



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

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**MINUTES OF JULY 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 eighth public meeting on July 20, 2018, from 9:04 a.m. to 3:43 p.m. The Committee received testimony from representatives from each of the Military Services’ Judge Advocate General’s Corps and the Judge Advocate Division of the U.S. Marine Corps regarding Article 140a, Uniform Code of Military Justice (UCMJ), which concerns military justice case management, data collection, and information accessibility. The testimony included the witnesses’ insights regarding the potential effect of recommendations being considered by the DAC-IPAD on the Services’ existing military justice processes and systems. The Committee also deliberated on recommendations proposed by the DAC-IPAD’s Policy Working Group regarding Article 140a and received updates from each of the Committee’s working groups. Lastly, the Committee received public comment from two sexual assault survivors who shared their experiences with the military justice system.

**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  
Dean Keith M. Harrison  
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  
Dr. Cassia C. Spohn  
Brigadier General James R. Schwenk, U.S.  
Marine Corps, Retired (by phone)  
The Honorable Reggie B. Walton  
Ms. Meghan A. Tokash (by phone)

### Absent Committee Members

Major General Marcia M. Anderson  
U.S. Army, Retired  
Ms. Margaret A. Garvin  
The Honorable Paul W. Grimm  
Mr. A. J. Kramer

### Committee Staff

Colonel Steven Weir, 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. Chuck Mason, Attorney-Advisor  
Ms. Meghan Peters, 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 Wesley A. Braun, U.S. Air Force, Service Representative  
Mr. Stephen McCleary, U.S. Coast Guard, Service Representative  
Major Timothy B. Peltz, U.S. Marine Corps, Service Representative  
Lieutenant Colonel Mary Catherine Vergona, U.S. Army, Service Representative

### Presenters

Ms. Janet Mansfield, Chief, Programs Branch, Criminal Law Division, U.S. Army Office of The  
Judge Advocate General

Major Wayne Shew, U.S. Marine Corps, Deputy Branch Head, Military Justice, Judge Advocate Division, Headquarters, U.S. Marine Corps  
Lieutenant Commander Jeff Pietrzyk, U.S. Navy, Deputy Director of Code 20, Military Justice Directorate at the Office of The Judge Advocate General, U.S. Navy  
Mr. John Hartsell, Associate Chief of the Military Justice Division, Air Force Legal Operations Agency  
Mr. Stephen McCleary, Senior Military Justice Counsel, Office of Military Justice, U.S. Coast Guard

Public Comment

Staff Sergeant Alyssa Rodriguez, U.S. Air Force, Retired  
Ms. Kylisha Boyd  
Mr. Ryan Guilds, Attorney, Arnold & Porter

**MEETING MINUTES**

The ADFO opened the public meeting at 9:04 a.m. Chair Martha Bashford provided opening remarks and summarized the agenda for the meeting.

Military Services' Perspectives on Best Practices for Implementing Article 140a, UCMJ, Case management; data collection and accessibility

The Military Service witnesses fielded questions from the Committee members regarding the feasibility of establishing one independent electronic database for the collection of case documents in order to implement Article 140a. The Services expressed concerns about duplicative efforts on the part of judge advocates who already have to provide information to their existing case management systems, and to DoD's database specific to sexual assault cases, the Defense Sexual Assault Incident Database (DSAID), which is used by the DoD Sexual Assault Prevention and Response Office (SAPRO) to report information annually to Congress. Witnesses also posited that the data already contained in their existing, separate case management systems may not transfer easily to a new electronic database. In addition, the Services noted their concern that one overarching system may not appropriately account for differences among each of the Services' command structures, Service-specific policies, and unique forms for documenting administrative and disciplinary actions.

Presenters also answered questions from Committee members regarding the resources required to provide case documents to the DAC-IPAD, and the additional resources that would be needed to transition to a more comprehensive, document-based system established under Article 140a. In response, the Service witnesses noted the benefits and challenges of a document-based approach to Article 140a data collection efforts, and detailed additional issues raised by any future requirement that those documents become available to the public. The Committee members inquired further about the Services' obligations under the Privacy Act to protect sensitive, personal information any time they respond to requests for information from external stakeholders. Members also asked whether existing models in the federal judiciary for case management and data collection could be adopted by the Military Services. Witnesses lauded the

