

MILITARY JUSTICE REVIEW PANEL (MJRP)

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10TH MEETING

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OPEN SESSION

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TUESDAY
APRIL 23, 2024

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The Military Justice Review Panel met at the McChord Club, 700 Barnes Boulevard, Joint Base Lewis McChord, Washington, at 9:00 a.m., Dr. Elizabeth L. Hillman, Chair, presiding.

PRESENT

Dr. Elizabeth Hillman, Chair
Capt (R) Benes Z. Aldana
Capt (R) Steven Barney*
Col (R) Kirsten Brunson
MG (R) John R. Ewers, Jr.
Col (R) Will A. Gunn
Judge Bruce E. Kasold*
MG (R) Robert Kenny
Col (R) Tara Osborn
Judge James Redford
Capt (R) Bryan Schroder
Judge Jeri K. Somers

ALSO PRESENT

Mr. Louis Pete Yob, Director
Ms. Stacy A. Boggess, Senior Paralegal
Ms. Jennifer Campbell, Chief of Staff
Ms. Alice Falk, Technical Writer-Editor*
Ms. Breyana N. Franklin, Communication
Specialist
Mr. David Gruber, Deputy General Counsel,
Personnel and Health Policy
Ms. Nalini Gupta, Staff Attorney
Ms. Amanda Hagy, Senior Paralegal
Mr. Michael Libretto, Deputy Director
Mr. Chuck Mason, Staff Attorney*
Ms. Janelle McLaughlin, Paralegal
Mr. Blake A. Morris, Paralegal
Ms. Meghan Peters, Staff Attorney
Ms. Stayce D. Rozell, Senior Paralegal
Ms. Ruth Vetter, Associate General Counsel,
Personnel and Health Policy
Ms. Eleanor Magers Vuono, Staff Attorney

PRESENTERS

Judge Arenda Allen*
Commander Rene Cano Jr., U.S. Navy
Command Master Chief Shane Carroll, U.S. Coast
Guard
Sergeant Major Kevin A. Fontenot, U.S. Marine
Corps
Colonel Andrew Gallo, U.S. Army
Chief Master Sergeant Timothy Hodgins, U.S. Air
Force
Judge Grady Leupold
Captain Mark McDonnell, U.S. Coast Guard
Lieutenant Colonel Ian Dunlap, U.S. Marine Corps
Command Sergeant Major Raymond Lathan, U.S. Army
Colonel David Morales, U.S. Air Force
Command Master Chief Benjamin Rushing, U.S. Navy
Judge Jim Stonier
Judge James Andrew Wynn

*attended virtually

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Military and Civilian Experience

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

2 (9:36 a.m.)

3 MR. LIBRETTO: We're going to be moving
4 into our first public session of this 10th Meeting
5 of the Military Justice Review Panel. And I'm
6 going to turn it over now to Ms. Meghan Peters,
7 the staff lead for this panel.

8 Thank you.

9 MS. PETERS: All right. Good morning,
10 everyone. And thank you to our panel of
11 commanders for joining us here today. During
12 this 90-minute session we will be discussing
13 command perspectives on issues that will help
14 this panel conduct the comprehensive review of
15 the military justice system.

16 The topics include, but are certainly
17 not limited to, the effectiveness of courts-
18 martial; non-judicial or adverse administrative
19 actions in the maintenance of good order and
20 discipline; perspectives on the Offices of
21 Special Trial Counsel; procedures for reporting
22 sexual assault and sexual harassment, and;

1 sentencing options available at courts-martial.

2 With that, I'd like to introduce our
3 distinguished speakers who serve in command
4 billets in and around Joint Base Lewis-McChord.

5 All right. We have Colonel Ian Dunlap
6 from the United States Marine Corps.

7 We have Commander Rene Cano, Jr., from
8 the United States Navy.

9 We have Colonel Andrew Gallo, United
10 States Army.

11 Colonel David Morales, United States
12 Air Force.

13 And Captain Mark McDonnell, United
14 States Coast Guard.

15 Thank you, gentlemen.

16 Dr. Hillman, before we begin the
17 question and answer session I just want to turn
18 the floor to you if you have anything to add.

19 CHAIR HILLMAN: Thanks, Meghan.

20 I just want to thank you all for
21 joining us. It's incredibly important that we
22 have a chance to hear from you.

1 I appreciate Ms. Peters and our whole
2 staff, you know, sharing some questions ahead of
3 time so you have a sense of what we're looking
4 for and just encourage you to help us do a better
5 job of understanding what's happening right now
6 in military justice and what the impact of the
7 changes that have been made are having on you,
8 the changes that actually are related to military
9 law which we're most especially concerned with.

10 But we realize that law doesn't
11 operate in a vacuum, and you are seeing all kinds
12 of changes out there that are altering the force
13 that you're leading, the challenges that you're
14 navigating, the missions that you're fulfilling.
15 And those things make a difference in what should
16 happen in military justice, too.

17 So, sharing your insight about what
18 you see out there right now and what you think is
19 ahead will really help us do a better job trying
20 to understand what's out there right now, and
21 advise the lawmakers and other decision-makers
22 who are influencing this climate of military

1 justice to make good decisions moving ahead about
2 -- that will make you and your troops, you know,
3 your folks more successful down the road.

4 Okay. Thanks, Meghan.

5 MS. PETERS: All right. I'm going to
6 begin this question and answer session. And the
7 first topic: your perspectives on the military
8 justice system's tools for accountability and
9 maintaining good order and discipline.

10 So, what are the biggest challenges
11 you face when dealing with good order and
12 discipline in your units?

13 I'm going to open it up to the group.
14 We're not going to go in any particular order.
15 And if anyone would like to speak to the biggest
16 challenges you face dealing with good order and
17 discipline, then give everybody else a chance to
18 answer as well.

19 Colonel Gallo?

20 COL GALLO: Sure. I'll kick that off.
21 I think, so I'll answer it in general terms.

22 So, I think having had a chance to

1 reflect on this year prior to this panel and kind
2 of talk about it as well, I think one of the
3 challenges we face is just from an education
4 perspective. And that's subordinate leaders or
5 junior leaders understanding the full array and
6 slate of tools that they have at their disposal
7 in accordance with the regulations.

8 What we notice is that sometimes
9 junior leaders are not necessarily, you know,
10 fully educated on that array of tools, and so
11 sometimes they'll jump to a tool that perhaps is
12 not most appropriate for the infraction or the
13 potential infraction that we're attempting to
14 deal with.

15 So, what we've noticed is that it pays
16 great dividend --

17 MR. LIBRETTO: Sir, I'm sorry to
18 interrupt you. It's Mike Libretto.

19 Can you turn on your microphone?

20 COL GALLO: I must have turned it off.

21 How's that? Oh, that's so much
22 better. That's so much better. Okay.

1 Thank you so much.

2 So, in short, we've noticed that
3 there's an education gap amongst some of our
4 leaders in terms of understanding that the tools
5 at their disposal to deal with incidents or
6 infractions amongst soldiers in the formation.
7 And so, we found some, some opportunities to
8 engage in leader professional development
9 sessions with our team and our junior leaders to
10 kind of educate them on some of these tools
11 available. And I think this applies all the way
12 up through the major level.

13 I think many of our lieutenant
14 colonels have had the opportunity to attend the
15 Army's Senior Officer Legal Orientation. I
16 myself was fortunate to attend that before
17 battalion command, and then required to attend it
18 before brigade command. For me, that was the
19 most kind of instructive to help me understand
20 the tools available.

21 So, not all of our leaders have that
22 opportunity. And that's just kind of one of the

1 gaps that we've identified.

2 I'll pause there. Thanks.

3 MS. PETERS: Does anyone have anything
4 to add similar to that or something, a different
5 perspective.

6 COL MORALES: Colonel Morales, United
7 States Air Force.

8 I would say, you know, one of my
9 concerns is definitely consistency and
10 efficiency. And so, I think it's critical for
11 commanders to give intent, to kind of inform, you
12 know, what they need for good order and
13 discipline in the unit to execute mission.

14 Consistency I think is a tough one
15 because you then delegate authorities down to
16 individual squadron commanders to execute non-
17 judicial punishment. And so, ultimately what you
18 want to see is consistency.

19 I think it's a tough decision between
20 finding consistency in something and then also
21 efficiency. You also want to try and get justice
22 as quick as possible to ensure that the focus can

1 then get back to mission.

2 Sometimes when you're in pursuit in
3 courts-martial that can take an extended period
4 of time. And so, there are, there are obvious
5 times where you pursue other methods of non-
6 judicial punishment in the effort of efficiency.

7 Thank you.

8 MS. PETERS: Captain McDonnell?

9 CAPT McDONNELL: Yes, thank you.

10 Good morning, everyone.

11 Just to amplify what Colonel Morales
12 said, for the Coast Guard in particular we have
13 smaller units. Some of our Coast Guard cutters
14 only have 10 or 12 people on it. So, from a good
15 order and discipline perspective it's also
16 managing the unit readiness. If one person has
17 to fall out of a unit for a particular reason,
18 that is a particular challenge for that unit.
19 So, it's making it a smooth and efficient process
20 and being able to move quickly.

21 As Colonel Morales said, sometimes
22 some of these cases can take quite an amount,

1 lengthy amount of time. So, it's managing that
2 and, you know, making sure that our unit
3 readiness is not impacted significantly when we
4 do have a more egregious case where somebody may
5 have to be removed from the vessel or a unit.

6 Thank you.

7 LTCOL DUNLAP: Good morning, all.
8 Lieutenant Colonel Dunlap.

9 I would echo the comments of these
10 gentlemen largely with the timeliness piece.
11 That's our biggest frustration. We have a number
12 of -- we have an interesting command here where
13 I'm coming from, it's almost 50/50 Marines and
14 sailors, over a thousand young folks.

15 And when we deal with disciplinary
16 issues that we do deal with, it takes quite a
17 while to get through the process and procedures
18 to see that those individuals are, are dealt
19 with, you know, to instill a good order and
20 discipline in the units.

21 So, the timeliness is a big piece of
22 it, the education as well, and the consistency as

1 well. Again, having Navy and Marine Corps
2 officers I think sometimes we look at things a
3 little bit differently. So, it's a challenge for
4 our command specifically.

5 But, again, just echo the comments of
6 these gentlemen.

7 CDR CANO: Hi. Good morning. Rene
8 Cano.

9 I'd like some of the things that we've
10 discussed, I've seen that, too, just the
11 timeliness of the process sometimes it takes
12 months to get justice. And in the meantime some
13 of these sailors are kind of on this legal hold
14 because I can't deploy them, will either get in
15 additional trouble or then we start getting into
16 some mental health issues that we have to
17 address.

18 Because of this kind of waiting, they
19 can't do their job. They're, you know, they're
20 just, you know, out of the, out of the formation,
21 as you will, as we said earlier.

22 So, I think timeliness is the biggest

1 factor when it comes to, you know, doing this,
2 especially the OTC process.

3 That's all. Thank you.

4 COL (R) BRUNSON: I have a quick
5 question. Right here.

6 CHAIR HILLMAN: Colonel Brunson.

7 COL (R) BRUNSON: Yes.

8 Do any of the other services have
9 anything like the SOLO, the Senior Officer Legal
10 Orientation? I know the Army does it. I don't
11 know if other services come to our JAG School or
12 if you offer anything like that for your
13 commanders.

14 COL MORALES: Yes, ma'am. I'll jump
15 in.

16 I'll say, so, pre-command training, so
17 whether they're pursuing an operations group
18 command, basically at the O6 level, anyone who
19 has gone through that type of command will go to
20 Maxwell Air Force Base and they do go through the
21 SOLO course as well where they sit with the
22 senior ranking JAG and discuss various legal

1 topics that are on the plate with the Air Force
2 at the time.

3 CDR CANO: I'll go that, too. For the
4 Navy Submarine Force in particular, like, our XO's
5 and COs, and even the major commanders, the O6
6 commanders, will go through the Senior Justice
7 School in Newport. So, that's the Navy's process.

8 LTCOL DUNLAP: Same for the Marine
9 Corps, ma'am. I went to the Senior Leader Legal
10 Course in Newport, Rhode Island. But it was about
11 three days and it was a firehose.

12
13 MS. PETERS: All right, thank you.

14 Colonel Osborn, you have a question?

15 COL (R) OSBORN: Yes. Thanks, Ms.

16 Peters.

17 We love to sell our course at the JAG
18 School, and glad that you all went to it. But
19 what about the junior commanders, what about the
20 captains, how are we educating them? And how are
21 we keeping them involved in the process of good
22 order and discipline?

1 I've got to say, I'm thinking, you
2 know, an analogy of privatized housing, you know,
3 and so, you know, when privatized housing
4 happened, I mean, we kind of said, okay, well,
5 good, we don't have to deal with that anymore.
6 And, you know, we saw what happened with
7 privatized housing.

8 How do we keep those junior commanders
9 involved in the process? And how do we educate
10 them so that they continue to be involved and
11 lead in the good order and discipline frame?

12 COL GALLO: Yes, ma'am. Appreciate the
13 question.

14 So, so there are some things that the
15 Army does in the schoolhouse in the normal
16 progression that our officers progress through.
17 So, there's a portion of the specific to the
18 captains of the Captain Career Course within each
19 of the branches where those captains will have an
20 introduction to some of the basic tenets of
21 military justice.

22 But, frankly, I don't think they

1 really get a good grasp of it until they're at
2 the unit level and they have an opportunity to
3 engage on an array of different cases.

4 One way we get after the leader
5 development perspective is we've got essentially
6 a Company Commander First Sergeant Course that's
7 run here at our Division Headquarters, and then
8 is also run at the corps level as well here on
9 JBLM. And there's a portion of that that focuses
10 specifically more on the practical side of some
11 of the various actions that commanders will be
12 involved in, and some of the decision making they
13 have to execute.

14 Frankly, we have also added to that
15 within our own leader professional development
16 programs. At the unit level we've identified
17 gaps in knowledge, and then we've conducted
18 sessions focused on those gaps in knowledge.

19 For example, we just did one recently
20 on investigations. And, specifically, we
21 identified that there's sometimes a tendency for
22 commanders to jump directly to the AR 15-6

1 investigation. And you know all the kind of the
2 second and third order effects of doing that.

3 But, of course, there's a tool, R.C.M.
4 303, commander's inquiry, that we identify that
5 many commanders who are out of formation,
6 primarily at the captain level, just, frankly,
7 were unfamiliar with this potential tool.

8 So, we had a leader professional
9 development session on investigations. We had a
10 great discussion around investigations. And then
11 we were able to kind of illustrate different
12 components of this.

13 And I think it's about you kind of
14 have to circle the wagons on that multiple times
15 over a 2-year command tenure because your captain
16 population is rotating. I have 37 company
17 commanders, and they'll rotate through at least
18 twice. So, it's about 75 to 100 captains in
19 command over a 2-year tenure. And we're kind of
20 always looking to circle back to reeducate.

21 Thanks, ma'am.

22 COL (R) OSBORN: Excellent. Thanks.

1 MS. PETERS: All right.

2 This is a two-part question. First is
3 what are the main types of disciplinary issues
4 that you deal with in your unit?

5 And can you speak to whether the tools
6 that you have at your disposal are working well
7 to address those, those types of misconduct? Or
8 whether you would recommend any changes in policy
9 or practice to deal with those most pressing
10 disciplinary issues?

11 LTCOL DUNLAP: I'll lead off.

12 I've got a significant number of
13 disciplinary issues in my unit. So, again, I've
14 got over a thousand young folks, Marines and
15 sailors. We've got I would say the large, the
16 vast majority are alcohol-related incidents that
17 lead to other issues. Also drugs. You know,
18 Washington State, legal to buy marijuana. Not
19 legal under the UCMJ. So, we've got drugs and
20 alcohol issues.

21 We've got hazing issues. We've got
22 racial and sexual harassment issues. We've got

1 sexual assault issues. All the things that you
2 would find with a thousand 18 to 22 year olds on
3 a college campus somewhere, unfortunately.

4 So, those, those take up a significant
5 amount of the leadership's time, my time, time
6 that would be the battalion leadership, the
7 company leadership.

8 The second part of that question,
9 recommended changes to policy and practice.
10 We're dealing with the issues as best we can at
11 our level. You know, a number of the more
12 significant issues, obviously, are over to the
13 OSTC. I know we've got some gentlemen in the
14 audience there that are actually working some of
15 the cases for my command.

16 You know, what we can handle at our
17 level we handle at our level. I can't speak
18 necessarily to whether we need policy changes. I
19 would just, as we're sitting here talking about
20 what can we do better, again, the timeliness.
21 I've got Marines and sailors that are, that are
22 suspects that are still walking around amongst

1 their victims.

2 I've got Marines and sailors that have
3 participated in misconduct, and their fellow
4 Marines and sailors that are doing the right
5 things see that they are still walking amongst
6 the Marines and sailors that are doing the right
7 things. And that's frustrating for the
8 leadership, it's frustrating for the Marines and
9 sailors that are doing the right things.

10 And, you know, I will tell you, the
11 vast majority of our Marines and sailors are
12 doing the right things. But it's that small
13 percentage that are not doing the right things
14 that are still walking amongst the rest of the
15 crowd, that impact the good order and discipline,
16 and the morale of the unit, and the effectiveness
17 of the unit. And that's frustrating for all of
18 us.

19 So, I don't know that I can speak to
20 necessarily recommend policy changes. But,
21 again, just the timeliness piece of it and
22 getting Marines and sailors who have committed

1 some form of misconduct to take care of that in a
2 more timely, efficient matter.

3 CAPT (R) SCHRODER: Meghan.

4 MS. PETERS: Thank you.

5 Go ahead, Captain Schroder.

6 CAPT (R) SCHRODER: I don't know if
7 anybody else, it would be helpful for me, I don't
8 think we saw or you all now kind of told us what
9 your jobs are. So, I hear a thousand Marines and
10 sailors and I'm just not sure where that's coming
11 from.

12 LTCOL DUNLAP: Yes, sir.

13 So, very interesting, unique command
14 where I'm coming from, Marine Corps Security
15 Force Battalion, Bangor, Washington. So, right
16 up the road here. And it is over a thousand
17 young Marines and sailors.

18 The Marines are primarily infantry
19 Marines. And the sailors are master-at-arms.

20 And we are, our mission is to
21 safeguard strategic weapons and assets up there
22 at Bangor. And so, it's a very unique command.

1 There's only two of them in the world, Bangor,
2 Washington and Kings Bay, Georgia.

3 CDR CANO: Rene Cano. I'm in command
4 of Submarine Readiness Squadron 3-1. Our primary
5 mission is to ensure that all subMarines are
6 ready, and the logistics and medical realms.

7 I have a number of collateral duties.
8 One of those is I have the only Staff Judge
9 Advocate between two O-6 commanders who actually,
10 the commodores that own the subMarines, and O-5s
11 who captain the subMarines.

12 So, for about 2,600 sailors my JAG
13 runs all those cases. So, he's processing I'd
14 say almost 50 cases at any given time across the
15 entire spectrum of sexual assault to non-covered
16 offenses.

17 So, and then I'm also the repository
18 for a lot of those sailors. So, they come off
19 the ships and I have about 50 of those personnel
20 either there for legal or medical reasons can't
21 be on a submarine. So, I hold them and I keep
22 them busy.

1 COL GALLO: I command 2nd Stryker
2 Brigade.

3 JUDGE REDFORD: Colonel, I have a
4 question --

5 COL GALLO: I'm sorry.

6 JUDGE REDFORD: -- I'd like to
7 interpose.

8 Thank you for all your service and
9 your leadership for these sons and daughters of
10 America. We appreciate it greatly.

