



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

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**MINUTES OF NOVEMBER 6, 2020, PUBLIC MEETING**

**AUTHORIZATION**

The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (“the Committee” or “DACIPAD”) 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 twentieth public meeting on November 6, 2020, from 11:00 a.m. to 3:55 p.m. At this meeting the Committee conducted final deliberations on the DAC-IPAD *Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military* as required by section 540I of the National Defense Authorization Act for Fiscal Year 2020. The Committee was briefed on restorative justice and victim impact statements during sentencing at courts-martial as requested by Congress in the Joint Explanatory Statement accompanying the FY20 NDAA. Finally, the Committee received an update from the DAC-IPAD Policy Subcommittee.

**LOCATION**

The meeting was held via teleconference with dial-in access information provided to the public in the Federal Register and on the DAC-IPAD’s website.

**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 Leo I. Brisbois  
Ms. Kathleen B. Cannon  
Ms. Margaret A. Garvin  
The Honorable Paul W. Grimm  
Mr. A. J. Kramer  
Mr. James P. Markey  
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  
Ms. Jennifer G. Long  
Dr. Jenifer Markowitz  
The Honorable Reggie B. Walton

### Committee Staff

Colonel Laura Calese, U.S. Army, Staff Director  
Ms. Julie Carson, Deputy Staff Director  
Ms. Alice Faulk, Technical Editor  
Ms. Nalini Gupta, Attorney-Advisor  
Mr. Chuck Mason, Attorney-Advisor  
Ms. Marguerite McKinney, Analyst  
Ms. Meghan Peters, Attorney-Advisor  
Ms. Terri Saunders, Attorney-Advisor  
Ms. Kate Tagert, Attorney-Advisor  
Mr. Dale Trexler, Chief of Staff  
Ms. Eleanor Magers Vuono, Attorney-Advisor

### Other Participants

Mr. Dwight Sullivan, Designated Federal Officer (DFO)

### Service Representatives

Lieutenant Colonel Andrew C. Lee, U.S. Marine Corps  
Major Marquita Ricks, U.S. Air Force  
Major Ryan C. Lipton, U.S. Marine Corps  
Ms. Janet Mansfield, U.S. Army  
Mr. James Martinson, U.S. Navy  
Ms. Asha Vaghela, U.S. Air Force  
Lieutenant Commander Daniel Wiltshire, U.S. Coast Guard

## MEETING MINUTES

Mr. Dwight Sullivan, Designated Federal Officer, opened the public meeting at 11:00 a.m. Ms. Martha Bashford, Chair of the DAC-IPAD, provided opening remarks welcoming those in attendance, explaining the purpose of the meeting and outlining the agenda. By voice roll call, she established quorum and introduced the DAC-IPAD staff to lead the Committee's deliberations on the draft *Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military*.

### DAC-IPAD Deliberations on the Draft DAC-IPAD Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military

After providing the Committee with a summary of the Congressional tasking, Ms. Eleanor Magers Vuono, DAC-IPAD Attorney-Advisor, introduced the draft report for deliberation and vote. She explained that based on the tasking, the Services responded to the Committee's request for information (RFI) for race and ethnicity data held in their various databases. Ms. Vuono stated that based on those responses, the draft report was developed for the Committee's deliberations.

Ms. Vuono led the Committee through a review of the report including the findings and recommendations. She highlighted the issues and edits discussed in the previous day's preparatory session. The Committee members provided their feedback and suggestions for incorporation into the final draft version of the report. It was agreed that the Committee would vote on the revised report after the Policy Subcommittee briefing.

### Staff Presentation on Restorative Justice and Victim Impact Statements at Sentencing Followed by Committee Discussion as Requested in the Joint Explanatory Statement to the FY20 NDAA

Ms. Kate Tagert, DAC-IPAD Attorney-Advisor, explained that in Section 535 of the FY20 NDAA, Congress included a request in the accompanying Joint Explanatory Statement (JES) that the DAC-IPAD explore whether other justice programs such as restorative justice programs could be utilized in the military justice system. She stated that the JES also requested that the DAC-IPAD assess whether military judges are interpreting Rule for Courts-Martial (RCM) 1001(c), too narrowly by limiting what survivors are permitted to say during sentencing hearings.

Ms. Tagert presented the principles of a restorative justice program and stated that it is an alternative to a traditional retributive criminal justice model. She stated that based on the sufficiency language in the JES, the DAC-IPAD would focus on suitable programs that could be offered before any type of charging or trial. Members provided feedback and expressed that based on their understanding, restorative justice as a program for sexual violence is in the exploratory stage. The Committee discussed the pros and cons of a restorative justice program and agreed that more information and discussion is needed. The Committee recommended that a working group explore the subject further.

