



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

MINUTES OF SEPTEMBER 7, 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 ninth public meeting on September 7, 2018 from 11:02 a.m. to 12:02 p.m., during which the Committee reviewed, deliberated on, and agreed to the final version of a letter to the Secretary of Defense with recommendations for the implementation of Article 140a, and an update on the DAC-IPAD’s activities.

LOCATION

The meeting was held by telephonic conference call. The meeting was available to the public at and the DAC-IPAD staff participated in the conference call from One Liberty Center, 875 N. Randolph St., Suite 150, 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 (by phone)
The Honorable Leo I. Brisbois (by phone)
Major General Marcia Anderson, U.S.
Army, Retired (by phone)
Ms. Meg Garvin (by phone)
The Honorable Paul W. Grimm (by phone)
Ms. Jennifer Gentile Long (by phone)

Brigadier General James R. Schwenk, U.S.
Marine Corps, Retired (by phone)
Ms. Meghan A. Tokash (by phone)
The Honorable Reggie B. Walton (by
phone)

Absent Committee Members

Ms. Kathleen B. Cannon
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

Committee Staff

Colonel Steven Weir, U.S. Army, Staff Director
Ms. Julie Carson, Deputy Staff Director
Dr. Janice Chayt, Investigator
Dr. Alice Falk, Technical Editor
Mr. Chuck Mason, Attorney-Advisor
Ms. Meghan Peters, Attorney-Advisor
Ms. Terri Saunders, Attorney-Advisor

Other Participants

Major Israel King, U.S. Air Force, Alternate Designated Federal Officer (ADFO) (by phone)
Major Jane Male, U.S. Air Force, Service Representative (by phone)
Mr. Jim Martinson, U.S. Navy Service Representative (by phone)
Major Wayne Shew, U.S. Marine Corps, Service Representative (by phone)
Captain Vasili Tasikas, U.S. Coast Guard, Service Representative (by phone)
Lieutenant Colonel Mary Catherine Vergona, U.S. Army, Service Representative (by phone)

MEETING MINUTES

The ADFO opened the public meeting at 11:02 a.m. on September 7, 2018. Chair Martha Bashford provided opening remarks summarized the agenda for the meeting.

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

The Chair began the public meeting by initiating a discussion of a draft letter, prepared by DAC-IPAD staff, summarizing the Committee's recommendations to the Secretary of Defense regarding the implementation of Article 140a, UCMJ. Ms. Meghan Peters, DAC-IPAD Attorney-Advisor, noted that the draft letter also contained the comments and edits suggested by the Committee members since the last DAC-IPAD public meeting and deliberations held on July 20, 2018. The draft letter contained the following recommendations:

Recommendation 1: The uniform standards and criteria developed to implement Article 140a, UCMJ, should reflect the following best practices for case data collection:

a. Collect all case data only from standardized source documents (legal and investigative documents) that are produced in the normal course of the military justice process, such as the initial report of investigation, the commander's report of disciplinary or administrative action, the charge sheet, the Article 32 report, and the report of result of trial;

b. Centralize document collection by mandating that all jurisdictions provide the same procedural documents to one military justice data office/organization, an independent entity within DoD;

c. Develop one electronic database for the storage and analysis of standardized source documents, and locate that database in the centralized military justice data office/organization within DoD;

d. Collect and analyze data quarterly to ensure that both historical data and analyses are as up-to-date as possible;

e. Have data entered from source documents into the electronic database by one independent team of trained professionals whose full-time occupation is document analysis and data entry. This team should have expertise in the military justice process and in social science research methods, and should ensure that the data is audited at regular intervals.

Recommendation 1a: Ensure that the source documents referenced in DAC-IPAD Recommendation 1 contain uniformly-defined content covering all data elements that DoD decides to collect to meet the requirements of Articles 140a and 146, UCMJ.

Recommendation 2: The data produced pursuant to Article 140a, UCMJ, should be sufficiently robust to serve as the primary source for the Military Justice Review Panel's periodic assessments of the military justice system, which are required by Article 146, UCMJ, and as the sole source of military justice data for all other organizations in DoD and external entities.

Recommendation 3: Article 140a, UCMJ, should be implemented so as to require collection of the following information with respect to allegations of both adult-victim and child-victim sexual assault offenses, involving either a sexual act or sexual contact, within the meaning of Articles 120, 120b, and 125, UCMJ (10 U.S.C. §§ 920, 920b, and 925 (2016)):

a. The circumstances giving rise to a criminal investigation by a Military Criminal

Investigation Organization concerning a military member who is subject to the UCMJ;

- b. Whether an unrestricted report of sexual assault originated as a restricted report;
- c. Demographic data pertaining to each victim and accused, including race and gender;
- d. The relationship between the accused and the victim(s);
- e. The initial disposition decision under Rule for Court-Martial 306, including the decision to take no action, and the outcome of any administrative action, disciplinary action, or any case in which one or more charges of sexual assault were preferred, through the completion of court-martial and appellate review;
- f. Whether a victim requested an expedited transfer or a transfer of the accused, and the result of that request;
- g. Whether a victim declined to participate at any point in the military justice process;
and
- h. Whether a defense counsel requested expert assistance testifying or consulting experts on behalf of a military accused, and whether those requests were approved by a convening authority or military judge, noting instances in which the government availed itself of the same type of expert assistance that was not provided to the defense.
- i. The duration of each completed military criminal investigation, and any additional time taken to complete administrative or disciplinary action against the accused.

Recommendation 4: The military Services may retain their respective electronic case management systems for purposes of managing their military justice organizations, provided that

- a. The military Services use the same uniform standards and definitions to refer to common procedures and substantive offenses in the Manual for Courts-Martial, as required by Article 140a; and
- b. The military Services develop a plan to transition toward operating one uniform case management system across all of the military Services, similar to the federal judiciary's Case Management/Electronic Court Filing (CM/ECF) system.

The Committee discussed and adopted without objection each recommendation, with the following amendments. The Committee decided to renumber Recommendation 1a as Recommendation 2, and renumbered each subsequent recommendation accordingly. The Committee voted to amend the new Recommendation 3 to recommend that the data developed pursuant to Article 140a, UCMJ, should support periodic assessments of the UCMJ and be the sole source of military justice data for all other organizations in the Department of Defense (DoD) and external entities. The Committee made non-substantive edits to the remaining recommendations.

After voting to adopt all five recommendations as amended, the committee reviewed the narrative portion of the draft letter as well as the enclosures. The Committee made a few non-substantive edits and approved the letter without objection.

Update from the Staff Director

The Staff Director and Deputy Staff Director updated the members on the status of funeral plans for Dean Harrison and on opportunities for the Committee members to commemorate Dean Harrison and his contributions to the DAC-IPAD.

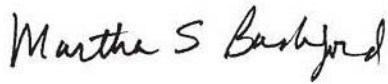
Public Comment

There were no public comments.

The Alternate DFO closed the public meeting at 12:02 p.m.

CERTIFICATION

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



Martha Bashford

Chair

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

MATERIALS

Meeting Records

1. Transcripts of September 7, 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. Draft Article 140a letter with member comments and edits
4. Enclosure 1: JPP Findings and Recommendations Regarding Military Justice Case Data for Sexual Assault Offenses (excerpted from three published reports of the JPP, available at <http://jpp.whs.mil>)
5. Enclosure 2: DoD Response to JPP Request for Information, Set 11 (Apr. 5, 2017)
6. Enclosure 3: Sexual Assault Case Documents and Data Elements Collected by the DAC-IPAD, prepared by DAC-IPAD Staff