



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

MINUTES OF APRIL 20, 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 its seventh public meeting on April 20, 2018, from 9:00 a.m. to 3:15 p.m. The Committee received briefings on case management and data collection in civilian criminal courts and the current military justice data and case management capabilities of the Military Services. 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
The Honorable Leo I. Brisbois
Ms. Kathleen B. Cannon
Ms. Margaret A. Garvin
The Honorable Paul W. Grimm
Dean Keith M. Harrison
Mr. A.J. Kramer
Ms. Jennifer Gentile Long
Mr. James P. Markey

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
Ms. Meghan A. Tokash
The Honorable Reggie B. Walton

Absent Committee Members

Major General Marcia M. Anderson
U.S. Army, Retired

Dr. Jenifer Markowitz

Committee Staff

Colonel Steven Weir, JAGC, U.S. Army, Staff Director
Ms. Julie Carson, Deputy Staff Director
Mr. Dale Trexler, Chief of Staff
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

Mr. Dwight Sullivan, Designated Federal Officer (DFO)
Major Israel King, U.S. Air Force, Alternate Designated Federal Officer (ADFO)
Major Joseph Ahlers, U.S. Air Force, 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

Presenters

Mr. Glenn Schmitt, Director, Office of Research and Data, U.S. Sentencing Commission
Mr. Wendell Skidgel, Electronic Public Access Staff, Administrative Office of the U.S. Courts

Ms. Margaret Sheehan McCaleb, Project Director, Next Generation CM/ECF, Case Management Systems Office, Administrative Office of the U.S. Courts
Dr. Allen Beck, Senior Statistical Advisor, Bureau of Justice Statistics, U.S. Department of Justice
Lieutenant Colonel Jason Coats, U.S. Army, Operations Branch Chief, Criminal Law Division, Office of the Judge Advocate General
Captain Michael Luken, U.S. Navy, Director, U.S. Navy Trial Counsel Assistance Program
Major Jesse Schweig, U.S. Marine Corps, Trial Counsel Assistance Program, Judge Advocate Division – Military Justice
Major Noel Horton, U.S. Air Force, Executive Officer, Air Force Judiciary Directorate, Air Force Legal Operations Agency
Mr. Stephen McCleary, U.S. Coast Guard, Senior Military Justice Counsel, Office of Military Justice, Washington D.C.

MEETING MINUTES

The DFO opened the public meeting at 9:03 a.m. Chair Martha Bashford provided opening remarks and summarized the agenda for the meeting.

Best Practices for Case Management and Data Collection in Civilian Criminal Courts

The first speaker was Ms. Margaret McCaleb, project director for the next generation of the Case Management Electronic Case Filing System (CM/ECF) at the Administrative Office of the U.S. Courts (AO). CM/ECF is the online system that all federal appellate, district, and bankruptcy courts use to manage their cases and which attorneys use to file motions, briefs, and other case-related documents. Because there are variations in the business processes among bankruptcy courts, district courts, and appellate courts, there are three separate but related versions of CM/ECF. Because there are also variations among the courts within a given type, the nationally supported versions of CM/ECF include tables that allow individual courts to customize the application to meet their local rules and procedures.

CM/ECF allows judges, chamber staff, and clerks' office staff to manage cases electronically, keeping track of deadlines, hearings, trials, motions filed, and more. It also provides automatic notification of filings. Courts have developed quality control processes.

Judge Paul Grimm asked how sealed matters are filed. Ms. McCaleb explained that there are seven to nine different levels of restrictions that can be set on documents filed with a federal district court. A single document can be sealed, or the entire case can be sealed, as necessary. Additionally, there are different degrees accessibility depending on the nature and purpose of the sealed document.

Judge Reggie Walton asked how the system accommodates individuals who represent themselves. Ms. McCaleb explained that if a *pro se* filer wanted to file a document under seal, they would need to file a motion saying that they want to file under seal. Judge Grimm added

that there are variations that exist within the system: some courts do not permit pro se filings unless specifically authorized by the court.

