



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

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**MINUTES OF JANUARY 25, 2019 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 eleventh public meeting on January 25, 2019, from 9:00 a.m. to 3:52 p.m. The Committee received testimony from former Service members who shared their experiences with the military justice system and the effects of sexual assault investigations. The Committee received updates from the Data Working Group and the Case Review Working Group. Lastly, the Committee deliberated the March 2019 draft report.

**LOCATION**

The meeting was held at Doubletree by Hilton Crystal City, 300 Army Navy Drive, Arlington, Virginia.

**MATERIALS**

A verbatim transcript of the meeting and 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 Paul W. Grimm

Ms. Jennifer G. Long (Dial-in)

Mr. James P. Markey

Dr. Jenifer Markowitz

Chief Master Sergeant of the Air Force  
Rodney J. McKinley, Retired

Brigadier General James R. Schwenk, U.S.  
Marine Corps, Retired

Dr. Cassia C. Spohn

Ms. Meghan A. Tokash (Dial-in)

The Honorable Reggie B. Walton

### Absent Committee Members

Honorable Leo I. Brisbois

Ms. Kathleen B. Cannon

Ms. Margaret Garvin

Mr. A.J. Kramer

### Committee Staff

Colonel Steven Weir, U.S. Army, Staff Director

Ms. Julie Carson, Deputy Staff Director

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

Ms. Patricia Ham, Attorney-Advisor

Ms. Marguerite McKinney-Analyst

Dr. William Wells-Criminologist

### Other Participants

Mr. Dwight Sullivan, Designated Federal Officer (DFO)

Major Israel King, Alternate Designated Federal Officer (ADFO)

### Presenters

Lieutenant Colonel (Retired) Joseph "Jay" Morse, USA

Colonel (Retired) Doug James, USAF

Colonel (Retired) David "Wil" Riggins, USA

## MEETING MINUTES

The DFO opened the public meeting at 9:00 a.m. Chair Martha Bashford provided opening remarks welcoming those in attendance and summarized the agenda for the meeting.

### **Panel: Effects of Sexual Assault Investigations on Accused Service Members**

The Committee heard testimony from three retired Service members who provided testimony specific to their experience after an accusation of sexual assault: retired Army Lieutenant Colonel Joseph “Jay” Morse, retired Air Force Colonel Doug James, and retired Army Colonel David “Wil” Riggins. Each panel member described his individual experiences after being accused of sexual assault while serving in the military. They discussed the process, the impact on their military careers, the impact on their professional career after retiring from the military, and the financial and emotional impact on themselves and their families.

Lieutenant Colonel Jay Morse began by providing a brief background of his career while in the Army highlighting his leadership as chief of the Army Trial Counsel Assistance Program (TCAP). He said that he was removed from that position and given a locally-filed letter of reprimand and in October of 2015 he retired honorably as a lieutenant colonel. Lieutenant Colonel Morse explained that as a result of the accusation his orders to become the SJA of 1<sup>st</sup> Cavalry Division were canceled and he was removed from the selectees for the senior service college, and told to withdraw his request for consideration for the grade of colonel. He added that his top secret–SCI security clearance was also suspended during this time, and subsequently not reinstated. Additionally, he said that the financial impact of withdrawing from competitive promotion to colonel was approximately \$ 2,000,000.

Colonel Morse shared with the members his particular concerns regarding a specific order made by the advising staff judge advocate that ordered him, or anyone acting on his behalf, not to speak to anyone about his case or he would be in violation of a lawful order and could be charged with interfering with an investigation. Due to the media exposure of the accusation, he cited several examples of losing job opportunities and rejected graduate school applications. He said that each time an organization Googles his name, he loses the job opportunity.

The Committee then heard from retired Air Force Colonel Doug James who explained that in addition to his current job as an airline pilot for a major airline, he is the president of Save Our Heroes, a non-profit for Service members falsely accused of sexual assault. He feels that the effective career killing, family destruction and the lack of holding proven false accusers accountable after making sexual assault allegations has turned the military judicial system into a threat to national security. He believes that his personal experience was a byproduct of a hostile and protracted custody battle between his wife and her ex-husband. He outlined that at the time of the accusation, his military career was on an upward trajectory and he had been screened for brigadier general. He said that the allegation and the Air Force’s lack of interest in the truth of his case, in favor of its interest in appeasing Congress, ended his career. He said that the investigation conducted by the Air Force and an *Air Force Times*’ article that was published after his arraignment had the most negative impact. Even though the Air Force eventually dropped his case for unexplained reasons, he explained that the damage was done and he retired soon after.