Ms. Meghan Peters, DAC-IPAD Attorney-Advisor, briefed the Committee on the request from Congress to look at how military judges are handling victim impact statements at courts-martial. She stated that victims' rights are codified in Article 6b of the Uniform Code of Military Justice (UCMJ), which states that a victim has the right to be reasonably heard at a sentence hearing related to the offense of conviction. Ms. Peters explained that the specific actions Congress requested the DAC-IPAD take are to assess whether military judges are giving appropriate deference to victims and, separately, whether judges are appropriately permitting other witnesses to testify about the impact of a crime pursuant to RCM 1001(c).

Ms. Peters provided the Committee with options for assessing and responding to the JES request. The Committee agreed that the Chair would assign the assessment of victim impact statements at trial to a subcommittee to be determined.

#### Policy Subcommittee Briefing on Interviews with Civilian Prosecutors and Defense Counsel and Update on Subcommittee Timeline for Review of Military Pretrial Processes

Ms. Meghan Peters, DAC-IPAD Attorney-Advisor, provided a summary of the Policy Subcommittee's (PSC) interviews with civilian prosecutors and defense counsel; the staff's collection of data concerning no-probable cause determinations at Article 32, UCMJ, preliminary hearings; a proposed report completion timeline; and the PSC's preliminary assessment regarding Article 32, UCMJ.

Ms. Terri Saunders, DAC-IPAD Attorney-Advisor, advised the Committee that the PSC would be conducting a PSC meeting on December 3 where Article 32 preliminary hearing officers and staff judge advocates will discuss the pretrial process. Ms. Saunders explained that based on the PSC's October 16, 2020, meeting, the PSC had made a preliminary assessment that a determination of no probable cause by a preliminary hearing officer should be binding on the staff judge advocate and the convening authority. This preliminary assessment presumes that a military judge or magistrate would serve as the preliminary hearing officer or, under exceptional circumstances, that another judge advocate with significant military justice experience would serve as the preliminary hearing officer. The no probable cause determination would be without prejudice to the government's ability to seek a new hearing with new evidence. She stated that by August of 2021, the PSC would produce findings and recommendations covering the preferral and referral processes.

#### DAC-IPAD Deliberations on the Draft DAC-IPAD Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military

The staff made the edits suggested by the Committee and returned to continue deliberations and vote. The Committee unanimously approved Findings 1 through 5, and subject to changes that were discussed, Recommendations 1 through 10 were approved unanimously.

#### Meeting Wrap-Up and Public Comment

Colonel Laura Calese, DAC-IPAD Staff Director, advised that a written public comment from Survivors United was received during the meeting, and that their statement would be aligned with the public meeting scheduled for February 5, 2021. Additionally, a written public comment was submitted by a former Navy officer regarding his court-martial for sexual offenses. Colonel Calese stated that his concern related to racial disparities in the military justice system and of judges and military panels specifically. She advised that his comments would be shared with the Committee, but per his request, would not be posted to the DAC-IPAD website.

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

The DFO closed the public meeting at 3:55 p.m.

### **CERTIFICATION**

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

CALESE.LAURA.JANE.1032374421  
Digitally signed by  
CALESE.LAURA.JANE.1032374421  
Date: 2021.04.07 07:51:41 -0400'  
Laura J. Calese, Colonel, USA  
p.p. Martha Bashford  
Chair

### **MATERIALS**

#### Meeting Records

1. DAC-IPAD August 21, 2020, Public Meeting Minutes

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

1. Meeting Agenda, DAC-IPAD Administrative Preparatory Session, November 5, 2020
2. Meeting Agenda, DAC-IPAD Public Meeting, November 6, 2020
3. DAC-IPAD Draft Race and Ethnicity Report
4. Memorandum from Department of Defense Office of General Counsel, Subject: Uniform Standards and Criteria Required by Article 140a, Uniform Code of Military Justice (UCJ) (December 17, 2018)
5. Memorandum from Department of Defense Office of General Counsel, Subject: Recording Court-Martial Demographic Information (June 8, 2020)
6. Office of Management and Budget, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, Federal Register Notice/Vol. 62, No. 210/October 30, 1997
7. Office of Management and Budget, Directive 15, Federal Register Notice/Vol. 62, No. 210/October 30, 1997
8. Office of Management and Budget, Revisions to the Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, Federal Register/Vol. 81, No. 190/September 30, 2016 Proposed Race and Ethnicity
9. Letter from the Department of Defense Task Force on the Administration of Military Justice in the Armed Forces (November 30, 1972)
10. Joint Explanatory Statement of the FY 2020 NDAA
11. DAC-IPAD PowerPoint Presentation, Joint Explanatory Statement, November 6, 2020

12. CV, Koss, Mary Ph.D.
13. Article, The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes, Mary P. Koss, PhD, Journal of Interpersonal Violence, 201X, Vol XX9X) 1-38, 2013
14. DAC-IPAD PowerPoint Presentation, Policy Subcommittee Update, November 6, 2020
15. DAC-IPAD October Articles of Interest