



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

MINUTES OF JANUARY 19, 2018 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 January 19, 2018 from 8:50 a.m. to 11:31 a.m. The Committee received briefings on the number of expedited transfers requested and granted in each Service. The Committee also received briefings from each of the Working Groups.

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 <https://dacipad.whs.mil>.

PARTICIPANTS

Participating Committee Members

Ms. Martha S. Bashford, Chair
Major General Marcia M. Anderson, U.S.
Army (Retired)
The Honorable Leo I. Brisbois
Ms. Kathleen B. Cannon
The Honorable Paul W. Grimm
Mr. A. J. Kramer
Mr. James P. Markey
Dr. Jenifer Markowitz

Chief Master Sergeant of the Air Force
Rodney J. McKinley, U.S. Air Force
(Retired)
Dr. Cassia C. Spohn
Brigadier General James R. Schwenk, U.S.
Marine Corps (Retired) (by phone)
Ms. Meghan A. Tokash

Absent Committee Member

Ms. Margaret A. Garvin
Dean Keith M. Harrison

Ms. Jennifer Gentile Long
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. Glen Hines, Attorney-Advisor
Mr. Chuck Mason, Attorney-Advisor
Ms. Stacy Powell, Senior Paralegal
Ms. Stayce Rozell, Senior Paralegal
Ms. Terri Saunders, Attorney-Advisor
Ms. Kate Tagert, Attorney-Advisor

Other Participants

Major Israel King, U.S. Air Force, Alternate Designated Federal Official (ADFO)
Major Joseph Ahlers, U.S. Air Force, Service Representative
Mr. James Martinson, U.S. Navy, Service Representative
Mr. Stephen McCleary, 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

Presenter

Dr. Nathan Galbreath, Deputy Director, Sexual Assault Prevention and Response Office, U.S.
Department of Defense

MEETING MINUTES

The ADFO opened the public meeting at 8:50 a.m. Chair Martha Bashford provided opening remarks and summarized the agenda for the meeting.

Briefing on the Department of Defense (DoD) and Military Services' Expedited Transfer Data

Dr. Nathan Galbreath, Deputy Director, DoD SAPRO, provided the Committee with data regarding the total the number of expedited transfer requests received across the Military Services between May 2012 and November 2016. Responding to questions posed to him at the previous DAC-IPAD public meeting, Dr. Galbreath stated that an expedited transfer of the victim had little to no impact on case disposition according to SAPRO's data. He further noted that there is no indication that an expedited transfer impedes prosecution of a case. He said that charges are preferred in sexual assault cases with an expedited transfer at about the same rate as sexual assault cases without such a transfer.

Regarding possible abuse of the expedited transfer program, Dr. Galbreath explained that according to the SAPRO data, instances where victims receiving transfers declined to participate in the process were just four percentage points higher than cases without a transfer request. He noted that this does not show a high likelihood of abuse. He also pointed out that if it is believed that victims are making up allegations just to get a move, one would expect to see a high rate of unfounded cases among those with expedited transfer requests, and this is just not the case.

Dr. Galbreath explained he had an opportunity to look at the expedited transfer data requested from the Services by the DAC-IPAD and noted that it appears most victims move to large population centers. He continued that if individuals were making up the complaints we should see a substantive increase in the number of cases being unfounded, but he noted that is not the case when compared to cases with no transfer. He reported to the Committee that there is no evidence of widespread abuse.

Ms. Bashford asked Dr. Galbreath about the 50% of cases where he indicated that command action was not possible and how that breaks down. He responded that the vast majority of cases that don't go forward fall into two categories: insufficient evidence of a crime to prosecute and victims declining to participate. He added that victims declining to participate represents about nine percent of the cases that go to a commander to determine whether to take action, and that this has stayed remarkably constant over the past four or five years. He added that SAPRO is watching closely to see how the addition of special victims' counsel is impacting this statistic. He said the last two categories of cases where command action is precluded are where the statute of limitations prevents it or the victim has died. He then explained another category where command action isn't possible, which is when the case is "unfounded"—determined to be false or baseless.