Colonel James also added that like Lieutenant Colonel Morse, internet searches continue to be a serious problem for him because the links are never removed. He said that in his case, he was able to get the *Air Force Times* article removed, but a dead link remains. He added that he worked through his congressional representatives to have his security clearance reinstated, but noted that his DNA remains in the FBI database.

Retired Army Colonel Wil Riggins next provided the Committee with his statement regarding the impact the allegation of sexual assault had on his career and his private life. He shared a summary of his career that began with graduating from the United States Military Academy followed by 26 years of military service. He said that in 2013 he was one of 35 officers selected for promotion to brigadier general, and that it was also during this time he learned he was the subject of a sexual assault allegation dating back to his time as a West Point cadet. He explained that the investigation took six months to determine there was insufficient evidence to establish probable cause. He said that despite the promotion review board's recommendation that he be promoted, the Secretary of the Army withdrew support, in what he believed was a punitive action. He told the Committee that returning to his previously held position was not an option and he chose to file for retirement—and to file a lawsuit against the accuser for defamation. He added that he recently received a favorable decision in the case, and received a record-setting amount of damages.

#### Member Questions:

##### *Length of Investigation*

Chair Bashford asked Colonel Morse how long his investigation into the allegation took. He said that it took about four months from the accusation to the filing of a reprimand, and the grade determination board lasted six or seven months.

##### *Recommendations*

General James Schwenk asked what the panel would recommend to change the system to fix some of the things they experienced, or that they know others have experienced, that didn't work well.

Colonel James replied that Save Our Heroes recommends the elimination of the *Feres* doctrine [that generally prohibits Service members from suing the government for monetary damages], that there be the ability to hold the prosecutor accountable, and to keep the investigations out of the newspaper.

Colonel Riggins added that there is also a constant mantra that there is a military sexual assault “epidemic” that leads to a perception that these are not individual cases that need to be looked at and weighed on their own merit. He emphasized that the victim and accused have rights that need to be protected. In his case, he explained, the Secretary of the Army did not follow the promotion review board's recommendation which was reviewed by both the Army Inspector General and the Department of Defense inspector general, and essentially allowed punitive

action with no finding of wrongdoing. Colonel Riggins said that his recommendation would be to refocus on the merits of each individual case.

Colonel Morse replied that he believes that due to too much congressional oversight, the military has created a system in which a victim's statement is always deemed to be true. Because of this, he continued, the accused can never defend themselves.

Colonel Morse also noted that if the accused says anything that puts into question the victim's credibility or explains why the victim would lie, then the accused is perceived as victim shaming, whereas if a decision-maker ever finds that the accused has greater credibility than the victim, Congress reacts negatively.

He continued that another issue relates to the staff judge advocates, each of whom has an obligation to uphold the law at all costs. Colonel Morse believes that this legal duty has become subordinate in the military to a desire to protect the convening authority, who is the staff judge advocate's boss. He recommended the Committee ask staff judge advocates what they believe their obligation is to their convening authority.

#### *Premature Disclosure of Allegations to the Media*

Judge Paul Grimm asked Colonel James whether his case came to the press from the Air Force or the accuser or someone else. He noted that since the docket is publicly available, he didn't know if it would be possible to prevent the information from getting in the press, and asked what recommendation the Committee could make to the Services that would prevent premature disclosure.

Colonel James replied that the announcement came from an *Air Force Times* writer looking at the docket. He added that he didn't have a recommendation to prevent it from happening, but it appears the Services are eager to get it out and that it creates a very unfair situation. Colonel Morse said that in his specific case he believes the investigation was leaked by someone from the CID office in an attempt to see if there were more potential victims who would come forward.

