Counsel, and
9 the offices they lead, will execute free from any
10 unlawful or unauthorized influence or coercion,
11 the duties of their office.

12 In addition to our assigned
13 responsibility to certify special trial counsel,
14 and consistent with our system wide neutral and
15 detached statutory responsibilities under Article
16 6 of the Uniform Code of Military Justice, Vice
17 Admiral Crandall and I are, and will remain,
18 fully engaged in the organizing, staffing,
19 training, and resourcing of the Office of Special
20 Trial Counsel.

21 As we make our directed frequent
22 inspections in the field, and supervision of the

1 administration of military justice, we will be
2 keenly attuned to ensure special trial counsel
3 remain independent, and thus, able to conduct
4 their statutory and secretarial assigned duties,
5 free from unlawful or unauthorized influence or
6 coercion.

7 Vice Admiral Crandall will now speak
8 to Phase 2 of the Navy's OSTC development.

9 VADM CRANDALL: Thank you, General
10 Bligh.

11 With the Secretary's approval of the
12 OSTC structure, and the development of a long-
13 term planning framework, the Navy entered Phase
14 2, building towards operational capacity.

15 In March of this year, the Navy's
16 Phase 2 work is ongoing, and has been focused so
17 far on the development of initial operational
18 capabilities.

19 In support of this work, the Navy has
20 identified an interim O-6 special trial counsel
21 lead, who will report later this month, as well
22 as a deputy lead, also an O-6, to supervise the

1 office through its initial stand up.

2 On May 11, 2022, the Navy held a Flag
3 Officer Selection Board, to make a recommendation
4 for the selection of an O-7, a rear admiral lower
5 half, to be the first special trial counsel lead.

6 Additionally, we have been actively
7 engaged in developing and refining an enterprise-
8 wide litigation manning design that incorporates
9 the combined requirements of the OSTC, the
10 general trial counsel departments, the military
11 judges, the defense service offices, and the
12 victims' legal counsel program.

13 This design will support additional
14 efforts to finalize the personnel, facility,
15 equipment, and training support requirements.

16 Finally, in coordination with the
17 other services, we are developing our special
18 trial counsel certification criteria, and counsel
19 training requirements.

20 General Bligh will now speak to Phase
21 2 of the Marine Corps' OSTC development, and our
22 common approach to Phases 3 and 4.

1 MAJ. GEN. BLIGH: The Marine Corps'
2 Phase 2 operational capability building efforts,
3 will continue throughout the year.

4 We have identified a deputy lead and
5 special trial counsel, an O-6 with extensive
6 military justice experience, who will report for
7 duty the first week of July, to supervise the
8 office through its initial stand up.

9 This officer will be assisted by two
10 senior judge advocates, one in the East and one
11 in the West, in identifying and securing
12 facilities and resources, that will be required
13 by the regional offices.

14 Further, in addition to identifying
15 our recommended lead special trial counsel
16 nominee, the Marine Corps will, in accordance
17 with FY 22 NDAA and consistent with the guidance
18 provided by the Secretary of Defense, work to
19 complete integrated training plans, establish
20 standard operating procedures, and execute
21 memorandum agreement with other services Office
22 of Special Trial Counsel.

1 Finally, next summer, certified
2 special trial counsel will begin reporting for
3 duty.

4 Phase 3 execution for both the Marine
5 Corps and Navy OSTCs, will begin with the process
6 of applying and assessing the standard operating
7 procedures, developed by our Offices of Special
8 Trial Counsel in the field environment.

9 Execution will continue through full
10 operational status, when the special trial
11 counsel exercise their authority over covered
12 offenses, on or after 28 December 2023.

13 Finally, Phase 4, the assessment
14 phase, is already in progress. Pursuant to
15 Section 547 of the FY 22 NDAA, the Secretary of
16 Defense, in consultation with the Service
17 Secretaries, The Judge Advocates General, and the
18 Staff Judge Advocate to the Commandant of the
19 Marine Corps, must publish a plan addressing how
20 they will assess the effects of changes, with
21 respect to the Office of Special Trial Counsel,
22 in disposition of covered offenses.

1 Both the Marine Corps and Navy have
2 begun coordination with the DoD Office of General
3 Counsel on this effort, and are actively working
4 to identify methods and measures of performance.

5 MR. COFFEY: Thank you, Admiral
6 Crandall, and General Bligh.

7 Madam Chair, this concludes the
8 opening remarks of the Navy Department, and we're
9 certainly prepared to address any questions the
10 commission may have after our colleagues speak.

11 Thank you.

12 CHAIR SMITH: Thank you.

13 MR. BESHAR: Good morning, Madam Chair,
14 distinguished members of the committee. I'm
15 grateful for the opportunity this morning to
16 appear on behalf of Secretary Frank Kendall, to
17 discuss the creation and operation of the Office
18 of Special Trial Counsel, at the Department of
19 the Air Force, which includes the Space Force.

20 Secretary Kendall has made clear that
21 sexual assault is a crime that harms our people,
22 and undermines our force lethality, readiness,

1 and mission success.

2 Accordingly, he has stated each member
3 of our team shares the enduring responsibility,
4 to eliminate sexual assault and harassment from
5 our ranks.

6 In convening this hearing, Madam
7 Chair, you noted that the statutory design and
8 Congressional intent of the OSTC, is to be
9 civilian-led and military executed.

10 In that regard, I'm pleased to be
11 joined this morning by my colleagues, Lieutenant
12 General Plummer, and Major General Vernon, both
13 recently promoted and appointed into their roles
14 as TJAG and DJAG.

15 It is vital that senior civilian and
16 military leaders across the Department, work
17 collaboratively to achieve the goals of the OSTC.

18 From our perspective, there are three
19 critical objectives for the OSTC. First, to
20 protect the independence of the prosecutorial
21 decision making process, Ms. Tokash, you spoke at
22 some length on this yesterday.

1 This was the intent behind removing
2 these covered offenses from the chain of command,
3 and also having the lead special trial counsel
4 report directly to the Service Secretaries,
5 without intervening authority.

6 Second, to develop a cadre of
7 dedicated, highly skilled prosecutors and support
8 staffs. These crimes, often with complex fact
9 patterns, require specialized expertise and
10 experience.

11 The goal is to leverage that
12 specialized expertise, to achieve consistency in
13 charging decisions, and just outcomes.

14 Third, to engender greater trust
15 amongst all stakeholders, including Congress, all
16 airmen and guardians, and most particularly, the
17 victims of sexual assault.

18 As an example, the Independent Review
19 Commission observed that the processing of sexual
20 assault cases, was overly long.

21 If investigations and dispositions
22 extend over lengthy periods, fewer victims will

1 be likely to come forward at the outset, or to
2 remain with the process through any trial.

3 A prolonged process can also adversely
4 impact the accused.

5 Regardless of the ultimate outcome of
6 any investigation, disposition, or prosecution,
7 the fundamental goal of the OSTC is for everyone
8 involved to feel that due process has been
9 followed.

10 I commend all of you for convening
11 this important hearing. I look forward to your
12 questions, and with that I'll turn it over to my
13 colleagues, General Plummer, and General Vernon.

14 LT. GEN. PLUMMER: Thank you, Honorable
15 Beshar.

16 Distinguished members of this
17 committee, thank you for the opportunity to
18 address our collective efforts to root out sex
19 assault, and other serious offenses in the
20 military.

21 Similar to what the Air Force's
22 groundbreaking stand up of the Special Victims'

1 Counsel Program in 2013, to provide independent
2 counsel and support the victims of sexual
3 assault, we are equally committed to the
4 effective implementation of the Office of Special
5 Trial Counsel, promulgated by last year's NDAA.

6 Successfully enacting the NDAA of
7 2022, and the IRC recommendations related to
8 military justice system, is the Air Force JAG of
9 course, number one priority, period.

10 The transformational changes in the
11 law place prosecution decisions directly with
12 experienced and expert military prosecutors, to
13 further enhance trust, and credibility in the
14 military justice system.

15 These changes will positively impact
16 the proficiency and the integration of our
17 investigators, attorneys, and paralegals, charged
18 with handling these cases to ensure we properly
19 hold offenders accountable for their crimes, and
20 ensure victims of these crimes are treated with
21 dignity, respect, and inclusion.

22 In support of these efforts, and to

1 ensure success when the NDAA legal authorities,
2 take effect on 27 December 23, the Department has
3 developed a multi-phase approach, very similar to
4 our colleagues.

5 To that end, Major General Vernon,
6 currently the Deputy Judge Advocate General, is
7 the architect of our model and our phasing, as
8 the former director of military justice and so
9 she's going to go through those details with us.

10 Thank you.

11 MAJ. GEN. VERNON: Thank you, General
12 Plummer. And, thank you Madam Chair Smith, and
13 distinguished members of this panel.

14 The Department recognizes the historic
15 nature of this change, and the dedication and
16 commitment it will take to effectuate these legal
17 and cultural reforms.

18 To that end, the Department will
19 execute the changes through a 5-phased approach.
20 Phase 1 began on January 1 of this year, during
21 which our team of experts tested various
22 organizational models, and OSTC procedures, using

1 a diverse group of personnel from across the Air
2 Force and Space Force.

3 This group executed eight table top
4 exercises to stress test proposed OSTC
5 procedures, and models.

6 To assist with the resourcing
7 questions, we extrapolated raw data on Department
8 of the Air Force courts-martial, and
9 investigations from 2017 to 2021, to project
10 anticipated growth for cases, and criminal
11 investigations involving covered offenses.

12 Phase 1 also saw the initiation of a
13 robust training and communication plan for our
14 attorneys, paralegals, and commanders in the
15 field, to ensure we create a meaningful culture
16 change, and garner trust in our new system.

17 The Department anticipates the O-7
18 lead special trial counsel will lead a
19 headquarters element of attorneys and paralegals,
20 as well as six field offices with attorneys and
21 paralegals focused on executing OSTC's mission
22 prosecuting covered offenses, and related

1 offenses.

2 Each field office will be run by a
3 Chief STC, who will run the office similar to a
4 civilian district attorney's office, responsible
5 for a number of STCs and paralegals.

6 These staffs will have delineated
7 duties, and be organized into three primary
8 functions. Administrative coordination and
9 processing of cases, investigation and
10 prosecution support teams, and case litigation.

11 Personnel filling the OSTC positions,
12 will have significant military justice
13 experience.

14 In May of this year, the Department
15 held its inaugural STC qualification course, with
16 36 attendees, including agents from our Office of
17 Special Investigations.

18 Instructors included subject matter
19 experts from the Air Force, Navy, Army, OSI, and
20 the Department of Justice.

21 Over the course of the next 18 months,
22 the Department will continue to professionally

1 develop these trial counsel through additional
2 training, and real world prosecution of covered
3 offenses.

4 The OSTC team will also begin
5 evaluating investigations and cases, through the
6 legal lens that will be in place when the OSTC is
7 fully operational.

8 While teamed with local legal offices
9 and law enforcement, the OSTC will exercise, test
10 and refine these new procedures, to ensure a
11 smooth transition from a commander-directed case
12 disposition model, to the independent case
13 disposition model administered by the OSTC.

14 Effective and efficient case analysis
15 and disposition, are critical to ensure trust in
16 the system, while being responsive to the needs
17 of good order and discipline.

18 Phase 2 begins on 1 July during which
19 we will further develop our OSTC initial training
20 and education policies, while continuing to test
21 procedures in the field.

22 Phase 3 is our resourcing phase,

1 during which we will allocate office space and
2 resources, and begin beta testing a new
3 prosecution case collaboration process where STCs
4 partner with our existing circuit trial counsel,
5 to evaluate how covered offense cases will be
6 processed under the, evaluated and processed
7 under the new law and procedures.

8 In Phase 4, the Department will affect
9 changes of assignment to staff, the OSTC as an
10 independent office reporting to the Secretary.

11 And, Phase 4 culminates in full
12 operational capability in December of '23, when
13 legal authorities from the NDAA go into effect.
14 But it does not mark the end of our efforts.

15 We are currently developing a fifth
16 phase, to prepare the Department for the
17 transition period after OSTC is at full
18 operational capability, and when the initial OSTC
19 covered offenses occur after 20 December of '23.

20 The build up to full operational
21 capability includes a significant recent
22 milestone. On June 25 the Department of the Air

1 Force achieved initial operating capability in
2 advance of the DoD July 15 deadline.

3 So, what does this mean? The OSTC is
4 currently staffed by JAG corps members
5 concentrated on developing operating procedures,
6 to ensure the OSTC is correctly positioned to
7 execute its mission, at full operational
8 capability.

9 The OSTC is augmented with highly
10 specialized prosecutors who have been certified
11 to serve as STCs.

12 They will continue to prosecute cases
13 under existing authorities, but they will test
14 operating instructions that will facilitate the
15 effective, and efficient execution of military
16 justice upon FOC.

17 This OSTC team will engage and partner
18 with all stakeholders in the military justice
19 process, to synchronize planning efforts, and
20 assess future resourcing requirements.

21 At full operational capability, the
22 lead special trial counsel will report directly

1 to the Secretary of the Air Force, with no
2 intervening authority.

3 Those assigned to the OSTC will be
4 rated within the OSTC, and not rated or
5 supervised by members of the JAG corps.

6 TJAG will serve a supporting role for
7 the Secretary by ensuring the certifying,
8 training and equipping of members of the JAG
9 corps, who will become the next generation of
10 OSTC personnel.

11 TJAG takes these significant NDAA
12 responsibilities seriously, and will remain
13 responsible for certifying judge advocates as
14 STCs, before they can perform those duties.

15 Lastly, TJAG remains responsible for
16 maintaining licensing standards for all judge
17 advocates, and ensuring they meet professional
18 responsibility standards.

19 We have embraced this holistic effort,
20 to ensure accountability and trust in our justice
21 system, and will continue to enact these reforms
22 with alacrity and skill.

1 There is still work to be done, but
2 we're committed to these efforts beyond the
3 enactment of the OSTC next year.

4 We look forward to your questions on
5 this subject, and thank you for the opportunity
6 to speak with you.

7 CHAIR SMITH: Thank you.

8 All right, I think we're going to
9 switch to folks on the screen, Army.

10 Thank you.

11 MS. RICCI: Yes, Madam Chair, Carrie
12 Ricci here. I want to make sure that you can
13 hear me. Do you have good, com, can you hear me?

14 CHAIR SMITH: We can kind of hear you
15 if you could speak up, or maybe turn the
16 microphone up a little bit, please?

17 MS. RICCI: Yes, ma'am, is this better?

18 CHAIR SMITH: Perfect. Thank you.

19 MS. RICCI: First, I want to thank you
20 for allowing us to appear virtually. We're
21 attending the Army's Senior Leader Readiness
22 Forum, affectionately known as the SLRF, and we

1 are offsite in Tysons Corner, in business casual,
2 for this annual meeting.

3 Before I begin my prepared remarks, I
4 want to first express my sincere commitment to
5 getting this right.

6 As a retired judge advocate, and as a
7 member of the Fort Hood Independent Review
8 Committee, I feel a deep commitment, and I know
9 that the same is true also for the Secretary, and
10 for Lieutenant General Risch.

11 We are one Army team all the way. So,
12 to my remarks.

13 It's an honor to come before this
14 committee, and a privilege to share with you the
15 great progress the Army has made, to ensure the
16 success of this monumental undertaking.

17 It's important first to note that the
18 Secretary has defined six objectives as
19 guideposts for the Army, one of which is to
20 reduce harmful behaviors.

21 And, of course, that includes
22 eliminating sexual assault from our formations.

1 To this end, the Army is in the
2 process of hiring its first ever prevention
3 workforce, with a clear strategy to not just
4 focus on responding to these behaviors, but to
5 prevent them in the first place.

6 During this transformational moment,
7 the Army staff is working tirelessly, led through
8 a collaborative effort between my office and the
9 Office of the Judge Advocate General, to ensure
10 the successful establishment of the Office of
11 Special Trial Counsel.

12 And, with that, the transfer of
13 disposition authorities to judge advocates, for
14 covered offenses.

15 The Army will implement the FY 22 NDAA
16 and DoD requirements through structural change,
17 focused on independence, expertise, and
18 preserving the Army's commitment to good order
19 and discipline.

20 I am happy to report the Army is on
21 track to meet the DoD suspense of establishing
22 the Office of Special Trial Counsel, by 15 July

1 2022.

2 An Army general order, which will
3 establish the Office of Special Trial Counsel, is
4 in its final stage of staffing, prior to the
5 Secretary's signature.

6 During this initial interim period,
7 the Army has identified an experienced O-6 judge
8 advocate to lead the organization, until the lead
9 special trial counsel is confirmed through a
10 selection board process.

11 The General Counsel and TJAG will
12 maintain an important partnership with
13 complementary roles, in ensuring that the OSTC
14 can operate independently, to reach referral
15 decisions free from improper influence, and is
16 staffed with qualified and experienced personnel
17 to prosecute covered offenses.

18 Lieutenant General Risch and his team,
19 have done great work creating the structure of
20 the OSTC.

21 I won't steal his thunder, but instead
22 I'm going to turn it over to Lieutenant General

1 Risch to give you greater details on our plan
2 moving forward.

3 Thank you.

4 LTG RISCH: Good morning, Madam
5 Chairwoman, and committee members, and staff.
6 Thank you for the opportunity as my colleagues
7 have indicated already, to provide additional
8 details on the significant planning, and
9 execution efforts already taken and scheduled for
10 the immediate future, all focused on ensuring a
11 smooth transition to the Office of Special Trial
12 Counsel.

13 Well before passage of the Fiscal Year
14 22 NDAA, Secretary Wormuth who is clearly
15 dedicated to the success of these significant
16 military justice reforms, tasked me with making
17 the anticipated transition successful.

18 In response, I appointed a team of
19 legal personnel to begin to contemplate potential
20 solutions to transition disposition decisions for
21 some to be determined class of cases, to judge
22 advocates.

1 Then in December when we learned the
2 full scope of that change, I directed that a
3 larger operational planning team be assembled to
4 provide courses of action, to successfully
5 execute this transition.

6 The operational planning team
7 consisted of well in excess of 30 extremely
8 experienced military justice practitioners, from
9 across our Army and beyond.

10 It included staff judge advocates from
11 both large and small installations, current and
12 former chiefs of headquarters Department of the
13 Army Criminal Law Division.

14 The chief trial judge, chief trial
15 defense service, the chiefs at both of our
16 government and defense appellate divisions,
17 special victim prosecutors, and special victim
18 counsel.

19 Retired judge advocates now serving as
20 civilian attorneys. A subject matter expert from
21 planning from our Army G3 Shop, and two special
22 advisors hired to assist in this critical task.

1 One of those special advisors subject
2 matter experts, was hired for her expansive
3 criminal law experience, serving as a civilian
4 career prosecutor for over 12 years.

5 She served as the chief for the
6 Special Victim and Family Violence Unit, for
7 Prince George's County, Maryland, where she led
8 efforts to create and implement a county wide
9 strangulation protocol, domestic violence high
10 risk and high lethality protocol, and domestic
11 violence diversion.

