

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

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MEETING

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TUESDAY
JUNE 13, 2023

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The Advisory Committee met in Salon D of the Renaissance Arlington Capital View Hotel located at 2800 South Potomac Avenue, Arlington, Virginia, at 12:45 p.m., the Honorable Karla Smith, Chair, presiding.

PRESENT

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

ALSO PRESENT

Mr. Dwight Sullivan, Designated Federal Official
Mr. William Sprance, Alternate Designated Federal
Official

DAC-IPAD STAFF

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

Mr. Dale L. Trexler, Chief of Staff

Ms. Stacy Boggess, Senior Paralegal*

Ms. Alice Falk, Technical Writer-Editor

Ms. Theresa Gallagher, Staff Attorney

Ms. Nalini Gupta, Staff Attorney*

Ms. Amanda Hagy, Senior Paralegal

Mr. Chuck Mason, Staff Attorney

Ms. Marguerite McKinney, Management & Program Analyst

Ms. Meghan Peters, Staff Attorney

Ms. Stayce Rozell, Senior Paralegal

Ms. Terri Saunders, Staff Attorney

Ms. Kate Tagert, Staff Attorney

Ms. Eleanor Magers Vuono, Staff Attorney

Ms. Evie Ankele, Intern

Mr. Yonah Berenson, Intern

Mr. James Van Drie, Intern

*Present via video-teleconference

Witnesses

Military Criminal Investigative Organizations

Ms. T.L. Williams Special Agent Ashlee Wega

Special Agent Erin Hansen Special Agent Kathleen Flynn

Prosecutors (Work with SVCs/VLCs)

LTC Heather Tregle Col Naomi Dennis

CAPT Angela Tang Col Glen Hines, Jr.

CAPT Anita Scott

Prosecutors (Military & Civilian Experience)

BG Bobby Christine LTC Joshua Bearden

Ms. Magdalena Acevedo Ms. Kathleen Muldoon

Senior Enlisted Leaders

CSM Michael J. Bostic CMSgt Laura Puza

MCPO Tiffany George MGySgt Christopher Pere

Public Comment

MSgt Lisa Silva, Retired Mrs. Donna Santucci

C-O-N-T-E-N-T-S

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

2 12:58 p.m.

3 MR. SULLIVAN: Good afternoon, I'm
4 Dwight Sullivan, I am the Designated Federal
5 Officer of the Defense Advisory Committee on
6 Investigation, Prosecution, and Defense of Sexual
7 Assault in the Armed Forces, colloquially known
8 as the DAC-IPAD. This meeting is open, Judge
9 Smith, you have the con.

10 HON. SMITH: Thank you, Mr. Sullivan,
11 and good afternoon. I want to welcome the
12 members, and all attendees to the 30th public
13 meeting of the Defense Advisory Committee on
14 Investigation Prosecution and Defense of Sexual
15 Assault in the Armed Forces, or DAC-IPAD.
16 Today's meeting will be in person, and by video
17 conference via Zoom for members, and presenters.

18 For those joining by video, please
19 mute when not speaking. If we have technical
20 difficulties, we will break for ten minutes, move
21 to a teleconference line, and send the
22 instructions by email. The Secretary of Defense

1 created the DAC-IPAD pursuant to the National
2 Defense Authorization Act for Fiscal Year 2015.

3 The DAC-IPAD's statutory purpose is to
4 advise the Secretary of Defense on the
5 investigation, prosecution, and defense of
6 allegations of sexual assault, and sexual
7 misconduct involving members of the armed forces.
8 Representatives from the Military Services
9 Criminal Law Division to serve as the DAC-IPAD's
10 service specific experts, and liaisons to their
11 services have joined us today, welcome.

12 We will begin the afternoon with a
13 panel of special agents from military criminal
14 investigative organizations, followed by a panel
15 of prosecutors to discuss the committee's study
16 of the feasibility, and advisability of
17 establishing a uniform policy for sharing victim
18 information under Section 549B of the National
19 Defense Authorization Act for Fiscal Year 2023.

20 Following a short break, we will hear
21 from a separate panel of prosecutors with
22 military, and civilian prosecution experience,

1 followed by a panel of senior enlisted leaders to
2 discuss the committee's study of UCMJ Article 25
3 criteria. We will close today with public
4 comments. The public meeting will continue
5 tomorrow at 8:25 a.m. when the committee will
6 hear from two more panels on Section 549B.

7 A panel of representatives from the
8 service's Special Victims Counsel organizations,
9 followed by a panel of civilian advocacy
10 organizations focused on victim's services.
11 After a break we will hear from separate civilian
12 advocacy organizations with a focus on diversity
13 issues. We will then hear from members that
14 attended a special trial counsel certification
15 course last week.

16 After lunch, a representative from
17 DOD's Office of Diversity Equity and Inclusion
18 will discuss that office's important work. After
19 a break, we have a series of updates, including
20 an update on the collateral misconduct report due
21 to Congress on September 30th, and updates from
22 our three subcommittees. After a deliberation

1 session we will have public comment, and end the
2 day with a wrap up of the meeting, and preview of
3 our next public meeting set for September 19th,
4 and 20th.

5 This meeting is being recorded, and
6 transcribed, and the complete written transcript
7 will be posted on the DAC-IPAD website at
8 www.dacipad.whs.mil. If a meeting attendee wants
9 to make a public comment, please submit your name
10 no later than 2:00 p.m. to
11 whs.pentagon.em.mbx.dacipad@mail.mil. Comments
12 will be heard at my discretion at either 5:15
13 today, or 4:00 p.m. tomorrow.

14 To assist the court reporter, and to
15 avoid multiple people speaking at the same time,
16 committee members should signal if they have a
17 question, or wish to speak, by stating your name,
18 and waiting to be acknowledged before proceeding.
19 Thank you to everyone for attending today, over
20 to you Colonel Bovarnick to start the meeting.
21 Thank you.

22 COLONEL BOVARNICK: Thank you Chair

1 Smith. Just for the record I will announce that
2 the committee's report titled Reforming Pretrial
3 Procedures and Establishing Uniform Prosecution
4 Standards: Recommendations for Article 32, UCMJ,
5 and the Secretary of Defense's Disposition
6 Guidance in Appendix 2.1, Manual for Courts-
7 Martial was finalized on Friday with electronic
8 copies distributed to the DAC-IPAD members, to
9 DOD for the general counsel and Secretary of
10 Defense, to the Senate and House Armed Services
11 Committees, and to the Military Justice Review
12 Panel members. Electronic distribution continues
13 this week for a list submitted by Ms. Tokash.
14 Hard copies will be requested to the DOD printing
15 offices and distributed through DOD official mail
16 as soon as received.

17 And the report's also available on the
18 DAC-IPAD website. For the members, we have a
19 third proposal for a new member submitted by Ms.
20 Tokash. This proposal is for an investigator,
21 and with the committee's approval, I'll solicit a
22 resume, and bio, and forward that new proposal to

1 join the two prior proposals submitted by General
2 Anderson, and Ms. Bashford.

3 It will go to OGC for nomination by
4 the general counsel, so I think we have
5 concurrence on that. So, we'll have three new
6 members submitted to OGC for nomination. And now
7 I'm going to hand it off to Ms. Meghan Peters,
8 who will introduce the panel for the first
9 session.

10 MS. PETERS: Thank you, Colonel
11 Bovarnick. Good morning, Chair Smith, and
12 committee members. This morning I have the
13 pleasure of introducing representatives from the
14 military criminal investigative organizations.
15 We have special agent -- I'm sorry, Ms. T.L.
16 Williams from Army Criminal Investigative
17 Command, a division command.

18 We have Special Agent Ashlee Wega from
19 the Air Force Office of Special Investigations.
20 Special Agent Erin Hansen from U.S. Navy Criminal
21 Investigative Services, and Special Agent
22 Kathleen Katie Flynn, U.S. Coast Guard

1 Investigative Service. Their professional
2 biographical information is provided for you at
3 tab three.

4 And we have given them an overview of
5 the DAC-IPAD's statutory task with regard to
6 assessing whether a uniform policy is needed for
7 the sharing of information with victims, and
8 victim's counsel. And to identify the
9 investigative interests implicated by the sharing
10 of that information. And with that, I will turn
11 it over to the committee to begin this question,
12 and answer session. Thank you.

13 HON. SMITH: Well, I guess I'll begin
14 with the first question. What is your current
15 practice by which you release the information,
16 the recorded statements of victims, forensic
17 examination information, and medical records to
18 victim's counsel?

19 Ms. Williams: Good afternoon,
20 Chairman Smith, and committee members. The Army,
21 we do it through the trial counsel, and FOIA
22 requests. We don't have any other means of

1 giving it directly to the special victim's counsel
2 at this point in time. But we're not opposed to
3 having a policy of such. Pretty much it.

4 SA WEGA: Good afternoon, Chairman
5 Smith, and committee members. Currently OSI's
6 procedures, and policies are twofold. When an
7 investigation is in a closed status, all
8 information flows through the base legal office
9 for consideration of distribution through the
10 victim's counsel. However, when the investigation
11 is ongoing, OSI has policies, and procedures to
12 receive that request, to review the request for
13 what information was received, or what information
14 is being asked for.

15 And we make a determination that is at
16 the unit leadership level based on a totality of
17 facts, based on where the investigation is at, at
18 that time, the implications of releasing that
19 information at that point in the investigation,
20 and a decision is made in consult with our base JA
21 Office on whether the information is released at
22 that time, and if so, what, if all of the

1 requests will be -- if information will be
2 released.

3 SA WEGA: Hi, good afternoon. NCIS
4 has a specific policy for recorded statements
5 that basically allows agents to share those
6 directly with the victim, or with the victim's
7 legal counsel on request. Regarding the medical
8 records, or SAFE forensic examination report,
9 they also have the flexibility to consider those
10 requests, and work with the local chain of
11 command, and with the local prosecution office to
12 discuss whether it's appropriate to share that at
13 a certain phase in the investigation.

14 Within the Navy Trial Counsel's
15 Office, I understand they have specific policies
16 for what can be released, and what victims have
17 the right to access, and that would happen at
18 that phase once the case has been transferred
19 from NCIS to the prosecutor.

20 MS. FLYNN: Good afternoon. For the
21 Coast Guard Investigative Service, upon preferral
22 of charges, and, or the culmination of

1 an investigation, much like CID, everything is
2 made available via the trial counsel, or staff
3 judge advocate. And then if it didn't go to
4 preferral charges, they would be made available -
5 - sorry, they could be made available via the
6 special agent to the SVC.

7 DR. MARKOWITZ: So, to follow up on,
8 particularly the medical forensic exam records,
9 the national protocol specifies that the
10 photographs that are taken as a part of the
11 medical forensic exam are considered a part of
12 the actual medical exam. And of course DOD
13 processes are based on the national protocol for
14 the sexual assault medical forensic exam.

15 Can you talk a little bit about how
16 you handle photographs in your investigations,
17 and in particular can you talk a little bit about
18 whether there are different processes for
19 handling genital photographs, or any photographs
20 that are deemed sensitive apart from external
21 body photographs, or the like?

22 SA FLYNN: Yes, ma'am. CID wouldn't

1 release those documents, it would go to the
2 custodian of the documents, which would be
3 MEDCOM, DHA, or AFME. But if there was some
4 photographs that were taken by an agent, it would
5 probably go through our FOIA requests. And then
6 with the FOIA requests, it depends on the actual
7 individual person doing the request on what type
8 of photographs will be released.

9 If it's the victim, they may want all
10 their photographs, but if it's the press, we
11 wouldn't release that type of photographs to
12 them, it would be too graphic in nature.

13 SA HANSEN: OSI does treat the
14 photographs as part of the medical record when we
15 do receive them from a SAFE exam, and same, if it
16 has to be shared for any reason whatsoever, we do
17 use a cover sheet, and when necessary we do edit
18 the photographs for privacy at all costs.

19 SA WEGA: So, with regards to the
20 photographs, sometimes those are provided
21 alongside the medical report, or sometimes
22 they're included within the kit itself. It

1 depends on the examiner, and their particular
2 protocol. Either way, we would retrieve a copy
3 of those photos if it was sealed inside the kit,
4 and they would be attached to our reporting,
5 along with the SAFE examination record.

6 Either on a disc, or if there are any
7 photos that are particularly probative, they
8 might be highlighted, and placed on a paper
9 template for inclusion in the case file, also
10 with a cover sheet if needed, depending on the
11 sensitivity. But otherwise they would be part of
12 the investigative file, and treated like any
13 other record collected, or any other document
14 that's part of the file.

15 And only released to those with a need
16 to know, with particular interest in the
17 investigation.

18 MS. WILLIAMS: At CGIS, much like my
19 other colleagues here, we treat the photographs
20 much like CSAM, child sexual assault material,
21 formerly known as child pornography, we would
22 therefore download it to maybe an external media

1 storage, and check it in as evidence. The report
2 would -- the summary of the report would be
3 included in our report of investigation, which is
4 released to the command, and legal. However, the
5 actual physical report would be kept in the
6 agent's file.

7 MR. CASSARA: My bad, usually my
8 wife's telling me to speak less. If I'm
9 understanding it correctly, from the Army, you're
10 saying that you turn over these documents in
11 investigative matters to the trial counsel,
12 correct?

13 SA FLYNN: Yes, sir.

14 MR. CASSARA: And the Navy, you turn
15 it over to the victim's legal counsel, correct?

16 SA WEGA: On request we will share the
17 victim's statement, or other records with the
18 victim's legal counsel. But as part of our
19 procedures, when we document our investigative
20 findings in a report, the practice is to turn
21 that over to trial counsel to review the case for
22 prosecution. So, that always happens, and then

1 the release with the victim would be upon
2 request, and consideration of the circumstances.

3 MR. CASSARA: Have you ever had a case
4 where the victim's counsel has said I don't want
5 this information going to the trial counsel? And
6 if so, what would you do?

7 SA FLYNN: No, sir, we have not had a
8 case, but we would take that case by case, and
9 make that determination with the legal counsel,
10 SVC, and trial counsel.

11 MR. CASSARA: Thank you.

12 HON. WALTON: Do any of you believe
13 that there should be a uniform policy regarding
14 the release of such information we're discussing,
15 and if so, what should that look like? And if
16 you believe there should not be the uniform
17 policy, why do you have that perspective?

18 SA FLYNN: DACID is not opposed to any
19 uniform policy, but we would request that it
20 wouldn't be too pigeon holed, and more of a case
21 by case basis with when necessary, and that all
22 documentation, and statements, and documentary

1 evidence would go to the trial counsel first for
2 judicial proceedings due to the fact that we
3 don't want to interfere with the judicial process
4 on whatever the trial counsel is trying to do.

5 And we don't want to release it too
6 early, don't know what could be a problem with
7 it. Plus, we're not custodians of a lot of the
8 documentation which is being requested, and we
9 don't have the background to redact anything that
10 would be needed, which the Trial Counsel's Office
11 would probably have more experience with that
12 than the agent on the ground.

13 SA HANSEN: I think the most important
14 part is if there is a formal policy across the
15 service that it would need to remain flexible,
16 and address both stages of an investigation when
17 an investigation is ongoing, and allow for the
18 most flexibility within that, so that the
19 investigation is not compromised in any way,
20 shape, or form.

21 But I do think the Air Force has good
22 policies, and practice right now that would be

1 able to be molded, and modeled.

2 SA WEGA: NCIS likewise feels that we
3 currently allow our agents, and investigators the
4 flexibility to respond to these requests, and
5 provide information when it's relevant. But
6 should there be a uniform policy, we would hope
7 that the MCIOs would have ample opportunity to
8 weigh in on the policy, ensure that it meets the
9 needs of our investigators, that it's not overly
10 restrictive.

11 We would also like to see potentially
12 some additional resources, or a point of contact
13 identified as the releaser of the information, or
14 the person to approve the request for release of
15 the information. For example, a victim witness
16 coordinator, or somebody within the trial
17 counsel's office, who again is particularly more
18 familiar with releasing that information, or
19 making redactions as needed.

20 MS. WILLIAMS: I concur with the other
21 MCIOs, CGIS has a great working relationship
22 currently with the trial counsel, and the SVCs.

1 Our family collaborative proves to be beneficial,
2 and operating smoothly as of right now, however
3 we are not opposed to having some overarching
4 policy, but like my colleagues have said before,
5 asking it to be a bit liberal.

6 And owning the integrity of the case
7 is very important to those that are involved in
8 the experiences of the victim, or survivor. So,
9 giving us the flexibility to do so would be
10 great, and that's all I have right now, thank
11 you.

12 HON. SMITH: Before you ask your
13 question, is anyone else having a hard time
14 understanding everything that's being said? Mr.
15 Cassara, Ms. Tokash, are you having -- yeah, it's
16 a little jumbled, I think, or something.

17 MS. BASHFORD: It comes across very
18 clear until they're on the microphone, and then
19 there's like a little feedback.

20 HON. SMITH: Yeah, I don't know if we
21 can address that though.

22 DR. MARKOWITZ: Thank you. So, I

1 think one of the things that I've noticed is that
2 when we're talking about the medical forensic
3 exam, some of the DOD policy assumes that victims
4 are being seen within the military treatment
5 facilities. We know though, that many victims
6 are being seen within civilian institutions, and
7 organizations, hospitals, clinics, etcetera.

8 Is there a difference in the way that
9 you are handling records, and information coming
10 from agencies, and organizations that are not the
11 MTFs themselves? Challenges in getting that
12 information for your investigations, any
13 difference in that process for you all? Or is
14 there no difference in terms of that particular
15 process? Just curious.

16 SA FLYNN: No, there's not any
17 difference for us. It's still a FOIA issue, and
18 then the custodians of the document. So, if it's
19 that hospital who is the custodian of the
20 documents, or the police department that is the
21 custodian of the documents, then they are the
22 ones that will give us permission to release, or

1 release it themselves.

2 SA HANSEN: And same, as far as
3 though, how they're handled once we do receive
4 them, they're handled the same as if they came
5 from a military treatment facility. I would say
6 it's a case by case basis on the relationships
7 with the civilian medical treatment facility, but
8 overall we have good relationships throughout our
9 area of responsibilities, and don't have issues
10 receiving those medical records.

11 But once we do receive them, they are
12 treated no different than any other medical
13 record we would receive from the military.

14 SA WEGA: Yeah, I will just reiterate
15 that SAFE kit documentation received from an MTF
16 would be treated the same as that received from a
17 civilian treatment facility. Anecdotally, I've
18 had experience in locations that work with off
19 base treatment facilities. Typically there's an
20 MOU put in place, usually spearheaded by the
21 installation SARC, or the SARCs in the
22 installation to ensure that that capability is

1 provided for.

2 That they know handle the cases that
3 come to them from each of the services. For
4 example, the restricted reporting kits are
5 handled differently depending on the service.
6 And in some of those circumstances, retrieving
7 the photographs has been a challenge just based
8 on whatever system they may use. The secure
9 portals, and things like that.

10 But they still are willing to share,
11 and they understand their role in law
12 enforcement, it can just lead to a little bit of
13 a hiccup, or challenge on occasion.

14 MS. WILLIAMS: No specific challenge
15 to speak of, but I concur with my colleagues.

16 DR. MARKOWITZ: And just to clarify,
17 would you agree that that's true OCONUS, as well
18 as CONUS?

19 SA FLYNN: I would agree based on my
20 OCONUS experience personally. Again, as my
21 colleague said, a lot of the front work is done
22 by either the SARC Office, and, or an MTF, and so

1 most of the time, at least where we have major
2 military presence, there are limited hiccups. I
3 would -- we can wait all day long. If it was
4 not a significant military presence, we would
5 probably have to establish that relationship, and
6 work through it on a case by case basis.

7 But where we have significant, at
8 least my experience, Air Force presence, we put
9 the work in beforehand to eliminate as much of
10 the problems beforehand, before a case hits the
11 door.

12 DR. MARKOWITZ: Great, thank you so
13 much.

14 MS. GOLDBERG: Thank you very much for
15 your comments so far. Have you seen patterns of
16 misuse of the investigative records, and
17 information that you've collected, and if so,
18 could you describe them?

19 SA FLYNN: No, ma'am.

20 SA HANSEN: No, ma'am, not at large.
21 We have had the leakage of some videos prior in
22 the past, I don't have personal knowledge of

1 that, nor do we know exactly how, or who leaked
2 them, but we have had instances where they got
3 out to the public, but not an overarching issue,
4 ma'am.

5 SA WEGA: Again, not a widespread
6 issue, but on occasion we have had victims that
7 we have engaged with that do seek to make those
8 encounters public, do seek to create their own
9 recordings of interviews, or phone calls, or
10 encounters, and then share those publicly. And I
11 think because of that, we tend to be a little bit
12 sensitive about wanting to control the
13 information, and control the information we
14 collect in our investigation.

15 When it comes to the recorded
16 statements that a victim provides, they're not
17 the only one in the room, there is an agent,
18 often two agents, those agents may go on in their
19 career to work in an undercover capacity, to work
20 in a national security mission. And so, they
21 certainly could potentially have a concern should
22 the information be posted, or should that video,

1 or their likeness be shared.

2 Which is why a policy or provision
3 that allows some kind of redaction or strategy
4 for containing that would be helpful.

5 MS. WILLIAMS: I concur with NCIS, and
6 in my experience, I haven't seen anything
7 mishandled.

8 MS. GOLDBERG: Thank you for your
9 responses, what was behind the question of course
10 was an interest in if there were to be a uniform
11 policy, what, if any sort of protective
12 provisions might you recommend, and presumably
13 those would apply to anyone who receives the
14 files, not just victim's counsel, but trial
15 counsel as well.

16 Is there anything else that you would
17 have in mind in terms of protecting integrity, or
18 the privacy of the data?

19 SA WEGA: Yeah, I would say when the
20 draft questions first came to me, and the
21 discussion was about forensic reports, my mind
22 went to the analytical report, once the actual

1 evidence is submitted for evaluation. But from
2 what we received in advance of this meeting, it
3 seems the interest is more in that report created
4 during their own physical exam of their body,
5 which is more in line with a medical record.

6 There's nothing in there that the
7 victim doesn't know, because they were there.
8 But when we speak of those forensic analysis
9 reports, and some of the outcomes, and findings,
10 I think that is where we're all very -- a little
11 more uncomfortable sharing that when the time is
12 not right. A victim may make an innocent
13 disclosure to a friend, the results of the DNA
14 testing, something like that.

15 And then that friend may let it slip,
16 and now the suspect is aware before we've have a
17 chance to do that interview, or confront them
18 with that evidence on our own. So, that's kind
19 of the example of what we're looking at as far as
20 how something could impact the outcome, or the
21 integrity of the investigation.

22 DR. MARKOWITZ: And before you

1 respond, could I just add a quick related
2 question? Which is what, if anything do you
3 communicate to victims to sort of ward off the
4 problems that you just mentioned, potential
5 problems you just mentioned?

6 MS. WILLIAMS: We convey to victims at
7 the culmination of every interview, we ask them
8 to keep what was said in this room to themselves,
9 and to not speak to other people because of the
10 integrity of the case, and it's very important to
11 pursue justice. However, in regards to the
12 previous statement, I think the scope of info
13 sharing, while collaborative, and transparent,
14 without protocols it could create problems in the
15 investigation.

16 In terms of exculpatory evidence that
17 we don't want to be revealed at a specific time,
18 and, or releasing video interviews, or even the
19 written summary of the interview that the agent
20 did. It could strain the relationship between
21 the victim, and the agents furthermore throughout
22 the investigation, in terms of just reliving the

1 emotional effects of going through that
2 interview, and just seeing it again.

3 Maybe they don't want to participate
4 further in the investigation just based off of
5 seeing themselves on video, and how they handled
6 it, their experience of it is a better way of
7 saying that, and that's not something we want.
8 We definitely want participation, and we want to
9 continue a rapport with them. We're here for
10 them in pursuit of justice, and so that's all I
11 had to add for that.

12 HON. WALTON: Ms. Williams, I think it
13 was you who indicated that you don't have the
14 authority to redact information before it's
15 produced. Do you think that that authority
16 should exist, and if it did exist, who should
17 have the authority to make the determination of
18 what redactions are appropriate?

19 SA FLYNN: I did say that the agents
20 don't have the authority to redact, it's done at
21 our records center, at the Crime Records Center,
22 which they've got all the training associated

1 with it. So, like Erin mentioned before, the
2 resources would be necessary if we put it down to
3 the level that each office would be releasing it
4 to the special victim's counsel, or the victim.

5 We would need to have that training,
6 and a person to make sure that we're not giving
7 out information that we shouldn't be giving out.

8 SA WEGA: I will add, if that's all
9 right. The NCIS policy on releasing the victim's
10 statement has evolved over time, and initially
11 our policy position was to have those requests
12 forwarded to our FOIA office, where they are used
13 to handling records requests, so that they could
14 perform the redaction. But as the number of
15 requests increased, we just didn't have the
16 resourcing to do that.