#### *Military Defense Counsel, Titling and Credibility, Mission Capability*

Chief Rod McKinley asked if each of the panel members had military defense counsel, and whether they felt they were properly trained and had the time to put into their cases. He also asked whether they thought that there was undue pressure to find guilt and whether their cases affected mission capability and the morale of the people surrounding them.

Colonel Morse responded that the current environment has created a situation where a male senior officer will never be in a room with the door closed with a subordinate female, won't share a taxi, will get separate rental cars or whatever it might be. He continued that it has created the perception that to go anywhere with a female Soldier, a female Airman, a female Marine or a female Sailor, he is putting himself at risk of an accusation that he cannot defend. He said that he has served with the absolute best women judge advocates and it is troubling that this situation has also created the unintended consequence of discriminating against females more than before.

Colonel Morse recommended that the Committee hear from female judge advocates regarding their experience in light of these concerns.

Colonel James replied that he had two military defense counsel, but eventually hired a private attorney due to the length of time it was taking and because of some of the nuances of his case. He added that he didn't see any impact on mission capability.

Colonel Riggins replied that in the Army, general officers needing representation are appointed a senior judge advocate. He said that he was initially assigned to a lieutenant colonel who was the branch chief, but a week later he was reassigned to a major who had previously been a prosecutor, but this was his first case as a defense counsel. Colonel Riggins felt that he did a fair job, and at the end of the six month investigation, there was no finding of wrongdoing. He explained that he learned through the more senior defense attorney on the case that a finding of no probable cause creates a middle ground for an accused of not guilty, but not innocent. He said that he contacted the one-star director of the Army CID who advised him that unless the accuser admits he or she made a false allegation, there is a reluctance for the investigation to ever state that the allegation is not valid.

Colonel Morse added that when a person is titled for an offense, the standard is that credible evidence exists—a very low standard for a procedural step that has outsized ramifications for a Service member when taken. He noted that the trial counsel in his case said that the “titling” process does not include an assessment of either party’s credibility. He believes this is because when a prosecutor or even a defense attorney brings evidence that suggests the claimant is not credible, it is considered victim-shaming and automatically discounted. On the other hand, if the Service doesn't title someone or take some sort of action when there is an allegation, then the feeling is that the convening authority at some point is going to get in trouble. Colonel James agreed. He said that what he has seen through his work at Save Our Heroes is that commanders issue non-judicial punishment to show they did something.

#### *Officer versus Enlisted Process Experience*

Chair Bashford asked the presenters how they think their experiences differed from those of an E-3 or a private who is 19, 20, or 21 years old.

Colonel Morse replied that in his case he had the experience of knowing how the system worked, but the young soldiers typically don't. He said that they are not immune from the same pressures on the company commander or battalion commander being advised by the same staff judge advocates, or trial counsel who are ensuring that action is taken. He added that he didn't think they are able to afford outside counsel or request specific defense counsel. He explained that also an E-4 does not have the same power or wherewithal or knowledge of the Army that a 40-year-old O-5 does. Colonel James agreed and added that there is pressure put on the young accused Service members to plead or go to a court-martial, but not advising them they will be a registered sex offender. Colonel Riggins responded that when his civil court case hit the news, his email inbox filled with requests that spanned the spectrum of rank and included a lot of parents of young enlisted Service members who don't have the resources it takes to defend themselves.

### Acquittal at Court-Martial

Chair Bashford asked Colonel James about his statement that he sometimes advises accused Service members to go ahead and hold out for the court-martial, since a letter of reprimand or finding of insufficient evidence can end a career. She asked how an acquittal at the court-martial impacts a career, to which Colonel James replied that at least with an acquittal the Service member can clear their name.

### Internal and External Political Pressure

Judge Reggie Walton asked the panel members about whether the political pressure they spoke about was part of the underlying reason for not being treated fairly. He asked whether there is a way the military system can be totally fair and impartial when those external and internal pressures are in play.

Colonel Morse replied that in 2014 when Senator Gillibrand presented a bill on the Senate floor, one suggestion was that all determinations be turned over to judge advocates. He explained that he thought that would decrease the number charges and increase the number of convictions, because now there would be a trained judge advocate that is looking at the facts and making a determination as to whether or not it meets a legal standard. He added that he didn't know if the answer is to take the authority out of the hands of the commanders. He added that his experience was that the advising staff judge advocate gave advice based on a desire to ensure that the convening authority would not come under scrutiny by Congress.