11 I would be curious to know what's the
12 time period, just, you know, not exactly it's 172
13 days or whatever, but from incident to
14 completion. If when you're talking to us we hear
15 it's a long period, I'd like to know what you
16 think what does that mean to each of you?

17 We don't have to start over, but if we
18 could work that in I'd be very grateful.

19 COL GALLO: Absolutely.

20 So, my name is Colonel Gallo. I
21 command 2nd Stryker Brigade here at JBLM. 2nd
22 Stryker Brigade is an infantry brigade, a

1 warfighting brigade. We have about 4,500
2 soldiers, so incidents span the whole gamut that
3 you'd expect to see in a city of 4,500.

4 Just to answer, I'll answer both
5 questions here quickly.

6 So, about 40 percent of our incidents
7 over the last year involved alcohol. We are a
8 unit that redeployed from a year in Korea this
9 past summer. So, about 10 months ago unit
10 redeployed from Korea.

11 And so, to get at the specific
12 question what types of disciplinary issues do we
13 mainly deal with in our unit? It's mainly DUIs
14 and allegations of domestic violence. And,
15 perhaps unsurprisingly, in the 90 days or so
16 after the unit redeployed is when we saw a
17 significant spike in our DUIs. And we saw a
18 significant spike in our domestic violence
19 allegations.

20 And so, we've had some success in the
21 last six months in bringing those numbers way
22 down, but those are still the primary infractions

1 that we deal with.

2 From a policy perspective what I'll
3 say is the DUIs we're relatively successful at
4 processing them quickly. So, to answer your
5 question specifically, let's say a soldier got a
6 DUI of a severity that we thought warranted
7 administrative separation, kind of the protocol
8 that we seek to follow is within 45 days.

9 There's a policy letter signed by our
10 division commander that lays out a construct to
11 do that. Obviously, it's challenging to
12 separate, but that would be 45 days. And if you
13 could do it in that 45 days, I would say that's
14 fast. That would be success, depending on how
15 you look at it.

16 That being said, let's say, for
17 example, a soldier got a DUI off post and perhaps
18 refused a Breathalyzer, and instead took the
19 blood test. The blood test will take 6 to 10 to
20 12 months to come back through the state. And
21 so, you could potentially have someone, you know,
22 on your books, you know, for upwards of a year

1 waiting on the results of that particular blood
2 test to move forward with that admin separation.

3 And then from a policy perspective is
4 there anything I would change to get after these
5 incidents? Nothing specifically.

6 But what I will say is, as we know,
7 domestic violence is a covered offense with OSTC
8 now. And I'm sure we'll talk about this here
9 shortly. But relatively new to the OSTC process,
10 so it remains to be seen how that plays out. So,
11 I don't, I don't have any specific
12 recommendations there. But I do know that there
13 is a throughput challenge for OSTC right now just
14 based on the volume of cases, particularly the
15 volume of domestic violence cases in and around
16 JBLM, and probably most Army posts.

17 Thanks.

18 MS. PETERS: Colonel Morales and
19 Captain McDonnell, if you could talk a little bit
20 about your unit mission, and address, I guess,
21 questions about the types of disciplinary issues
22 you're seeing.

1 Thanks.

2 COL MORALES: Absolutely.

3 So, Colonel David Morales. I am the
4 Acting Wing Commander at the 62nd Airlift Wing, so
5 40 C-17s used in both a strategic and tactical
6 mission set. 2,400 active duty airmen underneath
7 me.

8 And then I am currently serving as the
9 Air Force Senior Service Component Commander and
10 court-martial convening authority for 7,000 total
11 force individuals.

12 What that includes is when I say that,
13 there's a bunch of tenant Air Force units on the
14 base as well. There's the Western Air Defense
15 Sector. We also have the 446th classic reserve
16 associated with three flying squadrons in their
17 unit as well.

18 I would say the majority of our cases,
19 to give you an example, within the last three
20 years we've had approximately 100 non-judicial
21 NJP-type incidents. And then the majority of our
22 incidents when it comes to military justice has

1 to do with drug use, drug possession, and then
2 domestic violence.

3 Overseeing the case management group
4 in the Sexual Assault Preparedness and Response
5 Office, over an annual period we probably see
6 around 20 or so sexual assaults.

7 I would like to comment just on when
8 we talk about the tools available to us, there is
9 somewhat of a nuanced approach being a tenant
10 unit on a joint base, obviously a lot smaller in
11 the wing than on the Army side.

12 So, what we have is we have Air Force
13 Office of Special Investigations that cover large
14 offenses, most felony level crimes.

15 For everything else under the Joint
16 Base Lewis-McChord MOA, the Army MPI, Military
17 Police Investigations, investigates all those
18 other cases. And so, when we're talking about
19 small things such as sexual harassment type
20 investigations, the Air Force actually has no
21 investigation arm under Security Forces. And so,
22 we rely on our Army brothers and sisters to do

1 that.

2 And sometimes just because of
3 bandwidth they're extremely limited.

4 So, for example, there are times where
5 sexual harassment cases will go over to Fairchild
6 for investigation, and they will assist us in
7 that manner.

8 But Colonel Gallo mentioned it, kind
9 of the time that it takes to wrap up, for
10 example, toxicology reports if someone refuses a
11 Breathalyzer can take upwards of 12 months. And
12 so, we are waiting on that time. And that's a
13 big LIMFAC when we're looking to try to, again,
14 turn cases quickly, be efficient, and then get
15 stuff back to mission.

16 Thank you.

17 COL (R) OSBORN: I just want to
18 confirm. During that 12 months time the soldier
19 or the airman, he's flagged; right? Okay? So,
20 he's non-deployable during that 12 months time?

21 COL MORALES: Yes, ma'am.

22 COL (R) OSBORN: And is there still a

1 policy in effect that if you hit the 12 month
2 mark, and you're non-deployable there's a
3 mandatory initiation of separation action? Is
4 that still in effect?

5 COL MORALES: That is correct.

6 We actually receive a roll-up where we
7 will have individuals who are shown as non-
8 deployable. And then, I mean, it definitely
9 flags it to senior level attention to either take
10 action or pursue discharge.

11 COL (R) OSBORN: So, this whole time
12 when he's pending that toxicology report out in
13 King County or Pierce County, the soldier is
14 flagged, no favorable info -- no favorable, no
15 PCS, no training, no education courses, just on
16 your books in your units pretty much?

17 COL MORALES: There is a couple
18 creative ways we can, we can gainfully employ the
19 individual for the most part. For the most part,
20 yes, ma'am.

21 COL (R) OSBORN: Okay. All right,
22 thanks.

1 MS. PETERS: Captain McDonnell.

2 CAPT McDONNELL: Good morning.

3 Captain McDonnell. So, I'm the
4 Commander of Sector Puget Sound for the U.S.
5 Coast Guard. So, our region includes the state
6 of Washington, Montana, and Northern Idaho. So,
7 we have 14 subordinate units that are stationed
8 throughout the state of Washington throughout the
9 sound and on the coast, primarily doing search
10 and rescue, law enforcement, pollution response,
11 and other suite of Coast Guard missions.

12 So, that's 600 people that includes
13 civilians and reservists as well, but mostly
14 active duty members serving at our 14 units.

15 What my colleagues here stated is
16 pretty much the range that we see in terms of
17 some of the offenses, from very minor,
18 adjudicated within a few weeks, usually typically
19 using NJP authorities that I hold, but all four
20 teams, four of the units hold NJP authority.

21 We have a mix of officer commands and
22 what we call officer-in-charge, or officers-in-

1 charge, which are enlisted members that are in
2 command of vessels and stations, which is a
3 little bit unique for the Coast Guard.

4 In terms of timing, I mentioned a few
5 weeks for NJP, and then up to, you know, several
6 months to over a year for some of those more
7 egregious cases that might be of the sexual
8 assault nature or domestic violence, whether they
9 be on the civil side being investigated that way
10 or through the Coast Guard.

11 Our primary investigative arm is the
12 Coast Guard Investigative Service, or CGIS. And
13 the minor offenses at our unit level are
14 typically investigated by Coast Guard members.

15 Thank you.

16 LTCOL DUNLAP: Again I would echo the
17 comments of these gentlemen.

18 What I can handle in my level NJP,
19 very expeditious. But when it goes to something
20 outside of my control, OSTC or what have you,
21 months, you know, months to a year.

22 I've not been in the seat quite a year

1 yet, but I had Marines and sailors on my legal
2 tracker when I came into the command who had been
3 in a holding pattern for months. And they are
4 just now being adjudicated. And I've been there,
5 you know, going on, going on a year now.

6 We have a sailor who refused a
7 Breathalyzer who's been sitting for eight months
8 because we can't get the blood results from out
9 in town. So, yes, 6 to 8 to 12 months or more.
10 And, again, these are for generally the more
11 egregious cases that we cannot handle at our
12 level expeditiously.

13 CDR CANO: From my perspective I see a
14 lot of domestic violence and sexual assault.
15 Those are the most of the different types of
16 cases we see.

17 Some of those cases that have gone to
18 court-martial, I can think of three right now
19 that are about two years in the process, so.

20 However, for some of the cases that
21 are deferred back to the command, that turnaround
22 time is about 3 to 5, 6 months sometimes.

1 The only policy change I would
2 recommend for that process, for the cases which
3 are going to be deferred if the decisional
4 authority were at the Special Trial Counsel level
5 instead of the Chief Special Trial Counsel level,
6 so possibly at the O-4 level, those be deferred
7 back to the command. Given that person's
8 overall, the Special Trial Counsel's overall
9 experience and, you know, seeing these cases all
10 the time, I think we may see a quicker turnaround
11 if the ones that were going to be deferred were a
12 shorter time line.

13 MS. PETERS: You all have discussed
14 administrative separations and processing times
15 for courts-martial. In your experience are
16 administrative separations being used when a
17 court-martial might otherwise be more appropriate
18 for disposing of the offense?

19 And, if so, is this due to the lengthy
20 process of getting a case through courts-martial?

21 Does anyone have any comments or any
22 experience with that issue?

1 LTCOL DUNLAP: I would say yes and yes.

2 MS. PETERS: Anyone besides Colonel
3 Dunlap have any experience in the relative
4 efficacy?

5 CDR CANO: Yeah. I believe
6 administrative separation has kind of become the
7 de facto punishment in a lot of cases.

8 Only there's one case that I know of
9 that has been afforded courts-martial by the OSTC
10 in my area. Everything else has been deferred
11 back.

12 Sorry, I'm drawing a blank here.

13 MS. PETERS: Does anyone have anything
14 to add on the administrative separation and use
15 of that process?

16 COL MORALES: Yes, ma'am.

17 I'll say that when you're, when a
18 commander is deciding whether or not to take some
19 of these drug offenses to court, you know, if you
20 look statistically at what we've done in the Air
21 Force, you know, you have, you see a history of
22 very low acquittals and low sentencing rates.

1 That, coupled with the duration of time to run
2 the process, and then also the cost, significant
3 cost to get expert witnesses to testify on behalf
4 of toxicology, those I think are deterrents to
5 sending it towards court-martial.

6 And then, as I discussed in the very
7 beginning, you know, in terms of efficiency in
8 closing the case, good order and discipline in a
9 unit and having, you know, a swift response to
10 something as grievous as, you know, drug use and
11 drug possession in the Air Force.

12 COL GALLO: I think prior to OSTC it
13 was probably, there was probably a likelihood
14 that in some cases units would be pursuing admin
15 separation in lieu of court-martial because of
16 the lengthy time delays that have been discussed.

17 I think one significant benefit of
18 OSTC that I see from my seat now is we are
19 getting that kind of third independent party
20 look, which is kind of validating our approach.
21 And so, I've actually found that to be beneficial
22 just from the extent of making sure we're doing

1 our due diligence to consider all the tools that
2 are possible.

3 MS. PETERS: All right. And one more
4 note on administrative separations.

5 In your view, is the administrative
6 separation process in the boards, are they fair
7 to the service member who is subject to that
8 administrative action?

9 Do you have any comments on the
10 process from the standpoint of the service member
11 respondent?

12 CDR CANO: In the few boards that I've
13 seen the results of, I think, other service
14 members are they see it more as beyond a
15 reasonable doubt kind of calculation than a
16 preponderance of the evidence. So, because of
17 that it's a very high bar to actually get a board
18 to separate an individual.

19 COL MORALES: I would say it's a very
20 fair process. I mean, the recommendation is
21 given by the immediate commander. It goes
22 through a full legal review through the JAG

1 Corps. And then, ultimately it comes up to, you
2 know, the senior service commander for ultimate
3 decision.

4 I will say oftentimes when I'm
5 reviewing those packages I see rebuttals from the
6 service member themselves. And where they have
7 done their due diligence in terms of research,
8 you know, the possibility of rehabilitation for
9 some of these drug cases we get into. And so,
10 you really have to show that you meet all the
11 criteria. But those are things that are taken,
12 taken a look at under very close scrutiny from
13 all levels.

14 MS. PETERS: Anyone else?

15 Colonel Brunson has a question.

16 COL (R) BRUNSON: This is kind of
17 taking a left turn a little bit. But looking at
18 non-judicial punishment, Article 15s, I'll ask it
19 like this: what is your understanding of the
20 standard of proof in an Article 15?

21 And do you think that differs from
22 what the service member thinks it is?

1 (Pause.)

2 COL (R) BRUNSON: I didn't know it was
3 going to be that hard.

4 CDR CANO: I think the hard part is
5 understanding what the service member thinks, you
6 know. Because we're kind of detached as a
7 commander from that explanation part.

8 But I know for -- this is my personal,
9 you know, having run the NJPs, Article 15s, is
10 that it's a preponderance of the evidence
11 situation from my perspective. I'm not sure what
12 the sailors believe.

13 COL GALLO: Tracking the same, whether
14 or not the soldier understands that is difficult
15 to tell. I think that Trial Defense Service
16 articulates that to the soldier when they go
17 through the process. And I think our legal team
18 does as well immediately prior to the execution
19 of non-judicial punishment.

20 But it's probably something for me to
21 look into to know a little bit better, ma'am.

22 LTCOL DUNLAP: I was promised I

1 wouldn't be quizzed, ma'am.

2 (Laughter.)

3 LTCOL DUNLAP: But the same. The same,
4 ma'am.

5 And, you know, I've run a number of
6 NJPs, and captain's mast for Marines, sailors
7 respectfully. And, you know, on occasion I have
8 a marine or sailor says, no, I'm not guilty.

9 And whether that's them not taking
10 accountability for their actions, or whether they
11 actually think that, no, they're not guilty, I
12 can't speak to that necessarily. But, you know,
13 we believe it's fair and impartial, and
14 preponderance of the evidence.

15 COL (R) BRUNSON: And I'll tell you,
16 the reason I asked the question is because as a
17 former defense counsel many, many times the
18 soldiers that I defended viewed the Article 15 as
19 a given. Like, the commander already thinks I'm
20 guilty, it's just a chance for me to stand in
21 front of them. Right?

22 And so, I'm just wondering how you

1 view, and whether it's changed. With the changes
2 in the UCMJ and the changes in the processes have
3 you seen or do you anticipate any change in the
4 number of non-judicial punishment turndowns in
5 favor of trial?

6 Especially if, you know, we're looking
7 at preponderance of the evidence at NJP versus
8 beyond a reasonable doubt at trial, I'm wondering
9 if you see or anticipate any impact on that
10 process?

11 LTCOL DUNLAP: Yes, ma'am. We have
12 that appear here lately, Marines and sailors who
13 have refused NJP because they think that they
14 will go to court-martial and win. Absolutely.

15 COL GALLO: I haven't seen any change
16 recently, ma'am. But it does, it does kind of
17 bring to mind the options that commanders have
18 now once OSTC defers a case. And so, obviously,
19 we are receiving a number of deferent --
20 deferments, and we're learning about what our
21 options are, what our options are.

22 And I think one of the things we've

1 realized right up front is that non-judicial
2 punishment in the form of a field grade Article
3 15 is likely not a proven option once a case has
4 been deferred because, essentially, it is already
5 past that court-martial litmus test. So, if the
6 soldier was to take the court-martial it would be
7 problematic.

8 So, I think that's something that
9 we're in dialog with, with OSTC now. But I'm not
10 sure how that's going to play out over time,
11 ma'am.

12 CAPT McDONNELL: Just from my
13 perspective, I don't see any increase of refusal.
14 We do have a mix of vessels for our Coast Guard,
15 so they can, they cannot refuse mast or NJP on
16 the vessel side.

17 But we have not seen any increase or
18 any concern there.

19 And I have not seen a disconnect in
20 terms of whether people that have gone to
21 captain's mast have not understood what that
22 preponderance of the evidence is. It's in our,

1 our script when we actually -- if we do impose
2 NJP it's something that is discussed in the
3 script.

4 Thanks.

5 CDR CANO: Just to piggyback on that
6 one.

7 So, my experience kind of my senior
8 enlisted leader definitely communicates to those
9 awaiting NJP that if they go to court-martial the
10 punishment is a whole other level.

11 So, I think that in a way is a
12 deterrent to a court-martial day. Although I
13 have many sailors, I haven't seen one that has
14 refused NJP, and they could have.

15 Yes, ma'am.

16 MS. PETERS: A follow-up question to
17 that, gentlemen.

18 Has anyone ever personally experienced
19 or knows of a commander who found somebody not
20 guilty at an NJP proceeding?

21 COL GALLO: Yes. Myself.

22 Yeah, just obviously I don't, don't

1 see many of those now in my current position.
2 But, you know, as a battalion commander
3 considered the merits of every case. And, you
4 know, some percentage of those cases were not
5 guilty.

6 MS. PETERS: Does anyone have anything
7 to add?

8 COL MORALES: Yeah. Same here.

9 CAPT McDONNELL: I've had the same
10 experience. I've had, held masts before and
11 dismissed the case, so.

12 MS. PETERS: All right, thank you.

13 Let's turn now to the Special Trial
14 Counsel, this is your interaction with them has
15 already begun. And you've mentioned that in your
16 comments thus far.

17 Can you speak just broadly to general
18 effects of the establishment of the Office of
19 Special Trial Counsel has had on the way you
20 handle cases involving covered offenses, that
21 being sexual assault and other serious violent
22 felony offenses, talking about the relationships

1 and the way you, again, handle those within your
2 units?

3 And that can be through comments on
4 your communication with folks in those offices.
5 But, please, what are your observations now that
6 that program is up and running?

7 Thank you.

8 COL GALLO: For me it hasn't directly
9 changed how I operate or the level or nature of
10 information and I receive -- that I receive.

11 The one big difference is that the
12 charging decision is now made outside of the
13 chain of command. That's really the fundamental
14 difference.

15 Myself, I don't have any direct
16 contact with OSTC. I suppose I could if I wanted
17 to. But right now I use the legal chain. So, my
18 brigade judge advocate has established a pretty
19 functional and effective relationship with the
20 OSTC here at JBLM. As I understand it, they're
21 in routine contact to manage the caseload.

22 I think, and I mentioned it before,

1 but just considering, you know, if there is a
2 friction point with OSTC, from my perspective
3 what I would just say right now is just a
4 caseload and the time it's taking to turn.

5 We know there was an effective date
6 for OSTC to stand up. But OSTC also has reached
7 back into the past prior to that effective date,
8 which has greatly increased the total number of
9 cases that it's moving through.

10 As I understand it, there's about
11 three or four individuals here at JBLM that sit
12 in the OSTC. And I cannot even imagine what
13 their volume of cases are, just given the
14 magnitude of the number of soldiers on this post.

15 The one direct communication that I do
16 get from OSTC, and I assume maybe it's similar
17 for the whole team up here, is I, is I get an
18 automated email which basically informs me that
19 OSTC is going to be moving forward with a case.

20 It's a do not reply email, but on
21 occasion I get an automated email that says, in
22 the case of Private Smith we are moving forward.