Dr. Galbreath explained that in 2009 DoD adopted the FBI definition of unfounded, meaning the complaint was false or baseless. He stated that baseless means the case was improperly recorded as a sexual assault, and a false case means that evidence exists that indicates either the crime did

not occur or the accused did not commit the crime. He said this category of cases is very small at only two or three percent of cases per year.

Policy Working Group (PWG) Presentation and Committee Deliberations on the Department of Defense Expedited Transfer Policy

Chief Rod McKinley provided the Committee with an overview of the Policy Working Group's (PWG) assessment of the expedited transfer program. He reported that the PWG members' overall assessment of the expedited transfer program is that it is an overwhelmingly beneficial and effective mechanism to assist Service members who are victims of sexual assault in their recovery, and that the program should continue with further improvements.

Dr. Markowitz presented the first issue of concern leading to recommendations by the PWG. This issue is the perception among Service members of abuse of the expedited transfer program. The PWG found there is no indication that the policy is being abused, but that many in the Service mistakenly believe there is abuse of the program.

As a result of its findings, Dr. Markowitz stated that the PWG proposed two recommendations related to a mistaken perception of abuse of the policy:

Proposed Recommendation 1. The DAC-IPAD recommends the Secretary of Defense and the Services take action to dispel the misperception of widespread abuse of the expedited transfer policy including addressing the issue in the training of all military personnel.

Proposed Recommendation 2. The DAC-IPAD recommends that the Secretary of Defense identify and track appropriate metrics to monitor the expedited transfer policy and any abuses.

She noted that the PWG will continue to evaluate requested data on expedited transfer requests and associated training.

Ms. Cannon asked if the PWG believed testimony from defense attorneys and investigators would be beneficial to better understanding the effectiveness of the expedited transfer programs. Chief McKinley agreed this would be a positive step for the PWG as they continue to evaluate the program.

Dr. Markowitz made a motion that the DAC-IPAD approve the findings and recommendations associated with Issue 1. The motion was seconded and a roll call vote was conducted. All members accepted the findings and recommendations without objection.

General Anderson presented the second issue of concern regarding expedited transfers. The PWG found that under current DoD regulations, individuals who report a sexual assault under the Family Advocacy Program are not entitled to request expedited transfers. The PWG believes that these Service members should also have the ability to request an expedited transfer and that this exclusion is not consistent with the statute authorizing expedited transfers for Service members who are sexually assaulted

As a result of its findings, General Anderson stated that the PWG proposed two recommendations related to the inclusion of FAP in the expedited transfer policy:

Recommendation 3. The DAC-IPAD recommends the DoD-level FAP policy include provisions for the expedited transfer of active duty Service members who are victims of sexual assault similar to the expedited transfer provisions in the DoD SAPR policy and consistent with 10 U.S.C. § 673.

Recommendation 4. The DAC-IPAD recommends the DoD-level military personnel assignments policy include a requirement that assignments personnel or commanders coordinate with and keep SAPR and FAP personnel informed throughout the expedited transfer, safety transfer, and humanitarian/compassionate transfer assignment process when the transfer involves an allegation of sexual assault.

After brief discussion, General Anderson made a motion to approve the six findings and two recommendations for Issue 2. The motion was seconded and a roll call vote was conducted. All members accepted the findings and recommendations without objection.

Mr. A. J. Kramer and General James Schwenk next briefed the Committee members on six additional issues related to expedited transfers that the PWG plans to continue to evaluate.

Issue 1: The expedited transfer option is not available to Service members who make restricted sexual assault reports.

Proposed Interim Assessment: The DAC-IPAD believes the development of a workable option allowing Service members who make restricted reports to request and receive expedited transfers without triggering an investigation would be beneficial for certain victims. The PWG will continue to explore this issue.