12 She also led policy and legislative
13 initiatives statewide, on behalf of the Prince
14 George's County State's Attorney's Office.

15 We brought her into the Army JAG Corp
16 as an advisor to provide a civilian perspective
17 to all of our potential courses of action, to
18 challenge assumptions, and to ensure alternative
19 views and opinions were introduced and developed
20 at length throughout the planning, development
21 and implementation processes.

22 Her perspective has been invaluable

1 and many of her recommendations were adopted, and
2 are part of our new structure.

3 The operational planning team
4 assembled for almost four weeks in January of
5 this year, putting aside all other critical daily
6 work and competing requirements, to focus solely
7 on the task at hand.

8 The OPT developed structural options
9 for the Office of Special Trial Counsel, and
10 assessed at length the appropriate prosecutorial
11 workload at each level, and per individual
12 special trial counsel, to ensure justice and
13 fairness in the process, and individual wellness
14 for all involved in the process across our force.

15 The OPT studied and assessed the
16 volume of investigations, and courts-martial that
17 would end up within the purview of the Office of
18 Special Trial Counsel.

19 Best practices from within both the
20 military and the civilian systems, were used to
21 determine the optimal volume of workload that
22 each special trial counsel could effectively

1 manage.

2 The scope of offenses was obviously
3 key to establishing a baseline, and determining
4 the ultimate member and type of resources
5 eventually approved by the Secretary, to create
6 and support the Office of Special Trial Counsel.

7 The structure finally approved by the
8 Secretary, provides complete independence to the
9 lead special trial counsel, in establishing
10 internal policies, and providing legal oversight
11 of the Office of Special Trial Counsel.

12 The goal is that only the best
13 qualified and most experienced litigators, will
14 be assigned as our special trial counsel.

15 Through a certification process that
16 we are developing, we will ensure special trial
17 counsel are provided the required and
18 appropriate, education and training, and vetted
19 through a statutorily required certification
20 process, prior to assigning to the OSTC.

21 That process has already been in place
22 for years as our special victim prosecutor

1 program, a highly successful system already.

2 To enable the lead special trial
3 counsel to focus entirely on the prosecution of
4 all the leveled covered offenses, the Office of
5 the Judge Advocate General, will provide all
6 required and necessary Title 10 administrative
7 support to the OSTC.

8 This relationship will be entirely
9 administrative, allowing OTJAG to provide
10 funding, manpower, logistics, and personnel
11 assistance.

12 Plus appellate litigation support and
13 professional responsibility reviews, to the OSTC.

14 These efforts will capitalize on
15 efficiencies, avoid unnecessary growth or
16 duplication of personnel, and allow special trial
17 counsel to focus on their most important
18 function, the independent prosecution of covered
19 offenses.

20 There are two pivotal components to
21 the success of the OSTC. First, the Secretary
22 will ensure the right people are assigned to the

1 organization.

2 We welcome the opportunity to assist
3 in this pivotal function, and to ensure the
4 ultimate success of the OSTC.

5 However, justice can't be executed if
6 the deck is, or even appears to be, stacked
7 unevenly.

8 We must ensure that experienced and
9 well-trained litigators are qualified and
10 certified, and then assigned to handle covered
11 offenses for both the OSTC, and the trial defense
12 service, as well as military judges, special
13 victim counsel, and appellate counsel, as well.

14 The Secretary will ensure this through
15 the implementation of a military justice career
16 model, and development of detailed training plans
17 to ensure both special trial counsel, and trial
18 defense counsel, are ready for the significant
19 responsibility they assume when stepping into
20 this role.

21 The second component is the
22 communication and coordination required between

1 special trial counsel, and installation level
2 investigators, special victim counsel, victim
3 advocates, commanders, and government legal
4 representatives.

5 Development, testing, and refinement
6 of SOPs and business rules, for installation
7 coordination, is crucial.

8 It ensures the expeditious movement of
9 cases through the process, while also enhancing
10 transparency for our victims.

11 In that vein, we are working
12 diligently to assign both civilian personnel, as
13 well as other administrative staff, to the
14 headquarters element of the Office of Special
15 Trial Counsel.

16 Designed to ensure that the office is
17 up and running now, such that the lead special
18 trial counsel when selected by a promotion board
19 which meets in July, and confirmed by Congress,
20 will fall in on an office fully staffed and
21 already diligently working on these SOPs and
22 business rules to ensure they are both developed

1 and tested, prior to full implementation of the
2 applicable statute.

3 Training, resourcing, and manning, are
4 all well under way. The Secretary's plan is
5 moving forward, and firmly on track to meet all
6 deadlines.

7 Although change can bring uncertainty,
8 when planned and executed well, it creates a
9 spark that ignites a movement.

10 The Army has adapted, and will
11 continue to adapt rapidly, to maintain the
12 momentum and create a military justice system
13 that can, and will be, trusted by victims,
14 soldiers, and families.

15 Thank you for allowing Ms. Ricci and
16 I to represent Secretary Wormuth, in providing
17 this committee our most up-to-date information on
18 this truly significant effort.

19 And, we look forward to a continuing
20 dialogue with this committee.

21 Thank you.

22 CHAIR SMITH: Thank you.

1 At this point, we're going to open it
2 up for questions.

3 MEMBER BASHFORD: It's Martha Bashford,
4 and do I, jump in here if I'm incorrect.

5 When we looked at adult penetrative
6 sexual assaults in fiscal year 2017, 80 percent
7 of them never had charges preferred, or referred.

8 So, I've got a two-part question. One
9 is what role will your special trial counsel have
10 if any, in the investigation of these cases?

11 And, of the ones that did go to court-
12 martial, I believe around 20 percent of them only
13 resulted in a conviction.

14 So, what are your thoughts on that,
15 and but I'm really concerned about the 80
16 percent. Will you have investigators assigned to
17 your offices?

18 (Audio interference.)

19 MR. COFFEY: I want to react to the,
20 I think you said 20 percent conviction rate, and
21 just share with you my, my observation that one
22 of the benefits of referring the decision whether

1 or not to prosecute such crimes to an independent
2 prosecutor, is you're more likely to get better
3 charging decisions.

4 That it's my observation both as a
5 former commanding officer, and the research I've
6 done to date since becoming Navy GC, is that
7 there is by and large, under reporting of
8 misconduct because I think for many reasons. But
9 primarily lack of trust in the system.

10 But my sense is that there is probably
11 overcharging, that cases are not likely to result
12 in a conviction are charged because there is
13 pressure on commanders to do so.

14 There are obviously commanders that I
15 think there's evidence to show they've swept it
16 under the rug and looked the other way, for a
17 favored member of the command.

18 But having sat in that seat as a
19 commanding officer not once but twice, there is
20 pressure to let a jury figure it out.

21 And, perhaps refer for charges a case
22 that if I put on my former AUSA hat, you would

1 never take to trial.

2 So, I think, and I want to also note
3 that I caution anyone for making the rate of
4 conviction, a standard by which to judge the
5 justice system.

6 I think we will see fewer cases
7 charged, hopefully because the accountability and
8 the prevention, and the education parts of the
9 program, will reduce this misconduct. That is
10 the goal.

11 But that those charges that are
12 brought are more likely to result in a higher
13 conviction rate, which is not the goal, but will
14 be the natural consequence of having this filter
15 where a professional prosecutor says, I believe
16 that this case, that the misconduct occurred, and
17 I believe that I can prove it.

18 With regard to the 80 percent that
19 weren't investigated, I mean that's shocking to
20 me, but I think it goes back to my earlier point
21 about the lack of trust in the system.

22 And, as Honorable Beshar mentioned,

1 part of that is how quickly we get to a result,
2 and that feeds into the resources that are
3 needed, et cetera.

4 But we're going to build this, and
5 we're intent on making it work. And, as to how
6 these are investigated, I'll hand it over to
7 Admiral Crandall and General Bligh, and others.

8 Thank you.

9 VADM CRANDALL: Thank you, Mr. Coffey.

10 Just a couple of points to add to Mr.
11 Coffey. I would agree that we need to be careful
12 about assessing success via conviction rates.

13 What I would highlight there is this
14 idea of assessments is absolutely critical, and
15 that's why it's Phase 4 for us. How do we assess
16 the successful implementation of these
17 significant reforms?

18 And, I don't have all the answers for
19 you yet. I think that's something we need to
20 continue to work on.

21 It also ties into our greater Navy
22 emphasis from the Chief of Naval Operations,

1 which put a call to action to everyone across the
2 Department, to get real, get better.

3 And, to be self-assessing and self-
4 correcting. Always learning as a Department.
5 Not specifically for this, for military justice
6 reforms and sexual assault, but for everything we
7 do as a Department.

8 So, I believe what we're setting up
9 here with the Office of Special Trial Counsel,
10 really nests well under CNO's greater message for
11 our Navy.

12 We really do need to not neglect that
13 assessing piece as we move into that phase,
14 because it's going to be really important.

15 The other piece with regard to how
16 investigators will be wrapped up into these
17 special trial counsel teams, the OSTC, I think
18 that's still something to be completely worked
19 out.

20 But clearly, an important discussion
21 point. I appreciate you raising that.

22 General Bligh?

1 MAJ. GEN. BLIGH: Thank you, sir.

2 I'll call out a pilot program. I'm
3 kind of shooting on the Admiral's target here a
4 little bit.

5 Director Lopez from the Naval Criminal
6 Investigative Service, established basically a
7 sex crimes unit, investigative unit down in
8 Norfolk, where he took special agents and master
9 at arms.

10 The special agents handled the
11 penetrative sex assaults, and then the master at
12 arms the touchings, which were about 70 percent
13 of our cases.

14 And, that's all those guys, that's all
15 those investigators did. And, they work directly
16 with the Regional Legal Service Office.

17 And, what they found was the
18 investigators knew what the prosecutors needed to
19 make decisions, and efficiencies were gained.

20 So, we are going to mirror that effort
21 at Camp Lejeune and Camp Pendleton, and hopefully
22 get it using our criminal investigative division,

1 along with the NCIS agents, and hopefully get
2 that throughout the Marine Corps.

3 So, the intent is a much tighter
4 linkage between the prosecution, the OSTC and
5 then the investigators handling these offenses.

6 CHAIR SMITH: So, you wouldn't have
7 separate investigators in the OSTC, you would
8 rely on your criminal investigation units?

9 MAJ. GEN. BLIGH: So, ma'am, right now
10 we haven't made a final decision on that whether
11 it be a, maybe an LNO inside the OSTC, or is it
12 better to have that agent out working the
13 particular covered offenses.

14 So, we're still working through that.

15 CHAIR SMITH: Okay.

16 MR. BESHAR: Ms. Bashford is reflected
17 in the pioneering work done by the Manhattan DA's
18 office.

19 I think the goal is to really develop
20 that specialized expertise both within the ranks
21 of the investigators, and with the prosecutors.

22 Have that be more closely integrated,

1 and then also complimented with the victims'
2 advocates.

3 General Plummer, General Vernon?

4 LT. GEN. PLUMMER: Thank you, Mr.
5 Beshar, yes, ma'am.

6 And, so, you know, as we know, as
7 General Vernon commented and as the work by the
8 IRC, this is all holistic, right.

9 We're looking at prevention,
10 investigation and accountability. And, so we're
11 trying to integrate those functions as the
12 commandant just mentioned.

13 We noted in our training last month
14 that we did have OSI agents as part of that
15 training, to try to build those, those linkages.

16 Still to be determined as to your
17 question, the SJA to the Commandant, as to
18 whether there will be LNOs or whether there will
19 be direct reports, or what not.

20 But we do absolutely intend to build
21 that cadre. And, just as we specialize and offer
22 the training for our prosecutors, we intend to do

1 the same for our investigators.

2 Thank you.

3 MS. RICCI: Carrie Ricci here on the
4 screen.

5 I just want to highlight that the
6 questions from Committee Member Bashford really
7 point out the transformational nature of what
8 we're engaging in here.

9 And, it's not just the Office of
10 Special Trial Counsel. Our Criminal
11 Investigative Division is also undergoing a
12 complete transformation.

13 And, while we are mindful of the past,
14 we are also moving forward. And we are moving
15 forward with steady progress, and looking to make
16 that transformational change.

17 So, I'll allow, I'll yield the floor
18 to Lieutenant General Risch.

19 LTG RISCH: Thank you, ma'am, I
20 appreciate it.

21 To the committee members, in response
22 to the question I can assure you that there is a,

1 in our current program, and in the future in our
2 STC program, our special victim prosecutors are
3 involved in every investigation.

4 There is a policy that requires
5 immediate notification from the CID, when they
6 engage in an investigation on a sexual assault or
7 related matter, to involve the prosecutor.

8 And, that there is a good working
9 relationship between those two entities.

10 Moving forward, we are in discussions
11 as the other services are, with our CID civilian
12 leads, in terms of an embedding a sexual assault
13 trained investigator in our legal offices.

14 But I won't go any further. I will
15 say it's in the infancy. We've been going back
16 and forth with that recommendation.

17 When I was at Fort Hood as the Staff
18 Judge Advocate, we actually embedded a special
19 victim prosecutor in the CID office, so that
20 there was good working relationships.

21 And, under our current Army
22 leadership, we've created offices that are

1 designed, fusion directorates they're called,
2 that are designed to bring all of the elements in
3 terms of victim support, investigation,
4 prosecution, all together in one location to the
5 extent that they can, to share information.

6 But aimed at assisting victims and
7 conducting the best investigation. And, if
8 necessary and warranted, a subsequent prosecution
9 on that.

10 The final point I'll make is, you
11 know, if one looks at the RAINN data that I'm
12 sure the committee has access to, we certainly
13 have the same challenges in the military, as our
14 civilian counterparts do.

15 And, I think if you look at the
16 numbers there, you'll find that the number of
17 their cases that they begin an investigation that
18 actually end up in prosecution, are the same.

19 Because they have the same challenges,
20 the same difficulties that we do in the military.

21 So, thank you.

22 MEMBER LONG: Madam Chair, it's

1 Jennifer Long, I have a question.

2 CHAIR SMITH: Yes, thank you.

3 MEMBER LONG: Okay, and a question but
4 I do want to precede it with just a caution, or a
5 comment based on the discussion of statistics.

6 I think best practices when we're
7 looking at the outcomes of these cases, demands
8 not only you look at what the outcome of the case
9 was, but the reason why.

10 You can't, and there are ways to do
11 this through case assessments in your own office.
12 We at the DAC-IPAD did case reviews.

13 But offices themselves who are
14 instilling this, take a look at their cases,
15 determine what the outcomes are if they're
16 related to certain characteristics, and then sit
17 in roundtable to determine the why.

18 So you can't really tell much from
19 that 20 percent, or that 80 percent, other than
20 those are the numbers.

21 What we know from the national
22 attrition research and sexual violence, is that

1 most cases are weeded out because of very common
2 characteristics, that appear in most of these
3 cases.

4 So you want to understand if that 80
5 percent are actually cases that should come out,
6 or if they're cases that were properly weeded
7 out.

8 The same with the 20 percent. It's
9 possible that some were overcharged, but it's
10 also possible that the prosecutors didn't have
11 the skills, or the investigation wasn't done
12 well.

13 So, I would just caution really trying
14 to get to the why, before you take any
15 conclusions from the what.

16 As to the question, I did hear a lot
17 of the panel members talk about the need for
18 exceptionally skilled, and highly skilled, and
19 experienced litigators to lead these offices.

20 I wondered if people could talk a
21 little bit more about the type of sexual violence
22 experience, that the individuals who they were

1 looking at to lead these offices.

2 You were looking for them to have
3 those kind of competencies, besides just general
4 litigation.

5 CHAIR SMITH: You also all spoke about
6 the certification process to become an STC. So,
7 if you could include that kind of in your
8 response.

9 MR. COFFEY: Madam Chair, I'm going to
10 defer to the folks who were most involved with
11 the staffing of the OSTC, the JAG and the SJA.

12 VADM CRANDALL: Thank you.

13 With regard to the need for skilled
14 litigators, absolutely. And so just as an
15 example, our interim STC lead and interim deputy
16 lead, are both two O-6 officers who are part of
17 our military justice litigation career track.

18 That's a track we've had in place for
19 about since 2007, and it keeps officers, judge
20 advocates, in litigation related billets through
21 basically their entire career.

22 So we selected two O-6s who are both

1 at the expert level. There are three levels in
2 our military justice litigation career track.
3 specialist 1, specialist 2, and expert.

4 In the case of these experts, they
5 typically have about 12 years in litigation
6 billets when they become an expert. And, those
7 are a range of billets.

8 Prosecution billets, defense billets,
9 they could have served as judges as experts.
10 Appellate billets. Potentially victims' legal
11 counsel billets.

12 So we have not, to Madam Chairwoman's
13 question, identified our certification process
14 yet within the Department of the Navy.

15 But as kind of a precursor, we are
16 using our military justice career litigation
17 track personnel, who have already been selected
18 for the track.

19 It's a competitive board process to be
20 selected to be a specialist 1, which is the first
21 level.

22 So we are using that as our initial

1 how do we start to assign people to these
2 positions. And, then as we look for more detail
3 with the actual criteria itself.

4 MAJ. GEN. BLIGH: Ma'am, the Joint
5 Services Committee is looking at, they're talking
6 about the criteria for certifying special trial
7 counsel. So we're a little early in the process.

8 I'm glad to come back when those are
9 developed, and inform this committee.

10 We do not have a litigation track in
11 the Marine Corps, but we will be looking at
12 individuals who have multiple tours in, there's a
13 trial counsel, a defense counsel, military judge,
14 appellate counsel.

15 If they've been instructor on military
16 justice. One of the training environments to
17 identify the right folks to fill those regional
18 slots.

19 MR. BESHAR: Ms. Long, just briefly, I
20 appreciate your comments about the complexity of
21 particular statistics, and the focus being on
22 what's the outcome that you're trying to achieve.

1 What are the behaviors that you're trying to
2 encourage?

3 And, so as an example, I think a good
4 goal for all of us, is to encourage victims to
5 report their experiences, and then to remain with
6 the process throughout the duration of the
7 investigation, and possible prosecution.

8 And, so as an example, would tracking
9 the percentage of unrestricted reports versus
10 restricted reports, is that, would that be an
11 indicia of progress if the percentage of
12 unrestricted reports went up.

13 Those are things that require a lot
14 more scrutiny and consideration, over the coming
15 18 months.

16 General Plummer, General Vernon, what
17 would you add about special experience --

18 LT. GEN. PLUMMER: Thank you, Mr.
19 Beshar. So General Vernon's going to
20 walk you through some of the details
21 of where we are, but certainly the,
22 you know, the competencies we've been

1 discussing amongst, kind of, the
2 experts, as well as our certification
3 process.

4 MAJ. GEN. VERNON: Yes, sir. Thank
5 you. So we have had in place since, I believe,
6 2017 specialized prosecutors that are SVU-
7 qualified. And those generally have to have
8 participated in 18 to 20 courts involving sexual
9 offenses, and then they go through training in
10 addition to that and then they receive
11 certification.