17 And so, that authority was delegated
18 to the field, unfortunately we don't routinely
19 redact the statements. Although that remains a
20 capability, I suppose in a certain circumstance
21 if the agent, and field office leadership felt
22 that was necessary.

1 MR. KRAMER: Thank you very much. I'm
2 sorry, I didn't understand that there would be
3 some material you wanted redacted so that the
4 victim wouldn't -- can you give an example of
5 what that might be?

6 SA FLYNN: I really don't know exactly
7 what it might be. But there could be something
8 in a case file, or the information that we're
9 providing to the victim that may need to be
10 redacted. I just don't know what that would be,
11 but it is -- we need to make sure we take care in
12 making sure everything is done in accordance with
13 FOIA, and the Privacy Act.

14 MR. KRAMER: And then I had one follow
15 up for Special Agent Flynn. You said something
16 about not revealing exculpatory material, because
17 it might put the victim cross wise, or I'm not
18 sure about the exact word. But how would you
19 ever hold back exculpatory material? I don't
20 understand.

21 MS. WILLIAMS: What I meant to say,
22 sir, is through our investigative actions we

1 follow all leads to a logical conclusion, right?
2 And so, if there is info sharing, specifically
3 like cell phone data for example, the data came
4 from the victim's cell phone, but there could be
5 other leads in there that we're not ready to
6 share at that time, because we haven't been able
7 to act on them.

8 MR. KRAMER: Unwilling to share with
9 who? The defense, or the victim? That's what
10 I'm not clear on.

11 MS. WILLIAMS: This is during the
12 investigative process, sir. At the culmination
13 of the investigation, everything is shared, like
14 I specified earlier.

15 MS. GOLDBERG: In conversations with
16 some victim's counsel in different settings, some
17 of them mentioned to me the importance of having
18 the information, so that they can advise their
19 client. Some of them talked about the difficulty
20 they have had in accessing the information, and
21 the unevenness with which some of them get
22 information sometimes from some people, and not

1 from other people.

2 And so, I have a two part question for
3 you. One is are you aware of that issue of
4 unevenness? I think in those cases they were
5 talking about getting information from trial
6 counsel, not directly from investigators. So,
7 wondering if you're aware of that. And the
8 second is whether you're aware of, or have views
9 on providing information to victim's counsel that
10 they would be limited from providing to their
11 client.

12 So, the victim's counsel might have
13 it, but they might not share it with the client.
14 Because my understanding from some of the
15 conversations I had was that some of them
16 understood that there was certain information
17 they could not pass along, but they could use to
18 advise their client as a way of protecting the
19 integrity of investigation.

20 But also being informed about what
21 their client might be coming into if a
22 prosecution was pursued. That might have been a

1 four part questions, apologies, just pick up the
2 pieces that you feel you can respond to.

3 SA FLYNN: Well, if I miss a part, let
4 me know. But the trial counsel, as I understand
5 right now, they do it at preferral of charges.
6 So, they may not get it exactly at a certain time
7 every time, because I guess it would depend on
8 when the preferral charge is happening. And I
9 think with us providing the information to the
10 special victim's counsel, it's all about timing.

11 And that's one of the things with the
12 policy, a standardized policy, would be the
13 timing of doing it. Should we do it at the end
14 of all investigative leads are done? And so,
15 that way the special victim's counsel knows
16 everything that we've gathered, and we're not
17 trying to interfere with the investigation, and
18 have a possibility of interfering with the
19 investigation in any way.

20 Of course without having done this
21 before, I don't know exactly where that would
22 become an issue. And then I don't remember the

1 rest.

2 MS. GOLDBERG: That's a very good
3 running start. And I just want to be sure, it
4 sounds to me like the recommendation from you on
5 timing is at the end of the process, but I want
6 to be sure whether I'm hearing that correctly.

7 SA FLYNN: Yes, I would think it would
8 be at least at the end of all investigative
9 leads, and with the consultation of the trial
10 counsel to ensure that we don't interfere with
11 anything that's going to happen in the judicial
12 process either. Just all the consultations
13 associated with both sides to make sure we're
14 having a clean investigation. I don't want to
15 mess up a prosecution.

16 SA HANSEN: I would say for the Air
17 Force, I think our policy is pretty holistic in
18 that we do cover both stages of the
19 investigation. I don't know of any current
20 concerns from the victim counsel. I will say
21 obviously when victim counsel stood up, and we
22 were all new to this, I'm sure there were some

1 rocky beginnings.

2 But I do think the Department of the
3 Air Force has figured out a good battle rhythm
4 for releasability of information, and don't know
5 personally of any current complaints, or issues
6 going on within the community. I will say I
7 think it is -- info sharing has just increased
8 with both some of the legislative, and policy
9 direction for monthly coordinations to include
10 with the victim's counsel.

11 As well as other monthly meetings that
12 are had to ensure that information is cross
13 shared. But that is why at a minimum, during the
14 ongoing investigation, we do treat every case on
15 a case by case basis to ensure the integrity of
16 the investigation. We don't want to release
17 something that could impact, but for the most
18 part, while our policy does give leeway, when it
19 comes to a victim's statement, there would be
20 very limited reasons of why that would ever be
21 denied to them.

22 SA WEGA: I will just add that within

1 the Navy, and Marine Corps the investigator, and
2 VLC relationship is critical, and that that is
3 honestly on a case by case basis, what that
4 relationship looks like, and if it's a positive,
5 and collaborative working relationship, or if it
6 tends to turn, I guess a little more difficult
7 when they don't -- when both parties aren't
8 completely responsive, or understanding of the
9 position from the other.

10 And so, I think through better
11 education, and relationships, and relationship
12 building, that that should minimize some of this
13 kind of back, and forth, or denials of those
14 requests. But again with written statements,
15 recorded statements, we believe that that's the
16 victim's statement. They can walk out of a
17 police department after filing a report, or
18 filing for a protection order with a copy of
19 their affidavit, we agree that that's their
20 record, and that they have a right to it.

21 I don't know that we've fielded many
22 requests for medical records, or for SAFE

1 examination records. And so, I don't know that
2 there has been push back on those, just because I
3 am not aware of any specific requests, but I
4 think we would see those in the same light.

5 MS. WILLIAMS: As I said before, our
6 relationships, as Special Agent Hansen had
7 mentioned, with SVCs are very critical in working
8 towards a goal. Our goal is different than their
9 goal, but the respect, and the mutual
10 understanding is there. Within in my experience,
11 I am not aware of any concerns. Our guidelines
12 within CGIS are clear.

13 And those are mandated by
14 headquarters, and the special agent in charge,
15 and so in my experience, I have not had any
16 issues.

17 MS. BASHFORD: Do you draw any
18 distinction between items you would release to a
19 victim's counsel, as opposed to items you would
20 release to a victim who had not availed
21 themselves of legal representation?

22 SA HANSEN: For OSI, we would again,

1 during the ongoing, treat that on a case by case
2 basis, just as if they had counsel. Again,
3 giving deference to items that are there, such as
4 their statement. I guess I can't think of a
5 reason why we would not release their statement
6 to them. And once the investigation is closed,
7 even if they did not have victim's counsel, that
8 would all go through the legal office for
9 release, or through the FOIA process.

10 SA WEGA: NCIS doesn't make a
11 distinction whether the request is coming from
12 victim's legal counsel, or from the victim
13 themselves.

14 SA FLYNN: DACID would not make a
15 distinction between those, especially because
16 we're not opposed to any standardized policy
17 associated with that, and plus the fact that not
18 every victim chooses to have a special victim
19 counsel. So, you would have to definitely treat
20 them in the same manner.

21 MS. WILLIAMS: Likewise with my
22 colleagues, we treat all victims the same,

1 whether they have an SVC, or not. Therefore
2 there wouldn't be any overarching issue.

3 MS. TOKASH: This is Meghan Tokash.
4 Do you see any safety issues with respect to the
5 three points of release here?

6 SA WEGA: No, I don't see any safety
7 issues.

8 MS. WILLIAMS: I agree, I see no
9 safety issues.

10 SA HANSEN: I guess I would clarify
11 safety issues of whom, to go back to Ms. Hansen's
12 statement earlier, releasability of a recorded
13 statement that have agents that could work in
14 different mission sets, that could be considered
15 a safety issue. A safety issue to the victim, I
16 don't see any issues releasing their own
17 information to them, but it would depend on how
18 you were defining safety issue, to whom.

19 SA FLYNN: I could see where there
20 could be a possibility of a safety issue for
21 retaliation if the victim did something other
22 with their statement, like putting it on TikTok,

1 or something to that, on a social media platform.
2 They may put themselves in a position where now
3 other members of their unit are going to
4 retaliate against them. But that would be the
5 only place that I could think of as a possible
6 safety issue.

7 MS. TOKASH: My follow up question is
8 would any of these disclosure issues be easier,
9 and take pressure off of the MCIOs, and, or trial
10 counsel if decisions were made by a judge, so
11 made at the judicial level?

12 SA FLYNN: You mean as in a court
13 order by the judge at a particular time?

14 MS. TOKASH: Yes.

15 SA FLYNN: Well, it would make it
16 easier on the trial counsel, and CID, because we
17 wouldn't be making the decision.

18 SA HANSEN: Same, concur, it would at
19 least make the decision easier, it would take it
20 out of our hands, so yes.

21 MS. WILLIAMS: I guess my question
22 would be who is preparing the court order? Would

1 it be the agent, therefore it would be another
2 responsibility within the investigative action,
3 but that's all I have.

4 MS. TOKASH: I'm sorry, could you
5 repeat your answer? I'm having trouble hearing.

6 MS. WILLIAMS: Sure. Who would be
7 preparing the court order for the judge to
8 authorize? And would it be the agent therefore
9 that would add another administrative action for
10 the agent? Otherwise I concur with my
11 colleagues.

12 SA WEGA: I mean, I wouldn't object,
13 that just seems to kind of elevate the need for
14 bringing in judicial decision, rather than
15 leaving it at the lowest level to make that
16 discretionary decision, which would be the agent
17 in consultation with the prosecutor.

18 MS. BASHFORD: There was an indication
19 in the RFI responses, I believe from the Air
20 Force, that it's good for trial counsel to get an
21 agreement with victim counsel to return the ROI
22 at the conclusion of the case. Are any of your

1 services turning over the entire ROI to victim
2 counsel, or to the victim?

3 SA HANSEN: So, OSI does have policy
4 if a, again when the case is ongoing, we do have
5 the ability to release a draft ROI, but we would
6 look at the specific request, and see what
7 portions of the ROI would meet their request.
8 And so, it could be all, or none depending on the
9 specific ask. But again, knowing that they would
10 be using that to help counsel -- their client on
11 proceeding.

12 So, we do have policy, and procedures
13 that would allow for release of some, or partial
14 draft ROIs. And then once it is in the final
15 stage, the decision would go to our base legal
16 office.

17 SA WEGA: I am not aware of any
18 release of NCIS ROIs directly to victim, or to
19 their legal counsel. At the very conclusion of
20 the -- NCIS keeps our case files open until the
21 conclusion of the adjudicative process, whatever
22 that may be. And so, once adjudication is

1 complete, victims can certainly request a copy of
2 the entire file through the Privacy Act, or
3 through the FOIA process.

4 But during the investigation, I'm not
5 aware, perhaps that's something that trial
6 counsel manages.

7 SA FLYNN: DACID has no policy to
8 release a report until the end of the
9 investigation. Such as NCIS, we also keep our
10 case files open until after the adjudication
11 process.

12 MS. WILLIAMS: Much like NCIS, NCID,
13 we do the same. We keep it open until the
14 culmination of the investigation. However, we do
15 have the liberty to release a not-complete ROI,
16 but it's on a very case-by-case basis. As my
17 colleague in the Air Force has mentioned and in
18 my experience, it has never been released to a
19 special victims' counsel, but it's also never
20 been requested. But it's at the culmination of
21 an interview with trial service or the SJA or
22 through FOIA.

1 MR. CASSARA: In a case involving
2 multiple alleged victims, am I assuming correctly
3 that you will only release the information to a
4 particular victim that relates to that victim or
5 would there be an instance in which, for example,
6 you might release a statement of alleged victim A
7 to alleged victim B in order to persuade them to
8 continue to pursue the case or anything along
9 those lines?

10 SA FLYNN: No, sir. We wouldn't
11 release someone else's statement to another
12 individual, no.

13 SA HANSEN: Same for OSI.

14 MR. CASSARA: Thank you.

15 MS. GOLDBERG: I have a question
16 that's not exactly on point but relates to an
17 issue that came up in a visit we did to a
18 training recently. So if other colleagues have
19 questions that want to dig in on this, I don't
20 want to take anybody's time. But seeing none,
21 I'm going to go ahead and ask one of the
22 questions that, one of the issues that was raised

1 to me about the investigative process generally
2 and investigators in sexual misconduct cases is
3 that investigators change frequently and so that
4 it is hard to have a situation where the same
5 investigators carrying through on a particular
6 case. And, of course, that is true in the world,
7 right, in the rest of the world, you know.
8 Nobody is sort of bound to their job in that way.

9 But I guess the question is do you
10 concur with that as a reality? Is that the
11 reality you see? And if so, how do you
12 understand the effect of that frequency of change
13 on your cases, on your investigations, and in
14 this area, which I think can be different from
15 some other areas?

16 SA FLYNN: Well, you probably have
17 heard a little information about the Hood Report
18 that came out for CIB, so we are in the middle of
19 a transformation and one of our goals within that
20 transformation is to have agents stay on station
21 longer. You know, we're becoming more of a
22 civilian agency than we were military agency.

1 And, yes, we have seen where, you know, you
2 review a case and multiple agents are part of the
3 case and it slows it down and seems to get lost,
4 you know, some of the investigative activity.
5 But we are working right now to make that better
6 within CIB, so, hopefully, it all works out in
7 the end.

8 MS. GOLDBERG: Do you have a time
9 frame on the --

10 SA FLYNN: Oh, there is a time frame,
11 but I don't know the exact time frame. I do know
12 that we are working in increments to be, like, I
13 think it was originally 60/40, then 80/20, and
14 then, at some point, be 100-percent civilian.
15 But that's ongoing right now, and I don't know
16 the end state, what that actual year is.

17 MS. GOLDBERG: Thank you. And I do
18 realize that we didn't ask you to come here and
19 speak about this, just interested in your
20 reactions if you have --

21 SA HANSEN: So OSI has also extended
22 our time on station for our active duty members

1 just overall over the last couple of years. We
2 were also the beneficiary of a little over 130
3 civilian billets through the IRC, and so we plan
4 to use those as more of our continuity. We did a
5 lay-down plan to have additional civilian 1811s
6 at our main operating locations to build in that
7 continuity and be the lead agents for our special
8 victim crimes.

9 SA WEGA: So, yes, that does happen.
10 We all work for global agencies that have global
11 missions, and then that's typically what drives
12 this. NCIS is majority civilian special agent.
13 Our agents will stay in one location anywhere
14 from three to five years typically, and so a
15 little bit longer than our active duty
16 counterparts.

17 We also received a number of billets
18 following the IRC recommendations in order to
19 grow out our special victim investigations
20 program. And with that, our goal is to drive
21 down the case load for individual case agents, so
22 then they can accomplish those investigations

1 more quickly before a need to transfer and more
2 thoroughly, obviously. With fewer cases, you
3 have more time to spend on each investigation.

4 But one of the other complexities in
5 the military criminal justice system is that it's
6 based on the offender and who is the offender's
7 commanding officer, who is the convening
8 authority, and so our cases follow the subject.
9 If we have a delayed report of a case, then a
10 victim is now in Europe reporting an incident
11 that happened in Norfolk, but now the suspect is
12 in San Diego, that's going to lengthen the amount
13 of time that it's going to take to complete that
14 investigation, but that also means that the case
15 will eventually be transferred to San Diego where
16 the subject is so that we can continue to follow
17 that adjudication process. And so that's one
18 reason that cases may be transfer more frequently
19 between agents than in our civilian counterpart
20 agencies.

21 To mitigate that, however, NCIS has
22 recognized that the changing of case agents can

1 be a detriment to the investigation. And so
2 through our evaluation and inspection and
3 oversight process, we do pay close attention to
4 those cases that are transferred from one agent
5 to another just to make sure that things don't
6 drop, that it remains, you know, aggressively as
7 pursued as it was at the outset.

8 MS. WILLIAMS: CJIS has agents in
9 locations typically for four years, active duty
10 agents, civilian agents. There is no mandatory
11 time that they must be there. I'm not privy to
12 any changes that might be coming down. However,
13 we are aware that cases do follow subjects, and
14 they may get transferred. However, CJIS does a
15 great job advocating for a warm handoff is what
16 we say in the field, and what the agent will do
17 is they'll introduce a victim to the new agents.
18 Oftentimes, CJIS will fly the agent out to be a
19 secondary to the new case agent to facilitate the
20 continuity in pursuit of justice. And so they do
21 a really great job. And so, as we are not
22 perfect in our endeavors, I think we do a great

1 job, like Ms. Hansen said, mitigating all of
2 those issues that we know or are aware of.

3 MS. GOLDBERG: Thank you.

4 HON. SMITH: So I don't see anyone
5 else with any questions. So on behalf of the
6 Committee, thank you very much for your time this
7 afternoon. We appreciate it.

8 SA FLYNN: Thank you, Chair Smith.

9 COLONEL BOVARNICK: Maybe we can just
10 take a little break in place, about five minutes,
11 and we'll switch out for the next panel and start
12 at 1400.

13 We'll get started in about two
14 minutes.

15 Folks, we're going to get started, if
16 you could please take your seats. Ms. Peters
17 will introduce our next panel.

18 MS. PETERS: This is Meghan Peters.
19 Our session is focused on the sharing of
20 information with victims' counsel and victims
21 pursuant to your statutory task. During this
22 session, we have a panel of experts to assist

1 with understanding the implications for the
2 military justice process on the sharing of
3 information and on other interests in the
4 development of a policy that would affect
5 prosecutorial discretion and other issues.

6 So with that, I want to introduce our
7 panel. From the Army Trial Counsel Assistance
8 Program, we have Lieutenant Colonel Heather
9 Tregle. We have Captain Tang from the U.S. Navy
10 Office of Special Trial Counsel. We have Colonel
11 Glen Hines from the Marine Corps Special Trial
12 Counsel Office; Colonel Naomi Dennis from the Air
13 Force Office of Special Trial Counsel; and
14 Captain Anita Scott, our Military Justice Policy
15 Chief for the Coast Guard, who has shared
16 information with you previously. We're happy to
17 have her again to give you an armed forces-wide
18 perspective on this aspect of your statutory
19 task.

20 And so I'll turn it over to the
21 Committee to begin our question and answers.

22 HON. SMITH: Good afternoon, everyone.

1 Thank you for being here. So I'll start with the
2 first question, and that is what is -- and I'll
3 ask just that we'll kind of go down the line and
4 everyone can give us an answer. What's your
5 current practice for providing victim and
6 victims' counsel their statements, examinations,
7 photographs, et cetera?

8 LTCOL TREGLE: Sure. In the Army,
9 this is covered by Policy 22-07 and with regards
10 to recorded statements that are provided from the
11 victim or documentary evidence provided from the
12 victim. We give copies to the victim at
13 preferral without request.

14 With regards to the forensic
15 examination, the DD-2911 is provided upon
16 completion and anything else that would have been
17 created within that examination would be, is
18 always able to be released to the victim by the
19 victim requesting it through the military
20 treatment facility herself or can, with any
21 records that may be within the government's
22 files, those would be subject to release through

1 FOIA with a plan to be correct custodian of the
2 record.

3 And then I think that covers
4 everything.

5 CAPTAIN TANG: So current Navy policy
6 is the Commander of Navy Legal Service Command
7 Instruction 5810.1, the substance of which was
8 provided in the read-ahead. And when the Office
9 of Special Trial Counsel stands up, we expect to
10 follow consistent SOPs consistent with that
11 existing policy. Certain items are provided upon
12 request, including the victim's statement,
13 evidence produced by the victim, images of the
14 victim or the SAFE exam, and any court filing in
15 which the victim has an interest, plus the plea
16 agreement and stipulation of fact. Those are
17 upon request, and then others are sua sponte.
18 Those would include subpoenas, search warrants,
19 requests for records in which the victim has a
20 privacy interest, appointing order, scheduling
21 matters, et cetera. And we do intend to follow,
22 as the OSTC, consistent with these policies that

1 are currently in effect.

2 COLONEL HINES: Thank you. Good
3 afternoon, Committee members. Marine Corps
4 policy is very similar to our Navy counterparts.
5 With respect to the first piece of information,
6 any recorded statements of victims to
7 investigators, current policy and our legal
8 support in administration manual is that, before
9 preferral, the VLC, if the victim is represented,
10 or the victim are provided a copy of the victim's
11 statements, including video statements,
12 documentary evidence derived directly from and
13 pertaining directly to the victim that are in the
14 possession of the government. This obligation to
15 disclose continues throughout the proceedings,
16 and this policy will be continued under our OSTC
17 SOPs.

18 With respect to category two, upon
19 request, again, the VLC or, if unrepresented, the
20 victim is provided a copy of any reports arising
21 from the results of a sexual assault evidence
22 collection kit, including a DNA profile match,

1 toxicology report, or other information collected
2 as part of a medical forensic examination unless
3 doing so would impede or compromise an ongoing
4 investigation. And, again, this policy will
5 continue under our OSTC SOPs.

6 COLONEL DENNIS: Good afternoon.
7 Thank you for having me. The Air Force policy is
8 similar for release, similar to our sister
9 services. We do process requests for information
10 in accordance with the TJAG Policy 51201 on the
11 military justice administration. What we do is
12 based on the type of request that we received.
13 So victim's counsel, for instance, will file
14 official use requests, and we process that in
15 accordance with that request under the Privacy
16 Act, under FOIA, and other governing authorities.
17 We also have a process by which we process
18 requests directly from victims who are
19 unrepresented by counsel, but those decisions are
20 made with several considerations in mind, all of
21 which are outlined in our read-aheads that we
22 provided, but they include, you know, different

1 considerations for the victims' statements, in
2 particular in information directly related to
3 that particular victim, safety considerations,
4 privacy considerations, as well as, like, 412
5 evidence and things that may impact either the
6 investigation or the prosecution of the case.

7 CAPTAIN SCOTT: Good afternoon. Thank
8 you for having me. For the Coast Guard, our
9 current policy is to provide the recorded
10 statements, as well as the results, through
11 victim counsel as prior to preferral of charges
12 during the investigative phase and not upon
13 request. Trial counsel or staff judge advocate
14 office can turn it over if CGIS has not already.

15 If they are not represented by victim
16 counsel, however, they utilize the FOIA process
17 and CGIS turns it over through that process.
18 There's only one caveat that exists and where,
19 and I think, I believe the Marines said the same
20 thing already, to the extent that providing
21 information does not interfere with the
22 investigation, that has less applicability from

1 any statement. But when it comes to forensics on
2 property, there have been some instances where
3 that information has been withheld, at least
4 until there's a better theory on the case. Thank
5 you.

6 MR. KRAMER: Can you explain that last
7 thing, something being withheld until there's a
8 better theory of the case?

9 CAPTAIN SCOTT: Early in the
10 investigative phase, if we have lab results on
11 property, there have been instances where it is,
12 we have not been able to determine whether the
13 victim may or may not be a co-conspirator or a
14 co-subject and, in those instances, the property
15 results have been temporarily withheld to
16 determine what's going on with the case.

17 MR. KRAMER: Can I ask a couple more
18 while I'm at it? This is for everybody. It
19 sounds like two or three of the services turn it
20 over as a routine matter without request, but
21 others have to have a request to turn it over.
22 Am I hearing correctly? Is there some that just

1 turn it over as part of the investigation without
2 any requests? Who turns it over without any
3 requests, and who turns it over, you have to have
4 a request?

5 COLONEL DENNIS: So in the Air Force,
6 we do routinely turn over any statement that the
7 victim has produced, right. So any statement
8 that is part of, is produced by the victim, the
9 victim's own statement, we turn that over as a
10 matter of course as the case progresses,
11 particularly in the trial stage of the case, not
12 actually the trial but pretrial, like preferral
13 of charges.

14 The rest of what's contained in report
15 of investigation, for instance, is generally
16 processed through an official use request by the
17 victim's counsel, for instance. So if they need
18 access to more than their client statement, then
19 they would submit a request outlining the purpose
20 for which they would use that information.

21 MR. KRAMER: So I guess I should have
22 zeroed in on this. The other two things we're

1 talking about are the forensic examination and
2 any medical records of the victim, so those
3 latter two things fall in that category?

4 COLONEL DENNIS: Yes, sir.

5 MR. KRAMER: Can the rest of you tell
6 us?

7 COLONEL HINES: Sir, with respect to
8 medical records, so I would hope that our trial
9 counsel are not coming into possession in
10 advertently or intentionally into the possession
11 of victims' medical records. If there are
12 inadvertent disclosures, obviously, there are
13 several questions about how you have to deal with
14 that. It can create 513 issues.