1 We are taking on this case.

2 It goes just directly to me.

3 Typically what I do with it is I forward it to
4 the battalion command team that is responsible
5 for the soldier, and then I loop in my legal
6 chain so that we all have visibility over it.

7 I don't think anyone is a huge fan of
8 those automated emails, but at least it's a piece
9 of information which gives us some situational
10 awareness over where they are in the process.

11 MS. PETERS: Thanks.

12 Does anyone have any other comments?

13 COL MORALES: I would say on the Air
14 Force side it's really way too early. We have
15 seen no communication coming back from OSTC in
16 terms of some of the cases that they do have with
17 the Air Force.

18 You know, that cutoff which Colonel
19 Gallo referred to, 28 December, we did see a
20 couple deferrals just then drawing a line in the
21 sand in terms of the case they didn't want to
22 take on.

1 One thing that we are promised,
2 though, in terms of information flow from our JAG
3 Corps is that, you know, when those deferrals do
4 come back that it will have very specific
5 guidance as to why. And so, that's something
6 that I'm interested in learning about why, you
7 know, cases potentially would be deferred from
8 OSTC. And then going back to the commander to
9 determine, you know, what we're going to do with
10 that case where OSTC has decided not to act.

11 Thank you.

12 MS. PETERS: Anyone else?

13 LTCOL DUNLAP: I'll add one comment.

14 The colonel mentioned consistency
15 earlier. And, again, I'm from a command that's
16 Marine and Navy. We're dealing right now with
17 OSTC offices, for Marines for a Marine OSTC
18 office, and for sailors with a Navy OSTC office.
19 So, it's been unusual.

20 And, again, that's maybe unique to my
21 command because of how we're structured. But I
22 would agree with Colonel Morales as well, just,

1 you know, we're early on so I haven't had a great
2 deal of interaction with them.

3 You know, we have folks on our legal
4 tracker. And every week it's still with NCIS, or
5 still with OSTC. And, you know, again I realize
6 we have some in the audience there that are
7 working on the cases right now, so.

8 But the consistency piece is also a
9 concern for me when I'm working with Marines and
10 sailors that are going to different offices for
11 the same offenses.

12 CHAIR HILLMAN: I want to follow up on
13 something Colonel Morales said.

14 You have a sense of the tempo and the
15 pace of how the changes are being implemented,
16 and also the tempo and pace of issues that rise
17 up in the transition of personnel, including
18 legal and command personnel, you know, in the
19 different ranks and spaces that you're working
20 in.

21 If you were in our chairs, how much
22 time would be enough to actually know how OSTC

1 is, in its many permutations across the services
2 and units and geographic spaces, how much time do
3 we need to be able to tell how things are going?
4 How much data?

5 CDR CANO: Yeah, I think that it's kind
6 of first on the investigation side. So,
7 streamlining that process, that's the first place
8 I would look if I was sitting on that side of the
9 table is, like, how do we get our investigations
10 throughput higher so we can get the facts to get
11 that data to make a decision, so?

12 CHAIR HILLMAN: I hear you. And we are
13 hearing what you're saying about the challenges
14 in just perfecting the information, the evidence,
15 so that you can actually figure out what to do.

16 But how much time do we need to watch
17 what's happening out there before we can make any
18 kind of recommendation or assessment about how
19 things are working? Like how much? How many
20 months do we need?

21 Colonel Morales said it's way too
22 early, just a few months in right now. But how

1 much time do we need?

2 CDR CANO: I'd say no greater than 60
3 days if I had a decision. Because, again, that
4 erodes the good order and discipline by having
5 the sailor in this purgatory, and then the
6 victim, too, the anxiety of the justice on hold.

7 So, to me, like if in the magical
8 world, I'd say 60 days would be the ideal.

9 COL MORALES: So, I mean we're, in the
10 military, you know, our leadership corps is very
11 transient in so much as they only have a certain
12 amount of time that they sit in a leadership
13 position in command. And so, I think, you know,
14 everyone is going to be affected differently
15 based upon how they interpret certain cases and
16 their own, you know, ethical stamps on certain
17 issues.

18 I would say there's, you know, what is
19 the right amount of time? I think any data
20 coming back to the Air Force is going to be, is
21 going to be worthwhile. I understand that
22 justice takes time, you know, to execute.

1 But one thing I will say is that from
2 my understanding of OSTC, there are certain cases
3 where OSTC may enter into plea agreements where
4 then that binds the court-martial convening
5 authority into certain agreements coming out of
6 that. And so that, that's something that would
7 be, you know, interesting for me as a commander
8 to be bound into this kind of court-martial
9 agreement that was something that I don't have
10 any say in.

11 And so, again, we haven't seen any of
12 these cases come back, but I think every case is
13 going to be unique in that manner.

14 COL GALLO: I would think from a data
15 collection perspective I'd probably think you'd
16 probably want a year, a year's worth of data. I
17 think in the first few months there's been a
18 steep learning curve. And I think OSTC is
19 figuring out how to organize themselves for
20 success as well and building relationships.

21 So, I think probably the first three
22 to six months it's hard to really learn much from

1 that because it's so new. But I would think that
2 perhaps at the one year mark, you know, based on
3 the data then, that would be a useful point to
4 get an assessment of, you know, what it looks
5 like in the aggregate, ma'am.

6 LTCOL DUNLAP: I would concur with
7 that, ma'am. I'm the furthest from an expert on
8 this, but I would say a year's worth of data to
9 move out on it.

10 CAPT McDONNELL: From a Coast Guard
11 perspective, I agree. And our Office of Chief
12 Prosecutor is also new and, you know, I don't
13 think we have enough data really to determine how
14 those changes have affected, you know, the
15 streamlining of cases and such. So, I think a
16 year is the right point.

17 Thanks.

18 LTCOL DUNLAP: And I would add, too,
19 that I think, again, agree with the comments that
20 the OSTC offices around the military are probably
21 being overwhelmed right now.

22 MS. PETERS: All right. I'd like to

1 focus on the deferral process for just another
2 moment.

3 Do you believe that the process is
4 operating smoothly, that is by which a Special
5 Trial Counsel evaluates a case, and if they
6 decline to prefer charges, that case is
7 essentially deferred to the command. And with
8 that we would appreciate your comments on the
9 timeliness with which the case is deferred, and
10 your communication?

11 And I think expanding upon whether you
12 are receiving not just the deferral decision, yes
13 or no, but an explanation to accompany that
14 decision?

15 So, the timeliness, the explanation,
16 and whether it's operating smoothly.

17 And the last part of that, I think we
18 have touched on that momentarily is whether there
19 is effective disciplinary tools in your hands
20 once that case is deferred?

21 So, that's a lot about it, but just
22 generally the deferral process, your

1 communication, the timelines, and what you're
2 left with in your toolkit once a deferral occurs.

3 Thank you.

4 COL GALLO: Yes, ma'am.

5 So, we've actually received a bunch of
6 deferrals. Maybe, if I had to guess, maybe 15 to
7 20 or so in the last month.

8 And many of those, as discussed
9 previously, have been on the domestic violence
10 front. And some of those have been pretty quick
11 turns.

12 In terms of what's formally
13 transmitted to me when that's deferred, I have
14 not yet received any explicit articulation of the
15 rationale behind the deferral and the decision
16 not to prefer charges. But I have received a
17 verbal explanation from my brigade JAG that I
18 believe is being communicated to him verbally
19 through the legal chain.

20 So, he has always come back to me and
21 said he has paperwork which basically says that
22 OSTC has decided not to prefer charges and to

1 defer. And he shows me that paperwork and then
2 he'll articulate the reason. And it's usually an
3 assessment was made that the standard of evidence
4 doesn't meet the threshold, et cetera, et cetera,
5 et cetera.

6 And then him and I have a conversation
7 about tools available for me as the commander or
8 for my subordinate commanders to execute moving
9 forward.

10 And so, in some cases I have deferred
11 that right down to the battalion commander. In
12 other cases I have directed the initiation of a
13 general officer memorandum of reprimand, or have
14 asked the chain of command to initiate admin
15 separation -- not necessarily separate but
16 initiate admin separation.

17 But I think we are just now fully
18 coming to grips with what options we do have.
19 And as mentioned about NJP, we perceive that
20 that's really not a valid option once a case has
21 been deferred.

22 That being said, I think there is some

1 room, as I've been told, for engagement with OSTC
2 to potentially move down the non-judicial
3 punishment route, but haven't had an opportunity
4 yet to actually do that.

5 Last thing to say on this is we've
6 developed an internal process to codify what is
7 being transmitted to us from OSTC just for a
8 recordkeeping, recordkeeping purposes.

9 I'm not sure exactly what the
10 requirements are for units to do so, but we have
11 kind of articulated the results from OSTC in a
12 memorandum that we've put on file just for good
13 recordkeeping purposes within the soldier's file.

14 MS. PETERS: Does anyone else have
15 comments on their experience with the deferral
16 process?

17 COL MORALES: Again just from the Air
18 Force perspective, the only deferrals we've
19 received are those that are pre-28th December.

20 MS. PETERS: Okay, thank you. Thank
21 you.

22 All right, I'm going to move on to a

1 different topic, and that is military justice in
2 general.

3 If I can get your comments on the
4 process by which a service member who's facing
5 charges and pending court-martial, through their
6 counsel they may initiate a discussion around
7 plea agreement.

8 Have any of you had any experience in
9 making recommendations or negotiating a term in a
10 plea agreement? And, if so, was that term about
11 the range of sentence, or the type of punishment
12 that would be appropriate in that case?

13 So, your experience with the plea
14 agreement process.

15 COL GALLO: I have limited experience
16 in this, in this process. But I do recall a
17 number of incidents where a plea has come up. I
18 believe it's specifically been involved in the
19 range. And I think in some cases it's been
20 specific to confinement, perhaps confinement
21 duration.

22 In every case that I could recall, I

1 wasn't the decision maker. It was the first
2 general officer in my chain of command who is my
3 division commander. And so, I was making a
4 recommendation.

5 So, with counsel from my JAG I would
6 essentially consider the merits of the case, the
7 evidence, all the possible outcomes. And then I
8 would make a recommendation to my commanding
9 general on the nature of the plea.

10 MS. PETERS: Does anyone else have any
11 experiences to share with the plea agreements?

12 CDR CANO: For me the biggest one, so
13 I've done two so far, and to me the bad conduct
14 discharge is -- so, one was for a case on sexual
15 assault, child sexual assault case. So, to me
16 that was, like, that was mandatory.

17 And, obviously, the other thing was
18 mandatory registration for sexual offender. So,
19 that was all, that was part of the discussions in
20 the plea agreement. I had some bare minimums.
21 Confinement wasn't really discussed based on I
22 had the pers -- my SJA had given me the

1 perspective that the judge was not going to do
2 confinement in these two cases, so we didn't want
3 to go after something that we wouldn't -- we'd
4 lose the whole plea agreement if we had that on
5 there

6 So, that's my experience.

7 MS. PETERS: I see. So, the
8 discussion, to be clear, was whether there was an
9 appropriate minimum confinement in the plea
10 agreement to be specified, and whether that would
11 be -- whether that would survive the judge's
12 inquiry?

13 CDR CANO: That's correct.

14 And because it wouldn't survive, we
15 didn't offer it as a minimum requirement.

16 MS. PETERS: Does anyone have anything
17 else to add on plea agreements?

18 All right. In general, with regard to
19 the court-martial process, and we're talking
20 about for a moment just focusing on the trial
21 itself and the result, do you think more
22 transparency and information about ongoing

1 courts-martial would increase awareness or
2 enhance trust in the system by service members?

3 LTCOL DUNLAP: I'm always an advocate
4 for more transparency.

5 You know, I will say, too, though, and
6 I used the term when, earlier and it was probably
7 not the best term to use, for Marines and sailors
8 when they refused NJP to go to court-martial to
9 get a better outcome in their favor.

10 What concerns me is, is that if all
11 those Marines and sailors go to court-martial and
12 then get an outcome in their favor, when we
13 believe that they have done something, they have
14 participated in some form of misconduct, and then
15 we're transparent about it, then all the Marines
16 and sailors are going to say, well, I'm going to
17 refuse NJP. I'm going to go to court-martial and
18 I'm going to get an outcome in my favor.

19 So, that, that is a concern. But, you
20 know, that said, just weighing the pros and cons
21 of being more transparent, I mean, yes, we need
22 to be transparent and forthcoming about what's

1 going on, both at the NJP level, you know,
2 internally to the command, NJP, captain's mast,
3 but also a court-martial as well. But, again,
4 there is that concern.

5 MS. PETERS: And would that
6 transparency, what would that look like in terms
7 of projecting the results and the status of
8 ongoing cases, the nature of the charges? Or
9 just are you talking about the end results?

10 LTCOL DUNLAP: I think both.

11 I would say, too, though that I've
12 made the decision to send Marines to court-
13 martial a couple times now. And that in and of
14 itself is usually impactful to the rest of the
15 command when they know, oh wow, like, that marine
16 or sailor is going to court-martial. That's a
17 pretty big deal.

18 So, you know, regardless of what the
19 outcome is, you know, that's impactful in and of
20 itself.

21 MS. PETERS: All right. Does anyone
22 have anything to add?

1 Captain McDonnell?

2 CAPT McDONNELL: Yeah. I think you
3 have there's a thirst for transparency at the
4 local level, at the unit level, especially when
5 it impacts their unit. But also in the
6 aggregate, you know, what is the service doing
7 for, you know, good order and discipline overall?

8 So, for the Coast Guard, for example,
9 we have a good order and discipline quarterly
10 message that's sent out that summarizes all
11 courts-martial, NJP imposition, administrative
12 separations. And now it also includes anti-
13 harassment type incidents as well.

14 So, that's something new the Coast
15 Guard has put into our quarterly report and that
16 rolls up all of those cases. So, it's just
17 something that the Coast Guard has shared with
18 our, our workforce.

19 MS. PETERS: Colonel Morales?

20 COL MORALES: Yeah. I would say in the
21 Air Force we do a quarterly status of discipline
22 where we go over all cases that are NJP that have

1 closed out in the previous quarter, and then
2 courts-martial as well.

3 So, I think that's, that's relayed to
4 commanders and senior leaders. It is for them to
5 determine how they wish to be transparent with
6 their units.

7 But that information is definitely out
8 there.

9 I'll add one more piece because when
10 it comes to general courts-martial in the Air
11 Force we have gone to kind of a, a standing
12 panel. And the members of these standing panels
13 who can sit on these general courts-martial can
14 include members all the way down to the rank of
15 E-3.

16 And so, you know, it's questionable
17 whether or not, you know, commanders are supposed
18 to determine potential members for a standing
19 court-martial based upon their experience, their
20 role, their rank, any number of different things,
21 their age, their maturity.

22 But having an individual who is

1 potentially an E-3 on a court-martial does give a
2 very, I think, open sense of transparency to all
3 aspects and all ranks, so that they're able to
4 sit in and be part of that, that military justice
5 process.

6 Thank you.

7 MS. PETERS: Does anyone want to
8 comment on that, on the composition of court-
9 martial panels and transparency.

10 Okay, General Ewers, yes.

11 MAJ GEN (R) EWERS: It's in a different
12 area.

13 Thanks for coming, by the way. I know
14 you are all busy.

15 But I want to confirm what I think I'm
16 hearing. And I realize you're not general court-
17 martial convening authorities, or haven't been
18 general court-martial convening authorities in
19 the past. But it sounds to me like all the
20 communication that's coming from OTC -- OSTC to
21 commanders is advising them on what decision is
22 being made.

1 Have you been given an opportunity to
2 give input to what ought to happen in a
3 particular case that's yours that you send up in
4 a situation where you might make a recommendation
5 to a general court-martial convening authority?

6 COL GALLO: Sir, in short, no. I
7 haven't had an opportunity to do that yet.

8 That being said, my understanding is
9 that that is a possibility that that can be done.
10 I haven't come upon a circumstance yet where I
11 thought it made sense for me to transmit a
12 specific recommendation to OSTC about a case.
13 But I have been told through the legal channel
14 and from OSTC at the outset of this that that is
15 a potential COA that could be pursued. That
16 could be pursued, though I personally haven't
17 taken it yet.

18 COL MORALES: That would be a negative,
19 sir, for the Air Force. Not, not me personally,
20 no, sir.

21 CDR CANO: I've had a complete
22 different experience. My SJA has been very

1 proactive with communications with OSTC. And
2 part of every single case is, hey, OSTC is
3 thinking about deferring this. You know, what's
4 the command's stance and what would they like to
5 see?

6 Because it's under my belief, you
7 know, everything, you could still go to court-
8 martial even if the prosecution believes that
9 there's not enough evidence or whatever the
10 concerns are.

11 LTCOL DUNLAP: Haven't gotten that far
12 into it yet, sir, to the cases we're dealing
13 with.

14 CAPT McDONNELL: Same for me, sir. We
15 haven't had a case that's warranted a
16 recommendation.

17 MAJ GEN (R) EWERS: Thank you.

18 MS. PETERS: Any other questions about
19 Special Trial Counsel from the members?

20 Okay, hearing none, I'm going to get
21 back to a more generalized military justice
22 topic, and that is sentencing.

1 And, currently, only enlisted service
2 members are able to be reduced in rank by way of
3 a courts-martial sentence. Do you believe that a
4 military judge should be authorized to adjudge
5 reduction in rank for an officer convicted of an
6 offense?

7 LTCOL DUNLAP: Absolutely. But that's
8 a personal opinion.

9 MS. PETERS: And can you explain why
10 that would be beneficial as a sentencing tool to
11 add to the courts-martial process?

12 LTCOL DUNLAP: Well, we talk about, you
13 know, transparency and information flow, and
14 we're holding -- it seems that we're holding our
15 junior, senior and junior enlisted service
16 members accountable. It seems we're not holding
17 officers accountable.

18 And, you know, we constantly read
19 these articles in Army, Navy, Marine, and Air
20 Force Times about officers that are participating
21 in misconduct. And it appears at least, on the
22 basis of it, that they're not being held

1 accountable. So, they should be held accountable
2 as well.

3 MS. PETERS: Thank you.

4 Does anyone have a comment on the
5 court-martial process and sentencing for
6 officers?

7 COL GALLO: Yes, ma'am, I'm definitely
8 not an expert on sentencing, but I think just
9 from the perspective of dealing with misconduct,
10 I think I'd be a proponent of you, you know,
11 expanding the options, you know, rather than
12 constraining the options.

13 So, I think there'd be some value
14 there.

15 And then, I share similar sentiment to
16 the, you know, perceptions of equity concern
17 mentioned here.

18 CHAIR HILLMAN: Can I ask you,
19 Lieutenant Colonel Dunlap, it's -- you raised the
20 point, there's a perception of that deference to
21 officers that isn't applied to enlisted folks who
22 are accused of wrongdoing.

1 There is that perception.

2 Do you think that's the reality out
3 there?

4 That's for each of you.

5 And if you don't think that that
6 perception reflects reality, why do people
7 perceive it that?

8 Is there something we can do about
9 that?

10 You can start, Lieutenant Colonel
11 Dunlap since you raised this.

12 LTCOL DUNLAP: Sure, yes, ma'am.

13 That seems like a loaded question
14 there.

15 (Laughter.)

16 LTCOL DUNLAP: But you know, going on
17 19, 20 years of service, and over the course of
18 my career, I've seen a number of, you know, in
19 the media, cases where general officers, flag
20 officers participate in misconduct.

21 And seemingly, again, my perception
22 has been, as a junior officer, that they were

1 allowed to retire with rank, with pension, with
2 all the things that we remove from our enlisted
3 service members.