12 So they've been practicing in that
13 manner, so our certification process wants to
14 build on that to make that -- take that really to
15 another step, which is why we had the STC
16 qualification training where we then brought in
17 folks from the Department of Justice and got
18 those outside views and experts that talk to our
19 already trained prosecutors about some -- kind of
20 going a little bit deeper in some of the topics.

21 So that's what we anticipate in the
22 future, is continuing to do that, to make sure

1 that folks have that experience in the sexual
2 offenses. But then, obviously, you have to start
3 at some point, so they would start, you know, in
4 local legal offices trying non-covered offenses
5 but then start transitioning and getting that
6 experience, sitting second chair with the STCs to
7 get that experience. And then once they get to
8 that level, then to transition to the OSTC so
9 that we can keep building over the years, of
10 making sure we always have those specialized
11 prosecutors.

12 But it really has to be that mix of
13 people who show the ability to litigate, also to
14 have that emotional intelligence to be able to
15 understand the complexities of those cases. But
16 then also get that no-kidding, hands on
17 experience as well, and only after those are done
18 to the satisfaction of The Judge Advocate General
19 would they be certified. Thank you.

20 LTG RISCH: Madam Chair, General Risch
21 here. I'd like to point out -- first, thank the
22 committee member for the question. As I

1 mentioned before, we've got a special victim
2 prosecutor program that has been in existence
3 since 2010. And so we've got a cadre that we've
4 built over the last decade that we lean on
5 heavily from that side, as well as the defense
6 side, to lead, in terms of the instruction and
7 sharing their experience with new special trial
8 counsel that we bring over. And when I say new
9 it's in quotation marks because a lot of these
10 folks have tried cases both, on the special
11 victim trial counsel as well as general
12 prosecutor side, and TDS side as well.

13 That SVP program has a certification
14 course and we can certainly share with the
15 committee, if you don't have it already, exactly
16 what that course entails, the instruction that's
17 provided there -- and it's not all litigation
18 based, it goes to many of the issues that the
19 member's question was getting after, as well.

20 In addition, we have had on our staff
21 for almost that length of time, three highly
22 qualified experts, all career civilian

1 prosecutors that have that depth and breadth of
2 experience that will assist in the preparation of
3 cases, and actually be involved in some of them,
4 to the extent that they may be involved there.
5 And so that's been a wonderful program, over that
6 period of time.

7 We will use our military justice
8 career model and our development codes that we
9 have to track military justice experience in that
10 career model, in all of the jobs in the military
11 justice arena.

12 And then finally, I'd point out our
13 Advocacy Center, we just cut the ribbon on that
14 at Fort Belvoir, Virginia, a multimillion-dollar
15 facility modeled after DOJ's facility. We would
16 invite the committee to come down and take a look
17 at that state-of-the-art facility, see our
18 training calendar that we've got which,
19 obviously, will be primarily litigation focused.

20 But there are any number of cases in
21 the military justice arena that are on the
22 schedule, that we're building right now. But my

1 direction for the Advocacy Center was 52 weeks of
2 the year, seven days a week, it will be open for
3 training to maximize our throughput for all the
4 services -- not just for the Army, but for all of
5 the services, to increase our product that we put
6 into the court room. Thank you.

7 CHAIR SMITH: Thank you. Any other
8 questions?

9 MEMBER O'CONNOR: Madam Chair, I have
10 a question.

11 CHAIR SMITH: Yes?

12 MEMBER O'CONNOR: I wanted to follow
13 up with General Vernon, and ask you to describe a
14 little bit more of the training program you were
15 talking about. Just in terms of how many people
16 went through it, did they self-select or you
17 selected them, how many hours, what kind of
18 topics were covered? I'm curious for getting
19 more of a flavor for that.

20 MAJ. GEN. VERNON: Yes. Thank you for
21 that question. So it was a -- the folks that
22 were selected for it already had litigation

1 experience, and some of them were already our SVU
2 CTCs that were qualified. And then they were
3 also the folks that we are targeting to become
4 those, you know, STCs that will be in the office
5 at FOC.

6 And so, for right now, they've been
7 selected for the IOC so they will start working
8 covered defenses under old authorities, but those
9 are the folks who were targeted. We also had
10 eight OSI Agents that came and participated as
11 students, which allowed them to then participate
12 in some of the things that they did during that
13 course, like witness interviews.

14 You know, we recognize the importance
15 of that collaboration early between the
16 investigators and the prosecutors, and so one of
17 the models that we are working with right now, it
18 would have a integrated prosecution support team
19 that would be located at the local level. That
20 would include both, law enforcement and the
21 special trial counsel, as well as the local
22 counsel who would be assisting the victim's

1 counsel, who we would be providing the victim's
2 view to early on collaborate on that case. But
3 most importantly, that investigator and that
4 special trial counsel working together to develop
5 the investigation of the case.

6 So to your second part of the
7 question, about what types of things that they
8 went over, it was things like, memory and
9 cognitive interviews, and the complexities of
10 that. They did do some investigator training
11 where they looked at forensic capabilities, and
12 what OSI can do, as far as developing those
13 cases. They went into advanced evidence topics
14 as well as charging techniques, they did look at
15 digital evidence and how that works in cases, and
16 brought in some experts on that. They did do a
17 workshop on victim impact statements, so a lot of
18 it was really focused on, kind of, that next
19 level of understanding the complexities of sexual
20 assault cases beyond the litigation experience
21 that they may have already built.

22 MEMBER KRAMER: Madam Chair, it's A.J.

1 Kramer.

2 CHAIR SMITH: Is that Mr. Kramer?

3 MEMBER KRAMER: Yes, sorry.

4 CHAIR SMITH: Okay.

5 MEMBER KRAMER: I had two questions,
6 one a little simpler than the other. I
7 understood, obviously, that all the initial
8 selections for the heads of the offices and the
9 senior positions would be very experienced
10 people, I'm curious if you think the STC offices
11 will be able to be fully staffed by experienced
12 people? People with significant experience, or
13 whether some of them will have to be newer JAG
14 people.

15 And the second question is, given the
16 establishment of STCs, I wonder if there's been
17 any consideration that there might be an
18 imbalance in the defense function, and as to
19 whether there should be some similar changes made
20 to defense counsel in the JAG, to respond to the
21 STC offices? Thank you, and thank you very much
22 for your presentations.

1 VADM CRANDALL: So from the Navy
2 perspective, we anticipate experienced counsel
3 serving as special trial counsel. However,
4 within that OSTC enterprise, we would also expect
5 to have some more junior counsel who are not yet
6 experienced, to assist those special trial
7 counsel -- investigative phases, whatever, you
8 know, work needs to be done, so that we can
9 continue to grow new special trial counsel in the
10 future.

11 So clearly they wouldn't be leading
12 the case but we do anticipate some counsel that
13 would not be considered special trial counsel
14 being a part of that enterprise.

15 With regard to imbalance, your
16 question talking about imbalance with the defense
17 function. You know, I think that's why it's
18 really important, as we move into this next
19 several months, and we determine who is going to
20 go into those special trial counsel billets by
21 next September. At the same time we'll be
22 determining who will go into defense billets, who

1 will be going into appellate billets, who will be
2 going into judge billets. Because we need to
3 ensure that the system is a balanced system and
4 that the Secretary doesn't have any kind of extra
5 weight tied to the prosecution.

6 So, on the Navy side, I would just say
7 our current setup is an independent one star who
8 reports directly to the Chief of Naval
9 Operations, who is Commander Naval Legal Services
10 Command. And that flag officer is responsible
11 for all our current prosecution teams, our
12 defense teams, and our victims' legal counsel
13 teams.

14 So there is this, kind of, independent
15 chain of command for defense counsel right now,
16 and so I think we probably need to wait and see
17 how things function as we stand up the OSTC. But
18 we are certainly aware of the need in the
19 statutory language about ensuring trained,
20 qualified, and resourced defense counsel who are
21 defending those accused of covered offenses as
22 well.

1 MAJ. GEN. BLIGH: So our office of
2 special trial counsel will be staffed with
3 experienced individuals, they will be assisted by
4 more junior counsel from our general crimes trial
5 counsel shop, that'll come over and get the sets
6 and reps in order to one day compete to be
7 certified as a special trial counsel.

8 Regarding the question on imbalance,
9 a concern that the JAG and I, and our military
10 justice folks talk about all the time, is a fair
11 and just system that service members who
12 voluntarily subject themselves to UCMJ
13 jurisdiction believe in. And part of that
14 equation is on the defense side, adding
15 resources, and we plan to do that -- we plan to
16 add several senior litigators in there.

17 We're also going to add some
18 additional, what we call additional MOSs,
19 additional Military Occupational Specialties, so
20 we can identify our experienced, and senior
21 experienced litigators, so that in a snapshot in
22 addition to the Office of Special Trial Counsel

1 certified folks, we're able to see the defense
2 and the VLC also have experienced folks. So
3 that's our plan going forward.

4 LT. GEN. PLUMMER: Sir, thank you for
5 the question. And similar to the Navy and Marine
6 Corps, I suspect the Army, you know, the OSTC
7 personnel, the flag personnel, will be
8 experienced in military justice. But, just like
9 everybody else, to grow the next generation there
10 will be some folks that support that.

11 I can't tell you, kind of, the
12 excitement that we're seeing out on the field
13 when we travel to the bases, or we speak at our
14 JAG school or what not, as to the people that
15 want to be part of this -- both, from our
16 Active-Duty component as well as our Reserve and
17 Guard component. So many of our Reserve and
18 Guard folks are in DOJ and want to come back home
19 and be part of this, so we're pretty confident
20 and feel very good about the fact that we will
21 have those folks steeped there.

22 The imbalance question is a very

1 important question, and one we in fact talked
2 about yesterday in our office, and we're
3 wondering if maybe we need to get that bug-
4 checked. That being said, we want to ensure that
5 that all three legs of the stool are very strong,
6 right? The prosecution, defense counsel, and
7 special victims' counsel, we want to ensure
8 there's not an appearance or reality of some sort
9 of the imbalance. And so we intend to have
10 similar safeguards and similar training to ensure
11 that all of the participants in the justice
12 system are well armed for their particular
13 missions.

14 MEMBER WALTON: Madam Chair, I had a
15 question.

16 CHAIR SMITH: Oh, sure.

17 MEMBER WALTON: Having been a part of
18 the justice system now approaching 50 years, and
19 a judge almost 40 years, I've had the opportunity
20 to observe many trials and in some of those cases
21 unsuccessful prosecutions, or defense efforts.
22 And, in my experience, many times it's lack of

1 resources but many times it's also lack of
2 quality representation. And to a large degree,
3 especially as it relates in the civilian world to
4 prosecutors, it's the fact that retention becomes
5 a significant problem.

6 So when lawyers in the justice system
7 gain a level of experience, because of the lure
8 of the money that they can make in private
9 practice, they leave. You have that from both
10 perspectives, as far as both, the defense and the
11 prosecution. Is that a problem, that you see
12 that you have quality people doing this work but
13 not enough of them, and do you have a retention
14 problem? And if you do, what could be done to
15 address that?

16 VADM CRANDALL: Thank you for the
17 question. We are always watching retention
18 across the JAG Corps, we've got to keep our eye
19 on it -- especially when you have a strong
20 economy, there are more incentives. There's so
21 much that, kind of, goes into this question.
22 Even the change in the retirement system to allow

1 people to have affordable retirement at the
2 10-year point, whereas previously you had to wait
3 for 20 years for your retirement to vest. So
4 there's just a lot of big Navy issues that go
5 into this as well.

6 So one of the things that we have
7 within the Navy side of the house is we've got
8 something called judge advocate continuation pay,
9 that came in three phases to encourage people to
10 stay longer. And, for many years, those three
11 phases, you could -- a judge advocate could apply
12 for up to \$60,000 which, when it was enacted back
13 in 2000, 2001, was pretty much equal to the
14 average student loan debt. Well, no changes in
15 20 years and a lot's changed with regard to the
16 cost of legal education.

17 So just recently, the Navy approved
18 for our community, an increase in judge advocate
19 continuation pay and now judge advocates can earn
20 up to \$110,000 per judge advocate -- again, in
21 three phases. They have to commit a little bit
22 longer, so probably a nine years versus seven

1 year commitment over those three phases, taking
2 them to about, you know, the 14-year point where
3 they're up for 05 or commander, to try and keep
4 people in longer.

5 What is interesting about what the
6 Navy approved in this latest change for us was,
7 an extra amount for anyone in the military
8 justice crew litigation track. So if you're a
9 member of the military justice crew litigation
10 track, you qualify for an additional \$10,000 per
11 phase, for a total of up to \$140,000 to recognize
12 a substantial need we have to continue to retain
13 qualified litigators, as well as other qualified
14 judge advocates in our service.

15 So it is something we keep on top of,
16 and we've got this new tool that the Navy has
17 provided us that will hopefully continue to keep
18 us on the right side of retention as we move
19 forward.

20 I will also add -- I think of one my
21 co-panelists here talked about the excitement, I
22 think it was General Plummer -- in my

1 conversations, traveling into the -- meeting with
2 folks out on the fleet -- they are very excited
3 to be a part of this new enterprise. I've had
4 conversations with people who have got orders for
5 this summer to go to new roles, potentially as
6 assistant trial counsels. For example, at the 04
7 level, maybe junior 05 level, into some of these
8 fleet concentration areas.

9 And I said, hey, we've got this OSTC
10 coming, we're going to stand up -- your orders
11 may change, what do you think about that? And
12 they said they're all on board. They are excited
13 to be a part of something new and make these
14 changes have real impact, and make this
15 successful for the Navy. So I felt the exact
16 same, kind of, excitement when I'm out in the
17 fleet talking to folks about this. Thank you.

18 MAJ. GEN. BLIGH: Sir, this is one I
19 wish I'd gone before JAG, we --

20 (Laughter.)

21 MAJ. GEN. BLIGH: We offer no money at
22 the time, sir, for -- at this current time, for

1 continuation. I did just speak with the
2 Commandant last week about the need to retain our
3 talent, we are kind of bleeding at the 03 to 04
4 level, and it's a problem we can't recruit our
5 way out of so we need to hold onto the talent.
6 So we're putting together a business case that
7 we'll present to the Commandant and eventually
8 the Secretary -- hopefully get a few dollars to -
9 - the money doesn't keep people, it sort of
10 allows people to stay that have the staggering
11 debt and that's part of our pitch.

12 I will tell you, on a positive note,
13 the lead special trial counsel being a brigadier
14 general, our most experienced litigators are very
15 marketable, very sought-after, and like anyone in
16 the military, you give them something to compete
17 for, they -- we've seen that folks kind of stick
18 around a little bit, to compete. So this is a
19 good thing, going forward I think our litigators
20 are going to want to be around for a while.

21 LT. GEN. PLUMMER: Sir, so lack of
22 resources is something that we aren't concerned

1 about, in that our Secretary and our two service
2 chiefs are committed to ensuring that these are
3 staffed and, you know, resourced too with the
4 level they need to be.

5 You mentioned lack of quality
6 representation, one of the things that I would
7 offer is that, you know, we have a rather robust
8 professional responsibility function in our JAG
9 Corps, as most do. And those are not the types
10 of things that we're seeing on a regular basis,
11 if at all.

12 The draw of civilian practice is real,
13 and for many reasons, right? It depends on why
14 one joins, we know that fewer than one percent of
15 Americans are serving, for many reasons. We find
16 that generations change, many of us were military
17 with a family business, that's not necessarily
18 the case anymore. When we asked folks if their
19 parents served, or their grandparents served, we
20 see fewer and fewer hands raised.

21 All of us have other pulls as well,
22 right? Whether our spouses employment is an

1 issue, children's schools, parents aging, all
2 sorts of things to draw one to perhaps leave us.
3 If someone decides to leave us, we thank them for
4 their service and then try our best to put them
5 into our Reserve or Guard to ensure that we don't
6 lose that kind of institutional knowledge, that
7 depth of experience, and then we try to insert
8 them someplace where they can add to the mission.

9 We don't believe we have a retention
10 problem based on, you know, kind of, our numbers
11 and end strength, and the number of personnel
12 that we're permitted to have in our JAG Corps.
13 We are well above Air Force averages for career
14 field, so right now we believe we're healthy.

15 PARTICIPANT: Madam Chairwoman, it's
16 General --

17 (Simultaneous speaking.)

18 MEMBER WALTON: Question -- although
19 this is beyond your purview and may be a little
20 sensitive -- although, as judges, we are umpires,
21 supposedly, and call the balls and strikes, as
22 the chief justice said. But how we call those

1 balls and strikes does impact on the quality of
2 justice, and we do impact significantly on, you
3 know, the fairness of the process. And you can
4 go in one court room and get a certain quality of
5 justice, and go into another court room and get a
6 very different quality of justice.

7 In that regard, do you think that the
8 process of selecting military judges is an issue,
9 or can be improved? And, is there anything that
10 can be done to improve the selection process or
11 the quality of judging of being provided by
12 military judges?

13 CHAIR SMITH: Before you respond,
14 let's go to the Army -- we didn't give them the
15 opportunity to respond to the last question --
16 and then we'll go back to the judge's question --
17 other question.

18 LTG RISCH: Thank you very much, Madam
19 Chairwoman. And I'll be fairly brief but, to
20 wrap up answers, I concur with my Service
21 counterparts that there is excitement in the
22 force for a number of reasons. First and

1 foremost, we went to the Secretary indicating to
2 her that we just didn't want to ask our personnel
3 to have to do more with less, as they've had to
4 do over the past number of years, with other
5 changes that have been made -- not just in
6 military justice.

7 And so our growth was essentially
8 about 2.9 percent, 145 personnel growth in the
9 next couple years, one-third of that will be in
10 TDS on the defense counsel side -- in answer to
11 the question that we are trying to keep the
12 scales of justice balanced, in terms of that.

13 We've also -- and the excitement
14 really is not just in the help that's coming but
15 in the increased roles. I know of at least three
16 individuals that have pulled their resignations
17 once they found out about the new structure,
18 because they realized that they could in fact
19 litigate past the captain level. So we're going
20 to have litigators at the major level and the
21 lieutenant colonel, 04 and 05, which will
22 increase the level of experience in the courtroom

1 both, on the government side and defense side --
2 and that has caused people to want to stay around
3 a little bit longer.

4 In our recruiting arena, we're going
5 after young professionals with justice and
6 litigation experience, not just looking at law
7 schools but actively targeting folks out in the
8 civilian sector with the opportunities to
9 litigate at these increased levels as well, to --
10 as did the Secretary, we recognize that, with
11 this growth, there will be a time frame in which
12 we have to recruit.

13 So we're going to accept some risk in
14 our other five core legal disciplines, national
15 security law, contract and fiscal law,
16 administrative and civil law. But I don't want
17 the scales to tip too much, with all of our
18 experience going onto the military justice side.
19 So our career model and the levers that we pull,
20 as The Judge Advocates General allow us to ensure
21 that there is that quality on both sides of the
22 bar, in the military judges as well, but in our

1 other core legal disciplines. And I'll leave it
2 at that. Thank you.