Dean Keith Harrison asked for advice on how to implement a similar system. Judge Grimm added that before the CM/ECF system was rolled out for the entire federal judiciary there were a number of courts that tested the system out. He asked whether the Department of Defense should develop a pilot program to see whether there are unanticipated glitches before going live with an entirely new system. Ms. McCaleb responded that she highly recommended using pilot programs.

Judge Grimm asked for Ms. McCaleb's opinion on the utility of a system that allows users to access it wherever they have internet connection. Ms. McCaleb responded that the technology has evolved over time, and now there is a mobile query available. She also noted that the system is web-enabled, and all 204 federal courts have their own separate databases which are housed in two data centers.

Mr. James Markey asked about standardization. Ms. McCaleb responded that while there is standardization, there also has to be room for flexibility for local court procedures. She noted that different courts call the same type of motions by different names, but there is a code attached to each entry so that as long as the code is the same, the display can be different. Judge Grimm added that the system is remarkably user-friendly and has drop-down menus and instructions; his strong suggestion was that, as the military migrates towards considering such a system, the people who might be responsible for developing it coordinate with the AO, or any other organization that has similar filing systems, to see how it actually works.

Judge Grimm then commented that there is a branch in the AO called the Judicial Training Center which provides legal education and support for the judges. That branch is able to mine data to produce reports that make it possible to have non-anecdotal development of policy.

Chair Bashford asked about the collection of data. Ms. McCaleb responded that while the AO does not use that data for research purposes, the Federal Judicial Center may. Judge Grimm added that the Sentencing Commission captures all sentencing data. He also noted that judges are required by law to report every six months to Congress on the status of civil cases, including cases that are over three years old. This data is published by the AO. Ms. McCaleb also noted that the information is available if someone queried the system.

Ms. Margaret Garvin asked how often the system is updated to capture new reporting requirements. Ms. McCaleb noted they do at least one major release every year of the software.

Mr. Wendel Skidgel, a senior attorney for the Judicial Electronic Public Access Program at the Administrative Office of the U.S. Courts, was the next speaker. The mission of the Judicial Electronic Public Access Program is to facilitate and improve public access to court records and court information in accordance with federal law, rules, judiciary policy, and user needs. Mr. Skidgel noted that PACER provides access to docket sheets for 53 million cases and access to more than 1.1 billion documents that have been filed with the courts through CM/ECF. The program is funded entirely through user fees set by the Judicial Conference of the United States. He added that the judiciary proactively works to strike a balance between providing public access to court files and protecting sensitive information.

Chair Bashford asked how to file a motion under seal. Judge Grimm clarified that for certain matters, if you file a document requesting that it be filed under seal, the system allows the document to be sealed until such time that the court rules on it. If the opposing party files something that one believes should be sealed, they can request that document to be sealed. Ms. Garvin noted that if victim's counsel has not entered their appearance, they will not get notification of what has been filed. Mr. A. J. Kramer noted that there are two types of sealing: one where there is an indication on the public docket that a document is sealed, and one where there is not even an indication of the document on the public docket.

Chair Bashford asked if there was a way to query the system to get aggregate data. Ms. McCaleb noted that this would have to be done court by court, since each has its own database.

Mr. Glenn Schmitt, Director of the Office of Research and Data, U.S. Sentencing Commission, was the next speaker. He noted that the Sentencing Reform Act of 1984 created the Commission, a bipartisan agency that provides advice to federal judges when determining the sentences to be imposed on persons convicted of federal crimes. To support the promulgation of guidelines, Congress authorized the Commission to establish a research program to collect data about the sentences imposed in federal courts, and to disseminate that information to the public. Central to the Commission's work is its data collection effort.