Colonel Riggins replied that he believes it has to start with the most senior leaders within the Defense Department and with the Defense spending and Defense promotions. He added that when the Senate Armed Services Committee and House Armed Services Committee make blanket statements that at any cost something needs to be done, it becomes open to interpretation and creates a command environment where from the top down there are individuals making their own interpretation. He explained that at the time of his case, in 2013, there were two different battlefields, Afghanistan and Iraq, and the Secretary of the Army's number one priority for 2013 was complete eradication of sexual assault in the ranks of the Army. He explained that he applauds the efforts to properly identify and to punish validated cases of sexual assault, but when there is a command influence that says "at any cost," it can be interpreted in unrealistic ways.

### Defense Counsel Resources

Judge Grimm asked what specific resources the military defense counsel, who are assigned to defend the accused in these types of offenses, should have that they do not have. He asked whether separate investigators is the recommendation. Colonel Morse responded in the affirmative and suggested that Army Criminal Investigation Command (CID) investigators would be better investigators if they served a term as a defense investigator as well as a government investigator.

### Outside Counsel Representation

Judge Walton asked Colonel Morse if having outside civilian counsel would have made a difference in his case since a civilian attorney would not be subject to a court-martial [for not following the order not to interview witnesses]. Judge Grimm asked if he had a civilian attorney who continued to try to contact witnesses and gather evidence in his defense, would the command have interpreted that as his action through his attorney and taken action against him.

Colonel Morse responded that he didn't know if an outside counsel would have fared any better, based on how the government handled his case, and in the end the order was withdrawn and the investigation was considered complete. He added that he thought if he had had a civilian attorney and that attorney continued to do their own thing, he believed it would have been an additional issue for him as the Service member.

### *Insufficient Evidence and Command Decisions*

Chair Bashford asked the presenters what they thought the convening authority should do in situations in which there is insufficient evidence to bring charges forward. She wanted to know if the presenters wanted this to be treated as a declaration of the innocence of the accused and, if so, what about the cases in which it isn't clear that the accused is actually innocent, there just isn't enough evidence to prove the case at trial.

Colonel Riggins responded that his view is it comes back to a simple concept that an accused is innocent until proven guilty. He explained that there is a different viewpoint within the military because of the stigma and unwillingness to look at it from a different angle. Colonel James added that there are Facebook pages that talk about how to game the system through false accusations in order to gain benefits such as automatic permanent change of station of their choice, and VA benefits. Colonel Morse commented that it is not just some of the cases in which we don't know what happened, but rather, that describes most of cases. He said that's the reason for credibility assessments, and the reason that judge advocates must follow the law and apply standards to determinations every step along the way. He added that it can be okay to say we don't know what happened here and we're going to provide all the resources we have to ensure that someone who alleges they have been assaulted is provided every resource possible. Colonel Morse explained that he agreed with Colonel James that there are people who abuse the system for their favor, but sex assault doesn't make it special. He said it shouldn't swing the pendulum the other way so that it causes so much unfairness for the accused.

### *Potential Investigator Bias and Command Decisions*

Mr. James Markey commented that he is hearing in the presenters' testimony that political and cultural issues are occurring within the military and he asked what some of the opportunities are in the technical aspects of the investigation to address potential bias, and the command making decisions whether to prefer charges.

Colonel Morse replied that based on his specific experience, he believes the Judge Advocate General's Corps, not the commander or the two-star convening authority, ensured that he submitted his letter of retirement from the Army in response to the allegation. He explained that when commanders and the judge advocates who are advising them are at high levels, and every



case is potentially a high profile case, it causes a change in the decision-making process. He said it causes judge advocates to change how they advise and it causes commanders to change how they give a certain disposition.

Mr. Markey asked whether commanders should have the authority to make that decision, or whether somebody outside the commander who has direct supervision over that unit should be in a position to make those decisions in these cases.