15 But as an initial matter, those would
16 obviously be turned over to the victim. It's the
17 victim's medical records.

18 And I think I lost -- oh, you asked
19 about upon request. It's upon request in the
20 Marine Corps. Practically speaking, the
21 statement is going to be provided to the victim
22 before the special trial counsel conducts that

1 initial substantive interview, which should be
2 done in a perfect world before a charging
3 decision is made. So the policy is upon request,
4 but, in all likelihood, if they haven't requested
5 it, it's going to be provided to the victim
6 before one of our special trial counsel conduct
7 that --

8 MR. KRAMER: And what about the SANE
9 exam?

10 COLONEL HINES: That's the same
11 policy. Upon request, they're provided the
12 results of their SANE exam.

13 CAPTAIN TANG: And then for the Navy,
14 sir, those three categories that you've asked
15 about, the recorded statements of the victim, the
16 SANE exam of the victim, and any medical record
17 of the victim, those are upon request. But
18 consistent with the Marine Corps, we are going
19 to, in almost all cases, do a substantive pre-
20 charging interview; and before we do that, we're
21 going to provide the statements of the victim to
22 the victim and ask that he or she review those.

1 LTCOL TREGLE: In the Army, the
2 statements and documents provided by the victim
3 are provided without request. They're provided
4 to the SVC, and then the victim can decide with
5 her counsel whether or not she wants to have them
6 or not.

7 As far as medical records or forensic
8 examination, the victim can always request those
9 themselves through the MTF. If they are
10 documents that they provided to the prosecutor,
11 then they would fall into that first category of
12 statements or documents provided by the victim.
13 If somehow the government came into possession of
14 the medical records through some other means, we
15 would not release those to the victim absent a
16 FOIA request.

17 MR. KRAMER: Thanks very much.

18 DR. SPOHN: So I think my question was
19 answered by the follow-up question that was just
20 asked, but I do have a question about, obviously,
21 the information that is going to be shared may
22 contain sensitive information about the victim,

1 about witnesses, about other affected parties.
2 Do you ever redact that kind of information when
3 you release the records or the statements, or how
4 do you protect the privacy interests of the
5 victim, the witnesses, and anyone else who might
6 be affected by the release of the information?

7 HON. SMITH: Before you answer, can I
8 piggyback on that? I had a question about in
9 terms of let's say the forensic examination and
10 there are photographs, is there ever a protective
11 order or something like that so that, you know,
12 defense counsel can view those things, but you're
13 not providing to the accused the photographs and,
14 you know, private other documents or whatever to
15 the defendant or to the accused?

16 LTCOL TREGLE: With regards to the
17 privacy question, we do not redact the documents
18 that we give to the victim, a copy of the ones
19 that she provided to us so she would already have
20 that information. Anything that was not provided
21 by the victim that we are releasing would be
22 redacted in accordance with FOIA through the

1 proper custodian of the records.

2 As to the protective order question,
3 if the photographs from the forensic examination
4 end up in the file, they would be turned over to
5 the accused. However, we often do seek a
6 protective order for no further dissemination;
7 but, if they are in the file, they are turned
8 over to the accused.

9 CAPTAIN TANG: So with regard to
10 providing the victim his or her own statement or
11 own medical records, those would ordinarily not
12 be redacted because they would contain only the
13 private information that was either given by the
14 victim or known by the victim. We would not be
15 giving the victim information about witnesses
16 but, to the extent that we do provide discovery,
17 our standard practice is that PII is redacted.

18 As for providing the SANE exam photos,
19 a protective order can be sought to limit
20 dissemination, any further dissemination. We can
21 also state that we will be the ones to convey
22 photos to any defense forensic consultant, if

1 necessary, and oftentimes protective orders are
2 sought.

3 COLONEL HINES: Captain Tang
4 completely stole my thunder. Our policy in the
5 Marine Corps would be exactly the same as she
6 just articulated it.

7 COLONEL DENNIS: And in the Air Force,
8 we do, likewise, protect any information
9 regarding medical records, particularly the ones
10 you mentioned, you know, forensic evidence,
11 photographs, and things of that nature. We would
12 ask the court to seal those exhibits, and we do
13 not release customarily, absent some unique
14 circumstances, we would not release any field
15 exhibits to an accused or to a victim in a case.
16 However, their counsel would have access to that
17 information going through the court to fulfill
18 their official duties.

19 Hopefully, that answers your question.

20 CAPTAIN SCOTT: For the Coast Guard,
21 we share the identical policy to the other sea
22 services.

1 MS. GOLDBERG: Thank you for being
2 here. We'd like to ask a similar question to one
3 that I asked the panel before, I think, you were
4 in the room, which is have you seen any trends of
5 misuse of information or records; or, if not
6 misuse, do you have any concerns about misuse of
7 records that you think would be appropriately
8 addressed in protocols if there were to be a
9 uniform policy? And let me even be more generous
10 than just misuse and concerns, and we would also
11 welcome your suggestions more affirmatively about
12 what would be appropriate to include in a uniform
13 policy.

14 LTCOL TREGLE: I think I understand
15 your question. With regards to trends with the
16 misuse of records --

17 MS. GOLDBERG: Improper sharing of
18 records once they are provided, yes.

19 LTCOL TREGLE: In the Army, I'm not
20 aware of any trends with regards to that
21 situation.

22 CAPTAIN TANG: Same. Thankfully, I'm

1 unaware of any acts of misuse of discovery
2 information, and I don't have any present concern
3 about future misuse. To the extent that there
4 was something that was private, we could always
5 seek a protective order to limit further
6 dissemination.

7 COLONEL HINES: I would concur. I
8 just came from the military trial bench, and when
9 these issues come up during discovery, even when
10 a military judge orders disclosure of records
11 under 513 or 412, usually they put very strict
12 protective measures on the further dissemination
13 of that material. As someone else on the panel
14 noted earlier, they're sealed by regulation
15 before they're attached to the record.

16 In the counsel, at least in the sea
17 services that have practiced before me, when a
18 judge tells them, defense counsel, you're not to
19 disseminate this beyond your file, they take that
20 as an order, and I haven't had any experience
21 where counsel got into hot water or were accused
22 of violating those orders.

1 COLONEL DENNIS: I would concur with
2 the caveat that it depends on whether the
3 information is being shared with counsel or being
4 shared directly with a victim or accused. I
5 would have some concerns if a policy were to
6 require that certain information be shared
7 directly with the victim, particularly depending
8 on the timing of such a requirement and the
9 impact that that could have either on the
10 investigation or the prosecution of the case.

11 However, to the extent that we're
12 talking about releasing information to counsel
13 representing a victim, we have not seen any
14 trends or misuse of that authority, particularly
15 when it comes with the instruction by the
16 military judge.

17 CAPTAIN SCOTT: Similar to the Air
18 Force, the Coast Guard is unaware of any trends
19 of misuse but do think, if we create a uniform
20 baseline, some wiggle room for situations where
21 it's appropriate, would be helpful. Engaging the
22 current STCs, that was a repeated comment that we

1 feel that just having a little bit of wiggle room
2 to withhold temporarily, where appropriate.

3 And then also if, ultimately, the case
4 is not going to go forward, there were some
5 concerns about whether or not the disclosure,
6 full disclosure of information should have some
7 bounds.

8 MR. CASSARA: When dealing with a
9 child victim, we've all seen cases in which the
10 other custodian parent may not be in favor of
11 pursuing or, you know, you may have questions
12 from an investigative standpoint whether, for
13 example, the mom is telling you the truth or
14 fully cooperating. How do you deal with the
15 dissemination of the information that we've
16 discussed when dealing with a child victim when
17 the other parent may or may not be cooperating?

18 LTCOL TREGLE: In the Army, the
19 dissemination would go to whoever the Article 6b
20 representative is and, if it happens to be the
21 non-cooperating parent, then that is who it would
22 be released to. If the non-cooperating parent is

1 not the 6b representative, then we could ask the
2 court to appoint somebody outside of the non-
3 cooperating parent as the 6b representative, and
4 that's who it would be released to.

5 MR. CASSARA: And you would go to a
6 civilian court and ask them to appoint a
7 guardian? I mean, I've never seen that in my 30
8 years of military court experience, but the world
9 has changed so I don't know.

10 LTCOL TREGLE: No, I was speaking of
11 asking the military judge to appoint a 6b
12 representative.

13 CAPTAIN TANG: Same response from the
14 Navy, sir, that, typically, if there is a concern
15 with one of the parents being the Article 6b rep
16 and, hopefully, there's a neutral party involved,
17 either because it's the TC or the STC or there's
18 a VLC for the child if the child is a dependent,
19 hopefully there's an independent person who can
20 advocate for the 6b representative to be someone
21 who is going to be neutral and not helpful to the
22 offender, but that is not, I believe, always

1 possible.

2 MR. CASSARA: Colonel Hines, before
3 you answer, sir, when you were on the bench, like
4 I said, the rules have changed a little bit in
5 the last couple of years. Were you ever asked to
6 appoint a 6b rep for a child, or how would that
7 look?

8 COLONEL HINES: So I was, sir, in a
9 handful of cases. But it was never the fact
10 pattern or the hypothetical that you throw out.
11 It was usually a child victim, and the parents or
12 the parent were not the accused, and so it was
13 pretty easy. It would be submitted by the trial
14 counsel or the VLC for the child to appoint
15 usually mom or dad, and I would sign off on it
16 and there wouldn't be any issue with it. I've
17 never had the specific hypothetical that you put
18 out, but, if I had to answer it, I would answer
19 it just like my Army and Navy colleague. Those
20 are, as I'm sure you know from your experience,
21 very difficult cases to work through, and so I
22 think you would try to find someone who didn't

1 have an interest in the outcome of the case to
2 appoint as that designee.

3 COLONEL DENNIS: And just to avoid
4 repeating what my colleagues have said, I will
5 offer that I think your question highlights the
6 reason why any policy would need to offer
7 flexibility and look at the facts on a case-by-
8 case basis, you know, akin to how we do 2.1
9 considerations and disposition. There are a
10 variety of circumstances and hypotheticals that
11 we probably can't even imagine that could come
12 into play, and so a policy that would allow
13 flexibility to accommodate those while still
14 offering some consistency for the victims and
15 practitioners would be helpful.

16 CAPTAIN SCOTT: Ditto. I share my
17 colleagues' sentiments.

18 MS. TOKASH: This is Meghan Tokash.
19 Tomorrow, we're going to hear from some victim
20 services organizations, and I have a feeling that
21 what we might hear are concerns about access to
22 information with respect to lack of a docket in

1 the military so, in other words, access to
2 motions filings, court paperwork that may be
3 filed in the civilian sector, like a traditional
4 docket that people may have information to,
5 excuse me, access to.

6 Can each of you please address some of
7 those concerns that we might hear about tomorrow?
8 Thank you.

9 LTCOL TREGLE: In the Army, under the
10 same TJAG Policy 22-07, it does give, lays forth
11 the policy with regards to disclosure of
12 information to the victims. Besides the ones
13 I've already outlined, the date, time, and
14 location of any pretrial confinement review
15 pursuant to 305, they are given that information
16 upon the preferral of charges. The summarized
17 transcript of any victim's testimony at a
18 preliminary hearing they're given upon the
19 government's receipt. They're also given an
20 excerpt of the charge sheet setting forth the
21 referred specifications pertaining to that victim
22 any docket requests, as well as docketing and

1 scheduling orders, including deadlines for filing
2 motions, date, time, and location. For any
3 session of trial, they are given that
4 information, as well. And any requests to be
5 interviewed by the defense counsel, they are
6 supposed to be notified of that, as well.

7 And then, finally, upon filing by the
8 government, a copy of any motion or responsive
9 pleadings that may limit the victim's ability to
10 participate in the court-martial, affect the
11 victim's possessory rights in any property,
12 concern the victim's privileged communications or
13 private medical information, or involve the
14 victim's right to be heard. So they're given
15 notice of that, as well.

16 CAPTAIN TANG: So we, upon issuance,
17 have given the trial counsel the duty sua sponte
18 to give the victim's legal counsel or the victim
19 any docketing, scheduling, continuance matters,
20 and then trial management orders or court
21 scheduling orders when issued. Also, our public-
22 facing docket for the Navy and Marine Corps trial

1 judiciary is much improved from what you might
2 have seen in years past, and so that is publicly
3 available. But the TC have a sua sponte duty to
4 keep the victim informed of all scheduled
5 hearings.

6 As far as filings, the defense counsel
7 do have a duty to file any MRE 513, MRE 412
8 filings, or that which the victim has an Article
9 6b standing to be heard. Those are supposed to
10 be filed upon the defense, and the judiciary has
11 an active role in ensuring that the defense does
12 their job. The TC also backed them up on that.

13 And then, also, if a filing doesn't
14 fall squarely under MRE 412 or 513 but does
15 implicate a victim's rights, typically it's the
16 motion for discovery or production of something
17 that's private to the victim, then the backstop
18 is that the TC and the military judge will ensure
19 that those are also provided to the victim.

20 We are moving to a new case management
21 system that will be used for filing motions. I
22 am not presently tremendously familiar with that,

1 but that will also affect electronic service of
2 the substantive filings upon the appropriate
3 parties.

4 MS. TOKASH: I'm sorry. If I
5 understand correctly, in essence, and for the
6 Army, as well, the trial counsel is serving
7 almost as a PACER-esque function in relaying
8 information that is going through the court-
9 martial to the victim and/or the victim's
10 counsel.

11 CAPTAIN TANG: The defense attorney,
12 under the court rules, does have the initial duty
13 to actually furnish and serve upon the victim's
14 legal counsel those filings, but the backstop is
15 always the trial counsel and then the military
16 judge, as well.

17 MS. TOKASH: Or, I mean, if the trial
18 counsel files a motion in limine.

19 CAPTAIN TANG: Correct.

20 MS. TOKASH: Okay. I'm sorry.
21 Please, Glen.

22 COLONEL HINES: Yes. The Marine Corps

1 policy is subsequently similar to the Navy
2 policy, and we codified it again in our manual
3 and it will be codified in our OSTC SOP that
4 victims have the right to have reasonable notice
5 of all those things in Article 6b, the right to
6 notice when there's a pretrial confinement
7 hearing, the 32 hearing, pretty much any hearing
8 in court after charges have been referred to the
9 court-martial, and then post-trial a number of
10 things that are codified in both 6b and in policy
11 that they need to have notice of. And I would
12 agree that usually falls on the trial counsel to
13 make sure the victim legal counsel or the victim
14 has advanced notice of those court dates.

15 And we're in the same boat with the
16 Navy with respect to public-facing docket. It
17 operates, as well as the entries are put, you
18 know, on the web page. But we do have this new
19 case-tracking system that's coming online soon,
20 and the hope is that it's going to get us closer
21 to PACER. It's not going to be exactly like
22 PACER because, as the members know, we don't have

1 standing courts, like the federal courts do, with
2 an office with a clerk of court. But I think
3 we're getting better.

4 COLONEL DENNIS: Similarly, the Air
5 Force customarily releases information through
6 filings, whether it's defense counsel ensuring
7 that the victim's counsel is copied on any
8 correspondence with the court pertaining to 412,
9 513, and other filings that directly involve the
10 victim. And the trial counsel is responsible for
11 doing the same and ensuring that the victim is
12 kept up to speed in accordance with Article 6b.

13 The other thing I will say is that,
14 with respect to our public docket, we are
15 continuously improving the public docket but face
16 the same constraints as our sister services. And
17 with respect to OSTC's construct, as that gets
18 underway and continues to evolve, we, like the
19 other services, have focused resources on victim
20 engagement, and we are working closely with
21 victims counsel in discussing access to
22 information in particular, among other things

1 about how we can help them and how we can partner
2 together to make sure that Article 6b is
3 fulfilled and to make sure that the process is
4 more user friendly, if you will, for the victim
5 and victim's counsel.

6 CAPTAIN SCOTT: For the Coast Guard,
7 the responsibility primarily falls on the trial
8 counsel with the caveats previously mentioned on
9 the DC's responsibilities. The sea services have
10 graciously included the Coast Guard and the
11 standup of the new case management system known
12 as NCORS. I have seen a number of demonstrations
13 already as it expected to go live, I believe,
14 next month. And SVCs will, victim counsel will,
15 the way that the program works is you basically
16 go to your home page and everything relevant to a
17 case that you're assigned to pops up. It's like
18 your electronic docket is right in front of you.
19 So far, if I can use it, that means it's user
20 friendly.

21 And depending on what category you
22 have within NCORS, if you're TC, you get certain

1 permissions, DC certain permissions, judge
2 certain permissions. But everybody is utilizing
3 the same case management system, and it doesn't
4 let you continue if you miss a step. So pretty
5 much, you know, kind of asking us the question of
6 what do we do now versus with this thing going
7 live next month, I would anticipate, while not
8 like PACER, it is certainly going to have some
9 advantages about giving notice because it gives
10 it to you on your, as long as you can log in, you
11 can see what's coming up because it pushes it to
12 you.

13 MS. TOKASH: Thank you. We also heard
14 that tomorrow we may hear that another concern is
15 that the victims' legal counsel have received
16 information, like motions, inconsistently. Is
17 this because of the processes that you just
18 described, in essence, that it is upon the
19 defense counsel and the trial counsel to deliver
20 any motions that are filed, or do you have other
21 experiences?

22 LTCOL TREGLE: In the Army, it is upon

1 the trial counsel or the defense counsel, whoever
2 is making the filing with the court. If it
3 involves the victim, the rules of the court
4 require that the SVC be included on the filing.

5 I can't speak to whether or not it's
6 a problem. In my experience, the SVCs are
7 generally included on the filings that they need
8 to be included on, and I haven't heard any
9 complaints of them being left out of the process.

10 MS. TOKASH: As a follow-up, when you
11 say included on the filings, is that just an
12 exchange of emails between counsel and the judge?

13 LTCOL TREGLE: Yes.

14 MS. TOKASH: Thank you.

15 CAPTAIN TANG: Yes, ma'am. So the
16 first duty, it is incumbent upon the person
17 filing the motion to know to whom to distribute
18 it to and, archaically, we are still, until NCORS
19 stands up, using email was the filing. And so
20 when mistakes have been made, it typically has
21 been the defense failing to include the VLC.
22 Those mistakes are typically caught pretty early

1 on by the government counsel who then forwards
2 that information to the VLC and, if not caught by
3 the government counsel, then certainly the
4 military judge would note that.

5 On times when something made it to
6 court and the VLC had had no notice whatsoever,
7 that was rare, but I would delay any proceeding
8 on that until the VLC had had adequate time to
9 respond to anything that was new information.

10 COLONEL HINES: I would concur. The
11 trial judiciary rules in the sea services, at
12 least in the Marine Corps and the Navy, we have a
13 rule that specifically indicates or tells counsel
14 who are filing the motion, the moving party, they
15 have to serve copies of that motion on the other
16 party. And in cases where there is a VLC or a
17 victim that includes any motion under MRE 412 or
18 513, I could conceive of where there might be
19 other motions that would impact the victim's
20 rights, and those would need to be served, as
21 well.

22 And so, Ms. Tokash, it's essentially

1 on the counsel in that circuit to be following
2 those circuit rules. And if they fail to follow
3 those circuit rules, then it's, again, something,
4 as Captain Tang mentioned, that the presiding
5 judge would, I would expect, would address.

6 MS. TOKASH: And when you say the
7 presiding judge would address, would be that in
8 the form of sanctions somehow?

9 COLONEL HINES: Certainly it could be
10 sanctions. I mean, we have contempt power, too.
11 You try not to go from one to ten on that with
12 counsel, especially if they're not as
13 experienced. But it would start off with a
14 pretty stern, you know, maybe an email back or an
15 802 conference under RCM 802 with counsel, and
16 the question would be, whoever the moving party,
17 well, why didn't you serve this on, you know, in
18 a case where the VLC is upset, why didn't you
19 serve this on victim legal counsel. And it would
20 basically, that would be the first discussion, an
21 informal counseling, don't let this happen again;
22 and, hopefully, that would be enough to cure it.

1 MS. TOKASH: Is there a liberal grant
2 of delay in trial if one is sought by the
3 victim's legal counsel for extra time to review
4 the motions that were not served on them?

5 COLONEL HINES: Right. It's probably
6 not codified specifically in the letter of the
7 rules. But, certainly, anecdotally, if that were
8 to happen, the judge would be giving that counsel
9 more time to respond and it would typically be
10 how much more time do you want to respond, can I
11 have two days, Your Honor, and they're usually
12 unbelievably reasonably, you know. And you have
13 to go back to you sure you don't want more time,
14 then that counsel.

15 So if they ask for more time because
16 the filing was not served on them, most judges
17 are going to give them, you know, some more time
18 to respond.

19 MS. TOKASH: Colonel Dennis, I want to
20 make sure that you get to weigh in, as well.

21 COLONEL DENNIS: Yes, ma'am. I would
22 say, very similar to the other services, we do

1 file things via email. And it does seem archaic
2 when put next to a system like PACER. That
3 having been said, it is a system that our
4 personnel are used to, accustomed to, and, when
5 we have the opportunity to train our personnel,
6 they consistently use this information to ensure
7 that personnel are served with the right motion.
8 To whether it's trial counsel making sure that
9 the victim's counsel is copied to a particular
10 defense filing, or that judge, as that backstop
11 that Captain Tang mentioned. But we haven't seen
12 this be a particular issue, in the Air Force at
13 least, where victim's counsel are not being
14 served the motions that they need in order to
15 adequately represent their client.

16 And related to what I mentioned
17 earlier with respect to victim engagement, I
18 don't expect that or I should say I do expect
19 that to get even better under the OSTC construct
20 with investigations and prosecution support
21 teams. The integration between the victim's
22 counsel and the special trial counsel will happen

1 even earlier in the process, in the investigative
2 process, well before we get to the question of
3 disposition, so I expect that the information
4 sharing will be that much more robust under that
5 construction.

6 CAPTAIN SCOTT: Similar to what the
7 Marine Corps articulated, most of the instances
8 I've seen where there is some sort of lack of VLC
9 or SVC notification, it's just operator error.
10 It can be corrected by forwarding the email.
11 Most of the time it's not deliberate, and it's
12 caught by one of the other counsel on the case.

13 LTCOL TREGLE: If I could just add one
14 thing to that. In the Army, our clerks of court
15 are usually the ones that receive the filing and
16 accept the filing, and they are, for the most
17 part, very good. They will reject the filing if
18 it not in accordance with the rules. So if the
19 right people are not served they will reject the
20 filing, so that is also another backstop
21 potentially.

22 HON. WALTON: I appreciate that every

1 case is different; and, therefore, there has to
2 be some flexibility in reference to the
3 disclosure of information. But are there any
4 particular stages of the process in which
5 disclosure will not be made? For example, not
6 disclosing the information before a decision to
7 file charges has been made?

8
9 COLONEL DENNIS: What information, if I may, what
10 information in particular --

11 HON. WALTON: A victim's statement,
12 for example.

13 COLONEL DENNIS: I hate to say it
14 depends, because that's the lawyer answer. I
15 will say that when it pertains to a victim's
16 statement, it's probably less likely that it will
17 be impacted by the timing as it would be for
18 other information contained in a report of
19 investigation.

20 So, for the victim statements,
21 particularly his, or her recorded statements, or
22 maybe their written statement that they provided

1 to law enforcement, I would not see any specific
2 timing considerations that would impact
3 disclosure the way that I would see it for other
4 types of evidence.

5 HON. SMITH: Can I piggyback on this
6 question? What about in instances where there's
7 more than one statement taken from a victim? I
8 mean, I think in my experience as a prosecutor,
9 we would have a victim statement, and then the
10 detective would take a couple more statements
11 from other people, and then have to come back to
12 the victim, because maybe they weren't completely
13 forthcoming, or there's additional information.

14 It seems to me that there may be a
15 point at which -- and you said it would be case
16 by case, but I don't think you always know that
17 that's going to happen, so how do you manage
18 that? Add that to your explanation.

19 LTCOL. TREGLE: With regards to prior
20 to their being charges, in the Army, I'm not
21 saying that it couldn't happen, but we generally
22 do not disclose the stuff prior to preferral of

1 charges. With regards to multiple statements, if
2 we're post preferral, we generally will provide
3 multiple statements, and have the victim review
4 their statements prior to trial as well.

5 CAPTAIN TANG: And we will disclose
6 upon request the three categories of evidence
7 that are the subject of this hearing, and so if
8 the request comes pre-charging, we would provide
9 that. Multiple statements, we would provide
10 those pre-charging, and certainly before a
11 substantive interview.

12 Although I do concur with my Coast
13 Guard colleague, that perhaps in a very unusual,
14 rarely occurring circumstance, there might be a
15 reason why you would not pre-charging disclose
16 some result of the examination of the property of
17 the victim. It's not presently something that I
18 can imagine the situation where that would occur.