To facilitate the Commission's work, Congress has required that the courts provide five documents to the Commission within 30 days after the entry of judgment in a criminal case: the indictment or other charging document, the presentence report, the judgment and commitment order, the plea agreement if there is one, and the written statement of reasons form. The data from the five core documents submitted to the Commission are extracted and coded by Commission staff and input into a computer database. For each case in the offender data set, the Commission routinely collects information on case identifiers, demographic information about the offender, the statutes of conviction and the maximum and any minimum penalties that applied at sentencing, any guideline provisions that the court applied in the case, the type and length of sentence imposed, and the reasons given by the court for sentences that are outside the guideline range. Mr. Schmitt explained that the Commission has a staff of approximately 45 persons who enter this data into the Commission database, ensure that it is accurate and complete, and then use it for a myriad of analyses.

Mr. Schmitt noted that the Commission's data is regarded as one of the most complete and accurate data sets in the social science arena for several reasons. First, the data are a universe and not a sample. Second, only Commission staff input data into the data set. Third, Congress has authorized and appropriated the funding for a large research staff of social science professionals, allowing for more data to be collected. Fourth, all staff have advanced degrees in criminology or related fields with a thorough understanding of research and analytical methods.

Finally, Mr. Schmitt discussed some of the limitations of the Commission's data, including that the Commission does not collect data on investigations or prosecutorial decisions, among other things. Additionally, the Commission does not generally collect information about victims of crimes. The Commission also does not collect information about offender characteristics, such as

previous employment history, mental health and drug abuse history, support provided to dependents, and military service.

Dr. Cassia Spohn noted the lack of uniformity among the Services regarding the forms they use to collect data. She asked Mr. Schmitt for advice on how to improve the process so there is uniformity and consistency. Mr. Schmitt noted that some documents collected by the Commission are always in the same format, and some are not. He noted that the DAC-IPAD has the option to recommend that the documents be standardized, or to allow each of the Services to have their own approach, which would make things more complex and may limit what could be done with the data.

Judge Grimm asked whether some of the information the Commission does not collect could be derived from the five documents the Commission receives. Mr. Schmitt explained that when presented with a research question, the Commission will often go back into the documents and try to capture the special data that is not routinely collected. Mr. Schmitt noted that it is much easier to start with a big list of what information should be collected and then mandate that those data points be collected from the beginning, rather than put things on the list as you go forward. However, the longer the list, the more staff and money it takes to collect the data.

Judge Grimm then asked whether the Commission uses computer-assisted analytics to search data. Mr. Schmitt responded that prior to 2015, all of the Commission's data was collected by an employee who would look at the documents from the court and then manually put that information in a computer. He noted that relying on highly-trained, skilled human beings is more accurate than any computer extraction program. However, after 2015, the Commission began using computers in more ways, including to collect criminal history information to a greater level of specificity. Mr. Schmitt commented that since the Commission's data is used to deprive people of their liberty interest, it is extremely important to be accurate. Judge Grimm noted that there are two components of big analytics data—precision and recall—and these are inversely related.

Chair Bashford asked Mr. Schmitt if he would have the same confidence in the data if district court personnel did the coding, rather than Commission staff. Mr. Schmitt said he would not, because his staff is trained specifically to collect this data. He told the Committee that it was very important to have staff dedicated to this function.

Judge Walton asked if the Commission has collected information to assess whether there is a legitimate basis for sentencing disparities other than race. Mr. Schmitt responded that the Commission has done a number of studies that show unexplained differences in sentencing that are aligned on racial grounds. He noted that the studies also point out that there are data missing from these analyses. It could be that there is no other legitimate reason for the disparities other than race, or it could be that there is something that the Commission is not able to measure that is correlated with race that explains the result on a legal ground. He noted that based on some preliminary work, the Commission found that violence in the offender's past did not have a statistically significant impact on the outcome.

Dr. Spohn asked about the process that researchers have to go through to get access to the data. Mr. Schmitt noted that the Commission makes its data sets available to the public with two important limitations: it takes out information that would identify offenders and the sentencing judge. He noted that the Commission has a process in place by which researchers can enter into a cooperative agreement with the Commission if the researcher needs to know the identity of the judge or offender.