Colonel Morse replied that there are a lot of different answers, but that commanders need real authority to do their jobs and commanders need real authority to maintain good order and discipline; judge advocates need real authority to advise on the law not on politics. He added that when commanders are told or have the perception they need to make certain decisions in a case to avoid risk of not getting promoted or getting a lateral transfer, then it changes the way they make a decision.

Colonel James replied that he agrees with Colonel Morse to keep the politics out of it so they can make the decision.

Colonel Riggins clarified that the investigators in his case were not biased in any way against him. He also noted the considerable command influence the Secretary of the Army's decision had on his brigade commanders, and the ripple-down effect that it had throughout the formation regarding the way he was treated.

#### *Removal of Sexual Assault from the UCMJ to Civilian System*

Judge Grimm noted that one option that has been discussed is that the offense of sexual assault should not be within the Uniform Code of Military Justice and the military should not prosecute it. He added that it was resisted by the military because the function of the military justice system is to promote good order of discipline. He asked Colonel Riggins whether it would be better for the protection of the rights of the victim, and the accused, and better for the military to remove the type of pressures alluded to if these types of offenses were removed from the Uniform Code of Military Justice and were to be investigated, prosecuted, and handled in the civilian community.

Colonel Riggins replied that when he was a brigade commander he would have said that the command responsibility for good order and discipline within a unit is as old as this country and that responsibility exists whether in the continental United States or deployed on foreign ground. However, today he is reluctant to say that because there are second and third order effects that he thinks are difficult to measure, difficult to comprehend, and difficult to understand. He feels that knowing the stakes are high, he would be willing, after having gone through this experience, and having commanded and had UCMJ authority, to have that conversation to look for triggers and times when maybe it makes sense to put the decision somewhere else. He added that he didn't agree that this should be done in every case.

Colonel James said that in the past he had supported moving sexual assault out of the UCMJ, but now he supports removing politics and the political influence from the UCMJ. He explained that for now this is the targeted crime, but in two years it could be something else.

### **Data Working Group Presentation of Sexual Assault Court-Martial Data**

#### *Data Presentation: Courts-Martial Project*

Mr. Chuck Mason, DAC-IPAD Attorney-Advisor, Dr. Bill Wells, DAC-IPAD Criminologist, and Ms. Stayce Rozell, DAC-IPAD Senior Paralegal, provided the Committee with a briefing on the sexual assault case adjudication statistics for fiscal years 2015 through 2017 and the multivariate analysis for fiscal years 2016 and 2017. Mr. Mason explained that the total cases reflected in the database reflect all cases that had a charge preferred for sexual assault that met the initial standards. He led the Committee through the briefing noting the edits that were made based on the feedback received in the previous day's prep session. Mr. Mason explained that the data appendix to the report includes all of the data tables.

Chair Bashford commented that the conviction rates remain quite low and asked if there is data yet to know if it is because the wrong cases are going forward or if it is the prosecutors. She commented that this is not the norm for any other data in the civilian area that she has seen. Mr. Mason replied that the working group would work to have more information and direction at the next full meeting.

General Schwenk noted that one of the discussion items for the case review working group is to address the high acquittal rate and that will inform what is recommended by the full DAC-IPAD to the Case Review Working group to take on next year.

#### *Summary of Multivariate Results*

Dr. Bill Wells, the DAC-IPAD's professional criminologist consultant, provided the Committee with a briefing on the summary of multivariate results for fiscal years 2016 and 2017. His discussion covered four summary slides of a series of multivariate models for both years. He explained that access to the full results are contained in the appendix of the report. He added that it is also important to know when the patterns show there is no relationship because those findings can be just as revealing. Mr. Mason gave the example that rank or pay grade of the accused or the gender of the victim did not matter across any of the models.

General Schwenk asked whether there was a problem with the data regarding race. Colonel Weir commented that race is not part of any of the court-martial documents including the record of trial. General Schwenk noted that the Government Accountability Office (GAO) was in the process of conducting a wide-scale analysis of racial disparities within the military justice system, or lack of racial disparities within the military justice system in that report, and that it is due in February. He requested that Mr. Dwight Sullivan, DAC-IPAD's DFO, send the DAC-IPAD a copy.

