



THE DEFENSE ADVISORY COMMITTEE ON
INVESTIGATION, PROSECUTION, AND DEFENSE OF
SEXUAL ASSAULT IN THE ARMED FORCES

MINUTES OF OCTOBER 19-20, 2017 PUBLIC MEETING

AUTHORIZATION

The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (“the Committee”) is a federal advisory committee established by the Secretary of Defense in February 2016 in accordance with section 546 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 and section 537 of the NDAA for FY 2016. The Committee is tasked to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces based on its review of such cases on an ongoing basis.

EVENT

The Committee held a public meeting on October 19, 2017 from 1:15 p.m. to 5:08 p.m. and October 20, 2017 from 8:47 a.m. to 2:56 p.m. On October 19, 2017, the Committee first heard from a sexual assault survivor about her experience. The Committee then received briefings on the Services’ expedited transfer policies and heard from special victims’ counsel about the expedited transfer policy and the special victims’ counsel program. On October 20, 2017, the Committee received informational briefings from commanders and senior enlisted advisors about the training they receive to respond to sexual assault allegations. Following the briefings, the Committee received an update from the Case Review Working Group.

LOCATION

The meeting was held at One Liberty Center, Suite 1432, 875 North Randolph Street, Arlington, Virginia 22203.

MATERIALS

A verbatim transcript of the meeting, as well as preparatory materials provided to the Committee members prior to and during the meeting, are incorporated herein by reference and listed individually below. The meeting transcript and materials received by the Committee are available on the website at: <http://dacipad.whs.mil>.

PARTICIPANTS

Participating Committee Members

Ms. Martha S. Bashford, Chair
Major General Marcia Anderson, U.S.
Army, Retired
The Honorable Leo I. Brisbois
Ms. Kathleen B. Cannon
Ms. Meg Garvin
The Honorable Paul W. Grimm
Dean Keith M. Harrison
Mr. A.J. Kramer
Ms. Jennifer Gentile Long
Mr. James P. Markey

Dr. Jenifer Markowitz
Chief Master Sergeant of the Air Force
Rodney J. McKinley, U.S. Air Force,
Retired
Brigadier General James A. Schwenk, U.S.
Marine Corps, Retired
Dr. Cassia C. Spohn
Ms. Meghan A. Tokash
The Honorable Reggie B. Walton

Committee Staff

Captain Tammy Tideswell, JAGC, U.S. Navy, Staff Director
Colonel Steven Weir, JAGC, U.S. Army, Deputy Staff Director
Mr. Dale Trexler, Chief of Staff
Ms. Julie Carson, Attorney-Advisor
Dr. Janice Chayt, Investigator
Dr. Alice Falk, Editor
Ms. Theresa Gallagher, Attorney-Advisor
Ms. Nalini Gupta, Attorney-Advisor
Ms. Amanda Hagy, Senior Paralegal
Mr. Chuck Mason, Attorney-Advisor
Ms. Meghan Peters, Attorney-Advisor
Ms. Stayce Rozell, Senior Paralegal
Ms. Terri Saunders, Attorney-Advisor
Ms. Kate Tagert, Attorney-Advisor

Other Participants

Mr. Dwight Sullivan, Designated Federal Officer (DFO)
Major Israel King, Alternate Designated Federal Officer
Captain Joseph Ahlers, U.S. Air Force, Service Representative
Mr. James Martinson, U.S. Navy, Service Representative
Mr. Stephen McLeary, U.S. Coast Guard, Service Representative
Major Wayne Shew, U.S. Marine Corps, Service Representative
Lieutenant Colonel Mary Catherine Vergona, U.S. Army, Service Representative

Presenters

Senior Airman Hannah Stolberg, U.S. Air Force (Retired)
Dr. Nathan Galbreath, Deputy Director, Sexual Assault Prevention and Response Office, U.S.
Department of Defense
Ms. Diana Rangoussis, Senior Legislative and Policy Advisor, Sexual Assault Prevention and
Response Office, U.S. Department of Defense