Future Issue 2: The DoD-level expedited transfer policy approval standard and purpose are not sufficiently clear or comprehensive.

Proposed Interim Assessment: The DAC-IPAD believes the purpose, standards, and criteria outlined in the expedited transfer policy should be further evaluated and clarified. The PWG will continue to explore this issue.

Future Issue 3: Some active duty Service members who are sexually assaulted are not able to successfully return to duty even after and expedited transfer because of a need for transitional assistance.

Proposed Interim Assessment: The DAC-IPAD believes that some active duty Service members who are sexually assaulted are in need of transitional assistance before they are able to successfully return to duty. The PWG will continue to explore this issue.

Future Issue 4: The expedited transfer policy includes temporary intra-installation moves (PCA) as well as permanent moves to new installations or locations (PCS).

Proposed Interim Assessment: The DAC-IPAD is concerned that Service members who initially receive an intra-installation expedited transfer may be penalized if it does not resolve the situational issues and they subsequently request a second expedited transfer to leave the installation. The PWG will continue to explore this issue.

Future Issue 5: The expedited transfer policy is limited to Service members who are victims of sexual assault and does not include Service members whose civilian spouses/children are sexual assault victims even though they and their spouses may face exactly the same difficult situations at the installation that Service members face.

Proposed Interim Assessment: The DAC-IPAD believes that the expedited transfer policy should be a complete program without gaps in eligibility with the military community, including family members. The PWG will continue to explore this issue.

Future Issue 6: Inadvertent disclosures to command of sexual assaults and reports made by third parties deny Service members the opportunity to make a restricted report and protect their privacy, if desired.

Proposed Interim Assessment: The DAC-IPAD believes that victims who lose the ability to make a restricted report because of third party reports or because they are unaware of this consequence when they report to a member of their chain of command, may benefit by having the ability to restrict further disclosure or investigation of the incident if they wish to protect their privacy. The PWG will continue to explore this issue.

Chief McKinley reported that the PWG received preliminary information on command legal and sexual assault response training. He explained that the PWG plans to continue evaluating the substance and scope of the training. He added that the PWG also plans to begin an assessment of the new Article 140a, Uniform Code of Military Justice (UCMJ) (Data collection and management), to assist the DAC-IPAD in making a timely recommendation to the Secretary of Defense on the standards and criteria for data collection and management.

Ms. Bashford asked the Committee if they had any objection to the PWG's plan for their future activity. The Committee members unanimously approved the PWG plan.

Data Working Group Presentation and Committee Deliberations on FY 2012-2016 Sexual Assault Case Adjudication Data

Mr. Chuck Mason, DAC-IPAD attorney-advisor and professional staff lead for the Data Working Group (DWG), provided the Committee with an overview of the activities of the Data DWG, including recent modifications made to the DAC-IPAD database to provide more reliable and useful case adjudication data to the Committee. Mr. Mason reported that there are currently over 3,000 files in the database all of which will now be updated to incorporate several newly added data fields.

Mr. Mason also reported that the request for fiscal year 2017 sexual assault case file documents was sent to DoD SAPRO and the Services on January 11, 2018 (Request for Information (RFI) Set 7), continuing the Judicial Proceedings Panel's data collection effort. He explained that the preliminary response from DoD SAPRO indicates they are likely not going to meet the deadline requested and that DoD SAPRO does not want to release any information to the public until it is released to Congress. Mr. Mason relayed that he assured DoD SAPRO that the statistics from the data requested by the DAC-IPAD would not be public until the March 2019 DAC-IPAD report, and is requested now only for DAC-IPAD staff processing of the documents. He noted that in the future the request will be made directly to the Services to pull the information from their legal databases and not linked to DoD SAPRO.