### **Case Review Working Group Presentation of Investigative Case File Review Data**

Ms. Kate Tagert, DAC-IPAD Attorney-Advisor, provided an overview of the Case Review Working Group's data results from sexual assault investigations that were closed in fiscal year 2017. General Schwenk noted that the data come for the 165 randomly selected cases the staff and Committee members have reviewed out of 2,055 total cases. He said by next fall the review of all of the cases will be complete and then there will be an in-depth review of all the data.

### Reporting Party

In addition to victims giving reports of sexual assault, Ms. Tagert explained that third parties can make reports as well. In the report's descriptive data, third parties are divided into categories including victim-authorized representatives, SARCs, special victims' counsel/victims' legal counsel, the command, and other third parties, including intimate partners, family, friends, and neighbors. She noted that the majority of cases that are reported to law enforcement are not reported by the victim.

### Promptness of the Complaint

Ms. Tagert explained the checklist recorded the date of the sexual assault versus the date of the report. She noted 33% were reported within 48 hours.

### Duration of Military Criminal Investigations into Allegations of Penetrative Sexual Assault

Ms. Tagert explained that the duration of the investigation, from the time that a case was opened to the time that the command receives the report, was calculated. She noted that next year's report will provide the duration of how long it takes the commander to come to a decision.

### Victim Demographic Characteristics

Ms. Tagert reviewed the demographics of victims, noting the majority are female and enlisted, with the second largest demographic being the civilian spouse of a Service member. Additionally, it was noted the average age of victims is between 19 and 20. She noted for the next report the age and grade will be linked together for analysis.

### Victim-Subject Relationship

Ms. Tagert explained that to assist reviewers in determining the victim/subject relationship, Dr. Wells developed a hierarchy model that represented the closest relationship that was reported. She noted the largest number of accused were in the friend category.

### Victim Participation

Ms. Tagert explained that the reviewers recorded victim declination to participate in the investigation. She noted that out of 165 cases, 56 cases involved a victim's declination. She also noted that the largest demographic of victims declining to participate were Service members and civilians.

### Victim Participation Compared to Reporting Party

Ms. Tagert pointed out that third party reporting of sexual assault is unique to the military, and the Case Review Working Group looked at the effect of having a third party report on the participation level. She noted that if the command makes the report, the lowest percentage of victims declined to participate.

### Subject Demographic Characteristics

Ms. Tagert noted that the majority of subjects are male and enlisted, and the age of the subjects is only a little older than the victim.

### Subject Statement to Law Enforcement

Ms. Tagert explained that the Case Review Working Group also recorded whether a subject gave a statement to law enforcement. She noted that in the majority of cases, up to 74 percent, the subject gave a statement to either a military investigator or a civilian law enforcement agency.

Next, Dr. Wells described the data analysis results for the 122 cases in which no action was taken for the penetrative sex offense. He explained that the analysis looked at how consistently the four case closure classifications were used across organizations and highlighted the patterns of inconsistency in how the different organizations close out their cases.

### Case File Data: Understanding Victim Impairment

Dr. Wells explained that victim impairment is an important variable because it can have an impact on case progression for a couple of different reasons, including potential issues regarding victim credibility and issues related to the quality of evidence. He pointed out that in over half of the 122 cases, the victim was impaired. He noted that 43% of the victims self-reported being passed out or unconscious.

Dr. Jenifer Markowitz asked if there was consideration given to surreptitious use of drugs in any of the cases. She asked whether there were cases in which the victim was not sure whether they had been given something against their will or without their knowledge. Ms. Tagert responded that on the checklist there is an option for drugged and there were victims who reported they were impaired but didn't know how they got impaired. Reviewers classified those cases as drugged. She added that if someone reported that they felt like they were drugged, those were counted as such. Ms. Tagert explained that the drugs involved are not street drugs, but rather prescription medications. She noted that in some of the cases a toxicology report is included and that information will be discussed in next year's report.

Dr. Markowitz commented that as a general consideration going forward, from her clinical perspective, there may be utility in making a category for cases in which it is unclear what the nature of the impairment is because there are times when forensic examiners do not know why a patient comes in impaired.