19 It would be extremely rare where we
20 would refuse to disclose prior to charging any of
21 these three classes of information.

22 COLONEL HINES: I would concur, ma'am.

1 Again, sometimes when you draft policies, and
2 rules you want to give the prosecutor that out,
3 that sort of talisman to say there may be a case
4 that comes up that we might not be able to
5 foresee the reasons why, but you would still want
6 to retain that discretion, and authority as a
7 prosecutor to maybe withhold something.

8 But absent that, I think the policy
9 would be the same whether there was one
10 statement, or multiple statements, that we would
11 provide those to the victim. And again, provide
12 them before the trial counsel does that first
13 special trial counsel substantive interview.
14 Because when our SOPs hit the street, before we
15 even prefer charges, we will have already made
16 our decision on whether we're going to go
17 forward, or not.

18 We're not going to charge anyone, and
19 then we'll wait until referral, or wait until
20 after referral. All of this will be taking place
21 before we even prefer charges.

22 MS. BASHFORD: I think it was Colonel

1 Hines that said ideally you would like the victim
2 to have had access to the recorded, or written
3 statement before trial counsel interviews. I'm
4 coming from a place where we never did that,
5 ever. So, I'm trying to grapple -- memory is a
6 tricky thing, and for adults it can be
7 complicated by alcohol.

8 Children, it can be complicated by
9 maturity, verbalization skills, and are you at
10 all concerned that giving somebody at an early
11 stage their recorded, or written statement kind
12 of locks them into what might not have been a
13 good interview? Might not have been an interview
14 at a good time, or good place? And therefore you
15 don't develop information that wasn't given.

16 Or you don't -- inconsistent,
17 contradictory information sort of gets blocked
18 out, because they're locked into this early
19 statement, do you have any of those concerns?

20 LTCOL. TREGLE: In the Army, I don't
21 think that that's a concern. The way that we
22 approach it with victims, we do have them review

1 their statements before meeting with them. But
2 our interviews with them are not to just go over
3 what they had previously answered. But we do,
4 because a lot of times before a special trial
5 counsel actually gets to sit down with the
6 victim, a lot of time may have passed between the
7 time that they have given their statements.

8 So, we find it's best to have them
9 review their statements, refresh their memory, as
10 to not be needlessly creating inconsistent
11 statements. But sometimes they'll watch it, and
12 then they will still, in their interviews with
13 the trial counsel, the story -- their version of
14 the events will have change. I don't know that
15 they feel pressured to stay locked into their
16 previous statements.

17 I do think that they feel it helps
18 them remember what they had previously said, and
19 the events that occurred.

20 CAPTAIN TANG: So, in a perfect, ideal
21 world, we would have a special trial counsel who
22 would respond to NCI, and perhaps be behind the

1 glass helping to provide additional questions to
2 the investigator to ask of the victim, so that we
3 are minimizing substantive reinterview. I don't
4 believe that we'll get to that perfect 100
5 percent of the time the prosecutor is behind the
6 glass.

7 And so, there will always be extra
8 information that we will want later. I will say
9 that NCIS is typically not doing interviews until
10 VLC have been assigned, and that is typically at
11 least several days after the event, it's not
12 immediate. So, there has been time for the
13 person to reflect on what has happened before
14 they're locked in on their NCIS interview.

15 What I would also say is that when we
16 do have a prosecutor review with a victim, their
17 statement, they will emphasize in that
18 substantive interview, we just want the true
19 answer. There is no right, or wrong answers, the
20 only answer is the one that is true as best you
21 recall it. I don't believe that a victim would
22 feel pressured to stick with that first

1 interview.

2 But to the extent that they tell us
3 new, or different information, I believe that
4 that is just a part of the process, but I believe
5 that they will feel empowered to tell us what the
6 truth is as they recall it at the time. But to
7 the extent that what they told the first time as
8 full, and complete, I would like them to have the
9 best opportunity to be consistent to the extent
10 that that is still what they remember.

11 COLONEL HINES: I would concur with
12 Captain Tang. My practice, and some of us up
13 here, most of us probably practiced as trial
14 counsel, and defense counsel before there even
15 was a VLC. And to some extent as the prosecutor,
16 you were the VLC, you didn't have that AC
17 relationship, but I think there were, at times
18 you had a much more substantive first interview.

19 Because, in going, Ms. Bashford, to
20 answer your question, there are simply things an
21 investigator forgets to ask, or does not ask, not
22 being a lawyer, just doesn't know that they need

1 to ask those questions. And so, I'm not
2 particularly afraid of letting a victim review
3 their statement, they're recorded now, to watch
4 that interview so that their mind is refreshed,
5 as Captain Tang mentioned.

6 And then you step into that
7 substantive interview to maybe go over some
8 things, but more importantly to ask some
9 questions that might not have even come up during
10 their interview with the investigating agent.

11 COLONEL DENNIS: And what I would say,
12 Ms. Bashford, is that it's certainly a concern to
13 any trial practitioner, to expose a victim to
14 having had access to their statement before they
15 testify in court. However, I think it's a
16 concern that's overcome by all of the things that
17 my colleagues mentioned. We don't want to
18 needlessly produce inconsistent statements.

19 And often times, at least in my
20 experience, the victims, they just use it to have
21 their memory refreshed. And our counsel are
22 trained on effective victim interviews, and get

1 into things, including things that you mentioned
2 pertaining to the need to do clarification
3 interviews because of other evidence that has
4 come up between that initial statement to law
5 enforcement, and the interview as you get closer
6 to trial, it's a completely different interview.

7 So, it really just provides them with
8 an opportunity to have their memory refreshed.
9 And for that reason, I think it overcomes some of
10 the modest concerns related to providing them
11 their statement.

12 CAPTAIN SCOTT: Completely agree with
13 Colonel Dennis, I would have concerns in a
14 probably very small amount of cases, depending on
15 if you were talking to that person, I think you
16 get a sense of whether, or not the deviations
17 from a prior statement cause you any concern.
18 But the vast majority of the time it is more, or
19 less a different interview.

20 And the TCs, or STCs tend to be very
21 effective with kind of going back, and giving
22 lots of wiggle room to not change the story, but

1 to amplify, now that we know this, and the
2 interviewees feel very comfortable with providing
3 new, what we might call different information,
4 but new based on things that were just asked a
5 different way the first time. And once they have
6 an out, they can say what they need to say.

7 MR. KRAMER: Thank you all very much.
8 I have what I hope is a quick question. In our
9 three categories, number three, any medical
10 record of the victim that is in the possession of
11 investigators, or the government, and Colonel
12 Hines, I don't mean to put you on the spot, but
13 I'd like to hear from everyone. I think at the
14 beginning you expressed some puzzlement about
15 that category.

16 Does this category even exist? I
17 guess that's my question.

18 COLONEL HINES: And Mr. Kramer, is may
19 have been a product of me having been on the
20 bench, and so, only seeing it once it gets into
21 court, and then you're litigating these disputes.
22 But the first question that I would have is why

1 do these records even come into the possession of
2 a trial counsel? Now, sometimes a military
3 medical facility will disclose to investigators.

4 Sometimes, hopefully not much anymore,
5 but there have been cases probably in the distant
6 past where they just disclosed them, or turned
7 them over to the trial counsel. A trial counsel
8 thinking I need to go out, and do my discovery,
9 my due diligence, and so I'm going to go get the
10 medical records, not knowing that they probably
11 shouldn't do that.

12 So, I was speaking more -- that to me
13 looks like an inadvertent disclosure, and so if
14 that happens, what should be done with those?
15 And I would hope that what we would do is turn
16 those back over to the victim.

17 MR. KRAMER: Have any of the rest of
18 you ever seen this kind of -- not the SANE,
19 obviously not SANE, but other medical records?

20 CAPTAIN TANG: I think where medical
21 records would have been gotten by the
22 investigators would be usual physical injury,

1 perhaps domestic violence, or child abuse where
2 it was a mandatory report, and that NCIS has
3 gotten hopefully medical, and not mental health
4 treatment intermixed pursuant to the law
5 enforcement exception to HIPAA.

6 LTCOL. TREGLE: I would just add the
7 same, I've seen that, and there have been
8 instances where medical records may have been
9 obtained through nefarious purposes not by the
10 government, but by outside actors, and then they
11 come into the possession of the government.

12 MR. KRAMER: Surely not by defense
13 counsel, I'm sure.

14 LTCOL. TREGLE: I would not cast that
15 aspersion.

16 COLONEL DENNIS: I read that section
17 similarly to what Captain Tang mentioned, where
18 it's related to information in the case, and
19 sometimes there is maybe an over sharing by the
20 clinic, where they give you more than what is
21 relevant to the charged offense. But to the
22 extent that this is just pertaining to medical

1 record that is not necessarily a byproduct of a
2 forensic examination, but still related to a
3 charged offense, I do think that this is a valid
4 category.

5 CAPTAIN SCOTT: Same.

6 HON. SMITH: Anymore questions for our
7 panel? All right, seeing no more hands up, thank
8 you very much for your time today. We're going
9 to take a break until 3:15.

10 (Whereupon, the above-entitled matter
11 went off the record at 2:58 p.m. and resumed at
12 3:15 p.m.)

13 COLONEL BOVARNICK: Okay, for the
14 afternoon, these next couple sessions are
15 switching focus to Article 25, and I'm going to
16 hand it off to Ms. Terry Gallagher for the
17 introductions.

18 MS. GALLAGHER: Good afternoon, Chair
19 Smith, and committee members. Today we have
20 assembled an exceptional panel of prosecutors
21 with extensive military, federal, and state jury
22 experience. Their impressive bios, and a few

1 topics for discussion are included at tab six in
2 your read-aheads. So, I'll offer only a brief
3 introduction for each. And what I want to do
4 first off is correct a grievous error.

5 Brigadier General Bobby Christine is
6 not retired. He is actively continuing along in
7 his service to this country, and I don't quite
8 know how the retired crept into the material.
9 So, when it comes to Brigadier General Bobby
10 Christine, I'm simply going to refer you to his
11 bio at tab six, and say that he has extensive
12 experience prosecuting major crimes at the state
13 level.

14 And serving as a magistrate court
15 judge prior to being sworn in as the United
16 States Attorney for the Southern District of
17 Georgia in 2017. His responsibilities as a U.S.
18 attorney increased in 2021 when he was also named
19 acting U.S. Attorney for the Northern District of
20 Georgia. His distinguished military career as an
21 army reservist began at age 17.

22 Includes extensive experience with

1 military prosecution, and he's currently serving
2 as the advisor to the judge advocate general, and
3 assistant to the director of the Army National
4 Guard. Next in line there, we have Lieutenant
5 Colonel Promotable Joshua Bearden. And Joshua is
6 currently serving as a prosecutor for the Office
7 of the Chief Prosecutor for the Military
8 Commissions.

9 Having previously served in many
10 different military justice roles throughout his
11 service with the Army National Guard. He's on
12 leave from the United States Department of
13 Justice, where he's responsible for national
14 security investigations, and prosecutions.
15 Joshua also has significant experience
16 prosecuting violent crimes at the state level.

17 Next we have Kathleen Muldoon who is
18 a litigation attorney advisor for the United
19 States Marine Corps. Kathleen has over 19 years
20 of prosecution experience as an assistant state
21 attorney in Chicago, spending ten years in their
22 sex crimes unit. In 2013, Kathleen transitioned

1 to the United States Marine Corps as a highly
2 qualified litigation expert.

3 She trains, mentors, and advises trial
4 counsel throughout the eastern region on all
5 complex, and special victim cases. And then at
6 the end, we have Magdalena Acevedo, who is an
7 assistant United States Attorney for the U.S.
8 Attorney's Office. Magdalena began her criminal
9 justice career as an active duty Army JAG,
10 prosecuting courts-martial both state side, and
11 deployed.

12 Before becoming the primary government
13 appellate attorney for complex, and capital
14 cases. In 2008 she left active duty to become an
15 assistant United States Attorney for the District
16 of Columbia, where she prosecuted violent crime
17 in D.C. courts before shifting to her current
18 role as a community prosecutor, where she works
19 to increase the community's participation in the
20 criminal justice system.

21 At this time I'm going to relinquish
22 the floor to our presenters to provide

1 introductory remarks, including their perspective
2 on what Article 25 member selection criteria
3 continued to serve a military purpose in light of
4 the changing duties of panel members, and the
5 need to randomize the selection process. The
6 floor is yours General Christine.

7 BG. CHRISTINE: Thank you, thank you
8 very much, I appreciate that. I came in, and saw
9 retired on the name tag, and was like oh boy, I'm
10 going to learn a little bit today I thought.

11 BGEN. SCHWENK: I congratulate you on
12 the shortest retirement in history.

13 BG. CHRISTINE: Thank you for letting
14 me be with you. I'm actually eager to hear what
15 the other panel members have to say, very, very
16 distinguished folks. My time prosecution has
17 really been interrupted in my career. Although
18 you'll see, I can't imagine why you would read
19 it, but if you ever did read that introductory
20 material in my bio, you'd see that I did spend
21 about 14 years in private practice, where I did a
22 lot of criminal offense.

1 I had come out of a district
2 attorney's office, so even during that time I was
3 prosecuting for the military, so really nearly 30
4 years' worth of prosecution experience, but did
5 have about half of that doing civilian criminal
6 defense work. And of course there were times
7 with TDS, and its equivalent in the National
8 Guard before the creation of TDS, I was doing
9 military defense work.

10 Certainly lots and lots of time in the
11 U.S. Attorney's Office, lots of time as an
12 assistant DA, and now as an elected DA. And what
13 I will say at the -- what I think a lot of folks
14 can observe, and I suspect has been shared with
15 you, well let me pause before I say this, and say
16 I do not speak on behalf of the Army, I do not
17 speak on behalf of DOD, the National Guard, nor
18 the state of Georgia.

19 This is merely some south Georgian
20 that was walking past the renaissance, and found
21 an open door. The panels in the military are
22 simply better equipped to seek justice in my

1 experience, than our civilian juries. Now, I
2 believe we have the best system of justice in the
3 world in the civilian courts in America, but my
4 experience has been both defending, and
5 prosecuting.

6 Military panels resolve cases in
7 accordance with justice more frequently, and at a
8 higher percentage rate than our civilian courts
9 do. Now, is it the selection process? I would
10 say if we drill down into Article 25, what we're
11 going to get to that matters to me most is that
12 education level. Not that we should vector our
13 efforts in selecting only those with some sort of
14 alphabet soup behind their name insofar as
15 credentials.

16 But I believe that the population of
17 DOD is generally more educated than the normal
18 set from which we are picking juries in the
19 civilian world. The education level in the
20 military, in all strata of our military simply
21 represents, in my opinion, a more educated
22 populace than my general jury pools. Remember,

1 I'm not just talking as a prosecutor, I've done
2 defense work for nearly as long if you include my
3 civilian defense work, and military defense work.

4 So, I would say what in 25 is most
5 important to maintain would be an observance that
6 the pool is educated. Now, having said that, if
7 you believe the military generally is more
8 educated, you could do many things to adjust how
9 the pools are selected, and still get a panel
10 generally more educated than our civilian juries.

11 I guess another way to say that is if
12 you vector your efforts to get a result,
13 understand that I think you're going to end up
14 with a more educated panel than your typical
15 civilian jury anyway. So, without expressing an
16 opinion as to what should be done at this point,
17 I think there can be great modifications in the
18 way the panel is brought together.

19 And you will not do harm to what I
20 believe is the most beneficial part of the
21 military system, which is the education level.
22 Because that material is going to remain the same

1 no matter how you select your panels. Thank you.

2 LTC. BEARDEN: Good afternoon, my name
3 is Lieutenant Colonel Joshua Bearden. For the
4 last 19 years I've been a prosecutor. I've
5 either been a state prosecutor, a federal
6 prosecutor, military prosecutor, and now I'm
7 currently assigned as a prosecutor to the
8 Military Commissions. Historically speaking I've
9 had an opportunity to observe the various
10 interactions that you see on each of those type
11 panels.

12 Whether you're in a state court in
13 Alabama, where individuals seemingly know the
14 judge, and the jury, and the defense attorney,
15 and everybody knows one another, or across the
16 system where you have a federal judge that
17 largely controls, by virtue of his lifetime
18 appointment, how juries are selected in panel.
19 Or in the military system where we've struggled
20 for centuries to figure out the role of our
21 members.

22 Including, but not limited to the

1 factors that are in Article 25. I've been in for
2 about 29 years. I enlisted in 1994, I was going
3 to get out, interestingly enough, when 9/11
4 occurred. Long story short, I stayed in, and got
5 my commission as an officer, and before becoming
6 a JAG, I was actually commissioned as a cav
7 officer.

8 So, I say that from the perspective of
9 I've looked at it from the vantage point of being
10 a 17 year old private, I've looked at it from the
11 vantage point of being a yelled at officer
12 candidate, and I've looked at it as being a JAG
13 for at least the last 18 years. I think the
14 fundamental question that surrounds all of this,
15 the initial proposition is an individual
16 qualified to fairly, and impartially hear the
17 facts, and weigh, and determine guilt, or
18 innocence of an accused.

19 Now, when you look back at the
20 original inception of these factors back in 1948,
21 and the Elston Act before they became a part of
22 the UCMJ, we were a very different country then,

1 very different. In how we treated one another,
2 what our perceptions of the law were, what we
3 thought the role of the military judge, what we
4 thought the role of a JAG attorney was, quite
5 frankly, law officers were assigned.

6 And so, I look at it from the vantage
7 point of what were the individuals thinking back
8 in 1948, and 1950 relative to these factors? And
9 are they now obsolete, are they some artifact of
10 the past that we need to dispense with post
11 haste? And I think to General Christine's point,
12 who ironically enough was my boss when he was the
13 United States Attorney in the Southern District
14 of Georgia, and has a great deal of experience
15 that I've been able to learn on over the years.

16 I think the fundamental question is
17 where are we now relative to these factors? And
18 I would submit to this committee that we are the
19 strongest, most diverse uniform service that we
20 have ever been. Through the implementation of a
21 lot of federal initiatives over the years since
22 1948, and '50. And what does that mean to these

1 factors?

2 What it means by these factors is by
3 virtue of entering into the service, you've
4 pretty much checked the box for the age, you've
5 had some training, hopefully you've had a little
6 bit of experience. And given the incredible
7 criteria that we've put in place as to people
8 that we hopefully recruit, we're recruiting the
9 right people with the appropriate judicial
10 temperament to be a participant in a process that
11 they should be a participant in.

12 Because by, and large, they're an
13 interested party. And so, I think by, and large
14 the criteria that are set forth, albeit with good
15 intentions, are necessarily satisfied. I don't
16 know that they necessarily have to remain.
17 There's obviously the need to take into
18 consideration how senior, subordinate
19 relationships work, and whether a subordinate
20 should ever sit in judgment of a senior.

21 That's obvious, I think to most people
22 here. But I think I look at it from the vantage

1 point as either a state, or federal prosecutor
2 from this perspective. As a community at large,
3 in state courts, and federal courts we allow our
4 citizens to participate by, and large. The
5 benefit that we have in the military is we've
6 established over, of course a period of time,
7 essentially blue ribbon panels where we have a
8 very educated jury pool comparatively speaking.

9 That they have at least some
10 underlying training, that they have the
11 sufficient age requirement, and that they have
12 the judicial temperament to be a participant in
13 the process that they're a part of. So, my
14 objective in being here is hopefully to
15 articulate, I think the need to open it up to
16 individuals who are in the service to participate
17 lock, stock, and barrel in this process.

18 And that over a course of time, I
19 think we've done at least a good job of
20 satisfying the requirements that are already
21 established in Article 25.

22 MS. MULDOON: Good afternoon. My name

1 is Kathleen Muldoon, I am currently the
2 litigation attorney advisor for the eastern
3 region in the Marine Corps. And I come to this
4 committee humbled with the panel members that I'm
5 sitting with. My experience, I'm somewhat
6 different in that I worked as an assistant
7 state's attorney in Cook County, Chicago,
8 Illinois for 19 plus years.

9 And then jumped over to the military,
10 never served, never active duty, but experiencing
11 it somewhat in the reverse. Particularly with
12 the reorganization that happened in 2012. As
13 stated in my bio, I was a line prosecutor from
14 day one trying cases from DUIs through murders
15 throughout that 19 year period, half of which was
16 in the sex crimes unit.

17 Focusing on those type of -- that type
18 of litigation. And from there, with that
19 expertise, came to the Marine Corps first as a
20 highly qualified expert, and then the job just
21 transformed to litigation attorney advisory. But
22 the idea of all the 19 years of experience to

1 come, and work with the prosecutors, and help
2 them get their cases together.

3 How to deal with the evidence, with
4 the victims, with the witnesses, and all the
5 things that come along in putting a case together
6 at trial. And part of that then comes to the
7 jury selection, and coming to this panel, and
8 comparing civilian jury selection at a state
9 level, while I was cross designated as a special
10 U.S. attorney for one case, I just got to do the
11 sentencing part.

12 But be that as it may, coming here,
13 and watching the jury selection, and being a part
14 of that, the overwhelming goal in any jury, in
15 setting your panel members, or jurors, is a fair,
16 and impartial juror. That's all we want, that's
17 all anybody wants in criminal justice, military
18 justice. And with that, looking at the criteria,
19 some of the criteria in Article 25 is absolutely
20 the same as in civilian.

21 18 years old, U.S. citizen, although
22 there are military members who are not U.S.

1 citizens, and I think that is an important piece
2 to look at. It's a very small minority, but
3 keeping that in mind. The training, and
4 education that was laid out is in Article 25 I
5 think was more important when they were
6 sentencing, was in the hands of the jury.

7 And since that is changing, I think
8 there's -- in what I've seen, how important is
9 that education? They're all high school
10 graduates, you're starting with that, your
11 officers all have degrees. The training is to
12 some degree more than what you'll see in a
13 civilian jury. Civilian jury, you have the gamut
14 of people coming in for jury duty. And so, it's
15 sorted out through voir dire.

16 But all of that being important, I
17 think it's all important to see how do we get a
18 panel that is fair, and impartial? And rank is
19 important, that I'm sure will be discussed
20 throughout the next hour. But looking at that
21 with the goal as what criteria is laid out will
22 guarantee, or produce that fair, and impartial

1 juror.

2 MS. ACEVEDO: Good afternoon everyone.
3 I'm Magdalena Acevedo, I'm thankful for the
4 invitation to come speak before you all, so I can
5 share my experience both between the military
6 panels, and in D.C. between essentially state,
7 and federal courts. D.C. is a unique jurisdiction
8 in that the U.S. Attorney's Office handles both
9 state level offenses, and federal offenses.

10 So, I've had the pleasure of trying
11 cases on both the state side, and the federal
12 side. The juries are -- the jury selection
13 process, and the veneer are similar on the state
14 side, and the federal side with some differences
15 on where the jurors come from. But having
16 experienced jury selection in all of those areas,
17 I have to say that the way I picked juries as a
18 young attorney definitely changed from the way I
19 pick juries as a more senior attorney.

20 But I learned over time the importance
21 of a diversity of voices on every jury panel.
22 The benchmark of a good jury panel is not the

1 ability to reach a result. Sometimes a hung jury
2 is the right result. The benchmark, our goal
3 should be to find panels who can achieve justice,
4 and I think we need to go back to the
5 Constitution.

6 And remember that our goal in Article
7 25 factors, or the Jury Act is to find a jury
8 that provides a fair cross section of the
9 community. And so, in my opinion, the Article 25
10 factors limit that diversity. And when I speak
11 of diversity, I'm not just talking about
12 diversity of race, but also socioeconomic status,
13 upbringing, the ability to bring other voices to
14 the table.

15 And that life experience is often just
16 as important as educational level. So, in
17 limiting the availability of those voices in the
18 military, I think the military is decreasing that
19 fair cross section, and who can provide their
20 life experiences as part of the jury. The
21 factors that I do think that are mirrored, the
22 federal, and state factors in most places are

1 age, 18, which is pretty much a given with
2 military members.

3 And time, and service to some extent.
4 Just like civilian juries frequently require that
5 a prospective juror have lived in the area for a
6 year, I think it's similarly important that panel
7 members have been at that particular location for
8 a year. So, they are part of that community as
9 well. The other factors such as education, I
10 think are best for counsel to bring out during
11 voir dire.

12 BGEN. SCHWENK: Thank you all for
13 coming, and I appreciate your opening comments.
14 There was a commission two years ago in DOD to
15 look at sexual assault, and when it got to
16 looking at the members for courts-martial, and
17 the selection process for courts-martial, they
18 were reminded by many of the people they talked
19 to that one of the perpetual criticisms since
20 1950 of the military justice process is who
21 decides whether there's a courts-martial?