Judge Grimm asked whether having more information about the investigation and prosecution would give the Commission more data to determine whether disparities in sentences are correlated to or caused by certain demographics. Mr. Schmitt agreed that this data would be helpful, but noted that it would be complicated by certain factors—for instance, the fact that prosecutors charge crimes in different ways.

Chair Bashford asked if the AO captures charging information. The presenters responded that this information is knowable, but not yet captured. Ms. McCaleb added that the data are not captured separately in the database, though the information is available on the presentence report.

Chair Bashford then asked whether any fields have been added to the database over time. Mr. Schmitt noted that most of the time a new field would only capture information going forward, but there have been a few instances where the Commission has captured information looking backward as well.

Mr. Kramer asked how many data points are extracted from each case, to which Mr. Schmitt estimated 200. Depending on what kind of case it is, certain screens are available to be filled in. Most of the information comes from the judgment that the court signs, the statement of reasons form, and then the presentence investigation report.

Ms. Meghan Tokash commented that the military does not have presentence investigation reports. Mr. Schmitt responded that the fact that there is no presentence investigation report provides an opportunity for DoD to mandate how that information is collected. He noted that one possibility would be a report of trial document with check-boxes for the trial counsel to complete that would capture all the things in the presentence investigation report. He added that the Committee would need to think very carefully about what information should be collected. In his view, the database should not be limited to sexual assault crimes.

Mr. Schmitt remarked that his analysts code between 4 and 4.4 cases per hour. When asked about quality control, he noted the importance of having a dedicated staff and continuous training. He added that the Commission uses computer technology to double check some of the database entries and a “clean up” staff that reviews the entries when they do not seem correct.

Ms. Kathleen Cannon asked for advice on collecting information about cases early on in the military justice process. Mr. Schmitt responded that the military will need to capture data from law enforcement, staff judge advocates, and convening authorities. He noted that the challenge with the last two groups is that it may chill their prosecutorial discretion and decision-making.

Mr. Markey asked about the accuracy of the source documents received by the Commission. Mr. Schmitt commented that the documents the Commission collects are copies of official records generated by federal court proceedings, and are sent to the Commission in PDF format. While the documents are created by a range of people, they are normally sent to the Commission by the probation officers. The Commission examines the documents themselves because they want to have a fresh set of eyes on the information they contain. Mr. Schmitt added that his staff needs to use their judgment for some of the data entries—for example, when a person has multiple crimes for which they are sentenced, the staff needs to determine which sentencing guideline was used.

Judge Grimm asked how to capture information about why certain charges resulted in a conviction. Mr. Schmitt answered that a big issue would be whether there was a plea agreement or whether the case was contested. Beyond that, he did not believe it would be possible to “get in the mind” of the judge or jury and understand why there was a conviction.

Ms. Garvin asked about how to protect people’s privacy in the database. Ms. McCaleb answered that there is software that can detect certain patterns—such as social security numbers—to warn the attorney when s/he forgets to redact that information before filing the document. She also mentioned that the federal courts are considering using software that allows documents to be viewed by the parties to the case for twenty-four hours before making those documents public, in order to allow time for all parties to ensure appropriate protections are in place for sensitive information.

Ms. Meghan Peters asked about the code book from the Federal Judicial Center. Ms. McCaleb responded that one way for quality control is to limit the entry in the database to one of the available codes. Mr. Skidgel added that the codes allow for standardization—even if the same types of motions have different names, they are coded in the same way.

Ms. Peters then asked how a database could handle classified cases. Ms. McCaleb noted that there can be different levels of security built into the system from the beginning—similar to how sealed cases are handled.

After the speakers were excused, the Committee discussed some of the main points of the session. Chair Bashford commented that one of the most important things that they heard was the benefits of having a document-based system where the documents go to a central location. Ms. Cannon noted that it is important to streamline and standardize the documents used to collect information. General Schwenk added that one approach for the Committee would be to think about what the system should look like in order to provide the information that the Services and others need.