4 So, again, we're talking fairness,
5 that seems unfair to me.

6 And whether that is the actual reality
7 or not, I couldn't speak to that, ma'am. But
8 that is the perception I think within the ranks.
9 That's my perception.

10 CHAIR HILLMAN: Thank you.

11 MG (R) EWERS: I can give you an
12 anecdotal view.

13 I mean, I understand the point and I
14 can see how accountability can be an issue.

15 But as a practical matter, the
16 officers who retire with rank don't go to courts
17 martial, haven't been to courts martial.

18 Maybe they should have gone to courts
19 martial, but that's kind of another issue.

20 And the fact is, that as a practical
21 matter, we don't keep officers around who go to
22 courts martial. They're gone.

1 So, reducing them, you know, maybe
2 it's a nice slap in the face as they go out the
3 door, but it really doesn't get you much. It
4 just -- it's like the reduction to E-1 you get
5 when you get an administrative separation.

6 Who cares if you're an E-1, you're not
7 in the service anymore, just for processing
8 purposes.

9 We do -- and we do a really bad job of
10 telling people what's going on with our officer
11 discipline, which we need to get better at.

12 COL GALLO: That's a point that I was
13 going to make.

14 And in the interest of transparency,
15 I think we tend to be a little bit more close
16 hold with proceedings involving officers and that
17 kind of works against us, you know, from
18 perceptions of equity.

19 And then, I think, you know, officers
20 just, they follow a different process. And
21 sometimes, that process can be very lengthy.

22 From an Army perspective, it normally

1 involves human resources command. And it could
2 very, very lengthy, that process from start to
3 finish.

4 CDR CANO: I think one difference is,
5 if there's a reduction in rank situation with an
6 enlisted person, they potentially still have a
7 future in the military.

8 However, with an officer, they're, you
9 know, they resign or retire or leave.

10 And if you -- if we were to go to
11 courts martial, or an officer were to go to
12 courts martial before they retire, then, you
13 know, you have to do something different, I
14 think, and you know, a fine is probably a way to
15 really sticks it to an officer.

16 I mean, that's just my personal
17 opinion, but I -- you know, that's something that
18 really been discussed.

19 CHAIR HILLMAN: Judge Redford?

20 JUDGE REDFORD: Thank you.

21 One of the authorized punishments for
22 officers in previous versions of the UCMJ was not

1 necessarily reduction in rank, but loss of lineal
2 numbers, which all of us who've ever been before
3 a promotion board, they understand the impact of
4 that.

5 Any thoughts on whether that should
6 be, you know, re-instituted as a -- in addition
7 to or in lieu of reduction in rank?

8 COL MORALES: So, having just sat on
9 a promotion board of Air Force O-4s with
10 potential for O-5, I mean, I don't know if it
11 happens just, you know, by nature of the system,
12 but the way in which we select our officers for
13 O-5 is such that, I mean, any NJP at the O-3, O-4
14 level court-martialed, I mean, if that is in your
15 record, there's no way that you are promoting.

16 And so, I mean, talk about an easy
17 button, when pulling someone down to find that,
18 you know, 15 percent that is not promoting, I
19 mean, you're ending your career if you
20 essentially get to that level and then, you have
21 significant NJP or a court-martial.

22 MS. PETERS: Any one else?

1 All right, any other questions on the
2 sentencing options?

3 All right. In light of current
4 recruitment and retention challenges, I'd like to
5 get your perspectives on the potential for a
6 court-martial to have a sentence that encompasses
7 rehabilitative tools for enlisted and officers.

8 Are there any ways that come to mind
9 that you think the system could be leveraged to
10 potentially rehabilitate convicted service
11 members so that they could continue to serve?

12 CDR CANO: For some of these cases,
13 drugs, you know, alcohol, those are
14 rehabilitative.

15 However, you know, these sexual
16 assaults are -- that's a break of trust.

17 And by continuing a path in the
18 service, eventually, they're going to have to
19 lead people. Thus, the natural progression of
20 the military.

21 So, I just find it very hard to give
22 somebody else that crossed the red lines on

1 sexual assault like a second chance to
2 rehabilitate and now be put in a position of
3 trust to lead sailors.

4 MS. PETERS: So, it's really dependent
5 on the type of offense at issue?

6 CDR CANO: Absolutely.

7 MS. PETERS: Okay.

8 Does anyone have any comments on that?

9 CAPT MCDONNELL: I could.

10 I agree with my Navy colleague on, you
11 know, the type of cases.

12 I mean, from the Coast Guard
13 perspective, typically, and it's been my
14 experience that most folks that go through a
15 court-martial process are typically discharged or
16 separated.

17 And so, not seeing too many people
18 have gone and, you know, had a successful period
19 after that.

20 But from a rehabilitative perspective,
21 you know, we're also sending these folks out into
22 society. So, those have a rehabilitation aspect

1 to that.

2 They're going to hopefully be a
3 functional member of society at some point.

4 So, they're -- I think that there's a,
5 you know, a component of that from a
6 rehabilitative perspective that may not
7 necessarily be within the service itself.

8 MS. PETERS: Go ahead, Judge Redford.

9 JUDGE REDFORD: You're in command and
10 whether it's your battalion, your brigade, or
11 your security company and you get a sailor,
12 airman, soldier, or Marine who did go to court-
13 martial, did go through some rehab program,
14 what's his -- what's hers or his future when they
15 get repurposed to your command?

16 CDR CANO: Yes, so, the closest
17 example I've lived -- experienced is, I have a
18 sailor at my command which was on -- he went to
19 NJP, but he's an E-8.

20 And he -- there was a significant
21 incident that happened aboard a ship. He was
22 held accountable.

1 So, my -- on my check-in with him, I
2 said, hey, you were held accountable, you were
3 punished, and do you have a future here? You're
4 still in the service, and can't hold -- I'm not
5 going to hold that against you, you know, I'm
6 going to treat you like everybody else because
7 he's been held accountable.

8 So, however, with court-martial,
9 again, that's a more serious offense. I would
10 have to lean in the same direction of giving that
11 person a second chance.

12 COL GALLO: I concur.

13 I think we would seek to ensure that
14 that particular service member is in a right --
15 is in the right environment for a fresh start.

16 We do try and, you know, pride
17 ourselves on not being a zero defect
18 organization. So, people can make mistakes and
19 recover from those mistakes.

20 Beyond things that I can control, I'm
21 not sure what the implications would be for that
22 service member from a promotion and potential

1 perspective within the record itself.

2 But I would like to think that we have
3 a command climate established where that
4 individual would be given a fresh chance and not
5 be kind of re-adjudicated for something that he
6 already, you know, was convicted on and, you
7 know, served the punishment for.

8 LTCOL DUNLAP: Just to clarify, we're
9 talking court-martial events, is that correct,
10 ma'am?

11 MS. PETERS: That's right.

12 LTCOL DUNLAP: So, yes, fresh start as
13 far as I'm concerned.

14 Here's my plug, my opportunity to, if
15 we're talking about rehabilitative tools, I don't
16 know if that -- was that the next question or are
17 we going to get to that?

18 MS. PETERS: That is perfectly
19 appropriate for comment right now. I appreciate
20 it, go ahead.

21 LTCOL DUNLAP: So, I do know there was
22 a question on rehabilitative tools.

1 And you know, the Marine Corps in the
2 past have a CCU, Correctional Custody Unit.

3 Sir, I think maybe you're familiar,
4 Okinawa reinstituted that.

5 (Laughter.)

6 LTCOL DUNLAP: Okinawa reinstituted
7 that in 2018. I think it's still a thing.

8 And for those that are not aware, the
9 CCU is hard labor. It's making small rocks out
10 of big rocks.

11 And I was -- I'm told that it was
12 incredibly effective at taking young Marines who
13 had participated in misconduct had attitude,
14 discipline issues, they went to that for 30 days
15 or so and came back a brand new Marine.

16 And so, that's my two cents on
17 rehabilitative tools.

18 Now, as to whether we come back, sir,
19 someone from court-martial, if they're rehabbed,
20 great. A process, procedure tool and they come
21 to us, absolutely fresh start and hope that they
22 do the right things moving forward.

1 You know, that's the ideal, any Marine
2 or sailor that comes before me at NJP or
3 captain's mast, you know, I speak with them about
4 doing the right things going forward and be a man
5 or woman of character going forward.

6 JUDGE REDFORD: Do you think a
7 military judge, when imposing sentence, should
8 have the authority to suspend a BCD as a
9 condition of continued good service?

10 Not just recommend it, but order it?

11 And then, that sailor, Marine, airman,
12 Coast Guardsman, or soldier comes back.

13 Any thoughts on that?

14 COL MORALES: I would just say, from
15 my perspective, you know, as I alluded to in the
16 beginning, right, so, consistency.

17 I think there is a very strong message
18 to be sent that if an individual is coming -- or
19 going and facing a court-martial that, more than
20 likely, their place is not to continue service.

21 And so, I mean, I've got to put myself
22 in a position of flying aircraft, trusting the

1 individuals who, you know, are involved in flying
2 the aircraft and supporting the operations that
3 go into fixing and keeping those things flying.
4 We expect a certain level of discipline.

5 And so, I would say, you know,
6 although I hate to say every case is the same,
7 but it would be a hard sell for individuals to
8 come back and be rehabilitated if they've gone
9 through court-martial.

10 Thank you.

11 MS. PETERS: Go ahead, Colonel
12 Brunson.

13 COL (R) BRUNSON: So, is it the fact
14 of a court-martial that is the dividing line?

15 So, it sounds like if it was NJP, you
16 know, NJP, correctional custody, you know, all
17 fine, good, come on back, we'll give you a fresh
18 start.

19 But the simple fact that they went
20 through a court-martial, is that the line that
21 we're drawing that says, no, you're done?

22 CDR CANO: In my mind, that's not my

1 line. I think it's the type of offense. Like,
2 to me, like sexual assault, like there's --
3 that's mandatory processing anyway in the Navy,
4 or probably in all the services.

5 So, that's kind of already done for
6 me.

7 But, to me, there's like certain
8 offenses that you can rehabilitate from, in my
9 mind and experience, and some you cannot.

10 COL (R) BRUNSON: So, that, I can
11 understand, the type of offense.

12 But -- and obviously, my information
13 is dated, it's been a while since I was trying
14 cases or hearing cases, but I can just think of
15 several off the top of my head that work, you
16 know, where the service member went to a court-
17 martial, was not adjudicated at discharge because
18 of what they were ultimately convicted of.

19 But then, the assumption is, well, the
20 unit's going to kick them out anyway.

21 And so, if it's the type of offense,
22 that's one thing. But that's what I'm getting

1 at.

2 Is it the type of offense or is the
3 fact that it is at a court-martial?

4 Specific example, a soldier went to
5 court-martial for -- basically for child abuse.

6 But the facts came out where it really
7 wasn't so much abuse, it was more of a -- I was
8 raised by a Southern grandmother and I don't
9 understand where the line is.

10 And had been, essentially,
11 rehabilitated by going through behavioral health.

12 So, at that point, has a conviction,
13 is the conviction enough to say, we don't want --
14 I know I'm giving a very specific example.

15 But what I'm getting at is, is it the
16 conviction itself that says, there's really no
17 future for you in the service or is it the type
18 of offense that they're convicted of?

19 COL MORALES: Just to clarify, I would
20 say it would be the type of offense.

21 I mean, just the majority of those
22 cases in the Air Force that do go to court-

1 martial are very egregious.

2 LTCOL DUNLAP: Agreed, ma'am.

3 But again, you know, I've got a couple
4 cases here recently where a Marine or a sailor is
5 refusing NJP because they think they'll get a
6 better outcome at a court-martial.

7 So, that might be, honestly, a more
8 minor offense that if they're convicted, okay,
9 come back and a fresh start.

10 MG (R) EWERS: I want to talk about
11 rehabilitation from a slightly different angle.

12 We talked earlier about junior
13 officers and how they get oriented with our legal
14 system.

15 One of the concerns that we have as a
16 panel is the distrust among service members that
17 we're hearing about with respect to the UCMJ.

18 An overwhelming majority of Marines,
19 sailors, soldiers, and airmen, Coasties, who have
20 a brush with the UCMJ have it at the company
21 level for a very simple NJP.

22 So, that's where we have an

1 opportunity to train our youngsters or young
2 leaders, enlisted Marines, and the senior
3 enlisted Marines, and officers.

4 So, what more can we do to mentor our
5 young officers and our senior enlisted or staff
6 NCOs, essentially, and NCOs to help them use the
7 military justice system right at the point where
8 we can make an impact and avoid that next offense
9 that could land them at a court-martial?

10 COL MORALES: So, we do a newcomers
11 orientation. We bring in all of our first term
12 airmen. We sit them down. And one of the things
13 that the command and leadership team like to say
14 and divulge is the things that'll get them kicked
15 out of the Air Force.

16 Because quite honestly, depending on
17 what background they're coming from, you know,
18 there may be differences in what they have, and
19 ma'am, to your point, you know, what they have
20 come to be accepted as societal norms, the groups
21 of people that they hang out with.

22 I mean, all it takes is them having --

1 running with the bad crowd and they're bringing
2 that individual on the base and now, they're in
3 possession of an illegal substance.

4 I think education, you know, goes a
5 very long way. And it doesn't have to be to
6 scare them, but there are certain standards that,
7 in the Air Force, we keep and those standards are
8 no surprise.

9 But quite honestly, I don't know, you
10 know, where they get that level of education.

11 And so, that's one of the things that
12 I think our leadership team does a very good job
13 of divulging these are the things that will get
14 you kicked out of the Air Force. And --

15 MG (R) EWERS: I take your point, and
16 I don't mean to cut you off, but I want to focus
17 not on the educating the young enlisted Marines,
18 soldiers, sailors, airmen, Coasties, I'm talking
19 about educating the young officers and staff NCOs
20 so that we can teach --

21 I mean, okay, so, lance corporal comes
22 in and he's got a problem, you know, it's -- he's

1 UA for two days in a row. Right? Or just, you
2 know, he's very -- he shows up late.

3 Now, you have an opportunity to do
4 something to him in the military justice realm
5 that can either turn him around or get him
6 straight.

7 And the danger is, that for a variety
8 of reasons, and this is one of the big complaints
9 that we have, for a variety of reasons, we turn
10 them the wrong way and he goes down the road.

11 So, how do we train our leaders to
12 deal with minor NJP issues or UCMJ issues to
13 avoid the more serious NJP issues?

14 So, I'm sorry, I probably didn't say
15 that correctly the first time.

16 COL GALLO: Yes, sir.

17 So, I think one way we look at it is,
18 it's almost like an escalation of force and it's
19 -- there's kind of some low intensity, low impact
20 things that you can do initially upon an
21 infraction.

22 Of course, you can ramp that all the

1 way up, maybe court-martial being the most
2 extreme.

3 So, I think what we have noticed, and
4 I kind of hinted at it at the beginning is that
5 some of our leaders don't understand the value of
6 some of the tools on the lower end and they're
7 jumping right to the middle or perhaps they're
8 pursuing a field grade Article 15 at first
9 infraction when the answer may be just be, let's
10 sit down with the soldier, have a counseling
11 session.

12 Let's have an engagement about what
13 the standard is, where you fell off. And now,
14 let's figure out together how to develop an
15 action plan to get you right, you know, back on
16 the right track.

17 You know, versus kind of escalating
18 force to an extreme level.

19 We had a situation recently where
20 exactly this happened.

21 Soldier showed up late to a formation.
22 The young chain of command was trying to, you

1 know, set the standard right away and immediately
2 was pursuing moving down the field grade Article
3 15.

4 And the soldier actually utilized the
5 open door policy up the chain of command. We had
6 a discussion with leaders about it.

7 Went back to that team and said, hey,
8 let's think, what's the range of possible things
9 we could have done here? You know, had a good
10 conversation there.

11 And then, you know, hopefully, that --
12 those young leaders walked away with a better
13 understanding of what they can do with that kind
14 of low impact.

15 I think some of the soldiers will
16 potentially, you know, lose trust if you're
17 jumping right to these extreme measures when it's
18 something that we can handle, you know, in house
19 with a good conversation and a counseling
20 session.

21 COL (R) BRUNSON: With what you're
22 doing -- so, that's what you're doing in your

1 unit?

2 How do we make -- how do we have those
3 teaching sessions with the junior officers across
4 the military writ large?

5 Like where do we fix that problem?

6 LTCOL DUNLAP: Well, I feel like the
7 knee jerk would be to say more mandated training
8 but we all know in this room, like there's never
9 enough time for any of that.

10 So, you know, what Colonel Gallo said,
11 I mean, you know, similar experience, just it's
12 not necessarily the right answer, but OJT, on the
13 job training and, you know, the professional
14 discussions you're having with your subordinate
15 commanders and subordinate leaders.

16 You know, we could say, you know,
17 instituted professional education, but again, all
18 the services are not consistent with that,
19 either.

20 You know, it is as far as what rank
21 and grade you're going to to PME.

22 So, I don't know that there's a good

1 answer, ma'am, other than, you know, it's
2 incumbent on the commanders to have those
3 discussions with their subordinate commanders and
4 leaders.

5 MS. PETERS: All right.

6 If I may jump in, I want to make sure
7 our members who have joined us remotely, Captain
8 Barney and Judge Castle, do you have any
9 questions at this time?

10 CAPT (R) BARNEY: Hi, this is Steve
11 Barney.

12 First of all, thank you all for your
13 testimony.

14 I think one of the main takeaways I
15 have from this, more of an observation is, I
16 think about Colonel Dunlap's testimony about the
17 value of the congressional custody units, for
18 example.

19 We probably, as and a lead, to think
20 about how to address the fact that, over the last
21 30 years, our military through a national policy
22 level from high on has made it so extraordinarily

1 easy to discharge people and to quit on people
2 who have issues that involve the military justice
3 system.

4 When I think about the recruiting
5 impacts that all of our services are facing every
6 day and when I think about the very real threats
7 to our nation that exist today and will be in the
8 future, we need to develop a way to signal from
9 the top down that there is value in
10 rehabilitation.

11 There is value in providing
12 correctional tools to help service members in
13 whom our nation has invested so much in their
14 training to restore them as much as possible to
15 the extent that the nature of the offense will
16 allow it to get them back in the force and to
17 have them continue on in their careers, having
18 learned from their mistakes.

19 Thank you.

20 JUDGE CASTLE: This is Judge Castle,
21 no questions.

22 MS. PETERS: All right.

1 I want to thank you for the thoughtful
2 discussion that we had today. And thank you for
3 your insights.

4 And just to make sure we've covered
5 all bases, I learned early as an attorney not to
6 say one more question, but the one more question
7 may be, is there anything you would like this
8 panel to know that we didn't ask you about the
9 challenges with good order and discipline or
10 aspects of the military justice system that we
11 haven't commented on today that you would like
12 this panel to know about?

13 CDR CANO: Yes, one thing we haven't
14 talked about is the importance of the senior
15 enlisted leadership that we rely upon to maintain
16 this good order and discipline.

17 Because usually, these NJP offenses
18 isn't the first like run in with accountability.
19 There's several lower levels.

20 And on the other side of the coin is
21 training the junior officers, you know, how to
22 start making these decisions and making sure that

1 we're using the right levels of accountability
2 against those offenses.

3 Like we rely on the senior enlisted
4 leadership to train them as well.

5 Thank you.

6 MS. PETERS: Anything else?

7 Yes?

8 CAPT MCDONNELL: I would just like to
9 say, I think what the population of offenses that
10 we're talking about is a very small number of our
11 military members.

12 And by and far, most of our military
13 members desire the accountability for their peers
14 when they step out of line.

15 So, I think, you know, it gives me
16 hope and faith that we're getting after the right
17 problems here and making sure that our forces is
18 ready when called upon.