22 The convening authority. Who decides

1 what charges go to the courts-martial? The
2 convening authority. And who decides who is
3 going to sit as members, jurors on the courts-
4 martial? The convening authority. So, the
5 perception among some people has been, and the
6 criticism that flows from that has been hey,
7 you've got one person making all the decisions.

8 And the jurors are either handpicked
9 -- well, they are handpicked, they're handpicked,
10 and they know what their job is, so how is there
11 justice? So, that was one thing that they were
12 told. They were also told that -- and then here,
13 we've heard testimony from some women victims who
14 looked at their panel, and it was all older white
15 men, no women, nobody of color.

16 And that concerned some of those
17 victims that talked to us. We also heard from
18 accused who were convicted, and came in, and said
19 I'm a minority, and I was convicted by a panel of
20 older white men, and that bothered me. It wasn't
21 a cross section of the Army, Navy, Marine Corps
22 that I have in my unit. And so, those things all

1 got our attention, and we started looking at
2 well, what, if anything, can you do about it?

3 Now, that commission two years ago
4 recommended that there be a randomization process
5 to select members, and Congress in its infinite
6 wisdom, and being as wonderful as Solomon,
7 decided to split the blanket by saying to the
8 Department of Defense, go ahead, and put in
9 randomization to the extent you can, but keep the
10 Article 25 criteria, and the convening authority
11 figuring people out.

12 You know, making the selection using
13 those criteria. And so, DOD is grappling with
14 that right now. So, with that all as background,
15 one of the -- Ms. Acevedo had the observation,
16 leave that to voir dire, but a lot of people have
17 -- not a lot. Some people have said you should
18 make a recommendation as the DAC-IPAD that they
19 just do a complete randomized selection.

20 Because as many of you have pointed
21 out, you already have qualified people who could
22 be plenty smart enough, plenty -- with enough

1 integrity to be that impartial finder of fact
2 that you're looking for. So, go ahead, and do
3 that, and leave the rest of it to voir dire. You
4 all have a lot of experience with voir dire on
5 the civilian side, and on the military side.

6 What are your thoughts on that kind of
7 more -- a fundamental change to the way things
8 are currently done?

9 MS. ACEVEDO: I don't think that would
10 be sufficient to provide that fair cross section,
11 and I speak this having acted as -- or having
12 served as an acting SJA, working with convening
13 authorities on a daily basis. I've never met a
14 convening authority that did not have a goal of
15 justice, but every individual who looks at who
16 they deem to be qualified is bringing their
17 biases into the job.

18 Whether these are known biases, or
19 inherent biases, they have their own idea of who
20 is going to be a fair juror, and that may not
21 consider things aside from education, such as
22 life experience, and background.

1 BGEN. SCHWENK: Okay, other thoughts?

2 LTC. BEARDEN: To your initial point
3 about Congress' infinite wisdom, I think when you
4 look at the Article 25 factors, and
5 randomization, they're actually incompatible,
6 when you start trying to input certain data
7 that's been at least argued as constitutionally,
8 on its face, invalid to some degree. And you
9 start trying to put that into a randomization
10 process, that kind of defeats somewhat of the
11 purpose.

12 So, if you're eliminating factors that
13 are already kind of met on the front end by
14 virtue of my opening comments, relative to
15 people's age, and experience, and judicial
16 temperament, how do you get to a randomization
17 process I think is the ultimate question, without
18 it affecting the overall readiness, and
19 efficiency in various environments that we
20 operate in.

21 Is it going to have an impact on
22 mobilizations, and deployments that have some

1 kind of secondary impact on national security?
2 And I think that's a question that hasn't really
3 necessarily been answered, or thought out, and
4 I'm not smart enough necessarily to give you the
5 rationale of how that can be done. But I think
6 it's an important question.

7 We say this in the military, you have
8 great initiative, but bad judgement. And it's a
9 great initiative, I think in my overall opinion
10 as being a state, and federal prosecutor for most
11 of my life, I operate within the realm of
12 randomization every day on how juries are
13 selected. I mean we've got voter motor rolls,
14 and diverse panels across all ages, demographics,
15 socioeconomic backgrounds.

16 So, I think the intent in having
17 diverse panels to that degree, randomly selected,
18 is the right approach. But the consideration has
19 to be what are the secondary effects of trying to
20 implement that? Is it logistically feasible?
21 How can it be implemented without necessarily
22 impacting the primary purpose of these commands

1 in terms of their ability to stay ready for the
2 ultimate purpose of defending, and protecting the
3 country in a variety of environments?

4 I don't know that we have fleshed that
5 out. I don't know that we can do that today, but
6 I think that's the ultimate question that a lot
7 of practitioners have. I think in reading Dean
8 Skenk's (phonetic) comments, and her response to
9 you all, I think some inquiries were sent out.
10 She essentially said the same thing. What's the
11 secondary impact in doing this?

12 If we go to alpha rosters, if we do a
13 variety of different things? But by, and large,
14 I don't think the factors themselves in Article
15 25, and having a randomization process in, and of
16 itself are compatible. And so, you've got to
17 start with that, and resolve that issue as to
18 whether can we eliminate Article 25, and go
19 strictly to randomization process that includes
20 everybody, what does that look like?

21 And how can we keep it from impacting
22 our ability to maintain a level of readiness, I

1 think is the ultimate question.

2 BG. CHRISTINE: I would carry on with
3 that line of thinking. Are we going to maintain
4 a deployable system of justice? I think that's
5 one threshold question. Now, we see some
6 operations, we see some formations that do, and
7 quite frankly we talk about a deployable system
8 of justice. I tried amongst the first courts-
9 martials in Iraq, perhaps not the first, but
10 amongst the first.

11 That was a deployable system of
12 justice there in 2003. But we don't always see
13 that. We see a lot of stuff quit with the
14 baggage, and we're going to hold that until we
15 get back to home station. Which brings second,
16 and third order problems as Lieutenant Colonel
17 Bearden mentioned, I mean you've got different
18 forces.

19 National guardsmen, reservists, and
20 what have you, and the different rules that apply
21 to them depending on the mobilization, and the
22 end of those mobilizations. So, the one question

1 is how would a complete randomization affect that
2 deployability? And I'm not suggesting you not
3 move in that direction, just thinking we've got
4 to define the framework.

5 Are we going to be able to make a
6 deployable system of justice, and have the
7 initiatives that we're suggesting, whatever
8 initiatives that you suggest at the end? So, if
9 you move in the direction of randomization, which
10 I don't think is inappropriate, but then again, I
11 have a great level of confidence in our soldiers,
12 and sailors, and airmen across the spectrum.

13 Because I just believe it is a
14 phenomenal jury pool for both prosecution, and
15 defense. Because if the issue is, if the
16 objective is getting to justice, as said so very
17 well in our opening comments, then what
18 recommendations does this committee make that
19 enhance that value? I think it also has to --
20 you also have to have that discussion in your
21 deliberations that is not just occurring in the
22 military justice system, but across the spectrum.

1 Do we trust our commanders? You can't
2 go to a promotion board anymore without relooking
3 at previous investigations which have long since
4 been resolved, either founded, or unfounded.

5 Well, would we be doing that if we trusted
6 commanders? Perhaps there are issues beyond the
7 science of this chancery that need to be resolved
8 systemically in DOD.

9 To say well, if we're going to base
10 our system of justice on significant input from
11 commanders, we've got to resolve that threshold
12 question first. Do we trust our commanders? And
13 if so, then some of these other things, perhaps
14 the order of importance of some of these changes
15 that you all might suggest we make get graded
16 differently depending on the answer to that
17 primary question.

18 Which again, just isn't in the
19 criminal justice space, it's across the spectrum
20 in DOD. If we're looking at a system that can be
21 compatible with a deployed system of justice,
22 which I would recommend we keep, I have a comfort

1 level, and I don't advocate for it, and I only
2 speak for Bobby, but I have just such a faith in
3 our human capital that I think a randomized
4 system is going to get to justice as well as the
5 systems that we currently have.

6 Which I'm not advocating changing,
7 because I think we do a pretty good job in that
8 regard, the military does a pretty good job in
9 that regard. Then again, balance that with the
10 fact that I've picked 250 juries in my civilian
11 career thereabouts, and the threshold voir dire
12 is y'all ain't wanted by the law, are you?
13 That's kind of, okay, he's qualified.

14 So, it's a relatively low threshold
15 before our voir dire there. What's the
16 objective? We define the objective, and then
17 nest any recommendations in that, and I think the
18 deployability is a big question. Because if it's
19 truly a randomized selection, you're going to be
20 pulling in your chiefs of staff, and then your
21 motor pool sergeant, and what have you, and in
22 the deployed environment, that can have impact.

1 MS. MULDOON: Very briefly, because a
2 lot has been said already. I think you have to
3 balance the readiness of your military with a
4 purely randomized jury selection. I don't know
5 how that can actually happen. There would have
6 to be some limitations of who is being deployed,
7 and I'm going to say it wrong, I don't have all
8 my military terms right, so I apologize.

9 But if you're going to be deployed in
10 a different sense was just said, deployable
11 military justice, but being deployed to whatever
12 crisis is happening in the world. Being deployed
13 for training. In the civilian world, that
14 doesn't matter, it doesn't exist. That kind of
15 national security is not at the forefront of
16 selecting your juries in whatever city, or state
17 across the nation.

18 You might be considered excused if
19 you're about to have finals in college, that
20 might get you off the jury panel, but not being
21 deployed. I think it has too much of an impact.
22 So, the reason I bring this up, if you're going

1 to purely randomize the process, think of the
2 second, and third order effects of when, how is
3 this randomization going to occur?

4 And how is that going to affect the
5 big picture. That's what I have seen over, and
6 over again in trying to take the civilian model
7 of prosecution, and putting it -- having those
8 models inserted on, or in the military. You have
9 two different systems that are drastically
10 different. As I have said to my people, you're
11 comparing apples, and elephants.

12 You can't, it all doesn't fit. But
13 taking the concepts of being more randomized to
14 get a cross section of the community, and just to
15 ease some of the concerns of handpicked in
16 addition to everything that has been said,
17 looking at those criteria, and my biggest concern
18 is looking at the second, and third order effects
19 of whatever process is instituted be considered
20 as we're doing it.

21 Because it is such a different
22 community than say Chicago, or Atlanta, or any

1 place else in the United States. That's all I
2 have on that.

3 BGEN. SCHWENK: Thank you all very
4 much.

5 MS. GOLDBERG: Thank you very much,
6 and just a quick question that I think follows on
7 what you've shared. We have heard some about
8 some of the potential costs of moving away from
9 Article 25, that Article 25 produces kind of a
10 blue ribbon panel of people who are respected by
11 their peers. And then when they go back into
12 their -- to their colleagues that they are able
13 to sort of carry with them some of their
14 experiences, and so forth.

15 And that the idea of the command
16 selecting people gives the convening authority
17 more ability to pull them in, and make them show
18 up. And at the same time, there's a suggestion
19 that maybe there are some costs to having Article
20 25, like not everybody has the opportunity,
21 especially when it's -- we know at least in
22 civilian jury service, that serving on a jury can

1 really reinforce a person's sense of membership
2 in the civic community.

3 And faith in the system of justice, so
4 when you think about those various points, how do
5 you come out on the costs, and benefits of moving
6 away from Article 25? And one factor in Article
7 25 I just want to set to a side is rank, and
8 we'll assume some years of experience, but just
9 random selection apart from thinking about
10 questions of rank, and a minimum of years of
11 experience, and vetting for other serious issues.

12 LTC. BEARDEN: I think our overall
13 purpose that we've looked at in distinguishing
14 the primary difference between military courts,
15 and Article 3 courts for example is the need to
16 adhere to good order, and discipline. There's
17 this misconception that perhaps these factors are
18 necessary to drive kind of that point home. But
19 I think perhaps maybe even the opposite is true.

20 When you allow people to participate
21 in a process that they trust, that they've given
22 an opportunity to serve, one other factor that's

1 not included in 25 by the way, is each of the
2 individuals that serve have sworn to uphold the
3 Constitution of the United States of America
4 against all enemies foreign, and domestic.

5 There's not many people sitting on a
6 civilian jury that have necessarily had to do
7 that. So, I think at the end of the day,
8 providing that framework to allow people to
9 participate allows for a just system, and justice
10 complements discipline. And I think at the end
11 of the day people are more inclined to follow a
12 process that they believe in, that they trust in,
13 and that they're fully allowed to participate in.

14 One of the factors that we talked
15 about just a moment ago I wanted to touch on real
16 quick is this common denominator that we have had
17 historically, since our beginning, since our
18 founding. Is this constant grapple between the
19 role of commanders, convening authorities, the
20 role of the military judge, and the influence
21 that these parties have in the process.

22 And I think that there may be some

1 space in between random selection, and everything
2 that we talked about by holding accountable at a
3 greater level convening authorities to do the
4 things that they're mandated to do. One thing
5 that I've had an opportunity to do over the
6 course of the last year is work with Mr.
7 Sullivan, for example, on the Military Sentencing
8 Parameters and Criteria Board.

9 Where what we have seen is the
10 improvement, and the increased value of including
11 the military judge in sentencing. But by, and
12 large, involving participants like the military
13 judge at a greater level, and maybe requiring
14 convening authorities, and commanders to do their
15 job at a greater level with maybe some bigger
16 oversight might actually be some space in between
17 this, and pure randomization.

18 It's just a thought. We're concerned
19 about keeping a force that's capable of
20 mobilizing, deploying, and being operational,
21 while also taking into consideration the needs of
22 having a diverse panel. And the expectation is

1 that we have convening authorities that follow
2 that mandate, that we have people that are
3 willing to serve, that are allowed to serve.

4 That are chosen not because they're
5 the CA's friend, or the commander's friend, but
6 they're a part of a diverse force that's willing
7 to participate. Maybe there's a solution in
8 between.

9 MS. ACEVEDO: I wanted to expand for
10 a second about fairness. Because I believe the
11 diversification would not only actually make the
12 courts-martial more fair, but it would also
13 increase the perception of fairness in the
14 system. Right now you have a system where the
15 same person who is pre-qualifying the jurors is
16 also bringing the charges.

17 And from at least my limited
18 experience trying jury cases in the military,
19 there were very few jury trials, or panel trials
20 at my first duty infantry station, because people
21 just believed there was no point, because if they
22 went before a panel, they would be convicted,

1 that the system was not fair. And I think having
2 that randomization, and making the system also
3 appear more fair would give more people security
4 in the system.

5 DR. SPOHN: So, I'd like to return to
6 the issue of diversity in the jury selection
7 process. In the civilian system, a lot of the
8 blame, if that's the correct word, for the lack
9 of diversity, racial, ethnic, and even gender
10 diversity on juries is placed on the use of the
11 peremptory challenge to eliminate people of
12 color.

13 Particularly in cases where the
14 defendant is also a person of color. And if we
15 assume that the anecdotal, and empirical evidence
16 that we've heard, and reviewed of lack of
17 diversity on juries in the military justice
18 system is accurate, and given that peremptory
19 challenges, it's my understanding that they're
20 much more limited in the military system than
21 they are in the civilian system.

22 What are your suggestions? I know you

1 talked a little bit about this in your opening
2 statement, but first, do you think that the lack
3 of diversity is an issue that we should be
4 concerned about? And if so, what do you think
5 the causes of that lack of diversity are?

6 MS. ACEVEDO: I can't speak as to the
7 numbers for diversity in the military panels, but
8 I think military panels have actually a greater
9 chance than civilian panels of achieving
10 diversity in the pool. This is something that we
11 encounter frequently in D.C., which is that the
12 pool of people that the jurors are selected from
13 does mirror the community. The pool of people
14 that comes to jury service does not necessarily
15 do so. And in the military, you do have the
16 benefit of forcing jurors to come to service,
17 which I think would help with the issue of
18 diversity.

19 BG CHRISTINE: I would submit that
20 anything that the panel does that increases the
21 comfort level of the participants on both sides
22 of the ball, prosecution and defense, that

1 increases the comfort level of the panels is
2 going to be a net gain for the system because
3 it's all a voluntary system. I mean, the whole
4 social order is really based on our willingness
5 to subject ourselves to it. So I think there's
6 inherent value in comfort, quite frankly, and the
7 optics of it.

8 As the distinguished panel member
9 pointed out, in the civilian panels, our pool is
10 statistically weighted so that we know that when
11 we sent out and we bring in through jury summons,
12 we're going to get that statistically
13 representative sample.

14 Now, I live in a very diverse
15 community in the Deep South. My juries are more
16 diverse, my trial juries, after de-selecting. I
17 don't call it jury selection. There's an element
18 of de-selection. After de-selection, my juries
19 tend to be much more diverse, but that's a
20 function of my community.

21 So I think a result in a different
22 community that has different numbers can still be

1 a result, a panel that raises the level of
2 comfort at the beginning of trial. They can
3 still be displeased at the end of the trial, and
4 I think we have to observe that, as well. And we
5 have to approach some of the analysis with, well,
6 there's going to be disgruntled at the end of the
7 process by one side or the other in nearly every
8 case, but I don't think the panel should fear
9 taking a step which leads to comfort amongst all
10 the participants.

11 I analogize it to my time in the
12 magistrate court, which is probably part I'm
13 going to start leaving out because magistrate
14 court, where I'm from, whew, that's only a court
15 in the most esoteric terms. One of my jobs in
16 the civil, the small claims, the low-level civil
17 disputes was to resolve the dispute in my
18 courtroom such that it didn't get resolved in the
19 parking lot, and what I learned from thousands of
20 those magistrate court civil cases is people's
21 belief that they are getting fairness and justice
22 here, without regard to the result, that's what

1 perpetuates the system.

2 And so I would say, you know, maybe
3 looking at it from the other end of the funnel,
4 anything the panel does that leads to a higher
5 level of comfort in the likelihood that justice
6 will be received is something I think you ought
7 to seriously consider.

8 But I get back to my initial point,
9 which is I have great confidence in all the
10 persons in DoD who might be called, without
11 regard to where they fall on the rank structure.

12 MS. MULDOON: If I can, I think you
13 have to look at your jury pool in the first
14 place, civilian world, depending if it's, pick
15 your city, large city, smaller jurisdiction.
16 It's going to be representative of that section.
17 If you're a minority in that section, you're
18 going to feel, I think, you're in the minority
19 and your jury pool is not going to look like you,
20 et cetera. Understood. And I am in no way
21 suggesting -- I am for more diversity, but let me
22 get to my point here.

1 If you look at the military, primarily
2 white male. I don't have the statistics. The
3 numbers I looked up are antiquated. But,
4 primarily, walk on any base, I can tell you on
5 Camp Lejeune what am I looking at? There are not
6 many women in the military. If you're pulling
7 from an infantry battalion for a special court-
8 martial, how many females are going to be there?
9 Is the victim female? Is the accused female?
10 How is that going to -- and then you can apply
11 that to any other minority, race, ethnicity, et
12 cetera.

13 So you have to look at that to start
14 with. Like, that's where you need to pull your
15 diversity from, not the panel itself. The Fifth
16 Amendment doesn't get you a panel of your choice.
17 You have to start with a diverse venire, the
18 section that are going to come in and be
19 questioned, right. So you need to do that in the
20 military, and I do think the perception is very
21 important to make sure that, whether it's a
22 randomization, it's going to be randomization,

1 there's going to be randomization, but how that
2 is to take steps to ensure that you're getting
3 the widest catch to come to the venire is going
4 to, I think, instill a trustworthiness to the
5 process for everybody involved: the command, the
6 accused, the attorneys, the victims, the
7 witnesses. Entirely.

8 So to cast a wide net to get that
9 venire in is I think where the goal is and where
10 to look at making sure you have diversity at that
11 level, corresponding to what you have to start
12 with.

13 LTC BEARDEN: I would agree with that
14 in principle. I think you would have to broaden
15 the scope of the potential available individuals
16 that can serve, and that's essentially what we
17 kind of faced, as General Christine just
18 mentioned. You have some communities that are
19 not diverse or they're largely statistically not
20 available. It's just depending on the community.

21 Fortunately, we've had a number of due
22 process measures that have been put into place

1 over the years, whether it be Batson or Taylor or
2 all of these variety of constitutional challenges
3 that have gone forth. You know, we've had an
4 opportunity to improve the military judge in what
5 I mentioned earlier to be a part of the process
6 to ensure that the actual panel itself represents
7 the community, a cross-section, if you will.

8 And so there needs to be a measure in
9 which, as he indicated earlier, can we figure out
10 a way to expand the population that can be drawn
11 from and then apply a weighted percentage to be
12 able to draw from that where you get an adequate
13 number of people that represent the individual
14 that's charged. And that's not just respect to
15 diverse populations; from a gender standpoint, as
16 well. Somebody mentioned earlier sexual assault
17 cases and imagine being a sexual assault victim
18 and not having a female opportunity to serve on
19 your actual jury pool that fully understands what
20 you're going through in a lot of respects. It's
21 problematic. But I think the only way you get
22 there is by expanding the number of people that

1 are available.

2 MS. ACEVEDO: And I think -- is it Dr.
3 Brown? I can't read that far. I can't see your
4 name tag that far away; I'm sorry. I think that
5 two things I mentioned will have to change.
6 There would need to be more peremptory challenges
7 and, likely, there would need to be more of a
8 focus on Batson challenges if we switched to a
9 diverse system, a diverse selection.

10 MG ANDERSON: Thank you for coming
11 today. My question kind of follows on to what
12 General Schwenk said earlier talking about the
13 convening authority and their role in impacting
14 the diversity of the panel, the randomization.
15 Article 25, paragraph F, has something that I
16 just noticed that, to me, could dilute the
17 ability to get a diverse panel. It provides
18 that, before a court-martial was assembled for
19 the trial of the case, the convening authority
20 can excuse a member. Obviously, that's one
21 level, and we've done a good job, we do a good
22 job of vetting our commands, so we understand

1 what we're getting there.

2 However, it also then allows the
3 convening authority to delegate this authority
4 under this subsection to the staff judge
5 advocate, okay, but then or legal officer or to
6 any other principal assistant. Now we've gotten
7 into an area where there hasn't been a lot of
8 vetting for, you know, the kind of traits we want
9 our leaders and commanders to have, and now we're
10 allowing a lower level, I shouldn't say lower
11 level but certainly someone else to step into the
12 process and excuse members which could, in fact,
13 I think result in a less diverse panel. Not that
14 we're trying to do that, but it sort of leaves
15 that door open for that to occur.

16 Have you ever had an experience where
17 convening authority has delegated beyond or to
18 staff judge advocate or even to a lower level?

19 BG CHRISTINE: I have not.

20 LTC BEARDEN: I haven't, but what I
21 would say is, you know, you start with the
22 initial perception that those individuals have

1 interest, the interest of justice in mind in
2 doing their job. You know, across the various
3 forces, whether you be in Air Force or the Navy
4 or Army, these matters are handled quite
5 differently. I was surprised to learn in talking
6 to some of my colleagues in the Air Force that
7 the prosecutor in a lot of instances in the Air
8 Force plays a large role in determining that
9 initial vetting process, whereas in the Navy, in
10 talking to colleagues, they have absolutely no
11 involvement whatsoever.

12 So there's not a lot of consistency
13 and continuity in how it's addressed. I think
14 you have to start with the initial premise that
15 those individuals that are part of the process
16 are above board attempting to do the right thing.
17 They've sworn an oath to the Constitution, as
18 we've previously indicated, and that they have
19 the intent of the command in mind, unless
20 otherwise proven; and I haven't heard a lot of
21 instances in which somebody that's been delegated
22 to do this task is somehow created some nefarious

1 action to prevent people from being a
2 participant.

3 MS. MULDOON: I have not had any, I'm
4 not aware of any cases where it was delegated to
5 the SJA or legal officer. I know that the legal
6 officer and SJA sometimes assist the convening
7 authority in finding the individuals who meet
8 that Article 25 criteria, and then the convening
9 authority makes the final decision. So going up
10 the chain as opposed to delegating downward, I'm
11 not aware of any situation.

12 MS. ACEVEDO: I just had a thought.
13 I'm wondering what that section is meant to
14 handle situations, kind of like in the civilian
15 sector you have jury offices that can be make
16 limited excusals. So, for example, if somebody
17 is having surgery on the day of their service,
18 they can be excused from service rather than them
19 having to go through the convening authority.

20 HON. WALTON: Yes, I mean, this is a
21 very difficult challenge, I think, that the
22 military has, as does the civilian world. I've

1 been a judge for over 40 years now, and I think
2 one of the biggest challenges that I face both as
3 a local D.C. judge and now a federal judge for
4 over 20 years is trying to ensure that there was
5 a perception of fairness because perception is
6 very important and perception, I think, is
7 impacted to a significant degree from where you
8 sit. The perspective of a judge as to fairness
9 is very different than the perspective of defense
10 counsel, the prosecutor, the victims, the
11 witnesses, and the community, and it's very
12 difficult, I think, to appease all of those
13 segments of society.