Mr. Paul Rosen, Director, U.S. Navy Sexual Assault Prevention and Response Branch
Ms. Gail Reed, Policy and Plans Program Specialist, U.S. Marine Corps Sexual Assault Prevention and Response
Colonel Melanie A. Prince, U.S. Air Force, Division Chief, Interpersonal Self-Directed Violence Response Division
Lieutenant Amanda Styles, U.S. Coast Guard, Central Assignment Coordinator, Personnel Service Center, Enlisted Personnel Management Division
Ms. Laura Massey, Policy Branch Chief, Department of the Army Sexual Harassment, Assault, Response, and Prevention Office
Major Simone Jack, U.S. Army, former Special Victim Counsel
Lieutenant Commander Clair Huffstetler, U.S. Navy, Victims' Legal Counsel
Major Jessica Martz, U.S. Marine Corps, Deputy Officer-in-Charge, Victims' Legal Counsel Organization
Captain Brittany Tedford, U.S. Air Force, Special Victims' Counsel
Commander Paul Markland, U.S. Coast Guard, Special Victims' Counsel
Lieutenant Colonel Erin Miller, U.S. Army, Assistant Chief of Staff, G4, Chief of Sustainment for 101st Airborne Division
Commander Chad Livingston, U.S. Navy, Deputy Director Financial Policy and Systems, Office of the Assistant Secretary of the Navy, Financial Management and Comptroller
Lieutenant Colonel Jennifer Nash, U.S. Marine Corps, Commanding Officer, 7th Engineer Support Battalion
Sergeant Major Stennent Rey, U.S. Marine Corps, Senior Enlisted Advisor, 7th Engineer Support Battalion
Major Christopher Seamans, U.S. Air Force, Commander, 69th Maintenance Squadron
Senior Master Sergeant Terry Zannella, U.S. Air Force, First Sergeant, 69th Maintenance Squadron
Commander Jonathan Carter, U.S. Coast Guard, Commanding Officer, Coast Guard Cutter Legare
Chief Petty Officer Matthew Lee, U.S. Coast Guard, Command Chief, Coast Guard Cutter Legare
Colonel Erik Gilbert, U.S. Army, Chief of Staff to the Director, Joint Future Force Development, Joint Staff
Captain John Bushey, U.S. Navy, Commander, Navy Installations Command, Director of Public Safety
Colonel Kevin Stewart, U.S. Marine Corps, Executive Assistant to the Deputy Commandant, Installations and Logistics
Colonel Ty Neuman, U.S. Air Force, Commander, 2nd Bomb Wing, Barksdale Air Force Base
Captain Brett Millican, U.S. Coast Guard, Commanding Officer, U.S. Coast Guard Base Boston
Master Chief Jeff Waters, U.S. Coast Guard, Command Master Chief, U.S. Coast Guard Base Boston

MEETING MINUTES

The DFO opened the public meeting at 1:15 p.m. on October 19, 2017. Chair Martha Bashford provided opening remarks, welcomed Colonel Steven Weir as the new deputy staff director for

the DAC-IPAD, and introduced the Service representatives. She then summarized the agenda for the meeting.

PERSPECTIVE OF A SEXUAL ASSAULT VICTIM

The meeting began with a presentation by Senior Airman Hannah Stolberg, a contracting specialist for the Air Force, who was raped and beaten by an Air Force noncommissioned officer in 2012. She explained that she sustained significant injuries as a result of her assault, including a fractured femur and traumatic brain injury (TBI).

When she reported her assault to her command, her commander told her that nothing would be done. Her superintendent, who was also present at the meeting, remained silent. Ms. Stolberg explained that her recovery did not go smoothly. She spent time at an inpatient program for post-traumatic stress disorder (PTSD), but was taken out of the program prematurely. Because of her absence from work, she received a poor rating on her Enlisted Performance Report (EPR). On the day she received her EPR, she attempted suicide.

Ms. Stolberg said that her life turned around when she got involved in the Wounded Warrior Program. Additionally, at the end of her time on active duty, she went to an adaptive sports camp, where she was assigned a mentor. She also became involved in the ambassador program. She explained that she has found strength from speaking about her experience and finding out that so many people have had similar experiences.

Chair Bashford began the question and answer session. She asked about the timeframe of the assault and recovery; Ms. Stolberg responded that her medical evaluation board started in 2014, two years after her assault. Chief McKinley asked about Ms. Stolberg's reintegration into the unit after her hospitalization, and Ms. Stolberg responded that she was given "random" work after her return, and her work suffered—in part due to TBI and PTSD, but in part due to lack of support. In response to Ms. Bashford's question about where the military most needs to improve its handling of sexual assault, Ms. Stolberg stated that nearly half the people she meets do not report their assaults. She added that the way an assault is handled from the beginning could mean the difference between a victim going to trial or not. She noted that leaders often do not have the appropriate training to handle situations like hers.

Mr. Markey then asked about Ms. Stolberg's perspective on the investigative process. Ms. Stolberg stated that having done research on how few cases are prosecuted, she decided to file a restricted report, and never converted it to an unrestricted report. Finally, Ms. Cannon asked Ms. Stolberg whether anything happened to the man who assaulted her or her leadership. Ms. Stolberg stated that nothing happened to her assailant, and that she had to work alongside her commander for a year and a half after her assault, and even had to help plan his retirement ceremony.

After the break, Ms. Garvin noted that she had spoken privately with Ms. Stolberg, who said that her service dog has helped her immensely, and that she paid for the dog out-of-pocket.

BRIEFING ON THE DEPARTMENT OF DEFENSE (DOD) AND MILITARY SERVICES' EXPEDITED TRANSFER POLICIES

Dr. Nathan Galbreath began by describing the background of the expedited transfer policy. He explained that in 2011, the Sexual Assault Response Program was identifying gaps in its response system, and realized that many victims, after reporting a sexual assault, were not able to move from their units. This resulted in continued re-traumatization and prevented full healing. After conversations with victims and members on the Hill, and interest from the Secretary of Defense, the expedited transfer program was created in 2012.

Ms. Diana Rangoussis noted that she was responsible for crafting the first expedited transfer guidance. The Sexual Assault Prevention and Response Office (SAPRO) issued a DoD-wide directive on December 16, 2011, which was updated and incorporated into a permanent instruction in March 2013. Congress passed its own version of the expedited transfer mandate in the FY 2012 NDAA; this version included a 72-hour timeframe for a commander to approve/disapprove a request and a 72-hour timeframe for the victim to make an appeal in the case of a denial. In the FY 2014 NDAA, Congress authorized the transfer of a suspect.