Ms. Tokash stated that she did not believe that collecting information on a commander’s decision to go forward with a case would infringe upon prosecutorial discretion. Judge Grimm responded that it would be difficult to get people to admit the real reasons they treated a case a certain way unless that information was anonymized.

Updates for the Committee from the Data, Case Review, and Policy Working Groups

General Schwenk provided an update on the status of the Case Review Working Group's review of no action taken cases. He noted some preliminary issues the DAC-IPAD may want to explore further: (1) victim and subjects experience adverse effects from lengthy investigations; (2) the influence of an alleged victim's desire to go forward on the command legal decision; (3) prosecutor case analysis and additional investigation is generally not captured in command action documents; (4) apparent inconsistency between the judge advocate's probable cause determination and command action submission; (5) lengthy delays between final investigative report of investigation, command disposition action, and investigative case closure; (6) full investigation triggered by third party and command required reporting; and (7) usefulness of character interviews in case files.

Mr. Chuck Mason, DAC-IPAD Attorney-Advisor, provided an update on the Data Working Group. He advised that the Services have declined to provide the DAC-IPAD with their case lists until the SAPRO report comes out in May. He noted that this will put the working group very behind in collecting and analyzing data, and therefore the working group has revised its approach for issuing the request for information in the future. Mr. Mason then told the Committee about a couple of data calls that the working group has recently received and responded to, adding that he was proud to report that the DAC-IPAD's data system is meeting the needs of its customers.

Lastly, Chief Rodney McKinley provided an update on the Policy Working Group. The Policy Working Group is currently focusing on two issues. The first is making recommendations to the full Committee regarding the implementation of Article 140a, UCMJ, and the second is examining expedited transfer policies in order to complete the working group's assessment of several specific issues that were highlighted in the Committee's report of March 2018.

U.S. Department of Justice, Bureau of Justice Statistics Data Collection Methodology and Current Capabilities of the Military Services' Case Management and Data Collection Programs

The first speaker was Dr. Allen Beck, Senior Statistical Advisor for the Bureau of Justice Statistics (BJS). He is involved in developing information systems, ensuring efficiency of design, addressing data quality, and ensuring the accuracy of the estimates that are produced by the agency. He noted that the military faces many of the same issues as BJS, including ensuring uniformity of definitions and harmonizing data from diverse groups.

Chair Bashford asked Dr. Beck what works well when gathering data from so many different agencies with differing definitions. Dr. Beck explained that part of BJS's mandate is to provide a standard to law enforcement agents, corrections agencies, and other criminal justice agencies as to what the various terms mean and how they should be measured and reported. He emphasized the importance of financial and technical assistance for local law enforcement agencies, as well as being able to demonstrate the link between data and operations.

Chair Bashford then asked if it is possible in the civilian sector to measure the drop-off from reporting to prosecutions of sexual assault crimes. Dr. Beck noted that only about half of the incidents of rape and sexual assault actually get reported to someone. He added that BJS lacks a real system for tracking cases through the entire criminal justice process; instead, they have a

series of snapshots in time.

The next speaker, Lieutenant Colonel Jason Coats, U.S. Army, spoke about the Army's military justice case management systems. The Army JAG Corps manages military justice primarily utilizing two applications: Military Justice Online (MJO), and the Army Courts-Martial Information System (ACMIS). MJO serves three primary purposes: first, to create and produce standardized documents and facilitate the processing of investigations, administrative separations, military non-judicial punishment, and courts-martial; second, to create reports for the pre-trial, trial, post-trial phases of courts-martial within a general courts-martial convening authority's jurisdiction; and third, to produce statistical data for internal use in identifying gaps and trends concerning the execution of military justice actions, as well as external requests for information concerning it. The second system, ACMIS, is a secure web-based case management tool developed to give the Army Court of Criminal Appeals and trial judges the ability to monitor, track, and document every step required to maintain official court-martial case reports. In addition to those two systems, the Army also has an e-docket that is accessible to the public, and a monthly results of court-martial report that is published and is publicly available.