14 And there's no question,
15 unfortunately, that there are factors that come
16 into play that impact on the fairness of our
17 process that are, unfortunately, ingrained in
18 American society, one of those being race. And
19 the reality is that, if you are prosecuting
20 someone and that individual is being prosecuted
21 by an entirely white system, there's going to be
22 a perception, whether correct or not, that the

1 process is not fair. And I know we've heard from
2 several individuals who have testified before
3 this committee who have felt that they did not
4 get a fair shake because they were being
5 prosecuted on a base, especially if you're
6 talking about an officer in certain services,
7 where there were no other minorities like them
8 and they ended up being convicted. And whether
9 they were guilty or not, I can't say, but they
10 feel that they did not get a fair determination.

11 And I know there are significant
12 challenges that you face, and I don't know how
13 you necessarily resolve them. But I think, I
14 mean, the one thing when I was a prosecutor in
15 the District of Columbia years ago, we used to
16 have jurors that would sit for an entire month,
17 and you would see the conviction rate go up the
18 longer they sat. And now we have jurors who are
19 one and done, and the conviction rate is less.
20 And, obviously, there are psychological reasons
21 that come into play that impact on those
22 statistics, and, again, I don't know what the

1 ultimate answer is. I understand the logistical
2 problems that the military has in randomization,
3 but I do think there has to be a desire to try
4 and ensure that a jury panel that's hearing a
5 case is representative of, at least to some
6 degree, the individuals who are involved in the
7 litigation itself. And, again, I don't know how
8 you necessarily resolve that, but it's a
9 challenge that I think you face in the military
10 and the civilian world faces also.

11 And I guess the one thing I do feel is
12 important is that I don't know if education
13 itself dictates whether somebody is going to be a
14 good juror because I think good common sense
15 sometimes trumps intelligence as far as academic
16 achievement is concerned. And so I think it's
17 important, I think one of the problems that we
18 have is judges too often try and rush the process
19 of jury selection. They don't really scrutinize
20 the individuals to the extent that they should
21 who are being selected, and a lot of times the
22 pressures of the case load is a product of that.

1 And as a result of that, I think many times we
2 empanel juries who are not really prepared to
3 administer justice the way they should.

4 So I don't know. It's a hard issue.
5 It's something that I think this country, both in
6 the civilian world and the military world, faces.
7 And how we can resolve it I don't necessarily
8 know, but it's something that we have to continue
9 to fight because there is a perception in a
10 significant portion of our society who feel that
11 our criminal justice system, whether it's in the
12 military or the civilian world, is not fair and
13 just.

14 MR. CASSARA: I have a very simple
15 practical question. The military has one
16 peremptory challenge. I don't know what you
17 all's practices are in the civilian world. I
18 suspect every court is different. I suspect it's
19 more than one in at least most, if not all, of
20 them. Military courts are a panel of eight for
21 what you would call felony cases.

22 Any thoughts on, you know -- the issue

1 of unanimous juries as going through the courts
2 right now, I'm intimately familiar with that.
3 Putting that aside, any thoughts on a minimum
4 panel size of 12 and/or more peremptory
5 challenges to both sides?

6 BG CHRISTINE: If we are, as some of
7 the points said earlier, leaving a lot of these
8 things to be addressed in voir dire, then I would
9 increase the number of peremptory challenges,
10 which is going to be, you know, a whole lot of
11 appellate law is going to be made there going
12 through the Batson issues and what have you.

13 But if you're going to leave a lot of
14 these issues to be resolved through voir dire, as
15 opposed to how we're directing folks or just
16 taking a randomized sample, then I think justice
17 is going to cry out that you're going to need to
18 increase the number of peremptory challenges.

19 LTC BEARDEN: I agree with that, in
20 expanding it. I think, to the extent you have a
21 command that has the capability from a number
22 standpoint to be able to do that, I think that's

1 the ultimate question is, you know, you hear the
2 joke we just would really like to be able to have
3 enough warm bodies to actually sit, and that's an
4 unfortunate statement to have to make. But in
5 some cases, that's a practical reality for some
6 commands to be able to get enough people who are
7 qualified. So foreseeing that potential problem,
8 increasing numbers might exacerbate that
9 particular issue.

10 But to the judge's point, to the
11 extent you expand the number of people that can
12 sit on the venire that can adequately reflect the
13 accused and provide enough challenges to be able
14 to get there I think is the ultimate objective
15 because I think we're all here for that principal
16 purpose is to figure out a way to administer
17 justice and promote fairness. And by doing
18 exactly what you just said might be the answer.

19 MS. MULDOON: I can tell you that in
20 Chicago we had a jury panel of 12, two
21 alternates, on every jury, seven peremptories,
22 and unlimited cause obviously, maybe not

1 obviously. Seven peremptories. And depending on
2 the case, maybe you used them, maybe you didn't.

3 Military, we have, for felony level,
4 eight members. Often, 12 are sent over, 16 are
5 sent over. That's the extent of our venire,
6 where in Chicago we're getting panels of 40 to
7 come to that number of, ultimately, 14. We have
8 one peremptory in the military.

9 But also remember that there is a
10 liberal mandate for cause. Many, many more
11 challenges for cause I see are granted in the
12 military than would be in the civilian world, and
13 it comes to how they're rehabilitated. Again,
14 you're kind of comparing very different jury
15 pools again, but, with that, you're starting with
16 a smaller number, maybe 12 for a panel of 8. And
17 oftentimes they can't get to that number, and the
18 term is they bust quorum and we have to have the
19 convening authority send more people over and we
20 continue with the voir dire, and that's fine.
21 That's how we're going forward, and, if it's
22 enlisted, they have the right to enlisted on the

1 panel of one-third, which is 2.666 enlisted
2 people. It was very important when you didn't
3 have the limit of eight or you had to have eight,
4 so that one-third was more meaningful than it is
5 now.

6 And with that, the other difference
7 that hasn't really been spoken about, at least in
8 Chicago because I didn't do the research all
9 over, it's a unanimous jury verdict. The
10 military it's not. So that's another impact that
11 you're comparing to the whole process, and it all
12 impacts all of it. It's all interrelated with
13 that.

14 So if you are doing a more randomized
15 less selected member from the convening
16 authority, I think more peremptories are going to
17 be needed in order to sort out the members that
18 have been sent over in the venire and continuing
19 from there. So, again, interwoven, complicated
20 issues that are impacting at all different levels
21 in the selection process.

22 MS. ACEVEDO: I agree with my

1 colleagues and wanted to add that a lot of this
2 could depend on training given to judges. I've
3 picked juries in 30 minutes, and I've picked
4 juries in three days. So as one of our speakers
5 said, how much time a judge gives to question
6 these jurors and how much time a judge gives to
7 rehabilitate a juror is going to impact things
8 greatly.

9 HON. WALTON: With the difficulties
10 the military faces, could you realistically
11 operate the system if you had the number of
12 peremptories that are available in the civilian
13 world?

14 MS. MULDOON: They'd have to send over
15 a larger pool in the first place. And if it's
16 randomized, you're going to have, I would think,
17 more people will be selected in that, and that's
18 just my opinion based on no facts, which is what
19 that is. But you would have to have a bigger
20 panel, and it might take longer. But we would
21 seek, I concur, you can sit a jury, I've never
22 done it in 30 minutes, but a half a day or a day

1 it might take, depending on who comes over. So
2 more time, I think, has to be allotted for that
3 during the process.

4 But it's feasible, I think it is
5 feasible, and we just have to work towards that
6 common goal as we're looking at how we're, you
7 know, planning our trial schedules. Does that
8 answer your question? Can I elaborate more? I'm
9 sorry.

10 HON. WALTON: -- number of peremptory
11 challenges, so I know, I appreciate the
12 challenge.

13 LTC BEARDEN: And to that point, I
14 don't think all commands are built the same, you
15 know. You have some that are larger-populated
16 TRADOC type commands, a lot of folks available.
17 You may have other regionalized commands that may
18 not have enough participants that may have to
19 broaden their base of the potential pool as a
20 consideration.

21 HON. WALTON: I know when we had this
22 discussion previously and it was someone from the

1 Coast Guard, and they have, obviously, a smaller
2 number of military personnel. And they said, in
3 order to try and have a greater diversity, they
4 would bring individuals from other bases to hear
5 a case. I don't know if that's a feasible way to
6 operate in the other branches or not.

7 MS. ACEVEDO: And it doesn't mean that
8 we have to go as far as other courts' peremptory
9 challenges. If I remember correctly, prosecutors
10 get six peremptory challenges in District court
11 currently. Presumably, once the panel is picked,
12 that panel is qualified to hear that case, and
13 peremptory challenges should only be used really
14 for style or for gut feelings.

15 HON. SMITH: So moving away from
16 randomization for a minute because the discussion
17 about having a deployable system of justice and
18 balancing that, that's not something that we
19 think about in the civilian world. Looking just
20 at Article 25 and thinking about this idea of
21 having, of the perception of having a pool of
22 your peers, right, if you're the accused. And,

1 obviously, the convening authority picking the
2 pool is one thing, but what happens if Article 25
3 no longer has that, as Judge Walton said, the
4 education requirement but also the judicial
5 temperament piece because, in my mind, judicial
6 temperament is subjective based on whoever it is
7 who's making the call, right. The convening
8 authority is looking at this list saying, well, I
9 don't think this person has the judicial
10 temperament. What happens if that's not part of
11 the Article 25 equation? Does that change, does
12 that help change the perception of the accused
13 and also of just this idea of the military system
14 being fair while, at the same time, perhaps,
15 along with the education piece, increasing the
16 diversity of the prospective venire?

17 LTC BEARDEN: I totally agree. As I
18 mentioned at the outset, I think a lot of the
19 factors that are identified in Article 25 are
20 largely kind of, at least as a baseline, are
21 already established in terms of age, you've got
22 some training, you have some education.

1 Completely agree that judicial
2 temperament is a very subjective thing, you know.
3 Left to the beauty in the eye of the beholder, I
4 think it was United States v. Smith. It's never
5 really been clearly defined, but I think it was
6 Smith that said it's judgment and ability to be,
7 you know, respect, you've gained the respect of
8 your peers, so to speak. Well, that's very
9 subjective. I think, once you start kind of
10 taking that particular factor and some of those
11 factors off the table and you have a more diverse
12 pool, I think, of people without that
13 subjectivity, I think you're greater inclined to
14 have, you know, perhaps maybe not people who are
15 coming in for initial training. They're in
16 basic, they're in AIT, they're in OCS, they're in
17 a variety of different training programs.
18 They've established themselves as part of the
19 command. You know, they may not have necessarily
20 shown everybody else entirely what their judicial
21 temperament is per se, but they meet a lot of the
22 other criteria. And I think in broadening the

1 numbers of people by eliminating those factors is
2 going to improve your diversity of the pool
3 because you take the subjectivity out, if that
4 makes sense.

5 BG CHRISTINE: I'd summarize it a
6 little tighter and say it's either randomized or
7 it ain't, right. I mean, and I guess we said
8 that a little earlier. If we're going to keep
9 those criteria, if Congress says keep those
10 criteria but randomize, well, then that's really
11 not random, is it? We can define the objective
12 and then try to color in the lines, but we're
13 going to get a broader spectrum of the potential
14 pool or not. We're going to leave it to the
15 commander to determine temperament, or we're
16 truly going to randomize it. I'm not advocating
17 a position. I'm saying that those two -- you
18 can't have both, in my opinion.

19 But, again, I have a great deal of
20 confidence because I believe the pool is a
21 wonderful pool. From the newest enlistee, I have
22 great confidence in the pool. That's why I don't

1 fear a true randomization if you can make the
2 numbers work.

3 HON. SMITH: I think we're going to
4 thank all of you for being here today and
5 answering all of our questions. We appreciate
6 it.

7 COLONEL BOVARNICK: We'll just change
8 out for a couple of minutes here for the next
9 panel, the senior enlisted leaders.

10 Okay. I think we're ready. Ms.
11 Gallagher is going to introduce our next panel.

12 MS. GALLAGHER: And she's going to
13 keep it very short. I want to turn your
14 attentions to Tab 7, which contains the
15 biographies and some topics for discussion for
16 this panel. And then I want to point out that
17 this is the first time the DAC-IPAD has invited a
18 panel of senior enlisted leaders to provide their
19 perspective on an important aspect of military
20 justice, and so I am honored to briefly introduce
21 these assembled leaders before passing the floor
22 over to very brief introductory remarks, followed

1 by questions from the members.

2 First, we have Command Sergeant Major
3 Michael Bostic, the Regimental Command Sergeant
4 Major of the United States Army JAG Corps. We
5 have next Master Chief Tiffany George. She is
6 the first dedicated Command Senior Enlisted
7 Leader to the Commander of the Naval Legal
8 Services. We have Master Gunnery Sergeant
9 Christopher Pere who is the Legal Services Chief
10 of the Marine Corps. And we have Chief Master
11 Sergeant Laura Puza who is the Senior Enlisted
12 Advisor of the Air Force Judge Advocate General
13 Corps.

14 And with that, please give some brief
15 introductory background, and I'll turn it over
16 for questions.

17 CSM BOSTIC: Good afternoon, ladies
18 and gentleman. I'm Command Sergeant Major
19 Michael Bostic. First, I want to thank you all
20 for this opportunity to be here today, and I also
21 want to thank you for your support to our
22 military service members.

1 I am the Regimental Command Sergeant
2 Major for the Army JAG Corps. I currently advise
3 the Judge Advocate General for the Army on all
4 things military paralegals and all three
5 components for about 4,000 soldiers, Army
6 Reserve, National Guard, and active duty that are
7 paralegals that support attorneys throughout our
8 regiment worldwide. I've served in the Army for
9 over 29 years in and out of the branch, whether
10 that's an instructor, whether that's a first
11 sergeant, whether that's an army recruiter during
12 one point in my career, or as a battalion command
13 sergeant major where I had the opportunity to
14 advise two commanders on all things Army, not
15 necessarily JAG Corps, you know, mission.

16 Finally, I will say that, during that
17 time, I had a chance to put a different lens on
18 from being a legal mind or a paralegal in my
19 career to actually being a leader and trying to
20 help that commander figure out some of the
21 challenges that faced soldiers concerning our
22 mission, and that is, in the Army, to fight and

1 win wars or, in that particular assignment that I
2 had, was to help command support wars or support
3 a warfighter.

4 And, again, I appreciate your time
5 this afternoon.

6 MASTER CHIEF GEORGE: Good afternoon,
7 ladies and gentlemen. My name is Master Chief
8 Tiffany George. As the introduction had stated,
9 I've been in the Navy now for 22 years. I will
10 be at the 23-year mark in August. I've been a
11 paralegal now since 2003, March. I graduated
12 from the Legalman School in Newport, Rhode
13 Island. Prior to doing so, I came into the Navy
14 undesignated, so, basically, we come in and we
15 are firemen and we work in engineering with or
16 without training. However, I decided that legal
17 was my thing, wanted to do that. My mom was the
18 clerk of court for the United States Virgin
19 Islands, and that kind of led to me where I'm at
20 today in wanting to be a legalman in the United
21 States Navy.

22 While in the Navy, as a legalman, I

1 have worked more on the prosecution side, so the
2 regional legal service offices is what we call
3 them. And I was honored to be the first
4 dedicated senior enlisted leader back about two
5 months ago for the Commander of Navy Legal
6 Service Command. Basically, what we do is we
7 oversee all the legal offices throughout the Navy
8 all over the world, and we ensure that we provide
9 services to the fleet.

10 So I'm honored to be here today. And
11 also I appreciate the fact that you all decided
12 to have the senior enlisted leaders enlisted
13 representation here to provide our side of it
14 because a lot of times we forget that we are a
15 big component of this military organization. So
16 thank you so much for having us.

17 MGYSGT PERE: Good afternoon, ladies
18 and gentlemen. I'm Master Gunnery Sergeant
19 Christopher Pere. I've been in the Marine Corps
20 26 years now. I've been a legal services
21 specialist since I joined in 1997. I've served
22 in law centers all over the United States, Camp

1 Lejeune, North Carolina; Miramar, California;
2 Camp Pendleton, California; Hawaii. In those law
3 centers, I've served in trial, billets, defense,
4 administrative law, post-trial review, legal
5 assistance which is our family law practice.
6 I've served as senior enlisted advisors to staff
7 judge advocates and 3rd Marine Aircraft Wing in
8 Afghanistan in 2012, we went forward; and at
9 Marine Forces Reserve in New Orleans.

10 I've served as a recruiter in north
11 Texas, and I was a recruiter substation commander
12 in training junior recruiters whenever they came
13 out on the streets to recruit. That was 2007 to
14 2010, during the Marine Corps' ramp-up to 200 to
15 2,000 marines. So that was an interesting time
16 for us.

17 When I was in the 8, I was an field
18 manager for the enlisted paralegal MOS in the
19 Marine Corps, which is like our HR division so
20 managing the assignments of the enlisted marines.
21 I augmented the inspector general of the Marine
22 Corps during that time as an inspector, and I'm

1 currently serving as the Legal Services Chief of
2 the Marine Corps, so I support the SJA of the
3 commandant, Major General David Bligh, and we
4 oversee the legal services of the Marine Corps.

5 I'm grateful for the opportunity to
6 speak here today. Thanks.

7 CMSGT PUZA: Good afternoon. I'm
8 Chief Master Sergeant Laura Puza, the Senior
9 Enlisted Advisor to the Judge Advocate General.
10 I was recently the paralegal career field manager
11 in the Air Force. Prior to that, I was the
12 paralegal functional manager at two major
13 commands. I have also spent time as a
14 superintendent at Air Force Office of Special
15 Investigations and the Senior Enlisted Advisor at
16 the Military Commissions Defense Organization. I
17 have spent time as a paralegal and a
18 superintendent at the installation level or base
19 level legal offices, as well as a paralegal where
20 I worked in civil law military justice.

21 I have been in the Air Force about 24
22 and a half years now. I retrained to be a

1 paralegal in 2005, and I just want to thank you
2 for the opportunity to be here today.

3 MR. CASSARA: Thank you. Since we
4 have all of these great enlisted minds here, two
5 of the questions that we've been debating and
6 part of our recommendation is with regards to
7 enlisted representation on court-martial panels.
8 Current requirement, as you all know this, the
9 one-third requirement if the accused selects
10 representation or enlisted representation on the
11 panel.

12 Any thoughts about either, you know,
13 changing that number higher? Because one of the
14 issues that we've all been grappling with, as you
15 walk in with a client who is a young E-4 and
16 everybody on the panel is an E-8, E-9, or 0506,
17 and there is a perception, I think, of
18 unfairness, and sometimes perception becomes
19 reality.

20 Any thoughts about possibly increasing
21 that number or/and any thoughts about allowing an
22 accused to be tried by an enlisted panel should

1 he or she so desire? In 30 years of trying
2 court-martials, I had one case in which they were
3 all enlisted members on the panel, but that's, as
4 you know, a rarity, an exception and not the
5 rule. So I would like all of your thoughts on
6 those two issues, please. Thank you.

7 BGEN SCHWENK: That was pretty good.
8 I like the way you did that. Look to your left,
9 look to your right, don't put your finger on the
10 button. And it looks like the Regimental Command
11 Sergeant Major lost.

12 CSM BOSTIC: Ladies and gentlemen, I
13 think you all already know how we're going to
14 respond to this question. However, yes, an
15 accused can request an enlisted panel if he or
16 she chooses, and, in my experience, yes, I've
17 seen them. I've seen more than one, and I've
18 heard things about them, you know, for whatever
19 reason. But at the end of the day, the accused
20 has that right, and it's just that, it's their
21 right to request an enlisted panel.

22 In regard to the number, again, I

1 don't know of any reason why the one-third rule,
2 if it's an issue or not. I would like to see
3 what you all know to make it think it's not
4 right. And if I remember correctly, the entire
5 panel can be enlisted. I don't remember seeing
6 anything in the code that says it cannot. It's
7 just, you know, off the top of my head, so please
8 excuse me. Counsel, you know, determine, from
9 the way I see things, what the panel is composed
10 of after voir dire anyhow, so the convening
11 authority sends the requisite number of people
12 there and both counsel determine who actually
13 sits on the panel at the end of the day.

14 MASTER CHIEF GEORGE: So to answer
15 your question, I wholeheartedly believe that the
16 enlisted component on the court-martial members
17 should absolutely stay. What that number, what
18 that fraction may look like, right now it's a
19 third, as we know. However, I don't see why it
20 shouldn't increase.

21 MR. CASSARA: I'm sorry. You said you
22 don't know it why should or should not? We're

1 having a hearing issue here; that's all that is.

2 MASTER CHIEF GEORGE: I don't see why
3 it should not increase. I think there's favor to
4 increase the number. Enlisted personnel think
5 very differently than the officer component. I
6 think that's a given. I think we see that. I
7 think we understand that. There's reasons for
8 that.

9 What I think sometimes is that we look
10 at that as a disadvantage a lot of times for
11 enlisted members, whereas it should not be, just
12 based on the fact that very many years ago our
13 enlisted personnel were not as educated as our
14 officer component. But I will tell you today
15 they come in highly educated compared to what
16 they were before, so I personally believe they
17 can sit and stand head-to-toe with anyone next to
18 them with that educational background.

19 So to have them on as members is
20 valuable. They understand the intricacies or the
21 things that we do sometimes when we make the
22 silly mistakes that we make, and now they have to

1 go ahead and face the music.

2 So having them on there is very much
3 something that we need to continue. But I do
4 agree or, I should say, my suggestion and
5 recommendation would be, if we can increase it,
6 let's do that.

7 As far as the pay grade difference
8 where you mentioned that you have seen a very
9 junior E-3 and then there's an E-8 or an E-9 on
10 the panel, that is very intimidating to that
11 accused. But I don't believe that that's the
12 purpose of them being there for that to be
13 someone that's intimidating. But, however, I
14 think the person who is accused of whatever the
15 case may be, I think they still feel comfortable
16 knowing someone like them that wear the same
17 stripes understands what's happening.

18 MGYSGT PERE: So, sir, what I will
19 tell you is I don't want a panel of all enlisted
20 Marines judging me. You know, the Marine Corps
21 probably has a little different culture than the
22 rest of the services in that we eat our own

1 sometimes. I think officers see things through a
2 different lens. I think they tend to be more
3 empathetic sometimes.

4 And I think, you know, with regard to
5 the seniority of the panel, I think, you know,
6 experience, maturity, that all comes into
7 consideration. I don't think junior enlisted
8 Marines or service members on a panel is going to
9 do anybody any justice. That's just my opinion.

10 HON. SMITH: What do you mean by
11 junior? Just expand a little on that.

12 MGYSGT PERE: I'm sorry. Time in
13 service. So not necessarily rank, right, but
14 maybe members with less than three years, two
15 years in service, you know, wouldn't have the
16 hindsight that somebody with 10 or 15 years would
17 despite rank, right. They've been around,
18 they've been in a bunch of commands. Maybe
19 they've experienced what the accused is on trial
20 for with another set of circumstances before.
21 Maybe they've seen it, know somebody that's been
22 through it, something like that. Just have

1 experience and wisdom to draw from.

2 CMSGT PUZA: I don't have a problem
3 with increasing the amount of enlisted members on
4 a panel. I don't know that I would go to 100
5 percent enlisted because I do feel that officers
6 bring a different perspective as they're
7 deliberating over things that have happened and
8 just brings that open-mindedness and, again,
9 offers a different perspective to what an
10 enlisted member might seem.

11 I have also heard that enlisted
12 members are harder on their own. I think we hold
13 them to a higher standard versus an officer
14 potentially looking at a junior airman might be a
15 little more lenient on them, as well.

16 HON. WALTON: So, Master Sergeant, are
17 you saying that you don't think anyone who has
18 not been in the Corps for at least three years
19 should serve on a panel?

20 MGYSGT PERE: No, sir, I don't think
21 it should be a blanket statement, but I think it
22 should be, you know, circumstantial decision.

1 That's why I think Article 25 comes into play
2 where a commander's discretion, you know, maybe
3 there's an officer that's older, maybe they have
4 a graduate degree of some sort, right, you know,
5 they've been around the world a little bit, but
6 they joined the Marine Corps later. Maybe that
7 could be considered.

8 MS. TOKASH: Have any of you served as
9 a court-martial panel member, just for our
10 reference?

11 MGYSGT PERE: I have not.

12 MS. TOKASH: Okay. Thank you.

13 MS. GOLDBERG: Thank you so much for
14 being here. I have several questions, but I'll
15 just start with one on Article 25, picking up on
16 the conversation we were just having which is it
17 would be very helpful to hear your views on the
18 importance of the specific Article 25
19 qualifications as a basis for selection of panel
20 members. I want to set aside the question of
21 years of service right now because I think, for
22 reasons we've heard across the afternoon, there

1 are maybe particular reasons for that point but
2 wondering if you have any thoughts on either the
3 benefits or the costs of keeping Article 25 in
4 place as it is.