19 Thanks.

20 MS. PETERS: All right, hearing
21 nothing further, again, thank you for taking the
22 time out of your busy days and your units to talk

1 with us today. We really appreciate it.

2 CHAIR HILLMAN: Just to close out, I
3 want you to be assured that we'll take your
4 insight and perspectives with us as we try to
5 consider the issues that are before us.

6 And we're talking to your colleagues
7 in different spaces and places around the country
8 and the world to make sure that we understand
9 what's out there.

10 And also, you've made clear that
11 concerns about whether commanding officers are
12 still taking military justice seriously,
13 notwithstanding the seismic shifts in that part
14 of your work and your tool kit.

15 You've made clear that each of you
16 are, and I appreciate that as does everybody out
17 there who is protected by the folks who are in
18 the service or who have family members who are
19 actually in the service right now, too.

20 So, thanks very much.

21 (Applause.)

22 MR. LIBRETTO: Thank you, ladies and

1 gentlemen. We'll come back on at 11:15 with the
2 senior enlisted advisor panel, another open
3 session. Thank you.

4 (Whereupon, the above-entitled matter
5 went off the record at 11:01 a.m. and resumed at
6 11:14 a.m.)

7 MR. LIBRETTO: Once again, this panel
8 is comprised of senior enlisted advisors from
9 each of the services.

10 At this point, and it is an open
11 session, a public session that is, and at this
12 point, I'll turn it over to Ms. Nalini Gupta to
13 take it from here. Thank you.

14 MS. GUPTA: Thanks, Mike.

15 Good morning, everyone. We are
16 pleased today to have five senior enlisted
17 advisors here to speak about their perspectives
18 on military justice and answer questions relating
19 to your comprehensive review.

20 I will be moderating the panel and the
21 questions and I invite members, of course, to ask
22 questions and interrupt me at any point.

1 Their bios are in -- available in your
2 folder and there are some suggested questions are
3 available at Tab 3 of your packet.

4 Dr. Hillman, do you have anything you
5 would like to say before I start?

6 CHAIR HILLMAN: We're grateful you're
7 spending some of your precious time with us
8 today. It means a tremendous amount for us to
9 hear from folks who are actually out there doing
10 the work and using the system that we're working
11 to continue to perfect and advise those who have
12 the authority to implement changes and make your
13 life easier or more difficult as we look into the
14 future.

15 And so, we're glad to be able to hear
16 from you before we get to the point where we're
17 making any recommendations.

18 And I'm grateful, too, to everybody
19 here who has welcomed us to Joint Base Lewis
20 McChord and our staff and Nalini and all the
21 folks who are making it possible for us to do
22 this work.

1 So, thank you.

2 MS. GUPTA: Thanks.

3 I will quickly introduce you and then,
4 I invite everyone to give a brief description of
5 your position and your current unit.

6 So, on the -- on my left, we are -- we
7 have Chief Master Sergeant Timothy Hodgin from
8 the Air Force.

9 We have Command Master Chief Benjamin
10 Rushing from the Navy.

11 We have Sergeant Major Kevin Fontenot
12 from the Marine Corps.

13 We have Command Master Chief Shane
14 Carroll from the Coast Guard.

15 And we have Command Sergeant Major
16 Raymond Lathan from the Army.

17 Would you please start with a brief
18 description of your position?

19 Thanks.

20 And please remember to put your mic on
21 each time you speak.

22 CMSGT HODGIN: Good morning or good

1 afternoon, everybody.

2 Chief Master Sergeant Tim Hodgin. I'm
3 the 62nd Airlift Wing Command Chief.

4 My boss is Colonel Anaya. He's the
5 Senior Air Force Service Component Commander on
6 the base.

7 So, not only are we the 62nd Command
8 Team, but we also represent the Air Force for all
9 disciplinary discharge issues for airmen -- for
10 any airman that's on McChord.

11 CMC RUSHING: Good morning. My name's
12 Benjamin Rushing, Command Master Chief of Navy
13 Region Northwest. I work for Admiral Mark
14 Sucato. We're responsible for the 11 northwest
15 states as well as the naval installations
16 predominantly here in the Puget Sound.

17 Thank you.

18 SGTMAJ FONTENOT: I'm Command Sergeant
19 Major Kevin Fontenot over at MCSF in Bangor.

20 We guard strategic weapons.

21 And my boss was just up here,
22 Lieutenant Colonel Ian Dunlap.

1 We have about 1,200 Marines and
2 sailors, very unique to where we have a Master at
3 Arms and Marine infantrymen guarding those
4 assets. Thank you.

5 CMC CARROLL: Good afternoon. I work
6 for a two-star Admiral in Seattle, Washington and
7 we are in charge of the Pacific Northwest Coast
8 Guard, so Washington, Oregon, Idaho, Montana.

9 And we have about 3,700 people under
10 our control.

11 And I've been doing the, you know,
12 Command Senior Enlisted Leader, Chief People
13 Officer I like to call it. I've been doing that
14 for about six years. Thank you.

15 CSM LATHAN: I'm Command Sergeant
16 Major Raymond Lathan. I'm the Brigade Sergeant
17 Major for 2nd Brigade, Stryker Brigade here on
18 JBLM.

19 My boss is Colonel Andy Gallo. He was
20 sitting on the last panel as well.

21 And basically, what our brigade is,
22 we're a brigade combat team which consists of

1 seven battalions, three infantry, one calvary
2 squadron, an engineer battalion, and a support
3 battalion.

4 We -- our numbers are somewhere
5 between 4,200 and 4,500 soldiers on any given
6 day.

7 MS. GUPTA: Thank you so much.

8 We're going to start by talking about
9 the role of you in good order and discipline.

10 So, I have a two part question to
11 start.

12 The first part is, what are the main
13 types of disciplinary issues you deal with in
14 your unit?

15 And the second part is, what are the
16 biggest challenges you face when dealing with
17 good order and discipline in your unit?

18 And I invite any of you to start that.

19 CMSGT HODGIN: I guess I'll start.

20 It's funny, this question came up in
21 a senior NCO call that I had not too long ago.

22 They said, hey, Chief, what are the

1 things that you see?

2 And because all the airmen on the yard
3 aggregate up through us, I basically told him,
4 have you ever seen Law and Order?

5 Because it was everything from
6 domestic violence, sexual assault, drug cases,
7 you know, we're a subset of society and those
8 crimes that society commits, we also commit
9 inside the service.

10 So, there wasn't anything.

11 But the second part of your question
12 what are the challenges?

13 And I think it's probably the biggest
14 challenge, and like Colonel Morales mentioned in
15 the previous panel was, the fact that, you know,
16 what's legal outside the gate is not legal inside
17 the gate, and that's really slippery.

18 I brief people all the time like, hey,
19 if you have a boyfriend, girlfriend, significant
20 other and you're living off base, is it okay for
21 them to do certain things? And the answer is
22 yes.

1 But is it okay for them to get in the
2 car and drive on base with you? And the answer
3 is no. And sometimes, that can really trip
4 people up. And I think that's probably, in my
5 mind, the biggest challenge.

6 CMC CARROLL: I'll go ahead.

7 We -- I would say the biggest cases
8 I've seen in the last three years here in the
9 Seattle region, probably number is DUIs. That's
10 still just an unfortunate event we do see a lot
11 of still.

12 You know, not at the point compared to
13 your private sector, but it's a big deal, you
14 know. We have to recommend for discharge and
15 then, go -- that comes up to us to look at if
16 we're going to look at retaining or not.

17 I would say some of the biggest
18 challenges are speed of cases.

19 So, we, obviously, the Coast Guard's
20 very small. We don't have a contingent force of
21 people.

22 So, if we are going to sideline

1 somebody for an investigation, especially if it's
2 a member on member crime and you're going to
3 separate them, doing something like that, that
4 takes a big toll on some of our smaller units.

5 And we don't have a lot of places to
6 transfer and put them.

7 And I would say, transparency as well.

8 The Coast Guard, a lot of our people
9 in the Coast Guard now want transparency, want to
10 better understand how people can commit crimes
11 and either look like they get away with it or it
12 doesn't lead to jail time and things like that.

13 So, I would say the biggest thing I
14 talk a lot through is how the process works, how
15 sometimes transparency is, it's tough because
16 there's still -- our people have rights to
17 privacy through that.

18 So, I would say those are it.

19 SGTMAJ FONTENOT: Okay, so, for our
20 battalion, we're really dealing with a lot of
21 alcohol related issues.

22 We're dealing with drugs, sexual

1 assaults, hazing, you know, things of that
2 nature.

3 And so, here's what I would say is
4 that, when it comes to the challenges that we
5 have, it's really derived around a couple of
6 different things.

7 One is, and I would say this just kind
8 of other battalions that have been at, you don't
9 have necessarily a legal officer that has been
10 through, you know, paralegal type of course or
11 lawyer per se that, you know, is really on your
12 team to be able to advise you outside the SJAs,
13 right.

14 And so, we have, at our battalion,
15 which is very unique, a legal officer who is a
16 paralegal who actually had, you know, been
17 educated and is able to be a part of the team and
18 speak intelligently to and have the consistency,
19 you know, for the commanders that come and go.

20 But here's what I would say about the
21 commanders and the challenges that they face, and
22 the challenges, to be quite frank, that we face

1 as well, even though I think all of us hear, you
2 know, stay within a command billet.

3 And once we go that direction, there's
4 the educational piece beyond the classroom.
5 Right?

6 And so, the educational piece beyond
7 the classroom is, yes, we go to, you know, Long
8 Island, you know, Rhode Island, you know, type of
9 thing.

10 Hey, we're there for, you know, three
11 to five days and we get the education.

12 And say, hey, here's all the things,
13 you know, lawyerese, there's all the things
14 military justice.

15 However, we leave there and, to be
16 quite frank, forget what we, you know, what we're
17 taught and lean upon an SJA who has an opinion
18 and an idea but is very careful to overstep their
19 bounds with the commander and have a discussion
20 between the senior enlisted and the commander to
21 really try to formulate the best, you know, ideas
22 of what we know and what we understand and

1 lessons learned from beforehand.

2 So, I think that's a huge challenge
3 for us as a command team is the, I don't want to
4 say lack of knowledge, but really just not the
5 duty experts and getting into things beyond NJP
6 to court-martial, whatnot, and not being able to,
7 I would say, make the most intelligent, you know,
8 decisions that we could make if we were, you
9 know, maybe had more education, continuing
10 education outside of, you know, the required
11 Commander and Sergeant Major receiving that at
12 the beginning.

13 And the last thing I would just, you
14 know, leave with is timeliness beyond what's our
15 control. That's a challenge for us is that, you
16 know, we'll get into this a little bit later, but
17 I would tell you, it's, you know, maintaining
18 good order and discipline has to do with, you
19 know, dealing with the issues swiftly and
20 appropriately to be able to move beyond that for
21 not only the individual but also to, if there's
22 victims that involved, but also, too, for the

1 command to be able to maintain a command climate
2 that says, hey, not okay here, you know, this is
3 the way forward to be a pro.

4 Thank you.

5 CAPT (R) SCHRODER: I just want to --
6 you're in a really unique, it strikes me, unit.
7 You have a ton of people who work for you, but
8 you don't have an SJA?

9 SGTMAJ FONTENOT: We do, sir, that's
10 Lieutenant General Cavanaugh's staff out there.
11 They have an SJA at MARFORCOM.

12 But what I'm saying is, that it's very
13 effective for us to have this civilian legal
14 officer with us who has been there for over
15 decade who has seen and come through all of the
16 legal stuff, talks with the ROSO, talks with the,
17 you know, officers, special trial counsel, things
18 of that nature and has, you know, consistent
19 knowledge and has almost an expert at, you know,
20 all things legal that the Commander and I can
21 lean on to --

22 CAPT (R) SCHRODER: So, you do have

1 somebody?

2 SGTMAJ FONTENOT: Absolutely.

3 CAPT (R) SCHRODER: It sounded to me
4 like you didn't have somebody for such a large
5 unit.

6 Good, thank you.

7 CAPT (R) ALDANA: Can I just get a
8 clarification?

9 When you say legal officer, you're not
10 talking about your SJA, right? You're talking
11 about someone who's designated to handle the
12 legal affairs or serve as a liaison between the
13 SJA and your unit?

14 SGTMAJ FONTENOT: Yes, sir.

15 Yes, it's a civilian that we hired
16 long ago that has been very effective for us.

17 CMC RUSHING: Ma'am, if I could just
18 add --

19 MS. GUPTA: Please.

20 CMC RUSHING: -- one more thing, just
21 a couple of minutes.

22 For the Navy, so, I have the luxury of

1 my current job, I only have about 50 uniformed
2 military members on our staff. The rest are
3 predominantly civilian.

4 But I have had the luxury of being a
5 Command Master Chief on an aircraft carrier
6 destroyer on the world's largest naval base,
7 Naval Station Norfolk.

8 And I'll tell you, the -- what I have
9 struggled with in the ten years that I've been in
10 the command business is sexual assault and NCIS,
11 in those sexual assault cases.

12 Because, in my opinion, there's a
13 difference between penetration and the difference
14 between penetration and, for lack of a better
15 term, is a slap on the buttocks.

16 But when each one of those cases, the
17 NCIS has to investigate it and it takes time.

18 That's what I have struggled with, the
19 minor sexual assault cases, those are my terms, I
20 think could be adjudicated quickly and
21 appropriately without a full blown NCIS
22 investigation.

1 And then, separate from that, in my 30
2 years in the Navy, the minor policy changes from
3 year to year, even from administration sent to
4 administration in regards to like uniform
5 changes.

6 I pride myself being a Chief Petty
7 Officer in the Navy that we're teachers and
8 enforcers of the standard. The standard bearers
9 of good order and discipline.

10 But when those minor policy changes
11 happen, it's a challenge to keep up with those
12 and to keep our sailors on the right track.

13 Thank you very much, appreciate it.

14 CSM LATHAN: I would agree in terms of
15 the minor policy changes.

16 It's -- I think it's easier for us
17 seniors to digest them and kind of have an
18 understanding of them.

19 Where I see the challenge at is our
20 junior enlisted population. They're more, for
21 lack of a better term, the enforcers of standards
22 in discipline, more so than I am.

1 But I see challenges with, as
2 regulations continue to get updated, as laws
3 change, we're asking, you know, that most junior
4 leaders in our formation to have a clear
5 understanding of those things and enforce them at
6 the same time.

7 And it's not undoable, it's just a bit
8 of a challenge.

9 MS. GUPTA: Thanks for those
10 responses.

11 Since a couple of you brought up the
12 timeliness question, I'd like to go talk about
13 that a little bit more and invite responses from
14 anyone who didn't comment yet.

15 So, do you think UCMJ violations are
16 generally addressed and resolved in a timely
17 manner?

18 And what effect does a lengthy
19 resolution process have on service members
20 involved in the incident and then, the unit as a
21 whole.

22 So, I invite anyone who didn't speak

1 about that to please invite -- please add
2 comments.

3 CSM LATHAN: So, I guess that's me.

4 (Laughter.)

5 CSM LATHAN: So, in terms of
6 timeliness, I think it just depends on what the
7 infraction is.

8 And so, I could -- I'll use an example
9 of DUI.

10 And so, being stationed all over the
11 country, here in Washington, if, you know, if a
12 soldier is pulled over for a suspected DUI and
13 they refuse to do Breathalyzer and now, they have
14 to draw blood, that, in my experience since I've
15 been here, it takes a year just for us to get the
16 results back.

17 And so, that soldier is strung along
18 in the, you know, in the system for tantamount to
19 a year.

20 And so, there are certain things that
21 we can do administratively, but not from a
22 judicial punishment perspective because we don't

1 get the results back for close to a year.

2 And that's just in my experience, you
3 know, results may vary, but that's just one
4 example that I have.

5 CMSGT HODGIN: I'll add from the Air
6 Force perspective.

7 You ask about UCMJ, I would say that
8 if you're going through the non-judicial
9 punishment route, it can, just generally
10 speaking, it's much quicker.

11 I think the timeliness is much more
12 fair.

13 Once it escalates to the court-
14 martial, that's where I've seen it drag on for
15 years, to be honest.

16 CMC CARROLL: Yes, I concur.

17 If I want to find someone working at
18 1800 on a Friday, I know I can go down to legal
19 and they're there.

20 So, it is not a will of our legal
21 staff. They're really good at what they do and
22 they spend a lot of time at it.

1 But when we need to engage our CGIS
2 and go from a UCMJ violation to a court-martial,
3 that's when it really takes a long time and we
4 just don't have, again, the garrison force or the
5 areas to keep these people while they're waiting.

6 And we also need to care for them as
7 if they were still a member of our society, still
8 in our service, and that we -- I think we do an
9 okay job, but we could do a better job of making
10 sure they're okay.

11 They're waiting on the fate of their
12 life and we -- and that year to two years is a
13 long time for someone to sit and wait for those
14 things.

15 So, absolutely, you know, wave the
16 magic wand if we could get through cases a lot
17 faster would be better.

18 And then, a lot of times, people have
19 transferred by the time that we do finally get to
20 their court-martial or we're going to adjudicate
21 from that case and/or it leads commanders to have
22 to make alternative choices.

1 Do they want to wait two years to do
2 a court-martial or do they want to process this
3 person for separation and move on from it?

4 CMC RUSHING: I would argue as well
5 that a sailor waiting for a courts martial or
6 waiting through an admin type process, other
7 sailors see that and they often think nothing is
8 happening to this person. Right?

9 Guilty or innocent, you know, public
10 opinion, you know, the unit opinion is like
11 there's nothing happening. What's going on?

12 So, we're fighting through that as
13 well.

14 Thank you.

15 MS. GUPTA: All right, I'd like to
16 move on to discuss perspectives on the military
17 justice system.

18 Do you believe that the military
19 justice system is fair for both the victim and
20 the accused and why or why not?

21 CMC CARROLL: I do.

22 And again, six years, again, to look

1 at it from both sides.

2 I think we have, you know, I look at
3 a lot of things in the service, would I want my
4 children to be in the service. And if something
5 happened to my children, either way, I think our
6 military justice system would be the best place
7 for them to be during one of those cases besides
8 out in public.

9 I will say, our afloat tours, I wish
10 that they were afforded the same ability to get a
11 -- to elect court-martial. I think that would
12 help adjudicate -- I think that would help evenly
13 to a more fair system.

14 Because as we all know, if you're
15 attached to a float unit in the Coast Guard, you
16 can't elect to go to UCMJ. And I think that does
17 just disadvantage as we are looking for people
18 that need to go afloat.

19 It's just another disadvantage that
20 they don't get the same judicial processes as
21 their peers.

22 SGTMAJ FONTENOT: Yes, I just, if I

1 can, ma'am, just jump back to -- because I didn't
2 want to oversee this, the policy changes.

3 Can I address that real quick?

4 One of the things that I had a
5 recommendation on, and I don't know if this panel
6 is the correct avenue for this, but here's what I
7 would say.

8 Is that the pre-trial confinement, and
9 taking a look at pre-trial confinement in the RCM
10 and what exactly it states in there to hold
11 someone in pre-trial confinement in the brig
12 until, you know, their hearing at least and for
13 the foreseeable future.

14 We just got done with an IRO hearing
15 last week where the argument was made that, you
16 know, the individual doesn't show, you know, that
17 they wouldn't, you know, continue to be at work
18 or they would continue to do undisciplinatory
19 things.

20 And I would just say that, well, you
21 didn't share that until you did.

22 And the loss of confidence that we

1 have in this individual to be able to influence
2 those that are around them, but also to be able
3 to walk amongst the believed accused, you know,
4 victims and those individuals walking around, the
5 commanders hands seem to be tied to, you know,
6 with the interpretation of the RCM.