Captain Michael Luken, U.S. Navy, spoke about the Navy's data collection system. He noted the importance of having a system that is user-focused so that the individuals find value in inputting the information. The Navy currently uses the Case Management System (CMS)—this is a case manager, not a case tracker. It can be used to generate reports that show how long a case has been pending, how long it takes to get a recommendation to the command, and how long it takes from the point of referral, to the Article 32 preliminary hearing, or to completion of the trial. It is overseen by the Trial Counsel Assistance Program (TCAP) so that common themes can be identified and problems can be fixed. Every case goes into CMS; once Naval Criminal Investigative Service (NCIS) notifies the legal office about a case, the trial counsel is responsible for providing updates, recording the case chronology, and entering information into the different tables and checkboxes. He noted that, however, as more entries are added in CMS, more time and personnel are needed to provide information about a given case.

Major Jesse Schweig, U.S. Marine Corps, spoke on behalf of the Marine Corps. He noted that the Marine Corps has the same system as the Navy with a couple exceptions. The Marine Corps recently transitioned from a "prosecution merits memorandum" to a "case analysis memorandum," which requires the special victim prosecutor to give advice to the convening authority for all sexual assault cases in a two-step format. First, the special victim prosecutor will let the convening authority know whether there is probable cause; if there is probable cause, that special victim prosecutor will state whether there is a serious evidentiary defect that would preclude prosecution, such as when the victim declines to participate in the case, or when prosecution is otherwise inadvisable. Major Schweig then commented that there are two ways to create a data system: a headquarters-centric top-down data system, which he believes to be inefficient, or a modern, user-centric, bottom-up data system.

Major Noel Horton, U.S. Air Force, spoke about the Air Force's case management system, known as the Automated Military Justice Analysis and Management System (AMJAMS). AMJAMS collects data during all stages of military justice actions on offenses, as well as information on the participants, procedural matters, and timelines for the investigatory, court-martial, appellate, and non-judicial punishment processes. AMJAMS supports efforts to

eliminate or highlight excessive processing delays and provides the capability to monitor the current status of military justice actions. Data entry is predominantly done at the field level. AMJAMS can also be used by the Air Force JAG Corps headquarters to analyze trends and compare caseloads across different jurisdictions.

Finally, Mr. Stephen McCleary, U.S. Coast Guard, spoke about the Coast Guard program called Law Manager. While Law Manager is capable of tracking cases from the inception of the investigation, it is more commonly used after referral of charges. Additionally, Coast Guard Investigative Service (CGIS) uses a different system for their investigative work and to generate reports. Mr. McCleary noted that the Coast Guard had previously met with Ms. McCaleb, but the AO did not make CM/ECF available to them. This was for three reasons, according to Mr. McCleary: 1) the AO was busy working on the next generation of CM/ECF; 2) the AO had previously tried modify CM/ECF for another user in the executive branch, and that had not gone well; and 3) the AO believed CM/ECF is a far too complex for the Coast Guard's relatively small number and type of cases.

Chair Bashford asked the presenters whether they can query their systems to search for victim declination cases. All the Services except for the Army noted that while victim declination is memorialized in a document in the case file, they do not have specific data fields in their systems that capture this information. The Army noted that they have just added this as one of their data fields, so going forward this information would be available.

Dean Harrison asked what information is available to the public when a Service member is prosecuted. Lieutenant Colonel Coats noted that while the e-docket is available, no documents are actually available to the public; however, a member of the public may request information pursuant to the Freedom of Information Act.

Mr. Markey commented on the lack of standardization among the Services. Captain Luken agreed the Services were working in silos and using clunky, outdated systems, and that the Services should not be looking through open-field narratives in a database in order to compile information on victim declinations. Major Horton added that the Air Force has struggled to decide what data fields should be tracked, and to continuously adapt as public and Congressional interest changes over time.