3 VADM CRANDALL: With regard to your
4 question about judges, sir. Within the
5 Department of the Navy, we have a competitive
6 selection process for those who wish to apply to
7 be judges, whether at the trial level or the
8 appellate level. And so annually, there's a
9 board held, its led by our chief judge of the
10 Navy and other senior judges in uniform, across
11 the Department who receive applications from Navy
12 and Marine Corps judge advocates who wish to
13 serve as judges. And so I think that's been a
14 good process that we've used in the Department
15 for a number of years now.

16 With regard to their training, their
17 initial training is actually a joint training
18 environment with the judges of all the services,
19 hosted by the Army at their judge advocate school
20 in Charlottesville. It's a three week course,
21 you know, it gets good reviews, I should say to
22 my Army JAG colleague. And that's just their

1 initial training to certify them to sit as
2 judges, and then there's significant training for
3 both, trial and appellate level judges --
4 obviously different focuses throughout their time
5 as sitting judges. So I think we're in good
6 shape from that perspective. General Bligh?

7 MEMBER WALTON: Yeah. I think the
8 training program -- I've taught in that program,
9 I think three years now, so it's a great program
10 in Charlottesville.

11 VADM CRANDALL: Thank you

12 MAJ. GEN. BLIGH: So I've had the
13 privilege of sitting on the selection board, the
14 military judge selection boards, for several
15 years. It's a very competitive process, not
16 everyone who applies is screened, and then those
17 who are screened, many are not ever slated. It's
18 really competitive to get a military judge slot,
19 these are our foremost Mil-Just focused
20 individuals. Out at our circuits, we have 06s,
21 senior multi-tour judges out there leading and
22 mentoring, so they have the supervision in place

1 as they develop as military judges moving
2 forward.

3 LT. GEN. PLUMMER: Sir, and along the
4 same lines, you know, these are highly, you know,
5 coveted positions and, you know, they're
6 volunteers and they have to, kind of, have a
7 desire to do that. And so, when they apply, we
8 have -- our chief judge is an 06, and he
9 certainly kind of scours the talent across the
10 Air Force, right? From the courtrooms to
11 convening authorities, to wherever there might be
12 someone with the interest in that.

13 And we have that peer review amongst,
14 kind of, the folks that apply that want to be the
15 judge looking for, kind of, that judicial
16 temperament you're talking about, and ensuring
17 that they are the right folks for the bench.
18 Under our contract with the 06 chief judge, we
19 have the regional judges that will become
20 districts in the near future. They have 06s over
21 those regions and then they have, either of 05s
22 or junior 06s under them to ensure that they,

1 kind of, grow.

2 As our colleagues have mentioned, we
3 all benefit from the Army JAG School, of course,
4 for both, our trial and appellant judges. And
5 then that training brings everybody together, and
6 the bench, really, between all of our services is
7 very close. And they share lessons learned, they
8 share it -- and so, again, it's an area where we
9 feel pretty strong, but certainly, always open to
10 ideas for evolution and making that better.

11 LTG RISCH: And I'll simply echo, you
12 know, my counterparts, we have the same process,
13 it's a very rigorous process. Our assignment
14 folks, our chief trial judge plays a role in
15 identifying potential candidates for it, and then
16 our general officers sit on a board and I make
17 the final decision on who sits in the judiciary.

18 I'll leave the comments that have
19 already been made about the course, we're very
20 proud of that course, it's actually in session
21 right now. Our judges will graduate -- and
22 actually I'd simply say, I put our training of

1 our military judges up against any training
2 that's done on the civilian side, to prepare them
3 for it. And I think the proof is in the pudding
4 in terms of the appellate decisions, no
5 complaints against judges that are sitting right
6 now, they do an extremely competent job. Thank
7 you.

8 MEMBER WALTON: One other question,
9 which is a problem that I think even plagues us
10 in the civilian world. Do you have sufficient
11 diversity within your ranks, and if not, what can
12 be done to try and address that? When I say
13 diversity, racial diversity, gender diversity,
14 etcetera.

15 VADM CRANDALL: I'll go ahead and jump
16 in, but we could be here for a long time talking
17 about this issue. I think we could always do
18 better with diversity. So one of the things that
19 Chief of Naval Operations does is he has these
20 Navy leader development forum meetings with each
21 community manager, there's 17, now 18, community
22 leads for various communities within the Navy.

1 I'm one of those leads as the JAG for
2 the Navy, and we talk about these issues and I
3 think it goes back to -- it's a retention issue
4 that you raised earlier, but that even goes back
5 further to the recruiting issue. And so in this
6 last briefing I did, there was some amount of
7 trumpeting, because if you look at the Navy JAG
8 Corps numbers, they are better with regard to a
9 diversity of women in particular compared to
10 other communities in the Navy.

11 But what we pointed out, and has to
12 be, you know, put on the table is, over half of
13 the law students today are women and yet we just
14 hit 40 percent women in our Navy JAG Corps. So,
15 yes, our number is higher than the average --
16 Navy officers is 20 percent women -- but we
17 shouldn't necessarily be celebrating something if
18 there's -- it goes back to the point, I think Ms.
19 Long made about, we have to look at statistics in
20 a lot of different ways and get to the why.

21 So I do think there's work we need to
22 do to bring in an even more diverse group of

1 judge advocates into our community, and so
2 recruiting is absolutely pivotal. While we might
3 have 40 percent women across the Navy Jag Corps
4 at large, at the O6 level, captains, colonel
5 equivalent, we're probably at about 26, 27
6 percent. So what's the why behind that and how
7 do we have better representation at all levels,
8 not only women but members of different
9 ethnicities and different races. And so I do
10 think it's something we have to continually be
11 talking about and addressing, as to how we get
12 after that.

13 I will be honest with you, I do think
14 that COVID has been difficult when it comes to
15 recruiting, because we've had to do so many
16 things virtually, it hasn't allowed us the
17 ability to get people out to law schools to talk
18 about how they have raised families in the Navy,
19 how they've addressed some of these issues.

20 And so I think we need to take better
21 advantage as we come out of the COVID
22 environment, but it's an issue that we have to

1 continually be looking at and really looking at
2 the, how do we continue to offer those
3 opportunities to everyone across our JAG Corps so
4 they can grow and become the JAG someday.

5 CHAIR SMITH: So, very quickly, you
6 didn't give any numbers on Blacks, Hispanics,
7 Asians -- I don't know if you have those numbers,
8 but certainly I think we would want to hear those
9 numbers. Once we wrap up with the judge's
10 question -- we're supposed to be wrapping up
11 altogether -- but I promised Ms. Tokash that she
12 would have the opportunity to ask her question
13 and then you'll be free. Thank you.

14 VADM CRANDALL: So I will just add, at
15 that last briefing our numbers for different
16 races and ethnicities were basically similar to
17 the legal profession writ large in the country.
18 So, again, the, kind of, the -- the first
19 feedback was, oh, that's pretty good, and I said,
20 well, I don't know that that's pretty good. We
21 shouldn't be satisfied with that, we should be
22 making ourselves the place where people want to

1 come and our numbers should be better than that.

2 So I want to think the six to eight
3 percent -- I can't remember, I'll have to get you
4 those exact numbers, I don't want to make them
5 up. But, clearly I think that's an area we need
6 to do better in as well.

7 MAJGEN BLIGH: Sir, much like the
8 Marine Corps writ large, our legal community is
9 not diverse. We are working with our recruiting
10 command to target recruiting, in the past we have
11 taken whoever comes to our officer recruiters.
12 With our talent managers working with recruiting
13 command making affirmative steps to go to schools
14 that may have a more diverse population than what
15 we look like right now.

16 LT. GEN. PLUMMER: Sir, ma'am. So
17 this is something that we've been committed to
18 since early 2000s, we -- our recruiting mission
19 is to go to every ABA accredited law school, as
20 well as all of the various affinity bar groups,
21 and we've been doing that for over 20 years. You
22 know, we have had a couple of historic firsts in

1 our Air Force and Space Force, JAG Corps, right?
2 So you're sitting -- Major General Vernon is the
3 first Deputy Judge Advocate General, two-star
4 female in our history. We have Brigadier General
5 Gail Crawford, a African-American female who will
6 replace General Vernon as our justice director
7 leader there.

8 But I also will tell you that it's a
9 fierce competition for talent everywhere across
10 America for the legal profession. I too will
11 come back to you with the exact stats, as our
12 numbers are better against other career fields in
13 the Air Force, as well as a little better than
14 some of the civilian practice. But, as always,
15 sir and ma'am, we will continue to do better and
16 do more. Over.

17 LTG RISCH: Madam Chairwoman, our
18 numbers -- I won't take up additional time -- our
19 numbers and our challenge is certainly near those
20 of our sister Services as well, but I would
21 relish the opportunity to talk about the
22 significant diversity, equity, inclusion, and

1 accessibility efforts that, not only the Army but
2 our JAG Corps in particular, have put forward in
3 the recruiting arena and the retention arena.

4 But to tell you, just as an example of
5 how difficult it is, significant recruiting
6 efforts resulted in significant diversity in a
7 recent forward selection process and then by the
8 time our basic corps showed up in
9 Charlottesville, we had lost all of that
10 additional -- those diverse numbers. When I
11 asked why, we went back and replayed the tape and
12 found out that essentially other law firms and
13 other federal government agencies have the same
14 programs in place, and had kind of stayed in
15 touch with those individuals more and got them to
16 go to those other federal agencies or others.

17 So, we took our eye off the ball
18 momentarily, it's back on it, you can rest
19 assured. And that we'll continue to focus so
20 that our numbers go in the right direction. I
21 would be very interested in showing you our
22 numbers at the senior leader level as well

1 because I think, as we all know, that has a
2 significant impact. When you look up and you see
3 that your leadership mirrors what you'd like to
4 see, it bodes well for the future of our JAG
5 Corps. Thank you.

6 MEMBER TOKASH: Meghan Tokash -- thank
7 you all for your generous time and your expertise
8 that you bring here, and for your testimony
9 today, we very much appreciate it. I have a
10 brief contextual comment and a question for the
11 General Counsel who are appearing today as the
12 Secretary's designees, and if you need to get
13 back to us or come back at the September meeting
14 to answer this question, that would be fine -- a
15 fine answer as well.

16 So I've been hearing this comment of
17 civilian led, military executed, in terms of the
18 Office of the Special Trial Counsel. Including
19 in our letter, located at Tab 5, which must have
20 been edited by someone because the civilian led,
21 military executed language did not come from our
22 Chair or from me, who was the original drafter of

1 the letter.

2 My concern is what the congressional
3 intent is with respect to stand up of these
4 offices, and I think the congressional intent is
5 that this be civilian led and civilian executed,
6 and also the work force a military workforce.
7 And, obviously, there's our partnership there.
8 The word Secretary and, absent of the use
9 Secretary of Defense, is noted in section 531 and
10 532 seven times. So the congressional intent
11 envisions that the Service Secretaries will have
12 a major role in the rollout and implementation of
13 this office.

14 My question, in this context, is, who
15 in the Secretary's office will be the primary
16 point of contact for -- with the lead special
17 trial counsel in the service? And do you
18 envision that the Secretary's offices will need
19 to be plussed up so that the Secretary's offices
20 can oversee and execute this program
21 appropriately, including the rollout of general
22 prosecutorial philosophies, giving guidance for

1 the relationship between OSTC and commanders, and
2 OSTC and the staff judge advocates, and screening
3 and charging decisions? Thank you.

4 MR. COFFEY: Well thank you for the
5 question. I guess I'll start on behalf of the
6 Department of the Navy by addressing the part of
7 your question about setting up the OSTC. And
8 Secretary Del Toro has taken that on with vigor.
9 He set up the IAP, the Implementation Advisory
10 Panel, and directed who would be on it, and his
11 General Counsel, I am on it.

12 And so we are an -- it's a
13 recommendation panel, it's an advisory panel --
14 so we are chewing through the 73 recommendations,
15 as I mentioned before, that came out of the NDAA
16 and the IRC, that apply to the Navy that required
17 Navy action. And we are reporting back to him on
18 a regular basis what we're up to, and including
19 the OSTC. I mean, there was a presentation made
20 to him, his fingerprints are on that. He has, I
21 think it's suffice to say -- I don't want to get
22 in because it's pre-decisional -- but there were

1 several alternatives presented to him and we are
2 proceeding with the one he picked.

3 With regard to once it's set up, who
4 within the Secretariat will be leading this, or
5 to whom will the OSTC report -- and by the way,
6 the law does say that the lead trial counsel will
7 be a military officer, so I mean, that's in the
8 statute as well.

9 It's unclear who the Secretariat will
10 set up, I suspect that, as we get closer to it,
11 that, at least out of the box, it's going to be
12 the Secretary himself who hears from key
13 stakeholders in the Department on a regular
14 basis. And I suspect that he will take very
15 seriously having the lead STC report to him
16 directly, I suspect I will be in the room, but I
17 think that that is how he will proceed.

18 As far as additional staffing, too
19 early to say -- and I'll just leave it there,
20 it's too early to say. Thank you.

21 MR. BESHAR: I appreciate the
22 question, Ms. Tokash. It's a serious one and I

1 suspect that the hard answer is that, it's
2 something that has to get figured out over the
3 ensuing 18 months.

4 But a couple of preliminary
5 observations -- first, what's the role of the
6 Secretary? First, I think it's important to
7 visibly support the OSTC, this is not a simple
8 role, there'll be a lot of stakeholders who will
9 be evaluating this individual's performance and
10 the performance of the OSTC. So I think it's
11 quite important that the Secretary really,
12 visibly support this individual both, within the
13 Department and also as they perhaps testify, or
14 appear, in other forums, like a forum like this.

15 Making sure that the OSTC really has
16 adequate resources, absolutely crucial -- General
17 Plummer and General Vernon had spoken about the
18 position that our leadership team has really
19 staked out that this will be adequately staffed,
20 making sure that there's no interference. You
21 know, you've emphasized that, I've emphasized it,
22 all of us have -- the critical importance of

1 protecting the independence of the prosecutorial
2 decision-making staff.

3 So I think those are the big picture
4 priorities for the Secretary and then the way
5 that three of us, together with many others --
6 SAPRO leaders and other folks who are going to
7 collectively contribute to this very substantial
8 undertaking, we will work that through in the
9 months ahead.

10 MS. RICCI: Madam Secretary, in the
11 Army, the IRC recommendations, and the
12 implementation, have been assigned to the
13 Undersecretary to work diligently. And we have
14 had regular meetings on the implementation which
15 includes the stand-up of the Office of the
16 Special Trial Counsel.

17 General Risch and I have briefed the
18 Secretary together on a regular basis, the Army
19 is working on its rules that will govern the
20 Office of Special Trial Counsel. They are not
21 finalized yet so I don't have a clear answer
22 specifically as to who the lead special trial

1 counsel will be having these discussions with.

2 But I do want to note, and this is my
3 personal view of it, it's important that the lead
4 special trial counsel have access to all of the
5 resources that the Army has available, and to
6 recognize that residents in the Office of the
7 Judge Advocate General and in the Army JAG School
8 are many, many experts. You heard about the
9 military judge's course, there are many other
10 courses and resident experts, and we will not
11 deny the lead special trial counsel access to
12 those resources as well.

13 So I think there is more for us to do
14 as we work out the rules, but there is going to
15 be a great deal of expertise available to support
16 the Office and it's not going to be limited to
17 just one person or just one office. I hope that
18 makes sense.

19 MEMBER TOKASH: It does, thank you.

20 CHAIR SMITH: All right. Thank you
21 very much for your patience, I know we went over
22 time but it just goes to show you, this is an

1 important issue and we have lots of questions
2 related to it. So, as I mentioned at the outset,
3 I hope we can continue to have this dialogue over
4 the next few months as you develop your offices.
5 So thank you again. At this point --

6 (Simultaneous speaking.)

7 MEMBER SCHWENK: Thank you, General
8 Risch and thanks Kerry.

9 CHAIR SMITH: At this point, we're
10 going to break for lunch until 12:30.

11 (Whereupon, the above-entitled matter
12 went off the record at 11:43 a.m. and resumed at
13 12:34 p.m.)

14 COL. BOVARNICK: Okay, welcome back,
15 everyone. Madam Chair, if you're okay, I can
16 just give a little preview of what we're going to
17 cover this afternoon. I'll give a little
18 summary, okay.

19 So, the intent for this strategic
20 planning session, along with my colleagues up
21 here, we're going to kind of guide the committee
22 through, so I'll just kind of go through what

1 we're going to do and then I'll jump back to it.

2 So, we'd like to start with any
3 comments or discussion on the briefings and
4 testimony you've received. Next, we'll go into
5 voting on the SVC/VLC report after if there's any
6 further deliberations or discussion, then we'll
7 talk about the appellate report, excuse me, the
8 appellate project.

9 Then, we'll talk about the
10 subcommittees and assigning projects to the
11 subcommittees. That will include a discussion of
12 the write-in recommendations from the committee
13 members when we solicited your input on proposed
14 studies, the scope of the projects, a brief
15 discussion of the March 2023 annual report,
16 discussion on the presenters, and focus of the
17 next meeting.

18 I'll just comment now that after
19 discussions with the Chair and the DFO, it looks
20 like the next meeting, which was previously set
21 for 13 and 14 September, I think we can do in one
22 day, a one-day meeting.

1 Ms. Carson here will discuss, you
2 know, potential panels such as military
3 investigative organizations, victim rights, but
4 we'll leave that to then, but a one-day meeting
5 likely here at the same location, and then the
6 day prior would be a one-hour call-in or Zoom
7 administrative session so that when we start on
8 Tuesday, we'd go right into the public meeting.

9 And then time permitting, Ms.
10 Gallagher will talk about court-martial
11 observations and then we'll wrap up for the day.
12 Actually, we'll have public comment.

13 So, we have two hours allotted for
14 this, so we'll try to move through it in an
15 orderly fashion, but efficiently. So, starting
16 out, we're going to open it up to the committee.
17 I'd like to just make a couple of comments.

18 So, the discussions about any follow
19 up that you want for the staff and the civilian
20 prosecutors discussion yesterday, Colonel
21 Hernandez today, and, of course, the recent panel
22 that we just had with the General Counsel and

1 Judge Advocate General and SJA.

2 I'd just note that the staff is going
3 to track, as Colonel Hernandez mentioned, the
4 Federal Register notice, which will give 60 days'
5 notice. The staff will take that on every day
6 looking.

7 Of course, we'll know when that notice
8 appears, we'll have 60 days, and then the
9 committee will determine who wants to attend that
10 public session.

11 Certainly staff members are going to
12 be there, but committee members also, and also
13 providing any public comment that the committee
14 wants to provide to that. So, we will track
15 that.

16 MEMBER SCHWENK: This is Jim Schwenk.
17 I think we should task the DFO with notifying you
18 when that happens. That way, you don't have to
19 spend time looking at Federal Registers day after
20 day.