The policy is intended to be used for situations in which the victim feels safe but uncomfortable. The policy establishes a presumption in favor of transferring the Service member who files a credible report. The credible report determination is made by the commander with advice from the staff judge advocate (SJA) and military criminal investigator. The commander has flexibility to determine the location of the transfer. If no credible report is found, the reasons must be documented. If a victim's request is denied, an appeal may be made to the first general or flag officer in the chain of command.

Ms. Rangoussis discussed two handouts provided to the Committee. The first contained an enumerated list of issues that the commander must review and discuss with the Service member requesting the transfer. The second handout discussed the commander's responsibilities at the monthly case management group (CMG) meeting.

Mr. Paul Rosen, Director of the Navy Sexual Assault Prevention and Response Branch, noted a difference in the Navy's expedited transfer policy: if the commander rejects the victim's request, the request is automatically reviewed by the first flag officer.

Ms. Gail Reed, a program and policy specialist for the Marine Corps' Sexual Assault Prevention and Response Office, spoke next. Ms. Reed stated that the Marine Corps' program has been very successful. She noted that the expedited transfer process is covered at commander training.

Next, Colonel Melanie Prince, Chief of the Interpersonal Self-Directed Violence Division at Headquarters Air Force (ISDV), testified. ISDV is responsible for the strategic guidance for five types of violence, including sexual violence. Colonel Prince noted that many agencies play a critical role in the execution of the expedited transfer program—such as the Special Victims' Counsel Program, the Office of Special Investigations, and the Judge Advocate General's Corps. As a result, the expedited transfer program has many vertical and horizontal checks and balances. Colonel Prince noted that a recent improvement to the Air Force's program is that when a victim

moves to a new location, the commander and Sexual Assault Response Coordinator (SARC) are aware of the arrival, so that they can ensure the victim has appropriate support.

Lieutenant Amanda Styles, Central Assignments Coordinator at the Personnel Service Center (PSC) for the Coast Guard, testified next. She oversees transfer of personnel for the Coast Guard. Unlike the other Services, in the Coast Guard, the PSC handles all transfer requests, including expedited transfers. Local area commanders do not have that authority. Upon a request for an expedited transfer, a Crisis Intervention Team (CIT) convenes and determines how to process the request; the request then goes to PSC, which has two weeks to approve or reject the request. If approved, the victim will be moved within seven days. The CIT briefs the incoming command of the situation.

Finally, Ms. Laura Massey, Policy Branch Chief for the Department of Army Sexual Harassment Assault Response and Prevention Office, testified about the Army's program. She described a policy similar to the other Services, but noted that, due to the size of the Army, the Army has latitude to grant soldier location requests, particularly if the soldier is in a high density military occupational specialty. She noted that more soldiers have been transferred to Fort Hood than any other location.

Chief McKinley began the question session by asking about the effect of the program on victim participation in the military justice system, the effect on victim care services, and the effect on retention rates. Dr. Galbreath stated that people who receive an expedited transfer participate in the military justice system at the same rate as those who do not, noting that he would have exact numbers for the Committee in January. Mr. Rosen said there was no indication that the victim services for expedited transfer victims are different than services provided for other unrestricted reporting victims. The panelists did not have information regarding the retention rates of victims who receive expedited transfers, and Chief McKinley said those numbers were needed.

The presenters were asked about the Services' ability to assess whether the victims requesting expedited transfers believe the system is working. Dr. Galbreath noted he would provide the Committee with the results of two force-wide surveys, the Workplace and Gender Relations Survey and the Military Investigation and Justice Experience Survey. He added that the first survey has a 29-30% response rate, but the latter has a very low response rate.

Judge Walton asked about the transfers of the alleged perpetrators. Mr. Rosen stated that this can always be done for good order and discipline. Dr. Galbreath said he will provide statistics on how often the accused is transferred. He also will provide the Committee with information about exactly what information is given to the new command when a suspect is transferred.

Ms. Tokash asked whether an accused who is transferred has any due process rights, and Dr. Galbreath recommended asking the question to SJAs and defense counsel.

Ms. Bashford asked whether the statistics for expedited transfers cover family members, and Dr. Galbreath confirmed that they do not.

The presenters were asked about the 19 cases in which a victim was denied an expedited transfer. Dr. Galbreath stated that denials may occur for various reasons, such as if a credible report was not found or if the accused was moved instead of the victim. Ms. Tokash asked whether a finding that there was not a credible report may affect the victim's credibility at trial. Dr. Galbreath stated that it was possible, but noted that there were very few cases where the victim's request was denied. Ms. Reed clarified that expedited transfer requests come at different times during the investigative process, and may come before all the evidence is known.

Mr. Kramer asked whether the force-wide surveys ask whether a Service member who receives an expedited transfer believes their career is affected. Dr. Galbreath clarified that the survey did not specifically ask about that, but noted that most people who receive an expedited transfer say that their living situation is the same or better than before. Mr. Kramer then asked why the number of expedited transfers in the Navy is two or three times higher than the other Services. Mr. Rosen did not know, but stated that it might be because sailors on ships request expedited transfers so they can receive ongoing services.

Chair Bashford asked whether the Services break out requests by whether the offense is penetrative or non-penetrative. None of the Services do.