5 CSM BOSTIC: I'll start with that. If
6 I heard you correctly, the benefits to keeping
7 Article 25 as it is, I don't quite know what is
8 wrong with the way Article 25 is laid out. The
9 way I understand, through my experience, how
10 panels are selected by the convening authority, a
11 lot goes into that. The legal team for that
12 convening authority or that SJ's legal team, we
13 get the rosters from the command group, we
14 determine who is going to be available for how
15 long we want that panel to sit on that court-
16 martial convening order, and then we give the
17 commander a list. I don't want to say the word
18 random, but it is a scrubbed list of who would be
19 available. And then the commander, through their
20 counsel, go through and they come back with
21 whatever that number is that gets turned in.

22 And through the experience, through

1 education, through service requirements, again,
2 all of that stuff is, my words, that's our
3 standard that we try to come with that list. But
4 at the end of the day, like, there's more to it
5 than that.

6 For instance, say a junior soldier is
7 on that panel and now they've got to show up for
8 court and sit in the panel box. This is the voir
9 dire part. There's a lot of things that junior
10 soldiers have to go through, and I don't know
11 whether it's, you know, jury duty, for lack of a
12 better term, is that would I want a junior
13 soldier having to worry about when they've only
14 been in the Army a little bit of time. Just
15 because they join as a specialist, you know, they
16 could have a four-year degree and now they're
17 coming as a specialist, but we're looking at the
18 rank. Like my colleague said, yes, that's just
19 their rank, but how long have you been on that
20 rank, what does your experience bring to that
21 panel? Yes, you're an E-5 or an E-4 on the
22 panel, and, yes, the convening authority has made

1 sure you're experienced, but what does that truly
2 mean? Counsel is going to weed that out during
3 voir dire, but did we just waste that soldier's
4 time because we put them on a list that they
5 should not have been on to start with?

6 Again, I believe our process, as it
7 stands currently, works. I haven't heard of
8 anyone complain in my experience, like the panel,
9 it's just the wrong panel. Well, how did that
10 panel come about?

11 And judicial temperament is the only
12 thing I would probably question. Like, is that
13 defined anywhere? Because when I think of
14 judicial temperament, as I know my junior
15 soldiers that I've served with -- as an example,
16 like Private Bostic of 2023. What is his social
17 media page look like when we say judicial
18 temperament? Like, to me, that's a decision that
19 a person made to do whatever they're doing, but
20 now you're saying this soldier, you know, though
21 when they take the uniform off, they may not have
22 the right judgment calls, but we want them to sit

1 on a panel to determine someone's career, the
2 fate of someone's career.

3 So, again, just my first take on that.

4 MASTER CHIEF GEORGE: I think the
5 system in reference to how we wrote the Article
6 25 is it works. I think, with anything that we
7 do, there's always room for improvement, but I
8 think we have to ask ourselves what type of
9 improvement should we go towards and what's our
10 end goal? What are we really trying to change it
11 for if we were to change it?

12 Right now, I think it works in the
13 fact that we select members as, you know, my
14 colleagues here were stating, we go through a
15 very rigorous process to do so. We don't just
16 pick up a sheet of paper or a stack of papers and
17 say, here, here you go, figure it out. There's a
18 lot of detail and attention to detail that goes
19 into selecting those members.

20 One of the things I will say, judicial
21 temperament is something, as I've stated and sat
22 here before and heard in the previous testimony

1 today, is it is subjective. Do you really know
2 how to truly define judicial temperament, and
3 what does that look like by just looking at a
4 piece of paper that filled out?

5 So I think we need to be very, very
6 careful with that particular aspect of it that
7 we're looking for. Something that just came out
8 recently as of either yesterday maybe or earlier,
9 later last week, I think it came from the SECNAV
10 in reference to the military justice system and
11 the fairness or unfairness of, you know, people
12 of color. You know, that is part of the Article
13 25. That definitely needs to stay because,
14 clearly, it has shown now that we have some
15 issues.

16 So I think we need to be very careful
17 when we start peeling back on things that have
18 been working for so long. And I get it that just
19 because it's been working for so long doesn't
20 mean that we can't tweak it or change it. I
21 think we can tweak some of it, but we need to be
22 very careful in trying to revamp the entire

1 system.

2 MGYSGT PERE: I concur with a lot of
3 what my colleagues are saying right now. I think
4 Article 25, as written, is adequate but
5 absolutely can be improved upon. You know, I
6 think all of us know that judicial temperament,
7 it's ill-defined, it's not defined, you know.
8 It's very subjective. Every commander is going
9 to see that very differently. You know, senior
10 enlisted folks are going to see that a little
11 differently. What I think is a judicial
12 temperament may be different than the chief
13 master sergeant next to me.

14 I'll also offer that, you know, with
15 diversity, a lot of questions in here defer to
16 that. I think it's worth considering that maybe
17 we provide the accused or the victim an option to
18 elect then their race or their gender, similar to
19 the enlisted option to elect enlisted members on
20 the panel. Just put in the accused's lap, right.
21 That way, it's not constricting the commander,
22 it's not constricting the system.

1 CMSGT PUZA: I agree with my
2 colleagues in that I don't know what is wrong
3 with Article 25. I think it's been effective as-
4 is. I do think the best qualified by reason of
5 age, education, training, experience, and length
6 of service is built into the system and that,
7 with the rank requirement, if we keep that where
8 the members must be a higher rank of the accused,
9 I think that's built in where they're going to
10 have the time and service, the education, the
11 training, at least to the extent of the accused.
12 And so I think, like I said, it's kind of built
13 in there.

14 I agree with the judicial temperament.
15 If it's in there, I think it should be defined
16 what is the convening authority looking at when
17 they are taking judicial temperament into
18 consideration.

19 HON. SMITH: Are there any, aside from
20 the age, education, experience, length of
21 service, and judicial temperament, are there any
22 qualifications you think that a panel member

1 should have that, a qualification not included in
2 Article 25?

3 MASTER CHIEF GEORGE: I think a lot of
4 times when we have an accused and we have members
5 who haven't sat in the accused's shoes or done
6 tours where the accused may have, I think that is
7 something that we should look at and take into
8 account, the jobs that they've had, the positions
9 they've held, where they've been stationed, what
10 they were doing while they were there in that
11 particular job assignment. I think that's
12 important because a lot of times, too, people
13 commit, you know, misconduct sometimes based on
14 what they have gone through and what they're
15 currently going through. So I think that is
16 something that we should consider.

17 Also, backgrounds, where people come
18 from, things like that I think are important to
19 sometimes make a decision on whoever it is that
20 may be sitting there. It may not be the overall
21 totality of the decision point, but I think it
22 should be taken into consideration.

1 CMSGT PUZA: I don't think anything
2 else needs to be added.

3 MGYSGT PERE: I think I concur with
4 the Master Chief in that, you know, a lot of the
5 culture does come into consideration. You know,
6 culture of a command, culture of the service,
7 making sure that's reflected in the accused and
8 the panel would be important for a fair trial.

9 BGEN SCHWENK: Before I ask my
10 question, let me just pass along some of the
11 criticism we've heard about the panel selection
12 process and the ultimate end result of panels.
13 The major criticism that I've heard for 50 years
14 of the Article 25 criteria is the fact that there
15 is an Article 25. That means that why is the
16 convening authority who already decided there was
17 going to be a court-martial and decided what
18 specific charges are going to go to that court-
19 martial, he or she now turns around and picks the
20 members that are going to go judge guilt or
21 innocence and, if there's a guilty finding, the
22 sentence, although that will change in the near

1 future.

2 And so people have criticized probably
3 before I was ever in the Marine Corps, have
4 criticized that process because it's like having
5 judge, jury, and executioner in their view all in
6 one person, and the hand-picked jury does exactly
7 what they're supposed to do. And when we had
8 conviction rates that were through the roof,
9 there was, you know, there was data that they
10 could point to to support that. Now we have
11 acquittal rates that are through the roof, so,
12 you know, the shoe is on the other foot. That's
13 one criticism of Article 25.

14 And then the result, the criticism
15 we've had, we've had white female victim or
16 female victims of any race or ethnicity come in
17 and tell us what their panel was all older, from
18 their perspective at 20 years old, older white
19 males, and they didn't feel like they had any
20 rapport with any of those members who were trying
21 to understand what happened that night or that
22 day in their lives that was so traumatic to them.

1 And so they were looking for diversity on the
2 panel.

3 And then we heard from a number of
4 minority accused who were convicted by, they
5 said, all older white male panels. And, again,
6 they looked and said, you know, I don't feel that
7 there's any compatibility, any good relationship
8 between me and these panel members where they'll
9 be understanding of my situation.

10 So those are criticisms of the end
11 result, diversity of the process itself that the
12 convening authority has so much power.

13 I guess I should say that Meghan and
14 I were on the IRC two years ago where we
15 recommended some changes. But even though we
16 recommended what's now the STCs, you know, the
17 special trial counsel, we still had the convening
18 authority decide on the members.

19 So all that said, there's the
20 criticism. The issue is nobody has mentioned
21 diversity on a panel or that a panel should
22 reflect the composition of the force or anything

1 like that, and I wondered, I'll just ask
2 specifically what do you think? Should it,
3 shouldn't it? The Court of Appeals of the Armed
4 Forces had a case a number of years ago where
5 that tissue came up, and they concluded that
6 convening authorities, although it's not an
7 Article 25 criteria, convening authorities could
8 take race, ethnicity, gender, sex, into account
9 in trying to put panels together that reflected
10 the diversity of that command. Now there's
11 another case up there, and nobody knows what the
12 answer is going to be until it comes out on the
13 same issue.

14 So what are your thoughts on the
15 importance, the lack of importance, of diversity,
16 you know, race, ethnicity, gender, sex, whatever,
17 on court-martial panels? Thank you.

18 HON. SMITH: Can we also add in what
19 your thoughts are on how it's viewed among
20 enlisted members of the service?

21 MGYSGT PERE: So ladies and gentlemen,
22 I do think it's important. And, you know, to the

1 statement I made just a little while ago, I think
2 a really good idea one of my colleagues brought
3 up, one of my E-9, you know, Marine paralegals,
4 is that it should fall to the accused to elect
5 their race and gender if they so choose, right?

6 Because, you know, what's important to
7 me may not be important to my colleagues here at
8 the table. Every accused won't be different,
9 right? Some people will be indifferent to them.
10 Some people may feel very strongly. So, I mean,
11 I think to put it in the accused realm would be
12 beneficial.

13 BGEN SCHWENK: I know there's a split
14 on admin discharge boards, admin separation
15 boards. I think it was the Navy and the Marine
16 Corps that actually have a provision that says
17 that the respondent, you know, the person that's
18 potentially going to be thrown out, if a minority
19 could ask for minority representation on the
20 panel, which that's been brought up to us as an
21 example of a way to deal with this issue. And it
22 sort of goes to you having the accused, you know,

1 make that request if we wanted to make that
2 request.

3 But, anyway, that's an admin
4 discharge, but facing maybe an other than
5 honorable discharge, an honorable discharge
6 board, which is nothing to sneeze at and two
7 services, but I don't remember the two. I think
8 it was the Navy and Marine Corps. Have you guys
9 at the Army done that? Okay. Whichever the ones
10 are, that's been out. And I just throw that out
11 as something to think about.

12 CSM BOSTIC: Ladies and gentlemen, I
13 can answer -- I think there was two questions
14 thrown at us. Yes, I believe diversity is
15 important. I don't think there is any military
16 leader that wouldn't say that. However, I just
17 think we have to be careful because I know prior
18 to today we were talking about randomization.
19 Again, in the military mind, we do a lot of
20 things deliberately. Random is, you know, how we
21 operationalize random. But, yes, it is important
22 to have diversity. But, again, how do we shape

1 that for a panel?

2 And then, yes, sir, our administration
3 separation board, the respondent, on those
4 boards, can ask for a minority member sit on that
5 panel, that board, to determine their separation.

6 MGYSGT PERE: Sir, to the criticisms
7 about, you know, the commanders involvement time
8 and again, I think, it's important to remember
9 that, you know, the purpose of a court-martial is
10 to uphold good order and discipline, which is a
11 little bit different than a civilian trial,
12 right?

13 The commander owns his unit, he owns
14 his people, he owns, you know, good, bad or
15 indifferent the results of that trial. So he is
16 invested in choosing a panel that is going to do
17 justice, legit justice, whether that's an
18 acquittal, whether it's a conviction, right, he
19 owns that. So I would just offer that.

20 MASTER CHIEF GEORGE: I think for me,
21 ladies and gentlemen, I will look at diversity in
22 several lens because diversity isn't just one

1 thing. Diversity isn't just race. It could be
2 sexual orientation. It could also be the things
3 that you've done in the past, life before coming
4 into military.

5 So when you look across the spectrum
6 of any command that you may be a part of or any
7 civilian organization, there is something
8 different that you see from every person that you
9 work with. That in itself is diversity.

10 So when we look at diversity or when
11 we say the word diversity, I think we need to
12 start looking at it from many different lens and
13 not just one. I think the one that we go towards
14 the most right away when we say diversity is
15 race, but I think we need to expand that a little
16 bit.

17 Also diversity and having that as part
18 of member selection is very important because
19 diversity in itself is our strategic advantage in
20 the United States military across all services.

21 When you look at our enemies and when
22 we look at our competition out there, they are

1 less diverse than we are. And because of that,
2 there are disadvantages to that but there are
3 advantages for us because we think differently,
4 we do things differently and that's how we win
5 wars.

6 Therefore, this should be looked at no
7 different. But at the same time when we do
8 select members and we have those commanders
9 making those decisions, we also have to think
10 about those attorneys who go in the courtroom,
11 and they decide at that point for the interest of
12 the government or their client, who am I going to
13 keep? Who is going to be the member that is
14 going to decide the fate for this accused or for
15 the government?

16 And as a matter of fact, if they don't
17 like any of them, they get rid of all of them,
18 and we start over. Therefore, again, I think we
19 all talked, and I think we are all in unison
20 where I think there should be some tweaks. But
21 we also have to believe in the system that we
22 have been using that there are some benefits to

1 it. We are doing very well.

2 And our mission is to uphold the good
3 order and discipline, something very different,
4 it looks very different, than what a civilian
5 court has. And while I understand sometimes we
6 need to go into alignment with what we are doing
7 on a civil side, I think a lot of times we
8 forget. We are a military organization. We're
9 built very differently. We are supposed to be
10 built very differently.

11 And I think lately we have started to
12 cross those lines and, quite frankly, they don't
13 go together. There is a reason why it's called
14 the military and not the civil sector. If it was
15 not, we would all be doing the same things.

16 CMSGT PUZA: I would just like to add,
17 I absolutely think the panel members should be a
18 diverse group. However, for the Air Force we do
19 have some smaller bases that try courts-martial.
20 And if you are focusing so much on the diversity
21 of the panel, you may not get that, and it may
22 cut down on the randomization that I know has

1 been a topic of discussion as well.

2 So I think, again, if you do focus on
3 specifically that diversity and having certain
4 members on that panel, it won't be as random and
5 we may not have the pool of folks we are looking
6 for at some of our installations.

7 SGEN SCHWENK: Let me move -- oh, go
8 ahead, Suzanne.

9 MS. GOLDBERG: I will pose my question
10 and then we can -- you can respond if you would
11 like or we can jump to my colleague's question.
12 In light of what you said and in light of what we
13 know that, or at least what we've heard, that
14 there are perceptions that the process isn't fair
15 necessarily. And this is what Jim was describing
16 before sometimes because what our panel may look
17 like if you come in as a woman or as a person of
18 color and the panel does not, you know, look like
19 people who may have shared any of your
20 experiences, although they might have as you
21 pointed out.

22 I guess the question is do you have

1 other suggestions for improving the perception
2 and the reality of fairness of the process?
3 Like, we're looking at Article 25. We're looking
4 at randomization. We're thinking about
5 diversity. And the question is do you have other
6 ideas of places or issues we should be looking
7 that are procedural or substantive and might make
8 a difference here?

9 MGYSGT PERE: Ma'am, I think it's
10 probably difficult to get to fair for everyone,
11 right? And I don't say that lightly. I mean,
12 you know, a victim's perception of what's fair,
13 the accused's perception of what's fair, the
14 government's perception of what's fair, the
15 commander's perception of what's fair, right, I
16 don't know how we do that for everyone frankly.

17 MS. GOLDBERG: I guess what I mean is,
18 you know, to the extent that people look at the -
19 - victims may look at the process and say that
20 doesn't seem fair therefore I am not going to
21 report. I know there are other reasons victims
22 don't report. But to the extent that's one, it's

1 a serious issues, which is part of what's behind
2 the question and to the extent people are either
3 convicted or not and feel the -- you know, in a
4 broad way that the process is unfair that's a
5 serious issue as well.

6 And I take your point, right? You
7 know, there is never going to be consensus on
8 fair. By fair I don't mean happy. I mean, a
9 sense that people get a fair shake and that their
10 arguments are heard with an open mind and the
11 evidence is evaluated with an open mind.

12 CSM BOSTIC: Ladies and gentlemen, I'm
13 going to comment first and then I will entertain
14 a question. As I sit here and think about words
15 like perception and what the accused thinks when
16 he or she looks across the courtroom and sees
17 that panel, and I heard someone say I think
18 earlier today, yeah, an all-white panel.

19 Well, does the accused know or not
20 that maybe that panel member is white on the
21 surface, but maybe they are married to someone of
22 color. You know, again, it's just that optic,

1 that visual.

2 Fairness, it's just that. I mean, I
3 think our processes are fair. I think our
4 systems are fair. But it also turns into what
5 that person who is viewing things. If I'm an
6 accused and I was acquitted by an all white
7 panel, again, am I going to complain? Again, I'm
8 just being -- that senior enlisted leader is
9 going to throw this stuff at you. Or if I'm, you
10 know, guilty of all charges, if that's the case,
11 then yes, I'm upset. You know, innocent until
12 proven guilty, yes, but I'm upset because I don't
13 think I have the right panel. You know, what did
14 I say to my attorney to get whoever impaneled at
15 the end of the day?

16 So again, I say this, and I think all
17 of my colleagues are saying it. We're in the
18 military. We have a system of military justice.
19 It's in our title, military, operationalized.
20 It's got to have a task. It's got to have a
21 purpose.

22 And, you know, if you give us

1 something, if you make us change something,
2 change it to what fits us when we put our uniform
3 on, when we wear the cloth of our nation, when we
4 put our flag on our shoulder, make it fit us and
5 not someone that hasn't served, someone that
6 hasn't gone through basic training, you know, to
7 be, my words, broken down and then built back up
8 in terms of their personal courage and their
9 esteem and their honor and then go through their
10 training and do those things that military
11 personnel are required to do because at the end
12 of the day, yes, I'm sitting here today.

13 A month from now I could be overseas
14 carrying a weapon wearing 50 pounds of gear that
15 I don't wear now, having to sprint 230 yards, and
16 I want to trust that the person to my left and
17 right is trusted, you know, to have my back. And
18 like I trust my commanders to make decisions on
19 behalf of all of my teammates.

20 Again, so I say that as a yes. We're
21 a military structure, a military culture. There
22 is a lot that you all -- some of you have served,

1 but there is a lot that some people don't
2 understand. And our commanders are empowered to
3 do that, to be in charge and make those decisions
4 that they are paid to do with everybody in mind.
5 You know, not everyone is going to be satisfied
6 with everything that commanders do, much less
7 judges do. What's important today is not
8 important yesterday or tomorrow.

9 And if we go about things the way we
10 are going about things, like my colleague to my
11 left said, try to change the military identity,
12 but at what end state? What end state? To get
13 at their readiness or is it to make us happy to
14 be in uniform? Again, we have to do challenging
15 things.

16 MASTER CHIEF GEORGE: I will have to
17 agree with the members here, too, in that fair is
18 different depending on what side you are sitting
19 on. And it is not just one blanket thing either.
20 And I think depending on who you talk to,
21 depending on the outcome, you will hear different
22 as to what fair is.

1 So I honestly don't think that you can
2 say that one is more fair than the other.
3 Perception is just that, a perception. And just
4 because someone has a perception, that's their
5 opinion is what I will call it, not necessarily
6 perception. It's their opinion of something.
7 But just to say blanket in my perception is that
8 the process wasn't fair, well, how?

9 I think we need to start challenging
10 people on well, how was it not fair? How do you
11 know it wasn't fair? What does your fair look
12 like? What is your definition? But I don't
13 think that we can just say that the system is not
14 fair without understanding from whoever it is
15 that is saying it's not fair, why they're saying
16 it's not fair, what made it not fair.

17 CMSGT PUZA: Nothing to add.

18 HON. SMITH: So there has been a lot
19 of discussion about randomization of the
20 selection process. So moving away from Article
21 25 and that criteria, what are your thoughts on -
22 - I mean, I know you have all kind of said the

1 same thing, which is that you think the Article
2 25 criteria is appropriate but recognizing that
3 Congress has said look at randomization as well.
4 What are your thoughts on that in terms of a
5 selection process?

6 MASTER CHIEF GEORGE: So I don't see
7 an issue with randomization on its face. I see
8 an issue with it in how we execute it. And every
9 service that is represented here today, that
10 randomization will look very different in how
11 it's executed.

12 One of the things I saw before I came
13 here today and some of the questions that were
14 potentially going to be addressed was an alpha
15 roster. Well, an alpha roster in the Navy is
16 completely different than an alpha roster in the
17 Army, in the Marine Corps, in the Air Force.

18 And the way that we will select based
19 on randomization is very different. We have to
20 start asking ourselves, okay, we can do whatever
21 it is that you ask us to do, but it may become
22 entirely -- it may be presented to you entirely

1 different than what you are really asking for.

2 What system are we going to use to
3 randomize and select these members? Where are
4 they coming from? Are they an operational
5 forward deploy capacity? Are they out in 5th
6 Fleet? Are they in Japan in the Pacific region?
7 Where are these members coming from? How are we
8 going to pay for them? Money is always a thing.
9 Budgets are always cut. And the first thing they
10 ask is how are we going to pay for it. If money
11 is no object, then I think we will get there from
12 all sides of the earth, however, at what cost to
13 the mission?

14 And, again, where are we looking for
15 these members to come from? What system are we
16 randomizing and selecting them from? And when we
17 do so, there are questionnaires that need to be
18 filled out in order for you to make a decision
19 because is it just randomize select a name and
20 you bring them in the courtroom and you ask them
21 the questions and that's how you decide your
22 member?

1 So we have to look at the second and
2 third order effects when you talk about
3 randomization in the selection process.

4 CSM BOSTIC: Something I would like to
5 offer in terms of the randomization, and I think
6 my colleague was hitting at it. This
7 randomization, is it -- it's coming from what I
8 understand. Is it going to be AI-based? Is it a
9 database? Yes, all the rosters are different.

10 And when it comes to the legal office,
11 currently my junior paralegals are the ones
12 separating all of these rosters and, you know,
13 these supporting documents for the convening
14 authority to see what experience these potential
15 panel members have. But the resources, the
16 people, again, you give us something new that you
17 want us to do, the thing you want us to do, but
18 you don't give us the ways and means to get it
19 done.

20 This is going to cost. For every OSJA
21 throughout the Army I can speak for, is going to
22 need a couple paralegals, maybe an attorney, to

1 run this database, to run this system to
2 randomize, you know, the selection process. So
3 please keep that in mind because otherwise it is
4 going to be very taxing. And to the extent that
5 we are going to be able to execute randomization
6 is going to come at a cost. You know, we don't
7 have enough paralegals to do a lot of things we
8 are charged to do now. So please keep that in
9 mind when you push us to make this happen. Yes,
10 I'm asking for people.

11 And as I think about this
12 randomization more and the court-martial
13 convening orders that are generated, maybe a way
14 to operationalize it is, yes, you take the CMCOs
15 that are currently in place, you put those in a
16 bucket or in a database so you randomize all of
17 those that have already been screened and
18 selected. You know, does that meet the
19 definition of random? I don't know.

20 But then again, I know we're exploring
21 randomization, but has anyone defined
22 randomization? Because again, I've been privy to

1 something called drug tests in the Army. And we
2 use the word random for that as well. And I'm
3 not going to elaborate how we do that, but again,
4 that's another we tap at randomization at least
5 in the Army.

6 So, again, I would prefer, yes, you
7 give us a definition which would mean
8 randomization. And before that, I would even
9 offer that, please, give us time to execute and
10 assess some of the things you've already told us
11 to execute, you know, as a military justice
12 system for the Army, and, I'm sorry, all of my
13 teammates here at the table. We've got a lot we
14 got going right now.

15 So give us some time to execute and
16 assess what you've already told us to do and then
17 give us some time to focus on whatever you define
18 randomization to be and then get at the
19 randomization.