7 And arguments that could be made on
8 either side that are either stronger or not.

9 And then, we have IROs who are out
10 there that aren't as educated and/or have not
11 done but one or two IRO hearings.

12 Different services maintain different,
13 I don't want to say command cultures, but, you
14 know, we pride ourselves in the Marine Corps on,
15 you know, very much good order and discipline and
16 that being a focus of the character of who we are
17 as Marines.

18 And so, it's hard for us to swallow
19 those when, specifically, we're not on a Marine
20 Corps base to have those IRO hearings and be, you
21 know, going through this system, I guess you
22 would say, with respect to our own service.

1 So, that's just a challenge for us.

2 To address what you said, the fair
3 system, yes, I mean I think it's pretty fair and
4 impartial.

5 I think at the end of the day, we've
6 had quite a few folks go in, whether they're
7 Marine Corps or not courts-martial have done some
8 up here as well. And it's pretty fair and
9 impartial.

10 I've got other comments to that later,
11 but yes, thanks.

12 CSM LATHAN: I think it's pretty fair
13 and impartial.

14 I think one of the things that we kind
15 of struggle with is the transparency piece of it.

16 And more importantly, the -- you can't
17 really have real transparency without the
18 education piece as well. And the education piece
19 is so hard to do a lot of times.

20 If somebody is or is not adjudicated,
21 I think that a lot of times leaders, myself
22 included, don't take the time to educate the

1 formation on what exactly happened.

2 And so, I think that, you know, in
3 trying to make sure that reserving people's
4 privacy and all that.

5 But I think that there needs to be a
6 concerted effort by leaders to make sure that we
7 tell what happened as much as we possibly can so
8 that we promote good order and discipline and so
9 that we promote the actual system and show how
10 fair it is, whether the -- no matter how the
11 process ended.

12 CMSGT HODGIN: I was just going to add
13 that I do believe it's fair as well.

14 But the one thing I would say as far
15 as the victim and the accused, when things drag
16 on so long, the accused still has to exist within
17 the unit.

18 And while the letter of the law may
19 say one thing, the court of public opinion around
20 the unit might say another thing, which I think,
21 you know, especially if the person ends up being
22 found, you know, not guilty of whatever the

1 accusation is, but those reputation damaging
2 thoughts that are already infected in the unit.

3 MS. GUPTA: I'd like to follow up on
4 the transparency piece.

5 Would anyone else like to comment on
6 whether more transparency and information about
7 ongoing courts martial would increase awareness
8 and trust of the system?

9 SGTMAJ FONTENOT: I'll just say that
10 I'm a big fan of transparency.

11 But I think you also have to be
12 probably keep that filtered to a certain degree.

13 What I mean by that is, in full
14 transparency, you know, I've had some offices
15 that we have dealt with that, not the office
16 itself, but the system there allowed for cocaine
17 use to, you know, for a lesser, you know,
18 sentence, say, hey, you know, it's not needed
19 here and, you know, and off we go. Right?

20 And what do I mean by that is that,
21 you know, they've gone to their special or
22 summary, you know, court-martial and have been

1 found not guilty because they came up with the
2 excuse of how, and the story of, you know, when
3 things happened, which was believable to a
4 certain degree.

5 And then, they believed them enough
6 they went and now they're back in our ranks.

7 Where if we deal with those things,
8 you know, at NJP, the stuff, you know, it's done,
9 it's dealt with because the rules of evidence
10 don't apply and it's different, you know,
11 adjudication process.

12 But when it comes to the transparency
13 piece of saying, hey, here's all the things that
14 have happened over the last year, and this is the
15 outcome of it, I think it could be very positive.

16 It was positive when I was a junior
17 Marine and I saw the list hanging up, you know,
18 down by the company First Sergeant's office that
19 said here's all the NJPs and courts martial we've
20 done over the last year and, you know, don't be
21 the one.

22 And you'd read some of that stuff

1 standing outside of his office just waiting to,
2 you know, see him for something that was going on
3 and going, man, I certainly don't want to go, you
4 know, go down that road and that avenue.

5 So, I think full transparency can be
6 more positive than it is not.

7 CMC RUSHING: I mean, in regards to
8 non-judicial punishment at Navy unit level, those
9 results are pretty much advertised either in the
10 plan of the week, plan of the day, or things of
11 that nature.

12 In regards to courts-martial, it's
13 easy for me to go on the internet and do a search
14 for Navy courts martials and I go the Navy legal
15 site where it has a number of years worth of
16 courts martials results, whether, you know, the
17 guilty or not guilty, which is great.

18 What I struggle with with that is, if
19 I want a little more detail on the case, even my
20 JAG Corps officers struggle a little bit trying
21 to get those details.

22 That would be beneficial, an easy way

1 to obtain a free or fore set and summary of the
2 case so we can -- the leaders can use that to
3 educate or whatever.

4 Thank you.

5 CMC CARROLL: I would add with
6 transparency, it takes education for people to
7 understand what it looks like.

8 So, for example, you could see, and I
9 go to our good order and discipline message that
10 a member was found not guilty of sexual assault.

11 That doesn't mean that the victim made
12 it up, that means they were not found guilty.

13 And those things, we have to be able
14 to tell the rank and file of our organization
15 what that means.

16 Because we don't want a narrative
17 where people are making up cases like that.

18 And those are things I've had to talk
19 through at all hands and I'm glad to do that.

20 But we need to make sure that, with transparency
21 comes education as well so people understand what
22 it's supposed to look like and what the outcome

1 of a case truly means.

2 MS. GUPTA: Unless there's any other
3 comments on that, I'm going to have a follow-up
4 question to the fairness piece.

5 Do you believe there's a difference
6 between how enlisted and officers are treated in
7 the military justice system?

8 CMC CARROLL: I do, and I think we saw
9 that with COVID. There's a legal-first policy
10 standard of how you process people through and
11 discharge them.

12 So, I do think that there is a
13 difference. I sort of understand it, but I also
14 think as a service we need to move past the
15 difference.

16 I think our enlisted workforce is very
17 capable, smart, educated, come through the
18 system. Even if you look at the good-conduct
19 medal that we get every four years, there's just
20 no place for it anymore, because we expect all of
21 our people to have good conduct, not just our
22 officer corps.

1 So, I do feel like there's a
2 difference that we could work on.

3 SGTMAJ FONTENOT: All right, I'll jump
4 in. There is a difference, but there's a reason
5 for that difference that I don't necessarily
6 fully understand but I accept.

7 A lot of sergeants major, first
8 sergeants, master gunnery sergeants, master
9 sergeants, senior enlisted, get in trouble,
10 they'll go away. They'll go away and they
11 retire.

12 That has a second-door effect to their
13 lives and to whatever it is that's going on.
14 Specifically, like, I'll just talk about, like,
15 let's just talk about a Gunny.

16 Gunny has been in the Marine Corps for
17 sixteen years. He's told that, hey, you're going
18 to go away. You haven't reach eighteen-year
19 mark, you're not going to be around for
20 retirement, off you go.

21 But they weren't court-martialed, they
22 weren't NJP'd, but they were forced to move on.

1 That has a significant effect on all
2 the things that were lost, not only that
3 individual not get promoted, that individual did
4 not reach retirement eligibility, and is no
5 longer reaping all the benefits that come with
6 that.

7 But going back to your educational
8 piece, that's huge, which is a part of this whole
9 thing. Right?

10 Is that if our young people don't
11 understand that, hey, there is a difference, but
12 here's the second-door effect of that difference,
13 is that it'll continue to be a lack of
14 acceptance, if you will, of what those
15 differences are, because they don't understand
16 that they all have an impact, it's just a
17 different impact.

18 And I think it was brought up earlier
19 that a lance corporal can get NJP'd, and/or
20 court-martialed if they are retained, and still
21 bounce back from that first enlistment --
22 right? -- get promoted to corporal, be able to

1 reenlist maybe as we do using a tier system --
2 maybe not a top ten percent guy, but maybe a top
3 50, or a bottom third type of an individual, but
4 still the Marine Corps will say, hey, we need
5 retention, we need folks around, let's keep him
6 around.

7 Not a bad thing, but they have that
8 ability. Officer? Not happening. You're going
9 on the bad list, the commandant knows about you,
10 and you're not sticking around anymore --
11 right? -- type of thing.

12 So, there's differences, but there's
13 reasons for that.

14 MS. GUPTA: Any other comments on
15 that?

16 CMSGT HODGIN: Just fairly similar to
17 what Sergeant Major was just saying. So, on the
18 Air Force side, the main differences I see is on
19 the progressive discipline side. An LOC, an LOR
20 for an airman is meant to nudge them back within
21 standards, and they can recover from that, even
22 all the way up to non-judicial punishment.

1 For officers, an LOR can be pretty
2 much the end of their career. And so, the
3 differences are there and they're visible. But
4 the punitive nature of each is much less for the
5 enlisted side, so, I understand the reason for
6 it. And I've seen junior-enlisted, and even
7 senior-enlisted, recover from not only LOCs,
8 LORs, but also non-judicial punishment. And I
9 think that uses a rehabilitative tool for the
10 enlisted force.

11 CSM LATHAN: I agree. I think that
12 it's not necessarily the same, but I believe that
13 from an enlisted perspective, younger enlisted
14 personnel do have the opportunity to bounce back,
15 where there's a lot of times our officer
16 counterparts may not necessarily have the same
17 opportunity.

18 And so, giving an example, young
19 officer does one thing, junior-enlisted does this
20 over here. We visibly see the junior-enlisted be
21 stripped of their rank and this, that, and the
22 other. We don't necessarily see that for our

1 officer counterpart.

2 However, now that officer has bad
3 paperwork. In a lot of ways, his or her career
4 is over with. And not a lot of people see that.

5 And so, just educating our soldiers on
6 what is going to happen to that person. You
7 know, again, protecting their privacy. But just
8 that education piece I believe goes a long way.

9 MS. GUPTA: All right, I'd like to
10 shift gears and talk about the Office of Special
11 Trial Counsel.

12 Do you believe that having an
13 independent prosecutor rather than the commander
14 make a decision about whether to prosecute
15 certain cases, will improve the perception of
16 fairness in the prosecutorial decision? And why,
17 or why not?

18 CMC CARROLL: I do think it will. I'm
19 in favor of it. I have not worked for a
20 principal that didn't want to hold perpetrators
21 accountable to the fullest extent for that.

22 I also understand that it is hard

1 sometimes when you can't share details to make it
2 look like it's a fair assessment and everything,
3 and a lot of times you'll see on some of these
4 120 cases, it'll be the perpetrator will have
5 been a high performer.

6 And then it won't lead to the end
7 result that the service wanted, based on all the
8 facts we've already talked about.

9 So, I'm really a big fan of us
10 shifting to an OCT and having that be a process
11 that looks as impartial and as fair as it can be,
12 and truly it's going to be.

13 And I also think, talking with my
14 operational commander, I don't see where he -- he
15 doesn't fill in a loss there, because again he
16 wants the same thing, to be as transparent as we
17 can, and have as much trust in the system with
18 our people as possible. And we think that's a
19 step in the right direction.

20 CMC RUSHING: I fully support it as
21 well. Our unit commanders are more than capable
22 to handle this stuff, but I tell you, they are

1 busy dealing with daily ops.

2 So, it was fair before, I thought, and
3 I know it'll continue to be fair through the
4 Office of Special Trial Counsel. But it does
5 alleviate some of the work burden on those unit
6 commanders. Thank you.

7 CMSGT HODGIN: Yes, I believe it was
8 fair before and I think it'll still be fair.
9 I've had the pleasure, and over the course of my
10 almost 26 years in the Air Force, like every
11 commander that I've ever worked for had the best
12 intentions.

13 And I didn't see anyone where I would
14 raise my eyebrow and think that they were being
15 unfair based on the circumstances that were
16 presented to them.

17 And I still think it'll be fair under
18 OSTC, where I'm hoping -- and I haven't seen it
19 yet because it's such a new process -- that if
20 the OSTC defers to take on a case, that that is
21 sending an inadvertent signal to the commander
22 that the case isn't worth pursuing.

1 I hope that that doesn't happen, which
2 is why we're looking for feedback. Why are you
3 not taking this case up? Is the evidence not
4 going to reach a certain threshold, and possibly
5 we could go after something else?

6 I'm concerned that when they say, no,
7 we're not going to do it, that it's going to be a
8 signal that, hey, we're going to drop this too.

9 MS. GUPTA: We already began speaking
10 about this, but can you comment some more on
11 effective disciplinary tools you've seen used
12 outside of courts martial, to hold an accused
13 accountable?

14 SGTMAJ FONTENOT: My boss jumped on it
15 earlier, and I'll jump on it again. I didn't see
16 making big rocks into little rocks. And I will
17 tell you this. I was in the Marine Corps and I
18 came in 1997, and we had CCU and it was very,
19 very effective.

20 There was not one Marine that we
21 didn't send out of First Marine Division to that
22 correction facility, that didn't come back more

1 respectful, more disciplined, and really
2 rehabilitated of all things that we expect out of
3 these Devil Dogs.

4 And it wasn't just big rocks and
5 little rocks. It was a rehabilitation that was
6 there to really pour into these folks in a
7 focused, in a short period of time of three
8 weeks, to say, hey, what we're doing here and
9 what you're doing is not okay. Let's hit the
10 reset button here, get you going back in the
11 right direction, and off we go.

12 And I will tell you it was a huge
13 deterrent of saying, no, I'm good, I don't want
14 to go in that direction, for our folks to take
15 into consideration when thinking about
16 misconduct.

17 CMC RUSHING: I fully concur with
18 Sergeant Major's comments. Thank you.

19 CSM LATHAN: In the Army -- I've been
20 in the Army almost 32 years. But we used to have
21 something like that called School & Soldier. And
22 so, it's made a comeback every now and then, but

1 it was highly effective. And it was for sure a
2 deterrent.

3 We didn't make big rocks into little
4 rocks, but again, the deterrent was there and
5 everybody that went to school, the soldier did
6 come back a more disciplined and a more
7 respectful human being.

8 CMSGT HODGIN: So, for the Air Force,
9 yes, almost everything we do doesn't rise to the
10 level of a court-martial. So, the progressive
11 discipline that we employ handles almost all of
12 our discipline issues.

13 I think there's only been ten court-
14 martials at McChord over the last three years.
15 So, LOCs, LORs, non-judicial punishments, these
16 are the things that we use every single day in
17 order to nudge people back within standards.

18 CMC CARROLL: When I look at
19 disciplinary cases, I look at it from, first of
20 all, is it a one-time offense? I think all of us
21 are talking about repeated performance of bad
22 behavior.

1 I typically ask my senior leaders to
2 look at why. As to why are they in this
3 situation, or some sort of barrier that's
4 relieving them from being as good as they can be.

5 And then we got to make a decision.
6 Do we keep them and try to rehabilitate them, or
7 do we send them on their way?

8 Again, we don't have that process.
9 The Coast Guard used to be able to send them.
10 This was back when I first came into the Coast
11 Guard and I'm still around. But I don't have a
12 lot of experience to talk on that.

13 But I will say that I ask people to
14 lead in on the people we have, and truly try to
15 find out what is going on.

16 And we get very robotic in the Coast
17 Guard into rolling down a process of performance
18 probation, they fail performance probation, then
19 we discharge them.

20 Well, we need people in the Coast
21 Guard. So, I'm asking them, are you sure? You'd
22 rather sail short than sail with this person?

1 And that's led to, I would say, a lot
2 of positive returns. But again, typically,
3 people don't show up to work wanting to do bad.
4 So, I kind of ask us to lean in on that.

5 SGTMAJ FONTENOT: I would like to say
6 too that -- and this directly correlates to it --
7 there was a commandant in 1999 who wrote a
8 publication, and that publication was called
9 Sustaining the Transformation.

10 General Krulak, to his credit, did a
11 great job with writing this publication. And
12 that publication gets after -- we take this
13 civilian that's been a civilian typically, at
14 least for 60-plus percent of the force in the
15 Marine Corps, we take this individual, after
16 eighteen years, put them in the Marine Corps,
17 thirteen weeks of boot camp, transform into what
18 we believe to be the best product that one can
19 produce in the thirteen weeks.

20 That individual then has a litany of
21 things that they go through before they get to
22 the fleet.

1 They get to the fleet and it is really
2 up to them, their leadership, to pour into them
3 to continue to sustain the transformation of what
4 we call Marine.

5 And General Neller reinvigorated that
6 a few years ago as a commandant. And I will tell
7 you that that is a focus that we have at our
8 battalion, is getting after things like that.

9 Changing the character of an
10 individual invites just an outcome and a behavior
11 change. It's much like a parent does, as General
12 Lejeune ended up alluding to, the parent -- dad
13 relationship to a son, and to a daughter.

14 I'm not just after your behavior
15 change, son. What I'm after is changing the
16 character of who you are, because that's long-
17 lasting.

18 And so, that directly correlates to
19 good order and discipline and getting after these
20 things, because when you're changing the
21 character and desire of somebody's heart, which
22 takes a very long time, those of us that are

1 parents, and a lot of patience and a lot of just
2 pouring in. It's very exhausting.

3 You then start to change the climate
4 and the culture of your unit, and that has an
5 effect on shenanigans down the road.

6 MS. GUPTA: Turn it over to Dr. --

7 (Simultaneous speaking.)

8 MS. GUPTA: Oh, I apologize.

9 CSM LATHAN: The last thing I'll add
10 to that is, one thing that we do take into
11 consideration is bandwidth. And so, if you have
12 an individual that is taking up a lot of
13 bandwidth, down at the company's root battery
14 level, sometimes we just have to do addition by
15 subtraction.

16 And so, the Army is not necessarily
17 growing. We're struggling with the sessions, and
18 we're struggling with retention as well. But a
19 lot of times this person has demonstrated, at
20 chance after chance, that they clearly don't want
21 to be all they can be. And sometimes, it's just
22 we need to do a little bit of addition by

1 subtraction.

2 CHAIR HILLMAN: I think Captain
3 Schroder had a question too. I just wanted to
4 follow up. You see the consequences of a lot of
5 youthful behavior and misbehavior, mostly on the
6 good side, honestly, with the missions that
7 you're pursuing, and people supporting that, but
8 some on the other side.

9 And to be honest, as a parent, I think
10 kids are a little different today than they were
11 in the past. And so, I think the service members
12 who you're leading are different than in the
13 past.

14 Can you characterize that for me? I
15 mean, what do you see now that's different?

16 CSM LATHAN: Nothing. They do the
17 same stuff that I did when I was nineteen. The
18 only difference is that everybody knows about it
19 because of how they communicate.

20 There's nothing that these soldiers
21 are doing differently than my kids do and my
22 kids' friends do. It's just that we just know

1 about it a lot more.

2 And the regulations, and things of
3 that nature, continue to change. And so, what
4 was allowed when I came in the Army in the '90s,
5 and what's allowed now, are two different
6 planets.

7 And so, again, society really hasn't
8 changed that much, kind of. We're still kind of
9 doing the same stuff. I just think that -- and
10 this is something I talk to my junior leaders
11 about. Like, hey, these are the same humans that
12 they've always been.

13 And it's not like these people are
14 from Mars. They're just doing the same stuff.
15 We just have to use the tools at our disposal, to
16 make sure that good order and discipline is
17 adhered to in the organization.

18 SGTMAJ FONTENOT: Dr. Hillman, just
19 for clarification, just societal folks coming in,
20 and kind of what's the norm or the differences
21 for them, I would say that for our level of
22 nexus, the leather's not as thick.

1 They truly have grown up in a society
2 that is different. And that's not wrong. It's
3 just different.

4 And so, that's made them, I guess for
5 a lesser of words, soft. And trying to build
6 some of that resiliency, and that resiliency
7 underneath the umbrella of what does it mean to
8 get after the challenges in life that you face --
9 because everybody has anxiety, by the way, and
10 how do you get after that? An acceptance of,
11 it's okay not to be okay, it's not okay to live
12 in that, and moving forward.