Dean Harrison asked whether there are statistics on how often a person is transferred within an installation but not geographically moved. Dr. Galbreath noted that there have been 62 requests for unit or duty transfers and 684 for installation transfers.

Major General Anderson asked about record confidentiality of a victim or accused who receives a transfer. The presenters for the Navy, Coast Guard, Marine Corps, and Army all clarified that neither the record of the accused nor the victim is flagged. Colonel Prince stated that only the Director of Air Force Personnel Center and one other person has access to the information. The presenters stated that they would need to check on exactly who has access to the information relevant to the expedited transfer.

Chief McKinley asked about possible abuse of the expedited transfer program. Dr. Galbreath noted that the rates of cases determined to be unfounded are no different for victims who receive expedited transfers and victims who do not. He stated he would bring more data in January.

Ms. Garvin asked whether it is considered a denial when a person requests a particular type of transfer but is awarded another (such as a duty transfer rather than an installation transfer). Dr. Galbreath stated that the victim may appeal that decision.

Chair Bashford asked about training for commanders on expedited transfers. Most presenters noted that commanders receive training either at the pre-commanding officer course or at trainings conducted by the SARCs; the Coast Guard presenter noted she would need to check that information. Judge Brisbois later asked about the length and type of the training. Mr. Rosen responded that there is a sexual assault prevention and response module, and part of that module is on the expedited transfer policy. He noted that commanders do not need to be experts on the policy but need to know what procedures to take immediately to support the victim and begin the notification process in the case of an unrestricted report.

Ms. Garvin asked if commanders were trained on how to counsel Service members about expedited transfers, and specifically, if commanders were trained to talk to Service members about the potential career impact. Ms. Rangoussis responded that victims are told about possible career impacts such as forgoing a bonus or leaving a specialized duty area.

SERVICE SPECIAL VICTIMS' COUNSEL/VICTIMS' LEGAL COUNSEL (SVC/VLC)
PERSPECTIVES ON THE EXPEDITED TRANSFER POLICY AND SVC/VLC PROGRAM

Major Simone Jack, an Army judge advocate (JA) who served as an SVC at Fort Hood, began the session. She provided an overview of the Army's SVC program, noting that the program is essential because often times the interests of the victim do not align with those of the prosecution. During her tenure as an SVC, she supervised eight SVCs and represented 77 clients; at any given time, she had 30 clients with cases at different stages. Eight of her clients have requested expedited transfers; her role was to discuss the process and the pros and cons of receiving a transfer. All of her clients who requested an expedited transfer received one, and most of the transfers went smoothly.

Lieutenant Commander Clair Huffstetler, a Navy VLC, spoke next. Over the course of 15 months, she has served 49 clients; her average caseload is 34 clients. She noted that there is no typical case, and she begins representing clients at different stages in the proceedings. She stated that the cornerstone of her relationship with clients involves expectation management; she also noted that what is most beneficial to clients is that they receive unbiased legal advice, which helps them feel that they are in control. Regarding expedited transfers, she advises clients about the pros and cons of a transfer, and advises clients on how to make a request to their commander. One-third of her clients have requested an expedited transfer; she believes it was beneficial to these victims as they needed to be in a place where they feel supported. She recommended changing the expedited transfer process to be as transparent as the regular detailing process, so that victims know what billets are available in what geographic locations.

Next, Major Jessica Martz, Deputy Officer-in-Charge for the Marine Corps VLC program, testified. She explained that in the Marine Corps, VLCs also represent victims of domestic violence and, in exceptional cases, victims of other violent crimes. She noted that a goal of the VLC program is to make sure the clients are educated about the legal process and understand all options available. Regarding expedited transfers, she advises clients about the potential impact on their careers and on their legal cases. She also helps clients submit their requests and appeal a denial. She believes that expedited transfers are very beneficial to her clients because it allows them to get away from rumors and ostracism. Expedited transfers also give victims a sense of empowerment.

Captain Brittany Tedford, SVC at Shaw Air Force Base, was the next to testify. She stated that the SVCs play an important role in the expedited transfer process—including advocating for the client's interests and educating commanders about the policy. She noted that clients always request transfers to bases close to their families and support systems; they do not request only high-desirable locations. She also explained that expedited transfers run concurrently with investigations, which minimizes the potential investigative impact. She has not seen a negative impact on any case due to an expedited transfer.

Commander Paul Markland, SVC for the Coast Guard, spoke next. He stated that the biggest benefit of the SVC program is that it curbs both intentional and unintentional victim bullying. The most problematic aspect, in his opinion, is that SVC positions are often filled by new judge advocates who have not yet seen the system's competing interests. He then explained the process for requesting and receiving an expedited transfer in the Coast Guard. He also noted that none of his expedited transfer clients have ever refused to cooperate with the prosecution.

Judge Grimm began the question and answer session. He asked the SVC/VLC presenters to discuss their goals during the legal process. Major Jack explained that she will be present for interviews with the investigators, prosecution, and defense. She will also be present for pre-trial motions and for the duration of the trial; she passes notes to the prosecution if any issues arise. Lieutenant Commander Huffstetler stated that in the Navy system, VLCs sit behind the bar and stand up and wait for the judge to acknowledge them to make objections. She also noted that Navy VLCs answer all motions separately from the trial counsel. The Air Force and Marine Corps presenters explained that they also stand and wait to be recognized by the judge to make objections and argue motions separately from the trial counsel. Commander Markland noted that he has yet to have trouble being recognized either pretrial or during the trial. He also commented that in the Coast Guard's Norfolk courtroom there is a third table for the SVC at trial.