capabilities of the electronic systems used by federal courts and the U.S. Sentencing Commission, but felt that the Services' needs are broader than just managing court cases and sentencing data. In addition, the Members asked whether law enforcement data could be collected in a standard format in a system established pursuant to Article 140a. Witnesses opined that while law enforcement data reporting responsibilities are important, these responsibilities do not fall to judge advocates, and so any additional data collected about law enforcement activities under Article 140a should be scrutinized closely for its value to military justice practitioners and managers before it is collected. The Services overall felt that the goals of Article 140a, to achieve greater transparency and uniformity in the manner in which military justice information is collected, are imperative and that the Services would benefit from meeting the requirements of this new statute. When asked by the DAC-IPAD staff how each Service documents a commander's decision to take action or take no action on a sexual assault allegation, each Service witness described a different practice for documenting those decisions.

Deliberations on Best Practices for Implementing Article 140a, UCMJ, *Case management; data collection and accessibility*

Chair Rodney McKinley and Ms. Meghan Peters, DAC-IPAD attorney-advisor, opened the deliberations session by providing an overview of the text of Article 140a, UCMJ, and presenting list of issues identified by the Policy Working Group (PWG) for consideration by the full committee. Those issues include the scope of the Committee's recommendations, defining when a "sexual assault case" begins and ends for purposes of data collected pursuant to Article 140a, identifying any specific federal statutory reporting requirements that should be included in a database or system established pursuant to Article 140a, determining best practices for collecting data under Article 140a, and listing any specific information about sexual assault cases that DoD and the military Services should capture in a standardized format under Article 140a.

Ms. Peters presented the PWG's proposed options for defining the appropriate scope of the Committee's recommendations for implementing Article 140a. First, the PWG considered that the Committee could decide to address only how sexual assault cases are handled under Article 140a. Second, the Committee could make recommendations with regard to all UCMJ offenses. Finally, the Committee could choose to focus on both sexual assault and related offenses involving interpersonal violence. The PWG recommended taking the third approach.

Next, Ms. Peters summarized the four functions listed in Article 140a and highlighted the specific functions that the PWG wanted to address. The four functions that must be standardized across the Services, according to Article 140a, are as follows: collection and analysis of data, case processing and management, production and distribution of records of trial, and facilitation of access to docket information, filings, and records. The PWG advised that the Committee could focus its recommendations on data collection, on data collection and case management, or, finally, the Committee could focus its recommendations on data collection, case management, and public access to case information. The PWG recommended the third and broadest approach.

Ms. Peters summarized the PWG's recommendations with regard to when a case begins and ends for purposes of Article 140a, and the PWG's discussions regarding federal statutory reporting

requirements that could be included under Article 140a. The PWG recommended that a “case” involving sexual assault begin at the point of initiation of a criminal investigation into a military suspect, and end at the completion of appellate review.

Chair Martha Bashford, Ms. Jennifer Long, Mr. James Markey, and Dr. Cassia Spohn commented that data collection under Article 140a should facilitate an understanding of sexual assault cases that are investigated and closed without action. They all supported starting data collection concerning sexual assault cases from the point of initiation of a criminal investigation. Judge Leo Brisbois noted the benefits of collecting the same information for all UCMJ offenses, rather than carving out a specific set of data elements for sexual assault cases. He also favored unifying the criminal investigative and judicial systems into one overarching case management and data collection system. Dean Keith Harrison, Dr. Jenifer Markowitz, and Ms. Kathleen Cannon agreed that a criminal investigation is a critical phase of the military justice process, and should therefore be reflected in the data collected pursuant to Article 140a.

Ms. Long proposed that the Committee clearly define what is encompassed by the Committee’s reference to “sexual assault cases” within Article 140a. Several members suggested that “sexual assault” should include both penetrative and contact offenses involving both adult and child victims.

Judge Brisbois noted that the Committee should first decide what the structure of measures developed to comply with Article 140a should be—whether such measures should take the form of one centralized, uniform system, or five separate systems—before it can recommend how sexual assault cases should be handled within that system. In response, Mr. Markey thought that having the Services transition to one overarching system for the investigative and judicial phases of all cases would be too difficult, and recommended that the Committee consider a phased approach that begins with sexual assault cases, and gradually expands to cover other UCMJ offenses. Ms. Peters summarized the recommendation of the PWG: the Committee could recommend that the Services maintain their separate case management systems and use one uniform data collection system modeled after the U.S. Sentencing Commission’s research program.