13 And so, from an educational
14 standpoint, whether it be operational stress
15 control, an assessment of risk, which is our
16 OSCAR team that comes together in really trying
17 to get after these issues, we find ourselves as
18 leaders, as pouring a lot more into them, with
19 respect to their resiliency or the lack thereof
20 that they don't have, whether it was just from
21 society, whether it was from their parents.

22 We know that the divorce rate has gone

1 up, right? And mom and dad's both not around.
2 And so, that has its own challenges that they
3 bring.

4 I know this not because of politics or
5 anything of that nature, but sitting kneecap to
6 kneecap with young devil dogs that share these
7 issues, and say, Sergeant Major, this is the
8 problem that I'm having. This is what's going
9 on.

10 And it is a problem from their home
11 life and what they brought the baggage into the
12 Marine Corps. And now, it's up to us to parent
13 them, quite frankly, and to raise them up in the
14 way that they should go.

15 And we're up for the challenge to do
16 that. But that's a lot more of a challenge today
17 than it was when I came in, when it was just,
18 hey, suck it up, man. Like, this is just the way
19 that it is. Keep it moving. Right?

20 Okay, Roger that. Why? Because the
21 society said that that was okay. Society said
22 that that approach was just how we did business.

1 The society today, which bleeds over
2 into the services, does not say that that
3 approach is okay. This is, no, no, no, no, no,
4 we've got to sit down with these folks and do all
5 the things, in order to get to this.

6 I don't disagree with you. But that
7 takes a lot of time and a lot of effort and a lot
8 of exhaustion on leadership's part to get after
9 that. To do what I talked about in a previous
10 question.

11 And so, that's viable. I think that's
12 a big deal. I just don't know that we've really
13 dove deep on, at what level is it -- okay, now
14 we're going to be addressing these things almost
15 from a rehab standpoint, and not from just
16 leadership getting after it -- okay, hey, let's
17 walk alongside you, just get this thing done in a
18 timely manner.

19 But now, we're taking months, and if
20 not sometimes years, to work with this individual
21 through all the things that is offered to them,
22 in order to, quote unquote, rehab them to be a

1 better Marine.

2 CAPT (R) SCHRODER: My question's not
3 as insightful as Dr. Hillman's? And I don't want
4 to go too much into a rabbit hole. But I, like
5 Master Chief Carroll, seem to remember this idea
6 of a disciplinary platoon, or whatever you call
7 it.

8 But my memory was that the selection
9 process was, hey, people we think can be
10 rehabilitated.

11 It's not really as much disciplinary.
12 We're sending somebody for punishment, as to
13 rehabilitate them. And just I'm curious about
14 those of you who've talked about that.

15 Was that the process in the Marines,
16 or the Navy, or the Army? The selection process?
17 What were you looking for?

18 CMC CARROLL: When I look at
19 rehabilitation versus someone removed from the
20 Coast Guard, I look at are they doing harm to
21 somebody else with an intent?

22 So, if they're an actual want-to-do-

1 harm-to-somebody-else, they have no place in the
2 Coast Guard.

3 If they need help getting back on
4 track, that's where we need to lean in and do
5 those things.

6 And the same with -- I'm not sure this
7 is exactly on topic -- but say you see a mast.
8 So, if we hold a Captain's Mast, my typical
9 recommendation for that is if we have a systemic
10 issue within that area -- if it's a one-time
11 person offending it, I don't even normally like
12 going there, because there's other ways to get
13 after it without doing that; without taking that
14 time.

15 But if it's a systemic issue within a
16 unit, a station, a sub-culture, then those are
17 when I recommend those.

18 But for me, it's very simple. I look
19 at a case as, is this person actively wanting to
20 do harm to the service, or is it someone that
21 made a one-time mistake, or someone that wants to
22 do well and they're just struggling.

1 CMC RUSHING: For me, it's pretty
2 black and white. Whether a sailor -- let's say
3 they've executed misconduct. Was it an honest
4 mistake or a dishonest mistake.

5 And I think our commanders and our
6 senior enlisted leaders in the Navy were pretty
7 savvy in regards to figuring that out.

8 So, that would be my litmus test. Was
9 it a dishonest mistake or an honest mistake? Can
10 they be rehabilitated at a correctional unit or
11 not? If not, let's addition through subtraction.

12 SGTMAJ FONTENOT: Okay, I don't know
13 that we have enough time for me to unpack this.
14 But here's what I would say in short.

15 I was a first sergeant in the same
16 unit that I'm at currently right now, 2014
17 through 2017. Again, chose to go back there
18 because that's where I started as a young Marine,
19 and the issues there are generational.

20 Here's what I would tell you, and what
21 I learned as a young leader as a first sergeant.

22 It's not if, it's not when. It's not

1 a drawing a line in the sand that says, well, if
2 you do this, if you do that right, then you
3 deserve, or you will get, or my best, or
4 rehabilitation, you've drawn a blank.

5 I'm going to pour into your leadership
6 when you don't want to be poured into. I'm going
7 to challenge you when you don't want to be
8 challenged.

9 And the challenge for our leaders is
10 to understand that your leadership and the
11 pouring into people, regardless of whether
12 they're pending sexual assault, or they're just
13 being a knucklehead in the barracks, they don't
14 get to choose, and neither do you.

15 You pour into all of them. Regardless
16 of what they do. Not if and when they choose to
17 be different, but because that's what you owe
18 them to do as their senior enlisted leader.

19 And so, it's tiresome. It's
20 exhausting. I would say that's not been the
21 stance of leaders that I've been around, for
22 various reasons. Right?

1 Usually, it's just their personalities
2 and kind of where they're at. Pour into people
3 who deserve to be poured into, who want to
4 change.

5 There's a lot of times that young
6 Corporal Fontenot didn't want to change. And
7 there was a gunnery sergeant who sat me down
8 kneecap to kneecap and spent that time and poured
9 into me -- that I didn't deserve him doing
10 that -- that I changed.

11 And so, I believe that those things
12 have a direct impact on the good order and
13 discipline of a unit, and also the outcome of
14 less shenanigans happening. So, it's less NJPs,
15 less court-martials.

16 But everybody's got to be onboard with
17 it. They can't be onesies and twosies who are
18 doing things in that manner, if that makes sense.

19 JUDGE SOMERS: Hi. I don't know if
20 this is on track with what we're talking about or
21 not. I'm just going to frame it the way I was
22 thinking of it.

1 So, when I was in the Air Force doing
2 court-martials, you'd always try to get a panel
3 member of either senior officers, or senior
4 enlisted. We didn't want to have the young
5 captain on there because they didn't have the
6 perspective that we thought would be helpful for
7 deciding a case.

8 And I'm wondering, you have such great
9 experience in a lot of the young officers who are
10 coming in, are coming from the same society that
11 we were just talking about with the enlisted.

12 Are you able to guide those young
13 officers to have more perspective? Do they
14 listen to you? What kind of things can we take
15 away from that?

16 Because I know that my senior enlisted
17 advisors were my guideposts. And so, I just
18 wonder if you're experiencing the same thing now.

19 CSM LATHAN: I think it's just being
20 a good example, being the best you can possibly
21 be in living the same values that you're saying,
22 or you're enforcing to other people, to the best

1 of your ability. Nobody's perfect, but I think
2 there's a difference between you being perfect
3 and you being undisciplined.

4 And so, not trying to be a robot or
5 anything like that, but just trying to be the
6 best person that you can be at the individual
7 level, and being a good example.

8 CMC CARROLL: Back to both the
9 generational topics here. I call it the new
10 generation.

11 I don't say time, I would just say
12 younger than myself, is the why generation. They
13 want to know why.

14 So, and that includes officers and
15 enlisted. Why are we doing this? Why are we
16 doing that?

17 And I like that. I tell my leaders,
18 if you're going to get on stage in front of a
19 crew, it's long gone are the days we're talking
20 about the next uniform change and some easy
21 button topic to talk to.

22 You've got to know. Because they

1 research. They've got it at the tips of their
2 fingers. And they're going to come at you with
3 some real deep stuff and know.

4 But that does lead to, and I've seen
5 a junior officer's sailing our smaller ships
6 thousands of miles off to Indo-Pacific to Nation
7 Build. Twenty-six-year-old young leaders doing
8 those kind of things.

9 I can't imagine that some of the
10 things you war fighters are getting to do. But
11 it comes with a cost. And I'm the safe place.
12 They can shadow my door and say, I don't
13 understand what the admiral's thinking. I don't
14 understand what the 06 is thinking. And, okay,
15 let's talk about it.

16 So, I actually see more junior
17 officers than I do enlisted. Maybe that's just
18 the proximity where I'm at this stage of my
19 career. But I have a really good relationship
20 with them, I think. So, thank you.

21 CMSGT HODGIN: Speaking as the father
22 of a first lieutenant who's working down at

1 Cannon Air Force Base on the same mission that I
2 was doing back in 2007, this definitely hits
3 home.

4 One of the things we teach our
5 lieutenants is to find a master sergeant. Right?
6 Right when you get in, find that master sergeant,
7 because that master sergeant's probably been in
8 close to 20 years, you've been in for very little
9 time, you're 22, 23 years old.

10 But one of the things that I ended up
11 teaching -- we have what we call flight
12 leadership course -- that's kind of the first
13 time that they're in that command relationship.

14 And it can be easy to defer to the
15 enlisted member because of their experience. But
16 then teaching them, like, no, we appreciate that
17 you take our advice, especially on enlisted
18 matters. But you've got to be the decision-maker
19 in this situation.

20 And if there's ever a part where they
21 disagree, the officer should be winning in those
22 situations. And then if the chief master

1 sergeant needs to get involved, then the chief
2 master sergeant gets involves and explains to the
3 officer the nuances of the enlisted path.

4 So, yeah, that education piece for the
5 young officer to respect us enough to listen to
6 what we say, but also know that they're the
7 decision-maker in the relationship.

8 CMC RUSHING: Good morning, ma'am.
9 Yes, I agree with everything that's been said.
10 In my experience, our junior officers are pretty
11 darn sharp already. And they do tend to latch on
12 to the chief petty officer, especially at sea.

13 The few JO's that I've seen that have
14 screwed up, they only screw up once, and then
15 they go and talk to their senior enlisted leader.

16 But to couple with that, our ship
17 captains are pretty darn good at telling those
18 junior officers, hey, what did the chief say?
19 So, we get that good forceful watch team back up
20 at the commanding officer level.

21 SGTMAJ FONTENOT: They don't come see
22 me, I go see them. I think it's a culture of

1 what we breed.

2 But here's what I would say, is that
3 empowerment. The commanding officer either
4 empowers the sergeant major or he doesn't. And
5 you get marginalized to the officers.
6 Specifically, the junior officers.

7 And so, to CMC's point, when you say,
8 hey, what did the chief say, that's empowerment,
9 right?

10 To say, oh, the gentleman or the lady
11 who I look up to the most and who is the senior
12 officer of this boat, or of this unit, I need to
13 listen to them, and they're telling me to go talk
14 to the chief, they're telling me to go talk to
15 the staff sergeant, to the gunnery, to the
16 sergeant major, whoever, that's empowerment.

17 And I think it starts there. Because
18 if you don't have that -- and I experienced this
19 when I was at VMGR-352 as a sergeant major there.
20 Pilots didn't want to listen to the sergeant
21 major.

22 And that's because I'm an outsider.

1 I'm the only 89-9 that's there, everybody else is
2 an air wing. Never been an air wing in my life.
3 Infantry guy growing up, type of thing.

4 And I soon came to realize this. Wait
5 a minute. I'm not being empowered to do the
6 things, and for them to listen to what I have to
7 say.

8 Because I'm not jacked up. And I know
9 what I'm talking about. I didn't get selected to
10 sergeant major because I'm just all dorked up.
11 It's because at the end of the day, like, I've
12 got something to say that you may want to take
13 into consideration.

14 And so, I went to my boss and I said,
15 hey, sir, this is what I believe what's going on.
16 He's like, huh. That's very interesting. I
17 hadn't thought about that.

18 I said, look, two things. When you
19 get into the -- I forgot what they called it,
20 but -- the ready room, right? And you get in the
21 ready room and you talk to all your officers.
22 Empower me. And talk about, like, the sergeant

1 major, and this and that and so on and so forth.

2 And it was a different way of him
3 getting after and saying, hey, listen, these are
4 the things that I need you to do, and one of
5 those things is listening to what he has to say.
6 Because if he's saying it, I'm saying it. And if
7 he's saying it, it's important.

8 And so, that opened the door to things
9 like what we're talking about today. For them to
10 go, oh, okay, you mean legally, fill in the
11 blank, right? You mean, this is how this works,
12 or this is how that works.

13 And the second part of that was, where
14 he's at, I'm at. Right? And that means officer-
15 only meetings. Know the sergeant major was there
16 too, to pour into them, and again, to allow me to
17 have an audience with them, to grow them up in
18 the ways that they should go and what's expected
19 of them by the institution.

20 And that has second-tier effects,
21 whether it's in a court-martial room, whether
22 it's on a panel, whether it's them sitting on,

1 oh, by the way -- and I had an opportunity to
2 talk to them about sitting on AdSep boards.

3 Like, hey, gentlemen, ladies, this is
4 what you need to know and understand about AdSep
5 boards, and how and why, and things to take into
6 consideration.

7 So, I wasn't doing it whenever they
8 were on an AdSep board and I have a command under
9 the influence, but it was just the educational
10 piece, right? And then bringing the SJA and
11 having those discussions about things that you
12 take into consideration when they're on AdSep
13 boards.

14 CSM LATHAN: I think for the Marine
15 Corps and the Army, we kind of share a little bit
16 of the same culture. So, just like sergeant
17 major, they don't come talk to me.

18 It's just kind of like Army culture.
19 Like, their initial instinct, especially junior
20 officers, is to avoid the sergeant major. It's
21 just it is what it is.

22 But we seek out those opportunities to

1 talk with them, especially company-true battery
2 commanders, and even platoon leaders. Just
3 pulling them off to the side, talking to them,
4 talking to them about whatever they're doing.
5 Like, me and my commander always take
6 opportunities to pull those junior officers off
7 to the side and talk to them.

8 And he always defers to me. He will
9 literally in public go, I don't know, I'll defer
10 to the sergeant major.

11 And so, just like he's saying,
12 empowering your senior enlisted advisor or your
13 senior enlisted leader to help out with that kind
14 of stuff shows our officer counterparts, like,
15 hey, one, we are to be trusted.

16 And again, something I say all the
17 time. I will tell you, if I don't know, I don't
18 know. And I will say, sir, I don't know.

19 But the long and the short of it is,
20 it's just making sure you have those open lines
21 of communication, and then the relationship that
22 you have with your commander bleeds down

1 throughout the entirety of the brigade.

2 COL (R) BRUNSON: Sergeant Major, we
3 are taught as lieutenants to fear sergeants
4 major. So, that's why we're not talking to you.

5 MG (R) EWERS: So, I want to change
6 the trajectory just a little bit.

7 So, I mean, the great thing about the
8 military justice system that I grew up in, was
9 that the commander was the lord of all that they
10 surveyed. That's it.

11 So, as a senior enlisted advisor, CO
12 makes a decision people ask, geez, how can they
13 possibly make that decision. You say, that's
14 what the CO decided.

15 And now, we've flipped the script.
16 Now, the OSTC makes the decision, and the
17 commander might not agree with it.

18 So, now, you're holding onto that
19 decision; that you've just been advised by the
20 commander that the OSTC has made a decision on a
21 case and you need to explain it to your Marines,
22 soldiers, sailors, airmen, Coasties. What do you

1 say?

2 CSM LATHAN: So, by the time you make
3 E9, there are three things that you are: a
4 private investigator, a counselor, and an actor.

5 And so, a lot of times, what you have
6 to do is, you own it. You sit in a room with
7 your commander, you guys go back and forth, you
8 may even argue about it, just you and him.

9 You walk outside that room, you are a
10 united front. Period. And so, people will kind
11 of understand that maybe that's not the most
12 popular decision that's ever made, but as long as
13 you and your commander are a united front and you
14 and him or her have a clear understanding of
15 where you are at personally with it, but you are
16 still soldiers, and more importantly,
17 professionals, you walk out of that room as a
18 united front.

19 I think that it keeps good order and
20 discipline intact, and again, we just go back to
21 the transparency piece and education.

22 Because, again, I don't think that the

1 transparency can work without the proper
2 education and working with the right people to
3 make sure that that message gets down to the
4 individual level. But the proper education, I
5 believe, is the way to go, sir.

6 CMC CARROLL: I agree. The office is
7 an admiral for us in the Coast Guard. And I
8 think we're going to stand by their decision. We
9 know they are a trained expert in that.

10 I have a lot of faith in ours that
11 we're going to get it right as much as we can,
12 and I just don't see where we're going to have --
13 I'm certainly not going to shed light between my
14 admiral and that admiral, as far as it comes to
15 decision-making. And I'm pretty confident mine
16 will do the same, and it'll be the decision we'll
17 roll out and carry the message.

18 CMC RUSHING: I think the Judge
19 Advocate General Corps does a really good job, or
20 will do and continue to do a good job of
21 outlining the legal portions of the OSTC
22 decisions.

1 I mean, not to relitigate the case or
2 whatever, but I've seen my Jag Corps officer do a
3 good job of explaining what happened. Thank you,
4 sir.

5 SGTMAJ FONTENOT: General, I would
6 just say that it would be like undermining if we
7 did undermine the system, right? It'd be just
8 like undermining Lieutenant General Cavanaugh.
9 It's no different, right?

10 I mean, this is the system which we
11 have. We trust in the system. We believe it to
12 be fair and impartial. And what comes out of
13 that office, we got their back on it.

14 Between me and the commander and/or a
15 few of the command team members, I'm sure we can
16 disagree and have that closed-door session. But
17 coming out of there, I believe, just like these
18 gentlemen, being very professional and, hey, this
19 is the outcome, this is what it is.

20 I'm a big proponent that the command,
21 and specifically senior enlisted, for me, will
22 take the attitude of myself.

1 And if I have a positive attitude
2 towards the judicial system and towards the
3 outcome of it to be fair and impartial, they will
4 reciprocate that as well.

5 CAPT (R) ALDANA: I have a question
6 regarding the intersection of mental health
7 issues and discipline or military justice. Have
8 you seen a rise, or has that been an issue in
9 your cases that you advise or review with your
10 commanders?

11 CMC CARROLL: Yeah, I think we can
12 maybe talk generations again. But the first time
13 somebody fails can be a big failure. And they
14 have a very hard time with that as they're
15 waiting to find out their fate, so to speak, and
16 we do -- so we lean into the accused very hard to
17 make sure that they're being looked after.

18 The first thing I would tell somebody
19 that maybe that got a DUI, is like, today's the
20 worst day and it's going to get better from here.

21 And we're going to stand with you
22 through this. You made a mistake but you have

1 your whole life ahead of you.

2 You know, we have to have those
3 positive conversations with them, because I do
4 agree, I think mental health is on the rise.

5 But I also think it's more and more
6 people willing to talk about it. So, if they're
7 willing to talk about it, I'm willing to have
8 that conversation.

9 But that's why we need to speed
10 through things, as the wait is what is so hard, I
11 see on our people.

12 CMC RUSHING: Sir, if I could add onto
13 that, when it comes to the UCMJ, in my
14 experience, if they meet the elements of the
15 article, then easy day in regards to military
16 justice.

17 But when it comes to mental health, I
18 see an issue in the administrative portion of
19 that. I've seen a rise, in my experience over
20 the past couple of years, of administratively
21 possibly separating sailors, the Navy for
22 adjustment disorders, and things of that nature,

1 when there has been, in my opinion, no evidence
2 of that up to a certain point.