Judge Brisbois asked if SVCs/VLCs receive requests for the materials generated when an expedited transfer is made, since that material may later be used as impeachment material. Major Martz indicated that VLCs in the Marine Corps do not provide that confidential information and that she has not seen a request for it. Captain Tedford responded that she has received requests for those materials, but she clarified that the requests do not normally describe the facts of the sexual assault; instead, they only contain justification for why the victim wants to relocate to a particular installation. Lieutenant Commander Huffstetler explained that she scrutinizes her clients' written requests because she knows they may become sources for cross-examination at a later point. Commander Markland stated that his position is that neither his client nor he have any discovery obligations in the system—though it could be part of negotiation.

Ms. Long asked what victims want out of the investigation or prosecution of a case to make them feel like they have received justice. The presenters offered a number of answers, including that victims want to be heard, that they want to receive an apology from the perpetrator, and that they want the perpetrator to be removed from the military.

Ms. Cannon then asked what would happen if a victim admitted to an SVC that an allegation was fabricated but still wanted an expedited transfer. Captain Tedford responded that all SVCs/VLCs are bound by their state bar rules and the Service rules of professional conduct, so they cannot help a victim commit fraud. Lieutenant Commander Huffstetler further explained that if she believes a client is in a gray area, she advises the client about ways to limit his or her liability. Four of the five SVCs/VLCs reported that they have never had a client they believe fabricated a report to get an expedited transfer. The fifth said she had never had a client outright lie, but that she has seen areas of gray and a lot of different perceptions about what the truth is.

Judge Walton asked whether SVCs are under an obligation to disclose exculpatory information. Lieutenant Commander Huffstetler explained that SVCs do not have any obligations under

Brady/Giglio; however, if she ever came across exculpatory information, she would urge the prosecutor to turn over the information, or ask the client to give her permission to do so herself. Judge Walton then asked whether the denial of a request for expedited transfer because of lack of credible evidence was admissible at a subsequent trial. Lieutenant Commander Huffstetler stated that evidence of prior false reports could come in for credibility purposes, but there were limitations defined by the case law.

Mr. Kramer asked if victims change restricted reports to unrestricted so they can have an expedited transfer. He also asked why the number of victims who request an expedited transfer is so low—only 10% in the Air Force. Major Jack responded that most clients who un-restrict their reports do so for reasons other than wanting an expedited transfer. Other presenters noted that some clients un-restrict their reports and request an expedited transfer but still choose not to participate in the military justice process. The presenters generally did not know the reason for the low rate of expedited transfer requests, but some hypothesized that victims may already have strong support systems at their current installation and do not want to move.

Dean Harrison asked why SVCs treat an expedited transfer request as if the burden is on the victim if the presumption is actually in favor of granting the request. Lieutenant Commander Huffstetler noted that commanders sometimes set a higher bar than dictated by policy. Other presenters stated that most commanders are very receptive to expedited transfers and just want to do the right thing.

Dean Harrison then asked whether being an SVC is good for career advancement. The presenters agreed that the program is viewed positively by most people, and that SVCs have a good promotion rate.

Ms. Garvin asked the presenters whether they are making Article 6b motions. The Army and Marine Corps SVC and VLC reported that they have argued 6b motions based on the right to be treated with fairness and dignity and the Marine Corps VLC also stated that the Marine Corps VLCs are seeking protective orders for certain types of evidence such as cell phone data and mental health records.

The October 19, 2017 meeting ended at 5:08 p.m.

The meeting on October 20, 2017 commenced at 8:47 a.m.

COMPANY/SQUADRON OR SERVICE-EQUIVALENT LEVEL COMMANDER AND SENIOR ENLISTED ADVISOR PERSPECTIVES ON SEXUAL ASSAULT MILITARY JUSTICE TRAINING AND SEXUAL ASSAULT RESPONSE TRAINING

Lieutenant Colonel Erin Miller, Assistant Chief of Staff for the 101st Airborne Division at Fort Campbell, began the first session. Because of the large number of soldiers who have been under her command, she has dealt with multiple offenses under the Uniform Code of Military Justice (UCMJ), including Article 120 offenses. She received training on responding to sexual assaults throughout her career, starting pre-commission at West Point. She took pre-command courses on sexual assault legal actions. She noted that the biggest influence on how she handles a case is her

relationship with her trial counsel and SJA. She also regularly communicates with victim advocates and Sexual Harassment/Assault Response and Prevention (SHARP) representatives. She believes that victims under her command feel comfortable coming forward with allegations of sexual assault because she has built an environment of trust and because soldiers receive a lot of training—particularly training on reporting procedures and bystander intervention.

Next, Navy Commander Chad Livingston testified. He explained that when he first reported as an Executive Officer, he met with his SARC, who introduced him to the CMG and taught him about reporting requirements and victim care. Prior to assuming command, he took a basic legal course designed for prospective commanding officers; he also had a sexual assault-specific training while attending the Navy's Prospective Commanding Officer Course in Newport, Rhode Island. During his time as a commanding officer, he dealt with three new sexual assault cases and inherited one case.