Mr. Mason next discussed the statistical data charts that were provided to the Committee before the meeting: the Sexual Assault Case Characteristics Tables for Fiscal Years 2012–2016 and the Sexual Assault Case Adjudication Data Charts for Fiscal Years 2012–2016. He explained that the data in these charts was derived from the DAC-IPAD database which is a SharePoint database that produces data in the form of a Microsoft Excel spreadsheet. The data from the spreadsheet is then manipulated into tables that mirror the tables produced for the JPP by Dr. Cassia Spohn in her data analysis of the previous years' data. Mr. Mason advised that all of the charts would be included in the March 2018 DAC-IPAD annual report as an appendix.

Mr. Mason further explained that there will be no multivariate analysis of the data included in the 2018 report because the DAC-IPAD does not yet have a criminologist on its staff, as the JPP had with Dr. Spohn, though one will be hired. He emphasized that in the past, Service Representatives have expressed considerable interest in the multivariate analysis and that they actually utilize it.

Mr. Mason pointed out that a new data point included this year is whether a convening authority was located in the continental U.S. (CONUS), or outside the U.S. (OCONUS) or if the incident occurred on a vessel.

Discussing the accuracy of the total number of cases included in the DAC-IPAD database, Mr. Mason explained that the total number of cases for a given year varies somewhat from the number of cases actually reported by the Services in the responses to the DAC-IPAD requests for information because as documents are reviewed, the staff finds duplicate cases as well as cases that do not meet the criteria of adult sexual assault offenses or that were not completed in the requested fiscal year.

Another issue affecting the accuracy of the total number of cases reported, Mr. Mason explained, is that the DAC-IPAD staff who physically retrieved the case documents found 25 sexual assault case files in the Service archives that were not reported at all by the Services in their RFI responses to the DAC-IPAD.

Mr. Mason continued that for cases that are entered into the database, the information is carefully and uniformly entered and is extremely reliable because it is a document-based system. However, as long as the DAC-IPAD relies on the Services to self-identify and report the cases meeting the requested criteria, the staff will never be sure whether they have 100% of the cases.

In response to Mr. Markey's question about what mechanism could ensure accuracy in the total number of cases identified, Mr. Mason suggested that a solution could be a centralized location where copies of all charge sheets could be sent as a part of the routine distribution process at the time they are prepared and submitted. He added that as long as the individuals who are tracking the data don't receive notice of each case when the documents are originally submitted in the process, there is no way to be sure one has them all.

Regarding the resources that support the DAC-IPAD database, Mr. Mason reported that currently the database is managed by one attorney and a senior paralegal with assistance from an IT contractor. Based on the minimal staffing required to maintain the current sexual assault database, Mr. Mason estimated that receiving all charge sheets as they are submitted would be a heavy lift with current resources, but could be handled.

Mr. Mason continued describing the DAC-IPAD database noting that all charges for each case are tracked by the staff, not just the sexual assault charges, though there must be a sexual assault charge for the case to be included in the database. He said that the database is scalable and is already set up to track all UCMJ offenses which is what will be required by Article 140a, UCMJ.

Looking at the case characteristics in the data charts, Mr. Mason pointed out to the Committee that while half of the Armed Forces are represented by Service members in the E-3 through E-5 paygrade, the data shows that they make up 60–65% of the sexual assault cases with charges preferred—an overrepresentation for their population.

In response to a question from Dr. Spohn, Ms. Rozell explained that cases involving spouses or intimate partners through the Family Advocacy Program are coded and can be identified in the database. However, Mr. Mason added that it was not until the FY15 data call that cases handled through the FAP program were routinely included in the database. The text accompanying the charts will fully explain the limitations of the data.

Next, Mr. Mason walked the Committee through the charts involving case outcomes and discussed trends that can be seen such as more cases starting to go to general courts-martial rather than special and summary courts-martial.

Judge Grimm commented on the conviction rates of 25%–30% noting that this would be shockingly low in the civilian system and that he is interested in looking into what factors may be contributing to the low rate. Ms. Bashford noted that the conviction rate for penetrative offenses is nearly the same whether the findings are made by a judge or members but where the big difference appears is with full acquittals which have much higher acquittal rates with member panels. Mr. Mason explained that the category a conviction falls into in the chart is determined by the most serious offense for which the accused was convicted.