General Schwenk asked how long it takes to add a new field to AMJAMS, and Major Horton responded that while adding the data field does not take a long time, training users is more complex. Lieutenant Colonel Coats agreed that when adding a field, it needs to be done in an intuitive way. Dr. Beck commented that it is important to have common metrics and targets, which requires that everyone speak the same language. He added that you cannot attempt to collect every aspect of every decision point.

Ms. Jennifer Long asked whether Captain Luken was able to flag the more complicated cases in the Navy's Case Management System. Captain Luken noted that the metric he uses is that a typical caseload is 18 to 20 cases, and that TCAP has a system for noting and tracking high-visibility cases such as sexual assault cases.

Chief McKinley asked the presenters whether the military should continue to have five different systems, or whether there should be one system that every Service uses. Mr. McCleary

responded that though it would be possible to have five different systems, he thinks it would be better to have one. Major Horton disagreed, stating that it would be possible to have five different systems if there were common standards among all the Services. He added that the Air Force system already has reliable data going back to the 1980s and 90s. Major Schweig commented that there are a lot of differences between the five Services, and creating one uniform data system would require “an act of God.” Captain Luken agreed that all the Services have different histories and cultures and different administrative and non-judicial punishment processes. Lieutenant Colonel Coats added that military justice is different in each of the Services, so it would be difficult to have one case management system. He noted that even in the civilian sector there is not one overarching system across all federal or state courts.

Judge Grimm observed that the people asking for data on sexual assault cases do not necessarily understand that the military justice system operates in a dual capacity and handles cases such as sexual assault cases as well as cases that affect good order and discipline. He added that if the military is unable to answer questions about sexual assault, however, Congress might take away the military’s ability to handle sexual assault cases. He noted that the Committee must fashion recommendations that recognize this reality.

Chair Bashford asked about the definitions of certain terms used in the Defense Sexual Assault Incident Database (DSAID), such as “unsubstantiated” and “unfounded.” The presenters commented that they were not the people who entered information into DSAID and could not provide definitions on the spot.

Dr. Spohn noted that the Defense Incident-Based Reporting System (DIBRS) often contains a different case closure code than the closure disposition recorded in the case file itself. Captain Luken responded that in the Navy, there is a disconnect because DIBRS and the sexual assault disposition report (SADR) are handled by the convening authority, while the case closure disposition in the case file is classified by the prosecution.

Dean Harrison asked which office in each of the Services should be responsible for data collection. Captain Luken responded that it depends on what type of data is requested—it might be law enforcement, or it might be the JAG officers.

Mr. Markey asked about resource limitations. Captain Luken said he would want paralegals and good administrative staff available to enter data, and he would need good IT support as well. Mr. McCleary noted that in the military justice system there are no standing courts, so there is no equivalent of the clerk function.

Major Schweig commented that in the military, the cases are not normally “who done it” cases, but rather a question of whether the incident constituted a crime. In response, Mr. Kramer asked why the conviction rate is so low. Major Schweig answered that he believes “who done it” cases are often easier cases, but questions of whether something constitutes a crime require a judgment call by the jury members or the judge.

Ms. Peters asked whether the Services, using their systems, are able to analyze data to explain trends. Captain Luken responded that trends can prompt analysis: for instance, he can see certain trends including what the conviction rate is and how many Article 32s have been waived, and depending on that information, he can determine if more training is needed or something of that

sort. LTC Coats commented that he can look at multiple data fields and correlate two data points, or draw comparisons to explain why one data field is resulting in a certain trend based on the trend of another data field.

Colonel Steven Weir, DAC-IPAD Director, asked whether the Services can query their systems to determine in how many sexual assault cases that went to court martial did the suspect consume alcohol. The Air Force and Army currently do not have that ability. Captain Luken said that the Navy does, as long as the trial counsel or paralegal check the data box indicating alcohol was involved.