3 So, that's where I see it. Not
4 necessarily in the military justice system, but
5 in the admin portion. Thank you, sir.

6 SGTMAJ FONTENOT: I got plenty to say,
7 but I'm saving it.

8 MS. GUPTA: Since it was just brought
9 up, maybe we can have some follow-up questions on
10 administrative separations.

11 Can you share your thoughts on whether
12 they are appropriately retaining, verus
13 separating, service members accused of misconduct
14 similar to what was just brought up?

15 SGTMAJ FONTENOT: I'm glad that you
16 brought that up, because I made a lot of notes
17 about AdSep.

18 First and foremost, I'd like to just
19 address that the board members themselves that's
20 being chosen for this, they're us, I mean,
21 they're anybody, they're whoever.

22 And I'm sure they get briefed up and

1 there's a few things that happen there. But at
2 the end of the day, it's just like our board
3 members that are on the promotion panels for the
4 Marine Corps.

5 It's folks coming together, read some
6 precepts, and off you go, given it's kind of left
7 and right latter limits, and then they operate
8 within that.

9 But what we call that comes out of
10 there is the flavor of the board. And that is
11 very fluent. You can't really define it and you
12 don't really understand it. But it's a real
13 thing.

14 And that is the same thing that I see
15 out of these AdSep boards. That these board
16 members, which isn't necessarily fair, will say,
17 hey, retain this individual, for whatever the
18 reason. When they've done drugs, for instance.

19 And we have said, and you sign at MEPS
20 saying that the Marine Corps has a zero-tolerance
21 and zero-policy on drugs. On the use of illegal
22 drugs.

1 Well, we either do or we don't. And
2 when you go to the justice system -- now, I get
3 it, it's a justice system, it's what's written,
4 and I support that -- but you put people that are
5 in there who have various of opinions of whether
6 or not somebody should or should not be in
7 continuing service, that's hard to swallow when
8 we're retaining some folks that you had an
9 opportunity to make the decision, you're part of
10 a professional organization that prides
11 themselves on doing the right thing regardless of
12 what the cost is -- because in combat, what I
13 don't need is, I don't need to second-guess
14 whether or not you have good judgment and whether
15 or not you are going to be relied upon to do the
16 right things.

17 And so, that's a tough pill to
18 swallow. Specifically, I guess just for us in
19 the Marine Corps, whether or not someone
20 continues service.

21 One of the things that I would just
22 say to you is that I just think that there just

1 needs to be a little bit more education when it
2 comes to the process.

3 We try to do the best that we can. We
4 get after that with the SJA coming down. We've
5 had that individual once already in our
6 command -- that's officers and staff NCOs and the
7 two go together -- has talked to the justice
8 system, we talk through AdSep, we talk through
9 NJPs and court-martials and investigations, and
10 things of that nature, but a continuation of
11 that, maybe through the ROSOs, is what our next
12 move is, is to bring them out, get a different
13 perspective on some things -- case law and stuff
14 that's been happening locally -- and maybe just
15 giving a better perspective, so when they go into
16 those cases, they have a better filter in which
17 they see everything through, and it's not just
18 one-sided or uneducated, that they're making some
19 pretty serious decisions on.

20 CSM LATHAN: I think administrative
21 separation can be a very effective tool. I think
22 anything that gives commanders more options than

1 not is always good, in my book.

2 A lot of -- I wouldn't say a lot of
3 times. There have been times where somebody does
4 not necessarily meet criteria for court-martial,
5 for different reasons.

6 The administrative separation is a
7 tool that the commander can use in order to show
8 the formation that at minimum, this type of
9 behavior will not be tolerated in this
10 organization.

11 Even though we couldn't court-martial,
12 or even in some situations use UCMJ, but we can
13 use the administrative separation process as
14 another tool for the commander.

15 COL (R) BRUNSON: As a follow-up to
16 that, what is your opinion on those instances in
17 which a mandatory initiation of an Adsep board is
18 required, so it kind of really takes any
19 decision-making out of your hands? What are your
20 thoughts?

21 CSM LATHAN: So, I don't mind those,
22 ma'am. Because there's still a little bit of

1 discretion that the commander can use at Echelon.
2 So, there's the mandatory separations that occur
3 where my boss is the final approving authority on
4 it.

5 And so, he allows for commanders at
6 Echelon, company-true battery, and even battalion
7 commanders, to get input on whether we should
8 retain, or continue to go ahead and separate the
9 soldier.

10 And even for those situations where
11 it's the commanding general that makes that final
12 decision, she allows us the same ability to give
13 our comments on whether we want to retain, or
14 just move forward with the separation.

15 And I think it's case-by-case. And
16 it's based off of what the soldier's performance,
17 and more importantly, what their potential is to
18 continue to serve in the military.

19 So, I think that it's okay to have
20 things that are mandatory, as long as we still
21 have the avenue of, we don't have to totally ring
22 the bell in terms of the administrative

1 separation. We still have a little bit of wiggle
2 room in terms of our input.

3 CMC CARROLL: I think we could look at
4 time and service for the Coast Guard, that
5 generates either a, you get to an Adsep board, or
6 you don't get an Adsep board. And I would ask
7 and the why those timelines, and is that old
8 data? Should we maybe reexamine giving everyone
9 the opportunity for an Adsep board?

10 CMSGT HODGIN: I concur with Command
11 Sergeant Major with regards to the waivers. We
12 see this a lot with DUIs off-base and it
13 automatically triggers a discharge.

14 The squadron commander can then submit
15 to a waiver, which is approved or denied by my
16 boss. And any time a squadron commander has put
17 themselves, their name, on the line and said,
18 this airman we need to try to give one more shot,
19 it's been approved. So, I like the ability for
20 us to do that.

21 CSM LATHAN: Yeah, just to chime in on
22 that. There was a time period we got too many.

1 But myself and my commander, those commanders and
2 leaders that wanted to retain the soldier, you
3 had to come to the boss's office in person with
4 the soldier, and stand on the carpet and say why
5 you wanted to keep this soldier.

6 And what that did is it put the onus
7 on that soldier to say, hey listen, everybody
8 from your battalion command team, all the way
9 down to your team leaders, coming in here
10 vouching for you, saying that you should stay in
11 the Army and be a soldier.

12 And so, we've had a pretty good track
13 record in doing so. So, something that we want
14 to keep doing.

15 MS. GUPTA: I want to pick up on the
16 theme of rehabilitation that we were talking
17 about earlier, but specifically in the context of
18 service members who are convicted at courts
19 martial.

20 Can you offer any suggestions on ways
21 that the military justice system can, or even
22 should, be changed to place more consideration on

1 rehabilitation -- for example, substance abuse
2 programs, or things of that sort -- after a
3 conviction?

4 CMSGT HODGIN: So, I don't know about
5 my counterparts, but from my experience in the
6 Air Force, if a situation -- and ma'am, you
7 mentioned it earlier in the day, case-specific --
8 but if it rises to the level of a court-martial,
9 it's typically a situation that is a significant
10 core-values issue.

11 And if it is, that would be my red
12 line. Anything that's a red line with a core
13 value like -- I think of it as a super-structure
14 with a foundation. And any beam or wall that's
15 in part of that super-structure that could have
16 the ability to affect that foundation, which is
17 our core values, have caused the whole building
18 to come down.

19 And so, from my experience in 26 years
20 in the Air Force, I wouldn't think that there
21 would be a situation where an airman is going to
22 court-martial and gets convicted, and then we

1 would want that person in the formation.

2 CMC CARROLL: My only thought would be
3 that what is the point of going to the brig,
4 let's say. What is the point? Are we trying to
5 put them away forever? Are we going to try to
6 rehabilitate them and put them back into society?
7 Maybe not back into the service, but into the
8 society.

9 I would ask that we examine a person
10 we release back into the society, and try to do
11 our best to be proud of the resources we gave
12 that person, as a transition from the military
13 back to the society. Maybe not for themselves,
14 but for the better good of our country.

15 CSM LATHAN: I think it matters the
16 level of court-martial. And so, with the three
17 different levels of court-martial, the two lower
18 levels, I think that there's an opportunity for
19 rehabilitation.

20 And to be quite honest, I've actually
21 seen it in one or two occasions, where the lower-
22 level court-martial soldier was guilty, did their

1 punishment time -- one of them actually had to do
2 hard labor and came back to the formation -- but
3 some of those were able to be rehabilitated. So,
4 I believe it in terms of the lower-level court-
5 martials.

6 SGTMAJ FONTENOT: I would just ask
7 ourselves are we a rehabilitation institution. I
8 don't know, I haven't really dove deep into that,
9 but it's a consideration.

10 We're a warfighting organization. And
11 at the end of the day we're building war
12 fighters. Again, going back to Sustaining the
13 Transformation, General Krulak made it very
14 clear, and we've certainly adhered to that, that
15 we owe society a better civilian Marine whenever
16 they go back to society, defending society better
17 than what they left it.

18 But to what end? And where's that
19 line at? I don't know. But there's got to be
20 something. You have to have the parameters. You
21 have to say something that says, if this, then
22 that.

1 Because if you don't, you've opened it
2 to interpretation of -- it takes a lot of time to
3 rehab somebody. It takes a lot of resources --
4 money, and people, and doctors, and folks to get
5 them beyond where they were at. Or we can just
6 bring back CCU and be okay. So -- I'm just
7 kidding.

8 CHAIR HILLMAN: I'm going to muddy the
9 waters a little. We're building war fighters and
10 breaking war fighters sometimes too. And you all
11 know that, the stresses and the situations into
12 which we put folks, sometimes they come back
13 harmed in ways that causes them maybe to violate
14 core values.

15 So, it's not a different calculus then
16 at that point. I guess you'd work to keep that
17 out of a court-martial, and to manage it in a
18 different way. So, maybe that's the distinction
19 here.

20 But sometimes the behavior that
21 results from that PTS could be something that
22 would rise to the level of a court-martial

1 offense. And I think, as you know, it's a
2 difficult calculus.

3 MG (R) EWERS: And we actually require
4 our commanders to make those considerations for a
5 lot of discharge decisions at this point.

6 So, I mean, the number of cases where
7 somebody goes to a court-martial and might get
8 rehabilitated, meaning stay in the service, is
9 vanishingly small. There's so few of them.

10 And because they're on such a small
11 case-by-case basis, there's usually a readily
12 apparent reason for doing it, despite the fact
13 that the crime wouldn't suggest that
14 rehabilitation's a possibility. That's just for
15 what it's worth.

16 CMSGT HODGIN: Ma'am, I would agree
17 with you about the breaking war fighters piece.
18 And as far as if the core values are broken,
19 maybe continued service isn't an option. But we
20 don't forget about people.

21 Every chance I get -- I've had a
22 chance to talk to senators and Congress people

1 and civilians, like such as yourselves -- when
2 you make decisions to send us war fighters to
3 places where we have to do things, and we do come
4 back, you can't forget about us on the back end.

5 And so, every chance I get to preach
6 that message, that's what I say. Because maybe I
7 come back and I can't continue to serve, but I'm
8 still a person and I still carry those scars,
9 whether physical or mental, for the rest of my
10 days.

11 CMC RUSHING: Ma'am, if I may add, I
12 think there's a difference between the lower-
13 level misconducts and the correction custody
14 unit-type rehabilitation, if there's drug abuse
15 or alcohol abuse.

16 A lot of rehabilitation options are
17 available to the service member. I think we
18 fully inculcate that into the sailor's life.

19 But when a sailor is convicted at a
20 courts martial, and then the idea, in my opinion,
21 of rehabilitation to maintain that service member
22 in our Navy, I don't want any part of it. I want

1 them gone.

2 Because here's the way I look at it.
3 The service member takes that oath of enlistment,
4 or the officer takes that oath of office, and
5 it's different than the general public.

6 Held to a higher standard, whether we
7 like it or not, I don't want them in the Navy if
8 they're found guilty at a courts martial. Thank
9 you.

10 COL (R) BRUNSON: Does that change at
11 all, given from what I understand now, that with
12 the creation of the Office of Special Trial
13 Counsel handling all the big serious cases, now
14 the regular SJA office is freed up to handle some
15 of the low-lying fruit?

16 Where before it may have just gone to
17 NJP, or administrative separation, well now they
18 have the time.

19 So, the idea is, well, maybe there
20 will be more courts martial of things that three
21 years ago would have never seen the inside of a
22 courtroom. Does that change your opinion at all?

1 CMC CARROLL: Ma'am, I would just --
2 I have not seen where our poor legal staff is
3 freed up at all. I think they continually get
4 more and more and more. And I think we see
5 operational commanders, rightfully so, lean on
6 them for big decisions.

7 So, while I would like to think they
8 could have time for that, it's immediately -- at
9 least in the Coast Guard -- has been redirected
10 to areas where they need to focus in.

11 So, I just want to be careful as we
12 talk about removing some of their duties.
13 They're also preparing to send the information
14 that way. They're working through the cases,
15 they're working with our investigators, and
16 there's more need than there is lawyers. So, I
17 find that they don't have time to lean into other
18 things besides what they're going. Thank you.

19 SGTMAJ FONTENOT: Colonel, I would
20 just say in short, ma'am, I haven't really felt
21 anything different, as far as putting this into
22 play.

1 And I know that there's more that off
2 their plate, which is great. But from a commands
3 perspective, there was consideration, either you
4 belong commercial or you don't.

5 We either believe it needs to be at
6 that level, because what we're going to do is not
7 going to help maintain good order and discipline,
8 and/or send the right message, or hold you
9 accountable to the egregiousness of your offense.

10 So, it's neither here nor there. I
11 didn't care whether or not they were, like, heavy
12 burdened on caseloads, and things of that nature.
13 Like, this is where the commander believe it
14 needs to be at, that's where it's going to be at.

15 And if it's going to take a year,
16 year-and-a-half, so be it. That's the cost of
17 what came with it.

18 So, to answer your question, ma'am,
19 it's neither here nor there for me, and what I'd
20 advise the commander on.

21 Dr. Hillman, if I could, ma'am, just
22 address what you said, which is what you're

1 talking about, I'd love to have a sidebar
2 conversation on.

3 But in short, ma'am. Be careful with
4 that we break war fighters. I believe that the
5 ugliness of combat in a deployment, the byproduct
6 is a morally wounded -- specifically, morally
7 injured -- Marine, or service member.

8 We don't do a great job at the
9 transition back to society. And I'll just talk
10 04, 06, 09, and the combat tours I've had.

11 Ninety-six hours later, I'm at home
12 and I'm asleep in my bed. I won't get into the
13 details, but we didn't do that well.

14 And yes, can it have second-door
15 effects? Absolutely. Why didn't it with me?
16 Right? And why with other people that are going
17 to court-martials, egregious offenses, things of
18 that nature? Watching my own brothers out there
19 doing things and going, what in the world is
20 going on?

21 Some of that may be a change in the
22 actual brain tissues, and firing off of protons

1 and neutrons, and things I don't understand.

2 But I get back to resiliency. And I
3 look back and said, what allowed me to go through
4 that not once but multiple times, to come back
5 and be a resilient Marine?

6 And it was the four pillars. And I
7 won't get into all that, but it was being well-
8 balanced in those things. And people who I
9 allowed to pour into my life to make a
10 difference. To keep me out of trouble.

11 But it was also to my moral
12 convictions, and also the path in which I chose
13 to take when times of distress.

14 Unfortunately, my family was a part of
15 that transition. But we're better because of it
16 today.

17 But those are all choices. And again,
18 if you set aside the issue of the brain not
19 working the way it's supposed to and firing off,
20 and the actual doctor stuff that I don't
21 understand, and you just get back to the moral
22 scars and the things that we carry with

1 ourselves, it's how you choose to deal with it
2 every day that you wake up, and what you choose
3 to focus on.

4 And so, that's a challenge. Because
5 a young person specifically -- and we see; and
6 I'd love to know what the stats are -- that go to
7 court-martial, that go to NJP, that go to things
8 for egregious offenses, and you go, what is going
9 on in this individual's life?

10 Well, what were you thinking when you
11 were young? And if we're being quite honest,
12 some of you didn't get caught. Right?

13 So, just to be fair, that's a huge
14 thing to unpack with respect to these folks
15 coming back and how we're dealing with that.

16 But I think there's a lot more that
17 could be done to get after it on purpose, so that
18 we're transitioning this individual the best that
19 we can. Because everything that we have in
20 place, for the most part, outside of, like I
21 said, obviously for us, is reactive. Right?
22 It's reactive.

1 If you're having a problem, go see
2 this person. You don't know what to do with
3 this, go see that. Right? But it's not on the
4 front end proactive.

5 MS. GUPTA: I'd like to check in with
6 our Zoom members. Judge Kasold, or Captain
7 Barney, do you have anything to add to the
8 conversation? Any comments?

9 Does not sound like that. Open up to
10 the members as well, if anyone has anything else
11 they would like to get in before we have to
12 conclude.

13 MR. AGARWAL: I'm sorry, I couldn't
14 press the button fast enough. Judge Kasold, I
15 don't have any questions. Thank you.

16 MS. GUPTA: Okay, so if there's
17 anything else that we haven't covered that you
18 would like to share, we have a couple of minutes
19 and we invite you to do that right now.

20 CMC CARROLL: I want to thank you for
21 having us here today. I want to remember that
22 again the work you do is hard and gritty. Right?

1 And it's sometimes not at the forefront of the
2 service and what we brag about.

3 But it's so important as part of
4 taking care of our people. And again, I made a
5 few comments about the legal staff working late.
6 And you all really do that because you care about
7 people and you care about getting it right.

8 So, I want to appreciate that you're
9 doing this and that you're looking into this and
10 trying to get this right for our workforce.

11 CHAIR HILLMAN: Feel free to be more
12 critical. I appreciate that. And we have a role
13 to play where we can, as I said at the top,
14 either move towards progress or fall back. And
15 we like to keep making it possible for you all to
16 move ahead.

17 So, if there's anything else you're
18 seeing that you think we should make sure not to
19 touch, or maybe we should tinker with, we'd be
20 happy to hear it. But thank you for that.

21 SGTMAJ FONTENOT: Yep, thanks for
22 that, ma'am. I would say just in that vein,

1 don't tinker with what the commanders' abilities
2 are to be able to hold people accountable.

3 There was a comment earlier of, like,
4 whether or not the Special Trial Counsel should
5 have taken away these things from the commander
6 and whatnot. And somebody made a decision at
7 some point and we carried on, said, Roger that,
8 and off we went.

9 But if we could, as much as
10 possible -- we put so much into these commanders
11 to say, hey, you are trusted enough to take a
12 boat out across the whole entire world and do all
13 the things -- you're entrusted to lead an
14 infantry battalion into the face of adversity and
15 take the fight to the enemy, I think that we can
16 trust them to continue to maintain order and
17 discipline with being fair and impartial.

18 That does not mean that we can't pour
19 in more education and more knowledge, and
20 advisors, and things of that nature, at the
21 battalion brigade level. But I would like to not
22 see in the future, their arms be tied with

1 maintaining order and discipline within their
2 unit.

3 MS. GUPTA: Thank you so much for your
4 time today. We appreciate the insightful
5 comments and your thoughtful responses, and
6 taking the time to come today. Thank you.

7 MR. LIBRETTO: Ladies and gentlemen,
8 just a reminder, we'll be back on the record at
9 1:45. And the remainder of the two-day public
10 meeting will be closed to the public. So, all
11 those in attendance and virtually, please
12 recognize that the remainder of the meeting will
13 be closed. Thank you.

14 (Whereupon, the above-entitled matter
15 went off the record at 12:40 p.m.)

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Before: MJRP

Date: 04-23-24

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