Next Mr. Mason explained that Chair Bashford had asked the staff to look into the waver rate for Article 32 preliminary hearings. He stated that the law governing the Article 32 hearings was modified in December 2015 and that previously waiver without a pretrial agreement would occur in about 24–28% of cases, but after the form and purpose of the hearings changed, the rate of

waiver went up to 50% the first year and to almost 71% in the most recent year. He also noted that the conviction rate where there is no pretrial agreement has also declined somewhat since the implementation of the new Article 32.

Ms. Tokash asked whether the staff judge advocates' recommendations to the convening authority are part of the files that are being looked at. Mr. Mason responded that the data team does collect and track that information and Ms. Rozell added that the investigating officer's advice can be compared to the SJA's advice for each of the offenses.

Chair Bashford asked that Mr. Mason look into whether waiving or not waiving the Article 32 had a measurable impact on the conviction rate.

Ms. Bashford next brought up the issue of whether the Data Working Group would make future information requests directly to the Services for case information. Mr. Mason advised that the working group would like to go that route if acceptable to the Committee. Judge Grimm made a motion that an RFI be sent directly to the Services for future case information and Chair Bashford seconded the motion and asked if there were any objections. Hearing none, she advised Mr. Mason to direct requests to the Services only going forward. She added that she could not emphasize enough how important having the 2017 data is going to be to see if there are patterns and trends that can be identified.

Case Review Working Group Presentation and Committee Deliberations on Case Review Strategic Plan and Methodology

The staff supporting the Case Review Working Group (CRWG) briefed the DAC-IPAD members on the working group's strategic plan and methodology. Ms. Tagert first noted that the CRWG members have already done a lot of work reviewing cases.

She stated that one purpose of the initial case review is to start capturing data from the files in order to see whether predictive factors for case outcomes can be identified. Ms. Tagert explained that the working group members proposed reviewing investigative files in which no action was taken against the accused and to compare those cases with those which resulted in preferral of charges. She added that the CRWG created a checklist to capture several types of data that may help to predict outcome.

The second purpose of the case reviews, Ms. Tagert reported, is to capture demographic information. She noted a recent report published by Protect Our Defenders (POD) citing racial disparity in action taken against Service members accused of a crime as an indicator of the importance of capturing demographic data from case files.

Ms. Tagert reported that the CRWG will also look at case disposition categories that are identified in case files, versus the classifications found in the Defense Incident Reporting System (DIBRS) versus what is noted on the command action documents. She added that case reviews so far have shown discrepancies in these different categories used.

Finally, Ms. Tagert reported that the CRWG will review all 1,317 sexual assault cases that were reported as having no action taken against an identified active duty military subject. She noted that CRWG will be making a determination based on the investigative file only, whether or not the command action decision was reasonable based on the evidence or some other factor that is obvious in the case files.

Judge Grimm asked whether the investigation file makes a recommendation to the command and SJA on action to take or whether it just presents the outcome of the investigation. Ms. Tagert responded that it does both: in some cases, the reporting lists only “no action taken” without any additional information;” and sometimes there will be a brief write-up, potentially by the JAG legal office, but approved by the command. She noted that the CRWG is planning a working group session in March where representatives from each Service’s JAG office as well as commanders and law enforcement will be invited to discuss this issue.

Dr. Chayt noted that by DoD policy, investigators do not make recommendations on what appropriate action in a case would be. She said investigators are to discover the facts and present those facts to the commanders and JAGs so that a determination may be made at that level.

Judge Grimm suggested that it would be interesting to do a sampling of cases where the investigative file was reviewed for the conclusion to be drawn from it, then other related documents were sought that go beyond the investigation itself to try and figure out what happened over the lifespan of the case.