21 COL. BOVARNICK: Noted. I'll note that
22 some members may not have heard it as it came

1 quick, but there was an invitation from
2 Lieutenant General Risch, the SJA, excuse me, the
3 TJAG for the Army, to visit the Army's Advocacy
4 Center which is located at Fort Belvoir, where
5 they're going to be doing a lot of the training
6 for the special trial counsel.

7 And so, my recommendation would be
8 that a subcommittee, for example, the Office of
9 Special Trial Counsel, you know, and that team as
10 tasked, that the subcommittee visit, and if any
11 other members.

12 What we want to avoid is kind of
13 having a quorum to go down, so we could do it in
14 groups, but that was a great invitation and I
15 think a great opportunity for committee members
16 who want to observe some training.

17 And then finally, I took note of the
18 request for diversity statistics from the
19 services, so we'll handle that, do an official
20 RFI request for information and certainly report
21 that back to the committee at the September
22 meeting, in other words, gather up that

1 information that was requested.

2 But with that, I'll turn it over to
3 the committee chair for any discussions or follow
4 up that you may have, or discussions on any of
5 the presenters that have come, and then after
6 that, we'll move into the SVC report, but I want
7 to leave it now to the committee, any follow up
8 you may have for the staff or requests on the
9 presenters you already heard.

10 MEMBER LONG: This is Jennifer Long.

11 MEMBER SMITH: Ms. Long?

12 MEMBER LONG: Hi, I have a request,
13 and I apologize that I don't recall if it was the
14 Army or the Air Force panelist who talked about
15 that, I think it was a competency sheet or a
16 capacity sheet that they have to select their
17 head of their office, the OST lead.

18 I think they had some sort of,
19 competency is what I wrote down, qualification
20 sheet, but I didn't write down who it was. Does
21 that ring a bell?

22 MEMBER O'CONNOR: I think they all are

1 developing something like that if they don't have
2 it already, but it would be good, if this is
3 where you're going, it would be good to get it.

4 MEMBER LONG: Yes, someone has it.
5 Someone developed it and said they would turn it
6 over or provide us with it, and I don't remember
7 who already had it.

8 COL. BOVARNICK: Noted, ma'am. We
9 will definitely request that. We'll follow up on
10 that.

11 MEMBER ANDERSON: This is Marcia
12 Anderson. I didn't get a chance to ask this
13 question, but maybe it can be presented to the
14 panelists in an RFI.

15 But although I noted that several
16 mentioned that there was a lot of enthusiasm for
17 people to get these assignments and to get the
18 additional certification, at least in the Army
19 during the promotion board process, there were
20 memos provided to the promotion board members
21 that didn't necessarily identify preferred
22 assignments, but certainly identified things like

1 command time. That's extremely important for
2 senior level promotion opportunities.

3 So, I don't know if that kind of
4 effort is going to be undertaken in any of the
5 services to not only have people want to take
6 these assignments, but indicate to them that
7 their future promotion potential could be
8 enhanced by taking these assignments, because
9 without that, you may find all that initial
10 enthusiasm may wane.

11 So, that's just -- I don't know if
12 that can be provided in the form of an RFI or how
13 they're going to be presenting this to their
14 advocates, but whether it would be career
15 enhancing to actually complete one of these
16 assignments.

17 MEMBER WALTON: This is Reggie Walton.
18 I -- oh, sorry.

19 MEMBER SCHWENK: Let me just follow up
20 on that, please. Marcia, are you talking like
21 precept language? Because I know the Navy, when
22 they started their military justice track 15

1 years ago, they actually did exactly that.

2 They put precept language in about how
3 important it was for the Navy to have these
4 people in the military justice career track, and
5 that was an effort to signal to board members,
6 all things being equal, give them extra weight if
7 they're in that track, so I think we're looking
8 at precept language.

9 MEMBER ANDERSON: Yeah, something
10 similar to that, yes, yeah.

11 MEMBER WALTON: I had a question
12 regarding the last panel. What's the status of
13 the Coast Guard? They're not subject to the
14 obligation?

15 COL. BOVARNICK: Correct, yes, sir.
16 Mr. Sullivan, any additional comment on that with
17 the Coast Guard?

18 MR. SULLIVAN: So, the Office of
19 Special Trial Counsel concept is in 10 USC
20 1044(f), which is not part of the UCMJ, so that
21 part of Title 10 applies only to DoD. In fact,
22 almost all of Title 10 applies only to DoD except

1 for the Uniform Code.

2 Now, there is a provision in the
3 Uniform Code. It's 10 USC 824(a) and that sets
4 up the special trial counsel. That does apply to
5 the Coast Guard. So, they will be subject to
6 that same 11 covered offenses falling under the
7 authority of the special trial counsel.

8 They are not subject to the authority
9 of the Office of Special Trial Counsel with the
10 general or flag officer head reporting directly
11 to the Secretary of the Military Department with
12 no intervening authority. The Coast Guard is not
13 bound by that language.

14 MEMBER GRIMM: This is Paul Grimm. I
15 have a question, Dwight, to what you just said.
16 Since we've heard from the Coast Guard in other
17 aspects of what our mission has been in the past
18 years, will it be possible to get some further
19 information from the Coast Guard as to what their
20 plans are?

21 Even if they're not directly affected
22 by the Title 10 requirement, they are under the

1 courts-martial manual, and I'd like to at least
2 have some idea, and perhaps some of my colleagues
3 would as well, that the Coast Guard's moving in
4 somewhat sync with the other Department's since
5 they can be called into --

6 I mean, I understand that they're
7 Homeland Security and they're not Department of
8 Defense, but you wouldn't necessarily know it
9 when you're watching joint operations going out
10 there.

11 MR. SULLIVAN: Your Honor, we can
12 certainly do that. The Coast Guard
13 representative was here this morning. I see he's
14 absconded, perhaps anticipating your question.

15 So, I think it's been mentioned that
16 DoD is providing briefings to the House and
17 Senate Armed Services Committees on these issues.
18 Similarly, the Coast Guard has already provided
19 briefings to its House and Senate oversight
20 committees, and I was able to tag along and be a
21 back bencher on one of those.

22 So, they certainly have some products

1 already developed that talk about their
2 implementation concept for things like Article
3 24(a) that do apply to them, so that is certainly
4 something that the Coast Guard could easily
5 respond to if the committee were to send them an
6 RFI.

7 MEMBER SCHWENK: I think we should
8 demand that their Deputy Judge Advocate General
9 present himself personally in front of us.

10 (Laughter.)

11 CHAIR SMITH: Mr. Coffey mentioned
12 that the Secretary of the Navy issued guidance on
13 creation of the OSTC, and I think he indicated he
14 would be willing to share that with the
15 committee. Would it be possible to get that?

16 And then also, if a similar sort of
17 guidance was issued by the Secretaries of the
18 other branches, if we could try to get our hands
19 on that as well, that would be great.

20 COL. BOVARNICK: Noted. Any other
21 members have any other follow up for any of the
22 presentations that we've had over the last couple

1 of days?

2 CHAIR SMITH: Would folks be
3 interested in maybe having them return as we get
4 closer to -- I guess they said the rollout isn't
5 until December of 2023, but perhaps, you know,
6 six months, maybe at our December meeting? Is
7 that too far out?

8 MEMBER SCHWENK: That's good. Maybe
9 just an update.

10 CHAIR SMITH: Yeah.

11 MEMBER SCHWENK: They'll still be
12 waiting for the JSC to get the Manual for Courts-
13 Martial changes over to the White House. You're
14 welcome, Dwight.

15 (Laughter.)

16 COL. BOVARNICK: Yes, ma'am. So,
17 we'll plan requesting a comeback meeting in
18 December, which again, I mentioned September
19 would likely be a one-day meeting, but December
20 with two days, so that will be -- we'll
21 definitely put in that request. Anything else on
22 this topic? Nothing heard.

1 So, the next thing we'll cover is, so
2 based on the deliberation yesterday and at the
3 direction of the Chair, unless there's any other
4 discussion -- well, I guess I'll open it up. Any
5 other comments on the SVC/VLC report?

6 I can provide a quick summary of what
7 I heard yesterday and then see if we want to move
8 to a vote or if we need further discussion.

9 So, in recommendation one, as we all
10 know, there was a full discussion on the report's
11 recommendation for 18 months and then numerous
12 points were raised for 24 months, each with an
13 exception for exigent circumstances, whether they
14 be personal reasons or operational necessity.

15 Members raised points that
16 recommendations one and two, which had to do with
17 the stovepipe rating chain for the Army, be
18 considered together. For example, with an
19 independent rating chain, there would be no
20 stigma for a counsel to ask for a cut in the tour
21 lengths for reasons such as a burnout.

22 A point was raised that for a first

1 tour judge advocate, a tour length is normally
2 three years at a duty station, and so allowing
3 for two 18-month assignments is a general
4 practice, but for more senior judge advocates
5 that do a permanent change of station or PCS to a
6 new duty station, it's generally a two-year
7 assignment, a two-year PCS, so the tour length
8 for that SVC or VLC would essentially be for the
9 entire two years.

10 Also, there was a recommendation -- it
11 is a recommendation, as we all know, for a
12 minimum, and any longer assignment would be to
13 the discretion of the services.

14 A recommendation for 18 months would
15 not preclude a 24-month tour, and a
16 recommendation for 24 months, even with the
17 exception to cut it short, may not necessarily
18 account for the reality that first tour judge
19 advocates may have to fill these billets with
20 competing demands to fill trial counsel and
21 defense counsel billets.

22 So, that was kind of the general

1 summary of recommendation wants. I think when we
2 call for a vote, it would either be for 18 months
3 or 24 months.

4 I think recommendation two, we really
5 didn't hear, at least I didn't hear any
6 opposition to the report's recommendation that
7 the Army do an independent rating train, rating
8 chain structure for SVCs to match the other
9 services, so this rating chain would be outside
10 the local SJA office.

11 And then finally, what I heard for
12 recommendations three through ten, whether we
13 call them recommendations or best practices, the
14 bottom line would be to delete those from the
15 report so that the report would go forward with
16 recommendations one and two, which is essentially
17 what we were tasked.

18 When we think back to the original
19 letter, Representative Speier and Senator
20 Gillibrand really asked for those two things.
21 The staff did do a little extra putting these
22 other recommendations, but those could be held

1 until later and deleted from this report, and
2 then further study if the committee decides to
3 take on that study. So, that third thing I would
4 ask for is essentially delete those from this
5 particular report.

6 So, with that said, that was kind of
7 my summary. Does anyone have any comments before
8 we call for a vote on the issues of 18 months or
9 24 for the first one, accepting two as written,
10 and then deleting these other best practices
11 three through ten and hold those for a future
12 study?

13 MEMBER SCHWENK: Yeah, this is Jim
14 Schwenk. I think Judge Walton had a compromise
15 position on the 18 versus 24, which was the last
16 thing we discussed, and it was that the
17 recommendation read something along the lines of,
18 for first tour, you know, service members who are
19 VLCs, SVCs, VCs, a minimum of 18 months with the
20 exceptions, and for second and subsequent tours,
21 24 months with the exceptions, so, and I think I
22 indicated that I thought that was really

1 brilliant.

2 COL. BOVARNICK: Yes, sir.

3 MEMBER BASHFORD: Martha Bashford.

4 COL. BOVARNICK: Ms. Bashford?

5 MEMBER BASHFORD: Yeah, with the
6 exceptions, my impression was that if there was
7 some, you know, critical medical or family
8 emergency, not just I'm feeling burnt out and I
9 don't want to do this anymore, is there any other
10 place in the services where somebody can simply
11 cut a tour short because they're feeling burnt
12 out?

13 I would think not, but we seem to be
14 saying, well, we can deal with burnout because
15 they won't have to do it anymore. Is that
16 accurate?

17 COL. BOVARNICK: Yeah, I would agree,
18 ma'am, that, yeah, I think the way that it's
19 written now, it would really be for operational
20 necessity. I wouldn't recommend something going
21 in there if the counsel requests it because of
22 burnout as far as any recommendation.

1 Whether that actually happens in
2 practice, I would agree that that's pretty
3 uncommon, and I think even if you had an
4 independent rating chain, in my opinion and
5 experience in the military, that wouldn't
6 necessarily help to get someone promoted.

7 But in any event, right, so I probably
8 mischaracterized it. I think the recommendation
9 would be with exceptions for operational
10 necessity.

11 MEMBER SCHWENK: Or personal like
12 Martha said, you know, a family problem or, you
13 know, something where --

14 COL. BOVARNICK: Right.

15 MEMBER SCHWENK: -- which happens all
16 the time, somebody has a problem somewhere and
17 they transfer them to take care of the problem,
18 so.

19 COL. BOVARNICK: Right, and that's
20 regardless of what the particular assignment is.

21 MEMBER SCHWENK: Yeah, like I got
22 cancer when I was in Okinawa and I served a short

1 tour and I was out of there, you know, and back
2 to get care, so a personal problem.

3 MEMBER WALTON: I mean, the
4 recommendation I made was to some degree, I
5 guess, political to the extent that it would
6 appease those two congressional members in
7 reference to the 24 months, but at the same time
8 would take into account the concerns expressed by
9 the military members themselves about, during at
10 least that first term, the 24-month requirement
11 because it would consume so much of their tenure.

12 COL. BOVARNICK: Yes, sir, you've
13 convinced me. I think we should vote on that
14 first if that's the -- I think it seems like we
15 probably could have unanimous on that.

16 So, with that, based on the Chair's
17 direction to me, I think we'll call for a vote.
18 All those in favor of the, I'll just call it the
19 compromised position, you all just heard it,
20 first tour, minimum of 18 months, second or
21 subsequent, 24 months. All in favor of that, say
22 aye?

1 (Chorus of aye.)

2 COL. BOVARNICK: I think unanimous,
3 okay. Sorry, anyone opposed? I want to make
4 sure I don't miss somebody.

5 MEMBER GRIMM: So, Colonel, could I --

6 MEMBER SMITH: I thought Judge Grimm
7 was trying to speak.

8 COL. BOVARNICK: Oh, sorry.

9 MEMBER GRIMM: Yeah, Colonel, it might
10 just be easier to say is there anyone who votes
11 against it so that we don't have to keep saying
12 aye for everything. It's hard to know how many
13 people said aye. We're not waving our hands and
14 we're not marking it. So, it might be easier
15 just to say, is there anyone who votes against
16 it?

17 COL. BOVARNICK: Roger, sir, will do.
18 So, for that one, I think no one was opposed.
19 For this second recommendation, which is that the
20 Army's rating chain be independent similar to the
21 other services, is anyone opposed? Nothing
22 heard.

1 And then for the final one, we'll call
2 best practices three through ten, is anyone
3 opposed to those being deleted from this report
4 as you all saw and then leave it for future
5 consideration? Is anyone opposed to that
6 recommendation to pull those from this report?

7 CHAIR SMITH: Can I just ask one
8 question?

9 COL. BOVARNICK: Yes, ma'am.

10 CHAIR SMITH: Initially, when you said
11 delete it from the report and the committee can
12 take it up again if we want, I think, if I heard
13 General Schwenk correctly, and I get the
14 impression from the comments yesterday, we
15 definitely want to take it up later. I think we
16 just wanted it fleshed out a little bit more
17 before we presented.

18 MEMBER SCHWENK: Yeah, I think the
19 recommendation was take it, assign it to a
20 subcommittee, and direct the subcommittee to do
21 best practices of an SVC/VLC/VC program based on
22 the two that we addressed, and then the other

1 eight, and then whatever else the subcommittee
2 develops.

3 COL. BOVARNICK: Right, absolutely
4 right. So, this was actually more focused, like
5 this report, wrapping this one up, and then, yes,
6 that study would be assigned to a subcommittee
7 for further study, yes, ma'am.

8 So, I think with that, ma'am, if you
9 want to, we can probably hit that last part on
10 page five and leave the script for you.

11 MEMBER SCHWENK: Disagree.

12 CHAIR SMITH: Yeah, we didn't ask if
13 anyone was opposed to removing recommendations
14 three through ten and then referring it to the
15 subcommittee. Any opposition? No.

16 COL. BOVARNICK: None heard. So, on
17 page five there, for you, ma'am.

18 CHAIR SMITH: Oh, okay, thank you.
19 So, this concludes the voting on the SVC/VLC
20 report. The staff would complete the report,
21 remove, oh, I'm sorry, remove parts three through
22 ten for work to be completed by the subcommittee,

1 and return the report to us for a final review.

2 Once it's completed, we will submit
3 the final report to DoD, OGC, and the Congress.
4 Once submitted to Congress, it will also be
5 posted on the DAC-IPAD website for public access.

6 COL. BOVARNICK: Thank you, ma'am.
7 Okay, so now we want to conclude on the appellate
8 report discussion that was briefed yesterday by
9 Ms. Tagert and Ms. Critchley, and so there was a
10 great discussion there, and we want to open that
11 up for -- first off, are there any other
12 comments?

13 My real quick summary was it appeared
14 that the committee is ready to vote on whether to
15 include child sex offenses, the definition of
16 sexual assault that was proposed by the staff,
17 and then whether to report on the study in
18 phases, and so is there any additional comment on
19 the appellate review project that will be
20 ultimately assigned to a subcommittee?

21 So, with no other comment then, ma'am,
22 should I call for a vote on that now? Okay, so

1 is anyone opposed to including child sex offenses
2 in the appellate case review study? No
3 opposition heard.

4 Is anyone opposed to the definition of
5 sexual assault that was proposed by the staff?
6 And no opposition heard. And finally, is anyone
7 opposed to reporting on that study in phases as
8 was described by the staff yesterday? Okay, no
9 opposition heard, so that concludes the appellate
10 report.

11 Next, we're going to move into the
12 subcommittees and proposals to assign projects to
13 subcommittees, and just a couple of additional
14 comments on that. So, the three subcommittees
15 that are proposed for nomination, you all heard
16 yesterday.

17 I'm not covering the members, but the
18 actual committees, special projects subcommittee,
19 case review subcommittee, and a policy
20 subcommittee.

21 The initial recommendation is to
22 assign two projects or studies to each

1 subcommittee at this time, and then obviously if
2 more are added, but for today's purposes, at
3 least get two per subcommittee.

4 And so, if everyone recalls, it was
5 covered in great detail yesterday. I won't
6 belabor it today, but right now, the committee
7 has seven specific tasks, and we just actually
8 finalized the, well, we haven't finalized it, but
9 we know where we're going with the SVC report, so
10 that one, we don't have to assign to a
11 subcommittee.

12 Two, I had mentioned yesterday,
13 statutory don't have to be assigned to a
14 subcommittee, the March 2023 annual report and
15 the September 2023 biennial, collateral
16 misconduct, don't have to be assigned to a
17 subcommittee.

18 So, that leaves us with four current
19 tasks, three of them you were briefed on
20 yesterday and one you heard extensively about
21 today, and so those would be the victim impact
22 statements, the alternative forms of justice,

1 both in the ToR, the appellate case review that
2 we just discussed, and then the Office of Special
3 Trial Counsel task.