Lieutenant Colonel Jennifer Nash from the Marine Corps spoke next. She explained that she attended a two week training before assuming command, of which three hours was dedicated to sexual assault. She was also required to do one hour of training with the SARC upon her arrival at her base. The training she received covered reporting procedures and contained scenario-based exercises. In the past 16 months, she has dealt with six sexual assaults—with two victims requesting expedited transfers. She also inherited three cases. Sergeant Major Stennent Rey, the senior enlisted advisor to Lieutenant Colonel Nash, discussed the training he had received, which included the Navy Senior Enlisted Course, senior enlisted professional military education as a first sergeant, the sergeant major course, and the command resource brief for sexual assault prevention and response.

Air Force Major Christopher Seamans, squadron commander at Grand Forks Air Force Base, spoke next. His Air Combat Command Commanders' Course included a half-day training on sexual assault, where he heard from a victim about her experience and from a commander and first sergeant about available resources. During his time in command, he has relied heavily on the base legal office, the SARC, and the victim advocate to help him respond effectively to sexual assaults. Senior Master Sergeant Terry Zannella, who accompanied Major Seamans, then discussed the training and responsibilities of sergeants in the Air Force.

Finally, Commander Jonathan Carter from the Coast Guard testified, relaying his experience by telling the story of a sexual assault incident that occurred under his command. He received an email from a male petty officer who stated that he had been groped and subjected to degrading sexual comments by another male petty officer. The victim's email came at a very busy time operationally; however, Commander Carter knew an urgent response was vital. In determining how to respond to the victim, Commander Carter relied heavily on the unit commander's checklist for unrestricted reports of sexual assault. The victim requested an expedited transfer, which Commander Carter endorsed on the same day, even though the billet ended up being gapped for ten months. Months later, a summary court-martial was convened, where the accused pled guilty to five counts of abusive sexual contact.

Judge Grimm began the question and answer session; he asked about the development of bystander intervention training. Lieutenant Colonel Miller responded that bystander training has

been developed by the Army; she explained that since incidents often occur off-post or at a party, it is important for soldiers to recognize signs when something does not seem right. The presenters for the rest of the Services also clarified that they all have bystander intervention training. The presenters also stressed the importance of interactive trainings.

Ms. Long then asked whether the commanders' lack of formal legal training has ever hindered their ability to analyze a case, and whether any additional training is needed in toxicology or other complicated aspects of a legal case. Lieutenant Colonel Miller stated that she felt if she received more legal training, it might impair her ability to make impartial decisions, since as a commander she cannot get emotional about a case. Lieutenant Colonel Nash also stated that since the O-6 commander makes the decision about the disposition of a case with the advice of the staff judge advocate and trial counsel, she tries to stay disengaged from the legal process itself. Commander Carter believed the training he received has been sufficient.

Judge Walton noted that many presenters testified that there are insufficient investigative resources available, and asked how to improve this problem. Commander Livingston answered that Naval Criminal Investigative Service (NCIS) agents are often shared by the entire base, so there are not enough agents available to cover all the base's needs. Lieutenant Colonel Miller added that at Fort Campbell, over half of the open investigations involve an Article 120 offense, and these cases often take a long time. She noted that there need to be more investigators, and the investigators need to be skilled at conducting these types of investigations.

General Schwenk asked if the presenters are comfortable with the new policy that allows less experienced criminal investigators to handle contact cases, rather than the military criminal investigative organizations (MCIO). The presenters did not comment on the MCIO policy, but stated that they believed O-5 commanders should be able to handle lesser offenses, rather than elevating them to the O-6 commander level.

Judge Walton asked whether the military seeks to establish relationships with local law enforcement and prosecutors' offices. The presenters all stated that there is a professional working relationship between the base and civilian law enforcement. Most presenters stated that if both the accused and victim are Service members, the military will handle the case; if the victim is a civilian, there are other considerations. Commander Livingston added that if a sexual assault occurs off-post, the civilian investigative service has the choice whether to pursue the case; if it declines to prosecute, then NCIS takes the case.

Ms. Tokash asked about the credibility determination made for victims requesting expedited transfers. Lieutenant Colonel Miller said that for the Army, she and the brigade commander sign a memorandum to accompany a Personnel Action Request form; the memorandum certifies that the individual has filed a complaint that meets the level of an Article 120 offense.

Chief McKinley asked whether it would be beneficial to have unified training across the Services so that the responses to sexual assault allegations are the same. He also asked about the quality of the training. Lieutenant Colonel Miller and Commander Livingston responded that training is pretty consistent across the Services, but is tailored to fit the particular needs of each Service. Lieutenant Colonel Nash said that she would be opposed to any type of standardized training

because it would reduce creativity. The presenters agreed that sexual assault training is not a good topic for computer-based training; instead, training needs to be flexible, interactive, and engaging to be effective. As a follow-up question, Chair Bashford asked whether Service members are starting to experience training fatigue. The presenters answered that training fatigue is a problem because Service members are trained on many topics, including sexual assault prevention and response, equal opportunity, and cyber-awareness. They noted the importance of shifting towards interactive, peer-led training.