The members of the Policy Working Group who were present for the public meeting—Chair McKinley, Dr. Markowitz, and Dean Harrison—clarified that their recommendation to the Committee is that the Services should continue to operate their individual case management systems, but transition to one overarching data collection system to meet the requirements of Article 140a. Ms. Peters then listed the best practices that the PWG recommends be used to establish that centralized data collection system: collect information from standardized source documents used in the military justice process; centralize data collection within one entity; develop an electronic database for the storage of documents and analysis of data; limit data entry to one team of trained professionals; ensure Article 140a is the Services’ and DoD’s primary source of information about the military justice system; collect and analyze case data within a reasonable time after a case ends; and allow the Military Services to retain their respective case management systems, provided that they start using uniform terms and definitions.

The Committee members discussed several issues around the proposed best practices, including the challenges posed by resourcing a significant change in electronic systems, and the pros and cons of filtering automated, hand-generated data from disparate Service systems versus pulling case documents to one central location for analysis. Finally, the members raised some concerns about recommending a data collection system that is separate from the Services' case management systems. Others noted that historically, in both the civilian and military context, large systems that seek to do too many things at once can fail and are costly.

The next issue raised by the PWG was whether an Article 140a data collection system should include the elements of any specific federal statutes, such as the Victim Rights and Restitution Act of 1990, the Military Sex Offender Reporting Act of 2015, or the Brandy Handgun Violence Prevention Act of 1993. Ms. Peters listed for the Committee's consideration some factors in favor of and against adding this information to a data collection system. Chair Bashford commented that monitoring compliance with those statutes was beyond the scope of Article 140a. Dr. Spohn noted that a system that collects historical data is not, practically speaking, best-situated to monitor real-time compliance with federal statutes. The Committee members also discussed the difficulties of monitoring compliance with sex offender registry laws, and how existing systems already enforce those statutory requirements. Finally, Dr. Markowitz noted how current events influenced the PWG's concerns for DoD's handling of certain criminal conduct and the administrative requirements triggered by a criminal conviction.

The Chair pointed out that the DAC-IPAD has demonstrated that a system that collects adjudication information from case documents can produce valuable information about sexual assault cases. She also noted that while the Services have invested a lot of resources into their existing case management systems, they should take note of the example set by the U.S. Sentencing Commission in achieving a complete and accurate set of useful information about federal sentencing.

The Committee then discussed whether they wanted to recommend that Article 140a mandate collection of any particular data elements concerning sexual assault cases. Chair Bashford suggested the Committee recommend that the Services track when a victim declines to participate in the military justice process, and also track when a restricted report becomes unrestricted. Ms. Cannon suggested that Article 140a should include information about defense requests for expert assistance, in order to assess any possible influence that issue may have on conviction or acquittal rates.

The Committee agreed to submit its recommendations to the Secretary of Defense by September 2018. Ms. Cannon asked the Service Representatives whether defense counsel in their Service had access to their own case management system. In response, the Service Representatives explained that each Service's systems are used to facilitate the prosecution of a case, and that the Defense have very limited access to the information in those systems. They indicated that generally, military defense organizations do not have an elaborate case management system comparable to what the prosecutors and judges use to manage their cases. Ms. Cannon discussed with other Committee members the need to explore this issue of defense resources further in the future.

The Committee voted on several recommendations regarding best practices for implementing Article 140a, UCMJ. By majority vote, the Committee adopted all of the best practices recommended by the Policy Working Group, and also voted in favor of recommending that the military Services develop a plan to transition towards a unified case management system. The Committee discussed, and then voted in favor of the position, that its recommendations concerning “sexual assault cases,” would apply to cases involving both penetrative and contact offenses, and adult and child victims. The Committee members declined to extend their recommendations to apply to domestic violence incidents. The Chair and others acknowledged that while sexual assault is a form of domestic violence that occurs in many intimate partner relationships, domestic violence is outside the Committee’s charter and the members have not collected sufficient historical data on intra-familial violence other than sexual assault to make a recommendation about those types of offenses.