20 MGYSGT PERE: So, ladies and
21 gentlemen, my concerns about true randomization
22 in the Marine Corps, the Marine Corps is a very

1 young service. And to the points I alluded to
2 earlier in the conversation, you know, if you
3 throw, you know, an alpha roster into the
4 gonkulator and it spits out, you know, the panel,
5 you're going to have a lot of, you know, lance
6 corporals, corporals four years into the service,
7 lieutenants, captains four to six years in the
8 service on our juries and that concerns me. Just
9 the lack of wisdom, the lack of hindsight, the
10 lack of experiences, I'm not sure that's a fair
11 panel.

12 HON. WALTON: Other than additional
13 funding and additional personnel or whatever,
14 what recommendations, if any, do you all have
15 about what we should recommend that would improve
16 the justice system in the military, if any?

17 MGYSGT PERE: So, folks, I mean, my
18 personal take is that the commander's perspective
19 is important. And I think the more we restrain
20 their hands, the worse off we're going to be. I
21 think that, you know, they are charged with good
22 order and discipline in their unit, and they own

1 that process.

2 You know, my experience has been that
3 they care. They try to get it right. They try
4 to stay within the parameters of Article 25 as it
5 is written today. And, you know, they want to do
6 justice to the accused, to the victims. They
7 genuinely do. I think they lose sleep over it at
8 night.

9 So, I don't know. I think, you know,
10 going back to the diversity issue, I think that
11 could be beneficial. I really do think, you
12 know, putting that option on the accused is an
13 important consideration.

14 MS. TOKASH: Can I follow-up on that?
15 This is Meghan Tokash speaking. Playing devil's
16 advocate, what is the difference between trusting
17 young enlisted service members with their
18 military occupational specialty competency and
19 their ability to sit, listen to the receipt of
20 facts in evidence, follow a judge's instruction,
21 deliberate and arrive at findings?

22 MASTER CHIEF GEORGE: I think there is

1 a lot to look at in reference to what you are
2 asking because as much as we would like to think
3 an 18 year old is an adult by the law, the way
4 that they think and operate daily is not even
5 after basic training. So it takes a while for
6 them to get up to speed in what adulthood is and
7 what adulting is.

8 And I would go as far to say, being in
9 the military for 22 years, you would be surprised
10 in what you see a 25-year-old and what a 30-year-
11 old do. And you will shake your head and ask
12 yourself how long have you been away from 18?
13 Because the truth is we have some folks who we
14 work with on law side that need a little more
15 attention to develop.

16 And I think we, as military personnel,
17 as leaders, we are entrusted by those parents to
18 take care of their child, their sons and
19 daughters and that's what we do. But at the same
20 time, they don't send them to us prepared. Some
21 of them don't have the maturity level that we
22 would want them to be in order to sit on a

1 members panel and be the decision-maker for an
2 accused.

3 So that in itself is, I think, the
4 reason why that you have to be careful in that.
5 And especially in the Marine Corps, they're
6 young. And their level of competency at that
7 particular time, they will get there, but they
8 are not there yet. And to have them to make the
9 decision on someone's life, I think we are
10 playing with fire.

11 MS. TOKASH: Again, playing devil's
12 advocate to follow-up, what's the difference when
13 you compare that to being on a civilian jury? I
14 mean that, you know, comparatively speaking --

15 MGYSGT PERE: Well, ma'am, if I could
16 --

17 MS. TOKASH: Please.

18 MGYSGT PERE: The difference in my
19 mind is that, you know, someone's career is
20 likely over if they are sitting at a court-
21 martial, and they are convicted. You know, in
22 the civilian world that may not be the case.

1 I mean, you've got service members who
2 have deployed. You've got service members who
3 have been in, you know, the service for a decade,
4 two decades. And you're going to entrust that to
5 someone that's been in for three or four years
6 that can't even share their face? I don't think
7 so. No, ma'am. I'm not convinced.

8 MS. TOKASH: So if I'm hearing you
9 correctly, there is an emphasis on the tether to
10 one's career/livelihood in the military and
11 that's the distinction that you're making, if I
12 read that right.

13 MGYSGT PERE: I think that's a
14 consideration. Yes, ma'am. I think it's just an
15 immaturity issue with a lot of our junior service
16 members. Officers, too, I mean, they are not
17 excluded from that. It takes a while, to the
18 master chief's point, to grow up and be able to
19 be an adult and figure out your way in the
20 military.

21 I mean, this is a unique career path,
22 right? And, I mean, it is a brave soul that

1 chooses it. And there are those that are very --
2 you know, they have a lot of aptitude, and they
3 can do well in their particular skill set and
4 their job, but they are still children for a long
5 time, yes, ma'am.

6 CMSGT PUZA: Ma'am, I would also like
7 to add when you are speaking of junior folks, we
8 have a lot of things in the Marine Corps courts-
9 martial that it's a crime in the military where
10 in the civilian sector it's not. So depending on
11 how long they've been in or what their experience
12 is, something that someone is being court-
13 martialed for, they may not think is a big deal
14 even if the judge is explaining it to them and
15 what they did wrong, again, they just -- junior
16 folks are going to potentially look at that
17 differently.

18 But, again, I think that is where the
19 diversity piece comes in and having the different
20 ranks, the officers and enlisted, and allowing
21 the different perspectives to come into play.

22 CSM BOSTIC: Ladies and gentlemen, I

1 would add in agreeance with my colleagues, I
2 don't know to what extent a junior enlisted
3 member's voice will be heard in the panel, in the
4 deliberation room. Because I know enlisted
5 teammates, and yes, officers enlisted when they
6 first join raise their hand and go to the
7 training. Everybody is different.

8 And no offense, I've seen officers not
9 do things that enlisted do better, not
10 necessarily shaving, but putting a uniform on.
11 Like you were trained how to do that. Why are
12 you not doing that right today? Enlisted
13 members, you know, it's a culture that we have.

14 And when in terms of the education,
15 their ability to conceptualize the judge's
16 instructions and the elements of defense, I mean,
17 we've already got, in my words, a measure for
18 that. And that's the ASVAB. The ASVAB tells us
19 whether they can do that or not.

20 So, yes, if they are impaneled and
21 they are junior, yes, we would expect them to do
22 it. But the commander already kind of sets us up

1 for that. You know, this soldier just arrived
2 here three months ago. Why would they be on, you
3 know, that CMC? They don't know what they don't
4 know.

5 Another example, say, there's a junior
6 soldier impaneled. Say they are 20 years old,
7 and it's a DUI case. They are not even allowed
8 to drink. They don't know what being impaired by
9 alcohol means legally, and they probably wouldn't
10 admit to it. Or say there is a junior enlisted
11 that is impaneled and they've got behavioral
12 health challenges that only their commander is
13 supposed to know about and they are, you know,
14 taken some sort of way whenever this certain
15 piece of evidence is presented before them. And
16 they just break down in tears in the panel box.

17 You know, our soldiers are, my words,
18 vulnerable to an extent by giving them the
19 opportunity to do something that some of us may
20 feel they are not ready to experience yet. Yeah,
21 we are all in the business of protecting our
22 soldiers, no matter who they are.

1 So, again, I just think we have to be
2 careful when it comes to our military culture and
3 those things we've earned and those things that
4 we take a lot of pride in before we just say,
5 hey, we'll just change this rule and let
6 everybody that wears a uniform get this
7 opportunity to do something that they are
8 probably not even qualified to do and then we end
9 up wasting their time and making their experience
10 -- their first time to experience this one of the
11 worst experiences they probably had in their
12 life.

13 HON. SMITH: All right. I don't see
14 that anyone else has any questions. So thank you
15 very much for your time and being willing to come
16 in and answer our questions. Thank you.

17 COLONEL BOVARNICK: Chair Smith, we
18 have two public commenters that are here live so
19 they each have five minutes. So if you want to
20 just proceed right with that. Okay? We'll let
21 the panel members depart here for a couple
22 minutes and then we'll bring up our first public

1 commenter.

2 Okay. We'll get started with the
3 public comment in a minute here. Is Master
4 Sergeant Silva here? Okay. For our public
5 comments, Chair, we have two presenters in
6 person, Master Sergeant Retired Lisa Silva, U.S.
7 Air Force Retired. And you have five minutes,
8 ma'am.

9 MS. SILVA: Good afternoon. Again, my
10 name is Lisa Silva. I just want to say really
11 quickly, I realize this is probably one of the
12 most -- the hardest, but the most important thing
13 I will ever do in my life. And I feel the same
14 way about you.

15 I don't want to embarrass or bash the
16 military that I love nor the Air Force that I
17 honorably served for 20 years, and I was proud to
18 be a part of. With that being said, and not to
19 contradict myself, you have no idea how long I
20 have wanted to do this, privately speak out. But
21 I have been afraid of retaliation on so many
22 levels that I don't want to get into in this

1 forum.

2 I am simply here before you today
3 because I think it is time that I finally spoke
4 out about all that I know about this sensitive
5 issue. The American people have heard only one
6 side of the story.

7 It hurts my heart to no end to see all
8 these injustices that still occur to this day and
9 no one bats an eye. All the while unfortunately
10 there are some military leaders that because of
11 the political pressures have aborted their
12 ethical obligations and have turned their backs
13 on our service men and women and the families
14 that faithfully served alongside them.

15 I don't want to be in the limelight.
16 I want absolutely no media attention. I would
17 prefer to be on the four acres in the country
18 that my husband and I have retreated to still
19 simply attempting to heal from the nightmare
20 we've personally and painfully lived through.

21 I also don't think it should be my
22 responsibility to have to come here to speak to

1 you today, but all the same my husband and I
2 drove 1,700 miles one way to get an opportunity
3 to personally get your attention for five
4 minutes.

5 Most people come here to speak about
6 their own case or their loved ones. Five minutes
7 isn't enough for them, and it is not even a
8 fraction of the time I need from you to tell you
9 about all the corruption I have witnessed.

10 So really quick, I don't know if
11 you've gotten my bio or not. But again, I served
12 in the military. I was raped when I was 17 years
13 old before I came in the military. My husband,
14 my fianc, at the time, was falsely accused and
15 wrongfully imprisoned in 2015.

16 And after that happened, I didn't know
17 what to do. I started researching some cases.
18 There was no Innocence Project for the military.
19 And the Innocence Project won't help military
20 cases because it is USMJ and other issues, I'm
21 sure.

22 So I sort of helped co-found one

1 called Save Our Heroes. There have been people
2 that have testified from Save Our Heroes who have
3 submitted to your committee prior to.

4 I came here in person hoping that you
5 will believe when I say I need your help, and
6 they need your help. We need to ensure that this
7 does not continue to destroy anyone else's life
8 like it has ours and others who have been
9 affected by the false allegations and wrongful
10 conviction in the military justice system.

11 I am requesting that whatever powers
12 may be to investigate to where it went wrong and
13 fix what has happened even if it is done quietly,
14 we owe it to those that have lived through these
15 injustices in an attempt to make them whole
16 again, not to mention the innocent service
17 members that are destined to follow behind if we
18 don't fix it and rebalance the scales.

19 So, again, I'm someone that it has
20 personally happened to. I was also -- I didn't
21 mention. I was a victim advocate for 4-1/2 years
22 at Lackland Air Force Base. So for those of you

1 that don't think false allegations happen or it
2 is not very common, you have to look at what the
3 motive is. You know, there is so much motive in
4 the military.

5 You know, it's all over in the media.
6 Believe all victims. There are VA benefits. We
7 know what motives are. There are divorce
8 disputes, custody disputes. And I want to point
9 out that there are some people that have actually
10 contemplated taking their lives or taken their
11 lives that have been falsely accused.

12 This book right here is a sergeant
13 first class that was in the Army that actually
14 attempted suicide. He wasn't successful
15 thankfully. But his case was before SOH existed.
16 And we have -- we've talked so many people off
17 the ledge, 1:00 a.m. phone calls, all the intake
18 forms that we get to our organization. We have
19 no funding whatsoever because no one -- we've
20 lobbied Congress, contacted Congressmen,
21 Senators, and nobody will hear that side.

22 I personally came here on my own money

1 a few years ago and went to 13 offices and
2 everybody says the same thing. We know it
3 happens, but there is nothing we can do. So I
4 don't understand. As someone this has happened
5 to if I blamed the wrong person and they went to
6 prison, I would feel guilty. I wouldn't be able
7 to sleep at night. And you see those cases.
8 There are cases out there that people are
9 benefitting from this. And they are false
10 allegations, but, again, no one will help.

11 The victims are the complainants. You
12 know, they get pro bono lawyers. Their mental
13 health records are protected. Our servicemen
14 can't even go to a mental health doctor without
15 worrying about his record being brought up
16 against him.

17 We have people that they've gone to
18 chaplains. I've heard people tell me that if it
19 wasn't for the chaplains or our organization,
20 they wouldn't be here anymore.

21 I have so much to say. I had 144
22 pages. That's why you don't have a submission

1 from me, but you will. And I don't know exactly
2 what my time is left.

3 But I just want to say my husband
4 honorably served our country for 28-1/2 years.
5 Almost three years of it was in a prison cell
6 wrongfully convicted. Thank God it was
7 overturned, and he is home safe with me. But he
8 will never get justice or he never got justice.
9 I won't feed you a line and tell you I don't want
10 that remedied as well, but that's not why I am
11 here.

12 It's all these stories, all these
13 families. You know, I created this organization
14 and said I would always fight. I actually had to
15 stop doing it for four years because I couldn't
16 heal myself. And I just started doing it again
17 in February when I got a linked case of a
18 civilian that was wrongfully convicted by someone
19 that convicted somebody in the military, a VA
20 nurse and an Air Force master sergeant.

21 I am asking this committee to have a
22 third-party investigator look into U.S. v.

1 Collins. And if this is what I'm seeing and
2 there is validity to it, then they need to look
3 into a lot of the other ones. And if you look at
4 it and you think that what I am saying is
5 unfounded, I will go away, and the military can
6 handle the 1:00 a.m. calls. That's how
7 passionate I am about this.

8 I want to make sure that my brothers
9 and sisters get justice, you know, whether it's
10 the accused or, you know, the complainant. And I
11 don't know. I'm sorry. I'm nervous. But,
12 again, I'm passionate about all of this. You
13 know, there is a victim-centered investigation.
14 There is misconduct in handling these cases.

15 Everything that these families have
16 been saying these submissions about the falsely
17 accused, I agree with everything they are saying.
18 I can prove it to you. That's part of my 144
19 pages that will end up getting to you, and it
20 will probably be more.

21 COLONEL BOVARNICK: Master Sergeant
22 Silva, do you have any kind of concluding

1 comments because we will provide your written
2 stuff once it is properly redacted if you just
3 want to wrap up and then if the members have any
4 questions.

5 MS. SILVA: Yes, sir. Like I just
6 said, I am pleading to you all, like looking in
7 your eyes. Just know that this is also an issue.
8 I realize that there are people that are sexually
9 assaulted in the military, but it is not to the
10 scale that is being publicized. And I am a
11 female that served, you know. And that's pretty
12 much it. Thank you for your time.

13 HON. SMITH: Thank you.

14 COLONEL BOVARNICK: Oh, Ms. Santucci
15 is going to provide public comment. I know her
16 husband is here as well, but over to you, ma'am.

17 MS. SANTUCCI: I want to thank you all
18 for letting me talk to you today. I am the
19 mother of Army Private Anthony Santucci. I told
20 myself I wasn't going to cry. And I am the
21 President of Free Our Warriors.

22 I want to know how you can fix one

1 thing by totally breaking something else. That
2 is exactly what happened when the changes were
3 made to sexual assault, how it was handled in the
4 military.

5 There needed to be changes. Women
6 were being raped. It was being ignored. But
7 instead of fixing it and bringing everything to
8 the scales equal, in doing so, the scales have
9 tipped totally towards the accuser and away from
10 the accused.

11 I stand with any woman who was
12 sexually. As a woman, I can only imagine what
13 that would be like. But it is also a horrible
14 thing to have one person wrongfully convicted.

15 I want you to know that if my husband
16 and I thought for one second that our son was
17 guilty, I wouldn't be here talking to you. But
18 after reading his record of trial many, many
19 times, the investigative notes, and during our
20 own investigation, we know that he is innocent.

21 Unfortunately, he joined the Army
22 right when all those changes were being made. He

1 was just 21 years old. A 27-year-old married
2 mother of four approached him at a bar. They had
3 drinks. They were seen dirty dancing. They were
4 seen making out. She asked him to go back to his
5 barracks and play.

6 They drove her vehicle back to his
7 barracks. They had consensual sex. At one
8 point, she said she didn't want him to take off
9 her shirt because she didn't want him to see her
10 C-section scar.

11 So they concluded their having sex.
12 And he asked for her phone number. She said she
13 couldn't give that to him because she shared that
14 phone with her husband. They kissed goodbye.
15 She got in her car, and she drove herself home.

16 Why she ended up calling this in as a
17 sexual assault is still baffling to me. She had
18 what back in my day we called hickies. How is
19 she going to explain that to a husband? Or as
20 she told the operator when she called 911, I need
21 the morning after pill. Is that the first thing
22 that you lead with when you've just been raped?

1 No.

2 She said she didn't remember what bar
3 she was at. She didn't remember who the guy was.
4 And I've been a nurse for 42 years, and it has
5 always bothered me that she allowed a full exam,
6 a full pelvic exam. She allowed pictures. She
7 allowed them to swab for STDs. She refused,
8 specifically, a DNA swab. If you had just been
9 raped, wouldn't you want to know who that was?
10 That's the only way you're going to find them if
11 you don't know who they are.

12 I think in the back of my mind I've
13 always thought that maybe she thought if I say
14 that I was sexually assaulted and that's how I
15 can explain how I have these marks on me and then
16 it will just go away. But it didn't go away. It
17 ended up with my son being convicted and
18 sentenced to 20 years at Fort Leavenworth.

19 Our lives have been on hold for nine
20 years. We have spent over \$300,000 trying to get
21 justice for our son. It's not about the money.
22 We have missed so much of his life. He could

1 have been married by now. He could have had
2 children, our grandchildren. He could have owned
3 his own business. That was always a dream of
4 his. But instead, he is sitting in this small
5 8x10 cell.

6 He has missed out on seeing his
7 brother. His nieces and nephews have grown up.
8 He's missed all of that. His three best friends
9 were his cousins. They are all married. One has
10 a child. And Anthony still sits here.

11 This has shaken my faith as a
12 Christian woman. I have prayed so hard for
13 justice. At one point I prayed all day, the
14 entire day, every free moment of my day. I came
15 home, I was so mentally exhausted, I had to go to
16 bed. But I have come to realize that maybe God
17 has a bigger plan for Anthony. Maybe if this
18 hadn't happened, instead of finding out he was
19 going to prison, we would have gotten that knock
20 on the door that many families dread that their
21 loved one was killed.

22 I have to believe in God's bigger

1 plan. Maybe his plan is to use Anthony's case to
2 help bring to light this injustice and help right
3 this wrong. My husband and I are 64 and 68,
4 respectively. Our time on this earth is growing
5 short. And it is heartbreaking that we have
6 missed so much time with our son. He has another
7 10-1/2 years left of his 20 year sentence. My
8 worst fear is that one or both of us will pass
9 away before he is finally free.

10 My husband and I don't feel that the
11 military should be handling sexual assault cases.
12 I have listened to everybody who has talked here
13 today, and I don't agree. I think this should be
14 held in a civilian court. There is too much
15 political pressure on commanders to make sure
16 that they get convictions, to make sure that they
17 have good numbers that show that the military is
18 going strong on sexual assault.

19 The investigators and the prosecutors
20 will do anything to get convictions, even going
21 so far as to bullying women into becoming victims
22 if there is not enough evidence otherwise.

1 I have letters from two women with me
2 who say just that. And their letters were
3 ignored when they turned those letters in. It
4 doesn't matter that there are innocent men being
5 sent to prison for crimes they didn't commit.

6 Having an accuser labeled a victim
7 even before there has even been an investigation,
8 how can that be? You're not a victim until it is
9 proven you are a victim. Just because I say
10 something happened does not mean it's true and
11 not just because I'm a woman.

12 A woman does lie. I have worked in
13 the female field my entire life. And I can tell
14 you for sure women will lie, they will connive,
15 they can be evil. That's not to say that women
16 are not sexually assaulted because they
17 absolutely are. But there has to be equal
18 justice on both sides.

19 In the military -- with the convening
20 authority, which they were just talking about,
21 the convening authority is the one who decides to
22 take this case to court-martial. They are the

1 ones that pick the jury basically, which you've
2 already discussed. And the convening authority
3 when they feel that this shouldn't have been a
4 conviction, they're afraid for their career so
5 they won't say anything. There has been evidence
6 to that.

7 The convening authority is the very
8 person who decides on the first clemency. In my
9 son's case, there were three jurors that were in
10 the same chain of command. One of them had a
11 prosecutor representing him in a different
12 matter. In what world is that right?

13 If a commander does decide and he has
14 political pressure to overturn a case, we have
15 politicians who say this sends the wrong message
16 to victims. Is it only justice if the accused is
17 convicted?

18 There is no investigation done on
19 behalf of the accused. Everything is done to try
20 to make sure there is a conviction. The accused
21 is guilty until proven innocent.

22 In my son's case, four times during

1 his case, the jury was told that if you can find
2 him guilty by a preponderance of the evidence --
3 the prosecutor told them that if more than likely
4 than not, you think Santucci did this, you can
5 convict him. This goes against the
6 constitutional standard of beyond a reasonable
7 doubt, which is now required in all 50 states and
8 is in direct violation of his constitutional
9 rights.

10 We are asking for there to be an
11 independent review of these cases. We are asking
12 for justice for our son and any others who are
13 wrongfully convicted. We want those responsible
14 for these injustices held accountable.

15 You've heard my voice now, and I want
16 you to hear my son's voice. This is an excerpt
17 from something he wrote when he had been in
18 prison about six years.

19 In 2012 at the age of 20, I was the
20 first member of my family to become a paratrooper
21 in the Airborne Infantry. In 2013 at the age of
22 21, I became the first person in my family to be

1 falsely accused of sexual assault.

2 Less than a year later, I sat in front
3 of a judge, who with the wave of a hand took away
4 20 years of my existence. That was 6-1/2 years
5 ago. I have had many people tell me I should
6 just go ahead and accept responsibility so I can
7 get out sooner. I would rather remain true to
8 myself.

9 In order to take the sex offender
10 class at Fort Leavenworth, Anthony will be
11 required to sign paperwork saying he is guilty.
12 He has taken every other class that is required.
13 One of the reasons given for denial of his last
14 parole was that he hasn't been properly
15 rehabilitated, referring to him having not taken
16 that class. He has told us he will spend his
17 entire 20 years before he admits to something
18 that he didn't do.

19 Only in the military prison system is
20 this a requirement. No other prison in the
21 United States requires this.

22 COLONEL BOVARNICK: Can you start to

1 wrap up? I know you're --

2 MS. SANTUCCI: I have four sentences.
3 Making someone admit guilt should be against
4 their constitutional rights. At the end of the
5 day, I'm just a mom trying to get justice for my
6 son and hopefully helping others get justice as
7 well.

8 It might be too later for my son, but
9 it's not too late for other mother's sons. And I
10 wonder why is there no committee that's holding
11 meetings for the wrongfully convicted? Why do we
12 only get five minutes to speak in a two day
13 hearing or meeting? Please take the steps that
14 need to be taken to bring the scales of justice
15 back into equal balance. Thank you.

16 HON. SMITH: Thank you.

17 BGEN SCHWENK: Both of you should know
18 that we all appreciate your comments. And number
19 two, we have heard from other people previously
20 with similar concerns. And there was one panel,
21 people who made the statements at the end of our
22 meeting, who recommended that we look at

1 conviction integrity units.

2 And so at our meeting, the last or the
3 meeting before that, one of the subcommittees was
4 directed to look at that issue. So I'm not the
5 chair of that subcommittee, but I'm on it. And
6 so I'm sure as we start looking into it later
7 this year, we will be contacting you to make sure
8 we have all the information that you want us to
9 consider and then we will evaluate whether we
10 think there should be such a thing and if so, how
11 they should proceed. So I do want you to know
12 that we do listen. Thank you.

13 MS. SANTUCCI: I appreciate it. Thank
14 you.

15 MS. TOKASH: Can I make one follow-up?
16 This is Meghan Tokash. You know, this committee
17 is the Defense Advisory Committee on the
18 Investigation, Prosecution and Defense of Sex
19 Assault in the Military.

20 And I don't want to speak for
21 everybody, but I think we are very loyal to that.
22 And part of that important piece of our mission

1 is to make sure that we hear opinions and voices
2 like yours.

3 So thank you for being here today. It
4 is very important, and your voice is important to
5 our goals and what we do here as a federal
6 advisory committee.

7 COLONEL BOVARNICK: Judge Smith, I
8 think that's it for the day.

9 MR. SULLIVAN: This public meeting is
10 closed.

11 (Whereupon, the above-entitled matter
12 went off the record at 5:57 p.m.)
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