SPECIAL COURT-MARTIAL CONVENING AUTHORITY PERSPECTIVES ON SEXUAL ASSAULT MILITARY JUSTICE TRAINING

Captain Brett Millican of the Coast Guard began the next session and discussed commander training. The Coast Guard has formalized pre-arrival training for senior leaders, during which the legal community and SARC train leaders on how to respond to a sexual assault. In addition, when a commander arrives at the unit, the SARC and legal community meet with the commander to discuss the handling of a report. In the Coast Guard, within 24 hours of an unrestricted report, a CIT must stand up; within 72 hours, the commander must report to his or her first flag officer. Captain Millican said that a lot has changed in the past few years; a commander used to be able to sweep a report under the rug.

Colonel Ty Neuman spoke from the Air Force. Prior to assuming command, he attended a senior officer legal orientation course, which emphasized his role as a court-martial convening authority. Once he assumed command, he received additional training from his SARC and staff judge advocate. He noted that the most important training is his routine interaction with his SJA. He explained that his primary focus is the impact on good order and discipline of pursuing the case, rather than the litigation risks. Even if the chance of conviction is low, he will pursue a case if it sends a deterrent message, meets the appropriate legal standard, and is done in the pursuit of justice. He has, on occasion, made the decision to dispose of cases without legal action. He noted that he takes into account the preferences of the victim in determining how to dispose of a case.

Next, Marine Corps Colonel Kevin Stewart testified. He explained that he felt ready to address the issue of sexual assault when he took command because of his training and previous experience and the resources available to him. He said that the most important part of the initial response to a sexual assault is making sure the victim feels safe; if the Marine thinks an expedited transfer is in his or her best interest, he will support it.

Captain John Bushey spoke from the Navy. He explained that commanding officers, executive officers, and master chiefs attend command-level training prior to assuming their positions; this training includes legal training focused on non-judicial punishment, courts-martial, and sexual assault. Commanding officers also receive training from the SARCs and regularly receive advice from their JAGs. Captain Bushey noted that no two cases are the same and there are too many complicating factors to allow for any sort of decision matrix when responding to a sexual assault.

Finally, Army Colonel Erik Gilbert testified. He described the pre-command courses he took, which included legal training and training on the Army's SHARP program. During his time as brigade commander, the division held monthly Sexual Assault Review Boards to discuss types of

cases, trends, training, and success stories. His brigade also conducted quarterly training for soldiers. When he received an unrestricted report, he would seek advice from his SJA and also contact the Army's Criminal Investigation Division (CID), but he noted that CID at Fort Bragg is quite backlogged and investigations often take a long time. Colonel Gilbert believes that the biggest challenge is determining how to deal with cases where sexual assault cannot be clearly established—he explained that, in his mind, these cases created a “gray area” that could be exploited by alleged victims and alleged perpetrators. Regarding expedited transfers, he noted that he did not always agree with the requests, but felt at risk if he did not honor them. He believed that expedited transfers were most effective when soldiers were transferred to another unit in the installation; this provided the victim with consistent access to caregivers with knowledge of the case and provided a disincentive to abuse the system.

Ms. Cannon began the question and answer session. Given all the other responsibilities of the commanders, she asked whether they should be the ones deciding how to dispose of a case. Colonel Gilbert explained that he felt it was within his responsibilities to look out for all of his soldiers, including both the accused and the victim, and dealing with cases was an important component of good order and discipline. Captain Bushey added that it is important for Service members to see that their command is taking appropriate action to take care of victims and alleged offenders. Colonel Stewart noted that based on his training, experience, and resources available, he felt confident in his decisions. Captain Millican added that he thought it would be dangerous to handle Article 120 cases differently than other cases under the UCMJ.

Dr. Spohn then asked how often complainants withdraw cooperation when their case reached the commanders' level. Colonel Gilbert and Colonel Stewart stated that even if a victim withdraws support, the case still goes forward; however, proceeding to a court-martial may become much more difficult. Captain Bushey stated that he has seen victims inadvertently disclose a case and make it an unrestricted report, and he thinks that there should be a way of having a “cleansing statement” so that victims can keep their cases restricted.

Ms. Garvin asked about the role of SVCs/VLCs in influencing the commanders. Most presenters answered that they did not directly communicate with the SVC/VLC; instead, SVCs/VLCs normally interact with the SJA and the SARC.

Dean Harrison asked Master Chief Waters what he does to create an environment where a seaman feels comfortable coming forward to report inappropriate activity. Master Chief Waters noted that it is a challenge since seamen are often too intimidated to come forward to the chief; he tries to have junior leaders act as a buffer.

Mr. Kramer asked if any of the presenters had ever denied an expedited transfer. None of them had. He then asked how the Services can ensure that all commanding officers take sexual assault cases seriously. The presenters stated that commanders must be held to very high standards, and that if anyone acts inappropriately, they deserve to be dismissed. The presenters also noted that the selection process for commanders is stringent and that commanders receive a lot of training. They did acknowledge, however, that there will always be bad apples.

Ms. Long asked how commanders are able to make fair and impartial decisions, given that they are responsible for the accused. Colonel Neuman noted that though he has no legal training, he has 22 years of experience, and he believes it is part of his leadership role and his responsibility to maintain good order and discipline to take cases to trial when appropriate. Colonel Stewart noted that a number of steps in the process are conducted by independent entities—including an investigation by NCIS and an Article 32 preliminary hearing. The other presenters also emphasized the many different resources available to them, including skilled lawyers who provide them with advice and expertise.