4 So, to start out, again, I'll just
5 throw out the recommendation, but leave it to the
6 committee for a discussion, would be, for
7 example, for the special project subcommittee,
8 what I would recommend and throw out to the group
9 for discussion before any vote is that the Office
10 of Special Trial Counsel task be assigned to that
11 subcommittee.

12 So, that subcommittee would track that
13 fully as it develops, and so my recommendation
14 would, again, throwing it to the committee if
15 there's any discussion on whether the special
16 project subcommittee would be the best
17 subcommittee to take on that task.

18 I guess with nothing heard, we could
19 go right to the vote. Is anyone opposed to
20 placing that Office of Special Trial Counsel task
21 under the special project subcommittee? Okay, no
22 opposition heard, so that will be placed under

1 there.

2 So, in other words, when we request
3 our subcommittee formation through the General
4 Counsel, that will be aligned under that
5 subcommittee.

6 The appellate case review proposal, to
7 align that under the case review subcommittee
8 seems self-evident, but is anyone -- I guess,
9 I'll just ask, is anyone opposed to the appellate
10 case review task that we just voted on be
11 assigned to that case review subcommittee?

12 Nothing heard.

13 And then the two JES tasks that also
14 appear in the terms of reference that you were
15 briefed on yesterday, is anyone opposed to those
16 two studies being placed under the policy
17 subcommittee? Nothing heard.

18 Okay, so that leaves us, as we can all
19 see, two kind of slots there, and so what I'll do
20 now is, if we go to the -- okay, actually it's at
21 the bottom, sorry.

22 So, what you see here is we had, when

1 we sent out the recommendations for studies that
2 the committee would be interested in, actually
3 there's one before that that's not on here. So,
4 there was one that came from the IRC and it had
5 to do with studying -- actually, let me, rather
6 than try to ad lib this.

7 So, the IRC recommended at the back of
8 their report, not one of their primary
9 recommendations that were actually assigned, but
10 they recommended that the National Guard Bureau
11 modify its model state code of military justice
12 to include changes made by Congress to the UCMJ
13 as a result of the IRC recommendations and
14 encourages states to adopt the modified model
15 code.

16 And so, that was listed in that. I'll
17 just state here -- and importantly, the Secretary
18 of Defense did not direct that study to the DAC-
19 IPAD. The Secretary of Defense directed other
20 studies to the DAC-IPAD, but they did not direct
21 that one.

22 We asked if the committee had any

1 interest and the vast majority of the committee
2 did not express interest in undertaking this
3 study, and so what I would ask is, I guess --
4 actually I got the double negative here.

5 So, is anyone opposed to not studying
6 that, if that works?

7 (Laughter.)

8 COL. BOVARNICK: Okay, does anyone, I
9 guess, yeah, does anyone want to study that?
10 Nothing heard. Okay, so that one's off the
11 table.

12 Okay, so now these are the nine write-
13 ins here and I want to comment on the bottom
14 right. That, you heard mentioned today and the
15 staff mentioned it in Mr. Mason's briefing
16 yesterday.

17 There is a provision in the FY 22
18 NDAA, Section 547, which some of our staff
19 members are working on creating a database, so I
20 say we take that off the table for one, and then
21 up for discussion are these others.

22 I'll just throw out the standing

1 military magistrate. I talked to Ms. Tokash
2 about it. That may be a good one potentially for
3 the special project subcommittee, again to be
4 developed on what that would mean as far as the
5 specifics, but now it's just thinking about what
6 does the committee want to study and throw out?

7 And I think acquittal rates and
8 courts-martial, a great proposal by Ms. Bashford,
9 might be a great one to fall under the case
10 review subcommittee, but with that, I will stop
11 talking and turn it over to the committee.

12 MEMBER TOKASH: This is Meghan Tokash.

13 COL. BOVARNICK: That's a good point,
14 yeah. The other thing I'll throw out, this great
15 point, and do we want to assign the best
16 practices on the SVC task, maybe another one
17 that's not up here, but we obviously just
18 discussed it, assign that to a subcommittee.

19 So, with that said, now I'll stop
20 talking. So, there's one that's not listed up
21 there, but it's one we all just discussed.

22 MEMBER SMITH: I think Meghan Tokash

1 --

2 COL. BOVARNICK: Oh, sorry, Ms.
3 Tokash, sorry, because we can't see up on the
4 screen, but go ahead, please.

5 MEMBER TOKASH: No problem. Yes,
6 Colonel Bovarnick, you and I did speak about the
7 standing magistrates.

8 I think that that makes the most sense
9 to be one of the special projects that the
10 subcommittee can take on, especially considering
11 membership of the committee includes Judge Grimm
12 and Judge Walton, who I think would be very
13 helpful in studying that particular issue, over.

14 COL. BOVARNICK: Yes, ma'am, so I
15 guess I'll just go right to it. Is anyone
16 opposed to putting the standing military
17 magistrates, there's obviously a lot to be
18 developed with the parameters of that study, but
19 assigning that to the special projects
20 subcommittee? With none heard, that takes care
21 of that.

22 And then how about the proposal from

1 Ms. Bashford, who is the subcommittee chair for
2 the case review subcommittee, to study acquittal
3 rates and courts-martial? Anyone opposed to
4 that? Okay, none heard.

5 MEMBER GARVIN: This is Ms. Garvin.

6 COL. BOVARNICK: Oh, sorry, go ahead.

7 MEMBER GARVIN: I'm just wondering,
8 and I know this will get fleshed out or whatever
9 the vocabulary is in whatever subcommittee it
10 gets tasked to, but I do wonder, we've had some
11 conversation about ensuring that we don't stay
12 narrow on percentages, on rates, on conviction
13 rates or acquittal rates.

14 And so, I'm wondering if the, as I
15 look at my screen, the acquittal rate one
16 combined with the box right below it, analysis on
17 why victims withdraw, if it's actually a combined
18 thing, topic that gets referred to a subcommittee
19 about attrition, right, or case conclusion, or
20 something that goes -- as opposed to something
21 that says acquittal rates, because then I believe
22 the committee as a whole, we're kind of falling

1 into the trap of looking at data without going
2 into, I believe Ms. Long noted, the why. We're
3 looking at the what, not the why.

4 So, I just put that out there that
5 maybe even as we refer it to a committee, that
6 we are referring that when they think about what
7 the scope of the question is that they're going
8 to tackle, that they consider the box below it
9 also or something along those lines.

10 COL. BOVARNICK: Yes, ma'am. That
11 could definitely be included in the scope of
12 that. Again, these obviously are very broad,
13 even just the concept of standing military
14 magistrates. They can incorporate a lot. Just
15 like the one below that says appellate practice,
16 I mean, that can certainly be wrapped up into the
17 appellate case reviews.

18 So, a lot of these issues that the
19 members proposed on these write-ins absolutely
20 can be included, and some that we already have
21 and certainly for future studies as well, but,
22 yes, the one you mentioned, I think, definitely

1 can be included and should be included in that
2 acquittal rate one.

3 MEMBER BASHFORD: This is Martha
4 Bashford. One thing I don't want us to lose is -
5 - General Schwenk did such a great job leading
6 case review before, and then with the data
7 analysis, when we were sort of all stood down,
8 there were a lot of interesting things that
9 needed further development from that.

10 I don't want us just to kind of forget
11 where we left off, and some of it was why do
12 victims withdraw? What's the effect of alcohol?
13 The fact that force or a threat of force hardly
14 ever showed up in these cases. Victims not
15 represented by VLC had better court-martial
16 outcomes.

17 So, I think I agree with Meg that we
18 want to -- we don't want to just look at one
19 thing. I think it would be good to follow up on
20 some of the questions that came out of that
21 massive case review.

22 COL. BOVARNICK: Yes, ma'am, and I

1 think that will be up to the subcommittee as you
2 develop the parameters of the study and then, you
3 know, basically provide that as an update to the
4 full committee, whether that's in September or
5 the December time frame, but absolutely.

6 So, I think, Madam Chair, I think we
7 could, I guess, if we say that, yes, under the
8 special projects one, we have the standing
9 military magistrates to be developed, and then
10 the acquittal rates and other issues associated
11 with that to be under the case review
12 subcommittee.

13 Okay, so that concludes that portion
14 of the discussion. Now over to the deputy
15 director to --

16 MS. SAUNDERS: Colonel Bovarnick?

17 COL. BOVARNICK: Oh, yes, ma'am?

18 MS. SAUNDERS: I'm sorry. I just
19 wanted to bring up one issue. I think it was an
20 open question yesterday on some of the JES
21 topics, for example, whether the victim impact
22 statement issue is still something that the

1 committee wants to discuss in light of judge-
2 alone sentencing.

3 So, for example, the two JES topics
4 would presumably go to policy, but if the
5 committee determines that either that topic is
6 kind of OBE, for lack of a better word, or
7 perhaps should be deferred, is there more
8 discussion that the committee wants to have on
9 that? Do you want to take up that topic?

10 Alternatively, we could summarize that
11 in the annual report to simply say the committee
12 determined that this is, you know, that this does
13 not need to be looked at at this time based on
14 judge-alone sentencing or deferred pending the
15 changes to the system.

16 So, I just, with those two topics in
17 there, I just wanted to see if the committee had
18 any more discussion on that or had thought any
19 that any more.

20 CHAIR SMITH: I know we talked about
21 the fact that you could look at or we could look
22 at the judge-only cases that are occurring now

1 and still have it be a topic that we look into.
2 I don't know how folks feel about that or what
3 other people think about that.

4 MEMBER GARVIN: This is Ms. Garvin.

5 MEMBER WALTON: As I understand, most
6 sentencings are judge-alone sentencings already,
7 and that's going to be the requirement, I guess,
8 down the line, and it seems to me that it's an
9 issue that needs to be addressed.

10 Because, I guess, from the world in
11 which I come, I don't understand the limitation
12 that's put on the ability of a victim to express
13 whatever his or her perspective is in reference
14 to the sentencing at the time, you know, the
15 sentencing is going to be imposed.

16 I mean, if the judge wants to
17 disregard whatever is in the victim impact
18 statement, the judge can do that, but I just
19 don't see why a victim should be limited in what
20 he or she can say to the court about what they
21 feel about what the sentence should be in a case
22 where they were, you know, impacted by what

1 happened.

2 MS. SAUNDERS: Okay, so I just wanted
3 to make sure that you had all discussed that and
4 make sure I understood where we were coming out
5 on that, so I think that covers it. Thank you.

6 CHAIR SMITH: Can I add one more thing
7 that I had spoken to Ms. Tokash about and I
8 mentioned to Ms. Carson?

9 I was concerned yesterday by one, the
10 statistics, or not the statistic, the educated
11 guess about the percentage of appeals that dealt
12 with child sex abuse, and then two, the study Ms.
13 Tokash brought up which said that in the
14 military, that child pornography is, you know,
15 four times greater than in the civilian world.

16 And so, it seemed to me that looking
17 at sexual child abuse might be something that
18 this committee should consider, so if that's
19 something that we could assign to a subcommittee
20 or people could discuss whether that's something
21 that we want to look at, but the idea that --

22 You know, listen, 30 percent of the

1 appeals or somewhere around there are sexual
2 child abuse cases. That could be a function of
3 those are the types of cases that people are
4 appealing or that could be a function of, you
5 know, 30 percent of the cases flowing through the
6 military courts involve child sexual abuse.

7 I don't know, but I certainly think
8 it's something that the committee should consider
9 looking at if it's something people are
10 interested in.

11 COL. BOVARNICK: Oh, sorry, next on
12 the agenda that Ms. Carson was going to cover.

13 MS. CARSON: So, Chair smith, that's
14 a great segue into our discussion of the scope of
15 projects for the committee.

16 Just for some background for our
17 newest members, the committee, at the first
18 meeting it had five years ago, set some
19 boundaries on the scope of what it would look
20 into, and one of those boundaries was not to look
21 into child cases.

22 By what I've heard from yesterday and

1 today especially, I think we don't want to
2 continue that boundary. It sounds to me like
3 perhaps it should be considered on a case,
4 project by project basis.

5 If you want to have any discussion, if
6 there are any other scoping issues on things you
7 want to be sure or things you think are out of
8 bounds for what this committee should be looking
9 into as a blanket, I thought that would be a
10 worthwhile discussion to have and then move on
11 from, so I'll open it to you all to discuss.

12 CHAIR SMITH: I would be curious about
13 contact offenses, not penetrative, but contact
14 offenses. I'm trying to recall. I did take
15 notes, but one of the people on the panel
16 indicated 70 percent of their cases were contact
17 offenses.

18 And it seems to me that many times sex
19 offenses start as kind of the -- it's all
20 offensive, but not penetrative things, right? It
21 starts with groping and then it eventually moves
22 to something that might become penetrative.

1 And so, if we're looking at sexual
2 assault in the military, certainly groping and
3 contact offenses would be something, I think,
4 that we should be looking at, especially if -- I
5 don't remember who said it. Someone said it was
6 70 percent of the offenses that they saw.

7 So, that might be -- and I know that
8 makes it a -- that casts a wider net for us, but
9 it's worth discussing, particularly because one
10 of the issues that the military faces is things
11 that are, not accepted, I won't say accepted, but
12 that there is a tone, and if the tone is supposed
13 to be one of keep your hands to yourself and, you
14 know, that isn't always followed through with,
15 perhaps we could come up with some
16 recommendations.

17 MS. CARSON: I think that's a really
18 good point because it's interesting these
19 committees have evolved since the first one, the
20 RSP. The committee looked at penetrative and
21 contact offenses all together and didn't separate
22 them, and the next committee --

1 Actually, I think the JPP may have
2 done that too, but then the decision was made to
3 look specifically at penetrative offenses, and
4 that's what the case review committee did the
5 last time, but that's a good point that contact
6 offenses have now, which are very different than
7 the penetrative offenses, have not been looked at
8 as a separate category. So, is there any other
9 comment on --

10 MR. SULLIVAN: Ms. Carson, could I ask
11 -- Ms. Carson, Dwight here, could I ask one
12 clarifying question?

13 MS. CARSON: Oh, sure, sure. I
14 thought that was Judge Grimm, sorry.

15 MR. SULLIVAN: It's all right. So,
16 that's quite a compliment to be confused with
17 Judge Grimm. So, yesterday when the guesstimate
18 of 30 percent was made, was that 30 percent of
19 the whole pie of appellate cases or was that 30
20 percent of the one-third of appellate cases that
21 were sex abuse cases?

22 MS. CARSON: I'm not sure what the 30

1 percent is. What's the statistic you're -- 30
2 percent of what? Oh, it's Audrey, okay.

3 MS. CRITCHLEY: Yeah, Mr. Sullivan,
4 that was a guesstimate of the one-third, one-
5 third of the one-third.

6 MR. SULLIVAN: Right, so ten percent
7 roughly of the appellate cases then would fall
8 under that?

9 MS. CRITCHLEY: Well, we couldn't
10 answer as to the others because we -- as to the
11 remaining two-thirds, so I don't know.

12 MR. SULLIVAN: Right, so 30 percent of
13 roughly a third, so it's somewhere between nine
14 and ten percent, guesstimate.

15 MS. CRITCHLEY: Well, I mean, you know,
16 of the remaining maybe 70 percent, it might be
17 even higher than that. I can't speak to the
18 percentage in that pool, but, yes, it's referring
19 to that third.

20 MEMBER BASHFORD: Martha Bashford.

21 CHAIR SMITH: And it was Major General
22 Bligh who said that 70 percent of the offenses

1 are touching in the Marines.

2 MEMBER BASHFORD: Martha Bashford.

3 MEMBER SCHWENK: Yeah, I think the
4 reason -- this is Jim Schwenk. I think the
5 reason that we went to penetrative rather than
6 everything is purely a function of trying to save
7 Kate Tagert's sanity by coming up with a number
8 of cases that we thought we could handle in one
9 year, but we were off by two years, so it was
10 case load, just --

11 You know, it wasn't a decision, I
12 don't believe, that we valued studying
13 penetrative more than contact. It was just we
14 had to cut it somewhere to get the numbers down
15 and that was one of our arbitrary cutoffs.

16 CHAIR SMITH: Ms. Bashford, did you
17 have something you wanted to say?

18 MEMBER BASHFORD: That's what -- we
19 wound up with 2,000 cases just on the felony
20 level penetrative, so I don't think we possibly
21 could have included contact offenses in that
22 intensive case review which had never been done

1 before.

2 But I think that 70/30 is probably the
3 same for civilians as well. We've seen much more
4 of somebody smacking somebody or rubbing up
5 against somebody way more than we would see
6 penetrative offenses in the civilian side as
7 well.

8 MS. TAGERT: And we can certainly --
9 as the staff, we have years of data that shows
10 both contact and penetration, so we can certainly
11 get those statistics to you, you know, in a form
12 easy to read that the data team has collected
13 over the years.

14 MS. CARSON: And I think the
15 recognition of the difference in penetrative and
16 contact as a form of sexual offense to study was
17 really an important one, that it was looked at
18 separately to the penetrative offenses because
19 you would expect things to be different in those.

20 So, it's just, exactly, a function of
21 time and ability to look at the contact offenses,
22 but I think it's a good point that that's a

1 category that hasn't been looked at.

2 CHAIR SMITH: How does the -- I just
3 have a question real quick. How does the
4 military define sexual harassment? And that
5 might not be an easy question.

6 MS. CARSON: Dwight?

7 MR. SULLIVAN: So, Your Honor, the --
8 in January of this year, the President issued an
9 executive order that added sexual harassment as a
10 prescribed Article 134 offense, so this is going
11 to take a little bit of background, my apologies.

12 But we're all used to statutes that --
13 you know, we're used to the norm that a criminal
14 statute is enacted by the legislature. Well, one
15 of the UCMJ punitive articles is Article 134,
16 which is called the general article, and it
17 prohibits three things.

18 It prohibits conduct that's
19 prejudicial to good order and discipline, it
20 prohibits conduct that is service discrediting,
21 and it prohibits a service member and allows the
22 service member to be prosecuted by court-martial

1 for violating any federal offense that is not
2 capital.

3 So, any 18 USC offense, any 21 USC
4 offense, you know, a drug offense, all of those
5 can be prosecuted under Article 134.

6 Now, what the President has done is
7 he's prescribed in the Manual for Courts-Martial
8 certain ways that are likely to be associated
9 with conduct that is either prejudicial to good
10 order and discipline or service discrediting.

11 And in January of this year, the
12 President issued an executive order that
13 established sexual harassment as one of those
14 means.

15 Now, I'll say before that, the
16 military already prosecuted quite a lot of sexual
17 harassment cases, but they did it either as an
18 orders violation or they did it as maltreatment
19 of a subordinate where it was a
20 subordinate/superior relationship.

21 But we now have a prescribed Article
22 134 offense. It does require the terminal

1 element that that sexual harassment be either
2 service discrediting or of a nature to discredit
3 the Armed Forces, but the executive order lays
4 out the elements and the staff can easily get you
5 that provision, and Rich Gross has just brought
6 me that provision.

7 (Laughter.)