### Case File Data: Civilian Agency Involvement and Military Justice Processing

Dr. Wells explained that there were 49 cases that occurred off-installation in which a civilian agency was involved. He said that the civilian agency took the lead in 34 of the cases, and the military took the lead on 15. One civilian case out of the total cases with civilian agency involvement led to a civilian prosecution. Dr. Wells continued that of the 22 off-installation cases the military justice system processed, 5 resulted in a conviction for a sexual assault, or a conviction for multiple charges, or conviction for a sex assault and for a non-sexual assault crime.

### Case File Data: Variables Related to Command Action Decision

The next analysis Dr. Wells discussed was how case characteristics were related to whether a commander took action on a penetrative sexual assault complaint, as well as some of the relationships that emerged from that analysis. He explained when a judge advocate determined there was probable cause, the case was more likely to result in some action on the penetrative sexual assault complaint; when the victim participated in the investigation, there was also a greater chance that there was some action on the penetrative sexual assault complaint. He reported that if the victim received a forensic sexual assault medical examination, the case was more likely to move forward with some action; when the victim and the subject were not intimate partners but there was some other relationship—for all those relationships combined together—there was more likely to be some action taken.

General Schwenk commented that the Case Review Working Group would be reviewing at least 60 more cases in the next couple of months to wrap up the case review and turn all of the data over to Dr. Wells. He added that all Committee members were invited to assist in completing the final portion of the case reviews.

Dr. Spohn asked for more information about how race and ethnicity is recorded in the military. Ms. Tagert responded that as the working group heard from judge advocates, race is not recorded at all on criminal documents, and race is not always accurately recorded; for example, the case reviewers have found race noted on some investigative documents as either white or black (with no other options available). Ms. Tagert explained that the reviewers considered it the most reliable when the investigator asked the subject or the victim to describe how they identify. She added that at the next meeting she hopes to have a solution.

### **Committee Deliberations on March 2019 Draft Report**

The draft annual report was provided to each Committee member for review prior to the meeting. Members provided their comments and suggested edits to the staff who then compiled a draft report containing all of the Committee members' comments and suggested changes. During the meeting, at Chair Bashford's direction, Colonel Weir reviewed the edits for deliberation and approval of each proposed change. After deliberations, Chair Bashford asked for a vote to approve the edits and all were adopted as amended by unanimous agreement of the members.

Next Colonel Weir provided a review of the findings and recommendations for the Committee's deliberation. Chair Bashford asked for a vote on each finding and recommendation, and all were adopted as amended by unanimous agreement of the members.

Colonel Weir reviewed Chapters 1 through 6 of the draft annual report with the Committee. The members discussed each chapter and provided their feedback. Chair Bashford asked for a vote to adopt each of the chapters to the annual report as amended. Chapters 1 through 6 were adopted by unanimous agreement of the members.

### **Public Comment**

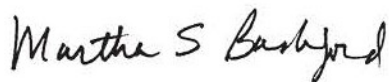
There were no requests for public comment.

With no further comments or issues to address, the meeting concluded.

The DFO closed the public meeting at 3:52 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 January 25, 2019, Committee Public Meeting, prepared by Neal R. Gross and Co., Inc.

#### **Read Ahead Materials Provided Prior to and at the Public Meeting**

2. Meeting Agenda, DAC-IPAD Public Meeting, January 25, 2019
3. Biographies of Meeting Presenters
4. Draft Outline and Initial Draft of the March 2019 DAC-IPAD Annual Report, January 18, 2019
5. Written statement of Michael Conzachi, Director of Investigations, Save Our Heroes, January 16, 2019
6. Memorandum from Department of Defense Office of General Counsel, Subject: Uniform Standards and Criteria Required by Article 140a, Uniform Code of Military Justice (UCMJ) (January 23, 2019)

7. Data Working Group PowerPoint Presentation, Data Presentation: Courts-Martial Project, January 25, 2019
8. Case Review Working Group PowerPoint Presentation, Case Review Project Descriptive Statistics, January 25, 2019
9. DAC-IPAD PowerPoint Presentation, Findings and Recommendations Briefing, January 25, 2019
10. DAC-IPAD Staff Prepared Information Paper: Draft Annual Report, Page 14, Disposition of Sexual Assault Investigations in the Civilian Criminal Justice System