Judge Brisbois asked whether it would make sense to give SJAs prosecutorial discretion over cases. Colonel Gilbert responded that the brigade SJA already opines about whether there is enough evidence to move forward with the case; he noted, however, that the experience level of the brigade SJA is different from that of the commander. Colonel Stewart added that the SJA is trained to provide legal advice, but not to make the ultimate decision; the commander considers all the factors of the organization when making the decision. Colonel Neuman also added that there are ways of standardizing decision-making among commanders; for example, in the Air Force, there are quarterly meetings among legal teams.

General Anderson then asked if any of the commanders or master chiefs had ever served on a panel for an Article 120 case. None of the presenters had.

Ms. Tokash asked whether the commanders would find written disposition guidance helpful. The presenters generally agreed that written guidance could be helpful, but cautioned that commanders need to take many things into consideration, and any written guidance may end up being too limiting. Captain Millican added that there is already some level of written disposition guidance in the UCMJ.

Mr. Markey asked about improving investigative resources. Colonel Gilbert responded that even for high profile rape cases, it takes years to complete the investigation and prosecution. He noted that a more timely decision would help everyone involved in the case. Captain Bushey agreed, noting that the slow time for processing cases causes victims and alleged offenders a lot of frustration.

Chair Bashford asked what one thing the commanders would change to improve the system. Several presenters noted they would support some type of “claw-back” opportunity or cleansing statement that would allow victims who did not intend to un-restrict their report to keep their report restricted. Other presenters noted that more resources are needed for investigators and victim support.

Judge Walton then asked what happens when a victim makes a credible claim of sexual assault but does not want to cooperate. Most presenters agreed that the case would still go forward, but if there was not sufficient evidence without the victim’s cooperation, the commanders would look to alternate dispositions to hold the perpetrator accountable.

Finally, General Schwenk asked whether the military justice system is relevant today for maintaining good order and discipline. All presenters agreed that it is relevant and essential.

COMMITTEE UPDATE FROM DAC-IPAD CASE REVIEW WORKING GROUP

For the last session of the meeting, General Schwenk provided the Committee with an update from the Case Review Working Group and a proposal for next steps. He explained that the working group has so far reviewed nine Army criminal investigative files, seven Air Force investigative files, ten Navy investigative files, and five records of trial. The working group proposed looking at investigations of penetrative offenses that did not result in the preferral of charges; this accounts for about 70-80% of all cases. This set of cases would be limited to investigations that were closed in FY 2017 where the subject was a Service member over the age of 16. General Schwenk noted that there was congressional interest in this set of cases. He proposed that the staff review a statistically significant sample of cases, using the guidance of the working group members.

The Committee then discussed victim privacy concerns. The case review plan was unanimously approved by the 14 Committee members present at the time of the vote, with Ms. Garvin and Dr. Markowitz both expressing reservations about privacy issues. Judge Grimm and Mr. Kramer were not present for the vote.

Public Comment

There were no public comments.

The Alternate DFO closed the October 20, 2017 public meeting at 2:56 p.m.

CERTIFICATION

I hereby certify, to the best of my knowledge, the foregoing minutes are accurate and complete.



Martha Bashford
Chair

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in
the Armed Forces

MATERIALS

Meeting Records

1. Transcripts of October 19, 2017 and October 20, 2017 Committee meetings, prepared by Neal R. Gross and Co., Inc.

Read Ahead Materials Provided Prior to and at the Public Meeting

2. Meeting agenda
3. Minutes of July 21, 2017 public meeting
4. Table of contents and summary of read ahead materials for DAC-IPAD members
5. Biographies of meeting presenters

6. AEquitas, Justice Management Institute, and Urban Institute, Excerpt from Model Response to Sexual Violence for Prosecutors (RSVP): An Invitation to Lead (2017)
7. Document prepared by DAC-IPAD Staff on DoD policy regarding expedited transfers of Service members who file an unrestricted report of sexual assault and related statutory provisions
8. Spreadsheet on expedited transfer data from the Department of Defense FY 2016 Sexual Assault Prevention and Response Office (SAPRO) Annual Report, prepared by DAC-IPAD staff
9. DAC-IPAD Request for Information (RFI) and Request for Meeting Presenters: RFI Set 4, Questions 1–6 (June 29, 2017)
10. 10 U.S.C. § 1044e (2015) (Special Victims' Counsel for victims of sex-related offenses), enacted in December 2013 in the FY 2014 NDAA, §1716, and amended in the FY 2015 and FY 2016 NDAAAs
11. Document prepared by DAC-IPAD staff with excerpts from the Services' commander legal handbooks related to sexual assault prevention and response
12. Document prepared by DAC-IPAD staff on panel topics for Thursday, October 19, 2017
13. DoD SAPRO's Briefing on Expedited Transfer Policy Handout #1, *Considerations for Commanders in Expedited Transfers*
14. DoD SAPRO's Briefing on Expedited Transfer Policy Handout #2, *Monthly Case Management Group (CMG) Responsibilities for Commanders of Expedited Transfer Victims*
15. PowerPoint presentation by Major Jessica Martz, USMC (October 19, 2017)
16. Document prepared by DAC-IPAD staff on panel topics for Friday, October 20, 2017
17. PowerPoint presentation by the Case Review Working Group presenting their plan of action (October 20, 2017)