Ms. Peters asked Dr. Beck what information is important to know about a sexual assault case in order to understand its outcome. Dr. Beck answered that use of alcohol, history of abuse, and the nature of the injuries are significant correlates of the probability of conviction. He added that obtaining a statement from the defendant and presence of a witness also seem to enhance the probability of a conviction.

Finally, Ms. Theresa Gallagher, DAC-IPAD Attorney-Advisor, asked the Service presenters about their command disposition reports. In the Air Force, this document is maintained by the Office of Special Investigations. The local legal office will maintain other documents memorializing command action. In the Coast Guard, this document is maintained by the legal office working on the case. In the Marine Corps, the Staff Judge Advocate completes this form and submits it to Headquarters Marine Corps, where it is entered into DSAID. Captain Luken noted that the new procedure in the Navy is that this form is kept in two places: it is kept at Navy headquarters, and it is uploaded into CMS so the trial counsel has access to it. In the Army, when a case is disposed of, the data is pushed to the criminal investigation division, which populates the standard form used to record command disposition decisions.

Public Comment

There were no public comments.

The ADFO closed the public meeting at 3:15 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. Transcript of April 20, 2018 Committee meeting, prepared by Neal R. Gross and Co., Inc.

Read Ahead Materials Provided Prior to and at the Public Meeting

2. Meeting Agenda
3. Biographies of Meeting Presenters
4. Report of the Military Justice Review Group – Part 1: UCMJ Recommendations; Article 140a (New Provision) – Case Management; Data Collection and Accessibility (pp. 1011-15) (Dec. 22, 2015)
5. Report of the Military Justice Review Group – Part 1: UCMJ Recommendations; Article 146 – Code Committee & Article 146a (New Provision) – Annual Reports (pp. 1021-31) (Dec. 22, 2015)
6. Memorandum from General Counsel, Dep’t of Def, to Chair, Joint Service Committee on Military Justice, subject: Charter of the Article 140a Implementation Subcommittee of the Joint Service Committee on Military Justice (Oct. 3, 2017)
7. 28 USCS § 994 Duties of the Commission
8. 28 USCS § 995 Powers of the Commission
9. U.S. Department of Justice, Bureau of Justice Statistics, Special Report on Profile of Intimate Partner Violence Cases in Large Urban Counties (Oct. 2009)
10. Department of Defense Crime Data Reporting, prepared by DAC-IPAD staff (Apr. 5, 2018)
11. Service responses to Judicial Proceedings Panel Request for Information (RFI) 89, for Oct. 9, 2015 Meeting, Updated March 2018
12. DAC-IPAD Court-Martial Database Documents and Data Elements, prepared by DAC-IPAD staff (Apr. 5, 2018)
13. Summary of JPP Findings and Recommendations on Military Justice Case Data for Sexual Assault Offenses, prepared by DAC-IPAD staff (Apr. 20, 2018)
14. Department of Defense Response to Judicial Proceedings Panel Request for Information Set 11 (Apr. 5, 2017)
15. Memorandum from Sec’y of Def to Deputy Sec’y of Def, subject: Establishment of Cross-Functional Teams to Address Improved Mission Effectiveness and Efficiencies in the DoD (Feb. 17, 2018)

Materials Provided During the Public Meeting

16. Written Statement of Ms. Margaret Sheehan McCaleb to the DAC-IPAD (Apr. 20, 2018)
17. Written Statement of Mr. Wendell Skidgel to the DAC-IPAD (Apr. 20, 2018)
18. Federal Judicial Center, Criminal Code Book 1996 to Present (Aug. 2016), *available at* https://www.fjc.gov/sites/default/files/idb/codebooks/Criminal%20Code%20Book%201996%20Forward_0.pdf
19. PowerPoint Presentation, Types of Reports, prepared by Navy JAG
20. Navy Handout, Example Reports (Apr. 16, 2018)