Next, Ms. Tagert discussed the CRWG’s request for information submitted to the MCIOs regarding only penetrative sexual assault offense investigations that were closed in FY 2017. She explained that they asked for case details for each case to be provided to the CRWG on Excel spreadsheets. The information requested included the disposition of the case according to the Service’s database and the case clearance category entered into DIBRS. She said the purpose of the two categories was to assess the consistency between what the Services recorded as a case’s disposition versus what was entered into DIBRS.

Ms. Gallagher explained that according to Rule for Courts-Martial 306, the commander has four options for case disposition. She stated that the command can take no action at all, administrative action, non-judicial punishment, or prefer charges. She noted that “no action taken” does not mean nothing happened—all of the cases are investigated and a final report provided to the command. She continued that the command, in conjunction with the legal adviser, then makes the disposition decision using the baseline standard of whether an offense occurred and whether the suspect committed it, plus consideration of an enumerated list of additional factors, such as the admissible evidence.

Regarding the accuracy of the list of 2,069 penetrative sexual assault investigations closed in FY 2017 provided by the MCIOs, Ms. Tagert noted that some of the cases did not fall within the requested parameters; for instance, there were some cases in which the military did not have prosecutorial jurisdiction; these cases were eliminated from the list of cases to review. She also noted that some of the dispositions were listed as unknown, in which case the DIBRS case closure was used to further classify the case. Another concern about the accuracy of the data is

that it is self-reported information from the MCIOs that the DAC-IPAD does not have documentary evidence for, so there is no way to verify the numbers until all of the identified case files are reviewed.

In analyzing the FY 2017 lists of cases closed from each MCIO, Ms. Tagert noted that for the Naval Criminal Investigative Service, which covers both the Marine Corps and the Navy, three different terms are used where no action is reported: insufficient evidence, no action taken, and unfounded. She also reported that for some cases the disposition is listed as “unknown.” For the Army, Ms. Tagert stated that the reasons given for as to why a case was closed were either “no action taken” or “unfounded” or no reason was given at all.

Ms. Tagert pointed out that the Air Force data was very good compared to the other Services, noting that it was always very clear what happened in each case. She noted that in the Air Force’s internal database the cases are never classified as “unknown” or “no action taken.” There is always some action entered. Even if the case was unfounded, the reason for unfounding was very clear and they used the FBI definition of false or baseless. She continued that if prosecution was declined, the data indicated the reason was stated as evidence threshold—which was very helpful.

In conclusion, Ms. Tagert said that even when only penetrative offenses are looked at, the preferral rate is still in the 20% range, other than the Coast Guard, which has a preferral rate of 41%. She stated that there appears to be no difference between contact and penetrative cases in the rate of preferral of charges.

Ms. Gallagher explained that by the end of the summer the CRWG and staff will have reviewed all investigation files that meet the criteria of penetrative offenses, with a military subject, an adult victim, and closed by the investigative agency in fiscal year 2017. She reiterated that the first phase is to review the 1,317 cases with no action taken, followed by 408 cases where charges were preferred. After that the CRWG will tackle the administrative action cases, civilian authority cases, and non-judicial punishment cases. She said once all the cases are reviewed and data entered in to the database, a criminologist will analyze the information.

Dr. Chayt pointed out that the number of cases being reviewed is greater than the number of cases reported by the Services in response to question on the number of investigations. This is because the Services reported the number of investigations opened, while for purposes of the data collection a case is defined as a subject. A number of cases have multiple subjects.

Ms. Gallagher explained that the strategic plan for future reviews is to look at attrition rate for the 408 cases with charges preferred to see how many were referred to trial, and if not, why not. She added that the CRWG has also contemplated looking at acquittals and would then compare them to the cases resulting in convictions.

Dr. Spohn noted that although the staff will look at all of the cases, the members of the CRWG will look at a statistically significant random sample and that they have avenues in place to ensure the reliability and consistency between the reviews of both the staff and the working

group members. Ms. Gallagher added that the case review checklist is being finalized and is about 12 pages long.