8 MR. SULLIVAN: Thank you. And so, the
9 elements that were prescribed by the President
10 are that the accused knowingly made a sexual
11 advance, demand, or request for sexual favors, or
12 knowingly engaged in other conduct of a sexual
13 nature, that such conduct was unwelcome, and that
14 under the circumstances, such conduct would, and
15 then it lays out those familiar EEO standards for
16 the effect of those actions in that particular
17 context, but again, we'll get you the actual
18 language. Thanks so much.

19 CHAIR SMITH: So, I was asking that
20 question because I'm wondering whether that is
21 something as well that we want to look at or is
22 that biting off too much? I don't know.

1 MS. CARSON: That was my exact next
2 comment was going to be sexual harassment.

3 CHAIR SMITH: Okay.

4 MS. CARSON: It was looked at by the
5 IRC. It's a new, exactly, a new offense, so is
6 that too much? Does the committee want to say
7 they're going to or not going to specifically at
8 this time or leave it for a later date to decide?

9 MEMBER O'CONNOR: I guess I have a
10 question which is what does it mean to look at
11 it, like a general topic, but like what would we
12 be looking for, and analyzing cases, trying to
13 add legislative description to what the meaning
14 of the words are? What would we be looking at?
15 What's your thought about that?

16 MEMBER SCHWENK: One of the immediate
17 things -- this is Jim Schwenk. One of the
18 immediate things we could do is, if we wanted to
19 do a short-term one and not miss the boat or miss
20 the train because it left the station, I mix my
21 metaphors all the time, but --

22 (Laughter.)

1 MEMBER SMITH: We get what you mean.

2 MEMBER SCHWENK: -- but anyway, is
3 Congress last year listed 11 offenses for the
4 special trial counsel.

5 Unlisted was sexual harassment
6 because, at that time, there was no punitive
7 article of sexual harassment, but in that
8 legislation, they directed the President to do
9 what he did in January.

10 So, now there is a punitive article,
11 so it seems to me the ball is in Congress's court
12 with this year's NDAA to decide do you do it
13 number 12, sexual harassment, or do you leave it
14 at number 11?

15 And there are, we heard on the
16 Independent Review Commission, some cogent
17 arguments for why it should be included. It's
18 sexual harassment. It's the predicate in so many
19 cases for sexual assault. It's silly not to have
20 it all together.

21 On the other hand, most sexual
22 harassment are minor and they're taken care of

1 quickly by the command in order to get the
2 attention of the command and discipline the
3 individual.

4 And so, obviously if you make it
5 number 12 on the list and it has to go to the
6 special trial counsel, you're not going to get
7 any quickness in that system, or you could get
8 some quickness, but not as quick as if the
9 command just did it themselves.

10 So, there were arguments back and
11 forth. That's a narrower beginning of looking at
12 the sexual harassment issue, but it's one that
13 is, I think, timely. Dwight, does that -- am I
14 wrong or right?

15 MR. SULLIVAN: You're right.

16 MEMBER SCHWENK: Okay, I paid him \$20
17 before we came in. So, that would be something
18 narrower in scope that would open the door to
19 other sexual harassment analysis, but is timely
20 for the NDAA that they're going to be writing
21 this year.

22 MEMBER MARKOWITZ: If I may, this is

1 Jen Markowitz, I would say, just my own
2 experience with these cases, it is so incredibly
3 pervasive. I would love to see us take this
4 particular issue on.

5 And as General Schwenk just described,
6 in this very narrow way, I think we would have
7 the ability to move the needle a little bit on
8 this. So, from my perspective, I think it's a
9 great use of our time, over.

10 MS. CARSON: From an authorities
11 perspective, the statute says that you will
12 advise the Secretary of Defense on the prescribed
13 sexual misconduct and other sexual misconduct, so
14 I believe it's within your discretion whether or
15 not that's something you wish to consider.

16 MEMBER WALTON: Yeah, I agree it's a
17 good idea because often it's a precursor to more
18 serious misconduct.

19 MS. CARSON: I also think with the
20 FY23 NDAA, you may see some additional offenses
21 added in, or at least attempted to be added in,
22 including sexual harassment.

1 MEMBER SCHWENK: That would be
2 important because Congress has to move the ball
3 while DoD is doing all of this --

4 MS. CARSON: Yes.

5 MEMBER SCHWENK: -- planning for how
6 many cases and how big the office should be.
7 Obviously, you want to move the ball, so all of
8 that has to be changed.

9 MS. CARSON: Are there any other
10 issues that come to mind that you think would be
11 beneficial to weigh in on now, whether or not the
12 committee thinks it's within your jurisdiction,
13 or tasking, or scope?

14 MEMBER SCHWENK: I think Colonel
15 Bovarnick mentioned it, but on the appellate case
16 review, I think that that subcommittee, Martha,
17 should also be looking at the process, the
18 system, the interface with VLC, you know, so that
19 once they finish looking at the cases and writing
20 their report on cases, they're prepared to come
21 back to the committee and say, we think there is
22 more there we could look at in the appellate

1 process, or we looked at that while we were doing
2 the case review and there's nothing worth looking
3 at. Go get another issue. So, I think that
4 makes sense.

5 MS. CARSON: So, my next two topics to
6 discuss are kind of part and parcel of the same
7 thing. The first is the composition of the March
8 2023 annual report, which is coming up sooner
9 than we would like probably. The second is the
10 presenters and focus for the September meeting.

11 And so, I always try to look at every
12 task and begin with the end in mind, and so in
13 thinking of who you want in September, it's
14 helpful to think of how many more meetings do we
15 have and how will we do that annual report?

16 So, there will be a meeting in
17 September and then there will be, I mean, yeah,
18 in December, and then one sometime before the
19 March deadline when you vote on that annual
20 report, which means you can hear testimony in
21 September from whatever you want to focus on
22 next.

1 I think a piece that you heard from
2 today or yesterday was the appellate project.
3 There are some folks that -- the government and
4 defense appellate divisions could potentially be
5 people you want to hear from in pursuing that
6 appellate project potentially at the September
7 meeting.

8 You were also sent a list of topics
9 that I believe you responded to, topics of
10 interest. I believe the military criminal
11 investigators were top on that list, so that's
12 not associated with a current topic, but that's
13 another group that we could bring testimony in
14 from.

15 We penciled this in, a few of us, over
16 lunch, just to think of what we, you know, how to
17 fill that September meeting, and if we brought in
18 government appellate and defense appellate -- I
19 try to think of each meeting as a block of five
20 hours. That's about as much scheduling as you
21 can do.

22 If we did a government and a defense

1 appellate division, that would be about three
2 hours, and then an appellate presentation and
3 deliberations, probably another hour, 30 minutes
4 to an hour.

5 Another thing we can do before
6 September is get an update on the Office of
7 Special Trial Counsel by issuing some requests
8 for information that the staff can put together
9 and see where things are.

10 We can summarize the testimony that we
11 heard and present that to the members to review
12 and have some further discussion on thinking
13 through what do you want to say in that March
14 report.

15 So, the areas in the report are going
16 to be the typical, describing the reconstitution
17 of the committee, the formation of the
18 subcommittees, the request that they be formed by
19 DoD, the summary of the SVC/VLC report since it
20 will be released before that date, and then an
21 update on the required appellate project.

22 So, having some testimony to discuss

1 in that report would potentially be beneficial,
2 also further discussion of the information that
3 you heard, maybe some additional information on
4 the data, what we can get or how we can deliver
5 some more information on the offenses. The
6 number of cases for each offense, I know, was of
7 interest in the discussions.

8 MEMBER SCHWENK: And updates from each
9 subcommittee, because we've done that in the past
10 where, you know, you say here is where we're at
11 on stuff.

12 MS. CARSON: Well, let me ask Dwight
13 that question because my understanding from the
14 Federal Advisory Committee Act is the
15 subcommittees can't meet until they're
16 established by the General Counsel. Is that
17 correct?

18 So, I don't think there can be
19 official subcommittee meetings before -- well,
20 hopefully maybe by the September meeting, we can
21 have them.

22 MEMBER SCHWENK: I'm sorry. I was

1 talking about the annual report, that in the
2 annual report --

3 MS. CARSON: Yeah, sorry, you're
4 absolutely right.

5 MEMBER SCHWENK: -- you could have
6 updates on what we're doing in each subcommittee.

7 MS. CARSON: And if --

8 MEMBER SCHWENK: This subcommittee is
9 doing this.

10 MS. CARSON: That will be, absolutely
11 be in there.

12 MEMBER SCHWENK: Here is what they've
13 done and not done, and maybe some subcommittee
14 will have something done and we can report it in
15 there.

16 MS. CARSON: And that will be the
17 section on the formation of the subcommittees.
18 If we're that far along, sure, that would be
19 great.

20 COL. BOVARNICK: I'm sorry, if I could
21 just jump in, I have assurances that I think
22 we're going to be able to turn the subcommittee

1 approval fairly quickly.

2 I'll have all of the documents ready
3 for the Chair's signature, get it over to Mr.
4 Sullivan, and he's given assurances that he's
5 going to be able to turn that around pretty
6 quickly.

7 So, there could be an alternative
8 where the subcommittees are formed, then perhaps
9 the subcommittees could hear from the appellate
10 personnel, so that's just another option, but I
11 think that that's one of the things that's
12 another option out there.

13 MEMBER SCHWENK: Yeah, when we're
14 going to the appellate people, besides appellate
15 government and appellate defense, it might be
16 interesting to get a few VLC/SVC/VC people and
17 ask their perspective on how they are interacting
18 appellate wise.

19 MS. CARSON: At the appellate level.

20 MEMBER SCHWENK: And maybe Bill
21 Cassara or somebody could help us get some
22 civilian practitioners who have done some

1 appellate work as civilian defense counsel so
2 that we're hitting a broader scope.

3 MS. CARSON: That would fill a meeting
4 for sure, and maybe -- that would be four panels,
5 so it may be best to do maybe two in September
6 and two in December so that you can really
7 marinate on what each one says each time, so that
8 might take us through the end of the year and
9 then give us a lot of material to discuss for the
10 annual report.

11 The MCI, the military criminal
12 investigators, was the highly reviewed topic as
13 well. Is that something -- do you want to put
14 that on the list for maybe the first meeting of
15 2023 to hear from the investigators or a follow
16 up from the IRC on the Fort Hood report?

17 MEMBER SCHWENK: I think the MCIOs are
18 important. They're the key to getting started on
19 the whole process for those offenses that have to
20 go to an MCIO, and we've dealt with them closely
21 in the past and they've been really responsive.

22 They were great with the IRC and who

1 knows what they're doing with the recommendations
2 out of the IRC? I don't know, but I think we
3 probably owe it to ask them how goes it? What's
4 going well and what isn't?

5 COL. BOVARNICK: One option could be
6 -- sorry to jump in there. One option could be
7 to have a panel with the MCIOs in September. I
8 know that was kind of what everyone recommended
9 as their number one, or the vast majority of the
10 panel.

11 So, is that something we could convene
12 like a 90-minute panel with the heads of each of
13 the, or at least close to the heads of each of
14 the organizations from the MCIOs?

15 MEMBER BASHFORD: Martha Bashford.
16 Just one thing when we're thinking of who we want
17 to hear from, it seems to me that when we lost
18 Master Sergeant McKinley on the panel, we don't
19 really have any enlisted perspective advocate
20 anymore on our panel.

21 So, when we're thinking of people to
22 invite, could we try to just keep that as

1 something we really want to hear from as well
2 where appropriate?

3 MS. CARSON: So, an enlisted panel,
4 enlisted members?

5 MEMBER BASHFORD: Yeah, you know, in
6 some form or fashion. We don't have that voice
7 for us anymore and I don't want to forget about
8 it.

9 MS. CARSON: Okay, so the next
10 question is do you want to address victim impact
11 and alternative justice in the 2023 report? You
12 can just, you know, make a decision in September
13 or at a later date of what you want to say, but
14 we're just outlining what that report is going to
15 look like.

16 CHAIR SMITH: I think that's good to
17 include. I was actually asking the general about
18 having, what was it, sexual response --

19 MEMBER SCHWENK: Victim advocates and
20 sexual assault response coordinators, a panel of
21 those. We did that when we traveled and they
22 were, you know, an important constituency to talk

1 to.

2 CHAIR SMITH: Right, I think that
3 might be helpful to hear from them.

4 MS. CARSON: In September or in
5 December? So, now I think you've identified
6 several groups now to hear from. The question is
7 going to be in what order? Do you want to hear
8 from all of the appellate folks, that's a whole
9 meeting together?

10 Do you want to split those up between
11 the two? Do you want to hear from the criminal
12 investigators and the victim advocates on the
13 same meeting or we can split them all up?

14 CHAIR SMITH: I think maybe appellate
15 in one meeting, and then I'm open to suggestions
16 obviously, and then MCIOs and victim advocates in
17 another.

18 MS. CARSON: In December?

19 CHAIR SMITH: Yeah.

20 MS. CARSON: Any other comments?

21 MEMBER WALTON: I think alternative
22 justice is something we can defer until some

1 point later.

2 COL. BOVARNICK: How about as a
3 proposal for the September meeting, the MCIOs and
4 the victims -- if we want to defer the victim
5 advocates so we can do the MCIOs, and then
6 depending on when the appellate subcommittee,
7 excuse me, the case review subcommittee is
8 formed, we could see how it works out with the
9 appellate team. What does the full committee
10 want to hear from the folks on the appellate
11 side? I guess throwing that back out.

12 CHAIR SMITH: I think the full
13 committee wants to hear from the appellate folks,
14 right? Yeah.

15 MEMBER SCHWENK: Okay, I think the
16 idea -- this is Jim Schwenk. I think the idea
17 that the whole committee gets to hear from the
18 constituency that a subcommittee is looking at in
19 more depth helps the full committee take on board
20 whatever the subcommittee ultimately recommends
21 and prepares, so anytime we can do that, that's,
22 in my view, that's a plus for me if I'm not on

1 that subcommittee.

2 CHAIR SMITH: Right, and also I think
3 the questions that are asked by the full
4 committee will assist the subcommittee in kind of
5 knowing which angle they want to take or things
6 they may not have thought about, so I think it's
7 beneficial.

8 MEMBER MARKOWITZ: The other question
9 is are we still talking about having an update on
10 the OSTC at the December meeting? Because now we
11 are talking about a fairly full December meeting,
12 which I'm all for. I just want to point out that
13 we also talked about that.

14 MS. CARSON: So, we will have to have
15 a draft of the report essentially that we're
16 going to do of the OSTC in December, so the
17 update would be best placed in September. That's
18 why I'm limiting to two panels per meeting as a
19 way to let us have some deliberation time.

20 Four panels is an awful lot. I mean,
21 it's an exhausting meeting to have four with, you
22 know, five people on each one. You know, your

1 mind is kind of on tilt by the end of the day.

2 That's right. We discussed having the
3 Service Secretaries or General Counsel also back
4 in December.

5 MEMBER MARKOWITZ: Sorry, that's what
6 I was talking about is --

7 MS. CARSON: Oh, I'm sorry. I'm
8 sorry.

9 MEMBER MARKOWITZ: -- them coming back
10 for the update in December.

11 MS. CARSON: Yes.

12 MEMBER MARKOWITZ: They were talking
13 about coming back for their update --

14 MS. CARSON: That's right, and so I
15 think that's, so that's one block --

16 MEMBER MARKOWITZ: Right.

17 MS. CARSON: -- right there, so maybe
18 that block and the MCIOs if that's the next
19 group.

20 MEMBER MARKOWITZ: So, because of
21 that, I think we might have to put off the
22 conversation about alternate justice to --

1 MS. CARSON: To the next year.

2 MEMBER MARKOWITZ: -- 2023. I just
3 don't see where we -- if people are committed to
4 the MCIOs, which I think is fine, I don't see
5 where we can slot in the conversation about
6 alternative justice and give it the appropriate
7 conversation and attention it deserves.

8 Because I think it definitely deserves
9 a significant amount of conversation and we need
10 the appropriate panel with the advocates, and so
11 I definitely think that we want to make sure we
12 have a meeting that we can really have the kind
13 of panel and the attention that that topic is
14 going to require.

15 COL. BOVARNICK: How about for -- it
16 sounds like for September, it would be the
17 appellate groups. We could fit as many as we
18 want to because it's a full day, and then in
19 December, the MCIOs, and then if there's an
20 update from the Office of Special Trial Counsel?

21 Does that sound like -- is anyone
22 opposed to that? And then we push the

1 alternative justice issue -- oh, sorry. I'll
2 repeat that because I'm sure the folks on the
3 screen didn't hear.

4 So, the proposal is, based on the
5 discussion that I've heard, is in September, a
6 one-day meeting, as many folks as we can get, a
7 wide variety on all appellate issues, judges,
8 civilian practitioners, government appellate
9 practitioners, and defense appellate.

10 And then at the December meeting,
11 which would be two days, MCIOs and hopefully an
12 update on the Office of Special Trial Counsel at
13 least for initial, and obviously we can develop
14 December more when we reconvene in September, but
15 that's -- okay, no opposition heard, so that's
16 what we'll go with for that.

17 MEMBER SCHWENK: This is Jim Schwenk.
18 If we're going to do two days in December, then I
19 think Martha's idea is really a good one, to get
20 some enlisted people in here and hear what they
21 think is going on and what they think is, yeah,
22 what they think is going on.

1 COL. BOVARNICK: Noted, yes, sir, and
2 I'll also note that General Anderson, in one of
3 her recommendations, also was on the line of the
4 junior NCO leadership and some of the junior
5 officer leadership as well, so I'll note that for
6 General Anderson, but, yeah, we're tracking that
7 now for December as well.

8 MS. CARSON: I think we have enough
9 feedback to get working on the agenda for the
10 next meetings. I don't know, do you want, I
11 don't know that we need to do more than that to
12 just move on now to the --

13 MEMBER SCHWENK: Okay. Because I am
14 slow and old, unlike Judge Walton who is old but
15 not slow --

16 (Laughter.)

17 MEMBER SCHWENK: -- I was wondering,
18 if you could go back over the specific
19 assignments to each subcommittee so I know I have
20 them down here?

21 COL BOVARNICK: Yes, sir. So for the
22 special project subcommittee it would be the

1 task, the general task of tracking the Offices of
2 Special Trial Counsel. So for example, whatever
3 is going to come out of the summaries for this
4 meeting and what Tokash and that subcommittee
5 want to work on.

6 The second task assigned to them is a
7 new one. So it's going to have to develop with
8 the subcommittee once the subcommittee is
9 officially designated and appointed by the
10 General Counsel, would be a discussion about
11 military, standing military magistrates to cover
12 a variety of areas, military protective orders in
13 the detention hearings.

14 Whether you start talking about
15 preliminary hearing officers and things of that
16 nature. So that would be a study that would have
17 to be developed and the parameters set.

18 For the second subcommittee, which
19 would be the case review subcommittee where Ms.
20 Bashford is the chair, it would be the appellate
21 project that's been briefed. And of course it
22 was just discussed bringing in those appellate

1 practitioners for the full committee to hear from
2 as they develop that project, which is well
3 underway as was briefed.