The Committee discussed whether it wanted to make recommendations solely about data collection for Article 140a, or about data collection, case management, and public access. Ms. Peters explained that the PWG wanted the Committee to consider making a recommendation that historical data about sexual assault cases should be publicly available under Article 140a. Dr. Spohn proposed a friendly amendment to the recommendation concerning best practices, which would add a requirement to produce historical data and reports. The Committee members discussed the proposed amendment. Judge Brisbois and Judge Walton raised concerns about the relative vagueness of recommending that Article 140a include a data reporting requirement, and the potential consequences of publicizing data in a way that jeopardizes potential witness testimony.

The Members discussed further the language of Article 140a, which already requires the Secretary of Defense to develop a plan to facilitate public access to dockets, case filings, and case records. Some Members felt the Committee had not thoroughly examined the issue of how to facilitate public access to case information, or aggregate case information, and thus could not make a recommendation on the topic at this time. The Chair ultimately decided that the amendment proposed by Dr. Spohn was not ripe for a vote.

By majority vote, the Committee agreed that under Article 140a, the data collected about a case involving an allegation of sexual assault should begin at the initiation of a criminal investigation by a Military Criminal Investigation Organization, and end at the completion of appellate review. The Committee also agreed that it was not prepared to make a decision on whether any specific federal statutory reporting requirements should be included in an Article 140a system.

#### Updates from the Staff Director, Data Working Group, Case Review Working Group, and Policy Working Group

The Staff Director described a request from the DoD Office of General Counsel, detailed in a memorandum in June 2018, that the Committee address several additional issues in its next annual report. These issues were identified by the Judicial Proceedings Panel as warranting further study by DoD and the DAC-IPAD. Next, the staff for the various working groups provided updates to the full Committee. The staff for the Data Working Group noted that the

Working Group is on track to produce for the Committee's annual report a detailed analysis for courts-martial completed in FY16 and FY17. The staff for the Case Review Working Group described the progress made in reviewing penetrative sexual assault cases that were investigated and closed without action in FY17, and in reviewing cases preferred in the same time period. Finally, the staff for the Policy Working Group provided an update on the status of the Working Group's findings and recommendations regarding the Services' expedited transfer policies. The issues addressed by the Working Group were identified in the DAC-IPADs' last annual report as requiring additional research and deliberation.

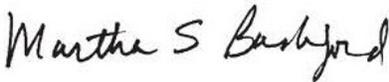
### Public Comment

Two sexual assault survivors provided public comments on their experiences after being sexually assaulted by members of the military. Retired Air Force Staff Sergeant Alyssa Rodriguez related her experiences with the military justice system after reporting she was sexually assaulted by a member of her unit. Ms. Kylisha Boyd similarly related her experiences after reporting she was sexually assaulted as a civilian by a member of the U.S. Air Force.

The ADFO closed the public meeting at 3:43 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 July 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. Article 140a Deliberation Guide, prepared by DAC-IPAD staff (July 9, 2018)
5. Staff Overview of Sexual Assault Case Information Collected by the DAC-IPAD, prepared by DAC-IPAD staff
6. Article 146 – Code Committee, & Article 146a (New Provision) Annual Reports
7. Karen Jowers, “Military Service Dodge Questions About 29-year-old Crime Reporting Law,” *Military Times* (Nov. 8, 2017)
8. Justin Pritchard and Reese Dunklin, “*Child-on-child Sex Assault Cases Languish on US*

*Bases.*” Associated Press (Mar. 14, 2018)

9. Minutes of the April 20, 2018 DAC-IPAD Public Meeting
10. Memorandum from Acting General Counsel of the Dep’t of Def to Chair, DAC-IPAD, Subject: Assessment of Judicial Proceedings Since Fiscal Year 2012 Amendments Panel Recommendations 54, 55, 57, 58 and 60 (Jun 7, 2018)
11. Military Appellate Case Law Update, prepared by DAC-IPAD staff
12. Policy Working Group PowerPoint Presentation on Article 140a, July 20, 2018
13. Data Working Group PowerPoint Presentation, Update to DAC-IPAD, July 20, 2018
14. Case Review Working Group PowerPoint Presentation, Update to DAC-IPAD, July 20, 2018
15. Policy Working Group PowerPoint Presentation, Update to DAC-IPAD, July 20, 2018
16. Written Statement of Staff Sergeant Alyssa Rodriguez, U.S. Air Force, Retired, to the DAC-IPAD (July 20, 2018)
17. Written Statement of Ms. Kylisha Boyd, to the DAC-IPAD, (July 20, 2018)