Ms. Bashford commented that the case review project is a huge undertaking and noted that when looking at the statistics there is a huge number of cases that never make it to the preferral/referral stage and she believes the CRWG is the first group to really look at these cases in-depth. Judge Grimm agreed that this is an enormous but very important undertaking and he expressed his gratitude to the CRWG for their efforts on this vital project.

Ms. Tokash asked for the Committee to request the standards used to arrive at a no action required determination by each of the Services—particularly anything in writing. Ms. Tagert noted this will be requested and also that this issue will be looked into at the March CRWG preparatory session during which the group will hear from judge advocates, the provost marshal, and investigators so they can explain the terminology and make sure there is an understanding as to what we are looking at.

Ms. Cannon noted that the CRWG has found is that there is inconsistency across the different branches of Service as to what their reasoning is and what “unfounded” and “insufficient” mean. Mr. Hines added that he is developing standard operating procedures (SOP) to ensure consistency in the review process and that when there is consensus among the working group about issues with a case, they are going to pull the file and do additional review by requesting more information from the Services such as prosecution memos.

Mr. Kramer asked if there is any indication in the files being reviewed that social media of the victim or accused are being looked into. Ms. Tagert responded that they are tracking all of the digital evidence including what type it was that is in the case file and whether it corroborates the account of the victim or accused.

Mr. Markey noted that even though the CRWG is not focusing on policy violations, if a policy issue shows up in the reviews that may have a causal effect on whether a case goes in one direction or another, they may look at that. He added that the real focus is whether the information that was provided to the command was sufficient to make a determination on whether the case should be preferred or not.

Prior to closing the meeting, the Committee thanked Captain Tideswell for her outstanding leadership and her 30 years of service.

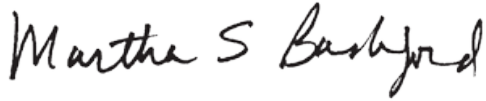
Public Comment

There were no public comments.

The DFO closed the public meeting at 11:31 a.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. Transcript of the January 19, 2018 Public Meeting, 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 the October 19-20, 2017 Public Meeting
4. Table of Contents and Summary of Read Ahead Materials
5. Biography of Presenter, Dr. Nathan Galbreath, Deputy Director, Sexual Assault Prevention and Response Office, U.S. Department of Defense
6. DAC-IPAD March 30, 2018 Annual Report Working Outline
7. Request for Information (RFI) Set 4, Questions 5 and 6 Submitted to the Under Secretary of Defense for Personnel and Readiness and the Service Secretaries on September 11, 2017, and Service Responses
8. DAC-IPAD Policy Working Group Deliberation Outline
9. Navy Sexual Assault Prevention and Response Office Expedited Transfer Study
10. RFI Set 6, Questions 1-3, Submitted to the Department of Defense Sexual Assault Prevention and Response Office (DoD SAPRO) and Service Judge Advocate General's Corps (JAG Corps) on January 10, 2018
11. RFI Set 5, Questions 1 and 2, Submitted to Military Criminal Investigative organization (MCIOs) on October 30, 2017 and Service Responses
12. Reports of Sexual Assault Received at Military Installations and Combat Areas of Interest (November 17, 2017)

Materials Provided During the Public Meeting

13. Expedited Transfer Analysis for DSAID Cases, DoD SAPRO, January 24, 2017
14. Revised Expedited Transfer Chart (prepared by DAC-IPAD staff)
15. Policy Working Group PowerPoint Presentation, January 19, 2018
16. Sexual Assault Case Adjudication Data Charts for Fiscal Years 2012–2016 (prepared by the DAC-IPAD staff)
17. Sexual Assault Case Characteristics Tables for Fiscal Years 2012–2016 (prepared by the DAC-IPAD staff)
18. Case Review Working Group PowerPoint Presentation, January 19, 2018
19. Chart of Officer and Enlisted Military Ranks for All Services