4 And then the second one would be this
5 concept of acquittal rates and courts-martial.
6 However, expanded beyond that, with the other
7 topics on kind of why things happen. And so that
8 would be that second one. Again, to be
9 developed.

10 And then for the policy subcommittee,
11 sir, which you're the subcommittee chair, or
12 nominated to be, we're looking at, because at the
13 end of the day we still have those two tasks
14 assigned by the terms of reference. And so
15 that's the victim impact statements, whatever
16 comes of that. As well as the alternative forms
17 of justice.

18 So I just want to, that's what I just
19 want to point out, like, those are two tasks that
20 the committee has in the Terms of Reference. So
21 it can't be, accepting however far it's pushed,
22 but it's something that it is a task. Not

1 assigned by me, assigned by the General Counsel in
2 the Terms of Reference.

3 And so the placement of those would be
4 under your subcommittee to develop with the
5 Staff's assistance.

6 MS. CARSON: If I can, if there is not
7 any questions on that, I guess I'll wait for
8 that. The next item we wanted to discuss is the
9 court-martial observations project. If we have
10 Terry Gallagher from our Staff available. I see
11 her. There she is.

12 Do you want to tell the members about
13 the court-martial observations project? Thank
14 you.

15 MS. GALLAGHER: Yes. Yes. And I'll
16 be very brief. I am very happy to announce the
17 restart of this valuable program.

18 For those of you that don't know the
19 court-martial observation project is designed to
20 get each of you to attend a contested sexual
21 assault court-martial, accompanied by a staff
22 member, to observe firsthand the current court-

1 martial environment. The court-martials are held
2 worldwide and by all Services and so we can
3 facilitate your attendance at a court-martial
4 that fits with your schedule.

5 For your scheduling purposes, these
6 courts normally last between three and five days.
7 And we do hope that each of you will be able to
8 attend at least one court-martial this year.

9 We only ask of you, that you record
10 some observations on a checklist that we've
11 prepared. And these responses from you will be
12 consolidated and used as a tool to identify
13 practice areas that may warrant further study.

14 So really, on this program you should
15 expect to receive, from me, an email in the near
16 future that identifies courts-martials that are
17 already docketed to occur within the next three
18 to four months. Where that court-martial will be
19 located and the service that the court-martial
20 corresponds to.

21 Is there any other -- and some
22 detailed information. Is there anyone with

1 questions on this program?

2 MEMBER BASHFORD: Terry, it's Martha.
3 Do you have any, occurring on any bases in Italy
4 coming up?

5 MS. GALLAGHER: I will check on that
6 for you.

7 MEMBER BASHFORD: Okay.

8 MS. GALLAGHER: But I do note, and I
9 am very happy to announce that Ms. Bashford will
10 be the first one attending a court-martial in the
11 very near future.

12 COL BOVARNICK: Madam Chair, that kind
13 of concludes all the topics that we were going to
14 cover. And so want to hand it back.

15 If there is anything else that the
16 Committee wants to discuss? And then we can take
17 a break.

18 And then we can come back for the
19 public comment, which is, I think we can take at
20 least a ten minute break and we'll figure out if
21 we have to wait until 2:30. One second, ma'am.

22 With that said, ma'am, I mean, we can

1 really -- so first of all, is there any other
2 topics that any member of the Committee wants to
3 raise now?

4 Whether it's from this meeting, what
5 we've discussed about the next meeting,
6 subcommittees or anything like that?

7 MEMBER TOKASH: This is Meghan Tokash.

8 COL BOVARNICK: Go ahead, ma'am.

9 MEMBER TOKASH: So, I just had a
10 question about the victim impact statements. It
11 seems like that, I'm just not sure where we, as a
12 Committee, left off on that. And I just want to
13 make sure that that doesn't get lost. Especially
14 if it's a pressing need while military panels are
15 still hearing sentencing cases. Over.

16 MS. CARSON: I think the only question
17 we need to resolve today is whether or not you
18 want to include anything about it in the annual
19 report in March. You know, do we want to put
20 that on a priority track or is that something we
21 should take up, the committee should take up,
22 afterward.

1 MS. TAGERT: From the victim impact
2 perspective, potentially you may want to put it
3 under the appellate project for the report.
4 We've seen a number of the cases already in the
5 appellate system. That may just be a more
6 natural place for it to sit until we hear
7 testimony on it from victims or judges and
8 practitioners. But that's just a suggestion.

9 MEMBER O'CONNOR: As a practical
10 matter what does that mean?

11 MS. TAGERT: From a practical
12 perspective, the appellate project has already
13 reviewed cases so we could certainly be briefing
14 the issue in the report itself and just
15 introducing it to the public, as well as the
16 committee members, before actually making any
17 recommendations or acting on it. But considering
18 we have two meetings left, that may be the most
19 natural thing for it to fall.

20 MS. CARSON: If it helps, the tasking
21 is to report on recurring issues in the appellate
22 cases. So there could be a recurring issue

1 related to victim impact statements.

2 MEMBER GARVIN: This is Ms. Garvin.

3 MS. CARSON: Go ahead, Ms. Garvin.

4 MEMBER GARVIN: Thank you. So, I
5 appreciate that approach. And I think it might
6 be a recurring issue, and that would be
7 interesting. I'm not sure it's wholly responsive
8 to the topic as it was presented to us from the
9 prior testimony, which was more about the
10 striking out and the editing and the not being
11 fully heard.

12 And the reason I say I don't think it
13 is going to be fully responsive is I don't think
14 those issues are being appealed based on my
15 experiences. So, I think it might be a
16 placeholder for this year in the report.

17 And really appreciate that approach
18 that we're not losing the thread from the
19 testimony we heard. As long as we're
20 acknowledging that that is, what gets appealed is
21 such a narrow piece, particularly at the issue as
22 it was already testified to in front of us.

1 And then I would strongly recommend it
2 be a priority in the next year so that, I mean,
3 we will then have been almost three years out
4 from the testimony that presented it to us in the
5 first instance I think. So, I very much
6 appreciate that creative thinking. And just also
7 for the appellate group to know, I think it will
8 be such a narrow subset.

9 CHAIR SMITH: I think what Ms. Garvin
10 said sounds good. Making sure that it remains an
11 issue and it's clear that it's still something
12 that we're looking at.

13 COL BOVARNICK: Any other comments
14 from any of the Committee Members? Okay, so --

15 MEMBER BASHFORD: Martha Bashford.

16 COL BOVARNICK: Oh, sorry.

17 MEMBER BASHFORD: Oh, sorry. I just
18 have one more. At our next meeting, it's hard
19 when you're virtual, but could we maybe identify
20 who the service members are and give them a
21 couple minutes just to like run through their
22 backgrounds?

1 MS. CARSON: Did you want the service
2 representatives or did you want presenter service
3 members?

4 MEMBER BASHFORD: (Audio interference)
5 for the Committee. The service representatives
6 who attend the committee sessions. There is
7 usually one from every service.

8 MS. CARSON: (Audio interference).

9 MEMBER BASHFORD: Yes. Like five
10 minutes or something.

11 (Audio interference.)

12 MEMBER SCHWENK: -- overseas travel or
13 around the country travel. You know, to go to
14 bases and stations.

15 And the other one is, whether there
16 would be any value in putting a small group
17 together and sending them to talk with militaries
18 of other countries that have similar justice
19 systems to ours to see, you know, I guess maybe
20 Canada should be off the list at the moment, but
21 otherwise, to see what lessons we might learn or
22 not learn from them. So those are two thoughts

1 for a discussion sometime in the future.

2 COL BOVARNICK: Yes, sir. I think we
3 can add that to the agenda for September at least
4 to get some initial thoughts and then move out as
5 the members want to execute.

6 MEMBER WALTON: Why not talk to Canada?

7 MEMBER SCHWENK: I'm not sure how many
8 senior officers in Canada have been either
9 prosecuted or fired. And I'm talking like their
10 equivalent to the chairman of the joint chiefs
11 and whatever, for either the way they handled
12 sexual misconduct cases or, I don't know. I
13 don't know.

14 But any comments there, Dwight?

15 MR. SULLIVAN: No comment.

16 COL BOVARNICK: Okay, so I'll cover
17 the public comment session. We received one
18 public comment via email prior to the meeting.

19 The email sent by Navy Lieutenant
20 Commander Manuel Dominguez, who appeared at the
21 last meeting on April 21st, 2022, was received by
22 the Staff on Monday, June 6th and sent to all

1 Committee Members on Tuesday, June 7th. Your
2 materials appear at Tab 10 of your read ahead
3 packet.

4 We received no other public comments
5 via email or a question of the public during this
6 meeting, yesterday or today. And so now Ms.
7 Saunders is going to provide our recap of the key
8 events of the past two days. And as best she
9 can, we all just kind of heard it, as she has a
10 kind of an initial preview of the next meeting.

11 MEMBER SCHWENK: Let me just say that,
12 on that Lieutenant Commander Dominguez
13 submission, we've had people from the public talk
14 to us in the past, and on other advisory
15 committees they've done the same thing, and
16 written submissions, and they're all helpful
17 because it's a different perspective than you get
18 when you're having panels of people from DoD
19 coming in, in front of you.

20 So I personally value them. And I
21 thank him for putting that one out, or providing
22 them with this handout, and appearing before us.

1 And encourage anybody that wants to in the future
2 to feel free to sign up.

3 MS. CARSON: I'll just note that
4 that's the court-martial that Ms. Bashford is
5 going to be attending.

6 MS. SAUNDERS: Okay, so for the recap,
7 what I'll do is try to recap some of the votes
8 you've made today and some of the topics you've
9 discussed and then go through the due-outs as I
10 have them. And please feel free to jump in and
11 correct me if I misstate something or add to the
12 list.

13 So for the, I'll start with the
14 SVC/VLC report. So, the votes were for the first
15 recommendation. We'll call it the Judge Walton
16 compromise.

17 So for first tour judge advocate,
18 first tour judge advocates were serving as SVC or
19 VLC there would be a minimum of 18 months tour of
20 duty. But any SVCs or VLCs who are second or
21 subsequent tour would be 24 months minimum. That
22 was a unanimous vote on that.

1 MEMBER SCHWENK: With exceptions for
2 personal or --

3 MS. SAUNDERS: Yes.

4 MEMBER SCHWENK: -- operational
5 assessment.

6 MS. SAUNDERS: Agree. No, great
7 point, General Schwenk. With the exceptions for
8 those things that you mentioned.

9 The second recommendation on the
10 rating chain, that was also unanimous that the
11 Army should have a separate stovepipe rating
12 chain. Similar to the other services.

13 And then the third thing that you
14 voted on was Recommendations 3 through 10 would
15 be deleted from the report and would be assigned
16 to a subcommittee for further study.

17 The only thing that I think did not
18 get accomplished here but perhaps would be
19 discussed in a future meeting is which
20 subcommittee those should go to and who should
21 take that up. Is that something that you want to
22 discuss now or is something that you want to hold

1 off on?

2 (Off-microphone comment.)

3 MS. SAUNDERS: Table it? Great.

4 Okay, so that does it for the SVC/VLC report.

5 For the appellate issue, the votes
6 were that child sex offenses would be included in
7 this study. The definition of sexual assault
8 that the staff provided to you is what will be
9 used for the study. And that the reporting on
10 the appellate study will be done in phases. That
11 was also a unanimous vote.

12 And I think, General Schwenk, you also
13 mentioned that part of this study should be a
14 look at the appellate process itself.

15 On the issues of subcommittees, we
16 have three subcommittees that have been approved
17 by the committee. The first is special projects
18 with the Chair of Meghan Tokash.

19 The members of that committee will be,
20 in addition to Ms. Tokash, will be Judge Grimm,
21 Mr. Kramer, Dr. Markowitz, Dr. Spohn and Judge
22 Walton. And the topics that the subcommittee

1 will be taking up will be the Office of Special
2 Trial Counsel. And also standing military
3 magistrates.

4 The second subcommittee is case review
5 subcommittee, with a Chair of Ms. Bashford. The
6 members of that subcommittee, in addition to her,
7 will be Ms. Garvin, Ms. Long, Mr. Markey and
8 General Schwenk. The topics that that
9 subcommittee will take up will be the appellate
10 case review. And also acquittal rates and court-
11 martial and additional topics related to that.

12 And then the third subcommittee will
13 be the policy subcommittee. The Chair will be
14 General Schwenk. And the additional members will
15 be General Anderson, Ms. Goldberg, Ms. O'Connor
16 and Chair Smith. And the topics will be the two
17 JES topics, which are victim impact statements
18 and alternative justice.

19 For the, going through here, for the
20 meetings. At the September meeting, going
21 through here, at the September meeting, the
22 concurrence of the committee was that you would

1 hear from appellate practitioners, both
2 government and defense. And we'll see whether we
3 can fit in the SVC practitioners and civilian
4 practitioners. And Ms. Bashford had also added
5 that she would like to hear introductions of the
6 service representatives.

7 For the December meeting, which will
8 be two days, we will invite the Service
9 Secretaries, or their designees, back for an
10 update on the OSTC project. Also, a panel of
11 MCIOs and an enlisted panel.

12 And the committee also discussed
13 tabling the alternative justice issue to 2023.
14 To look at it then.

15 MS. CARSON: Update on subcommittees.

16 MS. SAUNDERS: And also the update on
17 the subcommittees in the December public meeting.

18 Also, there will be a discussion for,
19 probably in the September meeting, of site visits
20 and what you just suggested, General Schwenk,
21 small groups going to talk to the allied
22 militaries.

1 And I'm just going through my notes to
2 see if I've forgotten anything. In the
3 alternative justice, one thing that you also had
4 discussed in 2023 would be to hear from a panel of
5 victim advocates and SARCs related to that issue.

6
7 Anything else? Did I forget
8 something?

9 COL BOVARNICK: I was just going to
10 say, I know we have a couple of requests for
11 information on some data. I know we have that
12 written down somewhere specifically, but we'll
13 make sure that we have an update on the RFIs as
14 well. This one specifically on the diversity and
15 gender type of statistics that you requested,
16 ma'am.

17 MS. SAUNDERS: So I do have the list
18 of due-outs, which I can go through very quickly.
19 These are, the first one, tracking the Federal
20 Register Notice for the rewrite of the JSC. The
21 JSC is rewriting the rules and noting when the
22 public hearing would be held for that and

1 providing that information to the committee.

2 The second, Colonel Bovarnick
3 mentioned that the Army TJAG had invited members
4 of the Committee to the Army Advocacy Center. So
5 that's something we'll provide you further
6 information on. The diversity statistics that
7 Colonel Bovarnick just discussed.

8 Ms. Long mentioned the competency
9 sheets for the OSTC. So we will request those
10 from the services.

11 General Anderson mentioned the,
12 brought up the idea of the Army memos to the
13 promotion board. Whether there could be some
14 kind of mechanism to enhance future promotion
15 potential. And so we can provide some
16 information on that if there is such a thing.

17 MEMBER SCHWENK: They're called
18 precepts.

19 MS. SAUNDERS: Precepts.

20 MEMBER SCHWENK: P-R-E-C-E-P-T-S.

21 MS. SAUNDERS: Thank you.

22 MEMBER SCHWENK: I think the Navy used

1 to have it. And whether they still do, I don't
2 know.

3 COL BOVARNICK: The Army does as well.
4 I know they're always available after the board.

5 MS. SAUNDERS: Yes.

6 COL BOVARNICK: We'll figure that out
7 though.

8 MEMBER O'CONNOR: I think the Navy
9 does.

10 MS. SAUNDERS: Also, the Secretary of
11 the Navy Guidance memos and other, what's that
12 word --

13 MEMBER O'CONNOR: Other services.

14 MS. SAUNDERS: -- other services.

15 Judge Grimm had requested information on how the
16 Coast Guard plans to implement the Special Trial
17 Counsel provisions. So we could prepared a
18 request for information to them.

19 And then, yes, I have the guidance.
20 And then the invitation to the General Counsels,
21 or their designees to return for the December
22 2022 public meeting for an update.

1 So have I forgotten any of the due-
2 outs? Are there any additional items? Okay, I
3 guess that wraps it up.

4 COL BOVARNICK: Chair Smith, over to
5 you.

6 MEMBER SCHWENK: Could I have a
7 question?

8 COL BOVARNICK: Yes, sir.

9 MEMBER SCHWENK: Unrelated to that
10 list. Staff support for the subcommittees, is
11 there a plan for that?

12 COL BOVARNICK: Yes, sir.

13 MEMBER SCHWENK: In other words, I
14 want to know who I, as soon as I get approved,
15 who do I task to take care of everything for me?

16 (Laughter.)

17 COL BOVARNICK: That's predecisional,
18 sir. I still have to work that with the staff.

19 (Laughter.)

20 COL BOVARNICK: I'm on it for you.

21 MEMBER SCHWENK: I was afraid of that.

22 COL BOVARNICK: I'm on it.

1 MEMBER SCHWENK: But I was assured
2 early, at the last meeting, don't worry, there
3 will be plenty of support. And I'm counting on
4 it.

5 COL BOVARNICK: Sir, there is. I
6 just, we just have to go through who that is
7 going to be for you. We'll get you the best.
8 But the thing there is, every member of our staff
9 is incredible, so.

10 MEMBER SCHWENK: Unlike the Special
11 Trial Counsel where the individual has to want to
12 do it and they have to have the ability, I'll get
13 nobody if you do that. So just go with, they
14 have the ability, they're assigned.

15 COL BOVARNICK: There is going to be
16 a preference sheet, and I know you'll be first up
17 for everybody.

18 (Laughter.)

19 CHAIR SMITH: Anyone have any, oh,
20 hold on.

21 (Off-microphone comment.)

22 MEMBER CASSARA: Do we have dates for

1 the next meeting or just general September and
2 December?

3 Can you hear me?

4 (Off-microphone comment.)

5 MEMBER CASSARA: Okay. Do we have
6 definitive dates for the next meetings or just
7 September and December? I may have missed that.

8 COL BOVARNICK: Yes sir so the (audio
9 interference).

10 MEMBER CASSARA: Okay.

11 COL BOVARNICK: (Audio interference)
12 exact time to be determined. Virtual session for
13 everybody, we'll cover the admin stuff. So no
14 more than an hour. So basically the meeting
15 itself, Tuesday the 13th of September.

16 December, I have to defer. Hopefully
17 someone else on the team remembers the December
18 dates. I don't have those off the top of my
19 head.

20 MR. TREXLER: 13, 14.

21 COL BOVARNICK: 13, 14 December. It
22 should be a Tuesday, Wednesday as well.

1 MEMBER CASSARA: Thank you very much.

2 COL BOVARNICK: Yes, sir.

3 MEMBER SCHWENK: I will be thinking of
4 you for my cruise ship in September.

5 CHAIR SMITH: Anyone have anything
6 else before we ask Mr. Sullivan to adjourn the
7 meeting?

8 MR. SULLIVAN: This meeting is
9 officially closed.

10 (Whereupon, the above-entitled matter
11 went off the record at 2:06 p.m.)

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